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PROCEEDINGS AND DEBATES OF THE *108th* CONGRESS, FIRST SESSION

HOUSE OF REPRESENTATIVES—*Wednesday, November 12, 2003*

The House met at 2 p.m.

The Most Reverend Anthony Sablan Apuron, Archbishop of Agana, Guam, offered the following prayer:

Almighty God, whose goodness fills our hearts with joy. You are blessed for bringing us together to work in harmony, in peace, and in justice. Send Your blessings upon our United States House of Representatives, who generously devote themselves to the work of our Nation and Territories in the laws they pass and the resolutions they create.

In times of difficulty and need, grant them the strength to transcend personal interests and seek after the common good for all. Strengthen them with Your grace and wisdom so that everything that they begin with Your inspiration, continue with Your guidance and by You be happily ended. Grace us with Your saving presence and aid us with Your constant blessing.

All glory and praise be to You, our ever-living God, forever and ever. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Alabama (Mr. ADERHOLT) come forward and lead the House in the Pledge of Allegiance.

Mr. ADERHOLT led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment a bill of the House of the following title:

H.R. 3054. An act to amend the Policemen and Firemen's Retirement and Disability Act to permit military service previously performed by members and former members of the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police, and the United States Secret Service to count as creditable service for purposes of calculating retirement annuities payable to such members upon payment of a contribution by such members, and for other purposes.

The message also announced that the Senate has passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 1828. An act to halt Syrian support for terrorism, end its occupation of Lebanon, and stop its development of weapons of mass destruction, and by so doing hold Syria accountable for the serious international security problems it has caused in the Middle East, and for other purposes.

The message also announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2673. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

The message also announced that the Senate insist upon its amendment to the bill (H.R. 2673) "An Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes, requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. BENNETT, Mr. COCHRAN, Mr. SPECTER, Mr. BOND, Mr. MCCONNELL, Mr. BURNS, Mr. CRAIG, Mr. BROWNBACK, Mr. STEVENS, Mr. KOHL, Mr. HARKIN, Mr. DORGAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. JOHNSON, Ms. LANDRIEU, and Mr. BYRD, be the conferees on the part of the Senate.

The message also announced that the Senate has passed bills of the following titles in which the concurrence of the House is requested:

S. 286. An act to revise and extend the Birth Defects Prevention Act of 1998.

S. 1657. An act to amend section 44921 of title 49, United States Code, to provide for the arming of cargo pilots against terrorism.

ADJOURNMENT TO FRIDAY, NOVEMBER 14, 2003

Mr. ADERHOLT. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 2 p.m. on Friday, November 14, 2003.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

ADJOURNMENT FROM FRIDAY, NOVEMBER 14, 2003, TO MONDAY, NOVEMBER 17, 2003

Mr. ADERHOLT. Mr. Speaker, I ask unanimous consent that when the House adjourns on Friday, November 14, 2003, it adjourn to meet at 12:30 p.m. on Monday, November 17, 2003, for morning hour debates.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY, NOVEMBER 19, 2003

Mr. ADERHOLT. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday, November 19, 2003.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 12, 2003.
Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in clause 2(h) of rule II of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on November 12, 2003 at 12:10 p.m. and said to contain a message from the President whereby he submits a copy of a notice continuing the national emergency with regard to Iran.

With best wishes, I am
Sincerely,
JEFF TRANDAHL,
Clerk of the House.

CONTINUING NATIONAL EMERGENCY WITH REGARD TO IRAN—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 108–141)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the Federal Register and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. Consistent with this provision, I have sent the enclosed notice, stating that the Iran emergency declared by Executive Order 12170 on November 14, 1979, is to continue in effect beyond November 14, 2003, to the Federal Register for publication. The most recent notice continuing this emergency was published in the Federal Register on November 13, 2002 (67 Fed. Reg. 68929).

Our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway. For these reasons, I have determined that it is necessary to continue the national emergency declared on November 14, 1979, with respect to Iran, beyond November 14, 2003.

GEORGE W. BUSH.
THE WHITE HOUSE, *November 12, 2003.*

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1657. An act to amend section 44921 of title 49, United States Code, to provide for the arming of cargo pilots against terrorism; to the Committee on Transportation and Infrastructure.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 677. An act to revise the boundary of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area in the State of Colorado, and for other purposes.

S. 924. An act to authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

Jeff Trandahl, Clerk of the House, reports that on November 7, 2003 he presented to the President of the United States, for his approval, the following bills.

H.J. Res. 76. Making further continuing appropriations for the fiscal year 2004, and for other purposes.

H.R. 1442. To authorize the design and construction of a visitor center for the Vietnam Veterans Memorial.

H.R. 3365. An act to amend title 10, United States Code, and the Internal Revenue Code of 1986 to increase the death gratuity payable with respect to deceased members of the Armed Forces and to exclude such gratuity from gross income, to provide additional tax relief for members of the Armed Forces and their families, and for other purposes.

ADJOURNMENT

Mr. ADERHOLT. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 2 o'clock and 6 minutes p.m.), under its previous order, the House adjourned until Friday, November 14, 2003, at 2 p.m.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. COX: Select Committee on Homeland Security. H.R. 2886. A bill to amend title 31, United States Code, to improve the financial accountability requirements applicable to the Department of Homeland Security, and for other purpose; with an amendment (Rept. 108–358 Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. RAMSTAD (for himself and Mr. CARDIN):

H.R. 3485. A bill to amend the Internal Revenue Code of 1986 to provide an incentive to preserve affordable housing in multifamily housing units which are sold or exchanged; to the Committee on Ways and Means.

By Mr. THOMAS (for himself, Mr. NUNES, Mr. DOOLEY of California, Mr. RADANOVICH, Mr. CARDOZA, Mr. MATSUI, Mr. DOOLITTLE, Mr. OSE, and Mr. HERGER):

H.R. 3486. A bill to create 4 new permanent judgeships for the eastern district of California; to the Committee on the Judiciary.

By Mr. RAMSTAD (for himself and Ms. ESHOO):

H. Con. Res. 324. Concurrent resolution urging Japan to honor its commitments under the 1986 Market-Oriented Sector-Selective (MOSS) Agreement on Medical Equipment and Pharmaceuticals, and for other purposes; to the Committee on Ways and Means.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 300: Mr. GINGREY.

H.R. 476: Mrs. CAPPS and Mr. GOODE.

H.R. 489: Mr. JONES of North Carolina.

H.R. 852: Mr. OLVER, Mr. BISHOP of Georgia, Mr. LANGEVIN, Mr. McDERMOTT, Mr. McNULTY, Mr. STARK, and Mr. DOYLE.

H.R. 1548: Mr. BARTLETT of Maryland.

H.R. 1699: Mr. BARTLETT of Maryland.

H.R. 1910: Mr. BRADLEY of New Hampshire.

H.R. 2102: Mr. BEAUPREZ.

H.R. 2173: Mr. RUSH, Ms. McCOLLUM, Mr. EMANUEL, Mr. PETERSON of Minnesota, Mr. COOPER, Mr. KILDEE, Mr. BALLANCE, Mr. MATSUI, and Mr. ROSS.

H.R. 2354: Mr. FARR.

H.R. 2683: Mr. KUCINICH.

H.R. 2823: Mr. COSTELLO.

H.R. 2945: Mr. MILLER of North Carolina.

H.R. 2967: Mr. HOEFFEL and Mr. PLATTS.

H.R. 3125: Mrs. MUSGRAVE.

H.R. 3240: Mr. STENHOLM, Mr. CARTER, Mr. PAUL, Mr. BONILLA, Mr. SMITH of Texas, Mr. BRADY of Texas, Mr. CULBERSON, Mr. BARTON of Texas, Mr. SESSIONS, Mr. HENSARLING, Mr. THORNBERRY, and Mr. BURGESS.

H. Con. Res. 30: Ms. LOFGREN, Mr. ACKERMAN, Ms. SOLIS, Ms. WOOLSEY, Mr. CLYBURN, Mr. RYAN of Ohio, Mrs. LOWEY, Mr. ALLEN, Mr. SCHIFF, Mr. ROSS, Mr. LUCAS of Kentucky, Ms. KAPTUR, Ms. BERKLEY, Mr. MEEKS of New York, Mr. BROWN of Ohio, Mr. HONDA, Ms. KILPATRICK, Mr. LEWIS of Georgia, Mr. JEFFERSON, Ms. MAJETTE, Mr. BELL, Mr. DAVIS of Tennessee, Mr. WATT, Mr. FORD, Mr. WELDON of Pennsylvania, Mr. ISRAEL, Mrs. McCARTHY of New York, Mr. BISHOP of New York, Ms. McCOLLUM, Mr. ORTIZ, Mrs. JONES of Ohio, Mr. DAVIS of Alabama, Mr. SCOTT of Virginia, Mr. LANGEVIN, Mr. WEINER, Mr. LARSEN of Washington, and Mr. DeLAURO.

H. Con. Res. 311: Mr. SOUDER.

H. Res. 103: Mrs. KELLY, Mr. JENKINS, Mr. SCHROCK, and Mr. SCOTT of Virginia.

H. Res. 371: Mr. KIRK, Mr. DINGELL, Mr. SHAYS, and Mr. SMITH of Michigan.

SENATE—*Wednesday, November 12, 2003*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

The Chaplain, Dr. Barry Black, offered the following prayer:

Let us pray.

O God our rock, great is Your glory, and worthy is Your name. We lean upon Your great strength, for You are our anchor on life's raging seas. As we prepare for the long day ahead, give Your servants in this place, the chosen of the people, the discipline to embrace Your wisdom. Remind them that true wisdom is pure, peaceful, gentle, impartial, sincere, merciful, and productive. May they remember that You expect from us faithful stewardship of our time. Give them the grace to use words responsibly, for the power of life and death is in the tongue. Place within their hearts a desire to be instruments for Your glory. Deliver them from discouragement and today let them mend the defective, bringing order where there is chaos and choosing the road that leads to life. We pray this in the name of Our Creator. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. McCONNELL. Mr. President, this morning, the Senate will begin consideration of the VA-HUD appropriations bill. We expect to have amendments offered and debated before the noon hour. Therefore, rollcall votes are anticipated. This is the final individual appropriations bill that will be considered on the floor, and it is my hope that we can finish the VA-HUD bill during today's session.

As previously announced, the Senate will recess from 12:30 p.m. to 2:15 p.m. for the Democratic Party luncheon. Following that recess, there will be 20 minutes remaining for debate before the vote on the adoption of the Department of Defense authorization conference report. Immediately following that vote, the Senate will vote on the adoption of the military construction appropriations conference report.

As the majority leader stated previously, tonight we will begin an extended debate on judicial nominations. All Senators are encouraged to participate in this very important process.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 2861, which the clerk will report.

The assistant legislative clerk read as follows:

> A bill (H.R. 2861) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

Mr. BOND. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, I know the distinguished Senator from Missouri is going to make an opening statement. Senator MIKULSKI, in an effort to move this bill forward, even though she had a longstanding commitment in Maryland this morning, asked that I represent her this morning, which I am happy to do.

However, her statement will be made at a later time at her convenience. She should be here in a relatively short period of time. As I indicated, she would not want to hold the bill up in any way. There is a lot of business going on today, as everyone knows, not the least of which Senator BOND and I are the chairman and ranking member of the Transportation Subcommittee of the Environment and Public Works Committee, and we are trying to move that bill along, too. That meeting started 5 minutes ago. I appreciate everyone's understanding, and I look forward to working as quickly and expeditiously as we can on this legislation.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Missouri.

Mr. BOND. Madam President, I thank the minority whip. I look forward to working with him on many issues, but the highway bill, which comes up once every 6 years, is being marked up in our subcommittee and full committee today. This is the perfect storm for me.

I understand Senator MIKULSKI's commitments today. I intend to make an opening statement, and then I have an amendment to lay down. I am going to have to turn over the floor to the Presiding Officer.

As always, VA-HUD is a challenging measure to produce, but this time it is particularly difficult because of the constraints in the budget. We have had to make some very hard decisions on how to fund almost every program in the bill. No one will be completely happy with this bill, but ultimately the decisions the distinguished ranking member, Senator MIKULSKI, and I have made with our committee have been the right ones, and the American taxpayers should be happy since our job is not only to fund programs, but to do so wisely, and that is what we have tried to do.

Ultimately, this is a good bill. It balances the needs and priorities of Members with requirements of the budget request of the administration. The bill also meets our discretionary budget allocation of $91.334 billion, and we are under our outlay allocation as well.

My compliments, once again, to my colleague and ranking member, Senator MIKULSKI, on her hard work, cooperation, and commitment to making this bill a balanced and good piece of legislation. I know that Senator MIKULSKI has a number of concerns about certain aspects of the bill, mostly regarding the funding level of certain programs. I share her concerns. But I believe we both understand we are drafting a bill with significant funding constraints. She and I worked hard to ensure the funding is targeted to key programs and priorities that we both strongly support, and we think most Members support as well.

To be clear, our most pressing and important priority in the VA-HUD 2004 appropriations bill is funding for our Nation's veterans and, most importantly, funding to provide quality and accessible medical care services from the Department of Veterans Affairs. I am proud to say our bill meets our commitments to our Nation's veterans and ensures the VA medical care system has adequate resources to meet its

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

current and ongoing needs, especially for VA's core constituents, such as those with service-connected disabilities, low incomes, or needs for specialized services.

It is critical that we ensure VA can provide a safety net for our veterans, especially during a time when our Armed Forces are mobilized across the globe maintaining the peace and fighting the war against terrorism.

While we expect the brave men and women serving in Iraq, Afghanistan, the Philippines, Bosnia, and other places to face dangers on a daily basis, they should not expect to face the danger of inadequate medical services when they return from duty. This bill ensures that they have peace of mind, meaning the Government will be there for them when they return.

Further, our bill meets the funding agreement for the VA under the fiscal year 2004 budget resolution by providing $30.6 billion in discretionary spending, an increase of $2.9 billion over the fiscal year 2003-enacted level.

Consistent with the budget resolution, nearly all of the discretionary spending increase is for medical care. Further, the bill does not include the administration's request to impose new enrollment and higher prescription drug fees on certain veterans. We have not included the administration's proposal because I believe it is unfair to ask our Nation's veterans to bear too heavy a burden for the cost of the medical care they rightly deserve. The proposal has proposed a new $250 enrollment fee and an increase in prescription copays from $7 a month to $15 a month.

The administration also requested funds to implement its controversial outsourcing program. According to VA, if these were not enacted, it would need $1.3 billion to meet its projected medical care needs in fiscal year 2004. Therefore, we have rejected these new fees and have included an additional $1.3 billion to make up for the lost revenues from those fees.

Let's be clear. Without these funds, the VA would be forced to deny care to about 585,000 veterans. During a time when our troops are deployed, fighting in Iraq, Afghanistan, and other places, it is not just necessary to include the additional funds; it is our moral duty to include those funds.

For medical care, the VA/HUD bill before us provides $26.8 billion in funds without collections, representing a $1.57 billion increase over the request. With third party insurance collections, the medical care account will have over $28.3 billion in funds. That is about $3.1 billion over fiscal year 2003's enacted level and represents a 12.3 percent increase over fiscal year 2003, the largest increase in VA medical care history.

Let me illustrate the urgent and pressing needs. Several of us went to the VA hospital in Washington yesterday to thank the veterans and wish them happy Veterans Day. But on our visits around the system, we found that there are tremendous needs.

According to a recent VA analysis, 15,000—almost 16,000 service members who served in Operation Iraqi Freedom have separated from military duty, and among these service members almost 2,000 had sought VA health care during 2003. I point out, these numbers do not include those military men and women who are returning from Afghanistan and other parts of the world, fighting the war on terrorism.

Every day in the news we hear the unfortunate, sad news of American soldiers killed in Iraq. However, as illustrated by the VA analysis and scores of news reports, we have found that our new medical care in the field has enabled us to save many service members who might not have survived. They come back with very serious wounds and perhaps disabilities.

USA Today, on October 1, said at least seven times as many men and women have been wounded in battle as those killed in battle. The good news is we have kept these people alive. But as these wounded service members are discharged, they confront new and challenging hardships in piecing together their lives. Most of them will be depending on the VA to meet their needs. Further, we know the demand for VA medical care is not going to lessen. We have already seen the VA medical care system overwhelmed by the staggering increase in demand for medical services.

Since 1996, the VA has seen a 54 percent growth, 2 million patients, in total users for the system. Further, the VA projects its enrollments will grow by another 2 million patients from the current level of 7 million to 9 million in 2009.

The other major highlight of VA funding is construction funding for VA's medical care infrastructure. The bill provides almost $525 million for minor and major construction projects. A significant portion of that is dedicated to the Department's Capital Asset Realignment for Enhanced Services, or CARES, initiative.

I want everybody to remember this because this CARES initiative is important. To jump-start the program, the bill includes authority for the Secretary to transfer up to $400 million from medical care to the CARES program. This transfer authority is provided because buildings that are no longer suitable for the delivery of modern health care cost the VA money out of medical care. Instead of spending these important resources on obsolete facilities, these funds could be used to provide quality care to more veterans closer to where they live. The GAO has concluded that the VA wastes $1 million a day on sustaining the obsolete and out-of-date, unused facilities. The CARES program is designed to move VA health care into the 21st century. It depends on a modernized infrastructure system located in areas where most of our veteran population lives.

Many veterans today have to travel hundreds of miles to receive care. I visited the VA hospitals in my home State of Missouri and found they all have great need for infrastructure improvements, such as modernized surgical suites, intensive care units, and research space. Most of the VA system was created right after World War II. It is outdated and located in areas that are not always easily accessible to veterans. That is why I strongly support the CARES initiative and believe Secretary Principi is on the right track in realigning the health care system.

As for HUD, we provide adequate funding for all programs either at last year's level or the budget request, and usually the higher of the two. However, there are several points to be made about funding for two programs: Section 8, and HOPE 6.

The administration proposed funding section 8 vouchers through a new account, Housing Assistance for Needy Families, which would have allocated section 8 certificates through a State block grant program. Under the budget request, section 8 project-based housing assistance would have continued to be funded through HUD. This program has been uniformly criticized and could have placed a number of families at risk of losing their housing over the next few years.

Instead, we funded the section 8 certificate fund at $18.4 billion, consistent with the budget request, without the new program structure. Many groups say this appropriation is inadequate and could result in the loss of housing. I share these concerns with several qualifications.

First, in previous bills we restructured the account to provide funding to PHAs only for the families actually using vouchers and then with the central reserve at HUD, to ensure additional funds would be available to fund vouchers for additional families up to the PHA—that is, public housing authority—authorized contract level.

This is new. The data is incomplete. There is a risk that there are not enough funds in the appropriation to meet all the needs of all families. But we do not know what that number will be.

In past years, HUD has found additional excess section 8 funding to meet all section 8 needs, and no doubt will next year and the year after until this new funding system is in place and data is reliable.

Nevertheless, we made it clear in the report that we expect the administration to alert us to any shortfalls and that we expect any shortfalls to be funded fully in a supplemental appropriations request.

Second, the administration eliminated the HOPE VI Program, which was funded last year at $570 million. This program has been a tremendous boost to the quality of housing for many low-income families. It has allowed PHAs to take down obsolete public housing, where we essentially warehouse the poor, and replace that housing with mixed income and public housing that has anchored new investments in distressed communities.

I have a personal interest in this program because we started this change. We made this change initially in St. Louis, MO, with one project which was totally uninhabitable, unsafe, and unfit to raise a family. It has been replaced with new, modern, mixed-income family housing. This program is working. This is one of the best things that has happened in public housing.

Does there need to be a change? Certainly we can look at it, but we need a discussion, a debate, and a decision before we try to shut down HOPE VI. We have not been able to fund this program fully, but we have provided $195 million for HOPE VI in fiscal year 2004 and provide limited authority to recapture funds from old projects unable to use their HOPE VI funding.

For the Corporation for National and Community Service, the bill provides $484 million for fiscal year 2004, about $100 million above the fiscal year 2003-enacted level and $113.6 million below the request. The dollar increase is the largest increase in the corporation's history, and the total amount provides the highest level of funding for the corporation. While our funding level does not meet the President's request, along with additional flexibilities we provided in the bill, it will support the President's goal of enrolling up to 75,000 new AmeriCorps members.

We have provided a robust appropriation for the corporation. I strongly believe the bill contains the necessary controls to ensure that the corporation does not continue to repeat the highly publicized mismanagement problems of the past. The bill ensures accountability, addresses the AmeriCorps enrollment problems, without penalizing the thousands of volunteers who want to serve and serve well.

Further, with the current chief financial officer in place, and Chairman Steve Goldsmith at the helm of the corporation's board of directors, I am very confident the corporation can correct its longstanding management problems.

I am a believer in tough love, and I can say with confidence this bill represents that philosophy. The promise of the corporation is too great to allow it to be derailed by inappropriate, inadequate mismanagement and the inability to count, which has perplexed the corporation in previous years.

For the Environmental Protection Agency, the bill provides $8.2 billion, some $552 million more than the budget request. The funding represents a number of tough decisions balancing Member priorities with the budget request. In particular, we were able to fund fully the clean water State revolving fund at the fiscal year 2003 level, which is $500 million more than the budget request. We also fully funded the drinking water State revolving fund at $850 million, which is equal to the budget request in the fiscal year 2003 level.

I know there will be some concerns about Superfund, which is funded at $1.265 billion, the same as fiscal year 2003, and $125 million less than the budget request. This is one of the tough choices, but this funding level reflects a level of funding consistent with the last few years.

We have included requirements to help push EPA toward more Superfund closeouts. There is a contentious issue in the count. Language has been included to clarify an existing exemption in the Clean Air Act that engines that are used in farming and construction and are smaller than 175 horsepower are exempt from State regulation for emissions but remain subject to EPA regulations.

The problem we face today is that California is on the verge of issuing new regulations that would drastically change the emission requirements for small engines, whether they are used for lawn and garden or farm and construction. This California Air Resources Board threatens 17,000 jobs in other States and 5,000 jobs in Missouri.

Before the board acted, I specifically requested them to find a resolution to the issue which would not force U.S. manufacturers to move their plants offshore because I think Government-required export of jobs is unacceptable. The California Air Resources Board had an opportunity to adopt a rule supported by the entire industry to provide the environmental gains needed and protect the public from the risk of burn and explosion from catalytic converters on small engines, but they chose not to go this route. Unfortunately, the proposed regulations raise great threats to safety of lives and the health of consumers.

I will be addressing that in an amendment I will be offering which will clarify the purpose of these provisions and also respond to concerns raised by a number of Senators. I hope we can support this measure to assure that we can clean up our environment, and we do so in a way that does not bring additional risk of explosion and fire. We have seen what tragedies fires caused in California. We do not want to see fires caused by small engines, and we do not want to see 22,000 manufacturing jobs exported directly as a result of a regulation.

The underlying bill itself also includes $5.586 billion for the National Science Foundation, an increase of $276 million over the current funding level. It is an increase of only 5.2 percent, which is far short of the funding path, which I think an overwhelming majority of this Senate supports, to put NSF on a path to double in 5 years. To keep us from losing jobs to overseas, we have to have the high technology science that the NSF can provide.

In addition, people working in the National Institutes of Health tell us that continued gains in NIH, which we have so generously doubled, is being held back by the failure of the hard sciences in NSF, which are necessary to support the medical advances. I am pleased we are funding the priorities of nanotechnology, plant genome, and EPSCoR above the requested levels and continue to support research at all levels, from elementary school to postdocs and beyond.

Finally, we continue our support of minority-serving institutions, including such programs as historically Black-serving institutions and the Louis Stokes Alliance for Minority Participation, with $22 million in additional funds over the President's request.

NASA is funded at $15.3 billion, consistent with the 2003 level. We have funded the space shuttle program at the President's requested level of $3.97 billion. The Columbia Investigation Accident Board recently issued a final report, and the response of NASA has developed an implementation plan as a foundation for return to flight.

Nevertheless, NASA is facing a crossroads in its human space program and we need to understand the extent of the administration's commitment to the shuttle, the International Space Station, and human space flight.

The need to define this commitment has become even more important in recent weeks with the successful launch of a Chinese taikonaut and after the disturbing news that Russia will be unable to fund the next scheduled launch of a Progress to the ISS, meaning the current crew on the ISS will not return to Earth until next year.

The bill does have to necessarily reduce the budget for the International Space Station by $200 million, reflecting the current state of the ISS, with its reduced crew and the inability of NASA and international partners to continue its construction of the ISS, as well as the obvious risks of relying on Russia and Russian vehicles to supply the ISS for an indeterminate amount of time.

There are many constraints within this bill. We must consider all the current uses for funds versus a program that in some respects is on hold. We will gladly reconsider this action as NASA and the administration present a plan that will restart the construction of the ISS to reach core complete.

The bill also provides for some minor programmatic changes within the science aeronautics and exploration account. We do provide for an additional $50 million beyond the President's request in the area of aeronautics.

Europe has made it clear they intend to dominate the commercial aviation market, and we intend not to let that happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. I thank the Chair.

Madam President, I thank Senator BOND and the distinguished Senator from California for her graciousness as we proceed on both the bill and an amendment of Senator BOND and her advocacy in behalf of the State of California. Her advocacy on the issue is well known, but I know she also has pragmatic solutions. I also appreciate that she did not object to bringing this bill forward. We thank her very much.

The veterans need this bill. We need it to protect America's environment. We need it to empower communities, and we need to invest in science and technology that helps us come up with new ideas for the new products that are going to lead to new jobs right here in the United States of America.

The Presiding Officer knows about the loss of jobs in our country and the way we are going to not only have the jobs today, but also the jobs of tomorrow, is by coming up with these new products. We know we win the Nobel Prizes, but now we have to start winning the markets.

I am so pleased to bring the VA-HUD bill to the Senate floor with my dear colleague, Senator BOND. This is truly a bipartisan bill. I thank Senator BOND for his cooperation and collegiality in developing the framework for this legislation, as well as Senator STEVENS and Senator BYRD who worked with us as we tried to deal with a very spartan and frugal allocation in these tough economic times. We really appreciate Senator STEVENS trying to problem-solve with us on how we can meet the compelling needs that are in this legislation.

One of the most compelling needs is VA. During the August recess, I traveled to VA clinics all over Maryland, from the rural parts of my State all the way up to metropolitan areas, meeting with doctors and nurses, but also with veterans. What did I see? Outpatient clinics at capacity, waits to see specialists, and, at times, driving long distances to travel in rural areas. Everywhere I went, they all said they were being swamped by new veterans seeking care.

They are anticipating the return of the Iraqi war veterans, not only Jessica Lynch, but others who come back bearing the permanent wounds of war knowing that they are going to need the permanent help of the VA. We want to be on their side to stand up for that help.

We also saw that many people who had health care but lost their jobs or were forced into early retirement turning to the VA. When we took a look at the VA budget, we found that the President's request was about $1.5 billion under what we needed to deal with the waiting lines, the new Iraqi vets coming back, and also the fact that we need to take care of those category 7 veterans, those World War II veterans. So we need more money in VA. We tried to take care of this on the Iraqi supplemental, but that was not the time nor the place, and we count on working with the leadership, under Senator STEVENS, to solve this problem. We have come a long way in this VA-HUD budget in dealing with this issue.

While we stand up for our veterans, we also want to stand up for our communities. This is why the HUD budget offers promise to the area of housing and community development. We continue our commitment to core housing programs. We particularly are enthusiastic about the Community Development Block Grant Program because it goes to local communities; it is flexible funding where the local community decides where the public investment needs to go to leverage jobs or to rebuild communities. This is why we like CDBG, whether it goes to North Carolina, to those small rural communities in Alaska, or to a big city such as Baltimore. Because of what we have done, we have helped retain over 100,000 jobs nationwide.

It is also the same for a program called HOME, which has created in the past 10 years over 700,000 affordable housing units. We are going to continue in this bill the longstanding commitment to renew all section 8 vouchers and also to keep the HOPE VI program going. So we are looking out for building housing, building hope, and providing access to the American dream.

We are also in this bill fighting to protect our environment. We are helping EPA by providing the right funds to clean up brownfields, improve air quality, and fix water and sewer systems. I am particularly proud of the way we have continued on a bipartisan basis to fully fund the Chesapeake Bay Program.

Where we would like to do more is in the water and sewer program. Every Senator has come to us, along with every Governor, to say: Increase water and sewer money. The communities need it to protect public health and the environment, but we also need it, say the Governors and the local officials, because this will also create jobs. We are under so many EPA-unfunded mandates that essentially this will push problems onto the local ratepayer.

We have funded water and sewer projects, but I am going to be offering an amendment to increase it even by $3 billion more.

We also have to have very strong enforcement of environmental laws. So we must not skimp on enforcement, and I will be supporting an amendment by Senator LAUTENBERG on this issue.

Then we go to national service. This bill also empowers communities through national service. Working with Senator BOND, we cleaned up a terrible accounting mess. The President has responded and given us new leadership, but right now we are working to increase the volunteer program. We continue to need additional funds and better management.

At the same time, we are working on NASA to return our space program to flight, but we want to ensure, as always, the safety of our astronauts, and we are absolutely committed to implementing the Gay-Min commission report so that when we go back to space, our astronauts will be safe.

Space science: This is where we look at big breakthroughs, whether it is Earth science, work at NASA Goddard, or the Hubbard telescope, but also Senator BOND and I worked to increase funding of aeronautics by $50 million.

In 1980, the U.S. had 90 percent of the commercial aviation market. Now we are down to 50 percent. This is unacceptable. We have to make sure we make airplanes in this country, and we come up with the best ideas and the breakthrough technology, not only for smart weapons of war, but where this is translated into the commercial airline business where we can fly and ensure that passengers are safe, but also maintain this manufacturing base. So Senator BOND and I put in $50 million for increased aeronautical research.

At the same time, we have put money into the National Science Foundation to make sure we have that farm team of the next generation of scientists and engineers, but also in breakthrough technologies, investment in biotech, infotech, and a marvelous new field called nanotech that could create thousands of new jobs.

Imagine that wonderful wedding ring the Chair has on, that our former colleague Senator Dole gave. As she looks at that ring, just know that that is the size of a supercomputer when we move our nanotechnology further ahead, that the entire Library of Congress will be in something less than the size of my earring. Is this not phenomenal?

There will come a day when someone will be able to take one little pill-like item a day, or even a month, and that nanotechnology will be an ongoing monitor for the diabetic, for the high blood pressure person, for the stroke-prone person and be able to send alerts to a doctor's office. This is what lies ahead.

We will not only be saving lives or collecting information, but what we will be doing is winning the Nobel Prizes and winning the markets and these products will be manufactured in this country and will revolutionize the world.

This is what VA-HUD is all about, standing up for our veterans, rebuilding communities, protecting the environment, answering a call to national service, making public investments in science and technology. So I am pleased to support this bill, along with my colleague, the chairman of the subcommittee, Senator BOND. This is a bipartisan bill. This is not a Democratic bill or a Republican bill. This is a red, white, and blue bill. We hope it moves expeditiously through the Senate with a few of the amendments we are proposing.

I yield the floor.

AMENDMENT NO. 2150

Mr. BOND. I call up an amendment at the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself and Ms. MIKULSKI, proposes an amendment numbered 2150.

Mr. BOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. BOND. Mr. President, this amendment before us is the one I described in my opening statement which will save 22,000 manufacturing jobs in 23 States. Let me repeat so that all will know what we are debating today, and that is whether we will decide to kill 22,000 manufacturing jobs in 23 States across America.

With this amendment, we will decide whether to close at least three American manufacturing plants. We will decide today whether we will send thousands of jobs to China. We will decide today whether we will kill thousands of jobs of manufacturing parts suppliers. We will decide today whether we will kill thousands of jobs of those dependent on a manufacturing paycheck. We will decide all of this with this very important amendment. Our answers must be a resounding no to killing 22,000 manufacturing jobs. Our answer must be a resounding no to sending more jobs to China by a State regulation. Our answers must be a resounding no to closing manufacturing plants. A "no" vote on this proposal and the underlying proposal is a vote to send thousands of jobs abroad.

Why are these jobs at risk? Quite simply a single agency in a single State has its own ideas of how to solve problems in the environment. The problem is they do so without a care in the world as to the consequences of their actions—the loss of jobs and the danger that it entails.

At issue is the desire of the California Air Resources Board to impose new air pollution reductions by imposing a massive redesign on small engines used in lawnmowers, generators, blowers, chain saws, and marine vessels. The California redesign would be so massive that it will force the use of expensive and dangerous technologies like super hot catalytic converters on hand-held equipment.

The California market and those States that may follow suit will be forced to do so because major chains that sell these small engines will not be able to make one kind of engine for a California market and another kind of engine for other markets. Instead of manufacturers rebuilding plants in the United States, they will rebuild them in China where it is cheaper and fill them with cheap labor. These workers will not be subject to U.S. wage, work, or environmental regulations.

This is not a question of what the company does in terms of its profit and loss statement. They can maintain the same profits by probably raising prices and sending their manufacturing to China. This is a question of U.S. jobs of the men and women who work in those plants.

I visited workers at a Poplar Bluffs, MO, plant which makes small engines. They are good people, hard-working people. They are supporting their families and their communities. They cannot understand why we would let a regulation of one State send their jobs to China. But they are not alone. Closure of these plants will have a ripple effect across the country.

When you include the direct loss from parts suppliers and payroll dependents, 22,000 jobs in 23 States from Minnesota to Florida, from Massachusetts to Texas and Arizona will be lost.

This map shows where those losses occur. They are significant losses—not only in my State but in Wisconsin, in Georgia, in Illinois, in Alabama, and in Texas. These are the States that will bear the burden.

I ask my colleagues: Can we afford to lose more than 22,000 manufacturing jobs? I think the answer is no.

The need to save these 22,000 jobs is so important that I have made changes in my small engines provision to address concerns of stakeholders and members. I believe and trust that these changes are appropriate and will assure that we have targeted our amendment to meet the real dangers.

First, the requirement that EPA establish new small engine standards to achieve additional pollution reduction for small engines.

Let me make it clear: EPA, under the Clean Air Act, already regulates small engines and has done at least two rounds of small engine air pollution reductions.

In this amendment, we direct them to within a year do another round of new standards so that the entire Nation benefits from cleaner small engines. In other words, we are going to get the cleanup that California wants in California, and which other States in the Nation need in their States. My own State of Missouri needs pollution reductions in Kansas City and St. Louis. In Missouri, we can't issue those regulations. I say to the occupant of the Chair, North Carolina can't issue those regulations on its own. But by directing EPA to enforce those standards nationally, we will get the cleanup that we need in every single one of our States. All 50 States will benefit from nationwide air pollution reductions.

While we are concerned about the loss of 22,000 jobs, changes in the amendment will also address vital safety concerns with the California rule. Safety professionals and the organizations they serve fear that the California rule will force unsafe changes to small engines that will increase the risk of fire, burn, and even explosion. This California regulation contains the requirement that would force small engine makers to install superheated catalytic converters.

Anybody who has been around them should know that catalytic converters reach extremely high temperatures when chemically breaking down air pollution. In fact, catalytic converters meeting California's standard can reach temperatures of 1,100 degrees Fahrenheit or more. Dry grass burns at just over 500 degrees Fahrenheit, and certainly human skin burns at much lower temperatures.

Keep in mind that were this California regulation to go into effect, you would be required to hold an 1,100-degree Fahrenheit catalytic converter attached to your weed whacker, chain saw, or lawnmower only inches from your hands and legs.

Keep in mind the California regulation would require you to wave around a 1,100-degree catalytic converter in the dry grass you are mowing or the dry brush you are cutting or in the dry leaves you are blowing. This is a safety hazard. There are basic safety warnings—avoiding the use of hot mufflers or use of equipment in dry grass or brush conditions must be avoided. The California rule ignores them. Not only did they not address these concerns, but in one example they provided misleading information to their own California Fire Chiefs Association. Initially, the California Fire Chiefs believed that the California combination of leaking fuel from overly pressurized tanks and excessive temperatures from a hot catalyst is a disaster waiting to happen. The fire chiefs thought the rule poses an unacceptable risk to the people of their State.

After promises from the Air Regulation Board were made to the fire chiefs that they change their regulations, the fire chiefs dropped their concerns. Unfortunately, they were misled, according to the fire chiefs.

This is an enlarged copy of the letter that was sent by the California Fire Chiefs Association. It documents how the operation of this new regulation would be a great danger.

I ask unanimous consent a copy of the letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CALIFORNIA FIRE
CHIEFS ASSOCIATION,
Rio Linda, CA, November 6, 2003.

Hon. CHRISTOPHER BOND,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR BOND: The California Fire Chiefs Association represents fire chiefs from over 1,100 fire departments operating in the state of California. Member organizations consist of municipal fire service agencies, fire districts, state and federal government agencies, and corporate fire brigades.

Earlier this year in oral and written communications to the California Air Resources Board (CARB), our association expressed serious concerns about the CARB's plans to require catalytic converters on lawnmowers and other lawn and garden power equipment. Firefighters have far too much experience suppressing fires caused by catalytic converters on automobiles carelessly parked on combustible grass and leaves.

After this past month of fighting wildland fires, we are almost too tired to think about catalytic converters on lawnmowers which, after all, are intended for use on grass. California does not need yet another way of igniting fires.

Several weeks ago, the CARB's staff informed our representative, Assistant Chief Jim Medich of the West Sacramento Fire Department, that the catalytic converter requirement had been removed and the outdoor power equipment industry was now in support of the measure. Believing that statement to be true, we had no further objection to the CARB rule and have since been quoted in support of the regulation.

Unfortunately, we were misled. The catalytic converter provision was not dropped, and we cannot find any evidence of industry support. As such, we wish to go on record that we categorically do not support the proposed regulation, because we believe it will lead to a substantial increase in residential and wildland fires.

These are complex issues that are not simply solved by manufacturers according to an arbitrary regulatory schedule. Similar challenges exist with catalytic converters on board boats, and it may be years before they are resolved.

We are saddened an agency that exists only to protect the health and safety of Californians would choose to ignore fire safety and misrepresent the facts. Our hope is that, as this matter proceeds to the federal government, it will be managed with more integrity. As always, we stand ready to work with our many friends in the environmental protection community who so well understand that effective fire prevention saves lives and protects the environment.

Sincerely,
Chief WILLIAM J. MCCAMMON,
President.

Mr. BOND. Madam President, the California Fire Chiefs Association say they categorically do not support the proposed regulation because it will lead to a substantial increase in residential and wildland fires.

They state:

> We are saddened an agency that exists only to protect the health and safety of Californians would choose to ignore fire safety and misrepresent the facts.

Not surprisingly, other agencies are very much concerned.

The National Association of State Fire Marshals remains very concerned that the California rule cannot be safely met.

The United States Consumer Products Safety Commission has concerns over the potential for burn fire material hazards that remain unaddressed.

The Missouri State Fire Marshal remains concerned that the California rules create a significant threat to the safety of people, property, and the environment.

The National Marine Manufacturing Association is concerned that California's activities create marine safety issues that must be evaluated further before they are imposed on industry. That is right. This rule can even make boats unsafe. Generators and engines kept in boats in enclosed spaces with poor ventilation requiring these superheated catalytic converters is a boating disaster waiting to happen.

I ask unanimous consent that copies of these letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF STATE
FIRE MARSHALS, EXECUTIVE COMMITTEE,
Washington, DC, October 7, 2003.

Re California's new emission regulations for lawn and garden equipment and request for a safety study.

Mr. JEFFREY R. HOLMSTEAD,
U.S. Environmental Protection Agency, Pennsylvania Avenue, NW., Washington, DC.

DEAR MR. HOLMSTEAD: The National Association of State Fire Marshals (NASFM) represents the most senior fire safety officials in the 50 states and the District of Columbia. Our mission is to protect life, property and the environment from fire and other hazards. We receive virtually all of our resources from federal and state government agencies.

NASFM became aware of the proposed emission regulation being proposed by the California Air Resources Board (CARB) for lawn and garden equipment earlier this summer. Out of concern that the very hot catalytic converters and pressurized fuel tanks required by this rule would pose a risk for additional garage fires, wildland fires and operator burns, NASFM submitted the enclosed July 29, 2003, and September 12, 2003, correspondence to CARB. In this correspondence, NASFM urged the CARB Board "not to proceed with [its proposed emission] regulation at this time, given the high probability that lives and property will be at risk if catalytic converters and pressurized fuel tanks are required before all critical safety parameters have been identified and before the industry can implement the proper safety measures."

NASFM urged CARB to participate in a safety test program to evaluate and respond to the unresolved safety concerns with CARB's proposal to apply extremely hot catalysts and pressurized fuel systems to lawn and garden equipment. We are aware that a similar safety study is being undertaken with U.S. EPA, the U.S. Coast Guard and industry to research the effects of applying catalytic converters to marine engines. However, by moving forward with the adoption of regulations at its Board hearing on September 25, the CARB Board has effectively rejected the proposed safety study, thus denying NASFM (and other safety organizations) the needed time and therefore the ability to participate as a stakeholder in the CARB regulatory development process. Additionally, CARB has failed to identify and objectively explain to the public the risks and substantially unresolved safety issues associated with its regulatory program. For example, CARB's August 8 Staff Report failed to mention—or even cite to—the correspondence submitted to CARB by the California Fire Chiefs Association on July 18, comments of NASFM submitted on July 29, or the correspondence from the U.S. Consumer Product Safety Commission, all of which raised valid safety concerns with CARB's proposal.

CARB has indicated that manufacturers will simply respond to the increased heat from catalysts by adding more heat shielding and insulation—despite documentation by manufacturers that the installation of additional heat shielding and insulation to protect the operator from burns will inherently result in much longer cool-down periods, increasing the risk of fires during refueling and fires from retained grass clippings after the equipment is parked in the garage.

NASFM remains very concerned that the requirements adopted by the CARB Board at its September 25 Hearing cannot safely be met, particularly by the relatively small, unsophisticated equipment manufacturers that dominate the lawn and garden industry. Consequently, NASFM's suggested safety study is needed more than ever to accurately determine how much heat catalysts will generate; whether the added heat from a catalyst exhaust system can safely be mitigated through heat shielding; and how much pressurization a fuel tank can safely withstand.

NASFM also is concerned that other states are likely to "opt into" the California program if they are authorized by U.S. Environmental Protection Agency (U.S. EPA) under Section 209(e) of the Clean Air Act. Because of fundamental unresolved safety issues, the U.S. EPA must ensure that consumers across the country are adequately protected as required by the Clean Air Act. We urge U.S. EPA to evaluate, accurately identify for the public, and address the substantial unresolved safety issues presented by the CARB regulation. If EPA authorizes the CARB regulation without conducting a thorough and meaningful safety evaluation, then NASFM and its members will request substantial additional federal funding to respond to a dramatic expected increase in fires in and around people's homes, as well as an increase in operator burn injuries. We believe the additional costs in fire suppression—and the potential loss of life and property, as well as damage to the environment—that will result from CARB's regulations as currently written would dwarf the relatively small costs of conducting a meaningful safety study prior to the EPA decision on whether to authorize the regulations.

NASFM has established relationships with the EPA as well as with environmental nongovernmental organizations, other fire service organizations and the Building and Fire Research Lab at the National Institute of

Standards and Technology. We stand ready to participate in a safety study on this issue if authorized by EPA.

Thank you for your consideration.

Sincerely,

DONALD P. BLISS,
President.

U.S. CONSUMER PRODUCT
SAFETY COMMISSION,
Washington, DC, August 4, 2003.

ALAN C. LLOYD, Ph.D.,
Chairman, Air Resources Board, California Environmental Protection Agency, Telstar Avenue, El Monte, CA.

DEAR DR. LLOYD: A staff representative of the U.S. Consumer Product Safety Commission (CPSC) attended the Small Off-Road Engine Workshop held by the California Air Resources Board (CARB) in Sacramento on July 2, 2003. Part of that workshop included the discussion of potential safety issues associated with proposed air quality requirements in California. We understand that these proposed air quality requirements might require additional emissions control equipment on outdoor power equipment such as lawn mowers. The CPSC staff has conducted an initial review of potential safety issues that may arise as a result of the promulgation of these requirements and believes that these issues merit further consideration and discussion in the regulatory process conducted by CARB. Specifically, the CPSC staff recognizes the potential for burn, fire, or materials hazards that additional emissions control equipment could present.

The CPSC engineering staff requests an opportunity to discuss proposed emissions control requirements for outdoor power equipment with the appropriate CARB staff to learn more about the proposed requirements and their implications on consumer product safety. Hugh McLaurin, the Director for Engineering Sciences at the CPSC, will contact the appropriate authority at CARB to arrange further discussions.

Sincerely,

JACQUELINE ELDER,
Assistant Executive Director.

NATIONAL MARINE
MANUFACTURERS ASSOCIATION,
Washington, DC.

Hon. KAY BAILEY HUTCHISON,
U.S. Senate, Russell Building,
Washington, DC.

DEAR SENATOR HUTCHISON: The National Marine Manufacturers Association (NMMA) is the nation's largest recreational marine trade association representing manufacturers of recreational boats, marine engines and marine accessories. NMMA has over 1500 members, many which are either located or conduct business in the state of Texas.

NMMA would like to inform you of recent actions by the California Air Resources Board that raises marine safety issues for recreational vessels equipped with generator sets. The recent rules for spark-ignited small off-road engines adopted by the California Air Resources Board would impose both new exhaust and evaporative controls on vessels equipped with these devices. This action was taken without consultation with NMMA, its members or the U.S. Coast Guard.

NMMA, the California Air Resources Board and the U.S. Coast Guard have a test program underway at Southwest Research in San Antonio to test catalysts on sterndrive/inboard engines. The purpose of this test program is to assure the performance, durability and safety of catalysts in this application. Nevertheless, California adopted regulations that would require catalysts on marine generators before completion of this study. The California rules would also require changes to the fuel systems on any vessel equipped with a marine generator. NMMA, our fuel tank and boat builder members and the U.S. Coast Guard have been actively engaged with the U.S. Environmental Protection Agency for several years in the development of regulations to control evaporative emissions from recreational vessels. It is our understanding that the requirements included in California's rules are similar to those which have raised safety issues in the EPA rulemaking. Like the exhaust rules, these requirements were adopted without consultation with the U.S. Coast Guard, and the boat building industry.

NMMA is concerned that California's activities create marine safety issues that must be evaluated further before they are imposed on this industry. For this reason, NMMA urges you to support Sen. Bond's provision included in the VA-HUD FY 2004 Appropriations bill which would limit California's ability to impose requirements on these devices and marine vessels.

Sincerely yours,

THOMAS J. DAMMRICH,
President.

DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF FIRE SAFETY,
Jefferson City, MO, October 24, 2003.

Senator CHRISTOPHER S. BOND,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOND: I write both as Missouri State Fire Marshal and as a director of the National Association of State Fire Marshals (NASFM). NASFM represents the most senior fire safety official in each of the 50 states and District of Columbia. NASFM's mission is to protect life, property and the environment from fire and other hazards. We receive virtually all of our resources from state and federal government sources, although we pride ourselves on the many productive relationships with industries that share our commitment to public safety.

First, I wish to thank you for giving serious consideration to serving as a sponsor of the American Home Fire Safety Act. This legislation has the potential to save two lives a day from the leading causes of fire in the home. As you know, I have lost family members in a fire involving the products contained in this bill. It would mean a lot to the Missouri fire service if you would help in this worthy effort.

But just as we seem to conquer one fire safety challenge, others take their place. We are especially concerned that a proposed California environmental regulation might move forward nationally and create a significant threat to the safety of people, property and the environment.

The issue is whether we have a sufficient understanding of how air emissions requirements for the small engines used with lawnmowers, snow-blowers and other small-engine outdoor power equipment might affect the number and severity of fires in residential garages and in rural communities most affected by wildland fires. We do not regard these potential fire hazards to be more important than air quality, but they certainly are no less important.

We stand ready to work with you, the environmental protection authorities and the manufacturers of these products to determine a common-sense approach to a complex series of questions about how best to have outdoor power equipment that is safe and clean. This is an attainable goal if we work together.

Most recently, the California Air Resources Board (CARB) has proposed air emission rules for these purposes. In cooperation with the California Fire Chiefs Association, and after consultation with the outdoor power equipment manufacturers and others with knowledge of these issues, NASFM urged CARB to give greater consideration to fire safety. While CARB acknowledged the concerns, the proposed rule does not.

The scenario is not hard to imagine—especially given the many garage and wildland fires that take lives, destroy property and spoil the environment every year. The CARB has not adequately examined the probability of increased gasoline leakage of the pressurized fuel tanks its rule will require. Nor has CARB considered the very high temperatures emitted by catalytic converters its rule will mandate.

Regulators have lost so much credibility over the years by forcing people to do illogical things. The combination of leaking fuel tanks and high temperatures is not something we wish to introduce into a residential garage with a gas water heater, discarded newspapers and rags, and combustible paints and solvents. Nor do we wish to see such power equipment left idle for even a minute on top of combustible vegetation. The forest fires that consume hundreds of thousands of acres and scores of homes can be ignited by a single, discarded cigarette. This could be far worse, and for that reason we have alerted the United States Department of the Interior to look into this matter.

As we understand the process, the CARB may proceed if it receives a federal waiver from the United States Environmental Protection Agency (US EPA), and that such waivers may be granted with little oversight. Once a waiver is granted, other states are likely to follow the CARB's lead. Even with the federal government's help, we cannot purchase enough fire apparatus and equipment or train enough firefighters to protect the public from the fires we now have. Prevention is the only answer. Creating new hazards—through regulation, no less—is unacceptable.

We will appeal directly to US EPA to give this matter very serious attention, but we would encourage you to use your good offices to encourage the US EPA to use this opportunity to protect the environment and human life from residential and wildland fires in the future. NASFM is not against states' acting to protect the environment from harmful emissions.

However, these fire safety issues will be a factor no matter where such measures are considered, and they are best dealt with on a national level for the benefit of all.

Best personal regards,

WILLIAM FARR,
Missouri State Fire Marshal, and
BOARD OF DIRECTORS,
National Association of State Fire Marshals.

Mr. BOND. Madam President, in the face of all of these concerned safety groups, I asked California to provide any kind of evidence or any kind of testing or any kind of analysis that these safety concerns were not true. They could not.

CARB failed to provide safety data or testing results using test procedures approved or witnessed by safety efforts.

CARB failed to provide any data testing or analysis of the danger of liquid or vapor fuel released from a pressurized tank used to comply with the rule lighting on fire after coming in contact with superheated catalytic converters used to comply with the rule.

CARB admitted that grass clippings can ignite if they come into contact with surfaces above 518 degrees Fahrenheit. CARB failed to provide any data showing that the shields were capable of protecting against temperatures of 1,026 degrees Fahrenheit. They admitted they failed to conduct standard testing applied to all internal combustion engines. This is a problem requiring us to act to solve it.

We are being asked to do something to protect 22,000 jobs, 3 manufacturing plants being moved to China. My provision would enable those jobs to stay in the United States. We are asking to prevent the risk of burn, fire, and explosion to millions of consumers, fires in our homes and in our wildlands. The provision to have EPA do a national rule instead of California will ensure that national environmental issues are met and that it will take into concern issues such as the safety in achieving the pollution reductions we need.

I made several changes in my amendment to address Member concerns. We made it clear that this would not have prevented their States from regulating existing or end-use engines. We made it clear this provision only applies to new engines. Some Members thought the initial language would prevent States from regulating diesel engines. We have specified these are limited to spark-only engines. They do not cover diesel engines because the State of California could continue to regulate them, and we have also seen that the EPA has issued regulations with respect to diesel engines.

Some Members were concerned that the original language would prevent their State from regulating mid- and large-sized engines such as airport tugs, forklifts, and cranes. We have no intention of limiting those. The amendment specifically applies only to small engines under 50 horsepower.

These are numerous changes that are well worth saving 22 manufacturing jobs. We will protect the environment. We are providing the air quality improvements to all 50 States. We are protecting public safety by assuring that the concerns of all of the safety interested groups I have indicated are taken into account by EPA in issuing their regulations. I don't want to be the one to go home and tell our workers we are sending their jobs to China. I don't want to tell our families they cannot have a breadwinner earning a good living in those factories. We want to tell communities that we will not cripple their tax base, their school systems, and cripple their services. We will protect the environment. We will protect public safety and the jobs.

I urge my colleagues to support this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. DORGAN. Madam President, as a member of the Appropriations Committee, let me compliment my colleague from Missouri and my colleague from Maryland, the chair and ranking member of this subcommittee. They have offered the Senate a good piece of legislation. While there may be some areas for discussion where we might have some disagreements about one level or another that has been proposed, by and large, Senator BOND and Senator MIKULSKI have done an excellent job bringing this appropriations subcommittee bill to the Senate. I appreciate their work.

The amendment just offered will spark some significant debate this morning. I believe my colleague from Idaho is also preparing to offer an amendment, and my hope is to be involved in that discussion when my colleague from Idaho offers his amendment this morning.

I would like to make a comment about another appropriations bill we will be dealing with this afternoon. I don't want to be in violation of the rule.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSPORTATION/TREASURY APPROPRIATIONS CONFERENCE

Mr. DORGAN. Madam President, this afternoon at 5 o'clock, the Transportation, Treasury, and General Government appropriations conference will meet. I am one of the conferees on that conference. We meet at 5 o'clock this afternoon.

In the appropriations bill that comes from both the House and the Senate to that conference at 5 o'clock this afternoon, there are provisions that deal with travel to Cuba. I mention that because something important will happen today. We have identical amendments in the House and the Senate bills that prohibit the enforcement of the provision that prohibits travel to Cuba by the American citizens. No money in the bill shall be used to enforce that travel ban.

I am particularly interested in this because, for example, the Treasury Department earlier this year denied a license to the Farm Bureau and other farm organizations to help organize a trade show in Cuba to promote the sale of U.S. agricultural products.

I find that unfathomable. Why would we want to prohibit the promotion of the sale of U.S. agricultural products to Cuba? Cuba must pay cash for those products they have been purchasing from our country because of an amendment I was involved in getting passed that allows U.S. companies to sell agricultural products to Cuba. There was a 40-year embargo, but we are now able to sell in Cuba. But inexplicably, the farm organizations, including the Farm Bureau, were denied a license to go to Cuba to promote the agricultural sales. That makes no sense to me. I hope we will have people who think more clearly about that.

What prompted me to talk about it this morning is a visit I had yesterday from a young woman who came to talk to me about a problem she has. I am going to show a picture of the young woman. Her name is Joni Scott. She went to Cuba 4 years ago. She is from Indiana. She went to Cuba 4 years ago, and she distributed free Bibles in Cuba. She and a group of folks from her church traveled to Cuba to distribute free Bibles. Last month, 4 years later, she received from the U.S. Government a fine of $10,000 for having traveled to Cuba to distribute free Bibles.

Yes, that is right, the Office of Foreign Assets Control at the Department of the Treasury tracked her down. It took them 4 years. I don't know why it took 4 years. They tracked her down and said: For the act that you have committed, traveling to Cuba to distribute free Bibles, we will fine you $10,000.

I have written to the Department of Treasury saying this does not make any sense. Is there no reservoir of common sense there, or at least some level below which they will not sink? Fining somebody $10,000 for distributing free Bibles in Cuba, what on Earth are we thinking about? This woman went with a church group to distribute Bibles free of charge to the Cuban people. Now she is being tracked down by our Government and levied a $10,000 fine. It makes no sense.

I also was contacted recently by another organization, the Disarm Education Fund. They donate medicine and medical supplies to Cuban health clinics. But more importantly, they send United States doctors to Cuba to teach advanced medical techniques to Cuban doctors. One of their projects involves a procedure called something called mandibular distraction, building new jaws for kids born without jaws. This is highly technical surgery. They have been not only doing this for children but teaching Cuban doctors the techniques of this intricate surgery.

This year, Disarm had to discontinue its programs because OFAC at the Treasury Department would not renew the license they had held since 1994. This went on for 6 months and they could not go to Cuba to help these children by distributing medicine and by performing intricate surgery and teach and train Cuban doctors.

On October 17, less than a month ago, after 6 months of consideration, OFAC issued a new license that allows the Disarm Education Fund to resume some of its programs in Cuba. However, the new license specifically prohibits this organization's doctors from training Cuban doctors. Do you know why?

Because OFAC says training of Cuban doctors in this very intricate surgery constitutes an export of service to Cuba.

So they can now go down and perform this surgery on Cuban children. It is very intricate surgery. They can perform the surgery, but they cannot have a Cuban doctor around to be trained because OFAC recently decided that educating Cuban doctors is illegal. What in the world is this Administration thinking?

Mr. CRAIG. Will the Senator yield?

Mr. DORGAN. I will be happy to yield.

Mr. CRAIG. On the legislation that became law a couple years ago, with your backing and my backing, that is that agricultural goods and medical supplies could be traded and sold to Cuba without United States taxpayer credit, maybe we need to add the words and "related medical services."

That is really picking the flyspecks out of the pepper here down at the Department of the Treasury. Shame on them for standing in the way of a humanitarian effort to make kids healthier.

But behind you is the picture of Miss Scott. She also visited my office yesterday. I must say to this administration: Do not fight us on this issue. We are giving you the right way out. The House and the Senate, in a strong bipartisan voice—the loudest and the strongest vote we have ever had here on the floor of the Senate—said: Let's begin to back away from this travel embargo with Cuba. It does not work any longer. It is a 40-year-old failed policy. Now you are being arbitrary. Now you are being selective. We ought to get away from that.

So I hope this afternoon in conference the House and the Senate's bipartisan voice is heard. Frankly, the administration ought to view it as a gift. We are not abolishing the law that puts in that embargo. We are simply disallowing the expenditure of levying a $10,000 fine against a woman passing out Bibles because she trafficked through Canada and did not fill out the right form. That is what we are doing.

Let OFAC track down drug traffickers and terrorists and leave Ms. Scott alone. That is what we ought to be about. Somehow this has gotten very confused and very skewed.

I thank the Senator for bringing up this point. Please prevail in conference this afternoon.

Mr. DORGAN. Mr. President, the Senator from Idaho was part of a group, a bipartisan group, in the Senate. Then-Senator John Ashcroft, for example, was also a key part of that group. We changed the law with respect to trade with Cuba so that we could sell agricultural products into the Cuban marketplace. We did not open it very wide, but we opened it.

Last year, for the first time in 42 years, 22 train carloads of dried peas left North Dakota to go to the Cuban people. Cuba paid cash for it. Our farmers were able to sell into the Cuban marketplace. Good for them.

But this issue of travel and denying farm organizations, including the Farm Bureau, the right to go to Cuba to promote food sales is just unbelievable.

There are times, not very often, but there are times when I am profoundly embarrassed by the actions of this Government. Yesterday was one of them, when this young lady came to see me to say: I am really concerned and upset about this because I went to Cuba to distribute free Bibles, and now my Government is slapping me with a $10,000 fine.

That is an unforgivable policy, in my judgment. But it is not just her. It is not just this young lady who thought she was doing the world some good, and clearly she was. She was pursuing her faith and her interest in distributing Bibles to the Cuban people.

There is so much more than just her. I mentioned the doctors who have been denied the opportunity to travel to Cuba to do this intricate facial surgery on Cuban children and to train Cuban doctors to do the same surgery. Now, after 6 months, they are able to go do the surgery, but they are not able to train the Cuban doctors because that is the prohibited export of a service to Cuba. Again, that is an embarrassing decision on the part of this Government.

But let me just describe a couple more, if I might.

This young lady is named Joni Scott. She traveled to Cuba, as I said, 4 years ago. It took them 4 years to track her down.

Cevin Allen, from the State of Washington, wanted to bury the ashes of his father, who was a Pentecostal minister in prerevolutionary Cuba. He died, and his last wish was that his ashes would be buried on the church grounds where he served in Cuba. Well, his son, true to the faith in his father, took his ashes to Cuba to bury them, and what happened to him was he received a notice from the Federal Government. They were fining him $20,000 for taking the ashes of his dead father to be buried on the church grounds where he served as a minister in prerevolutionary Cuba.

Marilyn Meister was a 72-year-old Wisconsin schoolteacher. She bicycled in Cuba. She received a $7,500 fine.

I have shown the picture previously of Joan Slote, whom I also know. She is a Senior Olympian. She bicycles all around the world. She is in her midseventies. She went with a Canadian bicycle group to take a bicycle trip to Cuba. She was fined $7,630. I said to OFAC: You ought to be embarrassed about that. OFAC then reduced her fine to $1,900, and she paid it. I don't think she should have, but she paid it. Then she got a note from the Department of the Treasury, after she paid it, that they were going to garnish her Social Security, and they sent a collection agency after her because, they said: Well, we never received it. She had the canceled check.

It is one thing for an agency to be incompetent; it is another thing for it to make fundamentally bad judgments about what it is going to do with its time. OFAC's should be chasing terrorists, not visitors to Cuba.

This is not a Republican or a Democrat issue; this went on under Democratic administrations as well, although I must say it has been ratcheted up—over double the effort—under this administration. And the President just announced, a month ago, on October 10: I have instructed the Department of Homeland Security to increase inspections of travelers and shipments to and from Cuba. He said: We will also target those who travel to Cuba illegally through third countries. He talks about using the investigative capability of the Department of Homeland Security to track down American travelers so we can levy fines against them.

My colleague from Idaho is right. It is ludicrous for OFAC to be tracking down some young woman who has distributed free Bibles in Cuba, so we can levy a fine. This is not, in my judgment, injuring Fidel Castro. This policy is attempting to take a slap at Fidel Castro, and it injures Americans and their right to travel freely.

I hope this afternoon, at 5 o'clock, when we go to this conference, with the identical provisions coming from the House and the Senate, that my colleagues, Republicans and Democrats, will support this policy of allowing travel to Cuba.

We long ago concluded with China, a Communist country, and Vietnam, a Communist country, that trade and travel and engagement is a constructive way to move forward. I believe that. I believe that is true with Cuba. The only voice Cubans hear is Fidel Castro's voice. I would much prefer they hear the voice of this young lady who travels to Cuba to talk to them about her faith and to talk to them about the Bible. I would much prefer they hear the voice of thousands and thousands of tourists who tell the Cubans what is happening in the rest of the world. The Cuban people deserve that. That is the quickest and the most effective way, I believe, to effect a change in the Government in Cuba.

So at 5 o'clock this afternoon, in the conference of Transportation-Treasury Appropriations bill, we will be making a very important decision, and because there are identical provisions in both the House and the Senate bills which will prohibit the enforcement of this travel ban in the future, I hope the conference will keep those provisions.

But the White House, as they have done in other areas, threatens a veto. I do not think they would veto this appropriations bill over this issue. But let them threaten. I believe very strongly, as my colleague from Idaho just suggested, that we ought to hold tight on this provision in conference this afternoon.

My intention of bringing this up now, and describing this young lady and her experience, is to ask my colleagues again: Let's do the right thing. Let's not be embarrassed by actions of the Government that fine the American people for traveling someplace to distribute free Bibles. That is outrageous, and it has to stop.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I rise to respond to the comments made by the Senator from Missouri, the chairman of the committee, in placing legislation, a rider, if you will, into the appropriations bill.

If ever there was a special interest provision in an appropriations bill, this is the mother and father of such a rider. I rise in opposition to what is called the small engine provision in the 2004 VA-HUD appropriations bill. I note that the Senator from Missouri did not send to the desk an amendment he plans to introduce to change the underlying amendment that was introduced in the Appropriations Committee markup. So I am going to try to address both pieces of legislation and indicate my opposition to both. Although the amendment that he says he is going to introduce is better than the language in the underlying bill, it is still unacceptable because it would effectively block any State regulation of small road engines anywhere in America. This provision was inserted into the chairman's mark at the request of a single engine manufacturing company, Briggs & Stratton from Missouri.

As originally written, the underlying bill would effectively preempt any State regulation of pollution from off-road engines smaller than 175 horsepower. I understand the Senator from Missouri now wants to narrow his provision to block any regulation of spark engines under 50 horsepower and not include diesel engines. This new provision is better but, as I said, still unacceptable.

Since the beginning, section 209 of the Clean Air Act has recognized that States, with extraordinary or extreme pollution, need flexibility to reduce pollution and protect public health. A California law actually served as the model for the original Clean Air Act. I think that is interesting. As a result, the Clean Air Act has always allowed California to set its own standards for some sources of pollution. Later changes in the law allowed other States to adopt the California standards, if they so chose.

The 1990 Clean Air Act amendments gave California the right to regulate emissions from off-road engines smaller than 175 horsepower, except for agricultural and construction equipment. So other States are currently free to adopt the California standards or not. The right of States to regulate small engines would quickly be taken away if the Bond provision is allowed to remain in this bill. Mr. President, individual States should have the right to regulate these small engines as they choose.

That is what States rights is all about. Many States have benefitted from the process established in section 209, and California's regulations often serve as models for the rest of the Nation. The small engine provision would amend section 209 and remove important rights from States. I oppose using the appropriations process to take away States rights under the Clean Air Act. This kind of change to a major law like the Clean Air Act deserves a full debate, hearing, and review in the Environment and Public Works Committee. It has had none of the above.

It is important for all of my colleagues to understand that one company is behind this so-called small engine provision. We are having this debate simply because Briggs & Stratton disagrees with a recently adopted California regulation which, incidentally, does not go into effect for another 5 years. I will explain why that becomes relevant later.

On September 25 of this year, California adopted a regulation reducing emissions from off-road engines smaller than 25 horsepower, mainly lawn and garden equipment. This is the interesting thing: This regulation is the equivalent of removing 1.8 million automobiles from California's roads by 2020. That is how big an item this is in my State. Once again, let me make it clear that we are talking about the equivalent of 1.8 million automobiles.

But the issue here is not whether we should support any particular regulation from the California Air Resources Board. The issue is whether we should permanently take away States rights to regulate these engines, period. Briggs & Stratton is using opposition to a single California regulation to block every State's efforts to regulate these engines anywhere in the future. I do not believe we should take such important changes to the Clean Air Act lightly, especially when such changes have been included in an appropriations bill without having adequately looked at the crucial stakes involved.

Briggs & Stratton has made a series of arguments in opposition to the California regulation. We heard the Senator from Missouri say the regulation would force the company to close plants, threaten thousands of American jobs, and for jobs to be moved to China. I don't know how the Senator from Missouri knows that they would move jobs to China unless Briggs & Stratton have told him that is what they plan to do.

At the very same time that Briggs & Stratton is lobbying this Senate to preempt California regulations, the company was telling the Securities and Exchange Commission an entirely different thing. On September 11 of this year, while lobbying the Senate in support of the small engine provision, Briggs & Stratton filed their annual 10-K report with the Securities and Exchange Commission. Here is what they say in their report:

> While Briggs & Stratton believes the cost of the proposed regulation on a per engine basis is significant, Briggs & Stratton does not believe that the [California Air Resources Board] staff proposal will have a material effect on its financial condition or results of operations, given that California represents a relatively small percentage of Briggs & Stratton's engine sales and that increased costs will be passed on to California consumers.

So point 1, California is just a small part of the Briggs & Stratton market. Point 2, it will not affect the financial viability of that market. And point 3, they would only pass on the costs of retrofitting these engines to whomever would buy it, something that is fairly typical. Now why all this talk about moving 22,000 jobs to China if, in fact, what they said on their SEC statement is correct? The SEC statement is the be-all-and-end-all for a company's integrity and credibility.

If you lie on your SEC statement, you get into a lot of trouble with the Securities and Exchange Commission.

Section 209 of the Clean Air Act gives California the right to regulate these engines. The company is free to pass along these costs to Californians. My State will accept those costs because we need cleaner air. As far as I am concerned, this is the way regulations should work.

Since we brought the annual report to the attention of the public, Briggs & Stratton has argued that the annual report was simply discussing the company's bottom line and that sending jobs overseas would not affect the bottom line. But that is not what the company's annual report says. The report says, again, California is but a small share of the Briggs & Stratton market. Increased costs will simply be passed along to California consumers. It does not say that any increased costs will force jobs overseas.

So Briggs & Stratton is telling the Securities and Exchange Commission that everything is fine and at the same time telling the media, the public, and this body that the sky is falling.

Senator BOXER and I have asked the Securities and Exchange Commission to investigate whether Briggs & Stratton has broken any securities laws by telling such drastically different stories. We are still waiting for a response.

In terms of jobs, my colleagues should also know that Briggs & Stratton's SEC report is referring to the original regulation proposed by the Air Resources Board. Since the SEC report was filed, the California Air Resources Board has continued to work with the industry to modify the regulation to correct fire safety concerns and to reduce costs, and I believe they will get there. They have 5 years to do so.

Madam President, what I am going to be doing in this portion of my remarks is essentially showing that Briggs & Stratton really is an isolated company asking for this. By so asking for it, they are going to cause additional costs to other industries. So I hope to make that argument now.

Last month, the Outdoor Power Equipment Institute, the small engine industry's leading trade group of which Briggs & Stratton is a member issued a press release which said that the industry's input into the adopted regulation made the regulation acceptable. This press release details the concessions made by the State and said that the Air Resources Board largely adopted the industry's counterproposal. In other words, the industry trade council, of which Briggs & Stratton is a member, had their counterproposal adopted by the State Air Resources Board and yet Briggs & Stratton is still opposing the action.

I quote the release:

> For the past 2 years, the Outdoor Power Equipment Institute has been working proactively with the staff of the California Air Resources Board to improve proposed catalyst base exhaust standards for real problems.

The press release goes on to say:

> In direct response to the Outdoor Power Equipment Institute's advocacy, the California Air Resources Board unanimously adopted on September 25 a modified framework which, one, relaxes the stringency of the California Air Resources Board's staff's proposed tier 3 exhaust standards and, secondly, substantially improves the overall general framework for the still-to-be-defined evaporative regulations.

I ask unanimous consent that the text of the Outdoor Power Equipment Institute's press release be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mrs. FEINSTEIN. Additionally, I have a September 26, 2003, letter from Alan Lloyd, the chairman of the California Air Resources Board, to the Senator from Missouri, detailing revisions that were made to the regulation. Referring to the modified regulation, Mr. Lloyd states as follows:

> I believe the action taken by the Air Resources Board is a win/win situation. We achieved our emission reduction goal. The adopted regulation, based on an industry proposal, will reduce costs, simplify compliance and avoid job losses.

So the Air Resources Board took the industry's proposal, the industry association of which Briggs & Stratton is a member. That is why this thing is so unfair.

I ask unanimous consent that the text of this letter from Mr. Lloyd to the Senator from Missouri be printed in the RECORD following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mrs. FEINSTEIN. Briggs & Stratton also raised concerns about fire safety. The Senator from Missouri has placed a November 6 letter from the California Association of Fire Chiefs in the RECORD. That letter expressed concerns about the proposed California regulation. I take these concerns very seriously. The last thing I want to do is increase the risk of fire. So we need to make sure these engines are safe, and the regulation has 5 years to make adjustments before it goes into effect, ample time to make such changes as replacing heat shields and doing whatever else is necessary to ensure these engines are fire safe.

There is apparently some miscommunication between the fire chiefs and the Air Resources Board. I have just received a letter dated November 11. I want to read from this letter:

> The fire safety issues we raised [and that would be the November 6 letter that Senator Bond printed in the Record] need more attention and require independent assessment before engineering and production decisions are made [which they have not been up to this time]. In our most recent discussions with [the Air Resources Board], they support the idea of an independent study, and have proposed moving forward with a study, much the same as what is now underway with catalytic converters being used in marine applications. We enthusiastically support this idea, and will be working closely with [the California Air Resources Board], the State Fire Marshal, and the U.S. Environmental Protection Agency to ensure that all fire safety concerns are addressed. We wish to make clear that we regard fire safety and environmental quality as being equally important, and wish to make it clear that we support without reservation the air quality goals of the proposed requirements. We support the regulation moving forward as we have received assurances from CARB [the California Air Resources Board] that our safety concerns will be addressed through this independent study.

So I think the concerns of the Senator from Missouri are a bit overstated in view of the fact that the fire chiefs, the fire marshal, and anyone else will work closely with CARB in the ensuing 5 years to correct any safety problems that might exist. The letter goes on, and this is important:

> Finally, we understand that, as a separate matter, the Senate is debating the question of whether States are free to develop safety and environmental standards. We were never asked to comment on this matter but, for the record, we do not support legislation that would interfere with a State's ability to protect its own citizens. To the contrary, we have had to count on the State of California to develop fire safety standards for upholstered furniture, mattresses and bedding, because the Federal Government has failed to do so. The issues of air quality, as they relate to outdoor power equipment, can be addressed, and I believe that working closely with the Air Resources Board, we will find a solution that will provide a high degree of fire safety while maintaining the Board's goals for air quality.

I would like to work with the Senator from Missouri, the Air Resources Board, fire safety officials, and the small engine industry to make sure the California regulation is fire safe. We have 5 years do so. It is possible to do so. But what we cannot do is take away the State's rights to be concerned about its citizens, and that is exactly what Senator BOND is trying to do.

He gives jurisdiction, for the regulation of small engines, to the EPA. What the fire chiefs have just said is the EPA has refused to move on areas such as bedding and other areas which cause fires, so the State has had to do it for themselves.

States rights are a major part of this issue and I thought these rights were part of everything we believed in—letting a State, where it can, regulate for itself. Again, I think it is unfortunate that Briggs and Stratton is using safety concerns about a single regulation to block all future efforts to reduce pollution from these engines in any State.

Let me tell you why this is so big for California. We have the worst air quality in the Nation. We have seven ozone nonattainment areas. That is more than any other State. Los Angeles is the Nation's only extreme ozone nonattainment area. The San Joaquin Valley is not far behind. This year has been the worst year for smog in southern California since 1997, and the San Joaquin Valley is in a similar situation.

This pollution has severe consequences for public health and for our economy in California. Let me tell you what the Air Resources Board says will be the result of the efforts of the Senator from Missouri. They say Senator BOND's provision could lead to 340 premature deaths per year in California due to deteriorating air quality.

I believe States with serious pollution problems need to be able to reduce emissions wherever possible. This small engine provision would place a very important source of pollution off limits to State regulation.

I understand a modifying amendment is going to be introduced on behalf of Senator BOND that will change the current bill language, which currently blocks the regulation of off-road engines smaller than 175 horsepower. All told, these engines alone emit as much pollution as 18 million automobiles. Can you believe that? Small off-road engines are emit as much pollution as

18 million automobiles. That is a big number for California and any reduction in this pollution would benefit California greatly.

The narrower version of this provision, which has yet to be introduced but I trust will be, would still block State regulation of spark engines smaller than 50 horsepower, which represents the majority of small engines that exist and operate in my home State. According to the California Air Resources Board, engines under 50 horsepower emit as much pollution as 4 million cars, just in California. This is more than 100 tons of smog-forming pollutants per day in my State alone.

The modifying amendment that we understand will be sent to the desk will essentially mandate 1,500 more tons of smog-producing pollutants a day in California—all to benefit one company that is not telling the truth on its SEC statement. These off-road engines are also among the least regulated and dirtiest engines around.

According to the California Air Resources Board again, operating the average gas-powered lawnmower for just 1 hour produces as much pollution as driving a car for 13 hours. I would hazard a guess that no one in this Senate knew that operating a lawnmower for 1 hour produces as much smog as operating a car for 13 hours. Keep in mind that the lawnmower is only about 5 horsepower and the car engine is far larger.

Even running a small string trimmer for an hour produces as much pollution as driving a car for 8 hours. Again, I hazard a guess that no one in this Senate knows that operating a small string trimmer for an hour produces as much pollution as 8 hours of driving a car. The bottom line: These are very dirty engines.

California is already struggling to comply with national air quality standards. We need every industry to do their fair share. According to the Air Resources Board, the State has to reduce emissions from these engines in order to achieve compliance with national air quality standards. In other words, if California is not allowed to proceed with the regulations they put forward on September 25, we will be violating clean air standards. What happens if we do it? What happens is that California loses $2.4 billion in highway transportation moneys. That is how important this issue is for the State of California and that is how dastardly this amendment—an authorization on an appropriations bill—really is.

California cannot afford to remain out of compliance with national standards. We also can't afford to take tools away from States that are in this situation. If we can't reduce emissions from off-road engines, then we will have to cut pollution from other sources. What does that mean? Other sources are already facing heavier regulation, so cutting their pollution will be more expensive and place more burden on other industries.

On this point I would like to quote a September 25 letter from the Environmental Council of the States. That is an organization that represents environmental agencies in all 50 States. Let me read what they say:

> Removal of this ability to regulate a substantial part of a State's inventory, means that States will have to obtain reductions from the stationary source area [key, from the stationary source area], an area that is already heavily regulated at substantially higher cost. Businesses facing global competition will opt to either shift work to offshore facilities or to simply close, with concomitant negative consequences on the local and national economy.

It is critical that this language be eliminated from the HUD–VA appropriations bill.

This is the environmental council to which every State belongs.

What does this mean? This means that every oil refinery will have to have tough requirements and that every utility will have to have tough requirements. The cost of gas will rise, and the cost of energy will rise. Every stationary source, if we can't tackle this area because it is so big, will have to have their standards tightened.

This is all for one company. Every other company that makes small engines has said they can comply, except one company in Missouri that says in their SEC report, no problem, and comes here and says, we are going to move our jobs to China. A whole series of companies will be disadvantaged, but one Missouri company will suffer no financial consequences.

I ask unanimous consent that the full text of this September 25 letter from the Environmental Council of States be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mrs. FEINSTEIN. Mr. President, the debate over the small engine provisions is focused on California for this point. But it is also clear that the effects go far beyond California.

Remember that under the Clean Air Act, once California passes the regulation, other States can then replicate that to any degree they so choose. This is where it begins to affect a number of other States. The small engine provision in the VA/HUD appropriations bill is a problem for every State and for every Senator who believes individual States should be able to adopt their own rules and regulations on issues such as these. States with serious pollution problems include Texas, Tennessee, Pennsylvania, Illinois, North Carolina, New York, New Jersey, Maryland, and many others know they need to be able to reduce pollution from every possible source. Some States have already moved forward with regulations affecting off-road engines.

This legislation—the underlying bill, as well as the amendment that we understand will be sent to the desk shortly—will cut this off, remove the right from a State and give it to the EPA that historically has been a slow mover in this area.

According to the associations representing State and local pollution control officials, the original version of the small engine provision would have blocked the current program in seven States—Alaska, Connecticut, Massachusetts, Nevada, Texas, and Wisconsin.

The 175-horsepower engine would also block programs in at least eight States that are considering future regulations: Alabama, Illinois, Nebraska, New Jersey, Pennsylvania, South Carolina, Tennessee, and Virginia, in addition to the District of Columbia.

The States recognize this threat to their rights. I have already quoted a letter from Environmental Council of the States. We have also received letters in opposition to the Bond provision from the National Conference of State Legislatures, the Southeastern State Air Resources Managers representing State air pollution control agencies in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, and the associations representing State and local air pollution control officials from all 50 States.

I ask unanimous consent that the letters from these organizations be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SOUTHEASTERN STATES AIR
RESOURCE MANAGERS, INC.,
Forest Park, GA, November 20, 2003.

Re Bond Provision of S. 1584—Fiscal Year 2004 VA, HUD and Independent Agencies Appropriations Bill.

Hon. ZELL MILLER,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR MILLER: Southeastern States Air Resource Mangers, Inc. (SESARM), representing the directors of the southeastern state air pollution control agencies in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, is writing this letter to encourage your support of the removal of a provision introduced by Senator BOND in S. 1584, the Fiscal Year 2004 VA, HUD and Independent Agencies Appropriations Bill. The provision would amend Section 209(e)(1)(A) of the Clean Air Act to curtail state's authority to reduce emissions from diesel and gasoline off-road equipment and engines.

While Senator Bond's proposed provision regarding the off-road engines apparently was intended to address rules adopted only in California, it will limit the ability of all states to solve serious public health-related air quality problems. Senator Bond's proposal revises a very important provision of the Clean Air Act which allows states to adopt engine emission standards more stringent than the federal standards as long as appropriate federal review processes are followed. Congress wisely put this provision into the Act to give states the ability to deal with serious air quality problems across the country. SESARM opposes the impact of the Bond proposal on this important provision.

Please note that other compromise amendments which fall short of fully restoring Section 209(e)(1)(A) are, in our opinion, unacceptable and will constrain states as discussed above. SESARM and your state air pollution control agency would appreciate your support of removal of the Bond Amendment from S. 1584.

Sincerely,

HON. E. HORNBACK,
Executive Director.

NATIONAL CONFERENCE OF
STATE LEGISLATURES,
Washington, DC, October 29, 2003.

Re S. 1584, FY2004 VA, HUD and Independent Agencies Appropriations Clean Air Act Amendment.

DEAR SENATOR: On behalf of the National Conference of State Legislatures, I write to urge your support for amendments that would strike a provision of S. 1584 that amends Section 209(e)(1)(A) of the Clean Air Act and curtails state authority to regulate diesel and gasoline off-road equipment and engines. Emissions from off-road sources contribute to ozone and fine particulate matter pollution. They pose a threat to public health and to state achievement and maintenance of national ambient air quality standards for ozone and particulate matter.

NCSL strongly believes that federal environmental policy should be addressed in substantive committee deliberations and not made through riders to appropriations bills. The amendatory language in S. 1584 would strip states of long-standing authority to exceed federal standards. It compromises state and local government capacity to determine the most effective means to address specific air pollution problems. It also has implications for agriculture and natural resource management none of which are addressed through the use of an appropriations rider.

The Clear Air Act appropriately recognizes that states are best suited to determine which sources, including off-road equipment and engines, contribute most significantly to air pollution and which strategies are most effective in addressing pollution-related problems. I again urge your support of amendments that strike the aforementioned off-road provision from S. 1584. Thank you for your consideration of NCSL's concerns.

Sincerely,

WILLIAM POUND,
Executive Director.

Mrs. FEINSTEIN. Mr. President, the States also propose compromise language that would still place some of these engines off limits. To quote the letter from the Southeastern States Air Managers:

> Please note that other compromise amendments which fall short of fully restoring section 209(e)(1)(a) are, in our opinion, unacceptable and will constrain States as discussed above. This association and your State air pollution control agencies would appreciate your support of removal of the Bond amendment from S. 1584, the HUD VA appropriations bill.

Many other States are just beginning to realize the importance of this small engine provision. As we move forward with more protective air quality standards, more and more States will need to reduce emissions to comply with national standards. Those States will also need to reduce pollution from these very engines because there are so many of them and they are so very dirty. I strongly believe we should protect a State's right to do so.

We should not use this appropriations bill to take rights away from the States without knowing what we are doing, without a hearing, and without review by the authorizing committee.

As I said, this rider is the mother and father of all riders because it authorizes a major reduction in States rights with no hearings whatsoever, no ability to question Briggs & Stratton, and no ability to ask them why they said on their SEC report that this would cause no financial disadvantage to the company, that California is such a small portion of their market, and they would just pass on any additional costs to the consumer.

Why would they tell the Senate or the Senator from Missouri they would move jobs to China if this passed? The statements of Briggs & Stratton make me very suspicious.

The Clean Air Act has long recognized that States with serious air pollution problems need to be able to set strong standards to protect public health. The hard-fought 1990 Clean Air Act amendments give the States the ability to regulate these off-road engines.

With respect to the California regulation, I will work with fire officials, air resources boards, the industry, and the Senator from Missouri to ensure that the final regulation is safe. But I believe it is clear that this should not be a debate about a specific State regulation. That is our problem. We will handle it. California is entirely able and capable of handling this problem. We don't need someone else to tell us what to do.

This is a debate about making sure the States have the flexibility necessary to protect the public health.

It is hard for me to understand why anyone would do this on an appropriations bill when the consequences are so dire, with over 300 premature deaths likely to be caused by worsening air pollution, or if the State moves to further tighten stationary sources and really send a whole magnitude of companies offshore.

I don't think in an appropriations bill we should take well-earned States rights away from every State in this Union to benefit one company. Remember, every other manufacturer of small engines is going along with what California is doing. They have all said they could do it. They have all said they could adapt these standards into their manufacturing. They have all said they could change. They have all said they can add adequate heat shields.

Furthermore, the pollution from these engines under 175 horsepower accounts for 17 percent of California's mobile smog emissions. This is not minor. We are talking about 17 percent of a State that has seven nonattainment areas in it, 17 percent of their pollution, and an Air Resources Board that has accepted the industry's proposal, an industry trade council, to which Briggs & Stratton belongs, submitted a proposal they could live with to the Air Resources Board. The Air Resources Board accepted it. And now Briggs & Stratton is coming back and saying: We do not agree; we will get our Senator to put a rider in a bill—with no hearing, without understanding the consequences that this provision will move the right for every single State to protect its citizens.

That is truly wrong. This morning, I ask my colleagues to stand up for their states rights. I ask them to stand up and protect public health. I ask them to oppose this special provision on this appropriations bill put there to benefit one company when every other company says they can comply.

EXHIBIT 1

[From the Outdoor Power Equipment Institute]

OPEI SUCCEEDS IN DRAMATICALLY IMPROVING CALIFORNIA EMISSION REGULATIONS

For the last two years, OPEI has been working proactively with the staff of the California Air Resources Board (CARB) to improve proposed catalyst-based Tier III exhaust standards for wheeled products, as well as new evaporative emission regulations, based on the use of carbon canisters and/or sealed fuel tanks, as well as less-permeable fuel tank materials and fuel lines. On August 8, 2003, CARB staff issued a proposed regulation that would have required wheeled products to install high-efficiency/high-heat generating catalysts in order to meet exhaust standards that were 50% more stringent than the current Tier II standards. CARB's August 8th proposal would also have required all lawn and garden equipment to be subject to shed-based performance testing to demonstrate that the entire piece of equipment complied with an overall evaporative/diurnal emission standard. CARB's August 8th proposal evaporative compliance program and exhaust stand would have: (1) imposed enormous compliance and product integration problems for both engine companies and OEMs; and (2) resulted in significant safety concerns as well, principally because of the substantial heat generated from the high-efficiency catalysts. Through written correspondence, the U.S. Congressional House Committee on Government Reform, the California Fire Chiefs Associations (CFCA), the National Association of State Fire Marshals (NASFM), and the U.S. Consumer and Product Safety Commission (CPSC) have gone on record as strongly opposing CARB's August 8th proposal because of the unresolved safety issues with high-efficiency/high-heat generating catalysts and pressurized fuel systems.

In direct response to OPEI advocacy, the California Air Resources Board (CARB) unanimously adopted on September 25th a modified alternative framework which: (1) relaxes the stringency of CARB Staff's proposed Tier III exhaust standards; and (2) substantially improves the overall general framework for the still-to-be-defined evaporative emission regulations. The CARB Board has adopted industry's proposed exhaust standards which are roughly 25% less stringent for Class I engines (less than 225 cc displacement) and 33% less stringent for Class II engines (greater than 225 cc displacement). Based on an economic study prepared for OPEI, the compliance costs of the industry counterproposal should be roughly one-third less than the costs associated with the August 8th CARB proposal. CARB's August 8th exhaust and evaporative proposed standards would have increased the average compliance cost for lawn mowers by $106 and the average compliance cost for riding mowers by $321. CARB's adopted less stringent exhaust and more flexible evaporative program are expected to result in an average total compliance cost increase of $73 for walk-behind-mowers and $189 for riding mowers.

The provisions in OPEI/EMA's counterproposal (as generally adopted by the CARB Board) also establish a much more straightforward and less burdensome, design-based (rather than shed-testing) program (for all products others than walk-behind-mowers) to demonstrate compliance with the evaporative requirements. OPEI has also persuaded CARB to allow the use of smaller and less-expensive carbon canisters. The provisions in OPEI's/EMA's counterproposal (as generally adopted by the CARB Board) provide industry with much longer lead-time compared to the August 8th CARB proposal. Specifically, industry has more than five years of additional lead time to achieve the ultimate evaporative emission requirements. This additional lead time should allow manufacturers with adequate time to develop and use new low-permeation barriers (such as co-extruded materials) in constructing their fuel tanks.

The Outdoor Power Equipment Institute (OPEI) is the major international trade association representing the manufacturers and their suppliers of consumer and commercial outdoor power equipment such as lawnmowers, garden tractors, utility vehicles, trimmers, edgers, chain saws, snow throwers, tillers, leaf blowers and other related products. Founded in 1952, the Institute is dedicated to promoting the outdoor power equipment industry by undertaking activities that can be pursued more effectively by an association than by individual companies.

EXHIBIT 2

AIR RESOURCES BOARD,
Sacramento, CA, September 26, 2003.

Hon. CHRISTOPHER S. BOND,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR BOND: Thank you for your September 24, 2003, letter commenting on the proposed regulation to reduce pollution from small engines below 25 horsepower. Your letter was received prior to the California Air Resources Board (ARB) public hearing on this regulation, and read by each of my fellow Board members.

Your letter urged the Board to reach "a comprehensive agreement with the entire small engine industry that saves jobs while also protecting the environment and public safety." I'm pleased to report that on September 25, 2003, the Air Resources Board unanimously adopted a revised regulation that I am confident addresses all the issues raised in your letter on behalf of the small engine industry. In particular, the regulation we adopted:

1. Removes any question regarding safety;
2. Results in the use of commonly available technologies which will not require engine redesign;
3. Prevents the possible loss of jobs referred to in your letter; and
4. Achieves nearly the same emission reductions.

The revised regulation is based on proposals we had requested and received in the past two weeks from members of the small engine industry. ARB staff used these proposals to design and include in the regulation two alternative methods of compliance. One of the alternatives closely reflects the proposal of the Engine Manufacturers, Outdoor Power Equipment Institute, and Briggs and Stratton.

The most important feature of the regulatory alternatives we adopted is a less stringent exhaust emission standard (offset by better evaporative emission controls). The new standard will reduce the heat generated by the engine's exhaust. Honda testified that with the revised exhaust emission standards, safety is no longer a concern. A representative of the California Fire Chiefs Association testified the revised regulation appeared to address their concerns. Similarly, a representative of the California Fire Marshall's office told our staff he believes ARB adequately handled the safety issues with the revised regulation. I am confident that the testimony of these experts assures us there will be no new safety issues resulting from implementing this regulation.

No testimony was presented to the Board regarding job losses and plant closures. However, I am aware that Briggs and Stratton has said the company will have to shut down some or all of its plants because major engine redesign would be required to meet California's proposal to reduce small engine emissions. I believe that statement referred to the original proposed regulation and no longer applies. Testimony at our hearing yesterday confirmed that relatively simple changes to engine components would allow these small engines to meet the revised emission standards we adopted. Better hoses and fuel tanks would prevent fuel vapors from leaking into the atmosphere where they form smog. A simple catalyst, similar to the ones used on over 15 million small motorcycles and mopeds worldwide, would reduce exhaust emissions without creating a heat hazard to the user. The testimony was clear that these simple changes were effective and no engine redesign that might cause job losses would be needed. Honda testified on the record that the regulations would not reduce its employment or production.

I believe the action taken by the ARB is a win-win situation. We achieved our emission reduction goal. The adopted regulation, based on an industry proposal, will reduce costs, simplify compliance and avoid job losses. Fire experts stated there is no safety problem.

As you stated in your letter to me, addressing these issues should obviate the need for Congressional action. We have successfully addressed all the issues you raised. Accordingly, I now request that you remove the expansive state preemption language from the HUD/VA budget bill, so in cooperation with small engine manufacturers, we can get on with the job of protecting the health of 35 million Californians.

Sincerely,

ALAN C. LLOYD, Ph.D,
Chairman.

EXHIBIT 3

ENVIRONMENTAL COUNCIL OF THE STATES, STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS, ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS,
October 24, 2003.

DEAR SENATOR: We write to you today on behalf of the Environmental Council of the States (ECOS), the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) to urge your support for amendments to strike a provision of the VA, HUD, and Independent Agencies FY 2004 appropriations bill that would amend Section 209(e)(1)(A) of the Clean Air Act to curtail states' authority to clean up diesel and gasoline off-road equipment and engines.

Emissions from off-road engines contribute significantly and increasingly to ozone and fine particulate matter ($PM_{2.5}$) pollution and are responsible for a variety of serious public health impacts. As state and local environmental agencies work to develop strategies for attaining and maintaining health-based National Ambient Air Quality Standards for ozone and $PM_{2.5}$, they will look to the regulation of off-road engines as a means for achieving their clean air goals.

The provision in the VA-HUD appropriations bill to amend Section 209 would have broad adverse consequences with respect to the ability of states to seek emission reductions from off-road engines. First, the provision would prevent not only California, but all other states as well, from setting new emission standards or enforcing existing standards for all off-road engines under 175 horsepower (hp), including, among others, those used in lawn and garden equipment, generators, forklifts, airport ground support equipment and mining equipment. Second, the provision would also preclude states from regulating off-road engines above 175 hp if the engines are certified in the same engine "family" as certain off-road engines under 175 hp. Third, the provision would prevent states from pursuing "retrofit" programs to clean up older, dirtier engines. In short, if this provision to amend Section 209 of the Act is retained in the VA-HUD appropriations bill, states' clean air efforts will be thwarted and they will be forced to seek further, likely less cost effective, reductions in emissions from other sources that are already well controlled, including small businesses.

As the Clean Air Act appropriately recognizes, states are best suited to determine which sources contribute most significantly to air pollution in their respective jurisdictions and which programs will be most effective in addressing their specific problems. ECOS, STAPPA and ALAPCO urge that you support amendments to strike this off-road provision from the VA-HUD appropriations bill and preserve states' rights to pursue healthier air for our nation.

Sincerely,

R. STEVEN BROWN,
Executive Director, ECOS.
S. WILLIAM BECKER,
Executive Director, STAPPA and ALAPCO.

Mrs. FEINSTEIN. Madam President, I thank the Senator from Maryland for her comments. She is a superior ranking member. When she is chairman of the subcommittee, she is a superior chairman of the subcommittee. I do not know any Senator who loves her assignment more than the Senator from Maryland. If we hear one thing from her, it is about her VA-HUD bill. She does a super job. I am just so grateful for her service to our country, to our veterans, and to housing. It has just been exemplary.

I yield the floor.

The PRESIDING OFFICER. Senator Craig.

AMENDMENT NO. 2156 TO AMENDMENT NO. 2150

Mr. CRAIG. On behalf of Senator Bond and Senators McConnell, Talent, Chambliss, Miller, and Craig, I send the Bond amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Idaho, [Mr. Craig], for Mr. Bond, Mr. McConnell, Mr. Talent, Mr. Chambliss, Mr. Miller, and Mr. Craig, proposes amendment numbered 2156 to amendment No. 2150.

The amendment reads as follows:

(Purpose: Clarify the current exemption for certain nonroad agriculture and construction engines or vehicles that are smaller than 50 horsepower from air emission regulation by California and require EPA to develop a national standard)

Page 106, strike lines 16 to 20 and insert in lieu thereof the following:

"Section 209(e)(1) of the Clean Air Act (42 U.S.C. 7543(e)(1)) is amended by—

(a) striking the words "either of"; and

(b) in paragraph (A), adding before the period at the end the following: ", and any new spark-ignition engines smaller than 50 horsepower".

Not later than December 1, 2004, the Administrator of the Environmental Protection Agency shall propose regulations containing new standards applicable to emissions from new nonroad spark-ignition engines smaller than 50 horsepower.".

Mr. CRAIG. I will speak only briefly. I didn't think I had a dog in this fight, only a lawnmower and a weed eater.

Most of what the Senator from California said I agree with. But I also know when you have a large manufacturer that builds literally tens of thousands of engines a year spread out across the country and are allied to a variety of tools that are built by other companies, there does need to be uniformity in law.

The amendment requires EPA to establish that kind of uniformity for 50 horse and under. Of course, I can appreciate that. I have dealt with situations before, including when we had the lawsuit over Yellowstone Park. It said that snowmobiles in Yellowstone Park had to meet a certain standard. We said, wait a minute, let's build a standard so all snowmobiles meet, nationwide, both the issue of sound and air pollution.

That is exactly what is happening now. Most industries, when you can build a nationwide uniformity of standard, work obviously to meet it or they go out.

Briggs & Stratton is the last remaining large manufacturer of small engines in the country. I understand that California has made some exceptions, carving out for Honda and others to meet certain compliance issues.

I hope in this amendment we do recognize when you have a producer of this magnitude that sells worldwide and nationwide that we build or work to build uniformity across those standards. I believe that is the intent of the amendment.

The Senator is right, it has been reduced to 50 horsepower and does address EPA, requiring them to address this problem.

Mrs. FEINSTEIN. Will the Senator yield?

Mr. CRAIG. I am happy to yield.

Mrs. FEINSTEIN. Or we can go back and forth through the Chair if the Senator is in agreement. The problem is that because of the severe conditions in the State, 7 nonattainment zones, this is 17 percent of mobile sources. If we do not deal with it, we cannot meet the clean air standards and we jeopardize our highway funds.

There is the rub, so to speak. States do not have to follow. Clearly, States have followed, a large number of them. I don't know what else to do. Every State's air, as we have discussed with forests, Senator, is different. Pollution comes from different kinds of sources in every State. That is why this ability of a State, particularly one as large as California, fifth largest economic engine on Earth, should have the right to protect its people.

The concern is that EPA, (a) won't move fast enough; (b) will not do enough to severely reduce the pollution to enable California to come within its containment standards.

Mr. CRAIG. Regaining my time in trying to respond to that because I am not the expert in this area and I have not dealt with this issue per se, obviously, I recognize the need of California. Other States have that need. What this amendment does is it addresses EPA to move rapidly into that area to build a uniform national standard that meets those needs. Of course, EPA does have a broader test when it develops regulation. It does have an economic factor test involved in looking at regulations that some States are not required or simply do not have because they set their own standards.

It is a fine line between allowing States to move forward and developing uniform national standards. There have been exceptions. The Senator has spoken to those exceptions.

When a market has a magnitude of sales large enough, sometimes those exceptions are effectively made and economically companies can survive. In this instance, what we have seen in this particular market, because of costs of retooling, retrofitting, and bringing assembly lines online, oftentimes it is easier to move offshore—not that you will change the requirement—but you can, therefore, build the new plant for less cost, you drive down your costs because of labor, and that is what the Senator from Missouri is concerned about.

He is also concerned about pollution. That is why the amendment addresses EPA and says get at the business of dealing with this 50 horsepower and up issue. That is a major problem.

Mrs. FEINSTEIN. Will the Senator yield?

Mr. CRAIG. I am more than happy to yield.

Mrs. FEINSTEIN. The bulk of our problem, I am told by the Air Resources Board, otherwise I would not know, is under 50 horsepower. So it takes that right away.

Additionally, Senator, I guess what got my dander up, was the SEC filing of a company when they say this is not a financial problem. Actually, the finances drive everything in the country. We know that very well. This is not a financial problem. They will pass on added cost. California is a small part of the market. If the company is saying that is a 10(k) I would tend to believe the 10(k). Wouldn't you?

Mr. CRAIG. Mr. President, regaining my time, I obviously cannot address that issue. I am here for the purpose of introducing the amendment on behalf of Senator Bond. Senator Bond is in markup on surface transportation and will be back to the floor in a while to engage the Senator in these questions, I am sure, and he knows a great deal more about this issue than I.

What I would like to do at this moment, if the Senator from California would accept it, is to lay the amendment aside temporarily for the purpose of the introduction of another amendment, and when Senator Bond gets back to the floor he can bring this amendment back for the purposes of addressing it with the Senator. Would the Senator object to that?

Mrs. FEINSTEIN. Not at all.

Mr. CRAIG. I thank the Senator from California.

I ask unanimous consent that the Bond amendment be set aside.

The PRESIDING OFFICER (Mr. Graham). Without objection, it is so ordered.

AMENDMENT NO. 2158 TO AMENDMENT NO. 2150

Mr. CRAIG. With that, I send to the desk an amendment for the Senate's consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Idaho, [Mr. Craig], for himself, Mr. Harkin, Mr. Cochran, Mr. Conrad, Mr. Chambliss, Mr. Coleman, Mr. Crapo, Mr. Lugar, Mr. Breaux, Mr. Roberts, and Mr. Fitzgerald, proposes an amendment numbered 2158 to amendment No. 2150.

(The amendment is printed in today's Record under "Text of Amendments.")

Mr. CRAIG. Mr. President, I have brought an amendment to the floor today that has been worked on for a long period of time in a bipartisan way, Democrats and Republicans, VA–HUD subcommittee, Senate Agriculture Committee, and others, to deal with pesticide registration and the fees of that registration.

For the last several years, the VA–HUD appropriations bill has, on an analyzed basis, advanced these fees automatically. We have done it through the appropriating process.

The administration basically said let's resolve this issue. A broad coalition of environmental organizations and chemical companies basically came together in the past several months to reach consensus on a permanent pesticide fees package. Through several long hours, an agreement was reached late this summer through a truly bipartisan effort that produced identical legislation in both the Senate amendment I have just sent forward with the 20-plus cosponsors and House H.R. 3188. So the House and Senate are now working in tandem on this issue.

The package includes a unique cross section of support from industry, labor, farmers, and the environmental community. Such groups as the Natural Resource Defense Council, the American Farm Bureau, the Sierra Club, the CropLife America group, and the Northwest Coalition for Alternatives to Pesticides now fully endorse this bill.

Cumulatively, there are over 20 agricultural organizations supporting this amendment, and they have asked for "stable, effective and predictable pesticide regulation" that is explicitly created in this legislation.

The amendment guarantees long-term stable funding to EPA that provides and expedites the pesticide registration process by using a performance-based approach. Additionally, the amendment provides a protection for small business and minor use products while funding efforts to protect workers.

The legislation ensures that EPA use sound science in its evaluation of products, and that existing rigorous standards are maintained, while reducing the timelag between approval and availability of these products to farmers and retailers who sell them.

The amendment is consistent with other user fees legislation, such as the successful Prescription Drug User Fee Act.

Congress has addressed the pesticide fees issue for several years, as I have mentioned, by simply rolling it over in appropriations bills. But it is truly an issue that deserves the full consideration of all parties involved and finality brought to it. And this amendment offers that.

I had offered it in the subcommittee, but because of our consideration of not dealing with legislation in the subcommittee, we chose, and I chose, to bring it to the floor on behalf of a very broad bipartisan group of Senators.

As in the past, the House and the Senate VA–HUD bills, as I said, spoke to a temporary approach; a 1-year fix for the issue.

Now, of course, I hope we can gain acceptance of this amendment on all sides so that we have a long-term solution so Congress can fully resolve the issue.

My amendment, our amendment, has the same budget impact as the 1-year rider currently in both the House and the Senate 2004 appropriations bills. Now is the time, I do believe, to provide a long-term fix to the pesticide fee program at the EPA by including this consensus legislation on an appropriations bill moving forward.

The diverse stakeholder coalition—from the agricultural industry, environmental groups, workers, and the consumer community—has worked long and hard to forge a consensus and is fully supportive of the terms of this amendment.

So I hope when we get consideration of this—it is possible there may be others who wish to speak to it—that we can bring it on this legislation and adopt it, hopefully, by consensus of the Senate.

Mr. President, I ask unanimous consent to add Senator PRYOR as a cosponsor of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. I know Senator DORGAN, who supports the initial legislation, has some concern about other issues and is on his way to the floor to speak to those.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, my understanding is that the pending amendment is an amendment offered by Senator CRAIG from Idaho dealing with pesticide registration fees. Is that correct?

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 2159 TO AMENDMENT NO. 2158

(Purpose: To permit the Administrator of the Environmental Protection Agency to register a Canadian pesticide)

Mr. DORGAN. Mr. President, that is a first-degree amendment. I will offer a second-degree amendment. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 2159 to amendment No. 2158.

Mr. DORGAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. DORGAN. Mr. President, I have visited with my colleague, Senator CRAIG, about this second-degree amendment. I have also visited with those who are running the Agriculture Committee.

This is an amendment to the pesticide registration fee amendment offered by Senator CRAIG. Let me point out, I support the underlying amendment. I believe it is an important amendment that Senator CRAIG has offered. I intend to vote for it. I will not insist on a vote. In fact, I will ask to withdraw my amendment following my presentation. But I did want to have a dialog with my colleague from Idaho about an issue that is related to the issue of pesticide registration. It deals with the issue of harmonization with Canada, something that was promised when we did the free trade agreement with Canada, that we would harmonize pesticides and herbicide pricing and policies.

The fact is it has not been done. A group of us in the Senate, a bipartisan group, including Senator CRAIG and Senator BURNS, myself, and others, have continued to work on this issue because we have a circumstance on the northern border where chemical prices are substantially different between the United States and Canada, even though in many cases the chemical itself is nearly identical—perhaps tweaked with one piece or another of the formula, but otherwise nearly identical.

For example, a chemical that is put on canola in Canada and then the canola is sent to our country to be crushed at the crushing plant and put into our food supply is a chemical our farmers cannot go get in Canada and bring back, despite the fact this chemical is substantially similar to one used on canola in the United States but is priced much lower in Canada. So we have had this promise of chemical harmonization for some long while dealing with Canada.

The current circumstance we believe is unfair to American farmers. The bipartisan legislation that is in the second-degree amendment I offer gives the EPA 60 days to approve or deny the registration of a Canadian pesticide if it has similar use and makeup as a pesticide registered in the United States.

It allows the EPA, if the EPA so chooses, to delegate portions of the registration workload to the States to aid the EPA in completing the registration process. But the Environmental Protection Agency, under this approach, is ultimately responsible for this process. According to a study done by the North Dakota State University, we still have significant price disparities between chemicals that are almost identical. If those disparities had been eliminated with harmonization, North Dakota producers would have saved $20 million last year. That is a substantial amount.

We have worked with State agriculture commissioners in the various States. As I indicated, Republicans and Democrats in the Senate have worked together. As a result of that, we are anxious to move this legislation. We did have a hearing on a different version of it previously. We have now changed that version because of some objections to it. We would like to have a hearing and a markup. I understand there are some perhaps in the industry who do not support this. But on behalf of American farmers, we really need to do it.

I have offered it as a second-degree amendment. I have learned moments ago that the chairman of the Senate Agriculture Committee will commit to doing a hearing on this next February. That is a couple of months away. That is significant progress. I appreciate very much his cooperation, and I know the Senator from Idaho is a member of that committee. My hope would be, although there is not a commitment at this point, that that hearing, in which we demonstrate bipartisan support for this issue, would be followed by a markup. We really do need to move this legislation.

My only purpose for offering the second-degree amendment today is that my colleagues and I are frustrated that we have not been able to get this done previously. There are many reasons for it, but we do need to now take action. That is the purpose of this.

I say to my colleague from Idaho, as a member of the Agriculture Committee, I know he and Senator COCHRAN, leader of the committee, and others believe strongly that we need to have proper hearings on these issues. I know my colleague from Idaho is a strong supporter. I ask him how he feels about this legislation, the second-degree amendment I have offered.

Mr. CRAIG. If the Senator from North Dakota will yield, Mr. President, what the Senator speaks to is a very real problem, especially in border States such as his and mine, where farmers across that line that is often invisible—economically, environmentally, and climactically, but not jurisdictionally, certainly not from a national standpoint—can't understand why a product that appears to be the same—and as the Senator from North Dakota said, there may be some slight difference because it is not licensed in this country—cannot cross the border and find a substantial savings and bring it back for application on his agricultural crops in the lower 48. Yet product raised in Canada, harvested in Canada, can be trafficked into our markets, refined, and moved into our food stream.

There does clearly need to be a resolution of this problem, from an economic standpoint, from an environmental standpoint, and from a food safety standpoint. That was spoken to in the Canadian free trade agreement, the North American Free Trade Agreement. It is something we ought to resolve.

I am pleased that the chairman of the Agriculture Committee is willing to hold hearings early next year to review it. I will certainly encourage that. I will encourage that we move the next step, to a markup, to resolve this issue once and for all. There are remnants left of difficulties between the United States and Canada in a variety of areas as a result of the free trade agreement. I didn't support that agreement initially, but it is the law of the lands involved: Canada, the United States, and Mexico.

We ought to try to resolve these kinds of difficulties that create great problems. Twenty million dollars spread across the national economy is not so much money; $20 million in a State such as North Dakota or Idaho, on individual farmers who are, at best, breaking even in some of these crops and in many years below cost of production—that savings in itself is a very substantial reduction in the overall cost of doing business.

That is what harmonization was about: Environmentally, regulatorily, and certainly as a cost of product, and for food safety and all of those things within the food chain. This is an issue that cries out for resolution. I am pleased that the Senator is willing to withdraw his second degree and that that probably then allows us, hopefully, to go forward with the other one, maybe by a voice vote or an acceptance of the chairman and the ranking member of the committee.

I thank the Senator for bringing this issue to the floor. I am certainly an advocate of his position and will work to help him resolve it.

Mr. DORGAN. Mr. President, I thank my colleague from Idaho. He has been a strong supporter of this approach.

Perhaps for the record, I might add what farmers are upset about is the following. We see Canadian grain coming into our country. It is treated with their chemicals but their chemicals are deemed unfit here, not because it has the wrong ingredient or it would be unhealthy for us. It is just the way it is labeled in order to prevent it from being sold in this country.

On the chemical Liberty for use in canola, there is a $4.40 per-acre price difference between the United States and Canada for essentially the same chemical.

On Glyphosate, commonly known as Roundup, there is only about a $2 per-acre price differential: On a chemical Puma, $11 million more to apply just for North Dakota farmers. The chemical Stinger, which is sold as Lontrel in Canada—both are similar pesticides, use the same active ingredient—there is almost a $10 per-acre difference between the chemicals. That is what upsets farmers. They see that they can't buy the nearly identical chemicals for $10 an acre less, but they see the grain come in from Canada that has been treated with the same chemical. That is why the United States-Canada free trade agreement had a provision in it that called for harmonization in these areas, and yet almost no progress has been made. It is why a group of us are trying to do something about it.

I thank my colleague from Idaho and my colleague from Montana and my colleagues on this side of the aisle. I thank Senator COCHRAN, and especially his staff on the Senate Agriculture Committee, on the commitment to hold a hearing, in the next couple of months, on this, in the month of February. Also, my colleague's belief that we need to move along, and he will be pushing for a markup, gives me some hope that we will be able to move this legislation.

Let me conclude by saying again the first-degree amendment offered by my colleague from Idaho is one that is needed. It is very important, and I strongly support it. It provides the fees for pesticide registration. This Congress needs to pass that legislation. I support doing it as a first-degree amendment offered by my colleague from Idaho.

AMENDMENT NO. 2159 WITHDRAWN

Mr. DORGAN. Mr. President, I ask unanimous consent to withdraw my second-degree amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. I hope we will adopt the first-degree amendment of my colleague from Idaho by voice vote. Certainly, this appropriations bill is going to become law. Whether it is on the floor of the Senate with action or part of some omnibus bill, this is going to the President for signature. Having my colleague's first-degree amendment part of the bill, doing something that needs to get done now, not later, makes a lot of sense. I am pleased to be supportive of the amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, it is my understanding, under the agreement, that Senator BYRD will be on the floor at noon to speak for a period of time. Following that, I understand we will resume consideration of the VA–HUD appropriations bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

The PRESIDING OFFICER. Under the previous order, the hour of 12 having arrived, the Senator from West Virginia, Mr. BYRD, shall be permitted to speak for up to 30 minutes.

Mr. CRAIG. That is the order. I understand we will then recess from 12:30 until 2:15 for the purpose of the Democrat policy luncheon.

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. How much time do I have remaining.

The PRESIDING OFFICER. The Senator from West Virginia has 29 minutes remaining.

Mr. BYRD. Mr. President, I thank the Chair. I will not use all of the remaining time.

DEPARTMENT OF DEFENSE AUTHORIZATION BILL

Mr. BYRD. Mr. President, on May 22 of this year, 2003, I cast my vote in opposition to the fiscal year 2004 Defense authorization bill. I cast that vote to protest the errant course of the defense establishment in seeking larger and larger regular defense budgets. The budget for the Department of Defense is exploding, even if we do not count the vast sums being used to maintain our troops in Iraq and Afghanistan.

The regular defense budget, not including the costs of the war on terrorism in Afghanistan or the other war, the war in Iraq which we started, has gone up by 31 percent since 2000. I will say that again. The regular defense budget, not including the costs of the war on terrorism in Afghanistan or the other war which we started in Iraq, has gone up by 31 percent since 2000.

In 2000, Congress authorized $304.1 billion to fund the routine day-to-day operations of our military. The conference report before the Senate today authorizes $401.3 billion to pay the routine bills for our defense establishment. As I say, I am not even speaking of the costs of Iraq on the one hand or the costs of Afghanistan. So if we were to just ignore Afghanistan and Iraq in looking at the costs of the military, we are authorizing today in the conference report $401 billion to pay the routine bills for our defense establishment as against the $304.1 billion that Congress authorized in the year 2000—in other words, roughly $100 billion more today than we authorized in 2000, just ignoring Iraq, on the one hand, and Afghanistan on the other.

The growth of the so-called peacetime budget of the Department of Defense is expected to continue into the foreseeable future. The Pentagon estimates that it will request $502.7 billion for routine defense operations in the year 2009. Think of that. That is more than a half trillion dollars. The Pentagon estimates it will request $502 billion for routine defense operations in 2009. But a request for half a trillion dollars—as we will be undertaking in 2009—should be anything but routine, especially if not one red cent of those funds would be for any contingency military operation.

Instead, these growing defense budgets are proof that there is no longer any real effort to provide a smarter defense plan that will modernize our forces for the 21st century while eliminating the vestiges of a cold war era military force. Nearly 3 years ago, Defense Secretary Donald Rumsfeld announced he would conduct a series of top-to-bottom reviews of the Pentagon. I lauded him for doing that. I applauded him publicly and in private conversations. I applauded the Secretary of Defense. Those reviews were supposed to get rid of old weapons systems, field new ones, and refocus the defense establishment to get more bang for the taxpayers' buck.

I, along with many others, supported those efforts as announced by the Secretary of Defense. But any hope of modernizing our Armed Forces while maintaining fiscal discipline has gone—gone out the window. The defense transformation effort which began as a frontal assault on irresponsible spending at the Pentagon has been replaced by the quest for flexibility—"flexibility," the latest buzzword to describe efforts to consolidate greater and greater and greater power into the hands of a select few at the top of the executive branch.

I voted against the Defense authorization bill on May 22 of this year. Why did I do that? I was the only one, the only Senator who voted against it. Why did I do that? I voted against that bill in order to voice my protest to spiraling defense budgets when the American people are expecting smarter spending by their Government, and I will vote against the conference report today to this bill for the very same reason, as well as because it gives rubberstamp approval to consolidating new, broad powers in the Secretary of Defense.

This conference report creates the "National Security Personnel System," so-called, which gives the Secretary of Defense, Donald Rumsfeld, unchecked powers—unchecked powers to rewrite civil service rules for civilian employees of the Pentagon. The conference report includes sweeping authorities—sweeping authorities to allow the Secretary of Defense, Donald Rumsfeld, to waive landmark environmental protection laws with a stroke of the pen.

The conference report establishes new "flexibilities"—flexibilities for the Pentagon to use to develop and deploy an unproven national missile defense system. That is a sinkhole, a sinkhole for your money, the taxpayers' money.

The conference report grants new multiyear authority to transfer appropriations—now, get this. Hear me! The conference report grants new multiyear authority to transfer appropriations of unlimited sums. This is not chickenfeed we are talking about. We are talking about unlimited sums of "your money," the taxpayers' money, from numerous accounts in order to increase spending on Navy cruiser conversions and overhauls.

These are but a few examples of the new powers granted to the executive branch, downtown, at the other end of the avenue, in this bill—this bill. I am not reading from "Alice in Wonderland." I am reading from this conference report.

Our country continues to be threatened by Osama bin Laden. Our troops are under fire in Iraq in the aftermath of a preemptive war, a preemptive war that we started, a preemptive war that our President, as Commander in Chief, started.

Fie on us, the Congress! For shifting that power to the President last October, last October 11. Twenty-three Senators in this body voted against shifting that power to the President. I was one of those 23. I was against shifting that power to this President or to any President. It doesn't make any difference to me what his politics—what his political party is, or would be, so help me, God. I would stand against that with any President. Fie on us! Only 23 Members in this body stood firm for the Constitution of the United States under which, power to declare war is vested in the legislative branch. Soldiers are fighting and dying half a world away and the wealth of this great country is being diverted from the United States Treasury in order to carry out an experiment in nation building in Iraq.

If there were ever a time to demand more accountability and efficiency in how taxpayer dollars are spent on our military, this is it. But instead of holding the feet of the Secretary of Defense to the fire, Congress gives the Secretary vast new powers to hire and fire workers as he sees fit.

Instead of turning the screws—the screws, instead of turning the screws—on this Defense Secretary to straighten out this mess, the accounting nightmare at the Pentagon, Congress grants the Pentagon more flexibility over how it can use funds appropriated to it. We cut the strings by which Congress limits the use of taxpayers' money. Instead of demanding greater accountability over how our military is preparing to meet the military threats of the coming decades, Congress creates new loopholes. The inescapable conclusion, is that Congress has been distracted from the most important issues facing our military posture. Instead, Congress is asked to take action on peripheral matters, and even then we simply pass the buck by closing our eyes and hoping that the Defense Department can straighten itself out if it is invested with enough new powers and "flexibilities."

If the leadership of the Pentagon thinks that "defense transformation" means getting Congress to stick its head in the sand, count me out. My idea of transformation means spending smarter to build a stronger military, not turning a blind eye to Executive Branch power grabs.

It is our fault. I can understand how the executive branch seeks to grab power. The executive branch is operating 24 hours a day every day, 365 days a year. Everywhere its imprint is seen throughout the globe, Congress sleeps.

The flexibilities in this bill are the antitheses of accountability. For each new "flexible authority" that Congress hands over to the Secretary of Defense—any Secretary of Defense—Congress signs away one more lever that should be used to compel the Secretary to build a smarter defense plan.

The Commander in Chief beats his chest and throws down the gauntlet, saying, "Bring them on," in front of the TV cameras, but pictures of the fallen dead coming home to Dover are not allowed.

Oh, we don't want to display the pictures of bringing back the caskets at Dover, DE. No. The American people must not see that side of the war. This is a stubborn course that we have chosen that could tie down our forces in Iraq for months and months and months, and years even to come, and it is a course that I oppose today. It is a course I have opposed from the beginning. This ill-advised invasion and occupation of a Middle Eastern country stands to sap—sap—our military power through the attrition of our brave men and women in uniform. The effects of such a toll could affect our national security for decades to come.

The United States cannot afford to shelve—to place on the shelf—efforts to leap forward a generation in military power by investing in a smarter defense plan. If our country does not prioritize efforts to change our military to respond to the asymmetric warfare of the 21st century—whether those threats emanate from North Korea, or a belligerent China, or Iran—the long-term toll of the adventure in Iraq could weaken our military for years to come, just as our Armed Forces were found to be hollow in the years after Vietnam.

I will vote against the conference report to the Defense authorization bill. It transfers vast unchecked powers to the Defense Department while avoiding any break with the business-as-usual approach to increasing defense spending. It dodges the most important issues facing our national defense posture, and I cannot support such a bill.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mrs. DOLE).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004—CONFERENCE REPORT—Resumed

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 having arrived, the Senate will proceed to the consideration of the conference report to accompany H.R. 1588, which the clerk will report.

The assistant legislative clerk read as follows:

> Conference report to accompany H.R. 1588, an act to authorize appropriations for fiscal year 2004 for military activities for the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strength for such fiscal year for the Armed Forces, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will be 20 minutes equally divided prior to a vote on the conference report.

Mr. REID. Madam President, if the manager will yield, it is my understanding the leadership is going to extend the time for the vote another 10 minutes.

Mr. WARNER. Madam President, the distinguished minority leader is correct that the time has been extended. The vote is to occur, I understand, at 2:45. The 30 minutes intervening is under the control equally of the distinguished Senator from Michigan, Mr. LEVIN, and myself.

Mr. REID. Madam President, I ask consent that that be the order. We have a caucus going on now.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Madam President, I encourage any and all Senators who desire to address this bill to avail themselves of the opportunity. To the extent that I have control over the 15 minutes, I am happy to accommodate Senators as they come to the floor.

I yield such time as the distinguished Senator may require. I hope it will be around 5 or 6 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, I apologize to our distinguished chairman for not having been down here during this discussion. As he well knows, I chair the Environment and Public Works Committee. I am proud to say we were able to get a bill out, the reauthorization bill. I feel very good about that. It will be coming to the floor. It is a good compromise but it required my attendance.

I want to be on record to say that our chairman and the ranking member have done a very good job. We have worked closely together during the development of the authorization bill. We are making great headway. We are turning in the right direction. I particularly applaud those who participated in the ultimate compromise that we agreed on having to do with the lease program, the 767s. We all understand we have a crisis in our tanker fleet. Our KC-135s are getting old and there is controversy over how much longer they can be used. Nonetheless, our pilots who are performing this significant mission of refueling need to have the very best. We are addressing that problem.

In the area of TRICARE, we have made some advancements that are long overdue. I know in my State of Oklahoma, we probably have one of the highest populations of retired military, many of them in Lawton and scattered throughout the State. I know there are very serious concerns we have gone a long way to meet.

Environmental issues bother me a great deal, and maybe I am more concerned about what has happened to our ability to train our troops, because I happen to also chair the Environment and Public Works Committee. So we deal with the environmental issues.

But it is very disheartening when you go down to your part of the country and see what has happened in some of the endangered species programs and how we are addressing those.

In Fort Bragg, in Camp Lejeune, for example, we are spending such an inordinate amount of money protecting the suspected habitat of the red-cockaded woodpecker that it is having a very deteriorating effect on our ability to train. This is something that does concern me greatly, and we are starting to address that, I know, in relation to the issue of endangered species. We have clarified the law that is going to perhaps, hopefully, stop some of the injunctions that have been taking place. I think we are making some progress there.

I am glad we are addressing end strength—not as much as I would like to or our chairman would like to because this is a compromise situation, but we have to recognize that we allowed our end strength to deteriorate, in terms of numbers, to the point that we are OPTEMPO of our regular services, we are OPTEMPO for our Guard and the Reserves. It is at an unacceptably high rate.

I do not think there is one Member of this Senate who does not go home and talk to his Guard and Reserve units, only to find out that critical MOS, military occupation specialties, are being lost because they are just overworked. You cannot expect someone who is in a citizens militia to have to be full time. Essentially, that is what is happening right now.

So we are starting to address that, and I think we need to go much further in the future. When I see that we did have a problem all during the 1990s, that I articulated on this Senate floor, when we had a lowering in the amount of attention that was given to our military in terms of end strength, in terms of modernization, in terms of national missile defense, these things were very disturbing to me. I know we are now recognizing it.

I hate to say it in this way, but I really think those who subscribe to the idea—or did subscribe to the idea prior to 9/11—that the cold war is over and we need not have the size military we once did are just dead wrong. I look wistfully back at those days when we knew what our enemies had. We had one major superforce out there, and that superforce was predictable.

Now we have the proliferation of both weapons of mass destruction throughout the world and the delivery system. We know what countries have a delivery system that could reach us here in Washington, DC. We need to make up for what was lost during that period of time.

Lastly, I would agree with Secretary Rumsfeld who at one of our earlier meetings suggested that throughout the entire 20th century, the percentage of our GDP that went to defense was about 5.7 percent, and that dropped down in the 1990s to about 2.7 percent. We are up to 3.4 percent approximately.

I think we need to stop and rethink that as an overall picture of a plan for the future, perhaps it should be somewhere around 4, 4.5, or 5 percent because the nature of the threat that is out there is more expensive. I think we need to address it. So I think this bill goes a long way in that direction.

I am very pleased with the product we have. We have a long way to go, and I hope we can join hands and do that in the future.

Again, I applaud our chairman and the ranking member for the efforts they have put forth in making this legislation a reality.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I thank my distinguished colleague for his steadfast service on our committee these many years, and particularly in this past year when we were confronted with a number of very serious issues. And I recognize the consideration of this conference report coincides with his markup in the Environment and Public Works Committee on which I am privileged to serve with him. But, I say to the Senator, you manage to do both quite well.

Mr. INHOFE. I thank the Senator.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I thank Senator INHOFE also for his service, his work on the committee. He travels to visit with our troops. He is totally dedicated to our troops and the national defense. I thank him for his kind words, but also for that commitment.

SECTION 336

Mr. HATCH. Mr. President, I was hoping that my friend, the distinguished chairman of the Armed Services Committee, might yield for a question.

Mr. WARNER. I would be happy to yield to my friend.

Mr. HATCH. As I was reading the Defense authorization bill, I noticed that under section 336, entitled "Pilot Program for Best-Value Source Selection for Performance of Information Services," the conference committee had modified the normal examination procedures for determining the source, either public or private, for the performance of information technology services. My question therefore is: Does section 336 modify, change or interfere, in any way with provisions of Title 10 §2460, §2464, or §2466 commonly referred to as "Core" and "50/50"?

Mr. WARNER. I thank the Senator for his question. The answer is no. It was not the intent of the conference committee to make any modification to Title 10 §2460, §2464, and §2466 which address the requirements for the Department of Defense to maintain an organic core logistics capability and ensure that at least 50 percent of depot level maintenance is performed by employees of the Department of Defense. The Department of Defense must still abide by these statutory provisions when they make any decision or action provided for in section 336.

Mr. HATCH. I thank the Senator for that answer.

TANKER PROVISION

Mr. McCAIN. Madam President, I would like to review with my colleagues section 135 of the National Defense Authorization Act for fiscal year 2004. Under the leadership of Senate Armed Services Committee Chairman WARNER, and Ranking Member LEVIN, Congress recently agreed to modify the manner in which the Air Force may acquire Boeing 767 aerial refueling tankers. This compromise is contained in section 135.

In the words of Chairman WARNER on October 23, 2003, this compromise sought to put this program back into the traditional budget, procurement, and authorization process. Section 135 replaces the current authorization for the Air Force to lease 100 aircraft, with an authorization for the Air Force to lease no more than 20 tankers, and to buy no more than 80 aircraft using multiyear procurement authority and incremental funding. The original proposal to lease 100 tankers would have cost taxpayers $6.7 billion more than buying them outright, according to the Congressional Budget Office.

Mr. WARNER. The Senator from Arizona's understanding is correct. By providing for the lease of only 20 planes, and by putting the bulk of this acquisition back into the traditional budget, procurement and authorization process, this compromise is estimated to save taxpayers over $4 billion.

I would like to take this opportunity to correct the legislative record. In a colloquy in the House among Chairman HUNTER and Congressmen DICKS and TIAHRT, it was stated that this compromise codified an agreement with the administration as set forth in a November 5, 2003, letter to me from Deputy Secretary Wolfowitz. For the record, the compromise does not endorse or codify any such agreement. The compromise is intended to ensure that Defense Department acquires tankers in a manner that meets its own needs, but also the needs and interests of taxpayers. While the Air Force maintained that its original lease proposal achieved this goal, it clearly did not. I fully expect the Defense Department to execute the terms of this compromise in a manner that fully protects American taxpayers' interests.

Mr. McCAIN. I am grateful to the Senator form Virginia for his leadership on this issue. Three of the four defense committees that were required to approve the original proposal to lease 100 tankers, did so without sufficiently examining the proposal or its effects on taxpayers. It was the Senate Armed Services Committee that put the brakes on that costly and misguided procurement plan.

By buying those tankers that it requires rather than leasing them, the Air Force can realize very significant savings. The Air Force can avoid paying the cost of borrowing the funds from the private market to build and acquire the planes, as originally proposed. The Air Force can also avoid paying the lease-specific costs that were apparently included in the price that it had previously agreed to pay for the tankers. Documents we have reviewed suggest that these lease-specific costs could be as high as $5.5 million per tanker. Arranging for a purchase of the tankers will also allow the Defense Department to question many of the other terms and conditions of the Air Force's original lease proposal, such as the maintenance and training costs, and whether the planes we are buying should be FAA-certified.

Mr. WARNER. I thank the Senator from Arizona for his steadfast leadership and vigilance on this critical issue. There could be no doubt as to the Senator's sincerity in always protecting the interests of taxpayers.

Mr. NICKLES. Mr. President, I commend the Senators from Arizona and Virginia for their leadership on this important issue. When the Air Force's original proposal to lease 100 tankers looked like a done deal a couple of months ago, both of these Senators stood up and made us consider the proposal in ways that we likely would not have, but for their commitment for the interests of both the warfighter and the taxpayer. In so doing, we now have before us, among other things, Section 135 of the National Defense Authorization Act for Fiscal Year 2004. As I understand this provision, the Air Force will be authorized to use the special non-confirming lease methodology to lease no more than 20 tankers, and buy the balance, not to exceed 80, under a multiyear procurement/incremental funding methodology.

Mr. McCAIN. The Senator is correct.

Mr. NICKLES. The Senator's rationale for agreeing to this compromise, whereby the total number of tankers to be leased was reduced by 80 percent, relied on the Congressional Budget Office's conclusion that the fewer planes that the Air Force leased, the greater the savings to taxpayers.

Mr. McCAIN. The Senator is correct. The intent was to maximize savings to taxpayers. If the Defense Department, in the words of Senator WARNER, puts this program in the traditional budget, procurement, and authorization process, the taxpayer will see significant savings.

Mr. NICKLES. I understand that the Congressional Budget Office has concluded that if the Air Force implements the compromise by acquiring the tankers under two separate contracts, gets budget authority at the time it orders its planes, and pays progress payments, taxpayers will see $5.3 billion in savings over the Air Force's original proposal to lease 100 tankers.

Mr. McCAIN. Yes. On the other hand, if the Air Force executes under a single contract—presumably under the current proposed contract—and pays at delivery, taxpayers will see savings cut nearly in half, according to Congressional Budget Office estimates. Unfortunately, I have every reason to believe that the Air Force will proceed in this manner, which fundamentally belies the compromise proposal. By proceeding accordingly, the Air Force succeeds in deferring having to make hard budget decisions to acquire tankers it says it "urgently" needs, Boeing locks the Air Force into a contract to acquire 100 tankers, and the investment bank gets its cut for setting up any financing and providing other financial services associated with the deal. All of this is done at an unnecessarily high cost to taxpayers—just as under the original proposal.

Mr. NICKLES. I agree. If the Defense Department proceeds accordingly, namely under the current contact, it will be attempting to meet its priorities through very many of the same convoluted means that were proposed under the original agreement—means that would cost more than necessary, thereby further increasing the deficit to unnecessarily high levels. Unfortunately, in the absence of a guarantee from the Defense Department that it will not implement Section 135 as suggested by the Defense Deputy Secretary's letter of November 5, 2003 and the recent colloquy in the House, I share your concern.

Additionally I want to reinforce your statement that it is not the intention of Congress, nor does this legislation reflect an agreement for the Air Force Secretary to implement the current contract on acquiring 100 tankers. We have heard testimony and the Institute of Defense Analysis has reported, and I quote, "We believe that the $120.7 million is a conservative, robust estimate of a reasonable purchase price for the KC–767A aircraft . . . and . . . should satisfy Boeing and its shareholders." We should not agree to a purchase price of $138.4 million which is significantly higher, because it includes lease unique costs.

I take the opportunity to highlight for our colleagues that the Congressional Budget Office has scored this transaction as an $18 billion direct purchase, requiring full budget authority up front. Ordinarily, under these circumstances, I would make a budgetary point of order. I will not raise that point of order now. But, what I will do is call upon the Secretary of Defense to implement the compromise provision in a way that accurately reflects the intent of the conference—acquire its tankers for the Air Force in a way that maximizes savings to taxpayers. It is anomalous that the Congress would have intended to have taxpayers see only half the savings and not touch the $6.4 billion maintenance and training contract—a contract that was never competed for. In the spirit of compromise, under Section 135, the Congress has provided the Department with tools to acquire the tankers responsibly and in a way that protects the interests of taxpayers.

At the end of the day, whatever legislation comes out of this body, the administration is responsible for implementing it as the Congress intended. After months of investigation, inquiry and debate, there can be little doubt that the intent here is to best protect the interests of the taxpayer.

Mr. McCAIN. I thank the Senator for his continuing, active concern on this most important issue.

Mr. FITZGERALD. Mr. President, I understand that preliminary estimates suggest that buying no more than 80 tankers in a way that avoids lease-specific costs could save taxpayers as much as $5.3 billion over the Air Force's original proposal to lease 100 tankers.

Mr. McCAIN. The anticipated savings under the compromise as described in Section 135 of the National Defense Authorization Act for Fiscal Year 2004 are very significant. The original proposal to lease 100 tankers was extraordinarily costly, and the compromise allows us to avoid those costs. For example, the original proposal would have had us pay $7.4 million per plane in private construction financing costs. The compromise provides for the Air Force to make progress payments to build the planes, and in so doing, to avoid this significant and unnecessary cost.

One of the reasons that the compromise authorizes the Air Force Secretary to use incremental funding to buy no more than 80 tankers is to allow the Air Force to get the tankers it needs in a manageable way that protects taxpayers.

Senator WARNER has said that, contrary to the statements of our House colleagues, the compromise does not codify or endorse the tanker acquisition plan that Deputy Secretary Wolfowitz described in his November 5, 2003, letter. The reason the compromise does not codify this approach is because paying for the tankers on delivery as the Deputy Secretary proposes could be very costly and could dramatically slash the savings that this compromise intends to provide—an outcome that is unacceptable.

Mr. FITZGERALD. As I stated during a Commerce Committee hearing on September 2, 2003 regarding this issue, the original lease transaction is nothing more than a complex, byzantine transaction that obscured the true cost of the tankers, reduced the transparency of the arrangement, and would unnecessarily cost American taxpayers billions of dollars. I commend the Senator from Arizona for his watchful eye over the negotiation and execution of this tanker deal. I also commend Senators WARNER and LEVIN for brokering the compromise agreement and putting the public interest ahead of a powerful special interest.

Mr. HATCH. Mr. President, today I rise in support of the fiscal year 2004 Defense authorization conference report. This report is not only a tribute to the Congress's hard work, in particular that of my good friend, Chairman JOHN WARNER, but it is also a reaffirmation of our commitment to meet the challenges of this War on Terror.

The conference report contains a number of provisions designed to alleviate some of the burdens placed on our fighting men and women. For example, I am proud to state that the report deals directly with a concern of many service members, including Utah National Guard and Utah-based Reserve families, by continuing payment through December 31, 2004, of special pay for duty while subject to hostile fire or imminent danger in the amount of $225 a month and $250 a month for family separation allowance. Additionally, all service members will receive at least a 3.7 percent pay raise. In order to help retain our mid-career service members, their pay will be increased between 5.25 and 6.25 percent. The burden for many of our Reserve forces will also be lifted regarding healthcare. The report provides TRICARE coverage for members, and their families, of the Selected Reserve of the Ready Reserve and each member of the Individual Ready Reserve, if they do not already have health insurance.

Keeping our word to our Nation's veterans is vital to maintaining the honor of our country. No other issue is as important to our veterans as that of concurrent receipt, that is, simultaneously paying veterans a military pension and providing them with disability benefits. Under the current law, many veterans' retirement pay is reduced or offset dollar-for-dollar for any disability benefit they receive. Unfortunately, proposals to remedy this situation remain controversial due to cost. Therefore, I must commend and congratulate Chairman WARNER once again for devising a compromise plan that boldly expands upon his previous efforts by providing full concurrent receipt for those veterans suffering disabilities from combat or combat-related operations and by phasing in this benefit, over a 10-year period for those retirees whose disability is rated at 50 percent or greater.

This legislation is also important because it reaffirms our transformation policy. Many at home will ask what is "transformation" and what does it mean to the future of our Nation's military? Simply put, transformation is a process of reform that will revolutionize the way the military conducts operations. We saw a glimpse of this emerging reality during the Iraqi conflict where information was gathered from a variety of sensors, whether on the ground or in the air, and that information was transmitted very quickly to commanders who could then exploit the weakness of our enemy. It was a remarkable operation and it reflects the high level of competence and expertise of our Nation's service men and women.

This Defense bill will accelerate transformation and ensure that our forces maintain their decisive edge. It is an important accomplishment and the chairman, ranking minority member and all the members of the committee deserve our thanks. Their efforts to make military transformation a reality have led them to fund the research and development of such revolutionary systems as the Army's Future Combat System, or FCS. FCS will allow our forces to deploy an army brigade anywhere in the world within 96 hours. The DDX and the Littoral Combat Ship will also be revolutionary in their stealth characteristics, automation systems, and command and control capabilities. The committee is also continuing its support for the Joint Strike Fighter, which will bring a stealth fighter to all of our air and naval/marine air forces.

That being said, I was disappointed to see that the President's request for full funding of the F/A–22 did not occur, although the report did authorize the President's request for the procurement of 22 F/A–22s. This is a system that is a transformational aircraft at its core. The F/A–22's supercruise engines allow for extended supersonic flight—a magnitude longer than its after-burner predecessors. Using stealth capabilities, the F/A–22 is able to penetrate an opponent's airspace and engage enemy aircraft at great ranges. Additionally, unlike our current air superiority fighter the F–15C, the F/A–22 will be able to engage integrated surface-to-air missile systems. Once again using stealth technology, the F/A–22 will be able to approach these missile sites and destroy them, utilizing internally carried GPS-guided bombs. The F/A–22, using this bombing capability, will also have the ability to track and launch attacks against ground-fixed and mobile targets. However, the truly transformational aspect of the aircraft is that it can accomplish all of these missions almost simultaneously. Paraphrasing the Air Force's motto, no aircraft comes close to the F/A–22's capabilities. I cannot say how proud I am and the rest of the State of Utah is that the sustainment and maintenance work on this extraordinary aircraft will be handled at Hill Air Force Base/Ogden Air Logistics Center.

I am also grateful that the committee was able to maintain the momentum toward transformation regarding our industrial policies. Instead of reverting to a protectionist posture, the report enables the Department of Defense and Congress to gather information on this issue. I believe that as the cost of research and development of our Nation's weapons systems continues to grow that it will become increasingly in our interests to harness the strengths of other nations in joint ventures. The future belongs to programs such as the Joint Strike Fighter, where the United States has been joined by the United Kingdom, Canada, the Netherlands, Italy, Turkey, Singapore and Israel to develop this stealthy and capable aircraft that will protect the forces of freedom at an affordable price. I commend the committee for its foresight on this matter.

As I close, once again I wish to congratulate my colleagues on the Armed Services Committee, especially Chairman WARNER, on this fine piece of legislation. It was a hard road, but once again the committee has risen to the challenge and supported our men and women in uniform. The Nation is in their debt.

Mr. HOLLINGS. Mr. President, I rise today to commend the chairman and ranking member of the Armed Services Committee for bringing the 2004 Defense Authorization Conference Report to the floor today. The conference report before us comes at a critical time in our national history with our troops engaged in conflict throughout the world.

The committee's leaders have demonstrated patience and grace under pressure, navigating a difficult legislative process. I know firsthand how difficult this process can be; I have walked a mile in their shoes. I have served as the chairman of the Committee on Commerce, Science, and Transportation and now serve as its ranking member. It is in this capacity that I rise to express my dismay to learn that the bill agreed to by the conference committee includes significant changes to legislation under Commerce Committee jurisdiction—the Marine Mammal Protection Act, MMPA. The changes include modifications to some of the most fundamental standards providing protection of marine mammals under the MMPA.

I am proud to have been one of the original authors of the MMPA back in 1972. Overall, it has worked extremely well in balancing the need to protect marine mammals while allowing other important activities, including the defense of our Nation, to move forward.

I firmly believe that the U.S. is capable of having both the strongest military force in the world, and at the same time, some of the best conservation laws of any country. I have been a great supporter of our Nation's military, having served on the Defense Appropriations Subcommittee for three decades.

The Committee on Commerce, Science, and Transportation, on which I currently serve as the ranking member, has jurisdiction over issues relating to marine mammals, including authorizations for and oversight of the MMPA. The Commerce Committee plans to take up reauthorization of the entire MMPA this Congress. Towards this effort, we have held hearings and numerous briefings with the many different entities who have an interest in the MMPA, including the Department of Defense, the National Oceanic and Atmospheric Administration, NOAA, the Fish and Wildlife Service, private industry, the scientific research community, and nongovernmental organizations. Many of these entities have offered comments, including some serious concerns, with respect to the MMPA language now included in the DOD authorization bill.

I regret to say that many of the provisions included in the bill before us simply don't make sense. For example, we have had testimony from respected scientists this year in hearings before our committee, as well as before the Senate Armed Services Committee, that the standard for "harassment" of marine mammals, now included in this bill, is scientifically indefensible. Moreover, some of the provisions included in the bill go far beyond DOD activities, including all research done by or on behalf of the Federal Government. Although no changes to the MMPA were in the bill that passed the Senate, the Senate leadership on the conference committee apparently felt that such changes would be acceptable.

The National Marine Fisheries Service, which along with the Fish and Wildlife Service, implements the MMPA, estimates that about 38 percent of all of the "small take" permits that it has issued under the MMPA were issued to the Department of Defense. That is over one-third of all such activities, and we know that there are numerous other defense activities for which no permit has even been sought. Yet not once did the leadership of the Senate Armed Service Committee reach out to consult with me or my staff on these provisions that will affect over one-third of the activities that it regulates.

We still plan to take up reauthorization of the MMPA in our committee, and we still have oversight of its implementation. I intend to work with my colleagues on the committee to carefully monitor how these changes are interpreted, to ensure that activities that could have real impacts on marine mammals do not fall off the radar screen, as it were. MMPA was written the way it was because we are still learning about how various activities may impact marine mammals. We must ensure that under these new standards, the lack of perfect science is not used as a basis to avoid the mitigation of potential impacts.

Mrs. MURRAY. Madam President, as we work to complete the Defense authorization bill, we are reminded of our obligation to the brave men and women of our military. They are protecting us at home and abroad.

Congress must make sure they have the equipment and resources they need.

Two years ago, our country was attacked. Suddenly, we have to project sustained military force around the world, and we had to protect our skies at home—and we had to do it quickly.

But as our tanker fleet embarked on more than 30,000 air refueling missions, we found that our 43-year-old tanker fleet was outdated, too often down for repairs, and too expensive to maintain.

This conference report provides the Air Force with the ability to begin recapitalizing this crucial fleet, with 100 new KC–767 air refueling tankers. These tankers will enable our air crews to do their jobs more effectively, more efficiently and more safely.

Success has many authors, and I thank my colleagues, including: Chairman WARNER and Senator LEVIN for their vigilance on this issue and their willingness to work with my Senate colleagues and me to ensure the Air Force gets these 100 tankers: Senators STEVENS, INOUYE, CANTWELL, ROBERTS, BROWNBACK and CONRAD for their unwavering support for this program over the last 2 years; and, on the House side, I thank Congressmen DICKS, LARSEN, and MURTHA, as well as Chairman HUNTER and Speaker HASTERT.

Fairchild Air Force Base outside of Spokane, Washington is home to the 92nd Air Refueling wing.

I have been to Fairchild. I have visited with the families and talked with the brave men and women who fly these tankers. I know the difficult missions these crews handle for each of us every day.

I promised to give them the best equipment we could, and today we're delivering on that promise.

After 2 years of work, I am proud that this legislation provides the authority needed for the Air Force to enter into a contract for 100 KC–767s.

Section 135, of this conference report authorizes the Air Force to enter into a contract for the combined lease and purchase of 100 tanker aircraft under the terms and conditions of Section 8159 of the FY02 Defense Appropriations Act.

This section specifically authorizes the Air Force to enter into one contract for 100 aircraft, 20 by lease and 80 by purchase, or if necessary, more than one contract for the same combination of aircraft.

In their joint report language, the conferees agree that this section would—quote—"authorize the secretary to enter into a multiyear procurement program, using incremental funding" for the 100 aircraft pilot program.

This language means the multiyear procurement program authorized by Section 135 would allow the Air Force to make payments as agreed to in the contract.

Furthermore, the language states that the Air Force would not be required to have the full budget authority required to purchase an aircraft in order to place an order for that aircraft under the contract.

I would like to point out that Section 135 was written after extensive negotiations between the Congress and the Department of Defense.

The agreement reached on Section 135 is based in part upon a letter sent on November 5, 2003 to the chairman and ranking member of the Senate Armed Services Committee by the Deputy Secretary of Defense, Mr. Wolfowitz.

The language included in Section 135 of this conference report represents a common understanding between the conferees, the Congress and the Administration on the agreement under which the Air Force will execute this 100 aircraft pilot program.

In closing, I again thank my colleagues for their help in fulfilling the promise I made to the brave men and women of the 92nd Air Refueling Wing.

Within 3 short years, Fairchild Air Force Base will be home to the first four of the 100 KC–767 air refueling tankers authorized in this bill.

Fairchild will get another 16 of these state-of-the-art aircraft just 1 year later.

I ask unanimous consent that the Wolfowitz letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WASHINGTON, DC,
November 5, 2003.

Hon. JOHN WARNER,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you again for your consideration of the Department of Defense's proposal to lease 100 KC–767A aircraft. As you know, there has been a vigorous debate on the best way to get this program started. Your most recent amendment would allow the Air Force to lease no more than 20 of the 100 tankers. The Air Force has developed a proposal to implement that arrangement, and I hope that you will find it acceptable.

Our proposal strikes a necessary balance between the critical need for new air-refueling tankers and the constraints on our budget. As reflected in the enclosed chart, we intend to lease the initial 20 aircraft and then buy aircraft at a steady rate of 11 to 13 aircraft per year until delivery of the 100th. We commit to add $2.4B, in Fiscal Years (FYs) 2008 through 2010, to the funding profile for the original proposal to lease 100 aircraft. We also will add $1.4B in FY 2012 to 2013. The combination of these added funds achieves an immediate start to the program and allows us to purchase the last 80 aircraft at time of delivery.

I appreciate the support that you have provided in the past and look forward to working you in the future. If you require further information, please do not hesitate to contact me. A similar letter has been sent to the chairmen and ranking minority members of each of the defense committees.

Sincerely,

PAUL WOLFOWITZ,
Deputy Secretary of Defense.

Ms. MIKULSKI. Mr. President, I am here to stand up for our troops. I am going to vote for the Defense Authorization Act because it will give our troops the tools they need to fight the battles today and in the future. Every day our soldiers are fighting a war on many fronts, including in Iraq and Afghanistan. In Iraq soldiers are risking their lives every day, while their loved ones at home are praying for their safe return. Our troops are making grave sacrifices, some losing their lives in service to our Nation. Their families, their husbands and wives, parents and children, are also making sacrifices. It is the responsibility of Congress to provide the weapons, vehicles, and tools that our soldiers need to be an effective fighting force.

But I also stand up for those who are protecting the United States of America—our brave, our gallant Federal employees who are out there every day on the front line. I am here to defend the rights of hard-working civilian employees in the Department of Defense. When I stand up for America, I want to be able to stand up for what America believes in. And that includes basic rights for workers.

I think it is terrible that the DOD is using it's budget, which is so vital for our troops, as a cover for undermining the basic rights of dedicated employees. This bill creates a completely new—and completely unfair—personnel system for civilian Defense Department employees. The new system undermines the collective bargaining rights of civilian personnel. It weakens the rights of DOD employees to appeal personnel decisions to an independent body. It rejects the current salary system, and seeks to replace it with one that will leave workers vulnerable to the whims of their supervisors. It even takes away the guarantee of overtime, weekend, holiday, and hazardous duty pay. We should not put a system in place that distracts Federal employees from doing their jobs and requires them to play office politics.

This new civilian personnel system will seriously undermine morale, and opens the door to cronyism and political patronage. I am tired of the attempts by this administration to replace our effective civil service system with one that rejects the rights of workers. The thousands of civilian Federal employees at the Department of Defense are concerned about the security of our country, and work hard every day to ensure that our fighting forces are the best in the world. Many have served on the front line in the war on terrorism, and have lost their lives in the terrorist attacks of September 11, 2001. I am ashamed that the Defense Department wants to take away their basic rights as workers.

I think it is terrible that I must choose between supporting our troops and supporting our civilian Federal employees. I am tired of the cynical manipulation of this process. I feel like I am being set up—that if we stand up for the workers, we are somehow or another getting in the way of national security. I am going to support the 2004 Department of Defense Authorization because it is important to our Armed Forces. You can count on me to continue to fight for everyone who is making sacrifices for our Nation. Our troops and our civilian Federal employees deserve no less.

Mr. KENNEDY. The Defense authorization bill contains many provisions that provide essential support for our military personnel, especially when we are asking so much from them in Iraq and around the world.

We have demonstrated our great appreciation for them by providing an across-the-board military pay raise of 3.7 percent, and a larger raise for mid-career personnel, raising the average increase to 4.1 percent. The separate increases already available for imminent danger pay and the family separation allowance are extended through December 2004.

The bill also recognizes the contributions of our Reserve personnel, by authorizing an allowance of up to $1,000 per month for Active and Reserve personnel who experience unusually high deployments. We expand commissary privileges for Guard and Reserve family members and we expand health care coverage both for Guard and Reserve personnel and for their families.

The bill increases benefits for families whose loved ones have made the ultimate sacrifice, by doubling the death benefit to $12,000 and by authorizing Survivor Benefit Plan annuities for surviving spouses of Guard and Reserve personnel who die on inactive duty training.

The bill recognizes the toll of these deployments on children, by providing $35 million in supplemental impact aid to assist schools with large numbers of children of military families.

The legislation also eases the path to citizenship for immigrants who serve in our Armed Forces and provides immigration benefits to surviving family members of those killed in service. 37,000 men and women in the Army, Navy, Marines, Air Force, and Coast Guard have the immigration status of permanent residents serving in our Armed Forces. Another 12,000 permanent residents are in the Reserves and the National Guard.

The legislation also improves access to naturalization for lawful permanent residents serving in the military. It provides expedited naturalization for members of the Selected Reserves during military conflicts. It protects spouses, children, and parents of soldiers killed in action, by preserving their ability to file for permanent residence in the United States.

Over a dozen immigrant soldiers have been killed in Iraq and these benefits are well deserved. These immigration provisions in the bill are a tribute to the sacrifices that these future Americans are already making for their adopted country. They deserve recognition for their bravery and loyalty to the basic ideals and freedoms of our country. Unfortunately, although the bill provides many needed benefits for our men and women in uniform, it lets down their civilian counterparts.

Many of us are extremely disappointed that the bill undermines fundamental protections for the 700,000 civilian employees of the Department of Defense.

Specifically, the report undermines collective bargaining, premium pay, the pay and classification system, third party review, and the appeals process. Many of the provisions are disguised as improvements, when in fact they undermine years of civil service protections.

Nearly 40 percent of Defense Department employees affected are veterans who have served the nation proudly. More than 8,000 are activated reservists serving in Iraq and other parts of the world. They are protecting us and we owe it to these patriotic Americans to protect their rights. They take pride in their work, their love their country, and they have served it with distinction, often for decades.

The Bush administration has demonstrated its intention to undermine workers' again and again. They have proposed privatizing up to half the Federal workforce. They have created a Department of Homeland Security that doesn't allow its employees to join a union.

Earlier this year, the administration stripped clerical and other workers in the Department of Justice and the U.S. Attorney's offices of their long-held union membership. They have even proposed taking overtime protections away from more than 8 million hard-working men and women.

It is an affront to these dedicated Federal workers to deprive them of their rights, even though no restrictions are placed on the rights of employees of government contractors performing similar jobs. Under the administration's proposal, we could well see Federal workers working alongside private workers with the Federal workers denied the same fundamental rights and protections that the private workers continue to have.

These workers repair planes, ships, and tanks. They manage the storage and distribution of weapons and supplies. They manage computer networks, provide training, analyze intelligence, investigate crimes, acquire major weapons systems, perform research on cutting-edge technologies, test munitions, care for children, operate hospitals and laboratories, and treat patients. Defense employees deserve civil service and collective bargaining rights, just as other Federal workers do. The administration is wrong to use this must-pass bill as a vehicle to deny these workers their basic rights, and I intend to do all I can to see that Congress repeals this unfair assault on these dedicated civilian workers of the Department of Defense.

Mr. FEINGOLD. Mr. President, first and foremost, I want to thank the members of the United States Armed Forces for their service to our country. These service men and women are performing admirably in the global fight against terrorism and the war in Iraq. They and their families are making great sacrifices for the American people. I am voting for this authorization legislation to support these people who are serving the country with such courage.

But this is not an easy vote for me. This legislation contains a number of good provisions, such as much-deserved pay raises for our men and women in uniform, expansion of TRICARE health insurance to some of the members of our Guard and Reserve, concurrent receipt for disabled veterans, 12 WMD Civil Support Teams, and "Buy American" provisions. However, the bill also contains two particularly bad policies: the elimination of civil service protections for Department of Defense, or DOD, civilian employees, and the environmental exemptions granted to DOD.

I am deeply troubled by the provisions included in the conference report that will effectively eliminate existing civil service protections for the more than 746,000 civilian Department of Defense employees. While I think we all can agree that some reforms are needed to the civil service system, I am concerned about the administration's approach to dismantling this system, in a seemingly department by department manner. I opposed the weakening of the civil service system during consideration of the bill that created the Department of Homeland Security, and I would have opposed the provisions in this bill if the Senate had considered them independently of this conference report.

The civil service system was put into place in order to end the corrupt patronage system that had permeated Government hiring and advancement. The provisions included in this conference report will put salary decisions into the hands of managers, which could be a slippery slope back to the bad old days of cronyism. I am also concerned that this new system will limit appeal rights.

Some in the administration have argued that the civil service system is rigid and could prevent the administration from acting quickly in the face of an imminent threat. This is not the case. The existing civil service system already provides the administration with broad flexibility, while at the same time ensuring that Federal workers have a consistent framework of basic protections, including appeal rights.

In addition, I support the right of workers to join a union, and I am troubled by the implication that union membership is somehow a threat to our national security. The conference report that we are considering today will undermine existing union representation and collective bargaining agreements by allowing the Secretary to create a new labor relations system.

The expected enactment of these provisions, coupled with the ongoing implementation of the new employment system that was created for the Department of Homeland Security, will result in more than half of the Federal civilian workforce not being covered by the basic protections of the civil service system.

I am equally troubled by the provisions included in the conference report that exempt the DOD from several environmental laws. The Senate version of this bill struck a fair balance between the need to protect the environment and the need for military readiness. It allowed for some exemptions to the Endangered Species Act if the Secretary of Interior found that the DOD's resource management plan effectively conserved the threatened or endangered species and that DOD would fund the plan. The conference version destroys this balance by merely requiring that the DOD's management plan confer "a benefit" to threatened or endangered species. There is no mention of the need for DOD to fund its management plan. The new language means that the DOD will get exemptions from the ESA merely by having an integrated management plan on paper. The purpose of the critical habitat designation provisions of the ESA is to attempt full recovery of species by preserving habitat. The current bill falls short of that promise.

The assault on our environmental laws goes further. This conference report exempts the DOD from key provisions of the Marine Mammal Protection Act, MPPA. It allows, among other things, the Secretary of Defense to waive its provisions for 2 years if the Secretary believes it necessary for national security.

I am committed to supporting a strong Endangered Species Act, particularly because of the successes Wisconsin has had in rehabilitating endangered and threatened wildlife and plants. Recent news accounts of sensitive whale population deaths caused by high-frequency Navy sonar systems also trouble me. Our troops in Afghanistan and Iraq were expertly trained at DOD facilities that complied with environmental laws. It is my understanding that the DOD has never requested an exemption to the Endangered Species Act. DOD already has the authority to request exemptions from the ESA for national security reasons and this new provision in the conference report is unnecessary. I agree with Senator JEFFORDS that the Defense appropriations bill is not the appropriate place to have this debate.

The administration sought even more environmental exemptions than are contained in this authorization bill. Although I am disappointed with the included exemptions, I am thankful that my colleagues were able to limit the damage.

I will vote for this bill and for the good provisions it contains for our men and women in uniform and their families. However, I remain deeply concerned about the administration's policy on civil service reform and protection of the environment. I will support this flawed bill, but I do so with some reluctance and in the hope that the Senate will revisit these seriously flawed provisions next year in the proper committees.

Mr. BIDEN. Mr. President, the fiscal year 2004 Department of Defense Authorization Conference Report provides important benefits as our military personnel continue to do battle in Iraq, Afghanistan, the Balkans, South America, and elsewhere. It is not, however, a perfect bill. I voted for it because I believe that in a time of war we need to take care of our military personnel and our veterans. But, I am concerned that this bill unnecessarily undercuts important environmental protection measures and civil service protections. I am also troubled by some of the nuclear weapons provisions of the bill. First let me describe some of the key provisions that I do support in this bill.

This bill provides a 3.7 percent across-the-board pay increase and, because of some of the targeted pay raises for mid-career personnel, an average pay raise of 4.1 percent. It also authorizes increases in the critical pay bonus areas of family separation, hostile fire, and imminent danger pay from October of this year until next December. These increases are much needed and well-deserved.

I am also pleased that the bill would allow the Army to add 2,400 additional personnel. I supported adding 10,000 and would still like to see the number grow, but this is, at least, a start.

Perhaps most important as we create new veterans daily, this bill starts to live up to our promises to our veterans. I have long believed that the commitment we make to the retirement benefits of a veteran and the commitment we make to care for those veterans injured while serving should not be mutually exclusive. This bill takes a very real step toward allowing veterans full concurrent receipt. Military retirees with 20 years of service, active duty or Reserve Component, and a Purple Heart or a combat related disability will be eligible for full concurrent receipt as of January 1, 2004. The remaining retirees who are disabled at 50 percent and above will get full concurrent receipt phased in over the next 10 years.

In addition to the important personnel benefits of this bill, I am also pleased that the bill makes a common sense commitment on strategic airlift. The bill prohibits any decision to retire C–5 As until an A-model is completely modernized under the Avionics Modernization Program and Reliability and Re-Engining Program and then tested for its operational capability. This will allow decisionmakers to have the facts about what capability can be gained from the modernization programs. In addition, the Senate has required a March report updating the military's strategic airlift requirement. We know that the old requirement, defined pre-9–11, pre-Afghanistan, and pre-Iraq, is too low. Until we have a more accurate sense of what is really needed, it will be hard for Congress and the military to determine the best way to meet the need.

Let me now detail my concerns with the environmental and civil service provisions of this legislation. I believe it is important to balance our national security needs with the rights of our children and grandchildren to live in a country that has clean air and water. America is the home to tremendous natural bounty and diversity. Those natural treasures are something we hold in trust, not something we should allow destroyed for expediency. As the Nation has advanced, we have striven to find ways to balance environmental protection with our economic and military needs. We have done this in our environmental protection laws, most of which carry national security waiver provisions. It is still not clear to me why the conferees felt it was appropriate to make changes to two key environmental protection laws without taking into account the advice and wisdom of those who oversee that legislation daily.

Let me start by saying that I believe realistic military training is absolutely critical to the survival of our military personnel. Until now, we have managed to balance that need with our desire to safeguard our environment. This bill allows the Department of Defense to get around the Endangered Species Act, ESA, and to make enforcement of Marine Mammal Protection Act, MMPA, extremely difficult. With respect to ESA it is particularly troubling since, again, there is a national security waiver provision in that law. In the Senate, we were able to craft a compromise that allowed the Defense Department to avoid making any new critical habitat designations on installations that had Integrated Natural Resources Management Plans that the Secretary of the Interior had determined would in fact conserve the species on the installation and would be adequately resourced. This bill does not provide that safeguard.

In the case of MMPA, this bill provides a weaker definition of "harassment." More extraordinary than that, the new weaker definition applies not just to military activities, but rather to any scientific research conducted by or on behalf of the Federal Government. We have been given no rationale or justification for making it easier for federally funded scientists to harm marine mammals. The bill makes it easier for the Navy to get permits if their activities will have no more than a "negligible impact" on marine mammals. I also do not see why legitimate Naval activities should not receive the same full scrutiny they have always received. Again, we were not given good justifications for making such a change. At the end of the day, I am very disappointed that the conferees agreed to basically allow the Department of Defense to begin making their own environmental rules. While they have done a very good job managing many environmental issues, their track record is not one that suggests complete self-regulation is warranted or desirable. Their job is to fight and win our nation's wars. As a democracy, it is our job to provide them the legal framework that allows them to do their job while not sacrificing the nation's natural treasures. This bill is a step backwards.

In the area of civilian personnel reform at the Department of Defense, I am again troubled that this bill opens the door to cronyism and discrimination, things from which we have long sought to insulate our civil service. While I am open to the notion that civil service reform may be in order, I am again concerned that it is being done in an ad hoc fashion and without the proper input from the committees that oversee the entire civil service. I believe that we must be wary of the potential politicization of our workforce. The employees of the Defense Department are highly dedicated professional, and they must be free from political pressure. I will be taking a close look at how the administration goes forward with its new authorities. I will be watchful that the employees are free from political retaliation and secure in their jobs so that they can perform their vital tasks to the highest of professional standards.

Finally, let me say a few words about some of the nuclear weapons provisions in this bill. This conference report does a good job, on balance, of providing for our cooperative threat reduction and non-proliferation assistance programs in the former Soviet Union. It provides roughly the funding requested by the President and, in particular, a needed Presidential waiver provision so that we can continue to help build a chemical weapons destruction facility in Shchuch'ye, Russia. It requires the Secretary of Energy to study and report on the possibility of purchasing and safeguarding excess weapons-grade uranium and plutonium from the independent states of the former Soviet Union, so as to ensure that such dangerous material cannot be diverted to rogue states or terrorists. And it allows the President to use some Nunn-Lugar and non-proliferation funds for projects outside the former Soviet Union, if he determines that this will assist in the resolution of a critical emerging proliferation threat or permit the United States to achieve longstanding nonproliferation goals.

I regret that the Congress agreed to repeal the Spratt-Furse prohibition of work on low-yield nuclear weapons. I am pleased, however, that the conference report states that such work may not commence the engineering development phase, or any subsequent phase, of a low-yield nuclear weapon unless specifically authorized by Congress. I am also pleased that the Secretary of Energy is barred from commencing the engineering development phase, phase 6.3, of the nuclear weapons development process, or any subsequent phase, of a Robust Nuclear Earth Penetrator weapon unless specifically authorized by Congress.

Again, I voted for this bill because it contains many important provisions, particularly in this time of war. But I am very concerned that some of the provisions agreed to by the conferees are ill-advised and premature. I hope that we will be able to reconsider them next year.

Ms. SNOWE. Mr. President, I rise today to speak briefly on the fiscal year 2004 National Defense Authorization conference report.

I want to acknowledge the leadership of the senior Senator from Virginia, Senator JOHN WARNER, Chairman of the Armed Services Committee in bringing this bill to final passage. Of course, I must also recognize the ranking member, Senator CARL LEVIN. I had the privilege of working with them on the Committee for several years and I can attest that each year they work together tirelessly to pass the defense authorization bill because they understand how absolutely vital this legislation is to the effectiveness and well-being of our armed forces.

For that matter, let me also recognize every Senator on the committee for their efforts because this conference report authorizes the equipment, the training, and the operational funds necessary to support our troops who are right now operating across the globe to make our Nation and the world more secure.

It also reflects the service and sacrifice of our troops by making a solid investment in their quality of life by increasing their pay and enhancing educational and health care opportunities for our active duty military members, our National Guard and Reserve troops and their family members. And that is only right, for today we are asking a great deal of our gallant young men and women as they guard our Nation at home and abroad and, of course, risk their lives every day to restore freedom and prosperity to the oppressed peoples of Iraq and Afghanistan.

This legislation also recognizes that we owe a continuing debt to those who have served honorably by phasing-in for those with a service connected disability rated at 50 percent or more the same benefit available to every other retired Federal employee—the ability to collect full retirement pay and disability entitlements without offsets. There is much work to be done before we achieve the full equity of concurrent receipt for all disabled military retirees and I will continue to support these efforts until we finally achieve the goal of full concurrent receipt.

This $401.3 billion dollar authorization provides $74.3 billion for the critical procurement accounts. In particular, this bill makes some significant strides by providing almost $12 billion in an area that is critical to the security of the Nation—our shipbuilding capacity. It has become more and more apparent that as we engage the forces of terrorism around the world we have become increasingly dependent on the ability of our Navy to not only deliver troops and munitions to the fight, but to act as the sea base from which our forces can operate without restrictions virtually anywhere in the world.

Yet, as a former Chair of the Seapower Subcommittee, I remain concerned about the Navy's shipbuilding program, particularly with respect to the surface combatant force. As part of the 2001 Quadrennial Defense Review, the Navy and DoD approved a plan for maintaining a 310-ship Navy including 116 surface combatants—cruisers, destroyers and frigates. Partly because of continuing concerns about the Navy's uncertainty regarding plans for future surface combatants, last year's authorization directed that the Navy notify Congress should the number of active and reserve surface combatant ships drop below 116 and provide an operational risk assessment based on that number.

By the end of fiscal year 2003, the Navy's surface combatant fleet had fallen to 106 ships and in the latest report submitted by the Navy in June of this year, the Navy notified Congress that by the end of fiscal year 2004, it was their intent to reduce the force of surface combatants to 103 ships. According to the Navy, accelerating the decommissioning of *Ticonderoga-* and *Spruance*-class ships will free up funds for next-generation destroyer programs without appreciably raising the operational risk level to our Naval forces because they are "significantly less capable than the more modern and survivable AEGIS-equipped DDG–51 class ships that are replacing them."

Therefore, I am encouraged that this authorization provides $3.2 billion for the construction of three DDG–51 *Arleigh-Burke* class destroyers for it is these ships, along with cruisers and frigates, that provide protection to the carriers and amphibious ships deployed to the Persian Gulf and around the world to prosecute the war on terrorism. Moreover, it adds $20 million for the DDG Modernization program to begin the insertion of advanced technologies that will dramatically reduce operation and support costs to the fleet and mitigate the risk of back-fitting these technologies on older ships. Above all, we must pursue every path necessary to provide technologies to our sailors that will ease their workload, enhance their training opportunities and increase the survivability of their ships.

In 2005, the Navy will complete the DDG–51 acquisition program, and the next generation of surface combatants, the DD(X) and the Littoral Combat Ship (LCS) are being funded in the research and development accounts. Although this authorization provides $1 billion for the continued development of the DD(X) and $183 million for the continued development of the LCS in the RDT&E accounts, there is a looming gap in the Shipbuilding and Conversion, Navy account for surface combatants. Without a focused effort on the part of the Navy to commit and invest in a robust surface combatant program, I am concerned not only about the ability of the Navy's surface combatant force to maintain current operating tempos but the continuing viability of our shipbuilding industrial base.

This trend not only applies to surface combatants but to our attack submarine fleet as well. Although the Navy and the Department of Defense has established a requirement of 55 attack submarines, the current inventory numbers only 54 of those ships. To compound the problem, the Navy continues to place submarines such as the USS *Jacksonville* on the list of submarines to be inactivated rather than funding their refueling as a solution to this force structure gap. The Senate wisely added $248 million for the refueling of that submarine and I am pleased this report sustained that effort.

I am also disappointed that the conferees have included Section 319 in this bill, on Military Readiness and Marine Mammal Protection. Under the Senate Rules, the Committee on Commerce, Science, and Transportation has jurisdiction over issues relating to marine mammals, including authorizations for and oversight of the Marine Mammal Protection Act (MMPA). The Subcommittee on Oceans, Fisheries, and Coast Guard, which I chair, intends to work on reauthorizing the MMPA in its entirety this Congress, and we have held a hearing and numerous briefings with all concerned marine mammal interests, including the Navy and the National Oceanic and Atmospheric Administration.

By including Section 319 in this bill, the conferees have disregarded our jurisdiction and work on the reauthorization of the Marine Mammal Protection Act, and they have seriously altered marine mammal policy in the United States. I have serious concerns about their changes to the definition of harassment, the Department of Defense exemption from the MMPA, and the incidental takings language. Changes of this magnitude on behalf of the military requires oversight and review by the Commerce Committee, and the implications of these changes for other regulated parties and interested MMPA stakeholders must be fully understood. Our Subcommittee will address these changes and many other marine mammal conservation issues as we proceed with full, comprehensive reauthorization of the MMPA.

Importantly, this bill sets aside $63.4 billion in the research and development accounts to develop the advanced technologies our troops will use to maintain their technological superiority over their adversaries. Significantly, conferees authorized $11 billion for the critical science and technology programs which brings us close to the goal of setting aside 3 percent of the defense budget to invest in the "seed corn" of our future military capability.

Much of that S&T investment will be executed at universities and colleges throughout America. For example, the University of Maine system has been on the forefront of the development of chemical and biological sensors and decontamination systems. The bill provides them with $1 million this year to begin the development of an environmentally-friendly photo-catalytic decontamination agent that holds much promise for the safe and rapid decontamination of exposed personnel as well as for the remediation of chemical agent and manufacturing and storage facilities.

In addition, this bill also authorizes $4 million for continued research at the University of Maine into the structural reliability of fiber-reinforced polymers composites in ship assemblies that will help define and ultimately control the significant property variations found in composite plates used in Navy ship construction.

One of the hallmarks of the Department of Defense is the interwoven nature of the military and civilian personnel who work together as our national security team. Civilian workers at DOD work alongside their military counterparts every single day, sometimes in the most hazardous conditions. For example, at the Portsmouth Naval Shipyard in Kittery, ME, workers hold a memorial service every year for the gallant crew of the USS *Thresher*, lost at sea in April, 1963 with 112 sailors and 17 fellow civilian workers from the shipyard. The civilian workers at the Department of Defense work and sacrifice to keep this Nation secure and we should recognize their dedication and professionalism.

While there are many positive provisions included in the bill, I am disappointed that the conferees did not include all of the personnel reform provisions put forward by my colleagues, Senators COLLINS, LEVIN, SUNUNU and VOINOVICH, instead adopting many of the provisions put forth by the Department. The current civilian personnel system was established over a period of decades in order to protect the rights of the civilian worker in areas such as merit-based hiring practices, equal pay for equal work, appeals of adverse personnel actions and collective bargaining. As the new National Security Personnel System established in this bill is set in place, the Department must keep faith with its civilian employees and provide for third-party appeals, third-party dispute resolution as part of the collective bargaining process and a credible, transparent performance rating system.

I will be watching closely as the Department institutes this new personnel system to ensure that Federal employee's rights are not abrogated and that the highly-skilled civilian defense workforce can continue to stand arm-in-arm with their military counterparts to provide for the security of our Nation.

Finally, and most importantly, the bill continues our commitment to the men and women in the armed forces and their families through the enactment of several important pay and benefits provisions. First, it includes an across-the-board pay raise of 3.7 percent for all military personnel and once again provides an additional targeted pay raise of 5.25 percent to 6.25 percent for the senior non-commissioned officers and mid-career personnel who are the backbone of our military.

There are also a number of provisions that will directly aid the families of service members such as an increase in the family separation allowance from $100 to $250 per month and an increase in the special pay for those subject to hostile fire and imminent danger from $150 to $225 per month.

This authorization rightly recognizes that our reservists and National Guard troops play an increasingly vital role in the war on terrorism, and extends to them expanded benefits in critical areas such as medical care and special pay rates. For example, reservists and their families will now be provided access to enhanced TRICARE coverage including non-mobilized reservists and their families who are either unemployed or whose employers do not provide health coverage. In addition, reservists and their families will be granted the same commissary privileges as active duty personnel.

Overall, this authorization provides the men and women of our armed forces with the equipment they need to accomplish their mission, the quality of life they have earned and security for their families. I support this legislation and urge my colleagues to pass this conference report unanimously because in a year when our Nation is facing unprecedented security challenges and dangers, we can do no less.

Mr. LIEBERMAN. Mr. President, I am disappointed that some provisions in this legislation giving the Department of Defense additional personnel flexibility go too far in weakening the legal protections of DoD civilian employees, who are critical to the military's performance and to its fighting men and women. I pledge to actively monitor DoD's implementation of its new authority to guard against abuse.

Throughout the development of this legislation, the administration has tried to push a regressive agenda to do away with important worker safeguards—and, in the process, to risk opening up the workplace to politicization and unfair treatment and to close off important channels of communication between labor and management. Congress rejected much of this, but some risks remain.

On the Governmental Affairs Committee, where I serve as Ranking Member, we worked hard and forged a sensible bipartisan compromise on these issues for the department. This legislation, S. 1166, was approved by our committee by a 10 to 1 vote. The provisions of S. 1166 were considered by the conferees, and some of our compromises were incorporated into this conference report. However, at the insistence of House majority conferees and the administration, the conference agreement also includes a number of provisions that risk opening up the workplace to cronyism and arbitrariness and undermining established means for fairly resolving issues between labor and management, so it is important that Congressional intent be closely adhered to.

For example, in the area of collective bargaining, the conference agreement included the provision of S. 1166 stating that the Secretary of Defense has no authority to waive chapter 71 of civil service law, which governs labor-management relations. The conferees also retained an amendment, which I had offered in our committee, assuring that the Secretary of Defense cannot choose to bargain only with large national unions and refuse to bargain with others that do not represent large numbers of Defense Department employees.

However, the conferees also agreed to a new provision authorizing the Secretary of Defense, together with the Director of the Office of Personnel Management, to establish a "labor relations system" for the Department of Defense to address the "unique role" of the Department's civilian workforce. As the conference report makes chapter 71 non-waivable, this new provision overrides chapter 71 only where the new provision and chapter 71 are directly inconsistent with each other. The new provision authorizing establishment of a labor relations system does not conflict with the statutory rights duties, and protections of employees, agencies, and labor organizations set forth in Chapter 71—including, for example, the selection by employees of labor organizations to be their exclusive representatives, the determination of appropriate bargaining units, the rights and duties of unions in representing employees, the duty to bargain in good faith, the prevention of unfair labor practices, and others—and such rights, duties, and protections will remain fully applicable at the department. The conference agreement provides that, in establishing a labor relations system, the Secretary will be authorized to "provide for independent third party review of decisions, including defining what decisions are reviewable by the third party, what third party would conduct the review, and the standard or standards for that review." The Secretary may use this provision to expedite the review of decisions, but not to alter the statutory rights, duties, and protections established in chapter 71 or to compromise the right of parties to obtain fair and impartial review of decision. The mutual trust required for productive labor-management relations requires a level playing field.

The conference report also includes other provisions, which weaken a number of safeguards that we had included in S. 1166, including the statutory mandate that DoD meet standards for the quality of its system for rating employee performance and that the department phase in its new personnel system to enable the department to get fair and objective processes in place. The conferees also included new provisions that would give the Secretary of Defense latitude to waive premium pay for employees working irregular schedules or in dangerous situations, and to disregard statutory checks against cronyism and politicization in promoting, reassigning, and laying off employees.

Finally, even aside from the weakened employee protections in the legislation itself, I am very concerned that the department may try to impose its new personnel authorities without adequate preparation and funding. Under the new system, the department wants to use employee performance, rather than seniority, to determine salary increases. To avoid arbitrary pay decisions, however, the department must establish personnel systems that can make meaningful distinctions in employee performance based on appropriate criteria, and managers must be adequately trained to use these new authorities. In evaluating this legislation last summer, GAO warned that the vast majority of DoD's systems for appraising employee performance are not well-enough established to take on the task of supporting a meaningful performance-based pay system. Moreover, successful projects where pay is based on performance must be adequately funded, or else pay levels will be determined by budget constraints rather than by the competency and efforts of employees; and colleagues will be pitted against each other in competition for limited funding for performance pay, thereby disrupting unit cohesion and teamwork.

An experienced supervisor at the Defense Department, quoted in a news article today about this legislation, well expressed these risks in the following terms: "The changes are going to be swift and we're going to go into this thing blind," he said. "The worst thing we can do to the employees of the DoD . . . is to come in and demoralize them by putting in new pay systems that can't be financed or executed."

As the department, together with the Office of Personnel Management, proceeds to develop the regulations and the personnel systems to implement this legislation, I intend to watch closely. I expect the department to provide a fully open process, in close collaboration with its employees, for developing the regulations necessary to implement the new personnel authorities. And the department should not implement pay-for-performance or other authorities until personnel systems are in place, managers are trained, and funding is available, so that the risks of favoritism, politicization, and a demoralized workforce inherent in this legislation are kept to a minimum.

Mrs. BOXER. Mr. President, I support the fiscal year 204 Department of Defense authorization bill.

With so many of our young men and women deployed in Iraq, Afghanistan and throughout the world, it is very important that Congress support our troops and the important pay increases and personnel benefits in this bill.

This legislation authorizes a 3.7 percent across the board pay increase for all uniformed members of the armed services and targeted pay raises of 5.25 percent to 6.25 percent for mid-career servicemembers. I strongly support these provisions of the bill. These pay increases are well earned.

I am also pleased that imminent danger pay at the level of $225 per month and family separation pay of $250 per month was extended until December 31, 2004. With United States troops bearing so much of the burden in Iraq, many military families are having a difficult time making ends meet. Extending these benefits is the least we can do.

But let me be clear. This $401 billion Defense authorization bill contains many troubling provisions that will make us less secure and that I oppose.

First, this legislation repeals a 1989 ban on the research and development of low-yield nuclear weapons and provides funding for research into new bunker-busting nuclear weapons. Developing new and low-yield nuclear weapons will not make us safer—it will only lead to a dangerous escalation in the arms race. These provisions send the wrong message to the rest of the world and are based on a flawed strategy developed by President Bush that contemplates scenarios for the preemptive use of nuclear weapons.

Second, this legislation significantly rolls back environmental safeguards on our military bases. The bill prohibits the Secretary of Interior from designating critical habitat under the Endangered Species Act on any lands owned or controlled by the Department of Defense if the lands are subject to a management plan developed by the military that provides a "benefit" to the species. the conference report also gives the military greater leeway to conduct activities that might disturb marine mammals, such as whales. Under this bill, the Secretary of Defense may exempt any action or category of actions from the requirements of the Marine Mammal Protection Act, if the Secretary deems it is necessary for national defense. These environmental rollbacks are unfortunate. I urge the Department of Defense to take extra care not to abuse these new broad authorities.

Finally, I am concerned this bill did not do more to limit sole-source contracting by the Department of Defense. During Senate consideration of this bill, I offered an amendment stating that the Department of Defense should meet its own goal of replacing Halliburton's sole-source contract to reconstruct Iraq's oil industry with a fully competitive contract by August 31, 2003.

It is now November and Halliburton's sole source contract is still in place and a new competitive contract has not been awarded. I appreciate that the final bill contains a provision requiring a report within 30 days on why this sole-source contract has been allowed to continue. However, it is regrettable that conferees did not establish a deadline for the termination of Halliburton's sole-source contract.

Despite these concerns, I want to thank the chairman and the ranking member of the Senate Armed Services Committee for their hard work on this legislation. It is a bill that will help our military men and women who are serving to protect our Nation.

Ms. CANTWELL. Mr. President, I rise today to express my support for the Department of Defense authorization conference bill before us today. The bill will strengthen our Nation's military readiness, procure vitally important weapons systems and provide for our veterans. At the same time, I wish to highlight my concerns about provisions in the bill relating to civilian defense workers and the environment.

I am pleased that the bill allows the U.S. Air Force to move forward with the KC–767 Global Tanker Transport program. By allowing the modernization of our aging tanker fleet, the bill promotes our national security and the security of our friends and allies.

I became involved in this issue more than 2 years ago after visiting Fairchild Air Force Base in Washington State, which is one of the premier basing locations for the Air Force's KC–135 refueling tankers. It was clear to me then, and it is clear to me now, that these aging planes need to be replaced.

With an average age of over 40 years, the KC–135s are the oldest planes in the Air Force, older than most of the pilots that fly them and older than virtually all large commercial aircraft.

The bill authorizes a program that will provide the Air Force one hundred KC–767 aircraft by leasing the first twenty planes and purchasing the remaining eighty. This arrangement is the result of a 2-year effort to find the best way to provide our pilots with the equipment that they desperately need, while protecting the interests of taxpayers. This has been accomplished.

I want to congratulate my colleagues, Senator WARNER and Senator LEVIN, for their leadership on the Senate Armed Services Committee to develop a solution that will reach our goals. I also want to thank the Air Force and the Department of Defense for working to find the funds that will carry out this program.

I am particularly proud that the Air Force was able to improve our military capability by procuring an American product. Boeing has been the industry leader in the tanker market for fifty years and it has helped ensure our military's air power dominance.

The 767 is built by thousands of men and women in my home State and is sold around the world. I am excited to see that because of this legislation, the Boeing 767 tanker will keep our military flying in the 21st century.

I am also pleased that the bill provides for our Nation's veterans. I am profoundly grateful for the service of America's veterans and for the sacrifices they have made to defend our Nation and our freedom. We have an important responsibility to ensure that our veterans are provided benefits and assistance that they deserve.

Specifically, the bill authorizes that the full concurrent receipt will be phased in over a 10-year period for disabled military retirees and National Guard and Reservists who have at least 20 years of service. In each of the next 10 years, service members will receive an additional 10-percent increase, until the full concurrent receipt is reached in 2014.

The bill also expands the Combat-Related Special Compensation Program that was enacted as part of the Fiscal Year 2003 National Defense Authorization Act. This year's bill provides concurrent receipt to military retirees, National Guard and Reservists who have at least 20 years of service, any retiree who was awarded the Purple Heart, or any retiree with a service-connected disability incurred as a direct result of armed conflict, while engaged in hazardous service, in the performance of duty under conditions simulating war, or through an instrumentality of war.

A strong national defense depends on active duty forces, Guard and Reserve personnel, a civilian workforce, military contractors and military communities. Civilian workers in my State play a key role in ensuring that the U.S. military is the best-trained and best-equipped in the world. Over 16,000 highly skilled and dedicated workers in the International Association of Machinists Local 160, the Bremerton Metal Trades Council, and other unions and organizations in Kitsap County help ensure that our sailors have the ships and equipment they need to combat terrorism and protect our security.

Accordingly, I am concerned about provisions in the bill that would erode existing protections for civilian DOD workers. These provisions will set back our efforts to ensure a fair and effective civil service system. Specifically, these provisions could weaken collective bargaining rights at the local level, reduce due process protections for DOD workers, and scale back appeals rights along with protections against favoritism in hiring in the workplace.

Given the recent contributions of our civilian workers in the war effort in Iraq and Afghanistan, we should not be taking away long-standing protections that have helped make the U.S. military the strongest in the world. I intend to work to ensure effective congressional oversight of the implementation of these controversial personnel provisions.

I am also troubled by provisions in the bill that would weaken current environmental protections for marine mammals and other species. For several decades, the military services have demonstrated a strong commitment to natural resource conservation while fulfilling their primary missions. Puget Sound is home to many military installations and sensitive species. Based on our experience in Washington State, I believe that we can have both the highest levels of military readiness and natural resource conservation.

However, I am very troubled that the bill would weaken both the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). Both of these acts currently provide significant environmental protections, while providing the military the flexibility to conduct training and other exercises. Because species recovery efforts pose unique challenges, I believe that amendments to these acts are best considered by the Commerce Committee and the Environment and Public Works Committee.

On balance, however, this bill marks a major step forward in support of America's soldiers, sailors, marines and air force personnel and our Nation's security. I am pleased to vote for it.

Mr. LIEBERMAN. Mr. President, I rise to express my support for the fiscal year 2004 Defense Authorization bill. At the same time, I am compelled to state for the record my dissatisfaction with the process that first delayed the conference report for months, and then presented the conferees with a conference report and a deadline for filing that precluded Senators from familiarizing themselves adequately with the final product.

Despite my concerns about the process, and my opposition to three specific provisions in this bill, the men and women in uniform protecting the United States need the support this bill provides. I commend Senator WARNER and Senator LEVIN for their dedication and leadership in bringing this difficult process to a successful conclusion. Our security depends upon the unrivaled strength of America's military and the unmatched skills, dedication and bravery of America's servicemen and -women, which they are demonstrating on a daily basis. This defense blueprint ensures that we will be able to continue to give our troops in the field the best possible equipment, while at the same time preparing them for future challenges. The funds authorized in this bill will allow our military to continue to conduct operations with the intensity and effectiveness that the worldwide fight against terror requires. Secondly, and no less important, our military services will be able to continue transformation at the pace necessary to meet the challenges they will face in the coming decades.

There are many important provisions in this bill. I want to briefly highlight ones that I think are particularly important. First, the strength of our military depends primarily on the men and women who are serving with such dedication and courage. They deserve fair compensation and adequate support for their families. This bill authorizes critical increases in pay and improvements in their quality of life that are so important to America's soldiers and their families. This bill increases base pay by 4.1 percent, increases family separation allowance, increases hostile fire pay, authorizes the first increment of concurrent receipt for disabled retirees, expands commissary access for Selected Reserve members and their families, and enhances health care benefits for reservists. I am particularly pleased that we have made progress in increasing the benefits for our reservists and their families, because they are bearing an important share of the sacrifices our military is making for our defense.

We have also included important provisions to maintain the momentum in transforming our military services. The Airland Subcommittee, where I have the honor of serving as Ranking Member, under the able leadership of Senator SESSIONS, has fully supported the critical programs for transforming the Army and Air Force, such as the Army's interim brigades and the Future Combat System, and the Air Force F–22 fighter and the Joint Strike Fighter. I am also pleased that we have included a provision to improve the Department of Defense's capacity to expand high speed high bandwidth capabilities for network centric operations, which is critical for our military to expand it's military dominance.

Despite my approval of the bill, I oppose some of the labor/personnel and environmental provisions contained in the legislation, and I did not sign the conference report to signal my disagreement with these provisions. I am disappointed that some provisions giving the Department of Defense additional personnel flexibility went too far in weakening the legal protections of DOD civilian employees who are critical to the military's performance and to its fighting men and women and that key work of the Government Affairs Committee, which has primary jurisdiction, was ignored in propounding these provisions. I intend to describe at another time my concerns with the personnel provisions in this bill.

On the environmental front, I am disappointed that the conference bill contains unnecessarily broad exemptions for the Department of Defense from an array of environmental protections, most of which originated in the House of Representatives. Without question, we can protect our troops and conserve our natural resources—especially our wildlife and marine mammals—at the same time. We have built the strongest military force in the world while the Department of Defense has complied with the same environmental laws as everyone else. This bill undermines the protections for wildlife under the Endangered Species Act by allowing an Integrated Natural Resources Management Plan certified in writing to confer an undefined "benefit" on species to substitute for critical habitat designation. Unlike the Senate's bill, the conference bill does not require the Department of Defense to fund or dedicate resources to implement or monitor the plan; or the Department of Interior to determine that the plan will effectively conserve species within the lands it covers. While I would hope that the Department of Defense would feel obliged to dedicate sufficient resources, the country would be better served to have required it.

The bill's changes to the Marine Mammal Protection Act for military readiness and federally funded scientific research activities were not part of the Senate's bill. Quite simply, they may have disastrous consequences for whales and other species living off our Nation's coasts. For example, the Marine Mammal Protection Act's core prohibition against taking actions with the potential to injure or disturb marine mammals has been severely weakened. Now, only acts that injure or have the significant potential to injure marine mammals, or that are likely to disturb their behavioral patterns to the point of abandonment or significant alteration, are prohibited. And these changes also are an unnecessary intervention into the work of the committee with expertise. They come just as the Senate and House committees with jurisdiction over these questions have begun their work of reauthorizing the Marine Mammal Protection Act. I only hope the committees will revisit these provisions in the reauthorization of that legislation.

In closing, let me express my concerns about how the conference was managed. It is unfortunate, in my view, that on an issue as important as this—the very essence of our Nation's ability to wage the current war against terrorism and at the same time prepare for unknown challenges in the future—that it took months to reach a consensus on this bill and that the final conference report was presented to all members with inadequate time to review the final product prior to filing. Such an important bill should not be handled in this manner.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Madam President, between now and the hour of 2:45, I yield such time as I have to the distinguished Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, I rise today to make some brief comments about the Defense authorization bill.

First, I compliment the chairman and ranking member for working hard on this legislation. I also thank the professional staff, both on the committee as well as the personal staffs. It was my first year on the committee, and it was an incredible process. There were many controversial and complex issues on which we worked together.

In the end, we have done a lot for the members of our military, our Armed Forces serving in this country and around the world. With the global war on terrorism, these issues have become more important than ever: To make sure they have the resources to fight the global war on terrorism and to ensure a quality of life so we can maintain the all-volunteer professional armed services we have.

Several issues covered in my subcommittee, the Readiness Subcommittee, were very important. We have a problem with our ranges. Dealing with readiness, we have to have the proper training facilities. This bill helps us address some of those issues. The military does such a fabulous job protecting the environment on its training ranges that the use of those ranges almost became threatened. This bill makes sure that the training ranges and the environment are protected, while the military can still use the training ranges. That was a very important part of this Defense authorization bill.

I also think about what we have done for military families. That cannot be overemphasized because of the sacrifices they make for this country. It is not just the people in uniform, but it is the families and the sacrifices they make for the country. It is important that we take care of their quality of life. I am very proud of the work we have done in this Defense authorization bill.

I hope next year we can complete this bill earlier in the year, before Defense appropriations is done, because it is a better way to do it. The issues are complex. Many times they are controversial. But we have to be willing to put our personal interests, our party's interests behind the interests of our Nation and the interests of our military.

The Defense authorization bill is one place where we can join hands across the aisle, as we have done on so many issues this year, and continue to work to make sure our military is so far superior to any other military in the world that if there is ever a question whether we go into battle, we know we have the upper hand.

Madam President, I thank the chairman for all the great work he has done.

I yield the floor.

Mr. WARNER. Madam President, I thank my distinguished colleague for his remarks and, more importantly, his active participation in our committee's work throughout this year.

Mr. LEVIN. Madam President, I ask unanimous consent that the Senator from Arkansas be recognized for 2 minutes immediately prior to the vote.

ORDER OF PROCEDURE

Mr. REID. Reserving the right to object, Madam President, we have the military construction conference report coming up right after the vote, and there is no time set for the two managers to speak.

I ask unanimous consent that there be 4 minutes equally divided for the two managers of the bill to speak prior to that vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there objection to the extra 2 minutes? Without objection, it is so ordered.

The Senator from Arkansas.

Mr. PRYOR. I thank the Chair.

Madam President, I rise today in support of the 2004 Defense authorization conference report. Even though there are some provisions I am disappointed in—some of the environmental matters and how those issues got worked out, and a few other issues, and I don't want to dwell on the negative—there are two reasons I signed on to the conference report and why I encourage my colleagues to vote for this conference report.

Those two reasons are sitting right in the front, Senator JOHN WARNER and Senator CARL LEVIN. They have demonstrated a true spirit of bipartisanship. It has been a great model for me as a new Senator to sit on this committee and watch these two Senators fight for their causes but do it in a very fair and open manner and deal with each other in such a constructive way. I thank them for their leadership.

They worked through dozens and dozens of very difficult issues. Nobody got their way completely. But they showed great leadership and great stewardship. I want to publicly acknowledge them and thank them, especially Chairman WARNER because he has been extremely fair to the minority.

Again, we don't always get our way, but I think he has demonstrated the camaraderie and the comity that we should have in the Senate.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I thank our colleague for his kind remarks. I simply say, spoken like the true son of a great United States Senator, with whom I was privileged to serve and who emulated all of the characteristics the Senator from Arkansas has bestowed on me, undeserving as they may be, one David Pryor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I thank our dear friend, MARK PRYOR. Senator WARNER and I came together and we came with his father at the same time. His dad and his mother, Barbara, have been dear friends of ours. MARK PRYOR has made an extraordinary contribution as a new Senator to this body and to our Armed Services Committee. He has made a great contribution. We are grateful for that and for his remarks this afternoon.

Mr. President, I rise once again to join with Senator WARNER in urging the Senate to adopt the conference report on H.R. 1588, the National Defense Authorization Act for fiscal year 2004.

As we stand on the floor of the Senate today, America's armed forces are engaged in military operations around the world on a scale unknown since the end of the Vietnam war nearly three decades ago. According to the latest reports, we have 132,000 troops deployed in Iraq with an additional 87,000 serving in support roles outside of Iraq. We have 9,000 troops in Afghanistan, with an additional 35,000 serving in support roles. Tens of thousands more soldiers, sailors airmen and marines are deployed elsewhere around the world.

In the last 2 years, we have also seen the largest sustained callups of National Guard and Reserve components since the Vietnam war. We have seen units deployed for extended periods, and repeated deployments of the same units. Throughout this period, our men and women in uniform have shown extraordinary ability, professionalism, and dedication, conclusively demonstrating once again that they are by far the best trained, best equipped, best disciplined, most highly skilled and motivated military force in the world. Nonetheless, there are indications that the unprecedented demands we have been placing on our Armed Forces are starting to have an impact on morale.

I will vote for this conference report because it contains so many important provisions for our national security and for our men and women in uniform.

It includes an across-the-board military pay increase, along with a series of other increased pays and benefits for our men and women in uniform and their families. The conference report includes Senator HARRY REID's amendment on concurrent receipt; Senator DASCHLE's amendment on TRICARE; Senator KENNEDY's amendment on expedited citizenship for lawful immigrants serving in the military; and an increase in Army troop strength on which Senator JACK REED played a leading role. It includes important Senate provisions that authorize an expansion of our cooperative threat reduction programs to countries outside the former Soviet Union.

The provision authorizing the establishment of a new National Security Personnel System did not come out entirely the way I would have liked, but the Senate was able to include a number of important protections for civilian employees at the Department of Defense. Senator COLLINS' strong commitment to a bipartisan, fair, and balanced approach to this issue made this a far better provision than it would otherwise have been.

The conference report contains a number of other provisions that concern me. For example, I believe that provisions addressing the Endangered Species Act and the Marine Mammal Protection Act go beyond what is needed to address the legitimate needs of the Department of Defense. I am also disappointed by the outcome of the conference on nuclear weapons issues, which take the United States in a dangerous new direction.

Despite my concerns about these issues, I will vote for this conference report because it contains so many other provisions that are so important for our national defense and for our men and women in uniform. I urge my colleagues to join me in supporting this conference report, which will help provide our military the training and equipment that they need and the compensation and benefits that they deserve.

Thanks again to Senator WARNER and both our staffs, who we specifically thanked last night for all their work which made this conference report possible.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the conference report.

Mr. WARNER. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 3, as follows:

[Rollcall Vote No. 447 Leg.]

YEAS—95

Alexander
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Campbell
Cantwell
Carper
Chafee
Chambliss
Clinton
Cochran
Coleman
Collins
Conrad
Cornyn
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Dole
Domenici
Dorgan
Durbin
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham (FL)
Graham (SC)
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchison
Inhofe
Inouye
Johnson
Kennedy
Kohl
Kyl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Pryor
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Sununu
Talent
Thomas
Voinovich
Warner
Wyden

NAYS—3

Akaka
Byrd
Jeffords

NOT VOTING—2

Edwards
Kerry

The conference report was agreed to.

Mr. WARNER. Madam President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

* * *

MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2004—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 2559, which the clerk will report.

The bill clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2559) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes, having met have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by all of the conferees on the part of both Houses.

(The conference report is printed in the proceedings of the House in the RECORD of November 4, 2003.)

The PRESIDING OFFICER. There are now 4 minutes, equally divided.

Mrs. HUTCHISON. Madam President, I am pleased to present the fiscal year 2004 military construction appropriations conference report for the Senate's consideration. This bill provides $9.316 billion for military construction, family housing, and base realignment and closure activities for the Department of Defense for fiscal year 2004.

The negotiations over this conference report were uncharacteristically long and difficult for a military construction bill. This difficulty stemmed from two sources. First, and quite simply, there is less money this year for military construction. The administration's request was $1.6 billion below the amount appropriated last year. Even with an allocation slightly above the President's request, this conference agreement provides $1.4 billion less than last year.

Compounding this difficulty were two very different points of view about military construction on the part of the Senate and House this year. The administration is in the midst of the most sweeping restructuring of our overseas basing structure since the end of World War II. This restructuring will involve the closure of hundreds of installations, the construction or expansion of perhaps dozens more, the return of significant numbers of U.S. troops to the continental United States, and major changes to the way our Nation stations and deploys its armed forces. This plan is still very much a work in progress. In testimony and briefings by Defense Department officials and military commanders this year—at this time—the scope, timing, and cost are not yet determined.

In the face of this uncertainty, the Senate was unwilling to commit prematurely to all of the new construction proposed for U.S. facilities in Europe and Korea, and instead chose to shore up badly needed investment in U.S. military facilities in the United States.

The House chose a different approach, voicing many of the same concerns as the Senate but agreeing nevertheless to fund most of the overseas construction. To pay for that construction the House made significant cuts to the President's priorities for domestic military construction spending, including nearly $50 million from already underfunded programs for the National Guard. These different priorities set the stage for the difficult conference we have just concluded.

Fortunately, I believe we have crafted a conference agreement that accommodates the most pressing authorities of both chambers and the administration within the funding we were allocated. The Senate agreed to reinstate a number of projects in Europe for which our commander there, General Jones, made personal appeals. After hearing from General LaPorte, we also provided funding for two additional barracks projects in Korea on the condition that a facilities master plan and cost-sharing arrangements with the Korean government are completed before construction on these projects begins. Funding for domestic projects was decreased somewhat but we were successful in reinstating $108 million in cuts made by the House to the President's budget request, including over $42 million for sorely needed Guard projects. The conferees also agreed to create a commission that will study the structure of our overseas bases in light of changing political and military circumstances and provide Congress an independent assessment of our future basing requirements overseas.

In short, the conference agreement represents what conference agreements usually do—a respectable compromise among competing priorities.

I would like to express my deepest appreciation to the ranking member on the military construction appropriations subcommittee, Senator DIANNE FEINSTEIN of California. We have worked extraordinarily closely throughout this process—and through two supplemental appropriations bills passed this year—and I have appreciated her counsel as we have faced these difficult issues. Her staff, Christina Evans and B.G. Wright, worked hand in hand with my staff, Dennis Ward and his assistant, Sean Knowles. I don't think a better cross-party working relationship exists in the Senate. This truly has been bipartisan effort. They have worked together to make the very best military construction bill that could possibly be made.

I thank Senator FEINSTEIN for her engagement and willingness to work together for our military.

I am pleased to present the fiscal year 2004 Military Construction appropriations conference report and recommend its adoption by the Senate.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I thank the chairman of the committee with whom I have had the pleasure of working now for a number of years. I want to say this: She has done a fine job. There was a very difficult conference situation. The House and the Senate bills were very different. In the first place, we received $1 billion less in allotment to work from; that is, 14 percent less. In the second place, the House bill went in one direction and our bill went in another. It is really thanks to the chairman for her very shrewd bargaining with the House that we have a bill and that we have a bill as good as this bill is.

This is a difficult time. We try to do the most we can with barracks and schools and centers for our troops both in this country and abroad.

I want to say to those Members who had adds and had to have those adds cut that I am very sorry. We had to reconcile the two bills, and that was very difficult.

But Senator HUTCHISON did a super job. I thank her very much.

At a time when American troops are continuing to fight the enemy in Iraq and Afghanistan, it is imperative that Congress do its part and provide the funds necessary to support the infrastructure requirements of our service members and their families.

I wish we could do more. The 2004 military construction conference report provides $9.3 billion for a myriad of mission-critical and quality-of-life construction projects in the United States and overseas, including barracks, schools, hospitals, and family housing units. That is the good news. The bad news is that this conference report is more than $1 billion below the amount Congress appropriated for military construction last year. And yet, as old infrastructure continues to deteriorate and new missions require new facilities, the military's infrastructure requirements are growing, not declining.

In the process of completing this bill, the Senate conferees had to balance a number of meritorious projects against available funds and military priorities, and we had to make some tough cuts. Because of the scarcity of resources made available by the administration for military construction, and the differing philosophies between the House and Senate military construction subcommittees, this has been an especially difficult year. However, the House and Senate conferees were able to bridge most of their differences and provide the best package possible under the circumstances, and I commend Senator HUTCHISON for her perseverance in achieving that goal.

There are many good items in this legislation. The conference report provides more than $5 billion for military construction, including $730 million for the Guard and Reserve components, nearly double what the President had requested. The bill includes $1.2 billion for barracks, $176 million for hospitals and medical facilities, and $3.8 billion for family housing construction and maintenance.

The legislation also establishes an Overseas Basing Commission to assess the adequacy of U.S. military installations overseas and to review the Defense Department's planned restructuring of the deployment of U.S. forces overseas. This could not be a more timely initiative, given the Defense Department's plans to make sweeping changes in the U.S. military footprint in Europe and Korea.

Overseas basing issues were among the most difficult that the conference had to deal with this year. In the middle of the budget cycle, the Defense Department announced a sweeping restructuring of U.S. installations in Europe and Korea. I support the Defense Department's review of our overseas installation requirements—it is probably long overdue—but there are many, many elements to a restructuring of the magnitude envisioned by the Secretary of Defense, and it is not something that should be rushed. Senator HUTCHISON and I have discussed this issue at length, and I believe we both have strong reservations about committing billions of U.S. taxpayer dollars to a new overseas basing structure that is a radical departure from the existing footprint without first seeing a comprehensive plan for the redeployment of U.S. troops, and the impact it will have on installations here at home.

Given the current precarious state of America's diplomatic relations with a number of our traditional allies, I also think the administration should redouble its efforts to work with governments in Europe and Korea to gain their support—both political and financial—for such a massive reshuffling of U.S. bases before embarking on this effort.

Even with those reservations, this conference report includes $354 million for projects at enduring installations in Europe, $169 million for the NATO Security Investment Program, which provides the U.S. share of funding for NATO construction projects, and $89 million for U.S. military projects in Korea.

As I said before, I wish we had more resources to devote to infrastructure requirements for our military. The need is real, and I hope that the administration will request more money for military construction next year, so that we do not have to continue to juggle priorities and postpone funding urgently needed facilities.

Again, I thank Senator HUTCHISON for her leadership on this subcommittee, and I also thank the subcommittee staff, including Christina Evans and B.G. Wright of the minority staff, Dennis Ward and Sean Knowles of the majority staff, and Chris Thompson of my staff.

I urge my colleagues to support this measure, and I yield the floor.

Mr. NICKLES. Mr. President, the conference report to accompany H.R. 2559, the 2004 Military Construction appropriations bill, provides $9.4 billion in discretionary budget authority and $10.3 billion in discretionary outlays in fiscal year 2004 for Military Construction and Family Housing appropriations. The $10.3 billion in outlays includes outlays from previously enacted legislation.

The bill is $112 million in budget authority and $38 million in outlays above the Subcommittee's 302(b) allocation. These totals result from the $112 million in non-emergency funds enacted in P.L. 108–106, the 2004 Iraq supplemental, that count against the bill's 302(b) allocation. The bill provides $193 million more in budget authority and $15 million more in outlays than the President's budget request. The bill provides $1.3 billion in budget authority less and $226 million in outlays more than the 2003 enacted level.

I ask unanimous consent that a table displaying the Budget Committee scoring of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

H.R. 2559, MILITARY CONSTRUCTION APPROPRIATIONS, 2004.—SPENDING TOTALS—CONFERENCE REPORT

[Fiscal Year 2004, $ millions]

Category	General purpose	Mandatory	Total
Conference report:[1]			
Budget authority	9,428	0	9,428
Outlays	10,285	0	10,285
Senate 302(b) allocation:			
Budget authority	9,316	0	9,316
Outlays	10,247	0	10,247
2003 level:			
Budget authority	10,751	0	10,751
Outlays	10,059	0	10,059
President's request:			
Budget authority	9,235	0	9,235
Outlays	10,270	0	10,270
House-passed bill:[1]			
Budget authority	9,308	0	9,308
Outlays	10,320	0	10,320
Senate-passed bill:[1]			
Budget authority	9,308	0	9,308
Outlays	10,311	0	10,311
CONFERENCE REPORT COMPARED TO			
Senate 302(b) allocation:			
Budget authority	112	0	112
Outlays	38	0	38
2003 level:			
Budget authority	−1,323	0	−1,323
Outlays	226	0	226
President's request:			
Budget authority	193	0	193
Outlays	15	0	15
House-passed bill:			
Budget authority	120	0	120
Outlays	−35	0	−35
Senate-passed bill:			
Budget authority	120	0	120
Outlays	−26	0	−26

[1] Includes $112 million in BA and $38 million in outlays of non-emergency spending (provided by the Emergency Supplemental for Iraq and Afghanistan, PL 108–106) that the President did not request and the Congress did not designate as a contingent emergency as is required by section 502(c) of H. Con. Res. 95, the 2004 Budget Resolution.

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions.

Mrs. HUTCHISON. Madam President, I call the question and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the conference report.

The clerk will call the roll.

The bill clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 448 Leg.]

YEAS—98

Akaka
Alexander
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carper
Chafee
Chambliss
Clinton
Cochran
Coleman
Collins
Conrad
Cornyn
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Dole
Domenici
Dorgan
Durbin
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham (FL)
Graham (SC)
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kohl
Kyl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Pryor
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Sununu
Talent
Thomas
Voinovich
Warner
Wyden

NOT VOTING—2

Edwards
Kerry

The conference report was agreed to.

Mr. BOND. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Missouri.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004—Continued

Mr. BOND. Madam President, is the pending business now the VA-HUD appropriations bill?

The PRESIDING OFFICER. Yes.

Mr. BOND. Madam President, there are about 45 seconds worth of things that we need to clear up, pending amendments. Then I intend to turn to the distinguished minority whip for the offering of an amendment, on which we will have a very short time limit.

I see my colleague, Senator MIKULSKI, is in the Chamber.

AMENDMENT NO. 2156

Madam President, I believe we have had a full debate on the Bond amendment. I call up the Bond amendment and ask for its adoption.

The PRESIDING OFFICER. There are two Bond amendments pending.

Mr. BOND. This is the Bond amendment on small engines.

The PRESIDING OFFICER. Amendment No. 2156 is now pending.

Mr. BOND. Madam President, I ask for its adoption.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The amendment is agreed to.

The amendment (No. 2156) was agreed to.

Mr. BOND. Madam President, I ask unanimous consent to add, as cosponsors, Senators MCCONNELL, TALENT, and CHAMBLISS.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2158

Mr. BOND. Next, Madam President, I call up the Craig amendment on pesticides.

The PRESIDING OFFICER. Amendment No. 2158 is now pending.

Is there further debate?

Mr. BOND. Madam President, I think we have had a full debate on that amendment. I know of no other debate.

The PRESIDING OFFICER. If not, without objection, the amendment is agreed to.

The amendment (No. 2158) was agreed to.

Mr. HARKIN. Madam President, I am pleased to have joined Mr. CRAIG in offering this amendment to add the Pesticide Maintenance Fees Reauthorization Act of 2003 to the VA–HUD appropriations bill.

The authority for the Environmental Protection Agency to collect these maintenance fees for the reregistration of pesticides expired 2 years ago. Since that time, authority has been extended through riders on the VA–HUD appropriations bill. This amendment would provide a long-term authorization that has been agreed to by the Senate and House Agriculture Committees and a broad array of stakeholders, including environmental and agricultural groups.

This proposal ensures that EPA continues to collect fees from the industry of an estimated $20 million per year. This will cover the costs of reevaluating chemicals first registered prior to 1984, including the cost of 200 EPA employees engaged in this important work. The EPA has no alternative but to collect these fees or sharply reduce their commitment to oversight of these chemicals. A slowdown in consideration of these applications is neither in the interest of the environment, nor of the farmers or chemical manufacturers.

This is a bill that has broad support, and it is important to get this done this year, so that it is in place for next year's budget. Adoption of this amendment will ensure that EPA has resources to evaluate and approve safer, more effective chemicals, and that older pesticides are reviewed for safety in accordance with the Food Quality Protection Act of 1996. I urge my colleagues to support this amendment.

AMENDMENT NO. 2167

Mr. BOND. Madam President, I am going to send a very brief amendment to the desk that removes the emergency designation. The committee has reallocated funds to us so that our bill now comes within the allocation offered by our committee.

Madam President, the amendment was with us in the cloakroom. I apologize to my colleague in the chair. Here it is. This is it.

Madam President, I send this amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND] proposes an amendment numbered 2167.

The amendment is as follows:

(Purpose: To remove the emergency designation on VA Medical Care)

Beginning on page 9, line 20, strike ": *Provided*, That" and all that follows through "Congress" on line 5, page 10.

Mr. BOND. Madam President, it simply strikes the emergency clause. I think there is no debate on that. I ask for its immediate adoption.

The PRESIDING OFFICER. Is there further debate?

The Senator from Maryland.

Ms. MIKULSKI. Madam President, I thank Senator BOND and Senator STEVENS for working very closely with us to ensure that promises made to veterans are promises kept. This $1.3 billion is a dire need. I am ready to give my consent to this amendment, and the veterans of America will be happy because of it.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 2167) was agreed to.

Ms. MIKULSKI. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOND. Madam President, I thank my colleagues.

Madam President, I also ask unanimous consent to add Senator MILLER of Georgia as a cosponsor to amendment No. 2156.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, I have spoken to the two managers of the bill. The distinguished Senator from New Jersey, Mr. LAUTENBERG, has agreed to allow the Senators from New York and Wyoming to go forward. Senators CLINTON and ENZI have an amendment to offer. They have agreed to 20 minutes equally divided, followed by a vote on or in relation to that amendment, with no second-degree amendments in order. I ask unanimous consent that be the case.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from New York.

AMENDMENT NO. 2152

Mrs. CLINTON. Madam President, I thank the minority whip and the chairman and ranking member of the subcommittee for an opportunity to discuss this very important amendment.

I call up amendment No. 2152.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mrs. CLINTON], for herself, Mr. ENZI, Ms. CANTWELL, Mr. GRASSLEY, Mrs. MURRAY, Mr. SMITH, Mr. SCHUMER, Mr. WYDEN, Mr. HARKIN, Ms. STABENOW, Mr. KERRY, Mr. DODD, and Mr. LIEBERMAN, proposes an amendment numbered 2152.

Mrs. CLINTON. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To permit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative of the Department of Veterans Affairs for purposes of enhanced services while limiting the use of funds for the initiative for purposes of the closure or reduction of services pending a modification of the initiative to take into account long-term care, domiciliary care, and mental health services and other matters)

At the end of title I, add the following:

SEC. 116. (a) LIMITATION ON USE OF FUNDS FOR CARES INITIATIVE.—No funds appropriated or otherwise made available for the Department of Veterans Affairs for a fiscal year before fiscal year 2005 may be obligated or expended to take any actions proposed under the Capital Asset Realignment for Enhanced Services (CARES) initiative that would result in the closure of a Department of Veterans Affairs health care facility, or reduction in services at such a facility, until the Secretary of Veterans Affairs—

(1) modifies the Capital Asset Realignment for Enhanced Services initiative national planning procedures to require that no changes be made in long-term care, domiciliary care, or mental health services without a completed and separate Capital Asset Realignment for Enhanced Services planning process intended to assess the future demand for such services;

(2) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to take into account the impact that any transfer of health care services under the initiative will have on the access of veterans to primary outpatient care, inpatient hospital care, and tertiary hospital care in rural and frontier population areas, as defined by the Census Bureau, taking into consideration such travel matters as road conditions, numbers of lanes on roads, and seasonal changes in and other factors relating to the weather;

(3) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to permit veterans to testify at hearings of the Capital Asset Realignment for Enhanced Services Commission and reconvenes the Commission for further hearings on the initiative in regions where the Commission has held hearings without permitting veterans to testify;

(4) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to hold at least one hearing regarding the realignment of services under the initiative within 30 miles of each Department of Veterans Affairs facility that would experience a realignment of services under the national plan for the initiative; and

(5) submits to Congress a report on the Capital Asset Realignment for Enhanced Services initiative national planning process that sets forth the results of the modifications under paragraphs (1), (2), (3), and (4).

(b) AVAILABILITY OF CARES INITIATIVE FUNDS FOR ENHANCED SERVICES.—Notwithstanding any other provision of law, neither subsection (a) nor any other provision of law shall be construed to limit the obligation or expenditure of funds under the Capital Asset Realignment for Enhanced Services initiative for the provision of enhanced services as long as the provision of such services does not involve the closure of a Department health care facility or a reduction in services as such a facility.

Mrs. CLINTON. Madam President, my cosponsor and I, Senator ENZI of Wyoming, are offering this amendment today, which is a bipartisan amendment. The sponsors include Senators MURRAY, GRASSLEY, CANTWELL, SMITH, WYDEN, SCHUMER, HARKIN, STABENOW, KERRY, DODD, LIEBERMAN, and LEVIN.

Our amendment would prevent any spending directed toward closing or reducing services under the so-called CARES plan until this plan considers long-term care, domiciliary care, and mental health care, as well as rural health care issues.

It would also offer veterans, many of whom have not been able to offer their views, a meaningful opportunity to participate in the CARES process.

This amendment is supported by the American Legion, the Eastern Paralyzed Veterans, the Vietnam Veterans of America, and the American Federation of Government Employees.

I want to be absolutely clear, this amendment does not affect, in any way, the CARES Commission or the VA moving forward on enhancing or increasing services for our veterans. It contains explicit language that allows enhancements under CARES to go forward.

I know the Secretary of the Veterans' Administration, a very distinguished gentleman, certainly has made the case strongly to veterans service organizations and to my colleagues that this amendment would stop enhancements.

It absolutely does not. The clear language makes it absolutely positive that we are not stopping enhancements. But what we are doing is saying: Wait a minute. The process that has ended up with recommending the closure of many of our VA hospitals, three of them in the State of New York alone, and the fact that in testifying, as my colleague Senator SCHUMER and I did before the CARES commission in Canandaigua, one of the hospitals that is on the target list to be closed, the commissioners had to admit they did not take into account mental health services, domiciliary services, and long-term services.

I am hoping this amendment will help us get a handle on some of these decisions that appear to be ill-advised and not part of a larger plan aimed at helping our veterans and that, in fact, the Department would go back to the drawing board to develop a plan through a fair process that would explicitly take into account mental health, domiciliary, and long-term care.

There is much to be said about this important amendment.

I ask unanimous consent to print in the RECORD a letter of support from the American Legion.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE AMERICAN LEGION,
Washington, DC, November 10, 2003.
Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CLINTON: The American Legion supports your proposed amendment to S. 1584, to limit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative of the Department of Veterans Affairs, pending a modification to take into account long-term care, domiciliary care, mental health care and other issues.

As for the CARES initiative in general, The American Legion supports the program. However, in doing so we continue to monitor the process, share dialogue with the CARES Commission, and have several times expressed concern over the very issues set forth in the amendment.

We appreciate the fact that you and your colleague, Senator Mike Enzi, share the Legion's concerns on these important matters.

Sincerely,
JOHN A. BRIEDEN III,
National Commander.

Mrs. CLINTON. The bottom line is that this process, which holds such promise to make sure we have the right mix of services for our veterans, is seriously flawed.

On Sunday, I was with a group of veterans served by the Manhattan VA. Their concerns range from the blinded veteran who suffered a service-connected loss of hearing and sight in the Vietnam war, who cannot possibly get to any other VA because of transportation problems, to the closure of important research that is being done on that campus in conjunction with the New York University Medical School, to the very serious problems raised by veterans who are getting superb mental health services and cannot get them anywhere else if these facilities are closed or the services reduced.

I wish the VA would hear us on this. I know they are opposed to it. I know they are concerned about it. But the exclusion of factors affecting mental health and long-term care is absolutely unacceptable. In fact, the VA has told us that next year in the strategic plan, they will get to those important services. How can we be closing facilities and not having taken into account those services?

I ask unanimous consent to print in the RECORD a letter of support from the Vietnam Veterans of America and the American Federation of Government Employees.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

VIETNAM VETERANS OF AMERICA,
Silver Spring, MD, November 12, 2003.
Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CLINTON: On behalf of Vietnam Veterans of America (VVA), I wish to thank you and Senator Michael B. Enzi for your bi-partisan efforts to ensure that vitally needed veterans health care facilities are not closed in a precipitous manner. Your amendment to be offered to the FY04 VA-HUD Appropriations bill is a much needed modification of the Capital Asset Realignment for Enhanced Services (CARES) process that will provide for a cooling off period and full public consideration before any Department of Veterans Affairs (VA) medical facility is closed or services further reduced. As long as the needed enhancements and new construction contained in the CARES plan can proceed, VVA strongly supports this amendment.

The process of devising a mathematical formula for CARES had been underway for several years before anyone in the veterans service organization community knew about this effort. The CARES process is ostensibly designed as a data-driven system. VVA has objected for more than a year to the data used, and to the civilian formula that is being inappropriately applied to veterans health care needs using that data. The data is not a needs assessment, but rather a snapshot of what services are left after six to seven years of reductions in staff in the core VA area of specialized services, most particularly in mental health. The original civilian formula still in use does not address the special medical needs of the veterans' community.

All who served in the military practiced a very dangerous occupation. Our wounds, toxic exposures, and even mental health needs are dramatically different in prevalence and in kind from those of the general civilian populace. The VA was created to be a veterans' health care system that addresses those special needs of veterans, and not just general health care that happens to be for veterans. The formula that VA is using estimates one to three presentations (illnesses, medical conditions, or maladies) per individual, whereas veterans using the VA system average five to seven presentations per person. As a result, the current formula will always underestimate the resources needed to properly care for veterans. Although there were some adjustments made, separate from the formula, to increase facilities for Spinal Cord Injury (SCI) and for Blind and Visually Impaired Rehabilitation, no such adjustment was made for mental health.

The formula simply does not properly address mental health care needs of veterans, nor long-term care, nor the needs of veterans returning from Iraq and Afghanistan. It is not surprising that a disproportionate number of the targeted facilities are psychiatric facilities. VVA believes that what is needed is development of a veterans health care formula, and a true needs assessment of the entire veterans' community by geographic area.

VVA believes in the concept of stewardship, that it is the task of each of us to leave things better than we found them. VVA understands and supports the impetus of Senators Bond and Mikulski to force the VA to plan for future needs before providing any further construction funds for facilities that might be abandoned in just a few years. This is what led to the CARES process.

VVA also is grateful to Secretary of Veterans Affairs Anthony J. Principi for his response to the concerns of the veterans' community about CARES. VVA is also grateful to CARES Commission Chair Everett Alvarez and the other distinguished members of that body for their work in trying to ameliorate the results of the inappropriate formula and bad data. We also recognize that the process is not yet over.

However, even though the CARES process is not yet finished, the fact that mental health facilities have been so prominently and inappropriately targeted for closure is ample cause for alarm. It is important to note that the chair of VA Advisory Committee on Serious Mental Illness testified before the CARES Commission hearing held in the Russell Senate Office Building in September 2003 that 65 percent of the organizational capacity that VA possessed in 1996 for mental health care is now gone.

It is also important to note that the dire shortage of funding of the veterans health care system, which has become a structural shortfall that is widening with each passing year, is contributing to the distortions of plans for proper care for all eligible and much deserving veterans in the nation, both rural and urban residents. After adding additional funds to the VA-HUD Appropriations bill for 2004, currently under consideration, we urge that the Senate work with the President to move to address this gross and growing scarcity of resources at VA medical facilities.

In summary, VVA supports the amendment you plan to propose, along with Senators Enzi, Kerry, Dodd, Lieberman, Cantwell, Grassley, Murray, Smith, Schumer, Wyden, Harkin, Stabenow, Kerry, Levin, and others that would have the effect of preventing any closures until further consideration can be given as to whether these proposed closures or diminishment of staff are indeed in the best interest of our nation's veterans. It is our understanding that this amendment does not mean that any of the enhancements, remodeling, or construction in the proposed CARES plan will be delayed or stopped.

Again, thank you and Senator Enzi for your strong leadership on this issue.

Sincerely,

THOMAS H. COREY,
National President.

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL–CIO,
Washington, DC, November 12, 2003.

DEAR SENATOR: On behalf of the American Federation of Government Employees, AFL–CIO, which represents 600,000 government employees, including 150,000 employees in the Department of Veterans' Affairs (VA), I strongly urge you to support the bipartisan amendments on CARES offered by Senator Hillary Rodham Clinton (D–NY) and Senator Michael Enzi (R–WY).

Under VA's planning process—Capital Assets Realignment for Enhanced Services—known as CARES, the VA is proposing to close VA nursing homes, domiciliaries, and inpatient mental health care beds without fully considering how the VA will meet the surging long-term care needs of elderly veterans or the needs of homeless veterans. The Clinton-Enzi amendment would allow the VA to spend funds to improve and repair facilities but would hold in abeyance the expenditure of funds to close or reduce services at VA facilities until the CARES process addresses VA's needs for nursing home care facilities, domiciliaries and mental health care delivery.

VA's own data projections indicate that in order to meet the current and future health care needs of elderly veterans the VA will need roughly 17,000 additional nursing home beds by 2022. The current CARES proposals target nursing home beds for closure without considering how the VA will meet the surging demand for veterans' nursing home and adult day care.

Veterans deserve access to quality care. Congress must make sure that VA plans for current and future veterans' demand for nursing home care, mental health services and supportive environments like domiciliaries.

AFGE strongly urges you to vote yes for the Clinton-Enzi amendment on CARES. If you have any questions, please contact Linda Bennett at 202-639-6456.

Sincerely yours,

BETH MOTEN,
Director,
Legislative and Political Action Department.

Mrs. CLINTON. In summary, I am offering this amendment because I believe that the Draft National CARES Plan and the process used to develop it are deeply flawed. The Plan has not adequately taken into account the impact of these proposals on long term care, domiciliary care and mental health services. The Development of Veterans Affairs needs to go back to the drawing board and develop its plan through a fair process that takes into account all relevant factors and allows veterans to fully participate in the plan's development.

At this time in our nation's history, with U.S. troops bravely serving in Iraq, Afghanistan and elsewhere, it sends exactly the wrong message to propose such drastic changes in veterans' health care without proper throught and deliberation. Our troops are fighting overseas to defend our values and way of life. We owe it to our current and future veterans to make sure that we provide the best health care possible for them and not rush to implement recommendations that provide our veterans with less adequate health care.

As a starting point, our bottom-line goal should be the delivery of high quality health care services to our veterans, delivered as efficiently as possible. Unfortunately, the hasty procedures that the Department of Veterans Affairs followed to develop these recommendations are fundamentally flawed.

Veterans' health care is too important an issue to require an adherence to artificial deadlines and hasty recommendations. With literally the lives of veterans at stake, the Commission should not engage in a rush to judgment over closing VA facilities.

FAILURE TO CONSIDER LONG TERM, DOMICILIARY AND MENTAL HEALTH NEEDS

As a result of the flawed CARES process, several important factors that are critical to veterans' health care have been neglected. In this rushed process, the impact of the proposed changes to long-term care, domiciliary care and mental health needs were not considered. The exclusion of these important factors taints the recommendations of the draft national plan. For example, the Draft National CARES Plan states that its mental health outpatient psychiatric provisions are "undergoing revision" and "should be available for next year's strategic planning cycle." As you can see from this panel, we found a speech on the VA web site in which then-Deputy Secretary Mackay admitted in April that "As you are also aware, there have been aspects of care that have been left out of his CARES plan. Long-term care, domiciliary care, and outpatient mental health care were all determined to need more work before reliable forecasts could be made."

Incredibly, despite this admission, the Draft National CARES Plan proposes reductions in beds in facilities that provide mental health services. Similarly, there is widely expected to be an increase in the demand for long term beds for veterans over the next 20 years. However, the Draft National Plan does not contain any analysis of how many long-term beds are needed in the coming decades and yet still recommends closing facilities with long-term beds.

During a meeting between members of the New York delegation and VA Secretary Anthony Principi a few weeks ago, Secretary Principi acknowledged that a plan for long-term psychiatric needs has not yet been developed. With all due respect to Secretary Principi and the Commission, it seems to me that developing a Draft National Plan before developing a plan for mental health needs is getting it exactly backwards. A plan for addressing mental health care should have been developed before the Draft National Plan was released, not after.

The Draft National Plan's failure to consider long-term mental health care has disastrous implications for veterans around the country, including thousands in New York. One of the facilities targeted by the CARES plan is the VA hospital in Canandaigua. I have visited the VA Hospital at Canandaigua and was greatly impressed by the quality of care provided at the facility as well as the overwhelming support that the VA hospital has in the community. And indeed, it is a cruel irony that Canandaigua has been recommended for closure in the same year that it received the highest facility rating in patient satisfaction in the country.

The omission of mental health care needs from the Draft National Plan is particularly striking because of the effect that the closure of the Canandaigua VA will have on the veterans with mental health care needs who are currently receiving care at the facility. Veterans at Canandaigua receive a specialized level of treatment for mental health illness that is not readily available at other facilities. Further, if the Canandaigua VA were to close, many veterans would be forced to drive long distances for care. As my colleague Senator ENZI has pointed out, the CARES national plan has not adequately taken into account the impact of the recommendations on rural health care.

The Draft National CARES Plan for VISN 3 recommends eliminating all inpatient services at Montrose VA hospital and transferring most of these services to the Castle Point VA hospital. A decision to follow through on this recommendation would be a serious blow to veterans who currently rely on the Montrose VA hospital for their care.

As I mentioned previously, the need for long term beds has not been properly assessed and current projections forecast that there will be a significant increase in the need for psychiatry beds through 2012. In order to ensure adequate capacity to handle the projected case load, local veterans organizations support retaining all services at Montrose and Castle Point.

Moving inpatient services from Montrose to Castle Point will require, by VA's own admission between $85 and $100 million and take at least 5 and maybe as many as 10 years to accomplish. However, the Draft National CARES plan provides no explanation for what will happen to services at Montrose in the meantime. Further, there is no analysis of how veterans will get services if future budgets do not include enough funds for the transition. The often substantial waiting periods that veterans living in this region already experience at the Montrose and Castle Point Campuses and their satellite facilities underline the strain the system is experiencing.

The Draft National CARES Plan will also have a significant impact on the Castle Point VA. Wait times at Castle Point are already too long. With the closure of Montrose and the shifting of veterans to Castle Point, the wait times are likely to get even worse. In addition, many area veterans have questioned the adequacy of space available for expansion at Castle Point.

The CARES Draft National Plan recommends developing "a plan to consider the feasibility of consolidating inpatient care [from Manhattan] at Brooklyn." Yet, once again there is no requirement that the development of this "plan" solicit the input of veterans. Further, the proposal does not properly take into account how the consolidation of inpatient care in Brooklyn will impact the relationship between the New York University School of Medicine (NYU) and the Manhattan VA. The NYU-Manhattan VA relationship, and the high quality of care for veterans it produces, would be imperiled by the potential closure of the Manhattan VA.

Finally, the practical matter of transportation deserves an important role in your deliberations. The high quality tertiary services at the Manhattan VA attract veterans from New York, and other states including New Jersey and Pennsylvania. One of the reasons the Manhattan VA is able to serve these veterans is its amazing accessibility, located, as it is, in the heart of Manhattan, at the center of a mass transit system that is unmatched anywhere else in the Nation.

Since the release of the CARES Draft National Plan, a frequent complaint that I have heard from area veterans has been that the VA has not been listening to their concerns. Veterans who contributed to the VISN 2 market plan, which called for no closures in VISN 2, feel betrayed by the decision to overrule the market plan and call for this facility's closure.

Further, the VA did not hold hearings near many facilities on the closure list around the nation. Our amendment would require new hearings within 30 miles of a facility where a reduction in services is proposed and require that veterans be allowed to testify.

In meeting with the veterans of New York, I have learned a tremendous amount about the value of the New York VA facilities and the quality of health care that is delivered there. And as letters to my office from veterans who use the facility demonstrate, the veterans' community in New York is united behind keeping these facilities open.

One veteran who wrote to me explained that he suffered a massive blow to the head while serving in the Marines and suffers from Organic Brain Syndrome and Organic Affective Disorder. He currently uses the Canandaigua VA's day treatment program. He wrote to me that "I have a lot of difficulty with my short term memory and the thought of losing one of the places that I am most familiar with bother me. . . . [I]t has taken a long time but I have finally reached a little bit of independence. By losing this hospital, I will be losing that independence. Also, the place that I live is very rural and there are no other facilities in my area. The idea of sitting around the house day after day depresses me."

Another veteran from Rockland County wrote to me about the potential closure in Montrose stating that "I was wounded in 1944 during World War II by shrapnel in the mouth causing the loss of several teeth. In early 1945, I was captured by German soldiers and held as a POW until the end of World War II. . . if [Montrose] were to close, I would have to travel an additional 45 minutes to one hour depending on weather for treatment at Castle Point VA Hospital. I am 84 years old and transportation is getting more difficult for me. As you know there is no public transportation to this facility."

Our Nation's veterans have served their country with distinction. Our nation made a pact with those who serve their country in the Armed Forces—a commitment that those who served would have access to quality health care through the VA hospital system. Yet this ill-considered and rushed Draft National CARES Plan threatens to undermine our commitment to our nation's veterans. That is we are this offering legislation in the Senate to halt any spending towards closure or reduction in services until long-term, domiciliary, mental health care and rural care are adequately considered and veterans are allowed to fully participate in the CARES process. If this amendment passes, the Department of Veterans Affairs and the CARES Commission can begin anew by taking into account the proper factors and input from veterans. I urge my colleagues to support the Clinton-Enzi amendment.

I also ask unanimous consent to print the letter from the Eastern Paralyzed Veterans Association.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EASTERN PARALYZED
VETERANS ASSOCIATION,
November 10, 2003.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR CLINTON: The Eastern Paralyzed Veterans Association strongly supports your proposed amendment to S. 1584, the FY 2004 VA-HUD Appropriations Bill to prohibit the Department of Veterans Affairs (VA) use of appropriated funds for the implementation of the VA's Capital Asset Realignment for Enhanced Services (CARES) initiative until CARES addresses such vitally important issues as mental health care, long term care, domiciliary care, and other outstanding issues. We have closely monitored the CARES process since its inception and, while we agree with VA that infrastructure analysis is necessary, we cannot support the National plan currently being considered for implementation until these concerns are addressed, as would be required by your legislation.

From the outset, VA has claimed that CARES would be a data driven process with sound and justifiable conclusions and proposals. Unfortunately this has not been the case. VA has refused to run data on its mental health programs and has maintained that CARES would not impact on this population. Despite these claims, 12 of the 14 VA facilities slated for closure or discontinuation of in-patient services have a major psychiatric service component. Additionally, the CARES National plan includes nothing with regard to long term and domiciliary care; two services that VA is Congressionally mandated to provide over the next twenty years. Finally, the data that was used to formulate the National plan completely excluded veterans in Priority Groups 7 and 8 from the twenty-year projected usage data. By excluding Priority 7 and 8 veterans from the CARES projections, VA is creating a system that will be unable to treat these veterans. This cannot be allowed to occur.

While CARES was well intentioned, the fact that this process has so many flaws on so many levels forces us to oppose it until these issues are addressed. Your amendment would require just that. Eastern Paralyzed Veterans Association is grateful that you, together with Senator Mike Enzi, will introduce this amendment to insure that these issues are dealt with before allowing the process to advance. Thank you.

Sincerely,

GERARD M. KELLY,
Executive Director.

Mrs. CLINTON. I see my colleague and partner Senator SCHUMER. I yield to him such time as he needs.

Mr. SCHUMER. I thank my colleague from New York and all of those who have worked so hard. I plead to my colleagues, the CARES Commission had a good idea. Let's study and see how we can make health services better for veterans. But looking at what they recommended in New York State, something went amuck; to close the Canandaigua Hospital makes no sense whatsoever. It is desperately needed by so many veterans. It is a fountain point of the community, and it does special work in mental health and psychological services that no hospital within miles and miles and miles around, tens of miles, hundreds of miles around, can do.

All we are asking is a chance. Let the CARES Commission go back to the drawing board and figure out what they did wrong. Let them look at what they have done wrong in New York in terms particularly of Canandaigua but also of Montrose and the Manhattan VA hospital where anyone who looks at it up close sort of scratches their head in wonderment and says: How did they come up with these recommendations? This is a bipartisan bill. It does not stop any kind of restructuring except for the fact that it says: Go back and look at other factors they seem to have missed.

It is desperately needed in many parts of the country. The veterans groups of America are totally for this amendment.

This Chamber and the other just voted for $87 billion for Iraq. Whatever one's opinion of that was, how can we at the same time turn our backs on so many of those veterans who fought in other wars? I know the intentions of the commission may have been good, but the effect, at least in our State, is to do just that. It is to turn its back on tens of thousands of veterans who served their country, many of whom were wounded in the course of battle.

This is a pro-veteran amendment, supported by veterans throughout the country. I urge my colleagues to support it.

I thank my colleague from New York for the great job she has done. We have worked as a team to try to prevent this from happening. This amendment gives us a good opportunity to go back and reargue. We hope our colleagues will support it.

Mrs. CLINTON. Madam President, this is an issue that affects veterans across our country. My cosponsor, Senator ENZI, is concerned particularly about the impact on his veterans who live in rural areas and are not going to be able to travel the long distances that will be required if services are reduced, if facilities are closed. I know my colleagues from Iowa, Michigan, Washington, Oregon, Texas, in addition to Wyoming, have asked for similar relief.

I hope my colleagues who are in States that, under this process, are in line to get enhancements and increases will vote for this because it doesn't affect your enhancements. It does not affect your increase, but it gives those of us who have mental health needs, who have rural health needs, who have domiciliary and long-term health needs the opportunity to get this process right and to fix the problems that would lead to the closure and reduction of services that are so needed in so many States for so many veterans.

I hope this amendment will find favor with my colleagues and will give those of us who are particularly on shaky ground because of the recommendations of this commission a chance to have a more rational process that really takes into account the needs of our veterans.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. ENZI. Mr. President, I am pleased to be a cosponsor of this amendment and I hope to clarify some of the reasons I believe every Senator should support our efforts.

I think everyone in this Chamber agrees on the importance of our national veterans community. Just yesterday ceremonies throughout the Nation and speeches here on the Senate floor paid tribute to those who have been willing to sacrifice so much. When young men and women volunteer their lives for the fight for freedom and democracy we, as a nation, promise to take care of them.

The amendment Senator CLINTON introduced today addresses the Capital Asset Realignment for Enhanced Services or CARES process from the Department of Veteran's Affairs.

I believe the intent of the CARES process is good. If we can clear up some of the unused space in the VA health care system and remove redundancy in services, we can save money and put it towards effective health care for our veterans. I do not believe, however, that rushing into changes for the sake of making changes is a good policy. How can we expect good changes to come from a broken system?

There is no doubt in my mind that the CARES Commissioners have the best interests of veterans at heart. I believe that given enough time and proper information, they will be able to make changes in veterans health care that will fully benefit current and future veterans for years to come. I must admit, however, that they currently have neither the time nor the proper information to make good changes.

Now, let's be clear about what this amendment does and does not do. It does not prevent the CARES process from moving forward. It does not prevent improvements from being made or new hospitals from being built. It does not kill the CARES initiative.

It does require the VA to commit to a separate process for long-term care, domiciliary care, and mental health care needs. It does require the VA to confirm that they have examined local travel factors such as road and weather conditions. It does require the CARES Commission to hold hearings within 30 miles of each facility targeted for a closure or a reduction of services and it requires veteran participation in these hearings.

Let me touch on a couple of these requirements. One is that there be a CARES Commission hearing within 30 miles of every facility facing a realignment of services under the national plan.

We recently had a CARES hearing in Cheyenne, WY near the Cheyenne VA Medical Center. I think the hearing went extraordinarily well. The veterans who attended where given an opportunity to understand more about the future of their health care. Likewise, the CARES Commissioners were able to hear the veteran's concerns through the veterans service organizations. Just holding a hearing in Denver about reducing services in Cheyenne—a town more than 100 miles away—would have sent a strong statement to Wyoming veterans that the VA cared neither for their health nor their opinions.

I believe each facility and community should have the opportunity to have this same interaction. Each community should be able to understand what the changes will mean for them and what differences in services the veterans will face. I now the burden falls to the CARES Commissioners to attend and consider the testimony at these additional hearings, but I believe they will then be better informed about the decisions they will need to make.

I also want to point out the travel issue in the amendment. I think we all realize the difficult nature of taking weather into consideration nationally. After all, northern Wyoming's winter and southern Florida's winter are hardly the same. What this part of the amendment intends to do is ensure that the local factors were considered when drafting the national plan. Distance cannot be the only factor considered—we all know that even in Washington, DC, 30 miles travel distance doesn't mean 30 minutes travel time.

Let me say again, this amendment does not stop the CARES process. It merely requires the VA to consider a couple of factors that we believe should have been considered from the very beginning.

I know letters from some veterans service organizations may have raised concerns for my colleagues about our amendment. these organizations were able to meet with the Secretary of Veterans Affairs and had many of their worries addressed. the Secretary told them that no services would be reduced until replacement services are fully available. He also stressed that no net changes would be made in long-term care, domiciliary care, or mental health care.

I think this meeting was a great idea. It is, however, a shame that it took news of this amendment to get the VA, moving. I am very glad that the veterans organizations had the opportunity to meet with the Secretary. Through this amendment we are trying to make sure the VA addresses the concerns of Congress. We are just trying to make sure that the promises made are promises kept.

Again, I want to reiterate my support for the CARES Commissioners themselves. They are doing their best to make good decisions in a broken system. I appreciate their patience and most of all their willingness to serve America's veterans. I urge my colleagues to support the amendment.

Mr. REID. Madam President, I rise to speak against this amendment, and in support of the CARES process.

As many Senators are aware, Nevada has experienced unprecedented growth over the last decade. In Clark County alone, the home of Las Vegas, 14 new schools are constructed each year to keep up with the approximately 8,000 people that move to the county each month.

The growth in our veterans population has been just as rapid. With approximately 245,000 veterans, Nevada has the second highest concentration of veterans in the country. Only Alaska ranks higher.

About 176,000 of Nevada's veterans have served in a war: 18 percent in the Gulf War, 49 percent in Vietnam, 21 percent in Korea, and 21 percent in World War II. Many of our veterans even served in multiple wars.

Therefore, Nevada's veterans have been combat-tested. And regrettably, the average age of our veterans' population is growing older each year. The rising average age, coupled with the many years of often very harsh service to defend our Nation's freedom, has placed a tremendous strain and great demand on the veterans health care system in Nevada.

More than 70,000 veterans are enrolled in the Reno and southern Nevada VA health care facilities, with more coming in each day. We have an excellent VA hospital in Reno, but other parts of northern Nevada are underserved. And the Las Vegas area continues to be one of the most densely populated regions of the country for veterans seeking quality health care and one of the most severely underserved.

In the past several years, the VA has not kept pace with the demand and growth in our State. Long lines, prolonged waiting times, old and crowded facilities: this is no way to provide health care to our courageous veterans, and it is no way to deal with the population explosion in Nevada.

So when this subcommittee called for a new plan and independent commission to examine the VA's resources and reallocate resources based on the greatest demand, I applauded that action. I also welcomed VA Secretary Tony Principi's active role and interest in supporting Nevada. He has been an honest advocate for our Nation's veterans, and a bright spot in the President's cabinet.

It came as no surprise to me that the CARES plan, which is the subject of this debate, found Nevada to be dramatically underserved by the VA.

The draft CARES plan contains $130 million in upgrades to improve health care facilities for the veterans who live in Nevada.

The plan also calls for the construction of a major medical center, clinic and nursing home in the Las Vegas area. This new hospital is only one of two hospitals recommended in the entire VA plan. I credit our hardworking VA staff in Nevada and the thousands of veterans themselves for making sure that the CARES Commission got the message about Nevada's desperate needs.

Therefore, I must oppose any effort to delay, derail or diminish the CARES process and the money and resources that would flow to the veterans in my State under the draft plan.

I have the greatest respect and admiration for the Senator from New York. I understand her concerns, and the concerns of other senators, about certain CARES recommendations that will impact other States. But these concerns should be addressed directly with the VA, and not by cutting off appropriations to the VA for the CARES process to continue.

The veterans of Nevada can't wait much longer for the upgrades and new facilities that they desperately need and deserve.

I therefore will vote against this amendment, and I would urge my colleagues to do the same.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, how much time remains?

The PRESIDING OFFICER. There are 10 minutes in opposition.

Mr. BOND. Madam President, I yield myself 7 minutes, and I reserve time for my colleague.

I rise in strong opposition to the Clinton-Enzi amendment. It would deny up to $1 billion in funds to support our Nation's veterans. I especially object to the amendment because it would likely extend waiting lines for veterans already waiting for medical care.

Before I go into further explanation, I ask unanimous consent to print in the RECORD letters from the Veterans of Foreign Wars, Amvets, Disabled American Veterans, and the Paralyzed Veterans of America.

There being no objection. the material was ordered to be printed in the RECORD, as follows:

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Washington, DC, November 6, 2003.

To: All Members of the U.S. Senate.
From: Robert E. Wallace, Executive Director, VFW Washington Office.
Re: Clinton/Enzi amendment to H.R. 2861.

On behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I would like to take this opportunity to urge you to oppose the Clinton/Enzi Amendment to H.R. 2861, the FY 2004 VA/HUD Appropriations bill.

This amendment would limit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative. The VFW is concerned that if this amendment passes, the CARES process will essentially be put on indefinite hold.

We share Senators Clinton's and Enzi's concerns regarding long-term care, domiciliary care, and mental health services; however, it is our understanding that the CARES Commission is currently reviewing the data to include these services. Therefore, at this stage, we believe it is important to move ahead as the location and mission of some VA facilities need to change to improve veterans' access; to allow more resources to be devoted to medical care, rather than the upkeep of inefficient buildings; and to adjust to modern methods of health care service delivery. Our nation's veterans deserve no less.

Again, I urge you not to support the Clinton/Enzi Amendment regarding the limiting of funds for the VA CARES initiative.

AMVETS,
Lanham, MD, November 7, 2003.

To: All Members of the U.S. Senate.
From: S. John Sisler, National Commander.
Re: Consideration of CARES amendment in VA/HUD appropriations bill.

It is our understanding that Sen. Hillary Rodham Clinton may offer an amendment to S. 1584, the VA/HUD appropriations bill, that would block the Department of Veterans Affairs from spending any money to enact the CARES Commission recommendations.

On behalf of the nationwide membership of AMVETS (American Veterans), I write to express our strong opposition to Sen. Clinton's proposed amendment aimed to stop progress of the Department of Veterans Affairs National Capital Asset Realignment for Enhanced Services (CARES) Plan.

The CARES initiative is clearly needed to assess what facilities will best meet the healthcare needs of America's veterans. AMVETS believes that adoption of the amendment would further delay moving forward with construction projects that are obviously essential to patient safety and that will eventually pay for themselves as a result of modernization.

AMVETS agrees with the Department of Veterans Affairs that many of their facilities need to be upgraded or replaced. We also agree with the Department that part of the solution for providing high quality health care to America's veterans is upgrading some facilities and replacing others with new and modern medical care treatment facilities.

AMVETS and I ask that you oppose any amendment that would cause the VA National CARES process to be used as an excuse to defer vital infrastructure maintenance and construction projects.

DISABLED AMERICAN VETERANS,
Washington, DC, November 7, 2003.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR CLINTON: On behalf of the more than one million members of the Disabled American Veterans (DAV), we write to express our concern over your proposed amendment to limit the use of funds for the Department of Veterans Affairs (VA) Capital Asset Realignment for Enhanced Services (CARES) initiative, pending modification of the initiative to include long-term care, domiciliary care, and mental health services in addition to reconvening the Commission for further hearings.

Intially, please know that preservation of the integrity of the VA health care system is of the utmost importance to the DAV and our members, and we greatly appreciate your efforts and insistence that long-term care, domiciliary care, and mental health services are included in the CARES initiative. These specialized programs are an integral part of providing sick and disabled veterans comprehensive health care. However, we are concerned your amendment may completely stall the CARES process and prohibit VA from making the necessary changes to improve its health care system and enhance access and services for veteran patients.

As you are aware, over the past seven years, following national trends, VA's Veterans Health Administration converted from a primarily hospital-based system to an outpatient focused health care delivery model. With these sweeping changes, there clearly came a need to reassess VA's physical structures and the need to realign, renovate, and modernize VA facilities to meet the changing health care needs of veterans today and well into the future. Many VA medical facilities have an average age of 54 years and are in critical need of repair. Unfortunately, VA's construction budget has decreased sharply over the last several years with political resistance to fund any major projects before a formal plan was developed. VA responded with the CARES initiative. However, many desperately needed construction and maintenance projects, including seismic repairs that could potentially compromise patient safety, have been unnecessarily delayed. DAV strongly believes that CARES should not distract VA or Congress from its obligation to protect its physical assets whether they are to be used for current capacity or realigned.

On a national level, DAV firmly believes that realignment of capital assets is critical to the long-term health and viability of the entire VA health care system. We do not believe that restructuring is inherently detrimental to the VA health care system. However, we will remain vigilant and press VA to focus on the most important element in the process, enhancement of services and timely delivery of high quality health care services to our nation's sick and disabled veterans.

VA Secretary Anthony J. Principi met with DAV and other veterans service organizations this morning and gave us his personal commitment that there would be no realignment or reduction in services as a result of CARES for mental health or long-term care until a definitive plan is developed and in place to absorb the workload for these specialized services. His promise to us satisfies our over-arching concern about the inclusion of these essential programs. Therefore, we believe the CARES process should be allowed to proceed at this critical juncture.

Again, we want to thank you for your efforts on CARES and for your strong leadership and support of veterans' issues. We very much look forward to continuing a positive and meaningful working relationship with you regarding matters of great importance to veterans. We hope that you will reconsider your position on this issue based on these new developments.

Sincerely,

DAVID W. GORMAN,
Executive Director,
Washington Headquarters.

PARALYZED VETERANS OF AMERICA,
Washington, DC, November 7, 2003.

MEMBERS,
U.S. Senate,
Washington, DC.

DEAR SENATORS: On behalf of the Paralyzed Veterans of America (PVA) I am writing to express our concerns regarding an amendment we understand will be offered by Senator Hillary Rodham Clinton to the VA, HUD, Independent Agencies Appropriation bill. As we understand, this amendment addresses the Department of Veterans Affairs' Capital Asset Realignment for Enhanced Services (CARES) process and, if passed, will limit the expenditure of funds for the process greatly delaying necessary improvements to the VA's medical care system.

While PVA concurs with Senator Clinton that the CARES process inadequately addresses issues of long-term care, mental health services and rural health care we believe that the amendment will so severely restrain the process that the many beneficial aspects of CARES will be seriously harmed. Delay of CARES projects that will benefit veterans, and in particular veterans with spinal cord injury or dysfunction, can only serve to weaken the VA health care system upon which our members and millions of other veterans rely.

Veterans' service organizations have received assurances from Secretary of Veterans Affairs Anthony Principi that no VA beds will be closed or capacity reduced until appropriate alternative health care resources have been identified and put in place. Additionally, the Secretary has assured us that long term care and mental health services will be included in the planning process with specificity to be provided as to who will be involved, how the process will operate and what timelines will be put in place. Finally the Secretary has indicated that the issue of inter-VISN (Veterans Integrated Service Network) planning and cooperation will be addressed.

In light of these assurances and the need to proceed with the positive findings, to date, of the CARES process, PVA believes any restrictions on funding for the CARES process can only serve to delay improvements in capacity and access of VA health care. We request that no limitation be placed on appropriated dollars for the Department of Veterans Affairs and that the CARES process be allowed to expeditiously move forward.

Sincerely,

DELATORRO L. MCNEAL,
Executive Director.

Mr. BOND. These organizations all oppose the Clinton-Enzi amendment because they understand the problem the VA has.

In 1999, the General Accounting Office found that VA could spend billions of dollars operating hundreds of unneeded buildings over the next 5 years. The GAO reported that the VA wastes more than $1 million per day on medical care funds for unneeded infrastructure instead of direct patient care. This money could be used to provide medical care to over 100,000 veterans.

Our committee, the VA-HUD committee, after the GAO report, directed the VA to do something about it, to develop a comprehensive strategy. Thus, in 1999, under the Clinton administration, the VA created the CARES Commission to address this concern.

I have traveled around the State of Missouri. I have seen firsthand the need for construction funds to update surgical and intensive care units. By the way, I gave at the office. One of the first closures the VA instituted was of a surgery center in the State of Missouri because they weren't doing enough surgeries to be proficient. I believed our veterans needed the best care. So now we have a primary care facility and we send them to a surgical hospital where they do enough surgeries to be proficient and safe.

We know we have different needs from veterans than when the VA was set up many years ago. The Clinton-Enzi amendment would deny over $600 million in construction funds to build new hospitals in States such as Nevada, Florida, and Colorado. It would deny funds to address safety, seismic and other deficiencies for facilities in Kentucky, California, Colorado, Ohio, Pennsylvania, and others. It would deny construction of 48 new community-based outpatient clinics.

It would deny funding for 37 nursing home investments, such as construction of new nursing homes in West Virginia and Pennsylvania. This is not a fatally flawed process. I cannot agree with the assertion of the Senator from New York. In an October 27 letter to all Senators, this year Secretary Principi outlines the great extent to which he has gone to ensure that the process and review be thorough at every stage. Local veterans groups, union officials, as well as affiliate representatives participated directly in the development of these plans.

The CARES Commission received more than 169,000 public comments. I take exception to the characterization of the plan as a "cost cutting" plan. The draft proposes to spend $4.6 billion in construction funds to expand services. It preserves more than 97 percent of the current bed capacity. Further, the draft plan provides for no reduction in VA capacity to provide domiciliary or long-term care, including long-term mental health care. Let me repeat that. The draft plan provides for no reduction in VA capacity to provide domiciliary or long-term care, including long-term mental health care.

In some areas, the draft plan would increase overall bed capacity. In New York State, the realignment would increase overall bed capacity by about 10 percent. The CARES Commission has held field hearings, and the Senator from New York has attended two of them. The CARES Commission held 38 field hearings with over 700 witnesses and made 68 site visits. Clearly, Secretary Principi and the CARES Commission have been thorough, responsive, fair, and open.

This is a process that still is in its development stage. The Senate authorizing committee, chaired by Senator SPECTER, is working on legislation to establish funding for CARES, which will provide Congress an opportunity to review the final CARES plan before it can be implemented. The VA Committee held a hearing with Secretary Principi and the CARES Commission chair, Everett Alvarez, to provide oversight on the process.

I am committed to and fully supportive of CARES because we need to support veterans' medical care over unneeded buildings. To keep unneeded or excess buildings in operation deprives veterans of the care they need. There has been much opposition to this.

Mr. President, to reiterate, I oppose vigorously the Clinton-Enzi amendment to stop the VA's Capital Asset Realignment for Enhanced Services or CARES process. The amendment would deny up to $1 billion in funds to support our Nation's veterans. I object to this amendment because I believe in putting the needs of veterans ahead of the costs of keeping open unneeded buildings. I especially object to this amendment because it would likely extend the waiting lines for veterans already waiting for medical care. It is imperative that the CARES process moves forward so that the VA can move its outdated medical care infrastructure into the 21st Century.

Before I explain my reasons for opposing this amendment, I ask that letters from the Veterans of Foreign Wars, AMVETS, Disabled American Veterans, and the Paralyzed Veterans of America be added to the RECORD. As the largest veterans' service organizations in the Nation, they all oppose the Clinton-Enzi amendment because of its negative impact on veterans.

Why does the amendment hurt veterans? In 1999, the General Accounting Office (GAO) performed a study of the VA's medical care infrastructure and found that the VA "could spend billions of dollars operating hundreds of unneeded buildings over the next five years." The GAO reported that the VA wastes $1 million per day in medical care funds on unneeded infrastructure, instead of direct patient care. Therefore, instead of wasting some $400 million annually on unneeded buildings, the VA could use these funds to provide medical care to over 100,000 needy veterans.

In response to the GAO's report, our committee directed VA to develop a comprehensive strategy to realign its medical care facilities so that it can deliver health care in a more accessible and effective manner. Thus, in 1999, the VA created the CARES initiative during the Clinton Administration to address this concern.

The amendment also hurts veterans by denying much-needed construction funds to areas that need modernized facilities to serve its veteran population. In my travels around my own home State of Missouri, I have seen firsthand the need for construction funds to update surgical suites and intensive care units, among other things. For those Senators who have veterans in rural areas, they know that there is a critical need for outpatient clinics so veterans do not have to travel hundreds of miles to the nearest hospital. With an aging veteran population, there is a significant need to build nursing homes and long-term care facilities. The Clinton-Enzi amendment will deny over $600 million in construction funds to these places. It will deny funds to build new hospitals in States such as Nevada, Florida, and Colorado. It will deny funds to address safety, seismic, and other deficiencies for facilities in States such as Kentucky, California, Colorado, Ohio, and Pennsylvania. It will deny the construction of 48 new community based outpatient clinics throughout the country. It will deny funding for 37 nursing home investments, such as the construction of new nursing homes in States such as West Virginia and Pennsylvania.

Another reason why I oppose the Clinton-Enzi amendment is that the CARES process is still in its developmental stage and it is premature to pull the plug. Yet, Senator CLINTON has already concluded that the CARES process is "fundamentally flawed" and the CARES Commission has "neglected" the important health care issues facing our veterans. Further, she characterizes CARES as a "cost-cutting" plan.

I do not agree with the Senator's assertions and I think it is unfortunate that she has been so critical of Secretary Principi who has been extremely responsive to the Congress's concerns. To Secretary Principi's credit, he has made the CARES process open and fair for all affected parties, including veterans to participate.

In an October 27, 2003 letter sent to all Senators, Secretary Principi outlines the great extent he has gone through to ensure that "the process and review be thorough at every stage." Local veterans groups, local officials, union officials as well as affiliate representatives participated directly in the development of local plans. Since the announcement of the Draft National CARES Plan, the CARES Commission has received more than 169,000 public comments. According to the VA, all comments will be made a part of the official record and will be considered by the CARES Commission during its deliberations.

I take great exception to Senator CLINTON's characterization of CARES as a "cost-cutting plan." The Draft plan proposes to spend $4.6 billion in construction funds to expand services. It preserves more than 97 percent of VA's current bed capacity. Ninety-seven percent. It increases outpatient capacity by more than 12 million visits a year. It creates 48 new community-based outpatient clinics and at least 2 new hospitals. Further, the Draft plan provides for no reduction in VA capacity to provide domiciliary or long-term care, including long-term mental health care. Let me repeat that last sentence. The Draft plan provides for no reduction in VA capacity to provide domiciliary or long-term care, including long-term mental health care. Moreover, in some areas, the Draft plan's realignment would increase overall bed capacity. For example, in New York State, the realignment would increase overall bed capacity by about 10 percent. The Draft plan provides for all of these enhanced services and additional facilities despite the VA's projections that the veteran population is expected to decline by more than 25 percent over the next 20 years. I ask my Senate colleagues, does this sound like a cost-cutting plan?

Further, the CARES Commission has held a number of field hearings and site visits across the Nation to listen firsthand to the concerns of interested parties. In fact, Senator CLINTON participated in two CARES hearings. In total, the CARES Commission held 38 field hearings that included over 700 witnesses and made 68 site visits. In some instances, the Commission altered its schedule to respond to local interests such as in New York.

Clearly, Secretary Principi and the CARES Commission have been thorough, responsive, fair, and open in moving the process. For example, at Senator SCHUMER's request, Secretary Principi agreed to visit the Canandaigua VA hospital before making any final decision.

I also stress again that the CARES process is still in its developmental stage. The Commission has not completed its work. No final decisions have been made. The current plan is only a draft and is an interim step to the overall process. Delaying or stopping this process is premature and ends up hurting more than helping our veterans. The CARES Commission must complete the plan and the Secretary and the Congress must approve it.

The Senate authorizing committee, chaired by Senator SPECTER, is working on legislation that establishes criteria for funding CARES projects, which will provide the Congress an opportunity to review the final CARES plans before it can be implemented. In fact, the Veterans Affairs Committee held a hearing with Secretary Principi and the CARES Commission Chair Everett Alvarez to provide oversight on the process and to ensure that the process was moving in a public and deliberative manner. The Committee also recently passed legislation that was originally sponsored by Senator Bob Graham and co-sponsored by nine other senators, including Senator Clinton that would give the Congress 60 days to approve before any VA facility could be closed. If enacted, this legislation ensures that the Congress is involved in the implementation of the CARES plan.

I am committed and fully supportive of CARES because I believe in supporting veterans medical care needs over unneeded buildings. I believe that CARES is the most important initiative in the VA and it must be done. We cannot afford any more delays. For too long, the VA was unable to rationalize its infrastructure and millions of medical care dollars were wasted on empty, obsolete, or redundant buildings instead of focusing those dollars on medical care for our veterans. Now, after nearly 4 years of work on CARES, the VA is developing a national plan that will ensure that the medical care needs of our Nation's veterans come first and they will receive the best care in modernized 21st Century facilities. We owe it to our veterans to move away from the old medical model of hospital-centered medicine to the contemporary, modern patient-centered medicine model.

The veterans also agree with my view and oppose this amendment. The VFW's November 6, 2003 letter states, "we believe it is important to move ahead as the location and mission of some VA facilities need to change to improve veterans' access; to allow more resources to be devoted to medical care, rather than the upkeep of inefficient buildings and to adjust to modern methods of health care service delivery. Our Nation's veterans deserve no less."

The sponsors of this amendment have tried to assuage the concerns of Senators who expect to receive new medical facilities in their State by limiting the amendment to facilities where closures may occur. However, I tell my colleagues, do not be fooled. This amendment would still prevent new hospitals, clinics, and nursing homes to be constructed because the VA cannot break up its CARES plan into separate pieces. There is only one plan for the Nation. It is a National Plan and it cannot be separated into pieces. In addition, many new construction projects under CARES cannot be financed unless some obsolete facilities are closed. In some areas, such as Chicago and Pennsylvania, construction for new facilities will be financed by the proceeds of leases of the closed facilities. Finally, this amendment continues the wasteful practice of spending medical care funds on unnecessary and empty buildings. Under CARES, these funds would be re-focused on direct patient care, the construction of new outpatient clinics, and operating costs for new hospitals, such as the proposed facilities in Las Vegas and Orlando. Implementing CARES will allow the VA to serve more veterans and especially ensure that our most vulnerable veterans will not be forced to wait for several months or years to obtain medical care.

I urge my colleagues to place the needs of veterans ahead of unneeded facilities. Efforts to delay the CARES process will cause significant harm to our veterans. Outside of funding for VA medical care, CARES is my highest priority for VA. I have supported CARES from its inception in 1999, including the implementation of the pilot program in VISN 12. I strongly urge my colleagues to oppose the Clinton-Enzi amendment and allow the VA to move the CARES process forward.

The PRESIDING OFFICER (Mr. Cornyn). Who yields time?

Ms. MIKULSKI. Mr. President, first, I compliment our two colleagues from New York on their advocacy for veterans and the attempt to work to form a bipartisan coalition and for being concerned about mental health services and long-term care, as well as the rural needs.

I say to my two colleagues, we on the VA Committee have to be concerned that we are in the veterans health care business and not in the veterans health real estate business. So we want to advocate for services, not for buildings.

I think the Senator is also aware that we just had to work very hard to forage to come up with the $1.3 billion to meet the compelling needs for our veterans. I ask the Senator from New York, with her very strong advocacy and the support of a bipartisan list of cosponsors, would she consider a different approach—that, perhaps, report language be in the bill acknowledging the validity of the concerns raised by her, Senator Enzi, and others, talking about the need for long-term care, and pay attention to this as well as the rural health care?

I say to my dear and esteemed colleague, the CARES project or process is due December 3. To make these recommendations, some of which are quite excellent—inclusion, participation, et cetera—would derail CARES. It could affect our spinal injury programs or more outpatient clinics. I know it could have unintended consequences.

Would the Senator consider an alternative other than having the vote on the amendment?

Mrs. CLINTON. Mr. President, I appreciate greatly the understanding of my friend and colleague. I am somewhat concerned, however. We have many charts, but I will not go into them, under the circumstances. They are very clear that there has not been adequate conversation on mental health and the other needs. I respect what the Senator from Missouri said. If you look overall, there may not be a loss of services defined in a certain way, but that is not necessarily tied to where the veterans need the services, or where the high-quality services have historically been given.

I also add that Senator Enzi, my esteemed cosponsor, is at this moment chairing a hearing. We were, obviously, unprepared to get this up and get it out. But he told us to go ahead. I would like the opportunity to discuss this with my cosponsor. I don't want to make a decision without his awareness of what the Senator's idea is.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that this colloquy be extended for another 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. CLINTON. Mr. President, I suggest that we at least have an opportunity to discuss this with not only the prime cosponsor, but all the other cosponsors because many of us feel very strongly about the way this CARES process proceeds.

Could the managers of the bill tell us what the plan is, and whether we are going to have votes on this bill when we finish the 30 hours? Where do we stand in the process? That would give me a better idea as to how to respond to the offer of the Senator from Maryland.

Mr. BOND. Mr. President, in order to get this bill completed, we are going to have to wrap it up one way or the other by 6 o'clock tonight. It can either walk out or go out feet first. I will join my colleague from Maryland in saying if she wants to withdraw the amendment, I understand her concerns. I am sympathetic to the concerns. We would be delighted to put it in report language and work with the Secretary of the VA to make sure her concerns are fully addressed.

But in the meantime, unless the Senator is ready to acquiesce, I ask unanimous consent that this amendment and the yeas and nays be set aside temporarily until we can have further discussions with the Senator from New York and the other sponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

BASIC PILOT PROGRAM EXTENSION AND EXPANSION ACT

Mr. BOND. Mr. President, I have been asked by the leadership to bring up Calendar No. 374, S. 1685, the Immigrant Pilot Program. I believe it has been cleared on both sides.

I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1685) to extend and expand the basic pilot program for employment eligibility verification, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 1685

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Basic Pilot Program Extension and Expansion Act of 2003".

[SEC. 2. EXTENSION OF PROGRAMS.

[Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking "6-year period" and inserting "11-year period".

[SEC. 3. EXPANSION OF THE BASIC PILOT PROGRAM.

[(a) IN GENERAL.—Section 401(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking "in," and all that follows through the semicolon and inserting "in all States;".

[(b) CONFORMING AMENDMENTS.—Section 402(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

[(1) in paragraph (2)(B), by striking "or entity electing—" and all that follows through "(ii) the citizen attestation pilot program" and inserting "or entity electing the citizen attestation pilot program";

[(2) by striking paragraph (3); and

[(3) by redesignating paragraph (4) as paragraph (3).]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Basic Pilot Program Extension and Expansion Act of 2003".

SEC. 2. EXTENSION OF PROGRAMS.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking "6-year period" and inserting "11-year period".

SEC. 3. EXPANSION OF THE BASIC PILOT PROGRAM.

(a) IN GENERAL.—Section 401(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by inserting after "United States" the following: ", and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004".

(b) REPORT.—Section 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) by striking "The" and inserting:

"(a) IN GENERAL.—The", and

(2) by adding at the end the following new subsection:

"(b) REPORT ON EXPANSION.—Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

"(1) evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

"(2) describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the basic pilot program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a)."

(c) CONFORMING AMENDMENTS.—Section 402(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) in paragraph (2)(B), by striking "or entity electing—" and all that follows through "(ii) the citizen attestation pilot program" and inserting "or entity electing the citizen attestation pilot program";

(2) by striking paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(d) ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.—Title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking "Attorney General" each place that term appears and inserting "Secretary of Homeland Security".

Mr. BOND. Mr. President, I ask unanimous consent that the Leahy-Brownback amendment at the desk be agreed to; the committee substitute, as amended, be agreed to; the bill, as amended, be read the third time and passed; the motions to reconsider be laid upon the table en bloc; and any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2170) was agreed to, as follows:

AMENDMENT NO. 2170

(Purpose: To extend the duration of the immigrant investor regional center pilot program for 5 additional years, and for other purposes)

At the end, add the following:

SEC. 4. PILOT IMMIGRATION PROGRAM.

(a) PROCESSING PRIORITY UNDER PILOT IMMIGRATION PROGRAM FOR REGIONAL CENTERS TO PROMOTE ECONOMIC GROWTH.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security"; and

(2) by adding at the end the following:

"(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.".

(b) EXTENSION.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended by striking "10 years" and inserting "15 years".

SEC. 5. GAO STUDY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall report to Congress on the immigrant investor program created under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

(b) CONTENTS.—The report described in subsection (a) shall include information regarding—

(1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program;

(2) the country of origin of the immigrant investors;

(3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;

(4) the number of immigrant investors that have sought to become citizens of the United States;

(5) the types of commercial enterprises that the immigrant investors have established; and

(6) the types and number of jobs created by the immigrant investors.

The committee amendment, as amended, was agreed to.

The bill was read the third time and passed, as follows:

S. 1685

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Basic Pilot Program Extension and Expansion Act of 2003".

SEC. 2. EXTENSION OF PROGRAMS.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking "6-year period" and inserting "11-year period".

SEC. 3. EXPANSION OF THE BASIC PILOT PROGRAM.

(a) IN GENERAL.—Section 401(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by inserting after "United States" the following: ", and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004".

(b) REPORT.—Section 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) by striking "The" and inserting:

"(a) IN GENERAL.—The", and

(2) by adding at the end the following new subsection:

"(b) REPORT ON EXPANSION.—Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

"(1) evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

"(2) describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the basic pilot program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a)."

(c) CONFORMING AMENDMENTS.—Section 402(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) in paragraph (2)(B), by striking "or entity electing—" and all that follows through

"(ii) the citizen attestation pilot program" and inserting "or entity electing the citizen attestation pilot program";

(2) by striking paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(d) ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.—Title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking "Attorney General" each place that term appears and inserting "Secretary of Homeland Security".

SEC. 4. PILOT IMMIGRATION PROGRAM.

(a) PROCESSING PRIORITY UNDER PILOT IMMIGRATION PROGRAM FOR REGIONAL CENTERS TO PROMOTE ECONOMIC GROWTH.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security"; and

(2) by adding at the end the following:

"(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.".

(b) EXTENSION.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended by striking "10 years" and inserting "15 years".

SEC. 5. GAO STUDY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall report to Congress on the immigrant investor program created under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

(b) CONTENTS.—The report described in subsection (a) shall include information regarding—

(1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program;

(2) the country of origin of the immigrant investors;

(3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;

(4) the number of immigrant investors that have sought to become citizens of the United States;

(5) the types of commercial enterprises that the immigrant investors have established; and

(6) the types and number of jobs created by the immigrant investors.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004—Continued

Mr. BOND. Mr. President, I see the distinguished Senator from New Jersey in the Chamber. I believe he has an amendment, and if the pricetag is reasonable, we may be able to accept it.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I appreciate the manager's interest in permitting me to offer this amendment. I will try to do it as quickly as I can.

Mr. President, I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2171 TO AMENDMENT NO. 2150

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself, Ms. MIKULSKI, Mr. JEFFORDS, Mrs. BOXER, Mr. CORZINE, Mr. SCHUMER, Mr. LEAHY, Mr. LIEBERMAN, Mr. KERRY, Mr. KENNEDY, Mr. EDWARDS, Ms. CANTWELL, and Mr. DURBIN, proposes an amendment numbered 2171.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To maintain enforcement personnel for the Environmental Protection Agency at the fiscal year 2003 level)

On page 98, line 5, before the period at the end, insert the following: ", of which, in addition to any other amounts provided under this heading for the Office of Enforcement and Compliance Assurance, $5,400,000 shall be made available for that office".

Mr. LAUTENBERG. Mr. President, I rise to offer this amendment on behalf of myself and Senator MIKULSKI. We are pleased to have as cosponsors Senators JEFFORDS, KERRY, LIEBERMAN, BOXER, SCHUMER, LEAHY, CORZINE, DURBIN, CANTWELL, KENNEDY, and EDWARDS.

This appropriations bill cuts the number of enforcement officers in EPA's Office of Enforcement and Compliance Assurance by 54 positions. The amendment I am offering would restore those 54 positions so that EPA would have the same number of enforcement officers in fiscal year 2004 that the agency had in 2003.

Maintaining the current level of enforcement capacity is the least we ought to do in view of the reductions in enforcement staffing we have seen made in recent years.

An EPA report that was released earlier this year on the Nation's enforcement of the Clean Water Act paints a disheartening picture. It shows additional officers are critically needed. Without this amendment, the total staffing reductions made since fiscal year 2001 will equal 100 enforcement positions. That is equivalent to eliminating all of EPA's enforcement personnel for both the Northeast and Southeast regions.

The cost of the 54 positions my amendment would retain would be approximately $5.4 million. This cost, as the Senator from Missouri noted, will be offset by a tiny reduction of .003, or three one-thousandths of a percent, in EPA's $22.2 billion environmental programs and management account. Again, these positions are only going to keep the level of enforcement staffing where it presently is.

Our colleagues in the House have already approved a similar amendment. In July, they voted to add 54 enforcement positions back into the bill at the same cost using the same offset as the amendment before us.

The cuts in enforcement are taking a heavy toll, and the facts are these: Between 1999 and 2001, 76 percent of the country's major facilities with significant environmental violations received no formal enforcement action whatsoever. Inspections are down. There has been a 45-percent decrease in enforcement actions, and the penalties that are levied averaged a paltry $6,000. We have practically hung out a sign that tells polluters it is all right to flaunt the law, and the fines are hardly a deterrent to businesses generally.

The damage they do, however, is not free, and society will pay the price for the mounting violations, additional fish advisories, higher asthma rates, more trips to the hospital, and worse.

An internal EPA survey that was leaked to the press in January painted a dismal and frightening picture of what is happening at some of the largest facilities across the country. Fifty percent of major facilities are exceeding their permitted toxic release limits by 100 percent, 21 percent of the facilities are exceeding their toxic release limits by 500 percent, and 13 are exceeding toxic limits by an alarming 1,000 percent.

These are alarming statistics, and they portray a terrible picture.

I am pleased my colleagues will be considering what it means to these families who live downriver or downwind from these plants. None of us in this Chamber would ever knowingly subject our families to concentrations of mercury, dioxins, or other deadly toxins in our lakes and rivers that are 10 times the safe level. But we are doing that. If we don't stop companies from violating our environmental laws, we will continue to do that.

To my colleagues, I say we are not powerless; we can stop these dangerous violations, or at least keep them contained to a no larger level, which is an important first step this amendment takes care of.

I submit this amendment for consideration by the ranking member, the distinguished Senator from Maryland, and the chairman, the distinguished

Senator from Missouri. I understand there has been a review of my amendment.

Ms. MIKULSKI. Mr. President, there has been a review of the Senator's amendment.

Mr. BOND. Mr. President, I believe we can accept this amendment. This is an increase, obviously. Our budget has been short in every area. We share the concern of the author of this amendment in ensuring EPA enforcement is strong enough.

There is no objection on this side.

Ms. MIKULSKI. Mr. President, I am an enthusiastic cosponsor of the Lautenberg amendment. He is absolutely right. This money is needed because it essentially restores funding for the environmental cops on the beat. We wanted to do this in our bill, but circumstances shackled us from doing so.

This is a good amendment. We are happy to accept it. I thank the Senator for his longstanding advocacy in this area.

The PRESIDING OFFICER. Is there further debate on this amendment?

Mr. BOND. Mr. President, a request has been made by the distinguished ranking member of the Appropriations Committee that we have a voice vote and not just accept these amendments without objection. It would be in order to ask for a voice vote.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 2171.

The amendment (No. 2171) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOND. Mr. President, Senator ENSIGN has a statement he wishes to make, but in the meantime we have a number of amendments that have been cleared on both sides.

AMENDMENT NO. 2172 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I send an amendment to the desk on behalf of Senator HOLLINGS and Senator GRAHAM of South Carolina. This is an amendment permitting the Secretary of VA to enter into an enhanced-use lease for the Medical University Hospital Authority in Charleston.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Missouri [Mr. BOND], for Mr. GRAHAM of South Carolina, for himself and Mr. HOLLINGS, proposes an amendment numbered 2172 to amendment No. 2150.

Mr. BOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> (Purpose: To authorize the Secretary of Veterans Affairs to enter into an enhanced-use lease at the Charleston Department of Veterans Affairs Medical Center, Charleston, South Carolina)
>
> At the end of title I, add the following:
>
> SEC. 116. Notwithstanding paragraph (2) of section 8163(c) of title 38, United States Code, the Secretary of Veterans Affairs may enter into an enhanced-use lease with the Medical University Hospital Authority, a public authority of the State of South Carolina, for approximately 0.48 acres of underutilized property at the Charleston Department of Veterans Affairs Medical Center, Charleston, South Carolina, at any time after 30 days after the date of the submittal of the notice required by paragraph (1) of that section with respect to such property. The Secretary is not required to submit a report on the lease as otherwise required by paragraph (4) of that section.

Mr. BOND. Mr. President, I believe this amendment has been cleared on both sides.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2173.

The amendment (No. 2173) was agreed to.

Mr. BOND. I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2173 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I send to the desk an amendment by Senator MIKULSKI which provides for the Corporation National Service to refrain from disclosing any information. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Missouri [Mr. BOND], for Ms. MIKULSKI, for herself and Mr. BOND, proposes an amendment numbered 2173 to amendment No. 2150.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> (Purpose: To require notice and comment rulemaking, and prohibit disclosure of selection information, by the Corporation for National and Community Service)
>
> On page 92, line 22, strike the period and insert the following: ": *Provided further*, That, for fiscal year 2004 and every year thereafter, the Corporation shall make any significant changes to program requirements or policy only through public notice and comment rulemaking: *Provided further*, That, for fiscal year 2004 and every year thereafter, during any grant selection process, no officer or employee of the Corporation shall knowingly disclose any covered grant selection information regarding such selection, directly or indirectly, to any person other than an officer or employee of the Corporation that is authorized by the Corporation to receive such information.".

Ms. MIKULSKI. Mr. President, this amendment is simple and straightforward. It does two things. It says the Corporation for National Community Service must change the rules. It protects the integrity of the grant process by preventing corporation officials from disclosing sensitive grant information and insists that any changes for rules for volunteer programs must have public comment.

One of my guiding principles is that people have a right to know, to be heard and to be represented. The Mikulski-Bond amendment upholds this principle. It ensures that the public gets a meaningful chance to comment on decisions that affect their communities and the volunteers who serve them.

Recently, National Service tried to change the rules for AmeriCorps. I was very troubled by the corporation's actions for two reasons: the process and the policy. My first concern was the process or actually the lack of a process. The corporation acted behind closed doors without input from Congress, volunteer advocates, or the communities they serve. States, communities, and advocates were told they had just 1 business day to review sweeping new rules, to ask questions about them, and to offer suggested changes. The corporation "jackpotted" advocates, volunteers, States, and local communities.

My second concern is policy. The AmeriCorps rules changes would hurt communities who depend on volunteers by eliminating support for long-standing, successful volunteer programs and by increasing financial and administrative burdens on communities and volunteer organizations.

I commend the board of directors for stepping in to stop the corporation. But it is clear that the corporation needs specific direction to ensure that the public has a right to be heard. The corporation doesn't have a Senate-confirmed CEO. We are working on a bipartisan basis to get David Eisner confirmed as the new CEO, but the staff must not make rule changes without leadership and public comment.

This amendment is good process, and good policy. It makes sure that the public has an opportunity to comment on any changes to National Service programs. And the amendment protects the integrity of the National Service grant process.

I thank Senator BOND for working with me on this amendment. I urge my colleagues to support it.

I thank the Senator from Missouri for his strong efforts to reform the fiscal and sloppy practices that are at the corporation. The volunteers are terrific, and now with the new CEO, I think we will be able to move ahead.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I thank my colleague from Maryland for her very thoughtful and well-crafted amendment. She has been regarded as really one of the greatest defenders of the concept of AmeriCorps national service. Nobody has been a stronger champion of volunteer service. I have been pleased to be a junior partner to her in this effort. She has it just right. The volunteers are wonderful. The purpose is wonderful. We have had more than a few bumps in the road in terms of how the program has been administered, but we have high hopes that the new administration in that agency, with the new head, the financial officer, the chairman, will be on the right track.

I urge my colleagues to adopt this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 2173.

The amendment (No. 2173) was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOND. Mr. President, I now see my distinguished colleague from Nevada is in the Chamber. I yield the floor to him for such comments as he wishes to make.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 2152

Mr. ENSIGN. Mr. President, I rise in opposition to the Clinton-Enzi amendment.

First, I ask unanimous consent that letters from the Disabled American Veterans, Veterans of Foreign Wars, AMVETS, and the Paralyzed Veterans of America, all expressing their opposition to the Clinton-Enzi amendment, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DISABLED AMERICAN VETERANS,
Washington, DC, November 7, 2003.
Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CLINTON: On behalf of the more than one million members of the Disabled American Veterans (DAV), we write to express our concern over your proposed amendment to limit the use of funds for the Department of Veterans Affairs (VA) Capital Asset Realignment for Enhanced Services (CARES) initiative, pending modification of the initiative to include long-term care, domiciliary care, and mental health services in addition to reconvening the Commission for further hearings.

Initially, please know that preservation of the integrity of the VA health care system is of the utmost importance to the DAV and our members, and we greatly appreciate your efforts and insistence that long-term care, domiciliary care, and mental health services are included in the CARES initiative. These specialized programs are an integral part of providing sick and disabled veterans comprehensive health care. However, we are concerned your amendment may completely stall the CARES process and prohibit VA from making the necessary changes to improve its health care system and enhance access and services for veteran patients.

As you are aware, over the past 7 years, following national trends, VA's Veterans Health Administration converted from a primarily hospital-based system to an outpatient focused health care delivery model. With these sweeping changes, there clearly came a need to reassess VA's physical structures and the need to realign, renovate, and modernize VA facilities to meet the changing health care needs of veterans today and well into the future. Many VA medical facilities have an average age of 54 years and are in critical need of repair. Unfortunately, VA's construction budget has decreased sharply over the last several years with political resistance to fund any major projects before a formal plan was developed. VA responded with the CARES initiative. However, many desperately needed construction and maintenance projects, including seismic repairs that could potentially compromise patient safety, have been unnecessarily delayed. DAV strongly believes that CARES should not distract VA or Congress from its obligation to protect its physical assets whether they are to be used for current capacity or realigned.

On a national level, DAV firmly believes that realignment of capital assets is critical to the long-term health and viability of the entire VA health care system. We do not believe that restructuring is inherently detrimental to the VA health care system. However, we will remain vigilant and press VA to focus on the most important element in the process, enhancement of services and timely delivery of high quality health care services to our nation's sick and disabled veterans.

VA Secretary Anthony J. Principi met with DAV and other veterans service organizations this morning and gave us his personal commitment that there would be no realignment or reduction in services as a result of CARES for mental health or long-term care until a definitive plan is developed and in place to absorb the workload for these specialized services. His promise to us satisfies our over-arching concern about the inclusion of these essential programs. Therefore, we believe the CARES process should be allowed to proceed at this critical juncture.

Again, we want to thank you for your efforts on CARES and for your strong leadership and support of veterans' issues. We very much look forward to continuing a positive and meaningful working relationship with you regarding matters of great importance to veterans. We hope that you will reconsider your position on this issue based on these new developments.

Sincerely,

DAVID W. GORMAN,
Executive Director,
Washington Headquarters.

AMERICAN VETERANS,
Lanham, MD, November 7, 2003.

MEMORANDUM

To: All Members of the U.S. Senate.
From: S. John Sisler, National Commander.
Re: Consideration of CARES amendment in VA/HUD appropriations bill.

It is our understanding that Sen. Hillary Rodham Clinton may offer an amendment to S. 1584, the VA/HUD appropriations bill, that would block the Department of Veterans Affairs from spending any money to enact the CARES Commission recommendations.

On behalf of the nationwide membership of AMVETS (American Veterans), I write to express our strong opposition to Sen. Clinton's proposed amendment aimed to stop progress of the Department of Veterans Affairs National Capital Asset Realignment for Enhanced Services (CARES) Plan.

The CARES initiative is clearly needed to assess what facilities will best meet the healthcare needs of America's veterans. AMVETS believes that adoption of the amendment would further delay moving forward with construction projects that are obviously essential to patient safety and that will eventually pay for themselves as a result of modernization.

AMVETS agrees with the Department of Veterans Affairs that many of their facilities need to be upgraded or replaced. We also agree with the Department that part of the solution for providing high quality health care to America's veterans is upgrading some facilities and replacing others with new and modern medical care treatment facilities.

AMVETS and I ask that you oppose any amendment that would cause the VA National CARES process to be used as an excuse to defer vital infrastructure maintenance and construction projects.

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Washington, DC, November 6, 2003.
To: All Members of the U.S. Senate.
From: Robert E. Wallace, Executive Director, VFW Washington Office
Re: Clinton/Enzi Amendment to H.R. 2861.

On behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I would like to take this opportunity to urge you to oppose the Clinton/Enzi Amendments to H.R. 2861, the FY 2004 VA/HUD Appropriations bill.

This amendment would limit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative. The VFW is concerned that if this amendment passes, the CARES process will essentially be put on indefinite hold.

We share Senators CLINTON's and ENZI's concerns regarding long-term care, domiciliary care, and mental health services; however, it is our understanding that the CARES Commission is currently reviewing the data to include these services. Therefore, at this stage, we believe it is important to move ahead as the location and mission of some VA facilities need to change to improve veterans' access; to allow more resources to be devoted to medical care, rather than the upkeep of inefficient buildings; and to adjust to modern methods of health care service delivery. Our Nation's veterans deserve no less.

Again, I urge you not to support the Clinton/Enzi Amendment regarding the limiting of funds for the VA CARES initiative.

PARALYZED VETERANS OF AMERICA,
Washington, DC, November 7, 2003.
MEMBERS,
U.S. Senate,
Washington, DC.

DEAR SENATOR: On behalf of the Paralyzed Veterans of America (PVA) I am writing to express our concerns regarding an amendment we understand will be offered by Senator Hillary Rodham Clinton to the VA, HUD, Independent Agencies Appropriation bill. As we understand, this amendment addresses the Department of Veterans Affairs' Capital Asset Realignment for Enhanced Services (CARES) process and, if passed, will limit the expenditure of funds for the process greatly delaying necessary improvements to the VA's medical care system.

While PVA concurs with Senator CLINTON that the CARES process inadequately addresses issues of long-term care, mental health services and rural health care we believe that the amendment will so severely restrain in the process that the many beneficial aspects of CARES will be seriously harmed. Delay of CARES projects that will benefit veterans, and in particular veterans with spinal cord injury or dysfunction, can only serve to weaken the VA health care system upon which our members and millions of other veterans rely.

Veterans' service organizations have received assurance from Secretary of Veterans Affairs Anthony Principal that no VA beds will be closed or capacity reduced until appropriate alternative health care resources have been identified and put in place. Additionally, the Secretary has assured us that long term care and mental health services will be included in the planning process with specificity to be provided as to who will be involved, how the process will operate and what timelines will be put in place. Finally the Secretary has indicated that the issue of inter-VISN (Veterans Integrated Service Network) planning and cooperation will be addressed.

In light of these assurance and the need to proceed with the positive findings, to date of the CARES process, PVA believes any restrictions on funding for the CARES process can only serve to delay improvements in capacity and access of VA health care. We request that no limitation be place on appropriated dollars for the Department of Veterans Affairs and that the CARES process be allowed to expeditiously move forward.

Sincerely,

DELATORRO L. MCNEAL,
Executive Director.

Mr. ENZI. As we observed Veterans Day yesterday, and remembered the sacrifices each and every veteran has made to grant us our current freedoms, Congress should be doing all it can to help modernize and improve the VA healthcare system at the earliest possible time. This amendment would derail this effort.

Congress should be finding new and innovative ways to get healthcare services delivered in a more timely and convenient way to our former servicemen and women. This amendment would postpone this effort.

Finally, Congress needs to ensure that the foundation and future of the VA healthcare system is stable and secure, giving our veterans the peace of mind that they will receive high quality and accessible healthcare whenever it is required. This amendment would hinder this effort.

The VA will soon finalize its 20-year Capital Asset Realignment for Enhanced Services initiative, better known as the CARES plan, for updating medical facilities. Starting in the last administration and continuing in the present one, VA evaluated its future need for healthcare facilities, matched projected needs against current facilities, and developed a plan to match resources to needs.

The amendment being proposed would impose unnecessary conditions before VA could go forward with this vital plan.

Through CARES, VA is examining where its facilities are located, where veterans are projected to be living in the next 20 years, and what their health needs will be. Nationwide, VA provides medical care to almost 5 million veterans.

VA's legacy facilities are old, with the average age over 50 years, many dating back all the way to World War I or even earlier. These initial facilities were designed to provide medicine as it was practiced a half century ago, and in most cases, are poorly located to serve veterans where they live today or are expected to live in the future.

CARES will enable VA to leverage scarce resources by directing funding from the maintenance of obsolete facilities and applying that funding to the direct provision of healthcare services and staffing. It calls for construction of new facilities where the veteran population is growing, such as the southeastern and western United States. Additionally, it provides for the realignment of facilities that are redundant, out of date, or poorly located.

The Draft National CARES Plan contains over $4.6 billion in capital investments, including 11 million square feet of renovation, 9 million square feet of new construction, 2 new hospitals, 48 new high priority community based outpatient clinics, 2 new blind rehabilitation centers, and 4 new spinal cord injury units.

The Draft National CARES Plan, completed in August in this year, is a comprehensive integrated national proposal. The CARES process has been thorough and inclusive, combining a set of national assessment standards with planning at the local and regional levels.

This plan is now under review by the independent CARES commission, established by Secretary Principi to objectively examine the plan, to obtain comments and conduct public hearings to ensure stakeholder views are considered. The CARES commission conducted 38 hearings, heard from over 700 witnesses; including employees, local government officials and veterans; and took over 180,000 comments.

The bottom line is that the Draft National CARES Plan has been exposed to lengthy and close public analysis, and those observations will be included within the final plan. Next month, the CARES commission will submit their independent and comprehensive plan recommendations to the Secretary, which he will accept or reject as a whole.

Placing further conditions on an already well-detailed plan, which this amendment would do, would hold up, and even disrupt, VA's long delayed modernization process.

For example, the House and Senate Appropriations Committees have declined to provide more than minimal funding for VA medical constructions until VA provides a nationwide plan for managing its medical facilities. CARES is that plan.

Further, this amendment would inherently prevent VA from implementing many critical components of the CARES plan. Anything less than full implementation of the CARES plan recommendations will lead to inequitable access to care. It cannot go forward with only parts of the plan. CARES is a comprehensive national plan, and it must be accepted in its totality to be effective.

Knowing this to be true, four of the major national veterans' service organizations: the Disabled American Veterans, the Veterans of Foreign Wars, the Paralyzed Veterans of America, and AMVETS, have come out in either strong opposition or have raised serious concerns about the Clinton-Enzi amendment.

I believe it is critically important that we consider the red flags raised by these organizations that represent almost 4 million veterans nationwide.

Let us consider the actions taken by the committee of jurisdiction over the CARES initiative, the Senate Veterans' Affairs Committee. As a member of this committee, I have been intimately involved in the step-by-step process of analyzing this initiative, and I believe the VA committee has dedicated more than ample time and resources to the study of this plan.

The committee held an extensive hearing on the CARES initiative just this past September, receiving updates from top VA officials and the Secretary himself, on the progress of the plan.

Ultimately more important, the VA committee in September voted unanimously to give the Secretary the authority to implement the Draft National CARES plan once it is completed. In doing so, the committee outlined very specific priorities for the implementation of this plan.

First, and what is paramount for the CARES process to be viable, any medical facility that is closed must be replaced with a facility that adequately serves the healthcare needs of the region. Second, any locality that is in need of a full-service hospital must receive one. And third, any region that is in need of an outpatient clinic to provide basic care services must receive one.

These priorities, as agreed to by every member of the VA committee, emphasize, in my belief, that we support the CARES initiative and want it to move forward as quickly as possible. This amendment, without question, would not allow this to happen

In my opposition to this amendment, I do understand the concerns of the sponsors. However, I believe that they have been more than adequately addressed.

The sponsors believe that the CARES process has neglected to address the areas of long-term care, domiciliary care and mental health, mainly in rural areas. I strongly disagree with these assertions.

By design, the VA seeks to provide long-term care services in the least restrictive setting that is compatible with a veteran's medical condition and personal circumstances. This allows VA to reserve nursing home care for veterans who can no longer be safely cared for in home- and community-based settings.

VA expects to meet most of the future growth for long-term care services through non-institutional settings that keep veterans close to spouse, home and friends.

Since there are critical renovation and replacement nursing home needs that have been recognized, the plan includes several needed nursing home renovations and replacements that are believed to be within the projected outcomes of the new model.

In planning for CARES, the networks were to develop options taking care to preserve current bed levels for nursing home and inpatient long-term mental health programs.

More recent data is now available and suggest that both disability among the elderly and nursing home utilization rates have diminished. The discrepancy between projected needs from the current planning model and actual current demand prompted VA, earlier this year to commence in an intensive review and refinement of the long-term care planning model.

However, because the new data could not be incorporated into a new planning model for the current cycle of the CARES process, VA chose to treat the long-term care issues neutrally; that is, there will be no major changes or negative impact on care or capacity in long-term care. Once the data from the new model is available and analyzed, it will be used for future strategic planning activities.

On the issue of rural coverage, VA is, in fact, very sensitive to the healthcare needs of rural and frontier veterans. It was a principal factor for several of the CARES commission hearings to be located in rural locales. Additionally, the Draft National CARES plan calls for the designation of critical access hospitals, recognizing the vital role that many of VA's small facilities fulfill in providing access to acute hospital care in rural or less densely populated areas. Moreover, it recommends 48 new sites for community-based outpatient clinics, many of those in rural areas.

The amendment before us is really nothing more than a solution in search of a problem. The VA has gone to great lengths to incorporate every stakeholder, especially our veterans, in the CARES process throughout.

I believe they have done an excellent job in creating a realistic and practical vision for the future of VA healthcare services, and we in the United States Senate should help them make that vision a reality.

What this all boils down to is how do we best serve the immediate and growing needs of our Nation's veterans. No one here is saying that the draft plan is perfect. However, we need to possess the wisdom and foresight to say we have all the necessary components in place to make a positive change and we should move forward.

Many injured or ill Vietnam veterans were disillusioned and critical when treated at VA medical facilities designed and built to treat their World War II fathers or even World War I grandfathers. Veterans of Iraq and Afghanistan are now returning to many of those same facilities.

It is time to take the first step toward bringing the level of care for all our veterans into the 21st century. They have waited long enough, and we need to act now to improve the lives of each and every veteran in America.

In summary, we all have made commitments to our veterans that we should take care of them. These are the men and women who have donned the uniform of the United States and have made incredible sacrifices so that we can live in freedom. We live in the greatest country, I believe, in the history of the world, with the most freedoms of any people in the history of the world. This country of ours has only remained free because people have been willing to lay their lives down to ensure those freedoms for us, our children, and our grandchildren.

The amendment that has been proposed today would violate the commitment to our U.S. veterans. I say that because the veterans are moving away from the old rust belt. We should be taking the health care, which is their primary issue, to our veterans. Services, need to follow where the veterans are moving. We should not be trying to prop up institutions, instead, we should be moving the healthcare services where those veterans are relocating.

Secretary Principi is doing a wonderful job of trying to put the priorities of the veterans over process, over other constituencies, and maybe over a congressional district. He is trying to reform the system, recognizing that veterans are moving and that the money should follow so that the services are provided to those veterans.

I live in the fastest growing State and the fastest growing metropolitan area in the United States. It must have the kind of quality of lifestyle that veterans like because they are moving there in droves. Per capita, our State now has the most veterans in the United States. Yet, for instance, the Las Vegas metropolitan area that has 1.6 million people does not have a VA hospital. There are a couple hundred thousand veterans living in the area and we have no VA hospital. We have VA clinics but no VA hospital. So when our veterans need surgery or have complicated procedures, they have to travel away from their families down to southern California to get those services.

We can understand it in smaller population areas, maybe, but in a major metropolitan area, where veterans are choosing to live, that is not keeping the commitment we have made to our veterans.

So I rise in strong opposition to this amendment and will fight against its passage. If there is a vote on it, we will fight against the votes to pass it, or if it is tried to be snuck in the omnibus bill, if this bill does not actually get passed today, we will fight against putting it in the omnibus bill. The reason why is because it is so important that we look the men and women in the face who are serving in our military today and say we are going to keep the commitment we are making to them today.

They already made the sacrifices, and now we need to keep our commitment to them. In the future, we will keep our commitment to them and they can count on that.

Secretary Principi and the administration, I believe, are trying to do the right thing. They are trying to say that as the veterans are moving, we recognize that. For a long time the VA has needed updating and changing, and they finally have the courage to start doing that. As a legislative body, let us not stop that process.

My colleague Senator REID and I have worked very hard on improving the services for veterans in our State, both in northern and southern Nevada, as all Senators try to do for their State. The bottom line is we should not hurt the services in the fastest growing areas of our country where the waits are so long, where people have to travel out of State to get the proper medical services. Let us look at our veterans and say no matter where they move in the United States, they are going to get the kind of services they have earned. And make no mistake about it, they have earned those services.

Anybody who has taken a look at what I believe is this ill-conceived amendment will say this would, in effect, do harm to many veterans in this country and they deserve better than that.

I thank the manager of the bill and the ranking member for the time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 2174 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I thank the Senator from Nevada. We are working on some possible amendments from the Senator from Illinois. Also, Senator MIKULSKI has a major amendment. I would like to move very quickly to do some amendments that I believe will not require any extended discussion. First for myself, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. BOND) proposes an amendment numbered 2174.

Mr. BOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: Increase funds for the Office of Federal Housing Enterprise Oversight to conduct audits, investigations and examinations and to provide for additional emergency)

On page 61, beginning on line 7, strike out “$32,415,000,” and all that follows through the period on line 16 and insert in lieu thereof “$39,915,000, to remain available until expended, to be derived from the Federal Housing Enterprise Oversight Fund: Provided, That not less than 60 percent of total amount made available under this heading shall be used for licensed audit personnel and audit support: Provided further, That an additional $10,000,000 shall be made available until expended, to be derived from the Federal Housing Enterprise Oversight Fund only upon a certification by the Secretary of the Treasury that these funds are necessary to meet an emergency need: Provided further, That not to exceed such amounts shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: Provided further, That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than $0.”.

Mr. BOND. At the request of the administration, this amendment would increase funding for the Office of Federal Housing Enterprise Oversight, OFHEO, for this year by $7.5 million. These funds are intended to strengthen OFHEO's examination, legal and human resources functions, and the fund's special investigation. The amendment includes an additional $10 million that is available only upon certification by the Secretary of the Treasury that there is an emergency need for additional funds.

There is, I believe, a compelling need to reform the regulatory structure governing Fannie Mae and Freddie Mac. At a minimum, the senior management of OFHEO must be replaced, and replaced now.

Senior management, in my view, has repeatedly failed to meet the most basic requirements of OFHEO's missions. For example, it took over 10 years for OFHEO to issue its risk-based capital standards, despite the fact that this is OFHEO's primary mission and key to its regulatory oversight of the GSEs.

This failing became even more evident when OFHEO publicly praised Freddie Mac's management just days before Freddie Mac's management was removed for accounting irregularities.

I applaud the work of the Banking Committee in the Senate and in the House, Senator SHELBY, Congressman BAKER, and the ranking members for making regulatory reform of OFHEO a priority. I look forward to working with them next year to help develop the right regulatory system.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. I concur with my colleague.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2174) was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2175 TO AMENDMENT NO. 2150

Mr. BOND. I send to the desk an amendment on behalf of Senator STEVENS relating to the Native American Housing Assistance and Determination Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Mr. STEVENS, proposes an amendment numbered 2175 to amendment No. 2150.

The amendment follows:

(Purpose: To provide an allocation of funding under the Native American Housing Assistance and Self-Determination Act of 1996 for the State of Alaska)

On page 86, between lines 11 and 12, insert the following:

SEC. 2 . NATIVE AMERICAN HOUSING.

ALLOCATION OF FUNDING.—Of the amounts made available to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) for fiscal year 2004, there shall be made available to each grant recipient the same percentage of funding as each recipient received for fiscal year 2003.

Mr. BOND. This is an amendment dealing with Native American housing. It is a simple amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Ms. MIKULSKI. Mr. President, I have no objection. This has been a longstanding issue raised by our colleague from Alaska. It is a very compelling situation.

The PRESIDING OFFICER. If there is no further debate on the amendment, the amendment is agreed to.

The amendment (No. 2175) was agreed to.

AMENDMENT NO. 2176 TO AMENDMENT NO. 2150

Mr. BOND. On behalf of the Senators from Illinois, Mr. DURBIN and Mr. FITZGERALD, I send an amendment to the desk dealing with the North Chicago VA Medical Center, making it available to the maximum extent feasible. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Mr. DURBIN, for himself and Mr. FITZGERALD, proposes an amendment numbered 2176 to amendment No. 2150.

Mr. BOND. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To insert a provision relating to VA-Navy sharing of facilities at North Chicago VA Medical Center)

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall make the North Chicago VA Medical Center available to the Navy to the maximum extent feasible. The Secretary shall report to the Senate Appropriations Committee by June 30, 2004, regarding the progress in modifying North Chicago VA Medical Center's surgical suite and emergency and urgent care centers for use by veterans and Department of Defense beneficiaries. Further, the Secretary shall consider having the new joint VA/Navy ambulatory care center to serve both veterans and Department of Defense beneficiaries sited on or adjacent to the North Chicago VA Medical Center and shall consult with the Secretary of the Navy to select the site for the center. The Secretary of Veterans Affairs shall report to the Senate Appropriations Committee on the site selection by June 30, 2004.

Mr. BOND. I yield for any statement by the Senator from Illinois.

Mr. DURBIN. I thank the chairman and the ranking Democrat for accepting this amendment on behalf of Senator FITZGERALD and myself. We are trying to encourage the cooperation of the North Chicago Veterans Hospital and the Great Lakes Training base for the benefit of the veterans, the sailors, and the taxpayers.

Ms. MIKULSKI. This is an excellent amendment. We concur.

Mr. BOND. This is something we need to do throughout the system, and we need to have a better integration of the health care facilities of the active military and the Veterans Affairs. I commend the Senators from Illinois and hope this model can be adopted elsewhere.

Mr. DURBIN. Mr. President, I want to thank the bill managers for accepting the amendment that I am offering today, along with Senator FITZGERALD, to encourage further sharing of health care facilities between the Department of Veterans Affairs and the Navy in North Chicago, IL.

The Illinois delegation has worked in a bipartisan manner for four years to encourage sharing between the North Chicago VA Medical Center and the Great Lakes Naval Training Center

(NTC) because of the proximity of the medical facilities. The Navy's hospital is 1½ miles from the North Chicago VA Medical Center, and the VA property adjoins Great Lakes NTC. The aim of the delegation was to keep the North Chicago VA Medical Center open, improve options for medical care for the Navy, improve training options for VA and Navy medical personnel, reduce costs, and improve access to health care for veterans and Department of Defense beneficiaries.

The VA's process to consolidate veteran's health care facilities in the Chicago area allowed the North Chicago VA Medical Center to stay open, but with the proviso that more sharing between the VA and the Navy would take place.

The Navy agreed to use the North Chicago VA Medical Center facilities as much as possible, in lieu of the Navy's outdated hospital, but renovation of a currently closed ward at the North Chicago VA Medical Center is required for a surgery suite, and the emergency and urgent care centers must be upgraded. The VA is planning to award a design contract for this work at the end of this year.

For its part, the Navy has agreed to build a new ambulatory care center that could be used for active duty military personnel as well as for veterans. It will be paid for out of the Navy's budget, but I believe that the VA should have input into the site selection. Having the ambulatory care center on or adjacent to the North Chicago VA Medical Center would make sense. The center will be used by both veterans and military personnel, and having it on or adjacent to the VA facility would ease veterans' access to it. The North Chicago VA Medical Center sits on a large tract of land, and, while the Naval base is accessible, it still requires gaining entry through the enhanced security procedures of a military base, making it more difficult for veterans if the center were physically on the base.

The amendment that Senator FITZGERALD and I offer today requires a report regarding the progress in modifying North Chicago VA Medical Center's surgical suite and emergency and urgent care centers for use by veterans and Department of Defense beneficiaries, demonstrating continued Congressional interest that these plans stay on track and on schedule. The amendment also requires that the Secretary of Veterans Affairs consult with the Secretary of the Navy to select the site for the ambulatory care center, in order to ensure a role for the Secretary of Veterans Affairs in negotiations with the Secretary of the Navy on site selection.

I appreciate the efforts of the bill managers to work with us on this amendment and to include it in the managers' package.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2176) was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2177 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I send another amendment to the desk on behalf of Senator MURKOWSKI relating to rural teacher housing, amending the Denali Commission Act to provide the ability of the Commission to make grants and loans to public school districts serving remote incorporated cities and unincorporated communities in Alaska.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Ms. MURKOWSKI, proposes an amendment numbered 2177 to amendment No. 2150.

Mr. BOND. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide housing for teachers, administrators, and other school staff in remote areas of Alaska since such housing is often extremely substandard, if it is even available at all, and rural school districts in Alaska are facing increased challenges, including meeting the mandates of the No Child Left Behind Act, and in recruiting and retaining employees due to a lack of housing units)

At the appropriate place, insert the following:

SEC. . RURAL TEACHER HOUSING.

Section 307 of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) is amended by adding at the end the following:

"(e) RURAL TEACHER HOUSING.—The Commission may make grants and loans to public school districts serving remote incorporated cities and unincorporated communities in Alaska (including Alaska Native Villages) with a population of 6,500 or fewer persons for expenses associated with the construction, purchase, lease, and rehabilitation of housing units in such cities and communities. Unless otherwise authorized by the Commission, such units may be occupied only by teachers, school administrators, and other school staff (including members of their households).".

Mr. BOND. This is carrying on our efforts to provide the best possible services to people in underserved areas of Alaska. I urge its adoption.

The PRESIDING OFFICER. Is there further debate?

Ms. MIKULSKI. I concur with the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2177) was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2178 TO AMENDMENT NO. 2150

Ms. MIKULSKI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI] proposes an amendment numbered 2178 to amendment No. 2150.

Ms. MIKULSKI. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for certain capitalization grants)

On page 104, between lines 14 and 15, insert the following:

For an additional amount for capitalization grants for State revolving funds, $3,000,000,000, to remain available until expended, of which $1,850,000,000 shall be for capitalization grants from State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and $1,150,000,000 shall be for capitalization grants from State drinking water treatment revolving loan funds under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12): *Provided*, That the entire amount made available under this paragraph is designated by Congress as an emergency requirement under section 502(c) of H. Con. Res. 95 (108th Cong.).

Ms. MIKULSKI. Mr. President, I rise to offer an amendment to increase funding for our communities for our Nation's waste system. My amendment is simple and straightforward. It adds $3 billion to the VA–HUD bill for a total of $5.2 billion for water and sewer infrastructure. My amendment increases funding in the EPA clean water State revolving loan fund to $3 billion, over $1.3 billion. My amendment also increases funding in the EPA drinking water revolving fund from $850 million to $2 billion.

When I offer this amendment, I want to be very clear. I am in no way critical of the effort the committee has made. I have been part of the effort. I congratulate Senator BOND for his robust funding for water and sewer systems. I thank him for his hard work on this issue. But we simply did not have enough money in our allocation. The budget cut $500 million from the President's budget from the clean water State revolving loan fund. Senator BOND and I worked together to restore that $500 million, and we are very grateful for that. But the Nation calls out for more.

Our Nation's communities are facing enormous needs in their effort to provide clean water and safe water and to comply with Federal environmental mandates. The need for better water and sewer systems is much greater than the amount that we now have in the Federal checkbook.

There have been studies, and studies after that, and the needs have been real and valid and have been validated by independent research.

The Federal Government must do more to help meet these needs. Failure to do so places a great burden on the local taxpayers because it shifts the responsibility to them. We have created an unfunded Federal mandate. At the same time, the lack of proper water and sewer threatens public health and environmental safety. Our State and local governments are also revenue-starved to meet these mandates.

Let me tell you about some of the studies.

In fiscal year 2000, the Water Infrastructure Network said our water and sewer systems will face a funding gap of $12 billion over the next 20 years. GAO said the cost to really do our water and sewer systems the way they need to meet not only environmental but public health concerns will be $300 billion over 20 years. There is study after study after study that validates this.

In my own State of Maryland, there is $4 billion in unmet needs. This isn't Senator BARBARA MIKULSKI talking; this is the State of Maryland speaking. Our Eastern Shore and rural communities are trying hard to reduce harmful nutrients that pollute the Chesapeake Bay. Every time they increase their bonding authority to pay for unfunded mandates, it means one less school or one less highway. But the needs of Maryland are a cameo of the needs of the Nation. We are simply not putting enough money in the Federal checkbook for water and sewer systems.

In my own hometown of Baltimore, our sewer system was built over 100 years ago. We are under a court order instituted by the EPA to rebuild it. It will cost $1 billion to do this. In order to be able to do this, ratepayers will pay the bill.

This is an issue where growing green also generates jobs.

The second reason this amendment is necessary is that it creates jobs. It is estimated for every $1 billion we spend on water infrastructure, 40,000 jobs are created, from the civil engineers and architect who design on it, to construction contractors, to heavy equipment manufacturers, and even those who run the lunch wagons at the job site. This creates jobs, but it has value for the taxpayer. It will give the State a much needed breather as they themselves are trying to meet this need.

My amendment is temporary and it is targeted. It is a one-time $3 billion increase. This isn't $3 billion every year; it is $3 billion this year. The State loan funds have widespread support and would go a long way in helping this.

The President requested $3.7 billion for water and sewer projects in Iraq. The President requested this funding as an emergency.

I respect what the President said, but we have an emergency here. We have crumbling water systems that threaten public health. We need billions of dollars. We have rising rates for our citizens, and at the same time the local ratepayer is going to shoulder the responsibility. If there is an emergency in Iraq, there is surely a water and sewer emergency in this country.

My amendment has widespread support—from the Water Infrastructure Network, a coalition of 47 nationally organized recognized organizations, to local officials, water and sewer service providers, engineers, construction contractors, labor unions, and environmentalists. This is the place where it all comes together—mayors, Governors, workers, private sector.

These will not be government jobs. These will be jobs in the private sector, in the local community, meeting local needs. Groups such as the League of Cities and the Association of Counties and others do that.

I ask unanimous consent that two letters of support for my amendment be printed in the RECORD. They are from the Water Infrastructure Network, the Coalition of the American Rivers and Ocean Conservatory, and others.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WATER INFRASTRUCTURE NETWORK,
Washington, DC, October 24, 2003.

Hon. BARBARA MIKULSKI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Re support for $5.2 billion for Clean & Safe Water SRFs.

DEAR SENATOR MIKULSKI: The Water Infrastructure Network (WIN) strongly supports your $5.2 billion amendment for the Clean Water and Safe Drinking Water State Revolving Funds (SRFs) in the Fiscal Year (FY) 2004 Veterans, Housing and Independent Agencies Appropriations bill. WIN is a broad-based coalition of 47 nationally-recognized organizations that represent local elected officials, drinking water and wastewater service providers, environmental and health administrators, engineers, labor unions, construction contractors, and environmentalists. WIN is dedicated to preserving and protecting the health, environmental, and economic gains that America's drinking water and wastewater infrastructure provides.

The SRFs help local communities meet water quality standards, repair and replace old and decaying pipelines and plants, protect public health, and ensure continued progress in restoring the health and safety of America's water bodies. This investment is a much-needed down payment to improve our nation's water and wastewater treatment plants. Your support for additional funding for the SRFs would help stimulate the economy, create jobs and provide funds for securing our water infrastructure for generations to come. WIN supports your proposed increase in federal funding in FY 2004 for the Clean Water SRF from its current level of $1.35 billion to $3.2 billion and for the Drinking Water SRF from $850 million to $2 billion. WIN believes this is an important first step toward developing a long-term, sustainable solution to close our country's infrastructure funding gap.

Safeguarding clean and safe water must remain one of our nation's highest priorities even though funding its continued improvement is one of our greatest challenges. Thank you for supporting clean and safe water in America.

Sincerely,

American Concrete Pipe Association (ACPA); American Concrete Pressure Pipe Association (ACPPA); American Council of Engineering Companies (ACEC); American Public Works Association (APWA); American Society of Civil Engineers (ASCE); American Water Works Association (AWWA); Associated Equipment Distributors, Inc. (AED); Association of Equipment Manufacturers (AEM).

Associated General Contractors of America (AGC); Association of California Water Agencies (ACWA); Association of Metropolitan Sewerage Agencies (AMSA); Association of Metropolitan Water Agencies (AMWA); California Rebuild America Coalition (CalRAC); Construction Management Association of America (CMAA); Chesapeake Bay Foundation (CBF); Design-Build Institute of America (DBIA).

Environmental and Energy Study Institute (EESI); International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; International Brotherhood of Teamsters; International Union of Bricklayers and Allied Craftworkers (BAC); International Union of Operating Engineers, AFL-CIO (IUOE); Laborers' International Union of North America (LIUNA); National Association of Counties (NACo).

National Association of Flood and Stormwater Management Agencies (NAFSMA); National Association of Regional Councils (NARC); National Association of Sewer Service Companies (NAASCO); National Association of Towns and Townships (NATaT); National Heavy & Highway Alliance; National League of Cities (NLC); National Precast Concrete Association (NPCA); National Ready Mixed Concrete Association (NRMCA).

National Rural Water Association (NRWA); National Society of Professional Engineers (NSPE); National Urban Agriculture Council (NUAC); Operative Plasters' and Cement Masons' International Association; Pipe Rehabilitation Council (PRC); Plastics Pipe Institute, Inc. (PPI); Portland Cement Association (PCA); Rural Community Assistance Program, Inc. (RCAP).

SAVE International (SAVE); Uni-Bell PVC Pipe Association (Uni-Bell); The Vinyl Institute; Underground Contractors Association of Illinois (UCA); United Brotherhood of Carpenters and Joiners of America (UBC); Water Environment Federation (WEF); WaterReuse Association (WasteReuse); Western Coalition of Arid States (WESTCAS).

October 27, 2003.

Support Mikulski amendment to fight water pollution on VA/HUD 2004 appropriation bill.

DEAR SENATOR: We ask you to vote in favor of Senator Mikulski's floor amendment to the VA-HUD appropriations bill appropriating $3 billion this year to fund critical drinking water and wastewater infrastructure needs. Our nation's perpetual failure to invest in maintaining our drinking water and sewer systems is endangering public heath and safety. The gap between our needs and our spending is on the order of $15 billion each year according to EPA.

The current funding is grossly insufficient to meet our nation's water quality needs, including addressing drinking water security issues, removing arsenic and other toxins from our tap water, rehabilitating aging sewer plants, controlling raw sewer overflows, decontaminating stormwater discharges, and minimizing polluted runoff. The cumulative impact of our society's failure to invest in clean water year after year has begun to cause very serious harm to public health, to the environment, and to our economy.

Experts estimate 7.1 million cases of mild to moderate and 560,000 cases of moderate to sever infectious waterborne disease in the United States each year, costing untold billions of dollars in health care and other expenses.

The CDC found that in 1999–2000 there were 39 disease outbreaks associated with drinking water and 59 associated with recreational water. Experts say approximately 1 in 10 waterborne disease outbreaks are detected.

There are over 200,000 water main breaks/yr. in the U.S.

The loss of swimming opportunities (beach closings) due to pathogen contamination is valued at $1–2 billion annually in the U.S. (EPA, 1995).

Economic losses due to swimming-related illnesses estimated at $28 billion annually (EPA, 1995).

There are estimated to be at least 40,000 discharges of raw sewage each year from "sanitary" sewer systems into streets, playgrounds, and waterways and 400,000 basement backups (U.S. EPA 2001).

Raw sewage discharges from combined sewer systems dump 1.2 trillion gallons of raw sewage into waterways each year in more than 700 U.S. cities.

Over 90% of U.S. city water supplies continue to use pre-WWI era technology to treat drinking water.

Earlier this year the Senate in its Budget Resolution approved a $3 billion increase in funding for the SRFs above last year's level, but unfortunately this proposal did not survive conference with the House. The Mikulski amendment would make this critical funding available through an emergency designation. Since inadequate drinking water and wastewater treatment results in raw sewage discharges, contaminated drinking water, beach closings, and waterborne disease outbreaks, this national problem clearly qualifies as a public health emergency.

We strongly urge you to support investing now in a clean water future for our nation. We also ask you to support any other amendments that improve environmental protection and to keep the bill free of anti-environmental riders.

Sincerely,

S. Elizabeth Birnbaum, Director of Government Affairs, American Rivers, Bob Perciasepe, Chief Operating Officer, National Audubon Society; Paul Schwartz, National Campaigns Director, Clean Water Action; Dawn Hamilton, Executive Director, Coast Alliance; Diana Neidle, Public Policy Advocate, Consumer Federation of America; Michele Merkel, Counsel, Environmental Integrity Project; Sara Zdeb, Legislative Director, Friends of the Earth.

Lisa Ragain, GWU Medical Center, Center for Risk Science and Public Health, National Association of People with AIDS; Olivia B. Wein, Staff Attorney, National Consumer Law Center; Nancy Stoner, Senior Attorney, Natural Resources Defense Council; Catherine Hazlewood, Clean Oceans Programs Manager, The Ocean Conservancy; Kyle Kinner, Legislative Director, Physicians for Social Responsibility; Anna Aurilio, Legislative Director, U.S. Public Interest Research Group; Michele Boyd, Legislative Representative, Public Citizen; Debbie Boger, Deputy Legislative Director, Sierra Club.

Ms. MIKULSKI. Mr. President, in conclusion, my amendment helps our communities by providing more funding to meet immediate water and sewer needs so our communities can have clean and safe water. Water and sewer funding provides dual value for the taxpayers. It helps public health, it helps the environment. We will have clean water and safe water, and it creates jobs.

I urge my colleagues to support my amendment to provide $3 billion more for our communities because I know every single State could use at least $1 billion more and I wish we could do it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I rise to speak on the underlying bill as well as to make some general comments about the Defense authorization bill we just passed and a few comments about the veterans provisions generally.

I thank the Chair and the ranking member for their good work on the underlying bill. I understand we hope to pass this very important appropriations bill before 6 o'clock this evening.

I was unable to be here earlier today. I want to make a couple of comments regarding veterans generally.

There are 400,000 veterans in Louisiana, and 12,000 of them are directly affected in a very positive way by the underlying bill.

Before I speak about that, I wish to say that the chairman of the Armed Services Committee, Senator WARNER from Virginia, and our ranking member, Senator LEVIN, should be commended for crafting a very good Defense authorization bill at a very difficult time.

I was formerly a member of the Armed Services Committee and worked for many years to fashion a bill, and I know how difficult it is even in times that are not stressful, much less in a time when we are in a war against terror in Iraq, here at home and other places around the world. It seems to me, as a former member of the committee, that the conference could have imploded many different times. But to Senator WARNER's and Senator LEVIN's credit and very good bipartisan working relationship, that bill was passed earlier today.

While I don't agree with all the provisions of it, there are a couple which are very important to our troops in Louisiana: No. 1, the 4.1 percent pay raise for all of our troops. And, No. 2, we moved closer to completely eliminating the disability tax on veterans in Louisiana with 20 years of service; that is, 12,000 men and women who now, when they retire, do not get their full retirement and disability benefits but basically have to give up 50 percent of that benefit. This bill we passed earlier today corrects that. For those families and their loved ones, that will mean immediate help.

In addition, the TRICARE eligibility expansion for guardsmen and reservists, if they are unemployed or cannot acquire health insurance from their employers, is a tremendous gesture to the Guard and Reserve who we are counting on and depending on to help defend us at this time. We literally could not win this war or even begin this endeavor without their commitment.

We must remain committed to the quality of life of our veterans and to letting our Guard and Reserve men and women know how much we appreciate them. We must keep ever vigilant, particularly when it comes to the Guard and Reserve. We are getting ready to send another 43,000.

I wish to make a couple of comments about the tax treatment of our Guard and Reserve and speak about some disappointment in that area.

Yesterday, with some fanfare, the Military Family Tax Relief Act was passed. It is a help, but in my mind it is an insufficient gesture. It is too modest for what our men and women in uniform deserve. The bill provided $1.1 billion in tax relief, which was asked for and which is most certainly deserved. It doubles the amount of payments to survivors of soldiers killed in action from $6,000 to $12,000—not a lot of money, but it helps the families better than the $6,000 that was in the previous law. It allows guards and reservists to deduct travel expenses, it allows troops to deduct the cost of equipment they buy themselves, and it reduces the residency requirement so our troops can take full benefit of the capital gains provision in the law as do other Americans who are not in the service.

But this bill did not go far enough. I wish to speak for a minute about this and my strong objection to moving forward with it without additional help and support.

The bill that was signed, Tax Relief for Families in the Military, represented .006 percent of the $1.75 trillion in tax relief that has been passed by this Congress at the urging of this administration. Let me repeat. The bill that was signed on Tuesday for the military only represented .006 percent of the tax cuts that have been provided by this administration to Americans generally. Yet the military, the men and women in uniform today, the over 1 million men and women in uniform, are providing 100 percent of our security, one could argue. That is not to diminish the role of our men and women in uniform, police and fire on the home front, but protecting our borders, fighting the battles overseas, they are providing 100 percent of the protection. Yet they only receive in this bill .006 percent of the tax cut.

We asked, Republicans and Democrats alike, to please include a provision that would have allowed the Guard and Reserve who are leaving their jobs and leaving their businesses to go fight in Iraq, to please have the Federal Government recognize that many of these families are losing income, sometimes as much as 60, 70, or 80 percent. We are asking them not just to go and put their life on the line, but we are asking them to put their livelihood on the line.

When some Members petitioned this administration, and particularly the House Republican leadership, to give some relief, to provide some tax relief to these businesses to encourage them to maintain those salaries for our Guard and Reserve, we were told: We do not have enough money.

We had 1.75 trillion to give tax cuts generally to people not in the military, but we could not find a few pennies to help our businesses in this country, to help their employees meet their salaries for the benefit of their families. I know the Senator wants to get back to the HUD bill, and I will in a minute, but I want to make this point and then get to the underlying bill, VA–HUD.

What we have to do in every way we can, whether it is this veterans bill we are debating now, whether it is in Defense authorization, or whether it is in our tax bills, to recognize our first priority should be to our men and women in uniform, overseas and here on our home front. When we design tax packages and tax benefits, they should be the first, not the last, to receive the help. They should be getting the lion's share or the essence or the core, not the crumbs that fall from the table.

Unfortunately, still, despite the lives that are being given, despite the effort that is being made, they still are receiving crumbs when they deserve the whole loaf of bread.

I will submit for the Record an article about a reservist reward for MSG Rodriguez: His reward was bankruptcy. When MSG Rodriquez and his company were activated for 1 year, they were given an 8-hour notice. He had to leave behind his wife to run the couple's construction company. He comes home and his daughter, of course, is crying and in tears, his wife is upset because they lost their business. Their income was cut by 80 percent. I ask unanimous consent to have this article printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From CBS Evening News, Nov. 11, 2003]

A Reservist's Reward—Bankruptcy

On a sun soaked street in northern California, Air Force reservist Oscar Rodriguez is finally back home from active duty, where, as CBS News Correspondent Byron Pitts reports, the high and unexpected cost of war has taken a toll.

"They ain't giving us a loan cause I got bad credit," says Rodriguez.

"It was hard seeing my mom," says his daughter Desiree. "I mean seeing her stressed and seeing her cry—it hurts a lot."

When Master Sgt. Rodriguez and his company were activated for one year—on eight hours notice—he left behind his wife to run the couple's construction company.

"My dad was away and so she's pretty much was doing this on her own cause he can't do anything about it when he's gone, and I can't really do anything about it, but I try," says Desiree.

They all tried, but with Rodriguez at war, repairing Air Force cargo planes, the family income was cut by 80 percent.

"I lost the bids for my construction projects," says Rodriguez. "I lost my savings. I lost my credit. My credit history—it's in shambles."

Despite federal laws protecting active duty reservists from creditors during wartime, the creditors kept calling. Their home is now in foreclosure.

"You do everything that you're supposed to do without asking for help," says his wife Kathy. "All you want is for everyone to do the right thing."

The Rodriguez family aren't the only ones who've sacrificed. Of the nearly 200,000 reservists on active duty in Afghanistan, Iraq and around the world, one-third have taken a pay cut in order to serve their country.

Rodriguez is now trying to rebuild his business one step at a time. He's gone from building hotels to kitchen counters. He's suing his creditors as much for the principle as the money.

"It's about every soldier, sailor, airman or marine," says Rodriguez. "Anybody who's serving our country has a right to at least not be concerned about the wolves knocking at the door."

Asked if they're going to recover, Rodriguez and his wife say they aren't sure.

"We're separated," said Kathy Rodriguez, as her husband sat silently beside her.

The strain of duty and debt may have cost this couple their marriage. Yet, Rodriguez has re-enlisted.

He's a member of an Air Force Honor Guard.

For him, sacrifice isn't a slogan. In war there are casualties, both overseas and at home.

Ms. LANDRIEU. The efforts some Members made to get this issue dealt with were rejected because we did not have enough money to help this reservist or the thousands and hundreds of thousands who are fighting for us, taking the cut in pay and losing their companies in the process.

Also I ask unanimous consent to have printed in the Record an article printed regarding 120,000 Federal employees who serve in the National Guard and Reserve. Nearly 14,000 have been called to active duty to help fight the war in Iraq. Senator Durbin and I wanted to get in the tax bill that was passed a provision that would allow them to maintain their salaries, their Federal salaries, so as not to fall down, basically, to receive the lower salary they receive in the Guard and Reserve. The sad thing is it would not have cost the Government anything because we had already budgeted to pay them their full salaries. This was rejected.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From Government Executive Magazine, Apr. 2, 2003]

Bill Would Close Pay Gap for Active Duty Feds

(By Tanya N. Ballard)

Three Senate lawmakers introduced a bill Wednesday that would require the government to pay the difference between civilian and military wages for federal employees called to active duty.

More than 120,000 federal employees serve in the National Guard and Reserves, and nearly 14,000 of them have been called to active duty to help fight the war in Iraq. But most of those employees earn less as active duty reservists than as civilian workers, according to Sen. Richard Durbin, D–Ill. Durbin joined with Sens. Mary Landrieu, D–La., and Barbara Mikulski, D–Md. to introduce legislation that would close the gap between military and civilian pay for those workers.

"We cannot simultaneously encourage Americans to serve their country in the National Guard and Reserves and then punish those who enlist by taking away a large portion of their income," Durbin said.

The Illinois senator described the case of one Air Force reservist who took a $45,000 cut in pay when he was called to duty and left his job as an air traffic controller in Chicago.

"This was a severe blow to his family," Durbin said.

According to Landrieu, several local and state governments, as well as private companies, have a pay gap plan in place to address this issue and the federal government needs to do the same.

"Reserve and guard employees—whether working in the public or private sector—should not have to take a pay cut when called to active duty, and that's exactly what's happening now," Landrieu said. "These men and women are not getting a tax cut, they are taking a pay cut to serve. It does not make sense."

According to Durbin, the gap in salary can range from 2 percent to 48 percent.

"We must provide our reservist employees with financial support so they can leave their civilian lives to serve our country without the added burden of worrying whether their loved ones back home can make the monthly mortgage payment or provide new shoes for their kids," Durbin said. "They are doing so much for us, we should do no less for them."

Ms. LANDRIEU. I say for the benefit of the people in Louisiana, we do not understand how we can give our tax credits to everybody but the Guard and Reserve. We can give out help to everybody except those Federal employees who take off one uniform and put on another, leave their homes for 6 months to a year, sometimes longer, and we expect them to take a cut in pay when we are giving tax credits to people who are not fighting.

If I could conclude on this one issue which really pours salt into the wound, when people say, Senator, we could not afford it, we actually found a way to pay for it. We said we should pay for it by making people who are right now evading U.S. taxes because they have made so much money in America because our troops have put their life on the line to protect the way of life which allows business people to make a lot of money in America, these business people who have made a lot of money because of what these men and women are doing in the Armed Forces, these business people are now deciding they are paying too much in tax, so they go to another country. They do not want to pay their taxes.

So we said let's make those folks pay their taxes and use those proceeds to pay for tax relief for the men and women in the military. We were told we cannot do that. We cannot possibly make people who owe taxes to America pay their taxes so that we can pay the men and women in uniform and give them a tax cut. I hope we will change our policy because it is wrong. We have missed an opportunity to help these families.

I conclude by thanking Senator MIKULSKI and Senator BOND for their hard work on behalf of veterans. They have restored a lot of the cuts that were proposed by this administration. I am proud to be part of helping to pass a veterans bill. But let's not forget it is not just about appropriations bills where we can help our men and women in uniform. Tax bills can help them. Other direct spending bills can help them. No one deserves our help more than people who put on a uniform every day and actually put their life on the line.

This Senator does not think we are doing enough and can afford to do more when we found an offset to make regular people pay the taxes they owe. If they do not want to put on a uniform and fight, that is fine, but at least give the benefits to the people who are protecting their ability to make a living.

I yield the floor.

Mr. JEFFORDS. Mr. President, I am a cosponsor of the Lautenberg-Mikulski amendment increasing funding for the enforcement activities of the Environmental Protection Agency, EPA. I would like to voice my strong support for this amendment. Without effective enforcement, our environmental laws will never succeed in reducing pollution and improving environmental quality. Simply put, the best environmental laws in the world mean nothing without vigorous enforcement.

Unfortunately, this administration does not share this sentiment. Just last week, the administration directed the EPA to abandon ongoing investigations of some 50 different facilities for violations of the Clean Air Act's New Source Review provisions. Apparently, gutting the rule itself was not enough. Pardons for big polluters—many of them large political contributors—seem to be the administration's preferred approach to environmental enforcement.

Lack of enforcement is hardly confined to the Clean Air Act. Indeed, a recent report from the EPA inspector general reveals an Agency failing to keep up with its enforcement duties across a number of different programs. According to the report, a majority of special agents-in-charge of environmental crimes states that they will not open a new case if they lack the resources necessary to pursue the case. In addition, formal enforcement actions under several key Clean Water Act programs have declined dramatically over the last 3 years. Specifically, the number of formal enforcement actions brought under the National Pollution Discharge Elimination System declined by 45 percent between 1999 and 2001. Clear Water Act enforcement actions against large concentrated animal feeding operations declined by more than 90 percent between 2000 and 2002.

I ask my colleagues: What kind of message does this send to the Nation's polluters? What kind of message does it send to the American people?

On one hand, we have an administration that is openly hostile to environmental enforcement. On the other hand, we have an EPA that is unable to initiate new environmental crimes cases and is dramatically scaling back on several major civil enforcement programs because the agency lacks adequate resources. I hope that Administrator Leavitt will work to remedy this situation, but I fear that much of the problem may ultimately lie with the White House.

Mr. President, the additional appropriation contained in this amendment represents a modest increase in the Agency's enforcement budget. But it is crucial one given the Agency's inability to keep up with its obligations to enforce this country's environmental laws. This amendment also sends a signal to the EPA and to the administration that the Senate takes environmental enforcement seriously. At the end of the day, the answer is not, as the administration would have it, to abandon existing enforcement actions.

Rather, the answer is to provide adequate resources and to demand more oversight to ensure that our environmental laws will not be empty words in the statute books.

Mr. JEFFORDS. Mr. President, I rise before you today to join my colleague, Senator MIKULSKI, in offering this amendment to increase the funds available for water infrastructure spending.

Since assuming the chairmanship of the Environment and Public Works Committee in 2001, I have spent many hours in the committee and here on the Senate floor discussing the pressing need for investment in our Nation's water infrastructure.

In the 107th Congress, the committee passed S. 1961, the Water Investment Act, which I introduced with Senators GRAHAM, CRAPO, and SMITH of New Hampshire, which would have increased water infrastructure spending by $35 billion, providing $3.2 billion for clean water in the first year, and $2 billion for drinking water in the first year

The Bush administration opposed the bill, stating, ". . . the administration does not support the funding levels contained in S. 1961."

In December 2002, Senators SARBANES and VOINOVICH and I, along with 38 Members of the Senate from both sides of the aisle, sent a letter to the President asking him to provide $3.2 billion for clean water spending, and $2 billion for drinking water spending.

Instead, President Bush responded by proposing a 40 percent cut in water infrastructure spending to Congress in his fiscal year 2004 budget.

In March 2003, I cosponsored an amendment with Senators MIKULSKI, SARBANES, GRAHAM and CRAPO to increase the allocation for water infrastructure spending in the budget resolution to $3.2 billion for clean water, and $2 billion for drinking water.

It was accepted by the Senate and dropped in conference with the House.

I do appreciate the work that the Senate VA-HUD Subcommittee did to restore clean water infrastructure spending to $1.35 billion, up from the President's request of $800 million—a significant step in the right direction.

The ironic thing about this issue, the actions we have taken over the last 2 years, and the lack of major progress is that there appears to be bipartisan consensus that water infrastructure spending has significant need, is critical to our Nation's water quality, leads to job growth, and enjoys broad support among the American people.

First—the needs are substantial. The EPA's own estimates show a $535 billion gap between current spending and projected needs for water and wastewater infrastructure over the next 20 years if additional investments are not made.

According to the Congressional Budget Office, the spending gap for clean water needs is estimated to be between $132 billion and $388 billion over 20 years, and the spending gap for drinking water needs at between $70 billion and $362 billion over 20 years.

It is not solely the Federal Government's responsibility to fill this gap. However, it is the Federal Government's responsibility to provide a reasonable investment in water infrastructure, given the size of the anticipated needs.

Second—repair of a quickly deteriorating water infrastructure is critical to our Nation's water quality.

Our towns and cities, along with the Federal Government, have invested billions of dollars over the last 30 years to build the infrastructure to treat our wastewater and drinking water. It is with this infrastructure that the country has been able to return about 60 percent of our waters to swimming and fishing standards.

Even with those investments, we continue to fail to fully protect our waters from pollution, with over 40 percent of our Nation's waters still impaired.

Now, the progress we have made over the last 30 years stands on the brink of evaporation as the extensive water and wastewater infrastructure we have built nears the end of its useful life, and we are failing to reinvest

Third, estimates show that for every billion dollars invested in water infrastructure spending, approximately 40,000 jobs would be created. We must take action to prevent our economy from faltering. We are proposing to invest $5.2 billion in the State revolving funds.

The States will provide a 20-percent match of just over $1 billion. This could create over 200,000 jobs.

Yet despite the apparent consensus that there are significant needs, that healthy water infrastructure is in need of repair, that investment will increase job growth, and that Americans support investing in water infrastructure, we fail to act. Why? I cannot answer that question.

Just last month, the President recognized the importance of water infrastructure needs in Iraq with his request for an $87 billion supplemental spending package that provided about $4 billion for water infrastructure improvements.

It is appalling to me that the President is willing to support water infrastructure investment overseas while failing to recognize that Americans have the same needs here at home.

However, the fact that the President failed to recognize our water infrastructure needs, requested a 40-percent drop in water infrastructure spending, and sought emergency spending for water infrastructure in Iraq that was four times the amount he requested for domestic water infrastructure spending, does not justify the same failure by this Senate.

The amendment that I offer today with Senator MILKULSKI provides a downpayment on our water infrastructure needs. It provides an additional $3 billion for domestic water infrastructure improvements. This increase is $1.3 billion less than the amount this Senate approved for Iraq less than 2 weeks ago.

By voting aye on the amendment offered by the Senator from Maryland, each of you can take direct action to improve both the state of our Nation's waters and the state of our Nation's economy.

Today could be the day that the Senate finally changes the course of water infrastructure spending and votes decisively to live up to our responsibility and improve the quality of our Nation's waters.

The outcome is up to us. I urge you to support the amendment proposed by the Senator from Maryland.

Mr. SARBANES. Mr. President, I rise in strong support of this amendment, by my colleague Senator MIKULSKI to boost federal funding for the clean water and safe drinking water state revolving funds (SRF) by an additional $3 billion. I spoke earlier this year on a similar amendment which I offered to the Senate budget resolution and I just want to underscore some of the key reasons this amendment is needed.

The President's Fiscal 2004 budget severely short changes the funds needed by State and local governments to upgrade their aging wastewater and drinking water infrastructure. The President's budget provided only $1.7 billion for both State Revolving Funds, split equally. The Committee-approved bill provided an additional $500 million, restoring the President's budget cut to the Fiscal 2003 enacted level of funding of $2.2 million—but is still short of what is needed.

Despite important progress over the last three decades, EPA reports that more than 40 percent of our nation's lakes, rivers and streams are still too impaired for fishing or swimming. Discharges from aging and failing seweage systems, urban storm water and other sources, continue to pose serious threats to our nation's waters, endangering not only public health, but fishing and recreation industries. Population growth and development are placing additional stress on the nation's water infrastructure and its ability to sustain hard-won water quality gains.

Combined sewer systems or so-called CSOs can be found in more than 750 communities in 32 States and the District of Columbia. EPA estimates that annual combined sewer systems discharge nearly 1,300 billion gallons of untreated or under-treated wastewater. To eliminate sewer overflows, the City of Baltimore alone must invest more than $900 million to upgrade its sewer system and comply with a consent decree with the Department of Justice and the Environmental Protection Agency. Many other cities across the nation face similar challenges. In fact, three years ago, in 2000, Congress amended the Clean Water Act to authorize a $1.5 billion grant program to help cities reduce these wet weather flows, but funds have not been available to implement the program.

Nearly 20,000 municipalities have separate sewer systems or SSOs, serving a population of 150 million. Unlike CSOs, these separate sanitary collection systems are not intended to carry significant volumes of extraneous water, such as storm water runoff, but frequently do because of infiltration and inflow, aging systems, and other factors. EPA acknowledges that sanitary sewer overflows pose a severe problem to the environment and public health.

Across the nation, our wastewater and drinking water systems are aging. In some cases, systems currently in use were built more than a century ago and have outlived their useful life. For many communities, current treatment is not sufficient to meet water quality goals. Recent modeling of the EPA's Bay Program has found that the 304 major municipal wastewater treatment facilities in the watershed will have to reduce nitrogen discharges by nearly 75 percent to restore the Chesapeake Bay and its major tributaries to health. Achieving this goal is estimated to cost $4.4 billion.

In April 2000, the Water Infrastructure Network (WIN), a broad coalition of local elected officials, drinking water and wastewater service providers, state environmental and health administrators, engineers and environmentalists released a report, Clean & Safe Water for the 21st Century. The report documented a $23 billion a year shortfall in funding needed to meet national environmental and public health priorities in the Clean Water Act and Safe Drinking Water Act and to replace aging and failing infrastructure.

In May 2002, the Congressional Budget Office released a report that estimated the spending gap for Clean Water needs between $132 billion and $388 billion over 20 years and the spending gap for drinking water needs at between $70 billion and $362 billion over 20 years.

In September 2002, the EPA released a Clean Water and Drinking Water Infrastructure Gap Analysis which found that there will be a $535 billion gap between current spending and projected needs for water and wastewater infrastructure over the next 20 years if additional investments are not made. This figure does not even account for investments necessary to meet water quality goals in nutrient impaired waters, like Chesapeake Bay.

The need for additional investment in wastewater and drinking water infrastructure is clearly documented.

But, States, localities and private sources can't meet the funding gap alone.

Local communities already pay almost 90 percent of the total cost or about $60 billion a year to build, operate, and maintain their water and wastewater systems. But as former Administrator Whitman pointed out, "(t)he magnitude of the challenge America faces is clearly beyond the ability of any one entity to address."

Water pollution is an interstate problem. The Congress understood the interstate dynamic of pollution in 1972 when a bi-partisan majority passed the Clean Water Act and began funding waste treatment infrastructure. In 1979 and 1980, the Congress provided $5 billion in Clean Water construction grants alone to assist states and municipalities with wastewater infrastructure needs. Over the years, budgetary pressures and other factors have reduced that funding level, and in Fiscal 2003, we provided only $1.34 billion in Clean Water State Revolving loan funds.

It is vital that the Federal government maintain a strong partnership with states and local governments in averting the massive projected funding gap and share in the burden of maintaining and improving the nation's water infrastructure. Municipalities need significant resources to comply with Federal clean water and drinking water standards. In the 107th Congress, House and Senate committees approved bills to authorize $20 billion over 5 years for the Clean Water Act SRF, underscoring the recognition that something must be done to address this funding gap.

An increase in funding for the Clean Water SRF to $3.2 billion and for the Drinking Water SRF to $2 billion in fiscal 2004 is the first step necessary to meet the Federal government's longstanding commitment in this regard.

This isn't a make-work public works project. It is an investment in the health of Americans and in a clean environment. It is an investment that will pay substantial dividends.

Wastewater treatment plants not only prevent billions of tons of pollutants each year from reaching our rivers, lakes, streams, and coasts they also help prevent water-borne diseases and make waters safe for swimming and fishing.

According to the Water Infrastructure Network, "Clean water supports a $50 billion a year water-based recreation industry, at least $300 billion a year in coastal tourism, a $45 billion annual commercial fishing and shell fishing industry, and hundreds of billions of dollars a year in basic manufacturing that relies on clean water. Clean rivers, lakes, and coastlines attract investment in local communities and increase land values on or near the water, which in turn, create jobs, add incremental tax base, and increase income and property tax revenue to local, state, and federal government. Some 54,000 community drinking water systems provide drinking water to more than 250 million Americans. By keeping water supplies free of contaminants that cause disease, these systems reduce sickness and related health care costs and absenteeism in the workforce."

They also create jobs—indeed tens of thousands of jobs and provide stimulus to the economy.

Each $1 billion in sewer and water improvements creates an estimated 40,000 jobs. With more than $5 billion in water infrastructure projects ready for construction, these jobs would be created immediately with Federal assistance. According to OMB, every federal dollar invested in water infrastructure generates up to $4 for project loans, so the potential for job creation from this amendment is tremendous.

The case for this amendment is compelling. Today, maintaining clear, safe water remains one of our greatest national and global challenges.

I urge my colleagues to support this amendment and help address the massive funding gap that looms on the horizon. Failure to act now risks undermining thirty years of progress in cleaning up our nation's waters.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, we are on the amendment, the emergency designation by my friend and colleague from Maryland. She seeks to add $3 billion to the vitally important State revolving funds that are so important to cleaning up our environment. I could not agree with her from my heart more strongly because this is an area of need. We have fought very hard to get our funding up to where it is. That is not enough. We have not been able to fund the National Science Foundation as we should. We had a major effort by the leadership of the full committee to get us the money that we need to get an additional $1.3 billion for veterans health care.

Having said that, this, unfortunately, is far beyond the budget allocated to the committee. It is in conflict with the stated position of the OMB with respect to emergency designations. Therefore, it is with regret that out of necessity I note that section 502, House Concurrent Resolution 95, the fiscal year 2004 concurrent resolution on the budget, created a point of order against an emergency designation on nondefense spending.

The amendment contains nondefense spending with an emergency designation; therefore, pursuant to section 502 of H. Con. Res. 95, the fiscal year 2004 concurrent resolution on the budget, I make a point of order against the emergency designation contained in the amendment.

Ms. MIKULSKI. Mr. President, pursuant to section 502(c)(6) of H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2004, I move to waive the 502(c) of that concurrent resolution for purposes of the pending amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Georgia (Mr. CHAMBLISS), and the Senator from Montana (Mr. BURNS) are necessarily absent.

Mr. REID. I announce that the Senator from New York (Mrs. CLINTON), the Senator from South Dakota (Mr. DASCHLE), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The PRESIDING OFFICER (Ms. COLLINS). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 44, nays 49, as follows:

The result was announced—yeas 44, nays 49, as follows:

[Rollcall Vote No. 449 Leg.]

YEAS—44

Akaka
Baucus
Bayh
Biden
Boxer
Breaux
Byrd
Campbell
Cantwell
Carper
Corzine
Dayton
Dodd
Dorgan
Durbin
Ensign
Feinstein
Graham (FL)
Harkin
Hollings
Inouye
Jeffords
Johnson
Kennedy
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Mikulski
Murray
Nelson (FL)
Nelson (NE)
Pryor
Reed
Reid
Rockefeller
Sarbanes
Schumer
Smith
Stabenow
Wyden

NAYS—49

Alexander
Allard
Allen
Bennett
Bingaman
Bond
Brownback
Bunning
Chafee
Cochran
Coleman
Collins
Conrad
Cornyn
Craig
Crapo
DeWine
Dole
Enzi
Feingold
Fitzgerald
Frist
Graham (SC)
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Kyl
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nickles
Roberts
Santorum
Sessions
Shelby
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Voinovich
Warner

NOT VOTING—7

Burns
Chambliss
Clinton
Daschle
Domenici
Edwards
Kerry

The PRESIDING OFFICER. On this vote, the yeas are 44, the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the emergency designation is stricken.

Mr. BOND. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Parliamentary inquiry: Does the amendment fall without the emergency designation?

The PRESIDING OFFICER. The Senator needs to make a point of order.

Mr. BOND. I make a point of order that this exceeds the budget allocation and, therefore, must fall.

The PRESIDING OFFICER. The point of order is well taken, and the amendment falls.

The Senator from Missouri.

Mr. BOND. Madam President, I have six amendments to offer.

Mr. REID. Without the Senator losing his right to the floor, I direct a question through the Chair to the distinguished Senator from Missouri. We are wondering, how much longer do the managers believe it would take to finish this bill?

Mr. BOND. Madam President, I have now heard from about five Members on the other side who have amendments on which we would have to have votes. If that is 20 minutes a vote, that would be 100 minutes at least.

Ms. MIKULSKI. I say to the distinguished Democratic whip, I think we can do this in 2 hours. I think there are amendments that require more conversation and modification, that might not require votes.

Mr. REID. If the Senator will continue yielding, I believe with five Democratic amendments the Senator has spoken about and the persuasive nature of the Democratic manager of this bill, some of them would not require votes, and I believe we could finish this in 2 hours.

I suggest to the leadership on the other side—I know everyone is chomping at the bit to go to 6 o'clock, but if we could have another couple hours, we could finish this bill. On this side, that would cut the marathon down to 28 hours. Although I have no authority to do this and this is not in the form of a unanimous consent request, I think we would be willing to give up part of our time in those 2 hours to finish this bill.

Mr. BOND. Madam President, I am truly overwhelmed by the generosity of my good friend from Nevada, but regrettably I am not driving this bus. I believe there is a unanimous consent order that cannot be altered without talking to the leadership. I apologize to my friends. I would love to finish the bill, but now that I have the floor, I do have a number of amendments that have been cleared on both sides.

AMENDMENT NO. 2180 TO AMENDMENT NO. 2150

Mr. BOND. Madam President, I send an amendment to the desk on behalf of myself to direct the Secretary of Housing and Urban Development to conduct and negotiate a rulemaking for purposes of changes to the formula governing the public housing operating fund. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND] proposes an amendment numbered 2180 to amendment No. 2150.

Mr. BOND. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require HUD to make any changes to the operating fund formula by negotiated rulemaking)

On page 86, after line 11, insert the following new section:

SEC. 226. The Secretary of Housing and Urban Development shall conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 31, 2004.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri has the floor.

Mr. BOND. Madam President, there are no objections on the other side.

Ms. MIKULSKI. No, I do not have an objection.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BYRD. Madam President, may I be recognized? May I be recognized for debate?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I thank the Chair.

Madam President, I have sought the floor at this moment to urge the leadership to extend the time on this bill for 2 hours. I have heard the distinguished Democratic whip say it, I believe I have heard the Senator from Maryland, the manager of the bill, and the ranking member on this side, Senator MIKULSKI, say it, and I believe I have heard the manager indicate we might be able to finish this bill with an additional 2 hours.

We have completed 10 appropriations bills for floor action. There are only 13. That means there are three more. If we could finish this bill in 2 hours, that would leave only two appropriations bills that have not had floor action: CJS and District of Columbia.

So I urge, Madam President, that the leadership extend the time on this measure that is before the Senate just 2 hours.

Let us finish this bill before going to other matters.

Mr. REID. Will the Senator yield for a question?

Mr. BYRD. Yes, I yield.

Mr. REID. I say to the Senator, who is the most experienced person in the Senate as far as moving matters on the floor, I mentioned to the two managers that we have momentum on this bill now. If we come back some other time with 2 hours, it just is not the same. All of us who are in the Senate, we know these measures develop momentum and that is what we have now.

As I indicated to the two managers earlier and through the Chair to my distinguished friend, the Senator from West Virginia, we could finish this bill in 2 hours. It would not be easy, but if we made a commitment to do that, we would, and I think we should. It will not take anything away from the 6 show. It would just put it over for a couple of hours. Would the Senator agree with that?

Mr. BYRD. Yes, I do.

Mr. DURBIN. Will the Senator from West Virginia yield for a question?

Mr. BYRD. Yes, I yield for a question without losing my right to the floor.

Mr. DURBIN. I thank the Senator from West Virginia. Through the Chair, I ask the Senator, who is more familiar with the rules than anyone, if the Senator from West Virginia made a unanimous consent request now that we went until 8 p.m., for example, and finish this bill for the veterans, the Veterans' Administration, would that be in order?

Mr. BYRD. It certainly would be in order.

Mr. DURBIN. In order to bring us to closure on this important legislation before we begin the long debate?

Mr. BYRD. It certainly would.

Mr. DURBIN. Through the Chair, I would ask the Senator from West Virginia to seriously consider that.

Mr. BYRD. Well, I will not only consider it, I will make the request. I would like for the leadership to be here and let the leadership consider making the request. I am talking about the majority leader. I do not want to try to impose myself in his stead in a matter of this nature, but I do think the Senate ought to go for a couple more hours, if that would do it, and let us finish this bill.

We have finished 10 appropriations bills. I am the ranking member on the Appropriations Committee. It certainly is in order for me to attempt to try to get this bill acted on. We are so close. This is a veterans bill, the VA–HUD bill, that is so important. We have soldiers, men and women, dying in Iraq. Why not pass this bill within 2 hours? We are within 2 hours, and if we work hard we might complete it before that 2 hours. Maybe some of the amendments could be peeled off so we could cut the time.

I ask, Is there anyone who would get the majority leader to come to the floor and let us consider this?

Mr. BOND. Madam President——

Mr. BYRD. I have the floor.

Mr. BOND. I was going to respond.

Mr. BYRD. Yes. Let me protect myself, though. I ask unanimous consent that I may yield to the distinguished Senator from Missouri so that he can propound a question to the Chair and that I retain my right to the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, we are coming up on a 6 p.m. deadline, I say to my friend from West Virginia, that has been long announced and been planned for. I say to the distinguished Senator that unless and until we are able to get concurrence from the leadership, the work on this bill tonight will stop. I further ask the Senator from West Virginia if he would permit us to continue with the cleared amendment that is at the desk. There are five more cleared amendments, four of them by Members from his side of the aisle, that we would like to be able to clear if he would allow me to do so.

Also, I announce to my colleagues there are visiting dignitaries from the European Parliament. My colleagues may wish to greet them.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I am going to propound a request. That request will include—did the Senator from Missouri say there were four amendments that were cleared?

Mr. BOND. Madam President, there is one measure pending at the desk, and there are five more amendments that have been cleared on both sides. Excuse me. Coming in over the transom, there are now two more. So that makes a grand total of seven amendments, five of them from Members on the other side of the aisle.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, before I make a request, let me congratulate the Senator from Missouri. He is a good member of the Appropriations Committee. He works hard. He is a productive member. I have a great deal of admiration for him and for the work he does. I say the same about my friend, the Senator from Maryland. She has done tremendous work on this bill. It is the VA-HUD bill. She always applies her total energies and talents to working on this measure. With her good work and cooperation, the manager of the bill, Mr. BOND, has been able to bring the bill to the floor. He has done great work. I do not want to take away from his work. I want to add to it, and so I compliment him.

As I understand it, there are seven amendments at the desk that have been cleared on both sides?

Mr. BOND. Madam President, these are not at the desk, only submitted.

Mr. BYRD. I yield only if I may retain my right to the floor.

I yield to the Senator that he may make that statement, and ask that I may retain my right to the floor.

Mr. BOND. Madam President, as I said, there are seven amendments that are to be offered. There is one at the desk and there are seven more now that have been cleared on both sides.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. May I say again, we have finished 10 of the 13 appropriations bills on this floor. We lack three: CJS, District of Columbia, and VA-HUD. VA-HUD is before the Senate. We are within reach of completing floor action on that bill. We ought to do that. If we fail, having come this close, what is the Senate going to look like? We have to complete action on appropriations bills one way or another before we can adjourn sine die. I hope we could finish floor action on this bill.

Think of all the time that has gone into the consideration of this bill in the committee. The chairman and ranking member have held hearings. They have had a markup of this bill. They have worked hard over a period of many months. They have heard witnesses. All of this ought not to be for naught.

I hope Senators will agree. I had hoped the distinguished majority leader would be on the Senate floor so that I could urge him to propound this request. We are only 11 minutes away from 6. Now, a unanimous consent request entered into at this point will prevail over any previous unanimous consent request dealing with that same matter. So I have the floor. I know what my rights are, and I know what my duties are, also, as the ranking member of the Appropriations Committee.

May I ask the Chair, am I wrong in anything I have said? Am I correct?

The PRESIDING OFFICER. The Senator has the floor.

Mr. BYRD. Yes. And am I correct that a unanimous consent request agreed to at this moment to extend the hour of 6, which was in a previous request, would be the prevailing motion?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I thank the Chair.

Mr. DURBIN. Will the Senator yield for another question?

Mr. BYRD. Madam President, I yield for a question without giving up the floor.

Mr. DURBIN. Through the Presiding Officer, I would like to ask the Senator from West Virginia, could you not make part of your unanimous consent request an agreement that the pending amendments will be considered in a timely fashion?

Mr. BYRD. That would be part.

Mr. DURBIN. So there is no effort to extend this beyond a reasonable period, but an effort to complete this bill for our veterans, for the Veterans Administration, before we begin the 30-hour debate. Could you not include that in your unanimous consent request?

Mr. BYRD. Yes, indeed.

So, Madam President, I really hesitate to make this request. I had hoped the majority leader would be in the Chamber because he is the person to be recognized at 6 o'clock, under the previous order. I don't want to appear to be discourteous. That is not my intention.

Why do you think I am doing this? I am the ranking member of the Senate Appropriations Committee. In the 7 years, I believe it was, that I was chairman of the Appropriations Committee, we never had—I don't think we ever had—I think we finished all 13 appropriations bills every year. We could finish another one. I know Senator STEVENS has worked hard. I asked Senator STEVENS during the last rollcall if he was agreeable to extending this time, since we are so close. He indicated he would work to do that.

Madam President, I ask unanimous consent that——

The PRESIDING OFFICER. The Presiding Officer apologizes to the Senator from West Virginia for being temporarily distracted.

Mr. BYRD. I didn't understand the Chair.

The PRESIDING OFFICER. The Presiding Officer apologizes to the Senator from West Virginia for being temporarily distracted.

Mr. BYRD. I thank the distinguished Presiding Officer.

I am trying to avoid appearing to intrude on the majority leader's previous request and his time. I don't want to appear to be discourteous. I want to make the request when the majority leader is here.

The PRESIDENT pro tempore. The Senator from West Virginia.

Mr. BYRD. I ask unanimous consent that I be permitted to make a unanimous consent request and that, if it is agreed to—or whether or not it is agreed to, that I be recognized for another unanimous consent request, with the understanding that in any event I will be recognized 1 minute before 6 p.m. today to make such request.

Mr. BOND. I object on behalf of the leadership, Mr. President, and I seek recognition.

Mr. BYRD. Mr. President, I don't lose the floor by virtue of having made a unanimous consent request, even though it is objected to. I don't lose the floor.

The PRESIDENT pro tempore. The Senator does not lose the floor by making a unanimous consent request.

Mr. SARBANES. Will the Senator from West Virginia yield for a question, reserving his right to the floor?

Mr. BYRD. I yield to the distinguished Senator from Maryland with the understanding I do not lose my right to the floor, and I yield for a question only.

Mr. SARBANES. If I could have the attention of the Senator from Missouri as I pose this question? Would the Senator entertain a unanimous consent request that allowed the amendments that are lined up here to be offered and to be accepted? I understand they are all going to be taken by voice.

Mr. BYRD. Mr. President, I don't yield the floor for that purpose.

Mr. SARBANES. I am not asking. I am just inquiring of the Senator's view of that.

Mr. BYRD. Mr. President, I ask unanimous consent that the seven amendments at the desk, to which the distinguished Senator from Missouri alluded, be considered agreed to, the motion to reconsider be laid on the table, and that the Senate immediately proceed to the further consideration of the VA-HUD appropriations bill with the understanding that time on that bill would end no later than 8 o'clock—or would end at 8 o'clock this evening, and that there would be a vote on the VA-HUD bill.

The PRESIDENT pro tempore. Is there objection to the request?

Mr. BOND. On behalf of the leadership, I object.

Mr. BYRD. Senators will understand I used to propound these requests without their being in writing. I am carefully trying to approach this, so I will start over.

Mr. President, I ask unanimous consent that the seven amendments that have been referred to by the distinguished Senator from Missouri, Mr. BOND, and are at the desk, that have been cleared, be considered agreed to and adopted to the bill. I further ask that the time originally set for recognition of the majority leader, at 1 minute until 6, be delayed 2 hours, that in the meantime the Senate consider action and complete action on the VA-HUD appropriations bill, and that the motions to reconsider be laid on the table.

The PRESIDENT pro tempore. Is there objection?

Mr. BOND. On behalf of the leadership, I object.

The PRESIDENT pro tempore. Objection is heard.

The Senator from Missouri.

AMENDMENTS NOS. 2151, 2180, 2181, 2182, 2183, 2184, 2185, 2186 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, we do have these six measures—seven—eight measures, now, at the desk, that I propounded? We have one from Senator MURKOWSKI on pioneer homes in the State of Alaska; we have one from Senators DORGAN, ROCKEFELLER, and LANDRIEU on access to primary health care for veterans in rural areas; we have one from Senator SNOWE—Senator SARBANES, Senators COLLINS, BYRD, SANTORUM, and others, a sense of the Senate with respect to section 8 vouchers; an amendment by Senator CLINTON and others relating to the Corporation for National Service volunteers; another from Senator LANDRIEU with respect to the States' deduction for administrative expenses in the Housing and Community Development Act; an amendment by Senator LEVIN and others relating to Federal water pollution control; a sense-of-the-Senate amendment by Senator BOXER about human dosing studies of pesticides.

I ask unanimous consent that the aforementioned amendments be sent to the desk, the titles read, that they be approved, and that a motion to reconsider be laid upon the table.

The PRESIDENT pro tempore. Is there objection?

Ms. MIKULSKI. Mr. President, I have no objection except I am sorry we can't finish this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments were agreed to, as follows:

AMENDMENT NO. 2151 TO AMENDMENT NO. 2150

(Purpose: To increase the amount of funds that may be used by States for technical assistance and administrative costs under the community development block grant program)

On page 125, between lines 7 and 8, insert the following:

SEC. 418. Section 106(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)) is amended—

(1) in paragraph (3)(A), by striking "shall not exceed 2 percent" and inserting "shall not, subject to paragraph (6), exceed 3 percent";

(2) in paragraph (5), by striking "not to exceed 1 percent" and inserting "subject to paragraph (6), not to exceed 3 percent";

(3) by redesignating the second paragraph (5) and paragraph (6) as paragraphs (7) and (8), respectively; and

(4) by inserting after paragraph (5) the following:

"(6) Of the amounts received under paragraph (1), the State may deduct not more than an aggregate total of 3 percent of such amounts for—

"(A) administrative expenses under paragraph (3)(A); and

"(B) technical assistance under paragraph (5).".

AMENDMENT NO. 2180 TO AMENDMENT NO. 2150

(Purpose: To require HUD to make any changes to the operating fund formula by negotiated rulemaking)

On page 86, after line 11, insert the following new section:

SEC. 226. The Secretary of Housing and Urban Development shall conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 31, 2004.

AMENDMENT NO. 2181 TO AMENDMENT NO. 2150

(Purpose: To provide for the treatment of the Pioneer Homes in Alaska as a State home for veterans)

At the end of title I, add the following:

SEC. 116. (a) TREATMENT OF PIONEER HOMES IN ALASKA AS STATE HOME FOR VETERANS.—The Secretary of Veterans Affairs may—

(1) treat the Pioneer Homes in the State of Alaska collectively as a single State home for veterans for purposes of section 1741 of title 38, United States Code; and

(2) make per diem payments to the State of Alaska for care provided to veterans in the Pioneer Homes in accordance with the provisions of that section.

(b) TREATMENT NOTWITHSTANDING NON-VETERAN RESIDENCY.—The Secretary shall treat the Pioneer Homes as a State home under subsection (a) notwithstanding the residency of non-veterans in one or more of the Pioneer Homes.

(c) PIONEER HOMES DEFINED.—In this section, the term "Pioneer Homes" means the six regional homes in the State of Alaska known as Pioneer Homes, which are located in the following:

(1) Anchorage, Alaska.

(2) Fairbanks, Alaska.

(3) Juneau, Alaska.

(4) Ketchikan, Alaska.

(5) Palmer, Alaska.

(6) Sitka, Alaska.

AMENDMENT NO. 2182 TO AMENDMENT NO. 2150

(Purpose: To express the sense of the Senate on the access to primary health care of veterans living in rural and highly rural areas)

At the end of title I, add the following:

SEC. 116. (a) FINDINGS ON ACCESS TO PRIMARY HEALTH CARE OF VETERANS IN RURAL AREAS.—The Senate makes the following findings:

(1) The Secretary of Veterans Affairs has appointed a commission, called the Capital Asset Realignment for Enhanced Services (CARES) Commission, and directed it to make specific recommendations regarding the realignment and allocation of capital assets necessary to meet the demand for veterans health care services over the next 20 years.

(2) The Department of Veterans Affairs accessibility standard for primary health care provides that at least 70 percent of the veterans enrolled in each of the regional "markets" of the Department should live within a specified driving time of a Department primary care facility. That driving time is 30 minutes for veterans living in urban and rural areas and 60 minutes for veterans living in highly rural areas.

(3) The Draft National CARES Plan issued by the Under Secretary for Health would place veterans in 18 rural and highly rural regional markets outside the Department accessibility standard for primary health care until at least fiscal year 2022, which means that thousands of veterans will have to continuing traveling up to 3-4 hours each way to visit a Department primary care facility.

(4) The 18 rural and highly rural markets that will remain outside the Department accessibility standard for primary health care comprise all or parts of Arkansas, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Washington, and West Virginia.

(5) Health care facilities for veterans are disproportionately needed in rural and highly rural areas because the residents of such areas are generally older, poorer, and sicker than their urban counterparts.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) the CARES Commission should give as much attention to solving the special needs of veterans who live in rural areas as it does to providing for the health care needs of veterans living in more highly populated areas;

(2) the CARES Commission should reject the portions of the Draft National CARES Plan that would prevent any regional market of the Department from complying with the Department accessibility standard for primary health care, which provides that at least 70 percent of the veterans residing in each market be within specified driving times of a Department primary care facility; and

(3) the CARES Commission should recommend to the Secretary the investments and initiatives that are necessary to achieve the Department accessibility standard for primary health care in each of the rural and highly rural health care markets of the Department.

AMENDMENT NO. 2183 TO AMENDMENT NO. 2150

(Purpose: To express the sense of the Senate that housing vouchers are a critical resource and that the Department of Housing and Urban Development should ensure that all vouchers can be used by low-income families)

On page 125, between lines 7 and 8, insert the following:

SEC. 4 . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) 30 percent of American families have housing affordability problems, with 14,300,000 families paying more than half of their income for housing costs, and 17,300,000 families paying 30 to 50 percent of their income towards housing costs;

(2) 9,300,000 American families live in housing that is overcrowded or distressed;

(3) 3,500,000 households in the United States will experience homelessness at some point this year, including 1,350,000 children;

(4) the number of working families who are unable to afford adequate housing is increasing, as the gap between wages and housing costs grows;

(5) there is no county or metropolitan area in the country where a minimum wage earner can afford to rent a modest 2-bedroom apartment, and on average, a family must earn over $15 an hour to afford modest rental housing, which is almost 3 times the minimum wage;

(6) section 8 housing vouchers help approximately 2,000,000 families with children, senior citizens, and disabled individuals afford a safe and decent place to live;

(7) utilization of vouchers is at a high of 96 percent, and is on course to rise to 97 percent in fiscal year 2004, according to data provided by the Department of Housing and Urban Development;

(8) the average cost per voucher has also steadily increased from just over $6400 in August of 2002, to $6,756 in April, 2003, due largely to rising rents in the private market, and the Congressional Budget Office estimates that the cost per voucher in fiscal year 2004 will be $7,028, $560 more per voucher than the estimate contained in the fiscal year 2004 budget request; and

(9) the congressionally appointed, bipartisan Millennial Housing Commission found that housing vouchers are "the linchpin of a national housing policy providing very low-income renters access to privately-owned housing stock".

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) housing vouchers are a critical resource in ensuring that families in America can afford safe, decent, and adequate housing;

(2) public housing agencies must retain the ability to use 100 percent of their authorized vouchers to help house low-income families; and

(3) the Senate expects the Department of Housing and Urban Development to take all necessary actions to encourage full utilization of vouchers, and to use all legally available resources as needed to support full funding for housing vouchers in fiscal year 2004, so that every voucher can be used by a family in need.

AMENDMENT NO. 2184 TO AMENDMENT NO. 2150

(Purpose: To provide VISTA volunteers the option of receiving a national service educational award)

On page 92, line 22, insert ": *Provided further*, That the Corporation shall offer any individual selected after October 31, 2002, for initial enrollment or reenrollment as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) the option of receiving a national service educational award under subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.)" after "programs".

AMENDMENT NO. 2185 TO AMENDMENT NO. 2150

(Purpose: To authorize appropriations for sewer overflow control grants.

On page 125, between lines 7 and 8, insert the following:

SEC. 4 . SEWER OVERFLOW CONTROL GRANTS.

Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) in subsection (f), by striking "2002 and 2003" and inserting "2005 and 2006";

(2) in subsection (g)(1)—

(A) in the paragraph heading, by striking "2002" and inserting "2005"; and

(B) by striking "2002" and inserting "2005";

(3) in subsection (g)(2)—

(A) in the paragraph heading, by striking "2003" and inserting "2006"; and

(B) by striking "2003" and inserting "2006"; and

(4) in subsection (i), by striking "2003" and inserting "2006".

AMENDMENT NO. 2186 TO AMENDMENT NO. 2150

It is the sense of the Senate that human dosing studies a pesticides raises ethical and health questions.

AMENDMENT NO. 2183

Ms. COLLINS. Mr. President, I rise today to speak on behalf of a Sense of the Senate amendment that Senator SARBANES and I are offering with respect to the section 8 housing voucher program. This amendment states that section 8 housing vouchers are a critical housing resource, that public housing authorities must be able to use all of their authorized vouchers, and that the Senate expects the Department of Housing and Urban Development to take all necessary steps to encourage full voucher utilization.

Our Nation is facing a critical shortage of affordable housing. A recent study by the Joint Center on Housing Studies at Harvard University indicates that approximately 30 percent of American families have housing affordability problems, with as many as 14.3 million families paying more than half of their income for housing costs and 17.3 million families paying 30 to 50 percent of their income toward housing costs. The same study indicates that 9.3 million families live in housing that is overcrowded or distressed, and 3.5 million households in the United States will experience homelessness at some point this year. That last number includes more than 1.3 million children.

As the gap between wages and housing costs grows, the number of working families who are unable to afford adequate housing continues to increase. On average, a family must earn over $15 per hour to afford modest rental housing, and in many cases, rising costs have led to families simply being priced out of the housing market. In my home state of Maine, the City of Portland offers a prime example of this phenomenon. The National Housing Conference reports that, in 1999, the median home price in Portland was $12,500. By 2001, that median price had increased to $158,000. During this period, Fair Market Rent for a two-bedroom apartment jumped from $641 to $817 per month, and this trend of increasing disparity between wages and housing costs shows little sign of abating.

Section 8 housing vouchers help approximately 2 million families with children, senior citizens, and disabled individuals afford a safe and decent place to live. The congressionally appointed, bipartisan Millennial Housing Commission found that housing vouchers are "the linchpin of a national housing policy providing very low-income renters access to privately owned housing stock. Currently, utilization of vouchers is at a high of 96 percent, and is on course to rise to 97 percent in fiscal year 2004, according to data provided by HUD. The average cost per voucher has also steadily increased from just over $6,400 in August of 2002, to $6,756 in April, 2003, and the Congressional Budget Office estimates that the cost per voucher in FY 2004 will be $7,028.

Our amendment states that it is the sense of the Senate that: 1. housing voucher are a critical resource in ensuring that families in America can afford safe, decent, and adequate housing; 2. public housing agencies must retain the ability to use 100 percent of their authorized vouchers to help house low-income families; and 3. the Senate expects the Department of Housing and Urban Development to take all necessary actions to encourage full utilization of vouchers, and to use all legally available resources as needed to support full funding for housing vouchers in fiscal year 2004, so that every voucher can be used by a family in need.

To many families, older, and disabled individuals, section 8 housing vouchers are the difference between having a safe, decent place to live and homelessness. it should be the sense of the Senate that HUD use all legally available funds to support every authorized voucher, and I encourage my colleagues to support this amendment.

Mrs. CLINTON. Mr. President, today I rise in support of Senator SARBANE's resolution, which expressed the sense of the Senate that Section 8 housing vouchers are a critical resource and that the Department of Housing and Urban Development should ensure that all vouchers can be used by low-income families. I have joined many of my colleagues as an original cosponsor of this amendment and would like to thank both Senator BOND and Senator MIKULSKI for including it in the pending VA/HUD Appropriations bill. I would like to commend the Senators for their commitment to balancing the competing housing priorities we face given the constraints they were working under. The Senate provisions are a big improvement over the House bill and would greatly reduce the chances of cuts to this program.

Earlier this year, I joined my colleagues in sending a letter to Secretary Martinez expressing our reservations and concerns about the President's proposal to block grant this critical program. Experience with block grants tells us that this plan could have actually undermined the program and reduced the number of families being served, so I was pleased that both the House and the Senate Committee rejected it.

The fact is the gap between wages and housing costs is growing and is pushing affordable housing beyond the reach of an increasing number of working families. On average, a family in this country must earn $15.21 an hour to afford a modest two-bedroom apartment, which is almost three times the minimum wage. In my home State of New York, a minimum wage worker would have to work 147 hours a week to afford a two-bedroom apartment at fair market rent. Section 8 vouchers make housing affordable and are making a real difference in the lives of approximately 2 million elderly and disabled individuals as well as families with children across the Nation. We should expand the program so that more families can receive assistance they so desperately need, but if we cannot expand it we should preserve it to ensure that families receiving vouchers can continue to depend on the support they have been promised.

New York's housing crisis is particularly alarming. In my State more than 500,000 renter households, roughly one-fourth of all renters, continue to pay more than half of their income in rent. These rents impose enormous pressures on them and add on to the financial burdens they already face. Many severely disadvantaged households find themselves unable to pay rent and meet their other basic needs. Some are forced to live on the street or in shelters. More than 38,000 homeless people sleep in New York City's shelter system each night, almost double the number of just 5 years ago and the largest annual increase since the Great Depression. The largest and fastest-growing segment of this homeless population is families with children. Section 8 housing vouchers provide a lifeline that helps these individuals make ends meet. We must help America afford safe and decent housing so that parents are not forced to choose between finding the money to pay for rent and putting food on the table.

The Housing Choice Voucher program is more than just a housing program. We know that affordable housing helps families increase their employability, earnings, educational outcomes, and children's well being.

In New York, Section 8 housing vouchers are assisting approximately 200,000 seniors, people with disabilities, and families with children. Under the House VA-HUD appropriations bill, New York could lose 6,020 vouchers, of which approximately 1,840 would go to working families, 1,020 to elderly households, 1,320 to disabled households, and 1,840 to other households. If the final VA-HUD conference report retains the Senate provisions referenced in the Sense of the Senate—directing HUD to fund these vouchers—then none of these vouchers would be lost and all of these families would be helped.

As this bill moves forward during conference, I urge my colleagues to support this language. It sends a message to HUD that America is depending on housing vouchers to ensure that all of our families can afford a safe, decent and adequate place to live.

AMENDMENT NO. 2184

Mr. REED. Mr. President, I rise as a cosponsor of Senator CLINTON's amendment relating to VISTA.

Since its creation in 1965, as part of the War on Poverty, over 120,000 Americans have performed national service as VISTA volunteers.

VISTA, Volunteers In Service To America, members serve in hundreds of nonprofit organizations and public agencies across the country, helping to find solutions to the problems caused by urban and rural poverty. VISTA volunteers fight illiteracy, improve health services, increase housing opportunities, bridge the digital divide, create businesses, and so much more.

Unfortunately, VISTA volunteers have been shortchanged for more than a year.

Since the creation of education awards in 1994, VISTA volunteers, upon completion of their service, have been eligible to receive either a $4,725 education award or end-of-service stipend of $1,200. Education awards can be used to pay education costs at qualified institutions of higher education or to repay qualified student loans.

However, the Corporation for National and Community Service has refused to offer education awards to last year's and this year's volunteers.

This summer, I was alerted to this unfortunate change in policy by several Rhode Islanders.

Section 129(b) of the National and Community Service Trust Act of 1993 contains the following language:

> Reservation of Approved Positions—The Corporation shall ensure that each individual selected during a fiscal year for assignment as a VISTA Volunteer under title I of the Domestic Volunteer Service Act of 1973 . . . shall receive the national service educational award described in subtitle D if the individual satisfies the eligibility requirements for the award. Funds for approved national service positions required by this paragraph for a fiscal year shall be deducted from the total funding for approved national service positions to be available for distribution under subsectons (a) and (d) for that fiscal year.

Given this clear language in the statute, I wrote to the Corporation seeking its rationale for denying the opportunity for VISTA volunteers to elect education awards. In his response, the General Counsel for the Corporation argued that the Corporation, not this language, determines whether a VISTA volunteer is in an "approved national service position", and only if that is the case, is the volunteer entitled to the opportunity to elect to receive an education award. The General Counsel has ruled that all VISTA slots are not "approved national service positions." Moreover, the General Counsel states that the Corporation has the authority to modify program rules based on funding levels.

As a result, 3,200 volunteers in fiscal year 2003 have been denied the option of an education award that has been of great benefit to countless volunteers. In Rhode Island, this has affected nearly 20 VISTA volunteers at City Arts, AS220, Providence Public Library, Family Life Center, RI Training School, RI Free Clinic, Southside Community Land Trust, New Urban Arts, and RI Coalition for Domestic Violence.

In order to continue to attract high quality and talented individuals willing to serve as VISTA volunteers, the Clinton amendment requires the Corporation to offer individuals, selected after October 31, 2002, for initial enrollment or reenrollment as a VISTA volunteer the option of receiving a national service education award.

This is an important amendment as we look to revitalize service in our country after months of mishaps at the Corporation for National and Community Service, and I urge its passage.

AMENDMENT NO. 2183

Mr. SARBANES. Mr. President, I come to the floor today to offer an amendment to the VA/HUD appropriations bill to ensure that the U.S. Department of Housing and Urban Development does all it can to make sure that the section 8 housing voucher program is fully funded and fully operational. I want to thank the cosponsors of this amendment, including Senators REED, KENNEDY, ALLEN, SANTORUM, and BYRD. In addition, I want to thank Senator COLLINS, who is a cosponsor, and was instrumental in drafting and gaining support for the amendment.

This amendment expresses the sense of the Senate that housing vouchers, which now assist almost 2 million low-income families around the country, are a critical housing resource and should receive full funding. This amendment reaffirms our commitment to the voucher program by reiterating that public housing agencies can lease all of their authorized vouchers, and that HUD must use all available funds to support these needed vouchers.

Unfortunately, too many families in America find it difficult to afford decent and safe places to call home. In fact, the number of working families who are paying over half of their income in rent is steadily rising, as the gap between wages and housing costs continues to widen.

According to a recent study conducted by the National Low Income Housing Coalition, on average, a family in the United States must earn over $15 an hour to afford a modest apartment without forgoing other necessities. This is almost 3 times the minimum wage. In my home State of Maryland, this number is almost $19 an hour.

These numbers make clear that there is a pressing need for housing assistance. The section 8 housing voucher program is a market-based housing program that has had strong bipartisan support since the program's inception. The housing voucher program has long been regarded as a successful way to help families in need find and afford rental housing.

Housing vouchers enable low-income families to go out into the private rental market and rent housing of their choice subject to a cap on the rental amount. Housing vouchers help families move closer to employment and educational opportunities, while providing stability so that families can better retain employment and children can succeed in school. Every study that has looked at the impact of vouchers has found a positive effect on employment and earnings, in addition to finding that housing vouchers help make the transition from welfare to work a successful one.

It is evident that the voucher program is one that works, and this has been recognized by past administrations and by Members of Congress on both sides of the aisle. Unfortunately, this administration simply did not ask for adequate funding for this program. According to recent HUD data, the budget request submitted this year by the administration underfunds this critical program by nearly $1.25 billion.

This $1.25 billion shortfall could have easily been avoided had the Department used updated data for its budget estimate, and I thank Senators BOND and MIKULSKI for calling on HUD to do just that. Recent HUD data show that a greater percentage of vouchers are being used now than ever before. According to this data, utilization is at a high of 96 percent, and is expected to rise to 97 percent in fiscal year 2004. In addition, due to rising rents, the actual cost per voucher is much higher than estimated by the administration. As rents rise, HUD must seek adequate funding to meet the needs in ever-changing housing markets.

While the bill before us today does not contain enough newly appropriated funds for the voucher program, we have reason to believe that HUD has enough available funding to meet the needs in the program in fiscal year 2004. I appreciate the efforts of Senators BOND and MIKULSKI to address this issue in the bill by directing HUD to ensure that public housing agencies can continue to issue turnover vouchers, and by calling on HUD to request supplemental funds if necessary.

The amendment I am offering today, along with Senator COLLINS and others, is a companion to this important language. It expresses the sense of the Senate that we expect HUD to do all it can to ensure that housing agencies can lease up to their authorized level of vouchers. The ability to lease 100 percent of authorized vouchers is critical and we fought hard last year to make sure that this right was retained. This bill reiterates this right and directs HUD to make sure all vouchers, including turnover vouchers, can be used by low-income families. In addition, this amendment calls on HUD to live up to its obligations by using all legally available funds to renew housing vouchers. Without using this additional funding, the $1.25 billion shortfall could translate into over 100,000 families losing their voucher assistance and their homes.

The amendment we are offering sends a message to HUD that this would be unacceptable, and that we expect it to do everything possible to ensure that families with vouchers do not lose their housing assistance and that low-income families on waiting lists can gain access to vouchers. These vouchers are being used in every community across the country, providing not only housing, but economic opportunities to low-income families. I urge my colleagues to support this amendment which reaffirms our commitment to housing low-income people in this Nation.

AMENDMENT NO. 2184

Mrs. CLINTON. Mr. President, I rise to offer an amendment that would provide education awards to all volunteers who are part of the VISTA—Volunteers in Service to America—program, which is administered by the Corporation for National and Community Service.

Before I begin, I want to thank Senator BOND and Senator MIKULSKI for all the hard work they have done to support national and community service. They have been real champions of this program. I would also like to thank Senators SNOWE, KENNEDY, CHAFEE, HARKIN, REED, MURRAY, and DODD for co-sponsoring this amendment. This amendment that I rise to offer today is not a partisan amendment—I know that I have support on both sides of the aisle because the VISTA program has such deep, strong roots among many political leaders on both sides of the aisle.

The VISTA program was first envisioned by President Kennedy soon after the Peace Corps was created. And in 1965, as part of President Johnson's War on Poverty, President Kennedy's dream was realized.

VISTA, like Head Start and so many other lasting anti-poverty programs, was created to serve the needs of the poorest Americans. On December 12, 1964, just four months after the legislation was enacted, President and Lady Bird Johnson welcomed the first group of twenty VISTA volunteers with these remarks:

> Your pay will be low; the conditions of your labor often will be difficult. But you will have the satisfaction of leading a great national effort and you will have the ultimate reward which comes to those who serve their fellow man.

When my husband championed the effort to dramatically expand national service and create AmeriCorps, he wanted to preserve this important part of President Kennedy and President Johnson's legacy. The VISTA program was authorized within the National and Community Service Trust Act and today it is administered by the Corporation for National and Community Service.

A staple of the program since its inclusion within the National and Community Service Trust Act is that every member who signs up shall receive a choice—a scholarship toward their education or a cash stipend. In recent years, more than two-thirds of the individuals participating in the VISTA program have opted for the education scholarship instead of the cash stipend.

In November of 2002, the Corporation for National and Community Service began denying new volunteers the option of receiving education awards. They were provided cash stipends, regardless of their preference.

I began hearing from New Yorkers who were frustrated by the decision. They felt like they had been duped—given a bait and switch. Their morale dropped dramatically and some have resigned as a result. Many saw a fundamental problem of equity. Members were passed over for education and awards while those who enrolled just two months later received them. I'm sure we all agree that this is unfair.

New Yorkers described to me the difference that VISTA has made in their life and in the lives of people they serve and expressed their frustration about what has happened to the program. Two New York VISTA members serving in West Seneca, New York developed a pilot program for ex-offenders, and I want to tell you a little bit about the first graduate: "he got his driver's license and was getting things in order for this first apartment ever—he had been incarcerated for 28 years, since his youth. The joy on the guy's face was unbelievable and I was proud to know that two VISTA members had made it possible," said one of them.

Across the country, at least 1,766 volunteers who were affected by this decision, according to the Corporation for

National and Community Service. The organization established to support the VISTA program—called Friends of Vista—estimates the impact at 3,200.

I do not want to haggle over the numbers or argue about who's to blame. I simply want the problem addressed.

This amendment is straightforward and simple. It says that VISTA volunteers shall be provided the option of receiving an education award or a cash stipend, consistent with the law and current practice. It does not have a cost associated with it, and I urge my colleagues to support this amendment and rectify this injustice.

Mr. SARBANES. Mr. President, have the amendments been adopted?

Ms. MIKULSKI. Mr. President, what time——

Mr. SARBANES. Have the amendments been adopted?

The PRESIDENT pro tempore. The amendments were adopted by unanimous consent, as requested.

Ms. MIKULSKI. I move to reconsider and lay the motion on the table.

The motion to lay on the table was agreed to.

NSF EPSCOR PROGRAM

Mr. BURNS. Mr. President, I rise to speak on the National Science Foundation's (NSF) Experimental Program to Stimulate Competitive Research program or EPSCoR. First, I would like to thank the distinguished chair of the subcommittee for including $100 million in the EPSCoR program. This is a very important program in my State of Montana—and very important for the other 22 EPSCoR states that are trying to develop a competitive research program.

I would also like to mention that I have talked with the EPSCoR project director and other participants in the program from Montana and that they have told me that the infrastructure improvement components of the program is critical to all other efforts to develop research capacity and to compete successfully for other NSF funding. I would like it to be clear that the research infrastructure component is central to the program and that we have provided funds to ensure that states can be fully funded.

Mr. BOND. I, too, have heard about the importance of the research infrastructure program and I want to assure the Senator that we have sought to provide sufficient funding to cover existing commitments and states that are currently under review.

Mr. BURNS. That is very important. Finally, I would just add that I hope NSF will make every effort to include the EPSCoR states in its new cyberinfrastructure activities. NSF did a very fine job a few years ago in helping secure high-speed connections for research institutions in EPSCoR states. The new NSF cyberinfrastructure program is evolving and I hope that they will include states like Montana in these efforts since networking and advanced computing are essential to keeping our research universities connected to cutting-edge research and allow them to collaborate and use equipment at remote locations.

Mr. BOND. I understand the Senator's interest.

CARES INITIATIVE

Mr. SCHUMER. It is my understanding that the managers of this legislation have agreed to work to address the concerns shared by Sen. CLINTON, Sen. ENZI, myself and others through the inclusion of language in the conference report on the FY04 VA–HUD Appropriations Act. It is my further understanding that this language will specifically address our concerns regarding the CARES Initiative's impact on long-term care, domiciliary care and mental health care as well as the ability of veterans to attend and participate in hearings regarding facility closings and the special needs of rural veterans in the process. I also understand that the managers have agreed to send a letter to Secretary Principi on these matters. In addition I understand that I will join my colleagues and the managers in submitting a longer colloquy for the record with the specific language to be included.

Mr. BOND. That understanding is correct and I look forward to working with my colleagues on this issue.

Ms. MIKULSKI. I share that understanding as well and thank my colleagues.

NON-ELDERLY DISABLED INCREMENTAL VOUCHERS

Mr. DOMENICI. Mr. President, I rise to join my friend and colleague, Senator BOND, in a colloquy on the Department of Housing and Urban Development's (HUD) Section 8 program. Senator BOND, it is my understanding that the section of the bill allocating funding for the Section 8 Housing Certificate Fund includes language that allows HUD to target up to $36 million for incremental vouchers to non-elderly people with disabilities that are adversely affected by the designation of public and assisted housing as "elderly only." Is this correct?

Mr. BOND. The Senator is correct. The bill includes more than $461 million for the HUD Secretary to support a range of activities related to the Section 8 program including contract amendments and other measures to ensure that housing authorities are able to lease up to their authorized unit levels. In addition, the bill allows HUD to allocate up to $36 million for new vouchers tied to the designation and occupancy restrictions imposed in public and assisted housing developments for the elderly. This continues a policy established by Congress in 1996 to ensure alternative resources for non-elderly people with disabilities who are being excluded from certain public and assisted housing properties.

It is important to note that the bill requires the HUD Secretary to ensure that there are adequate funds to renew all existing rental vouchers before allocating additional funds for disability vouchers for Fiscal Year 2004. It is the expectation of both Senator Mikulski and myself that HUD will be able to make a mid-year assessment in Fiscal Year 2004 to determine if the amounts appropriated for voucher renewals and contract amendments exceed the expected requests from housing authorities for authorized voucher renewals. In our view, such an assessment can be made as part of the periodic measurements HUD routinely makes regarding the pace of voucher renewals. It should also be part of the requirement set forth in S. Rpt. 108–143 by the Appropriations Committee for development of a real-time data model to identify the actual use of vouchers.

Further, it is our view that every effort should be made to ensure that public housing designation plans for elderly-only housing are linked to the vouchers, should they become available in Fiscal Year 2004. I do not believe that HUD should be prevented from including these disability vouchers in its annual consolidated Notice of Funding Availability or SuperNOFA. This would allow the agency to allocate expeditiously these vouchers before the end of Fiscal Year 2004 to housing authorities that are able to target them effectively to non-elderly people with disabilities who have been adversely affected by the designation of public and assisted housing as elderly only.

Mr. DOMENICI. I thank the Senator from Missouri for his support on this important issue.

NSF ASTRONOMICAL RESEARCH

Mr. INOUYE. Mr. President, I rise to speak on the issue of funding for astronomy within the National Science Foundation. I would like to engage in a colloquy with Senators BOND and MIKULSKI, the distinguished chairman and ranking member of the Subcommittee on VA, HUD and Independent Agencies.

Mr. BOND. I would be happy to engage in such a discussion with the Senator from Hawaii, a member of the Committee and the ranking member on the Subcommittee on Defense.

Mr. INOUYE. The committee's bill recognizes that the budget request provided inadequate funding for NSF's astronomical facilities. In response, the committee bill provided additional funding for radio astronomy facilities, but the funding level in other areas remains inadequate. For example, the National Optical Astronomy Observatory would be reduced below last year's level.

Ms. MIKULSKI. The Senator is correct. We were unable to provide additional funds for the NOAO due to our tight 302(b) allocation.

Mr. INOUYE. One specific high priority area for investment in optical astronomy that will be needed to develop the next generation of ground-based telescopes is in the area of adaptive optics. This will enable a major advance in astronomy that will have far-reaching effects in other areas, including national security. The National Academy of Sciences Decadal Survey in Astronomy has identified this as the enabling breakthrough that will be needed for the Giant Segmented Mirror Telescope, the top priority for optical astronomy.

For fiscal year 2004, about $5 million in additional funding for adaptive optics development is needed in order to develop the future generation of ground based telescopes, particularly for the GSMT. Would the chairman and ranking member be willing to join me in examining this possibility during conference on this bill?

Mr. BOND. We face a very tough conference with the House with our tight allocation and other competing funding priority areas such as veterans' health care, affordable housing, and other science and space programs. Nevertheless, I will look at this issue in conference.

Mr. MIKULSKI. I would be happy to support the Senator.

Mr. INOUYE. I would like to raise another issue. The Advanced Technology Solar Telescope was identified as the highest priority solar astronomy initiative for the coming decade. Presently, the National Solar Observatory is leading a national effort to identify a site for this future telescope and to make the overall project a success by addressing the long lead technologies. Progress on these is essential in order for the Advanced Technology Solar Telescope to achieve operations by 2007–2008 when NASA's complimentary space mission, the Solar Dynamics Observer, is launched. The combination of these two observatories will provide an unprecedented synergy between space- and ground-based solar observations that we believe will be of great scientific benefit. Unfortunately, the budget request does not provide the necessary funding to accommodate these needs.

One specific area that has emerged as critical is to begin the preparatory work on the mirror for this telescope and to develop fully the fabrication and polishing techniques that will be necessary. Would the chairman and ranking member join me in helping to identify $2 million in additional funding during conference to address this issue?

Mr. BOND. Speaking for Senator MIKULSKI and myself, we would be happy to look at this issue in conference.

Mr. INOUYE. I thank both Senators for their leadership in helping the U.S. remain scientifically and technologically competitive by providing critical investments in research.

Mr. BYRD. Mr. President, I am very interested in the need to provide funding through the Environmental Protection Agency (EPA) for the National Research Council to study whether the use of coal combustion wastes, otherwise known as coal fly ash, poses health and/or safety threats to the public or to the environment when used for reclamation purposes in both active and abandoned coal mines.

For more than twenty years, the EPA has been grappling with the issue of whether and how the use of these power plant combustion wastes should be regulated and the manner in which they should be regulated, if at all, under the Resources Conservation and Recovery Act or the Surface Mining Control and Reclamation Act. With this amendment, the National Research Council will be able to provide much-needed research assistance to the EPA as the agency continues to consider the development of national regulations in this area.

This study serves an important purpose and will help answer important questions about the impact of disposing coal combustion wastes in coal mines. Further, this study would offer timely information to EPA policy makers as these experts continue to assess the need for regulations governing this practice.

In summary, there is a great need for this study. It could be funded within existing resources and under existing authorizations. I hope that my colleagues will be able to consider this important request during the VA/HUD conference. I thank them for their consideration of this issue.

Mr. BOND. I thank the Senator from West Virginia for his remarks, and I will be working to ensure that this important study will be included in the conference report.

Ms. MIKULSKI. I also thank the senior Senator from West Virginia, and I, too, will support his request for such a study during the conference negotiations. This is an important matter for the State of West Virginia and other coal-producing States.

NASA

Mr. COCHRAN. Mr. President, I commend the chairman and the subcommittee staff for their outstanding work in bringing this legislation to the Senate for consideration.

Mr. BOND. I thank the Senator for his kind comments.

Mr. COCHRAN. As the chairman knows, I have had a longstanding interest in NASA's research partnerships with universities and industry, particularly in the area of developing commercial applications in remote sensing. I am pleased that the committee report includes the following language, which directs NASA to continue these partnerships:

> The Committee also expects NASA to continue its work on long-term plans to partner with U.S. universities and industry in a variety of NASA-related science research, including research related to nanotechnology, information technology and remote sensing. These are all areas of investment that have a commercial application that will have an increasing impact on society, the economy, and quality of life.

Mr. BOND. I share and strongly support the Senator's view that NASA should continue to work with universities and industry on NASA-related scientific research.

Mr. COCHRAN. I appreciate the Senator's response and would make the point that, while the Committee is supportive of these partnerships, the committee report proposes to decrease funding for the Earth Science Applications by $15,000,000 below the President's Budget request. I am concerned that this reduction will not only limit NASA's ability to partner with universities in the future, but may put at risk several current and on-going NASA contracts with universities for remote sensing research.

I am particularly concerned that NASA has sufficient funds in fiscal year 2004 to continue, at the fiscal year 2003 contracted amounts, three important NASA-university partnerships—the Enterprise for Innovative Geospatial Solutions, the Institute for Advanced Education in Geospatial Sciences, and the GeoResources Institute. I would inquire whether the Chairman would agree that it is not the Committee's intention that this Bill's proposed reduction in the Earth Sciences account will be applied by NASA to reduce the fiscal year 2004 funding for these three partnerships.

Mr. BOND. I appreciate the Senator bringing his concerns to my attention. He has my assurance that the Committee's proposed reduction in the Earth Sciences account is not intended to reduce the funding for the three university partnership programs he has described. I also share your concerns that this reduction could curtail some of the valuable research which we expect and which needs to be accomplished, and therefore intend to work in conference to increase the funding for Earth Science Applications to prevent any unintended shortfalls to existing programs as well as to needed new investments. As NASA continues to implement full cost accounting, we will confront a number of funding issues which will need additional scrutiny as we seek to understand NASA's new requirements with regard to what costs apply to programs under full cost accounting.

Mr. COCHRAN. I appreciate the Senator's assurance and look forward to working with him to ensure Earth Science Applications and these important NASA-university partnerships will be fully funded in fiscal year 2004.

Mr. SANTORUM. Mr. President, today I rise to speak to an amendment to the VA–HUD, and Independent Agencies appropriations bill which increases the bill's funding for AmeriCorps up to the funding level requested by President Bush in this year's budget. The bill currently includes $340 million in a combined account for AmeriCorps grants, national and state grants, and education awards. My amendment would add $93 million to increase the total to $433 million, the President's budget request. The amendment is paid for by the necessary across-the-board reduction in the bill as a whole. As a part of the USA Freedom Corps initiative, President Bush is committed to providing resources for 75,000 AmeriCorps participants this coming year. Earlier this year, in July, the Senate supported an increase of $100 million in Fiscal Year 2003 funding. Unfortunately, the funding was not ultimately included in the supplemental spending bill to the detriment of many committed community service programs around the country and in Pennsylvania.

Major community service and volunteer programs funded by the Federal Government are authorized under two laws: the National and Community Service Act of 1990, NCSA, and the Domestic Volunteer Service Act of 1973, DVSA. The Corporation for National and Community Service, CNCS, an independent Federal agency, generally administers the programs authorized under these laws.

The NCSA and DVSA have not been reauthorized since 1993, with the passage of the National and Community Service Trust Act of 1993, P.L. 103–82). This measure established: No. 1, the AmeriCorps program; No. 2, CNCS to administer NCSA and DVSA programs; No. 3, a National Service Trust to fund educational awards to AmeriCorps and other community service participants; and No. 4, State commissions on national and community service to receive funding under NCSA. Although authorization for the appropriation of funds for NCSA and DVSA programs expired at the end of fiscal year 1996, funding for the programs has been maintained through annual appropriations legislation. Specifically, NCSA programs are funded through the Veterans Affairs, VA, and Housing and Urban Development, HUD, appropriations bill, while DVSA programs are funded through the Labor, Health and Human Services, HHS, and Education appropriations bill.

AmeriCorps funds are distributed through the following channels: State formula programs, State competitive programs, national grants, and set-asides for Indian tribes. One of the benefits eligible AmeriCorps participants receive is an education award of $4,725 at the end of their service term. As a result of accounting and management complications and reduced funding, the AmeriCorps program expects to fall short of funding the 50,000 available volunteer slots for 2003.

Significant progress continues to be made to improve and reform the AmeriCorps program. Under the leadership of former Senator Harris Wofford and some States, significant steps were taken to improve the management of the AmeriCorps program of the Corporation for National Service, CNS. Les Lenkowsky had a vision to continue that progress and a commitment to community service. I recognize the dedication and contributions of AmeriCorps participants. I also believe that more can be done to improve the effectiveness of AmeriCorps by expanding the opportunities for service and I have previously introduced legislation intended to further that effort. In August 2001, I introduced S. 1352, the AmeriCorps Reform and Charitable Expansion Act. The goal of this legislation was to expand service opportunities through the AmeriCorps program and better equip AmeriCorps volunteers to reach out and serve Americans in low-income communities. We must continue to focus our efforts on serving Americans in our society who are most in need of a helping hand. My bill would have enabled participants to focus their efforts on helping Americans who are often overlooked in our society and help bring about renewal in our low-income communities. The bill would have dramatically increased service opportunities in low-income communities through a voucher system, which would have encouraged AmeriCorps volunteers to choose locations predominantly serving low-income individuals. In addition to increasing the funding, I believe it is important to reauthorize the Corporation for National Service this Congress.

As a significant additional step, on June 18, 2003, Senator KIT BOND of Missouri introduced S. 1276, the Strengthen AmeriCorps Program Act. I cosponsored this bipartisan legislation, which allowed the CNCS to fund education award grants using "conservative estimates" of AmeriCorps volunteer awards. CNCS is expected to enroll nearly 50,000 volunteers in 2003. The bill also provides safeguards for the program by establishing a central reserve fund to guard the Corporation against overenrollment; requiring the Chief Executive Officer to certify that the National Service Trust Fund contains sufficient resources to meet education award liabilities; and requiring an independent audit of the corporation's funding formula. S. 1276 was passed unanimously by the Senate, with my strong support, and was subsequently passed by the House of Representatives the following day. Passage of this legislation was a positive step towards addressing the needs of the AmeriCorps program.

I am disappointed that additional AmeriCorps funds were not ultimately included in the supplemental this year. However, I am pleased that increased funding has been included in both the Senate and House fiscal year 2004 VA–HUD, and Independent Agencies appropriations bill. The House passed this legislation on July 21, and it contains $244 million for the aforementioned grants and education awards. President Bush requested $313.2 million for fiscal year 2004; the amount provided in fiscal year 2003 was $173.9 million.

Mr. President, I urge my colleagues to support this amendment to expand the number of AmeriCorps participants and fully fund the President's request. I also believe that Congress should refocus the program on poverty alleviation efforts, expanded service location options for participants, and placing a greater emphasis on serving charities and the needy communities they serve to enable an even more strategic contribution from this federally supported program for Americans in need.

Mr. BOND. Mr. President, I would like to thank the Senator from Pennsylvania, Mr. SANTORUM, for agreeing to withdraw his amendment to further increase funds for the AmeriCorps program. I look forward to working with the Senator from Pennsylvania in the effort in conference to fully fund the President's request for AmeriCorps.

Mr. NICKLES. Mr. President, today the Senate is considering H.R. 2861, the Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations bill for Fiscal Year 2004, as reported by the Senate Committee on Appropriations.

The pending bill provides $91.334 billion in total budget authority and $96.549 billion in total outlays for Fiscal Year 2004 and within the Subcommittee's 302(b) allocation. For discretionary spending the Senate bill is at the Subcommittee's 302(b) allocation for budget authority and below the allocation by $.018 billion or .02 percent in outlays. The Senate bill is $1.699 billion or 1.8 percent in BA and $.708 billion or .7 percent in outlays above the President's budget request.

The pending bill funds the programs of the Department of Veterans Affairs, the Department of Housing and Urban Development, the Environmental Protection Agency, Corporation for National and Community Service, National Aeronautics and Space Administration, National Science Foundation and several other agencies.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1584, VA–HUD APPROPRIATIONS, 2004.—SPENDING COMPARISONS—SENATE-REPORTED BILL

[Fiscal Year 2004, $ millions]

	General purpose[1]	Mandatory	Total
Senate-reported bill:[2]			
Budget authority	91,334	32,911	124,245
Outlays	96,549	32,685	129,234
Senate Committee allocation:			
Budget authority	91,334	32,911	124,245

S. 1584, VA–HUD APPROPRIATIONS, 2004.—SPENDING COMPARISONS—SENATE-REPORTED BILL—Continued

[Fiscal Year 2004, $ millions]

	General purpose [1]	Mandatory	Total
Outlays	96,567	32,685	129,252
2003 enacted:			
Budget authority	86,817	30,318	117,135
Outlays	93,061	29,859	122,920
President's request:			
Budget authority	89,635	32,911	122,546
Outlays	95,841	32,685	128,526
House-passed bill:			
Budget authority	90,033	32,482	122,515
Outlays	95,478	32,266	127,744
Senate-Reported Bill Compared To			
Senate 302(b) allocation:			
Budget authority	0	0	0
Outlays	–18	0	–18
2003 enacted:			
Budget authority	4,517	2,593	7,110
Outlays	3,488	2,826	6,314
President's request			
Budget authority	1,699	0	1,699
Outlays	708	0	708
House-passed bill:			
Budget authority	1,301	429	1,730
Outlays	1,071	419	1,490

[1] Adjusted for floor amendment striking contingent emergency designation.

[2] This bill contains $25 million in lost revenue in FY 2004 due to a provision that blocks pesticide fees.

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions.

Mr. SARBANES. Mr. President, I come to the floor today to voice my support for the HUD/VA fiscal year 2004 appropriations bill currently before us. This bill is a great improvement over the administration's budget which sought to terminate a number of important housing programs. Under the leadership of Senators BOND and MIKULSKI, the Appropriations Committee was able to restore cuts contained in the administration's budget.

I first want to underscore the importance of the housing programs funded under this bill. These programs meet a critical need in communities around this country. Thirty percent of American families have housing affordability problems, with over 14 million families paying more than half of their income for rent. Many working families are unable to afford housing costs and this problem is growing as housing costs rise.

The importance of housing programs is clear. Unfortunately, each year we must fight to ensure that these programs are adequately funded. While I support the overall bill that we are considering, it does not contain adequate funding to meet the needs of low-income people around this country. What this bill does, however, is improve upon the administration's budget request.

I thank Senators BOND and MIKULSKI for including language in this bill which will help to ensure that thousands of families do not lose their homes. Under the administration's budget, the section 8 housing voucher program, which assists almost 2 million families across the country, would be underfunded by over $1 billion.

Fortunately, we have reason to believe that HUD has funds from prior years to use on voucher renewals, and the bill before us directs HUD to use all legally available funds for this purpose. The bill contains important provisions that preserve a housing agency's right to lease up to its authorized level of vouchers, and to overlease in a given month where necessary to achieve full utilization. It is my hope that these provisions avert any problems that could be caused by the low level of appropriations for this program. However, I fully support language in the report directing HUD to seek additional funding through a supplemental if necessary.

The bill before us restores funding for a number of small, but important programs that the President's budget sought to terminate. This bill continues the Rural Housing and Economic Development program, a $25 million program to help address the unique housing needs in rural communities, and provides $25 million for brownfields development.

Fortunately, homeless programs in this bill are provided with $108 million more than in fiscal year 2003. Over 1 million children will experience homelessness at some point this year, and each extra dollar for homeless programs is clearly needed to ensure that no child has to live on the street.

While there are many positive aspects to this appropriations bill, the public housing program, which houses approximately 1.5 million families, is underfunded yet again. each year, the administration has cut the Public Housing Capital Fund, which is used for maintenance and repairs. There is already a backlog of over $20 billion in needed capital repairs, yet, the administration's budget, as well as this bill, cuts the Capital Fund by $69 million. Without adequate funding, this backlog will continue to grow, threatening the homes of 1.5 million American families and the Federal Government's substantial investment in this housing.

The Public Housing Operating Fund is level funded; however, even that level is not adequate. Under last year's appropriations, HUD was unable to provide housing authorities with 100 percent of their needed subsidies. In addition to these cuts, in the past few years, housing authorities have lost the ability to run youth programs and provide for safety patrols as a result of the termination of the Public Housing Drug Elimination Program.

Despite these cuts, public housing agencies, in general, provide decent and safe housing for millions of low-income Americans. However, there are some public housing developments that do not provide adequate housing and contribute to neighborhood blight and deterioration. These developments are being transformed through the HOPE VI program, which provides grants to demolish and rebuild the deteriorated housing, helping to revitalize communities. I can tell you that in Baltimore City, the HOPE VI program has been an integral part of our revitalization efforts and its effects are felt throughout the city. I commend Senators BOND and MIKULSKI for continuing to fund this important program in the face of the administration's efforts to terminate HOPE VI.

The appropriations bill before us also contains a number of changes to existing programs. I want to raise a concern about the adoption in this bill of language authorizing HUD to move forward with a proposal to allow for subprime FHA lending. I do not believe that HUD is prepared for such a program. FHA has been an important tool for creating first time homebuyers, particularly new minority homebuyers. However, in some areas, as the committee report recognizes, FHA has been misused so as to lead to neighborhood disinvestment. The potential for abuse is too large to allow HUD to move forward with this new product. I urge members of the committee to ask HUD to provide a detailed plan on how it would implement a subprime FHA product prior to empowering HUD to do so.

I also thank Senator BOND and Senator MIKULSKI for their strong and ongoing support of the Asset Control Area, ACA, program. This program was established by the appropriators with the goal of turning distressed neighborhoods with high foreclosure rates, low homeownership rates, and disinvestment into areas of hope and growth. HUD has not administered this program effectively, as the Senate report points out. The Congress gave HUD considerable flexibility to run this program and I strongly agree with the views expressed in the report that HUD has not used this flexibility to effectively work with the local governments and nonprofits to make this program useful. I agree with my colleagues that HUD ought to work with these groups to ensure that they possess the necessary tools to invest in and rehabilitate these communities.

Restoring neighborhoods that have fallen victim to disinvestment is important; however, it is more cost effective to prevent the disinvestment from happening in the first place. That is why we must do more to prevent FHA foreclosures in troubled neighborhoods. I applaud Senator MIKULSKI and Senator BOND for their continued efforts to find ways to stop the foreclosure and flipping problems that plague many neighborhoods. I support the requirement contained in the committee report that HUD explore ways to protect both these communities and FHA homebuyers from bad loans that lead to foreclosures. The idea that FHA homebuyers in these specific areas would have someone who is responsible for watching out for their interests could help reduce flipping, predatory lending, and other abusive practices that undermine a community's stability and I thank my colleagues for including this in the bill before us.

Again, I thank Senators BOND and MIKULSKI for ensuring that low-income families continue to have access to decent and safe housing and for helping to address some of the tough issues that affect many neighborhoods around the country—vacant homes, predatory lending, and revitalization efforts.

Ms. MIKULSKI. Mr. President, what time is it?

The PRESIDENT pro tempore. It is 5:58.

Ms. MIKULSKI. Mr. President, in the 2 minutes that are left I just want to thank my colleague for the spirited way he has tried to move this bill. We worked with energy. We had momentum. We had bipartisan support. With the 2 minutes left on this bill, I really must express my very keen disappointment that we were not allowed at least another hour or two to finish. I know the other side has the issues they want to raise on Federal judgeships, but this bill stands up for what America stands for—veterans, empowerment of communities, and housing. And for 2 hours, in a show of respect to them, we could finish this bill.

The PRESIDENT pro tempore. The hour of 6 o'clock having arrived, the majority leader is recognized.

JUDICIAL NOMINATIONS

The PRESIDENT pro tempore. The hour of 6 o'clock having arrived, the majority leader is recognized.

Mr. FRIST. Mr. President, tonight we embark upon an extraordinary session for the next 30 hours. Republicans and Democrats will debate the merits of three judicial nominees. We will be considering the meaning of our constitutional responsibility to advise and consent on nominations. We will discuss whether there is a need to enact filibuster reform so that nominations taken to the floor can get a vote.

At the end of this time, the Senate will either vote on the nominees or we will try to break the minority's filibusters through cloture votes. Our goal is very simple: It is an up-or-down vote on these nominees. People can vote them up or they can vote them down. Just give us a vote.

We hold this extraordinary session for truly extraordinary reasons. In the history of this Senate, through 107 Congresses, the filibuster was never used to block confirmation of judicial nominees enjoying majority support. When the Senate has refused to confirm a nominee brought to the floor, it has done so on an up-or-down vote. Permitting a vote was fair to the nominees and fair to the President who sent them to us. In theory, the filibuster has always been available as a tool to derail a nomination, but until this Congress it has not been successfully used.

On rare occasions, confirmation filibusters were attempted, but the Senate always thwarted them. Up until now, no judicial nominee has ever failed on a filibuster. For the past 200 years, no judicial nominee has ever failed on a filibuster.

This year, in this Congress, those norms have been shattered. A partisan filibuster destroyed the nomination of Miguel Estrada, an immigrant from Honduras. Mr. Estrada is a superb lawyer, a great American success story. He served with distinction in both the Clinton administration and the Bush administration. The American Bar Association gave him its highest rating. Senate confirmation by an ample majority was assured. But a filibuster blocked action and the Senate was denied the opportunity for an up-or-down vote.

The remedy for the filibuster is a cloture vote. Before filing a cloture motion on the Estrada nomination, we waited several weeks. During that time, the nomination was debated on the floor for many hours. On more than 20 occasions we asked unanimous consent for a time certain to vote. Every time we did, the minority objected. They obstructed a simple up-or-down vote. From their standpoint, Mr. Estrada would never get a vote, not in a week, not in a month, not in a month or two, and not even for the whole Congress.

When it became clear that consent was impossible and the filibuster would not voluntarily end, cloture was the only resource left. Until this Congress, the record number of cloture votes on a single judicial nomination was two. On the few occasions a filibuster had gotten that far, bipartisan majorities in both invoked cloture, shut it down, and immediately thereafter those nominees were confirmed. Not so for Miguel Estrada. Seven times—not two, seven times—we initiated cloture; seven times cloture failed. Each time more than a majority in this body voted to end the filibuster but never did we get 60 votes. The minority obstruction did prevail, but Mr. Estrada would never get an up-or-down vote. This body never gave Miguel Estrada an up-or-down vote.

Finally, Mr. Estrada asked the President to withdraw his nomination. Who could blame him? He left the field with dignity. Meanwhile, the Federal courts—indeed, I would argue, therefore, the American people—were denied the service of a brilliant intellect, and the Senate's confirmation process was tarnished with unfairness.

Sad to say, Miguel Estrada was not an isolated case. Filibusters have also been mounted against Priscilla Owen, William Pryor, and Charles Pickering. In each of these instances, a majority of the Senate will confirm, a majority will confirm, but we cannot get 60 votes for cloture to allow the vote. Under Senate rules, the Presiding Officer cannot put the question to a vote if any Senator holds the floor or seeks to speak. If debate does not end, we cannot vote. To conclude debate, we must secure cloture, but cloture requires 60 votes. If a minority determines to obstruct, they never permit the Chair to put the question, and they withhold the votes for cloture to stop the filibuster.

On Miguel Estrada, on Priscilla Owen, on William Pryor, and on Charles Pickering, the full Senate has been denied the right to vote on confirmation. And no amount of debate and no amount of time is sufficient so the opponents' obstruction thus far has prevailed.

This week, I fear yet two more nominees may fall victim to the filibuster. Carolyn Kuhl and Janice Rogers Brown are able and talented candidates for the Federal bench. Either could be confirmed if they were ever given a vote. Will Senators be able to take those votes or will disciplined obstruction prevail yet again? I would like to be proven wrong, but I am not optimistic.

We will hear in this debate over the next several hours that the Senate has confirmed over 168 Bush nominees, and only 4 have thus far been blocked. Some Senators will argue these numbers demonstrate fairness to the nominees overall and to the President. We hear again and again the Senate is not a rubber stamp.

I am unimpressed with that argument. It uses a scorecard of a sort to mask the real issues. Can Senators vote up or down on a nominee? Or will obstruction by filibuster deny them that right to vote? Will Senators be held accountable for their vote? Will all nominees brought to the floor be treated fairly and get a vote? Will we be denied our right to give advice and consent? If Senators wish to oppose a nominee, that is their right. They may vote against him or her if they wish. If they can command a majority, the nominee simply will not be confirmed. That is how things should be. But that simple logic seems no longer to apply. Because of the filibuster, the majority is allowed to vote only if the minority consents.

Filibustering judicial nominations breaks dangerous new ground. It is unprecedented. These filibusters are not business as usual. Obstructionists have eroded two centuries of Senate tradition. Those who obstruct have changed the ground rules by which the Senate votes on confirmations. Some contend the minority has no choice. These left-wing activists and special interests claim the minority must use every available tool to oppose even if it changes forever how the Senate does business. Only then, they say, can the separation of powers be vindicated.

But let's look to history because history shows us a very different and a better path. For 70 percent of the 20th century the same party controlled the

White House and the Senate. Franklin Roosevelt sent liberal nominees to a Senate dominated by Democrats. So did John Kennedy, Lyndon Johnson, and Jimmy Carter. Ronald Reagan sent conservative nominees to a Senate controlled by Republicans. The Senate confirmed most of those nominees and rejected some others. But nominations brought to the floor got a vote and never died due to a filibuster.

All during those times the Senate had vigorous debate, effective debate. They had vigorous and effective minorities who sometimes filibustered legislation but never filibustered judges. Was Senator Dirksen's minority derelict in some way in not using the filibuster against Kennedy's and Johnson's nominees? What about the minority that served with Senator Baker but did not filibuster Carter judges, the minority that served with Senator BYRD but did not filibuster Reagan judges, or the minority that served with Senator DOLE but did not obstruct Clinton judges? Because they did not filibuster judges, did those minorities abdicate their confirmation responsibilities? I think not.

But now a different tradition has been launched. It is the obstruction of judges by a minority. This obstruction sets a novel threshold for confirmation: Nominees who are singled out because they fail someone's ideological test or because they showed general promise must have 60 votes to break a filibuster. The Constitution says that a simple majority is enough to confirm, but somehow that majority is no longer sufficient. Confronted with a filibuster and disciplined obstruction, the majority cannot vote at all. They are being denied a simple up-or-down vote on those nominees.

Under the Constitution, the Senate has a confirmation veto; a majority can vote a nominee down but obstruction by filibuster is veto by a minority. Never did the framers envision that anti-democratic outcome.

The American people are going to learn a lot about cloture over the next 30 hours. Cloture has applied to nominations since 1949 when the rule was expanded to address every debatable question except for motions to proceed to rules changes. The inclusion of cloture was merely incidental to a broader reform. In 1949, the change was controversial. It was well debated but not a word in all of that debate in 1949 was about nominations. The omission is not surprising because nominations simply were not filibustered then.

For three decades thereafter many proposals surfaced to change the cloture rule, and in 1959, 1975, and 1979 major amendments were, in fact, adopted. In all those debates not a word was said about nominations.

Mr. GREGG. Will the majority yield for a parliamentary inquiry? Isn't the sign across the aisle in violation of rule XVII?

The PRESIDENT pro tempore. The Parliamentarian will make a report to the Chair.

The majority leader is recognized.

Mr. FRIST. Many proposals surfaced to change the cloture rule. Major amendments were adopted. In all those debates, not a word was mentioned about nominations. Why should the debate have focused there? Nominations were not filibustered.

What is happening now breaks sharply with Senate tradition in ways that are corrosive for this institution. To restore those traditions, I have proposed filibuster reform. Along with Senators ZELL MILLER and nine additional cosponsors, I introduced S. Res. 138 in May. Our proposal was heard, reported by the Rules Committee in June, and now awaits Senate action.

The Frist-Miller proposal will alter the way the Senate concludes debate on nominations. By progressively declining cloture requirements of 60 votes, then 57 votes, then 54 votes, then 51, and finally, with a simple majority of Senators present and voting, we can end the practice of filibustering nominations if the Senate has the will to do so.

Every effort to reform the cloture rule, whether successful or not, has been debated in its entirety. Frist-Miller is different. It reforms the cloture process only for nominations and leaves cloture for the remainder of Senate debate alone. We fix only what is broken.

Mr. GREGG. Mr. President, I am sorry to interfere, but that sign is clearly in violation of rule XVII and should be removed.

The PRESIDENT pro tempore. The Chair has asked for a review of that, and the Chair will report to the Senate when we get that report.

The majority leader is recognized.

Mr. FRIST. Mr. President, a nomination filibuster by a minority whenever it may coalesce is different from legislative filibusters. On legislation, there is a potential safety valve that a troubled measure may be offered elsewhere as a nongermane amendment or somehow be addressed by the House or in conference. No such possibility exists on a nomination. There is no safety valve on a nomination. Filibustering nominations is obstruction in its most potent and virulent form. Even if a majority of Senators stand ready to confirm, nomination filibusters are fatal.

Frist-Miller is a narrow remedy that addresses a real problem. It permits substantial debate but allows the full Senate to work its will. The Senate must halt the emerging and unwelcome practice of obstructing nominations. No change in the rules is needed if those who have filibustered will relent and permit the nominations to have a vote. If they do not, then amending the rules is imperative. We have sought consent for a time certain to vote on each of the nominees. Met with objection, we filed for cloture. Without either consent or cloture, the obstruction will continue and incessant demands for reform will grow louder.

These demands will include the exercise of the Senate's constitutional rulemaking power to amend rules or precedents to end filibusters on nominees.

Various proposals go far beyond the Frist-Miller filibuster reform. I would not support these efforts now but I reserve the right to support them later.

During these recent days, the majority has come under vocal criticism from our colleagues on the other side for scheduling this executive session tonight and these cloture votes. The debate is a waste of time, they contend, because the Senate has many urgent matters to address, and we are short on time to address them. Indeed, our agenda is crowded. But the question of how this Senate discharges its constitutional responsibility on nominations is among the most important issues we can discuss. It affects how we relate to two coordinate branches of government. It concerns whether Senate traditions will be upheld or discarded. It involves the meaning and future of the confirmation process. Such deliberations are plainly worth the Senate's time and the close attention of the American people.

In closing, by unanimous consent, time during these 30 hours has been equally divided between the two parties. This will allow for balanced arguments, good debate, a chance to focus on these issues without distraction. We have entered this consent agreement in good faith to foster a serious dialog on a serious subject. This means sticking to the subject and not undermining or trivializing this session by wasting time through meaningless quorum calls and other obstructionist tactics. The debate we launch tonight is fundamental to restoring fairness to our confirmation process and reaffirming two centuries of Senate tradition.

The majority is here, prepared to do business. We want to meet our constitutional responsibility to advise and consent. Whenever the opposition ceases to obstruct, we are ready to vote. What we ask for is to be able to vote, up or down. Just give us a vote.

The PRESIDENT pro tempore. The Chair will make a report on the suggestion of the Senator from New Hampshire. Rule XVII of the Rules for Regulation of the Senate wing of The United States Capitol and Senate Office Buildings provides that:

> Graphic displays in the Senate Chamber are limited to the following:
>
> Charts, photographs, or renderings:
>
> Size—No larger than 36 inches by 48 inches.
>
> Where—On an easel stand next to the Senator's desk or at the rear of the Chamber.
>
> When—Only at the time the Senator is engaged in debate.
>
> Number—No more than two may be displayed at a time.

This sign was on display prior to the time the Senator has been recognized. I would ask that the Senator be prepared to use his sign when he is recognized and the signs not be displayed until the Senator is recognized.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The majority leader still has the floor.

Mr. FRIST. Mr. President, once I run through these unanimous consent requests, I will yield the floor.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. President, I now ask unanimous consent that the Senate proceed to executive session for the consideration of Calendar No. 86, the nomination of Priscilla Richman Owen to be a United States Circuit Judge for the Fifth Circuit.

The PRESIDENT pro tempore. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object.

The PRESIDENT pro tempore. The Senator reserves the right to object.

Mr. BYRD. I shall not object, but I ask for this recognition for the purpose of asking the distinguished majority leader a question.

Before I do that, may I say to the distinguished majority leader that I have no intention to become involved in this game back and forth. And I do not say it is a game just indulged in by one side. I have nothing to do with it. I have had nothing to say in it thus far. And at the moment, I do not anticipate having anything to say.

My interest is this: I am the ranking member of the Appropriations Committee of the Senate. I have been on that Appropriations Committee longer than any Senator in history. I have been on it 45 years. I would like to see us get one more appropriations bill passed.

When I was chairman of the Appropriations Committee for 7 years, I do not believe there was a year in which we did not get all 13 regular appropriations bills passed. We have passed 10 appropriations bills already this year.

The distinguished chairman of the Appropriations Committee, Mr. STEVENS, who is the President pro tempore of the Senate, and who now presides, has worked hard and has worked with me, but he has done most of the work in getting those 10 appropriations bills passed. I discussed this matter with him during the vote just preceding the hour of 6 o'clock, and I indicated to him I would like to see us try to finish this appropriations bill, the VA-HUD appropriations bill. And he indicated to me—he is in the chair—he indicated to me he would be glad to work toward that.

So here we are. We have finished floor action on 10 of the 13 regular appropriations bills. Only three are left. Those three are VA-HUD; DC appropriations; and CJS, Commerce-Justice-State—three appropriations bills. We are almost finished on VA-HUD.

When I came to the floor, my interest was in trying to get that bill finished, making it 11 appropriations bills. So I came to the floor, and I asked the manager on this side, Senator MIKULSKI, if we could finish it, and how long it would take, in her judgment. She thought it would take perhaps 2 more hours. And I believe, in discussions with Senator BOND, it was also indicated that we might finish that bill in 2 hours.

Now, I hoped the majority leader would be in the Chamber prior to the hour of 6 o'clock. I was made aware of his request that he be recognized 2 minutes before 6—5:58 or some such. I was hoping that—and it was with considerable trepidation, certainly reluctance, that I sought to impose a unanimous consent request that would, for 2 hours, have delayed action on the then-pending unanimous consent—Senate request—the unanimous consent request. I get my tongue a little twisted at age 86. That is my problem.

But I waited, hoping the majority leader would come to the floor. I know the demands on him, and I understand that. But I hoped he would be here so that I could make this request prior to this, what I call a game that is going on.

Please forgive me if—I am interested in getting the appropriations bills passed. I am not interested in participating in this other matter at all—right now. I have some ideas. I do not thoroughly agree—I do not completely agree with the distinguished majority leader on his interpretation of the Constitution with respect to nominees, but that is for another time.

But I have taken the floor now in the hope that we might, on this one day after Veterans Day—and my mother died on Armistice Day, 1918. I was 1 year old back then, lacking a week or something.

We have men and women dying in Iraq now. We have veterans by the scores coming back to this country who are injured and who will carry for life the signs of their service in Iraq.

I wanted to ask the distinguished majority leader—and I did not want to interrupt his speech, but I want to ask him, with great respect, if he would be willing to let the Senate go, let's say, until 8 o'clock, and then renew the previous order, with the understanding that we finish action on the VA-HUD bill by 8 o'clock, that the time intervening be equally divided between Mr. BOND and Senator MIKULSKI, and that we enter the order to complete that bill at 8 o'clock.

That is all I am asking, that we go another hour and a half, complete that bill, which would make us have 11 bills finished as far as floor action is concerned, with only 2 remaining. Let's get that bill passed. That is important.

I was a participant in the filibuster against Abe Fortas. I know something about filibusters. And I just am not willing to enter into one personally right now. But I would like to get this appropriations bill finished.

Mr. FRIST. Mr. President, responding, through the Chair, there is nobody on the floor of the Senate now—and I do appreciate this many people being here to debate the issue of our judicial nominations and the process, the process that the distinguished Senator from West Virginia probably understands better than anybody; that is cloture and the history of cloture—nobody understands better the challenges to me as majority leader than the distinguished Senator from West Virginia on the scheduling of this body.

I know there are people questioning why we are working tonight, and even through the night. We tried to spend a full day this Monday on the floor of the Senate, which was not a Federal holiday—never has been a Federal holiday—but when I made it clear we were here to do appropriations, a specific appropriations bill, and then, yes, on Veterans Day had us here—and I know the distinguished Senator had wished we were not here on that day, but being here on Veterans Day, and talking about the Department of Defense authorization and military construction and preparing for the bill that we addressed today, we made it very clear we would be using this time from 6 o'clock tonight, a long time ago, weeks ago, to your side and my side—not weeks ago, probably last week—after we try to finish up our business.

I put a huge priority on appropriations, a huge priority. We are going to kill ourselves to finish all these bills. I pledge to you by the end of next week is my goal to fully address all of the appropriations bills because I respect the process, and I have tried to bring every bill out. And as of today, we have brought every single bill to the floor. And for various reasons—not pointing fingers too much to either side—we have not been able to finish several of them.

Thus, I am going to respectfully say that no, I am going to stick with the schedule because we have people here to talk about an issue that many believe equally important, some more important; that is, our responsibility to handle these judicial nominations responsibly, respectfully, and that is what people are here to debate.

Then I would be happy to discuss how we complete this appropriations process with you and with the distinguished Presiding Officer because I am going to need your help to finish these in an orderly way.

But for now, I think we need to progress with addressing another important issue that is the schedule I set out. I would ask your consideration for setting that schedule out and that we can figure out how to do these appropriations bills.

Mr. REID. Mr. President, reserving the right to object.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I say, through the Chair to the distinguished majority leader, we started at 6 o'clock, and he spoke for 22 minutes or something. We have not gone into executive session yet. I would ask consent that your time be counted in the first hour so that we do not get behind in the 30 hours.

Does the leader understand my request?

Mr. FRIST. I do. And then we are going to subtract the time from the questions.

Mr. REID. Yes, I understand.

Mr. FRIST. That is fine, my 22 minutes apply, or whatever the time was I was actually speaking, to our first-hour agreement.

I still have some unanimous consent requests.

Mr. REID. I certainly understand.

Mr. FRIST. But for the length of my speech, it would be fine to apply that time to the first hour since we will be splitting the hours.

The PRESIDENT pro tempore. Is there objection to the request?

Mr. BYRD. Mr. President, further reserving the right to object.

The PRESIDENT pro tempore. The Senator is recognized for a question.

Mr. BYRD. And I do not intend to object, Mr. President.

May I say to the distinguished majority leader, 4 million veterans receive health care through the veterans health care system funded by the VA-HUD bill. How should we explain to these veterans that the bill is being set aside?

Mr. FRIST. Mr. President, through the Chair, I have had the wonderful opportunity of working in veterans hospitals myself for the last—until I got to this body—for 15 years, every day operating, giving care to veterans in medicine. So I appreciate veterans hospitals. I worked in veterans hospitals. I have probably spent more time than anybody in this Chamber in veterans hospitals—from early in the morning through many nights, just as we are going tonight. I care about hospitals. We are going to address them.

What I would ask, in response, is if the Senator from West Virginia would agree to a 2-hour unanimous consent to finish this bill, VA-HUD, on Friday—on Friday—so we can answer your question. If we can do that, we will be able to do exactly what you want to accomplish, to finish that bill, and it allows me to keep a commitment to a packed Chamber right now where we can debate the issues that people are here to debate. And then, within 48 hours, we have accomplished my objective and your objective. Two hours, we will do it Friday, as soon as we finish the cloture votes?

Mr. BYRD. Will the Senator yield for me to respond?

Mr. FRIST. Yes, sir.

Mr. BYRD. Mr. President, I have long admired the distinguished Senator from Tennessee.

[Disturbance in the Galleries.]

Mr. FRIST. Thank you, sir.

Mr. BYRD. I do not say that facetiously.

The PRESIDENT pro tempore. The Gallery will be warned, no response from the Gallery is permitted in the Senate.

Mr. BYRD. Some people are serious when they say things. But I have admired the Senator as a great physician. He speaks of his long service to veterans. I speak of a long service to veterans—more than 51 years in this Congress. I was here when the Veterans Administration was created. About Friday—Friday——

Mr. FRIST. Yes, sir.

Mr. BYRD. I am the recipient of the Franklin Delano and Eleanor Roosevelt Award for Freedom from Fear. I will receive that award on Saturday. I am not in a position to drive up on Saturday morning and receive that award. My wife is invited also with me. She cannot go. So I have to go on Friday, and the train leaves at 1 o'clock. As far as I am personally concerned, I would be happy to come in and finish those 2 hours and get the—I believe there are four votes that are going to be scheduled on clotures that morning.

Well, I have cast more rollcall votes than any living Senator, any deceased Senator, any Senator in the history of this Republic, any other Senator. I have 16,627 or 8 or 9—somewhere along there.

I say all that to say this: I do not want to miss any rollcall votes on Saturday. I take great pride in my rollcall record extending over 45 years in the Senate. It is 98.7 percent. So I missed less than 2 percent of the votes.

Could we agree then—I do not want to put myself in the position of my own leaders, as I did not want to put myself in the position of the distinguished majority leader on the other side. I would like to be able to make the four votes on Friday, catch my train at 1 o'clock, and go up and receive this very prestigious award.

Could we work something out to that effect?

Mr. FRIST. Mr. President, what I would like to do, because it is going to affect everybody's schedule, is to address this. If we can go through the remainder of the unanimous consent request, then try to address it.

I just want to restate I would love to finish this bill, the appropriations bill on VA-HUD, and I would love to be able to work it out if we can on Friday.

The PRESIDENT pro tempore. Is there objection to the request?

The regular order is to report the nomination at this time. The clerk——

Mr. BYRD. No. I reserved the right to object. May I have another minute? I am not participating in this whatever you call it—marathon, talkathon, blame-athon, or whatever it is. That is not of my interest right now. I am interested in the appropriations bill. It can be passed in 2 hours or less. As far as I am concerned, we could pass it now, just have a rollcall vote on it, the VA-HUD, but that would depend upon the two managers.

I am not going to impose on the time of the Senate and the majority leader, but I ask the majority leader, would he please put the request in some form to finish this bill within the next hour, have a vote up or down within the next hour?

Mr. FRIST. Responding, once again through the Chair, I will not be making that request tonight. Tonight we are going to stay on the judicial nominees. But I would like to discuss with you and the managers of the bill, and the Presiding Officer, the chairman of the Appropriations Committee, how we can best resolve that as quickly as we possibly can.

Mr. BYRD. Thank you, Mr. President. I remove my reservation and thank the majority leader.

The PRESIDENT pro tempore. Did the majority leader submit a unanimous consent request?

Mr. REID. Yes, he did. He did.

The PRESIDENT pro tempore. Without objection, it is so ordered. The request is granted.

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read the nomination of Priscilla Richman Owen, of Texas, to be a United States Circuit Judge for the Fifth Circuit.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, I would inquire of the Democratic side if they would be prepared to grant a time limitation on this nomination of 2 hours?

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Thank you very much, Mr. President.

Through you to the distinguished majority leader, first of all, let me really say we could finish this bill quickly tonight. The decision has been made not to do that. We will be happy to come back Friday and cooperate with the majority. We could not agree to a time, but I think as to how we worked before, if we go to that bill Friday, within a very reasonable period of time we could finish it on Friday. But as far as a specific time agreement is concerned, it would be very difficult to do that. But I stand ready and willing to come back to this bill on Friday and finish it on Friday; that is, VA–HUD. It is too bad we could not do it tonight.

In direct response to the majority leader, we would not be in a position to grant a time on Priscilla Owen. We have already voted on this matter on at least two or three separate occasions, as I recall. So in response to the distinguished majority leader's request, we would not agree to a time agreement on Priscilla Owen of any duration.

CLOTURE MOTION

Mr. FRIST. Given the objection, I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

Cloture Motion

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit:

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

NOMINATION OF CAROLYN B. KUHL TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 169, the nomination of Carolyn B. Kuhl, to be a United States Circuit Judge for the Ninth Circuit.

The PRESIDENT pro tempore. The nomination will be stated.

The assistant legislative clerk read the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

Mr. FRIST. Mr. President, again I ask the other side if they would be prepared to set a time certain for an up-or-down vote on this nominee after whatever debate they may need.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, in an effort to understand what is going on here, everyone should understand, these requests require a simple majority vote, and it would be senseless to take a vote on this. That is why we did not object.

I would say with this nominee, Carolyn Kuhl, we have reviewed this in very deep detail and would not be in agreement at this time to set any time limit on the debate. I ask the distinguished majority leader to advise us when we finish this woman and the following nominee, if you would be good enough to tell us when you anticipate voting. We are waiving the request for the requirement of a quorum. So if the majority leader can give us some indication when he desires to vote on this, whether it is 12:01 on Friday morning or later in the day.

Mr. FRIST. Mr. President, in response, we plan on voting Friday morning at a reasonable hour to be defined. That means sometime after 8:30 Friday morning. I will be more specific.

Mr. REID. I appreciate that very much. I object.

The PRESIDENT pro tempore. Objection is heard.

CLOTURE MOTION

Mr. FRIST. I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

Cloture Motion

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 169, the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

NOMINATION OF JANICE R. BROWN, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 455, the nomination of Janice R. Brown, of California, to be a United States Circuit Judge for the District of Columbia Circuit.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. FRIST. Mr. President, once again, I ask if we would be able to limit the time for debate on this nominee to 8 hours or 10 hours.

Mr. REID. We object, Mr. President.

The PRESIDENT pro tempore. Objection is heard.

CLOTURE MOTION

Mr. FRIST. With that answer, Mr. President, I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

Cloture Motion

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 455, the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

Mr. FRIST. Mr. President, I now ask unanimous consent that the three live quorums required under rule XXII be waived en bloc.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, parliamentary inquiry: In terms of the time we used on our side, how much time, in terms of my initial speech, was used by this side?

The PRESIDENT pro tempore. The majority has 4 minutes 47 seconds. The minority has 11 minutes 22 seconds.

Mr. REID. If I can make an inquiry through the Chair, Mr. President, the unanimous consent request, as I have heard the ruling of the Chair, is not counted against anybody; is that the way it is?

The PRESIDENT pro tempore. The time to object or reserving the right to object has been charged to the side making such a reservation.

Mr. FRIST. Mr. President, I suggest the general agreement is to spend an hour, 30 minutes to a side, and if they are not using the time, it will be yielded back to the other side. I ask unanimous consent that I use 15 minutes, 15 minutes for Senator HATCH, and we go to the other side.

Mr. REID. And we would have an hour?

Mr. FRIST. You would have 30 minutes.

Mr. REID. I say to the distinguished majority leader, we have had no time agreement the first hour other than listening to me object.

The PRESIDENT pro tempore. Reserving the right to object and statements made under such objection or reservation has been charged against the side making that reservation.

Mr. REID. I understand. So the Chair has ruled that the statement by Senator BYRD ran against us; is that true?

The PRESIDENT pro tempore. That is correct.

Mr. REID. So the next half hour will be used by Senators FRIST and HATCH, and then we will use our half hour.

Mr. FRIST. Again, I think it is time for us to move forward. Conceptually, we are going to have an hour, 30 minutes either side. Say I used 15 minutes—it may be more—Senator HATCH will speak about 15 minutes, and 30 minutes will be to your side, and we will be going back and forth.

Mr. REID. Fine. My only concern is we have had Senators we have scheduled to speak to use our half hour. Some of them have been champing at the bit here. If they don't speak now, they lose their time, their day in the sun.

Mr. FRIST. I thought I had a pretty good 20-minute speech. I was ready to start, but because of questions directed to me, again, about scheduling—we get things well set and then because of questions—if we can just start now and do as I requested, have 15 minutes and you take 30 minutes, we will be able to get started.

Mr. REID. I am wondering, I ask if we could use the next 15 minutes so my people who have been here, Senators waiting could take the time. I would divide whatever by 3 until the time until 7 o'clock.

Mr. FRIST. Would you please repeat that?

Mr. REID. Then we can start fresh at 7 o'clock with you and Senator HATCH giving us your statements, and we will take the next half hour.

Mr. FRIST. Mr. President, you mean I have Senator HATCH speak?

Mr. REID. We would take approximately 4 minutes each until 7.

Mr. FRIST. No, Mr. President, Senator HATCH is going to follow me, and then we will go into going back and forth. Senator HATCH has also been waiting 30 minutes. If it hadn't been for these questions, we would have been done 15 or 20 minutes ago.

Mr. REID. I say through the Chair, I am trying to be peaceful and calm here. The Chair ruled we have 4 minutes left.

Mr. FRIST. Would the Chair clarify how much time we have available on either side?

The PRESIDENT pro tempore. The majority has 4 minutes 37 seconds. The minority has 10 minutes 47 seconds.

Mr. HATCH. I ask unanimous consent that immediately after the half hour taken by the Democrats, I be given an additional 11 minutes. I will take 4 right now.

Mr. SCHUMER. I could not hear the Senator from Utah.

Mr. REID. The Senator from Utah said we would go until 7 o'clock and then they would do the next half hour; is that right? Is that what you said?

The PRESIDENT pro tempore. Is there objection?

Mr. HATCH. No, I said I would take the 4 minutes now and then take the 11 minutes after you had half an hour. How is that?

Mr. REID. Out of their time, that is absolutely fine.

The PRESIDENT pro tempore. The Senator is recognized for 4 minutes.

Mr. HATCH. Mr. President, I think it is appropriate to have the chairman of the Judiciary Committee who has had to go through all this rigmarole to say a few words before we get into this debate. I know the distinguished majority leader wanted me to do so.

To be honest with you, Mr. President, just think about it. All we want to do is what the Senate has always done. Once a nominee comes to the calendar, that nominee deserves a vote up or down under the advise and consent clause which is clearly a majority vote.

Never in the history of this Congress have we had what has been happening over the last number of years caused by the Democrats on the other side.

We should be voting on judges tonight, not debating judges. Frankly, there is a vocal minority of Senators preventing us from doing our constitutional duty to vote on judicial nominees. The American people need to know this, and although some of these folks have been moaning and groaning on the other side that we are taking this time, I suggest to them that there is hardly anything more important in a President's life, whoever that President may be, than getting his or her judicial nominations through.

Frankly, it is extremely important because this involves one-third of the coequal branches of Government. We found a continual filibuster on a number of these nominees.

Let me say this. Democrats seem to be very fond of saying: We passed 168 and we only filibustered 4. The fact is, that raw number of 168 we have had to fight pretty hard to get as well. But we have. Never in the history of this country have we had four stopped. That is only part of it.

I can name at least 15 that I have had various Democrats tell me they are going to filibuster. Most of them are circuit court of appeals nominees for the very important circuit courts in this country, people who have the ABA imprimatur, people such as Miguel Estrada; Priscilla Owen, who broke through the glass ceiling for women; Bill Pryor—even though he is conservative, he has always upheld the law even when he disagreed with the law; Charles Pickering, unanimously confirmed to the district court in 1990 and treated like dirt in the Senate—a racial reconciling. Yet he has been treated just like dirt. Carolyn Kuhl—we are going to have her first cloture vote on Friday because they are going to filibuster. Janice Brown—they are filibustering her; Claude Allen, I am told they are going to filibuster Claude Allen. How about Terrence Boyle of the Fourth Circuit? It looks as if they are going to filibuster him. James Deavers is being held up. Bob Conrad is being held up.

Four Circuit Court of Appeals judges for the Sixth Circuit out of Michigan are being held up by our colleagues on the other side; two district court nominees, and I could name some others.

The fact is, for the first time in history, they are treating a President of the United States in a ridiculous, unconstitutional fashion and not allowing him to have an up-or-down vote on his nominees. If they can defeat these nominees, that is their right, but they should not be dragging their feet and making it very difficult for these nominees to come up.

I heard some of the comments about how important the appropriations process is. It is important, but I can tell you we have had foot dragging almost all year by our colleagues on the other side, and it is important, but there is nothing more important than making sure that our courts are well staffed with competent judges who are going to enforce the law for the benefit of the American citizens.

There is nothing more important than that. Frankly, it is the one legacy that any President can leave. When Bill Clinton was President, we helped him put through 377 judges, the second all-time record. I might add Ronald Reagan was the all-time record holder at 382, 5 more than President Clinton. President Reagan had 6 years of a Republican Senate to help him and President Clinton had only 2 years of a Democratic Senate, and he was treated abundantly fair.

There were 47 holdovers at the end. Contrast that to when Democrats controlled the committee and Bush 1 was President. There were 54 holdovers.

Mr. President, this is really wrong what they are doing. It has the potential of exploding this body. Frankly, we can't allow it to continue. It is time for the American people to understand this. I understand my time is up.

Mr. REID. Mr. President, I yield 2½ minutes to the Senator from New York, Mr. SCHUMER; 2½ minutes to the Senator from California, Mrs. FEINSTEIN; and 2½ minutes to the Senator from Wisconsin, Mr. FEINGOLD; in that order.

The PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, they say one picture says a thousand words; one sign will equal 30 hours of palaver. The bottom line is very simple, we have supported and confirmed 168 judges whom President Bush has sent us. We have blocked 4.

All the rhetoric, all the splitting of hairs, all the talking about angels on the head of a pin don't equal that. This debate will boomerang on my colleagues from the other side of the aisle because all the American people have to do is look at that sign and they say: Gee, you're right.

The bottom line is the President, the majority leader, and the chairman of the Judiciary Committee will not be content unless every single judge the President nominates is rubberstamped by this body. That is what they want. We all know it. We have been very careful and very judicious in whom we have opposed.

People who are getting life appointments should not be extremists, should not be out of the mainstream, should not be asked to roll back 30 or 60 years of jurisprudence, and the four we have blocked fall in that category.

The bottom line is very simple: If you want agreement, then read the Constitution and tell the President, in all due respect, to read the Constitution. It says advise and consent. Advise means consult. We get no consultation. Consent means the Senate does its own independent review. That is what we have done.

So I understand why early on this sign vexed my colleagues from the other side. The bottom line is simple: We have been reasonable; we have been careful; we have been moderate; we have been judicious. The other side and the President simply say my way or the highway. That will not stand.

The PRESIDENT pro tempore. The Senator's time has expired. The Senator from California is recognized 2½ minutes.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, I have served as a member of the Judiciary Committee since I came to the Senate. I take the job very seriously. I try to do my homework in looking at these judges. I very deeply believe that this election provided no mandate to skew the courts to the right. I deeply believe that judges should be in the mainstream of American legal thinking, that they should have the temperament and the wisdom and the intellect to represent us well on the highest courts of our land.

What I wanted to use my time for—and the 2½ minutes will not be enough to do it—is to indicate that during the time I have been on the Judiciary Committee how I have seen the rules and the procedures of the committee change. Those changes have not been good. They have served to divide the committee more. They begin with changing the American Bar Association's 50-year tradition of rating the qualifications of potential nominees before the President nominates them, to after the President nominates them. I would like to say why I think that is important.

There have been changes made in the so-called blue slip policy so that concerns Senators from a nominee's home State are no longer given any consideration whatsoever. There has been a reinterpretation of a longstanding committee rule, rule 4, prohibiting the majority from prematurely cutting off debate over a nominee in committee. There has been the elimination of the tradition of holding a hearing on only one controversial nominee for appellate vacancies at one time. There have been changes to committee practice——

The PRESIDENT pro tempore. The Senator's time has expired.

Mrs. FEINSTEIN. I hope in the next hour perhaps I might have more time. I yield the floor.

The PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I think we ought to be spending 30 hours on the manufacturing crisis in our country. Since January 31, we have lost 2.5 million manufacturing jobs and over 70,000 of them are from Wisconsin alone.

These jobs are more than numbers on a page. They are all too real. The thousands of Wisconsin residents who have petitioned their Government know this firsthand.

In their letters to me—and, Mr. President, I have with me over 2,000 letters that were sent recently to my home by manufacturers, not labor union members but manufacturers from the State of Wisconsin that are desperate about this problem. Thousands of people from all around Wisconsin, from places such as Sparta and Trempeleau and West Bend and Muskego, write that the first and foremost reason behind these lost jobs is our trade policy.

These letters say: Our elected officials say workers will benefit from this free trade policy and the free trade agreements that come with it, but the opposite has occurred. Our trade deficit is increasing at a pace of $1.5 billion per day. That is how many more products we are importing than we are making. As you can see, these trade agreements are not working to the benefit of U.S. workers.

These letters go on to talk about how manufacturing in America is dying a slow death. That is a much higher priority than spending 30 hours talking about four judicial nominations, and we should respond to the desperate situation that the American people are facing with manufacturing job loss.

I yield the floor.

The PRESIDENT pro tempore. Under the previous order, the next hour is equally divided between the two parties, 30 minutes to each side. Who yields time? The Senator from Utah.

Mr. HATCH. As I understand it, I have 11 minutes left; is that correct?

The PRESIDENT pro tempore. The Senator has a half hour.

Mr. HATCH. Mr. President, we should be voting on judges tonight. Instead we are debating judges tonight because a vocal minority of Senators is preventing us from doing our constitutional duty to vote on judicial nominees.

The American people need to know that. That is why we are here. If you stop and think about this sudden new set of arguments or at least arguments they have used for a long time, the Democratic leadership has been blocking all kinds of passage of bills that are America's priorities for the whole year.

Now they are complaining because we want to let the American people know how bad they have been about Federal judges, which, after all, is one of the most important things we do around here. Just think about it. The long overdue fiscal year 2003 appropriations bills were finally enacted on February 20, 2003. For the first time in history, there were filibusters to defeat the President's circuit court nominees, now up to six who are actually filibustered, and at least another nine whom, I have been told, they will filibuster. The sign they have is an absolute outright falsehood.

We needed legal reforms to stop lawsuit abuse against doctors, businesses, and industries that have been virtually banned by the tactics of the minority. Medical liability, class action reform, gun liability, and asbestos reform: they have all been subject to delays or filibuster by the minority.

Similar delays led to a record number of days spent on the budget resolution and the near record number of rollcall votes on amendments, many of which were virtually identical. The distinguished Senator from Alaska understands that as chairman of the Appropriations Committee.

The most innovative waste of time came on the Energy bill. After spending 22 days on the Energy bill last year, we spent 18 days on the Energy bill this year, only to pass the same version of the Energy bill that passed the Senate last year.

Bioshield legislation necessary to ensure proper vaccines in medicine to counter bioterrorism attacks has still not cleared.

The State Department reauthorization has been stalled by Democrats insisting upon unrelated poison pill amendments be voted on prior to passage. I could go on and on.

The fact is, there has been a steady slowdown, steady slow walk around here, ever since we became the majority.

Now, the issues we are highlighting tonight could not be more fundamental to our country, to democracy, to the rule of law: separation of powers. All are at stake in this ongoing debate. Among the constitutional Framers' conceptual breakthroughs was that the judicial branch would receive equal status to that of the executive and legislative branches. An independent judiciary is the thread that binds the country together and ensures law and order. It is important. It is indispensable to the survival of a civilized society.

If it had not been for the restraining force of an independent judicial branch, either the executive or the legislative branches would have usurped incredible power and destroyed the checks and balances that are at the very foundation of our constitutional form of government. So we all have a stake in this debate tonight, and it is my hope that our opponents across the aisle will act to restore the constitutionally required up-or-down vote for judicial nominees. Ultimately, through the ballot box, the people in my home State of Utah and across America will decide who nominates and who confirms judges.

Let me repeat that our Nation's founding document requires that every judicial nominee who reaches the Senate floor receive an up-or-down vote. It is a simple, clear, and fair fact that lies at the heart of this debate. Once they hit the floor, they have always gotten a vote.

Every one of President Clinton's judges who hit the floor got a vote up or down, and only 1 out of 377 was defeated. But a minority of the Senate is rigging the system by engaging in an unfair set of unprecedented filibusters which are the culmination of an outright assault on the independence of the Federal judiciary.

When our colleagues across the aisle controlled the Senate, we saw nominees with the full support of their home State Senators denied hearings and votes for months and months. We saw nominees stalled by demands for unpublished opinions and volumes of written questions. We saw this become more and more serious since the beginning of this year.

We have continued to see ideology used to threaten the independence of our Federal judiciary by essentially requiring nominees to announce their views on issues that may come before them as Federal judges, something that has not happened in the past. But that is what they are requiring of President Bush's nominees, at least some of them.

They treated Miguel Estrada like dirt, while they allowed John Roberts to go through. Roberts was also in the Solicitor General's office. They did not ask for the highly privileged confidential matters for Roberts, but they did for Miguel Estrada.

By the way, most all of these people have high ratings from their gold standard, the American Bar Association.

We have seen for the first time in American history true filibusters of judicial nominees which are preventing the Senate from exercising its constitutional right and duty of advice and consent. This is harmful to the Nation, it is harmful to the judiciary, and it is certainly harmful to our institution. It is harmful to the President. It is harmful to these people who are willing to put their names up and to do this.

Article II of the Constitution of the United States invests in the President alone the power to nominate judges. There is no room for interpretation. The words are explicit. Yet we have seen efforts to usurp the President's constitutional authority not by constitutional amendment but through various proposals on how nominations should be made and demands on who should be nominated that exceed any reasonable interpretation of consultation.

We have also seen the filibusters of judicial nominees that brought us here tonight and prevent us from exercising our constitutional obligation of an up-or-down vote.

This assault on the judiciary is not without victims. There is no question that it is harmful to the Federal judiciary. More than half of its existing vacancies are considered judicial emergencies. So it is harmful to the President. He is not being treated fairly compared to all Presidents before him. And it is harmful to the Senate, whose constitutional roles are turned on their heads. It is perhaps most harmful to the individual lives of the nominees who have been denied a simple up-or-down vote, which they have always gotten before when they have been brought to the floor on the Executive Calendar.

Now let me talk about some of these nominees because I think it is important to remember that they are very real people who want to get on with their very real lives instead of hanging in the limbo of what has become the Senate's confirmation stall.

Let me turn to this particular picture. Former DC Circuit nominee Miguel Estrada, who is an American success story, unanimously gets the highest rating from the American Bar Association, the Democrats' gold standard. He was stopped for over 2 years—actually 3 years. Priscilla Owen broke through the glass ceiling for women and made it so women could become partners in major law firms, one of the most brilliant people in our society. She was an excellent witness, but they just do not want her.

William Pryor, of course, in my opinion, the outside groups tried to smear Pryor, and they did so with regard to his strongly held personal beliefs on abortion.

I might add that Charles Pickering, who I mentioned before, was passed by this body unanimously in 1990. Yet all of a sudden in the next 13 years he is unworthy to be on the circuit court of appeals?

No. It all comes down to abortion. We can go further. We can go further than just these nominees. I have mentioned a whole raft of others. I could name at least 15 colleagues on the other side who have indicated they are going to filibuster. Now that is abominable. All four of those nominees have been waiting years, and in some cases many years, for confirmation. All of them have been denied up-or-down votes.

On Friday, the Senate will consider the nomination of two more outstanding jurists, and let me just put up this second chart. Carolyn Kuhl served in the Reagan administration. She was only 28 years old at the time and they have tried to act like she had all kinds of authority to do things with which they disagree. She has virtually unanimous support from her fellow judges in California, many of whom are Democrats, who say she will make a terrific addition to the Ninth Circuit Court of Appeals.

Take Janice Rogers Brown, this African American woman who was the daughter of sharecroppers. She put herself through college and law school as a single mother—just think about that—and yet she is being treated in a very improper fashion.

I might add that nearly 100 of her fellow judges on the Los Angeles County Superior Court are in support of Carolyn Kuhl. She is a terrific nominee, but they suspect that she is probably pro-life. I do not know what she is. I do not know what Janice Rogers Brown is. They may be right on that, but so what?

I think if a person is otherwise qualified, no single issue should stop them from being able to serve their country on the Federal bench, and if we had taken the attitude they are taking, my gosh, President Clinton would have got very few judges. Instead he got 377, the second all-time record for confirmations.

DC Circuit Court nominee Janice Brown has spent nearly a quarter century in public service, including nearly a decade as a judge in the California State courts. This daughter of a sharecropper became the first African American woman to sit on the California Supreme Court in 1996. Why are they against her? Because they know she is conservative, and they want just one way of thinking among African Americans. She does not qualify because she happens to be conservative. No matter that she won 76 percent of the vote in the last election, more than any other nominee for the California Supreme Court, and wrote most of the majority opinions in the last year.

On Friday, we will have the opportunity to give these two nominees the up-or-down vote they deserve, but it is apparent the minority whip has said they are going to filibuster them.

I am proud to say in my 27 years in the Senate, some of my Democratic colleagues expressed similar views when a different President was in the White House. For example, the distinguished minority leader stated:

> As Chief Justice Rehnquist has recognized: The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down. An up-or-down vote, that is all we ask.

That was their philosophy when they had the Presidency and they had the Senate Judiciary Committee and were the leaders in the Senate.

On this point, I agree with Senator DASCHLE. All we ask for is an up-or-down vote. If they want to vote against these people, that is their right, but they need to have an up-or-down vote. Why are they afraid of allowing simple up-or-down votes in the cases of these excellent nominees? Well, because we think—I think—there is more than adequate evidence that on a bipartisan set of votes these nominees would be confirmed by the Senate. If not, let the chips fall where they may. But these nominees deserve a vote. Vote them up or vote them down, but just vote.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, my Democratic colleagues try to justify their unprecedented filibusters of President Bush's nominees by arguing that they want mainstream judges and that President Bush's nominees do not fit that criteria. Mainstream judges—I am a little puzzled by that assertion. I would think, for example, that Priscilla Owen is in the mainstream. She was rated unanimously well qualified by the ABA. She was endorsed by the past 16 Texas Bar Association presidents, both Democrats and Republicans. She has been twice elected to statewide judicial office in Texas, one of the States where they elect judges, and the last time, interestingly enough, she got 84 percent of the vote—unanimously well qualified by the ABA; supported by 16 presidents of the State bar of Texas, Democrats and Republicans, and gets 84 percent of the vote. Sounds like mainstream to me. Yet Democrats filibustered her nomination because of her interpretation of a Texas law saying minor girls could not have an abortion without their parents being notified—not consent but merely notified.

After all, school nurses need a parent's consent to dispense an aspirin to a child. Should not a parent be entitled to a simple notification when their child seeks an abortion? Over 80 percent of Americans think they should. That is a very mainstream notion.

So I was astonished that Democrats would say she was not "in the mainstream," and, frankly, I think the American public would be astonished by such a conclusion that a person so ruling would not be in the mainstream. But "mainstream," of course, is a relative term.

To help the American people understand the Democrats' view, we should look at some of the Clinton judges my Democratic colleagues have supported. Upon doing so, it should be pretty clear that the Democrats' view of mainstream is colored by the fact that they are sitting on the far left bank.

Clinton class of 1994, Judge Shira Scheindlin, a get-out-of-jail-free card for terrorist sympathizers. In the days after 9/11, Federal agents did their job by detaining a material witness to the 9/11 attacks, a Jordanian named Osama Awadallah. Osama knew two of the 9/11 hijackers and met with one at least 40 times. His name was found in the car parked at the Dulles Airport by one of the hijackers of American Airlines Flight 77, and photos of his better known name's sake, Osama bin Laden, were found in Osama Awadallah's apartment.

Under the law, a material witness may be detained if he or she has relevant information and is a flight risk. The Justice Department thought Osama met both of those tests. While detained, he was indicted for perjury. But Judge Shira Scheindlin, a 1994 Clinton nominee, dismissed the perjury charges and released this man on the street. Her reason? She ruled that the convening of a Federal grand jury investigating a crime was not a criminal proceeding, and therefore it was unconstitutional to detain this Mr. Awadallah.

This was quite a surprise to Federal prosecutors who, for decades, had used the material witness law in the context of grand jury proceedings for everyone from mobsters to mass murderer Timothy McVeigh. So much for following well-settled law.

If anyone wants to read a good article about this case, I recommend the Wall Street Journal editorial from last year entitled "Osama's Favorite Judge." It notes that thanks to Judge Scheindlin, this fellow is out on bail. We wonder how he is spending his time.

Just last Friday, the Second Circuit reversed Judge Scheindlin. The appellate court seemed quite puzzled that she would release this man given his obvious connection to terrorists. The Second Circuit held that his detention as a material witness was a scrupulous and constitutional use of the Federal material witness statute.

It is too bad Judge Scheindlin did not act in a similarly scrupulous fashion. Nevertheless, to Democrats she is probably "in the mainstream."

Let us take a look at the Clinton class of 1995, Judge Jed Rakoff. One of Judge Scheindlin's colleagues, a 1995 Clinton nominee, has ruled that the Federal death penalty is unconstitutional in all instances.

Now, some of my colleagues may share this position, but their views differ from the majority of Americans. When Judge Rakoff acts on his personal views, it is a very clear failure to follow Supreme Court precedent. Indeed, Judge Rakoff's rulings so brazenly violated precedent that even the Washington Post, which is against the death penalty as a policy matter, came out against his decision as gross judicial activism.

In an editorial entitled "Right Answer. Wrong Branch," the Post noted that the fifth amendment specifically contemplates capital punishment three separate times. The Post noted:

> [T]he Supreme Court has been clear that it regards the death penalty as constitutional. . . . The High Court has, in fact, rejected far stronger arguments against capital punishment. . . . Individual district judges may not like this jurisprudence, but it is not their place to find ways around it. The arguments Judge Rakoff makes should, rather, be embraced and acted upon in the legislative arena. The death penalty must be abolished, but not because judges beat a false confession out of the Fifth Amendment.

Another editorial, this one from the Wall Street Journal entitled "Run for Office, Judge," said as follows:

> It hardly advances th[e] highly-charged debate [on capital punishment] to have a Federal judge allude to Members of Congress who support capital punishment as murderers. If Judge Rakoff wants to vote against the death penalty, he ought to resign from the bench and run for Congress or the state legislature, where the Founders thought such debates belonged.

Judge Rakoff's ruling would prevent the application of the death penalty against mass murderers like Timothy McVeigh or Osama bin Laden. I guess Judge Rakoff is the kind of mainstream judge the Democrats would like to see on the bench.

There have also been some interesting rulings from the Ninth Circuit, finding the right to long distance procreation for prisoners. My friends on the other side believe very strongly in a living and breathing constitution. They also believe that the rule of law should not be confined to the mere words of the document and the Framers' intent. To them, those are anachronistic concepts. I was truly surprised, however, to read what a panel of the Ninth Circuit had tried to breath into the Constitution.

Three-time felon William Geber is serving a life sentence for, among other things, making terroristic threats. Unhappy with how prison life was interfering with his social life, Mr. Gerber alleged he had a constitutional right to procreate via artificial insemination.

A California district court rejected Mr. Gerber's claim. A split-decision of the Ninth circuit, though, reversed. Infamous Carter-appointee Stephen Rhinehardt joined President Johnson's appointee, Myron Bright, to conclude that yes, the farmers had indeed intended for "the right to procreate to survive incarceration."

In his dissent, Judge Barry Silverman—a Clinton appointee who was recommended by Senator KYL—wrote that "This is a seminal case in more ways in one" because "the majority simply does not accept the fact that there are certain downsides to being confined in prison." One of them is "the interference with a normal family life."

Judge Silverman noted that while the Constitution protects against forced sterilization, that hardly establishes "a constitutional right to procreate from prison via FedEx." The Ninth Circuit, en banc, reversed this decision, but only barely. And it did so against the wishes of Clinton appointees Tashima, Hawkins, Paez and Berzon, who dissented from the en banc ruling.

If anyone wants to read more about this case, I'd recommend George Will's piece entitled, "Inmates and Proud Parents." If there ever was a circuit in need of some moderation, balance, and ideological diversity, it is the Ninth Circuit. It is made up of 17 Democrat appointees, but only 10 Republican appointees.

It is the Nation's largest circuit, covering nine states and 51 million people. It is also reversed far and away more than any other circuit. Indeed, it is reversed so often—from 1996–2000, the Supreme court reversed it 77 out of 90 times—it is known as a "rogue" circuit. This has forced its representatives to introduce legislation to allow their States to secede from the Ninth Circuit.

But my Democrat colleagues probably won't give Ninth Circuit nominee Carolyn Kuhl the simple dignity of an up or down vote. Evidently she is not as "mainstream" as all these Democrat judges.

If these Democrat judges represent the "mainstream," then quite frankly, I am glad the Democrats think that Priscilla Owen, Carolyn Kuhl, and Janis Rogers Brown aren't in it. Unlike these Democrat judges, I am confident these women will follow precedent and act with commonsense.

The Senate should, as it did with Judge Paez, Judge Berzon, and other controversial Democrat nominees, give these women the simple dignity of an up or down vote.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Thank you very much, Mr. President.

I talked quite a bit on Monday about this matter dealing with jobs. We should be talking about jobs. We should be talking about unemployment, not four people who have jobs.

What I am talking about, what we are talking about on this side is absolutely valid. One needs only to go to the Web site of the majority leader, Senator FRIST, prior to his pulling from his Web site the information to the following question: Should the President's nominees to the Federal bench be allowed an up-or-down vote on confirmation as specified in the Constitution? Sixty percent, no.

Even the majority leader's Web site indicates that what is going on here is absolutely wrong. The majority of the people who responded, almost 10,000 people, said this is the wrong approach. This is from the majority leader's own Web site.

I also say that this has been referred to as a carnival—I don't know if that is an exact term. But as an indication that it is circus-like, one need only get an e-mail that was sent to various Senators on the majority side saying:

> It is important to double your efforts to get your boss to S–230 on time. Fox News channel is really excited about the marathon. Britt Hume at 6 would love to open the door to all our 51 Senators walking on to the floor. The producer wants to know, will we walk in exactly at 6:02 when the show starts so we can get it live to open Britt Hume's show? Or, if not, can we give them an exact time for the walk-in start?

Mr. President, we have said this should be about jobs, about unemployment. Even Senator FRIST's people who respond to him on his Web site say yes. Is it a circus? Absolutely. You can see from this it is a circus.

Mr. DURBIN. Will the Senator yield?

Mr. REID. I am happy to yield.

Mr. DURBIN. Is it possible for us to get an update during the course of the evening on what Fox News is going to be looking for during this marathon? This opening about the march into the Chamber clearly was priority for the "fair and balanced" network. Will we get updates from time to time how Fox News would like to orchestrate the rest of this?

Mr. REID. I say to my friend, perhaps so. If not, maybe we could check with the Federalist Society, which, coincidentally, is starting their convention tomorrow.

The PRESIDENT pro tempore. The Senator is warned to speak through the Chair and not risk the probability of being interrupted and losing the floor.

Mr. REID. Mr. President, I don't understand. I was speaking through the Chair, answering the Senator's question.

The PRESIDENT pro tempore. The Senator from North Dakota must address the Chair and ask for permission.

Mr. DURBIN. There is no Senator from North Dakota.

Mr. REID. I respond through the Chair to the distinguished Senator from Illinois.

The PRESIDENT pro tempore. It protects the Senator's right to the floor.

Mr. REID. I say to my friend that the Federalist Society, as we know, is not mainstream dealing with judicial issues, but extreme, and indicate that may be the case. One of the lead speakers, of course, is Mr. Bork. To even compound the political nature of the operation, Attorney General William Pryor of Alabama is speaking there.

For everyone within the sound of my voice, it sounds to me rather unusual that someone who has the nomination and is trying to get confirmed to be a member of a very high Federal court—I cannot imagine it would be appropriate for that person to appear at an organization that is not in the mainstream, but extreme.

So what we have here, even by Senator FRIST's standards, looking at his Web site, we have the facts as I have indicated previously.

Mr. SESSIONS. Will the Senator yield?

Mr. REID. Not right now. I will not.

We have here from Senator FRIST's own Web site the fact that 60 percent of the people—about 10,000 responded before it was pulled from the Web site—say that the procedure being sought here is wrong.

I also say it is very clear this is a carnival-type atmosphere as indicated by the e-mail setting up the various presentations to satisfy Fox News.

Finally, the Federalist Society, coincidentally, is the typeset for this matter.

I yield 12 minutes to the Senator from California, Mrs. FEINSTEIN.

The PRESIDENT pro tempore. The Senator from California is recognized for 12 minutes.

Mrs. FEINSTEIN. Mr. President, what I was trying to do was essentially trace changes in committee procedure with the difficulties the Judiciary Committee seems to be countenancing in present days. A good deal of it has to do with blue slip policy because it was the second tradition to fall by the wayside when President Bush took office.

Under the Clinton administration, nominees were often blocked not only by home State Senators but by any single Republican Senator. At the very least throughout the years preceding the Bush administration, a home State Senator's objection to a nominee would effectively stop that nominee from moving forward.

Let me show a copy of a blue slip used during the Clinton administration, starting in January of 1999, and sent to each home State Senator. The document itself specifically states that no proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home State Senators.

That policy was followed without fail and without question. Even before 1999, during the Clinton Presidency, the blue slip said "unless a reply is received from you within a week from this date, it will be assumed that you have no objection to this nomination."

But still, if there was an objection from a home State Senator, that nominee simply did not move, did not get a hearing, did not get a vote, did not get confirmed. It was, in fact, a filibuster of one.

Today, there is a new blue slip policy, one in which the objections of one or even both of the home State Senators is no longer dispositive. That is part of the problem. This keeps changing, dependent on who is President. This latest policy puts Democrats on the committee and in the Senate in a difficult position.

In the past, if a home State Senator objected to a nominee, that nominee did not proceed; there would be no committee vote and no filibuster on the floor. Fifty-five Clinton nominees did not receive a hearing. This well could have been a filibuster of one. The blue slip is secret; nobody knows.

Let me name some of the Clinton nominees who were filibustered by one or two members of the Judiciary Committee. Elena Kagen, nominated to the District of Columbia Circuit, nominated by Clinton, June 17, 1999. The nomination was returned December 15, 2000. She waited 547 days without getting a hearing or a vote in the Judiciary Committee. She is currently the dean of Harvard Law School.

Lynette Norton, nominated for the District Court for the Western District of Pennsylvania. Nominated by President Clinton on April 28, 1998, in the 105th Congress. Her nomination, which was submitted to the 105th and 106th Congresses, was returned both times without a hearing. She waited 961 days without a hearing or a vote in the Judiciary Committee. Again, a successful filibuster by one or two Senators, in secret.

Barry Goode, nominated for the Ninth Circuit. Goode was nominated by President Clinton on June 24, 1998. After 3 years of inaction, President Bush withdrew his nomination, on March 19, 2001. Mr. Goode waited 998 days without ever getting either a hearing or a vote in the Judiciary Committee. A filibuster of one or two, in secret—no hearing, no opportunity to read a transcript, no opportunity to go back and read writings, speeches, or look into a nominee's background. Just because of one or two Senators, a hearing is denied; the filibuster is complete.

H. Alston Johnson, nominated for the Fifth Circuit, a Louisiana slot. President Clinton nominated Johnson on April 22, 1999. His nomination was returned December 15, 2000. He waited almost 697 days without getting a hearing or a vote in the Judiciary Committee.

This goes on and on and on.

Now, the nominees before us today had hearings. There was debate. There was a markup. There was a debate. There was a vote. We did read their background. And based on knowledge, the minority of this body made a decision that we do not wish to proceed to affirm them. We have over 40 votes to do so. This is not the vote of one person in secret preventing a hearing from taking place. Now that is as much a filibuster as this is.

You are looking at me strangely, Mr. President?

The PRESIDING OFFICER (Mr. TALENT). There is no reason for that. I am just inquiring of the Parliamentarian about the time remaining.

Mrs. FEINSTEIN. And I don't want to use the time because I know Senator DURBIN—how much time do we have remaining?

The PRESIDING OFFICER. The minority has 18 minutes, of which 5½ minutes, approximately, still remain for the Senator from California.

Mrs. FEINSTEIN. Thank you.

So my point is that much of what has been happening in the Judiciary Committee has been to make it more confrontational. The blue slips are an excellent case in point. Changing when the American Bar Association ratings are known is a good point.

I remember during the Clinton administration when the ratings were done earlier and I had to call a nominee and tell them that because they had been out of the practice of law for a period of time, they were deemed unqualified by the American Bar Association and the President was not going to move their nomination. So without embarrassment to the individual, that nomination was withdrawn.

Today, you do not get the American Bar Association's qualified or partially qualified or unqualified rating until after the nominee is on the Hill.

Now there are those who do not think the American Bar Association's evaluation is worth anything. There are those on the committee who believe it is. So there is a difference in point of view. But at least have the qualification or nonqualification done early enough so that it can save the individual humiliation and also play a major role.

Let me talk for a minute about rule IV because I think rule IV again divided our committee in a way that it did not have to be. Rule IV has been a Senate tradition. It is a rule. It is a hard and fast rule. It prevents closing off debate on a nominee unless at least one member of the minority agrees to do so. Twice this rule has been reinterpreted, really violated, and votes have been forced on nominees well before debate has ended. The committee's rule in question contains the following language:

> The chairman shall entertain a nondebatable motion to bring a matter before the committee to a vote. If there is objection to bringing the matter to a vote without further debate, a rollcall of the committee shall be taken and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with 10 votes in the affirmative, 1 of which must be cast by the minority.

That enables the minority to delay a matter. It is in the rules of the committee to give it more time. This rule is not being followed.

This is one of the only protections the minority party has in the Judiciary Committee. Without it, there might never be debate at all. A chairman could convene a markup, demand a vote, and the entire process would take 2 minutes. This is not how a deliberative body should function. More importantly, it is contrary to our rules. That is one of the reasons we are where we are today.

This rule was first instituted in 1979 when Senator KENNEDY was chairman of the Judiciary Committee. It has been followed to the letter until very recently.

This is a nation of laws. We expect these laws to be obeyed even if they are just Judiciary Committee rules.

Let me give another situation, and that is ignoring traditional State vacancies. There is also a willingness by this administration to simply change the playing field if they do not like a result. Fourth Circuit nominee Claude Allen is one such instance. He is from Virginia. He has been nominated for a position that has traditionally been filled from Maryland. Why? Because President Bush became frustrated that Maryland's two Democratic Senators would not sign off on the nominees he wanted for that position. So he decided to simply go where he could find more friendly company—Virginia's two Republican Senators.

This stark determination to simply fill the bench with conservative jurists at all costs is what gives the minority in the Senate pause when considering whether to simply approve every Bush judge who comes our way or make a stand on some. We have chosen to make a stand on some. There are other attempts to ignore the minority. There are little things as well, things that add up over time to give the clear impression that the majority does not care about the needs or the will of the minority. That simply serves to create, increasingly, a bunker mentality among Democrats in today's Senate.

For instance, earlier this session, the Judiciary Committee scheduled a hearing with three very controversial circuit court nominees on a single panel for an appellate court.

The PRESIDING OFFICER. The Chair needs to inform the Senator from California she has used her 12 minutes.

Mrs. FEINSTEIN. May I finish my statement?

Mr. REID. I yield the Senator 2 more minutes.

Mrs. FEINSTEIN. The point is, these were all controversial nominees. A controversial nominee's hearing can run 8 hours. If you schedule three, you truncate the hearing for each, and you do not allow the minority to do their due diligence in terms of their homework.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I yield the remainder of our time to the distinguished Senator from Illinois, Mr. DURBIN.

The PRESIDING OFFICER. The Senator from Illinois is recognized, and he has 11 minutes 45 seconds.

Mr. DURBIN. Thank you, Mr. President, and I thank the minority whip.

First, for those who are following this debate, if it can be characterized as such, you should understand we had an opportunity to finish the appropriations bill for the Veterans' Administration, a $62 billion bill to fund veterans hospitals, clinics, and health care across the United States. We tried.

Senator BYRD of West Virginia came to the floor and said: Can we postpone what we are doing tonight here to finish this important appropriations bill so we can go to conference and get ready to adjourn this session in a timely fashion? Sadly, the Republican side objected to finishing the appropriations bill for the Veterans' Administration. It is their belief what we are doing now took precedence, is more important. It will be up to the voters and the public to make a judgment as to whether they were right.

I would also say that instead of addressing some issues families across America might tune in to follow, such as the unemployment in this country, and what we are doing about it, we are here debating a situation where 4 judges have been held out of 172 submitted by President Bush.

I would think, frankly, we ought to spend a little time really addressing the problem of unemployment in this country. This President has witnessed, in his administration, a loss of more than 3 million private-sector jobs. That is a record. Unless something changes dramatically, this President will be the first President since Herbert Hoover to have lost jobs during the course of his administration. Over 3 million Americans unemployed. Sadly, we have 9 million unemployed across the country today and their unemployment benefits are running out.

UNANIMOUS CONSENT REQUEST—S. 1853

In the interest of at least trying to do something constructive and legislative this evening, rather than just exchanging our comments back and forth, I am about to make a unanimous consent request that the Senate proceed to legislative session, and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers, that the Senate proceed to its immediate consideration, and that this bill be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DURBIN. I am not surprised because what we are about tonight is not the issues families care about. We are about a political script. Senator REID of Nevada read to us this all-points bulletin that was sent out to the Senators saying: Be sure and get over here exactly at 6 o'clock. It said: The Fox News channel is really excited about this marathon. Britt Hume at 6 would love to open with all of our 51 Senators walking on to the floor. The producer wants to know, will we walk in exactly at 6:02 when the show starts so they can get it live to open Britt Hume's show, or, if not, can we give them an exact time for the walk-in?

That is what this is about: It is about theater. The theater we are witnessing tonight is one where, frankly, the curtain should come down. We ought to start talking about things people really care about across America. I can tell you, it is not about 4 judges out of 172. We have approved for this President 168 of his nominees. I think it is a new record. I do not think any President in that brief a period of time has had 168 nominees approved. Lest you believe the Democrats dragged their feet, we approved 100 of these judges during the 17 months PAT LEAHY was chairman of the Senate Judiciary Committee. The remaining 68 came through under Republican Chairman HATCH. I think there has been a concerted and conscientious effort to give the President his nominees. Then, of course, there were 4 who were not approved—168 to 4. So 98 percent of this President's nominees have been approved. By any reasonable standard, this President is doing very well. Most people would agree, except for the 51 Senators on the other side of the aisle. They believe unless the President gets every nominee, this is a miscarriage of justice.

Sadly, though, they are ignoring the obvious. The obvious is the Constitution of the United States gives this Senate the authority to say yes or no, to advise and consent. Article II, section 2: Advice and consent of the Senate. Some of these Republican Senators would like to see this phrase go away and make their argument at least a little plausible, but it is a fact. We have the authority under the Constitution we swear to uphold to make these decisions; and we have made them.

Of course, not only is the Constitution on our side, but the rules of the Senate are on our side. It reminds me in law school, they told you early in a trial advocacy course—and this a cliche, I know—they used to say: If you have the law on your side in your trial, beat on the law. If you have the facts on your side, beat on the facts. But if you do not have the law or the facts on your side, beat on the table. That is what is happening in this 30-hour marathon. Our Republican colleagues are beating on the table. The law is not on their side.

The Constitution says we have the authority to say no. We have said no 4 times out of 172 opportunities. It is constitutional to do so. Are the facts on our side? Are we being unfair to stop 4 judges, approving 168 and stopping 4? I do not think so.

Frankly, if you look at the record of the Republicans in control of this same committee with a Democratic President, you will find some 63 nominees were never given the decency of a hearing. They never had a chance to even appear and introduce themselves to the committee. The decision was made by the Republican leadership, with a Democratic President, not to even let them in the building.

I have been through this. Three of my nominees that happened to. Do you know what it consisted of? If any one Republican Senator objected to any nominee, end of story. They effectively had a filibuster by one Senator. They stopped these nominees in their tracks.

I can recall going to Senator John Ashcroft, our Attorney General, with one extraordinarily talented nominee, and pleading with him, after the man had waited for a year for a hearing, pleading with him to at least meet the man. Let him come before the committee. No way. The answer was no. End of story. End of nomination.

That was the treatment accorded to three judges from my State during the short period of time when I was here and President Clinton was President, as the Republicans ruled the Senate Judiciary Committee.

I lost 3 nominees. Did I rally my Democratic colleagues: "Let's all get together and hold our breath and turn blue for 30 hours because I have lost 3 nominees"? No. Maybe I could have. Maybe I should have. But I did not. I understood it. I thought it was fundamentally unfair, and I still do.

What we have done to these four nominees is not unfair. Each and every single one of them has had a hearing. Each and every one of them has been able to come to the committee and present their credentials. That never happened to 63 nominees offered by President Clinton.

This President has a pretty good batting average when it comes to the Senate: 98 percent of his nominees have gotten through. But for the 2 percent, we are meeting this evening.

I might add here, if you take a look at the issues at hand, the Senator from Nevada raised an interesting one. Almost without fail, the majority of the 168 nominees were all members of this Federalist Society. It sounds like a secret handshake society. It is something else. I am not sure exactly what it is. I will tell you why I am not sure.

I do know this. If you are an aspiring law student who one day wants to be a Republican nominee for a judgeship, my recommendation to you is to join the Federalist Society today and do not miss a meeting because, frankly, that is a requirement if you are going to make it into the ranks of judges in the future.

What is it about this society? I don't know. But if you scratch the DNA of all these Republican nominees, you are going to find that Federalist Society chromosome. It is in every one of them. Time and again, I have said to these nominees: What is the Federalist Society? What does it mean to you? Some people say it is a rather extreme organization that views the law and the Constitution in a manner that most Americans do not. But when I ask these nominees—I can remember a Professor Viet Dinh of Georgetown Law

School where I went to school many years ago. I said: You belong to the Federalist Society. Why? He said: Because I get a free lunch in Chinatown once a month.

Well, I think it is more than that. If you go to their Web site and ask the Federalist Society what they believe, what they put on their Web site is they talk about how we have lost control of the law and the liberals are taking over—all the stuff you expect. Then when you ask each of these nominees: Well, do you agree with that? "Oh, no,"—with one exception: Mr. Pryor. William Pryor of Alabama says, yes, he does agree with it. If you got to know Mr. Pryor, you would understand he is rather unabashed in his political beliefs.

The fact of the matter is, the nominees we are receiving from the White House are not mainstream nominees. Sadly, of the 168 we have approved, many could be challenged as outside the mainstream, and that is not what America is looking for.

President Clinton knew if he sent up a real liberal, someone who, frankly, had the credentials of the left, he did not stand a chance before Senator ORRIN HATCH's Judiciary Committee. We would strive to find people with extraordinary legal credentials, people who really have made a difference in terms of their practice of law and what they have done; and they, too, suffered before that same committee.

This President has no qualms. The people he sends to us, whether it is Miguel Estrada or whether it is William Pryor or Priscilla Owen, each and every one of them have come back—Charles Pickering—with credentials that just do not pass the middle-of-the-road test.

Why are we doing this for 30 hours? Let's lay it on the line. This memo from Fox News tells you why we are here. We are here to grind raw meat for the Republican rightwing, so television networks like the fair and balanced Fox News network can rail on for days and weeks about this 30-hour tribute to the Republican point of view, so the radio talk show hosts, who blather on every single day from the right, will have much more to talk about. And instead of dealing with real issues, paying for the Veterans' Administration, so we can get that done, and meet our obligations, taking care of the unemployed across America, so they can feed their families and avoid bankruptcy, we do not have time for that. Our time has to be focused and dedicated to this debate.

I will say to my colleagues in the Senate, I think my friends on the Republican side will have to agree with this: Though they do not like the outcome of the four judges we have talked about here, we have given the nominees, even when Senator LEAHY was chairman, ample opportunity to explain who they are and what they stand for. I think what we have asked for is reasonable.

What we ask of every judicial nominee, from a Democrat or Republican President, is really basic. They have to be people who are honest, of high integrity. They have to understand the law. They should be people who do not come to this job with an ax to grind. That is not too much to ask. Four have failed that test; 168 have been approved.

The PRESIDING OFFICER. The time of the minority has expired.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, how much time is left in the first section for the majority?

The PRESIDING OFFICER. Five minutes 45 seconds.

Mr. SESSIONS. Mr. President, in response to a number of things that have been said, first of all, I want to correct Senator DURBIN. I think he misspoke when he said the Senate has said no to these nominees. What the Senate has said no to is an up-or-down vote. They have denied these nominees a vote. In each case, these nominees have proven they have a majority of the Senators in this body ready and willing to confirm them, if they are given the up-and-down vote. The systematic use of the filibuster that is occurring now has never before occurred in the history of this Senate.

As to the Constitution, I will just point out article II, section 2, quoted by the Senator—this is what it says—the President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors [and] judges. . . ."

Historically, this body has felt that constitutional language meant treaties required a supermajority, two-thirds vote, and judges would be confirmed by a majority vote, and that is what we have done.

I would just like to ask—I was going to ask Senator REID early, the distinguished assistant Democratic leader—name one position taken by the Federalist Society that is extreme. He will not be able to give you one of those, and neither would Senator DURBIN. This is a society of people who meet and discuss ideas. For example, they have had, in recent weeks, Senator SCHUMER's chief counsel speaking to the Federalist Society, as has Cass Sunstein, Marcia Greenberger, Laurence Tribe—three of the architects of the Democratic strategy for changing the ground rules of nominating judges.

This is really odd for me. I know Senator DURBIN said he has some legislation he would like to offer. Maybe he should have offered it Monday when the assistant majority leader was talking 10 hours down here about rabbits and cactus in Nevada and his book. That was all very interesting, but why weren't we doing any work then? I did not hear any complaints then when we were not passing legislation. That would have been an outstanding opportunity, I submit, to move forward.

Let me just say one thing about where we are on nominations. President Clinton had 377 judges confirmed. One judge was voted down on an up-or-down vote on this floor, a majority voted no—only one. When he left office, there were 41 judges pending and unconfirmed—only 41. President Clinton personally withdrew the nominations of 18. That is how they get 60.

When former President Bush left office, under Democrat control of the Senate, as Republicans were under Clinton, he had 54 nominees left unconfirmed. The record of the Republican Senate under President Clinton was superior under any standard of confirmations to that of the Democrats.

I believe we need to remember those numbers. We need to remember the Republicans rejected consistently the use of the filibuster. It was discussed by people. They said: Why don't we filibuster? Senator HATCH and others would say: We do not filibuster judges. This is why you do not filibuster judges. We never filibustered judges. In fact, one nominee I felt strongly about, whom I voted against, I voted for cloture to bring that nominee up for a vote to overcome a hold that was on the nominee.

My colleagues complain about the Federalist Society. They say they are extreme. They take no extreme positions whatsoever. They are a society that believes in the rule of law and they discuss those issues in free and open debate. But they have moved forward here such as Marsha Berzon and Ruth Bader Ginsburg on the Supreme Court.

ACLU members, American Civil Liberties Union members—do you want to know what their stated positions are on a lot of issues? They oppose steadfastly the death penalty. They openly support partial-birth abortion. They are consistently hostile to law enforcement. They oppose pornography laws, all pornography laws, in fact, even child pornography laws. They favor legalization of drugs.

We have confirmed a lot of ACLU members, as the Senator knows. They have stated positions that are contrary to the mainstream of American thought—no doubt whatsoever.

Somebody such as Attorney General Bill Pryor, who has a record of following the law to the letter, whether he agrees with it or not, is castigated because he makes a talk to the Federalist Society. It is suggested that is an extreme thing for him to do and it is not correct.

Mr. President, I yield back the time.

The PRESIDING OFFICER. The Senator from Alabama has 15 seconds.

Mr. SESSIONS. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, parliamentary inquiry: Are we now starting 30 minutes of time on this side of the aisle?

The PRESIDING OFFICER. That is correct.

Mr. SPECTER. I thank the Chair.

Tonight the Senate is engaging in a proceeding to call the attention of the American people to a very serious matter which exists on the confirmation of Federal judges. It is not a matter which occurs just when there has been a Republican President, but it has occurred also when there has been a President of the Democratic party, when the Republicans controlled the Senate. It has gone back at least to 1987, during the second 2 years of President Reagan's administration.

When the Senator from Illinois calls this theater, he may be right, but it is factual theater, and it is worth the time of the Senate for the American people to focus on this important issue.

It is now a little after 8 o'clock Eastern standard time. Frequently, the Senate Chamber is dark at this time. It is true we could be conducting other business, but there are many days when the Senate has tarried. For example, on Monday, the day before yesterday, when there had been a longstanding expectation that the Senate would not be in session because Veterans Day is traditionally not a day in session, but we came back specially to try to finish our work by the projected date of November 21, unexpectedly we were greeted with a 10-hour filibuster by Senator REID on the other side of the aisle. He has a right to do that—he is a Senator—under our rules.

It doesn't lie in the mouth of somebody to say we are spending time where we could have been working very hard on the appropriations process. I do hope we finish that process. I have been an appropriator for my 23 years in the Senate, and we should move to complete that work as promptly as possible.

But the subject matter tonight is the confirmation process, and it is a very serious subject. When President Reagan was in office, during the first 6 years where the Republican Party controlled the Senate, President Reagan secured confirmation of 82 percent of his district and circuit court nominees. In 1987 and 1988, when the Democrats were in control, that percentage dropped from 82 percent to slightly above 63 percent. When President George H.W. Bush was in office, all 4 years had the Senate in the control of the Democrats. The Senate confirmed slightly more than 62 percent of President Bush's nominees, and 54 percent of his nominees to both circuit and district courts were still pending in the Senate when his term ended.

President Clinton had about the same experience. In 1993 and 1994, there was an average of 79 percent of his district and circuit court nominees confirmed when his party controlled the Senate. For President Clinton's remaining 6 years, the percentage dropped to 54½ percent. So that the business of having the President of one party stymied or reduced in effectiveness on confirmation when the Senate is controlled by the other party has been really an apportionment of blame pretty much equally between Democrats and Republicans during the course of the Reagan, first Bush, and Clinton administrations.

The matter has come to a substantial decline, when, for the first time in the history of the Republic, some 216 years, there has been a filibuster of circuit court nominees.

I think it is important to note that we are not seeking tonight to break a filibuster. That would occur when we would seek to have those who were objecting to the judges continue to talk and talk until they ran out of energy or effort and stopped talking so that we could come to a vote. That was what happened in the filibusters on civil rights legislation in the 1960s.

The last time there was a filibuster in the Senate was 1987 when the subject was campaign finance reform. Senator BYRD was the leader of the Democrats. Senator DOLE, the leader of the Republicans, called all of us into the cloakroom behind us in the Senate Chamber at about 2 o'clock one morning and said: I would like all Republican Senators to stay off the floor. The reason Senator DOLE asked everyone to stay off the floor was to compel the party in power, the Democrats, to maintain a quorum of 51 Senators because if there are not 51 Senators present, then any Senator may suggest the absence of a quorum, and the Senate conducts no further business.

When Republican Senators, including ARLEN SPECTER, absented ourselves from the floor at Senator DOLE's request, Senator BYRD, the leader of the Democrats, countered with a motion to arrest absent Senators. Sergeant at Arms Henry Giugni was then armed with warrants of arrest and started to patrol the halls, and the first Senator he found was Senator Lowell Weicker.

Sergeant at Arms Henry Giugni was a little fellow, about 5 foot 6 inches, 150 pounds. Senator Weicker was a big guy—still is—about 6 foot 4 inches, 240 pounds. This was at about 3:30 in the morning. Sergeant at Arms Giugni decided not to arrest Senator Weicker. I think he made a good judgment. Then he started to go around and knock on Senators' doors.

Senator Packwood foolishly answered his door. Senator Packwood was then carried feet first into the Senate Chamber. This is a true story. You don't get many out of Washington, but this is a true story. That incident attracted a great deal of attention. C-SPAN became the channel of choice instead of Jay Leno.

In having this proceeding, it is more accurately called a marathon than a filibuster because it is not a filibuster. Republicans are doing most of the talking. We seek to attract the attention of the American people to what is going on in the judicial system.

We have at the present time judicial emergencies in four of the circuit courts of appeals in the United States: the Fourth Circuit, the Fifth Circuit, the Sixth Circuit, and the Ninth Circuit. When these judicial emergencies occur, people are denied their day in court, cases languish, the matters are not decided, and the fact of life is that justice delayed is justice denied.

Without burdening the record unduly, it is worth noting that in the Sixth Circuit where there is a judicial emergency, a 50-percent vacancy rate on that court, a death penalty case has been pending for more than 8 years. A plaintiff in a civil case on a job discrimination suit trying to get a job had to wait some 15 months before the case came up. That individual died before the case was ever heard.

The ultimate answer, I suggest, is that cooler heads are going to have to prevail, and we are going to have to establish a principle where it applies regardless of what party controls the White House or what party controls the Senate.

Three years ago, I proposed a judicial protocol to establish a timetable that 60 days after the President submitted a nomination to the Judiciary Committee, there had to be a hearing; 30 days thereafter, there had to be action by the Judiciary Committee on the nomination; 30 days later, the matter had to be brought to the floor of the Senate. Those times could be extended on cause shown by the chairman of the committee with notice to the ranking member or by the majority leader with notice to the minority leader. But those time parameters should be established.

If there were to be a strictly party-line vote in the Judiciary Committee, then that matter ought to be advanced to the Senate floor even without having the customary majority vote to bring it to the floor.

One of the grave problems which may confront the Senate is what is going to happen next when there is a Supreme Court vacancy. The filibusters conducted up until the present time constitute an effort to elevate the confirmation process which under the Senate rules calls for 51 votes, or a majority, to 60 votes which it takes to end a filibuster.

For those who may not know what a filibuster is, that is when one party keeps talking and talking and talking endlessly. But that may be brought to a close under the rules of the Senate with 60 Senators voting to cut off debate. That then leaves 100 more hours to debate, plenty of time even after cloture, even after debate is ended or limited, before the matter comes to a vote.

It does not require a Nostradamus to predict or to understand that the current approach on imposing an ideological test is a precursor for the Supreme Court of the United States. When the Senate is constituted as it is at the present time, it is easy to project that we will find a Supreme Court nominee, who does not satisfy the standards of the other party, subjected to a filibuster and to have a vacancy on the Court. What we are moving toward is deadlock.

Right now, there still remains an aura of some civility in this Chamber, notwithstanding our disagreements on the tactics that one side or the other may use in the Senate. We know that the next vote is the most important vote. Notwithstanding the rancor of the arguments, we do understand that we are here to conduct the business of the people of the United States. The judicial system is limping along—still in motion but limping along.

We face a grave potential problem. If the current course of conduct continues so that when we have a nominee for the Supreme Court of the United States, we have this deadlock, and then with so many 5-to-4 decisions by the Supreme Court deciding the cutting-edge questions in our society, we may look to 4-to-4 decisions, and that means no ruling by the Supreme Court of the United States.

One additional thought. Senator SANTORUM and I use in Pennsylvania a judicial nominating panel under an arrangement where the President has three nominees and the Democrats have one nominee. During the 24-year period from the time President Nixon was elected until the time President Reagan was elected, Republicans controlled the White House for 20 of those 24 years. It seemed to me it was an undue balance of judicial nominees without having the Democrats with any nominees in the district courts, so an arrangement was made when Senator Heinz and I were the Senators, carried on by Senator SANTORUM and myself, to allow the party out of power, the Democrats, to have one nominee out of three for the President—one for the party out of power. That has had a very salutary effect in bringing a little bipartisanship into the process.

I do not suggest that for the Supreme Court. I do not press it for the court of appeals. But I think it is an idea worth considering for the U.S. district courts.

In conclusion—the two most popular words of any speech—it is my hope that something constructive will come out of this marathon. It is my hope that there will be some attention attracted to it. When the Senator from Illinois characterizes this as theater, I don't think that is especially derogatory because it is fact theater. The American people would be well advised to watch this theater than some of that which is on the national networks tonight. This is real. Those sitcoms go on and on and are repetitious. More important than the factual theater is that we are on a vital issue.

I hope the Senators hear from the American people. I hope the American people tell us what they would like to have done: Whether you would like to have this kind of projected stalemate where nominees wait endlessly and where it takes 60 votes, a supermajority, to cut off debate and bring it to a vote, or whether you would like us to follow the constitutional mandate of 51 votes in confirmation so that these judges may be confirmed, may take their places to see that justice is done in an equitable way within a reasonable time period.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I want to focus on a chart that was displayed earlier by the Senator from New York where he proudly displayed the numbers 168 to 4. I think it is important we ask the question: what is that chart designed to prove?

On one hand, our colleagues on the other side of the aisle in the Judiciary Committee and here in the Chamber rail against the President's judicial nominees, calling them out of the mainstream and, even worse, mean-spirited, right wing. But if, in fact, our colleagues on the other side of the aisle have voted to confirm 168 of President Bush's nominees, it refutes that allegation because they have to agree that at least 168 of those nominees met their definition of mainstream.

I would like to associate myself with the outstanding comments of the Senator from Kentucky, the assistant majority leader, Mr. MCCONNELL. I wonder what their definition of mainstream truly is.

The second number of 4 is a number they want to be congratulated for blocking. I submit that just because you observe a stop sign 168 times and comply with the law, you are not to be rewarded for running that stop sign four times. It is still a violation of law, and you are still likely to get a ticket from the police officer.

This is more than just about breaking the law. This is about violating our Constitution, the fundamental law of this Nation.

We know really, rather than 168 to 4, the true number we ought to be focusing on is 0 to 4, and let me explain.

From 1789 to 2002—that is, for all of our Nation's history up until this year—the number of filibusters against judicial nominees of a President was—you guessed it—zero. But this year alone, because of this tactic that our colleagues have devised, to deny a bipartisan majority of this body its right under the Constitution to vote up or down on a judicial nominee, this number is 4.

So rather than 168 to 4—and as I explained, I think that repudiates and flies in the face of some of their arguments about President Bush's judicial nominees, and I deny that they are to be congratulated for unconstitutionally obstructing only 4. The real number we ought to be focusing on, and I hope the American people are focusing on, is zero to four because never, ever, in the history of this Republic has a minority in the Senate denied the right of the majority the vote up or down on judicial nominees. It is just not right. It is not fair. It has resulted in a degradation and a downward spiral in the judicial confirmation process of which no one should be proud.

I submit that four unconstitutional filibusters of these distinguished nominees is four filibusters too many. If we want to look at maybe a little bit of a history lesson, as this chart demonstrates, when Franklin Delano Roosevelt was President of the United States, 4,473 laws were enacted, 4 civil rights laws were filibustered—hardly something to be proud of. But I guess if our colleagues across the aisle are proud of their four, the argument would be that the people who filibustered these civil rights laws during FDR's term ought to be proud of that number.

When President Truman was in office, 3,414 laws were passed, 3 civil rights laws were filibustered. Is that something to be proud of? What our colleagues across the aisle say, because 3,414 laws were passed and only 3 were filibustered, that these folks who filibustered those three civil rights laws ought to be congratulated. I think not.

Then when President Lyndon Baines Johnson was in office, 1,931 laws were enacted, 3 civil rights laws were filibustered. To this hall of shame, I would add the 168 to 4, which is nothing to be proud of; it is something to be ashamed of.

Unfortunately, some people have lost their sense of shame in this process, which has become so degraded and so destructive. Indeed, I submit that the filibusters we have of the President's nominees are an abuse of the process. How can they justly claim that a 60-vote requirement to close off debate can somehow trump the Constitution?

As we have heard before on this floor, everyone knows, who has studied the Constitution, that there are supermajority requirements for certain things, and they are stated in the Constitution: To ratify a treaty or to pass a constitutional amendment, the Constitution is very clear that it requires a supermajority. Everything else requires majority rule.

Indeed, majority rule is fundamental to the democratic form of government. Majority rules: We fight our best fight; we make our best argument. Then we have a vote up or down. If we lose, well, we come back to fight another day. We try to persuade others that we were right and the majority was wrong. That is what our form of government is all about; not denying a majority their right, as stated in the Constitution, to let majority rule.

Believe it or not, that is what is happening and that is the reason we are standing here tonight trying to let the American people know that a terrible abuse of this process is occurring and an abuse of the Constitution, indeed a violation of the Constitution, is occurring. It is a disgrace. It is nothing to be proud of.

The other thing I would point out in the few minutes I have remaining, before I turn the floor over to the senior Senator from Texas, is this process is not only abusing the Constitution and creating a downward spiral in the judicial confirmation process that is very destructive of relationships in this institution, of our ability to get things done, it has made it too partisan, too bitter, too angry, and it is destructive.

I would also point out that the tactics that are being used against some of these nominees are despicable. Unless we stand up and repudiate the tactics of some of those who are opposing the fine nominees of President Bush, such as Janice Rogers Brown, I believe those who have joined cause with them in opposing this fine nominee ought to examine their conscience. I think they ought to reconsider their tactics. I think they ought to reconsider whom they associate with, whom they are joining cause with to tear down some of the fine nominees of this President, such as Janice Rogers Brown.

This is a cartoon that was posted on The Black Commentator on September 4, 2003, with President Bush, a racist caricature of Janice Rogers Brown with Justice Clarence Thomas, Colin Powell, Secretary of State, and Condoleezza Rice standing there. The caption says: "Welcome to the Federal bench, Ms. Clarence—I mean, Ms. Rogers Brown. You'll fit right in."

It is easy to see why this process has gone downhill and needs a wake-up call from all of us, because we need a fresh start. We need to disavow tactics such as this. Those who are opposing Justice Brown and other nominees should not be proud of that association any more than they claim to be proud of an unconstitutional filibuster of four of these nominees, including Justice Brown, because if, in fact, we do not get a fresh start, we do not have a clean break with this destructive process, if we do not quit tearing down people who want nothing more than to offer themselves to the American people by serving in positions of honor, such as Federal judges, who will answer the call? If they know that answering the call of public service means that they are going to have their reputation destroyed, they are going to be besmirched, they are going to be painted into a caricature that bears no resemblance to who they really are, who will answer the call? We will all be poorer for it.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Texas is recognized. The Chair informs the Senator from Texas that there are 2 minutes 20 seconds remaining on the Republican side.

Mrs. HUTCHISON. Mr. President, just to get an understanding, after that 2 minutes 20 seconds, then it goes to the Democratic side for 30 minutes and then back to the Republican side? Is that the way it is?

The PRESIDING OFFICER. The Senator is correct.

Mrs. HUTCHISON. Mr. President, in the 2 minutes that I have, I say I think the junior Senator from Texas made a very important point and that is the importance of the delicate balance of powers that was put in our Constitution. I think it is important that we do not say, well, 98 percent of the time we adhere to the Constitution. We need to adhere to the Constitution 100 percent of the time.

The Constitution has always said, from its beginning, that we would have a majority required to confirm the judicial nominees of the President. Now, this is by implication, because when the Constitution meant to have a supermajority, it so stated. We have always had a majority, and that is what, by its silence, the advise and consent part of the Constitution has required for judicial nominees, until last year.

In fact, I think the President is losing his constitutional right to appoint Federal judges. I think this whole situation is going to deter good people from offering themselves for the bench, and the judiciary must have good people if we are going to keep that very strong separation of powers with three separate but equal branches of Government.

In his first 2 years of office, President Bush was able to get 53 percent of his circuit court judges confirmed. The previous three Presidents each had 91 percent in the first 2 years of their office in the very important circuit court judge appointments.

Now, the circuit court, of course, is the next step below the Supreme Court. So a 53 percent record in the first 2 years is something that I think should not be accepted. It is very important that we try to get votes on these judges.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Nevada.

Mr. REID. Mr. President, I yield 15 minutes to the Senator from Indiana and 15 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Indiana.

UNANIMOUS CONSENT REQUEST—S. 1853

Mr. BAYH. Mr. President, I ask unanimous consent that the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to its immediate consideration; the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

Mrs. HUTCHISON. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator is recognized.

Mr. BAYH. Mr. President, this is an unfortunate debate, and I regret that all of us are here this evening. This debate will do nothing to speed the confirmation of judges about which this session has been called to consider. It will do nothing for the economy, for health care, for education, to protect the environment, or to advance the interests of our Nation's security.

It will, however, at least in small part, bring this august body, about which we care so much, to additional disrepute with the American people, making us look ineffectual and irrelevant.

In some respects, the Senate is being reduced to something close to a farce. It is becoming rapidly not the world's greatest deliberative body but instead the world's greatest Kabuki theater, a place where speeches are given to which very few people listen, no minds are changed, and votes are then held with complete predictability of results.

The search for principled compromise, which has always been a long and honorable part, distinguishing this body from other legislative bodies, has been abandoned in favor of sterile, ideological warfare, satisfying to only the most fervent of partisans. After this debate, I suspect that the far right will be satisfied, I suspect that the far left will be satisfied, and that the rest of the American people will be left scratching their heads, wondering, what on Earth are they doing?

I am reminded of nothing quite so much as some lines from Shakespeare when he characterized another instance as: Great sound and fury that signifyeth nothing.

That is tonight's debate: Sterile, empty, barren of results.

This debate, unfortunately, is a microcosm of everything the American people have come to not like about both the Congress and Washington, DC, something that is all too often all process and partisanship, with no progress on matters of substance and importance to the American people.

Too often the American people view Washington as totally self-absorbed, indifferent to their real concerns, and ineffectual in accomplishing much of value on the things that do matter in their daily lives: Health care, jobs, education for our children and grandchildren.

We must stop this cycle of constant recrimination, a process in which the minority obstructs to gain power and then turns around and complains about obstruction once power has been obtained. It makes us all look bad.

If hypocrisy had a monetary value, we could easily erase the Federal deficit because of debates such as the one we are engaged in tonight.

What is this all about? What are the facts that the American people deserve to know? Is it true that judges are being obstructed solely because of their partisan affiliation? That obviously cannot be the case. One hundred and sixty-eight of President Bush's judicial nominees have been confirmed. I assume that all of them, if not almost all of them, are good card-carrying Republicans or he would not have nominated them. Obviously, there cannot be some stonewall to object to Republicans being appointed to the Federal judiciary. This simply is not the case.

Are judges being rejected up to a point based solely upon ideological concerns? This also cannot possibly be the case. Of these 168 judges who have been confirmed, I assume that all, if not almost all, are in fact fairly conservative jurists, or hold out the prospect of being fairly conservative jurists. Otherwise, they would not have been nominated by this President.

So up to a point, it is obvious that conservatives are not being denied their place upon the Federal judiciary. This is all about power, the balance of power between the executive and legislative branches and whether the advise and consent function should be abolished whenever the Senate is controlled by the party of the President. It is all about the balance of power between the minority and the majority caucuses in this Senate and whether the right to debate should be limited in the case of judicial nominees, unlike any other business taken up by this body.

It is also about tipping the balance of power within the Federal judiciary and setting the stage for a Supreme Court vacancy to be filled by someone of even the most extreme ideological conviction and views.

Is that possibly what the Constitution had in mind when it established the right of advise and consent in this Senate? Is that something for which we should abrogate the right to unlimited debate in this Senate, selecting judicial nominees in exclusion to all other topics in this regard? Of course it is not.

We are ignoring the issues this evening that are of most importance to the balance of the American people. When I go home, I hear great talk about the economy and job losses. In the last 3 years, we in the State of Indiana have lost approximately one out of every six of our manufacturing jobs. One hundred fifty-nine thousand jobs, nonfarm jobs, have been lost during this period of time. That is what I hear people talking about. Small business men wonder how they are going to compete in the global economy today. Large business men and women wonder how they are going to make ends meet, particularly with the skyrocketing cost of health care. Many people ask how we are going to compete with China, India, and other countries that all too often seek to abuse the rules of international trade to seek unfair economic advantage. Those are the subjects we should be debating tonight.

Those are the topics that are on the minds of Hoosiers to whom I talk. Very rarely am I asked about vacancies in the Federal judiciary.

When I was returning from Indiana just last evening, one of the security guards, a gentleman who looked somewhat advanced in his years, called out to me as I was going through security, saying: Senator, what about the Medicare drug benefit? Is something going to get passed?

I said: I hope so.

He said: Well, it probably will not be structured the way it ought to be anyway.

I said: Well, I hope not. We are going to go back and see if we cannot hammer out a reasonable compromise.

I see some of my colleagues, including Senator GRASSLEY, who are laboring mightily toward that very end, and I salute him for that. That is what we should be debating tonight, how to reconcile our differences on providing drug coverage to senior citizens who are asking about it; how to make health care available to the American people in a way that is accessible and affordable. That is what is on the minds of Hoosiers to whom I talk. That is what we should be debating this evening in this body.

What about our education standards and what about providing our children and grandchildren with access to quality affordable education? When I think about the economy of the future, more than anything else it is going to require advanced levels of education, skill, and know-how. We are going to prepare my young sons and the rest of our children and grandchildren to have a better standard of living in a prosperous economy. It is going to be based not upon how strong they are but upon how knowledgeable they are, how well trained they are, how skilled they are. That is going to enable us to build a better economy. We are not debating that tonight.

At no point, in my recollection, have we set aside 30 hours to debate quality health care. At no point, in my recollection, have we set aside 30 hours to debate the economy or what we are going to do to create quality jobs. At no point, in my experience in the Senate, have we set aside 30 hours to talk about what we can do to debate quality education in the way we are setting aside these 30 uninterrupted hours in the wee hours of the morning. This is a clear example of misplaced priorities.

I hope this Senate will extricate itself from the morass into which we have sunk and begin to rehabilitate ourselves in the eyes of our countrymen and women. I hope we can once again begin to address the great issues that are of concern to the American people, that press all around us—what our country can do to be more prosperous, more just and more free. Above all, I hope that we as Senators can remember why we are here, and that is not to wage war upon one another but instead to once again renew the struggle against the ancient enemies of man: Ignorance, poverty, disease. That is why we are here, not sterile ideological debates.

I hope we can learn from this experience so that we will not have to repeat it. I hope we can focus on making progress, not dividing this body over the country. This aisle that separates the chairs, Republicans on one side and Democrats upon the other, gives us the opportunity to build bridges of reconciliation and understanding, forging principled compromise which has always been the hallmark of this institution. We have strayed from this heritage for too long. It is a tradition to which we must return if we are to once again recapture the confidence of the American people.

The final thing I will say is that we had an election in Indiana for our mayors this last Tuesday, a week ago yesterday. Something on the order of 20 percent of the people of my State turned out to vote for our mayors. When I had the privilege of being elected to this body in 1998, about 36 percent of the eligible voters in my State took the time to go to the polls. That is barely one out of three. In the closest Presidential election in the history of our country 2 years ago, decided finally by the Supreme Court, barely half of the American people felt connected enough to their institutions of self-governance to take even the most elementary step of citizenship—going to the polls to register their preference.

What has happened to our democracy? What has happened when 20 percent or 36 percent or a bare majority feel invested enough in the cause of shaping their own destiny to take the time to participate in our elections? If we are going to renew our democracy, if we are going to lead this country to meet the great challenges of our time, if there is one thing I am absolutely certain, it is that it will take all of us, each and every one of us from every ethnic group, racial group, gender, and walk of life.

Too many people have become disillusioned. Too many cynical, too many skeptical whether this body and their government can make a difference anymore. Events such as this debate tonight do not help.

We need to get back to the business at hand, putting before the American people an agenda of hope and opportunity so we can once again reenlist them in the cause of making this the greatest democracy known to man. That, at the end of the day, is what has brought us here. I suggest that is the business to which we must once again return.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized. There are 16 minutes 54 seconds remaining.

Mr. DURBIN. I begin by commending my colleague from Indiana. That was an extraordinary speech. I hope that for a moment Senators on both sides of the aisle will stop and reflect on what he just said. I think it was a challenge to everyone, as strongly as we feel about what we are debating tonight, the appointment of Federal judges; the Senator from Indiana is right. The people across America wonder why we are wasting the time of the Senate on issues that have no importance or relevance to their lives, and because they cannot understand us, they are estranged from us. They do not feel invested in this process, they do not feel a responsibility to vote; they, frankly, think we spend too much time in partisan posturing. The 30 hours of this debate are a classic example of that kind of partisan posture. That is unfortunate.

What the Senator hears in Indiana and I hear in Illinois and I daresay every Senator hears in their State—I have been going back to Illinois for 4 straight years in the month of August trying to tour the State, meeting with business and labor leaders and community leaders, to ask what is going on. For 4 straight years they told me the same thing: Senator, can you do anything about the cost of health insurance? It is killing us. It is killing my small business. It is killing my large business. My family is worried about coverage. What are you going to do in Washington about the cost of health insurance? I have to basically shrug my shoulder and say: I am sorry, that is not on our agenda. We have other things we debate in Washington, not the things you and your family worry about, that keep you up at night. This is a good example.

Would it not have been inspiring if we came together as Democrats and Republicans on the floor to talk for 30 hours about the future of health care in America, to speak to it in honest, nonpartisan fashion, to try to address some of the most controversial parts of it in a responsible, gentlemanly way?

That is what we are expected to do. That is not what this is about. This is about alerting FOX News to grind out their cameras at the entrance of the Senate to watch a parade of Senators come in—Senators who have now disappeared. This is about charts being made, night and day by Democrats and Republicans, to argue their case.

My people living back home in Springfield, IL, and Chicago, IL, I am sure, turned off C-SPAN a long, long time ago, if this is the best we can offer them. Sadly, that is all we are offering them.

We left the Veterans Administration appropriations bill—we could have finished it—for veterans hospitals and the millions of veterans across America because we did not have time; we had to start this never-ending 30-hour debate. We cannot entertain a motion made by the Senator from Indiana, a motion I made, as well, to try to do something about the 9 million unemployed Americans whose benefits are running out. We do not have time for that. We have time for this political debate.

That is unfortunate. It is distressing. I have given 21 years of my adult life to public service. I have never regretted a moment of it. I walked away from a law practice and never looked back. This is the most exciting and interesting thing I can think of to do with your life, to be involved in public service. I encourage everyone, regardless of your political stripe, to get involved. You will love the opportunity it gives you to help people. But, frankly, we are not seizing that opportunity or we would not be here tonight. We would not be here discussing a question about whether 168 or 172 judges is the right number.

Is this the best we can do? I think not. I think we can rise to a greater challenge but we have to put aside the partisanship.

I readily concede I have struck a few partisan blows and a few have been thrown my way. That is part of life in the Senate, I am sure, and life in the big leagues. But at the end of the day when it is all over, at the end of the year or end of the session, each of us would like to point back to something we did to improve the lives of the people we represent. What have we done to make the schools better? What have we done to deal with the economic uncertainty of middle-income families? What have we done to deal with the trade laws that are killing us in the Midwest and across the Nation?

I have been a proponent of free trade. It is almost impossible to defend at this moment in time. We are not enforcing our trade agreements. We have lost five or six manufacturers in Indiana and the same is true in Illinois. We lost 3 million jobs across America. Frankly, many of those jobs will never come back. When we read headlines that say there are 120,000 new jobs in America, that is good news. But ask the hard question, are the jobs we created paying as much as the jobs we lost? If they were manufacturing jobs, the answer is pretty obvious. The answer is no, they are not. We are losing more and more good jobs. Instead of focusing on that as we should, on the things that people care about, we are spending our time in 30 hours of debate over four judges.

The senior Senator from Texas said earlier that the President has a constitutional right to appoint judges. I don't want to correct the Senator from Texas, but she is wrong. The President does not have a constitutional right to appoint judges. The President has a constitutional right to nominate judges. The judges are appointed through the advice and consent of the Senate. Therein lies the difference in our points of view. From the Republican side of the aisle, the President has a constitutional right to name the judges he wants. End of story. But the Constitution says otherwise. And it always has.

Even the most powerful and beloved President has to be held accountable to the people of America through the Senate, through the House, and that is why we are here tonight. At one moment in history when President Roosevelt had been reelected with the largest majority in the history of the United States, Franklin Roosevelt, he decided he had had his fill with the U.S. Supreme Court across the street and they were not treating him well and he came up with a scheme to pack the court, to add more Supreme Court Justices because they just were not ruling on his laws the way he wanted them to. He proposed that to an overwhelmingly Democratic Congress in the House and the Senate and ran into a firestorm of opposition from his own party.

President Franklin Roosevelt, as popular as he was, with the mandate he brought to office—and I will not reflect on this President's mandate in this discussion, but President FDR's mandate was substantial. He felt that he had a moment in history when he could change the Supreme Court. And this Senate, the Democrats in the Senate, said: No, we have to draw the line; this executive branch cannot control the judicial branch and we will stand in the path of a popular and beloved President. And they did. They stopped him.

That, to me, was an important moment in history—when Senators of the same political party said to a President, this Constitution created three branches of Government for good reason.

So tonight we are in a position where many are arguing that this Senate should step back and not assert its constitutional right to speak to the qualifications of judges. It will be a sad day if we allow that to occur.

Let me try to synthesize this into what it is about. It is not about the four judges or two more who might be added on Friday. It is about the next appointment to the Supreme Court across the street. That is the real story. There are a lot of good reasons we are here tonight but the real reason is the next Supreme Court vacancy and the belief on the Republican side of the aisle that if we can hold fast with our approach in stopping people unqualified, unfit, to serve on a Federal court, they will have a difficult time passing through a controversial nominee to the U.S. Supreme Court.

I think, in my heart of hearts, that is why we are here this evening. They are trying to smooth the road, prepare the way for that Supreme Court nominee from this President.

Now, let me give advice to my friends—and they are not likely to take it—on the Republican side. There is a way to avoid all that. Pick a man or a woman who is of such impeccable legal background, great credentials, the kind of person with the integrity that they will be above this kind of political debate. It can happen and it has happened.

In my State of Illinois, a State with two Senators from opposite political parties, we have not had one problem in filling the Federal judicial vacancies. We have done so, Democrat and Republican, with good men and women whom I am certain will serve this country well. I just gave the green light to a nominee who sits on our calendar, and I hope we will move quickly, Mark Philip, who was a clerk to Justice Antonin Scalia. I am a Democrat, approving a former clerk to Justice Scalia. I met him and trust him and I think he will be a great Federal district court judge.

That can happen again. But we have to move away from those who are ideological extremes. We have to move away from those who are lightning rods. We have to move to a center path, which most Americans expect of us.

Sadly, tonight, we are being told this Senate should not even ask questions of these nominees. That is wrong. We have a constitutional responsibility, a responsibility that must be met.

Some have said, incidentally, that ours are the first to ever filibuster nominees. In fact, the Senator from Pennsylvania said it is the first time in the history of the United States anyone has ever filibustered a judicial nominee. Well, this chart shows that is not correct. Abe Fortas of the Supreme Court, subject to cloture motion, filibuster; Stephen Breyer, First Circuit—I am going through the list—Rosemary Barkett, Eleventh Circuit; Lee Sarokin, Third Circuit; Marsha Berzon, Ninth Circuit; and Richard Paez, Ninth Circuit.

The fact is, there have been judges brought to the Senate floor who have been filibustered in the past. The fact is, most of those filibusters failed. The motion for cloture prevailed but the filibuster was on. On the four who are under contention this evening, the filibuster has succeeded. The motion for cloture has not been filed successfully. That is the difference. To say it has never happened before in our history is to defy the obvious. It certainly has happened before.

The point we are trying to make is it is not unreasonable to have 4 nominees out of 172 questioned, to be found lacking.

Let me close by saying, again I commend my colleague from Indiana because I think he put it in perspective. We all know it is true. We could be spending our time doing a lot more important things for America and a lot more important things for the people we represent than squabbling over four judges.

Mr. REID. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. REID. I ask the Senator, through the Chair, there have been statements made by the majority, for weeks, months, that never ever in the history of the country has there been a filibuster conducted regarding a Federal judge. Would the Senator again state whether or not those statements regarding filibusters of Federal judges having never been held is true or false?

Mr. DURBIN. It is false. It is clearly false. Justice Abe Fortas, 1968; Judge Stephen Breyer, 1990; Judge Rosemary Barkett, 1994; Judge Marsha Berzon, 2000; Judge Paez, 2000. And many others.

The fact is, for those who say there have never been filibusters by nominees, that is clearly not right.

Mr. REID. Another question I ask my friend from Illinois, through the Chair, what I have heard the Senator state tonight is that on numerous occasions—in fact, the chart that is behind you indicates this—that there would be numerous occasions going back to at least 1968, there have been filibuster after filibuster, and sometimes they have tried to invoke cloture on more than one occasion; is that true?

Mr. DURBIN. That is accurate. As noted here, for Judge Breyer, twice. That is a clear example. On some of the others, there could have been more than one time, as well.

The point I would like to make to my friend from Nevada, we also know that under President Clinton, 63 of his nominees never got a hearing. They were never given a chance to come to the floor for this vote because the Republican-controlled Senate Judiciary Committee would not even give them a hearing.

Mr. REID. Will the Senator yield for a question that I ask through the Chair?

Mr. DURBIN. I am happy to yield.

Mr. REID. The Senator from Illinois is a member of the Judiciary Committee. Would you explain to the people watching this—whatever it is—would you explain to the people how a person gets to the Senate floor to be nominated for a judge? How do they get here? What is the process? Explain to the people of the country what you mean when you say someone never had a hearing.

Mr. DURBIN. It is customary for a Senator of a State, depending on the President's party, to be able to suggest to the White House a nominee to fill a vacancy on the Federal district judge and the Federal circuit court. That nominee is then given to the White House for approval and investigation, FBI background checks, the normal things. If the White House then clears that nominee, the name is sent to the Senate Judiciary Committee. A hearing is scheduled in the normal course where the person is brought before the committee. After the committee has done its investigation, questions are asked and then the person is brought for a vote and eventually finds their way to the floor.

Under the Clinton administration, after the nominee came out of the White House, 63 times, 20 percent of the President's nominees were stopped at that point and never brought to a hearing before the Senate Judiciary Committee. So the argument that we have stopped four belies the reality that when we looked at the numbers from the Clinton administration, 20 percent, not 2 percent but 20 percent, of the judges never got their chance before the Judiciary Committee to even present their credentials and argue for their nomination.

I say to the Senator from Nevada, that is a sad reality. Frankly, this President is being treated far better than President Clinton. This Senate Judiciary Committee, under the leadership of Senator PATRICK LEAHY, a Democrat, approved 100 of President Bush's nominees, gave them hearings and moved them forward.

We tried in a bipartisan fashion to meet our constitutional responsibility. Only 4 times out of 172 have we said no. Only four. It is reasonable for us to stop and ask hard questions of nominees who are asking for lifetime appointments to some of the highest courts of the land.

Mr. REID. Will the Senator yield?

The PRESIDING OFFICER. The time of the Senator from Illinois has expired. However, there is a minute and a half left on the Democratic side.

Mr. REID. Will the Senator answer this question?

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. I direct the question through the Chair to my friend from Illinois. The number 168 on the chart behind you, does that represent 168 people who have been nominated by President Bush who are now serving in the Federal judiciary who have lifetime appointments?ca

Mr. DURBIN. That is correct. I say to the Senator from Nevada that there are some among those 168 about whom I have had misgivings. Many of them I voted for anyway, understanding this is the President's prerogative to nominate people for the Federal courts.

Going back to the point I made earlier, the President does not have a constitutional right to appoint Federal judges. He has the right to nominate them. Only with the advice and consent can they be appointed to the Federal judicial vacancies. Therein lies the real difference in the argument we brought forward this evening.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada has the floor with 27 seconds.

Mr. REID. When the majority uses their time, the half hour will be divided in whichever way the Senator from Michigan, Mr. LEVIN, and the Senator on the other side wishes to divide 30 minutes.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, Senator HATCH will be on the floor shortly. Before he gets here, I want to talk about one of the nominees who we will be voting on, once again, with cloture votes on Friday. That is Justice Priscilla Owen. Justice Priscilla Owen has had a vote in the Senate. She has had four or five votes in the Senate.

If we were adhering to the Constitution of the United States, she would be sitting on the Fifth Circuit today. There are three vacancies on the Fifth Circuit. They need to fill their bench. She should be sitting there because she has gotten more than 51 votes. But Priscilla Owen is not sitting on the Federal bench today because we have a new standard that has been put in place for the first time since 1789. Last year, we started having a 60-vote standard for Federal judges.

So Priscilla Owen, although she has repeatedly and every time, gotten over the required 51 percent, is not sitting on the Federal bench today. No. Instead, this very qualified supreme court justice of the State of Texas is doing her job, doing it very well, serving as a supreme court justice in the State of Texas, even though she has gotten the requisite number of votes on repeated occasions to be confirmed as a Federal judge by the standards of this Congress from 1789 until 2002, until the rules were changed because we are now filibustering Federal judge nominees.

Priscilla Owen was endorsed by every newspaper in Texas when she ran for reelection. Priscilla Owen made the highest grade—the highest grade—on the bar exam when she took it. She graduated at the top of her class from Baylor Law School. She has had an exemplary record both as a supreme court justice for the State of Texas and as a practicing lawyer. She is experienced. She is qualified. She was rendered qualified by the ABA system, the committee, and she has been endorsed by Democrats and Republicans throughout Texas. She has been endorsed by Democratic supreme court justices with whom she served on the Supreme Court of Texas.

The former chief justice of the supreme court, a Democrat, named John R. Hill, who also was a Democrat attorney general in the State of Texas—a very fine one, a very respected lawyer in Texas; supreme court chief justice and attorney general of our State—said Priscilla Owen is unqualifiedly the best we could have for this court. She is a person who ought to be on the Federal court.

In fact, he came up here and tried to meet with Democratic Senators to talk about how qualified she is. That Priscilla Owen is not sitting on the Fifth Circuit today is a tragedy, and it is not right.

She is not the only one who has been asked to meet this higher standard. Look at Miguel Estrada, who came to our country as a boy and did not even speak English, who studied so hard that he was able to go to Columbia and become a Phi Beta Kappa, and then to Harvard Law School, where he graduated, again in the top of his class.

Miguel Estrada, the American dream; Miguel Estrada, who sat here since May of 2001, who got the requisite number of votes to be confirmed for the DC Circuit—well over 51—time and time and time again, but he is not sitting on the DC Circuit. He finally said: I can't take this anymore. I have to get on with my life. In September, he said: Take my name off the list.

Why? Why have we set a higher bar for Priscilla Owen and Miguel Estrada—these two perfectly qualified people, with great academic standing, with great records, with experience, everything you would want on the Federal bench?

What are we going to do to the people who would ask for Federal benches in the future? I am very concerned that after watching this process so many of them are going to say: Please, don't throw me in that briar patch.

So, Mr. President, I do not think we should change the Constitution of the United States without going through the process of a constitutional amendment. Have we had a vote on the floor that got a two-thirds majority saying that we will have a 60-vote requirement for confirming Federal judges? Have we done that? That is the process for amending the Constitution of the United States.

But I do not think that since I have been here I have seen a vote that would say: No, it is not a 51-vote margin; it is 60. No, Mr. President, we have not had that vote. But, in fact, the amendment to the Constitution is being put forward without going through the process. Because we now have six people nominated to the circuit court bench who are having to meet a higher standard than 51. And that is not right.

To date, our President, President Bush, has had 63 percent of his nominees to the circuit court confirmed. The previous three Presidents have had 91 percent of their circuit court judges confirmed by this time in their terms.

So I am going to turn the floor over to the distinguished chairman of the Judiciary Committee who has done a wonderful job trying to get these nominations through the process. He has done a magnificent job in trying to bring these great nominees to the floor.

But we are standing here tonight because this is a constitutional issue, and it is important. It is important that these good people, who have submitted themselves for this process to be confirmed as Federal circuit judges, be able to, with dignity, have a vote up or down with the same standard that we have had since 1789; and that is a 51-vote margin.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Utah.

Mr. HATCH. Mr. President, I have been listening to this debate and the populist arguments being made by Democrats who seem to think that having Federal judgeship nominees treated fairly, as they always have been in the past, once they have been brought to the floor, seems to be not right because they think we ought to do something about jobs.

Well, why haven't they? This recession began in the last year of the Clinton administration. I went through just some of the things that show they have had a pattern of obstruction from day 1 around here since we have taken over control of the Senate.

The pattern of obstruction was set on the first day of the 108th Congress when the motion to adjourn was forced to a rollcall vote, something that is usually never done. The long overdue 2003 appropriations bills were finally enacted after we became the majority in 2003, on February 20.

For the first time in history, filibusters were used to defeat the President's circuit court nominees. I have mentioned upwards of 15 that some Democrats have told me they are going to filibuster. They are not going to filibuster all of them, but they are certainly filibustering already more than four. There are six right now by the time you get through with Friday.

I can tell you, there are a whole raft of others they are planning on filibustering. First time in history, treating a

President like dirt, and these nominees, which is even more important in this sense, because these nominees—we are going to find that we cannot get the top people in the country to take these positions, especially if they are very liberal or very conservative, even though they are in the mainstream. And that is a big phony shibboleth. Every time they say: Well, they are outside the mainstream of American jurisprudence. They were saying that about Bill Pryor, criticizing the cases that he won as the Alabama attorney general before the Supreme Court. So who is out of the mainstream? It certainly is not Bill Pryor, nor is it any of these other nominees.

Like I say, Priscilla Owen, who has been held up for 3 years now—better than 3 years—Priscilla Owen is on the Texas Supreme Court. She was one of the first women partners in this country. She broke through the "glass ceiling" for women. They ought to be giving her a medal instead of treating her in this despicable fashion, and they are only doing it because these inside-the-beltway groups control, in many respects, what they do. It all comes down to abortion.

Now, there are sincere people on both sides of that issue. That is why I did not allow the issue of abortion to stop otherwise qualified candidates from getting a vote up or down on the floor, even though I am personally pro-life and cannot imagine why anybody would want to go for a regime of abortion on demand. There were 1.6 million abortions a year at one time. Forty million abortions in this country—the barbaric practice of partial-birth abortion, which many of my colleagues voted for, even some on this side.

Let me go down a few further here: Needed legal reforms, I mentioned, to stop lawsuit abuse against doctors, businesses, and industries have been virtually banned by the tactics of the minority.

Jobs have been lost right and left because of their refusal to allow decent laws to be passed. Medical liability, class action reform, gun liability, and asbestos lawsuit reforms have all been subject to delays or filibusters by our colleagues on the other side.

As I said, we spent 22 days on an Energy bill last year, and then we had to spend 18 days on an Energy bill this year, when we basically enacted the same bill we did last year.

Bioshield legislation is very important for those of us who work heavily in the area of health care and antiterrorism. Bioshield legislation is necessary to ensure proper vaccines and medicines to counter bioterrorism attacks has still not cleared objections.

The State Department reauthorization was stalled by Democrats insisting upon unrelated poison-pill amendments being voted on prior to passage.

The District of Columbia appropriations bill is subject to a rolling filibuster threat over a provision giving low-income students school choice, where we spend over $11,000 per student and have the lousiest school system in the country.

Last year Senate Democrats failed to pass a budget resolution for the first time since the Budget Act was written in 1974, and they have the gall to come in here and say: Well, we ought to be taking care of jobs.

We are going to take care of jobs if we can get some cooperation from them. But all the taking care of jobs in the world may not amount to much if we do not have a good Federal judiciary to make this system work, to make sure our constitutional way of life continues.

They passed no welfare reform. They took no action to ban cloning. They passed no Medicare prescription drug plan. They confirmed a record low number of judges. They enacted only 2 of the 13 appropriations bills and delayed enactment of a Homeland Security Department for months. It is this dismal record of inaction that Democrats hope to repeat.

Now, we are committed to delivering the Healthy Forests bill and the CARE Act to the President's desk. The Democrats are refusing to name conferees to the bill that passed with strong bipartisan support. I could go on and on.

But my friend from Nevada—it is kind of interesting to me that he would take 10 hours out of the Senate's time on Monday to filibuster, when we all came here prepared to vote on appropriations bills.

I think it is pretty bad to come in here and say that we should not do what we should for judges, when they themselves have been filibustering not just judges but virtually everything else with a slow walk.

Mr. McCONNELL. Will the Senator yield for a question?

Mr. HATCH. I am glad to yield, without losing my right to the floor.

Mr. McCONNELL. I notice my friend's voice from Utah is cracking a bit, and I thought I might give him a moment's relief by asking him a question or two.

Mr. HATCH. Sure.

Mr. McCONNELL. I would ask the chairman of the Judiciary Committee, was it not the case that the current DC Circuit Judge John Roberts and nominee Miguel Estrada were nominated on the same day in May of 2001?

Mr. HATCH. That is correct.

Mr. McCONNELL. I would ask my friend from Utah, is it not true that the rationale for defeating Miguel Estrada given by the other side was that either he or the Justice Department or both of them refused to turn over the working papers that he had produced during his period as a lawyer in the Solicitor's Office of the Justice Department?

Mr. HATCH. That is correct. These are the most confidential private papers of the Solicitor General's Office, the lawyer who represents all of the public.

Mr. McCONNELL. Right. Was it also not the case, I ask my friend from Utah, that every single living Solicitor, who are either current or former Solicitors, the majority of which are Democrats, concurred with the Justice Department's position that these working papers should not be turned over?

Mr. HATCH. That is correct. Four of the seven former Solicitors General were leading Democrats, who said that what the Democrats are doing is wrong.

Mr. McCONNELL. People such as Seth Waxman and Archibald Cox?

Mr. HATCH. Right.

Mr. McCONNELL. All concurred?

Mr. HATCH. Right.

Mr. McCONNELL. All concurred that these types of working papers should not be turned over?

Mr. HATCH. That is right.

Mr. McCONNELL. Is it not the case, I ask my friend from Utah, that both John Roberts and Miguel Estrada worked in the Solicitor's Office?

Mr. HATCH. They both worked there. They both were excellent appellate lawyers. By the way, Estrada worked not only with the Bush administration but with the Clinton administration. And he had high marks.

Mr. McCONNELL. The same two gentlemen we just discussed, who were nominated on the same day back in May of 2001, by President Bush, for the very same court?

Mr. HATCH. Right.

Mr. McCONNELL. Nominated to the same court, the same experience in the Solicitor's Office. And is it not the case, I say to my friend from Utah, that John Roberts was passed out of committee and subsequently confirmed on a voice vote in the Senate?

Mr. HATCH. A unanimous voice vote on the floor, but only after waiting 12 years through three nominations by two different Presidents.

Mr. McCONNELL. He certainly had to wait a while, did he not?

Mr. HATCH. Right.

Mr. McCONNELL. Is it not the case that you had two nominees nominated on the same day, to the same court, having had the same experience in the Solicitor's Office, and one nominee was rejected because internal papers in the Solicitor's Office were requested and not turned over, and no such request for the same kind of office papers were made of now Judge Roberts?

Mr. HATCH. John Roberts, who was one of the finest appellate lawyers in the country, as was Miguel Estrada, was treated completely differently once the Judiciary Committee considered him. And I had to force them to consider him. Yet he passed this body by unanimous consent.

Mr. McCONNELL. So the request was made for certain papers of one nominee and the precise same papers of the other nominee were not requested?

Mr. HATCH. That is exactly right. They treated Miguel Estrada differently from John Roberts.

Mr. MCCONNELL. Let me ask my friend from Utah, is there any conceivable basis for such disparate treatment for the same two people, nominated for the very same court on the very same day, going through the very same Judiciary Committee? Can the Senator from Utah think of any rational reason for this kind of disparate treatment?

Mr. HATCH. Not a legitimate reason. The only reason was they believed him to be pro-life. I don't know whether he is to this day because we do not ask those questions.

Mr. MCCONNELL. But the stated reason, I would say to my friend from Utah, you just confirmed a moment ago. The stated reason for not confirming Miguel Estrada was that he would not turn over these papers or the administration would not turn over these papers.

Mr. HATCH. The phony reason.

Mr. MCCONNELL. That was the stated reason.

Mr. HATCH. The phony reason they hid behind.

But let me make this point. Miguel Estrada, as great an attorney as he is, having argued 15 cases before the Supreme Court, having the highest recommendation of the American Bar Association, their gold standard, they did not want him to come through this process because they knew, or at least they perceived, that he was on the fast track to become the first Hispanic on the Supreme Court and they just cannot tolerate having a conservative Hispanic on the Circuit Court of Appeals for the District of Columbia, let alone on the Supreme Court.

Mr. MCCONNELL. So I say to my friend from Utah, what we have is a situation where a white male nominee, to the very same court, with the very same experience, was treated one way and a Hispanic-American nominee, nominated to the very same court, on the very same day, was treated differently?

Mr. HATCH. That is absolutely right. But even Roberts had to go through a lot of pain to get there—12 years waiting, nominated three times by two different Presidents.

We put him out of the committee after a 12-hour hearing. You hardly have that much for Supreme Court nominees. There were two others on that list. They complained because there were three on one day's hearing. They ignored the fact that TED KENNEDY, when he was chairman, had seven circuit nominees one day, and another four. We had at least 10 other times when we had three.

Then once we put him out of the committee, I had to bring him back in the committee so they could have another crack at him. They could not touch him. He was that good. So he had to go through an inordinate process to get there. But they knew they did not have anything on him. They know they didn't have anything on Miguel Estrada.

Mr. MCCONNELL. It sounds to this Senator, I wonder if the chairman concurs, that there was a sort of rule created and applied to Miguel Estrada——

Mr. HATCH. It was a double standard.

Mr. MCCONNELL. That was not applied to John Roberts, two nominees considered for the same court at the same time.

Mr. HATCH. Absolutely right. Roberts was treated like all other nominees during the Reagan years, Bush 1 years, and the Clinton years. He was not asked to give his opinions on future issues that might come before the Circuit Court for the District of Columbia.

Because Miguel Estrada answered the same way basically as all the other people who had passed in prior years, they held that against him. The big phony issue was knowing that the Solicitor General's Office did not give the most privileged, private documents in that department without making that department unworkable.

Mr. MCCONNELL. Which is why, I say to my friend, they didn't ask for those papers on John Roberts.

Mr. HATCH. That is right. They did treat Roberts differently, no question about it. They gave him a rough time, too. Miguel Estrada is in a league of his own in the way he was mistreated, but Roberts was mistreated, too. Roberts sits on the Circuit Court of Appeals for the District of Columbia after having been unanimously approved here.

Let's talk about how important that is. We have had 40 rollcall votes on the floor. You talk about delays. You talk about fouling up this body. We have had 40 rollcall votes on people who got unanimously confirmed. Can you imagine what it takes to go through 40 rollcall votes? It slows down the Senate like you can't believe, and muscles up the Senate like you can't believe. It is all a big game to try and make this President not successful. But Miguel Estrada had to go through that as well.

Mr. MCCONNELL. So I say to my friend from Utah, and I will conclude with this, the practical result of that is this immigrant who came to the United States as a teenager, speaking broken English, realized the American dream, went to undergraduate and law school, was a star student, argued 15 cases before the Supreme Court, was denied an opportunity to get an up-or-down vote on the Senate floor by the creation of a standard that was not applied at the very same time to another nominee who was not a minority.

Mr. HATCH. And, by the way, was never applied to any nominee, to my knowledge, in the past. Miguel Estrada was singled out with a double standard for the sole purpose of defeating his nomination and getting him to withdraw.

Mr. MCCONNELL. They were having a hard time, I say to the chairman, trying to find some basis upon which to defeat this guy. He was unanimously well qualified by the ABA, right?

Mr. HATCH. Their gold standard.

Mr. MCCONNELL. He argued 15 cases before the Supreme Court.

Mr. HATCH. Very few people even argue one case.

Mr. MCCONNELL. He received outstanding recommendations from everyone with whom he worked. They were having a real struggle, weren't they, I say to my friend, the chairman, trying to find some basis upon which to reject this truly outstanding nominee.

Mr. HATCH. It shows the lengths they would go to on that side—at least the leaders on that side—to screw up a nomination of a very good person.

Take Janice Rogers Brown. She is a terrific African-American justice on the California Supreme Court. She wrote the majority of the majority opinions on that court last year, and yet they come here and say she is outside the mainstream. They are outside the mainstream when they make arguments such as that.

There is only one reason they are against Janice Rogers Brown and filibuster her: because she is an African-American woman who is conservative and pro-life. For these inside-the-beltway groups, that is their single issue.

I had friends on the other side tell me, when I asked, "Why are you doing this," say, "Well, the groups will score this as a vote, and then they will come against whoever votes that way in the next election." These guys don't have the guts to take on the groups.

Mr. MCCONNELL. Isn't it true, I ask my friend from Utah, in California where the justice to whom you just referred serves on the supreme court, you have to stand periodically for continuation?

Mr. HATCH. That is right.

Mr. MCCONNELL. You can be rejected. Is it not true she got three-fourths of the votes?

Mr. HATCH. Better than that. She got 76 percent of the vote. She was the top vote-getter among four supreme court nominees.

Mr. MCCONNELL. This is in that bastion of conservatism, California.

Mr. HATCH. I think the Senator makes a very good point.

Mr. MCCONNELL. This nominee who was called outside the mainstream—outside the mainstream—gets about three-fourths of the vote in that bastion of conservatism—California—and the other side suggests she is somehow unacceptably conservative? That is absurd on its face, I argue to my friend.

Mr. HATCH. It certainly is. I went to one of my friends on the other side—

and I won't mention the name because I don't think that would be proper—and I said: What did you think of Janice Rogers Brown? His answer was: She's terrific—which she was in front of the committee. Yet every Democrat went against her in committee and I think cited horrendously bad arguments to do it.

They can point to 8 or 10 cases with which they didn't agree, but with which a lot of people do agree, and then they say she is outside the mainstream when she has tried hundreds of cases and decided, as a majority opinion writer, the most majority opinions in that court last year and I think in prior years as well.

It is really unseemly, and that is why we are so upset here. Let me tell you, if we continue down this course, we are going to severely harm the Federal judiciary and get only people who really are not only outside the mainstream, but are Milquetoast, who can't make a decision to save their lives. Once you get to the Federal bench, you have to be able to make tough decisions.

Mr. McCONNELL. Isn't it also true, I say to my friend, the chairman, that one of the arguments used on some of the nominees is because they have certain personal beliefs, that they won't uphold the law? Has that been an argument frequently made?

Mr. HATCH. That is a frequent argument. I think the best illustration of that happens to be Bill Pryor.

Mr. McCONNELL. Which is what I was going to ask my friend, the chairman.

Mr. HATCH. They criticized him for cases he won before the Supreme Court, saying he is outside the mainstream because they disagreed with the cases. In fact, they think Rehnquist is out of the mainstream. They think Scalia is out of the mainstream. They certainly think Clarence Thomas is out of the mainstream because they want a single approach, a minority approach to everything that has to be liberal, and if you are not liberal, you are outside the mainstream, even though some of the greatest judges ever to sit on the Federal courts and Supreme Court were conservatives. Some of the great ones were liberals, too, but understood the role of judges.

Mr. McCONNELL. This is the same Bill Pryor who is currently standing up against the Alabama chief justice.

Mr. HATCH. Right.

Mr. McCONNELL. Who has been defying a court order by refusing to remove the Ten Commandments from a public building. It is very unpopular in Alabama to be against that guy.

Mr. HATCH. Bill Pryor is getting savaged by the rightwing because he basically sued to have the chief justice removed for not following the rule of law.

Mr. McCONNELL. A classic example of following the law and not his own personal beliefs; is that not correct?

Mr. HATCH. That is absolutely correct. Just fast forward to this week. As the Atlanta Journal Constitution reported this week, Bill Pryor filed a pretrial brief asking the Alabama Court of the Judiciary to remove Judge Moore from the Alabama Supreme Court because of Moore's defiance of the Federal court order to remove the Ten Commandments display. Bill Pryor's brief stated, quoting from the Atlanta Journal Constitution article: Moore should be removed because "he intentionally engaged in misconduct and because he remains unrepentant for his behavior."

I could go on about Bill Pryor. During his hearing—a lengthy hearing—he was asked over and over by virtually every Democrat who showed up about his deeply held personal beliefs. He answered every question the way a judicial nominee should. Even though he had deeply held beliefs, he would obey the law.

The PRESIDING OFFICER. The time controlled by the majority has expired.

Mr. HATCH. I thank the Senator for his excellent questions.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask the time of the half hour allotted to this side be divided between myself and Senator DODD and that I may proceed for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, what I wish the majority would be allowing tonight is consideration of legislation that addresses the loss of over 3 million jobs in this country during the last few years, most of them manufacturing jobs.

What I wish the majority would be allowing us to do tonight is to consider legislation to extend the unemployment benefits to those Americans who have lost their jobs in this recession, the way we have extended unemployment benefits in previous downturns.

Those needs of the American people and a dozen other needs are what we ought to be spending our time on tonight and every day until those issues, and many other critical issues, are addressed.

Instead, those on the other side of the aisle decided to spend 30 hours rehashing the reasons that 4 out of the 172 of President Bush's judicial nominees have not been confirmed by the Senate. That is their right, but it is wrong.

In my home State of Michigan, the unemployment rate is 7.4 percent. In fact, Michigan has lost and continues to lose more manufacturing jobs than almost any other State in the Nation. Mr. President, 2.5 million of the 3.3 million jobs which the U.S. economy has lost since January 1, 2001, were in manufacturing. We lost over 160,000 of those jobs in Michigan alone. Other States face large job losses, but what we should be doing is helping people who lost jobs, acting to stop the currency manipulation by China, Japan, and other countries, and the one-way street in trade which has been such a large part of the loss of jobs in this country.

The first act of this Congress last January was to extend unemployment benefits through the end of this year because Congress did not act last year. That made the 2002 holiday season mighty grim for those workers whose benefits had expired. Current law provides 13 weeks of additional Federal aid to laid-off workers who have exhausted their 26 weeks of regular State benefits. However, this administration has shown no interest in either extending the deadline for the program or authorizing new benefits. The trust fund that is to be used for unemployment benefits currently has over $20 billion in it. Why this administration balks at extending unemployment benefits is beyond me since that is what the money in that fund is for.

I, along with a number of our colleagues, propose we extend the December 31 deadline for another 6 months so newly unemployed workers can receive Federal assistance, but also making available an additional 13 weeks of Federal unemployment benefits for a total of 26 weeks. That is what we have done in prior recessions. We responded during the 1974 recession. Federal benefits were extended to 29 weeks.

In the 1981 recession, Congress extended benefits to 26 weeks. In the 1990 recession, 26 weeks were provided, 33 weeks to States with high unemployment.

While the unemployment numbers released last week were somewhat of an improvement, in terms of manufacturing jobs, that loss continues, and the long-term economic forecast continues to be pessimistic.

On this track, this administration will be the first administration to lose private sector jobs since Herbert Hoover.

In one moment I am going to propound a unanimous consent request that I know my Republican colleagues will want to hear, and I want to alert them of the fact I will be propounding that request in a moment. I hope our Republican colleagues will give us consent to take up unemployment insurance extension legislation this evening. Perhaps then this 30-hour exercise will be fruitful.

I think I have alerted the Republicans that we would be making this unanimous consent request.

UNANIMOUS CONSENT REQUEST—S. 1853

I ask unanimous consent that the Senate proceed to legislative session; that the Finance Committee be discharged from further consideration of

S. 1853, which is a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to its immediate consideration; that the bill be read a third time and passed; and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LEVIN. Mr. President, since the majority has now determined we will spend 30 hours of the time of the Senate rehashing 4 of the 172 judicial nominations that haven't been confirmed, I want to address what is an even deeper issue than the majority's effort to weaken and water down the role of the Senate in exercising its advice-and-consent responsibility.

That even more fundamental issue is our Nation's historic and constitutional system of checks and balances. Those checks and balances are an integral part of the unique design of our founding document in restraining the potential excesses and extremes of the executive branch. We share the obligation and responsibility with the judicial branch.

Our rules in the Senate are aimed at restraining the potential abuse of the rights of the minority by the majority within the legislative branch itself.

In June of this year, Robert Caro, the eminent Pulitzer Prize winning historian and author of "Master of the Senate," his great biography of former President and Senate majority leader Lyndon Johnson, wrote to our Senate Rules Committee addressing this subject and quoting from his book. Here is what he said:

> . . . in creating this new nation, its Founding Fathers, the Framers of its Constitution, gave its legislature . . . not only its own powers, specified and sweeping . . . but also the powers designed to make the Congress independent of the President and to restrain and act as a check on his authority, [including the] power to approve his appointments, even the appointments he made within his own Administration . . . and . . . the power to approve Presidential appointments was given to the Senate alone; a President could nominate and appoint ambassadors, Supreme Court Justices, and other officers of the United States, but only "with the advice and consent of the Senate."

Robert Caro goes on to say:

> The Framers wanted to check and restrain not only the people's rulers, but also the possibility that the majority will be used in Madison's words "to oppress the minority." The Framers, he [Madison] said, established the Senate as the body "first to protect the people against their rulers; secondly to protect the people against the transient impressions into which they themselves might be led . . . The use of the Senate is to consist in its proceeding with more coolness, with more system. . . .

One of the historical tools for the protection of the minority which is developed in the Senate from its earliest days is the principle of extended debate. The exercise of this right of Senators, particularly when it is used to block actions which the majority fervently wishes to take, is embodied in our Senate rule that you must have a supermajority of 60 percent of the Senate on matters where there is strong opposition.

Filibusters have played an important role in moderating action in the Senate. It is widely recognized the Senate is a less partisan place—you may not be able to discern that tonight, but generally this is a less partisan place than the other body in our Congress or virtually any other democratically elected legislative body anywhere in the world.

As Senator BYRD said in his series of scholarly addresses on the floor of the Senate about Senate history:

> Arguments against filibusters have largely centered around the principle that the majority should rule in a democratic society. The very existence of the Senate, however, embodies an equally valid tenet in American democracy: the principle that minorities have rights.

Senator BYRD goes on to say in his study:

> The most important argument supporting extended debate in the Senate, and even the right to filibuster, is the system of checks and balances. The Senate operates as the balance wheel in that system, because it provides the greatest check against an all powerful executive through the privilege that Senators have to discuss without hindrance what they please for as long as they please . . . Without the potential for filibusters, that power to check a Senate majority or an imperial presidency would be destroyed. It is a power too sacred to be trifled with.

Lyndon Baines Johnson said in 1949:

> . . . If I should have the opportunity to send into the countries behind the iron curtain one freedom and only one, I know what my choice would be . . . I would send those nations the right of unlimited debate in their legislative chambers.
>
> If we now, in haste and irritation, shut off this freedom, we shall be cutting off the most vital safeguard which minorities possess against the tyranny of momentary majorities.

In May of 1994, when the Republican minority blocked President CLINTON's nomination of Sam Brown to be ambassador, one of our Republican colleagues said the following:

> In considering the nomination of Mr. Samuel W. Brown to be the Ambassador to CSCE, I have reflected on the latitude which ought to be accorded the President in making this decision for the ambassadorship, reflecting as well on the constitutional responsibility of the Senate for advice and consent as a check. . . . I am troubled by a situation where the only pressure point Republicans have in the U.S. Government is on cloture. Once cloture is obtained, there are more than enough votes on the other side of the aisle to cover the day. While the House is not involved in this matter, the House is overwhelmingly Democratic; there is a Democrat in the White House. The only place Republicans can assert any effective, decisive action is by stopping somebody from coming up. We have 44 votes, and we have more than enough, if there is unity among the Republicans, to do that. I think Mr. Brown's nomination and the responsibilities at the Conference on Security and Cooperation in Europe are sufficiently important to preclude his nomination.

The filibuster succeeded in blocking this nomination.

There are many reasons to at least consider modification to the Senate rules regarding the procedures for ending debate, the process we call cloture. Those rules have been modified a number of times before, but one of the reasons to consider modifying our rules is not the reason which is motivating our current majority in the Senate: irritation with the fact that only 98 percent of President Bush's judicial nominees have been confirmed by the Senate. That irritation that a substantial minority of Senators would stand in the way of getting their way 100 percent of the time has led to this 30-hour talkathon and their apparent desire to amend the Senate rules to let them get their way 100 percent of the time.

We find ourselves tonight debating not whether unemployment insurance should be extended for Americans who have lost their jobs, not how to create more jobs in our economy, not how to better provide for the education of our children, or to strengthen our homeland security, or reduce the cost and increase the availability of prescription drugs, but, rather, listening to the re-argument of the case for the 4 nominees out of 172 nominees the Senate has not confirmed.

They want a 100 percent confirmation success record, and they appear to be willing to throw over the very essence of the Senate and its check-and-balance role to accomplish it. The Constitution says the President shall nominate, and, by and with the consent of the Senate, shall appoint ambassadors and judges.

William Maclay, one of the first two Senators from Pennsylvania, wrote the following:

> Whoever attends strictly to the Constitution of the United States will readily observe that the part assigned to the Senate was an important one, no less than that of being the great check, the regulator and corrector, or, if I may so speak, the balance of this Government. . . . The approbation of the Senate was certainly meant to guard against the mistakes of the President in his appointments to office [and] the depriving power should be the same as the appointing power.

I thank the Chair, and I yield the floor to my friend from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I begin by thanking my colleague from Michigan for his comments. I intend to share some similar thoughts this evening.

First of all, let me begin by stating my own views about this process this evening and note—some have chosen to use the word anger—but I rise more in sadness.

We are gathered to engage in this—I do not know what it is properly called—I guess a filibuster. It is unique in that the majority is conducting a filibuster. Normally, a filibuster, for those who are interested in how this works, is conducted by a minority within a minority, but we find ourselves this evening a few short days away from the end of this particular session with a tremendous amount of unfinished business, and we are spending the next 30 hours—or 26 hours, whatever is left—on this particular debate and discussion, which I suppose has some value in the mind of some. As far as this Member is concerned, I regret in some ways even addressing the matters before us this evening. The better approach might have been to protect the rights of the minority but not to engage in this debate.

There may be four votes that will occur on Friday. Three of them involve individuals who are seeking appointment to the Federal judiciary. With all due respect to these particular nominees, putting aside one's views or whether they are for or against them, history will probably little note nor record for any great length of time who they were. That is not in any way to suggest they are not worthy individuals, but in the passage of time, these nominations will not register terribly significantly in the history of the debates of this great Chamber.

I arrived as an employee of the Senate about the age of 17 when I sat on these steps. Lyndon Johnson was the majority leader of the Senate. There was Everett Dirksen and Senator McClellan. It was a sea of giants who served in this body. I tried to imagine this evening whether or not they might proceed in a debate like we are having, but I cannot imagine them doing so, quite candidly.

I am afraid we are diminishing dramatically the incredible historic role of this institution by this process. When I think of all the matters that deserve our attention, when I think of all of the Herculean debates that have occurred in this Chamber throughout the 217-year history of our country, some of the great debates deciding who we were as a society—I sat on that step over there and listened to the all-night debates on civil rights in the early 1960s. I listened to southerners argue vehemently on behalf of their position regarding States rights. They were incredible debates. Never once in all of that process that I watched as a child sitting out there did I ever hear anyone suggest we ought to change the rules of the Senate.

Even among those who were outraged that there were those who were arguing about denying a substantial minority of citizens of this country the right to participate freely in the democratic institutions of America, never once did anyone suggest we ought to somehow curtail the right of a minority to be heard in debate, extended debate. Never once. Yet here we are tonight, having an extended debate over three or four judicial nominations. We may be asked on Friday to cast a ballot about amending the rules of the Senate to fundamentally change what has been a central ingredient of why this institution has been as celebrated and honored throughout the 217-year history of this country. That I find rather appalling, that we would gather at this hour with all of the other issues in front of us.

I spent 2 hours yesterday at Walter Reed Hospital. I took my 2-year-old daughter out to visit with the young men there, many of whom are missing limbs. I saw several of my colleagues out there, by the way. SAM BROWNBACK was out there. I went to spend a quiet couple of hours to express to these young men my great admiration for what they had done for their country.

I would like to think they might think something larger of this institution other than that we would engage in a discussion and debate tonight about three or four judicial nominations. Other of my colleagues have made comments about the numbers that have been approved and not approved. I am not a member of the Judiciary Committee. I have heard my colleagues extol the virtues of these nominees. I have heard others excoriate them. I will leave that debate for others. The vote I am most worried about is the possible fourth vote that may occur on Friday, and that is whether we are going to change the nature of this institution because some of us are disappointed about some outcomes of votes. I would hope whatever else ensues or passes over these next 30 or 40 hours that when it comes to that vote, maybe there will be those who will get up and defend this institution.

It is inappropriate for me to do so, but I will note the fact that there are those watching this debate this evening in this Chamber who are of a younger generation. They are students, I suspect, in some way wanting to participate or witness what some have tried to describe as an historic event. I would hope they take note of the arguments in debate about what is important, why the Founders created this institution, why we are not a unicameral body, as some State legislatures—why we are a bicameral body, why it is there is down this corridor a House of Representatives at that end of the building and a Senate at this end. What are the fundamental distinctions between these two branches of one House? Why are we different? Why do we exist? What did the Framers have in mind when they created this institution? It is this very debate that gives justice, gives rationale to the existence of the Senate.

One needs only to go back to the Federalist papers, and as I look around this Chamber there are the forebears of those who sit in these seats who made the most eloquent arguments on behalf of the notion, of the idea, of having extended debate and the right and power to amend. Those are the two central ingredients which make this institution so unique.

When we begin to erode those very powers, then the very justification for this institution begins to diminish. We end up creating nothing more, potentially, than a mere image of the body that is at the other end of this hall.

I gave some remarks going back a number of weeks ago in front of the Rules Committee. I am the ranking Democrat of the Rules Committee. As such, I bear a responsibility, along with my colleague from Mississippi, who is the chairman of the committee, to consider such matters. I have great respect for the majority leader, but I would hope as we discuss the idea of amending rule XXII, that we would keep in mind what the Framers had in mind when it came to nominations, particularly nominations of a life tenure.

It is one thing to be talking about nominations during the duration of a given administration, but with judicial nominations it is for life. Depending on how young that person may be, an Federal judicial appointment can go on for decades. And so the Framers, given the experience they had come through, with the tyranny of a king, desired to create a system whereby the third coequal branch of government would have powers delineated between the executive branch to appoint and the legislative branch to approve, to provide its advice and consent.

If the ability of this institution to thoroughly exercise that right of advice and consent is destroyed, then we run the risk of creating a judicial branch, a coequal, that becomes nothing more than the hand servant of the executive. That is what the Founders worried about. It is what Senator Rutledge of South Carolina argued for when he spoke eloquently about the importance of keeping an independent judiciary.

In fact, for many weeks, during the constitutional convention, they argued the President ought to have no rights when it came to judicial nominations, that that right ought to be exclusively contained in the Senate of the United States. As a result of compromise, it was ultimately decided that the power to nominate individuals should reside in the executive, and the power to approve should remain here, thus guaranteeing, to the extent possible, an independent judiciary.

What is being suggested by the fourth vote we may be asked to cast on Friday is that we undermine that very principle which has survived for 217 years. I would hope with a resounding vote, both Democrats and Republicans, whatever strong feelings there may be about these three or four nominees, or whatever the number is, that we would not allow this institution to be diminished, caught up in the passions of these nominations.

History will not record nor remember who these people are, but if we undermine this institution's ability to do what our Founders asked us to do, then history will record forever our shortsightedness.

I regret in a sense having to engage in this debate. I was stunned to learn that in addition to this 30 hours of "circusry" going on here, and the three votes that will occur on Friday, there may be a serious effort to vote on whether this institution should give up its right to be able to have extended debate on judicial nominations.

This institution and its history deserve more. The fact that the Senator from Michigan and I have to arise at 10 at night to argue about something as fundamental as a rule change in the Senate and to be asked to vote on it with maybe 5 minutes of deliberation before that ballot is cast on Friday is incredible to this Member. It is incredible we would have to do this.

Does not anyone care about being here? We are only temporary stewards. My colleagues and I are just guaranteed a short amount of time to be a part of this institution. We do not own this. We bear an historical responsibility to those who came before, but an even greater one to those who come afterward, to see to it we maintain the order and the ideals embodied in the creation of this institution. That we would relegate a fundamental change in the rules of the Senate to a debate occurring between 10 and 2 and 3 and 4 and 5 a.m. in the morning, with a vote to that may be cast on Friday without further deliberation, I find stunning in its dimensions.

This is a matter that deserves far more deliberation and thought, whatever one's views may be on these nominations. To find ourselves, with all of these other issues that are in front of us, to have to defend the Senate in the wee hours of the morning about a rule that has sustained us as an institution, is something I regret deeply.

I hope my colleagues, whatever their passions may be about Miguel Estrada, Priscilla Owen, William Pryor, and Charles Pickering—I do not know these individuals. I presume they are good people, whatever differences we may have, as I am sure there have been people who have been nominated in previous administrations who are also good people who were rejected because the majority today disagreed with them. I am sorry that happens to people, but unfortunately, that is one of the aspects of a process such as we have, as imperfect as it is.

The idea that our passions are so wrapped up in these individuals that we are willing to squander the rules of the Senate is disturbing. We should always know that it may only be a short time before roles may be reversed. This party in the minority may be the party of the majority in the future. And in the future, the party of the President may, of course, be different. I would hope we would never suggest changing the rules of the Senate because we are momentarily disappointed that certain individuals, whatever contributions they may have made in their lives and to their communities, are so deserving that they warrant changing the rules of the Senate because they are not getting a position they seek. I hope we have not come to that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I enjoyed the stirring remarks of my colleague. However, I think he completely ignores the fact that the filibuster rule did not even begin until 1917, and it did not come into fruition until the 1940s. Nevertheless, we have changed the rules in this body many times. But we are not asking for a change of the rules. We are asking for a recognition. There is a difference between the Executive Calendar, where the precise meaning of the Constitution is advise and consent under section 2, clause 2 of the Constitution, and the legislative calendar where we do have a right to filibuster. So that distinction needs to be made.

I yield 5 minutes to the distinguished Senator from Pennsylvania, and then I will be happy to take questions on this side.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to respond directly to the comments made by the Senator from Connecticut. I too sit on the Rules Committee and I take a responsibility here, being a steward, as the Senator from Connecticut said, a temporary steward of this place. One would think, if they listened to the comments of the Senator from Connecticut, that what the Republicans are trying to do is change the rules.

I have a chart of the last 11 Presidents since the "filibuster rule" has been around: 2,372 judicial nominations confirmed, zero filibustered.

Who is changing the rules? This is a wonderful world we have: That left is right, right is left, up is down, in is out.

The rules have been changed by practice. They hold up a chart 168 to 4. This states 2,372 to nothing. Never been done. Walk through these Halls. Stand in this Chamber. If the walls could speak of the great debates, the intense, partisan, vicious debates that occurred in this Chamber, fights that have occurred on the floor of the Senate because of the passions of the moment, so firmly believing that what you were fighting for was right.

But not once, not one time did they put that passion for that short-term partisan or political or policy game in front of the sacred constitutional process that governs this country.

What does that constitutional process dictate in the case of judicial nominations? Look at the precedent my friends. Look at the precedent. No filibusters. Because the Constitution says that it is a majority vote. In spite of the rancor, in spite of the partisanship and the stakes so high so many times in our country's history, they always had the perspective because, yes, I say to the Senator from Connecticut, they knew they were temporary stewards. They took that responsibility seriously so they did not corrupt the rules.

Why are we changing the rules? We are not trying to change the rules. We are trying to bring back the rules that have been in this country for 214 years. We are trying to change the rules? We are not being good temporary stewards? Me thinks thou doest protest too much. We are simply trying to set this Senate back to the days the Senator from Connecticut recalls as a boy, when giants did stroll this Senate, where big matters were at stake, but they put the integrity of the process, the integrity of the Senate because we are a country of laws and rules and constitutions. We do not twist them and corrupt them to meet the short-term political needs that some interest group off the Hill was pleading for you to do.

That is what is happening here. That is what occurs here, and will occur, unfortunately, if we do not have a change of heart by a number of people on the other side of the aisle again on Friday so the 98-percent button that I see and the 168 to 4 will now be 168 to 6 and then 168 to 7 and then to 8 and then to who knows? Because once we corrupt the system, once we twist the rules to meet our partisan end, there is no end other than a complete debasement of what this Senate has stood for 2,372 times before.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield without losing my right to the floor a question of the Senator from——

Mr. REID. We cannot hear you.

Mr. HATCH. I yield to the Senator from Colorado without losing my right to the floor.

Mr. ALLARD. I thank the fine Senator from Utah.

Mr. HATCH. I have laryngitis. What a time to have laryngitis. But that is the way it is. I apologize for my voice.

Mr. ALLARD. I thank the fine Senator from Utah for yielding.

Many papers in the State of Colorado have expressed a concern that we are not voting on judicial nominees, along with many papers throughout the country. I have three papers that expressed a view. I would like to have the chairman respond to the comments made in these three papers.

Many people throughout Colorado wonder what the impact might be on having a filibuster and how that will affect the Federal judiciary. Many of them live in the great city of Pueblo. In fact, the Pueblo Chieftain observed, "some liberals are trying to create a second legislative body," referring to the judiciary, "that will pass measures which they cannot get passed because they're often opposed by a majority of Americans." The paper fears this will lead to "a serious erosion of the separation of powers."

Does the Senator from Utah share those concerns?

Mr. HATCH. I sure do. The paper got it just right. I have seen three major editorials from the Chieftain and from the Rocky Mountain News calling the Democratic filibuster an irresponsible escalation of the judicial nominating war.

I agree with both. The Denver Post said "a change in Senate procedure is long overdue." "[T]here is no good reason to oppose a supermajority of the Senate that was not contemplated in the Constitution."

They got it just right.

Mr. ALLARD. That is correct. I thank the chairman for responding to those comments made in those three major papers in the State of Colorado.

We do need to move on for a vote. They express the view of many in Colorado. I thank the chairman for giving me an opportunity to ask the question.

Mr. HATCH. I yield to the distinguished Senator from Virginia without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. I wish the Senator from Michigan, Mr. LEVIN, were still on the floor. In his arguments, he cited a quote from Lyndon Baines Johnson as to what would be the best gift that could be given, I believe he said, to the Soviet Union or those behind the Iron Curtain. He thought the best gift would be unlimited debate.

I could think of a lot of other things you would want to give people who are repressed than unlimited debate. Maybe freedom of speech, freedom of expression, freedom of religious beliefs, private property rights, due process, equal protection of the law, maybe even the right to bear arms so they can overthrow the dictatorship.

Unlimited debate—that does not strike me as what is needed in a democracy. What one wants is adherence to the Constitution, accountability and responsible action by those who are elected by the people. And we want fairness, which is being denied here, without potential for filibustering.

This is what Senator LEVIN said that President Johnson said: "If I should have the opportunity to send into countries behind the iron curtain one freedom, and only one, my choice would be to send those nations the right of unlimited debate in their legislative chambers."

I expect they could have had all sorts of unlimited debate but what one wants is adherence to our U.S. Constitution.

Let me share with our distinguished chairman of the Judiciary Committee, Senator HATCH, some words that have been said recently: Judgeships are currently vacant, causing undue delays in justice for citizens served by the court. The candidates for these vacancies deserve to have an up-or-down vote on their nominations. The Senate should not be playing politics with the Federal judiciary.

Guess who said that? Senator CARL LEVIN in a press release on May 24, 2000.

Then Senator LEVIN said, on October 3, 2000, in the CONGRESSIONAL RECORD: I believe the Nation as a whole deserves to have these nominees and other nominees awaiting hearings and votes acted on by this Senate, as well. I believe it is also unfair. Perhaps this is the most important of all to the people who await justice in their courts.

Senator LEVIN said that on October 3, 2000.

Then Senator LEVIN also said that leadership had a responsibility to advise and at least vote on judicial nominees.

And parallel to the debates we are having on several of the judges this evening that will go on through tomorrow and into the morning on Friday, he said: Two of the women who we are focusing on today are from Michigan. They are nominees for the court of appeals. The truth of the matter is that the leadership of the Senate has the responsibility to do what the Constitution says we should do which is to advise and at least vote on whether or not to consent to the nomination of nominees for these courts.

That was September 14, 2000, 3 years ago. I wish that Senator LEVIN were still on the floor so I could ask him whether he was right in 2000, saying the Constitution demanded and required Senators to act and vote on nominees. Or does he really believe that the most important responsibility is for endless debate?

I say to the Senator from Utah, Mr. HATCH, what we have seen is stalling and more stalling and more stalling. They can debate endlessly, but at the end of every debate, at the end of every examination, of everyone's qualifications and capabilities, and whether Miguel Estrada, Priscilla Owen, or any other of the nominees, ultimately the responsibility is, as Senator LEVIN said 3 years ago, it is our responsibility to act, to vote. The Constitution demands it. Accountability to our constituents and our respective States demands it. And fairness should not continue to be denied to these many nominees because of the obstruction and also the very inconsistent statements that have been made this year compared to past years.

I ask the chairman of the Judiciary Committee, would you find these statements to be prior inconsistent statements which call into question the desirability of having endless debates in the Senate or in the committee, especially after the committee has decided on a majority vote to report out, favorably, a judicial nominee?

Mr. HATCH. That is a good question because it seems as if our friends on the other side forget when they were in the majority and they had the Presidency and they all wanted votes up and down and all of a sudden they do not.

The Senator is right in pointing out these disparities. All of a sudden when the worm is turned, they do not want to live up to their own words. I am not sure that Senator LEVIN does not want to live up to his own words, but if he does want to live up to his own words, then he should not be voting with the Democrats. He should be voting for cloture.

Mr. ALLEN. I have a followup question. In view of our friend from the Commonwealth of Pennsylvania and his articulate, passionate statement, Senator SANTORUM, out of the thousands and thousands of nominations, how many have been filibustered? Zero, is that not correct?

Mr. HATCH. Zero. Until this.

Mr. SCHUMER. Will the Senator yield?

Mr. HATCH. I will yield to the distinguished Senator from Virginia for a question and then I will yield to the distinguished Senator from Minnesota without losing my right to the floor.

Mr. WARNER. Mr. President, first, may I thank the distinguished chairman of the Judiciary Committee.

Mr. SCHUMER. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Utah has yielded to the Senator from Virginia for the purposes of asking a question.

Mr. HATCH. The Senator will have his half hour in about 15 or 20 minutes.

Mr. WARNER. I thank the Presiding Officer and I thank the distinguished chairman of our Judiciary Committee.

I say to my colleague from Virginia how proud we are to be from the Commonwealth of Virginia from whence so many Framers of the Constitution came. I compliment you on your remarks tonight. I am privileged to serve with you because you represent, in my judgment, all the fine things about the Commonwealth. I try, in my humble way these 25 years, to do the same.

The Senator referred to this Constitution. The question I have to our distinguished chairman is very simple. I want to go back to the hot summer of 1787, when 55 individuals had gathered from the Colonies to work from May 25 to September 17 to frame this precious document. It was a long, hot summer. Tireless trips from their homes to Philadelphia. As a consequence, today, our form of government is the oldest continuously functioning government on Earth today. I have been challenged on it. But almost every other government in existence at the time this Constitution was written have fallen into the dustbin of history. Someone challenged me about Switzerland. Yes, Napoleon crossed the Alps and ceased that government for a period of time. This is a government that has continued to function.

As the delegates emerged on the final day, September 17, Ben Franklin walked down the steps and was met by a reporter. I thought of that little history tonight when a reporter asked me, what is it that you are doing tonight in the Senate? Mr. Franklin answered that question on September 17, 1787. He said to that reporter: We have given you a Republic, if you can keep it.

This Constitution explicitly gives to the President of the United States the power to appoint the judges. In Section 2, it explicitly gives to the Senate, not the Congress, but to the Senate, the responsibility of advice and consent

Three coequal branches of the Government and the judiciary perform that critical function of keeping the power of each of the other two, executive and legislative, in balance. That is what we are doing tonight. I ask the distinguished chairman, are we not, in the immortal words of Ben Franklin, here tonight for one sole purpose, to keep our Republic?

Mr. HATCH. That is the way I view it. I have to say this is a very dangerous thing the Democrats are doing for the first time in history. It has caused a tremendous amount of angst on everyone's part and awful partisanship because it has never been done before. It is time to move on.

I yield to the distinguished Senator from Minnesota.

Mr. COLEMAN. Mr. President, I thank the distinguished chair of the Judiciary Committee, the Senator from Utah, for yielding. I have a question that reflects upon the implications, changing the constitutional standard. The Senator from the Commonwealth of Pennsylvania noted that of the past 11 Presidents' judicial nominees, 2,372 were confirmed, zero filibuster. The President was elected and he has served his responsibilities on the part of his office; we have our responsibility. I take it that the Senator from Utah would say part of those responsibilities in the Constitution give us the opportunity to vote, a majority vote to confirm or deny the confirmation of judges.

The question I have concerns a comment that appeared in a Minnesota paper. Like the Senator from Colorado, Minnesota papers have commented on this problem. There was a column by George Will, a nationally syndicated columnist, that appeared in the Duluth News Tribune. He said the following, and I ask the Senator from Utah whether he would agree with this statement: If the Senate rules, exploited by an anticonstitutional minority, are allowed to trump the Constitution's test and two centuries of practice, the Senate's power to consent to judicial nominations will have become a Senate right to require a 60-vote supermajority for confirmations by thus nullifying the President's power to shape the judiciary, the Democratic Party will yield a Presidential power without having won a Presidential election. Would the Senator from Utah agree with this statement?

Mr. HATCH. I certainly do. That is what is behind this. I think the Senator points it out very well. So did George Will.

Mr. SCHUMER. Would my colleague from Utah yield for a question?

Mr. HATCH. Not on my time.

Mr. SCHUMER. We have had some misstatements on the floor about how many filibusters we have had.

Mr. HATCH. About what? I did not hear the Senator.

Mr. SCHUMER. I said, we have had some misstatements repeatedly by the Senator from Virginia and the Senator from Minnesota about how many have been filibustered. There have been a bunch who have been filibustered, it is just that we happened to succeed. Isn't that correct?

Mr. HATCH. I am not going to yield at this time to the distinguished Senator. I will yield to the distinguished Senator from Tennessee.

Mr. COLEMAN. Will the Senator, if I could just follow up—so the record is clear——

Mr. HATCH. Yes.

Mr. COLEMAN. It is clear, in the history of this great Republic, the Senate has not denied a confirmation of a circuit court nominee by filibuster?

Mr. HATCH. That is right, in the history of the Senate. Absolutely, Will was right, because that same commentary was pointed out by Alexander Hamilton. He wrote in Federalist Paper 76 the Senate's role is to refuse nominations only for "special and strong reasons" having to do with "unfit characters." That is not what our Democratic colleagues are doing. What they are doing here is denying up-and-down votes to very qualified people, who by their own gold standard, the American Bar Association, are proven to be qualified.

I believe it is abysmal that has happened. I think Senators have pointed out here this evening this is a very important debate that has to occur.

The American people need to know a militant minority, 45 Democrats, basically, is thwarting the will of the majority and taking away the dignity of an up-and-down vote to qualified judicial nominees by this President, which has never happened, once they hit the floor, which has never happened before.

In the Clinton years, all 377 judges were confirmed—only one was rejected, but he got an up-and-down vote, which is more than our people are getting.

Mr. COLEMAN. I thank the Senator.

Mr. HATCH. I yield to the distinguished Senator from Tennessee, without losing my right to the floor.

Mr. ALEXANDER. Mr. President, if I could ask the Senator a question. Maybe he could help me understand something I am having a difficult time understanding.

I had the privilege of serving as a law clerk in the 1960s to the Honorable John Minor Wisdom on the Fifth Circuit Court of Appeals. Judge Wisdom was among the four Republican-appointed judges who presided over the peaceful desegregation of the South. I have lived in the South and grown up in the South and know something about what those years were like.

I have been mystified, since I am not a member of the Judiciary Committee, by the treatment of Judge Pickering of Mississippi and Attorney General Bill Pryor of Alabama. I do not know Judge Pickering. I have met him briefly only twice. My staff and I studied his record. I have heard insinuations and words that were carefully chosen by the other side to suggest he was guilty of not being sensitive on racial issues. Yet when I looked into his record, I discovered, quite to the contrary. He had been living in Laurel, MS. In 1967, just to cite one example, he had testified in public against the leader of the White Knights of the Ku Klux Klan, which were the closest thing we had to terrorists in the United States of America in the last half century—an act of courage.

So here is a man who throughout his whole life was far out front on issues of race relations. He was living in an area where it was hard to do, and he had not been quiet, he had not been backward, he had been far out front of his neighbors on issues of race relations.

Then I learn about Mr. Pryor, the Attorney General of Alabama, and I realize in hearing Senator SESSIONS talk that he, too, was a law clerk to Judge Wisdom, the great civil rights judge in the South. I hear it said Mr. Pryor is somehow insensitive to racial and other matters.

Yet looking into his record, I learned he is at the moment seeking to oust the chief judge of Alabama in the case involving the chief judge's failure to obey a Federal court order to remove the Ten Commandments from the State Supreme Court, that the State Attorney General of Alabama wrote all the football players and coaches in Alabama to say they could not pray before football games because the law did not allow it, that he wrote to the district attorneys telling them they could not enforce a law against abortion, that he took a case all the way to the United States Supreme Court that was against the Republican party to which he belonged. It seemed to me here is a man who I recall Judge Wisdom talking about as a wonderfully talented young man. The judge was very proud of him. Here he has this record of upholding the law when it would be enormously unpopular in Alabama and certainly must be against his own views.

What is it about these two southerners, the latter one, the editor in chief of the Tulane Law Review, a law clerk to Judge Wisdom, this distinguished person; and then Judge Pickering, who was a leader for civil rights, endorsed by former Governor William Winter, the Democrat, endorsed by Frank Hunger, Al Gore's brother-in-law. What is it about the other side that will not allow us to have an up-or-down vote on those two southerners who have been nominated by the President to be a judge?

Mr. HATCH. Well, to be honest with you, it all comes down to abortion, according to some of my top Democrat friends. That has become a litmus test issue for Democrats because the inside-the-beltway groups the Democrats talk about do not want people on the courts who are pro-life, even though they are committed to upholding Roe v. Wade because that is the law of the land.

In the case of Judge Pickering, Judge Pickering was unanimously confirmed as a Federal district court judge in 1990. He has served well. He is one of the people who brought about racial conciliation in the State of Mississippi and was treated in a despicable fashion here.

In the case of Bill Pryor, I do not think anybody who looks at his record can say he will not uphold the law, no matter how much he disagrees with it, because that is what a judge will have to do.

Mr. ALEXANDER. May I ask the chairman, did he not, as Attorney General of Alabama, advise the local district attorneys they could not enforce a law passed by the Alabama State legislature——

Mr. HATCH. That is correct.

Mr. ALEXANDER. Because it would be in violation of a Supreme Court decision?

Mr. HATCH. That is right. If I recall it correctly, it had to do with partial-birth abortion, even though he hates partial-birth abortion, as anybody who looks at it carefully. It is a barbaric practice, at the very least. He upheld the law.

I do not know you can ask anything more of anybody than that. Plus, this is a fellow who graduated No. 1 in his class from Tulane University School of Law, who is very bright and was very candid and open with the committee, and yet being filibustered for no good reason. It really is unseemly.

Mr. ALEXANDER. I wonder if the chairman remembers—I have heard a lot of talk tonight about what a great protection of minority rights the filibuster is.

Mr. HATCH. Yes.

Mr. ALEXANDER. I am trying to think back to the 1950s and the 1960s. How many rights of African Americans in the South were protected by the filibuster in the 1950s?

Mr. HATCH. That is right.

Mr. ALEXANDER. In the 1960s? How long was civil rights legislation held up in this very body by the filibuster? What was it that caused the cloture rules to be changed so now it takes 60 to override instead of 67? It was the Nation's anger about the filibuster, denying equal rights for African Americans in the South in the United States.

What is so great about the filibuster in terms of protecting the rights of minorities and individuals if it delayed progress on civil rights for so long in this country?

Mr. HATCH. The distinguished Senator raises some good points. There is no question the filibuster rule was despicably used during that time. But I still believe most of us would agree that rule XXII, the filibuster rule, can and should apply to the legislative calendar. We have a right to set our own rules through the legislative calendar. But the Executive Calendar is a calendar that is subject to our right to advise and consent, which under article II, section 2 is a majority vote, and it is being distorted by our friends on the other side.

The PRESIDING OFFICER. The time controlled by the majority has expired.

The Senator from Nevada.

Mr. REID. Mr. President, first of all, I want to lay it on the record that CARL LEVIN, the senior Senator from Michigan, is not inconsistent in any way. We all know what happened to CARL LEVIN and the Michigan delegation is the fact that there were no hearings on the judges he wanted—no hearings.

That is the reason some 20 percent of the Clinton nominees never made it. They refused to hold hearings. CARL LEVIN would have welcomed the procedure we are going through because if it had gotten here, and there had been an attempt to filibuster, cloture would have been invoked.

CARL LEVIN, I say to my friend, the junior Senator from Virginia, is not and has not been inconsistent in any way.

I want to refer to this. We have to understand what we are talking about here. Mr. President, 168 judges have been approved; 4 have been disapproved. For people to continually come on this floor, as if history facts have no bearing on what they are talking about—they believe, on the other side, if they keep saying it long enough, that there have never been filibusters before—that people will believe it.

I show everyone this New York Times headline of September 25, 1968. Headline: "Critics of Fortas Begin Filibuster, Citing 'Property'." "Griffin Attack Lasts 3 Hours. . . ."

Of course, we know that was a filibuster. Senator BYRD participated in it, as we recall. I say to my friends on the other side of the aisle, please do not say this is the first time there has been a filibuster, because it is not true. It is not true.

I also want to refer to the next chart, something that is important to the American people. What do I think we should be dealing with? During the time President Bush has been President, we have lost more than 3 million jobs in the private sector. I think that is fairly significant.

Also what we should be talking about is my next chart to show what the President of the United States and his administration have done to create jobs in America.

Here is what the President has done to create jobs. Can everyone see this chart? In fact, we can turn it around. It is the same on the other side, isn't it? Let's see what is on the other side. Yes, the same thing. This is what the President has done to create jobs: nothing.

He has lost 3 million jobs. That is what we should be talking about here tonight, not the fact this is the first filibuster we have ever had in the history of the country. You can say it once, twice, 1,000 times—it is not true. Other judges have been filibustered and we have had attempts to invoke cloture. It has been successful sometimes; sometimes it has not been successful.

Let's look at this next chart. It is interesting we are spending 30 hours talking about things we should not be talking about. We are talking about judicial vacancies, which are at the lowest rate in almost 15 years. What we should be talking about are those things that are going up, not the thing that is going down. We should be talking about the 44 million Americans who tonight will go to bed with no health insurance. That is what we should be talking about. We should also be concerned about the millions of Americans who are underinsured.

Mr. President, 44 million people have no health insurance, and we are here spending our time lamenting about the 4 people who want job increases; that is, they want to get better jobs. Miguel Estrada, let's not shed too many tears for him. He makes a half a million dollars a year. I think we should be talking about the people who have no health insurance, about the people who have lost jobs in this administration—the 9-plus million people who are unemployed, as we speak. Why can't we spend that time, that is, 30 hours dealing with issues that are important to the American people?

We also know, in addition to having 44 million people uninsured, that during the last 3 years those people who are poor in America have increased in numbers. The numbers have ballooned. We have the poor getting poorer and the rich getting richer, and we are squeezing the middle class so it is getting smaller and smaller. Wouldn't it be nice if we talk about poor people? I recognize they do not have lobbyists. Maybe they do not have Gucci shoes and these big limousines, but they still deserve our time.

The poor are getting poorer and the rich are getting richer. Shouldn't we spend part of this 30 hours talking about them? The unemployed: We have talked about that issue. I have talked about it tonight on more than one occasion. But the American people have to recognize that during the administration of George Bush the unemployment rolls have gone up.

The national debt: What has happened to the national debt during the last 3 years? It has gone up, way up. It is interesting to note that during the last 3 years of the Clinton administration, we were spending less money than we were taking in. We were actually paying down the national debt. We were being criticized for paying it down too fast: Be careful; you can't do that.

Well, whoever heard that term really took it in spades because the fact of the matter is, we are now increasing the national debt. This year's budget deficit will be the highest in the history of our great country.

Everything that is going up we are not talking about. We are talking about people who have jobs, and they lost an opportunity to get a promotion.

I ask unanimous consent that the Senate now return to legislative session and proceed to the consideration of Calendar No. 3, S. 224, the bill to increase the minimum wage, that the bill be read a third time, passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. I am not surprised. I am not surprised. We have the audacity on this side of the aisle to ask that the minimum wage be increased from $5.15 to something more. Why, these people who draw minimum wage, think about it, if they work 40 hours a week, 52 weeks a year, and don't get any time off for vacation, they can make the grand sum, working a whole year, of $10,700. What pigs. They want to get that much money?

I say we should recognize the people drawing minimum wage are not a bunch of high school kids working in a fast food chain. The fact of the matter is 60 percent of the people drawing minimum wage are women. For the majority of those women, that is the only money they get for them and their families. I cannot imagine that we have had such a difficult time bringing up something so important to the American people, the minimum wage, to increase it from $5.15 an hour, maybe increasing it $1, maybe increasing it $1.50.

I know that is pushing the envelope a lot to think this body would take up something as unimportant as people getting an increase in the minimum wage. No. What we should do is worry about four people, four people, one of whom makes a half a million dollars a year downtown. Then we can also worry about other people, those other three who, between them, make about a half a million dollars.

I have no understanding in my heart how the majority can continually deny us the opportunity to do something about the minimum wage.

Remember, the judicial vacancies are at their lowest level in almost 15 years. While we are here talking all night about judges, 44 million people, as I have indicated earlier, will go to sleep tonight with no health insurance, none, and millions of others have insurance that is not very good.

Nine million, almost 10 million people will go to bed tonight wondering if tomorrow they will finally be able to find a job—recognizing that the average person who loses a job in America today is out of work for 5 months. That is the average, 5 months. And it does not matter. It does not matter what strata we are talking about. People in America have trouble finding jobs. The average is 5 months.

We have tried earlier today, through a unanimous consent request, to spend some of these 30 hours talking about having an extension of unemployment benefits. No.

We have asked tonight to increase the minimum wage, to debate that. No.

I think it pretty well describes what is going on here today.

This is an issue that people think if they talk about how unfair we are, that, yes, what we have done here is so bad—we have approved only 98 percent of the President's requests to become judges. Only 98 percent. If we had it up to 99 percent, would we only be here for 15 hours?

I think this is a travesty. I say that without any question. Others have referred to it as a carnival and a circus. Whatever it is, the unemployed, those people who are poor, those people who have no health insurance are not getting their time in the Senate.

Who is getting time? Four people: Estrada, Owen, Pickering, and Pryor. That is not fair.

I yield to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Chair.

Mr. President, I listened to the debate, and I would say basically, kindly, it is just a repetition of arguments we have heard over and over again. A little less kindly, sound and fury signifying nothing.

I tried to ask some questions of the other side a few minutes ago and was rebuffed. It is no wonder because we are not having a coming together here. We are not having an elucidation. What we are having is a rehash of arguments we have heard over and over again.

It is not going to change anything, I say to my colleagues. It is not going to change a thing. There is only one way to change things, and that is for the President and the other side to follow the Constitution and take the words "advise and consent" seriously. If they think we can be bludgeoned, if they think more talk radio makes a difference, it is not going to make a difference. In fact, I would argue to my colleagues, this debate is helping us because the hard-right media, the talk radio, and the others don't mention this fact.

This chart is worth 30 hours of palaver, of gibberish. The Wall Street Journal today has an editorial with the pictures of the six. Do they mention how many have been approved? They don't dare. They have had editorial after editorial and some of them criticize me. I write letters, and they don't publish them. You would think if they are going to do a whole editorial being critical of someone, they would give them the courtesy of publishing a letter. They are not interested in the debate of facts. No.

At least we are getting a chance to show this. One picture is worth a thousand words; one chart is equal to all the talk we have heard. Nothing will change that.

This is actually going to help our side. It is backfiring. I know many of you on the other side didn't really want to do this, but I guess I have to say to those of you who argued for it, thanks.

I heard from a constituent earlier tonight. They were watching the debate. I said: Did you know about 168 to 4? No. Most people don't because the big storm on this has come from a small narrow band on the hard right. We know the other side has to pay attention to them. They accuse us of being subject to beltway liberal groups. There are groups on both sides. They both feel as passionately.

I don't know why one group is any better than the other, but the group on that side has made this an issue. They just can't stand the fact that four have been rejected—four.

I begin by saying, better be careful about what you wish for because this at least is an even airing of the facts. What I would like this to be is a real debate. I would like us to ask each other questions. I would like us to challenge each other's assumptions and misstatements. But it is obviously not happening. Obviously not at all.

Mr. CORNYN. Will the Senator yield for a question?

Mr. SCHUMER. I will be happy to yield for a question. I give the Senator from Texas the courtesy I was not given.

Mr. CORNYN. I would like to ask the Senator from New York, of the individuals he has listed on his chart, isn't it true that all but Judge Fortas were ultimately confirmed to the positions to which the President appointed them?

Mr. SCHUMER. Yes, reclaiming my time, that is exactly the point. I haven't gotten up to this chart, but I will go to it now.

Mr. CORNYN. If I may——

Mr. SCHUMER. Let me please answer my colleague's question. The bottom line is the other side has said—and in the chart of the Senator from Pennsylvania, he was careful. He said "successfully filibustered, none." Then when it was repeated by many of the other colleagues, they said there has never been a filibuster.

As my good colleague from Nevada pointed out, there have been filibusters. Here are some of the judges who have been filibustered.

Don't claim there has never been a filibuster. In fact, I would ask anyone on the other side, when you filibustered just 3 years ago, did anybody object and say the Constitution is being defiled? Judge Berzon was filibustered in 2000. Judge Paez was filibustered in 2000. Judge Sarokin was filibustered in 1994.

I didn't hear the outcries from the Senator from Pennsylvania or others that filibuster is constitutionally wrong. Oh, no. Oh, no. So the one difference——

Mr. CORNYN. Will the Senator yield?

Mr. SCHUMER. Let me finish—the one difference—and then I will be happy to yield for a question—is this. We succeeded. Do you know why we succeeded? I will tell you why. Because President Clinton made an effort to nominate moderate judges, by and large; because President Clinton did far more of the advise-and-consent process than President Bush, and President Clinton was able to persuade 15 or 20 Members from the other side to finally vote for these judges.

We have had no advice, meaning consultation. I am consulted in New York, and we have filled every vacancy. On the main court of appeals nominees, there is no advise, and that means there isn't consent.

I would argue this to my good friend from Texas: No President has chosen judges through an ideological prism more than President Bush. He said it when he ran, to his credit. He was going to appoint judges in the mold of Scalia and Thomas, two of the most conservative judges we have. Some of them are to the right of Scalia and Thomas. Clearly, Justice Brown is. I believe Miguel Estrada was. He has appointed judges ideologically. Then we are supposed to not challenge that ideology? It is two-faced. It is hypocritical.

Most of President Clinton's nominees—not all, but most—were not legal aid lawyers or ACLU attorneys. They were partners in law firms; they were prosecutors. Anyone who has followed this knows President Clinton decided to nominate, by and large, decidedly moderate judges. That is why the filibusters were not successful.

Our filibusters are successful, frankly, not because of any of us. It is because President Bush has decided to nominate people from the hard right so that he gives us no choice. Nothing would please me more—and I am one of the leaders in this—nothing would please me more than for Counsel Gonzales to call some of us in and say: How do we come to some kind of comity? Guess what, the same thing that happened in New York and a few other States will happen nationally.

Will most of the judges be far more conservative than me? Yes. Will many of the judges disagree with my view on choice or affirmative action or anything else? Yes. But at least we will feel they will interpret the law, not make law.

As my good friends know on the other side, the Constitution requires interpretation of the law, and ideologues, far left or far right—I don't like far-left judges, either—want to make law because they feel they are so right and the country is so wrong, and so they try to make law.

Mr. CORNYN. Will the Senator yield——

Mr. SCHUMER. The Founding Fathers in their wisdom—I will yield in a minute, and maybe the Senator would ask the others on their time to yield to us as well. Then we can get some debate here and maybe make a little progress instead of just talking past one another.

The bottom line is this: We are defending the Constitution. We are saying there should be some balance. President Bush didn't win by a landslide. This Senate is not 62 to 38 or 70 to 30. This country is narrowly divided, and that means when laws are made, they tend to move to the middle. The prescription drug law is an example right now. But judges don't have to move to the middle. Once they are appointed, they are there for life, and they have virtually absolute power over cases. All we have is the constraints within their own heads.

My good, learned friend from Texas knows that in the "Federalist Papers," Alexander Hamilton said ideology should play a role. My good friend from Texas—he is a student of history—knows one of the first nominees of George Washington, John Rutledge, was rejected because of his views on the Jay Treaty. My good friend knows in that Senate that rejected John Rutledge were a good number of the Founding Fathers. So this is not new. This is not made up. In fact, what is new is the view on the other side that if they don't get their whole way, they want to change the rules. If there had been for 20 years protests from many of my colleagues who sat in those seats in 2000 and 2000 and 1994 and 1994 when there were filibusters, maybe we could feel there was some genuine feeling here, some genuine fidelity. Instead, I would argue most of those who study logic know that things can be made; that the weakest arguments are outcome determinant. In other words, you look for the outcome you want and then you make the argument. That, I would argue, with all due respect, is what my colleagues are doing.

The bottom line is filibusters were not an abomination to the Constitution when President Clinton nominated. And, by the way, in the inverse case, holding back judges from even getting a vote in the Judiciary Committee was perfectly OK. That didn't unbalance the Constitution.

What my colleagues have done is taken the result they want, which is 172 to 0, and then come up with an argument that all of a sudden filibusters are bad. Blocking judges can't be bad because look at all these judges the other side blocked and didn't even allow to come up for a vote. So it can't be that blocking judges is wrong. But it also can't be that filibusters are wrong because they did them in recent history. They just didn't succeed.

Now they have this twisted logic that only a successful filibuster is bad. That doesn't make much sense. I am sure my good colleague from Alabama wishes his filibuster had succeeded. He felt it passionately. He felt Judge Berzon and Judge Paez were too far over, maybe.

Mr. SESSIONS. Will the Senator yield for a question?

Mr. SCHUMER. I will be happy to yield since I mentioned the Senator's name.

Mr. SESSIONS. Did the Senator know that although the Senator from Alabama strongly opposed Berzon and Paez and voted against both those nominees, that there were holds on those nominees, and the Republican leader, TRENT LOTT, moved for cloture to move the nominations forward, and this Senator, as did TRENT LOTT, voted for cloture to bring an up-or-down vote and voted against the nomination although we——

Mr. SCHUMER. Let me reclaim my time.

Mr. SESSIONS. That is not the kind of filibuster we have going on today.

Mr. SCHUMER. I simply say to my colleague——

The PRESIDING OFFICER. The Senator from New York controls the time.

Mr. SCHUMER. Thank you, Mr. President.

What I said before was, and I say it again, I did not hear an outcry about filibustering being wrong or being unconstitutional or being evil when these judges came up. I didn't see people get on the floor for 30 hours. There were four of them in the last 6 years. I didn't even hear people get on the floor for 3 hours and take up time to say why filibustering is bad.

Do you know why they say it is bad now? Because we have succeeded. Again, why have we succeeded? Because President Bush has changed the way people are appointed to the judiciary. He has nominated judges through an ideological prism to a far greater extent than any President in history.

I say to my colleagues, do you want to get it to be 172 to 0? Tell the President to sit down with us, to advise, to come to some compromise, and then you will probably get 172 to 0. But as long as this process continues where there is no advise and consent, as long as this process continues where certain judges who believe decisions that have been discredited 50 and 100 years ago should be law, we have no alternative but to do what we are doing.

Mr. REID. Will the Senator yield for a question?

Mr. SCHUMER. I will be happy to yield to my colleague for a question.

Mr. REID. Does my friend from New York support the unanimous consent requests—plural—that have been entered today on the record and rejected by the majority, first of all to extend up employment benefits? Does the Senator from New York believe we would be better advised to go forward on something like that than on these four people who do have a job?

Mr. SCHUMER. I say to my colleague, most definitely, because, first, not only do these people have a job, but they shouldn't be on the bench.

Mr. REID. I ask another question. Does the Senator also agree that rather than going through 30 hours of this—first of all, with all due respect, everybody, including me, everything that has been said so far tonight in these 5 hours has already been said.

Mr. SCHUMER. More than once.

Mr. REID. And I am sure for the next 25 hours, there will still be nothing new. Having said that, I ask my friend from New York, does he think it would be a good idea that the unanimous consent requests I proffered where I asked to do something about the minimum wage right here on the Senate floor tonight, does the Senator think that would be a good idea to help the American people?

Mr. SCHUMER. I say to my colleague, it would be an excellent idea. This debate, as I mentioned earlier, is not going to accomplish a thing. In fact, if it accomplishes anything, since we haven't had the media drumbeat on our side the way the others have, it is going to help us; it is going to get this very fact out. Why not have a debate on something we haven't debated, such as minimum wage, such as health care, such as energy policy, instead of having two people decide energy policy. Nobody knows what the conference report will be. Let's have a debate about that.

Here we are repeating over and over and over and over again the arguments that have been made and made and made.

The bottom line, I say to my good colleague from Nevada, is there are 100, 200, 300 better ways to spend 30 hours in the Senate than redebate these issues. If this is frustration on the other side because 4 of the 172 have been blocked, the solution is not to repeat the same arguments which we regard as specious. The solution is to come to the middle and compromise and talk to us, as we have done in certain States.

I say this to my colleagues: Stop using outcome-determinative arguments. Filibusters are fine when you do them. Only when we do them successfully are they no good. And blocking judges? That is just fine. You blocked so many more than we have. This argument is like trying to thread a needle: Blocking judges is OK; filibustering is OK; only successful filibustering is unconstitutional.

I doubt many legal scholars of any political persuasion would be able to sustain the contradictions in my friends' arguments from across the aisle.

The bottom line is simple: We believe advise and consent really means what it says.

The PRESIDING OFFICER (Mr. ENZI). The Senator has consumed his time.

Mr. SCHUMER. We believe keeping judges in the mainstream is within what the Founding Fathers wished us to do. I will have more to say in the next hour.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, it is my understanding that there is a rough sense between the Democratic and Republican sides that the next hour, at least on our schedule, had been designated, that the Republican time would take half an hour and the Democratic side half an hour. If there is a different point of view on that side, perhaps that could be expressed. Otherwise, we would go forward. If there is not, then what I would like to do at this time is yield 5 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I have spent a fair amount of time on the floor tonight listening. I am a freshman on the Judiciary Committee. There are a great many things Senators can do. They can speak flamboyantly, they can speak articulately, they make history, but they cannot rewrite history.

I heard a few phrases tonight that were trying to rewrite a little of the history. So I thought for a few moments I would read from a letter from the Senator who was there for the Abe Fortas debate, not a filibuster but a debate, a cloture vote. We are trying to say tonight that cloture votes are somehow filibusters. Well, my goodness, what an interesting term of art. Most importantly, what an interesting play of words.

Filibusters are nonstop speaking. Cloture votes are simply to gain the majority necessary, a supermajority, to continue the work of the Senate. Now, those are the rules of the Senate.

Let me read a letter that came to us from Robert Griffin, Republican Senator from Michigan. He writes to the Honorable JOHN CORNYN, chairman of the Subcommittee on the Constitution:

> Dear Mr. Chairman: An Associated Press piece which appeared yesterday in many of the Sunday newspapers (copy attached) speculated that Chief Justice Rehnquist and/or Justice O'Connor might retire this year or next, and concluded with this comment: Presidents have not had much success in appointing Supreme Court justices in election years. . . . The last person to try it was Lyndon Johnson in 1968, when he failed to elevate Justice Abe Fortas to replace Chief Justice Earl Warren. Republicans filibustered the nomination and Johnson backed off.

That is what the article in the paper said. Here are the facts from a Senator who was on the floor at the time debating the Abe Fortas nomination. He goes on:

> Whether intended or not, the inference read by many would be: Since the Republicans filibustered to block Justice Fortas from becoming Chief Justice, it must be all right for Democrats to filibuster to keep President Bush's nominees off the appellate courts. Having been on the scene in 1968, and having participated in the debate, I see a number of very important differences between what happened then and the situation that confronts the Senate today.
>
> First of all, four days of debate on a nomination for Chief Justice is hardly a filibuster.

He goes on to speak of the remarks that he gave in closing out that debate.

> When is a filibuster, Mr. President? . . . There have been no dilatory quorum calls or other dilatory tactics employed. The speakers who have taken the floor have addressed themselves to the subject before the Senate, and a most interesting and useful discussion has been recorded in the Congressional Record.
>
> Those who are considering invocation of cloture at this early stage on such a controversial, complex matter should keep in mind that Senate debate last year on the investment tax credit bill lasted 5 weeks—

In other words, Senate leadership is now considering imposing a cloture vote on the debate that has gone on for

4 days. Nothing was said about a filibuster. So we go on, and he speaks about that. Then he says:

> While a few Senators, individually, might have contemplated the use of the filibuster, there was no Republican Party position that it should be employed. Indeed, Republican leader of the Senate, Everett Dirksen, publicly expressed his support for the Fortas nomination shortly after the President announced his choice. Opposition in 1968 to the Fortas nomination was not partisan. Some Republicans supported Fortas; and some Democrats opposed him.

Then he goes on to speak about the cloture vote. There were 45 in favor of the motion and 43 against.

What happened the next day, when the President, a Democrat President, could see he simply did not have bipartisan support on the floor for a majority, 50 plus 1? He pulled the Abe Fortas nomination. There was no filibuster. There was simply a cloture vote.

Now, it is a term of art that is trying to be finely defined tonight and finely written. When is a filibuster a filibuster? When is a cloture a cloture? Well, my colleagues cannot use the Abe Fortas example as a filibuster because simply this Senator will never allow other Senators to rewrite history. History is what it is at the time it is recorded and the CONGRESSIONAL RECORD clearly demonstrates——

Mr. SCHUMER. Will my colleague yield for a question?

Mr. CRAIG. I will not yield at this time.

It is simply a fact recorded in the CONGRESSIONAL RECORD, so spoken by Robert P. Griffin, then the Senator from Michigan, who was there debating the cloture.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I yield 5 minutes to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I thank the Senator from Arizona. We have heard some comments about we ought to be talking about jobs and the economy. On this side of the aisle, we are always looking at ways to make our tax laws, our regulatory policies, and our legal system more conducive to more jobs with more investment in this country.

We have heard this evening all sorts of excuses and justifications for filibustering. For example, we heard mentioned earlier by the Senator from Michigan, Mr. LEVIN, a citation as justification from Lyndon Johnson who said: "If I should have the opportunity to send into countries behind the iron curtain one freedom and only one, my choice would be to send those nations the right of unlimited debate in their legislative chambers," to which my view was, gosh, there are a lot more important rights, such as freedom of expression, freedom of religion, property rights, due process under the rule of law.

When we get to the rule of law and how important that is for the credibility in this country, whether it is people in this country or outside of America to take a risk and invest in this country, the fair adjudication and administration of laws is very important. It is vitally important that we have judges on the courts so that if there are contractual disputes, or if property is being taken, or if there is a dispute, it is as expeditiously handled and decided rather than being delayed because of insufficient judges.

In many of these circuits, we have judicial emergencies. In fact, it is a fundamental principle of the American judicial system that justice should be blind, that people can get a fair hearing regardless of who they are, where they come from, or what they look like. Surely, nominees to the Federal bench deserve the same rights to a fair hearing as any of us.

Our sense of what is right for the country tells us that the most political among us realize that it is imperative that our courts are in working order. Common sense tells us that many of America's highest courtrooms do not have judges to run them and as a result the legal system cannot function.

When it is said that the economy is somehow not doing as well as it should, all of us, on this side of the aisle, President Bush and his Cabinet, are working to make sure that our economy gets stronger and more jobs are created. In fact, the gross domestic product is the best in nearly 20 years. We had negative growth in 2001, obviously because of a variety of factors, including, of course, the terrorist attacks. The gross domestic product has grown every quarter since the passage of the Economic Growth and Tax Relief Reconciliation Act of June of 2001.

It grew our economy by a 7.2-percent annual rate the third quarter of this year. This was the fastest pace of growth since 1984, almost 20 years ago. Employment continues to make gains. Payrolls increased by 126,000 new jobs, net new jobs, in October. The stock market continues to grow. That means more money for people's nest eggs, for their security and retirement.

Business is reacting favorably to tax relief and corresponding economic growth, where businesses are growing, thereby providing more jobs. We also find an increase in disposal household income, where mothers and fathers have more money so they are spending it on their children, which is great for those who are selling whatever products or services that they are purchasing, as well as whoever is packaging, transporting, fabricating, assembling, or manufacturing what they are purchasing.

Dividend relief also is leading to billions of new dividends distributed to shareholders. All of this is going on now. It also is important, though, that we have judges and the fair administration of the rule of law in the laws that we pass.

We cannot have activist judges. Activist judges create uncertainty. Businesses want to know what the laws will be so they can make those strategic long-term decisions. To have judges coming up with activist inventions of new laws that were not written or adopted by the legislative branch is dangerous for security, jobs, and investment in this country.

To put a fine point on judges, look at the Ninth Circuit Court of Appeals. Ask those affected every day by the decisions by our Federal appellate courts whether confirming circuit court nominees is important.

The people of California almost had their constitution gutted by a three-judge panel in the Ninth Circuit only to have a larger panel of the same circuit reinstate their constitutionally authorized gubernatorial recall election. I think it is pretty important who sits on the Ninth Circuit.

I am sure those in circuits where, for example, schoolchildren in Montana, Nevada, Arizona, and Idaho, who cannot say the Pledge of Allegiance because of leftwing activist judges in that circuit, who say that if one person takes offense at some other revering our flag, then the pledge is unconstitutional, would say these judges do matter.

They matter in our everyday lives. They matter in our schools. They matter in our businesses. Let's put in judges who will interpret the law, not invent it.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I thank the gentleman for his comments, both on the status of our economy and the great economic growth that we are now enjoying, but also the last point about the importance of confirming judges.

I hope people around America are watching tonight so they will understand why we are talking about the importance of confirming judges nominated by the President to the Federal bench.

We have all heard the phrase, "justice delayed is justice denied." The reason that is a common phrase is because there is a lot of truth to it. What we are seeing around the country today is delay in justice because the Senate is denying the President a mere up-or-down vote on some of his nominees to the bench.

While it is possible for minority members, along with some in the majority, to defeat a judge on an up-or-down vote, that has only happened one time, a few years ago, since I have been in the Senate.

The judges who are being denied confirmation would all pass with a majority vote, but the minority is holding them up through the mechanism of the filibuster. I will have more to say about that mechanism in a moment.

The key point the Senator from Virginia made was that it is important we confirm these judges, as important as many of our other functions.

Let us reflect for a moment. The Senate was given some very unique responsibilities by the Framers of our Constitution. Among those unique responsibilities is the sole ability to ratify treaties and confirm nominations of the President. Advice and consent of the Senate is the way the Constitution refers to it.

The House of Representatives, with all of the great responsibilities of that body, does not have this authority. This is alone the job of the Senate, and it is a job that the Senate, throughout its entire history, has taken very seriously. Never, in the history of the Senate, has there been a successful filibuster of a nominee to the bench by the President. That is what is so striking, what is so important, what is so significant, about the activity of the minority party during the course of the last couple of years, and it is why we are here tonight talking about this and trying to move America to move our Democratic colleagues to recognize that it is only fair to provide an up-or-down vote for these candidates. That is all we are asking.

We have talked about the fairness to the nominees themselves. Miguel Estrada, one of the most competent attorneys in the country, after more than 2 years, finally withdrew his name from consideration because he had to move on with his career. We could talk about the fairness to these nominees of having to languish for months, for years, without even the courtesy of an up-or-down vote. We could talk to the fairness of the President. We could talk to the fairness of the majority in the Senate.

What I want to address briefly is the fairness to the American people in denying justice by the delay in filling vacancies, vacancies which are emergency vacancies.

What is an emergency vacancy? An emergency vacancy is one which has been determined by the Judicial Conference, which is a nonpartisan entity that acts as the principal policymaking body for the administration of the U.S. courts, that there are so many cases per judge in a particular circuit or district that an emergency exists; there are not enough judges to take care of the cases in any reasonable timeframe, as a result of which litigants suffer.

Perhaps the clearest way to make this point is, every schoolchild knows that the Constitution of the United States guarantees a criminal defendant a speedy trial, but they cannot get a speedy trial if there is no judge. So what happens is that all of the other litigants in the courts have to go to the back of the line and stay there until all of the criminal defendants have had their speedy trial.

In some cases, that means the civil cases languish for 3, 4, 5, 6 years. That is justice denied in the case of those litigants whose justice has been delayed.

What are these judicial emergencies? There are 12 judicial emergencies on the circuit court of appeals including the Ninth Circuit, the Fifth Circuit, the Sixth Circuit, and the Fourth Circuit. Democrats are obstructing nominees for every one of those circuits. For all three of the nominations who have already been filibustered—Priscilla Owen, nominated to fill one of the two Fifth Circuit judicial emergencies; Charles Pickering to fill one of the Fifth Circuit judicial emergencies; and Bill Pryor, nominated to fill an Eleventh Circuit judicial emergency—in each case, the filibuster is preventing us from filling a seat which has been declared a judicial emergency.

This is not some theoretical exercise. This is a problem that has to be dealt with, and the Senate is falling down in its responsibility to fill these emergencies.

Democrats have also threatened to filibuster other nominees who have been named to fill judicial emergencies in other circuits, by name, Carolyn Kuhl, who I would like to speak about a little later, nominated to fill a Ninth Circuit judicial emergency, Henry Saad for the Sixth Circuit, Susan Neilson for the Sixth Circuit, Richard Griffin for the Sixth Circuit, David McKeague for the Sixth Circuit, and Claude Allen to fill a judicial emergency in the Fourth Circuit.

The cost of judicial vacancies to litigants in civil rights cases not being able to vindicate their civil rights in commercial disputes, in contract disputes, in regulatory cases involving Federal regulations, in every kind of case one can mention, there are cases languishing and litigants who are not being given their rights because there are not sufficient judges to hear their cases.

I mentioned the Ninth Circuit. That is the circuit in which my home State of Arizona is located. I am very familiar with the delays in that circuit. It is hurting the economies of our States. It is hurting the rights of litigants in our States. I will mention a couple of details to make the point.

The Ninth Circuit is the largest circuit in the country. It hears appeals from California, Arizona, Nevada, Idaho, Montana, Washington, Oregon, Alaska, and Hawaii. There are over 5,200 cases pending in the Ninth Circuit. It has the largest civil docket in the Nation, more than 1,500 cases. Since early 2001, cases filed in the district court of the Ninth Circuit and that make their way through the court of appeals take longer to resolve than they did 2 years ago. In 2001, it took 30 months for a case to go from original filing to a final decision on appeal. By June 2003, it took 31 months. This 1-month increase in delay may seem small but the delay adds up across the circuit. There are more than 4,100 cases in the Ninth Circuit affected by this delay.

That means there are more than 123,000 extra days that have been spent by both parties waiting for a decision. It takes 5 months longer to resolve a case in the Ninth Circuit than the national average of courts of appeal, 31 months versus 36 months. That is what has affected my State and other States in the United States Court of Appeals. The filibuster that has been conducted by the Democrats is responsible for the inability to fill these vacancies. Not just vacancies, but judicial emergencies.

The last point I make before yielding time, if the Senator from Alabama is still here and would like to speak briefly, to answer a question that has been asked of me by constituents in Arizona. They remember the movie "Mr. Smith Goes to Washington" with Jimmy Stewart. A couple of them have read in the history books about the great filibuster Strom Thurmond conducted over 24 hours. They asked me, if the Democrats are filibustering these judges, why can't you make them talk all night? The answer to that question is, that is not the nature of a modern filibuster. When Jimmy Stewart and Strom Thurmond were speaking that long, they were trying to hold the floor, as our colleague from Nevada did a couple of nights ago when I think he spoke over 8½ hours. He did not want to give up the floor because he did not want business to be conducted.

In the case of Strom Thurmond and Jimmy Stewart, in the movie, they did not dare give up the floor because they were a one-man band for their cause. They may have had one or two colleagues with them, but basically they were it. They knew as soon as they gave up the floor, the leader would say: I ask unanimous consent we now vote on the matter they were arguing about. They would object and say, I object, and under Senate rules that is enough. It only takes one person to object to go to the next stage. The next stage is filing a cloture motion and then a vote occurs. If 60 Senators say, "We are ready to vote," you take the vote on whatever matter it is. In this case, it would be the nomination of these judicial nominees. They might pass by 51 votes, but you cannot take the vote until 60 Senators agree.

That is the rule that applies on the legislative calendar. Up until now no one thought it would be a rule that would be abused with respect to the Executive Calendar, the calendar on which the judicial nominees are considered.

The Democrats have decided to seek to apply that 60-vote rule so if more than 40 of them vote no to take a vote, we would not have the 60 votes necessary to take that vote and the majority rule would never be permitted to prevail. That is the way it has been for the last several months. We have taken a cloture vote several times and each time there are 44, 45 Democrats who vote against cloture. They vote against taking the final vote. That means there may be 55 or 56 on the other side with some Democrat support, obviously, willing to take the vote. But we cannot get that number up to 60.

Up until now, in the interpretation that has prevailed, we cannot take the final vote which would pass for all of these nominees; 51 votes would be secured for every one of the nominees that have been filibustered. That is why we cannot make someone talk all night. If our colleagues on the Democrat side wished, they could have one person on the floor all night tonight and simply object to our request to go to these votes. But they would not have to talk if they did not want to.

I am pleased they are joining in this debate so we can actually have a discussion about these candidates. In that sense, I guess we have forced an all-night discussion. It is a discussion that should have occurred a long time ago. It is a useful discussion, but it is not a discussion at the end of the day that I suspect will change any of their minds, as a result of which, as long as we adhere to the 60-vote rule that has always been the rule in the past, we cannot get to a vote where the majority would be able to prevail. That is what the Senate rules are.

On Friday, we will have a vote to change the rules. That vote requires a two-thirds majority to pass. It is unlikely that will occur, either.

That is the state of play right now. That is why, to answer the question, "Can you make somebody talk all night," the answer is no, not if they have 40 friends, because if they have 40 friends, all they have to do is vote "no" when you have a cloture vote and you cannot go on to your final vote. That rule may sound arcane, but I also say on legislative matters, it has been used by both parties to defeat legislation that did not have a 60-vote majority. It is a right Senators have always felt important, for important matters to require 60 votes. To pass a treaty, it takes two-thirds. The Constitution explicitly spells that out. But to confirm a judge, the Constitution has no supermajority requirement.

There are a lot of people who believe the real intent of the Framers was that a simple majority should apply. Perhaps one day that issue will be tested. Until then, we are with the proposition that as long as any Senator objects, it takes 60 votes to get to a final vote in which a simple majority would prevail. As of right now, that is what is being applied in the case of these judicial nominees.

The important point for Americans to understand is the minority has thwarted the will of the majority; that the consequences are significant for the country; that emergency judicial vacancies are not being filled; and while this is unfair to nominees themselves, it is even more unfair to the American people because the judicial vacancies remain vacant.

It is a solemn responsibility of the Senate to act on the President's nominees. We are not fulfilling that responsibility. It is for that reason the Republican majority decided to take this time tonight and tomorrow to try to bring this matter to the attention of the American people to urge our colleagues to reconsider their position in opposition to even taking a vote on these nominees so eventually we can get to the point where we can simply have an up-or-down vote on the nominees President Bush has made for these important positions.

I reserve the balance of the time allotted to the Republican side during this hour. If there is another Republican wishing to speak, I am happy to recognize that person. If not, I am happy to yield the floor to colleagues on the Democrat side for whatever time is remaining and pick that up a little bit later.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I am happy to yield to my colleague.

Mrs. HUTCHISON. I am happy for the Senator to go forward and then we will come back at the end of the hour.

Mr. KYL. Mr. President, I inquire how much time remains of the half hour?

The PRESIDING OFFICER. Two and ½ minutes.

Mr. KYL. If either Democrat who is on the floor would like to speak, fine. Otherwise I will go ahead and use that time.

Mr. REID. Mr. President, it works better when we use our time and do not get mixed up so no one owes time.

Mr. KYL. I am happy to follow the precedent we have established and use the remaining 2½ minutes.

I wanted to speak to the qualifications of some of these nominees. Obviously, during the short period of time I have, I am not going to be able to do that except that I said I wanted to mention the qualifications of one of these nominees, Judge Carolyn Kuhl, nominated to the Ninth Circuit Court of Appeals, a judge who would be sitting on cases I might argue to the Ninth Circuit Court.

She has been a judge in a State trial court in Los Angeles since 1995. The American Bar Association rated her "well qualified," their top rating for the Ninth Circuit Court of Appeals. She has served as a superior court judge in Los Angeles County in both the criminal and civil divisions and supervising judge of the civil division, the first woman to hold that position. Before that, she was a partner in a prestigious law firm in California. Before that, she served in the Department of Justice. She worked as a deputy solicitor general of the United States and argued cases before the United States Supreme Court in that capacity. She has extraordinary bipartisan support. A bipartisan group of 23 women judges on the superior court who serve with Judge Kuhl have written to our Judiciary Committee and said, "As sitting judges, we, more than anyone, appreciate the importance of an independent, fair-minded and principled Judiciary. We believe that Carolyn Kuhl represents the best values of such a Judiciary." That is from a bipartisan group of judges.

A bipartisan group of nearly 100 judges who serve with her said: We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us. As an appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge.

There are a variety of other endorsements that have been made of this fine candidate. The bottom line is we reviewed her record, we heard her testimony. She made a tremendous impression on all of us on the committee. The worst a couple of people on the other side can say is they disagreed with a couple of her decisions. I daresay if that was the test of every one of us as Senators, we would be in a sorry position because we cannot go very long without people disagreeing with us philosophically on positions.

Judge Carolyn Kuhl, it is plain, will follow the Constitution. She is one of the candidates we need to act upon. I urge my colleagues to consider these remarks in consideration of her nomination.

Mr. REID. Mr. President, the first 15 minutes will go to the Senator from California, Mrs. BOXER, and the second 15 minutes to the Senator from New York, Mr. SCHUMER.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I am glad Senator KYL brought up the Kuhl nomination because I will be talking a little bit about that nominee and her background and the number of people from all sides of the spectrum who oppose this nominee and the fact there is a very serious case involving a breast cancer patient who she ruled against in terms of her privacy rights. I will get into that. Judge Kuhl was overturned immediately. I will get into that and why it is we have taken a stand on a handful of these very extremist, very controversial judicial nominees.

First, I remind us of the scorecard. If I were the Republicans and I got 168 of the judges I wanted and only was turned down for 4, I would do what my mother said when I was a kid: "Honey, if you get 90 percent of what you want, say thank you, give the person a hug, and leave the room."

Instead, what do we have? We do not have smiling, we do not have thank you's. We have 30 hours of wasted time to hear people complain and whine about the fact they did not get four.

Somebody wrote a book once, called "All I Really Need to Know I Learned in Kindergarten." I honestly think this is the most childish situation. The President gets 168 and does not get 4 and his party is up in arms.

How does that compare to President Clinton? Let's take a look at that. President Clinton had 63 nominees blocked, or 20 percent of his nominees. President Bush has, up to now, four—I suspect if we get these new two women we are talking about coming forward on Friday, hopefully, there will be six, but tonight there are four. That is 2 percent, and we have complaining going on.

I do not get it. I feel like BARBARA in Wonderland. It makes absolutely no sense. I cannot figure it out. It is like the kid who comes home from school and says to his dad, "Dad, I got 98 percent; aren't you proud of me?" Dad says, "What happened to that other 2 percent?" What is it about? We all learn to be gracious when we win. When we win 98 percent, we should be gracious.

Here are the names of the Clinton nominees who were blocked. Fifteen times more judicial nominees blocked than that of President Bush. Why were they blocked? The other side felt, for whatever reason, maybe they did not feel they came from the mainstream.

I remember speaking to Senator HATCH. He actually called me into his office. We had a very good talk. This is when he was chair of the Judiciary Committee and President Clinton was President. He said to me: "I just want you to know, BARBARA, if your side sends over from California liberal judges, they will never go anywhere. Do not send me liberal judges."

I said: "Orrin, I get it. I am a pragmatist. I have a committee advising me. I will so instruct them." We got almost all of our nominees through.

When President Bush was elected, I said to Senator HATCH: "I hope you are not going to send us rightwing nominees, because they are out of the mainstream and this President promised us mainstream nominees."

Remember the night the Court decided he had won the election? The President came out—I will never forget it—we needed healing, and he came to the mike. It was very healing. He said: "I will govern from the center. I am a uniter, not a divider."

Yet we see some of these nominees who are coming down who are so far off to the right they are falling off the charts. I want to be clear. I want to say this unequivocally to my colleagues. I don't deserve to be here if I don't exercise the right given to me in the Constitution of the United States, which I revere. If I don't exercise that right, I do not deserve to be here. If I don't stand up and block some of these people, I do not deserve to be here. It is as simple as that. You can come to my State, you can call me every name in the book, it does not matter to me, because my constituents want me to stand up for what is right. What is right is to support mainstream candidates for the judiciary and stand up to extremist nominees and those who are out of the mainstream. I have to do it. It is my job.

Do you want to come and talk about it for 30 hours when we could be doing other things? That is fine with me. I can talk about it for 630 hours. That is how strongly I feel in my heart about what we have done.

What does the Constitution say about our job? The Constitution says: The President—that means this one and every other one—must seek the Senate's advice and consent. It does not say "sometimes." It does not say "usually." It does not say "when you feel like it." It says very clearly, the President must seek the Senate's advice and consent. That does not mean notifying Senators, "This is who we are coming up with." It means sitting down with us. It means talking to us. I have to say, this administration falls short.

When Carolyn Kuhl was nominated, I said to Alberto Gonzales, the President's man on this, Give me some time. I wanted to support a woman for this judgeship. Members know my record. I said, Let me get back to you. Lo and behold, what did I find out? I want to tell you what I found out.

First I found out about this case. Think of yourself as the woman in this circumstance, perhaps as her husband or as a relative. A woman had a mastectomy. It is a brutal operation. She is frightened. She is sick. She is going to the doctor for a followup exam. She is in the office. The doctor has another person in the office, dressed in a white coat, and the exam takes place. This other gentleman is leaning over this woman in one of the most embarrassing moments, her most frightened moments, her most humiliating moments, and he is fanning her. He is involved in this. He is staring at her the whole time. When she leaves the doctor's office on the way out, something did not feel right to her. She asks the receptionist, "What doctor was that in the office with me?" The receptionist said, "That was no doctor; that was a drug salesman."

The woman was appalled. A drug salesman had been in this room with her without her permission, without her knowledge.

The bottom line of all of this, she sues. The case comes before Judge Kuhl, who is a new judge in the State. Judge Kuhl rules against this woman. The case is appealed and Carolyn Kuhl is overturned.

Is this someone you think should be rewarded with a lifetime appointment? I say not.

Let's see what the National Breast Cancer Coalition has written. This is a group that does not get involved in politics. This is a group that does not get involved. They were so upset, they said:

> We cannot afford to have Judge Kuhl on the court of appeals where she will have a greater effect on women with and at risk of breast cancer and our family and friends.

The National Breast Cancer Coalition getting involved in a judicial nomination. I will tell you, if I did not stand up for the women across this country—how many of us get breast cancer? About one in nine. If I did not stand up for them, I do not deserve to be here.

So if you want to talk about it for 30 hours, for 40 hours, for 50 hours, count me in—count me in—because if I were to roll over and allow someone such as that to get on the bench, someone who is hostile to women, someone who is hostile to civil rights, someone who is hostile to privacy rights, someone who is off the deep far right end of the spectrum, I do not deserve to be here because I promised my constituents I would support mainstream judges. I have supported many judges, 90 percent of the judges President Bush has brought forward. But once in a while you have to take a stand.

Let's look at the number of groups that are against Carolyn Kuhl's nomination, which is going to be brought up on Friday. I cannot even read all of these to you. It would take too long. But I will give you a few: the AFL–CIO, the American Association of University Women, the American Federation of School Administrators, the Asian Pacific American Labor Alliance, Breast Cancer Action, the Breast Cancer Fund, the Women's Law Center, Clean Water Action, Communication Workers, Defenders of Wildlife, the Feminist Majority, the Foundation for a Smoke-Free America, Friends of the Earth, the International Federation of Professional Technical Engineers, Los Angeles County Federation of Labor, NARAL, Moveon.org, National Breast Cancer Coalition, National Center for Lesbian Rights, National Council of Jewish Women, National Employment Lawyers Association.

It goes on and on and on, and there are reasons why these groups have gotten involved in this. Because all you have to do is see the record of this woman and you understand why these groups are against her.

Office and Professional Employees International Union——

Mrs. HUTCHISON. Mr. President, will the Senator yield?

Mrs. BOXER. No, I will not. People for the American Way, Physicians for Social Responsibility, Planned Parenthood, Pride at Work, Progressive Jewish Alliance, the Sierra Club, Smoke Free Educational Services—this goes on—Taxpayers Against Fraud, United American Nurses. It goes on and on.

There is more: the Wilderness Society, the Women's Leadership Alliance; the Members of the California delegation: the Honorable NANCY PELOSI, BARBARA LEE—all the women of California who are on the Democratic side in the Congress.

So you want to talk about it for 30 hours? We will talk. We will talk.

This is from 102 law professors from across the United States on Judge Kuhl:

> Judge Kuhl has spent her entire professional life—in the Government, in private practice, and on the State bench—aggressively promoting an extremist agenda that is hostile to women, minorities, injured workers, and the environment.

Judge Kuhl's record goes back to when she worked in the Reagan administration and tried to persuade the Reagan administration to say that it was OK that Bob Jones University get a tax deduction. She was called part of a band of zealots who did that.

So you want to talk about Judge Kuhl. I know her record inside out. I wanted to support a good woman from California. My whole life is spent promoting women but not women who would be hostile to other women and hostile to the guy who maybe needs to join an organization and perhaps get into a law suit. She does not even like the fact there are juries. She does not like the fact there are juries.

So here we are. It is a quarter to 12 at night. I am all perky now. The reason is, I feel deeply about this. This is a chance to stand here and say, "What are you doing?" to the other side of aisle. You have 168. You did not get four. You are whining and you are complaining and you are crying and you are marching into the Senate and you are stopping progress.

What about the millions of jobs that have been lost? Three million jobs lost, 2.6 million in manufacturing. Let's talk about that for 30 hours—instead of crying, crying about not getting 100 percent but only 98 percent of what you want.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. I ask for 1 more minute, and then I will turn it over to my colleague from New York.

Mr. SCHUMER. I yield a minute to my colleague from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. So here we see the problems. We have lost jobs. You do not want to talk about that. I think right now I ought to ask unanimous consent that the Senate now return to legislative session and proceed to the consideration of Calendar No. 3, S. 224, the bill to increase the minimum wage, that the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

Mrs. HUTCHISON. I object.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. Mr. President, reserving the right to object.

Mrs. BOXER. Was there an objection?

Mr. SANTORUM. Mr. President, reserving the right to object.

Mr. REID. Mr. President, there was either an objection or no objection.

Mr. SANTORUM. I object.

The PRESIDING OFFICER. Objection is heard.

Mrs. BOXER. Just finishing up my minute, this proves my point that they want to complain about four judges who already have jobs. But they do not want to deal with the people who are unemployed and this terrible economic situation we have in our country today.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you, Mr. President.

First, I thank my colleague from California. She is feisty any time of the day but, not only feisty, on target. I very much appreciate her great work, particularly in bringing to our caucus's attention the problems with Judge Kuhl.

Now, I would like to review the bidding so far. First, we have had a lot of talking, virtually none of it new. Second, there have been repeated refusals to go on to issues that we do not talk about, such as minimum wage, loss of jobs, health care. Third, we believe this debate is helping us because the rightwing radio and the rightwing groups have talked about their argument.

I mentioned the Wall Street Journal editorials that never mention this number, what anything fair would be. We are getting this number out: 168 to 4.

When I go to parades in upstate New York, conservative areas, they say: Why are you stopping the President's judges? I say: It is 168 to 4. They say: Never mind. Well, that is what this debate is doing. The American people are going to say: Never mind.

Finally, I think we have revealed how our colleagues' arguments are outcome-determinative. Lawyers will tell you they are the weakest arguments. You pick your outcome and then you determine it.

Are they against filibusters? No. Again, I will repeat my challenge: Let a Senator on the other side show me that they got up and demanded 30 hours or 3 hours or 5 hours when Members on their side attempted to filibuster Judge Barkett, Judge Sarokin, Judge Marsha Berzon, Judge Paez. Did anyone get up and complain? No.

So you are not against filibusters and you are not against blocking judges. Here they are. You have blocked a whole lot of judges. You did not use filibuster. You refused to give them a vote. But they were blocked—same effect. The only thing you seem to object to is a successful filibuster. Where is the logic there?

Finally, you want to have viewer-successful filibusters? Talk to us. Come and meet with us. Nominate judges who may be conservative but are not so far out of the mainstream, such as Justice Brown who believes that Government is evil. She is against all zoning laws, at least according to her speech to the Federalist Society. And she thinks the Lochner decision, one of the most discredited decisions which said the State government could not regulate the number of 60 hours—New York State said 60 hours is when a bakery worker could not work any longer. They can't do that.

So nominate some people who are conservative but not so far out that they want to make law, not interpret law. That is the bidding so far.

Now, one other point that was made since I last spoke. My good friend from Idaho, I love him. He is a fine guy. We even worked together on a gun control bill, so it shows you anything is possible around here. But he is saying Judge Abe Fortas was not filibustered? What is this argument? A cloture vote is not a filibuster? As my daughter would say: "Hello."

Why do we have a cloture vote? Because there is a filibuster. Here is the headline in the New York Times: "Critics of Fortas Begin Filibuster. . . ." Why is that not a filibuster? But the New York Times, they are one of those wacky, liberal publications, and this is one of these slanted liberal headlines.

So let's take the U.S. Senate Web site. What is the headline? October 1, 1968: "Filibuster Derails Supreme Court Appointment." I am paraphrasing: In June 1968, Chief Justice Earl Warren informed President Lyndon Johnson that he planned to retire because of a filibuster.

Mr. President, I ask unanimous consent to have a document from the Senate's own Web page printed in the RECORD. I would ask all of my colleagues who believe that Abe Fortas was not filibustered to make a motion to correct the Web site.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FILIBUSTER DERAILS SUPREME COURT APPOINTMENT

In June 1968, Chief Justice Earl Warren informed President Lyndon Johnson that he planned to retire from the Supreme Court. Concern that Richard Nixon might win the presidency later that year and get to choose his successor dictated Warren's timing.

In the final months of his presidency, Johnson shared Warren's concerns about Nixon and welcomed the opportunity to add his third appointee to the Court. To replace Warren, he nominated Associate Justice Abe Fortas, his longtime confidant. Anticipating Senate concerns about the prospective chief justice's liberal opinions, Johnson simultaneously declared his intention to fill the vacancy created by Fortas' elevation with Appeals Court Judge Homer Thornberry. The president believed that Thornberry, a Texan, would mollify skeptical southern senators.

A seasoned Senate vote-counter, Johnson concluded that despite filibuster warnings he just barely had the support to confirm Fortas. The president took encouragement from indications that his former Senate mentor, Richard Russell, and Republican Minority Leader Everett Dirksen would support Fortas, whose legal brilliance both men respected.

The president soon lost Russell's support, however, because of administration delays in nominating the senator's candidate to a Georgia federal judgeship. Johnson urged Senate leaders to waste no time in convening Fortas' confirmation hearings. Responding to staff assurances of Dirksen's continued support, Johnson told an aide, "Just take my word for it. I know [Dirksen]. I know the Senate. If they get this thing drug out very long, we're going to get beat. Dirksen will leave us."

Fortas became the first sitting associate justice, nominated for chief justice, to testify as his own confirmation hearing. Those hearings reinforced what some senators already knew about the nominee. As a sitting justice, he regularly attended White House staff meetings; he briefed the president on secret Court deliberations; and, on behalf of the president, he pressured senators who opposed the war in Vietnam. When the Judiciary Committee revealed that Fortas received a privately funded stipend, equivalent to 40 percent of his Court salary, to teach an American University summer course, Dirksen and others withdrew their support. Although the committee recommended confirmation, floor consideration sparked the first filibuster in Senate history on a Supreme Court nomination.

On October 1, 1968, the Senate failed to invoke cloture. Johnson then withdrew the nomination, privately observing that if he had another term, "the Fortas appointment would have been different."

Mr. SCHUMER. I thank you, Mr. President. So I guess I have caught a little of the feistiness of my friend from California.

Now, Senators, this is a serious issue. Many of my colleagues have done a great job of bringing up the issue of jobs and health care and all of that. I think we should do that because we have heard these arguments over and over and over and over again. We have not talked about the minimum wage once or for providing health care for the uninsured or many other issues. But so be it.

Let me again go over what our Constitution says. Does our Constitution say, "Do not filibuster"? It does not say that. In fact, our Constitution says the Senate ought to be the cooling saucer.

We all know the story. James Madison was explaining, I believe it was to Thomas Jefferson, why there was a Senate. Jefferson thought it looked too much like the House of Lords. He had been over in Paris. And he had not written the Constitution.

He came back and he goes over to James Madison's house and Madison is pouring tea. He says: You see. He pours the boiling water into a cup, and he says: You see the boiling water in the cup? That is the House of Representatives, where the people's passion bubbles over. Then he poured some of the water into the saucer, and he said: The Senate is the cooling saucer.

Well, James Madison, we have been, by stopping these four nominees, a little bit of that cooling saucer. Our job, when the President goes too far, as he has with some of these nominees, is to be the cooling saucer.

Now, unfortunately, our being the cooling saucer gets some of the others on the other side very hot. But we are defending the Constitution. The idea that a successful filibuster is bad has nothing to do with the Constitution. That comes from a few of my colleagues' view that they want to get every nominee. So let's make an argument. Because if a successful filibuster is bad and an unsuccessful filibuster is OK—and we have been through that before—then you cannot make any argument about a filibuster.

Again, I would like my colleagues to read this over and over and over again. There is nothing in there that says: No filibuster. There is nothing in the Constitution that says: A majority will decide judges, a 51-to-49 majority. It says the President must seek the Senate's "Advice and Consent."

Constitutional scholars will tell us that the reason we have these rules in the Senate—unlimited debate, two-thirds to change the rules, the idea that 60 have to close off debate—is embodied in the spirit and rule of the Constitution.

Yes, my colleagues, we are the cooling saucer. When the President's passion for hot rightwing judges who might make law rather than interpret law gets overwhelming, we will cool the President's passion. That is what the Constitution is all about, and we all know it.

By the way, when, again, my colleagues thought President Clinton was nominating a few judges too far left, what did they do? What did you do over there? You filibustered. Paez and Berzon were very liberal, no question about it. But because President Clinton had, by and large, nominated moderate nominees, nominated moderate people, your filibuster could not last.

Let me say something to my colleagues. We did not want to undertake a filibuster. Many of us on the Judiciary pleaded with Chairman HATCH to go to the White House and say: Meet with us. No. Many of us pleaded with Counsel Gonzales to come meet us a little bit of the way. No.

So we had no choice. Either we could be a rubberstamp or we could use the only means we had at our disposal to stop the President from getting every nominee, and that was the filibuster. Again, it is in keeping with the Constitution. We believe we are fulfilling our constitutional obligation.

Again, I see my colleague from Pennsylvania brought up his chart: No successful filibusters. Did my colleague object to the unsuccessful filibusters of Barkett, Sarokin, Berzon, and Paez? Did my colleague say he wanted 30 hours on the floor because a filibuster was wrong?

Mr. WARNER. Will the Senator yield for a question?

Mr. SCHUMER. I am happy to yield. I want to finish my point and then I will yield to my friend from Virginia, who is one of the most respected and erudite Members of this body, and I consider him a friend of mine.

I would simply say that the argument that filibusters are OK but successful filibusters are not OK just melts under even the sunshine of a distant logic.

I yield to my colleague from Virginia.

Mr. WARNER. Mr. President, I have had the privilege of leaving the floor and talking with a number of visitors. It is remarkable how many people have come from all across the country to be here. They have asked me, in a very straightforward manner: Senator, we have followed this debate and we cannot understand how one side says there is no filibuster and the other side says there is a filibuster.

So, Mr. President, I would hope we could enter into a colloquy and allow the colleagues here—the former attorney general of Alabama, who is on the Judiciary Committee, and the distinguished Senator from Pennsylvania, who has taken such a leadership role—to see whether or not in colloquy we can provide some clarity to those trying to follow this very important debate on this highly technical use of the word "filibuster."

So I am just wondering if you would state what your understanding is, and then my colleagues on this side will state their understanding.

Mr. SCHUMER. I thank my colleague from Virginia for that excellent inter—I do not mean interruption—I mean it in the classical sense, trying to bring us together.

I will be happy to yield to either of my colleagues from Alabama or Pennsylvania and ask them, because I would like to have debate here instead of each of us getting up and making speeches. I asked a few times and my colleagues were not on the floor.

Mr. WARNER. So, Mr. President, you have your chance. So let's go.

Mr. SCHUMER. Well, this is a good interjection by my friend from Virginia.

Why is it that a successful filibuster is wrong but an unsuccessful filibuster is OK? Because we have had them before, and many on your side participated in them. We did not hear any of these arguments about the Constitution or anything else. I would be happy to yield to my colleague from either Alabama or Pennsylvania for an answer. Maybe we can come to some meeting of the minds.

Mr. SESSIONS. Mr. President, maybe I would suggest, as we go forward here, the time be counted to each side. We are now in the next hour anyway. Is that where we are?

The PRESIDING OFFICER. We are 15 seconds from the minority's time running out.

Mr. SESSIONS. All right. So in the next time block we set aside perhaps we can count the time against each side if we speak.

Let me explain what happened. The Senator from New York was not here—

The PRESIDING OFFICER. The minority's time has expired.

Mr. SESSIONS. I thank the Chair.

Mr. SANTORUM. Mr. President, I ask unanimous consent that, during this colloquy, whatever time is consumed by whatever party member run off the time of that hour of that side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. So we make sure we understand, what we are saying is whoever is talking, time will be taken off their side; is that right?

Mr. SANTORUM. That is correct.

Mr. SESSIONS. The Senator from New York was not here during the Clinton years in the Senate; he was in the House.

Mr. SCHUMER. Will my colleague yield? I was here the last 2 years of the Clinton years. I was here for Berzon and Paez.

Mr. SESSIONS. Let's talk, then, about Berzon and Paez and get this straight. That is real good to remember. I just assumed the Senator couldn't have been here or he might have understood a little differently.

Holds are placed on legislation by Senators. Holds are placed on nominees by Senators. One way to break that hold is to file for cloture which guarantees an up-or-down vote. Holds were placed on Berzon and Paez. President Clinton was President of the United States. These were two of his most liberal nominations to the most liberal circuit in America; the one that struck down the death penalty, struck down the Pledge of Allegiance, struck down the "three strikes and you're out" law in California, and Berzon and Paez participated in all those opinions.

Anyway, when they were up for nomination, I strongly believed those were not good nominees and opposed them. We discussed these nominations within the Republican ranks. Somebody said: Why don't we filibuster? The chairman of the Judiciary Committee, Senator ORRIN HATCH, said: No, filibusters are not appropriate for judges. We should not enter a filibuster.

A Democrat said: We want a vote on Berzon and Paez. We have waited long enough. So we got to the point where TRENT LOTT, the Republican majority leader, the equivalent of TOM DASCHLE in this circumstance, filed for cloture. He said: Let's bring these two nominations up for a vote.

I and a whole lot of others did not support the Berzon and Paez nominations but did not believe in filibusters. The Senator from New York suggested we were unprincipled. He suggested that we are now opposing filibusters which we then favored. But when TRENT LOTT moved for cloture, I voted for cloture. Only half a dozen or so voted against cloture, and the nominees came up, and they got an up-or-down vote. TRENT LOTT voted against the nominees. I voted against the nominees. They had an up-or-down vote, and they were confirmed.

You can say that is a filibuster, but it is not the same thing as a filibuster organized by the Democratic leader and unified Democratic ranks to block now six nominees from even getting an up-or-down vote. It is not the same. I don't think there is any doubt about it, it is the first time a filibuster has been used systematically under these circumstances.

Mr. SCHUMER. If I might respond to my colleague from Alabama, let me say to everyone here, I have great respect for my colleague from Alabama. We work together on the Judiciary Committee quite well. We have had some legislation together. Let me make a few points.

First, I don't disagree that Paez and Berzon were very liberal. There could be made an argument—I didn't agree with it—that they may have been out of the mainstream and maybe should have been blocked. Certainly, that is what our former colleague, Mr. Smith from New Hampshire, believed.

In fact, I agree with the Senator from Alabama. I think the Ninth Circuit is a very liberal circuit. I voted for Jay Bybee, who is far to the right of me, because I thought the Ninth Circuit could use some balance. I don't have a problem with people saying Paez and Berzon were very liberal and we ought to try to block them.

Let me make two points in reference to what is a hold. A hold is saying "I am going to filibuster."

Mr. SESSIONS. No.

Mr. SCHUMER. If I might finish. That is why the hold is able to hold things. There is nothing in the rules about one Senator can hold things up, but the way things work around here, you say: If you bring this to the floor at this point, I am going to keep talking and you are going to need 60 votes. I don't know it to be any different than a filibuster. It is certainly not a difference that makes a difference. One may call it a hold rather than a filibuster, but it is a filibuster.

Second, I say, in all due respect to my colleague, again, let's not get semantical here. It is true that my good friend from Alabama opposed cloture. How many Senators voted for cloture? How many voted against? Thirty-one? I don't think there was a Democrat among them—maybe; maybe one. I don't recall if Senator Miller was here then. Thirteen voted against Judge Berzon.

But immediately after on the vote for Paez, my colleague from Alabama got up and made a motion to "indefinitely postpone the nomination."

Let's not get semantical here. If you are indefinitely postponing the nomination, you are seeking to do what we are seeking to do, which is block a nomination you thought was ideologically incompatible.

The bottom line is this: I will make this argument and then yield—I defer to our great whip here—we have divided up all our time and I am taking somebody else's time; maybe my friend from Minnesota, and I don't know who the other Senator was—Senator BOXER. So I don't want to take too much of it.

I simply say, again, these arguments sort of, a little bit, contain a bit of sophistry. Blocking a judge is the goal—successful filibuster, unsuccessful filibuster, a motion to indefinitely postpone, not allowing a judge to come to a vote. When either side has thought a judge out of the mainstream, they have used the device that was available to them to allow the Senate, I would argue, to do what the Founding Fathers wanted us to do, which is to be the cooling saucer. Sometimes it was successful, sometimes it wasn't, but it is not a difference that makes a difference, as the law professors used to say.

I yield the floor.

Mr. REID. Parliamentary inquiry, please: How much time remains on our side following the statement of the Senator from New York?

The PRESIDING OFFICER. Twenty-six and a half minutes.

Mrs. HUTCHISON. No, Mr. President, parliamentary inquiry: It is now the majority's time, as I understand it. The minority time has finished.

The PRESIDING OFFICER. The time that is used will be taken off the sides. It has been taken off when it was being used.

Mrs. HUTCHISON. That is right, but Senator SESSIONS and Senator SCHUMER took equal amounts of time. Wouldn't the majority time follow since the minority time——

Mr. REID. We know that.

The PRESIDING OFFICER. The majority has 26 minutes left and have a priority on that unless they wish to continue the agreement they had of having an open debate.

Mr. REID. Mr. President, we will go back to the original system we had.

Mr. SESSIONS. I object to the change, if he is making a point.

Mr. SCHUMER. If I might make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, while the Senator from New York is here, and he is such a good advocate, as we say in Alabama, you make soup out of slop. A motion to postpone is not a filibuster. It is an up-or-down vote to delay.

I was in negotiations with the Senator from California and the White House to say we can let Berzon and Paez go but at least put more decent, more mainstream judges in California. We didn't get that agreement, and they moved forward with the vote. That was not a filibuster.

I want it to be clear that the leadership on this side, the chairman of the Judiciary Committee, the majority leader, and this Member of the Senate did not vote to maintain any kind of extended debate but voted for cloture which would have guaranteed a vote and did guarantee a vote for them. That is not a classic filibuster.

Mr. GRAHAM of South Carolina. Will the Senator yield for a question?

Mr. SESSIONS. Yes.

Mr. GRAHAM of South Carolina. The Senator from Virginia made a good point. There are a lot of people confused, and the Senator put me in that category. I sat here and listened to this debate.

Is it true that the main difference between the example they are using and our problem is that these two people are on the court?

Mr. SESSIONS. That is certainly a distinct and obvious difference. Both of these nominees were moved forward by the action of TRENT LOTT, the Republican leader, to move a Clinton nominee for an up-or-down vote. He got the up-or-down vote. Both those nominees were confirmed. That is exactly correct.

And you want to talk about consistency, I ask the Senator from New York if he still stands by his statement he made that the basic issue of holding up judgeships is the issue before us, not the qualifications, which we can always debate; it is an example of Government not fulfilling its constitutional mandate because the President nominates and we are charged with voting on the nominees?

And PATRICK LEAHY, the chairman of the Judiciary Committee——'

Mrs. HUTCHISON. Will the Senator yield?

Mr. SESSIONS. I will for a question.

Mrs. HUTCHISON. I want to clarify a point because the Senator from New York tried to equate a filibuster with a hold. I was hoping the Senator from Alabama would show the difference between a hold and a filibuster. If we start calling a hold a filibuster, then we have really changed the rules around here because holds are used for a variety of purposes. They are used for negotiation, and they may or may not lead to a filibuster, and usually they don't.

To say that someone put a hold on someone and then there was an effort through extended debate to get those holds taken off is a filibuster is a misreading of the rules; would the Senator agree?

Mr. SESSIONS. I would certainly agree, and as the Senator from Georgia suggested, we do that a lot around here.

Mr. CHAMBLISS. Will the Senator yield for a question?

Mr. SESSIONS. I will.

Mr. CHAMBLISS. I noticed my friend, the Senator from New York, for whom I have great respect, made a comparison between a hold and a filibuster but yet at the same time he has shown this chart over and over again, showing where we have 168 approved and only 4 filibustered. But as the Senator well knows, the Senators from Michigan have had holds on numbers and numbers of judges for months and months. So his number four, instead of being four, should be about eight, if he really believes a hold was equivalent to a filibuster. So his argument simply doesn't hold water, if I may pose that in the form of a question to the Senator.

Mr. SESSIONS. I agree, if a hold is a filibuster, then there are a lot more Bush nominees now being filibustered than have been suggested. I think there are four being held by Senator LEVIN.

Mr. SESSIONS. I yield for a question from the Senator from Virginia.

Mr. WARNER. In the nature of a question, first, I ask the Presiding Officer to inquire of the Parliamentarian if the word "filibuster" appears in any of the rules of the Senate. My understanding is that it does not.

The PRESIDING OFFICER. The Senator from Virginia is correct.

Mr. WARNER. So the word "filibuster" is not in the rules. I want to clarify that. I have done a lot of study on this question, and I think I can work our way through it. It is not in the rules. Let's go to Webster's Dictionary. It is rather interesting, the word has been used throughout history in many ways.

Filibuster—the first definition: "An irregular military adventurer; an American engaged in fomenting insurrections in Latin America in the mid-19th century." But then we get to the last definition, and herein I think is some guidance: "a: the use of extreme dilatory tactics in an attempt to delay or prevent action, esp. in a legislative assembly. b: an instance of this practice."

I think somewhere in between lies the truth. So perhaps with this background and the assurance it isn't in the rules, the Senator from Alabama can continue to educate the Senate as to his perspective, and the Senator from New York can continue to educate the Senate from his perspective, and let us hope we have brought some light on this issue.

Mr. SCHUMER. I thank the Senator.

Mr. WARNER. Mr. President, if I can add one more thing, there is a very fine book issued by the Library of Congress. I ask the Presiding Officer the title of that book. The Parliamentarian knows of it.

The PRESIDING OFFICER. The title would be "The History of the Cloture Rule."

Mr. WARNER. Yes, I have studied that, and it is issued by the Library of Congress; am I not correct in that?

The PRESIDING OFFICER. That is correct.

Mr. WARNER. For those who want to pursue this in great depth. I thank my colleague for this colloquy, and I hope perhaps we got some clarity to the issue.

Mr. SESSIONS. I thank the distinguished chairman of the Armed Services Committee, Senator WARNER. He has brought wisdom here and helped us to keep from going around in circles.

There is an argument that can be made by the Senator from New York that holds that were ended by cloture votes are filibusters, but they were not really filibusters in the sense we are facing them today. What we are seeing today is a sustained deliberate attempt by the leadership of the Democratic Party to block judges by having less than 50 votes to do so. They block judges by requiring through the procedural rules of the Senate that we have to have 60 votes to confirm a judge instead of 51.

We know that in each one of these nominees that have been held up that more than 50, usually as many as 55, 54, 53 votes are there to confirm the nomination, but they have been blocked by a sustained filibuster led by the Democratic leadership and TOM DASCHLE and his team. That is what has brought us to this point. I think we have clarified that issue.

I say on the question of are we changing our views on this side, I reject that point. This side was principled during the Clinton years. This side did not resort to the filibuster as a tool of the opposition, as the Democrats have. There can be no debate about that. Their nominees were moved forward. We did not adopt this policy.

I see the Senator from Texas is here. She has some thoughts she would like to share with us about a particular comment that was made about the nominee from California, Judge Kuhl. I yield time to her.

Mr. REID. Parliamentary inquiry: How much time is left on both sides?

The PRESIDING OFFICER. Seventeen minutes on the majority side; 25½ on the minority side.

Mr. REID. It would be, I think especially for the wee hours of the morning, better if we continue with what we started with so there is not a fight for who gets recognized. Does anybody have a problem with the way we have done it?

Mr. SESSIONS. I am not exactly sure of the way we have done it.

Mr. REID. What we have done since 6 o'clock; the majority would take the first half hour and we take the second half hour.

Mr. SESSIONS. En bloc.

Mr. REID. Yes. I hope we can go back to that arrangement. That is my request.

The PRESIDING OFFICER. I assume you mean during this hour the majority would get its 16 minutes——

Mr. REID. Absolutely, and we will get our 25.

The PRESIDING OFFICER. And the next hour would be half hour first for the majority and——

Mr. REID. Yes, starting at 1 a.m. going back to the regular system.

The PRESIDING OFFICER. Unless the Senator agrees to an alternate position, that would be the policy.

Mr. REID. That request is granted?

The PRESIDING OFFICER. That is the way the unanimous consent was set up to begin with.

Mr. REID. Thank you, Mr. President.

Mr. SESSIONS. I yield 5 minutes to the Senator from Texas.

Mrs. HUTCHISON. Mr. President, I wanted to tell the rest of the story on Judge Carolyn Kuhl because I think a misimpression was left by the Senator from California regarding the case of the woman who was having a breast exam, and when she left the office, she asked who the doctor was, and the receptionist said: That wasn't a doctor, that was a pharmaceutical company representative.

When I first heard about that, I definitely wanted to hear more because that did not sound like the kind of judge I would want on the bench, a judge who would dismiss the case against the pharmaceutical company for having a person in the room when the patient was not even told this person was not a doctor or who this person was. I, in fact, did look at the rest of the story and I found a very different story. In fact, the plaintiff sued both the pharmaceutical company and the doctor. The doctor was sued for negligence in not informing the patient and asking the patient's permission, or having the patient have the right to say, no, I do not want that person in the room. The plaintiff sued the doctor, the doctor's firm, and the pharmaceutical company.

Judge Kuhl allowed the case to stay open, which she dismissed against the pharmaceutical company, because the case against the pharmaceutical company was common law intrusion upon seclusion, which was not settled law in California at the time, but she kept the case against the doctor for his failure to consent. The judge allowed the cause of action, the trial, to go forward against the doctor and the medical partnership for failure to obtain consent, and the plaintiff did recover. The plaintiff should have recovered, and the plaintiff did recover. Judge Kuhl allowed that to happen by keeping the lawsuit open against the doctor who was the person negligent in this case.

I think it is very important that when we know the full story it shows Judge Kuhl, in fact, was very sensitive to this woman's claim and allowed it to go forward. She made sure it went forward, and, in fact, the woman did settle for a full recovery.

I just wanted to set the record straight because I thought there was a misimpression in the record about Judge Carolyn Kuhl, and I would hope we would acknowledge she did let this case go forward and there was a recovery.

I think Judge Kuhl is an outstanding judge. After looking at her record very fully, I am very pleased to support her. I am very aware she is supported in a bipartisan way by many people in California, and most certainly when we talk about needing some balance on the Ninth Circuit Court of Appeals I think Judge Carolyn Kuhl would be an excellent addition to bring some balance to this circuit that is the most reversed circuit in the entire United States of America. Of all the circuit courts of appeal in the United States of America, the Ninth Circuit is the most reversed by the Supreme Court. I think that would tend to show we need some balance on this court, and I would hope Judge Carolyn Kuhl would get a fair vote, because if she does, she will get the majority in this body. They will look at the facts in her record. They will see how qualified and balanced she is, and she will get confirmation if she has a fair shot.

I thank the Senator from Alabama for letting me bring out the rest of the story, as Paul Harvey would say, and make sure the record is complete on behalf of Judge Carolyn Kuhl.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Texas so much for those comments. I remember when that came up in the Judiciary Committee. We heard these allegations that this woman, Carolyn Kuhl, was insensitive about the rights of women and she had made this big error in this case. What she said simply was, as the Senator mentioned, the doctor allowed this man to come into the room, and not the drug company who hired this gentleman. They did not even know about it, I am sure. The permission was given by him, and if anyone committed a wrong, it was that doctor. She allowed the case to go forward, and under California law, the full recovery can come out of any one defendant who is liable, and the full recovery did come in fact from the doctor. It is an important matter to note.

I will just share, since the issue was raised, about this side not being principled and I pointed out during the 8 years of President Clinton's administration, the leadership on this side of the aisle absolutely rejected filibusters. During that same time when President Clinton was seeking to get judges confirmed, the Democratic Senators also were attacking filibusters and used a lot of language that would make that clear.

For example, Senator BOXER on May 14 of 1997 said: It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the floor.

Senator FEINSTEIN said: A nominee is entitled to a vote. Vote them up, vote them down.

Senator DASCHLE, now the Democratic leader, said: I find it simply baffling that a Senator would vote against even voting on a judicial nomination.

Senator LEAHY, the chairman of the Judiciary Committee during the time of the Democratic majority, said: I think the Senate is entitled to a vote in this matter. I think the President is entitled for the Senate to vote—he is talking about President Clinton—and I think the country is entitled for the Senate to vote.

Now Senator LEAHY is leading the filibuster. So is Senator DASCHLE. They are completely changing their position, and this side did not do that.

Senator HATCH explained to us why filibusters were bad, so this side rejected that and did not go forward.

Senator KENNEDY said: It is true that some Senators have voiced concerns about these nominations, but that should not prevent a rollcall vote which gives every Senator the opportunity to say yes or no.

Mr. CHAMBLISS. Will the Senator yield?

Mr. SESSIONS. I would be pleased to yield to the Senator from Georgia.

Mr. CHAMBLISS. Just like the Senator from Alabama, I was somewhat shocked by the comments of the Senator from California about the fact that if you get 98 percent you ought to be happy with what you get and go home. The fact of the matter is, never before in the history of the United States of America has any President gotten 98 percent. Every other President, prior to this President, prior to the obstructionism coming from the other side of the aisle on these judicial nominees, has gotten 100 percent. It is zero and four filibusters out there right now.

I remind the Senator from California of her comment made back on March 9, 2000, as per the CONGRESSIONAL RECORD: I make an appeal, if we vote to indefinitely postpone a vote on these two nominees or one of these two nominees, that is denying them an up-or-down vote, that would be such a twisting of what cloture really means in these cases. It has never been done before for a judge, as far as we know, ever.

So the Senator from California agreed with us back in March 9 of 2000. Again, it would be in line with what Senator LOTT said when he said these people deserve an up-or-down vote.

The thing about these votes is that if people disagree with them, if any Senator on the other side of the aisle or if any Senator on this side of the aisle disagrees any judicial nominee is qualified to serve on the Federal bench at the district level or on any circuit court, they should have the right to vote against them, but they are entitled to a vote.

I agree 100 percent with the Senator from California when she made her comment in March of 2000 that we ought to have an up-or-down vote; that it has never—and I repeat her statement—it has never been done before for a judge, as far as we know, ever. It has never been done.

When it comes to saying "has there been a filibuster" or "has there not been a filibuster," I agree with the Senator from California; there has never been a filibuster before of a circuit court nominee. There ought not be a filibuster that continues on these judges. We ought to have an up-or-down vote.

I yield back to the Senator from Alabama.

Mr. SESSIONS. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator from Alabama has 5 minutes 40 seconds.

Mr. SESSIONS. If the Senator from South Carolina wants to make a comment, I will yield to him.

Mr. GRAHAM of South Carolina. Just very briefly. I thank the Senator for yielding.

I never thought in a 30-hour debate you would have to fight to get something to say. We may want to extend this thing.

It has been good to hear everybody's perspective about what has gone on in the past. I am really more worried about the future. I am new to the Senate. This is my first year here. I do not know who shot John 5 years ago or 10 years ago, and who is still mad about what happened during Clinton, Bush 1, or George Washington. That is not my concern.

My concern is I am in the Senate at a time when I know that if this continues, we are going to destroy the judicial nominating process as I have understood it to be since law school. We are going to drive good men and women from wanting to serve because the nominees who are being filibustered—I have been on the Judiciary Committee—have had a hatchet job done on them. They have had an opinion here and a dissenting opinion there taken out of context. They are all well qualified by the American Bar Association. They all come highly recommended by the people who know them best.

For one of the nominees, they used a letter he and his wife wrote to his diocese about Christian marriage. Mr. Pryor from Arkansas was asked about whether or not he chose to take his kids to Disney World during Gay Pride Day. You are asking people questions I feel are unbelievably uncomfortable asking anybody as to whether they are qualified to be a judge.

This process is broken. The past has its abuses on both sides, but this process is broken. There is no precedent for what is going on here.

I may be wrong, and if I am wrong somebody correct me, but it is my understanding, in the history of this country, over 200 and something years of following the Constitution, we have never had an occasion where somebody came out of the Judiciary Committee, was voted out of the committee, and was unable to get a vote on the floor, until now.

If that is the case, then we are doing something different that is really bad, in my opinion, because it will be answered in kind down the road. If this is successful, to expect the Republican Party to sit on the sidelines if there is a Democratic President and not answer in kind is probably too optimistic.

If that happens, you are taking the Senate in a death spiral of where 40 people, 41 people, answering to special interest groups, are going to hijack the Constitution. This is a big deal. This is wrong and it needs to stop. It has never happened before. It should not happen now. Whatever problems we have had in the past with judges, you have taken it to a new level that will destroy the ability to follow the Constitution, and you will take politics to a level that it has never been before in a rule-of-law nation and we will all suffer greatly.

Mr. SESSIONS. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Alabama has 2½ minutes.

Mr. SESSIONS. Mr. President, I agree so strongly with the Senator from South Carolina that this has the real danger of undermining the independence of the judiciary and injecting politics into the judiciary in a way we do not want to do.

I had the opportunity to obtain information from one of our greatest understanders of Senate rules on holds. I think I would like to share that with the Presiding Officer, Senator ENZI, who is as skilled on the history of the Senate as anyone.

He just notes this: What is a hold? A hold is a request by a Senator to be notified so a unanimous consent request can be objected to. If somebody is going to move a bill, legislation, or a judge, and you want to talk more about it or so forth, you put a hold. They have to call you before they will do a unanimous consent without your knowledge and slip something through you want to talk about or debate. It is not a filibuster.

A filibuster would be a continuous success by less than a majority of the Senators to stop progress to a vote in an action or a matter. It is a success continually by a minority of the Senate to stop the majority from bringing a matter to a vote. A cloture, more than a majority, stopped by a minority, 55 votes for cloture to stop debate, can be defeated by 45 Senators who vote contrary to that, is a filibuster, as has been admitted by the Senators on the other side.

I think we have been playing some games with words, but the bottom line is what has occurred this year is unprecedented. It is a systematic, organized filibuster by the Democratic leader, TOM DASCHLE, and his team and the assistant leader and most of the Members on the other side—but not all—but on these now six nominees to date we have not had 60 votes to shut off debate.

That is what we are talking about. You can call a hold a filibuster if you choose. Maybe you could justify that. But I do not think it is.

The PRESIDING OFFICER. The majority's time has expired.

Mr. REID. We will divide the time on this equally between the Senator from California and the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, how many minutes do I have?

The PRESIDING OFFICER. The Senator has 12 minutes 42 seconds.

Mrs. BOXER. Well, here we go, more of complaining and more upset from the other side. They just did not get 100 percent of what they wanted. They only got 98 percent. The score is 168 to 4. Other charts can be printed, but here is the truth. Do my colleagues want to see it another way? Here are the names of the people we have confirmed to the Federal bench for George Bush, 168 strong, and there are 4 we believe are out of the mainstream, who we believe would actually hurt the rights of our people to privacy, to dignity, to fairness, to justice, and we have stood up and we have said, no. The other side cannot believe they did not get 100 percent of what they wanted. Maybe in their life they get 100 percent of what they want. Most of us do not. Most of us work hard for what we believe and we are happy to get maybe close to what we want.

We have more complaining and more bickering, more upset, 30 hours taken away from other issues. This is where we are. We even had Senator GRAHAM stand up and throw out this fact: No one is going to apply for judgeships. No one is going to apply for lifetime judgeships that pay a lot of money because Democrats stood up and said 4 did not meet the test of fairness, 4 were outside the mainstream and, yes, 168 were fine. So now people are not going to apply for judgeships anymore? Well, if I spoke to someone who said, do you think I ought to apply for a judgeship, the first thing I would say is, well, your odds are pretty good, 168, and only 4 did not make it. So I would say your chances are pretty good.

Then we hear all this talk about we Democrats are doing something different, we have never filibustered, never, even though on the Senate Web site itself there is discussion that there have been filibusters, and CHUCK SCHUMER put that in the RECORD.

Let me read something much more recent than that one. This is just a couple of years ago, when we had the Berzon and the Paez nominations. The other side today is saying those were not filibusters. Well, let's hear what Republican Bob Smith said as he launched, yes, a filibuster.

I wish my colleagues would listen, but it is okay, their minds are made up. He said: It is no secret that I have been the person who has filibustered these two nominees.

Let me say that again. A couple of years ago, Bob Smith said: It is no secret that I have been the person who has filibustered these two nominees, Judge Berzon and Judge Paez.

The issue is, why are we here? What is the role of the Senate in judicial nominations? The Constitution gives the Senate the advise-and-consent role. We are supposed to advise the President and consent if we think the judge should be put on the court.

Republican Bob Smith, who led the filibuster against two Californians, goes on to say—do I remember it? It is etched in my mind forever. These were two terrific people who were held up, one for 4 years and one for 2 years, and then we finally got them to the floor and Bob Smith launched a filibuster saying a filibuster in the Senate has a purpose. It is not simply to delay for the sake of delay. It is to take the time to debate, to find out about what judges' thoughts are, et cetera.

Can we please not have a debate over whether the other side ever launched a filibuster? They admitted it. I ask unanimous consent that this be printed in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE PAEZ FILIBUSTER

So that the record on this point, this dramatic reversal in positions, is clear, I feel constrained to mention that the 15 Senators who voted to continue to filibuster the Paez nomination and to, in fact, postpone it indefinitely, (voting both against cloture and for indefinite postponement) were Senators Frist, Bob Smith, Jessie Helms, Wayne Allard, Larry Craig, Michael Enzi, Phil Gramm, Asa Hutchinson, James Inhofe, Frank Murkowski, Sam Brownback, Jim Bunning, Mike DeWine, and Richard Shelby. How many of the current Senators among them have you seen on this Senate floor claiming that [President Bush's] judicial nominees are entitled to an up or down vote and that delaying or filibustering is wrong? I have seen some of them. It is their right to change their minds, but at least acknowledge their past efforts to block President Clinton's nominees, which kept many seats for this President to try to pack.

I will let the words of the Senators who filibustered Clinton nominees speak for themselves. For example, in 2000, just three years ago this month, Senator Smith noted during the filibuster of Judge Paez and Marsha Berzon, a Ninth Circuit nominee:

"[I]t is no secret that I have been the person who has filibustered these two nominees, Judge Berzon and Judge Paez. The issue is, why are we here? What is the role of the Senate in judicial nominations? The Constitution gave the Senate the advise-and-consent role. We are supposed to advise the President and consent if we think the judge should be put on the court. . . .

Filibuster in the Senate has a purpose. It is not simply to delay for the sake of delay. It is to get information.

It is to take the time to debate and to find out about what a judge's thoughts are and how he or she might act once they are placed on the court."

So, those who came before the Senate and said no Republican ever filibustered a Clinton nominee were dead wrong. Senator Smith went on to explain:

"As far as the issue of going down a dangerous path and a dangerous precedent, that we somehow have never gone before, as I pointed out yesterday and I reiterate this morning, since 1968, 13 judges have been filibustered by both political parties appointed by Presidents of both political parties, starting in 1968 with Abe Fortas and coming all the way forth to these two judges today.

It is not a new path to argue and to discuss information about these judges. In fact, Mr. President . . . [w]hen William Rehnquist was nominated to the Court, he was filibustered twice.

Then, after he was on the Court, he was filibustered again when asked to become the chief Justice. In that filibuster, it is interesting to note, things that happened prior to him sitting on the Court were regurgitated and discussed. So I do not want to hear that I am going down some trail the Senate has gone down before by talking about these judges and delaying. It is simply not true."

This straight-forward Republican from New Hampshire proclaimed:

"Don't pontificate on the floor and tell me that somehow I am violating the Constitution . . . by blocking a judge or filibustering a judge that I don't think deserves to be on the court. That is my responsibility. That is my advise-and-consent role, and I intend to exercise it."

Thus, the Republicans' claim that Democrats are taking "unprecedented" action, like the White House claim that our request for Mr. Estrada's work while paid by taxpayers was "unprecedented," is simply untrue. Republicans' desire to rewrite their own history, while understandable, is just wrong. They should come clean and tell the truth to the American people about their past practices on nominations.

They cannot change the plain facts to fit their current argument and purposes. It is also noteworthy that, before the debate on Bush nominations this year, the distinguished chairman of the Judiciary Committee, my good friend from Utah, admitted that the Republicans had filibustered Judge Paez's nomination in 2000. After cloture was invoked in Paez's nomination, Senator Sessions made a motion to indefinitely postpone a vote on the nomination; this motion failed by a vote of 31 to 67.

Senator Hatch then admitted there had been a filibuster: "I have to say, I have served a number of years in the Senate, and I have never seen a 'motion to postpone indefinitely' that was brought to delay the consideration of a judicial nomination post-cloture. "Indeed, I must confess to being somewhat baffled that, after a filibuster is cut off by cloture, the Senate could still delay a final vote on a nomination. A parliamentary ruling to this effect means that, after today, our cloture rule is further weakened."

Mrs. BOXER. Let me quickly say about Judge Kuhl, Senator HUTCHISON said, in fact, that Judge Kuhl showed a lot of compassion to this victim who went into a doctor's office and was subjected to the humiliation of having a drug salesman witness her exam without her permission. Senator HUTCHISON said she was very, very kind to this victim.

Let's see what the victim says about Judge Kuhl.

My name is Azucena Sanchez-Scott. I am a survivor of breast cancer and Judge Kuhl's courtroom. I stand before you now because I want to tell my story so that other people will never have to relive it.

Nothing about my cancer is easy. Not the chemotherapy, not the fear, and certainly not the emotional pain of disfigurement. As a person battling cancer each visit to the doctor brings questions about my future and my health. That is where I was when my doctor and a stranger walked in. The doctor offered no introduction and proceeded to examine me and asked that I disrobe. It was only when I left the office and inquired with the receptionist that I learned that the stranger was a sales representative for a drug company with no medical reason for being there.

The bottom line, Carolyn Kuhl ruled against this woman, and when Senator HUTCHISON said she allowed the case of the doctor to go forward, that is what Judge Kuhl said. Then she retracted that and said: I made a mistake; I never had the doctor's case before me.

So let's get the facts straight here. Why do you think we have three major breast cancer organizations—Breast Cancer Action, Breast Cancer Fund, the National Breast Cancer Coalition—asking us to defeat Carolyn Kuhl? Not because Carolyn Kuhl was compassionate. But because of the opposite reason: She turned her back on a woman in need, on a sick woman. And Carolyn Kuhl was overturned in a unanimous vote by the court of appeals. For that, my friends want to promote her to this lifetime appointment.

I say if I caved in to that, again, I do not deserve to be here. Sometimes you have to stand up for people who need protection. Carolyn Kuhl had that chance. She took a hike. She ruled against this woman. This woman has been scarred in more ways than one from that experience.

Here we are. It is 12:45. We could be working on issues that really matter to people instead of rehashing these judgeships. They got almost everything they wanted. But they are going to pound their fists and say the same thing over and over, "This has never happened before"—despite the fact it has and make it sound as if we are being unfair when we are not. We are just doing our job. But there we are.

Look at what we could be doing. We have lost almost 3 million jobs in this country. This President has the worst record of any President since Herbert Hoover on private-sector employment. Why don't we spend 30 hours talking about that? Why don't we pass the 6-year highway bill? We got it out of our committee thanks to Senator REID and Senator INHOFE today. Why not bring that bill down, I say to my friend, Senator REID? Let's vote on the 6-year highway bill. Do you know how many jobs we would create in this country? In my State, 80,000 jobs.

Let's pass a manufacturing jobs tax credit so that manufacturing stops leaving this country. Let's raise the minimum wage. I tried to do that by unanimous consent. The other side objected. They do not want to do that.

With our salary, we make the minimum wage for a year in just a couple of months here. But no, they are spending 30 hours talking about 4 people who already have jobs and they do not want to talk about the 3 million jobs that were lost. They do not want to protect overtime. As a matter of fact, they tried to take it away from workers. They do not want to extend unemployment insurance.

Nothing is getting done that really matters to people. That is a sad, sad situation.

Long-term unemployment: These are the people who have been out there and out there—2 million, plus. That is a terrible record. Long-term unemployment tripled since George Bush took over.

How about the tax cuts? Let's look at how fair they are. They are 80 times larger for millionaires than for middle income households earning about $50,000 to $75,000.

The Bush economic record? The only administration going back to Eisenhower with a decline in manufacturing output—big manufacturing job losses.

No, we cannot talk about that. We cannot have an action plan to get people back to work. And I have not even talked about school construction, which would really employ a lot of people. I visit some of my schools and the tiles are falling off the ceiling. No, we cannot talk about that. We do not have time. But we have time to discuss, for 30 hours, judgeships that we have gone over and over. And they are winning. They got 168 through and they did not get 4. They are worried about 4 people; I am worried about 3 million people. I am worried about the unemployed in my State, the people without health insurance.

I will tell Members what else I am worried about. We have a President who has rolled back so many environmental laws—I have them on a scroll and I cannot show them because it is not allowed by the Senate rules. But I will hold this up. If I took this scroll and I rolled it across the Chamber, it would go from one end to the other. It goes on and on and on. It is small print. It shows all of the environmental rollbacks of this administration.

Just 2 weeks ago they came up with an incredible idea. When there are PCBs on your land—those are the most toxic chemicals there are; they are carcinogens—we always had a rule if you had PCBs on your land you had to have a plan to clean it up and EPA had to oversee it. No. Gone. Now you can sell your land and God help the people who buy it with PCBs on it.

Superfund under President Clinton, 80 sites a year we cleaned up—the most toxic sites. Now we are down to 40 a year.

How about arsenic and playground equipment? In the latest hit of the administration, they announced they will allow the use of arsenic-treated lumber for playground equipment. Wake me up when this environmental nightmare is over.

It is 12:35 in the morning and I can still feel it in my heart that we are doing the wrong thing tonight. Why not try to reverse this horrible record and protect our children and protect the health of our people and get our people working again? Instead, we are debating 168 to 4.

I close with this, and I will probably dream about these numbers all night—what is left of the night. They got 168, and they did not get 4. They cannot accept the fact that 98 percent is pretty good. I don't know what else we are supposed to do, but I will say, whatever it takes, I will not be intimidated into voting for nominees that are so far right they would roll back the hands of time. They will not protect the health of the people, the privacy of the people, the safety of the people. I am not going to do that.

I was sent here on a promise that I would stand up for the people of my State. That is what I intend to do. With 168 to 4, they ought to be smiling instead of whining.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I have learned politicians' priorities can be measured by their passions. What do they care about most? What stirs their souls? For that reason, the exultation of my colleagues across the aisle about this session, their fervor, their apocalyptic predictions, their press announcements, other than tax cuts for the rich and the super-rich, I have not seen that much passion across the aisle in my 3 years in this Chamber. Frankly, it does not do that for me.

My passion tonight is what my colleague from California said: to work on other matters. We would be far more aroused talking about how to put Americans back to work, the over 3 million who have lost their jobs since this administration took office less than 3 years ago. And not just a return to any jobs, but jobs that are the same as, as good as or preferably better than the jobs they held before. Not minimum wage jobs with no benefits, no health coverage for spouses and children, no pensions, no protections, no real future.

I would like us to talk about how we replace the 2.6 million manufacturing jobs lost in this country in the last 3 years, jobs moved offshore to someplace other than America. Many of them, I fear, are not coming back to America.

The majority of the Republican caucus leadership has the authority to decide the Senate's agenda and has decided we will spend 30 hours on 4 jobs. We have not spent 30 minutes on jobs for the other 3 million Americans out of work who are looking for jobs. We have not spent 3 minutes on jobs and survival assistance for the over 2 million Americans who cannot find jobs for so long that they have exhausted their unemployment benefits. Many are completely broke. If we do not provide them with some support soon, more will be completely broke.

Every time we have tried to bring up a bipartisan bill to extend unemployment benefits for Americans out looking for work, except one time last year, someone has objected across the aisle and we cannot proceed. No one has objected to spending 30 hours on 4 people, but we do not spend 30 seconds on most people affected by unemployment in this Nation.

I will try again. I ask unanimous consent that the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to its immediate consideration, the bill be read the third time and passed, and the motion to reconsider be laid on the table.

That would extend the basic program unemployment for 6 months. It would extend the long-term unemployment for an additional 13 weeks and would benefit 5 million Americans.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DAYTON. As I said, you can tell the priorities and what arouses people's passions. I could get really compassionate about the Senate's whole last week and the disaster aid for Minnesota and elsewhere where crops have been devastated by the summer's drought. Many of Minnesota's farmers had their crops totally destroyed. I did not detect as much passion and priority or concern among Members of the caucus, combined, as in one of them tonight for the misfortune falling on thousands of Minnesotans.

I get passionate talking about prescription drug coverage for seniors on Medicare, which went to the Republican-controlled conference committee last July and has not come out since. That is only half as good as the resources committed to the Members of Congress, which is why I introduced my "taste of their own medicine" amendment which passed the Senate months ago by a vote of 93 to 3. It says that prescription drug benefits that Members of Congress receive can be no better than what we vote for seniors and others under Medicare.

Over 17,000 Minnesotans were compassionate enough about that principle that they signed a petition at the Minnesota State Fair in 12 days. That is what Minnesotans are passionate about.

I could get passionate about learning the truths about the present conditions in Iraq. After being told for weeks now how much they are improving and that things are getting better, I read today a CIA report disclosed by two people high up in the administration who cannot get their message through at that level any other way than going to the American people and saying, You do not know all the facts. You do not know even the right perspective on what is going on there.

We have sons and daughters and husbands and wives and children of Minnesotans who have given their lives, who are giving their bodies and well-being or giving their livelihoods, and we cannot find out the truth about when they are coming home or whether their stay of duty will be extended and for how long.

Those are things that Minnesotans can get very passionate about. That is real life or death.

What is important to people? If we do not manifest it here, people will not care about the institutions such as the Senate. I do not question my colleagues' right to their choice of priorities. I don't question their right to have different views on policies and judges or any other matter. That is the nature of our process. That is the strength of our process. That is the wisdom of our process.

I have been, in less than 3 years, in the parity, even, 50–50 Senate, with the Vice President, the tiebreaker, but in committee and conference committees equal, and in the majority for a year and a half and this last year in the minority. The previous year and a half there were 69 cloture votes that the Democratic leader, the majority leader, then had to file to move to proceed to legislation, to consider legislation, voting on legislation, issues that were far more important and affected a far greater number of Minnesotans and other Americans than a particular judgeship: health care for senior citizens; benefits for our veterans; environmental protection. And now this year, the conditions have changed.

As somebody once said, how a minority reaching majority, seizing authority, hates the minority. So we have, as colleagues across the aisle noted, and I agree, seen a certain role reversal. But that is, in part, the different responsibilities of minority and majority caucuses, and it is particularly the difference of the responsibilities of those in the party other than the President and in the party the same as the President.

I don't question the right of my colleagues, one of them or all of them, to support the President, whether he is right, whether he is wrong, whether they believe he is right or wrong. Those are individual decisions of conscience and politics.

The Founders of this country—and this applies whether the President of the United States is Democrat or Republican, in which case the situation is reversed—understood that the incredible foresight and wisdom of the separation of powers, this coequal authority of the legislative branch, equal to that of the executive branch, was critical in every respect, critical to this country's genuine freedom and preservation of our democracy.

Judge Brandeis, almost 100 years ago, said the separation of powers was adopted by the convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction but, by means of the inevitable friction inherent in the distribution of governmental powers among the three branches, to save the people from autocracy, to save the people from despotism, from tyranny. That is what they were concerned about. That is the practice that has served us well in this Nation and in this institution of the Senate for 216 years.

So it concerns me, and I do not question anyone's right to take whatever position they wish, but it concerns me as I read my colleagues on the other side who were designing this debate, this forum, have a combined number of years of experience in the Senate that amounts to less than one half of 1 percent of the combined collective wisdom achieved by nearly 1,900 men and women who have served in this body in its 216-year history. Yet I hear Members of this body who have been here less than a year saying emphatically this system is broken and it should be radically overhauled and that somehow the process we are engaged in is one that illserves our country and is even, they say, a violation of our Constitutional responsibilities. That is one of the most serious charges that anyone can make against a fellow Senator, because when we take this office, we stand, each of us, and recite the same pledge——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DAYTON. To uphold the Constitution of the United States.

Mr. President, I ask unanimous consent for 1 minute to complete my thought.

The PRESIDING OFFICER. Under the time agreement——

Mr. REID. What was being asked?

Mr. DAYTON. A unanimous consent request for 1 minute to complete my thought.

Mr. REID. Well, we will just take that out of our time from the next half hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DAYTON. Thank you, Mr. President.

That is the most solemn oath I have ever taken, to uphold the Constitution of the United States. I do not question the commitment of anybody in this body to upholding that oath and carrying it out as he or she believes is right, which is the reason we are elected independently, to exercise that independent authority.

But when people put out releases saying these matters we are engaged in are dangerous and irresponsible, that we have no right to be doing this, that it is a dangerous dereliction of our constitutional duty, those are very serious accusations.

If anyone in this body believes what we are doing is unconstitutional, they should take that question to the proper court. If anyone believes what we are doing in this body is a violation of Senate rules and procedures, they should take that question to the Parliamentarian.

I was told earlier today that the Parliamentarian has not been asked. I believe the Parliamentarian, based on all the rules and precedents of the Senate—this book of 1,400 pages of precedents that have been adopted over 216 years—would find we are acting responsibly and within that authority which is our responsibility and our right.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The minority's time has expired.

The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Thank you, Mr. President.

As we go into the 1 o'clock hour, Jimmy Buffett says it is 5 o'clock somewhere. But it is 1 o'clock here. We will try to reorient ourselves as to what was going on in the last hour. It is kind of an update, a CNN headline update.

The last hour was pretty interesting, I thought. We had examples used by our friends on the Democratic side to say basically that what we Republicans have done in the past we complain about now. I reiterate, as far as I am concerned, the past is the past, and I am more worried about the future. I have been here a year and all I have known since I have been here is fussing and fighting about everything, particularly judges. It has not been too pleasant to be on the Judiciary Committee because a lot of good men and women have had a hatchet job done on their professional qualifications and who they are as people, to not be allowed to be voted on. There have been a lot of manufactured reasons.

But as I understand, from having listened to the debate the last hour, the idea of holding a judge has been used as an example of an abuse, that holds have been put on judges, which is apparently a process in the Senate to deny somebody from going through the committee process, or to go forward.

The example Senator SCHUMER used was two judges: Paez and Berzon. I hope I have their names right. They were two judges who were appointed by President Clinton, and I think Senator Smith from New Hampshire tried to block their nominations, put a hold on it. There was a real contention about what was going on with those two judges. But the curious thing to me was there was an intervention in those cases, in those two nominations by the Republican leadership, as I understand it, that basically brought to a close the process of blocking those judges from having a vote after they came out of committee.

To me, that illustrates that in the past, when efforts were tried or were being used to basically hijack the constitutional requirement of a majority vote, once the nominee was presented to the Senate, there has been intervention to right the ship.

Since I have been here, the only intervention I have seen is to shut down what has been going on for 200-some years. Now, it is like a cricket match. It is 168 to 4. It is 168 to 16. Cricket goes on for 3 days. It is pretty interesting for the first hour or 2, but 3 days later I kind of get blurry-eyed watching cricket—the same way here with these numbers.

The point is, there never has been in the history of the country a situation where somebody was reported out of the Judiciary Committee to come to the floor of the Senate to be voted on as a judicial nominee, that they were not eventually voted on—until now. There have been cloture motions made, but they were always made to bring about a vote.

There has been a concerted effort by the Democratic leadership to block judicial nominees in an unprecedented way. That is why we are all here tonight. Not only is it unprecedented, it is very dangerous. The reason I think it is dangerous is because it effectively changes the constitutional standard.

I am going to read, since we have 30 minutes here, where the Constitution talks about a supermajority vote: The "Concurrence of two thirds" of either the House or the Senate is required to "expel a Member" of Congress.

That is kind of self-serving. But we do not want to throw each other out until we get two-thirds of our colleagues to agree we should be thrown out. So that is a real check on us keeping our jobs.

Also: "And no Person shall be convicted" by the Senate in an impeachment trial "without the Concurrence of two-thirds of the Members present," according to article I, section 3.

I have a little experience with that article. That is a very high standard to achieve. And it should be a high standard to achieve. Can you imagine what would happen if, by Senate rule, we changed the impeachment standards so the President of the United States could be impeached by a majority vote?

I am sure the Supreme Court would not allow that to happen. I am sure there would be a great outcry by the public if we, in a partisan fashion, changed the way you impeach a President because we did not like that person or their agenda. There would be a huge outcry in the country because we would have subverted the Constitution.

That is exactly what is going on here in reverse. Instead of a two-thirds requirement to confirm a judge, like we have to throw somebody out of the House or the Senate, or to impeach the President, or to ratify a treaty—why two-thirds to ratify a treaty? The Founding Fathers were worried about a President making a deal with some foreign power that was not in the best interests of the country, so you had a high standard to ratify. You had a check over Presidential power.

They give the power in the Constitution for the President to veto legislation coming out of these bodies, to make sure we do not get off track. The only way we can override a Presidential veto is the two-thirds vote.

There was a lot of thought going into supermajority votes. It was not just by accident that the Constitution has six or seven provisions that require a majority vote, and I would argue strongly it is not by accident that the majority vote requirement applying to judges was put there on purpose.

Our job, as I see it, is not to say what we would do if we were President. Our job, as the Constitution lays out for us, is to advise and consent by a majority vote to make sure the President—whoever he or she might be—is not sending over their brother-in-law or sister-in-law or unqualified people.

What we have done this year, different from other years, is we have taken our political differences and our desire to make the court go one way versus the other and we have hijacked the Constitution for political reasons.

Our friends on the other side of the aisle lost badly in 2002. There was an article right after the election where the conference came together and started inventorying: Why did we lose? There was a strain of thought on the Democratic side that they lost because they were too accommodating to the President, and the Democratic base was deflated; that you are working with them too much on taxes, you are helping him with homeland security, that you are doing this and that with President Bush. One thing you might want to do to fight back—and this is in the article; and I do not have it with me—is to go after his judges.

Well, that certainly gets people fired up. Republican and Democratic base voters very much follow issues such as this: who the President may pick for the Supreme Court, who the President may pick for the Federal bench.

I am asking, in all sincerity, that somehow we find a way out of the box that we are in. Because I have been in the Senate for a year—I do not know how much longer I will be here but I do understand what is going to happen down the road.

If this is successful—and why they pick people, I really do not know. I have been on the Judiciary Committee. They do not do this to everyone. But they pick certain people for court of appeals jobs right below the Supreme Court and they will pick a few out of the herd, and they will start saying awful things about them—I will talk about that in a moment—and they will wind up, after they come out of committee, not getting an up-or-down vote in the Senate—for the first time in history. I will talk about this later when I have more time.

There are dozens of quotes by Democratic Senators saying it is really an abuse of the Senate's power not to allow somebody to be voted on up or down. They were right then. They were talking about a situation in President Clinton's term where they thought the Republicans were denying people a chance to go through committee and they were latching on to the constitutional provision of a majority vote, the advise and consent vote, saying: The high road for the Senate to take is if you do not like these people, if you do not like their philosophy, and if you do not think they are qualified, vote against them, but do not change the constitutional standard because it would be bad for the country.

That way of thinking has been replaced. I think the reason it has been replaced is because the political moment is so hot. We are a divided nation. The year 2000 was a very close election. In 2002, there was a change in the Senate's makeup. It is 51 to 49. And we are being consumed by the political moment.

I can tell my colleagues on the other side of the aisle, and my Republican colleagues, that if we keep up this practice, it will do long-term damage to this country.

The one thing I like most about America is it is a rule-of-law nation. Instead of having to go in the parking lot and fight people, you have a court to go to. There is a way in this country for the weak to make the strong answer; and that is called the courtroom. The people you put in the courtroom are important. We have constitutionally, in the Federal system, given that power to the President. We, by majority vote, say yes or no to that nominee.

What we have done is politicize this process in an unprecedented way, in a dangerous way. If you don't think down the road it will be answered in kind by the Republican Party, I think you are very naive. I hope I will have the courage not to go down that road as an individual Senator.

But the animosity being generated by this practice is red hot among both bases, and it will be almost impossible, in my opinion, for this not to become the norm. Payback is hell. That is a phrase with which we are all familiar. Payback, when you are messing with the Constitution, is dangerous. Political payback has to have boundaries. When you are messing with the constitutional standard about judges, I think you have gone too far.

The question is, is this really a filibuster?

It is obvious that it is a filibuster in terms of these nominees because they have come out of committee and they cannot get a vote because our Democratic colleagues, behind their leadership, have united, with a few breaking away, to deny a vote. We have had hours of debate on all these nominees. They cannot come to the floor for an up-or-down vote. The Democratic Party has changed its whole opinion about whether that is a good or bad idea, and they have adopted a practice that no one has done before in the history of the country.

But we are having a hard time. It is 1:15 in the morning and we cannot get the other side to admit that their filibuster going on here is different than anything that has happened before.

I used to be a prosecutor, and the old saying was: Follow the money. If you want to know what happened in the criminal enterprise, follow the money.

Well, let me tell you about an e-mail that was sent by a good friend of mine. Senator CORZINE is a very nice person. His job is to retake the majority for the Democratic Party. He is in charge of the Democratic Senatorial Committee. Senator ALLEN, who sits right next to me, is in charge of the Republican Senatorial Committee. Their jobs are to go out and recruit candidates and raise money so the party will be effective in taking over the majority, if you are a Democrat, or retaining it, if you are a Republican.

Here is what an e-mail said about what is going on right now:

> Senate Democrats have launched an unprecedented effort. By mounting filibusters against the Bush administration's most radical nominees, Senate Democrats have led the effort to save our courts.

November 3, 2003, it was an e-mail to donors from Senator CORZINE. I would argue that when he said they are engaging in "an unprecedented effort . . . mounting filibusters against the Bush administration's most radical nominees" that he was not tricking people, that he was telling them: We are up here fighting by using the filibuster.

One of two things are true: The e-mail is accurate, which I think it is, and it is designed to get people to send in money; or he is tricking people and he ought to give their money back. Because if you listen to our Democratic friends on the other side, this e-mail is wrong, and these people deserve a refund. They are raising money on the idea that they are filibustering Bush's nominees. That is the best evidence of what has gone on here. They are trying to get people to open up their wallets to give their money because they are doing something that is unprecedented. What is that something? We are "filibuster[ing] against the Bush administration's most radical nominees."

There are a bunch of quotes out there. Senator BOXER:

> Frankly, from my perspective, if people are off the charts on the right wing, I am not going to vote for them. I will not filibuster them.

February 26, 2003.

One of the people being filibustered comes from California, Justice Brown.

Let me tell you a little bit about her, and then I will yield to my friend from Georgia.

Justice Brown sits on the California Supreme Court. She has been there since May of 1996. In California, people get to vote on who they want to be on the court. She received 76 percent of the vote in her last election.

Now, the last time I checked, California is not a hotbed of Republican conservatives. I do not know why we lose so badly; and we do. We have lost almost every national election in California since Ronald Reagan. But she received 76 percent of the vote from people who live in her State.

A little more about her: She is the daughter of a sharecropper, born in Greenville, AL. She attended segregated schools. I grew up in South Carolina. The first African American I ever went to school with, I was in the 6th grade—not something to be proud of but a fact. She preceded me.

She has an academic record that if she were your daughter you would be unbelievably proud. She received a BA in economics from California State, her JD from the UCLA School of Law. She received an honorary degree from Pepperdine University. She has authored more majority opinions for the California Supreme Court than any other justice.

This is how nasty this has gotten. This is a cartoon from something called "The Black Commentator," September 4, 2003. This person is a racial stereotype. Your eyes can tell you better than I can. It says: "Welcome to the Federal bench, Ms. Clarence . . . I mean, Ms. Rogers Brown. You'll fit right in." And the people clapping are a caricature of Justice Thomas, Colin Powell, and Condoleezza Rice.

This is what people are having to go through. This is the way they are being characterized and being attacked. I think it is a low for the Senate. I am very sorry that she had to go through it, but she is being filibustered after having come out of committee.

If you don't like Justice Brown, then you can vote against Justice Brown, but you don't have the right to take the Constitution and turn it upside down for petty politics, and that is exactly what is going on here.

I can tell my friends on the other side, if they think we are not going to fight back, they are dead wrong. They are going to have a fight on their hands as long as this goes on, and at the end of the day, the loser is going to be the American people if we don't find a way out of this mess because 40 people are a lot easier to gather up than 50 when it comes to politics. Sixty is really hard to get.

What is going to happen if this continues is that we are going to have special interest groups, whether it is environmentally driven, abortion driven, gun driven—there is a group for everything out there—that is going to be upset with a particular nominee, and they are going to try to get 40 Senators to jump on their side.

The people being empowered from this practice are special interest groups, and the big loser is the average, everyday American. The big loser is the 76 percent of the people who voted for Justice Brown.

I yield to my friend and colleague from Georgia to talk about another abuse that exists in California.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I thank my friend from South Carolina. He and I served together for 8 years in the House of Representatives. We were both elected in 1994 and came in with a bunch of revolutionaries who came to Washington to change the world. We were staying up all night on the House side on a regular basis. He and I looked over at the Senate, and said: The decorum is great; they go to bed at a reasonable hour. What do you know, here we are.

I am sorry the Senator from California has left the floor because she made the point over and over that President Bush had his nominees confirmed 98 percent of the time. The fact is, the Constitution of the United States must be complied with 100 percent of the time. Ninety-eight percent of the time is not good in that particular instance.

There are some other situations where 98 percent of the time isn't that great, and that is why I am really sorry she is not here. If I told my wife that I was faithful 98 percent of the time——

(Disturbance in the Galleries.)

She wouldn't be all that happy with me. I wouldn't be happy if my food was 98 percent free of E. coli bacteria. I would not be happy if my car started 98 percent of the time.

The PRESIDING OFFICER. The Senator will suspend. The Galleries are not allowed to react to any statement on the floor. The Senator will resume.

Mr. CHAMBLISS. I would not be happy if my soap was only 98-percent pure. I would not be happy if our voting machines had a 98-percent accuracy rate.

I would not be happy if the power worked only 98 percent of the time. And I would be awfully nervous if the airplane that I was flying on had a track record of landing safely 98 percent of the time.

So the Senator's reference to this President getting 98 percent of his judicial nominees confirmed simply does not hold water.

I wish to talk for a minute about Carolyn Kuhl. Again, she was referenced by the Senator from California about her qualifications and her abilities to serve on the Ninth Circuit Court of Appeals.

Carolyn Kuhl is a very special lady. She has been a judge in California since 1995. But prior to that, Carolyn Kuhl had an exemplary record that includes service both as a committed advocate as well as an impartial jurist. She has outstanding qualifications and bipartisan support.

Her qualifications include having graduated cum laude from one of those liberal universities—excuse me, one of those conservative universities called Princeton University and having graduated Order of the Coif at Duke University Law School. The Senator from South Carolina and I graduated from the University of South Carolina and the University of Tennessee, respectively.

Order of the Coif means you were in the top one or two, not percent, the top one or two in your class. Neither one of us was there. That is something special. She was a law clerk to then-Judge Anthony Kennedy of the Ninth Circuit. She then worked in the Department of Justice as a Special Assistant to the Attorney General, Deputy Assistant to the Attorney General, and Deputy Solicitor General.

She was a partner in the very prestigious law firm of Munger, Tolles & Olson. She was the first female supervising judge of the civil department of the Los Angeles County Superior Court. Carolyn Kuhl brings excellent, outstanding educational credentials to the bench.

There are a number of individuals who have registered their support for Judge Kuhl. There has been some indication that maybe some female members of the bar are upset with her over some of her decisions, and one decision in particular.

Let me show you what 23 members of the Los Angeles Superior Court, 23 women judges on the Los Angeles Superior Court bench said about Judge Kuhl, and this was a bipartisan group:

> Judge Kuhl approaches her job with respect for the law and not a political agenda. Judge Kuhl has been a mentor to new women judges. . . . She has helped promote the careers of women, both Republican and Democrat. . . . As sitting judges, we more than anyone appreciate the importance of an independent, fairminded and principled judiciary. We believe that Carolyn Kuhl represents the best values of such a judiciary.

There was a case that, if you listened to the Senator from California, you would have thought that Judge Kuhl was the doctor in the office who was being sued, not the judge on the bench who was reviewing the case.

Let me tell you what the appellate court judge who wrote the opinion in the case, referenced by the Senator from California, said about Judge Kuhl and about that specific opinion that he reviewed:

> On appeal, I was the author of the Sanchez-Scott opinion. . . . Judge Kuhl's order sustaining the demurer without leave to amend was not an act of bias or insensitivity. . . . In fact, a strong argument can be made that she correctly assessed the competing societal interests the California Supreme Court requires of all jurists in this State to weigh in determining whether the tort of intrusion has occurred. With respect to those who have criticized Judge Kuhl as being insensitive or biased because of my opinion in Sanchez-Scott, they are simply incorrect.

Judge Kuhl brings impeccable credentials to the bench. She brings impeccable educational credentials, as well as jurist credentials, to the bench. She brings bipartisan support from the women, from the men, from the Republicans, and the Democrats in the State of California who know her best.

For us to have to go through the exercise here of, once again, contending with a filibuster from the folks on the other side of the aisle with respect to the nomination of Carolyn Kuhl, is truly an injustice and is one of those injustices that, as my friend from South Carolina has said, there will be a payback on. That is not the way we want to operate. It is not the way this body has operated for well over 200 years since we have been approving judges, and it is not the way we should operate in the future.

There is still time to correct the process that we are going through, and based upon what we are doing here tonight, I hope the profile of this issue is going to be brought home to the household of every American and every voter, and that they will understand there is a group in the Senate who wants to move forward to make sure their lives are made better because good judges are going to be put on the bench, and good judges ought to be confirmed by the Senate; and that there is another group in the Senate who is being obstructionist and is doing everything within their power to prevent the President of the United States from having the judges that he thinks are the best qualified from being put on the Federal bench all across America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Thank you, Mr. President. On this half hour to which we are entitled, the two Senators from Arkansas are going to split the time, with Senator LINCOLN taking the first time, whatever time she may consume, leaving the remainder to the junior Senator from Arkansas.

The PRESIDING OFFICER. The senior Senator from Arkansas.

Mrs. LINCOLN. I thank the Chair. Mr. President, I am proud to be here this morning to see that this age-old institution is acting as it should. We are looking at, reviewing, and exercising our constitutional responsibilities.

I am not, however, proud of the fingerpointing that is going on—as we say to young children, I hope no one's eyes get put out—and all the fingerpointing that goes on in these 30 hours of discussion and debate, the warnings we have just heard: There's a payback; there's a payback.

I do rise this morning, however, to express my extreme disappointment and dismay that we are expending such a large portion of our remaining time and energy on this unnecessary debate. We probably have only a few days left in this session to deal with important issues on which we have not yet completed action this year. How many seniors have my colleagues talked with in their travels back home to their States about the need for prescription drug coverage for our elderly?

How many of them have they talked with as they traveled with Meals on Wheels and other programs and talked with these seniors who are telling you that they are cutting their medications in half, that they are not going to be able to afford their heating bill this winter and their prescription drugs?

I implore my colleagues, how many have you talked with in your travels back home?

Looking at education funding, how many teachers have my colleagues spoken with as they traveled back home—teachers who are telling them they are going to have to spend their own money on supplies come February because they don't have enough glue and construction paper for their children or that they are having to spend an undue amount of time meeting demands that we have put on these school districts and yet have been unwilling to provide the resources for them to meet those demands?

How many of those single mothers who are working day and night to pull themselves up by their bootstraps, to leave the welfare rolls and bring dignity to their children and to put bread on the table—how many of those have my colleagues spoken with as they have traveled home to their States when we could be doing the welfare reauthorization bill and making it bigger and better than we did before?

The highway bill: How many people have they talked with when they go home to their States? I had a group come to me the other day who said: We come to you all in Congress begging every year for a few million dollars to try to create the infrastructure that we need in rural States, such as Arkansas, to improve our economy, and all of a sudden $87 billion falls out of the sky? What about us at home? Are you all going to talk about us? Are you going to bring us up? Are you going to do something about the things we need to make our lives stronger, to make our families better, to strengthen the fabric of this Nation?

Those are the issues about which we should be talking, Mr. President, and I wish we were. We have not yet completed action on all the appropriations bills. We have an Energy bill that should have been finished in 2002 to bring our country into the 21st century. For the last 25 years, we have needed a new energy policy in this country. Other countries are leaving us behind in the new and innovative ways they are looking to provide renewable fuels to improve not only their economy and their environment but to lessen their dependence on foreign oil.

These are the issues about which we should be talking, and genuine concern about what we want to do to strengthen our Nation.

We are still waiting. We are still waiting for these to be completed, time tonight that could be spent in dealing with those very important issues.

Faced with these and many other pressing issues and faced with a tight schedule, what does the leadership propose? They propose to spend 30 hours of our time, and far more time in preparation and staff hours, overtime for police officers and multitudes of others who are here for these 30 hours, debating four or five judicial nominees, all of whom have been debated, generated significant opposition where they live and work. All have been given adequate review time, and all of whom, in my judgment, should not be promoted to a lifetime appointment on the Federal bench.

Instead of focusing so much time and attention trying to promote a lifetime position for these individuals who already have very good jobs, my wish would be that President Bush and the Republican leadership would focus more of our time on issues that truly impact the lives of all of our constituents, and particularly the lives of the Arkansans I represent—issues such as creating good paying jobs in Arkansas, improving public education and expanding access to affordable health care and prescription drugs for our seniors, and, yes, providing something we all have agreed would make a big difference in people's lives: a refundable child tax credit, something that got overwhelming support in the Senate but is buried in a couple of conferences and here, there, and yonder because it is not a priority.

Those people in this country who make between $10,500 and $26,650 are not important enough for us to deal with. Somehow they don't work hard enough, although they have to work, they have to bring home a paycheck, and they have to be raising children to be eligible for a refundable child tax credit. But for some reason, they are not a priority here anymore.

We could have done that months ago, but we didn't. Here we approach the holidays, people have been in school, a multitude of needs that families across this country have, and we fail once more to even look at the small ways we can be helpful.

There are any number of issues that merit careful and lengthy consideration in the Senate, but filling a handful of judgeships should not be given a priority given the backlog of pressing issues the Senate has yet to complete this year.

Unfortunately, this is a manufactured crisis to distract the American people from the very real crises that we are going through; the ones that we are facing, such as the fact that in the next 15 to 20 years, we are going to go from 41 million Americans over the age of 65 to over 70 million Americans over the age of 65. We as a nation are so completely underprepared for that crisis.

We have 126 medical schools in this country. Only three of them have a department in geriatrics. We are training less geriatricians, and we are training even less academic geriatricians who will teach those geriatricians who might be there to take care of me, and I am the youngest in this body.

We are so underprepared with health care, a reform in Medicare, and a prescription drug package to meet these unbelievable numbers that will cause a crisis in this country.

We are here tonight, tomorrow, until midnight tomorrow talking about four people who did not get a job they wanted. It is unbelievable.

What about our children? What about educating our children to be prepared in the 21st century, to be competitive in a global economy, teaching our children the skills they are going to need to be competitive? They are the future of this country. They are our future workers. They are our future leaders.

We came up with a great bipartisan bill to educate our kids, and we do not have the guts to pay for it. Out of the $8 billion for the education plan for our kids, we are only funding $2 billion of it from the President's budget, a quarter. I have to say, that is a misspent priority there.

We have record deficits that are going to be heaped on the shoulders of our children. Sixty-six percent of that debt comes due in 4 years. What happens to our constituents if all of a sudden somebody comes up and says, "Guess what, your debt is due and I want it on demand. No, you cannot refinance, no way. I am going to call that debt on you"?

These are serious crises we should be addressing and we are spending our time pointing fingers and not addressing the issues of the American people.

We have a conflict in Iraq that is taking the lives of American soldiers every day, and there is no end in sight. These are crises, not the fact that four people who wanted a job did not have the support of enough Senators and that is what we are spending all this time on.

Today, 95 percent of Federal judicial seats are filled. This is the lowest number of judicial vacancies in 13 years. This 5 percent vacancy rate is lower than the U.S. unemployment rate and the poverty rate, and I know because I represent a State that is very high in poverty. I come from one of the 20 highest poverty counties in the country.

Today there are more lifetime-appointed Federal judges serving than at any time in our Nation's history. Furthermore, since President Bush was elected, the Senate has confirmed 168 Federal judges and rejected only 4—2 percent of his nominees.

By comparison, when Republicans controlled the Senate during President Clinton's administration, more than 60, or 20 percent, of his nominees never received a vote in the Senate.

Sadly, I think the Senate's record on this matter truly speaks for itself. I believe all executive and judicial nominations that come before the Senate are entitled to courtesy and respect, but I also believe the Senate's role of advice and consent is a very important check and balance our forefathers designed and instituted. It is an obligation I do not take lightly.

Senators are not elected to play a ceremonial role in the nomination process. This is not an issue of whether one likes the President or does not like the President. This is not an issue of whether one thinks these nominees are good people. They are all good people. Ours is not a ceremonial role in this nomination process. Instead, we have an obligation to carefully consider each nominee individually, to help ensure the judiciary is fair and balanced and to ensure the American public maintains faith in our judicial branch of Government. We have a responsibility to make sure these judicial nominees will not be partisan in their decisionmaking, that they will not be biased or partial to their own personal beliefs, but will institute the rule of law, the Constitution, and the precedent of the higher courts.

Given the undue attention that has been lavished on these four nominees, I certainly believe it is worth revisiting a bit of their cases just to reconsider why they have not been confirmed. In each case, it is clear each of the nominees who has not been confirmed has shortcomings that in my opinion disqualify these individuals for the important positions to which they have been nominated. This does not mean I do not think they are good people. It does not mean I do not like the President. It simply means I am doing the job the people of Arkansas sent me here to do, to evaluate these people.

When we look at Ms. Owen, after reviewing the record and meeting with Judge Owen, discussing her tenure with members of the bar who practice in Texas and in Arkansas, I was not satisfied this nominee could set aside her personal views and give each side a fair hearing. She had not in the past. In some instances, it is not just me. Judge Owen's own colleagues have criticized her failing to understand and abide by the plain meaning of statutory provisions before her as a judge on the Texas Supreme Court.

Likewise, we look at the case of Alabama's Attorney General William Pryor. He is one of the most strident and outspoken nominees we have seen. After reviewing some of the statements General Pryor has made about sitting Supreme Court Justices and the decisions of that Court, I am concerned that he does not possess the necessary judgment and temperament to be a Federal judge, to oversee that element of the judiciary.

Judge Pickering of Mississippi, who I do think is a good man, has also been invoked in this debate and his record does bring me concern. His record raises serious questions about his ethical conduct on the bench. His repeated contacts with the Justice Department in an attempt to obtain a lesser prison sentence for a convicted defendant, and his solicitations of letters of recommendation from lawyers in Mississippi who had cases before him are well-known examples.

Finally, consider the case of Miguel Estrada, who withdrew himself from consideration earlier this year. By many accounts, Mr. Estrada was a distinguished attorney with a very talented legal mind. However, when we in the Senate attempted to verify this assessment by asking Mr. Estrada to come before the Judiciary Committee to answer additional questions and submit all of the relevant information that was necessary, and the burden of proof was in his court—we asked the same of President Clinton's nominees—Mr. Estrada indicated he would rather not. To me, and many of my colleagues, Mr. Estrada's response simply was not acceptable.

It is important to note there are good, solid reasons as to why these people were not confirmed. These reasons had nothing to do with any personal beliefs or characteristics. They had nothing to do with partisanship. They had nothing to do with working against the President. I opposed these nominees because I am not convinced they meet the requirements of what is expected of those who receive a lifetime appointment to the Federal bench. That is my job.

Again, these are 4 nominees. Out of 172, 4 have not been confirmed. Do 4 nominees constitute any sort of judicial crisis? Of course not. Of course they do not. If we do math, the Senate has confirmed 98 percent of President Bush's nominees. I do not know about you, but you are right in that we do not want our automobile to work at 98 percent, but let me tell you 98 percent is pretty good. It is not 100 percent, but that makes me think about my kids. If they come home from school after they make 98 on their test, am I going to send them to their room? Am I going to punish them for that? Am I going to say, well, I cannot believe you did not do 100? No.

What I am going to do for my children is what we should be doing. I am going to sit down with them and I am going to help them reach 100 percent. I am going to work with them. That last 2 percent may be the most difficult, but the most difficult is worth working towards. When we work together, we can get there. In working together, we could reach that. But the administration does not want to do that. No, telling them they had not done good enough is not what I would do. I would work hard with them to get to where we needed to be.

It is my sincere belief if President Bush would make a good-faith effort to work with Democrats in a spirit of cooperation, all of his nominees would be confirmed, with little or no controversy or opposition. Unfortunately, it has become apparent the President is more interested in staging a fight and casting blame, which is really a recipe for gridlock. In gridlock, the only ones who get hurt are the American people.

It is disappointing the President and the Senate leadership are expending so much time and energy to secure jobs for four people who already have good jobs, particularly considering the millions of people who are out of work and finding it increasingly difficult to make ends meet. The people who lose out in this fictional crisis are the American people. Tying up the Senate for 30 hours on 4 judicial nominees means we are not talking about the issues that matter most to the people we represent. It means we are not talking about how we are going to finish that prescription drug bill in order to help seniors cope with the rapidly rising cost of those prescription drugs. It means we are not spending our time focused on improving our schools and educating our children, so they can get the best possible start towards competing in that global marketplace. It means we are not doing all we can to create jobs and move our economy forward. It means we are not building that infrastructure that is so necessary in rural America and elsewhere across this country.

Just this week, I learned Arkansas has experienced its highest rate of unemployment in a decade. While my colleagues on the other side of the aisle point to the improving economic indicators as evidence that the doldrums are behind us, I can assure them that for most people in Arkansas those numbers are just abstractions. They want to see jobs, and they want to see real action in the Senate to get things done on behalf of the voters who sent us here.

Unfortunately, I think we have taken this time and used it most unproductively. Many Members have come to the floor tonight to talk about the past. I have heard some very eloquent speeches about their times as pages and debates they have heard, many quoting history from centuries ago. I think the most important thing we can talk about tonight is the future. I think we must talk about the future. I think we must talk about all of these crisis issues we are faced with, and I think we must come back to our children and let that be our focal point.

All of us in this body are so blessed. I started out speaking about how blessed I feel to even be in this body, to be in this place tonight, to be a part of an institution that is so incredible that it has lasted over 200 years. We are all blessed in many things, and for whatever faults some people may find in our Government, I believe, and I think the American people believe, we still live in the greatest country on the face of this Earth.

Tonight I looked at one of my greatest blessings, my children. I put them in bed before I came over. I tucked them in. I thought about what we were going to talk about tonight. I thought about this great country we live in. I thought about the conflict in Iraq. There were mothers who were putting their children to bed tonight whose husbands may be stationed abroad. There were children who were being put in bed tonight tucked in by their grandparents because their mothers had been called up and were in a strange and dangerous land. I thought about the fact my children are so blessed to live in this country under a rule of law that separates us from the rest, a rule of law that, when it is administered without bias, without the interjection of political issues or personal views, can create security and safety. It creates freedom. It creates a life I want my children to have.

I look in the eyes of mothers across the globe who do not put their children to bed in a nice, warm home, who have not been fed. They live in violence and terrorism. They live in a land that is stricken with famine because there is no rule of law, or what law exists is implemented through a political regime. That is what separates us from them, that we have a system designed specifically to separate the political from the rule of law.

I am proud to be here. I do not have the background many of my colleagues do, having been Governors and attorneys general, having served in this body for a long period of time, but I challenge any of them to match my pride, my pride of this country and in what that rule of law represents to me, not only as an American but as a mother and as a Senator.

I have no qualms in doing my job the people of Arkansas sent me here to do, to make sure these individuals we send to the Federal bench to implement the rule of law in this Nation, the Constitution, and the precedent of the higher courts do not interject their political views, their bias, or their personal views because we know that through these years a nonbiased judicial branch of government has served us well. It is what has separated us from those countries that right now we work so hard to change.

I yield time to my colleague who I am extremely proud to serve with, the other Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. Two and one-half minutes.

Mr. PRYOR. Mr. President, in this 2½ minutes, I would like to thank some people for tonight. I would like to thank the staffers who are here on both sides. I would like to thank the Senate staff, the Sergeant at Arms staff, the doorkeepers, the cloakroom staff, all the various people who make the trains run on time around here, because I certainly understand they have families to go home to, that they have lives outside of these halls. I know the sacrifice they are making tonight to be here.

I also want to thank my colleagues on the other side of the aisle for their viewpoints. We may differ on some of these issues, but I appreciate their opinions and respect their viewpoints and the zealousness by which they approach the subject at hand.

I want to thank colleagues on my side who are here in the wee hours of the night and will be here throughout the day tomorrow to talk about these issues that are very important to the people of this country. I know members of the Senate on our side of the aisle are equally passionate about these issues. Some of this is a matter of opinion. Some of it is a matter of fact and history and tradition. Certainly people on this side of the aisle are very passionate about this.

In the couple of minutes I have remaining, I want to acknowledge some of the hard work the people in this institution and around this institution have put into this 30-hour filibuster or marathon debate, whatever one wants to call it, because it has come at quite a sacrifice to the members of the staff in this body.

Do I have any time remaining?

The PRESIDING OFFICER. Twenty seconds.

Mr. PRYOR. I would again thank my colleague from Arkansas. We have a great tradition in our State of sending strong Senators to Washington, and certainly Senator LINCOLN is one of those. She shows great leadership not just for the State but for the Nation. I want to thank her for her contribution tonight.

The PRESIDING OFFICER. The time of the minority has expired.

The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I am very proud of the State I represent. The State of Georgia is, in my opinion, the greatest State in our country because that is where I come from, and I am very blessed to represent that State. A number of great individuals from our State have served in this very august body. We have had a tradition of strong leadership in the Senate from Georgia, the Walter Georges, the Richard Russells, the Sam Nunns, the Paul Coverdells.

Outside of the Senate, we also have had a history of strong leadership coming from our State. For the past 30 years the man who has epitomized political leadership and strength in our State is now our senior Senator. It has been a great privilege and pleasure for me to have the opportunity, No. 1, to know this man over the past 35 years or so, but to have an opportunity to serve with him in the Senate and for him to be my senior Senator has truly been a great honor to me.

It is with great pride, and I consider it a great privilege, to be able to yield such time as he may consume to the Senator from Young Harris, GA, senior Senator from Georgia, Mr. MILLER.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MILLER. Mr. President, I stand here proudly next to a copy of the U.S. Constitution. It is a document that has stood the test of time. It is a document that is revered throughout the world. As a history professor, I have read it many times. But I need to know tonight where in the U.S. Constitution does it say the President's nominees for the judiciary must have a supermajority to be confirmed? Where does it say that? I have searched high and low for that clause and that provision. I cannot find it. Maybe these old 71-year-old eyes are getting kind of dim. Perhaps I need a magnifying glass.

I seek. I search. I hunt in vain. For is it not there. Even if I had the eye of an eagle I could not find it because it is simply not there.

No, the U.S. Constitution says only the Senate is to advise and consent on the President's nominees. Somehow that has been twisted and perverted into this unmitigated mess we have today where 59 votes out of 100 cannot pass anything because 41 votes out of 100 can defeat anything. Explain that to Joe Sixpack in the Wal-Mart parking lot.

Explain that to this man, James Madison, who wrote that Constitution. He predicted and he feared some day someone would try to finagle this system, that they would try to plot and conspire and pervert the process in just the way they have. James Madison warned about this in Federalist Paper 58. He said: If that should happen, "The fundamental principle of free government would be reversed. It would be no longer the majority that would rule. The power would be transferred to the minority."

But don't just take my word for it. Look at others who are far smarter, far wiser than I will ever be and how they have expressed the kinds of things that are going on around here.

On June 1, 1950, a brave woman who was then the Senator from the State of Maine, Margaret Chase Smith, gave one of the most courageous speeches ever given on the floor of this Senate. It has been called the "declaration of conscience" speech. Senator Smith questioned what was happening at that time in the Senate. It was not about filibusters but, make no mistake, it was about intrigue, and it was about character assassination.

Let me give you a few excerpts from Senator Smith:

> The United States Senate has long enjoyed worldwide respect as the greatest deliberative body in the world. But recently that deliberative character has too often been debased to the level of a forum of hate and character assassination sheltered by the shield of congressional immunity.

She went on:

> It is ironic that we senators can during debate in the Senate [and in committee], directly or indirectly, by any form of words, impute to any American who is not a Senator any conduct or any motive unworthy or becoming an American—and without that nonsenator American having any legal redress against us.

She went on:

> It is strange that we can verbally attack anyone without restraint and with full protection, and yet we hold ourselves above the same type of criticism here on the Senate floor. Surely, the United States Senate is big enough to take self-criticism and self-appraisal. Surely we should be able to take the same kind of character attacks we dish out to others.

She continued:

> I think it is high time for the United States Senate and its members to do some real soul searching and to weigh our consciences as to the manner in which we are performing our duty for the people of America and the manner in which we are using or abusing our individual powers and privileges.
>
> I think it is high time we remembered that we have sworn to uphold and defend the Constitution. I think it is high time that we remembered that the Constitution, as amended, speaks not only of the freedom of speech but also of trial by jury instead of trial by accusation.

So said Margaret Chase Smith in 1950.

Let me tell you what Thomas Sowell, in his recent book "The Quest for Cosmic Justice" writes about the role of a judge:

> The traditional conception of the role of judges was expressed thousands of years ago by Aristotle, who said that a judge should "be allowed to decide as few things as possible." His discretion should be limited to "such points as the lawgiver has not already defined for him."
>
> A judge cannot "do justice" directly in the cases before him. This view was strongly expressed in a small episode in the life of Justice Oliver Wendell Holmes. After having lunch [one day] with Judge Learned Hand, Holmes entered his carriage to be driven away. As he left, Judge Hand's parting salute was: "Do justice, sir, do justice." Holmes ordered the carriage stopped. "That is not my job," Holmes said to Judge Hand. "It is my job to apply the law."
>
> Elsewhere Holmes wrote that his primary responsibility as a judge was "to see that the game is played according to the rules whether I like them or not."

Lastly, I want to quote a Georgian named Phil Kent. In his book "The Dark Side of Liberalism," he takes the liberal argument in this controversy and states it. He says:

> The United States [according to the liberals, according to the Democrats in this debate we are in today] comprises diverse people and cultures. As such, judges should have the power to change laws when circumstances dictate. The U.S. Constitution is a document in flux, and is many times irrelevant in modern society. Therefore, federal judges should be chosen on the basis of their views or the positions of their issues and should be tested on their ideologies.

That is what the Democrats have been saying to us in all this debate. Then Kent answered that premise:

> We are a nation of laws, not of men. Our government is constitutional, not political. Our highest court is the arbiter of constitutional controversies, and the protector of unalienable rights. As former President Ronald Reagan underscored, "Freedom is indivisible—there is no "s" on the end of it. You can erode freedom, diminish it, but you cannot divide it and choose to keep some freedoms while giving up others."
>
> Ignoring the law, whether seen as politically expedient or ideologically sound, suggests that the courts are merely devices to be used to change policy.
>
> The courts, however, are partners with specific duties separate and apart from lawmaking and law execution. We've missed that point as a nation for too long, to our great peril.

That brings me to this map of the United States. I ask you to look at the faces on this map. They are the faces of America. These are the faces of America. There is Miguel Estrada, who spoke little English when he came to this country as a teenage immigrant from Honduras. But a few years later, this immigrant graduated magna cum laude from Columbia College in New York and from Harvard Law School. He clerked for Justice Anthony Kennedy on the highest court in this land, the U.S. Supreme Court. He continued to soar with a very distinguished law career. Yet the Democrats in this Chamber have decided this man could not even have an up-or-down vote. It is a shame, and it is a disgrace.

There is Bill Pryor, a devout Catholic and a southerner who grew up in a house where both John F. Kennedy and Ronald Reagan were revered. He graduated magna cum laude from Northeast Louisiana University and Tulane University Law School. He also has had a very distinguished law career, including winning statewide election twice as Alabama's attorney general. Yet the Democrats in this Senate will not give him an up-or-down vote.

Then there is Charles Pickering, another southerner, a grandfather, a courageous and a deeply religious man. He graduated at the top of his law school class at the University of Mississippi, served in elective office for 12 years, practiced law for 30 years, and has served this country ably on the U.S. District Court since 1990. Yet the Democrats in this Senate refuse to give Judge Pickering an up-or-down vote.

There is Priscilla Owen, who grew up on a farm in rural Texas and later rose to win election to the Supreme Court of Texas. Along the way she graduated in the top of her class at Baylor University Law School and practiced law for 17 years. In her successful reelection bid to the Supreme Court in 2000, every major newspaper in Texas endorsed her. Yet in this Senate, this woman cannot get an up-or-down vote.

Finally, there is Janice Rogers Brown. I have spent a lot of time with this woman. I have read dozens of her speeches. I love and admire her. The daughter of an Alabama sharecropper who rose to serve on the California Supreme Court, she attended segregated schools until she was in high school and decided to become a lawyer after seeing African-American attorneys in the civil rights movement praised for their courage. In 1998, 76 percent of Californians voted to retain Justice Brown, an approval rating most of us can only dream of. Yet this African-American woman will not be given an up-or-down vote because the Democrats in this Chamber refuse to let her do it. They are standing in the doorway and they have a sign: Conservative African-American women need not apply, and if you have the temerity to do so, your reputation will be shattered and your dignity will be shredded. Gal, you will be lynched.

These are the faces of America, men and women who pulled themselves up, who worked hard, who played by the rules, and excelled in the field of law, and now all of their hard work and success has landed them in the doorway of the Senate, and each one of them is having that door slammed in their faces. The very least they deserve, the very least they deserve is an up-or-down vote. Surely, in the name of all that is fair and reasonable, surely, in the name of James Madison, surely in the United States of America in 2003, that is not too much to ask, just an up-or-down vote, just an up-or-down vote, just an up-or-down vote.

The majority of this Senate deserves to have its voice heard.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I thank my colleague from Georgia for his always direct, forthright, from-the-heart statement. He knows he and I share an awful lot with respect to this issue and so many others. Again, it has been a pleasure for me to serve with him.

I want to talk about one of the men he just mentioned who is one of the faces on that map and is one of the individuals who is being filibustered. That is Judge Charles Pickering.

What an injustice to an individual is being carried out with respect to the filibuster of the nomination of Judge Charles Pickering to the Fifth Circuit Court of Appeals. I feel a very special relationship to the Fifth Circuit because when I began practicing law in 1969, I was a member of the Fifth Circuit. At that point in time, all of Georgia was a part of the Fifth Circuit.

Then I believe it was 1979 or 1980, we split off. We became the Eleventh Circuit and the Fifth Circuit became the circuit that handled cases from Texas, Louisiana, and Mississippi.

This man, Charles Pickering, grew up in Mississippi. It has been said by his critics on the other side of the aisle—and I quote because I was in the chair presiding Monday when this statement was made by one of the individuals from the other side of the aisle on the floor, in talking about his record on race, "He has a bad record."

Nothing could be further from the truth. Judge Pickering has been a strong advocate of the civil rights movement since the very early days of his career. Judge Pickering was one who came through a very difficult time in the history of our country, particularly coming from the South. Those of us who grew up in that same South, particularly in the rural South during those days, know the difficult times we faced and how far we have come since then. We are still not where we need to be. But, boy, what strides we have made. It is only because of men like Judge Charles Pickering that we have made those strides.

So for anybody to say this man has a bad record on race is simply not just incorrect, but it does a grave injustice to a man who worked so hard to make sure civil rights did come to his part of Mississippi.

Judge Pickering, in 1967—you have to think back. In rural Mississippi, a part of Mississippi where the Ku Klux Klan, which today we would brand as terrorists—at that point in time, they were very active in that part of Mississippi. Judge Pickering stood face to face, eye to eye with the Ku Klux Klan. He went to court and testified against the Imperial Wizard of the Ku Klux Klan in Mississippi. For those who had not lived through that time, you cannot have a real appreciation for what he did, how brave, courageous, and how much integrity this man showed by doing this. He testified against the Imperial Wizard in a criminal action, in which the Imperial Wizard of the Ku Klux Klan was charged with the murder of a man named Vernon Dahmer.

Unfortunately, although Judge Pickering did that, now on the floor of this Senate it is said he has a bad record when it comes to civil rights. Judge Pickering is a strong, religious man. He has a very strong faith. He believed there ought to be equality among children in schools. For that reason, he made sure his children went to integrated schools from the very first day they were eligible to go to school.

Again, for those of us who grew up in the South during those days when integration began, this was not a very popular thing to do in the white community, to say the least. But Judge Pickering, again, stared racial injustice in the eye and he said we have to do the right thing and we have to make sure all of our children have an equal opportunity, so he sent his children to the same schools as the African-American community sent their children to during, again, this very difficult time.

The list goes on and on about what Judge Pickering has done with respect to race relationships, from organizing local committees, to organizing statewide committees dealing with the issue of racial justice in the State of Mississippi.

Judge Pickering served on the Federal bench in the district court where he lived for several years. He has been criticized for having a bad judicial record. Well, let me tell you about his judicial record. Some 99.5 percent of his cases have either been affirmed or not appealed—99.5 percent. They have either been affirmed or not appealed. Of those appealed, Judge Pickering has only had a reversal rate of 7.9 percent, which is 20 percent lower than the U.S. Department of Justice's national average of 9.1 percent, and 2 times lower than the average district court judge under the Fifth Circuit Court of Appeals.

Judge Charles Pickering is not just a good man, Judge Charles Pickering is an outstanding judge. This is the kind of man the folks on the other side of the aisle are being obstructionist about and are not allowing an up-or-down vote with respect to his confirmation on the floor of the Senate. It is wrong, it is unjust, and it ought not to continue.

I want to talk to you about one other individual very quickly, and that is Miguel Estrada. Miguel Estrada has withdrawn his nomination, after being under consideration for years. He decided he was not going to put his family through this any longer and he decided the best thing to do was withdraw his nomination and move on.

Miguel Estrada came to the United States as a teen from Honduras. He spoke very little English. He made sure he learned English quickly enough to enter school and he graduated cum laude from undergraduate school and went to Harvard Law School, where he graduated with honors and was a member of the Harvard Law Review. He has given his life to public service. Most recently, his public service included being in the office of the Solicitor General of the United States of America under both a Republican President, President George Herbert Walker Bush, and a Democratic President, Bill Clinton. In both instances, he served under a Solicitor General who has now come forward and said this man is a good man, an outstanding lawyer, and this man deserves to be confirmed to the DC Circuit Court of Appeals.

Obstruction came from the other side of the aisle, and they would not even give Miguel Estrada an up-or-down vote to confirm his nomination to the DC Circuit Court of Appeals.

I want to spend the last part of my time here talking about this issue of cloture. The Senate has operated under various different rules on cloture, which is the ability of the Senate body to terminate debate on a pending matter. From 1789 until 1806, the Senate cloture rule allowed debate to be shut off by a simple majority vote. For 17 years after the country began operating under the U.S. Constitution, the Senate rules provided a simple majority vote was all that was needed to cut off debate.

In 1806, the Senate eliminated its first cloture rule which, in effect, put the Senate under a system where unanimous consent was required to end debate. This unanimous consent system lasted for over 100 years and survived 3 unsuccessful attempts to bring back some sort of cloture rule.

In 1917, the Senate filibustered a proposal supported by President Woodrow Wilson to arm American ships against German submarines, prior to America's entry into World War I. This filibuster was rather controversial and led to support for the Senate approving the first version of today's cloture rule, which is rule XXII. That required a vote of two-thirds present and voting to end debate on "pending measures."

Rule XXII was again amended in 1949 to extend cloture to any measure, motion, or other matter, but cloture became inapplicable to any rule change, making it more difficult to change the rules again. Part of this 1949 rule change raised the required number of Senators for cloture from two-thirds of those present and voting to two-thirds of all Senators.

Ten years later, in 1959, rule XXII was extended to rule changes, but the number of required Senators was moved back to two-thirds of those present and voting. In 1975, our esteemed senior Senator from West Virginia, Senator BYRD, championed another amendment to rule XXII that changed the required number of Senators for cloture to three-fifths of Senators duly sworn and chosen—in other words, a hard 60 Senators, without regard to how many are present and voting. The 1975 rule change left the cloture requirement for rule changes at two-thirds of Senators present and voting.

In 1979, Senator BYRD again proposed another amendment to rule XXII. This time, the amendment imposed a 100-hour limit on post-cloture debate. This was reduced to 30 hours in 1986.

We started off in 1789 with the cloture rule that closed off debate by a simple majority vote. The original rule was clearly constitutional because it didn't impose more than a simple majority to end debate and proceed to the question of an up-or-down vote on the President's nominees. Now it is interesting, and I think very telling, that the Framers of the Constitution set out only five instances where they thought the Senate needed more than a simple majority vote to act. That is what is referred to as a supermajority, such as three-fifths, two-thirds, and such—anything but a simple majority.

Those five instances requiring a supermajority are: impeachment, expulsion of a Senator, the override of a Presidential veto, ratification of a treaty, and adoption of a constitutional amendment.

I ask unanimous consent that I be allowed to continue and that my time be taken off of the next hour, same as we have been doing.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAMBLISS. I thank the minority leader.

In contrast, the approval of Federal judges should occur frequently. I would go so far as to say 100 percent of all qualified nominees should be approved by the Senate. This is why there is no requirement in the Constitution for more than a simple majority to confirm these nominees. The Constitution charges this body with the responsibility of advice and consent on the President's nominations.

With this in mind, when the Senate began operations, it required only a simple majority vote to end a filibuster. We have come a long way in the last 214 years. As you have just heard, we have tinkered with the cloture rule on a number of occasions. I am of a mind that the number of cloture rules we have had since the original rule were, or are, unconstitutional, including the present rule XXII, where they are applied to prevent a majority of Senators from confirming the President's judicial nominees. But that has never happened before this year. We have never in our Nation's history had a minority of Senators try to prevent a vote on the President's nominees under the guise of rule XXII.

By acting in this way, a minority of Senators has found a way to make the cloture rule unconstitutional in practice. The Framers of the Constitution knew the situations where they wanted more than a simple majority for the Senate to act. Confirmation of the President's nominees was not one of these instances.

If you look at the text of article II, section 2, in the second paragraph, you see in the very same sentence where the Framers require two-thirds of Senators present to ratify a treaty, they charge the Senate with responsibility for advice and consent without a word said about a supermajority requirement; just a simple majority is clearly all they thought was needed to advise the President.

With respect to the Senate's consideration of nominees, I think the only constitutional cloture rule we have ever had was the first one, which stood for the first 17 years the Senate was in operation. We have tolerated a number of different accommodations over the years, including the absence of any cloture rule for over 100 years, where we could only end debate by unanimous consent and a lot of other compromise cloture rules along the way. Ultimately, what decides whether a rule is constitutional is whether 51 Senators say it is constitutional.

We have another proposal offered this year to resolve the impasse that has prevented the Senate from discharging its constitutional duty to advise the President on nominations of the individuals we are here talking about.

Senate Resolution 138, of which I am a cosponsor, was introduced by Majority Leader FRIST and has bipartisan support from the senior Senator from my State, Senator MILLER, who is an original cosponsor of the resolution.

S. Res. 138 is a reasonable compromise to break the impasse we now face. Instead of setting a fixed supermajority requirement of 60 votes to end debate and bring a nominee to a vote, S. Res. 138 starts with a 60-vote requirement and gradually reduces the number of necessary votes until ultimately a simple majority of Senators present on the floor can decide whether to consent to the President's nominee. While respecting that the filibuster has a historic role in the Senate, this bill assures that, ultimately, the will of the majority will prevail. Over the past few years, measures similar to S. Res. 138 have received bipartisan support at various times.

We have a history of support of this concept from people on both sides of the aisle for a needed change to the cloture rule. Now is the time to come together and make it happen. We can end this filibuster by cooperation in a bipartisan fashion, or we will have to decide other options that might work.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DASCHLE. Mr. President, when will the Democratic allotment of time expire?

The PRESIDING OFFICER. At 3:05.

Mr. DASCHLE. I thank the Chair for the information.

Mr. President, the distinguished Senator from Arkansas has been a stalwart participant during the wee hours here. I want to publicly acknowledge his presence and laud him for his willingness to not only be on the floor, but to stay on the floor. I asked if he would mind if I would take a couple of minutes, and then I will relegate the balance of time for this allotment to him. He has some important remarks to make and I, like others, would like to hear him.

Let me respond briefly to the comments made by the distinguished Senator from Georgia. He noted, of course, that the Constitution provides the authority to the Senate to write its rules. That, in essence, is what we have done, as he has also noted. There have been various ways with which the Senate addressed the issue of unlimited debate, which is the essence of this institution. Having unlimited debate means an opportunity for Senators to be heard for whatever length of time, but it also means an opportunity to protect the minority—the minority being whatever the case may be, whether it is a political minority, ethnic minority, minority on a given issue, regardless. That was really the essence of what the Founding Fathers saw with regard to the delegation of this authority to the Senate to write its rules with an expectation that filibusters, this extended debate, would be part of the deliberative spirit and soul of this body.

But my colleague from Georgia fails to recognize, and certainly others have ignored the number of times our Republican friends have used the rules of the Senate, the filibuster, to advance their position. There have been a number of occasions over the course of the last three decades where filibusters and cloture votes have been cast. There were 63 occasions where nominees from the Clinton administration did not even reach the floor because of an effective filibuster within the committee. One Senator would say: I will not allow this nominee to go forward. That assertion was respected and, ultimately, 63 of the Clinton nominees never got out of committee because of a Republican filibuster. That has not happened, of course, during this Congress. The Republicans have moved their nominees at will, and the only option we have available to us, of course, is to vote either against or for the nominee in committee, and then on cloture as some of these nominees with whom we have grave concern come to the Senate floor.

No. 1, this is not unprecedented. No. 2, it was used to a far greater degree by our Republican colleagues during the 8 years of the Clinton administration—as I said, on 63 occasions.

That issue should not be debated. It is not even arguable. I don't think this debate should be about 4 jobs, which, by the way, are generating incomes of over $100,000. It is our view that the debate tonight should be about the 3 million jobs that have been lost under this administration and the 9 million jobs which are lost and for whom people are attempting to find some way to survive financially and economically.

Those 3 million jobs have been lost, in our view, because of a mismanaged economy that needs to be addressed if indeed we are going to bring this economy back. All one has to do is look at the comparison between the Clinton and Bush administrations to gain some understanding of the degree of difference between the Democratic approach and the Republican approach to the economy. The Clinton administration created 22 million jobs in 8 years. The Bush administration has lost 3 million jobs in 3 years. Our view is, if we are ever going to turn this around, it is important we do three things.

First and foremost, we address the concerns of those who are unemployed today by providing unemployment compensation beyond the limits that have now been put in place. There are too many people who have, through no fault of their own, been unable to get employment and who have run out of unemployment benefits. We need to address that. I hope the Senate will do so before we leave this year.

The second thing we need to do is to ensure those who are employed have the kind of incomes they deserve. That means, in some cases, increasing the minimum wage for the first time in now almost 7 years and addressing the fact that at minimum wage we are at the lowest purchasing power in the history of minimum wage.

It also means we protect people's overtime. Contrary to what the administration would like to do, we need to ensure those 8 million people who could see their overtime lost are provided the confidence and the knowledge they will not lose the overtime and will be compensated as we have done now for almost 70 years, for time they have worked over a 40-hour work week.

Finally, I think it is critical we understand we must provide some relief for the extraordinary costs our working people especially are facing with regard to health care. Health insurance costs have skyrocketed—some 15 percent a year.

There are a number of ways with which to create jobs—the highway bill, the manufacturing job tax credit. We offered tonight unanimous consent requests with the hope our colleagues might join us in at least allowing this legislation to go forward. Obviously they have objected. But that is the first thing we need to do—create the jobs for those 3 million people who have lost their jobs in this administration.

Second, we need to ensure the incomes of those who are working are protected.

Third, I hope we can recognize that, even with incomes, they can't afford their health insurance today unless we help them to find ways in which to bring its cost down.

There is a lot more to talk about with regard to jobs and this economy, but as I said, the distinguished Senator from Arkansas has been waiting. He has done an extraordinary job of representing this caucus on the Senate floor and I yield the floor now for his remarks.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Arkansas.

Mr. PRYOR. Mr. President, I would like to acknowledge and thank my colleague from South Dakota, who has done such an outstanding job tonight, and always.

Tonight I would like to read a portion of a book that won the Pulitzer Prize recently. It is called "Master of the Senate." It is about Lyndon Baines Johnson as a Senator, not as President. It was written by Robert Caro. It is 1,040 pages. I assure you I am not going to read all thousand pages tonight. I am just going to read a few excerpts from chapter one. Chapter one is entitled "The Desks of the Senate." I am only going to read a small portion of chapter one. I will be starting on page 3. But I think it is important for us to all put this in context and remember what the Senate is all about and how it works and how it is designed to function within our constitutional system. So, if I may start midway down, on page 3.

> When a person stood on the floor of the Senate Chamber, however—in the well below the dais—the dais was, suddenly, not plain at all. Up close, its marble was a deep, dark red lushly veined with grays and greens . . .

In fact, on this pilaster behind me you can see those colors Mr. Caro is referring to here.

> . . . and set into it, almost invisible from the galleries—

We have a number of people in the gallery tonight.

> . . . almost invisible from the galleries, but, up close, richly glinting, were two bronze laurel wreaths like the wreaths that the Senate of Rome bestowed on generals with whom it was pleased, when Rome ruled the known world—and the Senate ruled Rome.
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> From the well, the columns and pilasters behind the dais were, suddenly, tall and stately and topped with scrolls, like the columns of the Roman Senate's chamber, the columns before which Cato spoke and Caesar fell, and above the columns, carved in cream-colored marble, were eagles, for Rome's legions marched behind eagles. From the well, there was, embroidered onto each pale damask panel, an ornament in the same pale color and all but invisible from above—a shield—and there were cream-colored marble shields, and swords and arrows, above the doors. And the doors—those seven pairs of double doors, each flanked by its tall columns and pilasters—were tall, too, and their grillwork, hardly noticeable from above, was intricate and made of beaten bronze, and it was framed by heavy, squared bronze coils. The vice presidential busts were, all at once, very high above you; set into deep, arched niches, flanked by massive bronze sconces, their marble faces, thoughtful, stern, encircled the Chamber like a somber evocation of the Republic's glorious past. And, rising from the well, there were the desks.

Let me pause here because these desks have a lot of history. In fact, I think it is safe to say almost all of American history in some way or another has flowed through the Senate. I don't think that is an overstatement.

> The desks of the Senate rise in four shallow tiers, one above the other, in a deep half circle. Small and spindly individually, from the well they blend together so that with their smooth, burnished mahogany tops reflecting even the dim lights in the ceiling so far above them, they form four sweeping, glowing arcs. To stand in the well of the Senate is to stand among these four long arcs that rise around and above you, that stretch away from you, gleaming richly in the gloom: powerful, majestic. To someone standing in the well, the Chamber, in all its cavernous drabness, is only a setting for those desks—for those desks, and for the history that was made at them.
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> The first forty-eight of those desks—they are of a simple, federal design—were carved in 1819 to replace the desks the British had burned five years before. When, in 1859, the Senate moved into this Chamber, those desks moved with them, and when, as the Union grew, more desks were added, they were carved to the same design. And for decades—for most of the first century of the Republic's existence in fact; for the century in which it was transformed from a collection of ragged colonies into an empire—much of its history was hammered out among those desks.
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> Daniel Webster's hand rested on one of those desks when, on January 26, 1830, he rose to reply again to Robert Hayne.

I am not going to go into that story because it should be known by most people who follow Senate history, one of the more famous exchanges in the history of the Senate. Let me skip on to page 7 and talk about what I really think is important for us to consider this morning:

> The long struggle of the colonies that were now become states against a King and the King's representatives—the royal governors and proprietary officials in each colony—had made the colonists distrust and fear the possibilities for tyranny inherent in executive authority. And so, in creating the new nation, its Founding Fathers, the Framers of its Constitution, gave its legislature or Congress not only its own powers, specified and sweeping, powers of the purse ("To lay and collect Taxes . . . To borrow Money on the credit of the United States . . . To coin Money") and powers of the sword ("To declare War, grant Letters of Marque and Reprisal . . . To raise and support Armies . . . To provide and maintain a Navy . . .") but also powers designed to make the Congress independent of the President and to restrain and act as a check on his authority: power to approve his appointments, even the appointments he made within his own Administration, even appointments he made to his own Cabinet; power to remove his appointees through impeachment—to remove *him* through impeachment, should it prove necessary; power to override his vetoes of their Acts. And the most potent of these restraining powers the Framers gave to the Senate. While the House of Representatives was given the "sole power of Impeachment," the Senate was given the "sole power to try all Impeachments" ("And no person shall be convicted without the Concurrence of Two Thirds of the Members present"). The House could accuse; only the Senate could judge, only the Senate convict. The power to approve presidential appointments was given to the Senate alone; a President could nominate and appoint ambassadors, Supreme Court justices, and all other officers of the United States, but only "by and with the Advice and Consent of the Senate." Determined to deny the President the prerogative most European monarchs enjoyed of declaring war, the Framers gave the power to Congress as a whole, to House as well as Senate, but

> the legislative portion of the power of ending war by treaties, of preventing war by treaties—the power to do everything that can be done by treaties between nations—was vested in the Senate alone; while most European rulers could enter into a treaty on their own authority, an American President could make one only "by and with the Advice and Consent of the Senate, provided two thirds of the Senators present concur."

I will skip to page 8. It is a discussion of James Madison, the primary designer of our constitutional system of government. Certainly it was a committee effort, but James Madison has been historically credited with playing the major role in its creation, in its design:

> How, Madison asked, is "the future danger"—the danger of "a leveling a spirit"—"to be guarded against on republican principles? How is the danger in all cases of interested coalitions to oppress the minority to be guarded against? Among other means by the establishment of a body in the government sufficiently respectable for its wisdom and virtue, to aid on such emergencies, the preponderance of justice by throwing its weight into that scale." This body, Madison said, was to be the Senate. Summarizing in the Constitutional Convention the ends that would be served by this proposed upper house of Congress, Madison said they were "first to protect the people against their rulers; secondly to protect the people against the transient impressions into which they themselves might be led."
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> "The use of the Senate," Madison said, "is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch." It should, he said, be "an anchor against popular fluctuations." He drew for parallels on classical history, which, he said, "informs us of no long-lived republic which had not a Senate." In two of the three "long-lived" republics of antiquity, Sparta and Rome, and probably in the third—Carthage (about whose governmental institutions less was known)—senators served for life. "These examples . . . when compared with the fugitive and turbulent existence of other ancient republics, [are] very instructive proofs of the necessity of some institution that will blend stability with liberty." Thomas Jefferson had been in Paris during the Convention, serving as minister to France. When he returned, he asked George Washington over breakfast why the President had agreed to a two-house Congress. According to a story that may be apocryphal, Washington replied with his own question: "Why did you pour your tea into that saucer?" And when Jefferson answered, "To cool it," Washington said, "Just so. We pour House legislation into the senatorial saucer to cool it." The resolution providing for a two-house Congress was agreed to by the Constitutional Convention with almost no debate or dissent.
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> And to ensure that the Senate could protect the people against themselves, the Framers armored the Senate against the people.
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> One layer of armor was bolted on to allay the fears of the states with fewer people, that the more populous states would combine to gain a commercial advantage or to control presidential appointments and national policies; the small states were determined that all states should have an equal voice in the Congress, so, in what became known as the "Great Compromise," it was agreed that while representation in the House would be by population, in the Senate it would be by states; as a result of that provision, a majority of the people could not pass a law; a majority of the states was required as well. But there were other, even stronger, layers. One was size. "Numerous assemblies," Madison explained, have a propensity "to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions." so the Senate would, in Madison's phrase, be "less numerous." Each state, the Farmers decided, would be represented by only two senators; the first Senate of the United States consisted of just twenty-six men.

Now I am going to skip to page 10.

> Senators would also be armored against the popular will by the length of their terms, the Framers decided. Frequent elections mean frequent changes in the membership of a body, and, Madison said, from a "change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence and every prospect of success." What good is the rule of law if "no man . . . can guess what the [law] will be tomorrow?" Guarding against "mutable policy," he pointed out, requires "the necessity of some stable institution in the government." Edmund Randolph, as usual, was more blunt. "The object of this second branch is to control the democratic branch," he said. "It it not be a firm body, the other branch being more numerous and coming immediately from the people, will overwhelm it." Senators, he said, should "hold their offices for a term sufficient to insure their independency." The term sufficient, the Farmers decided, would be six years. Senators would hold office three times as long as the members of the "democratic branch." They would hold office longer than the President held office. And around the Senate as a whole there would be an additional, even stronger, layer of armor. Elections for senators would be held every two years, but only for a third of the senators. The other two-thirds would not be required to submit their record to the voters (or, to be more accurate, to their legislatures) at that time. This last piece of armor made the Senate a "stable institution" indeed. As a chronicler of the Senate was to write almost two centuries after its creation: "It was so arranged that while the House of Representative would be subject to total overturn every two years, and the Presidency every four, the Senate, as a Senate, could never by repudiated. It was fixed, through the staggered-term principle, so that only a third of the total membership would be up for re-election every two years. It is therefore literally not possible for the voters ever to get at anything approaching a majority of the members of the Institution at any one time."

Now I'm going to skip to page 11.

> The coat of constitutional mail bolted around the Senate was sturdy indeed—by design. Under the new Constitution, the power of the executive and the power of the people would be very strong. So to enable the Senate to stand against these powers—to stand against them for centuries to come—the framers of the Constitution made the Senate very strong. Wanting it to protect not only the people against their rulers but the people against themselves, they bolted around it armor so thick they hoped nothing could ever pierce it.
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> And for many years the Senate made use of its great powers. It created much of the federal Judiciary—the Constitution established only the Supreme Court; it was left to Congress to "constitute tribunals inferior," and it was a three-man Senate committee that wrote the Judiciary Act of 1789, an Act that has been called "almost an appendage to the Constitution." The Judiciary Act established the system of federal and district courts, and the jurisdictional lines between them, that endure to this day, and established as well the principle, not mentioned in the Constitution, that state laws were subject to review by federal courts. And when, sixteen years later, this new creation was threatened by a concatenation of the very forces the Framers had feared—presidential power and public opinion—the Senate saved the Judiciary.

By the way, Mr. President, the Senate has a history of saving the judiciary in critical times. That should be a discussion for a later time. But there is no question that the Senate has served as protector of the judiciary in our system of government.

> The desks (there were thirty-four of them by 1805) had been removed for this occasion, and the Old Senate Chamber had been arranged as if it were a tribunal. In the center of one wall stood the chair of the presiding officer, Vice President Aaron Burr, as if he were the chief judge, and extending on his right and left were high-backed, crimson-covered benches, on which the senators sat, in a long row, judges in a court from which there was no appeal.

Mr. Caro goes on to explain the impeachment trial of Supreme Court Justice Samuel Chase; here again, the rule of law and the fact we are a nation of laws and not men built up by the Senate. It is the Senate's tradition to stand up for our liberty and for our law.

I wanted to bring this to the Senate's attention. I know my time is drawing to an end. At this point, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, thank you.

The Democratic leader came to the floor and spoke, as many have on that side of the aisle, attempting to change the subject on the issue of jobs.

The number keeps coming up about 3 million jobs being lost in this administration since this administration took office. I want to share with you a chart that looks at the survey of the U.S. employment level. This includes everybody. The numbers that the Democratic leader referred to do not include everyone. It was a different survey of jobs. This is the most comprehensive one. You can see from this comprehensive survey, here we are: the most jobs in the history of the United States.

If these include all the jobs, whose jobs does the Democratic leader say don't count? What jobs don't count, according to the Democrats? If you are self-employed, if you are an individual doing work, you don't count. The Democratic leader is not going to count you as someone who is working. If you are a domestic worker or you work for a private household, you don't count—you are not a worker; you don't have a job. If you are self-employed, if you are a domestic worker for a private household, you don't count. If you work on a farm, you don't count. If you are someone who works—it is probably some of the hardest work that is done in this country—on a farm, according to the Democratic leader, your job doesn't count. If you work in a family-run business part time, you don't count. In fact, there are 8 million workers on farms, family businesses, households and self-employed, under the Democratic leader's survey, who don't count. We believe you do.

By the way, when it comes to paying taxes, the Democratic leader counts your job. He makes sure we collect your taxes. But, as far as being employed or not, for political purposes, you don't count. It is 138 million, a record and growing.

Why are they coming up here and talking about this? Because they want to criticize the President's plan for turning this economy around. It probably says they do not have a plan.

Mr. COLEMAN. Mr. President, will the distinguished Senator from the Commonwealth of Pennsylvania yield for a question? I want to talk about judges in a second.

Mr. SANTORUM. I am happy to yield.

Mr. COLEMAN. Is the distinguished Senator familiar with some of the statistics that came out recently regarding jobs and growth in the economy?

Mr. SANTORUM. I have seen some of them. In fact, they were revised a couple of months prior to the most recent report—I believe it was August and September—the net new jobs created on the original projection was 16,000. They have revised them up to almost I think 150,000.

Mr. COLEMAN. I believe about 50,000 double to over 100,000. As the distinguished Senator from the Commonwealth of Pennsylvania is aware, that payroll employment increased by 126,000 jobs in October.

Mr. SANTORUM. If you look at the last 3 months, almost 300,000 new jobs, net new jobs were created in this economy.

Mr. COLEMAN. Is the distinguished Senator from the Commonwealth of Pennsylvania aware that the gross domestic product—by the way, the gross domestic product is the way we measure growth in this economy—increased at a 7.2-percent annual rate?

Mr. SANTORUM. I believe that is the highest rate of growth in almost 20 years.

Mr. COLEMAN. Is the Senator from Pennsylvania aware of the actions that this Senate has tried to take to grow jobs? One of the things we attempted to do was to pass a bill regarding class action reform. Does the distinguished Senator from the Commonwealth of Pennsylvania believe that class action reform, if it were passed, would help grow jobs?

Mr. SANTORUM. I don't think there is any question that the drain on this economy is one of the major impediments to creating jobs, increasing the standard of living in America and giving a better quality of life for the average American.

Mr. COLEMAN. I ask the Senator from Pennsylvania, on the issue of malpractice litigation regarding doctors and the impact that has on the cost of health care, and the impact the cost of health care has on small business and growing jobs, does he see a correlation between the increased litigation costs and the impact it has on the condition of the economy?

Mr. SANTORUM. The No. 1 crisis in my State with regard to health care is medical lawsuit abuses.

Mr. COLEMAN. Would it be fair to say that our friends on the other side of the aisle have obstructed our efforts to pass malpractice reform?

Mr. SANTORUM. They have blocked every form of reasonable and balanced litigation reform that balances the interests of those who rightfully have a plea before a court for compensation and the right of society not to have outrageous awards, which make us unproductive, which raises the cost of health care, and which limits the availability of health care to millions of Americans.

Mr. COLEMAN. If the Senator will yield the floor—and I would very respectfully disagree with his last assertion that our colleagues on the other side of the aisle have no plan; they have a plan. The plan is to roll back the President's tax cuts. Listen to the candidates. They want to roll back that tax cut. The lowering of the tax rates has generated more income in the pockets of Americans.

Mr. SANTORUM. They want to roll back the reductions that the President put in place. They do not like the dividend proposal. The stock market has added $2 trillion in value. What does that mean to the millions of Americans who now participate in the market? You are talking about real wealth. You are talking about retirement security for millions of Americans because of the economic plan of this administration passed by the Senate. And they would like to roll that back. I guess they do not like markets going up. I guess they do not like employment going up. I guess they do not like economic activity and job creation.

Mr. COLEMAN. Has my colleague from the Commonwealth of Pennsylvania talked to small business owners about the impact of accelerated depreciation?

Mr. SANTORUM. We saw in just the last few quarters the business community—which has really been lagging, and which is an indicator in all of the economy—as a result of the accelerated depreciation expensing provision in the tax package that we passed, is finally beginning to invest, and by doing so they are increasing productivity which means higher wages for workers. It is a little bit of a challenge. If productivity goes up, that means higher quality jobs, higher paying jobs, and more productive jobs. As growth continues, so will the employment.

Mr. COLEMAN. Is the distinguished Senator aware that business investment increased in the last quarter about 15 percent? Does that have a relationship to growing jobs?

Mr. SANTORUM. Absolutely. The fact is that incentives for businesses to invest in capital and equipment and purchasing capital equipment for manufacturers here in this country means they are improving their productivity. They are being more competitive internationally. We are not losing those jobs. We are keeping those jobs here. They are more productive jobs and higher paying jobs. It is a win-win all across.

Mr. COLEMAN. Mr. President, I would respectfully suggest again that our friends on the other side of the aisle have a plan. The plan is to roll back the tax cuts. Again, look at the statistics. Look at what is happening in the economy. Any American being out of work is a terrible thing. I am a former mayor. I always understood the best welfare program, the best housing program, and the best health care is jobs. But you have to plan a vision. The Bible said people without a vision will perish.

This President has a vision, and that vision is producing results. We are seeing it. There is an increase in consumer spending as a result of tax cuts.

Mr. SANTORUM. I thank the Senator from Minnesota for his questions. I think we settled this issue pretty clearly as to the importance that we have put on jobs and the response of the Republicans in the Senate and this President to grow the economy as a result of a recession which started in the Clinton administration and which was exacerbated by 9/11. The President responded with certainty and with a dynamic plan, with an innovative plan, and it is working in our economy.

Now we turn to another area where the Democrats have obstructed; the issue of Federal judges we are spending the evening here tonight on. I have said throughout the time I was going to be on the floor that we are going to ask for votes. We should be able to get votes—up-or-down votes.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate now proceed to consideration of Calendar No. 455, the nomination of Janice R. Brown to be a United States Circuit Judge for the District of Columbia Circuit; provided further that there then be 20 hours of debate equally divided for the consideration of the nomination; provided further that following the debate the Senate proceed to the vote on the nomination, and that there be no further intervening action or debate.

Mr. PRYOR. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

Mr. SANTORUM. I have just asked that a justice who was elected in the State of California by 76 percent of the vote—no elected official from California in this Chamber can make that claim—76 percent of the vote in the State of California and we can't get a vote on her nomination, up or down; a judge who wrote more majority opinions than any other member of that court, who is a qualified African-American woman; we cannot get a vote on the floor of the Senate after 20 hours of debate. I will agree to 30 hours. I amend it to 30 hours of debate. I ask unanimous consent that the previous unanimous consent that I read be modified to allow for 30 hours of debate.

Mr. PRYOR. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

Mr. SANTORUM. This is not a matter of debate. This is not a matter of due consideration. This is a matter of not allowing a qualified judge, a justice of the supreme court of the largest State in this country, who was elected by 76 percent of the people in the State of California, who is now being assailed as not being within the mainstream. How small is the stream? How small is the stream that 24 percent of Californians are in compared to the rest of America? That is not mainstream? That is extreme. We are not talking about the mainstream judges. We are talking about fighting to only put on extreme judges. This is a travesty. If this woman were nominated 10 years ago, we wouldn't even have had a vote on the floor of the Senate; or 5 years ago, she wouldn't have even been voted on. We would have confirmed her with a voice vote, and everybody in this Chamber knows it.

This body was once a place where sense of history and duty and responsibility meant something, to be a steward of this incredible body, this famed institution. It used to mean something to be a Senator to uphold the tradition of this body.

That is why for 214 years no one put their partisan whim, their short-term political gain in front of the process that kept this institution whole. But tonight in this session of Congress we are throwing that all away. What is so important? What is so sacred to those who would contort the rules of the Senate as never done in the history of this Senate? Senators have a chance to do it. But there is some higher calling not to give in, not to give in to that notion, You know, I really do not like this judge—not to give in because of the consequences for the long-term future of this country is just too dire. What caused so many to be so willing to give up and give in and thereby fail the Senate and cause this body to become so rancorous?

I ask my colleagues, as someone who never voted against a cloture motion—I have never voted against a cloture motion for a judge, judges who I thought would be the worst judges who are against everything I believe in. Paez and Berzon are two examples. I lost sleep because I knew the damage they could do with the Ninth Circuit and are doing. By the way "under God," Paez and Berzon, stricken from our Pledge of Allegiance.

These are radical activist judges. I knew it. They will destroy the very fabric of our Constitution. I knew it. I gave them an up-or-down vote because this body, this Constitution, the process by which we do business here is more important.

No more. The puppeteers of the special interest groups around Washington, DC now carry much more weight than the Constitution. This is a sad time. People ask why we are doing this. Because we have a right to tell the public what is going on. This is ugly. This is the worst of our nature. I plead, as someone who wanted to do what you are doing worse than you could possibly imagine but didn't because there are bigger things than the next election.

I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I have the greatest respect and compassion for my colleague from the Commonwealth of Pennsylvania and for his commitment to what this institution is all about.

I don't know if I can find the words to describe the feeling that I have, elected just this year to the Senate, to these hallowed halls. I listened to the reading from my friend and colleague from Arkansas from Caro's "The Master of the Senate." It is a humbling honor to be part of this body, to be part of the flow of history, a flow that has helped develop the greatest nation in the world. We got there due to divinely inspired guidance from the Founders of this great Republic who gave us a Constitution which provides a sense of clarity of our roles and responsibility. If we decide to only abide by it 98 percent of the time and the folks who follow us decide to abide by it 98 percent of the time, we are in trouble. My colleagues across the aisle have a sign that says 168 to 4. They are proud of that. I am stunned. I am absolutely stunned. If the airline I flew back and forth to Minneapolis would advertise 98 percent of the time they would get me there safely, I wouldn't fly.

Think about the Constitution. I could walk you through it. First amendment of the Constitution: Congress shall make no law respecting establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press. If there were 172 newspapers in the United States and I said 168 of them are going to have freedom of the press, but not the other 4, where would we be?

Second amendment to the Constitution: Right to bear arms.

In Minnesota, we bear arms. A lot of folks were out deer hunting last weekend there. If I were to tell a group of 172 Minnesotans that 168 of you have the right to bear arms, but not 4, 98 percent, I don't think they would be happy Americans.

I could go through every amendment. Third amendment: no soldier shall in a time of peace be quartered in any house without the consent of owner, nor in time of war but in a manner prescribed by law, the third amendment to the Constitution. If I went to a group of homeowners and said, you are going to quarter soldiers, 2 percent of you are, they wouldn't be very happy, and they shouldn't be.

We took a solemn oath to preserve and defend and abide by the Constitution of the United States. That is how we got here. That is our obligation once we got here. It wasn't a partial thing. It wasn't an almost thing. It wasn't a but-for thing, and it wasn't a 98 percent thing. It was to preserve the Constitution.

The fifth amendment to the Constitution: Individuals cannot be compelled to testify against themselves. Can you imagine if we said that applies 98 percent of the time? It doesn't work that way. It should not work that way. There is a reason why. You have to think about this. Again my colleague read the history of the Senate. It is a magnificent history. But the public out there has to ask the question: Why in the over 200 years of this Republic has there never been up until now a partisan filibuster that has stopped judges from being confirmed.

Yes, we have the right to advise and consent. The Constitution gives the President the opportunity to appoint judges. We are then to advise and consent. He nominates. We advise and consent. But we do it by a simple majority. We cast our vote. If you don't agree, you vote them down. If you agree, you vote them up. But for the history of this Republic, we have a process which we abide by, the Constitution. That was reflected in the readings from my colleague from Arkansas. Treaties, as he noted in his comments, require in the Constitution a supermajority, but not judges.

Mr. TALENT. I wonder if the Senator from Minnesota will yield for a question.

Mr. COLEMAN. I yield.

Mr. TALENT. I wonder if the Senator knows how many court of appeals appointments Presidents on average have gotten over a 4-year term since Jimmy Carter? It is 40. There were 10 per year. I went back and looked. Does the Senator know how many court of appeals judges the other side has filibustered or will filibuster by Friday? It is six.

Does the Senator know how many more they have threatened to filibuster? It is another six. I wonder if the Senator is aware of the fact that out of 40 court of appeals judges President Bush figures to get in a 4-year term, the other side has filibustered or threatened 12. So it is not four out of 168. It is 12 out of 40, or 30 percent. I don't know how the Senator feels about that. I wonder if he doesn't think that is a more relevant figure that maybe we should be using.

Mr. COLEMAN. Even if it was 2 percent, we don't disregard the Constitution. Certainly if you are looking at 30 percent, that is outrageous. That is outrageous. One of the things that troubles me as a new Senator, as is my colleague from Missouri, as is my colleague from Arkansas—I think we still have this great kind of sense of awe, but one of the things that troubles me—and I haven't been here, but I have heard so much of the debate—they say, they did it to us in the past.

Let the record be very clear. Of the past 11 Presidents' judicial nominees, there were 2,372 confirmed. None were stopped by a filibuster. This whole thing about what you did to us in the past, of course, now we are doing to you. Then what will those who follow us do? What are the consequences of that?

I will tell you, I will stand on the floor of the Senate and say I will apply the same standard to judges with a Republican President that I will if there were ever to be a Democratic President and I am serving in this institution. Are they competent? Are they committed to preserving and upholding the Constitution? That is what the judges we are talking about all have said.

You have to get right to it. They are being opposed because there are special interest groups who don't like their position on a particular issue, most probably abortion. Judge Pickering, by way of example, is somebody. When I ran for the Senate, I had a debate with the former Vice President of the United States, Walter Mondale, a magnificent American, a great public servant, who I simply disagreed with on certain issues. But in the debate that came up, I talked about it at that time, saying: We can't obstruct.

The PRESIDING OFFICER. The time of the Senator has expired.

Who seeks recognition? The Senator from New Jersey.

Mr. CORZINE. Mr. President, I would like to start with a little bit of perspective on the judiciary, and I would like to respond a bit to the economic arguments I heard discussed over the last 30 minutes which are sort of not in touch with reality, certainly not in touch with the reality of those folks who live and work in New Jersey and those across the country.

Let's start with a simple proposition that there are 172 nominations before the Senate. The commonsense reality is, 168 have been confirmed, 4 have been held up. I hear this view that people should not have the ability to express their point of view about judicial philosophy, temperament, the perspective of the individual judges. But I don't know what we are here for if we are not supposed to exercise our judgment and work within the rules as established. One hundred sixty-eight to four seems to be a pretty favorable ratio by most human standards anywhere across America, when you look at judgments about the quality of folks you would interview for a job. It is sort of common sense.

In my own State of New Jersey, we are six for six, including a circuit court judge. We worked very carefully with the folks at the White House about background, worked in a cooperative sense. That has not happened across all of America. That is what people are arguing is now the case with the four who are on this board. There is a legitimate right to debate one's judicial philosophy. The rules of the Senate are very clear and have been used many other times.

This idea that there have been no filibusters is blatantly false. We can go back to the Abe Fortas situation, and there are other situations where it may not have been the end game but it was certainly the starting point for holding back, going forward with judicial nominations. There are a number of them. I am sure these have been identified here on the floor, whether it was the Fortas nomination for chief justice; Rosemary Barkett, a judicial nominee, had a similar situation; Supreme Court Justice Steven Breyer, Judge Paez, Lee Sarokin, and Marsha Berzon.

It has been argued and researched that 63 judicial nominees of the committee and 6 judicial nominees on the floor have been filibustered in the past. It is not something that is new. But what is really hypocritical, in my view, is we are focused on a technique that has been used to stop four judges many of us on this side of the aisle find extreme, when 55 Clinton nominees were not given hearings to be even discussed, 55. I could read the list of them. That is about, if my mathematics are correct, relative to the number, 30 percent stopped, cold dead stopped, without even having an opportunity to be reviewed, 55 Clinton nominees against 4 Bush nominees.

I don't know that it serves a useful purpose to say, we did this and we did that. The fact is we need to have a serious review of judges, and people ought to be able to express their opinions within the rules about whether they think they are qualified on the basis of standards that are generally accepted: Judicial philosophy, whether they will uphold the Constitution, settled law, all those kinds of issues.

The fact is in another time or another place, people primarily used the committee process to keep judicial nominees from even being reviewed.

What is the result? I want to reconfirm that 98 percent of those nominees President Bush has put forward have been confirmed. Only 2 percent have not. Again, that is an overwhelming commitment to moving judges through this process and significantly better than has occurred in previous administrations.

Again, the filibuster has been used as well. I just don't think we are reciting facts properly and history right.

There is another very fundamental situation here. Contrary to the claims we hear, we think there is some kind of vacancy crisis in our Federal courts. I would like to have 100 percent myself, but 95 percent of Federal judicial appointments are now filled. When we had a change of administration, because of that 55 and the process that went through, it was only 75 percent. There was a distinct process of holding back, pushing back with regard to what the folks on the other side were prepared to do when working with another President. That is why when people talk about 168 to 4, that perspective is not being brought to the discussion.

It is very simple: 55 folks stopped in the last 4 years, and there has been 4. People can argue that somehow from their perspective those 55 were outside the mainstream. Some were not brought up for discussion in the committee. But the process we are using here is to make sure the debate on the floor brings out these extreme views, operating within the rules. I think we have facilitated a significant improvement in the ability of the courts to fulfill their function. That is what is the practical element. Those 168 are real because they are dealing with the issues the American public has to deal with. Our court system is actually functioning better than it has because we have been very facile in making sure judicial appointments have gone through. It is just a matter of perspective.

Mr. TALENT. Will my friend from New Jersey yield for a question?

Mr. CORZINE. Certainly.

Mr. TALENT. Are you aware with regard to any of those committee actions or inactions to which you refer, was there ever a case where a majority of the committee expressed a desire to vote up or down on those nominees?

Mr. CORZINE. The Senator from Missouri maybe has reviewed all of the transcripts from those committees. I have not. I do know the President of the United States sent nominations here and in most instances they were. The 55 that I have, and there are a number of them I haven't reviewed, there was an attempt to try to get a number of those before the committee, and they were not allowed to be debated. It never got started. I can't speak to all 55. I have not reviewed all of the transcripts.

Mr. TALENT. I am not going to intrude on the Senator's time. He referred to a lack of respect. I think the reason is because I don't believe there has been a situation where a majority of the committee or body wanted to vote up or down on a nominee when they didn't have that chance. I thank the Senator for yielding.

Mr. CORZINE. I appreciate the discussion with the Senator from Missouri.

What we have here, in my view, at 20 minutes of 4 on a Thursday morning, is a view that there were different techniques used by the folks on the other side of the aisle to restrict a President from having the kinds of judges and the number of judges they wanted to put into the courts which actually led to something that wasn't good for the American people; that is, a much higher vacancy rate in the Federal district courts than is the case today. I know in my own case and in the State of New Jersey, we are five for five on district judges and one for one on circuit judges, because we are working in a cooperative manner to try to get to a result that will allow the courts to have the judges to be able to deal with the cases. I think 168 is showing that happened across this country. So because there are three or four judges people believe are outside the mainstream—the special-interest stuff I have a hard time understanding. I am not a lawyer, but I read some of these cases where people don't believe in the incorporation of businesses and want to take away fundamental purposes of how that works in this world. That is outside the mainstream. That is difficult for me to understand. Therefore, I think it is perfectly reasonable to question whether that is an appropriate appointment to one of our most important appeals courts.

So, again, one of those four—or maybe it will be six, as the Senator talks about, by the time we get to whatever hour in the morning we vote on this stuff on Friday; maybe that will be the case. But I think it is important we as Senators review the record and, within the rules, use our judgment to decide whether someone is in the mainstream of judicial philosophy. Apparently, that was happening in previous administrations for 55 folks; they were just using a different technique as opposed to this particular one.

Again, I go back to the fundamental issue. It left a gaping hole in the ability of our courts to deal with the American public's needs in the Federal courts—the 75 percent fill ratio, or 25 percent vacancy ratio. Now we have a 4.8 percent vacancy ratio. I think, ultimately, somebody is going to say what is going on here? Are we actually dealing with the issues the American people need, which is having the judicial system that actually works.

I have to talk a little bit about the economy because I heard some other questions, and we talked about payroll employment versus other measures. Frankly, I don't know a single serious economist in America who doesn't say we measure the standard job performance of this economy, this country, by looking at payroll employment. It is accepted as the base standard by economists across the country. The kinds of comparisons to other standards, those are all well and good. I think they reflect, frankly, the growth in the population.

We are not creating jobs rapidly enough to actually reduce the level of unemployment. That is why payrolls have always been used as a basic issue, because it takes into account the growth of the population as well, which, by the way, we are at about the lowest—I think we had a little uptick, a minor uptick in the last 2 months in the percentage of Americans who are working out of the total population. The fact is we have lost something approaching 3 million payroll jobs under this administration. What is more important is to get to the basic fact, which is 9 million Americans are unemployed. That is the real deal. It is not whether it is growing—certainly, it is a painful experience for those who lost jobs, but there are 9 million Americans who want to work and cannot do it. It is up by 3 million since this administration took hold. Nobody is pulling that number out of the air. That is why we are trying to talk about those jobs versus the four judicial jobs within the perspective I tried to relate.

When you have 95 percent of the positions filled in the judiciary, I think somebody is doing their job filling those holes. But we are not doing the right things about creating jobs for Americans. That is just fact. It is not hyperventilation. Nine million Americans are looking for work and they don't have it. By the way, 2 million of them have been unemployed longer than 6 months. One could ask what are we doing about that. You know, we have not passed a minimum wage, we have not extended unemployment insurance for people who are now coming on the rolls of the long-term unemployed. We are not really creating a jobs program in a serious sense. We have certainly cut taxes and I guess—to go back to Econ 101, at some point if you throw enough money into the system, we will create some jobs. We have about a $300 billion budget deficit and a 1 percent interest rate, and we have had them for a very long period of time, at these stimulative levels. At some point, you are going to get job growth. Was it an efficient way to do it? I wonder, when we have created about $5,000 in debt for every individual in America. That doesn't seem to jibe with an efficient use of resources. It certainly is not a rampage of growth or a booming economy that we have for most Americans.

The latest economic statistics came out and everybody said how wonderful they were. They weren't too good in New Jersey. We lost another 11,800 jobs—11,800 manufacturing jobs in the month of August. We have a little bit of lag between when the State numbers come out and the Federal numbers. We are about to close our last two auto plants in New Jersey. We are closing the Ford plant for sure, in Edison, and we have the GM plant, which they are going to extend at about half production for the next 2 years, and they are going to look at shutting it down.

Every week, we get another major employer laying off manufacturing jobs in the State of New Jersey. New Jersey probably has had as strong an economy as anyplace because we have the pharmaceutical industry, which is growing. But our manufacturing base is out the window.

We don't talk about those 9 million jobs. We are talking about four jobs here, and I don't get it. I don't see what our priorities are. We are trying to talk about minimum wage and about transportation and we are trying to talk about a whole host of things that would allow us to have the opportunity to get this economy going and create jobs for those 9 million people—not these 4 folks, where we have already approved 98 percent of those interviewing for those jobs.

I don't know. I am sort of simple, but I think a 98 percent positive conclusion out of 172 folks interviewing for these jobs is pretty good. We have actually filled in the holes in the Federal judiciary, and we have a major problem with 9 million Americans who are looking for work. We don't spend any time talking about how we are going to create jobs here, except we are going to have tax cuts every hour on the hour between now and the next decade, which will put debt on my kids and then their kids to follow. We may get some job growth as a function of doing this, but was it efficiently provided to the American people? I think that is very hard to say.

UNANIMOUS CONSENT REQUEST—S. 224

Mr. President, I ask unanimous consent that the Senate return to legislative session and proceed to the consideration of calendar No. 3, S. 224, a bill to increase the minimum wage, that it be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. COLEMAN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CORZINE. Again, I think we have our priorities mixed up here. There are a whole bunch of folks in this country who benefit enormously from the minimum wage. When they go out and buy things, that will stimulate the economy. One of the great opportunities for us is to deal with some of these economic issues that we have, instead of haranguing. I think, unfortunately, about these four folks, about whom I think there is legitimate reason to have a debate—where they stand on judicial philosophy, and how their history is, or how their writings fit with settled law and from a constitutional perspective.

Again, we have put 98 percent of the nominees to work. We have not done anything about the 9 million Americans who don't have a job, who want to work. There are a whole bunch more who have dropped out of the system—I think about 4 million, if memory serves me correctly. It strikes me we have our priorities mixed up. I don't understand it. By the way, I will go through some other statistics. It is actually mind-boggling to me that we are spending so much time on four people, when the unemployment rate is 6 percent, and 9 million folks are without jobs. That is up from 4.1 percent 3 years ago. The poverty rate is up from 11.3 percent to 12.1 percent; I think that is 4 million people. The percentage of uninsured has gone up from 14.2 percent to 15.2 percent. About 2 million people have lost their health insurance in the last 3 years. The deficit has gone from a $236 billion surplus to a $304 billion deficit.

If somebody was running my company and they had a negative cash flow of 500 some odd billion dollars, I think I would find a new CEO. The national debt went from $5.6 trillion to $6.8 trillion. I guess that is for my grandkids to worry about, and it will be explosive. And judicial vacancies have gone down from about 10 percent to 4.6 percent. What is this picture? I just don't know where our priorities are in the scheme of things. We are talking about four people and we have 9 million Americans and a whole bunch who haven't had an increase in the minimum wage in 7 years. We cannot even get a vote on it and haven't been able to get a vote on it. They are not interested. Does that make any sense? I don't get it.

This is not the right priority where I come from, or for most Americans. I would rather fight like crazy for the 9 million people who want to work than just four judicial nominees out of the 168 judges who have already been approved. It is very important, in my view, that we have a proper prioritization and perspective on what is going on here, particularly when you look at it in the context of other techniques being used to hold up a whole bunch of judges at another period of time. We are talking about four here. I am no great legal constitutional scholar, but 168 to 4 is a pretty real number, and 55 folks left out by the other side is a real number.

I see my very good friend from Arkansas. It looks like he is chomping to go to work here. I would very much appreciate it if he has a comment on either of the things I have said, or I am sure he has more brilliant remarks to make.

I yield the floor to my friend from Arkansas.

Mr. PRYOR. Mr. President, I am not sure we have anybody in this Chamber or in this body who is more knowledgeable about the economy and economic principles than our colleague from New Jersey. He has proven himself on the field of battle on these economic issues.

How much time do I have left?

The PRESIDING OFFICER. Seven minutes 15 seconds.

Mr. PRYOR. I want to spend the next few minutes talking about a man who was one of President Bush's nominees for a judicial post in the Eastern District of Arkansas. He is from Arkansas. While I was not consulted on his nomination, I do support his confirmation. Actually, this ties in a little with Senator TALENT's question of a few moments ago. I notice Senator TALENT did not accuse the Democrats of being obstructionists. Some have, of course, but I know he did not do that tonight.

This is, as Paul Harvey might say, the rest of the story, or at least a part of the rest of the story. Leon Holmes is a very distinguished lawyer in Little Rock. His academic accomplishments and his love of academia are more than evident when you look at his background and qualifications for office. He has been a clerk for the Arkansas Supreme Court. He has worked for some very prestigious, very well known Little Rock law firms. He has been appointed judge on a couple of occasions for the Arkansas Supreme Court. In fact, I had the privilege of practicing with Leon Holmes in Little Rock in a law firm called Wright Lindsay & Jennings, which is truly a wonderful place to practice law. I got to know Leon well there and saw his legal acumen up close.

I understand Leon's qualifications for office. He has won different awards. The American Bar Association gave him a well qualified/qualified stamp. He and I may differ on some issues; nonetheless, he is very broadly supported by members of the Arkansas bar, and I support him.

Let me tell you a little bit about the nomination. He was nominated by President Bush on January 29 of this year. He went to the Judiciary Committee. He got out of Judiciary on May 1—over 6 months ago. He got out of Judiciary and he has been languishing on the Executive Calendar ever since. In fact, today I sent a letter to the Senate majority leader, BILL FRIST, and the Judiciary chairman, ORRIN HATCH, inquiring about the status of Leon Holmes' nomination, asking them to bring his nomination forward. If I may, I would like to read a portion of this letter into the RECORD. It says:

> I am writing to express my concerns regarding the nomination of Leon Holmes to the U.S. District Court for the Eastern District of Arkansas.
>
> Mr. Holmes has garnered overwhelming support from the Arkansas State Bar, of which I am a member, and received the rating of Qualified/Well Qualified from the American Bar Association. He possesses the skill, ability, and experience to enable him to serve as a member of the judiciary. While Mr. Holmes and I may differ on some issues, I believe he is well able to carry out his duties according to the Constitution and that he will apply established precedent as judicial canons require.

The letter goes on basically asking the majority leader and chairman of the Judiciary Committee to bring his nomination to an up-or-down vote. There is no effort on the Democratic side to filibuster Mr. Holmes' nomination, even though I have no doubt a number of my Democratic colleagues will vote against him. I remain perplexed as to why he has not come to the floor yet.

I am puzzled why the Republican leadership has yet to bring up his nomination. I hope I will receive a response to the letter soon. So as Paul Harvey says, that is the rest of the story.

One reason I wanted to tell this story is because I receive phone calls in our office from Arkansas and around the country asking me to vote for certain of President Bush's nominations. Our staff will tell them: Senator PRYOR already voted for 67 of President Bush's judicial nominations, and their response is, "no, he hasn't."

Well, sure I have. See, the rest of the story is not being told. I think a lot of people around the country perceive we are blocking every single judicial nomination that comes down the pike, but that is not true. As Senator CORZINE mentioned a few minutes ago, the 168 nominations is a historically high number, just like the 98 percentage number is a historically high percentage for approved judicial nominations. I don't think you will find that repeated in American history.

We need to keep this in context. Here I am from Arkansas, and I support one of the President's nominees, but I cannot get him to the floor. There is no obstruction on Mr. Holmes, and there is not going to be a filibuster. I have talked to many Senators on our side and on the Republican side. Yet he has not come up for a vote yet.

There is one other thing I want to mention in the time I have remaining, and that is, back in April, I signed a letter with a number of my Republican colleagues, freshman colleagues, about this judicial nomination process. I asked the leadership, Senator FRIST and Senator DASCHLE, to try to work together with the White House to try to make sure we don't get to this point where we are this morning—that is, gridlock over some of these nominations.

There is enough blame to go around, and the last thing I want is a 30-hour blame-a-thon. I don't want to participate in that. But I do think we need to revisit what we are doing. I think we need to put things in the past and leave them there and move forward on these nominations. If it is payback upon payback, we are never going to get anything done. Both sides have some responsibility there.

Also, I say I believe a big portion of the responsibility rests with the White House. After all, the White House starts this process. The President is the one, under the Constitution, who does the nominating, and I know many of my Democratic colleagues feel they have not been consulted—I know I have not been. They feel they have not been consulted and, in fact, they have been deliberately shut out of the process. I think we need to work with the White House to try to make this better.

I think the White House has a responsibility. We all have some responsibility. I think if we work hard, we can make this process work much better.

How much time do we have on our side?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. TALENT. Mr. President, I wish I could say it is a pleasure to be here with you at 4 o'clock in the morning. It is certainly always enjoyable to see you. This is a subject that is certainly worth discussing and it is extremely important. I have not been all that involved in it before. There are a number of other issues on which I have been working.

I am here this evening because, when I look at the qualifications of the four nominees we are considering, Judge Owen, General Pryor, Judge Kuhl, and Justice Brown, those qualifications to me seem so outstanding that it seems that, had these nominees come up in the past, they would not only have been voted on but they would have been approved, and not only approved but approved by an overwhelming majority; as the Senator from Pennsylvania said a little while ago, approved by a voice vote. Now they are being filibustered.

For the first time in the Nation's history, court of appeals nominations by the President of the United States are being stopped on the Senate floor by a minority using the filibuster. It never happened before. They filibustered four to this point. I hope that the minority will not filibuster two more on Friday.

I understand there are six other nominations the President has made to the court of appeals for whom there is a threat of a filibuster. So it is quite possible that by the end of the year a minority of this body will have filibustered and stopped on the Senate floor, 12 court of appeals nominations, and that has never happened, not even once, in the history of the United States.

Then there are some who stand here and say this is nothing new. It is not only new, it is unprecedented. It is not only unprecedented, it is action on a scale that nobody even contemplated before. You cannot look at the total number of nominations; you have to look at the nominations for the courts of appeals. You have to compare apples to apples and oranges to oranges if you want these figures to mean anything.

The President of the United States has nominated 46 people for the court of appeals so far; 29 of them have been confirmed, 6 of them have been filibustered or very probably will be filibustered by Friday; another 6 are threatened to be filibustered. I certainly invite my friends who have been part of this filibustering minority to stand here and tell us tonight if they don't intend to filibuster any more besides the six we are talking about. I don't think they are going to do that. That will make a total of 12 filibustered or threatened to be filibustered, 12 out of the 46 nominations the President has made to the court of appeals.

One-quarter of the nominations the President has made to the court of appeals have been or are threatened to be filibustered. In the past 200 years, not one was successfully filibustered. It is an unprecedented usurpation or attempt to usurp the President's power from the Constitution, and the traditions of this body, to nominate people and get them appointed to the court of appeals.

I heard the senior Senator from New York speak. He is my friend and I work with him on a number of issues. I find him to be delightful—well maybe not delightful, but he is my friend. He is a delight.

He said the problem is, if they just come to me, I am the ranking member of the courts subcommittee, if the White House will just come to me before they make these nominations and consult with me. What he was saying is that together we could come up with good nominees. I think this is what the minority here is aiming to do. When I say the minority, I mean the group of people who are filibustering. They want a co-Presidency, as far as this is concerned; they hope the President will consult with them before making the nominations.

I love my friend, the senior Senator from New York. Nobody from Missouri had a chance to vote for him. We have one President. He makes the nominations. The Senate's job is to vote to confirm. How has that job been conducted in the past, and exercised in the past? It is worth looking at. I say this not as a person who has been a Member of this body before this year, but as a citizen of the United States. I have looked at what happened in the past when we had these vacancies.

When the President nominates, what do Presidents traditionally look at? What do you think? They look, first, at personal integrity. They want to nominate people who have integrity and a reputation for integrity. They look for people who they know or people who they know, know. In other words, if you want to be nominated to a judgeship, you try to talk to people in the administration you know or talk to people who know people in the administration. So you contact your Senator or you contact somebody in the Department of Justice, just like applying for any other job. If you know somebody, you contact him.

And, of course, Presidents look at qualifications. They look at the achievements of prospective nominees in particular fields and then they look at relevant biographical information that may be specific to that appointment. Perhaps they are looking for a particular ethnic diversity or geographic consideration. Then the President and Department of Justice put all that together and they nominate somebody and send him down here. And then the Senate votes to confirm.

How has the Senate done that in the past? The Senate has acted as a kind of check. The Senate looks at these nominees to make certain they have the positive qualifications that the President has said they have. The Senate looks at nominees to make certain they have minimum achievements and experience so that a lawyer, looking at a nominee, would say, yes, that is what a person ought to have to be on the Federal court bench.

The nominee may have been a law professor. They may have been a practicing lawyer or a public official. Have they been out of law school long enough, received awards, published in their fields, litigated enough cases? The Senate looks at that for a minimum. We don't want to confirm somebody where the bench and bar around the country would look at that person and say, no, they haven't been out of law school long enough to serve on the Federal bench.

Then, of course, the Senate looks at integrity. That is really a negative check: to make certain what they don't have. To make certain that they don't have stains on their record such that they should not serve on the Federal bench. They didn't cheat in law school. They have not been found guilty of ethics violations in the practice of law.

There are not any notorious examples of incompetence in their background.

That is what the Senate has looked at in the past: where nominees have met those qualifications; had that minimum that the Senate looks for; have not had the negative things the Senate wants to make certain they have not had. In the past, those nominees got a hearing. They were voted out of committee. They not only were put on the floor, but they got a vote on the floor. They not only got a vote on the floor, but they were confirmed, and they were not only confirmed, they were typically confirmed by overwhelming majorities, even by Senators who were of a different party, who disagreed with their jurisprudence. That is what has happened in the past and we have had a tremendous break from that precedent and that tradition in this Senate.

Of that action in the past—some here have said that the Senate should not be a rubberstamp. Was the Senate a rubberstamp for 200 years? No, it was not. What the Senate did was show a respect for the constitutional separation of powers, which a minority of this Senate now refuses to show.

Let's suppose families have, in their own way, constitutional arrangements just as this country does. Let's suppose that in some family the husband and wife have talked about who is going to handle the finances. They have decided that because the wife is maybe better at those things, or better able to handle those things, that the wife is going to handle the finances. If this is beginning to sound like my family, the analogy is pretty apt. So the wife in this specific family makes decisions regarding investments, and then goes to the husband and says: What do you think, I would like to put some money in this? Or I would like to invest in this thing.

The wife gives him the benefit of the doubt. Is that a rubberstamp? That is a recognition, then, of the tradition of that family. The wife in that case has traditionally done this because that is how it is set up. It is not a rubberstamp; it is giving the benefit of the doubt, when appropriate, according to the arrangements that have traditionally prevailed in that family. That is what the Senate did for 200 years and that is what the minority is not doing now. That is why we are losing perspective about it.

I will say this to my good friend from New Jersey, who is accusing us of losing perspective: Yes, we are losing perspective because about a quarter of the President's nominees to the court of appeals have been filibustered or threatened to be filibustered; because the Members who are filibustering want to be consulted. They want to be the ones who make the nominations when nobody had a chance to vote for them for President. That is enough to cause us to lose perspective.

Why has it changed? What is causing this to happen?

My friend from Pennsylvania asked that: Why? Why are we doing this? It's disrupting this body, it's dividing us, and it's an injustice to these people. I am going to get to that at the end if I have time. The worst thing about it is these people, who should be confirmed, or would have been confirmed 10 years ago, deserve to serve. They worked hard and millions of people around the country are going to wonder what is wrong with them because we can't even get a vote. It is not right. Why has it happened?

I hear different things. I don't know. I talked to some people. I hear things that maybe Members on the other side at some point went to a retreat and a bunch of law professors met with them and told them if they didn't do something like this there would be an imbalance in the Federal courts. If that is true—I hear this, I don't know—I can immediately see a basic part of the problem, because we have law professors giving advice about something besides the law. I have a rule that when law professors give advice about something besides the law, it is almost always wrong. I say this as a person who used to be a kind of law professor. I never actually made it. I was a fellow, an adjunct professor. And they are brilliant and you get them out of their field and it is risky to take their advice about anything.

Let's go back to imbalance. Going back through the Carter Presidency, which is back about 26 years—the last generation in the modern era. In the last 26 years, there has been a Republican President 14 years, a Democratic President 12 years. By the way, I am going to give overall figures for district court and court of appeals numbers but they don't vary. If you break them out and separate them, they don't vary that much.

President Carter had confirmed 265 nominees to the bench; President Clinton, 377, for a total of 644, which is about 53 confirmed per year. President Reagan had 384. He was there for 8 years. The first President Bush had 195. Up to this point the current President Bush has had 168, for 747 over 14 years which is, Mr. President, about 53 per year.

Where is the imbalance? That a Republican President for 14 years, Democrat President for 12 years, they each got about 53 per year and it is the same basically whether you break it out for court of appeals. They each got basically 10 court of appeals judges per year. There is no imbalance.

We have had balance for the last 200 years, and the reason it has worked pretty well, is that the people have elected Presidents from different philosophies and different parties. That is how you get balance. The only way you get imbalance is if you have Presidents of one particular philosophy or one particular party elected year after year, term after term after term, and that has happened and there is a technical term for that. It is called representative government.

Yes, if you lose a lot of Presidential elections in a row, there is going to be an imbalance on the Federal bench. That is the way it happens. The only time it has happened in the 20th century, by the way, is when the Democrats had the White House more than 20 years in a row, through President Roosevelt, and then through the only President ever from Missouri, our great Harry Truman. I don't recall hearing Republicans filibustering and claiming imbalance at that time.

How much time do I have left?

The PRESIDING OFFICER. The Senator has 16 minutes.

Mr. TALENT. I have 16 minutes.

What is the other argument I hear over and over? This is why I think it is really working, and I respect this because it reflects a sincere philosophical conviction. I respect that. One of the things I tell people as I travel around and talk about the Senate and about the Congress is that I am not an institution guy. I don't stand up and wax on and on about how great the Senate is, although it is a great honor to be here.

But I will say about my colleagues, that most people who believe out there that people in the Senate don't have convictions are wrong. That is why we are here at 4 in the morning. That is the one thing that unites us. We are here because we have convictions. We all have other places we could be—in bed. We are here because we have convictions.

The other reason, which is what I really think is working here, is out of conviction, the sense that these nominees they are filibustering or threatening to filibuster are somehow too extreme. We all know what they mean when they say that. We use codes here. It means they are too extreme on social issues. Those who are filibustering disagree with these nominees on the social issues, and particularly, let's say it, that one big social issue: abortion. They disagree with them on that. So they are too extreme to be confirmed, too extreme to vote for, too extreme even to have a vote because they disagree with them on the social issues.

I have to say, because I have convictions on this, too, that we ought to look at what a definition of extreme is here. A lot of folks who are saying this voted against the ban on partial-birth abortion. I respect their conviction an awful lot but that is a pretty heinous procedure and I think America is entitled to ask: Who is extreme?

The truth is, for this process, for the purpose of confirming Federal judges, that is not the kind of analysis either side should be using. Because the truth is, if we are honest about it, on the social issues, there is not a mainstream.

There are tens of millions of Americans who are on both sides of those social issues and they are good people, they are honest people, and their views deserve respect. People who hold those views deserve not to be disqualified, held as unfit for office under the Constitution of the United States, just because we disagree with them.

My wife and her law firm visited Washington over the weekend so I stayed in town with her. Normally I go home every weekend. There is a reason for this digression. Members of her firm visited around town, had a great time, and visited the Supreme Court. Justice Breyer was kind enough to speak for a few minutes to them. And wasn't it great of him, Mr. President, to take his time to do that? He is an able jurist, one of the smartest people on the Federal bench.

He wrote the opinion of the Supreme Court striking down a partial-birth abortion ban. I couldn't disagree with him more on his jurisprudence on that issue. It wouldn't occur to me not to vote to confirm him for the Supreme Court. It would not occur to me to say his view is extreme on that, because his view is shared by millions and millions of people who are part of this political community, too.

This is one of the reasons why I feel so motivated to be here. Can the Senate contain the disagreements that we conscientiously have on issues such as this or will those disagreements blow up this process that has allowed us all to live together and legislate together for 200 years? That is the question. It will do that, unless we start treating these people we disagree with, with respect.

We can't force people to come around to our view on these issues, as passionately as we may feel. We have to persuade them. You can't persuade people unless you can talk to them and listen. And that means you can't treat them as if they are pariahs. You can't say to Janice Rogers Brown, who served for years as a justice on the California Supreme Court, and has overcome obstacles in her life that would have stopped 99 percent of other people—and you can't say to her: We disagree with you about this so you don't even get a vote. We don't respect you enough even to give you a vote. Let's not do that.

In the past, this body has debated a whole lot of difficult issues, issues that were tearing at the fabric of the country. But we have to continue as one body and we can't do that unless we treat people with respect. We have to understand there is not a mainstream on this.

We may wish everybody would agree with us, but they do not. We can't make that a litmus test. That is what is happening here. That is I think what is underlying a lot of things.

I want to focus on the human element a little bit.

How much time do I have left?

The PRESIDING OFFICER. Ten minutes.

Mr. TALENT. Ten minutes left to inflict myself on the Senate at 4:20 a.m. I think I will talk a little bit about Judge Kuhl. I have gone over her background. It is really extraordinary. I am a lawyer. I actually clerked on the court of appeals for a great judge, a good man, Richard Posner of the Seventh Circuit. I know something about Federal judges and how they get there. I don't mean any disrespect. I am trained well enough as a lawyer not to do that. I guess we are protected by the speech and debate clause here. They couldn't come after me if I didn't respect that. I respect Federal judges. I wish they all had the qualifications these people have.

There are some of them who got on the court of appeals because they knew somebody; in some cases, because they knew somebody in this body.

Judge Kuhl has been nominated to the Ninth Circuit. She has been a judge since 1995; before that, for 9 years she was a partner in a prestigious Los Angeles law firm. She was a litigator. We can forgive her that. From 1981 to 1986, she served in the Department of Justice as Deputy Solicitor Attorney, as Deputy Assistant Attorney General, and as Special Assistant to Attorney General William French Smith. She argued cases before the Supreme Court and supervised work of other attorneys. She clerked for Judge Anthony Kennedy, then a judge in the Ninth Circuit and now a member of the Supreme Court. In 1977, she graduated from Duke Law School. She has extraordinary bipartisan support. Listen to what people say about her.

Vilma Martinez, former Director of the Mexican American Legal Defense and Educational Fund, said:

> I'm a lifelong Democrat. . . . Even though we don't share the same political views, necessarily, I consider her mainstream. . . . She's careful and she's thoughtful. She's been an excellent [state court] judge, and I think she will be an excellent 9th Circuit judge, one who will approach that job the way I think that job should be approached: with great care and deference.

I wish everybody in this body had the broadmindedness of Vilma Martinez. Congratulations, Ms. Martinez.

Twenty-three women judges on the Superior Court of Los Angeles say:

> Judge Kuhl is seen by us and by members of the Bar who appear before her as a fair, careful and thoughtful judge who applies the law without bias.

She can't get a vote. Don't tell me the Senate has operated this way. It hasn't operated this way in the past. They have filibustered, or they are threatening to filibuster, about a quarter of President Bush's nominees to the circuit court of appeals. Not one ever before successfully filibustered on this floor; not one ever before filibustered with the support of the leader of either party. It isn't right.

Mr. SANTORUM. Will the Senator yield?

Mr. TALENT. I will yield, and the Senator is probably doing the Senate a favor by getting me to yield.

Mr. SANTORUM. I want to review what the Senator talked about. See this chart: 168, but that 168 includes district court judges.

Mr. TALENT. Absolutely.

Mr. SANTORUM. Explain the difference between a district court judge and a circuit court judge when it comes to matters of law and the impact of those decisions.

Mr. TALENT. I am happy to comment on that. Everybody knows what is going on here. They are filibustering the court of appeals judges because, yes, they are appellate judges. They are the more important ones. They are letting the little fish go. They are filibustering, or threatening to filibuster, about a quarter of the court of appeals judges. Another reason is they think some of these people might get nominated to the Supreme Court.

Mr. SANTORUM. At the District of Columbia level are trial court judges who basically preside over trials and the circuit court or appeals courts decide matters of law that apply across the circuit, and it can have an influence in other circuits. Is that correct?

Mr. TALENT. That is absolutely correct.

Mr. SANTORUM. Most decisions that are appealed from the trial court go to the appellate court, or the circuit court, but very few go up to the Supreme Court. Is it not true the appellate court makes the final decision in a lot of these cases?

Mr. TALENT. I have read about a group of law professors concerned about an imbalance on the court of appeals. That imbalance just doesn't exist. The same statistics I read before show Presidents back through Jimmy Carter have had each around 10 court of appeals appointments per year. It is a little bit more for the Republican Presidents; a little over 10, and a little under 10 for the Democrats, but there is no real difference. That is why it is very balanced, and we are just coming off two terms of a Democrat President. We are now in one term of a Republican. The next election is probably going to be close. I think that is probably what is working here. I hope my friends on the other side of the aisle who are filibustering don't continue to compare apples to oranges. Let us at least be fair. If you want to talk about how many were filibustered, it isn't 4 out of 168. If they follow through on this threat, it will be 12 out of 46, which is about a quarter. That was not a high point, even though that is just about a quarter. That means that only around 75 percent of them are going to be given an up-or-down vote.

My friend from Arkansas and I work on a lot of things together. She is a great Senator. She was saying if her kids brought home 98 percent in math, she would be pretty pleased about it. I would, too, if my kids brought that grade home. I have three kids. If they brought home 75 percent in math, I would be a little bit concerned, particularly when in the past it has been 100 percent.

Mr. SANTORUM. I think the analogy of the Senator from Minnesota—the Senator from Minnesota says if we are forcing what the Constitution requires 98 percent of the time, or much worse, 75 percent of the time, I think the American public would have a right to throw us out on our ears. I think they expect the Senate to enforce the Constitution 100 percent of the time. Anything less than 100 percent is an abdication of that oath we walked over there right there on those steps before the Vice President and took. The oath has something to do with defending the Constitution—not 98 percent of the time, not 75 percent of the time, 100 percent of the time. That is not what is going on.

Mr. TALENT. I certainly thank the Senator from Pennsylvania.

How much time do I have left, if any?

The PRESIDING OFFICER (Mr. BURNS). The Senator has 2 minutes 22 seconds.

Mr. TALENT. I thank the Senator for his clarification. I think that it is very important.

In the remaining time, I will just close by reading a little bit more about Judge Kuhl. These are real people who are getting unjustly treated in this body which is supposed to be about justice.

Here is what Gretchen Nelson said. She is the officer of the Litigation Section of the Los Angeles County Bar Association and a prominent plaintiff's attorney. She probably gave money to my opponent in the last election. Here is what she said:

> I am a life-long Democrat. I am also a plaintiff's attorney. My political views are and always have been liberal. I firmly agree with U.S. Supreme Court's opinion in Roe v. Wade, and I trust that the decision will remain viable. I am opposed to the appointment of any judicial nominee who is incapable of ruling based upon a considered and impartial analysis of all the facts and legal issues presented in any matter. Judge Kuhl is not such a nominee and she is well-deserving of appointment to the Ninth Circuit.

That is what Senators would have said 5 years ago on this floor. Don't say it hasn't changed.

Anne Egerton, former law partner of Judge Kuhl:

> I understand some have raised concerns about Judge Kuhl's commitment to gender equality and reproductive rights. I don't share those concerns.

Anne Egerton goes through her background with the Arizona Women's Political Caucus.

> I have been a registered Democrat for 30 years, and I have supported [Democratic legislators]. I have no reservations in recommending Judge Carolyn Kuhl for appointment to the Ninth Circuit. I know her to be committed to the rule of law and the application of governing precedents in the area of reproductive freedom; that precedent, of course, includes Roe v. Wade and the many cases which have applied.

I don't think there is anything more to be said. I wish we could get consent to vote on these nominees and then we could go on to other business of the Senate. This is important.

What is happening to these people is wrong. What is happening to the Senate is unfortunate and bad for the country. That is why I am here and that is why we are all here at 4:30 in the morning.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Rhode Island.

Mr. REED. Mr. President, we are here this morning to discuss the status of judges. My colleagues on the other side of the aisle have been rather adamant in claiming they may have been mistreated. I think there is a contradiction in their argument. Frankly, what I witnessed here as a Member of this body over the last several years in the Clinton administration was a process of systematically denying the nominees of President Clinton—qualified, indeed, very qualified nominees in their positions on the Federal bench—doing it not on the floor as we are doing here openly, but using what I would describe as a pocket filibuster. We are all aware of the notion of a pocket veto. The Constitution allows the President a certain number of days to exercise his veto, but at the end of a session he doesn't have to exercise that. He simply has to put the bill in his pocket and it will not become law. That is essentially what the Republican majority did here to so many of President Clinton's nominees. They refused to give these individuals hearings. They refused to take up the nominations or to seriously allow a process for the committee to deliberate and to consider and to recommend them for an up or down vote.

Today, for the majority to come and claim they are being mistreated and that the Constitution is being violated is to me a profound contradiction because they have very determinedly and consistently denied even a hearing to so many well-qualified individuals who were nominated by President Clinton.

That is not to suggest we are in any way trying to match their conduct. The fact we are here on the floor exercising our rights under the rules of the Senate and the Constitution of the United States to make a statement about judges, to make a statement about individuals who we feel for many reasons lack either the qualifications or the judicial temperament to serve successfully on the Federal bench, makes the record quite clear. That is in contrast to the pocket filibusters.

We have been very active and cooperative in moving 168 judges through the committee process to the floor of the Senate and to ultimate confirmation by the Senate. It is a remarkable record.

In the last year alone, I believe we have confirmed more judges than were confirmed under President Reagan's tenure with a Republican Senate at the time. This is not a record of evasion of our constitutional responsibilities. This is a record of meeting our constitutional responsibilities, one of which is to exercise our individual judgment as Senators as to the qualification of anyone to serve on the Federal bench. But as I mentioned before, what we saw so consistently and so persistently under the previous President was a Republican strategy of blocking judges by a pocket filibuster; not here on the floor, but off the floor, denying them right to a hearing.

Let me suggest this has a very pernicious effect on so many women who were nominated by President Clinton. This is a report of some of the judges nominated by President Clinton for consideration by this Senate:

Kathleen McCree-Lewis for the Sixth Circuit—again, my colleagues have been going on and on about the importance of the circuit judges. They are important. What happened when President Clinton nominated Kathleen McCree-Lewis to the Sixth Circuit? She never got a vote; never got around to the process of hearings, a debate in committee, a recommendation to the floor of the Senate; never got through to us for a vote. Helene White to the Sixth Circuit, never got a vote; Elena Kagan to the D.C. Circuit, never got a vote.

By the way, Ms. Kagan is today dean of the Harvard Law School. Is there anyone who would suggest she was not qualified to be a Federal judge? I think that would be quite an extreme statement. She was more than qualified to be a Federal judge, but she never got a vote.

Elizabeth Gibson to the Fourth Circuit, never got a vote; Christine Arguello to the Tenth Circuit, never got a vote; Bonnie Campbell to the Eighth Circuit, never got a vote; Patricia Coan to the District of Colorado, never got a vote; Valerie Couch to the District of Oklahoma, never got a vote; Rhonda Fields to the District Court for the District of Columbia, never got a vote; Dolly Gee to the Central District of California, never got a vote; Marian Johnston to the Eastern District of California, never got a vote; Sue Myerscough to the Central District of Illinois, never got a vote; Lynette Norton to the Western District of Pennsylvania, never got a vote; Linda Riegle to the District of Nevada, never got a vote; Cheryle Wattley to the Northern District of Texas, never got a vote; Lynee Lasry to the Southern District of California, never got a vote; Wenona Whitfield to the Southern District of Illinois, never got a vote; and Anabelle Rodriguez to the District of Puerto Rico, never got a vote.

That is the record of the pocket filibuster; nominated by the President of the United States; qualified; and, indeed one of these individuals I point out is now the dean of the Harvard Law School, but they never got a vote of any kind.

That is what we saw: The rules of the Senate being used by the majority to frustrate the nominees of the President of the United States. Then to come to this floor and claim this is now unprecedented and a usurpation of the Constitution of the United States when we are simply exercising our rights on the floor under the rules of the Senate to express our opinion as to the quality and qualifications of nominees to the Federal bench is I think certainly a contradiction.

With respect to some of these judges, I think the key issue here is judicial temperament. Indeed, there is a certain degree of sensitivity about judicial temperament as one goes from the district court to the court of appeals. It is often the case that a district court judge is younger and the thought is that person will mature on the bench and maybe in future days will be of such experience and demonstrated judicial temperament that she or he would be promoted to the circuit court of appeals, and then there are direct nominees to the circuit court. But again, you have to look at someone's breadth of experience, maturity, and intellect, and again their judicial temperament.

The nominees who have been identified and have been questioned by Democrats are individuals by and large whose judicial temperament is quite questionable.

Priscilla Owen has had a long history of putting her own personal opinion above the law, of injecting political ideology into the law, rather than following precedent.

One of the things about a circuit court judge is you have to follow precedent. The Supreme Court can try to create law, but a circuit court must follow precedents of the Supreme Court. In case after case after case, there were such situations in which she just defied precedent. There is a case of medical malpractice, Weiner v. Watson, when one of our colleagues, the junior Senator from Texas, was on the Texas Supreme Court Justice, and he unequivocally rejected Judge Owen's argument, stating it was contrary to the Texas State Constitution.

Are we going to put people, on courts of the United States who have a predilection to not follow the Constitution? I think not. That is one example.

You can see the same with Justice Brown who is a justice of the California courts. She has been criticized on the bench for injecting her own personal views and not following precedent. On a number of occasions, Republican colleagues have criticized her dissenting opinions for their judicial activism. In one case, Brown was "chastized for imposing a personal theory of political economy on the bench contrary to established precedent."

In another, she was chastized for refusing to accept acknowledged previous judicial precedent. That charge is extremely serious when you are dealing with a judge who is charged with following the precedent, following the Constitution, and following the law.

The same may be said about Judge Kuhl; again, ideology rather than legal temperament and legal reasoning seems to be her forte.

There is case after case after case. There are reasons, solid reasons to question these nominees. Our job as Senators is to raise those questions.

There have been 168 judges confirmed by the Senate for President Bush, a record number, a remarkable number. In fact, vacancies on the Federal judiciary are the lowest they have been in recent memory. It is because we have been working together. But that does not mean we surrender our obligation to question and challenge those judges who do not meet the test of judicial temperament, nonpartisan application of the law, and nonideological application of the law. And there are those whose nominations have failed.

That is what the Founding Fathers envisioned when they created a system of advise and consent. It is not advise and approve. It is advise and consent. The Senate plays an active role. There is no group of people who played a more active role in considering the nominees, certainly of President Clinton, than the Republican majority today. They did it persistently. They did it deliberately. They did it consciously. We are exercising constitutional powers.

One of the examples that was used and one of the judges who was an eminent jurist in California, nominated for the Ninth Circuit, is Judge Richard Paez. He was subject to cloture votes. He was subject to situations in which he was challenged. That is the rule. You get to do that. In fact, Judge Paez waited 1,500 days even to get a vote. That is not the case with these nominees. There were 1,500 days in which he was nominated to the Ninth Circuit. His nomination was in limbo. Finally, there was a vote and people rose up. Some supported a motion for cloture; others rejected it. So this notion that it is unprecedented to challenge a nominee for the Federal judiciary through the cloture process is fanciful. It has happened very recently. It happened with Judge Paez.

He is not the only one. Sixty-four of President Clinton's nominees never received a floor vote. One nominee, Ronnie White, was defeated on a floor vote.

We have a situation where the deeds and actions are not wrapped in the dim mist of history. These nominations were before the Senate 2 or 3 years ago. The deeds don't match the words we are hearing today. All of the outrage about the constitutional challenge and crisis. That outrage was certainly not manifested a few years ago when Judge Paez was waiting 1,500 days for a hearing and then was subject to a cloture vote just as these nominees are being subject to cloture votes.

That is one point. But there is a larger point. We are spending hours and hours and hours to demonstrate a supposed crisis, the fact that 4 individuals out of 172 have not been confirmed by this Senate, when in fact there are much greater problems facing this Nation. We have an unemployment rate that continues to hover around 6 percent, a budget deficit that is exploding and inhibiting appropriate action by this Senate on so many important issues—education reform, worker training, dealing with issues both large and small.

We have a crisis internationally that is costing us the lives of our soldiers and military personnel and billions of dollars from our Treasury. We are spending all night, long, precious hours conducting a demonstration, when we should be working on appropriations bills and we should be dealing with the issues that confront the families of America. I think it is really a demonstration of listen to what I say, don't watch what I do. Because when we watch what the Republicans do, the record is remarkable, the high number of President Bush's judicial nominees who have gone through. It is extraordinary compared to the treatment President Clinton received.

I would hope when we finish this exercise, we can in fact go forth and deal with the issues which are essential and should be dealt with. We have a minimum wage that has been stuck for years now. It should be increased. We have a host of other issues that need addressing. I hope we can.

I yield to my colleague, Senator CORZINE.

Mr. SANTORUM. Will the Senator yield for a question?

Mr. REED. I am happy to yield.

Mr. SANTORUM. The Senator from Rhode Island has complained about how the Clinton nominations were treated. Does the Senator from Rhode Island know there were 42 judges who were not brought forward out of committee. But at the end of the Bush presidency, Bush 1, there were 54 judges not brought forward out of committee? Under a Democratic Senate, President Bush 1 had 54 that were not considered. Under a Republican Senate, President Clinton only had 42 nominees. I would just suggest the record by the Republican Senate was actually better than the last Democratic Senate.

Mr. REED. Let me reclaim my time. I would simply say regardless of the residue of judges in the Bush administration versus the end of the Clinton administration, the point I am making is there was apparently a very consistent effort on the part of Republicans to deny votes to all manner of judges. I think 64 of President Clinton's nominees never got a vote, never got to the floor. I have the time. I think what it amounts to is a very deliberate protest, which the majority has the power to do, of using the committee process to deny hearings and to deny votes.

It is a contradiction then to come to the floor and say: We can use the rules of the Senate. We can use these rules and we can deny judges, but if the Democrats choose to use the rules of the Senate to challenge a judicial nominee of the President, Bush or otherwise, that represents a violation of the Constitution.

That is my point. The point is borne out regardless of the residue of judges of either administration. The record today, this Senate and the Senate under the leadership of TOM DASCHLE, shows we have done a remarkable job in confirming this President's nominees. That was not suggested in the treatment of President Clinton's nominees.

I yield to my colleague from New Jersey.

Mr. CORZINE. I appreciate the discussion my colleague from Rhode Island brought up. I wanted to clarify one point of questions about an individual. Did you suggest Elena Kagan is now the dean of the Harvard Law School?

Mr. REED. I suggested it because that is my understanding, that she was nominated for the District of Columbia circuit and she is now the dean of the Harvard Law School. She is a remarkable dean. I am somewhat prejudiced since I graduated from Harvard Law School, but she is a remarkable personality.

Mr. CORZINE. Was she unable to get a hearing in the Judiciary Committee when President Clinton nominated her for circuit court?

Mr. REED. Let me just say my recollection is she was not given a vote after being nominated to the court.

Mr. CORZINE. So she suffered from what you were suggesting, a pocket veto.

Mr. SANTORUM. Will the Senator yield for a question?

Mr. CORZINE. Yes.

Mr. SANTORUM. Do you know when the nominee you are talking about was nominated for that position?

Mr. CORZINE. As the Senator from Pennsylvania knows, I was just inquiring myself to try to find out more about this. This is not one of those I was aware of. I have a whole list of folks who waited 1,454 days, 1,000 days for a hearing, 602 days. If somebody looked at one of those nominees who was not allowed to come to the floor of the Senate for a vote, at least a broad group of folks who review the qualifications of an individual, you are qualified enough to be the dean of Harvard Law School but somehow not qualified to have a vote on the floor of the Senate.

Mr. SANTORUM. If the Senator will yield for a point of information.

Mr. CORZINE. Certainly.

Mr. SANTORUM. My understanding is the nominee you are referring to was nominated in August, 2 months before the election.

Mr. CORZINE. If the distinguished Senator from Pennsylvania would allow, I don't know what elections have to do with confirming nominees, if they have gone before the Judiciary Committee and they are qualified. That seems disingenuous in the context of, we have qualified folks. They ought to be dealing with the circumstance of having an opportunity to be reviewed and brought to the floor. What we are debating is what is the technique that has been used at different times in our history—by the way, the pretty immediate history—to deal with a very simple question that some people want to understand the judicial philosophy and actions, how an individual will deal on the court. Sometimes when Republicans are not controlling the White House, they are willing to use the committee system to make that happen. Some of us on our side of the aisle sort of wouldn't mind debating folks on the floor, using the rules to make sure we bring out extremists' points of view.

I point out, 168 to 4. I will go through the circuit courts in a minutes.

Mr. REED. Will the Senator yield?

Mr. CORZINE. Yes.

Mr. REED. A question has come up about Elena Kagan's nomination. I have some information. Ms. Kagan was nominated in June of 1999. For 18 months, there was no action on her nomination. I believe her nomination was certainly available for action by the committee and by the relevant bodies of the Senate for 18 months, yet she never received a hearing and there was no floor vote.

Mr. CORZINE. I appreciate the Senator from Rhode Island helping me respond to the Senator from Pennsylvania's question: 18 months, not 2 months; no hearing; no floor vote; someone who at least some folks who look at legal capacity and qualifications thought enough of, after she was not reviewed by the Senate either with a hearing or floor vote, to become the dean of the Harvard Law School.

Again, my point is, we seem to be talking out of a sort of surreal context. One hundred sixty-eight to four is on the face of it an important statement of how there has been cooperation. I went through in New Jersey five for five on district court judges and one circuit court judge. When people work together, you can get the positive results in this whole process.

The 168 to 4 shows we can have a positive result. Ninety-five percent of all judicial positions are filled. That, by the way, is in contrast with only 75 percent at the end of the Clinton administration, because there had been such a limited number of folks who had been able to actually get a hearing and ultimately a floor vote.

There is also the statement that we are somehow or another being far more restrictive. I do want to review that it is 10 times the number of nominees blocked by the technique of not giving hearings or allowing for nominations to be reported to the floor that occurred in the Clinton administration. It was 63 nominees blocked in the 1995-to-2000 period, against 2 percent so far in the 2001-to-2003 period of Bush nominees. There is something about the raw numbers of this that don't make sense and wouldn't to anyone if they actually focused on them in a commonsensical way.

I want to get to the circuit court judge issue. If you look back to the Carter administration on through, we heard it is roughly 10 circuit court judges a year per individual. This is sort of like figuring out when the best rate of return in the market is over the last 50 years. You can pick certain sections and everything looks wonderful. I would just like to look in this 1995-to-2000 period when Clinton nominees were languishing in the hearing room. Hearings held for judicial nominees averaged for the Clinton administration 9 versus 22 with respect to what is going on in the current situation. Judicial nominees given hearings, 43 versus 81. Circuit court judges, nominees given hearings, 9 under President Clinton, 19 circuit court. That is on average. The confirmation is 68 judges confirmed on an annual basis versus 38 in the Clinton years. That is 1995 to 2000. Circuit court judges, it was only 7, not 10 as we heard before, if you look at that 1995-to-2000 period. It is 12 judges under the current administration.

We can pick these numbers, any number you want, to try to make cases. But the fact is, we are approving more judges, we are dealing with the situation on a much more legitimate basis, on an ongoing basis than what occurred in the previous administration.

I just happen to have the yearbook of those folks who were left out in 1995 to 2000. There could be four we would have here supposedly under the current situation.

By the way, I happen to know one of these judges, Stephen Orlofsky, a district judge in New Jersey who was unanimously confirmed for district court judge and then never got a hearing. I happened to know the specifics of that because it was closer to home. Ultimately we just filled this position with Michael Chertoff who seems to me to be a fine appointment, one I recommended, stood by and pushed very hard for because people worked together. They cooperated, the White House, the folks in the Judiciary Committee, and the Senators from the area. I think this can be done. I think 168 to 4 shows it is being done. I would contrast that with the over 50 nominees, 1995 to 2000, who never got a hearing.

I am just going to point out two of these. Judge Helene White of Michigan was nominated to the Sixth Circuit, waited in vain 4 years, 1,454 days for a hearing. It may not be a filibuster on the floor, but for 1,454 days she couldn't get a hearing. I think it gets to the same result. We are not dealing with Presidential nominations. The fact is, there were 55 of these folks. In fact, we have only identified four who seemed to be so far out of the mainstream that a number of us are concerned about how that fits.

I could go through this. There is a James Beatty from North Carolina nominated to the Fourth Circuit. He didn't get a hearing either, waited 3 years, 1,033 days, never got a hearing. This went on. You could get on down into the weeds on a whole series of these folks. But these people never got a hearing. It is just a different technique. We are talking about four people. There is a legitimate view that their actions were outside the mainstream. Maybe they got votes once they got to the floor, but they never got out of committee. I think that is a major issue.

The other thing I will segue off into is the issue the Senator from Rhode Island talked about. What is really hard about this is there is an incredible agenda for America to be discussing. I think we could afford to spend 30 hours talking about how we put 9 million Americans back to work. I think it is pretty hard to understand how we got the priorities. We have 168 positive elements with regard to our judicial nominations accepted and only 4 turned down, but we have had 3 million lost jobs, 2½ million manufacturing jobs. We have had the deficit go from a $236 billion surplus to a $304 billion deficit. We have seen a $500 billion plus negative cashflow because we are managing the economy poorly. We have seen it hurt and bite real individuals, 9 million. Two million people have been unemployed longer than their unemployment benefits would allow; 4 million people have dropped off the rolls.

It is an incredible misprioritization, in my view, that we are talking about four judges when there are 9 million people that we ought to be figuring out how to get back to work.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CORZINE. I thank the Chair. We will be back.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I want to respond to what the Senator from New Jersey has said. I think to put it into the proper context, the Senator from New Jersey is talking about people who were nominated by President Clinton who didn't get hearings. Most of the people who didn't get hearings had blue-slip problems. Democrats, right now, are holding members of their States in committee—right now—with blue slips. That has been done.

In fact, there are a whole bunch from Michigan being held by the Senators from Michigan for the circuit court, by blue slips. Democrats are holding up judges right now. So the idea that we are going to compare that, which has been a historical right of Senators, to the home State being consulted on nominations for the district court—speaking as a Senator from Pennsylvania, I can certainly suggest to the President who I would like him to look at for the circuit court from my State. But I don't get a right to tell him who it is. The precedent has not been that way. The Senators from Michigan are blue-slipping these nominees and they have blue-slipped others.

Some of the nominees pointed out by the Senator from New Jersey, held by the Clinton administration, were actually pulled by the Clinton administration. The number that were actually not pulled because of FBI problems were 42, not 63; 42 did not receive a hearing. Some of them had blue-slip problems.

Members were not properly consulted from the States. Some were Democrats and some were Republicans. This has been a practice throughout Senate history. The question is not whether that practice should be changed. Some suggest—and, in fact, there has been a movement by several people to try to change that process. But this is something that is a prerogative of home State Senators, which has been a prerogative of home State Senators throughout the tradition of the Senate. It is one that I think most Members would say is probably a good thing.

Home State Senators are consulted by the President before people from their State are nominated. They should have some advice and consent into the process. When they don't, some Senators get very upset about that and they sign a negative blue slip.

So let's talk about apples to apples. We have 42 Clinton nominees not acted upon for a variety of different reasons; some the committee didn't like, some were blue-slipped, some were submitted late in the process. So there were 42, after 8 years. There were 377 confirmed nominees and 1 was defeated on the Senate floor. There were zero filibusters on the floor.

Under President Bush 41, there were 54 nominees not considered by the Democratic Senate Judiciary Committee—more than President Bush, substantially less number of nominees confirmed by the Senate.

Now, we don't know how many George W. Bush nominees are not going to be confirmed by the end of this year or next year, but there will be some. Some will be nominated late in the process, and it takes a while for the process to work. There will always be some in the pipeline. That is the way the process works. So the idea that we are going to take the normal process of processing judges here and say we have not considered every one of them and that sort of makes everything all equal, no it does not.

The issue here is that, once the Judiciary Committee has done their job, just as every committee here does their job—lots of committees have nominations. It is their job to scrub them and find out whether they are qualified and capable to do the job and report them to the Senate floor if they think they are.

I was on the Armed Services Committee. We reviewed thousands of nominations; some we didn't report out because we didn't think they were proper for promotion or appointment. That is the obligation of the committee.

We get lots of bills in these committees. Is every bill that we don't report out somehow as a result of a filibuster in the Senate? I don't think so. That is the job of the committee. Once the committee makes the determination and the majority of the committee—whatever it is, Democrat or Republican, or a combination—reports a nominee out, reports a bill out, the question is, what happens on the floor of the Senate?

With respect to nominations, since the filibuster rule was put into place, 2,372 nominations have come to the floor of the Senate, and not 1 has ever been stopped from an up-or-down vote. Not one. All of them received up-or-down votes.

This idea that 168 to 4—we keep hearing that is a good percentage. Is it? Is it a good percentage when the four are subjected to a process that has never been done before? It is soon to be 6, promises to be 12. All of a sudden, 4, 6, 12—exponential growth here. Why? Because we are going down a very twisted and tortured path, with the logic that is being followed by the minority in the Senate. What is happening here has never happened in the history of the Senate.

This is a great body. Incredible debates have occurred here in the past. This is the greatest deliberative body in the world. It should be. We should talk about these issues. It is great that we are here all through the night talking about this. But in the end, our responsibility, according to the Constitution, is what every other Senate for 107 sessions of the Senate, for 214 years, has done. Our responsibility under the advise and consent clause of the Constitution is to consider judicial nominations and give them a vote up or down. That is what every Senate leader, every Senator who had the opportunity to have an impact on this process—they all came down with the decision that that is what this constitutional provision meant—until this year.

Some have suggested, well, these judges are so far out of the mainstream; they are so bad; there have never been judges this bad; these guys are really bad; they are not just bad, they are really bad, worse than we have ever seen in 214 years; nobody has ever been this bad; therefore, we have to change the rules.

Let's talk about a couple of judges. One who I voted against—I will use one of them—was Judge Paez, who was referred to on the other side. I voted against Judge Paez. But I voted for cloture. I thought Judge Paez would be one of the worst judges this country would ever see. I didn't want him to be a judge. He was already a judge in district court, but I would loathe to put him on the Ninth Circuit because I thought he would absolutely take the Constitution and set a match to it and throw it in the trash can and do whatever he damn well pleased.

Well, they are saying that Judge Pickering is so far out of the mainstream that he would light a match to the Constitution and throw it away and do whatever he pleases. That is pretty much what they are saying. Well, let's look at Judge Pickering and Judge Paez and see what they did with two similar cases.

Judge Paez and Judge Pickering both had cases before them having to do with sentencing guidelines. Judge Pickering didn't like the sentencing guidelines that were before him in a case. The other side has used this case as their principal reason—one of them—of opposing Judge Pickering. They didn't like the way he dealt with this case because he didn't like the sentencing guidelines. So what did Judge Pickering do that they really don't like? They find it deplorable conduct that this judge would do this. What did he do? He complained about it. He complained about it. That is it. Judge Pickering complained about it.

What did Judge Paez do? He struck it down and said it was unconstitutional.

Now, who is the judge that is throwing the Constitution in the trash can? What was the provision that Judge Paez struck down and said was unconstitutional? The three strikes and you are out provision, which was voted in by the people of California. What happened to Judge Paez? His decision was overturned by the U.S. Supreme Court.

Who is the mainstream and who is the extreme? Every time you hear mainstream over there, put an X in front of it. It has nothing to do with mainstream. It is extreme. It is dangerous.

Let's talk about some of other Judge Paez's decisions. He was one who tried to stop the California election a few months ago. Yes, he was one of the ones who said it is unconstitutional for them to do that. Oh, by the way, he was also on the Pledge of Allegiance case and said "under God" should not be in the pledge. Oh, he is very mainstream, the kind of guy we really want. The Senator from New York said tonight, "I think he is in the mainstream." Understand, folks, what mainstream is: "Under God" not allowed in the pledge, the three strikes and you are out law is unconstitutional, and the California election is unconstitutional. If I don't like it, it is unconstitutional. That is mainstream? A government of men, not of laws is mainstream? This is very dangerous, folks.

People ask me all the time: Senator, why should this matter to us, what is going on here? Why does this matter? What do judges have to do with my life? Well, the answer to that question should be: not much. That is what the answer should be—not much. Unless you get into trouble one way or another, it should not matter that much to you at all.

What a judge should do is as little as possible. They should try to make decisions based on the narrowest law possible, not try to make pronouncements and change the law from the bench or amend the Constitution from the bench. They should do as little as possible.

See, that bothers a lot of my colleagues on the other side of the aisle. They don't want judges who will do as little as possible. What they are concerned about with Judge Pickering is not that he will do as little as possible. They are concerned he will do as little as possible, that he will make decisions based on the narrowest grounds, not broad, sweeping grounds, the grounds that change laws and create new rights or responsibilities. No, they want someone who will put their world view in the law that they cannot accomplish through the legislative process. They want judges who will do it through the judicial process. That is what they are getting. They don't want anybody who will say we are going to stop doing that.

That is not what the Founders wanted us to do here. If they wanted us to respect the legislative branch and presume that what they pass is constitutional—if in fact it is not, we have problems—then decide the issue on the narrowest grounds. That is what we want. That is not what they want.

I am really troubled. I am really troubled by what I see going on in the Senate of people who are willing—for what? For what cause? Are they willing to take the Constitution of the United States, when it comes to the confirmation of judicial nominees, which has been upheld by every Congress in history, and turn it on its ear to accomplish some goal?

My question is—and I asked it earlier—in 214 years, no group of Senators ever decided that it was what they cared about, with respect to the courts, that it was so important that they were willing to go against the Constitution, which says a simple majority for advise and consent. It did not require a supermajority. They were going to go against the Constitution and raise the bar. No Senate in history said we were going to raise the bar and require a supermajority vote, given all of the incredible issues that we had to deal with in the Senate: no Senate has ever said the issue today is so important that we need to raise this bar, that it is best for our country to do that. Why? Because most Senators always felt, as I deeply feel, that we are a Nation of laws, and this Nation of laws and of constitutional law is important to preserve. We should not just throw it over for an immediate political whim, or policy whim, because once the process is corrupt, once the law is violated, once the procedures are changed, you cannot put the genie back into the bottle.

What this debate tonight is all about, this process we are going through is is a plea. Someone suggested it is not a very effective plea because the chances of getting a vote up or down on the judges is not very high. Yet it is a plea. It is a plea to those who have done something unprecedented in the history of this Chamber to stop. If they stop and they admit this was wrong, that this was not the way to deal with judicial nominations, that this is not a precedent they want to set—not 4 times, or 6 times, or 12 times but probably many times after that—and that this is not the right way to handle judicial nominations, maybe then we can bring some civility back to this process. Maybe we can say to the people who want to serve this country in one of the most honorable ways they can—to be a judge—a very important function in our society, maybe we will be able to attract the best and brightest to come here and offer up their services and not feel they are going to be put through a washing machine or, worse yet, maybe somebody who cares about the long-term health of our judiciary, that we don't politicize it by applying litmus tests. Let's just lay the cards on the table. What is this cause? What is this cause that the other side is so passionate about that they had to change the rules? The cause is the right to privacy. That is the cause—Roe v. Wade.

I have given many talks on abortion on the floor of the Senate. I said the right to privacy under Roe v. Wade has had its tentacles reach out and corrupt so many areas of our culture: abortion, eugenics, euthanasia, stem cell research, cloning, the right to same-sex marriage—all of these rights come from this right to do whatever you believe is right for you to do. You are the law. You have the right to do whatever you want to do. That is where this right comes from.

I said it has infected and poisoned the culture beyond what people even today realize: the cheapening of the value of human life, the debasement of the family, the basic social structure of our country. It is corroding and eroding who we are. But I forgot one, it is now corroding and eroding the Senate.

Mr. HATCH. Will the Senator yield for a question?

Mr. SANTORUM. I am happy to yield.

Mr. HATCH. I would like to ask the distinguished Senator, we have seen this poster they have over there: 168, and only 4 stopped. But isn't it true that there are at least 12 circuit court of appeals nominees, ones who correct lower courts who many times make mistakes, who are being held up in filibusters here—not just four?

Mr. SANTORUM. I say to the Senator from Utah, the chairman of the Judiciary Committee, there have been 28 or 29 circuit court judges confirmed. Out of that 168, there are 29.

Mr. HATCH. Right.

Mr. SANTORUM. So as the Senator from Missouri said further, the little fish they let go through the nets but they catch the big fish, the folks who rule on the law, who have the ability to influence the character of the law in this country, the appellate level. They catch the big fish in the net. They have let 29 go through. But 29 to 12, that is about a third of the nominees that the President has put up for the circuit court who have been caught.

I ask the Senator from Utah if he knows what is the usual percentage of circuit court—by the way, let me state this. Never have circuit court judges ever been filibustered, ever. But let's set aside the unconstitutional filibuster occurring right now, the unprecedented abuse of the Senate rules that is occurring here right now. Let's go back as if this were being done on an up-or-down vote.

What percentage of Presidential nominees for the circuit court get through and are approved in a normal course?

Mr. HATCH. Normally in the Reagan-Bush I-Clinton years, 80 to 85 percent—85 to 90 percent.

Mr. SANTORUM. So 85 percent are approved; the rest are held in the committee.

Mr. HATCH. By the end of the third year.

Mr. SANTORUM. By the end of the term. Can you recall, let's say, what is the percentage in the first 2 years of an administration? What was the percentage in the last few years under Clinton, under Bush I, and under Reagan?

Mr. HATCH. Well, in the case of Bill Clinton, President Clinton, 91 percent, if I recall correctly.

Mr. SANTORUM. It was 91 percent.

Mr. HATCH. People don't realize how important these circuit courts of appeals are. We have shown this chart that they have is not only inaccurate, it is a bold-faced lie. Because they can't really come out here with a straight face and admit they are going to filibuster at least 12 circuit judges and some district court judges.

Mr. SANTORUM. I ask the chairman, my understanding is they are only putting four up so they are suggesting they are not filibustering Janice Rogers Brown and they are not filibustering Carolyn Kuhl.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate now proceed to consideration of Calender No. 455, the nomination of Janice Brown to a United States Circuit Court for the District of Columbia Circuit, provided further that there be—pick a number—50 hours of debate equally divided for the consideration of the nomination, provided further that following the debate the Senate proceed to a vote on the confirmation of the nomination with no further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BINGAMAN. I object.

Mr. SANTORUM. So that is 168 to 5. Let's go to the next.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate now proceed to consideration of Calendar No. 169, Carolyn Kuhl to be a United States Circuit Judge for the Ninth Circuit, provided further that there be 100 hours of debate equally divided for the consideration of the nomination, provided further that following debate the Senate proceed to a vote on the confirmation of the nomination with no further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BINGAMAN. I object.

Mr. SANTORUM. I think we need to change the chart. It has to be 168 to 6 now. Anytime the chart comes up I think everybody here, for the record, should make it clear, 168 to 4 is now an outdated chart.

Mr. BINGAMAN. Will the Senator yield for a question?

Mr. HATCH. It is a total misrepresentation is what it is.

Mr. BINGAMAN. Will the Senator yield for a question?

Mr. SANTORUM. I will be happy to yield for a question.

Mr. BINGAMAN. Will the Senator concede that there is a difference between a Senator objecting to a unanimous consent request which had not been presented before on the Senate floor and the stage of a filibuster?

Mr. SANTORUM. I say to the Senator that in normal cases I would say that may be the case. But it is clear we are going to have a cloture vote on Friday on this nominee. It is abundantly apparent to everyone who has been listening to these proceedings that the chances of the two gentlewomen from California, Ms. Kuhl and Ms. Brown, being given the record 60 votes to defeat cloture, or to get cloture, is highly unlikely. So we are not going to be able to get cloture. That is at least what we have been hearing from the other side. We are not going to get cloture. We can't get unanimous consent. It sounds like a filibuster to me.

So I agree in part getting a unanimous consent is not in and of itself a grounds for saying it is being filibustered but voting against cloture certainly is. Other than the Senator from Georgia, that has seemed to be the order of the day on that side of the aisle.

I am a very optimistic person so I am hopeful I am wrong.

Mr. ALLEN. Will the Senator from Pennsylvania yield?

Mr. SANTORUM. I am happy to yield.

Mr. ALLEN. When my colleague from the Commonwealth of Pennsylvania talks about what makes this different for the Democrats, the difference is really about 3 years and a different President. I have looked at previous statements made by Senators on these issues, though I was not a Member of the Senate until 2001, and I am listening to all of these arguments being made now. I was earlier in the day quoting—much earlier in this day——

Mr. SANTORUM. Yesterday.

Mr. ALLEN. Yesterday. Time really passes when you are having fun—I feel as if I should be singing like Faron Young: "Hello Walls."

As I was saying, Senator LEVIN is quoted as saying in 2000:

> We should not be playing politics with the Federal judiciary. Candidates for these vacancies deserve to have an up-or-down vote on their nominations.

Earlier this morning, I listened to Mr. REED, the Senator from Rhode Island and the Providence Plantation. But in 2000 he said:

> I ask my colleagues to take their constitutional duties seriously and vote for these nominees on the basis of their objective qualifications, not on the basis of petty politics.

Another quote from Senator REED of Rhode Island, this is from the March 9, 2000 CONGRESSIONAL RECORD. He said that there is "considerable attention" being paid to various nominations

> . . . especially among members of the Latino community because the Senate is not doing its job. This is troubling. In regards to

nominations the public rightly expects us to move judiciously and expeditiously and without regard to politics.

Those are the prior statements. The statements we hear from our Democratic colleagues on this floor—whether late last night or early this morning, are inconsistent with previous statements. It is a double standard within their own ranks.

Mr. SANTORUM. I say to the Senator from Virginia that he is absolutely right. The Senator from the Commonwealth of Virginia is right. But I will tell you who has been consistent. Senate Republicans have been consistent. We said all along we are not going to filibuster judges. When holds are put on a nomination—a hold meaning I need to be notified for a unanimous consent and I may want to talk some on this nomination or this bill—we said we are not going to mess around with that. We are going to vow to wipe out holds, everything else. We are going to move nominations. We are going to get up-or-down votes. We are not going—we are going to have cloture. We are going to get the people's business done.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me speak for a few minutes on this issue that brings us here at this early hour and then also talk about another issue that I think also deserves some serious attention by the Senate; that is, the health care crisis that we face in the country. But let me first talk about this process for nominating and confirming Federal judges.

The obvious question is, How is the system intended to work under our Constitution, under article II of our Constitution?

As I understand it, based on my reading of article II of the Constitution, the President has the authority to nominate judges and it is fairly clear from the language of that document that the intent is that he will consult with the Senate, that he will make a nomination based on that consultation, that then the Senate will review the nominee and confirm or not that nominee—then either go forward or not with that nomination.

In fact, with regard to most nominees I would say the system works very well. In fact, it has worked with previous Presidents. It is working with this President.

Yesterday I was present at a hearing of the Judiciary Committee where we had a nominee from New Mexico who has been nominated for our district court, Federal district court there. I support that nomination, the nomination of Judith Herrera for that position. Senator DOMENICI strongly supports that nomination. He recommended her to the President for that position.

Frankly, the White House consulted with me—consulted, I am sure, with Senator DOMENICI but consulted with me as well—and asked if I would support this nomination.

I had the chance to meet with the nominee, to talk with her, and of course I have known her for many years, and I was very glad to support her nomination. That is essentially the process we have followed with regard to all of the nominees for Federal district court positions in my State of New Mexico and with regard to the court of appeals position which is reserved for our State, New Mexico, on the Tenth Circuit Court of Appeals.

There again, the President and Senator DOMENICI both consulted with me before a nomination was sent forward. I had a chance to review the nominee and concluded that I would strongly support that nominee.

So the system, in fact, generally works the way it is intended to work. We get very good people serving on our Federal courts as a result of that.

But for some reason as regards some of these judges we are arguing about, the President has chosen not to follow this approach. In some cases the President has chosen to nominate people without consulting with the Senators from the States those individuals hail from and has done so in many cases over the strenuous objection of Senators from those States.

There is strong opposition from the States, for example, to the two nominees I was hearing about a few minutes ago from the Senator from Pennsylvania, Judge Kuhl and the other is Judge Brown, from California.

In both of those cases, as I understand it, the President has determined to go ahead with nominations. He has nominated those individuals and he has done so over the strenuous objection of both Senators from the State from which those two nominees come. To my mind, it is somewhat unprecedented in the Senate that both Senators from a State would object strenuously to a particular nominee and the President would say, that's your problem; I am going to go ahead and nominate them anyway.

What's more, the Judiciary Committee would go ahead and confirm or recommend those two nominees for confirmation over the strenuous objection of the two Senators from the State I involved—to me that is unprecedented. We have all this talk about a blue-slip procedure. That is out the window as far as I can tell. The blue-slip procedure used to mean that unless you got—unless the judiciary had returned to it a blue slip signed by each Senator from that State, there would not even be a hearing on the nominee. That was the system that prevailed.

Not only are we to the point where, even if the Senators from the State where the nominees come from do not return a blue slip would they be voted out, they can even affirmatively object to those nominees and the Judiciary Committee goes ahead and votes them out at any rate. They put them on the Senate floor and they file a cloture motion and they say we are going to have a vote on the Senate floor on these individuals; we could care less what the Senators from the State involved think about these nominees. That, to me, is an unprecedented procedure. I am not familiar with that.

I think about my own situation. As I have indicated, I have been pleased with the courtesy and consideration I have received from the White House and, of course, from my colleague, Senator DOMENICI, with regard to nominees by this President for Federal judicial positions. I have always been consulted before the nomination was sent forward. I have been given a chance to meet with those nominees and have been given a chance to get back and say: Yes, these are people I would support.

I have assumed in going through that process that, if I had come to a different conclusion, if I had determined that I had a strong objection to one or more of these nominees, that would also be honored and that the President would find someone else who was acceptable to, of course, the President but to the two Senators from the State as well before going forward with the nomination. I have assumed that. I still assume that. But that has not happened in the case of some of these nominations.

As I understand it, tomorrow we are going to have a vote on a cloture motion on the two judges I mentioned. You can argue about the merits of the positions that these judges have taken, but the thing that sticks in my craw, the issue that I want to focus on is the process. Why would I want to vote in favor of going forward to confirm a judge when I know the two Senators from the State that the judge comes from strenuously object to that judge being confirmed?

If the shoe were on the other foot, if in fact I was the Senator who was objecting, I would hope my colleagues in the Senate would support my right to object and to keep that person from being confirmed as a Federal judge. I am not sure they would do that, but I would certainly request they do that. That is exactly the request we have received from the two Senators from California, one of whom serves on the Judiciary Committee, and both of whom have spent extensive time looking into the records of these two judges. Why in the world are we not willing to defer to their view on this and hold up on confirming these judges? It seems to me that is the tradition of the Senate and we ought to adhere to that tradition. I think the President ought to adhere to that position.

We are talking here about what might be wrong with the process for confirming judges.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. BINGAMAN. I am glad to yield.

Mr. ALLEN. If I may question the Senator, using the criteria which he set forth insofar as the two judges being opposed and which we are now debating. My colleague said that the reason or a rationale for him to vote against them is because the two Senators from California are opposed to these two nominees? In the case of Priscilla Owen, both Senators CORNYN and Senator HUTCHISON are strongly in favor of Justice Owen. Does that mean that when we get to a vote on Justice Owen the Senator from New Mexico will then vote to move forward to at least allow a fair up-or-down vote on Judge Owen since both Texas Senators are strongly in favor of her?

Mr. BINGAMAN. Mr. President, let me first say I think that is a very good question. The answer is, no, I would not vote to move forward with a vote on Judge Owen because of the other problems that have surfaced with regard to her views and her judicial record. But I think as I approach this issue we have a threshold question. The threshold question is: Do the Senators from the State that is affected support these nominees? If they don't, the President shouldn't nominate them, and the Judiciary Committee should not report their nomination to the Senate floor. If they do support these nominees, there is still an obligation on each Member of the Senate to review the nominee and to determine whether in fact we believe that nominee should be confirmed for a Federal judgeship. That is the process we are going through.

I would say I do not think just getting the support of the Senators from a particular State entitles a person to a lifetime appointment to the Federal bench, but I do think that absent the support and in the face of strong opposition from the Senators from the State that is affected, the Senate should not be considering the nominees under these circumstances.

To criticize those of us who do not want to move ahead with an up-or-down vote on that on the theory we know how an up-or-down vote will come out on these issues, the President has very good ability to line up Republican Senators to vote for virtually anything, so far as I can tell—not just on judicial nominations, but virtually anything he opposes around here. I am amazed, frankly, at some of the willingness of some of my colleagues on the Republican side of the aisle to march down to the Senate well and cast a vote in favor of positions the President is advocating regardless of how it would affect our constituents. We know what the outcome will be if we go to an up-or-down vote. I think it would be a disservice to the Senators from the States affected for us to go ahead and confirm these individuals over their strenuous objections.

I hope when we get to these votes on cloture tomorrow on these particular judges we have talked about that we will not move ahead and invoke cloture.

I do not think, as far as I know, based on the information I have, none of them are individuals I would favor promoting to the positions they have been nominated for.

I know my colleague is here and may wish to speak as well. I don't want to use all of our time.

Let me just talk for a minute about another issue. In many ways, this is a very unusual process we have gotten into here with a 30-hour diversion from the other business we could be pursuing here in the final weeks of this legislative session. There is other important business. Frankly, when I go home to my State of New Mexico, it is difficult for me to explain to people in my State who I represent why I am not dealing with some of the issues that directly affect them in their daily lives. Instead, we are here talking through the night about judicial nominees in many cases who are strongly opposed by the Senators from the States they come from.

I want to speak for just a few minutes about the health care crisis in the country. Earlier this year, I introduced the first part of a series of proposals to try to strengthen our Nation's health care safety net. That bill is entitled Strengthening Our States, or the SOS Act, of 2003. It seeks to protect the Medicaid Program, to improve the Medicaid Program. That is a program that is under severe stress and pressure because of the budgetary problems in our States. Dianne Rowland and Jim Talin of the Kaiser Commission on Medicaid say that:

> Medicaid is the glue that helps hold our health system together. It takes on the highest risk, the sickest and most expensive populations from private insurers and from Medicare.

That is a lot of people in my State who depend on the Medicaid system. We need to take steps to strengthen that system. Like a waterfront community that seeks to set up barricades against a rising river, defending the Medicaid Program from attacks such as the idea of a block grant is a top priority. This administration began this year recommending we adopt essentially a block grant approach to Medicaid. That concept is one which I strongly opposed. I am glad to see many of our Governors have now come out in strong opposition to that concept. It would be extremely adverse to those who depend upon this very important system in our States.

It is critical to maintain Medicaid, as it has correctly responded as a safety net program by adding coverage to millions of people as the country has slipped into recession. We are now pulling out of that recession—at least we all hope we are. Certainly the economy indicates we are. But as we have been in this slow period of economic growth, it has been clear the Medicaid system has been extremely important. The total number of individuals who are uninsured in this country have increased. Nearly 44 million people are without any coverage. Once the future of Medicaid is assured and protected, we also need to take some additional steps to confront the fact this nearly 44 million people—or 15.2 percent of the population—is without health insurance for the entire year of 2002. That is an increase of nearly 4 million people over those who were uninsured in the year 2000. The numbers for 2003 undoubtedly have gotten even worse.

The report of the National Coalition on Health Care says the confluence of powerful economic forces fueled by terrorist attacks of September 11 have unleashed a perfect storm that increases dramatically the number of uninsured in the United States with as many as 6 million people in total losing their coverage.

In light of this, I just make the point again it is somewhat shocking to me that we are spending 30 hours—essentially that means this whole week. The truth is our ability to get work done this week has been substantially impaired by the decision of the majority here in the Senate to devote 30 hours to talking about this handful of judicial nominees they would like to have confirmed for Federal judicial positions in spite of the serious problems that have been found with regard to that program.

The number of people in our country who need health care is staggering. New Mexico ranks second only to Texas in the percentage of its citizens who are uninsured. In New Mexico, we are the only State in the country with less than half of our population currently covered by private health insurance. That is a rather shocking statistic when you think about it. But it is true. Forty-two percent of the Hispanic population has employer-based coverage; that is, nationwide. That is not in New Mexico. That is in comparison to 67 percent of non-Hispanic whites who have employer-based coverage. To address the growing crisis, we have been working with the American College of Physicians since last fall on a legislative proposal we are calling the Health Coverage Affordability Responsibility and Equity Act of 2003. This legislation does a variety of things which I want to educate my colleagues on at some time when we have more opportunity to do so.

Our colleague from New Jersey wishes to speak again on the issue that brings us here at this early hour, so I will yield to him, but I think the course we are following with regard to judges is not a course any of us would choose at this point. If we could get the President back into the consulting mode with regard to all judges he has pursued, with regard to most judges, I think the problem would be eliminated and we would not have the difficulty and confrontation which has been required as a result of nominations so far this session.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. BINGAMAN. I am glad to yield.

Mr. ALLEN. The Senator brought up the two Senators from California opposing two judges for the Ninth Circuit Court of Appeals as if the Ninth Circuit Court of Appeals is only in California. That court of appeals covers many States—I believe even the State which the Presiding Officer is from, Nevada, but also Idaho, Oregon, Washington, Hawaii, Montana Arizona and Alaska. It is not just the Senators from one State that are affected when you have a circuit as large as that. This is the same court that almost hijacked the Constitution of California. Three of these judges attempted to do just that until they were all overruled so they could go forward with the California recall election. It is not just one State that is affected when you are talking about a circuit.

Let us talk about the District of Columbia Court of Appeals. There are no Senators from the District. I will not get into that debate on this issue.

Who is the President to consult in the case of the D.C. Circuit Court of Appeals? The President consulted many people and put forth a person of impeccable credentials, Miguel Estrada, who is actually a resident of Virginia. Senator WARNER and I presented him to the committee. I will not speak about that wonderful day at this time. The President looked for people from all across the country and presented Miguel Estrada's nomination to the Senate. Seven times we tried to get an up or down vote on Miguel Estrada. The reason we are still fighting this right now is because the minority is denying me, as a Senator, and other Senators, the ability to advise and consent and fair up or down vote. I am not saying people have to vote for any particular judge. But we all have a responsibility to vote. From the perspective of the Senator from New Mexico, who is the President supposed to consult for the District of Columbia Court of Appeals when he put forward a superbly qualified and exemplary individual who was held up for over 2 years and finally could not continue with the years of delay and obstruction?

Mr. BINGAMAN. Mr. President, reclaiming my time, it is a very good question. My own view would be we clearly have in the Senate for well over a century now delegated the initial responsibility for reviewing judges to the members of the Judiciary Committee. I would suggest the President should be consulting with members of the Judiciary Committee, both Republicans and Democrats, and if he determines he can't get a single Democrat on the Judiciary Committee to support his nominee, that should be a signal to him he should find a nominee who could be supported by Democrats, as well as Republicans.

It is true the Democrats are in the minority at this point. But a great many Members of this body are Democrats and a great many members of the Judiciary Committee are Democrats. If to a person they are opposed to the nominee after they learn of the qualifications and the positions taken by the nominee, I think that is a signal to the President he should find someone else. Clearly, that is not the course he has chosen to follow.

I see my colleague from New Jersey. Let me yield the balance of my time to him.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I thank the Senator from New Mexico for what I think is a very appropriate underscoring of the unprecedented nature of not working with the Senators from the State which the judge has been nominated.

I concur with the Senator from New Mexico. In New Jersey's case, we are 5 for 5 on district court judges because there has been strong cooperation back and forth between the White House and Senators from New Jersey. We are one for one on the circuit court judges where people work together to try to move things. That is how we ended up, frankly, in general with 168 to 4 because this process has worked a lot more smoothly than I think this 30-hour talkathon has indicated.

I want to use the last few minutes of my time this morning to talk about priorities.

One hundred sixty-eight to four—scratch that and make that six, if you want. The fact is that is about 97½ percent if it were 6 of all of the judges who come up have been approved. When there is an outreach toward cooperation, things work pretty well around here. For some reason that has worked pretty well in most instances, and we are trying to look at a very narrow segment of something I think reasonable people can have differences of view about—the qualifications of the individuals. That is exactly why the rules are being used the way they are.

I want to place this in context. It is really more important in how it plays off of what the Senator from New Mexico said.

We have real issues in this country right now. The fact is we have 9 million Americans unemployed. We can spend 30 hours here talking about four or six judges when we have 9 million people unemployed.

By the way, the statistics going down in national terms don't seem to fit New Jersey. The latest statistics we have show we have had 11,800 jobs lost in the last reported period. Unemployment has grown by about 258,000 since the year 2000. New Jersey has brought 55,000 manufacturing jobs in the Nation.

These are real people. At least when I go back to the streets of communities I represent, people are more interested in what is going on with their jobs and what is going on with the economy than whether we have a difference of opinion about four judges or five judges when we have confirmed 168.

It seems to me we have our priorities all messed up here when there are 9 million Americans left out of the economic system.

It is hard for me to understand why poverty is growing in this country. The number is up almost 1 percent—from 11.3 to 12.1 percent. In New Jersey, that is 69,000 people who have gone onto the poverty rolls who weren't there before the current administration's economic policies were put in place, and 148,000 New Jerseyans have gone off the rolls of those who have health care. These are real issues. These are the things that impact people's lives.

These 4 judges out of 172—it is pretty hard to understand why we are spending all night and all day talking about that when we ought to be doing something about health care in this country; when we ought to be doing something about prescription drugs, while we have been waiting for somebody in the dark of night to try to put together a bill. It doesn't make sense that we have the focus on something that is so narrow and is not even in the context of actual reality because we are actually filling those jobs. But we are not doing anything about the 9 million Americans who are losing jobs.

We can't get, by the way, an increase in the minimum wage. It has been 7 years since we increased the minimum wage around here. We can't get a debate on that.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate now return to legislative session to proceed to the consideration of calendar No. 3, S. 224, the bill to increase the minimum wage, that the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

Mr. ALLEN. Objection.

The PRESIDING OFFICER. Objection is heard.

The time has expired.

Who yields time?

The PRESIDING OFFICER (Mr. THOMAS). The Senator's time has expired. The Senator from Virginia.

Mr. ALLEN. Mr. President, we are now entering the 13th hour of this debate. The reason it has taken so long is because some Democrats have denied a fair up-or-down vote on many nominees. The sun is rising, of course, along the eastern seaboard from Miami and Jacksonville. It is rising in Charlotte and Myrtle Beach and Virginia Beach, all the way up to Maine. I am sure there are truck drivers from Bangor. Maine to Bakersfield, California who have been listening very intently to this debate. It is nice to be here this morning with my Senate colleagues, but surely we did not start this day as advised by the great country singer Charlie Pride, "to kiss an angel good morning." I do not see any angels around here. My angel is at home with our children getting them ready for school.

You hear arguments from the other side that they just have to stop these nominees as in the case of Miguel Estrada. In the case of Miguel Estrada, he even had the support of several Democrats. There were four Democrats who did vote for moving Miguel Estrada's nomination to an up or down vote. But the minority is setting a new standard, and I dare say not a constitutional standard. This new standard has crept into the Senate. While the Constitution says you are supposed to advise and consent and a nominee is confirmed by a majority vote, my colleagues on the other side have set a new standard for a supermajority. Because of that, a majority of us in the Senate have been denied our opportunity to act responsibly for our constituents and have the guts to stand up and vote yea or nay after examination, deliberation, exploration, inquisition, in some cases, interrogations of judges to determine their judicial philosophy.

I care a great deal about judicial philosophy. I believe strongly that judges should be interpreting and administer the law, as opposed to inventing the law.

Earlier the Senator from New Jersey was talking about economic matters. I clearly want to say, for all those who are bright eyed and listening this morning, the number one goal of us on this side of the aisle is to make sure America is competitive—to have the right tax policies, the right regulatory policies so businesses can invest, whether in New Jersey or Virginia or elsewhere in this country, and to help create more jobs. We have to have the right policies in place for this to occur.

And America's competitiveness directly relates to our courts. We have to make sure there is class action fairness so as a nation we make sure those who have grievances or injuries due to negligence have access to the courts, while helping to reduce frivolous lawsuits. Obviously, this is something that means a great deal for jobs.

What happened to the class action bill that was going to help create jobs and defend against junk lawsuits? We had obstruction on that. We were able to get 59 votes, but we had to get 60. This reform is important for jobs and the retention of jobs. We want to pass an energy bill, an energy bill that will help create 500,000 new American jobs with clean coal technology, advancements in hydrogen fuel cells as well as hopefully development of our domestic reserves of oil and gas. We want to create more jobs by passing an asbestos bill that ensures that people who have asbestosis or asbestos-related diseases can actually get compensated as opposed to the lawyers.

We successfully passed the Small Business Administration bill that will help create 3 million jobs. We want to make sure we get homeland investment or repatriation of profits to come back into this country. We have to pass a variety of other measures so families, individuals, and businesses can prosper.

We have done a lot so far, and you are seeing the results of it. I was listening to the Senator from New Jersey. He seems not to have been listening in some regards to recent economic facts. We have had great gross domestic product growth in every quarter since we passed the economic growth and tax relief package in 2001. This most quarter we had the biggest growth in almost 20 years as far as gross domestic product. You are seeing in the beginning more jobs being created—126,000 net new jobs. The reason for this is businesses and individuals are reacting favorably to tax cuts. The Senator from New Jersey did not vote for those tax cuts. If it were up to the Senator from New Jersey, taxes would be higher on individuals, on families, and on small businesses. You would have less investment, fewer jobs, and less hope for opportunity, prosperity, and jobs in the future.

We are going to continue working to make sure our economy is running as strongly as possible. Are we satisfied with where it is? No. There are people still looking for work, and we need to make sure we address those issues. But it does not mean we ignore the issues of the third branch of our Government, the judicial branch. What we have here is an abrogation of our constitutional responsibility. What we have here is a diminishment of the accountability and responsibility of Senators. What we have here is a perpetuation of unfairness and an injustice to many judges.

The Senate has a clear responsibility in the judicial nomination process, as seen in Article II, section 2 of the Constitution. It is to advise and consent. It is not to obstruct and delay. Senators can be expected to examine different nominees in a fair method. We can have a debate. I don't expect any Senator to be a rubberstamp for any President. The Senate can properly give thorough and honest consideration of a nominee prior to a vote in deciding whether consent should be granted. That means every Senator has every right to vote against a nominee if they feel that person is unsuited to the bench.

The advise and consent in our Constitution does not, though, give the Senate the right to deny a simple up-or-down vote to a nomination once that nominee has been thoroughly debated and evaluated in the Judiciary Committee of the Senate and brought forward to the floor. The Constitution requires fairness and accountability from the Senate in confirming nominees. Without a proper up-or-down vote, I am afraid what you are finding here is the judicial nomination process, as laid out in our Constitution, is being hijacked by the minority—not every single Democrat, but a majority of the Democrats. Their position is one that is irresponsible and an obstruction of our constitutional responsibilities. There is no accountability. There is no fairness.

For over 214 years, the President has had the responsibility of nominating persons to vacant positions on federal courts. That is spelled out in the Constitution. This is essential to maintaining the constitutional framework of a separation of powers.

Five years ago, the New York Times said the Senate should "rise to the occasion and address the institutional responsibilities of the Senate rather than surrendering to the petty tactics of the blockading few." This was in 1998. On this rare occasion, I agreed with the New York Times.

I would say to my colleagues, if you do not like Judge Janice Rogers Brown, Judge Carolyn Kuhl, Justice Priscilla Owen, or any other judicial nominee for whatever reason that may be, whether I consider it justified or not, vote against their nominations, but vote. Take a stand up or down. Show your constituents where you stand. Don't hide behind the arcane procedural maneuvers of the Senate.

What we have here is justice being delayed and being denied. It is beyond me how some Senators can continue to practice blatant political maneuvering at the expense of these well-qualified, respectable nominees, when the administration of justice is so important to our country. They cannot continue to use these machinations and procedural rules to perpetuate this obstructionist agenda. I believe Americans are astute. They can see these arguments being made are to avoid an up-or-down vote. They are not based on reason but rather petty partisan politics.

It is not just the people's work and business that is being made a victim when the other side denies these nominees a fair up-or-down vote. It is justice in our courtrooms that is also a victim to this obstructionism. Justice delayed is justice denied. It means cases that need to be litigated are delayed longer. It means in criminal cases, it may take a longer period of time for cases to be heard and decisions to be made. It affects victims of crime, as caseloads back up. Access to our courts for legal disputes and an expeditious decision making process by the courts are both important.

Let's consider Miguel Estrada. This is a gentleman I feel very passionately about because I got to know him in the midst of his consideration before the Senate. Miguel Estrada now lives in Virginia. He came to this country as a teenager, unable to speak English. He applied himself. He worked hard. He is the modern day Horatio Alger story and exactly the model we tell our children about. If you work hard, apply yourself, do well in school, get a good education, then you can have great opportunities in life. That is what Miguel Estrada did when he came from Honduras as a teenager.

He worked hard, learned English, and ended up going to Ivy League schools. He clerked for a Federal judge. The American Bar Association, after looking at his record when working in the Solicitor General's office and a variety of other positions, gave him their highest unanimous rating. Indeed, he argued 15 cases before the Supreme Court of the United States, winning most of them.

I remember that hearing in the Judiciary Committee, as my good friend and colleague JOHN WARNER and I presented him. His sister was there. His wife was there. His mother was there, so proud of Miguel. I was thinking, this is just a wonderful day in America to see that dream of America, the land of opportunity for people of qualifications and performance, is still there. I remember speaking for all Virginians, congratulating Miguel Estrada.

Then to see what happened to him, the injustice of holding it up, not just for consideration for 3 months, not consideration for 6 months, 1 year, but over 2 years, with repeated efforts to bring it to a fair up-or-down vote on the Senate floor—not once, not twice, not three times, four times, five times or six, but seven times. Finally after 2 years, this wonderful gentleman decided that he had to get on with his life and that this process was too stressful to him and to his family. Undoubtedly you could understand why being held up this way in such an unfair and unjust matter that he finally decided that he had to go on with his life.

To me that was a very sad day in the history of the Senate. It does not reflect on the views of the majority of the Senators because we had a majority of Senators for Miguel Estrada. We just didn't have 60. To me that is an injustice.

Some of my colleagues will talk from time to time about Miguel Estrada. I see that the Senator from New York, Senator SCHUMER, is here. Senator SCHUMER called Mr. Estrada "a far right stealth nominee, a candidate who will drive the Nation's second most important court out of the mainstream." Mr. President, we cannot allow the politics of personal destruction, evident by this statement by the Senator from New York, to continue to infiltrate our judicial nomination process. After 2 years of refusing to vote, that was enough injustice without these gross mischaracterizations.

I will tell you what Virginians across the Commonwealth are saying. The Fredericksburg Free Lance Star said that "the filibusterers are abusing the Senate's advice and consent role under the Constitution" and that "Senate Democrats need to stop snacking on sour grapes and give this President his due."

The local newspaper in Staunton, Virginia, said: "Regarding filibustering engaged in by Democrats in the U.S. Senate to block Bush's judicial picks, either vote them up or vote them down, then live with the consequences. Filibustering is one of the least palatable tactics politicians can engage in, one which only serves to bolster the public's lack of confidence in our elected representatives. It's no accident that the word "filibuster" derives from a Spanish term for pirate—"filibustero." It's an apt description for a process whereby politicians seek to board and hijack the legislative process."

The Richmond Times Dispatch said: "According to the "gold standard," each [of President Bush's] candidate's ability to serve on federal appellate courts is impeccable. Yet [Senator] LEAHY and his calculating cohorts presume the judicial nominees' perceived ideology to be more important than their ability—and have resorted to stall tactics perfected decades ago on the Carolina hardwood." That is basketball terminology for those who don't remember the four corners.

From the same newspaper:

> Miguel Estrada did not deserve such shabby treatment. No one does.

The Manassas Journal Messenger argues:

> The worst part about the Democrats' continued stonewalling on Federal judicial nominations is the legacy that it leaves.

The Winchester Star, a newspaper owned by a former Senator who served as a Democrat and an independent, Harry F. Byrd, Jr., predicted that:

> The precedent set here is ghastly. If this threat continues to go unchallenged, advice and consent in the future will be tantamount to obstruct and destroy.

And just last month that same paper said:

> The constitutional prescription of a simple majority for confirmation no longer applies. A 60-vote supermajority . . . is now standard operating procedure in a process held hostage by a liberal minority.

They went on to call the Democrats' actions "lamentable" and "reprehensible."

Mr. CORNYN. Will the Senator yield for a question?

Mr. ALLEN. I yield to the Senator from Texas.

Mr. CORNYN. The Senator has talked about Miguel Estrada and his admirable qualities, the fact he emigrated here as a young man at 17, barely spoke the English language, and yet rose to the top of his profession and, indeed, represented the United States Government before the highest Court in the land in 15 cases, which is a remarkable professional accomplishment. But you also alluded to the comments made by our colleague from New York, and you gave us some quotes about the nature of President Bush's judicial nominees. I believe at another time he accused the President of loading up the judiciary with rightwingers who want to turn the clock back to the 1890s and warning that America is under attack from the hard right, the mean people. They have the sort of patina of philosophy, but underneath it is meanness, selfishness, and narrowmindedness.

If I may ask the Senator, how in the world can you reconcile the public record of Miguel Estrada and this sort of characterization? Do you have an explanation for what is happening here?

Mr. ALLEN. There is no justifiable explanation. Miguel Estrada is a person of very calm demeanor. He is very mild mannered and soft spoken. He is one who, throughout the entire nomination process, was willing to subject himself to whatever written interrogatories submitted to him by Senators. He was willing to and did meet one on one with Senators. So that characterization is not accurate.

Do you know what that characterization is? It is pure politics. It doesn't matter what the truth is because they have not justified it. What is unfortunate about statements such as that is that it is the politics of personal destruction. We should rise above that.

I say to the Senator that my very first speech on the Senate floor was about judges. I said that I care about treating people as individuals rather than partisans. I spoke about Roger Gregory. President Clinton had appointed him as an recess appointment. This had many Republicans, understandably, infuriated. I examined and talked to Roger Gregory to determine his judicial philosophy. I studied his records of accomplishment, considered his temperament, and all of the attributes judges who are appointed for life should have. You have to be sure you are not going to end up with some judge who is a radical one way or the other, an activist, but rather one who interprets the law and applies the facts of the case, rather than inventing or creating laws. My first speech was to say, "let's rise above that and to be statesmen."

I found Roger Gregory to be very qualified. The first thing I said to

President Bush when he asked me my thoughts on this nomination was that I had interviewed judges for various positions when I was Governor and that one can never be absolutely sure about a nominee. But I told President Bush that I felt that Roger Gregory truly had the right philosophy and capabilities, and I hoped he would appoint him. And President Bush did.

That is an example of rising above partisanship, rising above this picky, partisan process in the Senate, which denies an opportunity for me, as a Senator, to vote up or down. But it also denies the American people the accountability and responsibility they expect for their Senators.

Mr. CORNYN. Will the Senator yield for one other question?

Mr. ALLEN. Yes.

Mr. CORNYN. The Senator has characterized what he thinks is happening here in terms of these attacks on qualified nominees, such as Miguel Estrada. I just wish to ask the Senator this. We all know, in order to get to the Senate, we have to run for election; and I just ask the Senator what his reaction is, or whether he would include this in the category of petty partisan politics that he just described in terms of the way Miguel Estrada has been attacked.

Most recently, in a fundraising electronic newsletter to potential donors, the chairman of the Democratic Senatorial Campaign Committee, our colleague from New Jersey, recently acknowledged—he boasted that the current blockade of judicial nominees is "unprecedented." But the context in which he used that is to raise money for Democratic candidates to the Senate and the statement we are hearing on the floor regarding the figure 168 to 4, that they have only blocked 4. But at the same time we see they are using these unprecedented filibusters to block the highly qualified nominees of the President. Is that what you would characterize as a political use of this obstructionism of President Bush's nominees?

Mr. ALLEN. It is worse than that. I was not aware of that, I say to the Senator from Texas. That is more than just petty partisan politics. That is disgusting. This will lead to a continual downward spiral of our constitutional responsibilities. You can say you are against a judicial nominee, but to use it to brag and to admit that it is unprecedented in an attempt to raise money—to me, that is the sort of retaliation and retribution that is a real loser, and not just to Republicans or Democrats; the real loser is the justice system of the United States, which has been the pinnacle of the protection of our liberties and freedoms under the Constitution, which was created and designed to protect our God-given rights.

Mr. INHOFE. Will the Senator yield for a question? I know his time is running out.

Mr. ALLEN. Yes.

Mr. INHOFE. I have been observing this all night long and all of these legal scholars. I admire you so much, although I have to admit I have often said that perhaps one of my best qualifications for being a Senator is that I am not a lawyer. When I read the Constitution, I know what it says. It is very clear what it says. It says advise and consent. It is a very important process.

The reason I wanted the Senator to yield is you have been justly talking about the qualities of Miguel Estrada. I have met him, too. He is such a humble man. When you hear the horrible things said about him, it makes you cry inside. There was one thing that all of these nominees the President nominated have in common, and that is they are also eminently qualified. You have talked about his qualifications. Besides that, he worked in both the Bush and Clinton administrations.

Also, look at the rest of the nominees. William Pryor is the youngest attorney general at the time he was appointed and was nominated by the President. He has the highest ranking of the American Bar Association. Priscilla Owen has the highest ranking of the ABA. In 2000, she won 84 percent of the vote. She was supported by three former Democrat judges from the Texas Supreme Court. Judge Pickering—99.5 percent of his cases were affirmed and not appealed.

I think we are talking about people who the President has done such a great job of singling out and finding, the most highly qualified people. I wanted to ask you that question. Isn't it true that everything you have said about Miguel Estrada and his qualifications is true about all these nominees?

Mr. ALLEN. It is. I very much agree with the Senator from Oklahoma. Miguel Estrada, Priscilla Owen, Judge Pryor, Judge Brown, and Judge Kuhl—they all have impeccable records. They have different experiences but great experience, and they are highly recommended by the people who know them best. This is a great way of judging their capabilities. Nonetheless, the facts don't seem to matter.

I close and say we need to act in accordance with the Constitution. The Constitution is important. Accountability is important. Fairness and justice are important. As a matter of principle, our judicial nominees deserve a fair and simple up-or-down vote. These nominees are individuals who are important for the function of justice in these various courts. And it is not just these three; there are others being obstructed.

I ask my colleagues to show some guts. Stand up and vote yes or vote no. Act responsibly. Since I started off with a Charlie Pride admonition and, unfortunately, we have not been able to "Kiss an Angel Good Morning" here on the Senate floor, why don't we follow Aaron Tippin's advice that "you got to stand for something." So why don't you stand. Vote yes or no on these judges but vote.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The majority's time has expired.

Who yields time?

The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, let me first compliment my colleague from Virginia for his vast knowledge of western song lyrics. I think he has recited several of his favorite lyrics. I always preferred the famous western song "Who Drank My Beer While I Was in the Rear." That always seemed to be one that isn't played near enough. I am sure that is part of the Senator's repertoire.

Let me comment on a few of the things the Senator said. First, he said that justice delayed is justice denied; there is a terrible burden we are putting on the American people by not filling these judgeships.

Let me call to the attention of my colleagues what has happened as far as judicial vacancies during the last 8 years. You can see from this chart that, in January of 1995, there were 63 judicial vacancies. That was when the Republican majority was here in the Senate. That number increased to 110 judicial vacancies by January of 2002.

At that time, the Democrats took the majority in the Senate and the number came down precipitously, down to 60 vacancies by the time the Republicans gained control in the Senate and, at that point, of course, it has continued to go down. So now, in January of 2004, the expectation is that we will have 40 judicial vacancies.

This is the best record as far as filling judicial positions, vacancies, of the Senate in many years. We have fewer vacancies today and will have fewer by the end of this year than we have had for a very long time. So we do not have this problem that the public is being denied judges, judgeships.

I am very proud of the record of accomplishment that we have achieved so far in this Congress. I think we have approved a great many judges. We have approved a great many of this President's judges. This other chart, which has been up several times during last night's discussion says the whole thing. It basically makes the point that we have approved 98 percent of the judicial nominees who have been sent to us.

In my State, we have approved several very good nominees for Federal judicial positions. I have supported those. As I indicated earlier, those nominations were brought forward, in my view, in the way the system is supposed to work. That is a system whereby the President and the White

House—the President's legal counsel—essentially contacted me, as well as, of course, Senator DOMENICI, my colleague, and assessed our views with regard to people they were intending to nominate. That is the way the system is supposed to work. That is what advice and consent has come to mean and should mean in our system. The President seeks advice, the Senate gives its consent, or withholds its consent.

I have been very pleased to give my consent to the nominations that the President has chosen to send forward with regard to nominees for judicial positions in New Mexico. I also know and would like to say that I have assumed—and I continue to assume—that after my advice is requested and after my consent is sought, that if I had strenuously objected to some of those nominees and had stated so, the President at that point would decide to go ahead and choose someone else.

In my State, we have a great many people who are practicing attorneys, who have held key positions in our State in various capacities, who are qualified to serve as Federal judges. That is one of the great strengths of our legal system. I am sure that is true of every State in the Union. If one of those individuals, for some reason, is not the appropriate choice and Senators from the State involved determine that, then the President should take that into consideration.

My colleague from Virginia talked about being consulted by the President about Roger Gregory before the President made a decision on that appointment. That is entirely appropriate. That is the way the system ought to work. The President and his legal counsel should be consulting Senators about the appropriateness of various candidates for judicial office before the nominations are sent to the Senate for consideration.

I think the reason we are here tonight, the reason there is angst about this issue about these four judges who have not been confirmed, the 2 percent, is because as to those 2 percent we did not have that consultation. The members of the Judiciary Committee, the ranking member of the Judiciary Committee, Senator LEAHY, the other members of the Judiciary Committee on the Democratic side, did not have that opportunity to be consulted, and nominations were sent forward that, in fact, were not acceptable, were not strongly supported, had no support, and had strong opposition to them. Accordingly, we have agreed not to move forward with those nominations, which I think is entirely appropriate.

The notion that the Senate should have the right to consent—and that is contained in article II, section 2 of our Constitution—implies in it the idea that the Senate should have the right to withhold its consent, and that, in fact, we have exercised that right with regard to 4 of the 172 nominees who have come to the Senate floor so far for consideration. That is a pretty good record for this President. I think this President has done much, much better than the previous President in getting his nominees confirmed.

There was great frustration on the part of many of us in the prior administration, and it has been expressed here on the floor, that very good nominees were being sent forward by President Clinton and were not afforded a hearing. It was not as though there were objections that would be expressed, there were not articulated objections. It is just that they would not be given a hearing because of some view by some Member that the person should not be entitled to a hearing before the committee.

That practice has not been followed with regard to President Bush's nominees. We did not follow that when the Democrats were in the majority in the Senate, since President Bush has been in office, and, of course, it is not being followed at this time.

Let me put this in a larger context, which is something we have tried to do here during the recent hours; that is, the context that we have major issues facing our country today. There is significant work—undone work—still crying out for attention in the Senate before this session of Congress is over. The majority leader tells us we will adjourn on November 21. That is a week from tomorrow. I don't know if we will make that deadline or not. We have had other deadlines that have not been made. But that is the schedule as we now know it. We will adjourn a week from tomorrow, and we are essentially wasting this week talking about a set of issues that have been talked about and talked about and talked about during recent months.

I hope that before we leave this year, we will not only finish the appropriations bills, which clearly need to be done to keep the Government functioning; I hope we will also conclude work on a Medicare prescription drug bill, which will preserve the Medicare system but which will provide a genuine benefit to Medicare recipients. I am informed that some time—perhaps by the end of the week—we will have some better indication as to what resolution is finally coming out with regard to those issues that have been in conference.

I hope, also, we get a decent Energy bill. I have complained repeatedly about the process that has been followed with regard to the Energy bill because Democrats have been excluded from those conference meetings. But I still hold out hope that the final product, which we have been assured we will be able to see 48 hours before the final meeting of the conference—I am informed—I still hold out hope that final product will be something that will be good for the country and, on balance, will be a step forward. I don't know that that is the case. Until we see the bill, we will not know that is the case. We don't know what is being put in the bill that was not in the Senate-passed bill. We don't know what is being put in the bill that was not in the House-passed bill. But clearly there is important work the Senate needs to be doing.

We have very few days in which to accomplish that work. I regret that we are spending so much time on this single issue. Frankly, in my State, if I go around New Mexico and ask people what do they think we ought to be having all-night sessions to resolve here in the Congress, this would be a very distant item on the list of priorities. I think the first priority would probably be, Why don't you do something significant on the health care crisis? Why don't you do something about the 44 million people who have no health care coverage in this country? That number continues to rise.

I have served in the Senate now for a little over 20 years, and that number has risen during most of that time. We have not acted effectively to deal with that health care crisis and, accordingly, we have a great many people in my State who do not have access to quality health care, do not have access to affordable health care. We need to do something about the cost of health care. We need to do something about the availability of health care.

Of course, we need to do some things to try to maintain our job base, the jobs about which we all are concerned. We have lost over 3 million jobs since this President came into office. I am glad to see we are finally, now, in the last month, beginning to see some jobs created on a net basis. We created more jobs last month than we lost. I hope that will continue. It is going to have to continue for some period before we are at a break-even point. But I hope we are at a break-even point in the near future because, clearly, there are a lot of people looking for jobs, looking for good-paying jobs, and we see too many of those jobs going overseas, too many of our better paying jobs, particularly manufacturing jobs, leaving for other parts of the world.

My colleague from New York is here. He is a member of the Judiciary Committee and has been intimately involved in these issues related to judicial nominations. I know he spoke last night. He is ready to speak again and give his views on this issue, so I will yield the remainder of my time to him.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank my colleague from New Mexico for, as usual, his thoughtful, balanced, and fair remarks.

We have, I guess, now been debating 13 hours 45 minutes here. I don't think too many new arguments have come out. I don't think we have accomplished anything. But let's proceed, although I couldn't agree more with my colleagues that we could have devoted some of this time to speaking about issues we have not debated on the floor at length—jobs, the yearning of the average American to have a secure and good job; health care, and the millions who are not covered and millions more who are covered and cannot afford health care; even a debate on the war in Iraq, where we are going and what we should be doing. It would be far more instructive and illuminating to the American people than what we have done here.

But we are here, and I think we should be talking about the judicial nominations. One point I make, just before getting into the substance: We heard some paeans to Miguel Estrada; Horatio Alger, we heard. He is a bright man of accomplishment, but let's be fair here. His father was a banker in Honduras. He came from a privileged background. America welcomes people of all backgrounds. That is wonderful. But the bottom line is he was not typical of an American immigrant. His father was a banker, they were part of the Honduran elite. The Senator from the other side said he didn't speak English when he came here. We think he probably did.

But Horatio Alger? No. Horatio Alger was somebody who started off poor. There are indeed, I would like to inform my colleague from Virginia, millions of immigrants who came here poor as church mice and struggled and worked their way up. It is sort of interesting that the hero to those on the other side is a wealthy Honduran who became a wealthy American—that is the modern-day Horatio Alger story. So let's be straight here.

Miguel Estrada, to be fair, is a very bright man. But just because he is bright and just because he came from a good background doesn't give him carte blanche to become a judge. He didn't answer any of our questions. How many Americans would get a job if they told the boss: I refuse to fill out the questionnaire. I don't want to answer that question.

These were not esoteric questions; these were not demeaning questions; they were very simple questions: What is your view of the first amendment and how expansive it ought to be? What is your view of the commerce clause? The very things on which he would opine as a judge.

These have been regarded as legitimate questions from the day of the founding of the Republic. Let me say, why are my colleagues so appalled that we would ask such questions? I will tell you why. It is very simple. Because this President, George Bush, despite his wanting his image to be moderate, on the issue of judicial nominations has been the most hard right President we have seen. His nominees are not mainstream, many of them.

People on this side of the aisle have voted for many of them with whom we do not agree. But when some go so far, we believe the Founding Fathers almost importune us to question them thoroughly, and to block them if necessary.

Again, this chart, I would say to the American people, says more than all the words and rhetoric and name calling we have heard from the other side: 168 to 4.

Is the process broken down? No. Is the process so much so that a reasonable judge can't get through? Obviously not, unless you think George Bush is not nominating any reasonable judges.

What has happened here? There is such anger on the hard right that they can't get every single judge they are pushing many on the other side, against their own will, to engage in performances like we have seen over the last 14 hours. We want every single judge approved. That is their goal. That is the goal. And then we come up with the arguments.

So we went through this last night. Filibusters are OK, as long as they fail. That makes no sense. We have had filibusters in the past. We have had six of them, four by the Congresses in the 1990s and 2000. If a filibuster is wrong, it should be wrong whether it passes or it fails.

But then look at the other argument. Over 50 judges were blocked by the other side. We didn't hear any speeches about Constitution in crisis. They weren't even giving hearings.

The logic defies me: It is OK to block judges by not giving them hearings, and it is OK to filibuster as long as you fail; the only thing that is wrong is to have a filibuster succeed and that brings the Constitution in disrepute and brings the Republic to its knees.

My colleagues, that argument does not hold up in first year law school. It is just totally hypocritical and contradictory. It is saying, I want my results so I am making whatever argument it takes. Sort of like the judges we don't want. A little like Justice Brown's way of arguing—of deciding cases. Blocking is not bad because they blocked 50 of them and there was no outcry. Filibusters aren't bad because they filibustered six of them, or four of them, and that was just fine.

So let's be honest here. For some reason, there is white hot anger among a small, narrow group of people that they can't get every judge. Again, I welcomed—I don't think this serves our time well—but I welcome it, in the sense that all of those talk shows and all of those radio programs and all of those editorial boards leave out the one overwhelming fact, which is 168 to 4.

I will march in parades in conservative parts of my State and once in a blue moon—most people don't care about this issue, to be honest, compared to the things that make their lives better, compared to the relief American families want when they sit down at the dinner table on Friday night to figure out how to pay these bills. But the occasional time somebody called out, "Why are you blocking the President's judges?" because they listen to the radio or read a biased article in the editorial pages, I would say: "We approved 168 to 4," whatever the number is, and they say, "Oh, OK."

You can do all the sophistic arguments you want, how many angels are on the head of a pin, say this way to block judges is OK.

By the way, I would like one of my colleagues to defend, in the 30 hours we have, was it all right to block the 50 judges of President Clinton? Was that OK? Do we ignore that fact? It is not ancient history; it was in the last decade. Was that OK? I would ask any of my colleagues to answer that.

Then I would ask them to point out to me when Senators on the Republican side of the aisle launched filibusters, who got up and complained and said the Constitution was being violated?

No, no, no. The arguments here, again, are outcome determined. There is no internally consistent logic. It just says: We want all the judges; we will take whatever argument it takes. When they originally put forward Miguel Estrada, they said he was a rags-to-riches case, and then of course the facts came out. Now he is Horatio Alger: Honduran banker's son becomes successful American lawyer. I don't know if that is going to tug at the heartstrings of most Americans. Most, I think, would say Horatio Alger is the person who came here penniless and worked in a factory, who tried to struggle to provide for his family, who started a small business and struggled, the whole family worked in it and then they got a little money, and they got richer and God bless America. That is what is wonderful about this country.

But again, whatever argument fits. Is there a solution to this conundrum? Obviously, there is. There is. It is to follow the Constitution, not to come up with this idea that somehow, buried in the Constitution—by the way, that is not being literalist. When my colleagues say the Constitution says you can't filibuster a judge, they are reading words into the Constitution. I believe in a flexible Constitution. I think most people do in the 21st century. But if you want literal reading of the Constitution, find the word "filibuster." Find me the number 60. Find me the sentence that says everything in the House and Senate, or just the Senate, should be supported by majority rule.

If majority rule were so important, then we should not have committees because when committees block judges, as they did, we don't even know what the majority thinks. The Senate has a very important function in this Republic. It has had for 200-some-odd years. It is to be, as Madison put it, the cooling saucer.

As I mentioned last night, I didn't have qualms about some of my colleagues trying to stop Judges Paez and Berzon. The Ninth Circuit is a very liberal circuit. It is too liberal for my taste. To put more liberal judges on there probably didn't increase the balance. That is why this year I supported the nomination of Judge Bybee, Jay Bybee. I don't agree with him on almost anything, but on the Ninth Circuit to have a hard right conservative is probably a good thing.

My view is there ought to be moderation on the courts. And probably it is great to have one Justice Scalia on the Supreme Court and one Justice Brennan. You should not have five of either. Judges should not be at the extremes because they are the ones who tend to make law.

We have a nominee coming up Friday, Justice Brown, who wants to go back and reratify the Lochner decision that has been in disrepute for 70 years. Is that justice, someone who is interpreting the law? Lochner, which said a State couldn't pass a law that said bakery workers could work only 60 hours a week? We have come a long way since then.

But it is true, there are some in America who say: We don't want the Government doing anything. If I am a businessman, I should be able to do whatever I want. I should be able to pollute the air. I am a self-made person. Or I should be able to take my property and do exactly what I want with it—no zoning.

That is a view, certainly a view that can be argued in this Chamber or anywhere else. It is not the view close to the mainstream of the American people.

So the bottom line is a very simple one. We believe—it may drive some crazy, but we believe we are defending the Constitution. We believe that through whatever sophistry and sophistic arguments we hear that every one of the President's judges should be approved does not do justice to this wonderful document, this living, breathing document, the Constitution. We believe that if the only way you were to reject a judge was because the judge didn't have high enough grades in law school or because they smoked marijuana when they were in college, it would demean the process. We believe that asking questions about a judge's judicial philosophy—that is what is at the core of what makes a good judge. We believe that when a President brings ideology into the nominating process—we didn't, he did, and he said it. To his credit, he was honest. He said he is appointing judges in the mold of Scalia and Thomas. That wasn't about their law school grades or diversity; it was about a philosophy: Let's take the courts and change the way they view things.

We believe that our examination of these nominees and their views, and what they do as judges, is not only appropriate but obligatory.

I say this to the American people, to those of you who may be watching here at 7 in the morning. Judges have a tremendous effect on all of our lives. It is hard to see because it is not like a debate here in the Senate, this wonderful institution, or the President deciding a policy. It is done on a case-by-case basis. That is the beauty of this country. But that can determine, if you are a woman or a minority or disabled, what kind of discrimination might be allowed to exist against you. They can determine, if you are a worker, what kind of structure there is to protect your rights.

The PRESIDING OFFICER. The time of the minority has expired.

Mr. SCHUMER. Thank you, Mr. President.

The PRESIDING OFFICER. Who seeks time?

The Senator from Texas.

Mr. CORNYN. Mr. President, I have to give my colleague from New York credit. He is a determined, articulate advocate of his point of view. The problem is the facts just don't sustain that point of view. This has been refuted time and time again, but we see the same charts being trotted out time and time again that just are proven not true by the facts that we all know. I want to talk a little bit about those facts. I want to talk a little bit about what Democrats in the past have said about filibusters and their conviction that they should never occur and that they are, in fact, unconstitutional. In fact, those are the arguments we are making today, and we will use their own words to prove it.

My colleague from New York time and time again trots out a chart that claims that a number of judicial nominees have been filibustered by Republicans when in fact, those same nominees have been confirmed and are today sitting on the Federal court. How he can claim that what a Democrat minority is doing to Miguel Estrada or Priscilla Owen, Janice Brown, Carolyn Kuhl, Bill Pryor, and Charles Pickering is somehow the same thing Republicans did in the past is just disingenuous at best.

He claims that Stephen Breyer was filibustered. The last time I checked, Stephen Breyer sits on the U.S. Supreme Court. You go down his list, and, frankly, the chart is not worth the paper it is printed on.

Don't take my word for it. Listen to the words of TOM DASCHLE on January 30, 1995. The minority leader said:

> The Constitution is straightforward about the few instances in which more than a majority of the Congress must vote: A veto override, a treaty, and a finding of guilt in an impeachment proceeding. Every other action by the Congress is taken by majority vote.

That is our position. They are denying those very words here today.

I just hope the American people are listening, even though the hour is early and even though we have been talking for a long time now.

My question is, should we believe you today or should we believe what you said in 1995, Senator DASCHLE, when you said, other than a veto override, a treaty, or a finding of guilt in an impeachment proceeding, every other action in Congress is taken by majority vote?

I believe he was correct then and because of the politics of the moment he is not correct today.

Senator TOM HARKIN, in 1994, said:

> I really believe that the filibuster rules are unconstitutional. I believe the Constitution sets out five times when you need majority or supermajority votes in the Senate for treaties, impeachment.

We could go down the list:

Lloyd Cutler, White House Counsel under President Carter and President Clinton; Senator BIDEN; Senator BOXER; Senator FEINSTEIN; and Senator KENNEDY. Senator KENNEDY said: "Nominees deserve a vote." He is not saying that here today. He is voting to obstruct a vote where a bipartisan majority of the Senate stands ready to confirm these nominees. Senator KENNEDY said: "Nominees deserve a vote. If our colleagues do not like them, vote against them."

I would prefer the Senator KENNEDY of that era because I think he was right then. None of our colleagues on the other side of the aisle have made any explanation for why they have changed their position on what the Constitution means. But yet we have heard from Senator ALLEN and others that the characterization we are hearing from the other side about these fine judicial nominees is nothing more than politics.

The Senator from New Jersey, Mr. CORZINE, in a moment of stark candor, had this to say. This was an e-mail he sent to prospective donors to the Democratic Senatorial Campaign Committee. He said:

> Senate Democrats have launched an unprecedented effort.

How he could call it unprecedented if, in fact, as Senator Schumer and others have said, it hasn't happened in the past? Senator CORZINE, I guess, is guilty of telling the truth here. He said:

> Senate Democrats have launched an unprecedented effort by mounting filibusters against the Bush administration's most radical nominees. Senate Democrats have led the effort to save our courts.

Of course, we understand what is going on. This is about raising money.

This is about stirring people up by throwing them some red meat. We all understand what is going on. The American people understand what is going on, that this is about politics. This is not about politics as usual, this is about politics at its worst.

The reason I say that is not because it is unusual for us to disagree in this body. In fact, that is one of the things I love about this body—that any Senator can stand up and talk about what they truly believe to be in the best interests of this country. We know many times there are disagreements. But then ultimately we have a vote because we believe in majority rule in this country. That, in fact, is what distinguishes this form of government from others—that sooner or later, after we have talked—and we have talked about some of these nominees for 2½ years or more—but sooner or later, we vote. Sooner or later, we vote. That is what democracy is about. That is not what is happening with regard to these filibusters, and it is wrong.

The thing that really concerns me—there are a lot of things that concern me about this process. I believe it is not simply in need of tinkering. I think the system is broken down completely and we need a fresh start.

Together, myself along with my colleagues who are new Members of this body who have been here now for just about a year, we sent a letter to the majority leader and the minority leader, the chairman and ranking member of the Judiciary Committee, and said: We are really not interested in this game of tit for tat or recrimination, pointing to the past and saying we were entitled to treat President Bush's nominees today badly because we believe you treated President Clinton's nominees badly. Frankly, I wasn't here then. I don't endorse treating any nominee badly. These are honorable men and women who have been chosen by the President to serve in positions of important public service, and they deserve to be treated better than the nominees we are talking about today have been treated. Perhaps there were excesses in the past. I regret that. Unfortunately, I wasn't here to do anything about it. But I am here today.

What I believe is that we need a fresh start. We need to agree among ourselves that what has happened in the past in terms of the way judicial nominees have been treated does not reflect credit on this institution, and the people we are talking about, people who have risen to the very top of the legal profession and who should be treated with honor, it is wrong to treat them as common criminals. It is wrong to treat them as a caricature of their true selves. It is wrong to call them names. We can disagree with them. We can have a great debate. But ultimately, we need to treat them respectfully.

That doesn't mean a Senator has to vote for them. Every Senator has a clear right to vote their conscience—to vote up or down. That is really all we are asking for today and last night and for the remainder of this day, and as long as it takes to make clear that what is happening is wrong. It is unconstitutional, as Democrat leaders have said in the past—a fact which they have apparently forgotten, to put it charitably.

But I think the thing that really concerns me more than anything else—and as I have said, there is a lot to be concerned about—is the tactics used against some of these nominees, and the way they are treated after they have volunteered to offer their services to the American people on the bench.

We have seen charts that say 168 to 4. As we pointed out before, the real number, if we are being honest, should be zero to 4, zero being the number of filibusters against judicial nominees from 1789 to 2002. That is right. It never happened before—never in the history of the United States of America. It has never happened before, until this year. This year we have seen four filibusters. What has changed? Has the Constitution somehow changed? For those Senators who decried filibusters in the past and who now embrace them, what has changed to cause their change of opinion and change of view? I think we know what has happened.

That is why the number should be zero to 4—zero filibusters since 1789 until 2002 and 2004, in this last year, in an attempt to block President Bush's highly qualified nominees.

But as I was saying, where I come from we don't treat people as statistics. Where I come from, if you are going to attack someone and call them names, you at least give them a chance to meet with you and sit down and talk face to face. Yet obstructionists have time and time again refused to even meet with these nominees. Any Member of the Senate who would like to meet with these nominees and talk about their concerns and to see if they are justified, to listen to the response, has that right, and indeed every Senator has had that opportunity, but many have turned it down rather than take advantage of that opportunity and reach understandings and then vote.

We have even had this process sink to a new low when it comes to embracing the idea that a nominee's personal views on religious issues should play a role in determining whether or not they are fit to serve as a judge.

I strongly disagree with that concept, and I think all of us should reject it. I believe that when a nominee's personal theological beliefs become a legitimate course of debate before the judiciary and before the Senate, when we insert ourselves somehow between the relationship between an individual and their God, we violate both our conscience and our Constitution.

I have sensed in the Judiciary Committee that some of my colleagues are genuinely alarmed and uncomfortable when a nominee speaks about his or her faith in honest terms in the public arena. Indeed, it is so rare today where people feel free to talk about things that are most important to them.

I would like to read a comment that unnerves some of these folks, who are uncomfortable with such frank and honest discussions.

We are inspired by a faith that goes back through all the years to the first chapter of the Book of Genesis. God created man in his own image. We on our side are striving to be true to that divine heritage. We are fighting, as our fathers have fought, to uphold the doctrine that all men are equal in the eyes of God. There never has been, there never can be, a successful compromise between good and evil. Only total victory can reward the champions of tolerance and decency and freedom and faith.

This was not the comments or the testimony of a nominee to the Federal bench. These were the words of President Franklin Delano Roosevelt. I seriously doubt that anyone in this body at that time took President Roosevelt to task for speaking frankly and honestly about his deeply held personal religious beliefs. President Roosevelt was certainly within his rights to say that in 1942, and it is just as right and proper that our nominees today express their deeply held religious beliefs when they are talking about things that concern them in response to questions, whether it be about abortion or any other issue. I wonder today if, testifying before the Judiciary Committee, President Roosevelt himself would be challenged for these very remarks.

We have most recently witnessed the strident animus directed toward Judge Carolyn Kuhl and Attorney General Bill Pryor who have faced challenges over their religious beliefs, particularly concerning the matter of abortion. Both nominees have, from a legal scholar's point of view, criticized the legal analysis used to support the Roe v. Wade decision. These nominees personally hold beliefs that are absolutely consistent with their faith and the doctrine of their church. Their understanding of religion holds to the doctrine that abortion is wrong. Yet, still, the obstructionists have argued that for both of these nominees—and Bill Pryor, in particular, who is repeatedly challenged over his philosophy and deeply held views above all those arising from his religious beliefs, rendered them simply unqualified to be confirmed.

I would point out that these nominees are hardly alone in criticizing the Roe decision as a legal matter. Numerous legal scholars and jurists across the political spectrum who call themselves pro-choice and pro-life have publicly criticized the legal analysis in

Roe, and indeed that is what lawyers do and judge us do. They parse words. They challenge an analysis to try to sharpen legal thinking. But Supreme Court Justice Ruth Bader Ginsberg, who was overwhelmingly approved by the Senate, has described Roe as "heavy-handed judicial intervention" that was "difficult to justify." Allan Dershowitz, a law professor from the Harvard Law School, described Roe as a "case of judicial activism more appropriately left to the political process." Edward Lazarus, former law clerk to Justice Blackmun, the author of Roe, said that "Roe borders on the indefensible as a decision and, at its worst, is disingenuous and results oriented."

I read these quotes not for any other reason except to show that there has been over time serious scholarly concern about the legal justification for that decision.

But perhaps more to the point, even though Attorney General Pryor and Judge Kuhl have criticized the reasoning of Roe, they recognize that Roe v. Wade is the law of the land. Indeed, one of the things I admire most about Attorney General Bill Pryor, as the Senator from Tennessee noted in his comments last evening, is that he has said: "No matter what my personal beliefs are, I believe in the morality of enforcing the law."

Indeed, I believe as a public servant, as attorney general, as a judge, it is the obligation of a judge to interpret the law as written, not as I would have it be. Indeed, some of the problem we have had is judges who have elevated their personal beliefs, their political agenda above the law. I submit that a judge who is a lawmaker is, in fact, a law breaker.

We understand in this country what was settled well over 200 years ago at the Constitutional Convention in Philadelphia; that is, we have three branches of Government. We have the Congress or legislative branch, which everyone understands. That is the reason we run for election, tell people what we believe, and then we are either accepted or rejected by the public because they believe that same way or not. But then we have a President, the executive branch, whose job it is to execute the law that Congress has written. Indeed, they are servants of the law as well because we recognize they, too, must comply with the law and that no President is above the law; that we are a nation of laws, not of men.

Then there is the judicial branch of Government. The Federalist Papers refer to the judicial branch as the "least dangerous branch." I wonder whether James Madison and Alexander Hamilton are spinning in their graves today when they see what the Federal judiciary has become in too many instances, where judges have assumed the role of lawmaker, something that was anathema to the Framers.

My point is simply this: People such as Priscilla Owen, with whom I served for 4 years on the Texas Supreme Court, understand that no matter what their personal beliefs are, when they put their hand on the Bible and they take an oath to uphold the law of their State and of the United States of America, they have a sacred obligation not to elevate their personal views above the law. Indeed, the judicial philosophy we should all embrace is that of a judge who interprets the law and not makes law.

As I said earlier, a judge who is a lawmaker is indeed a law breaker because they violate the fundamental commitment that all of us have made to enforce and uphold the law, including the Constitution that dictates those respective roles for the various branches of Government.

When I see people such as Priscilla Owen, who received 84 percent of the vote in her last election by the people of Texas and who has been twice selected to the Texas Supreme Court; when I see people such as Justice Janice Rogers Brown, who was supported by 76 percent of Californians in the last election in 1998, the highest of four justices on the ballot; these are not out-of-the-mainstream judges, unless words no longer have meaning.

I agree with Senator SANTORUM who has said, to many it appears that their definition of "mainstream" is extreme. But these are mainstream judges who have received the support of the people they currently serve, both in Texas and California, because they have faithfully interpreted the law. They have been true to their oath. They have been true to the Constitution.

We live in a pluralistic society. People across this country have a variety of different beliefs on a variety of different matters. Indeed, that is what makes this country so great and so strong because we believe everyone is entitled to believe as they wish, to speak and say what they want, but that ultimately we are all governed by the same rules: the rule of law.

It does my heart great sadness to see that people who have dedicated their life to upholding the law are treated so shabbily in this, the world's greatest deliberative body, and that reputations that have been earned with a lifetime of public service are degraded and denigrated to the point that we would not recognize them; that their families, who listen to these unfair and, in some instances, scurrilous attacks, must certainly suffer when they hear the name calling and the unfair characterization of these good and decent human beings.

Just one example of this, perhaps, has taken us to a new low. This cartoon appeared in the Black Commentator on September 4, 2003. This was displayed at the hearing of Janice Rogers Brown before the Judiciary Committee, someone who currently serves on the California Supreme Court. I had the honor to introduce her to the committee because her two home State Senators refused to do so. But it was my honor to do so.

This is the kind of scurrilous, mean attack that is embraced by some who oppose these nominees. I know it is not necessarily easy to see, but this depicts a caricature of President Bush, a picture of Janice Rogers Brown in the most extreme sort of racial stereotype you can imagine, Justice Clarence Thomas, Secretary of State Colin Powell, and Condoleezza Rice, National Security Adviser to the President. The President is saying: "Welcome to the Federal bench, Ms. Clarence . . . I mean, Ms. Rogers Brown. You'll fit right in."

Our colleagues on the other side would do well to disavow this kind of support for the obstruction of these judicial nominees. Indeed, I would think every fairminded and decent human being would decry and denounce these sort of vial and loathsome tactics. We can disagree. We can have different points of view. Indeed, I think that is what makes this body so unique and so important. But we should agree to maintain a certain minimum level of civility in our discourse and, indeed, when there are those who inject this sort of scurrilous attack on President Bush's nominees, or anyone else for that matter, we ought to stand up and say: Unfair, unjustified, and we repudiate it.

Frankly, I have not heard the kinds of repudiation that I would expect for those who are joining in this obstruction against Janice Rogers Brown and denying her the right to a vote.

That is all we are asking for, an up-or-down vote.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I have said often what a great privilege it is for me to be here and to represent the State of Florida. Little did I think 3 years ago when I came into the Senate that I would be speaking to an empty Chamber at 7:30 in the morning. But, indeed, it is a privilege to be here and to offer the ideas of this Senator and the perspectives.

It is pretty clear to me that when I vote for 172 judges and only 4 of 172 are rejected, I am doing my duty. It happens to be this Senator from Florida. Of those 4 who were rejected, I voted for 1 of those 4. But the notion that somehow this is not being fair for the Senate to advise and withhold consent on 4 judges out of 172 just seems to me to be something that we in the South would say is "just beyond me."

Mr. President, 172 judges have come in front of this Chamber. I have voted for 169. I have voted against 3 of those judges. Now why? Why did I?

Well, because what I want is a judge, particularly at the level of the appellate court, but for that matter any Federal judge because they are there for a lifetime appointment, they are there beyond any kind of influences that would remove them from the bench save for skulduggery and unethical behavior, they are there to be free to exercise their judgment—in so doing that, I want a judge who is open-minded, who approaches the bench in a fair-minded way. I don't want a judge who comes to the bench and his mind already made up.

In the South we have a phrase for that. It is a "know-it-all." I don't want a know-it-all as a judge. I want a judge who has an open mind, who is going to listen to the facts, and apply the law. That is what the security and sanctity of this judicial system is based on: Fair and equal justice for all.

That means that a judge ought to have judicial temperament to open their mind and not have all the answers as they approach the bench.

So for this Senator, it is pretty clear, when I vote on 172 judges, and 3 of those 172 don't meet my test, and in the will of this body, 4 of those 172 don't meet the test, it seems to me that is a fairly reasonable point of view. That is inserting the check and balance of the constitutional system that is so unique to our system of government, where a legislative branch offsets, and checks and balances the executive branch, and so, too, a judicial branch offsets and checks and balances the other two branches.

I am delighted to be here with my colleague from Oregon today and to share the floor as we give some of our ideas about this all-night session. It was quite a challenge getting here. There is a real wind storm in Washington today. Fortunately, since the power went out at my residence, my stopwatch and also alarm clock wristwatch went off, and I had to stumble around in the dark with a flashlight and race over here. But I am delighted to be here and to join with my colleague from Oregon.

Mr. WYDEN. I thank my friend. I think he has made a number of important points about judges. The fact is, there is an alternative path. I think about how I have had a chance to work with my colleague in the Oregon delegation, Senator SMITH. We have gotten judge after judge confirmed because we have felt, while some consider it quaint, that you ought to try to work in a bipartisan way. We have not applied an ideological litmus test. I think what the Senator from Florida is saying is that is the kind of approach we ought to be pursuing, to try to find common ground to get the Senate together.

As I begin my comments this morning, I will say that I think a lot of Americans look at what is going on now on the floor of the Senate and say that it is sort of like the great wall of China, an almost impenetrable barrier surrounding a forbidden community where their voices just go unheard.

I know what I hear from my constituents—I have open community meetings in all of Oregon's counties—is awfully different than essentially what the Senate has been doing through the night.

For example, what I hear about is how medical costs are just gobbling up everything in sight. I hear, for example, about how the crushing small businesses, scores of them dying to cover their people, have been unable to do it. I hear about providers, physicians, and others leaving the system because of inadequate reimbursement. I hear about so many who are not poor enough for Medicaid, they are not old enough for Medicare, and they fall between the cracks. Again, there is an alternative approach to all of the partisanship.

The senior Senator from Utah, ORRIN HATCH, has worked with me for a number of years now on the Health Care for All Americans Act. It is absolutely critical that the Senate get moving on this issue because we all understand that there is a demographic tsunami coming. Millions of baby boomers are about to retire in a few years. All of the problems we are seeing today are going to be multiplied three or fourfold.

Yet the Senate isn't tackling that kind of issue because, in effect, things have ground to a halt over exactly the kind of polarization the Senator from Florida has talked about.

I would hope that as we wrap this up, we understand that nothing important is going to get accomplished in the Senate unless there is an effort to work in a bipartisan kind of fashion.

Mr. NELSON of Florida. Will the Senator yield?

Mr. WYDEN. I am happy to yield.

Mr. NELSON of Florida. On that point, we have been fortunate to have a bipartisan approach in Florida with regard to the confirmation of judges as well. My senior colleague, Senator GRAHAM, as Governor back in 1978 to 1986, was able to get the legislature to pass a series of panels called the Judicial Nominating Commission. This would be composed of lay people and members of the bar, leaders of the community who would receive applications for a vacant judgeship, and then that committee would screen them, interview them, look at their credentials, and nominate three, and then the Governor would select. That is still law today.

When Governor GRAHAM was elected to the Senate in 1986, he started to institute a similar situation, but rather by custom instead of law, in the confirmation of nominees to the Federal bench. It has worked well, while there have been two Senators of the same party and, indeed, while Florida has had two Senators of both parties. Indeed, the judicial nominating commissions formed back in Florida nominate three for the vacancy. The Senators sit down and interview all three of those. Now we are operating under a system that we have worked out with the existing Governor of Florida that it will be six nominees for the vacancy.

Senator GRAHAM and I sit down and interview all six, and we make a recommendation to the White House if we have an objection.

Otherwise, the White House then goes about and selects which one they want. It is a way of working this in a bipartisan fashion, with a bipartisan commission; and all of our judges have gotten through without controversy.

The fact is exactly what the Senator from Oregon says. If you put your mind to it and you want to be bipartisan, you can have this process work, work efficiently, work effectively, and work timely in order to have good, fair, and open-minded judges.

Mr. WYDEN. The Senator from Florida is being logical. Heaven forbid that logic break out sometimes in this area that is often called the "logic-free zone"—this area surrounding the Capitol. It just seems that in so many of these areas, the institution just takes leave of its senses because both of us have described a bipartisan way to deal with the issue of judges—an approach that works in Florida and has worked for Senator SMITH and I in Oregon. I do not think the Senate has the time or luxury for a lot of this pettiness.

I mentioned the health care issue with Senator HATCH that I have felt strongly about since my days as co-director of the Oregon Gray Panthers. This demographic revolution is coming on us, and the prescription drug issue we are tackling now is vitally important. But if there is one thing the Senate has learned, health care is like an ecosystem. What you do in one area affects all other areas. Senator HATCH and I have pulled together an approach that has now gotten the support of the Chamber of Commerce and the AFL–CIO to get back on track for what, regrettably, was not finished back in the early 1990s. In the health care area, you see an alternative path.

I see my good friend from Virginia here, Senator ALLEN. He and I are working on at least five major technology issues right now on the question of Internet access, and we are working in a bipartisan way with the States and localities to ensure that the Internet medium is allowed to grow and prosper. We have come together on nanotechnology, and we are working together.

I want to give some additional time to the Senator from Florida because I know his schedule is short. If you look at the big issues of our day, including the health care question, where I have outlined what Senator HATCH and I are talking about on so many issues that are social and ethical; and the technology question, where it just seems fitting that the Senator from Virginia is here, Senator ALLEN, my friend and partner on so many of these technology issues, the Senate has a choice either to listen to our constituents and take the bipartisan approach that will lead to real solutions or continue what is seen by most Americans as just small food-fight-like exercises.

I want to give additional time to my friend from Florida because of his schedule. I appreciate, particularly, his outlining, as we have tried to do in Oregon—Senator SMITH and I working together—the kind of bipartisan approach that the Senator from Florida has described in his State for choosing judges.

Mr. NELSON of Florida. Mr. President, I will pick up on that theme the Senator from Oregon has mentioned. I must say this has been one of the greatest experiences, and most enjoyable, to get to know all of these Senators. I must say there is not one Senator here I do not personally like. I must also say that my degree of frustration—and usually if I am frustrated, it is with a smile because of enjoying my colleagues here so much; but my one frustration is that this place is way too partisan. And, from time to time, this place is way too ideologically extreme. When you have a country as big and as broad and as complex and as diverse as ours, it is very difficult to govern this country when it becomes highly partisan and ideologically extreme. It makes it very difficult for the people who are in the political center trying to reach out and bring people together to build consensus when there is sharp, highly charged partisanship and ideological extremism. It is very hard to build that consensus.

Mr. ALLEN. Will the Senator from Florida yield?

Mr. NELSON of Florida. I would love to yield to my colleague, but it is my understanding that, under the rules, we are given, in each hour, one-half hour for the Senator from Oregon and me to make a presentation, and one-half hour is given to the Senator's colleagues to make their presentation. It would be my intention for Senator WYDEN and I to continue our remarks, since we only have about 12 minutes left.

Mr. ALLEN. Mr. President, I thought it had been agreed that any speaking or questioning I may do would get charged against our time in the next hour.

Mr. NELSON of Florida. Mr. President, it is my understanding that I have the floor. I have some thoughts I want to express. Rather than have those interrupted, I prefer to just continue on.

The PRESIDING OFFICER. The Senator from Florida has the floor.

Mr. ALLEN. Thank you, Mr. President.

Mr. NELSON of Florida. Mr. President, I thank the Senator from Virginia, who is one of my favorites here. I have the privilege of serving with him on a number of committees.

Back to what I was saying, if we would stop this excessive partisanship—you cannot get things done with this excessive partisanship. Especially, you cannot get it done in a Senate that is basically split down the middle, 50–50. I think it is 51–49 now. So if you are going to get anything done, we ought to be Americans first, not partisans first. That is what part of all this fight is. That is what part of this all-night session has been.

Do you know what. The folks out there in America—and I think all of you know this—don't like these partisan food fights.

I would like the perspective of the Senator from Oregon on that.

Mr. WYDEN. Mr. President, I think the Senator from Florida and I have tried to spend our half hour talking about specific ways in which the Senate, on a bipartisan basis, can come together to find common ground. Let me repeat them as we move to the end of our half hour. The Senator from Florida and I have talked about an alternative approach on judges, which works in the State of Florida and in the State of Oregon. I have talked about the health care issue, the issue that I feel the most passionate about, going back to my days when I worked with the elderly, and the wonderful help I have gotten from ORRIN HATCH, trying to focus on getting the country ready for this huge set of population changes that is coming. I thought it was very fitting that the Senator from Virginia was here, Mr. ALLEN, who has worked with me on technology issues.

A fourth area—something that is fresh in the Senate's mind—is that just a few days ago, we got 80 Senators—far more than anyone could have imagined—to support a major natural resources bill dealing with the forest fire issue. This is something of enormous concern in my part of the country and, obviously, all Americans. Our hearts go out to the people in California where they have had this terrible tragedy. Senator FEINSTEIN and Senator COCHRAN—I always wanted to work with Senator COCHRAN on an issue as chairman of the Agriculture Committee. I haven't had the opportunity until now. He could not have been more constructive and helpful. I think that is why the Senate got 80 votes for that forest rebuild.

So I think the Senator from Florida is setting the right tone and certainly, in our 20 minutes, on the question of judges, health care, technology, and on the question of forestry, the two of us have shown that there is an alternative to a lot of the smallness, a lot of the harshness that we are seeing dominate this debate.

I thank my colleague for all of this extra time, and I believe the tone he is setting is one that will respond to what I hear the country talking about, and certainly what I hear people of Oregon talking about at our 36 town meetings in every part of the State.

Mr. NELSON of Florida. If the Senator will yield, I want to discuss another subject where partisanship gets in the way, and that is putting our fiscal house in order.

The Senator will remember about 2½ years ago, the wonderful optimistic view that we had of the Federal budget, where we were sitting on a budget surplus in the year 2001—something in excess of $250 billion in that 1 year, with a projected surplus over the next decade that was going to allow us to pay down and almost pay off the entire national debt, and still have enough left over in order to enact a substantial tax cut, and still have enough left over to start new programs that were needed, such as the adequate funding of the bill that we ultimately passed but did not adequately fund—the No Child Left Behind Act—and modernizing Medicare with a substantial prescription drug benefit. We had the opportunity to do all of that and still be fiscally conservative and fiscally responsible in not invading the Social Security trust fund, letting that Social Security trust fund surplus pay off the national debt over the next decade.

Instead, 2½ years later, we are looking in this fiscal year at a budget deficit—not a surplus but a deficit—of a half trillion dollars. That means we are spending $500 billion more than we have coming in in tax revenue. What do we do? We go out and borrow it. Who do we borrow it from? We borrow it in part from the average American citizen when we buy Treasury bonds. Do you know what surprises people? We end up borrowing it from countries such as China and Saudi Arabia.

If we are going to get out of this fiscal briar patch, it is going to take bipartisanship. The excessive partisanship gets in the way, just like it has gotten in the way of having us in session all night for that side of the aisle to make their point of view, and our side of the aisle to say that we have taken up 172 judges and approved 168 of them.

This country has its challenges and we have not even talked about Iraq and Afghanistan and the war on terror. But it certainly has its challenges with this fiscal mess that we are in of bleeding to the tune of deficit financing of $500 billion in this fiscal year.

Again, I thank my colleague. What he represents, my colleague from Oregon, and our colleague from Louisiana, who is with us—what they represent is the bipartisanship of reaching out and trying to bring people together and build consensus. That is what we need to do when we are dealing with Iraq and Afghanistan, the budget deficit, the environment, education, prescription drug benefits, and the approval of judges.

Mr. WYDEN. Will my colleague yield?

Mr. NELSON of Florida. Yes.

Mr. WYDEN. I think you have given us an ideal way to wrap up our half hour. I want to tick off yet another area where we have outlined an opportunity for an alternative path. We have spent our half hour describing a way in Florida and Oregon where you can deal with judges in a bipartisan fashion. We have talked about health care issues. Orrin Hatch and others have helped me, as have other Democrats. I think that has been constructive and a real path to try to deal with what is coming in 2010 and 2011.

Senator ALLEN was here and we talked about technology and the fact that the Senate got 80 votes a few days ago for forestry legislation—an unprecedented bipartisan vote. Finally, the Senator from Florida puts us on this question of fiscal responsibility, another avenue for cooperation between the parties.

I think about the outstanding work done by the Senator from Maine, Ms. COLLINS, who chairs the committee overseeing the operations of Government. She and I have been very concerned about the lack of openness in competition in the contracting process for these reconstruction contracts. It looks, given the events of this week, as though you are going to get more information out of Baghdad than you are going to get out of Government agencies in Washington, DC. There wasn't a shred of partisanship with respect to how we tackle this issue. So I think what we wanted to do in our half hour of time—the Senator from Florida and I—is not just talk about everything that has gone wrong, but to outline on specific issues an alternative path—a path that shows that we are listening; that the notion that somehow Washington, DC, is like a great wall of China, an unpenetrable community for the American people doesn't have to be that way. Whether it is judges, health care, technology, forestry, or the fiscal morass that the Senator from Florida has talked about, we want people who are listening this morning to know that we do think there is another way for the Senate to do its business.

I say to my friend from Florida, we came to Congress essentially together in the other body and then here. I have really enjoyed this and particularly the tone that I think he set out when we began—that the Senate needs to do better, and if you want to get anything important done—which is why we are sent here—it has to be bipartisan. I thank my colleague.

Mr. NELSON of Florida. Mr. President, has the half hour expired?

The PRESIDING OFFICER. The minority has an additional 1 minute 50 seconds.

Mr. NELSON of Florida. Mr. President, I thank my colleague from Oregon, and I thank the Senator from New York, who has already shared his comments. I am looking forward to the comments of the Senator from Louisiana and also the Senator from Iowa.

Bottom line: What is this about? This is about fair and equal treatment for the American people and producing a Federal judiciary that will be open minded. Over two centuries ago, a group of political geniuses got together and crafted a written document called the Constitution, which would not allow power to be concentrated in the hands of any one person or any one institution but, rather, that an arrangement of sharing of power would occur. Each institution would have a check and balance against the other.

You are seeing that check and balance play out now in the nomination and confirmation, and/or the advice or nonconfirmation of this body, the Senate. So it is a great privilege for me to participate in it, along with the Senator from Oregon.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. NICKLES). The Senator from Virginia.

Mr. ALLEN. Mr. President, I listened to the words of the Senator from Florida and the Senator from Oregon. As the Senator from Oregon said, we have worked together on things from cybersecurity to nanotechnology, important initiatives for the competitiveness of our country. We have worked together to prevent access taxes on the Internet and other matters, particularly in the technology area.

I listened to the Senator from Florida. This is why I wanted to pose a question to him. I realize both sides were out of time so I bring up the issue now.

In the way he was speaking earlier, I would say, the Senator from Florida, Mr. NELSON, said we approved all these judges and there were four we have not approved. Indeed, on one of them he actually voted for; that was Miguel Estrada. Miguel Estrada received 55 votes for cloture to actually go to a vote.

In the case of Miguel Estrada, the majority of Senators were in favor of Miguel Estrada. I commend Senator NELSON as one of the four or five Democrats who, on Miguel Estrada's nomination, thoroughly examined his qualifications and decided that he should be accorded a vote. But we now have a supermajority requirement for judicial nominations, a 60-vote margin.

However, to look at a cloture motion as a vote up or down is not correct. The Constitution does not require a 60-vote margin. The Constitution requires advice and consent in a simple majority, one way or the other, with a simple, fair, and equitable vote. Miguel Estrada had 55 votes. Senator NELSON was one who voted to end cloture. Clearly, with a fair vote, he would now be on the DC Court of Appeals. Instead we had to go through seven cloture votes.

The same with Attorney General Pryor, Judge Pickering, and Justice Owen—all have had majority votes to end cloture. So the reality is, and why there is frustration and aggravation and why we are trying to get justice and equity done, is that in fact there has not been a simple up or down vote on this nominees.

In the event that one of these cloture votes had only resulted in 47 or 48, I expect the writing would be on the wall and we would recognize the President would have to renominate. That happened years ago with Justice Fortas.

In this situation, it is clear, with Miguel Estrada, Mr. PRYOR, Judge Pickering, and Justice Owen, the majority are in favor. It there will probably be a majority in favor of Judge Kuhl and Judge Rogers Brown.

I have been talking about country music songs through the night and through the morning. This reminds me of an analogy to "Rawhide," except the opposite, instead of "movin', movin', movin'," we have "stallin', stallin', stallin'."

What we want is people to decide in the Senate, yes or no, whether you are going to move them up or move them down; yet, nevertheless, move and decide. That is the responsible thing to do, consistent with the Constitution, consistent with the accountability of the Senators to the Constitution and to their constituents as well as fairness to these nominees, to give them the fairness of an up-or-down vote. Simply decide.

Mr. BENNETT. Will the Senator yield for a question?

Mr. ALLEN. Yes, I will.

Mr. BENNETT. I am interested to hear the Senator make the point that an up-or-down vote is what we are asking for. The Senator was in the Chamber when the cartoon was displayed with highly offensive racial characteristics attributed to the judge from California. I ask the Senator if he is aware that this African-American woman, who in my opinion has been slandered, has been the subject of comment by Al Sharpton, one of the candidates for President. Al Sharpton said he disagrees with the woman and believes she is not qualified to sit on the bench but that she is entitled to an up-or-down vote. Is the Senator aware of Mr. Sharpton's comment on that?

Mr. ALLEN. No, I was not aware of that. I thank the Senator from Utah, Mr. BENNETT, for bringing that up. I hope some of our colleagues on the other side of the aisle will look back on some of their own statements from 3 years ago and 4 years ago when they were saying judges deserve up-or-down votes, and at those contemporaneous times, from Reverend Sharpton. I may not always agree with Reverend Sharpton, but he seems to be a man of fairness and I hope our colleagues on the other side of the aisle will heed his advice.

Mr. BENNETT. I would say I almost never agree with Reverend Sharpton, but I have seen the diligence with which he and other civil rights leaders have pounced upon any politician who has ever dared hint at any kind of racial slur or attack on an African American. At least he has shown this degree of consistency, that he has now spoken up against those who are Democrats who may have been guilty of a racial slur, and come to the defense of an African American, even though he disagrees with her.

I think it appropriate for us to note that. I appreciate the Senator's yielding to me for the opportunity to make that comment.

Ms. LANDRIEU. Will the Senator from Virginia yield for a question?

Mr. ALLEN. I thank the Senator from Utah for bringing up, not only the Sun, but that enlightening view.

Ms. LANDRIEU. Will the Senator yield?

Mr. ALLEN. I yield at the sufferance of the Senator from Tennessee. I will yield, but it will be on your time.

Ms. LANDRIEU. Just a question. I am sorry the Senator from Utah left the floor. Perhaps if he hears this question, he might come back to respond.

I am wondering, since he raised the name of Al Sharpton, Rev. Al Sharpton, who asked for a vote on one nominee, supposedly. If Al Sharpton—I am sure he did, and others—asked for a vote on 60 of President Clinton's nominees, which represented 20 percent of the nominees sent up by a former President, would the Senator from Utah have agreed to a vote, if Rev. Al Sharpton had called him? I don't think so. He could come back to the floor and respond to that.

The issue is not single votes. The issue is whether the Senate of the United States, the Democrats, have a right to give advice and consent to the President. The facts speak for themselves. The Senator from Virginia knows them well. The numbers are 168 of President Bush's nominees have been approved with bipartisan support and cooperation from the Democrats in the Senate. Only 4—only 4—have been stopped—only 2 percent. That is in contrast to the thousands—this is my question.

The PRESIDING OFFICER. The Senator may ask a question.

Ms. LANDRIEU. Did the Senator from Utah or the Senator from Virginia know that when President Clinton was in the White House, thousands and thousands of individuals—did you know—called to ask for votes on the 60 percent?

The PRESIDING OFFICER. The Senator is entitled to ask a question. She is not entitled to make a speech.

Ms. LANDRIEU. I am asking a question: Did you know? That is my question. Did they know that when the former President sent hundreds of nominees and asked for a vote—and I am sure Reverend Sharpton and others—did they know, some of the members and groups involved and interested Americans involved—did they know that 55 nominees were not given a right to have their vote called?

Mr. BENNETT. May I respond?

The PRESIDING OFFICER. The Senator from Virginia has control of the time.

Mr. ALLEN. The question was propounded to the Senator from Utah, and I yield to the Senator from Utah. But before I do, the point is here and now. The four you are talking about is already six. The Senator from Florida was talking about these so-called cloture votes as being votes. They are not fair up-or-down votes. That is the point here. Don't try to shirk responsibility or shirk accountability. Are you going to vote for or against these individuals based upon their merits? If you are against them, that is fine. But have the equity and fairness of a vote.

I was not here in those days. All I know is, since President Bush has come into office, he has put forward individuals, including Roger Gregory, whom I mentioned earlier, who was a recess appointee of President Clinton, and it was really difficult for a lot of Republicans to act on statements of Judge Roger Gregory based on his qualifications and merits, but we did. We think you on the other side ought to accord these nominees the same fairness and equity of a fair vote.

But I will yield to Senator BENNETT, responding on the Al Sharpton question.

Mr. BENNETT. Mr. President, I will answer the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. I am unaware of how many nominees did not get out of committee. I am unaware of what may have happened prior to a nomination coming to the floor. But I do know I would allow a vote on every nominee who comes to the floor, regardless of which party it may be or regardless of which President might put that nominee forward. And I would agree with Al Sharpton or anyone else who called for an up-or-down vote, without a filibuster, on any nominee, any judicial nominee who has come forward.

There is no question but nominees get lost in committees. There is no question nominees get held up by holds and other activities. But once a nominee has been cleared by a majority vote of the committee and placed on the floor, that nominee is entitled to an up-or-down vote. I have always held that position. I always will hold that position. It is for that reason I will support the Frist-Miller rule change that will make that position very clear.

I do not care who the President is, under the Constitution he or she has the right to make nominations. The Senate handles those nominations. I understand sometimes those nominations will be stopped in committee. But once the committee has voted by a majority vote to put the nomination on the floor, whether it is my President or someone else's President, I will always support and always have supported the notion that that individual is entitled to an up-or-down vote.

Mrs. LANDRIEU. Will the Senator from Virginia yield?

Mr. ALLEN. I will yield to the Senator from Tennessee.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Arizona.

Mr. KYL. Will the Chair advise me when I have spoken for 90 seconds? I simply want to make one point. That is, the chart that is before us on the other side is more than misleading; it is absolutely false. There are always judges who are not confirmed at the end of a Presidential term. There were at the end of the Clinton term. There were at the end of the first Bush term. So it is wrong to say that, because there were judges who continue be confirmed because they were nominated late, they were rejected.

What is correct is to say is there have been four nominees rejected by filibuster without a fair trial, without an up-or-down vote. I have been trying to think of an analogy, watching people say: Look, it's 168 to 4; we have only filibustered 4. Of course, there are a lot more in the wings.

But here is an analogy that deals with the law: We only hanged 4 people without a trial. We gave the other 168 a fair trial. We had a vote in the jury.

That is what is going on here. It is not a matter of defeating the judges. Judges are defeated by both parties very seldom, and there are some at the end of a President's term who can't be voted on just because of time constraints, and it is about the same number in every party, if I go back in time.

What is unprecedented is the filibuster where you don't even allow them a vote. The analogy I came up with is the one I just mentioned—I think it is very apt—to say, Look, we only hanged four people without a fair trial; the others got a fair up-or-down vote.

That to me is wrong. That is what we are talking about here.

Mrs. LANDRIEU. Will the Senator yield for a clarification?

The PRESIDING OFFICER. Who seeks time?

Ms. LANDRIEU. Will the Senator yield for a clarification?

The PRESIDING OFFICER. Who seeks time?

Ms. LANDRIEU. The Senator from Arizona.

The PRESIDING OFFICER. Is the Senator from Louisiana in control of time?

Ms. LANDRIEU. I think I——

The PRESIDING OFFICER. The Senator from Tennessee is in control of the time. The Senator from Tennessee.

Mr. ALEXANDER. How much time does the majority have?

The PRESIDING OFFICER. The majority has 17 and a half minutes.

Ms. LANDRIEU. Parliamentary inquiry: How much time do the minority and majority have at this hour to be allocated?

The PRESIDING OFFICER. The majority has 17 minutes, the minority has 28 minutes.

Ms. LANDRIEU. Thank you.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, insofar as the Senator from Arizona's comments are concerned, he said we gave 168 a fair trial and hanged 4 without a trial. He might have also said we had never done that before this year. That is the point.

Let me step back from this and try to put it in a little different framework. I am new to the Senate. I came here in January for the first time even though I worked here before, 35 years ago, for Senator Howard Baker.

A lot of people ask me, knowing I was a Governor for a while: What do you think of it? How do you like the U.S. Senate?

I suspect the reason they ask that is that some former Governors who have come here have not liked it. It is a very different sort of job. But this has been a great privilege for me. It is hard for me to think of a thing that has not been good about the last 10 or 11 months.

The Senator from Louisiana is here. One of the good things is she and I have worked together on issues that have to do with the environment and energy. So the opportunity to speak, the people with whom I work, the issues I deal with, all those things make serving in the Senate a great privilege.

The only real disappointment I have had is this issue of judges, of the treatment the Democratic side has given to President Bush's appointment of judges. I have been puzzled by that. I have even said to some of my friends on the other side: Before this year, before I got here, the Republicans must have done something awfully bad to you to produce this kind of reaction because I really don't understand it.

I know something about the appointment of judges. As Governor of Tennessee, I appointed about 50 judges. In fact, the other day, I went back to Nashville for the retirement ceremony for Chancellor Irwin Kilcrease. I appointed him in 1980. He was the first African American ever to serve as a chancellor in our State. He served with dignity. I didn't ask him his political party before he was appointed. It turned out he was a Democrat. I didn't ask him his view on abortion. I still don't know what it is. I didn't ask him how he was going to decide the cases before I appointed him. I thought it would be totally inappropriate.

I checked to see if he was intelligent, fair, had good character, if he would respect people who came before him, and I appointed him and he has served with great distinction, as did the others.

I also worked for a great judge. The Senator from Louisiana certainly knows him well, or knew him well. His name was John Minor Wisdom. He lived in New Orleans. When I graduated from law school in the mid-1960s, he was already considered to be one of the great Federal judges of the country.

He and Judge Elbert Tuttle of Atlanta, Judge Richard Rives of Florida, and Judge John R. Brown of Texas, all appointed by President Eisenhower, Republican judges, presided over the peaceful desegregation of the South in the 1960s and into the 1970s. In 1962, they ordered Ole Miss to admit James Meredith. They are regarded as heroes in the South.

Judge Wisdom was a great judge. I am sure, before he was appointed, no one in the Senate asked him how he would decide the cases he was about to decide.

What is going on in the Senate today reminds me of the old mountain story about the lawyer who came up to the judge at the beginning of the case and said: Judge, may I make a few arguments on the law? May I tell you about the case?

The judge said: You don't need to tell me about the case. I got a phone call last night. I pretty well know the facts. Just give me a few points on the law.

The importance of judgeships in America is that when we go before them, we expect to be treated fairly. We don't believe it is a political exercise. And we accept the results. That is why it is so inappropriate, it seems to me, for us suddenly to be rejecting President Bush's appointments because of their permanent views when it is established by their long records that they are able to apply the law.

Let me especially speak about a couple of cases from the part of the country I know the best, the South. I want to mention first the attorney general of Alabama, Bill Pryor. I want to mention, second, the Federal judge from Mississippi, Charles Pickering.

Let's talk about Bill Pryor. He is a young attorney general, I just learned the other day. I had not really focused on him enough to know exactly who he is. He also was a law clerk to Judge Wisdom. He was editor in chief of the Tulane Law Review. I am certain the Senator from Louisiana would agree that would qualify someone, at least on paper for good starters, to be a good judge. I know Judge Wisdom hired extraordinary people. I know he never hired anyone who wasn't fair. I know he would never tolerate anyone in his office who wasn't committed to civil rights because he was one of the leading civil rights judges in the country. Yet on the other side of the aisle, the argument against Bill Pryor—this is no more than a racial smear—is that he is not sensitive to civil rights, he is a white conservative from Alabama and, therefore, can't be trusted, that is what the point is. But there is nothing in his background that would suggest that. That is made up out of whole cloth. That is not the reason the other side will not give Mr. Pryor an up-or-down vote, something that has never been done in the history of our country until this year with Federal nominees.

Let me just speak about what Mr. Pryor's career has included. When he was appointed attorney general of Alabama, he voluntarily said in his ceremonial remarks he criticized the State constitution for banning interracial marriage. He didn't have to do that. He volunteered that.

What is he doing today? He is trying to oust the chief judge of the Alabama Supreme Court because the judge insists on keeping a copy of the Ten Commandments in the courthouse in violation of a Federal court order. It is not because Mr. Pryor doesn't believe in the Ten Commandments. He believes in the law. He is able to put the law ahead of his own views.

He is a Republican. He took to the Supreme Court of the United States a reapportionment case that worked against the Republican Party in Alabama. He didn't do it because he wanted to hurt the Republican Party, he did it because he was able to put the law above his own political beliefs.

What else did he do? This may be the most serious and difficult act that an Alabama attorney general could do. I am surprised that he is still in office having done it. He wrote a letter to every school district in Alabama—to every superintendent in every school—telling them the football coach couldn't lead a prayer before the football game—not because he doesn't pray, not because he is not religious, but because he believes the law doesn't permit it. He is a Roman Catholic. He said so in the hearing. He is pro-life. But on the issue of abortion, he wrote all of the district attorneys in Alabama and told them they could not enforce an anti-abortion law passed by the State of Alabama because parts of it were unconstitutional. He put the law before his religious beliefs.

Here is someone who was the editor in chief of the Tulane Law Review, a law clerk to the greatest civil rights judge of the last 30 years in the South, who has consistently put the law ahead of his own beliefs, and the other side won't bring him up for a vote. Why would that be?

Let us go to Judge Pickering for a moment, another example in the South.

The suggestion has been made that he is not racially sensitive. Those are code words. That is to suggest that somehow Mr. Pickering is a bigot and is not fair to African Americans. We all know what the slur is, what the slander is, what the implication is. We all know what that means. But what do the facts show?

The facts show that Mr. Pickering was not on the sidelines, that he was not in the background, that he was out front during the great civil rights struggle of the 1960s and the 1970s. He lives in Laurel, MS. He lived at the center of the problems of racial desegregation. He lived in the same town as the head of the White Knights of the Ku Klux Klan, Sam Bowers. The White Knights were organized because they didn't think the Klan was mean enough. The White Knights and Sam Bowers, according to the Baton Rouge Advocate, was the most dangerous, the most violent racists living in the 1960s.

We hear a lot about terrorists today. The terrorists of the 1960s in the United States were the Klan members in Laurel, MS.

What did Charles Pickering do? He testified in public against Sam Bowers, in the courthouse, against the most violent living racist in America, according to the Baton Rouge Advocate. That was 1967. He has had a whole lifetime of commitment to racial progress. It seems as if almost everybody in Mississippi supports him, including most of the Democratic leaders.

William Winter, my friend with whom I served, former Democratic Governor, a beacon for racial progress in Mississippi, strongly supports Judge Pickering. Frank Hunger, who was a law clerk on the Fifth Circuit Court of Appeals where I was—Frank Hunger was President Clinton's Deputy Attorney General, he is Al Gore's brother-in-law, and he strongly supports Judge Pickering.

Why in the world would the other side slur Judge Pickering and suggest that he is guilty of racial insensitivity when he stood up for desegregation? He might have been on the other side that opposed segregation, but he wouldn't. He was out front risking his life, literally, and putting his own children in public schools when others were running off to segregated academies. When we bring him up before the Senate—after sticking his neck out and sticking up, in Mississippi, for desegregation—we cut his neck off in Washington, DC? Why is that being done? I am not sure. I know it is not right constitutionally.

The President nominates the judges. That has always been the way it was. Despite the rhetoric on the other side, until this year, this Senate has never used the filibuster to deny an up-or-down vote to a Presidential nominee who has a clear majority in the Senate. The filibuster has been used for other purposes by the other side.

I was hearing a lot of talk last night about protecting the rights of the minorities. There were not a lot of African Americans in the South in the 1960s who felt really protected when a filibuster was being used by Senators to stop the most important piece of civil rights legislation that was offered here. So it is not that great a device to have.

Why are they doing this? I don't know. One clue is to change the rules, which we may have to do, but the other is the election, which I guess is what I prefer.

In Senate races in Florida, in North Carolina, in South Carolina, in Arkansas, in Georgia, and all across this country, I hope this is an issue. I hope people say: Why was President Bush, for the first time in our history, not given a chance to have up-and-down votes on men such as Charles Pickering and Bill Pryor who were extraordinarily qualified, had the majority vote and were courageous leaders in the South? Is it because they are southerners? I don't know what it is. But the other side is so captured by narrow interests that they are digging a hole so deep that I hope it has an important political result next year.

I would prefer to see us operate differently, and I will pledge to do what the Senator from Utah pledged to do. While I am a United States Senator, if a nominee comes to the floor for a judgeship by any President, Democrat or Republican, I will not participate in a filibuster. I will vote to cast an up-or-down vote on any nominee of any President. I think that is the right thing to do. The sooner those of us on both sides do that, the more we will get back to appointing judges in the way Judge Wisdom was appointed, and the way Judge Kilcrease was appointed. And we would appoint judges we would respect. We would not be asking them how they will decide cases before they come in, and we would not be submitting them to an ideological litmus test before they are appointed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I would like to answer a couple of points that the Senator from Tennessee raised. My colleague from Iowa is here to join me for a few moments to speak on the floor about this subject.

Let me say there really isn't a Member I respect more in the Senate than the new Senator from Tennessee. He and I served together on the Energy Committee. I am well aware of his very progressive views on civil rights. I am aware of his history as a clerk for one of the finest justices who has served in the country. I am aware of his connection to Louisiana and as a southern leader. As a Democrat, I respect the work he did in Tennessee as a Republican Governor of that State. I look forward to many wonderful years working with him.

But I would like to answer the question of why many people in the South are upset and concerned about what the Republican majority is calling on us to do today.

I want to start with the charge that the Senator from Virginia said—stalling, stalling, stalling. The Senator from Tennessee knows very well the Democrats did not ask for this 30 hours. The Republican leadership is stalling the veterans bill, the Energy bill, and the housing bill, which people in our State—as the Senator from Tennessee knows, I have 400,000 veterans in Louisiana. He must have 500,000 veterans in Tennessee. Their bills are pending while we debate whether or not it is fair to block 4 of 168 nominees—4 of 168.

The second point I want to make is that the Senator from Arizona took 90 seconds to come to the floor and refer to the people who are listening—and we do believe the country is interested in the debate here in the Senate—that these four individuals were "not given a trial." I think the words were "hung without a jury," or some such inflammatory language.

Please let me say for the RECORD that these 4 judges out of 168, only 2 percent of President Bush's nominees, were given hearings. The nominee from Texas, Priscilla Owen, 1 full day of hearing; the nominee from Alabama, Judge Pickering, 2 days of hearings, and 1 day was given after the anthrax attack. The Capitol was literally under attack and we felt so strongly about providing a hearing the day after the attack that the nominee was given a hearing.

Mr. Estrada was given 1 day of hearing, and Mr. Pryor was given 1 day of hearing.

So the notion that these nominees have not been given their day in court, time to express their views and to answer questions, is absolutely false. That is in contrast to the 57 nominees of 63 of President Clinton's nominees. Let me repeat: 57 out of 63 who didn't get 1 minute of a hearing, not 1 minute.

These 4 we have blocked for reasons that I and my colleagues will go into—and Senator HARKIN will speak about in a minute—have been blocked for very good reasons. All of them got a hearing. I just wanted to make that clear.

I know the Senator from Tennessee will remember those hearings in those committees.

The third point I want to clarify is the Senator from Utah said he would never not give a nominee the opportunity for a vote. The RECORD will reflect that the Senator from Utah has voted seven times against cloture for giving a nominee—not a judicial nominee but appointee—a vote on the Senate floor.

I urge Senators to not use words such as "never" or "every" because the fact is, filibusters have been attempted before over the course of our history: In 1968, in 1980, in 1994, and in the year 2000, but they haven't been successful.

This filibuster is successful for one reason and one reason only: The American people do not want these four judges on the bench. They just do not want them on the bench, and they are expressing that through the Democrats here in the Senate. I will tell you why.

Let me talk about Mr. Pryor for just 1 second. I want my colleague from Tennessee to know, and my colleague from Alabama will know this. I know I am going to aggravate some Democrats when I say this. But I was willing to vote for Judge Pryor, and I had basically told that to the Senator from Alabama, who is a good friend of mine, someone with whom I really enjoy working, who is much more conservative than I am on some issues. But I really do like him and I really do trust him in many ways. I talked with him and we talked about it. I was prepared to vote for Mr. Pryor until this ad appeared. Let me read it to you. Judicial Chambers:

> While some in the Senate are playing with religion, Catholics need not apply.

I am a Catholic. When these ads appear, by right-wing groups that want to divide this country, Catholic against Protestant, Gentile against Jew, man against woman, straight against gay, it is something inside me that just boils up.

When the Republican leadership tells me I have a problem with Catholic judges—my father is a Catholic judge, and my sister is a Catholic judge. I don't have problems with Catholic judges. I don't have problems with William Pryor. I have problems with this red meat rhetoric that is anti-American, anti-constitutional, and defies every principle that this country and the men who are dying today and women in Iraq fight for. It is not a matter of whether you are Catholic, whether you are Jewish, whether you are Protestant. You should be judged on qualifications. But the right wing—and I told the Senator from Alabama until the National Republican Party repudiates this ad, the chairman of the party stands up and says 'these ads have no place, and the Republican Party repudiates these ads, the nominee will not get my vote—not because he is pro-life and I am pro-choice, not because of this or that, but because of this ad.

That is what this election is about. I will tell you the people in my State are tired of it. I have Catholics and Protestants who want to be united, to be together, who want to create jobs, who want to help veterans, want to figure out the problem in Iraq, and they are so tired of the Republican leadership just using every little wedge issue, religion or race to wedge everybody apart. I know Democrats aren't completely innocent of these tactics, but it has gotten to the point where it has basically shut down the work here.

I want to be clear. My dad is a Catholic judge; my sister is a Catholic judge. I am not against Catholic judges. But we are against ads like that, and until they are repudiated we will not allow this nominee to go forward.

I don't even know if I want to go into Judge Pickering from Mississippi because I know he is from a fine family. But I will say this about that. I know his son well. He is a wonderful man. He is in Congress. I know he has beautiful grandchildren, and he has a wonderful family. But I will tell you this: The Senator from Tennessee should know this better than anyone because I think he is part of the new South. I think his whole life has been spent helping us in the South deal with the terrible issue of discrimination, to the point where it breaks your heart to think about what the laws did to people, crushed their spirits, crushed their lives, robbed them of the opportunity for anything. I grew up in that kind of place. I spent my whole life trying to change it, and I know he has, too.

One of the reasons we have stopped the Pickering nomination is that many of us—and I don't think it is just Democrats, it is Republicans and Independents in the South—want the nominees on that Fifth Circuit to be about the new South, not the old South. To many of us, many of the moderate, middle, mainstream civil rights organizations, this Pickering nomination is about the old South. He was not one of the strongest civil rights leaders in Mississippi. There are hundreds of qualified judges, White and Black, who really sacrificed for civil rights. Why couldn't we have somebody like that on our bench? They don't have to be liberal. They could be moderate or conservative. Why do we have to reach back and find someone from the past? Why not reach forward?

When Judge Pickering got out of law school, he asked his law partner to join him. His law partner belonged to the Mississippi Sovereignty Commission. My father got out of law school a few years before he did, in 1954. Judge Pickering got out in 1961. My father never, in 100 years, would have asked a member of the Mississippi Sovereignty Commission to be his law partner. It just wouldn't have happened, because our family was a civil rights family. We rejected everything the Mississippi Sovereignty Commission or the Louisiana Sovereignty Commission or the Alabama Sovereignty Commission did, which was to basically intimidate African Americans. No matter how good they were, no matter how hard they worked, no matter how talented they were, no matter how many times they went to church or loved their children, because they were Black, they couldn't get a job, they couldn't live in the neighborhoods. That is what the sovereignty commissions did.

So you are asking me, after spending 40 years of my life fighting against this, to stand here and say it is OK to appoint someone like this to the bench? And then get upset when I say I have a problem with that?

Well, I am sorry about it. I do have a problem with it. Most of the people in my State have problems with it because, believe me, there are lots of people in Mississippi who were in the civil rights movement on the right side of the movement, not the wrong side; the forward side, not the back side. And I will tell this President or any President, we are looking for people in the future, not the past. We are looking for a new South. We reject the old South.

In conclusion, let me just say that my time has expired. Senator HARKIN is in the Chamber. I thank him for his great patience. I am sorry I got a little exercised. But I guess coming from the part of the country I do and being Catholic, it has been very hard, especially for us, to have to hear some of the rhetoric that is thrown around on the Senate floor.

Again, to my friend from Tennessee, I have the utmost respect for him. He has been a real leader in this effort.

I yield the floor and acknowledge Senator HARKIN who is here to speak.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Parliamentary inquiry: How much time do I have?

The PRESIDING OFFICER. The Senator from Iowa has 14 minutes.

Mr. HARKIN. Is that under a unanimous consent agreement?

The PRESIDING OFFICER. The Senator has 14 minutes under the consent arrangement and 2 minutes remaining under this hour segment.

Mr. HARKIN. Mr. President, I was driving in this morning and listening to NPR. I couldn't turn on the television this morning because our house didn't have electricity. The wind knocked out the electricity. So I was listening to the radio driving in. They had a little snippets of the debate last night: Some people talking about this as being theater, whether it was real theater or false theater. I don't know that I want to even venture a guess as to whether this is real or false, but I will tell you this: It is hypocritical theater. This is hypocritical theater going on right now.

The arguments of my friends on the other side, the Republican side, are so filled with hypocrisy, so filled with double standards. These arguments reek with pure, unadulterated partisan politics.

I have listened to this, and it is hard to know where to begin. This morning I was listening to some of my friends on the other side talk about a moral obligation to have a vote on the Senate floor on judges. However, I was listening to the words carefully. Evidently, it is not morally correct or morally right for Democrats to hold up judicial nominees on the Senate floor with extended debate or filibuster, whatever you call it. That is morally unacceptable. But it is morally acceptable for Republicans to hold up judicial nominees in committee.

Here is where the words get kind of funny. I have heard the Republicans talk about this, and they say: That is not a filibuster in committee; that is a hold. Here on the floor it is a filibuster. One is morally acceptable; one is not.

Please tell me where the moral demarcation line is on this. How absurd. How reeking of hypocrisy. I remember 15 times more judicial nominees were blocked by Republicans. But they did it in committee.

When this all started last night, I thought, this is so appropriate that this theater, this hypocritical theater we are engaged in, is happening at nighttime. It is so appropriate for this event to take place at night because under cover of darkness is where this majority likes to operate, in committee, not open on the floor. No, block the nominees in committee. That is not a filibuster. That is a block. That is a hold. That is OK. Morally, that is acceptable. It doesn't count. But don't dare block them out in the open, on the Senate floor.

Three years ago, Bonnie Campbell, former attorney general of the State of Iowa, head of the Violence against Women Office at the U.S. attorneys office here in Washington, did a great job, came before the committee. President Clinton had nominated her for judicial appointment to the Eighth Circuit. Both blue slips were turned in by the two Senators from Iowa. She had a hearing, a great hearing. Not one issue was raised in public against Bonnie Campbell, no one said she was unfit to be a judge, that there was something bad in her background, that she had made bad judgments or decisions as attorney general. Not one thing came out against Bonnie Campbell, but she never got on the floor for a vote. She was held hostage in Committee never to be seen again.

Now I say to my friends on the other side: I stood here, asked numerous times unanimous consent to bring Bonnie Campbell out on the floor to have a debate. Every time, it was objected to. Where were my friends who are so sanctimonious now? Where were they 3 years ago when I asked unanimous consent to bring Bonnie Campbell out of committee?

Now I see clearly. The scales have fallen from my eyes. I see clearly. It is morally OK to stop them in committee. Don't give a vote in committee, under cover of darkness. You pull the cloak over it and you don't allow them out of committee. That's OK because no one really knows what's going on outside the Beltway.

It is hypocrisy—sheer hypocrisy.

The Senator from Arizona earlier said he had an analogy, something about, we are going to hang them without a trial. I kind of missed a little bit of that. How about this analogy—about Bonnie Campbell's analogy? How about all of these judges who were held in committee and blocked? They were held in prison forever with no charges, no trial, no vote, just lock them up and don't ever let them out.

Sanctimonious arguments on the other side. My, my, my. Notice the nuance of the words. How many times have I now heard Republicans on the other side say: I will never, never vote to block a nominee on the floor? I hear it all the time. That seems to be a common refrain from the other side: I will never vote to block a nominee using a filibuster.

My good friend from Utah said that. But check the record. The Senator from Utah, who was recently in the Chamber saying he would never vote against cloture, voted against cloture 8 times in the Clinton administration, against 8 nominees, Janet Napolitano to be U.S. attorney, Ambassador Flynn, Walter Dellinger, Rick Taggert, Sam Brown, Edmund DeJarnette, Henry Foster, Derrick Shearer. My friend from Utah voted against cloture eight times. Again, where is the moral demarcation line?

I guess it is morally all right for my Republican friends to vote against cloture on nominees for attorney general, ambassadors, et cetera. It is morally OK to do that. But it is not morally OK to vote against cloture on a lifetime appointment to the judiciary.

Please, someone tell me about the moral demarcation line. You can vote against cloture for nominees eight times and come out on the floor and say, I will never vote against cloture on a judicial nominee.

Again, notice the nuance of the words. This is a filibuster. But if they're held up in Committee with a hold for no apparent reason, well that doesn't count. There's nothing morally wrong about that. I heard that from my Republican friends: We didn't filibuster all of these judges in committee; they just had a hold put on them. Apparently, there's an obvious moral difference that I just have failed to see.

It is at times such as this I am reminded of one of my favorite refrains from one of my favorite plays, "Finian's Rainbow." It goes like this: For life is like cricket. We play by the rules. But the secret which few people know, that keeps men of class far apart from the fools, is to make up the rules as you go. It is a little refrain from a song in "Finian's Rainbow."

Republicans just want to make up the rules as they go, change them to fit the times and circumstances, change their arguments—these actions represent sanctimonious hypocrisy, partisan politics, double standards.

Well, we have had 30 hours here, I guess. I want to just say, I thank all of the staff and the pages, the reporters, the police, all who had to stay and work overtime.

Speaking of overtime, while we are wasting time with this theater of hypocrisy, guess what is happening in other parts of this building. Guess what is happening under the cover of darkness. The Republicans want to take away your overtime pay protection. That is what is happening.

The administration, earlier this year, came out with a new proposed rule that will effectively take away overtime pay protection for 8 million Americans. Not one hearing was held on it. Cover of darkness. Not one public hearing was held on that. The Senate voted on an appropriations bill to stop the administration from enacting that rule. The House of Representatives joined in and voted.

Yet the administration, the President, says he is going to veto it. He is going to veto funding for education, health care, medical research at NIH, funding for job training programs, all because they want to take away your overtime pay protection. All these people who worked here overnight—police, reporters, staff, so many people who worked overtime—while they are playing this little shell game.

It reminds me of that carnival shell game. You watch this hand, but with the other hand they are picking your pockets. Let's waste 30 hours of time talking about 4 judges to hide the fact that we don't want to vote on the issues that really matter to the American people—like raising the minimum wage, protecting overtime, extending unemployment insurance assistance, passing a real medicare prescription drug benefit and responsible energy bill and passing our appropriations bills.

It is a shell game. Look at these 4 judges that the Democrats are blocking. Don't look a the 168 judges this Senate has confirmed under President Bush. Hype this up. We will have this theater to hide what's really going on.

The other side may think the American people don't know what is going on. But I believe the American people haven't been fooled. They know this is a waste of time to hide what the Majority can't or don't want to get done.

The PRESIDING OFFICER. The Senator's time has expired. For the information of our colleague, his time has expired.

The Senator from Tennessee has 2 minutes.

Mr. ALEXANDER. Mr. President, I have been listening to my friend from Iowa. One thing he said that I agree with: The quote from "Finian's Rainbow" about making up the rules as they go a long.

The issue before us is a pretty simple one. I think a lot of other Americans think President Bush ought to appoint judges with conservative principles who will not make up the rules as they go along, who will not make up the law as they go along, who will enforce the law as they find it, as Attorney General Bill Pryor does in Alabama, as Judge Pickering does in Mississippi.

The issue here, after all the charts are taken down and all the rhetoric is put aside, is very simply this: For the first time in our Nation's history, the Democrats are using the filibuster to keep us from having an up-or-down vote on President Bush's nominees after they have gotten out of committee, after they have gotten to the floor, and after it is clear they have a majority of votes. That is the first time in our Nation's history.

Second, they are doing it to extraordinarily well qualified women and men. I don't know whether that is grounds to change the rules of the Senate or not. But it surely is grounds for the people of the South and this country to address in the next election. Should a President have the right to appoint judges with conservative principles who will enforce the law rather than make it up as they go along? We believe that a President of whatever party should have that right. The other side, for the first time in 200 years, says: We are going to stop you from having an up-or-down vote on people who have the majority vote.

The PRESIDING OFFICER. The time of the Senator from Tennessee has expired.

The Senator from Iowa is recognized.

UNANIMOUS CONSENT REQUEST—S. 224

Mr. HARKIN. Mr. President, I ask unanimous consent that the Senate return to legislative session and proceed to the consideration of Calendar No. 3, S. 224, the bill to increase the minimum wage, that the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

Mr. MCCONNELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, parliamentary inquiry: The time is controlled how?

The PRESIDING OFFICER. Under the previous order, beginning at 9 a.m., the minority and majority each control 30 minutes.

Who yields time?

The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, I rise today on behalf of my constituents in the Sixth Judicial Circuit to discuss the plight we confront in that circuit. That circuit is made up of Michigan, Ohio, Kentucky, and Tennessee. As you can see by this chart, the Sixth Circuit is currently 25 percent vacant. If you are a litigant in the Sixth Circuit of Kentucky, it takes you 6 months or longer to get your case decided than in any other circuit in America.

Why are we in this situation? We are in this situation because the two Michigan Senators won't allow the Senate to go forward on four nominees from their own State—the Michigan Four. So we languish with a 25 percent vacancy rate. Litigants have a 6-month or longer wait than anywhere in America, while the two Michigan Senators hold up nominees from their own State, presumably because President Bush will not nominate people the Democratic Senators from Michigan are recommending that he nominate to the Sixth Circuit.

It may have been a close election, but President Bush won. He gets to make the nominations. I can tell you as a Senator from the Sixth Circuit, I am not interested in seeing Democratic nominees to our circuit court. So what they have done here is set up a standard that cannot be met and will not be met, and they are punishing the litigants of the Sixth Circuit because of this pique they have that the Republican President won't nominate recommendations of Democratic Senators from Michigan to the circuit court.

My recollection—and I have been here a couple of terms myself—is that Senators don't get to pick circuit judges. We may have a lot of influence on the selection of district judges, but Senators typically don't get to pick circuit judges. Maybe we get to make a recommendation, but we certainly don't get to pick them under Presidents of either party. So what is being asked in this situation is that Democratic Senators get to select circuit judges in a Republican administration.

I can tell you if, as Republican Senators from the Sixth Circuit, we don't even get to pick Republican judges for the Sixth Circuit, there is no chance the Democratic Senators are going to get to pick Democratic judges in a Republican administration.

The National Judicial Conference has designated all four of these seats as judicial emergencies. Not surprising. Twenty-five percent are vacant. It is a judicial emergency. The President nominated four superior jurists to fill these seats. Each of these nominees—all languishing in committee because the Michigan Senators object to them going forward—has gotten an ABA rating of qualified or well qualified. That used to be the Democrats' coveted gold standard.

But despite the President doing his job and trying to fill these seats, the Senate has fallen down on the job. These nominees are from Michigan, and the Senate delegation from that State, as I said, has objected to the Senate considering them, even though the Sixth Circuit is in crisis. It is even rumored that if the nominees were to be reported out of committee, they would join the ranks of the filibustered nominees we have been talking about since yesterday at 6 p.m.

Our friends and colleagues on the other side keep talking about the four they filibustered. There are seven more who we understand are going to get the same treatment. So maybe we ought to be talking about 11 who are going to be subjected to a supermajority.

The wheels of justice in my State and the other States of the Sixth Circuit are turning very slowly. Sometimes they are not turning at all. Cases are going unheard and grievances unredressed because the Sixth Circuit bench is one-fourth empty. Each judge has to handle a much larger caseload.

According to AOC—Administrative Office of the Courts—in 1996, each judge on the Sixth Circuit had to decide an average of 364 cases. That was just 7 years ago. On the Sixth Circuit, each judge had to decide about 364 cases. Last year—in 2002—each judge on the Sixth Circuit had to decide 643 cases—from 364 cases up to 643 cases between 1996 and 2002. That is a 77 percent increase from just 6 years ago. By overworking judges on the Sixth Circuit, the Senate is causing great delays for litigants. It now takes an excruciatingly long time for citizens of the Sixth Circuit to get their appeals decided.

As this chart shows, the national average for the time to decide an appeal is 10.7 months. This is the national average in the circuit courts of a delay in getting your decision made—10.7 months. In the Sixth Circuit, however, it is 6 months longer than that, 50 percent more.

So if you happen to be a litigant in the Sixth Circuit, because of the demand of the Michigan Senators that the Republican President of the United States select Democratic nominees of their choosing to the Sixth Circuit, if you are unfortunate enough to be a litigant in the Sixth Circuit, you are out of luck. I hope your case is not too important because it will take 50 percent longer than the national average to get a decision. It is all because the Michigan Senators believe they should be able to pick one or more circuit judges for a Republican President.

The Sixth Circuit has the dubious honor of being the slowest circuit in the Nation—dead last. The blame for that resides not with the President of the United States, who has had four well-qualified nominees pending before the Judiciary Committee for quite some time; the reason for that is the Michigan Senators' refusal to sign off on any of them, unless they get to tell the President whom to nominate.

Looking at it another way, if you are lucky to have to be in one of the other circuits, if you file your appeal by the beginning of the year, you may get a decision by Halloween. If you file at the same time in the Sixth Circuit, you will wait until Easter of the following year to get a decision. We have all heard the old saying that justice delayed is justice denied. So let's put a human face on those statistics.

In the area of criminal justice, Ohio Attorney General Betty Montgomery has said that numerous death penalty appeals are experiencing prolonged delays. In the area of civil rights, attorney Elizabeth McCord had been waiting 15 months just to have an oral argument scheduled for her client's appeal in a job discrimination suit—15 months to get an oral argument in a job discrimination suit because the Michigan Senators won't allow any of the President's nominees to go forward. In the interim, her client died. He waited so long, he simply passed away.

According to the Cincinnati Post, delays such as this have become commonplace because vacancies have left the court at half strength and created a serious backlog.

Commenting on this sorry state, Mary Jane Trapp, president of the Ohio Bar Association, said:

> Colleagues of mine who do a lot of Federal work are continuing to complain. When you don't have judges appointed to hear cases, you really are back to the old adage, "justice delayed is justice denied."

Mr. President, this situation is completely and totally unacceptable. I am astonished that our Democratic colleagues want to filibuster qualified judicial nominees who could address the problem.

My Democratic colleagues try to justify their obstructionism based on a grievance they believe they have suffered with respect to two of these seats. Bear in mind, there are four vacancies. This grievance goes back two Congresses and involves an intradelegation spat. The "you started it" excuse is more than just a little wanting in light of these troubling statistics and unfortunate stories.

As I said earlier, let's get back to the first principle: Democratic Senators don't get to pick circuit judges in Republican administrations. In fact, Republican Senators don't get to pick them in a Republican administration. We get to make recommendations. Presidents of both parties have long believed circuit court appointments were their prerogative.

So I say to my friend from Idaho, who has joined us on the floor, here you have a situation where the Democratic Senators in Michigan, with a Republican administration, are demanding that the Republican President appoint someone of their choice to the circuit courts when even we as Republican Senators don't get to make such selections. I think it is safe to say that that is never going to happen. That is never going to happen.

So in the meantime, four nominees the President has made—all from the State of Michigan—which would solve this 25 percent vacancy problem on the Sixth Circuit, languish because of this desire on the part of Democratic Senators to pick circuit court nominations in a Republican administration.

It is important to remember that Michigan doesn't own these seats. They don't belong to any particular State. Certainly, historically, at least in recent history, these four seats have belonged to Michigan. They belong to the people of the United States. If anybody has a particular claim, it is the people of the Sixth Circuit, all of whom are suffering because of this obstructionism. I know the people of Ohio, Kentucky, or Tennessee would be more than happy to have these judges if Michigan doesn't want them. If the Michigan Senators don't want Michigan judges on the Sixth Circuit, goodness, we would be happy to have a good Ohio, Kentucky, or Tennessee lawyer fill the vacancies. My people in Kentucky didn't have anything to do with this spat up in Michigan. They are having to pay for it, as are the people of Ohio, Tennessee, and Michigan.

I said there are four vacancies in Michigan. Two of the four seats the Michigan Senators are blocking don't have any connection to any prior intradelegation dispute. There were two of the four judges who were involved in all of this dispute during the Clinton years, but there are four vacancies. All four of them are being held up. President Clinton did not even nominate anyone. Let me repeat, President Clinton didn't even nominate anyone for the seat to which Henry Saud has been nominated. Henry Saud, if confirmed, would be the first Arab American to sit on a circuit court in U.S. history. That is one of the nominations they are holding up. President Clinton didn't even nominate anyone for the seat to which Henry Saud has been nominated. The seat to which David Mackey has been nominated didn't even become vacant until the first year of the current President's term. Two seats are being held up by the Michigan Senators, one of whom President Clinton nominated, and one didn't become vacant until President Bush took office. These two vacancies had nothing to do with whatever the spat was that went on earlier, and all four seats remain vacant.

This is simply an unacceptable situation. The American people should be aware of what is going on. They should demand that this obstructionism cease. This outrage that is occurring in the sixth judicial circuit puts a human face on what has been going on around here this year.

Real litigants, real people, are paying the price for senatorial pique, for senatorial demands for something that is totally unreasonable—where Democratic Senators, in a Republican administration, get to pick circuit judges. In the meantime, the lawyers and litigants of the Sixth Circuit continue to suffer under this 25 percent vacancy crisis, this judicial crisis of the highest order, as a result of Senate obstructionism.

Let me also add, just a month ago, both houses of the Michigan Legislature passed resolutions that noted the negative effects of the vacancy crisis and urged the U.S. Senate in general, and Michigan Senators in particular, to act on the Michigan nominees. The Michigan Legislature is passing resolutions asking the Michigan Senators to let the nominations go forward.

Mr. President, I thank the Chair for the opportunity to address the crisis in the Sixth Circuit. It is a very serious crisis confronting my State. I see the Senator from Oklahoma here.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Oklahoma is recognized.

Mr. McCONNELL. Mr. President, how much time remains?

The PRESIDING OFFICER. The majority controls 12 and a half minutes.

Mr. McCONNELL. Mr. President, I reserve the remainder of our time.

The PRESIDING OFFICER. Who yields time?

The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I will also be speaking later. I want to make a couple of comments after presiding and listening to some of the speeches made a moment ago. I think it is important to maybe give a couple of viewpoints about the positions of the Senate.

I have had the pleasure of being in the Senate for 23 years. I plan on serving 1 more year in the Senate. I have had a lot of great experiences, a lot of high points and low points. One of the lower points is the way judges have been treated in the last 2 years. In my previous 21 years, we never had a filibuster on a judge, and I never heard colleagues say, Wait a minute, President Clinton had nominees and they weren't considered. Most of those who were on the list he nominated very late in the last year of his term of office. One of them was from Oklahoma, and the two Senators from Oklahoma were never even consulted. That name was on the list.

So there is a difference between being nominated, going through the process—particularly with district court judges—consulting the home State Senators. That is the tradition of the Senate.

One of the things that bothers me is we are breaking the tradition of the Senate by saying now you have to have a supermajority, particularly on the appellate court level. I don't know that that has happened on district court, and I am glad. We have confirmed a lot of district court judges and I am glad. But when it comes to circuit court, the next higher level, it may be a higher standard and all of a sudden now, the standard for those judges appears to be 60 votes. That is evident by the fact of four having been filibustered and there are another two who will be filibustered in the process. We will find out tomorrow.

Another of the traditions that has been trampled upon is what people are saying and how they are saying it. We had a speaker just recently who mentioned two Senators by name and kept using the words "sanctimonious hypocrisy." That is in violation, in the opinion of this Senator, of rule XIX of the Senate.

We have rules. And we have rules for a purpose. Those rules should be adhered to. When Senators violate the rules, I think they undermine maybe to some extent the dignity and esteem of the Senate.

These rules have a purpose. Rule XIX says:

> No Senator in debate shall directly or indirectly by any form of words impute to another Senator or other Senators any conduct or motive unworthy or unbecoming of a Senator.

That rule is there for a purpose. It is gradually being ignored in debate, time and time again, by some Members—not by most Members, by an occasional Member.

I am giving a warning to Members, if they violate this rule, I am going to call it on them and I am going to ask the Parliamentarian if their comments are a violation of rule XIX. And if they are in violation, they will be seated. It will take an actual vote for them to be allowed to participate in debate again.

It is not right to be coming down mentioning Senators by name and using words such as "sanctimonious hypocrisy" and impugning a Senator's motives. That is in violation of the rules. People ought to know the rules. Maybe if we would abide by the rules, we would have a higher level of debate, greater civility, and maybe greater understanding of some of the challenges we have before us today.

Let me just make one other comment about there were some judges who are maybe left in the queue. President Clinton had a bunch of judges left in the queue. I had a judge who was left in the queue at the end of Bush 1's administration. His name was Frank Keating and he ran out of time. That is one of the traditions of the Senate. When people are nominated in the last year or the last few months of an administration, a lot of times they don't get confirmed. That is not a filibuster. Some people were equating that to a filibuster. It is not. There has not been a filibuster of a judge in my term—actually in the history of the Senate—until this year, on four individuals, and now we are going to find it on a couple of additional judges.

One other comment. My very good friend from Louisiana said her father was a Catholic judge, and God bless him. I am concerned that there is a religious litmus test coming. Maybe we can confirm Catholics, but if they happen to be pro-life Catholics—I don't know if her dad is a pro-life Catholic or not. I hope he is. I don't know. That is his business. I usually don't ask the nominees I am recommending or the President is considering—I usually don't ask them their position on that issue. But my guess is if someone is known to be a pro-life Catholic, they cannot get through this litmus test for appellate court judges that many are using today, and I think that is very regrettable. Maybe if they happen to be pro-life Southern Baptists or pro-life Mormons or pro-life Jews, I am not sure they can get through this new litmus test now being put on us by the Judiciary Committee and, unfortunately, by the minority in the Senate. I think that is very regrettable and we need to change that.

Our colleagues on the other side need to realize at some point, someday, they will regain the majority. They need to be thinking about what that means for the long term. I cannot imagine they assume we are going to have a 60-vote litmus test or a 60-vote margin or hurdle for confirmation of judges during Republicans but that is not going to happen at some point when Democrats might occupy the White House.

I think this raising the bar to 60 votes—I happen to believe it probably is unconstitutional, but I also happen to believe they are setting a precedent that they likewise will regret.

So I hope maybe more mature minds will be thinking about this on the Democrat side and say, wait a minute, shouldn't we really give somebody such as Miguel Estrada a vote?

Mr. McCONNELL. Will the Senator from Oklahoma yield for just a moment? The Senator from Kentucky is here. I don't know how much time we have remaining.

The PRESIDING OFFICER. The majority holds an additional 6 minutes on this side.

Mr. NICKLES. I will be happy to yield to my very good friend from Kentucky.

Mr. McCONNELL. Thank you. I yield the remaining time on this side, during this hour, to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. BUNNING. I thank for yielding my good friend from Kentucky and my good friend from Oklahoma. I have a question for the senior Senator from Kentucky.

I ask my friend from Kentucky: The Michigan Senators argue that they have not been properly consulted on these, the Michigan nominees. Yet I understand the White House Counsel's Office consulted extensively with the Michigan Senators. This chart reproduces a letter from the White House Counsel that shows from April to November 2001, the White House consulted with the Michigan Senators no fewer than 13 times. So I ask my friend from Kentucky, in light of the record, does it not seem that the Michigan Senators are defining consultation as picking the nominees, rather than the President picking them?

Mr. McCONNELL. I would say to my friend from Kentucky, he is exactly right. I think what is clearly happening here is the Michigan Senators want to pick circuit judges in a Republican administration.

I remind everyone, the two Michigan Senators are Democrats. My recollection is that the Senator from Kentucky and I may get to recommend judges for the circuit court but we don't get to pick them in a Republican administration, so why should any Democrat Senator expect they would get to pick circuit judges in a Republican administration?

Mr. BUNNING. On the Sixth Circuit Court of Appeals, where these Michigan circuit judges are needed so desperately, isn't it true right now that Federal district judges are having to go to the Sixth Circuit and be seated because of the judicial crisis we have on the Sixth Circuit?

Mr. McCONNELL. My friend from Kentucky is absolutely right. We have a 25 percent—25 percent of the Sixth Circuit is vacant. Not because of the President of the United States. Four Michigan nominees were sent up here some time ago. They have been in the Judiciary Committee. They are having to draft district judges. It is the slowest circuit in America because it is 25 percent vacant.

Mr. BUNNING. I only say to my good friend, the senior Senator, that even some of the newer judges with whom you and I are familiar are now having to do 2-week tours of duty over at the Sixth Circuit Court of Appeals—they have only been on the district bench for 2 years—to try to catch up the backlog we have at the Sixth Circuit Court. If we could only get a little better cooperation out of certain Senators from Michigan, maybe we could fill those four vacant seats in a rational and reasonable way.

Mr. McCONNELL. I thank my friend from Kentucky for pointing this out. It is an outrageous situation.

Mr. BUNNING. Mr. President, we have heard from many on this side of the aisle this morning and last night. They have made great points about President Bush's judicial nominees and the bad situation they are in.

We started this year talking about Miguel Estrada. His nomination is no longer before the Senate because of the opposition party's tactics and for the sale of his family.

Today marks 918 days after Miguel Estrada's nomination. He has never received an up-or-down vote. That is unfair to him. President Bush, and the American people.

Miguel Estrada is a respected attorney here in Washington. He received a unanimous "well qualified" rating from the ABA which is the rating our Democrat colleagues call the gold standard for judges.

He would have been the first Hispanic to sit on the prestigious DC circuit. He was a clerk at the Supreme Court. He graduated with distinction from Harvard Law School and argued many cases before the Supreme Court. He even served in the Clinton administration.

But that is not the most impressive part of Miguel Estrada's story. He was born in Honduras and came to America at age 17 speaking little English. He overcame that hurdle and graduated from one of our most exclusive colleges and law schools.

He also overcame a speech disability. And this is no small hurdle to clear when your career depends on making successful oral arguments in court.

Miguel Estrada became a victim of politics in the Senate when some here said his views were unknown. They made unprecedented demands for documents every legal office in the country would object to releasing. They asked questions that countless Clinton nominees also declined to answer. And opponents said that was unacceptable.

The real issue here is what is known about Miguel Estrada.

He is a bright young Hispanic lawyer who follows the law and would make a great Supreme Court nominee.

The idea of the first Hispanic on the Supreme Court being a conservative is unacceptable to them. I hope his nomination comes before the Senate again some day and we can vote to confirm him.

And then there is Priscilla Owen.

Her nomination has been pending for 918 days. She has been a supreme court justice in Texas since 1995.

In her last election she received 84 percent of the vote. I'm not sure many here know what it feels like to receive that kind of percentage. But I bet we would all like to.

And just like Miguel Estrada, the ABA gave her a unanimous "well qualified" rating.

She graduated with honors from Baylor Law School where she was on the law review and she earned the highest score in Texas when she took the bar exam. Having suffered through several children taking the bar exam, I've heard what kind of challenge that can be.

But most telling is what her colleagues in Texas say about her.

Justice Owen has the support of three former Democrat justices on the Texas Supreme Court. Fifteen bipartisan past presidents of the Texas bar endorsed her.

And running for re-election she was supported by every major Texas newspaper. We should all be so lucky to even get our hometown newspaper's endorsement.

We've had three cloture votes on her and we will vote again on Friday.

Each time a majority signaled we should give her an up-or-down vote. But again the minority is preventing her from having her day in court.

What is her crime? Twice in the Texas Supreme Court, Justice Owens said the court was wrong and that under Texas law the parents of a pregnant child had the right to be informed before their daughter had an abortion.

Several lower courts had already upheld these parental rights and that Texas law does not give parents the right to stop the abortion, but they did have the right to be informed.

But that precedent apparently doesn't matter and she is being obstructed by a radical minority in this Senate that believes children have unlimited rights to abortions and parents should not be able to talk to their pregnant child first.

I know the vast majority of Americans do not believe that. And it is well past time we give Justice Owen an up-or-down vote.

Alabama attorney general Pryor was the next judge to fall victim to special interest politics.

Bill Pryor was appointed Alabama attorney general in 1997 and re-elected twice, most recently with 59 percent of the vote.

He has argued before the U.S. Supreme Court, practiced at two law firms, and taught law school.

In law school he was on the law review and graduated with honors. After law school he was a clerk at the fifth circuit where he worked for a judge who spent years working to desegregate schools in the South.

Attorney General Pryor is supported by Republicans and Democrats in Alabama.

Newspapers praise the lack of partisanship in his office. He is known in Alabama for following the law. Ironically that is what his detractors say he won't do.

Bill Pryor is an outspoken man who does not hide his beliefs but he has proven that his personal beliefs do not get in the way of following the law. He does not support abortion and has never apologized for it.

But he made sure his office followed Supreme Court precedent in enforcing the State's partial birth abortion statute even though he disagreed with the decision, and most recently he acted against overwhelming public opinion in Alabama to enforce Federal court rulings ordering the Ten Commandments display in the Alabama Supreme Court to be removed.

Again a majority of this body has kept Attorney General Pryor from getting the up-or-down vote he deserves. He has proven without a doubt that he will follow the law even when he disagrees with it.

Twice a majority of the Senate has said he should get a vote. Next time I hope we give him an up-or-down vote.

Next up on the honor roll of filibustered judges is Judge Charles Pickering.

Judge Pickering was unanimously confirmed by the Senate in 1990 to be a Federal district judge in Mississippi.

He graduated first in his law school class at the University of Mississippi. He practiced in a law firm and was both a city and county prosecutor. He was a municipal court judge and elected to the Mississippi State Senate.

Judge Pickering has spent his career as a leader in race relations in Mississippi.

His career has been dedicated to tearing down racial barriers against minorities in the South, and he was not very popular for it in Mississippi in the 1960s and 1970s, but it was the right thing to do.

I remember traveling around the South in the 1950s and 1960s and remember race relations there.

I remember signs at cafes saying "whites only" and then bringing food outside with my white teammates and sitting down with our black teammates on the bus and eating with them.

I remember what it was like as professional baseball gradually embraced minorities. Judge Pickering helped break down these racial barriers and he risked his career and reputation to do it.

In recent years Judge Pickering served on race relations committees in Mississippi. He spent time working with at-risk minority children.

In 1967 Judge Pickering was a prosecuting attorney in Jones County, MS.

He took the witness stand to testify against a Klan leader in a trial for killing a Black civil rights activist.

By standing up for equality and justice, Judge Pickering put himself and his family in danger and lost his reelection. You can never really judge the character of a man until standing up for his beliefs costs him something.

Judge Pickering's willingness to stand up against racial violence cost him his job as a prosecutor. But that did not keep him from continuing to fight for racial justice.

Probably the most heated race issue in the 1960s and 1970s was integration of public schools. Integration came to Judge Pickering's town in 1973. The Black and White communities in Laurel were split and Charles Pickering worked to bring them together.

He created a plan to integrate schools. In the end many Whites still moved their kids to private schools to avoid integration. And Judge Pickering could have done the same. But instead, he believed in integration and kept his children in public school.

Many have said he has been soft on civil rights. But that does not sound like the story of a man who is soft on racial justice to me.

Again the special interests that have kept the Senate from voting on Miguel Estrada, Priscilla Owen, and Bill Pryor are preventing a vote on Judge Pickering.

A majority of the Senate again has said we should have a vote on Judge Pickering and the Senate must fulfill its constitutional responsibility and do so.

Now we come to the nominees who will soon be victims of special interest politics—Judge Carolyn Kuhl and Justice Janice Rogers Brown.

Judge Kuhl is a superior court judge in Los Angeles where she has worked on civil and criminal cases. Currently, she is the supervising judge of the civil division.

Judge Kuhl graduated from Duke Law School and clerked for the same court she was nominated to. In the 1980's she worked at DOJ and the Solicitor General's Office where she argued before the Supreme Court.

The ABA says Judge Kuhl is "well qualified." Republicans and Democrats in California have spoken about her fairness and competence. Fellow judges and attorneys who appear before her strongly support her nomination and urge an up-or-down vote.

Judge Kuhl's crime is that she represented her government while working for the Reagan administration. One instance our colleagues on the other side of the aisle like to point to is when she helped prepare a document supporting President Reagan's views in an abortion case.

In other words, she was doing her job and representing her client.

One thing they forget to mention is the case was the first major abortion case to follow Roe v. Wade when the new law was quite uncertain.

They also forget to mention that it was her job to represent the position of the President and not her own views.

They also forget to mention that three other attorneys who worked on that case were Senate confirmed to positions after the case. Judge Kuhl has said she will follow the law regardless of her views. Her record proves it.

Finally, we get to Judge Janice Rogers Brown of the California Supreme Court. Judge Brown, who a minority of the Senate says is out of the mainstream, was recently re-elected with 76 percent of the vote.

She was born in rural Alabama to a family of sharecroppers. She grew up in segregated schools. She lived in an era where laws were written to prevent racial equality in the South. Yet Justice Brown succeeded in school and became the first black woman to sit on the California Supreme Court.

What do my colleagues say about Justice Brown is out of the mainstream?

Justice Brown voted to uphold a law saying parents have a right to consent before their daughter can get an abortion. How far is that out of the mainstream? Recent polls tell us well over three quarters of Americans think parents should be involved in the abortion decisions of their children.

What else do opponents say she has done that is out of the mainstream?

Her detractors say she wants to undo decades of Supreme Court precedent in property rights and government involvement in the economy. But none of them can point to any court opinions where she disregarded the law and substituted her personal views.

However, she is supported by a bipartisan mix of professors, judges, attorneys, and civil rights activists.

That does not sound out of the mainstream to me.

I am convinced these nominees are each qualified and would serve this Nation well on the courts they have been nominated to.

The Senate has a constitutional responsibility to advise and consent on nominations made by the President. But so far a minority of the Senate has prevented us from fulfilling that responsibility.

I am not asking my Democrat colleagues to vote for and support these nominees. I just ask that they give them the courtesy and right to an up-or-down vote.

If they do not believe the nominee is qualified then they should vote no. But by preventing a vote they are ignoring their constitutional duty. We should vote on these nominees and we vote on them soon.

The opponents of these nominees are not just playing around with these nominees' lives—they are also toying with the Constitution.

The PRESIDING OFFICER. The time for the majority has expired. The Senator from West Virginia.

Mr. ROCKEFELLER. I thank the distinguished Presiding Officer.

Mr. President, I recognize my colleagues on the other side of the aisle would like to use this debate time to focus on the employment status of four people, all of whom are employed. I would like to talk about a different subject, and that is the millions of people who are not working. I think we owe it to the American people to discuss the millions of Americans who have lost their jobs under the economic plans of the sitting President.

In particular, I would like to focus on the millions of Americans who have lost good manufacturing jobs, and that is the subject of my discourse. I ask the Presiding Officer to cut me off in precisely 15 minutes if I have not finished. Since I will be back at 9 o'clock, I will finish at that point.

Let me draw your attention to a few very troubling statistics. Manufacturing employment in the United States has now fallen to the lowest level in 41 years. In the last 5 years, we have lost 16 percent of all of our factory jobs. In the last 2 years alone, we have lost more than 2.5 million manufacturing jobs. In my own State of West Virginia, we have lost 14,000 factory jobs since January 2001.

To me, these are frightening statistics. They ought to jolt every Member of the Senate and prompt an urgent call for action. A vibrant manufacturing base, in this Senator's opinion, is essential to our standard of living. For generations, factory jobs have been the path to the middle class, providing good wages, health insurance, and pension benefits. Advances in manufacturing technology account for most of our economy's increased productivity. Every dollar we spend on a finished manufactured good is estimated to produce about $2.43 increased economic activity.

Simply put, we cannot become a service-only economy, in the judgment of this Senator, and at the same time expect to maintain our high standard of living. We ought to act swiftly to ensure Americans will produce steel and computers and cars and pharmaceuticals and many of the other products which we generally refer to as manufacturing.

We ought not to be timid in the face of the devastating statistics I have cited. We can do something about them. In the Senate, that is what we are meant to be doing. And we certainly should not ignore these statistics and focus, instead, on the jobs of four judges who already have work. We would better serve Americans if we used our time today to debate ways to revive the manufacturing sector of our economy, and I am going to talk about it. People may not want to hear about it, but I am going to talk about it because it affects all the people of the country, and my people in West Virginia very much.

At the end of September, I introduced legislation to provide some relief for American manufacturers on several fronts. I am disappointed the Senate has not yet debated that legislation. I am not surprised, but I am disappointed. The bill I introduced is called the SAFE Act, which stands for Securing America's Factory Employment.

I wish that topic were all we were discussing this morning, today, this week, this month. Saving our Nation's factory jobs is crucial. I will take a moment to discuss what my legislation does.

The SAFE Act would offer relief to American manufacturers in several ways.

First, the legislation would provide a tax deduction to any company that has manufacturing jobs in the United States.

Second, this bill would help companies cover the cost of providing health care for retirees—a huge subject. It is a crippling obligation for many of our once-proud industries.

Third, I propose we strengthen our trade laws to ensure they offer the protections that in fact our domestic industries deserve from unfair and illegal trade practices practiced by others.

Let me take a moment to explain in greater detail how these proposals can help our domestic manufacturing base. Congress is compelled to repeal the Foreign Sales Corporation Extraterritorial Income provisions of the U.S. Tax Code in order to avoid $4 billion in trade sanctions authorized by something called the World Trade Organization. Regardless of my opinion of the WTO decision in this matter, I recognize that to protect our economy from a trade war, we may need to update our Tax Code. We can do so and still encourage manufacturing by reducing the overall effective corporate income tax rate on domestic manufacturing.

The SAFE Act provides a 9 percent deduction for profits derived from the manufacturing activities in the United States. This is the equivalent, I would say, of lowering the corporate income tax rate from the current 35 percent to 32 percent of the portion of profits that can be directly linked to U.S. factories; also mining operations and the like.

This is a very straightforward tax break. It will lower the cost of doing business in the United States and will help companies that employ Americans to compete in the global marketplace.

In addition, my bill includes a tax credit to employers to encourage them to retain their retiree health insurance coverage—a huge problem nationwide. As my colleagues well know, employers know their health plan sponsors continue to restructure how they provide health care benefits for both workers and retirees. The economy is in a tough situation and it makes it difficult for them.

Interestingly, the percentage of employers who offer retiree health benefits has declined substantially over the past 15 years, to wit: Two-thirds of all firms with 200 or more workers sponsored retiree coverage 15 years ago. According to the most recent data, a little bit more than one-third do that today. Despite these reductions, the employer-sponsored health system is the largest source of health care coverage in the country today, even with that diminution of the percentage.

The SAFE Act would provide employers with a tax credit to cover 75 percent of the costs associated with providing health care coverage to their retirees in order to protect existing coverage and reverse the current trend.

Finally, my legislation would strengthen our trade protections, our antidumping and countervailing duties. So-called AD/CVD trade laws are often the first and last line of defense for U.S. industries injured by unfair labor or illegally traded imports.

These laws are absolutely essential for the survival of our manufacturing sector in an increasingly global market. But some of these provisions have become antiquated by recent changes in our global economy and the new structure of international trade. The American steel crisis has made it very clear that these trade laws need to be strengthened. Companies, workers, families, and communities rely heavily on fair trade laws to prevent the ill-effects of unfair trade. Antidumping and countervailing duty laws need to be updated and amended so they work both as intended and as permitted under the rules of international trade.

For example, the SAFE Act includes a provision that allows us to consider whether or not an industry is vulnerable to the effects of imports in making antidumping and countervailing duty determinations. Another provision of this bill will make it tough for our trading partners to circumvent antidumping or countervailing duties. I have a variety of examples I could give of that, but I will not for the moment.

They could do so by clarifying that such orders include products that have been changed in only a very minor respect. What do I mean by that? Sometimes companies will make a product in another country, send it to a third country, and they will adjust a little tiny piece of something. Then that third country will export it into the United States and it will count as an export from the third country—not from the first country or the second country which actually produced the greatest mass of it—thus allowing them to have their trade surplus increased.

This will help prevent foreign nations from making slight alterations to products they are exporting to us in order to skirt existing antidumping or countervailing duty orders.

Another clear problem under our current trade law is that foreign producers and exporters of such merchandise may avoid AD/CVD duties by using complex schemes that mask payment of countervailing duties resulting in the underpayment of duty rates.

My legislation would restrict such practices by requiring the importer, if affiliated with the foreign producers or exporters, to demonstrate that the importer was in no way reimbursed for any AC/CVD duties that were paid.

There are certainly other changes we should consider to update our trade remedy laws. These provisions are by no means an exhaustive list, but we do need to get the debate started. I have offered this bill as a way to reenergize the debate. I have 15 minutes and I am using it to discuss something I think is useful.

Steel is a prime example of the need for strong trade laws, strong enforcement of the laws on the books, and strong considerations to toughen existing statutes.

As the Presiding Officer well knows, I have long been involved in the fight for the American steel industry. Currently, the industry, its workers, and steel communities around the country await a decision from the President of the United States on section 20 tariffs he imposed on steel imports in the face of an unprecedented flood of steel imports from foreign countries below price and below the cost of production in the home country.

Some of our foreign trading partners are lobbying the White House very hard to lift these tariffs. In fact, the European Union was in town just last week making irresponsible and illegal trade threats to try to sway the President's decision. I hope they fail. The administration has a very clear choice between preserving good-paying and hard-earned American jobs or caving in to the threats of our foreign trading partners.

All of the arguments made prior to the imposition of the tariffs about the potential damage and consequences of the 201 tariffs have been debunked.

This is important. We have something called the International Trade Commission. It is a nonpartisan quasi-judicial body. They found that the tariffs have done what they were meant to do—the tariffs on steel: give the American steel industry breathing room it needs to restructure. The International Trade Commission also found that the tariffs have not significantly impacted the U.S. economy in any other way.

If this administration is truly committed to the steel industry and, importantly, the communities built around it, the President will leave the tariffs just as they are and fulfill his promise to American workers. If not, we are facing very hard times indeed, and it may be the death knell for steel manufacturing in America—something I don't think we want to see.

I am extremely disappointed that rather than engaging in a serious debate, we are spending 30 hours talking about judicial nominees because some Senators believe it is an effective way to do whatever.

Instead of scoring political points, the SAFE Act addresses several very dire needs of our manufacturing companies. It improves our trade laws, helps with the burden of retiree health care costs, and effectively lowers the corporate tax rate on manufacturing activities. This package of reforms is an effective plan to stem the flow of manufacturing goods from overseas.

I will conclude by simply saying this: The fact that almost 9 million Americans are out of work, that is urgent; the fact that employment insurance is set to run out for many Americans who have been unemployed for a long time, that is very urgent; the fact that 43.6 million Americans lack health insurance and manufacturers and other employees are dropping health coverage to make ends meet, that is urgent; the fact that America has lost more than 3 million private sector jobs since our current President took office, that is urgent; the fact that the number of Americans living in poverty has increased by 3 million in 2 years, that is urgent; and the fact that 4.5 million Americans work part time because they cannot find full-time jobs, that is urgent.

I would simply like to suggest that the Senate return to the urgent business facing our Nation. We have appropriations bills to consider and pass. We have a comprehensive Energy bill to pass. We have a highway bill to pass. We have much to do.

I thank the Presiding Officer, and I yield the floor.

The PRESIDING OFFICER. The assistant minority leader.

UNANIMOUS CONSENT REQUEST—S. 1584

Mr. REID. Mr. President, yesterday at 6 o'clock we were working on S. 1584, a bill that funds the Departments of Veterans Affairs, Housing and Urban Development, and other agencies. It is a bill that has $122.7 billion. It includes $612 billion for the Department of Veterans Affairs, veterans benefits, all the health facilities, EPA, and NASA. It is an extremely important piece of legislation.

Therefore, for the veterans of America, I ask unanimous consent that at 6 o'clock tonight we move off this and go back to the VA-HUD bill and complete it within 2 hours. The two managers of the bill, Senators BOND and MIKULSKI, said they could do that. It would be an important part of our legislative agenda. I ask unanimous consent that that be the case.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, reserving the right to object, and I will object, we hope to complete that bill, in the next few days. Therefore, for the moment, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, let me suggest another consent agreement that might make more sense. I ask unanimous consent that the Senator modify his previous request so that just prior to proceeding as requested, the three cloture votes would be vitiated and then the Senate immediately proceed to three consecutive votes on the confirmation of the nominations with no intervening action or debate.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Who yields time?

The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, the two unanimous consent requests that have just been made I am afraid might have come out of my 15 minutes. I would like to ask unanimous consent if I could have an additional 3 minutes so that I will have my full 15 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRAHAM of Florida. Mr. President, I thank my colleague from Kentucky for his generosity. I intend to use much of my time talking about the issue that was discussed by my friend and colleague from West Virginia. But I would like to start with some comments on the subject which has been before us since 6 p.m. yesterday; that is, the issue of judicial confirmation.

This is a fundamental issue in our democracy. One of the great figures in the development of the structure of our Nation's Government stands over us every day we are in session in this Chamber; that is, the first Vice President of the United States, John Adams.

Concerned about the structure of government, preceding the War for Independence and anticipating there would soon be a new nation which would be striving to develop the appropriate structures to maintain its democracy, John Adams wrote a series of his thoughts on government. These became the essential ideas first for the constitutions of the newly independent Colonies and State constitutions, and then in Philadelphia the development of the U.S. Constitution.

One of the central points of John Adams's thoughts on government was the essential role which was played by an independent judiciary. He said, as quoted in the Pulitzer Prize-winning biography of John Adams by David McCollough:

> Essential to the stability of government and to "enable an impartial administration of justice," Adams stressed the separation of judicial power from both the legislative and the executive. There must be an independent judiciary. "Men of experience in laws of exemplary morals, invincible patience, unrivaled comments and indefatigable application should be subservient to none and appointed for life."

There were a number of provisions placed in the U.S. Constitution in order to carry out that essential independence of the judiciary. Many of those occur after an individual assumes his or her judicial position, including lifetime appointments, and the fact that Congress cannot reduce the salaries of a member of the Federal judiciary. Those are designed to protect Federal judges, both politically and economically, from undue interference.

But the issue of how do you maintain impartiality in the selection of judges was one of the most contentious issues of the Constitutional Convention. Up until the very end of the Convention, the provision that was in the draft Constitution was for the Senate to appoint Federal judges. But there was concern that would put too much authority in the legislative branch, and thus the final compromise was to have the President make the nominations for judges but the Senate to confirm those nominations.

There was not intended to be a subservient position for the Senate. Rather, it was to be a position of equality as a fundamental part, as John Adams said, of maintenance of the independence of the judiciary.

What we are debating to date is the fundamental question of how should the Senate exercise its equal role in the designation of those persons who will become lifetime appointments to the Federal judiciary.

I believe that in this most serious of responsibilities we have, it is appropriate that the rules which apply to the general conduct of the Senate, rules which were largely written by John Adams's successor, Thomas Jefferson, who also looks down upon us this morning—that those rules should apply in order to protect the interests of the minority. That is not just a political minority; it might also be an economic or a regional minority.

It has been the practice in this body that there be the provision for extended debate and that the termination of that extended debate require more than a majority of the Senate. Why should that procedure which applies to all other activities not apply to one of the most important, if not the most important, activities of the Senate, which is to play its equal role in the determination of who will be the judges of the Federal system in our Nation?

Let me suggest that maybe we need to look beyond the confines that have dominated much of this debate and ask how can we, within a system that is balanced between the President and the Senate, do a better job of selecting judges and avoid the kind of contention and delay we are currently experiencing.

Let me make three suggestions. Excuse my egocentric discussion of this first suggestion. But for 12 years, the two Senators from Florida were one Republican and one Democrat. Over that 12-year period, for one period of time the President was a Republican and then later a Democrat. During that 12-year period, Senator Connie Mack and I established a process. The process was to have a nonpartisan panel of citizens roughly divided between lawyers and lay people review the applications of persons who were seeking Federal judicial appointments. We refused to allow on any of the documentation an indication, direct or indirect, of what the party affiliation of the applicant was. Senator Mack and I refused in our interviews with those who were selected through this process to raise any questions of their partisan affiliation. This process proceeded with interviews of the applicants and a recommendation of generally three persons to Senator Mack and myself. We would select one of the three jointly and then submit that to the President.

Virtually, if not totally, without exception, the President approved the person selected through that process, nominated that person, and this Senate confirmed that person generally in an expeditious manner—I hope because of the confidence of my colleagues in the impartiality and the merit orientation of the process we had used.

I suggest to my colleagues and to the President that maybe a system analogous to this could be more broadly utilized at both the district court and the circuit court level in order to reduce the instances of the impasse in which we currently find ourselves.

A second recommendation: There are some scholars who are now looking at the issue of the judiciary and its relationship to the executive and legislative branches, and they are beginning to suggest that possibly we should move away from a lifetime appointment of Federal judges at the district and circuit court levels—not at the Supreme Court level—and to establish a fixed term such as 12 years rather than the current lifetime appointments. That 12-year term would be nonrenewable. This would have the benefit of persons knowing that the person appointed, nominated, and confirmed to the Federal judiciary at other than the Supreme Court level would serve an extended term but would not be permanently in office. Therefore, some of the concerns particularly about the philosophical views would be reduced.

Finally, I think the President should be encouraged to reexamine what has become I think an unfortunate pattern and which has elevated the importance of the circuit courts, and it has elevated the attention given to the nominees for the circuit court, and that is the practice that almost all of the recent nominees to the U.S. Supreme Court were nominated directly from their service in a circuit court. In fact, every U.S. Supreme Court Justice since 1990 came out of the circuit court. I think serving on the Federal circuit court is a perfectly appropriate preparation for the Supreme Court. What I disagree with is that the entire Supreme Court should be made up of persons with that background.

This Nation has been well served with Supreme Court Justices who had a variety of backgrounds, including people such as Hugo Black who had been a member of the Senate before he was appointed to the Supreme Court; Earl Warren, who was Governor of California before being appointed to the Supreme Court; persons who came from an academic background, such as Felix Frankfurt, or from the active practice of law, Louie Brandeis.

I encourage the President, when there is another opportunity to appoint a Supreme Court Justice, to look more broadly than has become the pattern at least since 1990.

With those comments I turn briefly to a discussion of the issue of the loss of manufacturing jobs and what we might do to put a tourniquet, to a degree, on that loss.

A very fundamental question facing our Nation is, How can America maintain its standard of living substantially higher than the rest of the world, during a period of globalization of the economy where so much emphasis is going to what parts of the world can produce a product at the lowest unit cost. There are some things that we need to do in order to revise our trade policy. Many of them were discussed by the Senator from West Virginia. I particularly emphasize the importance of having the context of trade, issues such as labor, human rights, and environmental protection, become part of the trade negotiation. I am not suggesting the way to do this is by writing all those provisions into each trade agreement; rather, that we look to organizations such as the International Labor Organization, if not the oldest international organization in the world, an organization to which most countries belong and have accepted the labor protocols of, the International Labor Organization, to determine which of those protocols are appropriate to a specific trade agreement; include that, and then either through enhanced enforcement by the protocol itself, which I think is the preferable approach, but failing that, through mechanisms of the trade agreements, to see those standards become reality.

Beyond changes in our trade law, we need to look at what is going to be required in America to make us as competitive as possible. I particularly reference two things: One, we have to have the best educated, the most productive workforce in the world if we are going to be able to compete globally and maintain our standards of living. John Adams was instructive on this point as well. John Adams urged the widest possible support for education: Laws for the liberal education of youth, especially for the lower classes of people, are so extremely wise and useful that to a humane and generous mind, no expense for this purpose would be thought extravagant.

I agree with that assessment of John Adams and add to it the importance of training for adults who are finding their current skills are less in demand and need to either enhance those skills or to add new skills to their capabilities.

Finally, before I conclude, we need to make a greater investment in our infrastructure. Our roads, bridges, water and sewer systems are critical to our economic productivity. They are deteriorating. This Congress will have an opportunity soon to deal both with adequate funding of education, particularly for retraining of adults and to enhance our capability to provide a modern set of support systems for our economy.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Kansas.

Mr. BROWNBACK. Thank you, Madam President. I am being joined by my colleague from Kansas, Senator ROBERTS, my colleague from Illinois, Senator FITZGERALD, and Senator NICKLES will join us in our time period to talk about the judicial crisis we have in this country and the difficulties that have been created now by an unprecedented act of the filibustering of circuit court judges. I will take a narrow look at this as an issue that has been building for the last 40 years, and what has happened during that 40-year time period that the crisis in the court has developed.

We stand on the shoulders of greatness. It was with courage and honor and convictions and convictions in religious beliefs that our forefathers formed this union of States we now call the United States of America. Indeed, the foundation of our country was formed with an understanding that there is a recognition of a higher moral authority. It is over our mantle, the one right here that I look at which says, "In God We Trust."

Yet if we are to continue down the precedent set in 1962—and I will go into that—it will be likely that in the near future we will have to take these words down and remove them as being illegal. This body itself committed a criminal act under a determination made by the Ninth Circuit Court of Appeals when we opened up and said the Pledge of Allegiance; a criminal activity because in 1954 President Eisenhower, the great Kansan, with a legislative body inserted, the unbelievable words, "one Nation, under God."

The Ninth Circuit Court of Appeals, to which two of the nominees would go, has declared that unconstitutional. It would be one thing if we said this is just an unusual aberration, but what we have to say and see is that this is a continuation of a 40-year march that the court has been on to purge any recognition or acknowledgment of God in the public square.

We are on 40 years of judicial activism in this regard. I will go through that. The Ninth Circuit is applying the endorsement test, first articulated in the 1985 school prayer case of Wallace v. Jaffree. Let's be honest about the logic behind the test. It is an absolute demand that religious ideas and language be thoroughly eliminated and cleansed from government activities. If consistently applied, the endorsement test basically drives God out of public school and out of our public life.

For too long we in this body have been silent and stood by while the courts have slowly chipped away at our responsibility to this Nation. And today we see the effects of our apathy.

At this critical time in our Nation's history, the Senate stands locked in a controversy surrounding the confirmation of judges. But this stalemate also underscores the large issues at stake and the serious choices we face as a nation. If we look at the judicial trends for the past 40 years, the courts have increasingly veered off course. As far as religion is concerned, the courts have been on a relentless drive to remove God from the public square. It started in 1962 in Engel v. Vitale when 39 million students were forbidden to do what they and their predecessors have been doing since the founding of our Nation, publicly calling upon the name of the Lord at the beginning of each school day as we do in this body.

The following year in the School District of Abington Township v. Schempp, the Court held that Bible readings in public schools also violate the first amendment. In 1992, in Lee v. Wiseman, prayer was removed from graduation exercises. And in 2000, in the Santa Fe Independent School District v. Doe, prayer was removed from being said at football games.

None of these restrictions were affirmatively adopted by any legislative body. The legislative bodies, either at the Federal or State level did the opposite. The Congress added the phrase "under God" in 1954 to the Pledge of Allegiance, and did so with the explicit intention of fostering reverential patriotism—nothing more, nothing less. It was done to reflect the values of the American people that were as valid in 1954 as they are today. Yet this year, the Court will continue to decide these issues, irrespective of what the American people believe in and want.

Along the way during this 40-year time period, the Court also discovered the constitutional right to abortion and more recently struck down State anti-sodomy laws.

As the Court has sought to remove God from the public square, we should examine the impact it has had on our culture, that amorphous atmosphere that helps form our souls and our identities. The culture, the following charts demonstrate, has clearly deteriorated. More and more Americans are slipping into depression, alcoholism, and suicide. Our Nation's schools are plagued with students who not only fall behind in educational standards but who are suffering from societal problems that we have allowed to take place in this country.

Prior to the two major cases outlawing prayer in 1962 and 1963, our students enjoyed more stability. Since then, there has been more violence, sexual activities in schools, which have had corrosive effects on our culture.

For example, look at this chart showing suicides increased dramatically for teenagers between 1960 and today, nearly tripling the age bracket of suicide for children in our schools. Similarly, drug use has gone up significantly since the 1960s. Alcohol use also went up among those between the ages of 12 and 17, as this chart shows.

Here are examples of societal consequences since the 1960s. Since the passage of Roe v. Wade, legalizing abortions, abortions have increased dramatically. By the 1990s, abortions, private sources show, have more than doubled during that period of time. We are at 1.5 million a year. Bill Clinton called for abortion to be safe, legal, and rare. It is none of the three.

We see a dramatic increase in divorces that have taken place in this country since 1960.

This chart goes back to 1940, but from 1960 forward we are at a point in the 1990s where one in every two marriages end in divorce in America. Is that a healthy culture? We have seen same trends in violent crimes taking place. From 1960 to where we are today, we have seen more than a doubling, tripling of violent crimes taking place.

I ask the simple questions of my colleagues: Is there a direct correlation? Did the removal of prayer in the classroom or prohibitions on other public displays of religious convictions lead to the kind of moral decay reflected in the charts? Did the removal of honor and recognition of a higher moral authority impact our children? Or is it mere coincidence that our culture has declined as the courts deliberately and quietly shifted this country away from our motto, "In God we trust."

However one may interpret the empirical data and whatever conclusions one may draw of the cause and effect, we cannot ignore the key principles in the Constitution and under the establishment clause. While it may seem like inherent contradiction, Americans believe it both appropriate and necessary for government to limit abuses of religious liberty while at the same time making the effort to support sound religious convictions.

I am joined by several of my colleagues in the Senate who want to go further in making points about the judges who are being appointed. One thing is consistent with the judges, and that is they are people who have, in many cases, strong convictions, strong religious convictions, and they are being tested and tested out because of their faith. Is that where we are going with this removal of God from the public square? This is a dangerous precedent and dangerous way we are going.

I yield the floor to my colleague from Kansas, Senator ROBERTS.

Mr. ROBERTS. Madam President, I thank my distinguished friend and colleague for yielding. This is one of those times where perhaps everything has been said but not everyone has said it. I am not sure what I can add to this debate, but I will give it a try.

Our citizens of Kansas have watched the Senate's action, or rather inaction, on the President's nominees. I would like to quote from the Wichita Eagle, one of our fine newspapers in Kansas which simply editorialized:

> The party that does not control the White House is trying to control the ideological makeup of the federal courts, by misusing the Senate's advice-and-consent function to stall votes on the president's judicial nominees.

The Topeka Capital Journal also observed:

> The federal judiciary is heading to a train wreck.

I suspect by the time we get to the end of this and these kind of delay tactics, people will crawl out of train wrecks faster than we get this solved. I hope that is not the case.

It is not just the local newspapers that are expressing their views on these issues. Many constituents have written and called my office. They are expressing their frustration on the Senate's treatment of this process. This is a time that the process of the Senate, normally not a very high profile issue, has become a high profile issue.

Kansans are pragmatic and understanding people. They understand that some Senators oppose the President's nominees on ideological grounds. They also understand that those Senators are entitled to that position and answer to their own constituents for their actions. However, they do not appreciate the abuse of the Senate's procedural tools to allow the minority to dominate the majority. They want us to give these nominees a simple up-or-down vote. That is the whole issue. They want these nominations decided on the merits, not blocked by some procedural maneuver.

That is what this all comes down to. All of the rhetoric and support of these delaying tactics would have you believe the four nominees are "out of touch," or "out of the mainstream." Those opposing the nominees would have us believe they have not had a sufficient opportunity to question the nominees or have not received enough information to form an opinion. The facts are that through hearings that have been held, and in one case over 2 years have passed and the nomination simply remained blocked.

Additionally, if my colleagues truly believe they do not have enough information despite these hearings and despite the answers that are provided by the nominees, the answer is simple.

They do not have to vote for the nominee. They can simply vote no, if we could just have a vote. So despite all of these protestations to the contrary, this comes down to ideological obstructionism.

Now, intuitively the logic that a judicial selection should be based or influenced by a nominee's ideology leads one to believe that judges should or will rely on their own personal beliefs rather than on the law when rendering their decisions. I find this remarkable and completely off the mark. I am certain that if each of these nominees receive an up-or-down vote, each would be approved by a majority vote and they would vote according to the law. They said that over and over again.

My question is, How is justice served when justice is delayed? If you deliver solid and qualified judges to our court system, that is more important than litmus-test politics. We are just simply not doing our job.

Let me talk about trust. This continued delay does not foster the public's trust in our government's process to simply get the job done.

Let me talk about cost. Taxpayers spend $5.1 billion for the Federal judiciary every year. The American people are paying for fully staffed courts and are getting obstructionism and vacant benches. Reckless behavior such as this is irresponsible and a waste of taxpayer dollars.

Let's talk about delay. Let's really talk about delay. Court delays are becoming the norm. We all know that. We read about something egregious in the newspaper and wonder why you cannot get a court decision or at least some justice out of the situation. All of the court circuits facing these judicial emergencies are averaging 4- to 5-month—4- to 5-month—delays. And these delays are on top of a process that, from the original filing in district court to the final decision on appeal, takes 24 to 28 months—over 2 years.

OK, let us talk about results. What does an overtaxed judiciary really mean to Americans? It means that cases take longer to resolve, lives are disrupted and inconvenienced further, and real people must wait indefinitely in limbo as justice in their cases remains undetermined.

In over two centuries of Senate history, why, judicial nominations have been both approved or refused. No filibuster was necessary to defeat a nomination. The reliance by those who oppose these nominations of this procedural tool to handicap the process is simply unprecedented. The use of the filibuster essentially grants the minority veto power, hence controlling which nominees will even be given the chance—just the chance—for an up-or-down vote, much less confirmed.

Now the Constitution explicitly states seven circumstances in which a supermajority vote is warranted by one or both Chambers of Congress. The advice and consent of Presidential nominations by the Senate is not one of these special circumstances. In fact, Alexander Hamilton states in Federalist 76 that the Senate's role is to refuse nominations only for "special and strong reasons" having to do with unfit characters. At some point, after the issues and merits of the nominee have been debated, we have an obligation to render a decision, whether it is yea or nay, and not let the matter hang in the balance unresolved and unfinished.

These competent, well-qualified judicial nominees deserve an up-or-down vote. The people of Kansas and the United States deserve a full—a full—judicial bench.

I thank my colleague for yielding the time.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. I thank the Chair.

I now yield to the Senator from Illinois for 7 minutes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. FITZGERALD. Madam President, I thank both my colleagues from Kansas. I appreciate the remarks that were just made by the chairman of the Intelligence Committee.

I would like to go back to some of the statistics that have been cited in this debate. I guess I have been very troubled to hear on the radio this morning, on call-in radio, the figures being cited over and over again that were offered last night on the other side of the aisle.

We kept hearing that they had only blocked four judges. Well, that is simply not true, and I think it is very important that the American people know that is not true.

I have in my hands a chart that was prepared by the nonpartisan Congressional Research Service that shows that of the Presidents going back to Carter, in 1977, through August 1, 2003, the Senate has blocked a higher percentage and a higher number of judges who were nominated by President Bush than any other President in the Nation's history—or at least going back to 1977. And I am sure nothing was going on prior to 1977 like what is going on today.

The fact is, according to this survey, President Bush has nominated a total of 264 people to serve on the district and appellate courts in this country. As of August 1, 2003, only 144 of them have been confirmed. That is only 54 percent of the number of nominations made by President Bush.

Now we need to break that down. Of district court nominees, President Bush, as of August 1, has nominated 185 nominees to the district court. Only 117 of them have been confirmed. That means the Senate had rejected or not acted on 68 of those district court nominees.

With respect to the appellate courts, as of August 1, the President had nominated 79 appellate court judges and the Senate, as of August 1, only confirmed 27 of them. That is only 34 percent of the total. So that means 52 of President Bush's nominees to the appellate courts have been blocked by the Senate.

My friends on the other side of the aisle have done something very clever. They have just arbitrarily decided they are only going to talk about judicial nominees who have been filibustered and blocked on the floor of the Senate and they are not going to talk about those whose nominations have been blocked in other ways, such as in committee. Thus, the American people have been given a misleading impression overnight. They have been misled into thinking the Senate has only blocked four nominees for the appellate courts. Well, it has been far more than that.

As of August 1, it had been 52. I do not know what the figure would be right as of today, but I would have to tell you, if you compare it to the previous Presidents, the treatment of President Bush's nominees has been deplorable.

Going back to President Carter, he nominated 61 appellate judges; 56 of them were confirmed. In other words, Carter, in 4 years, only had five appellate court nominees who did not make confirmation; 91 percent of his nominees were confirmed. President Reagan, who was a Republican President, served while there was a Democratic Congress. He had 81 percent of his appellate nominees confirmed. The first President Bush had 77.8 percent of his appellate court nominees confirmed. President Clinton had 56 percent of his appellate court nominees confirmed.

If you get down to this President, George Bush, he only has had, as of August 1, 34 percent of his appellate court nominees confirmed. I am very concerned about what this means for our country. It could mean that a minority in the Senate is usurping for itself the power to control the Federal judiciary.

Under our Constitution, the President is supposed to appoint the judges with the advice and consent of the Senate. We have some idea what the Constitution meant by that because Alexander Hamilton addressed the issue in Federalist Paper No. 76. He said the Senate's role is to refuse nominations only for "special and strong reasons" having to do with "unfit characters."

I do not even think anyone has made the argument that the nominees who have been blocked in the Senate in this Congress have been unfit. I think the arguments against their nominations have been more ideological; simply the other side does not agree with these people, suspects they may be conservative.

Many of President Bush's nominees have been pro-life. I am concerned there may be a litmus test that is being applied on the other side, that they are simply not going to allow pro-life judges on our appellate courts. That is very troubling because that is upsetting our constitutional order that our Founding Fathers have made.

The key point here is, I do not want the American people to come away with the impression that only four of President Bush's nominees have been blocked. The number is far higher. It is probably a total of over 100. Probably about 120 have been blocked. As of August 1, 68 district court judges have been blocked and 52 appellate court judges. So this whole thing about just four judges having been blocked is really nonsense, and we ought to set the record straight.

The PRESIDING OFFICER. The Senator has used 7 minutes.

Mr. FITZGERALD. Thank you, Madam President. Having used up my time, I will now yield the floor to my distinguished colleague, Senator BROWNBACK from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Thank you, Madam President. I thank the Senator from Illinois.

Madam President, how much time remains on this side?

The PRESIDING OFFICER. Five minutes remain on the majority side.

Mr. BROWNBACK. Thank you very much.

I thank my colleague from Kansas and my colleague from Illinois for the comments they have made in this debate in which we have been engaged for some period of time and I think make both cogent and important points to put forward.

I want to double back around and finish on the comments I started on about this being a 40-year debate. For some of us who might have been up for a while, it may seem like 40 years already since last night.

But this has been a 40-year debate, and we have engaged and embarked on a great debate about which these judges are front and center, and it is potentially a collision course, some may say, between those who believe in God and that He has a role to play in the cultural and moral fabric of this Nation and those who prefer to sanitize our public institutions of any reference to God.

We should at least allow the vast majority of Americans who believe in God to honor Him in public, as our Founders did, and not be forced to conceal Him from the public square.

The four nominees currently being filibustered all believe in God, as do 90 percent of the American public. Should they be excluded from the appellate courts because of their faith? Their deeply held convictions just happen to mirror those of George Washington, most of the Founding Fathers, as well as some of the greatest Americans in our history—Abraham Lincoln, Susan B. Anthony, Dwight Eisenhower, and Martin Luther King, Jr. Would any of them be able to get on this court today through this litmus test? I doubt it.

If the issue here is this body has not had sufficient opportunity to debate the merits of the candidates, then let's go ahead and debate and move to a final vote.

Those who wrote the Constitution, which is the oldest working constitution in the world, remain the best guide to its clear meaning. America's Founding Fathers, by and large, did not believe government must be neutral toward religion. George Washington, in his Farewell Address, often quoted, gave the clear view, "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports."

The Founders supported the public recognition of religion because religion and morality are, in Washington's words, the "firmest props of the duties of men and citizens." When Washington addressed the new Nation for the first time as President, he led the country in public prayer, something we have never failed to do since, and yet removed 40 years ago from our public classrooms.

Therefore, I submit to you today that we should not stand idly on issues of judicial nominations. The Framers of the Constitution feared tyranny from the judiciary more than from the other two branches. They placed deliberate limitations on the judiciary in order to ensure the integrity of the judicial system. As a result, the Federalist Papers reported that under their plan, "the Judiciary is beyond comparison the weakest of the three departments of power. . . . [and] the general liberty of the people can never be endangered from that quarter."

Would that be an agreed-to statement today? I think not.

It is our duty to ensure the legislative integrity of our culture. Indeed, it is written in the Constitution that to do anything less is to walk away from our responsibility to this Nation, a responsibility that was recognized and affirmed by our Founding Fathers.

Madam President, as we conclude on this side of the aisle for this 30-minute section, I would just note to my colleagues on the other side of the aisle that this is going to continue to be an issue. We will get these judges through at some point in time, whether it is this session or we have to go back to the public and have another vote in the 2004 election cycle.

This will be a front and center issue. As the courts and the culture are becoming increasingly tied together with the difficulties we have had in this society, this will be taken to the public. I do not doubt that this will be, if not the top issue, one of the top three issues. They are going to be out in the public. I think this is a bad idea policywise, what is taking place in the blockage of these judges. I think it is bad politics.

But this is going to take place and this fight will continue. If we do not get it done now, we will continue to press forward, and it will be taken into the election cycle, and we will let the American public look and see: Do they think this is the way judges should be handled by the Senate? As these calamities of judicial blockage keep mounting up, it will become clearer and clearer to the public what is taking place here.

This is a very important fight. It is one about which a lot of people care deeply. It is one that a lot of my—when people come up to me in Kansas and talk about issues, these are front and center issues they talk about. They are concerned about these issues and have been for some period of time. And they are wondering: What are you doing? What about this activist court? Why are you not getting these judges on through?

This is something that does touch the public. We can do it the way it should be done; we can get a clear vote up or down or we can take it back out to the public in the next election cycle. One way or the other, this is going to occur. And I would suggest that the best way for this society, the best way for this Government, the best way for this culture is for these to come forward here, be vigorously debated, and then voted on up or down. I think the public is now coming to a very strong point on this.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BROWNBACK. Thank you very much. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

UNANIMOUS CONSENT REQUEST

Mr. REID. Madam President, I ask unanimous consent that the Senate stand in recess from 4:15 to 5:15 today. This is so that all Senators can attend a closed briefing in secure room No. S–407, the briefing to be by Ambassador Bremer, the American administrator in Iraq.

Another American was killed today, along with 25 Italian peacekeepers in Iraq. The Senate Intelligence Committee is no longer functioning, so it is more important than ever for this body to review the direction of the American war in Iraq, especially in that we have appropriated in special funding this year some $163 billion. I so move.

The PRESIDING OFFICER. Is there objection?

Mr. BROWNBACK. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Madam President, the Senator from Vermont is going to take 1 minute of the time of the two Senators from Washington. I would ask unanimous consent that following his statement, which would be 1 minute, the two Senators from Washington divide their time, and the first to be recognized is the junior Senator from Washington, followed by the senior Senator from Washington.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont.

Mr. LEAHY. Madam President, I agree, this can be an issue and probably should be an issue in the election, but let's make sure it is an issue on the facts. There is this discussion we heard on the floor this last hour or so of the great vacancies. That is balderdash.

The fact is, there are more Federal judges sitting right now than at any time in history. We have been told that we are blocking 130. There are only 40 vacancies, approximately 40 vacancies in the whole country. Let's get our numbers right. This number is right. We have confirmed 168; we have blocked 4. We confirmed 168; we blocked 4. That is the fact.

It is hard on the other side to hear that, after they blocked over 60 of President Clinton's nominees by one-person filibusters, but it is a fact. We confirmed 168; we stopped 4. They stopped 61.

Thank you.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Madam President, thank you.

I rise to join my colleagues in what has been for now some many hours a very robust debate on our judicial nominees and the process by which this body should follow their advice and consent process for the President.

I think it is clear to the other side of the aisle—and it is very interesting that the two Senators from Washington are here with the two Senators from Kansas. I can imagine that we would rather talk about many other issues, particularly high unemployment in our states and how to get America moving again, and particularly in the aerospace manufacturing area. But the bottom line is, this body does have a role on advice and consent. And since the 1940s, the Senate rules have allowed cloture votes on nominations, and we have exercised that. So that is what this debate has been about.

My colleagues have continued to point out that these numbers reflect what that debate has produced as far as our working together in our constitutional role. I do want to say, though, that there is a very worthwhile point to this debate, and I would say to my colleagues on both sides of the aisle that perhaps if we wanted to even extend this debate beyond the 30 hours, we should do so because what is really at question here is the nominees the President is putting before us and whether our country, at a critical time, is going to stand up and continue to protect the privacy rights of individuals who are being threatened, those privacy rights that exist in our Constitution and are actually being challenged by our own Government.

I believe that we are at a critical time in our country's history, and that is why it is so important for the Senate to do its job. That job is to give the American people a judiciary that represents the mainstream views of America, that protects their constitutional rights, and that does not represent a clear threat to 30 years of settled law protecting a woman's right to choose.

I believe the real issue that we should debate, because it is critical to the American people, is not the fact that we have confirmed 168 Bush judges; the issue is that this Administration has nominated 4 individuals who Senators believe fail the test. Over 40 Senators believe that they will not act to protect our constitutional rights and to uphold our Constitution.

Each of these nominees—Priscilla Owen, Charles Pickering, Miguel Estrada, and William Pryor have records that indicate a determination to interpret the law not as it is but as they want it to be.

Over the next decade, Federal judges will be making critical decisions about the right to privacy and how both Government and business should respect that right to privacy. We are at the tip of the iceberg of an information age where businesses may have access to your most personal information and exploit that; where the health care industry has access to your most personal information; where Government has established a process of eavesdropping and tracking U.S. citizens without probable cause. Government has even used and developed software that can track one's use of Web sites and information on their personal computer without their consent or knowledge.

And of course, a woman's right to privacy in her choices about her body, even after 30 years of established, settled law, continues to be threatened.

I voted against these four individuals, and I will continue to oppose them. I oppose them because I believe ensuring that our judiciary is independent and committed to protecting our constitutional rights is increasing in importance and that these four cannot fill that role. It is increasing in importance because with one party in control of both the Congress and the Executive branch, and an independent and balanced judiciary is the only remaining check to ensure that our core constitutional protections are upheld.

America is a great democracy, but it is an even brighter beacon to the rest of the world because our citizens trust our judiciary to protect their rights!

Now that as a result of the Patriot Act, Government can obtain a warrant to search your home without your knowledge; can obtain a subpoena to track your use of the Internet without showing probable cause; and can obtain a secret wiretap to eavesdrop, the judiciary must serve as a check on that power.

I know some of my colleagues want to try to address some of these issues, and we will have many opportunities in the future to correct some of this overstepping by those in our Federal Government. But in a September 2003 report, the Justice Department clearly acknowledged that new powers granted under the PATRIOT Act were not simply being used to fight terrorism and espionage.

The report "cites more than a dozen cases that are not directly related to terrorism in which Federal authorities have used expanded power [under the PATRIOT Act] to investigate individuals, initiate wiretaps and other surveillance and seize millions in tainted assets."

The Government has already deprived two U.S. citizens of their constitutional rights and held them as enemy combatants subject to secret trial, and they can basically deprive legal immigrants protected by the Constitution from this arrest and detain them without charges.

Just yesterday, the New York Times reported that even in our intelligence reauthorization bill, there is language significantly expanding the role of the FBI to get information from car dealers, travel agents, post offices, casinos, and others without going before a Federal judge.

I know it is easy to want to believe that these issues are all about fighting terrorism and are not hurting people.

Madam President, I can tell you, I believe strongly in the war on terrorism. In my State, we have seen three important cases that have been successfully prosecuted. In 2000, agents apprehended Ahmad Ressam, an individual who had plans to blow up landmarks on the west coast. Last year, the FBI in my region was also successful in tracking down individuals who wanted to build a terrorist training camp in Oregon. The lead individual in that case, James Ujaama, will be providing information that I hope will lead to the extradition of an extremists cleric based in London. And a group of men in Portland actually pleaded guilty to traveling to Afghanistan to fight against Americans after September 11.

I firmly believe it is possible to fight the war on terrorism and prosecute terrorists and still uphold the constitutional rights of Americans. But to make sure that balance is right, the Senate must do its job to ensure that nominees to the federal court will interpret the law, and not use their personal views to rewrite it.

Americans are genuinely concerned about the erosion of their rights. Earlier this year in the Senate, we hosted a forum in which two individuals from my State, Nadin Hamoui and Mako Nakagawa, both testified about their experiences. Both described being awakened in the dead of night in their family homes by armed law enforcement who pointed guns at their parents, herded sisters and brothers into waiting vehicles and took them away for a long detention with no access to due process. The eerie part was that their stories occurred sixty years apart, in 1941 and 2001.

In Washington State, the echo of internment of Japanese Americans during World War II and the damage that it did is still very real, and hearing these two stories makes us aware of just how much our respect for liberty in this country can be overcome by fear.

It has never been more important to have a judiciary that vigorously protects our constitutional rights and particularly our rights to privacy. As a perfect example, just this past week, the Supreme Court agreed to hear arguments on whether prisoners at the United States Naval Base at Guantanamo Bay are entitled to access to civilian courts to challenge their openended detention. An independent judiciary has the courage to review Government assertions of power, and that is what we are talking about here: whether these nominees would live up to the demands of that independent judiciary.

These are good individuals. They are earnest. They are hard working. But there have been fundamental questions raised about their records and about whether they have impartially judged their cases.

Charles Pickering, we all know, has been involved in a case where he picked up the phone and intervened with the Department of Justice in an attempt to reduce a sentence mandated by Federal guidelines.

Priscilla Owen has been repeatedly had her opinions chastised by members of her own court who have called them "nothing more than inflammatory rhetoric" and "an unconscionable act of judicial activism." The San Antonio Express News actually called the nomination—or the renomination, I should say—of these two individuals, Owen and Pickering, a "misguided" and "major disappointment."

Mr. Pryor, again, I am sure a well-meaning individual, sought to limit the Violence Against Women Act—and a fellow Republican attorney general had this to say about him:

> I have great questions about whether Mr. Pryor has the ability to be nonpartisan. I would say he was probably the most doctrinaire and most partisan of any attorney general I dealt with in 8 years.

Are these the individuals we want to trust with lifetime appointments to protect our constitutional rights and to uphold those rights?

The PRESIDING OFFICER. The Senator's time has expired.

Ms. CANTWELL. Madam President, how much time have I used?

The PRESIDING OFFICER. The Senator has used 11 minutes. There are less than 10 minutes remaining.

Ms. CANTWELL. If my colleague from Washington would allow, I would like to continue.

Mrs. MURRAY. How much more time does the Senator need?

Ms. CANTWELL. Three minutes.

Mrs. MURRAY. I yield 1 more minute to my colleague from Washington.

Ms. CANTWELL. I thank my colleague. Madam President, in voting against these individuals, the Senate is doing the job the American people expected us to do.

In order to continue to have this great democracy, we must ensure we have vital checks on this administration's power. The American people are expecting their judiciary to be independent, to respect precedent, and not to prejudge the issues before them. The American people think we need a fair and balanced judiciary to counterbalance the executive and legislative branch, and we need to give them that.

These four individuals have demonstrated records of reaching beyond the law in order to reach their preferred ideological outcome. The Federal judiciary will not rise or fall on the fate of these four individuals, but in order to be a great democracy, in order to continue shining as the world's brightest beacon for individual rights, we need to have an independent judiciary, Without the important check that this Senate provides by doing our job in advising and consenting with the President on these issues, that will not be possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Madam President, how much time do I have?

The PRESIDING OFFICER. Eight minutes.

Mrs. MURRAY. Madam President, the majority believes that the Senate should spend 30 hours discussing what the New York Times calls a manufactured crisis on judges. While I believe our time would be better spent helping laid-off workers by extending unemployment benefits, I am happy to talk about the confirmation of judges. I am happy to talk about how these lifetime appointments affect the rights and freedoms of every American, and I am happy to talk about our impressive record of confirming 98 percent of the judges this majority has brought to the Senate floor.

I want to be clear that by spending 30 hours talking about four judges who already have jobs, we are not helping the 3 million Americans who do not have jobs. This marathon is the type of political grandstanding that, frankly, makes Americans scratch their heads and conclude that politicians just don't get it. We should be spending our time on the urgent needs facing our citizens in employment, health care, transportation, and completing our work on putting this Federal budget together. But the majority has decided that this is the most important issue we can discuss for 2 days, and they control the floor.

I wish to talk about four things: The importance of the Senate in confirming judges, the progress we have made in the past 3 years, the success we have had in confirming judges in Washington State, and the job crisis that the majority doesn't want us to discuss.

First, I want to put this discussion in context because the judges who serve on the Federal bench affect the lives and liberties of every American. These are lifetime appointments. This is not just a nomination to a commission or to an ambassadorship. This is a lifetime appointment for a Federal judge whose rulings over the next 30, 40, maybe more years, will have ramifications for every single American.

As Senators, we are elected to serve our constituents. We are asked to confirm judges whose decisions can change U.S. history. They can shape the lives of Americans for generations to come. In addition, we expect Federal judges to provide the proper checks in our system of checks and balances that was outlined in the Constitution. Without it, our system does not function properly. It is our job to ensure that each nominee has sufficient experience to sit in judgment of our fellow citizens; that they will be fair to all of those who come before the court; that they will be evenhanded in administering judges; and that they will protect the rights and the liberties of all Americans.

To determine if a nominee meets those standards, we have to explore their record, ask them questions, and weigh their responses. That is a tremendous responsibility and one that I take very seriously.

In the Senate, we have made great progress in confirming the judges President Bush has nominated. Look at these figures. The Senate has confirmed 168 judicial nominees of President Bush to have come before the Senate. In 3 years, we have only stopped 4—4 people whose records raise the highest questions about their abilities to meet the standards of fairness that all Americans expect.

Let me repeat that: 168 judicial nominees. That is a confirmation rate of 97.7 percent. We have confirmed 168 judges.

That is more confirmations than during President Reagan's entire first term. So for this year, we have confirmed 168 judges.

Today, 95 percent of the Federal judicial seats are filled. That is the lowest number of vacancies in 13 years. There are now more Federal judges than ever before.

When it comes to circuit court judges, we have confirmed 29. That is more appeals judges than Clinton, the first President Bush, or Reagan had by this point in their administrations.

I have to point out that while the majority is complaining today about our 98-percent confirmation rate, it was a different story during the Clinton administration. Back then, Republicans used many different roadblocks to stop the confirmation of judges nominated by President Clinton.

During Clinton's second term, 175 of his nominees were confirmed and 55 were blocked from ever getting votes. During those years, the majority used the committee process to ensure nominees they disagreed with never came to a vote. Fifty-five nominations sent over by President Clinton never received consideration. So I think the Senate has a pretty impressive record at this time of confirming judges. That is clear in a 98-percent confirmation rate, and 95 percent of the Federal judicial seats are filled today. It is the lowest number of vacancies in 13 years.

I wish to talk for a minute about the process we use in Washington State to confirm judges. We have worked out a system to ensure Washington judges are nominated and confirmed even when different political parties hold Senate seats or control the White House. For many years, I have worked with a Republican Senator and a Democratic President to nominate and confirm Federal judges. Today, with a Republican President, I am working with my Democratic colleague from Washington State on a bipartisan process to recommend judicial candidates. We developed a bipartisan commission process to forward names to the White House, and it has worked very well. Both sides have equal representation on the commission, and the commission interviews and vets those candidates.

It worked for Senator Gorton—a Republican—and I when we were forwarding names to President Clinton, and it is working for Senator CANTWELL and I as we both recommend names to President Bush.

I am proud that during President Bush's first 3 years, we have confirmed two excellent judges through this bipartisan commission process. We confirmed Ron Leighton, a distinguished trial lawyer in Tacoma who is now a U.S. district court judge for the Western District of Washington in Tacoma.

We have confirmed Lonny Suko as a district court judge for the Eastern District of Washington State. He is a distinguished lawyer and U.S. magistrate judge who has earned the respect of so many in his work on some of eastern Washington's most difficult cases.

Currently, we are in the process of getting a nomination hearing and confirmation of Magistrate Judge Ricardo Martinez for a vacancy on the U.S. District Court for the Western District of Washington.

For over 5 years, he has served as a magistrate judge for the United States. Before that, he was a superior court judge for 8 years, and he was also a King County prosecutor for 10 years.

Judge Martinez has the impressive credential of being named the first drug court judge in Washington State and worked tirelessly to ensure the success of this program which uses treatment services as an alternative to incarceration.

I am looking forward to his hearing and confirmation fairly quickly.

I am here to tell you that in Washington State, we are making real bipartisan progress in confirming judges. It is a process that I believe serves the people of Washington State well.

Mr. ALLARD. Will the Senator yield for a question?

Mrs. MURRAY. I have very little time left, and I want to finish my statement. I thank my colleague.

The time we are spending discussing our 98-percent confirmation rate could be used to address much more pressing issues. The majority is spending 30 hours to talk about four people who already have jobs. I think we should spend that time talking about the 3 million Americans who cannot find jobs.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator's time has expired.

Mrs. MURRAY. Mr. President, I conclude by saying in my home State of Washington, 70,000 people have been laid off. They want this Senate to deal with unemployment insurance extension, which we need to do before we adjourn.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Colorado.

Mr. ALLARD. I wonder if the Senator from Washington would yield for a question and we would divide the time against each of us; time would go against her in responding to the question and my asking the question would go against the Republicans.

Mr. REID. At this stage I would object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. If the Senator wants to ask a question, use it on his time. We have people who have prepared all-night speeches and have been cut too short.

Mr. ALLARD. That was just a suggestion, but obviously she does not want to respond to the question.

Mr. President, today my colleagues and I are trying to put an end to the nomination logjam. All we are asking is for a simple up-or-down vote on these highly qualified nominees now. Carolyn Kuhl, Priscilla Owen, and Charles Pickering must receive a vote. Today, our Nation is facing a judicial crisis. Currently, there are 22 emergency judicial vacancies and 12 of these are on the court of appeals. It is simply irresponsible for us to ignore this growing crisis.

Sticking our heads in the sand like an ostrich and ignoring it, as some of my colleagues would like us to do, will not diminish the seriousness of this crisis and make it go away.

I have an article from the Washington Post written by George F. Will on February 28, 2003, entitled "Coup Against the Constitution." I ask unanimous consent that that article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 28, 2003]

COUP AGAINST THE CONSTITUTION

(By George F. Will)

The president, preoccupied with regime change elsewhere, will occupy a substantially diminished presidency unless he defeats the current attempt to alter the constitutional regime here. If at least 41 Senate democrats succeed in blocking a vote on the confirmation of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit, the Constitution effectively will be amended.

If Senate rules, exploited by an anti-constitutional minority, are allowed to trump the Constitution's text and two centuries of practice, the Senate's power to consent to judicial nominations will have become a Senate right to require a 60-vote supermajority for confirmations. By thus nullifying the president's power to shape the judiciary, the Democratic Party will wield a presidential power without having won a presidential election.

Senate Democrats cite Estrada's lack of judicial experience. But 15 of the 18 nominees to the D.C. court since President Carter have lacked such experience, as did 26 Clinton circuit judge nominees who were confirmed. And 43 of the 108 Supreme Court justices (most recently Byron White, Thurgood Marshall and Lewis Powell), including eight of the 18 chief justices (most recently Earl Warren), had no prior judicial experience.

Sen. Charles Schumer opposes Estrada because his mind is, Schumer says, a mystery. And because the Justice Department refuses to release papers Estrada wrote during his five years (four of them in the Clinton administration) in the solicitor general's office. The department, emphatically supported by all seven living former solicitors general (four of them Democrats), says that violating the confidentiality of department deliberations would have a deleterious effect on those deliberations. Anyway, the papers Schumer seeks contain not Estrada's personal views but legal arguments supporting the litigation positions of the U.S. government.

Estrada, whose nomination has been pending for almost two years and who has met privately with any senator who has asked to meet with him, answered more than 100 questions from the Judiciary Committee, and unusually large number. Only two of 10 Judiciary Committee democrats exercised their right to submit written questions to Estrada for written answers. Schumer did not.

Schumer says, "No judicial nominee that I'm aware of, for such a high court, has ever had so little of a record." Actually, he is aware of at least two nominees to a yet higher court—Gov. Warren and Sen. Hugo Black—who had no record comparable to Estrada's 15 briefs and oral arguments (10 of them victorious) in cases he argued before the Supreme Court.

Schumer says Estrada would not cite "three supreme Court cases in the past you disagree with." Actually, he was asked to cite three "from the last 40 years," a transparent attempt to force him to discuss Roe v. Wade. *But because abortion-related cases still come before courts, Estrada could not discuss Roe without violating the American Bar Association's Code of Judicial Conduct, which says prospective judges "shall not . . . make statements that commit or appear to commit the nominee with respect to cases, controversies or issues that are likely to come before the courts." Which is why Justice Ruth Bader Ginsburg, declining to answer certain questions at her confirmation hearing, said, "It would be wrong for me to say or preview in this legislative chamber how I would cast my vote on questions the Supreme Court may be called upon to decide"* (emphasis added).

When Boyden Gray was White House counsel for the first President Bush, Sens. Edward Kennedy and Joseph Biden—both now former chairman of the Judiciary Committee, and both still on it—warned him that any nominee would be rejected if the White House asked the nominee questions about specific cases. And a Judiciary Committee questionnaire, which every nominee must complete, sternly asks: "Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such a case, issue or question?" (emphasis added).

Alexander Hamilton wrote in Federalist Paper 76 that the Senate's role is to refuse nominations only for "special and strong reasons" having to do with "unfit characters." The American Bar Association unanimously gave Estrada its highest rating, and Estrada's supervisors in the solicitor general's office gave him the highest possible rating in every category, in every rating period.

Given the cynicism and intellectual poverty of the opposition to Estrada, if the Republican Senate leadership cannot bring his nomination to a vote, Republican "control" of the Senate will be risible. And if the president does not wage a fierce, protracted and very public fight for his nominee, he will display insufficient seriousness about the oath he swore to defend the Constitution.

Mr. ALLARD. Now some of my colleagues have proudly said they have acted on 98 percent of the judicial nominations sent to the Senate for confirmation. I would just simply like to point out that if we would only accept a 98 percent success rate, say, on flight safety, there would be 1,740 flights a day that would not land safely. Five hundred major organ transplants would be performed incorrectly and more than 4 billion letters would be mishandled by the U.S. Postal Service this year. Ninety-eight percent, when we are talking about district as well as circuit court, simply is not good enough.

On a personal note, I ask my colleagues, what would they want from their veterinarian performing a 98 percent success rate on their pet? My colleague is a veterinarian from Nevada. I am a veterinarian. That would not be acceptable to my colleagues. At that particular rate, I do not think we would be in business very long. Some in this body may believe 98 percent is good enough, but clearly it is not good enough.

I point out one example of the new judicial nomination double standard in the Senate that resulted in an outstanding nominee, Miguel Estrada, not being given a fair up-or-down vote.

In March of 1995, President Clinton nominated Carlos Lucero to be the first Hispanic judge to be on the Tenth Circuit Court of Appeals. Carlos Lucero was a Coloradan, the State I represent. After only 3 months, Mr. Lucero was nominated, confirmed, and was seated on the bench of the Tenth Circuit.

Prior to his confirmation, Mr. Lucero had no judicial experience yet enjoyed a well qualified rating from the American Bar Association.

Miguel Estrada was considered well qualified. He was to be the first Hispanic ever to sit on the U.S. Court of Appeals for the DC Court. He argued 15 cases before the U.S. Supreme Court, was a law clerk for Justice Anthony Kennedy, and graduated magna cum laude from Harvard Law School.

Let us compare Carlos Lucero's nomination to Miguel Estrada's nomination. President Bush nominated Miguel Estrada to be the first Hispanic judge to be on the District Circuit Court of Appeals in May of 2001. He received a highly qualified rating from the American Bar Association, yet he waited more than a year for a hearing. After waiting for more than 2 years for a vote, he finally asked that his name be withdrawn.

The point I am making is, how can we expect well qualified judges to be willing to serve on the Federal court if they have to go through a 2-year process and they have to put their careers on hold at the time?

Now tell me that this is not a double standard. Tell me that in a case where there are two nominees equally qualified, with the same rating by the ABA, there was not a double standard being imposed by Democrats on Miguel Estrada.

This double standard has been recognized in my home State of Colorado. On a chart beside me, I have two editorials, one from the Denver Post, a newspaper that endorsed Al Gore for President, and the other from the Rocky Mountain News. The Denver Post said:

> The key point—

Talking about Miguel Estrada—

> is that there should be a vote. . . . A filibuster should play no part in the process.

The Rocky Mountain News says:

> The Democrats have no excuse. . . . Keeping others from voting their consciences on this particular matter is simply out of line.

I also have an editorial from the Chicago Tribune entitled "Squandering Miguel Estrada," on September 7, 2004. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune, Sep. 7, 2003]

SQUANDERING MIGUEL ESTRADA

Presidents tend to nominate to important federal judgeships candidates who share their philosophical views, and those of the voters who elected them. So it comes as no surprise that many of President Bush's judicial nominees have conservative backgrounds. Those nominees are evaluated by the Senate, which is supposed to approve or reject them.

Last week, though, Democratic senators who are slavishly devoted to a clutch of liberal interest groups succeeded in driving away a superb nominee, Miguel Estrada, a brilliant lawyer and native of Honduras who would have been the first Hispanic jurist on the most important appellate court in the country, the one based in Washington, D.C.

Faced with a Democratic filibuster that kept the Senate form voting yea or nay on his nomination, Estrada graciously asked the president to withdraw his name. Estrada has a family to raise and a career to manage. He can no longer wait for elemental fairness to suffuse the United States Senate.

Estrada had received the highest possible rating from the American Bar Association. But he also is a conservative. The knowledge that he someday would make a superb candidate for a Supreme Court vacancy marked him as a nominee the liberal interest groups and their puppets in the Senate had to eliminate by any means necessary. And so, for the first time in the history of the nation, a president's nominee to a federal appellate court has been defeated not by a straightforward vote of senators, but by a filibuster.

Never mind that 55 senators stood ready to confirm Estrada. Republicans couldn't muster 60 votes to break the Democrats' filibuster. The confirmation vote never occurred.

Partisans will note that, during Bill Clinton's presidency, GOP senators played games with some of his nominees. That was no less scurrilous than this year's chicanery. As the Tribune argued during Clinton's tenure, the only fair way to treat a controversial choice for a judgeship is "to debate the nomination fully and then vote to confirm or reject": the nominee.

By failing to do that in Estrada's case, Democratic senators have squandered a promising judicial career before it could begin. They also have rewritten the Constitution, which says a simple majority of the Senate is enough to confirm a judicial nominee. If it takes 60 votes to break a filibuster, that is the number presidents now will need whenever the party out of power decides to throw a hissy fit over a nominee.

With their fundamentally unjust treatment of a good man, Senate Democrats have handed Republican candidates, from the

White House down, an excellent issue for voters to consider during the 2004 election cycle.

As the Tribune reported Friday, the emboldened Democrats are filibustering two more of Bush's nominees and have indicated the will employ the tactic against others as well. All to deny still more nominees the up-or-down votes they deserve. Miguel Estrada was denied that simple justice by the United States Senate.

Mr. ALLARD. Mr. President, the time has come for the Senate to vote on these four highly qualified nominees.

I now yield to the esteemed Senator from Idaho to make a few comments.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, I appreciate the opportunity our majority leader has given us to debate the issue of judicial nominations and the question of whether it is appropriate under our Constitution to have a filibuster of a judicial nomination by the President.

I believe we face a constitutional crisis. There are a lot of numbers that have been bandied back and forth between the various sides in this debate. I am going to try to make a little sense out of those in a few minutes, but I want to start with the Constitution of the United States, which in article II says that the President shall nominate, and by and with the advice of the Senate, shall appoint judges.

This Constitution does not provide a supermajority vote for the nomination, for the advice and consent process in the Senate. Our Founding Fathers were very capable and very good at pointing out those circumstances where they believed more than a majority vote was required for this interaction between the Senate and the President established in our Constitution.

In a number of different places in the Constitution, whether it is ratification of treaties or impeachment or Presidential veto overrides or the other occasions where our Founding Fathers believed the Constitution required more than a majority vote and instead a supermajority vote, they were very specific about laying that out.

With regard to judges, they did not lay out a supermajority requirement. Instead, it was stated—and until this Congress—that our Founding Fathers and the Constitution intended the advise and consent process in the Senate to require a majority vote and not to be "filibusterable."

We have seen a lot of debate on a lot of different numbers and I want to try to clarify some of these. One of the very common responses to us is: Well, we have stopped only 4 judges by filibuster this Congress and yet under the last Presidency, under Bill Clinton, over 60—I have heard different numbers, 55, 60, but whatever it is—judges were stopped by the Republicans.

It is critical for people to understand that we are talking about two very different things. All judges nominated by any President must go to the Judiciary Committee and must make it through the Judiciary Committee. In that process, under every President, a number of the judges do not make it.

In fact, we have a chart that shows under President Bush No. 1, 54 of his nominations did not make it through the committee or were voted down by the Senate.

Under President Clinton, our number, as we analyze it, is 41. Now I have heard the number 55 and the number 60, but somewhere between 41 and 60 or some other number in that category did not make it through the committee.

Actually, one of these nominees was voted down on the floor. The others did not make it through the committee. They do not make it through the committee often for a number of reasons. The point is that in the committee, there is a majority vote. It is the majority rule, as the Constitution requires, for these judges to make it through the process. Even if the committee does not act on these nominees, if the majority of the Senate wants to bring them forward, there is a discharge petition that can bring them forward.

The point is, it is important to understand the distinction between judges who are stopped in the normal course of the majority voting process of the Senate as they work through the committee and then on to the floor, and what we are debating today.

Let us go to the next chart. Today we are debating whether we should change what has never been done before. This number is the number of years in which the Senate, Republicans and Democrats, refused to uphold a filibuster against a judge. For the last 214 years, both Republicans and Democrats in the Senate have refused to uphold filibusters against judges.

Now, we are going to hear and have heard over the last number of hours a lot of debate about that as well. The Republicans have been accused of filibustering Democrat judges and Democrats have been accused of filibustering Republican judges over the years, and they would have everyone believe it is a common practice for the Senate to accept the filibustering of judges.

The reality is that although there have been efforts to try to filibuster judges in the past, until this Congress neither party has tolerated it because both parties recognized the intent of the Constitution that once a President's nomination gets to the floor, the President is entitled to a vote. Whether the Republicans or the Democrats tried to filibuster a judge, both parties in the past have ultimately come together to stop that filibuster from preventing the intent of the Constitution from being accomplished.

Let us get a little bit of history on this. The cloture rule in the Senate has been applicable to nominations since 1949. Since that time, cloture has been filed on only 35 nominations, meaning all the rest of the nominations basically made it through, once they got to the floor of the Senate, to a final vote. Of those 35 times that cloture had to be filed, 17 of them were judicial nominations, 18 were other executive nominations.

Of those 17 times since 1949, when we have had cloture on judicial nominations, cloture has been defeated on the first try in 11 of the 17 tries. Of all the other cases, cloture was defeated by the second try.

Now, people need to understand what cloture is. Every time there is a cloture vote, it does not necessarily mean there is a filibustering. It simply means that at that point, the Senate is not ready to vote. It may mean they want to wait a little longer before a vote is taken. But when we see a cloture tried again and again and the announcement that as many times as it wants to be tried it is going to be stopped, that is a filibuster. We are seeing that now on four judges, with a threat of it on seven more.

Let us put up the other two charts. There has been a lot of talk about how the Republicans stopped more of President Clinton's judges than the Democrats did of President Bush's judges. This number is the number of President Clinton's judicial nominations that reached the floor that were voted on and confirmed and the number that were filibustered. None of President Clinton's nominations was filibustered. There were some cloture votes. We can argue among ourselves whether or not that was a filibuster, but the point is that none of the efforts in the Senate against President Clinton was allowed to proceed to stop his judges from getting a vote. They all got a vote.

Let us look at the next chart. The next chart is the number of nominations of Presidents in the last 11 Presidencies where, when the candidate got to the floor, they were denied an up-or-down vote. Out of 2,372 nominations that have come to the floor during the last 11 Presidents, zero were filibustered. Zero were stopped from having a vote once they got to the floor of the Senate.

In this Congress, we have seen that happen four times, and it is now being threatened on seven more judges. A new trend, a new precedent, in American history is being set in the Senate and the American people need to pay attention to it because regardless of how one passes the numbers back and forth, the fact is that the precedent is now being set to require that not only does a nominee have to make it past the committee but they have to be subjected to the filibuster rule in contravention of the clear intent of the U.S. Constitution.

This is all leading up to a battle over a potential Supreme Court nomination.

It will be very unfortunate for this country if the Senate, in this Congress, changes the history of our treatment of this critically important provision of our Constitution as we move forward in the analysis and handling of our responsibility on the advice and consent on judicial nominations.

Mr. ALLARD. Mr. President, I thank the Senator from Idaho for his comments.

I yield 10 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I thank the Senator from Colorado for yielding to me.

Mr. President, I want to share an experience I had at 5:30 this morning. One has lots of experiences at 5:30 in the morning on the Senate floor and in observing what went on during the night. There was something that occurred to me that I want to share, and I hope I can do it in this period of time.

There are two reasons this has been taking place, that they do not want to confirm these judges. One is ideology, philosophy. I hate to say it but unless one is pro-abortion and unless they are anti-gun, they do not want that person on the bench. But there is another reason we have not talked about, and that reason is just a reason of obstruction. We have been watching obstruction in all forms, but I want to share something and I hope people understand that this directly relates to the nominees for the judicial vacancies. I want to get the point across that it is happening to other nominees as well.

I chair the Environment and Public Works Committee. We had a person who was a nominee of this President, Gov. Michael Leavitt from Utah, one of the most highly regarded individuals in this country and certainly one of the most highly qualified ever to be nominated to a position of Administrator of the EPA.

We sat there and recognized how everybody loved this guy and yet they dragged it on and obstructed for days and weeks, just to drag it on out. So it is happening with many of the nominees.

Now, Governor Leavitt is a very kind and decent person and I really believe the most qualified nominee to be Administrator of the EPA we have ever been able to act upon. The way he was treated was just absolutely shameful. It took 56 days to finally get the nomination, five times longer than those who preceded him as Administrator, even though he had overwhelming bipartisan support.

I do not think anyone has questioned that the motivation of the delay was partisan Presidential politics. They set a new standard, new precedent, for an EPA Administrator. They really were not talking so much about him as they were trying to talk about the environmental policies of this President.

If my colleagues will look at some of the people who supported him, we had many people, including my ranking member, Senator JEFFORDS. He said it has nothing to do with qualifications of the Governor. At this time, I would say that qualifications really do not seem to be an issue on judicial nominations. It has been said over and over again, and later if I have time within my timeframe I am going to get into that, but this goes on and talks about various Democrats praising Governor Leavitt for this nomination and yet they would not confirm him.

Senator NELSON, who is a former Governor of Nebraska, served with him as Governor. He said: I believe nearly everyone, if not everyone, with whom Governor Leavitt worked in the NGA—that is the National Governors Association—would state that they had a favorable impression of him. I wholeheartedly support Mike Leavitt to serve as EPA Administrator.

We heard the same thing from our old friend Bill Richardson with whom many of us served in the House of Representatives. He is currently Governor of New Mexico. He praises his virtues. He has worked effectively with other Governors regardless of party, and he went on to say he is probably the best nominee who has ever been put forth to be Administrator of the EPA.

So he is highly qualified and nobody would deny that, and yet they turn this thing into trying to attack the President on his environmental record.

I have to quote from one person, Gregg Easterbrook. I have not quoted him on this floor before. He is a liberal Democrat. He is a senior editor of the liberal New Republic. He says in an op-ed piece in the Los Angeles Times: The Democrats are not as interested in Bush's environmental record as they are attacking President Bush personally. He says: Most of the charges made against the White House are baloney—these are his words—and made for the purposes of partisan political bashing and fundraising. He also contends that environmental lobbyists raise money better in an atmosphere of panic. He goes on to explain the real reason this issue was going on. This man was subjected to a lot of things, including 100 prehearing questions, and later 400 questions prior to the hearing. This has never been done before.

Then we had an experience that has never happened in the history of this Senate. We went back as far as Jennings Randolph in the middle sixties. It never happened in the history of this committee. The Democrats boycotted the committee. They did not show up. We have 10 Republicans and Democrats. We have to have a majority there and two members of each party, at a minimum. So they boycotted and did not show up.

Time went on and we started looking at how long it took from the time of the nomination, to the hearing, to the confirmation. In the case of William Riley, it was 13 days; the case of Carol Browner, 10 days; in the case of Governor Whitman, it was 13 days. Yet it took 56 days for this person to be confirmed. Finally, they did confirm and the vote was 88 to 8.

I suggest today if we had the vote on Priscilla Owen, she would be sitting in the Fifth Circuit right now; and Miguel Estrada, the DC Court; William Pryor, the Eleventh Circuit; and Charles Pickering, the Fifth Circuit.

For a minute I will dwell, if the manager will give me a couple extra minutes, on Miguel Estrada. I saw something happening that I thought was significant. I will refer to something that happened to me February 26, 2003, a year ago, when we were talking about the confirmation process.

Mr. ALLARD. I am happy to extend an additional 2 minutes to the Senator from Oklahoma.

Mr. INHOFE. We had a group in Oklahoma at that time that was there from San Luis Potosi, a sister city in Mexico. We have a sizable Hispanic community in Oklahoma. I was mayor of Tulsa, and I recall how excited the people were each year when they saw people striving to achieve, Hispanics in this country.

I was standing before the crowd and said:

> Como acalde de la cuidad de Tulsa, yo quiero decir, "Bien venidos, bien venidos a la cuidad. Creemos que la cuidad de San Luis Potosi es la cuidad mas hermosa de todas las cuidades del mundo."
>
> (Translation)
>
> As the mayor of the city of Tulsa, I want to say, "Welcome, welcome to the city. We believe the city of San Luis Potosi is the most beautiful city of all the cities in the world."

I saw the looks on their faces, realizing we were participating in their culture. They are looking at Miguel Estrada saying, Why won't they give him a chance to reach the top? Why is it that he does not get a chance for high office, he or any other Hispanic?

I tried to answer. I believed there might be a way of garnering support to make this reality. I said:

> Muchos Hispános estan escuchando ahora . . . y yo quiero decir.
>
> Por descrácia, hay personas en el senádo que no quieren escuchar a ni una palabra de la verdad.
>
> Yo invito a la communidad hispána para llama a sus senadores para insistir en los derechos de Miguel Estrada y en la confirmación de juéces de los Estados Unidos.
>
> (Translation)
>
> Many Hispanic Americans are listening right now . . . and I want to say:
>
> Disgracefully, there are people in the Senate that don't want to listen to even one word of the truth.
>
> I invite the Hispanic community to call their senators to insist on the rights of Miguel Estrada and on the confirmation of the judges of the United States.

People were calling in but it did not get the message across to the people on that side of the aisle that there must be some other reason that they do not want Miguel Estrada to be confirmed.

Congress is a powerful institution and it is necessary to have the ability to collect and challenge much of what the President does, but when it comes to the courts and to interpreting laws and regulations, politics needs to get out of the way. Justice delayed is justice denied. I believe we are in a position to do some things and turn this around and get some of these people confirmed.

My guess is residents of California, who had their constitution gutted by a three-judge panel in the Ninth Circuit, only to have a larger panel of the same circuit reinstate their constitutionally authorized gubernatorial recall election, think it is pretty important who sits on the Ninth Circuit.

I had an experience this morning debating one of our fine Senators, Mr. LAUTENBERG. I said at that time this is about ideology. I don't think anyone—after listening to all the debate that has gone on overnight—does not realize if you are not pro-abortion, if you are not anti-gun, you will be in opposition, and we will not get confirmation. It is wrong. All we want is an up-or-down vote on these fine nominees.

Mr. ALLARD. Mr. President, I will wrap things up on our side. Before I do that, there are a couple of questions I would like to pose to my colleagues who are now in the Senate. I understand they are going to take some time to speak on their side of the aisle.

First, I pose a question to Senator DORGAN, who is the Senator from North Dakota. Senator DORGAN stated there would be no foot dragging on President Bush's nominees.

The PRESIDING OFFICER. The Senator needs consent to pose questions to other Senators.

Mr. ALLARD. I am speaking under my own time.

The PRESIDING OFFICER. It still requires consent to pose a question to other Senators.

Mr. ALLARD. I have a question I would like to ask of Senator DORGAN, if I might.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLARD. That is, he quoted that we are moving expeditiously on the President's nominees, refusing to return in kind the foot dragging delay of so many of President Clinton's nominees.

I ask him to respond to that question under his own time.

I also have a question to pose to the Senator from Iowa and give him an opportunity to respond on his own time. That question is, What has happened to change your view, when he wanted a vote regardless of the outcome?

I quote:

> If you want to vote against them, let them vote against us. That is their prerogative. But at least have a vote.

This was made September 14, 2000. I ask both Members to respond to those statements. I ask them what has changed since those comments were made.

When they get their time, they can respond to those questions.

Let me wrap this up. I had a press conference this morning at 3:30, maybe 4 a.m., with the small business interests of this country. The point was made that delay in the judicial process is a problem for small business. How the courts function does have an impact on our economy. Lawsuits have an impact on our economy and how rapidly the courts respond.

We have a crisis in the circuit courts, the courts of appeal. We need to fill the vacancies so cases that go before the circuit courts such as civil rights cases dealing with racial discrimination, sex discrimination, age discrimination, religious discrimination, and the Americans With Disabilities Act can be handled in an expeditious way. These are cases impacting small businessmen in this country. We need to have our commercial disputes resolved in the circuit courts. There are contract disputes, insurance coverage disputes and trademark infringement issues in those courts. There are a lot of regulatory cases, for example, in the DC Courts, on environment, health, and safety standards, labor court enforcement, challenges to the Federal rules.

In the DC Court, the crisis we have on the DC Circuit Court is especially important as it applied to the small business community in this country. We do have a crisis. We have a crisis in the DC Circuit Court, which is 25 percent slower than 2001, another 58,000 days more than 2001, a crisis in the Ninth Circuit, the Sixth, and the Fifth Circuit.

The point is we need to get these nominees to the circuit courts passed through the Senate. It is unprecedented. Never in the history of the Senate have we not moved forward on judicial nominees when we had the majority of the Senators supporting that nominee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

UNANIMOUS CONSENT REQUEST—S. 224

Mr. HARKIN. I ask unanimous consent the Senate proceed to legislative session and proceed to consider the bill to increase the minimum wage, Calender No. 3, S. 224; that the bill be read a third time and passed; and the motion to reconsider be laid upon the table.

Mr. ALLARD. I ask unanimous consent that the Senator modify his request so that just prior to proceeding as requested, the three cloture votes would be vitiated, and the Senate would then immediately proceed to three consecutive votes on the confirmation of the nomination with no intervening action or debate.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. HARKIN. No, I do not modify my request.

Mr. ALLARD. Then I object to his request.

The PRESIDING OFFICER. The objection is heard to the original request.

Mr. HARKIN. There again, I think we see what this is all about. We want to respond to the real needs of our people in America. We want to increase the minimum wage and the Republicans keep objecting to it. They will not let us bring it up for a vote. But they want to bring up four judges for lifetime appointments for a vote. So we see the difference.

We are trying to work on behalf of the American people to meet the real needs of people unemployed and people who need an increase in the minimum wage. The Republicans will not bring it up. That is the difference here.

Obviously, what we have, I called it the theater of the absurd earlier. There has been a play running for several years at the Kennedy Center called "Shear Madness." It has now come to the Senate floor and is playing here now, "Shear Madness." You can watch it free here. You do not have to pay to go to the Kennedy Center to see it.

First of all, I thank the police, the court reporters, other Capitol employees, who have had to spend long hours here through the night so that we can waste time, waste taxpayers' money, engaging in this ridiculous charade. I am told that the police out here are putting in 16-hour shifts, 16-hour shifts just so we can come out here for this ridiculous charade.

I am told our court reporters have to do 20-minute increments rather than the 10-minute increments they normally do. I am not a court reporter, but I think having that thing strapped around your shoulders and working for 20 minutes gets pretty tiring.

Does anyone on the other side think about these people? They have families. They have other things they need to do. How about our police working 16-hour shifts out there? Anyone on the other side of the aisle ever think about what is happening to them because of this charade we are putting on? We think about them.

I might say to the police and other people putting in all the overtime, while we are here with all this charade, do you know what is going on in the other part of the Capitol, downtown with the administration? They are trying to take away your overtime pay protection. Watch the little shell game with this hand on the judges, and with the other hand they are trying to take away your overtime pay protection. That is what this is all about. Tune in and watch this charade.

But do you know what else is going on in the other part of the Capitol? They are trying to take away your Social Security. They are trying to do away with your Medicare provisions. That is what is going on in another part of the Capitol.

Don't take my word for it. Here is something out of Congress Daily this morning: Enlisting the support of health care industry, House Republicans accelerated efforts Wednesday to build outside support for the emerging Medicare prescription drug bill, and quotes a Republican from Virginia who said this new business coalition is absolutely critical in whipping Members just before a vote.

> They have been critical all along. It works from the groundwork. It is all about winning elections at home. Everyone understands this is a political process.

This is on the Medicare prescription drug bill. He said the coalition that they are putting together is broader than the drug companies, and it includes representatives ranging from construction companies to Caterpillar.

This is the coalition the Republicans are putting together to destroy Medicare as we know it. They are putting together a coalition of business, drug companies, construction companies, et cetera. Where are the seniors? Where are the elderly in their coalition? Not to be heard from. And they are going to do away with Medicare as we know it. They are going to privatize it.

Here is another one from November 6, Newhouse News Services, talking about Social Security. It quotes a Josh Bolton, Director of Bush's Office of Management and Budget: In the long run, Social Security cannot meet its commitments. Bolton would switch the system from government-guaranteed benefits to private investment accounts that would probably, but not positively, generate as good a benefit as Social Security now promises but can't deliver.

Now, the administration is saying that Social Security cannot survive. It is a fact that the tax cuts passed by this Congress and signed by this President, most of which went to the wealthy in our society, if those amounts of money that go out to those tax cuts had instead been used for the Social Security system, Social Security would be solvent for the next 75 years. But now they are saying we do not have enough money for Social Security; we cannot meet our obligations. Of course not. They opened the gates through the Treasury and let all the money go to the wealthy in our country with that tax program they had.

That is what this is about. Get your mind off of that and look at this charade we are putting on today.

I will respond to my friend from Colorado, and he is my friend. He is a great Senator who just quoted me a little while ago, remarks I made on the Senate floor a couple years ago about bringing up Bonnie Campbell. Here is a list of 63 judges who were blocked at that time, Clinton nominees, one of those being Bonnie Campbell from Iowa. I point out 63 here and only 4 we have blocked.

Here is the difference. The Republicans say they were stopped in committee. Yes, the Senator from Colorado quoted me accurately. I did ask unanimous consent to bring Bonnie Campbell out of committee to the floor. They objected. The Republicans objected. Now, Bonnie Campbell had a hearing. Nothing was raised about her. Nothing that was bad or anything in her background—nothing. She was absolutely qualified to serve as a circuit court judge, but Republicans would not even let her out of committee.

Here is what the Republicans say. It is wrong to stop someone in the Senate with a filibuster or an extended debate. That is wrong. But it is all right if we stop them in committee, which is exactly what they did.

So, yes, I asked unanimous consent to bring it out of committee, bring it to the floor. You bet I did. They objected.

Now, they are trying to say, why don't we do now what they were unwilling to do? Why should we change the rules, I ask my friend from Colorado? We will play by the same rules you played by. But, no, now you on the other side want to change the rules.

As I said this morning, my favorite line, a refrain from Finian's Rainbow that I bring up at times like this. It goes like this: Life is like cricket. We play by the rules. But the secret which few people know that keep men of class far apart from the fools is to make up the rules as you go.

That is what they are trying to do. Of course, I tried to bring it up. They objected. But now they want to change the rules and have a different playing field.

Mr. ALLARD. Will the Senator yield?

Mr. HARKIN. Or someone mentioned January 5, 1995. I offered an amendment on the floor of the Senate that would have set up a procedure to close cloture. We would have had a vote, then a couple weeks would have to go by, have another vote, a couple weeks go by, and have another vote. Finally, you get down to 51 votes.

I still believe in that, that after a month's period of time, after extended debate, there ought to be 51 votes and move legislation.

Mr. ALLARD. Will the Senator yield?

Mr. HARKIN. I will in a second.

Guess what happened. I offered that amendment. Guess how many Republicans supported it. Zero. Zero. Not one Republican supported it.

Now what I hear they want to do is they want to change the rules to prevent cloture on judges, lifetime appointments. But on legislation—on legislation—no. They want to continue to be able to filibuster legislation. Well, come on. Give me a break. If you want to stop filibusters, stop it for everything, not just for judges.

Now, my friend from Colorado, I know wants to ask me a question, and I do not know how much time I have, but I will be glad to yield for a question.

Mr. ALLARD. I will make it short. The question I have for the Senator from Iowa, my good friend—and we have worked together on many issues—is, Will you now support the Frist-Miller proposal? It is a bipartisan proposal, a step in the direction that you proposed several years back.

Mr. HARKIN. I say to my friend, if they would modify it to look like what we did in 1995. My amendment in 1995 covered everything. It covered legislation. It covered judges. It covered everything.

If you put that forward, you have got my vote. But, no, what you want to do on that side is only have it pertain to judges, and not to legislation.

No. I am sorry. If you want to end the filibuster, do it for everything, not just for what you think is right. Let's do it for everything.

So I say to my friend—and he is my friend; he is a great Senator—I know we have a disagreement about this, but I am just saying, what I hear from the other side is they want to pick and choose. They want to be able to say, if you stop a judge in committee, that is fine, but you cannot stop him on the floor. And that is what they did. They stopped the judges in committee.

So when you hear Republicans come out here today or last night or however long this charade is going to go on—when they beat their breasts and say, oh, my goodness, I have never or I will never vote to filibuster a judge on the floor, check the record on that person and see what they did when they were held up in committee. Oh, it was all right. That was a hold. That was not a filibuster. That was a hold. Fancy words, different words—same result.

So what the rules have been in the past, the game, the rules we have played by in the Senate are good enough for today, and if you want to change the rules, change them for everything. Do not just pick and choose one little thing at a time. That is my point to my friend from Colorado.

I know the Senator from North Dakota wants to speak, and I am going to yield to him. But I just again point out that while this charade is going on here, the administration is at work trying to cut Social Security benefits. They are at work trying to come up with a Medicare prescription drug bill that benefits our drug companies and not our seniors. They are at work trying to take away overtime pay protection for 8 million working Americans. They are at work stopping an increase in the minimum wage. They are at work stopping any increase in an unemployment insurance extension. That is the game that is being played here.

I yield the floor to my esteemed colleague and friend from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have not had the opportunity to listen to all of this debate.

Mr. HARKIN. An opportunity?

Mr. DORGAN. I am not sure I would consider it an opportunity, had I had the time. I know people watching this, perhaps on C-SPAN, would take a look at all this and say: Well, this is a bunch of windbags in blue suits. They talk and they talk and they seem to disagree, and when they are done talking, they have not said very much.

There is some truth to the fact that much of what goes on in this Chamber is without great merit and without great consequence. There are times when we do things—and often when we do things together—that have significant impact on the future of this country and on the direction of this country. This is not one of those moments, I might say.

This 30 hours is 30 hours that are designed to make a point, a point without much validity. And I will explain why that is the case. But it is, in my judgment, of very little consequence.

My dad used to say, never buy something from somebody who is out of breath. Do you know something? There is a kind of breathless quality to my colleagues. My colleague from Colorado just asked me a question kind of breathlessly, and I have watched others sort of out of breath here coming to the floor of the Senate talking about how unfair this process has been, how we are blocking judges.

Look, maybe it is time for just a few facts—just a few. You have seen them before. This is not a memory test, but it will take very little time to commit to memory. Mr. President, 168 judges confirmed—168 confirmed—and 4 have been blocked. We do not apologize for blocking four judges we don't want to be on the Federal bench.

The Constitution says there are two steps to giving someone a lifetime appointment: One, the President shall nominate; and, two, the Senate shall approve. It is called advise and consent. The roles are equal. This is not a circumstance where the President has certain prerogatives that we do not have. The roles are equal. To put someone on the Federal bench for an entire lifetime, the President nominates and then we give our advice and consent. Mr. President, 168 times this Senate has said yes, and on 4 occasions it has said no.

Why are we here for 30 hours? Because the majority party is apoplectic. They are having apoplectic seizures about these four.

Do you know something? When my son was about 10 years old, he ordered from a magazine an ant farm. When he did it, I described it on the floor of the Senate one day. I had no idea what an ant farm was, but it was two pieces of glass hooked together on the ends, very narrowly, and then you put sand in it. They also sent you a little vial with ants. And they said in the instructions that you put the ants in the refrigerator to slow them down a little bit, and then you take the cap off and you throw those things in that little glass container with sand. And then it said: Just watch, and you will be entertained by this ant farm.

So we slowed them down. We put these old ants in the refrigerator. Then we poured them in this little glass with the sand, and then we watched—a day, a week, 2 weeks. It was fascinating. Every morning you would wake up, and those old ants had been working. They took the sand from this side, and they would move it to this side. The next day you would wake up, and they moved the sand back. Do that about 2, 3 weeks and you realize there was a lot of activity going on but they were not going anyplace. Nothing was happening.

It was all an empty exercise. And do you know what? At times the Senate reminds me of that, and especially in this 30-hour period it reminds me of that. We can move things back and forth, we can vent and breeze and wheeze, and it does not change the facts.

The facts about judgeships are these: 168 we have supported, which means we have the lowest vacancy rate since the mid-1980s. Why do we have the lowest vacancy rate since the mid-1980s? Because we—yes, we—have approved 168 judges, at a far higher rate than happened under the Clinton administration when the Republicans controlled this body. I am not and will not be apologetic to anyone under any circumstance for this record.

Now, with respect to these four, do we have a right to decide there are four people whom we do not want on the Federal bench? You bet your life we do—not only a right, but we have an obligation. If we decide this candidate or that candidate is not worthy of a lifetime appointment, we, in my judgment, have an obligation, and that obligation, under advise and consent, is to weigh in with our opinion.

Mr. ALLARD. Will the Senator from North Dakota yield?

Mr. DORGAN. I will not yield, and I will not do so because the Senator from Colorado asked a question on his time and said he would not allow me to answer on his time, so I will not allow him to ask questions on our time.

I would be very happy, however, by consent, to spend a full hour with the Senator from Colorado or any other Senator, for that matter, just back and forth with two or three of us asking and answering questions. I would enjoy that opportunity.

But having said all that, let me explain that this 168 to 4 is, in my judgment, a lot of shadow boxing. It might be fun for some. I am sure it is not fun for those who have to spend their time for the next 30 hours—the doorkeepers and the members of the police, and others, the security, and the folks at the desk, and the folks who do the service that is performed here to keep the records of the Senate—they have to be here 30 hours. If it makes people feel better doing this, they have a right to do it. I will not complain about it. They have a perfect right to do this.

But let me tell you what I have a right to do as well. I have a right, at least as one Member of this Senate, to wish—to wish—just for a moment that I were in control of this agenda. And I will tell you what I would do today if I were in control of this agenda. I would bring something to the floor of the Senate that deals with the subject of jobs.

I know what I would want to talk about today. I would want to have some legislation on the floor, and I will tell you what it would be about. Huffy bicycles.

Let me tell you about Huffy bicycles. Huffy bicycles have 20 percent of the market in this country for bicycles—20 percent. They used to be made in America. They were made in Celina, OH, made by 850 good workers, 850 union members in a plant in Ohio. They made $11 an hour in wages plus benefits. And they made a great bicycle, sold at Wal-Mart, Sears, Kmart.

Do you know what this bicycle had on the front, right underneath the handlebar? It had a picture of an American flag on a decal, a decal for the Huffy bicycle—an American flag, American made. God bless them.

But then it became too expensive to make Huffy bicycles in America. Mr. President, $11 an hour was too much to pay workers. So do you know where these Huffy bicycles are made now? In China. Do you know why? Because they get paid 33 cents an hour. And do you know what they did when they moved the Huffy bicycles to China? They laid off all those workers in Ohio—850 of them—who now work 2 jobs, 3 jobs to make ends meet, and some do not work at all.

What they did, when they went to China and started producing these bicycles, was they took off that American flag decal right underneath the handlebar and they changed that American flag to a picture of the globe—the globe. Well, God bless the globe. But I happen to care a great deal about jobs in Ohio—American workers who get up in the morning and say goodbye to their family because they are going to a job that they love: I make Huffy bicycles. No, I don't make a fortune; I make $11 an hour, but I work hard, and I do a good job. And then I am told one day my last job will be to replace the decal on the front of the bicycle from a flag to a globe before they fire me and move the jobs to China.

I want to talk about that. If I were running this place, we would be talking about legislation to address this question of whether American workers ought to be told: You must compete with 33-cent-an-hour labor. And if you can't, tough luck; you lose your job.

We are talking about four jobs this morning that my colleagues on the other side of the aisle are upset they were not advanced to the Federal bench. I am talking about 850 people in Ohio who used to make Huffy bicycles, and proud to do so, who discovered they were too expensive at $11 an hour. Huffy wanted to make bicycles for 33 cents an hour.

I would like to talk about that on the floor of the Senate and have policies dealing with international trade on the floor of the Senate. And that relates to jobs, not just relating to 850 people, but it relates to millions of jobs.

Three million people had to tell somebody in their family they lost a job in the last few years. These are people at the bottom of the economic ladder. These are people who know about secondhand, second-shift, second jobs. They are the ones who lose their jobs. We ought to talk about joblessness in this country and the fact that our economy is expanding but the job base is not.

Last month we had good news, and good for us, good economic growth. Do you know what happened? We lost manufacturing jobs again last month, 50,000 of them. I suppose if you wear a suit, it does not matter much, and if you serve in the Senate, you will not notice it much. But I guarantee you, if you were one of those last month who had a good manufacturing job, who had to come home and tell your spouse and your family, "I have just lost my job; no, not because I am a bad worker but because I can't compete with 12-year-olds working 12 hours a day being paid 12 cents an hour"—and yes, that happens. Yes, that happens. And I can show you where and tell you when. So I would talk about that. That is what I would have on the agenda.

While I am at it, while I am halfway irritated about what we are not doing, let me also talk, just for a moment, about something I discussed yesterday. At 11 o'clock last night in a conference committee in the basement of this Capitol, I lost this issue, and I am a little irritated about that this morning.

This is a picture of a young woman, a young Christian woman from this country, and her name is Joni Scott. She came to see me 2 days ago. Do you know why? Because her Government has levied a $10,000 fine against her. Do you know why? Because the Government discovered she went to Cuba, and she went to Cuba in order to deliver free Bibles to the Cuban people with her church group.

So this young woman, named Joni Scott, took Bibles with her church group, went to Cuba, and distributed free Bibles in the country of Cuba. And when she came back to this country, do you know what her country said to her? We have got the Department of the Treasury, with an organization called OFAC, Office of Foreign Asset Control, and they sent her a notice and said: You are fined $10,000. You must pay a $10,000 fine. Why? Because you went to Cuba.

Mr. President, we ought to talk about that today. I had an amendment on the conference committee last night. The amendment passed the Senate. The amendment passed the House of Representatives. It was bipartisan. Republicans and Democrats voted for it in the Senate and the House, to say: Let's not enforce this travel ban against Cuba. It is not fair to the American people. That is an attempt to slap around Fidel Castro, and by doing that, we are injuring American people's right to travel.

Well, we went to conference last night, and this bipartisan approach—in both the Senate and the House—was kicked out. Why? Because the White House threatened to veto the bill if it was in it. This bill still stands. This young lady has a $10,000 fine. I have written to the Treasury Department saying: How dare you? How dare you?

But it is not just her. It is farmers from my State who want to sell farm products into Cuba. The Farm Bureau is denied a license to travel to Cuba to promote farm exports. It is about using food as a weapon. That is what the administration wants to do with Cuba; it is about embargoes. This does not make any sense.

So if I were running this place today—and I am not, unfortunately—I would be talking about that. I would be talking about the ability of our farmers to sell into that marketplace and, why on Earth will you not give a license to a farm group to go to Cuba to promote agricultural sales while you penalize a young lady who goes to Cuba to hand out free Bibles?

Is there anybody here who thinks this makes any sense? Have we lost all bases of common sense? Or will someone at some point stand up and say, let's do the right thing here?

So instead, we are here 30 hours. It started with Fox News and the majority party combining so that at 6 o'clock they could do a live news shot. They are excited about it. They want the people to talk in the Chamber. It is all in a memorandum: We need to do this. And they are very excited. Britt Hume is very excited to have on his show a live shot of the Republicans walking into the Chamber. And for 30 hours we talk about judges.

It is fine. They have a perfect right to do that. I do not disparage that right at all. I say, however, it certainly is not the topic that is on the minds of most of the American people. There is so much misinformation about this subject that ricochets around this Chamber.

We are told by our colleagues: You are filibustering; that has never been done. I don't know where they get that. Do they just not do the basic research? I do not understand that. Do they just not do basic research at all?

Tell me about Abe Fortas. Many years ago, was there a filibuster? Of course there was. Tell me about Richard Paez. Tell me about all the cloture votes we have had to cast around here because Republicans forced us to have cloture votes.

Why do you have a cloture vote? Because there is a filibuster, in order to break a filibuster. And I could go through, but my colleagues already have, name after name after name where there has been a filibuster by the Republicans.

Then let me just indicate, finally, that my colleague from Iowa indicated there are many men and women who never even got a hearing. That is a filibuster by one person demanding the Judiciary Committee refuse to even give a hearing to candidates. Yes, for the Ninth Circuit, but for judgeships all around this country.

So I know we are going to vent out here for, I suppose, another 12—I guess 12 hours. And it will amount to nothing. We ought to be talking about jobs and a range of things that are very important to the future of this country.

The PRESIDING OFFICER. The Senator's time has expired.

PRAYER

The PRESIDING OFFICER. The hour of 12 o'clock noon having arrived, the Senate, having been in continuous session since yesterday, pursuant to the order of the Senate of February 29, 1960, will suspend while the Chaplain offers a prayer.

Today's prayer will be offered by our guest Chaplain, RADM Robert F. Burt, Chaplain of the U.S. Marine Corps and Deputy Chief of Navy Chaplains.

Mr. REID. Mr. President, I ask that the time be equally charged against both sides during the prayer.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina.) Without objection, it is so ordered.

The guest Chaplain, RADM Robert Burt, offered the following prayer:

Let us pray.

Almighty God, Lord of our universe, creator, sustainer, protector, and comforter, source of our hope, bless us with Your divine presence and fill us with Your joy.

Lord, thank You for these servants of our great Nation. Help them today to sense the support and prayers that go out on their behalf, not just here in this room, but all over our Nation as citizens lift them up before You and sincerely pray for them every day. Answer those prayers, O God, and fill these Senators with Your spirit and power.

Lord, we lift together this Nation up before You and pray that You would continue to pour out Your rich blessing upon us. Bless our citizens spiritually, financially, physically, and emotionally. Bless our military personnel and their families. Lord, continue to use these Senators as instruments and channels of Your blessing.

May they remember "never to become weary in doing good, for in proper time they will reap the harvest." Bless each Senator, bless their families, bless the States they represent, and, most of all, bless our Nation and its commitment to the pursuit of freedom and liberty not only within our own borders, but also to so many nations that desperately need our help.

We ask these things in Your awesome and holy name. Amen.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I believe the regular order is that we now have half an hour on our side.

The PRESIDING OFFICER. The time until 1 o'clock will be evenly divided.

Mr. GREGG. Mr. President, first, I thank the guest Chaplain for that very fine prayer which brings us back to reality in a way that is appropriate.

There has been a tremendous amount of excellent discussion today about the issue of the process of approving those four judges who have been nominated to the circuit courts of appeals, and the whole issue of the filibuster and how filibusters work into the process of the Constitution and the management of this Senate. It has been appropriate. It has been good. It has been enlightening, I hope, to those who have taken the time to listen at whatever hour they happened to listen.

I heard some extraordinary discussions which have been historical and legal and factual and informative. The question of whether or not a filibuster is appropriate is critical, and the constitutionality of using a filibuster relative to the Executive Calendar and the approval of judges is a very legitimate question in my mind.

I think when you look at the Constitution and the language of the Founders, they were fairly precise people in how they designed this Senate when they decided to be precise. And on the issue of advise and consent, they were precise. They said it would take a supermajority to approve treaties, but they were silent on the issue of supermajority relative to justices, and, therefore, in my opinion, I think it is fairly evident that, as far as they were concerned, they expected a majority for the purposes of approving justices and, therefore, a filibuster is inconsistent with that.

Really the filibuster, and the issue of the filibuster which has received so much appropriate attention today and which is obviously why we haven't been able to get to a vote, is systematic of the bigger issue, which is why is the opposition evolving relative to these justices?

We have to remember—and I think it is important for people to focus on this because there have been a lot of charts and signs up talking about the number of judges approved—that we are dealing with the circuit court of appeals level of the judiciary. We are not dealing with district judges. The vast majority of the judges who are approved by this body, who are nominated by any President, are district court judges. They are the trial judges. What we are dealing with, however, is the people who take a look at what happened in the trial and decided whether law has been adequately applied to the trial and who basically interpret the Constitution and the laws of the land and have, therefore, a huge impact, obviously, on how our society functions.

Fewer and fewer cases make it to the Supreme Court. More and more cases are decided on the issue of the question of their constitutionality, the implications of the broader law involved by the appeals level of our justice system. Therefore, when we look at the circuit court of appeals appointments, we are looking at an extraordinarily important position within the structure of our governance as a nation, a governance which is based on the issue of the protection of law. You can't have a democracy unless you have a structure of jurisprudence which is fair, honest, and applied consistently with principles developed over years.

Therefore, to look at all the judges out there and say 168 or 200 or 5,000 have been approved is irrelevant to the question. The question is, what is the circuit court issue; what has happened with the circuit court? We know in the circuit court area there have only been 29 approved, and there are presently 4 pending who are subject to a filibuster right now, which means they can't get a majority vote. There are going to be two more, it looks like, who are going to be subject to that same filibuster, who won't get a majority vote, and that will be followed by, it appears, another six subject to a filibuster and, therefore, cannot get a majority vote. So we have 12 compared to 29.

Twenty-nine have been approved. That is a very high percentage of the circuit court justices who have been basically blocked from getting an up-or-down vote as should apply under our form of structure, our Constitution, in my opinion.

There has been a lot of discussion about that point. But what is the real implication? What is this fight over getting to a vote really about? It is about who these justices are and what they represent, because this is a new radicalization of the issue of judges and their appointment to the circuit court.

The use of the filibuster at this time is symptomatic of that radicalization, and it is the radicalization of the nominating process which is the real issue at hand and on which the American people should be willing to focus.

It appears—not appears—it has occurred now that a litmus test has been put in place for the purposes of approving members to the circuit court, a litmus test that really has no relationship to the judicial temperament, experience, fairness, or expertise of the nominee who has been brought forward. It is a litmus test totally outside the bounds of what has traditionally been the way in which we evaluate a justice nominated to the circuit court. It is a litmus test based on the justice's personal and religious views, not the justice's judicial actions.

This is a huge departure from what has been the traditional method by which we have evaluated and confirmed judges in this country.

First off, the litmus test as an approach is wrong. I was a Governor. I appointed judges. I never asked one judge what his or her view was on any issue. What I wanted to know about a justice I was going to appoint was: One, were they honest beyond a question of a doubt; two, were they smart; three, were they fair; and four, have they life experience that is going to give them some sensitivity toward the people who would be coming before their court.

What their views were, I believed, was inappropriate to ask, but that was my position. Clearly, it is not the position of the minority in this body. The minority in this body decided there must be a litmus test which every justice appointed to the circuit court has to jump over.

I could possibly accept that if that litmus test was tied to whether the justice was honest, whether the justice was fair, whether the justice was intelligent, or whether the justice had the life experience that was appropriate to go on the court. But that is not the litmus test. The litmus test now is whether or not the justice nominated to the position has an individual belief, not a judicial view, which is inconsistent with the view of one Member—just one Member—of this body. It is a staggering event representing a fundamental change in the way in which we appoint justices and nominate and confirm and evolve a judiciary.

Under this philosophy, it is very likely that any person who comes to this body who subscribes to the Catholic faith and subscribes to it as laid down by the leader of the Catholic faith and by the catechisms of the Catholic faith, even though they may, as a justice, have made it very clear they do not allow that faith to determine their decisions—and in one case we have a classic example of that, and that is Justice Pryor—that justice will not be allowed to be confirmed because his personal views—not his judicial actions, not his judicial review process—but his personal views will not have passed the litmus test simply because he happens to maintain a religious belief.

That is an extraordinarily dangerous precedent to set in this body, and it will fundamentally change the character of this Nation over time if it is allowed to continue, to say nothing of the prejudice that it reflects.

Since I have been in this body, I have voted for a lot of judges. When President Clinton was here, I voted for Justice Breyer to the Supreme Court. I voted for Justice Ruth Bader Ginsburg to the Supreme Court. These were two Justices I absolutely knew did not subscribe to my political philosophies, but they were honest, they were fair, they were smart, and they had life experience that was appropriate.

Had I applied a litmus test coming from the other side of the aisle, I could have easily said no, and we could have filibustered those judges, but that was not appropriate. That is not the way to proceed.

Unfortunately, my time is up. I would like to spend more time on this issue. Two of my fine colleagues wish to speak. I think this is the essence of the issue we are confronting today. The filibuster is symptomatic of it. The essence of it is we are radicalizing the manner in which we appoint justices, and we are allowing that radicalization to be based on personal beliefs rather than judicial action, which is fundamentally wrong.

Mr. President, I now yield 5 minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, that was an excellent statement by the Senator from New Hampshire. I wish to go further with some of the issues about which he was talking.

Our Constitution specifically spells out only five instances where a supermajority is required and moving to consideration, and approval of the President's judicial nominees is not on that list. This list includes treaties, impeachment, expulsion of a Senator, overriding a Presidential veto, and adoption of a constitutional amendment.

The spirit of our Constitution should mean something. It is in defense of our Constitution that we are taking these 30 hours. It has been said we are wasting our time. Defending our Constitution is not wasting the Senate's time. It is critical to this Senate.

What the Senator from New Hampshire was just talking about—the Supreme Court nominees for whom he voted, even though they were different ideologically from him—if this process is allowed to continue, it is going to be 12, we know already, appellate nominees who are going to be blocked by filibuster—12 out of 41. If this is allowed to continue, we know next year it is going to be worse, and when the next Supreme Court nominee comes up, if it is Ruth Bader Ginsburg or Breyer or Rehnquist, those people would not be approved in the climate in the Senate today. Highly qualified people will not be able to make it on to the Supreme Court.

Do my colleagues know what that is going to do to the process? Good people are not even going to be part of the process. When the President calls them and says: I would like you to consider this, they are going to say: Go see somebody else.

The Judicial Conference is a nonpartisan entity that acts as the principal policymaking body for our court system, and it has declared 12 judicial emergencies on the circuit court of appeals. The President is doing his job by sending us the nominees. It is our time to do our job.

The Ninth Circuit, which serves my home State of Nevada, is the largest and busiest circuit court of appeals in this Nation and is also the most overturned court in the country. In 2001, it took 30 months in the Ninth Circuit for a case to go from original filing in the district court to the final decision on appeal. That is 5 months longer than the average court of appeals.

In the Ninth Circuit in the 1996–1997 session in the middle of the Clinton Presidency, the Supreme Court found it necessary to review 28 cases in the Ninth Circuit. Of those 28 cases, it overturned 27 of them. By the way, this was one-third of the Supreme Court's docket that year.

We know about some of the outrageous cases in the last year or two from the Supreme Court. Let me mention a couple of them. We know the Ninth Circuit is the one that is trying to overturn the Pledge of Allegiance, saying that God should not basically be part of our country or part of our Government, or the name "God."

The Senate took up a resolution which then-Senate majority leader Tom Daschle brought to the floor, and every Senator voted to condemn what the Ninth Circuit had done. This is the circuit to which Carolyn Kuhl is nominated. We need to get good people on the Ninth Circuit. It is absolutely critical for us to do that.

I feel passionately that we need to fix the process. We need to fix it for when the Democrats are back in power so that good people get an up-or-down vote. They shouldn't be blocked simply for ideology from getting an up-or-down vote. If a Senator disagrees with them, vote them down, but give them an up-or-down vote. A minority of Senators should not be able to block the process for judicial nominees as part of the advise and consent clause.

So let's work together. Let's reach across the aisle and say: Let's fix the process. Otherwise, as we go into the future, this tit for tat, this payback is going to continue to get worse and worse, and it is truly a threat to our constitutional Republic.

I close with this: We appeal to the other side. We are going to try to offer a resolution to fix what is going on here, and we encourage them to join us so this doesn't just get worse as the years go by.

I yield the floor.

The PRESIDING OFFICER. The Senator has used his 5 minutes. The Senator from Texas.

Mr. CORNYN. Mr. President, may I inquire how much time remains on our side?

The PRESIDING OFFICER. Twelve minutes.

Mr. CORNYN. Mr. President, I yield myself 7 minutes, and I yield the senior Senator from Texas the remaining 5 minutes of our time.

Mr. President, I have been either in the Chamber or watching the Chamber from other parts of this building as this debate has gone forward since early last evening. I happened to be watching from my office just before I came to the floor most recently when the Senator from Iowa, Mr. Harkin, made a couple of comments to which I want to respond.

First, I want to say what I agree with. I agree with him that the people who work so diligently in this Chamber and elsewhere, in the cloakroom, the people who report what we say for the Congressional Record, how much I and the rest of us appreciate their faithful and dedicated service. Some of us got a few hours sleep last night. I am not sure all of them did. I just want to say for all of us how much we appreciate their service.

There is something else he said that I disagree with very strongly, and that is where my colleague from Iowa charged the Republicans in this Chamber, the bipartisan majority really—it is not just Republicans—but charged those of us who believe this debate is important with "sanctimonious hypocrisy" for our attempts to uphold the Constitution for what we believe to be the unconstitutional obstruction of President Bush's nominees.

There is a lot about this debate that I think folks at home watching TV or listening on the radio may have a little bit of trouble getting their head around, their brains around, because some of it involves arcane rules of the Senate and the Constitution. There is one thing that folks back home understand, and they understand hypocrisy, sanctimonious and otherwise.

I think it is worth noting, indeed I think it is important to note, comments that have been made by those who are now on the other side of this debate, what they said a few short years ago on this very self-same subject.

My mother used to say that the test of one's character is whether you are the same person in public as you are in private, and I think using something close to that test, we could ask whether the speeches that a Senator gave 5, 6, or 7 years ago are consistent with the position they publicly take today.

In that spirit, I would offer this: On March 1, 1994, the Senator from Iowa said: I really believe that the filibuster rules are unconstitutional.

That is the same Senator who accused those of us who believe that the same thing he professed in 1994, when he called us sanctimoniously hypocritical for what we are doing today—he happened to agree with us in 1994 but has obviously changed his position today.

Senator LIEBERMAN of Connecticut on January 4, 1995, said: The filibuster rule, there is no constitutional basis for it. It is in its way inconsistent with the Constitution. One might almost say it is an amendment to the Constitution by rule of the U.S. Senate.

Then there was the minority leader, at a time in 1995 when he said: The Constitution is straightforward about the few instances in which more than a majority of the Congress must vote. The Founders concluded that putting such immense power into the hands of a minority ran squarely against the democratic principle. Democracy means majority rule, not minority gridlock.

Then there are the comments of the distinguished legal counsel, Lloyd Cutler, who served as White House Counsel both to President Carter and President Clinton, who said: Nothing would more poorly serve our constitutional system than for the nominations to have earned the approval of the Senate majority but to be thwarted because the majority is denied a chance to vote.

I would like to agree with the comments made by Senator LIEBERMAN, Senator DASCHLE, Senator HARKIN, and Mr. Cutler just a few short years ago, but obviously their position has changed, or I should say their position has changed because majorities have changed. They find themselves in a different posture today than they found themselves in then, and it is no longer convenient or expedient for them to claim that majority should rule.

I submit they were right then and they are wrong now. I do not know of a nicer way to put it. It is hypocrisy to take inconsistent positions based on expedience where they should be made on principle.

What we are fighting about today is a fundamental principle. My colleague from Iowa said he wondered what the moral demarcation line was between holds and committee inaction on the one hand and filibusters on the other hand. I have an answer for him. I think it is a great question. The answer is: The line of moral demarcation is the Constitution and majority rule. That is where the moral demarcation line is, and there have now been four unconstitutional filibusters.

The PRESIDING OFFICER. The Senator has consumed the time yielded to him.

Mr. CORNYN. I yield the floor to the senior Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. I thank the Senator from Texas, my colleague, for being here most of the night, as most of us were, and for carrying this debate as a distinguished member of the Judiciary Committee who is maybe the only Member of the Senate—I am not sure—he is the only Member I know who has been a member of a supreme court of his State, Texas, and the attorney general of his State. I am very pleased that he has been such an active participant in this debate.

I wish to talk a little bit about the issue of the filibuster as it pertains to judges. We have had a lot of debate about what is a filibuster and did one occur, previous to this, a filibuster on a judicial nominee.

Well, there is an argument about one, and that is Justice Abe Fortas who was promoted to Chief Justice and was turned down by the Senate. "Turned down" might not be the right words, but whether or not there was a filibuster is in debate.

There is no debate that there have been no other filibusters of judicial nominees because Members of both parties have tried very hard not to filibuster until 2002 because they know it is the nuclear option. Once it starts, it is going to promote partisanship in this very important constitutional responsibility.

I want to read a letter from former Senator Robert Griffin, who was a Member of the Senate during the Fortas debate. He quotes an Associated Press piece which, in discussing the nomination of Justice Abe Fortas to replace Chief Justice Earl Warren, said:

> Republicans filibustered the nomination and Johnson backed off.

Here are his words:

> Whether intended or not, the inference read by many would be: Since the Republicans filibustered to block Justice Fortas from becoming Chief Justice, it must be all right for the Democrats to filibuster to keep President Bush's nominees off the appellate courts. Having been on the scene in 1968, and having participated in that debate, I see a number of very important differences between what happened then and the situation that confronts the Senate today.
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> First of all, four days of debate on a nomination for Chief Justice is hardly a filibuster.

Now, we are talking about people who have been nominated for over 2 years, who have had numerous cloture votes. That is a big difference. He goes on to say:

> While a few Senators, individually, might have contemplated use of a filibuster, there was no Republican party position that it should be employed. Indeed, the Republican leader of the Senate, Everett Dirksen, publicly expressed his support for the Fortas nomination shortly after the President announced his choice. Opposition in 1968 to the Fortas nomination was not partisan. Some Republicans supported Fortas; and some Democrats opposed him.
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> When on October 1, 1968, a vote was taken on the first and only cloture motion, the count was: 45 in favor of the motion [for cloture] and 43 against. Of course, those opposed to the nomination were jubilant, not only because the count fell far short of the ⅔ then required to impose cloture but, after reviewing the leanings of the absentees, we were more confident than ever that we had, or would achieve, majority support for our position [against Justice Fortas]. Of course, it also demonstrated that the White House could not produce the showing of a majority in favor of the nomination. Even if four days of debate were to be characterized as a filibuster, it could not be claimed that our debate was thwarting the will of the majority. Needless to say, that picture stands in stark contrast with the tactics employed these days by Senate Democrats.

President Johnson the next day withdrew the nomination.

The difference here is, there was not a partisan filibuster. There was not a majority that could be counted, and if anyone knows former Senator Lyndon Johnson, who was President of the United States, they know he was a vote counter. The Senator, now President Johnson at the time, withdrew the nomination because he did not have the majority vote for the nomination. So there has not been this kind of partisan filibuster. Both parties have refused to allow it to happen for good reason, and I would hope it would end today as well.

The PRESIDING OFFICER. The majority's time has expired.

The Senator from Vermont.

Mr. LEAHY. Mr. President, this has been interesting, and I think for the public who might be watching, they may want to know what they are getting for their $100,000 to $150,000 of taxpayer's money that is being spent in this filibuster and those staff members who have lost any ability to have time for themselves and their families.

So I thought I might boil this down to its essence. Have filibusters been used before on Executive Calendar nominees, including judicial nominees to the lower courts, as well as to the Supreme Court? Of course they have. No matter how much my friends on the other side say no, of course they have. They know that.

The CONGRESSIONAL RECORD is open for all to read, and we do not even have to go back to ancient history for this. Three years ago, there were even two simultaneous Republican filibusters on the Senate floor against Richard Paez and Marsha Berzon, two of President Clinton's nominees. In fact, here is a list of Republican filibusters of nominees. It is a pretty long list.

I do not think we have to remind our friends on the other side of the aisle about the dozens more that were blocked not through votes in the open, on the Senate floor, but through holds by anonymous Republican Senators. In fact, these were filibusters by one or more anonymous Republicans. If one or more Republicans objected to one of President Clinton's nominees, they never got a vote. They never got on the floor. They never got out of committee. One actually did get out, and then by a party line vote he was voted down. That was the African-American chief justice of the Missouri Supreme Court.

So what happened in these one-person anonymous filibusters by the Republicans? Not 4 people being held up, it was 63 of President Clinton's nominees. Sixty-three of President Clinton's nominees were blocked by the Republicans by a one-person anonymous filibuster.

So are filibusters, including judicial nominees, rare? Sure, they are. And, incidentally, these are the Clinton circuit court nominees blocked by the Republicans during 1995 to the year 2000. As we can see, it is a pretty large number: James Beatty, Rich Leonard, Jorge Rangel, Robert Raymar, Barry Goode, Alston Johnson, James Duffy, Elena Kagen, James Wynn, Kathleen McCree Lewis, Enrique Moreno, James Lyons, Allen Snyder, Kent Markus, Robert Cindrich, Stephen Orlofsky, Roger Gregory, Christine Arguello, Elizabeth Gibson, Bonnie Campbell, Andre Davis, Richard Paez, Marsha Berzon, H. Lee Sarokin, and Rosemary Barkett.

The Senate's rules are intended to protect against abuses by the majority that at any given time controls the Senate. I have been here eight times in the majority, eight times in the minority. So the majority and minority go back and forth all the time. In this case, the Senate's rules protect against abuses of power—we have a system of checks and balance—especially by a White House that is so bent on controlling all the levels of power. They even want the Senate to change their rules, rules that have governed this body for over 200 years.

Now, should filibusters be used sparingly? Of course. And they have been used sparingly. But unlike the times of the recent Republican filibusters where 63 of President Clinton's nominees were stopped, we have used this very sparingly against a President who wants to run roughshod over other safeguards built into our system of government and into the very rules and practices of the Senate and its committees.

By using it sparingly, all this talk—you know, it is almost ironic to see my Republican friends with a straight face say how terrible this is and spend $150,000 or so of the taxpayers' money to tell us how terrible this is, after they stopped, by using 1-person filibusters, 63 of President Clinton's nominees.

Let us put the chart up there, if we might. Here is what we have done. We did not stop 63, as they did. We have stopped four. We have confirmed 168, and we stopped 4. There is even a T-shirt floating around which says: We confirmed 168 of President Bush's nominees and what did we get for it? When you look at the back, it says: All I got was this lousy T-shirt.

So this year, with breathtaking arrogance and a certain disdain for the past and certainly an unwillingness to be honest about the history of the Senate, we have seen a systematic dismantling of the Judiciary Committee's own rules. One by one, Republican majorities have changed, bent, and even broken the longstanding rules and practices that are intended to protect the rights of Senators to defend the rights of their States and their constituencies. These are the very same rules they used—some would say abused—when there was a Democratic President.

Would filibusters be necessary at all if the President lived up to the Constitution's injunction that he seek not only the Senate's consent but also its advice in selecting candidates for the independent Federal judiciary? Remember, the Federal judiciary is not supposed to be an arm of the Republican Party or the Democratic Party. Of course, it is supposed to be independent. It is a real question: Is there a clear way forward without the need to prevent the confirmation of any judicial nominee? The President has the ability to stop all of this. None of this impasse would be necessary if the President actually followed advice and consent.

If the President did what other Presidents of both parties have done, where they have tried to be a uniter, not a divider, if the President, who has declared his disdain for what he calls judicial activism, had nominated people who were not judicial activists, if he had tried to unite and not divide, none of this would be happening.

Instead of working with the Senate to name mainstream nominees to our courts, he has chosen instead to try to politicize the courts. He and his aides have unabashedly declared that they are out to remake the federal judiciary in the image of ideological activism. Our courts are foundational to our system. Our independent judiciary is the envy of the entire world.

In deference to groups on the far right, he has nominated judicial activists who cannot help but raise questions about their impartiality and their capability to administer justice for all.

What we need is an independent judiciary. Time and again, Democratic Senators have acted in good faith to fill vacancies that Republicans kept open for years when there was a Democratic President. Time and again they have blocked, by one or two anonymous Republican holds, Democratic nominees of President Clinton's from going forward.

We have filled those. That is why we are able to get 168 of the President's nominees through. We have stopped four. Come on. Is this worth spending the taxpayers' money? Perhaps not. Maybe, though, they believe it is worth it to send out fundraising letters.

The public's priorities v. the Republican leadership's priorities: During this 30-hour talkathon, the Republican leadership of the Senate again is following a script laid out for it by a White House intent on bending all other branches of government to its will. This is a White House intent on establishing some sort of unitary government and intent on removing the checks and balances among our three branches of government that are a foundation of the American system. In furtherance of this script, in these rare final hours of this year's legislative session, the Republican leadership has decided to abandon work on the real priorities of the American people. They are obstructing those priorities, in favor of repetitive speeches about promoting these four controversial nominees to lifetime positions as federal judges—four people who already have good, well-paying jobs—is more important than the three million Americans who have been struggling to find any jobs at all.

The Republican leadership has already overshot the Senate's adjournment date by more than a month. We have already had to enact three continuing resolutions to keep the Federal Government operating because the appropriations bills that the Congress needs to pass have not been enacted. It is now more than five weeks after the fiscal year began and we should have completed all 13 appropriations bills, but the Republican Congress has enacted a total of only four out of 13.

The remaining annual appropriations bills include the funds that go to improve our schools. The funds that NIH uses to advance our medical knowledge in fighting disease and illness. The resources used by EPA to enforce our clean air and water laws. They include appropriations for our veterans and for law enforcement.

Yesterday evening as the Republicans gathered to accommodate the programming requests of a certain television network, the senior Senator from West Virginia was trying to get the Senate to do its work. Senator BYRD, as the ranking Democrat on the Appropriations Committee, was searching for the Republican leader and urging the Senate to complete its work on the appropriations bill that funds services for our military veterans. He asked that the Senate continue that work so that we could finish Senate consideration of this important bill and proposed that we do so in just two hours. The Republican leadership objected. He renewed his request when the Republican leader did appear on the floor but was, again, rebuffed by Republican objection. Those few minutes may turn out to be the most telling of this entire so-called debate. Republicans chose to sacrifice the work of the Senate, the priorities of the American people and the interests of our veterans to a partisan political stunt.

In one of their many press conferences on this diversion, on November 6, the Republican leader committed to "complete the appropriations process" before beginning this charade. Even the junior Senator from Pennsylvania, agreed with that and said: "The leader's right. What we're about to embark in next week, after the appropriations process has run its course, is to enter into a debate. . . ." Well, when given the chance to honor that commitment last night, the Republican caucus chose partisan theater over the work of the Senate.

There is the unfinished business of providing a real prescription drug benefit for seniors. There is the Nation's unemployment and lack of job opportunities that confound so many American families. With millions of Americans having lost their jobs in the last three years, the Republican Senate is, instead, insisting on spending these final days of this session on a handful of highly controversial judicial nominations that divide the Senate and the American people and ignoring the needs of the almost 10 million Americans who are out of work, including those more than three million Americans who have lost their jobs since President Bush took office.

There are the corporate and Wall Street scandals that concern so many of those who have invested and placed their trust and financial security at risk in our securities markets. While we are listening to Republicans pontificate about a handful of highly controversial judicial nominees, some Republican has an anonymous hold on S. 1293, the Criminal Spam Act of 2003. This is a bipartisan bill that can do something about the worst spam abuses. Earlier this week, the Washington Times reported that spam is doing more damage to our economy than hackers or viruses. A few weeks ago the entire Senate joined in adopting a version of S. 1293 to the Burns-Wyden bill and we joined to pass that bill. Now some Republican has turned around and under cover of anonymity is holding up the bipartisan bill that can be enacted before adjournment this year that can stem the tide against the worst abuses and fraudulent conduct that is gumming up our internet economy and communications. This is the type of anonymous Republican hold that was likewise responsible for holding up more than 60 of President Clinton's qualified nominees to the federal judiciary from 1995 through 2001.

There is the need for Congress to continue the federal highway programs that build and repair our roads and highways and bridges. There is the need to perform real oversight of the U.S.A. PATRIOT Act and to provide real oversight for the war in Iraq. Just as Republicans objected to the Senate Judiciary Committee investigating the factors that led to September 11, Republicans are now objecting and preventing a full investigation by the Select Intelligence Committee of what led the Bush administration to contend that Saddam Hussein had weapons of mass destruction and was about to use them against the United States and that we had to embark earlier this year on a preemptive war.

Nor has the Senate taken any action on the misrepresentations made to us by Bush administration officials about their efforts to gut Clean Air Act enforcement. When they appeared and testified before us, they declared that their policies would not affect enforcement of the Clean Air Act and ongoing cases. Over the last two weeks we have seen how far from the truth that testimony was.

For the last three years this Administration has run roughshod over environmental protection and the Republican Senate has done nothing to stem the tide. They have catered to special interests in rolling back protections for clean water, clean air, toxic cleanups and public health. The Senate should be focusing attention on these attacks upon the environment and these rollbacks, but nothing could be farther from the agenda of the Republican Senate leadership.

Forty-two environmental rollbacks by the Bush administration that have been announced on Friday is the number the Senate should be working on. There have now been more environmental rollbacks than there are vacancies throughout the entire federal judiciary. The Bush administration's announcement that they are halting enforcement actions against industrial polluters under the New Source Review provision of the Clean Air Act flatly contradicts the assurances by Justice and EPA officials to the Senate last year. The toxic pollutants that will cause asthma and heart disease for our children and grandchildren is apparently of little interest to the Republican leadership of the Senate. That would be worthy of serious inquiry, debate and Senate action.

Last week the House passed by an overwhelming bipartisan margin the Advancing Justice through DNA Technology Act of 2003, H.R. 3214. This landmark legislation provides law enforcement with the training and equipment required to effectively, and accurately, fight crime in the 21st Century. More specifically, the bill would enact the President's DNA Initiative, which authorizes more than $1 billion over the next five years to eliminate the backlog crisis in the nation's crime labs, and to fund other DNA-related programs. It also includes the Innocence Protection Act, a death penalty reform effort I launched three years ago with Senators and Congressmen on both sides of the aisle.

The House vote was a major breakthrough in finding solutions to the flaws in our justice system. I understand that Republican Senators are now blocking action on the bill in the Senate. This bill is the result of extensive, exhaustive negotiations among Democratic and Republican leaders in the House and the Senate. It has broad support, both in the Congress and across the country and deserves the Senate's immediate attention and passage.

We have shown that the death penalty system is broken, we know that the reforms in this bill will help, and we know that every day we delay action may be another day on death row for some innocent people. These mistakes in our system of justice carry a high personal and social price. They undermine the public's confidence in our judicial system, they produce unbearable anguish for innocent people and their families and for the victims of these crimes, and they compromise public safety because for every wrongly convicted person, there is a real criminal who may still be roaming the streets. This matter is also being stalled by Senate Republican inaction.

The Senate has yet to take up the Anthrax Victims Fund Fairness Act of 2003, S. 1740, which Senator DASCHLE and I introduced with a number of other Senators because we are concerned that the citizens harmed by the anthrax letters addressed to Senator DASCHLE and to me in October 2001 are the forgotten victims of the aftermath of September 11. They, too, should have access to the Victim Compensation Fund. The Senate has yet to consider the September 11th Victim Compensation Fund Extension Act, S. 1602, which must be passed before we adjourn or hundreds of families who suffered on 9/11 will likely be left out in the cold without the compensation Congress and the American people intended to provide. Nothing will take away the pain and loss of September 11 and its aftermath for the victims but we owe them the Senate's attention before we adjourn.

New rules for Republican nominees: Rather than consider those important matters, why would the Republican leadership insist on rehashing the debate on the handful of judicial nominees on which further Senate action is unlikely? When they were considering the judicial nominees of a Democratic President in the years 1995 through 2000, they showed no concern about stranding more than 60 of President Clinton's judicial nominations without hearings or votes. They did not demand an up or down vote on every nominee but were content to use anonymous holds to scuttle scores of qualified nominees. Indeed, they stood cavalierly by while vacancies rose from 65 in January 1995 to 110 when Democrats assumed Senate leadership in the summer of 2001. They presided over the doubling of circuit court vacancies from 16 to 33 during that time.

Indeed, the Republican leader at that time famously came to the Senate floor to defiantly declare that the Senate had confirmed too many of President Clinton's judicial nominees as far as he was concerned. That was when the Senate was considering less than half as many judicial nominees and had more than twice as many judicial vacancies as there are today. During those days the Republican leader said he only had one regret, one apology regarding his obstruction of President Clinton's judicial nominees: "I probably moved too many already." Four years ago, toward the end of the third year of President Clinton's term, a year in which only 34 judges were confirmed, the Republican leader left no doubt that Republicans and the Republican leadership were unrepentant about their delays and obstruction of scores of qualified judicial nominees when he proclaimed: "Getting more federal judges is not what I came here to do." That Republican leader would not schedule votes on President Clinton's judicial nominees when vacancies were much higher and growing in the summer of 2000 and, ironically, sought to use appropriations bills as an excuse. The Senator from Mississippi said: "[S]pending bills must move first. . . . . Until we get 12 appropriations bills done, there is no way any judge, of any kind, or any stripe, will be confirmed." Of course, now the Republican caucus shows little interest in completing the Senate's work on appropriation bills, even though we are no longer in the summer but four months later in the year, well past the deadline and already into the next fiscal year without having even had the Senate initially consider these fundamental legislative matters. As I have noted, just last evening the Republican leadership rebuffed Democratic efforts to complete action on appropriations for our veterans, which could have been done in two hours.

In those years, the Republican chair of the Senate Judiciary Committee repeatedly argued that 67 vacancies in the federal judiciary was "full employment" as far as he was concerned. He wrote in USA Today in September 1997, when there were more than 100 judicial vacancies, that there was no judicial vacancy crisis and that the 742 active judges were sufficient. Over the last three years, Democrats have cooperated in confirming 168 judges nominated by this President, including 68 this year; we have reduced judicial vacancies on an expanded federal judiciary to 40; and we have 837 active judges, the most in U.S. history. We have 40 percent fewer vacancies than what Republicans used to call "full employment" for the federal judiciary and almost 100 more active judges than just a few years ago when Republicans were content to delay and obstruct President Clinton's nominees and argue that there was no problem.

So why do Republican partisans insist that the Senate now devote its time to rehashing the debate on some of this President's most controversial nominees to the independent federal judiciary? Is it merely coincidence that the Republican leadership has chosen to schedule these proceedings for the week of the Federalist Society's National Convention in Washington? Perhaps this is to give Republicans the opportunity to preen and posture while such an important segment of their base activists are in town. Perhaps it is to give the Republican leadership another chance to make false arguments about judicial nominations. Perhaps it is to give some a platform for baseless and McCarthyite accusations against Democratic Senators. Or perhaps it is to distract from the real concerns that affect Americans every day. Newspapers this week report that this exercise is precipitated because of a "brewing rebellion by conservative activists." Reportedly partisan diehards "are accusing the Senate GOP leaders of going too easy" and apparently when Republicans appear on conservative radio talk shows "they are often barraged with questions" about why the GOP is not successfully ramming every judicial nominee through the Senate that they control. Apparently this dissatisfaction has even begun to affect Republican fundraising and, according to the Washington Post, "a recent mailing [by a conservative group] to raise money for candidates yielded empty envelopes" from those who had formerly contributed. Let us hope that this is not the real reason for this grandstanding. Let us hope that when something begins to affect Republican fundraising, it is elevated to the top of the agenda—the public, the responsibilities of the Senate be dashed.

Mr. President, 168 nominees have been confirmed. If the Republican leadership has staged this vote in order to try to persuade the American people that Democrats are obstructing the President's judicial nominees, they are going to have to stray far from the facts, because the facts show that the Senate has made dramatic progress on judicial vacancies when and where the Administration has been willing to work with the Senate. Indeed, last week the Senate confirmed the 168th of this President's judicial nominees 100 of them, confirmed by the previous Democratic-controlled Senate, in just 17 months. We could confirm several more if the Republican leadership would just schedule the votes. There are other nominees who were reported unanimously by the Judiciary Committee and are just waiting to be confirmed. The number of confirmations could easily total 170 or more if the Republican leadership were truly interested in filling vacancies. Of course, more progress might undercut the partisan message that some are trying to peddle. Maybe that is why for weeks at a time the Republican leadership in the Senate has repeatedly refused to schedule votes on judicial nominees who will be approved, and have chosen is choosing, instead, to focus on the handful of the President's most extreme and divisive nominees.

The truth is that in less than three years' time, the number of President Bush's judicial nominees the Senate has confirmed has exceeded the number of judicial nominees confirmed for President Reagan, the "all time champ" at getting Federal judges confirmed, in all 4 years of his first term in office. A handful of the most extreme and controversial nominations have been denied consent by this Senate in the proper exercise of its duties under the rules. Only four. One-hundred-sixty-eight to four. That is in stark contrast to the more than 60 judicial nominees from President Clinton who were blocked by a Republican-led Senate.

McCarthyite smears: If this show is being staged to give some a platform for repulsive smears that Democrats are opposing nominees because of their religion, Republicans will have entered a realm of demagoguery, repeating false allegations and innuendo often enough to hope that some of their mud will stick.

Before they do that again, I would refer them to what the distinguished Senator from Louisiana, Ms. LANDRIEU, said this morning, because if this was not almost ridiculously contrary to the facts, there is one part in this whole debate that should be troublesome to both Republican and Democratic Senators, and that is the religious McCarthyism that has crept into this debate. The distinguished predecessor of mine, Ralph Flanders of Vermont, stood up on this floor and brought a halt to a member of his own party, Senator Joseph McCarthy, because of the smears he was making, the unsubstantiated smears he was making on people. Now, some of my friends on the right and some of my friends in the Republican Party have been making this smear. They are saying if you are opposed to these people, you are anti-Catholic or anti-Christian. If it was not so hurtful it would be humorous.

I first heard this when a radio talk show said I was anti-family, anti-

Catholic. On Sunday morning, they asked my press secretary about it. He said: The Senator did not hear it because he was at mass with his wife of 41 years.

We should not sink to something that we know is not so. Slanderous accusations have already been made by Republican Senators, and ads run by a group headed by the President's father's former White House counsel and a group whose funding includes money raised by Republican Senators and even by the President's family when they falsely claimed that judicial nominees were being opposed because of their religion. These contentions are despicable and unfounded. Other Republican members of the Judiciary Committee and of the Senate have either stood mute in the face of these McCarthyite charges, or, worse, have fed the flames. Such accusations are harmful to the Senate and to the Nation and have no place in this debate or anywhere else.

Just a few weeks ago, President Bush rightly told the Prime Minister of Malaysia that his inflammatory remarks about religion were "wrong and divisive." He should say the same to members of his own party. Today, Republican Senators have another chance to do what they have not yet done and what this Administration has not yet done: Disavow this campaign of division waged by those who would misuse religion, race and gender by playing wedge politics with it. I hope that the Republican leadership of the Senate will finally disavow the contention that any Senator is being motivated in any way by religious bigotry or for racial or gender-based reasons.

This week rumor is that the Republican public relations machine will be cranking overtime to try to make Democratic Senators appear anti-woman. Led by Senators MIKULSKI, FEINSTEIN, BOXER, MURRAY, LANDRIEU, LINCOLN, CANTWELL, CLINTON, and STABENOW, it is hard to see how Democrats can be subjected to such allegations with a straight face, but that is what the rumor is.

The facts are that under Democratic leadership, the Senate confirmed 100 judicial nominees, including 21 women, nominated by President Bush in just 17 months, including four to our Courts of Appeal. During the 107th Congress, President Bush nominated only 18 women to district court seats, out of 98 district court nominees (18 percent), and only 8 women to circuit courts out of 32 circuit court nominees (25 percent). This year Democrats have supported the confirmation of 12 additional women nominated to the Federal bench, including three to our Courts of Appeal. This President's nominees have included only one woman in each five judicial nominees. The 33 women judges confirmed represent 20 percent of the 168 judges confirmed.

By contrast, nearly one of every three of President Clinton's judges are women. Of course, the Republicans who controlled the Senate and the Judiciary Committee during the Clinton Administration also blocked 18 women nominated to Federal judgeships by President Clinton. Women who were blocked from getting Senate action on their judicial nominations include Kathleen McCree-Lewis, Elena Kagen, Elizabeth Gibson, Helen White, Christine Arguello, and Bonnie Campbell, all of whom were nominated to the circuit courts. These six outstanding women lawyers were not extreme or ideologues. They were outstandingly qualified women lawyers whose nominations were blocked anonymously by Republican Senators, without explanation, without a vote, without accountability.

Records of activism: On important issues to the American people—the environment, voting rights, women's rights, gay rights, Federalism, privacy rights, equal rights, civil rights and more—too many of this President's nominees have records of activism and advocacy. That is their right as American citizens, but that does not make them qualified to be judges. As a judge it would be their duty to impartially hear and weigh the evidence and to impart just and fair decisions to all who come before the court. In their hands, we entrust to the judges in our independent Federal judiciary the rights that all of us are entitled to enjoy through our birthright as Americans.

The President has said he is against what he calls "judicial activism." How ironic, then, that he has chosen several of the most committed and opinionated judicial activists ever to be nominated to our courts.

The question posed by his controversial nominations is not whether they are skilled and capable advocates. The question is whether—not for a 2 year term, or a 6 year term, but for a lifetime—they would be fair and impartial judges. Could every person whose rights or whose life, liberty or livelihood were at issue before their courts, have faith in being fairly heard? The President has chosen to divide the American people and the Senate with his highly controversial nominations. If Republicans want to clean the slate and start fresh, we should do so with nominees who unite the American people, nominees who can be supported by a strong bipartisan majority in the Senate.

We are also hearing the claim by Republicans that the filibuster of a judicial nomination in unprecedented. Republicans themselves filibustered the nominations of Judge Richard Paez and Marsha Berzon as recently as 2000. They previously filibustered the nominations of Judge Rosemary Barkett and Judge H. Lee Sarokin. Of course, while in the majority, Republicans took full advantage of the secret hold and of their control of the agenda to prevent a vote on 63 nominations by not scheduling hearings and votes on them. Many of those now claiming that Senate filibusters are unprecedented participated in them and voted against cloture just a few years ago.

Indeed, as the Senate's own website notes in an articled entitled "Filibuster Derails Supreme Court Appointment," the 1968 nomination of Abe Fortas to be Chief Justice was filibustered with the help of Republicans: "Although the committee recommended confirmation, floor consideration sparked the first filibuster in Senate history on a Supreme Court nomination." The attempt at cloture on the Fortas nomination was rejected by the Senate.

In addition, Republican Senators turned the filibuster of President Clinton's nominees and of legislation into a destructive art form. A nomination to be Surgeon General, Dr. Henry Foster, was defeated by a Republican filibuster, ambassadorial nominations were filibustered and bill and bill was filibustered as Republicans obstructed the work of the Senate and the legislative agenda. For Republicans to claim foul now, after their use of the filibuster tactic, may earn them the political equivalent of an Oscar, Tony or Grammy.

For 3 years I have asked the President and Senate Republicans to join with us to fill the vacancies on the Federal courts with qualified, fair, nonideological judges. Democrats have bent over backwards to support a record number of nominees. When the White House will work with all Senators, we have been able to identify and confirm judges quickly and by consensus. When the President has chosen to select ideological activists and try to pack the courts, we have opposed a handful of his most extreme nominees.

The Federal courts should not be an arm of the Republican Party, nor should they be an arm of the Democratic Party. The Senate should continue to honor its constitutional responsibilities to this third branch of our Federal government and to the American people whose rights are protected by our Federal courts. No President, with or without the complicity of any current majority in the Senate, can be allowed to relegate the Senate to the role of rubber stamp.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I thank the Senator from Vermont for his exemplary leadership on these issues. During a very difficult time in the Senate's history, he has continued to deal with the challenges and criticism in his usual humorous, self-deprecating way. It is a real example for all Members.

I, like many of my colleagues, have been following this debate not just for the last hours but for the last months. It is troubling for the two views being presented here to be so diametrically opposed about what the history is, what the facts are, what the law is, what the Constitution says and demands.

My friends on the other side of the aisle have chosen this opportunity to try to garner public attention for their perspective, which is that somehow the Democrats, acting in what we believe is the highest sense of duty, our understanding of the Constitution and the law, have drawn a line. We have seen this hour after hour now in the Senate, in the big chart that says 168. That is how many of the President's nominees have already been confirmed. Those men and women are sitting on our Federal benches. They are making decisions that affect our lives. I voted for virtually all of them. They would not have been my choices. I would not have nominated some of these people in that 168 number, but they passed the test. They passed the test of judicious temperament. They passed the test of being people who understood the critical role of what it meant to be a judge in a free society like ours.

So what is this really about? We got some hints from some of our colleagues on the other side of the aisle. This is about trying to gain political partisan advantage and also increase fundraising. I was amused to read a story about how some of their more extreme supporters sent back empty envelopes when solicited for funding for the Republican Senate campaign committee. Those contributors said: You are not tough enough. You need to make a big issue out of it.

So, in obedience, the Republican leadership decided to do that. That is their choice. They can dominate the floor on whatever issue they choose. It is a shame they keep the attention on this issue to the exclusion of so many other important issues such as the economy, education, homeland security, what is happening in Iraq, and should happen. But that is their choice. That says a lot about their priorities as they respond to the music played by the most extreme of their privileged contributors.

It is somewhat disquieting for those who have a memory longer than 24 hours, or longer even than 2½ years, to see the distortions that have been presented with great passion and conviction. But, nevertheless, beating on the table does not necessarily mean what you are saying is true.

I am concerned, too, about the misleading way that the treatment of nominees during the Clinton administration has become a mantra on the other side of the aisle. I think 168 to 4 shows the Democrats in the Judiciary Committee and here on the Senate floor have shown great deference, 98 percent deference to the President's nominees and the will of the majority. That is certainly not something that nominees by President Clinton or the Democrats on the Judiciary Committee and in this body received when the shoe was on the other foot.

I am a little bewildered by this because time and time again my friends on the other side overlook the history of how extremely qualified men and women from all walks of life, all races and ethnic backgrounds, were treated under the Clinton administration.

The other side suggests that there were no mistreatments because there were so few, if any, filibusters. That is what they claim. Here are the pictures of the circuit court nominees blocked by Republicans. I know many of these people personally. I have the same feelings about them that I know some of my colleagues on the other side have about the nominees from their State. I know what they and their families have been put through for months, for years. And why was that? Because the way they were treated was done essentially in secret.

I give the other side great credit. They did not come out in the open like we are. They did not come out and debate the merits and demerits of the nominees from the current administration. What happened is, these distinguished men and women never even got a hearing. They never got to appear before a committee in most cases. They never got a vote out of a committee. The Judiciary Committee, under Republican leadership, became a judge buster. You could not get out of the committee. You could not get to the Senate floor. So, of course, there could not be a filibuster because they never had the opportunity.

I have a little chart that shows the difference in how nominees were treated, that clearly demonstrates we had 63 nominees, 23 circuit court nominees, 40 district court nominees. They are represented by apples on my chart. We grow a lot of apples in New York so I am partial to apples.

These 63 well-qualified, distinguished lawyers and judges were stiffed. They were not even given, in many instances, the decency of a committee hearing. They were left hanging out there, twisting in the wind, by a Republican majority that decided: We do not want to have to stand up and say why we will not confirm these people because if we have to talk about it publicly, everyone will see through us and it will be demonstrated conclusively that this is not about the Constitution or the law. This is about blocking well-qualified nominees from a Democratic President from having lifetime tenure on the Federal bench.

So, 63 qualified people were blocked. We have blocked 4 for a variety of reasons. We have been publicly willing to go on the record and say, for the world to hear, they are lemons. We cannot support these people. They do not have the temperament, the quality that should sit on the Federal bench.

I find this sad. That is the word I would use. Neutral, nonpartisan experts agree that the Clinton administration judicial nominees were, by and large, moderate, accomplished, excellent choices. What are we given? We are given four people who, for a variety of reasons, are just waving red flags. I understand that. This is not about confirming judges. This is about exciting a base. This is about scoring political points. This is about raking the money in. I can imagine the phones are ringing over at the Republican Senate campaign headquarters. They are making so much money today because they have their hard-core base sending those dollars in. Keep standing up there, keep fighting. But I venture a guess that even a majority of those folks do not know the facts. They certainly are not going to get it from what is said on the other side of the aisle.

It is sad, it is kind of heart breaking, actually. We had an opportunity during the 8 years of the Clinton administration to nominate 63 well-qualified people, none of whom were given the decency of fair treatment. It was done under the cloak of secrecy. It was done behind closed doors. It was done with anonymous holds. It was done with no committee hearing being scheduled. You can go through the individual accomplishments of these people, and it is stunning how well qualified they were. You can look at the names. I know many of these people. Republicans blocked 15 times more judicial nominees of President Clinton than have been blocked here. It has been a little difficult for many on this side of the aisle to explain to our constituents why we did not block more of them. A lot of the people who got through in that 168 were people many Members would prefer not to be on the bench, but we could not stand up in public and say why we would vote against this person, so we voted for them. When it comes to the four we blocked, we have more than ample reason.

I regret the majority has chosen to politicize this important process. I regret that they have chosen to ignore history and to distort the facts. I regret they would decide to spend time on these matters instead of the many important issues that confront our Nation and our world. We have a lot of big challenges around the world. I am personally concerned about what is happening in Iraq, what is happening in Afghanistan. I wrote to the Secretary of Defense yesterday because of reports about potential threats from al-Qaida to hijack cargo aircraft and fly them into nuclear powerplants. We have a lot of very difficult issues facing us. But instead, my friends on the other side want to rewrite history, want to ignore the well-qualified people they blocked through every maneuver, faint, and incredible behind-the-scenes stealth they could come up with.

I will now yield the remaining time on our half hour to my good friend and colleague, Senator SCHUMER, who has been a champion on this issue.

UNANIMOUS CONSENT REQUEST—S. 1853

Mrs. CLINTON. Before I yield, I ask unanimous consent the Senate proceed to legislative session, the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for dislocated, displaced workers; that the Senate proceed to its immediate consideration, the bill be read the third time and passed, and motion to reconsider be laid upon the table.

Mrs. HUTCHISON. Mr. President, reserving the right to object, I ask consent that the Senator modify her request so that just prior to proceeding as requested, the three cloture votes be vitiated, the Senate would then immediately proceed to three consecutive votes on the confirmation of the nominations, with no intervening action or debate.

The PRESIDING OFFICER. Will the Senator from New York modify her request?

Mrs. CLINTON. No, Mr. President.

Mrs. HUTCHISON. Then I object.

Mr. REID. Mr. President, before the junior Senator from New York speaks, I want to spread on the record the entire Democratic Caucus's appreciation for his stalwart service during the last many hours. The Senator has been here now for his fifth shift. On behalf of all the caucus, I extend my appreciation.

UNANIMOUS CONSENT REQUEST

Mr. REID. I ask unanimous consent the Senate stand in recess today from 4:15 to 5:15 so we can all go upstairs and find out what is happening from Ambassador Bremer, our No. 1 person in Iraq on the war in Iraq. It seems to me the fact that we talked 23 hours instead of 24 hours should not have any bearing on the outcome of the proceedings, but it would help every Senator, Democratic and Republican, to be able to give their full attention to the proceedings in the secret room upstairs. I so move.

Mrs. HUTCHISON. Mr. President, reserving the right to object, I certainly understand the sentiments of the distinguished deputy leader. We do all want to be able to do that, and we will be able to go in shifts. All Members are very interested in what is going on and very pleased that there is action by the United States to make sure that we do everything possible for the stability of Iraq. But we are in a very important debate. We are debating a constitutional issue. I would have to object.

The PRESIDING OFFICER. The objection is heard.

The Senator from New York.

Mr. SCHUMER. Mr. President, I thank all of my colleagues for the debate. I repeat something I have repeated in the five other times I have been here. We have had a lot of talk, a lot of palaver. But this one sign, this one chart is more persuasive than everything that has been said. No one, except a far-right militant, extreme minority, believes that the courts are obstructed when 168 judges are approved and four are not approved. Say whatever you will, that fact is transcendent. That fact is dominant.

I thank my colleagues on the other side for giving us the opportunity to repeat it over and over.

Now, we have been engaged in a lot of sophistry, a lot of arguments that do not make a difference. The lead argument is that there should not be filibusters. Last night, I talked at some length about all the filibusters that have gone on before. By the way, if you believe that the Constitution prohibits filibusters, you certainly believe it prohibits them not only for the judicial branch but the executive branch. Of course, that would be interpreting the Constitution because there are no words in there that say it. So my colleagues on the other side who are so worried about those who expand the law are doing it themselves.

I make another point today. We have heard this morning a little bit of a shift in the themes from my colleagues. Majority should rule. Just give them a vote. That is all we want, they say. If we want to give every nominee a vote, how is it different preventing the vote by speaking on the Senate floor or preventing the vote by refusing to bring the nominee up in the committee?

Did Annabelle Rodriguez get a vote? All she wanted was a majority vote. No. Did Clarence Sundram or John Bingler or Robert Freedberg or Lynette Norton or Legrome Davis or Robert Raymar or Robert Cindrich or Stephen Orlofsky get a vote? Nope, these are President Clinton nominees who were not brought before the committee.

What is the rule? That when the President nominates someone, all the other side is saying is, majority vote. Here is a list of 63 people who did not get that majority vote. If the Constitution is telling us every nominee should get a majority vote, why didn't it apply to these 63 as well as those 4?

And one other thing my learned colleague from Texas got up and said, hypocrisy is when you did one thing 10 years ago and do a different thing now. These were not 10 years ago; these were 5 years ago. I would ask but he is not here. Is it hypocrisy for the members of the Judiciary Committee on the other side, who never called these people for a vote, who deprived them of the principle of a majority vote, not to bring them up and now complain they want a majority vote for these four? I am not sure either measures up for hypocrisy. That is a strong word. But what is good for the goose is certainly good for the gander.

The whole issue of majority vote——

The PRESIDING OFFICER. Time controlled by the minority is consumed.

The Senator from Pennsylvania.

Mr. SPECTER. While the Senator from New York is on the Senate floor, I ask him to respond to a question, and that is, Does he consider this Senator a far-right extremist militant?

Mr. SCHUMER. Is this on the time of the Senator from Pennsylvania?

Mr. SPECTER. Yes.

Mr. SCHUMER. Please repeat.

Mr. SPECTER. It was argued a few moments ago with a chart, 168 to 4 that only "a far-right extremist militant" would say that was an insufficient record.

So my question to the Senator from New York is, Do you consider ARLEN SPECTER a far right extremist militant?

Mr. SCHUMER. I do not, in answering his question. But sometimes he has occasional lapses in his very fine judgment. And this is obviously one of those.

Mr. SPECTER. Well, I do not know how the Senator from New York can say there is a defect in judgment when I have not asserted anything yet. All I asked, Mr. President, was a question as to whether he considered ARLEN SPECTER a far right extremist militant. And he said, no, but sometimes there are lapses in my judgment.

I will ask a followup question to the Senator from New York. In the absence of any assertion or statement of judgment, where are the lapses in my judgment at the moment?

Mr. SCHUMER. I will say to my colleague, I heard him speak on this before, and when it comes to the issue of judicial nominees, where my colleague has usually quite good judgment, in recent months he is sort of edging way over to the right side, for reasons I am not sure of. But his normally sound and moderate judgment, in my judgment, when some of these nominees came up, has abandoned him, at least in this moment.

I say to my colleague, any nominee who believes that Lochner—and my colleague is very erudite, so I do not even have to describe to him what it is—who says that Lochner was correctly decided does not belong on the bench, in anyone's book, and, my guess is, really in his heart of hearts, does not belong on the bench in the book of the Senator from Pennsylvania. I know he will dispute that, but seeing his record, I have admired his record. And a judge who believes that property rights, that zoning is taking——

The PRESIDING OFFICER (Mr. BUNNING). The Senator from Pennsylvania has the floor.

Mr. SCHUMER. I was responding to the question.

Mr. SPECTER. Mr. President, I do thank you for your intervention. I had not wanted to interrupt the Senator from New York by calling for regular order, which would be in order when the comments go beyond—far beyond the scope of the question. But I thank the Chair for his intervention.

I would ask the Senator from New York another question, and ask him to be as restrained in time as he can be because we only have a half an hour, for I was concerned the last answer might use up the entire half hour.

When the Senator from New York made the comment that he questions my judgment, did he disagree with my judgment when President Clinton nominated Berzon to be a Court of Appeals judge for the Ninth Circuit and I joined with Democrats to get her confirmed?

Mr. SCHUMER. As I said—and I will try to be brief; and I know neither the Senator from Pennsylvania nor I is known for brevity on the floor——

Mr. SPECTER. Mr. President, that calls for a yes or no answer.

Mr. SCHUMER. As I said, normally I think the judgment of my colleague is a good one. Berzon, in my judgment, the nomination of Judge Berzon, she was quite far to the left. But I spoke about this last night. I believe, at least, because President Clinton, by and large——

The PRESIDING OFFICER. The Senator from Pennsylvania is not privileged to ask a question of the Senator absent consent. The regular order is that the Senator from Pennsylvania has the floor.

Mr. SCHUMER. I ask unanimous consent that he be allowed to continue asking me questions.

Mr. SMITH. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SMITH. I would like to speak.

Mr. SPECTER. Mr. President, the Senator from Oregon will have time to speak. We are in a 30-minute sequence. I would follow up the question to the Senator from New York: Did he disagree with my judgment on agreeing for the confirmation of Judge Paez, along with the Democrats, nominated by President Clinton?

Mr. SCHUMER. Mr. President, there was no—do we have unanimous consent? I did not hear.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I withdraw the question.

The PRESIDING OFFICER. You withdraw the question.

Mr. SPECTER. We will proceed with the debate.

The PRESIDING OFFICER. Thank you.

Mr. SPECTER. We have quite a number of people here who are already prepared to speak, and we will go on in regular order. But I asked the Senator from New York those questions because I think his assertion, when you hold up the chart with 168 to 4 and then say that only a far right extremist militant would question that, is grossly in error. I sought to illustrate it by asking the question as to whether ARLEN SPECTER fits that bill of a far right extremist militant.

The reality is that the 168 to 4 does not tell the picture. It is a misconstruction. Beyond the 4 who have been rejected by the filibuster by the Democrats, there are 5 others who are currently being filibustered; there are 14 others pending where the filibuster is imminent. President Bush has had only 63 percent of his appellate judges confirmed, whereas in similar circumstance for the past three Presidencies, there have been 91 percent confirmed.

So the chart, which has been seen more often than the most activist commercials, simply is misleading. These filibusters have gone very deeply into the heart of the nomination power of the President. The tradition has always been that the President gets substantial latitude in selecting judicial nominees. And where you have a challenge in ideology, the Democrats have, in this proceeding, gone to a new level in filibustering circuit judges. It simply has never been done before.

Last night, the Senator from Illinois made a comment that all the Republicans were doing here was theater. And I spoke shortly thereafter, and I agreed with him that this is theater. But it happens to be factual theater, and the theater is being utilized for a very important purpose; that is, to acquaint the American people with what is happening in the Senate on the politicization of judicial nominees.

I outlined in some detail yesterday, and will summarize it only briefly, the business of it being difficult when the party in the White House is different from the party in the Senate, which is what happened during the last 2 years of President Reagan's administration, and all of the administration of President George Herbert Walker Bush, where the percentages were very low. Then, in the first 2 years of President Clinton's administration, the percentages were high because he had a Senate controlled by his own party. And when President Clinton made nominations in the last 6 years, the percentages again were low. So the fault has been attributable to both parties when one party controlled the White House and the other party controlled the Senate.

But what has happened here more recently has been a new low. It has been a new low because for the first time there has been a filibuster of a circuit judge, which had never happened in the preceding 216 years of the Republic. And what we are doing here in this marathon—aptly named; it is not a filibuster, it is a marathon—is to call the attention of the American people to what has happened.

I related the filibuster sequence back in 1987, which is worth repeating, because it illustrates the point about how these proceedings are effective in telling the American people what is going on.

In 1987, there was a filibuster by Republicans on campaign finance reform. Senator BYRD was the leader of the Democrats. At about 2 a.m.—one early morning—Senator Dole, the Republican leader, called us all back into the cloakroom, a few feet to the rear of where I stand now, and said he would request that no Republican Senator go to the floor, so as to compel the Democrats to maintain a quorum—51 Senators—because in the absence of a quorum on the floor, any Senator may suggest the absence of a quorum and then there is no further business to be transacted.

Senator BYRD then responded with a motion to arrest absent Senators, and the Sergeant at Arms, Henry Giugni, was armed with the warrants of arrest. The Sergeant at Arms started to patrol the halls, and the first Senator he found was Senator Lowell Weicker. Sergeant at Arms Henry Giugni was about 5 feet 6 inches and 150 pounds. Senator Lowell Weicker was 6 feet 4 inches and 240 pounds—in fact, still is 6 feet 4 inches and 240 pounds. The Sergeant at Arms decided not to arrest Senator Weicker, which I think was a wise decision.

I note the Senator from Connecticut, Mr. DODD, smiling. He was Senator Weicker's colleague at the time from Connecticut and I think would confirm the wisdom of not arresting Senator Weicker.

So then the Sergeant at Arms started to knock on Senate doors. It is interesting how, when you tell a story, there is so much more attention paid to what is going on. People are snoozing here generally during this marathon.

At any rate, Henry Giugni went to knock on doors, and he knocked on Senator Packwood's door, and Senator Packwood foolishly answered the door. Then Senator Packwood was carried, feet first, in through that door. I was in the Chamber at the time. They carried him feet first.

This is a true story. You do not get many true stories out of Washington, but this is a true story. Even the pages think it is funny. It was really funny that night. It attracted a lot of attention. And that is what we seek to do here today, is to attract attention, because if the American people focus on what is going on with this filibuster, of the politicization of the judges, we think we can end it. And we are trying to make C-SPAN the channel of choice, to replace Jay Leno in the late hours.

There are many people who are surfing as we speak. It is amazing how many people will even watch C-SPAN or get to C-SPAN inadvertently in surfing. And I would urge them to continue to listen because what is happening here is substantively important, and I think even more interesting than the soaps, or at least stay tuned for the next 20 minutes, until after Senator SMITH and Senator SUNUNU have had an opportunity to speak.

I want to cover one other subject very briefly before yielding to my colleagues, and that is the subject of the quality of the nominees who have been filibustered. I will cite only one in the interest of time, and that is Miguel Estrada.

This is a young man who was born in Tegucigalpa, Honduras. He came to the United States as a teenager. Really, it is the great American story. He went to Columbia, where he was Phi Beta Kappa and magna cum laude, and that is a considerable achievement. He then went to the Harvard Law School where he was magna cum laude and on the Harvard Law Review. That is a unique achievement.

He then was a law clerk to two distinguished Federal judges, one of whom was on the Supreme Court of the United States. He then had a distinguished career as a practicing lawyer. Then he went to the U.S. Attorney's Office in the Southern District of New York. And I can tell you from my own experience as an assistant DA, that is a very valuable experience. Then he was an Assistant Solicitor General and had really a remarkable record.

He was rejected by the Democrats on a filibuster and ultimately withdrew, and it was really because he was potentially a Supreme Court nominee. And the reasons given: the reasons were that he was a stealth candidate. But any fair analysis of his responses to other nominees' would demonstrate that he answered the questions at least up to the standard level, and then the Democrats objected to his nomination because he refused—the administration refused to turn over memoranda he had written as an Assistant Solicitor General. But if those memoranda are to be turned over under that circumstance, every lawyer who is an Assistant Solicitor General or an assistant DA or in any legal position would be chilled by the prospect of having such memoranda disclosed at some time in the future when that individual was subject to the confirmation process.

Now, it is my hope that these proceedings will produce something useful by way of focusing the attention of the American people.

I was on a radio program in Fargo, ND, for about 25 minutes earlier this morning, and these ideas have been spread across the country. It is my hope that the American people will communicate with the Senators on both sides of the aisle, both Republicans and Democrats. I think when the American people focus on this issue, there will be great pressure to change, to take politics out of the selection of Federal judges.

I now yield to my distinguished colleague from Oregon, Senator SMITH.

I ask the Senator, how much time would you like?

Mr. SMITH. Ten minutes.

Mr. SPECTER. Done.

Mr. President, how much time remains?

The PRESIDING OFFICER. Thirteen minutes 20 seconds.

The Senator from Oregon.

Mr. SMITH. Mr. President, for those of you who may still be watching this debate, I know the suggestion has been made by our friends on the other side that essential work is not being done. This time, I assure you, what is being done is a lot of work, and it is being done currently in conference committees.

What we are doing here, I think, is also very important. In terms of dialog and debate in our democracy, we have an important issue before us. You have seen the sign. It says: 98 percent. All these judges have been confirmed. It is important not to get locked into that number because what is being missed is whether we are upholding our oath to the Constitution only 98 percent of the time or 100 percent of the time.

In my view, my reading of the Constitution, it is that supermajorities are provided for in our Constitution in cases of Presidential vetoes, expelling a Member, and other areas.

Mr. President, I listened to my friend from Connecticut last night. He made a very good speech. He talked about his boyhood and sitting here in the time of his father. I am sure he was listening to great civil rights debates, and the filibusters went on and on in terms of civil rights.

But I will tell you, based on my reading of the recent book on Lyndon Johnson's life, by Robert Caro, "Master of the Senate"—central in the fight among Democratic southerners and Democratic northerners, along with Republican northerners—there was the frustration over the issue of the filibuster. Hubert Humphrey and Clinton Anderson of New Mexico repeatedly began each session trying to change the rules on filibuster because they knew if they could not change them, then Senator Russell would make it impossible for them to break the veto and deny the African-American community civil rights in this country.

What is the difference between that fight over a filibuster when it comes to a legislative issue such as civil rights versus an executive appointment or Executive Calendar issue such as we are dealing with today?

Well, I suggest that what has happened ever since the defeat of Robert Bork is each side is upping the ante and we are exalting now single-issue politics in our country in a way that I think truly disserves our country.

There is an old maxim in the law that justice delayed is justice denied. It is a fact that many justices or judges have been confirmed, but the real potential exists not just to delay justice—and thereby deny justice—but to dumb down justice in our country. Let me tell you why I believe that this could happen.

Right now, we are seeing the winnowing out of anyone in the law who is learned, well written, well spoken, and whose views are well revealed to the American people. I remember as a new lawyer listening to the debate in the Senate over Robert Bork. I remember as a law student, prior to that, particularly enjoying the writings of Laurence Tribe and Robert Bork. These two great legal scholars would debate in their writings over the word "liberty" and the proper role of judges in enforcing and providing for liberty.

You couldn't find two scholars with more polar opposite positions than Tribe and Bork. But, I loved their readings. I had the feeling when I would read them that I was a part of the contest of ideas. I remember the feeling when Robert Bork was defeated that, doggone it, I would sure have given them Laurence Tribe if they would have given us Robert Bork. Because I knew the writings of our country's legal journals would be all the better if the judiciary could attract the best and the brightest.

Now we are saying as the Senate, if you have strongly held views, you had better check them at the door. And, if you don't do that, you had better not expose them. We are saying to the judicial branch of Government—we, the Senate, the legislative branch—we don't want the best and the brightest; we want the mediocre, we want the mushy middle; we want those who are just going to go along and get along.

I think we also disserve the marketplace of ideas when both parties ratchet up these politics. This is what has happened. The difference between the filibuster as it relates to the Legislative Calendar and the Executive Calendar is simply that we, the legislative branch, are now attacking the judicial branch.

American justice will be the poorer for this because, you watch, when we have a Democratic President and a Democratic majority in the Senate—this will happen again—watch the filibusters come up. That is unfortunate because we have elections for a reason. This is an ebb and flow in American politics that is important.

Am I suggesting we get rid of filibusters? I am not, but I am suggesting we have escalated this too high. I believe we are exacting single-issue politics, I believe we are delaying justice, and I believe we are dumbing down justice in America.

The unspoken word here is the single issue of a woman's right to reproductive choice. The word is "abortion."

Every one of us has wrestled with that issue. I truly believe and I understand why a woman doesn't want the Government part of such a decision. I also believe there are times when life is so viable and so obvious that the law ought to protect that life.

As I looked in the mirror and then presented myself to the people of the State of Oregon, I had to say: You know, I am pro-life. I am pro-life with exceptions, but I am pro-life. My State is pro-choice. But, they had a right to know my position. I told them. Ultimately, I was elected anyway. I promised them I would not have a single-issue litmus test on judicial appointments.

I am here to tell the people of Oregon, I have kept that promise. I voted for President Clinton's nominees who were pro-choice because I believe we should not let single-issue interest groups rule the day on an issue so constitutionally fundamental to the future of justice in our country. But that is what is happening here. That is why this time is so important, that we spend it debating and hopefully resolve this issue.

Mr. President, I will not take more time. My colleague, Senator SUNUNU, deserves to be heard.

I pray, I plead, I hope we can get beyond this as it comes to executive appointments, the Executive Calendar, because we are disserving America with this process that has now ratcheted up to a new level that is constitutionally dangerous.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I very much appreciate the remarks of my colleague from Oregon and in particular the emphasis he placed on what the tone and the tenor of our current debate on nominees could mean for future nominees, for future qualification of those who might be interested in serving on the bench.

As elected officials, we talk all the time about tenor in politics, big media, and advertising campaigns, and all the rest that a modern campaign involves, and the way in which the introspection and intrusiveness of that process discourage good people from running for office.

Anyone who has ever spent time looking at the political process is aware of that concern. It doesn't matter if you are running for the Senate or not; you could be running for school board or mayor or dogcatcher, for that matter; but people understand that there is a level of intrusiveness, an invasion of personal life, that discourages good people from running for office.

There is not much we can do about that as a Senator, as an elected official, but there is something we can do about this process, the judicial nomination process, the vetting process, the approval process. If we allow this current tone and tenor to remain, then, as the Senator from Oregon has described, we will not only discourage good people from wanting to serve on the Federal judiciary to bring their judgment and intellect to bear, to help provide justice to those who deserve and need justice, we will even discourage people from engaging in debate, from putting their ideas out on the table, from writing, from thinking about different ways to look at or evaluate the law.

I am not a lawyer. I am about as far from the law as one can get. I am an engineer by training, and I am proud of that fact. I understand the value of creativity, innovation, and debate, and the marketplace of ideas. When we have Members of the Senate come to the floor and say: I am voting against someone because I don't like the way they decided a case, that raises a red flag for me. If there is a specific case and a specific issue and you truly believe the way they decided the case means they are not capable, they are not fit, they are not qualified, that is fine, but let's not suggest for a minute that we will ever or should ever seek to find candidates who agree with us on every issue on every legal point.

My constituents back home won't agree with me on every issue anytime. I don't think there is a member of my family who agrees with me on every issue. And we certainly shouldn't accept that kind of bar for our judicial candidates. What we should look for are qualifications of experience, intellect, or a sound, consistent case record.

I think we have moved away from that. When we have nominees who have the support and endorsement of every paper in their State, liberal or conservative, or we have nominees for the judiciary who have received the support of 70 or 75 percent of the people in their State, liberal and conservative, or we have nominees who have demonstrated time and again, as we do, their commitment to uphold the law as written regardless of their own point of view, I think these nominees deserve the fairness of an up-or-down vote, and that is ultimately what I think is at stake here.

We can look at the numbers and discuss whether or not there has ever been a cloture vote at a particular time or a particular place on a particular nominee, and we have had cloture votes before, but what is different about the current debate is that cloture votes have never been used in a partisan way to prevent a nominee from getting that up-or-down vote on the floor. It certainly hasn't been used on the past on four, five, six, seven, or eight nominees. It is that process that I think has Members of this Senate, Democrat and Republican, and the public very frustrated.

Technically, is it within the right of the minority to force these cloture votes? Sure. It is not a question of whether it is technically within the right of a Member of the Senate or the minority to engage in this kind of obstruction. The question is, Is it the right thing to do, is it the fair thing to do?

Ultimately, it is important that we take a stand as to whether or not we believe it is right. I certainly do not. And ultimately the public will also be asked to decide whether they think this is appropriate behavior for their Senators and for their leaders in Washington, DC.

I yield the floor.

The PRESIDING OFFICER. The majority time has expired.

Mr. SPECTER. Mr. President, that is what I was about to inquire. I thank the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. I thank the Chair.

Mr. President, every debate we have in the Senate comes down to a question of values and priorities for all of us, how we spend our time personally, how we spend our time in the Senate, where we choose to put our efforts.

I wish to speak today about where I believe we should be putting our efforts if we are going to spend 30 hours of time speaking on the floor of the Senate.

First, I remind colleagues again, lest we get lost in all of the discussion of what we are talking about, we have, since I have been in the Senate, approved 168 judges. We have confirmed 168 judges, and we have said no to 4—168 to 4. Almost every one of those 168 I voted for.

We are talking about four people who currently have jobs who want to be promoted to lifetime positions as Federal judges. What I would like to spend my time talking about today are the 3 million people who don't have jobs. Three million Americans have lost their jobs during this same time period, in the last 2½ years.

What I want to spend my time speaking about are the 162,000 people and more who have lost their jobs in the great State of Michigan, most of those in the manufacturing sector.

I am very proud of the fact that Michigan is first in the Nation in the manufacturing of automobiles. About 31 percent of all of the automobiles that are made in this country and almost 17 percent of all the trucks made in this country are made in the great State of Michigan.

I am proud of the fact that we produce about half the office furniture. Three leading office furniture manufacturers in the Nation are based in Michigan. I am proud of our tool and die makers. I am proud of everyone in our small manufacturing businesses. Most of our businesses are very small with under 20 people in auto supply and in the tool and die industry. I know they are under severe crisis today.

We are under severe crisis in Michigan and in this country as it relates to our manufacturing economy. That is worth 30 hours of debate on the floor of the Senate. That is worth 30 hours of action on the floor of the Senate.

We cannot afford to lose our ability to make products in this country. That is what we do in Michigan. I am proud of the fact that we make products, we grow products, and we do it well. Give us a level playing field for our businesses and our workers, and we will compete and win. That is not happening, and I am deeply concerned about the stories after stories I have heard.

I wish to share a couple stories today. I look at the headlines: "2,700 jobs in danger as Electrolux considers closing Greenville refrigerator plant." This is in the Grand Rapids Press:

> Electrolux Home Products announced today it may eliminate 2,700 jobs at Greenville refrigerator plant and shift production to Mexico.

That is all too common a headline, and it is something that is going on in Michigan.

> Such a move would be a huge blow to the city of Greenville and Montcalm County, where Electrolux and its predecessors have long been the largest employers and among the largest taxpayers.

That is what we should be talking about: What is happening in Greenville and Electrolux.

"Ford sets a timetable for plant closings. Revitalization plan called for cutting 35,000 jobs."

> Ford Motor Co. will close plants in Ohio and Michigan by year's end and another in New Jersey in the first quarter of next year.

It goes on:

> Another factory in Ohio will end production in the next four years.

Not four people who already have jobs, but people who right now are working hard every day, 9 to 5 or longer, to earn a paycheck so they can have a good-paying job in the United States of America and send their kids to college, to afford their health care, to afford their house, maybe a cottage up north, which is something we like to do in Michigan, maybe a boat, maybe a snowmobile—those things that allow a good quality of life in our country. We are in danger of losing that when we lose manufacturing jobs.

"Straits Steel closing sad news for plant's 180 employees." This comes from Ludington.

We read in the Lancing State Journal: "Jobless rate could rise in the winter." There is more concern about what happens when we lose construction jobs in the wintertime.

I receive a lot of letters from people writing me and asking for help. They would love to see us spending 30 hours on the floor of the Senate not only talking but actually doing something to save their jobs and to support our manufacturers.

I would like to read you just one letter from Walker, MI:

> I am writing to you in the hope you will read my letter. What I want to write you about is how much of our industry is disappearing. Factories continue to close or lay off. Often they leave the State and, even worse, they leave the country. A lot of these are American companies, like Lifesavers plant in Zeeland.
>
> Yes, we need bankers, lawyers, doctors, and computer consultants. I am one. But that is not our strength. Our strength is in our industry, in our farms, in our shops. I live in Grand Rapids, MI, and I see a lot of construction, but it is all retail and restaurants. How can we continue to grow if we are all making only $8 to $10 an hour? Most of the time you can't even make that. Henry Ford knew that he had to pay his employees a living wage so that they could afford to buy his cars.

There is story after story coming from the State of Michigan, across the Midwest, and all across our country. They are asking for our help. With over 3 million jobs that have been lost—3 million, not 4—3 million jobs that have been lost, what is the response of the administration? We have had to fight to stop them from taking people's overtime pay. Can you imagine, 3 million people lose their jobs and what is the response? Take away the other people's overtime pay.

Then we have to fight to extend unemployment compensation for the people who have lost their jobs and are having difficulty finding new jobs. Of deep concern to me is what is happening as relates to a lack of a level playing field in China and Japan and other Asian countries. We know in the Banking Committee—and the esteemed Senator presiding today I know has expressed concerns as well as to what is happening to the currency manipulation in China and Japan. Effectively, we are seeing a tax on American goods and services sold in China and Japan, and they get a tax break here or a price break because of what they are doing. We need a level playing field.

We asked the administration to do something; join us; we know it is happening, and yet they refuse to step up and join us in the tough efforts that need to happen to give our businesses the level playing field they need to keep jobs in America.

We have seen a refusal to address the high health insurance costs. We need to create more competition with pharmaceutical drugs. We need to be working with our employers to lower health care costs, the No. 1 pressing issue that has caused layoffs, that has caused people to pay more in deductibles and premiums and has caused businesses to struggle to survive.

Let's talk about those issues that create jobs, that relate to our ability to have a standard of living that we have been accustomed to and deserve in this country. If people are willing to put in a day's work, they ought to be able to know there will be a good-paying job there so they can care for themselves and their families and they can do those things that will allow them to have the best possible life in this great country of ours.

Finally, we have seen a continual block over and over on the issue of increasing the minimum wage. An awful lot of folks working for minimum wage are women. They are women with children. They are working minimum-wage jobs, most often without insurance. They are paying for daycare. They are wanting to work and yet finding themselves in a situation that, no matter how hard they try, working 40, 50, 60 hours, they just can't make it because the minimum wage has not kept up.

So it is very concerning that we have seen a continual effort to block a simple $1.50 increase in the minimum wage for 7 million people living in the United States of America, who work hard and play by the rules and assume that if they do that, they will be able to succeed and care for their families. Seven million people need our help today with a $1.50 increase in the minimum wage.

Thirty-seven percent of those folks right now are seeking emergency food aid, and they are working. They are working, and yet they cannot make it and are having to ask for food assistance. So we over and again have asked for the support of our colleagues on the other side of the aisle to address those 7 million individuals who work hard every day and believe in America and want to be able to be successful.

So I am very hopeful that we will be able to do that.

UNANIMOUS CONSENT REQUEST—S. 224

At this time, I ask unanimous consent that the Senate now return to legislative session and proceed to the consideration of Calendar No. 3, S. 224, the bill to increase the minimum wage; that the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

Mr. SMITH. Mr. President, I would ask that the Senator modify her request so that just prior to proceeding as requested, the three cloture votes would be vitiated, and the Senate would then immediately proceed to three consecutive votes on the confirmation of the nominations, with no intervening action or debate.

Ms. STABENOW. Mr. President, I would object.

The PRESIDING OFFICER. The Senator will not modify her request?

Ms. STABENOW. No.

Mr. SMITH. I would object.

The PRESIDING OFFICER. The objection is heard.

Ms. STABENOW. Mr. President, I am going to turn in a moment to my esteemed colleague from Connecticut who has been in this Chamber time and again, not only addressing the issue that brought us here but other issues as well. He is someone who has been fighting for those good-paying jobs. He is a consensus builder and problem solver and somebody who knows how to get things done. I am very grateful to be sharing this time with him today because of the wonderful leadership he brings to the Senate and the way in which his work has touched so many lives of people in Michigan as well as across the country.

In conclusion, I end as I started by saying what we do around here always relates to values and priorities. I hope we will choose to focus our time and attention on those things that affect the most people in our country, those things that are best to move our country forward and to keep the economic engine moving forward for all of us, that will at the end of the day allow us to say that what we did on the Senate floor today gave people an opportunity to work hard and create a better life for themselves and their families.

We are losing the manufacturing sector in this country. We need a sense of urgency about that. We need to act to give our businesses and employees a level playing field and address those issues that will allow them to keep jobs in this country. I hope as we are debating about 4 people, we will remember 3 million people who are counting on us to act.

I now yield time to my colleague from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, first, I thank my colleague from Michigan not only for her work today but her tremendous contribution in the relatively short time she has been a Member of this body. We thank her immensely for her very balanced and deliberate approach. I thank her particularly for raising the issue she has today.

While the subject matter defined by the majority is the question of judicial nominations, I think the point she has raised, that there are an awful lot of people all across this country who are—while they may be interested from an intellectual standpoint, even some maybe on a more passionate level on the question of judicial nominations, there are a significant number, the overwhelming majority, I think, of people, if asked how they would like to see the Senate of the United States allocate its time and resources, the Senator from Michigan has identified a subject matter that is of far more compelling interest to a larger number of people in this country, the issue of putting people back to work; what has happened to the closure of so many small manufacturing firms all across the United States that have seen their products no longer marketable in this country and elsewhere because of the onslaught of foreign products that have come in through misguided and failed trading agreements we have reached, particularly with the People's Republic of China and elsewhere.

So I thank her. I suspect there are an awful lot of people across this country who appreciated the fact that she took 15 or 20 minutes to talk about the 3 million people who over the last 29 months have lost their jobs in this country and who are sitting there today wondering whether or not they are going to be able to keep that home, whether or not they are going to be able to afford their children going on to college, whether or not if they get sick they will be able to pay for that illness, if they had a job that provided health insurance for them.

So I thank her and I suspect there are an awful lot of people across this country who appreciate immensely her determination to see that those jobs, not just the jobs of some people who were unable to have a vote on the Senate floor to confirm them for a judicial nomination, will be the consideration of this institution.

I must say as well, I appreciate my colleague's kind comments about my efforts as a legislator. I try to take some pride in that. I think my colleagues on the other side know this. I work very hard to maintain my relationships with every Member. Regardless of what battle may ensue today, tomorrow is a new day and I always reach across the aisle wherever I can because I have never seen an issue in my 24 years here that had any value and merit be accomplished without it being bipartisan, ever. I defy any Member to mention a single issue of any significance that was ever adopted by this body that was not bipartisan in nature.

When we lose our ability to do that, we not only suffer as an institution but the people we seek to represent suffer terribly. So it is critically important that we make those efforts.

I have spent a lot of time over this last number of weeks trying to get something done on asbestos reform. My colleague from Michigan and my colleague from Oregon know of the efforts we made in this regard. It is terribly worrying to me that we are about to end this session. We have 700,000 lawsuits that have been filed for people who were exposed or could get ill from exposure to asbestos. Seventy thousand cases are being filed a year. There are major companies that have gone bankrupt because of the problems with exposure and the liabilities as a result of the asbestos issue. I would have hoped, maybe vainly, that we might spend some time on an issue such as that, candidly. I noticed to my colleagues the other day that while I voted against cloture on the class action reform issue, I immediately took the floor to say I am very interested in a class action reform bill and I am prepared to support one. There were issues that needed to be worked out.

I know there are businesses all across this country that would like very much to see us address the issue of class action reform. There is nothing like 30 hours' worth of debate on class action reform. There will be no 30 hours of debate on asbestos issues here, unfortunately.

So I say with all due respect—and I do respect my colleagues, all of them—that it is a reflection to some degree of what your sense of priorities is. There are a lot of issues that deserve attention, but I would ask any average American to identify for me, when given the choices to debate, whether or not we ought to do something about class action reform, something about asbestos legislation, something about joblessness, something about Medicare reform, prescription drug benefits. I have seen nothing even remotely close to 30 hours of debate in this Chamber on any of those issues at all—none, absolutely none.

So while we in the minority cannot set the agenda, the power of the majority is the power to be recognized, and the power to be recognized means you set the agenda. Even though our ranks are only separated by two Members, the division of two Members makes it possible for the majority to decide what this Chamber will do, what this institution does, on a daily basis, on an hourly basis.

The majority, in their judgment, have decided that this issue, the issue involving four judicial nominations, is far more important than anything else on which this Congress, this session, with hours away from terminating it, should spend its time and efforts.

I do not disagree that this is an important issue. I think it is an important issue, particularly where we may be asked to vote on changing the rules of the Senate to either eliminate or virtually eliminate the right to filibuster judicial nominations. That is a profound question, and I just regret that it ends up being debated at 2, 3, 4, and 5 o'clock in the morning and not something that ought to consume a serious debate in this Chamber as to the wisdom of such a potential move. I am not sure that amendment is going to be offered, or that idea will be suggested to us by tomorrow, but I have been told it will. I will come to that in a minute.

I do think it is important that people wonder whether or not this body, or politics or Congress, ever gets it. One of the questions we all face from time to time when we conduct our town meetings is: Do you have any idea, Senator, what it is like to raise a family today, with all the pressures we are under? Do any of you in Congress—I do not care whether you are Democrats or Republicans—do you have any idea what we are going through out here?

When we conduct 30 hours of debate about four judicial nominations, I sometimes think that question has a lot of merit, unfortunately.

So I wish we were spending some more time on some of these other issues. Maybe we will get to them. Hope springs eternal, and I will keep trying to work on it. I have been asked to come and spend some time to protect our interests on the floor and so I will utilize some time, as I did last night, to talk about the issue at hand.

I am terribly disappointed that we are spending the time of this institution on something such as this when we need to be spending our time, what little time we have, on so many other questions, that so many people in this country want to see us address and try to come up with some answer for. They know it is difficult.

Look, what we love about this institution is also what galls us the most about it. The beauty of the Senate is not only the manner in which we do things but also the frustrations that are evoked as a result of how we do things. Had the Founders of this great Republic sought efficiencies, they never ever would have set up this system. The last system you would ever set up, if you were trying to get the job done expeditiously, is the one we have lived with for 217 years. This is a terribly frustrating system. It will drive you to madness watching it happen, particularly this institution of the Senate.

When the Framers were debating the existence of a legislative branch—in fact, the idea was pretty much to have a unicameral system I think in the early discussions: One house, simple majority rules. I sit in the seat of a man by the name of Roger Sherman, from the State of Connecticut, who was one of those Framers of the Constitution, the only one of the Framers, by the way, to ever have signed all four of the cornerstone documents of the United States. He signed the Articles of Confederation, the Declaration of Independence, the Constitution of the United States, and the Bill of Rights. I am very proud to sit in his seat in the Senate, after 217 years.

In that Constitutional Convention, it was Roger Sherman, my forbearer in this job, who suggested, along with Oliver Ellsworth from Connecticut as well, the creation of a separate body in the Congress of the United States that we have come to know as the Senate.

The argument was about small States and large States. The fear was, for people who came from smaller States, that in the House of Representatives, since it would be determined by population, large States by population would so dominate the Congress of the United States that those who lived in smaller States would be overwhelmed. They were about to vote against the Constitution when Sherman and Ellsworth came up with the idea of a Senate, where every State, regardless of size, would have equal representation—two Senators from every State.

My colleague from New Hampshire and I from Connecticut, small States, we have two Senators; my colleague from Michigan, a large State, and from California, two Senators. It is a rather beautiful system in a way. They went beyond the idea of just small States and large States. The seed of the notion that there ought to be a place where the rights of a minority get protected was also included in this concept.

In the House of Representatives, in which I had the privilege of serving for 6 years before coming to this body 24 years ago, the majority rules. If you are in the minority in the House—I do not know if my colleague from New Hampshire ever served in the minority in the House, but I certainly did not; I was always in the majority there—being in the minority in the House is painful because it can roll right through you. What the majority wants to do happens. That is it.

In this body, the idea was to create a place where the minority interests, including a minority of one, would have rights that you would never get in the House of Representatives. Hence the right of one Senator, if they stand up and can stand long enough and do not leave the floor, to have the right not to be interrupted, extended debate; the right to amend. It has been a wonderful balance. The rights of a majority are down the hall. The rights of a minority are here in this Chamber. We have tried over the years to see to it that those unique rights give us a sense of balance, what one of the Framers called the saucer—the Senate—in which the passions would cool, because the tyranny of a majority can be overwhelming. So the Senate was a place to say let's stop, let's take a look, let's think again about whether or not this is the right way to go.

Now, if we go back and look at the genesis of the thought process that was involved in the creation of the Constitution in this Republic, a unique event in the history of mankind, certainly they had been through an experience where a king had been overbearing. Remember, two-thirds of the population of this country in 1776 was not terribly enthusiastic about a revolution. Only about a third of the population thought that was necessary. As the tyranny of a king grew larger and people's rights were being deprived, taxations levied without their ability to be heard, they decided: We need to move away from that.

So as this system evolved and a discussion of what it would look like, the last thing the Founders wanted to do was create an executive without some checks and balances on it, an unlimited tyranny of an executive. In fact, as I pointed out last night, there is ample evidence, of course, that when it came to judicial nominations, the Framers did not want to give the right to nominate to the President. It was only an afterthought that said, on judicial nominations, they ought to go to the President, and then the Senate would provide its advice and consent.

I carry with me every day a copy of the U.S. Constitution. It was given to me by my seatmate ROBERT C. BYRD many years ago. It is a rather worn-out copy of this wonderful document, but I carry it with me 7 days a week. I read it constantly. As I get older, my appreciation for the wisdom of these people grows deeper.

It is very clear article III of the Constitution lays out judicial power, the judicial part of it. It says that people are appointed to the courts, supreme and inferior courts, and they will serve for life, during good behavior for life. It is unique. It is the only office in the country where one gets a lifetime appointment. The President does not. Members of Congress do not. A Federal judge gets a lifetime appointment. If you are appointed when you are 35 years of age and you live to be 85—50 years—unless you do something terribly wrong, you are there; you are not going anywhere.

Of course, in article II, they lay out in section 2: He—speaking of the President—shall have the power, by and with the advice and consent of the United States Senate, to make treaties, and so forth. It goes on. And by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers, and so forth, judges of the Supreme Court, and all other officers of the United States.

Does anyone really believe for a single moment that the Framers of this unique document intended that the President, the executive branch, would appoint and that it was then the duty of this body to just rubberstamp that choice? Of course not. In fact, they did not even want to give him the power to appoint to begin with because they were uneasy about someone having too much power in their own hands.

I suspect our predecessors probably had in mind what some of the more recent predecessors did with postmasterships.

I remember my father talking about the postmastership appointment. He used to say that this was a dreadful idea, to give Senators the right to appoint postmasters, because he said inevitably you would have about 100 applicants for the job. Of course, once they were confirmed, they could never get involved in politics again. So he used to say you would end up with 99 enemies who did not get the job and 1 ingrate who did who could never talk to you again.

I suspect that may have been true as well about Federal judgeships, that our colleagues in the Senate, in the earliest days, probably said: Look, we do not want the business of having to nominate these guys because inevitably we are going to pick someone and the other guys are people who are going to be upset with us. So why do we not give that to the President, let him appoint them, and then we will decide whether or not they deserve to be confirmed.

The notion somehow that one has a constitutional right to a vote—I have read this document; I read it every day—there is nowhere in this document one gets a constitutional right to a vote on anything, any more than the American people have a right to a constitutional vote on the minimum wage or on Medicare reform or any other matter I want to bring up. There is no constitutional right to that. There is certainly no constitutional right that if one gets nominated to be a judge, they have a constitutional right to be voted on. Nowhere does the Constitution give someone that, in any area whatsoever.

The idea somehow that we would only apply a filibuster to legislative matters and not judicial nominations, so one can filibuster a sense-of-the-Senate resolution——

The PRESIDING OFFICER. The time of the Senator has expired. The Senator's half hour is up.

Mr. DODD. I thank the Chair very much. I apologize to my colleagues for going a little bit. I appreciate the indulgence of the Chair.

The PRESIDING OFFICER. Does the Senator from Alabama seek recognition?

Mr. SESSIONS. Mr. President, the Senator from Alaska is prepared to speak.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Ms. MURKOWSKI. Mr. President, I thank the Senator from Alabama for this opportunity.

I join today with my colleagues in the Senate to address the judicial confirmation process and really the procedural quagmire in which we find this body right now. I take very seriously my obligation under the Constitution to provide the advice and consent to the judicial nominations of individuals who are nominated by the President to serve on the Federal bench. I have heard repeatedly over the hours the term "rubberstamp," there is a rubberstamp approval. Those on my side of the aisle would automatically take the President's nominees. I do not take part of my job to mean that my vote is intended to be a rubberstamp of approval for the President's nominations to these critical judicial positions.

I am frustrated that after serving in the Senate for almost a year, and contrary to what some Members may assert, the Senate has not been permitted to vote up or down on the merits, on the qualifications of the individuals who are embroiled in this current dispute. Rather, we have been prevented, I have been prevented as a Member of the Senate, as an individual, from voting for or against a nomination by a legislative procedure, legislative procedural rules unique to this body.

We are engaged in the Senate in a historic session for not quite 24 hours, during which time we have heard about the nomination process, the qualifications of certain individuals to be Federal judges, the need for jobs, unemployment issues—a variety of compelling, interesting significant issues. I bring to this debate this afternoon a new issue and explain why legislation I have proposed, along with several other colleagues of the Senate, to split the Ninth Circuit Court of Appeals, why this is relevant and important to the debate today.

The Senate has debated the qualifications and character of specific individuals to serve on the Ninth Circuit. As some would argue, by invoking the Senate procedures to filibuster the current judicial nominations, those on the other side of the aisle are simply trying to ensure the balance or the mainstream ideology on the U.S. court of appeals.

But there is little doubt in my mind they seek to maintain what I perceive to be philosophical bias on the Ninth Circuit Court of Appeals. For those looking for circuit courts whose actions may raise concerns about ideology and balance, I suggest my colleagues take a close look at the U.S. Court of Appeals for the Ninth Circuit. In the makeup of who is currently serving on the Ninth Circuit, the court currently has 9 judges appointed by Republican Presidents and 17 judges appointed by Democrat Presidents. I will put the Ninth Circuit record into a historical precedent, a recent historical precedent.

During the United States Supreme Court October 1996 term, the Supreme Court found it necessary to review 28 cases decided by the Ninth Circuit. These cases from the Ninth Circuit made up approximately one-third of the Supreme Court docket despite the fact that the Supreme Court has jurisdiction over 11 other Federal circuits and over Federal questions decided in courts of all 50 states.

Of those 28 Ninth Circuit cases back in 1996, the Supreme Court reversed 27. Some could argue this reversal rate is simply the impact of a more conservative Supreme Court disagreeing with the Ninth Circuit on close questions. However, most of the reversals were unanimous. In fact, six were summary reversals. The Supreme Court did not even ask for briefing or oral arguments. The Supreme Court simply reversed the Ninth Circuit on the basis of the petition for certiorari. This lopsided reversal rate has since continued since that 1996 term.

As we compare other circuit court reversal rates, it is helpful because it puts the Ninth Circuit into a context and helps us review the balance.

In 1997, of those cases decided by the Supreme Court in a full opinion, the Supreme Court reversed or vacated four cases from the DC Circuit cases and affirmed five. Balance that against the Ninth Circuit, where in that same year the Supreme Court affirmed 3 cases from the Ninth Circuit and reversed or vacated 14.

Let's go to 1998. The Supreme Court affirmed one case from the DC Circuit, vacated one case, and reversed no DC Circuit case. In comparison to the Ninth Circuit, in 1998 the Ninth Circuit was affirmed 4 times and reversed or vacated 14 times.

1999, the Supreme Court affirmed three DC district cases and reversed or vacated no cases from that court.

In 1999, the Ninth Circuit in comparison was reversed or vacated 9 times that year and affirmed only once.

In 2000, the DC Circuit was reversed once and only had one case from that court to go up to the Supreme Court that year. The Ninth Circuit was affirmed 4 times, and in the year 2000 reversed or vacated 13 times.

Over the last 3 years, one-third of all cases reversed by the Supreme Court came from the Ninth Circuit, the circuit that my State is part of. That is 3 times the number of reversals for the next nearest circuit, and a 33 times higher reversal rate than the Tenth Circuit.

I suggest these statistics are astounding in their proportion. One of the reasons the Ninth Circuit is reversed so often is it has become too large and too unwieldy. It is a simple fact. The circuit serves a population of more than 54 million people, almost 60 percent more than served by the next largest circuit. By the year 2010, the Census Bureau estimates that the Ninth Circuit will preside over a population of more than 63 million people. According to the Administrative office of the United States Courts, the Ninth Circuit alone accounts for more than 60 percent of all appeals pending for more than a year. The shear magnitude of cases brought before the court explains why it takes nearly 50 percent longer than the national average, almost 1 year and 4 months, to get a final disposition of a case in the Ninth Circuit. It takes 5 months longer to resolve a case in the Ninth Circuit than the national average for a court of appeals, and the delay increased by a full month in 2003 compared to the time it took in the year 2001. Talk about justice delayed, this is it here in the Ninth Circuit.

With such a huge caseload, the judges cannot possibly have the opportunity to keep up with the decisions within the circuit, let alone track decisions made in other circuits. I suggest that now is not the time to have vacancies on the bench in the Ninth Circuit.

One of the individuals who is the subject of these 30 hours, Carolyn Kuhl, has been waiting for an up-or-down vote to the Ninth Circuit since June 22, 2001. There are many who believe the U.S. Court of Appeals, the Ninth Circuit, is out of touch with the mainstream. This is part of the reason that I support splitting the Ninth Circuit and part of the reason the Senate must complete the pending nominations.

We only need to look back to March of this year when the Ninth Circuit decided that the Pledge of Allegiance was unconstitutional. Talk about a very graphic example of the Ninth Circuit being out of touch with mainstream America. The Senate, by a 94–0 vote, went on record expressing unanimous opposition to the Ninth Circuit decision in Elk Grove Unified School District. The U.S. Supreme Court shortly thereafter granted certiorari and briefs to be filed before the end of the year.

Another part of the problem with the Ninth Circuit is it is never able to speak with one voice. All other courts have one entity to hear full court en banc cases. The Ninth Circuit sits in panels of 11. This system injects unnecessary arbitrariness to decisions. In an en banc decision, a case is decided 6 to 5. There is no reason to think it could actually represent the views of the majority of 24 active members of the bench. In fact, there are some commentators who have suggested that a majority of the 24 members of the Ninth Circuit may have disagreed with the pledge decision. But there was a concern that a random pick of 11 members of that circuit to hear the case en banc might have resulted in the decision being affirmed.

The time has come to fill the vacancies in the Ninth Circuit and to enact legislation to split the circuit. We have heard again many times in the Senate over the course of these hours: Justice delayed is justice denied. That is most certainly happening in the Ninth Circuit. That is happening to the individuals who are pending before the Senate seeking confirmation of their judicial appointments. Filling the current vacancies would decrease the time it takes to resolve cases and would therefore provide better administration of justice.

I see the Senator from Ohio is in the Senate, and I know he was to have a share of our side's time.

Mr. SESSIONS. What is the time situation?

The PRESIDING OFFICER. The majority controls 17 minutes and the minority controls 30 minutes allocated.

Mr. SESSIONS. I yield to the Senator from Ohio for 10 minutes or so.

Mr. VOINOVICH. How much time remains?

The PRESIDING OFFICER. There are 16½ minutes.

Mr. VOINOVICH. Mr. President, today I rise to talk about this body's treatment of President Bush's judicial nominations. This is not the first time I have been forced to come to the floor to protest this treatment, but I hope it will be the last.

Over the past few years we have seen highly qualified nominees wait sometimes two years before their nomination reaches the floor of the Senate, only to see their records and reputations vilified for political purposes in the interim or to watch as cloture vote after cloture vote fails.

And where has this filibustering and posturing gotten us?

I want to underscore that one might question spending 30 hours on the issue of the Democrats using the filibuster to frustrate the Senate's right to advice and consent on presidential nominees, but we would not be here today if my colleagues across the aisle had not created a constitutional crisis with their use of the filibuster—and have now driven us—in order to protect the Constitution to consider changing the cloture rules of the Senate.

Beyond the constitutional crisis, there is a diminishing of the third branch of Government, the Judiciary, at the hands of the legislative branch that has serious implications for the people of the United States.

We have 12 judicial emergencies on the circuit courts of appeal. The President has done his job, nominating new judges for 11 of the 12 appellate court vacancies. But the Senate has not done its job in confirming these judges.

And there is a cost associated with these vacancies. The American taxpayers spend $5.1 billion for the federal judiciary every year. The American people are paying for fully staffed courts—not for political games. When courts are vacant and cases take longer than they otherwise could, lives are disrupted; businesses can be crippled, and financial resources are drained from the productive economy.

My circuit in particular, the Sixth Circuit, is getting slower and slower as the obstruction continues. It has been plagued by political game-playing by my friends, the Senators from Michigan, who want to control who President Bush appoints to the circuit court vacancies that currently happen to exist in Michigan.

Over the last 2 years, court delays in the already-slow Sixth Circuit have increased by nearly 2 months.

In 2001, it took 28.9 months, that's over 2 years, in the Sixth Circuit for a case to go from original filing in district court to final decision on appeal.

By June, 2003, it took 30.8 months. This 2-month increase difference may seem small, but there are more than 2,000 cases in the Sixth Circuit affected by this growing delay. With 2,000 plus cases being delayed nearly 60 days, more than 120,000 extra days have been spent by both parties waiting for a decision. What a waste of resources.

I would like to draw your attention to a nominee who has faced the harshest of criticism from this body: Charles Pickering. I preface my comments on Judge Pickering, with a brief review of my civil rights record. The utility of this will be important in a few minutes.

I have always been very proud of my record on civil rights. When I was Mayor of Cleveland, we created the first Minority Business Development Center operated by a city. As a result, minority participation in city contracts rose from 1.5 percent to 28 percent in the first 2 years.

As Mayor, we also increased the amount of business the city did with minority and female businesses from less than $1 million per year to more than $90 million/year by 1989.

We recruited and promoted more minority firefighters than any other administration in the city's history. We increased minority hiring on the police force by 63 percent in 5 years.

We successfully defended our fire and police hiring program in a landmark U.S. Supreme Court case that established that prospective race-conscious relief for past discrimination is constitutional.

I also lobbied Congress on behalf of establishing a Martin Luther King Day and made sure, as President of the National League of Cities, that it was properly celebrated across America. I was one of only 2 invited to the inauguration of Martin Luther King Holiday in Atlanta.

As Governor, we established the Governors Challenge Conference, to discuss positive human relations. We established the Disadvantaged Black Male Commission, which helped achieve a 200 percent funding hike for the Commission on African American Males; the Urban Schools Initiative, to improve accountability and performance in Ohio's urban school districts; and the Cleveland Scholarship Program, recently upheld by the U.S. Supreme Court, to give scholarships for low-income families and allow them to send their kids to the school of their choice.

These are just a few of the civil rights initiatives I worked on before coming to the Senate. And yes, I broke ranks with my colleagues on this side of the aisle to support hate crimes legislation, and I have been working with one of my colleagues on the other side of the aisle on racial profiling legislation.

I mention all of this now so that people know that I would not support a nominee such as Charles Pickering if I thought for one minute that he would undo any of the progress we have made in the civil rights area, or if I thought he would treat individuals differently because of the color of their skin.

Judge Pickering has been a leader for equal rights, integration, inclusion and reconciliation in his community, church, political party, and state.

As a county attorney in the 1960's, he worked with the FBI to dismantle, disrupt and prosecute violent members of the Ku Klux Klan. In 1967, he testified against the Imperial Wizard of the KKK for a fire bombing of a civil rights activist in Mississippi. That was not easy in 1967.

In 1976, he hired the first African-American staffer for the Mississippi Republican Party.

In 1981, he successfully represented a black man falsely accused of robbing a 16-year-old white girl.

In 1985, as President of the Mississippi Baptists he presided over the first Convention session addressed by an African-American pastor and the first African-American congregation to join and integrate the Convention.

In 1988, he chaired a race relations committee for Jones County, Mississippi.

In 1991, he worked with his son and son-in-law to integrate his former fraternity at the University of Mississippi. He helped establish and still serves on the Board of the Institute of Racial Reconciliation at the University of Mississippi.

In 2000, he helped establish a group to work with at-risk African-American youth in Laurel, Mississippi.

Mr. President, in examining Judge Pickering's fitness for this judgeship, it is important to not only look at his record, but also his broad base of support from individuals of varying backgrounds and political affiliations.

Judge Pickering has been endorsed by the current president and 17 past presidents of the Mississippi State Bar. He has been endorsed by all major newspapers in Mississippi. He has been endorsed by all statewide elected Democrats and the chairman of the Mississippi Legislative Black Caucus.

James Charles Evers, brother of slain civil rights leader Medgar Evers has said of Judge Pickering:

> As someone who has spent all my adult life fighting for equal treatment of African-Americans, I can tell you with certainty that Charles Pickering has an admirable record on civil rights issues.

Rev. Nathan Jordan, Pastor, St. John United Methodist Church and former President of the Forrest County NAACP:

> Without hesitation, I can truthfully say that Judge Pickering is an extremely fair judge who serves all our citizens. . . . It seemed to me that he pushed very hard to insure the fair treatment of minorities.

Ruben V. Anderson, the first African American Supreme Court Justice in Mississippi and former associate counsel for the NAACP stated:

> I have known Judge Pickering for at least a quarter of a century. At all times I have found him to be an honorable man. . . . Judge Pickering would be an asset to the Fifth Circuit Court of Appeals and I recommend him without reservation.

There is no reason—no reason—as one looks at the qualifications of hundreds of people that this Senate has already confirmed over the years that Charles Pickering should not be sitting on the Fifth Circuit Court of Appeals.

The reason he is not is because my colleagues on the other side of the aisle, for all intents and purposes, have modified the Constitution by filibustering his nomination and denying this man an up or down vote on the floor of the Senate.

It is an outright violation of the advise and consent provision of the Constitution, and all Americans—Democrats and Republicans, liberals and conservatives—should demand that it stops now so that the judicial branch of Government can go about doing the job envisioned for it by the Constitution, and this body can get on with the other business of the people.

This has to end—it has to end—and I prayerfully and respectfully ask my colleagues on the other side of the aisle to cease and desist their obstructionist tactics for the benefit of our Constitution and the people of the United States of America.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, will the Senator yield? He has been talking about the Sixth Circuit and this chart they have been placing in the Chamber.

By the way, Mr. President, what is the time on this side?

The PRESIDING OFFICER. The majority controls an additional 7½ minutes.

Mr. SESSIONS. They have been saying there are four judges being held up. But there are four being held up in the Sixth Circuit.

This is a resolution just passed I believe yesterday by the Michigan State Senate, expressing concern about this. I would just like to read from it. I know the Senator from Ohio was concerned about this circuit. It is his circuit.

They say:

> Whereas, The Senate of the United States is perpetuating an injustice and endangering the well-being of many Americans. Its actions are jeopardizing our system of justice in 6 out of the 12 federal judicial circuits that have been declared "judicial emergencies," including the 6th Circuit Court of Appeals which includes the state of Michigan. . . .

They say:

> Whereas, The Senate of the United States is allowing the continued, intentional obstruction of the judicial nominations of all these nominees put forth by the President of the United States, including four fine Michigan jurists: Judges Henry W. Saad, Susan B. Nielson, David W. McKeague, and Richard A. Griffin, nominated to serve on the United States 6th Circuit Court of Appeals. . . .

I ask the Senator from Ohio, isn't it true that the chart they have been putting up says four judges are being mentioned; it does not include these four judges whom they are also obstructing?

Mr. VOINOVICH. They do not include those four judges who are being obstructed.

Mr. SESSIONS. I will just point out, Mr. President, if the Senator will yield the floor——

Mr. VOINOVICH. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I will just conclude by noting this is a very strong resolution from the Michigan State Senate. They say:

> Resolved by the Senate—

That is the Michigan Senate—

> That we memorialize the United States Senate and Michigan's United States Senators to act to end the filibusters of the federal circuit court nominees pending on the Senate floor, to release those being upheld in the Judiciary Committee of the Senate of the United States, and to vote for the bipartisan Frist-Miller Resolution. . . .

I ask unanimous consent that this resolution be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

> Senator Cropsey offered the following resolution:
>
> SENATE RESOLUTION NO. 199
>
> A resolution to memorialize the United States to end the filibusters of the federal circuit court nominees pending on the Senate floor, to release those being held up in the Judiciary Committee of the Senate of the United States, and to support the reforms of the federal judicial confirmation process, all which will be addressed during 30 hours of floor debate this week.
>
> Whereas the Senate of the United States is perpetuating an injustice and endangering the well-being of many Americans. Its actions are jeopardizing our system of justice in 6 out of the of 12 federal judicial circuits that have been declared "judicial emergencies," including the 6th Circuit Court of Appeals which includes the state of Michigan; and
>
> Whereas the Senate of the United States is allowing the continued, intentional obstruction of the judicial nomination of all these nominees put forth by the President of the United States, including four fine Michigan jurists: Judge Henry W. Saad, Susan B. Nielson, David W. McKeague, and Richard A. Griffin, nominated to serve on the United States 6th Circuit Court of Appeals; and
>
> Whereas there has never been a filibuster on any Court of Appeals nominee in the history of the Senate. This obstruction continues to harm the lives, careers, and families of eminently qualified judicial nominees and is prolonging the judicial emergencies that have compromised the administration of Justice for many of our fellow citizens in Michigan and around the country; and
>
> Whereas both of Michigan's Senators continue to block the Judiciary Committee of the United States Senate from holding hearings regarding these nominees. This refusal and the refusal by many of their colleagues to allow the United States Senate to complete its constitutional obligation of advice and consent is denying all of the nation's filibustered nominees an up or down vote on their nomination. All the while, the severe backlog of cases is growing; and
>
> Whereas the 30 hours of debate on the floor of the Senate of the United States aims to improve our judicial system by attempting to end the filibuster on several nominees, and the blocking of our Michigan 6th Circuit nominees, while instituting necessary reforms in the judicial confirmation process; now, therefore, be it
>
> *Resolved by the Senate*, That we memorialize the United States Senate and Michigan's United States Senators to act to end

the filibusters of the federal circuit court nominees pending on the Senate floor, to release those being upheld in the Judiciary Committee of the Senate of the United States, and to vote for the bipartisan Frist-Miller Resolution (S. Res. 249); and be it further

Resolved, That copies of this resolution be transmitted to Michigan's United States Senators, The Senate Majority Leaders, the President Pro-Tempore of the United States Senate, and the President of the United States.

Mr. SESSIONS. Mr. President, there has been a lot said here. I just want to share a few thoughts. This matter is, at its core, about the rule of law in this country. We have a system that believes judges are here to apply the law as written, they are not here to enforce their rules, their personal political agenda, do what they think is nice in every case.

Clients have rights. If the rights they have protect them from lawsuits, they should be protected. If they are entitled to recover or be successful, they ought to be successful. It is up to the judge to apply the law fairly and objectively.

President Bush has his hand on the heart of the problem. He understands what is wrong with the judiciary in America. He knows it is out of control. He knows we are allowing verdicts to run wild. He knows we have a radical secularization of America that is occurring through the power of the Federal courts. It is not healthy. We have things such as the Pledge of Allegiance being struck down. He knows criminal cases are being tossed over at record rates.

Two judges we confirmed—Berzon and Paez—and I voted to give them an up-or-down vote, and I voted against them on the merits—these two nominees, in separate cases, struck down California's highly effective "three strikes and you are out" law that has helped drive down the crime rates significantly in California. And I say that as a former prosecutor of over 15 years. Absolutely, that has had an impact in the reduction of the crime rate in California. They struck those down as unconstitutional.

Mr. President, 170 death penalty cases have been overturned, as the Senator noted, by this Ninth Circuit, the most liberal circuit in America, and they struck down the Pledge of Allegiance. The U.S. Supreme Court has reversed the Ninth Circuit—in 1 year—in 27 out of 28 cases; in another, 14 out of 17 cases. In fact, the New York Times several years ago, in a news article, said a majority of the Supreme Court considers the Ninth Circuit to be a rogue circuit.

So what we are trying to do is come back to the mainstream. I am shocked that the distinguished Senator from New York, Mr. SCHUMER—who is really the point man on the advocacy of judicial activism in the Senate—I would submit this is what he said in this debate earlier, and I am just shocked by it. No wonder when I came in, I saw Senator SPECTER having his feelings hurt. Senator SCHUMER said:

> No one except a far right militant extreme minority believes that the courts are being obstructed when 168 judges are approved and 4 are not.

So that is not the language of moderation. That is not the language of collegiality. They are accusing Members over here of being far right extremists because they do not agree with the filibuster tactics that are going on here.

In another comment recently, on the Internet site 365Gay.com:

> New York's other Senator, Democrat Chuck Schumer [was quoted as saying he] launched a broadside at conservatives, accusing the President of "loading up the judiciary with right-wingers who want to turn the clock back to the 1980s." Schumer said America is under attack from "the hard right, the mean people," and said "They have this sort of little patina of philosophy but underneath it all is meanness, selfishness and narrow-mindedness."

That hurts my feelings.

Mr. President, these nominees who are here who are being held up are not extreme. Janice Rogers Brown, an African American, who grew up in Alabama under racial discrimination, went to California, got her law degree at UCLA, a single mom, got elected to the Supreme Court of California, not a conservative State. She got 76 percent of the votes. Are these mean-spirited, selfish, narrow-minded people? Not Janice Rogers Brown, if you saw her testify, as I did.

Carolyn Kuhl went to Duke Law School, graduated on the Law Review, clerked with Justice Anthony Kennedy on the Ninth Circuit when he was on the Ninth Circuit, and has served for a number of years on the courts out there and has won bipartisan praise from those courts.

Mr. President, I ask unanimous consent that I be given an additional 3 minutes to be deducted from the majority time in the next section.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SESSIONS. And Priscilla Owen. I guess they claim she is a right-wing, mean-spirited person. Priscilla Owen graduated at the top of her class in law school, made the highest possible score on the Texas bar exam. She was one of the most successful legal practitioners in all of Texas. They asked her to run for the supreme court. She did. She won reelection with 84 percent of the vote and the support of every major newspaper in Texas.

Bill Pryor, the attorney general from Alabama, got 59 percent of the vote in his reelection bid.

These are people out of the mainstream of this country, right-wing extremists? No, sir. The values this country holds dear with regard to the legal system, that were bequeathed to us from the English tradition, need to be cherished and protected and valued. America understands this. Mainstream America is very troubled by courts that do not adhere to the traditions of how to interpret law in America. They do not believe judges are entitled to reinterpret the meaning of words and statutes, and in our Constitution to legitimate the perpetuation of a political agenda.

That is what it is all about. President Bush understands that. The American people understand that. That is mainstream. The kind of allegations we have had here against these fine nominees is not mainstream. It is typical of the hard left that comes from the People for the American Way, the American Civil Liberties Union, and those kinds of groups.

Mr. President, I feel really strongly about it. I believe the majority acted responsibly during the Clinton years. We did not maintain a filibuster against Clinton judges, as has been done now for the first time in history. That is what is occurring today, a filibuster, systematically, of a number of highly qualified judges for whom there is no basis to object on the merits.

I yield the floor and I reserve the remainder of the time.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I have been in the Senate now 15 years, and I must say I never experienced what will be 30 hours, when this debate ends at around midnight tonight, that I thought were as off point and, in many ways, as not relevant to what we are talking about here—which is Federal judgeships in our country—as this debate has been.

In my judgment, that is because our colleagues on the other side of the aisle have not wanted to deal with the facts and have wanted to, instead, try to create impressions which are not true. Because the fact is—and it has been said now on many occasions and many times since this debate started last night—the President and the committee have sent to the floor 172 nominees since he came into office, and we have voted out 168 of them positively, and 4 have been held up.

So how can anybody claim that in fact there is a conspiracy to deny those nominees sent up by the President a vote? Mr. President, 168 have been voted on and are now sitting in their Federal judgeships, and 4 have been held up.

Furthermore, the vacancy rate at the Federal judgeship level is less than 5 percent. In other words, over 95 percent of all the Federal judgeships in this country are now presently occupied. When you have a vacancy rate of less than 5 percent, how can anybody make the argument that there is something sinister going on?

Just a minute ago, my colleague from Alaska suggested that in the Ninth Circuit, because of the vacancies, apparently, justice delayed is justice denied. That phrase has been used time and again to suggest that perhaps a third or a half of all of the Federal judgeships in this country today are vacant. Again, I repeat, it is less than 5 percent. It is at its lowest point since 1985 in terms of vacancies.

Now, on the Ninth Circuit, which was referred to by my colleague from Alaska, there are 25 circuit court judges who are supposed to be sitting, and there are but 2 vacancies at the present time. So how can we make the argument that justice delayed is justice denied because there are "so many vacancies on the Federal judiciary"? It simply is not true.

So what is the argument about? What are we spending these 30 hours on? To suggest that the Democrats are holding up the Federal judiciary by some vast conspiracy which, in fact, the numbers do not suggest in any way to be true?

In fact, when President Bush took office, we did have a vacancy rate of about 12 percent, and now it is down, as I said, to less than 5 percent, which is at its lowest point since 1985.

So to my colleagues on the other side of the aisle, what is the point? Why are we spending 30 hours debating an issue which, in fact, is not an issue? If we want to debate ideology, that is an entirely different story. But that is not what this 30-hour debate is all about. It is about the assertion made by the other side that the Democrats are preventing our Federal judiciary from doing its job by decimating Federal judgeships all over the country.

As I pointed out here, in the most clear manner, in an arithmetic way, the argument in no way has any merit. So I wish we could move on and talk about the things that are really important to the American people today, on which they are looking to us for leadership: Our economy, our deficit, our unemployment rate, our health care crisis, our educational crisis, the problems men and women who are leading their regular lives every day face and on which they are looking to the Federal Government for at least some help and assistance.

They are not all hot and bothered about the fact that 4.5 percent or 5 percent of the Federal judgeships in this country are today vacant, which is to say that over 95 percent are occupied. They are not concerned about that. They are concerned about their real problems and what we are doing to try to alleviate them. And here we are, taking 30 hours and, in my opinion, just wasting it in talking about a problem which the other side alleges exists and does not exist.

Finally, when President Clinton was in office, and the Republicans controlled the Senate from 1995 to the year 2000, nominees were also denied votes in that era. They were denied votes because they were not given hearings by the Republican Judiciary Committee. So they were denied their vote in much the same way that some are being denied a vote right now. That is the way the process works. There is nothing sinister about it, and it certainly does not cripple our country's judicial system.

My colleague from New Jersey is, I believe, waiting to speak.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I thank my friend from Wisconsin, Mr. President, and I was very interested in what he had to say. I thought it was right on the mark.

The fact is, this is a clear example of misplaced priorities, those of the Republican leadership and the White House. It is hard to understand why there is such outrage on the other side of the aisle about these four people being denied a spot on the Federal bench.

If they are worried—and I heard it requested here: Give these people a break. Be fair with them.

They are worried about these four people being denied their opportunity, but there is an expense to putting them on the bench that is going to be felt by Americans across this country.

What about the 3 million people who are denied jobs? What about the millions of jobless being denied unemployment benefits? What about the White House's attempt to deny millions of workers their overtime pay? What about lower income, working Americans being denied an increase in the minimum wage? What about the millions of women being denied their right to reproductive freedom by nine men surrounding the President when he signed the new anti-choice law? They took away a woman's right to make a decision, in concert with their doctor, about their health because these nine men—the male oligarchy—decided that it was appropriate that they take away a woman's rights.

There was not one woman on the floor to defend that decision. Not one woman spoke about it. Not one woman in this picture or even in the other picture that was shown in the top newspapers across the country. Not one woman, but they are making decisions about women.

I said the other day on the Senate floor, and I repeat it, I have three daughters, and I respect their judgment about how they ought to conduct their pregnancies and how they ought to live their lives to make sure they are healthy to take care of the nine grandchildren I have been blessed with, and not run any risk—my middle daughter is on her fourth pregnancy right now—not to run any risk that anything was amiss with her health that she couldn't take care of her three children.

What about the administration's attempts to deny our troops their imminent danger pay?

I just came from Walter Reed Hospital with other Senators, and I met a couple of people there. One was a young double amputee from Rockland, MA. He was in Iraq 3 weeks. He has no hands. Part of one arm is still in place. Most of the other arm is missing. It is a tragedy.

My guess is he was somewhere in his early twenties. He had been a member of the National Guard a few months and was called up from Rockland, MA.

By the way, two of our Senators—one former and one present, amputees themselves; one with three limbs missing—went to Walter Reed to console this young man and encourage his spirit and his belief that life can be functional. Senator Cleland, now out of office, and Senator INOUYE with an arm missing that he lost in southern Italy, went to cheer up this young man.

What about them? We are using time here to talk about these choices when they are not choices. They are not qualified by the judgment of many. But why carry on this battle? Why this stick in the eye to the public at large when there are so many other issues about which to talk?

I had a chance to be on TV this morning with one of our Republican colleagues. We talked about what was going on. He said: We are not losing any time. My duty was at 5 o'clock in the morning. What time did we lose? It occurred to me, what a foolish response. If it is important enough to be here at 5 o'clock in the morning, then why isn't it important enough for us to be taking care of what we have to in Iraq and getting those kids home and making sure we get as many allies as we can to pick up this burden we have and share it.

Why can't we talk about that at 2 o'clock in the morning or 3 o'clock in the morning or 4 o'clock in the morning? I don't get it. Why can't we talk about 3 million jobs lost and talk about a way to adjust that situation—jobs lost.

What about the administration denying photographers the right to honor our fallen heroes coming back in flag-draped coffins? When do we say the public doesn't have a right to honor them and remember that these people gave their lives on behalf of our country? Why is that not permitted? Why is it so obscure? We can't see them. They don't show the people what has really happened in the war. Maybe they won't think it is such a bad idea that we don't have the kind of partnership we ought to have over there fighting the battle.

On Monday, I went to a funeral in Newark, NJ, of a young man named Joel Perez. He was a sergeant. He was on the Chinook helicopter, as was the man we visited this morning. There are bones broken all over his body, but he is glad to be alive. He is very happy to be alive. He knows what happened to the 16 others. They lost their lives.

Since May 1, the President has found time for 36 fundraisers. How many families did he visit to console, to tell them he is sorry and acknowledge their bravery in serving? No, the debate is on four judge nominees. What do the American people think about that?

Look at the majority leader's own Web site. He said he did a poll. The poll said: Should the President's nominees to the Federal bench be allowed an up-or-down vote on confirmation as specified in the Constitution?

First error, "as specified in the Constitution." I will talk about that in a minute. The poll answers came in: 60 percent said no, the President's nominees to the Federal bench ought not be allowed an up-or-down vote if the opposition doesn't want to give it to them—60 percent. But they quickly changed this Web site because they didn't like the answer they got. So they changed it to a more mealy-mouth kind of thing: Should we do it or shouldn't we do it? The Constitution says "advise and consent." It doesn't say consent and then advise, which is what they would like to see us do here. They would like to see us go ahead and say: Mr. President, that is what you asked for; that is what we are giving you. No, our responsibility in the minority and in the majority is to stand up for what we believe and what the people who sent us here want us to say, and if they don't want us to say it, then they will reject it at the appropriate time.

This Senate spending 30 hours to talk about four judicious—judicial; they are not judicious at all—judicial nominees? Meanwhile, 3 million have lost their jobs since this President took office.

I ask my colleagues to listen closely to this fact. In the private sector, two Americans have lost their jobs every minute that George W. Bush has been President. Two families without an income; two families where there may be some humiliation about an inability to go to work.

I remember my late father who finally, in the desperate days of the Depression, had to take a job with the WPA. He was embarrassed about doing it because it looked like welfare. It was a job. The Government had created jobs. He was humiliated having to take that job, but he did it because he wanted to provide for me, my mother, and my little sister. He had to do it.

What about those 3 million people? What are we doing to help them go to work? The latest survey shows there are a total of 8.8 million Americans currently unemployed; 3 million have lost their jobs since this administration took office; and the reality is this administration doesn't have a jobs plan. Not surprising. It has a bad record on jobs.

Let's look at this chart of the last 80 years. It shows jobs gained or lost during administrations, in the millions. We have two administrations identified in red. By the way, those in green were Harding, Coolidge, Roosevelt, Truman—a variety. None of them, except President Herbert Hoover and George W. Bush, have lost jobs during their administrations. It is a sad commentary.

The chart shows actual jobs gained or lost in the millions, and here we see there are 3 million lost.

The two blobs on this chart are the administrations of Herbert Hoover and the current administration. When we look at this chart, there are only two administrations in the last 80 years that have resulted in a net job loss: this administration and Herbert Hoover's administration. I don't remember thinking about it during Hoover's time, but I was there at the time. I knew it was a disaster in my house.

I would think the Bush administration doesn't enjoy sharing this kind of company, but the inaction of this administration on this issue makes me wonder if they understand the damage they are causing to the economy and families across the country. But we are taking 30 hours of time. The 30 hours don't belong to us. They belong to the people of the country. It belongs to our constituents.

Taking 30 hours of the time of the Senate not to pass a jobs creation bill, not to pass incentives for companies to continue manufacturing in the United States, not to extend the unemployment benefits for people victimized by this economy—none of that. We are here to discuss a couple of extremist judicial nominees the President wants to force down our throats.

President George W. Bush presented himself in the beginning days of his campaign and in the early days of his administration as being a uniter, not a divider, except that is far from the truth. I have never seen a more ideologically partisan White House, and I served with Ronald Reagan when he was President. I served with George Bush, Sr., when he was President. I served with President Bill Clinton. I have never seen a more ideologically partisan White House. This administration and my colleagues across the aisle are driven ideologically to the point that I think there is kind of an impaired vision to the simple, clear, and irrefutable facts.

The Senator from Wisconsin said it. As of today, the Senate has confirmed 168 judicial nominees recommended by President Bush and blocked 4 in 3 years. President George W. Bush has gained more confirmations than President Reagan did in his first full term. Mr. President, 168 confirmed judicial nominees is particularly impressive because 100 nominees were confirmed when Democrats still controlled the Senate in the last Congress. We did our share, and we will continue to do our share, but we will not let the judicial system and the citizens of this country be taken advantage of, not if we can help it.

This is a 98-percent rate of confirmation for President Bush's judicial nominees. That is an impressive rate. As I said before, the Constitution says that the Senate must advise and consent, not consent and then advise, which is what we would like to see happen here. It is the Senate's job to put a check on the President's appointments. If it were not, then the Founding Fathers would not have written the consent requirement into the Constitution.

I think it is instructive to look back at the treatment of President Clinton's judges by the Senate. During the Clinton administration, 248 Clinton judicial nominees were confirmed, and 63 were blocked from getting votes. That is 20 percent of all President Clinton's nominees, and now there are complaints from the other side because President Bush is not getting just 2 percent of his choices.

During the Clinton administration, Republicans placed secret holds on judicial and executive nominees preventing many fine Americans from even having a hearing in the Senate Judiciary Committee.

The Senator from Wisconsin is on the Judiciary Committee. He knows and everybody in this room knows that you don't have to have a talkathon to kill nominees. All you have to do is just not bring it before the committee, or if they go before the committee, not bring them before the Senate. That is the control of the majority.

We did it differently when we were in charge. We processed most of the administration's recommendations.

In total, 63 Clinton judicial nominees and more than 2,200 Clinton executive nominees were defeated by delay or no votes. These numbers are unchallengeable. We see it here: Clinton nominees from 1995 to 2000, number confirmed, 248; nominees blocked, 63, 20 percent of the total. Of the Bush nominees, we processed 168; nominees blocked, 4; total, 2 percent. That is what is happening. And now to have this circus taking place with the crocodile tears about how we treated these nominees, and not one word about how we are treating the public. No, no.

Mr. SESSIONS. Will the Senator yield for a question?

Mr. LAUTENBERG. No, I would like to finish, Mr. President. I am sorry. At such time as the floor shifts hands, I will be happy to answer any questions.

The fact is, Democrats have used the filibuster only to block nominees with records of extremism. Americans deserve an independent judiciary with fair judges who will enforce their rights and uphold the law. Republicans want Democrats to blindly confirm result-oriented, agenda-driven judges whose rules of judicial interpretation change to meet their ideological agenda.

It is pretty obvious, I guess, to the American people, we are not consenting. That is the choice and the right that the Founding Fathers gave us as Senators. I am not about to give up that right.

I ask the Chair, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from New Jersey has 4½ minutes remaining.

Mr. REID. Will the Senator yield for a question?

Mr. LAUTENBERG. I will.

Mr. REID. Through the Chair to the distinguished Senator from New Jersey, I ask my friend, we have spent—how many hours it has been since last night at 6 o'clock—talking about four people. I am sure the State of New Jersey, like the State of Nevada, and all 48 other States, has people who are unemployed. New Jersey is a very heavily populated State. Does the Senator from New Jersey think the people in New Jersey would care about our dealing with, for example, unemployment insurance where during the last 3 years we have lost 3 million jobs, or does the Senator think they would like to talk about some way to get jobs for the more than 9 million people who are unemployed in this country?

Would the people in New Jersey rather we be doing that or what we are doing now?

Mr. LAUTENBERG. I say to my friend from Nevada, I hear two principal concerns from the people in New Jersey: One, jobs; having to get to work because not only is it the deprivation of funds and the shortage of being able to afford, many times, the necessities, but it is the humiliation of not being able to provide for your family. That is what they talk about.

Do you know what else they talk about in New Jersey? They talk about health care. They talk about prescription drugs. People in the senior community—and I happen to fit, thankfully, in that community—are concerned about the prescription drugs they can't get to sustain themselves.

We saw things in the paper today—I read these with great interest—about the successful effects of a drug that is called Lipitor. I am not advertising any medication, but look in the paper and you will see that it has reduced the possibility of heart attack. People want those drugs. We have got to live this long because, A, we were lucky and, B, maybe because we had the right doctors and the right prescription drugs to keep us going. So that is what they think about.

I have yet to have a call, that I am aware of, that said: Senator, for crying out loud, pass those four judges and, by the way, I am jobless, in case you should think about it; or: Pass those four judges and do not worry about the environment because we can stand some more toxic waste in our skies or on our ground. No, do not worry about those things. Senator, you just take care of getting those four people the job that the President and the Republican Party want them to have.

To answer the question the Senator from Nevada asked—and I am reminded about this constantly—3½ million people, since January 2001, have lost their jobs in manufacturing. It also breaks the economic structure that we desperately need. We need manufacturing jobs because those are decent-paying jobs. One does not have to have a college education there, or a master's degree, or anything like that for most of those jobs. It is for the people who want to go to work who have not had the advantage of getting the extended education.

That is what they want us to talk about. They want us to talk about what is happening: Where are these jobs going that are leaving our shores? What should we do about it?

Well, we do not have time for that debate. I have to remember to tell them that when they call up. Sorry, we cannot discuss jobs or prescription drugs, or your kid's schooling. We do not have time for it. We are busy, very busy, and we are under the gun, and that is to get our appropriations bills done and things of that nature. We have to get it done so that we can end this session and we can get back to our communities and talk to our people and do what we have to, to stay in touch. No, we do not have time for that.

The PRESIDING OFFICER (Mr. CRAPO). The time of the minority has expired.

Mr. LAUTENBERG. Mr. President, I reluctantly yield.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, may I inquire how much time now is allotted to the majority side?

The PRESIDING OFFICER. The majority has 27½ minutes.

Mr. CRAIG. Mr. President, I recognize the Senator from Wisconsin is still in the Chamber. Let me say, in all fairness, I was listening from my office to the Senator when he asked how justice delayed is justice denied when the vacancy rate is so low. He also wondered why we are spending time on judges. I think his own words answer the question.

Senator KOHL declared that the judicial confirmation process should not be about politics. In a quote in the CONGRESSIONAL RECORD of 1997, Senator KOHL said: We need these judges both to prosecute and sentence violent criminals and to prevent more backlogs in the civil cases.

I think he also stated it was in our system where judges got blocked and that there was nothing sinister about it.

Let me read a couple more of the Senator's quotes because we have been accused of hypocrisy on this floor and I do not think any of us ought to be accused of that. Different circumstances and different times oftentimes produce less than consistent quotes. My guess is that this Senator has been a bit guilty of that on occasion, too.

In the CONGRESSIONAL RECORD of May of 1997, it says that Senator KOHL urged votes on nominees who had been approved by the Judiciary Committee. Let's breathe life back into the confirmation process, let's vote on these nominees who have already been approved by the Judiciary Committee, and let's see a timetable for future hearings on pending judges. Let's fulfill our constitutional responsibilities. Justice denied demands that that be at a minimum—and so forth and so on. I could read other quotes. My guess is that if we searched the RECORD, I would find quotes by myself.

I come to this debate in probably a slightly different way than some. I am a freshman on the Judiciary Committee. I have spent plenty of time over the last year watching the inner workings of the Senate judicial nomination process. With all due respect to our colleagues on the other side of the aisle, there is an emerging trend in the process that is very disturbing to this freshman Senator on the Judiciary Committee.

I refer to an effort by a select few to legitimize probes into the nominee's personal and political ideology, in addition to the nominee's judicial philosophy. That is, they would have us ask what the nominee thinks about such items as abortion, the death penalty, affirmative action, even though the future job of the nominee has nothing to do with what he or she thinks about these issues and everything to do with how the nominee would apply and enforce constitutional, statutorial, and common law in the cases involving those issues.

Now, that ought to be very clear and it ought to be a clear difference between how one approaches a judicial nominee and how we are now approaching judicial nominees. Those who have mounted this crusade have tried to divert attention from serious constitutional problems this process poses. They have held straw hearings and brought in heavyweight legal scholars to say, of course, a nominee's political ideology should be considered in the nomination process in an effort to pass off. Everybody knows that sort of attitude. But the academic gloss quickly wears off when there is no substance underneath, and they find out this is not a probative debate on judicial philosophy, this is really raw politics of the first instance.

In a 2001 Senate judicial committee hearing, the leading proponent of the personal ideology probe said this: For whatever reason, possibly Senators' fear of being labeled partisan, legitimate concerns of ideological beliefs seem to be driven underground. It is not that we do not consider ideology, we just do not talk about it.

Now you talk about it openly. If you do not have the right ideology, you cannot make it to a vote on the Senate floor. You may be the brightest legal scholar in the country, with an absolutely gold-plated record, but if you do not walk the fine line of political attitude, political philosophy, you do not cut it.

That Senator may truly not know that political ideology is not traditionally the subject of an extensive probe. However, I would submit that the rest of us do know the reason.

Law students—I have never been one—in their first year of law school know the reason. They cannot tell you that when they are called into the class, but a professor makes it very clear that it does not matter what they think about the legal issue at hand but only what the law is on the issue and how they should apply the law. That is what a freshman law student finds out.

From the very beginning, it is not the politics of the issue, it is the law: What does the law say, and how do you apply the law?

We are in the Chamber today not about law. We are in the Chamber today because of politics, because these judges who have been responsibly nominated by a President, brought before the Judiciary Committee, with the highest possible credentials in almost every instance, gold-plated records in the judicial process, cannot now come to the floor for a vote, not even a simple up-or-down vote.

Why? Because the other side has now established a litmus test of political philosophy, and if they do not meet it, they do not cut it. That is the bottom line.

Our Democratic colleagues even know the reason. Let me tell my colleagues what Senator PAT LEAHY has said. I am quoting him. I would not take him out of context. Nobody should take any Senator out of context. Here is what he said: We need to get away from a rhetorical and litmus test and focus on rebuilding a constructive relationship between Congress and the courts. We need balance and moderation that respects the democratic will and the weight of precedence. We do not need our Federal courts further packed with ideological purity. We do not need nominees put on hold for years while we screen them for their Republican associations.

I guess the only thing I can say about that quote is: that was then, this is now.

Senator TOM HARKIN said: I thought that if the President nominated them, they had a fair hearing, and they were reported out, my own decision was whether or not they were qualified, not whether they were ideologically opposed to me or to how I feel about what they believe. Again, that was then, this is now.

So then Senator HARRY REID said: I do not think we should have a litmus test on members of the subcabinet, the Cabinet, or the judges. But then again, that was HARRY REID then, not Senator REID now.

Although I myself have never studied the law, I know the reason, too. I am going to try to be as honest as I always am on the floor and as direct as I can be. When the nomination of Ruth Bader Ginsburg came up for the U.S. Supreme Court in 1993, I was confronted with a nominee whose past revealed that she had a vastly different political ideology than my own. My constituents from Idaho, in fact, made it clear how different she was in what she had done from the mainstream of my State's thinking. However, Justice Ginsburg was a judge of great ability, character, intellect, and temperance. Her record was replete with this evidence, and though at one time she had been a vocal advocate of particular political issues, she had a sharp understanding of the limit, of the character of the judiciary and the role she would play as a judge, a neutral arbiter, not an advocate.

Well, I voted for Ruth Bader Ginsburg, not because she had the same ideology—my guess is she was here and I am there, and I think the record probably clearly demonstrates that, but I was convinced she was a bright legal mind who would, in fact, not be an advocate but a neutral arbiter.

That is not the kind of judgment nor is that the kind of test that is being applied to the nominees who are before us now. It is raw politics, folks—nothing more, nothing less. It is a fine litmus test of the attitude on the part of the Democrats, and if it does not match the litmus test, they do not get the vote.

Now and then, of course, we probably ought to make a few examples here to prove that you have that kind of power, or that you can exert that kind of power, even in fact when the advice and consent clause of the Constitution, in my opinion, and I think the opinion of a lot of constitutional scholars—of which I am not one—is that we advise and we dispose, or consent, and that you do that not by suggesting to the President that he can only send up those who meet the narrowest of a litmus test but those who meet the broadest and the most easily substantiable character, quality, training, expertise, and talent. That is what we want.

Our Founders also understood the reason judicial nominees should not be subjected to personal ideologies. For instance, in Federalist Paper 78, Alexander Hamilton underscored how important an independent judiciary was to the separation of powers:

> The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body.

To guard against such legislative encroachments, Hamilton emphasized the need for qualified judges; that is, individuals who possess virtue, honor, requisite integrity, competent knowledge of the law, be of fit character, and those who have the ability to conduct the job with utility and dignity. Character and competence is what Hamilton talked of and was, therefore, the foundation of the judicial selection process. Consideration of an individual's independent political will would undermine it.

Yet today, we have slipped into that morass of politics. We are not holding up individuals looking at them for the character of the individual and the quality of the legal mind and how they have demonstrated the use of that talent in their lifetime and through their professional ways.

Those are the issues that are debated on the floor, and that is the substance of this debate. For the first time, this freshman on the Judiciary Committee is witnessing something unique, and that uniqueness is quite simple. We are now applying politics instead of the judgment of character to the judges the President is sending forth for us to consider.

May I ask how much time remains on our side?

The PRESIDING OFFICER. Thirteen minutes, 50 seconds.

Mr. CRAIG. I yield such time to the Senator from Wyoming as he may consume.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. I will not take much time. I have been listening, of course, as we all have, to the debate, some of it from the chair this morning. Nearly everything has been said, I suppose. Not all of us have said it, and so it is important that we all do.

I am no expert in the judicial system. I am not on the committee. But I have been here and I have observed what has gone on throughout this whole last year. We keep talking about the fact that we ought to be talking about unemployment, we ought to be talking about a number of things, and I agree with that. We should have been doing that over the last year, but we spent a lot of time on this very issue right here on the floor when we could have been talking about energy; we could have been talking about health care; we could have been talking about all of those things.

So I kind of hate to hear that this 30 hours is holding things up when we spent much more than that with the other side simply holding up moving things along.

I am convinced there needs to be a system in the Senate we can depend on and work with, that we can bring it to a vote and decide yes or no. There has to be that system. That is what this is all about. There seems to be a lot of talk, of course, about the individual candidates we are talking about here who have not been able to be dealt with. But the real fact is it is the system that is in question. That is what it is really all about, and I think we need to deal with that issue.

There has been obstruction, frankly. There has been obstruction on almost all of our issues. It has been called slow-walking. Some evidence of that from last year is that we did not even get a budget. Remember that? We did not even get appropriations through the whole year.

That same obstructionism has been going on this year. It is all political. It is too bad, really, because we have so much we can do and so much we really ought to do. We have a constitutional duty, of course, to provide the advice and consent of these nominations. It is pretty simple. The Constitution specifically requires a supermajority for overriding a veto, for impeachment, for ratification of treaties. Advice and consent is not in that category and has not been in that category.

As I said, I will not take long. Some of the past comments from the other side of the aisle I think have been interesting as time goes by. Let me quote from Senator EDWARD KENNEDY from the CONGRESSIONAL RECORD in 1999, in September: Delays can be described as an abolition of the Senate's constitutional responsibility to work with the President and ensure the integrity of the Federal courts.

Another quote: The delay has been especially unfair to nominees who are women and minorities, selected for that sort of business.

Another from the Senator from California: I am very glad we are moving forward on judges today.

We have all heard, as we were growing up, that justice delayed is justice denied. We have vacancies in many of our courts that have gone on for a year or 2 years, in many cases getting to a crisis level. I am pleased we will be voting. I think whether the delays are on the Republican or Democrat side, let the names come up and let us have a vote. Let us debate and have a vote. The Senator from California and I agree with that point of view.

I yield the floor.

Mr. CRAIG. Mr. President, I thank the Senator from Wyoming for his comments as we debate this issue. How much time remains on our side?

The PRESIDING OFFICER. There are 9 minutes 40 seconds.

Mr. CRAIG. I yield to the Senator from Utah 8 minutes.

Mr. BENNETT. Mr. President, we have compared numbers around here, particularly the number of 168 to 4 over and over again. I make it clear that these two numbers are not in the same ballpark; that is, this is not 168 who have been approved and 4 who have been disapproved. There has been no vote disapproving the 4. Rather, it is 168 who have received a vote in the tradition and the precedent set and maintained for 214 years.

The Constitution was ratified in 1789, and from that time forward there has never been an instance where a judge reported out of the Judiciary Committee, or whatever committees preceded the Judiciary Committee in the existence of the Senate, never been a time when a judge whose name has come to the floor has been denied a vote until this year. If you take apples and apples, if you take the number of those reported to the floor and voted on until this year, the number was 2,372–0 for 214 years. Whether it was under control of the Democrats or the Republicans, this body never denied a reported nominee a vote. Some of those who got votes got defeated, but no one who was reported was denied a vote until this year.

We talk about the law. We talk about the Constitution. One of the parts of the law as I understand it becomes established is the question of precedent, 214 years of precedent, 2,372 cases of precedent upset in this Congress by the Democratic leadership.

A lot of people have called a lot of people names during this debate. I don't want to do that. I was urged to do that just before I came over here by some who said: Why don't you say the kind of things about them they are saying about you or their nominees? Mix it up.

I don't want to do that because I don't think that is useful. What I would like to urge on the Senate on this occasion is that we go back to a proposal that was made some years ago by the Democrats, specifically, Senator LIEBERMAN and Senator HARKIN, a proposal endorsed by Senator DASCHLE, that said let us eliminate the filibuster for nominees, start out with a 60-vote cloture motion, followed up with a second cloture motion at a lower level, follow it up with another cloture motion at another level, and so on. The Republicans did not endorse that. I am, today, rising to endorse that. I am today rising to say, we thought that rule change was not necessary because we thought the precedent would hold. But the precedent has now been broken. The precedent did not hold.

The time has come to recognize the wisdom of Senator LIEBERMAN and Senator HARKIN and Senator DASCHLE and others to change the rules. The vote we will have tomorrow on what is now called the Frist-Miller proposal is a vote to endorse the wisdom and farsightedness of Senator LIEBERMAN, Senator HARKIN, and Senator DASCHLE in previous Congresses. And the practical effect of passing Frist-Miller will be to establish in the Senate rules a 214-year-old precedent that has been broken in this Congress for the first time. The effect would be to establish in the Senate rules a precedent that has held up 2,372 times, and has only fallen in this Congress. It will be a vote to make a bipartisan solution to a problem that has spawned far too much acrimony, far too much controversy. It will be a permanent solution to this matter.

It will not solve the question of Miguel Estrada who was tired of having his reputation trashed and decided to withdraw and thus deprive the United States of the opportunity to have the services of a man who excelled academically, who excelled professionally, who, though he was appointed to the Solicitor General's office by the first President Bush, was maintained in that office for several years by President Clinton because they thought he was that good.

Today he has been attacked on this floor as a lemon, someone who deserved to be rejected. We have fallen to that level of discourse, and we should avoid that level of discourse. Let us adopt a bipartisan solution which Republicans previously blocked. This Republican is prepared to repent. This Republican is prepared to say, OK, I recognize the wisdom of Senator LIEBERMAN's proposal. I am willing to endorse it. Now it is before us once again. Let us not kill it just because it bears the name Frist-Miller instead of the names Lieberman-Harkin as it originally had.

Give Members an opportunity to put the bitterness, the wild and sometimes excessive statements behind us and move forward in the future as we have done in the past for 214 years to see to it that any nominee who makes it through the committee process and gets reported to the floor gets voted on, whether he or she is a Republican or a Democrat, Hispanic or an African American, a Roman Catholic or a Jew or whatever the situation. If he or she survives the committee process and comes to the Senate floor, he or she deserves a vote in the same tradition that we have followed for 214 years.

I yield the floor.

Mr. CRAIG. How much time remains on this side?

The PRESIDING OFFICER. There are 2 minutes 15 seconds.

Mr. CRAIG. Mr. President, let me be brief and close. I see the Senator from Washington and the Senator from Wisconsin ready to speak. As the Senator from Washington engages this afternoon, I would like to quote some of her comments so they are fresh in her mind.

Senator MURRAY raised the issue of the action on female and minority nominees was denying justice and holding the system hostage. On September 14, 2000, she said at a press conference: Our justice system is being held hostage and American communities are paying the price.

Senator MURRAY went on to say at a press conference on September 14: This delay is especially troubling when we look at what happens to women and minorities. It is time to dismantle the glass ceiling and let qualified jurists take their place on the bench. We are here to send a message. Confirm the judicial nominees pending before the Senate and let these qualified men and women fill the vacancies of the courtrooms across America.

That is a quote from the Senator who is about to address this afternoon the issue of the filibuster of the qualified judges who are before the Senate. I hope her statements of less than 3 years ago would be fresh again in her mind as she resumes the debate this afternoon.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, this morning on the Senate floor I spoke at length about the importance of the Senate's role in confirming judges for lifetime appointments and talked of the success in the Senate confirming 98 percent of the judges sent to the floor. We have, I remind our colleagues, confirmed 168 judges on the Senate floor. That is pretty impressive. But all the Senate action that is important to occur before the end of the year is now being held up over four judges.

I also talked this morning about the success we had in Washington State using a bipartisan commission to select and confirm qualified judges. This morning I noted that we should be spending our time on much more pressing issues like helping the many unemployed workers who are about to run out of unemployment benefits.

We are wasting 2 days of the Senate's very limited time left in this session on four judges. We certainly have more important things to do. We were supposed to pass 13 appropriations bills by October 1. We did not. Today, more than half the bills that fund the Federal Government are incomplete, waiting for congressional action. We have a lot of work to do that affects millions of families. But instead, we are wasting 30 hours of the Senate, precious hours of time talking about four judges.

What we are not doing is we are not helping laid-off workers in these 30 hours. We are not improving health care. We are not fixing roads across this country. We are not improving the economy. We are not helping our troops. And we are certainly not improving veterans care. We are not doing anything for the millions of Americans who need help today because the other side is tying the Senate in knots so nothing can get done.

What we are doing right now reminds me a little bit of the behavior back in 1995 when the other side did not get exactly what they wanted on the budget, so they shut down Government. Boy, we really heard from people across the country when the Government was shut down. Federal services were shut down, people could not get their Social Security check, agencies were shut down. The needs of every American were set aside at that time so Republicans could complain about a budget with which they disagreed.

The same thing happened here today. The needs of every American are being set aside so Republicans can complain about four judges they want confirmed. Forget the laid-off workers, forget health care, forget education. The other side wants to make a point, and they are shutting down the Senate and the needs of the American people so they can make that point.

Each passing hour on this floor feels more and more like the Government shutdown of 1995. We cannot work on critical needs because the other side is holding things up. After 30 hours of hearing about this, the American people will get it. They will see that we are not working on the things that really do matter to them. I am sure many Americans are scratching their heads, wondering what is going on in the Senate. The answer is, we are not working on jobs. We are not working on education. We are not working on health care because the majority is upset we have confirmed only 98 percent of President Bush's judicial nominees.

As I mentioned this morning, there are much more important things we need to be doing. We do need to extend unemployment benefits for laid-off workers. I tried to bring up the bill to help laid-off workers get unemployment benefits, but when I bring it up the majority says it is not the right time to discuss helping laid-off workers.

I invite the majority to explain to laid-off workers in my State who are going to exhaust their benefits on December 31 why we are talking about judges instead of helping those laid-off workers? These hours that we are wasting on this manufactured crisis could be much better spent on the real crisis facing so many Americans.

Two weeks ago I introduced legislation to extend unemployment benefits to workers who will run out of benefits on December 31, right after Christmas. For millions of Americans who cannot find jobs, the clock is ticking and every day counts. Unless this Congress acts, those families are going to start the new year without a job and without any help paying for the basics like housing and food and medicine.

Two weeks ago I introduced the amendment in the Senate. If the majority wants to vote against helping laid-off workers, that is their choice, but we are going to force them to take a vote because working families should not be punished any more than they already have been in this tough economy.

Congress cannot leave town for the year—and many people are talking about ending next week—we cannot end next week without extending the benefits on which these many families rely. We have extended benefits in past recessions and we need to do it in this recession because the clock is ticking.

In my home State of Washington, we have the third highest unemployment rate in the Nation. It is 7.6 percent. Since President Bush took office, we have lost more than 70,000 jobs in Washington State. Those laid-off workers want jobs. They are eager to work. In King County alone, 10,000 people are on a waiting list for job training. They want to provide for their families, but they are about to get cut off unless the Congress does the right thing and extends unemployment benefits. If Congress does not extend those benefits, another 124,000 in my home State, Washington State, will exhaust their benefits by December 31. These families are draining their savings accounts just to hang on. Many of them have run out of options. But they still have to pay their mortgage. They still have to pay their medical bills. They still have to pay college tuition. That is why they need these unemployment insurance benefits.

The bill I introduced will do three things. First, it will help families as they try to get back on their feet. These benefits simply will help them buy groceries, pay the mortgage, keep their kids in college. It will give them a little bit of cushion as they try to find work.

Second, extending benefits will help stimulate the economy in every State and every Member wants their economy to be better in their State because when we send the unemployment insurance, people then have the money they need to buy things for every day. That will be a shot in the arm for the hard-hit States, for our hardware stores, for grocery stores, and all of our businesses like that. It means these people will have the money they need to keep those businesses going as well.

Finally, extending benefits will help stimulate our Nation's economy. Every dollar invested in these benefits generates another $1.73 for our economy.

Laid-off workers deserve a vote on this bill. They deserve a debate on this bill. They deserve time in the Senate on this bill. They need our help. We should be using 30 hours of time to talk about the unemployed workers, the difficulties facing them, and how we in this Congress are going to get them back on their feet. That is what we should be spending 30 hours on.

It seems to me at a time when we are spending $1 billion a week in Iraq, the very least we can do is give unemployed Americans a few hundred dollars a week. Congress cannot leave town without providing a life line to laid-off workers. The clock is ticking, time is running out, and we should be helping laid-off workers instead of squandering our limited time on the judges issues.

To understand how serious this is, I will read some letters from the people I represent.

How much time remains on my side?

The PRESIDING OFFICER. The Senator has 21½ minutes.

Mrs. MURRAY. I ask the Presiding Officer to notify me when I have used 6 minutes.

The PRESIDING OFFICER. You will be notified.

Mrs. MURRAY. Let me read a letter from Laura Perry in Battle Ground, WA, a small community in southwest Washington. Laura wrote:

> I really need to know what is being done not only in the State of Washington, but in Congress to acknowledge workers who have lost their jobs.
>
> Millions of us are going to lose our homes!
>
> Throughout my life, I have done all the right things to stay current with the job market.
>
> In spite of this fact and having a college degree, I lost my job after 9/11 when my company closed the northwest branch office due to the economic downturn.
>
> Now, a year and one-half later, I find that I do not fit in all the niches for acquiring employment retraining because I am not on welfare, I haven't been employed by Boeing, I am not a dislocated homemaker, and I am not a veteran.
>
> Please let me know what is being done to help the unemployed in this country when the unemployment insurance runs out.
>
> For the first time in my life, I am also without medical benefits.

I think Laura Perry deserves 30 hours of time on the Senate floor.

Let me read a letter from Marshall Dunlap of Kent, WA, a suburb out of Seattle. He writes to me:

> Please support the upcoming bill to extend unemployment benefits to those who have lost our jobs.
>
> It doesn't help the economy when millions of us are about to become homeless.
>
> I would prefer a job but until the economy recovers I am finding this impossible.
>
> I am a high tech worker and have no other skills.
>
> I am 53 years old and have very few options.
>
> For every job I apply for there are hundreds of other applicants.
>
> Once the economy comes back, I'm sure I'll be able to support myself but without help until that happens I will lose my house.
>
> I know I am not alone so imagine the problem multiplied by millions.
>
> There are over 97,000 people unemployed in the Puget Sound are alone. Please help.

That is from Mr. Marshall Dunlap, in Kent, WA.

I think Marshall would prefer we were spending 30 hours talking about how we are going to help him get back into the workforce and able to provide for his family.

Here is a letter from Ronnie Harper of Kingston, WA:

> Thank you very much for working to extend UI benefits in the state of Washington.
>
> I moved here 6 years ago to enter the technology market, which I did immediately upon my arrival.
>
> Unfortunately, things turned sour at Hasbro last year because people stopped buying toys, and I was laid off after 5.5 years of exemplary service.
>
> I have been working extremely hard over the past year to find another job; a job that is in the IT industry with a competitive compensation package.
>
> My efforts have been practically fruitless, with most employers even refusing to discuss their reasons for not considering me for their open positions, and many filling posted positions internally.
>
> At this point, I am on my last week of unemployment insurance, and I have mouths to feed. I hope very much that this bill is successful, please keep us posted!

That is from Ronnie Harper in Kingston, WA.

Unfortunately, I need to add that since he wrote this letter to me, Mr. Harper has now exhausted his benefits. That is why I think this Senate needs to act and why we should be spending 30 hours of debate time talking about how we are going to help Mr. Harper.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. Seventeen minutes 40 seconds.

Mrs. MURRAY. Mr. President, let me add one final letter before I turn it over to my colleague from South Dakota who has been waiting in the Chamber.

This is a letter from Bill Gilbertson of Sequim, WA. He says to me:

> DEAR SENATOR MURRAY: Thank you for your support of S.1708, Emergency Unemployment Compensation Act.
>
> Your comments to the Senate, describing the real life problems of being unemployed will hopefully encourage passage of this important matter.
>
> Please pass on my comments to your colleagues who don't know what its like to be jobless.
>
> Life without a job is a demeaning experience; it affects all aspects of your life.
>
> You have to be very careful with the little money you have, only necessities can be considered.
>
> Fear, low self image, feeling of lack, and despair of the future are some of the challenges you face when hit by unemployment.
>
> I have been unemployed now for over a year, it's been tough, but I won't give up till I get a job.
>
> Extension of S. 1708 would really help me thru this.

That is Bill Gilbertson of Sequim, WA.

We are talking about real people facing real problems. I think it is essential that this Senate deal with this issue now.

UNANIMOUS CONSENT REQUEST—S. 1853

Because of that, I ask unanimous consent, Mr. President, that the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to its immediate consideration, the bill be read a third time and passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Mr. President, reserving the right to object, I appreciate the concern of the Senator from Washington. The Senate is in session. The Senate is working. It is November 13. The timeline she has outlined is December 31.

Mrs. MURRAY. Is there an objection?

Mr. CRAIG. I therefore object.

The PRESIDING OFFICER. Objection is heard.

Mrs. MURRAY. I am deeply disturbed to hear that. The Senate is going to be out of session shortly. Everyone wants to finish by Thanksgiving. I am sure the letters I have read from a few of the people in my State reflect a lot of people's concerns that these people are going to be facing Thanksgiving without knowing how they are going to be paying for their mortgage, their food, and their basic necessities.

The PRESIDING OFFICER. The Senator has used 6 minutes.

Mrs. MURRAY. Mr. President, I yield to my colleague from South Dakota who has been waiting.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I rise today to express not just my profound disappointment but, very frankly, my contempt for the outrageous political ploy the Senate Republican leadership is foisting upon this Senate and upon the American people.

This is a monumental waste of time, every Member knows that, at a time when we have so much work to be done, to be wasting 30 hours—now, I understand, perhaps more than that—on a false, fabricated issue.

On top of that, all of this, I am being told, is costing the taxpayers at least $100,000—taxpayer money for this political ploy to be brought to the floor. And as the media has said from all around the Nation, there is no judicial crisis in America at the Federal level. This is a fabricated crisis which, frankly, is a polite way of saying that what is being brought to the floor is a fake. It is phony. It is fabricated. At stake is not a principle; at stake is—let's face it—money.

What is at stake is the far radical right of the Republican coalition with their vision of an America with no Social Security and no Medicare, no Federal role in the schools, what have you, a radical vision that very few Americans share. They have let it be known to the Republican leadership of the Senate here that they are going to not be as generous with their political contributions if they do not see more noise and more combat on behalf of a tiny percentage of judges nominated by the President.

This, what we have here today, and last night, and on into the night tonight, is an incredibly cynical political ploy not worthy of the Senate, certainly not worthy of the American people, Republican or Democrat.

The American people deserve better. They deserve better of this institution than what the Republican leadership has foisted on this country; and then, to add insult to injury, putting it on the credit card of the American people.

So far, this President has had 168 Federal judges—virtually all conservative, Republican judges—approved by this Senate, and I have voted for most of them. So the question is not whether the Senate will approve conservative Republican judges—we have over and over and over again; 168—but the Constitution requires the Senate to provide advice and consent to this President or any President on these appointments, which are of a lifetime nature. This is not some Cabinet appointee who will come and go with whoever is President. These people will sit on the Federal bench for as long as they live, if they so choose. Much longer than virtually anyone in this Chamber will live, these nominees will still be there.

If the expectation—which apparently is the logic of the opposition here today—is that anything short of 100 percent approval of these judges is out of compliance with the obligation of the Senate, then what does that say about our Republican friends' notion of what advice and consent is all about?

Now, President Bush, obviously, with 168 successes to 4, could have 100 percent success if he would send us mainstream, conservative Republican judges, which he mostly has done. But obviously he has taken the political tactic of rounding up a handful of judges who are absolutely beyond the pale and sending them here knowing they would be lightning rods, knowing they would energize the radical, political right in this country, and it would gin up political contributions. That is what this is all about.

Now, when President Clinton was President, he was told: Do not send any liberals to be nominated for the bench. They will not even get hearings, much less votes on the Senate floor. And that turned out to be true.

The Senate, because of our parliamentary rules, allows the minority party to exercise a 60-vote criterion on issues that are controversial. It is one of the reasons the Senate has long been the institution of moderation, relatively speaking, in the Congress, because while in the other body the majority of one allows them to jam almost anything through that body, on the Senate side we have an ability to enforce a certain level of bipartisanship because nobody can get anything done that is controversial without 60 votes. I would suggest that this is one of the geniuses of the Senate, that this is not the House of Representatives, that there is a certain level of consensus that is required to get things done in the Senate, and I believe that is what the American people want to see.

Now, we respect the right of this President to nominate like-minded people to the bench. He has. And they have been approved—168 of them. But where those people, those nominees, fall outside of the broad consensual understanding of the Senate, and cannot get 60 votes, those nominees ought to be rejected.

They will be easily filled by other no doubt conservative Republicans, but at least people who have the respect of the bar associations, of the Senators of their States, and who fall clearly within the mainstream of contemporary legal and political thinking.

Mr. President, 98 percent of the administration's judicial nominees have been confirmed—98 percent. That is a good success ratio in almost any human endeavor, contrary to what you hear from the other side.

Mr. President, 95 percent of Federal judicial seats are now filled. We currently have the lowest judicial vacancy rate in 13 years. If anything, this Senate ought to be patted on the back for its acceleration of judicial nominees the Judiciary Committee has considered and the floor has approved.

Last year, the Senate, led by my colleague from South Dakota, Senator DASCHLE, confirmed the largest number of judicial nominees in a single year since 1994—a remarkable track record. So to stand this on its head and suggest there is some sort of an obstruction, some sort of interference with the process, it goes beyond outrage, it defies comprehension.

Sometimes we hear: But what about the appellate judges? Well, the Senate has confirmed 29 of President Bush's circuit court of appeals nominees to date. More Bush circuit court nominees—get this, and this is the highest Federal court until you get to the Supreme Court—than Clinton, Reagan, or George Herbert Walker Bush had by this point in any of their administrations.

We also hear that this process requiring 60 votes, this process requiring bipartisanship on judicial nominees for their lifetime appointments, is some unprecedented sort of thing. Well, that is far from the truth.

Our Republican friends required 60 votes on 6 Democratic judicial nominees on the floor and filibustered 63 nominees in committee. So there is nothing unprecedented that is going on here. What is happening is there is an enforced bipartisan, an enforced moderation that I think is good for the country, and certainly good for the Federal bench, at a time when this country is narrowly divided, at a time when we are approving people who will serve on that bench for a lifetime.

What is sad is that while these hours are being devoted to a fabricated fake crisis that has to do with political fundraising, we are not getting on with the issues of jobs, of education, of health care, and prescription drugs. We have an Energy and Medicare bill in conference, but they are both on life support as we speak.

The budget, which was supposed to have been done by October 1, the first day of the Federal fiscal year, has not been done. It is not even close to having been done. And yesterday Senator BYRD, our colleague from West Virginia, noted that this week, the week of Veterans Day, the Republican leadership insisted we shut down the debate on the Veterans Administration legislation appropriations bill in order to consume this time on this issue. The American people deserve better than that.

I have to wonder if the other side that concocted this cockamamie scheme has any shame at all, to have done this to the American people, and to have done this to this institution. We ought to be talking about the jobless economy that continues to drag on. The economy would now have to create 326,000 jobs every month to keep the Bush administration from having the worst job creation record of any administration since the Great Depression.

As of October 2, 2 million people have been unemployed for over 6 months, more than triple the number at the beginning of the Bush administration. That remains the highest level in 10 years. Almost 5 million people work part time because of the weak economy. This is an increase of 44 percent since January of just 2001—the highest level in almost 10 years.

Talk about crisis. Talk about the need for attention. What about an increase of 44 percent in part-time workers and record high unemployment? Mr. President, 24,000 manufacturing jobs were lost last month alone. Imagine that, 24,000 manufacturing jobs just last month lost. And in too many cases, those jobs are not coming back.

Talk about crisis. That is what this body ought to be talking about. According to job placement firms, planned layoffs of U.S. companies shot up to 172,000 jobs in October from 75,000 in September. Announced layoffs are at their highest level since October 2002, when 176,000 jobs were cut.

Recent studies suggest that jobs lost since 2001 are now gone for good. A study by the Federal Reserve Bank of New York has concluded that the vast majority of job losses since the beginning of the 2001 recession were the result of permanent changes in our economy and are not coming back.

The labor market is not going to regain strength until positions are created in new economic sectors. The surge in discouraged workers masks the true impact of the economic downturn.

Currently, 1.6 million people are marginally attached to the labor force; about 462,000—almost a half million of these workers—have stopped looking for work altogether because they do not believe there is any work available.

African Americans and Hispanics bear the brunt of the economic downturn. During a month with a net gain in jobs, the unemployment rate among African Americans jumped to 11.5 percent in October, about twice the national average. The unemployment rate among Hispanics, 7.2 percent, is far higher than the national average.

This anemic job creation of the last month provides about 25,000 fewer jobs than are required to even keep up to the new entrants into the labor market. We actually lost ground this last month, meaning young people leaving high school and college cannot find work in too many cases. In addition, average hourly wages increased by 1 penny last month.

So when we talk about urgency, when we talk about a crisis, we need to get past the right-wing politics and get back to political moderation, which is what this 60-vote requirement requires of this body, and we ought to get back to the real issues the American public want the United States to be considering.

The PRESIDING OFFICER. The time of the minority has expired.

Mr. JOHNSON. I yield the floor.

The Senator from Mississippi.

Mr. LOTT. Parliamentary inquiry, Mr. President: I believe there will now be another hour, 30 minutes to the Republican side of the aisle, followed by 30 minutes to the Democratic side of the aisle.

The PRESIDING OFFICER. The Senator is correct.

Mr. LOTT. Under that agreement, I am glad to yield such time as he may consume to the distinguished senior Senator from my great State of Mississippi, Mr. COCHRAN.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. I thank the Chair. Mr. President, I appreciate my colleague yielding me time.

Back in 1787, with a great deal of disenchantment around the country with the Articles of Confederation, a new Constitution was written to bring all the States of the Union into a workable bond. One of the fundamental principles reflected in that Constitution, as explained in the Federalist Papers, was majority rule. It was a difficult concept because the States were not all the same size, and the Senate would have two Members from each State.

There were situations that could develop when a minority of Senators, or Senators reflecting a minority of the population, could actually cause a decision to be made in behalf of all of the people of the country. So there are controversies surrounding that principle. But it was a fundamental maxim that is reflected in the Federalist Papers.

One other complicated factor is Gov. George Clinton of New York was strongly opposed to ratification of the Constitution. The Framers thought if he prevailed, then it might kill the effort to ratify the Constitution and get the country moving forward to fulfill the hopes and aspirations of the Framers.

Alexander Hamilton was also from New York, and he took the lead in crafting some essays that were published in newspapers in New York to convince the general public and, through them, the legislators who would vote on ratification that the Constitution was a good idea for the country. He was joined, of course, by James Madison and John Jay. They all collaborated, contributed to the essays published under the pseudonym Publius, and they were persuasive.

That majoritarian principle has been carried down through the years in our country, in our Government, in our Federal system. Now only in exceptional circumstances is more than a majority needed on any particular issue. As a matter of fact, the Constitution itself States that supermajority voting requirements exist only in certain specific circumstances. Confirmation of judges and other high-ranking officials in the administration are not among those instances where a supermajority is required by the Constitution.

The Framers were committed to the majority-rule principle, and the rules of the Senate carry forward that principle. But this year, the Standing Rules of the Senate are being used in an unprecedented way to impose a supermajority requirement of 60 votes to obtain confirmation by the Senate of Presidential appointments.

Article II of the Constitution creates a unique relationship between the President and the United States Senate in the selection of people to serve in the Government. It provides that the President "by and with the Advice and Consent of the Senate, shall appoint" and then it lists those that come under this section.

Section 2 of article II actually contains the exact language. It is instructive to be reminded what the Constitution itself says:

> He shall have Power,—

The President—

> by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

It is very clear, in my mind, that this majority principle is supposed to apply and obtain in the votes for confirmation as described in section 2 of article II of the Constitution.

The filibustering of nominations is a new development. Prior to this year, the number of cloture votes taken on any executive nominee was three, and on any judicial nominee, it was two.

The cloture rule was adopted by the Senate in 1917. This was the first time Senators were guided by a procedure for bringing a debate to a close on any measure, motion, or other matter pending before the Senate.

Over the next 51 years, no judicial nomination was filibustered, and not one cloture vote was required to end debate on a judicial nominee.

The minority has begun a process that only history will be able to judge, but I fear—I genuinely fear—that nominations in the future by any President will be denied confirmation unless they can muster 60 votes to win approval by the Senate. That is not what the Constitution requires. That is not what the rules of the Senate require. A 60-vote requirement for the confirmation of Federal judges is not consistent with the history and the practices of the Senate. It must be rejected.

If we are unable to prohibit this practice by a change in the Senate rules, we will find it harder than ever before to attract talented and well-qualified candidates to serve in the Federal judiciary.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Mississippi.

Mr. LOTT. Mr. President, I thank my distinguished colleague from Mississippi for his comments. He has shown, once again, he is a student of the Constitution and of the law. I hope our colleagues found his speech to be informative, and I keep hoping and praying that there will be a change of heart and mind in how we deal with this issue.

Mr. President, the debate that has been taking place for nearly 24 hours is the culmination of 9 months of obstructionism by a minority of Senators who have subverted the Constitution's advice and consent provisions and undermined the very fundamental tenets of democracy.

It is an elementary principle of democratic government that the majority determines the outcome of political questions. Certainly the minority has a right to state it's case and have input into the issues. But at the end of the day, when the final decision is at hand, a majority decides the outcome.

Yet in the 108th Congress we have seen an unprecedented attack on this core principle of democracy. Instead of majority rule as our governing principle, we have the rule of the minority. Four nominees to the Courts of Appeal are supported by a clear majority of Senators. Yet a minority of Senators refuses to allow the Senate to vote on these nominations.

The Founding Fathers well recognized the dangers inherent in granting a minority a veto over the will of the majority. James Madison, in Federalist 58 pointed out that the Constitutional Convention explicitly rejected the idea that Congress be required to adopt a supermajority quorum to transact business. He warned that the "fundamental principle of free government would be reversed," if we allowed a minority to overrule the majority.

Why is majority rule the "fundamental principle of free government?" Simply stated, Mr. President, if the will of the majority is not the prevailing principle, then it is legitimate for one person, whether a king, or autocrat, to determine the fate of political society. Our Founding Fathers rejected that idea and all of American society has rejected that concept since 1776.

Unfortunately, what we have witnessed over the past 9 months in connection with the nominations of Miguel Estrada, Priscilla Owen, William Pryor, and Charles Pickering is a hijacking of the Senate's constitutional responsibility to advise and consent on the President's nomination and to accept the idea of majority rule.

A minority of Senators have literally rewritten the Constitution to engraft a supermajority rule into the confirmation process, a requirement that completely contradicts the intent, spirit and language of the Constitution.

The Founding Fathers believed there were a few extraordinary instances where supermajorities are necessary and they spelled them out in the Constitution: Ratification of a Treaty; override of a presidential veto; conviction in a case of impeachment; passage of a constitution amendment; and expulsion of a Member.

Amendments to the Constitution have added two other supermajority requirements—one, a post-Civil War disqualification rule for serving in Congress; and another regarding a determination of whether a President is disabled.

But now a minority in the Senate has effectively rewritten the Constitution to demand a supermajority vote on some Presidential nominations. That completely contravenes the Constitution.

When the members of the Constitutional Convention considered the appointment power, they first debated placing the appointment power in the Senate. However, that idea was rejected because the members of the Convention believed the Senate was "too numerous and too little//personally responsible, to ensure a good choice," according to Madison.

The convention also considered giving the President the sole authority of appointment. In an effort at compromise, Madison suggested that the power of appointment be given to the President with the Senate able to veto the choice only if two-thirds of Senators opposed the nomination. Ultimately, the Convention allowed for a simple majority vote on the President's nominations.

The Founders were so confident that the power of judicial appointment is primarily an executive function that they wrote into the Constitution a provision that allowed Congress to pass a law giving the President exclusive authority to appoint all judges below the Supreme Court. In addition, the President was granted the power to make temporary appointments when the Senate is in recess.

You can search the historical record and not find a single shred of evidence to suggest that the Framers of the Constitution ever envisioned a scenario where a minority of the Senate could cause the rejection of a Presidential nominee. But that is exactly the situation we face today.

On 7 different occasions, as many as 55 of 100 Senators voted in favor of ending debate on the nomination of Miguel Estrada. But the minority obstructing his nomination refused to allow an up or down vote and ultimately Mr. Estrada withdrew his nomination.

Fifty three Senators voted to end debate on the nomination of Priscilla Owen. But the minority refused to allow an up or down vote.

Fifty three Senators voted to end debate on the nomination of William Pryor. Again, the minority refused to allow an up or down vote.

And just 2 weeks ago, a majority of 54 Senators voted to end debate on the nomination of Charles Pickering. And once again, the minority prevented us from bringing this vote to a conclusion.

This undemocratic obstructionism threatens to destroy the integrity of this institution.

I have heard it said by some who are blocking the President's nominations, that there is nothing wrong with the confirmation process. They say we've confirmed 168 of the President's nominees; why is there a problem just because we block four nominees? 168–4 is a pretty good record, they say.

I would like to bring to the Senate's attention another statistic: The number of President Clinton's judges that were blocked by Senate filibusters. 0. No a single Clinton nominee who was brought to the floor was blocked by a filibuster.

Cloture petitions were filed on 5 of President Clinton's nominees. But every single one of those nominees was given a straight up or down vote. Every one of them. So if we are comparing records, here is the record that matters: Four of President Bush's nominations blocked by filibuster and none of President Clinton's nominees blocked by filibuster.

This is not baseball or basketball; this is the responsibility of the Senate to live up to its Constitutional responsibilities. And what a minority of Senators have done is to create a double standard for judicial nominations. They say for some judges, we accept the constitutional mandate of a majority vote. But for other nominees, we have created an extra-constitutional higher standard.

For nominees Miguel Estrada, Priscilla Owen, William Pryor, and Charles Pickering, a constitutional majority is not good enough. You have to garner a supermajority.

That's a standard that is not fair, yet that is precisely what a group of Senators in the minority have demanded. And as a result, they are failing to fulfill their constitutional responsibility to provide advice and consent.

For those who say there is nothing wrong with the confirmation process, I say look at this chart.

Up until 1968 there was never a filibuster of a judicial nominee. In some instances, cloture was filed twice and even when cloture was not invoked, every single nominee whose name had not been withdrawn was given an up or down vote.

We have had an unprecedented 7 cloture votes on Miguel Estrada and 3 on Priscilla Owen. In both cases, a majority of the Senate voted in support of the nominees. But a minority of Senators refuse to give these nominees straight up or down votes as required by the Constitution.

I believe that establishing a rule that if a nominee cannot garner a supermajority of 60, the nominee will not be entitled to a vote is a very dangerous precedent that will haunt this chamber for decades to come.

We have never in 214 years established such a rule. Even in the case of the most controversial nominees in recent memory—Robert Bork and Clarence Thomas—the Senate carried out its constitutional responsibility by giving each of them an up or down vote.

In June, I chaired a Rules Committee hearing on judicial nominations where one of the witnesses claimed that in the 19th Century, there were several instances where a minority of Senators prevented the Senate from considering judicial nominees. I would like to take a few moments to clarify the record on this issue.

In December, 1828, lame duck President John Quincy Adams nominated John Crittenden to the Supreme Court.

In February 1829, a month before Andrew Jackson was to be sworn is as President, the Senate voted 23–17 to postpone the nomination until Jackson came into office. Clearly, in this instance a minority was not blocking the will of the majority.

In June, 1844, President John Tyler nominated Ruben Walworth and Edward King to fill Supreme Court vacancies. The Senate, by votes of 27–20 and 29–18, voted to postpone the nominations. After Tyler was defeated in the 1844 election, he resubmitted the Walworth and King nominations. The Senate refused to vote on the nominations submitted by the lame duck.

John Meredith Read was also nominated by lame duck President Tyler. A month before Tyler's successor was to be sworn into office, the Senate voted to adjourn rather than consider the Read nomination. Obviously, the will of the majority was not thwarted by the minority when the Senate voted to adjourn.

In the summer of 1852, President Millard Fillmore nominated Edward Bradford to the Supreme Court. The nomination was made just before the Senate was already planning to adjourn. It adjourned before considering Bradford's nomination. When the Senate reconvened, Franklin Pierce had won the 1852 Presidential election. And Fillmore did not renominate Bradford. Instead, in early 1853, lame duck Fillmore nominated George Badger to the Supreme Court. The Senate voted 26–25 to postpone consideration of Badger's nomination. Fillmore then nominated William Micou, but the Senate refused to act on the lame duck nomination. There is no evidence that a majority supported Micou.

Finally, Mr. President, in January 1881, the lame duck President, Rutherford B. Hayes, nominated Stanley Matthews to fill a vacancy on the Supreme Court. The nomination never was reported from the Judiciary Committee. When President Garfield took office in March, he renominated Matthews. After 2 months of debate, Matthews was confirmed by a vote of 24–23.

I have taken the Senate's time to provide details of these 19th century nominations to make the point that there is no evidence that any of the controversial justices nominated in those years was blocked by a minority of Senators.

In every instance, a majority voted to delay or defer consideration. And in most of these instances, they involved nominations made after a sitting President was defeated for re-election. They have absolutely no relationship to the situation that has confronted President Bush throughout this year.

As my colleagues are well aware, historically, the Senate has demonstrated a great reluctance to tamper with the Rules that govern this body, especially the rules that govern debate. However, when a minority of Senators have repeatedly abused the filibuster, the Senate has acted to change its rules.

After a minority of Senators blocked efforts to have an up or down vote on a proposal to arm merchant ships during World War I, the Senate adopted its first cloture rule. The cloture rule was larger changed in 5 separate occasions, most recently in 1986.

The last attempt to change the cloture rule occurred in 1995 when Senators HARKIN and LIEBERMAN proposed a cloture rule nearly identical to the majority leader's proposal, but broader in scope because it applied to legislation as well as nominations. On a motion to table, that effort failed by a vote of 76–15.

I voted against that proposal because I agreed with Senator BYRD that the biggest abuse of the filibuster had occurred in connection with Motions to Proceed and that the Rules of the Senate, in particular Paragraph 2 of rule VIII, provided an adequate remedy to address this problem.

However, it has become apparent that there is no remedy in the current Senate rules to address the obstructive practices of a minority of Senators to block Presidential nominations. And that is why I cosponsored the majority leader's resolution, S. Res. 138. This resolution was reported favorably from the Committee on Rules on June 26, of this year.

The majority leader's resolution that will return the advice and consent responsibility to what the founding fathers intended. Our resolution would give the opponents of a nomination more than a fair opportunity to express their reasons for opposing a nominee. But it would not allow a minority of members to avoid their constitutional responsibility to have a final yes or no vote on a nomination.

Under our approach, cloture on a nomination could not be filed until the Senate has considered the nomination for at least 12 hours. On the first cloture vote, 60 votes would be necessary to invoke cloture. On a second vote, cloture could be invoked by 57 votes. If a third vote was necessary, 54 votes could bring cloture. And if a fourth cloture vote was necessary, then, and only then, a majority of Senators voting and present would be all that is needed to invoke cloture.

What our proposal does is give the opponents of a nomination 12 hours to first express their opposition. And then they will have as many as 8 days to speak against a nomination. And then, if cloture is invoked on the fourth cloture vote, the opponents will still have 30 hours in which to speak.

In other words, Senators would have as many as 234 hours to speak for or against any Presidential nomination. I think that is more than enough time for the Senate to fully consider a President's nominations.

The Republican cosponsors of this resolution are making a very simple statement—no matter whether the occupant of the White House is a Republican or a Democrat, we believe that a nominee reported from committee is entitled to a confirmation vote on the Senate floor.

We believe it is unconscionable and constitutionally infirm for a minority of Senators to have the capacity to prevent the Senate from carrying out it's advice and consent functions.

Filibusters by a minority of members to prevent a vote on a nomination should have no place in the Senate. Whether a cabinet choice, a district court judge or a Supreme Court Justice, Presidential nominees are entitled to a vote. That is what the founding fathers anticipated and that is what our resolution would achieve.

I would prefer that we could break this impasse without changing Senate Rules. But if this action stands, if a minority of Senators can obstruct the will of the majority and prevent the President's nominees from having a vote, the Rules of the Senate must be changed.

I wish to talk about how I feel personally touched and involved in what we are dealing with here.

In my 15 years in the Senate in a variety of positions as a new Member, as a member of the leadership, both as secretary of the conference and as whip and leader, I have experienced a lot of what has gone on with confirmations personally and firsthand. I have been involved in a lot of them.

I must say, without it being aimed at just one party or the other, this process has been on a slippery slope down that whole time. I believe it goes back to the nomination of Judge Bork before I actually got to the Senate. The pattern continued with John Tower who was nominated to be Secretary of Defense in my first year in the Senate, and it continued to slide down with the nomination of Justice Clarence Thomas. And throughout the Clinton years, we had difficulty in this area.

I just wonder how much further downward can it go. I think we have reached the bottom. We are trying now to abuse the rules of the Senate, to ignore the Constitution, and set in place a new precedent to block good, qualified men, women, and minorities to the Federal judiciary. We have to stop it. We should stop it here and begin to go back up into a more positive approach in how we deal with Presidential nominees.

I was involved with President Clinton's first Cabinet. I was selected by then-minority leader Bob Dole to work through the nominations and see if there were problems. As a matter of fact, I want the record to show that we confirmed every one of his nominees by the day he was inaugurated. It was not easy. Some nominees had some problems. We got the job done. He was the

President. These were his Cabinet selectees. They deserved to be confirmed.

During my years as majority leader, we had a lot of discussions back and forth over how the process worked, how judicial nominees were treated when they got to committee, and when they got to the floor. I remember a lot of those debates. I remember the Senator from Maryland was involved in those debates in March and in December of 1997. I didn't always like the process. I wasn't always proud of how we treated these nominees. But I will tell you this: On my watch, not one Clinton nominee was filibustered. Zero. None.

If you want to use the numbers game—this is not baseball or basketball, but that is an important statistic—during the Clinton years, from 1993 to 2001, no judge was defeated by a filibuster. By the way, it was attempted a few times. I had to file cloture several times, but usually we were able to set it aside and, in every instance, we confirmed the nominee.

On one occasion, I remember late in the afternoon—actually the Senate voted not to invoke cloture, not to cut off the filibuster on a judge—I took this spot in the Senate and said we cannot let that stand. Senator ORRIN HATCH, chairman of the Judiciary Committee, said the same thing. And before the night was over, we backed away from that position. Zero in the Clinton years; 4 already in the Bush years.

It has been just this year that this new abuse of procedure has started—the American people understand that. The American people understand there is something innately unfair about dragging out an up-or-down vote on these men, women, and minorities. So four already, and at least two more are threatened.

I don't know where it is going to end, but I do think that it is important the people understand this is not insignificant. This is very important. We are about to set this precedent, something the Senate did not do before this year. We did not do it in the 214-year history of this country, and now we are about to set this new precedent.

What do my colleagues on the other side of the aisle think is going to happen if the tables are reversed? What if there should be in some far off, distant future time a Democratic President and a Republican majority? Do they think if this precedent has been set that the tables won't be turned and there won't be filibusters of liberal judges on the other side? I will be opposed to that if I am here, as I have been in the past.

That is another number we ought to look at: 214 years, and no judges were defeated by a filibuster. I feel very personal about this point. I have gone back, in addition to looking at the number of years, and looked at occasions when there were attempted filibusters, when Presidents late in their terms made nominations and there were subsequent votes. I want to show you the list of what has happened over the years where there have been attempted filibusters.

This shows what happened in 1968, 1971, through the eighties and nineties. We can see there were some attempted filibusters, and cloture motions to cut off this extended debate were filed. But in every case but one, they were all confirmed. Justice Fortas, in 1969, had his nomination withdrawn by President Johnson when it was revealed that he did have some serious ethical problems.

Over all these years, even though there were filibusters and cloture motions, they were all confirmed. There are a couple of nominations on this chart about which I feel very strongly.

There was an attempt to hold up in a variety of ways two nominees to the Ninth Circuit Court of Appeals—Richard Paez and Marsha Berzon. Their filibusters were offered. I had great concerns about these judges, but I voted against the filibusters. I voted to invoke cloture, and they went to a straight up-or-down vote. I voted against them, but they were confirmed.

I was under intense pressure to not let that happen, but I refused to let that precedent be set on my watch because I didn't think it was fair at all.

I also feel personally and, I admit, emotionally involved because of the very unfair treatment that Judge Charles Pickering of Mississippi received over the last 2½ years. This is a good man, a good judge. He has had his reputation besmirched. This is a man who was confirmed unanimously by the Senate 13 years ago. Now he is being filibustered by the Senate. It is so unfair.

I hear a lot of talk about the human aspects of unemployment. What about the human aspects that these men, women, and minorities have had to go through? Their career is in limbo. They don't know whether they should stay with their law firm, stay on a State supreme court; are they going to be confirmed; how do they explain, how do they answer questions from the press? They have a very personal problem, too.

In the limited time we have, I don't want to just complain about what is going on here, I want to talk about the solution, how we get out of this situation, how we get off this limb onto which we have worked ourselves. We know this is wrong. Both sides of the aisle know this is wrong, and there has to be some concern about what the long-term impact will be. It has contributed to the overall atmosphere we are now dealing with in the Senate.

Here is what we can do. First of all, we can bring up the nominations of these good people. Justice Owen from Texas is a brilliant, impressive woman on the Texas Supreme Court. She is being filibustered. Why? Is she not qualified? Does she not have the proper education? Does she not have impressive credentials in her experience? Is she not sitting on the highest court in Texas? What is the problem?

The answer is that she is a conservative woman, that is all, a mainstream conservative woman. They try to let on there is something wrong with her philosophy and how she has ruled. I looked at a lot of these rulings. This is an eminently qualified woman. Yet she is being blocked by a filibuster. How do we get out of this situation? First of all, we try to give our colleagues on the other side of the aisle an opportunity to stop doing this filibustering. We bring up nominations of the judges. Apparently, they are not going to stop. At the end of this week, we will probably have three men and three women, including minorities, all blocked by filibusters—Hispanic, African American, women, men, it doesn't make any difference. I don't understand what is happening here.

What do we do next? We have a debate like we are doing now. Some people say: Why are you doing this? The Federal judiciary has a huge influence in what happens in this country. So these lifetime appointments are very important. We are trying to put the American people on notice as to how dangerous this is and what is going on, and it is getting some additional coverage. People are now calling in and saying: I didn't know that was going on. Why are you doing this?

Give us an opportunity to highlight the unfairness and the precedent we are setting and allow the people to weigh in a little bit. That is step 2.

Step 3: As chairman of the Rules Committee, I worked with the majority leader, BILL FRIST, and Senator ZELL MILLER of Georgia, and we came up with a process that could stop these filibusters. It is an elongated process, but one to which surely nobody could object.

After 12 hours of debate, we would have a cloture vote. It would require 60 votes. Then after a period of time, there would be a second vote. Fifty-seven votes would be required. A third vote would then occur with 54 votes required, and finally, only on the fourth cloture vote, would we get down to 51. We would have the 12 hours initially. Then we would have 30 hours after the fourth cloture vote to speak. All total, it could take as long as 234 hours. It is not a perfect process, but at least it is a process.

A similar proposal was made a few years ago by two current Senators on the Democratic side of the aisle. We should perhaps have a vote on that proposal.

Last but not least, at some point I feel very strongly we are going to have to make it clear through some process—and I won't go through it now—

that says judges will be confirmed with 51 votes—only 51 votes. That is what the Founding Fathers intended. Senator COCHRAN made the historical point, and so have I. That is what it should be.

We can go back and vote on these nominees. They might not be confirmed, but I think the American people understand the fairness of voting them up or voting them down. Justice for judges. Do whatever the Senate's will is, but don't use a procedural technique requiring 60 votes to defeat these good men, women, and minorities.

This is an important issue. It is worth taking time to debate. I am very pleased we are debating this issue. I see Senator SARBANES on the floor of the Senate. He has been on the House Judiciary Committee. I was on the Judiciary Committee with him way back in the seventies. He is a lawyer. He has looked at these issues. I know he has been involved in them. We have had some discussion back and forth over the years.

In March 1997, he rose on the floor of the Senate and spoke in support of the nomination of Merrick Garland to be on the district court. He said:

> It is not whether you let the President have his nominees confirmed. You will not even let them be considered by the Senate for an up-or-down vote. That is the problem today. In other words, the other side—

The Republicans—

> will not let the process work so these nominees can come before the Senate for judgment. Some may come before the Senate for judgment and be rejected. That is OK. But at least let the process work so the nominees have an opportunity and the judiciary has an opportunity to have these vacant positions filled so the court system does not break down because of the failure to confirm new judges. . . .

These judges along the way were being slow-walked or they had problems or they got to the floor and we had other legislation we wanted to consider. We did not always get them up, but here is an important point: During that time I was the majority leader, we confirmed Merrick Garland. It happened. He got confirmed. He is on the bench today.

Senator SARBANES was right, give them an up-or-down vote, and that is what we are calling for today.

I see Senator GRAHAM of South Carolina is in the Chamber and prepared to speak. I may want to have a final statement later on today, but before I yield to Senator GRAHAM, let me wrap it up this way: I plead with my colleagues in the Senate. This is not a good thing for us. It is not good for the institution. It is not good for our country. It is not good for our relationships. It is not good in terms of getting our work done and making sure we have a judiciary that is occupied by good men and women.

We should stop rejecting these judges just on the basis of their philosophy. I voted for Justice Ruth Bader Ginsburg. I knew I would not agree with her decisions. I did not agree with her philosophically across the board, but by education, demeanor, qualifications, and experience, she should have been confirmed. I voted for her. I ask no less of my colleagues on the Democratic side of the aisle.

Let's stop this, and then let's get back to making sure we pass energy legislation, pass aviation legislation, get a prescription drug plan for our elderly people. This discussion is not delaying that. Work is being done on it right now. We can get this process corrected and then we can pass these substantive bills.

I yield the remainder of my time to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. I thank the Senator from Mississippi for yielding.

How much time remains?

The PRESIDING OFFICER. Eight minutes.

Mr. GRAHAM of South Carolina. I think it would be appropriate now to compliment Senator LOTT. During his time as majority leader, he ran into a very dicey situation with judges. There was a lot of emotion on both sides. He was able to manage the system so that the people would get the vote the Constitution requires.

After having witnessed this debate for the last day or so, I can understand how hard that must have been. It must have taken a lot of effort, a lot of courage. He had to tell people no who did not want to hear no. The country is better off by Senator LOTT allowing these people to have a vote up or down. If we do not fix this situation before the Senate, and it becomes part of the institutional way of doing business, then the consequences to the public are very dire.

The first thing that is going to happen, in my opinion, is we are going to get good men and women who are watching this, maybe one day aspiring to be judges, to say: Why in the world would I put myself through this? You are called all kinds of bad names. They take everything you have written or said or thought about saying, and they cut and paste it and try to create mental images of who you are that are totally contradictory to your life's work, are contradictory to what the ABA says about you as a professional, are contradictory to what your friends and the people who have practiced with you say about you. So it is not a very pleasant thing.

The Senator from New York, Mrs. CLINTON, with whom I have very much enjoyed working on other matters, had a chart talking about 168 to 4. The 168 were apples; the 4 were lemons. Now we are down to calling people lemons. These are real people and they have one thing in common. It is not four that are going to be filibustered, it is well over a dozen before it is over with. The one thing these four have in common right now—and that is not including Justice Brown and Judge Kuhl, who will be filibustered; they cannot get a vote either—is that they are the first in the history of the country.

We could literally put everybody in a phone booth who has been voted out of the Judiciary Committee by a majority vote but has never received a vote on the Senate floor. This 168 to 4 is a joke. The four people in question are the only ones in the history of the country to come out of the Judiciary Committee and never get to be voted upon. That is very dangerous because if that is the way we react to people who come out of the Judiciary Committee, if we start letting 40, 41 Senators dictate the advise and consent role, then we have really taken a turn for the worst because the Constitution says the Senate will advise and consent to the Presidential nominations.

Who does the advising and consenting? A majority of us or a minority of us? For 200-plus years, we have done it one way. But on the watch of Senator DASCHLE, with whom I have also enjoyed working, we have taken a very big turn for the worst.

We are in political and constitutional quicksand. The harder we try to get out of it, the deeper we go. If my colleagues do not believe it will be answered in kind down the road if there is ever a Democratic President, as Senator LOTT talked about, then I think we are all naive.

What I hate the most is I have been in the Senate for a year, and the abuses of the past I am sure are real. I have never put a hold on any judge for any reason. I am worried about the future. I think my job as a new Member of the Senate is to talk about the consequences of this action for the future.

I do not want to serve in the Senate in its darkest days. Right now, we are writing every day we speak one of the darkest chapters in the history of the Senate. Good people are being put through the wringer unnecessarily. If my colleagues do not think they are good people and they really think they are lemons, the Constitution gives my colleagues a way to object to them, and that is vote.

My colleagues can be on record forever saying, this is a lemon, this person should never be able to be on the bench; but they do not have the right to take the Constitution and turn it upside down for their own political gain and their own political desires. That, my colleagues do not have the right to do.

Money was mentioned. They were talking about the phones ringing over at the Republican Senatorial Committee because our base is excited we are fighting back and this is a fundraising opportunity. Well, people are raising money off this event and it pretty much stinks, on both sides, but that is the moment in which we find ourselves.

Let me read an e-mail that was sent out on November 3 by Senator CORZINE, the chairman of the Democratic Senatorial Campaign Committee. His job is to fire up his donors to give money so the Democratic Party can recapture the Senate. There was a great deal of lambasting the Republican Party about writing fundraising letters about this event, and that we are doing this to fire up our base, and that we are doing this to raise money.

Let me read what Senator CORZINE told his Democratic contributors:

> Senate Democrats have launched an unprecedented effort. . . .

We are well into the 30 hours and we cannot get an agreement as to whether or not this is unprecedented. I can assure my colleagues that he is not lying in the e-mail, that this is not false advertising. If it is false advertising, people ought to get their money back.

It is unprecedented, and the word "unprecedented" is underlined for a reason. No one has ever done this before. He was not lying when he put it in an e-mail to open up people's wallets. Unprecedented by doing what?

> By mounting filibusters against the Bush administration's most radical nominees.

Let's break that statement down. It is unprecedented, but my colleagues on the other side will not admit it is. Filibustering, exactly what my colleagues on the other side are doing, against the Bush administration's radical nominees because of their ideology. That is something that is very dangerous, too.

One of the nominees was asked the question why he and his wife chose not to take their two daughters to Disney World during Gay Pride Day. Nobody should be asked about that. They are trying to ask that question to have a mental construction that this person somehow is not going to be fair to people based on sexual orientation.

The Mississippi situation is the worst of them all, in my opinion, of trying to change an image of who somebody really is. In 1967, Judge Pickering, who has been a Federal judge for a dozen years, well qualified by the ABA, well respected in the State of Mississippi, was a young prosecutor—an elected position—who chose to testify against the Imperial Wizard of the Ku Klux Klan in Mississippi, not the fast track to get ahead in 1967. It was radical in the right way.

In 1967, they integrated public schools in Mississippi, as they did in South Carolina. I was in the sixth grade. I could remember going back to school and seeing five Black kids come to my class for the first time in my life. As an adult, a 48-year-old man, I now realize how their parents must have felt, to send their kids into a very uncertain, unchanging situation, but they sent their kids to public schools to make it better. I respect those parents because a lot of people quit, on both sides.

In 1967, Judge Pickering chose to send his children to public schools when White flight was the phenomenon of that county. We will see a photograph of a lot of Black kids with very few White kids in 1967 Mississippi public schools, and those White kids are Judge Pickering's kids. That was the right thing to do.

These people are not lemons, but if my colleagues do not like them, vote against them. My colleagues do not have the right to change the Constitution for the political moment.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Minnesota.

Mr. DAYTON. May I inquire, does this side have 30 minutes?

The PRESIDING OFFICER. There are now 30 minutes for the Democratic side.

Mr. DAYTON. May the time be equally divided between the Senator from Maryland and myself?

The PRESIDING OFFICER. It may if the Senator wishes.

Mr. DAYTON. I thank the Chair.

Mr. President, it is now 4:30. At 4:15, the Central Intelligence Agency began a classified briefing of all Senators on a just completed report on the worsening conditions in Iraq, a report that, according to the news accounts that were published yesterday and today about it, was reportedly leaked by a very high level Bush administration official so that it could not be hidden from the American people and from us in Congress.

When I became aware of this—and we were only informed of this briefing this morning—I asked Senator DASCHLE and Senator REID to see if we could suspend our talking and talking and talking about all of this for 1 hour to go listen to what is happening to the 130,000 courageous Americans whose lives are on the line in Iraq and to learn what we might be able to do, or must do, to support and aid them.

Senator DASCHLE and Senator REID inquired, could our colleagues across the aisle either give up 1 of the 30 hours that we are talking and talking about the jobs of four Americans and devote that time to protecting the lives and protecting the safety of 130,000 Americans and to preserving their heroic success that they achieved last spring in Iraq, which was for some of them their heroic sacrifice on our behalf, and which the CIA assessment reportedly has concluded is now in real jeopardy. Or even if that was not satisfactory, could that hour be added on to the scheduled conclusion for this blame-athon, keep the 30 hours as planned even though it is clear to this Senator, having participated between 12 and 1 this morning and listened to others throughout the early hours and now up until this time, that 30 hours for this topic is excessive and that our speeches are becoming increasingly repetitive, but just pause for 1 hour so that all of the Senators could attend that briefing on behalf of their constituents who are over in that precarious situation.

The answer was no. I thought that when this blame-athon began, it showed fellow caucus members on the other side of the aisle with mistaken priorities, but this has convinced me that it is much more serious than that. Winston Churchill once described a fanatic as somebody who cannot change his mind and will not change the subject. This fixation today fits that description.

We had a Senate Armed Services Committee hearing scheduled this morning, the committee on which I serve, with the Acting Secretary of the Army and other high-level Army officials testifying. We just received a briefing from them, reports of the timetables they have for deployments in and out of Iraq. We have seen reports of other news sources that within a few months the intention is to increase significantly in Iraq the number of reservists and National Guard men and women, which has a lot more importance to a lot more people who live in my State of Minnesota, whose loved ones are either over there now or are training to go over there soon or will be called up to go over later, than any judicial appointment. That hearing was cancelled.

The House of Representatives is taking this whole week off. They are waiting for us to catch up on passed appropriations bills for a fiscal year that started on October 1. Yesterday, we suspended action on the VA-HUD appropriations measure, set it aside for this period of time to talk and talk on the same well-beaten, thoroughly debated, and genuinely disagreed-upon difference of our respective opinions, which is somehow so important to some of us that everything and everyone else must simply wait.

The House Members are being paid by the American taxpayers to not even be in town this week because they are waiting for us to catch up. We are spending our time and American taxpayers' dollars to say the same things over and over and over and over again.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Secretary of the Senate be instructed to deduct the pay of all Senators for 15 hours, which is half the time that we are engaged in this excessive pursuit, and that should be our time, and for indulging in our priorities and playing to our audiences and doing whatever else this is supposed to be about but it is not serving the interests of the people of America any longer and I believe we should face up to that and recognize that.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. DAYTON. I would point out we are not going to vote until tomorrow. We are going to vote tomorrow on a couple of these matters, on a couple of these nominees. According to our own Senate rules and procedures, we are not able to vote until then. Contrary to what some people watching this show might deduce from comments that have been made in the last few minutes, and before me and in the hours preceding, we actually do follow our rules and procedures in this body. We have 216 years' established rules and procedures, and if any 1 of the 100 Senators who doubts that those rules and procedures are being properly followed or disagrees with the action, we have a remedy for that. We have a referee, we have a head umpire and impartial ruler on our rules, who is the Senate Parliamentarian. He or she, as the case may be, at the moment can be asked by any one of us to rule on any action, any tactic, any maneuver being employed by any Member of the Senate or any group of the Senate.

Yet for all the accusations for the last number of hours that we are violating somehow the rules, the procedures, the traditions, the Constitution, the intent of the Founding Fathers and just about everything else anybody has conjured up to justify their own point of view, we could ask. No one has asked. I am told that as of yesterday no one had asked the Parliamentarian, and I believe the reason is likely that the colleagues on the other side know that the answer would be clearly and unequivocally that we are following the practices and the traditions long established over 216 years by which this body conducts its matters, its business on behalf of the people of the United States of America.

We can have legitimate differences of opinion about whether that is a good set of rules, one that serves us and serves us in one situation or does not serve us, but they are there. I have learned this in my 3 years here, to my own proper humility, that there is a real collective wisdom that has been established with almost 1,900 men and women serving over the course of those 216 years and that while I may still not agree with some of the particulars, there is a way in which this country has been better served in the eyes of many people more learned than I about government and legislative procedure, has been better served by this body than any other legislative body in the history of the world anywhere on this planet.

Two generations ago, Gladstone called the Senate of the United States "that remarkable body, the most remarkable of all the inventions of modern politics."

James Madison, one of the authors of the document which we swear to uphold when we take this oath of office, the Constitution of the United States, said at the time:

> In order to judge of the form to be given to this institution [the Senate], it will be proper to take a view of the ends to be served by it. These were,—first, to protect the people against their rulers, secondly to protect the people against the transient impressions into which they themselves might be led.

I appreciated the words of the distinguished Senator from Mississippi just now because he was kind and gracious enough, and correct enough, to disagree with the application of these rules and procedures. But not as some have done, casting aspersions on following the rules and procedures, but beyond that, following our responsibilities and proscriptions under the Constitution of the United States, which I consider to be about the most serious accusation that any Member could direct toward anyone else.

As I said earlier, we have taken an oath of office to uphold the Constitution of the United States. That is the most solemn oath I have ever taken in my life. I expect every other Member of this body who has taken that oath is as sincerely and dedicated to that oath as I. To different people it may mean different things. But I never imagined questioning any Member's commitment. If there were reason to doubt or question, the proper way to direct that is through courts of this country, because it is a constitutional matter of the gravest import.

I urge everyone who has engaged in this constitutional practice these many hours to weigh those words far more carefully than some are doing. As I am on the Senate Rules Committee, I appreciate the approach the chairman of that committee suggested or implied in looking at these matters and, through a proper forum, if it be the desire, to consider them in a learned way, to bring in constitutional scholars who can give us a variety of opinions, impartial, nonpartial opinions about the Constitution and case law.

Then we can have an opportunity to consider whether what is established as a long-standing tradition and practice, whereby 41 Members of this body can prevent the other 59 from proceeding on something that would be passed by majority vote. I could argue the merits or demerits of that position over a particular matter, but I certainly would not question any Member's proper use of that just because I did not happen to like its application.

There were 69 of those measures taken in the last two years when we were in the majority; 69 times Senator DASCHLE had to move to proceed and file cloture when he was majority leader to consider bills and amendments, to go to final passage of legislation that affected health care for senior citizens, veterans benefits, environmental protection, matters that had far more consequence to many more Americans than any single judicial appointment to a Federal court.

I respect and appreciate the chairman of the Rules Committee and his thought on that matter. I welcome the chance to participate in that. I believe that is the responsible forum to review these matters and, if deemed necessary or desired on the part of those to consider it, to recognize we have the right and responsibility.

We have been elected independently by the men and women of our own States to do this job as each of us sees best, and I am willing to give anyone the benefit of the doubt who is doing so. That is our responsibility. That is our right.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Would the Chair state the parliamentary situation, please.

The PRESIDING OFFICER. The Senator from Maryland has 15½ minutes remaining on the Democratic side.

Mr. SARBANES. I will address the various issues concerning the long-term unemployed in this country. Before that, I will make a couple of comments about the judges.

Sixty-three of President Clinton's nominees were blocked from consideration. Four of President Bush's nominees have been blocked. Twenty percent of the Clinton nominees in the period of 1995 to 2000, the period when the other side controlled the Senate, the committees and the floor, were blocked and not given any opportunity to move forward. Many of those blocked were extraordinarily able people. Only four of President Bush's nominees have been blocked. Many of us feel very strongly that they represent extreme points of view outside of the legal mainstream in this country.

In a sense, the period over the last 6 years of the last century when an incredible number of the President's nominees were blocked is the genesis of the situation that people are talking about. Of course, the other side was able to do it in committee. They did not have to do it on the floor, they did it in the committee since they had a majority in the committee and they simply brought the curtain down at that point.

Yesterday, the New York Times ran an editorial entitled "Chatter in the Cave of the Winds." I ask unanimous consent the full text of that editorial be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit No. 1)

Mr. SARBANES. I will quote part of it and then I will elaborate on this issue.

> Senate majority Republicans might take a moment—or even a vote—to extend reassurance to the nation's millions of unemployed tonight during the 30-hour ersatz "filibuster" they plan to protest the Democrats' blocking of President Bush's more extremist judicial appointees. The filibusters will talk through the night, performing from a political script in a time-wasting tableau designed to produce campaign fodder for next year. But out there in real life, federal emergency unemployment benefits are scheduled to expire on Dec. 31 with no sign of notice from the Republicans in Congress. A year ago, they blithely quit the Capitol and let the unemployed stew through the holidays before retroactively approving a benefit extension that was far too modest.

I recall that very well because I was involved in the effort last year to try to extend these unemployment insurance benefits and the Congress left. It went home. The unemployment benefits ran out. People found themselves in absolutely dire circumstances. When the Congress finally returned, they extended the benefits retroactively. But meanwhile, people had passed through an extraordinarily difficult time for themselves and their family.

Nearly 9 million workers are unemployed today. There are another 4.8 million, just under 5 million Americans, who want full-time jobs but can only find part-time work. Some people choose to work part-time. These are people who want to work full time but cannot find full-time jobs so they have part-time jobs. That is almost 14 million Americans, those that are unemployed and those that are underemployed. In addition to that we have about 1.5 million Americans who were in the labor force but dropped out because they are so discouraged about the prospects of finding work.

This is the worst jobless recovery since the Great Depression. During this administration we have lost 2.9 million private-sector jobs, as measured by employees on private nonfarm payrolls. This chart shows where we were in January of 2001 and this is where we are in October of 2003. That is a loss of just under 3 million jobs.

Even the Secretary of the Treasury is not predicting that all of those jobs will be recovered by the end of this term. He has made a prediction which a lot of people think cannot be achieved, but even the administration is not predicting that they are going to recover all of the lost jobs.

Now, if they do not recover these lost jobs, and I see no way that they can possibly do that, this will be the first presidential administration since Herbert Hoover under which the economy has lost private-sector jobs.

This chart shows presidents and private-sector jobs gained or lost during an administration, in millions. We start with President Harding and then we go to President Coolidge. The green on the chart shows there was job gain during those administrations. Then we plunge down with President Hoover and we come back for job gains, all positive, net job gains during these administrations, President Roosevelt, President Truman, President Eisenhower, President Kennedy, President Johnson, President Nixon, President Ford, President Carter, President Reagan, President Bush the first, President Clinton; and, now, the current President Bush, with a negative, net job loss.

In the past, it has been a long-standing bipartisan policy to extend unemployment insurance during periods of labor market weakness. Unemployment insurance benefits were actually extended four times during the Reagan administration and three times during the first Bush Administration. The month we are in is the 31st month since the recession began. At this point during the 1990s recession, every worker was eligible for a minimum of 20 weeks of additional benefit. The basic benefit is 26 weeks. We then seek to extend it if the labor market is not improving, so people can support their families. Actually, the benefit they get is less than 50 percent of what they were earning and in order to draw an unemployment insurance benefit you must have built up an employment record. So by definition, you were working and you had a job, you lost your job, and only then do you get the unemployment insurance benefit. The benefit is designed to help carry you and your family through difficult circumstances.

Now we have 13 weeks of extended benefits but that pales in comparison with what was done in previous times. It certainly is inadequate in the face of a labor market in which we are not recovering jobs. What are these people to do who lose their jobs, they start drawing unemployment benefits, the benefits run out, they have been looking for work, they cannot find work, and then they no longer receive benefits. How do they support their family at a minimum level? They cannot do it.

As the New York Times said in this article:

> After the tax-cutting binges President Bush and Congress engineered for the affluent, failure to renew the nation's helping hand to the jobless would present a scandalous holiday scenario worthy of Dickens. More than talk, action is required.

They are absolutely right. Mr. President, 1.4 million American workers have exhausted their benefits and are unable to find work. They are out in the cold with no support. We now have over 2 million long-term unemployed. That is people who have been out of work for 26 weeks or more.

When President Bush came into office in January of 2001, the number of long-term unemployed, people unemployed for more than 26 weeks, was 660,000. The number of long-term unemployed in October of 2003, is just over two million. The number of long-term unemployed has tripled in the course of this administration. It now constitutes 23 percent of the entire unemployed population.

The last time such a large percentage of the unemployed were the long-term employed—in other words, people out of work for more than 26 weeks—was 20 years ago. This is the worst performance in 20 years, in two decades. Obviously, we need to extend these unemployment benefits and repeated efforts to do so have been blocked. The leadership is talking about leaving at the end of next week until next year. Of course, what that means is millions more will run out of their benefits and be unable to sustain their families.

There is money in the unemployment insurance trust fund for this purpose. That money is paid in, in good times, in order to address the situation in bad times. But that money is not being used. It was specifically set aside for this purpose. The extension of unemployment insurance benefits is a policy we have followed in the past. It has support from both sides.

These benefits are for people without jobs. I am hearing lamentations about four people who did not get their Federal judgeships. They have other jobs. These people have no jobs.

We made repeated efforts to bring the legislation up. I will make such an effort right now, once again. There is legislation pending to address this issue in the Finance Committee. It would help these workers. It would help our economy. It would ensure that we did not go through the travail and the turmoil which occurred at the end of last year, as well. It would provide an additional 13 weeks of benefits to those who have already exhausted their benefits.

[From the New York Times, Nov. 12, 2003]

CHATTER IN THE CAVE OF THE WINDS

> Senate majority Republicans might take a moment—or even a vote—to extend reassurance to the nation's millions of unemployed tonight during the 30-hour ersatz "filibuster" they plan to protest the Democrats' blocking of President Bush's more extremist judicial appointees. The filibusterers will talk through the night, performing from a political script in a time-wasting tableau designed to produce campaign fodder for next year. But out there in real life, federal emergency unemployment benefits are scheduled to expire on Dec. 31, with no sign of notice from the Republicans in Congress. A year ago, they blithely quit the Capitol and let the unemployed stew through the holidays before retroactively approving a benefit extension that was far too modest.
>
> This filibuster has no practical purpose. In the older days, a single lawmaker had to talk nonstop to block a hated bill; nowadays, the leadership merely counts heads to see if enough senators want to block a bill and then it is silently hung up. So if the retro-orators just want to make rhetorical points today and run short of topics, we beg them to ponder their jobless constituents instead of resorting to boilerplate sound bites and creaky filibuster stunts (in sad memory there was Alfonse D'Amato's singing an "Old McDonald" parody).

> Serious help is needed for the 2.4 million more recent jobless facing the end of their state benefits, not to mention the 2.1 million long-term unemployed who have slipped off the job-hunting scope. The promising uptick in the deep hiring slump—126,000 new jobs in October—is less than half the rate needed to even begin to dent the backup of joblessness. To deal realistically with the problem, Congress needs to double—to 26 weeks from 13 weeks—the federal emergency benefits that are available when state benefits run out. This would be similar to the help offered during the recession of a decade ago when long-term joblessness, especially in manufacturing, was hardly the problem it is now.
>
> After the tax-cutting binges President Bush and Congress engineered for the affluent, failure to renew the nation's helping hand to the jobless would present a scandalous holiday scenario worthy of Dickens. More than talk, action is required.

UNANIMOUS CONSENT REQUEST—S. 1853

Mr. SARBANES. Therefore, Mr. President, I ask unanimous consent that the Senate proceed to legislative session, that the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to its immediate consideration; that the bill be read the third time and passed and the motion to reconsider be laid upon the table.

Mr. LOTT. Reserving the right to object, I ask consent that the Senator modify his request so that just prior to proceeding the requested 3 cloture votes be vitiated and the Senate immediately proceed to three consecutive votes on the confirmation of the nominations, with no intervening action or debate.

Mr. SARBANES. Mr. President I made a unanimous consent request, which is pending.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Does the Senator object to the modification?

Mr. SARBANES. The Senator does not modify the unanimous consent request.

The PRESIDING OFFICER (Mr. CORNYN). Objection to the request is made.

Is there objection to the request as made?

Mr. LOTT. In view of that, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator's time has expired.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I do not have a New York Times to quote, but I think I am a lot more fortunate because I have two New Mexico papers, important papers in my State, to quote. I do not have to use them to change the subject. I will quote from a couple of our New Mexico papers on the issue of the nominations, the nominating process, and what has happened to that process in the last couple of years.

Let me first quote from our largest newspaper, the Albuquerque Journal. It says in its headline: "End Filibuster, Put Court Nominee to Vote." And then it says:

> What the Colt revolver was on the dusty streets of the Old West, the filibuster is on the floor of the U.S. Senate: The great equalizer gives 41 senators the ability to bring the chamber's business to a halt.
>
> The tactic should be unholstered only on issues of high principle or grave importance. Considering the issues currently confronting Washington, the judicial nomination—

In this paper it is referring to Miguel Estrada when it says:

> The judicial nomination of Miguel Estrada does not rise above partisan wrangling. To block a vote on his appointment to the U.S. Court of Appeals for the District of Columbia Circuit is an abuse of the filibuster.

I ask unanimous consent that this editorial from that distinguished newspaper be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Albuquerque Journal (NM), Feb. 23, 2003]

END FILIBUSTER, PUT COURT NOMINEE TO VOTE

What the Colt revolver was on the dusty streets of the Old West, the filibuster is on the floor of the U.S. Senate: The great equalizer gives 41 senators the ability to bring the chamber's business to a halt.

The tactic should be unholstered only on issues of high principle or grave importance. Considering their issues currently confronting Washington, the judicial nomination of Miguel Estrada does not rise above partisan wrangling. To block a vote on his appointment to the U.S. Court of Appeals for the District of Columbia Circuit is an abuse of the filibuster.

Democrats say the filibuster is justified because too little is known about Estrada and he has not been forthcoming about his judicial philosophy.

New Mexico Sen. Jeff Bingaman said Friday he has not made up his mind about backing continuation of the delay tactic, and echoed the Democratic indictment of the Honduran immigrant as a stealth conservative.

"Obviously, you become suspicious of a person's point of view if he won't answer questions," Bingaman said.

Let's get on past mere suspicions of Democrats and declare guilt by association. Estrada is the choice of President Bush. His views doubtlessly come closer to mirroring Bush's than those of left-learning Democrats or those of Clinton's judicial nominees.

Femisinst Majority president Eleanor Smeal, for one, doesn't need any more information about Estrada to know that in blocking him, "the Democratic leadership is giving voice to its massive base of labor, civil right, women's rights, disability rights, environmental, gay and lesbian rights groups."

Oh, then this is about constituent politics.

There's another constituent-oriented facet: Miguel Estrada is a successful immigrant, current front-runner to become the first Hispanic Supreme Court justice and an obvious role model in short, a poster boy for Republican recruitment of minorities away from the one, true political faith.

This isn't about suspicions; Estrada is the Democrats' worst nightmare from a partisan perspective.

From a personal perspective, Democrats who have worked with him in the Clinton administration have high praise. Seth Waxman, Clinton's solicitor general, called Estrada a "model of professionalism." Former Vice President Al Gore's top legal adviser, Ron Klain, said Estrada is "genuinely compassionate. Miguel is a person of outstanding character (and) tremendous intellect."

During Judiciary Committee hearings in September, Estrada said: "Although we all have views on a number of subjects from A to Z, the first duty of a judge is to a put all that aside."

That's good advice for a judge, and it's good advice for senators sitting in judgment of a nominee. Put aside pure partisan considerations; weigh Estrada's qualifications, character and intellect; end the filibuster and put this nomination to a vote.

Mr. DOMENICI. This editorial continues:

> Feminist Majority President Eleanor Smeal, for one, doesn't need any more information about Estrada to know that in blocking him, "the Democratic leadership is giving voice to its massive base of labor, civil rights, women's rights, disability rights, environmental, gay and lesbian rights groups."
>
> Oh, then this is about constituent politics.

Then there was another editorial in a New Mexico paper, the paper is a rather liberal newspaper, the Santa Fe New Mexican. The Santa Fe New Mexican editorial is entitled: "Estrada Tosses Towel; Pyrrhic Win For Dems."

> So Senate Democrats got what they wanted—or avoided what they didn't want: Miguel Estrada has asked President Bush to withdraw his nomination to the U.S. Court of Appeals. . . .
>
> The 41-year-old Honduran immigrant, who led his law class at Harvard, was a vastly better choice for the judiciary than any number of Democrats who slid onto the federal bench during the early Clinton presidency.
>
> Now, with a GOP president and a bare Republican majority in the Senate, the Dems still are able to stymie the appointment of conservative judges reflecting the apparent wishes of the American electorate: There are too few Republican senators—or principled Democrat ones—to apply cloture to threatened filibusters over the confirmation of Estrada and other qualified appointees.

And it goes on to talk about various Senators and how they conducted themselves on this nomination. I ask unanimous consent that the editorial from the Santa Fe New Mexican be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Santa Fe New Mexican, Sept. 5, 2003]

ESTRADA TOSSES TOWEL; PYRRHIC WIN FOR DEMS

So Senate Democrats got what they wanted—or avoided what they didn't want: Miguel Estrada has asked President Bush to withdraw his nomination to the U.S. Court of Appeals, for the District of Columbia Circuit.

The 41-year-old Honduran immigrant, who led his law class at Harvard, was a vastly better choice for the judiciary than any number of Democrats who slid onto the federal bench during the early Clinton presidency.

> Now, with a GOP president and a bare Republican majority in the Senate, the Dems still are able to stymie the appointment of conservative judges reflecting the apparent wishes of the American electorate: There are too few Republican Senators—or principled Democratic ones—to apply cloture to threatened filibusters over confirmation of Estrada and other qualified appointees.
>
> Estrada was appointed to the appellate court in the spring of 2001. He's been in a kind of limbo ever since. Yesterday, he threw in the towel, saying it's time to devote full attention to his law practice and his young family.
>
> We can almost hear the echo of hurrahs from Capitol Hill, where only four Democrats sided with 51 Republican colleagues who quite properly saw him as an excellent appointment. New Mexico's Jeff Bingaman wasn't one of the four. The Senator has offered excuses about a lack of information on Estrada, who has been in a figurative fishbowl since long before his nomination—but Bingaman knows darn well this is party politics at its lowest. Republicans have pulled similar stunts on Democratic nominees during years past. This is payback time—or repayback time; playing schoolyard games with our nation's system of justice.
>
> For the Dems, this could prove to be a Pyrrhic victory: The day will come when a Democratic president's nominees might face treatment as shoddy as Estrada got. We can only hope the Republican Senators of that day will prove more gracious than their GOP predecessors—and today's Democrats.

Mr. DOMENICI. Mr. President, I just want to move, for a moment, to compare how certain other judges have been treated in terms of how long they had to wait while the Senate did nothing because we were in a filibuster mode in the Senate. I want to take two or three of our nominees and just go through with those who are listening the various qualifications and the like for various nominees. I will start with Miguel Estrada, and I will take three other nominees and talk about them versus Miguel Estrada.

Nominee:

Douglas H. Ginsburg: nominated by President Ronald Reagan; college, Cornell University; law school, University of Chicago Law School; circuit court clerkship, Carl McGowan of the D.C. Circuit Court of Appeals; Supreme Court clerkship, Thurgood Marshall; Federal Government service, Deputy Assistant AG.

A. Raymond Randolph: nominated by President George Bush; college, Drexel University; law school, Pennsylvania Law School; circuit court clerkship, Henry J. Friendly, Second Circuit Court of Appeals, Federal Government service, Assistant to the Solicitor General.

Merrick B. Garland: nominated by President Bill Clinton; college, Harvard, summa cum laude; law school, Harvard Law School; circuit court clerkship, Henry J. Friendly, Second Circuit Court of appeals; Supreme Court clerkship, William J. Brennan, Jr.; Federal Government service, Special Assistant to the AG.

Now, for each of these: it took 15 days for one of them, 66 days for one of them, and 71 days for the third.

Then we come to Miguel Estrada: nominated President George W. Bush; college, Columbia, magna cum laude; law school, Harvard Law School, magna cum laude; circuit court clerkship, Amalya Kearse, Second Circuit Court of Appeals; Supreme Court clerkship, Anthony Kennedy; Federal Government service, Assistant U.S. Attorney and Assistant Solicitor General. Mr. President, he waited 848 days.

Obviously, Mr. President, there is no validity to the conversations coming from the other side that they have not taken qualified appointees and decided that they would apply this rule of 60 instead of 51.

Out there in America, when people look at the Senate they say when you have 51 votes, that is the way you win. With 51 votes you win; with 49 you lose—but not when it comes to judges they do not like, just plain do not like—not that they are not qualified, they just do not want them.

For some reason they have decided they are not going to let that person on, and no longer is the majoritarian rule the rule of the day. It is a supermajority. Then the time begins to run.

Miguel Estrada had to wait more than 800 days before he gave up. I have just gone through the names of three. I am not going to say the others were not qualified; they were. But certainly Miguel Estrada is as qualified as any of them are, if you look at just the paper background and the previous service and achievements prior to them coming to the floor and languishing or getting confirmed.

For none of those three are better nominees than Miguel Estrada, and everybody looking at his record and seeing what he has done and what he has not done knows that.

Now I would like to close with a last editorial, an editorial also from New Mexico. This one is from the Albuquerque Journal. This editorial speaks about the current situation when so many candidates and other Democrats in high positions are coming to our State, the State of New Mexico, to talk to the Hispanic people where we have large numbers, and to talk politics to them.

I am quoting from a September 11, 2003, editorial from the Albuquerque Journal. It says:

> Democratic presidential hopefuls mouthed and sometimes mangled Spanish words in Albuquerque last week, searching for Hispanic votes.
>
> Earlier that day, a Hispanic judicial nominee who wanted a simple up-or-down vote on the Senate floor withdrew after two years of Democratic mangling of the confirmation process.
>
> Democrats could not argue that Miguel Estrada was unqualified to serve on the appeals court for the District of Columbia, a stepping stone to the U.S. Supreme Court.

Playing catch-up after emigrating from Honduras at 17 with little English, Estrada graduated from Columbia with honors, earned a Harvard law degree and clerked for Supreme Court Justice Anthony Kennedy.

Estrada's credentials were good enough for the Clinton administration, where he worked for five years in the U.S. Solicitor General's Office.

Though he has no paper trail of decisions as a judge, his reputation as one of the nation's finest appellate lawyers led to a unanimous American Bar Association rating of "well qualified" for the Supreme Court.

But "well qualified," in terms of legal intellect, is not qualification enough in the U.S. Senate. There's blame enough to spread around both sides of the aisle. . . .

But Democrats have escalated the partisan warfare to the filibuster level. Estrada would have been confirmed by a simple majority, but Democrats raised the bar for this Hispanic from the wrong side of the political tracks. Estrada had to have a super majority of a Senate where Democrats toed the party line against him.

Though accustomed to adversity, Estrada finally withdrew after two years of this absurdity. His experience should not be in vain.

Democrats who take Hispanic support for granted but can't bring themselves to vote for a qualified Hispanic should learn a new word from the lips of voters: !Basta!—Enough of this purely partisan jockeying on judicial nominations.

I think, while many came to the floor and quoted the New York Times and other major newspapers, I think my two New Mexico papers have hit it on the head, the last one right where it belongs during a political campaign—come and mingle and mangle our language and our last names, and then when one is nominated, make them have the supermajority, all the time asking for their vote—paraphrasing the last editorial that I just read from the Albuquerque Journal.

I think what has happened to these nominees—in particular, the four we are speaking of, led by Miguel Estrada, and the three women—it is clear they have been politicized. They are qualified. If they would have had a chance under other Presidents at other times with their kind of qualifications, they would be serving on a higher bench in the United States without question.

They have just found themselves at a point in time when the filibuster rule is applied with such assurance that there is no harm to come to those politically or otherwise who use the instrument of filibuster against the extremely qualified.

That is exactly what has happened here. I am pleased to speak for just a few moments. I compliment all of those who have taken much time over the last day and a half to speak to the issue, specifically as to these people, and generally as to how this process used this way is ruining the political process and making good candidates—let's make it superior candidates—subject to the whim of the 60-vote rule.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. How much time do we have remaining on our side?

The PRESIDING OFFICER. There are 15 minutes 20 seconds.

Mr. TALENT. I am going to be brief, Mr. President. I had an opportunity to speak last night and I want to have a chance to hear my friend from Ohio and I want to give him a full opportunity to speak.

We are here—I am here again; others have been here more often than I—because we are trying to put a stop to filibusters that are unprecedented in their nature. For the first time in the history of this institution, court of appeals nominees of the President of the United States have been filibustered to death on the floor of this Senate by a determined minority.

It is a usurpation of the Constitution. It is hurting the courts, and it is unfair to these nominees who are not only qualified, who not only should be confirmed, but who would, just a few years ago, have flown through this body because of their extraordinary qualifications.

I just want to address a couple points. One that has been made very often by some Senators who have been participating in these filibusters is that, in fact, they are really not doing anything that unprecedented or that bad because they have approved, they have allowed all but four of the nominees to go through. Well, that is just not the right way of looking at it.

They set out to hunt, if you will, the big game, the court of appeals judges. So it is true, they have not been taking any shots at the rabbits, at the squirrels, at the district court judges. Those they have let through. But they have taken down or they are threatening to take down, through the filibuster, a quarter of President Bush's nominees to the court of appeals.

This graph shows it. None of the previous four Presidents, or any of the Presidents, had ever lost a court of appeals nominee by a filibuster of the minority on the floor of the Senate.

President Bush has had 29 court of appeals nominees confirmed. Twelve of them have either been filibustered or they are going to be filibustered tomorrow or there are threats to filibuster them.

He sent 46 down in total. Twelve have been filibustered or threatened to be filibustered, which is a quarter of his nominees. That is not a passing percentage in anybody's book, and it is unprecedented to have even one filibustered.

Second, Senators have said: Well, look, the filibuster has been used in the past, and that is because motions for cloture have been offered and passed sometimes in the past. There have been small groups of Senators who have tried to filibuster nominees in the past, and the rest of the Senate has said: No, we do not do that. We may not like the nominee, but we do not filibuster them. In every case, the leaders of both parties have supported motions for cloture, and cloture has been invoked.

They are using instances when the filibuster has been stopped by the Senate in the name of the Constitution, and in the name of the traditions of the Senate to support their efforts where the filibuster has succeeded. They are turning the past on its head to support a present and a future which is completely inconsistent with the Constitution and the traditions of the Senate. It is wrong, and it is wrong to people involved.

I wish I had time today. Perhaps I will have time later to go through the qualifications of these nominees. On top of everything else, they just deserve this. Many of these people have overcome tremendous obstacles, personal obstacles in their youth, to achieve tremendous success in the field of law. They would be great judges. We need those judges on the courts.

Finally, Mr. President, and before I yield to my friend from Ohio, I just want to say that repeatedly it has been suggested by that group of Senators who have been filibustering that: Well, we ought to go on to other business. In fact, they are upset that the process of the Senate is being obstructed.

Well, I would sure like to go on to other business, too. You can filibuster or not filibuster. There is no question under the rules of the Senate, Members have the raw power to do this. What you cannot do is filibuster and then complain about obstruction. You cannot do that. That is called having your cake and eating it, too. The minute that Members of this Senate decide they want to go on to other business, we can go on to other business. Just allow us a time agreement to vote. Allow us to vote on these people. Five minutes after you do that, we are off to other business of the Senate, which all of us want to go on to.

In the meantime, please, if you are going to filibuster these nominees, at least do not complain about obstruction of the processes of the Senate.

With that, Mr. President, I yield the floor to my friend from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, the nominees who President Bush have nominated are outstanding attorneys, people who would make fine judges and, frankly, the sooner we have an up-or-down vote on these nominees the better.

The nomination of these judges affects the citizens living in their judicial circuits and the nominees themselves. So this is not just a theoretical debate, this is a real world debate with real consequences.

Let me turn to one of those nominees, and that is Judge Charles Pickering. I want to talk about the merits because that is what we should be talking about, what we should be debating on the Senate floor, the merits of all these nominees. If we had an up-or-down vote, I say to the Members of the Senate, that is what we would be able to do. That is what this whole discussion for these 30 hours is about: our request to be able to vote on the merits.

Let me talk about the merits and what we would be able to talk about if we had that opportunity.

Judge Pickering, a man who graduated from the University of Mississippi with honors. This is a man who graduated from law school the first in his class; a man who has had a distinguished career as a lawyer; a prosecuting attorney; a judge who was confirmed unanimously by the Senate to a district court position 13 years ago.

What about the ABA? We always hear about the ABA. We don't think that should be the be-all and end-all, but the ABA should be a part of what we look to. Here is a letter ABA sent to me and other members of the Judiciary Committee:

> Senator DEWINE, We are transmitting to you for your consideration, this committee's evaluation pertaining to the nomination of the Honorable Charles Pickering, Sr., as judge of the United States Court of Appeals for the Fifth Circuit. I am pleased to report, as a result of our investigation, a substantial majority of the committee is of the opinion that the Honorable Charles W. Pickering, Sr., is well qualified for appointment as judge to the United States Court of Appeals for the Fifth Circuit.

That is what they had to say about him.

People who know Judge Pickering best in his home State of Mississippi also agree that he should be on the bench. People who have known him for years have written to this Congress and have talked with us and have said this man is qualified. This is a man of great character; he should be on the bench.

There have been attacks about Judge Pickering. Let me talk about these for a moment. Again, this is the type of discussion we should be having on the Senate floor. We shouldn't have to be down here making the argument that all we want is an up-or-down vote. This substantive argument is what we really should be able to have.

Let me talk about some of the attacks on Judge Pickering. At the time of our hearing on Judge Pickering, he had decided roughly 4,500 cases as a district court judge. Out of those 4,500 cases, he has been appealed 328 times and ultimately he was reversed or had the case remanded for additional work or some clarification in 26 cases.

Without getting too much into the numbers, I can tell you he has a good reversal rate—about 8 percent. That is better than the national average, and it is even better than the average in the Fifth Circuit.

Some of Judge Pickering's critics would argue the problem is not the number of cases on which he has been reversed. They say the problem is what you find in those reversals. Let's take a moment and look at that.

I looked at the 26 cases where he was reversed or where the case was sent back for further clarification. The statement was made in one of Judge Pickering's hearings several times that his cases boiled down to civil rights, voting rights, employment, and that is what was troubling. I think we need to look at each of these areas, and I will try to do that in the brief time I have.

There are a few ways to categorize a case and what type of case it is remains, certainly, in the eyes of the beholder, but I have looked at the reversals and the areas mentioned during the hearings, and this is how I break them down.

On my count, 2 of the 26 cases involve employee rights, 1 case involved voting rights, and 4 were civil rights cases. I believe as we look at these cases, there is no merit to the charges in regard to Judge Pickering.

Let's look first at the accusation of voting rights. Judge Pickering was reversed on one voting rights case, and that was Watkins v. Fordice. Judge Pickering was part of the three-judge panel that decided that case. Here is the key. We should be very clear about this. The voting rights issues in this case had already been resolved. The issue that went up for appeal was, guess what—Listen to this: attorneys fees. That is what the issue was. That is what went up on appeal.

So to categorize that as a voting rights case, that the judge was appealed on a voting rights case and overturned on a voting rights case is simply not fair. It is not fair by any good judgment.

When the case went up on appeal, the court of appeals said: We need more information. And they sent it back to Judge Pickering's three-judge panel. Judge Pickering and the other two judges gave them more information. It went back up, the court of appeals looked at it, and said: It's OK, you were right. We are not going to reverse you. And that ended it. That is the voting rights case about which everyone is talking.

I should also note for the record there were three other voting rights cases that Judge Pickering decided. Not one of these cases—not a single one—was reversed. In fact, nobody ever appealed the cases, which again tells us something. When a voting rights case is not appealed or when a major case is not appealed, it certainly tells us something.

So we end up on the voting rights issue with only one case where he was appealed, in that particular case it was about attorney's fees and, in the end, Judge Pickering was held to be correct anyway, and three other cases were not appealed at all.

Let me talk briefly about Judge Pickering and the civil rights cases. Every one of the civil rights cases—of the 26 cases we are talking about—every single one of them involved claims made by prisoners. I point that out not to say prisoners rights cases are unimportant; they certainly are important. We all know they are important. They can involve basic rights. But these are not the type of cases that we would normally associate, or at least the public would normally associate, as civil rights cases. Lawyers know them as civil rights cases, but I believe the general public would not think of them as typical civil rights cases. They were often procedural requests, sometimes requests for very specific relief.

For example, in one case, the whole issue was whether or not a prisoner had a right to use a certain type of typewriter. This prisoner wanted to use a memory typewriter instead of a regular typewriter, and that is what the substance of the case was about.

There were procedural issues there, and the court of appeals took a look at them. They were reversed, and we certainly understand that.

Again, I am not minimizing that, but I think we just need to put this whole case in its proper perspective.

Let me also note for the record that Judge Pickering was reversed, as we have said, in a total of 11 of the so-called prisoner cases out of an estimated 1,100 prisoner cases with which he dealt.

Let's now talk about Judge Pickering's employment cases. I will be very brief because I see my time is almost up. We need to look at both the employment cases, the Marshall case, and the Fairley case. In the Marshall case, Judge Pickering upheld an arbitrator's decision reinstating an employee who had been fired from her job. In the other case, the judge found on behalf of the worker suing his employer's disability plan for damages. In both cases, Judge Pickering ruled in favor of the employee.

The court said he was wrong about how he did it, wrong in the decision, and the court overturned him. But no one should use the employment case where he was overturned—these two cases—as in any way indicating that he is not sensitive to employees. He did, after all, in these two cases, rule in favor of the employees.

Judge Pickering is well-qualified. There is no doubt about it. His overall record as a judge is excellent. The specific cases cited as a concern do not show anything at all except that he is a human being who sometimes made some mistakes. I submit that virtually every district court judge that we look at and look at as carefully as we have looked at Judge Pickering, we would find similar reversals.

When we look at these specific cases, I believe there is no indication that Judge Pickering is hostile to civil rights, to voting rights, to employment rights, or any other type of rights. I believe there is no evidence at all that Judge Pickering substitutes his personal opinions for the law. In fact, the evidence shows that he clearly does follow the law.

Judge Pickering has testified under oath to the Judiciary Committee twice that he will follow the law and abide by the law, and Mr. President, his record shows that he will.

This is just an example of the debate that I think we ought to be having. If our colleagues across the aisle would allow us to have an up or down vote on these nominees, we could talk about the qualifications and criticisms of these nominees. We could talk about allegations and they could be supported or dispelled. There are many, allegations against these nominees that would be dispelled—just like the ones I've just discussed about Judge Pickering.

I encourage our colleagues to let us have the debate on the merits of the nominees. Then Senators can hear all the facts—both sides of the debate. And then they can make up their minds and vote—yes or no, just vote.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand under the agreed procedure, the Senator from Hawaii and myself will have a half hour; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. KENNEDY. Mr. President, I have listened with interest over the last 24 hours to those who have taken exception to the action that has not taken place in the Senate with regard to judges. I listened very carefully. Many of our colleagues have been extremely eloquent in their presentations.

As we are reaching the 24-hour point, it is important to understand exactly what our responsibility is in the Senate with regard to the appointment power, what our Founding Fathers expect of the Senate, and whether we are measuring up to the test which they established at the Constitutional Convention.

I draw the attention of our colleagues once more to the raw statistic, which I think effectively rebuts so many of the allegations and the presentation that has been made, where we have actually confirmed 168 of the nominees, and only 4 have not been affirmatively approved. That is 98 percent. We ought to think about what has been said on the other side about the abuse of those who have expressed opposition to these nominees, whether there has been an abuse of the system itself, when we find out they have gotten 98 percent of their way over this Congress. My good friend from Vermont has gone through the statistics in great detail.

I listened a little earlier to one of my colleagues on that side of the aisle say there never has been an instance where a circuit court judge was filibustered by the other side. I am a member of the Judiciary Committee, and I would be glad to sit down with my colleague and go over the 23 well-qualified nominees who never emerged from the Judiciary Committee to be considered on the floor of the Senate.

Nonetheless there are those who are listening tonight who may say, "My goodness, we have these nominees and they are not being considered. Isn't this a one-way street, where now Democrats, perhaps a few Republicans, are not permitting the vote on particular nominees?"

I can remember very well the other side using the same rules to their own advantage with regard to judicial nominees, and history demonstrates that, as has been pointed out by our colleagues.

Rather than dwelling on that, I think it is instructive once more to think about what our Founding Fathers expected of this body with regard to the appointment process. When we look at that, we will see that they expected us to exercise our own good, independent judgment. There are those on the other side who say, if the President sends someone up to the Senate, you better find a good reason not to vote for him or otherwise the President is entitled to that individual. That is not the case. That has been repeated time and time again.

To the contrary, if you look at the debates in the Constitutional Convention, our Founding Fathers weighed their debates and discussions believing that we in the Senate should have the heavy hand in terms of the final judgment with regard to nominees. I will take a few moments to review that because it is instructive.

The Constitutional Convention met in Philadelphia from late May until mid-September of 1787. On May 29, 1787, the Convention began its work on the Constitution, and when the Virginia Plan was introduced by Governor Randolph, it provided that a National Judiciary be established to be chosen by the National Legislature.

Under this plan, the President had no role—no role—in the selection of Federal judges. When this provision came before the Convention on June 5, several Members were concerned that having the Congress as a whole select judges was too unwieldy.

James Wilson of Pennsylvania suggested an alternative: that the President be given the sole power to appoint judges. The idea had no support. John Rutledge of South Carolina said he "was by no means disposed to grant too great a power to a single person." James Madison agreed that the legislature was too large a body, and stated that he was "rather inclined to give the appointment power to the Senatorial branch." This is the debate of our Founding Fathers, a group sufficiently stable and independent, as James Madison pointed out, to provide "deliberate judgments" on judges.

A week later, Madison offered a formal motion to give the Senate—the U.S. Senate—the sole power to appoint judges, and this motion was adopted without a single objection.

On June 19, the Convention formally adopted a working draft of the Constitution, and it gave the Senate the exclusive power to appoint judges. This was the thinking of our Founding Fathers.

We learn in that debate on the floor of the Senate, the Founding Fathers intended the Senate of the United States to be a principal partner, obviously, in the consideration of these judges.

On July 18, the Convention reaffirmed its decision to grant the Senate the exclusive power. Wilson again proposed "that judges be appointed by the executive," and again his motion was defeated. The issue was considered again on July 21 and in the Convention for the fourth time and again agreed to the exclusive Senate appointment of judges. In a debate on the provision, George Mason of Virginia called the idea of executive appointment of Federal judges a "dangerous precedent."

Not until the final days of the Convention was a compromise suggested. On September 4, 2 weeks before the Convention work was completed, the committee proposed that the President should have a role in selecting judges. It stated: "The President shall nominate and, by and with the Advice and Consent of the Senate, shall appoint judges of the Supreme Court."

The debate made clear, Mr. President, however, that while the President had the power to nominate the judges, the Senate still had a central role. Gouverneur Morris of Pennsylvania actually described the provision of giving the Senate the power "to appoint judges nominated to them by the President."

It's clear that the Constitutional Convention, which had repeatedly rejected the proposal to let the President alone select the judges, did not intend the Senate to be a rubberstamp for the President. And it is equally clear that, especially when the Senate is controlled by the President's own party, the Founders did not intend the Senate to roll over and play dead whenever the President tells them to.

We have approved 168. And only 4 have been rejected. That is a pretty good record for this President.

On the contrary, it is clear what the Founders would say to us today. They would say, "We gave you this power to use it whenever you think the President proposes judges who will not be beneficial to the Nation. We did not tell you what rules to use to exercise that power. We gave you the right to set your own rules."

And they did. And the Founders did not say, and did not mean that "the President can appoint whomever he wants to the Federal courts, as long as he gets a bare Senate majority to consent." If we did adopt a rule that allowed the President to do so, the Founding Fathers would look down on us and say, "Shame!"

"You are the Senate. If we wanted the President alone to be able to pick the judges, we would not have given you the power that we did in the Constitutional Convention. For 214 years, you have used that power wisely, and under the power we gave you, you have the authority to set your own rules." That is what the Founding Fathers said.

As Senators, we have the obligation to say no to the President when we think he is wrong. We should not abdicate the powers the Founding Fathers gave us. If we are true to our oath of office as Members of the Senate, we cannot abdicate the powers the Founders gave us.

We should not erase the rules which give us the ability to be the Senate and protect the independence of the Federal courts.

We exercise different judgments on Presidential nominees. The independence of the Senate and the courts is the essence of our Constitutional system of checks and balances that has served us so well throughout our history.

The Senate has never hesitated to exercise its advice and consent power. During the first 100 years after ratification of the Constitution, 21 of 81 Supreme Court nominations one out of four were rejected, withdrawn or not acted on. During these confirmation debates, ideology often mattered. John Rutledge, nominated by George Washington, failed to win Senate confirmation as Chief Justice in 1795. Alexander Hamilton and other Federalists strongly opposed him because of his position on the controversial Jay Treaty with Great Britain. A nominees of President James Polk was rejected because of his anti-immigration position. A nominee of President Herbert Hoover was rejected because of his anti-labor view.

When a President makes the request for a member of the Cabinet, it is time limited to the 4 years that President is going to be there. The President has the heavy presumption that he is entitled to his own advisers, and that is why the overwhelming majority of nominees by the Presidents for their Cabinet are approved. We have some for the regulatory agencies that may be a little bit longer, or go past a particular administration, and perhaps we apply a somewhat tighter and more stringent test, but we are talking about lifetime tenure on important courts of this land.

The DC Circuit Court has really been called another supreme court because they have the appellate jurisdiction on so many of the regulatory agencies. These appeals that come before that DC Circuit involve the rights of working men and women. They make the decision in terms of whether the workplace is going to be safe for all of those who go in and work in their plants and factories. They are going to interpret whether the various legislation dealing with the environment is adequately enforced, along with a whole range of different issues that affect the health and safety and well-being of the people of this country.

Our friends on the other side say, "If the President nominates someone, why are you not rubberstamping it?" That is not what our Founding Fathers said or agreed to or instructed us to do. They said we should make our own independent judgment and decision, and the fair judgment and decision, I believe, is whether these individuals who are nominated demonstrate a core commitment to the fundamental teachings of the Constitution of the United States. That is what this Senator looks for with a nominee.

When they will not answer the questions—but the administration knows what those answers are—or they have demonstrated over a lifetime by statements and deeds that they will not abide by the fundamental teachings of the Constitution, why in the world should we take a chance, in representing the people we do, to think they deserve a promotion to serve in these high courts? It should not be that way. The Founding Fathers never expected us to be that way, and we will not have it that way.

Recently, we had a very distinguished historian who wrote a magnificent book. It is called "Master of the Senate" by Robert Caro. In that book, he did an enormous amount of reading and studying of the views of our Founding Fathers and also of the early years of the Senate in order to put his historical figure, President Johnson, then-Majority Leader Johnson, into some perspective. I will just mention these lines which I think are very insightful about the Founding Fathers and what they believed this institution was really all about:

"The writings of the framers of the Constitution make clear that Senators, whether acting alone or in concert with like-minded colleagues, are entitled to use whatever means the Senate rules provide to vigorously contest a President's assertion of authority with which they strongly disagree.

One could say, in fact, that under the fundamental concept of the Senate as envisioned by the Founding Fathers, it is not merely the right, but the duty of the Senators to do that, no matter how popular the President or how strongly the public opinion polls of the moment support the President's stand on the issues involved."

Then he continues:

" . . . in creating the new nation, its Founding Fathers, the Framers of the Constitution, gave its legislature . . . not only its own powers, specified and sweeping . . . but also powers designed to make the Congress independent of the President to restrain and act as a check on his authority, (including) power to approve his appointments, even the appointments made within his own administration . . . "

And the most potent of these restraining powers the Framers gave to the Senate is:

" . . . the power to approve Presidential appointments was given to the Senate alone; a President could nominate and appoint ambassadors, Supreme Court Justices, and other officers of the United States, but only 'with the Advice and Consent of the Senate.' "

" . . . the Founders, in their wisdom, also gave the Senate the power to establish for itself the rules governing exercise of its powers. Unlike the unwieldy House, which had to adopt rules that inhibited debate, the Senate became the true deliberative body that the framers had envisioned by maintaining the ability of its members to debate as long as necessary to reach a just result. For more than a century, the Senate required unanimous agreement to close off debate. The adoption of Rule XXII in 1917 allowed a two-thirds cloture vote on 'measures,' but nominations were not brought under the rule until 1949."

In short, two centuries of history rebut any suggestion that either the language or the intent of the Constitution prohibits or counsels against the use of extended debate to resist Presidential authority. To the contrary, the nations's Founders depended on the Senate's Members to stand up to a popular and powerful President. In the case of judicial appointments, the Founders specifically mandated the Senate to play an active role, providing both advice and consent to the President. That shared authority was basic to the balance of powers among the branches.

Surrendering such authority is not something which should be done just because of a Senator's point of view on the particular issues of the moment—because much more than the particular issue is involved.

Republican Senators are wrong when they say, "The President is entitled to have his own people on the courts." We know that history tells us the opposite. The Senate usually chooses to give the President broad leeway in appointing members of his cabinet and filling other positions in the Executive Branch. He is politically responsible for these appointees. They generally serve at his pleasure, and their appointments end at the end of his term in office. But appointments to the federal courts are lifetime appointments. Federal judges are able to fulfill their own constitutional responsibility because they are independent of both Congress and the White House.

The Founding Fathers wanted the checks and balances, the independent government agencies: The Presidential and the executive, the Congress with the House and the Senate, and an independent judiciary. It does not belong to the President. It does not belong to the Congress. It belongs to the American people, and both the President and the Senate have an important responsibility to make sure it remains independent.

I yield the remaining time to the Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I have spent the past 23 hours listening to the debate which was billed as a debate on judicial nominations and has turned into a semantics fest over who is responsible for the delayed enactment of legislation important to both sides of the aisle. One thing is clear to me, this is not getting us any closer to enacting the legislation we have identified as important.

We are devoting 30 hours to debate the fact that the Senate has passed only 98 percent of President Bush's nominees, not 100 percent. I take my responsibilities as a United States Senator very seriously. My understanding is that I am to provide the President with my advice and consent regarding the individuals he nominates for a lifetime position to the Federal judiciary. It troubles me that we are spending 30 hours to discuss the fact that we have not acted on 2 percent of the President's nominees to the Federal judiciary.

We are talking about 4 individuals, 4 individuals who have jobs, while 3 million people have lost jobs since President Bush took office. We should be talking about jobs. We should be debating and voting on legislation to increase the minimum wage. We should be finishing our appropriations bills. We should be talking about ways to strengthen our manufacturing base. We should be discussing extended unemployment benefits for the long-term unemployed, the 3 million Americans who have lost their jobs during the Bush presidency.

If we want to start talking about legislation that is important to us as individual Senators, we could be talking about Federal recognition for Hawaii's indigenous peoples, Native Hawaiians, an issue of extreme importance to my constituents in Hawaii. We could be talking about ending mutual fund abuses for investors or promoting financial literacy for our students. We could be talking about how to fund the promises we extended when we passed the No Child Left Behind Act which has been severely underfunded since its enactment.

Instead, we have spent 23 hours talking about 4 judicial nominations, 4 nominations out of 172, which have not been approved by this body. We have spent the past day blaming each other for the lack of progress on the issues that we have identified as priorities. It is sad that we have come to this point. During my tenure in the Senate, we have been able to work in a bipartisan manner to achieve our goals.

I take particular offense, to the claims that have been made about Democratic Senators being anti-woman, anti-Catholic, anti-Hispanic, and anti-African-American, merely because we refuse to approve 4 of the President's judicial nominees. Since when do we cast aspersions simply because we are unable to get our own way? As a former principal and teacher, this is not behavior that I would condone in the classroom, much less on the floor of the Senate.

My colleagues from the other side of the aisle argue that this is the first time a filibuster has been used for a judicial nominee. Republicans have openly filibustered 6 judicial nominees on the floor of the Senate, 5 of which were circuit court nominees.

There seems to be a theme that my colleagues on the other side of the aisle have not engaged in efforts to block a judicial nomination. I want to share with my colleagues a situation I encountered during the 104th and 105th Congress. An individual from Hawaii was nominated to serve on the U.S. District Court, District of Hawaii. This was a nominee strongly supported by both Senators from Hawaii. This nominee had a hearing before the Senate Judiciary Committee and was reported favorably. However, this is where the process stopped for a period of two-and-a-half years.

A colleague from another state placed a hold on this nominee for over 30 months before allowing us to confirm this nomination. In effect, a Senator from a State thousands of miles from Hawaii blocked a district court nominee that the senior Senator from Hawaii and I supported. This colleague is now the attorney general of the United States, and happens to be a good friend of mine. I found this situation to be so unusual, that a colleague from another state would place a hold on a district court nominee from my State when both Hawaii Senators strongly supported the nomination. I also find it highly ironic that the person who placed that hold is now in a position of great importance in this administration. I raise this issue to dispute the notion that this is the first time a nomination has been blocked, after the Senate Judiciary Committee favorably reported the nomination to the Senate for consideration.

I could also speak about the nomination of Justice James Duffy to the United States Court of Appeals for the Ninth Circuit. A fine nominee, described by his peers as the "best of the best," he had strong support from Senator INOUYE and me to fill Hawaii's slot on the Ninth Circuit. Yet, Justice Duffy never received a hearing in the Senate. Seven hundred and ninety-one days without a hearing. Justice Duffy is one of the well-qualified and talented men and women nominated during the Clinton administration, individuals with bipartisan and home-State support, whose nominations were never acted on by the Senate. In back of me are pictures of those, and Mr. Duffy's picture is on the chart.

The last person I will mention is Richard Clifton, who is now serving on the U.S. Court of Appeals for the 9th Circuit. Richard Clifton was nominated after President Bush withdrew Justice Duffy's nomination. Richard Clifton served as the Hawaii State Republican party counsel. While I don't necessarily agree with all of his views, I supported his nomination, and he was confirmed within a year of his nomination.

Ninety-five percent of Federal judicial seats are now filled, creating the lowest vacancy rate in 13 years. So let's get back to the things we should be talking about—jobs, education, Medicare, minimum wage, unemployment insurance, and helping the poor.

We are squandering valuable time that the Senate could and should be using to address matters of great importance to thousands of Americans. I am honored to cosponsor legislation offered by the senior Senator from Massachusetts, Mr. KENNEDY, to raise the minimum wage. He has spoken with tremendous passion of the urgent need for an increase in the minimum wage.

I remind my colleagues that since establishing the minimum wage requirement in 1938, we have had only 19 increases in the minimum wage, the latest occurring in September 1997. The minimum wage would need to reach $8.38 an hour to equal the purchasing power of the statutory minimum wage in 1968. A full-time worker paid the minimum wage earns about $4,000 below the poverty line for a family of three. This is not right.

We should not only be raising the minimum wage so that employees working full time are not struggling to stay above the poverty line. We should also extend the Temporary Extended Unemployment Compensation program. This program, which was enacted on March 9, 2002, provided up to 13 weeks of federally-funded benefits for unemployed workers in all states who exhausted their regular unemployment compensation benefits. In addition, up to an additional 13 weeks for certain high unemployment states that have an insured unemployed rate of 4 percent or higher. The program has been extended several times, with the latest extension enacted into law on May 28, 2003. While this program will be phased-out through March 31, 2004, the program actually ends on December 31, 2003. Although employment has risen, the national unemployment rate has remained unchanged at 6 percent. In October 2003, the Department of Labor has indicated that 2 million unemployed persons were looking for work for 27 weeks or longer. This is greater than the 13 weeks of regular unemployment and greater than the additional extended unemployment benefits. We should be doing more not just for our men and women who are fighting our war on terrorism, but for those who are fighting the war on poverty.

My time is almost up, so I will end here. In a Senate where the divide between the majority and minority is held by a mere vote, and that division reflects the viewpoint of the American body politic at-large, it is imperative that we work together to resolve so many of the issues that are important to our constituents. When it comes to judicial nominations, the confirmation rate of 98 percent clearly shows that we, in the minority, are doing what we can to work with the majority in upholding our constitutional obligation to provide advice and consent to the President on judicial nominations. I can only hope we achieve a 98 percent rate in enacting the laws addressing funding for education, healthcare reform, Medicare reform, increasing the minimum wage, extending unemployment insurance, and providing Americans with the financial tools to be successful.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Massachusetts.

Mr. KENNEDY. How much time do we have remaining?

The PRESIDING OFFICER. The minority has 1 minute remaining.

Mr. KENNEDY. I thank my colleague and friend. He mentioned the increase in the minimum wage. It has been 7 years since we have increased the minimum wage. In that time, we have also increased the pay for Members of the Senate five times, but we are denied the opportunity to increase the minimum wage for working families in this country. I think it would not take us very long. If the Senator would agree with me, it would take us about half an hour before we are prepared to go ahead and vote on a minimum wage, and here we have just used 30 hours or are going to be using 30 hours of discussion that is not related to that or to education, overtime, unemployment compensation, jobs, or education funding.

I thank the Senator for an excellent presentation. I believe our time is just about up.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time for the majority?

The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I say to my colleagues that if they will give us an up-or-down vote on all of these nominees, as they have done in every other instance and as the Senate has done for every other President of the United States, there is a lot of work we need to do and we look forward to moving on to that. What we have been doing over the past 24 hours almost now, what we are going to do for the next several hours, is some of the most important business this Senate can ever take up, and that is the confirmation of our judicial nominees.

I am pleased to yield such time as he may consume to the Senator from Missouri, Mr. TALENT.

Mr. TALENT. Madam President, I thank my friend for yielding. It has been a pleasure, in a sense, to be here. I will not take very much time.

I have enjoyed hearing the remarks of my friends, the Senator from Hawaii and the senior Senator from Massachusetts. I have the pleasure of serving with them on the Armed Services Committee. They have often been eloquent on the floor of the Senate.

My friend from Massachusetts has been eloquent on the subject of judicial nominations before. I am going to quote something he said about 5 years ago. I do it with respect and for a reason. He said on January 28, 1998:

> Nominees deserve a vote. If our Republican colleagues don't like them, vote against them. But don't just sit on them—that is obstruction of justice. Free and full debate over judicial nominations is healthy. The Constitution is clear that only individuals acceptable to both the President and the Senate should be confirmed. The President and the Senate do not always agree. But we should resolve these disagreements by voting on these nominees—yes or no.

We should resolve these disagreements by voting on these nominees—yes or no. I have quoted this for a reason. The divisiveness over nominations, holding them up in one way or another, is not new to this Senate. This tactic of abusing the filibuster rule for a minority to stop court of appeals judges from even getting a vote, that is new; that is unprecedented. They have been blocking now or threatening to block a quarter of President Bush's court of appeals nominees. That is unprecedented, and the Senators doing it are responsible for doing it. They have to stand up for that. But the divisiveness and some elements of obstruction are not new.

We have an opportunity with this debate, and we are all exhausting ourselves talking, trying to come up with a real bipartisan resolution. I hope we can end the debate by stepping back and coming up with a set of rules that will be fair to whoever is the President and whichever party controls the White House. If we could do that, then we could clear these nominees for a vote.

We are coming to the end of President Bush's term. We don't know who is going to be President a year from now. But we know that President deserves a better procedure than we have given this President. Now is the opportunity to do that, and then we can get on to the other business of the Senate.

I encourage both sides to do that, and I thank my friend from Georgia for yielding.

Mr. CHAMBLISS. I thank my friend for his very insightful comments, as always.

I yield such time as she may consume to the Senator from North Carolina, Mrs. DOLE.

Mrs. DOLE. Madam President, when the Constitution was drafted so many years ago, it outlined a process by which the President of the United States would nominate judges with the "advice and consent" of the U.S. Senate. The filibuster expands the Senate's advice and consent role in nominations well beyond what the Constitution envisioned.

And for too long, politics has prevented the Senate from doing its constitutional duty.

The judicial process is obviously gridlocked. Qualified candidates have been nominated only to find that they are unable to get proper consideration on the Senate floor. In the meantime, burgeoning court dockets, delayed trials and overworked judges have become the norm for far too many of our courts, especially in North Carolina.

This simply isn't right. Every President, Republican or Democrat, deserves to have his nominees voted on. Every Senator has a responsibility to exercise his or her constitutional duty to vote on the President's nominees, and every nominee deserves a hearing, a committee vote, and an up-or-down vote on the Senate floor. Americans deserve courts that are staffed with qualified judges, and the process should be absolutely free of politics.

I was sworn in as a U.S. Senator to represent 8 million North Carolinians. In doing so, I took an oath to fulfill the duties of this office, including one of a Senator's most important responsibilities—voting on judicial nominees submitted by the President. Unfortunately, politics has undermined this process. Americans have the right to know where their Senators stand, and no one, no one should be able to hide behind parliamentary loopholes to avoid accountability to his or her constituents. The Constitution calls on all 100 Senators to give their advice and consent—not one Senator with a blue slip, not a group of Senators on the Judiciary Committee, but all 100 Senators.

President Bush has said that each judicial nominee deserves a vote within 180 days of his or her nomination. Unfortunately, that is not the case for several of our excellent North Carolina nominees. Right now, we have three candidates whose nominations have been languishing in the Senate.

Terry Boyle was first nominated to the 4th Circuit Court of Appeals in 1991—and then again in May 2001—this means he has been denied the courtesy of a vote in the Senate for more than a decade. Let me make that clear—More than a decade. The 4th Circuit hears federal appeals from North Carolina, South Carolina, Virginia, West Virginia, and Maryland. North Carolina is the largest State in the 4th Circuit, and historically the number of judges roughly corresponds with population. By this measure, we should have four to five judges on the court. We have only one. This seat has been vacant so long it has been declared a judicial emergency, so it is imperative that we act now.

And Terry Boyle is extremely well qualified for the job. He is Chief Judge for the U.S. District Court in the Eastern District of North Carolina, having served on that court for 17 years. He was designated to sit with the court of appeals 12 times, and he has authored over 20 appellate opinions. Everett Thompson, an Elizabeth City lawyer and a Democrat, said this of Terry Boyle: "I think he is really one of the best trial judges I've every appeared before. He's a student of the law, he works hard, he's bright, he's fair. And I never saw him be political about anything at all."

And then there is Jim Dever, former Editor-in-Chief of the Duke University Law Journal, nominated to serve on the U.S. District Court for Eastern North Carolina. How long should a nominee have to wait for a hearing? Three weeks? Six week? Six months? This distinguished attorney has waited 18 months just to get a hearing. The seat has been vacant for almost 6 years—currently, the longest district court vacancy in the country. And the Eastern District is an area where his skills and expertise are desperately needed—this vacancy has been a judicial emergency since 1999—and, until the recent confirmation of Louise Flanagan, there were only two full-time judges there. The caseload got so heavy last year that U.S. District Judge Malcolm Howard had to continue seven civil cases because of the pressing criminal docket, which takes precedent by law. In an order announcing his decision, Judge Howard wrote, "For more than two years, this four-judge authorized court has functioned with two active judges. The result over time is that the caseload, civil and criminal, has become almost insurmountable." Mr. President, there hasn't been one single objection raised about Jim Dever's qualifications. He has broad bipartisan support. Robinson Everett, a Duke Law professor and former chief judge of the Court of Appeals for the Armed Forces, describes Jim Dever as having "all the requisite qualities"—"he will be a superb jurist."

And, Bob Conrad is a well-respected U.S. Attorney nominated in April to be U.S. District Judge for the Western District of North Carolina. He is sorely needed. This is a district that had one of the highest caseloads in the country for the sixth year in a row. Bob Conrad is held in high esteem by his colleagues—Republicans and Democrats. He is known for his prosecution of a cigarette smuggling ring funding the terrorist group Hezbollah. In 1999, he was appointed by then-Attorney General Janet Reno—Janet Reno, as the point man for a Justice Department Task Force looking into illegal fundraising on the campaign trail. Roy Cooper, the Democrat Attorney General for North Carolina, said of him, "Bob is a straight shooter. We are from different political parties, but I believe he is a student of the law and his decisions are not affected by partisan politics."

All three North Carolina nominees come with superb credentials, yet none has ever been considered by the Senate Judiciary Committee or, of course, the full Senate. This is a fairness issue. It isn't fair to these nominees and certainly isn't fair to our judicial system, which must not be subjected to political maneuverings.

If a Senator believes a nominee is not qualified, then have the confidence to convince fellow Senators to vote against him. But at least take a vote. I trust my colleagues will vote based on a nominee's qualifications, like integrity, fairness, intelligence, work ethic, adherence to the rule of law and judicial temperament. We owe it to their constituents to take a stand on each and every judge. And that simply isn't happening in the U.S. Senate.

There are a variety of ways that nominees have been held up in the Senate over many years. But we have reached an unparalleled level with the filibuster of judges. Instead of continuing a trend of retaliation, we have the ability to stop this downward spiral in its tracks. If we don't, the loser will be justice, the hundreds of thousands of crime victims in the United States and the judges who are overworked and unable to meet the demands on their courtrooms. And common sense tells us that many of America's highest courtrooms don't have judges to run them, and as a result, the legal system simply can't function. Yes, justice delayed is justice denied.

Mr. CHAMBLISS. I thank the Senator from North Carolina for her very insightful comments, as always, about what has been happening in North Carolina with respect to the delay of judicial appointments once again.

Now I yield such time as he may consume to the Senator from Indiana, one of the most respected men in the Senate, Mr. LUGAR.

Mr. LUGAR. Madam President, I thank the distinguished Senator from Georgia. I thank him for his leadership throughout this debate and his extraordinary contribution to our understanding. I likewise appreciate very much the testimony of the distinguished Senator from North Carolina with specific references to remarkable nominees, and the distinguished Senator from Missouri, who preceded the Senator from North Carolina, with his insightful comments.

I would like to take a slightly different approach in my speech. I believe this debate is about the thought that we ought to have a vote up or down on each nominee. That is very important to the Senate, to our country, for fairness to the nominees and to the strength of the judiciary.

It has been my privilege to serve almost 27 years, 15 of these years with a Republican President. The custom I knew as a young Senator and now in whatever age I am at is that you have a responsibility: If you are going to make recommendations to the President of the United States, do so with care.

In the first 25 years of my career, I appointed a nominating committee in Indiana made up principally of very distinguished attorneys and judicial figures for whom I had respect and from all over my State. I knew these people commanded respect, and they were very helpful in identifying, each time a judicial vacancy occurred, several nominees.

Without fail, I presented all of these nominees to the President, and his staff sifted through them and in each case came up with one of the nominees, frequently the one recommended first by the panel I had suggested. And thank goodness, each one of these nominees had an up-or-down vote, usually a very fine consideration by the Judiciary Committee. I did not ever take that for granted, but I saw coming along the horizon a very different story in the current workings of the Judiciary Committee.

I have great respect for that committee and its members and for those who have served as chair and ranking member of the committee. I think there is a crisis in that committee which is very important for us to be thinking about. I believe that privately a good number of members in the committee on both sides of the aisle deeply regret what has been occurring in the committee.

Nevertheless, once again, on May 15, 2002, I was confronted with the news that Judge William Lee and Judge James Moody would both be retiring. I appreciated that those vacancies, two of them, were going to come in to the particular milieu about which we are now talking.

So on this occasion, I took the responsibility personally to write to the press throughout our State that we had a very substantial opportunity ahead of us. I outlined all the qualifications I could see of a Federal judge and, with great cooperation of the press, invited every well-qualified person to apply. The applications the candidates filled out consumed tens of pages, including substantial writings and often the statements they had made in their professional work.

Over the course of 4 months, ultimately 15 serious candidates emerged. I personally read all of their statements carefully. Those 15 candidates included 6 State judges, 4 U.S. magistrate judges, 2 attorneys in private practice, 1 Federal prosecutor, 1 Indiana prosecutor, and a legal professor. Their ages ranged from 35 to 61 and they represented 11 counties across our State.

After taking a hard look at all of these applications, I interviewed, over the course of an hour or 2, 5 of the nominees I thought were the most promising. In those interviews, I was interested principally in their professional skills, but likewise I had read the opinions of these nominees. I did not ask them questions on social issues in America today, on political issues, on foreign policy issues. I did ask them about their work, the characterization of how they would fulfill their responsibilities.

Following all of that, I submitted three names to the White House, and two of those persons were in fact nominated. They were Philip Simon, an assistant U.S. attorney and chief of the criminal division in Hammond, IN, and Theresa Springmann, a U.S. magistrate judge from Hammond, IN, this being the northern half of that State, that particular district that was involved.

In fact, I have nominated a third, whom I shall not indicate in this address. But President Bush, in fact, did send those two nominees I have cited, Mr. Simon and Ms. Springmann, to the Senate.

Philip Simon, I had found and the Senate Judiciary Committee discovered, had a remarkable record as a U.S. attorney. He was chief of the criminal division and responsible for all criminal prosecution in the Northern District of Indiana. He supervised and participated in prosecutions involving large-scale drug distribution rings, illegal firearms trafficking, white-collar fraud cases, environmental crime, and mob-related racketeering cases. He was in charge of a public corruption task force in Lake County, IN, which was very vigorous. He has been the recipient of a number of awards and commendations. The mutual insurance companies of Indiana presented an award to Judge Simon for his work to combat insurance fraud. He was given the Directors Award by former Attorney General Janet Reno, the highest award given to a U.S. attorney by the Justice Department in the last administration.

Judge Springmann was the first woman to be made partner at Sprangler, Jennings & Doherty, the largest law firm in northwest Indiana. She followed this up by becoming the first woman judicial official in the Northern District of Indiana, presided over 30 civil jury trials, 10 civil and criminal bench trials, and conducted 300 settlement conferences for the district court. She received a number of commendations and the highest rating from the Lake County Bar Association.

At this point, I decided to write to Senator HATCH and Senator LEAHY, chairman and ranking member of the committee. Beyond that, I went to both of them for personal conversation about these nominees, to explain the procedure and my own criteria, at least, in making these suggestions to the President.

In fact, on March 12 of this year, Judge Springman and Judge Simon were given hearings; but prior to that time, I approached Senator EVAN BAYH of Indiana, and I gave to Senator BAYH the total records of these nominees, so that he might see exactly the same applications I had examined, the same opinions. I asked him for his support of these nominees, and in fact he gave that. He appeared with me before the Judiciary Committee on behalf of these two nominees.

Perhaps we had an unusual situation in Indiana, but I point out that I was pleased the Judiciary Committee acted promptly on the nominees and the Senate did likewise. Thus, what could have been a gaping hole in the Northern District of Indiana judiciary lineup, in fact, was promptly filled, even after the departure of these two distinguished judges. Now, that will not work for every situation, and there may be occasions, as a matter of fact, when the President of the United States has nominees in mind, as he takes a look at a particular State, that the Senator from that State may not have in mind. I can conceive that my three nominees might have led to the President or his people saying: Go back and try again and see if there are not other persons among these distinguished people you have nominated who more fit the idea of what I believe ought to be on the bench in America today. I recognize that.

But it was very important to my constituents in Indiana that we have the service of these judges—continuity in that regard. It was very important that they knew the criteria, the character, the whole process, that it was totally transparent and played out over several months with an enormous amount of publicity.

Sadly enough, the Northern District of Indiana has an extraordinary number of political corruption trials going, with problems of gang-related crime from Chicago and the Illinois border, and sometimes from Michigan and through that area, which brings a total Federal emphasis quite apart from the local situations that might have been involved. These were controversial areas of turmoil, not the placid situations that more characterize my State.

This is why the selection of people in this particular business—where there was enormous fraud, abuse, and corruption—was especially important and the civic trust in these judges is especially important. They have been serving for several months with distinction, as I anticipated they would. There was in fact a recognition at the time they were sworn in by the total community, in a very large celebration, celebrating the judiciary and the rule of law in that part of our State.

I recite all of this and have asked Senators to indulge in what amounts to maybe a parochial recitation about Indiana simply to say I believe that somehow in the workings of the Judiciary Committee and the relation of that committee with the White House and with us, there really has to be a working out of a better feel. What I suspect is occurring here is that, unfortunately, there may be individual members of the committee who have decided a way to carve out a different function for themselves or maybe suggest a different function for the Senate.

We are all judges of the Constitution and what is proper and so forth. There are some who say, after all, a Presidential nominee for a Cabinet position is going to be bound by the term of the President. But these are lifetime officials, and we recognize that. But as the distinguished Senators who preceded me have pointed out, new Presidents come and go. The fact is that Republicans and Democrats are somehow going to have to work together year after year in an ongoing body for the continuity of our country.

What is occurring now doesn't work. Without arguing the wisdom or justice of someone holding up a nomination through a filibuster, I submit that this is not in the best interest of the Senate or our judiciary. The public doesn't like it. There may be partisan persons or people with special interests in America who do like it. Whose entire being resonates with a particular cause and they attempt to prevail upon people to stop somebody at all costs before they do harm. I understand that. We all have to deal with that.

What we are talking about today is, I hope, the continuity for the very broad number of Americans who want to have confidence in justice and confidence in us, even in a closely divided Senate, maybe in a closely divided country, and to be able to work in their interests. That is why this debate is so important—to elevate this idea not only of comity but of justice, doing the right thing to a much higher level, as opposed to the tactical advantage of filibuster, of a misuse, in my judgment, of a separation of power situation to cause harm.

Madam President, I appreciate the opportunity to participate in this debate with my distinguished colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I thank the Senator from Indiana. As always, he has provided great insight into the way in which judicial nominees are best handled. He does it in a way in which all of us function. It does work. Particular instances we have had on the floor under consideration have also gone through a similar process, where the President has picked nominees he knows are great jurists and great men and women.

Unfortunately, we are having to go through the exercise that we are having to go through to hopefully seek the cloture and to vote to ensure that these men and women get an up-or-down vote.

I want to talk quickly, in the remaining time we have, about two of the nominees.

I had the opportunity to visit this afternoon with the Honorable Janice Rogers Brown, who is a justice on the Supreme Court of California, whom the President has nominated for a position on the DC Court of Appeals. Justice Brown has a very distinguished 26-year legal career, all but 2 of which she served in public service. She has a great Horacio Alger story to tell. She was born in a tiny community called Greenville, AL, outside Montgomery. She grew up in the rural South just, as I did and Senator ALEXANDER did, at a time that was very difficult. She made the best of the conditions under which she grew up and she survived in a situation which a lot of people didn't survive.

I was so impressed not only with her legal background and her educational background but just with Janice Rogers Brown as a person. She is just a great lady. For her to go through what she is going through now, for one simple reason—that reason being nothing to do with any particular decision she has rendered in the Supreme Court of

California. The only reason she is going through what she is going through now is that she gave a speech to about 50 people in which she challenged the young people in that audience and, as a result of that, she is now being filibustered or is in the process of coming to be filibustered by the Democrats.

I urge my colleagues to consider very thoughtfully voting positively on the cloture motions we are going to have tomorrow.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Madam President, here I am in the Chamber again exactly 24 hours 30 minutes from when I was gaveled down from trying to complete the VA-HUD bill. I was on the floor 24 hours 30 minutes ago, standing up for veterans, trying to protect the environment, and working very closely and enthusiastically on a bipartisan basis with the chairman of the subcommittee on appropriations for veterans, housing, the environment, and other independent agencies.

We were only 2 hours and about five or six amendments from being gaveled to come to cloture on the bill. As I was gaveled down, I was just heartsick that we could not take 2 more hours to finish the bill. Instead, this went on for 30 hours, and I am puzzled what has been accomplished by it.

I know what wasn't accomplished by it. We did not finish the appropriations bill yesterday. Because we didn't finish the appropriations bill yesterday, we essentially said to millions of American veterans that we are going to put you on hold. We said to those thousands of faith-based organizations that build housing for the elderly—oh, no, we have to worry about a filibuster for judges; oh, no, we cannot move the bill. For those people who are trying to bring criminal prosecutions on polluters in the environment, we said we cannot really fund that, even though you don't have the right computers and enough staff. We have to talk about four judges. Millions of veterans, housing to be built for the elderly, the environment to be protected, getting our astronauts back to space safely, investing in science and technology at the National Science Foundation—that is the stuff of the VA-HUD subcommittee. That is why I am so passionate about it. It is one of the greatest subcommittees in Appropriations because it meets compelling human needs and yet gets America ready for the future.

But oh, no, we could not finish it yesterday, we could not take 2 hours—oh, no, we had to talk about four judges and a process.

I am very disappointed in that, and I have to express my gratitude for the way Senator BYRD pushed for completion of the bill. I also express my gratitude to Senator TED STEVENS, who obviously worked out something where tomorrow we can come back and attempt to finish the VA-HUD bill. But this could have been done in the spirit of comity. We had momentum yesterday. It is the way the Senate ought to work. We had a bipartisan bill. We were forging bipartisan compromises, because when it comes to standing up for veterans, we cannot be the Republicans and Democrats, we have to be the red, white, and blue party.

Today, I was at Walter Reed talking to Marylanders who will forever bear the permanent wounds of war. We were in wards with young men who have put themselves on the line. They didn't lose their lives, but they have lost a limb. You see their families. You say hi to a young lady who is a wife or to a mother of one of those wonderful soldiers getting great treatment at Walter Reed. You have a 22-year-old wife and a 42-year-old mother trying to be there with her husband and her child, the man they love, so he can get well and get back on his feet.

They are doing a fabulous job at Walter Reed. We are going to do all we can to support them. Those men and women look so young, so fragile. They are so brave and they cannot wait to get back on their feet. Some want to get back to their unit. They are going to come back to the VA. We cannot abandon these soldiers, sailors, and marines who are coming back from Iraq either bearing permanent wounds of war or the permanent impressions of war on them. We have to have a VA. This is why we need to move our legislation forward promptly, expeditiously, on a bipartisan basis.

I know, working with the distinguished Senator from Missouri, the chairman, we can do this. But oh, no, we could not do it last night. We had to put it aside. I didn't tell the guys at Walter Reed that we didn't fund veterans health care last night. It would have broken my heart to tell them we are going back to the Senate to argue about a filibuster, to argue about four people of questionable qualifications to sit on the Federal bench.

I didn't say that to them, but I say this to you. We have to get serious about the agenda for the United States of America. We need the right priorities. Do we need a good judiciary? You bet we do. That is why we passed 168 judges already. With these four, with the qualifications that are so thin and troubling and these other issues, I don't think so.

I want to talk about the priorities. Fortunately, again, because of the vigor of Senator BYRD and the cooperation of Senator STEVENS, we are going to be in the Chamber tomorrow. We do have priorities. I spoke about veterans health care. You also know we have really significant issues in housing. Our communities need help. We are ready to move funds such as the community development block grant. This is money that goes into local communities, whether it is a big city such as New York or the small communities of Alaska, providing help to build childcare centers, rehabilitation of dilapidated properties. CDBG, last year, created over 100,000 jobs. When we asked for 2 hours, we were standing up for that. When we look at housing for the elderly, most of it is built and operated by faith-based organizations, such as the Associated Jewish Charities, Associated Catholic Charities, the Lutherans. It is wonderful because they take small amounts of Federal dollars and leverage them with philanthropy. They not only run programs, they run them with great compassion.

These are the things we should be spending hours on the floor advocating. That is why we also worked to have funds to protect the environment. I wanted to talk about the Chesapeake Bay. Last night, I didn't talk about how we needed to protect the bay because we were short of time. People wanted to stand up on how they want to protect something about these four judges in the filibuster.

How about the National Science Foundation? That needed attention last night, too. This is the one that invests in groups such as biotechnology and infotech and nanotech. Nanotechnology is a whole new field of inventing subatomic particles. I said to the Senator from North Carolina yesterday when she was presiding, our earrings, Madam President, this will contain all the books in the Library of Congress 20 years from now. That is what nanotechnology means. Taking one pill—you can take everything from your heart rate to your blood sugar, and also make new metal that is 10 times lighter than steel and 10 times stronger.

I just lost thousands of steel jobs—thousands—and they are losing their pensions and their health care. Maybe with nanotechnology, we will have a new kind of metal mill and we can bring manufacturing back to our country. Instead, we are sending our jobs on a fast track to Mexico and a slow boat to China while we are slowing the Senate down in this 30-hour process and squandering time and not focusing on national priorities.

I don't want to diminish what we are doing on judges. The judiciary is a separate and independent branch of Government. This is why we need to have the best of the best.

Our courts are charged with safeguarding the very principles America stands for: justice, equality, individual liberty. That courthouse door must always be open, and when someone walks through that door they have to find an independent judiciary. I want to be sure when somebody walks through that courthouse door they not only get a fair trial and a fair hearing, but they know that person providing it is the best of the best.

The Senate does have an important and coequal role in the confirmation of judges. There is an advise-and-consent clause. It doesn't say sit around and rubberstamp. There is nothing in the Constitution that talks about 180 deadlines. It says give advice and consent.

We gave advice, but we do not give our consent on four individuals. When I look at judges, I have three categories: judicial competence, integrity, and commitment to the core constitutional principles.

My senior colleague and I have just supported three Republican judges from Maryland. We did it with enthusiasm. One was Judge Titus, whom the Senate confirmed just a few days ago. He is a brilliant man, very esteemed, involved in the Maryland bar. He could go on the Fourth Circuit Court of Appeals.

Another we backed in committee and on the floor was Judge William Quaries, an African-American jurist who I predict will go far. A scholar with a touch of the people. He has a unique touch.

We also backed someone unique, a man who chaired the Republican Party in Maryland. He actually ran against a Democratic attorney general and Senator SARBANES and I signed the blue slips with a flourish and appeared before the committee. Why would we do that? Because Judge Robert Bennet is a fantastic person and an excellent judge. He was fabulous as the U.S. Attorney. He brings legal ability, writings, et cetera. Look, we said, let bygones be bygones, he would make a great judge, and we are not going to stand on the party. This is the way SARBANES and MIKULSKI have operated.

But guess what. Now we get to the court of appeals. What a process this has been. First they sent us a gentleman who wasn't even a member of the Maryland bar. He lived in Maryland, but we don't think ZIP Codes are the only qualification. We think you have to be a member of the Maryland bar and participate in the Maryland legal community. So we rejected him.

The next person they sent was on the staff of Judge Gonzalas. We felt that was a little—it was an excellent job for him, but a little thin for the court of appeals.

Guess what. Now we have been sent a Virginian. You might say, Is there anything wrong with being from Virginia? No, as long as it is the Virginia seat. It is by tradition that there are geographic seats on the court of appeals and we want ours. My colleague Senator SARBANES and I are going to fight that on the basis of geography. There are many other things about Mr. Allen that are troubling about his background, but right now our battle will be because this should be a Maryland seat.

I have voted for Republican judges and I voted for Republican judges on the court of appeals in Maryland. There is Judge Niemeyer, an excellent judge. I supported him for the district court and now on the court of appeals.

When Judge Dianna Motts went to the court of appeals I didn't even know what party she was. I didn't know. You know what, I didn't care.

Here we are, arguing over a process. We are squandering our time, while pressing national needs are here. I would say, let's move on. Let's get back to the business America wants us to focus on. We can't have food fights and so on in the Senate. I have worked with so many of my colleagues on a bipartisan basis that I would like to get the momentum back for that type of action.

Tomorrow when I get another chance at VA–HUD, I look forward once again to returning to work in the Senate that tries to move bipartisan legislation. When it comes particularly to national security and the people who defend America, we put party aside and we are the red, white, and blue party. Maybe we need to start acting like that in the Senate on every issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, as I understand the allocation of time, we have the remaining time, am I correct?

The PRESIDING OFFICER. Yes, 15½ minutes.

Mr. KENNEDY. We have 15½ minutes.

As my friend and colleague from Maryland pointed out, we have been listening to our friends on the other side of the aisle for at least half of the past 24 hours. After we have listened to that, we still come back to the fact that 98 percent of their judges have been approved and 4 have not, and the Constitutional Convention never expected us to be a rubberstamp. We are faced on the other side by the prospect, at least, of changing the rules of the game even though those on the other side have used the system and refused to permit consideration of a number of judges. They did that in the Judiciary Committee of which I have been a member for many years.

It is interesting to me as we have gone over that ground so many times, our friends on the other side would be so interested and concerned about four individuals who have lost their jobs when we are facing so many other Americans out there who have lost their jobs and are really suffering.

We were talking about numbers. I mentioned the recent figures of the Department of Agriculture that say tonight there are 13 million children who are going hungry. That is Department of Agriculture statistics. Have we heard over the period of the last 24 hours ideas or suggestions or recommendations about how we are going to deal with the problems of hunger in children? That is happening tonight, 13 million.

The other side is talking about four judges—four individuals who make more than $100,000 a year. What about the 13 million hungry children? Have we talked about that?

How much have we talked about the 9 million Americans who are unemployed? There are 1.4 million who have already lost their unemployment compensation, with all the implications of that. They can't buy health insurance, they can't put food on the table, they can't pay the mortgage, they can't buy a birthday present for their children, they can't celebrate any kind of holiday for any of the members of their family. They are hard-put and hard-pressed. Have we talked about that for those individuals?

How about the millions of Americans who do not have health insurance tonight? How about the millions of Americans who do not have health insurance tonight, the hundreds who lost their health insurance today, and all of their concerns for their families? How are they going to be able to deal with medical bills? Have we talked about that?

The escalation of the cost of health care—have we talked about that and what that means to families? Have we talked about families who have gone into bankruptcy because they can't pay their medical bills? That affects 2 million Americans every year. We talk about four judges; we don't talk about 2 million Americans who go bankrupt every year because of health care costs. We don't talk about that.

We haven't talked a great deal about the 80,000 workers who have contributed to the unemployment compensation fund, and starting the end of next month—and we are in the final moments and hours of this session—80,000 a week are going to lose their unemployment. This is at a time when the unemployment fund has $20 billion in surplus.

We are in the final hours, as the Senator from Maryland has pointed out. Have we talked about what is going to happen to them? Don't you think they are concerned about whether the Senate is going to take any action in the final hours? Do we demonstrate any anxiety about what is going to happen to their families? I haven't heard a great deal about it from our friends on the other side. I haven't heard a great deal about it.

We haven't heard a word from the other side about doing anything about increasing the minimum wage. It has been 7 years since we have increased the minimum wage; 7 years have gone by, and we can't get a vote on it in the Senate. The other side brings up a bill like the State Department reauthorization and I offer the minimum wage as an amendment and the majority Republicans pull the bill to deny us the opportunity to vote on it. I mean, if we are going to get indignant about the rules of the Senate, come on. Come on. Let's vote on an increase in the minimum wage. All of those on the other side who said, "Let the majority have a chance, let's have a vote on an issue, let's have a vote on this, let's have a vote on that," we say, "Let's have a vote on the increase in the minimum wage." Oh, no, we can't do that. We can't have a vote on the increase in the minimum wage. We couldn't even get a vote now on the question of extending unemployment compensation. Oh, no, we can't do that. No, no, we are not going to be able to do that. We can't get a vote on hate crimes. No, no, we can't. We have to study that some more.

I mean, come on. Twenty-four hours and you are going to continue for another 6 hours pontificating about the injustice that is being perpetrated when you have all this taking place across this country? The anxiety and tremendous frustration and the sense of hopelessness that takes place across this country, and you refuse to let us have a vote on the increase in the minimum wage?

This is the chart on the minimum wage. This is what is happening to the minimum wage in the United States of America.

This blue line indicates the purchasing power. It was almost $8.50 back in 1968. It is now down to, without the increase, $4.95 in purchasing power this year, without any increase. It will be just about the lowest it has ever been.

Who are the minimum wage recipients? Here we go. Here is another chart that shows the minimum wage no longer lifts a family out of poverty—from 1972 through 1982, there were 2 years when it was just at the poverty line. We said people who want to work and can work will work 40 hours a week, they will be able to get out of poverty. Look what has happened in the 1980s, 1990s. We were able to get a little blip in early 1992 and again in 1998. It was basically the same legislation. Now, since 1998 to 2003, we are unable to get a vote to increase it $1.50 over 2 years.

Can you imagine the amount of money we have seen returned to American taxpayers, $2 trillion over the past 2 years, and we can't get an increase in the minimum wage for working men and women? And the other side is trying to be indignant about the fact four individuals who are making over $100,000 are being put upon and we are going to have to listen to them for 6 more hours?

What is the increase in the minimum wage? It is the equivalent of $3,000. It might not seem like a lot to people, but it is 7 months of rent, 11 months of groceries, 14.5 months of utilities, full tuition for a community college degree. That is what that represents. That is real money for working families who are at the bottom end of the economic ladder.

Our Republican friends refuse to give us at least the opportunity to vote. Understand, vote. We heard that word used a great deal on the floor of the Senate. Let's get a vote on this issue.

Let me review as well about jobs. We talked about four jobs. What we are facing here is 3 million Americans who have lost their jobs. Let's think, besides the statistics, exactly what it means in terms of financial hardships of the unemployed. Look at this. Half the unemployed adults have had to postpone medical treatment—that is 57 percent—or cut back on spending for food. I have just given the figures and the statistics of the Department of Agriculture that have 13 million children hungry tonight. Thirteen million children are hungry tonight.

One out of 4, 26 percent, has had to move to other housing. Imagine that. We have 3 million people who have lost their jobs and 1 out of 4 had to move out—move in with friends or relatives. There is a problem that deserves debate, discussion, and ideas and solutions and resolution and determination and accountability here. There are 38 percent who have lost their telephone service, 22 percent are worried about losing their phones, more than a third, 36 percent, have trouble paying the gas or electric bill—things that are absolutely assumed around here.

People are really hurting. We are not talking about 4 people, we are talking about hundreds of thousands of people, and we have occupied the time of the Senate to talk about 4 judges who are not qualified, I don't believe, to serve on the Supreme Court. We are not expected to be rubberstamps. Our Founding Fathers never intended that.

I want to mention one other item that is now in the conference. It would be pretty worthwhile if we had engaged our friends on the other side to tell us what is happening in the conference on the issue of overtime pay. When people work overtime, something that for some 60 years has been in our law, it ensures people who work longer than 40 hours a week are going to be fairly treated. We have the proposal by the administration to deny that to 8 million Americans. It was defeated here on the floor of the Senate, defeated in the House of Representatives, and now it is in a conference.

Why don't we hear from the other side what has happened to that conference? Why don't we hear where they are on the issues of overtime? That makes an enormous difference to people. It makes a big difference in their lives. It is not 4 people and their livelihood, it is hundreds of thousands, tens of thousands, millions of people whose lives are going to be affected.

Right off the top of the list are firefighters, policemen, nurses. Does that ring a bell to anyone around here? They are the backbone of Homeland security. We are cutting back on their income.

We have had a bipartisan determination on that issue here. Do we hear anyone on the other side, when they are talking about 4 jobs, talk about all these numbers of Americans who are losing out?

Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 2½ minutes remaining.

Mr. KENNEDY. I would have liked to have gone on. Maybe we will have time later.

UNANIMOUS CONSENT REQUEST—S. 224

In the meantime, I ask unanimous consent the Senate return to legislative session, proceed to the consideration of Calendar No. 3, S. 224, the bill to increase the minimum wage, that the bill be read a third time and passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. Madam President, I ask unanimous consent that the Senator modify his request so that just prior to proceeding as requested, the three cloture votes would be vitiated and the Senate would then immediately proceed to three consecutive votes on the confirmation of the nominations, with no intervening action or debate.

The PRESIDING OFFICER. Is the Senator from Massachusetts willing to modify his request?

Mr. KENNEDY. Madam President, I withdraw my consent request because it is quite clear there is objection by the Republicans to the consideration of an increase in the minimum wage.

UNANIMOUS CONSENT REQUEST—S. 1853

I ask unanimous consent the Senate proceed to legislative session, the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers, that the Senate proceed to its immediate consideration, the bill be read a third time, passed, and the motion to reconsider be laid on the table.

Mr. CORNYN. I ask consent the Senator modify his request so just prior to proceeding as requested, the three cloture votes would be vitiated and the Senate would then immediately proceed to three consecutive votes on the confirmation of the nominations, with no intervening actions or debate.

The PRESIDING OFFICER. Does the Senator from Massachusetts modify his request with those conditions?

Mr. KENNEDY. I withdraw my request and let the Record indicate the Republicans have objected to the extension of the minimum wage and have objected to the extension of unemployment compensation for hard-working Americans who have paid into that fund.

Mr. CORNYN. Madam President, once again, we are proceeding with the Democrats' filibuster of the circuit court nominees.

Mr. KENNEDY. Do I have the floor?

Mr. LEAHY. Regular order, Madam President.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. SHELBY. I yield myself as much time as I require.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Madam President, I rise tonight to speak on behalf of the President's right to select qualified judges of his choosing and the Senate's duty to provide advice and consent on these judicial nominees by means of an up-or-down vote on their confirmation.

The quagmire in which we currently find ourselves I believe threatens the constitutionally-vested discretion of this and all future Presidents in appointing those judges they see fit. Second, it threatens the independence and effectiveness of the federal judiciary, and third, it threatens the future function and effectiveness of the United States Senate as the deliberative and distinguished institution it is today.

Article 2, Section 2, Clause 2 of the United States Constitution vests the President alone with the power of appointing Federal judges "with the Advice and Consent of the Senate." Nowhere does the Constitution grant the Senate any power over selecting judicial appointments.

A review of over 200 years of the Senate's history and practice makes it clear that the Senate's role in Presidential nominations is either to confirm or deny their appointment by means of an up-or-down vote on the floor—nothing more and nothing less.

The unprecedented obstruction we are now experiencing is simply unjustifiable, I believe.

Why not allow the President to do his job of selecting judicial nominees and let us do our job in confirming or denying them? Principles of fairness call for it and the Constitution requires it.

Those of my colleagues who are currently blocking confirmation of the President's circuit court nominees have admitted to doing so on ideological grounds. They feel that these nominees are outside of their definition of "mainstream"—whatever that may mean. When Senators impose a subjective litmus test on judicial nominees, they are really just seeking out candidates that agree with them ideologically. This introduces a political element into the constitutional framework of judicial appointments that isn't there—and with good reason.

The Constitution grants Federal judges lifetime tenure and salary protection precisely in order to insulate them from political influences.

The Senate's standard for confirming a judge should simply be a nominee's honesty, competence, temperament, and appreciation for the proper constitutional role of an Article III judge.

Any test beyond this substitutes the judgment of individual Senators over that of the President and unduly politicizes a position that is intended to exist outside the realm of politics. What is more, as my colleagues in the minority continue to use their ideological litmus test to justify blocking the President's circuit court nominees—four so far, with more promised—these unfilled vacancies impose a heavy burden on our judiciary.

The ability of these appellate courts to manage their caseloads and to effectively interpret and apply the law is dependent on a full complement of judges available to consider and rule on pending cases.

We all know the saying "justice delayed is justice denied," and we simply can not allow our own political agendas to undermine the fair application of the rule of law.

I would encourage all Senators to take a step back from the current debate and envision the future of this Senate if the obstruction of these judicial nominees continues. Do we really want to operate in an environment where judicial confirmations require 60 votes? That is the direction in which we are rapidly headed.

I can understand that some of my colleagues don't agree with our current President's politics. That is politics. I can understand that this President's judicial nominees may not be to some of their ideological liking. That is politics. However, this does not justify denying a judicial nominee a simple up-or-down vote.

I feel quite certain that my colleagues on the other side of the aisle would not be nearly as accepting of these obstructionist tactics if they proverbial shoe were on the other foot.

I am not asking any of my colleagues to vote in favor of confirming a nominee that they oppose. I leave that determination to their discretion. I am simply asking them to allow the Senate to complete its constitutionally-appointed duty in providing the President with advice and consent on all of his judicial nominees.

Now, I would like to take just a few moments to discuss two of the President's filibustered circuit court nominees in which I take a particular interest: Alabama Attorney General Bill Pryor and California Supreme Court Justice Janice Rogers Brown.

Bill Pryor is the President's nominee for the United States Court of Appeals for the Eleventh Circuit. I have known Bill for many years and have the highest regard for his intellect and integrity. Whether as a prosecutor, a defense attorney, or the Attorney General of the State of Alabama, he understands and respects the constitutional role of the judiciary and specifically, the role of the federal courts in our legal system.

I am confident that Bill would serve honorably and apply the law with impartiality and fairness, if he were confirmed for the Eleventh Circuit. Unfortunately, Attorney General Pryor's nomination has been filibustered for most of this year.

Janice Rogers Brown is the President's nominee for the United States Court of Appeals for the D.C. Circuit, which is widely regarded as the court second in importance only to the United States Supreme Court.

I am proud to say that Justice Brown is a native of my own State of Alabama, having been born in Greenville and raised in Luverne before moving to California.

The progression of her career to serve on California's highest court—the first African American woman ever to do so—is a remarkable story of success through hard work and dedication that serves an example for us all.

Justice Brown has enjoyed a distinguished career on the California Supreme Court, most recently receiving 76 percent of the vote the last time she came before California voters.

Justice Brown possesses the highest character and ideal temperament for this important judgeship. Unfortunately, her nomination is subject to filibuster and thus the D.C. Circuit is denied her services.

It is the role of the Senate to provide the President with advice and consent on his judicial nominations. We can only fulfill this duty by allowing each of these nominees an up-or-down vote by the full Senate.

The proper function and balance of the executive, judicial and legislative branches depends upon it.

It is my hope that we can end this impasse tonight and vote on each of these nominees. Let the majority vote. Let the majority count. If we get the majority vote, they will be confirmed, but they should not be obstructed. They should not be filibustered.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

Mr. WARNER. Mr. President, parliamentary inquiry: Can the distinguished Senator from Iowa—we were told to come here at certain times, and if he were to take as much as he wishes, that would preclude any other Senator speaking in the time period.

Mr. GRASSLEY. I yield to the Senator whatever time he needs.

Mr. WARNER. I withdraw my parliamentary inquiry.

Mr. GRASSLEY. I yield the Senator whatever time he wants.

Mr. WARNER. I will sit down. The Senator may go ahead.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise today to discuss the Democrats' filibuster of President Bush's judicial nominees. The Senate Democrats still think it is Halloween and are trying to spook us into believing that President Bush has nominated a bunch of extremist individuals that cannot be good judges. The Democrats are claiming that these nominees are "outside of the mainstream". The truth is that these individuals will not implement a liberal agenda on the bench. The truth is that these individuals will follow the law, rather than bend to the will of the political left. But these inside the Beltway, left wing groups have gotten the Democrats to do their bidding. They have hijacked the judicial confirmation process in an unprecedented filibuster of judicial nominees, and they are denying these good men and women an up or down vote. Federal judicial seats will remain unfilled, and litigants seeking justice from those courts can expect further delays.

The reality is that the Constitution of the United States gives the President the power to appoint individuals to seats on the Federal judiciary. The Constitution gives the Senate the responsibility to advise the President in this process. And the Constitution requires the Senate, by a simple majority vote, to give its consent to the President's choices for Federal judgeships, or to withhold that consent. But through an unjust abuse of the filibuster, a minority of Senators is preventing the majority of the Senate from taking an up or down vote on President Bush's judicial nominee. That is not right.

I have always been of the position that judicial nominees should be carefully scrutinized by the Judiciary Committee because they are life-time appointments. It is my opinion that judicial nominees should have intellect, experience, character and integrity. They should also have the right judgment and temperament for the job. But most importantly, they should understand their role on the bench, which is to interpret the law and to follow the law, not to make the law and legislate from the bench. That is the most important credential in my book. And I take that job of looking at judicial nominees very seriously.

However, once the Senate Judiciary Committee has had the opportunity to review these candidates and to approve them, these individuals should get an up or down vote by the full Senate. This is the right process. This is a fair process. During my tenure ,with the United States Senate, I haven't always agreed with a sitting President's choices for the Federal bench. I have voted against a number of judicial nominees because I didn't believe they were qualified to be a judge, or because I didn't believe that a seat needed to be filled. But I have never filibustered a judicial nominee.

But that is just what is happening right now. We are seeing the unprecedented use of the filibuster rule to stop judicial nominees from being confirmed. An exceptional group of men and women are being used for political gain by this minority group of Senators. The nominees that the Senate is considering right now, Janice Rogers Brown, Carolyn Kuhl, and Priscilla Owen, as well as Bill Pryor and Charles Pickering, two nominees that have been filibustered, they all are distinguished individuals that deserve an up or down vote. They all deserve to be confirmed.

Let me say a few words about the men and woman that are being filibustered. These men and women are being characterized as outside of the mainstream, extremist people. They are being characterized as "bad judges" that have to be stopped. Nothing is further than the truth. The reality is that some left-wing interest groups are skewering these nominees' reputations with baseless allegations because they don't have a liberal ideology. And the Senate Democrats are more than happy to do the bidding of these racial outside groups. And our nation will suffer dearly for it.

Priscilla Owen is currently a judge on the Texas Supreme Court. She was unanimously rated well qualified by the ABA and enjoys a steller reputation in her home state. She's been repeatedly reelected to the Texas Supreme Court by wide margins and has served that court admirably. Judge Owen enjoys the support of her two home state Senators and has been endorsed over and over again by elected officials, fellow jurists, and attorneys alike.

Janice Rogers Brown, the daughter of a share cropper who attended segregated schools, put herself through California State University and eventually law school at UCLA. She did all this while raising two children as a single mother. She served her state in a variety of legal roles, including Deputy Attorney General and then later as a legal affairs secretary to the Governor. Judge Brown has served on the California Supreme Court since 1996.

Carolyn Kuhl has been a judge on the Los Angeles County Superior Court since 1995. She served in a variety of positions in the Justice Department, and then was a partner at a prominent Los Angeles law firm. Judge Kurl received a well qualified rating by the ABA, and enjoys bipartisan support.

Three other highly respectable nominees have already been filibustered. Bill Pryor has earned the reputation as one of the most experienced states attorneys general in the country. He graduated from law school magna cum laude, and clerked for Fifth Circuit Judge Wisdom. We have seen that he enforces the law regardless of his personal convictions. General Pryor also has overwhelming support from across the political spectrum.

Judge Charles Pickering has been a lawyer and county prosecutor, and has served as a distinguished federal district court judge for the past 11 years. He received the ABA's highest rating, "well qualified." He stood up against the Ku Klux Klan, and has been a leader for equal rights, integration and inclusion in his community. The people that know Judge Pickering best support him without hesitation.

Finally we have Miguel Estrada, who was nominated to the D.C. Circuit Court of Appeals. He become so frustrated with the process that he withdrew his nomination after waiting over 2 years for an up of down vote. Yet he is the true American inspiration story. Born in Honduras, he came to America as a young boy and through determination and hard work, elevated to the top echelons of the law profession. He was an Assistant Solicitor General of the United States in the Clinton Administration, and was a partner in a prominent law firm. Mr. Estrada received the highest rating from the American Bar Association, and is well respected by colleagues and friends alike.

It is a real shame that this fine man felt he had to withdraw his nomination from consideration because of the guerilla smear tactics of the far left and because of the guerilla smear tactics of the far left and because of the Democrats' unprecedented filibuster tactic. And it is a real shame that these other fine men and women, and their families, have to go through this same miserable saga. As I think about these nominees with their stellar reputations, outstanding intellects, and their compelling life stories, it saddens me to know that the Democrats have been so ready and willing to stomp all over their good names and to deny the American people quality jurists—all this in the name of carrying the sword for special left wing interest groups.

I have served in this body for many years. And I have seen the filibuster used to leverage a better bargaining position on legislative matters. But it hasn't been used to block a judicial nominee, and especially not where that nominee enjoys majority support by the Senate. This is the first time in history that the filibuster has been used to prevent a judicial confirmation, even though my colleagues on the other aisle say that isn't the case. It is wrong and probably unconstitutional. It is an abuse of the process. The Senate is supposed to provide advice and consent. The Democrats are denying the rest of the Senate our responsibility under the Constitution to give our consent—or even to withhold our consent. It is a terrible disgrace and ought not to continue.

The Democrats are leading us down a path that is just going to make matters worse. The judicial confirmation process is already in an unhealthy state of repair—we don't need to destroy it altogether. The Democrats need to stop playing politics with the judiciary. They need to stop spooking people about the qualifications and ability of these nominees to be good federal judges. They need to stop spooking away qualified nominees like Miguel Estrada. We need to stop this unjust filibuster and give these worthy nominees what they deserve—an up or down vote.

I yield the floor. I yield whatever time the Senator from Virginia needs.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my good friend, my colleague from Iowa.

Mr. President, what is the parliamentary situation, and what time remains under the control of my distinguished colleague from Iowa who is managing this set of debates at this time?

The PRESIDING OFFICER. The majority controls 10 minutes, the minority has 30 minutes.

Mr. WARNER. So we have 10 minutes remaining.

The PRESIDING OFFICER. That is correct.

Mr. WARNER. I thank the Chair.

Mr. President, I commend my good friend from Iowa for a very statesmanlike coverage of the responsibilities of the Judiciary Committee on which he has served these many years.

I turn to the following. If we look back in history in the summer of 1787, 55 individuals gathered in Philadelphia to write our Constitution. It was a very hot summer, and it was a long and arduous debate, many drafts back and forth, but careful consideration was given. Finally, in mid September, it was over. It was a monumental achievement. But the Framers did not know at that time what a great achievement they had made, one that would enable the United States, today, these 200-plus years later, to become the oldest continuously surviving Republic form of government on Earth today.

Almost every other government in existence at the time of the Constitutional Convention has fallen into the dustbin of history. So we must ask ourselves, why? It is very clear to this humble Senator that it was due, in part, to the wisdom of the Framers to have three coequal branches of the Government. I view this debate as one to determine the survivability of the coequal stature of the three branches.

I am not going to argue about all the things that have taken place back and forth, but just go to this magnificent document—the Constitution. The Presiding Officer has placed a copy of it on every desk in the Senate chamber, and many of us daily carry it in our pocket. The Constitution very clearly states that a simple majority vote is the regular order of business, with the exception of a few instances specifically enumerated in the Constitution that require super-majority votes. Had the Framers decided that we should require 60 votes for the confirmation process of the Senate, they would have explicitly written in such a requirement.

It is quite interesting to note that:

Two-thirds of the Senate must vote to ratify a treaty; two-thirds of the Senate must vote to convict on an article of impeachment; two-thirds of a House of Congress must vote to expel a Member of that body; two-thirds of each House of Congress must vote to override a President's veto; and two-thirds of each House must vote to propose an amendment to the Constitution. With regard to the advice and consent, clearly enunciated in the Constitution, and given to only one body of Congress, the Senate, there is no mention of a higher than simple majority vote. It is there to protect, again, the checks and balances. It is there to protect against an executive branch nominee which, in the fair judgment of the Senate, does not meet the high standards to become a member of the judicial branch.

The case here is very simple: Are we going to abide by what the Framers laid out, what has kept this great Nation together these 200-plus years? Or are we going to devise and contrive in our own words some system by which to prevent a simple vote up and down on a judicial nominee?

The Constitution does not include that super-majority. If the bar is to remain at 60 votes, as my colleagues on the other side have so vehemently argued in favor of, I say then the Senate would have far more power on questions of judicial nominees than was intended by the Framers. The checks and balances concept of our Constitution would be changed. And how would that affect our Republic?

Well, when the Constitutional Convention was over in September 1787, Benjamin Franklin emerged and was greeted by a crowd, some were reporters. He was questioned, "what have the Framers wrought?" He replied, "a Republic, if you can keep it."

And that is what we are doing here in this historic debate. We are determining the rules by which we keep that Republic.

Throughout this historic debate, this Chamber has resonated with the use of the word "filibuster." I ask: Can any Senator point to use of that word in any of the rules of the U.S. Senate? In every desk, every Senator has their book on the rules of the Senate and procedures of the Senate. You can't find the word "filibuster" in that book because it is not there. But, should I be wrong, parliamentary inquiry to the Presiding Officer, can the Parliamentarian find the word "filibuster" in the rules of the Senate or any definition in the rules of the Senate?

The PRESIDING OFFICER. The word "filibuster" is not contained in the standing rules of the Senate.

Mr. WARNER. I thank the Presiding Officer. It is not in the rules. Where do you go to look for it? Webster's Dictionary. This dictionary has been in my office these 25 years since I have been privileged to serve in this body. And I use it often. I say to my colleagues, this is an interesting bit of history. The dictionary defines "filibuster" as, "An irregular military adventure especially one in quest of plunder, a free-booter, applied to buccaneers infesting the Spanish American coast, later an organizer or member of a hostile expedition to some country or countries with which his own is at peace in contravention of international law."

Go all the way down to the last definition, and you will find a reference that is most appropriate to this debate. I read:

> A member of a legislative or deliberative body who, in opposition to the proposed action of the majority, obstructs or prevents action by the extreme use of dilatory tactics such as speaking merely to consume time and so forth.

It is about the fifth definitional use of this word.

I say, most respectfully, that it is a word that is a slang word. It probably has been used to cover many types of procedures that both sides have followed under the rules for many years.

I went back and did some research in this wonderful book. It is entitled "Senate Cloture Rule, Limitation of Debate in the Congress of the United States, Legislative History of Paragraph 2 of Rule XXII of the Standing Rules of the United States Senate."

I do not find in this excellent treatise, put out in 1985 by the Library of Congress, printed by the direction of the Rules Committee and Administration of the United States Senate, any instance in which the situation we are faced with today with these nominees is covered. They do refer to the use of the word "filibuster," but loosely.

Ultimately, with all of the confusion surrounding the word "filibuster," I think you have to come down to what it was the Framers intended, what is in this book—the Constitution, which has held this Nation together these 200-plus years, this great Republic of our's.

I say to my colleagues, as Ben Franklin said, we have a Republic, and this debate is determining the ground rules by which we can or cannot keep it.

Clearly, the President has the authority to nominate. Clearly, this body has the authority of advice and consent. But remember, it is to be in a balance of powers between the executive and the legislature. I say if we are to set a precedent here that it requires 60 votes to act upon a nominee, three nominees—

The PRESIDING OFFICER. The time of the majority has expired.

Mr. WARNER. I ask unanimous consent for 1 additional minute.

Mr. LEAHY. Then I ask for 1 additional minute on our side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. If we were to set a precedent that nominees reported out of the Judiciary Committee were subjected to a 60 vote requirement, this precedent would disrupt the carefully crafted system of checks and balances embedded in our Constitution by giving the Senate far more power in the judicial selection process than the Executive Branch, the President. These nominees deserve a simple up-or-down vote as provided in the Constitution by the absence of any reference to a supermajority or a 60 vote requirement.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I am honored to follow the Senator from Virginia. I want to return to the Constitutional Convention that he spoke of from 216 years ago. Among the last issues resolved at the Constitutional Convention was the question of whose job it is to select the members of this third branch of Government that was to be created.

We have an executive branch, the legislative branch with the House and Senate, and a judicial branch. At that time in this country there was a great concern on the part of those framing the Constitution and trying to craft a framework of our Government. Foremost among the concerns they had was the concern that somehow we would unintentionally invest too much power, too much authority in one person. Having dealt with the King of England and not wanting to have to deal with another figure of authority with the kind of powers of a monarch, there was a great debate over what would the powers be for this new President and how would we constrain those powers.

Among the last issues resolved at the Constitutional Convention was the question of who selects the judges, who selects the members of that third branch of the judiciary. There were plenty at the Convention who thought that in order to make sure we didn't end up with another monarch in this country, a king, the power of selecting the judiciary should lie with the legislative branch. There were those who thought the Senate or the House or some combination thereof should select who the judges would be. There was another school of thought that said, no, maybe we should give the President, our Chief Executive, the power to select who our judges would be. As we all know, the compromise that was struck was one that says the President may nominate with the advice and the consent of the Senate.

Yesterday, as our youngest son came home from school, he shared with his mom and me some good news. He shared with us that while he won't get his report card for another week or so, he had learned the results of his scores, his grade in English language arts. He is in the eighth grade. He came home and he said: I got a 94 for English language arts in this grading period, dad. I get an A. I get an A.

We were delighted. He has a tough teacher. He has worked real hard, and he earned a 94. He is going to get an A. We hope he does as well in his other courses.

On the scorekeeping for how this President is doing with respect to getting his nominees confirmed, I think of the 172 we voted on so far; 168 have been confirmed, 4 have not. That is 98 percent. In my book, in my son's book, that is an A. That ain't bad.

Before I came here to serve in the Senate with my colleagues, I was a Governor. I know some people get tired of hearing me talk about that. But it was a great privilege to be Governor of my State. In our State, Governors nominate people to serve on the bench. The Senate can confirm. Whether it was a judge, supreme court, magistrate court, any commission, I would like to have had every single nominee confirmed. I suspect that most other Governors who similarly make nominations for appointments in their States would like to have all their nominations confirmed as well. Not all of my nominations were confirmed.

There is a give and take with the Senate in my State, just as there is a give and take with the Senate in this city for our National Government. I don't often quote Mick Jagger and Keith Richards, but there was an old song from my youth they used to sing: "You can't always get what you want, but if you try sometime, you get what you need."

We need from this President good nominees. I expect they are going to be Republicans. I expect they are going to be conservative. My guess is that of the 98 percent who have been confirmed, they were all Republicans. For the most part they were all conservative. I don't think it is realistic of this President to expect that we are going to confirm 100 percent of his nominees.

It sure wasn't the expectation of his predecessor, Bill Clinton. He got a majority of his nominees confirmed but not 100 percent, not 95 percent, not 90 percent, not 85 percent, but about 80 percent were actually nominated, had hearings, and their names actually ended up on the floor for a confirmation vote. That is a B-minus. Compared to the A-plus that this President is getting with respect to confirmations, I am not sure I understand fully the great dissent and the great disappointment and the great frustration our friends on the other side have shared.

Here is my frustration. I didn't come here to be about partisan politics. I didn't come here to be about gridlock. I didn't come here to pursue that agenda. I came here as one who wants to work with people on the other side of the aisle. I want to get things done.

I have voted with this President more than 75 percent of the time. I am told that only 7 Democrats have voted with this President more than I have in the last 2 years. I have tried to provide leadership on issues that both of my colleagues are concerned with, Senator LEAHY and Senator HATCH: class action, asbestos reform, bankruptcy, welfare, a comprehensive energy policy.

Meanwhile, while we are standing here tonight debating on whether or not 98 percent is good enough, we don't have an energy policy. Over half the energy we get that we use in America comes from foreign sources, a lot of it controlled by people who don't like us. We don't have an energy policy. We should be debating an energy policy and adopting it.

Standing here tonight we have a legal system that has lost its sense of balance, whether the issue is class action litigation that is being heard in small, remote courthouses around the country or whether the issue is asbestos and folks sick and dying getting the help they need. Meanwhile, the people who will never be sick will get money from those who need it. We should be debating those issues here tonight.

We have too much sulfur dioxide or nitrogen oxide and mercury in our air, putting out too much carbon dioxide, causing global warming. We should be addressing those issues.

We had a trade deficit last year that exceeded $400 billion. It is getting worse. We have a budget deficit that this year will approach $500 billion in 1 year alone. We are paying today on our national debt, just today, $800 million—plus just in interest on the debt. We ought to be debating how we rein in those budget deficits and trade deficits, not deciding is 98 percent enough or is 97 percent high enough in terms of success in nominations.

As former Governor and someone who was once privileged to chair the National Governors Association, we looked at the States as laboratories of democracy. We looked at the States to provide best practices, whether it was moving people off welfare, helping to make sure people coming out of prison didn't recidivate and go back to prison, what could we do to raise student achievement.

I want to talk about one model that works real well with respect to judicial nominations, and one I know the most about is my State of Delaware. Since 1897, the constitution of my State has called for balance with respect to our judiciary. We have year after year a legal climate and a judiciary that is acknowledged by some of the foremost attorneys who practice in this country as the best—the best legal climate, the fairest of any State in America. We are proud of our judiciary.

In the 8 years I was Governor, I nominated as many Republicans to the bench as I did Democrats. MIKE CASTLE, my predecessor, now a Congressman, when he was Governor, he nominated as many Democrats to the bench as he did Republicans.

In our State, there has to be a symmetry. Essentially, for every Democrat you nominate, the next one has to be a Republican. We have done that for over 100 years and have ended up with a terrific judiciary, widely respected at home, across the country, and even beyond our borders. There is a saying, "If it ain't broke, don't fix it." That is not what we ought to say. We should say if it is not perfect, make it better.

The way we nominate judges in our National Capital for our Federal Government is broken and it needs to be fixed. Whether George Bush is President or Bill Clinton is President, we waste more and more time on judicial nominations. We are bogged down in that. We still haven't passed our spending plan for the new fiscal year, which started a month and a half ago. We are still wrestling with our appropriations bills. This system is broken.

My friends, the solution may be in Delaware, it may be in Vermont, or it may be how they nominate judges in Georgia or in Iowa. There is a better way to do it than what we are doing here. We have to find it and we have to come to some kind of closure around a better plan. When we do, instead of facing the prospect of leaving here without action on class action legislation, action on asbestos, or action on an energy bill, or without action on transportation policy, or early childhood programs, maybe we can do our jobs and even pass appropriations bills on time instead of the kind of mindless—oftentimes mindless debate we devote to judicial nominations.

That having been said, I yield to the former chairman of the Judiciary Committee, the ranking Democrat, Senator LEAHY, with my thanks.

Mr. LEAHY. Mr. President, I thank the Senator from Delaware for what he said. He has a distinguished record in the other body, as Governor and now here. We listened to him in this Chamber. I wish they would listen to him on the other end of Pennsylvania Avenue because the person who makes the nominations is the President. I have been here with six Presidents. I have never known a time when a President is less willing to engage the Senate in advise and consent. President Ford did, President Carter did, President Reagan did, former President Bush did, and President Clinton did. I hope this White House would begin to do that also.

Interestingly enough, today I was given a petition signed by 310,000 Americans from all over the country. This petition supports a filibuster of extreme judicial nominees of the President. In fact, in the last 72 hours, 172,000 Americans signed these petitions. I went through them, thanks to the ability to search electronically, and picked out some from my State of Vermont.

In Moretown, VT, someone wrote:

> It is a disgrace how this administration is attempting to pack our Federal courts with right-wing extremist judges that seek to undermine the hard-fought pillars of legal precedent that reflect the values of a vast majority of Americans. I wholeheartedly support the efforts of the Senate Judiciary Committee Democrats to oppose this blatant abuse of the majority power. . . . The Senate GOP leadership should be ashamed of wasting precious legislative time to engage in what amounts to a publicity stunt. . . ..
>
> Shame on them. They don't deserve the seats that the people have entrusted in them.

Moretown, VT, is a little town a few miles away from where I live. It is straight down the valley; you can look straight down the valley from the front lawn of my home. We used to go to mass there on Sunday. It is where one of my grandmothers was born. So I was pleased to see that.

I received this petition from West Townshend, VT:

> Thank you very much for all your hard work and valuable work. We appreciate it.

West Townshend is a very small town in Vermont. People are very independent there.

This one is from South Burlington, VT:

> I support any measure to prevent Bush's extreme judicial appointments. Keep up the good work.

This is from Barre, VT:

> Please be strong and stand against the Republicans. Ashcroft has already taken away too many of our civil liberties; we cannot have judges doing the same.
>
> Barre, VT, is considered the granite center of the world, with the largest granite quarries in the world. My grandfather, Patrick J. Leahy, was a stonecutter in Barre, VT. My father was born in Barre, VT. The people of Barre, VT, are as strong and independent as the beautiful granite in their quarry.

I have one from South Ryegate, VT:

> You must protect the cherished rights of women to control their own bodies. Do not approve judges whose records show that they do not believe in women's rights.

South Ryegate, VT, is a beautiful little town on the eastern side of Vermont. I know it well. When my maternal grandparents immigrated to this country from Italy, not speaking a word of English, they came to South Ryegate, VT, where my Italian grandfather was also a stonecutter. My mother, a first-generation American, was born there, her first language was Italian, but she learned English at school. I remember my grandfather, so proud of the judicial and constitutional system of this country, and so proud of taking the oath of citizenship. My father, in Barre, VT, was so proud of the separation of powers in this country—the legislative branch, an independent branch of Government, equal to the other two; the executive branch, independent and equal to the other two; and the judicial branch, independent and equal to the other two.

I remember him sitting in the gallery when I was first sworn in as a Senator, knowing I was part of that triumvirate of powers in this country, which is why our democracy has lasted this long. But throughout it all, it was so important that one branch was outside of politics, that one was independent of either of the political parties, and that is the judiciary. It should not be a Democratic judiciary or a Republican judiciary.

The battle we are having now is because this White House does not want it to be an independent judiciary. They want it to be the most extreme possible. They want it to be an arm of the Republican Party.

One hundred sixty-eight to four. We have confirmed 168 of President Bush's nominees. We stopped four of the most extreme. Lordy, the crocodile tears that have been shed here, at great cost to the American taxpayers, over the last 24 hours—the crocodile tears that have been shed for that.

I do not remember one single Republican standing on the floor and saying how terrible it was when the Republicans blocked 63 of President Clinton's nominees, but, oh, my, it is like Niagara Falls, the crocodile tears, when we blocked four of theirs.

I received another one from Burlington, VT:

> The courts need to represent all Americans. Keep extremists out. Thank you for fighting for representation of all Americans by blocking the extremist judge nominees. Shame on President Bush.

I mention Burlington because I was married there 41 years ago. I still vote there. My children were raised there. I know the people in Burlington, VT. They are independent, good people—people who care for an independent, not a political, judiciary.

Little Hardwick, VT, stands at that junction between Montpelier and St. Johns and Barre. They say:

> Stay awake. Stay vigilant. Protect civil rights, a woman's right to choose, public education and worker's rights. We stand with you.

Hardwick, VT, let me tell you, I stand with you, and I will stay awake and be vigilant. The people on this side of the aisle will stay vigilant and we will protect an independent judiciary. We will not allow the judiciary to be an arm of any political party.

The President said that he wanted to be a uniter and not a divider. Oh, how much I wish he were. If there was ever a time that this country needs a uniter, not a divider, it is right now. But, instead, in deference to groups on the far right, the President has nominated judicial activists about whom one cannot help but raise questions regarding their ability to act impartially, with justice for all. We need an independent judiciary.

We are fortunate in Vermont because we have the most independent Federal judges you can imagine—people with total integrity, who will treat whoever comes into their court with impartiality regardless of whether they are Republican or Democrat or independent. That is what all courts should do.

Time and time again, Democratic Senators have acted in good faith to fill vacancies Republicans kept vacant by blocking a Democratic President's judicial nominees. After Republicans blocked 63 of President Clinton's nominees, when a Republican President came in, they said: Look at all these vacancies. My God, we have to move as fast as we can to fill them. This is terrible. This is a crisis in the judiciary. How could this possibly have happened? How could this possibly have happened; there are 63 vacancies here. My Lord, the sky is falling down.

Where did those vacancies come from? They came from one person, one Republican, holding an anonymous filibuster. If one Republican said, I don't want this judge of President Clinton's, the nominee went no further. Notwithstanding that, some of them had the highest qualifications this country has seen. Notwithstanding that, some of them were the most brilliant judges. Notwithstanding that, they were Hispanics, women, African Americans, people of faith, and people of great conscience. They were not allowed to go forward because one member of the Republican Party said he or she did not want them to go forward. But notwithstanding that the Republicans created all those vacancies, notwithstanding that, the Democrats said, we will help you fill them.

Notwithstanding the arrogance and the one-person filibusters on the other side, the Democrats started filling those vacancies with President Bush's nominees. We have filled 168 vacancies. We stopped four of the most extreme nominees. And now, lordy, lordy, lordy, the Niagara Falls of tears comes from the other side—crocodile tears, hypocritical tears, from those who said not a word, not a word when they blocked 63. Not a word. Not a word. They blocked 63. Not a word. We stopped four of the most extreme, and you would think the world was coming to an end.

What Democrats have done is that we have stood up for our principles and for the independence of the Senate in its constitutional role in the judicial confirmation process. The Republican leadership has decided to spend, I am told, upwards of a quarter of a million dollars of the taxpayers' money to have this debate. I apologize for that. I am not the one who wanted to do this. I apologize to all the staff—the police officers, who should be home with their families, the doorkeepers, those who keep the journal of these proceedings—who are some of the finest men and women I have worked with in nearly 30 years here.

But that quarter of a million dollars the Republican leadership is spending on this charade of crocodile tears could almost be worth it if one thing comes out of it. If the President would realize that this whole process begins with him, not with the Senate. The President has an absolute right to nominate anybody he wants. The Senate has an absolute right to advise and consent, to determine whether nominees are confirmed, especially to lifetime jobs.

I ask him once again, work with the Senate. Every President through history has sought the Senate's advice and consent. In those instances when they did not, they did not get their way. There was another President named George, the greatest President in this Nation's history, George Washington. He was the most popular man in America in the time he lived and probably the most popular person America has ever had. He was a man who brought us together as a country, who set the precedent to make this a great democracy. But George Washington nominated judges the Senate felt he should not have. The Senate exercised its constitutional authority, and not all of George Washington's judicial or executive branch nominees were confirmed. President Washington knew he had to come back and seek the Senate's advice and consent before his nominees would go through.

A great hero of mine, not just because I am a Democrat but because I remember what he meant to people like my parents, who owned a small business in Montpelier, VT, was Franklin Delano Roosevelt, also one of the greatest Presidents to ever serve this country. He kept this country together, kept the world together at the time of naziism and fascism, and the Japanese attack on Pearl Harbor. He brought us out of a recession, and he did this even though he was physically crippled. He worked so hard for this country, it finally killed him. But even Franklin Delano Roosevelt, when he tried to pack the court and change the independence of our Federal judiciary, a Democratic-controlled Senate said he could not do that. In fact, not only did Franklin Delano Roosevelt not get every one of his judges confirmed, but his court packing plan was filibustered.

No matter how partisan anybody is here, I don't think anybody is going to suggest the problems began here. The Senate said no to Washington. The Senate said no to Franklin Roosevelt. The Senate can say no to George Bush. Tradition is there. The Constitution is there. Our rights are there.

Basically, we have taken all this time spending a quarter of a million dollars of the taxpayers' money to talk about this because we don't want to vote on minimum wage, or workman's compensation, child programs, or the appropriations bills that, by law, we are required to have voted on by September 30. We still haven't. We don't want to vote on veterans benefits even though the administration seems hell-bent on cutting veterans benefits.

We don't want to do any of those things. We will spend a quarter of a million tax dollars on the Republican's charade. I say the same thing today that the Senate said to George Washington and said to Franklin Roosevelt: We are going to ask for advice and consent. The Senate is going to stand up for its rights. I yield the floor.

The PRESIDING OFFICER. Does the Senator yield back his time? He has 56 seconds.

Mr. LEAHY. Mr. President, let me say this. Again, I have been here with six Presidents, Republican and Democrat. Presidents have always sought advice and consent. They have not always liked what they have heard. Five of the six Presidents have been willing to work with us on judicial nominations: Presidents Ford, Carter, Reagan, former President Bush, and President Clinton. I urge the current President to follow their example. Things will go far more smoothly. I do yield the remainder of my time.

The PRESIDING OFFICER. All time has expired. Who yields time? The Senator from Alabama.

Mr. SESSIONS. Mr. President, I appreciate the remarks of the distinguished ranking member of the Judiciary Committee. He has been around the Senate and the confirmation process for a long time.

He said he wanted to apologize for people staying here and having to work tonight. It is unfortunate that we are here. We are here because we have a filibuster organized and sustained by the Democratic leadership against six nominees. We have more in the pipeline to be blocked, so it is not just four. I want to ask, would the Senator want to apologize for his remarks that he made in 1998 when he, Senator LEAHY, in the CONGRESSIONAL RECORD, said:

> I cannot recall a judicial nomination being successfully filibustered. I do recall earlier this year the Republican chairman of the Judiciary Committee and I noted how improper it would be to filibuster a nomination.

That was when President Clinton was in office and Chairman HATCH, a Republican, was chairman of the Judiciary Committee. Chairman HATCH said on the floor of the Senate and in committee and in private Republican conferences that a filibuster was not good.

Senator LEAHY and the Democratic leadership all said filibusters were not good. We did not have those filibusters.

So it is amazing to me, now that within a year or two after making statements such as that, and taking that position, we now have those very same people leading a filibuster. I would say apologies need to come from the other side.

Let me mention a few basics about confirmations under President Clinton: 377 nominees were confirmed, 1 was voted down on this floor in an up-or-down vote, not blocked by a filibuster, and no filibusters were had against those nominations. That is what happened.

There were 41 left pending and unconfirmed. Many of those were nominated late, after the August recess. Some of them had FBI background problems, including drug use or other unresolved issues. So there were 41 left pending and unconfirmed; 18 nominees were withdrawn by President Clinton before the final term. So I guess that is how they get 59, 60 nominees who they say got blocked. But that is what happened.

When former President Bush was President and he left office and the Democrats controlled the Senate, they left 54 of his nominations hanging. So under Senator HATCH's leadership and under TRENT LOTT's leadership, only 41 were left unconfirmed when President Clinton left office.

They say you blocked them with holds. Holds were put on nominations, just as they are today. Senator LEVIN has a hold against four circuit judges for the Sixth Circuit. They say they are only holding up four; this is not truth; with the nominees being blocked by Senator LEVIN they are holding at least eight. In fact, there are 13 circuit judges who are being held up and blocked by the Democrats right now. It just so happens we are only in full-blown filibuster of five, one having withdrawn, making six.

I will say one more thing. My colleagues on the other side of the aisle just blithely and consistently and repeatedly say these nominees are extreme, extreme, extreme. "Most extreme," I believe is the phrase I have heard: Most extreme possible; extreme judicial nominees. As if saying this can make it so.

When we talk about judges, each judge is a human being. Each judge is entitled to a fair and decent consideration on the floor of this Senate and in committee. If they are not extreme, they ought not be called extreme. That is wrong for us to do that.

I know these attack groups, People for the American Way, the Alliance for Justice, the National Abortion Rights League and that crowd are the extremists.

They accuse and call our nominees extreme. That is for sure. These groups are not accountable. The problem is when these extreme notions are picked up by Senators. This should not happen. Senators are the ones who are elected. Senators are the ones who have taken the oath. Senators in this body have a responsibility not to call a nominee such as Priscilla Owen extreme. She got 84 percent of the vote in Texas and was given a unanimously well-qualified rating by the ABA to be a judge—she is not extreme.

Judge Janice Rogers Brown from California, who got 76 percent of the vote in the State of California, not a conservative State, for justice of the supreme court in that State, is not extreme. And neither is Carolyn Kuhl, who rated the highest rating possible by the American Bar Association, who has received incredible bipartisan support from the hundred or so judges in her area where she practices as a State judge. She was editor of the Duke Law Review and clerked for Justice Anthony Kennedy and is a brilliant nominee of the highest order. These are outstanding nominees. They are not extreme.

The extremists are the groups and the people calling them extreme. These nominees teach Sunday school. They serve on the Altar Guild. They are involved in civic groups in their communities. They have held important positions in their States. They are the kind of people we ought to have on the bench. It is wrong for them to be accused of being out of the mainstream.

President Bush knows what the people want in Federal judges. He has nominated that kind of Federal judge. The people will support him on that, and it is very disturbing to hear them called extremists when they are mainstream and effective judges and nominees.

I now recognize the Senator from Colorado. I believe he is prepared to make some remarks.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. CAMPBELL. Mr. President, this evening I am pleased to join my fellow Senators—including my good friend from Utah—Judiciary Committee Chairman HATCH—for this "Justice for Judges" Marathon. I doubt if anyone will change their minds, but the debate is one we need to air.

First of all, I would like to thank Senator HATCH for the excellent work he has been doing—just as he consistently does day after day and hearing after hearing—as the Chairman of the Judiciary Committee.

I also thank Chairman HATCH for his support for another bill I am sponsoring this year, the Law Enforcement Officer's Safety Act of 2003. Every one of our Nation's leading law enforcement organizations—including the Fraternal Order of Police—consider this bill to be one of their top legislative priorities. I am especially pleased that this bill now enjoys the strong bipartisan support of 66 cosponsors—including 41 Republicans and 25 Democrats. I also want to point out that Senators LEAHY and HATCH are lead original cosponsors of this important legislation, and thank them for their support. Unfortunately, this bill is a perfect example of how the intent of the U.S. Senate can be subverted by the few opposed to a bill.

I also want to point out that even though this bill enjoys bipartisan support, and easily enough to get it passed by the Senate in an up-or-down vote—or even to invoke cloture—it is still being held hostage by a few Senators who have dug in their heels and refuse to let it pass.

It is not fair nor just in a body where fairness and justice is paramount that a minority of a few can hold up the will of 67 Senators.

I want to let my fellow Senators know that I will be pushing for the passage of the Law Enforcement Officers Safety Act early next year.

The challenges we are now facing in the form of the unprecedented filibustering of Circuit Court judicial nominees is in no way the result of Senator HATCH's ability as a Chairman or as one of the Senate's great gentlemen.

Unfortunately, we are now facing a situation in which judicial nominees that clearly have the bipartisan support they need to be confirmed by the Senate in an up-or-down vote simply cannot get the vote they deserve.

Repeated refusals to allow Circuit Court nominee Miguel Estrada the straight up-or-down vote he deserved unfortunately led to him withdrawing his nomination.

As a Coloradan, I am not alone in my assessment that an injustice was done, and not just to Miguel Estrada, but to our finely balanced system of Constitutional government as handed down by our Founding Fathers.

We all know the history of Miguel Estrada. He is a great American success story. He is a man of impeccable credentials dedicated to upholding the law. Unfortunately, he has committed the high crime of being a conservative. He does not deserve the insult of being called a "lemon" as one Senator has done today. Whether to vote against nominees is each Senator's decision, but they do not deserve insults. On September 10, 2002, the Pueblo Chieftain editorial stated:

> One would think that Democrats in the Senate, who claim to hold diversity in such high esteem, would be amendable to Mr. Estrada's nomination. But he committed the political sin of being conservative.

The Pueblo Chieftain went on to say:

> For the first time in the Nation's history, Senate Democrats filibustered the nomination. By doing so they turned the Senate's historic practice of advice and consent into a litmus test for liberal interest groups. The Democrats also have launched filibusters to stall the nominations of a half-dozen other candidates.

The editorial continues:

> Mr. Estrada asked President Bush to withdraw his nomination, which had languished in the Senate for nearly two years. Mr. Bush did so, with regret.
>
> Mr. Estrada should have been confirmed. He was just as qualified as a dozen other judicial nominees who were eventually confirmed.
>
> But Democrats have resorted to the filibuster to stop those judicial candidates feared to be opposed to abortion. But when asked about the Roe v. Wade abortion ruling during confirmation hearings, Mr. Estrada said, "It's the law. I will follow it."
>
> In the long run, Democrats may have hurt themselves and their outreach to Hispanic moderates and independents by denying all Hispanics a historic moment—the first and highest-ranking Hispanic on the Federal bench who also had strong backing from a wide range of Hispanic groups.

Mr. President, let me speak about a towering figure in Colorado history. Byron White, a football star and then a conservative U.S. Supreme Court Justice who retired in 1993 after 31 years on the Federal bench. After having lived a long and fruitful life, Justice White passed away on April 15, 2002. I met Justice White. His many achievements made most but not all Coloradans proud.

Justice White was appointed to the Nation's highest court by President John F. Kennedy in 1962. I knew Justice White—he had a handshake that would make you wince, even in his 80's.

Byron White combined physical prowess—as a nationally acclaimed football star in the 1930's who went on to become a Rhodes scholar and, eventually, a leading jurist.

In 1937, Byron "Whizzer" White was an All-American football player with the University of Colorado Buffaloes. He led the nation in both scoring and rushing yards while leading an unbeaten team. He never liked his nickname "Whizzer". But sports writers did so he was stuck with it.

He also was an outstanding football player in the earliest days of professional football, playing running back for both the Pittsburgh Steelers and the Detroit Lions.

He used his professional football signing bonus to pay his way through Yale Law School. He graduated first in his class.

During World War II he served as an intelligence officer with the U.S. Navy. It was Byron White who wrote the official report on the sinking of John F. Kennedy's patrol boat, the PT–109.

White "had excelled in everything he had attempted" President Kennedy said admiringly when he appointed his long-time friend and the Deputy Attorney General as our Nation's 98th Supreme Court Justice in history.

However, despite the outstanding strengths and qualifications, as articulated by President Kennedy, Justice White had some views that most likely would have led to filibuster by today's Senate. In fact, if it had been a Republican President who nominated Byron White in 1965 instead of a Democrat, he probably would not have been confirmed even then.

For instance, he dissented from the historic 1973 ruling that declared that women have a constitutional right to an abortion.

In 1986, he stirred a storm of controversy by writing the Supreme Court's opinion that constitutional protections of privacy do not extend to homosexual conduct.

Justice White consistently opposed restrictions on law enforcement officers, which led him to dissent from the famous 1966 Miranda ruling that police officers inform a criminal suspect being arrested of their rights.

Justice White also dissented from rulings that outlawed voluntary prayer for children in public schools.

By the late 1980's, Justice White had joined conservatives in opposing "affirmative action" programs on the grounds that they amounted to reverse discrimination.

The point is that he was appointed by President John F. Kennedy—but even so—under today's atmosphere, including political correctness and in-your-face special interests—with litmus test approaches to public policy—Justice White would have almost certainly been relentlessly filibustered and would probably not be confirmed.

I am not sure that I would have voted for his confirmation had I been here, because I disagree with some of his decisions, but I would have been given the chance.

The way that today's Senate is treating judicial nominees stands in even starker contrast when it is pointed out that Justice White was confirmed by the Senate by a voice-vote, and without objection. Not one Senator objected—"D" or "R." That was on April 11, 1962.

A lot has changed since then. Some for the better and some not. One thing that has certainly not gotten better is the way judicial nominees are being treated. Questioning has given way to badgering. Civility has given way to discovery. Playing "Got Ya" is a poor substitute for an impartial hearing.

The question is not whether the President's nominees should or shouldn't be confirmed. That is a smokescreen. The question is should we, as duly elected Senators be accorded our constitutional responsibilities of advise and consent by voting on each nominee. The minority is denying me the right to an up-or-down vote through their filibusters—and thereby are denying the people of Colorado the right to be represented through my vote. I have heard time and again from our colleagues on the other side of the aisle that 168 nominees have been confirmed and only four have not. What are they talking about? I haven't been given the chance to even vote on those four. Not a question of numbers. It is a question of fairness.

We need to do what we can do to reverse and correct the emerging practice of filibustering judicial nominees.

There is no question in my mind that many deserving and well-qualified people will refuse the call of public service after watching the kangaroo court they might now face in getting confirmed. It doesn't make any difference who is in the majority. No nominee should have to be verbally flailed in the confirmation process.

Mr. President, it is not too late to turn back, reverse course, and give all judicial nominees the up-or-down votes they deserve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank the Senator from Colorado for his remarks. It is true, we need to treat these nominees with civility. That is the least we can do in this body.

I believe we have one more Senator to speak, the Senator from Wyoming, and we have about 14 minutes.

Mr. ENZI. Mr. President, first, I wish to concentrate a little bit on some of the comments I heard during the 3½ hours I chaired last night.

A lot has been made of this number, 168 to 4. But you cannot compare district court judges with circuit court nominations. Instead, you should look at the situation for what it is, an attempt to obstruct the confirmation of circuit court judges.

Since January 2003, President Bush has nominated a total of 29 circuit court judges. Of those judges, only 12, or 41 percent, have been confirmed. Of the remaining 17, my colleagues across the aisle have obstructed or threatened to obstruct 11 qualified and talented judges. In other words, almost 50 percent of the circuit judges ready to come to the floor for confirmation have been held up by the Democratic side for political purposes.

Last night I heard this 98-percent factor, and I heard it said that if my child came home with a test and he got 98 percent, I should congratulate him and work hard to get the other 2 percent.

I will tell you what ought to happen if your kid comes home with only 50 percent, and that is what we are talking about when we are talking about circuit court judges, we are talking about failure of the system, a total breakdown of the system.

You have to look at the concentration that there is on the circuit court. That is because those circuit court folks could become Supreme Court Justices. And Lordy, we don't want to pass any who might make it to that.

Every day the Senate is in session we begin with a prayer and the Pledge of Allegiance. I know my colleagues on both sides of the aisle are firmly committed to this country, and that as we say the words of the pledge, like me, they mean every word of it and they honestly pledge their alliance to the flag and to this Nation. But I have to wonder if they haven't forgotten the meaning of all of the words in the pledge, especially when I hear them put forward the argument that we do not need to vote on all the judicial nominees because we have already voted on most of them.

The last six words in the Pledge of Allegiance, "with liberty and justice for all," mean we do not preserve justice or liberty for just a few people or for most of the people and leave a few or even an individual behind. It means we have justice for all, for everyone. That is 100 percent. We pledge that and we don't make exceptions because we have a high percentage of success.

In fact, this is one of the situations that the courts were created to protect: the rights of the individual. I think it is a little ironic that there are those in the Senate who would be willing to withhold justice and rights from some, in this case four highly qualified individuals, and the cases they could be hearing, if they were confirmed.

That is justice being denied as well. That is justice only for a few, or maybe most, but not all—just because the individuals don't have the same political philosophy as those across the aisle.

While it may be true—the percentage of judges we have voted on—when you are the one who is left out and are not allowed justice, that is 100 percent of your life—the one who is being affected, and 100 percent of justice that is being denied as an individual.

I think this is wrong. I sincerely hope we move off this obstructionism and have an up-or-down vote on the highly qualified individuals with talent, experience, and integrity, and who could be considered as the ideal we want in all judges.

I think everybody knows about the qualifications.

The comments made last night are what we are seeing here for the first time—a change in the way we do judges. The problem with it is it probably will continue and at some point there will be a reversal of roles. We will spiral down and down until we are not approving judges. It won't be 2 percent counting all of the district judges and not doing the true statistics on just the circuit court judges. It will not be approving a majority of them.

I have to tell you, I have been through that spiral once before. When I first got here, there was a judge nominated. She would only sentence a person to 90 days in jail who had raped a minor because she didn't like the rehabilitation system of the prisons in her State. I was appalled by it. In our State, there are a lot of people who would think that maybe he should have been shot. He raped a minor.

I put a hold on that person so we could have a debate instead of a unanimous consent. I eventually got the debate.

I had an unrelated piece of property that some people had been paying taxes on for 70 years which they had bought from the BLM but the title had never changed. It took an act of Congress to change the title. Because I put that hold on, it took me 3 years to get that piece of property transferred to the people. Do you know what those people said? They appreciated what I had done on that judge.

But I have to tell you that unless an up-or-down vote happens on that judge, that is the way it is supposed to be.

It was exactly 200 years ago, in 1803, that the Supreme Court and our Nation's judicial system went through its first and most dramatic change since it was established by the Judiciary Act of 1789. This change occurred when then Chief Justice John Marshall issued his decision in the landmark case, Marbury vs. Madison. In that decision Marshall established the responsibility of the Federal court to review the constitutionality of congressional actions. His action brought the courts out of almost obscurity, seen as the weakest and most timid of the three branches of government, and gave it a prominence and power that is not equaled by any other court system in the history of the world.

Before Justice Marshall was appointed to the court in 1801 the court seemed to lack direction. There was no clear idea of purpose or vision about whether or not the court could consider itself to be an important entity. The very first Supreme Court Session was held in New York City in 1790. It was almost postponed when only three of the original six justices arrived for the court's opening session. The court had to wait and put off doing business until a fourth justice arrived and they had enough judges to constitute a quorum.

Justice Marshall himself did not initially consider the court to be a prominent institution. At the time of his appointment to the court, he was also serving as Secretary of State for President John Adams and he had turned down an earlier appointment to the court in order to run for a seat in the U.S. House of Representatives. After President Adams finally talked him into serving as Chief Justice of the court, Justice Marshall served as both Chief Justice and Secretary of State for 2 months because he felt it wasn't worth giving up the position of Secretary of State to serve on the Supreme Court.

Over the next 34 years Justice Marshall reinvented the court and provided the leadership it needed to assume the prominent role it plays in our court system today.

One has to wonder what Justice Marshall would think about what is going on in the Senate today. Would he agree with my colleagues across the aisle that it is all right to put partisan politics and partisan bickering ahead of the rights of judicial nominees if those impacted are just a small fraction of society. Would he agree with them that justice denied for a few was acceptable? Or would he hold true to the basic tenets of the Constitution that all men are created equal and that everyone has the right to their day in court?

A lot has been made about the numbers 168 to 4. You really can't compare district court judges with circuit court nominations. Instead we should look at this situation for what it really is, an attempt to obstruct the confirmation of circuit court judges. Since January 2003 President Bush has nominated a total of 29 circuit court judges. Of those judges only 12 or 41 percent have been confirmed. Of the remaining 17, my colleagues across the aisle have obstructed or threatened to obstruct 11 qualified and talented judges, or in other words, almost 50 percent of the circuit court judges ready to come to the floor for confirmation have been held up by the Democrats for political purposes.

Every day that the Senate is in session we begin with a word of prayer and with the Pledge of Allegiance. I know that my colleagues, on both sides of the aisle, are firmly committed to this country and that, as they say the words of the Pledge, like me, they mean every word of it and that they honestly pledge their allegiance to the flag and to this Nation. But I have to wonder if they haven't forgotten the meaning of all the words in the pledge, especially when I hear them put forward the argument that we do not need to vote on all of our judicial nominees because we have already voted on some or most of them. The last six words in the Pledge of Allegiance, "with liberty and justice for all," mean that we do not preserve justice or liberty for a few people, or for most of the people, and leave a few, or even an individual, behind. It means we have justice for all, for everyone, 100 percent and that we don't make exceptions because we have a high percentage of success.

In fact, this is one of the situations that the courts were created to protect, the rights of the individual. I think it is a little ironic that there are those here in the Senate that would be willing to withhold justice and rights from some, in this case four highly qualified individuals, and would not extend justice to all, just because those individuals don't have the same political philosophy.

While it may be true that the percentages of judges that have been voted on is high, when you are the one that is left out and are not allowed justice, that is 100 percent of your life that is being affected and 100 percent of justice that is being denied you as an individual.

I think this is wrong, and I sincerely hope we move off this obstructionism and have an up or down vote on these highly qualified individuals, whose talents, experience and integrity can easily be considered the ideal for what we want in judges.

We often talk about the ideal in our debates in the Senate. We hold up a picture of what things should look like and how things should be done in the hopes that someday, we can move our Nation forward to the point where the ideal is, more often than not, reality. One of those ideals that has been presented is a world where our judges and our courts are more representative of America. Our courts have often been accused of being elitist. The Bush Administration has been working hard to change that image by making sure our judges are more diverse. By nominating people like Miguel Estrada, Carolyn Kuhl, Janice Rogers Brown, Priscilla Owen, William Pryor, and Charles Pickering, President Bush has set an example of the ideal by selecting people from different backgrounds, with different styles, who share the same passion and enthusiasm for the law.

The list of judges that is before the Senate represents a group of candidates who are well educated, fully talented, and well qualified for the posts for which they have been nominated. Unfortunately, for some, this list also represents the unfairness of the system—a system which, in theory, guarantees each nominee a vote—but—in practice, can be used to deny a nominee a vote.

So here we are, well down the road, holding a list of candidates that still haven't received a vote. In spite of all their qualifications and the personal integrity they have shown throughout the process, these judges have been forced to wait as the Senate decides whether or not we can simply hold an up or down vote on them. Why? It's pretty clear to just about everyone. Because these are good nominees and in a fair and just world, they'd win the vote hands down. Therefore, the only way to avoid having these candidates confirmed is to deny them their constitutional right to an up or down vote.

What is most tragic about this situation is that these delays have not come without cost. These nominees aren't the only ones who are being denied their rights. Let's not forget the other victims in this situation who have been denied their right to a fair and impartial judicial process because there are not enough judges to hear all their cases. The real victims of these delays are not the nominees, or the Bush administration, or even the Republican Party. No, the real victims are the people whose rights have been denied to accommodate some increased partisan bickering.

There is a saying "Justice delayed is justice denied." We make people with very real needs and very real issues wait while we try to score a few points in the game of politics. We drag out their court costs, their attorney's fees, and delay their restitution and damage payments all because we want to get one up on the other party.

We have a crisis in our courts that we can solve today. I urge my colleagues to step up to the plate and become a part of the solution. I urge them not to accept the belief that justice for some is sufficient. I urge them to allow the Senate to conduct its constitutional duty and hold an up or down vote on these judges. If you don't agree with them, or feel they are not qualified, then vote against them. That is your prerogative and duty as a Senator. But do not continue to deny justice for the nominees or the courts any longer.

Mr. SESSIONS. Mr. President, the Senator from Montana is here and I know he would like to finish up.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, a lot of questions are being asked about this debate as we roll along. We went late last night and there are probably some folks who have been short of sleep.

Let there be no doubt about it, as we close this half hour, this is obstruction. A week ago tomorrow, we argued about definitions. Now we are worried about ideologies and how we appoint our judges. Here is one way you can have an issue and you can be on both sides of it and never worry about the consequences. That is healthy for us. We passed that through this Senate with strong bipartisan support and only 14 folks voting against it. Now we can't name conferees. "Well, I voted for it." But we do not want it to get to conference.

I am fighting for two judges, Janice Rogers Brown and Carolyn Kuhl. Both of them are nominated to the Ninth Circuit. Why am I fighting so hard for them? Let me tell you why.

I am sponsoring legislation to split up the Ninth. It is too big. It covers California, Arizona, Nevada, Idaho, Washington, Oregon, Alaska, Hawaii, and my home State of Montana. It covers 14 million square miles—that is a fairly good sized pasture—with 45 million people. The second highest population is the Sixth Circuit with 29 million. It has the highest number of active judges with 28. The average number per judges per circuit, including the Ninth, is 12.

Let me tell you another reason why. The decisions that have been handed down by the Ninth lately—from 1996 through 1979—the Supreme Court heard 228 cases from the Ninth Circuit, and 27 of those decisions were overturned, 17 of them by unanimous decision.

From 2001 through 2002, 12 of the 17 Ninth Circuit decisions were reversed, and 7 of those were unanimous.

How would you like to have that track record? And we live in that circuit. Then you wonder why we get excited about the appointment of judges to that Ninth Circuit.

It is absolutely unbelievable.

I am an original cosponsor of S. 562. We must get it done.

What we are talking about here is people in a circuit who can't handle the work and come up with decisions that can't stand the test in the Supreme Court. That is pretty bad—1 in 27. That is almost as bad as 0 and 1 in a gunfight in judicial terms.

I am not an attorney. I don't think I will ever be one. But I will tell you that you can read and you know where the American people are, and those people are denied representation on the Ninth Circuit.

Definitions: We have heard it. If we cooperate, things would really get along good here. If we cooperate—we did—that is healthy for us. Now we can't name conferees to finish the job that is in front of us.

This is not my first rodeo. I know what is going on here. They should be ashamed—ashamed to contradict their own conscience.

Obstructionism: Give these judges a vote up or down. That is the way you got here. They deserve the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama has 3 minutes 30 seconds remaining.

Mr. SESSIONS. The Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I wish to speak about some statements that have been made in the past and the inconsistency of these statements with the ones we are hearing today.

Let me quote for my colleagues some sentiments with which I very much agree, and I then I will ask you all to guess who said it: "I find it simply baffling that a Senator would vote against even voting on a judicial nomination. Let the Senate vote on every nomination."

Here is another quote. See if you can figure out who said this: "I don't know how Members tell the Hispanic community we are being equally as fair with them as we are with all non-Hispanic judges when that simply is not true. Hispanic or non-Hispanic, African-American or non-African-American, woman or man, it is wrong not to have a vote on the Senate floor. What are they afraid of? What are they afraid of? What is wrong with a vote?"

Another quote from one of our colleagues who quoted Chief Justice Rehnquist: "As Chief Justice Rehnquist has recognized, the Senate is surely under no obligation to confirm any particular nominee but after the necessary time for inquiry it should vote them up or vote them down. An up-or-down vote that is all we ask."

Have you guessed the speaker yet? No, that is not ORRIN HATCH; it is not Senator SESSIONS; it is not Senator ENZI and it is not me. That is Senator TOM DASCHLE, the Democratic Minority Leader. These quotes are from October 5, 1999 and October 28, 1999.

Senator KENNEDY said nominees deserve a vote. He said: "If our Republican colleagues don't like them, vote against them. But give them a vote. Don't just sit on them. That is obstruction of justice."

My goodness. Senator DASCHLE and Senator KENNEDY certainly had the right idea 3 years ago.

Senator DASCHLE also said that Senators "have a constitutional outlet for antipathy against a judicial nominee. Vote against that nominee."

Senator DASCHLE, the Democrat leader in all of this obstruction and delay, said in 1998: "All we are asking of our Republican colleagues is to give these nominees a vote and hopefully the fair consideration they deserve. We will press this issue every day and at every opportunity until they get the vote."

Doesn't that sound familiar as to what we have been trying to do for the last several years?

Senator DASCHLE is also on record complaining about how long it took for some cases and decisions that had been pending for months. He said for "anyone to be held that long is just an extraordinary unfairness not only to the nominees but to the system itself."

The PRESIDING OFFICER. The time has expired.

Mr. ALLEN. If I may, with consent, have 2 minutes that is attributed to our time at 9 o'clock.

The PRESIDING OFFICER. Is there objection?

Ms. STABENOW. Reserving my right to object, my colleague, I appreciate the time, but in order for us to stay on schedule and given the fact I have been waiting here at this point, I would appreciate his wrapping it up. If he would like to take 1 minute to wrap up, I would not object to that.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. I would like to close with a final quote from Senator DASCHLE that he made in September 1999: "It is so incredibly unfair to me that they would continue to persist in the determination not to allow these very qualified people to even have a vote."

Mr. President, that is what all of this is about. Tomorrow morning we will have a chance to end debate on these nominees and allow for fair up or down votes. In addition we will be able to determine the veracity, truth, and sincerity of our colleagues that I have previously quoted. If they were willing to tell the truth 3 or 4 years ago, they will have an opportunity to stop this spiral of unfair actions and delays which only bring more retaliation and more delays.

Senators will then be upholding the Constitution and will be accounting to their constituents, as well as giving fairness to the nominees.

I thank the President and I thank my colleagues.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, as I said before on the floor, all the statements that are being made, and all the time we spend in relation to our values and our priorities, I also believe we get things done when we work together, when we work in a bipartisan way. That is what our constituents expect us to do.

I see the esteemed chairman of the Judiciary Committee on the floor. I thank him publicly for working with the senior Senator from Michigan as we work through difficult issues that relate to Michigan. I appreciate his willingness to do that. That is how we get things done—when we work together.

When we look first at the record of legislation taken up on this floor, I think it shows we work together. I think when we have worked together to confirm 168 judges, most of those I have voted for overwhelmingly, and when we see that we have only had a disagreement on 4, I think that shows bipartisan cooperation. I think that shows what the people of this country, and certainly the people of Michigan, want to see done. There is no question in my mind that this demonstrates our willingness to roll up our sleeves, to be fairminded, to look at the facts, to look at the nominees, and to work together.

It also shows, though, that we are willing to make a critique, that we are not a rubberstamp for this administration, nor should we be for any administration of either party. It shows we are willing to make a judgment. When the nominees go too far, we say no. That is what happened four times.

What I am most concerned about now, though, in this 30 hours—which now, instead of ending at midnight, is going to go until 9 in the morning—is that we are saying our values and priorities are spending time talking about four people who already have jobs and want to get a promotion that will last a lifetime. These are lifetime appointments.

My concern is that we need to be spending time on this floor not only talking but doing something about the 3 million people who have lost their jobs in the last 2½ years—3 million people. They do not have a lifetime job. They would just like to know they have a job tomorrow for their families. They would like to know that the job probably carries health care with it and will be there so they can put food on the table and they can pay the mortgage, the car payment, send their kids to college, and know they can have a good life in America that they assume if they work hard they will be able to achieve.

That is the debate I have said a number of times that we need to be having. One-hundred and sixty-thousand-plus of these 3 million are people who have lost their jobs in Michigan; people who have lost good-paying jobs, good-paying jobs with health care and pensions. They find themselves in very difficult circumstances and they are asking us to help them.

I am very proud of the fact that Michigan is the first in the production of automobiles. Thirty-one percent of all the automobiles in this country are produced in the State of Michigan.

My dad and my grandfather owned a Cadillac dealership in Claire, MI. We have been proud to be a part of supporting the Michigan automakers.

We also are first in the production of trucks, producing 17 percent of trucks. We have the three leading office furniture manufacturers in Michigan and produce nearly half of the office furniture.

Why do I say this? Because we have a crisis in manufacturing in this country that we need to be addressing in this Senate. Jobs can't all be in the service industry. We need to make things and we need to grow things. That is what we do in Michigan. We make things and we do it well. We will compete with anybody any time. Just give us a level playing field. We also grow things. We are willing to compete with anybody any time. Just give us a level playing field. We don't have that right now. We don't have that level playing field. We are not addressing that.

We are not addressing what is happening with the fact that China is violating the WTO or that China and Japan basically have put a tax on American goods and services sold in this country by manipulating their currency. We are not doing anything about that.

As a member of the Banking Committee, I sit and listen to the Treasury Secretary basically acknowledging that something is not right but not wanting to step up and take the tough action on behalf of American manufacturers and American workers.

We need to be talking on this floor and taking action on behalf of the men and women who have been the backbone of this country in manufacturing and have created the middle class that separates us from other countries around the world.

Why aren't we having that debate? Not a debate about 4 people who already have jobs, who want to get promoted. Three million people do not have a job and are now struggling with their families.

I want to share a few comments that I have heard. Earlier today I shared some headlines from newspapers in Michigan about what is going on. I want to share one of those this evening with my colleagues. It is from the Ludington Daily News, in northwest Michigan. It says: "Tough Loss, Straits Steel closing sad news for plant's 180 employees." Then it starts out by saying:

> Despite the looming possibility over the past few months that their plant might close, workers at Straits Steel & Wire Co. kept their production quality high and their attitudes positive, said General Manager Tyndall.
>
> But on Friday, Tyndall was forced to tell his co-workers and friends that corporate officials decided to close the Ludington plant, 56 years after it began operations in 1947.
>
> Making the announcement twice—to the first shift in the morning, then the second shift in the afternoon—was not easy for Tyndall, who joined workers on the floor of the production plant as he shared the bad news with the group.
>
> "People are down," he said Friday afternoon. But he stressed the plant's closing is not related to performance. "When we walk out, we can hold our heads high and go chest to chest with anyone on the street and say we did our jobs well."

They did their jobs well. But because of what is happening and the unfair competition around the world and the stress and struggle as it relates to cost, the plant closed.

Why aren't we dealing with issues that will help this Straits Steel and Wire Company in Ludington, MI? Those are the jobs I want to be talking about. Those are the jobs people in my State want us to be trying to fill.

Let me mention a few letters I have been receiving from people in Michigan that say it better than I can. First from a gentleman who says: I am writing you regarding the health of my business. I have a high tech business servicing industrial lasers, much like the ones that are no doubt cutting metal subassemblies for our armed services use as well as civilian businesses. My business has the flu. It is feverish and sluggish almost to the point of no business at all. Our country was initially built on small businesses providing services and employment. Our government encourages small business growth yet at the same time small businesses are being destroyed one by one because our economy is in such dire straits that business orders are essentially flat, which in turn is causing my business to fail. Occasionally I call the few customers I have left and ask questions about how they feel about the economy and what they think will happen in the near future. They say they are very concerned about the future. Some are laying off personnel. Others take pay cuts to keep their jobs. Still others feel they are sinking with no relief in sight. My business is now on the verge of collapsing and the only reason is the economy. I find it extremely difficult to believe that because of a few positive economic reports showing up here and there that our economy is getting better. The only real indicator of an improving, recovering economy, in my opinion, are reports coming in of companies rehiring people and putting them back to work. No other indicators, in my opinion, mean a thing until people start going back to work.

I agree with that. It is about putting people to work and having businesses recover from the flu.

Also from a Michigan resident: I am a tool die maker for over 40 years. I now find myself out of a job and unable to find one in my field. I have no health insurance. Why has America farmed most of our manufacturing jobs out to other countries? I think America has got to be not only the greatest thinking country in the world but we have to also regain our status as the greatest producing country in the world, as we did in World War II. That is, as you remember, the reason we won.

From Bridgman, MI: I would like to say I have worked in manufacturing for 20 years. This is the first time in my career that my hours have been reduced. I have a house payment, utility bills, children to feed and clothe, doctor bills, car payment, insurance, school lunches and preschool. This is just a few of my expenses. We are hanging on by a thread, day by day living. This is not the way Americans should have to live, especially in this day and age.

I agree. If people work hard, they get up in the morning and they go to work and they work all day, they ought to be able to know they are going to be paid a good wage, that they can count on that job being there, that we want them to be able to have health care. We want them to be able to put money aside for a pension, and we want them to know they will have the security of being able to take care of their families and plan for the future as part of the great middle class of America.

Our manufacturing economy has given us that. We are losing that. We are losing that. We need to pay attention. We need to talk for 30 hours on the floor about jobs and how to help our manufacturing sector. We need to talk for 60 hours or 90 hours. More importantly, we need to act to do something so we can level the playing field. As I have said before, I will put our workers and our businesses up against anybody, if it is a level playing field. Just make it fair and we will compete. We need to address issues of health care. We know one of the biggest challenges right now for our manufacturers is the explosion in the prices of health care. I also know from talking to our automakers about half of that is because of prescription drug prices, the lack of competition, and the explosion in prices. We ought to be doing something about that.

We have bills in front of us right now in the Medicare conference where we could do something, if we wanted to, about that to lower prices. I would love to have a 30-hour debate on that because there is nothing right now more challenging to businesses and workers than the issues of health care. Workers are finding they are being asked to pay more in premiums and deductibles or their salary is capped in order to pay for health care increases or, worse yet, they are losing their jobs because of the increases. That is a debate worth having. That is a debate that would result in our focusing on something that means something very important to the people of this country. I would look forward to that debate.

Let me read a couple more letters: I've worked in manufacturing for 23 years, and this is the first time in my career I have had my hours reduced. I am worried about losing my job. My family is suffering because of my reduced income and planning for the future of my trade. I am a mold maker, and this has always been a solid trade. My trade is faltering, not only because of the economy but also because of foreign competition. How can we compete with countries that pay drastically reduced wages with no benefits?

We have to address that, not by saying you have to work for less, Michigan workers. You have to work for less and you have to take no health care and no benefits. We have to be fighting for our middle class and creating a way to raise the standards of living around the world instead of lowering ours, which is exactly what is happening right now. It is probably the most serious threat to our future in terms of maintaining our economy and our middle class. That is worthy of a 30-hour debate.

There are many more letters I could read that are the same. So where are we, when we are talking about 3 million jobs lost and counting just in the last 2½ years, a little less than 3 years. What is the response from the administration to this number? Are we pulling everybody together to figure out what we can do to lower health care costs? Are we figuring out what we can do to level the playing field and stop China and Japan from using advantages and manipulating their currency and creating a situation that is unfair to us? Are we looking for ways to stop the small manufacturers from going and moving their plants overseas? No.

What is the response from the administration? The first thing is to propose to cut people's overtime pay, people who already are working. We are going to cut their overtime pay. That is one of the major points the administration is fighting for right now in the appropriations process. They fight every effort to extend unemployment for the people who are currently unemployed. In the past, on a bipartisan basis, every President from Nixon and Carter and

Reagan and Clinton, every President we have during times of recession, we have extended unemployment compensation for those who are unemployed. We have to fight now at every turn on behalf of the unemployed. I have mentioned earlier the administration has not been willing to get tough with China, has not been willing to deal with what is happening in Japan as well, that has so affected our automobile industry and our manufacturing economy.

We need leadership to step up and do more than just words to get tough on them, to create a level playing field. We have seen the administration not be willing to address the high cost of health insurance and do those things that will bring prices down. Earlier today I offered a unanimous consent request to increase the minimum wage $1.50 an hour so 7 million people, a large share of them women with children who are working for the minimum wage and trying to make it and don't have health insurance, paying their child care every day, trying to make it, trying to do what we are asking them to do in this country, could get a raise. It was objected to by colleagues. So we are seeing the people who earn the least can't get a raise. The administration won't support 7 million folks getting a raise. They want to take overtime away from the folks who are already working, not wanting to deal with those who are out of work with unemployment, not wanting to level the playing field so we can keep our manufacturers here and keep those good-paying jobs.

Over and over again, we see efforts that block what we need to turn this number around of 3 million jobs lost and counting.

That is the reality of what is happening. Frankly, I am disappointed we are not willing to spend time. If we are going to ask people to stay up all night and the staff to be here and so on, let's address something that affects them and their families and everyone who is listening and watching, and that is how we move this economy forward, how we protect manufacturing, how we support our businesses large and small, and our workers working harder and harder every day just to make ends meet, so we can make sure the quality of life and standard of living we want for our families is maintained in this country.

We are the greatest country in the world. But we are truly in crisis, I believe, as it relates to what is happening in our economy and with our manufacturing sector.

Let me take an opportunity to read a few more of the letters I get every day, unfortunately, from the people of Michigan. A letter that says: I have never written to a Michigan Senator before, but for me, now is the time. You see, I am one of the discouraged unemployed in Michigan. After over a year of fruitless searching for a nonexistent job in my field as a CAD designer, I have given up. It breaks my heart to leave the field I love. I must just ask you this: Where are all the automotive engineering jobs? Is it true that we in Michigan have lost much of our employment base as it relates to engineering through outsourcing? I know many colleagues who are also out of work and many who have left the field altogether, as I am contemplating. I just want you to know how one of your constituents is feeling about the employment situation here in Michigan.

Of the 3 million jobs that have been lost, over 2.5 million of them are in manufacturing. These are jobs that pay well, that bring health care with them, that bring a pension, that create middle-class America, those folks who can buy the houses and the cars—we want them to all buy them American made—who buy the boats and the snowmobiles and the cottage up north, who send the kids to college and believe in the American dream: that if you work hard, you can be successful in this country and you will have the opportunity to have the dignity of work.

From Union City, MI: I am writing this letter because there seems to be some confusion about our economy. Our government seems to think that a tax cut will help but I don't think so. Since the year 2000, there has been over 3 million manufacturing jobs that have been lost, gone to China. My wife and I own a small machine shop in Union City, Michigan. At one time we had 7 employees. Now my wife, my son and myself are all that is left. Most of the time we don't even have enough work for ourselves. I have watched as many of my friends and competitors have gone out of business and just closed their doors or filed bankruptcy. While we fight the war on terrorism, if we are not careful, we will lose a much bigger war to the rest of the world without a shot being fired.

From Clyde, MI: My husband, a 25-year mechanical engineer, designer of automotive special machines, has been laid off for seven months. The company he worked for was bought by Fiat and within two years, began outsourcing the engineering to countries such as Bosnia where engineers will work for $6 an hour. Our workers can't compete with that obviously. The engineering department is now closed completely, everything is outsourced. He is 55, laid off, 2½ weeks short of his retirement, vesting at 100 percent, can't draw Social Security, and has been unable to find work. The market is flooded with engineers because outsourcing is happening all over. I work two jobs and a third when I can get the work. If we want to maintain the quality of our environment and keep our families fed, we need legislation to address the inequities in manufacturing standards globally, balancing tariffs, something. Our workers can't compete with the salaries outsourcing provides from other countries but for which foreign workers can maintain their own standard of living.

Again, I have received letter after letter after letter saying the same kinds of things. I also receive letters from furniture makers. I have had the opportunity to be in Grand Rapids, MI, and talk with furniture makers who have lost their contracts to Chinese contractors or subcontracting has moved over to China. They say: Well, it is because they can't compete. It is just the way the economy works.

Well, no, it is not. China manipulates their currency and it amounts to about a 40 percent tax on goods and services we send to China. They are not playing by the rules. They don't play by the rules. Why aren't we standing up for us? My constituents are saying: What about us? What about our jobs? We appreciate the fact that four people who wanted to be promoted as judges have not had the opportunity to do that. One hundred sixty-eight, yes; four, no.

But I hear from people representing this 3 million people saying: What about us? What about a marathon for us? What about spending time on the floor debating solutions that will create jobs for the people in this country that represent the majority who believe in this country, who work hard every day, who want to work hard, who want the dignity and respect of work? They don't want a handout. They want to work. They are finding their jobs are leaving, and they need our help.

Our manufacturers, large and small, and the people who work for them, need our help. They are asking us to work on a bipartisan basis. These folks are not Democrats or Republicans. They are Americans. They are Michigan citizens. They are asking us to turn our focus to those families, those people in our country who need our help. What we do is always about values and priorities—always. It is always about values and priorities.

I believe this debate is about misplaced priorities and we need to return to what is most important in the precious hours we have here and the time we have to get something done for the American people, because there is a lot at stake, including the quality of our way of life as a country. We cannot afford to lose our manufacturing base. We cannot afford to lose the middle class of this country, which has made us strong. If we are not careful, that is exactly what is going to happen.

I call on my colleagues to spend this time on how we move forward and take this number of 3 million jobs down to 2 million and to 1 million and get it down to zero, because that is the number that truly counts for all of us.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I inquire of the time. Where are we?

The PRESIDING OFFICER. The minority still has 41 seconds remaining.

Mr. REID. We are happy to yield 41 seconds to the majority.

The PRESIDING OFFICER. Does the Senator from Idaho seek time?

Mr. CRAIG. The chairman of the Judiciary Committee is on the floor. I will yield to him.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I apologize to those listening in and to my colleagues for having laryngitis.

Mr. REID. I want my 41 seconds back with that voice.

Mr. HATCH. Your voice is not much better than mine, from what I can hear.

Whenever you are losing an argument, you try to bring up something that might help you to win. This argument about jobs is very important, but I remember all last Monday being wasted by our colleagues on the other side. I can list all of the obstructions that have occurred this year, time after time, when we tried to do something that might be good in that area. This phony chart of 168 to 4, it doesn't take any brains to realize that is totally false.

Tomorrow, we are going to have two cloture votes on two more, so there are at least six. If you go through all those they really do plan to filibuster, you get up around 15, 16, or 17. This is the first time in history this has happened.

I rise to speak about the judicial nominees being filibustered by a minority of Senators. I have served in the Senate for 27 years, and I can honestly say President Bush's nominees are among the best I have ever seen. They are experienced, intelligent, ethical, hard working, respected in their communities, and they have given their lives to public service. We honor these great men and women for volunteering to serve their country. They have put forward their good names for evaluation by the Senate and they deserve a simple up-or-down vote—just the dignity of the vote. Our priority is to vote on these nominees. We owe them no less.

By June of this year, we had two well-qualified nominees blocked by filibusters. These filibusters were the first two in the history of this body. By the end of July, we again made history, adding a third filibustered nominee. By October, we had four nominees filibustered, another record. Shortly, we will have two more filibustered nominees, yet another record. The number continues to rise.

Those who are watching this, don't believe this phony chart. That has never happened before. Like you say, it is one thing to say we gave the 168 a trial. Most of them are district court judges now. So we gave 168 a trial, but we only lynched 4 of them—6 of them now, or 8 probably next week. It will be up to 17 before long.

I promise not to talk about the color of somebody's tie or my favorite fast food. I want to talk more about numbers tonight. I want to talk about President Bush's nominees to the Federal court. Ambrose Bierce defined nominee as a "modest gentleman [or gentlewoman] shrinking from the distinction of private life and diligently seeking the honorable obscurity of public office." That may or may not be the case, but I want to highlight several of the distinguished and respected judicial nominees who are currently being filibustered by the Democratic Party members, Justice Janice Rogers Brown, Justice Priscilla Owen, and Judge Carolyn Kuhl. We can talk in terms of numbers, but I prefer to talk about why these three distinguished judges deserve a simple up-or-down vote on the Senate floor, and why they deserve to be confirmed as Federal judges.

We started hearing from the other side that, according to my colleagues, these nominees have despicable views, or are wildly out of the mainstream, or from the hard right, are mean people, have embarrassing records, are far out and off the charts, are unqualified, are activist, are extremists, or right-wingers who would like to take the country back to the 1890s, are deeply hostile to and actively seeking to undermine civil rights, women's rights, and workers rights—gee—seek to turn back the clock on constitutional rights, have records of not really helping women, seem to have little regard for the rights of women, and represent the "worst of the worst," as one colleague on the other side put it the other day. Those were the nice things they have said.

Actually, Judiciary Committee hearings often remind me of an old Far Side cartoon showing three cowboys on Main Street in the Old West. One cowboy lies sprawled on the dusty street, with a revolver lying next to his arm. The cowboy on the left stands with a smoking gun, staring at the fallen man, and saying: "OK, stranger . . . What's the circumference of the Earth? . . . Who wrote the 'Odyssey' and the 'Iliad'? . . . What's the average rainfall of the Amazon Basin?" The cowboy on the right stands stunned, with his hands to his face, saying, "Bart, you fool! You can't shoot first and ask questions later!" In a similar vein, Ambrose Bierce wrote that to nominate someone was to "designate for the heaviest political assessment. To put forward a suitable person to incur the mudglobbing and deadcatting of the opposition." I often fear we do not give our judicial nominees a fair chance before shooting them down.

The other side, before they heard one word out of Janice Rogers Brown's mouth, was already shooting her down; they didn't give her a chance.

I hope we can move past applying labels to the fine men and women who have volunteered to serve their country through judicial service. Our duty under the Constitution is to determine whether judicial nominees possess the experience, intelligence, and temperament needed for judicial service. Our constitutional responsibility is to judge whether judicial nominees are willing and able to place the rule of law above all other concerns in rendering justice. The Senate cannot fulfill its constitutional duty when a minority of Senators refuses to allow an up-or-down vote for the President's nominees. As it stands, a bipartisan majority of U.S. Senators stand ready to vote on and confirm each of these excellent nominees.

Mr. COLEMAN. Will the Senator yield for a question?

Mr. HATCH. Yes, I am happy to.

Mr. COLEMAN. A concern we have with nominees is they are competent and able to do justice and do the right thing. There are ways to measure that. I ask the chairman, is it true the three nominees we are debating have been rated qualified or well qualified by the American Bar Association? Is that an objective standard by which nominees can be rated?

Mr. HATCH. That is true. Remember, all throughout the Clinton administration, on all their nominees, our friends on the other side were saying if the ABA approves them with a qualified rating, then they deserve to have an up-or-down vote. When they have a well-qualified rating, the highest rating you can possibly have, then there is no question they deserve an up-or-down vote. Like the three cowboys in the street I talked about, they shoot them down before they even get a chance to have that vote up or down.

Mr. COLEMAN. Sometimes the people can rate judges, when judges are up for election. I ask, is it true Justice Owen was elected to the Texas Supreme Court by 83 percent of the vote in Texas?

Mr. HATCH. Absolutely true.

Mr. COLEMAN. Is it true Janice Rogers Brown was retained to serve by 76 percent of California voters?

Mr. HATCH. Yes. I might add Justice Owen, to get back to her, had 84 percent of the vote in the year 2000. That is the highest support of any State supreme court justice that year. Most every major newspaper in Texas endorsed her. Our colleagues on the other side say she is out of the mainstream. Give me a break.

In the case of Justice Brown, she won 76 percent of the vote. I think there were four, if I recall correctly, supreme court justices up for election. She won the highest vote of all of them in a State not known for conservative politics. Yet they have tried to paint her like she is some sort of a rightwing nut. Well, just look at NBC News. They made it pretty clear she is no rightwing nut. She is a very good person.

Mr. COLEMAN. I ask the chairman, sometimes judges can be graded by peers, folks who served with them, who know firsthand the quality of the work they do. Is it true Judge Kuhl has the support of over 100 California judges across the political spectrum?

Mr. HATCH. Yes, of both Democrats and Republicans. She is one of the most highly rated judges in California. She is outstanding. Frankly, these are Democrats saying she made one of the best judges on the Ninth Circuit Court of Appeals.

Mr. COLEMAN. I ask one last question. How is it the opponents of these nominees can claim these nominees are extreme or out of the mainstream, or not qualified?

Mr. HATCH. Well, I suppose the overwhelming majority in the most populated State, in the case of California, is out of the mainstream. I guess the overwhelming majority in one of the largest States in the Union, Texas, is out of the mainstream. You know, I suppose having the support of her fellow judges, in the case of Carolyn Kuhl, across the board, Democrats and Republicans, is out of the mainstream. According to these people over here—I will tell you who is out of the mainstream, it is these people over here who are filibustering judges for the first time in history and really endangering this process. It is ridiculous. It is wrong. I think the American people have to rise up and let them know it is wrong.

Mr. COLEMAN. I thank the Senator.

Mr. ALLARD. Will the Senator yield for a question?

Mr. HATCH. I am happy to.

Mr. ALLARD. I am a veterinarian by profession, and we have a code of ethics in our profession. I understand we are expected to abide by the code of ethics, and I understand the American Bar Association has a code of ethics for judges. My understanding is the code of ethics says you will not take a position, when you are in the process of seeking a position on the bench, that might prejudice your ability to decide a case. Every one of these individuals up for consideration is highly respected by their peers. I suspect it is because they are honorable and they live by the code of ethics.

I am disturbed by the specific questions that come from members of the committee when, in my view, it makes it difficult for the nominee to answer those questions because it would make it difficult for them to be objective in the way they look at a case that comes before them. I wonder if you would share with me about the code of ethics and the question on how is that practical, and do you have any reason to believe these are horrible individuals who would not measure up to the highest standards of the court, based on their peers who recommended them as highly well qualified?

Mr. HATCH. I have been on the Judiciary Committee for 27 years. I have to say I have not seen any better nominees in that whole time. As far as ethics, the only one the Democrats demanded an answer to every question—questions about future cases that will come before them—not the only one, but the main one, was Bill Pryor. The other one was Miguel Estrada. To make a long story short, it has been a very unfair process for these people. We have more than made the case that Miguel Estrada was treated completely different from John Roberts. Both of them served in the Solicitor General's Office. They asked these stupid questions about documents that are the most highly privileged documents in the Government today, and seven former Solicitors General said these cannot be given, and they used that as a phony excuse to shoot down Miguel Estrada, who is well qualified by the American Bar Association. When Bill Pryor answered all the questions, they said you answered too many questions. You are damned if you do, damned if you don't.

It is pretty clear, they just wanted to shoot these people down right from the beginning. To come out here and make such a fuss about jobs when they have been obstructive all year long is so phony that I have to admit, it almost brings tears to my eyes. Maybe it does bring some tears to my eyes because phony things tend to do that.

Mr. ALLARD. I thank the Senator for responding to my question. I have one other followup question. You mentioned jobs and it seems to me we have an efficiently operating judiciary. We don't have a lot of lawsuits that help the economy. That means we need to move out of filibuster and get these nominees voted up or down and get them on the bench, particularly in the circuit courts where we have a lot of pending cases. One of the best things I think we can do is to get these nominees on the bench and fulfilling their duties. Do you agree?

Mr. HATCH. I do. Sometimes the district courts are involved and that is why we need the circuit court of appeals. Yet this President is treated different than prior Presidents, including President Clinton. About two-thirds of the circuit court nominees haven't even had a vote. Usually by this time in a President's career about 90 percent have had a vote.

Ms. COLLINS. Will the distinguished Senator yield for a question?

Mr. HATCH. I am delighted to.

Ms. COLLINS. The Senator from Utah is an extraordinary lawyer, and he also has a distinguished history in the Senate and has served so ably as the chairman of the Senate Judiciary Committee. I wonder, given the Senator's breadth of experience, if he happens to know the origin of the word filibuster and could he enlighten the Members of this body and those who are watching tonight as to its origin and meaning.

Mr. HATCH. I was hoping somebody would ask that. We have a chart prepared. They put it up. Filibuster comes from a Spanish word "filibustero," meaning a pirating or hijacking, one word for obstruction. That is what it is. Look, I have no problem with filibusters on the legislative calendar because the Senate can set its own rules. But when it comes to the Executive Calendar, that calendar depends on your exercising restraint by advising and consenting, which means a simple majority vote up and down.

In the Clinton years, every Clinton nominee who came to the floor got a vote up or down. We did have a few who wanted to filibuster Clinton nominees. I personally stopped that because I recognized it would be disastrous for the Senate if we went down that road. As you can see, it is disastrous. We are in the middle of going down that road. We have already gone down it because our colleagues on the other side just don't seem to understand how important it is for them not to filibuster Federal judicial nominees. But I thank my colleague for bringing it up.

Ms. COLLINS. I thank the Senator for his clarification. That is indeed fascinating and we have learned a great deal here this evening.

Mr. SESSIONS. Will the Senator yield for a question?

Mr. HATCH. I will be happy to.

Mr. SESSIONS. Addressing the distinguished chairman of the Judiciary Committee, who has served so ably for so many years on these matters, I would like to follow up on that question that was just asked.

During your tenure as chairman of the Judiciary Committee when President Clinton was President, and he was nominating judges that sometimes would not have been our choice, or your choice for a judge, did you have occasion to express your opinion as to whether a filibuster was appropriate or not?

Mr. HATCH. As the Senator will recall, right in the middle of a couple of very controversial nominees, Judge Paez, now Judge Berzon, there were some on our side who legitimately felt they should filibuster both of those——

Mr. SESSIONS. I hate to interpret the Senator, but his microphone is distorting pretty badly. Maybe the cord is broken?

Mr. HATCH. Maybe I can bring it down here. Maybe it will work better here. I have it too close to my mouth. I am glad the Senator corrected that.

Judge Paez had been an activist judge in the eyes of many of our colleagues on the district courts out there in California. Marsha Berzon was one of the leading labor lawyers in the country. We had some who wanted to filibuster them. I stood up in caucus and said that is not going to happen. To his credit, the then majority leader TRENT LOTT stood up and said that is not going to happen.

We are both leading conservatives, but we knew that was a disastrous thing to do in this body because it would lead to animosities you could never quite—that would remain. It would lead to partisanship. It would violate the Constitution, it would violate the very advice and consent clause, the great power we have been given by the Founding Fathers.

Frankly, as the distinguished Senator has pointed out, I stood up and said that is not going to happen and it did not.

Did we have some cloture votes? Yes. But the cloture votes were to get to the nominee so we could vote. Every Clinton nominee who came to the floor, who was brought to the floor, got a vote up or down. Only one was defeated and that was Ronnie White, on a straight vote up or down. But every other one, all 377 of them, the second highest total in history, passed.

Did I agree with all those judges? You bet your life I didn't. But they were qualified. The fact I didn't agree with them ideologically was irrelevant. What is relevant is, Are they qualified? I certainly would not take away the opportunity of serving in the Federal Government for an otherwise qualified person just because I disagreed with that person on abortion or on any other issue, for that matter.

Mr. SESSIONS. Will the Senator yield for a further question?

Mr. HATCH. Yes, I yield.

Mr. SESSIONS. I remember that very well. I remember you speaking clearly that the filibuster was inappropriate. You both said it publicly and in the Republican conference when the issue was raised by people who did not have your experience in this matter. TRENT LOTT, the Republican leader in debate—I voted to end debate, TRENT LOTT voted to end debate, you voted to end debate and allow an up-or-down vote, and when that occurred I voted against the nominee. But I agree with your argument that a filibuster was not sound.

Let me ask you this. At that time, when Senator DASCHLE was the Democratic leader and Senator LEAHY was ranking member on the Judiciary Committee, did they take a public position that a filibuster of Clinton judges was not appropriate?

Mr. HATCH. Virtually every Democrat said it, took the position a filibuster should never take place. All they asked for was an up-or-down vote. That is all they wanted, if we would just be decent enough to give them an up-or-down vote. We did. We were decent enough.

What does that imply about what is going on on the other side? I will let the public draw their own conclusions. But we were decent. We did what was right. We gave them up-or-down votes. Frankly, what is going on here is just appalling.

Mr. SESSIONS. Let me follow up. Now that President Bush is in the White House and he is sending judges over, has your position on whether a filibuster is appropriate or not changed in any way?

Mr. HATCH. No, it has not, because a filibuster is inappropriate when it comes to judicial or even executive nominees, especially judicial nominees. Our ability to give advice and consent means if you don't like the nominee, vote against him or her. If you do, vote for them. But, above all, don't obstruct, which is exactly what they are doing here, obstruction, from the Spanish word, "filibustero," meaning a pirating or hijacking. Just one more objection. Now we have six more objections, as of tomorrow—actually they require cloture votes to be filed on Janice Brown, and of course Carolyn Kuhl, so we now have six. I could name up to 17 they have threatened to filibuster and probably will.

To keep bringing that phony chart up here is an insult to everybody on this floor. It is an insult to everybody watching. It just shows they are void of any real arguments. To now try to change the nature of the debate to jobs, when they have obstructed all year long, is an insult.

Mr. SESSIONS. Will the Senator yield for one following question?

Mr. HATCH. I will be happy to.

Mr. SESSIONS. Senator HATCH, so it is clear to me, it is your position, the position of TRENT LOTT, has not changed as to whether a filibuster was appropriate, and neither has that of our majority leader, BILL FRIST?

Mr. HATCH. It has not changed. But their positions have changed.

Mr. SESSIONS. Let me ask you with regard to TOM DASCHLE, the Democratic leader, and Senator LEAHY, the ranking member on the Judiciary Committee, who argued so aggressively against filibusters just 2 or 3 years ago, has their position changed today? Are they, in fact, participating in an unprecedented procedure, an unprecedented filibuster of judicial nominees?

Mr. HATCH. No question. They were very forthright and very strong that there should never be filibusters of judicial nominees. Now all of a sudden when it is to their advantage, they think—I think it is to their great disadvantage. They lost the 2000 election in part because of the way they are treating judgeship nominees. I think they are going to lose a lot of standing in this country. The way they are treating southern nominees is abysmal, like Bill Pryor. Like Charles Pickering.

It doesn't take any brains at all to realize they just don't think these two able people are worthy of being on the bench when in fact they are more worthy than many of the nominees we approved for them in the 8 years of the Clinton administration.

Mr. SESSIONS. I thank the Senator for his leadership. I asked those questions because it was suggested last night in debate that somehow those on this side had changed our view. I think it is quite crystal clear the only views that have changed and only positions that have been changed are those on the other side. Unfortunately, it has changed the historical principles of this Senate with regard to filibusters of nominees.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, will the chairman of the Judiciary Committee yield for a question?

Mr. HATCH. I will be happy to.

Mr. CRAIG. The chairman in earlier questioning by the Senator from Minnesota alluded to the fact that NBC News tonight featured as their lead story Janice Rogers Brown, Supreme Court justice from California. I am a freshman on the Judiciary Committee so I have not had the experience you have had, going through numerous years of confirmation hearings. But I must tell you I was so impressed with this woman's talent and her clarity in answering questions.

What is her background? What was her beginning, if you will? I think it is the great American story, I am told.

Mr. HATCH. She was born a sharecropper's daughter. This woman had it rough all the days of her life. She put herself through college and law school as a single mother. She has worked in State government now for I think it is 26 years. And they are trying to say she is against government? My gosh, she has worked there and been supportive for I think 26 years. She is one of the best nominees I have ever seen.

If we had done to three woman nominees what they are doing to these three—Priscilla Owen, who broke through the glass ceiling, getting women a right to be partners in law firms; Carolyn Kuhl has the support of 100 of her fellow judges out there, Democrats and Republicans; Janice Rogers Brown, sharecropper's daughter, has risen to the top of the heap, who has fought her way all her life—if we had done this to any of their nominees they would be screaming about it right up to today. It is unbelievable they are trying to do this on these three women nominees. They want a regimented liberal approach to everything, and if it is not there, then they are out of the mainstream, according to them.

I think most people in this country are in the middle and, I think, the middle or moderate conservative. But, be that as it may, these are competent, qualified, well-qualified women, and they are treating them like dirt. I don't understand it, myself.

Mr. CRAIG. Will the Senator yield for another question?

Mr. HATCH. I will be delighted to.

Mr. CRAIG. It was also mentioned in that questioning by the Senator from Minnesota that Justice Brown had received—I think your response was—74 or 76 percent of the vote of the State of California in a reconfirmation of her position. We have heard a great deal about judges who dissent too much. She was criticized by the Democrats for some of her speeches, that she was "out of the mainstream," even though she received this phenomenal vote in California. Didn't Justice Brown write more majority opinions than any other justice in the Supreme Court of California—in the last term, I believe is what they are saying?

Mr. HATCH. Yes, the distinguished Senator makes a good point. She was elected by 76 percent of the vote. I would have to say, she wrote a majority of the majority opinions, and joined in some 73, if I recall correctly, unanimous opinions. In other words, she is not only in the mainstream, she is one of the best justices. State justices in the country. They are treating her like dirt. I don't understand that kind of treatment.

The PRESIDING OFFICER. The majority's time has expired.

Mr. CRAIG. I thank the Senator for his answers to my questions.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I rise this evening to express what might be best described as my disappointment in what has occurred during the past 24 hours, now I understand perhaps another 12 hours. I ask we move the process forward.

Mr. HATCH. Will the Senator yield for a unanimous consent request? It will only take a few seconds.

UNANIMOUS CONSENT AGREEMENT

I ask unanimous consent at 8:30 a.m. on Friday the Senate begin an hour of debate equally divided prior to the first cloture vote; further, that the last 20 minutes be equally divided, the first 10 minutes under the control of the Democratic leader or his designee and the last 10 minutes under the control of the majority leader or his designee.

Mr. REID. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I rise tonight to express disappointment over what has happened over these past nearly 24 hours, or past 24 hours-plus, and perhaps another 12 hours. I just ask we move the process forward.

I would like to make very clear a few statistics I think are appropriate tonight. We have seen many statistics or many different versions of the same statistics over these past many hours. Tonight I would like to make very clear a few statistics with respect to my voting record on confirmation of judicial nominees, which is really based on the principles I hold as a Member of the Senate.

I voted to invoke cloture 13 times. That is a 100 percent voting record on judicial nominees. To date, I have never voted against invoking cloture on a judicial nominee, not one.

I have voted in favor of confirming all nominees except one, and I voted for cloture to move the process forward, even on a nominee I cannot support.

I have done all these things because I believe in moving the process forward. As Governor of Nebraska, I had the great privilege of appointing judges to the bench. I appointed the entire Nebraska Supreme Court and the entire Court of Appeals over my 8 years, and nearly 50 percent of the judges in Nebraska. I may not be good at it, but I have had a lot of experience.

I would hope we could move forward this process. If we cannot agree, then at least we ought to move on. What is happening right now during these hours of debate is not about moving the process forward. In fact, what is being accomplished seems to me to be just the opposite, setting us back. This debate has served only to further frustrate the work of this body, delayed action on critical legislation that must be addressed, and has further polarized the competing sides on these very controversial appointments.

The question I ask tonight is, Does using a tactic of delay to criticize and attack another tactic of delay cause you to make the point or lose the point?

To add further frustration to this matter, this delay occurred only after we were forced to choose between missing votes on Tuesday, Veterans Day, or cancelling the many obligations most of us made to our constituents to participate in events to honor veterans back home. The leadership basically decided having these hours of debate seemed to be more important than honoring those who fought and died while protecting the freedoms that under ordinary and normal circumstances are debated and defended in this very Chamber every day. By having votes on Veterans Day, I could not participate in that exercise, and I didn't appreciate having to choose between Nebraska veterans and votes on legislation before this body. Like others, I chose to be with my veterans. I missed two votes. I would do it again in a heartbeat.

But it is not only our veterans who were not given the consideration they deserve. It is also our seniors, who are anxiously awaiting a prescription drug benefit. What do I say to George and Lee back home when they ask me, "Why haven't you been able to get a prescription drug benefit but the Senate could debate on other issues for 30-plus hours"?

It is those who suffer from mesothelioma who desperately await an asbestos reform bill. What do I say to a widow of a recently deceased judge in Nebraska who was waiting to collect money because of the bankruptcy of a particular company? She is unable to collect it, but would have the opportunity, under an asbestos reform proposal, to collect on behalf not only of herself, but on behalf of her young children.

I am just one of 100 in this great legislative body, and I am very honored to be here. Even though I am relatively new to the scene, I think it is very clear each of us is entitled to his or her own opinion. I have to say some of us are moving the process forward. I find it difficult to explain to others why we cannot be independent in our thinking about judges. Someone might say there is not too much of a difference about this judge or that judge. That is what this process is all about. But when we can't come to an agreement about a particular judge and we can't move forward, we cannot delay in this situation, but we must in fact move on.

I oftentimes try to impress upon myself and my family and my friends and others that reasonable people can and will disagree. But when they are unable to agree, it is unreasonable to expect the process to come to a halt regardless of the rules, but it is important to go ahead and move on. I embrace that philosophy because I too would always like to have everything go my way. I would like to see every bill read exactly as I wish and every nominee be the one I choose. Instead, I do embrace that philosophy because I believe we can have those differences of opinion, hold different views on the issues, serve different constituencies from diverse regions of this great Nation, and we can, in spite of all that, and in many instances because of that, achieve progress in addressing the critical issues of our entire Nation.

I don't believe these hours of debate have helped us move closer to resolving our differences on these 4 nominees. In fact, I am afraid it has achieved just the opposite. I fear this exercise may have poisoned the well, leaving this body with such stark disagreements, and any progress on the issues that matter to my constituents—a prescription drug benefit, an energy policy, asbestos reform, welfare reform—and the bills that run the Government may not be now attainable.

Many Americans question the motives of both sides as this spectacle continues. I am not going to suggest a motive for all of this, but I can surmise a conclusion: These hours have been needlessly carved out while the critical issues remain unresolved. My constituents sent me here to get things done—not to pander, not to be a partisan, not to disrupt, delay, object, or deny, not to waste 30 minutes or 30 hours.

In the interest of moving forward, making progress, and doing good work for the American people, I urge my colleagues, not in any partisan way, to think long and hard about what is being orchestrated here for these hours and what the American public expects of us during the final days of the session—so we can deal with the prescription drug benefit, so we can deal with the energy needs, so those folks who are today worried about the cost of natural gas and the high cost of energy sources in the future know there is a solution in sight.

Drought relief: I can go back to Nebraska and say, Well, we couldn't get a drought bill. I guess it was OK that we debated 30 hours on other issues, but in fact when you are losing your family farm as a result of the continuing drought, that isn't probably going to sell.

Highway reauthorization: Many States today are waiting for the highway reauthorization so they can continue to build and improve their infrastructure, because that relates to jobs—jobs in construction, but also jobs because of the improved infrastructure.

Many States are worried today about FAA reauthorization. I have airports in smaller communities in Nebraska that are worried about being able to build and expand and improve their airports due to part of the reauthorization.

What do I say to them if that doesn't get accomplished? What do I say to those who are waiting for asbestos legislation? What do I say about class action? When are we going to get that accomplished?

When are we going to say enough is enough? If these 30 hours-plus that are now going into more hours had been used to debate health insurance, the full funding of special education, dealing with the Federal unfunded mandates, or some of us had worked previously on State fiscal relief, or in finding more ways to create jobs and improve the jobs and the markets we have today, looking for ways to make trade not only free but fair so we don't export jobs but we do import and export our products at the same time—if we had spent the time on that, then this time could have been productive.

In many ways perhaps there can be a catharsis as we move forward on finding new ways to deal with the judiciary. I have looked back and forth over the years looking at the role of the judiciary to see if there is anything anywhere that ever gives the judge the right to legislate or to make law. The one thing I made clear with every judicial candidate was: Are you going to be in the position of a judge or do you want to be a legislator? Are you going to legislate or are you going to adjudicate? The position of a judge is not to legislate. It is to interpret law, to apply law, and to adjudicate.

To win constituency groups in Presidential elections, the unfortunate thing for some time has been to say I am going to appoint judges to do certain things, to rule certain ways on the Supreme Court bench, to rule in certain ways on certain issues that will appeal to a constituency or to win constituency groups.

Sometimes I think we politicize the judiciary, and that is why we are where we are today. We need to move away from worrying about ideology, political philosophy, and to make sure judicial activism is not a part of what we do. If Presidential candidates say they are going to appoint Supreme Court judges not to be conservative or liberal, but those who will fairly apply the law and those who will do what they think is right under the law, not to make the law, then I think it is important. Politicians do keep promises. In the view of many, maybe not many promises. But politicians do keep promises when they say they will appoint judges of a certain kind. Then they are obligated to constituency groups to do that.

That is the root cause of our problem—moving away from ideology and political philosophy so we only deal with judges who come to the bench with the idea they are there to apply, to interpret the law, not to legislate, not to make the law. Until we do that, we are going to be hopelessly bogged down from time to time. But I am here to move the process forward. If the rest of us can't get together to move the process forward as a body, then we at least ought to move on.

Thank you, Mr. President. I yield the floor to my colleague from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

UNANIMOUS CONSENT REQUEST—S. 1853

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Senate proceed to legislative session and that the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers, the Senate proceed to its immediate consideration, the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

Mr. CRAIG. Mr. President, reserving the right to object, I ask unanimous consent that the Senator modify his request so that just prior to proceeding as requested, the three cloture votes would be vitiated and the Senate would then immediately proceed to three consecutive votes on the confirmation of the nominations with no intervening action or debate.

Mr. ROCKEFELLER. The Senator from West Virginia will not do that.

Mr. CRAIG. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROCKEFELLER. Mr. President, I am extremely frustrated that the Senate continues this debate, or whatever it is. It is already more than a day. We are dealing with the nominations of a handful of judges. That is not trivial. I understand that. As a Senate, we have a responsibility to address the most urgent issues facing our Nation. Unemployment insurance for those who are unemployed, I think, happens to be one of them. Today we are, embarrassingly, failing to live up to that responsibility.

This morning I talked at some length about the crisis facing our Nation's manufacturing sector. I will not relent on that subject. As factories close down, people across this country are losing jobs, losing health care benefits and retirement benefits. As a country, we are losing the industrial base that is responsible for the greatness of this Nation.

Some of the statistics I mentioned this morning I am going to repeat.

Manufacturing employment is at a 41-year low, and more than 2½ million manufacturing jobs have been lost in the last couple of years.

This morning I described legislation I introduced to address this manufacturing crisis. I happen to feel very strongly about that legislation. As I explained, the bill I crafted would offer relief to American manufacturers in three ways:

First, by lowering the effective corporate income tax rate by about 3 percent; second, by providing employers tax credit up to 75 percent to help cover the cost of health care coverage for retirees who had worked for that company; and, third, by strengthening our trade protection laws. There is a plan I laid out to help stem the terrible flow of manufacturing jobs from the United States overseas. I recognize other Senators have different ideas about the best way to help our Nation's manufacturing companies compete. I welcome the vigorous debate. I believe we ought to leave no stone unturned when looking for a solution to this crisis which is so vital to so many of our people. That is why, frankly, I am so frustrated and disappointed we are going through this 30-hour charade.

On the 1st of October, the Senate Finance Committee, on which I am proud to serve, approved legislation known as the JOBS Act. That stands for "Jumpstart Our Business Strengths." The legislation enjoyed broad bipartisan support in the Senate Finance Committee and passed out of it. But 6 weeks later it is still awaiting action by the full Senate.

I do not necessarily agree with every provision of that bill, but that did not happen to be important to me because it represents a serious effort to help America's factories and the people who work in those factories. I care about those people. I represent those people and I will fight for those people.

The more important provision of the bill reduces the corporate tax rate, much the same as my own legislation would do. Unfortunately no debate has been scheduled for this important legislation. Some seem to believe we will not have time to consider the legislation before adjourning this year. That is tragic for the people who are not working. This Presiding Officer faces that in his own State, the State of Illinois.

I cannot understand that thinking. How can we possibly have 30 hours to air our grievances about judicial nominees when we all know exactly what the result is going to be? There is no time to debate a way to protect American factory jobs. I could pick on many other subjects and would be happy to do so, but I pick one subject tonight.

I believe if the Senate took up the JOBS Act, we could have a thoughtful, constructive debate and we could pass it. In fact, as I look about the Senate floor, I see the Senator from Nebraska, the Senator from Maine, and the Senator from West Virginia, and the last time we were on the floor together, we passed a bill which spread out to the States $16 billion of Medicaid assistance which they desperately needed—two Democrats and a Republican. It could have been two Republicans and one Democrat. It makes no difference. We got the job done. The bill passed, and the States benefited from it.

But what are we doing now? We are talking. We could pass legislation on all kinds of things. I would ask all of my colleagues to think for a minute about the Americans who right now as we speak are hard at work on the evening shift in factories around the country. They are making everything from cars to contact lenses. Many of these factory jobs are exhausting. They require concentration and heavy lifting. They cause injuries. They require concentration. When Americans are toiling away in our factories right now, we cannot help but be inspired ourselves to concentrate and to do some heavy lifting of our own. We must work hard and do our jobs. It is our job as Senators to look at the serious policies that make our country work or work less well. People having a job and putting food on the table is a very major part of that.

Much to my dismay, we are not engaged today in serious debate about ways to create and maintain jobs in America. That is the subject of discussion in my State. We are not a wealthy State. We are a good State. Our people are as good or better than anybody in any other State. I fight for then. But they need work. Instead, our factories continue to struggle and are forced to shut down. Millions of Americans are out of work. Because so many of our factories are leaving the country, it is more and more difficult for Americans to find new jobs.

People always think when you lose a job, you can get another job. There was a day when that was true. That is no longer true. Indeed, economic experts have concluded the vast majority of job losses suffered in the last few years are permanent, are not replaceable. Factories are closed and will not reopen.

Let me take a moment to discuss the economic situation in my own State of West Virginia. Our steel industry has been struggling to recover from years of unfair and illegal competition against steel that was dumped on our markets and sold in America at below the cost that it cost to produce it in the country it came from—dumped steel, illegal steel, breaking our national law.

What was once our State's largest employer, Weirton Steel, recently announced it will cut an additional 800 jobs. I can remember when 13,000 people worked at that company. If President Bush backs down on the steel tariffs, of course, it will hurt the industry just as it is poised to recover. Ending the tariffs early will cost many more Americans jobs and at a time we know that new factories are not being opened in steel. We have to protect those steel jobs we have. I mean "protect" in the best sense of the word by using the American law and by being faithful to our own conscience.

Employment in the coal fields is also affected. The coal industry has long supplied our steel industry with the finest quality coal in the world. That has continued to decline. There are not many coal miners left anymore in West Virginia. Indeed, the manufacturing base all over my State continues to shrink drastically, and, as it diminishes, so do jobs with good wages and good benefits. That is the American dream.

In the southern coal fields, two other established prominent manufacturers—EIMCO, a Norwegian company that manufacturers mining equipment, and the Dean Company, with which I spent most of my life, a maker of wood veneers—are closed; they went overseas.

The past year has brought the closing of two long-time manufacturers in north-central West Virginia, the Clarksburg Casket and Glassworks Company. In the Mid-Ohio Valley in Parkersburg, two long-time manufacturers, Johns Manvillle and Ames True Temper, closed plants. Just 3 weeks ago, it was announced another 50-year-old plant was scheduled to close in Parkersburg, putting almost 200 workers at Schott Scientific Glass out of work. Their jobs went overseas.

In the Kanawha Valley where this Senator lives, two well-established chemical companies are closing, Flexys in Nitro and FMC in South Charleston. These closings mean hundreds of jobs lost.

Where are these workers supposed to turn? Their average age may be 45 to 55. What are they meant to do? Take up computer sciences? Biochemistry, physics? They can't do that. There is no place for them to go. There are no replacement jobs. Some of them take temporary jobs where they don't get benefits and try as best as they can to work with their families.

I was extremely pleased at the recent news of the strong economic growth in the third quarter of this year in this country. This does not translate into new jobs in West Virginia. New jobs is what we look at. People do not feed their families and do not pay their mortgages with news of strong economic growth. They need paychecks. It comes from jobs.

This Congress has not done enough to protect the paychecks of hard-working Americans. We have failed to stem the flow of jobs overseas, a subject about which I could speak for 6 hours. We have not done enough to provide temporary assistance to workers who have lost their jobs. Currently, 9 million Americans are unemployed and almost 2 million Americans have been unemployed for more than 6 months. In West Virginia, almost 42,000 workers are facing the holidays without a job.

Today, the Senate ought to be addressing the needs of these workers. Therefore, I am pleased to be a cosponsor of legislation introduced by Senator KENNEDY that would extend the unemployment compensation for those Americans of which I speak who are still struggling to find work in our so-called jobless economic recovery.

As factory after factory closes its doors, or freezes hiring, workers are unable to find new jobs. They are running out of unemployment benefits at an alarming rate. As many as 80,000 workers per week are expected to exhaust their unemployment compensation in December itself. Senator KENNEDY's bill would continue Federal unemployment benefits for an additional 6 months. The legislation would also provide 33 weeks of additional Federal benefits in States with especially high unemployment rates.

This bill provides crucial assistance for long-term unemployed workers. There are more than 1 million workers who have already exhausted their extended benefits but have not been able to find a new job.

Let me be clear. Men and women in West Virginia and across the country would rather have a paycheck than an unemployment check. We all know that. However, the jobs are not available. The choice is not theirs. They have families to feed. The Federal Unemployment Insurance Program was specifically created to help workers when the economy suffers prolonged downturns. Workers have paid into the unemployment compensation fund and they deserve to collect benefits from the fund during such a weak jobless recovery.

Currently, the unemployment insurance trust funds have $20 billion sitting in a bank. The benefits outlined in Senator KENNEDY's bill would cost $16 billion. To me it is unconscionable to leave the funds in the bank when they are needed by workers during hard times. Moreover, by making additional unemployment benefits available, Congress will also obviously be helping our economy.

I am afraid that the charade we are engaged in at the moment is a lose-lose proposition for the American people. I do not diminish the importance of judges, but I do not diminish the importance of unemployed workers whose self-esteem is destroyed and whose skills are ready to be put to work. It does nothing to help 9 million Americans who have already lost their jobs to have this debate. It does nothing to protect the jobs and factories that are currently struggling to compete to have this debate. I would also suggest that it hampers the ability of Senators to come together to address the urgent business of the Nation because of the nature of this debate.

There is certainly no shortage of important business before the Senate. We need to pass a prescription drug bill, and there are many other issues I could discuss.

I will end with simply this thought: I love America. I love my State of West Virginia. I love its people. I know they need to be well represented by judges. But I also know they have to work or else it probably doesn't make much difference to them.

What I am talking about tonight, what I talked about this morning is the ability for Americans to have jobs, to hold jobs and, if they lose them, to get unemployment insurance.

I yield the floor.

The PRESIDING OFFICER (Mr. ENZI). Who yields time for the majority?

Mr. HATCH. Mr. President, I appreciate our colleague's comments about the necessity of jobs. I agree with him. We are debating the third branch of Government, without which there wouldn't be any jobs for anybody, without which the Constitution wouldn't be alive today, without which we wouldn't have the freedoms we have.

In all this talk about jobs, I haven't heard any real ideas as to how we get more jobs. It is as though they think Republicans aren't concerned about jobs. Of course, we are. We are debating something that is equally important; in fact, over the long run, much more important than almost anything else we can debate. That is, are we going to have an honest, decent judiciary to uphold the Constitution?

I have seen this body and the other body pass unconstitutional legislation many times in my 27 years. I have seen Presidents act unconstitutionally a number of times in my 27 years, and before that. It has been the judiciary that has saved the Constitution. It has been the judiciary that has corrected matters. It has been the judiciary that has helped small business, where the jobs are. It has been the judiciary that has given justice to this country, that has protected Americans from criminals, that has done so much good for this country. That doesn't mean all judges are perfect or right. But by and large, it has worked very well. That is why we make these positions lifetime appointments, so they don't owe anything to anybody but the law.

Here we have a distortion for the first time in history, filibustering judges and phony, untrue charts of 168 to 4. Let me tell you, they wouldn't have allowed the 168 to go through had we not been fighting as hard as we could and forcing them to allow those judgeships to be brought up. We would have nowhere near 168.

With regard to the four, we are already up to six. We were there last night. We were there months ago when they indicated they were going to filibuster Janice Rogers Brown and Kuhl, in addition to the other four who have been mentioned. Then there are probably at least 13 others who I can name. There will be more, because there is an arrogance here, it seems to me, that goes beyond doing what is right for this country.

Very few things rise to the dignity of the importance of judges and getting a good Federal judiciary. I am for jobs like everybody else, but because they don't have any other arguments, that is why they are doing that.

I would be happy to listen to my colleagues on any suggestions they have with regard to jobs. Usually it is another big Federal program that literally doesn't create any jobs. It just creates another burden for taxpayers. That is what they think creates jobs.

I am happy to yield to the distinguished Senator from Virginia.

Mr. WARNER. I listened carefully as our distinguished chairman was referring to other nominees who have been acted upon by the distinguished members of the Senate Judiciary Committee. I have been studying extensively the very impressive record of achievement of a number of these individuals who are awaiting action on the floor.

You mentioned Justice Janice Rogers Brown, a distinguished jurist of 25 years on the California Supreme Court. The record shows that she was born to very proud parents but ones of modest means. Sharecropping was their profession.

This distinguished, hard-working young person worked her way through college, worked her way through law school, and has now served the people of California for a quarter of a century, including the last 7 years as a California Supreme Court justice. That is remarkable.

Further, we heard that she was elected or reelected to the California Supreme Court. I think the chairman should explain the distinction between our Supreme Court, which is subject to the process we have been discussing these several days. But in a number of States, they do have a State election. All of us in this Chamber are here by virtue of the support of people in elections. But how many of us have been elected to the Senate with 76 percent? I don't think my distinguished junior colleague from the State of Virginia got that.

Mr. ALLEN. Far from it.

Mr. WARNER. Well, I was pretty close to it, I mention to the Senator. But I don't claim 76 percent. That is quite a record. We have heard that she has ruled for the plaintiffs in many civil rights and consumer protection cases. She is supported by her colleagues in California, those who know her best.

But could the distinguished chairman advise the Senate with regard to his opinion with respect to the nomination as it is hopefully brought before the whole Senate?

Mr. HATCH. Well, of course, she is subject to the same advice-and-consent rule of article II, section 2 of the Constitution, as are all of these Federal judges. But she deserves the dignity of an up-or-down vote.

The senior Senator has brought out she is an African-American woman who has come from nowhere, in a sense, a sharecropper's daughter, to being a justice on the California Supreme Court.

Mr. WARNER. That is a dream of millions of students all across this country, to have that opportunity to come up through our system, to gain their degrees, to take their place in society, to stand for the cause of freedom in this great country, and some few do manage to get on the judiciary of the States. I know that Presidents look to the jurists in States, because they have a proven record, to select them for the Federal judiciary.

Mr. HATCH. That is right.

Mr. WARNER. I do hope this distinguished nominee will fare well and be treated with fairness when that name is brought before the Senate.

Mr. HATCH. I appreciate my dear colleague. But we will find out tomorrow that the other side is going to vote against cloture. They are filibustering this terrific African-American woman justice who has made it on her own throughout life, who wrote most of the majority opinions in the California State Supreme Court while joining unanimously with others in over seven cases just last year.

They have tried to paint her as though she is out of the mainstream. I would like to suggest who is out of the mainstream. It is a high percentage of those on the other side of the aisle who think that only the left has any ideas in this country. Because she is a conservative black woman and she is not monolithically in step with what they think black people ought to be, they are against her. If we did that to one of their nominees, the whole world would come down on us.

Mr. WARNER. She is proud of her African-American heritage. I hope the Senate gives her fair treatment.

Mr. HATCH. I do, too. I hope the Senator is right. But from what I have seen here, she is going to be filibustered right along with the rest of them.

I recognize the distinguished Senator from Virginia, and then I will come to the distinguished Senator from North Carolina.

Mr. ALLEN. Mr. President, following up on my esteemed colleague from Virginia's comments and observations on Justice Janice Rogers Brown, she is the first African-American woman to serve on the California Supreme Court, having come from segregated schools in the South, worked her way up.

I find it very interesting that the following quote was made a few years ago: Whether it is Hispanic or non-Hispanic, African American or non-African American, woman or man, it is wrong not to have a vote on the Senate floor. What are they afraid of? What are they afraid of? What is wrong with a vote?

Tomorrow the person who made that statement on October 28, 1999, Senator TOM DASCHLE, Democratic leader, is going to lead a filibuster against Justice Janice Rogers Brown.

Mr. HATCH. That is my understanding.

Mr. ALLEN. Clearly, a prior inconsistent statement showing duplicity. I would ask, when you referred to some of their arguments that she is out of the mainstream, I was looking at the record from the hearings. I understand Justice Brown was criticized for a single ruling she made on a parental consent case. We have parental consent laws in Virginia. The vast majority of people, even some who consider themselves pro-choice, recognize that if an unwed minor daughter is going through the trauma of an abortion, that at least the mother or father ought to be notified, ought to be involved, because it is a medical procedure that even for ear piercing or tonsils being taken out, you need consent. So for something as traumatic as the surgery of abortion, which is physical obviously, but also something that is emotional, parents should know when their 17, 16, 15-year-old daughter is going through such a procedure.

She is being criticized for that. I don't find that, at least from Virginia standards, or if the Senator could share with us, do you consider that out of the mainstream? From what I can see from surveys, 80 percent-plus of all Americans, regardless of the color of their skin or their ethnicity or gender, think parents ought to be involved when their unwed minor daughter is contemplating such a procedure.

Mr. HATCH. Well, the Senator raises a good point. But not according to that side. It is out of the mainstream. Just think about it. The Senator is correct. Eighty-two percent of the people are for parental notification laws. Challenging the reasonableness of parental notification statutes lies somewhere between hard and impossible. That is why an overwhelming majority of Americans support those laws, including the parents of Holly Patterson. Holly was a young girl who died 7 days after taking RU–486, the abortion drug.

Her father learned about her abortion just hours before her tragic death. If there was a parental notification statute, Holly might still be alive today.

Parents do have some rights here. Most people acknowledge that. But that is one of the big reasons why our friends on the other side are against all three of these women nominees, I suppose. If there had been a parental notification statute, young Holly would be alive today.

It is ridiculous to criticize these two fine nominees for their opinions upholding parental notification statutes. Justice Brown's opinion on the parental consent statute is well within the legal mainstream. The U.S. Supreme Court has routinely found notification statutes constitutional.

So the Senator has raised a very important point. But that is considered out of the mainstream by our colleagues. Again, we know who is out of the mainstream. It certainly isn't Janice Rogers Brown.

I will just point to the side that is out of the mainstream. Yet they are trying to make everybody march in unison, in accordance with their liberal plan for America. That is not right. I turn to the distinguished Senator from North Carolina.

Mrs. DOLE. Mr. President, will the distinguished Senator yield for a question?

Mr. HATCH. I would be delighted.

Mrs. DOLE. I have heard that the Senate minority leader called Priscilla Owen unqualified. Yet I understand Justice Owen attended Baylor University and Baylor University Law School, graduating cum laude from both institutions. I understand that she finished third in her law school class and earned the highest score on the Texas bar exam. And she accomplished these remarkable achievements at a time when women were a distinct minority in the legal profession.

Isn't it true that 15 past presidents of the Texas State bar, both Democrats and Republicans who hold a variety of views on important legal and social issues, agree that Justice Owen is an outstanding nominee and should be confirmed as a Federal judge?

Mr. HATCH. Absolutely true. By the way, one of the arguments that the side across the aisle from us is out of the mainstream again is over parental consent, a dissent that she had written, upholding the finder of fact in the lower court. The majority just ignored those facts and overruled the right of parents to consult with their daughter before the daughter had an abortion.

She is not out of the mainstream. Guess who is out of the mainstream? I thank the Senator.

Mrs. DOLE. Senator, is it not the case that former Texas Supreme Court Justices John Hill, Jack Hightower, and Raul Gonzalez, all Democrats, say Justice Owen is unbiased and restrained in her decisionmaking?

Mr. HATCH. That is correct. These are people who know her or who have worked with Justice Owen on the Texas Supreme Court. They are all Democrats. They are all partisan Democrats, by the way. They think she would make a fine judge on the circuit court of appeals.

Mrs. DOLE. As I understand it, some of our Democratic colleagues oppose Justice Owen because she is too pro-business, her opinions are results-oriented. Didn't the leading tort law professor, Victor Schwartz, look at Justice Owen's opinions and find those opinions, those characterizations of the opinions to be untrue?

Mr. HATCH. Victor Schwartz is one of the law professors who wrote the book on torts. He is one of the most distinguished legal thinkers in the country. In fact, Professor Schwartz wrote:

> Any characterization of Justice Owens as pro-plaintiff or pro-defendant is untrue.

But we are getting used to that. The reason they are all talking about jobs, it is a political reason, of course. They are trying to get people to not pay attention to this debate. But the reason they are talking about jobs is because they don't have a good argument against Priscilla Owen, nor do they have one against Janice Rogers Brown, nor do they have a good argument against Carolyn Kuhl. And three outstanding women who, if we treated three of their women justices like that or nominees like that, all hell would break loose

In all honesty, Professor Schwartz said that just isn't true.

Ms. LANDRIEU. Parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from Utah yield?

Mr. HATCH. Not yet, I yield to the distinguished Senator from Texas.

Mrs. HUTCHISON. To follow along with what the distinguished Senator from North Carolina was saying, Justice Priscilla Owen, a personal friend of mine who I have known for years, isn't it true that she was endorsed by every newspaper in Texas when she ran for reelection to the Supreme Court of Texas, every single one?

Mr. HATCH. The distinguished Senator from Texas knows that is true. That is not easy in the State of Texas. There are some very liberal newspapers down there that scrutinized every aspect of her life.

Mrs. HUTCHISON. It was really phenomenal. In fact, isn't it true that she got the highest number of votes of any person running for the supreme court that year?

Mr. HATCH. No question about it. She is a terrific person.

Mrs. HUTCHISON. I heard one of my colleagues on the other side of the aisle say: There are not enough hours in the universe that would be sufficient for debating Justice Owen's nomination. I thought that was very interesting because, the fact is, if we had 1 more minute of debate, it wouldn't matter, because she already has a majority vote in the Senate. Isn't that true?

Mr. HATCH. That is true. In fact, all three of them do.

Mrs. HUTCHISON. If she has the majority vote on the floor of the Senate, and the Constitution says that advise and consent is not a supermajority, that is what it implies because it didn't ask for a supermajority, then why isn't she sitting on the Fifth Circuit bench right now?

Mr. HATCH. Well, I think it is because she is not a liberal. That seems to be the only mainstream the other side is interested in. I cannot say she is all that conservative either. But the fact of the matter is, she is not a liberal Democrat. Here is a woman who has every credential in the world, as the Senator from Texas pointed out, who broke through the glass ceiling for women so women can now become partners in law firms, when that was tough to do. Here is a woman who has fought every day of her life to excel, who has excelled. Yet look how she is being treated, like she is "outside of the mainstream."

Since they don't have any real legal arguments, any real philosophical arguments—they don't have any real arguments, and that is why we are getting a filibuster on one of the best nominees I have seen. By the way, she got the highest rating from the not-conservative American Bar Association, which during the Clinton years was called the gold standard. If you got a "qualified" from the ABA and you were a Clinton nominee, that meant you were OK, you were in the mainstream.

Here is a woman with a "well qualified," the highest rating from the ABA, and they are trying to say she is outside of the mainstream. That is just another misuse of terms because they don't have a real argument against her.

Mrs. HUTCHISON. You know, the distinguished Senator from North Carolina is a graduate of Harvard Law School. She went through when it was very tough. I am a graduate of the University of Texas Law School, and there were five women in my class of 500. So we know what it is like to go through those hard times and graduate from law school. Frankly, we would have a hard time finding a job.

Priscilla Owen went through that. She has known the tough times. She has known herself to be superior. That is why I appreciate the Senator from North Carolina talking about my friend, Justice Owen, and why I am standing up for her today, because I know what she has been through. She has come out on top. She has come out on top in everything she has done, and she would have gotten a majority vote on the floor of the Senate. She deserves to be sitting on the Fifth Circuit today.

I will ask this final question. Why in the world would the Senate put a blemish on the record of a woman who has high moral standards, who has faced the electorate and won overwhelmingly, who has been endorsed by every newspaper in Texas, and got the highest number of votes the year she ran? Why would the Senate keep her from getting the appointment she is so qualified for?

Mr. HATCH. I cannot see a good reason. It is a mystery to me why our Democratic colleagues refuse an up-or-down vote. Like the distinguished Senator from Texas said—and I really admire the Senator from Texas, who is a lawyer, from the University of Texas, and the Senator from North Carolina, Senator DOLE, who is a lawyer, who graduated from Harvard Law School. I think the other side ought to be listening to the two of you, especially with regard to an eminent woman jurist named Priscilla Owen, and another jurist named Janice Rogers Brown, and another one named Carolyn Kuhl.

To make a long story short, if they don't like these nominees, then vote them down. The reason they are stopping them is because all three of them have a majority of the Senate willing to vote for them. They are flying in the face of the advise and consent clause, refusing to give them the dignity of an up-or-down vote. I think women across this country ought to be outraged by it—liberal women, moderate women, and conservative women. It is a slap in the face to every one of them, the way these three women are being treated by the other side. I have heard for 27 years how much greater they are for women. Don't believe it. If they were, they would not be arguing against these wonderful women nominees. Don't believe that for one second. It is all politics.

The only reason they are talking about jobs, in all honesty, is because they don't have the arguments against these eminent women lawyers and judges. It is pathetic.

Mrs. HUTCHISON. I thank the Senator from Utah.

Mr. HATCH. How much time is left?

The PRESIDING OFFICER. There are 6 minutes 15 seconds.

Mr. CRAPO. Will the Senator respond to a question?

Mr. HATCH. I surely will.

Mr. CRAPO. The Senator from Utah spent time responding to questions about the nominees we are going to vote on tomorrow. I note those who oppose this vote often bring up a chart that says 168 to 4, noting they have only filibustered 4 judges in this Congress. I think it is important to point out, though, that number 4 is the first time in the history of this country, in the history of the Senate, a filibuster has been sustained against a judicial nominee of the President of the United States.

I think it should be clarified to the American people that the fact we are now seeing a filibuster sustained against nominees of the President turns the Constitution on its head and begins a very dangerous precedent with regard to how the nominees for the judicial branch are treated by this Senate.

Mr. HATCH. No question about it. That 168 to 4 doesn't even begin to tell the story, because if it had been up to our colleagues on the other side, there would not be 168. We had to fight for every one of those people, and we had to fight hard fights. We had to force them to vote. They cannot vote against everybody. So there is not just four. We have already got six. We had to file cloture on Carolyn Kuhl and Janice Rogers Brown, which will be up tomorrow. I can name probably another 11 they are going to filibuster. So that is a blatant, outright lie.

Mr. CRAPO. Would the Senator from Utah tell us how many of the nominees of President Clinton to the bench were filibustered during his Presidency?

Mr. HATCH. Not one. Our side would not permit that because of the detriment to the Senate, the detriment to the Federal judiciary, the detriment to the Constitution, the detriment to just good reasoning. We didn't filibuster one.

Mr. CRAPO. Isn't it also true that out of the last 11 Presidents—and I think we used 11 Presidents because it was 1949 when the filibuster became possible—not one of their nominees, until today, until this Congress, not one of the President's nominees has been successfully filibustered in the Senate of the United States because of the understanding of the fact that the Constitution gives the President the right to a vote?

Mr. HATCH. That is right. Once they hit the floor, they have had a vote up or down. And 377 Clinton judges are serving in the Federal judiciary today because we had the decency to give them the dignity of votes up or down—something not being accorded our nominees.

Mr. CRAPO. It is my understanding that 2,300 nominations have come to the floor since the filibuster was possible.

Mr. HATCH. It is 2,372.

Mr. CRAPO. Zero were filibustered this year, and this year four have been successfully filibustered, and what is it, five, six, or seven more are scheduled to be filibustered?

Mr. HATCH. That is right. Actually, it is more than that. We have two more tomorrow. That gets us up to six. Then probably there are another 11 I can name. I won't take the time to do that now. There hasn't been one filibuster by us. There have been cloture votes, but they were used for time management purposes to get us to a vote. In every case, the Clinton nominee got voted up, except for one.

Mr. CRAPO. I thank the chairman. I think it is important to look at this and understand what this debate is about and why we are giving it this time, to focus on the threat to the Constitution that is being posed by the treatment of judicial nominations in this Congress. I thank the Senator.

Mr. HATCH. I thank my colleague. The real number, for the past 11 Presidents of judicial nominees confirmed versus the filibustering they are doing, is 2,372 that were confirmed. None were filibustered, until President Bush became President. He is being treated wrongfully. It is unfair to him, unfair to these nominees. I like what the Senator said earlier. I think he said we gave a fair trial to 2,372—actually 168. We gave a fair trial to them and with regard to the four, we just hung them. That kind of shows in that one sense it is great to give a fair trial, but we are not giving a fair trial to these four. They are arguing it is all right for four because it is only four. Well, it is not all right if people are hung without a fair trial. They are certainly not getting a fair trial.

Mrs. HUTCHISON. Mr. President, will the Senator yield for a question?

Mr. HATCH. I surely will.

Mrs. HUTCHISON. I think in hearing the debate, the most egregious misrepresentation I have heard is about Judge Carolyn Kuhl and a case she had, where there was a woman who was being examined who had breast cancer, and there was someone in the room who was not a doctor, a person from a pharmaceutical company. It was said she callously let the pharmaceutical company be dropped from the case. Isn't it true, though, there was also an action against the doctor who was negligent, and she kept the lawsuit alive so that woman could have a recovery?

The PRESIDING OFFICER. The time of the Senator is expired.

Mr. HATCH. I ask unanimous consent for 30 more seconds.

Ms. LANDRIEU. I object.

Mr. HATCH. Let me just say that it is true.

Ms. LANDRIEU. I object. I know the distinguished chairman has been on the floor for a while making some truly offensive statements to colleagues on this side of the aisle that, in my opinion, are beneath the dignity of the committee on which he serves as chair. I ask the chairman if he recognizes the number on this chart. Could he state for the record what it is.

Mr. HATCH. I don't recognize the number. However, I do recognize the argument.

Ms. LANDRIEU. The Senator from Utah——

Mr. HATCH. Let me answer the question, if I may.

Ms. LANDRIEU. The distinguished Senator from Utah has answered the question.

Mr. HATCH. May I please finish?

Ms. LANDRIEU. He has answered my question. He said he didn't know what the number was. I would like to explain to him and to the other Members.

Mr. HATCH. Will the Senator yield?

Ms. LANDRIEU. No, I will not. The number is 98 percent——

The PRESIDING OFFICER. Senators will address other Senators through the Chair.

Ms. LANDRIEU. The number the distinguished Senator from Utah did not recognize—I don't know why he would not recognize it since he is chairman of the committee, but he says he doesn't recognize it. The number is 98. Ninety-eight percent of the judges that were sent to this Senate by President Bush we have approved—98 percent. There are not many people in America, not white people, or black people, or Spanish people, or women, or men, who think the Senate should approve 100 percent of any President's nominees. It is beyond the realm of reason, particularly a President who did not win the popular vote.

Earlier in the debate, the chairman, who also doesn't recognize this number, this 98 percent, also fails to recognize the numbers in the last election. The numbers of the last election were Bush 50,456,169; Gore 50,996,116. So 500,000 more people voted for Vice President Gore in the popular vote than President Bush. He won by a handful of electoral votes in Florida, and we know that. The Court decided it. I am not complaining about it, but numbers are important. Let me tell you another number——

Mr. SESSIONS. Will the Senator yield for a question?

Ms. LANDRIEU. I will not.

Mr. REID. Regular order.

Ms. LANDRIEU. I will not yield for a question.

Another number is 63. I want the public who is watching this—and I think a lot of people are watching this, and I am glad because this is what the next election is going to be about, and I am very excited to help lead this fight. Sixty-three nominees were blocked. It wasn't an open filibuster. It wasn't debated in the open, like tonight where there are no secrets and we can all speak about what we believe. This was done in secret, and not by many Senators who represent millions of people, but maybe by one Senator who just decided he or she didn't like the nominee, and so they would not sign the slip.

The chairman of the committee reigns over this. He understands this number 63. They didn't even have the decency of getting a vote or a hearing in committee because the chairman from Utah had a system in place that blocked them.

Mr. HATCH. Will the Senator yield?

Ms. LANDRIEU. No, I will not yield.

Mr. HATCH. I have a question.

Mr. REID. Regular order, Mr. President.

Mr. HATCH. I object to that, Mr. President.

Mr. REID. How rude that is.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Ms. LANDRIEU. Thank you, Mr. President. I will not yield the floor, and we are not going to yield this point.

Technically, the majority is correct that there has not been a technical filibuster successfully completed. But there have been filibusters on this floor that have been tried, but they weren't strong enough to stand up to them because their arguments weren't strong enough. The only way a filibuster can survive is if the arguments and the truth is strong enough to stand up to lies. That is the only way a filibuster survives. That is why this filibuster survives, because the truth is always stronger than a lie.

This 63 people never could come out of committee. I am not even going to go into that. I am going to talk about something else.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 24½ minutes.

Ms. LANDRIEU. Good. I am going to take every one of them.

I want to tell the Republican majority something quite simple. This country, no matter your best efforts, will not be divided. No matter your vicious rhetoric about Protestants and Catholics and blacks and whites and Hispanics and women, we refuse to be divided. In a time of war, which we are in, when the country is under assault and we have men and women dying in Iraq, it is the height of disrespect and un-Americanism to come to this great floor and talk about the pettiness and say this woman Senator, who has spent 25 years in public office, and every woman who has ever served, that there is something wrong if I don't want a woman as a judge or I don't want African Americans to be here.

The Senator from Utah must forget where I am from. I would like to remind him where I am from. I am going to fight for Louisiana. In the 63 years before Rosa Parks decided to sit down in her seat because her feet were so tired she could not move, a man named Homer Plessy decided he would get on a rail car that was entitled "whites only." He got on it in New Orleans, my hometown. He rode on the train and he knew he would be arrested. But a group of lawyers, African-American free men of color, had decided that he would be the right one. Why? Because he was white enough to pass, to get on the train, and black enough to be arrested. And that is exactly what happened.

Forty years before the Civil Rights Act, Plessy rode that train and the great movement began to free people who had been slaves for 300 years.

I have to sit in the Senate Chamber and listen to the Republican majority argue that, in the whole country, they can't find a better African-American woman than this Janice Rogers Brown to serve on the bench, to hold up Rosa Parks, to honor the work of Louis Martinet, and to honor the memory of Plessy. The only person they can find to serve on the bench is a woman who says—and I want to read what she says so the people in this country can just decide for themselves. Don't listen to all the technical parts. I am just going to read to you what the woman said and you decide for yourself if you think this is mainstream or not:

> Some things are apparent. When government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is families under siege, war in the streets, the precipitous decline of the rule of law, the rapid rise of corruption, the loss of civility and the triumph of deceit. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

What do you think Rosa Parks thought when the Federal judge came down to Alabama and government intruded and said: Lady, you don't have to suffer anymore. You think that Rosa Parks thought that government was bad?

Let me go on to say what this mainstream woman thinks of all the grandparents in the United States.

> My grandparents' generation thought being on the Government dole was disgraceful, a blight on the family honor. Today's senior citizens blithely cannibalize their grandchildren, because they have a right to get as much "free stuff" as the political system will permit them to extract.

Excuse me, but on behalf of all the grandparents I represent, this is an insult to every single one of them who raised their children, and then when some of their children got into trouble, raise the grandchildren and the great-grandchildren on their Social Security paychecks of $672 a month, which the Republican side refuses to raise, and a minimum wage which is $5.50, which they won't raise, and you are asking me to put a woman on the court that insults the grandparents of Louisiana? Take your dossier and go somewhere else.

Now, if these people are in the mainstream, then I don't know what mainstream we are talking about, because it is not mainstream in Louisiana. That is what this debate is about.

The Senate Democrats didn't want to have this filibuster. We are made to have this filibuster because the Republicans on that side think they can divide the country and split us up and cause trouble. I will tell you what people at home want. We are in a war. They want us to be united and fight together. But they have us fighting against Catholic, Protestant, rich, poor, young and old. It is a disgrace, and it is not the Democrats fault. It is the Republican majority.

I will just say this. I know the men and women who serve over there and individually they are fine. But, boy, collectively they can sure get themselves up into a lather. The country deserves better. The people want better.

We have an Energy bill to pass; we have appropriations bills to pass; I have 400,000 veterans in my State who are looking for help, and they turn on the television to see the chairman from Utah saying something about the women in the Senate don't want women on the bench, and we don't want Hispanics on the bench, and we don't want African Americans on the bench? Whoever heard of such ridiculousness?

I beg this body, let's stay on the facts. The facts are that we have approved 98 percent of President Bush's nominees. We have rejected people such as Janice Rogers Brown, and no matter how many times they bring her up, she will be rejected because she makes statements like this that are an insult. She is not going anywhere. We will vote on her 100 times. She will never get on the bench. Whether or not we have a vote on her, she is not going to get on the bench.

Let me say I just made a call—how much more time do I have?

The PRESIDING OFFICER. The Senator has 16½ minutes.

Ms. LANDRIEU. Good.

I just made a call to the National Bar Association, which is the most distinguished group of African-American lawyers in the country. I am sure maybe there are smaller groups that other people might think are, but this is the most well thought of group of lawyers. This group of lawyers, more than almost any other group, would surely know the history of the civil rights movement. They would surely understand the characters and people I have talked about, and all the stories and all the drama. You would think that President Bush, who ran on compassionate conservatism, and the Republicans who keep saying we are reaching out to African Americans—we want to reach out to African Americans, we want to go and put African Americans on the bench—you would think that sometime in the last 3 years they would have called the National Bar Association, or the President would have called the National Bar Association and said: Look, I'm a conservative. You all probably are more liberal as a group, although there are probably some conservative members. Why don't you give me a recommendation, knowing that I can't support a real liberal judge. But if you work with me we could get some really good African Americans on the bench that are highly qualified, that the Democratic majority would like. I would feel happy about that. We are in a war. It would be really important for us to unite our country.

Do you think he ever consulted with them? No. The President, this White House, or the Republican leadership never called the National Bar Association, which is the most prestigious group of African-American lawyers, to just ask them. Is there any conservative judge, moderate conservative judge you all would think would be good that I could appoint?

This is not about doing what is right. This is about winning elections and ginning up the far right in the wings. I understand that. It has been done before. But not during a war. Not when people are dying. It is just not right.

So we could stay on the floor all night, all tomorrow, all next week, but I tell you the people in this country are going to have enough of it pretty soon because they don't believe this is right. They can tell when something is not moving in the right direction.

I will end with this. No matter how hard the Republican majority tries to divide us, we will not be divided. We are going to stand united. We are going to speak the truth. We will debate in the open why these nominees do not deserve to sit on the bench and why we will filibuster these nominees.

We will continue to do that until the people decide in the next election what kind of America they want. In my heart I believe they want an America that is united, not divided.

I see my colleague from New Jersey is here. We have a few moments left. I thank him for his patience.

Mr. CORZINE. I thank the Senator from Louisiana. I think you have spoken brilliantly tonight, about the idea of trying to divide us over something that is basically a disingenuous issue to start with.

You talk about the 98 percent. Over the last 24 hours, we have seen this 168 to 4 over and over. No one could speak more eloquently about the facts; 98 percent is a hell of a number.

Ninety-five percent of judicial positions in this country are filled. When President Clinton left office and President Bush took office, it was at 75 percent. The reason was because those 63 that the Senator from Louisiana was talking about never got a hearing, never got a chance to get a vote in committee, never got reported to the Senate to get voted on. Sixty-three judges were blocked. It is a different technique under the rules of committees as opposed to here on the floor, no committees, no votes, no reports—63 qualified judges, at least in the opinion of the then-President, never had a chance to fill that void, and 25 percent of seats went unfilled. Now 95 percent are filled.

When there is cooperation—I can tell you there has been cooperation in New Jersey. We have had five district court judges and a circuit court judge, we worked with the White House and the Judiciary Committee, and it has worked very smoothly. It can work if we reach out and work with each other, which we have to do in this society if we are going to get good things done—not by dividing us.

You know, it strikes me that we spent a lot of time talking about four judges or six judges. One of those 63 judges—by the way, who couldn't get a hearing, it went on for a year and a half—is now the dean of the Harvard Law School. It is hard to understand how he wasn't qualified to be considered for the bench but is qualified to be the dean of the Harvard Law School.

By the way, this shows it in a pictorial sense. This is the list of 63. This is the 4. It is very clear.

I want to dwell on something else. The real issue is not 4 people who are not being approved on this Senate floor. The real issue are the 3 million people who have lost jobs since 2000, the 9 million Americans who do not have a job, the 2½ million Americans who have lost manufacturing jobs, and the real agony we have in the country because we are not creating jobs fast enough in this country.

We have gone fast enough to get 98 percent of the judicial positions filled, but we have not gone fast enough to take care of the 3 million Americans and the 9 million unemployed and the 2.5 million manufacturing jobs lost.

I think we have our priorities wrong. We have been debating 4 people while there are 9 million Americans out of work. We have been doing that now going on 24, 26 hours. We are going to go on some more.

Americans know what impacts their lives: their ability to take care of their kids, their families, their grandparents, their future. They are interested in having a job. Jobs count. We are talking about 4 while 9 million are missing in action in our debates on the floor of the Senate.

I think it is disingenuous. I think it is clearly staged. I think we are off on the wrong target.

I point out today I went through some of the press reports that came out over the AP wire today. The U.S. trade deficit grew to $41.3 billion in September—$41.3 billion. We are going to have a $500 billion current account deficit in this country, and what we are going to have, more importantly, is a deficit in manufacturing jobs because they are all going overseas. We ought to have a debate here about economic policy that puts Americans to work—a $41.3 billion trade deficit this month. It is going to be $500 billion for the year.

We have had discussions in committee—which, by the way, we had to cancel all our committee meetings—about whether we have the proper trade policies, the proper positioning with China where we are losing jobs right and left across the manufacturing sector. We had the biggest trade deficit with China we have ever had in the month of September.

Why are we talking about 4 jobs when we are losing millions of jobs, 2½ million jobs, because we have an economic policy that is out of kilter with the needs of the American people?

If that is not enough, the poverty rate has grown 1 percent in this country in the last 3 years. That is about 1.7 million people. We have seen the uninsured in America, those without health insurance, go up a little over 2 million. We are having no discussion on issues that impact people's lives who are watching this debate. We want to have real debates that make a real difference in people's lives. We ought to be talking about these jobs. We ought to be talking about health insurance. We ought to be talking about that trade deficit, ripping out the heart of middle-class America's jobs.

I don't understand why we have our priorities on 4 people when we have a 98-percent positive ratio of confirming judges. It doesn't make sense, particularly when we can argue about whether they are mainstream or they have made the kinds of statements the Senator from Louisiana quoted from one of those individuals who is going to be considered tomorrow for confirmation. It doesn't make sense.

There are all kinds of things we could be doing right now. We could be raising the minimum wage. That would improve the lives of about 4 million Americans. We could pass a transportation bill that would create, by almost every estimate about 1 million jobs. It is lingering in committee. We don't want to talk about it on the floor, but it is a million jobs. It builds America; it invests in our future.

We could talk about increasing investment in higher education or maybe do something about making sure we don't take 8 million Americans away from having the opportunity to make overtime pay so they can operate and live in this community of America in a more secure way.

Then, the greatest tragedy, in the last 13 days we have had 42 Americans killed in Iraq. We have changing policies. We have generals in Iraq saying we are not living in the real world. We are not talking about it as if it is a war. General Sanchez today said we are not walking away from using the word; we are going to win this battle—no, we are going to win this war because the people back in Washington need a dose of realism in their debates about this issue.

Then we have a meeting to discuss the intelligence report that was leaked by someone with regard to what is happening on the ground in Iraq, and nobody shows up because we are debating 4 judges.

It strikes me we have our priorities wrong in this country when we are talking about 4 judges when we have 9 million people unemployed, when we have lost 2.5 million manufacturing jobs, when we have 2 million people losing their health insurance. We have a tie-up on the prescription drug benefit bill and the Energy bill and we can't get these bills out. We have generals in Iraq saying we don't have a realistic view of what is going on in the debates we have here in Washington. There are real issues that matter to real people across this country, in the millions—in the millions, not 4—not when 168 are approved and 4 are not.

I don't know where our priorities are when we turn our attention to such an issue when there are real debates about whether they fit into the mainstream or not, whether we ought to have a real debate. By the way, other people used other techniques at another time when it was convenient to do it. It is disingenuous to say, use the rules of the Senate which are authorized under the Constitution. I hear all this "unconstitutional" view. That is not unconstitutional. We should change the rules if we don't like the rules of the Senate, just the same way that we can change the rules in committees.

It is not sensible that we are not putting our priorities on the loss of jobs and taking care of the American people in the way they expect us to—to debate and put in the time and effort.

This whole debate, which has now gone on for 26 or 27 hours, should be about jobs—not 4 but 9 million. It should be about the important issues that impact people's lives, the people who are uninsured, the people who haven't had an increase in the minimum wage in 7 years—7 years. We can't get a vote on that. We can't get a vote on the Transportation bill that would create a million jobs. There are all kinds of things we can't get votes on around here because people don't want to have them. They use the rules for those purposes.

Four out of 172, 98 percent have gotten votes. It is very hard to see how we have our priorities straight in this area tonight and have had properly placed priorities for the last 26 or 27 hours.

I hope we can get focused on something other than 4 jobs. We should get focused on the 3 million people who have lost them, the 9 million people who don't have jobs. We ought to be talking about extending unemployment benefits to the 80,000 people a day who are going to lose those in another 30 days when we are not in session.

It is incredible—our priorities. It is incredible. I believe as much as anyone else that we ought to cooperate. We have in many, many places. That is how we got 168 judges approved. That is how we got to a 95-percent fill ratio on the number of judges' slots that have been filled. But we have major problems with employment and the economics of this country. It is time we get our priorities straight.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Utah.

Mr. HATCH. Mr. President, it has been a good debate. But I have noticed the folks on the other side of the aisle want to shut down the debate on judges because they don't have an argument. Jobs is where it seems their only argument is, and more Federal Government programs. In fact, they don't even have very good arguments there. It is "increase the minimum wage." I am not sure it will create jobs. And "re-up insurance," which certainly doesn't create more jobs.

On the other hand, I am not saying they are not compassionate. They are decent people wanting to do those things. But when you do not have any arguments against the judges we are talking about, then you change the subject. That is exactly what they have done.

If the distinguished Senator from Louisiana were here, I would ask her why she took the number 129 because, of course, that is a number of confirmed judges that were left off her chart. We have had distortions of the facts. We have had distortions of the statistics. You can prove anything with statistics if you want to manipulate them. There are 129 judges left off that chart she was showing. We confirmed 377 Clinton judges—not 248. If you want to be factual, be factual. Don't distort the facts.

I was a little surprised that now at the 29th hour of debate an awful lot of Democrats come on the floor without any arguments that are really valid against these nominees we are talking about. They are changing the subject because their arguments don't hold water.

As for Democrat claims that they have been blocking only the most extreme Bush judicial nominees, let us look at the facts.

Priscilla Owen won 84 percent of the vote in her last election for the Texas Supreme Court. Bill Pryor won 58 percent in his last election for the Alabama attorney general's position. Janice Rogers Brown won 76 percent in her last election for the California Supreme Court. And Charles Pickering was confirmed to the Federal district court in 1998 by this body by unanimous vote. Yet he has been treated like dirt. You wonder why people in the South are getting sick of it.

By the way, the unanimous consent vote included the support of 24 of the Democrats currently in the Senate, 23 of whom now refuse to give him the dignity of an up-or-down vote. Why? Because they know he would be confirmed.

These nominees are hardly extremists as painted by the other side who claim that is what they are talking about. Give me a break.

Let us look at this a little differently. What is more extreme? Receiving 84 percent of the votes in Texas, the second most populous State in the Nation, as Judge Priscilla Owen did in her last election? They are filibustering a qualified nominee for the Fifth Circuit for the first time in American history. That is what they are doing, without any real arguments against her. They don't have any. They do not have the facts on their side so they change the subject.

I think jobs are important. I will tell you, there will not be any jobs in this country if we lose our freedoms because we don't have the Federal courts staffed by competent and decent judges.

Mr. COLEMAN. Mr. President, will the Senator yield for a question?

Mr. HATCH. I would be happy to yield.

Mr. COLEMAN. I listened to the Senator from Louisiana. She was talking about filibusters. I was glad to hear her say unequivocally that it was a filibuster. We will filibuster these nominees. There is no question.

Mr. HATCH. We are not going to let these people through.

Mr. COLEMAN. She also said, I believe the only way filibusters survive is the truth—truth. I have only been in this body for less than a year. I know there is history in this body. The history is not always the greatest history when it comes to filibusters. There were attempts on the floor of this Senate to make sure that minorities didn't have certain rights; that minorities had poll taxes; that anti-lynching laws were filibustered. I have a chart here that talks about filibusters.

I ask the distinguished chairman whether under F.D.R. civil rights was filibustered; under Truman, civil rights was filibustered; under L.B.J. civil rights was filibustered.

Again, would it be the Senator's belief that necessary laws that were filibustered is something to be ashamed of and they were not the truth; filibusters were not the truth; the attempts to provide civil rights and opportunities for Americans for good things and they were filibustered, and filibustered was not the truth?

Mr. HATCH. Absolutely right. In every case it was Democrats who led the filibuster. In every case, including this one. It is not the truth.

Janice Rogers Brown, 76 percent of the vote, State of California Supreme Court; Priscilla Owen, 84 percent; William Pryor, 59 percent of the vote.

What is more extreme, receiving 76 percent of the vote in California, the most populous State in the Nation, as Janice Rogers Brown did in her last election to the California Supreme Court—filibustering a brilliant nominee to the DC Circuit, the Nation's second highest court? If Justice Brown is so extreme and leftwing, California voters certainly would have recalled her, but they didn't. Three-quarters of them voted to keep her on the bench.

By the way, the late Justice Stanley Mosk on the California Supreme Court was the California Supreme Court's well-known liberal voice for decades. In that same election, she got 76 percent. He only got 68 percent of the vote in the last retention election.

Does anyone want to guess whether the Senate Democrats would call him more extreme than Justice Brown in left-leaning California if he were up for the District of Columbia Court? Of course not. He would be in the mainstream.

Once more, extreme—receiving 59 percent of the votes in Alabama, as Bill Pryor did in his 2002 election to the office of attorney general of that State. They are filibustering a nominee with broad bipartisan support across the Eleventh Circuit for a judicial emergency vacancy on that appellate court. In each of these cases, these unprecedented filibusters of qualified nominees to the appellate courts are undoubtedly extreme.

There is extreme action by our colleagues on the other side. There is nothing else you could call it. It is demeaning to this body. I don't care how excited someone gets on the other side. Sooner or later they run out of arguments and start talking about jobs because they have to change the subject and hopefully get the American people off of the importance of putting people on the Federal bench.

The Senator brings up a very important point. Every one of those unjust filibusters was conducted by Democrats. It was the Republicans who basically pushed through the civil rights law, along with some good Democrats as well. I want to make sure credit is given on both sides.

The fact is, the leaders of those filibusters were Democrats. But in this case, 168 to 4, virtually all Democrats—

not all. I know one or two who do not believe filibustering should be done to the judges. But all the rest of them are leading this unjust filibuster.

Mr. BROWNBACK. Will the distinguished chairman yield for a question?

Mr. HATCH. Yes, I would.

Mr. BROWNBACK. I want to follow up on a question by my colleague from Minnesota. I think this is the point. He points out that you have a couple of filibusters on major issues to change the country. The issues that were filibustered ultimately got through, and I believe these judges will ultimately get through when the public gets the RECORD and has a chance to read it. These issues were things that were changing the country—when you talk about the law, civil rights laws, things that were being brought forth. Isn't that what is really being addressed here today? We are not talking about 4 judges or 29 who are being blocked on circuit courts. This is really about a group trying to block a certain set of individuals who may, as some say, have deeply held beliefs being on the Federal bench and trying to purge that set of philosophies or thoughts from the Federal bench. Isn't this a much bigger issue than the appointees? Those law changes were bigger than filibustering one law. This is about the impact on all of society, on a whole culture.

Mr. HATCH. That is right. Frankly, yes. It is as important as these four and tomorrow's six. Next week, who knows how many nominees are being filibustered. It is demeaning to the Senate. It is detrimental to the country. It is detrimental to the judiciary. It is unfair to the President. It is unfair to these qualified nominees who have been rated so highly by the ABA—their gold standard, by the way, during the Clinton years. If you got a qualified rating from the ABA, that is all you needed, you should be confirmed. We did confirm 377 of them, the second highest total number of confirmations in the history of this country—Bill Clinton's judges. We did it because we were fair. We didn't filibuster those judges. Every one of them got a vote. It was 377 to 0. We didn't filibuster them.

For all I have heard from the other side—I heard some of the emotional remarks—I was the one, along with Senator LOTT, who made sure we didn't filibuster their nominees. I don't think they are in a position to criticize me.

By the way, in the past, there were 11 Presidents' judicial nominees confirmed versus those who were filibustered, the past 11 is when the filibuster rule came into being in the current filibuster rule. We can go all the way back to the beginning of this country 214 years ago. We have never had a filibuster before these folks on the other side have been doing it this year, 2,372 judges have been confirmed to zero filibustered.

The history of the successful Senate filibuster, from July 4, 1789, to March 6, 2003, there is no question about the successful or unsuccessful because there were not any until March 6, 2003. March 2, to the present, we have had four so far as successful filibusters. We are apparently going to have two more tomorrow even though all six of these folks would win an up-or-down vote in the Senate.

One of the Senators said we are going to vote on these judges tomorrow. No, we are not going to vote on the judges. We will be voting granting the right to vote on these judges. Since only 41 Senators are necessary on this side to stop us from granting that right for these judges to have an up-or-down vote, there will be six of them tomorrow. I suppose when we go down the line there will be as many at 17.

Let me make a couple of other points that I think are important. Look at three of the President's nominees who have been accused by the Democrats of being out of the mainstream. They don't look to me like outside the mainstream. They have received overwhelming support in each of their home States. Apparently, these are not only a majority of the Members of the Senate outside the mainstream who support them but a vast majority of the citizens of California, Texas, and Alabama are all outside the mainstream, too, I guess.

Democrats seem very fond of their 268-to-4 chart and believe this number 168 of President Bush's judges who have been confirmed since he took office will distract people from the important fact that the Democrats have filibustered four appellate nominees, Miguel Estrada, Priscilla Owen, William Pryor, Charles Pickering, and now Janice Rogers Brown and Carolyn Kuhl for the first time in American history.

The point is that no raw number of confirmations means anything in and of itself while these unprecedented filibusters continue. While the number of filibusters as of today stands at four, Senate Democrats are virtually certain to add others to the list, including Janice Rogers Brown nominated to the District of Columbia Circuit and Judge Carolyn Kuhl nominated to the Ninth Circuit. That makes a total of six.

There are other filibuster targets on the horizon, a Fourth Circuit nominee Claude Allen and Terrence Boyle, North Carolina District Court nominee, James Dever and Bob Conrad. They are also potential for filibuster. These are just some of them who we have already been told will be filibustered.

That figure is extremely misleading, all the while more vacancies in our Federal courts continue to be classified as judicial emergencies.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. HATCH. I would be happy to yield.

Mr. SESSIONS. I notice the Senator, when this 98-percent chart was put up the Senator didn't recognize it and neither did I. Isn't it true that the President has nominated some 200 judges and 160 or so have been—and the idea that the 98 percent of his nominations have been confirmed is certainly not accurate; is it?

Mr. HATCH. The President has nominated 209 judges; 168 have been approved. So 20 percent of his nominations have not made it.

Mr. SESSIONS. I do not know where the eight came from.

Mr. HATCH. I don't know. I knew what the distinguished Senator from Louisiana was driving at. Again, a distortion of the facts.

Mr. SESSIONS. I ask another question: They show a chart that says 168 to 4. Is that the 4 they were filibustering last week or is that the 4 who have been held hostage? What 4 are they talking about? There are well over 10 nominees who are being actively filibustered or obstructed at this point.

Mr. HATCH. That is right.

Mr. SESSIONS. I do not know how that chart comes about, either.

Mr. HATCH. This chart is just the beginning of what they intend to do to the Federal judiciary. Democrats have also implied that it is just fine to prevent an up-or-down vote on at least these four nominees because we blocked 60 or so of President Clinton's nominees. That is extremely misleading. I think their number is 63.

Let me briefly break that down. First, 18 of those nominees were withdrawn by Clinton himself—18 of them. Second, 25 of these nominees were either nominated after the August 2000 recess, do not have home-State support because the Clinton administration did not consult at all with the relevant Senators, or there were confidential investigative reasons that prevented the nominations from moving forward. At most, there were about two Clinton nominees who the Republican Senate did not confirm.

The numbers are even more stark. If you look at the difference between 168 and 209, you can see that it is about the same. The numbers are even more stark when you compare the number of nominees left hanging at the end of the first Bush administration by Senate Democrats with the number of Clinton nominees awaiting confirmation at the end of the Clinton administration.

Let me refer to this chart. There were 54 judicial nominations not confirmed at the end of Bush 1. That is when the Democrats controlled the Senate. Fifty-four of the first President Bush's nominees were unconfirmed at the end of 1992.

In contrast, at the end of the Clinton administration, only 41 nominees remained unconfirmed. But 9 of those were put up so late there was no way we could have confirmed them. There were really only 32.

At almost the end of the Presidencies you have that or more who just can't get through the system. Looking at that, according to the Senate Democrats, they don't even deserve the dignity of an up-or-down vote. Contrast this with the prior 3 Presidents' confirmations for their first 11 circuit nominees.

In every case, less than 100 days. Senate Democrats in the 107th and 108th Congress have been the most obstructionist of the President's judicial nominees in recent U.S. history. It is that simple. Confirmation times for the first 11 circuit nominees, Reagan-Bush, it was one. George Bush, look at how much that has gone up, and it is growing. This President is not being treated fairly. Neither are his nominees.

Furthermore, there are more Federal appellate vacancies today, 18, during President Bush's third year in office, than there were at the end of former President Clinton's second year in office, where there were 15. Over half of President Bush's appeals court nominees in this Congress have not been confirmed. There are 41 total vacancies on the Federal district and appellate benches, 22 of which are classified as judicial emergencies by the nonpartisan Administrative Office of U.S. Courts. A staggering 67 percent of the vacant appeals court slots are judicial emergencies.

There is a different scorecard that I find more significant. That is the 377 to zero. President Clinton, with 6 years of a Republican Senate after 1994, had 377 of his judicial nominees confirmed without a single filibuster by Republicans, even though Republicans had to swallow hard on a lot of them. Only President Reagan, with 382, had more of his judges confirmed, 5 more than President Clinton. But Reagan had 6 years of a Republican Senate to help him. Clinton only had 2 years of a Democrat Senate. Yet he came out with almost the same number as Ronald Reagan. He was treated fairly. Clinton is No. 2 in U.S. history, even though his opposition controlled the Senate for 75 percent of his term.

Just to give you a sense of how unprecedented Democrat current filibusters are, here is another scorecard we have talked about: 2,372 judges have been confirmed in the last 11 Presidents and zero were filibustered. The 11 Presidents that precede the current President Bush, back to President Franklin Delano Roosevelt, never had a judicial nominee filibustered and had 2,372 nominees confirmed. So these filibusters are empirically unprecedented.

How about this scorecard? Years since the Judiciary Act in 1789 that we have gone without filibustering judges until this President. Since the beginning of the year, beginning with Miguel Estrada, there have been four, and there will no doubt be two more tomorrow. How many more? Up 10 percent, 15, 17? Up to 10 percent as Senator SCHUMER suggested last week in the Judiciary Committee? If there is some filibuster percentage the Democrats have in mind, what is it? The majority of the Senate and President Bush would really like to know. I think the American people would really like to know, too.

One final word on the Democrat scorecard. Even one filibuster of a judicial nominee is too many, because every judicial nominee who reaches the Senate floor should be afforded the dignity of an up-or-down vote. We owe our third branch of government no less. By way of analogy, would it be acceptable to enforce all but four of our criminal laws? Would it be acceptable to defend all but four of the constitutional amendments that comprise the Bill of Rights? Of course not. It is no more acceptable to allow up-or-down votes on all but four and counting of the President's judicial nominees. Vote them up or vote them down. But just vote. That is all we are asking.

The Democrats have a right to consent. They have a right to advise. If they don't want to give their consent, then they have a right to vote against any of these nominees. That I will find no fault with. I might disagree, but they have a right to do that. What they don't have a right to do is to subvert the Constitution for the first time in history and allow 41 Senators to prevent an up-or-down vote of these judicial nominees.

The distinguished Senator from Minnesota, with his chart on the terribly wrong filibusters, brought out a very good point. I don't want to compare rankings or anything, but this one is just as important as the others because without a good Federal judiciary, our civil rights would not be enforced. Explain the chart one more time, because I think people need to hear it. But in all four of those, those filibusters were conducted by Democrats, and every one of them was wrong, especially this 168 to 4 we are going through right now, but especially the other three as well.

Mr. COLEMAN. Will the Senator yield for a question?

Mr. HATCH. I am happy to yield.

Mr. COLEMAN. Again, I listened to the words of my friend from Louisiana, where she made the comment that the only way a filibuster survives is if it is the truth.

I was reflecting on the history of filibusters. I read about it when I was a young man. Certainly preceding my youth, going back to the times of Harry Truman and FDR, unfortunately, there is a terrible history in this body of opposing efforts to provide civil rights opportunities, opposing efforts to ensure that there were antilynching statutes, opposing efforts to get rid of things like the poll tax. This is a sad part of the history of this body. I ask the distinguished chairman, who has a much better sense of history than I, is it true the tool that was used to oppose those efforts, oppose good things, the tool was the filibuster, and the filibuster did not represent the truth? Would that be a fair statement?

Mr. HATCH. The Senator is absolutely correct. Here we have a situation where we have a terrific African-American justice on the California Supreme Court who won 76 percent of the vote, who came from nowhere to somewhere, who fought her way throughout life to be what she is, who has ruled in favor of plaintiffs, civil rights claimants, the poor, the disadvantaged throughout her career, who is being treated in this shabby fashion with a filibuster.

Mr. COLEMAN. Would it be the truth in regard to these nominees, in regard to Owens and Kuhl and Pickering and Estrada, who we haven't talked about, that in each and every case the measures of their competence, be it the bar association, the gold standard my colleagues across the aisle have talked about for so long, be it the recommendations of their colleagues, other judges with whom they have worked, be it the recommendations of the voters when they put themselves up for a vote—in each and every case, they received the highest recommendation; that is the truth, is it not?

Mr. HATCH. That is right. And let me just say this: Filibusters are not the only means the Democrats are using to obstruct. During the 3 years of the Bush administration, the Senate has taken 108 rollcall votes on judicial nominees at Democrats' insistence. Eighty-seven percent of these votes have been unanimous, 87 percent, calling into question why we needed these rollcall votes at all. Contrast that to 8 years of the Clinton administration during which the Senate took only 46 rollcall votes out of 377 judges, only 39 percent of which were unanimous. Couldn't we have been passing appropriations bills or creating jobs instead of wasting the time on unanimous votes?

Look at this chart. Clinton, 18 votes, 2.25 average votes per year, 486 minutes were consumed, 8.1 hours, 61 average minutes per year; Bush, 104 votes, 34.7 average votes, these are unanimous rollcall votes, 34.7 average votes per year, 2,808 minutes were consumed, 46.8 hours, 939 average minutes per year. In this body that is delay, obstruction, complete shutdown of the body while we have these votes everybody knows will be unanimous. It is just another illustration of how far they have gone to obstruct on these judges.

Finally, who is wasting time? Unanimous rollcall votes on judges, compare Clinton; we didn't require rollcall votes on unanimously to-be-approved judges. Look what they have done to the Bush administration. This President is being treated very unfairly.

When you hear them talking about jobs, look, I am as interested in jobs, and so is every other Republican, as they are. The only reason jobs is coming up is because they know they can't handle the criticisms that are coming their way for the way they are treating these judicial nominees. They just can't. They can distort the facts. They can distort the statistics. They can distort the record. But they really can't justify what they are doing.

Again, go back to your chart, the distinguished Senator from Minnesota. Every one of those unjust filibusters that took away rights from people and kept people enslaved to a large degree, every one was led by Democrats.

The PRESIDING OFFICER. The time of the majority has expired.

The Senator from New York.

Mr. SCHUMER. Mr. President, I yield myself 15 minutes and the remaining 15 minutes to my colleague from New Jersey.

I have enjoyed these debates. I said at the very beginning these debates would be good for our side. They have proven to be. One little chart here, this chart seems to be under all of my colleagues' skin because they are debating it and coming with up with their own numbers, et cetera. But let me tell you, this one chart has won this debate. You can come up with as many others as you want, and tonight what have we debated, why 168 to 4 is not true? That is what the other side has said.

I said at the beginning of this debate this would help us. Because this one chart was equal to 30 hours of palaver. To my good friend from Utah, he is a good man. He is my friend. But do you know what he just said? Rollcall votes are a form of obstructionism. I would just like my colleagues to have recalled the words of my good friend from Utah: Rollcall votes are obstructionist.

My goodness. What are we called on to do here if not vote. And letting people know how you voted, isn't that the whole mark of democracy?

I realize my colleagues on the other side of the aisle are frustrated, and so they have had to come up with all kinds of sophistic arguments. But this one tops the cake. The fact Democrats have asked for rollcall votes on judges is a means of obstructing. Maybe we should just, when the President nominates somebody, not have a hearing and not have asked questions and not have any votes and just let the President appoint all the judges. Next we will be hearing from my colleagues on the other side of the aisle that is what the Founding Fathers really wanted.

Again, to all of those who are listening, I hope there are a few left, 168 to 4. That fact is immutable, unchangeable, irrefutable. The reason it has such resonance is because the other side fails to mention it. Whether it be our colleagues when they speak, whether it be the rightwing radio shows when they say we are obstructing all of the President's judges or most of the President's judges, whether it be the editorial pages that try to kneecap us, 168 to 4, 168 to 4, 168 to 4. Don't forget it. There is no judiciary in crisis. There is no obstructionism.

There are some judges—whether they be Black, Hispanic, women, Catholic, Jewish, Muslim, Baptist, southern, northern, eastern, western—who are so far out of the mainstream that they should not be on the bench, and we are upholding the Constitution by doing that.

Now the arguments of my good friend from Minnesota, these charts, are getting to the point of ridiculous. They are what logicians and lawyers would call "outcome determinative." We want an outcome so we put together numbers. Successful filibusters. I ask my colleagues, if a filibuster is against the Constitution, why is an unsuccessful anymore unconstitutional than a successful filibuster? Why is a filibuster of an executive branch nominee any different than a filibuster of a judicial nominee?

Do you know what the other side is saying? We are just going to take judges in green shoes and give you the numbers on those and not judges in pink shoes or purple shoes.

They are differences that don't make a difference. What we are talking about here, again very simply, is how many judges have come before this Chamber and how many have been approved. One hundred sixty-eight to four. No denying it. No refuting it. No getting around it. The truth hurts because the American people know—30 hours, I guess now it is 39 hours, you can debate this for 390 hours, 3,900 hours, 39,000 hours, and all your words are not equal to 168 to 4.

For those who watched this debate, this has been elucidating, because what the hard right and their allies tried to spread throughout America is, we were holding up all the judges, most of the judges, a judiciary in crisis, a huge number of vacancies. My colleagues, do you know what answers all of that hyperbolic falsity? One hundred sixty-eight to four.

We are going to keep that chart up. I realized when I first put the chart up, one of my colleagues objected. I understand it gets under your skin. I understand it pulls the rug out from the argument.

Now, do you want to talk about judges rejected? Do you want to talk about judges who didn't get a majority vote? Then talk about them. Here we have two charts. Sixty-three of President Clinton's judges didn't get a majority vote. It doesn't matter whether they didn't get it by filibuster or by not bringing them up for any vote. Again, that is like green shoes versus pink shoes. They are all judges.

Here are some names. Did every one of these people twist in the wind? You bet. Some longer, some shorter. Were some withdrawn by the President? Of course. Some withdrew their names themselves. My good friend from Utah, who I dearly love said: Well, some of the names were withdrawn by President Clinton. Does that mean we can erase the name of Miguel Estrada from this debate? He was withdrawn. That is not going to work. He was blocked. So were the others.

One final thing I would say, because I do want to spend about half my time now, or less than half, talking about one of the nominees. The Senator from Louisiana was correct. We are opposing judges because of their views, not their ratings by the bar association, which talks about their education and legal training, and not their sex, ethnicity, or religion.

The other side seems to think that should be a determination of who becomes a judge. Shame on the women because they won't just rubberstamp any woman. Shame on the Blacks or on the rest of us because we won't rubberstamp every Black, shame on everybody, me. They called me because I didn't agree with Miguel Estrada, but should I have let him go because he was Hispanic? That is un-American. It is not right. It is un-American. It is below the belt.

My good friend from Louisiana—I have never heard her more eloquent—had every right to be angry and upset. To say the women should be ashamed of themselves because they are not voting for another woman. What do you think the American people would think if they thought that ought to be our norm? Every Baptist should vote for every Baptist and every Catholic should vote for every Catholic and every Jew should vote for every Jew. What kind of logic is that?

Let's get back to the reality here. The reality is a handful of these judges are way out of the mainstream, at least in the opinion of a good number of us. Enough to block them. The one that I would like to talk about for the little bit of time I have left is Justice Brown.

I don't agree with her views on affirmative action, but that is not dispositive to me in this case. What is dispositive to me is that we have not seen—I have not seen, in the 18 years I have been here, a judge further out of the mainstream than Justice Brown. I want to read to you what she said in a case called San Remo Hotel v. City and County of San Francisco:

> Turning a democracy into a kleptocracy does not enhance the stature of the thieves, it only diminishes the legitimacy of government.

What does she mean by that? She was against zoning laws. Do most people think zoning laws are a kleptocracy in 2003? Maybe that went on in 1900, when we could have factories built next to homes and when workers' lungs would be polluted. But no more.

Here is what else she said in a speech to the Federalist Society:

> Where government moves in community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is [this is when government is around] families under siege, war in the streets, unapologetic expropriation of property, the precipitous decline of rule of law, the rapid rise of corruption, the loss of civility, and the triumph of deceit. The result [this is what government brings] is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

Many colleagues on the other side of the aisle believe in limited government. That is legitimate. I, for one, feel in certain areas Government goes too far. But this view? That is kind of disturbing, particularly for a judge on the DC Court of Appeals, which has more to do with Government than any other court in the land, with the exception of the Supreme Court. Please, you can find conservatives, you can find people who are against affirmative action who don't express these views; but these views are circa 1850, and even then would not be supported by most Americans. We are supposed to support a judge like that? Do you know what. I would guess if you asked my 51 colleagues on the other side of the aisle to nominate someone for the DC Court of Appeals and the record of Justice Brown were brought before them, they never would have nominated her.

Why is she here today? That is the question we ask. Is this to be deliberately provocative? Is it that the President doesn't believe he should nominate African Americans who are within the mainstream? I don't think so. He has nominated a few. I don't get it. The views of Justice Brown go so beyond what there is in a consensus in America, liberals and conservatives, that it is appalling to me she would be nominated for the DC Court of Appeals. There is only one reason: The extremists on the hard right are demanding something of the President. He is doing a prescription drug bill. He is talking to the United Nations. He is not demanding Roe v. Wade be repealed at this very moment. By nominating somebody like Justice Brown, maybe he appeases them, even though he may know she will not be approved. I don't know. That is just a theory.

But I will tell you this. If Justice Brown were White, or Asian, or Hispanic, a man, or if she were Protestant, Catholic, or Jewish, or Muslim, or Hindu, I would oppose her nomination. If Justice Brown got 100 percent of the vote in California, I would oppose Justice Brown. Justice Brown does not belong on the DC Court of Appeals where over decades, over centuries, beliefs among Democrats, Republicans, liberals, conservatives, 99 percent of Americans about what Government should and could do would be totally rejected. Justice Brown will be defeated tomorrow, I hope and I believe. It will not be because of outside groups and it will not be because of any of the women not standing up for women. It will simply be because her views are so ideologically out of the mainstream that she does not belong on the DC Court of Appeals. It is that simple.

When we knock out Justice Brown, I believe the Founding Fathers will be smiling upon us. One of them might say to the other: That is why we gave the Senate some power to block the President's nominees. This is the kind of nominee who should be knocked out. This is the kind of role the Senate, as the cooling saucer, should play, and whether it be by filibuster or by not bringing her up for a vote, or by defeating her in committee, which are the various ways the Senate has to be the cooling saucer, none of them—51-49, none of them simple majority, the Senate will be fulfilling its hallowed, ancient, and continuing role as a check on abuse of power of the President.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. CORZINE. Mr. President, I thank the senior Senator from New York for making sure the fundamental issue is understood by the American public. The fact is, 172 nominations have come to the floor; 168 have been approved. Four have not been sustained under the rules of cloture. And 98 percent—you can talk about it any way you want. The numbers fit the commonsense judgment of the American people that something positive is going on here with regard to how we are dealing with the confirmation of judges. I go back to the practical reality that 95 percent of the judicial positions in the Federal courts, district and circuit and Supreme Court, are filled; 95 percent of them are filled. In 2000, at the end of the Clinton administration, only 75 percent of those positions were filled.

This is the lowest vacancy rate in 13 years. The reason is very simple—168 to 4. It is not a complicated issue. It is not a complicated issue. Then you have to look at the four. The Senator from New York read this statement about the judge we will be looking at tomorrow, talking about "when government advances, freedom is imperiled." I don't think that is what the American people would think—those people who believe in Social Security, those people who might think we ought to have a prescription drug benefit for all Americans, people who believe we ought to pull together an army to protect the American people from terrorism, the folks who think we ought to build highways, bridges, schools, and other things, which are generally done by the public. When the government advances—what is this? I want to say this right. "When the government advances, freedom is imperiled." There is one out of the four. One wonders whether that is the mainstream of American thought.

A couple of judges in this four have serious issues some people think approach or have gone over the line of ethical violations. I have heard almost everybody say at some level they believe integrity is an issue. There are serious concerns about actions of several of the people who are involved—aside from their views. I will not even mention the judge. One judge said, in talking about the role of Congress:

Congress, for example, should not be in the business of public education, nor in the control of street crime.

That may be a view that is mainstream for some in this body, but I have a hard time understanding where many of us believe the role of Congress would prohibit us from being involved in the business of public education or the control of street crime. It doesn't sound to me like a mainstream thought. That is one of the judges.

Then another judge we will be considering tomorrow talked about privacy rights, threw out a case where someone was performing an operation on a patient, and it happened to be a female. The doctor had a male drug salesman attend without asking for that right of the individual. Then the judge said that wasn't a violation of privacy rights. That kind of thing—I am not a lawyer and I don't know all the details of this precedent, but it is kind of like 168 to 4. You would think if somebody is undergoing surgery and somebody asks you a question about who the person was who was observing you going through surgery, if you had a drug salesman overseeing that, you might think that was an invasion of privacy. That is sort of common sense to me.

I think there are reasons to debate these four and maybe the two, if we are going to get people who are not necessarily following precedent, settled law—I hear a lot of arguments about activism on the court. It sounds to me like there is an active view that is different than settled law with regard to privacy. There is a view that is outside settled law and precedent with regard to the role of Government, with regard to schools and crime in our streets.

I think there is a reason to question some of these four. Therefore, it is not inappropriate, when you think people are going to be out of the mainstream and may have ethical issues that are legitimate questions that people raise, that somebody ought to exercise that judgment here on the floor of the Senate when we are asked to vote on it. From my perspective, that is what guides my vote and one of the reasons I have helped make this 168 to 4 happen.

By the way, I am proud of the 168 and while we now have the highest percentage of occupancy of judicial positions in the last 13 years—that looks to me like a pretty good track record. In most walks of life, it would be a pretty reasonable statement of cooperation and effort to make things happen. That is certainly, again, the perspective I want to start with, 168 to 4, filling up the judiciary.

Then we heard the argument raised that somehow we are trying to change the subject. This is changing the subject. We are talking about four folks, while we have 9 million people unemployed, 2.5 million manufacturing jobs lost in America, and we have the rampaging trade deficit, budget deficit, a rise in the poverty rate, declining insured and health insurance coverage in America, no prescription drug benefit for seniors, no passage of the Transportation bill, no consideration of a minimum wage increase for 7 years. We cannot get it to the floor.

We don't want to talk about four judges when we have a war going on and all these economic issues before the country. They say we are changing the subject? I think we ought to change the subject. I would imagine the people watching this debate are changing the channel because they want to know what the heck is going on in the fundamental parts of their lives, their jobs, what their kids are doing in Iraq, what is going on with regard to jobs that are going to be created for the rest of their families. They want to know what is happening to their health insurance. They would like to know whether school class size is going to be 18 or 26. Those are things that matter, and we are debating four judges who, as I read some of the most extreme comments here—again, we are debating whether it is appropriate to have a filibuster about somebody who says “where government advances”—it says “advances relentlessly”—“freedom is imperiled.”

We are debating that, as opposed to worrying about whether 9 million people can get extended unemployment benefits, whether we can get a jobs bill to build highways and bridges and other things in this country, whether we can have an honest debate over intelligence operations in this country. It strikes me we have our priorities out of place. It just makes no sense in the world we are living in that we are debating 4 judges out of 172 and they have views like “where government advances, freedom is imperiled.” I don't think the American people—anyone you sat down around the kitchen table with and you talked about this issue, with this language, and this perspective on judicial philosophy—would say I would rather you be focusing your time on the floor of the Senate at 5 minutes to 12, 29 hours and 55 minutes into a debate, saying it is more important that we are talking about that judge than we are talking about what is happening with our men and women in Iraq, or whether we have appropriate investment in our intelligence operations that protect them, or the 9 million people are getting the proper attention on their unemployment benefits. I don't get it. There is no comparison of the importance. It is not changing the subject. It is getting to the subject the American people want us to do. At least that is the way it is in New Jersey. I have not had one single person ask me about a judge, until today when we got a call-athon calling in—the first time we got a call with regard to whether the filibuster was holding up these rights. I had my people read back this: “When government advances, freedom is imperiled.” About half of the people said I don't know whether that is somebody I want to stand with because I don't know that that is a position that really fits with the American Constitution, in my view, of what the American democracy is about. It is very hard for me to understand where we have our priorities.

Lastly, I want to bring up a point that filibusters weren't only used to stand in the way of civil rights acts by Democrats back in the 1930s or 1940s. On February 3, 1991, a filibuster was executed on this floor on the Family and Medical Leave Act. There were no Democrats who voted for that cloture. Let's see. Handgun violence prevention on November 19, 1993. I think that is the Brady bill. Let's see. Goals 2000, to educate America on March 24. I have a list of about—something that approaches about 50—maybe a little more than that—60 filibusters that were executed, including a couple with regard to judges, where judges withdrew their nominations that were executed by the other side of the aisle.

Filibusters have been used. No one was calling them unconstitutional when you were trying to deal with family and medical leave, or nobody was calling them unconstitutional when we were talking about the Hatch Act. Funny how that comes up. No one was calling them unconstitutional when we were dealing with judges at an earlier time when they withdrew their names. I want to make sure we keep the right perspective here because we are making all kinds of statements. Frankly, I think all of it is irrelevant. It makes no sense when we should be talking about the 9 million Americans who don't have jobs and we are talking about the 2 million people who have lost health insurance in the last 2½ years, when we are talking about the 1.7 million people who slipped into poverty in the last 2½ years, when we have gone from a $250 billion budget surplus to a $375 billion budget deficit, a $550 billion negative cashflow swing in this country because we are not handling our finances right, and we have a war going on and the generals are saying we are having unrealistic views about it back here.

I don't know, maybe we should not change the subject. We should just talk about these four judges. I wonder if the Senator thinks that is the right prioritization. It strikes me it is out of touch with America, and we are now 29 hours and 59 minutes talking about 4 judges.

The Senator from New York is right; 168 to 4 actually expresses what the debate about judges is all about. But one could think we ought to be talking about the 9 million Americans or, by the way, the 130,000 troops we have on the ground who are in harm's way. It strikes me, the discussion we have had for these 30 hours is missing a very major point to the American people.

I yield the floor.

The PRESIDING OFFICER (Mr. BROWNBACK). Is there further debate? The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, we got to the bewitching hour. It is midnight. I am going to enjoy the evening the best I can because I have a chance to engage with two of my colleagues. I don't know how long it will last, but I really enjoy the give and take of dealing with Senator SCHUMER. It may come to surprise people, we actually have been working on a couple of things. We had some successes in the past and we will have some in the future. I believe with a great deal of certainty, if the shoe were on the other foot, if my party were engaged in filibustering nominees of a Democratic President, that Senator SCHUMER would be right out here fighting for his cause. Senator CORZINE and I are getting to know each other. We will have all night to get to know each other. I have enjoyed working with him, also.

This is unusual for the Senate. I don't know if this has ever been done before. I hope it is not necessary to do again. But here we are. We are here at midnight. We are talking about whether or not there is a filibuster. Has there ever been one in the past? Who shot John? Who has been the meanest and the baddest in the past?

I guess what I am trying to focus on for the next few minutes is, What about the future? I guess that is my biggest concern. We have had all kinds of charts about how nominees were treated in the past. I have been here a year. Since I have been here, it has been like pulling teeth to get certain people on the floor for a vote. But that is OK. The process is what it is. The Constitution says what it says and we will all have our chance to express what we think is right versus what we think is wrong.

This is a big deal. It is a big deal for the Senate. There are a lot of other issues that need to be talked about. Sure, Iraq is certainly one of them, people out there in harm's way. We have 9 million people unemployed. I am the first to admit there are a lot of issues in this country that need to be talked about and addressed.

But this is one of them. One of the reasons Senator CORZINE has not had too many calls is Americans are able to walk around with a pretty secure feeling that the system works. I think it is a blessing we are not nervous every day about whether or not you can go to court because we expect, if we have a problem, a legal problem, there will be a place to go to get it resolved. That is just part of our mindset. We don't worry a whole lot about that and I think that is great.

But, really, that is a luxury. There are a lot of countries in this world where there is no venue to go to settle disputes. You have to go by force or violence, or you have nobody to help you out when you are down.

We have a pretty good legal system. God knows it needs to be fixed in some respects, but the idea of a rule of law nation caring about how you appoint judges is a big deal. Imagine if you had a system where it would be almost impossible to confirm somebody who had an actual belief or opinion. What you would find is there would be a lot of vacancies and there would be a backlog of cases. The things we assumed were always there for us would no longer be there. So this really is a big deal.

If you believe in a system where the weak can hold the strong accountable, then you ought to be listening to this debate because only in a rule of law nation, a courtroom, is that possible, because in a political environment the strong always win over the weak. In a confrontation of resources, the strong always win over the weak.

But America is a little bit different. You can hold anybody accountable. You can have your day in court. Even the President of the United States can be sued by an average, everyday person, if the President of the United States is claimed to have violated their rights.

That is a big deal. That is something worth fighting for. Some people believe that is worth dying for.

Now, that is very much at risk. The way we do business with our legal system is very much at risk. Because you can put up all the charts you want to put up and you can play all the number games you want to play, but the truth is, and I challenge someone to prove me wrong, that this is the first time in the history of our Nation that nominees have come out of the Judiciary Committee with a majority vote and have been blocked by a filibuster from being voted up or down. This is unprecedented. This is dangerous. We find ourselves in political and constitutional quicksand.

Of all the conflicts we have had in this Nation, of all the fights between the Republican and Democratic Parties, of all the likes and dislikes that have happened politically, no one before has chosen to go down this road. The road our friends on the other side have chosen to go down really is the road to oblivion, in terms of trying to get good men and women to be willing to serve their country as a judge.

My friend and colleague, Senator COLEMAN from Minnesota, is new to the Senate like myself. The strength of this Nation is people with accents have a chance to get ahead in life. I am the first person in my family to go to college. My dad was a World War II veteran and came out of the war and started his own business and married my mom and neither one of them finished high school. But they impressed upon me and my sister the value of an education. Because of the good, sound, strong public school system of which we partook, I was able to do things I never dreamed of doing. Now I find myself in the Senate.

I am a lawyer. If you can't take a joke, you should not be a lawyer, because there is a lot of lawyer jokes out there. But I have always enjoyed the role of being an attorney because I like representing people and I like representing causes. The law to me was not just a job; it was a passion.

The ultimate ascendancy for somebody in the law is to become a judge. You will make less money but you will get authority and respect, and you will have a chance to mold the law. To many people that is much more important than money.

To me it is a shame, if you are willing to apply for the job, that you have to be treated so poorly as these four people we are talking about have been treated. But make no mistake about it, they are not four people; there are going to be at least a dozen in the next couple of weeks. They are being treated differently than anybody in the history of the Nation. They are having some very hard things said about them and all they want to do, and all they are willing to do, is to serve their country in the Federal judiciary.

Our friends on the other side have pulled out a chart, 168 to 4, with an illustration: 168 apples represented those people who were allowed to go forward. The Senator who had the chart said, I like apples, so I picked apples to represent the 168. And the four, well they were called lemons. I thought that was pretty cute at the time. But the more I thought about it, that is really not fair. If you don't like these people, if you disagree with their philosophy, if you disagree with their view of the world, you have a chance to express it. You have a chance to vote them up or vote them down. But I don't think it helps anybody to label them as lemons. We are going to have a long talk about the people they have labeled as lemons. Between now and 9 o'clock in the morning, we are going to have a long talk, eventually, about the individual nominees.

You can decide whether or not you will vote for them. You can kind of be a Senator for a day, if you would like. That would be an exercise that would be interesting for those who want to watch. If you don't like them, you can vote against them in the Senate. But I think you have an obligation to vote them up or down.

As I talk about these individuals I will tell you why I am willing to vote yes. I don't expect anyone on the other side, or my side, to vote because of my reasoning. I do expect the people at home, in South Carolina, to be able to judge me and hold me accountable for my reasoning. I will tell you, with a deep sense of pride, that I think the four people who have been called lemons are very fine Americans and deserve more respect than they have gotten.

The thing I like most about serving with my colleague, Senator COLEMAN from Minnesota, is that his race was one of the most watched and unusual races in the Nation. It was full of triumph and tragedy. His opponent, Senator Wellstone, who I knew fairly well and certainly respected for his strong beliefs, tragically died right before the election. Senator COLEMAN ran against former Vice President Mondale.

The thing that impressed me most about his race, as I watched the debate, was the sincerity he had when it came time to present the reason he wanted to be a Senator for the people of Minnesota, along the lines of: I would like to go to Washington and do something. I watch you from afar and you seem to be fussing and fighting about everything. People are hurting out here and I would like to be a Senator who could go to Washington and work across the aisle and actually do something.

Tonight, at almost quarter after midnight, I would argue to the people who may be listening in Minnesota that your Senator is doing something. It is not what he envisioned. It is not what he hoped for. It is not what I hoped for. I hoped to be home right now. And we passed some legislation long overdue. But I argue the Senator from Minnesota is doing something that needs to be done; that is, standing up for his beliefs and his view of the Constitution.

I am confident that over time this exercise will be judged well in history. When there is an accounting in this period of the Senate, it will be one of the darker periods of the Senate and my hope is it will be a period that will not have lasted long. Because the future is why I am here. The future is why I and Senator COLEMAN ran. We have a lot of problems with Social Security and Medicare and a budget and a war to fight and many obstacles facing this country. We are dying to get on with it. We really do want to help win this war on terrorism and make the economy better and stronger and fix the retirement problem the Nation faces.

We didn't ask for this. But it came our way. It happened on our watch. I think this may be one of the most important things we will ever do as Senators.

With that, I will yield to my good friend, Senator COLEMAN from Minnesota, and let him know in my opinion that he is doing something that is very important to the country by participating in this debate.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. COLEMAN. Mr. President, first, I thank my friend and colleague, the Senator from South Carolina. We came in in the same class. He served in the Congress. He is more experienced and understands the ways of Washington. But he understands the ways of South Carolina. He is about as real as he can be. People think of Washington as a phony town. I look at my colleague, my friend from South Carolina, and he is very real. That is a good thing.

In the discussion we have had tonight—now past 30 hours—I appreciate his effort to humanize the four individuals whose lives have been, in some ways, put on hold, their future put on hold, certainly by the actions of this body. No, they are not lemons and they are not simply numbers. They are people. They are moms, dads, fathers, daughters, sons. They are folks who have the capacity to have an incredible influence on our lives.

I was a former prosecutor. The Senator from South Carolina had that experience of doing some prosecution in his time. I can tell you, courts have an impact on your lives, on your family's lives in many ways. So I appreciate it, if as we move now into the morning hours, there will be votes coming up this morning—not tomorrow morning, this morning—to put a human touch on what this is about.

I think there was a mood or a feeling in the country at the time that we got elected that really did focus on getting something done. I was running for office and disaster assistance bills were being debated in the Congress. The House was passing bills but the Senate was not. I can tell you my constituents were unhappy. They were concerned.

Last year there was a debate over a prescription drug benefit. I was running for office. There were still seniors forced to make the choice between prescription drugs and food. That is a bad thing. That is not a good thing. Hopefully, this year we are close and before we get out of here, assuming folks come together, we can get something done.

I think that was the tone. That was the message. By the way, I hope, certainly the message I heard—it should not be a partisan thing. There are a lot of things I heard in the debate tonight from my colleagues on the other side. I don't disagree with all of it. My colleague from Louisiana made a comment that we can't be divisive. She is right. I can tell you we are not trying to be divisive. Being divisive is when you do something that is unprecedented, and that is really what we are talking about today.

The fact is, one of the things we did kind of settle tonight is the filibuster. There was a discussion all along about whether they are really filibustering nominees, a lot of discussion about filibusters.

First, I say again I was disappointed what I heard tonight. If anything, it was the comment of my colleague from Louisiana saying filibuster was the successfulness of the truth. No. With filibusters we have stopped some very good legislation. We have used the filibuster in a very terrible way in this body in its history. We have filibustered to try to prevent antilynching laws coming into effect. We have filibustered civil rights legislation. We have filibustered against the poll tax. We filibustered about a lot of things and not often good. A filibuster is often to be ashamed of and this one is to be ashamed of.

My colleague asked what is the difference between filibustering legislation and judges? The difference is this little book. It is called the Constitution. That is the difference. The Constitution laid out very clearly when the President has certain powers. The President, by the way, doesn't get elected unanimously. He gets elected following the laws. Not everyone votes for him but he then becomes the President. Once you become the President, you have certain powers and the Senate has certain powers and responsibilities. So it is a matter of seeing there is a difference between what one can do legislatively, using filibusters, and what the Constitution provides.

There is a reason why, in the history of this country of 214 years, up until this Congress, this body has never used a filibuster to stop circuit court nominees once they got through committee. That is the reality.

You can put all the charts up and all the statistics; that is the reality. If folks are listening, they have to be thinking there has to be some reason in over 214 years why folks have not done what is being done today. In part, it is because of the consequences. If we do that, what we do is we let a minority—that is what we have here because in each of these cases the judge is being filibustered, a majority of the Senators, Democrats joining with Republicans—yes, they are going to vote for them. We know that. That is why the minority is filibustering, stopping the vote.

So what you have here is a situation where the minority stands up and says: We don't support a person. Maybe it is because of a particular issue. Maybe the issue of abortion comes up again and again, which, by the way—and we will have plenty of time to talk about this—what is so interesting if you look at the record, the nominees who have been criticized or attacked because of their position on abortion, to a person have said that they would follow the law, that they would put personal beliefs aside.

You choose a judge and what you ask of them over here is can you put your personal beliefs aside and make a judgment. That is what these folks have all said. Because they have those beliefs, the minority comes together and blocks them. What is the outcome?

This, I know, frustrates my friend from South Carolina and it frustrates me. We all look into the future. I campaigned and I wanted to be a charter member of the "Let's Get It Done Coalition." Let us figure out a way to solve problems.

The Senator from New Jersey is right. We have to get an energy bill through. I hope we get it through. We have to do something about prescription drugs. We have to do something about jobs, and something about medical malpractice. We should do something about class action. Those efforts are not going to be allowed to come to a vote. Those are the jobs bills. Let us get it done. Let us put the bickering and partisan stuff aside and figure out a way to get it done.

The problem we have as we look to the future is who is going to get confirmed. If anybody with deeply held views is going to be filibustered by one side, now the Democrats are in the minority, there may come a point in my time where my friend from South Carolina is sitting in the minority and a Democrat President may propose a judge, and I will say to the body that I intend to use the same standard with a Democrat President. Are judges qualified? Will they commit to uphold the Constitution? I will not support folks who will use the Constitution to create laws of their own beliefs. But if they agree to follow the Constitution and are qualified, then you support them. The President has that authority.

If you look at the history of the judiciary, it is kind of a balance. There have been Democrat Presidents and Republican Presidents going back over the last 12 years—8 years of Bill Clinton, 8 years of Reagan, 4 years of Bush, Jimmy Carter. There are about almost equal numbers of Democrats and the Republicans on the judiciary. It is balanced. What is happening here today is we are changing that balance. When we allow minorities to take hold, we change that balance. That is what happens.

In the future, you are going to get folks with strongly held beliefs and there may be a Ruth Bader Ginsburg, a liberal who went to my high school, James Madison in Brooklyn, NY. I disagree with some of her reasoning on decisions. She is a good judge. She is bright. She exercises her judgment. I don't think in this environment if the Democrats are in charge that Ruth Bader Ginsburg would be confirmed. That would be sad for America. The same would be true with Scalia and a number of members of the Court.

What are you going to get? The best and the brightest are going to be cast aside because they may have a strongly held belief, which is what you see in some of the nominees here because a minority says we don't want them to come forward. A minority then filibusters in a way again in contradiction to article II of the Constitution. That is why we are raising this. That is what we are talking about and doing something that has not been done in history.

It is interesting. In terms of the Constitution, it is very clear. The President has certain powers—unlike, by the way, in European countries and in contrast to monarchs who would simply make treaties. Leaders in Europe could make treaties. Our folks said, no. The President's power of making treaties is going to be contingent upon two-thirds of the Senate present and concurring. That is in the Constitution. We wanted to limit the powers of the President. When it came to appointment of judges, it is not two-thirds. Two-thirds is only for treaties. Very clearly there is a delineation.

For some reason to date, 214 years into our country's existence, the standard has been changing. That is an important thing. Jobs are important. As a former mayor, I have said 1,000 times the best welfare program is a job; the best housing program is a job; the best health care comes with jobs. Jobs are important. I understand that. What is interesting is my colleagues on the other side of the aisle are crying economic—by the way, never once mentioning 9/11. If you talk about what has happened to this economy, you have to talk about the impact of 9/11. You have got to talk about the recession that occurred before the President came into office. You have to talk about the impact of WorldCom and the impact of Enron.

The reality is now because of the policies, many of which this Congress passed, policies which cut taxes, which put money in the pockets of moms and dads which give businesses the incentives to invest, the economy is starting to move forward. The last numbers report 7.2 percent gross domestic product growth, and over 200,000 more jobs in the last couple of months. The number is revised upward. Business investment is moving forward, in part in large measure because of the tax cuts. Yet the other side of the aisle says we want to talk about jobs. I am looking forward to that debate. But it is all important. The judiciary is important. What we do with judges is important. In order for businesses to operate and for families to operate, you have to have a judiciary that works.

What is fascinating here—and I love that chart of 168 to 4. I love seeing that chart. When the other side puts up a chart showing 168 to 4, that is their argument. They keep coming back with the underlying supposition of, It is false. Their argument doesn't carry weight. Let us talk about 168 to 4. The real discussion here and what is going on here is the President of the United States has the power to appoint district court judges.

A little lesson, for those listening, a first impression in the Federal system: What happens when the district court judge issues an opinion, there is a review process. It is reviewed by the circuit courts. The courts of appeal level, by the way, is right below the Supreme Court, which is one of the things I think comes into play here.

When you pick judges who may be on the circuit court, what happens is they then became a candidate for the Supreme Court. That is the real deal. They are all the real deal. Being a judge on the court of appeals is an incredible honor. It is a higher court than the district court. What is happening is the President has had 29 circuit court judges confirmed. We as of tomorrow will have six who have been filibustered. There are more in the hopper. That is very clear from my colleagues on the other side of the aisle. They will be filibustered. Out of the circuit court, the other side is saying 168 to 4, and some judge like wearing pink shoes and green shoes—no. The difference between circuit and district court judges is not the color of their shoes. The difference between circuit court and district court judges is these judges are on a higher court. These are the judges who are right below the Supreme Court.

District court judges sit in a particular district. Circuit courts sit in a multistate area. They have a broader range and geographic jurisdiction. It is the higher court.

What has happened here is it is not 98 percent. Even 98 percent of the time, adherence to the Constitution is wrong. When we took our oath, when the distinguished Senator from Kansas took his oath, and the Senator from South Carolina took his oath on that floor, we swore to uphold the Constitution of the United States 100 percent. It wasn't qualifying.

I find it absolutely startling that folks take pride in upholding the Constitution 98 percent of the time. The first amendment, freedom of the press: If there are 172 newspapers in the country and 168 of them are going to have freedom of the press and not the other 4, they wouldn't be very happy and very American.

The reality here is we have 29 circuit court judges who have been approved and we have 12 who are being filibustered. I think we are talking around 30 percent, 25 or 30 percent. That is a big number. I believe that is the largest number certainly since World War II. I have to go back in the history books. That is wrong. That is the number here.

The other side keeps coming back saying 168 to 4; therefore, no problem. The problem is you can put up all the numbers you want, but the difference is not the difference, whether it is green shoes or pink shoes; these are courts of highest jurisdiction.

What has happened here and what is happening is unprecedented in 214 years of the history of this country. This hasn't happened.

All we are asking is for these 12 judges to simply have a vote. We are talking about a vote. A cloture vote tomorrow is not a vote on the judges. We are simply saying give—Miguel Estrada, by the way, withdrew.

My time may be coming to an end. I want to get back to talking about him—an immigrant, incredible record, education record, incredible performance record, a brilliant man, and withdraws.

Priscilla Owen, give her a vote. William Pryor and Pickering, give them a vote. If you do not support them, you vote them down. Your voice is heard. It is not about a rubberstamp. I am not asking my colleague, the Senator from New York, to vote for these folks. Vote them down. If you do not like Judge Brown, vote her down; Judge Kuhl, vote her down. Vote these folks down. But give them a vote. That is what the Constitution requires.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Searchlight, NV.

Mr. REID. Thank you, Mr. President.

First of all, I want to extend my appreciation—and I speak for the Senate, both Democrats and Republicans—to the staff which has been supporting us the last few days. People are working very long hours. The Capitol Police are working a 16-hour shift. Their shifts are very important. There are some people from all over the world who target the Capitol of the United States where we now stand. These men and women who guard us, protect us, make us secure, have to be vigilant. They are among the best trained police officers in the entire world. I extend appreciation from all Senators to them for the work they do, not only during the time in the past few days but all of the time—having been a Capitol policeman in the day when things were much more calm and deliberate than they are now.

I also extend the appreciation of all Senators to all the staff, Parliamentarians, clerks, the enrolling clerks, the court reporters—I don't think I have done that—and the pages. We have juniors in high school who are here tonight. I haven't mentioned everyone.

But my compliments go to everyone who supports this great institution. I am sorry they have had to work another night, but that is the way it is.

The reason you have seen all the charts on the other side of the aisle change is because this number Mr. SCHUMER talked about bothers them a lot. Now they have come up with judges who haven't even come before the Senate. They know only four have been turned down. But now they have the other thing, that there is going to be 12. Well, we might wait and see what is going to happen. Why don't we wait?

I say this: The 30 hours we have spent so far has been totally wasted. There isn't going to be a single vote changed. Nothing is going to change. This has been an effort to toss meat to the rightwing extremists. Many Senators—and I say many—certainly at least a dozen Republican Senators approached me and made different excuses and apologies for what is going on on the other side. They know this is very nonsenatorial. But we are involved in this and we are going to proceed in the best and most dignified way we can.

There is something else I would like to spend some time talking about tonight, and that is jobs.

Let us talk about what is happening in the last 30 hours. What has happened? We can start at a number of different places. During the last 30 hours, 2,833 Americans—men women, teenagers, old people, married, unmarried, grandparents—have been laid off. They have lost their jobs.

In America today, things are so difficult dealing with jobs. For the 2,833 Americans who have lost their jobs during the last 30 hours, the average time for them to find a good job will be 5 months. Five months, 2,833 Americans will wait an average of 5 months to find another job.

It seems to me it would be good for us rather than spending 30 hours plus on 4 people and not a single vote has been changed—4 people who have jobs, good jobs—that we would spend some time talking about how to create more jobs, thirty hours of debate here in the Senate about programs.

For example, I think what we should have is an infrastructure development program where the Federal Government is involved in putting out money so the contracts can be let in the private sector so companies can build roads, they can build dams, they can build bridges, they can do water systems, sewer plants. We could spend some time here debating where it should go and how much we should spend. We know for every $1 billion spent, we would create 47,000 jobs as compared to 2,833 Americans who have lost jobs in the last 30 hours—47,000 high-paying jobs. Of course, the spinoff from these jobs would be significant and magnificent.

As I indicated, 2,833 people have lost their jobs in the last 30 hours. The four people who have been dwelled on by the majority have jobs—good jobs. Who are the people who have lost their jobs? I have already talked about parents, single parents, families. It is really sad to understand that 2,833 people are going to have to wait on average 5 months to find another job.

During the last 30 hours, 8,698 people have lost their health insurance.

A man flew in from Arizona to meet with me today. He graduated from Utah State University where I did. He was a star football player at Utah State University. He is a big man physically and a big man emotionally. He flew back here because he is now a physician. He is terribly concerned about the 8,698 people who have lost their health insurance. He understands what it means for people to come to him and have no health insurance. He talked to me and my staff about what we can do about it. He felt so strongly about it that he came back and talked to me.

How does a mother feel, how does a father feel, who have children or no children, how do they feel going to bed at night recognizing if something happens to them or their family, they have no health insurance. What do they do? They do not get the treatment and care they need. They only go when something desperate has happened to them. An automobile accident, they go to the emergency room. Preventive care, forget about it. During the last 30 hours, 8,698 people have lost their health insurance. I think we should talk about that. We need to do something about that. There are 44 million Americans who have no health insurance.

In addition to 44 million people who have no health insurance, there are millions of people who are underinsured, meaning they have insurance but it isn't very good. That is what I talked about today among other things with my friend from Utah State University, a wonderful man, who is a young physician who cares about his community and his country.

We have 44 million Americans with no health insurance, and we are here, and we have been here for the last many hours talking about four people who not only have jobs but they have health insurance. Every one of the four have health insurance. And they have jobs.

What does it mean not to have a job? Does it take away someone's dignity? Does it cause divorce, dissension? Does it cause kids not to be able to go to school, to college? Of course it does. Does it cause crime? Of course it does. Does it cause our welfare rolls to go up? Of course it does.

But the 4, the 168 to 4, those 4 have jobs. They have health insurance. Why are we not here talking for 30 hours of constructive debate about doing something in this Nation about health insurance so people when they get sick can go to a doctor, people when they need preventive care can get it. In the long run it would save the country lots of money.

In the last 30 hours, the trade deficit of this country has gone up $300 million. In 30 hours, the trade deficit has gone up $300 million. What does that mean? It means we have bought more into this country and sold less outside our country to the tune of $300 million. That is not good.

I have heard my friend from North Dakota, Senator BYRON DORGAN, give lectures in this Senate about the need to do something about our trade policies because the trade deficit continues to rise, causing this country lots of problems. We are doing nothing about it. We have a trade deficit with China. They jiggle their money, and it is continuing. We are afraid to take that issue up here.

My friend, the distinguished Senator from New York, Mr. SCHUMER, has attempted on several occasions to bring forth an amendment to stop the Chinese from playing with the numbers so that the trade deficit continues. But we have been unable to do that. Why? Because we are talking about four people who have jobs, who have health insurance, and could care less about the trade deficit.

In the last 30 hours, focusing away from some problems that to some may not seem important—the trade deficit—we could talk about something that is real important. During the last 30 hours when we have been here talking about four people who have jobs, who have health insurance, and who have nothing to do directly with the trade deficit but are keeping us from talking about it, during that 30 hours the food stamp rolls in this country have gone up by 6,237. During the last 30 hours, 6,237 desperate people have signed up for food stamps saying, in effect: We are hungry. Government, will you help us buy food for our families? We have never done it before. But these are new people signing up for food stamps.

I could say without any qualms or reservations, the four people I have talked about here tonight and the majority has talked about here for a long time, they have not lost their jobs. They have not lost health insurance. They don't even have to consider food stamps. But wouldn't it be good for us as a nation to spend some time talking about food stamps?

I can remember when I was a new Senator, the great Senator Pat Moynihan—his chair was right back there. There was a vote going on about the homeless. Senator Moynihan said to me: We have helped create the homeless by Federal policies where we have, in effect, emptied out our mental institutions, but we have done nothing to have community health centers. A lot of the people who are homeless are people who need medical attention.

Well, food stamps, we need to do something about that.

About poor people, in America today, as sad as it seems, the rich are getting richer. The rich are doing fine. The wealthy are doing fine. The elite of America are doing great. The poor are doing real bad. The middle class is narrowing all the time. We need as a nation to figure something out to do something about that. We don't want to live in America like many countries where you have the rich and the poor and no middle class. Why don't we spend 30 hours doing that? Not spending 30 hours talking about four people who are well educated, have jobs, have health insurance, are not on food stamps.

During the last 30 hours, when we have been here in the Senate talking about these four people, we have had in America 36 mass layoffs. Employers have had 36 experiences where they said: We have to lay off more than 50 people. A mass layoff, by Department of Labor standards, is more than 50 people. During the last 30 hours, we have had 36 of those.

Why are we having so much trouble in America today keeping people working? Why is it taking so long for people who lose a job to find a job? I would think this Nation would be better served talking about jobs, not about four people who have jobs, who have health insurance, who are not on food stamps, who have not been part of a mass layoff in the last 30 hours.

On this Senate floor, during these last 30 hours, there have been seven attempts by the minority to extend unemployment benefits for people whose unemployment benefits have run out. Is that important? During the last 30 hours, while we have been here talking about four people who have jobs, who have health insurance, who are not on food stamps, who have not been part of mass layoffs, 13,194 people have had their unemployment benefits run out. The people who have lost unemployment benefits are real. These are not statistics that somebody made up.

Let me read to you a letter I received from a woman in Las Vegas, NV. We will just call her Margo. I won't give her full name. She writes, October 10, 2003:

> Dear Senator Reid:
>
> On July 2, 2003 I became a displaced airline worker after 38 years as a TWA (now American Airlines) Flight Attendant. As a result of union concessions given to American Airlines, I received no severance pay.
>
> My Unemployment Benefits will expire on January 2, 2004.
>
> Congress has passed new legislation which made December 28, 2003 the cut-off day for Temporary Extended Unemployment Compensation. After that date, there will be no more extensions. I will miss the deadline for Extended Unemployment Benefits by 5 days.
>
> I am a single woman and a sole supporter. I have no skills applicable to this difficult job market and my age makes an already bad job market even more limited. It will take time to learn skills and find a suitable job. Extended Unemployment Benefits will be needed for my very survival.
>
> I ask you—

She has it in bold type—

> to please support S1708—

The one we have tried to move seven times to the floor in the last 2 days, objected to by the majority—

> which will extend the TEUC [benefits] and provide additional Unemployment Benefits to those who cannot find jobs.

This is a real person. This is not someone who is made up. This is descriptive of the 13,194 people who, during the last 30 hours, have lost their unemployment benefits. That is sad.

I have another letter here from another woman. I will read the last paragraph:

> I am not writing this letter to get a hand out or sympathy. For every job that is open, 50 people apply. I have faith in God that he has a perfect job for me and that he will provide for us.

I ask unanimous consent that these two letters be printed in the Record, and with the permission of the Chair, I would ask the clerk to block off the names because I have not spoken to them for permission to make their names public.

There being no objection, the letters were ordered to be printed in the Record, as follows:

July 31, 2003.

To: President George W. Bush, Congressman John Gibbons, Senator Harry Reid.

Re unemployment benefits.

Gentlemen: I really don't expect that any of you will actually read this letter. It will probably go to an aide and if I am lucky I may get a response. So why I am writing this letter? Because there are many other people in this country who are unemployed and have run out of unemployment benefits. Man people like me, feel that writing a letter like this is a waste of time. Many have no hope, but I believe that one person's voice can make a difference.

I live in a small community in Northern Nevada. There are at least 50 people applying for every job opening. We have thought about moving to other cities, but the job market is tight every where. My husband is disabled and receives a small social security check each month. It pays all but $15 of our first mortgage on our house. I have to supply the money to pay a second mortgage and all of our living expenses. Three years ago we had to file for bankruptcy. With a job and a new start we have been rebuilding our credit, but have not been able to refinance our home.

In December of 2001 I had to quit my job. I quit for cause. My doctor wrote a letter and I was eligible for unemployment benefits. Less than 6 months after I left that company, the position that I had held for 6 years was eliminated company wide. Some people moved up into management, but many were laid off. It took me five and a half months to find a job. My training and experience has mostly been in the accounting field. I took a job as an outside sales rep. for an office supply company, because that was what was available. The job lasted 8 months. Then the company that I was working for updated their computer system to make it easier to purchase items off an internet web site. As a result they laid off some sales people including me.

Here in lies the problem. Because I was on unemployment from January to June 2002 it affected my base period for benefits. When I got laid off on March 2003 I was only eligible for 13 weeks of unemployment benefits not the full 26 weeks. My lack of employment in the base period was not by choice. I was on unemployment, but because I was on unemployment and had no job earnings it shortened the amount of weeks that I was eligible for benefits. When I applied for the federal extension the same thing happened. I was eligible for 7 weeks not 13 weeks. I have sent out hundreds of resumes with little response.

I am not writing this letter to get a hand out or sympathy. I have faith in God that He has the perfect job for me and that He will provide for us. There are many thousands of people who do not have this hope. They have been laid off multiple times, and were eligible for little or no benefits. I have friends that were laid off over a year ago and are still trying to find work. Unemployment should not be a free ride. There has to be a limit on benefits or it would turn into another welfare situation. People would get on it and have no incentive to better themselves and get off it. But the way the current system is setup, it paralyzes people who have been laid off multiple times over several years. All I am asking is that people, who are truly trying to find work, get a fair chance to provide for their families while they seek employment. I would work a part-time job or 2 part-time jobs in lieu of a full-time job if I could find them. So the solution is two fold. Get the economy going so that people like me can find a decent paying job or jobs. And revise the current system so as not to penalize people who have already gone through one or more layoffs in a short period of time.

Gentlemen, this is the greatest country in the world. The middle class needs a break. I don't want a free ride. I just want a job or jobs that will supply the basic needs for our family.

October 10, 2003.

Hon. Harry Reid,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Dear Senator Reid: On July 2, 2003 I became a displaced airline worker after 38 years as a TWA (now American Airlines) Flight Attendant. As a result of union concessions given to American Airlines prior to my furlough, I received no severance pay.

My Unemployment Benefits will expire on January 2, 2004.

Congress has passed new legislation which made December 28, 2003 the cut-off date for Temporary Extended Unemployment Compensation (TEUC). After that date, there will be no more TEUC extensions. I will miss the deadline for Extended Unemployment Benefits by 5 days.

I am a single woman and sole supporter. I have no skills applicable to this difficult job market and my age makes an already bad job market even more limited. It will take time to learn skills and find a suitable job. Extended Unemployment Benefits will be needed for my very survival.

I ASK YOU TO PLEASE SUPPORT SENATE BILL S. 1708 which will extend the TEUC bill and provide additional Unemployment Benefits to those of us who cannot find jobs.

Thank you for your consideration in this matter.

Respectfully submitted.

Mr. REID. I would also say that this woman says she would take two jobs at minimum wage just to make things work. She has a husband who is disabled. That is what this is all about.

We know that during the last 30 hours people in America have had some problems. Two thousand eight hundred thirty-three people have lost their jobs; 8,698 have lost health insurance; food stamps increased by 6,237; the trade deficit has gone up $300 million; 36 mass layoffs, 13,194 people lost their unemployment.

During the last 30 hours, we have 65,357 people who applied for unemployment benefits for the first time. We have had, during this 30 hours, desperate people; 5,137 people have filed for bankruptcy.

I did general practice. I have had interviews with people who told me they had no choice but to file bankruptcy. Usually it is some problem with medical expenses, but these people are desperate. We don't have a bunch of deadbeats out there. We don't have 5,137 deadbeats. We have 5,137 desperate people.

What are we talking about here? Not doing something about the bankruptcy law when we came that close to passing it. There was one provision in it that because of the ideology of certain people it didn't pass. We came so close to reforming the bankruptcy law which would have helped a lot of these people. We should spend some time on bankruptcy.

I have talked to the distinguished senior Senator from Iowa on many occasions about the need to do something about this. And by the way, he is a Republican. We need to do something about it. But what are we doing? Spending 30 hours talking about people who have jobs. They have not lost their health insurance. They are not drawing food stamps. They have not been part of mass layoffs. They have certainly not lost their unemployment. They have not had to file for unemployment benefits for the first time, and they have not had to file for bankruptcy.

During the last 30 hours, to get real personal about this, 80 people have committed suicide. While we have been here talking about these 4 people, 80 people in America have killed themselves. These are real people. The distinguished junior Senator from Oregon lost a 22-year-old son about 2 months ago as a result of suicide. In this Senate Chamber, there are lots of people who have suffered as a result of suicide. My father killed himself.

We need to learn more about suicide. More than 31,000 people in America a year kill themselves. We don't know why. It is one of the leading causes of death for teenagers. Why are we spending time on these four people? Why couldn't we spend 30 hours trying to find out why people kill themselves? We don't know. And we, as a Congress, have trouble even having a hearing on it. The first hearing on this was held less than 10 years ago. We have done a little since then but not very much. There are desperate people out there trying to decide are they going to kill themselves today.

I met up here in my office today with a prominent person, a prominent name in Washington, DC. She proceeded to tell me when she was 17 years old she tried to kill herself. She took a lot of pills. She described to me how she believed she went to the other side and came back. This isn't some nut. This is a good friend, someone who a lot of people know, a wonderful person. We need to learn more about suicide. But we are not going to do it talking about these four people, these four people who have jobs, who have health insurance, who are not on food stamps, who have not been part of mass layoffs, who have not filed for unemployment benefits or bankruptcy.

During the last 30 hours—and this is very difficult to comprehend—during the last 30 hours, 10,000 people have died in Africa because of AIDS; 10,000 people in 30 hours have died in one continent because of AIDS; 70,000 people in a week. There are no vacations. Christmastime, Thanksgiving, Easter, it doesn't matter, they keep dying. What about a debate for 30 hours recognizing what we can do to approach the needs of this worldwide problem which has an affect on America?

During the last 30 hours, Nasiriyah, Iraq, a suicide bomber, 31 killed; during the last 30 hours in Baghdad, Iraq, 2 of the 1st Armored Division killed; during the last 30 hours in Iraq, 37 attacks by terrorists, many of our troops not dead but injured; during the last 30 hours, seven funerals of American servicemen killed in a helicopter downing in Iraq, seven funerals.

I understand how strongly people feel about these four people. I know how strongly people feel about this. But as I said yesterday, I don't in any way suggest we are wrong. I believe as strongly as I can that we have done the best thing for America in turning down these people who would be bad for the judiciary.

I have been to juries lots of times. I have tried over 100 cases with juries. I have the greatest respect for our justice system. I have tremendous respect for judges who try cases themselves. But I also have some idea in my own mind, having been a trial lawyer, how important it is to have good people on the bench, especially the Federal bench. These are appointments for life. I think no matter how strongly people feel about this issue, and assuming for purposes of this discussion that we are wrong, which I disagree, but let's assume for purposes of discussion, don't you think we have carried this thing a little too far? Don't you think the same points could be made?

I have tremendous respect for my friend from South Carolina. I sat right here, just like this, scared to death 5 years ago. It was the first time I had ever sat this close, first time I ever had the job as the assistant leader of the Democrats. I was afraid to be here. The first big thing was the impeachment trial of the President of the United States. The Senator from South Carolina was one of the managers. He is a fine lawyer. I have great respect for him. He is a man of courage. He breaks from his party on occasion. I admire him for that.

But I say to my friend, I think we have made our points. I mean, you make a good case. But for Heaven's sake, everything has been said by your side, and everybody has said it. On our side, I think everything has been said, and everybody has said it.

Enough is enough. I think during the last 30 hours we could have been discussing issues that are more important, such as jobs, not the four people who have jobs, who have health insurance, who have not had to go on food stamps, who have not been part of mass layoffs. They have not lost unemployment benefits. They haven't had to file bankruptcy. There are just so many problems we need to deal with that we have not done because of these 30 hours.

I say to my friends, we have had an equal discussion. I think that is good, that the two leaders worked that out, because it could have been a real nasty situation here without allocating the time in a balanced fashion. Maybe history books will look at this as something that has been important to the country. I hope so. But I have my doubts.

I think the more important issues are not those dealing with these four people. The more important issues are those dealing with the personal lives of other than those four people.

I would ask that we recognize that. I know the content of the character of the Senator from South Carolina who is leading the debate on the other side. I know he will lead a civil debate. I appreciate that. But I just say: Why don't we all just wrap it up and go home. Come back and vote at 8:30. That is what the schedule is anyway. I think that would be better for the whole body.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. REID. Whatever time we have remaining, I yield to the majority.

The PRESIDING OFFICER. Time is yielded back from the minority side. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I have great respect for the Senator from Nevada and the deep concerns he has for a range of problems and concerns that he talked about. They are real. We are talking about more than just four people. We have to recognize that. It is not just about four people. For people who were confirmed and should be confirmed as court of appeals judges, we will have a tremendous impact on the lives of the folks about whom the Senator from Nevada was talking. That is what the courts do. It is not a personal thing. This is not a measure of whether these nominees have jobs, don't have jobs. It doesn't take away from anyone else. This is about the third leg of the stool of Government: legislative branch, we are part of that; executive branch; and judicial. Those are the three legs of the stool that uphold the system we have.

It is not about four people. The Senator is right. There are so many important issues to talk about, such as AIDS. I came back from a trip to Africa with the majority leader and a group of my colleagues. We saw the devastation and destruction. We were in South Africa where 5 million people are HIV positive, and 20,000 of them on treatment. We looked into the eyes of people who were dying and into the eyes of the doctors treating them. We are doing stuff about that; we are acting. We passed in this body a bill that provides over $2 billion—$2.4 billion, and you add in our commitment to the global fund. The President made a commitment of $15 billion, which is unprecedented, and overwhelmingly we are acting on it.

It is not enough to simply lay out a litany of problems. Maybe I am more of an optimist and a realist. My favorite quote is from the first Prime Minister to serve Israel, who said that anybody who doesn't believe in miracles is a realist. Goodness gracious, the world is not falling apart. There is a lot of hope and optimism. It is not just enough to talk about problems, as my colleagues on the other side of the aisle do. We can talk about the economy and jobs. What are you doing about it? That is the question. What is the plan? Their plan has been to roll back the President's tax cut. That is what their nominees for President are talking about—rolling back the tax breaks we are giving to moms and dads, that we are giving to small business, accelerating depreciation, increasing the opportunity to expense capital investment to generate more investment. The latest survey shows that business investment is up by 15 percent. So it is not simply to lay out a litany of woes, how terrible the world is. What are you going to do about it?

That is what my colleague from South Carolina and I talked about in our campaigns. We want to do something about it. It is not enough to lay out just how the sky is falling and how the world is falling apart. We are trying to do things here.

We will have time to debate the economy. We have debated it, and we passed the third largest tax cut in the history of this country. And what do you see? The GDP is estimated at 7.2 percent, down in the third quarter of 2003. Employment increased by 126,000 in October, while the number of jobs added in September was revised to 125,000 from the previous estimate of 57,000. The unemployment rate decreased from 6.1 percent in September to 6 percent. It is still too high but it is decreasing. There is a downward trend in jobless claims. The stock market, on November 3, jumped to a new 17-month high. We have trillions of dollars of new investment in this economy.

The tax cuts we passed here, which were opposed by our friends across the aisle, are responsible for the accelerated growth in opportunity. Spending by businesses grew at an annual rate of 11.1 percent in the third quarter, following an impressive 7.3-percent gain in the second quarter. Again, these are things we have done that have encouraged investment and, in the end, generated opportunity and are generating jobs. That is what it is all about. We have a ways to go, absolutely. But it is not enough just to lay out the litany of how terrible things are. What are you going to do about it? One of the things we do about it is why this debate is important—it is to make sure we have a strong Government, that we have a strong judiciary. That is what this is about.

The fact is, when the President of the United States has 30 percent of his circuit court judges and court of appeals judges filibustered, it is unprecedented in 214 years of the history of this country, and it is wrong. The fact is, we should talk about upholding the Constitution.

I am a former solicitor general in Minnesota. I had the opportunity to argue before the highest court of my State many times. I have great love and appreciation for its constitution and history, and it is important. To the person who is unemployed and is getting a job, that is important.

I say to that person that I am committed to doing everything I can, with every breath that I have, to make sure you have opportunity. I am going to do that. At the same time, we have the ability to do more than one thing at a time in this body. I can tell you, we are debating at 1 in the morning, but to those listening, I hope this is an educational experience.

Let's talk about the Constitution now. By the way, to my friends across the aisle, I noted his conversation with the doctor from Utah State, that he was concerned about health insurance, as he should be. One of the keys to getting health insurance is jobs, small business. The things that we have done to generate new investment and grow jobs, that helps people get health insurance. I ask my colleague, the distinguished minority leader, assistant minority leader, whether the doctor talked to him about medical malpractice, whether he talked to him about the impact that medical malpractice has on his ability to practice and to provide quality health care. The cost of that, by the way, on businesses makes it more difficult for them to grow jobs. That is another issue that was filibustered by our friends across the aisle.

I think we came within a vote or two on class actions—within a vote of changing that. The fact is, it is not enough just to talk about it. So it is important to talk about the Constitution. That is what we are going to do.

The fact is that all of us, when we got sworn in, raised our hands and swore to uphold it. The Congressional Oath of Office is: I solemnly swear that I will support and defend the Constitution of the United State against all enemies, foreign or domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely, without any mental reservation or purpose of evasion and that I will well and faithfully discharge the duties of the office upon which I am about to enter, so help me God.

That is a pretty strong commitment. It is not a partial commitment. It is not a 98-percent commitment, and it sure as heck isn't a 70-percent commitment. That is what we are dealing with today. My colleagues seem proud of that. You are even using the 98-percent figure.

Again, the reality is we are dealing with circuit court judges, and close to 30 percent have not been confirmed and have been filibustered. The fact is that right now it is four but tomorrow it will be six. We know the other six are there. Unless my friends from across the aisle would say we are not going to filibuster another six, I will run the names by them. We will change the chart and say something different. We all know the reality. Let's lay it out here at 1:10 in the morning.

Twenty-nine nominees were confirmed and 12 were not. Just think, if we took the approach that it is not important, you know, 98 percent—as I said before on the floor, if the airline that got me to St. Paul told me that I had a 98-percent chance of getting there and a 2-percent chance I would crash, I would not be flying.

The Constitution is wonderful. The first amendment says:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peacably assemble, and to petition the Government for a redress of grievance.

I want those listening to think why is it that in the 214 years of the history of this great Republic, this great country, the Senate has not done what we are doing now. We are changing the system. It is very dangerous.

The second amendment says:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, not be infringed.

Minnesotans are pretty strong about the second amendment. We like to hunt and we like our firearms. That is OK. Imagine if I went to a group of 172 using my colleagues' chart and said 168 of you are going to have the second amendment, or if I went to 41 and said we are going to give these rights to 29 of you. There would be a revolution.

The third amendment says:

> No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Can you imagine if I went to 41 Minnesotans and said 29 of you are going to have a third amendment right, but 12 may be forced to quarter without your consent. I don't think they would do it. They would say, where is America? There is a reason why we have fidelity to the Constitution.

The fourth amendment says:

> The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.

Can you imagine going to 41 Minnesotans and saying 29 of you will have the right not to be subjected to unreasonable search and seizure but 12 of you don't have that right? There would be a revolution. On and on.

The fifth amendment talks about the right against self-incrimination.

The sixth amendment says:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Can you imagine if out of 41 defendants, 29 were told you would have a right to speedy trial? Even if you told 168 they would have that right, but not the other 4, there would be a revolution.

We are not just talking about four individuals here. We are talking about one of the foundations and the underpinnings of this Government.

I tell the young people listening in the Chamber, this is your future. The greatness of this country is built on its fidelity to the constitutional principles. It has allowed us to kind of grow into the greatest nation in the world with the freedoms we enjoy, and those freedoms we have enjoyed have triggered great entrepreneurial opportunity—growing jobs. It is tied together and it is about growing jobs.

You grow jobs when you have a constitution that is adhered to and you have stability. I am chairman of a subcommitte of the Foreign Relations Committee on which we both serve. I can tell you that the concerns I have about some of the countries in Latin America have to do with whether they have rule of law. The reality is, if there is no rule of law, we see there is no investment, you don't grow jobs. So they are related. They are related.

In the end, I want to get away from just talking about the principles, these sorts of abstract constitutional principles. They are important and that is why we are here, because we must have fidelity there. We have to get things back in sync. We have to get away from this process, this unprecedented filibuster. By the way, those are not my words. Those are the words, as I understand it, of JOHN CORZINE, the chairman of the Democratic Senatorial Campaign Committee. In an e-mail he had—we have a chart here—it says:

> Senate Democrats have launched an unprecedented effort by mounting filibusters against the Bush administration's most radical nominees. Senate Democrats have led the effort to save our courts.

Unprecedented filibuster, that is what this is about. There has to be a better way. This is about being divisive. We have to get away from divisiveness, from everything being a battle. We have to get back to a fidelity to the principles that founded this great country. They are pretty clear. You don't need a Ph.D. or a law degree to understand the Constitution. It is pretty clear, pretty easy reading.

So that is what this is about today. In the end, it is not simply about four people; it is not about whether they have a job. It is whether, in fact, we uphold the obligation that we have, that we do our duty, that we do our job. In the end, we should simply give people a vote. If you think that they are good nominees, vote for them. If you think they are bad nominees, vote against them. But you give them a vote. That is what we have done for over 200 years. To fail to do that will have terrible consequences.

One last story before I turn the floor over to my colleague from South Carolina. It is about this building and a little bit of history from a number of years ago. There is an old Senate Chamber down the hall. When you walk out of here, it is maybe about 50 yards away. When we get sworn in in here in the official ceremony, we then have a ceremonial picture taking with the Vice President. It is a very special moment for all of us, especially for kids from humble roots. I am one of 8 kids, and to have my mom and dad there was very special.

In that old Senate Chamber, in the old days the Supreme Court actually operated on the floor above the Senate. At one time, they were planning on remodeling the Supreme Court chambers. Some enterprising young architect decided that one of the pillars that was kind of holding it up didn't need to be there. So they said don't worry about that. What happened was that the Supreme Court crashed into the Senate, disrupting its work.

There is a moral to that story. If you displace or undermine one of the pillars of Government, which is what we are doing here, beware of the consequences. We cannot let that happen. These nominees—100 percent of them—deserve what we have done for 214 years: give them a vote, vote them up, vote them down, but give them a vote.

With that, I yield the floor to my colleague from South Carolina.

Mr. GRAHAM. I thank the Senator. The Senator did an excellent job of trying to put into perspective what we are trying to do. Senator REID from Nevada has left. If anybody deserves a break, he does. A couple of days ago, he spent about 8 hours-plus on the floor trying to prevent some legislation from coming forward that he thought was inappropriate. He was committed to making sure that the activity of the Senate did not go forward. He used his right as a Senator to speak. I applaud him for that. I don't agree with him, but the worst thing I think I can say about Senator REID is that sometimes I disagree with him. He is a very nice man. I have enjoyed getting to know him over the years and serving with him. I appreciate the nice things he said about me.

The point is that we disagree on this, and I don't question his motivation. I just question the judgment of what we are doing here. He described the United States problems in very graphic terms. God knows we have problems in this country, but I think it was used to try to illustrate or trivialize what we are doing tonight. If we have all these problems, why are we talking about this? I don't think it is healthy to trivialize the constitutional process of nominating judges. Whatever problems we have in this country—and there are a lot of them—none are going to be made better by hijacking the Constitution. If you expect us to just lay down and forget about it, then you have mistaken who we are. If you feel strong enough to stand up for 8 hours to stop something from happening, God bless you; if you think other people are not going to do the same, you have made a huge mistake. We are going to talk until 9 o'clock and do other things.

I announced today that if this doesn't change, I am going to ask the Supreme Court to decide whether or not the tactics of the minority have violated the Constitution, because I believe they have. If you are into numbers, I can tell you this. In the past 11 Presidents, on their judicial nominees confirmed versus those filibustered, we have had 2,372 people confirmed. We have not had one person filibustered. Now we have 4, and in just a couple weeks we are going to have a dozen. Some things were said. If nothing changes, nothing will change.

I can stand here, talk until I am blue in the face, and I have no illusions about my ability to change anybody's vote on the other side. I feel a real need to let history know, and my constituents back in South Carolina know, I think this is a lousy thing that is going on. I think this is a change for the worse, that you are taking the country down a road no other group has ever taken it in the Senate. You are doing it for political reasons you believe are just, but I think history is going to judge you poorly. I think it is going to be one of the darkest chapters in the history of the Senate. You have started something you can't stop, and most likely we will answer in kind down the road and you have taken 200 years of history and thrown it in a ditch. That is a big deal.

There are a lot of problems in this country, but you are about to create one that is very bad. You are adding to that list of problems the fact the Constitution has been changed in a way I think is illegal. Certainly it violates the traditions of the Senate. And we have to deal with it and we are going to deal with it. We are going to talk about it and we are going to try to get you to vote and we are not going to let this go.

I am going to ask the Supreme Court to look at this case that is going on before the Senate and see if the filibuster, requiring 60 votes, violates the terms of the Constitution because the Constitution requires a simple majority vote to confirm a judge sent over by the President.

Since we are going to have about 8 hours, I will save some of the time to talk about the history of the constitutional debate that went into that clause, why they picked a majority versus a two-thirds requirement that you have for ratifying treaties and impeaching the President. There is absolutely a rhyme and a reason for everything in this document.

There is no rhyme or reason for what is going on now, other than politics of the moment.

If you listen to Senator REID, you would want to leave the country. I mean it is an assessment of the problems of the country, given to try to trivialize our objection to the Constitution being changed in an improper way. But it also is a distortion of who we are as Americans, because Americans, given all of our problems, are still the most hopeful people in the world. After listening to this rendition you would just wonder why everybody is not moving to Canada or Mexico.

We are not leaving the country. Other people are trying to get into our country. One of the biggest problems we have that he did not talk about is illegal immigration. People are literally risking their lives to get to be part of the American dream.

I would rather focus on some of the positive aspects of our country, one of them being a courtroom available to everybody and anybody, regardless of your status in life, where you can go have your day in court, and that requires a judge. Judges are picked by the President and confirmed by the Senate. The advice and consent clause for the Senate has never meant a minority telling the President what to do. It has always meant a vote on the nominee with a majority being required to put you on the bench, until now.

Let's talk a little bit about some of these people, the four names. But there are many more affected by this than just four. This is the America I like to talk about, and relish.

Justice Brown: Janice Rogers Brown is one of the four who is being filibustered. She sits on the California Supreme Court. Senator SCHUMER said she is out of the mainstream. She is not of the temperament and the thought process, in his opinion, that makes her a mainstream person, so she would do harm to the country if she served as a judge.

President Bush disagrees with Senator SCHUMER because he chose her to go on the court of appeals. Senator SCHUMER has an obligation under the Constitution to give his advice and give his consent and eventually vote. He doesn't have the right, in my opinion, to band together with 39 other Senators and bring us to a screeching halt. No one has ever done that before. It is called a filibuster. The number of filibusters in the last 11 Presidencies is zero up until now.

Let me tell you a little bit about Justice Brown. No. 1, she lives in California and she got 76 percent of the vote. In California you get to vote on a judge. You get to decide. You, as a citizen, get to vote to retain a judge once they become a judge. You actually get to express yourself. I am going to go out on a limb here and say no rightwing nut is going to get 76 percent of the vote in California. I am going to stand firmly behind that statement. I don't believe 76 percent of the electorate in California would vote for somebody described as Senator SCHUMER has described this lady. I believe 76 percent of the people in California see Judge Brown like the President sees Judge Brown. This whole argument that she is somehow out of the mainstream just does not pass the smell test because the people of California get to vote on Justice Brown.

We finally got a Republican Governor of California. Arnold is an interesting figure, Governor Schwartzenegger is a larger-than-life figure—literally. But I don't think anybody would ever accuse him of being a rightwing nut. California's political makeup is such that the person described by Senator SCHUMER would never, ever make it. This is just one example of the cut-and-paste job on all four of these judges, with more to follow.

Let's talk about the America she came from. Only in this country can you do what Senator COLEMAN and myself have done. I grew up in a pool hall restaurant—beer joint is probably a more accurate term—and made it to the Senate. I am very proud of my parents. They worked hard. They are small business people. I feel I am the luckiest person in the world.

She is the daughter of a sharecropper. She was not born in California; she was born in Greenville, AL in 1949. She attended segregated schools. I attended segregated schools up until I was in the sixth grade. I was born in 1955.

I can remember, I think it was the sixth grade—about 1967, somewhere along that period of time—showing up and for the first time in my life having African-American students attend my class. It all worked well back home where I lived. In other parts of the State it was more dramatic. In Alabama it was more dramatic. This is the State where George Wallace stood in front of the door of the University of Alabama and said, No, you are not coming here if you are an African American. It took the Alabama National Guard, federalized by President Kennedy, to open that door.

That is where she grew up. She talked about listening to her grandmother's stories about the NAACP lawyer Fred Gray, who defended Dr. Martin Luther King, Jr., and Rosa Parks, and her experiences as a child of the South, and that motivated her to become a lawyer.

Senator SCHUMER said she is not very good on affirmative action. Maybe her view of affirmative action is not what Senator SCHUMER's view is, but I would argue if she was somehow in the right ditch on affirmative action, 76 percent of the people in California wouldn't have voted for her and somebody would have informed them otherwise.

This lady's story is compelling. She moved to Sacramento when she was a teenager. She got a BA in economics from California State in Sacramento in 1974, her J.D. from the UCLA School of Law in 1977. She received an honorary doctor of law degree from Pepperdine University Law School, Catholic University of America School of Law, and Southwestern University School of law.

Prior to more than 8 years as judge in the State courts, she served from 1991 to 1994 as the legal affairs secretary to California Governor Pete Wilson, another known rightwing crazy person, where she provided legal advice on litigation, legislation, and policy matters. From 1987 to 1990 she served as deputy secretary and general counsel for the California Business, Transportation and Housing Agency, where she supervised the State banking, real estate, corporations, thrift, and insurance departments.

She was deputy attorney general in the Office of the California Attorney

General. She began her career as a legislative counsel of the California legislature and more will come about Justice Brown.

The PRESIDING OFFICER. The time of the majority has expired. Who yields time? The Senator from Minnesota.

Mr. DAYTON. Mr. President, I was on the floor the second time yesterday, 4 or 5 in the afternoon. I observed, then, the time we devoted to this had already become excessive as indicated by the fact the statements being mailed were becoming increasingly repetitive and redundant. Now I see the added problem is, as we go even further, they become less and less factually correct and reliable, which is bad enough under normal circumstances. But the accusations that are being made are the most serious accusations that can be directed toward another Senator.

One point of factual agreement is we all do take an oath of office when we are sworn in here in this Chamber by the Vice President of the United States and we do swear to uphold the Constitution of the United States. When I took that oath 3 years ago, that was the most solemn oath I have taken in my lifetime. There is nothing I ever committed to that I take more seriously, and I do my best, as I can possibly see to do so, to uphold that. I have never had occasion in my almost 3 years here to question or certainly not to cast aspersions on any other Member for failing to uphold that solemn oath as he or she believes it is best performed.

We have information available to us through the Library of Congress and the Congressional Research Service that has been in existence since just about the time the country began. We use it as a learned and nonpartisan and, as much as possible, nonbiased source of information about the 216-year history of this body. It is not hard to get this information. You just pick up the phone and call and ask to get it. So I did the other day.

They list the chronological history of efforts to limit debate in the Senate. It goes back to the Journals of the Constitutional Congress in 1778. It references the very first session of the Senate in 1789, which started adopting these rules of various sorts. You can read, and over and over in the summaries, I am sure you can go back to the Journals and read in greater detail, how this has been discussed, considered, debated, argued, voted upon, modified, turned down by Members of this body for 216 years.

When people are accusing us of acting outside the rules and the procedures of this body in doing what has been done here and debated about here for all that time, they either are woefully ignorant of the facts or they know the facts and they are being, I think, extremely irresponsible to the American people, if they have the misfortune to be watching this at this hour, to lead them to believe we are doing something here which is anything other than our right, well established in 216 years.

If the Members on the other side want to disagree with what we are doing, or why we are doing it, or who we are doing it for or against, they are perfectly within their rights to do so. But to say we are violating the rules of this body is not true. To say we are violating the Constitution of the United States is a heinous fault and I will go with the Senator from South Carolina, I will join with him going to the courts of this country, right up to the Supreme Court and let's get the ruling he wants. Because I guarantee what it will be. Courts have ruled for the last 216 years the House and the Senate have the right under the Constitution to establish their own rules. That is what we have done. That is what this book is about.

This book is 1,524 pages, called "Senate Procedure." These are all the precedents and changes in the rules and modifications and the like. It only goes up to about 1992 because over the last 11 years the chief Parliamentarian, who is the editor of this book, hasn't had the time to add to it. There are probably another 500 pages or whatever that have not been added to this that are all the different precedents, all the different changes. Any time any one of us thinks anybody else here is acting in violation of those, we have somebody right there. Every minute we are in session we have somebody we can ask and get a factual answer, an impartial and nonpartisan answer, and that is the Parliamentarian.

I ask the Parliamentarian if anything in these books for 216 years precludes our right to do what we are doing and if it is not within the rules of this body. I think it is shameful that anybody states otherwise.

One important rule, in 1902, was adopted. Rule XIX was amended by inserting at the beginning of clause No. 2 the following:

> No Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

I can't think of any imputing of any conduct or motive more unworthy to a United States Senator than the violation of the U.S. Constitution, violation of the Constitution that we each took the oath of office to uphold. To do so without basis in fact is just beyond the pale.

The Senator from Mississippi, the chairman from Mississippi, earlier today said he had his disagreements, he thought we should review these matters in the Rules Committee. I laud him for saying so. He doesn't have to agree with what we are doing. He has every right to disagree and he has every right as the chairman of the committee to go through that process and I welcome the opportunity for him to bring in constitutional scholars, the Congressional Research Service, the Library of Congress authorities, and go through all this and consider other questions about whether the minority should be able to hold up the nominations of some 60 nominees of a President of the other party when they are in the majority; as the Senator from Florida suggested, whether these should be lifetime appointments. By the time he passed away, Thomas Jefferson was opining that they should not be, to the Federal judiciary.

Let's get the facts. Let's ask the Library of Congress, the Congressional Research Service, to tell us if this is wrong. It's on their stationery that up until 1917, when the Senate first adopted a cloture rule, until 1949, I read directly:

> . . . cloture could be moved only on legislative measures and nominations could not be subjected to cloture attempts.

But then the Senate rule was changed, by the Senate. Following the rules and procedures of Senate they changed it so these steps could be taken with regard to nominations.

I am on page 3, reading again exactly:

> Even after Senate rules began to permit cloture on nominations, cloture was sought not until 1968 on a motion to proceed to consider the nomination of Justice Abe Fortas which was debated at length.

Moving ahead:

> Cloture was sought on no other nomination until 1980. Subsequent to 1980, of the 12 nominations on which cloture occurred during the 103d Congress, ten were for executive branch positions except in that Congress most nominations on which cloture had been sought have been to judicial positions.

They have a table which says between 1967 and 2002 on judicial nominations cloture was invoked by the Senate 11 times; cloture was not invoked 6 times. Executive branch nominations, cloture was invoked 10 times, not 8 times.

It is pretty easy to get this information. If somebody thinks they are just making it up, they are wrong. They should make that case. But otherwise people are making up misrepresentations and misinformation. It is outright false. They are doing a great disservice to this body and to the credibility we all strive to maintain.

One of our predecessors from Minnesota, a man I worked for back in 1975 as a legislative aide, Walter Mondale, former attorney general of Minnesota, served for 11 years as a Senator. He said one of his proudest accomplishments was modifying the procedures under rule XX from two-thirds to three-fifths of Senators. On behalf of the change, Senator Mondale said at the time as sponsor of this resolution the proposal was a reasonable accommodation of the right to debate and the right to decide. We believe this might be harmonized in such a way as to protect action.

Anybody in this body has a perfect right to disagree with that statement by Senator Mondale with the actions of the majority of his colleagues in that session to make this modification and to leave this rule as it essentially is today. But to just imply it is a violation of the rules in what we are doing—implying we disrespect the body and the purpose of the established procedures and upholding the best interests of this country for 216 years—by people who have been here less than a year themselves I think is an abomination. Then to go beyond that and say we are in violation of our oath to uphold the Constitution of the United States is I think a disgrace.

I yield to my colleague from New Jersey the balance of our time.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank the Senator from Minnesota. It is obvious he is outraged at the triviality that is being thrown out here about how we are violating our oath and violating our standards.

Think about this. We are now in the 32nd hour of this talkathon on judicial nominations, brought to you by the Republican Party. I guess the first 30 hours were so successful they decided to extend the hours. But instead of helping anyone promoting a good cause, Republicans are using this staged event to push for job applicants who are unfit to take the job. They are unfit, they are unqualified, they have shown they are likely to abuse their authority as circuit court judges who advance an extreme rightwing agenda and not in the best interests of America.

The Republicans so desperately wanted this talkathon to be a made-for-television movie they attempted to coordinate their efforts with FOX News, the providers of fair and balanced Republican television. It comes from the distinguished majority leader's office, one of his staff people. It says: "It is important to double your efforts to get your boss to S. 230 on time. FOX News channel is really excited about this marathon. Brit Hume at 6 would love to open with all of our 51 Senators walking onto the floor. The producer wants to know we will walk in exactly at 6:02 when the show starts so they can get it live to open Brit Hume's show. If not, can we give them an exact time for the walk in start?"

That hardly sounds like a sincere effort to me to get something done.

I hear the outrage about how we are playing politics on this side. What is this? If that is not raw production, I have never seen it. Line up. I wonder if the suit colors and ties were described at the same time. It is good to see a bunch of penguins walking down here 51 deep.

FOX News presents—it says 30 hours. They made a mistake. They didn't know how enjoyable this was, that we were going to go on with this.

The passions are so high there are things said that are just not accurate.

I point to this hallowed document, Senate Manual, which talks about the Constitution of the United States. It is part of the book. It talks about the powers of the President. He "shall have power by and with the advice and consent of the Senate to make treaties et cetera and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court and all other officers of United States."

Advise and consent—it doesn't say consent and advise. It doesn't say just approve them and we will talk about it later. We are maintaining our responsibility to the Constitution to a "t". It is our friends who want to ride roughshod over it and perhaps maybe find another way to curtail the appropriate dissent of the minority as has been evidenced so many times in the past.

I think about what is going on here after a visit I made yesterday along with others to Walter Reed Hospital, and I met a young man there. I knew he was in a ward in an area—a single room but in an area where the amputees are cared for. I didn't want to really inspect him with my eyes. I reached out my hand to shake his hand, and I wound up feeling a cloth and nothing in the cloth. His hand was missing. On the other side his arm was missing. He is about 23 years old, full of life. My guess is 23. I know he is young. He was positive and said, I am going to get on with this. We had the good fortune to have former Senator Max Cleland from Georgia who lost three limbs in Vietnam and was made out to be unpatriotic in the last election. Figure that one out. But he had the good judgment to ride in there in his wheelchair and look at this young fellow who had been, by the way, 3 weeks in Iraq, and about 4 months in the Reserve; no hand on either side, and no arm on one side. He told this young man, Have courage. There is life for you. And then he gets visited by Danny Inouye, Congressional Medal of Honor winner, missing an arm. He comes in to say to this young fellow, There is life out there. You can accomplish something.

And here we stand on this nonsense. Why aren't we talking about what the problems are in Iraq and how we solve them?

Let me read to my friends on the Republican side what a very distinguished Republican Senator said, JOHN MCCAIN. Few had his experience in military matters in a war. He said:

> The Pentagon's proposed withdrawal of U.S. troops in Iraq would be an irrational move. "If anything," said McCain, a senior member of the Senate Armed Services Committee and an outspoken critic of the administration's postwar policies in Iraq, "the United States needs to increase its troop presence in Iraq, specifically special forces and Arabic-speaking intelligence officers. The attacks are up. The wounded Americans are up. Killed Americans are up, and the Pentagon announced a withdrawal or decrease in the number of American troops. It is not reasonable or rational," says John McCain.

I agree with him. Why aren't we discussing that? Why aren't we having a marathon, 30-hour marathon, and talking about the war, talking about what is going on and talking about what we do to make it easier on those to make them safer, and send the 10,000 or 20,000 additional troops JOHN MCCAIN says are necessary and I believe are necessary? I am no military expert. I spent 3 years in the Army. I was a corporal during World War II. But I know we need more there. We have to help our troops.

Do not talk about whether we are violating the Constitution. Where is your oath? Is it in your heart? It is the process we are talking about. Go to the Supreme Court and have a great trip. We will escort you there. Take and read the Constitution—just like you can, just like I can. Forgive me—just like the Senator from South Carolina can.

That is what we ought to be talking about and not talking in front of the American people about the process and about how fair we have to be with judges we think are unfit and we are going to talk about it. Just as we were threatened by the debate that went on, we are not going to go away, as I heard the Senator from South Carolina say. We are going to stay here. We are going to do this, and I am going to the Supreme Court. Have a good visit. The fact of the matter is it is very clear what our responsibilities are.

I talked about my trip yesterday to Walter Reed. On Monday, I made a trip to the Sacred Heart Cathedral in Newark and watched a young man who was on a Chinook helicopter. By the way, the fellow I saw in Walter Reed was not the American amputee. The other fellow, burned, broken bones all over his body, he was in the Chinook helicopter also. It wasn't many days ago this fate befell them, and they were already in the hospital here.

But Sergeant Joe Parez—25 years old, wife, little baby girl, mother, father, brothers—was buried at the Cathedral in Newark. He was one of the 16 who perished when the Chinook helicopter went down.

We had a brief moment of conversation. I said we would try to be of help to the widow and the family. She is a very young woman totally overcome by the loss of her husband.

This was a week for me that brought home reality. I saw it when I served in Europe during World War II, and I saw it here, and I saw it when I went to the hospital that took care of Vietnam veterans.

There is a price, a terrible price people are being asked to pay. They are there. They are worried about their families. They are worried about their jobs. They are worried about this country. They are worried about how they are going to adjust back into society after being away too long. We are stretching this rubberband so tight. We have reservists who signed up for duty that included weekends and a couple of weeks a year out in field exercises. Their job primarily was to be there in the case of emergency, floods, natural disasters, riots, those kinds of things that happen. But we do not talk about those. As a matter of fact, what has happened here I find quite shocking is there is a deliberate attempt by this administration to conceal the fact that these dead guys are coming home in caskets, and they deserve the honor of being acknowledged and not hidden off in some obscure air terminal and shipped quietly in trucks to get them out of the way. Stand up, Mr. President, and stand up, my friends on the Republican side, and demand we have an inquiry about this instead of fooling around with 30 hours here to prove nothing.

The Constitution tells you how it goes. Read it. Read it and tell the truth to the American public. Stop talking about politics because that is exactly what you are doing. You think the TV perhaps is going to get your brave message out to the rest of the country. Yes. Our heroes stood up and they stood up for a process. The rate, I think, is something like $80,000 an hour it costs to put on this not very good circus, I would say.

I say to the critics on the other side, stand up, talk about things that affect people, tell us how we are going to get out of Iraq without losing more of our young people. We are over 400,000. There are far more casualties than we had in gulf war 1.

I managed to be the first legislator to be there in 1990. We had 540,000 people on the ground and we lost far fewer than we have lost in Iraq II. Why? Maybe we were better prepared. Why? Maybe we had enough people to make sure they couldn't maraud our troops and our units there and decimate them, and not only break their lives but break the hearts of the Americans across the country because they do not understand what is happening.

This is a colossal waste of time. Face up to it. The minority disagrees with the selection. You have seen the statistics—168 to 4. I think the number is a very small percentage of those who have been challenged. More judges have been confirmed in this Senate than we saw in the entire years of the Clinton administration. We have done our job, and we have done it well. Tempers fly high. I think they ought to. I don't like losing my temper. But I dislike losing my mind.

That is what is happening here. This is a loss of purpose. This is raw politics. To call it anything else is unfair and false. The Constitution says advise and consent. It doesn't say consent and advise. It says nothing in the Constitution, no matter how many attributions, that we have to lay down and simply accept what the President sends down. There are checks and balances, just as a reminder, in case one doesn't understand that. This is a perfect example of what it is about.

No, we will not accept people who we think are unfit. This has not been an unreasonable Senate. We have done what we have to. We have watched appropriations bills language all over the place. We have seen there is hardly a serious long day of work to get the job done. But this falsely heroic effort to make a difference in the way our society functions is I think see-through politics. I think it is obvious what we are watching—someone called it theater. I call it a circus. It is not fair to the people we serve.

I hope we will be able to get on with the business of the people soon. We have our votes tomorrow morning. I would like to see us turn to the war in Iraq and have a serious debate about it and hear from the high-posted officials, the Secretary of Defense, the National Security Adviser.

I was at a briefing today. I don't know whether any of the other Senators here were in the room. It was a relatively junior staff presentation. The news didn't particularly have much insight attached to it. But we went to try to find out.

We ought to make a pledge right now that we will do another 30 hours, maybe start tomorrow night and talk about the Iraq war, talk about our people, talk about how we are going to get them home and talk about how we are going to end it; talk about how we are going to justify to the American people why we are spending $20 billion for the reconstruction of Iraq but we can't rebuild schoolhouses filled with asbestos or otherwise.

The PRESIDING OFFICER. The minority's time is expired.

Mr. LAUTENBERG. I yield the floor.

Mr. GRAHAM of South Carolina. Mr. President, I thank Senator LAUTENBERG for his services to this country. Serving in World War II is a big deal no matter your rank. My dad was a corporal, too. If you think it is a waste of time, have your say. This is a huge deal. The Democratic leadership and the members of the Democratic Party have set in motion something I don't know how to stop. I had a chart that says in the last 11 Presidencies we had 2,372 people confirmed and not one person filibustered. You decided to do something different. It bothers me as much as our response bothers you. The people being filibustered are very qualified people, in my opinion, and you certainly have your right to disagree.

I don't believe the Constitution gives the minority of the Senate the right to advise and consent. We have 214 years of history where the advice and consent clause has been the Senate speaking as a majority. What hurts the most about the filibusters, which are unprecedented and are harmful to the country, is every nominee that is being filibustered by our friends on the other side has enough votes to become a judge. Literally a minority of Senators have taken it upon themselves for the first time in the history of the country to make sure a majority of the Senate cannot vote to confirm a judge by using a rule of the Senate.

I would like the Supreme Court to hear that case because I don't know of any other way to make this go forward. Chances are the Supreme Court may very well say this is not something we decide because you are the Senate. We are the Court. These rules are your rules. They may well say that, but I feel a need to push this as far as you can to get an answer and try to move on and have a better future.

The future of the Senate when it comes to judges is going to be lousy. We have four filibusters going on with another seven or eight to come. But if we behave with each other like this, we will have hundreds before long. As time marches on, we will have a lot of people caught in this vise.

Senator COLEMAN from Minnesota made a great point, I thought. Justice Ginsburg would not have a prayer because she has a liberal view of the law and a lot of people on this side voted against her. But they voted and she won the day. Justice Scalia is vilified by the left. He would never have a shot. A lot of people on the Democrat side voted against him. But he won the day and he is sitting on the Court. That is the strength of the Nation. When you have someone like Ginsburg and Scalia in a room having to talk to each other trying to find a way to move forward in terms of judges, it is going to be very disappointing because good people are not going to put themselves through this.

Justice Brown will be filibustered just as sure as I am standing here. She is an African American who sits on the Supreme Court of California. She has authored more majority opinions in California than any other justice. I gave a rundown a while ago about her story coming from a sharecropper family in Greenville, AL, going all the way to the Supreme Court in California, getting 76 percent of the vote in her last election. And you have to vote on judges in California. My argument is that no one would get 76 percent of the vote in California if they were the rightwing ideologue that the other side is describing.

I am not here to convince Members that I am right. I am here to set the record straight in terms of why I believe President Bush picked a good person. If you disagree, vote against her. Don't allow the Constitution to be changed in the way you are doing because you are putting the country in constitutional and political quicksand. Members will regret it down the road. I know the country will regret it.

Now, there is politics going on here. I will put a human face on this. Justice Brown has had a pretty rough time of it in committee. She has been very successful with her career in California. She has been successful in every endeavor she has engaged in, serving in a variety of capacities to the point that people want to promote her and the three-fourths of the citizens of her State think she has done a great job. But she comes to the Senate and she runs into a buzz saw because she is conservative. Apparently that is a crime.

This is a cartoon by the Black Commentator, a paper. The first amendment allows people to talk about public figures. This is just a little bit of what it is like to be in the environment our friends on the other side have created. This cartoon has "Welcome to the Federal Bench, Ms. Clarence, I mean, Ms. Rogers Brown. You'll fit right in."

And it is a caricature of President Bush and a racial stereotype, an offensive drawing, of Miss Brown. The people in the choir are clapping, as Justice Clarence Thomas—a very distorted picture which is offensive, I think—Colin Powell, African American, Secretary of State, a great general and somebody I admire, and Condoleezza Rice, our national security adviser, another African American who I think will help us do a good job in Iraq. This has been a miserable experience for this lady. I am very sorry she has had to go through this.

Over 50 percent of the Senate will vote for her when the cloture vote comes. Pickering, Owens, Pryor, all have received over 50 votes but we cannot get to passage because the filibuster rule requires us to get 60 votes. Therein is my problem. The Constitution does not require 60 votes to confirm a judge. There are several places where two-thirds are required. The Constitution says you will advise and consent by majority vote in the Senate.

They are using a procedural device, the Democratic Party is in this case, to block a vote on what I think are well-qualified people. No one else in the history of the country has done this before, Republican or Democrat. This is the first time someone has come out of the Judiciary Committee with a majority vote who cannot receive an up-or-down vote. There are four of them with a bunch more to come.

I give no apology for wanting to try to do something about this because, as sure as we are all here tonight, there will be a Democratic President come later on and that person will make a recommendation to this body, a nomination to this body, and if we do not change the way this trend is going, it will be a miserable experience. We will get bogged down and we will never be able to move forward as the Constitution has envisioned. This has worked well for 214 years. This is not time to change it.

Senator LAUTENBERG was right, there is a political dynamic going on here. I am sure Republicans have been abusive in the past in terms of the way the judges have been treated. I have heard a lot about that. Like Senator COLEMAN, I am new to the Senate. I would rather not perpetuate that problem. I would like to be someone who solved that problem.

We have some quotes from the past that I will read quickly. Senator LEAHY, the ranking member of the Judiciary Committee, said in 1998: I stated over and over again on this floor that I would refuse to put an anonymous hold on any judge—that is a way of keeping a judge coming through the committee—that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported, that I felt the Senate should do its duty. If we don't like somebody the President nominates, vote him or her down.

Very wise advice. We are not doing that at all. I don't know why we changed but we have.

Senator LEAHY, 1998: I cannot recall a judicial nomination being successfully filibustered. I do recall earlier this year when the Republican chairman of the Judiciary Committee and I noted how improper it would be to filibuster a judicial nomination.

I will read before the night is over many statements in the past where our Democratic colleagues were absolutely against the idea of doing anything other than giving a person an up-or-down vote. That has changed in an unhealthy way.

E-mails were talked about before. Let me read an e-mail that I think says a lot. This came from Senator CORZINE, the chairman of the Democratic Senatorial Campaign Committee, November 3, 2003, not very long ago, and it was sent out to raise money. I am sure we have sent e-mails and letters saying: Help us. The Democrats are destroying all of President Bush's nominations. That is the political environment we have gotten ourselves into. Like Senator COLEMAN, I would rather not perpetuate this. I would like to end it and move on and get it right.

Based on the prior statements of Senator LEAHY and others that we will read later on, they have changed for some reason. Now they are going into the past and saying, we are doing this because you did that. Where does this end? The truth is, no one has done what they are doing now. That is just a fact.

From the e-mail:

> Senate Democrats have launched an unprecedented effort.

I will stop right there. I think that is a true statement. I don't believe Senator CORZINE is misleading the donor population. I think he is trying to tell them, folks, we are doing something nobody else has done before. This is unprecedented. You need to pay attention. You need to look at your Democratic Senators, pay attention to what we are doing, because we are taking a step no one has ever taken before. What is that step?

> By mounting filibusters against the Bush Administration's most radical nominees, Senate Democrats have led the effort to save our courts.

This e-mail is designed, quite simply, to let people in the Democratic Party know that the Senate Democrats have done something different, something unprecedented, and they are filibustering the President's nominees because they are radical. You cannot send this e-mail out to collect money and spend 32 hours denying you are filibustering anybody. You are filibustering judges in an unprecedented way. And they are the Bush administration's nominees. The question is whether or not they are radical.

If you think they are radical, vote against them. I don't believe Justice Brown is radical. I don't think 76 percent of the people in California who have voted would have voted for her if she was radical. I think the attacks against her have been radical. But that is just my opinion.

This e-mail clearly establishes the fact that the Democratic Party has made a calculated effort in the Senate wing of the Democratic Party to do something different, to stand up against President Bush. They are blinded by the political moment. If we continue down this road, there will be more e-mails such as this on both sides of the aisle and it will be a disaster for the Constitution.

There are men and women serving in Iraq. There are people putting their lives at stake for this country. God bless them. We all did take an oath. They have their opinion and I have my opinion about what the oath means. But it will not withstand the filibustering of these nominees. It would be irresponsible on my part, given what I believe my oath is, to just let this go and make like it is no big deal because I think this is a huge deal.

I yield to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, following up on the comments of my friend and colleague from South Carolina, you have to ask yourself, 214 years and the Senate has not done this, has not stopped a judicial circuit court nominee by filibuster. That is a fact. My colleagues on the other side can argue with charts but that is the reality.

You have to ask yourself, for 214 years was the Senate a rubberstamp for the President? I don't think so. I don't think anyone could make that argument. What you have is the reality that the Senate was exercising its constitutional responsibility. And doing it in a constitutionally responsible way.

That is what is important, doing it with respect for the Constitution, respect for the authority of the President to set forth the nominee, respect for the obligations upon the Senate to advise and consent, by a majority vote. Again, the Constitution, article II, says treaties need a supermajority, not a simple majority vote. What we have here is the minority saying we are not living by majority votes when it comes to judicial nominees regardless of what is in the Constitution. That is unfortunate. It is more than unfortunate. It undermines the principles upon which this democracy is based.

My colleague from Minnesota, the senior Senator from Minnesota, talked about this not being unprecedented. We have done it before.

Here are the facts. This is a listing of judicial nominations subject to cloture attempts from 1968 to 2003. I will go through every one of them. The first one is Abe Fortas, Chief Justice. Cloture was rejected. I will come back to whether that was even a filibuster. That was not a partisan filibuster. In fact, it was a bipartisan effort because of ethic complaints about Fortas but it was not a partisan filibuster.

A letter was sent to JOHN CORNYN, chairman of the Subcommittee on the Constitution from the former Senator from Michigan, a predecessor of my colleague, Mr. LEVIN, who is sitting there, talking about the Fortas nomination and basically saying that it was not a filibuster.

What happened, in a letter he says, while a few Senators might have contemplated use of the filibuster, there was no Republican Party position that it should be employed. Indeed, the Republican leader of the Senate, Everett Dirksen, publicly expressed his support for the Fortas nomination shortly after the President announced his choice. Our position in 1968 to the Fortas nomination was not partisan. Some Republicans supported Fortas; some Democrats opposed him.

Go through every listing on this chart. Outcome of cloture attempt, may have been rejected, may have been invoked, may have been withdrawn, but every nominee got a vote. That is what this is about. Vote them up or vote them down but give a vote.

We have a minority for the first time in the history of this body basically saying, regardless of what is in the Constitution, regardless of the language of the Constitution that makes it clear that the advice and consent is based on majority, they are changing the rules of the game. The argument is that these candidates, these nominees are outside the mainstream.

What is the mainstream? Who is the mainstream? Priscilla Owen received 84 percent of the vote in the last election for the Texas Supreme Court.

I have to tell you, I would love to see an 84 percent in any election. Just about anybody in this body would love to see 84 percent. They would tell you that is mainstream. That is mainstream. That is the "wholestream." What is left is extreme. And that is what you have.

Bill Pryor, 59 percent in his last election for Alabama Attorney General—59 percent.

Janice Rogers Brown received 76 percent in her last election to the California Supreme Court.

I would note one of the Senators from California, Mrs. BOXER, received 53 percent. Who represents the mainstream in California? Seventy-six percent of the vote. The other Senator from California, Mrs. FEINSTEIN, by the way, former mayor of San Francisco—I am a former mayor. I have great respect and appreciation for mayors. It is a tough job. She is a great Senator. I do not always agree with her, but she is a great Senator. She got 56 percent of the vote. Janice Rogers Brown, who supposedly is the extreme, got 76 percent in her last election for the California Supreme Court. That is mainstream, not extreme.

Charles Pickering was confirmed to the Federal district court in 1990 by this body by unanimous consent. What that means is no one objected; everybody agreed. And today he is described as extreme?

If I could go through some of the candidates, Priscilla Owen—a whole bunch of these nominees are out of the mainstream? I am not sure what they are talking about. She has served in the State of Texas on the highest court. She has been given the support of 15 past presidents of the State Bar of Texas, a bipartisan group. We are talking about the folks who know them best.

Justice Owen was unanimously rated as well qualified by the American Bar Association. Apparently, this unanimous rating of the American Bar Association is out of the mainstream as well. I would submit, by the way, the American Bar Association is not a conservative interest group. I do not know who the members are, but I have to guess it is a bipartisan group. I have to guess there are some Democrats in that group.

It is clear the so-called mainstream being portrayed by some in this body is not only an incorrect reflection of the average American but a single-issue extreme which flows only in the direction of special interest groups. That is really what this is about.

You have to go through the records of these folks. I went to law school. Senator GRAHAM went to law school. I went to the University of Iowa, did fairly well, and served 17 years in the attorney general's office, and solicitor general, chief prosecutor of the State of Minnesota. But you would love to have the qualifications and credentials of the folks here, the folks the President has nominated. These are quality, quality, quality folks.

Then you read the statements of some of their supporters. Mary Sean O'Reilly, lifetime member of the NAACP and a Democrat:

> I met Justice Owen in January, 1995, while working with her on the Supreme Court of Texas Gender Neutral Task Force. . . . I worked with Justice Owen on Family Law 2000, an important state-wide effort, initiated in great part by Justice Owen. . . . In the almost eight years I have known Justice Owen, she has always been refined, approachable, even tempered and intellectually honest.

That is what you want from a judge. That is what you want from a judge. You do not want fidelity on a single issue. What you want is the judge to be tempered, to be intellectually honest, to apply their best judgment, to interpret the Constitution.

Raul Gonzalez, former Democratic justice on the Supreme Court of Texas. In Texas they elect their justices. In the elections, Democrats run, Republicans run. Senator CORNYN, one of our colleagues, also elected with us, is a former member of the Texas Supreme Court, former attorney general.

Raul Gonzalez, former Democratic justice on the Supreme Court of Texas:

> I found her to be apolitical, extremely bright, diligent in her work, and of the highest integrity. I recommend her for confirmation without reservation.

John L. Hill, former Democratic chief justice on the Supreme Court of Texas:

> After years of closely observing Justice Owen's work, I can assert with confidence that her approach to judicial decision-making is restrained, that her opinions are fair and well reasoned, and that her integrity is beyond reproach.

That is what it is about: integrity beyond approach, opinions that are fair, well reasoned. That is what you look for in judges. You cannot allow a minority of folks in this body to toss about the label mainstream, fueled by folks with special interests. They are kind of pounding the drum, and people follow that drum.

But you have to ask, who is in the mainstream? Folks who get overwhelmingly elected by the people of their State, who receive bipartisan support.

Another former Democratic justice on the Supreme Court of Texas, Jack Hightower:

> I am a Democrat and my political philosophy is Democratic, but I have tried very hard not to let preconceived philosophy influence my decision on matters before the court. I believe that Justice Owen has done the same.

That is what you want. The reality is, judges are people. They have heart and soul like everyone else. If you are a defendant in front of them, you may worry about that. But they are people. They bring a life experience. They bring a perspective. They bring a philosophy. You cannot divorce that. You do not divorce that. Some may have been active in politics. There is no question about that. They bring positions on issues. They are not issue neutral. They have not been lobotomized. They bring a life experience and perspective.

What we ask of them is to do what these folks—their colleagues, by the way, are from a different political perspective—say they do. We look to their ability to be well reasoned. We look to their ability to have integrity. We look at their ability to put aside the preconceived notions and simply say they will examine each case on the facts, and apply the law, the law that is done by—yes, that is what we do. That is what legislators do. That is what you are looking for.

Former law clerk of Justice Owen, Lori Plager:

> During my time with her, I developed a deep and abiding respect for her abilities, her work ethic, and, most importantly, her character. Justice Owen is a woman of integrity who has a profound respect for the rule of law and our legal system.

That is what it is about: respect for the law and the legal system. To be described as extreme, when you have this body of opinion of folks who know you, who have worked with you, who have been your colleagues, who sit side by side, who have watched you process and reason, and then to render judgments, when they are willing to put aside their political predisposition—and what we are asking for is our colleagues to put aside the politicization of this process, put aside what we have done. Do not go back on a history of 200 years. We have not allowed this to happen on the floor of this Senate. We have not rejected judges on the floor of this Senate by virtue of filibuster for 214 years.

Hector De Leon, past president of Legal Aid:

> As the immediate past president of Legal Aid of Central Texas, it is of particular significance to me that Justice Owen has served as the liaison from the Texas Supreme Court to statewide committees regarding legal services to the poor and pro bono legal services. Undoubtedly, Justice Owen has an understanding of and a commitment to the availability of legal services to those who are disadvantaged and unable to pay for such legal services. It is that type of insight and empathy that Justice Owen will bring to the Fifth Circuit.

That is what you are looking for. You cannot do any better than that. Do not allow folks to wave a flag and say "extreme" when you have folks who in their own community, overwhelmingly—overwhelmingly—voted, reelected her to the Supreme Court of Texas in overwhelming numbers, and her colleagues coming forth and saying: Hey, this is a woman who is right. This is a woman who is talented. This is a woman who will not put the life experience she brings, perhaps preconceptions about issues—you have folks saying she will do what judges need to do. That is what it is about.

Before the night is over, we will talk about others. We will talk about Bill Pryor. We will talk about Judge Kuhl. We will talk about Miguel Estrada, who has withdrawn. We will talk about Judge Pickering.

But the common denominator in all of these, what the President has done is he has exercised his authority under the Constitution to nominate people who have integrity, who have the qualifications, who have the support of those with whom they have worked, and who, in many cases, when they have had to go before the people of their State, have been overwhelmingly endorsed as being part of the mainstream, not the extreme.

The PRESIDING OFFICER. The Senate majority's time has expired.

The Senator from Michigan.

Mr. LEVIN. Mr. President, how I wish we could take a week's worth of time to debate the issues which are of some critical importance to the people of my State; namely, the loss of manufacturing jobs and the problems we have in Iraq. These issues, the economy in general, job loss in particular, and loss of our troops abroad dominate the minds and the hearts of my constituents.

But the majority has the power to take the Senate on a fruitless cruise. That is what we are about: rehashing the merits and demerits of 4 of the 172 candidates who we have voted on in this Senate. I know these numbers are numbers which are very troubling to the majority. I can tell that by the fact they have attempted to come back with a whole bunch of other numbers.

When this debate is over, when the dust is settled, what I think most people will remember, at least in terms of the calls to my office, is, Is this Senate being tied up, night after night, with complaints that 4 of 172 judges have not been confirmed.

Mr. President, 168 is a number now which is impressed on the minds of people who have watched this debate and heard this debate. The number four is a number which people now understand. Maybe the 98 percent confirmation rate is not quite at the same level as these 2 numbers, but those numbers—168 of President Bush's nominees confirmed by this Senate, 4 have not been confirmed by this Senate—those 2 numbers are very much emblazoned in the minds of people across this country.

In rejecting these four, the Senate has exercised its advise and consent function according to our rules. It has carried out the checks and balances role according to the Constitution that gives us a check and a balance, according to the rules of the Senate.

I want to go back a little bit in history. We have heard quite a bit tonight that this is the first time a filibuster has been used against a judge on the floor of the Senate. I will get into this in a little more detail. I hope to have a little time to talk about the economy and manufacturing job loss, and other things which are very much on the minds of my constituents.

But since the majority has decided to set aside this time, mainly to debate the fact that only 98 percent of the judges who have come before us have been confirmed, and have now suggested, over and over and over again, that filibusters have never been used relative to judges, this is the New York Times headline of September 25, 1968 relative to Abe Fortas: "Critics Of Fortas Begin Filibuster. . . ." This is what the Senate Web site says about that filibuster. This is not a Democratic Web site. This is the Senate Web site for the date October 1, 1968: "Filibuster Derails Supreme Court Appointment." That is a Senate Web site.

Folks on the other side, our colleagues on the other side, are saying: Well, what about circuit court nominees? We sometimes hear those words put in there when the statement is made that filibusters have not been used to derail judicial nominees. Sometimes the words "circuit court nominees" are put in there instead of "judicial nominees," sometimes the words "circuit court" are left out, sometimes they are included.

If circuit court nominees have not been derailed by filibuster, it is not for a lack of trying. The complaint of our colleagues on the Republican side, it seems to me, more accurately would be: Well, we have tried filibusters many times, but we have not succeeded. You folks are succeeding.

That is the complaint when you strip away the rhetoric and look at the reality. If filibusters have not succeeded in derailing circuit court nominees of Democratic Presidents by Republican Senators, it is not for lack of trying. Because the effort was made over and over and over again with Clinton circuit court nominees. The difference is, the filibuster effort did not succeed because the supermajority, which was required during those filibusters, was achieved for those circuit court nominees. That is the difference.

This is not at all unprecedented. This use of extended debate requiring a cloture vote on judicial nominees has been used repeatedly. It has not succeeded repeatedly, but it has been used repeatedly.

One of our Republican colleagues, during a debate on a nominee—this is not a judicial nominee, but this is a nominee which is subject to this exact same language of the Constitution about advise and consent as our judicial nominees are—when a Clinton nominee to be Ambassador was before us, and there was a filibuster underway and that nomination was blocked, this is what one of our colleagues said. Now this was in 1994, and the Senate was controlled by Democrats. The White House was controlled by Democrats. The House of Representatives was still controlled by Democrats. Our Republican colleague here in the Senate was pointing out the only power that was left to Republicans was the use of a filibuster and forcing a cloture vote. And I emphasize, this is on a nominee who had exactly the same rights or lack thereof to an up-or-down vote as a judicial nominee because the nomination is governed by the same advise and consent clause of the Constitution as our judicial nominees. Here is what our colleague said:

> In considering the nomination of Mr. Samuel Brown to be Ambassador . . . I have reflected on the latitude which ought to be accorded the President in making this decision for the Ambassadorship, reflecting as well on the constitutional responsibility of the Senate for advice and consent as a check. I am troubled by a situation where the only pressure point Republicans have in the U.S. Government is on cloture. Once cloture is obtained, there are more than enough votes on the other side of the aisle to cover the day. While the House is not involved in this matter, the House is overwhelmingly Democratic. There is a Democrat in the White House. The only place that Republicans can assert any effective, decisive action is by stopping somebody from coming up. We have 44 votes and we have more than enough, if there is unity among the Republicans, to do that. I think Mr. Brown's nomination and the responsibilities of the Conference on Security and Cooperation in Europe are sufficiently important to preclude his nomination.

That is what our Republican colleague said in 1994:

> The only place that Republicans can assert any effective, decisive action is by stopping somebody from coming up. We have 44 votes.

That has been the case not just with ambassadorial nominations but with other nominations subject to the advice and consent clause. The only difference with the circuit court nominees of President Clinton, for instance, who were filibustered is that there was not a supermajority to stop the confirmation of the judges. That is not a distinction which I would think the Republicans in this debate would want to emphasize, but it is a distinction in fact.

Mr. President, 168 of this President's nominees have passed the test; 4 have not. When the filibuster has been used relative to those four, the rules of the Senate which provide for that to occur, and there was not a supermajority, then those nominees have not been confirmed.

What is at stake here is the functioning of the Senate as a check and a balance on executive power. Our Republican colleague who spoke that way in 1994 was exactly right. He was using the rules of the Senate in a totally appropriate way and saying that the only way we can stop this, the only way the minority has a voice, if we feel so deeply that there are 41 or more of us who wish to stop this nominee from being confirmed, we must use the filibuster, and we must force a cloture vote. Checks and balances are what are at stake here. The historic role of the Senate is what is at stake here.

Then-Senator Lyndon Johnson, in March of 1949, said the following relative to these checks and balances:

> A man elevated to the Office of the President has virtually unlimited powers of influence over his country. His own personality is a force of great impact upon all the people of the Nation and, in fact, upon the people of the world. Add to those powers directly all those less conspicuous powers of his aides, his administrative agencies and the multitude of channels which feel his influence, and you have a force no other representative government has even trusted for long to one man.
>
> If on occasion you grant to this titular head of government the further intoxicant of an overwhelming majority of loyal supporters in the legislative branch, then you have a force well nigh irresistible. The distinctions between legislative and executive are difficult to preserve under such circumstances. Mere memorandums become laws and laws become mere memorandums. In such a situation, which happily is more hypothetical than historical, the entire theory of our Government system of checks and balances dissolves and evaporates. The right to check and balance was not granted to the majority because a majority rarely seeks control over itself. Those rights were conceived and installed in the Constitution solely as safeguards for the minority.

He said:

> I am no historian, but as I have studied the history of governments gone before us, I have been impressed by the fact that the freedom of unlimited debate in legislative chambers has been given up many times by members themselves who are irritated or frustrated by a minority. But so far as I have found, once that freedom was yielded, it has never been returned. If we now give up this freedom in the Senate, I, for one, do not expect to live to see its return.

Much has been stated here about filibusters on the floor of the Senate. Too little has been said about stealth filibusters which occur in committee. Political scientist Sheldon Goldman of the University of Massachusetts, who is a neutral observer of the process, said the following in a Los Angeles Times article on November 6:

> The Bush administration has been spectacularly successful in getting the overwhelming proportion of its judicial nominations confirmed. There are only a relative handful being filibustered and held up, and this contrasts with the dozens of Clinton nominees who were held up by the Republicans in the last 6 years of the Clinton administration.

Professor Goldman expressed it this way:

> The Republicans obstructed quietly in the committee. If they didn't want to approve you, you just didn't get a hearing.
>
> Here is one example. Kent Markus was nominated by President Clinton for a seat on the Sixth Circuit. He testified to the Senate Judiciary Committee on May 9, 2002, as follows. To their credit, Republican Senators told him two things.
>
> There will be no more confirmations to the Sixth Circuit for the Clinton administration.

Two:

> This has nothing to do with you. Don't take it personally. It doesn't matter who the nominee is, what credentials they may have, or what support they may have.

Mr. Markus went on to testify that one Republican Senator told him the following:

> This is bigger than you, and this is bigger than me.

Senator KOHL, who kindly championed his nomination in the Judiciary Committee, encountered a brick wall. The fact was a decision had been made to hold the vacancies and see who won the Presidential election. With a Bush win, all those seats could go to Bush, rather than Clinton nominees.

That is what happened. That is exactly what happened to Kent Markus and his nomination. A hearing was denied to him. A vote was denied to him. And if there is some constitutional right which is being created here on the floor, I assume Kent Markus was denied his constitutional right to a vote, as were the dozens of other nominees of President Clinton who never got a hearing, much less a vote.

I can't believe for one minute that any court, even if it reaches the merits of this case that is going to be brought, would say there is a constitutional right to have your nomination voted on when there are so many ways of blocking a nomination from getting a vote, starting with not having a hearing, starting with not having a markup, starting with not reporting a nomination to the floor, starting on the floor not reaching a vote up or down.

When the Republican Senate denied committee hearings and votes for 63 judicial nominees and more than 200 executive branch nominees, they blocked a vote on those nominations. That was their right. They may have done the wrong thing in doing so, but they had a right to do so. I wish they hadn't. I wish they had allowed those to come to hearings. At least have a cloture vote, if nothing else, on the floor, but that was not to be.

There are a lot of ways you can have a vote on this floor. One of them is a cloture vote and one of them is a vote up or down. But these 63 judicial nominees never even got to a cloture vote, never even got to see if there could be a supermajority put together for them under our rules on the Senate floor.

It is remarkable to me that our colleagues on the other side of the aisle make the claim that blocking nominees from having an up-or-down vote on the Senate floor is unprecedented, given the actions during the last administration.

Republicans filibustered several Clinton nominees on the floor of the Senate, including Richard Paez, Marsha Berzon, Rosemary Barkett, and H. Lee Sarokin. Cloture votes requiring supermajorities were required to be produced for each of them.

Our colleagues say these nominees were not blocked by a filibuster, which is an artful way of saying that the effort at the filibuster failed. That is very different from saying that the filibuster was not tried. It was. Cloture votes were required but supermajorities were obtained. That is the difference between those Clinton nominees and these four nominees. Here supermajorities have not been obtained. Therein lies the difference. Same cloture votes, same type of cloture votes required, but cloture was invoked for Berzon, Barkett, Paez, and Sarokin. Supermajorities supported those nominations, and the opposition had a right to force those votes. That required a supermajority. They had a right to filibuster, and, in fact, did so.

Two of President Clinton's nominees, not judicial but nominees, still governed by that same advice and consent clause in the Constitution, were defeated by filibusters. One was Henry Foster nominated to be Surgeon General, and the other one was Sam Brown nominated to be ambassador. The argument relative to that nomination was quoted by me at some length a few moments ago where a Republican colleague within his rights using the rules said: We have only to put together 41 Republican Senators and we can block this nomination. It is the only way to block a nomination with which we fervently disagree.

Given the fact that the Democrats didn't control the White House, the Democrats controlled the Senate, our Republican colleague pointed out accurately that the only way to block that nominee was by use of the filibuster. Were his constitutional rights violated? I don't think so. I think he was given consideration by the Senate in the way that the Senate decides to consider nominees, and it can consider nominees in many ways.

It can decide never even to give a nominee a hearing should it choose. I don't think that is a wise course, in most cases, but should the Senate choose not to give a nominee of the President a hearing, that is the Senate's decision. Or after a hearing, if it decides not to have a markup to vote that nominee either out of committee or to defeat that nominee, that is the Senate's decision. Should a chairman, acting alone, decide not to put a name on a markup, that may be that chairman's power.

So the suggestion that requiring a supermajority vote by filibuster is new to the Senate is just simply wrong. We can argue—legitimately argue—and disagree over whether or not the Senate should give up this important check and balance on Presidential power, but we cannot argue, it seems to me, that it is unprecedented in its exercise.

Here are the words of one more of our colleagues during a filibuster of a Clinton nominee on March 3, 2000. During the filibuster of the nomination of Judge Richard Paez to the Ninth Circuit, this is what our colleague said:

> I say to the American people who may be listening right now, judges impact our lives big time in the decisions they make. Citizens complain about violence and the criminals getting out. There are bad judges making bad decisions that cost Americans their liberties, cost them their lives sometimes. That is wrong. We have an obligation in the Senate to take a good hard look at a lifetime appointment to the circuit. The members are there forever, even when they get real old. It is pretty hard to get rid of them. This is a lifetime appointment. We have a responsibility to make darn sure these judges are going to represent the views of a majority of the American people in terms of the law. I intend to do that as long as I can stand here to do it.

He didn't have 39 others or 40 others to stand with him. As a result of that, there was a supermajority for that judge, but it was despite the filibuster. It wasn't that there was no filibuster. It was despite the filibuster which the Republicans had a right to stage and did stage. But most Republicans decided, or at least enough Republicans decided not to continue that filibuster but, rather, to invoke cloture.

To suggest the filibuster has never been used flies right in the face of history and recent history, as well as the history of Abe Fortas.

Historian Robert Caro wrote the Rules Committee of this Senate as follows:

> In short, two centuries of history rebut any suggestion that either the language or the intent of the Constitution prohibits or counsels against the use of extended debate to resist Presidential authority. To the contrary, the Nation's Founders depended on the Senate's members to stand up to a popular and powerful President. In the case of judicial appointments, the Founders specifically mandated the Senate to play an active role, providing both advice and consent to the President. That shared authority was basic to the balance of powers among the branches.

He continued:

> Surrendering such authority is not something which should be done just because of a Senator's point of view on the particular issue of the moment—because much more than the particular issue is involved. What if a Senator—let us say a Senator from a small population state without any other means of defense votes to support a new limitation on debate today. What will he [or she] do in some future year when he is trying to stop a bill or a nomination that a bare majority of the Senate supports, but that he and 40 colleagues believe would be terribly detrimental to their states or to the nation. . . . What will he feel when he suddenly realizes that his right to hold the Senate floor against that action has been so greatly reduced that the bare majority can silence him before he is finished making his case? What will he do when he realizes that, without the right of extended debate his cause is ultimately helpless?

Finally, I ask unanimous consent that the letter from Senator CORZINE, which has been referred to, apparently a fundraising letter, be printed in the RECORD in full because I think the words which were quoted by my friend on the other side had some very critical dots in there, and I think the dots should not have been there. The two sentences should not have been pushed together as though they were one. The document of Senator CORZINE says the following:

> Senate Democrats have launched an unprecedented effort to protect the rights of all Americans by keeping our courts fair and impartial.

That is the unprecedented effort. The next sentence is:

> By mounting filibusters against the Bush Administration's most radical nominees, Senate Democrats have led the effort to save our courts.

The suggestion that the words read "an unprecedented effort to mount filibusters" is not an accurate reflection of that letter. The dots which were in the chart, it seems to me, take the place of some very critical words making two sentences look as though it is one sentence.

I ask unanimous consent, just so we can have full disclosure of this letter, that this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

> Despite the administration's desire to ignore the Constitution's rule of ADVICE and CONSENT, Senate Democrats are holding Republicans accountable.
>
> Why must the Democrats continue their fight against Charles Pickering?
>
> While in law school, Mr. Pickering wrote an article suggesting ways the state of Mississippi could better enforce its ban on interracial marriage.
>
> As a state senator in the 1970's, Mr. Pickering worked to repeal important provisions of the Voter Rights Act.
>
> In 1994, he went out of his way to seek a more lenient sentence for a convicted cross-burner.
>
> Once defeated when Democrats had a majority in the Senate, President Bush nominated Charles Pickering for a second time after the 2002 elections and now two successful filibusters launched by Senate Democrats have kept him off the bench!
>
> The Bush Administration is devoted to using the courts to its political advantage. Time and again, this administration has nominated ultra-conservative candidates who are zealously devoted to advancing corporate interests, taking away reproductive freedom, smashing the wall of separation between church and state, and dismantling equal opportunity.
>
> But the Administration has got a big problem: Senate Democrats. Senate Democrats

have launched an unprecedented effort to protect the rights of all Americans by keeping our courts fair and impartial. By mounting filibusters against the Bush Administration's most radical nominees, Senate Democrats have led the effort to save our courts.

Help the Senate Democrats keep fighting. Support the DSCC efforts to help elect more Democrats to the Senate—and keep the proven leaders we have. Help the DSCC send a message to the Bush Administration—Senate Democrats will NOT rubber stamp extremist judicial candidates. Help us fight to maintain judicial integrity by sending more Democrats to the United States Senate in 2004.

Contribute Now!

Sincerely,

Senator JON CORZINE.

Mr. LEVIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. ALLARD). Forty seconds.

Mr. LEVIN. I thank the Chair and thank my colleagues. I am happy to share with them the feeling that somehow or another hopefully we can find a way some day to get over the place we are at, not just on judges but on all of these nominees.

I look forward to that Supreme Court case which my friends are going to file. I think it would be just fine to have the Supreme Court rule on this issue to clear the air on it. I have great confidence that they will support the right of the Senate.

The PRESIDING OFFICER. The minority's time has expired.

Mr. LEVIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I have the greatest respect for my colleague, the Senator from Michigan. He serves as the ranking member on the Subcommittee on Investigations, which I chair, and serves this body as ranking member of Armed Services. He is a credit to this institution.

I disagree with him, however, in his interpretation of the reality of the history of this body. It is very clear that this body has not successfully filibustered a circuit court nominee in its history. The one case that is mentioned again is Abe Fortas.

As I indicated earlier, this was a bipartisan effort. It was not a partisan filibuster. So what we have here on the floor today is the first partisan filibuster, and the purpose is clear. My colleague has said this is the only tool that the minority thinks they have to stop the President from exercising his authority, but I think that he is right when he says the historic role of the Senate is what is at stake here.

I say that because we have to reflect upon how our colleagues who preceded us—by the way, some of them are still here in some of the cases he talked about—what was going through their minds when they were faced with the same circumstances we are faced with today; that is, a group of folks in the majority in many cases who objected to a particular nominee.

We can use the Clinton years as an example. There was a Republican majority for 6 years of President Clinton's term. No judicial nominee, not one judicial nominee, was ever deprived of a vote on the floor of the Senate. That is what we are talking about, a vote on the floor—not one.

My colleague and friend from Michigan made reference to the cases of Marsha Berzon and Richard Paez in the year 2000, Ninth Circuit. Although most Republicans opposed their confirmation—and we heard some of my colleagues earlier tonight. Senator SESSIONS talked about that case. Senator LOTT talked about that case. He was majority leader at the time. They also opposed any effort to prevent the full Senate from voting on their nominations. They did so and they told you it was because of their reverence and respect for the historic role of the Senate. That is what is at stake. That is the principle that has guided us for 214 years before today, before this 108th Congress.

Colleagues had the opportunity to invoke cloture only if the Republican majority said we were to go along, and it was not because, as my colleague from Michigan somehow inferred, that they could not kind of put together the necessary votes to block it. No. What happened is that they were not willing to ignore the history and the tradition, and I think most importantly what the Constitution says, and that is that supermajorities are not required to confirm nominees for circuit courts.

Debate on each of these nominations, Berzon and Paez, lasted only 1 day and a majority of Republicans joined all Democrats in supporting cloture motions for debate on each nomination, including over 20 Republicans who would eventually vote against confirmation and a majority of the Republican members of the Judiciary Committee. Senator HATCH talked about that.

So our colleagues at that time faced two candidates in the Ninth Circuit. By the way, that is the same circuit that ruled the phrase "under God" unconstitutional. That is the same circuit that initially was going to prevent the California recall from taking place until finally en banc the entire circuit had to come together and change that.

In neither case did Republicans mount a party-line filibuster effort to prevent voting on a nominee. In fact, Majority Leader LOTT filed the cloture motions for the above debates. So what we have is not what my friend and colleague from Michigan would infer, that somehow before there was simply an ability—yes, there were cloture motions and either they were invoked or they were rejected, and that somehow they were invoked and that is why you were able to vote on it. No. Here you had the Republican majority leader file the cloture motions for Berzon, for Paez. My colleague, Senator SESSIONS, said: I opposed them. I voted to support cloture. I voted against the nomination, and that is what we are asking for.

Follow the history. That is what is at stake, as Senator LEVIN said, the historical role of the Senate. If it has changed it, it has changed it at great risk.

The situation was similar in 1994 when some Republicans voiced objections to President Clinton's nomination of H. Sarokin to the United States Court of Appeals of the Third Circuit. A majority of Republicans supported a cloture motion after a relatively brief period of debate and cloture was invoked by a vote of 85 to 12. Judge Sarokin was then confirmed by a vote of only 65 to 35. Twenty-three then of my colleagues supported cloture. The majority supported cloture. Yet at the same time they voted against the candidate. That is the history of this body. That is what the Constitution requires.

I am told that the only judge nominated by President Clinton who faced a partisan filibuster was that of Brian Theodore Stewart, a nominee to the Federal district court in Utah. However, it was Senate Democrats who filibustered the nominee in protest over purported delays in bringing other judicial nominees to the floor. A cloture motion was voted upon on September 21, 1999, and failed, falling short of the 60 votes by a vote of 55 to 44, with all Democrats except Senator Moynihan opposing cloture.

Once again, Democrats' objection was not to Judge Stewart himself and on October 5, 1999, the Senate confirmed him by a vote of 93 to 5. So for all the handwringing that we heard about the treatment of President Clinton's nominees, one is very clear: Every single one of them got a vote.

The fact is that what happened here is that my colleagues followed the history and tradition of this body and said they would make sure they got a vote because that is what the Senate is called upon to do, advise and consent. There is a principle of majority rule, a principle, again, espoused in this document, in this Constitution, of the United States.

My colleague also implied that it is just fine to prevent an up-or-down vote on at least 4 of these nominees because we blocked 60 of President Clinton's nominees. I have two observations about that, and I know this is what frustrates me and my colleague Senator GRAHAM. The fact is that there is and has been a tradition in this body, shortly before the end of the President's term. What happens is that folks kind of say, well, let's see who the new guy is, see what happens, and they slow it up.

The numbers are even more stark, by the way, if we compare the number of nominees left hanging at the end of the first Bush administration by Senate Democrats with the number of Clinton nominees awaiting confirmation at the end of the Clinton administration. The Democrat-controlled Senate left 54 of the first President Bush nominees unconfirmed at the end of 1992. In contrast, at the end of the Clinton administration, 41 nominees remained unconfirmed.

Let's stop that practice, unless a game is being played, unless these are clearly unqualified nominees, unless there is some reason to suspect we are not having qualified folks coming before us and we are playing politics.

On the other hand, well, they did it to us and we are going to do it to them. It is like the Hatfields and McCoys, like Montague and Capulet. It is like a family feud. It is futile and it needs to stop. It needs to change.

I appreciate the comments of my friend Senator LEVIN at the end saying maybe we can get beyond this. I hope we can get beyond this. I hope we can do what Senator GRAHAM talked about when we started this conversation a little over 3 hours ago and he said let's look to the future.

The future is only going to be a bright future if we, one, follow the dictates of the Constitution, understand that there is this concept of majority rule, that the Constitution dictates that these nominations be dealt with on a majority basis, and that this body respect the history and tradition. That is what we have.

Then, of course, it is the responsibility of the President to bring forth qualified nominees and get past the rhetoric of extreme. I dealt with Priscilla Owen. Let me talk about Bill Pryor, for example. Alabama Attorney General Bill Pryor, nominee to the Eleventh Circuit, has earned a reputation as one of America's most experienced and esteemed State attorneys general. His nomination has received overwhelming support from across the ideological and political spectrum. Mr. Pryor was appointed attorney general of Alabama in 1997 and was overwhelmingly reelected; outstanding credentials. He was a law clerk for civil rights legend, the late Judge John Minor Wisdom.

Senator LAMAR ALEXANDER, also one of our newer brethren, fraternity of those who just got elected this year, had an opportunity to work with Judge Wisdom, who is, by the way, one of the great civil rights legends. Attorney General Pryor worked for him. Pryor graduated magna cum laude in 1987 from Tulane University School of Law and was then chief of the Law Review. What is interesting is that Attorney General Pryor is being attacked as being extreme. He is a man, by the way, who does have very strong beliefs. He is human. He has strong beliefs. That is not a bad thing. That is a good thing.

He is a person who has shown that he is willing to put his beliefs to the side to look at the law and to interpret the law, and that is what we expect a judge to do.

My friend Senator GRAHAM and I have talked about this. We talked about Bill Pryor. There is the chief judge in Alabama, who was involved with the case about the Ten Commandments in court. The courts have said that is unconstitutional.

Now, I suspect General Pryor believes that is probably a good thing, but General Pryor then leads the effort to challenge—in effect, to prosecute—the chief justice saying the law has to be enforced. That is what it is about.

Bill Pryor has also been a moderate voice in the partial-birth abortion debate. By the way, that is a mainstream position, but a court decision came down and challenged the Alabama law. General Pryor, in accordance with his duty to defend the statute, that is what he did. He then exercised that authority putting aside what I am sure are personal opinions to enforce the law. That is not extreme. That is mainstream. That is what we want on a court.

Yes, we have people of character, principle, and strong beliefs. What the other side has done is they take folks who have these strong beliefs, who then espouse them. Along the way they may give a speech, they may give a writing, and then they wave that around to see how extreme they are, but we have to judge people by their actions. We have an attorney general who puts aside his personal beliefs to say he will enforce the law. That is what you do.

My distinguished colleague who will take the floor after me, Senator PRYOR, was a former attorney general. I know he operated in the same way. That is what he would expect of his colleagues, put aside personal beliefs to enforce the law. That is what makes a good judge. Vote them up, vote them down. Give them a vote.

I yield the floor to my colleague, Senator GRAHAM.

Mr. GRAHAM of South Carolina. I thank the Senator for yielding. I think he did a very good job of trying to explain the best we can that this has never been done before, that this is truly a new era for the Senate. We are filibustering judges who have been reported out of the Judiciary Committee for the first time in the history of the country. That fact will never go away. It has never happened before. Abe Fortas was not a partisan filibuster. Republicans and Democrats thought the man was not qualified to be chief judge because of some ethics complaints, and the President withdrew it. But you had Republicans and Democrats banding together trying to send a message to the President that they did not think this person was promotable. They had 4 days of debate. It was not a filibuster. It wound up being a bipartisan effort to come together to send a message to the President.

There is nothing bipartisan about this other than the fact that every nominee who is being filibustered has Republican and Democratic support to sit on the bench in a majority fashion. That is the problem here, that if all of these people who are being filibustered had their day on the floor, an up-or-down vote, they would be judges and they would have Democratic votes. One of them has 55, we believe, because 55 people have voted to allow a vote on the floor. That is important.

These people would be judges, just like the two Senator LOTT intervened on. The two Democrats who were being opposed by some Members of the Republican Party, Senator LOTT stepped in and stopped it. He filed a cloture motion and it passed overwhelmingly to end debate, and they are sitting on the bench today. Good for him. I am glad he did it.

I want to be fair, too, to Senator CORZINE. There is nothing wrong with people talking about issues before the Senate in trying to get money sent to the parties. Both parties do that. I have never suggested that Senator CORZINE has done anything wrong. I am just trying to put in perspective what this debate truly is all about, because when you are out there talking to your base about what you are doing that can be a pretty good evidence of what is in your heart and what you mean to do.

Now I have the whole document. This chart is an excerpt from a November 3 fundraising e-mail sent out by Senator CORZINE, the head of the Democratic Senatorial Campaign Committee. It says:

> Senate Democrats have launched an unprecedented effort . . . By mounting filibusters against the Bush administration's most radical nominees, Senate Democrats have led the effort to save our courts.

I have been saying for days now that this e-mail indicates that they view this to be an unprecedented effort by Democratic colleagues and the unprecedented effort is mounting filibusters. But this dot, dot, dot, now I have the whole e-mail and I do want to be fair. I do not think it has changed a thing. Having looked at the e-mail, I think it reinforces my point.

This is what the actual paragraph says in full:

> Senate Democrats have launched an unprecedented effort to protect the rights of all Americans by keeping our courts fair and impartial. By mounting filibusters . . .

I think a fair reading, a fair interpretation of the English language, is that the unprecedented effort refers to the filibusters. They are throwing in some nice language about being fair in there. Nothing has changed.

This was an e-mail sent out to try to tell Democrats that we are up here fighting Bush in an unprecedented way by filibustering his judges because we think they are radical. This e-mail is about a particular judge, and I am going to read the whole thing. This is the way it is entitled:

> Senate Democrats protect our courts again. Dear Erin, Senate Democrats have stopped another judicial extremist who wants nothing more than to turn back the clock on fifty years of progress on civil liberties. Reproductive freedom, equal opportunity, and corporate accountability again.

What a lousy person that is—that is me stating.

> After being defeated under a Democratic controlled Senate, controversial judicial nominee Charles Pickering was defeated again on Thursday by Democrats in the Senate.
>
> For the first time in history, a President of the United States re-nominated a judicial nominee that the committee had already voted down but the Senate Democrats stopped the Bush Administration in its tracks.

That is true. When the Democrats had control of the Senate, Judge Pickering was voted down on a party-line vote. The President has a right to resubmit the nominee. I am very glad he did because this time he came out of committee on a party-line vote.

We just have a different view of whether or not this man is a racist, because there is no other way to interpret what this e-mail is saying about this man.

Continuing:

> Despite the administration's desire to ignore the Constitution's rule of advice and consent, Senate Democrats are holding Republicans accountable.
>
> Why must the Democrats continue their fight against Charles Pickering?
>
> While in law school, Mr. Pickering wrote an article suggesting ways the State of Mississippi could better enforce its ban on interracial marriage.
>
> As a State senator in the 1970's, Mr. Pickering worked to repeal important provisions of the Voter Rights Act.
>
> In 1994, he went out of his way to seek a more lenient sentence for a convicted crossburner.

They have described somebody who is not what you would want to have on the bench. There is no other way to say it other than this e-mail is directly and indirectly suggesting Charles Pickering is racially motivated. What a horrible thing to say about somebody if it is not true.

> Once defeated when Democrats had a majority in the Senate, President Bush nominated Charles Pickering for a second time after the 2002 elections and now two successful filibusters launched by Senate Democrats have kept him off the bench!
>
> The Bush Administration is devoted to using the courts to its political advantage. Time and again, this administration has nominated ultra-conservative candidates who are zealously devoted to advancing corporate interests, taking away reproductive freedom, smashing the wall of separation between church and state, and dismantling equal opportunity.
>
> But the Administration has got a big problem: Senate Democrats. Senate Democrats have launched an unprecedented effort to protect the rights of all Americans by keeping our courts fair and impartial. By mounting filibusters against the Bush Administration's most radical nominees, Senate Democrats have led the effort to save our courts.
>
> Help the Senate Democrats keep fighting. Support the DSCC efforts to help elect more Democrats to the Senate—and keep the proven leaders we have. Help the DSCC send a message to the Bush Administration—Senate Democrats will NOT rubber stamp extremist judicial candidates. Help us fight to maintain judicial integrity by sending more Democrats to the United States Senate in 2004.

That is the e-mail in its entirety. Now the accusations in that e-mail are strong, they are direct, and I think vicious. Judge Pickering, according to this e-mail, is someone who wanted to keep the interracial marriage statute alive when he was in law school by writing law school papers in support of this. He went out of his way in 1994 to make a sentence more lenient for a convicted cross burner.

The only thing a rational person would receive from that litany is Judge Pickering is friendly to a cross burner. If that is true, he should never have been a judge for 30 seconds. If the other things are true, it was a huge mistake to ever advance this man forward.

But here is the problem I have with believing what is in this e-mail. Number one, I have met the man. I have talked to him. I served in the House with his son, Chip, who is one of the nicest, brightest young men I have ever met. This e-mail describes him as a very intolerant, racially insensitive person. But I can tell you without a doubt from personal experience he did a great job as a father because his son is anything but racially intolerant. His son is a wonderful young man.

If that e-mail is true, then you explain to me how the American Bar Association could give him the highest rating possible, well qualified. Did they miss this racial past? Or do they condone it? How about this, maybe this is a cut-and-paste job and they didn't buy it. He graduated first in his class; 99.5 percent of the cases were affirmed or not appealed. His reversal rate is below the national average, two times lower than the average district judge in the Fifth Circuit Court of Appeals. He has never had a voting rights case appealed or reversed. He has never had a formal discrimination case reversed in 170 cases and is endorsed by the current president and 17 past presidents of the Mississippi State bar. Maybe they are all racist, too. He is endorsed by all major newspapers in Mississippi. He is endorsed by all statewide elected Democrats and the chairman of the Mississippi legislative black caucus. He was endorsed by former Democratic Governor William Winter, Bill Waller, former Democratic lieutenant governor, and the list goes on and on and on.

Other people object, but I assure my colleagues this e-mail is a distortion of this man. Here is the Judge Pickering I have come to know. In 1967 when Mississippi was red hot and racial tensions were very high in the South, particularly in Mississippi, he served as an elected county prosecutor. He was asked to testify against the Imperial Wizard of the Ku Klux Klan of Mississippi. He took the stand against the Imperial Wizard successfully but lost his job. He was not in the mainstream; he was swimming upstream.

In 1967, when schools were integrated in Mississippi—and I have told the story about integration in South Carolina—he chose to keep his children in public schools at a time when White flight was the dominant way of dealing with the problem in that part of Mississippi. You will see class photos in that era of a lot of African-American children and a smattering of White kids. Among those White families, White kids, were Judge Pickering's kids.

He chose at a time, when others did not in large numbers, to try to make Mississippi better. He has been head of the Mississippi Baptist Association. He has been on the Federal bench for a dozen years, rated well qualified by the American Bar Association.

Of all the events that have occurred in the Senate since I have been here, this one bothers me the most because southern White males are very open to the accusation that we are racially insensitive, due mostly to the way the South has conducted itself.

When I grew up, my family had a restaurant and African Americans came to get their food and to buy a beer and they had to leave because there was no mixing of the races until I was in high school. That is not something to be proud of. Judge Pickering was part of the solution.

What they are trying to cast this man as being is unfair to him; it is unfair to his family. If you believe it to be so, you can vote against him. But he is the best example of how sick the Senate has become.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. I ask unanimous consent we use 5 more minutes of the majority's time and we subtract it from the next hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COLEMAN. Mr. President, I will continue the Pickering story because I think it is important.

My colleague, Senator GRAHAM, has done a tremendous job of laying it out. I don't know Judge Pickering's son as well as Senator GRAHAM does, but I have met him. I have to go beyond that.

Senator GRAHAM mentioned when he was in law school that he wrote an article on interracial marriage. That was in 1959. He was assigned to write an article. It was required, not voluntary. It was an academic exercise. The article evaluated various State laws on interracial marriage. He took no position on the moral nature of these laws nor did he advocate or condone the ban on interracial marriage. He was given an assignment and required to do it.

In the case of the cross burning—and I am a former prosecutor and I have seen this happen—he simply sought precaution in sentencing. There was a bad investigation done by the Clinton Justice Department. They recommended a plea bargain to the guy in the cross burning who was the ring leader. So he gets off. There is a trial then for the other guy. Judge Pickering is there and he sees it is simply not proportioned. He told the guy he tried, who was not the ring leader—but the other got was off the hook. He said what he had done was heinous and dastardly and would not be tolerated and someone would have to spend time in the penitentiary for his act and ruled according to the sentencing guidelines. On and on.

This is an individual who, again, sent his kids to interracial schools in the 1970s. This is a guy who testified against the KKK. This was a death sentence.

In 1985, he was president of the Mississippi Baptist Association, and he presided over the first convention addressed by an African-American pastor.

I could go on and on and on. Again, what we have here is mainstream, not extreme. This is a person who was supported by the folks who know him best. Many African-American judges have written in support of Judge Pickering, including Justice David Keith, the first African-American Federal judge in Mississippi, Henry Wingate, the first African-American Supreme Court judge in Mississippi, Rubin Anderson, and Mississippi court judge Johnny Williams.

What we have is a case where the people who know him best see this is a decent man. This is a man without prejudice. We have special interest groups with their own agenda from outside looking to shoot him down. In doing so, what we have is this Senate undermining the Constitution and our obligation. They are doing something that has not been done before, without legitimate base. Vote them up, vote them down, give them a vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. As I understand what just transpired, his additional 5 minutes or so will be applied to the next hour so I still have 30 minutes.

The PRESIDING OFFICER. That is correct.

Mr. PRYOR. Mr. President, I thank my colleagues on both sides of the aisle for their zealousness on the issues that are present here with regard to these judicial nominations. I know my colleagues on the Republican side have very strongly held opinions and viewpoints they are very sincere about holding. I may differ with them on some of the particulars and some of the conclusions, but I respect their opinions and I respect their zealousness and their commitment to their cause.

Likewise, on the Democratic side, I have a number of colleagues over here who have done a very good job of poignantly discussing these issues and trying to present the other side of the story. I think they are equally passionate.

In some of the finest traditions of the Senate, this august body, this Chamber, is like an arena where maybe two great competitors come in, hash it out and fight it out. That is how the Senate is designed. It is almost like in the Bible, the Book of Proverbs, as iron sharpens iron, one man sharpens another. I just hope that is the process we are going through, that we are sharpening the other, that we are making this engine better and we are progressing as a people and as a nation.

I appreciate the Presiding Officer being here. It is the second night in a row the Senator has had the graveyard shift. Someone with your seniority, I am surprised to see down here two nights in a row. I know you are doing your duty for your colleagues and for your Nation. Certainly there are untold numbers of staff people who work for the various Senators, who work for the Senate itself, the Capitol Police, the C–SPAN team. I have been watching some of this at home or in my office and C–SPAN has done a great job. Periodically when a term will come up that may be unfamiliar to the viewers around the country, they will flash up a definition of that term, such as what a filibuster is, what a hold is, whatever the case may be. They have been taking this opportunity to use this as an instructional time for viewers back home to help understand their Government and help understand their Congress.

I thank the cloakroom staff on both sides. I could go down the long list. The stenographers are doing double duty. There are so many people who should be thanked for allowing this marathon to go on. It has put strains on people. I am very sensitive to the fact they have families they need to get home to and they have lives outside of what goes on here on Capitol Hill. I express a deep and sincere debt of gratitude to those people.

Let me talk about the judicial nomination process. Both my colleagues across the Chamber know I signed on to a letter with them this spring about trying to make this process work better. One thing I was concerned about in signing that letter is we might come to this point today where we would lock horns and have some gridlock on a few nominees. I hope we do not get to the point of gridlock overall in this process.

As to the numbers, since we have been here this Congress, I believe we have confirmed 68 of President Bush's nominees and 4 have been blocked. Last Congress, there were an additional 100, so I believe the grand total is 168.

We have seen a lot of charts with numbers and percentages, but I hope the whole process does not bog down. So the people around the country understand, we are talking only about a select few of the nominations, not the overall nomination process.

One thing I was concerned about and one reason we wrote that letter several months ago was because we wanted to try to make the nomination process better.

We want to try to make it more constructive and more productive. To me, a lot of that responsibility rests with the White House. We talked about that very briefly in that letter. I feel strongly that since the President, under the terms of the Constitution, is the one who begins the process of nominating, he and the White House staff need to try to get the Democratic and Republican leaders involved and sit down to try to work through some of these controversial nominations and try to figure out how we can do this better as we move forward.

One thing I am concerned about is we, around here in the Congress, particularly in the Senate, probably more than the House, are so focused on tradition and history and how things have been done in the past that it is human nature, I guess, that we oftentimes cannot put aside the things that happened in the past. Sometimes those things are perceived to have been ill-willed or for whatever reason perceived to have been unfair, unjust, whatever the case may be. Of course, I have said many times that I have a concern that in this judicial nomination process there is sort of partisanship and gamesmanship, and it is just counterproductive for the people.

So, again, I hope we can move forward. I want to try to continue to work with President Bush on his nominations. I believe I voted for 66 of his nominations of judges. In fact, I was talking to my staff the other day, and I said: Well, the people who are calling in about some of these controversial judgeships, what are they saying to you? They say they want Senator PRYOR to vote for candidate X, whoever that may be. The staffer will say: We appreciate your call. But we also want you to know he voted for 66 or 67 of President Bush's nominees. Invariably, the person on the other end of the line says: No, he hasn't. Because they are not hearing the other side of the story, that, again, we are only talking about a small percentage of the nominees who are not getting through.

If you look at the numbers and the percentages that President Bush has accomplished since he has been President, they are historically high numbers.

So I want to continue to work with the President and find that common ground. I believe we all have the constitutional responsibility to advise and consent on judicial nominations. Mostly what I am hearing on the other side—mostly—people believe the Senate should not be a rubberstamp. I think the vast majority of Senators believe the Senate should not be a rubberstamp and an automatic approval process for the President.

I think we have a responsibility to the Nation to look at these—again, the concept of iron sharpens iron, the President and the Senate sharpening each other, because he knows we will review and look very carefully at the nominations he puts forward. He puts forward a higher quality nomination than if it was just a rubberstamp. That accountability is a positive thing for the people and for the Government. I take this responsibility seriously. I know all Members of the Senate do take their responsibility very seriously.

Another thing I wish to say is that when I look at judges I kind of have a criteria. I have kind of broken it down into four parts. We try to be consistent in our office when we look at these four factors.

One is just a starting point: Is the nominee qualified? Most of the people who make it through the committee are qualified. I think, again, there is a weeding out process there, but I start with the presumption that if they get to this stage in the process they are qualified.

The second thing I ask myself is, can they be fair and impartial? I think that is an extremely important criteria. Admittedly, it is somewhat subjective. Reasonable minds can differ about if someone can be fair and impartial, and reasonable minds do differ.

Again, that is one thing we get back to in the Senate. Someone like either of my two colleagues, who have spoken here in the last few minutes, who are so articulate and so good, they look at some of those nominees and there is no doubt in their minds, they are going to be fair and impartial. I look at them and I have some doubts. Again, that is how the process works. I am proud that their two States have sent them to the Senate. They are here to do their duty as God gives them the right to do it. I feel like I am here to do the same.

So reasonable minds can differ about being fair and impartial. But regardless of how you come out on the conclusion, that is one of the criteria I use. I think it is extremely important for a judge.

There is another, a third, element I look at; that is, has the nominee demonstrated an ability to exercise and to show the proper judicial temperament? For all the lawyers out there, and all the parties out there, if you have been in court before, you understand how important the judicial temperament can be in cases. Literally these judges oftentimes hold life or death in their hands for a criminal defendant. Or they may hold a business's solvency or whatever the case may be. It is very important. Their temperament oftentimes is determinative in how the case will come out. So again it is subjective, but I try to look at their judicial temperament.

Then the fourth criteria is sort of the elastic clause. The Constitution has an elastic clause, so part of my criteria is kind of an elastic standard—and I don't say standard but elastic consideration—and that is, are there other factors or other circumstances, when you look at these nominees, that should be considered? And, boy, that is just openended.

But I think, as Senators, we should consider the totality of the circumstances. We should look at these nominees in a historical context; it may be a social context; it may be something unique to that region or that State or that person. I think it is incumbent on us to look at those carefully.

Here again, it is subjective. Is that something you can really write down as criteria of how it is going to work in every single case? No. Maybe it should not be. Maybe it should be left elastic so it can be changed and be looked at from different perspectives with each particular nominee.

But regardless of that, I do take my role and my duties as a Senator very seriously. One of those roles that I believe very strongly about is the people of Arkansas sent me here to work with everybody else who is up here. If the people of this country want to elect George Bush as President, I am here to work with President Bush. Mississippi sends their set of Senators and Texas sends their set of Senators, and Massachusetts and California, and I believe my responsibility, as a Senator for Arkansas, is to work with who is here. That is what I have tried to do, and I will continue to try to do that.

One thing also we need to keep in mind is that these judicial nominations we are talking about today and that we always have under consideration here in the Senate are lifetime appointments. Only under extreme circumstances will these people be removed from office. It is very rare that happens in American history, but it can happen. But these are lifetime appointments.

I think it is critical that our judiciary is independent. I think that is the way our Founding Fathers set it up. We better get these nominees right on the front end because these people will serve for life.

Like I say, they hold justice in their hands. Their application of the law will be determinative for so many things during the course of their careers.

I think, simply put, people are entitled to know what nominees think. I think people are entitled to know about the qualifications. They need to have the assurance that these nominees under consideration by the Senate—the people need to have an assurance that if these people do put on the robe, do serve on the bench, that the integrity of the system will be there and that these people will do justice, as their responsibility requires.

I personally believe the people of America want a moderate and balanced approach. Personally, I think most Americans do not want to see the courts packed with judges with a conservative agenda or judges with a liberal agenda. I think most Americans want to see moderate, fairminded people on the bench. Because people understand that if you go into this with an agenda, then the courts will not be balanced and that judge and the court will have one dominant point of view. That is not good for our justice system.

I do think there has been a lot of discussion about some of these judges' records. Again, I think those are subject to interpretation. I am not going to try to get into all the particulars of those. We do not have time tonight, plus my colleagues, for the last several hours, the last 30-plus hours, have tried to do that. Many of them have done a very good job.

What I would like to do, if I can, is talk about one thing that does bother me, and that is the fact we are getting toward the end of our calendar year in the Senate and this is crunch time for the Congress to get its work done. In fact, right now our colleagues in the House, down the hall, basically are only meeting about 1 day a week, maybe 2, for votes because they have taken care of a lot of their legislative business—not all. They still have some things pending. But they have gotten theirs down to the point where they do not have to be in very many legislative days. In fact, a lot of what they are doing is waiting on us to accomplish and to finish our business.

Well, here we are spending 30-plus hours in a talkathon about these four judicial nominations that have been blocked. I think we need to keep it in perspective. Some of the Democrats have talked about 3 million jobs that have been lost in the last 3 years and what we are arguing about here are four judicial jobs. Well, that may be fair; that may not be. But I think there is some merit to that.

To keep it in perspective, 98 percent of President Bush's nominees have been confirmed. That is a pretty good percentage. You try to find another percentage like that in history, I am not sure you will find it. Also, when you look at Government and we look at anything involving human events, 98 percent is a pretty high percentage.

So again, I would encourage all of us to try to keep this in perspective. I heard one of my colleagues last night talk about 98 percent of this and 98 percent of that. In fact, it was Senator CHAMBLISS of Georgia. He had a very humorous monologue about that. But the truth is, 98 percent in politics and in Government is a pretty doggone good success rate. In fact, I would go so far as to say I am not sure anybody in Washington ever gets 100 percent of what they want. Most people are happy to get 50 percent of what they want, if they can just get that done.

But regardless of that, I think most people I talk to back home understand that judges are important, and they understand that it is important that we have an independent judiciary, but they also perceive that these four nominations are not urgent to the welfare of our Nation. So that causes me to question why we are doing this right now. If this is a big issue, can't we put it off until another time? But regardless, we find ourselves here. That is just where we are right now.

I want to talk about one other thing that is a concern to people all over the Nation; that is, losing jobs in the manufacturing sector of our economy. It was announced the other day that one of the great companies in the world, I guess—Michigan-based Whirlpool—plans to move some of its refrigerator production, which is made in Fort Smith, AR—they plan to move those jobs from Fort Smith down to Mexico. Very sad news.

Jim Pickens, who was, until very recently, Arkansas' economic development director, said that it is clear that some of the 4,500 Whirlpool jobs in Fort Smith will go.

The problem with this is it is not an isolated incident. It is a trend. It is something to which we in the Senate should be devoting our time. It is something that folks back home are very concerned about, losing these manufacturing jobs.

One thing that is of particular concern in the Whirlpool case is it was just a few months ago—about a year ago—when Whirlpool made an announcement they were going to actually add 700 jobs in Fort Smith. Of course, there was a lot of excitement about that announcement. Now there is a lot of disappointment about what Whirlpool has decided to do. I am not saying this to be critical of Whirlpool, but I am saying to my colleagues instead of spending this much time on these four judicial positions, let's spend this much legislative time in trying to figure out how to save our manufacturing sector. Because I think long term when you look at what is good for technology and good for this Government, good for this country, saving those manufacturing jobs is probably more important than these four judgeships we are talking about.

Another thing that I must tell you I experienced today is I went to Walter Reed Hospital, the Army hospital here in the DC area, and talked to men and women who had come out of Iraq and Afghanistan. Very sobering, very serious. These are patriots of the first order. Some of them will have lifelong injuries due to their service to this country.

One thing that was emphasized with us over and over is that Iraq is a very dangerous place right now. There again, I hope, and I sincerely hope, the Senate will spend this much time in deliberation and in consideration of how we should move forward in Iraq and what that future looks like for Iraq.

Mr. President, it does not bother me to work late. This is the second night in a row that I have had a late night slot. But it does bother me a little bit that we may have lost some perspective in that we need to keep these other important issues in perspective. No question that our judiciary is important. That is our third branch of Government. But we also need to keep it in perspective.

Mr. President, may I inquire, how much time do I have remaining?

The PRESIDING OFFICER. Four and a half minutes.

Mr. PRYOR. How much time?

The PRESIDING OFFICER. Four and a half minutes.

Mr. PRYOR. Let me read part of a letter from Robert Caro. He is the man who wrote the Pulitzer Prize winning book, "Master of the Senate."

"Master of the Senate" is the story of Lyndon Johnson when he was a Senator. In June of this year, Robert Caro wrote a letter, not to me, but to TRENT LOTT and CHRIS DODD, the two leaders of the Rules Committee.

Mr. President, I ask unanimous consent to print this letter in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ROBERT A. CARO,
June 3, 2003.

Hon. TRENT LOTT, Chairman,
Hon. CHRISTOPHER J. DODD, Ranking Member,
Senate Committee on Rules and Administration, Russell Senate Office Building, Washington, DC.

DEAR SENATORS LOTT AND DODD: Several members of the Senate have asked me whether my research on the history of the Senate sheds light on the current debate over the role of the Senate with respect to President Bush's judicial nominations.

Defining the right of extended debate is always tricky. If it is being used against you, it is a vicious weapon of obstruction, whose use in a democracy is unconscionable. If it is you who is using that weapon, it is a great one to have in your arsenal.

Many times in America's history, the right of extended debate has been used to defend causes with which I profoundly disagree. In Master of the Senate, I tried to show how it was a last-resort, but very effective, barrier thrown up in the most ignoble of causes: the continuation of racial segregation.

Nonetheless, great care should be taken in placing new restrictions on that right. Senators who are considering doing so should understand that they will be taking a step that has significant implications for the balance of powers created under the Constitution, and also for another very fundamental concern in a democracy: the balance between majority and minority rights.

The writings of the framers of the Constitution make clear that Senators, whether acting alone or in concert with like-minded colleagues, are entitled to use whatever means the Senate rules provide to vigorously contest a President's assertion of authority with which they strongly disagree. One could say, in fact, that under the fundamental concept of the Senate as envisioned by the founding fathers, it is not merely the right, but the duty of Senators to do that, no matter how popular the President or how strongly the public opinion polls of the moments support the President's stand on the issue involved.

I said in Chapter 1 of Master of the Senate that ". . . in creating the new nation, its Founding Fathers, the Framers of its Constitution, gave its legislature . . . not only its own powers, specified and sweeping . . . but also powers designed to make the Congress independent of the President and to restrain and act as a check on his authority, [including] power to approve his appointments, even the appointments he made within his own Administration. . . . And the most potent of these restraining powers the Framers gave to the Senate. . . . The power to approve Presidential appointments was given to the Senate alone; a President could nominate and appoint ambassadors, Supreme Court Justices, and other officers of the United States, but only 'with the Advice and Consent of the Senate.' "

I also pointed out that "the Framers wanted to check and restrain not only the people's rulers," but also the possibility that the majority will would be used, in Madison's words, "to oppress the minority." The Framers, he said, established the Senate as the body "first to protect the people against their rulers; secondly to protect the people against the transient impressions into which they themselves might be led. . . . The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch." The Constitutional Convention adopted the two-House Congress with almost no dissent.

To give the Senate strong protections from transient public passions or executive pressure, the Convention kept the Senate small so that it would have, again in Madison's words, less propensity "to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions." To make the Senate more stable, to keep it "firm," and "to insure their independency" [Edmund Randolph], the Framers gave Senators terms three times as long as House members and half again as long as the President's. As a final layer of armor, only one-third of the Senate would be elected every two years, so that the Senate would change only gradually over time.

As I wrote, since the power of the President and the power of the people would be very strong under the Constitution, "to enable the Senate to stand against these powers—to stand against them for centuries to come—the Framers of the Constitution made the Senate very strong."

I have pointed out that one of the first acts of the Senate was to write the 1789 statute setting up the federal judiciary system. Sixteen years later, the Senate was called upon to preserve and protect the independence of that system by standing up to Thomas Jefferson, a popular President with a majority in both Houses. Jefferson wanted the Senate to help him tilt the Supreme Court in his own direction, by convicting Justice Samuel Chase after the House had impeached him on a party-line vote. Jefferson had more than enough of his own party members in the Senate to convict Chase, but enough Senators from *both* parties voted against the President to sustain the independence of the Judiciary from the Executive. As your colleague Senator Byrd said some two centuries later, "The Senate exercised in that fine moment of drama the kind of independence, impartiality, fairness and courage that, from time to time over the years, it has brought to bear on the great issues of the country." The independent Senate had vindicated the Framers' hope that it would stand against the tyranny of presidential power and the tides of public opinion.

The Founders, in their wisdom, also gave the Senate the power to establish for itself the rules governing exercise of its powers. Unlike the unwieldy House, which had to adopt rules that inhibited debate, the Senate became the true deliberative body that the Framers had envisioned by maintaining the ability of its members to debate as long as necessary to reach a just result. For more than a century, the Senate required unanimous agreement to close off debate. The adoption of Rule XXII in 1917 allowed a two-thirds cloture vote on "measures," but nominations were not brought under the rule until 1949.

In short, two centuries of history rebut any suggestion that either the language or the intent of the Constitution prohibits or counsels against the use of extended debate to resist Presidential authority. To the contrary, the nation's Founders depended on the Senate's members to stand up to a popular and powerful president. In the case of judicial appointments, the Founders specifically mandated the Senate to play an active role, providing both advice and consent to the President. That shared authority was basic to the balance of powers among the branches.

Surrendering such authority is not something which should be done just because of a Senator's point of view on the particular issue of the moment—because much more than the particular issue is involved. What is a Senator—let us say a senator from small-population state without any other means of defense—votes to support an new limitation on debate today? What will he do in some future year when he is trying to stop a bill or a nomination that a bare majority of the Senate supports, but that he and 40 colleagues believe will be terribly detrimental to their states or to the nation—an action that he feels a few members of the senate may change their view about if only he has enough time to explain the full consequences to them and to the public? What will he feel when he suddenly realizes that his right to hold the senate floor against that action has been so greatly reduced that the bare majority can silence him before he is finished making his case? What will he do when he realizes that, without the right of extended debate, his cause is ultimately helpless?

I am not attempting to say that the right of extended debate should not be modified. I am, however, attempting to say as strongly as I can, that in considering any modification Senators should realize that they are dealing not with the particular dispute of the moment, but with the fundamental character of the Senate of the United States, and with the deeper issue of the balance between majority and minority rights.

As I told a group of Senators last month, you need only look at what happened when the Senate gradually surrendered more and more its power over international affairs to learn the lesson that once you surrender power, you never get it back.

Respectfully,

ROBERT A. CARO.

Mr. PRYOR. Mr. President, basically what Robert Caro points out in this letter is:

> Several members of the Senate have asked me whether my research on the history of the Senate sheds light on the current debate over the role of the Senate with respect to President Bush's judicial nominations.
>
> Defining the right of extended debate is always tricky. If it is being used against you, it is a vicious weapon of obstruction whose use in a democracy is unconscionable. If it is you who is using that weapon, it is a great one to have in your arsenal.

I think right there we see the tension Mr. Caro captured so well in his book, but here again he has captured it and framed up the issue very well for us. The right of the filibuster or unlimited debate is something that is viewed very differently, depending which side of the filibuster you are on.

It has historically in this country been used time and time again for almost everything under the Sun—sometimes successfully, sometimes not successfully. One thing he talks about is:

> Nonetheless, great care should be taken in placing new restrictions on that right. Senators who are considering doing so should understand that they will be taking a step that has significant implications for the balance of powers created under the Constitution, and also for another very fundamental concern in a democracy: the balance between majority and minority rights.

I have no doubt some of my colleagues on the Republican side genuinely feel the Democrats are out of line in using the filibuster in this context. Also, I have no doubt many of my colleagues on the Democratic side feel we are perfectly within our rights to use the filibuster. Here again, I encourage my colleagues to look at this letter from Robert Caro dated June 3, 2003, which brings a historical—not a political, not a partisan, but a historical—perspective to what we are talking about tonight and what we will be voting on in the morning.

Again, I thank all my colleagues for being here. It is late-night duty. It is not easy. The staff has just done a fantastic job. My legislative director, Walter Pryor, has been with me every step of the way. I know he would like to get some normalcy back in his life, as do so many of us.

Has my time expired, Mr. President?

The PRESIDING OFFICER. The Senator has 40 seconds.

Mr. PRYOR. Mr. President, again, I thank you and thank my colleagues on both sides of the aisle for all their hard work in bringing these issues to the forefront. I see my colleague from Rhode Island, Senator REED, walk in. We went to Walter Reed Hospital today. I know he has had a long day. I look forward to listening to his remarks.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I wish to acknowledge Senator PRYOR's commitment to moving this process forward. He did write a letter a while back trying to find a way to better handle the problems we are having with judges. I think he has a very good heart about this. I respect him as a person. He has truly become a friend.

With that kind of attitude, maybe we will find a way out of this down the road. Right now, unfortunately, we are stuck in the quicksand, not mud. The more we fight each other, the deeper into it we get. The atmosphere in the Senate right now about judges I think has taken a turn for the worse.

There are probably many things one can point to in the past on the Republican side. I am not here to defend the past. I am here to talk about the future, and we have to deal with the present. Here is what about the present bothers me the most.

There is an effort to filibuster judges in a way that has never occurred before in the history of the country. I think it is very unhealthy and constitutionally impermissible and will only be answered in kind. We are going to set the future course of the Senate down a road where it will be hard to get good men and women to apply. Let me tell you why I think they will not apply.

I read a fundraising e-mail that concerned Charles Pickering. As one can tell when I spoke, it bothered me greatly what they are trying to do to Judge Pickering because I come from the South. I know how easy it is to be associated with the sins of the past, to be, for lack of a better word, sometimes stereotyped. Here are the accusations in the e-mail:

> Why must the Democrats continue their fight against Charles Pickering? While in law school, Mr. Pickering wrote an article suggesting ways Mississippi can better enforce its ban on interracial marriage.

That statement clearly tries to make the reader believe this is a person who has supported interracial marriage bans and is racially insensitive. I ask the country to look at it in these terms. He was unanimously confirmed by this body 12 years ago. Not one person objected. I can't believe the whole body was asleep at the switch and this law school article was not known. He didn't advocate the ban on interracial marriage. It was under attack, and he wrote a scholarly dissertation about it.

If you believe what the statement says, the entire Senate either didn't know about this or ignored it because the entire Senate unanimously approved Judge Pickering 12 years ago, long after he got out of law school, to sit on the Federal bench as a district court judge.

The second point:

> As a State senator in the 1970s, Mr. Pickering worked to repeal important provisions of the Voter Rights Act.

The reader of this e-mail who is being asked to give money to help Democrats fight President Bush's nominees—what is the message you are trying to convey to the reader of this e-mail? That yet again in the 1970s this same person, while holding public office in Mississippi was working to undermine laws that protected African Americans in the State of Mississippi. There is no other fair interpretation of why that is in this e-mail and trying to cast him in that light.

Again, it is beyond my understanding and real belief, if that were true, if this man used his office in Mississippi in 1960 to undermine the Voting Rights Act, that this body 12 years ago would have unanimously approved him to be a district court judge.

I believe these two statements were designed to emotionally charge the reader and to unfairly label Judge Pickering in a way that is not deserved and flies in the face of the fact that the Senate confirmed him unanimously 12 years ago.

The last point:

> In 1994, he went out of his way to seek a more lenient sentence for a convicted cross burner.

My colleague from Minnesota very eloquently spoke about that case. I am on the Judiciary Committee. When I heard that accusation, it really did pique my interest. I wondered what was going on because none of us want a judge who is going to be sympathetic to such a horrible crime.

Here is what actually happened. There were three defendants, not two—three defendants. The ringleader and the second oldest man, I believe, received a probationary sentence. The youngest of the three was charged with a crime of arson.

What this judge did is he looked at the way the prosecutor handled three defendants, and he said: That is not fair. You are letting two of the worst guys go and impounding the youngest guy.

That is what I want a judge to do. I want a judge to make sure the people who come before his court are treated in an apportioned manner.

The third person, the youngest one, was given a speech and a lecture by Judge Pickering about the act of cross burning that should make us all very proud. The youngest defendant went to jail, but his sentence was adjusted in light of what happened to the other two people who basically got away with it because the prosecutor did a deal I don't understand myself.

I do understand why Judge Pickering wanted to adjust the sentence, but if you listened to the words and read the transcript, he didn't go out of his way to do anything other than to make the sentences apportioned. He went out of his way to let the defendant know what a sleazy person he was by engaging in this activity, but he brought balance to the people before him.

The reason I keep talking about this situation and Justice Brown is I am trying to let the record reflect for future review that I believe very sincerely these judicial nominees are having a tremendous hatchet job done on their lives. They are trying to make up reasons to justify a filibuster, and there is no good reason to have a filibuster.

Senator PRYOR is a very fairminded person. If he disagrees with me about Judge Pickering or anybody else, that is just life; he is right. All I am asking him and other Senators to do is to follow the Constitution, and the advice and consent clause for the entire history of the country when it comes to judges has been interpreted in a manner that the majority of the Senate will advise and consent, not a minority.

What is happening to these four people—and we will talk more about the others—is very unhealthy for the country. The reason I say that is they are taking statements and articles, speeches, and letters to their church out of context, and liberal special interest groups are trying to oppose conservatives coming on the bench in an unfair way.

These four individuals' lives have been distorted. That is what bothers me the most. If you don't like their philosophy, vote them up, vote them down, just vote, is the saying. If we continue what we are doing today into the future, no reasonable person is going to feel good about wanting to go on to the Federal bench given what is happening to these people, and that will be a huge loss to the country.

The process we are engaged in today has no upside; it only has downsides, and the downsides I think are extremely dire for the country. Not only are you going to drive good people away because nobody is going to want to go through this—and I assure you it will be answered in kind, and that is sad because I know politics.

The other downside is special interest groups, liberal or conservative, are going to have more power than they deserve over individual lives because all they need to do is get 41 votes.

Special interest politics is part of our political landscape. The Constitution has checks and balances against each branch. One of the checks and balances I like the most about the way the judicial nominating process works is if a majority of us feel a person is qualified, they get to sit on the bench.

Please, let's not as a group empower special interest groups to the point that 41 of us can stop somebody from sitting on the bench because we will have rewritten the Constitution, not only in its letter but its spirit.

I end with this. Federalist Paper No. 66 has the following comment:

> It will be the Office of the President to nominate and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the executive and oblige him to make another, but they cannot themselves choose. They can only gratify or reject the choice of the President.

For the sake of the future of law in this country, for the sake of the future of the Senate, let's not let a small group make it impossible for good people to serve.

I yield the rest of the time to my good friend from Kansas, whom I have known since I have been in politics at the Federal level, Senator BROWNBACK.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I appreciate my colleague from South Carolina carrying the comments and the load for several hours in the early morning as we approach 4:15 in the morning. We are talking about something of great importance. He has real wisdom in his words, too, about the point that the process on which we are embarked has no upside to it. When you have good people, qualified people blocked from the Federal bench not by majority vote but by filibuster, you are headed down a bad path. This bad path doesn't have a good ending.

We will continue to have division in this body. I don't doubt we can be blocked on these for some time, but that is certainly going to carry over into the next election cycle, and this doesn't have an upside to it. Plus, we have good people waiting. We have people who are qualified and are not going to be serving on the Federal bench.

We have a lot of hurt feelings. We have a lot of accusations made without truth. We have harsh words, harsh comments, and that all leads to a downward cycle. There isn't an up cycle here.

I wish to take a few minutes to describe why I think we got to this point. We didn't used to be here. We have approved people of strong judicial opinions in recent times. They have generally been from the left, and those have been approved during the Clinton years.

Lord knows we are talking about circuit court nominees now. What if we got a Supreme Court nominee? Does the body get tied up for 2 years? We have actually had one Supreme Court Justice who has been filibustered in the past.

Why did we get to this point? It used to be if people had a litmus test on candidates, that was seen as a terrible thing and they were castigated. I don't know if the Presiding Officer or others remember when Ronald Reagan was accused of having a litmus test. That was just a horrible thing. His administration denied it. They didn't put forward people under a litmus test, and we were moving forward.

Now people are being subject to a litmus test. They are being blocked. They are qualified, and they are being stopped. How did we get to this point? I want to take a shot at that and develop it from the standpoint of a case that is currently before the Supreme Court. It is the case of Michael A. Newdow v. The U.S. Congress, United States of America, George W. Bush, President of the United States, State of California, Elk Grove Unified School District. That would be the operative group in the Newdow case, the flag suit case. It is the case most people are familiar with where the Ninth Circuit Court of Appeals determined it was unconstitutional for our children in school to say the Pledge of Allegiance. The reason it is unconstitutional is because of something Dwight Eisenhower signed into law when he was President of the United States in 1954, and that is where the Congress of the United States added the phrase: "One Nation under God."

That phrase was so offensive to Mr. Newdow or his child who was in the school that he said: I can't stand this any longer. He was joined by some other people and took this case to the Court.

The Ninth Circuit said you are right. You should not have to. This is not right for our children to say one nation under God. That evoked quite a comment across the country. It evoked quite a comment by this body. I believe this body voted 99 to 0 to say that the flag salute is right; we should say this; it should be allowed by our children.

There were a lot of protestations and the people commented that it was terrible that the Ninth Circuit would be so out of whack, so lacking of mainstream thought, so out of context and touch with the American public that they would rule against something that 98 percent of the American public is for, the flag salute.

The problem with the public outpouring on Newdow and the problem facing the Supreme Court now on this Newdow case is that they were following precedence being developed over a period of 40 years, that the Supreme Court, circuit courts, and others had been working for a period of 40 years to remove the recognition of a higher moral authority from the public square. They were saying this is something we do not want in the public square.

It started in 1962 that these series of cases is built upon. In 1962, Engel v. Vitale was the case that really started this whole string going. That was when our children were allowed to say a prayer at the beginning of the schoolday, and Engel v. Vitale said that was unconstitutional. It was followed by School District of Abington Township v. Schempp. There the Court held that the Bible readings in public school also violated the first amendment. It was followed, in 1992, by Lee v. Weisman, a case about prayer that was being held at a graduation exercise. The Court held that was unconstitutional. It was followed, in 2000, by Santa Fe Independent School District v. Doe where prayer was being removed from being said at a football game. That is followed by the Newdow case now before the Court. I predict it will be followed by a case that will call for this body to remove "In God we trust" off the mantle that is here. I predict it will be followed by a case that will call on us to remove off of our money any reference to a higher moral authority, "In God we trust" being taken off of the back of the one dollar bill. It will follow, follow, follow.

Well, people do not agree with that. Massive amounts of people in this country do not agree with that. People have mounted up now. Actually, some people do agree. Some people say, yes, we should remove the recognition of some higher moral authority, of God, from the public square. So we are engaged in this great ideological fight.

I contend that this battle, this fight, of blocking these justices started about 40 years ago. Some of us participating in this form of debate feel as if the last couple of days have been along that 40-year line. What we are seeing is the courts injecting itself here into a societal issue that many people feel deeply about and immersing itself in this. Then both sides get fired up and we get good people such as Charles Pickering and Priscilla Owen and others—particularly a guy like Charles Pickering. He is probably the most instructive of the cases here.

We have gone through ad nauseam his qualifications, but I want to make this point of him: First in his law school class, highest rating by Martindale Hubbell, unanimously approved by the Senate for a district court judge in 1990, affirmed on appeals 99.5 percent of the time, reversed only 26 times out of approximately 5,300 cases, received the ABA, the American Bar Association, highest rating, well qualified.

So what is the problem with this picture? Mr. Pickering was president of the Southern Baptist Convention for Mississippi, so he is a man of faith. As such, when we have these 40 years of cases coming up that say we have to remove God from the public square and run into a guy such as Charles Pickering who says, I will uphold the law—and he has upheld the law because, if he had not, he would have been overturned many more times—he says I will uphold the law but I really think this line of cases and some of these discovered rights the court has done in just these last 40 years, I think they are wrong personally. I disagree with these. I will uphold the cases. But they run into people who are saying we are trying to remove God from the public square and we are going to try to remove people who believe in God from serving in the public square.

You run into this clash, and you get this great clash in the civilization and you get this great clash in the culture. Now you have the courts injecting themselves in a great culture conflict that we are involved in in this country today. One of the key division issues in our country today is issues of culture. People ask what is that?

Culture, it is difficult to say what that is, but people are concerned about it. There is not a company in this country that is not deeply concerned about its corporate culture. There is not a family in this country who is not concerned about its family's culture. There is now in the country itself concern about what its culture is going to be.

The central issue is, are you going to recognize a higher moral authority or not? Is the motto "in God we trust" true or not? You get a guy qualified such as this who would say, yes, that motto is true. I believe it to be true. I will uphold the laws as ruled to date, but I do believe this motto is true. And it runs right smack into this series of cases and we are going to see it front and center again in Newdow. We will see it again and again.

That is the problem actually with this, because it divides us on something that should not. It divides us on something that should unite us. It divides us in a way that I do not think is healthy for the country. I do not think this is good at all. I think it divides us on something that as a policy matter is not good and that is why I think it is also bad politics when this happens. I think bad policy is bad politics. That is why we have this level of fighting today. That is why I am speaking on the floor of the Senate at about 4:30 in the morning.

We are going to continue to have this fight. Regardless of the vote that we take later this morning, how it takes place, probably really regardless of the dispensation of these four and future ones coming on, this is the cultural clash that we have. It is not healthy but it is going to continue.

Mr. SANTORUM. Would the Senator from Kansas yield for a question?

Mr. BROWNBACK. I would be happy to yield for a question.

Mr. SANTORUM. Mr. President, the Senator from Kansas points out that Judge Pickering, who is a sitting Federal court judge right now, was affirmed in 99.5 percent of his cases.

What I have heard from the other side is that we do not want these judges out of the mainstream being nominated.

Now, would the Senator from Kansas say that someone who has been affirmed or not appealed in 99.5 percent of the cases since he has been on the Federal court is someone out of the mainstream?

Mr. BROWNBACK. Mr. President, the number speaks for itself. Absolutely, this is a mainstream judge. When you get approved on that percentage of your cases that you have ruled on—remember, this is at the district court level, so he is both finding fact and applying law. You have to be a really good judge, if you are going to be upheld by people reviewing you 99.5 percent of the time on both facts, that means there is wisdom there, and law, which means he is applying it correctly.

Mr. SANTORUM. I would ask the Senator from Kansas if he would look at maybe what the Senator from New York, Mr. SCHUMER, said yesterday he considers a mainstream judge. He referenced the Ninth Circuit and some of the judges that President Clinton nominated and were unanimously supported by Members on the other side of the aisle, a judge such as Richard Paez who was involved in the case the Senator just spoke of, the "under God" case in the pledge, who went in and tried to hold up the California election, ruled unconstitutional the California three strikes and you are out. This is a man that has been overturned—in fact the Ninth Circuit, with a majority of Democrat nominees, has been overturned more than any other circuit.

Is that group of judges mainstream in the Senator's opinion?

Mr. BROWNBACK. It is not mainstream.

The PRESIDING OFFICER. The majority's time has expired.

The Senator from Rhode Island.

Mr. REED. Mr. President. Once again, we are engaged in the early hours of the morning in a discussion about judges and the role of the Senate, and our role is stark. We have the responsibility under the U.S. Constitution to give advice and consent to the nominations of the President of the United States, not advice and approval, not just advice, but advice and consent. That requires the Senate to take a very active role in reviewing the qualifications of nominees who come before us and making judgments about their ability to serve as members of the Federal judiciary.

We take that seriously. I think that responsibility implies that at times we have to disagree with the President. It is not unusual that such disagreements take place. This whole debate, I believe, might begin and end with a very simple statement of fact, 168 to 4. One hundred sixty-eight of President Bush's nominees have been reviewed by this Senate and have been confirmed. Four have not. It suggests to me that the Senate is properly discharging its responsibilities to advise and consent with respect to the nominees of the President to the Federal judiciary.

In fact, of those 168 individuals, they represent, I would suspect, jurists who have a conservative outlook, probably a different outlook than I have, on certain issues. Yet they represent both in terms of their conduct personally, but just as importantly their judicial temperament and their judicial philosophy, individuals who uphold the tradition of the Federal judiciary at the level of the district and circuit court individuals who follow law, not try to make it, who do not impose their views on the case before them but, in fact, follow precedence, who follow the guidance of the Constitution and the Congress in establishing the law.

It is in those cases and the very few cases, 4 out of 168, where there seems to be a record of ideological commitment rather than legal scholarship, of political—with a small p—interest, rather than a judicial temperament that is fair and balanced, that the President's nominees have not passed the test.

An example of this is the comment I made in May of 2003 when I contrasted the nomination of Judge Edward Prado to the pending nomination of the Texas Justice Priscilla Owen. Judge Prado served 19 years on the United States district court. He is someone who has a record of fairness and evenhandedness. I would suspect, since he is a nominee of President Bush, that he has a conservative outlook in his approach to cases. But he is an appropriate judge. He follows precedence. He does not insert his particular philosophy, his particular ideology, into the cases before him. As a result, he was confirmed, an example of the 168 judges who have been confirmed by this Senate on behalf of President Bush.

The four who did not pass the test were those whose record suggested that they were not evenhanded, they were not balanced; that indeed they inserted political or ideological bias in the conduct of their decisions. In that case, I think it is not only appropriate but it is our responsibility, as the constitutional body entrusted with advice and consent, to register our consent and to register our protest. And we have.

This is not an unusual circumstance in the history of this Senate and of this country. There have been instances several times when Republicans have used the device of cloture votes and filibusters to express their concern about the qualifications or quality of a judicial nominee. It goes back many years, and it certainly continued into the administration of President Clinton. Abe Fortas, whose nomination as Chief Justice of the Supreme Court of the United States was subject to cloture votes, was subject to attempted filibusters by the Republicans. So were Rosemary Barkett and Stephen Breyer as a judicial nominee for the circuit court. Justice Breyer is now a member of the U.S. Supreme Court. In fact, I was here yesterday morning and listened to my colleague, the junior Senator from Missouri, talk about how Justice Breyer was at a conference he was attending and how he was articulate and appropriate, and might not be someone he philosophically agreed with but that he was a good judge—but Justice Breyer was the subject of cloture motions and a filibuster.

Mr. SANTORUM. Would the Senator from Rhode Island yield for a question on that?

Mr. REED. Could I just continue?

Mr. SANTORUM. Certainly.

Mr. REED. He was subject to a filibuster and subject to cloture votes before he was ultimately confirmed, and then ultimately went on to the U.S. Supreme Court.

So this is not a procedure or a device that has not been used by the Republicans, because, in fact, it is part—indeed, a significant part—of the procedural devices of the Senate, something that is appropriate.

As I pointed out yesterday, what I find disconcerting and indeed somewhat contradictory to the argument of the Republicans today is that they were quite adept during the Clinton administration of using delay and denial of hearings to frustrate the nominations of so many individuals, so many potential judges, because many of these individuals never even reached the floor of the Senate for a vote. It was, in my words, a pocket veto.

We are all familiar with the notion of a pocket veto. The President of the United States, in the last 10 days of a session, can simply put the bill in his pocket, not sign it, not comment on it, and it essentially dies as legislation. Well, that was done all too often in the Clinton administration.

The most significant case is the one I mentioned before. In fact, the Senator from Pennsylvania and I yesterday had a bit of a colloquy about this. That is a nominee, Elena Kagan, who was nominated in 1999, spent 18 months waiting for approval, no action was taken, and her nomination expired. Fortunately for Ms. Kagan, she has found other employment. She is now the dean of Harvard Law School, which might suggest that she certainly had some legal abilities that could have been used on the Federal bench. But that is an example of a pocket veto.

Again, we are engaged in this discussion, this debate. It is a serious one, but it is taking place at a time when there are other very serious issues pressing this country. As my colleague from Nevada, Senator HARRY REID, pointed out in his long floor statement preceding this debate, that as we worry about four individuals who have not yet been confirmed, other Americans are seeing their jobs undercut. We are looking at unemployment rates of about 6.0 percent. They are hovering there. They seem to be persistent. Long-term unemployment is growing. It is becoming increasingly difficult for people to maintain their employment with good, solid jobs. We see the poverty rate going up. Meanwhile, the vacancies on the Federal courts have diminished significantly. We are at almost record levels of Federal judicial employment. But as we look at the people throughout this country, the poverty rate is growing. It is affecting children particularly. The rate of the uninsured, or people lacking health insurance, is increasing. Our budget deficit is soaring. The national debt is soaring. These are difficult issues, and yet we are here today talking about 4 individuals, out of 172, who have not been confirmed as judges and not been confirmed based, I think, on sound analysis and sound review of their records.

So I think, again, to place this in context, we are performing our historic responsibilities that have been used and deployed by countless other Senates, both by Republicans and Democrats, throughout the course of this country's history. And indeed I think that is our responsibility and we are doing it.

What I regret, and I hope after the conclusion of the votes this morning we can get back to, is critical business such as how do we expand economic opportunity in this country? How do we reinvigorate our manufacturing base, which is eroding dramatically? How do we give working families additional resources by raising the minimum wage? That would be something that would be very beneficial to millions of Americans. Can we pass good legislation that allows us to continue to invest in our infrastructure, in our highways, in our roads? And then in international affairs, how do we come to grips with the increasing crisis overseas in Iraq, a crisis that sees our soldiers, marines, airmen, and sailors each day engaged in conflict over there in a very difficult insurgency?

As Senator PRYOR mentioned, yesterday several of us had the opportunity to go up to Walter Reed Army Hospital. I have been there a few times over the last several months and have seen a Rhode Island military police unit, National Guard, assigned to Baghdad. They have suffered, unfortunately, casualties. To go there and see these young men, to see them having suffered, having served so magnificently, it makes you wonder why we are spending so much time on this debate, and not more time talking about the way ahead in Iraq, not talking about other situations of international concern.

I find it startling just a few days ago the Central Intelligence Agency released a report concluding the North Koreans likely have several nuclear devices and likely will be able to deploy those devices without testing. That they have apparently mastered a technological means to circumvent testing is startling, in fact, horrific information, but this is being lost in the shuffle with the Iraq situation. This is a fact that is startling and is pressing on our national security and our future security.

But there is no extended debate on North Korean policy. There is no extended debate on the way ahead in Iraq. We have committed ourselves as a nation to a course of conduct that requires sacrifice, and yet we are not fully coming to grips with the nature of that sacrifice and what we should do.

For many of these reasons, although this debate is certainly appropriate—that is one of the great things about the Senate, you can talk of the issues of the moment, the issues of the time, but certainly there are so many more pressing issues, so many more critical issues to the future of this country and to the future of America's families the continued obsession with this topic does disservice.

Mr. SANTORUM. We have had debates in the past and I would like to ask the Senator from Rhode Island this question, and I am posing a hypothetical. Assume that, and I am sure some in this country would like to see this happen, in the next election President Bush is overwhelmingly defeated at the polls, after his defeat at the polls in November, President Bush nominates a judge to a circuit court after the election, and that the Senate happens to be in a lame-duck session after the election. He would nominate a judge to the circuit court. Let's also assume when President Bush gets defeated, not only does he get defeated but the Republicans lose control of the Senate. It is a huge win by the Democrats. Assume all that happens.

President Bush, in the face of that, comes out after the election, nominates a judge to the circuit court and the Republicans jam that person through committee, get him to the floor and try to move a vote on that nomination to confirm him prior to the end when the Republicans would lose control and a new Democrat President is in place. Does the Senator believe your side of the aisle would confirm that nominee like that?

Mr. REED. Reclaiming my time, I like your hypothetical. I like the context.

Mr. SANTORUM. I thought this would be an interesting example.

Mr. REED. I think you are being overly generous. I like to believe if the nominee was of the quality to serve on the Federal bench as a circuit judge, he or she would be approved, which is the rule that applies so far to 168 of the nominees of President Bush.

I do say quite sincerely that, indeed, if someone was nominated by a President who did not measure up to those standards, the 168 judges who have been affirmed, they would not be voted in because they lack ability, skill, or judicial temperament, or the other criteria, and they would be opposed.

Again, the record suggests that in dealing with President Bush's nominees, 168 have been confirmed. I suspect all of them are more conservative than any nominee suggested by President Clinton. All of them are individuals who, had a Democratic President been in office, would not have been nominated. That is the nature of the nomination process. Nonetheless, they were confirmed.

Now, the last 2 days of a legislative session, with a change of power, et cetera, that introduces a unique aspect.

Mr. SANTORUM. Do you believe anyone on your side of the aisle would try to block or attempt to filibuster given the unique nature of that circumstance?

Mr. REED. There might be an attempt to do that, but your question to me is, what do I believe. Maybe this is an expression of my beliefs. I would like to think that, as in the case of 98 percent of President Bush's nominees, they would receive not only careful review but ultimately confirmation.

Mr. SANTORUM. I ask the Senator two more points quickly. A nominee in November, to be confirmed within 3 or 4 weeks, the Senator would agree a careful review would be very difficult during that period.

Mr. REED. I think the Senator is trying to refer to the more philosophical than pragmatic logistics. The reality is if someone, either someone who is a sitting judge or otherwise, was nominated——

Mr. SANTORUM. Even assuming it was not a sitting judge.

Mr. REED. Nominated in November, simply the FBI, background checks, the questionnaires, reviews, all those things, take time. In fact, the reaction, frankly, if any President did that, President Bush or President X or President Y did that, the public reaction would be very adverse, regardless of the Senate. I would like to move on.

Mr. SANTORUM. The final point is, Justice Pryor, 1980, nominated by Jimmy Carter after the November election in 1980. The President's party lost the election, the Democrats lost the Senate, he was nominated after the election and was brought to the floor with no judicial experience, and the Republicans, who then took control of the Senate in 1980, were asked to confirm him.

What did the Republicans do? There were some on our side, I think the Senator can understand in response to the question, who said we should filibuster because we do not have the time to read his record, he has no judicial experience, but the Republican leader who was going to be the majority leader pushed his side not to filibuster, and moved him through. It was Justice Breyer.

Mr. REED. My point was Justice Breyer was subject to a cloture vote, subject to a procedure that is being used here.

Mr. SANTORUM. Under extraordinary circumstance, I think the Senator from Rhode Island would admit.

Mr. REED. Let me reclaim my time. The circumstances might have been extraordinary but, again, this was an example of Republicans using the device of cloture votes, of threatened filibuster, of extended debate, to make a point that they felt uncomfortable with a judicial nomination. That is the principle.

There is no special rule for the last 20 days of a session. There is no special rule that says that is when the filibuster is OK. There were sincere, well-meaning Senators, Republican Senators, who felt that because they did not have a chance to evaluate his record or because they felt his record was too liberal, they needed to do what they did. Justice Breyer, in fact, was well known to every person in this body. He had been the counsel to the Senate Judiciary Committee, and worked for Senator KENNEDY on the deregulation of the airline industry. He was someone who had personal knowledge of every Senator in this body at the time.

So this was not a question of who is this person. This was a question of some people expressing their sincere belief that because of his judicial philosophy, because of his temperament, because of the way he conducted himself, the Senate should not go forward in this automatic fashion.

The point remains the same. This notion of the unprecedented, unconstitutional, un-American use of cloture votes and filibuster is quite wrong. It has been used before by both sides.

The question must be back to the original hypothetical posed by the Senator from Pennsylvania, What is the criteria we are using. I urge that criteria has to be based upon a careful review of the conduct and temperament of the nominee. That is a better construct of the individual. Is this person someone who recognizes the careful balancing a judge must perform daily? Is this someone who, although he has very strong beliefs, strong ideas about the way the law should be interpreted, respects the fact that as a circuit judge or a district judge he or she has to follow precedent? Is this someone who does not try to impose their views on the law but tries to faithfully judge based on the law? That is the issue. That is the issue of all of these nominees, and 168 of President Bush's nominees have passed that test with flying colors. Four have not. That, I believe, is what we have to focus on.

Once again, as we move forward—and this is an appropriate debate, this is one of the virtues, the glories of the Senate. We can stand here at 4:50 in the morning and talk about great issues that affect this great country. However, this is not the only issue. I would say there are so many more pressing issues. We will conclude this extended debate this morning. We will vote, and then we have the responsibility of getting back to some very critical business the business of this economy, of this country, both here and across the globe.

There is one issue among many issues we have to be particularly concerned about and that is the issue of our long-term economic vitality. We have a situation in the country where we are losing jobs left and right. We are particularly vulnerable to the loss of manufacturing jobs. Under the Clinton administration, in a huge jobs growth of the late 1990s, we saw an increase of 257,000 manufacturing jobs. Now we are seeing a contraction of employment generally, and particularly in manufacturing. We have lost about 2.45 million jobs in manufacturing. We have to do something. I hope we can.

So far we have not taken action aggressively or as aggressively as we should. What we have seen in many respects is our manufacturing sector are jobs being lured overseas by lower wages, poor environmental quality standards, very little in the way of labor rights. It is attractive to employment. We have to do something about it. We operate in a context of international trade rules where we cannot simply put up a wall of tariffs around our country, so we have to be more creative and innovative. One of the problems that inhibits our creativity and our innovation is the fact that to help manufacturing concerns we have to provide some resources, in terms of manufacturing tax credits, in terms of a solution or at least progress when it comes to the issue of health care costs to companies throughout this country, which is probably one of the key problems facing every business enterprise in this Nation. That does not come cheap. When you look as it as we are, not only erosion of jobs but an erosion of the Federal budget moving in this administration from a surplus projected to be in the trillions of dollars over a decade, to deficits which are equally now being projected into the trillions of dollars, it constrains our ability to respond to these issues, to provide some type of benefits to alleviate the cost of health care for the manufacturing sector, to provide incentives for manufacturing, to provide tax credits and other programs so we can help manufacturing companies particularly deal with environmental concerns.

One of the consistent complaints I get in Rhode Island is it is not fair, Senator, I have to abide by very strenuous rules on environmental emissions, yet I see competitors in China and other countries spewing smoke out of their smokestacks and pouring solids into the wastewater streams. I cannot do that.

In fact, up my way, the manufacturers have been zealous in protecting the environment. But they are in a terrible dilemma. How do we help them? We could provide tax credits for environmental improvements. But again that costs money. It costs something else, too. It costs the time and attention of this Senate on this issue. It costs the same time we are spending to talk about judges to invest in the future of our economy and the future of this Nation. I hope we can spend the time.

We have seen over the course of the last several years an economy that is beginning to at least show some signs of life, but we are not back yet by a long shot. There is a real fear we are leaving millions behind, a real fear in parts of this country that those jobs that were there 3 years ago, particularly in manufacturing, have not only been lost temporarily but have been lost forever. That goes not just to the individual families that have been affected, it goes to the fabric of the lives of those families.

When a manufacturing plants closes, it is not just a sad day in the lives of the workers, it is a community feeling a loss. We are seeing too much of that.

We have not only this challenge, we have the challenge of the tumultuous world. Again, when we look at the requirements and demands on our economy, and the requirements and demands of protecting ourselves internationally, we have to ask ourselves where are we going to get the resources, given the budget, to fund our military? To provide the resources to conduct a very expansive and aggressive foreign policy?

Just a few days ago this body voted $87 billion for reconstruction of Iraq. That is $87 billion in the context of a deficit in which we are spending money literally we do not have. I am sure that will not be the last time we consider additional resources for Iraq, Afghanistan, and other countries. Yet we are not doing those things we need to do to ensure fully that our nation is entirely protected.

So we have serious challenges before us. I hope again at the conclusion of this very extensive debate and at the conclusion of these votes this morning, we can get back to that critical business. Interestingly enough, we interrupted Senate proceedings at a juncture where we were ready to pass the HUD–VA appropriations bill to get on to the discussion of these judges. At that point, we were considering how we could strengthen further, increase further, the resources going to our Veterans Administration. That is another area of concern I have and I am sure we all have. We have to make sure those young Americans who are today struggling—and the fact those young Americans I visited yesterday who are being sent literally from Walter Reed Army Hospital to a VA facility, many of them amputees because of the nature of the conflict in Iraq that 5 years, 10 years from now they have the same quality of services they are getting today.

That is a challenge. And it is a challenge we cannot meet unless we focus our attention and our time and our effort on this bill. That was the very bill we left to come on to this discussion of judges.

How much time remains?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. REED. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, before I resume debate on the judicial nominations, all this talk about not having done work on the economy ignores the fact this Senate early this year passed a jobs and growth package that is working—7.2 percent growth in the last quarter. A lot of people, maybe some, may be upset we are having great economic growth and 300,000 jobs have been created.

As this chart shows, we are now in the most jobs in the history of America, 138 million people. See the signs of doom and gloom and 6 percent unemployment that 10 years ago would have been full employment, we are at that level now. The idea we are going to hell in a hand basket with the economy, some may wish that to be the case for political purposes, but it just is not. It is not a fact.

The facts are this economy is growing. Sure, we have more to do. That is why we have the jobs and growth package we are trying to push through having to do with litigation reform, which is being blocked by the other side of the aisle. On several fronts, whether it is medical lawsuit abuse, whether it is class action reform—which we lost on the floor of the Senate by one single vote—whether it is asbestos legislation—talk about manufacturing jobs. Asbestos litigation is killing us. What is happening? The other side of the aisle is blocking it because their trial lawyer friends in the Democrat Party, who support the Democratic Party more than any group, they are blocking productivity, they are blocking job creation. .

They come to the floor and complain that there are no jobs available. The fact is, the policies of this administration are working, and it is just driving the other side crazy. They want to complain about the past.

Look to the future. Things are looking great, except when it comes to the third branch of Government.

The third branch of Government, the judicial branch of Government, is one of the most important branches of Government because it interprets our Constitution. It says what our rights and responsibilities are according to that Constitution.

You have to wonder because I get this question all the time: Senator, why are you spending all this time on judicial nominations? What is so important? How does it affect me? I get reporters' questions all the time. Reporters sometimes can be insightful and sometimes they can ask the most basic of questions. And you wonder why. But in this case the basic question is a good question: Why should we care about this?

Now, if you would listen to some on the other side, they would tell you, you should not care about this. Turn your televisions off. Nobody is paying attention. The sign from the Senator from Iowa: I am going to be watching "The Bachelor" tonight. That, to me, was one of the most telling things. It was a joke. Oh, but you know humor. Humor is one of the great things in our society, every society, because for humor to be really effective, there has to be a little bit of truth in it. The little bit of truth in that—I am going to be watching "The Bachelor"—is don't pay attention. Please, don't pay attention to this. Go do something else. We would rather have you not know what is going on. We would rather have you, at 5 o'clock in the morning, be safely snuggled asleep in your bed knowing that, trust me, we have taken care of all of your concerns and needs. So go watch "The Bachelor," something really important, something really significant, something that is going to elevate your life. Don't pay attention to one of the most important debates this Senate has ever had. Go watch "The Bachelor." Go watch the continued debasement of our society. That is what you should be doing.

Now, I know that people are going to say: Oh, well, you can't take a joke. But in humor is truth; otherwise, the humor does not work, does it? Go watch the debasement of our society. I would argue, if you want to watch the debasement of our society, you should turn on to C-SPAN right now because what is happening on the floor of the Senate is an attempt by a minority to circumvent the Constitution.

Why? Circumvent the Constitution by requiring a higher standard for the confirmation of judges than has ever been held before. Well, they say there have been filibusters before. There has never been a case where there has been an organized attempt to block a nomination by requiring a supermajority. There have been cloture votes filed here.

In the case of Stephen Breyer, Justice Breyer, nominated after the 1980 election, after Jimmy Carter lost, after the Democrats lost control of the Senate in a landslide election—can you imagine if President Bush had the gall to nominate someone to a circuit court after getting swamped in an election? There would be audible laughter on the other side of the aisle that we would consider a nomination at that point. Filibuster? My goodness, they would be screaming how dare you have the gall to do something like that?

I know the Senator from Rhode Island said: Well, I would hope we would consider this. Oh, please. Please. Look at the nominations they are blocking now, "out of the mainstream" nominations they are blocking now.

Janice Rogers Brown: 76 percent of the vote in California. Out of the mainstream?

Priscilla Owen: 84 percent of the vote in Texas. Out of the mainstream?

Oh, I would hope we would consider these nominations in due course? Really? Really not. No. What the Senate Republicans did in 1980, by confirming someone to an appellate court, shows what the Senate was like years ago. But it has fundamentally changed. Why? Well, back then we had leaders. You had Howard Baker. You had people here on this side of the aisle who put the institution first, who said, as a leader: We are not going to filibuster. In fact, they moved the cloture vote to move the judge. Why? Because we only had a week or so left when the nomination came up.

Here in the Senate just to move anything takes weeks. At the end of a session, one Senator has enormous power because they can make you go through the procedures in the Senate to get to a vote, which takes weeks if there is not consent. So just one Senator, at the end of a session—we all know it. We all use this leverage. It is the beauty of this place. It is why one Senator is so much more powerful than dozens and dozens of House Members. It is because of the rules here.

But the Senate minority leader, soon-to-be majority leader said: We are not going to do that. We are not going to filibuster. If there is a hold on soon-to-be Judge Breyer, we will work with the soon-to-be minority that was swept out of the election—huge losses; hemorrhaging—we will work with you to confirm someone who, by the way, is now on the United States Supreme Court and is writing opinions that make me throw up.

But we did it because the Senate was a different place then than it is now. We did it because the leaders were different then. Leaders did not respond to the latest pro-choice Web site. They were not manipulated by organizations far from this place, who fund their campaigns and support their grassroots activity, narrow special interests, who seep into this Chamber like hidden gases underneath the door panel. That is what is poisoning this atmosphere.

That is what is poisoning this atmosphere. It is narrow zealous special interests. That is what has changed in this place.

But it is not just them. They cannot do it without us because there have been the NARALs and the ACLUs, and People for the American Way, and the trial lawyers association and all—labor unions—they have been out there before. But people in the Senate always stood up for the Senate against the passions of the moment, the special interests of the moment, the needs and wants of your supporters at the moment.

They felt a responsibility. They felt a responsibility for their leadership in the Senate.

It is amazing to stand here. The Chamber is basically empty. No offense to my colleagues from Kansas and South Dakota, but it is 5:10 in the morning, as my voice echoes, resonates without very many people here. But you still look around this place, and you look at the empty chairs and you close your eyes and you can just feel the presence of the greats who have been here in the past, of the people who have sat in these chairs—these very chairs at these very desks in this very place, this beacon of deliberation, this beacon of sometimes delay and sometimes not particularly pretty debates in the Senate, but yet the essence of democracy here. And for 214 years—214 years—the leaders in this Chamber, not necessarily all the Members—we are a society of saints and sinners and everything in between, but the leaders in this Chamber always took the responsibility of leadership of this august body as a sacred trust because what we do here sets precedent for what will happen.

The Senator from West Virginia changed the filibuster rule. I know with his sense of history he knew the consequence of his action. When he changed the rules postcloture for the recognition of a quorum, the Senator from West Virginia knew what the consequences of that would be. When we change any procedural thing in this Senate, we know because history has taught us that there are profound consequences.

So when Senator DASCHLE, Senator REID, Senator KENNEDY, Senator LEAHY, Senator DURBIN, Senator CLINTON, and Senator SCHUMER—the leaders of this new strategy—decided they were going to enlist their colleagues on a new course, they could not help but know. You cannot help but know, if you spend any time in this place. If you are a page, who comes in 15, 16, 17 years old, and comes in and just sits in this place for any period of time, you know that what you do here over the years remains in some way because you set precedent.

You all know, just by looking at these sometimes not particularly attractive, sort of stodgy-looking leather chairs that this place is a place of tradition. It is a place of precedent. These are old wooden desks. We have little ink wells. Look at this little sand that comes out of these things that were used for people who signed documents with feathered pens. Come on. You cannot be here and not know that this is a place of tradition and precedent. It reeks of it.

So when you change something here, you have to realize that it has a huge impact on our society. So I ask, what is the great issue of the day—issues of the day—that are so urgent, that are so powerful, that are so necessary for this precedent of the Senate, for a leader never to involve his party in a partisan attempt to block a nominee by requiring an unconstitutional supermajority to confirm the nominee. Never has been in history. Mr. President, 2,730 nominees since the filibuster rule was put in place in the last century. No nominee—never, never with a nominee in the history of the country did a minority leader ever enjoin his forces to block by using the filibuster. Never before. Now that is a precedent-setter, folks.

Why? Why? Why is it so important? What has changed that would not lead George Mitchell to do that? That would not lead Howard Baker to do that? That would not lead Mike Mansfield to do that? That would not lead Everett Dirksen to do that? That would not lead Senator Taft or Senator Vandenberg or Senator Johnson to do that?

Let's go on back through history. All of these men—the giants of the Senate—the giants of the Senate never once employed this tactic. Do you think that Lyndon Johnson, as majority leader, ever had a nominee he did not want? I assure you, having read some of the history of Lyndon Johnson, and Caro's book—the Senator from Arkansas talked about it—there were people the Senator from Texas did not like. There were people the Senator from Ohio, Mr. Taft, did not like.

You could go on throughout history, but did they ever apply a higher standard? Did they ever do that? The answer through history is no. Could they have? Well, obviously from what is happening right now, the answer is, yes, they could have. But did they do it? No.

Were there issues of great importance during those times? Well, I would suggest if you were living through those times of war and depression and communism and segregation, and in prior centuries, slavery, reconstruction, and trust busting, and human rights, I would argue those are pretty big issues. Never before used.

So I am going to go back to what the Senator from Kansas was talking about in the last hour. What are the issues—or what is the issue—that is so important that the Senator from South Dakota and the leadership of the Democratic Party would seek to change the way the Senate does business, would seek to change the precedent of the Senate and potentially forever change the judiciary of this country?

Let's make no mistake about it, you are going to dramatically affect who is going to be applying for these judges, who is going to be confirmed, and what their point of view is going to be—I would argue what their competence is. The issue is clear, it all centers around this issue called the right to privacy—the right to privacy.

Now, here is a copy of the U.S. Constitution. I am holding it up in my hand. I challenge any person in this country, in the world, to find the words "right to privacy" in this document. It does not exist. It does not exist. Wait a minute. I always thought—I ask students all the time: What section of the Constitution is the right to privacy? Will you please read the section that the Founders, or through constitutional amendment, established the right to privacy? Can you please find that for me?

Well, oh, yes, it is in the—let me see. Is it in the 14th amendment? Is that where it is? No. I am sitting here reading: "All persons born in the United States subject to jurisdiction . . ."—no, no, I don't see the words "right to privacy" in there. Maybe I was wrong. Maybe it is the 10th amendment: "No powers delegated to the United States Constitution prohibit the States or reserve the States with respect to . . ."—no. Oh, it has to be the first amendment. Good: "Congress shall make no law respecting the establishment of religion, prohibiting free speech or the exercise thereof, or abridging the freedom of speech or the right to peaceably assemble . . ." —no, it is not there.

Where is this right to privacy? Well, it was created by whom? It was created by judges. Was it amended because there is a provision in the Constitution, we can find that, that says how you amend this document. Is that the way it happened? No, it did not happen that way.

We amended the Constitution because we put in place a power of authority, people on the highest court of the land who decided it was their responsibility to change the Constitution, that it was their responsibility to find new meaning in these words that have been around for a couple of centuries.

I have always thought we were a government of laws and not of men, but that is not the case anymore. That is fundamentally what this debate is about because, you see, the written words of the Constitution that says a majority vote is necessary do not mean anything anymore because the Constitution is a dusty old document we can manipulate and change for whatever purpose because we have advances in society; we know more than they did then; we are enlightened. Come on, folks, 240 years ago, they didn't have the level of sophistication and knowledge of our culture today, and so these dusty old documents need to be revised; it is so complicated to go through the amendment process of the Constitution; it is so cumbersome; we, the enlightened, will change it as, of course, the culture demands us to do, to free us from the bonds and shackles of these now long departed Founders of our country who couldn't possibly understand the complexity of the world today and the advancements today that have made this document so unnecessary. So we don't need to find anything in this piece of paper. In fact, if we can't find it, that is fine; we will simply create it.

Who does this creating? It is the very judges we are debating today. The Senator from Kansas talked at length in the last hour about the line of cases that is taking an eraser to the word "God," religion, erasing it from our public consciousness. It is as if the first amendment was never written:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

"Free exercise thereof." I asked a group of students yesterday what were the first words in the Constitution, separation of church and state or exercise of free religion. Half said separation of church and state. Of course, if you listened to the judges and what popular culture says, you would believe that.

Can you imagine, half the people I talked with yesterday did not think free exercise of religion was in the Constitution? Can you imagine? Why would they think that? Because in practice that is the message the culture sends about the Constitution. It is not about freedom of religion. If it were about freedom of religion, we wouldn't be erasing God from everything that is public in our culture.

Who is doing the erasing? Is it Congress? Did Congress pass a law that says you can't have prayer before a football game? Did Congress pass a law that says we will scrap "under God" from the Pledge of Allegiance? Did the people speak out and say, We don't want the mention of any faith in the public square? Is that what Congress did? No.

So people ask: What are the consequences of what we are doing here today? The consequences are clear. We have elected people who are erasing from the public consciousness some of the most important and fundamental rights and, I would argue, some of the most important and fundamental principles that keep our country moral, safe, free, and prosperous.

Mr. BROWNBACK. Mr. President, will the Senator from Pennsylvania yield for a question?

Mr. SANTORUM. I will be happy to yield to the Senator from Kansas.

Mr. BROWNBACK. Mr. President, I have been listening, and I think the Senator from Pennsylvania puts forward a brilliant and eloquent argument, and it gets to the hub of what we are talking about instead of the areas. It is in this last 4-year time period that a constitutional right to privacy has been discovered and which has spawned a series of cases. This is done by the Court. The Court has discovered this, and the Court has done this.

Let me ask a simple question: Has the U.S. Supreme Court ever been wrong?

Mr. SANTORUM. You would think from the debate here that this right to privacy, that has now been established as this incredibly well thought out and documented thing, is wholly supported within this document. I have folks on my side of the aisle—I always think of the former Senator from Washington, Slade Gorton, who is for abortion rights who thought Roe v. Wade was one of the worst legal decisions he had ever seen. So many people who are for abortion rights, who would have voted as a legislator to allow the legalization of abortion, saw this judicial construction or deconstruction of the Constitution as an abomination to our legal system.

Has that ever happened before? Obviously, the Senator from Kansas is referring to some of the cases such as Plessy v. Ferguson where the Court looked at this Constitution and said: You know, equality really doesn't mean equality. The words here aren't exactly what we think they are, and you can be separate and equal. Or we can go back to Dred Scott. They looked at this Constitution and said: You know, equal doesn't mean equal. This rash of cases we have seen where the courts have just decided to take these hallowed words and twist them into the culture of the day, this is not a new thing in America; unfortunately, it is a very old thing in America.

The Court in Dred Scott said: Yes, people have rights and people should be treated equally, but—I think of "Animal Farm"—some people are more equal than others. Some people have more rights than others. In the case of the slave, they really don't have much in the way of rights at all.

We look back at those cases now with disgust, but judges found in this incredible document the right to do incredible harm to this country—incredible harm—and, in many cases, with complicity from the Senate, for it is we who are the guardians of this document because we put these judges in these places. So it is an important responsibility.

That is why this debate is so important. That is why we shouldn't be watching "The Bachelor." We should be watching out for the future of this country.

In my next block of time in the next hour, the Senator from Kansas and I are going to talk about this right to privacy, this line of cases that has tried to erase God from the public memory and consciousness, all instigated by judges who would find wide praise and admiration on the other side of the aisle, who would be called mainstream judges—mainstream judges who are striking at the heart of this document.

What is a mainstream judge? Let's understand it. A mainstream judge says God has no place in the public square. That is a mainstream judge.

A mainstream judge says you have the right as an individual to have dominion over somebody else and terminate their life if you want to. That is a mainstream judge.

A mainstream judge says we are going to take the institution of marriage and corrupt it, deconstruct it, tear it apart, put it back together to mean nothing. It means any two people for any reason who want to get together should be recognized as married, irrespective of who they are. It has nothing to do with fathers and mothers and having children. What does that have to do with marriage? That is a mainstream judge.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SANTORUM. It is an extreme judge, not a mainstream judge.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, reference has been made at this early hour this morning about debasing the values of this institution and this country. If any American sadly wants to see debasing of the institution, they have only to look at the strategy that has been foisted upon this body and on the American people by the Republican leadership of this Senate with their fabrication of a "crisis" relative to the nomination and approval of Federal judges.

There is no crisis. The fabricated crisis the media has talked about is a polite way of saying the phony crisis, the fake crisis.

The reality of the situation is that this Senate has approved 168 Federal judges nominated by President Bush. The Senate has blocked the approval of 4 Federal judges, a remarkable 98 percent success rate.

The ratio of unfilled judgeships is now at its lowest point in some 13 years. The pace of approval of judges is at a higher rate than that of past Presidents of either political party, and I think it is fair to say that of these 168 judges, most of whom I voted for, virtually all, if not all, were conservative Republican judges. That is to be anticipated. They were all nominated by President Bush.

The question is not whether we should approve conservative Republican judges. We have, overwhelmingly.

The question is, Should there be some shred of moderation, some shred of bipartisanship in this institution relative to these judges who will serve life terms on the bench? These are not Cabinet officers. These are not people who come and go with whatever President happens to be in office. These are people who will serve virtually their entire lives on the Federal bench. So this body has a constitutional obligation of advice and consent.

Apparently, the other side believes unless there is 100 percent approval of Federal judges, that somehow we haven't done our job. I would say the opposite, that if all we do is rubberstamp the nominations of any President, Republican or Democrat, this body has fallen down in its obligations, constitutionally and ethically.

One of the great things about the Senate and the great traditions of the Senate—and there are great traditions in this body—is that unlike the House—I served in the other body, as did many of my colleagues—unlike the House of Representatives with its majoritarian philosophy, set up that way by the Founders, where if you have a majority of one vote, that is sufficient to ram through almost anything, the Senate was devised by the Founders of our Republic to be a moderating, cooling institution. That is why we have 6-year terms—because Senators are invited to take a longer term view of what is good for our Nation and what is not.

The Senate is designed to be a body that doesn't jump every time a whim is expressed by the public or in the political whims of the day. Our role is to take a longer term view and to moderate what is oftentimes the hot politics of the House of Representatives.

It is very difficult, because of the rules of this body, to jam through legislation for the approval of virtually anything of any controversy without some bipartisanship. That is the course of action we are seeing here today.

While we have approved 168 of President Bush's judicial nominations, the minority party, a 51-to-49 minority, has said these are such important positions, let's make sure there is a general consensus about the support of these nominees. That is what the 60-vote rule requires.

The other side is very frustrated because they like to jam things through the Senate with 51 votes, but that is not the way the Senate works on this or many other issues.

I have to say President Bush's nominees have received prompt hearings compared to virtually any other standard. That contrasts greatly with President Clinton's experience. President Clinton was told: Don't bring us a nominee who is liberal; they will not receive a hearing. And, indeed, they did not.

We had people nominated, closed up their law practices and put their family on hold for years upon years, and could not get a hearing under the Republican leadership during the Clinton years.

That doesn't happen anymore. Now people who are nominated do receive timely consideration. They do get votes. They get votes on the floor of the Senate. But the Senate has chosen to use its prerogative to require bipartisanship on some of the judges who many in this body believe fall outside the mainstream of conservative thought in terms of their politics, in terms of their legal interpretations.

There is no crisis in terms of judges. For over a decade, we have not had the ratio of judgeships filled as we have today. President Bush has an enormous winning record in terms of the nominations that have been approved. Again, virtually all of them are conservative Republican judges. That is his prerogative. The Senate has gone along with that. There is no problem there. This is not as though somehow the President is getting jammed.

What is happening here, I think, is that there has been a strategy concocted by the leadership of the other side to try to gin up political support among a faction of their supporters. What we have here is politics, an effort to play to the radical right. It is costing $100,000 or more of the taxpayers' money for this debate, and yet what we have here is a phony, fake, fabricated crisis. This is no crisis. The Senate is dealing with judges in a timely and responsible fashion.

President Bush, obviously, could have the approval not of 98 percent but 100 percent of his nominees if he were to send to us mainstream conservative Republican judges, as he largely has done. Clearly, it is part of the political strategy to look around the country and find a handful who fall far outside the mainstream of Republican or Democrat judicial thinking and nominate them, knowing there will be resistance to these individuals.

The thought is that by nominating these individuals, they can energize the radical right-wing political faction within the Republican Party. They will contribute money then if they see all this going on. It is a very cynical strategy. This has nothing to do with the interpretation of the Constitution. We are approving conservative Republican judges. It does have to do with able people who are in the mainstream, broadly thought.

I think it is regrettable that we find this Senate and our work hijacked by those who want to push aside timely consideration in the Senate of issues pertaining to jobs, education, health care, energy, environment, our veterans and our military—all the issues with which this body ought to be dealing.

The Federal fiscal year began October 1. Yet the Federal budget is not concluded. So there is so much that needs to be done, that we are being prevented from doing as we spend these many hours around the clock on a fabricated, phony crisis that does not exist. All of this to play to a very small faction politically in America. It has to do with political fundraising. It does not have anything to do with the quality of the court.

I note that 95 percent of the Federal judicial seats are now filled. That is the lowest vacancy rate in 13 years. Last year, this Senate, led by my colleague Senator DASCHLE, confirmed the largest number of judicial nominees in a single year since 1994. There ought to be celebrations on the part of the other side in this body over the remarkable, timely, aggressive approval of Federal judges, the highest number of judicial nominees approved in a single year since 1994. The highest level of judicial seats filled, ratio of seats filled, in 13 years. That ought to be cause for celebration. That is a remarkable level of progress, and it was done in a bipartisan fashion.

Part of that time, the Democrats controlled the Judiciary Committee with Senator LEAHY as chairman. Part of that time the Republicans controlled the Judiciary Committee. So the track record is truly extraordinary. What an irony that in the face of that reality, we find ourselves through the wee hours of the night, through the day yesterday, through the day today, being prevented from dealing with the real legislative issues while we talk about this political gamut that we have before us.

Some say, well, what about the appellate court judges? That is the highest Federal court next to the Supreme Court itself, and one that truly does write law. Well, even there the Senate has confirmed 29 of President Bush's appellate court nominees to date, more Bush circuit court nominees than—get this, President Bush has had more of his appellate court nominees approved by this Senate than President Clinton, President Reagan, or President George Herbert Walker Bush had by this point in their administrations. Yet here we are, the other side posing as though there is some sort of terrible crisis going on when, in fact, it is just the opposite. Conservative Republican judges are being approved at a record pace by this body.

What the other side seems to find unacceptable is that the Democratic Party is insisting that one should not go to a lifetime Federal bench unless there is a generally broad consensus, bipartisan consensus, not unanimous but a broad consensus, of at least 60 votes that that person deserves to sit on the bench dealing with legal issues that are of monumental importance to every American citizen for the rest of their lives. I think that is one of the great strengths of this body. That is one of the great strengths of the United States Senate, that we cannot be stampeded into the radical actions of a few but that we take a longer term view of what is good for America, what is consistent with American values, what is consistent with American priorities, for all of our people. That is what is happening in this body this year, and that is why a few on the other side are objecting so strenuously.

Now, other judges have been filibustered; cloture votes have been held. Other judges have been held up in committee, which has been the favorite mechanism of keeping people from having a vote at all. That is to be said even for these four. They have been allowed votes in committee and cloture votes on the floor. They cannot get the 60-vote requirement and so they are not going to the Federal bench because they do not have that broad-based consensus of support in this body.

That is what this body is all about. It is not just judges. This same 60-vote rule prevails on virtually everything we do in the Senate, from the passage of health care, to education, to appropriations legislation. Virtually everything is subject to that consensus requirement. I think it reflects the best of our values in America and, in fact, it represents America coming together in this body to try to produce legislation that is good for us all. It is not ideologically driven. It is not the product of the far left or the far right. The product of the far left or the far right does not do well in this body because of the nature of the rules that have been the rules since our Republic began. It is one of the geniuses of the Founders of this Nation, that that is the profoundly important role of the Senate to moderate the radical winds that occasionally blow politically through this country and through Washington, DC.

So it is a bulwark of individual freedom and of American values and priorities that we have a body like this that mandates that there be greater thoughtfulness, greater moderation, greater reflection than would otherwise be the case.

There are other issues that we rightfully ought to be moving on to. Recently—yesterday, in fact—I visited the Walter Reed Army Hospital in Washington, DC. One of my constituents, a soldier injured in Iraq, was there. Senator DASCHLE and I and a contingent of other Senators visited our troops. We can take great pride in the quality of these young men and women and what they have done for America, what they are doing for America. They are extraordinary people with great courage, and they are getting on with their lives as best as they can.

It was heartbreaking to go from room to room at Walter Reed and see our Iraq military veterans. In one room, a soldier has lost an arm. The next room, a 20-year-old young man has lost both arms. In the next room, a young man has lost his leg all the way to the hip. In another room, there was a young man with brain damage. In another room, a man has lost his feet. Another room, a man has lost his hand. In another room, an individual has lost his arm again. It goes on and on.

There has been a lot of reference to those who have lost their lives and made the ultimate sacrifice in Iraq. Our hearts and prayers go out to them and their families, but we should not forget those as well who are alive and with us but whose bodies are shattered, whose lives are forever changed because of what they were willing to do for the United States of America in their military service.

Their families were there. Young wives were there yesterday, many of them with very small babies, some pregnant. Now they have a husband who has no arms, who has no legs, who has brain damage. We need to give some thought to these families as well, think about the enormous sacrifices they are making for America.

One of the great ironies and sad ironies of this debate that is going on is that the legislation that was taken off the floor in order for us to have this debate was the VA-HUD appropriations bill, the very bill where we will make determinations about whether these young men and young women, once they conclude their military service, will have the health care, the job training, and the therapy they need to get on with their lives. That was pushed aside. We do not have time for that debate apparently because we need to spend 2 days or more of the Senate's time on this phony crisis because 4 out of 172 judges have not been approved by this body. What a sad commentary about the priorities of the Republican leadership in this body.

I do not ordinarily make partisan references lightly. I am a Democrat. I am elected in a State that is overwhelmingly Republican, and I am proud of the Republican support that has been extended to me for many years. They are good, wonderful, thoughtful, patriotic, religious people on both sides, no question about that. But I am profoundly disappointed, to the point of contempt, for what has happened in this body the last day or so with the hijacking of the Senate's agenda already behind schedule on these important issues that we ought to be talking about in order to take up this question of 168 to 4.

I suggest that if it was 172 to 0, that would be good evidence that the Senate is not doing its job of advice and consent. This body is not meant to be a rubber stamp. That is not what the Founders of this Nation thought that they were doing when they wrote our Constitution and devised the rules of the Senate.

Mr. President, in 1968 New York Senator Robert Kennedy launched a Presidential campaign at a time of great unrest and dissent in our nation. He ran a campaign that lasted 85 days to empower those who did not have the power, to bring justice to those who did not have justice, and the protest the direction of our great nation. At the beginning of that campaign, he addressed criticism of anti-war protesters by saying:

> There are millions of Americans living in hidden places, whose faces and names were never know. But I have seen children starving in Mississippi, idling their lives away in the ghetto, living without hope or future amid the despair on Indian reservations, with no jobs and little hope. I have seen proud men in the hills of Appalachia, who wish only to work in dignity—but the mines are closed, and the jobs are gone, and no one, neither industry or labor or government, has cared enough to help. Those conditions will change, those children will live, only if we dissent.
>
> So I dissent, and I know you do, too.

Mr. President, I rise today to dissent. I dissent to the majority of this body's unwillingness to focus and deliver on healthcare and education. I dissent to this body's inability to provide for our veterans. I dissent to the President's blatant disregard for treaty and trust responsibilities to Indians. And most of all, I dissent this political charade.

Instead of talking about judges, as a body, we should be addressing the unmet needs across this country.

Our Veterans made tremendous sacrifices in service to our Nation. They have answered the call to defend our freedom and served our country at the time of its greatest need. We are trying to provide our veterans with the full benefits they have earned. While the White House can find money for tax cuts for America's wealthiest families and a $20 billion lavish grant for Iraq, too often poverty is pled when it comes time to providing our veterans the benefits they deserve. Right now 60,000 veterans are waiting 6 months or longer for an appointment at VA hospitals. I think it is important to fully fund VA health care so that veterans of Operation Iraqi Freedom can get the care they need when they return home.

My own son served with the 101st Airborne in Iraq. He is home now. He is safe. He did not suffer one of these horrific injuries. We are grateful for that, but we are very mindful that tens of thousands of others are still there, have suffered horribly, have lost their lives, and their families have gone through enormous painful stress.

In contrast, the Republican leadership in the Senate has broken their promise to provide an additional $1.8 billion for veterans health care this year and even proposed an increase in prescription drug copayments that impose a $250 annual membership fee for veterans seeking health care. Should we not be talking about these kind of priorities? It is astonishing to me that the Republican leadership of the Senate has set a target adjournment date only days from now, November 21, and has scheduled 39 straight hours of executive session to discuss this phony issue; not 39 straight hours to discuss critical legislation such as lack of prescription drug coverage facing millions of American beneficiaries in this country. Do not the 40 million Medicare beneficiaries deserve as much attention as this phony issue is receiving?

We are at an impasse. We do not have a final Medicare bill. At this rate, spending hours and hours discussing nominations which have overwhelmingly been approved, instead of debating important Medicare legislation, makes me wonder about the priorities of the majority party in this body. They are dedicating nearly 10 hours each of discussion for four individual judges, but we cannot spend 1 hour each for every million individuals on Medicare. What is wrong with that picture? High drug spending is placing a heavy burden on American families, and many businesses are responding to rising drug spending by increasing the amount that employees must pay for prescription drugs. The public programs such as Medicaid and the Veterans Health Administration are also struggling to respond to soaring drug spending. Finding a solution to the prescription drug crisis in this country is a priority for me, for many in this body. It should be a priority for the entire body.

States and local communities are struggling with the worst budget shortfalls since World War II and many have cut back on education funding, on instruction time, have laid off quality teachers and school staff. School district after school district in my home State of South Dakota are having opt-out votes, trying to do something to try to make sure that children in our communities have the resources they need to learn. Parents and students are holding bake sales and auctions to save teaching jobs, music, art, other student activities. It would be impossible for our public schools to meet the strict demands of the new Federal education law if vital school services continue to be cut all across our Nation.

I believe that fighting to bridge this gap by increasing Federal aid to the States and raising public awareness of the school public crisis is essential. I think it is important to recognize that money alone is not the solution to improving our schools, but we need also to be cognizant of the fact that public schools need the financial resources necessary to successfully implement No Child Left Behind. The National Education Association's State-by-State report on layoffs and cuts affecting public schools and the responses of students, parents, and communities, NEA collected anecdotal data from 2003 through the end of September and finds the school district stress all across this country.

In my home State of South Dakota, our Native-American community is struggling badly—high unemployment, lack of health care, high infant mortality, lack of jobs. Again, that is another area that deserves the attention of this body.

These are the real crises that face America, not a 98-percent approval of conservative Republican judges, which this body has done.

This President has been served very well by the Senate on the timely approval of 98 percent of these judicial nominations. I submit that the four who have been rejected were selected with the thought in mind that they would be rejected because what the other side of the body wants, and I think what the President wants, is a fight. They know that a fight will energize the radical right wing of the Republican Party and will energize political contributions. Sadly, that is what this debate is all about. That is why the taxpayers are having to fund $100,000 or more for the cost of this. That is why we are not able to get on to the other issues that truly we ought to be addressing right now.

One hundred sixty-eight conservative Republican judges have already been approved, most with my support. That is not the question. The Federal bench has a higher ratio of judges seated now than we have had in 13 years. The appellate judges are being approved at a faster rate than Clinton, Reagan, or George Bush, Sr.

So the record of this body, Republican and Democrat on the Judiciary Committee, has been one of accelerated consideration of judges in a way that has not been seen in many years. I think that reflects well on the body. What does not reflect well on this Senate is this hijacking that has taken place of our agenda, where we are being prevented from talking about the real issues, the real crises having to do with our children, having to do with our schools, having to do with our seniors, having to do with our veterans, having to do with health care costs. That has been hijacked by a body that wants to talk about these four judges who were selected, I think, by a process where the President and the leadership of the other side knew very well that these would be lightening rod candidates, that they do not fall within the same mainstream body as the other 168 conservative Republican judges.

That has led to this dispute, and the dispute, I think, is not about principle. It is about energizing politics. It is about raising money. That is a sad commentary. That is contrary to the values of this body and of the American people, Republican and Democrat. The American people deserve better than what has gone on on the floor of this Senate over these last many hours. We are going to see the rest of today wasted as well.

Mr. President, our roads, schools, and infrastructure are crumbling as Nero fiddles here in the Senate. Yet our friends in the majority complain about a 98 percent approval rate for President Bush's judicial nominees. In baseball, that would equate to roughly a batting average of .980. A power hitter is someone with a batting average in the range of .330. That means if the Bush Administration's judicial approval rate in the Senate were considered in baseball terms, we would be batting nearly triple what any major league manager would love to have.

And consider a baseball team that would have a .980 winning percentage. A winning percentage like that would far surpass any record set by any team in major league baseball; and would certainly beat the losing seasons of the Texas Rangers when President Bush was their managing general partner.

In fact, the quality of some of the judicial appointments sent up here by President Bush shows the same judgment he used when he traded Sammy Sosa, a perennial home run leader, to the Chicago Cubs.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator's time has expired.

Mr. JOHNSON. Mr. President, I yield the floor. I am sure it is a great place. I have not been there. I am sure it is wonderful. He used the whole day to talk about that, while we hear endlessly, Why are we not talking about veterans benefits or unemployment when all Monday was used by the Democratic side to talk about Searchlight, NV.

It is a wonderful place, I am sure, but I don't know of any legislation pending about Searchlight, NV. Why weren't we talking on Monday about these things and not addressing the great issues of the day or addressing what we need to be doing about the war in Iraq? Instead, we are talking about Searchlight, NV. Where was the protest? Where was the anger? Where was the outrage. How about rabbits eating cactus? Again, I am sure it is a great place. No offense to anyone from Searchlight, NV.

A week ago Friday, a week ago today, the other side ate a whole day up and we got no votes done on appropriations bills because they were chewing it up on filibustering at that point. Where was the outrage? We were not dealing with the great issues of the day. I guess it did not matter at that point in time.

I find it interesting that this is all about fundraising. It seems the people fundraising are the left. This is NARAL, National Abortion Rights Action League, their Web site, going to task on Charles Pickering; others on the left, pushing this hard for fundraising and organizational purposes. I don't think that is at the root of what we are talking about and why we are spending this time and why we are being tied up on something that has been without precedent, a blockage of Federal judges. This is really about a big issue, and that is why we are here at 6 in the morning on Friday, because we are talking about a big issue and we need to talk about other issues as well—which I agree with; we need to talk about other items, but we need to talk about this one, too.

When you get a judiciary that is blocked, you need to talk about it. Why would these folks be blocked? These are highly qualified. They get painted different ways, but we have been through ad nauseam the qualifications. They are highly qualified judges in mainstream positions in their States on the highest courts in Texas and California—I guess Texas and California are mainstream—they are on the highest courts. One is on the Federal bench in Mississippi, approved by this body previously.

What this comes back to—and the Senator from Pennsylvania was hitting it when we last had the floor—was a discovered right by the Supreme Court, the right to privacy. If we blow away the smoke and we are stating why we are here at this point in time and why would such qualified judges be blocked, it is because of the court that has been writing laws and about the right of privacy, or this constitutional right, discovery. It is not in this document, as the Senator from Pennsylvania pointed out, the right to privacy.

I find it interesting that others have mentioned that the appellate court writes laws and that is why the judges are important. The lower court, the Federal district trial court, does not write laws, but the appellate court does. There is the issue and the problem. The appellate court does not write laws. The Supreme Court does not write laws. They interpret the laws. They interpret the Constitution. They do not write it.

Unfortunately, people in this body look at it differently. Some are saying, yes, the court can write laws at the appellate and the Supreme Court. If that is the case, we have a second legislative body in Washington: We have three units of government, but two happen to be legislative and one executive. Yes, one legislative also has a court and judicial judges as well, but we have a second legislative body. And we are seeing this stream develop further with some people on the other side of the aisle saying we should examine the political opinions of people we are appointing to the bench.

If they are going to be a judge and they are going to interpret the law, why should a political opinion be of significance in the consideration? That is not their role. They are not a legislature. I am a legislator; you are a legislator; people in this body are legislators, but those on the Supreme Court or court of appeals are not legislators.

Some say, OK, we need to examine the political ideology of the people coming forward for the bench even though they are saying we will follow the law and that leads to writing laws on the bench. I hold to the opinion—most people on this side do—what you want in a judge is someone who interprets the law and interprets the Constitution and does not write it. There would be times I would have actually liked a judge to interpret something to the right and write it more conservatively. I would think that would be appealing to me, but I don't want a judge like that. I don't want a judge to do that. That is my job. That is not his or her job.

I am asking for one to stay within the document and not to discover or write amendments to this document. I want them to interpret the law. This is what we are seeing seep into this. These are not legislators. These are not legislators-to-be, going on the bench, who write laws. They interpret the laws.

What we have seen taking place is one of the biggest laws written by the bench over the last 4 years, the right to privacy, or as is more common vernacular today, this is about abortion and the Supreme Court's discovering this right. That is why all the judges are always quizzed ad infinitum about their views, because if the court can write that law, the court can repeal that law, so they do not want someone to go on with a political philosophy contrary to this, who might write the law differently.

Now, we have a bad premise here. The court should not be writing law. The court should be interpreting laws. So stick within the documents.

We also have a bad premise in the second step, looking at the political philosophy of someone being appointed. No, look at the qualifications and their willingness to uphold the Constitution. We are down a bad road a couple of steps already. That is why we are here at this time of day, because these four appellate court judges would be not questioned to any degree if it was not about political philosophy. That is the issue, and it is a big issue, and it is worthy of this discussion. And it is sad we are at this point because I have some of my colleagues here who want to speak and I do not want to dominate this half hour.

Mr. SANTORUM. I would like to ask the Senator a question. You may have answered the question I posed earlier: Why, throughout the history of the United States, have we not had a leader of the Senate, minority or majority, join in blocking of a nominee to require a supermajority? Why has it never happened prior to this session?

I think the Senator landed on it when the Senator said for the first time we are seeing people come to the court not to be judges but to be legislators, to make law instead of decide constitutional interpretation and to settle disputes. So we have entered into a time when political considerations now become much more important than the quality of the judge, the temperament of the judge, the qualifications of the judge, the experience. Those are now important, but they are almost secondary issues to the political philosophy of the judge because the courts now are fundamentally different than they were 50 years ago or 60 years ago.

Is that what the Senator from Kansas is saying?

Mr. BROWNBACK. It is what I am saying. And it is bad that we are seeing this route taking place. This is going to lead us down a bad road. We are already started down the road.

Now we appoint legislators for life with superpowers, and we are unable to pull them out other than maybe for moral turpitude. You have people who become—in essence, they can almost be dictatorial or tyrannical, and they are appointed for life. That is why so many people are so passionate about what takes place on the bench today, because now you have a superlegislator who does not answer to the public. It starts to get irritating to a lot of people.

This is not the way we should be going. We should be backing up and saying these are three coequal branches of government with different jobs—not legislators each, but a legislative and executive and a judicial branch. This is the problem.

If we keep going down this trail, and you have to examine political philosophy because judges can write laws or you can discover rights, including rights of privacy in the Constitution, and what other rights can you discover in the Constitution, and it will be important to know the political philosophy. Say we get one or two Supreme Court nominees to come up. Now we have somebody such that we are looking at a superlegislator for life in the highest court of the land who can, with a couple of other people, rewrite this document—not just legislate but rewrite the constitutional document. That is why we have the huge fights on this floor.

We used to say in the past—thanks to the question my colleague raised, we say, I disagree with the philosophy of Ruth Bader Ginsburg, I disagree with the philosophy of someone else, but they said they would uphold the law. They are confined, as I am as a legislator, with a set of power and authority. I do not agree philosophically, but they are qualified and will do a good job and I don't have a good reason to vote against them.

Mr. SANTORUM. This gets to the heart of this 168-to-4 number. The vast majority of the 168 are at the district court level, trial court level.

What the Senator from Kansas is saying—and I want to make it clear—the district court judges, by and large, do not make law. They are trying cases. Appellate court judges, we have seen now in recent years, have begun to take on the mantle of legislator in making law, and therefore all of the nominees who are being blocked on that side are these quasi-legislative-type judges.

The Senator is suggesting the super-legislator is the Supreme Court. So if we are in for filibusters for appellate courts, can anyone imagine what a Supreme Court nominee fight will look like in the Senate now versus 20 or 30 years ago?

Mr. BROWNBACK. Absolutely. That is the point. We will be in such a mammoth fight and engaging the entire country with this, how will you ever get that person through?

It does go to this constitutional case that is being considered by the Supreme Court now on the flag salute, "One Nation under God." Here was a continuation of the discovered set of laws that somehow discovered that our kids cannot say our flag salute, "One Nation Under God." Ninety percent plus of the public is for the flag salute. I am confident that percentage is ahead of that. In this body, there is outrage. And the Ninth Circuit, in a consistent opinion with 40 years of discovery law, says: No, you cannot do that.

So now you put somebody in a legislative role—circuit court, lifetime appointment, cannot remove them—and the Ninth Circuit, which gets overturned all the time—as a group of legislators they get overturned all the time by the Supreme Court. Now, say you get a Supreme Court position that opens. They are not going to get overturned by anyone. And you get people fearful of the tyranny of the judiciary which the Founding Fathers were fearful of themselves. They wanted the judiciary to be the most limited because they have the lifetime appointments. They have a pretty big set of powers. They feared tyranny could become an issue because it was a lifetime appointment and was not subject to the checks and balances of the people.

People check and balance everyone in this body. But do they check and balance the judiciary? Where is the populace's ability to check and balance? That is why this is an important debate and why so many are concerned.

What we should be doing is backing up and saying, no, this is about the strict construction of the documents that pass through the legislative bodies that are in the Constitution that go through an extraordinary process. Where, as the Senator from Pennsylvania pointed out, the Supreme Court discovers a new right in this Constitution, if we had written that in there, it would have taken a vote of two-thirds of this body, three-fourths of the States, to become law. This is a big, lengthy process and, as such, we have a limited number of constitutional amendments, as it should be. It is a strong document, standing over two centuries, and yet a court can discover this.

We should back up and stand on the issue of, this should be about strict construction of what is taking place. This is a very important key fight to have.

With that, I yield the floor. There are several other Members who seek to speak.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I take a step back here and go through what we are doing. What is going on? What is going on in the Senate that has brought about this debate which has been so important? Can we agree on what is going on? I think we can. Let me use the words, and I would agree with these words written by JON CORZINE, the Senator from New Jersey, who happens to be the chairman of the Democratic Senatorial Committee.

The Senator from South Carolina was here and the Senator from Minnesota was here talking about this throughout the night. We can agree on what is going on.

> Senate Democrats have launched an unprecedented effort. By mounting filibusters against the Bush Administration's most radical nominees. . . .

Unprecedented. And what does "unprecedented" mean, according to the dictionary? Having no precedent. What is precedent? An earlier occurrence.

So, having no earlier occurrence. What does that mean? It has never happened before. That is not me. It is not Republicans saying this. You have protestations on the other side. This happens all the time. Come on, no big deal. The Senator from Illinois will show a chart, look at all these filibusters. Come on, no big deal. We do this all the time. Unprecedented. Their words, not mine.

To whom? To their people? Guys, this is what we are really doing. We are not going to say this on the floor of the Senate, but this is what we are really doing. It is unprecedented.

So what is going on? An unprecedented filibuster to raise the bar for certain nominees. That is what is going on. Not my words, the words of the Senator from New Jersey to the people he relies upon to support their party.

Let's look at the facts. Is it unprecedented? Since the filibuster rule was put in place, 2,372 nominees came to the floor of the Senate. Has anyone been blocked by filibuster? No. So you see, 168 to 4—stack that percentage against 2,372 to zero. Four? Let me ask if it is four.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 169, the nomination of Carolyn Kuhl to be a United States Circuit Judge for the Ninth Circuit; and further provided there be 100 hours of debate equally divided for the consideration of the nomination; and provided further the Senate proceed to a vote on the confirmation of the nominee, with no intervening action or debate.

Mr. DURBIN. I object.

Mr. SANTORUM. Now it is 168 to 5. So that chart is now outdated that the Senator from Illinois will show.

UNANIMOUS CONSENT REQUEST

Mr. SANTORUM. I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 455, the nomination of Janice Rogers Brown to be United States Circuit Judge for the DC District Court; provided further that there be 200 hours of debate equally divided for the consideration of the nomination; provided further that following the debate, the Senate proceed to a vote on the nomination of Janice Rogers Brown, with no further intervening action or debate.

Mr. DURBIN. Mr. President, I ask unanimous consent that that unanimous consent request be amended and that we move to legislative session immediately to consider an increase in the minimum wage and additional unemployment benefits for the 3 million Americans who have lost their jobs under President Bush's administration.

Mr. SANTORUM. I want to make it clear that you are asking, in addition to this unanimous consent, that we would do this unanimous consent in addition to this?

Mr. DURBIN. I ask unanimous consent that before we consider any unanimous consent request by the gentleman from Pennsylvania, that we first——

Mr. SANTORUM. I would object. I object.

Mr. DURBIN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Objection is heard.

Mr. DURBIN. Mr. President, I reserve the right to object.

Mr. SANTORUM. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator—

Mr. SANTORUM. Thank you.

Mr. President, I renew my unanimous consent request.

The PRESIDING OFFICER. The Senator may object or not object.

Mr. DURBIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. DURBIN. Will the Presiding Officer tell us what the pending business of the Senate is at this moment?

The PRESIDING OFFICER. The nomination of Janice R. Brown, of California, to be United States Circuit judge for the District of Columbia Circuit.

Mr. SANTORUM. I renew my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Mr. President, I object. If the Senator is not going to consider the——

The PRESIDING OFFICER. Objection is heard.

Mr. SANTORUM. Mr. President, I have the floor.

Now that chart the Senator from Illinois is going to show is 168 to 6. And I would project that 168 to 6 will soon be 168 to 7 and then 8 and then 9 and then 10; and that this number is going to actually, looking forward into the future of the Senate, be a good percentage. I might agree with him looking forward because we will have set a precedent tonight. We will have set a precedent in this session of Congress that will go to haunt both sides forever. If we maintain it, it will. I guarantee it.

What we are doing here is playing with real bullets. I tell you there are folks on our side of the aisle who are loving what you are doing. They are loving what you are doing, man. They just think, go, baby, go. Do this because we can't wait to get our arms around the next Democratic President who wants to stack the court with a bunch of people who believe God does not belong in the Pledge of Allegiance. We can't wait—who, by the way, got confirmed by the Clinton administration and by this Senate. We can't wait to get our arms around people who find in this Constitution things that are not in it, who believe it is their job to be the super Senator, the super legislator, the super President. We can't wait to block those nominees because, do you know what. You did it first. You did it first. You can say, oh, no, we didn't do it first. You did it first. You crossed the line. Oh, it has been threatened. It has been talked about around here. I will not deny that. I talked about it.

Richard Paez, by the way, who tried to stop the California election a few days before the election, found somehow or other that "you can't hold this election," that, to the people wanting to recall the Governor, "you can't do that because, of course, I know more than the people." Richard Paez, Ninth Circuit, overturned more than any other circuit in the history of the United States. Clinton nominees, liberal, activist judges, out of step with the mainstream, the Senator from New York and maybe other Senators call mainstream, who says "under God" does not belong in the Pledge of Allegiance, who said "three strikes and you're out," that the people of California voted for, is unconstitutional. The Supreme Court overturned that.

That is the mainstream. Can't wait to get at the next Richard Paez. Can't wait to get at the next Marsha Berzon. Go on down the list of folks. Did I want to filibuster them? Did I want to filibuster Richard Paez because he was a district court judge? And he was awful. He expressed values and views that were so out of step with America and with my constituents in Pennsylvania, I just could not stand it. I said, come on. How can we continue to let these judges, who think they are God, who think they are Senators, who write laws that do not exist, who take the laws we do write and turn them into what they think, not what the Senate believed and what the President believed—how do we let these people keep coming at us and not do anything?

My leader, TRENT LOTT, and my chairman of the Judiciary Committee, ORRIN HATCH, said that is not the way we do things in the Senate. This is the passion of the day. But in the Senate, one of the great things—and you hear it on both sides all the time—one of the great things about the Senate is we do not get caught up in the passion of the day. We understand the long term. We understand the greatness of America. We hear we are the cooling off. We do not get caught up with the passion of the day. We are the deliberative body. Therefore—and therefore—we have a higher calling than to respond to the NARAL ads or the People for the American Way ads. We have a higher calling. We are Senators. We look out for the long-term interests.

How do you preserve the long-term interests? You do it by following the laws and the precedent. You do it by using what has been established over 214 years to protect rights, and we are throwing it away. We are throwing it away, and understand the stakes of what we are doing here. Understand the precedent we are turning over and what we are going to unleash on the floor of this Senate. Do you know what. Maybe it is a good thing. I have sat here now—I will not argue against my colleagues, but I have sat here now, and I listened to the Senator from Kansas.

I would ask the Senator from South Carolina: Do you believe there are some on our side who, after listening to the Senator from Kansas and listening to the judges who have been put through—because we have been good stewards. We have allowed the Richard Paezs of this world to come and undermine our Constitution. We have allowed the left to seed into the court system those who would destroy this Constitution.

Are there not Members of our side, I ask the Senator from South Carolina, who would say, thank you, we never had the courage—we never had the courage—to change the way the rules are here in the Senate to make sure that we could protect—as I think the Senator from New Jersey said—"protect our courts?" We did not have the courage—as the Senator from New Jersey said—"to stop judicial extremists."

So maybe what we should be doing, I ask the Senator, is thanking the Senator from Illinois—and the Senator from North Dakota is here—and the Senator from South Dakota, Senator DASCHLE. Maybe what we should do is instead of protesting this is to thank them for giving us a tool, for giving us a tool to protect this document.

I assure them—maybe I should not assure them—maybe I will ask the Senator from South Carolina, what do you think will happen now?

Mr. GRAHAM of South Carolina. Well, to the best I can, to the Senator from Pennsylvania, for the last year—this is my first year—I have seen a trend that seems to be getting worse and worse. I can assure you, as the Senator from Pennsylvania has indicated, that for every liberal special interest group there is a conservative special interest group that feels just as passionately as the People for the American Way.

The Senator is absolutely right. I have been trying to say this all night. We are in political quicksand. You have put us in a place we have never gone before, and the more we fight and the more we fuss, the quicksand takes you deeper and deeper, quicker and quicker.

The truth is, the Senate will never be the same if this stands because the Senator from Pennsylvania is exactly right. There will be so much pressure on people on our side to stand up against anybody who is perceived to be liberal—not just whether or not they can follow the law, but they may have written an article when they were in law school. They maybe made a speech somewhere about the philosophy of life. And it will be seized upon, it will be touted, and it will be shouted, and 41 of us may buy into that.

The advise and consent clause has stood the test of time. But the formula that you are imposing upon the Senate is a formula for disaster, and a big loser. Who loses? It is average, everyday people who will be shut out because of special interest politics on the left and the right. The real big loser is somebody who loves the law who wants to be a judge but has said: I am not going to put myself and my family through that.

So Senator SANTORUM is exactly right.

The PRESIDING OFFICER (Mr. BOND). The Senator's time has expired.

Mr. GRAHAM of South Carolina. There will be no turning back, and this will destroy us over time in terms of the rule of law.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Thank you, Mr. President.

Let's not forget what this is all about. Mr. President, 168 of President Bush's nominees have been approved by the Senate; 4 have not—168 to 4. That is the score. This President has 98 percent of his nominees approved. We have now consumed 36 hours of the time of the Senate railing about the four who were held back.

Those on the other side of the aisle believe the advise and consent clause of the Constitution is meaningless. They believe their President, their Republican President, should have every nominee, every judge. They really argue with the premise that these judges should be asked hard questions. They do not believe that a judge seeking a lifetime appointment to the bench should be asked, What do you believe? What values will motivate you if you were in a position of power, a position to decide cases and basically the position to decide the outcome of people's lives?

They do not believe in that. Frankly, they are arguing that this Constitution, that they have sworn to uphold, which provides for the advice and consent of the Senate before a Presidential nominee is appointed to the bench, should be tossed out.

Those of us on the Democratic side disagree. I think, frankly, in their heart of hearts a lot of the more moderate Republicans disagree. They understand that no President gets everything he wants 100 percent. No President should, Democrat or Republican. But they are loyalist, and their partisan loyalty is showing. It has shown for 36 hours.

Let me show you the judicial confirmation scorecard so you will understand what has happened to nominees sent by Presidents to the Senate.

President Clinton's nominees: 248 confirmed, 63 blocked. So 20 percent of the nominees, one out of five sent to the Senate by President Clinton, were blocked by the Republicans, Senator ORRIN HATCH, and the Senate Judiciary Committee.

President Bush's nominees: 2 percent have been blocked.

I listened to the Senator from Pennsylvania tell us, warning us that, frankly, stopping four judges will be remembered, and they will revisit this if the Democrats ever take control of the White House again.

Well, let me remind my colleague from Pennsylvania, those 63 Clinton nominees who were blocked, most of them were never even given the courtesy of a hearing. I know this personally. Three judges from Illinois, three good people seeking Federal appointments, were stopped because one Republican Senator—in the case of one of my nominees, former Republican Senator John Ashcroft of Missouri—personally stopped this nominee. This nominee, a good person, who would have been an excellent judge, was stopped because Senator Ashcroft objected to him. In objecting to him, he never got a hearing.

So for the Senator from Pennsylvania to come and warn us that if there is ever a Democratic President, you can count on nominees being stopped, we learned that lesson. We learned it when President Clinton offered nominees who were quality people, moderate people, and stopped because of some perceived slight, stopped because of some perceived position on issues that the right wing did not agree with.

Let me show you some of the photographs of some of these nominees. You can see that even this small gathering of nominees here represent a rich diversity of people across America. The Republicans would have us believe these people sent to the Senate Judiciary Committee by President Clinton were somehow radical people, people who did not share the views and opinions of America.

You can count on this: Within those people are excellent judges, people with the highest ratings from the American Bar Association, people who were rejected. It gets back to this, as shown on the next chart: The final score here is 168 to 4. So 168 of President Bush's nominees have been approved; only 4 have been held back. Ninety-eight percent have been approved.

I listened to the speech just given by the Senator from Kansas. I hope that those who are following this debate, even though I cannot imagine at 3 o'clock in the morning on the west coast a lot of people are tuned in, but if those who are following this debate heard what the Senator from Kansas said, I think it was chilling and troubling, if not alarming. It is a clear indication of what is at stake here in this debate. The Senator from Pennsylvania joined in the chorus because the Senator from Kansas said they were opposed to judges who were "discovering the right of privacy in the Constitution." Those were his words, "discovering the right of privacy in the Constitution."

Well, the Senator from Kansas is correct. The word "privacy" does not appear in the Constitution of the United States. But those who have interpreted this document have come to the conclusion that Americans have a basic right of privacy. I suppose from what the Senator from Kansas said, that is judicial activism in his eyes.

But let's remember how that right of privacy first came to the Supreme Court and the decision made, the landmark decision of Griswold v. Connecticut, a Connecticut statute which said they would prohibit the right of married couples to buy birth control devices, contraception, an archaic statute from the 19th century that said that married couples could not buy birth control devices. We are talking about the ones most commonly known.

The Supreme Court said that is wrong. We believe that the people of Connecticut, the people of America, have the basic right of privacy and that married couples should be allowed to make that decision, and no State government should prohibit them from making that decision.

So in this case, the Supreme Court "discovered" the right of privacy in the Constitution. The Senator from Kansas believes, I suppose, that this is judicial activism, that the court went too far. How many people in America believe that? How many people in America believe that States or the Federal Government should prohibit the right of couples or even individuals to buy birth control devices, to buy birth control pills? Is that this discovered right of privacy at work? The same right of privacy, I might add, that was at the core of the Roe v. Wade decision.

So there we have it. They are looking for judges who even question the right of privacy in the Constitution. You wonder why we would even stop four judges because given free rein, I am afraid that my Republican friends would turn the clock back, turn the calendar back to the 19th century, questioning the right of privacy of Americans.

I thought conservatives, by their nature, were opposed to the overreach of government. But what we hear this morning from the most conservative members of the Republican caucus is that we have to question the right of privacy. That is hard to believe.

They also went on to say, the Senator from Kansas agreed with the Senator from Pennsylvania that we need a check and balance on the courts. Think about that for a moment. Oh, it is a nice-sounding phrase. But think about the check and balance on the courts, and then think about the principle of an independent judiciary. Those two are inconsistent.

The check and balance on courts comes in the process when the President nominates a judge, and when we review that judge's credentials and decide whether that judge receives a lifetime appointment. Then there is the correct belief that short of impeachment, judges in America are independent to make decisions. It is one of the bedrocks of our democracy. That has been challenged on the floor of the Senate today by the most conservative members of the Republican caucus.

You wonder why we are here for 36 hours? You wonder why we are taking all this time. It is because of the views just expressed this morning by two members of the Republican caucus which indicate the extreme position they are prepared to take, indicate why 168 of President Bush's nominees being approved and 4 being stopped is unacceptable, and indicate that they want to change the profile and complexion of the judiciary across America in profound ways.

The Senator from Pennsylvania has political amnesia. He comes to the floor this morning and forgets that 63 of President Clinton's nominees never even received a hearing, not even the dignity of a hearing. And he warns us in a booming voice: We will remember this if there is ever a Democratic President.

I say to the Senator from Pennsylvania, he is suffering from political amnesia. He has failed to acknowledge that 63 of President Clinton's nominees were never even given the dignity of a hearing. That was a sad outcome for those nominees and their families. To think we are not going to stop this process at this point in time, that we are going to continue on for another 3 hours is, frankly, I think, unfortunate.

Yesterday, I went with a group of Senators out to Walter Reed Hospital to visit with some of our injured soldiers. Senator TIM JOHNSON from South Dakota was in that group, as well as Senator BYRON DORGAN of North Dakota. There were about a dozen of us who went out and visited with these soldiers. It is something I am not going to forget. These are some of the best we have who have given the most. They have been subject to injuries which are truly sad and tragic in a way, but their courage and their determination are going to stick with me.

Why aren't we talking about Iraq? Why aren't we talking about the veterans? Why aren't we talking about the need for this country's national security or its economy? Really, because there is another agenda in play here. We are involved in a made-for-TV filibuster. That is what this is all about. This isn't for real. Those cots were props on a stage. I walked around the Senate. Most of those cots are still cold as ice. They have never been warmed by a Senator's body. They were brought in here so Fox TV News and all the right wing talk shows could say: My goodness, we are staying up all night. There is a handful of Senators who have given a lot of hours here, no don't about it. This is a made-for-TV filibuster. Sadly, we are ignoring the agenda of this country.

My colleague from North Dakota is here, and I yield the floor to him.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I appreciate the comments of my colleague from Illinois. This is, in many ways, an interesting debate and certainly an important debate largely because it is alleged that we have embarked on something unusual, something unique. Of course, that is not the case.

The issue of filibusters is not a unique issue in the Senate. Let me talk just for a moment about something I listened to on the radio on the way in. C-SPAN is covering this by radio. I heard my colleagues, as my colleague from Illinois indicated, on the other side of the aisle talk about this issue of right to privacy. There is no right to privacy, they say. What is this right to privacy that somehow has been manufactured? They don't agree with the right to privacy. The American people don't have a right to privacy, they say; that is not in the U.S. Constitution.

Let me give an example of right to privacy issues that relate directly to the issue of judgeships. We have a nominee before us named Carolyn Kuhl who is a State judge. Carolyn Kuhl was involved in a case and dismissed a claim and then was overturned in her dismissal. Let me describe the claim. It was an egregious invasion of privacy.

An oncologist was giving a breast exam—in fact, a full examine, including a breast exam—to a woman in his examination room. Another person was in the room with a white coat, another male. That male turned out to be a pharmaceutical salesman. No, not a doctor, a pharmaceutical salesman observing the full physical, including the breast exam of this patient.

The patient sued. Judge Kuhl dismissed it, just threw it out. This woman had no right to privacy, no right to expect privacy. That is what the judge said.

That judge was overturned on appeal, and the court that unanimously overturned that said: The conduct was highly offensive—that is, allowing another male in the room to observe, and not even a doctor but a pharmaceutical salesman—that conduct was highly offensive and the patient had an "objectively reasonable expectation of privacy."

My colleagues suggest this is a manufacturing of some right that doesn't exist. This woman has no right no privacy in the Constitution. Judge Kuhl would have it right, they would say.

Judge Kuhl didn't have it right. This happens to be one of the judges who has been held up by the Senate—one of the 4; 168 approved, 4 not approved. This particular judge we decided does not merit approval by the Senate. The other side says there is no right to privacy, so don't be critical of this judge; there is no right to privacy for the American people.

I don't understand that argument. I hear it, but I don't understand it. That is rooted somewhere in the 1930s or the 1920s or perhaps the 1880s. It is certainly not what the American people would expect someone in the Senate to be asserting in the year 2003, that the American people have no right to privacy, or that Judge Kuhl's decision is the right decision, and that has already been determined. That was thrown out on appeal—unanimously, I might say. So Judge Kuhl is not advancing in the Senate. We make no apologies for that. This is someone far outside the mainstream whose record of decisions indicates to us we don't want to elevate this person to a lifetime on the Federal bench.

Let me just say with respect to the 168 approved, 4 not, 2 of those are North Dakota Federal judges, judges from my State. Both are Republican and both nominations I was proud to support. They are both now on the Federal bench in North Dakota. I played a role in getting them there, and I am pleased I did. I think they will be great Federal judges.

That happened the right way. The administration visited with Senator CONRAD and myself and selected from among some good candidates two judge candidates we supported who we think will do well on the Federal bench.

There are other approaches to this. One is, for example, saying to the two California Senators: It doesn't matter what you think, we are going to pick an ultraconservative in California whose record doesn't merit support by the Senate, and we are going to try to shove it down your throat because we believe we have a right to do that. That is the attitude. There is a kind of arrogance there, in my judgment.

When they wrote the U.S. Constitution, the Framers decided they were going to have a couple of steps to this process. I am glad they did. In fact, they almost decided the President should not be involved in the process. That was part of the discussion because they didn't want to give that much power to one person in this country, but they finally made a compromise with respect to judges. They said the President will nominate and the Congress will have a role of advising and consenting. That is, the President will nominate and the Congress will say yes or no.

We have been extraordinarily cooperative with respect to this President. In almost all cases, we have said yes. In four, we have said no. For that, we now have a 30- or 39-hour extravaganza in which, when I was driving in this morning, I heard my colleagues talk about corruption and all the code words they have developed especially for this debate, especially for their political friends so the word will mean something and it becomes much more than actually exists. This is all a manufactured debate.

They say there has never been a filibuster. That is not true. But if you say it eight times an hour for 39 hours, maybe some people will believe it. I don't know.

This is the oft-repeated old story about the man who comes home at 2 o'clock in the morning, having been drinking and with lipstick on his collar. And his spouse angrily confronts him and says: Where have you been?

He says: Riding my bicycle.

She says: That can't be true, I took your bicycle to the shop yesterday.

He says: That's my story, and I'm going to stick to it.

That is what is happening here: It is my story, patently untrue, obviously false, but they stick to it. They say there has never been a filibuster. The fact is, when the Republicans were in the minority, they filibustered 16 nominations in 1 Congress alone. So if they say it eight times the next half hour, just understand, it is not true. They can say it, say it, and say it, but it is not true.

I guess debate is an opportunity to exchange views. It does not require someone to tell you the facts. The facts are, as my colleague from Illinois indicated, many of the nominees in the previous administration never even got a hearing—not even a hearing. But in addition to that, there have been numerous filibusters, and some of my colleagues, in fact, who are here this morning voted against cloture to sustain a filibuster, some of the same ones who are making this claim.

I don't understand, I guess, how they think it sticks just to stand up here and say something they believe to be the case when they know it is simply not true.

Let me, in the couple of minutes I have remaining, talk about some of the issues I wish they had passion to address. This, in many ways, relates to the right to privacy.

The President and my colleagues on the other side of the aisle have decided in recent days that this young lady—her name is Joni Scott, who went to Cuba to distribute free Bibles—will be fined $10,000 by the U.S. Department of the Treasury. Why? Because she exercised her right to travel and distributed free Bibles to the poor people of Cuba.

She now is subject to a $10,000 fine. I tried to change that the other night. I couldn't do it. The majority in this Congress and the President said: Absolutely not, we are going to maintain these travel restrictions that restrict the right of the American people to travel.

By the way, this woman is going to get no relief. A $10,000 fine for an American citizen who distributes free Bibles in Cuba—maybe we could be talking about that this morning and see if we can agree that it is a perversion to do this. It seems to me this woman has some rights. Yes, the right to travel, perhaps the right to privacy, the right to distribute free Bibles. But the majority party says: No, she has no such right, none at all.

Let me ask if we might not want to talk about another subject during these 39 hours. We have lost 3 million jobs in the last couple of years with a failed economic policy.

This is a picture of a Huffy bicycle. They used to be made in the United States. In fact, right here under the handlebar they used to have a decal that was the American flag decal. Mr. President, 850 workers in Ohio were fired because they were making $11 an hour, and they moved this bicycle manufacturing plant to China where they can pay 33 cents an hour, and they took this flag decal off the handlebar and put on a decal of the globe. Not an American flag, a globe. Why? Because they decided $11 an hour is an egregious wage, outrageous amount of money to pay people when you can make it for 33 cents an hour in China, working 16 hours a day, 7 days a week. So we lost 850 jobs. These 850 people went home and had to tell their families: I lost my job. I am a good worker. I tried hard, but I couldn't compete with 33 cents an hour.

I wonder if maybe we wouldn't have the same passion on this floor to talk about jobs that Americans had but don't have any longer. Could we have a few of our friends stand up and join us to have a 39-hour debate about jobs the American people need, want, and deserve but don't have because these jobs are moved to parts of the world where people are paid 33 cents an hour.

I could hold up another chart to show you 12-year-old kids working 12 hours a day, being paid 12 cents an hour, and they get the jobs and those jobs leave this country. Is there a passion on this floor to talk about that? Oh, no, we don't have time. This isn't a big issue.

The passion is to stand up here and say with respect to the four nominees to the court who have not advanced that we are engaged in a filibuster that has never before been done. That is absolutely, patently false, and the people who make that charge know it.

My hope is we can stop some of this and get on to the things that really matter to the American people and the economy and the future of this country.

My colleague from Illinois I know has additional comments.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank my colleague from North Dakota for reminding us that there are issues out there about which the American people really care. I dare say if you go to Missouri, Illinois, North Dakota, South Carolina, Georgia, or Minnesota and take the average person on the street and ask them: "Where in the list of priorities in your life is the fact that 4 judges out of 172 nominated by President Bush have not been approved," my guess is they are going to say: I didn't even know that. Is that a big problem?

In fact, this morning's Washington Post has an interesting story about what we are doing here, this made-for-TV filibuster. They say:

> The greatest deliberative body shows what it does best—talk itself silly.

That is the Washington Post this morning. They refer to filibuster buttons—we have them on both sides of the aisle—filibuster T-shirts, and filibuster bingo games.

I am glad they didn't disclose the identity of this man, but they went out and asked one of our Capitol Police officers what he thought about this marathon debate. He probably would lose his job if his name were disclosed because of the Republican majority. Here is what this man said, a Capitol policeman who has been standing guard over the Capitol through the wee hours of the morning while we gassed on here on the floor about our favorite political issue: the lack of confirmation of four judges.

Incidentally, for those who are keeping score, I believe it cost us about a quarter of a million dollars in taxpayer money for additional pages to be printed in the CONGRESSIONAL RECORD and for additional Capitol Hill Police overtime protection because of this 39-hour marathon—a quarter of a million dollars.

Let me get to the quote from this Capitol policeman. They asked about the made-for-TV filibuster. He said:

> I can see it if it was something important, like the budget or Iraq, but who cares about judicial appointments. They should get a life.

There is a lot of wisdom out there standing in the hallways and in the streets in the cold wondering what in the world we are doing here. The Senator from North Dakota knows full well, if you go to his State or my State and talk about 3 million jobs lost under the Bush administration, those are the numbers they care about, not 168 to 4.

The Republican majority is out of touch. They just don't get it. They don't understand what real families and real businesses across America care about.

The cost of health insurance—for goodness' sake, how much time have we spent in the Senate talking about the cost of health insurance this year? Nada, zero, rien, not at all. No time to discuss the cost of health insurance, the biggest single issue facing families and businesses across America, but, boy, for four judges we are prepared to stand on this floor for 36 hours and grind red meat for Fox TV News and the right-wing radio boys. We will spend night and day. We will bring in our props such as cots and suitcases, and we will pretend this is a really serious filibuster and ignore the really serious issues that America really cares about.

You wonder why fewer and fewer people take the Senate seriously? You wonder why fewer and fewer people vote? It is because of this kind of charade.

Mr. DORGAN. Mr. President, will the Senator from Illinois yield?

Mr. DURBIN. I yield for a question.

Mr. DORGAN. In the previous administration, over 50 nominations were sent to the Congress in which there wasn't even 1 day of hearing—not even the courtesy of allowing someone to come to the Capitol for a hearing. Were any of the folks who are now on the floor of the Senate complaining about our holding up four judges who did get a hearing but we decided not to confirm—were any of the folks complaining back then that those 50 nominees never got a hearing?

Mr. DURBIN. I say to the Senator from North Dakota, their passion for justice did not apply to a Democratic justice. Their passion for justice did not apply to 63 nominees who were not given a chance to come to the Senate floor. Their passion for judges did not apply to those men and women whose lives were changed forever. But when it comes to these four, we take up the time of the Senate, take up the money of the taxpayers to divert us from issues that people really care about. It tells us what it is all about.

When the Senators from Kansas and Pennsylvania come to the floor and say, We want judges who don't discover the right of privacy in the Constitution, is that a conservative value, is that a family value—to reject the right of privacy? That is what they said, and I don't get it. If that is what they are for, they are clearly out of the mainstream, and we ought to take a closer look at every job.

I even think Robert Bork, when he was trying to get on the Supreme Court, said he agreed with Griswold v. Connecticut, a right to privacy case. What we heard this morning from the most extreme members of the Republican caucus is they will not even acknowledge a right of privacy for individuals and families across America. That is a sad outcome and one I think, frankly, should be challenged because if that is really the standard we are going to play to, I am going to look a lot harder on the Senate Judiciary Committee to make sure we don't have nominees given lifetime appointments to the bench who would have our Government raiding the bedrooms and private lives of Americans. That is what it is all about. It should not be allowable.

I see the majority leader on the floor and I respect him very much, but this is wrong. What we are doing is wrong. This made-for-TV filibuster over 4 judges after the President had 168 approved—why aren't we talking about issues people really care about, such as the cost of health care, the loss of jobs, the poor soldiers coming back injured who need help in veterans hospitals?

The Presiding Officer is chairman of the Veterans' Administration and HUD subcommittee on the Appropriations Committee. We had to pull his bill from the floor the other day. We did not have time to finish the bill, the 2 hours it would take to finish that bill—$62 billion, if I am not mistaken, or $68 billion for the Veterans' Administration—because we had to hurry on to this made-for-TV filibuster. That is sad. We should do the people's business. We should focus on things that Americans really care about.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, to be referred to as an extreme Member of the other side of the aisle, I would like to suggest that this extreme Member on the other side of the aisle never voted against cloture on a judicial nomination. How extreme is this Member versus the Member who just spoke, who has voted repeatedly and repeatedly and repeatedly and repeatedly and repeatedly against cloture? Who is the extremist?

I will posit that to the American people. Who is the extremist? The Senator from Pennsylvania, who never in his career voted, ever, against a cloture petition for a judicial nomination or the Senator from Illinois, who has led the effort, organized the posse, to filibuster, for the first time in American history, nominations for the court?

This is only 168 to 4. When the rules are changed, upon changing the rules you have to start with one. Then you do two. Then you do three. Then you do four. And today we do five. Today we do six. Next month it will be seven. Then it will be eight. Years from now, it will be 127, and then 3,455. It starts with one. It starts with the change.

There have been 2,372 nominations since the filibuster rule was put in place; zero blocked on the Senate floor. It has never been done in history.

Oh, it is only four, just a few. We are doing great. "We just started," is what they are not saying—we have only just begun. We just started this, folks. Not the Senator from Pennsylvania, not the Senator from South Carolina, not the Senator from Missouri. The Senator from Missouri opposed a judge. He said, look, have an up-or-down vote and then I will vote no. That has been the way it has been done here. This idea that we have filibustered nominations by folks not getting a vote in committee, let us look at the record.

Fifty-four Bush nominees under the Democratic Senate got no hearing, did not get confirmed. Have we complained that they were filibustered? No, because they were not. Every President at the end of his term has judicial nominations in committee who have not gotten through, for a variety of reasons. It is just the flow of the Senate. In this case, 54 Bush nominations. How many Clinton nominations, after 8 years? Forty-one.

Let me repeat this again because we are saying this is different; Clinton was treated so unfairly. There were 377 nominations, 1 defeated on the floor, up-or-down vote. No filibuster.

I remember—the Senator from Missouri, I am sure, can remember this—Richard Paez. I do not know if the Senator from Missouri voted against him or not, but I sure did. I did not vote against cloture because the Senator from Mississippi, Mr. LOTT, and the chairman, Senator HATCH, said: Do not set this precedent. Do not change the rules. It is going to come back and bite us. We cannot do this. It is too important to the future of the Senate. It is going to undermine the judiciary. The Ruth Bader Ginsburgs of this world, the Antonin Scalias of this world will not have a prayer getting through this place. The best and the brightest are going to get knocked away or scared away if we raise this bar, if we allow the extreme elements of either party to start to run the Senate. We cannot let this happen.

As much as we may want to, as much as we did not want Richard Paez to be a Ninth Circuit Court judge, you have to hold back. You cannot let the passion of the moment completely destroy the precedent that has served this body and this country so well. Do not succumb to the special interest groups who are pleading with you. Come on.

The Senator from South Carolina said just in the last hour that for every one liberal special interest group there is one conservative one. Guess what. When the shoe is on the other foot, do you think we are going to say, oh, well, we are going to go back to the way it was; we are going to let you have all of your liberal judges; we are only going to require 51 votes? Fat chance. Fat chance.

Mr. GRAHAM of South Carolina. Will the Senator yield for a question?

Mr. SANTORUM. I will yield the floor to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. For something that is a waste of time, it has been hard as heck to get to say anything around here because everybody is so fired up about talking, which I think is good. We have been in almost 39 hours, and if Senators get 15 minutes to express themselves they are lucky, which I think is a testament to how important this is to people.

I am very proud of what the Senator from Pennsylvania has tried to tell the body about what the future will be like. The Senator from Minnesota and the Senator from Georgia, my two good friends, my classmates, we were not here during a lot of these problems of the past. We are worried about the future.

I want to very quickly respond to my good friend from Illinois. Here is what I am willing to do—and I do not know who the Capitol Hill policeman was, God bless him for serving—I am willing to stand by a poll of all the cops in America and see whether they think appointing a judge is a big deal. It is my belief that most cops in America have had experiences in court that they really would like us to pick judges wisely. As a prosecutor, I can assure my colleagues who the judge is matters. I can assure my colleagues that most police officers do watch how the court operates, and they are concerned about the quality of judges because many of them have made cases risking their lives only to see it bounced.

So I totally disagree that this police officer is speaking for the mainstream of cops. Cops care about judges.

The Washington Post—I am not a great fan of the editorial page, but I read the Washington Post about what they think is going on here today. On February 5, 2003, the Washington Post said this filibustering of judges—Miguel Estrada—is really not a good thing. A world in which filibusters serve as an active instrument of nomination politics is not one either party should want.

Well, the extreme Senator from Pennsylvania shares the same views as the Washington Post, which begins to bother me a little bit. Maybe he should be a little more extreme. But what he is saying is what the Post said back in February. You do not have to be a rocket scientist to figure this out because I figured it out. I am not a rocket scientist.

This is about manufactured controversies. Judge Pickering, oh, this is no big deal. Why are the Senate Democrats sending out urgent e-mails saying send us money, my God, the country is about to blow up because the Bush administration is devoted to using the courts to its political advantage? If that does not get your blood boiling, what would? It would scare me if I got a memo from somebody who is a responsible member of the Senate Democratic leadership saying, send money quickly. The Bush people are taking over the courts, and they are going to put a guy on the court named Charles Pickering. While he was in law school, he wrote an article about making sure the ban on interracial marriage in Mississippi was not stricken down.

As a State senator in the 1970s, Pickering worked to repeal the important provisions of the Voter Rights Act. That ought to scare you to death if you believe in racial harmony and justice.

This e-mail is totally in contradiction of what has been said on the Senate floor. The e-mail says that Senate Democrats have launched an unprecedented effort. If you have listened to everybody for the last 33 hours, this is just business as usual. The e-mail is the best evidence of what is going on over there. They have picked a few judges, for whatever reason. They have manufactured controversies about who these people are, and they are ruining their lives.

Judge Pickering was approved by this body 12 years ago. I would daresay this body would not have unanimously put him on the district court as a Federal judge if they believed he was writing articles supporting interracial marriage bans and that while he was a State senator he actively undermined the rights of African Americans in Mississippi. That makes no sense. That means this place is totally asleep and worthless when it comes to screening, or they are manufacturing controversies about this judge.

Judge Pickering was voted well qualified, the highest rating one can get from the American Bar Association. I am convinced that the ABA is not putting people on the bench well qualified if they believe they are a bunch of racists. It goes on and on with all four of these people, and it soon will become 12. That is why I am so upset.

Special interest groups who do not live in Mississippi have declared war on the basic essence of who Charles Pickering is, defying all of the evidence out there by people who know him the best and what he has done with his life. That is a sad state. That will lead to chaos, and the Senator from Pennsylvania is absolutely right. You are going to have people applying for these jobs in the future who will have never uttered a word about anything because if they say anything that may get a liberal or a conservative special interest group mad at them, they will come and knock their head off. That is why we are here at 10 minutes after 7 and you have to really watch it to make sure you do not deny your colleagues a chance to speak because contrary to what they say over there, this is a big deal to everybody, and, my God, it ought to be. If it gets to be where it is not a big deal to how a judge is appointed and nominated, and whether you follow the Constitution, our problems with the economy pale in comparison with our problems as a nation. When politics enters the judicial arena and the judicial arena just becomes another form of politics, then we have drifted far astray from where our forefathers wanted us to be.

I will yield to my colleague from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I could not agree more with my colleague from South Carolina. When I hear asked on this Senate floor, who cares about judicial appointments, who cares about the important judiciary that makes decisions that affect our everyday lives, I would join with him in saying that the people in Missouri care.

I have found all of the problems—and there are many problems, there are lots of concerns. People are concerned about Iraq. They want to see the President carry on the war against terrorism. They are concerned about jobs. They are very grateful, I might add, that the Republican Congress has given the economy such a boost with its good fiscal policy and gotten the economy growing, an economy that President Bush inherited that was in the tank, but it is starting to grow, and we want it to grow faster. They ask me more about this unprecedented filibuster of judges than anything else.

No matter where I go, in the rural areas, in the big cities, in the suburbs—my colleagues on the other side ask, who cares? Well, people in my State understand. They know how important the judiciary is. They know that appellate courts, the courts that oversee district courts usually in many States, make decisions that affect our everyday lives.

The Senator from South Carolina was right. The police officers, the sheriffs, these are the folks who go out and risk their lives and then they see appellate judges, people on appeals courts, making decisions that turn these criminals loose. And they say what is this all about? I am risking my life, I am out there getting shot at, trying to bring somebody in, and an appellate court judge misuses the law to set him free. Our police officers, our law enforcement officers today understand the constitutional rights. They know. They have to abide by the standard. They have to respect the rights of all citizens. But when they do that, when they go through all of the steps and do it right and then a criminal is turned loose, they, who have risked their lives, know how important these judges are.

My Democratic colleagues complain that we are taking time. Well, I have been waiting to get on the floor because this is something we need to talk about. We have listened to them all year long delay, filibuster. They bragged about they finally passed the Healthy Forests bill to stop the wildfires that have burned in California and threaten many States, and do my colleagues know what they are doing? They are filibustering the ability to take that bill to the conference so we can get it passed. They are filibustering that.

My colleague from Illinois was talking about how long it took us to get to the VA-HUD bill, a bill I am responsible for. Well, something may have interfered with taking up that bill when the minority whip spent 8½ hours on the Senate floor on Monday complaining about filibusters. Excuse me, but what is that when he will not release the floor beginning at 1:30? I gave up. I heard he went 8½ hours, maybe it was 9½ hours. I decided to turn on the ball game about then. But we were blocked from doing anything. We were blocked by the same Democrats who complained, after they filibustered all year long, that we are talking too much.

There is a lot to be said, but the most important thing I can say is that the

President has nominated 46 people to serve on the Federal circuit court, and the Senate has confirmed only 63 percent. This is what we are talking about, unprecedented. The President has made four nominations to the Court of Appeals for the DC Circuit, the second highest court in the land, and only one has been confirmed.

Despite the self-congratulations of the Democrats who say they have confirmed 168, they have not confirmed 37 percent of the circuit judges. What nominee has withdrawn his name? One of the most qualified people ever nominated for the judiciary. Three remain filibustered. Three more are being threatened with that fate. Numerous others are being blocked or delayed by the minority. The reason most cited is that these nominees are out of the mainstream.

The mainstream, it appears, is defined by a few of my colleagues and some of the most liberal interest groups in the country. I know the liberal interest groups, the Hollywood group, put in a lot of money, and they have strange ideas of what the mainstream is. When you talk about some of their mainstream Hollywood people or People for the American Way ideas, I tell my colleagues, that dog does not hunt in Missouri. I imagine it does not hunt in South Carolina, Georgia, and Pennsylvania either.

If that is the litmus test, let us talk about who is in the mainstream. For the Ninth Circuit, Judge Carolyn Kuhl, the American Bar Association says she is well qualified for the position. Oh, earlier on, that was going to be the gold standard. The Democrats said: We cannot appoint anybody who is not rated at least qualified by the American Bar Association.

She is rated well qualified, a distinguished career as an attorney with the Department of Justice, U.S. Solicitor General, a clerk for the United States Supreme Court. Twenty-three women judges on the Superior Court of Los Angeles, and nearly 100 judges who serve with her have spoken out on her outstanding abilities and professionalism. The litigation section of the L.A. County bar has also. Are those people out of the mainstream? Are they somehow different? Are they somehow unworthy?

Then Judge Janice Rogers Brown, she is the first African-American woman to serve on the State's highest court. She was retained by the support of 76 percent of the voters in her last election. That is in California. Is 76 percent of the California voters out of the mainstream? Academics from colleges across the State have written in to speak about her professionalism and evenhandedness. Sounds like mainstream to me.

They like to think that the panel of the Ninth Circuit, which is the most liberal, most overruled, most out of touch circuit court in the Nation, is mainstream, but this panel of Ninth Circuit judges tried to stay the recall election in California. The Ninth Circuit judges declared that the words "under God" in the Pledge of Allegiance are unconstitutional. Is that the mainstream? Two Democrats appointed to the Ninth Circuit ruled that convicted felons serving a life sentence have a fundamental right to procreate by artificial insemination. Are they in the mainstream? Where is that in the Constitution?

Mr. President, I have many colleagues who need to speak. I have a whole lot more to say. I will be sharing it with you. But most of all, I am hearing from the people in Missouri who know their lives could be affected by what the nominees of the appellate courts in the Nation can provide.

After 9/11, a Jordanian named Osama Awadallah was apprehended after material linking him to some of the hijackers was found in a car parked at Dulles by one of the hijackers. It was established that Awadallah knew two of the hijackers and had met with one of them up to forty times. But Clinton appointee Judge Shira Scheindlin dismissed his charges and in the process struck down a federal material witness statute long used by the Department of Justice to detain witnesses who are a flight risk. The fact that this was well-settled law used by the prosecution was no deterrent to the judge. Fortunately, she was overruled by the court of appeals.

Yesterday, we also heard about Clinton appointee Judge Jed Rakoff, who ruled that the federal death penalty is unconstitutional, again disregarding well established precedent. In his opinion, the judge likened the statute to murder. The judge seemed to have total disregard for the fact that the arguments he made were those that should be made in a legislative body, but that would require one to be responsive to the will of the voters—what an old fashioned notion! Even the Washington Post—which opposes the death penalty—condemned this blatant overreaching decision as entirely inappropriate for a judge.

Another recent Clinton appointee has ruled it necessary for the government to permit criminal illegal immigrants bail, rather than holding them for deportation—A very useful tool for our immigration services to ensure that criminal aliens are sent back to their native countries.

President Clinton nominated a New Jersey federal judge to the court of appeals who once ruled that a homeless man, despite the disturbance he was causing the patrons, had a right not to be removed from a public library. Of course, he was supported unanimously by the Democrats. On the circuit court, he went on to rule that prisoners had a constitutional right protecting their mail from searches and argued that the government could not go after the proceeds of drug forfeitures—fortunately for the war on drugs, he was unsuccessful.

Speaking of prisoner cases, one of the decisions issued by Judge Pickering that the Democrats have been critical of was a prisoner's rights case. A prisoner was dissatisfied with the prison issue typewriter because it was lacking a memory system—Judge Pickering ruled that this prisoner's typewriter was adequate and he did not have the right to one with memory. What a cruel decision. Is that what this debate has come down too? This hardly puts Judge Pickering out of the mainstream, in fact I would bet just about everyone listening to this debate would agree this decision is mainstream—It makes common sense.

I could stand here all morning reading decision after decision handed down by Democrat appointed judges that simply defy reason and bear no resemblance to what most people in this chamber or in their states would consider to be the "mainstream". Yet a few of our colleagues have taken it upon themselves to make this critical determination. By their history, they have no credibility on this question. In fact, all the nominees who have been labeled as such actually enjoy the majority support in this body and have the support of Republicans and Democrats alike.

Mr. President, it is time to give these extremely well-qualified, high-respected individuals an up or down vote. It is time for the minority to quit hiding behind this flimsy argument about being in the mainstream.

It is too late for Miguel Estrada, his nomination was withdrawn after 848 days and 7 cloture votes, unanimous rating of well qualified by the ABA, but it is time to give Justice Priscilla Owen a vote, her nomination has been pending for 917 days and there has been three cloture votes, unanimous rating of well qualified by the ABA, it is time to give Judge Charles Pickering a vote, his nomination has been pending for 901 days and he has an ABA rating of well qualified, it is time to give Attorney General William Pryor a vote, his nomination has been pending for 217 days and he received a qualified rating, it is time to give Judge Carolyn Kuhl a vote, her nomination has been pending for 873 days and the ABA has give her a well qualified rating, it is time to give Justice Janice Brown a vote, her nomination has been pending for 110 days, and it is time to give Judge Henry Saad a vote, his nomination has been pending for 743 days.

Mr. President, it is time for the body to give these candidates an up-or-down vote.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Just like the Senator from Missouri, I want to talk for just a second about who cares about these judicial nominations because obviously the folks on the other side of the aisle who have been obstructionists in not allowing circuit court judges to come to a vote think the American public does not care about our Federal judicial system. Sure, our supporters understands it and they care. Sure, every Rotary Club I go to understands it and they care because they ask me about it. Every church where I go to speak, they care, they understand it, because they ask me about it. I have been walking down the street in my hometown and some stranger will come up to me. He understands it and he cares.

Obviously, the Senator from Illinois is totally insensitive to these kinds of people.

Let me tell you who else cares. That criminal defendant who is sitting in jail and who is having to wait longer than he ought to wait because we do not have Federal judges on the bench, he or she cares. That plaintiff or defendant in a civil lawsuit who is having to sit and wait and wait for justice, whatever that justice may be, on either side of the appellate case, he cares because he is not getting his case served.

Obviously, the folks on the other side of the aisle who are complaining about and conducting this filibuster think those people are OK and they do not care. They care.

I guess one of the major other differences between the Senator from Illinois and this Senator is that I don't go to the Washington Post to get my anecdotes. I don't go to any conservative newspaper to get my anecdotes.

Yesterday I drove to my office over in the Russell Senate Office Building, and as I pulled my car up to the gate, just like all of us—we stop, the Capitol Police have to come around and run the mirror under your car—the Capitol policeman came over to me and he knew I had been up except for an hour the night before, and I could tell he was dead tired, and he looked at me and he said: Senator how are you doing? And I said: I am tired. He said: Senator, you guys are doing the right thing. Make your point.

You know that guy cares because he is like every other law enforcement officer in America. They depend on us to make sure we provide them with good judges to take the bad guys off the street which makes their job easier.

There is one other point I want to make because I have heard this comment off and on for the last 38 hours. And that is, the fact that the score of 98 percent is a pretty good score. I don't care whether it is a math, English, or a reading test. They keep bringing this point up that we have confirmed 98 percent of the President's judicial nominees.

First of all, the numbers are not right, but I will not get into that. I want to talk about the 98 percent. On its face, that might sound fine. When you come to messing with the Constitution of the United States, when it comes to the confirmation of judges, 98 percent is not good enough. The reason is that every other President in the history of the United States of America—and we have had 43 of them now—every single one of the other 42 Presidents of the United States has had a score of 100 percent when it comes to the issue of not having their judges filibustered.

For these folks to stand up on the other side of the aisle and say 98 percent is pretty good, they don't care about the fact that they are the first in the history of the United States of America to filibuster a judge.

I repeat, if 98 percent is OK and they are smiling and happy about it, I would like to hear how many of them go home this afternoon and think they would get a good reception from their spouse if they said: You know, honey, I have been faithful to you 98 percent of the time. Or I wonder how many of them would feel good as they get on an airplane this afternoon and head home smiling and thinking, boy, we have done great work defending our judges and defending our filibuster of these judges but that airplane had a safety record of landing 98 percent of the time.

There is a difference. We live under this document that has served us so well for so many years and 100 percent of the judges who are nominated have been confirmed by every other Senate for every other President prior to this one as per the language of this great document.

I close by reading some comments out of a book written by a man of which I am a big fan. The Democrats in this Senate are not particularly a fan of his right now, but let me tell you, he is a great American. He is a great American who speaks the truth, and he is speaking the truth about what is going on in this body right now. "The National Party No More, the Conscience of a Conservative Democrat." It is written by my colleague, my good friend from the State of Georgia, Senator ZELL MILLER.

I ask unanimous consent that the entire chapter, chapter 8, entitled "41 Beats 59—That Strange Senate Math," be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

41 BEATS 59—THAT STRANGE SENATE MATH

The United States Senate is the only place on the planet where 59 votes out of 100 cannot pass anything because 41 votes out of 100 can defeat it. Try explaining that at your local Rotary Club or to someone in the Wal-Mart parking lot or, for that matter, to the college freshman in Political Science 101. You can't, because this strange Senate math stands democracy on its head.

By name, this incongruous, obstructionist procedure is known as a filibuster. The word filibuster comes from a Spanish word for "pirate," and that is exactly what this procedure does. It hijacks the democratic process. Filibusters first caught the fancy of the nation after James Stewart, in Frank Capra's classic movie Mr. Smith Goes to Washington, made Mr. Smith a hero standing up to the Senate bosses on behalf of the people. But now, however, most Americans understand vaguely that in the Senate any member can stand up and talk endless drivel for hours in order to prevent legislation he or she opposes from coming to a vote. The process is so ridiculous that the filibuster, like that old comics-page blowhard Senator Claghorn, has unfortunately become, in the minds of many, just another caricature of the Senate, just another thing to laugh at, just more hot air from the Cave of the Winds.

Realizing that with the scrutiny of television, the people would not stand for such nonsense, the "Old Bulls" of the Senate fuzzed it up. They made it subtler. These verbal gunslingers can now be forced to shut up, and the process and the Senate move along toward a vote if sixty members remove the cotton from their ears' and vote for cloture. A cloture shuts off what is called a debate but isn't because it takes two sides talking to constitute a debate. If this sounds confusing, it is meant to be. That is precisely the objective.

The short version of this debacle is that the way filibuster is being used in the Senate gives the minority an absolute veto on just about everything. In fact, the U.S. Senate has become similar to the Security Council of the United Nations where one country can veto the will of a clear majority and castrate the entire process.

Winston Churchill once said, "Democracy is based on reason and fair play." Well, there's nothing reasonable or fair about what's been happening in this august body. It's not just that it's an expensive waste of time and taxpayer money, but it's also a flagrant abuse or majority rule, the principle that democracy operates on everywhere. Everywhere, that is, except in the U.S. Senate.

Rule XXII of the Senate is the reason for all this. It was adopted in 1917 and was meant to move things along. President Woodrow Wilson had lashed out at what he called a "little group of willful men" who had blocked his proposal to arm our merchant ships against German submarines. Sixteen senators could file a petition against a bill or an amendment and if two-thirds approved it within two days, debate was to be limited to one hour per member or one hundred hours. Later it was modified to sixty votes, not two-thirds, necessary to halt a filibuster. And in 2003, for the first time, it was used to prevent a vote on the presidential judicial nominees.

The longest filibuster in congressional history was waged against the Civil Rights Act in August 1957 by Senator Strom Thurmond of South Carolina, when he held the floor for twenty-four hours and eighteen minutes. Wayne Morse of Oregon comes in a close second with twenty-two hours and twenty-six minutes. Probably the most entertaining was the Kingfish, Huey P. Long of Louisiana, who in 1935 only went on for fifteen hours, thirty minutes against one of President Roosevelt's New Deal proposals. When asked how he kept from answering the call of nature for that long he answered, "Why do you think I wore a navy blue suit?" Strom Thurmond had dehydrated himself in a sauna before taking the floor for his record-setter and didn't worry about that problem.

James Madison, the Father of the Constitution, feared some future political leaders would pervert the legislative process in just this way. He warned in Federalist Paper #58 that when it happened, "The Fundamental principle of free government would be reversed. It would be no longer the majority that would rule. The power would be transformed to the minority." I'm sure the man who wrote the Constitution is spinning in his grave.

Alexander Hamilton may be taking a couple of revolutions as well, because he agreed with Madison. He pointed out in his Federalist Paper #68 that the vice president was given a tie-breaking vote for "securing at all times the possibility of a definite resolution of that body." A "definite resolution"; how well put. But no one has said it better than Senator Henry Cabot Lodge in 1893, when obstructionism was not nearly as bad as it is today: "To vote without debating is perilous, but to debate and never vote is imbecile."

Years ago, when I was teaching freshman political science at Young Harris College, I always repeated the old story about the origin of the Senate. Thomas Jefferson was in France when the Constitutional Convention was being held. Later, he asked his friend George Washington, who presided over the convention, about the purpose of this upper chamber, the Senate. Washington, so the anecdote goes, then asked Jefferson, "Why do you pour coffee into your saucer?" To cool it," Jefferson replied. Washington responded, "Even so, we pour legislation into the senatorial saucer to cool it."

Cool it, yes, but not freeze it into an ice cube. Truth is, there is nothing at all said in the Constitution about protecting Senate minorities. Our Founding Fathers, I believe, thought the smaller size, longer and staggered terms, as well as state legislation on the selection of senators, would provide more wisdom.

Some constitutional lawyers have argued that any kind of super-majority vote is unconstitutional, other than for the five areas specified in the Constitution: treaty ratification, impeachment, override of a presidential vote, constitutional amendments, and expelling a member of Congress. As I write this, Judicial Watch is doing just that. They have filed a lawsuit arguing that confirmation of judges is not specified in the Constitution and, hence, does not require a super majority.

That's one possible remedy. There are others. We could abolish Rule XXII that protects this travesty and let the U.S. Senate operate under rules like every other democratic legislative body in the world where a simple majority rules. That's about as likely as a day dawning in Washington without ten fund-raisers.

Or we could modify what I call the "two-track trick" or filibuster by stealth adopted a few years ago, where another piece of legislation is considered at the same time a filibuster goes its windy way. I call it "filibuster-lite." It's a way to avoid the inconvenience and pain of a real filibuster as if we are using powder-puff, 16-ounce gloves instead of bare knuckles. I'd much rather just duke it out in a real debate and get it over than try to deceive the public that no blood is being spilled. Many veterans of the senate—not a newcomer like myself—have expressed dismay wit the process. Henry Clay, generally recognized as one of our greatest senators, condemned the first organized filibuster when it occurred in 1837. Even back then, he though there needed to be some workable limitation for endless debate. If only he could see what happened late in the twentieth century, Clay would be another grave-spinner. In the nineteenth century, there were twenty-there filibusters. In the last thirty years of the twentieth century, there were more than two hundred.

Two pieces of crucial legislation that filibusters have stymied over the years include the anti-lynching bill of the 1920s and abolishing the poll tax that was held up for twenty-two years from 1942–1964. The Civil Rights Act of 1964 was filibustered for ninety-three calendar days.

With Georgia's Senator Richard Russell as their leader and unlimited debate as their weapon of choice, a small band of Southern senators for years had managed to defeat or drastically weaken any civil rights legislation that came before the Senate. But it was different in 1964. The Senate membership had changed and President Johnson was pushing it with all his considerable power. He told the nation that passing the legislation would be the most fitting memorial that recently assassinated John F. Kennedy could be given. He also managed to peel off Minority Leader Everett Dirksen who often sided with Russell. In the end cloture was invoked 71–29 and the bill went on to pass by an overwhelming margin.

Obviously, both parties have used filibusters time and time again, one just as guilty at the other. In 1996, Democrats blocked a vote on a constitutional amendment on term limits and the Republicans blocked a vote to reform campaign finance. Many conservatives would disagree with me, but I happen to think the political process would have been improved if both those measures had passed. Certainly, it would have greatly weakened the current death-grip of the well-heeled special interest groups because electing their pet incumbents over and over with little or no opposition is what gives both the tremendous power they have. I call it "the dance," and it's nothing like that Garth Brooks song by the same name. After the music of election year stops, it's the public that gets screwed.

In the mid-1990s there was a bipartisan group of distinguished citizens called "Action, Not Gridlock" that came together with great ballyhoo, intent on reform and majority rule. Republican Barry Goldwater was among them. Then in 1995, Democratic Senators Tom Harkin and Joe Lieberman introduced a rule change that I believe is the best that's been proposed.

Two years earlier, Harkin had let a committee hearing have it with both barrels: "There comes a time when tradition has to meet the realities of the modern age. The minority's rights must be protected. The majority should not be able to run roughshod over them, but neither should a vexatious minority be able to thwart the will of the majority and not even permit legislation to come up for a meaningful vote."

The Harkin-Lieberman plan called for a four-step process that kept sixty votes on the initial cloture vote, but decreased it by three votes with each of the next three cloture attempts until finally it got down to the majority of fifty-one. They argued, logically, that this would preserve the Senate tradition while giving the minority plenty of time to plead its case without blocking the majority forever. I liked this idea so well that in March 2003, I introduced an identical bill. In May I joined with Majority Leader Bill Frist in a modified version applying the process only to judicial nominees. That seems to have the best chance for any kind of change and I'm afraid that's not much. Both Harkin and Lieberman now oppose what they so eloquently promoted a few years earlier.

As far as the fate of the Harkin-Lieberman rule change, the New York Times celebrated New Year's Day 1995 with a lengthy editorial beginning, "The U.S. Senate likes to call itself the world's greatest deliberative body. The greatest obstructive body is more like it." The article continued, "Once a rarely-used tactic reserved for issues on which senators help passionate convictions, the filibuster has become the tool of the sore loser, dooming any measure that cannot command the sixty required votes."

All of this came to naught, however, after the Republicans solidly opposed the amendment and Democratic Senator Robert Byrd who, like that mythical, hell-guarding, ferocious three-headed dog Cerberus, punctuated his opposition with the story of how Cato the Younger, in 60 BC, got the floor in the Roman Senate at midday and valiantly spoke until sundown, the time of adjournment, in order to thwart one of Julius Caesar's proposals. That story marked the end of the Harkin-Lieberman filibuster reform bill. Never mind that Byrd didn't tell the rest of the story, that Caesar was not thwarted and fourteen years later Cato committed suicide while Caesar was at the height of his power and still going strong.

Now, I must admit I greatly admire and respect this man, Cato the Younger. He was one of Rome's greatest statesmen, not at all like his great grandfather Cato the Elder, who exemplified the corruption and hypocrisy that later undermined the traditions of republican liberty. Cato the Younger was different. He was a moral man and a great defender of the Constitution and the dominant role of the Senate. That was his role and he always played it to the hilt. His reputation was such that our Founding Fathers admired him as a symbol of opposition to tyranny. In fact, George Washington ordered a play about Cato performed to inspire his soldiers at Valley Forge.

But, truth be told, Cato met an ignoble end. His reputation was greater than his ability. After he was defeated by Caesar at the Battle of Thapsus, rather than accept the generous offer of clemency from his old antagonist, he committed suicide. And he botched that; he didn't fall directly on his sword and it didn't kill him swiftly so he tore out his own intestines with his bare hands. It gave "spilling your guts" a new meaning and was a messy end for the First Filibusterer. While today we can find many good books on Caesar, I have yet to find one on Cato. So, you lovers of the filibuster, I say that is a history lesson worth thinking about.

For all the good stories that have come down through the centuries inspired by the filibuster, in the end, it has nothing to do with ancient history.

The filibuster has nothing to do with the British Parliament.

The filibuster has nothing to do with coffee cooling in a saucer.

The filibuster has nothing to do with freedom of speech.

The filibuster has nothing to do with tradition.

The filibuster has nothing to do with the Constitution.

The filibuster has nothing to do with protecting minority rights.

The filibuster has everything to do with personal political power. It's about Alpha dogs defending their turf in that great big kennel under the dome.

Mr. CHAMBLISS. Here is what he says:

> The United States Senate is the only place on the planet where 59 votes out of 100 cannot pass anything because 41 votes out of 100 can defeat it. Try explaining that at your local Rotary Club or to someone in the Wal-Mart parking lot or, for that matter, to the college freshman in Political Science 101. You can't, because the strange Senate math stands democracy on its head.

He then talks about "Mr. Smith Goes To Washington" and the perception about a filibuster. And he continues:

> Realizing that with the scrutiny of television, the people would not stand for such nonsense, the "Old Bulls" of the Senate fuzzed it up. They made it subtler. These verbal gunslingers can now be forced to shut up, and the process and the Senate move along toward a vote if sixty members remove the cotton from their ears and vote for cloture. A cloture shuts off what is called a debate but isn't because it takes two sides talking to constitute a debate. If this sounds confusing, it is meant to be. That is precisely the objective.
>
> The short version of this debacle is that the way filibuster is being used in the Senate gives the minority an absolute veto on just about everything. In fact, the U.S. Senate has become similar to the Security Council of the United Nations where one country can veto the will of a clear majority and castrate the entire process.

He goes on and gives several anecdotes about the Constitution and what a great document it has been and cites Jefferson's comment to Washington about the function of the Senate and Washington's statement that has been mentioned several times about the function of the upper Chamber, the Senate. The story is told with Washington asking: Why do you pour coffee into your saucer? To cool it, Jefferson replied. And Washington said: Even as we pour legislation into the senatorial cup to cool it.

Here is what Senator MILLER says about that: Cool it, yes. But not freeze it into an ice cube.

There is a significant difference.

Again, he goes on talking about the history of the filibuster. In the history of Democratic Senators, Democratic Senators who are serving in this body today who in recent years have asked that this filibuster rule be changed so that we would not go through the process that we are experiencing today. All of a sudden those Democratic Senators have amnesia and are voting not to invoke cloture.

This is the way Senator MILLER winds up:

> For all the good stories that have come down through the centuries inspired by the filibuster, in the end, it has nothing to do with ancient history.
>
> The filibuster has nothing to do with the British Parliament.
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>
> The filibuster has nothing to do with protecting minority rights.
>
> The filibuster has everything to do with personal political power. It's about Alpha dogs defending their turf in that great big kennel under the dome.

I agree with Senator MILLER.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Louisiana.

Mr. BREAUX. Good morning, Mr. President and colleagues.

I was very interested in listening to the distinguished Senator from Georgia and the Senator from Pennsylvania. I am trying to keep track of what he was quoting from. We decided he was quoting from Miller, chapter 1, verses 6 through 12. I am sure it is considered a holy document. And of course, as most documents, there are two sides to every story. Indeed, on that I imagine you have at least two sides to Miller, chapter 1, verses 6 through 12.

I arrived in this institution over 30 years ago and remember quite well driving up from Washington 35 years ago in a U-Haul with two small children and my wife. I was in absolute awe of the Capitol. In fact, the first time I had ever had an opportunity to visit Washington was when I came here to work as a very young aide to a then-sitting Member of Congress on the House side.

Over those 35 years, I have come to love and respect and appreciate all of the good things that this institution, including the other body, as well as the Senate, stands for. It is a wonderful opportunity to engage in serious debate about the important issues of the day and to address the important issues and problems facing the people of this Nation. That is what this institution does best.

Unfortunately, every now and then the institution tends to break down and we spend an inordinate amount of time doing things that do not address the great issues of the day or contribute anything to solving the great problems of the day. This is one of those times. I have not lost my respect for this institution, and particularly the Senate, even though as in most things in the real world, sometimes things did not run quite as they should. We have now engaged in a couple of days of exhibiting how this institution does not work very well, although on very rare occasions. I still have the utmost respect for this institution and will continue to have that respect for as long as I live despite the fact that every now and then it breaks down.

The issue it has broken down on—I imagine most people in this country are probably watching the morning news show; some are probably watching cartoons with their children. I doubt very well most are watching what some would consider a cartoon-type of atmosphere in this debate which has been on longer than it should. The issue is quite simple: Are Democrats stopping Republicans from getting their judges approved? And are we doing it in a way that is somehow unconstitutional or outside the rules of the Senate?

If you look at the record of the judges, our side has pointed out we have approved 168 judges while only 4 have stopped. I was trying to say, how does that relate to the average American? If the Washington Redskins had a 98 percent win-loss record, people would think that is absolutely astounding, and Spurrier would be given a big raise if they had 98 percent win-loss. If Tiger Woods won 98 percent of the tournaments he entered, people would be writing in amazement about that incredible person capable of winning 98 percent of the time. I happen to play tennis, and if Andre Agassi won 98 percent of his matches, I would imagine people would say this is truly incredible, someone would be capable of winning 98 percent of the time. I guess I should throw in the New Orleans Saints because if they won 98 percent of the time, I cannot imagine what the State of Louisiana would do.

But that is, in fact, the record the President of the United States, President Bush, has established with regard to the judges he has submitted for confirmation. It is truly a remarkable record of having almost every person he has submitted to the Congress be considered by appropriate committees and considered on the floor and approved. A 98 percent record is truly a remarkable achievement by any measure, whether it is a sports metaphor or whether it is any other type of metaphor we can imagine.

I will bring it closer to home. Imagine any Member of this body getting 98 percent of the vote. Maybe the distinguished Senator from Georgia who is in the Chamber is capable of that, but I don't know if any of us would ever get 98 percent of the vote. Some have been fortunate to get over 50 percent every now and then, but no one ever gets 98 percent of the vote. Teams do not win 98 percent of their games, golfers do not win 98 percent of the tournaments, and neither do tennis players. It is unheard of.

If the average person starts looking at a record where 98 percent of the nominees have, in fact, been approved and are sitting on the bench and doing their duty, by any measure of any standard of operation in this country, people would say that is a pretty outstanding record. Yet the Senate has spent the last several days complaining about a 98 percent achievement record by the President of the United States, saying somehow that is not enough; somehow it should be 100 percent every time with every nominee.

Most American people would say: What are they talking about? Why are they spending so much time saying 98 percent achievement is not enough?

That is where we are. That is what we are talking about.

Enough said about that. After 2 days of talking 24 hours a day, we have heard enough about the 98 percent record. Some I voted for cloture and some I decided not. But the record speaks for itself. It is an outstanding record.

Let me talk about one of the things we ought to be doing if we are going to be the greatest deliberative body in the history of the world, which I think the Senate truly is, something I have been working on for over 5 years as former chairman of the National Commission on Medicare Reform and now a member of the Senate Finance Committee working with our colleagues, trying, in a bipartisan fashion, to address one of the really important issues of this Nation.

We are at a health care crisis in America. We have literally millions and millions of Americans with no health insurance at all. They have to go to emergency rooms. They are in the poorhouse and get services under the State Medicaid Program. Many of these people work hard every day. Yet the companies they work for no longer provide health insurance. It is truly a national problem of monumental proportions, yet we are not talking about that in the Senate today.

Another issue is the fact that we have something over 40 million American citizens who have a health insurance plan that is inadequate, outdated, and in desperate need of reform in terms of how much money we spend on the program. The current program we have for seniors is unsustainable in terms of the money we spend and where it will come from.

All of the Members in this Chamber and all of our employees have health insurance that is significantly better than every single one of the 40 million Americans who do not have health insurance. Our health insurance covers hospitalization, our health insurance covers doctors, our health insurance covers emergencies, and our health insurance covers prescription drugs. Yet we have not been able to do for seniors what we have done for ourselves. That is something that challenges this institution and something to which this institution has to pay attention.

The simple fact is that Medicare today does not cover 47 percent of an average senior's health care costs. It is embarrassing that we, arguably the strongest Nation in the history of the world, have a system where the seniors of this country who have worked, earned, and paid into a fund to provide health insurance when they are old, now are covered by a policy that only covers 53 percent of the average senior's medical costs, and leaving 47 percent somewhere else.

We have been working very hard for a long period of time to reform Medicare. The groups that have been working together have reached an agreement that is a tentative agreement, and no one is bound by it until we see the final product, and that includes me.

The interesting thing about this is that if anything should not be political, it is health care. But I can think of no subject that has become more political than health care, and no subject that has become more political in health care than how we treat the Nation's seniors.

Republicans continue to talk about why Democrats will not do what is needed and necessary to pass a reform bill. And Democrats continue to say Republicans want to privatize it and end Medicare as we know it.

There are Republican political pundits in this city who have said we should pass a Republican-only bill in the House of Representatives and send it to the Senate so the Senate Democrats can kill it; it will be a terrific political issue for us. On the other hand, there are Democratic political pundits in this city who will say there is no way we can support and pass a Medicare bill. Why? Because it would give President Bush an opportunity to sign a bill in the Rose Garden and he might get credit doing so.

So we continue to play what I would call the political blame game. We are more concerned about ourselves and our political parties than we are about the 40 million seniors who desperately need the help in order to get prescription drugs under a reformed Medicare plan.

If we go along those lines, what we will have done is to say, once again: It is their fault it did not get done. And they will say: No, it is your fault it did not get done. But once again what we will give to America's seniors is a basket of excuses. And I have suggested many times that seniors cannot take an excuse to the drugstore and get their prescriptions filled. It is not possible.

What they need is both sides to act like grownups and both parties not just to look at their political base but to look at what is good for America, and join forces and say: Yes, it is going to be a compromise. No, it is not going to be everything I would like if I had an opportunity to write the bill, but we do not. Each of us is part of a larger body, and each of us is part of a body that is almost evenly politically divided.

So that is a challenge that is facing us. What we have tentatively agreed to is an insurance program under Medicare, for the first time since 1965, which will cover prescription drugs for America's seniors. They will pay a premium and have a small deductible and have some copayments, but every Member of the Senate has that type of a drug plan. The Federal Government will pay 75 percent of it, and the senior beneficiary will pay 25 percent.

We will spend $400 billion over the next 10 years trying to make that happen. We see seniors every day going to Mexico and going to Canada to buy drugs from foreign countries. Why? Because they do not have insurance that covers it. Hospitalization in Canada is cheaper than it is here. Doctor treatments and doctor visits are cheaper in Canada than they are here. Why do seniors not complain about that and say: "I am going to have my doctor visit in Canada. I am going to go to a hospital in Canada"? It is a very simple reason. Because they have an insurance policy in this country that covers doctors, and it covers hospitalization. But it does not cover prescription drugs. There is no insurance. So they have to bear the burden of 100 percent of the costs of prescription drugs.

This legislation will be designed to say: All right, we are going to solve that problem. We are going to give you a prescription drug plan. We are going to take seniors who are now under the Medicaid Program for the poor and put all of them into the Medicare Program for all 40 million American seniors. I think that is good, solid, public policy. We are going to make sure all low-income seniors get a special rate by reduced premiums or no premiums at all to make sure we take care of the most vulnerable among us as far as the senior population is concerned.

It is important, as I conclude, when we look back on this session, that we will be able to say we have done more than create more excuses. The seniors can no longer live on political excuses coming out of Washington as to why we have not completed the job. There will be things in this bill that both sides will be able to pick and find and say, I can't be for it because of this. But I would just ask my colleagues to look at the broader picture, to look at the total package and say: When we have an opportunity, perhaps once in several decades, or once in a lifetime, to truly get something done to put in place a system that can be improved upon in the future, we will seize that unique opportunity and come together in a bipartisan fashion. And the American people will be able to say: Yes, they did it, and they did a good job.

I think that is what this body should be dealing with. That is one of the critical, important issues of this day. And I would suggest we get on to it just as soon as we possibly can.

With that, Mr. President, I yield to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Thank you very much, Mr. President.

Let me, first of all, commend my colleague from Louisiana, Senator BREAUX, for the hard work he has been doing to try to get us to a prescription drug bill for Medicare beneficiaries that will, in fact, preserve the Medicare system but will also meet this very real need that most seniors and all of us have, to be able to afford prescription drugs.

Let me say a few words about the issue of judicial appointments before I then talk about a couple of other issues I want to briefly visit as well.

As I approach this whole question about judicial nominations, I guess my starting point is to ask, how is the system supposed to work? How is this system of choosing and nominating and confirming of judges supposed to work when it involves Federal judges?

I think it is supposed to work the way it generally has worked with this President; and that is, it is supposed to work the way it has worked with regard to these 168 judges who have been confirmed. The truth is, these judges who were confirmed, they were nominated by the President, were confirmed by the Senate These are judges who are conservative in their political philosophy, in their legal philosophy. That is sort of a given with this President. We understand that. Everyone understands that. Democrats understand it. Republicans understand it. I have no problem with that.

This President was elected as our President. He has the right to choose judges who have a conservative perspective, and clearly that is what he has done, and clearly that is the way the system is supposed to work. But as I think about how the process should work, it seems to me the very first step the President should take—and the President and his assistants, his general counsel have taken with regard to most of those 168 judges, maybe all of them, at least the ones I am familiar with—the first step is to go to the Senators from the State involved and ask those Senators if these are acceptable persons to be nominated.

That is exactly what has a happened in the case of judicial nominations from my home State of New Mexico. And I am very appreciative of the President and his counsel for including me in that discussion and in that decisionmaking. Essentially, what has happened is that my colleague, Senator DOMENICI, and the White House have identified a person—in the case of each vacancy we have had in New Mexico—they have identified a person who they thought should be nominated for that position, and they have asked me to talk to that person and give them a response as to whether that was someone I would support as well.

In each case, I had been very pleased to support those nominees. In each case, I have had the chance to sit with those people, talk to them, acquaint myself with their qualifications. And, as I say, I have been very pleased to support those nominations.

That is the way the system, in my opinion, is supposed to work. But once the President has determined that the Senators from a particular State—at least one of the Senators, but preferably both Senators from a particular State—will support the nomination of a judge or judicial candidate from that State, then, of course, it is much easier to get the full Senate to go along with that. Frankly, that is the way the system ought to work.

I have had circumstances where individual Senators have come to me, Democratic Senators have come to me and asked: Are you sure you want us to support this nominee for a judicial position in your State? because my staff tells me there are questions—and this and that. I am pleased at that point to be able to respond, yes, that I have checked out these nominees, I have determined that they are people I support, and I urge that the full Senate support them.

Now, we have two judicial nominations coming before us today that are coming up for a vote on cloture that have not come up before, but in both cases my understanding is they are being presented as nominees over the strenuous objection of both Senators from the State from which the judges come.

I have difficulty understanding why I should want to support a judicial nominee from a State if the Senators from that State oppose that nominee. I try to think of how I would feel if I were opposed to a nomination from my State and the President and a majority here in the Senate were trying to confirm that nomination over my strenuous objection.

I think we have some obligation to our colleagues to defer to their own understanding and their own knowledge and their own opinion on these issues, particularly as it affects their State. Now, not exclusively; we do not have to defer. But I am just saying that as a precondition for going forward and considering a judicial nominee, we ought to begin by asking: Do the Senators from the State the judge comes from support the nomination? That seems to me to be a threshold question.

In the case of Carolyn Kuhl, on whom we are having a cloture vote later today, as I understand it, and in the case of Janice Rogers Brown, about whom we are also having a cloture vote later today, I am informed that the Senators from California have determined they do not support these nominations. They are urging that the Senate not go forward with these nominations. They urge that the Judiciary Committee not report these nominations. And in spite of all of that, the President says we are going to do it any way.

We are doing this over the objection of the Senators from California. That, to me, is a cause for concern. We are talking about a breakdown in the traditions and a breakdown in the system that is supposed to be functioning. To me, that is a clear breakdown in the system for choosing and nominating and confirming Federal judges.

So I hope we can get back to a policy with regard to all the nominations that come from the White House and this President that is consistent with the experience I have had in my home State of New Mexico; and that is, that before a nomination is sent to the Senate for confirmation, Senators will be asked to give their opinion as to the appropriateness of the nominee.

One good thing about this country—it is certainly true in my State; I am sure it is true in every State in this country—we have a wealth of very capable, honest, hard-working members of the bar who would love to serve on the Federal courts. There is no shortage of good people for these positions. Accordingly, it is not difficult to find a person to serve in these key positions who has the strong support of Senators, Congressmen, and public officials in these States.

The list of organizations and public officials, and both California organizations and national organizations, that oppose the two nominees I have referred to here is extensive, and I have been given that list.

Twenty-two members of the California congressional delegation have indicated their opposition to our going forward with the nomination of Janice Rogers Brown. We have members of the Judiciary Committee of the California Assembly who have come out in opposition to our going forward with Carolyn Kuhl's nomination to the Ninth Circuit Court of Appeals. There is a very long list of individuals and organizations.

I know neither of these nominees personally myself, but, clearly, I have to give deference and some consideration to the opinions of those who have worked with them.

Mr. LEAHY. Will the Senator yield for a question?

Mr. BINGAMAN. I am very pleased to yield to my colleague.

Mr. LEAHY. Mr. President, the distinguished Senator from New Mexico had an exemplary career as attorney general of New Mexico and, obviously, is in a position probably to know more about the bar of New Mexico than anyone else in his State; and his service replicates that of other Senators on both sides of the aisle from their representing their States.

My question is this: The traditions of the Senate mean so much, and most of them are there for a reason. The tradition of having to get clearance from home State Senators—and, of course, every State is equal in the Senate. But Federal judges have an enormous impact on the States. The tradition has always been that the home State Senators have the best idea who the Federal judge is who is going to be making decisions that affect the men and women of that State. This has not always been perfect, but has it been the experience—I ask this of my friend and former attorney general of his State, a Senator of great respect and competence—has it been his experience that in the main, very much in the main, this has worked extremely well?

Mr. BINGAMAN. Mr. President, in response to the question, I certainly would say it has been my experience that this does work. In fact, when the name of someone is being considered for appointment to a Federal judgeship in my State of New Mexico, I have been getting calls. I get calls from lawyers who have worked with these individuals. I get calls from people who have tried cases against these individuals. Some of them, frankly, are favorable and some may not be as favorable.

I get a great deal of feedback on these individuals who are being considered by us for nomination. And, of course, I have the ability, as a Senator from New Mexico, to call people whose opinions I respect and to say: You have spent your lifetime practicing law in the courts in New Mexico. What do you think about the qualifications and the temperament and the appropriateness of this person for this kind of a judicial position? Based on that kind of feedback, then I am in a position to advise the President, advise my colleagues, advise anyone in the Senate that, in my opinion, this person would be well qualified.

I am sure that same process occurs with every Senator in every State, and it should. I think that is exactly what the Framers of the Constitution had in mind when they talked about advice and consent. I think they were talking about Senators being able to give their advice before the President made a final determination as to who would be elevated to a judicial position, and Senators being able to either give their consent or withhold their consent.

It is far preferable, in my view, if that advice and consent is requested and provided at an early stage in the process, not once the nominee has been sent up here, not once the President has had a press conference at the White House with the nominee in attendance. I think it is in many ways unfair to the people being nominated to have them pushed to that stage without the necessary advice and consent having been sought from the Senators in question.

I think that is the unfortunate circumstance we find ourselves in this morning, that there are individuals being pushed upon us as appropriate members to be elevated to court of appeals positions, and the nominations are being strongly opposed by the Senators from the States from which those individuals come.

So I think it would be unfortunate in the extreme if the Senate were to disregard the views of the Senators from those States and say: Regardless of their views, we are going to go forward here, regardless of the feedback they have provided; regardless of the numerous groups and individuals who have come forward to state objections here, we are going to push this nomination through the Senate.

I do think there is a very valuable purpose the Senate serves; and that is, to slow things down. That is what we have done here as to some of these nominees. These are nominees who, in my view, should have been better vetted with the Senators from the States involved.

If those Senators had been given an opportunity to make their case to the President and to his counsel at an early stage, perhaps we could have avoided some of the votes we are going to have to cast this morning. I think that would certainly be preferable.

Has my time expired, Mr. President?

The PRESIDING OFFICER. The Senator has 4 seconds.

Mr. BINGAMAN. I will yield back my time, Mr. President.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I have great respect for the Senator from New Mexico and the principles he just talked about: his deep concern of the breakdown of the system, of the tradition of the Senate. It is important. This is a very special place. This is the greatest deliberative body in the world. I believe that. That is really what we are talking about today—the tradition of the Senate. That is part of why this debate is important.

This is not a game. This is not a charade. This is important. The past 11 Presidents' judicial nominees confirmed v. filibustered: 2,372 confirmed, 0 successfully filibustered until now—the traditions of the Senate, the traditions of this great institution.

We have been up all night. We have had a lot of conversation, a lot of debate. My colleagues across the aisle said it is absolutely, patently false to say we haven't successfully filibustered circuit court nominees. Read my charts. They are real. Here is the list. Judicial nominees subjected to cloture attempts 1968 to 2003 time after time: No. 1, Abe Fortas, rejected. The Senator from Michigan, who was part of that process had a letter saying, by the way, that was a bipartisan effort. The Republican leader supported cloture on that. Of all these, not a single partisan effort where the nomination was successfully blocked.

The folks involved in making those decisions who predated me reflect what the Senator from New Mexico talked about—a reverence for the tradition of this body, a tradition I believe that is reflected in the Constitution that says decisions about judges are done essentially by a majority—two-thirds for treaties.

As I listened, I understood what was happening here. Part of this tradition is any single Senator can stand up and say: I object. That is who we are. That is a great power for an individual Senator.

We talk about advice and consent. I think perhaps the concept now in people's minds is that we all should be part of this advice and consent process; we all should be heard. But the reality is, in the end, and again according to the Constitution, the decision is going to be made by a majority. It is not about the President being successful 98 percent of the time. It is about 100 percent of the time giving an opportunity for an up-or-down vote. That is what this is about, 100 percent of the time giving an up-or-down vote and then let the vote be what it may.

In fact, nominees may be rejected. It is not about guaranteeing the outcome, but it is following the Constitution to give people a right to a vote. That is the process, that is the tradition, and that is the history. We run such a terrible risk when we cast that aside.

This has been a very sharp debate. There has been a lot of discussion about all sorts of other issues about which we should be talking. I reiterate again, I am deeply concerned about jobs. I am deeply concerned about the economy. Some folks say it is hard, but we can actually multitask around here. We can absolutely uphold our constitutional responsibility to advise and consent and give a vote and do other business.

We passed the third largest tax cut in the history of the country, and we are seeing the impact of that now. The economy is moving forward. GDP is up 7.2 percent in the last report. There are over 250,000 jobs over the last couple of months. There is more to be done, but we can do more than one thing.

For those of my colleagues who protest, oh, we are spending all this time, we spent 10 or 11 hours on Monday talking about Searchlight, NV, talking about rabbits eating cactus and rocks. That is part of the process. People get frustrated. I understand that.

The bottom line is, we stand here after 30 hours of debate, now almost 38 hours, and what do we get out of that? What do we understand? We understand that the history of the Senate is one in which this body up to now has not used a partisan filibuster to block judicial nominees. We see that happening today. We see the record of that.

They talk about 168 to 4 and talk about all the judges. Clearly, when we talk about appellate judges, we have 29 confirmed and 6 who have been blocked and 6 who are threatened to be blocked. Now we are talking about 29 and 12. That is 30 percent. Not only is that nothing to be proud of, but it is in contravention to the constitutional direction the Framers and the Founders gave us.

The consequences of this are ones about which we should all be concerned. We are talking about our judicial system. This is not a game. This is one of the fundamental underpinnings of this constitutional democracy, and we have a solemn obligation and responsibility to choose men and women of good judgment and good character who bring a willingness to apply the law to the table and to make judgments.

The reality is that those candidates before us are folks their own peers have said are of the highest quality. The American Bar Association, the gold standard that my colleagues on the other side talked about so many times, say they are highly qualified. In some cases, the voters, those who have run for office—Priscilla Owen, Janice Rogers Brown—have received overwhelming shows of support. That tells you something about the mainstream, the bipartisan nature of the support.

Judge Carolyn Kuhl: A bipartisan group of nearly 100 of her colleagues said:

> We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us and the Senate that confirms her. As appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge.

A bipartisan group of 23 women judges of the superior court who served with Judge Kuhl wrote:

> As sitting judges, we, more than anyone, appreciate the importance of an independent, fairminded, and principled judiciary. We believe Carolyn Kuhl represents the best values of such a judiciary.

The fact is, these judges hold strong opinions, there is no question about that, but to a person they said they will do what a judge needs to do and put those personal opinions aside and apply the law. Their colleagues who know them have raised their hands and said: Yes, that is what they have done; that is what they will do. The voters who know them reaffirmed their positions by reelecting them by overwhelming majorities. That is what we should be looking at. That is mainstream. That is not extreme.

In the end, we are grasping for something simple: for every Senator on this floor to do what every Senator has the right to do—to be heard, to give your advice to the President of the United States, and if you don't agree with his nominees, do what has been done through the entire history of this country, for 214 years: Give your advice, give a vote; vote them up, vote them down, but give them a vote. It is what the Constitution requires. It is what I believe the future of this institution requires.

Let's get beyond the partisan politics. Let's put it aside. Let's do the right thing. Let's come together. Let's focus on getting things done. That is our opportunity, and I hope we don't squander it.

I yield to my colleague from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I thank the Senator for yielding. It has been a real pleasure to talk with him throughout the night. It has been a great debate. For something considered a waste of time, so many Senators have participated. It has not been a waste of your time or the country's time. We have a good record the people can look upon and make a decision about what we are doing here in this Senate.

If I had to boil it down to what all this means to me, which I have to do between now and a quarter after, here is what I think is the down side of what we are doing in the Senate: Special interest politics is being given a green light to go after people they may disagree with because they think the nominee doesn't share their philosophy or political persuasion.

You are giving them a green light to manufacture controversies, to go after people in a personal way, and we are going to rue the day we did that. The left is doing it today. The right will do it tomorrow. We are unleashing special interest forces. We should be deterring them. Right now we are emboldening them, and the country will be worse for the wear.

There are people at the end of the process. We are talking about individuals. Miguel Estrada has claimed to be outside the mainstream. All I can tell you is that the Washington Post on February 5, 2003, not exactly a right-wing rag, said:

> Estrada is well qualified for the bench. This should not be a tough case for confirmation. Democrats who disagree should vote against him.

I think that pretty well sums up the idea that he can't be that far out of the mainstream or the Washington Post would not have said that about him.

If you disagree with me and think he is out of the mainstream, vote against him. Please don't continue the process of filibustering people because we are going to change the Senate forever, for the worst, and the future nominees to come, whatever they said in law school, whatever letter they may have written to their wife, whatever decision they made about going on a trip, if they said something that offends the left or offends the right, people are going to come after them like gangbusters, knock their heads off, and you are going to keep good men and women from wanting to serve. That is going to happen, sure as I am standing here. It will be a great tragedy. Please let's turn this around.

Judge Brown will be No. 5. She sits on the Supreme Court of California. She is objected to. She is out of the mainstream allegedly. I would argue that 76 percent of the voters in California are not right-wing zealots, and that anybody who can get 76 percent of the vote in California has to have some sort of moderation about them. She has written the majority of the court's opinions. She is respected by her peers. You wouldn't get 76 percent of the vote in California if you were out of the mainstream in any real way.

Justice Owen from Texas, No. 1 in everything. She serves on the State supreme court. She received 84 percent of the vote. The only people left who didn't vote for her are probably the extreme people. I would argue that 84 percent of the people who chose to vote in Texas is probably our best evidence about who she is and the way she conducts herself.

Pryor: If you read in the paper today, the attorney general of Alabama has just successfully removed the chief justice of Alabama. It was his job to bring the case to the grievance committee in the State of Alabama, and the reason the chief justice was removed was that he defied a Federal court order to remove the Ten Commandments out of a courtroom in Alabama.

Whatever you want to say about Attorney General Pryor being out of the mainstream, let me tell you that the Ten Commandments are popular in Alabama. He chose the less traveled route for a politician. He chose to enforce the law against a rogue judge who is pandering to the political moment. He followed his constitutional duty, and I bet you he agrees the Ten Commandments have a right to be displayed, but he said: It is not about me; it is about the law.

Mr. SESSIONS. Mr. President, will the Senator yield?

Mr. GRAHAM of South Carolina. Yes.

Mr. SESSIONS. With regard to that matter, Attorney General Pryor did file a brief on behalf of Judge Moore and argued that the Ten Commandments were legitimate because there are three depictions of the Ten Commandments in the Supreme Court. And right on this wall are the words "In God We Trust." He defended that.

When the case was lost, the judicial inquiry commission brought a charge against the chief justice because he did not comply with the court order, and it was the duty of the attorney general to bring that case under Alabama law. So he was required to present the case that had been brought by something akin to a grand jury.

Mr. SANTORUM. Will the Senator from Alabama say that is following the law?

Mr. SESSIONS. It is absolutely following the law. There are a host of other examples to a degree I have never seen before in America. Bill Pryor always does what he believes the law compels him to do. Many times it is something he does not personally like to do.

Mr. GRAHAM of South Carolina. Senator LEAHY said in 1998:

> [I]f we don't like somebody the President nominates, vote him or her down or up.

He was right then. I am very afraid that we are opening the darkest chapter in the history of the Senate when it comes to judges. I don't want to be a part of it. I reject the past. I embrace a better future. Please, for God's sake, let's not continue to do this because we will all regret it.

The PRESIDING OFFICER. The majority has 30 seconds remaining.

Mr. SANTORUM. Maybe what we are finding out here is the minority doesn't want someone who is going to follow the law. I think what they really want is someone who is going to make the law, make the law politically, exactly maybe as the Senator from Vermont would like it to be made. Maybe there are things he or other Members on his side can't accomplish in the legislative chamber, so they want judges who will make the law they want. That is why the litmus test. They want activist judges on the court not to follow the law but to make it the way they really want it. That is what is at issue here.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I am glad to see my friend from South Carolina used a tiny part of a quote of mine. I am always glad when somebody quotes me, even when they don't do it accurately.

What I was referring to, if you look at the quote, was the one-person filibusters of 63 of President Clinton's nominees, where one person, one Republican, usually anonymously, would object to President Clinton's nominees and then those nominees would never get a vote at all. Those were filibusters by one person done anonymously, not in the open.

Here, of course, unlike what was done to President Clinton, the Democrats have cooperated to make sure that 168 of President Bush's nominees to the Federal judiciary have gone through and only 4 have not. We can see only 4 have been blocked. We have confirmed 168 and only blocked 4. That contrasts to the 63 anonymous filibusters done by the Republicans—63 done by the Republicans when they were in charge.

As I walked over this morning, I thought: Finally, the Republican leadership is bringing to a conclusion three really "Alice in Wonderland" kind of days, really wasted days in the history of the Senate. During those days, as much as the Republican leadership wanted to waste the Senate's time, at a cost of hundreds of thousands of tax dollars, I am proud of our Democratic Senators who had to endure endless criticism for objecting to a handful of the President's most extreme, controversial, and divisive nominees.

What they have tried to do is get the Senate's attention back on the unfinished legislative business of this session that is of such concern to the lives of so many Americans. As I said, we have cooperated in the confirmation of 168 of this President's judicial nominees. We confirmed 100 in the 17 months I was chairman and confirmed another 68 in the 17 months my distinguished colleague from Utah was chairman. I am not going to criticize him that he didn't get as many confirmed as I did, but there are the numbers, 168 to 4. That is more judges than President Reagan, the "all-time champ," appointed his entire first term in office when he had a Republican majority. So in less than three years, we have already eclipsed President Reagan's four year total.

Among the 168 confirmations are more circuit court confirmations than for any of the last three Presidents at this stage in their first terms. The scorecard is 168 to 4.

After this week, the total of those blocked could increase by two, but the number of confirmations will not have been increased. Rather than work with all Senators to confirm those nominees who can be confirmed after a vote or who may be confirmed after a reasonable debate and a vote, the Republican leadership has remained fixated on the most controversial and most divisive nominees.

During this 40-hour talkathon, the Republican leadership of the Senate has taken what could have been productive days at the end of this year's legislative session and decided to abandon work on the real priorities of the American people. I understand that the reason they have been spending so much of the taxpayers' dollars in doing this talkathon is that some of the Republican campaign committees have tried to use this to raise money. If they are, instead of charging the taxpayers for this, I wish they would do it themselves.

But what we have are our friends on the other side engaging in repetitive speeches about promoting a small handful of controversial nominees to lifetime positions as Federal judges. These are people who already have good well-paying jobs. They do not want to talk about the legislation that might help the more than 3 million Americans who have lost their jobs since President Bush assumed office.

Unlike President Clinton's term, where a million new jobs were created every year, in the 3 years of President Bush's term, 3 million jobs have been lost, but they do not want to talk about that.

The Republican leadership has already overshot the Senate's adjournment date by more than a month. We have already had to enact three continuing resolutions just to keep the Federal Government going because we have not passed our appropriations bills. The law says we have to enact our 13 appropriations bills by the end of September. The Republican Congress has enacted only 5 of the total 13. They ignore the law on that, but then they waste this time and hundreds of thousands of taxpayer dollars to have a campaign talkathon.

They do not want to vote on the appropriations bills and, instead, they want to waste time on this? They want to waste time giving lifetime jobs to three or four people but they do not want to do anything about the 3 million Americans who are out of jobs.

Here is what they are not talking about, here are the issues that are not being voted on, here are the bills that the Republican leadership will not bring up: Funds that go to improve our schools. Funds that NIH uses to advance our medical knowledge in fighting disease and illness. The resources used by EPA to enforce our clean air and water laws. They do not want to bring up appropriations for our veterans and for law enforcement. These are things that all people should be able to agree on, Republicans and Democrats, but we are told there is no time to bring up money for our law enforcement or for our veterans.

In fact, during the first evening of this exercise in the wind chambers, the senior Senator from West Virginia was trying to get the Senate to do its work. Senator BYRD, as the ranking Democrat on the Appropriations Committee, urged the Senate to complete its work on the appropriations bills that fund services for our military veterans. He said, Why do we not finish this? This administration has cut money for veterans benefits. It has cut money for veterans hospitals. It has cut money for disabled veterans. He said, Can we not at least take a couple of hours more—if you are going to spend 40 or so hours talking about four judges, can we do something, can we take 2 more hours to finish the bill that will affect millions of America's veterans?

He said we could do it in 2 hours. The Republican leadership objected. Those few minutes at the beginning of this debate may be the most telling of this entire so-called debate. Republicans chose to sacrifice the work of the Senate, the priorities of the American people and the interests of American veterans so they could pull a partisan political stunt.

In one of their many press conferences on this diversion, on November 6, the Republican leader committed to "complete the appropriations process" before beginning this charade. Even the junior Senator from Pennsylvania agreed with him and said: "The leader's right. What we are about to embark in next week, after the appropriations process has run its course, is to enter into a debate. . . ." Well, when given the chance to honor that commitment, the Republican caucus chose partisan theater over the work of the Senate.

We said can you not take 2 hours out of these 40 hours to at least do the appropriations bill for our veterans? I mean, you are not going to do the appropriations bills for our law enforcement. You are not going to do it for medical research. You are not going to do it for anything else. If you could just take 2 hours out of this, at a time when we are creating a lot more veterans, many of them horribly disabled and disfigured from the war in Iraq, we are told, no. We do not have 2 hours for that.

There is the unfinished business of the Nation's unemployment and lack of job opportunities that confound so many American families. With millions of Americans having lost their jobs in the last three years, the Republican Senate has, instead, insisting on spending these final days of this session on a handful of highly controversial judicial nominations that divide the Senate and the American people and ignoring the needs of the almost 10 million Americans who are out of work, including those more than three million Americans who have lost their jobs since President Bush took office.

Instead of working together on such important matters, we are being forced to repeat another cloture vote on the nomination of Priscilla Owen. The Senate has voted three times on this nomination, and three times, the Senate has decided against granting consent. Her nomination had been fairly and thoroughly considered by the Judiciary Committee last year, and her nomination was rejected on the merits. Never before has a President renominated a judicial nominee who was rejected on the merits by the Judiciary Committee.

She has shown herself to be a judicial activist and an extremist even on the very conservative Texas Supreme Court where her conservative colleagues have criticized her judging. All that has occurred since the cloture votes during the spring and summer is that Republican partisans have ratcheted up their name calling and Justice Owen has been made to serve as a political prop for the White House.

In fact, I commend to my colleagues an insightful article by David Margolick that appeared recently in Vanity Fair magazine entitled "Bush Scored Advantage."

The second in this series of votes is to be on Judge Carolyn Kuhl. This nomination to the 9th Circuit has been opposed by both the home-state Senators from California and for good reason. From her days seeking to change federal policy and provide tax breaks to Bob Jones University, to her efforts to overturn Roe v. Wade, to her recent decisions seeking to excuse the invasions of the privacy of Ms. Sanchez-Scott, a breast cancer survivor, Carolyn Kuhl has been extreme.

Finally, the Senate will be required to vote in relation to a nomination that has been whisked through the Judiciary Committee in the last several days, that of Janice R. Brown. This controversial nomination is opposed by the Congressional Black Caucus, the National Bar Association, the California Association of Black Lawyers and a long list of African-American and civil rights leaders and organizations. Former Senator and former ambassador Carol Moseley Braun has recently written to us opposing this nomination. I ask that her November 12 letter be made part of the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WOMEN'S ORGANIZATIONS OPPOSING NOMINATION OF PRISCILLA OWEN

National Organization for Women
National Organization for Women, Texas Chapter
NOW Legal Defense & Education Fund
Religious Coalition for Reproductive Rights
National Abortion Federation
National Women's Law Center
NARAL Pro-Choice America
National Council of Jewish Women
National Council of Jewish Women, Texas
American Association of University Women
American Association of University Women of Texas
National Family Planning and Reproductive Health Association
National Women's Political Caucus
Texas Women's Political Caucus
Texas Freedom Network
Women's Issues Network—Dallas
Women's Health and Family Planning Association of Texas
Republican Pro-Choice Coalition
Gender Justice Action Group
Feminist Majority
National Partnership for Women & Families
Greater Dallas Coalition for Reproductive Freedom
Texas Abortion and Reproductive Rights Action League
Planned Parenthood Federation of America
Planned Parenthood Association of Hidalgo County
Planned Parenthood Association of Lubbock
Planned Parenthood of Cameron and Willacy Counties
Planned Parenthood of Houston and Southeast Texas
Planned Parenthood of North Texas
Planned Parenthood of San Antonio & South Central Texas
Planned Parenthood of South Texas
Planned Parenthood of the Texas Capital Region
Planned Parenthood of West Texas

WOMEN'S ORGANIZATIONS OPPOSING NOMINATION OF JANICE RODGERS BROWN

National Organization for Women
California National Organization for Women
NOW Legal Defense & Education Fund
Religious Coalition for Reproductive Rights
National Abortion Federation
National Women's Law Center
NARAL Pro-Choice America
National Council of Jewish Women
National Council of Jewish Women, California
National Council of Jewish Women, Los Angeles
American Association of University Women
National Family Planning and Reproductive Health Association
National Partnership for Women and Families
Feminist Majority
Planned Parenthood Federation of America
Planned Parenthood of Golden Gate
Planned Parenthood of Los Angeles
Women Lawyers Association of Los Angeles
Women's Reproductive Rights Assistance Project
Pacifica Institute for Women's Health
Black Women Lawyers of Los Angeles
California Abortion and Reproductive Rights Action League
California Women's Law Center

WOMEN'S ORGANIZATIONS OPPOSING NOMINATION OF CAROLYN KUHL

American Association of University Women
Breast Cancer Action
Breast Cancer Fund
California Abortion and Reproductive Rights Action League
California National Organization for Women
California Women Lawyers
California Women's Law Center
Center for Reproductive Law and Policy
Coalition of Labor Union Women (CLUW)
Feminist Majority
Los Angeles African-American Women's Political Action Committee
NARAL Pro-Choice America
National Abortion Federation
National Council of Jewish Women
National Organization for Women
National Partnership for Women and Families
National Women's Law Center
National Women's Political Caucus—California
Pacific Institute for Women's Health
Planned Parenthood Federation of America
Planned Parenthood Affiliates of California
San Diego County National Organization for Women
Women's Committee, Labor Committee for Latin American Advancement
Women's Leadership Alliance Women's Political Committee
Women's International League for Peace and Freedom
Women's Reproductive Rights Assistance Project.

NOVEMBER 12, 2003.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Russell Senate Office Building, Washington, DC.
Hon. TOM DASCHLE,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

GENTLEMEN: Respect for the rule of law, and the impartiality of the judiciary are almost synonymous concepts. It is out of concern for both that I want to convey my most serious concern about the State's consideration of the nomination of Justice Janice Rogers Brown for the United States Court of Appeals for the District of Columbia Circuit.

Justice Brown has not demonstrated the balance and judicial temperament and prudence that are central to a respected judiciary. Indeed, she has spoken to an organization of my own alma mater, the University of Chicago Federalist Society, in terms so radical as to bring into question her own regard for the position she currently occupies. The extremism of her views has been publicly demonstrated time and time again, particularly concerning matters of settled law regarding the national government's responsibility to protect civil and political rights of women and minorities. Such extremism undermines the confidence any citizen might have in the capacity of this nominee to fairly interpret and administer the law.

I am the only African American woman to have served in the United States Senate, or on its Judiciary committee. As such I have not only an appreciation for the gravity of the Senate's role and responsibility in regards to the appointment process, but I also have a keen appreciation for the diversity of opinion among African Americans. Not all black people think alike, and I have no doubt that there is a constituency that would be happy to see an African American of any political persuasion confirmed for such an important position as the D.C. Circuit Court of Appeals. However, it does both the black community as well as the courts a great disservice to confirm to such a position an individual who has so clearly demonstrated a disregard for the balance and impartiality required of the members of the bench.

I appeal to our President to exercise greater respect for the traditions of the judiciary in making future nominations. Justice Brown should be given an opportunity to mature in her demeanor and her judicial conduct, but not as a member of the Circuit Court. As such, I urge the members of the Committee to reject this nomination.

Sincerely,

CAROL MOSELEY-BRAUN.

Mr. LEAHY. The San Francisco Chronicle and the Washington Post editorialize against her as an example of the Bush Administration's efforts to pack the circuit courts with ideologues. In her decisions and her writings and speeches she has shown herself to be a consummate judicial activist who will disregard precedent when convenient to her ends. Her view of government is not consistent with the work of the D.C. Circuit in reviewing the environmental protections, workplace protections, consumer protections and other government regulations authorized by Congress to protect all Americans.

The obvious intent of these stacked votes is a partisan effort to paint opposition Senators as anti-woman. Women know better. Women leaders, women's rights organizations have opposed these nominations. I know the Republican partisan public relations machine will be cranking overtime to say we are anti-woman. Given that we are being led by Senator BARBARA MIKULSKI, Senator DIANNE FEINSTEIN, Senator BARBARA BOXER, Senator PATTY MURRAY, Senator MARY LANDRIEU, Senator BLANCHE LINCOLN, Senator MARIA CANTWELL, Senator HILLARY CLINTON, and Senator DEBBIE STABENOW, it is hard to see how Democrats can be subjected to such allegations with a straight face. I mean, tell them that they are anti-woman. These are all women who have the finest records of defending, upholding, and advancing women's rights. It is crazy.

When we were in charge, the Senate confirmed 100 of President Bush's judicial nominees, including 21 women, in just 17 months. They included 4 women to our Courts of Appeal. During the 107th Congress, President Bush nominated only 18 women to district court seats out of 98 district court nominees, or 18 percent, and only 8 women to circuit courts out of 32 circuit court nominees, or 25 percent. Well, this year, Democrats have supported the confirmation of 12 additional women nominated to the Federal bench, including 3 more to our Courts of Appeal. The thirty-three women judges confirmed represent 20 percent of the 168 judges confirmed so far.

Perhaps, though, they are a little bit nervous about this. President Bush has nominated far fewer women to the Federal bench than President Clinton did. This President's nominees have included only one woman in each five judicial nominees. By contrast, nearly one of every three of President Clinton's judges are women. Of course, the Republicans who controlled the Senate and the Judiciary Committee during the Clinton administration also blocked 18 women nominated to Federal judgeships by President Clinton. They did it by their one-person anonymous filibuster. Do not give me this baloney that, oh, it is so terrible that we are standing out here in open session blocking four judges. They blocked 63 by anonymous filibuster, 18 of them women. The women who were blocked from getting Senate action on their judicial nominations by the Republicans include Kathleen McCree Lewis, Elena Kagan, Elizabeth Gibson, Helene White, Christine Arguello, Bonnie Campbell—all of whom were nominated to the circuit courts. Now, these six outstanding women lawyers and judges were not extreme or ideologues. They were blocked anonymously by Republican Senators. This was done without any explanation. This was done without a vote of any kind. We never had a debate on them.

These other judges, the 4 out of 168 of President Bush's who have been confirmed, at least there was a debate on them. We discussed the merits of their nominations. The 63 of President Clinton's nominees who were blocked by the Republican majority would have liked to have at least had a hearing or debate on the merits of their nominations. There was no debate. Nobody wanted to come to the floor and talk about them, not when they could do a one-person filibuster, and do it anonymously so the press in their hometown would never know who was holding them up, including some of the Senators from the States where they were nominated. They could do this anonymously, and they could do it in a way that they would never have their fingerprints on it.

Now, I have heard more crocodile tears shed on this Senate floor this week than I have heard in my 29 years. Why? Because 4 judges of President Bush's were stopped, out of 168 who were confirmed. He has had less nominees stopped than any President I can remember since I have served in the Senate.

I yield the floor.

(At the request of Mr. DASHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. EDWARDS. Mr. President, my Republican colleagues are calling this 30-plus-hour marathon "Justice for Judges." Now, I'm all for justice for judges. And that's exactly what every single one of President Bush's judicial nominees has gotten.

But I ask my colleagues, where is Justice for the American people? They seem more concerned about Justice for a handful of judges—the 2 percent of those Bush's nominee who haven't been confirmed—than justice, fair play and opportunity for the American people.

The Republican majority claims that we're facing a vacancy crisis in our Federal courts. Ninety eight percent of Bush's judges have been confirmed and this is a crisis? Two percent of Bush's judges have not been given lifetime appointments and we're in a crisis?

Under George W. Bush, the unemployment has risen to 6 percent the poverty rate has increased to 12.1 percent the percentage of Americans with no health insurance has gone up to 15.2 percent. And, during this time, the vacancy rate on the Federal courts has gone down to 4.5 percent its lowest point in over 13 years. In fact, there are more full-time Federal judges on the bench today than at any other time in U.S. history. The vacancy rate is now below the number that Senator HATCH called "full-employment" in the Federal judiciary during the Clinton administration.

Where is the concern for the 6 percent of the American people who can't find jobs? The same people who claim that 4.5 percent vacancy is a crisis think that 6 percent unemployment is great news, that a "jobless recovery" is a good thing. Why aren't they at least as concerned about Justice for the Jobless, Justice for Working People, Justice for the Poor, Justice for Families?

So, what does this marathon debate tell us about the priorities of the Republican majority? What does it tell us when they are more concerned about securing lifetime jobs for three sitting judges and a State attorney general than in securing jobs for the 9 million Americans who are out of work?

Why are they more interested in fighting for three judges and an attorney general—all of whom have received full and fair consideration—than fighting to bring hope back to the American people?

Why aren't we spending 30 hours debating how to help the 9 million Americans who no longer have the dignity and self-respect that comes from completing a hard day's work? Why doesn't the Republican majority schedule 30 hours of debate to figure out how to provide health care to the American people and prescription drug benefits to the elderly?

We should be figuring out how to bring back the 3 million jobs we've lost on George Bush's watch—two jobs lost for every minute he has been in office.

We should be addressing the anxiety of families who fear that by sundown they will be without a safe home. We should be working to find a way to lift the tax burdens on working families and provide real economic opportunities so they can provide food, clothing, and shelter for their families.

We should be debating about the best way to close the education gap and support and fund our public schools.

We should be working together to lift Americans out of poverty.

And we should be coming together, not to fight for justice for judges but to fight to end the injustice that still tugs on the soul of America.

In other words, we should be fighting for Justice for the American People.

But instead, my Republican colleagues have virtually shut down the Senate to force lifetime appointments for three judges and an attorney general.

This political stunt is getting lots of coverage, but it's not doing a thing to improve the life of one single American—except three sitting judges and an attorney general.

We have confirmed 168 of President Bush's nominees. I voted for the vast majority of these judges, even though many of these judges have held conservative views with which I strongly differ, because I believed they would ultimately enforce the Constitution and the law.

But I cannot and will not vote for these four nominees, for good reason. These nominees not only do not represent the mainstream, but they have demonstrated an unwillingness to set aside their personal views to uphold the law and protect civil rights. We have good reason to oppose these nominees. And we not only have the right, we have a constitutional obligation to stand up to the President when he makes unacceptable nominations to the bench.

Our Founding Fathers did not give the President unilateral or unfettered power to select Article III judges. They wanted to ensure that the people—through their elected representatives—have a say in who will be appointed to the Federal bench.

Every President—whether Republican or Democrat—must consult in a meaningful way with the Senate to appoint highly qualified judges to the Federal bench.

Meaningful consultation does not mean that the White House just sends us who they want and we rubberstamp them, without careful examination and consideration. Meaningful consultation often involves compromise and consensus.

This approach has worked reasonably well—with some exceptions—over the years. But now we find ourselves dealing with a White House that disdains this longstanding principle of advice and consent. Instead, the President is appointing judges who are far out of the mainstream. Judges who are hostile to civil rights and equal justice. Judges who are not only willing but eager to put their personal views above the law. Judges he certainly knows are unacceptable to us and our constituents. We have tried to work with the White House to find common ground, but most of our attempts to reach consensus with the administration have been dismissed. In some instances, our commitment to fairness and diversity has been attacked. This is not the way this process should work. It is wrong. It would be wrong, regardless what party the President belongs to.

Previous administrations of both parties attempted in good faith to work with the Senate in its appointments process. President Clinton put up numerous highly qualified mainstream nominees for Federal judgeships, only to have them blocked, denied hearings and denied votes by a Republican Senate. Twenty percent of Bill Clinton's judges were blocked by a Republican Senate. We heard nothing about justice for judges then.

This had a particular impact on my home State of North Carolina, which is part of the Fourth Circuit. North Carolina—the largest State in the circuit—until this year had not been represented on the court since 1994. President Clinton tried four times to put a North Carolinian on the court, only to have his nominees blocked for reasons other than their qualifications. In fact, during his last 6 years in office, President Clinton had eight nominees—four of them African American—blocked in the Fourth Circuit alone. These were well-qualified men and women, none of whom could be labeled ideologues, whose views were well within the mainstream of legal thought and practice. Nevertheless, they were blocked.

We've seen what happens when the President meets us halfway. He's done it before—rarely, but he's done it. He reached out to us on Allyson Duncan, an outstanding North Carolinian who just last month was formally installed as a judge on the Fourth Circuit Court of Appeals, breaking a logjam that had held our State back for a decade.

In that case, President Bush did more than just pay lipservice to our constitutional obligation to a advise and consent. He reached out to us before he made his decision—he consulted with us—he sought our advice. And in making his decision, the President selected a nominee who represents the mainstream of our State.

Throughout Judge Duncan's confirmation process, I commended the President for consulting with us and making an excellent nomination. And I told him that if he takes this approach to future judicial nominations we have a real opportunity to find common ground in the search for excellence on the Federal bench. When we work together, we find outstanding nominees like Allyson Duncan, who represents the best of North Carolina and America.

That's one of the reasons puzzled and troubled that Republicans are calling us anti-black, anti-Hispanic, anti-Southern, anti-Catholic. They're running attack ads against us that represent the worst forms of religious and racial McCarthyism. They're doing this even though the record shows that Democrats have voted to confirm 13 of President Bush's African-American nominees while Republicans blocked 12 of Clinton's African-American nominees. We have confirmed 33 of Bush's woman nominees. Nearly 40 percent of the Bush judges confirmed have been from southern States. These accusations of bias flat-out wrong and they are outrageous and I must speak out against such demagoguery and race baiting.

We have gone the extra mile. We have demonstrated that we are willing to work with the White House to move forward on nominees who provide balance to the courts. We have confirmed 168 of President Bush's judicial nominees—98 percent. We have been more than cooperative.

It's really a shame that the Senate doesn't spend a fraction of the time they've spent on the full employment program for judges on finding ways to improve the lives of the American people.

The American people deserve better than this. We owe it to them to call a halt to this marathon madness and get down to work to address the problems they sent us here to solve. It is time to fight for justice, jobs and opportunity for the American people.●

Mr. DODD. Mr. President, the majority has indicated that as part of this debate to invoke cloture on these three nominees to the Federal judiciary, they may move to consider S. Res. 138, a resolution introduced by the majority leader, Senator FRIST, which would amend the Senate rules to treat debate on Executive Calendar items differently than matters on the Legislative Calendar.

Nothing is more fundamental to the ability of the Senate to fully exercise its constitutional responsibility to provide advice and consent to the President's executive nominees than to subject such nominees to full and deliberative debate. And any move to amend the Senate rules to place additional limitations on that debate is tantamount to a ceding of legislative branch powers to the executive. I appreciate the opportunity to speak on the issue of proposed changes to Senate rule XXII.

The filibuster is widely viewed as one of the Senate's most characteristic procedural rules. I believe we can all agree that the best way to consider a change to Senate rules is to do so in accordance with existing Senate rules. I believe this 30-hour debate will follow Senate rules and precedent.

Any attempt to change Senate rules, particularly cloture rule XXII, should be in keeping with the deliberative rules, precedents and practices that have been the hallmark of this institution since it was conceived during a steamy summer in Philadelphia over 217 years ago.

Senate rules have endured the age-old test of time, people, places, and events. Senate rules delineate the constitutional responsibilities of the body and define the character of the institution. Making changes to the rules and the precedent of the Senate is not an action that should be taken lightly or for partisan purposes.

In the history of the institution, the rules of the Senate have been through general revision just seven times: 1806, 1820, 1828, 1868, 1877, 1884, and 1979. The architecture of our Senate rules and precedents is built on the foundation of the right to debate and amend, the two basic principles that make the Senate the upper House in all of the legislative bodies of the world. If you chip and change this keystone, then you chip and change the Senate as an institution.

Herein lies the central paradox and towering majesty of the Senate. What makes this institution so revered and unique is what can simultaneously gall us the most: the practice of extended debate.

But the Founders insulated the Senate from sanction for debate and explicitly left it to "determine the rules of its proceedings."

The rules of the Senate reflect the intent of the Framers that the Senate be the "saucer into which the nation's passions may be poured to cool." The ability to fully examine and debate any matter of national importance is the hallmark of the Senate. Nowhere more than in the advice and consent responsibility of the Senate do we see the Framer's intent to balance the fear of a resulting tyranny of a majority against the principle of majority rule.

As Alexis de Tocqueville observed: ". . . the main evil of the present democratic institutions of the United States . . . [arises from] the very inadequate securities against tyranny . . . if ever the free institutions of America are destroyed, that event may be attributed to the unlimited authority of the majorities, which at some future time may urge the minorities to desperation. . . ."

The President nominates, but his power is balanced, and checked, by the power of the Senate to provide advice and consent. Neither can act alone. And in the case of the judiciary, the creation of the third, separate and equal, branch of Government, the powers are deliberately counterposed.

This is not the first controversy over Senate rules, precedents and practices of the right to extended debate. Through our history, the right of extended debate has never been seriously questioned as other than a vital foundation of our Republic. This right has been a catalyst for achieving the most remarkable feature of our civilization: the degree to which we have been able to provide our citizens with, at one and the same time, both great freedom and great stability.

As Robert Caro, author of "The Master of the Senate," for which he was awarded his second Pulitzer prize, has observed, and I quote him, "in creating the new nation, its founding fathers, the framers of its constitution, gave its legislature not only its own powers specified and sweeping, but also powers designed to make the Congress independent of the President, and to restrain and to act as a check on his authority, including power to approve his appointments, even the appointments he made within his own administration. And the most potent of these restraining powers the framers gave to the Senate."

The power to approve Presidential appointments was given to the Senate alone. A President could nominate and appoint Ambassadors, Supreme Court justices, and other officers of the United States, but only with the advice and consent of the United States Senate. This is the American way and it must remain the American way. While the Founding Fathers recognized the inherent dangers in granting a minority of Senators a veto over the will of the majority, the Constitution did just that.

But proposals to limit debate would change that.

S. Res. 138, a proposal by Majority Leader FRIST, would amend Senate rule XXII to provide for a declining number of votes required to invoke cloture on Executive Calendar items, such as judicial nominations.

I have deep reservations about Majority Leader FRIST's resolution to amend Senate rule XXII. I fully appreciate the majority leader's desire to expedite the business of the Senate. I fully understand the frustration with respect to the deep desire to invoke cloture on Executive Calendar items, including executive nominations such as judicial nominations.

But there is simply no crisis facing our judiciary today that necessitates the damage to the very fiber of this institution that such a rules change would render. The vacancy for the Federal judiciary is at its lowest level in 13 years.

Since President Bush came into office, the Senate has confirmed 168 of his nominees and has decided not to proceed with only 4. That is a 98 percent success rate for the President. In my view, this is a great success rate.

The Senate must not act to change its rules. To do so now would amount to a "hijacking" of the Senate's constitutional duty to provide advice and consent to the President's nomination authority. The supermajority requirement is consistent with the intent, spirit and language of the Constitution.

S. Res. 138 presents the question of whether rule XXII should be revised to accommodate a targeted remedy for filibusters of judicial nominations. The real question should be whether S. Res. 138 strikes the most appropriate balance between existing Senate rules and the advice and consent duties of the Senate. In the view of this Senator, it does not.

The cloture rule exists by virtue of the longstanding rules of the Senate enacted pursuant to authority under the Constitution, article I, section 5.

The Constitution expressly authorizes such procedural rules and sets no standard to limit the Senate's discretion in formulating such rules. Further, the Constitution does not compel the Senate to take any action, much less a final vote, on any matter, legislative or executive.

There is no argument to the fact that the Senate has plenary authority to devise its own rules. Nor is there any argument to the fact that there is no right to mandatory majority rule. Most importantly, the Senate tradition on filibuster offends no constitutional edict. In the words of Chief Justice Burger, "there is nothing in the language of the Constitution or history or our cases that require a majority always prevail on every issue."

At its most fundamental core, the Senate is a testament to the coexisting rights of the majority and the minority. Small states have an equal say in the Senate's tradition, and rules protect debate no matter whether it is a principled stand of one Senator or a chorus of the convinced. The Senate rules balance majority rule with minority right.

As a Senator in this body, I recall watching the Senate as a very determined minority insisted on their right to be heard on the issue of civil rights. Their position on civil rights was unfair, unpopular, and illegal. Yet the majority of Senators did not question the right of the minority Senators to assert their right under Senate rules and precedent to debate, delay, diminish or defeat civil rights legislation. And, the minority did so for years.

Ultimately, both the noble principles of racial equality and extended debate prevailed in the Senate. But the Senate rule that had been long thwarted was left essentially unchanged.

Prior to 1917, there was only a century old rule that required unanimous consent to cut off debate. This means that for 111 years, the Senate practice of extended debate was absolute in its scope. All Senators had to consent in order to bring consideration of a matter to a close. For the subsequent period of 58 years, two-thirds of the Senate were required to end debate. Currently, three-fifths are required. Until 1949, there was no procedure for limiting debate on nominations in the Senate. For the past 212 years, there has never been a Senate rule that permits a simple majority to force a vote on any matter up for consideration, including judicial nominations.

In this historical context, S. Res. 138 would be without precedent to require a simple majority to invoke cloture, in my view. S. Res. 138 would reduce to a majority vote that Senate procedural rule which girds the independence of the coequal judicial branch.

There is an irony to S. Res. 138 that cannot go unstated or unexamined. It would reform the cloture process only for nominations and leave cloture for the remainder of the Senate debate as it is. Arguably, it is precisely in the area of nominations, particularly judicial nominations, that the Framers intended these powers to be utilized.

S. Res. 138 would fundamentally alter the nature of the Senate and the balance of powers created by the Framers of the Constitution. It would undermine the Senate's role in our constitutional democracy, cede enormous power to the Executive and upset the deliberate system of checks and balances intended by the Framers.

S. Res. 138 would fundamentally diminish the Senate's power in relation to that of the Executive. And if the Senate cedes such power to the Executive, then I do not think the Senate will ever get that power back. Of all the issues that the Senate faces now and in future Congresses—such as war, the economy, health, education, election reform, jobs—none is more important than this one on Senate rule changes. Why? Because how we resolve this issue will, in many respects, determine how we resolve all others.

S. Res. 138 proffers change that is historically significant. However, S. Res. 138 does not proffer filibuster reform that will permit ample debate while rejecting delay in perpetuity. Nor does S. Res. 138 fit squarely within Senate tradition of balancing the right to debate with the responsibility to conclude the people's business.

Instead, S. Res. 138 would shift the balance of power on advise and consent to the executive branch. To accommodate this proposal means a profound change in the Senate as an institution and the character of the Senate as a body itself.

It reduces the constitutional 'advice and consent authority, indeed duty, to a mere rubber stamp of the President's prerogatives. We must always attempt to find the right checks and balances between a rubber stamp and a deliberative body on both legislation and nominations. This is what makes the Senate, as an institution, so powerful, so special, so unique.

We must remember that during the Constitutional Convention, only after lengthy debate, was the power to appoint judges committed to the President as well as to the Senate. Why? John Rutledge of South Carolina said it best: "the people will think we are leaning too much toward monarchy" if the President is given free rein to appoint judges.

The final compromise was characterized by Governor Morris of Pennsylvania as giving the Senate the power to appoint judges nominated to them by the President. In Federalist 76, Hamilton explained, "the Senate's review would prevent the President from appointing justices to be the obsequious instruments of his pleasure."

Against this backdrop, I find it quite troubling that Majority Leader FRIST now suggests that we narrow deliberation, debate, and the rights of the minority with respect to the nomination process and thereby enhance the ability of the majority to turn the Senate into a rubber stamp of a President's nominee.

What is at stake in this debate is nothing less than the integrity of the Senate and the independence of the judicial branch—the deliberate intention of the Framers to ensure against the excess of the Executive.

In describing the role of the Senate to provide advice and consent to executive nominations, Roger Sherman noted: "the Convention, who formed this Constitution, thought it would tend to secure the liberties of the people, if they prohibited the President from the sole appointment of all officers. They knew that the crown of Great Britain, by having that prerogative has been enabled to swallow up the whole administration . . . but this government is different, and intended by the people to be different."

The real problem here is not constitutional, but rather it is institutional. Senators must think of themselves as part of an institution, held together by a common respect for its rules and traditions. We have a responsibility to the President, the people, and to the institution.

This is a moment for Senators, as Senators, to stand up for the Senate.

Those of us fortunate to serve in this body are but its temporary custodians. We are stewards of an institution governed by rules and practices that have withstood the test of more than two centuries of time. Now is not the time to retool the rules to achieve goals that are, in essence, transient and partisan in nature, no matter how deeply felt.

When in history has the will of a minority—through extended debate been able to stop anything that this Nation desired or that had the broad support of its people? The Senate works its will, extended debate and all, as it was intended to work—in the words of James Madison—" . . . to consist in its proceedings with more coolness, with more system, and with more wisdom, than the popular branch."

The disagreements that we have over judicial appointments, and over some legislation, will likely be long forgotten, and of limited consequence, in years to come. But to change the rules and practices of the U.S. Senate in the manner that is here proposed, in my view, would do permanent and lasting damage, not only to this institution but to our democracy that has served us so long and so well.

I hope that cooler heads will prevail and that the majority leader will not bring up S. Res. 138 to amend the rules of the Senate.

But if that happens, I urge my colleagues, as Senators, to uphold the unique authority of the Senate to give equal voice to all States, indeed to all people, and to forego the political expedience of the moment in order to ensure the integrity of the Senate, and the functioning of this Republic, for generations to come.

Mr. LIEBERMAN. Mr. President, in the course of this debate, I have been deeply disturbed to hear the characterization my Republican colleagues have given to a filibuster reform proposal Senator HARKIN and I offered nearly a decade ago. They have referred to our proposal, and our statements in support of it, as precedent for their efforts here today. As I have said in the past, I believe that is deeply wrong. To make clear both what our proposal did, and why my Republican colleagues' characterizations of it are wrong, I thought it would be worthwhile to make sure the record included testimony I offered to the Senate Rules Committee this past June. I ask unanimous consent that the full text of that testimony be reprinted in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR JOE LIEBERMAN, SENATE RULES AND ADMINISTRATION COMMITTEE, JUNE 5, 2003

Chairman Lott, Senator Dodd and Members of the Committee. I greatly appreciate the opportunity to submit this statement for your hearing record, so that I can share with the Committee my thoughts on filibuster reform and my previous efforts on the topic.

In late 1994, I joined Senator Harkin in launching an effort to encourage Senate discussion of reforming the Senate's cloture rule. Like Senator Harkin, I had become increasingly frustrated at the way the Senate's cloture rule repeatedly allowed a minority of Members to prevent the Senate's majority from enacting legislation. I felt—and continue to feel—that the Senate rules should be changed to prevent a small minority of Senators from bringing legislation to a halt simply by saying that they will never end debate. Senator Harkin and I therefore offered a proposal under which an initial cloture vote would require 60 votes, but the requisite number to reach cloture would decline by three with each of the next three cloture attempts on the same matter. As of the fourth cloture vote, 51 votes—a simple majority—would suffice to invoke cloture.

This was not a partisan effort on our part. Indeed, Senator Harkin and I offered our proposal after the Democrats lost their majority status and at a time we therefore fully understood that our proposal would more often than not—in the short term, at least—inure to our party's detriment. Let me say that again: our proposal was not an effort to push through our own agenda or help our own party. Nor was it a proposal aimed at carving out special rules for one type of legislation or Senate action in order to ease enactment or Senate approval of one particular agenda.

In early January 1995, we offered our proposal on the Senate floor. After a good debate, the Senate voted on it and, unfortunately, we lost by a landslide. 76–19. Among those voting against our proposal were every Member of this Committee who was in the Senate at the time, including the current Majority Leader, whose proposal the Committee is considering today. I considered that an unfortunate result then, and I continue to consider it so today. Despite the often troubling ways in which the current Majority has sought to run the Senate, I still believe the filibuster rule should be changed so that once Members have had an opportunity to fully debate and seek to amend measures, the majority can have its say.

But that is unfortunately not what the Majority Leader's proposal seeks to do. Indeed, although I expect some will seek to characterize the proposal the Committee is considering as akin to the Harkin-Lieberman one, it most assuredly is not. Our proposal applied across the board—to legislation and nominations alike. As I already mentioned, it was the legislative gridlock that motivated us back then, and that continues to be the real problem caused by the cloture rules. But my Republican colleagues don't want an across-the-board reform. As they would have no choice but to acknowledge, they don't want to give up their own ability to filibuster legislation, even while they are in the Majority. That's because, whether it's the patients' bill of rights, campaign finance reform or a plethora of other issues, they have launched their own filibusters while in the Majority, and they just don't want to give up their ability to continue to do so. Majority rule apparently should only go so far in their view.

What the Majority Leader's proposal amounts to is a demand for unilateral disarmament. It is an effort to force the current minority party to swallow a rules change that allows this President and his party to carve an exception from the Senate rules for their out-of-the-mainstream judicial nominees, while keeping the parts of the cloture rule that they want to continue taking advantage of. But the issue of how the Senate operates should not be subjected to such one-sided demands. We all must work with the rules we have and seek to apply them fairly and impartially. That's why, as I said at the time I first made this proposal with Senator Harkin, even though I support filibuster reform, as long as the rules are what they are, I'm not going to be the only one to abandon them. I will continue, as a representative of the interests of the voters of my state, to live within them and support filibusters where I think it appropriate.

In short, in contrast to the serious reform effort we made, this proposal amounts to one party's effort to turn a Senate rule into a partisan tool—to cherry pick its favored issue in the name of democracy, while leaving themselves free to filibuster away on legislative proposals they don't like. I would welcome more company in the effort to engage in serious reform of the cloture rules so that we all—Republicans, Democrats and Independents alike—can make the Senate work better for the American people. But this unfortunately is not that effort.

Mr. SANTORUM. Mr. President, this is a very historic time for our country. Until this Congress there had never been a filibuster of a circuit court nominee in the history of this country. Thus far we have had four filibusters of highly qualified judicial nominees this year and may have two more by the end of this week. It is not the intent of the Constitution to confirm a nominee with 60 votes but to confirm with a simple majority. Whether we vote a nominee up or we vote them down, it is our duty to bring them for a vote and to represent the will of the majority in the advice and consent role of the Senate in relation to the President's nominees. If the minority would like to create a 60-vote requirement, then they should respect the Constitution and introduce a constitutional amendment to do so—and build the necessary support for it around the Nation—rather than through this backdoor assault. The precedent that is being set through this abuse of the filibuster is a dangerous and destructive one for future Presidents, future nominees, and most importantly the future of the Judiciary.

As we look at the nominees that have faced obstruction, I ask what makes these nominees ripe for such unprecedented obstruction in our country's history? The most recent judicial nominee to experience this assault is California Supreme Court Justice Janice Rogers Brown. I spoke on the floor a few weeks ago of the cruel treatment that Justice Brown has had to endure. Ms. Brown was recently degraded by a stereotypical cartoon on blackcommentator.com. The cartoon has President Bush and Justice Brown walking into a room and the President saying, "Welcome to the Federal bench, Ms. Clarence—I mean Ms. Rogers Brown, you'll fit right in." In the background are Justice Thomas, Colin Powell, and Condoleeza Rice. The bottom says, "News item: Bush nominates Clarence-like conservative to the bench." Left oriented groups opposing the President's nominees did not condemn this distortion.

In Justice Brown's Judiciary Committee hearing, she responded to this cartoon saying, "But while I've been having those meetings, people have said to me: 'Well, you know, it's not personal, it's just politics, it's not personal.' And I just want to say to you that it is personal, it's very personal—to the nominees, and to the people who care about them." It doesn't get more personal than this. Brown is a very intelligent woman who is a Supreme Court Justice in our Nation's largest State, was re-elected to her seat with 76 percent of the public vote, possesses a stellar educational record and has a great judicial reputation. However, in order to fulfill her dream and the President's wishes, she must subject herself to unfair personal attacks and embarrassing degradation.

Carolyn Kuhl, another female judicial nominee, also faces harsh and unwarranted criticism in her nomination for the Ninth Circuit Court of Appeals, a circuit court that even Senator SCHUMER admits is way too liberal and is the most overturned circuit of the 13 circuits. The Judicial Conference of the United States has declared this vacant seat a "judicial emergency." But this is not even the main crisis for this court. This court gave us the notorious Pledge of Allegiance decision that Democrats joined Republicans in disavowing. Our friends on the other side of the aisle stress the importance of appropriate balance on the court. This court has 17 judges appointed by a Democratic President and 8 appointed by a Republican President. It seems apparent that Judge Kuhl would be a perfect candidate to better balance a court tipped extremely to the left. Judge Kuhl, like the overwhelming majority of President Bush's nominees, has received a "Well Qualified" rating from the ABA, the "Gold Standard," previously deferred to by Democrats in the Judiciary Committee. However, Judge Kuhl has been receiving unfair treatment from leftist special interest groups seeking to control the nominations process through the historically unprecedented misuse of the filibuster. They criticize Kuhl's role in a 1986 case in which the Government filed a brief stating President Reagan's position that Roe v. Wade was wrongly decided.

Rather than be criticized, Judge Kuhl should be praised for fulfilling her ethical duty to her client. Her job was to represent the President's position before the Supreme Court. Rule 1.2b of the Model Rules of Professional Conduct state that "[a] lawyer's representation of a client, including representation by appointment does not constitute an endorsement of the political, social, or moral views or activities." The hypocrisy of those opposing her nomination lies in the fact that they have not objected to past nominees who were attorneys on the same government brief. Furthermore, Judge Kuhl is supported by a wide range of pro-choice supporters who strongly believe that she will uphold the law. So, as I have asked before, what makes Judge Kuhl so special that warrants obstruction as a judicial appointee?

Then, there is Priscilla Owen. Justice Owen was nominated for the Fifth Circuit Court of Appeals by President Bush in May of 2001. Justice Owen was elected by 84 percent of the voters of Texas to the Texas Supreme Court. This vacancy has been declared a "judicial emergency" by the Judicial Conference of the United States. She has yet to have an up-or-down vote. She has significant bipartisan support, including from three former Democrat judges on the Texas Supreme Court and a bipartisan group of 15 past Presidents of the State Bar of Texas. Owen is yet another nominee who has received a unanimous "Well Qualified Rating" from the ABA. Critics argue that she has strong views on abortion, but she has always interpreted the law faithfully by applying statutes enacted by the Texas Legislature.

Abortion-rights activists claim that Owen's decision to uphold a new statute that requires girls under the age of 18 to notify their parents of an abortion is an example of judicial activism. Never mentioned by these organizations is that not only was Owen upholding a statute enacted by the Texas Legislature, the U.S. Supreme Court has long held that parental notification is permissible under the constitutional right of abortion as dictated by Roe v. Wade. The claims that Owen is a judge who has and will continue to practice judicial activism are not true and unwarranted. As of today it will be 917 days since President Bush nominated Justice Owen. You will not find a more qualified candidate.

Another nominee who has been waiting more than two years is Charles Pickering. A nominee for the Fifth Circuit of Appeals, another vacant seat declared a "judicial emergency," Judge Pickering has been labeled by some of those across the aisle as "racially insensitive", and that his "poor" judicial record reflects this. How is it then that Pickering has received a "Well Qualified" rating by the ABA, the "Gold Standard" according to Democrats on the Judiciary Committee, to serve on the Fifth Circuit Court of Appeals? Many of Pickering's colleagues, civil rights leaders, and Democratic leaders from his own State attest to Pickering's remarkable record on race. James Charles Evers, brother of slain civil rights leader Medgar Evers, has endorsed Pickering by saying "As someone who has spent all my adult life fighting for equal treatment of African Americans, I can tell you with certainty that Charles Pickering has an admirable record on civil rights issues. He has taken tough stands at tough times in the past, and the treatment he and his record are receiving at the hands of certain interest groups is shameful." Along with the false accusations of racial insensitivity, activists also accuse Pickering as not being fit to hear abortion cases. Pickering has testified that he is committed to following Supreme Court Precedent in Roe v. Wade and Planned Parenthood v. Casey.

Abortion rights activists in their assault on some of the President's nominees have especially focused their attacks on Alabama Attorney General William Pryor, nominee for the 11th Circuit Court of Appeals. General Pryor has been criticized by these organizations as well as from colleagues across the aisle for what they term "deeply held beliefs." Earlier this year, I spoke on the floor about General Pryor's "deeply held beliefs." Criticism of Pryor's beliefs stem from his views on abortion. These views are, in large part, due to his background as a devoted Catholic. Being a devoted Catholic requires one to oppose the practice of abortion, and General Pryor is indeed a devoted Catholic. As a practicing Catholic myself, I am disturbed at what is being conceived here. If the Catholic philosophy of having no leeway on the concept of abortion is preventing General Pryor from an up or down vote, then we have a constitutional crisis on our hands which would eliminate tens of millions of Americans from being considered for Federal judgeships. General Pryor's record speaks for itself. Though he has criticized the Supreme Court's decisions on abortion, which is well within his rights as an American citizen, he has demonstrated a commitment over the years to enforce and uphold the law as one of the longest serving attorneys general in the Nation.

I fear for the future of the judicial nomination process. Good, decent people who have outstanding records of upholding the law are being put through unfair, unjust and unnecessary attacks by people do not agree with their conservative values. One must ask my colleagues, why they think the politicization of the Judiciary is in anyone's interests. At what price do we continue this unfair degradation of judicial nominees?

We all know the sad ending of Miguel Estrada's nomination. His qualifications remain outstanding. He came to the United States at age 17 after being born and raised in Honduras. He graduated magna cum laude from Harvard Law School where he was editor of Harvard Law Review. He is a former assistant to the Solicitor General and argued 15 cases before the U.S. Supreme Court. He clerked for Supreme Court Justice Anthony Kennedy, a Justice who does not share Estrada's conservative philosophies. He received strong support from prominent members of the Clinton administration whom he worked for.

Are we to believe that documents the administration is unwilling to share from the Solicitor General's Office are what blocked his nomination, when all previous living Solicitors General, Republican and Democrat, signed a letter saying such work products should not be required to be provided? To do so would only undermine the ability of the office to represent the Federal Government and the President and would negatively impact the ability to attract quality lawyers to the office. We have also discussed time and again the appropriateness of Estrada's reluctance to prejudge cases at committee hearings. Opponents knew that they had no basis to oppose his nomination so they chose to place the burden on the nominee to prove a negative or else to have the Office of the Solicitor General undermine its independence and effectiveness.

So what is the answer to why these nominees are receiving unprecedented unfair treatment? Why are we spending time here arguing for these candidates that are so well qualified for judgeships? I have voted for dozens of judicial nominees whose philosophies I do not share in deference to the President and to the Constitution. I fear the answer is the belief by a minority of Senators that there is short-term political gain in filibustering these nominees because some special interest groups are demanding this. But the long-term cost of this short-term thinking is tremendous. This unfair obstruction is setting a dangerous precedent and direction for the future of the Judiciary. The Constitution has given the Senate the responsibility to defend the judiciary there is no one else.

Mr. INOUYE. Mr. President, it is most unfortunate that we in the Senate found ourselves embroiled in a lengthy and costly debate over four of President George W. Bush's judicial nominations—and make no mistake: this debate will cost more than is readily apparent.

On a simple level, the preparation for 30 hours of debate on the Senate floor will translate into hundreds—possibly thousands of man hours of preparation. My fellow Senators, their staffs, and the myriad interested civic groups will toil ceaselessly to ensure that both Democrats and Republicans will be able to get their messages across to the American people. The media coverage and analysis are likely to be comprehensive and focused intensely down to the most minute details. Like a ravenous beast, this spectacle will devour our time, attention, and energy, until eventually, it consumes itself.

My Democratic colleagues and I are acutely aware of another cost of this debate: the cost of opportunities lost to the Senate and to the Nation. Thirty hours of sustained attention could have addressed the needs of the 3 million citizens who have lost their jobs since the President took the oath of office. Thirty hours of continuous inquiry could have finished our constitutionally mandated duty of providing funds for the Federal Government. Thirty hours of debate could have broken the logjam on Medicare and Medicaid reform. Any of these goals would have been worthy of America's time.

but regrettably, our 30 hours of debate will purchase for us none of these noble ends.

Instead, our colleagues from across the aisle will have spent this time on four men and women—four men and women who have jobs. Four men and women who collectively make a million dollars every year. Four men and women who have already been the subject of countless hours of debate in the Senate, and whose records have already been displayed amply before the American people. Four prosperous men and women against the millions of American citizens who are unemployed.

By far the highest price of these 30 hours of debate, however, will be its contribution to the growing rift between people of different ideological bents. The Senate has always been a place where Senators—a group as diverse and varied as the people they represent—have been able to put aside their differences and work for the good of the country as a whole. As one Senator who has had the privilege of participating in the life of this institution for over 40 years, I cannot understand why the majority leadership has brought us to this point.

My grave concern is tempered only by my hope and confidence that we will rise above the divisive spirit that provoked today's debate, and begin to do the work of the Nation and its people.

The PRESIDING OFFICER. Under the previous order, the hour of 8:30 a.m. having arrived, the Senate will begin an hour of debate equally divided prior to the first cloture vote. Under the previous order, the last 20 minutes will be equally divided with the first 10 minutes under the control of the Democratic leader or his designee, and the last 10 minutes under the control of the majority leader or his designee.

Who seeks time?

The Senator from Utah.

Mr. HATCH. Mr. President, let me personally express gratitude and thanks to Senator SANTORUM of Pennsylvania, Senator NORMAN COLEMAN of Minnesota, Senator LINDSEY GRAHAM of South Carolina, and Senator JEFF SESSIONS of Alabama, all of whom stayed here all night last night to make the points they have made. I personally appreciate it.

Senator GRAHAM asked me to take time to read the full quote of Senator LEAHY that he was not given the benefit of. Senator LEAHY said he was misquoted, so I will read the full quote: This is Senator LEAHY in the CONGRESSIONAL RECORD of June 18, 1998, regarding delays in Senate action on judicial nominations:

> I have stated over and over again on this floor that I would refuse to put an anonymous hold on any judge; that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty. If we don't like somebody the President nominates, vote him or her down.

Now, that is the correct full statement by the distinguished ranking member of the committee. Senator GRAHAM wanted me to make sure that the full statement was put in.

What is involved here is whether or not we are going to abide by the Constitution because the Constitution is pretty clear on this subject of advice and consent. This little book right here contains the Constitution of the United States. In article II, section 2, clause 2, speaking of the President, it says this:

> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur, and he shall nominate, and by and with the Advice and Consent of the Senate—

It goes on to say appoint judges. Now, that is what the Constitution says. The Founding Fathers knew what a supermajority vote was. They put that requirement in here, where it was necessary for treaties. It is very clear to anybody who reads it, and I think any constitutional scholar, that advice and consent means a vote up or down, a majority vote up or down.

During the Clinton years, when Democrats were afraid the Republicans were going to filibuster their nominees, Democrat after Democrat got up and said we should not filibuster, vote up or down one way or another. If my colleagues do not like a judge, vote against him or her. A lot of those quotes have been put in the record during this 40-hour debate. The fact is, when push comes to shove, when it becomes to their political advantage to stop people on the floor of the Senate, they start filibustering.

This business of one-man filibusters, that is pure bunk. The fact is, everybody who came to the floor got a vote up or down. Now, there were a few on our side who wanted to filibuster some of those judges because they were so liberal, but I personally stood up in our conference and in our caucuses, as did Senator LOTT, who was then the majority leader, and said that is not going to happen because that is constitutionally unsound. Plus, it is not right.

But it has happened, as our colleagues on the other side have not been able to stop themselves from taking political advantage.

Why are they doing this against these six people? I get a kick out of the use of 168 to 4. Today it is 6. What will it be tomorrow? I can tell my colleagues the number is going to go up continuously because they do not want anybody on these circuit courts of appeals who may be pro-life. That is what this is all about. It is about abortion. Otherwise, how could anyone find one fault with Priscilla Owen? I do not even know what her position is on abortion. I know that question is not asked by the White House or by us. I do not know what her position is.

What fault can my colleagues find with a woman who was No. 1 on the bar exam in that State and who broke through the glass ceiling for women? Now, women are partners in law firms, where before they could not get secretarial jobs half the time. It was terrible what women went through. She was one of the people who broke through that problem. She won 84 percent of the vote in Texas, which is not particularly a Republican State, although it is fast becoming one looking at what is going on up here, just like Alabama is becoming a Republican State when they see the injustice and unfairness going on here.

Priscilla Owen won 84 percent of the vote; every newspaper in that State ran editorials supporting her, and yet she is being treated like dirt here. Why? Because in a dissent she would have upheld the rights of a parent to have notification that those parents' child was about to have an abortion. Eighty-two percent of the American people believe that is the right thing to do. She was merely evaluating whether the lower court finder of fact in that parental notification case had made an error, and he hadn't, so she thought that the factfinding judge ought to be upheld. What is wrong with that?

Going to Janice Rogers Brown, Janice Rogers Brown won 76 percent of the vote in her reelection, more than the leading liberal then on the California Supreme Court, Stanley Mosk. Mosk was a liberal voice on the court. He got 68 percent. Janice Brown got 76 percent. Now, I know if this was reversed and Mosk was the one who was nominated by a Democrat President, the Democrats would be arguing that he got 68 percent of the vote and that we should just confirm him. And we, as Republicans, probably would if we concluded that he was competent, had a good temperament, was intelligent enough to do the job, was honest and a person of integrity, even though we disagree with him on many issues.

My contention is that the fact that a person may be pro-life is irrelevant, or the fact that a person is pro-choice is irrelevant if that person is otherwise qualified for these Federal judgeships. If we get to the point where we stop people because of one litmus test issue, Katie bar the door, it is going to politicize the Federal judiciary in a way that never should happen.

Janice Rogers Brown is the justice who wrote a majority of the majority opinions last year in the California Supreme Court. She also joined in unanimous opinions, I think around 73 times. There is no question she is in the mainstream. That just has become a bad redefining of terms by our friends on the other side. Since they do not have any real arguments against these people, they will say, well, they are outside the mainstream of American jurisprudence. Well, that is just pure bunk and everybody knows it.

What about Carolyn Kuhl? Carolyn Kuhl has 100 of her fellow judges on the

California Superior Court, Democrats and Republicans, vociferously supporting her as somebody who would make an excellent judge on the Ninth Circuit Court of Appeals, which has a tremendous imbalance. Senator SCHUMER is constantly talking about imbalance, that we should balance up the courts, liberals and conservatives being equal. Well, there are 17 Clinton and Carter nominees and judges on the ninth Circuit Court of Appeals. I believe there may be eight judges on that court nominated by Republican Presidents.

If that is the case, if they really want balance, why oppose even voting on Carolyn Kuhl, one of the leading scholars in America? What do they hold against her? When she was a 28-year-old, a junior lawyer in the Department of Justice, doing the bidding of the then-President, Ronald Reagan, she actually helped write some of the briefs which she would do in the normal course of events—anyone would do, even if you do not agree, because that is your job—on some issues that our friends on the other side do not appreciate. Again, it comes down to abortion.

I was talking to one of the leading civil rights ministers who during the 1960s was threatened every day. He was head of the ACLU in Mississippi, a liberal Democrat who has been in some of the Democrats' meetings, during which they've plotted their mistreatment of the President's nominees. He said to me: Senator HATCH, you are absolutely right—he is pro-choice, by the way, but he sees the injustice of this as he came out in support of the judge. He said: Senator HATCH, you are absolutely right, this is all about abortion.

We do not know where these nominees stand on abortion, at least I don't. I have had discussions with all three of them and never asked the question. Whether pro-choice or pro-life is irrelevant if they are otherwise qualified to serve on the courts.

What is being done to these three women we are going to vote on today? We are not voting on their right to be a judge, we are voting on cloture, on the right to go forward and have a vote up and down on these judges. For the first time in history, the absolute first time in history, we now have filibusters against six incredibly qualified, well qualified candidates.

During the 8 years of the Clinton administration, time after time, the Democrats would say: We have a person who is qualified by the American Bar Association. That is the gold standard, the American gold standard. The imprimatur of the American Bar Association, that is all it takes. 377 Clinton nominees got through; one was rejected by a majority vote on the Senate floor. 377. Amazing how the statistics are distorting. This talk about 168—that was a hard fought battle on most of them. It was not at all simple to get them through. Democrats have politicized everything around here with regard to the judiciary. I would like to end that by having votes up and down on all judicial nominees.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. How much time is available to the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Vermont has 30 minutes, and that includes time for the Democratic leader.

Mr. LEAHY. I obviously will not take that time.

Again, in 29 years here, I have been accustomed to some hyperbole and some interesting changes of statistics and even quotes. I have great respect for my dear friend from Utah, but, man, he has hit the trifecta of the hyperbole in the out-of-context quotes.

Of course, what he does not point out, when I spoke of filibusters on this floor, I was talking about the one-person anonymous hold filibuster on Sonia Sotomayor. It was only after a public outcry that she was allowed a vote and she had overwhelming support in this body—not somebody who was almost 50–50 or 52–48, she had overwhelming support. But she was not allowed to get a vote. And even that took 2 years of putting her life on hold. Editorial writers from the right to the left said: Give this woman a vote. This was a consensus candidate.

We hear about all the ones who got votes. For some reason, there seems to be a reluctance by my friends on the other side to talk about the 63 who were never allowed votes. They were blocked because one Republican would anonymously say no.

I don't find the record of cooperation during the Clinton years to be anything to brag about. Sixty-three fine men and women were blocked and never given a vote. In fact, when President Bush took office, there was an unprecedented number of vacancies in a lot of the circuits. Why? As testimony before our committee showed, because the nominees were told by Republican Senators: We think you are great. We think you would make a good judge. But we have been told we are not allowed to move you forward, we are not allowed to give you a vote. We are not allowed to give you a hearing because someday there will be a Republican President and he will want to fill those vacancies.

Notwithstanding that, when I was chairman, even though it pained me to do it, I allowed those vacancies to be filled by President Reagan's nominees, by President Bush's nominees, even though in testimony before our committee the nominees said they were told by Republicans they would never be allowed to have a vote.

I don't hear the other side talk about the 63 who were given a one-person filibuster, anonymously, whether they were judges from Pennsylvania, Ohio, Missouri, Michigan, or elsewhere. They were blocked by these one-person anonymous holds. Sometimes it was not too difficult to realize who the hold was because it was usually from their own State.

Of course, there were many others. As the distinguished Senator from Utah has said in his own writings, the Democratic President would consult with him on different people and he would tell them no, do not even send this one up, they will not get a vote. So they never came forward. I guess on inaugural day that consultation stopped.

We have confirmed 168 and held back 4. Is anyone going to tell me with a straight face that in the Bush administration, with all the promises they have made to the far right, there are not a whole lot of pro-life judges in here? Of course there are. Many have been very clear, saying they were pro-life, but I voted for them because I believed they could be fair, they would be judicious, they would follow the law, they would follow the precedence and not their personal inclinations.

When I hear of the crocodile tears about Ms. Kuhl, saying she was a young person writing a memo for the Reagan administration, do not hold that against her—come on. She was not only writing a memo, she was a spear carrier for Bob Jones University.

Now I know Bob Jones University is kind of a pet of the other side, but this is a university where the founder and philosophies are anti-Catholic, anti-Mormon, anti-Black. Yet we are supposed to say, forget the fact she was anti-Catholic, anti-Mormon, anti-Black in her support of this, she was only doing her job. She was only doing her job.

A lawyer has a right to follow their conscience. If a lawyer has a client and says: Go out there and take a position that really should not be sustained—in this case, a position on Bob Jones University—you ought to say: No, I quit. I quit. We have seen many instances of that in the past.

Not counting the time for the leader, how much time remains to the Senator from Vermont?

The PRESIDING OFFICER. Thirteen minutes.

Mr. LEAHY. I yield 10 minutes to the distinguished Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I thank Senator LEAHY for so many things. He has been so strong on this whole issue of making sure we do not put on the bench folks who are so outside the mainstream that they would set us back. Because you have a very strong position as a top Democrat, you have allowed to be approved 168 of George Bush's nominees.

He has talked to us in depth, as well as other Members of the Judiciary

Committee, about the four, up to now, who the Senator believes are far outside that mainstream. In order to protect the rights of our people, this is not some argument about a football game, that you are beating us 168 to 4. It is about protecting the people we represent, protecting their rights, protecting their health, making sure they are treated equally before the law. All the things that we as a great country, the greatest in the world, have given to our citizenry, could be overturned if we wind up having a court system that is radical and that moves away from those freedoms.

So if nothing else, I hope people in America understand that the Republicans in the Senate are complaining because they did not get all of their President's nominees. So we have made the point over and over.

Today, we are going to add two more, I believe, to this list and it will be 168 to 6, for a 97 percent success rate. Why are we doing that? Why do we think we are going to stop two of these candidates today—actually, we have stopped a third before and we will do that again. Because they do not reflect the values of this country in their decisions. I could go over them one by one; I don't have the time to do that. And they would be dangerous.

Here is the interesting thing. We have sitting in the committee two nominees who cleared the committee, Mark Filip and Gary Sharp, one from Illinois, one from New York, and all you have to do is bring those out. They have full support. You will be back up to 98 percent before the day's end.

I say to my friends, I do not deserve to be a Senator if I do not exercise the power our Founders gave us explicitly in the Constitution, the power of advice and consent. It does not say sometimes advice and consent. It does not say maybe advice and consent. It does not say if you feel like it. It does not say if there is a Democrat in power or Republican. It says the Senate has the power to advise and consent. This does not mean rolling over for any Member.

That is the key point. Do the people of America want a rubberstamp Senate or do they really want Senators who take their responsibility seriously and look at each nominee seriously?

The power we were given is a very important power. I will explain that to the people of my State. If they want a Senator who will be a rubberstamp for a President of either party, they need to think long and hard about Senator BOXER because I am not their girl. I am not going to do that. That is not why I am here.

So anyone reading the Constitution knows that Senator LEAHY and members of the Judiciary Committee—and I see the Senator from Illinois here—they are just doing their job.

The Republicans have spoken almost 40 hours. I lost track after 30 hours. They are telling us essentially: Don't do your job; be a rubberstamp. We are not going down that path.

I am happy to yield.

Mr. DURBIN. I know we are coming to the breathless close of this wonderful marathon, this made-for-TV filibuster.

I ask the Senator through the Chair the following question: Is the Senator aware in the early hours this morning Republican Senators from Kansas and Pennsylvania came before the Senate and raised the question of whether the Constitution includes the right to privacy? According to the Senator from Kansas, he referred to it as the discovered right of privacy in the Constitution.

I would like to ask through the Chair if the Senator from California could reflect on the right to privacy, particularly as it relates to one anomaly from her State, Carolyn Kuhl.

Mrs. BOXER. Absolutely. I will show the number of women's organizations who oppose Carolyn Kuhl. I am glad the Senator raised this question.

It is particularly interesting that today we have three women before the Senate. I say to my colleagues from both sides of the aisle, as a woman who has been in public life, actually elected to my first office in 1976, making sure that women have an equal opportunity, making sure that women move into positions of leadership has been one of the hallmarks of my career.

Now we hear people on the other side saying anyone who votes against these women is not in favor of women.

Let me state from the bottom of my heart—and I will get to that issue of privacy—the worst thing that can happen to the women of this country—to your daughters, to your nieces, to your aunts, to your grandmothers, for that matter, to your moms—the worst thing is to have a woman in power who rules against the interests of women. Carolyn Kuhl is one such woman. Janice Brown is one such woman. And Priscilla Owen. And those are the three who come before the Senate today in a package. Each of them, if you look at their decisions, has been hostile to women.

I will talk about the Carolyn Kuhl case. Before Carolyn Kuhl, as a sitting State judge, comes a case in which a woman is explaining that she went to a physician for a followup mastectomy examination, a very humiliating, difficult, painful moment for that woman. That woman has written us and her story is in the RECORD. I have placed it in the RECORD.

The woman simply said to Judge Kuhl: My privacy was violated because I went to my doctor and the doctor allowed in the room a drug salesman. The doctor did not ask me, the doctor never told me.

This drug salesman was leaning over the table, was fanning this woman with a fan, was involved in this intimate exam.

Every woman in this country knows that if that happened to them, they would be humiliated beyond belief. This woman had the courage to sue. Carolyn Kuhl ruled against the woman, and the excuse is, she allowed the case against the doctor to go forward. Untrue. That particular case never was before her. The issue was breach of privacy. She ruled against the woman. Carolyn Kuhl had to write an apology to the committee for misstating what actually had happened.

Mr. LEAHY. Will the Senator yield?

Mrs. BOXER. Yes.

Mr. LEAHY. In other words, under this ruling, if the doctor had invited his auto mechanic because he might like to watch breast exams, put him in a white coat, it would be the patient's fault for saying: By the way, is this another doctor? Is this your auto mechanic?

Mrs. BOXER. My friend is right.

Mr. LEAHY. Frankly, I would hope I could say to my wife or my daughters, there would be a right of privacy issue here. For those who say there is no privacy in a case such as this, they have never been in a doctor's office for an examination.

I yield back to the Senator from California.

Mrs. BOXER. Let me say that, fortunately, her decision was overruled unanimously by the State appellate court. This is the State appellate court. There are lots of Republicans on that court. They saw this was a terrible decision.

Here is the list of women's groups against the nomination of Carolyn Kuhl. It includes Breast Cancer Action, Breast Cancer Fund—on and on—Women's Leadership Alliance. And the same list—actually a few different names, for Janice Brown and for Priscilla Owen. These women do not care about women advancing. They have not cared about the equal rights of women.

Let's have some backbone here and stand up when we think these nominees are good for the people and oppose them when we know they have been bad for the people and they will do worse yet.

The PRESIDING OFFICER (Mr. SMITH). The Senator's time has expired.

Who seeks time?

Mr. LEAHY. Mr. President, what is the time remaining?

The PRESIDING OFFICER. The Senator from Vermont has 2 minutes 13 seconds; the Senator from Utah has 8 minutes 12 seconds.

Mr. LEAHY. Well, and there is time reserved for the two leaders?

The PRESIDING OFFICER. There are 10 minutes each for the majority leader and the minority leader.

Mr. LEAHY. Mr. President, over these past 24 hours, the American public has heard a lot of what one could generously describe as wishful thinking from the other side of the aisle about the history of the Senate in considering nominations, especially recent history of Republican obstruction when a Democrat was in the White House. Their efforts to re-write American history and the history of this Senate remind me of the old Soviet Union, rewriting its history books to suit the ruling party and erasing photos that would reveal inconvenient facts. Their misleading and wrong assertions have been made over and over and over again, perhaps in the hope that repetition would turn those falsehoods into fact. I think it is important for posterity to set the record straight.

Last night, echoing Republican press conference, Republicans took to the floor to claim that no judicial nominee had ever been filibustered or blocked from getting a confirmation vote in the history of the Senate. They made these assertions repeatedly while pointing to signs with the number zero printed on them. They refused to acknowledge that any judicial nominee has ever been filibustered, that any has ever been denied a confirmation vote, that any nominee for even a short-term position has ever been filibustered on the floor or filibustered in Committee. The repeated the party line from GOPUSA that "no federal judicial nominee by the past 42 presidents has been filibustered in the history of the U.S. Senate dating back to 1784." I ask unanimous consent to place the following excerpt from the New York Times from 1968 into the RECORD about the filibuster in the Senate over the nomination of Justice Abe Fortas to be Chief Justice of the Supreme Court, a letter signed by more than 60 law professors from across the country in support of the use of the filibuster of judicial nominees, and an important and outstanding letter from Professor Michael Gerhardt which thoroughly addresses the specious arguments being made about the use of the filibuster under our Constitution. I hope that this evidence would cause some of my colleagues to reconsider some of the false and misleading statements made by my colleagues on the other side of the aisle. One can always hope.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Sept. 25, 1968]

PRECEDENT FOR JUDICIAL FILIBUSTERS

CRITICS OF FORTAS BEGIN FILIBUSTER, CITING "PROPRIETY"

GRIFFIN ATTACK LASTS 3 HOURS—MANSFIELD BACKS JUSTICE, BUT SCORES LECTURE FEE.

May 16, 2003.

Hon. BILL FRIST and TOM DASCHLE,
U.S. Capitol,
Washington, DC.

DEAR SENATORS FRIST AND DASCHLE: As law professors, we write to express our opinion that the Senate's use of the filibuster with respect to both legislation and nominations is constitutional. Both the text of the Constitution and historical practices strongly support the constitutionality of the filibuster. Article I, Section 5 expressly provides, "Each House may determine the Rules of its Proceedings." Article I, Section 5 plainly authorizes the Senate to make procedural rules. It empowers the Senate as well to delegate what is sometimes final authority over the fate of legislation and nominations to committees and their chairs. The textual authority for the filibuster is precisely the same as those for these other measures. If these measures are constitutional, then so too is the filibuster.

The Supreme Court has repeatedly emphasized the relevance of historical practices for determining constitutionality. The filibuster, understood as protracted debate precluding final Senate consideration of a legislative matter, began early in the history of the Republic. It has been used frequently by senators from both parties with respect to nominations as well as legislation. In fact, it has been used effectively to defeat presidential nominations, including the nominations of Abe Fortas to be Chief Justice of the United States in 1968, Sam Brown to be Ambassador in 1994, and Henry Foster to be Surgeon General in 1995. This longstanding historical practice weighs heavily in support of the filibuster's constitutionality.

The filibuster reflects the Senate's longstanding respect for minority views and underscores the unique role of the Senate as a part of American democracy. It has the salutary effect of giving an incentive to all sides to seek compromise on issues where points of view are sharply divided. With regard to nominations to an independent branch of government such as the judiciary, the filibuster encourages the President to find common ground with the Senate by nominating individuals who can garner consensus.

For these and other reasons, we conclude the filibuster is constitutional.

Very truly yours,
(Signed by 60 Law Professors).

UNIVERSITY OF NORTH CAROLINA
SCHOOL OF LAW,
November 10, 2003.

Hon. PATRICK LEAHY,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: I understand that this week the Republican leadership will be coordinating thirty hours of debate about the legitimacy of the recent filibusters against three of President Bush's judicial nominees. To assist you (and the Senate) in this debate, I have taken the liberty of providing below a revised version of my testimony earlier this summer on behalf of the filibuster. The revised testimony reflects my thinking and research on the subject since my testimony in May and June. My continued thinking and research on the filibuster have clarified further the solid constitutional foundations for filibustering judicial nominations. My hope is that this revised testimony may help to set the record straight on the Senate's longstanding commitments to allowing the filibuster (against all kinds of nominations) and to amending its rules in accordance with its rules.

EXECUTIVE SUMMARY

The filibuster derives its authority from the Senate's express power to design its own procedural rules to govern its internal affairs and the Senate's consistent support for its legitimacy. It is also one of many counter-majoritarian features of the Senate, including the committee system and unanimous consent requirements. If these practices are constitutional, then so too is the filibuster.

While there have been many criticisms directed against the filibuster in recent months, none has merit, in my opinion. First, the most popular arguments against the filibuster are circular, i.e., they simply assume their conclusion. The arguments presume that some constitutional principle, such as majority rule or anti-entrenchment, trumps the filibuster. Then, operating from this premise, they set out to demonstrate flaws in the arguments of the defenders of the filibuster. Yet, exposing flaws in the other side's arguments does not make an affirmative case for a constitutional principle of majority rule or anti-entrenchment; it merely shows imperfections in the defense of the filibuster. The absence of support for the other side does not establish the legitimacy of the case against the filibuster. Those maintaining that the filibuster is illegitimate must show the constitutional foundations for the principles on which they are relying. Second, the arguments against the filibuster—e.g., it violates majority rule—cannot be squared with the constitutional structure as it was designed or has evolved. Third, Article I of the Constitution contains no explicit or implicit anti-entrenchment principle that would preclude the Senate from adopting, for the sake of institutional stability and order, certain procedural rules that carry over from one session to the next and may only be altered with super-majority approval. In fact, entrenchment is far more consistent with our constitutional structure than anti-entrenchment is. Entrenchment is much more the rule rather than the exception in the legislative process. Even legislative bodies such as the House that formally reconstitute themselves as the outset of each new session have pre-set agendas in place prior to any vote as to how they should proceed to reconstitute themselves, what they should do once they have formally reconstituted themselves, the committees to which members need to be assigned, how those assignments may take place, the jurisdictions of those committees, and even the rules they may select under which to operate. Moreover, given that only a third of the Senate is up for re-election at any one time, there is no "new" majority that comes into power at the outset of a session who can credibly claim any entitlement to vote on the rules under which it would be operating throughout the session.

The filibuster is best understood as a classic example of a non-reviewable, legislative constitutional judgment. It is a practice that has the same claim to legitimacy as many countermajoritarian practices within the Senate, including the committee structure and unanimous consent requirements. The Constitution permits all of these practices, but it does not mandate any of them. These practices define the Senate's uniqueness as a political institution, particularly its historic commitments to various objectives—respecting the equality of its membership and to minority viewpoints; encouraging compromise on especially divisive matters; and facilitating stability, order, and collegiality in the long run. The principal checks on these practices, including the filibuster, are political. They include the Senate Rules, the need to maintain collegiality within the institution, and the political accountability of senators for their support for, or opposition to, filibusters.

I.

Neither the Constitution nor the Senate Rules expressly mention, or mandate, the filibuster. Nevertheless, the best starting place for understanding the authority for the filibuster is Article I of the Constitution, which governs and defines the powers of the Congress. In Article I, section 5, the Constitution provides, "Each House [of the Congress] may determine the Rules of its Proceedings." This section plainly authorizes the Senate to make procedural rules, including but not limited to the length of debate in the Senate. This section further authorizes the Senate to delegate official responsibility to smaller units (and even individual members) within the Senate. Many of these delegations allow committees and their Chairs to have what is sometimes final say over the fates of legislation and nominations. This same authority provides the support for many informal senatorial practices such as senatorial courtesy—in which individual senators may make recommendations to the President on the people whom he should nominate to federal offices in their respective states—as well as the blue-slip process that has traditionally allowed individual senators with the means by which to nullify nominations to judgeships within their respective states. In addition, a single senator may place a "hold" on legislation or a nomination, postponing consideration to a later date. The filibuster derives its legitimacy from the same authority that allows for each of these other legislative practices—Article I, Section 5, which empowers the Senate to implement procedural rules, including the specific rule governing the procedure for cloture, Rule XXII. If these practices are constitutional, then so too is the filibuster.

The other, possible authority for the filibuster is historical practices. The filibuster has been employed, in one form or another, as extended debate in the Senate throughout the history of the Senate. In fact, "the strategic use of delay in debate is as old as the Senate itself. The first recorded episode of dilatory debate occurred in 1790, when senators from Virginia and South Carolina filibustered to prevent the location of the first Congress in Philadelphia." While the First Congress allowed a so-called motion for the previous question which could not be debated, its name was misleading. In practice, "the previous question motion was seldom used before the Senate abolished it in 1806;" and it rarely succeeded in silencing those senators determined to continue the debate. Instead, the motion tended, once made, to end debate by requiring the removal of the matter being debated from the Senate agenda. Thus, it did not force a vote but rather forced the Senate to move onto other business. Moreover, the availability of this motion did not prevent the Senate from continuing to permit protracted debate to delay floor votes. The eminent biographer Robert Caro explains the history of the filibuster subsequent to the abolition of the previous question motion:

"For many years after 1806—for 111 years, to be precise—the only way a senator could be made to stop talking so that a vote could be taken on a proposed measure was if there were unanimous consent that he do so, an obvious impossibility. And there took place therefore so many 'extended discussions' of measures to keep them from coming to a vote that the device got a name, 'filibuster,' from the Dutch *vrijbuiter*, which means 'freebooter' or 'pirate,' and which passed into the Spanish as *filibustero*, because the sleek, swift ship used by the Caribbean pirates was called *filibote*, and into legislative parlance because the device was, after all, a pirating, or highjacking, of the very heart of the legislative process."

In other words, the practice in the Senate from 1806 until 1917 allowed the smallest minority possible with the Senate—a single senator—to bar a floor vote on any legislative matter by engaging in an extended speech. During this period, every floor vote required unanimous consent.

The Senate first, formally curbed the practice of endless debate in 1917, after eleven senators had successfully filibustered President Woodrow Wilson's proposal to arm American merchantmen against German submarine attacks. At President Wilson's urging, the Senate passed Rule XXII, which allows debate upon a "pending" matter to be terminated when, after a petition for such "cloture" was presented by sixteen senators and approved by two-thirds of the senators present and voting. In subsequent years, senators from both parties have used the filibuster to block a floor vote on a wide range of legislation. From 1917 until 2000, cloture was invoked 193 times out of the 545 times it was attempted. During the period from 1927 through 1962, the Senate did not invoke cloture once. In this period, conservative senators repeatedly used the filibuster to block civil rights legislation, provoking liberal senators to denounce the filibuster as illegitimate and conservative senators to defend it. In the late 1960s and early 1970s, conservatives and liberals switched positions on the filibuster: Liberal senators used the filibuster to block centerpieces of President Nixon's social and economic agenda while many conservative senators questioned its legitimacy. After Bill Clinton became president, a series of Republican filibusters blocked by aspects of his legislative agenda, including a comprehensive bill providing for national health care reform. Nevertheless, the filibuster has endured, with the most recent reform occurring in 985 when a supermajority within the Senate approved an amendment to Rule XXII requiring only three-fifths, rather than two-thirds, of the Senate as the requisite number to invoke cloture.

Throughout the long history of its deployment in the Senate, the filibuster has not been restricted to delaying floor votes only on legislation. It has been often used to thwart presidential nominations. The first, recorded instance in which it was clearly and unambiguously employed to defeat a judicial nomination occurred in 1881. At the time, Republicans held a majority of the seats in the Senate but were unable to end the filibuster, which had been employed near the end of the legislative session, the preclude a floor vote on President Rutherford B. Hayes' nomination of Stanley Matthews to the Supreme Court. Though Matthews eventually served as an Associate Justice, it was only because Hayes' Republican successor, President James Garfield, re-nominated Matthews in the next legislative session. (There were also nine other occasions in the nineteenth century when the Senate held no floor votes on Supreme Court nominations.) A recent Congressional Research Service study shows that from 1949 through 2002, senators have employed the filibuster against 35 presidential nominations, on 21 of which senators had sought and invoked cloture. 17 of the 35 nominations filibustered were to Article III courts. All 21 nominations on which cloture was invoked were eventually confirmed. Of the 14 nominations on which cloture was sought but not invoked, 11 were eventually confirmed. For instance, Republican senators filibustered President Clinton's nominations of Walter Dellinger to head the Office of Legal Counsel in the Justice Department and Janet Napolitano to be U.S. Attorney for Arizona, but eventually the Senate confirmed both nominees—Dellinger after Republican senators relinquished their opposition to his nomination and Napolitano after the Senate voted 72–26 on a cloture motion to end the filibuster against her nomination. Four of the 35 filibustered nominations failed altogether—then-Associate Justice Abe Fortas to be Chief Justice and Judge Homer Thornberry to be an Associate Justice in 1968, Sam Brown to be Ambassador in 1994, and Dr. Henry Foster to be Surgeon General in 1995. Other nominations have failed without having been formally filibustered, as Senator Jesse Helms' threat of a filibuster nullified President Clinton's intention to nominate then-Assistant Attorney General Walter Dellinger as Solicitor General. Another dramatic use of the filibuster occurred when Republican senators filibustered five of President Clinton's nominations to the State Department in order to gain leverage in a dispute over whether the State Department adequately investigated allegations that a former Clinton campaign worker who later served in the department had improperly searched the records of 160 former political appointees and publicly disclosed the contents of two of the files. As John McGinnis and Michael Rappaport concluded in their extended study of the Constitution's super-majority voting requirements, "the continuous use of filibusters since the early Republic provides compelling support for their constitutionality.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEAHY. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am highly offended, and I think anybody who is fairminded would be highly offended by this one-sided, partisan attack on Judge Kuhl, and bringing up that particular case because everybody knows that case was settled by the woman's doctor, the one who was at fault. And, frankly, that was hitting below the belt.

Carolyn Kuhl, she is a pioneer for women: cum laude graduate of Princeton University; Duke University Law School: Order of the Coif; law clerk to then-Judge Anthony Kennedy of the Ninth Circuit.

She worked at the Department of Justice: Special assistant to the Attorney General; Deputy Assistant Attorney General; Deputy Solicitor General.

She was 28 years old when she was asked to work on the Bob Jones case. I think it is slanderous to say that Republicans support Bob Jones University's attitudes about race. Give me a break. Nobody on this side does, and neither did she. The case she worked on was a tax issue, and she had an obligation to work with her senior people in the Department. She was very junior at the time. And, frankly, they had a reasonable argument about a certain IRS tax exemption relevant to private universities.

She was a partner in the Los Angeles firm of Munger, Tolles & Olson, one of the best law firms in the country. She is the first female supervising judge of the Civil Department of the Los Angeles County Superior Court.

This is a woman of tremendous abilities. They pick one case out of the hundreds or thousands she has heard and tried, and then distort that case. It drives you nuts around here.

"Both Democrats and Republicans . . . step up to the plate to support [Judge] Kuhl." This is Vilma Martinez—not known for conservative politics, by the way—who is one of the top leaders in the Mexican American Legal Defense and Education Foundation, if I recall it correctly. In the Daily Journal this is what Vilma Martinez had to say:

> [Judge Kuhl] stepped up to the plate. She wrote letters, made phone calls and exhorted her fellow Republicans to confirm [Judge] Paez and other Clinton nominees.

Judge Paez was a very controversial nominee. I know. I had to work it through to even give him a chance. But he got a vote up and down. And, unfortunately, some of my colleagues who were against him were right. He has become a very activist judge on the Ninth Circuit Court of Appeals, just stepping right in and becoming a member of the leftist majority on that court.

Vilma Martinez, this Hispanic-American leader, says:

> [Judge Kuhl's efforts are] characteristic of her sense of fairness and respect for an independent judiciary.

She goes on to say:

> [M]any of the groups that support Judge Paez, ironically, have turned their fire on Judge Kuhl, apparently to exact payback against Senate Republicans.

If you listen to those arguments, it is easy to conclude that.

Then, in the bottom paragraph, Vilma Martinez says this—and Vilma Martinez is a Democrat, not a Republican—she says:

> This turnabout is not fair play. It is the continuation of a vicious cycle that punishes worthy judicial candidates in a misguided effort to use the judiciary to further narrow political ends.

That is the type of stuff we are dealing with around here: distortions, distortions of the facts, maligning absolutely qualified people. Look at this. Carolyn Kuhl has the support of pro-choice women. Anne Egerton, judge on the LA Superior Court:

> I understand that some have raised concerns about Judge Kuhl's commitment to gender equality and reproductive rights. I do not share those concerns. . . . I have been a registered Democrat for thirty years, and I have supported—financially and otherwise—[Senator Feinstein], Senator Boxer, and other Democratic legislators and candidates. I have no reservations in recommending Judge Carolyn Kuhl . . . for appointment to the Ninth Circuit Court of Appeals.

Take Gretchen Nelson, pro-choice Democrat, plaintiff's attorney. On February 14 she had this to say:

> I am opposed to the appointment of any judicial nominee who is incapable of ruling based upon a considered and impartial analysis of all of the facts and legal issues presented in any manner. Judge Kuhl is not such a nominee and she is well-deserving of appointment to the Ninth Circuit.

Let's quit slandering these people. Let's quit distorting the facts. All because you think they might be pro-life.

My gosh, look at the women judges who support Judge Kuhl's confirmation. A bipartisan group of 23 women judges at the Los Angeles Superior Court, on February 22, said this:

> Judge Kuhl approaches her job with respect for the law and not a political agenda. Judge Kuhl has been a mentor to new women judges. . . . She has helped promote the careers of women, both Republican and Democrat. . . . As sitting Judges, we more than anyone appreciate the importance of an independent, fair-minded and principled judiciary. We believe that Carolyn Kuhl represents the best values of such a judiciary.

Let's get this out of this totally slanderous political debate and start talking about the real facts.

Democrats on this Floor have tried to confuse the issue, to pretend that what they are doing is no different than what happened to some of President Clinton's nominees. But they are dead wrong. They are comparing apples to oranges. They are different. We did not filibuster a single Clinton nominee who had majority support. Once on the floor, all of them received up or down votes. 377 confirmed for Clinton. Despite the Democrats, not because of them, we have confirmed 168 Bush nominees.

One Senator went so far as to call the four filibustered nominees, as of yesterday, lemons, if you can believe it, when all of them have well qualified ratings from the American Bar Association.

Look at the facts. President Bush has had 29 circuit court of appeals nominees confirmed, but another 12 of them, at least, are facing filibusters. I believe that number is really higher, about 17. It is an amazing, unprecedented series of filibusters of appellate nominees, what we are going through, and there are more to come.

Let me get the last chart up there. The real facts are that since we have had the filibuster rule, since the administration of Franklin Delano Roosevelt, we have had 2,372 judges confirmed and zero filibustered—until now.

Now, it is one thing to filibuster, it is another thing to slander these people. I have seen so much of that over the last 2 or 3 years that I am just sick of it. I am just sick of it.

Let's give these people votes up and down. The reason they will not is they know there are enough good-thinking people in this Senate on both sides who would—for all of these six people who are being filibustered—confirm them on a bipartisan majority.

So a tyrannical minority—which is in so many ways slandering these people, these honest, decent, good people—is preventing votes up and down on judicial nominees for the first time in the history of this country.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 1 minute 15 seconds.

Mr. HATCH. I yield it to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I plead with the Members on the other side of the aisle to stop this. I have folks on our side of the aisle saying: Don't plead with them. Don't plead with them. Let them do it. Because we will have our opportunity someday, and we will make sure there is not another liberal judge ever, ever, to get on that—no more Richard Paezes, no more Ruth Bader Ginsburgs—never, because what is good for the goose is good for the gander. Let them up the ante. We will take all those activist judges they send up and we will shoot them down.

Is that what they want? Anybody who gives a political opinion in America no longer will be eligible for the judiciary. We are going to sanitize the judiciary? We are going to send it to "Mediocrityville"? Is that what we really want here?

Because let me assure you, as I live and breathe, that is what will happen. If we keep this up—it is 4 today; it will be 6—in 2 hours it will be 6. The Senator from Utah said pretty soon it will be 12. Why it is only 4? Because you just started. You always start with 1.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SANTORUM. Stop now. You have a chance to save this country and this judiciary. Stop now.

The PRESIDING OFFICER. The Democrat leader is recognized.

Mr. DASCHLE. Mr. President, as I understand it, I have 10 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. DASCHLE. I would ask the Presiding Officer if he could notify me when I have used all but 3 minutes.

Mr. President, I find it remarkable that our colleagues can continue to come to the floor these past 40 hours and lament the fact that we have had votes on 172 judicial nominees and 4 of them have not been confirmed because they have not attained cloture. With passion and with emotion they scream out. Where is the fairness for those four nominees, they ask. Where is the fairness?

I find it remarkable that some of the very people who lament not getting a vote for those 4 nominees were participants in the effort to deny even a hearing to 63 nominees for the bench during the Clinton administration. Don't talk to me about the unfairness of a cloture vote on the Senate floor. Don't talk to me about cloture. Don't talk to me until you talk about those 63 who waited, in some cases 4 years, and never got a hearing—or a committee vote.

Denying consideration of judicial nominees is an ongoing practice that our Republican colleagues have been involved in for as long as they have been in the Senate. So this extraordinary outcry, this emotional fervor that we hear so often on the other side, with their misleading charts, does not bear up to the facts.

You tell those 63 people who have not had even a chance for a vote, who should have been confirmed, how it is right for them now not to have the jobs for which they work were nominated—you tell them about the fairness of those four votes.

We have done all we can to work with our colleagues to accommodate all nominees. We have now spent 40 hours talking about this matter. And we have actually spent over 20 days debating judicial nominations since the Bush administration has come to office. 20 days debating and largely confirming the nominees sent to us from the White House.

From the beginning of these last 40 hours, our message was really very simple: We have confirmed 168 of the 172 nominees to date. We have worked with our colleagues on the other side to do as much as we can to ensure that they get a fair debate and ultimately an opportunity to be voted on, whether it is a cloture vote or an up-or-down vote on this Senate floor—unlike what they did on 63 occasions during the Clinton administration.

What we have said over the course of these 40 hours, though, is that it is very unfortunate that while we are debating these four jobs, we are not debating what the American people care most about. We are not debating the fact that 3 million people have lost their jobs, or what to do about it. We are not debating the fact that we are not working on the things the American people care most about.

Several times we spoke about the need to pass the highway bill, and our Republican colleagues ignored our concerns. Several times we spoke about the need to pass the manufacturing jobs credit bill; our Republican colleagues ignored our concerns. These are bills that could truly provide the opportunity for the unemployed in this country to actually acquire a good job and be a little more confident that they will have a brighter future.

Several times we have asked for an increase in the minimum wage by unanimous consent so those who are working would get the pay they deserve.

Republicans objected.

We could have been spending our time a lot more effectively, a lot more in concert with the expectations of the American people, but that has not been the case.

We will continue to work with our colleagues, and in those cases where we can find agreement, we will continue to confirm most of the Bush nominees. But that will not be the case this morning.

We are now debating three justices who continue to insist on putting their own views above the law, to interpret law on their own and without regard to judicial precedent.

As a result, virtually every single women's organization and every single civil rights organization in the country has urged the Senate, pleaded with all 100 Senators to reject these nominations.

I am very grateful for the effort made by our Democratic colleagues on the Judiciary Committee who have put the time and effort they have into analyzing the record of these nominees and have concluded, as I have, that they do not warrant confirmation.

Mr. President, there will come a day, once again, when we can find nominees for whom there can be agreement. But until that happens, until we have the confidence that we can look upon them with an expectation that they will uphold the law, interpret law and not write the law, we have no other recourse but to oppose their nominations, as we will this morning.

I yield such time as he may require to the distinguished Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you.

Mr. President, I thank my colleague from South Dakota for once again being our leader in every way. We are grateful to him, and I think I speak for every Member on this side of the aisle.

Mr. President, this debate ends as it began, with this one immutable fact: 168 to 4; 168 judges confirmed, 4 rejected.

The other side has spent 39 hours trying to come up with other signs, trying to come up with other ways. In reality, this debate has actually helped our side because this fact stands out above all others.

Are we being obstructionist when we approve 168 and reject 4? Everyone but the most extreme of Americans say absolutely not. Are we violating what the Founding Fathers wanted when they talked about advise and consent when we merely blocked 4, 2 percent of the 100 percent of the judges brought up? Every seventh grader who studies constitutional law knows that 168 to 4 is not obstructionist.

The bottom line is the other side has spent hours on sophistry, successful filibusters are wrong, but unsuccessful filibusters are OK because they engaged in filibusters on judicial candidates in 2000 and 1994 and previously. Filibusters of judges are unconstitutional, but filibusters of statutes, of laws, of bills are perfectly OK. What sophistry.

The bottom line is that the other side comes up first with the result and then tries to make the argument backward. I understand why. The small hard-right minority has a scorched earth policy in America. They have to get everything their way and then are pushing, pushing, pushing the other side. They are saying: Do something. But, frankly, because of the wisdom of the Founding Fathers, the Senate still is the cooling saucer, and there is nothing they can do.

This debate has degenerated. To try and get this to be 172 to 0, there is name-calling: anti-Hispanic, anti-Black, anti-Catholic. We know what low and cheap shots those are. We are opposing judges based on their being out of the mainstream, judges who would make law, not interpret law. I don't like judges far left or far right who do that.

Then last night we got from my good friend from Utah, whom I love, he says calling for rollcall votes was obstructionist. That is how absurd and how frustrated and how piqued the other side has been. Calling for rollcall votes on judges is obstructionist? I say to my colleagues, we on this side would have rather spent the time debating how to bring jobs back to America, how to bring health care to America, how to raise the minimum wage.

But at the end of the day, this exercise, come up in the mind of a few, has ended up benefiting us, and there is one solution, I say to my good friend from Pennsylvania, who pleads earnestly——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SCHUMER. To stop this, and that is come talk to us, work with us in a bipartisan way, nominate judges both sides can support. Don't say my way or the highway and this will stop. But that is the only way to stop it.

Thank you, Mr. President.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, over the past 2 days, the Senate has sustained what has truly been an extraordinary, all-hours debate, a debate on judicial confirmations and on the very nature of each Senator's duty and right to give advice and consent on the nominations sent to us by the President of the United States, just as the Constitution requires.

We have placed our differences over the last 39 hours, to paraphrase Justice Brandeis, in the disinfectant sunshine of public opinion. This continuous debate has been framed by the bipartisan effort on a very simple principle; and that is, give us an opportunity for an up vote or a down vote, just give us that right to vote.

We have been focused on the Fifth Circuit Court nominee, Justice Priscilla Owen of Texas, who has already been denied that simple up-or-down vote on three previous occasions. It has been focused on two new circuit court nominees from California, Judge Carolyn Kuhl, nominated to the Ninth Circuit Court of Appeals, and Janice Rogers Brown nominated to the DC Circuit Court of Appeals.

We also debated the bipartisan proposal cosponsored by Democrat Senator ZELL MILLER of Georgia to limit the use of the filibuster as to all nominations, a proposal that I believe will change the all too rancorous way that Washington does business. Indeed, this proposal, although more narrow, was based on one previously supported by Senators KENNEDY, LIEBERMAN, KERRY, and other Democrats.

The minority has suggested again and again—we heard it just a few minutes ago—that we should not have spent this time on this issue of the Constitution of the United States of America; that we should not have spent this time discussing the unfair treatment of the President's nominees. They argue that we should not have spent this time on these new judicial nominees that we will be voting on in cloture in just a few minutes.

We simply don't believe that the Senate stewardship, our responsibility, that stewardship for the third branch of Government is the least of our duties, as is suggested that we should not be spending time focused on these issues.

It is almost as if the other side of the aisle said these issues are not important. On the contrary, the Senate stewardship of the independent judiciary is perhaps the Senate's most important task. Why? Because it is our responsibility. It is not the responsibility of the House of Representatives.

George Washington understood this. He believed the judiciary was the most important of the three branches because the courts would protect our liberties. But America's courts do much more than that.

We heard a lot about the economy. We heard a lot about jobs. It is our independent judiciary that provides the anchor for America's economic strength. It is the stability, and it is the confidence that our courts provide that make the United States of America the safest location, the best location for domestic investment, for foreign investment, whether in industry or commerce, and for the overall economy. Why? Because the courts protect those liberties. That means, what? More jobs. It means more prosperity for all Americans.

Our courts guard the rule of law, and to the extent they are free of results-oriented politics and other forms of corruption, they are the foundation stones that have allowed America's history to unfold differently than our sister republics to the south.

In this past year, Americans have come to understand the influence of the courts over our everyday lives, over our daily lives, over our national culture in ways that our Founding Fathers would have never imagined.

Of course, the Democrats' complaint that we are spending too much time on these issues is a little bit strained in that it is they who are filibustering, continuing to debate, denying that opportunity to vote yes or no on these nominees. The filibuster rule, when not abused, is intended to give the minority more time, to allow more time for debate.

Despite the complaints and the charges back and forth, I do give my Democratic colleagues real credit for collegially joining in this debate over the last 39 hours. I am enormously proud of my Republican colleagues. I believe that both sides should feel a certain degree of satisfaction as to how this historic debate has been conducted.

In the past 2 days, we have debated three nominees who the American Bar Association considers qualified to serve on the appellate court but who a Democrat minority considers out of the American mainstream. How many times have we heard that over the last 39 hours—"out of the mainstream."

I can tell you I don't think the minority has argued effectively or persuasively how Justice Owen, who was elected to the Texas Supreme Court by 83 percent of Texas voters, is out of the mainstream. Out of the mainstream, Justice Brown. Out of the mainstream when she was retained to serve by 76 percent of California voters? Is that out of the mainstream?

They have certainly not convinced any fairminded person how it is that Judge Carolyn Kuhl—who has the support of over 100 California judges and labor unions across the political spectrum, and yes, even trial lawyers—cannot serve on that Ninth Circuit, that really worrisome Ninth Circuit Court that declared the Pledge of Allegiance unconstitutional.

What we have seen, and the reason this debate is historic is that it underscores and it lets the American people know, as well as restates the importance of the issue, that over the past year, the minority has used the filibuster to deny a bipartisan majority the opportunity to vote up or down, to give advice and consent. Let me say that again.

A minority, for the first time in history—it happened this year—for the first time in history, a minority in this body is using the filibuster to deny a bipartisan majority the opportunity to vote yes or no.

It has come up that while majorities have delayed judges in the past through the majority's delegation to the Judiciary Committee, votes on judges have never before been blocked by a minority. Of course, this debate has been more than about Senate procedure. In effect, what we have seen over the last year is the minority is, in effect, amending the people's Constitution without the people's assent. The reason for this is now well know.

Senate liberals have sought with increasing intensity to politicize not just the confirmation process, but the courts themselves. In pursuing this course, they are threatening the legitimacy of America's courts. That legitimacy comes from much more than just black robes or a high bench. It comes from the people's belief that judges will apply the law or the Constitution without regard to personal politics.

Rather than seeking to determine the judiciousness of a nominee and whether a nominee will be able to rule without bias, liberal Democrats are out to guarantee that our judges are, in fact, biased against some and in favor of others. In America, with that result, citizens will have to worry about the personal politics of the judge before whom they come for justice. I say judiciousness, why?

Like other Senators this year faced with the question of what is required by the Constitution's mandate that the Senate give the President advice and consent, I have turned for guidance to the Founding Fathers and especially to the father of the independent judiciary, John Adams, to find that correct standard by which we give advice and consent on a judicial nominee.

President Adams, the father of our independent judiciary, memorialized for us what the standards should be for confirming our judges. He wrote that they should be "men [and women] of experience on the laws, of exemplary morals, invincible patience, unruffled calmness, and indefatigable application who will be appointed for life and subservient to none."

President Adams understood well enough the challenge of being judicious despite one's opinions and even in the face of unpopular opinion. Few people remember it was John Adams who defended the British soldiers who, on March 5, 1770, shot into a crowd on the streets of Boston. Our children study this episode today as the Boston massacre. It is a history lesson we can learn from in our work and on judicial nominations.

John Adams defended the British soldiers before a Boston court with angry mobs in the street.

I will close in a second. I will speak on leader time for the next minute.

I have to wonder, Mr. President, if today John Adams would be obstructed by filibuster because an out-of-touch minority, urged on by special interest groups, questions John Adams' qualifications based on his past advocacy simply for being a good lawyer defending a client, however politically unpopular.

In a few minutes, the filibustering minority will have another opportunity to stand in the light of the Senate floor and do the right thing. I say to the minority: Give these nominees a vote. Vote them up or vote them down, but just give them an honest up-or-down vote.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I will use leader time first to engage in a brief colloquy with the distinguished majority leader with regard to the schedule for the remainder of the day. I wonder if he can inform us as to what his intentions are with regard to schedule.

Mr. FRIST. Mr. President, I will be happy to talk during the votes with the leadership on the other side. My intent would be to have these three consecutive cloture votes and then after that have no other votes today. Before saying that with definitiveness, I would like to have a discussion with the minority leader, if there is other business he would like to bring to the floor as well.

We likely will have other business following that. Again, I expect no rollcall votes after these three votes.

Mr. DASCHLE. I thank the majority leader.

Mr. President, I also note at the end of this period of time, we have been here now for about 40 hours. It is probably not accurate to say we have all been here for 40 hours. Some of us had the luxury of coming and going, but there have been a lot of staff on the Senate floor, in our cloakrooms, in the Sergeant at Arms Office, our Capitol Police, all of our clerks—the extraordinary effort that they have made in these last 40 hours should be recognized.

I know I speak for all of our colleagues on both sides of the aisle in expressing our heartfelt gratitude to all of them. Once again, they have exceeded our expectations, and we are grateful for their dedication and professionalism during these difficult days.

I yield the floor.

NOMINATION OF PRISCILLA RICHMAN OWEN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call is waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 86, the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit, shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. CARPER), the Senator from North Carolina (Mr. EDWARDS), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Florida (Mr. NELSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. CARPER) and the Senator from Massachusetts (Mr. KERRY) would each vote "nay."

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 53, nays 42, as follows:

The result was announced—yeas 53, nays 42, as follows:

[Rollcall Vote No. 450 Ex.]

YEAS—53

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Chafee
Chambliss
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeWine
Dole
Domenici
Ensign
Enzi
Fitzgerald
Frist
Graham (SC)
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Kyl
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Voinovich
Warner

NAYS—42

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Byrd
Cantwell
Clinton
Conrad
Corzine
Daschle
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Graham (FL)
Harkin
Hollings
Jeffords
Johnson
Kennedy
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Mikulski
Murray
Pryor
Reed
Reid
Rockefeller
Sarbanes
Schumer
Stabenow
Wyden

NOT VOTING—5

Carper
Edwards
Inouye
Kerry
Nelson (FL)

The PRESIDING OFFICER. On this vote, the ayes are 53, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

NOMINATION OF CAROLYN B. KUHL TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 169, the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

Bill Frist, Orrin G. Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

Mr. LEAHY. Mr. President, I want to commend the Senators from California for their leadership in connection with this matter.

Today, the Senate is considering the nomination of California Judge Carolyn Kuhl to the U.S. Court of Appeals for the Ninth Circuit. In accordance with Republican practices during the period 1995–2000, this nominee would have never come to the Judiciary Committee for a hearing in the first place and would never have been voted upon by the Judiciary Committee. This consideration on the Senate floor today underscores the President's refusal effectively to consult with the home-State Senators from California, both of whom oppose this nomination. In fact, this vote is the culmination of a year in which the President's disregard for home-State Senators and the Republican majority's disregard of past practices to achieve their partisan political objectives could not be more calculated.

Judge Kuhl's appearance before the Judiciary Committee, despite the clearly stated opposition of Senator BOXER, was only one in a string of transparently partisan actions taken by the Senate's Republican majority since the beginning of this Congress. In each of these actions, Republicans have done something they never did while in the majority from 1995 to 2000. Throughout the course of this year, they have continued to ratchet up their unprecedented partisanship and the use of judicial nominees for partisan political purposes.

The Republican majority took a step on the nomination of Judge Kuhl that was unprecedented for this Chairman. They scheduled a hearing for a nominee who did not have approval from both of her home-State Senators, a nominee for whom both blue slips were not returned positively. There is not a single example from 1995 through 2000, when the President was a Democratic President, and when Republican Senators were objecting, when the Judiciary Committee held a hearing on a judicial nominee over the objection of a home-state Senator.

Senate Republicans should remember that when the nomination of Ronnie White of Missouri was finally voted upon in 1999, all Republicans, in an unprecedented party-line vote, defeated that nomination. Several Republican Senators who had voted in favor of Justice White when he was considered by the Committee changed their positions and voted against his confirmation. The facts are that, at the time of his hearing, the senior Senator from Missouri supported the nomination and endorsed him at his hearing, and the junior Senator did not object to the hearing. Senator Ashcroft then chose to vote against the nomination. On the eve of the vote on the nomination, Senator BOND changed his position and decided to join Senator Ashcroft in opposing the nomination.

In connection with that vote, Senator HATCH said that if both home-State Senators had opposed the nomination earlier, it would never have proceeded. He told the Senate: "[H]ad both home-State Senators been opposed to Judge White in committee, Judge White would never have come to the floor under our rules. I have to say, that would be true whether they are Democrat Senators or Republican Senators. That has just been the way the Judiciary Committee has been."

The Ronnie White nomination is not an example of a previous time that the Committee and the Senate proceeded over the objections of home-state Senators. To the contrary, it is precisely the opposition, a clear precedent the other way.

While it is true that various Chairmen of the Judiciary Committee have used the blue-slip in different ways, some to maintain unfairness, and others to attempt to remedy it, it is also true that each of those Chairmen was consistent in his application of his own policy—that is, until the Kuhl hearing. That was the first time that this Chairman ever convened a hearing for a judicial nominee who did not have two blue slips acceding to a hearing.

This Republican President's choice of Carolyn Kuhl for a vacancy on the Ninth Circuit is a divisive and political choice. As a lawyer in the Reagan Administration, a lawyer in private practice, and as a state court judge, Judge Kuhl has demonstrated an extreme philosophy that threatens the rights and interests of Americans, particularly women's rights, other civil rights, and access to justice. Among other significant cases, Judge Kuhl spearheaded an effort to reverse the Reagan Administration's policy on tax-exempt status for racially discriminatory private schools, including Bob Jones University. She has also consistently advocated against women's rights and reproductive rights—from aggressively pushing the Justice Department to argue for a reversal of Roe v. Wade, to arguing for limits on the reach of sexual harassment laws, to rulings as a judge which raise concerns about her commitment to privacy rights.

This nomination has generated widespread opposition and requests that the Senate not consent to her confirmation. Among the many membership organizations that have written in opposition are: Seven members of the California Assembly Committee on the Judiciary, California Women Lawyers, the Japanese American Citizens League, the Leadership Conference on Civil Rights, People for the American Way, Planned Parenthood Federation of America, Taxpayers Against Fraud and many, many more.

I suspect we will hear these groups, and the others who oppose the President's nomination of Judge Kuhl, vilified as members of some left-wing conspiracy, intent on sinking each and every nominee, no matter what their views. But I would like to remind those who would raise that argument, as I have before, that these organizations represent millions of citizens with legitimate concerns about the direction of the judiciary in this country. I appreciate their willingness to participate in the process and their refusal to be intimidated into silence. The Washington Times has conceded that "President Bush has seen more of his appeals court nominees confirmed by the Senate at this point in his term than any other president since at least the 1970s." When I was Chairman of the Judiciary Committee during the 107th Congress, the Senate confirmed 100 of this President's nominees. So far this year, the Senate has confirmed 68 additional judges nominated by President Bush. The Senate has now confirmed 168 of the Bush judicial nominees. That is more confirmations than in all of President Reagan's first term and more judges in one year than were confirmed during all of 2000, 1999, 1998, 1997, 1996 or 1995.

Among those 168 confirmations are 29 circuit judges. That is more circuit judges at this point in his presidency than were confirmed for President Reagan, President Bush or President Clinton. So far this year the Senate has confirmed 12 circuit court judges. In the comparable year of 1999, Republicans allowed only 7 circuit court judges to be confirmed all year.

Four of President Bush's nominees to the Ninth Circuit Court of Appeals have already been confirmed. Richard Clifton was given a hearing and confirmed under Democratic leadership. Just this year, the Senate has confirmed two additional Ninth Circuit nominees, one of whom, Jay Bybee, was quite controversial. Just before the Memorial Day recess, Democratic Senators expedited and encouraged the Majority Leader to allow a vote on the nomination of Judge Consuelo Maria Callahan, a consensus nominee with support from both home-State Senators. And, in September, Democratic Senators supported the nomination of Judge Carlos Bea, another nominee with support from both home-State Senators.

Unlike the divisive nomination of Judge Kuhl, both home-state Senators supported the nominations of Judge Callahan and Judge Bea. Rather than disregarding time-honored rules and Senate practices, my friends on the other side of the aisle should help us fill more judicial vacancies more quickly by bringing those nominations that have bipartisan support to the front of the line for Committee hearings and floor votes.

Republican Senators have been claiming that there have never been filibusters of nominees before and arguing that every nominee always gets a Senate up or down vote. That was certainly not the case for 63 of President Clinton's judicial nominees and for hundreds of his Executive Branch nominees. Such a claim is so contrary to history it is breathtaking in its boldness. On a single day in 2000, the Senate had to invoke cloture to stop Republican filibusters of the nominations of Judge Richard Paez and Marsha Berzon. Republicans also unsuccessfully filibustered Judge Rosemary Barkett and Judge H. Lee Sarokin in 1994. They successfully filibustered Executive Branch nominees such as ambassadorial nominees and the nomination of a Surgeon General, and the list goes on and on. I have spoken about them before.

This White House has been the most aggressive in recent history in its efforts to pack the federal courts and tilt it sharply toward a narrow ideology. The most extreme of the Administration's nominees are not being approved. We are seeking to maintain the independence of the Federal judiciary and to protect the rights of Americans in so doing. The Administration and its supporters have taken to using these nominations as partisan matters and to drive wedges between Americans. I have urged that the President be a uniter rather than a divider on this important lifetime nominations, but my voice has been ignored.

The provocative steps taken by the White House and Senate Republicans have broken new grounds in politicizing the Federal judiciary. The Republican majority has shown a corrosive and raw-edged willingness to change, bend and even break the very same rules that they took advantage of when the judicial nominees involved were a Democratic President's choices.

One of Carolyn Kuhl's most notorious decisions as a lawyer in the Reagan Justice Department is among her most troubling. As a political appointee serving directly under the Attorney General of the United States, she spearheaded an effort in the Reagan Administration to reverse position in the Bob Jones University case. This was the case challenging IRS rules denying tax-exempt status to schools that racially discriminate.

In 1981, the IRS rules were challenged by Bob Jones University, which wanted to keep avoiding their tax responsibilities despite a policy prohibited interracial dating. When the school took this issue to the Supreme Court in 1981, the Reagan Justice Department was prepared to defend the rules, as is its duty. But in January 1982, the government suddenly changed its position, and argued that the IRS had no legal authority to deny tax-exempt status and agreed to give Bob Jones, despite its blatant policies of racial discrimination, the tax exemption.

Then-Congressman TRENT LOTT, supported by Senator Strom Thurmond, was pivotal in the lobbying effort to change the government's position, and then-Special Assistant to the Attorney General Carolyn Kuhl concurred. This decision was so outrageous that more than 200 career lawyers in the Justice Department's Civil Rights Division objected to the change of position in a letter to their Assistant Attorney General.

According to records of Congressional hearings on the topic and a New York Times article written at the time, Carolyn Kuhl was one of three people characterized as "a band of young zealots" at work as political appointees at the Department of Justice, and part of the "Bob Jones team" who opposed the overwhelming sentiment and "pressed for the legal switch to give Bob Jones its tax exemption." Indeed, Carolyn Kuhl and Charles Cooper, then-Special Assistant to Attorney General William French Smith, co-authored a 40-page memorandum to Civil Rights Division Head William Bradford Reynolds strenuously arguing that "the [IRS] Commissioner's Ruling denying tax-exempt status to racially discriminatory private educational institutions is supported by neither the language nor the legislative history of Section 501(c)(3)" and that the IRS should therefore "reverse its position" in the case and "accord tax-exempt status" to Bob Jones.

The Supreme Court, in an 8–1 ruling, repudiated Carolyn Kuhl's position and denied the school tax-exempt status. Chief Justice Warren Burger wrote for the majority, "[a]n unbroken line of cases following Brown v. Board of Education establishes beyond doubt this Court's view that racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals."

It is interesting to note that the reason we know so much about Judge Kuhl's advocacy on behalf of schools like Bob Jones is because of internal Justice Department documents turned over to the Senate Finance Committee in February of 1982. At that time, in the wake of the Reagan Administration's switch in position, the Committee held a hearing to consider a legislative fix to the problem. A number of Justice Department memoranda as well as communications between high-level officials were turned over to the Committee in connection with the hearing, just months after the documents were first written. The House Ways and Means Committee held a similar hearing on February 4, 1982. Among the documents turned over to these Congressional committees was a memo written by Carolyn Kuhl on December 8, 1981 to Ken Starr noting Reagan/Bush campaign statements on private schools and a memorandum written by Carolyn Kuhl and Charles Cooper, one of the other members of the "Bob Jones team," to Civil Rights Division Head Reynolds regarding the Bob Jones case.

At her hearing, Judge Kuhl conveniently told us that she regretted having taken the position she did at the time. Although it was the first time she had ever said so publicly, at her hearing, she claimed that in 1982 she had been concerned about the implications the Bob Jones policy would have on all-girls' schools. This concern was not reflected in her memos at the time, and has not been heard in any other context. But, taking her at her word that this was truly a concern, the explanation she gave at her hearing is still very interesting. She said, and I'll quote her, "I had attended an all-girls' school and I did not want to see a precedent created that would have meant that tax exemptions could be taken away from all-girls' schools because they discriminated against men." In other words, she advocated helping a school that was racially discriminatory because of her personal affinity for her alma mater. Either way, whether or not you believe her newly articulated explanation, her responses on this issue raise as many questions as they answer.

Judge Kuhl also contended at her hearing that her advocacy on behalf of Bob Jones University should be excused because of her relative youth and inexperience. This too seems a convenient explanation. She describes herself as someone two and a half, maybe three years out of law school with no decision making authority, painting the picture of a naive young attorney with no influence over such important decisions. But this was 1982, five years after her graduation from law school, and she had proven herself enough to have landed one of the most prized jobs for a political appointee with a law degree: Special Assistant to the Attorney General of the United States. She doubtless had daily personal contact with the nation's highest law enforcement officer, and as his protégé represented his position to the very influential people serving under him, including Solicitor General Charles Fried and Head of the Civil Rights Division William Bradford Reynolds. While I accept the contention that she was not the final decision maker on the Bob Jones matter, the facts lead me to believe that her arguments were taken seriously and held more than a little weight. I think Judge Kuhl underestimated the esteem in which her legal abilities were held. Indeed, only a few years later, she became the Deputy Assistant Attorney General in the Civil Rights Division, with managerial responsibilities for hundreds of attorneys.

I would argue that Judge Kuhl's participation in this case exceeded an attorney's obligation to be a zealous advocate. Rather, her aggressive involvement surely helped build momentum behind the drastic change in position the Justice Department would take. But the substantive weakness of her argument in the face of legal precedent only underscores how political and results-oriented it was. So thin was her case that it caused the New York Times to wonder "How could any president be given such incompetent legal advice? How could lawyers for the U.S. Government stray so far from the mainstream of the Country's understanding on the racial issue? How could a president at this stage in our history play with the issue for political reasons?" Judge Kuhl cannot so easily explain this away.

When she was Deputy Solicitor General in the Reagan Justice Department, Carolyn Kuhl tried to persuade the U.S. Supreme Court to eliminate its "associational standing" doctrine in United Automobile Workers Union v. Brock, 477 U.S. 274 (1986). In this case, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) challenged the Secretary of Labor's interpretation of provisions of the Trade Act which would have deprived the union members of certain benefits—benefits available to assist workers laid off because of competition from imports. The issue on appeal to the U.S. Supreme Court was whether the UAW had standing to sue in federal court on behalf of its affected members.

Although Judge Kuhl stated at her hearing that she was not on the brief in this case, she later revised her testimony in written answers, saying that she had confused this case with another. Although she was still not completely forthcoming in her responses, I discovered that she was in fact one of five high level officials on the brief and that she argued the case before the U.S. Supreme Court in March 1986.

In her arguments, she urged the Supreme Court to eliminate the doctrine of representative standing in favor of requiring organizations to meet the requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure. But, she then also admitted that the government would oppose a request for class certification in this case. She stated in her brief that the Supreme Court should "reconsider the doctrine in light of the practical and analytical difficulties it presents", and that the doctrine was not of that "longstanding effect." A significant portion of her brief was devoted to the more far-reaching arguments of why the doctrine of representative standing should "not be recognized" and why the class action provisions should be applied instead.

The majority of the Supreme Court rejected her arguments and concluded that the government's presentation "has fallen far short of meeting the heavy burden of persuading us to abandon settled principles of associational standing." Id. at 290.

The doctrine of representative standing allows unions, environmental organizations, business groups, and others to protect the interests of their members in court. Elimination of the doctrine would greatly impede the ability of organizations to represent their members. For this reason, a diverse group of organizations, including the U.S. Chamber of Commerce and the AFL–CIO filed an amicus brief opposing Kuhl's position in the case.

Judge Kuhl's arguments in this case raise concerns about whether she would protect the rights of working men and women or curtail access to the courts for such individuals. In addition to this case, as a judge on the state court, she has issued troubling decisions with regard to the rights of working Americans and access to justice, such as a case in which she found that a woman target of a SLAPP (Strategic Lawsuit Against Public Participation) suit was not entitled to recover attorneys' fees for successfully defending against the suit—a decision which was unanimously reversed by the appellate court.

Other cases in which Judge Kuhl was involved with while at Justice demonstrate that on issues related to privacy and women's rights she clearly has an ideological agenda. As Deputy Solicitor General, Kuhl co-authored the Reagan Administration's amicus brief in Thornburgh v. American College of Obstetricians and Gynecologists, urging the Supreme Court to uphold Pennsylvania's severe restrictions on abortion, including prosecution of doctors. Her view on the matter is documented not only in the brief, but also by her boss at the time, Charles Fried, then-Solicitor General, who recounts in his memoirs that, "[t]he most aggressive memo [about Roe v. Wade] came from my friends Richard Willard and Carolyn Kuhl, who recommended that we urge outright reversal of Roe."

In that brief, Kuhl argued that the courts below placed too much emphasis on the woman's right to privacy. Moreover, the brief discusses issues beyond the merits of the particular case and urged the Supreme Court to abandon its principles of stare decisis and overturn settled law. In a 6–3 decision, the Supreme Court also rejected that call.

As Deputy Solicitor General, Carolyn Kuhl argued for an extremely narrow legal definition of sexual harassment in the landmark case of Meritor Savings Bank v. Vinson. A female employee, Mechelle Vinson, filed suit against her supervisor and the bank that employed her, alleging that the supervisor had sexually harassed her and that she had been terminated when she refused him, violating her rights under Title VII of the Civil Rights Act. Kuhl's brief for the Reagan Administration argued that Ms. Vinson's claim should be dismissed because her conduct had been found by the trial court to be voluntary. The Supreme Court found the opposite, and held that the claim could go forward no matter the characterization of Ms. Vinson's conduct, as long as the sexual attention she was getting, described by the court as "appalling" and "especially egregious," was unwelcome.

It would have been bad enough that Judge Kuhl had taken this position as a political lawyer at the Justice Department, trying to narrow the rights of victims of sexual harassment as part of the Reagan agenda, but even worse and more puzzling, was her explanation of the case at her hearing.

Just as she articulated a never-before heard explanation for her position in the Bob Jones case, Judge Kuhl told us at her hearing that she was "very happy" with the decision, and that the Supreme Court's reasoning "tracked" the brief she wrote. She dismissed Senator FEINSTEIN's concerns that the Justice Department had declined to accept the unwelcomeness standard adopted by the Supreme Court, brushing her off with a vague mention of the question of the voluntary nature of Ms. Vinson's behavior. This explanation is mystifying, and sounds to me like an attempt to put a positive spin on an issue she knew Democratic Senators would view with suspicion. She knew that those of us concerned with allowing victims of discrimination an opportunity for redress would have problems with her brief in Meritor Savings, and she fudged an answer to try to look like she agreed with us. Such obfuscation should not be allowed to succeed. I would have preferred it if she had been up front with us about her brief and its relationship to the Court's decision.

Judge Kuhl's record on the state bench offers another example of her troubling views on privacy. In the recent case of Sanchez-Scott v. Alza Pharmaceuticals, et al., Judge Kuhl's decision to dismiss a claim for invasion of privacy brought by a cancer patient against her doctor and a pharmaceutical company was reversed by the appellate court. The plaintiff, a patient undergoing chemotherapy for breast cancer, was examined by her oncologist, Dr. Monty Polonsky, in the presence of an unidentified man who turned out to be a representative of a pharmaceutical company.

The complaint stated that the doctor introduced the man, a Mr. Martinez, as, "a person . . . who was looking at Dr. Polonsky's work," but no further details about his identity were provided. During the course of the physical, Ms. Sanchez-Scott felt warm and began to use a pocket fan to cool herself. The doctor took the fan from the plaintiff and gave it to Mr. Martinez so he could fan the plaintiff because, as he told her; "[i]t would give him something to do." Then, the doctor and Mr. Martinez began to laugh at the plaintiff, who became very uncomfortable and asked for the fan back, saying she could fan herself. Mr. Martinez refused and continued to fan her. Dr. Polonsky examined Ms. Sanchez-Scott while she was undressed from the waist up, while Mr. Martinez sat beside the examining table and watched. Only when she went to the reception desk after her exam was over did Ms. Sanchez-Scott learn that Mr. Martinez was a drug salesman, and not a trained medical professional. Ms. Sanchez-Scott explained that she felt uncomfortable and embarrassed and cried from shame and anger once she left the doctor's office.

Judge Kuhl found that the plaintiff could not sustain an action for an invasion of privacy against the doctor because what happened to her did not meet the test of being "highly offensive to a reasonable person." She reasoned that Ms. Sanchez-Scott had been introduced to Mr. Martinez, knew he was there and could have made further inquiry about who he was or object to his presence. She also found relevant that there was no touching, and that nobody else found out about the presence of the drug salesman in the exam room. She also explained that because the patient would not have a reasonable expectation that a medical procedure would only be observed by a doctor, there could be no expectation of privacy. The appellate court ridiculed her reasoning and allowed the plaintiff to continue with her invasion of privacy claims against her doctor.

Again, at her hearing, Judge Kuhl's answers were misleading. When questioned about this case by Senator DURBIN, Judge Kuhl tried to make herself seem sympathetic to Ms. Sanchez-Scott's plight. She told Senator DURBIN that she could understand why the plaintiff was upset, that she had good reason to be upset. But Judge Kuhl misstated crucial facts about the case that would have shed a clearer light on her legal ruling. She told Senator DURBIN that the plaintiff's claim for invasion of privacy against the doctor was permitted to go forward, an assertion that is simply not true. Later, in a letter to Senator HATCH, she did correct herself, but the impression she tried to leave at the hearing was contrary to the facts. If her ruling in the Sanchez-Scott case had been allowed to stand, the case against the doctor for an invasion of privacy would not have been able to go forward. I know this sounds like nitpicking about a minor procedural issue, but it is more than that. It is about her sensitivity to privacy issues, her ability to follow the law, and her pattern of trying to spin her negative positions to her benefit at her hearing.

Ms. Sanchez-Scott does not see it as nitpicking either. In a letter she wrote to the Committee about her experience in Judge Kuhl's court, she expresses her opposition to rewarding the judge with a promotion to the federal court. She tells us that, "[a]s a cancer survivor, I trusted that my doctor would make decisions in my best interest . . . I was . . . shocked and dismayed that Judge Kuhl determined that I, not the doctor, had the obligation to protect my privacy in his exam room."

This President talked about being a uniter, not a divider, yet he has failed to work with all home-State Senators to identify qualified candidates who can be supported by both sides. A recent opinion piece in the Washington Post had it right when it said that rather than promoting "bipartisanship," which this President said he wanted, he has instead promoted "hyper-partisanship." I hope—for the sake of our country and the independence of the judiciary—that the White House and the Senate majority decide to work with Democratic Senators to identify qualified, mainstream nominees who can be supported by all sides and to abandon their quest to pack the circuit courts with activists and ideologues.

I ask unanimous consent that several letters in opposition be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CALIFORNIA LEGISLATURE,
Sacramento, CA, February 11, 2003.

Re Oppose the nomination of Carolyn Kuhl to the Ninth Circuit Court of Appeals.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: We are writing as members of the Judiciary Committee of the California Assembly to urge you to oppose the nomination of Judge Carolyn Kuhl to serve on the Ninth Circuit Court of Appeals. We believe that Judge Kuhl's record indicates that her opinions would potentially threaten laws protecting California's environment and civil rights, and the rights of our citizens to privacy and reproductive choice. As part of President Bush's effort to nominate numerous ultra conservative judges to lifetime positions on the federal bench, this nomination represents an unacceptable risk to our state and the nation.

Judge Kuhl's nomination is opposed by more than 40 organizations representing civil rights, religious, environmental, reproductive rights and labor organizations, including the Sierra Club, National Organization for Women, California Abortion Rights Action League, National Women's Law Center, People for the American Way, and the Alliance for Justice among others. Their concerns run the gamut from Judge Kuhl attempting to close off access to the courts by overturning the doctrine of associational standing (the right of organizations to file suit on behalf of their members), to convincing the Reagan administration during her tenure with the Justice Department of attempt overturning Roe v. Wade. As a private attorney she argued in support of regulations prohibiting doctors and health care professionals at federally-funded clinics from counseling women about abortion, or even informing them that abortion was a legal medical option.

Still other of Judge Kuhl's positions show just how far she is from the mainstream of legal thought on issues of concern to most Californians. For example, Judge Kuhl was one of two Justice Department officials who convinced the Attorney General to reinstate the tax exempt status for the segregationist Bob Jones University. This position was opposed—in writing by more than 200 lawyers in the Justice Department's civil rights division, and was even opposed by President Reagan's Solicitor General, Ted Olson.

As a California state trial court judge, Judge Kuhl has not generally written published decisions. However, several published cases cause us concern about her willingness to protect the basic rights of individuals. For example, in one case Judge Kuhl dismissed a breast cancer patient's claim of invasion of privacy after her doctor brought drug company representative into the room during a breast exam. This ruling was reversed on appeal. In still another controversial decision, Judge Kuhl dismissed a case brought under California law enacted to prevent suits against whistleblowers and others acting in the public interest. The California appellate court again reversed Judge Kuhl's decision calling it "a nullification of an important part of California's anti (abusive lawsuit) legislation."

Finally, in her career Judge Kuhl has been aligned with some of the most ideologically intransigent and far-right elements of the Republican Party. She is a member of the Federalist Society, which seeks to establish an ultra-conservative federal bench. We believe that placing Judge Kuhl on the Ninth Circuit Court of Appeals would be a grave error that would threaten California law and place a relatively young and ultra-conservative jurist in a lifetime position on one of the most important courts (after the Supreme Court) for our state. We urge you to oppose her nomination as forcefully as possible.

I thank you for considering our views.

Sincerely yours,

ELLEN CORBETT,
Chair, Assembly Committee on Judiciary.

CALIFORNIA WOMEN LAWYERS,
Sacramento, CA, March 26, 2003.

Re opposition—Carolyn Kuhl appointment.

Senator DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing on behalf of California Women Lawyers (CWL) to inform you of CWL's opposition to the confirmation of the nomination of Los Angeles Superior Court Judge Carolyn Kuhl to the Ninth Circuit Court of Appeals. As you may know, CWL is a statewide organization of women attorneys dedicated to advancing the interests of women, both in the legal profession, and in society, through education, legislation and advocacy. CWL supports a fair and balanced judicial nominating process and process and opposes an extreme right-wing federal bench engaged in ultra-conservative judicial activism.

CWL supports the appointment of federal judges who are open-minded, view the constitution as a living document and who are committed to the role of federal courts in protecting civil rights and individual liberties, and in guaranteeing due process, equal protection of the law, the right of privacy and access to justice. We believe that Judge Kuhl's record indicates she is unsuited for a position on the Ninth Circuit bench.

Judge Kuhl is a longtime member of The Federalist Society and adheres to the ultra-conservative philosophy espoused by that group. While working at the Department of Justice, Ms. Kuhl vigorously supported tax-exempt status for Bob Jones University, despite its history of racial discrimination. Ms. Kuhl has also argued in favor of overturning Roe v. Wade, as well as onerous regulations burdening abortion rights. While on the Superior Court bench, her decisions have been reversed by the California Courts of Appeal for restricting the rights of individuals to sue to protect their privacy and to protect themselves from harassment suits under California law decisions which she based on her narrow interpretation of statutes which clearly favor such individual rights.

Ms. Kuhl's record reveals that she is wedded to an extremist philosophy that is far removed from the beliefs of most Americans. Our nation deserves a federal court pledged to upholding constitutional rights secured through Supreme Court precedents and embodied in civil rights statutes. CWL therefore urges you to not support Ms. Kuhl's nomination.

Sincerely,

ANDREA CARLISE,
CWL President.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, DC, May 7, 2003.

Re Oppose the confirmation of Carolyn Kuhl.

Hon. ORRIN G. HATCH,
Chair, Senate Judiciary Committee, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the confirmation of Carolyn Kuhl to the United States Court of Appeals for the Ninth Circuit. Our review of Judge Kuhl's record indicates that her positions, opinions, and legal activities in the areas of civil rights and equal opportunity, and the rights of women, workers, and consumers, are troublesome and raise serious questions about her commitment to equal justice and civil rights for all Americans.

First, we are very concerned about Judge Kuhl's record on civil rights and equal opportunity, particularly on the issue of whether the federal government should subsidize institutions that practice racial discrimination. Judge Kuhl was one of three Reagan Justice Department officials who persuaded the Attorney General to reverse prior policy and support the granting of tax-exempt status to Bob Jones University, despite its racially discriminatory policies, in its brief in Bob Jones University v. United States, 461 U.S. 574 (1983). More than 200 Justice Department lawyers, the solicitor general, and the Treasury Department general counsel objected to the change of position that Kuhl advocated. According to the New York Times (May 1983), Kuhl was one of three characterized as a "band of young zealots" who urged the change in policy. By an 8–1 vote, the Supreme Court rejected Kuhl's position and upheld the IRS denial of tax exempt status to Bob Jones University.

In addition, we are troubled by Judge Kuhl's work urging the Supreme Court to overrule its precedent on "associational standing." In International Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Brock, 477 U.S. 274 (1986), Kuhl not only argued that the requirement for associational standing had not been met in the particular case, but went on to urge the Supreme Court to overturn the doctrine of associational standing altogether, except in the most extraordinary circumstances. This view, if adopted, would have had a catastrophic affect on the ability of civil rights and other groups to file lawsuits on behalf of their members in order to vindicate their legal rights.

While at the Justice Department, Kuhl was also involved in a troubling effort to limit the reach of sexual harassment doctrine. As Deputy Solicitor General, she co-authored an amicus curiae brief in the landmark sexual harassment case of Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), asserting a position on sexual harassment which, had it been adopted, would have made it more difficult for women to prove sexual harassment in the workplace. In a unanimous opinion authored by then-Justice William Rehnquist, the Court rejected as incorrect the focus in Kuhl's brief of the "voluntariness" of the alleged sexual conduct, instead making clear that the test is whether the sexual conduct was "unwelcome." Kuhl was also part of the Reagan Administration's effort to restrict the remedies that courts can order in the case of employment-related discrimination in violation of Title VII. In Local 28 of the Sheet Metal Workers' International Ass'n v. EEOC, 478 U.S. 421 (1986), Kuhl co-authored a brief on behalf of the EEOC advocating the extreme theory that relief in Title VII cases can be granted only to identifiable victims of discrimination. This theory, rejected by the Supreme Court, would have significantly limited the ability of the courts to provide effective remedies for past and persistent discrimination.

Kuhl's record also reveals a troubling tendency to favor corporate interests, at the expense of workers and consumers. As a lawyer in private practice, Kuhl argued on behalf of two major defense contractors that the qui tam provision of the False Claims Act, which allows private individuals to sue corporations that committed fraud against federal government programs, was unconstitutional. See United States ex rel. Rohan v. Litton Industries, Inc., No. 92–55546 (9th Cir.). As a judge, she dismissed a case brought under a California law enacted to prevent suits against whistleblowers and others acting in the public interest. The California appellate court reversed Kuhl's decision in unusually strong terms, calling it "a nullification of an important part of California's anti-[abusive lawsuit] legislation." Liu v. Moore, 69 Cal. App. 4th 745, 748 (1999). Kuhl also dismissed a claim brought by a breast cancer patient whose privacy was invaded when a drug salesman who misrepresented his identity participated in her doctor's examination of her breasts. On appeal, the Court of Appeals unanimously found in favor of the plaintiff, reversing Kuhl's decision. See Sanchez-Scott v. Alza Pharmaceuticals, 86 Cal. App. 4th 365 (2001).

In sum, Judge Carolyn Kuhl's views on important civil rights issues, particularly with regard to equal opportunity and the rights of workers and consumers, are outside the mainstream. Her work as a Justice Department official, in private practice, and as a California judge reflects a lack of commitment to core constitutional values and to upholding equal rights for all Americans. Therefore, we urge the Judiciary Committee to reject the confirmation of Carolyn Kuhl to the Ninth Circuit Court of Appeals. If you have any questions or need further information, please contact Nancy Zirkin, LCCR Deputy Director/Director of Public Policy at (202) 263–2880, or Julie Fernandes, LCCR Senior Policy Analyst, at (202) 263–2856.

Sincerely,

Wade Henderson.
Dr. Dorothy L. Height.

Planned Parenthood Federation of America—Statement Regarding the Nomination of Carolyn Kuhl to the Ninth Circuit Court of Appeals

The Planned Parenthood Federation of America (PPFA), the world's largest and most trusted voluntary family planning organization, has a long-standing history of working to ensure the protection of reproductive rights as well as working to advance the social, economic, and political rights of women. Because lower federal courts exercise enormous power in deciding cases involving women's rights, the right to privacy, reproductive freedoms, and other basic civil rights, PPFA believes that judges appointed to these courts must demonstrate a commitment to safeguarding these fundamental rights. PPFA will oppose confirmation of nominees who fail to do so.

We believe that California Superior Court Judge Carolyn Kuhl's record demonstrates that she is not committed to protecting these rights. Therefore, PPFA opposes her nomination to the United States Court of Appeals for the Ninth Circuit.

Judge Kuhl held various positions in the U.S. Department of Justice during the Reagan administration. From 1982 to 1985, Kuhl held the appointment of Deputy Assistant Attorney General for the Civil Division. During her tenure in that position, the Supreme Court agreed to hear Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986), a challenge to several Pennsylvania abortion restrictions. The Reagan administration filed a brief in Thornburgh that not only supported the Pennsylvania restrictions, but also called for an outright reversal of Roe v. Wade: "Indeed, the textual, doctrinal and historical basis for Roe v. Wade is so far flawed, and . . . is a source of such instability in the law that this Court should reconsider that decision and on reconsideration abandon it."

The Acting Solicitor General at the time the Thornburgh brief was filed, Charles Fried, wrote, in his book, Order and Law, that when he was considering what position to take in the case, "[t]he most aggressive memo came from my friends Richard Willard and Carolyn Kuhl in Civil, who recommended that we urge outright reversal of Roe."

In addition, when in private practice, Kuhl chose to serve as counsel for the American Academy of Medical Ethics in Rust v. Sullivan, 500 U.S. 173 (1991), the case challenging the "gag rule"—federal regulations promulgated by the Bush I administration that prohibited health care professionals at family planning clinics that receive funding from the Title X program from counseling women about abortion—or even providing non-directive counseling that informed them of abortion as an option. Kuhl's brief argued that this prohibition did not violate the rights of the health care providers and their patients.

Given Kuhl's record demonstrating animosity towards reproductive rights, PPFA joins other organizations concerned with women's rights and civil rights in opposing her nomination to the Ninth Circuit Court of Appeals.

Taxpayers Against Fraud,
The False Claims Act Legal Center,
Washington, DC, April 3, 2003.

Re Judge Carolyn Kuhl.

Chairman Orrin G. Hatch,
Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC

Senator Patrick J. Leahy,
Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC

Dear Chairman Hatch and Senator Leahy: Taxpayers Against Fraud, the False Claims Act Legal Center ("TAF"), opposes the appointment of Judge Carolyn Kuhl to a position on the United States Court of Appeals for the Ninth Circuit. TAF's opposition is based on Judge Kuhl's apparent effort to deceive the Ninth Circuit in U.S. ex rel. Rohan v. Newbert (No. 92–55546). Judge Kuhl is effect represented to the Court that the Justice Department had questioned the constitutionality of the whistleblower ("qui tam") provisions of the False Claims Act ("FCA"), when in fact this was untrue.

In 1989, a memorandum was prepared in the Office of Legal Counsel of the Department of Justice questioning the constitutionality of the FCA. However, the views are set forth in that memorandum ("OLC Memo") were not adopted by the Department or advanced by the Department in FCA cases.

Despite the fact that the OLC Memo did not represent the views of the Justice Department, Kuhl, in her capacity as counsel for Litton Systems, Inc., submitted it to the Ninth Circuit, citing it in support of her arguments that the qui tam provisions of the FCA are unconstitutional and implied that the OLC Memo set forth the views of the Justice Department. The Department was not a party in the case, but learned of the misrepresentation of its views and submitted a letter to the Clerk of the Ninth Circuit setting the record straight.

We at TAF are deeply disturbed that Judge Kuhl would attempt to mislead the Ninth Circuit, the court to which she now aspires, about the views of the Department of Justice, regarding the constitutionality of an act of Congress. TAF believes her stunning lack of candor disqualifies her from service on that court.

James W. Moorman,
President.

Mr. FRIST. Mr. President, I ask unanimous consent that the next two votes be 10-minute votes.

The PRESIDING OFFICER. Without objection, it is so ordered.

By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 169, the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit, shall be brought to a close.

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Florida (Mr. NELSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 53, nays 43, as follows:

[Rollcall Vote No. 451 Ex.]

YEAS—53

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Chafee
Chambliss
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeWine
Dole
Domenici
Ensign
Enzi
Fitzgerald
Frist
Graham (SC)
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Kyl
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Voinovich
Warner

NAYS—43

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Byrd
Cantwell
Carper
Clinton
Conrad
Corzine
Daschle
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Graham (FL)
Harkin
Hollings
Jeffords
Johnson
Kennedy
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Mikulski
Murray
Pryor
Reed
Reid
Rockefeller
Sarbanes
Schumer
Stabenow
Wyden

NOT VOTING—4

Edwards
Inouye
Kerry
Nelson (FL)

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

NOMINATION OF JANICE R. BROWN, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 455, the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin G. Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad R. Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

Mr. LEAHY. Mr. President, the opposition to Justice Brown for a lifetime position on the D.C. Circuit is deep and wide and is based on her record, both on and off the bench. As anyone who was watching C–SPAN last night and the night before would know, the Republicans are using the judicial nomination process in a manner that divides rather than unites. As the San Francisco Chronicle wrote, "Presidents typically shape the judiciary to reflect their own views. But with Charles Pickering, Priscilla Owens, William Pryor, Miguel Estrada and now Brown, Bush seems bent on stacking the bench with ideologues."

For this particular nominee, Janice Rogers Brown, the White House political operatives and ideologically driven selection staff reached out 3,000 miles to find a nominee who has repeatedly received negative ratings, who has been criticized by her Republican colleagues on the bench, and who has emerged from the Senate Judiciary Committee on a party-line vote. As Justice Brown's home State newspaper, the San Francisco Chronicle, wrote: "naming Janice Rogers Brown to the U.S. Circuit Court of Appeals for the D.C. Circuit, President Bush has again chosen a contrarian with a judicial philosophy that lies well outside the bounds of the mainstream." Even the Washington Post, which has been very sympathetic to this Administration and, in particular, to its court-packing efforts on the D.C. Circuit, has written that Janice Rogers Brown "is one of the most unapologetically ideological nominees" in many years.

As the nominee herself conceded at the end of her confirmation hearing, she was "treated with great courtesy" by the Members of the Judiciary Committee. Thereafter, this was a nomination rushed out of the Committee last week before the ink was dry on nonresponsive answers to Senators' questions, and during Senate floor debate on another highly divisive judicial nominee, before a full Committee debate could be held. The District of Columbia Circuit is too important to the rights of all Americans to be left to judges whose ideological bias would lead them to gut the environmental protections, workplace protections, consumer protections and other government regulations authorized by Congress to protect all Americans.

In my statement at the outset of her confirmation hearing less than one month ago, I urged partisans to end the ugly game of contending that any criticism of the record of a Bush judicial nominee had to be motivated by bigotry. I asked that the right-wing tactic of smears and name calling subside and that we not see the race card dealt from the shameful deck of unfounded charges that stalwarts of this President's most extreme nominees have come to rely upon as they further inject partisanship and politics into the appointment of Federal judges. I noted that I expected that those who ultimately decided to support Justice Brown, even though they oppose affirmative action, would do so because they believed she would be a fair Federal judge. I suggested that those who opposed her because they retained serious doubt about her nomination and are concerned that she was selected on ideological grounds, could oppose her nomination for principled reasons having nothing to do with race. I urged that we focus on substance at the hearing and in this process.

My plea went unheeded, so that, first, I must, again, briefly respond to the partisan smears and name-calling that I have been hearing from the other side of the aisle. We have heard the ridiculous charges that we are opposing Justice Brown because of her gender or her race. My opposition to this nominee has nothing to do with her race; it is has nothing to do with her gender. It is about what kind of a lifetime appointment to the District of Columbia Circuit I fear she would be.

If Democrats were making decisions based on the gender of the nominee, would we have confirmed 33 judges nominated by President Bush who are women, including seven to the Courts of Appeal? Would we have worked so hard during the Clinton years to increase gender diversity on the bench and fight for votes for Bonnie Campbell, Elena Kagan and the scores of women nominees who were blocked and delayed by anonymous Republican holds? Would we be urging President Bush to work with us to find outstanding women judges and lawyers to increase gender diversity on the Federal bench? Do our critics really contend that Senators MIKULSKI, FEINSTEIN, BOXER, MURRAY, LANDRIEU, LINCOLN, CANTWELL, CLINTON, and

STABENOW are anti-woman, or that Senators KENNEDY, BIDEN, HARKIN, REID or any other Democratic Senators would discriminate against women? This is a smokescreen, intended to obscure this nominee's stark record.

If Democrats were making decisions based on the race of the nominee, why would we have voted to confirm 13 African-American judges nominated by President Bush, including all four of the other African Americans nominated by President Bush to the appellate courts? Would we have confirmed Lavenski Smith to the 8th Circuit? Would we have fought so hard for two Congresses to confirm Roger Gregory and integrate the 4th Circuit? Would we have worked with Senator EDWARDS to confirm Allyson Duncan to the 4th Circuit? For that matter, would we have been so outraged at the Republicans' treatment of Justice Ronnie White, Judge Beatty, Judge Wynn, Kathleen McCree Lewis and so many outstanding African-American judges and lawyers who the Republicans blocked from confirmation during the Clinton years? These claims of racism are irresponsible and false. These ploys are wrong, and they should stop.

In fact, the list of the African-American organizations and individuals who oppose Justice Rogers Brown's nomination is one of the most troubling indications that this is another divisive, ideologically driven nomination. Are we to believe that the 39 members of the Congressional Black Caucus are racist? Members of the Congressional Black Caucus include the respected congressional delegate from the District of Columbia ELEANOR HOLMES NORTON, the chair of the Congressional Black Caucus, the Honorable ELIJAH CUMMINGS, and such distinguished Americans as Representatives CHARLES RANGEL and JOHN CONYERS. In addition the Nation's oldest and largest association of predominantly African-American lawyers and judges, the National Bar Association, and its State counterpart, the California Association of Black Lawyers both oppose this nomination.

The foremost national civil rights organization, the Leadership Conference on Civil Rights opposes this nomination. The women of Delta Sigma Theta oppose this nomination. Dr. Dorothy Height, Dr. Joseph Lowery and Julian Bond have spoken out against this nomination.

Justice Brown has a lengthy record, of opinions, of speeches and of writings. She has very strong opinions, and there is little mystery about her views, even though she sought to moderate them when she appeared before the Judiciary Committee.

I come to my decision after reviewing Justice Brown's record—her judicial opinions, her speeches and writings—and considering her testimony and oral and written answers provided to the Senate Judiciary Committee.

Now, Justice Brown's supporters will say we are opposing Justice Brown because her viewpoint is different than ours on social issues. But my opposition is not about whether Justice Brown would vote like me if she were a member of the United States Senate on issues of importance. This is not about her position on choice. This is not about one dissent or one speech. This is about Justice Brown's approach to the law—an approach which she has consistently used to promote her own ideological agenda, an extreme agenda that is out of the mainstream. Her approach does not entitle her to a lifetime appointment to this very important appellate court.

Janice Rogers Brown's approach to the law can be best described as a "jurisprudence of convenience." What do I mean by that? Justice Brown has proven herself to be a results-oriented, agenda-driven judge whose respect for precedent and rules of judicial interpretation change depending on the subject matter before her and the results she wants to reach.

While Justice Brown's approach to the law has been inconsistent—she has taken whatever approach she needs to in order to get to a result she desires—the results which she has worked toward have been very consistent—throughout her public record. Some of Brown's supporters, and in fact Justice Brown herself, have tried to detract attention from the ideas she has expressed in speeches—while she was a member of the bench—claiming they are "just speeches." Well, that is a hard distinction to follow when Justice Brown's comments to groups across the country over the last 10 years repeated the same themes—in fact, sometimes even the same words—as she has written in her opinions.

In Santa Monica Beach v. Superior Court of L.A. County, Justice Brown wrote of the demise of the Lochner era, claiming "the 'revolution of 1937' ended the era of economic substantive due process but it did not dampen the court's penchant for rewriting the Constitution." Similarly, in a speech to the Federalist Society, she said of the year 1937—it "marks the triumph of our own socialist revolution."

In San Remo Hotel v. City and County of San Francisco, Justice Brown wrote, "(t)urning a democracy into a kleptocracy does not enhance the stature of the thieves; it only diminishes the legitimacy of the government." Similarly, two years earlier, she told an audience at the Institute for Justice, "If we can invoke no ultimate limits on the power of government, a democracy is inevitably transformed into a kleptocracy—a license to steal, a warrant for oppression."

As Berkeley Law School Professor Stephen Barnett pointed out about Justice Brown's "apparent claim that these are 'just speeches' that exist in an entirely different world from her judicial opinions," "that defense not only is implausible but trivializes the judicial role." I agree with Professor Barnett on this and understand his determination to oppose her nomination. Justice Brown's provocative speeches are disturbing in their own right, and they are made more so by their reprise in her opinions.

Justice Brown now says that she will "follow the law." However, in a judicial dissent, she wrote, "We cannot simply cloak ourselves in the doctrine of stare decisis."

One of the examples of Justice Brown's results-oriented jurisprudence can be seen in the way she has disregarded precedent in her opinions in order to expand the rights of corporations and property owners, at the expense of workers and individuals who have been the victims of discrimination. In several dissents, Justice Brown called for overturning an exception to at-will employment, long recognized by the California Supreme Court, that was created to protect workers from discrimination. She has repeatedly argued for overturning precedent to provide more leeway for corporations against attempts to stop the sale of cigarettes to minors, prevent consumer fraud, and prevent the exclusion of women and homosexuals.

Justice Brown has also been inconsistent in the application of rules of judicial interpretation—again depending on the result that she wants to reach in order to fulfill her extremist ideological agenda.

These legal trends—her disregard for precedent, her inconsistency in judicial interpretation, and her tendency to inject her personal opinions into her judicial opinions—lead to no other conclusion but that Janice Rogers Brown is—in the true sense of the words—a judicial activist.

When it is needed to reach a conclusion that meets her own ideological beliefs, Justice Brown stresses the need for deference to the legislature and the electorate. However, when the laws—as passed by legislators and voters—are different than laws she believes are necessary, she has advocated for judicial activism.

One stark example springs to mind: In order to support her view that judges should be able to limit damages in employment discrimination cases, she concluded that "creativity" was a permissible judicial practice and that all judges "make law."

Justice Brown's approach to the law has led to many opinions which are very disturbing. She has repeatedly and consistently advocated turning back the clock 100 years to return to an era where worker protection laws were found unconstitutional. She has attacked the New Deal, an era which created Social Security and labor standards, by saying it "inoculated the Federal Constitution with a kind of underground collectivist mentality."

And she has repeatedly opposed protections against discrimination of individuals—in their jobs and in their homes. Justice Brown's recent claims that her words do not mean what they say are simply unconvincing.

There is one more aspect of Justice Brown's nomination which is extremely disturbing. That has to do with the court for which she was nominated. She is being considered for a position on the premier administrative law court in the Nation—a court that is charged with overseeing the actions of Federal agencies that are responsible for worker protections, environmental protections, consumer safeguards, and civil rights protections.

I am concerned about her ability to be a fair arbitrator on this court. Justice Brown has made no secret of her disdain for government. She has said, "where government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies."

How can someone who believes it is not the "job of government to take care of" the American people be entrusted to make fair and neutral decisions when faced with the responsibility of interpreting the powers of the Federal Government and the breadth of regulatory statutes? Justice Brown responded to this question at her hearing by calling on us to review her record as a judge to see that she does not "hate Government." Well, I did review her record. And, what I found was disturbing: She has used her position on and off the bench to argue for the dismantling of government from the inside out.

It is no small irony that this President, who spoke of being a uniter but has used his position to send judicial nominations that divide the Senate and the country, and who spoke with disdain of "judicial activism," has nominated several of the most consummate judicial activists ever chosen by any President. None of the President's nominees is more in the mold of judicial activist than this nominee, Janice Rogers Brown.

I am voting against Justice Borwn's nomination today because the American people deserve judges who will interpret the law fairly and objectively. Janice Rogers Brown is a confirmed and committed judicial activist who has a consistent record of using her position as a member of the court to advocate for her personal belief. We must not enable her to bring her "jurisprudence of convenience" to one of the most important courts in the Nation.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Florida (Mr. NELSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 53, nays 43, as follows:

[Rollcall Vote No. 452 Ex.]

YEAS—53

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Chafee
Chambliss
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeWine
Dole
Domenici
Ensign
Enzi
Fitzgerald
Frist
Graham (SC)
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Kyl
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Voinovich
Warner

NAYS—43

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Byrd
Cantwell
Carper
Clinton
Conrad
Corzine
Daschle
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Graham (FL)
Harkin
Hollings
Jeffords
Johnson
Kennedy
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Mikulski
Murray
Pryor
Reed
Reid
Rockefeller
Sarbanes
Schumer
Stabenow
Wyden

NOT VOTING—4

Edwards
Inouye
Kerry
Nelson (FL)

The motion was rejected.

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent we proceed to a period for morning business with Senators permitted to speak therein for up to 10 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Washington.

THE UNEMPLOYMENT PROBLEM IN AMERICA

Ms. CANTWELL. Mr. President, we just completed 30 hours of debate on judicial nominees, an obviously important debate for all Members who participated. But it is time for us to address the unemployment problem in America, and the fact that this body cannot adjourn for the year without passing an unemployment benefit extension.

Many of my colleagues will remember last year we were at this same point, when unemployment benefits were going to expire in December. We had a debate about whether that was necessary to do by the time we adjourned. I can tell you that not a lot has changed in Washington State. We still have 7.6-percent unemployment and a very high level at the national level, at 6 percent. Americans want to know whether they are going to have an extension of those benefits.

During the Bush and Clinton administrations we extended unemployment benefits for an extension of over 30 weeks during that time period because we thought it was important to make sure people were covered. During the economic downturn, unemployment benefits are a stimulus. For every dollar spent on unemployment benefits it generates $2.15 as far as the economy—that is mortgage payments that can be made, health care benefits that can be extended.

While my colleagues think last year's solution of coming back in January and fixing this unemployment benefit problem was a solution, I guarantee it was not. Adjourning from here without expanding unemployment benefits is like putting a lump of coal in the stockings of Americans at Christmastime.

There were individuals in my State who, because of the failure of us acting, really did make economic choices about their future. I had a constituent who took a big chunk out of her pension program at a 30-percent penalty, basically trading her long-term economic future off for short-term returns because we hadn't given her a commitment on unemployment benefits.

UNANIMOUS CONSENT REQUEST—S. 1853

I ask unanimous consent the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment benefit insurance for displaced workers, and that the Senate proceed to its immediate consideration, that the bill be read a third time and passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection? The Senator from Nevada.

Mr. ENSIGN. Reserving the right to object, I ask unanimous consent that I may ask the Senator from Washington a question while reserving my right to object.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENSIGN. Mr. President, in asking this question, is the Senator from Washington aware, back in 1993 when the Democrats controlled the House, the Senate, and the White House the rate of unemployment was higher than it is today and that every Democrat in the House and the Senate and the President signed a bill to terminate the program when the unemployment rate was higher? Is the Senator from Washington aware of that fact?

Ms. CANTWELL. I am not aware to what the Senator from Nevada is referring. I know during the Bush and Clinton administrations, with a richer package of 20 weeks after a Federal program on extension, richer than the 13 weeks that we have now, we extended that over a 30-month period of time.

So far this administration has only done that over a 22-month period of time. While we all want the economy to recover, and we all want to put Americans back to work—I guarantee these individuals would rather have a paycheck than an unemployment check—we need to do a better job making sure that we are making a commitment to unemployment benefits before we adjourn for the session.

We just spent all this time debating judicial nominees. I think it was a hardy debate on both sides. But let's give the American people and those who are suffering from unemployment the benefit of knowing that they will get this benefit extension before we adjourn.

Mr. ENSIGN. Mr. President, the fact is, when the Democrats were in control of all three bodies, the Democrats terminated the program of extending unemployment benefits at the Federal level. They terminated the program.

More people were unemployed at that time when they terminated the program. It is good enough today. The economy is recovering. It is producing jobs. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Pennsylvania.

JUDICIAL NOMINATIONS

Mr. SANTORUM. Mr. President, I just want to thank all of the Members, particularly on this side of the aisle, for the terrific level of debate we have seen over the past 40 hours. I was amazed, yesterday, sitting both here and in my office, and seeing Member after Member come to the Senate floor. I have never seen a debate where more of our Members came to the floor to let their views be known to the American public, of how important this issue is to the future of our country, the issue we just voted on, the issue of judicial nominations.

I was stunned. I thought we would have to scurry around and have sort of a core of people who were willing to come to the floor and fill up the time. But for 40 hours, 39-plus hours, we had no problem. In fact, at 5 o'clock in the morning, Senator CHAMBLISS and I were arguing over 5 minutes, who was going to get the extra 5 minutes because there was such enthusiasm for a cause that we felt was just. It was not a small group.

Some in the media suggested that there was some division over here as to whether to take on this strategy. I would say, just look at the response of our membership. They came to the floor. They came with passion. They came with a conviction that what we were arguing for was the right thing for the country. Maybe it was not the right thing for us politically. We had that debate about having a higher standard for judges, higher than a simple majority, a three-fifths majority, which is now the rule. I think this debate and the votes today have cemented that.

Now the standard will be that you have to have 60 percent of the Senate in order to be a Federal judge. We have made that the rule. So the 214-year history is now gone.

We had a great debate about it. The rule has changed. I thank all who participated on both sides. I thank the staff, the pages, the staff here on the floor—the floor staff, which has been rotating, but even rotating these jobs were not made for three shifts. We don't have three-shift jobs. This is a one-shift operation and they had to work three shifts. They did a great job—the folks in the cloakroom, the Judiciary Committee, all the leadership staff. I particularly thank the staff of the Republican conference—Mark Rogers and Barbara Leeden and Elizabeth Keys, Robert Traynham, Melissa Seckora—all the staff who have worked so hard, holding press conferences in the middle of the night.

Gosh, we had press conferences, 1:30, 2:30, 3:30, 4:30, 5:30, 6:30 in the morning, every hour.

All the outside groups who were concerned about the future of our country and concerned about the future of the judiciary came to Washington. I remember walking in late in the evening on Wednesday evening, and in the rain, in the wind, people lined up outside the Capitol to get into the Capitol to be here on Wednesday night because they knew this was a debate that had real significance because they knew this was a debate that is going to have a place in history.

By affirming what has happened four times before today, now five, now six—that 168-to-4 chart, that 98 percent chart—that is now history; 168 to 6. That is not even accurate because there are 6 more they have said they will filibuster.

Obviously, when the minority leader says there is going to be a filibuster, you get the ducks in a row. They have been able to do that and do it successfully.

So it is now 168 to 12. Of course, we just started that this year. There have only been four, they say. This is the first time it has been done.

It is like a little ball, like dropping a pebble at the top of a large mountain. It shakes lose a couple of other pebbles. Pretty soon, over time this gets to be a boulder, an avalanche that is coming down and is going to hit the judicial branch of our Government.

I predict, if nothing is done to change the rule, the number will be in the hundreds within a couple of years, in the thousands and the tens of thousands as this country goes forward. Why? Because we have changed the way we consider nominations.

I am going to repeat what I said at the close of the debate because I still hope there is a chance that some Members will reconsider. There are Members on our side who have smiles on their faces, Members who care deeply about issues that are before the court today who have smiles on their faces because they say: Now we have the tool to stop activist judges. Now we have the tools we didn't have before. Now they have to get 60 percent of the vote for the judges, the Richard Paezes of this world and the Marsha Berzons of this world, and those who could come on and replace the document I hold in my hand, the Constitution, with their own view of the world.

What an activist judge is, is a little James Madison, just someone who thinks they can write their own Constitution. Madison didn't have the privilege of having all the knowledge that we have today about what is right and wrong. He didn't have the understanding that so many of our learned jurists have in doing what is right for the American people. So this guy, Madison—it was a pretty good first draft. There are many activist judges who think they can write a better Constitution, and they do so on a regular basis. What Madison thought would change the Constitution is something that is actually in the Constitution, and that is a procedure for amending the Constitution. But a lot of Members on the other side of the aisle don't believe we should have to bother with that rather cumbersome process in this fast-changing world in which we live. It just takes too much time. It is far too much effort. It involves having to convince the American public. Why should we bother with such folly?

We, the enlightened, the intellectuals, those who have reached the pinnacles of our professional occupations, we in the judiciary, we are the ones who should be able to lay out for future generations what should have been done for them.

So this elitist, activist corps—elitist in the most pejorative sense of the word "elitist"—are activist judges who take this document, light a match to it, and throw it away and say: We are a country of people, we are a country of people, not of laws.

That is what we are going to get more of. So what my colleagues believe we can do now is apply the same standard they have applied to Janice Rogers Brown, elected by 76 percent of the vote in the State of California; Priscilla Owen, elected by 84 percent of the people of the State of Texas; Carolyn Kuhl, William Pryor, Charles Pickering, Miguel Estrada—the list goes on and will go on. It will go on.

This is a huge tragedy, what happened here today. The point is, as the Senator from Iowa, Mr. HARKIN, when we came in the Chamber just 40-some hours ago had a sign held up: "I am going to watch 'The Bachelor'." That was funny. I chuckled. But true humor, good humor, really good and biting humor, always has an element of truth to it, doesn't it? It always has an element of truth. The element of truth here is that the other side does not want you to hear what is going on. They want you to go and watch "The Bachelor," tending to your business. We will take care of the business here. You need not mind what we do here. No, don't bother with us; we'll handle it. You could watch "The Bachelor." We will take care of the people's business here and don't bother with us.

Hopefully, some Americans paid attention. Hopefully, some Americans heard the debate that went on here in the Senate Chamber for the past 40 hours and heard very clearly that we have changed, potentially forever, the standard by which we will confirm judicial nominees. In so doing we eliminate those, not just from the right.

Let me assure you, my colleagues on the other side of the aisle, let me assure you we are not just eliminating those on the right, because what is good for the goose is good for the gander. When you twist and contort the law, it becomes the law for everybody. It is twisted and contorted in its ugliest sense, but it is there for all to see and there for all to use. Rest assured, it will be used. Whether it is by the Senator from Pennsylvania—I hope not because I hope never to be in the minority, and I hope never to have to serve under a Democrat President. That is obviously my objective. I hope I don't have the opportunity or the desire to ever use it. But I suspect someday, someone—either myself or someone who shares my philosophy and ideas of how this Government should be run and how the judiciary should behave—will take this tortured process that has been cemented today and use it against the very people you believe are mainstream, who the Democrats of the left believe represent the deep and wide channel that is the mainstream of American thought; people who believe that "under God" should not be in the Pledge of Allegiance, that deep, wide mainstream; people who believe this is a living document.

Let me interpret what that means. That is what you will hear a lot from those on the other side, that this is a living, breathing document. A living, breathing document? Yes. It is living and breathing, but it is not a document. It is a judge. When you hear "living and breathing," documents don't live and breathe. They say exactly what they mean. Documents written 214 years ago don't change by themselves. They don't breathe. They do not live. They were put there and put on paper for a reason—to provide stability to this country and certainty for those here in America who know their rights and who understand those rights throughout time. If we are to change these words, we do so through the process where the people of America—not some unelected few—have input into that process. It is called the amendment process to the Constitution which requires the Congress to act and three-quarters of States to affirm and ratify. That is how we change this document—not by appointing and confirming living, breathing judges to make it their own. That is what they have done.

They think now that they have a sufficient number of these folks on the court that they don't want any conservative judges. What is a conservative judge? A conservative judge is not someone who changes this document to reflect their ideology. I would not call that a conservative judge. I would not call that a judge for whom I would vote. That is not a conservative judge. I don't want a judge who is going to come in and contort the Constitution to my thinking. I want a judge who is going to live by what this Constitution says. It reflects the will of the people. That is what a conservative judge is. A conservative judge is someone who abides by the Constitution—not someone who sees it as a living, breathing document. Judges who are conservative are called "strict constructionists"—to strictly and narrowly construe controversies that are before them and decide cases in the narrowest sense—not to use a dispute between parties as an opportunity to legislate.

The Senator from Kansas, Mr. BROWNBACK, said at about 4:15 in the morning that what is really happening here is this new test is being introduced by Senators on the other side of the aisle—this ideological test.

Your job as a judge is to look at the disputes between parties, see the applicable law that has been passed by Congress, the State legislatures, or provisions in the Constitution and apply those to the factual circumstances before you. That is your job. If that is your job, then why should we be concerned about your ideology? That is a pretty fair question. If all you are supposed to do is look at the statutes and use the rules and the statutory constructions which are laid out, or look at the Constitution and refer to the interpretations of the Supreme Court with respect to that area of the law, then why at the district court or on the appellate court level should we be concerned about your ideology? It should not be a factor because you are simply applying the law. A liberal can apply the law just as easily as a conservative can apply the law and look at ideology.

Why should your political ideology have anything to do with it if that is all your job is? I don't mean to demean by saying "if that is all your job is." It is a very important job. It is an adjudicatory process. It is a very important process in our country. It is one of the three branches of Government. It is their responsibility to do that. It is not the responsibility of the Senator from Arkansas or Nevada to settle disputes and make decisions. We give that to people who study the law, understand it, and then make the decisions based upon it. We are the ones who create the law. We are the ones who have the great debates on what the law should be that they apply.

The President is the one who executes the law, and in the case of the judiciary appoints those who prosecute it.

I will say in conclusion that what is happening now with this political test is a recognition by the other side—an admission by the other side—that no longer are judges just there to try facts and apply the law, but they are there—in fact, the other side wants them to be there to change the law—not to apply the law but to change the law to reflect the ideology that is dominant on their side of the aisle. They do not want judges who will apply the law. They want judges who will make the law. You would think they would not want to give up their legislative prerogative. That is our prerogative. It is our job to make the law.

What they have found over the years is that the public will not buy a lot of stuff they want to sell. They can't get it done. What they have figured out is a way to avoid having to go through this cumbersome process of writing the laws, getting the public to go along with it, and having to stand for things that are unpopular, which is to just find people who will do it for them and they don't have to stand for election. We can get them in there and they are there for life. They can do our bidding because we can't get it done.

A very dangerous thing happened here today. It will not serve this country well. It will politicize the branch of the Government that heretofore has stayed fairly apolitical. It is a mistake.

I hope and pray that Americans will write and talk to their Members of the Senate, ask them, plead with them to stop this. Put this genie back in the bottle and put it away—throw it away. It is not good for America. It is not right for America. It has never been America. For 214 years we have kept politics out of the judiciary. Let us not politicize it. People are so tired of politics. They complain and rail about it all the time. What have we done here today? We have now injected a healthy dose of it into the judicial system.

May God help this country for what we have done today.

I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Arkansas is recognized.

NOMINATION OF J. LEON HOLMES

Mr. PRYOR. Mr. President, I want to again remind this Senate and my colleagues on both sides of the aisle about one of the judicial nominees who happens to be from my State of Arkansas, Mr. Leon Holmes.

Leon and I practiced law together in Little Rock for a few years in the late 1980s or early 1990s. He is a very fine person, a very fine man, and a very fine lawyer. I am proud to count him as a friend.

Let me emphasis that Leon Holmes and I don't agree on every single issue. There is no doubt that there are some things he and I disagree on. But I am very respectful of his views because I know that he has arrived at those views through long consideration. He is a man of great integrity and great judgment. President Bush nominated him in January of this year to be a district judge for the Eastern District of Arkansas.

Mr. Holmes is a practicing lawyer in Little Rock, and has been with a number of very prestigious law firms in his legal career. He is considered probably by most people one of the best lawyers in Arkansas, and certainly on certain types of cases would be considered among the best, if not the best. But at any rate, President Bush nominated him in January—if my memory is correct, January 25—and his nomination went to the Judiciary Committee. He came out of the Judiciary Committee on May 1.

For over 6 months now, Mr. Holmes has been languishing on the Executive Calendar. I am troubled as to why he has been languishing like that. I have talked to the Republican leader many times, to the Republican chairman of the Judiciary many times, and I have talked to my colleagues many times. Both Senators from Arkansas are quite puzzled as to why. We have had 30-plus hours of filibuster led by the Republican Party on some of these judicial nominations, and here we have a nomination that we want to proceed on. We want to move forward on that today. To date, there has not been anything scheduled.

UNANIMOUS CONSENT REQUEST

With that in mind, I would like to ask unanimous consent—I know that we will need a moment to allow someone to come out on the Senate floor—that at a time to be determined by the two leaders, the Senate proceed to executive session to consider Executive Calendar No. 165, the nomination of J. Leon Holmes of Arkansas to be U.S. district judge, that it be considered under the following time limitation: 5 hours for debate equally divided between the chairman and the ranking member, or their designees; that when the time is used or yielded, the Senate without any intervening action or debate vote on confirmation of the nomination; that the President be immediately notified of the Senate's action, and the Senate return to legislative session.

The PRESIDING OFFICER. The Chair informs the Senator from Arkansas that the leaders are trying to work out an agreement to bring this nominee to the floor, and at the current time, unfortunately, I will have to object in my capacity as a Senator from Nevada.

Mr. PRYOR. Thank you, Mr. President.

I have worked for months on this nomination.

Let me emphasis that Mr. Holmes was not my nomination. He is President Bush's nomination. I wasn't consulted in any form or fashion before the nomination was put forward. I wasn't brought into the loop at all. The nomination was handed to me. Unfortunately, I continue to work on this and for whatever reason my efforts seem to be falling on deaf ears on the Republican side.

Mr. DASCHLE. Mr. President, will the Senator from Arkansas yield for just a moment?

Mr. PRYOR. Absolutely.

Mr. DASCHLE. Mr. President, I appreciate the request made by the distinguished Senator from Arkansas. This is a matter that he and his colleague from Arkansas, Senator LINCOLN, have been involved in and supported for a long period of time. He and I have had a number of conversations. I want to make sure that the record is clear there will be no objection on this side to having votes on the nomination. We have had now 40 hours of debate where one Republican after another has come to the floor in an outcry that we haven't been able to have a vote on a judge, that we are denied the opportunity to have an up-or-down vote on a judge.

As we have said on 168 occasions, let us have the up-or-down vote. This one would be the 169th.

We are prepared this afternoon within the next hour to have a vote on the judge referenced by the distinguished Senator from Arkansas.

I appreciate very much his request. I certainly understand his frustration after all of the outcry that we have heard from our colleagues on the other side. It is amazingly ironic after all of that on a nominee for which there is absolutely no objection to moving to. I will oppose the nominee. I will vote against the nominee when it is presented to the Senate, but there is certainly no opposition within our caucus.

I want the record to be clear with regard to that point. Again, as I have on other occasions, I want to work with the majority leader for a very short time and have a vote. Let us have the vote. After all of this, you would think that the Republican caucus and the majority leader and others responsible for these decisions would jump at the chance of having a vote on the Holmes nomination.

We are ready. We will certainly not object to a time limit or to ultimately have an up-or-down vote, as the Senator from Arkansas has proposed.

Mr. PRYOR. Mr. President, I would like to reiterate what the minority leader has just said. There is no hold on the Democratic side on this nomination. All systems are go on this side. I have talked to my Democratic colleagues and we are ready to vote Mr. Holmes up or down.

Quite frankly, I know on a personal level that Mr. Holmes is ready to be voted up or down.

Again, thank you, Mr. President, for the time. I yield the remainder of my time. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, we have had a good 39 hours, I guess, of debate. It is great to see my friend from Texas here, Senator CORNYN, who served on the Texas Supreme Court and understands these issues and chairs the constitutional law subcommittee of the Judiciary Committee. I say it is good because we have had a very bad and very historic change in the procedures of the Senate.

After all this debate, I think it is doubtful anyone could maintain today that in previous years we did not have filibusters. And I don't think anyone could doubt that we now have sustained filibusters as an organized, systematic way to change the number of votes necessary to confirm a President's nomination from a majority of 51 to 60 votes. This is a big deal. It is not a good deal. It is not good for the Senate. It changes the historic balance of power. It enhances of power of the Senate.

Now the Senate can block a nomination with only 40 votes. It weakens the President, and it weakens the courts. It is a classical alteration of the balance of power established by our Founders when this country was created. It is not good. It was driven by politics. It is a further decline in civility and debate, and it is a greater increase in the influence of politics in the confirmation process. This Senate is not and should not be proud of what has occurred to date.

I am glad it was brought about with some pain. I am glad it just didn't slide in a banal way without any thought. I am glad there are Senators who stayed here all night last night. I was here past midnight. Some stayed here all night because they wanted to be sure they were on record and Americans understood what we have done. I think it ought to be seared on our souls what occurred here. Every Member of this body needs to think about it. We need to realize that this was not lightly done. There is no doubt that in the spring after the election of President Bush, Democratic Senators met in retreat and they had a conference with some liberal law professors. And as the New York Times reported on that retreat, the Senators decided to change the ground rules for confirmation. We have absolutely seen that.

We had nominees blocked in committee on a party-line vote in the Judiciary Committee when the Democrats had their brief period of majority. JIM JEFFORDS switched parties. We had nominees not brought up for hearing in committee. And we had filibusters on the floor to a remarkable degree.

I will just say that this is unhealthy. One of the things we had in the Judiciary Committee, in the courts subcommittee that I chaired and then Senator SCHUMER chaired after JIM JEFFORDS switched parties, and he began to have hearings on a number of things. He said the burden of proof should be on the nominee. That has not been the issue. So we had a hearing on the fact that the burden of proof should be on the nominee. We had a hearing that the Supreme Court was an extremist, activist, conservative court, which is so far from the truth, it is hard to believe it. That was the agenda of that.

The third thing most threatening to us and to our classical understanding of law was a hearing to say: Well, politics is involved in everything. We ought to ask judges all about their ideology, their politics. That should be openly a part of the confirmation process.

I felt so strongly against that. Lloyd Cutler, the White House counsel under President Carter and President Clinton, clearly and unequivocally rejected that. He said it would lead to the politicization of the courts. I practiced before Federal judges for nearly 15 years as a Federal prosecutor. I will just say that we have to believe—criminal defenders, civil litigants, prosecutors have to believe—that the judge who sits on their case will be able to set aside his or her personal political biases and ideas and beliefs, faithful beliefs, whatever; he will set them aside. When they go to that court, there will be a fair and objective trial, and they will be judged on the merits of the law and the facts and not what the judge thinks, not the politics of the judge.

Lloyd Cutler was correct, as every other witness was who testified at that hearing. We do not need to politicize the courts. We are heading in that way.

Senators are so political. They are driven so much by the special interest groups that they think and believe everything can be settled by political deal. They think courts operate that way. That is not the way they do. I practiced in court. You go to court. You offer to put evidence. Somebody objects. The judge reads the law, and he decides, well, if it meets the standard to come in or it is excluded. You don't admit half of it. It is either admitted or it is not admitted, as Judge Cornyn so ably knew, both as attorney general and as a member of the Texas Supreme Court. Those are things that go to the core of the heritage of law we have been given.

The whole world knows that America and the British have a magnificent legal system. The average citizen can borrow $100,000, buy a house, a $200,000 house, pay it back at 6 percent interest over 30 years. The money, the guy who loaned them $100,000 can believe he is going to collect it. If he doesn't pay it, he can foreclose, and there are procedures, and he pays off the debts and gets out and gets himself paid off. That is why he can afford to loan the man the money at this incredibly low rate.

You go to undeveloped countries around the world, and you see houses half built and you say: Why? They say, well, they saved up enough money to put up the walls and roof, but not enough for the insides. There is no way for them to borrow money. They don't have a legal system that works like ours. We need to cherish and protect the system.

Investors come from all over the world to America because they believe if they have to go to court, they will get a fair shake even though they are a company from Japan or South Korea or Singapore or China or Germany or France. That is something we need to protect. We do not need to allow it to be politicized. We need judges who follow the law as written, who will not impose their personal agendas in the decisionmaking process.

All of these things are matters that President Bush talked about in his election campaign. He believes them deeply. The American people share those beliefs by a substantial number. But they are not shared to the degree they should be by others in this Chamber who are blocking these nominations.

I hope that somehow, some way, this filibuster procedure can end. I hope that somehow, some way, we can avoid the collision we are engaged in now, the obstruction and the delay we are facing today, and get on with the classical way we have always handled judicial nominations in America. It is just unfortunate.

So it has been good that we have had a painful, tough 39 hours. A lot of things have been said. I hope that as we go forward, we can work our way through it. It may take litigation. It may take rules changes. It may take other things. I hope we will continue to back an independent judiciary of men and women of quality and integrity.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I express my gratitude to the Senator from Alabama for his leadership on these issues. He and I share an experience in common, having been attorneys general of our respective States, I in Texas and he in Alabama. I guess that experience, together with the fundamental values we have all come to believe in, ensconced in the Constitution, that elevate the rule of law over the political maneuverings of men and women, is something about which we feel very strongly. I know he does, and I appreciate his eloquence and his passion and his commitment to those values and that ideal.

I know after this lengthy debate there will be those who will want to make a judgment on who won and who lost. That is what I want to talk about for a few minutes because, frankly, I think the battle is not over. With the failure to achieve the necessary votes for cloture of these three nominees this morning, three highly qualified and distinguished individuals who, frankly, don't deserve the shabby treatment they have received during this confirmation process, there will be some who will say: Well, the majority was unable to get the minority to change their mind and so the majority must have lost. The stubborn, recalcitrant minority must have won.

I would say this is a case of perhaps having lost the battle but the war is still raging. The war is still going on. Frankly, it is a war, a battle, a metaphor for a war that has been going on since the inception of this country. It is a debate about what kind of country this is, what kind of country America is.

Indeed, it is also a question of what kind of country we will become. I believe that if our judicial confirmation process becomes so politicized, as it appears to have become, and the test for confirmation is political correctness and licking your finger and putting it in the wind to test which way public opinion is going, and to make sure that if you are a lawyer or a judge or an attorney general you have made decisions in a way that is consistent with public opinion polls rather than the law, I think we will risk losing that war because it is fundamentally a war of words, of ideas, about what kind of Nation we are and what kind of Nation we will become, whether we will become one ruled by politics and polls and special interest groups or whether we are a nation of laws and not men and women.

There is more to be said. There is more to be done in this ongoing war. Of course, we all know those who have followed this debate are aware that the majority leader and Senator ZELL MILLER from Georgia, a Democrat colleague of ours, have filed a rule change proposal which would allow for sufficient debate in the Chamber on nominees but ultimately allow what the Constitution itself commands, and that is that majorities ultimately rule. This is about a fundamental precept of our democratic form of government which says that after the debate, after everybody has had their say, after we have learned from each other in the give and take, ultimately there has to be a vote, and that when those votes are counted, majorities will rule and they will determine the outcome.

Of course, that is the rule everywhere where democracy is respected and practiced except, I am sad to say, in the Senate, when it comes to these judicial nominees, because what we have experienced here with this unprecedented obstruction is a tyranny of the minority. It is, frankly, a shame. I think we are poorer for it.

We could talk about this ongoing war of ideas and debate. We can talk about the battle we fought here this last day and a half and how it is just one battle in this ongoing conflict of ideas and really debate about the nature of our country that we have had since the beginning of this country. But there is a judgment day. There is a judgment day under our form of government, and that is when ordinary citizens exercise their right to go to the polls and to say whether they approve or disapprove of what we are doing here in this Chamber.

Whether you are a city councilman, county commissioner, Governor, Senator, Congressman, President of the United States, we are subject to the ultimate judgment of those voters, of those citizens, because we are a country that believes in the sovereignty of the people. And it is the people who will have the last word.

I believe our friends on the other side of the aisle who have exercised this tyranny of the minority have made a very dangerous gamble. Their gamble is, what they are betting is, that not enough people are really paying attention. Of course, that is part of what we have been trying to do, to make sure that people who are interested have an opportunity to understand what is going on here and what is at stake.

But ultimately, under our form of government, there can be no division in this body or anywhere else in this country about the fact that, ultimately, the American people will exercise the final judgment and determine who wins and who loses. That has not been decided today on this issue.

This is just one battle in that ongoing war leading up to that day of judgment. Ultimately, for those of us who run for public office, that is what determines whether we will continue to serve here in this body or in any other elected office in this Nation or not; whether we maintain the confidence of the people; whether the people believe that what we are doing here represents their interests as opposed to special interests. And if, in fact, they have confidence in our judgment, our honesty, integrity, and what it is we are trying to accomplish here, then they will say so by returning us to this place, or any other office of public service. So, ultimately, this battle has really been a skirmish in this ongoing conflict.

There is an important difference between those who would obstruct a bipartisan majority who want to confirm these fine nominees, and that is really the nature of the judicial branch of our Government.

I have had the honor for 13 years to serve my State in the judiciary before I was attorney general, and now in the Senate. I believe fervently that what the Framers intended by creating the judicial branch was not one where we had ideologues on the bench, or even politicians who were trying to advance a political or personal agenda. What they conceived and what has helped maintain the rule of law by determining the independence of the judiciary is that we will have rules that will govern all of us, and there will be disputes about those rules and the facts will be decided by independent judges, not ideologues, not those politicians on the bench, not somebody who has run for a particular platform to be nominated and confirmed to lifetime tenure.

The Framers' genius really was that that is a role they left to the representative branches of Government, the Congress and the executive branch, represented by the President. They conceived of a judiciary that would interpret the law and not make the law; that would interpret what the legislature's intent was, not promulgate public policy from the bench, or legislate from the bench. The legislation, they said, should come from the Congress. Once the Congress has determined the laws, then the President has a responsibility to execute the law.

It is a judiciary that serves as the impartial "umpire." We all know that, in any sporting activity, an umpire who takes sides before the contest is inconsistent with the whole idea of fair play. We are talking about more than fair play here. We are talking about what kind of nation America is and what kind of nation America will become, whether we preserve this concept of an independent judiciary, unaffected by politics, that determines the law, not makes the law.

I believe James Madison, Alexander Hamilton, and others of the Founding Fathers, who so wisely conceived of this form of government, would literally roll in their graves if they heard some of the suggestions we have heard during this debate and elsewhere—that judges can, and perhaps should, be ideologues; and really what we are trying to do is achieve some sort of mythical balance to make sure we have enough conservatives and liberals and moderates on a multijudge bench, and somehow in this "witch's brew" we are going to come out with justice, with fairness; that people will know what the rules are ahead of time and be able to conform our conduct to what the rules are, so they can go about their business unafraid of being interfered with, molested, or sued.

Indeed, that is what we depend on, the knowledge of what the rules are, and that they will be administered by those who do not have a stake in the outcome, or have an ax to grind, or have a political or personal agenda. That is what our judges are supposed to be, not those who participate in a game of political football.

We do not want, as this process has seemed to degenerate into, judges who will precommit to the outcome of cases that may come before them before they have even heard the facts. In the Judiciary Committee, on which I serve, I have heard judicial nominees questioned about: How would you rule if such and so happened? What is your view of the 14th amendment or the 5th amendment? Assuming this given set of facts, how would you rule in that case?

Those questions are entirely inappropriate. We don't want judges, and we should not confirm judges, who would prejudge a hypothetical set of facts. We want judges who have an open mind and a commitment to the rule of law, and who will enforce that law impartially, without regard to who wins or loses.

If what we are doing here jeopardizes the rule of law, we will have done great damage not only to this body but to our country.

Mr. President, I thank my colleagues for patiently listening after this long debate. But I believed it was important to make some of these points.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

PRAYER

The PRESIDENT pro tempore. The hour of 12 noon having arrived and the Senate having been in continuous session since Wednesday, pursuant to the order of the Senate on February 29, 1960, the Senate will suspend while the Chaplain offers a prayer.

Today's prayer will be offered by our guest Chaplain, Rev. Leroy Gilbert, Pastor of Mount Gilead Baptist Church in Washington, DC.

The guest Chaplain offered the following prayer:

Eternal God, the God of grace and glory, the God whose giving knows no ending, the God who stretched the spangled heavens and made us speechless at the sight of His magnificent handiworks, we pause to invoke Your blessing upon our Nation, our Senators, and all those who serve them.

Lord, we pray that the work of this Body will equip every household in America with the resources to build strong and stable families. We pray that the Senators' tireless efforts will enable the people of America to stand strong for the principles that undergird our rights, liberties, and the pursuit of happiness. We pray, when citizens observe how this Senate conducts the business of our Nation, they will be inspired by how those from different political parties can work together to achieve a common purpose for the good of America.

As one Nation under God, may we always be protected by Your divine promises as recorded in Chapter 54 of Isaiah, which declares: "This is the heritage of the servants of God . . . no weapon formed against you shall prosper . . . tyranny and terror will be far from you . . . whoever attacks you will surrender to you." To You, Almighty God who assures the faithful, "I will make your way prosperous and you shall have good success," we pray. Amen.

The PRESIDENT pro tempore. In my capacity as the Senator from Alaska, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ANIMAL DRUG USER FEE ACT OF 2003

Mr. GREGG. Mr. President, on November 7, 2003, the Senate passed the Animal Drug User Fee Act of 2003 which authorizes animal drug user fees.

Performance goals, existing outside of the statute, accompany the authorization of animal drug user fees. These goals represent a realistic projection of what the Food and Drug Administration's Center for Veterinary Medicine can accomplish with industry cooperation. The Secretary of Health and Human Services forwarded these goals to the chairmen of the Senate Committee on Health, Education, Labor, and Pensions, and the House Committee on Energy and Commerce, in a document entitled "Animal Drug User Fee Act Performance Goals and Procedures." According to Section 2 of ADUFA, "The fees authorized by this Act will be dedicated toward expediting the animal drug development process and the review of new and supplemental animal drug applications and investigational animal drug submissions . . . as set forth in the CONGRESSIONAL RECORD."

Today, I am submitting for the RECORD this document, which was forwarded to the Committee on Health, Education, Labor, and Pensions on November 13, 2003, as well as the letter from Secretary Thompson that accompanied the transmittal of this document.

I ask unanimous consent they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC, November 13, 2003.

Hon. JUDD GREGG,
Chairman, Committee on Health, Education, Labor and Pension,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you are aware, the Food and Drug Administration has been working with representatives of the veterinary pharmaceutical industry and staff of your Committee to design a new animal drug "user fee" proposal. Under this proposal, the additional revenues generated from fees paid by this industry would be dedicated for use in expediting the process for the review of animal drug applications, in accordance with performance goals that have been developed by FDA in consultation with the industry. S. 313, the "Animal Drug User Fee Act of 2003" reflects the fee mechanisms developed in these discussions. The performance goals are specific in the enclosure to this letter entitled, "Animal Drug Under Fee Act Performance Goals and Procedures." I believe they represent a realistic projection of what FDA can accomplish with industry cooperation and the additional resources that would be provided by the bill and annual FDA appropriations that fully cover the costs of pay and inflation increases for the animal drug review process each year.

I appreciate the support of you and your staffs, and the assistance of other Members of the Committee.

Sincerely,

TOMMY G. THOMPSON.

ANIMAL DRUG USER FEE ACT PERFORMANCE GOALS AND PROCEDURES

The goals and procedures of the FDA Center for Veterinary Medicine (CVM) as agreed to under the "Animal Drug User Fee Act of 2003" are summarized as follows:

FIVE-YEAR GOALS (TO BE IMPLEMENTED BY SEPTEMBER 30, 2008)

1. Review and act on 90 percent of complete animal drug applications (NADAs) and reactivations of such applications within 180 days after submission date.
2. Review and act on 90 percent of non-manufacturing supplemental animal drug applications (i.e., supplemental animal drug applications for which safety or effectiveness data are required) and reactivations of such supplemental applications within 180 days after submission date.
3. Review and act on 90 percent of manufacturing supplemental animal drug applications and reactivations of such supplemental applications within 120 days after submission date.
4. Review and act on 90 percent of investigational animal drug study submissions within 180 days after submission date.
5. Review and act on 90 percent of investigational animal drug submissions consisting of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data within 50 days after submission date.
6. Review and act on 90 percent of administrative animal drug applications (NADAs submitted after all scientific decisions have been made in the investigational animal drug process, i.e., prior to submission of the NADA) within 60 days after submission date.

The term "review and act on" is understood to mean the issuance of a complete action letter after the complete review of an animal drug application, supplemental animal drug application, or investigational animal drug submission which either (1) approves an animal drug application or supplemental animal drug application or notifies a sponsor that an investigational new animal drug submission is complete or (2) sets forth in detail the specific deficiencies in such animal drug application, supplemental animal drug application, or investigational animal drug submission and, where appropriate, the actions necessary to place such an application, supplemental application, or submission in condition for approval. Within 30 days of submission, FDA shall refuse to file an animal drug application, supplemental animal drug application, or their reactivation, which is determined to be insufficient on its face or otherwise of unacceptable quality for review upon initial inspection as per 21 CFR 514.110. Thus, the agency will refuse to file an application containing numbers or types of errors, or flaws in the development plan, sufficient to cause the quality of the entire submission to be questioned to the extent that it cannot reasonably be reviewed.

Within 60 days of submission, FDA will refuse to review an investigational animal drug submission which is determined to be insufficient on its face or otherwise of unacceptable quality upon initial inspection using criteria and procedures similar to those found in 21 CFR 514.110. A decision to refuse to file an application or to refuse to review a submission as described above will result in the application or submission not being entered into the cohort upon which the relevant user fee goal is based. The Agency will keep a record of the numbers and types of such refusals and include them in its annual performance report.

FDA may request minor amendments to animal drug applications, supplemental animal drug applications, and investigational animal drug submissions. At its discretion, the Agency may extend an internal due date (but not a user fee goal) to allow for the complete review of an application or submission for which a minor amendment is requested. If a pending application is amended with significant changes, the amended application may be considered resubmitted, thereby effectively resetting the clock to the date FDA received the amendment. The Agency intends to establish the same policy for investigational animal drug submissions.

Sponsors are not required to submit study protocols for review. However, for each voluntarily submitted protocol for a study that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, the Agency will issue an acknowledgement letter providing comments resulting from a complete review of the protocol. The acknowledgment letter will be as detailed as possible considering the quality and level of detail of the protocol submission, will include a succinct assessment of the protocol; and will state whether the Agency agrees, disagrees, or lacks sufficient information to reach a decision that the protocol design, execution plans and data analyses are adequate to achieve the objectives of the study. If the Agency determines that a protocol is acceptable, this represents an agreement that the data generated by the protocol can be used to support a safety or effectiveness decision regarding the subject animal drug. The fundamental agreement is that having agreed to the design, execution, or analyses proposed in protocols reviewed under this process, the Agency will not later alter its perspectives on the issues of design, execution or analyses unless public or animal health concerns unrecognized at the time of protocol assessment under this process are evident.

INTERIM BACKLOG GOALS

1. Review and act on pending animal drug applications, supplemental animal drug applications, and investigational animal drug submissions within 24 months of initiation of user fee payments.

ADDITIONAL INTERIM GOALS

1. Fifty percent of FDA incremental review staff recruited and on-board by first quarter of FY 2006. Total staff increment on-board by end of FY 2008.

2. FDA will review all submissions in accordance with procedures for working within a queue. An application/submission that is not reviewed within the applicable Interim Application/Submission Goal time frame (noted below) will be reviewed with the highest possible priority among those pending.

INTERIM APPLICATION/SUBMISSION GOALS

FY 04—90 percent of:

Animal drug applications (NADAs) and reactivations of such applications received during FY 2003 are reviewed within 259 days.

Non-manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2004 are reviewed within 320 days.

Manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2004 are reviewed within 225 days.

Investigational animal study submissions received during FY 2004 are reviewed within 320 days.

Investigational animal drug submissions of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data received during FY 2004 are reviewed within 125 days.

Administrative animal drug applications (administrative NADAs) received during FY 2004 are reviewed within 90 days.

FY 05—90 percent of:

NADAs and reactivations of NADAs received during FY 2005 are reviewed within 270 days.

Non-manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2005 are reviewed within 285 days.

Manufacturing supplemental animal drug applications and reactivations of such supplemental application received during FY 2005 are reviewed within 190 days.

Investigational animal drug study submissions received during FY 2005 are reviewed within 285 days.

Investigational animal drug submissions consisting of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data submissions received during FY 2005 are reviewed within 100 days.

Administrative NADAs received during FY 2005 are reviewed within 85 days.

FY 06—90 percent of :

NADAs and reactivations of NADAs received during FY 2006 are reviewed within 230 days.

Non-manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2006 are reviewed within 235 days.

Manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2006 are reviewed within 140 days.

Investigational animal drug study submissions received during FY 2006 are reviewed within 235 days.

Investigational animal drug submissions consisting of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data submissions received during FY 2006 are reviewed within 80 days.

Adminstrative NADAs received during FY 2006 are reviewed within 80 days.

FY 07—90 percent of:

NADAs and reactivations of NADAs received during FY 2007 are reviewed within 200 days.

Non-manufacturing supplemental animal drug applications and reactivations of such supplemental application received during FY 2007 are reviewed within 200 days.

Manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2007 are reviewed within 120 days.

Investigational animal drug study submissions received during FY 2007 are reviewed within 200 days.

Investigational animal drug submissions consisting of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data submissions received during FY 2007 are reviewed within 60 days.

Administrative NADAs received during FY 2007 are reviewed within 70 days.

FY 08—90 percent of:

NADAs and reactivations of NADAs received during FY 2008 are reviewed within 120 days.

Non-manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2008 are reviewed within 180 days.

Manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2008 are reviewed within 120 days.

Investigational animal drug study submissions received during FY 2008 are reviewed within 180 days.

Investigational animal drug submissions consisting of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data submissions received during FY 2008 are reviewed within 50 days.

Administrative NADAs received during FY 2008 are reviewed within 60 days.

WORKLOAD ADJUSTMENT

The Animal Drug User Fee Act of 2003, requires FDA to annually adjust fee revenues after FY 2004 to reflect changes in review workload utilizing a weighted average of animal drug applications, supplemental animal drug applications for which data with respect to safety or effectiveness are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions. The Agency currently intends to utilize the method detailed below to calculate the workload adjustment, and the percent increase in fees will be the amount of the sum of the output from the workload adjuster that is greater than one (1.0). However, the weighting of the specific factors may change in light of discussions with the animal drug industry and the results of ongoing activity based costing analyses within the Center for Veterinary Medicine.

The term "workload adjuster" applicable to a fiscal year consists of the sum of the following 5 components:

(A) The percent of change in the total number of original and reactivated animal drug applications submitted (comparing the three-year average number of such submissions for fiscal year 2001–2003 to the three-year average for the most recent three year period ending June 30 before the start of the fiscal year) times 3 percent.

(B) The percent of change in the total number of original and reactivated supplemental animal drug applications for which data with respect to safety or effectiveness are required (comparing the three-year average number of such submissions for fiscal year 2001–2003 to the three-year average for the most recent three year period ending June 30 before the start of the fiscal year) times 12 percent.

(C) The percent of change in the total number of original and reactivated manufacturing supplemental animal drug applications (comparing the three-year average number of such submissions for fiscal year 2001–2003 to the three-year average for the most recent three year period ending June 30 before the start of the fiscal year) times 25 percent.

(D) The percent of change in the total number of investigational animal drug study submissions (comparing the three-year average number of such submissions for fiscal year 2001–2003 to the three-year average for the most recent three year period ending June 30 before the start of the fiscal year) times 46 percent.

(E) The percent of change in the total number of reviewed investigational animal drug protocol submissions (comparing the three-year average number of such submissions for fiscal year 2001–2003 to the three-year average for the most recent three year period ending June 30 before the start of the fiscal year) times 14 percent.

THE VA-HUD APPROPRIATIONS BILL AND THE DEFENSE AUTHORIZATION CONFERENCE REPORT

Mr. JEFFORDS. Mr. President, hardly a day goes by without an announcement of new casualties in Iraq, a news story about the family of a fallen service member, or the profile of a heroic soldier learning to cope with the aftermath of wounds suffered in Iraq. While the conflict is Iraq prompts quick approval of the defense spending bills, there is less appreciation for mounting costs to the Department of Veterans Affairs.

I was most distressed at last month's refusal by the White House to support the Senate's addition to the Iraq-Afghanistan emergency supplemental of $1.3 billion in funding for veterans' health care. Most Senators understand that military activities in Iraq are significantly increasing the burden on the VA, and supported the addition of $1.3 billion to the Iraq supplemental. Seeing that this amendment was poised for inclusion in the final bill, the White House sent notice to Congress that it would veto the entire package if money for the VA were included. Sadly, Congress gave in to administration pressure and removed this critical funding.

I am pleased that the Senate leadership finally saw fit to bring the VA-HUD appropriations bill to the Senate floor this week. This critical legislation, setting funding levels for fiscal year 2004, which actually began 6 weeks ago, is long overdue. This legislation provides $62 billion for the Veterans Administration, $27 billion of which goes to the Veterans Health Administration, an increase of $3.9 billion over last year's spending level and $1.3 billion over the President's request. Because of budget constraints and the unwillingness of the administration to endorse additional funding for the VA, the Senate Appropriations Committee designated the additional $1.3 billion as emergency spending so as not to count against the annual spending caps. However, this also made the increase subject to the President's approval, and it risked meeting the same fate as other increases rejected by President Bush.

I am very pleased that during debate on the VA-HUD appropriations bill, the managers successfully offered an amendment to remove the emergency designation and incorporate the $1.3 billion into the bill, thereby greatly increasing the chances that this money will actually get to veterans this year. It seems that a majority of Senators have been listening to the few of us who have been decrying the state of VA funding for some time, and they are now coming to understand that even these modest increases do not make up for the continual shortfall experienced by the VA in recent years. It's long past time that this trend be reversed.

The Senate VA-HUD appropriations bill also supports the Rural Health Initiative, RHI, a successful examination of innovative methods of delivering health care to veterans in rural areas. The VA must become more adept at spreading its health care dollars further across rural America. I am encouraged that the RHI will help improve the VA's performance in this area.

After making significant progress on this legislation, I was discouraged that the Senate leadership decided to pull this VA-HUD bill off the floor prior to its completion in order to begin a 30-hour discussion of the status of judicial nominations. While I agree that judicial nominations are important, I was most disappointed that a largely partisan political debate took precedence over the completion of much needed funding for veterans. I urge the leadership to quickly bring us back to the people's business—the work we were sent here to accomplish.

I would like to mention another issue of concern to veterans that came before the Senate this week. For years I have been a primary promoter of concurrent receipt—the payment to disabled veterans of the full disability and retirement benefits to which they are entitled. For many years, disabled military retirees have been forced to choose between receiving their full retirement pay or their disability benefits. This injustice has finally been recognized by a majority of the Congress, in large part due to the unflagging commitment of Senator HARRY REID. In recent years, Congress has moved to partially restore these benefits. The fiscal year 2004 Defense authorization conference report contains legislation allowing combat disabled veterans with a disability greater than 10 percent to receive their full disability and retirement benefits. It also provides for a 10-year phase-in of full disability and retirement benefits for those with a noncombat related disability rating of over 50 percent.

While I am pleased to see this important improvement in benefit payments, I am concerned that some might view this as the end of the road for this issue. I intend to work closely with Senator REID to continue to press the administration and the Congress to fully fund concurrent receipt for all disabled veterans. This is a basic principle of fairness that is not rectified by halfway measures.

I regret that, for a number of reasons, I was unable to support passage of the Defense authorization conference report, despite its progress on concurrent receipt. Unfortunately, the legislation included unacceptable environmental provisions. As a former Navy Officer and 30-year reservist. I understand the need for the best possible military training. As the ranking member of the Environment and Public Works, EPW, Committee, I was quite concerned by a request from the Bush administration to exempt the Department of Defense, DoD, from five of our Nation's most important and effective environmental laws. After careful review by the EPW Committee, I was convinced that the waivers contained in current law are quite sufficient to provide flexibility for DoD if it needs greater leeway to conduct military readiness exercises.

In an effort to forge a reasonable compromise between DoD's request and sound environmental policy, Senator LAUTENBERG and I authorzed as amendment to the defense authorization bill that was supported by a majority of Senators. While this amendment carefully balanced the Defense Department's need for training with the Interior Department's mandate to protect endangered species, it was dropped in conference with the House of Representatives. In its place, the conferees added language providing DoD with broad authority to sidestep the Endangered Species Act and the Marine Mammal Protection Act, even dropping requirements that any waivers be related to military readiness. I cannot in good conscience support legislation that undermines such critical environmental legislation. Therefore, I had no choice but to vote against the defense authorization conference agreement in spite of its improvement on concurrent receipt.

Mr. President, we have a long way to go before our veterans health system is fully funded and before veterans receive the full compensation they deserve for their years of service to the Nation. I hope that the daily stories of herosim coming out of Iraq will compel more Members of Congress to stand with the veterans and not to rest until justice is done.

INTELLIGENCE FAILURES

Mr. JOHNSON. Mr. President, I rise today to discuss an article entitled "The Stovepipe" by Seymour Hersh that appeared in a recent edition of The New Yorker magazine.

The article outlines a series of disturbing intelligence failures within the Bush administration leading up to the war in Iraq. From ignoring career intelligence analysts to relying on unreliable raw data, the article makes the case that senior members of the Bush administration often ignored information that did not fit their preconceived view of the situation in Iraq and pushed the intelligence community to come up with information that would support their position, regardless of its accuracy. In particular, the article outlines the practice of "stovepiping" information in which intelligence was passed up through the administration without subjecting it to a thorough review by intelligence professionals.

The bad intelligence that resulted from this process was then used to convince our Nation of the need to engage in a near-unilateral, pre-emptive war in Iraq to protect the American people from what was described as an imminent threat from Iraq's weapons of mass destruction.

As a result of this go it alone approach in Iraq, the Bush administration has alienated much of the world, told U.S. taxpayers that they are financially responsible for rebuilding Iraq, and ordered more than a hundred thousand U.S. troops to stay in Iraq for the foreseeable future—yet no evidence of Iraq's weapons of mass destruction have been found.

Mr. President, there is no doubt that at one time Iraq possessed chemical weapons. We know that Saddam Hussein used these weapons during the Iran-Iraq war and on his own people. There is also no doubt that at one point Saddam Hussein pursued a nuclear weapons program. However, the Iraq Survey Group—the group charged with finding Iraqi weapons of mass destruction—has yet to turn up any proof of the huge WMD stockpiles and nuclear weapons program of which the Bush administration repeatedly told us they had evidence.

It is clear that the world and the Iraqi people are better off without Saddam Hussein. He was a brutal dictator who terrorized his own people and destabilized the entire Middle East. I am extremely proud of the men and women of our Armed Forces for their actions during the war and the ongoing efforts to stabilize the country. Now that we are there, we cannot "cut and run" and we must provide our troops with the resources they need to complete their mission and to return home as soon as possible.

However, I am deeply concerned that we sent our sons and daughters to war based largely on what turns out to be faulty intelligence. The ends of the war do not justify the means by which the Bush administration convinced the American people that this war was necessary. That is why I believe we need to have an independent investigation into the acquisition and use of intelligence leading up to the decision to go to war in Iraq, not as a political attack, but as a way to make sure that future decisions about whether or not our country goes to war based on the best possible intelligence.

Mr. President, I encourage all of my colleagues to read this important Hersh article from The New Yorker of October 21, 2003.

21ST CENTURY NANOTECHNOLOGY RESEARCH & DEVELOPMENT ACT

Mr. ALLEN. Mr. President, I rise today to thank my colleagues for their support of S. 189, the 21st Century Nanotechnology Research and Development Act.

Especially I want to thank my colleague from Oregon, Senator RON WYDEN, for his leadership. I have enjoyed working with Senator WYDEN on nanotechnology for the past several years on this important issue for America's future. I would also like to thank the other cosponsors on this legislation: Commerce Committee Chairman and Commodore JOHN MCCAIN, the senior Senator from Virginia, Mr. WARNER, and Senators LIEBERMAN, MIKULSKI, HOLLINGS, LANDRIEU, CLINTON, LEVIN, and BAYH.

I have made America's competitiveness in nanotechnology a priority, and working with Senator WYDEN and the chairman of the Commerce, Science, and Transportation Committee, Senator MCCAIN, we held the first hearings in Congress on this emerging science, a field that promises to forever change the way we approach scientific and engineering challenges. Nanotechnology is a "bottom-up" approach much like building a sculpture atom by atom and molecule by molecule instead of cutting it from a larger rock. Nanotechnology on the dimensional scale is one nanometer; that is, one-billionth of a meter or 100,000 times smaller than the width of a human hair.

Far-reaching outcomes for the 21st century are envisioned in both scientific knowledge and technological advancement for nanotechnology. The potential for nanotechnology and the exciting work taking place in nanoscience are by all accounts revolutionary, and as the technology matures it will undoubtedly have a tremendous impact on our daily lives.

S. 189 is a truly historic piece of legislation, because, for the first time, it creates a comprehensive national plan to advance and develop the field of nanoscience, nanoengineering, and nanotechnology. This field of science is quickly transforming almost every aspect of our modern world and is already significantly improving our quality of life. Nanotechnology is also showing promise of new applications that we can only imagine at this time. Let me highlight several important examples, such as the use of iron nanoparticles in the cleanup of Superfund sites; nanometer-size minerals in the efficient production of gasoline from crude oil; nanoscale designer molecules to create bone structure for bone repair; nanolasers for super-precision surgery; and gold nanoshells with attached antibodies introduced to targeted cancer tumor sites to destroy tumor growth while leaving healthy tissue unharmed.

As a Senator, my top priority is to advocate and support policies that create jobs, investment, and improvement of America's ability to compete in the global marketplace.

I earnestly believe there is a link between research and development and job creation, which ultimately leads to prosperity for all Americans. Therefore, I believe one of our most important goals should be to create the conditions precedent to positioning researchers and innovators to compete, contribute, and succeed both domestically and internationally. From materials to electronic devices, computers, biotechnology, healthcare systems, pharmaceuticals, environmental improvement, agriculture, efficient energy conversion and storage, space exploration, economical transportation, and national defense, nanotechnology will be the foundation of many of the revolutionary advances and discoveries in the decades to come and will soon occupy a major portion of the technology economy. The annual global impact of products where nanotechnology will play a key role has been estimated to exceed $1 trillion a year by 2015, requiring about 2 million nanotechnology workers.

To remain competitive in this global market we must commit ourselves to ensuring that the United States keeps its edge in this field. This Nation has been the leader of virtually every important and transformative technology since the Industrial Revolution, and this legislation assures that the United States will continue to lead the world at the new frontier of the nanotechnology revolution.

Specifically, the legislation authorizes a total of $3.63 billion in appropriations over 4 years from fiscal year 2005 through fiscal year 2008.

The goals of the legislation are to provide support for fundamental research and to catalyze synergistic interdisciplinary science and engineering research and education in emerging areas of nanoscience by: providing research grants to individuals and interdisciplinary teams of investigators; establishing a network of advanced technology user facilities and collaborative research centers; accelerating nanotechnology research and development in the private sector including startup companies; encouraging participation of colleges and universities; and guaranteeing United States international leadership in the development and application of nanotechnology.

This historic legislation not only helps ensure America's economic competitiveness in the global marketplace, but spurs innovation and research in a field of science and technology that can touch every human life. I thank my colleagues for working with Senator WYDEN and me to pass this truly vital legislation for America's future.

HONORING OUR ARMED FORCES

Mr. LIEBERMAN. Mr. President, I rise today to pay tribute to Private First Class Anthony D. D'Agostino, U.S. Army, of Waterbury, CT. It is with great sadness of heart that rather than celebrating his birthday, which would have been November 6, we are instead mourning his death. He is the sixth member of the military from Connecticut to die in Iraq.

Even as we mourn his passing, however, we can celebrate his life. His father served in the military, and PFC D'Agostino continue that great tradition. He lived as a true patriot and defender of our great Nation's principles of freedom and justice. He was a member of the 313th Signal Company, 3rd Signal Brigade, Fort Hood, TX. No doubt, PFC D'Agostino was looking forward to some well-deserved rest and recuperation as the CH-47 helicopter he was traveling in was shot down by a shoulder-type missile, forcing it to crash land. He was killed along with 15 others on what has been characterized as one of the bloodiest days in Iraq.

PFC D'Agostino's mission was clear, as was his resolve. He served as a messenger of high justice and idealism in the best tradition of American principles and patriotism. I am both proud and grateful that we have the kind of fighting force he so exemplified.

Our Nation extends its heartfelt condolences to his family. We extend our appreciation for sharing this outstanding soldier with us, and we offer our prayers and support. You may be justifiably proud of his contributions.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe one such crime today. At a well-known Atlanta college, Aaron Price left a dormitory bathroom after suspecting that one of his classmates had made an unwanted sexually suggestive gesture toward him. Mr. Price returned to the bathroom, with a baseball bat from his bedroom closet, and proceeded to beat his classmate in the head. Mr. Price did not stop until he had fractured the student's skull, chipped many of his teeth, and caused a life-threatening blood clot to develop in his classmate's brain.

Also, I would like to recall two crimes that occurred in a 90-minute span on September 2, 1998, in Huntington, WV. There, two men were berated with anti-gay slurs, then beaten by the same trio of attackers. The first of the two anti-gay attacks occurred as a 31-year-old New Jersey man, who was headed to the PATH train from a local bar, was attacked by three men. The man was kicked and punched, then thrown down a flight of stairs.

The victim of the second attack was a 48-year-old man who left a different bar. He was grabbed from behind and thrown to the ground by three men fitting the description given by the first victim. The men made anti-gay remarks, then took his wallet. One of the men pulled out a knife, and the victim suffered a cut on his arm and a broken wrist during the fight. Police believe the two victims were targeted because they are gay.

In conclusion, I would like to describe a terrible crime today. Guinn "Richie" Phillips of Rineyville, KY, disappeared on June 17, 2003. His body was found one week later. Josh Cottrell, the man accused of the murder, is believed to have killed the victim because he dislikes homosexuals. Mr. Cottrell had earlier told his aunt and cousin that he planned to kill Mr. Phillips after Mr. Phillips made an unwanted advance in a local hotel. Mr. Cottrell allegedly strangled Mr. Phillips and stuffed his body into a suitcase, later dropping it in a lake.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

CBO ESTIMATE ON S. 1248

Mr. GREGG. Mr. President, on November 3, 2003, I filed Report 108–185 to accompany S. 1248, a bill to reauthorize the Individuals with Disabilities Education Act, and for other purposes. At the time the report was filed, the estimates by the Congressional Budget Office were not available. I ask unanimous consent that a complete copy of the CBO estimate be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 11, 2003.

Hon. JUDD GREGG,
Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1248, the Individuals with Disabilities Education Improvement Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Donna Wong.

Sincerely,
DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1248—Individuals with Disabilities Education Improvement Act of 2003

Summary: S. 1248 would reauthorize the Individuals with Disabilities Education Act (IDEA) through 2009. The bill also would amend two programs that are permanently authorized by IDEA, create four new programs, and amend the Rehabilitation Act of 1973.

CBO estimates that the bill would authorize additional appropriations of $841 million in 2004, for a total of about $10.2 billion in that year (including the two programs that are permanently authorized). CBO estimates that the new authorizations under S. 1248 would total about $5.3 billion over the 2004–2009 period, assuming that annual levels are adjusted for inflation. CBO estimates that appropriations of those authorized levels would result in additional outlays of $4.0 billion over the 2004–2009 period.

Enacting S. 1248 would affect direct spending. CBO estimates that the new state grants for rehabilitation services for students with disabilities would increase mandatory outlays by $139 million in 2004 and $1.8 billion over the 2004–2013 period.

S. 1248 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA). Any requirements on states or educational institutions would be conditions for receiving federal grants; the bill would authorize more than $4 billion over the 2004–2009 period in additional funding for such grants.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1248 is shown in Table 1. The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 1248, THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2003

	By fiscal year, in millions of dollars—						
	2003	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION							
Baseline Spending Under Current Law:							
Estimated Authorization Level[1]	9,434	9,323	9,506	9,708	9,910	10,130	10,350
Estimated Outlays	8,152	9,484	9,580	9,595	9,755	9,963	10,180
Proposed Changes:							
Estimated Authorization Level	0	841	857	875	893	913	933
Estimated Outlays	0	17	547	809	868	886	905
Spending Under S. 1248:							
Estimated Authorization Level	9,434	10,164	10,364	10,583	10,803	11,042	11,282
Estimated Outlays	8,152	9,501	10,127	10,404	10623	10,849	11,086
DIRECT SPENDING							
Baseline Spending Under Current Law:[2]							
Estimated Budget Authority	2,533	2,587	2,645	2,706	2,772	2,840	2,911
Estimated Outlays	2,515	2,569	2,626	2,686	2,750	2,818	2,888
Proposed Changes:							
Estimated Budget Authority	0	198	205	212	220	228	236
Estimated Outlays	0	139	197	210	218	225	233
Spending Under S. 1248:							
Estimated Budget Authority	2,533	2,785	2,850	2,918	2,992	3,068	3,147
Estimated Outlays	2,515	2,708	2,823	2,896	2,968	3,043	3,121

[1] The 2003 level is the amount appropriated for that year for all IDEA programs. The 2004–2009 levels are the baseline amounts for the Grants to States and the Preschool state grants programs, which are permanently authorized under IDEA. The 2004 level includes an advance appropriation of $5.7 billion in the Grants to States program.

[2] Projected spending is CBO's baseline for state grants for rehabilitation services and handicapped research.

Note.—Components may not sum to totals because of rounding.

Basis of estimate: S. 1248 would reauthorize the Individuals with Disabilities Education Act through 2009. All IDEA programs were authorized in 2003 by the General Education Provisions Act (GEPA), and the two largest programs—Grants to States and Preschool state grants—are permanently authorized. S. 1248 would amend those two programs, create four new programs, and amend the Rehabilitation Act of 1973.

Most programs authorized under IDEA would be reauthorized at such sums as may be necessary for 2004 through 2009. For existing programs, the estimated authorization level is the 2003 appropriated amount inflated (i.e., a baseline projection). For new programs, if amounts are not specified, the estimated authorization level is CBO's projection of what it would cost to implement the new program. If funding is specified, CBO's estimate for authorized levels is the authorized amount for 2004 with that amount inflated in later years. As noted above, funding for the Grants to States and Preschool state grants programs is already permanently authorized at such sums as may be necessary, so the estimate assumes that funding would continue at the baseline level.

State grants for rehabilitation services are classified as mandatory or direct spending under the Budget Enforcement Act of 1990. Although the specific authorization for the grants expired in 2002, automatic one-year extensions under the Rehabilitation Act of 1973 and GEPA authorize the grants through 2004. Under section 257 of the Balanced Budget and Emergency Deficit Control Act, CBO is required to assume a permanent continuation of the program for baseline purposes. The estimated costs for the bill's authorization of state grants for students with disabilities are projected to increase with inflation and with the number of students with disabilities ages 14 to 21.

The current-law levels for 2003 shown in tables 1 and 2 are the amounts appropriated that year for all programs. Amounts authorized under current law for years 2004 through 2009 are CBO's baseline projections for the two programs that are permanently authorized and include an advance appropriation of $5.7 billion in 2004 for the Grants to States program.

CBO estimates that S. 1248 would authorize additional appropriations of $841 million in 2004 and additional funding of $5.3 billion over the 2004–2009 period assuming that "such sums" amounts are adjusted for inflation. If the authorized amounts are appropriated, outlays would increase by $17 million in the first year and by $4.0 billion over the six-year period. In addition, if S. 1248 were enacted, CBO estimates that direct spending (for the new state grants for rehabilitation services) would increase by $139 million in 2004 and by $1.8 billion over the 2004–2013 period.

Spending subject to appropriation

Table 2 presents CBO's estimates of spending subject to appropriation with inflation adjustments for the various components of each title under S. 1248. The estimated outlays reflect historical rates of spending for the affected programs or for similar programs.

TABLE 2.—DETAILED EFFECTS OF S. 1248, THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2003, WITH ADJUSTMENTS FOR INFLATION

	By fiscal year, in millions of dollars—						
	2003	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION							
IDEA Spending Under Current Law:							
Budget Authority/Authorization Level[1]	9,434	9,323	9,506	9,708	9,910	10,130	10,350
Estimated Outlays	8,152	9,484	9,580	9,595	9,755	9,963	10,180
Proposed Changes:							
Title I: Amendments to the Individuals with Disabilities Education Act:							
Infants and Toddlers State Grants:							
Estimated Authorization Level	0	442	450	460	469	480	490
Estimated Outlays	0	9	287	425	456	466	476
State Professional Development Grants and Personnel Preparation:							
Estimated Authorization Level	0	52	53	54	56	57	58
Estimated Outlays	0	1	34	50	54	55	56
Personnel Development:							
Estimated Authorization Level	0	93	95	97	99	102	104
Estimated Outlays	0	2	61	90	97	99	101
Technology Development, Demonstration and Utilization; Media Services:							
Estimated Authorization Level	0	39	39	40	41	42	43
Estimated Outlays	0	1	25	37	40	41	42
Access of Instructional Materials:							
Estimated Authorization Level	0	5	5	5	5	5	6
Estimated Outlays	0	*	3	5	5	5	5
Parent Training and Information Centers, Community Parent Resource Centers, and other activities:							
Estimated Authorization Level	0	81	82	84	86	88	90
Estimated Outlays	0	2	53	78	83	85	87
Interim Alternative Education Settings, Behavioral Supports and Whole School Interventions:							
Estimated Authorization Level	0	50	51	52	53	54	56
Estimated Outlays	0	1	33	48	52	53	54
Title III: National Center for Special Education Research:							
Estimated Authorization Level	0	79	80	82	83	85	87
Estimated Outlays	0	2	51	76	81	83	85
Title IV: Commission on Universal Design and the Accessibility of Curriculum and Instructional Materials:							
Estimated Authorization Level	0	1	1	0	0	0	0
Estimated Outlays	0	1	1	*	0	0	0
Total Proposed Changes:							
Estimated Authorization Level	0	841	857	875	893	913	933

TABLE 2.—DETAILED EFFECTS OF S. 1248, THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2003, WITH ADJUSTMENTS FOR INFLATION—Continued

	By fiscal year, in millions of dollars—						
	2003	2004	2005	2006	2007	2008	2009
Estimated Outlays	0	17	547	809	868	886	905
Total Discretionary Spending Under S. 1248:							
Estimated Authorization Level	9,434	10,164	10,364	10,583	10,803	11,042	11,282
Estimated Outlays	8,152	9,501	10,127	10,404	10,623	10,849	11,086

[1] The 2003 level is the amount appropriated for that year for all IDEA programs. The 2004 through 2009 levels are the baseline amounts for the Grants to States and the Preschool state grants programs which are permanently authorized under IDEA. The 2004 level includes an advance appropriation of $5.7 billion for the Grants to States program.

Notes. Components may not sum to totals because of rounding. * = Less than $500,000.

Title I: Amendments to the Individuals with Disabilities Education Act. Title I of the bill would amend programs authorized under the IDEA. CBO estimates that this title's additional IDEA authorizations would total $762 million in 2004 and $4.8 billion over the 2004–2009 period. We estimate that the resulting outlays would be about $15 million in 2004 and $3.7 billion over the 2004–2009 period.

Grants to States. S. 1248 would authorize such sums as may be necessary for the Grants to States program. Because the program is already permanently authorized at such sums, we assume that funding would continue to be authorized at the current baseline level.

The state grant program provides formula grants to states to assist them in covering the excess costs of providing special education services to children with disabilities. Funding for this program currently is provided on an academic-year basis through appropriations in two separate fiscal years: a forward-funded appropriation which is available July 1 of the current fiscal year, and an advance appropriation available October 1 of the next fiscal year. Although the program has been funded by two separate appropriations since 2001, funding does not need to be authorized separately because all of the funds for an academic year could be provided in one appropriation. The program is funded at just under $8.9 billion in academic year 2003–2004 ($3.2 billion in 2003 and $5.7 billion in 2004).

Preschool State Grants. S. 1248 would authorize such sums as may be necessary for the Preschool grants program. The Preschool state grants program is already permanently authorized at such sums as may be necessary so the bill would not change current authorizations for this program. The Preschool program provides additional grants to states for providing special education services to children with ages 3 through 5. The program is funded at 4387 million in 2003.

Infants and Toddlers with Disabilities. S. 1248 would reauthorize the infants and toddlers state grant program at such sums as may be necessary in years 2004 through 2009. The infants and toddlers program provides funds to states for early intervention and identification activities. The program is funded at $434 million in 2003 and CBO estimates that the authorization for 2004 would be about $442 million under S. 1248. Assuming annual adjustments for inflation, we estimate a six-year total authorization of $2.8 billion.

State Professional Development Grants. The bill would authorize such sums as may be necessary for years 2004 through 2009 for state professional development grants. The state professional development grant program provides grants to states to help them improve their systems for professional development and providing special education services. Funds can be used for personnel preparation, in-service training, and other activities. Grants are distributed on a competitive basis in years that the appropriation is less than $100 million and would be distributed partly based on a formula if the appropriation exceeds that amount. The current state improvement program is funded at $51 million in 2003 and CBO estimates that the bill would authorize the appropriation of $52 million for 2004 and $330 million over the next six years.

Personnel Development to Improve Services and Results for Children with Disabilities. The bill would authorize such sums as may be necessary in years 2004 through 2009 for competitive awards to institutions of higher education and other organizations to fund programs that help address needs for highly qualified personnel in special education, and other activities. Comparable activities are funded at $92 million in 2003 and CBO estimates that the bill would authorize funding of $93 million for 2004 and $590 million over the 2004–2009 period.

Technology Development, Demonstration and Utilization, and Media Services. S. 1248 would authorize such sums as may be necessary for programs that provide funds for activities that increase access to the classroom for children with disabilities. These programs focus on services for individuals who are deaf or blind such as video and closed captioned television. Comparable activities are funded at $38 million in 2003 and CBO estimates that the authorization would be $39 million of 2004 and $244 million over the 2004–2009 period.

Access of Instructional Materials. S. 1248 would create a National Instructional Materials Access center to coordinate the acquisition and distribution of materials for the blind. The center would collect electronic files by book publishers and catalogue, store and distribute the electronic files to authorized entities free of charge. The department would award a contract to a nonprofit organization to administer the center. The bill would permanently authorize funding at such sums as may be necessary and based on discussions with Congressional staff and the Department of Education on the intent and scope of the center, CBO estimates that the annual cost to create and operate the center would be between $5 million and $6 million over the next six years.

Parent Training and Information Centers, Community Parent Resource Centers, Technical Assistance for Parent Training and Information Centers, Technical Assistance and Demonstration, Dissemination of Information, and Implementation of Scientifically Based Research. The bill would authorize such sums as may be necessary in years 2004 through 2009 for parent training and information centers, community parent resource centers, technical assistance, and activities that support scientifically based research. The regional centers provide information, training, and referral services to parents of children with disabilities. Comparable activities are funded at $79 million in 2003 and CBO estimates that the bill would authorize funding of $81 million for 2004 and $511 million over the 2004–2009 period.

Interim Alternative Educational Settings, Behavioral Support, and Whole School Interventions. S. 1248 would create a new competitive grant program to provide grants to organizations to establish practices related to student behavior. Practices could include early screening efforts, training for school staff on positive behavioral interventions, and on-site counseling services. The bill would authorize $50 million in 2004 and such sums as may be necessary for the next five years. Assuming adjustments for inflation, we estimate that the bill would authorize the appropriation of $316 million for this purpose over the 2004–2009 period.

Title III: National Center for Special Education Research. Title III of the bill would create a National Center for Special Education Research within the Institute of Education Sciences and authorize such sums as may be necessary for each of the fiscal years 2004 through 2009. The new center would replace the current special education research and innovation program and would conduct research and evaluation related to the needs of children with disabilities. The current research program is funded at $77 million in 2003 and CBO estimates that the authorization would be about $79 million in 2004 and $496 million over the 2004–2009 period. Resulting outlays would be about $2 million in 2004 and $377 million over the 2004–2009 period.

Title IV: Commission on Universal Design and the Accessibility of Curriculum and Instructional Materials. Title IV of the bill would establish a commission to study, evaluate, and make recommendations to the Congress and the Secretary of Education on design and accessibility of curriculum for children with disabilities. The bill would authorize $750,000 for 2004 and such sums as may be necessary for 2005 for the Commission. CBO estimates that the resulting outlays would be less than $1 million in 2004 and about $1.5 million over the 2004–2009 period.

Direct spending

Table 3 displays the changes in direct spending over the 2003–2013 period. S. 1248 would have no impact on governmental receipts (i.e., revenues).

TABLE 3.—ESTIMATED DIRECT SPENDING AND REVENUE EFFECTS OF S. 1248

	By fiscal year, in millions of dollars—										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Changes in outlays	0	139	197	210	218	225	233	241	249	75	8

TABLE 3.—ESTIMATED DIRECT SPENDING AND REVENUE EFFECTS OF S. 1248—Continued

	By fiscal year, in millions of dollars—										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Changes in receipts	Not applicable										

Title II of the bill expands the scope of the Rehabilitation Act of 1973 to cover certain services provided to students with disabilities for ages 14 through 21 designed to prepare the students for post-secondary education or employment. These services may include but are not limited to needs assessment, counseling, and training. The bill would directly authorize these grants through 2009, but automatic one-year extensions under the Rehabilitation Act and under the General Education Provisions Act would authorize the grants through 2011.

State grants for vocational rehabilitation services have been classified as direct spending under the Budget Enforcement Act of 1990. S. 1248 creates separate funding for services to be provided to students with disabilities, but there are strong linkages between the delivery of services under the two authorizations. In CBO's view, the delivery of services to the students and nonstudents constitutes a single program for which the funding is mandatory.

CBO estimates that the services authorized by title II would cost about $1.8 billion over the 2004–2013 period. The potential costs of the expansions could be significantly higher or lower than CBO currently estimates, as caseloads and types of services that would be delivered are highly uncertain at this time.

CBO's estimate assumes that 2.0 million to 2.2 million disabled students per year would be in the age range recovered by S. 1248. CBO assumes that, as under the existing program, the students would be screened to determine as to whether they are likely to benefit from receiving the proposed services. This screening would mean that a significant portion—perhaps 25 percent to 30 percent—would receive few or no services. Of those deemed likely to benefit, CBO assumes an annual cost of $171 per student in 2004 rising to around $200 by 2009. This average cost figure is based on program data for 1999, and reflects the assumption that many students would not need services each year and that, for a significant portion of the services, the services would be largely needs assessment including advice about postsecondary educational opportunities. For the purposes of this estimate, CBO assumes that states will supply the necessary matching funds (21.3 percent of the total spending) costing them $54 million in 2004 rising to $64 million in 2009.

Intergovernmental and private-sector impact: The provisions of IDEA apply to states and educational institutions as recipients of federal grants. Consequently, any requirements that would be created or extended by S. 1248, would be conditions of federal aid and not intergovernmental or private-sector mandates as defined by UMRA. (Any mandate for the provision of special education results from other federal statutes). Under current law, states are receiving about $8.9 billion in academic year 2003 from IDEA, which CBO estimates equals about 18 percent of the average per pupil expenditure for all children. Title I would authorize $3 billion for state professional development grants and infant and toddler programs over the 2004–2009 period. Over the same time period, title II would make available an additional $1 billion to states for programs directed at 14 to 21-year-olds. Other sections of the bill would authorize additional grants—some of which would be available to state and local entities. Any costs to match such funds or administer programs would be voluntary.

Previous CBO estimate: On April 28, 2003, CBO transmitted a cost estimate for H.R. 1350, the Improving Results for Children with Disabilities Act of 2003, as ordered reported by the House Committee on Education and the Workforce on April 10, 2003. H.R. 1350 would authorize different amounts of funding for most programs, would not create new programs, and would not amend the Rehabilitation Act of 1973.

Estimate prepared by: Federal Costs: Titles I, II, and IV: Donna Wong (226–2820) and Title II: Deborah Kalcevic and Paul Cullinan (226–2820). Impact on State, Local, and Tribal Governments: Sarah Puro (225–3320). Impact on the Private Sector: Nabeel Alsalam (226–2666).

Estimated approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

TRIBUTE TO DR. DON DUGI

Mr. McCONNELL. Mr. President, I rise today to honor a noted and dedicated educator, Dr. Don Dugi. Dr. Dugi has been named the 2003 Kentucky Professor of the Year, awarded by the Council for Advancement and Support of Education. Criteria for the award includes support from colleagues and extraordinary dedication to teaching demonstrated by involvement with undergraduate students.

Dr. Dugi is a professor of political science at Transylvania University in Lexington, KY. He joined the faculty of Transylvania in 1975 after earning his master's degree in political science from St. Mary's College in Texas. After his master's degree, he earned his Ph.D. in political science from Purdue University in 1981 where he wrote his dissertation on the "Political Ideology of Kentucky Coal Producers."

During his tenure at Transylvania, Dr. Dugi has gained respect from both his colleagues and, more importantly, the students to whom he has dedicated his time and energy. In fact, the Student Government Association recognized his talent and love for teaching and honored him with its Teacher of the Year award. Dr. Dugi became the faculty advisor to both the Student Government Association and pre-law students in 1975, roles he continues today. Each May, he teaches a class to prepare students for the law school admissions test. He receives no compensation and continues to teach his regular classes. This is but one example of Dr. Dugi's selfless commitment to the students at Transylvania.

Colleagues also benefit from Dr. Dugi's commitment to excellence. The administration at Transylvania recognized Dr. Dugi's talents and awarded him a Bingham Fellowship for Excellence in Teaching in 1989. In 1998, he became the first recipient of the prestigious Bingham-Young Professorship. With this honor, Dr. Dugi developed a program that allowed his colleagues to investigate the concept of race as both an intellectual and an instructive concern. For this purpose, he organized a variety of events including a film series, lecturers, performers, and artists. The entire Transylvania campus benefited from Dr. Dugi's hard work.

An accomplished political scientist and educator, Dr. Dugi is a true leader in the field of political science and education, more generally, and should be commended for his unwavering dedication to Transylvania University, its faculty, staff, and its students. I ask each of my colleagues to join me in paying tribute to Dr. Don Dugi, not only for the 2003 Kentucky Professor of the Year Award, but for all that he gives to his students, his community, and his Nation.

ADDITIONAL STATEMENTS

OREGON HEALTH CARE HERO

• Mr. SMITH. Mr. President, today I rise to honor a tireless advocate for Oregonians with disabilities. Cynthia Owens has committed herself to helping ensure, whether through grassroots organization or legislative activism, that individuals with disabilities are granted equal access and opportunity. Today, I recognize Cynthia Owens as an Oregon Health Care Hero.

Twenty-one years ago, Cynthia and David Owens' youngest son, Andy, nearly drowned. The accident left Andy with severe physical disabilities. With the realization that she would need to be her son's advocate, Cynthia began working to protect and expand critical services that allow individuals with disabilities to live independently in their communities. Although her son's new disability served as her impetus, Cynthia's work with countless boards, commissions and organizations has had an impact far beyond her own son; her efforts have been felt throughout the disabled community in Oregon.

United Cerebral Palsy was the first to benefit from Cynthia's commitment to the disabled community. She served for 13 years as a volunteer, working with families to help identify resources and services for their disabled loved ones. After becoming a legislative advocate at the federal and state level, she began working for The Arc of Oregon as the coordinator of a campaign to extend services to all those eligible for disability assistance.

With the experience she gained helping her son find a job in the community, Cynthia became involved in larger efforts to find employment for individuals with disabilities. She now works with the Oregon Health Sciences University Center on Self Determination, the National Coalition on Self Determination, and Self Determination Resources, Inc. Cynthia works with groups around the state to train others in the disability employment field, as well as maintaining a database for families and other interested in employment opportunities. Cynthia was recently honored with an appointment to the State Rehabilitation Council by Governor Kulongoski. The Council works to ensure that Oregon Vocational Rehabilitation Division assists Oregonians with disabilities achieve meaningful employment and independence.

I have had the distinct pleasure of meeting both Cynthia and Andy. I am repeatedly amazed by the strong will, warmth and goodwill of the Owen's family, and honored to help support Cynthia and her work on behalf of the disabled community in Oregon. Cynthia and her husband, David, have faced many challenges raising their son. However, Cynthia has turned those challenges into opportunities for Andy and others like him.

For being an outstanding mother and advocate. I salute Cynthia Owens and thank her for being a true Oregon Health Care Hero.●

HONORING DR. WILLIAM P. FOSTER

● Mr. GRAHAM of Florida. Mr. President, today I pay tribute to an innovative musician and Floridian, Dr. William P. Foster. For over 50 years, Dr. Foster was conductor of the internationally acclaimed Florida A&M University Marching "100" Band. Throughout his musical career at FAMU, Dr. Foster has been credited with revolutionizing marching band techniques and redefining the marching band as an art form. Dr. Foster's dedication to excellence in education through the arts has enriched the lives of Floridians and Americans.

In June of 1946, Dr. Foster came to Florida A&M University to establish the Marching "100" Band. Since its inception, the band has participated in more than 200 half-time pageants, has appeared in three films, three commercials, and numerous magazine and newspaper articles. The band has appeared on 60 Minutes, 20/20 and PM Magazine telecasts and thirty-four nationally televised performances on all networks with a viewing audience of over five billion people. On October 26, 1984, the FAMU Marching Band was presented the prestigious Sudler Intercollegiate Marching Band Trophy. In 1989, the band was selected by the French government, to serve as America's official representative in the Bastille Day Parade, celebrating the Bicentennial of the French Revolution. The band also appeared in both of President Bill Clinton's inaugural parades, in January of 1993 and 1997. This list of band appearances and honors is by no means exhaustive.

Dr. Foster's contributions to FAMU have earned him State and national recognition as well. He is a member of the Hall of Fame for several organizations including the National Association for Distinguished Band Conductors, the Florida Music Educators Association and the Afro-American Hall of Fame, to name a few. In 1994, he was elected president of the American Bandmasters Association and in 1996, President Bill Clinton nominated, and the U.S. Congress approved Dr. Foster's presidential appointment to serve on the National Council on the Arts. In August of 2003, Dr. Foster's efforts were recognized again by the State of Florida, when he was inducted into the Florida Artists Hall of Fame. This award acknowledges individuals who contribute to Florida's national and international reputation as a State with a strong and sustained commitment toward the development of cultural excellence.

Dr. Foster has taken an active role to ensure the continued musical involvement of the FAMU student body. As an inspired bandleader and advisor, Dr. Foster sought financial support to aid his undergraduate students in the Marching "100" Band. Initially, Dr. Foster gave thousands of dollars of his own money, and started to work with large and small corporations, and private citizens. However, Dr. Foster was never satisfied with the level of support he received for the students. When Dr. Foster stepped down as Director of Bands and Department Chairman, he set forth to dedicate his attention the creation of a foundation. To this end, and with the assistance of Mr. Harold E. Byrd, Sr., on April 22, 1998 the William P. Foster Foundation was established.

Mr. President, I commend Dr. William P. Foster for his commitment to education, music and philanthropy. His commitment to education and philanthropy is an example to us all. For his many years of public service, I am proud to acknowledge the work of Dr. William P. Foster.●

HONORING DR. OSWALD P. BRONSON, SR.

● Mr. GRAHAM of Florida. Mr. President, today I pay tribute to a fine humanitarian and Floridian, Dr. Oswald P. Bronson, Sr., who will be retiring in June 2004. An educator and spiritual leader, Dr. Bronson has spent his life building bridges between the college and the community. Throughout his 28-year career as President of Bethune-Cookman College, Dr. Bronson has overseen tremendous growth and improvements on campus. Dr. Bronson's dedication to excellence in education and community advocacy has enriched the lives of Floridians and Americans.

Dr. Bronson's leadership and achievements at Bethune-Cookman College are a benchmark in higher education. Under his guidance, the college has nearly doubled its enrollment to 2,500. It has raised its community economic impact to $250 million, boosted endowments from $1.2 million to $25 million, and increased its total operating budget from $6 million to more than $45 million. His vibrant personality, genuine concern for the growth of the institution, and commitment to the founder's vision, enable him to bring unprecedented private, corporate and governmental support to the institution.

Active on campus and off, Dr. Bronson's belief in service to the community is evident in his numerous outside activities, including his appointment to an advisory post by former President Bill Clinton. He has served as chairman and president of prestigious educational and religious organizations nationwide, including his most recent appointment to the Board of Directors for the National Association of Independent Colleges and Universities.

Dr. Bronson is an ordained United Methodist Church minister, and former president of the Interdenominational Theological Seminary. He has served as a pastor in Florida, Georgia and Illinois for 16 years, and has lectured and taught in numerous mission schools, clinics, pastoral institutes and leadership training seminars.

Dr. Bronson has fostered and strengthened Bethune-Cookman College's relationship with the local community and the world. A thoughtful and well-respected member of the Bethune-Cookman College family, Dr. Bronson has advocated for increased diversity and understanding on campus and off. I am pleased that outstanding Floridians like Dr. Bronson are setting an example for communities across our Nation, and I want to thank him for his service.●

SQUAW VALLEY PARK DEDICATION

● Mrs. BOXER. Mr. President, I am pleased to announce the dedication of Squaw Valley Park in Placer County, CA.

Two decades ago, the Placer County Board of Supervisors and local community partners began their search for an ideal site for a community park. Their final choice was Squaw Valley, located within the Tahoe National Forest. Squaw Valley, which is internationally renowned as the site of the 1960 VIII Winter Olympic Games, is one of the crown jewels of the Sierra Nevada.

This park is also significant because its creation is the result of historic legislation, signed by President Clinton on July 29, 1998, allowing the U.S. Forest Service to conduct land transactions through sale rather than land exchange. I was proud to support this new approach because it saves taxpayers money through a much expedited transaction process.

When completed next spring, Squaw Valley Park will provide an exceptional recreational environment in which local residents and visitors will be able to enjoy this breathtaking region of California. I commend all those who have made the dream of Squaw Valley Park a reality.•

IPS CHARITY DYE ELEMENTARY SCHOOL 27: WINNER OF THE NATIONAL BLUE RIBBON SCHOOLS AWARD

• Mr. LUGAR. Mr. President, I rise today to recognize and congratulate Indianapolis Public School Charity Dye Elementary 27 as a recent recipient of the prestigious No Child Left Behind Blue Ribbon Schools Award.

The Blue Ribbon Schools Program was established in 1982 to identify and recognize outstanding public and private schools across the United States. In keeping with the principles of the No Child Left Behind Act—the education reform bill signed into law in 2002—the requirements for this award have been strengthened and now focus more intently on student achievement results.

Charity Dye Elementary School is an Indianapolis inner-city school, and is the first IPS school to receive this award in nearly 20 years. While the school faces all the same challenges as most inner-city schools, Charity Dye has shown that challenges can be overcome with hard work and dedication to the cause.

Five years ago, the percentage of third grade students who passed the Indiana Statewide Testing for Educational Progress exam at Charity Dye was 30 percent. Last year, this number was 83 percent a gain of 50 percentage points, and nearly 13 percentage points over the statewide average. This is an extraordinary turn around.

Charity Dye has made this progress by internalizing the philosophy of the No Child Left Behind Act and operating under the assumption that every child can learn, and that every child will learn.

I am very pleased to take this opportunity to applaud all the students, teachers, and administrators of Charity Dye Elementary School for their hard work and dedication to learning. I hope that the early love of learning will stay with each of the students of Charity Dye as they progress through school. And I encourage each and every one of Charity Dye's teachers, students, and administrators to keep up the excellent work.

As a former mayor of Indianapolis, I am very proud of IPS Charity Dye Elementary 27 and offer this school as a model of excellence for other schools in Indiana and across the Nation.•

HONORING DR. MARIA ALICIA GARZA

• Mr. CRAPO. Mr. President, I rise today to honor Dr. María Alicia Garza, associate professor in the Department of Modern Languages and Literatures at Boise State University. Dr. Garza has been chosen as the Idaho Professor of the Year by the Council for the Advancement and Support of Education and the Carnegie Foundation for the Advancement of Teaching. This prestigious honor is a tribute to Dr. Garza's outstanding teaching, which touches, motivates, and inspires.

Dr. Garza has been with Boise State since 1996 and has received excellent reviews from Day One. She is recognized by both faculty and students for her knowledge of the subject matter, her infectious enthusiasm, and her thorough preparation. As a result of this dedication, Dr. Garza's students have been motivated to succeed, as they have graduated from BSU and moved into the workforce.

Not surprisingly, this is not the first time Dr. Garza has been recognized for her outstanding efforts. She has also received the Associated Students of Boise State University Faculty Recognition Award, as well as the College of Arts Distinguished Teaching Award during her time at Boise State. The Idaho Professor of the Year award is another example of Dr. Garza's commitment to high quality education in Idaho. I offer my congratulations and highest praise to Dr. Garza, Idaho's Professor of the Year.•

TRIBUTE TO DR. DON DUGI

• Mr. BUNNING. Mr. President, I pay tribute to Dr. Don Dugi professor of political science at Transylvania University located in Lexington, KY on being named the Kentucky Professor of the Year.

The Professor of the Year Awards are the only national awards that recognize college and university professors for their teaching. Since 1981, the Professor of the Year awards have been given to professors who exhibit dedication to teaching and commitment to their students.

Dr. Dugi has exhibited great commitment to his students at Transylvania University. As a professor for political science, Dr. Dugi is tasked to mold our Nation's future leaders. Being honored with this award Dr. Dugi sets an example of excellence for the rest of the faculty and for his students.

Mr. President, I now ask my fellow colleagues join me in thanking Dr. Dugi for his dedication and commitment to the education of America's future. In order for our society to continue to advance in the right direction, we must have professors like Dr. Dugi in our colleges and universities.•

PROFESSOR CAROLE GAVIN

• Mr. LAUTENBERG. Mr. President, I would like to take this opportunity to recognize Dr. Carole Gavin, my constituent who was recently named the New Jersey Professor of the Year by the Carnegie Foundation for the Advancement of Teaching and the Council for Advancement and Support of Education. This award is given to professors who demonstrate a high level of dedication to teaching and a commitment to students, and who use innovative instructional methods. Dr. Gavin's dedication to teaching non-English speakers and academic accomplishments make her an outstanding recipient of this award.

As a professor of French and English as a Second Language at Burlington County College in New Jersey, Dr. Gavin has spent the past 22 years devoted to her students. I think she describes her teaching philosophy best: "my primary objective as a professor here at Burlington County College since 1971 has been to help students understand that language, whether it be a foreign language or English, plays a critical role in their success as human beings and professionals."

Dr. Gavin's professional accomplishments include expanding the college's English as a Second Language program into a multi-level, nine-course program that serves over one hundred students from many different countries. Last year, Dr. Gavin received the Association of Community College Teachers', ACCT, Northeast Regional Award. The ACCT describes her as "a stellar member of the Burlington County College faculty," and calls her commitment to her students "exemplary."

In addition to her role as teacher, Dr. Gavin recently underwent one of the most difficult personal challenges an individual can face. Emerging victorious from a battle with breast cancer, Dr. Gavin used her struggle to help others by working with the Phi Theta Kappa honor society to launch the Carole Gavin Scholarship initiative. This scholarship provides active Phi Theta Kappa members, who have been touched by cancer, with financial resources to help defray educational expenses for the Academic Year 2003—2004 while enrolled in either two or four-year institutions.

It has become something of a cliché to describe someone as an inspiration. Nevertheless, the work that Carole

Gavin has done both professionally and personally is truly inspirational, and I offer her my deepest congratulations.●

TRIBUTE TO VICKY MROCZEK

● Mr. DeWINE. Mr. President, today I pay tribute to a remarkable woman—a woman who devoted herself to improving the lives of those often overlooked in our society—the elderly and the poor. The State of Ohio lost one of its most dynamic and compassionate public servants with the passing of Vicky Mroczek on September 28, 2003.

Vicky Mroczek dedicated over 20 years of her career to public service in Ohio, most recently serving as the Chief of the Office of Community Services in the Ohio Department of Development. Since 1985, she administered Ohio's Home Energy Assistance Program, a federally funded program that helps low-income households manage their energy bills. Earlier in her career, she worked for the Ohio Consumer's counsel, representing Ohio's residential customers in utility matters. She also served on the Board of the Central Ohio Transit Authority.

Vicky was also a prominent figure at the national level, working on creative and innovative approaches to helping low-income households afford essential energy services. She served as Chair of the National Low-Income Energy Consortium from 1993 until her death. She also served as Chair of the National Energy Assistance Directors Association from 1990 through 1992.

Vicky Mroczek was an engaging and dynamic public speaker, someone who could engage audiences from the cities to the farms, in local settings to national forums, reaching utility clients, utility executives, and everyone in between. She led with grace, fairness, and most of all, compassion. Her service and dedication to the citizens of Ohio and to low-income families across our Nation is a model to us all. She will be missed.

Vicky's husband of 24 years, George Diehl; her mother Phyllis Mroczek; and her sister, Michelle Mroczek, remain in our thoughts and prayers.●

TRIBUTE TO LARRY GAMMON

● Mr. SUNUNU. Mr. President, I wish to pay tribute to the President of Easter Seals New Hampshire, Larry Gammon, whose leadership has been crucial to the ability of Easter Seals to do so much for so many in our State. He is a man of remarkable character, who has devoted his life to community service, beginning his career in public education and then joining Easter Seals, where he is currently in his thirty-second year with the organization.

Mr. Gammon shares the dedication, enthusiasm, and vision of the founders of Easter Seals to increase the independence and improve the quality of life for individuals with special needs. As a result, Easter Seals New Hampshire has grown significantly to meet the needs of communities throughout the State, as well as in Maine, New York, and Vermont.

In New Hampshire, Easter Seals provides services to more than 20,000 residents each year, addressing a wide range of physical and emotional concerns including cerebral palsy, autism, muscular dystrophy, and Alzheimers disease.

And each day, an average of 125 New Hampshire children are served through Easter Seals' youth programs including families in need, family mediation, parenting workshops, and 24-hour emergency support. For those who needed, but could not afford, assistance in the past year, Easter Seals New Hampshire provided $2 million in free and reduced-cost services.

New Hampshire's elderly population is well served by senior programs offered by Easter Seals including: a medical day rehabilitation program for individuals requiring light nursing monitoring; an ambulatory program for those with light medical and mental health needs; and an Alzheimer's day program for elders with dementia and memory loss.

Equally impressive as the quantity of services provided by Easter Seals New Hampshire is their variety. Deaf or hard of hearing clients are fitted with hearing aids, and vocational training is provided to the visually impaired. Additionally, rehabilitation therapy is available for those who have sustained traumatic injuries.

For 22 consecutive years, Easter Seals has ranked number one among National Health Council members for the percentage of program dollars spent on direct client services, allocating over 90 cents of every dollar for this purpose. Larry Gammon has provided prudent financial stewardship to Easter Seals New Hampshire with the organization earning numerous accolades for its fiscal management and services.

Mr. Gammon is an individual of remarkable character who leads by example, with an impressive record of community service that extends beyond his work at Easter Seals and includes active roles in a number of other community organizations. This effort has made him successful in recruiting individuals of similar dedication to the board of directors and staff of Easter Seals, which now totals 1,200.

The contributions of Larry Gammon and Easter Seals New Hampshire on behalf of individuals with special needs are an example of America's community spirit and a role model for the rest of us. I thank the Senate for the opportunity to honor this extraordinary individual and organization.●

TRIBUTE TO WORLD OF CHILDREN AWARD HONOREES

● Mr. DEWINE. Mr. President, today I recognize the honorees for the 2003 Hannah Neil World of Children Awards presented in Columbus, OH, on November 20, 2003. These awards recognize people from around the world who have devoted their lives to making the world a better place for children. The awards are very prestigious, commensurate to the Pulitzer and Noble Prizes for those who dedicate their lives to improving the lives of children.

Since the inception of the awards, 500 nominations have been received from 50 countries. An international Advisory Council, headed by three-time heavyweight boxing champion Muhammad Ali and composed of 35 members from 15 different countries, selects the award recipients.

I would like to recognize each of this year's honorees and thank them for their selfless commitment to helping children across the globe:

First, the Kellogg's Child Development Award honors an individual who has made a significant lifetime contribution to children's futures by greatly improving their opporuntities to learn and grow. The honorees for this award are:

Fani Lerner from Parana, Brazil; Claudia Gonzales Moreno from Murillo, Bolivia; and Jetsun Pema from Himachal Pradesh, India.

The Cardinal Health Children's Care Award recognizes an individual who has made a significant lifetime contribution to the health and well-being of children. The honorees for this award are:

Dr. Martin Eichelberger from Washington, DC; Dr. Elizabeth Jones from California; and Mehendra G. Mehta from Mumbai, India.

The Founder's Award honors an individual youth who has made significant contributions to enhancing the lives of other youth. The honorees for this award are:

Ryan Hreljac from Ontario, Canada and Dayro Javier Reyes Acosta from Santander, Colombia.

I extend my most sincere thanks to these honorees for their dedication and commitment to our world's children. Their efforts, indeed, are deserving of the highest praise and recognition, as they give voice and hope to children in need across the globe.●

GUNNERY SERGEANT THOMAS S. HOGDAHL, UNITED STATES MARINE CORPS

● Mr. THOMAS. Mr. President, as a veteran marine and friend, I rise today to pay tribute to Gy Sgt Thomas S. Hogdahl, who will retire from the U.S. Marine Corps on March 1, 2004. I have had the pleasure to work with Hogdahl on many occasions. In addition to his professionalism and planning expertise he will be missed for his intensity, integrity, and unique sense of humor. But mostly he will be missed for his dedication to the Members and staff of the Senate.

Thomas Hogdahl was born in Teaneck, and was raised in Bergenfield NJ. There he played basketball and soccer and graduated from Bergenfield High School in 1983. In 1984 he enlisted in the Marine Corps, and subsequently reported to Parris Island, SC, to take on the challenge of becoming a US marine.

Upon earning the title of marine, Gunnery Sergeant Hogdahl completed his followon training at Camp Lejeune, NC, where he received formal training as a Marine Corps Administrator, graduating as the honor graduate. He was then ordered cross-country to Camp Pendleton, CA, to serve as an administrative clerk to the hundreds of marines assigned to the historic 1st Marine Division. From 1986 to 1994, his service would take him to Okinawa, Japan, with the 3rd Marine Amphibious Force; Marine Corps Base Quantico, VA, with Security Battalion, and eventually to Dover, NJ, with the inspector and instructor staff for the 25th Marines, 4th Marine Division.

In 1994, Gunnery Sergeant Hogdahl was selected for one of the most demanding billets in the Marine Corps, a Marine Corps Drill instructor (DI). I, as well as every person who has worn the Eagle, Globe, and Anchor will remember their drill instructor for the rest of their lives. He is the one person who has the greatest impact in transforming trainees into U.S. marines. After graduating in the top 10 percent of his DI School, Gunnery Sergeant Hogdahl returned to the legendary yellow footprints where he started his journey 10 years before, only this time it would be in Recruit Depot San Diego, and this time he would be wearing the traditional "Smokey" cover of a drill instructor. For the next 2 years his leadership and example would transform hundreds of young men into U.S. marines.

In 1996, after leaving the drill field, Gunnery Sergeant Hogdahl attended the Advanced Personnel Admin Chief's Course, graduating again as the honor graduate. Thereafter he reported for duty at Marine Corps Base Quantico, VA, where he served as Administration Chief for headquarters and Service Battalion. Just over a year later Gunnery Sergeant Hogdahl was selected to attend the Staff Non-Commissioned Officer Career Course, from which he graduated in the top 10 percent amongst his fellow senior marines. Following school, Gunnery Sergeant Hogdahl was handpicked to fill a senior SNCO position as administrative assistant in the Office of the Under Secretary of the Navy. Based on his exemplary performance over the next year and a half, Gunnery Sergeant Hogdahl was once again selected for another position of great responsibility—the Staff Non-Commissioned Officer for the Marine Corps' U.S. Senate Liaison Office.

In May 1999, Gunnery Sergeant Hogdahl began his tour with the Marine Corps' Senate Liaison Office, and since that time, he has been a key player in helping to maintain positive and productive relationships between the Marine Corps, my colleagues in the Senate, professional committee staff, and personal staff. He was responsible for responding to thousands of congressional inquiries ranging from such sensitive issues as notification of combat casualties during Operations Enduring Freedom and Iraqi Freedom to providing important, timely information on the operation and organization of the Marine Corps. Through his efforts, Gunnery Sergeant Hogdahl developed a sterling reputation for honesty, punctuality, and accuracy. His efforts not only communicated the Commandant's message to the Senate, but also upheld and added to the Marine Corps' image and reputation on Capitol Hill.

While a member of the Marine Corps Senate Liaison Office, Gunnery Sergeant Hogdahl successfully planned and executed 28 international congressional delegations. I had the pleasure of traveling on three of these congressional delegations with Gunnery Sergeant Hogdahl, and was greatly impressed with his professionalism, attention to detail, and resourcefulness. His acumen for planning and coordination carried over into Gunnery Sergeant Hogdahl's ability to plan and organize numerous Marine Corps and Joint Service social events on Capitol Hill. These events included among others, the Marine Corps Birthday Commemoration, Joint Services Reception, and Marine Corps fall and spring receptions—all very important in enabling myself, and my Senate colleagues to maintain important relationships with the Corps' senior leadership.

Throughout his career as a U.S. marine, GySgt Thomas S. Hogdahl has demonstrated outstanding character, discerning judgment, and a deep sense of duty to his Country and Corps. On behalf of the U.S. Senate, I thank Gunnery Sergeant Hogdahl for his 21 years of service to the Nation and the U.S. Marine Corps. His wife Barbara, and their three sons—Thomas, Stephen, and Brandon—have reason to be proud of "Gunny" Hogdahl as we are here in the U.S. Senate and I wish them all the best as Tom tackles new challenges in his certain to be successful civilian career.●

MESSAGE FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

PERIODIC REPORT RELATIVE TO THE NATIONAL EMERGENCY WITH RESPECT TO IRAN WHICH WAS DECLARED IN EXECUTIVE ORDER NO. 12170—PM 56

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO IRAN

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2003. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 12, 2003.*

MESSAGES FROM THE HOUSE

At 2:17 p.m., on November 12, 2003, a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 313. An act to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs.

H.R. 274. An act to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge; and

H.R. 3232. An act to reauthorize certain school lunch and child nutrition programs through March 31, 2004.

The enrolled bills were subsequently signed by the President pro tempore (Mr. STEVENS).

At 3:47 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that pursuant to 10 U.S.C. 9355(a), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Board of Visitors to the United States Air Force Academy: Mr. THOMPSON of California, and Ms. KILPATRICK of Michigan.

ENROLLED BILLS SIGNED

On November 13, 2003, a message from the House of Representatives, delivered by one of its clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2559. An act making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes; and

H.R. 3054. An act to amend the Policemen and Firemen's Retirement and Disability Act to permit military service previously performed by members and former members of the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police, and the United States Secret Service Uniformed Division to count as creditable service for purposes of calculating retirement annuities payable to such members upon payment of a contribution by such members, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. STEVENS).

MEASURES PLACED ON THE CALENDAR

The following bills were read the first time:

S. 1862. A bill to provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations.

S. 1863. A bill to authorize the transfer of certain naval vessels.

S. 1864. A bill to enhance the security of the United States and United States allies.

S. 1865. A bill to enhance the security of the United States and United States allies.

S. 1866. A bill to enhance the security of the United States and United States allies.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, November 12, 2003, she had presented to the President of the United States the following enrolled bill:

S. 313. An act to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communication was laid before the Senate, together with accompanying papers, reports, and documents, and was referred as indicated:

EC–5202. A communication from the Secretary of the Senate , transmitting, pursuant to law, the report of the receipts and expenditures of the Senate for the period April 1, 2003 through September 30, 2003; ordered to lie on the table.

EC–5203. A communication from the Director, Regulatory Review Group, Farm Service Agency, transmitting, pursuant to law, the report of a rule entitled "Prompt Disaster Set-Aside Consideration and Primary Loan Servicing Facilitation" (RIN0560-AG56) received on November 6, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5204. A communication from the Director, Regulatory Review Group, Farm Service Agency, transmitting, pursuant to law, the report of a rule entitled "Removal of Obsolete Regulations" (RIN0560-AH04) received on November 6, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5205. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, a report relative to the impact of compensation initiatives on recruiting and retention; to the Committee on Armed Services.

EC–5206. A communication from the Assistant Director, Executive and Political Personnel, Department of the Navy, transmitting, pursuant to law, the report of a nomination confirmed for the position of Secretary of the Navy, received on November 6, 2003; to the Committee on Armed Services.

EC–5207. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Notification of Arrival in U.S. Ports; Correction (USCG-2002-11865)" (RIN1625-AA41) received on November 10, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5208. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Regulated Navigation Area: [CGD08-03-029], Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes; Inland Rivers, Eighth Coast Guard District; Correction" (RIN1625-AA11) received on November 19, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5209. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Regatta and Marine Parade Regulation; Special Local Reg.: [CGD07-03-099], World Championship Super Boat Race, Deerfield Beach, FL" (RIN1625-AA08) received on November 19, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5210. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations: [CGD08-03-043] St. Croix, Hudson, Wisconsin" (RIN1625-AA09) received on November 19, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5211. A communication from the Attorney Advisor, Department of Transportation, transmitting, pursuant to law, the report of a nomination for the position of General Counsel, Department of Transportation, received on November 6, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5212. A communication from the Attorney Advisor, Department of Transportation, transmitting, pursuant to law, the report of a vacancy and designation of acting officer for the position of General Counsel, Department of Transportation; to the Committee on Commerce, Science, and Transportation.

EC–5213. A communication from the Acting Division Chief, Marine Mammal Division, Office of Protected Resources, transmitting, pursuant to law, the report of a rule entitled "Dolphin-Safe Tuna Labeling; Official Mark" (RIN0648-AN37) received on November 6, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5214. A communication from the Acting Division Chief, Marine Mammal Division, Office of Protected Resources, transmitting, pursuant to law, the report of a rule entitled "Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean" (RIN0648-AI85) received on November 6, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5215. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to Section 344 of the Trade Act of 2002 ; to the Committee on Finance.

EC–5216. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to State I and Stage II Vapor Recovery at Gasoline Dispensing Facilities" (FRL#7586-2) received on November 6, 2003; to the Committee on Environment and Public Works.

EC–5217. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Kansas Update to Materials Incorporated by Reference" (FRL#7580-6) received on November 6, 2003; to the Committee on Environment and Public Works.

EC–5218. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Permits by Rule, Control of Air Pollution by Permits for New Construction or Modification, and Federal Operating Permits" (FRL#7585-8) received on November 6, 2003; to the Committee on Environment and Public Works.

EC–5219. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revisions to the California State Implementation Plans, San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District" (FRL#7582-2) received on November 6, 2003; to the Committee on Environment and Public Works.

EC–5220. A communication from the Executive Director for Operations, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's Year 2001 Commercial Activities Inventory; to the Committee on Environment and Public Works.

EC–5221. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–5222. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000 ,000 or more to the United Kingdom, Germany, and France; to the Committee on Foreign Relations.

EC–5223. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to The Netherlands; to the Committee on Foreign Relations.

EC–5224. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–5225. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to Parts 120, 123, 124, and 125 of the International Traffic in Arms Regulations; to the Committee on Foreign Relations.

EC–5226. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

EC–5227. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the American Servicemembers' Protection Act of 2002, the report of an extension of Presidential Determination 2004-03 relative to Colombia; to the Committee on Foreign Relations.

EC–5228. A communication from the Secretary, American Battle Monuments Commission, transmitting, pursuant to law, the Commission's Fiscal Year 2003 annual report; to the Committee on Governmental Affairs.

EC–5229. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the report of the office of Inspector General for the period April 1, 2001 through September 30, 2001; to the Committee on Governmental Affairs.

EC–5230. A communication from the Acting Inspector General, Selective Service System, transmitting, a report relative to the Selective Service System's compliance with the Inspector General Act of 1978; to the Committee on Governmental Affairs.

EC–5231. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the report of the Office of Inspector General for the six-month period ending September 30, 2001; to the Committee on Governmental Affairs.

EC–5232. A communication from the Deputy Secretary, Division of Market Regulation, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled "Rule 10b-18" (RIN3235-AH37) received on November 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5233. A communication from the Senior Paralegal for Regulations, Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Savings Associations—Transactions with Affiliates" (RIN1550-AB55) received on November 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5234. A communication from the Senior Paralegal for Regulations, Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Interim Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets" (RIN1550-AB79) received on November 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5235. A communication from the Regulations Coordinator, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Privacy Act; Implementation" received on November 7, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5236. A communication from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled "Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits" received on November 6, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5237. A communication from the Secretary of Health and Human Services and the Attorney General, transmitting, pursuant to law, a report relative to the Health Care Fraud and Abuse Control Program for Fiscal Year 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–5238. A communication from the Vice Chairman, Office of the General Counsel, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled "Party Committee Telephone Banks" received on November 7, 2003; to the Committee on Rules and Administration.

EC–5239. A communication from the Vice Chairman, Office of the General Counsel, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled "Multicandidate Committees and Biennial Contribution Limits" received on November 7, 2003; to the Committee on Rules and Administration.

REPORTS OF COMMITTEES

The following reports of committees were submitted on November 12, 2003:

By Mr. STEVENS, from the Committee on Appropriations:

Special Report entitled "Further Revised Allocation to Subcommittees of Budget Totals for Fiscal Year 2004" (Rept. No. 108–195).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. INHOFE for the Committee on Environment and Public Works.

*Rixio Enrique Medina, of Oklahoma, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

By Mr. GRASSLEY for the Committee on Finance.

*Bradley D. Belt, of the District of Columbia, to be a Member of the Social Security Advisory Board for a term expiring September 30, 2008.

*Jennifer Young, of Ohio, to be an Assistant Secretary of Health and Human Services.

*Michael O'Grady, of Maryland, to be an Assistant Secretary of Health and Human Services.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. STABENOW (for herself and Mr. LEVIN):

S. 1850. A bill to direct the Secretary of the Interior to conduct a study of maritime sites in the State of Michigan; to the Committee on Energy and Natural Resources.

By Ms. MURKOWSKI:

S. 1851. A bill to raise the minimum state allocation under section 217(b)(2) of the Cranston-Gonzalez National Affordable Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SPECTER (for himself and Mr. SANTORUM):

S. 1852. A bill to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin; to the Committee on Energy and Natural Resources.

By Mr. KENNEDY (for himself, Mrs. CLINTON, Mr. DASCHLE, Mr. DURBIN, Mrs. MURRAY, Ms. CANTWELL, Mr. SARBANES, Mr. LEVIN, Mr. BINGAMAN, Mr. SCHUMER, Mr. BAUCUS, Mr. REED, Mr. ROCKEFELLER, and Mr. KERRY):

S. 1853. A bill to provide extended unemployment benefits to displaced workers; to the Committee on Finance.

By Mr. DODD (for himself, Ms. SNOWE, and Mr. DURBIN):

S. 1854. A bill entitled the "Digital Opportunity Investment Trust Act"; to the Committee on Commerce, Science, and Transportation.

By Mr. ALLEN:

S. 1855. A bill to authorize the Administrator of the National Aeronautics and Space Administration to establish an awards program in honor of Charles "Pete" Conrad, astronaut and space scientist, for recognizing the discoveries made by amateur astronomers of asteroids with near-Earth orbit trajectories; to the Committee on Commerce, Science, and Transportation.

By Mrs. CLINTON:

S. 1856. A bill to designate the Department of Veterans Affairs outpatient clinic in Sunnyside, Queens, New York, as the "Thomas P. Noonan, Jr., Department of Veterans Affairs Outpatient Clinic"; to the Committee on Veterans' Affairs.

By Mr. LOTT (for himself and Mr. SMITH):

S. 1857. A bill to amend the Internal Revenue Code of 1986 to provide procedural fairness in the application of the controlled group provisions to employers who contribute to multiemployer pension plans and who engage in bona fide corporate transactions; to the Committee on Finance.

By Mr. COCHRAN (for himself, Mr. HARKIN, Mr. COLEMAN, Mr. ALLARD, Mr. ENSIGN, and Mr. CRAPO):

S. 1858. A bill to authorize the Secretary of Agriculture to conduct a loan repayment program to encourage the provision of veterinary services in shortage and emergency situations; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DURBIN:

S. 1859. A bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service; to the Committee on Armed Services.

By Mr. HATCH (for himself, Mr. BIDEN, and Mr. GRASSLEY):

S. 1860. A bill to reauthorize the Office of National Drug Control Policy; to the Committee on the Judiciary.

By Mr. LUGAR:

S. 1861. A bill to provide a framework for consideration by the legislative and executive branches of proposed unilateral economic sanctions in order to ensure coordination of United States policy with respect to trade, security, and human rights; to the Committee on Foreign Relations.

By Mr. LUGAR:

S. 1862. A bill to provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations; read the first time.

By Mr. LUGAR (for himself and Mr. BIDEN):

S. 1863. A bill to authorize the transfer of certain naval vessels; read the first time.

By Mr. LUGAR (for himself and Mr. BIDEN):

S. 1864. A bill to enhance the security of the United States and United States allies; read the first time.

By Mr. LUGAR (for himself and Mr. BIDEN):

S. 1865. A bill to enhance the security of the United States and United States allies; read the first time.

By Mr. LUGAR (for himself and Mr. BIDEN):

S. 1866. A bill to enhance the security of the United States and United States allies; read the first time.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. KERRY, Mr. LIEBERMAN, and Mr. AKAKA):

S. 1867. A bill to amend the Solid Waste Disposal Act to encourage greater recycling of certain beverage containers through the use of deposit refund incentives; to the Committee on Environment and Public Works.

By Mr. BROWNBACK (for himself, Mr. CRAPO, Mr. SMITH, and Mr. SANTORUM):

S.J. Res. 24. A joint resolution providing for the recognition of Jerusalem as the undivided capital of Israel before the United States recognizes a Palestinian state, and for other purposes; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FEINGOLD:

S. Res. 266. A resolution expressing the sense of the Senate with respect to polio; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN (for herself, Mr. KYL, Mr. LIEBERMAN, Mr. COLEMAN, Mr. LAUTENBERG, Mr. SANTORUM, Mr. FITZGERALD, and Mr. COCHRAN):

S. Con. Res. 81. A concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 50

At the request of Mr. JOHNSON, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 50, a bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans health care, and for other purposes.

S. 344

At the request of Mr. AKAKA, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 344, a bill expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

S. 420

At the request of Mrs. DOLE, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 420, a bill to provide for the acknowledgement of the Lumbee Tribe of North Carolina, and for other purposes.

S. 451

At the request of Ms. SNOWE, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 451, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes.

S. 486

At the request of Mr. DOMENICI, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 486, a bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

S. 557

At the request of Ms. COLLINS, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 557, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 569

At the request of Mr. ENSIGN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 569, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 596

At the request of Mr. ENSIGN, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 596, a bill to amend the Internal Revenue Code of 1986 to encourage the investment of foreign earnings within the United States for productive business investments and job creation.

S. 710

At the request of Mr. LEAHY, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 710, a bill to amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under that Act with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad.

S. 780

At the request of Mr. LOTT, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 780, a bill to award a congressional gold medal to Chief Phillip Martin of the Mississippi Band of Choctaw Indians.

S. 856

At the request of Mr. ROCKEFELLER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 856, a bill to amend the Internal Revenue Code of 1986 to expand the incentives for the construction and renovation of public schools.

S. 864

At the request of Mr. EDWARDS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 864, a bill to amend the Child Care and Development Block Grant Act of 1990 to provide for grants to parents and guardians of certain military dependents, in order to assist the parent and guardians in paying for the cost of child care services provided to the dependents, and for other purposes.

S. 902

At the request of Ms. LANDRIEU, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S . 902, a bill to declare, under the authority of Congress under Article I, section 8, of the Constitution to "provide and maintain a Navy", a national policy for the naval force structure required in order to "provide for the common defense" of the United States throughout the 21st century.

S. 950

At the request of Mr. ENZI, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 950, a bill to allow travel between the United States and Cuba.

S. 971

At the request of Mr. HARKIN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 971, a bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

S. 976

At the request of Mr. WARNER, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 976, a bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

S. 1006

At the request of Mr. BURNS, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1006, a bill to reduce temporarily the duty on certain articles of natural cork.

S. 1140

At the request of Mr. LAUTENBERG, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1140, a bill to amend titles 23 and 49, United States Code, concerning length and weight limitations for vehicles operating on Federal-aid highways, and for other purposes.

S. 1143

At the request of Mrs. HUTCHISON, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 1143, a bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, research, and medical management referral program for hepatitis C virus infection.

S. 1246

At the request of Mr. ROBERTS, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1246, a bill to amend the Internal Revenue Code of 1986 to provide for collegiate housing and infrastructure grants.

S. 1353

At the request of Mr. BROWNBACK, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1353, a bill to establish new special immigrant categories.

S. 1358

At the request of Mr. AKAKA, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1358, a bill to amend chapter 23 of title 5, United States Code, to clarify the disclosure of information protected from prohibited personnel practices, require a statement in non-disclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

S. 1392

At the request of Mr. HARKIN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1392, a bill to amend the Richard B. Russell National School Lunch Act to improve the nutrition of students served under child nutrition programs.

S. 1393

At the request of Mr. HARKIN, the names of the Senator from Nebraska (Mr. NELSON), the Senator from Michigan (Mr. LEVIN) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 1393, a bill to amend the Richard B. Russell National School Lunch Act to reauthorize and expand the fruit and vegetable pilot program.

S. 1394

At the request of Mr. HARKIN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1394, a bill to establish a demonstration project under the medicaid program to encourage the provision of community-based services to individuals with disabilities.

S. 1460

At the request of Mr. KENNEDY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1460, a bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.

S. 1513

At the request of Mr. SCHUMER, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1513, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form or become members of labor organizations, and for other purposes.

S. 1531

At the request of Mr. HATCH, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from North Dakota (Mr. CONRAD) were added as cosponsors of S. 1531, a bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall.

S. 1538

At the request of Mr. HARKIN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1538, a bill to ensure that the goals of the Dietary Supplement Health and Education Act of 1994 are met by authorizing appropriations to fully enforce and implement such Act and the amendments made by such Act, and for other purposes.

S. 1545

At the request of Mr. CAMPBELL, his name was withdrawn as a cosponsor of S. 1545, a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents.

S. 1570

At the request of Mr. SANTORUM, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1570, a bill to amend the Internal Revenue Code of 1986 to allow individuals a refundable credit against income tax for the purchase of private health insurance, and to establish State health insurance safety-net programs.

S. 1619

At the request of Mrs. MURRAY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1619, a bill to amend the Individuals with Disabilities Education Act to ensure that children with disabilities who are homeless or are wards of the State have access to special education services, and for other purposes.

S. 1630

At the request of Mrs. CLINTON, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1630, a bill to facilitate nationwide availability of 2–1–1 telephone service for information and referral services, and for other purposes.

S. 1645

At the request of Mr. CRAIG, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1686

At the request of Ms. MURKOWSKI, her name was added as a cosponsor of S. 1686, a bill to reauthorize the adoption incentive payments program under part E of title IV of the Social Security Act, and for other purposes.

At the request of Mr. GRASSLEY, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1686, supra.

S. 1700

At the request of Mr. LEAHY, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from New Jersey (Mr. CORZINE), the Senator from Hawaii

(Mr. INOUYE) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 1700, a bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 1702

At the request of Mr. SMITH, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1702, a bill to amend the Internal Revenue Code of 1986 to extend the exclusion from gross income for employer-provided health coverage to designated plan beneficiaries of employees, and for other purposes.

S. 1704

At the request of Ms. COLLINS, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1704, a bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children.

S. 1721

At the request of Mr. CAMPBELL, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 1721, a bill to amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

S. 1734

At the request of Mrs. LINCOLN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1734, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to expand or add coverage of pregnant women under the Medicaid and State children's health insurance programs, and for other purposes.

S. 1736

At the request of Mr. ENZI, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1736, a bill to promote simplification and fairness in the administration and collection of sales and use taxes.

S. 1737

At the request of Mr. WYDEN, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 1737, a bill to amend the Clayton Act to enhance the authority of the Federal Trade Commission or the Attorney General to prevent anticompetitive practices in tightly concentrated gasoline markets.

S. 1741

At the request of Ms. COLLINS, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1741, a bill to provide a site for the National Women's History Museum in the District of Columbia.

S. 1765

At the request of Mr. LOTT, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 1765, a bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities.

S. 1792

At the request of Mr. DOMENICI, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S . 1792, a bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 1833

At the request of Mr. DASCHLE, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1833, a bill to improve the health of minority individuals.

S. 1834

At the request of Ms. STABENOW, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 1834, a bill to waive time limitations in order to allow the Medal of Honor to be awarded to Gary Lee McKiddy, of Miamisburg, Ohio, for acts of valor while a helicopter crew chief and door gunner with the 1st Cavalry Division during the Vietnam War.

S. 1853

At the request of Mr. KENNEDY, the names of the Senator from New Jersey (Mr. CORZINE) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1853, a bill to provide extended unemployment benefits to displaced workers.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. RES. 164

At the request of Mr. ENSIGN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. Res. 164, a resolution reaffirming support of the Convention on the Prevention and Punishment of the Crime of Genocide and anticipating the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003.

S. RES. 202

At the request of Mr. CAMPBELL, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932–33.

S. RES. 248

At the request of Mr. CAMPBELL, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. Res. 248, a resolution expressing the sense of the Senate concerning the individual Indian money account trust fund lawsuit.

S. RES. 253

At the request of Mr. CAMPBELL, the names of the Senator from North Carolina (Mrs. DOLE), the Senator from Alabama (Mr. SESSIONS), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Nebraska (Mr. HAGEL) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. Res. 253, a resolution to recognize the evolution and importance of motorsports.

At the request of Mr. NELSON of Florida, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. Res. 253, supra.

At the request of Mr. KYL, the names of the Senator from Tennessee (Mr. ALEXANDER), the Senator from Virginia (Mr. ALLEN), the Senator from New Mexico (Mr. DOMENICI), the Senator from Nevada (Mr. ENSIGN), the Senator from New Hampshire (Mr. SUNUNU), the Senator from Oklahoma (Mr. NICKLES), the Senator from Idaho (Mr. CRAIG), the Senator from Virginia (Mr. WARNER), the Senator from Colorado (Mr. ALLARD) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. Res. 253, supra.

S. RES. 260

At the request of Mr. DURBIN, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. Res. 260, a resolution expressing the sense of the Senate that the Secretary of Health and Human Services should take action to remove dietary supplements containing ephedrine alkaloids from the market.

AMENDMENT NO. 2160

At the request of Mr. DEWINE, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Alabama (Mr. SHELBY) were added as cosponsors of amendment No. 2160 intended to be proposed to H.R. 2861, a bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. STABENOW (for herself and Mr. LEVIN):

S. 1850. A bill to direct the Secretary of the Interior to conduct a study of maritime sites in the State of Michigan; to the Committee on Energy and Natural Resources.

Ms. STABENOW. Mr. President, I rise today to introduce the Michigan Lighthouse and Maritime Heritage Act, a bill to promote and protect Michigan's Great Lakes history including its lighthouses and maritime museums.

Before I discuss this bill, I want to say that it is extremely fitting that we are discussing the importance of Michigan's Great Lakes history, because today is an important day in that long history. Two years ago today, President Bush signed into law the FY 2003 Energy and Water Appropriations bill, which included a provision which I authored to place a two year ban on oil and gas drilling in the Great Lakes and protect them from the imminent threat of drilling.

At the time, Governor Engler's administration was moving forward with plans to issue permits for oil and gas drilling in the Great Lakes despite the overwhelming opposition of the citizens of Michigan and the Great Lakes region. The Great Lakes drilling ban had overwhelming bipartisan support of the Great Lakes Senators and House members; so much so, that Senator VOINOVICH and I worked together to re-extend the drilling ban for an additional two years, through the end of FY 2005, in last year's Omnibus Appropriations bill.

One of the reasons the Great Lakes drilling ban had such broad support is that as the elected stewards of this precious natural resource, we all understood how important the Great Lakes are to our region and the Nation. The Great Lakes make up 20 percent of the world's fresh water supply, and thirty-three million people rely on the Great Lakes for their drinking water, including 10 million for Lake Michigan alone. The Great Lakes' coastlines also are home to wetlands, dunes and endangered species and plants. Lake Michigan alone contains over 417 coastal wetlands, the most of any Great Lake.

The Great Lakes are not just an important natural resource, but they are a critical part of Michigan's economy and quality of life. Millions of people use the Great Lakes each year to enjoy their beaches, good fishing and boating. The latest U.S. Fish and Wildlife estimate shows that recreational fishing totals an $839 million boost to Michigan's tourist economy alone. Michigan has over one million registered boaters on file, more than any other State.

The Michigan Lighthouse and Maritime Heritage Act would help preserve the history of this precious natural resource for generations to come. The bill would require the National Park Service (NPS) to study and make recommendations as to the best way to promote and protect Michigan's lighthouses and maritime resources. After 18 months, the NPS would submit the study to Congress with its recommendations to link these wonderful resources such as establishing a lighthouse and maritime heritage trail, and to identify financial resources for Michigan's communities to preserve and restore their lighthouses, museums and other maritime resources. Congress could then move forward with establishing the lighthouse and maritime heritage trail, and implementing the NPS's recommendations. Hopefully, a Michigan lighthouse and maritime heritage trail would lead to increased visitors and tourism to these wonderful sites, which also would help bolster the local economy in these communities.

The Great Lakes are an inseparable part of Michigan's identity and cultural history, and Michigan's landscape reflects that bond. Michigan is home to over 120 lighthouses, more than any other state in the U.S. The oldest Michigan lighthouses are over 180 years, dating back to the 1820's. Michigan is also home to the country's only fresh water marine sanctuary, the Thunder Bay National Marine Sanctuary. This marine sanctuary is designated to protect over 100 shipwrecks through an area of Lake Huron known as shipwreck alley. Michigan is also home to numerous maritime museums and lighthouse museums which are located throughout the State.

The Michigan Lighthouse and Maritime Heritage Act will help protect these precious Great Lakes resources for future generations of Michiganians, and promote the wonderful history of the Great Lakes for all who visit Michigan to enjoy.

By Ms. MURKOWSKI:

S. 1851. A bill to raise the minimum state allocation under section 217(b)(2) of the Cranston-Gonzalez National Affordable Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

Ms. MURKOWSKI. Mr. President, I rise to introduce a bill that will increase the minimum funding level for low population States for the U.S. Department of Housing and Urban Development's HOME Investment Partnerships Program.

The HOME program was created when the Cranston-Gonzalez National Affordable Housing bill was signed into law in 1990. Funds were first appropriated for this program in 1992. HOME program funds are disbursed to State and local governments for the purpose of assisting with the expansion of housing for low-income families. These governmental entities have a great deal of flexibility when using these funds to implement the program's purpose.

When this program was created, a minimum funding level of $3 million was created for States that would normally receive a small amount of HOME funds under the allocation formula, which is based on a State's population, among other parameters. Three States—Alaska, Delaware, and Nevada—received this level of funding for this program in fiscal year 2003. Assuming a three percent inflation rate per year between 1992—when this program was first funded—and 2003, a $3 million allocation in 1992 dollars decreased in value to $2,145,904 in 2003.

This is unacceptable. My State is one of the most expensive areas in the country to develop housing, especially when one takes into account the cost to transport building materials to extremely remote areas of my State.

This legislation increases the minimum State funding level for the HOME program to $5 million. Based on fiscal year 2003 allocations for this program, ten States received less than $5 million. Those States are: Alaska, Delaware, Nevada, Hawaii, Montana, North Dakota, South Dakota, Utah, Vermont, and Wyoming. My proposed increase in funding would be offset by an overall decrease in allocations to other States. If a $5 million minimum funding level had been in place by fiscal year 2003, the other 40 States would only have experienced an overall decrease of less than $15 million. Bearing in mind that the amount appropriated in fiscal year 2003 for this program is just under $2 billion, such a decrease in funds seems reasonable considering no changes have been made to the minimum State funding level since the HOME program was first funded in 1992.

In addition, the congressionally-appointed, bipartisan Millennium Housing Commission recommended increasing the minimum State funding level for the HOME program to $5 million in their May 30, 2002, report to Congress.

It is imperative that we address this important issue so that we can address the housing needs of a greater amount of low-income families in low-population States.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1851

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small State HOME Program Equity Act of 2003".

SEC. 2. ALLOCATION OF RESOURCES.

Section 217(b)(2)(A) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(b)(2)(A)) is amended by striking "$3,000,000" each place it occurs and inserting "$5,000,000".

By Mr. SPECTER (for himself and Mr. SANTORUM):

S. 1852. A bill to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin; to the Committee on Energy and Natural Resources.

Mr. SPECTER. Mr. President, I have sought recognition today to introduce a bill to authorize Federal funding for the rehabilitation of the Benjamin Franklin National Memorial. This memorial, an attraction for some 1 million visitors annually, is truly a national treasure and it has come under significant deterioration—threatening its very existence. I, along with my distinguished colleague from Pennsylvania, Senator SANTORUM, are introducing this bill to ensure that Federal funding is made available to preserve and protect our Nation's memorial to Benjamin Franklin, America's distinguished scientist, statesman, inventor, and diplomat.

Unveiled in 1938, the memorial is located in the Memorial Hall of the Franklin Institute Science Museum of Philadelphia, PA—one of the Nation's premier science and technology museums. The Institute became custodian of the memorial in 1972 when Public Law 92-511 designated the Memorial Hall as the Benjamin Franklin National Memorial. In 1973, a Memorandum of Agreement was executed by the U.S. Department of the Interior and the Franklin Institute and directed the Department to cooperate with the Institute in "all appropriate and mutually agreeable ways in the preservation and presentation of the Benjamin Franklin National Memorial Hall as a national memorial." To date, the Department has not provided any Federal funding to the Franklin Institute other than $300,000, which Senator SANTORUM and I secured from the "Save America's Treasures" program in the Fiscal Year 2000 Interior, Appropriations Act to help improve accessibility to the memorial.

Unlike other national memorials, the Benjamin Franklin National Memorial does not receive an annual allocation of Federal funds that provides for preventative maintenance or other important activities. The significant burden of maintaining this national memorial has become a challenge to the Franklin Institute. For example, under the terms of the 1973 Agreement, the Institute is required to admit the public to Memorial Hall free of charge. Accordingly, the Institute—a non-profit organization—has absorbed the sole responsibility for providing the funds necessary to preserve and maintain the memorial.

The legislation that Senator SANTORUM and I are introducing today finally provides the Franklin Institute with the Federal support necessary to ease the financial burden of maintaining a national memorial—enabling the Institute to continue its duties as its custodian. The bill authorizes up to $10 million in Federal funds to provide needed rehabilitation and to help enhance the experience at the memorial through the addition of exhibition space for the proper display of the finest existing collection of Franklin artifacts.

The Benjamin Franklin National Memorial at the Franklin Institute serves as the Nation's primary location honoring Franklin's life, legacy, and ideals. This was further solidified in July 2002, when President George W. Bush signed into law House Resolution 2362, which created the Benjamin Franklin Tercentenary Commission.

This commission, which I chair, is charged with studying and recommending activities appropriate for the 300th anniversary of Franklin's birth in 2006. As we expect visitors to the memorial from throughout the world for this celebration, it is important that the Franklin Institute, as custodian of the memorial, begin the meticulous restoration and enhancement of it promptly. I urge my colleagues to support this legislation to preserve this national tribute to Benjamin Franklin for years to come.

By Mr. LOTT (for himself and Mr. SMITH):

S. 1857. A bill to amend the internal revenue Code of 1986 to provide procedural fairness in the application of the controlled group provisions to employers who contribute to multiemployer pension plans and who engage in bona fide corporate transactions; to the Committee on Finance.

Mr. LOTT. Mr. President, I rise to day to introduce, along with my colleagues Senator SMITH from Oregon, the multiemployer Pension Plan Procedural Fairness Act of 2003. The purpose of this legislation is to provide a modest amount of procedural fairness with respect to claims filed against former employers under the multiemployer pension plan (MEPPA) rules.

By way of background, MEPPA makes an employer that completely or partially withdraws from participation in a multiemployer pension fund liable for the employer's share of the plans' unfunded vested benefits. That liability is referred to as "withdrawal liability" and can be collected from any member of the controlled group of employers that included the withdrawing employer. The process of collecting withdrawal liability can become quite unfair when the pension fund attempts to assert liability against a former employer or a former member of a controlled group of employers that, as a result of a legitimate business separation, such as a sale or spin-off transaction, ceased to be associated with the withdrawing employer several years before the compete or partial withdrawal occurred.

MEPPA provides that a former employer or former member of a controlled group can still be liable if "a principal purpose" of the business separation transaction was "to evade or avoid" withdrawal liability. The legislative history indicates that the "evade or avoid" provision was designed to prevent unscrupulous employers from dumping a distressed subsidiary in order to evade or avoid withdrawal liability. I firmly believe that unscrupulous companies that attempt to evade withdrawal liability should be held liable. However, companies that engage in legitimate transactions should be able to defend against withdrawal liability claims that arose from events which occurred many years after the business separation.

The simplest way to understand the issue is with an illustration. Assume that a parent company operates a subsidiary that makes contributions to a multiemployer plan. Assume further that, for valid business reasons, the parent company disposes of the subsidiary via a bona fide "spin-off" transaction. At the time of the spin-off, the subsidiary was current on all of its required contributions to the multiemployer pension fund, and the subsidiary continues to make contributions to the multiemployer plan after the spin-off. To complete the example, assume that several years after the spin-off, the spun-off subsidiary goes out of business and ceases to make contributions to the multiemployer pension fund. Under this scenario, the MEPPA rules allow the pension fund to claim that a principal purpose of the transaction was to evade or avoid withdrawal liability. Because the MEPPA rules do not provide any time restrictions for making these claims, a former parent company may be forced to defend against such a claim years, if not decades after the transaction in question. By contrast, the single-employer plan rules provide a 5-year safe harbor rule that protects employers against such claims.

While multiemployer plans should certainly be able to pursue claims against unscrupulous employers, there are two procedural rules in MEPPA that severely and unfairly hinder an employer's ability to defend itself against a claim for withdrawal liability under the evade or avoid standard when the transaction in question occurred several years before the date of a complete or partial withdrawal. The first rule is referred to as the "pay to play" rule, and the second rule involves the burden of proof borne by the employer.

Under MEPPA, if the pension fund makes a claim for withdrawal liability against the former parent company under the "evade or avoid" standard, the claim is sent to arbitration. However, the parent company must begin making payments to the multiemployer pension plan within 60 days after receiving a demand solely based upon the plan's unilateral decision to assert a withdrawal liability claim and long before any neutral third party finds that "a principal purpose" of the challenged transaction was to "evade or avoid" withdrawal liability. As a result, a company that engaged in a bona fide business transaction many years before the withdrawal occurred is forced to begin paying on the claim based on nothing more than the plan's demand.

According to the legislative history, this unique "pay to play" rule was enacted in response to what Congress perceived to be inefficient, cumbersome and costly procedures for collecting delinquent contributions from employers. Simple collection actions were converted into complex litigation through defenses that were unrelated to the multiemployer plan's entitlement to the contribution. However, the relevant MEPPA language is not limited to collection actions. While it may be appropriate to require a contesting employer to commence payments while the claim is being litigated, it is not fair to require prepayment in the case of an "evade or avoid" claim when the transaction in question occurred many years before the complete or partial withdrawal occurred.

The second procedural unfairness involves the burden of proof that an employer faces in rebutting a claim under the "evade or avoid" standard. MEPPA provides that a plan sponsor's determination is presumed correct, unless the contesting party shows by a preponderance of evidence that the determination is incorrect. The impetus behind Congress's decision to include such a presumption was the need to avoid a perceived potential for conflict and delay over the soundness of actuarial determinations of liability. Specifically, the presumption was crafted in order to prevent "the likelihood of dispute and delay over technical actuarial matters with respect to which there are often several equally 'correct' approaches. Without such a presumption, a plan would be helpless to resist dilatory tactics by a withdrawing employer—tactics that could, and could be intended to, result in prohibitive collection costs to the plan." However, the MEPPA presumption language is not limited to actuarial determinations, but reaches liability determinations as well.

Even if this presumption is appropriate when withdrawal liability is triggered shortly after a transaction occurs, it is unfair to apply the presumption when the transaction in question occurred several years before the withdrawal took place. In this situation, a company that engages in a bona fide transaction may be forced to prove a negative—namely that a principal purpose of a transaction that occurred many years ago was not to evade or avoid withdrawal liability.

To summarize, under the MEPPA rules, an employer may find itself in a position where it has to respond to claims regarding a legitimate business transaction that occurred many years earlier. Furthermore, in defending against the claim, the employer must 1. prove that a principal purpose of the transaction was not to evade or avoid withdrawal liability, and 2. prepay the contested amount of the liability well in advance of any final determination of liability. This is patently unfair. Our legislation is a modest attempt to inject some notions of procedural fairness in this situation.

Our bill does not change the present-law rules regarding the determination of liability with respect to a complete or partial withdrawal from a multiemployer pension plan. However, it does change the procedural rules applicable to such a determination, but only with respect to a transaction that occurred five years or more before the date of the complete or partial withdrawal.

Under our bill, when a determination of an employer's withdrawal liability is based on a finding by the plan sponsor that a principal purpose of a transaction was to evade or avoid liability, and the transaction in question occurred five years or more before the date of the complete or partial withdrawal, the following rules would apply: 1. the determination by the plan sponsor is not presumed to be correct, and the plan sponsor has the burden to establish, by a preponderance of the evidence, each and every element of the claim for withdrawal liability, and 2. if an employer contests the plan sponsor's determination either through arbitration or through a claim brought in court, the employer is not obligated to make any withdrawal liability payments until a final decision in the arbitration, or in court, upholds the plan sponsor's determination. Our bill would apply to any employer that receives a notification after October 31, 2003.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1857

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Multiemployer Pension Plan Procedural Fairness Act of 2003".

SEC. 2. AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.

(a) IN GENERAL.—Section 414(f) of the Internal Revenue Code of 1986 is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) COMMON CONTROL.—

"(A) IN GENERAL.—For purposes of this subsection and subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), all trades or businesses (whether or not incorporated) which are under common control within the meaning of subsection (c) are considered a single employer.

"(B) PRINCIPAL PURPOSE TEST.—If a principal purpose of any transaction is to evade or avoid liability under subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), then, subject to paragraph (6), the determination of whether one or more trades or businesses are under common control for purposes of such subtitle shall be made without regard to such transaction.", and

(2) by adding at the end the following:

"(6) DETERMINATION OF COMMON CONTROL MORE THAN 5 YEARS FOLLOWING A TRANSACTION.—

"(A) IN GENERAL.—If—

"(i) a plan sponsor of a plan determines that—

"(I) a complete or partial withdrawal of an employer has occurred, or

"(II) an employer is liable for withdrawal liability payments with respect to the complete or partial withdrawal of an employer from the plan,

"(ii) such determination is based in whole or in part on a finding by the plan sponsor that a principal purpose of any transaction was to evade or avoid liability under subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), and

"(iii) such transaction occurred at least 5 years before the date of the complete or partial withdrawal,

then the special rules under subparagraph (B) shall be used in applying section 4219(c) and section 4221(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1399(c) and 1401(a)) to the employer.

"(B) SPECIAL RULES.—

"(i) DETERMINATION.—Notwithstanding section 4221(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401(a)(3))—

"(I) a determination by the plan sponsor under subparagraph (A)(i) shall not be presumed to be correct, and

"(II) the plan sponsor shall have the burden to establish, by a preponderance of the evidence, each and every element of the claim for withdrawal liability.

"(ii) PROCEDURE.—Notwithstanding section 4219(c) and section 4221(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1399(c) and 1401(d)), if an employer contests the plan sponsor's determination under subparagraph (A)(i) through an arbitration proceeding pursuant to section 4221(a) of such Act (29 U.S.C. 1401(a)), or through a claim brought in a court of competent jurisdiction, the employer shall not be obligated to make any withdrawal liability payments until a final decision in the arbitration, or in court, upholds the plan sponsor's determination.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1399(b)(1)) after October 31, 2003.

By Mr. COCHRAN (for himself, Mr. HARKIN, Mr. COLEMAN, Mr. ALLARD, Mr. ENSIGN, and Mr. CRAPO):

S. 1858. A bill to authorize the Secretary of Agriculture to conduct a loan repayment program to encourage the provision of veterinary services in shortage and emergency situations; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. COCHRAN. Mr. President, the United States is experiencing a serious shortage of veterinarians in rural agricultural and inner-city areas. Veterinarians are needed in these areas to support our Nation's defense against bioterrorism, improve food safety, and prevent disease outbreaks. Unfortunately, the financial constraints of loan repayment obligations prevent many new veterinary graduates from working in these underserved areas.

Today, I am pleased to introduce, along with the distinguished Senator from Iowa, Mr. HARKIN, legislation that addresses these challenges. The bill authorizes the Secretary of Agriculture to assist veterinarians in repaying their educational loans if they agree to provide veterinary medical services in areas where the Secretary has determined that a shortage of qualified veterinarians exist.

In addition, at the request of the United States Department of Agriculture, the bill authorizes the Secretary to provide additional loan repayment for those veterinarians in this program who agree to provide services to the Federal Government in emergency situations. When epidemics of animal diseases break out in specific locations in the United States, there is often a serious shortage of trained veterinarians available to respond. Examples include the Exotic Newcastle Disease outbreak in California and an outbreak of low pathogenic Avian Influenza in Virginia in 2002. This legislation would enable the Department of Agriculture to locate trained veterinarians where they are needed in an emergency situation.

This legislation has the support of the Department of Agriculture and the American Veterinary Medical Association which have worked together to develop this legislation to ensure that we have the veterinary health professionals available to protect our food supply. This is an important step in resolving the serious shortage of veterinarians.

Mr. HARKIN. Mr. President, I am pleased to join the chairman of the Committee on Agriculture, Nutrition and Forestry, Senator COCHRAN, to introduce the National Veterinary Medical Service Act. This bill will offer veterinarians a valuable opportunity to serve where they are needed most, while receiving help in paying off their often burdensome student loans.

The cost of becoming a veterinarian is tremendous. Unless aspiring veterinarians come from a wealthy background, they will have accumulated substantial debt by the time they leave school. Because of this debt, their postgraduate opportunities for employment are greatly limited to the geographical areas and types of jobs where incomes meet the burden of student loan repayment. By defraying some of this debt, this bill will help veterinarians to take jobs where there are shortages of veterinarians—such as meat and poultry inspectors in the Federal Government, or in rural areas where large animal practitioners are needed.

Many of these unfilled positions are essential to ensuring the health and food security of Americans. We need to keep the Federal Government staffed with skilled veterinarians in order to maintain a safe food supply and the health of our livestock and poultry. We have all seen the devastating effects diseases such as E. coli O157:H7, Salmonella and Foot and Mouth Disease can have on the livestock and poultry industries and the human and economic toll they can take.

I have worked on many initiatives to address the uneven distribution of medical professionals. Although it often can require extra incentives to get these professionals where they are needed, they often transform these shortage areas by providing critically important services. I have been very happy with the ability of past bills to enable medical professionals to go where they are needed, and I am confident the National Veterinary Medical Service Act will be as successful for veterinarians. I am proud to cosponsor this bill, and I urge my colleagues to support it.

By Mr. DURBIN:

S. 1859. A bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service; to the Committee on Armed Services.

Mr. DURBIN. Mr. President, today, I am introducing a bill that would not only lower the retirement age for reservists but offer incentives for members of the National Guard and Reserves to remain longer in the service of their country.

The bill, the Reservists Retention Act of 2003, lowers the age at which reservists could draw full retirement benefits. Under current law, reservists must complete 20 qualifying years, "good years", or more in order to retire at age 60. A number of bills have been introduced during this Congress that would lower the reserve retirement age in various ways: to age 55; or with immediate eligibility as soon as the reservist completes 20 qualifying years; or with a two-for-one formula where for every two years served beyond 20, the reservist will earn a one-year drop in the retirement age.

These bills are all serious attempts to address the growing recognition that our Reserve Forces are overburdened and under-compensated. The Reservists Retention Act of 2003 aims to balance key provisions from these bills by allowing reservists who serve beyond the requisite 20 qualifying years to retire one year earlier for each year of service beyond 20, down to the age of 55. For example, a reservist who completes 23 qualifying years would be able to retire at 57; one who completes 25 or more years would be able to retire at 55, but no earlier than 55.

In the face of frequent and increasingly long deployments, offering this "one-for-one" retirement formula for extended service will aid in retaining experienced reservists in both the National Guard and Reserves beyond the 20-year mark.

I believe this bill is fair and recognizes the drastically changed nature of Reserve service. Since the end of the Cold War, employment of our Reserve Forces has shifted profoundly, from being primarily an expansion force to augment Active Forces during a major war, to the situation today where DoD admits that no significant operation can be undertaken without the Reserve Components.

Right now there are 155,000 National Guard and Reserves who are mobilized and on active duty. Another 43,000 reservists have been alerted that they can expect to be called up early next year. Those who are assigned to Iraq can expect to be away from their families for 18 months, with 12 months of that time in Iraq.

We need to clearly demonstrate our commitment to the well being of America's reservists and their families. The Reservists Retention Act of 2003 acknowledges the increasing stress associated with reserve service by providing an incentive to experienced personnel to remain in the Reserves or National Guard until retirement.

They are doing so much for us; we should do no less for them.

I hope my colleagues will join me in supporting this important measure. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1859

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELIGIBILITY FOR RETIRED PAY FOR NON-REGULAR SERVICE.

(a) AGE AND SERVICE REQUIREMENTS.—Subsection (a) of section 12731 of title 10, United States Code, is amended to read as follows:

"(a)(1) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—

"(A) satisfies one of the combinations of requirements for minimum age and minimum number of years of service (computed under section 12732 of this title) that are specified in the table in paragraph (2);

"(B) performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed 20 years of service computed under section 12732 of this title before October 5, 1994, the number of years of qualifying service under this subparagraph shall be eight; and

"(C) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

"(2) The combinations of minimum age and minimum years of service required of a person under subparagraph (A) of paragraph (1) for entitlement to retired pay as provided in such paragraph are as follows:

"Age, in years, is at least:	The minimum years of service required for that age is:
55	25
56	24
57	23
58	22
59	21
60	20.".

(b) 20-YEAR LETTER.—Subsection (d) of such section is amended by striking "the years of service required for eligibility for retired pay under this chapter" in the first sentence and inserting "20 years of service computed under section 12732 of this title.".

(c) EFFECTIVE DATE.—This section and the amendments made by this subsection (a) shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act and shall apply with respect to retired pay payable for that month and subsequent months.

By Mr. HATCH (for himself, Mr. BIDEN, and Mr. GRASSLEY):

S. 1860. A bill to reauthorize the Office of National Drug Control Policy; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise to introduce with my colleagues, Senators BIDEN and GRASSLEY, "The Office of National Drug Control Policy Reauthorization Act of 2003." This bill is a forward-looking measure which will strengthen the Office of National Drug Control Policy as we face the new challenges posed by illegal drugs.

I want to thank my colleagues Senators BIDEN and GRASSLEY for working with me to draft this important legislation. Senator BIDEN has a long and impressive record in addressing the problem of illegal drugs. He is considered the father of ONDCP. He had the vision, the commitment, and the dedication to make it a reality. I thank him again for his work on this proposal that we are introducing today.

I also want to thank Senator GRASSLEY for his work on this important legislation. Senator GRASSLEY has been a tireless advocate in fighting illegal drugs. As the chair of the Senate Caucus on International Narcotics Control, Senator GRASSLEY has demonstrated leadership and commitment in addressing issues relating to domestic and international drug trafficking.

The bipartisan legislation we are introducing today reauthorizes ONDCP for 5 years and provides ONDCP with the necessary tools and resources to: Develop national drug control policy; coordinate and oversee the implementation of the national drug control policy; assess and certify the adequacy of national drug control programs and the budget for those programs; evaluate the effectiveness of National Drug Control Program agencies' programs; and develop specific goals and performance measurements needed to assess the effectiveness of the national drug control policy and the programs of the national drug control program agencies.

The legislation includes a number of reforms which will enhance ONDCP's ability to serve as the coordinator of Federal, State, and local policies aimed at reducing the availability of, and demand for, illegal drugs. The bill: 1. expands ONDCP's role and authority in overseeing the performance of federal agencies' drug control programs, and requires ONDCP to develop specific goals and measurements to assess the performance of Federal agencies; 2. requires ONDCP to develop a new performance measurement system which includes annual and 5-year objectives for assessing the National Drug Control Strategy; 3. expands and increases authorized funding for the High Intensity Drug Trafficking Areas Program designed to reduce illegal Drug trafficking and drug production activities in designated areas; 4. creates a new emerging threat fund for ONDCP to allocated to individual HIDTAs to respond to emerging drug trafficking threats in specific HIDTAs; 5. improves the Counter-Drug Technology Transfer program to provide increased technologies for State and local law enforcement agencies, and reforms the program to ensure timely delivery of such technologies; and 6. reauthorizes and enacts reforms to the National Youth Anti-Drug Media Campaign to ensure responsible use of Federal funds used to support the campaign.

I want to take a moment to address several specific issues. First, I am a strong supporter of the HIDTA program. The HIDTA program brings together Federal, State, and local law enforcement, promotes intelligence sharing among these law enforcement agencies, and ensures coordinated and effective law enforcement strategies. The HIDTA program has proven successful, and is even more important today because of the FBI's need to reallocate resources from drug enforcement to terrorism. Given this reality, it is critical that we support the HIDTA program as an important resource in the fight against illegal drug traffickers.

Second, I want to express my continued support for the National Youth Anti-Drug Medical Campaign. While I know the campaign has suffered from some management problems in the last few years, I am confident that the campaign is on the right track. I want to commend ONDCP Director John Walters and The Partnership for a Drug-Free America President Roy Bostock for their commitment to working together, and for the steps they have taken to ensure that the campaign operates effectively.

The legislation includes specific reforms which will support the campaign and make sure that it operates in a cost-effective manner. Specifically, the bill: 1. Delineates the specific roles and responsibilities of ONDCP, the Partnership and a media buying contractor; 2. restricts the use of funds for creative development of advertisements, except for advertisements intended to reach a minority, ethnic or other special audience that cannot be otherwise obtained from the Partnership; 3. requires the Director to obtain no-cost matches of advertising broadcast times, print space or in-kind contributions which directly relate to substance abuse prevention and specially promote the purposes of the campaign; 4. disqualifies any corporation, partnership or individual from bidding on a media buying contract if such entity, within the last 10 years, in connection with the national media campaign has been convicted of any Federal criminal offense, subject to any Federal civil judgment or penalty in a civil proceeding involving the United States; or settled any Federal civil proceeding or potential proceeding; and 5. provides financial and performance accountability requirements for the campaign.

I also wanted to highlight title VII of the bill—Drug Abuse Education, Prevention, and Treatment. These provisions, which Senators BIDEN, GRASSLEY, LEAHY and I authored in the 107th Congress as part of S. 304, provide much-needed education, prevention and treatment resources which are so critical to reducing the demand for illegal drugs. As I have said before, our national drug strategy must embrace a comprehensive policy that reduces the demand for, as well as the supply of, drugs. To reduce the demand for drugs, we must redouble our efforts at prevention and treatment. This Nation's battle with substance abuse can be successful only through a balanced approach—one that supports law enforcement but at the same time promotes education, prevention and treatment.

Title VII of the bill includes a proposal to establish residential drug treatment facilities for drug-addicted women who have young children. Such facilities are in short supply in this the country, and the problem has grown worse with an ever increasing number of women with children who are abusing drugs.

Treatment is even more imperative for our troubled juveniles, the vast majority of whom will go on to lead productive lives if we can just break the addiction cycle. This bill provides substantial resources to States for juvenile residential treatment facilities and to Federal, State, and local agencies and private service providers to coordinate the delivery of mental health and substance abuse services to children at risk.

Finally, the bill eliminates a restriction in the Controlled Substances Act and will permit medical practitioners to provide drug addiction treatment in group practices. This provision will expand treatment options for thousands of patients who have been denied access to critical addiction treatments.

The proposed legislation we are introducing today will ensure that Congress provides the required oversight—and support of—ONDCP as it continues its critical role of coordinating our National Drug Control Strategy to ensure that we reduce the availability of, and demand for, illegal drugs in our country. I urge my colleagues to support this important legislation.

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

Office of National Drug Control Policy Reauthorization Act of 2003 Section-by-Section Analysis

TITLE I—ORGANIZATION OF OFFICE OF NATIONAL DRUG CONTROL POLICY AND ROLES AND RESPONSIBILITIES

Sec. 101. Amendments to Definitions. This section updates the definitions for "Demand Reduction", "Office", "State and Local Affairs", and "Supply Reduction", and adds a definition for "Appropriate Congressional Committees".

Sec. 102. Establishment of the Office of National Drug Control Policy. This section expands the responsibilities of ONDCP to require ONDCP to evaluate the effectiveness of National Drug Control Program Agencies' programs, and to develop specific goals and performance measurements relevant to assessing these programs. This section also defines the responsibilities of the Director, and four Deputy Directors.

Sec. 103. Appointment and Responsibilities of the Director. This section clarifies succession of the Director and Deputy Directors when vacancies occur; specifies additional responsibilities for the Director and ONDCP; clarifies ONDCP's fund control notice authority and requires appropriate reporting to Congress of such notices; creates a United States Interdiction Coordinator; and requires ONDCP to submit to Congress a comprehensive strategy to address the increased threat from South American heroin.

Sec. 104. Amendments to Ensure Coordination With Other Agencies. This section requires the secretaries of the Interior and Agriculture, Homeland Security, and Defense to submit to ONDCP and Congress reports relating to their agencies' efforts to reduce the cultivation and supply of illegal drugs relevant to the preparation and implementation of the National Drug Control Strategy.

TITLE II—THE NATIONAL DRUG CONTROL STRATEGY

Sec. 201. Annual Preparation and Submission of the National Drug Control Strategy. This section retains the requirement that the President submit to Congress by February 1st of each year a National Drug Control Strategy which sets forth a comprehensive plan for the year to reduce abuse and the consequences of drug abuse by limiting the availability of and demand for illegal drugs. The section also sets forth the required contents of the strategy, and the process for developing the strategy.

Sec. 202. Performance Measures. This section requires that ONDCP submit with the National Drug Control Strategy a new performance measurement system that includes annual and 5-year targets for each of the National Drug Control Strategy goals and objectives.

TITLE III—HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM AND COUNTER-DRUG TECHNOLOGY ASSESSMENT CENTER

Sec. 301. Purposes of High Intensity Drug Trafficking Areas Program. This section establishes the purposes of the HIDTA program—to reduce drug trafficking and drug production in designated areas in the United States by: (1) facilitating cooperation among federal, state and local law enforcement agencies to share information and implement coordinated enforcement activities; (2) enhancing intelligence sharing among Federal, state and local law enforcement agencies; (3) providing reliable intelligence to law enforcement agencies needed to design effective enforcement strategies and operations; and (4) supporting coordinated law enforcement strategies which maximize use of available resources to reduce the supply of drugs in HIDTA designated areas.

Sec. 302. Designations of HIDTAs and Evaluation of HIDTA Performance. This section includes minor changes to existing law regarding factors for consideration in designating HIDTAs and consultation with appropriate officials. In addition, the section sets out specific requirements for an initial evaluation of all existing HIDTAs and a requirement for continuing evaluation of HIDTAs as part of the National Drug Control Strategy.

Sec. 303. Organization of HIDTAs. This section established minimum requirements for organization of HIDTAs, and specifically requires that each HIDTA have an Executive Board responsible for managing the HIDTA comprised of an equal number of representatives from Federal law enforcement and State and local law enforcement agencies.

Sec. 304. HIDTA Funding. This section authorizes funding for HIDTAs: $280 million for FY 2004; $290 million for FY 2005 and 2006; and $300 million for FY 2007 and 2008; requires the Director to submit to Congress a budget justification document each year to support the funding request for each HIDTA; and authorizes the Director to set aside up to 10 percent of the total HIDTA funding request for grants to respond to emerging drug trafficking threats.

Sec. 305. Assessment of Task Forces in HIDTA Areas. This section requires the Director to submit to Congress, not later than 180 days after the enactment of the Act, a report assessing the number and operation of all task forces within each HIDTA.

Sec. 306. Funding for Certain HIDTA Areas. This provision dedicates $1 million of High Intensity Drug Trafficking Area money to (1) prevent intimidation of potential witnesses in drug cases and (2) combat drug trafficking by creating a toll-free telephone hotline for use by the public to provide information about drug activity.

Sec. 307. Report on Intelligence Sharing. This section requires the Director to submit to Congress, not later than 180 days after the enactment of the Act, a report evaluating existing and planned intelligence systems in order to ensure effective information sharing among Federal, State and local law enforcement agencies responsible for drug trafficking and drug production enforcement.

Sec. 308. Counter-Drug Technology Assessment Center. This section revised the title of the Director of Technology to Chief Scientist for Technology; reauthorizes the Technology Transfer Program; establishes procedures and reporting requirements to ensure prompt transfer to technologies to State and local law enforcement agencies; and authorizes use of such technologies for homeland security purposes.

TITLE IV—REAUTHORIZAITON AND IMPROVEMENT OF THE NATIONAL YOUTH ANTI-DRUG MEDIA CAMPAIGN

Sec. 401. Short Title. This section establishes the title, "National Youth Anti-Drug Media Campaign Reauthorization Act of 2003."

Sec. 402. Purposes of the National Anti-Drug Media Campaign. This section clarifies the purposes of the campaign: (1) preventing drug abuse among young people in the United States; (2) increasing awareness of adults of the impact of drug abuse on young people; and (3) encouraging parents and other interested adults to discuss the dangers of drug use with young people.

Sec. 403. Roles and Responsibilities of the Director, the Responsibilities of the Director, the Partnership for a Drug Free America, and a Media Buying Contractor. This section establishes the roles and responsibilities of the Director, the Partnership for a Drug-Free America and a Media Buying Contractor. The Director, in consultation with PDFA, shall determine the overall purposes and strategy of the national media campaign.

Sec. 404. Responsible Use of Federal Funds for the National Youth Anti-Drug Media Campaign. This section requires the Director to allocate sufficient funds to meet the goals of the national media campaign; restricts the use of such funds for creative development of advertisements, except for advertisements intended to reach a minority, ethnic or other special audience that cannot be otherwise obtained from PDFA; requires the Director to obtain no cost matches of advertising broadcast times, print space or in-kind contributions which directly relate to substance abuse prevention and specifically promote the purposes set forth in section 102(a); and exempts any no cost match advertisements from the sponsorship identification provisions in section 317 of the Communications Act of 1934 (Section 103(c)(2)).

In addition, this section ensures responsible use of federal funds by requiring: not less than 89 percent of appropriated amounts for each fiscal year be used for the purpose of advertising time and space (Section 103(d)(1)(A)); no more than $5,000,000 is used in each fiscal year to develop creative content by an entity other than the Partnership for a Drug Free America (Section 103(d)(1)(B)); disqualification of any corporation, partnership or individual from bidding on a contract if such entity, within the last 10 years, in connection with the national media campaign has been convicted of any Federal criminal offense, subject to any Federal civil judgment or penalty in a civil proceeding involving the United States; or settled any Federal civil proceeding or potential proceeding (Section 103(d)(1)(C)(i-iii); and ONDCP to re-solicit bids for any existing contracts with a disqualified bidder, provided that the national media campaign is not interrupted during the re-solicitation process.

Finally, this section includes financial and performance accountability requirements, and expands ONDCP's reporting requirements to Congress on issues related to the national media campaign.

Sec. 405. GAO Audit of National Media Campaign. This section directs GAO to conduct an audit of the national media campaign and submit a report to Congress, within one year after the date of enactment of the Act.

Sec. 406. Authorization for the National Media Campaign. This section authorizes funding for the national media campaign of $195 million for each of the fiscal years 2004 through 2008.

TITLE V—AUTHORIZATIONS AND EXTENSION OF TERMINATION DATE

Sec. 501. Authorization of Appropriations. This section extends the authorization date for ONDCP from 2004 through 2008.

Sec. 502. Extension of Termination Date. This section extends the termination date of the Act from September 30, 2003 to September 30, 2008.

TITLE VI—DESIGNATION OF UNITED STATES ANTI-DOPING AGENCY

Sec. 601. Designation of United States Anti-Doping Agency. This section designates the United States Anti-Doping Agency: to serve as the independent anti-doping organization for amateur athletic competitions recognized by the United States Olympic Committee; to ensure that athletes participating in amateur athletic activities do not use performance-enhancing drugs; to implement anti-doping education programs; and (4) to serve as the United States representative responsible for coordination with other similar anti-doping organizations.

Sec. 602. Authorization of Appropriations. This section authorizes funding for the United States Anti-Doping Agency for fiscal years 2004 through 2008: for fiscal year 2004, $7.2 million; for fiscal year 2005, $9.2 million; for fiscal year 2006, $9.5 million; for fiscal year 2007, $9.9 million; and for fiscal year 2008, $10.5 million.

TITLE VII—DRUG EDUCATION, PREVENTION, AND TREATMENT

Sec. 701. Expansion of Substance Abuse Education and Prevention Efforts. This section authorizes the Administrator of the Substance Abuse and Mental Health Services Administration to make grants to public and non-profit private entities to carry out school-based programs concerning the dangers of abuse of and addiction to illicit drugs and to carry out community-based abuse and addiction prevention programs that are effective and research-based. In awarding grants, the Administrator is required to give priority to rural and urban areas that are experiencing a high rate or rapid increase in abuse. The section authorizes $100 million to be appropriated for FY 2004 and such sums as necessary for each succeeding fiscal year.

Sec. 702. Funding for Rural States and Economically Depressed Communities. This section authorizes $50 million for each of the fiscal years 2005 through 2007 for grants to States to provide treatment facilities in rural and economically depressed communities that have high rates of drug addiction but lack resources to provide adequate treatment.

Sec. 703. Residential Treatment Programs for Juveniles. This section authorizes $100 million a year for each fiscal year of 2005 through 2007 for grants to States to provide residential treatment facilities designed to treat drug addicted juveniles.

Sec. 704. Drug Treatment Alternatives to Prison Programs Administered by State or Local Prosecutors. This section authorizes funding of $30 million for each fiscal year of 2004 through 2006 to create a pilot project for the Attorney General to award grants to State or local prosecutors to develop, implement or expand residential drug treatment programs as an alternative to prison drug treatment programs.

Sec. 705. Funding for Residential Treatment Centers for Women and Children. This section authorizes $10 million for each of the fiscal years 2005 through 2007 for grants to States to provide residential treatment facilities for women who have minor children and who are addicted to methamphetamine, heroin, and other drugs. Such facilities offer specialized treatment for addicted mothers and allow their children to reside with them in the facility or nearby while undergoing treatment.

TITLE VIII—ANABOLIC STEROID CONTROL ACT OF 2003

Sec. 801. Short Title. This section creates a short title, "The Anabolic Steroid Control Act of 2003."

Sec. 802. Amendments to the Controlled Substances Act. This section amends the definition of "anabolic steroid" under 21 U.S.C. 802, to remove the requirement that such a substance promote muscle growth, and thereby encompass steroid precursors such as androstenedione and other similar substances—many of which have been developed since the Steroid Control Act of 1990. This section also makes technical corrections to the current list of anabolic steriods, and adds known steroid precursors to the anabolic steroid list except dehydroepiandrosterone (DHEA). Finally, this section modifies the definition of "felony drug offense" in 21 U.S.C. 802 to apply to offenses involving anabolic steroids.

Sec. 803. Sentencing Commission Guidelines. This section directs the United States Sentencing Commission to review and revise the sentencing guidelines, as necessary, for crimes involving anabolic steroids.

Sec. 804. Prevention and Education Programs. This section authorizes $15 million for each of the fiscal years of 2004 through 2009 for the Secretary of Health and Human Services to award grants to public and nonprofit entities to carry out science-based education programs in elementary and secondary schools to highlight the harmful effects of steroids and steroid precursors.

Sec. 805. National Household survey on Drug Use and Health. This section authorizes $1 million for each of the fiscal years of 2004 through 2009 for the Secretary of Health and Human Services to include questions concerning the use of steroids and steroid precursors in the National Survey on Drug Use and Health, an annual survey conducted to measure the extent of alcohol, drug and tobacco use in the United States.

TITLE IX—NATIONAL GUARD COUNTER-DRUG SCHOOLS

Sec. 901. National Guard Counter-Drug Schools. This section authorizes $30 million for each fiscal year of 2004 through 2008 for the Chief of the National Guard Bureau to establish and operate five National Guard Counter-Drug Schools to provide training in drug interdiction and demand reduction activities to Federal, State and local law enforcement agencies, community-based organizations, and other organizations engaged in counter-drug activities.

TITLE X—MISCELLANEOUS PROVISIONS

Sec. 1001. Repeals. This section repeals the President's Council on Counter-Narcotics and the Parents Advisory Council on Youth Drug Abuse, neither of which has ever met.

Sec. 1002. Amendment to the Higher Education Act. This section clarifies and narrows Section 484(r)(1) of the Higher Education Act (20 U.S.C. 1091(r)(1) to prohibit the award of any federal education grant to any student who has been convicted of any offense under Federal or state law involving possession or sale of a controlled substance while they are receiving a federal education grant.

Sec. 1003. Controlled Substances Act Amendment. This section makes a technical correction to the Drug Addiction Treatment Act of 2000 which inadvertently classified HMOs and other large health systems in the same category as small group practices of physicians. Additionally, this section clarifies that the reporting requirements under the Act apply three years after approval of the controlled substance, not three years from the date of passage of the Act.

Sec. 1004. Exportation of Narcotic and Nonnarcotic Drugs. This Section authorizes companies to export controlled substances to central warehouse facilities outside the United States for delivery to locations in other countries, subject to the DEA certification requirement.

Sec. 1005. Study of Work Place Environment at ONDCP. This section directs GAO to conduct a study and report to Congress on the workplace environment at ONDCP.

Sec. 1006. Requirement for Latin American Heroin Strategy. This section requires the Director to submit to Congress a comprehensive strategy that addresses the increased threat from Latin American heroin, and in particular Colombian heroin.

Mr. BIDEN. Mr. President, I rise today to introduce legislation to reauthorize the so-called "Drug Czar's" office with Senator HATCH, the Chairman of the Judiciary Committee and Senator GRASSLEY, the Chairman of the Caucus on International Narcotics Control.

This bipartisan legislation will, I hope, result in speedy action to reauthorize the drug director's office for 5 years. No matter what perspective any of us have on a specific drug policy, this legislation is about whether we will have a drug director and a drug office to be responsible for developing, coordinating and enacting a national drug policy.

Some twenty years ago I began fighting to create the Office of National Drug Control Policy (ONDCP) because I believed then, as I believe now, that we needed a Cabinet-level official who would coordinate Federal drug policy. I argued that Cabinet-level status was necessary because this individual needed to have the clout to stop interagency feuding, fight for necessary budgetary resources and decertify inadequate agency drug budgets. But just as important, I believed that the public needed to have one high profile person to hold accountable for developing and implementing an effective national strategy.

In 1982 my bill creating a national drug director passed as part of a larger crime bill, but the President vetoed it. He, like all Presidents—both Democrats and Republicans did not like the idea of being held accountable for what was seen as an intractable problem. But I kept at it and six years later the bill became law.

Before we had a drug czar's office there was no official in charge of the Administration's drug effort. And because there was no one Cabinet official in charge, other members of the President's Cabinet could duck responsibility to talk about tough drug policy issues. And that meant no Administration talked enough or did enough about the drug problem and no Administration was held accountable on drug policy. I'm glad that those days are behind us.

As the person responsible for coordinating Federal drug policy, the drug czar deals with almost every federal agency, from the Department of Justice on drug courts to the Department of Homeland Security on interdiction issues to the State Department and the Department of Defense on Plan Colombia to the Department of Health and Human Services on groundbreaking research on how drug use changes brain chemistry. It is the drug director's job to make sure that all of these wide ranging issues are addressed in the annual drug strategy so that our national policy is a balanced one, giving proper attention to drug enforcement, drug treatment, drug prevention and research.

That is why the bill that Senator HATCH, Senator GRASSLEY and I are introducing today retains the provision in current law requiring the Drug Director to submit to Congress an annual drug strategy, detailing how he proposes to address all aspects of our national drug problem. We also ask him to reach out to state and local officials not only to get their input but also to get their support to advance the national goals on the local level.

And just as with my original drug czar legislation, the reauthorization bill retains as its central goal holding every Administration and every President accountable on the drug issue by requiring ONDCP to evaluate the effectiveness of drug policy and programs and develop specific performance measurements and goals.

The bill also includes a number of changes to strengthen current drug control policies and programs. In the area of law enforcement, the bill reauthorizes and increases the funding for the High Intensity Drug Trafficking Area (HIDTA) program which helps to coordinate federal, state and local efforts to reduce drug trafficking and production in designated areas. The bill also requires an evaluation of each individual HIDTA to monitor the program's effectiveness and requires ONDCP to report to Congress on intelligence sharing among HIDTAs and other law enforcement entities.

In terms of prevention and treatment efforts, the legislation includes a number of important provisions. First, it reauthorizes the National Youth Anti Drug Media Campaign and modifies the program so that it will be more accountable. Second, it includes a number of provisions that the Senate passed unanimously last Congress as part of the Drug Abuse Education, Prevention and Treatment Act to expand drug treatment for rural states, economically depressed communities, juveniles and women with children as well as to create a demonstration project to fund drug treatment alternatives to prison programs administered by state and local prosecutors. And finally, the bill amends the Higher Education Act to clarify that those convicted of drug offenses are not prohibited from receiving federal student aid unless they commit a drug felony while they are receiving the grant, loan or work assistance.

I want to thank Senator HATCH and Senator GRASSLEY for their cooperation in crafting a bipartisan bill to reauthorize the Office of National Drug Control Policy. Both Senators have been leaders on drug policy issues and I am glad to work with them on this important matter. I hope that the rest of my colleagues will support this legislation and that we can pass it without delay.

Mr. GRASSLEY. Mr. President, I rise today to add my comments to those of Senator HATCH and Senator BIDEN on the re-authorization of the Office of National Drug Control Policy. Drug use in America may not be on the front page of the New York Times or Washington Post, but remains a deep concern for many people in small towns and local neighborhoods where the effects of drug abuse are painfully felt. Drugs pose an immediate threat to their lives, and the lives of their children.

The re-authorization of ONDCP is about the leadership role we expect the Federal government to play in confronting the issue. I want to take a moment to highlight a few revisions we have proposed in an effort to strengthen the leadership role that ONDCP should play.

The legislation we are introducing today will improve the capacities of the Office to coordinate our Federal efforts against drug use. We have strengthened the role of the Deputy Director of State and Local Affairs, because we recognize that the coordination of activities, information sharing, and resource allocations between Federal, State, and local law enforcement is increasingly critical.

As everyone is this body knows, there isn't enough money to go around to fully fund all of the worthy causes that are out there, and part of our job is making these tough choices. By increasing the coordination between resources that are already deployed, we can increase the effectiveness of these efforts without having to reinvent how business gets done. ONDCP is an ideal place to play broker over these efforts and move this forward.

We have also included provisions clarifying the authorities and responsibilities of the offices of Demand Reduction and Supply Reduction. Much of ONDCP's responsibilities involves coordinating the activities and focus of other Departments. There is no one simple solution to our drug problem, and ONDCP has a responsibility to ensure that Federal prevention, law enforcement, treatment, and interdiction initiatives cover the full spectrum of opportunities available. Accordingly, our bill clarifies the roles and responsibilities of the various Deputies at ONDCP to strengthen their ability to coordinate the counterdrug activities both within ONDCP and those of other Departments.

The Office of National Drug Control Policy also has responsibility for the execution and effectiveness of the High Intensity Drug Trafficking Areas program, or HIDTA program. The HIDTA program has proven to be an effective mechanism for getting multiple law enforcement agencies from multiple levels of government to work together. For a relatively modest amount, participating law enforcement agencies have benefited tremendously from the increased information sharing and coordination that HIDTAs generate.

However, there was legitimate concern over the lack of performance measures for the HIDTA program. In addition, there seemed to be some confusion over what the overall purpose of a HIDTA designation was. finally, funding for the HIDTA program has been stifled because of a fear that ONDCP may cut the amount for one particular HIDTA in favor of another. Our legislation addresses these concerns in ways we believe will improve the effectiveness, accountability, and transparency of the program.

First, this legislation establishes that the purpose of the HIDTA program is fourfold: facilitating cooperation among Federal, State, and local law enforcement; enhancing intelligence sharing; providing reliable intelligence to law enforcement agencies for the design of effective enforcement strategies and operations; and supporting coordinated strategies designed to reduce the supply of illegal drugs within a designated area. By focusing the purpose of a HIDTA on improving the capabilities and capacities of those within the HIDTA, we will strengthen the effectiveness of these designated areas to go after drugs.

Second, the legislation creates an evaluation mechanism which requires ONDCP to first establish specific purposes and measures for each HIDTA, and then evaluate the performance of each HIDTA based on the purposes and measures that were established. Because threats each HIDTA faces are unique, the performance of each HIDTA will be evaluated against the goals which are established for that particular HIDTA, rather than an undefined National standard. Not only should this give Congress a better understanding of the performance of this program, but it should give ONDCP a mechanism to better evaluate and support the particular needs of individual HIDTAs.

Third, this legislation requires ONDCP to itemize how much it believes each HIDTA should be funded when the budget request is submitted, rather than waiting until after the appropriations process is complete. Combined with the previous two changes, these changes will combine to give ONDCP the flexibility it needs and the HIDTA program the credibility it needs to expand its leadership and funding for the coordination of law enforcement counterdrug operations.

The final section of this legislation that I would like to mention is the National Media Campaign. I will be honest: I am still not convinced that this program makes the best possible use of drug prevention dollars. But I am in the minority here. Almost everyone I've talked to believes our prevention efforts will be better with the campaign than without it—even if the evidence that the campaign makes a difference is questionable, at best. If the campaign is going to continue, and this legislation does extend the Campaign, I think it's important that it get back to the parameters that were established when it was initially pitched to and authorized by congress.

I think what we have here is a good start in this direction, and I appreciate my colleagues' willingness to take my concerns into consideration. The legislation we have drafted refocuses the campaign toward its initial, buy-one-get-one-free hypothesis. We've proposed enhancing the capacity of the campaign to measure its effectiveness, in an effort to move beyond the 6-month time lag that has hampered past measurements of performance. We have also included a clearer outline of what should, and should not, be paid for by the campaign. And we have created a clear role for the Partnership for a Drug Free America, who has been working on this effort for much longer than Congress has funded it.

All in all, I think we have a good bill. Not a perfect bill, but a good bill. I look forward to continue working with the Committee, our colleagues in the House, and the Administration with the hope that we can re-authorize ONDCP expeditiously.

By Mr. LUGAR:

S. 1861. A bill to provide a framework for consideration by the legislative and executive branches of proposed unilateral economic sanctions in order to ensure coordination of United States policy with respect to trade, security, and human rights; to the Committee on Foreign Relations.

Mr. LUGAR. Mr. President, I rise to introduce the Sanctions Policy Reform Act.

The fundamental purpose of my bill is to promote good governance through thoughtful deliberation on those proposals involving unilateral economic sanctions directed against other countries. My bill lays out a set of guidelines and requirements for a careful and deliberative process in both branches of government when considering new unilateral sanctions. It does not preclude the use of economic sanctions nor does it change those sanctions already in force. It is based on the principle that if we improve the quality of our policy process and public discourse, we can improve the quality of the policy itself.

Numerous studies have shown that unilateral sanctions rarely succeed and often harm the United States more than the target country. Sanctions can jeopardize billions of dollars in U.S. export earnings and hundreds of thousands of American jobs. They frequently weaken our international competitiveness by yielding to other countries those markets and opportunities that we abandon. They also can undermine our ability to provide humanitarian assistance abroad.

Unilateral sanctions often appear to be cost-free, but they have many unintended victims—the poor in the target countries, American companies, American labor, American consumers and, quite frankly, American foreign policy. Sanctions can weaken our international competitiveness, lower our global market share, abandon our established market to others and jeopardize billions in export earnings—the key to our economic growth. They may also impair our ability to provide humanitarian assistance. They sometimes anger our friends and call our international leadership into question. In many cases, unilateral sanctions are well-intentioned, but impotent, serving only to create the illusion of U.S. action. In the worst cases, unilateral sanctions are actually undermining our own interests in the world.

Unilateral sanctions do have a place in our foreign policy. There will always be situations in which the actions of other countries are so egregious or so threatening to the United States that some response by the United States, short of the use of military force, is needed and justified. In these instances, sanctions can be helpful in getting the attention of another country, in showing U.S. determination to change behaviors we find objectionable, or in stimulating a search for creative solutions to difficult foreign policy problems.

But decisions to impose them must be fully considered and debated. Too frequently, this does not happen. Unilateral sanctions are often the result of a knee-jerk impulse to take action, combined with a timid desire to avoid the risks and commitments involved in more potent foreign policy steps that have greater potential to protect American interests. We must avoid putting U.S. national security in a straight-jacket, and we must have a clear idea of the consequences of sanctions on our own security and prosperity before we enact them.

To this end, I am offering this bill to reform the U.S. sanctions decision-making process. The bill will establish procedural guidelines and informational requirements that must be met prior to the imposition of unilateral economic sanctions. For example, before imposing unilateral sanctions, Congress would be required to consider findings by executive branch officials that evaluate the impact of the proposed sanctions on American agriculture, energy requirements, and capital markets. The bill mandates that we be better informed about the prospects that our sanctions will succeed, about the economic costs to the United States, and about the sanctions' impact on other American objectives.

In addition, this sanctions policy reform bill provides for more active consultation between the Congress and the President and for Presidential waiver authority if the President determines it is in our national security interests. It also establishes an executive branch Sanctions Review Committee, which will be tasked with evaluating the effect of any proposed sanctions and providing appropriate recommendations to the President prior to the imposition of such sanctions.

The bill would have no effect on existing sanctions. It would apply only to new sanctions that are enacted after this bill became law. It also would apply only to sanctions that are unilateral and that are intended to achieve foreign policy goals. As such, it excludes trade remedies or trade sanctions imposed because of market access restrictions, unfair trade practices, or violations of U.S. commercial or trade laws.

Let me suggest a number of fundamental principles that I believe should shape our approach to unilateral economic sanctions: unilateral economic sanctions should not be the policy of first resort. To the extent possible, other means of persuasion and influence ought to be exhausted first; if harm is to be done or is intended, we must follow the cardinal principle that we plan to harm our adversary more than we harm ourselves; when possible, multilateral economic sanctions and international cooperation are preferable to unilateral sanctions and are more likely to succeed, even though they may be more difficult to obtain; we ought to avoid double standards and be as consistent as possible in the application of our sanctions policy; to the extent possible, we ought to avoid disproportionate harm to the civilian population. We should avoid the use of food as a weapon of foreign policy and we should permit humanitarian assistance programs to function; our foreign policy goals ought to be clear, specific and achievable within a reasonable period of time; we ought to keep to a minimum the adverse affects to our sanctions on our friends and allies; we should keep in mind that unilateral sanctions can cause adverse consequences that may be more problematic than the actions that prompted the sanctions—a regime collapse, a humanitarian disaster, a mass exodus of people, or more repression and isolation in the target country, for example; we should explore options for solving problems through dialogue, public diplomacy, and positive inducements or rewards; the President of the United States should always have options that include both sticks and carrots that can be adjusted according to circumstance and nuance; the Congress should be vigilant by insuring that his options are consistent with Congressional intent and the law; and in those cases where we do impose sanctions unilaterally, our actions must be part of a coherent and coordinated foreign policy that is coupled with diplomacy and consistent with our international obligations and objectives.

An unexamined reliance on unilateral sanctions may be appropriate for a third-rate power whose foreign policy interests lie primarily in satisfying domestic constituencies or cultivating a self-righteous posture. But the United States is the world's only superpower. Our own prosperity and security, as well as the future of the world, depend on a vigorous and effective assertion of our international interests.

The United States should never abandon its leadership role in the world, nor forsake the basic values we cherish. We must ask, however, whether we are always able to change the actions of other countries whose behavior we find disagreeable or threatening. If we are able to influence those actions, we need to ponder how best to proceed. In my judgment, unilateral economic sanctions will not always be the best answer. But, if they are the answer, they should be structured so that they do as little harm as possible to our global interests. By improving upon our procedures and the quality and timeliness of our information when considering new sanctions, I believe U.S. foreign policy will be more effective.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. KERRY, Mr. LIEBERMAN, and Mr. AKAKA):

S. 1867. A bill to amend the Solid Waste Disposal Act to encourage greater recycling of certain beverage containers through the use of deposit refund incentives; to the Committee on Environment and Public Works.

Mr. JEFFORDS. Mr. President, like every loyal Red Sox fan, I believe that next season, my team will be victorious. I bring this same level of optimism to my efforts to reduce the amount of wasted resources and litter caused by discarded beverage containers. I rise today to introduce the National Beverage Producer Responsibility Act of 2003, the Bottle Bill, convinced that this is our year.

I have long been an advocate for increased recycling. Vermont passed its Bottle Bill in 1972 when I was State Attorney General. In 1975, during my first session as a Representative in the U.S. House, I introduced a national Bottle Bill, closely resembling Vermont's very successful example. Last Congress, as Chairman of the Environment and Public Works Committee, I convened the first congressional hearing in many years on recycling, in which the Committee heard expert testimony on the merits of a national program to recycle beverage containers.

The reason that I continue to push this issue is simple—it makes sense. Beverage container recycling is one of the simplest ways to see a dramatic improvement in our environment. One hundred and twenty billion—let me repeat, 120 billion with a "B"—beverage containers were wasted by not being recycled in 2001. If we could raise the Nation's recycling rate to 80 percent, we would save the equivalent of 300 million barrels of oil over the next ten years and eliminate 4 million tons of greenhouse gas emissions annually. States that have enacted bottle bills also have benefited by reducing road side litter by up to 84 percent.

These savings may sound unrealistic. But, in Vermont alone, recycling efforts in 2001 reduced greenhouse gas emissions by 94,000 metric tons of carbon equivalent. That's equal to approximately two-thirds of all industrial carbon dioxide emissions from fossil fuel combustion in Vermont and 4.5 percent of greenhouse gas emissions. To me, those savings sound remarkable.

Why a refundable deposit program? Thirty years of experience demonstrates that refundable deposit bottle bills are dramatically more effective than voluntary efforts. The ten States that have implemented deposit laws recycle more containers than all of the other 40 States combined. While I applaud curbside and other voluntary recycling efforts, the 71 percent of Americans who live in non-bottle bill States account for only 28 percent of recycled beverage containers.

My bill, the National Beverage Producer Responsibility Act of 2003, strikes a balance between the wishes of industry, the authority of individual states, and the needs of a healthy environment. Unlike traditional bottle bills, this legislation would fully harness market incentives by setting an 80 percent recovery performance standard and allowing industry the freedom to design the most efficient deposit-return program to reach the standard. States that already have bottle bills will retain their authority to continue their programs in their own individual ways as long as they meet the national performance standard.

This Saturday, November 15, 2003, is America Recycles Day in Vermont and across the country. Two years ago, to help commemorate the 2001 America Recycles Day, I participated in a public service announcement to raise awareness regarding the need to buy recycled goods. The importance of recycling deserves, however, more than a 30-second public service announcement and more than its own day on the calendar. For it to work, recycling must be a commitment of all of ours each and every day of the year.

Vermont's commitment to recycling has provided some impressive statistics. For example, in 2001, 31 percent of Vermont's municipal waste was diverted from landfills. That year, 13,260 tons of containers were recycled through soft drink and beer distributors and materials recovery facilities. The benefit of these programs is, of course, that they help keep our Green Mountains green. I commend and thank Governor Jim Douglas for his many recent initiatives to encourage and improve the efficiency of recycling across Vermont. For example, under Governor Douglas' leadership, Vermont has implemented beverage container recycling programs at 20 State information centers. In the first phase, in less than two months, over 200 pounds of aluminum, glass, and plastic were recovered from 51,000 visitors passing through one such information center in Williston, VT.

And today, the U.S. Senate's other Vermonter, PATRICK LEAHY, joins me and Senators JOSEPH LIEBERMAN, DANIEL AKAKA, and JOHN KERRY as original cosponsors as I introduce the National Beverage Producer Responsibility Act of 2003.

Mr. AKAKA. Mr. President, I am pleased to be an original cosponsor for the National Beverage Producer Responsibility Act of 2003, a bill introduced today by Senator JIM JEFFORDS. This bill serves a need that we already have seen in Hawaii—to reduce litter and increase recycling by encouraging businesses to work together in a partnership with government to reclaim glass, plastic bottles, and cans that accumulate on our shores, in our landfills, and along our streets.

The bill sets up a deposit charge that can be reclaimed when the beverage container is returned. The legislation sets a measurable performance standard of 80 percent recovery rate for used, empty beverage containers for recycling or reuse. The bill was crafted to address the concerns of industry, retain the authority of individual States, and promote a healthy environment. It empowers the beverage container industry to design a container recycling program that best fits its business requirements to meet the 80 percent goal. States like Hawaii and 10 other States across the Nation that already have bottle bills will be able to continue their programs as long as the programs meet the national performance standard. It aims to protect and preserve our Nation's natural resources and reduce costs to counties, cities, and residents. In my own State, Hawaii recently enacted a beverage container bill which will take effect in 2005.

As our Nation prepares to celebrate America Recycles Day on Saturday, November 15, I am optimistic that the National Beverage Producer Responsibility Act of 2003 will help keep our parks, beaches, and roadsides cleaner; reduce burdens on landfills; decrease ground water contamination; save energy; lower taxes for disposal costs; and create new industries and jobs.

By Mr. BROWNBACK (for himself, Mr. CRAPO, Mr. SMITH, and Mr. SANTORUM):

S.J. Res. 24. A joint resolution providing for the recognition of Jerusalem as the undivided capital of Israel before the United States recognizes a Palestinian state, and for other purposes; to the Committee on Foreign Relations.

Mr. BROWNBACK. Mr. President, I rise to introduce a joint resolution regarding the status of Jerusalem, and its potential in catapulting the Middle East Peace process forward.

Just prior to returning from the summer recess, I traveled to Israel for five days on one of the most important official trips I have made since coming to the Congress in 1994. I have been to Israel before, but this trip had a special meaning for me both in terms of who and what I saw.

I arrived in the aftermath of the bus bombing in Jerusalem that killed Yeshiva students going to the Wailing Wall. The same week I was there, Palestinian Prime Minister Abu Mazen lost a no confidence vote and conceded to a shake up of the Palestinian cabinet. A wave of Palestinian terrorism ensued and it appeared that no Palestinian leader, at that time, had the will or the desire to contain terrorism much less stamp it out so that President Bush's Roadmap for Peace could proceed.

On my way from the airport in Tel Aviv to the hotel in Jerusalem, I made a brief visit to a town called B'nei Berek, a small Orthodox suburb of Tel Aviv. B'nei Berek was established shortly after the founding of Israel. In the intervening 50 year period, this town has turned into a thriving city of over 200,000 people—a very special place for the Orthodox community in Israel.

While I was there I met with one of the most respected and senior Rabbis in Israel. This man lived in a very modest apartment on an average street, and you would never know that he was one of the most important theological scholars in Israel. His home was lined with volume after volume of theological text, but he spoke plainly and deliberately about the importance of his faith and the role of faith in the lives of the Jewish people. The history of the Jewish people seemed to be etched onto his face and into his eyes.

On this same trip I met with the Israeli Foreign Minister Silvan Shalom, Finance Minister Benjamin Netanyahu, Former Israeli Defense Force General Ephraim Eitam and Ambassador John Wolf, who is charged with monitoring the implementation of commitments in the peace process.

One evening, I went on a tour of the Western Wall and the tunnels that run underneath the current level of buildings around the old city wall. The tour took over an hour and explored some of the most exciting history about Israel, Jerusalem and the Temple.

There is a point in the tunnels that leads to an old entrance into the old city that, if opened, would lead to a special place below where the Temple once stood. This place, I'm sure my colleagues as children in Sunday school learned, is called the Holy of Holies.

The Temple was built around this place, and it could not be entered except by the High Priest on Yom Kippur. It is the place, described in the Book of Genesis, where Abraham was to sacrifice his son Isaac. It is also the place where the Ark of the Covenant was kept. This was a unique experience.

Jerusalem is a special place. It is extremely important to the peace process. In my hand is the "Jerusalem Resolution," a proposition which I hope will propel the peace process forward by moving two big issues forward.

This resolution seeks to make it U.S. policy that prior to the recognition by the U.S. of a Palestinian State, the U.S. Embassy must be moved to Jerusalem and that Jerusalem be declared as the undivided capital of Israel. This resolution would establish an important, tangible asset on both sides for advancing the peace process.

For the past decade, we have attempted to forge a peace agreement between the Palestinians and Israelis on a design of land for peace. This model has failed. We should attempt a new way. If we address two major issues at the outset of vital interest to the ultimate desire for peace, we can help to create a powerful momentum for peace. This bill pushes for the resolution of the status of Jerusalem in conjunction with the recognition of a Palestinian state.

Jerusalem has been the capital of the Jewish people for three thousand years, and is the center of Jewish faith and culture. Jerusalem is the seat of Israel's Government, and is the only capital city designated by the host country in which the U.S. does not maintain an embassy nor recognize it as the capital.

In this resolution, three months prior to the recognition of a Palestinian state, the United States must move its embassy to Jerusalem and the status of Jerusalem must be resolved by the international recognition of Jerusalem as Israel's capital.

I hope that my colleagues will join me in my effort. The peace process is in need of a major paradigm shift. We can't continue to bog ourselves down in the mechanics of the process. We must think grand about this problem and move beyond the status quo.

This resolution is a challenge to this body to change its perspective on this issue. I hope in the coming months we can engage in serious debate over peace and the way toward it in the Middle East.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 266—EXPRESSING THE SENSE OF THE SENATE WITH RESPECT TO POLIO

Mr. FEINGOLD submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 266

Whereas polio has caused millions of casualties through history, paralyzing millions and killing untold numbers of others;

Whereas polio remains a public health threat in today's world, despite being easily preventable by vaccination;

Whereas polio is now limited to 10 countries, with the distinct possibility that it can be once and forever extinguished as an affliction on mankind by ensuring the vaccination of all children in these countries under the age of 5;

Whereas a Global Polio Eradication Initiative exists that seeks to once and forever end polio as an illness, which includes efforts underway by the Centers for Disease Control and Prevention; and

Whereas the United States has the capacity to act to speed the eradication of polio by assisting in the targeting of its few remaining reservoirs: Now, therefore, be it

Resolved, That the Senate—

(1) expresses serious concern about the continuing threat posed by polio;

(2) encourages the United Nations and its component agencies, the private sector, private voluntary organizations and non-governmental organizations, concerned States, and international financial institutions to act with haste and manifold dedication to eradicate polio as soon as possible; and

(3) calls upon the United States government to continue its contribution to the multilateral effort to eradicate polio, including closely monitoring laboratory stocks of the polio virus.

SENATE CONCURRENT RESOLUTION 81—EXPRESSING THE DEEP CONCERN OF CONGRESS REGARDING THE FAILURE OF THE ISLAMIC REPUBLIC OF IRAN TO ADHERE TO ITS OBLIGATIONS UNDER A SAFEGUARDS AGREEMENT WITH THE INTERNATIONAL ATOMIC ENERGY AGENCY AND THE ENGAGEMENT BY IRAN IN ACTIVITIES THAT APPEAR TO BE DESIGNED TO DEVELOP NUCLEAR WEAPONS

Mrs. FEINSTEIN (for herself, Mr. KYL, Mr. LIEBERMAN, Mr. COLEMAN, Mr. LAUTENBERG, Mr. SANTORUM, Mr. FITZGERALD, and Mr. COCHRAN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 81

Whereas, on January 1, 1968, Iran signed the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (the "Nuclear Non-Proliferation Treaty");

Whereas by becoming a party to the Nuclear Non-Proliferation Treaty as a non-nuclear weapons state, Iran has committed itself to permanently abstaining from the development or acquisition of nuclear weapons;

Whereas, in March 2003, the Director of the International Atomic Energy Agency (IAEA) announced that Iran was constructing a facility to enrich uranium, a key component of nuclear weapons;

Whereas environmental sampling by the IAEA at Iran's Natanz nuclear facility revealed the presence of highly enriched uranium that can be used to develop nuclear weapons;

Whereas the traces of highly-enriched uranium detected by the IAEA at the Natanz facility and the Kalaye Electric Company could indicate that Iran has been secretly attempting to produce weapons-grade uranium at these facilities;

Whereas the June 6, 2003, report of the Director General of the IAEA expressed concern over the failure of the Government of Iran to report material, facilities, and activities at its nuclear facilities, including those that have the potential to enrich uranium and develop nuclear weapons, in contravention of its obligations under the safeguards agreement it signed in connection with the Nuclear Non-Proliferation Treaty;

Whereas the Board of Governors of the IAEA adopted a resolution on September 12, 2003, that called on Iran to provide the IAEA a full declaration of all imported material and components relevant to the uranium enrichment program, to grant unrestricted access, including environmental sampling, to the IAEA, to resolve questions regarding the conclusion of the IAEA experts who tested gas centrifuges in that country, to provide complete information regarding the conduct of uranium conversion experiments, and to provide such other information and explanations and take such other steps as the IAEA determines necessary to resolve by October 31, 2003, all outstanding issues involving Iran's nuclear materials and nuclear activities;

Whereas on October 21, 2003, the Government of Iran reached an agreement with 3 European foreign ministers in which it promised to extend full cooperation to the IAEA, sign the IAEA Additional Protocol and commence ratification procedures, comport itself in accordance with the provisions of the Model Additional Protocol prior to ratification, and voluntarily suspend all uranium enrichment and processing activities;

Whereas the 3 European governments promised a dialogue with Iran to ease Iran's access to a variety of modern technologies and supplies once certain international concerns regarding Iran are fully resolved;

Whereas, even if Iran adheres to its commitment to the European foreign ministers to suspend enriching and processing uranium, Iran has explicitly indicated that it reserves the right to resume this activity at a time of its choosing;

Whereas, although Iran has provided the IAEA with what it claims is a full statement about the nature of its nuclear activities, the IAEA has indicated it may take some months to fully evaluate the Iranian declaration, and IAEA head Mohammed El Baradei has already stated that the documents show that Iran failed to comply with some of its commitments under the Nuclear Non-Proliferation Treaty;

Whereas Iran has not yet provided the IAEA unrestricted access to conduct inspections that the IAEA believes are necessary to resolve issues concerning Iran's nuclear program;

Whereas, on October 23, 2003, the Government of Iran provided the IAEA with a declaration that it described as a complete and accurate history of its nuclear program;

Whereas Iran's National Security Council Chief, Hassan Rouhani, stated on October 21, 2003, that Iran was not prepared to abandon its uranium enrichment program, and the Iranian Foreign Ministry indicated on October 26, 2003, that it has not yet suspended uranium enrichment but was merely studying the issue;

Whereas, in June 2003, Iran conducted a successful test of the 800-mile range Shahab-3 missile, and Iran is also seeking to produce a 1,200-mile Shahab-4 missile; and

Whereas the continuation of construction by Iran of unsafeguarded nuclear facilities, coupled with its ties to terrorist groups, will continue to constitute a severe threat to international peace and security and to vital American national interests: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) deplores the development by Iran of a nuclear weapons program and the failure of the Government of Iran for well over a decade to report material, facilities, and activities to the International Atomic Energy Agency in contravention of its obligations under the safeguards agreement it signed in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (hereafter in this resolution referred to as the "Nuclear Non-Proliferation Treaty");

(2) concurs with the view of the Department of State, as delivered in testimony to the U.S.—Israel Joint Parliamentary Committee on September 17, 2003, by the Assistant Secretary of State for Verification and Compliance that the explanations provided by the Government of Iran for its nuclear activities are not credible;

(3) concurs with the conclusion reached in the Department of State's Annual Report on Adherence to and Compliance with Arms Control and Non-Proliferation Agreements and Commitments that Iran is pursuing a program to develop nuclear weapons;

(4) acknowledges the agreement reached between the Government of Iran and the foreign ministers of Germany, France, and the United Kingdom, but questions whether it signifies a sincere and lasting decision by the Government of Iran to abandon its nuclear weapons program;

(5) believes that Iran must come into full compliance with its obligations;

(6) calls on the President to use all appropriate means to prevent Iran from acquiring nuclear weapons, including—

(A) urging the Government of Iran to end its nuclear weapons program and comply fully and unconditionally with the terms of the resolution adopted by the Board of Governors of the International Atomic Energy Agency on September 12, 2003 (hereafter in this resolution referred to as the "IAEA resolution"), that calls on Iran to—

(i) provide the Agency a full declaration of all imported material and components relevant to the uranium enrichment program;

(ii) grant unrestricted access, including environmental sampling, to the Agency;

(iii) resolve questions regarding the conclusion of the Agency experts who tested gas centrifuges in that country;

(iv) provide complete information regarding the conduct of uranium conversion experiments; and

(v) provide such other information and explanations and take such other steps as the Agency determines necessary to resolve by October 31, 2003, all outstanding issues involving Iran's nuclear materials and nuclear activities; and

(B) taking such diplomatic measures as are necessary to encourage other nations, especially Russia, France, Germany, and the United Kingdom, to urge the Government of Iran to fully and immediately comply with the such resolution;

(7) calls on Russia to—

(A) use all appropriate means to urge Iran to accept in full the IAEA resolution;

(B) suspend all nuclear cooperation with Iran, particularly the completion of the Bushehr nuclear reactor and the delivery of fuel for that reactor, until Iran fully and completely complies with the IAEA resolution and fully implements the Model Additional Protocol;

(C) insist that no fuel will be supplied to the Bushehr reactor unless Iran agrees to return all spent fuel to Russia; and

(D) put into effect procedures to ensure that Iran cannot divert any spent fuel;

(8) calls on member states of the United Nations to prevent the Government of Iran from continuing to pursue and develop programs or facilities that could be used in a nuclear weapons program and end all nuclear cooperation with Iran, including the provision of dual use items, until Iran complies fully with the IAEA resolution and fully implements the Model Additional Protocol;

(9) calls on the European Union to condition economic and commercial agreements with Iran on the full compliance by Iran

with its commitment not to pursue nuclear weapons and to stipulate that any rights that Iran obtains under such agreements will be immediately revoked if Iran interferes with the work of the IAEA or takes any other steps to acquire nuclear weapons;

(10) calls on the IAEA, in accordance with its own regulations, to formally declare Iran in violation of the Nuclear Non-Proliferation Treaty at its November 20, 2003, board meeting and refer the matter to the United Nations Security Council for further action;

(11) calls on the United Nations Security Council, immediately upon receiving any violations report from the IAEA, to address the threat to international peace and security posed by Iran's nuclear weapons program by passing a Security Council resolution, or take such other action that may be necessary to impose stringent diplomatic and economic sanctions against Iran; and

(12) calls on the Government of Iran to cease all efforts to acquire nuclear fuel cycle capabilities and to end the enrichment and processing of uranium until it is able to provide specific, verifiable assurances that it is not engaged in a clandestine nuclear weapons program by—

(A) coming into complete and verifiable compliance with its obligations under the IAEA resolution, including the prompt and unconditional implementation of the Model Additional Protocol; and

(B) fully meeting its obligations under the Nuclear Non-Proliferation Treaty.

AMENDMENTS SUBMITTED & PROPOSED

SA 2150. Mr. BOND (for himself and Ms. Mikulski) proposed an amendment to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

SA 2151. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2152. Mrs. CLINTON (for herself, Mr. Enzi, Ms. Cantwell, Mr. Grassley, Mrs. Murray, Mr. Smith, Mr. Schumer, Mr. Wyden, Mr. Harkin, Ms. Stabenow, Mr. Kerry, Mr. Dodd, Mr. Lieberman, Mr. Levin, and Mr. Daschle) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2153. Mr. GRAHAM, of Florida (for himself and Mr. Nelson, of Florida) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2154. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2155. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2156. Mr. CRAIG (for Mr. Bond (for himself, Mr. McConnell, Mr. Talent, Mr. Chambliss, Mr. Miller, and Mr. Craig)) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2157. Mr. SANTORUM submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2158. Mr. CRAIG (for himself, Mr. Harkin, Mr. Cochran, Mr. Conrad, Mr. Chambliss, Mr. Coleman, Mr. Crapo, Mr. Lugar, Mr. Breaux, Mr. Roberts, Mr. Fitzgerald, and Mr. Pryor) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2159. Mr. DORGAN proposed an amendment to amendment SA 2158 proposed by Mr. Craig (for himself, Mr. Harkin, Mr. Cochran, Mr. Conrad, Mr. Chambliss, Mr. Coleman, Mr. Crapo, Mr. Lugar, Mr. Breaux, Mr. Roberts, Mr. Fitzgerald, and Mr. Pryor) to the amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2160. Mr. DeWINE (for himself and Mr. Voinovich) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2161. Mr. DeWINE (for himself and Mr. Voinovich) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2162. Mr. DeWINE (for himself, Mr. Levin, and Mr. Voinovich) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2163. Mr. DeWINE (for himself and Mr. Voinovich) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2164. Ms. CANTWELL (for herself, Mr. Carper, Mr. Brownback, Mr. Hagel, Mr. Roberts, Mr. Nelson, of Nebraska, and Mrs. Murray) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2165. Mr. COLEMAN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2166. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2167. Mr. BOND proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H .R. 2861, supra.

SA 2168. Mr. REED submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2169. Mr. LEVIN (for himself, Ms. Collins, Ms. Stabenow, and Mr. Voinovich) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2170. Mr. BOND (for Mr. Leahy (for himself and Mr. Brownback)) proposed an amendment to the bill S. 1685, to extend and expand the basic pilot program for employment eligiblity verification, and for other purposes.

SA 2171. Mr. LAUTENBERG (for himself, Ms. Mikulski, Mr. Jeffords, Mrs. Boxer, Mr. Corzine, Mr. Schumer, Mr. Leahy, Mr. Lieberman, Mr. Kerry, Mr. Kennedy, Mr. Edwards, Ms. Cantwell, and Mr. Durbin) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development , and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30 , 2004, and for other purposes.

SA 2172. Mr. BOND (for Mr. Graham, of South Carolina (for himself and Mr. Hollings)) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2173. Mr. BOND (for Ms. Mikulski (for herself and Mr. Bond)) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H .R. 2861, supra.

SA 2174. Mr. BOND proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H .R. 2861, supra.

SA 2175. Mr. BOND (for Mr. Stevens) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2176. Mr. BOND (for Mr. Durbin (for himself and Mr. Fitzgerald)) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H .R. 2861, supra.

SA 2177. Mr. BOND (for Ms. Murkowski) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2178. Ms. MIKULSKI proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2179. Mr. FITZGERALD submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2180. Mr. BOND proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2181. Mr. BOND (for Ms. Murkowski) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2182. Ms. MURKOWSKI (for Mr. Dorgan (for himself, Mr. Rockefeller, and Ms. Landrieu)) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2183. Mr. BOND (for Mr. Sarbanes (for himself, Ms. Collins, Mr. Byrd, Mr. Santorum, Mr. Reed, Ms. Snowe, Mr. Kennedy, Mr. Dodd , Mr. Kerry, Mr. Allen, Mr. Schumer, Mrs. Murray, Mrs. Clinton, Mr. Leahy, Mr. Chafee, Ms. Cantwell, Mrs. Feinstein, Mr. Lautenberg, Ms. Stabenow, Mr. Jeffords, Mr. Lieberman, Mr. Akaka, Mr. Dayton, and Mr. Nelson, of Florida)) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2184. Mr. BOND (for Mrs. Clinton (for herself, Ms. Snowe, Mr. Kennedy, Mr. Chafee, Mrs. Murray, Mr. Reed, Mr. Harkin, and Mr. Dodd)) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2185. Mr. BOND (for Mr. Levin (for himself, Ms. Collins, and Ms. Stabenow)) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2186. Mr. BOND (for Mrs. Boxer) proposed an amendment to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra.

SA 2187. Mr. McCAIN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2188. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2189. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2190. Mr. GRAHAM, of Florida submitted an amendment intended to be proposed by him to the bill H.R. 2861, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2150. Mr. BOND (for himself and Ms. Mikulski) proposed an amendment to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Veteran Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE I—DEPARTMENT OF VETERANS AFFAIRS

Veterans Benefits Administration

COMPENSATION AND PENSIONS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation benefits to or on behalf of veterans and a pilot program for disability examinations as authorized by law (38 U.S.C. 107, chapters 11, 13, 18, 51, 53, 55, and 61); pension benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 15, 51, 53, 55, and 61; 92 Stat. 2508); and burial benefits, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment of premiums due on commercial life insurance policies guaranteed under the provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 540 et seq.) and for other benefits as authorized by law (38 U.S.C. 107, 1312, 1977, and 2106, chapters 23, 51, 53, 55, and 61; 50 U.S.C. App. 540–548; 43 Stat. 122, 123; 45 Stat. 735; 76 Stat. 1198), $29,845,127,000, to remain available until expended: *Provided*, That not to exceed $17,056,000 of the amount appropriated under this heading shall be reimbursed to "General operating expenses" and "Medical care" for necessary expenses in implementing those provisions authorized in the Omnibus Budget Reconciliation Act of 1990, and in the Veterans' Benefits Act of 1992 (38 U.S.C. chapters 51, 53, and 55), the funding source for which is specifically provided as the "Compensation and pensions" appropriation: *Provided further*, That such sums as may be earned on an actual qualifying patient basis, shall be reimbursed to "Medical facilities revolving fund" to augment the funding of individual medical facilities for nursing home care provided to pensioners as authorized.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 21, 30, 31, 34, 35, 36, 39, 51, 53, 55, and 61), $2,529,734,000, to remain available until expended: *Provided*, That expenses for rehabilitation program services and assistance which the Secretary is authorized to provide under section 3104(a) of title 38, United States Code, other than under subsection (a)(1), (2), (5), and (11) of that section, shall be charged to this account.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, service-disabled veterans insurance, and veterans mortgage life insurance as authorized by 38 U.S.C. chapter 19; 70 Stat. 887; 72 Stat. 487, $29,017,000, to remain available until expended.

VETERANS HOUSING BENEFIT PROGRAM FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct and guaranteed loans, such sums as may be necessary to carry out the program, as authorized by 38 U.S.C. chapter 37, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That during fiscal year 2004, within the resources available, not to exceed $300,000 in gross obligations for direct loans are authorized for specially adapted housing loans.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, $154,850,000, which may be transferred to and merged with the appropriation for "General operating expenses".

EDUCATION LOAN FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $1,000, as authorized by 38 U.S.C. 3698, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $3,400.

In addition, for administrative expenses necessary to carry out the direct loan program, $70,000, which may be transferred to and merged with the appropriation for "General operating expenses".

VOCATIONAL REHABILITATION LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $52,000, as authorized by 38 U.S.C. chapter 31, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That funds made available under this heading are available to subsidize gross obligations for the principal amount of direct loans not to exceed $3,938,000: *Provided further*, That the loan level shall be considered an estimate and not a limitation.

In addition, for administrative expenses necessary to carry out the direct loan program, $300,000, which may be transferred to and merged with the appropriation for "General operating expenses".

NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For administrative expenses to carry out the direct loan program authorized by 38 U.S.C. chapter 37, subchapter V, as amended, $571,000, which may be transferred to and merged with the appropriation for "General operating expenses".

GUARANTEED TRANSITIONAL HOUSING LOANS FOR HOMELESS VETERANS PROGRAM ACCOUNT

For the administrative expenses to carry out the guaranteed transitional housing loan program authorized by 38 U.S.C. chapter 37, subchapter VI, not to exceed $750,000 of the amounts appropriated by this Act for "General operating expenses" and "Medical care" may be expended.

Veterans Health Administration

MEDICAL CARE

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities; for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs, including care and treatment in facilities not under the jurisdiction of the department; and furnishing recreational facilities, supplies, and equipment; funeral, burial, and other expenses incidental thereto for beneficiaries receiving care in the department; administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction and renovation of any facility under the jurisdiction or for the use of the department; oversight, engineering and architectural activities not charged to project cost; repairing, altering, improving or providing facilities in the several hospitals and homes under the jurisdiction of the department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; aid to State homes as authorized by 38 U.S.C. 1741; administrative and legal expenses of the department for collecting and recovering amounts owed the department as authorized under 38 U.S.C. chapter 17, and the Federal Medical Care Recovery Act, 42 U.S.C. 2651 et seq., $25,488,080,000, plus reimbursements: *Provided*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall establish a priority for treatment for veterans who are service-connected disabled, lower income, or have special needs: *Provided further*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall give priority funding for the provision of basic medical benefits to veterans in enrollment priority groups 1 through 6: *Provided further*, That of the funds made available under this heading, $1,100,000,000 is for equipment and land and structures object classifications only, which amount shall not become available for obligation until August 1, 2004, and shall remain available until September 30, 2005: *Provided further*, That of the funds made available under this heading, not to exceed **$1,100,000,000** shall be available until September 30, 2005: *Provided further*, That of the funds made available under this heading, the Secretary may transfer up to **$400,000,000** to "Construction, major projects" for purposes of implementing CARES subject to a determination by the Secretary that such funds will improve access and quality of veteran's health care needs: *Provided further*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs may provide prescription drugs to enrolled veterans with privately written prescriptions based on requirements established by the Secretary: *Provided further*, That the Secretary of Veterans Affairs shall conduct by contract a program of recovery audits for the fee basis and other medical services contracts with respect to payments for hospital care; and, notwithstanding 31 U.S.C. 3302(b), amounts collected, by setoff or otherwise, as the result of such audits shall be available, without fiscal year limitation, for the purposes for which funds are appropriated under this heading and the purposes of paying a contractor a percent of the amount collected as a result of an audit carried out by the contractor: *Provided further*, That all amounts so collected under the preceding proviso with respect to a designated health care region (as that term is defined in 38 U.S.C. 1729A(d)(2)) shall be allocated, net of payments to the contractor, to that region: *Provided further*, That such sums as may be deposited to the Medical Care Collections Fund pursuant to 38 U.S.C. 1729A may be transferred to this account, to remain available until expended for the purposes of this account: *Provided further*, That Medical Care Collections Funds may be used for construction, alteration and improvement of any parking facility set forth in 38 U.S.C. 8109: *Provided further*, That of the unobligated balances remaining from prior year recoveries under this heading, **$270,000,000** is rescinded.

For an additional amount for "Medical care", **$1,300,000,000**: *Provided*, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 502 of H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2004: *Provided further*, That the entire amount shall be available only to the extent that an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2004, is transmitted by the President to the Congress.

MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development as authorized by 38 U.S.C. chapter 73, to remain available until September 30, 2005, **$413,000,000** plus reimbursements.

MEDICAL ADMINISTRATION AND MISCELLANEOUS OPERATING EXPENSES

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law; administrative expenses in support of capital policy activities, **$79,146,000**: *Provided further*, That of the funds made available under this heading, not to exceed, **$4,000,000** shall be available until September 30, 2005, plus reimbursements: *Provided further*, That technical and consulting services offered by the Facilities Management Field Support Service, including project management and real property administration (including leases, site acquisition and disposal activities directly supporting projects), shall be provided to Department of Veterans Affairs components only on a reimbursable basis, and such amounts will remain available until September 30, 2004.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For necessary operating expenses of the Department of Veterans Affairs, not otherwise provided for, including administrative expenses in support of department-wide capital planning, management and policy activities, uniforms or allowances therefor; not to exceed **$25,000** for official reception and representation expenses; hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, and the Department of Defense for the cost of overseas employee mail, **$1,283,272,000**: *Provided*, That expenses for services and assistance authorized under 38 U.S.C. 3104(a)(1), (2), (5), and (11) that the Secretary determines are necessary to enable entitled veterans: (1) to the maximum extent feasible, to become employable and to obtain and maintain suitable employment; or (2) to achieve maximum independence in daily living, shall be charged to this account: *Provided further*, That the Veterans Benefits Administration shall be funded at not less than **$1,004,704,000**: *Provided further*, That of the funds made available under this heading, not to exceed **$64,000,000** shall be available for obligation until September 30, 2005: *Provided further*, That from the funds made available under this heading, the Veterans Benefits Administration may purchase up to two passenger motor vehicles for use in operations of that Administration in Manila, Philippines.

NATIONAL CEMETERY ADMINISTRATION

For necessary expenses of the National Cemetery Administration for operations and maintenance, not otherwise provided for, including uniforms or allowances therefor; cemeterial expenses as authorized by law; purchase of one passenger motor vehicle for use in cemeterial operations; and hire of passenger motor vehicles, **$144,203,000**: *Provided*, That of the funds made available under this heading, not to exceed **$7,200,000** shall be available until September 30, 2005.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, **$62,250,000**, to remain available until September 30, 2005.

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending and improving any of the facilities under the jurisdiction or for the use of the Department of Veterans Affairs, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, and 8122 of title 38, United States Code, including planning, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, where the estimated cost of a project is more than the amount set forth in 38 U.S.C. 8104(a)(3)(A) or where funds for a project were made available in a previous major project appropriation, **$272,690,000**, to remain available until expended, of which **$183,000,000** shall be for Capital Asset Realignment for Enhanced Services (CARES) activities; and of which **$10,000,000** shall be to make reimbursements as provided in 41 U.S.C. 612 for claims paid for contract disputes: *Provided*, That except for advance planning activities, including needs assessments which may or may not lead to capital investments, and other capital asset management related activities, such as portfolio development and management activities, and investment strategy studies funded through the advance planning fund and the planning and design activities funded through the design fund and CARES funds, including needs assessments which may or may not lead to capital investments, none of the funds appropriated under this heading shall be used for any project which has not been approved by the Congress in the budgetary process: *Provided further*, That funds provided in this appropriation for fiscal year 2004, for each approved project (except those for CARES activities referenced above) shall be obligated: (1) by the awarding of a construction documents contract by September 30, 2004; and (2) by the awarding of a construction contract by September 30, 2005: *Provided further*, That the Secretary of Veterans Affairs shall promptly report in writing to the Committees on Appropriations any approved major construction project in which obligations are not incurred within the time limitations established above: *Provided further*, That no funds from any other account except the "Parking revolving fund", may be obligated for constructing, altering, extending, or improving a project which was approved in the budget process and funded in this account until 1 year after substantial completion and beneficial occupancy by the Department of Veterans Affairs of the project or any part thereof with respect to that part only.

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities under the jurisdiction or for the use of the Department of Veterans Affairs, including planning and assessments of needs which may lead to capital investments, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, 8122, and 8162 of title 38, United States Code, where the estimated cost of a project is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), **$252,144,000**, to remain available until expended, along with unobligated balances of previous "Construction, minor projects" appropriations which are hereby made available for any project where the estimated cost is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), of which **$42,000,000** shall be for Capital Asset Realignment for Enhanced Services (CARES) activities: *Provided*, That from amounts appropriated under this heading, additional amounts may be used for CARES activities upon notification of and approval by the Committees on Appropriations: *Provided further*, That funds in this account shall be available for: (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the department which are necessary because of loss or damage caused by any natural disaster or catastrophe; and (2) temporary measures necessary to prevent or to minimize further loss by such causes.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify or alter existing hospital, nursing home and domiciliary facilities in State homes, for furnishing care to veterans as authorized by 38 U.S.C. 8131–8137, $102,100,000, to remain available until expended.

GRANTS FOR THE CONSTRUCTION OF STATE VETERANS CEMETERIES

For grants to aid States in establishing, expanding, or improving State veterans cemeteries as authorized by 38 U.S.C. 2408, $32,000,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

SEC. 101. Any appropriation for fiscal year 2004 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" may be transferred to any other of the mentioned appropriations.

SEC. 102. Appropriations available to the Department of Veterans Affairs for fiscal year 2004 for salaries and expenses shall be available for services authorized by 5 U.S.C. 3109.

SEC. 103. No appropriations in this Act for the Department of Veterans Affairs (except the appropriations for "Construction, major projects", "Construction, minor projects", and the "Parking revolving fund") shall be available for the purchase of any site for or toward the construction of any new hospital or home.

SEC. 104. No appropriations in this Act for the Department of Veterans Affairs shall be available for hospitalization or examination of any persons (except beneficiaries entitled under the laws bestowing such benefits to veterans, and persons receiving such treatment under 5 U.S.C. 7901–7904 or 42 U.S.C. 5141–5204), unless reimbursement of cost is made to the "Medical care" account at such rates as may be fixed by the Secretary of Veterans Affairs.

SEC. 105. Appropriations available to the Department of Veterans Affairs for fiscal year 2004 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" shall be available for payment of prior year accrued obligations required to be recorded by law against the corresponding prior year accounts within the last quarter of fiscal year 2003.

SEC. 106. Appropriations accounts available to the Department of Veterans Affairs for fiscal year 2004 shall be available to pay prior year obligations of corresponding prior year appropriations accounts resulting from title X of the Competitive Equality Banking Act, Public Law 100–86, except that if such obligations are from trust fund accounts they shall be payable from "Compensation and pensions".

SEC. 107. Notwithstanding any other provision of law, during fiscal year 2004, the Secretary of Veterans Affairs shall, from the National Service Life Insurance Fund (38 U.S.C. 1920), the Veterans' Special Life Insurance Fund (38 U.S.C. 1923), and the United States Government Life Insurance Fund (38 U.S.C. 1955), reimburse the "General operating expenses" account for the cost of administration of the insurance programs financed through those accounts: *Provided*, That reimbursement shall be made only from the surplus earnings accumulated in an insurance program in fiscal year 2004 that are available for dividends in that program after claims have been paid and actuarially determined reserves have been set aside: *Provided further*, That if the cost of administration of an insurance program exceeds the amount of surplus earnings accumulated in that program, reimbursement shall be made only to the extent of such surplus earnings: *Provided further*, That the Secretary shall determine the cost of administration for fiscal year 2004 which is properly allocable to the provision of each insurance program and to the provision of any total disability income insurance included in such insurance program.

SEC. 108. Notwithstanding any other provision of law, the Department of Veterans Affairs shall continue the Franchise Fund pilot program authorized to be established by section 403 of Public Law 103–356 until October 1, 2004: *Provided*, That the Franchise Fund, established by title I of Public Law 104–204 to finance the operations of the Franchise Fund pilot program, shall continue until October 1, 2004.

SEC. 109. Amounts deducted from enhanced-use lease proceeds to reimburse an account for expenses incurred by that account during a prior fiscal year for providing enhanced-use lease services, may be obligated during the fiscal year in which the proceeds are received.

SEC. 110. Funds available in any Department of Veterans Affairs appropriation for fiscal year 2004 or funds for salaries and other administrative expenses shall also be available to reimburse the Office of Resolution Management and the Office of Employment Discrimination Complaint Adjudication for all services provided at rates which will recover actual costs but not exceed $29,318,000 for the Office of Resolution Management and $3,059,000 for the Office of Employment and Discrimination Complaint Adjudication: *Provided*, That payments may be made in advance for services to be furnished based on estimated costs: *Provided further*, That amounts received shall be credited to "General operating expenses" for use by the office that provided the service.

SEC. 111. No appropriations in this Act for the Department of Veterans Affairs shall be available to enter into any new lease of real property if the estimated annual rental is more than $300,000 unless the Secretary submits a report which the Committees on Appropriations of the Congress approve within 30 days following the date on which the report is received.

SEC. 112. No appropriations in this Act for the Department of Veterans Affairs shall be available for hospitalization or treatment of any person by reason of eligibility under section 1710(a)(3) of title 38, United States Code, unless that person has disclosed to the Secretary of Veterans Affairs, in such form as the Secretary may require—

(1) current, accurate third-party reimbursement information for purposes of section 1729 of such title; and

(2) annual income information for purposes of section 1722 of such title.

SEC. 113. None of the funds in this Act may be used to implement sections 2 and 5 of Public Law 107–287.

SEC. 114. Receipts that would otherwise be credited to the Veterans Extended Care Revolving Fund, the Medical Facilities Revolving Fund, the Special Therapeutic and Rehabilitation Fund, the Nursing Home Revolving Fund, the Veterans Health Services Improvement Fund, and the Parking Revolving Fund shall be deposited into the Medical Care Collections Fund, and shall be transferred to the Medical Care account, to remain available until expended, to carry out the purposes of the Medical Care account.

SEC. 115. Notwithstanding any other provision of law, at the discretion of the Secretary of Veterans Affairs, proceeds or revenues derived from enhanced-use leasing activities (including disposal) that are deposited into the Medical Care Collections Fund may be transferred and merged with major construction and minor construction accounts and be used for construction (including site acquisition and disposition), alterations and improvements of any medical facility under the jurisdiction or for the use of the Department of Veterans Affairs. Such sums as realized are in addition to the amount provided for in the Major and Minor Construction appropriations.

TITLE II—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

HOUSING CERTIFICATE FUND

(INCLUDING TRANSFER AND RESCISSION OF FUNDS)

For activities and assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) ("the Act" herein), not otherwise provided for, $18,433,606,000, and amounts that are recaptured in this account, to remain available until expended: *Provided*, That of the amounts made available under this heading, $14,233,606,379 and the aforementioned recaptures shall be available on October 1, 2003 and $4,200,000,000 shall be available on October 1, 2004: *Provided further*, That amounts made available under this heading are provided as follows:

(1) $16,202,616,000 for expiring or terminating section 8 project-based subsidy contracts (including section 8 moderate rehabilitation contracts), for amendments to section 8 project-based subsidy contracts, for contracts entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act, for the 1-year renewal of section 8 contracts for units in projects that are subject to approved plans of action under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and for renewals of expiring section 8 tenant-based annual contributions contracts (including amendments and renewals of enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act (42 U.S.C. 1437f(t))): *Provided*, That notwithstanding any other provision of law, the Secretary shall renew expiring section 8 tenant-based annual contributions contracts for each public housing agency (including for agencies participating in the Moving to Work demonstration, unit months representing section 8 tenant-based assistance funds committed by the public housing agency for specific purposes, other than reserves, that are authorized pursuant to any agreement and conditions entered into under such demonstration, and utilized in compliance with any applicable program obligation deadlines) based on the total number of unit months which were under lease as reported on the most recent end-of-year financial statement submitted by the public housing agency to the Department, adjusted by such additional information submitted by the public housing agency to the Secretary which the Secretary determines to be timely and reliable regarding the total number of unit months under lease at the time of renewal of the annual contributions contract, and by applying an inflation factor

based on local or regional factors to the actual per unit cost as reported: *Provided further*, That funds may be made available in this paragraph to support a total number of unit months under lease that exceeds a public housing agency's authorized level of units under lease to the extent that the use of these funds is part of a strategy for a public housing agency to attain its authorized level of units under contract: *Provided further*, That when a public housing agency is over its authorized contract level, that public housing agency may not issue another voucher (including turnover vouchers) until that public housing agency is at or below its authorized contract level for vouchers.

(2) $461,329,000 for a central fund to be allocated by the Secretary for the support of section 8 subsidy contracts or amendments to such contracts, and for such other purposes as are set forth in this paragraph: *Provided*, That subject to the following proviso, the Secretary shall use amounts in such fund, as necessary, for contract amendments to maintain the total number of unit months under lease (up to the authorized level) including turnover and reissuance of authorized vouchers, and for contract amendments resulting from a significant increase in per-unit costs, or otherwise provide funds so that public housing agencies may lease units up to their authorized unit level: *Provided further*, That the Secretary may use up to $36,000,000 in such funds for incremental vouchers under section 8 of the Act to be used for non-elderly disabled families affected by the designation of a public housing development under section 7 of the Act, the establishment of preferences in accordance with section 651 of the Housing and Community Development Act of 1992 (42 U.S.C. 13611), or the restriction of occupancy to elderly families in accordance with section 658 of such Act (42 U.S.C. 13618): *Provided further*, That the Secretary may only allocate the incremental vouchers under the previous proviso upon a determination that there are adequate funds under this heading to fund all voucher needs in this fiscal year: *Provided further*, That if a public housing agency, at any point in time during their fiscal year, has obligated the amounts made available to such agency pursuant to paragraph (1) under this heading for the renewal of expiring section 8 tenant-based annual contributions contracts, and if such agency has expended 50 percent of the amounts available to such agency in its annual contributions contract reserve account, the Secretary shall make available such amounts as are necessary from amounts available from such central fund to fund amendments under the preceding proviso within 30 days of a request from such agency: *Provided further*, That none of the funds made available in this paragraph may be used to support a total number of unit months under lease which exceeds a public housing agency's authorized level of units under contract: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations of the House and the Senate on the obligation of funds provided in this paragraph;

(3) $252,203,000 for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134), conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act (42 U.S.C.1437f(t)), and tenant protection assistance, including replacement and relocation assistance;

(4) $72,000,000 for family self-sufficiency coordinators under section 23 of the Act;

(5) not to exceed $1,339,448,400 for administrative and other expenses of public housing agencies in administering the section 8 tenant-based rental assistance program: *Provided*, That the fee otherwise authorized under section 8(q) of the Act shall be determined in accordance with section 8(q), as in effect immediately before the enactment of the Quality Housing and Work Responsibility Act of 1998;

(6) $100,000,000 for contract administrators for section 8 project-based assistance;

(7) not less than $3,010,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under "Public and Indian Housing"; and

(8) up to $3,000,000 for an outside audit by a major accounting firm to assess the current status of all funds within this account, including the amounts of obligated and unobligated funds for all programs funded under this heading for fiscal year 2004 as well as the availability of funds currently appropriated under this heading for fiscal years 2005 and thereafter.

The Secretary may transfer up to 15 percent of funds provided under paragraphs (1), (2), (3) or (5), herein to paragraphs (1), (2), (3) or (5), if the Secretary determines that such action is necessary because the funding provided under one such paragraph otherwise would be depleted and as a result, the maximum utilization of section 8 tenant-based assistance with the funds appropriated for this purpose by this Act would not be feasible: *Provided*, That prior to undertaking the transfer of funds in excess of 10 percent from any paragraph pursuant to the previous proviso, the Secretary shall notify the Chairman and Ranking Member of the Subcommittees on Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate and shall not transfer any such funds until 30 days after such notification: *Provided further*, That, hereafter, the Secretary shall require public housing agencies to submit accounting data for funds disbursed under this heading in this Act and prior Acts by source and purpose of such funds: *Provided further*, That incremental vouchers previously made available under this heading for non-elderly disabled families shall, to the extent practicable, continue to be provided to non-elderly disabled families upon turnover: *Provided further*, That $1,372,000,000 is rescinded from unobligated balances remaining from funds appropriated to the Department of Housing and Urban Development under this heading or the heading "Annual contributions for assisted housing" or any other heading for fiscal year 2003 and prior years, to be effected by the Secretary no later than September 30, 2004: *Provided further*, That any such balances governed by reallocation provisions under the statute authorizing the program for which the funds were originally appropriated shall be available for the rescission: *Provided further*, That any obligated balances of contract authority from fiscal year 1974 and prior that have been terminated shall be cancelled.

PUBLIC HOUSING CAPITAL FUND

(INCLUDING TRANSFER OF FUNDS)

For the Public Housing Capital Fund Program to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g), $2,641,000,000 (the "Act"), to remain available until September 30, 2007: *Provided*, That of the total amount provided under this heading, in addition to amounts otherwise allocated under this heading, $400,000,000 shall be allocated for such capital and management activities only among public housing agencies that have obligated all assistance for the agency for fiscal years 2001 and 2002 made available under this same heading in accordance with the requirements under paragraphs (1) and (2) of section 9(j) of such Act: *Provided further*, That notwithstanding any other provision of law or regulation, during fiscal year 2004, the Secretary may not delegate to any Department official other than the Deputy Secretary any authority under paragraph (2) of such section 9(j) regarding the extension of the time periods under such section for obligation of amounts made available for fiscal years 1998, 1999, 2000, 2001, 2002, 2003, or 2004: *Provided further*, That with respect to any amounts made available under the Public Housing Capital Fund for fiscal years 1999, 2000, 2001, 2002, 2003, or 2004 that remain unobligated in violation of paragraph (1) of such section 9(j) or unexpended in violation of paragraph (5)(A) of such section 9(j), the Secretary shall recapture any such amounts and reallocate such amounts among public housing agencies determined under 6(j) of the Act to be high-performing: *Provided further*, That for purposes of this heading, the term "obligate" means, with respect to amounts, that the amounts are subject to a binding agreement that will result in outlays immediately or in the future: *Provided further*, That of the total amount provided under this heading, up to $50,000,000 shall be for carrying out activities under section 9(h) of such Act, of which up to $13,000,000 shall be for the provision of remediation services to public housing agencies identified as "troubled" under the Section 8 Management Assessment Program and for surveys used to calculate local Fair Market Rents and assess housing conditions in connection with rental assistance under section 8 of the Act: *Provided further*, That of the total amount provided under this heading, up to $500,000 shall be for lease adjustments to section 23 projects, and no less than $10,610,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under "Public and Indian housing": *Provided further*, That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended: *Provided further*, That of the total amount provided under this heading, up to $40,000,000 shall be available for the Secretary of Housing and Urban Development to make grants to public housing agencies for emergency capital needs resulting from emergencies and natural disasters in fiscal year 2003: *Provided further*, That of the total amount provided under this heading, $15,000,000 shall be for Neighborhood Networks grants for activities authorized in section 9(d)(1)(E) of the United States Housing Act of 1937, as amended: *Provided further*, That notwithstanding any other provision of law, amounts made available in the previous proviso shall be awarded to public housing agencies on a competitive basis as provided in section 102 of the Department of Housing and Urban Development Reform Act of 1989: *Provided further*, That of the total amount provided under this heading, $55,000,000 shall be for supportive services, service coordinators and congregate services as authorized by section 34 of the Act and the Native American Housing Assistance and Self-Determination Act of 1996: *Provided further*, That of the total amount provided under this heading, up to $125,000,000 shall be for grants and credit subsidy to support a loan guarantee and loan program for the development of public housing units in mixed income housing developments: *Provided further*, That the first proviso under this heading in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003 is amended by striking "1998, 1999".

PUBLIC HOUSING OPERATING FUND

For payments to public housing agencies for the operation and management of public housing, as authorized by section 9(e) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g(e)), $3,576,600,000: *Provided*, That of the total amount provided under this heading, $10,000,000 shall be for programs, as determined appropriate by the Attorney General, which assist in the investigation, prosecution, and prevention of violent crimes and drug offenses in public and federally-assisted low-income housing, including Indian housing, which shall be administered by the Department of Justice through a reimbursable agreement with the Department of Housing and Urban Development: *Provided further*, That, in fiscal year 2004 and all fiscal years hereafter, no amounts under this heading in any appropriations Act may be used for payments to public housing agencies for the costs of operation and management of public housing for any year prior to the current year of such Act: *Provided further*, That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended.

REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING (HOPE VI)

For grants to public housing agencies for demolition, site revitalization, replacement housing, and tenant-based assistance grants to projects as authorized by section 24 of the United States Housing Act of 1937, as amended ("such Act"), $195,115,000, to remain available until expended: *Provided*, That the Secretary may recapture funds from grants previously awarded under this heading in fiscal year 1997 and prior fiscal years for use in making grants in fiscal year 2004 as authorized under section 24 of such Act: *Provided further*, That the Secretary may only recapture grants under the previous proviso where the Secretary determines that a project is less than 90 percent complete and that the project is unlikely to be completed successfully within the next 2 fiscal years: *Provided further*, That the Secretary shall not recapture funds from any HOPE VI project that has unobligated funds due to litigation or a court ordered consent decree: *Provided further*, That the Secretary shall establish an alternative housing plan to meet tenant needs where the Secretary is recapturing HOPE VI funds from a public housing agency with a failed HOPE VI project and the Secretary may recapture only the amount of funds which are not necessary to meet the requirements of the alternative housing plan: *Provided further*, That the Secretary shall report to the Congress by December 15, 2003 on the status of all HOPE VI projects that are unlikely to be completed according to program requirements: *Provided further*, That the Secretary shall report to the Congress on any decision to recapture funds from a HOPE VI project, including the justification for the decision and the provisions of the alternative housing plan: *Provided further*, That the Secretary may use up to $3,000,000 of the funds made available under this heading for technical assistance and contract expertise, to be provided directly or indirectly by grants, contracts or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of the department and of public housing agencies and to residents: *Provided further*, That none of such funds shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgments, unless expressly permitted herein.

NATIVE AMERICAN HOUSING BLOCK GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For the Native American Housing Block Grants program, as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4111 et seq.), $646,600,000, to remain available until expended, of which $2,200,000 shall be contracted through the Secretary as technical assistance and capacity building to be used by the National American Indian Housing Council in support of the implementation of NAHASDA; of which $4,000,000 shall be to support the inspection of Indian housing units, contract expertise, training, and technical assistance in the training, oversight, and management of Indian housing and tenant-based assistance, including up to $300,000 for related travel; and of which no less than $2,720,000 shall be transferred to the Working Capital Fund for development of and modifications to information technology systems which serve programs or activities under "Public and Indian housing": *Provided*, That of the amount provided under this heading, $2,000,000 shall be made available for the cost of guaranteed notes and other obligations, as authorized by title VI of NAHASDA: *Provided further*, That such costs, including the costs of modifying such notes and other obligations, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize the total principal amount of any notes and other obligations, any part of which is to be guaranteed, not to exceed $16,658,000: *Provided further*, That for administrative expenses to carry out the guaranteed loan program, up to $150,000 from amounts in the first proviso, which shall be transferred to and merged with the appropriation for "Salaries and expenses", to be used only for the administrative costs of these guarantees.

INDIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a), $5,300,000, to remain available until expended: *Provided*, That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $197,243,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to $250,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for "Salaries and expenses", to be used only for the administrative costs of these guarantees.

NATIVE HAWAIIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b), $1,035,000, to remain available until expended: *Provided*, That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $39,712,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to $35,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for "Salaries and expenses", to be used only for the administrative costs of these guarantees.

COMMUNITY PLANNING AND DEVELOPMENT

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

For carrying out the Housing Opportunities for Persons with AIDS program, as authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.), $291,000,000, to remain available until September 30, 2005: *Provided*, That the Secretary shall renew all expiring contracts for permanent supportive housing that were funded under section 854(c)(3) of such Act that meet all program requirements before awarding funds for new contracts and activities authorized under this section: *Provided further*, That the formula funds made available under this heading for fiscal year 2004 shall be awarded to eligible grantees under the same rules and requirements as were in effect for fiscal year 2003: *Provided further*, That the Secretary may use up to $3,000,000 of the funds under this heading for training, oversight, and technical assistance activities.

RURAL HOUSING AND ECONOMIC DEVELOPMENT

For the Office of Rural Housing and Economic Development in the Department of Housing and Urban Development, $25,000,000 to remain available until expended, which amount shall be awarded by June 1, 2004, to Indian tribes, State housing finance agencies, State community and/or economic development agencies, local rural nonprofits and community development corporations to support innovative housing and economic development activities in rural areas: *Provided*, That all grants shall be awarded on a competitive basis as specified in section 102 of the Department of Housing and Urban Development Reform Act of 1989.

COMMUNITY DEVELOPMENT FUND

(INCLUDING TRANSFERS OF FUNDS)

For assistance to units of State and local government, and to other entities, for economic and community development activities, and for other purposes, $4,950,000,000, to remain available until September 30, 2006: *Provided*, That of the amount provided, $4,545,700,000 is for carrying out the community development block grant program under title I of the Housing and Community Development Act of 1974, as amended (the "Act" herein) (42 U.S.C. 5301 et seq.): *Provided further*, That not to exceed 20 percent of any grant made with funds appropriated under this heading (other than a grant made available in this paragraph to the Housing Assistance Council or the National American Indian Housing Council, or a grant using funds under section 107(b)(3) of the Act) shall be expended for "Planning and Management Development" and "Administration", as defined in regulations promulgated by the Department: *Provided further*, That $72,500,000 shall be for grants to Indian tribes notwithstanding section 106(a)(1) of such Act; $3,300,000 shall be for a grant to the Housing Assistance Council; $2,600,000 shall be for a grant to the National American Indian Housing Council; $52,500,000 shall be for grants pursuant to section 107 of the Act; no less than $4,900,000 shall be transferred to the Working Capital Fund for the development of and modification to information technology systems which serve programs or activities under "Community planning and development"; $12,000,000 shall be for grants pursuant to the Self Help Homeownership Opportunity Program; $35,500,000 shall be for capacity building, of which $31,500,000 shall be for Capacity Building for Community Development and Affordable Housing for LISC and the Enterprise Foundation for activities as authorized by section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, with not less than $5,000,000 of the funding to be used in rural areas, including tribal areas, and of which $4,000,000 shall be for capacity building activities administered by Habitat for Humanity International; $10,000,000 for the Native Hawaiian Housing Block Grant Program, as authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111 et seq.), of which $400,000 shall be for training and technical assistance; $60,000,000 shall be available for YouthBuild program activities authorized by subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, as amended, and such activities shall be an eligible activity with respect to any funds made available under this heading: *Provided*, That local YouthBuild programs that demonstrate an ability to leverage private and nonprofit funding shall be given a priority for YouthBuild funding: *Provided further*, That no more than 10 percent of any grant award under the YouthBuild program may be used for administrative costs: *Provided further*, That of the amount made available for YouthBuild not less than $10,000,000 is for grants to establish YouthBuild programs in underserved and rural areas and $2,000,000 is to be made available for a grant to YouthBuild USA for capacity building for community development and affordable housing activities as specified in section 4 of the HUD Demonstration Act of 1993, as amended.

Of the amount made available under this heading, $21,000,000 shall be available for neighborhood initiatives that are utilized to improve the conditions of distressed and blighted areas and neighborhoods, to stimulate investment, economic diversification, and community revitalization in areas with population outmigration or a stagnating or declining economic base, or to determine whether housing benefits can be integrated more effectively with welfare reform initiatives: *Provided*, That these grants shall be provided in accordance with the terms and conditions specified in the report accompanying this Act.

Of the amount made available under this heading, $140,000,000 shall be available for grants for the Economic Development Initiative (EDI) to finance a variety of targeted economic investments in accordance with the terms and conditions specified in the report accompanying this Act.

The referenced statement of the managers under this heading in title II of Division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; H. Rept. 108–10) is deemed to be amended with respect to item number 721 by striking "training" and inserting "creation, small business development and quality of life improvements within the State of South Carolina".

The referenced statement of the managers under this heading in title II of Division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; H. Rept. 108–10) is deemed to be amended with respect to item number 317 by striking "135,000" and inserting "151,000".

The referenced statement of the managers under this heading in title II of Division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; H. Rept. 108–10) is deemed to be amended with respect to item number 324 by striking "225,000" and inserting "209,000".

COMMUNITY DEVELOPMENT LOAN GUARANTEES PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, $6,325,000, to remain available until September 30, 2005, as authorized by section 108 of the Housing and Community Development Act of 1974, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $275,000,000, notwithstanding any aggregate limitation on outstanding obligations guaranteed in section 108(k) of the Housing and Community Development Act of 1974, as amended.

In addition, for administrative expenses to carry out the guaranteed loan program, $1,000,000 which shall be transferred to and merged with the appropriation for "Salaries and expenses".

BROWNFIELDS REDEVELOPMENT

For Economic Development Grants, as authorized by section 108(q) of the Housing and Community Development Act of 1974, as amended, for Brownfields redevelopment projects, $25,000,000, to remain available until September 30, 2005: *Provided*, That the Secretary of Housing and Urban Development shall make these grants available on a competitive basis as specified in section 102 of the Department of Housing and Urban Development Reform Act of 1989.

HOME INVESTMENT PARTNERSHIPS PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For the HOME investment partnerships program, as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, $1,925,000,000, to remain available until September 30, 2006: *Provided*, That of the total amount provided in this paragraph, up to $40,000,000 shall be available for housing counseling under section 106 of the Housing and Urban Development Act of 1968; and no less than $1,100,000 shall be transferred to the Working Capital Fund for the development of, maintenance of, and modification to information technology systems which serve programs or activities under "Community planning and development".

In addition to the amounts made available under this heading, $50,000,000, to remain available until September 30, 2006, for assistance to homebuyers as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended: *Provided*, That the Secretary shall provide such assistance in accordance with a formula developed through rulemaking.

HOMELESS ASSISTANCE GRANTS

(INCLUDING TRANSFER OF FUNDS)

For the emergency shelter grants program as authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, as amended; the supportive housing program as authorized under subtitle C of title IV of such Act; the section 8 moderate rehabilitation single room occupancy program as authorized under the United States Housing Act of 1937, as amended, to assist homeless individuals pursuant to section 441 of the McKinney-Vento Homeless Assistance Act; and the shelter plus care program as authorized under subtitle F of title IV of such Act, $1,325,000,000, to remain available until September 30, 2006: *Provided*, That not less than 30 percent of funds made available, excluding amounts provided for renewals under the shelter plus care program, shall be used for permanent housing: *Provided further*, That all funds awarded for services shall be matched by 25 percent in funding by each grantee: *Provided further*, That the Secretary shall renew on an annual basis expiring contracts or amendments to contracts funded under the shelter plus care program if the program is determined to be needed under the applicable continuum of care and meets appropriate program requirements and financial standards, as determined by the Secretary: *Provided further*, That all awards of assistance under this heading shall be required to coordinate and integrate homeless programs with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health and Substance Abuse Block Grant, Workforce Investment Act, and the Welfare-to-Work grant program: *Provided further*, That $12,000,000 of the funds appropriated under this heading shall be available for the national homeless data analysis project and technical assistance: *Provided further*, That no less than $2,580,000 of the funds appropriated under this heading shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under "Community planning and development".

URBAN DEVELOPMENT ACTION GRANTS

From balances of the Urban Development Action Grant Program, as authorized by title I of the Housing and Community Development Act of 1974, as amended, $30,000,000 are cancelled.

HOUSING PROGRAMS

HOUSING FOR SPECIAL POPULATIONS

(INCLUDING TRANSFER OF FUNDS)

For assistance for the purchase, construction, acquisition, or development of additional public and subsidized housing units for low income families not otherwise provided for, $1,033,801,000, to remain available until September 30, 2007: *Provided*, That $783,286,000, plus recaptures or cancelled commitments, shall be for capital advances, including amendments to capital advance contracts, for housing for the elderly, as authorized by section 202 of the Housing Act of

1959, as amended, and for project rental assistance for the elderly under section 202(c)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing, of which amount $50,000,000 shall be for service coordinators and the continuation of existing congregate service grants for residents of assisted housing projects, of which amount up to $30,000,000 shall be for grants under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) for conversion of eligible projects under such section to assisted living or related use, including substantial capital repair, of which amount $25,000,000 shall be maintained by the Secretary as a revolving loan fund for use as gap financing to assist grantees in meeting all the initial cost requirements for developing projects under section 202 of such Act: *Provided further*, That of the amount under this heading, $250,515,000 shall be for capital advances, including amendments to capital advance contracts, for supportive housing for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act, for project rental assistance for supportive housing for persons with disabilities under section 811(d)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing for persons with disabilities as authorized by section 811(b)(1) of such Act, and for tenant-based rental assistance contracts entered into pursuant to section 811 of such Act: *Provided further*, That of the amount made available under this heading, $15,000,000 shall be available to the Secretary of Housing and Urban Development only for making grants to private nonprofit organizations and consumer cooperatives for covering costs of architectural and engineering work, site control, and other planning relating to the development of supportive housing for the elderly that is eligible for assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q): *Provided further*, That amounts made available in the previous proviso shall be awarded on a competitive basis as provided in section 102 of the Department of Housing and Urban Development Reform Act of 1989: *Provided further*, That no less than $940,000, to be divided evenly between the appropriations for the section 202 and section 811 programs, shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under "Housing programs" or "Federal housing administration": *Provided further*, That, in addition to amounts made available for renewal of tenant-based rental assistance contracts pursuant to the second proviso of this paragraph, the Secretary may designate up to 25 percent of the amounts earmarked under this paragraph for section 811 of such Act for tenant-based assistance, as authorized under that section, including such authority as may be waived under the next proviso, which assistance is 5 years in duration: *Provided further*, That the Secretary may waive the provisions governing the terms and conditions of project rental assistance and tenant-based rental assistance for such section 202 and such section 811, except that the initial contract term for such assistance shall not exceed 5 years in duration: *Provided further*, That all balances and recaptures, as of October 1, 2003, remaining in the "Congregate housing services" account as authorized by the Housing and Community Development Amendments of 1978, as amended, shall be transferred to and merged with the amounts for those purposes under this heading.

FLEXIBLE SUBSIDY FUND

(TRANSFER OF FUNDS)

From the Rental Housing Assistance Fund, all uncommitted balances of excess rental charges as of September 30, 2003, and any collections made during fiscal year 2004 (with the exception of amounts required to make refunds of excess income remittances as authorized by Public Law 106–569), shall be transferred to the Flexible Subsidy Fund, as authorized by section 236(g) of the National Housing Act, as amended.

RENTAL HOUSING ASSISTANCE

(RESCISSION)

Up to $303,000,000 of recaptured section 236 budget authority resulting from prepayment of mortgages subsidized under section 236 of the National Housing Act (12 U.S.C. 1715z–1) shall be rescinded in fiscal year 2004: *Provided*, That the limitation otherwise applicable to the maximum payments that may be required in any fiscal year by all contracts entered into under section 236 is reduced in fiscal year 2004 by not more than $303,000,000 in uncommitted balances of authorizations of contract authority provided for this purpose in appropriations Acts.

MANUFACTURED HOUSING FEES TRUST FUND

For necessary expenses as authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5401 et seq.), $13,000,000, to remain available until expended, to be derived from the Manufactured Housing Fees Trust Fund: *Provided*, That not to exceed the total amount appropriated under this heading shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund pursuant to section 620 of such Act: *Provided further*, That the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year 2004 so as to result in a final fiscal year 2004 appropriation from the general fund estimated at not more than $0 and fees pursuant to such section 620 shall be modified as necessary to ensure such a final fiscal year 2004 appropriation.

FEDERAL HOUSING ADMINISTRATION

MUTUAL MORTGAGE INSURANCE PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

During fiscal year 2004, commitments to guarantee loans to carry out the purposes of section 203(b) of the National Housing Act, as amended, shall not exceed a loan principal of $185,000,000,000.

During fiscal year 2004, obligations to make direct loans to carry out the purposes of section 204(g) of the National Housing Act, as amended, shall not exceed $50,000,000: *Provided*, That the foregoing amount shall be for loans to nonprofit and governmental entities in connection with sales of single family real properties owned by the Secretary and formerly insured under the Mutual Mortgage Insurance Fund.

For administrative expenses necessary to carry out the guaranteed and direct loan program, $359,000,000, of which not to exceed $355,000,000 shall be transferred to the appropriation for "Salaries and expenses"; and not to exceed $4,000,000 shall be transferred to the appropriation for "Office of Inspector General". In addition, for administrative contract expenses, $85,000,000, of which no less than $20,744,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under "Housing programs" or "Federal housing administration": *Provided*, That to the extent guaranteed loan commitments exceed $65,500,000,000 on or before April 1, 2004, an additional $1,400 for administrative contract expenses shall be available for each $1,000,000 in additional guaranteed loan commitments (including a pro rata amount for any amount below $1,000,000), but in no case shall funds made available by this proviso exceed $30,000,000.

GENERAL AND SPECIAL RISK PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost of guaranteed loans, as authorized by sections 238 and 519 of the National Housing Act (12 U.S.C. 1715z–3 and 1735c), including the cost of loan guarantee modifications, as that term is defined in section 502 of the Congressional Budget Act of 1974, as amended, $15,000,000, to remain available until expended: *Provided*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, of up to $25,000,000,000.

Gross obligations for the principal amount of direct loans, as authorized by sections 204(g), 207(l), 238, and 519(a) of the National Housing Act, shall not exceed $50,000,000, of which not to exceed $30,000,000 shall be for bridge financing in connection with the sale of multifamily real properties owned by the Secretary and formerly insured under such Act; and of which not to exceed $20,000,000 shall be for loans to nonprofit and governmental entities in connection with the sale of single-family real properties owned by the Secretary and formerly insured under such Act.

In addition, for administrative expenses necessary to carry out the guaranteed and direct loan programs, $229,000,000, of which $209,000,000, shall be transferred to the appropriation for "Salaries and expenses"; and of which $20,000,000 shall be transferred to the appropriation for "Office of Inspector General".

In addition, for administrative contract expenses necessary to carry out the guaranteed and direct loan programs, $93,780,000, of which no less than $16,946,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under "Housing programs" or "Federal housing administration": *Provided*, That to the extent guaranteed loan commitments exceed $8,426,000,000 on or before April 1, 2004, an additional $1,980 for administrative contract expenses shall be available for each $1,000,000 in additional guaranteed loan commitments over $8,426,000,000 (including a pro rata amount for any increment below $1,000,000), but in no case shall funds made available by this proviso exceed $14,400,000.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

GUARANTEES OF MORTGAGE-BACKED SECURITIES LOAN GUARANTEE PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

New commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act, as amended (12 U.S.C. 1721(g)), shall not exceed $200,000,000,000, to remain available until September 30, 2005.

For administrative expenses necessary to carry out the guaranteed mortgage-backed securities program, $10,695,000, to be derived from the GNMA guarantees of mortgage-backed securities guaranteed loan receipt account, of which not to exceed $10,695,000, shall be transferred to the appropriation for "Salaries and expenses".

POLICY DEVELOPMENT AND RESEARCH

RESEARCH AND TECHNOLOGY

For contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C. 1701z–1 et seq.), including carrying out the functions of the Secretary under section 1(a)(1)(i) of Reorganization Plan No. 2 of 1968, $47,000,000, to remain available until September 30, 2005: *Provided*, That of the total amount provided under this heading, $7,500,000 shall be for the Partnership for Advancing Technology in Housing (PATH) Initiative.

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ACTIVITIES

For contracts, grants, and other assistance, not otherwise provided for, as authorized by title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and section 561 of the Housing and Community Development Act of 1987, as amended, $50,000,000, to remain available until September 30, 2005, of which $20,000,000 shall be to carry out activities pursuant to such section 561: *Provided*, That no funds made available under this heading shall be used to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan.

OFFICE OF LEAD HAZARD CONTROL

LEAD HAZARD REDUCTION

For the Lead Hazard Reduction Program, as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, $175,000,000, to remain available until September 30, 2005, of which $10,000,000 shall be for the Healthy Homes Initiative, pursuant to sections 501 and 502 of the Housing and Urban Development Act of 1970: *Provided*, That both programs may include research, studies, evaluations, testing, and demonstration efforts, including education and outreach by units of general local government, community-based organizations and other appropriate entities concerning lead-based paint poisoning and other housing-related diseases and hazards: *Provided*, That of the total amount made available under this heading, $50,000,000 shall be made available on a competitive basis for areas with the highest lead paint abatement needs, as identified by the Secretary as having: (1) the highest number of pre-1940 units of rental housing; and (2) a disproportionately high number of documented cases of lead-poisoned children: *Provided further*, That each grantee receiving funds under the previous proviso shall target those privately owned units and multifamily buildings that are occupied by low-income families as defined under section 3(b)(2) of the United States Housing Act of 1937: *Provided further*, That not less than 90 percent of the funds made available under this paragraph shall be used exclusively for abatement, inspections, risk assessments, temporary relocations and interim control of lead-based hazards as defined by 42 U.S.C. 4851: *Provided further*, That each recipient of funds provided under the first proviso shall make a matching contribution in an amount not less than 25 percent: *Provided further*, That each applicant shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary of the Department of Housing and Urban Development to carry out the proposed use of funds pursuant to a Notice of Funding Availability.

MANAGEMENT AND ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary administrative and non-administrative expenses of the Department of Housing and Urban Development, not otherwise provided for, including purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed $25,000 for official reception and representation expenses, $1,112,130,000, of which $564,000,000 shall be provided from the various funds of the Federal Housing Administration, $10,695,000 shall be provided from funds of the Government National Mortgage Association, $1,000,000 shall be provided from the "Community development loan guarantees program" account, $150,000 shall be provided by transfer from the "Native American housing block grants" account, $250,000 shall be provided by transfer from the "Indian housing loan guarantee fund program" account and $35,000 shall be transferred from the "Native Hawaiian housing loan guarantee fund" account: *Provided further*, That the General Counsel of the Department of Housing and Urban Development shall have for fiscal year 2004 and all fiscal years hereafter overall responsibility for all issues related to appropriations law: *Provided further*, That the Secretary shall fill 7 out of 10 vacancies at the GS–14 and GS–15 levels until the total number of GS–14 and GS–15 positions in the Department has been reduced from the number of GS–14 and GS–15 positions on the date of enactment of Public Law 106–377 by 2½ percent: *Provided further*, That no funds shall be made available for the salaries (other than pensions and related costs) of any employees who had significant responsibility for allocating funding for the overleasing of vouchers by public housing agencies.

WORKING CAPITAL FUND

For additional capital for the Working Capitol Fund (42 U.S.C. 3535) for the development of, modifications to, and infrastructure for Department-wide information technology systems, and for the continuing operation of both Department-wide and program-specific information systems, $240,000,000, to remain available until September 30, 2005: *Provided*, That any amounts transferred to this Fund under this Act shall remain available until expended.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $102,000,000, of which $24,000,000 shall be provided from the various funds of the Federal Housing Administration: *Provided*, That the Inspector General shall have independent authority over all personnel issues within this office: *Provided further*, That no less than $300,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems for the Office of Inspector General.

CONSOLIDATED FEE FUND

(RESCISSION)

All unobligated balances remaining available from fees and charges under section 7(j) of the Department of Housing and Urban Development Act on October 1, 2003 are rescinded.

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For carrying out the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, including not to exceed $500 for official reception and representation expenses, $32,415,000, to remain available until expended, to be derived from the Federal Housing Enterprises Oversight Fund: *Provided*, That not to exceed such amount shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: *Provided further*, That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than $32,415,000.

ADMINISTRATIVE PROVISIONS

SEC. 201. Fifty percent of the amounts of budget authority, or in lieu thereof 50 percent of the cash amounts associated with such budget authority, that are recaptured from projects described in section 1012(a) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 1437 note) shall be rescinded, or in the case of cash, shall be remitted to the Treasury, and such amounts of budget authority or cash recaptured and not rescinded or remitted to the Treasury shall be used by State housing finance agencies or local governments or local housing agencies with projects approved by the Secretary of Housing and Urban Development for which settlement occurred after January 1, 1992, in accordance with such section. Notwithstanding the previous sentence, the Secretary may award up to 15 percent of the budget authority or cash recaptured and not rescinded or remitted to the Treasury to provide project owners with incentives to refinance their project at a lower interest rate.

SEC. 202. None of the amounts made available under this Act may be used during fiscal year 2004 to investigate or prosecute under the Fair Housing Act any otherwise lawful activity engaged in by one or more persons, including the filing or maintaining of a nonfrivolous legal action, that is engaged in solely for the purpose of achieving or preventing action by a Government official or entity, or a court of competent jurisdiction.

SEC. 203. (a) Notwithstanding section 854(c)(1)(A) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)(1)(A)), from any amounts made available under this title for fiscal year 2004 that are allocated under such section, the Secretary of Housing and Urban Development shall allocate and make a grant, in the amount determined under subsection (b), for any State that—

(1) received an allocation in a prior fiscal year under clause (ii) of such section; and

(2) is not otherwise eligible for an allocation for fiscal year 2004 under such clause (ii) because the areas in the State outside of the metropolitan statistical areas that qualify under clause (i) in fiscal year 2004 do not have the number of cases of acquired immunodeficiency syndrome (AIDS) required under such clause.

(b) The amount of the allocation and grant for any State described in subsection (a) shall be an amount based on the cumulative number of AIDS cases in the areas of that State that are outside of metropolitan statistical areas that qualify under clause (i) of such section 854(c)(1)(A) in fiscal year 2004, in proportion to AIDS cases among cities and States that qualify under clauses (i) and (ii) of such section and States deemed eligible under subsection (a).

SEC. 204. Except as explicitly provided in law, any grant or assistance made pursuant to title II of this Act shall be made on a competitive basis in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989.

SEC. 205. Funds of the Department of Housing and Urban Development subject to the Government Corporation Control Act or section 402 of the Housing Act of 1950 shall be available, without regard to the limitations on administrative expenses, for legal services on a contract or fee basis, and for utilizing and making payment for services and facilities of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, Federal Reserve banks or any member thereof, Federal Home Loan banks, and any insured bank within the meaning of the Federal Deposit Insurance Corporation Act, as amended (12 U.S.C. 1811–1831).

SEC. 206. Unless otherwise provided for in this Act or through a reprogramming of funds, no part of any appropriation for the Department of Housing and Urban Development shall be available for any program, project or activity in excess of amounts set forth in the budget estimates submitted to Congress.

SEC. 207. Corporations and agencies of the Department of Housing and Urban Development which are subject to the Government Corporation Control Act, as amended, are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of such Act as may be necessary in carrying out the programs set forth in the budget for 2004 for such corporation or agency except as hereinafter provided: *Provided*, That collections of these corporations and agencies may be used for new loan or mortgage purchase commitments only to the extent expressly provided for in this Act (unless such loans are in support of other forms of assistance provided for in this or prior appropriations Acts), except that this proviso shall not apply to the mortgage insurance or guaranty operations of these corporations, or where loans or mortgage purchases are necessary to protect the financial interest of the United States Government.

SEC. 208. None of the funds provided in this title for technical assistance, training, or management improvements may be obligated or expended unless HUD provides to the Committees on Appropriations a description of each proposed activity and a detailed budget estimate of the costs associated with each program, project or activity as part of the Budget Justifications. For fiscal year 2004, HUD shall transmit this information to the Committees by March 15, 2004 for 30 days of review.

SEC. 209. Notwithstanding any other provision of law, in fiscal year 2004, in managing and disposing of any multifamily property that is owned or held by the Secretary and is occupied primarily by elderly or disabled families, the Secretary of Housing and Urban Development shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 that are attached to any dwelling units in the property. To the extent the Secretary determines that such a multifamily property owned or held by the Secretary is not feasible for continued rental assistance payments under such section 8, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties or provide other rental assistance.

SEC. 210. A public housing agency or such other entity that administers Federal housing assistance in the States of Alaska, Iowa, and Mississippi shall not be required to include a resident of public housing or a recipient of assistance provided under section 8 of the United States Housing Act of 1937 on the board of directors or a similar governing board of such agency or entity as required under section (2)(b) of such Act. Each public housing agency or other entity that administers Federal housing assistance under section 8 in the States of Alaska, Iowa and Mississippi shall establish an advisory board of not less than 6 residents of public housing or recipients of section 8 assistance to provide advice and comment to the public housing agency or other administering entity on issues related to public housing and section 8. Such advisory board shall meet not less than quarterly.

SEC. 211. Section 24(n) of the United States Housing Act of 1937 (42 U.S.C. 1437v(n)) is amended by striking "September 30, 2004" and inserting "September 30, 2006".

SEC. 212. The Secretary of Housing and Urban Development shall provide quarterly reports to the House and Senate Committees on Appropriations regarding all uncommitted, unobligated, and excess funds in each program and activity within the jurisdiction of the Department and shall submit additional, updated budget information to these committees upon request.

SEC. 213. The Secretary of Housing and Urban Development shall submit an annual report no later than August 30, 2004 and annually thereafter to the House and Senate Committees on Appropriations regarding the number of Federally assisted units under lease and the per unit cost of these units to the Department of Housing and Urban Development.

SEC. 214. (a) Notwithstanding any other provision of law, the amount allocated for fiscal year 2004 and thereafter to the City of Philadelphia, Pennsylvania on behalf of the Philadelphia, PA–NJ Primary Metropolitan Statistical Area (hereafter "metropolitan area"), under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), shall be adjusted by the Secretary of Housing and Urban Development by allocating to the State of New Jersey the proportion of the metropolitan area's amount that is based on the number of cases of AIDS reported in the portion of the metropolitan area that is located in New Jersey. The State of New Jersey shall use amounts allocated to the State under this subsection to carry out eligible activities under section 855 of the AIDS Housing Opportunity Act (42 U.S.C. 12904) in the portion of the metropolitan area that is located in New Jersey.

(b) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development shall allocate to Wake County, North Carolina, the amounts that otherwise would be allocated for fiscal year 2004 and thereafter under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) to the City of Raleigh, North Carolina, on behalf of the Raleigh-Durham-Chapel Hill, North Carolina Metropolitan Statistical Area. Any amounts allocated to Wake County shall be used to carry out eligible activities under section 855 of such Act (42 U.S.C. 12904) within such metropolitan statistical area.

SEC. 215. (a) During fiscal year 2004, in the provision of rental assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) in connection with a program to demonstrate the economy and effectiveness of providing such assistance for use in assisted living facilities that is carried out in the counties of the State of Michigan specified in subsection (b) of this section, notwithstanding paragraphs (3) and (18)(B)(iii) of such section 8(o), a family residing in an assisted living facility in any such county, on behalf of which a public housing agency provides assistance pursuant to section 8(o)(18) of such Act, may be required, at the time the family initially receives such assistance, to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such a percentage or amount as the Secretary of Housing and Urban Development determines to be appropriate.

(b) The counties specified in this subsection are Oakland County, Macomb County, Wayne County, and Washtenaw County, in the State of Michigan.

SEC. 216. Section 683(2) of the Housing and Community Development Act of 1992 is amended—

(1) in subparagraph (F), by striking "and";

(2) in subparagraph (G), by striking "section." and inserting "section; and"; and

(3) by adding the following new subparagraph at the end:

"(H) housing that is assisted under section 811 of the Cranston-Gonzalez National Affordable Housing Act.".

SEC. 217. Section 224 of the National Housing Act (12 U.S.C. 1735o) is amended by adding the following new sentence at the end of the first paragraph: "Notwithstanding the preceding sentence and the following paragraph, if an insurance claim is paid in cash for any mortgage that is insured under section 203 or 234 of this Act and is endorsed for mortgage insurance after the date of enactment of this sentence, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of ten years.".

SEC. 218. The McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) is amended—

(1) in section 101(b), by striking "Interagency Council on the Homeless" and inserting "United States Interagency Council on Homelessness";

(2) in section 102(b)(1), by striking "an Interagency Council on the Homeless" and inserting "the United States Interagency Council on Homelessness";

(3) in the heading for title II, by striking "INTERAGENCY COUNCIL ON THE HOMELESS" and inserting "UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS";

(4) in sections 201, 207(1), 501(c)(2)(a), and 501(d)(3), by striking "Interagency Council on the Homeless" and inserting "United States Interagency Council on Homelessness"; and

(5) in section 204(c), by inserting after "reimbursable" the two places it appears the following: "or nonreimbursable".

SEC. 219. Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding the following new section at the end:

"PAYMENT REWARDS FOR CERTAIN SINGLE FAMILY MORTGAGES

"SEC. 257. For purposes of establishing an alternative to high cost mortgages for borrowers with credit impairments, the Secretary may insure under sections 203(b) and 234(c) of this title any mortgage that meets the requirements of such sections, except as provided in the following sentences. The Secretary may establish lower percentage of appraised value limitations than those provided in section 203(b)(2)(B). Notwithstanding section 203(c)(2)(B), the Secretary may establish and collect annual premium payments in an amount not exceeding 1.0 percent of the remaining insured principal balance and such payments may be reduced or eliminated in subsequent years based on mortgage payment performance. All mortgages insured pursuant to this section shall be obligations of the Mutual Mortgage Insurance Fund notwithstanding section 519 of this Act.".

SEC. 220. (a) INFORMATION COMPARISONS FOR PUBLIC AND ASSISTED HOUSING PROGRAMS.—Section 453(j) of the Social Security Act (42 U.S.C. 653(j)) is amended by adding at the end the following new paragraph:

"(7) INFORMATION COMPARISONS FOR HOUSING ASSISTANCE PROGRAMS.—

"(A) FURNISHING OF INFORMATION BY HUD.—Subject to subparagraph (G), the Secretary of Housing and Urban Development shall furnish to the Secretary, on such periodic basis as determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to individuals who are participating in any program under—

"(i) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

"(ii) section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

"(iii) section 221(d)(3), 221(d)(5), or 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z–1);

"(iv) section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

"(v) section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

"(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.—The Secretary of Housing and Urban Development shall seek information pursuant to this section only to the extent necessary to verify the employment and income of individuals described in subparagraph (A).

"(C) DUTIES OF THE SECRETARY.—

"(i) INFORMATION DISCLOSURE.—The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information provided by the Secretary of Housing and Urban Development with respect to individuals described in subparagraph (A), and shall disclose information in such Directory regarding such individuals to the Secretary of Housing and Urban Development, in accordance with this paragraph, for the purposes specified in this paragraph.

"(ii) CONDITION ON DISCLOSURE.—The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

"(D) USE OF INFORMATION BY HUD.—The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only—

"(i) for the purpose of verifying the employment and income of individuals described in subparagraph (A); and

"(ii) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals described in subparagraph (A).

"(E) DISCLOSURE OF INFORMATION BY HUD.—

"(i) PURPOSE OF DISCLOSURE.—The Secretary of Housing and Urban Development may make a disclosure under this subparagraph only for the purpose of verifying the employment and income of individuals described in subparagraph (A).

"(ii) DISCLOSURES PERMITTED.—Subject to clause (iii), the Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph shall not be made available under section 552 of title 5, United States Code.

"(iii) CONDITIONS ON DISCLOSURE.—Disclosures under this paragraph shall be—

"(I) made in accordance with data security and control policies established by the Secretary of Housing and Urban Development and approved by the Secretary;

"(II) subject to audit in a manner satisfactory to the Secretary; and

"(III) subject to the sanctions under subsection (l)(2).

"(iv) ADDITIONAL DISCLOSURES.—

"(I) DETERMINATION BY SECRETARIES.—The Secretary of Housing and Urban Development and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of Housing and Urban Development (in consultation with and approved by the Secretary), of the costs and benefits of disclosures made under clause (ii) and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

"(II) PERMITTED PERSONS OR ENTITIES.—If the Secretary of Housing and Urban Development and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of Housing and Urban Development to a private owner, a management agent, and a contract administrator in connection with the administration of a program described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

"(v) RESTRICTIONS ON REDISCLOSURE.—A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for verifying the employment and income of individuals described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

"(F) REIMBURSEMENT OF HHS COSTS.—The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

"(G) CONSENT.—The Secretary of Housing and Urban Development shall not seek, use, or disclose information under this paragraph relating to an individual without the prior written consent of such individual (or of a person legally authorized to consent on behalf of such individual).".

(b) CONSENT TO INFORMATION COMPARISON AND USE AS CONDITION OF HUD PROGRAM ELIGIBILITY.—As a condition of participating in any program authorized under—

(1) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(2) section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(3) section 221(d)(3), 221(d)(5), or 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z–1);

(4) section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

(5) section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s),

the Secretary of Housing and Urban Development may require consent by an individual (or by a person legally authorized to consent on behalf of such individual) for such Secretary to obtain, use, and disclose information with respect to such individual in accordance with section 453(j)(7) of the Social Security Act (42 U.S.C. 653(j)(7)).

SEC. 221. Section 9 of the United States Housing Act of 1937 is amended by inserting at the end the following new subsection:

"(o) LOAN GUARANTEE DEVELOPMENT FUNDING.—

"(1) In order to facilitate the financing of the rehabilitation and development needs of public housing, the Secretary is authorized to provide loan guarantees for public housing agencies to enter into loans or other financial obligations with financial institutions for the purpose of financing the rehabilitation of a portion of public housing or the development off-site of public housing in mixed income developments (including demolition costs of the public housing units to be replaced), provided that the number of public housing units developed off-site replaces no less than an equal number of on-site public housing units in a project. Loans or other obligations entered into pursuant to this subsection shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary.

"(2) The Secretary may prohibit a public housing agency from obtaining a loan under this subsection only if the rehabilitation or replacement housing proposed by a public housing agency is inconsistent with its Public Housing Agency Plan, as submitted under section 5A, or the proposed terms of the guaranteed loan constitutes an unacceptable financial risk to the public housing agency or for repayment of the loan under this subsection.

"(3) Notwithstanding any other provision of this title, funding allocated to a public housing agency under subsections (d)(2) and (e)(2) of this section for capital and operating funds is authorized for use in the payment of the principal and interest due (including such servicing, underwriting or other costs as may be specified in the regulations of the Secretary) on the loans or other obligations entered into pursuant to this subsection.

"(4) The amount of any loan or other obligation entered into under this subsection shall not exceed in total the pro-rata amount of funds that would be allocated over a period not to exceed 30 years under subsections (d)(2) and (e)(2) of this section on a per unit basis as a percentage of the number of units that are designated to be rehabilitated or replaced under this subsection by a public housing agency as compared to the total number of units in the public housing development, as determined on the basis of funds made available under such subsections (d)(2) and (e)(2) in the previous year. Any reduction in the total amount of funds provided to a public housing agency under this section in subsequent years shall not reduce the amount of funds to be paid under a loan entered into under this subsection but instead shall reduce the capital and operating funds which are available for the other housing units in the public housing development in that fiscal year. Any additional income, including the receipt of rental income from tenants, generated by the rehabilitated or replaced units may be used to establish a loan loss reserve for the public housing agency to assist in the repayment of loans or other obligations entered into under this subsection or to address any shortfall in the operating or capital needs of the public housing agency in any fiscal year.

"(5) Subject to appropriations, the Secretary may use funds from the Public Housing Capital Fund to—

"(A) establish a loan loss reserve account within the Department of Housing and Urban Development to minimize the risk of loss associated with the repayment of loans guaranteed under this subsection,

"(B) make grants to a public housing agency for capital investment needs or for the creation of a loan loss reserve account to be used in conjunction with a loan made under this subsection for the rehabilitation of a portion of public housing or the development off-site of public housing in mixed income developments (including demolition costs of the public housing units to be replaced), or

"(C) or repay any losses associated with a loan guarantee under this subsection.

"(6) The Secretary may, to the extent approved in appropriations Acts, assist in the payment of all or a portion of the principal and interest amount due under the loan or other obligation entered into under this subsection, if the Secretary determines that the public housing agency is unable to pay the amount it owes because of circumstances of extreme hardship beyond the control of the public housing agency.".

SEC. 222. Section 204(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11314(a)) is amended by striking in the first sentence after the word "level", "V", and inserting in its place "III".

SEC. 223. Notwithstanding any other provision of law, the State of Hawaii may elect by July 31, 2004 to distribute funds under section 106(d)(2) of the Housing and Community Development Act of 1974, to units of general local government located in nonentitlement areas of that State. If the State of Hawaii fails to make such election, the Secretary shall for fiscal years 2005 and thereafter make grants to the units of general local government located in the State of Hawaii's nonentitlement areas (Hawaii, Kauai, and Maui counties). The Secretary of Housing and Urban Development shall allocate funds under section 106(d) of such Act to units of general local government located in nonentitlement areas within the State of Hawaii in accordance with a formula which bears the same ratio to the total amount available for the nonentitlement areas of the State as the weighted average of the ratios between (1) the population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State; (2) the extent of poverty in that eligible unit of general local government and the extent of poverty in all of the eligible units of general local government in the nonentitlement areas of the State; and (3) the extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all of the eligible units of general local government in the nonentitlement areas of the State. In determining the weighted average of the ratios described in the previous sentence, the ratio described in clause (2) shall be counted twice and the ratios described in clauses (1) and (3) shall be counted once. Notwithstanding any other provision, grants made under this section shall be subject to the program requirements of section 104 of the Housing and Community Development Act of 1974 in the same manner as such requirements are made applicable to grants made under section 106(b) of the Housing and Community Development Act of 1974.

SEC. 224. The Secretary of Housing and Urban Development shall issue a proposed rulemaking, in accordance with Title V, United States Code, not later than 90 days from the date of enactment of this Act that—

(1) addresses and expands, as necessary, the participation and certification requirements for the sale of HUD-owned multifamily housing projects and the foreclosure sale of any multifamily housing securing a mortgage held by the Secretary, including whether a potential purchaser is in substantial compliance with applicable state or local government housing statutes, regulations, ordinances and codes with regard to other properties owned by the purchaser; and

(2) requires any state, city, or municipality that exercises its right of first refusal for the purchase of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(i)) to ensure that potential purchasers of the project from the state, city, or municipality are subject to the same standards that they would otherwise be subject to if they had purchased the project directly from the Secretary, including whether a potential purchaser is in substantial compliance with applicable state or local government housing statutes, regulations, ordinances and codes with regard to other properties owned by the purchaser.

SEC. 225. Section 217 of Public Law 107-73 is amended by striking "the rehabilitation" and inserting in lieu thereof: "redevelopment, including demolition and new construction".

TITLE III—INDEPENDENT AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one for replacement only) and hire of passenger motor vehicles; and insurance of official motor vehicles in foreign countries, when required by law of such countries, $35,000,000, to remain available until expended.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

SALARIES AND EXPENSES

For necessary expenses in carrying out activities pursuant to section 112(r)(6) of the Clean Air Act, as amended, including hire of passenger vehicles, uniforms or allowances therefore, as authorized by 5 U.S.C. 5901-5902, and for services authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376, $8,000,000, of which $5,500,000 is to remain available until September 30, 2004 and $2,500,000, of which is to remain available until September 30, 2005: *Provided further*, That the Chemical Safety and Hazard Investigation Board shall have not more than three career Senior Executive Service positions.

DEPARTMENT OF THE TREASURY

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT

To carry out the Community Development Banking and Financial Institutions Act of 1994, including services authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for ES-3, $70,000,000, to remain available until September 30, 2005, of which not less than $5,000,000 shall be for financial assistance, technical assistance, training and outreach programs designed to benefit Native American, Native Hawaiian, and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers, and up to $12,000,000 may be used for administrative expenses, including administration of the New Markets Tax Credit, up to $6,000,000 may be used for the cost of direct loans, and up to $250,000 may be used for administrative expenses to carry out the direct loan program: *Provided*, That the cost of direct loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $11,000,000.

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable under 5 U.S.C. 5376, purchase of nominal awards to recognize non-Federal officials' contributions to Commission activities, and not to exceed $500 for official reception and representation expenses, $60,000,000.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

NATIONAL AND COMMUNITY SERVICE PROGRAMS OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Corporation for National and Community Service (the "Corporation") in carrying out programs, activities, and initiatives under the National and Community Service Act of 1990 (the "Act") (42 U.S.C. 12501 et seq.), $452,575,000, to remain available until September 30, 2005: *Provided*, That not more than $330,000,000 of the amount provided under this heading shall be available for the National Service Trust under subtitle D of title I of the Act (42 U.S.C. 12601 et seq.) and for grants under the National Service Trust Program authorized under subtitle C of title I of the Act (42 U.S.C. 12571 et seq.) (relating to activities of the AmeriCorps program), including grants to organizations operating projects under the AmeriCorps Education Awards Program (without regard to the requirements of sections 121(d) and (e), section 131(e), section 132, and sections 140(a), (d), and (e) of the Act): *Provided further*, That from the amount provided under the previous proviso, the Corporation may transfer funds as necessary, to remain available without fiscal year limitation, to the National Service Trust for educational awards authorized under subtitle D of title I of the Act (42 U.S.C. 12601), of which up to $5,000,000 shall be available to support national service scholarships for high school students performing community service: *Provided further*, That the Corporation shall approve and enroll AmeriCorps members pursuant to the Strengthen AmeriCorps Program Act (Public Law 108–45): *Provided further*, That of the amount provided under this heading for grants under the National Service Trust program authorized under subtitle C of title I of the Act, not more than $50,000,000 may be used to administer, reimburse, or support any national service program authorized under section 121(d)(2) of such Act (42 U.S.C. 12581(d)(2)): *Provided further*, That not more than $14,575,000 shall be available for quality and innovation activities authorized under subtitle H of title I of the Act (42 U.S.C. 12853 et seq.), of which $5,000,000 shall be available for challenge grants to non-profit organizations: *Provided further*, That notwithstanding subtitle H of title I of the Act (42 U.S.C. 12853), none of the funds provided under the previous proviso shall be used to support salaries and related expenses (including travel) attributable to Corporation employees: *Provided further*, That to the maximum extent feasible, funds appropriated under subtitle C of title I of the Act shall be provided in a manner that is consistent with the recommendations of peer review panels in order to ensure that priority is given to programs that demonstrate quality, innovation, replicability, and sustainability: *Provided further*, That not more than $10,000,000 of the funds made available under this heading shall be made available for the Points of Light Foundation for activities authorized under title III of the Act (42 U.S.C. 12661 et seq.), of which not more than $2,500,000 may be used to support an endowment fund, the corpus of which shall remain intact and the interest income from which shall be used to support activities described in title III of the Act, provided that the Foundation may invest the corpus and income in federally insured bank savings accounts or comparable interest bearing accounts, certificates of deposit, money market funds, mutual funds, obligations of the United States, and other market instruments and securities but not in real estate investments: *Provided further*, That no funds shall be available for national service programs run by Federal agencies, authorized under section 121(b) of such Act (42 U.S.C. 12571(b)): *Provided further*, That not more than $5,000,000 of the funds made available under this heading shall be made available to America's Promise—The Alliance for Youth, Inc.: *Provided further*, That to the maximum extent practicable, the Corporation shall increase significantly the level of matching funds and in-kind contributions provided by the private sector, and shall reduce the total Federal costs per participant in all programs by not less than 10 percent: *Provided further*, That the Inspector General of the Corporation for National and Community Service shall conduct random audits of the grantees that administer activities under the AmeriCorps programs and shall debar any grantee (or successor in interest or any entity with substantially the same person or persons in control) that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs, including any grantee that has been determined to have violated the prohibition of using Federal funds to lobby the Congress: *Provided further*, That the Inspector General shall obtain reimbursements in the amount of any misused funds from any grantee that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs.

SALARIES AND EXPENSES

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, the employment of experts and consultants authorized under 5 U.S.C. 3109, and not to exceed $2,500 for official reception and representation expenses) involved in carrying out the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) involved in administration as provided under section 501(a)(4) of the Act, $25,000,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $6,500,000, to remain available until September 30, 2005.

ADMINISTRATIVE PROVISIONS

Notwithstanding any other provision of law, the term "qualified student loan" with respect to national service education awards shall mean any loan determined by an institution of higher education to be necessary to cover a student's cost of attendance at such institution and made, insured, or guaranteed directly to a student by a State agency, in addition to other meanings under section 148(b)(7) of the National and Community Service Act.

Notwithstanding any other provision of law, funds made available under section 129(d)(5)(B) of the National and Community Service Act to assist entities in placing applicants who are individuals with disabilities may be provided to any entity that receives a grant under section 121 of the Act.

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

SALARIES AND EXPENSES

For necessary expenses for the operation of the United States Court of Appeals for Veterans Claims as authorized by 38 U.S.C. 7251–7298, $16,220,000 of which $1,175,000 shall be available for the purpose of providing financial assistance as described, and in accordance with the process and reporting procedures set forth, under this heading in Public Law 102–229.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, including the purchase of two passenger motor vehicles for replacement only, and not to exceed $1,000,000 for official reception and representation expenses, $32,000,000, to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

NATIONAL INSTITUTES OF HEALTH

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For necessary expenses for the National Institute of Environmental Health Sciences in carrying out activities set forth in section 311(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and section 126(g) of the Superfund Amendments and Reauthorization Act of 1986, $78,774,000.

AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

TOXIC SUBSTANCES AND ENVIRONMENTAL PUBLIC HEALTH

For necessary expenses for the Agency for Toxic Substances and Disease Registry (ATSDR) in carrying out activities set forth in sections 104(i), 111(c)(4), and 111(c)(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended; section 118(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended; and section 3019 of the Solid Waste Disposal Act, as amended, $73,467,000, which may be derived to the extent funds are available from the Hazardous Substance Superfund Trust Fund pursuant to section 517(a) of SARA (26 U.S.C. 9507): *Provided*, That notwithstanding any other provision of law, in lieu of performing a health assessment under section 104(i)(6) of CERCLA, the Administrator of ATSDR may conduct other appropriate health studies, evaluations, or activities, including, without limitation, biomedical testing, clinical evaluations, medical monitoring, and referral to accredited health care providers: *Provided further*, That in performing any such health assessment or health study, evaluation, or activity, the Administrator of ATSDR shall not be bound by the deadlines in section 104(i)(6)(A) of CERCLA: *Provided further*, That none of the funds appropriated under this heading shall be available for ATSDR to issue in excess of 40 toxicological profiles pursuant to section 104(i) of CERCLA during fiscal year 2004, and existing profiles may be updated as necessary.

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE AND TECHNOLOGY

For science and technology, including research and development activities, which shall include research and development activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; necessary expenses for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; procurement of laboratory equipment and supplies; other operating expenses in support of research and development; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project, $715,579,000, which shall remain available until September 30, 2005.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

For environmental programs and management, including necessary expenses, not otherwise provided for, for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project; and not to exceed $9,000 for official reception and representation expenses, $2,219,659,000, which shall remain available until September 30, 2005, including administrative costs of the brownfields program under the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project, $36,808,000, to remain available until September 30, 2005.

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of, or for use by, the Environmental Protection Agency, $42,918,000, to remain available until expended.

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including sections 111(c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project; $1,265,000,000 (of which $100,000,000 shall not become available until September 1, 2003), to remain available until expended, consisting of such sums as are available in the Trust Fund as authorized by section 517(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and up to $1,265,000,000 as a payment from general revenues to the Hazardous Substance Superfund for purposes as authorized by section 517(b) of SARA, as amended: *Provided*, That funds appropriated under this heading may be allocated to other Federal agencies in accordance with section 111(a) of CERCLA: *Provided further*, That of the funds appropriated under this heading, $13,214,000 shall be transferred to the "Office of Inspector General" appropriation to remain available until September 30, 2005, and $45,000,000 shall be transferred to the "Science and technology" appropriation to remain available until September 30, 2005.

LEAKING UNDERGROUND STORAGE TANK PROGRAM

For necessary expenses to carry out leaking underground storage tank cleanup activities authorized by section 205 of the Superfund Amendments and Reauthorization Act of 1986, and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project, $72,545,000, to remain available until expended.

OIL SPILL RESPONSE

For expenses necessary to carry out the Environmental Protection Agency's responsibilities under the Oil Pollution Act of 1990, $16,209,000, to be derived from the Oil Spill Liability trust fund, to remain available until expended.

STATE AND TRIBAL ASSISTANCE GRANTS

For environmental programs and infrastructure assistance, including capitalization grants for State revolving funds and performance partnership grants, $3,814,000,000, to remain available until expended, of which $1,350,000,000 shall be for making capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended (the "Act"); $850,000,000 shall be for capitalization grants for the Drinking Water State Revolving Funds under section 1452 of the Safe Drinking Water Act, as amended, except that, notwithstanding section 1452(n) of the Safe Drinking Water Act, as amended, none of the funds made available under this heading in this Act, or in previous appropriations Acts, shall be reserved by the Administrator for health effects studies on drinking water contaminants; $50,000,000 shall be for architectural, engineering, planning, design, construction and related activities in connection with the construction of high priority water and wastewater facilities in the area of the United States-Mexico Border, after consultation with the appropriate border commission; $45,000,000 shall be for grants to the State of Alaska to address drinking water and wastewater infrastructure needs of rural and Alaska Native Villages: *Provided*, That, of these funds (1) 25 percent will be set aside for regional hub communities of populations over 1,000 but under 5,000, (2) the State of Alaska shall provide a match of 25 percent, (3) no more than 5 percent of the fund may be used for administrative and overhead expenses, and (4) a statewide priority list shall be established which shall remain in effect for at least three years; $3,500,000 shall be for remediation of above ground leaking fuel tanks pursuant to Public Law 106–554; $130,000,000 shall be for making grants for the construction of drinking water, wastewater and storm water infrastructure and for water quality protection in accordance with the terms and conditions specified for such grants in the committee report accompanying this Act, and, notwithstanding any other provision of law, heretofore and hereafter, projects awarded such grants under this heading that also receive loans from a State water pollution control or drinking water revolving fund may be administered in accordance with applicable State water pollution control or drinking water revolving fund administrative and procedural requirements, and, for purposes of these grants, each grantee shall contribute not less than 45 percent of the cost of the project unless the grantee is approved for a waiver by the Administrator of the Environmental Protection Agency; $100,500,000 shall be to carry out section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including grants, interagency agreements, and associated program support costs; and $1,130,000,000 shall be for grants, including associated program support costs, to States, federally recognized tribes, interstate agencies, tribal consortia, and air pollution control agencies for multi-media or single media pollution prevention, control and abatement and related activities, including activities pursuant to the provisions set forth under this heading in Public Law 104–134, and for making grants under section 103 of the Clean Air Act for particulate matter monitoring and data collection activities of which and subject to terms and conditions specified by the Administrator, of which $60,000,000 shall be for carrying out section 128 of CERCLA, as amended, and $20,000,000 shall be for Environmental Information Exchange Network grants, including associated program support costs: *Provided*, That for fiscal year 2004, State authority under section 302(a) of Public Law 104–182 shall remain in effect: *Provided further*, That notwithstanding section 603(d)(7) of the Act, the limitation on the amounts in a State water pollution control revolving fund that may be used by a State to administer the fund shall not apply to amounts included as principal in loans made by such fund in fiscal year 2004 and prior years where such amounts represent costs of administering the fund to the extent that such amounts are or were deemed reasonable by the Administrator, accounted for separately from other assets in the fund, and used for eligible purposes of the fund, including administration: *Provided further*, That for fiscal year 2004, and notwithstanding section 518(f) of the Act, the Administrator is authorized to use the amounts appropriated for any fiscal year under section 319 of that Act to make grants to Indian tribes pursuant to sections 319(h) and 518(e) of that Act: *Provided further*, That for fiscal year 2004, notwithstanding the limitation on amounts in section 518(c) of the Act, up to a total of 1½ percent of the funds appropriated for State Revolving Funds under title VI of that Act may be reserved by the Administrator for grants under section 518(c) of such Act: *Provided further*, That no funds provided by this legislation to address the water, wastewater and other critical infrastructure needs of the colonias in the United States along the United States-Mexico border shall be made available to a county or municipal government unless that government has established an enforceable local ordinance, or other zoning rule, which prevents in that jurisdiction the development or construction of any additional colonia areas, or the development within an existing colonia the construction of any new home, business, or other structure which lacks water, wastewater, or other necessary infrastructure: *Provided further*, That the referenced statement of the managers under this heading in Public Law 106–377 is deemed to be amended by striking "wastewater" in reference to item number 219 and inserting "water": *Provided further*, That the referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended by striking "wastewater" in reference to item number 409 and inserting "water".

ADMINISTRATIVE PROVISIONS

For fiscal year 2004, notwithstanding 31 U.S.C. 6303(1) and 6305(1), the Administrator of the Environmental Protection Agency, in carrying out the Agency's function to implement directly Federal environmental programs required or authorized by law in the absence of an acceptable tribal program, may award cooperative agreements to federally-recognized Indian Tribes or Intertribal consortia, if authorized by their member Tribes, to assist the Administrator in implementing Federal environmental programs for Indian Tribes required or authorized by law, except that no such cooperative agreements may be awarded from funds designated for State financial assistance agreements.

None of the funds appropriated or otherwise made available by this Act shall be used to promulgate a final regulation to implement changes in the payment of pesticide tolerance processing fees as proposed at 64 Fed. Reg. 31040, or any similar proposals. The Environmental Protection Agency may proceed with the development of such a rule.

The Environmental Protection Agency may not use any of the funds appropriated or otherwise made available by this Act to implement the Registration Fee system codified at 40 Code of Federal Regulations Subpart U (sections 152.400 et seq.) if its authority to collect maintenance fees pursuant to FIFRA section 4(i)(5) is extended for at least 1 year beyond September 30, 2003.

Section 136a–1 of title 7, U.S.C. is amended—

(1) in subsection (i)(5)(C)(i) by striking "2003" and inserting "2004";

(2) in subsection (i)(5)(H) by striking "2003" and inserting "2004";

(3) in subsection (i)(6) by striking "2003" and inserting "2004"; and

(4) in subsection (k)(3)(A) by striking "2003" and inserting "2004".

Notwithstanding CERCLA 104(k)(4)(B)(i)(IV), appropriated funds may hereafter be used to award grants or loans under section 104(k) of CERCLA to eligible entities that satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was prior to the date of enactment of the Small Business Liability Relief and Brownfield Revitalization Act of 2001.

For fiscal year 2004, notwithstanding any other provision of law, recipients of grants awarded under section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) may use funds for reasonable administrative costs, as determined by the Administrator of the Environmental Protection Agency.

Section 209(e)(1)(A) of the Clean Air Act (42 U.S.C. 7543(e)(1)(A)) is amended by striking out "New engines which are" and inserting in lieu thereof the following: "Any engine covered by a certificate of conformity that also covers any engine".

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, not to exceed $2,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, $7,027,000.

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses to continue functions assigned to the Council on Environmental Quality and Office of Environmental Quality pursuant to the National Environmental Policy Act of 1969, the Environmental Quality Improvement Act of 1970, and Reorganization Plan No. 1 of 1977, and not to exceed $750 for official reception and representation expenses, $3,238,000: *Provided*, That, notwithstanding section 202 of the National Environmental Policy Act of 1970, the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council.

FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $30,848,000, to be derived from the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund.

GENERAL SERVICES ADMINISTRATION

FEDERAL CITIZEN INFORMATION CENTER FUND

For necessary expenses of the Federal Citizen Information Center, including services authorized by 5 U.S.C. 3109, $14,000,000, to be deposited into the Federal Citizen Information Center Fund: *Provided*, That the appropriations, revenues, and collections deposited into the Fund shall be available for necessary expenses of Federal Citizen Information Center activities in the aggregate amount not to exceed $21,000,000. Appropriations, revenues, and collections accruing to this Fund during fiscal year 2004 in excess of $21,000,000 shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS

OPERATING EXPENSES

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code) of the Interagency Council on the Homeless in carrying out the functions pursuant to title II of the McKinney-Vento Homeless Assistance Act, as amended, $1,500,000.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SPACE FLIGHT CAPABILITIES

For necessary expenses, not otherwise provided for, in the conduct and support of space flight capabilities research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $7,582,100,000, to remain available until September 30, 2005, of which no less than $3,968,000,000 shall be available for activities related to the Space Shuttle and shall not be available for transfer to any other program or account, and no more than $1,507,000,000 shall be available for activities related to the International Space Station.

SCIENCE, AERONAUTICS AND EXPLORATION

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of science, aeronautics and exploration research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $7,730,507,000, to remain available until September 30, 2005, of which amounts as determined by the Administrator for salaries and benefits; training, travel and awards; facility and related costs; information technology services; science, engineering, fabricating and testing services; and other administrative services may be transferred to "Space flight capabilities" in accordance with section 312(b) of the National Aeronautics and Space Act of 1958, as amended by Public Law 106–377.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $26,300,000.

ADMINISTRATIVE PROVISIONS

Notwithstanding the limitation on the availability of funds appropriated for "Science, aeronautics and exploration", or "Space flight capabilities" by this appropriations Act, when any activity has been initiated by the incurrence of obligations for construction of facilities as authorized by law, such amount available for such activity shall remain available until expended. This provision does not apply to the amounts appropriated for institutional minor revitalization and construction of facilities, and institutional facility planning and design.

Notwithstanding the limitation on the availability of funds appropriated for "Science, aeronautics and exploration", or "Space flight capabilities" by this appropriations Act, the amounts appropriated for construction of facilities shall remain available until September 30, 2006.

From amounts made available in this Act for these activities, the Administration may transfer amounts between aeronautics from the "Science, aeronautics and exploration" account to the "Space flight capabilities" account, provided NASA meets all reprogramming requirements.

Funds for announced prizes otherwise authorized shall remain available, without fiscal year limitation, until the prize is claimed or the offer is withdrawn.

NASA shall maintain a working capital fund in the United States Treasury and report to the Congress on the status of this fund by January 31, 2004. Amounts in the fund are available for financing activities, services, equipment, information, and facilities as authorized by law to be provided within the Administration; to other agencies or instrumentalities of the United States; to any State, Territory, or possession or political subdivision thereof; to other public or private agencies; or to any person, firm, association, corporation, or educational institution on a reimbursable basis. The fund shall also be available for the purpose of funding capital repairs, renovations, rehabilitation, sustainment, demolition, or replacement of NASA real property, on a reimbursable basis within the Administration.

Amounts in the fund are available without regard to fiscal year limitation. The capital of the fund consists of amounts appropriated to the fund; the reasonable value of stocks of supplies, equipment, and other assets and inventories on order that the Administrator transfers to the fund, less the related liabilities and unpaid obligations; and payments received for loss or damage to property of the fund. The fund shall be reimbursed, in advance, for supplies and services at rates that will approximate the expenses of operation, such as the accrual of annual leave, depreciation of plant, property and equipment, and overhead.

The unexpired balances of prior appropriations to NASA for activities for which funds are provided under this Act may be transferred to the new account established for the appropriation that provides such activity under this Act. Balances so transferred may be merged with funds in the newly established account and thereafter may be accounted for as one fund under the same terms and conditions.

Notwithstanding any other provision of law, no funds under this Act or any other Act may be used to compensate any person who contracts with NASA who has otherwise chosen to retire early or has taken a buyout.

National Credit Union Administration

CENTRAL LIQUIDITY FACILITY

During fiscal year 2004, gross obligations of the Central Liquidity Facility for the principal amount of new direct loans to member credit unions, as authorized by 12 U.S.C. 1795 et seq., shall not exceed $1,500,000,000: *Provided*, That administrative expenses of the Central Liquidity Facility in fiscal year 2004 shall not exceed $310,000.

COMMUNITY DEVELOPMENT REVOLVING LOAN FUND

For the Community Development Revolving Loan Fund program as authorized by 42 U.S.C. 9812, 9822 and 9910, $1,500,000 shall be available: *Provided*, That of this amount $700,000, together with amounts of principal and interest on loans repaid, is available until expended for loans to community development credit unions, and $800,000 is available until September 30, 2005 for technical assistance to low-income and community development credit unions.

National Science Foundation

RESEARCH AND RELATED ACTIVITIES

For necessary expenses in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880–1881); services as authorized by 5 U.S.C. 3109; maintenance and operation of aircraft and purchase of flight services for research support; acquisition of aircraft; and authorized travel; $4,220,610,000, of which not to exceed $341,730,000 shall remain available until expended for Polar research and operations support, and for reimbursement to other Federal agencies for operational and science support and logistical and other related activities for the United States Antarctic program; the balance to remain available until September 30, 2005: *Provided*, That receipts for scientific support services and materials furnished by the National Research Centers and other National Science Foundation supported research facilities may be credited to this appropriation: *Provided further*, That to the extent that the amount appropriated is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally: *Provided further*, That $90,000,000 of the funds available under this heading shall be made available for a comprehensive research initiative on plant genomes for economically significant crops.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For necessary expenses for the acquisition, construction, commissioning, and upgrading of major research equipment, facilities, and other such capital assets pursuant to the National Science Foundation Act of 1950, as amended, including authorized travel, $149,680,000, to remain available until expended.

EDUCATION AND HUMAN RESOURCES

For necessary expenses in carrying out science and engineering education and human resources programs and activities pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), including services as authorized by 5 U.S.C. 3109, authorized travel, and rental of conference rooms in the District of Columbia, $975,870,000, to remain available until September 30, 2005: *Provided*, That to the extent that the amount of this appropriation is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally.

SALARIES AND EXPENSES

For salaries and expenses necessary in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875); services authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; not to exceed $9,000 for official reception and representation expenses; uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; rental of conference rooms in the District of Columbia; and reimbursement of the General Services Administration for security guard services; $225,700,000: *Provided*, That contracts may be entered into under "Salaries and expenses" in fiscal year 2004 for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year.

OFFICE OF THE NATIONAL SCIENCE BOARD

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code) involved in carrying out section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) and Public Law 86–209 (42 U.S.C. 1880 et seq.), $3,900,000: *Provided*, That not more than $9,000 shall be available for official reception and representation expenses.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General as authorized by the Inspector General Act of 1978, as amended, $10,000,000, to remain available until September 30, 2005.

Neighborhood Reinvestment Corporation

PAYMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION

For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101–8107), $115,000,000, of which $5,000,000 shall be for a multi-family rental housing program.

ADMINISTRATIVE PROVISION

Section 605(a) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8104) is amended by—

(1) striking out "compensation" and inserting "salary"; and striking out "highest rate provided for GS–18 of the General Schedule under section 5332 of title 5 United States Code"; and inserting "rate for level IV of the Executive Schedule"; and

(2) inserting after the end the following sentence: "The Corporation shall also apply the provisions of section 5307(a)(1), (b)(1) and (b)(2) of title 5, United States Code, governing limitations on certain pay as if its employees were Federal employees receiving payments under title 5.".

Selective Service System

SALARIES AND EXPENSES

For necessary expenses of the Selective Service System, including expenses of attendance at meetings and of training for uniformed personnel assigned to the Selective Service System, as authorized by 5 U.S.C. 4101–4118 for civilian employees; purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed $750 for official reception and representation expenses; $26,308,000: *Provided*, That during the current fiscal year, the President may exempt this appropriation from the provisions of 31 U.S.C. 1341, whenever the President deems such action to be necessary in the interest of national defense: *Provided further*, That none of the funds appropriated by this Act may be expended for or in connection with the induction of any person into the Armed Forces of the United States: *Provided further*, That none of the funds appropriated under this heading may be used in direct support of the Corporation for National and Community Service.

TITLE IV—GENERAL PROVISIONS

Sec. 401. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 402. No funds appropriated by this Act may be expended—

(1) pursuant to a certification of an officer or employee of the United States unless—

(A) such certification is accompanied by, or is part of, a voucher or abstract which describes the payee or payees and the items or services for which such expenditure is being made; or

(B) the expenditure of funds pursuant to such certification, and without such a voucher or abstract, is specifically authorized by law; and

(2) unless such expenditure is subject to audit by the General Accounting Office or is specifically exempt by law from such audit.

Sec. 403. None of the funds provided in this Act to any department or agency may be obligated or expended for: (1) the transportation of any officer or employee of such department or agency between the domicile and the place of employment of the officer or employee, with the exception of an officer or employee authorized such transportation under 31 U.S.C. 1344 or 5 U.S.C. 7905; or (2) to provide a cook, chauffeur, or other personal servants to any officer or employee of such department or agency.

Sec. 404. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals not specifically solicited by the Government: *Provided*, That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

Sec. 405. None of the funds provided in this Act may be used, directly or through grants, to pay or to provide reimbursement for payment of the salary of a consultant (whether retained by the Federal Government or a grantee) at more than the daily equivalent of the rate paid for level IV of the Executive Schedule, unless specifically authorized by law.

Sec. 406. None of the funds provided in this Act may be used to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings. Nothing herein affects the authority of the Consumer Product Safety Commission pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056 et seq.).

Sec. 407. Except as otherwise provided under existing law, or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are: (1) a matter of public record and available for public inspection; and (2) thereafter included in a publicly available list of all contracts entered into within 24 months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

Sec. 408. Except as otherwise provided by law, no part of any appropriation contained in this Act shall be obligated or expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), for a contract for services unless such executive agency: (1) has awarded and entered into such contract in full compliance with such Act and the regulations promulgated thereunder; and (2) requires any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report prepared pursuant to such contract, to contain information concerning: (A) the contract pursuant to which the report was prepared; and (B) the contractor who prepared the report pursuant to such contract.

Sec. 409. (a) It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

(b) In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

Sec. 410. None of the funds appropriated in this Act may be used to implement any cap on reimbursements to grantees for indirect costs, except as published in Office of Management and Budget Circular A–21.

Sec. 411. Such sums as may be necessary for fiscal year 2004 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

Sec. 412. None of the funds made available in this Act may be used for any program, project, or activity, when it is made known to the Federal entity or official to which the funds are made available that the program, project, or activity is not in compliance with any Federal law relating to risk assessment, the protection of private property rights, or unfunded mandates.

Sec. 413. Except in the case of entities that are funded solely with Federal funds or any natural persons that are funded under this Act, none of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties to lobby or litigate in respect to adjudicatory proceedings funded in this Act. A chief executive officer of any entity receiving funds under this Act shall certify that none of these funds have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

Sec. 414. No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

Sec. 415. All Departments and agencies funded under this Act are encouraged, within the limits of the existing statutory authorities and funding, to expand their use of "E-Commerce" technologies and procedures in the conduct of their business practices and public service activities.

Sec. 416. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government that is established after the date of the enactment of this Act, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

Sec. 417. None of the funds provided in this Act to any department or agency shall be obligated or expended to procure passenger automobiles as defined in 15 U.S.C. 2001 with an EPA estimated miles per gallon average of less than 22 miles per gallon.

This Act may be cited as the "Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004".

SA 2151. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 125, between lines 7 and 8, insert the following:

Sec. 418. Section 106(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)) is amended—

(1) in paragraph (3)(A), by striking "shall not exceed 2 percent" and inserting "shall not, subject to paragraph (6), exceed 3 percent";

(2) in paragraph (5), by striking "not to exceed 1 percent" and inserting "subject to paragraph (6), not to exceed 3 percent";

(3) by redesignating the second paragraph (5) and paragraph (6) as paragraphs (7) and (8), respectively; and

(4) by inserting after paragraph (5) the following:

"(6) Of the amounts received under paragraph (1), the State may deduct not more than an aggregate total of 3 percent of such amounts for—

"(A) administrative expenses under paragraph (3)(A); and

"(B) technical assistance under paragraph (5).".

SA 2152. Mrs. CLINTON (for herself, Mr. Enzi, Ms. Cantwell, Mr. Grassley, Mrs. Murray, Mr. Smith, Mr. Schumer, Mr. Wyden, Mr. Harkin, Ms. Stabenow, Mr. Kerry, Mr. Dodd, Mr. Lieberman, Mr. Levin, and Mr. Daschle) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title I, add the following:

Sec. 116. (a) Limitation on Use of Funds for CARES Initiative.—No funds appropriated or otherwise made available for the Department of Veterans Affairs for a fiscal year before fiscal year 2005 may be obligated or expended to take any actions proposed under the Capital Asset Realignment for Enhanced Services (CARES) initiative that would result in the closure of a Department of Veterans Affairs health care facility, or reduction in services at such a facility, until the Secretary of Veterans Affairs—

(1) modifies the Capital Asset Realignment for Enhanced Services initiative national planning procedures to require that no changes be made in long-term care, domiciliary care, or mental health services without a completed and separate Capital Asset Realignment for Enhanced Services planning process intended to assess the future demand for such services;

(2) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to take into account the impact that any transfer of health care services under the initiative will have on the access of veterans to primary outpatient care, inpatient hospital care, and tertiary hospital care in rural and frontier population areas, as defined by the Census Bureau, taking into consideration such travel matters as road conditions, numbers of lanes on roads, and seasonal changes in and other factors relating to the weather;

(3) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to permit veterans to testify at hearings of the Capital Asset Realignment for Enhanced Services Commission and reconvenes the Commission for further hearings on the initiative in regions where the Commission has held hearings without permitting veterans to testify;

(4) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to hold at least one hearing regarding the realignment of services under the initiative within 30 miles of each Department of Veterans Affairs facility that would

experience a realignment of services under the national plan for the initiative; and

(5) submits to Congress a report on the Capital Asset Realignment for Enhanced Services initiative national planning process that sets forth the results of the modifications under paragraphs (1), (2), (3), and (4).

(b) AVAILABILITY OF CARES INITIATIVE FUNDS FOR ENHANCED SERVICES.—Notwithstanding any other provision of law, neither subsection (a) nor any other provision of law shall be construed to limit the obligation or expenditure of funds under the Capital Asset Realignment for Enhanced Services initiative for the provision of enhanced services as long as the provision of such services does not involve the closure of a Department health care facility or a reduction in services as such a facility.

SA 2153. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans' Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I, add the following:

SEC. 116. Of the amount appropriated or otherwise made available by this title under the heading "CONSTRUCTION, MAJOR PROJECTS", $300,000 shall be available for advance planning for national cemeteries in the areas as follows:

(1) The Jacksonville, Florida, area.

(2) The Sarasota, Florida, area.

SA 2154. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. . NATIONAL ACADEMY OF SCIENCES STUDY.

The matter under the heading "ADMINISTRATIVE PROVISIONS" under the heading "ENVIRONMENTAL PROTECTION AGENCY" in title III of division K of section 2 of the Consolidated Appropriations Resolution, 2003 (117 Stat. 513), is amended—

(1) in the first sentence of the fifth undesignated paragraph (beginning "As soon as"), by inserting before the period at the end the following: ", and the impact of the final rule entitled 'Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion', amending parts 51 and 52 of title 40, Code of Federal Regulations, and published in electronic docket OAR–2002–0068 on August 27, 2003"; and

(2) in the sixth undesignated paragraph (beginning "The National Academy of Sciences"), by striking "March 3, 2004" and inserting "September 1, 2004".

SA 2155. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. There are appropriated $1,100,000 to the Secretary of Housing and Urban Development for the purposes of making the grant authorized under section 3 of the Paul and Sheila Wellstone Center for Community Building Act.

SA 2156. Mr. CRAIG (for Mr. BOND (for himself, Mr. MCCONNELL, Mr. TALENT, Mr. CHAMBLISS, Mr. MILLER, and Mr. CRAIG)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for the purposes; as follows:

Page 106, strike lines 16 to 20 and insert in lieu thereof the following:

Section 209(e)(1) of the Clean Air Act (42 U.S.C. 7543(e)(1)) is amended by—

(a) striking the words "either of"; and

(b) in paragraph (A), adding before the period at the end the following: ", and any new spark-ignition engines smaller than 50 horsepower".

Not later than December 1, 2004, the Administrator of the Environmental Protection Agency shall propose regulations containing new standards applicable to emissions from new nonroad spark-ignition engines smaller than 50 horsepower.

SA 2157. Mr. SANTORUM submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 89, line 14, strike "$452,575,000" and insert "$545,575,000".

On page 89, line 16, strike "$330,000,000" and insert "$423,000,000".

On page 92, line 22, strike the period and insert ": *Provided further*, That each amount under each heading (other than this heading) in this Act shall be reduced on a pro rata basis by $93,000,000.".

SA 2158. Mr. CRAIG (for himself, Mr. HARKIN, Mr. COCHRAN, Mr. CONRAD, Mr. CHAMBLISS, Mr. COLEMAN, Mr. CRAPO, Mr. LUGAR, Mr. BREAUX, Mr. ROBERTS, Mr. FITZGERALD, and Mr. PRYOR) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

Beginning on page 105, strike line 3 and all that follows through page 105, line 25, and insert the following:

SEC. . PESTICIDE REGISTRATION.

(a) SHORT TITLE.—This section may be cited as the "Pesticide Registration Improvement Act of 2003".

(b) REGISTRATION REQUIREMENTS FOR ANTIMICROBIAL PESTICIDES.—Section 3(h) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(h)) is amended—

(1) in paragraph (2)(F), by striking "90 to 180 days" and inserting "120 days"; and

(2) in paragraph (3)—

(A) in subparagraph (D)(vi), by striking "240 days" and inserting "120 days"; and

(B) in subparagraph (F), by adding at the end the following:

"(iv) LIMITATION.—Notwithstanding clause (ii), the failure of the Administrator to notify an applicant for an amendment to a registration for an antimicrobial pesticide shall not be judicially reviewable in a Federal or State court if the amendment requires scientific review of data within—

"(I) the time period specified in subparagraph (D)(vi), in the absence of a final regulation under subparagraph (B); or

"(II) the time period specified in paragraph (2)(F), if adopted in a final regulation under subparagraph (B).".

(c) MAINTENANCE FEES.—

(1) AMOUNTS FOR REGISTRANTS.—Section 4(i)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)) is amended—

(A) in subparagraph (A)—

(i) by striking "(A) Subject" and inserting the following:

"(A) IN GENERAL.—Subject"; and

(ii) by striking "of—" and all that follows through "additional registration" and inserting "for each registration";

(B) in subparagraph (D)—

(i) by striking "(D) The" and inserting the following:

"(D) MAXIMUM AMOUNT OF FEES FOR REGISTRANTS.—The";

(ii) in clause (i), by striking "shall be $55,000; and" and inserting "shall be—

"(I) for fiscal year 2004, $84,000;

"(II) for each of fiscal years 2005 and 2006, $87,000;

"(III) for fiscal year 2007, $68,000; and

"(IV) for fiscal year 2008, $55,000; and"; and

(iii) in clause (ii), by striking "shall be $95,000." and inserting "shall be—

"(I) for fiscal year 2004, $145,000;

"(II) for each of fiscal years 2005 and 2006, $151,000;

"(III) for fiscal year 2007, $117,000; and

"(IV) for fiscal year 2008, $95,000."; and

(C) in subparagraph (E)—

(i) by striking "(E)(i) For" and inserting the following:

"(E) MAXIMUM AMOUNT OF FEES FOR SMALL BUSINESSES.—

"(i) IN GENERAL.—For";

(ii) by indenting the margins of subclauses (I) and (II) of clause (i) appropriately; and

(iii) in clause (i)—

(I) subclause (I), by striking "shall be $38,500; and" and inserting "shall be—

"(aa) for fiscal year 2004, $59,000;

"(bb) for each of fiscal years 2005 and 2006, $61,000;

"(cc) for fiscal year 2007, $48,000; and

"(dd) for fiscal year 2008, $38,500; and"; and

(II) in subclause (II), by striking "shall be $66,500." and inserting "shall be—

"(aa) for fiscal year 2004, $102,000;

"(bb) for each of fiscal years 2005 and 2006, $106,000;

"(cc) for fiscal year 2007, $82,000; and

"(dd) for fiscal year 2008, $66,500.".

(2) TOTAL AMOUNT OF FEES.—Section 4(i)(5)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(a)-1(i)(5)(C)) is amended—

(A) by striking "(C)(i) The" and inserting the following:

"(C) TOTAL AMOUNT OF FEES.—The"; and

(B) by striking "aggregate amount" and all that follows through clause (ii) and inserting "aggregate amount of—

"(i) for fiscal year 2004, $26,000,000;

"(ii) for fiscal year 2005, $27,000,000;

"(iii) for fiscal year 2006, $27,000,000;

"(iv) for fiscal year 2007, $21,000,000; and

"(v) for fiscal year 2008, $15,000,000.".

(3) DEFINITION OF SMALL BUSINESS.—Section 4(i)(5)(E)(ii) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a-1(i)(5)(E)(ii)) is amended—

(A) by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively, and indenting the margins appropriately;

(B) by striking "(ii) For purposes of" and inserting the following:

"(ii) DEFINITION OF SMALL BUSINESS.—

"(I) IN GENERAL.—In";

(C) in item (aa) (as so redesignated), by striking "150" and inserting "500";

(D) in item (bb) (as so redesignated), by striking "gross revenue from chemicals that did not exceed $40,000,000." and inserting "global gross revenue from pesticides that did not exceed $60,000,000."; and

(E) by adding at the end the following:

"(II) AFFILIATES.—

"(aa) IN GENERAL.—In the case of a business entity with 1 or more affiliates, the gross revenue limit under subclause (I)(bb) shall apply to the gross revenue for the entity and all of the affiliates of the entity, including parents and subsidiaries, if applicable.

"(bb) AFFILIATED PERSONS.—For the purpose of item (aa), persons are affiliates of each other if, directly or indirectly, either person controls or has the power to control the other person, or a third person controls or has the power to control both persons.

"(cc) INDICIA OF CONTROL.—For the purpose of item (aa), indicia of control include interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees.".

(4) EXTENSION OF AUTHORITY FOR COLLECTING MAINTENANCE FEES.—Section 4(i)(5)(H) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a-1(i)(5)(H)) is amended by striking "2003" and inserting "2008".

(5) REREGISTRATION AND OTHER ACTIVITIES.—Section 4(g)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136a-1(g)(2)) is amended—

(A) by striking subparagraph (A) and inserting the following:

"(A) IN GENERAL.—The Administrator shall make a determination as to eligibility for reregistration—

"(i) for all active ingredients subject to reregistration under this section for which tolerances or exemptions from tolerances are required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), not later than the last date for tolerance reassessment established under section 408(q)(1)(C) of that Act (21 U.S.C. 346a(q)(1)(C)); and

"(ii) for all other active ingredients subject to reregistration under this section, not later than October 3, 2008.";

(B) in subparagraph (B)—

(i) by striking "(B) Before" and inserting the following:

"(B) PRODUCT-SPECIFIC DATA.—

"(i) IN GENERAL.—Before";

(ii) by striking "The Administrator" and inserting the following:

"(ii) TIMING.—

"(I) IN GENERAL.—Subject to subclause (II), the Administrator"; and

(iii) by adding at the end the following:

"(II) EXTRAORDINARY CIRCUMSTANCES.—In the case of extraordinary circumstances, the Administrator may provide such a longer period, of not more than 2 additional years, for submission of data to the Administrator under this subparagraph."; and

(C) in subparagraph (D)—

(i) by striking "(D) If" and inserting the following:

"(D) DETERMINATION TO NOT REREGISTER.—

"(i) IN GENERAL.—If"; and

(ii) by adding at the end the following:

"(ii) TIMING FOR REGULATORY ACTION.—Regulatory action under clause (i) shall be completed as expeditiously as possible.".

(d) OTHER FEES.—

(1) IN GENERAL.—Section 4(i)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a-1(i)(6)) is amended—

(A) by striking "During" and inserting "Except as provided in section 33, during"; and

(B) by striking "2003" and inserting "2010".

(2) TOLERANCE FEES.—Notwithstanding section 408(m)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(m)(1)), during the period beginning on October 1, 2003, and ending on September 30, 2008, the Administrator of the Environmental Protection Agency shall not collect any tolerance fees under that section.

(e) EXPEDITED PROCESSING OF SIMILAR APPLICATIONS.—Section 4(k)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a-1(k)(3)) is amended—

(1) in the paragraph heading, by striking "EXPEDITED" and inserting "REVIEW OF INERT INGREDIENTS; EXPEDITED"; and

(2) in subparagraph (A)—

(A) by striking "1997" and all that follows through "of the maintenance fees" and inserting "2004 through 2006, approximately $3,300,000, and for each of fiscal years 2007 and 2008, between ⅛ and ⅐, of the maintenance fees";

(B) by redesignating clauses (i), (ii), and (iii) as subclauses (I), (II) and (III), respectively, and indenting appropriately; and

(C) by striking "resources to assure the expedited processing and review of any application that" and inserting "resources—

"(i) to review and evaluate new inert ingredients; and

"(ii) to ensure the expedited processing and review of any application
that—".

(f) PESTICIDE REGISTRATION SERVICE FEES.—The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a et seq.) is amended—

(1) by redesignating sections 33 and 34 (7 U.S.C. 136x, 136y) as sections 34 and 35, respectively; and

(2) by inserting after section 32 (7 U.S.C. 136w-7) the following:

"SEC. 33. PESTICIDE REGISTRATION SERVICE FEES.

"(a) DEFINITION OF COSTS.—In this section, the term 'costs', when used with respect to review and decisionmaking pertaining to an application for which registration service fees are paid under this section, means—

"(1) costs to the extent that—

"(A) officers and employees provide direct support for the review and decisionmaking for covered pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses;

"(B) persons and organizations under contract with the Administrator engage in the review of the applications, and corresponding risk and benefits information and assessments; and

"(C) advisory committees and other accredited persons or organizations, on the request of the Administrator, engage in the peer review of risk or benefits information associated with covered pesticide applications;

"(2) costs of management of information, and the acquisition, maintenance, and repair of computer and telecommunication resources (including software), used to support review of pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses; and

"(3) costs of collecting registration service fees under subsections (b) and (c) and reporting, auditing, and accounting under this section.

"(b) FEES.—

"(1) IN GENERAL.—Effective beginning on the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall assess and collect covered pesticide registration service fees in accordance with this section.

"(2) COVERED PESTICIDE REGISTRATION APPLICATIONS.—

"(A) IN GENERAL.—An application for the registration of a pesticide covered by this Act that is received by the Administrator on or after the effective date of the Pesticide Registration Improvement Act of 2003 shall be subject to a registration service fee under this section.

"(B) EXISTING APPLICATIONS.—

"(i) IN GENERAL.—Subject to clause (ii), an application for the registration of a pesticide that was submitted to the Administrator before the effective date of the Pesticide Registration Improvement Act of 2003 and is pending on that effective date shall be subject to a service fee under this section if the application is for the registration of a new active ingredient that is not listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency.

"(ii) TOLERANCE OR EXEMPTION FEES.—The amount of any fee otherwise payable for an application described in clause (i) under this section shall be reduced by the amount of any fees paid to support the related petition for a pesticide tolerance or exemption under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

"(C) DOCUMENTATION.—An application subject to a registration service fee under this section shall be submitted with documentation certifying—

"(i) payment of the registration service fee; or

"(ii) a request for a waiver from or reduction of the registration service fee.

“(3) SCHEDULE OF COVERED APPLICATIONS AND REGISTRATION SERVICE FEES.—

“(A) IN GENERAL.—Not later than 30 days after the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall publish in the Federal Register a schedule of covered pesticide registration applications and corresponding registration service fees.

“(B) REPORT.—Subject to paragraph (6), the schedule shall be the same as the applicable schedule appearing in the Congressional Record on pages S11631 through S11633, dated September 17, 2003.

“(4) PENDING PESTICIDE REGISTRATION APPLICATIONS.—

“(A) IN GENERAL.—An applicant that submitted a registration application to the Administrator before the effective date of the Pesticide Registration Improvement Act of 2003, but that is not required to pay a registration service fee under paragraph (2)(B), may, on a voluntary basis, pay a registration service fee in accordance with paragraph (2)(B).

“(B) VOLUNTARY FEE.—The Administrator may not compel payment of a registration service fee for an application described in subparagraph (A).

“(C) DOCUMENTATION.—An application for which a voluntary registration service fee is paid under this paragraph shall be submitted with documentation certifying—

“(i) payment of the registration service fee; or

“(ii) a request for a waiver from or reduction of the registration service fee.

“(5) RESUBMISSION OF PESTICIDE REGISTRATION APPLICATIONS.—If a pesticide registration application is submitted by a person that paid the fee for the application under paragraph (2), is determined by the Administrator to be complete, and is not approved or is withdrawn (without a waiver or refund), the submission of the same pesticide registration application by the same person (or a licensee, assignee, or successor of the person) shall not be subject to a fee under paragraph (2).

“(6) FEE ADJUSTMENT.—Effective for a covered pesticide registration application received on or after October 1, 2005, the Administrator shall—

“(A) increase by 5 percent the service fee payable for the application under paragraph (3); and

“(B) publish in the Federal Register the revised registration service fee schedule.

“(7) WAIVERS AND REDUCTIONS.—

“(A) IN GENERAL.—An applicant for a covered pesticide registration may request the Administrator to waive or reduce the amount of a registration service fee payable under this section under the circumstances described in subparagraphs (D) through (G).

“(B) DOCUMENTATION.—

“(i) IN GENERAL.—A request for a waiver from or reduction of the registration service fee shall be accompanied by appropriate documentation demonstrating the basis for the waiver or reduction.

“(ii) CERTIFICATION.—The applicant shall provide to the Administrator a written certification, signed by a responsible officer, that the documentation submitted to support the waiver or reduction request is accurate.

“(iii) INACCURATE DOCUMENTATION.—An application shall be subject to the applicable registration service fee payable under paragraph (3) if, at any time, the Administrator determines that—

“(I) the documentation supporting the waiver or reduction request is not accurate; or

“(II) based on the documentation or any other information, the waiver or reduction should not have been granted or should not be granted.

“(C) DETERMINATION TO GRANT OR DENY REQUEST.—As soon as practicable, but not later than 60 days, after the date on which the Administrator receives a request for a waiver or reduction of a registration service fee under this paragraph, the Administrator shall—

“(i) determine whether to grant or deny the request; and

“(ii) notify the applicant of the determination.

“(D) MINOR USES.—

“(i) IN GENERAL.—The Administrator may waive or reduce a registration service fee for an application for minor uses for a pesticide.

“(ii) SUPPORTING DOCUMENTATION.—An applicant requesting a waiver under this subparagraph shall provide supporting documentation that demonstrates, to the satisfaction of the Administrator, that anticipated revenues from the uses that are the subject of the application would be insufficient to justify imposition of the full application fee.

“(E) IR–4 WAIVER.—The Administrator shall waive the registration service fee for an application if the Administrator determines that—

“(i) the application is solely associated with a tolerance petition submitted in connection with the Inter-Regional Project Number 4 (IR–4) as described in section 2 of Public Law 89–106 (7 U.S.C. 450i(e)); and

“(ii) the waiver is in the public interest.

“(F) SMALL BUSINESSES.—

“(i) IN GENERAL.—The Administrator shall waive 50 percent of the registration service fees payable by an entity for a covered pesticide registration application under this section if the entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application.

“(ii) WAIVER OF FEES.—The Administrator shall waive all of the registration service fees payable by an entity under this section if the entity—

“(I) is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

“(II) has average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed $10,000,000, at the time of application.

“(iii) FORMATION FOR WAIVER.—The Administrator shall not grant a waiver under this subparagraph if the Administrator determines that the entity submitting the application has been formed or manipulated primarily for the purpose of qualifying for the waiver.

“(iv) DOCUMENTATION.—An entity requesting a waiver under this subparagraph shall provide to the Administrator—

“(I) documentation demonstrating that the entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

“(II) if the entity is requesting a waiver of all registration service fees payable under this section, documentation demonstrating that the entity has an average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed $10,000,000, at the time of application.

“(G) FEDERAL AND STATE AGENCY EXEMPTIONS.—An agency of the Federal Government or a State government shall be exempt from covered registration service fees under this section.

“(8) REFUNDS.—

“(A) EARLY WITHDRAWALS.—If, during the first 60 days after the beginning of the applicable decision time review period under subsection (f)(3), a covered pesticide registration application is withdrawn by the applicant, the Administrator shall refund all but 10 percent of the total registration service fee payable under paragraph (3) for the application.

“(B) WITHDRAWALS AFTER THE FIRST 60 DAYS OF DECISION REVIEW TIME PERIOD.—

“(i) IN GENERAL.—If a covered pesticide registration application is withdrawn after the first 60 days of the applicable decision time review period, the Administrator shall determine what portion, if any, of the total registration service fee payable under paragraph (3) for the application may be refunded based on the proportion of the work completed at the time of withdrawal.

“(ii) TIMING.—The Administrator shall—

“(I) make the determination described in clause (i) not later than 90 days after the date the application is withdrawn; and

“(II) provide any refund as soon as practicable after the determination.

“(C) DISCRETIONARY REFUNDS.—

“(i) IN GENERAL.—In the case of a pesticide registration application that has been filed with the Administrator and has not been withdrawn by the applicant, but for which the Administrator has not yet made a final determination, the Administrator may refund a portion of a covered registration service fee if the Administrator determines that the refund is justified.

“(ii) BASIS.—The Administrator may provide a refund for an application under this subparagraph—

“(I) on the basis that, in reviewing the application, the Administrator has considered data submitted in support of another pesticide registration application; or

“(II) on the basis that the Administrator completed portions of the review of the application before the effective date of this section.

“(D) CREDITED FEES.—In determining whether to grant a refund under this paragraph, the Administrator shall take into account any portion of the registration service fees credited under paragraph (2) or (4).

“(c) PESTICIDE REGISTRATION FUND.—

“(1) ESTABLISHMENT.—There is established in the Treasury of the United States a Pesticide Registration Fund to be used in carrying out this section (referred to in this section as the ‘Fund’), consisting of—

“(A) such amounts as are deposited in the Fund under paragraph (2);

“(B) any interest earned on investment of amounts in the Fund under paragraph (4); and

“(C) any proceeds from the sale or redemption of investments held in the Fund.

“(2) DEPOSITS IN FUND.—Subject to paragraph (4), the Administrator shall deposit fees collected under this section in the Fund.

“(3) EXPENDITURES FROM FUND.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C) and paragraph (4), the Administrator may make expenditures from the Fund—

“(i) to cover the costs associated with the review and decisionmaking pertaining to all applications for which registration service fees have been paid under this section; and

“(ii) to otherwise carry out this section.

“(B) WORKER PROTECTION.—For each of fiscal years 2004 through 2008, the Administrator shall use approximately 1/17 of the amount in the Fund (but not more than $1,000,000, and not less than $750,000, for any fiscal year) to enhance current scientific and regulatory activities related to worker protection.

“(C) New inert ingredients.—For each of fiscal years 2004 and 2005, the Administrator shall use approximately 1/34 of the amount in the Fund (but not to exceed $500,000 for any fiscal year) for the review and evaluation of new inert ingredients.

“(4) Collections and appropriations acts.—The fees authorized by this section and amounts deposited in the Fund—

“(A) shall be collected and made available for obligation only to the extent provided in advance in appropriations Acts; and

“(B) shall be available without fiscal year limitation.

“(5) Unused funds.—Amounts in the Fund not currently needed to carry out this section shall be—

“(A) maintained readily available or on deposit;

“(B) invested in obligations of the United States or guaranteed by the United States; or

“(C) invested in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

“(d) Assessment of Fees.—

“(1) Definition of covered functions.—In this subsection, the term ‘covered functions’ means functions of the Office of Pesticide Programs of the Environmental Protection Agency, as identified in key programs and projects of the final operating plan for the Environmental Protection Agency submitted as part of the budget process for fiscal year 2002, regardless of any subsequent transfer of 1 or more of the functions to another office or agency or the subsequent transfer of a new function to the Office of Pesticide Programs.

“(2) Minimum amount of appropriations.—Registration service fees may not be assessed for a fiscal year under this section unless the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2002) of the Office of Pesticide Programs of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) are equal to or greater than the amount of appropriations for covered functions for fiscal year 2002 (excluding the amount of any fees appropriated for the fiscal year).

“(3) Use of fees.—Registration service fees authorized by this section shall be available, in the aggregate, only to defray increases in the costs associated with the review and decisionmaking for the review of pesticide registration applications and associated tolerances (including increases in the number of full-time equivalent positions in the Environmental Protection Agency engaged in those activities) over the costs for fiscal year 2002, excluding costs paid from fees appropriated for the fiscal year.

“(4) Compliance.—The requirements of paragraph (2) shall have been considered to have been met for any fiscal year if the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2002) of the Office of Pesticide Programs of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) is not more than 3 percent below the amount of appropriations for covered functions for fiscal year 2002 (excluding the amount of any fees appropriated for the fiscal year).

“(5) Subsequent authority.—If the Administrator does not assess registration service fees under subsection (b) during any portion of a fiscal year as the result of paragraph (2) and is subsequently permitted to assess the fees under subsection (b) during the fiscal year, the Administrator shall assess and collect the fees, without any modification in rate, at any time during the fiscal year, notwithstanding any provisions of subsection (b) relating to the date fees are to be paid.

“(e) Reforms to Reduce Decision Time Review Periods.—To the maximum extent practicable consistent with the degrees of risk presented by pesticides and the type of review appropriate to evaluate risks, the Administrator shall identify and evaluate reforms to the pesticide registration process under this Act with the goal of reducing decision review periods in effect on the effective date of the Pesticide Registration Improvement Act of 2003 for pesticide registration actions for covered pesticide registration applications (including reduced risk applications).

“(f) Decision Time Review Periods.—

“(1) In general.—Not later than 30 days after the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall publish in the Federal Register a schedule of decision review periods for covered pesticide registration actions and corresponding registration service fees under this Act.

“(2) Report.—The schedule shall be the same as the applicable schedule appearing in the Congressional Record on pages S11631 through S11633, dated September 17, 2003.

“(3) Applications subject to decision time review periods.—The decision time review periods specified in paragraph (1) shall apply to—

“(A) covered pesticide registration applications subject to registration service fees under subsection (b)(2);

“(B) covered pesticide registration applications for which an applicant has voluntarily paid registration service fees under subsection (b)(4); and

“(C) covered pesticide registration applications listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency.

“(4) Start of decision time review period.—

“(A) In general.—Except as provided in subparagraphs (C), (D), and (E), in the case of a pesticide registration application accompanied by the registration service fee required under this section, the decision time review period begins 21 days after the date on which the Administrator receives the covered pesticide registration application.

“(B) Completeness of application.—In conducting an initial screening of an application, the Administrator shall determine—

“(i) whether—

“(I) the applicable registration service fee has been paid; or

“(II) the application contains a waiver or refund request; and

“(ii) whether the application—

“(I) contains all necessary forms, data, draft labeling, and, documentation certifying payment of any registration service fee required under this section; or

“(II) establishes a basis for any requested waiver or reduction.

“(C) Applications with waiver or reduction requests.—

“(i) In general.—In the case of an application submitted with a request for a waiver or reduction of registration service fees under subsection (b)(7), the decision time review period shall be determined in accordance with this subparagraph.

“(ii) Request granted with no additional fees required.—If the Administrator grants the waiver or reduction request and no additional fee is required, the decision time review period begins on the earlier of—

“(I) the date on which the Administrator grants the request; or

“(II) the date that is 60 days after the date of receipt of the application.

“(iii) Request granted with additional fees required.—If the Administrator grants the waiver or reduction request, in whole or in part, but an additional registration service fee is required, the decision time review period begins on the date on which the Administrator receives certification of payment of the applicable registration service fee.

“(iv) Request denied.—If the Administrator denies the waiver or reduction request, the decision time review period begins on the date on which the Administrator receives certification of payment of the applicable registration service fee.

“(D) Pending applications.—

“(i) In general.—The start of the decision time review period for applications described in clause (ii) shall be the date on which the Administrator receives certification of payment of the applicable registration service fee.

“(ii) Applications.—Clause (i) applies to—

“(I) covered pesticide registration applications for which voluntary fees have been paid under subsection (b)(4); and

“(II) covered pesticide registration applications received on or after the effective date of the Pesticide Registration Improvement Act of 2003 but submitted without the applicable registration service fee required under this section due to the inability of the Administrator to assess fees under subsection (d)(1).

“(E) 2003 work plan.—In the case of a covered pesticide registration application listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency, the decision time review period begins on the date that is 30 days after the effective date of the Pesticide Registration Improvement Act of 2003.

“(5) Extension of decision time review period.—The Administrator and the applicant may mutually agree in writing to extend a decision time review period under this subsection.

“(g) Judicial Review.—

“(1) In general.—Any applicant adversely affected by the failure of the Administrator to make a determination on the application of the applicant for registration of a new active ingredient or new use for which a registration service fee is paid under this section may obtain judicial review of the failure solely under this section.

“(2) Scope.—

“(A) In general.—In an action brought under this subsection, the only issue on review is whether the Administrator failed to make a determination on the application specified in paragraph (1) by the end of the applicable decision time review period required under subsection (f) for the application.

“(B) Other actions.—No other action authorized or required under this section shall be judicially reviewable by a Federal or State court.

“(3) Timing.—

“(A) In general.—A person may not obtain judicial review of the failure of the Administrator to make a determination on the application specified in paragraph (1) before the expiration of the 2-year period that begins on the date on which the decision time review period for the application ends.

“(B) MEETING WITH ADMINISTRATOR.—To be eligible to seek judicial review under this subsection, a person seeking the review shall first request in writing, at least 120 days before filing the complaint for judicial review, a decision review meeting with the Administrator.

“(4) REMEDIES.—The Administrator may not be required or permitted to refund any portion of a registration service fee paid in response to a complaint that the Administrator has failed to make a determination on the covered pesticide registration application specified in paragraph (1) by the end of the applicable decision review period.

“(h) ACCOUNTING.—The Administrator shall—

“(1) provide an annual accounting of the registration service fees paid to the Administrator and disbursed from the Fund, by providing financial statements in accordance with—

“(A) the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838) and amendments made by that Act; and

“(B) the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410) and amendments made by that Act;

“(2) provide an accounting describing expenditures from the Fund authorized under subsection (c); and

“(3) provide an annual accounting describing collections and expenditures authorized under subsection (d).

“(i) AUDITING.—

“(1) FINANCIAL STATEMENTS OF AGENCIES.—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of an executive agency.

“(2) COMPONENTS.—The annual audit required under sections 3515(b) and 3521 of that title of the financial statements of activities under this section shall include an analysis of—

“(A) the fees collected under subsection (b) and disbursed;

“(B) compliance with subsection (f);

“(C) the amount appropriated to meet the requirements of subsection (d)(1); and

“(D) the reasonableness of the allocation of the overhead allocation of costs associated with the review and decisionmaking pertaining to applications under this section.

“(3) INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall—

“(A) conduct the annual audit required under this subsection; and

“(B) report the findings and recommendations of the audit to the Administrator and to the appropriate committees of Congress.

“(j) PERSONNEL LEVELS.—All full-time equivalent positions supported by fees authorized and collected under this section shall not be counted against the agency-wide personnel level goals of the Environmental Protection Agency.

“(k) REPORTS.—

“(1) IN GENERAL.—Not later than March 1, 2005, and each March 1 thereafter through March 1, 2009, the Administrator shall publish an annual report describing actions taken under this section.

“(2) CONTENTS.—The report shall include—

“(A) a review of the progress made in carrying out each requirement of subsections (e) and (f), including—

“(i) the number of applications reviewed, including the decision times for each application specified in subsection (f);

“(ii) the number of actions pending in each category of actions described in subsection (f)(3), as well as the number of inert ingredients;

“(iii) to the extent determined appropriate by the Administrator and consistent with the authorities of the Administrator and limitations on delegation of functions by the Administrator, recommendations for—

“(I) expanding the use of self-certification in all appropriate areas of the registration process;

“(II) providing for accreditation of outside reviewers and the use of outside reviewers to conduct the review of major portions of applications; and

“(III) reviewing the scope of use of the notification process to cover broader categories of registration actions; and

“(iv) the use of performance-based contracts, other contracts, and procurement to ensure that—

“(I) the goals of this Act for the timely review of applications for registration are met; and

“(II) the registration program is administered in the most productive and cost effective manner practicable;

“(B) a description of the staffing and resources relating to the costs associated with the review and decisionmaking pertaining to applications; and

“(C) a review of the progress in meeting the timeline requirements of section 4(g).

“(3) METHOD.—The Administrator shall publish a report required by this subsection by such method as the Administrator determines to be the most effective for efficiently disseminating the report, including publication of the report on the Internet site of the Environmental Protection Agency.

“(l) SAVINGS CLAUSE.—Nothing in this section affects any other duties, obligations, or authorities established by any other section of this Act, including the right to judicial review of duties, obligations, or authorities established by any other section of this Act.

“(m) TERMINATION OF EFFECTIVENESS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the authority provided by this section terminates on September 30, 2008.

“(2) PHASE OUT.—

“(A) FISCAL YEAR 2009.—During fiscal year 2009, the requirement to pay and collect registration service fees applies, except that the level of registration service fees payable under this section shall be reduced 40 percent below the level in effect on September 30, 2008.

“(B) FISCAL YEAR 2010.—During fiscal year 2010, the requirement to pay and collect registration service fees applies, except that the level of registration service fees payable under this section shall be reduced 70 percent below the level in effect on September 30, 2008.

“(C) SEPTEMBER 30, 2010.—Effective September 30, 2010, the requirement to pay and collect registration service fees terminates.

“(D) DECISION REVIEW PERIODS.—

“(i) PENDING APPLICATIONS.—In the case of an application received under this section before September 30, 2008, the application shall be reviewed in accordance with subsection (f).

“(ii) NEW APPLICATIONS.—In the case of an application received under this section on or after September 30, 2008, subsection (f) shall not apply to the application.”.

(g) CONFORMING AMENDMENTS.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 136) is amended—

(1) by striking the item relating to section 4(k)(3) and inserting the following:

“(3) Review of inert ingredients; expedited processing of similar applications.”;

and

(2) by striking the items relating to sections 30 and 31 and inserting the following:

“Sec. 30. Minimum requirements for training of maintenance applicators and service technicians.
“Sec. 31. Environmental Protection Agency minor use program.
“Sec. 32. Department of Agriculture minor use program.
“(a) In general.
“(b)(1) Minor use pesticide data.
“(2) Minor Use Pesticide Data Revolving Fund.
“Sec. 33. Pesticide registration service fees.
“(a) Definition of costs.
“(b) Fees.
  “(1) In general.
  “(2) Covered pesticide registration applications.
  “(3) Schedule of covered applications and registration service fees.
  “(4) Pending pesticide registration applications.
  “(5) Resubmission of pesticide registration applications.
  “(6) Fee adjustment.
  “(7) Waivers and reductions.
  “(8) Refunds.
“(c) Pesticide Registration Fund.
  “(1) Establishment.
  “(2) Transfers to Fund.
  “(3) Expenditures from Fund.
  “(4) Collections and appropriations Acts.
  “(5) Unused funds.
“(d) Assessment of fees.
  “(1) Definition of covered functions.
  “(2) Minimum amount of appropriations.
  “(3) Use of fees.
  “(4) Compliance.
  “(5) Subsequent authority.
“(e) Reforms to reduce decision time review periods.
“(f) Decision time review periods.
  “(1) In general.
  “(2) Report.
  “(3) Applications subject to decision time review periods.
  “(4) Start of decision time review period.
  “(5) Extension of decision time review period.
“(g) Judicial review.
  “(1) In general.
  “(2) Scope.
  “(3) Timing.
  “(4) Remedies.
“(h) Accounting.
“(i) Auditing.
  “(1) Financial statements of agencies.
  “(2) Components.
  “(3) Inspector General.
“(j) Personnel levels.
“(k) Reports.
  “(1) In general.
  “(2) Contents.
“(l) Savings clause.
“(m) Termination of effectiveness.
  “(1) In general.
  “(2) Phase out.
“Sec. 34. Severability.
“Sec. 35. Authorization for appropriations.”.

(h) EFFECTIVE DATE.—Except as otherwise provided in this section and the amendments made by this section, this section and the amendments made by this section take effect on the date that is 60 days after the date of enactment of this Act.

SA 2159. Mr. DORGAN proposed an amendment to amendment SA 2158 proposed by Mr. CRAIG (for himself, Mr.

Harkin, Mr. Cochran, Mr. Conrad, Mr. Chambliss, Mr. Coleman, Mr. Crapo, Mr. Lugar, Mr. Breaux, Mr. Roberts, Mr. Fitzgerald, and Mr. Pryor) to the amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

( ) Registration of Canadian Pesticides.—

(1) In general.—Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a) is amended by adding at the end the following:

``(i) Registration of Canadian Pesticides.—

``(1) Definitions.—In this subsection:

``(A) Canadian pesticide.—The term 'Canadian pesticide' means a pesticide that—

``(i) is registered for use as a pesticide in Canada;

``(ii) is identical or substantially similar in its composition to a comparable domestic pesticide registered under this section; and

``(iii) is registered in Canada by the registrant of the comparable domestic pesticide or by an affiliated entity of the registrant.

``(B) Comparable domestic pesticide.—The term 'comparable domestic pesticide' means a pesticide—

``(i) that is registered under this section;

``(ii) the registration of which is not under suspension;

``(iii) that is not subject to—

``(I) a notice of intent to cancel or suspend under any provision of this Act;

``(II) a notice for voluntary cancellation under section 6(f); or

``(III) an enforcement action under any provision of this Act;

``(iv) that is used as the basis for comparison for the determinations required under paragraph (4);

``(v) that is registered for use on each site of application for which registration is sought under this subsection;

``(vi) for which no use is the subject of a pending interim administrative review under subsection (c)(8);

``(vii) that is not subject to any limitation on production or sale agreed to by the Administrator and the registrant or imposed by the Administrator for risk mitigation purposes; and

``(viii) that is not classified as a restricted use pesticide under subsection (d).

``(2) Authority to register Canadian pesticides.—

``(A) In general.—The Administrator may register a Canadian pesticide if the registration—

``(i) complies with this subsection;

``(ii) is consistent with this Act; and

``(iii) has not previously been disapproved by the Administrator.

``(B) Production of another pesticide.—A pesticide registered under this subsection shall not be used to produce a pesticide registered under this section or section 24(c).

``(C) Registrant.—

``(i) In general.—The Administrator may register a Canadian pesticide under this subsection on the application of any person.

``(ii) Application.—If the Administrator registers a Canadian pesticide under this subsection on application of any person, the applicant shall be considered to be the registrant of the Canadian pesticide for all purposes of this Act.

``(D) Administrator.—Not later than 60 days after a person submits a complete application for the registration of a Canadian pesticide under this subsection, the Administrator shall—

``(i) approve the application; or

``(ii)(I) disapprove the application; and

``(II) provide the applicant with a statement of the reasons for the disapproval.

``(E) Delegation.—

``(i) In general.—Subject to clause (ii), the Administrator may delegate a function of the Administrator under this subsection.

``(ii) Approval.—The Administrator shall approve or disapprove any final action taken under this subsection as the result of a function delegated to a State.

``(3) Applicant requirements.—A person seeking registration of a Canadian pesticide under this subsection shall—

``(A) demonstrate to the Administrator that the Canadian pesticide is identical or substantially similar in its composition to a comparable domestic pesticide; and

``(B) submit to the Administrator a copy of—

``(i) the label approved by the Pesticide Management Regulatory Agency for the Canadian pesticide; and

``(ii) the label approved by the Administrator for the comparable domestic pesticide.

``(4) Criteria for registration.—The Administrator may register a Canadian pesticide under this subsection if the Administrator—

``(A) obtains the confidential statement of formula for the Canadian pesticide;

``(B) determines that the Canadian pesticide is identical or substantially similar in composition to a comparable domestic pesticide;

``(C) for each food or feed use authorized by the registration—

``(i) determines that there exists an adequate tolerance or exemption under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that permits the residues of the pesticide on the food or feed; and

``(ii) identifies the tolerances or exemptions in the notification submitted under subparagraph (E);

``(D) obtains a label approved by the Administrator that—

``(i) includes all statements, other than the establishment number, from the approved labeling of the comparable domestic pesticide that are relevant to the uses registered by the Administrator; and

``(ii) excludes all labeling statements relating to uses that are not registered by the Administrator; and

``(E) not later than 10 business days after the issuance of the registration, publish in the Federal Register a written notification of the action of the Administrator that includes—

``(i) a description of the determination made under this paragraph; and

``(ii) a statement of the effective date of the registration;

``(5) Labeling of Canadian pesticides.—

``(A) In general.—Each container containing a Canadian pesticide registered by the Administrator shall bear the label that is approved by the Administrator under this subsection.

``(B) Display of label.—The label shall be securely attached to the container and shall be the only label visible on the container.

``(C) Original Canadian label.—The original Canadian label on the container shall be preserved underneath the label approved by the Administrator.

``(D) Preparation and use of labels.—After a Canadian pesticide is registered under this subsection, the registrant shall—

``(i) prepare labels approved by the Administrator for the Canadian pesticide; and

``(ii) conduct or supervise all labeling of the Canadian pesticide with the approved labeling.

``(E) Registered establishments.—Labeling of a Canadian pesticide under this subsection shall be conducted at an establishment registered by the registrant under section 7.

``(6) Revocation.—

``(A) In general.—After the registration of a Canadian pesticide, if the Administrator finds that the Canadian pesticide is not identical or substantially similar in composition to a comparable domestic pesticide, the Administrator may issue an emergency order revoking the registration of the Canadian pesticide.

``(B) Terms of order.—The order—

``(i) shall be effective immediately;

``(ii) may prohibit the sale, distribution, and use of the Canadian pesticide in a State; and

``(iii) may require the registrant of the Canadian pesticide to purchase and dispose of any unopened product subject to the order.

``(C) Request for hearing.—Not later than 10 days after issuance of the order, the registrant of the Canadian pesticide subject to the order may request a hearing on the order.

``(D) Final order.—If a hearing is not requested in accordance with subparagraph (C), the order shall become final and shall not be subject to judicial review.

``(E) Judicial review.—If a hearing is requested on the order, judicial review may be sought only at the conclusion of the hearing on the order and following the issuance by the Administrator of a final revocation order.

``(F) Procedure.—A final revocation order issued following a hearing shall be reviewable in accordance with section 16.

``(7) Limits on liability.—No action for monetary damages may be heard in any Federal or State court against—

``(A) the Administrator acting as a registering agency under the authority of and consistent with this subsection for injury or damage resulting from the use of a product registered by the Administrator under this subsection; or

``(B) a registrant for damages resulting from adulteration or compositional alteration of a Canadian pesticide registered under this subsection if the registrant did not have and could not reasonably have obtained knowledge of the adulteration or compositional alteration.

``(8) Provision of information by registrants of comparable domestic pesticides.—

``(A) In general.—On request by the Administrator the registrant of a comparable domestic pesticide shall provide to the Administrator that is seeking to register a Canadian pesticide under this subsection information that is necessary for the Administrator to make the determinations required by paragraph (4).

``(B) Penalty for noncompliance.—

``(i) In general.—If the registrant of a comparable domestic pesticide fails to provide to the Administrator, not later than 15 days after receipt of a written request by the

Administrator, information possessed by or reasonably accessible to the registrant that is necessary to make the determinations required by paragraph (4), the Administrator may assess a penalty against the registrant of the comparable pesticide.

"(ii) AMOUNT.—The amount of the penalty shall be equal to the product obtained by multiplying—

"(I) the difference between the per-acre cost of the application of the comparable domestic pesticide and the application of the Canadian pesticide, as determined by the Administrator; and

"(II) the number of acres in the United States devoted to the commodity for which the registration is sought.

"(C) NOTICE AND OPPORTUNITY FOR HEARING.—No penalty under this paragraph shall be assessed unless the registrant is given notice and opportunity for a hearing in accordance with section 14(a)(3).

"(D) ISSUES AT HEARING.—The only issues for resolution at the hearing shall be—

"(i) whether the registrant of the comparable domestic pesticide failed to timely provide to the Administrator the information possessed by or reasonably accessible to the registrant that was necessary to make the determinations required by paragraph (4); and

"(ii) the amount of the penalty.

"(9) PENALTY FOR DISCLOSURE.—

"(A) IN GENERAL.—The Administrator shall not make public information obtained under paragraph (8) that is privileged and confidential and contains or relates to trade secrets or commercial or financial information.

"(B) DISCLOSURE.—Any employee of the Environmental Protection Agency who willfully discloses information described in subparagraph (A) shall be subject to penalties described in section 10(f).

"(10) DATA COMPENSATION.—The Administrator and a person registering a Canadian pesticide under this subsection shall not be liable for compensation for data supporting the registration if the registration of the Canadian pesticide in Canada and the registration of the comparable domestic pesticide are held by the same registrant or by affiliated entities.

"(11) FORMULATION CHANGES.—

"(A) IN GENERAL.—The registrant of a comparable domestic pesticide shall notify the Administrator of any change in the formulation of a comparable domestic pesticide or a Canadian pesticide registered by the registrant or an affiliated entity not later than 30 days before any sale or distribution of the pesticide containing the new formulation.

"(B) STATEMENT OF FORMULA.—The registrant of the comparable domestic pesticide shall submit, with the notice required under subparagraph (A), a confidential statement of the formula for the new formulation if the registrant has possession of or reasonable access to the information.

"(C) SUSPENSION OF REGISTRATION FOR NONCOMPLIANCE.—

"(i) IN GENERAL.—If the registrant fails to provide notice or submit a confidential statement of formula as required by this paragraph, the Administrator may issue a notice of intent to suspend the registration of the comparable domestic pesticide for a period of not less than 1 year.

"(ii) EFFECTIVE DATE.—The suspension shall become final not later than the end of the 30-day period beginning on the date of the issuance by the Administrator of the notice of intent to suspend the registration, unless during the period the registrant requests a hearing.

"(iii) HEARING PROCEDURE.—If a hearing is requested, the hearing shall be conducted in accordance with section 6(d).

"(iv) ISSUES.—The only issues for resolution at the hearing shall be whether the registrant has failed to provide notice or submit a confidential statement of formula as required by this paragraph.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 121) is amended by adding at the end of the items relating to section 3 the following:

"(4) Mixtures of nitrogen stabilizers and fertilizer products.
"(g) Registration review.
"(h) Registration requirements for antimicrobial pesticides.
  "(1) Evaluation of process.
  "(2) Review time period reduction goal.
  "(3) Implementation.
  "(4) Annual report.
"(i) Registration of Canadian pesticides.
  "(1) Definitions.
  "(2) Authority to register Canadian pesticides.
  "(3) Applicant requirements.
  "(4) Criteria for registration.
  "(5) Labeling of Canadian pesticides.
  "(6) Revocation.
  "(7) Limits on liability.
  "(8) Provision of information by registrants of comparable domestic pesticides.
  "(9) Penalty for disclosure.
  "(10) Data compensation.
  "(11) Formulation changes.".

(3) EFFECTIVE DATE.—This subsection and the amendments made by this subsection take effect on the date that is 180 days after the date of enactment of this Act.

SA 2160. Mr. DEWINE (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, after line 22, add the following:

The aggregate amount appropriated by this title under the heading "NATIONAL AERONAUTICS AND SPACE ADMINISTRATION" is hereby increased by $29,000,000, with the amount of the increase to be available for commercial technology transfer programs. The amount available under the preceding sentence for commercial technology transfer programs is in addition to any other amounts available under this Act for such programs.

The amount appropriated by this title under the heading "SCIENCE, AERONAUTICS, AND EXPLORATION" is hereby reduced by $29,000,000, with the amount of the reduction to be allocated to the Beyond Einstein Initiative.

SA 2161. Mr. DEWINE (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, line 6, insert before the period the following: ": *Provided*, That of the amounts available under this heading, $4,000,000 shall be available for the purpose of research and development relating to intelligence propulsion and related advancements, and shall be in addition to any other amounts available under this heading for that purpose".

SA 2162. Mr. DEWINE (for himself, Mr. LEVIN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 97, line 24, after "members;", insert the following: "the Great Lakes Legacy Program of the Environmental Protection Agency, in an amount that is not less than $15,000,000;".

SA 2163. Mr. DEWINE (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. From amounts appropriated under this Act, there shall be set aside $660,000 for the National Academy of Sciences study proposal "Health Risks to Children from Residential Lead Contamination".

SA 2164. Ms. CANTWELL (for herself, Mr. CARPER, Mr. BROWNBACK, Mr. HAGEL, Mr. ROBERTS, Mr. NELSON of Nebraska, and Mrs. MURRAY) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. EXTENSION OF CERTAIN PUBLIC HOUSING/SECTION 8 MOVING TO WORK DEMONSTRATION AGREEMENTS.

(a) EXTENSION.—The Secretary of Housing and Urban Development shall extend the term of the Moving to Work Demonstration Agreement entered into between a public housing agency and the Secretary under section 204, title V, of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, April 26, 1996) if—

(1) the public housing agency requests such extension in writing;

(2) the public housing agency is not at the time of such request for extension in default under its Moving to Work Demonstration Agreement; and

(3) the Moving to Work Demonstration Agreement to be extended would otherwise expire on or before December 31, 2004.

(b) TERMS.—Unless the Secretary of Housing and Urban Development and the public housing agency otherwise agree, the extension under subsection (a) shall be upon the identical terms and conditions set forth in the extending agency's existing Moving to Work Demonstration Agreement, except that for each public housing agency that has been or will be granted an extension to its original Moving to Work agreement, the Secretary shall require that data be collected so that the effect of Moving to Work policy changes on residents can be measured.

(c) EXTENSION PERIOD.—The extension under subsection (a) shall be for such period as is requested by the public housing agency, not to exceed 3 years from the date of expiration of the extending agency's existing Moving to Work Demonstration Agreement.

(d) BREACH OF AGREEMENT.—Nothing contained in this section shall limit the authority of the Secretary of Housing and Urban Development to terminate any Moving to Work Demonstration Agreement of a public housing agency if the public housing agency is in breach of the provisions of such agreement.

SEC. 419. STUDY OF MOVING TO WORK PROGRAM.

(a) IN GENERAL.—The General Accounting Office shall conduct a study of the Moving to Work demonstration program to evaluate—

(1) whether the statutory goals of the Moving to Work demonstration program are being met;

(2) the effects policy changes related to the Moving to Work demonstration program have had on residents; and

(3) whether public housing agencies participating in the Moving to Work program are meeting the requirements of the Moving to Work demonstration program under law and any agreements with the Department of Housing and Urban Development.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall submit to Congress a report on the study conducted under subsection (a).

SA 2165. Mr. COLEMAN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. There are appropriated $1,060,000 to the Neighborhood House in Saint Paul, Minnesota, for construction costs of the Paul and Sheila Wellstone Center for Community Building.

SA 2166. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. . (a) Section 45D(e) of the Internal Revenue Code of 1986 (relating to low-income community) is amended by adding at the end the following new paragraph:

"(4) MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.—

"(A) IN GENERAL.—In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting '85 percent' for '80 percent'.

"(B) HIGH MIGRATION RURAL COUNTY.—For purposes of this paragraph, the term 'high migration rural county' means any county which, during the 20-year period ending on December 31, 2000, has a net out-migration of inhabitants from the county of at least 10-percent of the population of the county at the beginning of such period.".

(b) The amendment made by this section shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000.

SA 2167. Mr. BOND proposed an amendment to amendment SA 150 proposed by Mr. BOND (for himself and Ms. MILKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

Beginning on page 9, line 20, strike ": *Provided*, That" and all that follows through "Congress" on line 5, page 10.

SA 2168. Mr. REED submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. Funds made available under this Act or any other Act that are awarded by the Secretary of Housing and Urban Development to a public housing agency for replacement housing needs arising from the demolition of public housing units, and that are used by the public housing agency as project-based assistance, shall not be included as tenant-based assistance that is attached to a structure for the purposes of the 20 percent limitation under section 8(o)(13)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f), if the public housing agency certifies that use of the funds as project-based assistance is necessary in order to provide adequate replacement housing opportunities consistent with the purposes of section 24 of that Act (42 U.S.C. 1437v).

SA 2169. Mr. LEVIN (for himself, Ms. COLLINS, Ms. STABENOW, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 4 . SEWER OVERFLOW CONTROL GRANTS.

Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) in subsection (f), by striking "2002 and 2003" and inserting "2005 and 2006";

(2) in subsection (g)(1)—

(A) in the paragraph heading, by striking "2002" and inserting "2005"; and

(B) by striking "2002" and inserting "2005";

(3) in subsection (g)(2)—

(A) in the paragraph heading, by striking "2003" and inserting "2006"; and

(B) by striking "2003" and inserting "2006"; and

(4) in subsection (i), by striking "2003" and inserting "2006".

SA 2170. Mr. BOND (for Mr. LEAHY (for himself and Mr. BROWNBACK)) proposed an amendment to the bill S. 1685, to extend and expand the basic pilot program for employment eligibility verification, and for other purposes; as follows:

At the end, add the following:

SEC. 4. PILOT IMMIGRATION PROGRAM.

(a) PROCESSING PRIORITY UNDER PILOT IMMIGRATION PROGRAM FOR REGIONAL CENTERS TO PROMOTE ECONOMIC GROWTH.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security"; and

(2) by adding at the end the following:

"(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.".

(b) EXTENSION.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended by striking "10 years" and inserting "15 years".

SEC. 5. GAO STUDY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall report to Congress on the immigrant investor program created under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

(b) CONTENTS.—The report described in subsection (a) shall include information regarding—

(1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program;

(2) the country of origin of the immigrant investors;

(3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;

(4) the number of immigrant investors that have sought to become citizens of the United States;

(5) the types of commercial enterprises that the immigrant investors have established; and

(6) the types and number of jobs created by the immigrant investors.

SA 2171. Mr. LAUTENBERG (for himself, Ms. MIKULSKI, Mr. JEFFORDS, Mrs. BOXER, Mr. CORZINE, Mr. SCHUMER, Mr. LEAHY, Mr. LIEBERMAN, Mr. KERRY, Mr. KENNEDY, Mr. EDWARDS, Ms. CANTWELL, and Mr. DURBIN) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 98, line 5, before the period at the end, insert the following: ", of which, in addition to any other amounts provided under this heading for the Office of Enforcement and Compliance Assurance, $5,400,000 shall be made available for that office".

SA 2172. Mr. BOND (for Mr. GRAHAM of South Carolina (for himself and Mr. HOLLINGS)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title I, add the following:

SEC. 116. Notwithstanding paragraph (2) of section 8163(c) of title 38, United States Code, the Secretary of Veterans Affairs may enter into an enhanced-use lease with the Medical University Hospital Authority, a public authority of the State of South Carolina, for approximately 0.48 acres of underutilized property at the Charleston Department of Veterans Affairs Medical Center, Charleston, South Carolina, at any time after 30 days after the date of the submittal of the notice required by paragraph (1) of that section with respect to such property. The Secretary is not required to submit a report on the lease as otherwise required by paragraph (4) of that section.

SA 2173. Mr. BOND (for Ms. MIKULSKI (for herself and Mr. BOND)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 92, line 22, strike the period and insert the following:": *Provided further*, That, for fiscal year 2004 and every year thereafter, the Corporation shall make any significant changes to program requirements or policy only through public notice and comment rulemaking: *Provided further*, That, for fiscal year 2004 and every year thereafter, during any grant selection process, no officer or employee of the Corporation shall knowingly disclose any covered grant selection information regarding such selection, directly or indirectly, to any person other than an officer or employee of the Corporation that is authorized by the Corporation to receive such information.".

SA 2174. Mr. BOND proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 61, beginning on line 7, strike out "$32,415,00," and all that follows through the period on line 16 and insert in lieu thereof "$39,915,000, to remain available until expended, to be derived from the Federal Housing Enterprise Oversight Fund: *Provided*, That not less than 60 percent of total amount made available under this heading shall be used to for licensed audit personnel and audit support: *Provided further*, That an additional $10,000,000 shall be made available until expended, to be derived from the Federal Housing Enterprise Oversight Fund only upon a certification by the Secretary of the Treasury that these funds are necessary to meet an emergency need: *Provided further*, That not to exceed such amounts shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: *Provided further*, That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than $0.".

SA 2175. Mr. BOND (for Mr. STEVENS) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 86, between lines 11 and 12, insert the following:

SEC. 2 . NATIVE AMERICAN HOUSING.

ALLOCATION OF FUNDING.—Of the amounts made available to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) for fiscal year 2004, there shall be made available to each grant recipient the same percentage of funding as each recipient received for fiscal year 2003.

SA 2176. Mr. BOND (for Mr. DURBIN (for himself and Mr. FITZGERALD)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Hosing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall make the North Chicago VA Medical Center available to the Navy to the maximum extent feasible. The Secretary shall report to the Senate Appropriations Committee by June 30, 2004, regarding the progress in modifying North Chicago VA Medical Center's surgical suite and emergency and urgent care centers for use by veterans and Department of Defense beneficiaries. Further, the Secretary shall consider having the new joint VA/Navy ambulatory care center to serve both veterans and Department of Defense beneficiaries sited on or adjacent to the North Chicago VA Medical Center and shall consult with the Secretary of the Navy to select the site for the center. The Secretary of Veterans Affairs shall report to the Senate Appropriations Committee on the site selection by June 30, 2004.

SA 2177. Mr. BOND (for Ms. MURKOWSKI) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . RURAL TEACHER HOUSING.

Section 307 of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) is amended by adding at the end the following:

"(e) RURAL TEACHER HOUSING.—The Commission may make grants and loans to public school districts serving remote incorporated cities and unincorporated communities in Alaska (including Alaska Native

Villages) with a population of 6,500 or fewer persons for expenses associated with the construction, purchase, lease, and rehabilitation of housing units in such cities and communities. Unless otherwise authorized by the Commission, such units may be occupied only by teachers, school administrators, and other school staff (including members of their households).".

SA 2178. Ms. MIKULSKI proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 104, between lines 14 and 15, insert the following

For an additional amount for capitalization grants for State revolving funds, $3,000,000,000, to remain available until expended, of which $1,850,000,000 shall be for capitalization grants from State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and $1,150,000,000 shall be for capitalization grants from State drinking water treatment revolving loan funds under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12): *Provided*, That the entire amount made available under this paragraph is designated by Congress as an emergency requirement under section 502(c) of H. Con. Res. 95 (108th Cong.).

SA 2179. Mr. FITZGERALD submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. (a) IN GENERAL.—None of the funds appropriated under this Act shall be used for the purpose of implementing or carrying out the Mark-to-Market program established under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f et seq.) with—

(1) any for-profit entity with respect to the Evergreen Terrace I and Evergreen Terrace II housing complexes located in Joliet, Illinois; or

(2) any entity, or its successors or assignees, that signed, prior to October 1, 2003, a restructuring commitment with the Department of Housing and Urban Development with respect to the Evergreen Terrace I and Evergreen Terrace II housing complexes located in Joliet, Illinois.

(b) RIGHTS OF RESIDENTS.—Nothing in this section shall be construed to alter the rights or eligibility of residents of the Evergreen Terrace I and Evergreen Terrace II housing complexes in Joliet, Illinois, to benefit from or to participate in programs administered by the Secretary of Housing and Urban Development.

SA 2180. Mr. BOND proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 86, after line 11, insert the following new section:

SEC. 226. The Secretary of Housing and Urban Development shall conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 31, 2004.

SA 2181. Mr. BOND (for Ms. MURKOWSKI) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title I, add the following:

SEC. 116. (a) TREATMENT OF PIONEER HOMES IN ALASKA AS STATE HOME FOR VETERANS.—The Secretary of Veterans Affairs may—

(1) treat the Pioneer Homes in the State of Alaska collectively as a single State home for veterans for purposes of section 1741 of title 38, United States Code; and

(2) make per diem payments to the State of Alaska for care provided to veterans in the Pioneer Homes in accordance with the provisions of that section.

(b) TREATMENT NOTWITHSTANDING NON-VETERAN RESIDENCY.—The Secretary shall treat the Pioneer Homes as a State home under subsection (a) notwithstanding the residency of non-veterans in one or more of the Pioneer Homes.

(c) PIONEER HOMES DEFINED.—In this section, the term "Pioneer Homes" means the six regional homes in the State of Alaska known as Pioneer Homes, which are located in the following:

(1) Anchorage, Alaska.

(2) Fairbanks, Alaska.

(3) Juneau, Alaska.

(4) Ketchikan, Alaska.

(5) Palmer, Alaska.

(6) Sitka, Alaska.

SA 2182. Ms. MURKOWSKI (for Mr. DORGAN (for himself, Mr. ROCKEFELLER, and Ms. LANDRIEU)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title I, add the following:

SEC. 116. (a) FINDINGS ON ACCESS TO PRIMARY HEALTH CARE OF VETERANS IN RURAL AREAS.—The Senate makes the following findings:

(1) The Secretary of Veterans Affairs has appointed a commission, called the Capital Asset Realignment for Enhanced Services (CARES) Commission, and directed it to make specific recommendations regarding the realignment and allocation of capital assets necessary to meet the demand for veterans health care services over the next 20 years.

(2) The Department of Veterans Affairs accessibility standard for primary health care provides that at least 70 percent of the veterans enrolled in each of the regional "markets" of the Department should live within a specified driving time of a Department primary care facility. That driving time is 30 minutes for veterans living in urban and rural areas and 60 minutes for veterans living in highly rural areas.

(3) The Draft National CARES Plan issued by the Under Secretary for Health would place veterans in 18 rural and highly rural regional markets outside the Department accessibility standard for primary health care until at least fiscal year 2022, which means that thousands of veterans will have to continuing traveling up to 3–4 hours each way to visit a Department primary care facility.

(4) The 18 rural and highly rural markets that will remain outside the Department accessibility standard for primary health care comprise all or parts of Arkansas, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Washington, and West Virginia.

(5) Health care facilities for veterans are disproportionately needed in rural and highly rural areas because the residents of such areas are generally older, poorer, and sicker than their urban counterparts.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) the CARES Commission should give as much attention to solving the special needs of veterans who live in rural areas as it does to providing for the health care needs of veterans living in more highly populated areas;

(2) the CARES Commission should reject the portions of the Draft National CARES Plan that would prevent any regional market of the Department from complying with the Department accessibility standard for primary health care, which provides that at least 70 percent of the veterans residing in each market be within specified driving times of a Department primary care facility; and

(3) the CARES Commission should recommend to the Secretary the investments and initiatives that are necessary to achieve the Department accessibility standard for primary health care in each of the rural and highly rural health care markets of the Department.

SA 2183. Mr. BOND (for Mr. SARBANES (for himself, Ms. COLLINS, Mr. BYRD, Mr. SANTORUM, Mr. REED, Ms. SNOWE, Mr. KENNEDY, Mr. DODD, Mr. KERRY, Mr. ALLEN, Mr. SCHUMER, Mrs. MURRAY, Mrs. CLINTON, Mr. LEAHY, Mr. CHAFEE, Ms. CANTWELL, Mrs. FEINSTEIN, Mr. LAUTENBERG, Ms. STABENOW, Mr. JEFFORDS, Mr. LIEBERMAN, Mr. AKAKA, Mr. DAYTON, and Mr. NELSON of Florida)) proposed and amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 4 . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) 30 percent of American families have housing affordability problems, with 14,300,000 families paying more than half of their income for housing costs, and 17,300,000 families paying 30 to 50 percent of their income towards housing costs;

(2) 9,300,000 American families live in housing that is overcrowded or distressed;

(3) 3,500,000 households in the United States will experience homelessness at some point this year, including 1,350,000 children;

(4) the number of working families who are unable to afford adequate housing is increasing, as the gap between wages and housing costs grows;

(5) there is no county or metropolitan area in the country where a minimum wage earner can afford to rent a modest 2-bedroom apartment, and on average, a family must earn over $15 an hour to afford modest rental housing, which is almost 3 times the minimum wage;

(6) section 8 housing vouchers help approximately 2,000,000 families with children, senior citizens, and disabled individuals afford a safe and decent place to live;

(7) utilization of vouchers is at a high of 96 percent, and is on course to rise to 97 percent in fiscal year 2004, according to data provided by the Department of Housing and Urban Development;

(8) the average cost per voucher has also steadily increased from just over $6400 in August of 2002, to $6,756 in April, 2003, due largely to rising rents in the private market, and the Congressional Budget Office estimates that the cost per voucher in fiscal year 2004 will be $7,028, $560 more per voucher than the estimate contained in the fiscal year 2004 budget request; and

(9) the congressionally appointed, bipartisan Millennial Housing Commission found that housing vouchers are "the linchpin of a national housing policy providing very low-income renters access to privately-owned housing stock".

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) housing vouchers are a critical resource in ensuring that families in America can afford safe, decent, and adequate housing;

(2) public housing agencies must retain the ability to use 100 percent of their authorized vouchers to help house low-income families; and

(3) the Senate expects the Department of Housing and Urban Development to take all necessary actions to encourage full utilization of vouchers, and to use all legally available resources as needed to support full funding for housing vouchers in fiscal year 2004, so that every voucher can be used by a family in need.

SA 2184. Mr. BOND (for Mrs. CLINTON (for herself, Ms. SNOWE, Mr. KENNEDY, Mr. CHAFEE, Mrs. MURRAY, Mr. REED, Mr. HARKIN, and Mr. DODD)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 92, line 22, insert ": *Provided further*, That the Corporation shall offer any individual selected after October 31, 2002, for initial enrollment or reenrollment as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) the option of receiving a national service educational award under subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.)" after "programs".

SA 2185. Mr. BOND (for Mr. LEVIN (for himself, Ms. COLLINS, and Ms. STABENOW)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 4 . SEWER OVERFLOW CONTROL GRANTS.

Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) in subsection (f), by striking "2002 and 2003" and inserting "2005 and 2006";

(2) in subsection (g)(1)—

(A) in the paragraph heading, by striking "2002" and inserting "2005"; and

(B) by striking "2002" and inserting "2005";

(3) in subsection (g)(2)—

(A) in the paragraph heading, by striking "2003" and inserting "2006"; and

(B) by striking "2003" and inserting "2006"; and

(4) in subsection (i), by striking "2003" and inserting "2006".

SA 2186. Mr. BOND (for Mrs. BOXER) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

It is the sense of the Senate that human dosing studies of pesticides raises ethical and health questions.

SA 2187. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, beginning with line 21, strike through "$7,730,507,000," in line 23 on page 110 and insert the following:

$7,663,700,000, to remain available until September 30, 2005, of which no less than $3,968,000,000 shall be available for activities related to the Space Shuttle and shall not be available for transfer to any other program or account, and no more than $1,588,600,000 shall be available for activities related to the International Space Station, of which $81,600,000 shall be derived from reductions in the following amounts and for the following projects, as specified in Senate Report 108–143, which amounts are unauthorized by law or unrequested by the President:

(1) $1,000,000 to Utah State University, Logan, Utah for the Calibration Center.

(2) $1,500,000 to Montana State University-Bozeman for the Center for Studying Life in Extreme Environments.

(3) $750,000 to Montana State University-Bozeman for the Space Science and Engineering Lab.

(4) $1,000,000 to the University of Idaho in Moscow, Idaho for advanced microelectronics and biomolecular research.

(5) $2,000,000 to New Mexico State University for the ultra-long balloon program to augment planned flights and technology development.

(6) $2,000,000 to Texas Tech University in Lubbock, Texas, for equipment at the Experimental Sciences Building.

(7) $1,000,000 to the University of Texas, Austin for nanomedicine.

(8) $1,000,000 to Texas A&M University in College Station for the Space Engineering Institute.

(9) $1,400,000 to the University of New Orleans, Louisiana for the Composites Research Center of Excellence and for the development of advanced metallic joining technologies at Michoud Space Center.

(10) $2,500,000 to Marshall University, Bridgeport, West Virginia for the Hubble Telescope Project.

(11) $2,300,000 to the University of North Dakota, Grand Forks, North Dakota for the Northern Great Plains Space Science and Technology Center.

(12) $2,000,000 for University of Maryland, Baltimore County for photonics research.

(13) $1,500,000 to George Mason University, Fairfax, Virginia for the Center for Earth Observing and Space Research Mid-Atlantic Geospatial Information Consortium.

(14) $1,000,000 to Utah State University, Logan, Utah for the Intermountain Region Digital Image Archive and Processing Center.

(15) $2,500,000 to the University of Mississippi for the Enterprise for Innovative Geospatial Solutions.

(16) $2,000,000 to Mississippi State University for the Geospatial and Natural Resources Institute.

(17) $1,600,000 to the University of New Mexico for the Center for Rapid Environmental Assessment and Terrain Evaluation.

(18) $3,000,000 for the University of Alaska for weather and ocean research.

(19) $1,000,000 for the Pacific Northwest Collaboratory at the Pacific Northwest National Laboratory to demonstrate real-time applications of earth science data.

(20) $1,000,000 to Glenn Research Center for the John Glenn Biomedical Engineering Consortium.

(21) $1,250,000 to Space Sciences Inc. in Montana for microgravity related pharmaceutical development.

(22) $2,000,000 for the University of Missouri Bioinformatics Consortium for equipment purchase.

(23) $1,500,000 for Truman State University Life Sciences for laboratory equipment.

(24) $5,000,000 for the development of an aeronautics research budget covering the next 5 years allocated to the National Institute for Aerospace located in Hampton, Virginia, for contracting with industry and academia to prepare such a budget plan no later than March 1, 2004.

(25) $3,000,000 to Wichita State University, Wichita, Kansas for the National Center for Composite Materials Performance.

(26) $1,000,000 to Wichita State University, Wichita, Kansas, for the Critical Aircraft Icing project.

(27) $1,000,000 to the Delaware Aerospace Education and Foundation, Kent County, Delaware.

(28) $2,000,000 to Wheeling Jesuit University for the National Technology Transfer Center.

(29) $600,000 to the Challenger Center in Kenai, Alaska.

(30) $1,000,000 to the Virginia Commonwealth University, Richmond, Virginia for advance research in batteries and fuel cells.

(31) $1,500,000 to the University of Montana in Missoula, Montana for the National Space Privatization Program.

(32) $2,000,000 for the Denver Museum of Nature and Science in Denver, Colorado for equipment for the Space Sciences Museum.

(33) $1,500,000 for the Adventure Science Center in Nashville, Tennessee for the Sudekum Planetarium.

(34) $500,000 for the University of Northern Iowa in Cedar Falls, Iowa for the Existing Business Enhancement Program.

(35) $1,300,000 for Iowa State University for the PIPELINES Project.

(36) $1,000,000 for the Metropolitan School District of Decatur Township Indiana for the Challenger Learning Center Expansion.

(37) $1,700,000 for Northern Kentucky University/University of Louisville for a digital science center.

(38) $2,000,000 for the University of Alabama in Huntsville for the Center for Modeling Simulation and Analysis.

(39) $1,000,000 for the Oregon Museum of Science and Industry for the space science education distance learning program.

(40) $1,000,000 for Southeast Missouri State University for the NASA ERSC Outreach Project.

(41) $1,500,000 for Dominican University's Center for Science and Technology for project based learning.

(42) $200,000 to Wheeling Jesuit University in West Virginia for Classroom of the Future.

(43) $2,000,000 to the University of Connecticut for the Center for Land Use Education and Research.

(44) $2,000,000 to Iowa State University, Ames, Iowa for non-destructive evaluation studies.

(45) $500,000 to the Des Moines Science Center, Des Moines, Iowa.

(46) $2,000,000 for the School of Science and Mathematics at the College of Charleston, Charleston, South Carolina.

(47) $3,000,000 to the University of Hawaii, Hilo for the Mauna Kea Astronomy Education Center.

(48) $1,500,000 to Space Education Initiative, Wisconsin for the Wisconsin Geoscience Education initiative.

(49) $1,000,000 to the Youth Achievers Committee of New Jersey, Burlington County, New Jersey for the Youth Achievement Committee Science and Math Initiative.

(50) $500,000 to the University of Vermont, Burlington, Vermont for the Center for Advanced Computing.

(51) $1,000,000 to Wayne State University, Detroit, Michigan for the Center of Smart Sensors and Integrated Microsystems.

(52) $1,000,000 for Wellpinit School District in Wellpinit, Washington for the Virtual Classroom Project.

(53) $1,500,000 for the Mitchell Institute, Portland, Maine, for science and engineering education.

SCIENCE, AERONAUTICS AND EXPLORATION

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of science, aeronautics and exploration research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $7,648,907,000.

SA 2188. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

TITLE V—SECURITY OF WASTEWATER TREATMENT WORKS

SEC. 501. SHORT TITLE.

This title may be cited as the “Wastewater Treatment Works Security Act of 2003”.

SEC. 502. WASTEWATER TREATMENT WORKS SECURITY.

Title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) is amended by adding at the end the following:

“SEC. 222. WASTEWATER TREATMENT WORKS SECURITY.

“(a) DEFINITION OF VULNERABILITY ASSESSMENT.—

“(1) IN GENERAL.—In this section, the term ‘vulnerability assessment’ means an assessment of the vulnerability of a treatment works to an unlawful action intended—

“(A) to substantially disrupt the ability of the treatment works to safely and reliably operate; or

“(B) to have a substantial adverse effect on critical infrastructure, public health or safety, or the environment.

“(2) INCLUSIONS.—The term ‘vulnerability assessment’ includes—

“(A) a review of the vulnerabilities of the treatment works that identifies, with respect to the treatment works—

“(i) facilities, systems, and devices used in the storage, treatment, recycling, or reclamation of municipal sewage or industrial wastes;

“(ii) intercepting sewers, outfall sewers, sewage collection systems, and other constructed conveyances;

“(iii) electronic, computer, and other automated systems;

“(iv) pumping, power, and other equipment;

“(v) use, storage, and handling of various chemicals; and

“(vi) operation and maintenance procedures; and

“(B) the identification of procedures, countermeasures, and equipment that a treatment works may implement or use to reduce the vulnerabilities of the treatment works identified in a review described in subparagraph (A).

“(b) GRANTS FOR VULNERABILITY ASSESSMENTS AND SECURITY ENHANCEMENTS.—The Administrator may provide grants to a State, municipality, or intermunicipal or interstate agency—

“(1) to conduct a vulnerability assessment of a publicly owned treatment works; and

“(2) to implement security enhancements described in subsection (c)(1) and other security enhancements to reduce vulnerabilities identified in a vulnerability assessment.

“(c) GRANTS FOR SECURITY ENHANCEMENTS.—

“(1) PREAPPROVED SECURITY ENHANCEMENTS.—Except as provided in paragraph (3), on certification by an applicant that a vulnerability assessment has been completed for a treatment works, and that the security enhancement for which assistance is sought is for the purpose of reducing vulnerabilities of the treatment works identified in the vulnerability assessment, the Administrator may provide grants to the applicant under subsection (b)(2) for 1 or more of the uses described in paragraph (2).

“(2) USES OF GRANT FUNDS.—The uses referred to in paragraph (1) are—

“(A) the purchase and installation of equipment for materials and activities relating to access control, intrusion prevention and delay, and detection of intruders and hazardous or dangerous substances, including—

“(i) barriers, fencing, and gates;

“(ii) security lighting and cameras;

“(iii) metal grates, wire mesh, and outfall entry barriers;

“(iv) securing of manhole covers and fill and vent pipes;

“(v) installation and rekeying of doors and locks; and

“(vi) smoke, chemical, and explosive mixture detection systems;

“(B) the conduct of an activity to improve the security for electronic, computer, or other automated systems and remote security systems, including—

“(i) controlling access to those systems;

“(ii) intrusion detection and prevention; and

“(iii) system backup;

“(C) participation in a training program, and the purchase of training manuals and guidance material, relating to security; and

“(D) the conduct of security screening of employees or contractor support services.

“(3) ADDITIONAL SECURITY ENHANCEMENTS.—

“(A) GRANTS.—The Administrator may provide a grant under subsection (b) to an applicant for additional security enhancements not specified in paragraph (2).

"(B) Eligibility.—To be eligible for a grant under this subsection, an applicant shall—

"(i) submit to the Administrator an application containing a description of the security enhancement; and

"(ii) obtain approval of the application by the Administrator.

"(4) Limitations.—

"(A) Use of funds.—A grant provided under subsection (b) shall not be used for—

"(i) payment of personnel costs; or

"(ii) operation or maintenance of facilities, equipment, or systems.

"(B) Disclosure of vulnerability assessment.—As a condition of applying for or receiving a grant under this subsection, the Administrator may not require an applicant to provide the Administrator with a copy of a vulnerability assessment.

"(d) Grant Amounts.—

"(1) Federal share.—The Federal share of the cost of an activity funded by a grant under subsection (b) shall not exceed 75 percent, as determined by the Administrator.

"(2) Maximum amount.—The total amount of grants made under subsection (b) for any publicly owned treatment works shall not exceed $150,000, as determined by the Administrator.

"(e) Technical Assistance for Small Publicly Owned Treatment Works.—

"(1) Definition of small publicly owned treatment works.—In this subsection, the term 'small publicly owned treatment works' means a publicly owned treatment works that services a population of fewer than 20,000 individuals.

"(2) Security assessment and planning assistance.—

"(A) In general.—The Administrator, in coordination with the States, may provide technical guidance and assistance to small publicly owned treatment works for—

"(i) the conduct of a vulnerability assessment; and

"(ii) the implementation of security enhancements to reduce vulnerabilities identified in a vulnerability assessment.

"(B) Inclusions.—Technical guidance and assistance provided under subparagraph (A) may include technical assistance programs, training, and preliminary engineering evaluations.

"(3) Participation by nonprofit organizations.—The Administrator may provide grants to nonprofit organizations to assist in accomplishing the purposes of this subsection.

"(f) Refinement of Vulnerability Assessment Methodology for Publicly Owned Treatment Works.—

"(1) Grants.—The Administrator may provide to nonprofit organizations 1 or more grants to be used in improving vulnerability assessment methodologies and tools for publicly owned treatment works, including publicly owned treatment works that are part of a combined public wastewater treatment and water supply system.

"(2) Eligible activities.—A grant provided under this subsection may be used—

"(A) to develop and distribute vulnerability self-assessment methodology software upgrades;

"(B) to improve and enhance critical technical and user support functions;

"(C) to expand libraries of information addressing threats and countermeasures; and

"(D) to implement user training initiatives.

"(3) Cost.—A service described in paragraph (2) that is funded by a grant under this subsection shall be provided at no cost to the recipients of the service.

"(g) Authorization of Appropriations.—There is authorized to be appropriated, to remain available until expended—

"(1) $200,000,000 for use in making grants under subsection (b);

"(2) $15,000,000 for use in providing assistance under subsection (e); and

"(3) to carry out subsection (f), $1,000,000 for each of fiscal years 2003 through 2007.".

SEC. 503. RESEARCH AND REVIEW.

Title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) (as amended by section 502) is amended by adding at the end the following:

"SEC. 223. RESEARCH AND REVIEW.

"(a) Definitions.—In this section:

"(1) Covered treatment works.—The term 'covered treatment works' has the meaning given the term 'treatment works' in section 212.

"(2) Harmful intentional act.—The term 'harmful intentional act' means a terrorist attack or other intentional act carried out with respect to a covered treatment works that is intended—

"(A) to substantially disrupt the ability of the covered treatment works to provide safe and reliable—

"(i) conveyance and treatment of wastewater;

"(ii) disposal of effluent; or

"(iii) storage of a potentially hazardous chemical used to treat wastewater;

"(B) to damage critical infrastructure;

"(C) to have an adverse effect on the environment; or

"(D) to otherwise pose a significant threat to public health or safety.

"(b) Review by Administrator.—Not later than 2 years after the date of enactment of this section, the Administrator, in coordination with appropriate Federal agencies, shall research and review (or enter into a contract or cooperative agreement to provide for research and review of)—

"(1) means by which terrorists or other individuals or groups could carry out harmful intentional acts; and

"(2) means by which alternative processes of conveying, treating, and disposing of wastewater could be provided in the event of the destruction, impairment, or disruption of covered treatment works as the result of harmful intentional acts.

"(c) Means of Carrying Out Harmful Intentional Acts.—Means referred to in subsection (b)(1) include—

"(1) means by which pipes and other constructed conveyances used in covered treatment works could be destroyed or otherwise prevented from providing adequate conveyance, pretreatment, treatment, and disposal of wastewater meeting applicable public health standards;

"(2) means by which conveyance, pretreatment, treatment, storage, and disposal facilities used by, or in connection with, covered treatment works could be destroyed or otherwise prevented from providing adequate treatment of wastewater meeting applicable public health standards;

"(3) means by which pipes, constructed conveyances, pretreatment, treatment, storage, and disposal systems that are used in connection with treatment works could be altered or affected so as to pose a threat to public health, public safety, or the environment;

"(4) means by which pipes, constructed conveyances, pretreatment, treatment, storage, and disposal systems that are used in connection with covered treatment works could be reasonably protected from harmful intentional acts;

"(5) means by which pipes, constructed conveyances, pretreatment, treatment, storage, and disposal systems could be reasonably secured from use as a means of transportation by terrorists or other individuals or groups who intend to threaten public health or safety; and

"(6) means by which information systems, including process controls and supervisory control, data acquisition, and cyber systems, at covered treatment works could be disrupted by terrorists or other individuals or groups.

"(d) Considerations.—In carrying out the review under this section, the Administrator—

"(1) shall ensure that the review reflects the needs of covered treatment works of various sizes and various geographic areas of the United States; and

"(2) may consider the vulnerability of, or potential for forced interruption of service for, a region or service area, including the National Capital Area.

"(e) Information Sharing.—As soon as practicable after the review carried out under this section has been evaluated by the Administrator, the Administrator shall disseminate to covered treatment works information on the results of the review through the Information Sharing and Analysis Center or other appropriate means.

"(f) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $15,000,000 for the period of fiscal years 2004 through 2008.".

SEC. 504. FUNDING.

Notwithstanding any other provision of this Act, of the amounts made available by this Act to the Administrator of the Environmental Protection Agency for security purposes, the Administrator may use such sums as are necessary to provide grants under section 222(b) of the Federal Water Pollution Control Act (as added by section 502).

SA 2189. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. Bond (for himself and Ms. Mikulski) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 106, between lines 20 and 21, insert the following:

SEC. . DESIGNATIONS OF AREAS FOR $PM_{2.5}$ AND SUBMISSION OF IMPLEMENTATION PLANS FOR REGIONAL HAZE.

(a) In General.—Section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) is amended by adding at the end the following:

"(6) Designations.—

"(A) Submission.—Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 $PM_{2.5}$ national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

"(B) Promulgation.—Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 $PM_{2.5}$ national ambient air quality standards.

"(7) IMPLEMENTATION PLAN FOR REGIONAL HAZE.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 169B(e)(1) (referred to in this paragraph as 'regional haze requirements').

"(B) NO PRECLUSION OF OTHER PROVISIONS.—Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.".

(b) RELATIONSHIP TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—Except as provided in paragraphs (6) and (7) of section 107(d) of the Clean Air Act (as added by subsection (a)), section 6101, subsections (a) and (b) of section 6102, and section 6103 of the Transportation Equity Act for the 21st Century (42 U.S.C. 7407 note; 112 Stat. 463), as in effect on the day before the date of enactment of this Act, shall remain in effect.

SA 2190. Mr. GRAHAM of Florida submitted an amendment intended to be proposed by him to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I, add the following:

SEC. 116. PROVISION OF OUT-PATIENT MEDICATION BENEFIT FOR MEDICARE-ELIGIBLE VETERANS.—Section 1712 of title 38, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

"(e)(1) The Secretary shall furnish to any medicare-eligible veteran on an out-patient basis such drugs and medicines as may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of any illness or injury suffered by such veteran.

"(2) In this subsection, the term 'medicare-eligible veteran' means any veteran who—

"(A) is entitled to or enrolled in hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); or

"(B) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.).

"(3) The furnishing of drugs and medicines under this subsection shall be subject to the provisions of section 1722A(b) of this title.".

(b) COPAYMENT REQUIREMENTS.—

(1) IN GENERAL.—Section 1722A of such title is amended—

(A) in subsection (a)(1), by inserting "(other than a veteran covered by subsection (b))" after "require a veteran";

(B) by redesignating subsections (b), (c), and (d), as subsections (c), (d), and (e), respectively;

(C) by inserting after subsection (a) the following new subsection (b):

"(b)(1) In the case of a veteran who is furnished medications on an out-patient basis under section 1712(e) of this title, the Secretary shall require the veteran to pay, at the election of the Secretary, one or more of the following:

"(A) An annual enrollment fee in an amount determined appropriate by the Secretary.

"(B) A copayment for each 30-day supply of such medications in an amount determined appropriate by the Secretary.

"(C) An amount equal to the cost to the Secretary of such medications, as determined by the Secretary.

"(2)(A) In determining the amounts to be paid by a veteran under paragraph (1), and the basis of payment under one or more subparagraphs of that paragraph, the Secretary shall ensure that the total amount paid by veterans for medications under that paragraph in a year is not less than the costs of the Department in furnishing medications to veterans under section 1712(e) of this title during that year, including the cost of purchasing and furnishing medications, and other costs of administering that section.

"(B) The Secretary shall take appropriate actions to ensure, to the maximum extent practicable, that amounts paid by veterans under paragraph (1) in a year are equal to the costs of the Department referred to in subparagraph (A) in that year.

"(3) In determining amounts under paragraph (1), the Secretary may take into account the following:

"(A) Whether or not the medications furnished are generic medications or brand name medications.

"(B) Whether or not the medications are furnished by mail.

"(C) Whether or not the medications furnished are listed on the National Prescription Drug Formulary of the Department.

"(D) Any other matters the Secretary considers appropriate.

"(4) The Secretary may from time to time adjust any amount determined by the Secretary under paragraph (1), as previously adjusted under this paragraph, in order to meet the purpose specified in paragraph (2)."; and

(D) in subsection (d), as so redesignated—

(i) by striking "subsection (a)" and inserting "subsections (a) and (b)"; and

(ii) by striking "subsection (b)" and inserting "subsection (c)".

(2) DEPOSIT OF COLLECTIONS IN MEDICAL CARE COLLECTIONS FUND.—Paragraph (4) of section 1729A(b) of such title is amended to read as follows:

"(4) Subsection (a) or (b) of section 1722A of this title.".

(c) CLERICAL AMENDMENTS.—(1) The heading for section 1712 of such title is amended by striking "**for certain disabled veterans**".

(2) The table of sections at the beginning of chapter 17 of such title is amended in the item relating to section 1712 by striking "for certain disabled veterans".

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I announce for the information of the Senate and the public that the hearing to conduct oversight of the implementation of the Energy Employees Occupational Illness Compensation Program previously scheduled before the Committee on Energy and Natural Resources on Friday, November 14 at 10 a.m. has been cancelled and will be rescheduled as soon as practicable.

For further information regarding this hearing, please contact Pete Lyons of the Committee staff at 202-224-5861.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I announce for the information of the Senate and the public that the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources will add two bills to the agenda of the hearing scheduled for November 18, 2003 at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building.

The bills being added are S. 1167, which would resolve boundary conflicts in Barry and Stone Counties in the State of Missouri, and S. 1848, which would amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administrative Site in the State of Oregon.

The other bills that will be considered at the hearing are S. 1467, a bill to establish the Rio Grande Outstanding Natural Area in the State of Colorado, and for other purposes, S. 1209, a bill to provide for the acquisition of property in Washington County, UT, for implementation of a desert tortoise habitat conservation plan, and H.R. 708, a bill to require the conveyance of certain National Forest System lands in Mendocino National Forest, CA, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364, Washington, DC 20510–6150 prior to the hearing date.

For further information, please contact Dick Bouts or Meghan Beal (202–224–7556).

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Friday, November 21, at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to conduct oversight of the implementation of the Energy Employees Occupational Illness Compensation Program.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, November 12, 2003, at 4 p.m., in closed session to receive a classified operations/intelligence briefing regarding ongoing military operations and areas of key concern around the world.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, November 12, 2003, at 9:30 a.m., on "Tobacco: State Use of Settlement Funds."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, November 12, at 9:15 a.m., to conduct a business meeting to consider S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, and the nomination of Rixio E. Medina to be a member of the U.S. Chemical Safety and Hazard Investigation Board.

The hearing will take place in SD-406 (Hearing Room).

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, November 12, 2003, immediately following a 2 p.m., nomination hearing, for a hearing titled "S. 1358, the Federal Employee Protection of Disclosures Act: Amendments to the Whistleblower Protection Act." '

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, November 12, 2003, at 2 p.m., for hearing to consider the nomination of Scott J. Bloch to be Special Counsel, Office of Special Counsel.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, November 12, 2003, at 10 a.m., on "Judicial Nominations," in the Dirksen Senate Office Building Room 226.

Witness List

Panel I: Senators.

Panel II: Judith C. Herrera to be United States District Judge for the District of New Mexico; F. Dennis Saylor to be United States District Judge for the District of Massachusetts; and Sandra L. Townes to be United States District Judge for the Eastern District of New York.

Panel III: Domingo S. Herraiz to be Director of the Bureau of Justice Assistance United States Department of Justice.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SECURITIES AND INVESTMENT

Mr. WARNER. Mr. President, I ask unanimous consent that the Subcommittee on Securities and Investment of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on November 12, 2003, at 2 p.m., to conduct a hearing on "The Financial Accounting Standards Board and Small Business Growth."

The PRESIDING OFFICER. Without objection it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Friday, November 14, 2003, after the last cloture vote in Dirksen Room 226. Note: This markup was rescheduled from Thursday, November 13, 2003.

Agenda

I. Nominations: Henry W. Saad to be U.S. Circuit Judge for the Sixth Circuit; James B. Comey to be Deputy Attorney General; Michael J. Garcia to be Assistant Secretary of U.S. Immigration and Customs Enforcement; Claude A. Allen to be U.S. Circuit Judge for the Fourth Circuit; and Federico L. Rocha to be U.S. Marshal for the Northern District of California.

II. Bills: H.R. 1437, To improve the United States Code [Sensenbrenner, Conyers] and S. Res. 253, To recognize the evolution and importance of motorsports [Campbell, Kyl].

PRIVILEGES OF THE FLOOR

Mrs. FEINSTEIN. Madam President, I ask unanimous consent that privilege of the floor be granted to Craig Harper, a fellow in my office, during consideration of the VA-HUD legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I ask unanimous consent that Jason Eaton and Melissa Hall of my staff be granted floor privileges for the duration of the week.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. I ask unanimous consent that Bridget Lipscomb of my staff be permitted the privilege of the floor during the time I am on the floor until 9 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Sharmila Matugama, from the Judiciary staff, be granted the privilege of the floor during consideration of the judicial nominations.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I ask unanimous consent that privilege of the floor be granted to Lisa McGrath, a law fellow who is on my staff, during consideration of this judicial nomination debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Mr. President, I ask unanimous consent that Joe Laird from my staff be allowed on the floor for the duration of this hour of debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that privilege of the floor be granted to Ursula Williams, an intern with Senator SANTORUM's office, during consideration of this debate on judicial nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committee of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Thad Cochran:									
Mexico	Dollar		2,178.00						2,178.00
Senator Mike Crapo:									
Mexico	Dollar		2,178.00						2,178.00
Hunt Shipman:									
Mexico	Dollar		2,038.00						2,038.00
Matthew O'Mara:									
Mexico	Dollar		2,038.00						2,038.00
Mark Halverson:									
Mexico	Dollar		2,038.00						2,038.00
Stephanie Mercier:									
Mexico	Dollar		2,038.00						2,038.00
Senator Norm Coleman:									
United States	Dollar				6,822.00				6,822.00
Cuba	Dollar		700.00						700.00
Jeff Harrison:									
United States	Dollar				6,822.00				6,822.00
Cuba	Dollar		700.00						700.00
Total	Dollar		13,908.00		13,644.00				27,552.00

THAD COCHRAN,
Chairman, Committee on Agriculture, Nutrition and Forestry, Sept. 25, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Dennis Ward:									
United States	Dollar				4,314.32				4,314.32
South Korea	Won		1,072.00						1,072.00
Total			1,072.00		4,314.32				5,386.32

TED STEVENS,
Chairman, Committee on Appropriations, Sept. 8, 2003.

AMENDED CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2003.

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Thad Cochran:									
France	Euro		460.00						460.00
Senator Tom Harkin:									
France	Euro		460.00						460.00
Sid Ashworth:									
France	Euro		460.00						460.00
Charlie Houy:									
France	Euro		460.00						460.00
Ellen Murray:									
France	Euro		460.00						460.00
Kay Webber:									
France	Euro		460.00						460.00
Mark Keenum:									
France	Euro		460.00						460.00
Katherine Hennessey:									
Dominican Republic	Peso		476.00						476.00
Costa Rica	Colon		225.00						225.00
Mexico	Peso		646.00						646.00
Dennis Balkham:									
Dominican Republic	Peso		476.00						476.00
Costa Rica	Colon		225.00						225.00
Mexico	Peso		646.00						646.00
Jill Shapiro Long:									
Dominican Republic	Peso		476.00						476.00
Costa Rica	Colon		225.00						225.00
Mexico	Peso		646.00						646.00
Kate Eltrich:									
Dominican Republic	Peso		476.00						476.00
Costa Rica	Colon		225.00						225.00
Mexico	Peso		646.00						646.00
Chad Schulken:									
Dominican Republic	Peso		476.00						476.00
Costa Rica	Colon		225.00						225.00
Mexico	Peso		646.00						646.00
Senator Daniel Inouye:									
Japan	Yen		966.00						966.00
United States	Dollar				7,133.00				7,133.00
Charlie Houy:									
Japan	Yen		966.00						966.00
United States	Dollar				7,133.00				7,133.00
Total			11,887.00		14,266.00				26,153.00

TED STEVENS,
Chairman, Committee on Appropriations, Sept. 8, 2003.

AMENDED 2ND QUARTER CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM APR. 1 TO JUNE 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator James M. Inhofe:									
Ghana	Dollar		100.00						100.00
Italy	Euro		90.27						90.27
Czech Republic	Dollar		563.07						563.07
United Kingdom	Euro		299.60						229.60
Mark Powers:									
Ghana	Dollar		172.00						172.00
Italy	Euro		74.00						74.00
United States	Dollar				5,172.46				5,172.46
Total			1,228.94		5,172.46				6,401.40

JOHN WARNER,
Chairman, Committee on Armed Services, Oct. 20, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Maren R. Leed:									
United States	Dollar				5,157.68				5,157.68
South Korea	Won		219.70				8.90		228.60
Joseph T. Sixeas:									
United States	Dollar				5,157.68				5,157.68
South Korea	Won		219.70				8.90		228.60
Senator Bill Nelson:									
United States	Dollar				6,469.94				6,469.94
Belgium	Euro		367.65						367.65
Czech Republic	Crown		277.79						277.79
Germany	Euro		419.73						419.73
Denmark	Krone		613.05						613.05
Kuwait	Dinar		568.34						568.34
Daniel Shapiro:									
United States	Dollar				6,199.01				6,199.01
Kuwait	Dinar		620.00		50.00		23.00		693.00
Barbara Strickland:									
United States	Dollar				4,890.94				4,890.94
Belgium	Euro		203.39						203.39
Czech Republic	Crown		377.70						377.70
Germany	Euro		832.96						832.96
Denmark	Krone		685.95						685.95
Senator Jeff Sessions:									
United States	Dollar				5,384.06				5,384.06
Kuwait	Dollar		293.00						293.00
Qatar	Dollar		172.50						172.50
Pakistan	Dollar		40.00						40.00
Germany	Dollar		298.50						298.50
Arch Galloway II:									
United States	Dollar				5,384.06				5,384.06
Kuwait	Dollar		273.00						273.00
Qatar	Dollar		179.00						179.00
Pakistan	Dollar		22.00						22.00
Germany	Dollar		250.50						250.50
Ambrose R. Hock:									
United States	Dollar				5,384.06				5,384.06
Kuwait	Dollar		275.00						275.00
Qatar	Dollar		162.73						162.73
Pakistan	Dollar		28.50						28.50
Germany	Dollar		294.41						294.41
Senator Lindsey Graham:									
Israel	Dollar		552.20						552.20
Kuwait	Dollar		581.20						581.20
Pakistan	Dollar		313.20						313.20
Turkey	Dollar		248.20						248.20
Cyprus	Dollar		437.20						437.20
Senator John McCain:									
Israel	Dollar		530.00						530.00
Kuwait	Dollar		593.00						593.00
Pakistan	Dollar		333.00						333.00
Turkey	Dollar		276.00						276.00
Cyprus	Dollar		481.00						481.00
Daniel C. Twining:									
Israel	Dollar		724.00						724.00
Kuwait	Dollar		778.00						778.00
Pakistan	Dollar		526.00						526.00
Turkey	Dollar		276.00						276.00
Cyprus	Dollar		512.00						512.00
Senator James M. Inhofe:									
United States	Dollar				6,458.23				6,458.23
Israel	Dollar		209.00						209.00
Bulgaria	Dollar		140.00						140.00
John Bonsell:									
United States	Dollar				4,751.23				4,751.23
Israel	Dollar		227.75						227.75
Bulgaria	Dollar		158.75						158.75
Germany	Dollar		66.75						66.75
Netherlands	Dollar		35.73						35.73
Senator John Warner:									
Liberia	Dollar		64.00						64.00
Ascension Island	Dollar		22.00						22.00
Qatar	Dollar		218.71						218.71
Kuwait	Dollar		645.37						645.37
Senator Carl Levin:									

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Qatar	Dollar		199.39						199.39
Kuwait	Dollar		645.37						645.37
Senator Jack Reed:									
Qatar	Dollar		232.12						232.12
Kuwait	Dollar		689.48						689.48
Senator Susan Collins:									
Qatar	Dollar		245.80						245.80
Kuwait	Dollar		645.37						645.37
Senator E. Benjamin Nelson:									
Qatar	Dollar		245.80						245.80
Kuwait	Dollar		645.37						645.37
Senator Pat Roberts:									
Qatar	Dollar		234.00						234.00
Kuwait	Dollar		778.00						778.00
Senator John Cornyn:									
Qatar	Dollar		278.71						278.71
Kuwait	Dollar		822.71						822.71
Total			22,306.28		55,286.89		40.80		77,633.97

JOHN WARNER,
Chairman, Committee on Armed Services, Oct. 1, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard Shelby:									
United Kingdom	Pound		1,230.00						1,230.00
Belgium	Euro		341.00						341.00
Germany	Euro		1,810.00						1,810.00
Senator Wayne Allard:									
United Kingdom	Pound		1,230.00						1,230.00
Belgium	Euro		341.00						341.00
Germany	Euro		1,810.00						1,810.00
Senator Paul S. Sarbanes:									
United Kingdom	Pound		1,230.00						1,230.00
Belgium	Euro		341.00						341.00
Kathleen L. Casey:									
United Kingdom	Pound		1,190.00						1,190.00
Belgium	Euro		321.00						321.00
Germany	Euro		1,710.00						1,710.00
John M. Smith, III:									
United Kingdom	Pound		1,160.00						1,160.00
Belgium	Euro		311.00						311.00
Germany	Euro		1,660.00						1,660.00
Steven B. Harris:									
United Kingdom	Pound		1,047.00						1,047.00
Belgium	Euro		249.00						249.00
Germany	Euro		1,354.00						1,354.00
Stephen R. Kroll:									
United Kingdom	Pound		955.00						955.00
Belgium	Euro		341.00						341.00
Germany	Euro		1,560.00						1,560.00
Total	Euro		20,191.00						20,191.00

RICHARD SHELBY,
Chairman, Committee on Banking, Housing, and Urban Affairs, Oct. 3, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Maria Cantwell:									
Israel	New Shekel		563.00						563.00
Kuwait	Dinar		543.00						543.00
Pakistan	Rupee		305.00						305.00
Turkey	Lira		240.00						240.00
Cyprus	Pound		440.00						440.00
Total			2,091.00						2,091.00

JOHN McCAIN,
Chairman, Committee on Commerce, Science, and Transportation,
Sept. 23, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Peter B. Lyons:									
Japan	Yen		518.61		635.11		67.68		1,221.40
United States	Dollar				7,649.97		17.00		7,666.97
Total			518.61		8,285.08		84.68		8,888.37

PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, Sept. 6, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Max Baucus:									
Mexico	Dollar		1,895.00						1,895.00
United States	Dollar				1,316.62				1,316.62
Senator Craig Thomas:									
Mexico	Dollar		1,470.00						1,470.00
Shara Aranoff:									
Mexico	Dollar		1,405.00						1,405.00
United States	Dollar				394.83				394.83
Everett Eissenstat:									
Mexico	Dollar		1,530.00						1,530.00
United States	Dollar				1,840.65				1,840.65
John Gilliland:									
Mexico	Dollar		1,865.00						1,865.00
United States	Dollar				1,114.65				1,114.65
Laura Hayes:									
Mexico	Dollar		1,385.00						1,385.00
United States	Dollar				201.42				201.42
Robert Holifield:									
Mexico	Dollar		1,869.00						1,869.00
United States	Dollar				378.65				378.65
David S. Johanson:									
Mexico	Dollar		1,513.18						1,513.18
United States	Dollar				1,840.65				1,840.65
Tom Mahr:									
Mexico	Dollar		1,333.00						1,333.00
United States	Dollar				191.52				191.52
David A. Olson:									
Mexico	Dollar		1,438.00						1,438.00
Brian Pomper:									
Mexico	Dollar		1,380.00						1,380.00
United States	Dollar				189.91				189.91
Tim Punke:									
Mexico	Dollar		1,409.00						1,409.00
United States	Dollar				201.42				201.42
Stephen Schaefer:									
Mexico	Dollar		1,485.00						1,485.00
United States	Dollar				1,840.65				1,840.65
Bryn Stewart:									
Mexico	Dollar		1,330.00						1,330.00
Total			21,307.18		9,510.97				30,818.15

CHUCK GRASSLEY,
Chairman, Committee on Finance, Oct. 20, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John Sununu:									
United States	Dollar				3,063.85				3,063.85
Senator Lincoln Chafee:									
Israel	Dollar		1,086.00						1,086.00
Jordan	Dollar		326.00						326.00
United States	Dollar				4,438.50				4,438.50
Senator Richard Lugar:									
Russia	Dollar		866.66						866.66
Kazakhstan	Dollar		866.66						866.66
Uzbekistan	Dollar		866.67						866.67
Turkey	Dollar		562.00						562.00
Germany	Dollar		724.00						724.00
United States	Dollar				6,027.99				6,027.99
Senator Sam Brownback:									
Israel	Dollar		1,448.00						1,448.00
United States	Dollar				4,767.04				4,767.04
Heather Flynn:									
Ghana	Dollar		1,030.00						1,030.00
Sierra Leone	Dollar		440.00						440.00
Senegal	Dollar		1,058.00						1,058.00
United States	Dollar				7,417.00				7,417.00
Michael Phelan:									
Rwanda	Dollar		321.00						321.00
Tanzania	Dollar		45.00						45.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Congo	Dollar		450.00		172.00				622.00
United States	Dollar				7,634.47		115.00		7,749.47
Michael Haltzel:									
Bosnia	Dollar		600.00						600.00
Austria	Dollar		800.00						800.00
Romania	Dollar		550.00						550.00
United States	Dollar				5,963.19				5,963.19
Andrew Fisher:									
Russia	Dollar		1,040.00						1,040.00
Kazakhstan	Dollar		220.00						220.00
Uzbekistan	Dollar		154.00						154.00
Turkey	Dollar		562.00						562.00
Germany	Dollar		600.00						600.00
United States	Dollar				6,027.99				6,027.99
Mark Helmke:									
Mexico	Dollar		950.00		68.00		272.00		1,290.00
Daniel Shapiro:									
Qatar	Dollar		204.00						204.00
Kuwait	Dollar		369.00						369.00
Carl Meacham:									
Brazil	Dollar		630.00						630.00
United States	Dollar				6,628.77				6,628.77
Puneet Talwar:									
Sweden	Dollar		891.00						891.00
United States	Dollar				4,900.60				4,900.60
Jennifer Simon:									
Brazil	Dollar		630.00						630.00
United States	Dollar				6,662.40				6,662.40
Thomas Brady:									
Israel	Dollar		1,448.00						1,448.00
United States	Dollar				4,612.54				4,612.54
Thomas Moore:									
Russia	Dollar		465.33						465.33
Kazakhstan	Dollar		465.33						465.33
Uzbekistan	Dollar		465.33						465.33
Turkey	Dollar		562.00						562.00
Germany	Dollar		824.00						824.00
United States	Dollar				6,027.99				6,027.99
Jonah Blank:									
Sri Lanka	Dollar		1,330.00						1,330.00
Thailand	Dollar		380.00						380.00
Malaysia	Dollar		470.00						470.00
Singapore	Dollar		390.00						390.00
United States	Dollar				9,618.44				9,618.44
Frank Jannuzi:									
China	Dollar		2,515.00						2,515.00
North Korea	Dollar		1,178.00		1,905.70				3,083.70
South Korea	Dollar		292.00						292.00
United States	Dollar				2,594.73				2,594.73
Kenneth Myers, Jr.:									
Russia	Dollar		866.66						866.66
Kazakhstan	Dollar		866.66						866.66
Uzbekistan	Dollar		866.67						866.67
Turkey	Dollar		562.00						562.00
Germany	Dollar		724.00						724.00
United States	Dollar				6,027.99				6,027.99
Kenneth Myers III:									
Russia	Dollar		533.33						533.33
Kazakhstan	Dollar		533.33						533.33
Uzbekistan	Dollar		533.34						533.34
Turkey	Dollar		562.00						562.00
Germany	Dollar		724.00						724.00
United States	Dollar				6,027.99				6,027.99
Keith Luse:									
Indonesia	Dollar		1,285.04		1,236.85		304.20		2,826.09
Singapore	Dollar		134.16						134.16
China	Dollar		528.87						528.87
North Korea	Dollar		437.50						437.50
United States	Dollar				7,020.09				7,020.09
John Seggerman:									
Israel	Dollar		860.00						860.00
Jordan	Dollar		290.00						290.00
United States	Dollar				4,438.50				4,438.50
Total			45,410.53		113,282.62		691.20		153,356.36

RICHARD LUGAR,
Chairman, Committee on Foreign Relations, Oct. 6, 2003.

2ND QUARTER CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard Lugar:									
Jordan	Dollar		1,350.00						1,350.00
Senator Chuck Hagel:									
Jordan	Dollar		1,350.00						1,350.00
Philippines	Dollar		294.00						294.00
Singapore	Dollar		622.00						622.00
Japan	Dollar		202.00						202.00
Jofi Joseph:									
Peru	Dollar		689.00		172.28				861.28
United States	Dollar				4,054.90				4,054.90

2ND QUARTER CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2003—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Norm Coleman:									
Colombia	Dollar		675.00						675.00
Andrew Parasiliti:									
Kuwait	Dollar		1,167.00						1,167.00
Saudi Arabia	Dollar		450.00						450.00
United States	Dollar				7,031.66				7,031.66
Puneet Talwar:									
Kuwait	Dollar		1,167.00						1,167.00
Saudi Arabia	Dollar		450.00						450.00
United States	Dollar				7,031.66				7,031.66
Andrew Parsiliti:									
Jordan	Dollar		1,350.00						1,350.00
Iraq	Dollar		1,666.00						1,666.00
United States	Dollar				1,677.00				1,677.00
Puneet Talwar:									
Jordan	Dollar		1,350.00						1,350.00
Iraq	Dollar		1,666.00						1,666.00
United States	Dollar				1,677.00				1,677.00
Frank Zannuzi:									
Indonesia	Dollar		382.00						382.00
Thailand	Dollar		1,442.00						1,442.00
Laos	Dollar		157.00						157.00
United States	Dollar				7,648.06				7,648.06
Michael Haltzel:									
Lithuania	Dollar		235.00						235.00
Latvia	Dollar		414.00						414.00
Estonia	Dollar		446.00						446.00
Finland	Dollar		668.00						668.00
United States	Dollar				5,258.37				5,258.37
Kenneth Myers, Jr.:									
Jordan	Dollar		1,350.00						1,350.00
Janice O'Connell:									
Mexico	Dollar		336.00						336.00
Haiti	Dollar		634.00						634.00
United States	Dollar				2,630.30				2,630.30
Nancy Stetson:									
Haiti	Dollar		646.00						646.00
United States	Dollar				1,162.00				1,162.00
Jennifer Simon:									
Mexico	Dollar		504.00						504.00
United States	Dollar				2,045.40				2,045.40
Kim Savit:									
Jordan	Dollar		635.00						635.00
Jennifer Simon:									
Venezuela	Dollar		894.00						894.00
United States	Dollar				2,193.33				2,193.33
Michelle Gavin:									
Sierra Leone	Dollar		750.00				145.00		895.00
United States	Dollar				8,377.73				8,377.73
Heather Flynn:									
Indonesia	Dollar		382.00						382.00
Thailand	Dollar		1,442.00		115.00				1,557.00
Laos	Dollar		157.00						157.00
United States	Dollar				11,414.78				11,414.78
Lou Ann Linehan:									
Philippines	Dollar		294.00						294.00
Singapore	Dollar		622.00						622.00
Japan	Dollar		202.00						202.00
Michael Phelan:									
Sierra Leone	Dollar		150.00				100.00		250.00
United States	Dollar				9,772.79				9,772.79
Carl Meacham:									
Colombia	Dollar		675.00						675.00
Lorianne Woodrow:									
Colombia	Dollar		675.00						675.00
Carl Meacham:									
Mexico	Dollar		504.00						504.00
United States	Dollar				2,045.40				2,045.40
Carl Meacham:									
Venezuela	Dollar		744.00						744.00
Chile	Dollar		288.00						288.00
United States	Dollar				4,696.33				4,696.33
Total			30,076.00		79,003.99		245.00		109,324.99

RICHARD LUGAR,
Chairman, Committee on Foreign Relations, Oct. 6, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Raymond V. Shepherd III:									
United States	Dollar				1,028.54				1,028.54
Germany	Euro		1,021.00						1,021.00
Laura Stuber:									
United States	Dollar				1,028.54				1,028.54
Germany	Euro		1,021.00						1,021.00
Total			2,042.00		2,057.08				4,099.08

SUSAN COLLINS,
Chairman, Committee on Governmental Affairs, Oct. 22, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Janice Kaguyutan:									
United States	Dollar				6,249.86				6,249.86
Guinea	Franc		463.18				306.36		769.54
Cote d'Ivoire	CFA Franc		875.31						875.31
Sierra Leone	Leone		363.01						363.01
Christopher Campbell:									
Mexico	Peso		372.50						372.50
Senator John Cornyn:									
Mexico	Peso		105.00						105.00
Matthew Winslow:									
Mexico	Peso		40.00						40.00
Senator Orrin Hatch:									
Mexico	Peso		200.00						200.00
Bruce Artim:									
Mexico	Peso		57.49						57.49
Marcia Lee:									
United States	Dollar				6,277.45				6,277.45
Turkey	Lira		899.00						899.00
Uzbekistan	SOM		262.00				15.00		277.00
Jeffrey Miller:									
United States	Dollar				5,044.40				5,044.40
Turkey	Lira		877.04						877.04
Uzbekistan	SOM		269.40						269.40
Jennifer Wagner:									
United States	Dollar				6,494.45				6,494.45
Turkey	Lira		1,041.00						1,041.00
Uzbekistan	SOM		290.00						290.00
Senator John Cornyn:									
United States	Dollar				710.00				710.00
Mexico	Peso		413.87						413.87
Matthew Winslow:									
United States	Dollar				824.00				824.00
Mexico	Peso		412.19						412.19
Total			6,940.99		25,600.16		321.36		32,862.51

ORRIN HATCH,
Chairman, Committee on the Judiciary, Oct. 29, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
William Duhnke			879.42						879.42
Melvin Dubee			877.00						877.00
Senator John Rockefeller			1,012.00						1,012.00
Randall Bookout			1,656.00						1,656.00
	Dollar				8,109.11				8,109.11
Richard Douglas			1,729.00						1,729.00
	Dollar				8,109.00				8,109.00
Jacqueline Russell			638.00						638.00
	Dollar				4,857.37				4,857.37
Thomas Corcoran			638.00						638.00
	Dollar				4,862.70				4,862.70
Cynthia Bruno Wynkoop			232.00						232.00
	Dollar				4,907.37				4,907.37
Elizabeth O'Reilly			232.00						232.00
	Dollar				4,769.00				4,769.00
Total			7,893.42		35,614.55				43,507.97

PAT ROBERTS,
Chairman, Committee on Intelligence, Oct. 16, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL FRIST FOR TRAVEL FROM AUG. 19 TO AUG. 29, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bill Frist:									
United States	Dollar				3,634.20				3,634.20
South Africa	Rand		697.00						697.00
Mozambique	Metical		458.00						458.00
Botswana	Pula		421.00						421.00
Senator John Warner:									
United States	Dollar				5,266.88				5,266.88
South Africa	Rand		642.00						642.00
Mozambique	Metical		417.00						417.00
Botswana	Pula		350.00						350.00
Senator Mike DeWine:									
South Africa	Rand		630.00						630.00
Mozambique	Metical		269.00						269.00
Botswana	Pula		325.00						325.00
Namibia	Dollar		171.00						171.00
Senator Mike Enzi:									
South Africa	Rand		571.00						571.00
Mozambique	Metical		460.00						460.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL FRIST FOR TRAVEL FROM AUG. 19 TO AUG. 29, 2003—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency.	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Senator Lamar Alexander:									
South Africa	Rand		597.00						597.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Senator Norm Coleman:									
United States	Dollar				4,809.89				4,809.89
South Africa	Rand		697.00						697.00
Mozambique	Metical		458.00						458.00
Botswana	Pula		205.00						205.00
David Schiappa:									
South Africa	Rand		597.00						597.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Steve Biegun:									
South Africa	Rand		697.00						697.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Andy Olson:									
South Africa	Rand		601.00						601.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Nick Smith:									
South Africa	Rand		597.00						597.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
George Tolbert:									
South Africa	Rand		497.00						497.00
Mozambique	Metical		360.00						360.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		312.00						312.00
Sally Walsh:									
South Africa	Rand		697.00						697.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Delegation expenses*:									
South Africa	Rand						29,129.59		29,129.59
Mozambique	Metical						11,638.77		11,638.77
Botswana	Pula						11,941.09		11,941.09
Namibia	Dollar						11,638.77		11,638.77
Total			20,430.00		13,710.97		64,348.22		98,489.19

*Delegation expenses include payments and reimbursements to the Department of State, and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S. Res. 179 agreed to May 25, 1977.

BILL FRIST,
Majority Leader, Oct. 11, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), BILL FRIST, MAJORITY LEADER FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Rohit Kumar:									
Mexico	Pesos		708.00						708.00
Total			708.00						708.00

BILL FRIST,
Majority Leader, Nov. 5, 2003.

101ST AIRBORNE

Mr. FRIST. Mr. President, "Iraqi Destiny," which is the 101st Airborne Division's weekly newsletter, runs a feature on its last page called "Man on the Street." The 101st Airborne is based in Tennessee and Kentucky, right on the border. I and my colleague, LAMAR ALEXANDER, and the distinguished colleagues from Kentucky have a particular interest in the men and the women with the 101st Airborne and their families and their support groups. It is fascinating to receive this weekly newsletter. In it was run a feature on the last page called "Man on the Street." It features the 101st soldiers and Iraqi citizens answering a question of the week. The questions range from light hearted to the much more serious, such as, "What will you do with the extra money you are making?" to, "What do you think of the new schools that are opening?"

A few weeks ago, soldiers were asked, "What Arabic words have you learned while in Iraq?" Most had conventional responses, things you would expect: "Hello, how are you." But I was very interested to learn that a certain Screaming Eagle, Sergeant Thomas Baker, has learned the word, "Habibi," Arabic for "Sweetheart." Now, I won't speculate as to how or why Sergeant Baker has learned the word, "Habibi." But I do think we can take it as an encouraging sign of the progress that is being made in Iraq.

I take special, home State pride in the 101st Airborne Division. It is based at Fort Campbell, 60 percent of which is located in Tennessee. It goes without saying that Fort Campbell is integral to the Tennessee community, and especially to Clarksville where many of Fort Campbell's families reside.

I've had the privilege of visiting Fort Campbell numerous times, actually staying overnight in the army barracks and traveling to Fort Campbell on another occasion with the President of the United States.

Under the leadership of Major General David Petraeus, a friend and someone I had known prior to coming to the Senate, the 101st is doing extraordinary work. You may remember that it was the 101st that found and dispatched Uday and Qusay Hussein in Mosul. Since then, the 101st has moved more quickly than any other American unit in training guards and policeman for the new Iraqi Civil Defense Corps.

They've also shown the Iraqi people tremendous generosity and heart in helping to rebuild Iraq's infrastructure, civic institutions and, even more fundamentally, the people's pride and hope in their future.

Take for example the story of the Avgani Clinic. Located in the north, the clinic serves 60,000 Iraqis from the town of Avgani and 50 outlaying villages. Under Saddam Hussein, the clinic was allowed to fall into disrepair. It had cracking walls, poor electricity, no bathroom. The clinic's director says that the clinic was "a sad place." That, however, was before the arrival of First Lieutenant Michael Lefler and the Screaming Eagles.

In 3 months time, with just $25,000—in America, the price of a mid-size sedan—Lefler and his team led the renovation of the entire facility.

They installed new desks, chairs, computers, curtains, and yard tiles. They constructed several new rooms and bathrooms. The clinic is now fully operational, with twice the funds it previously had. The director of the clinic says the facility is now a "very happy place."

The 101st soldiers list among their values: "Duty, Respect, Selfless-Service, Honor, Integrity, Personal Courage, and Professionalism." All of these virtues have been on sterling display. From organizing book drives for Iraqi schoolchildren, to restoring water and power, everyday the 101st is showing the Iraqi people exceptional character and America's commitment to Iraq's future.

I'd like to close with a story about a soccer game, not too long ago, in the town of Al Qosh. With the help of the 101st, the Lady Virgin Orphanage of Al Qosh hosted the championship soccer tournament of the season. For the event, army engineers cleared an area adjacent to the orphanage to create a soccer field.

Seven teams from around the region, along with their families, gathered at the new field, cheering and blowing kazoos as the Screaming Eagles faced off against the Iraqi Sharafeya team. The Screaming Eagles won 2 to 1, and the crowd of spectators ran onto the field with cheers and laughter.

Among the happy fans were children from the orphanage wearing personalized soccer uniforms. Earlier in the summer, the 101st had given each child their own soccer uniform with the child's name printed across the back, and "Screaming Eagles" in Arabic emblazoned across the front. I suspect those uniforms will be treasured for years to come, and that is what this struggle is all about—the years to come. We have undertaken an extraordinary task to change the course of history, to bring peace and democracy to Iraq. We know that democracies do not export terror. Tyrannies do. So, we have toppled a despotic, terror-sponsoring regime and set out to transform a brutalized nation.

It is an ambitious undertaking worthy of a great country. America is a great country, and through the noble efforts of men and women like those of the 101st, Iraq is on the road to freedom.

Not too long ago, President Bush signed the historic $87 billion wartime supplemental that will help the Iraqis realize their dream. He also gave a very important speech to remind us of the fundamental nature of democracy, and America's role in the world.

He said:

> The advance of freedom is the calling of our time; it is the calling of our country. We believe that freedom is not for us alone, it is the right and the capacity of all mankind. The establishment of a free Iraq in the heart of the Middle East will be a watershed event in the global revolution.

President Bush has set a brave and courageous course. And I am confident that twenty years from now, Iraqis will fondly recall moments, like the Al Qosh championship soccer match of 2003, with the special pride of having been there when the liberation came.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT—CONFERENCE REPORT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to consideration of the conference report to accompany H.R. 2115, the Century of Aviation Reauthorization Act.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2115), to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes, having met, have agreed to recommend and do recommend to their respective Houses as follows:
>
> That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

(The text of the Conference Report is printed in the proceedings of the House in the RECORD of October 29, 2003.)

CLOTURE MOTION

Mr. FRIST. To my understanding, we are unable to reach a time agreement on this conference report. I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to report the motion to invoke cloture on the conference report to accompany H.R. 2115, the Vision 100—Century of Aviation Reauthorization Act.

The legislative clerk read as follows:

CLOTURE MOTION

> We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 2115, the Flight 100—Century of Aviation Reauthorization Act.
>
> Bill Frist, John McCain, Conrad Burns, Ben Nighthorse Campbell, A. Wayne Allard, Jeff Sessions, M. Crapo, Larry E. Craig, Kay Bailey Hutchison, John E. Sununu, George Allen, Saxby Chambliss, Rick Santorum, Norm Coleman, Craig Thomas, Pat Roberts, Trent Lott.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, if I could just intercede for a moment, I have been discussing this matter with the distinguished majority leader. It is regrettable that, at least at this point, we have not reached a time agreement on the FAA conference report. A lot of work has gone into the bill on both sides. A lot of negotiation has gone into the conference agreement itself.

Because there is no public assurance on the part of the administration that they are not prepared to at least examine the impact of privatization, we are unable to reach agreement with regard to the time on the FAA conference report at this time. I am still hopeful that perhaps before the time we reach the cloture vote, the scheduled time for the cloture vote on Monday, the administration will at least give additional thought to a proposal that has been made now on both sides of the aisle that they simply join with us in examining more carefully the implications of privatization prior to the time it is decided.

A 1-year moratorium, an examination of the ramifications of privatization is what we are seeking. With that assurance I think we could get a vote of 100 to 0, perhaps, on this bill. I am very hopeful that is still within the realm of possibility. If it were not for that, I think we would have agreement this afternoon. So I only note that, given the fact that we still have time before next Monday to come to some agreement with regard to how to proceed on privatization.

I thank the majority leader for his intervention. I will await further word. I yield the floor.

Mr. FRIST. Mr. President, the Democratic leader and I were just talking about that prior to my taking the floor. I will discuss this with the appropriate people, as well as Senator LOTT, who has worked very hard on the conference report.

Mr. DASCHLE. I thank the majority leader.

Mr. FRIST. I now ask, notwithstanding rule XXII, this vote occur at 5:30 on Monday, and that the time from 4:30 to 5:30 be equally divided between the two leaders or their designees for debate prior to the vote. Finally, I ask the quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. I ask unanimous consent the Senate now proceed to executive session for the consideration of Calendar Nos. 237 and 238, en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations will be stated.

DEPARTMENT OF AGRICULTURE

The legislative clerk read the nomination of Thomas C. Dorr, of Iowa, to be Under Secretary of Agriculture for Rural Development.

The legislative clerk read the nomination of Thomas C. Dorr, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation.

CLOTURE MOTIONS

Mr. FRIST. This nomination was reported by the Agriculture Committee on June 18. We have been unable to reach a consent on its consideration. Therefore, I send two cloture motions to the desk and ask they be reported consecutively. .

The PRESIDING OFFICER. The cloture motions having been presented under rule XXII, the Chair directs the clerk to read the motions.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 237, the nomination of Thomas Dorr to be Under Secretary of Agriculture for Rural Development:

Bill Frist, Thad Cochran, Saxby Chambliss, Rick Santorum, Norm Coleman, Craig Thomas, Jeff Sessions, Pat Roberts, Kay Bailey Hutchison, George V. Voinovich, Charles Grassley, Wayne Allard, Michael B. Enzi, Elizabeth Dole, John E. Sununu, Sam Brownback, John Warner.

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 238, the nomination of Thomas C. Dorr, of Iowa, to be a member of the Board of Directors of the Commodity Credit Corporation:

Bill Frist, Thad Cochran, Norm Coleman, Charles Grassley, Wayne Allard, Jim Bunning, Conrad Burns, Mitch McConnell, John Cornyn, Lamar Alexander, Larry Craig, Richard G. Lugar, Peter Fitzgerald, George Allen, Don Nickles, John Ensign, James M. Inhofe.

Mr. FRIST. I ask unanimous consent the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF STATE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to the consideration of the following nomination on today's Executive Calendar: Calendar No. 461. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, and the President be immediately notified of the Senate's action and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination was considered and confirmed as follows:

Zalmay Khalilzad, of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Transitional Islamic State of Afghanistan.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to Legislative Session.

ADOPTION INCENTIVES REAUTHORIZATION ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 3182 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3182) to reauthorize the adoption incentive payments program under part E of title IV of the Social Security Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. ROCKEFELLER. Mr. President, today, the Senate is taking bipartisan action to pass the Adoption Promotion Act of 2003, which will extend and improve the adoption bonuses created as part of the 1997 Adoption and Safe Families Act. For many years, the Senate has taken a bipartisan approach to adoption and child welfare policy. I am very proud to be one of the lead advocates for this legislation that rewards states which promote adoption and invest in child welfare.

Throughout this year, a bipartisan group, led by Finance Chairman GRASSLEY met to forge consensus on extending the adoption incentives, and doing more to focus attention on the needs of older children. President Bush highlighted the need to do more to promote adoptions for children nine years old or older, and Congress agreed. The list of cosponsors, including Senators LANDRIEU, BUNNING, CRAIG, BAUCUS, DEWINE, LEVIN, INHOFE, NELSON, LINCOLN, CLINTON, and JEFFORDS, demonstrates the broad coalition that can be achieved when we take a bipartisan approach.

As I noted, our legislation builds on the foundation set with the 1997 Adoption and Safe Families Act. Since its passage, adoptions from foster care have nearly doubled nationwide and over 900 West Virginia children have a permanent home. By extending and expanding this law, we hope to continue to promote permanent homes, and place a new focus on older children.

Despite our success in recent years, across this nation 126,000 children are waiting to be adopted. Children over the age of 9 represent almost half of the children awaiting adoption yet these children spend the most time in the system and have a difficult time finding permanent homes. The Adoption Promotion Act of 2003 will especially help these children by offering incentives to states that successfully place older children in adoptive homes.

This bill rewards states for moving children into permanent homes from the foster care system and further rewards states for moving special needs, and older children from foster care to permanent placements. This bill is particularly important for my state. In West Virginia, over 70 percent of the children in foster care are over age 9. This act will help older children find much needed, permanent homes.

This legislation is a positive way we can strengthen our child welfare system, but we also know that more must be done to help vulnerable children. The bipartisan spirit that helped ensure this legislation passage is the same spirit needed to deal with the rest of the child welfare system as we continue to push the basic goal of a child's health and safety being paramount, and every child finding a permanent home.

Mr. NELSON of Nebraska. Mr. President, I rise today in support of H.R. 3182, legislation to reauthorize the adoption incentive program. I would like to thank Senator GRASSLEY for his leadership on this issue. He has been a friend to American families for his entire tenure in this body and his work has made it even easier for more families to come together through adoption.

As an adoptive parent myself, I know firsthand how adoption can complete a family and how it can give new beginnings to both adoptive parents and children. And as a member of the Adoption Caucus, I have worked to make it easier for other families to experience the joy my family did through adoption.

This legislation will help that process by removing financial obstacles to adopting a child. As anyone who has been through an adoption knows, it can often by a very long, expensive process and for some families; the costs are so high as to be prohibitive. This legislation will help ensure that a family is not prevented from adopting a child simply because of the high costs involved.

The Adoption Incentives Program has already had been a tremendous success. Now this reauthorized and amended version of the program can help even more children and families for years to come. I stand wholeheartedly behind the goals of this bill and I look forward to working with Senator GRASSLEY on this issue again in the future.

ABUSED AND NEGLECTED CHILDREN

Mrs. CLINTON. Mr. President, first I want to thank Senator GRASSLEY for the leadership that he has shown in addressing the needs of abused and neglected children. Together with Senator LANDRIEU and Senator BUNNING, Senator GRASSLEY has worked tirelessly and I know that this work comes from the heart. It is not an issue that gets in the headlines unless something goes wrong. It's an issue that one champions only because he or she cares. I also want to acknowledge the longstanding commitment of my friend Senator ROCKEFELLER who is well known as the greatest ally of needy children in this esteemed body.

Mr. GRASSLEY. I too want to thank Senator LANDRIEU, and I would like to recognize Senator BUNNING's efforts on this legislation.

Today we are passing the Adoption Incentives Reauthorization Act of 2003. It is particularly appropriate that we are doing so during National Adoption Month. Since the original Adoption Incentives Act was passed in 1997, the number of adoptions has doubled in 33 states. I am proud of this achievement and pleased that we are today continuing the authorization of this effective program.

Mrs. CLINTON. I too am pleased to reach this milestone. When my husband and I worked to establish the program in 1997, we hoped that this program would become half the success that it has. My husband set a goal of doubling the number of children adopted out of foster care and last month we finally achieved that goal. In New York City, the number of children in foster care has plummeted by more than half since 1997 due in large part to the increased focus on helping available children for adoption.

Nevertheless we still have a long way to go. Over 580,000 children remain in foster care, 126,000 of them are ready and waiting to be adopted into a loving home. That is why this legislation is so important. And not only does it continue the incentives for States to help children with special needs be adopted out of foster care, it adds a new incentive to focus on older children—those over 9—whose chances of being adopted grow slimmer by the year. These vulnerable children face the greatest danger of aging out of foster care, a transition that is associated with lower educational outcomes, higher rates of teen pregnancy, higher rates of poverty, lower rates of employment, and many other negative factors.

Mr. GRASSLEY. I am pleased that this bill focuses on older children, thanks to the leadership of President Bush, and I hope when we revisit this legislation during the next reauthorization we will have seen the same remarkable results that we have seen over the past 5 years.

Mrs. CLINTON. Of course, as the number of children in foster care declines, as it has in New York City, it becomes increasingly difficult for states to qualify for adoption incentive awards. In order to receive such a bonus, states must exceed the highest number of adoptions they have achieved since the base year. Some have suggested that an alternative, and potentially more accurate, method for determining bonuses would be to look at the percentage of children in foster care who are adopted as opposed to the raw number.

Mr. GRASSLEY. I am aware that that method has been put on the table. However by adjusting the base year to 2002 and adding a new category of older children, we made it much easier for states to qualify for an adoption incentive bonus. Throughout the course of this reauthorization we talked to child welfare advocates and listened to their concerns about the way the incentives are awarded. The method we arrived at was reached through consensus and we have received very strong bi-partisan, bi-cameral support for the bill before us today. In fact, the House has already passed this legislation without opposition. By passing the same language here in the Senate, we are ensuring that President Bush will sign this important legislation into law sooner rather than later.

Mrs. CLINTON. I very much appreciate all the time that has gone into this act. And I am pleased that we are going to work together to have the General Accounting Office look into what is the best way to structure the adoption incentives formula so that when we consider this legislation in the future we will have thoroughly explored other methods for calculating bonuses.

Mr. GRASSLEY. I am also looking forward to a through study of this issue that can inform the next reauthorization.

Mrs. CLINTON. Now, there have been some news reports lately that have argued that the Adoption Incentives Program has put children in dangerous situations by creating a strong financial incentive to place children for adoption out of foster care without regard to their safety or well-being.

Mr. GRASSLEY. I have seen those reports and I disagree with their premise. The primary goal of the Adoption and Safe Families Act is to make the safety and well-being of children paramount in child welfare decisions. In addition, in order to receive funds under the Promoting Safe and Stable Families Program, states must develop a plan to assure safety and permanency for children who enter the state's foster care system.

Adoption assistance is minimal especially when you think about the cost of raising a child. Families who adopt are highly unlikely to adopt children for the financial benefit. Nationally payments made on behalf of an eight-year-old average only $14 per day. This is a fraction of what the Department of Agriculture suggests is needed to raise a child.

Mrs. CLINTON. I absolutely agree. And I would build on your remarks by adding that if States are not making the safety and well-being of the child paramount they are endangering their Title-IV-E funds, which is a much larger pot of money than the small amount they receive as a bonus under the Adoption Incentives Program. However, I would also add that it becomes increasingly difficult to guarantee the safety of each child under the care of the State when caseworkers are responsible for excessive caseloads and do not have the training to effectively serve the children in the child welfare system.

I would also add that I believe the next important step we need to take to make all adoptions out of foster care successful is to dedicate more resources to post-adoption services, including respite care, mental healthcare, and educational services.

Mr. GRASSLEY. I agree that we have to focus on the full range of adoption services. We have not improved the lives of abused and neglected children if they are adopted only to be returned to foster care because the families that adopted them didn't have the support they needed to care for them. This is not good for these kids.

Mrs. CLINTON. One way that we might consider to help States provide the full range of adoption services is to tap into the pot of unspent funds in the Adoption Incentives Program. Last year $45 million was appropriated for the purpose of awarding bonuses, but only $18 million was actually awarded. I believe these funds have been retained by HHS for the purpose of awarding future bonuses, but with the great need for child welfare funds, I believe these funds would be better spent this year on post-adoption services or in bonuses for States that have increased the percentage of children adopted out of foster care.

Mr. GRASSLEY. I agree that funds appropriated for the Adoption Incentives Program should be spent on child welfare. While we may disagree about how exactly those funds should be spent, we are in agreement that they should be used to improve the lives of abused and neglected children. I know that there is interest among members of the Finance Committee to see that these unspent funds are used to improve the lives of children and I hope we can all work together to address this in the future.

Mrs. CLINTON. I thank Senator GRASSLEY for his leadership and his commitment to America's most vulnerable children. I look forward to working with him in the future.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3182) was read for the third time and passed.

OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 36, S. 1824.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1824) to amend the Foreign Assistance Act of 1961 to reauthorize the Overseas Private Investment Corporation, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read for a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1824) was read the third time and passed, as follows:

S. 1824

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Overseas Private Investment Corporation Amendments Act of 2003".

SEC. 2. ISSUING AUTHORITY.

Section 235(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(a)(2)) is amended by striking "November 1, 2000" and inserting "2007".

SEC. 3. TECHNICAL CORRECTIONS.

(a) Administrative Costs.—Section 235(a)(1)(B) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(a)(1)(B)) is amended by striking "subsidy cost" and inserting "subsidy and administrative costs".

(b) Noncredit Account Revolving Fund.—Section 235(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(c)) is amended—

(1) in the first sentence—

(A) by striking "an insurance and guaranty fund, which shall have separate accounts to be known as the Insurance Reserve and the Guaranty Reserve, which reserves" and inserting "a noncredit account revolving fund, which"; and

(B) by striking "such reserves have" and inserting "of the fund has";

(2) by striking the third sentence; and

(3) in the last sentence, by striking "reserves" and inserting "fund".

(c) Payments To Discharge Liabilities.—Section 235(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(d)) is amended—

(1) in the first sentence, by striking "Insurance Reserve, as long as such reserve" and inserting "noncredit account revolving fund, as long as such fund"; and

(2) in the second sentence, by striking "or under similar predecessor guaranty authority" and all that follows through "subsection (f) of this section" and inserting "or 234(c) shall be paid in accordance with the Federal Credit Reform Act of 1990".

(d) Authorization of Appropriations.—Section 235(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(f)) is amended—

(1) in the first sentence, by striking "insurance and guaranty fund" and inserting "noncredit account revolving fund"; and

(2) by striking "Insurance Reserve" each place it appears and inserting "noncredit account revolving fund".

(e) Board of Directors.—Section 233(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2193(b)) is amended in the second paragraph—

(1) by striking "officials" and inserting "principal officers";

(2) by inserting "whose duties relate to the programs of the Corporation" after "Government of the United States"; and

(3) by striking "an official" and inserting "one such officer".

SEC. 4. INVESTMENT INSURANCE.

(a) Expropriation or Confiscation.—Section 234(a)(1)(B) of the Foreign Assistance Act of 1961 (22 U.S.C. 2194(a)(1)(B)) is amended by inserting "or any political subdivision thereof" after "government".

(b) Definition of Expropriation.—Section 238(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2198(b)) is amended by inserting ", a political subdivision of a foreign government, or a corporation owned or controlled by a foreign government," after "government".

SEC. 5. LOCAL CURRENCY GUARANTY.

(a) Local Currency Guaranty.—Section 234 of the Foreign Assistance Act of 1961 (22 U.S.C. 2194) is amended by adding at the end the following:

"(h) Local Currency Guaranties for Eligible Investors.—To issue to—

"(1) eligible investors, or

"(2) local financial institutions, guaranties,

denominated in currencies other than United States dollars, of loans and other investments made to projects sponsored by or significantly involving eligible investors, assuring against loss due to such risks and upon such terms and conditions as the Corporation may determine, for projects that the Corporation determines to have significant developmental effects or as the Corporation determines to be necessary or appropriate to carry out the purposes of this title.".

(b) Definition of Local Financial Institution.—Section 238 of the Foreign Assistance Act of 1961 (22 U.S.C. 2198) is amended—

(1) in subsection (d), by striking "and" after the semicolon;

(2) in subsection (f), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(g) the term 'local financial institution'—

"(1) means any bank or financial institution that is organized under the laws of any country or area in which the Corporation operates; but

"(2) does not include a branch, however organized, of a bank or other financial institution that is organized under the laws of a country in which the Corporation does not operate.".

SEC. 6. OUTREACH TO MINORITY- AND WOMEN-OWNED BUSINESSES.

(a) In General.—Section 240 of the Foreign Assistance Act of 1961 (22 U.S.C. 2200) is amended—

(1) in the first sentence, by striking "The Corporation" and inserting:

"(a) In General.—The Corporation"; and

(2) by adding at the end the following:

"(b) Outreach to Minority-Owned and Women-Owned Businesses.—The Corporation shall collect data on the involvement of minority- and women-owned businesses in projects supported by the Corporation, including—

"(1) the amount of insurance and financing provided by the Corporation to such businesses in connection with projects supported by the Corporation; and

"(2) to the extent such information is available, the involvement of such businesses in procurement activities conducted or supported by the Corporation.

The Corporation shall include, in its annual report submitted to the Congress under section 240A, the aggregate data collected under this paragraph, in such form as to quantify the effectiveness of the Corporation's outreach activities to minority- and women-owned businesses.".

WORKFORCE INVESTMENT ACT AMENDMENTS OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 366, S. 1627.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1627) to reauthorize the Workforce Investment Act of 1998, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic]

S. 1627

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Workforce Investment Act Amendments of 2003".

[SEC. 2. TABLE OF CONTENTS.

[The table of contents of this Act is as follows:

[Sec. 1. Short title.
[Sec. 2. Table of contents.
[Sec. 3. References.

[TITLE I—AMENDMENTS TO TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998

[Subtitle A—Definitions

[Sec. 101. Definitions.

[Subtitle B—Statewide and Local Workforce Investment Systems

[Sec. 111. Purpose.
[Sec. 112. State workforce investment boards.
[Sec. 113. State plan.
[Sec. 114. Local workforce investment areas.
[Sec. 115. Local workforce investment boards.
[Sec. 116. Local plan.
[Sec. 117. Establishment of one-stop delivery systems.
[Sec. 118. Eligible providers of training services.
[Sec. 119. Eligible providers of youth activities.
[Sec. 120. Youth activities.
[Sec. 121. Adult and dislocated worker employment and training activities.
[Sec. 122. Performance accountability system.
[Sec. 123. Authorization of appropriations.

[Subtitle C—Job Corps

[Sec. 131. Job Corps.

[Subtitle D—National Programs

[Sec. 141. Native American programs.
[Sec. 142. Migrant and seasonal farmworker programs.
[Sec. 143. Veterans' workforce investment programs.
[Sec. 144. Youth challenge grants.
[Sec. 145. Technical assistance.
[Sec. 146. Demonstration, pilot, multiservice, research, and multistate projects.
[Sec. 147. National dislocated worker grants.
[Sec. 148. Authorization of appropriations for national activities.

[Subtitle E—Administration

[Sec. 151. Requirements and restrictions.
[Sec. 152. Cost principles.
[Sec. 153. Reports.
[Sec. 154. Administrative provisions.
[Sec. 155. Use of certain real property.

[TITLE II—AMENDMENTS TO THE ADULT EDUCATION AND FAMILY LITERACY ACT

[Sec. 201. Short title; purpose.
[Sec. 202. Definitions.
[Sec. 203. Authorization of appropriations.
[Sec. 204. Reservation of funds; grants to eligible agencies; allotments.
[Sec. 205. Performance accountability system.
[Sec. 206. State administration.
[Sec. 207. State distribution of funds; matching requirement.
[Sec. 208. State leadership activities.
[Sec. 209. State plan.
[Sec. 210. Programs for corrections education and other institutionalized individuals.
[Sec. 211. Grants and contracts for eligible providers.
[Sec. 212. Local application.
[Sec. 213. Local administrative cost limits.
[Sec. 214. Administrative provisions.
[Sec. 215. National Institute for Literacy.
[Sec. 216. National leadership activities.
[Sec. 217. Integrated English literacy and civics education.
[Sec. 218. Transition.

[TITLE III—AMENDMENTS TO OTHER PROVISIONS OF LAW

[Sec. 301. Wagner-Peyser Act.

[TITLE IV—REHABILITATION ACT AMENDMENTS

[Sec. 401. Short title.
[Sec. 402. Technical amendments to table of contents.
[Sec. 403. Purpose.
[Sec. 404. Definitions.
[Sec. 405. Administration of the Act.
[Sec. 406. Carryover.

[Subtitle A—Vocational Rehabilitation Services

[Sec. 411. Declaration of policy; authorization of appropriations.
[Sec. 412. State plans.
[Sec. 413. Eligibility and individualized plan for employment.
[Sec. 414. Vocational rehabilitation services.
[Sec. 415. State rehabilitation council.
[Sec. 416. Evaluation standards and performance indicators.
[Sec. 417. State allotments.
[Sec. 418. Client assistance program.
[Sec. 419. Incentive grants.
[Sec. 420. Vocational rehabilitation services grants.
[Sec. 421. GAO studies.

[Subtitle B—Research and Training

[Sec. 431. Authorization of appropriations.
[Sec. 432. National Institute on Disability and Rehabilitation Research.
[Sec. 433. Research and other covered activities.
[Sec. 434. Rehabilitation research advisory council.

[Subtitle C—Professional Development and Special Projects and Demonstrations

[Sec. 441. Training.
[Sec. 442. Demonstration and training programs.
[Sec. 443. Migrant and seasonal farmworkers.
[Sec. 444. Recreational programs.

[Subtitle D—National Council on Disability

[Sec. 451. Authorization of appropriations.

[Subtitle E—Rights and Advocacy

[Sec. 461. Architectural and transportation barriers compliance board.
[Sec. 462. Protection and advocacy of individual rights.

[Subtitle F—Employment Opportunities for Individuals With Disabilities

[Sec. 471. Projects with industry authorization of appropriations.
[Sec. 472. Services for individuals with significant disabilities authorization of appropriations.

[Subtitle G—Independent Living Services and Centers for Independent Living

[Sec. 481. State plan.
[Sec. 482. Statewide independent living council.
[Sec. 483. Independent living services authorization of appropriations.
[Sec. 484. Program authorization.
[Sec. 485. Grants to centers for independent living in States in which Federal funding exceeds State funding.
[Sec. 486. Grants to centers for independent living in States in which State funding equals or exceeds Federal funding.
[Sec. 487. Standards and assurances for centers for independent living.
[Sec. 488. Centers for independent living authorization of appropriations.
[Sec. 489. Independent living services for older individuals who are blind.
[Sec. 490. Program of grants.
[Sec. 491. Independent living services for older individuals who are blind authorization of appropriations.

[Subtitle H—Miscellaneous

[Sec. 495. Helen Keller National Center Act.

[TITLE V—TRANSITION AND EFFECTIVE DATE

[Sec. 501. Transition provisions.
[Sec. 502. Effective date.

[SEC. 3. REFERENCES.

[Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment or repeal shall be considered to be made to a section or other provision of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

[TITLE I—AMENDMENTS TO TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998

[Subtitle A—Definitions

[SEC. 101. DEFINITIONS.

[Section 101 (29 U.S.C. 2801) is amended—

[(1) by striking paragraph (24);

[(2) by redesignating paragraphs (1) through (4), (5) through (16), (17), (18) through (23), (25) through (41), and (42) through (53) as paragraphs (2) through (5), (7) through (18), (20), (23) through (28), (29) through (45), and (47) through (58), respectively;

[(3) by inserting before paragraph (3) (as redesignated by paragraph (2)) the following:

["(1) ACCRUED EXPENDITURES.—The term 'accrued expenditures' means charges incurred by recipients of funds under this title for a given period requiring the provision of funds for—

["(A) goods or other tangible property received;

["(B) services performed by employees, contractors, subgrantees, subcontraotors, and other payees; and

["(C) other amounts becoming owed under programs assisted under this title for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

[(4) in paragraph (2) (as redesignated by paragraph (2)), by striking "Except in sections 127 and 132," and inserting "Except in section 132,";

[(5) by inserting after paragraph (5) (as redesignated by paragraph (2)) the following:

["(6) BUSINESS INTERMEDIARY.—The term 'business intermediary' means an entity that brings together various stakeholders with an expertise in an industry or business sector.";

[(6) in paragraph (9) (as redesignated by paragraph (2)), by inserting ", including a faith-based organization," after "nonprofit organization";

[(7) in paragraph (10) (as redesignated by paragraph (2))—

[(A) in subparagraph (B), by striking "and" after the semicolon;

[(B) in subparagraph (C)—

[(i) by striking "not less than 50 percent of the cost of the training" and inserting "a significant portion of the cost of training as determined by the local board, taking into account the size of the employer and such other factors as the local board determines to be appropriate"; and

[(ii) by striking the period and inserting "; and"; and

[(C) by adding at the end the following:

["(D) for customized training with employers in various parts of the State, a significant portion of the cost of the training, as determined by the Governor, taking into account the size of the employer and such other factors as the Governor determines appropriate.";

[(8) in paragraph (11) (as redesignated by paragraph (2))—

[(A) in subparagraph (A)(ii)(II), by striking "section 134(c)" and inserting "section 121(e)";

[(B) in subparagraph (C), by striking "or" after the semicolon;

[(C) in subparagraph (D), by striking the period and inserting "; or"; and

[(D) by adding at the end the following:

["(E)(i) is a member of the Armed Forces on active duty, who has been involuntarily separated with an honorable discharge, from the Armed Forces, or who has received notice of such separation;

["(ii) is the spouse or adult dependent of a member of the Armed Forces who has experienced the loss of employment as a direct result of relocation to accommodate a change in duty station of such member; or

["(iii) is the spouse of a member of the Armed Forces on active duty who meets the criteria described in paragraph (13)(B).";

[(9) in paragraph (12)(A) (as redesignated by paragraph (2))—

[(A) by striking "and" after the semicolon and inserting "or";

[(B) by striking "(A)" and inserting "(A)(i)"; and

[(C) by adding at the end the following:

["(ii) is the dependent spouse of a member of the Armed Forces, whose family income is significantly reduced because of a deployment, an activation, a transfer of duty station, or the service-connected death or disability of the spouse; and";

[(10) in paragraph (14)(A) (as redesignated by paragraph (2)), by striking "section 122(e)(3)" and inserting "section 122";

[(11) by inserting after paragraph (18) (as redesignated by paragraph (2)) the following:

["(19) HARD-TO-SERVE POPULATIONS.—The term 'hard-to-serve populations' means populations of individuals who are hard-to-serve, including displaced homemakers, low-income individuals, Native Americans, individuals with disabilities, older individuals, ex-offenders, homeless individuals, individuals with limited English proficiency, individuals who do not meet the definition of literacy in section 203, individuals facing substantial cultural barriers, migrant and seasonal farmworkers, individuals within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and such other groups as the Governor determines to be hard-to-serve.";

[(12) by inserting after paragraph (20) (as redesignated by paragraph (2)) the following:

["(21) INTEGRATED TRAINING PROGRAM.—The term 'integrated training program' means a program that combines occupational skills training with language acquisition.

["(22) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given the term in section 102(a)(1) (A) and (B) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)(1)).";

[(13) in paragraph (29) (as redesignated by paragraph (2))—

[(A) in subparagraph (B), by striking "higher of—" and all that follows through "level, for an equivalent period" and inserting "poverty line for an equivalent period";

[(B) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively; and

[(C) by inserting after subparagraph (C) the following:

["(D) receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);";

[(14) in paragraph (34) (as redesignated by paragraph (2)), by inserting ", subject to section 121(b)(1)(C)" after "121(b)(1)";

[(15) by striking paragraph (37) (as redesignated by paragraph (2)) and inserting the following:

["(37) OUT-OF-SCHOOL YOUTH.—The term 'out-of-school youth' means an out-of-school youth as defined in section 129(a)(1)(B).";

[(16) in paragraph (45) (as redesignated by paragraph (2)), by striking ", and the term means such Secretary for purposes of section 503";

[(17) by inserting after paragraph (45) (as redesignated by paragraph (2)) the following:

["(46) SELF-SUFFICIENCY.—The term 'self-sufficiency' has the meaning given the term in section 134(a)(3)(A)(4)(x) and section 134(e)(1)(A)(ix).";

[(18) in paragraph (48) (as redesignated by paragraph (2)), by striking "clause (iii) or (v) of section 136(b)(3)(A)" and inserting "section 136(b)(3)(A)(iii)";

[(19) in paragraph (57) (as redesignated by paragraph (2)), by striking "(or as described in section 129(c)(5))" and inserting "(or as described in section 129(a)(2))"; and

[(20) in paragraph (58) (as redesignated by paragraph (2)), by striking "established under section 117(h)" and inserting "that may be established under section 117(h)(2)".

[Subtitle B—Statewide and Local Workforce Investment Systems

[SEC. 111. PURPOSE.

[Section 106 (29 U.S.C. 2811) is amended to read as follows:

["SEC. 106. PURPOSES.

["The purposes of this subtitle are the following:

["(1)(A) Primarily, to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, self-sufficiency, and earnings of participants, and increase occupational skill attainment by participants.

["(B) As a result of the provision of the activities, to improve the quality of the workforce, reduce welfare dependency, increase self-sufficiency, and enhance the productivity and competitiveness of the Nation.

["(2) To enhance the workforce investment system of the Nation by strengthening one-stop centers, providing for more effective governance arrangements, promoting access to a more comprehensive array of employment and training and related services, establishing a targeted approach to serving youth, improving performance accountability, and promoting State and local flexibility.

["(3) To provide workforce investment activities in a manner that promotes the informed choice of participants and actively involves participants in decisions affecting their participation in such activities.

["(4) To provide workforce investment systems that are demand-driven and responsive to the needs of all employers, including small employers.

["(5) To provide workforce investment systems that work in all areas of the Nation, including urban and rural areas.

["(6) To allow flexibility to meet State, local, regional, and individual workforce investment needs.

["(7) To recognize and reinforce the vital link between economic development and workforce investment activities.

["(8) To provide for accurate data collection, reporting, and performance measures that are not unduly burdensome.

["(9) To address the ongoing shortage of essential skills in the United States workforce related to both manufacturing and knowledge-based economies to ensure that the United States remains competitive in the global economy.

["(10) To equip workers with higher skills and contribute to lifelong education.

["(11) To eliminate training disincentives for hard-to-serve populations and minority workers, including effectively utilizing community programs, services, and agencies.

["(12) To educate limited English proficient individuals about skills and language so the individuals are employable.

["(13) To increase the employment, retention and earnings of individuals with disabilities.".

[SEC. 112. STATE WORKFORCE INVESTMENT BOARDS.

[(a) MEMBERSHIP.—

[(1) IN GENERAL.—Section 111(b) (29 U.S.C. 2821(b)) is amended—

[(A) in paragraph (1), by striking subparagraph (C) and inserting the following:

["(C) representatives appointed by the Governor, who—

["(i) are the lead State agency officials with responsibility for the programs and activities that are described in section 121(b) and carried out by one-stop partners, except that—

["(I) in any case in which no lead State agency official has responsibility for such a program or activity, the representative shall be a representative in the State with expertise relating to such program or activity; and

["(II) in the case of the programs authorized under title I of the Rehabilitation Act of 1973, the representative shall be the head of the designated State unit, as defined in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705);

["(ii) are the State agency officials responsible for economic development;

["(iii) are representatives of all business in the State, including small businesses, who—

["(I) are owners of businesses, chief executive or operating officers of businesses, or other business executives or employers with optimum policymaking or hiring authority;

["(II) represent businesses with employment opportunities that reflect employment opportunities in the State; and

["(III) are appointed from among individuals nominated by State business organizations, business trade associations, and local boards;

["(iv) is a chief elected official (representing cities and counties, where appropriate);

["(v) are representatives of labor organizations, who have been nominated by State labor federations; and

["(vi) are such other State agency officials and other representatives as the Governor may designate."; and

[(B) in paragraph (3), by striking "paragraph (1)(C)(i)" and inserting "paragraph (1)(C)(iii)".

[(2) Conforming amendment.—Section 111(c) (29 U.S.C. 2821(c)) is amended by striking "subsection (b)(1)(C)(i)" and inserting "subsection (b)(1)(C)(iii)".

[(b) Functions.—Section 111(d) (29 U.S.C. 2811(d)) is amended—

[(1) in paragraph (1), by striking "development" and inserting "development, implementation, and revision";

[(2) in paragraph (2), by striking "section 134(c)" and inserting "section 121(e)";

[(3) by striking paragraph (3) and inserting the following:

["(3) reviewing and providing comment on the State plans of all one-stop partner programs, where applicable, in order to provide effective strategic leadership in the development of a high quality, comprehensive statewide workforce investment system, including commenting at least once annually on the measures taken pursuant to section 113(b)(3) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C 2323(b)(3)) and title II of this Act;";

[(4) by redesignating paragraphs (4) through (9) as paragraphs (5) through (10), respectively;

[(5) by inserting after paragraph (3) the following:

["(4) development and review of statewide policies affecting the coordinated provision of services through the one-stop delivery systems described in section 121(e) within the State, including—

["(A) the development of objective procedures and criteria for use by local boards in assessing the effectiveness and continuous improvement of one-stop centers under section 121(g);

["(B) the development of guidance for the allocation of one-stop center infrastructure funds under section 121(h)(1)(B);

["(C) the development of—

["(i) statewide policies relating to the appropriate roles and contributions of one-stop partner programs within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation in the one-stop delivery system;

["(ii) statewide strategies for providing effective outreach to individuals, including hard-to-serve populations, and employers who could benefit from services provided through the one-stop delivery system; and

["(iii) strategies for technology improvements to facilitate access to services provided through the one-stop delivery system, in remote areas, and for individuals with disabilities, which may be utilized throughout the State;

["(D) identification and dissemination of information on best practices for effective operation of one-stop centers, including use of innovative business outreach, partnerships, and service delivery strategies, including for hard-to-serve populations; and

["(E) such other matters as may promote statewide objectives for, and enhance the performance of, the one-stop delivery systems;";

[(6) in paragraph (5) (as redesignated by paragraph (4)), by inserting "and the development of Statewide criteria to be used by chief elected officials for the appointment of local boards and for use in certification of local boards consistent with section 117" after "section 116";

[(7) in paragraph (6) (as redesignated by paragraph (4)), by striking "sections 128(b)(3)(B) and 133(b)(3)(B)" and inserting "sections 128(b)(3) and 133(b)(3)(B)";

[(8) in paragraph (8) (as redesignated by paragraph (4), by striking "and" after the semicolon;

[(9) in paragraph (10) (as redesignated by paragraph (4))—

[(A) by striking "section 503" and inserting "section 136(i)(1)"; and

[(B) by striking the period and inserting "; and"; and

[(10) by adding at the end the following:

["(11) increasing the availability of skills training, employment opportunities, and career advancement for hard-to-serve populations.".

[(c) Alternative Entity.—Section 111(e) (29 U.S.C. 2811(e)) is amended—

[(1) in paragraph (1), by striking "For" and inserting "Subject to paragraph (3), for"; and

[(2) by adding at the end the following:

["(3) Failure to meet performance measures.—If a State fails to meet the State adjusted levels of performance established pursuant to section 136, the Secretary may require the State to establish a State board in accordance with subsections (a), (b), and (c) in lieu of the alternative entity established under paragraph (1).".

[(d) Sunshine Provision.—Section 111(g) (29 U.S.C. 2822(g)) is amended—

[(1) by inserting ", and modifications to the State plan," before "prior"; and

[(2) by inserting ", and modifications to the State plan" after "the plan".

[(e) Authority To Hire Staff.—Section 111 (29 U.S.C. 2811)) is amended by adding at the end the following:

["(h) Authority To Hire Staff.—The State board may hire staff to assist in carrying out the functions described in subsection (d) using funds allocated under section 127(b)(1)(C) and section 132(b).".

[SEC. 113. STATE PLAN.

[(a) Planning Cycle.—Section 112(a) (29 U.S.C. 2822(a)) is amended—

[(1) by striking "5-year strategy" and inserting "4-year strategy"; and

[(2) by adding at the end the following: "At the end of the first 2-year period of the 4-year State plan, the State board shall review and, as needed, amend the 4-year State plan to reflect labor market and economic conditions. In addition, the State shall submit a modification to the State plan at the end of the first 2-year period of the State plan, which may include redesignation of local areas pursuant to section 116(a) and the levels of performance under sections 136 for the third and fourth years of the plan.".

[(b) Contents.—Section 112(b) (29 U.S.C. 2822(b)) is amended—

[(1) in paragraph (8)(A)—

[(A) in clause (ix), by striking "and" after the semicolon; and

[(B) by adding at the end the following:

["(xi) programs authorized under title II of the Social Security Act (42 U.S.C. 401 et seq.) (relating to Federal old-age, survivors, and disability insurance benefits), title XVI of such Act (42 U.S.C. 1381 et seq.) (relating to supplemental security income), title XIX of such Act (42 U.S.C. 1396 et seq.) (relating to medicaid), and title XX of such Act (relating to block grants to States for social services), programs authorized under title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796 et seq.), and programs carried out by State agencies relating to mental retardation and developmental disabilities; and";

[(2) by striking paragraph (10) and inserting the following:

["(10) a description of how the State will use funds the State received under this subtitle to leverage other Federal, State, local, and private resources, in order to maximize the effectiveness of such resources, expand resources for the provision of education and training services, and expand the participation of businesses, employees, and individuals in the Statewide workforce investment system, including a description of incentives and technical assistance the State will provide to local areas for such purposes;";

[(3) in paragraph (12)(A), by striking "sections 128(b)(3)(B) and 133(b)(3)(B)" and inserting "sections 128(b)(3) and 133(b)(3)(B)";

[(4) in paragraph (14), by striking "section 134(c)" and inserting "section 121(e)";

[(5) in paragraph (17)—

[(A) in subparagraph (A)—

[(i) in clause (iii)—

[(I) by inserting "local" before "customized training"; and

[(II) by striking "and" at the end;

[(ii) in clause (iv), by striking "homemakers)," and all that follows through "disabilities)" and inserting "hard-to-serve populations and individuals training for nontraditional employment"; and

[(iii) by adding after clause (iv) the following:

["(v) how the State will serve the employment and training needs of individuals with disabilities, consistent with section 188 and Executive Order 13217 (42 U.S.C. 12131 note; relating to community-based alternatives for individuals with disabilities), including the provision of outreach, intake, the conduct of assessments, service delivery, the development of performance measures, and the training of staff; and"; and

[(B) in subparagraph (B), by striking "and" at the end;

[(6) in paragraph (18)(D)—

[(A) by striking "youth opportunity grants" and inserting "youth challenge grants authorized under section 169 and other federally funded youth programs"; and

[(B) by striking the period and inserting a semicolon; and

[(7) by adding at the end the following:

["(19) a description of how the State will utilize technology to facilitate access to services in remote areas, which may be utilized throughout the State;

["(20) a description of the State strategy for coordinating workforce investment activities and economic development activities;

["(21) a description of the State strategy and assistance needed for ensuring regional cooperation;

["(22) a description of how the State will use funds the State receives under this subtitle to—

["(A) implement innovative programs and strategies designed to meet the needs of all businesses in the State, including small businesses, which may include incumbent worker training programs, sectoral and industry cluster strategies, regional skills alliances, career ladder programs, utilization of effective business intermediaries, and other business services and strategies that better engage employers in workforce activities and make the statewide workforce investment system more relevant to the needs of State and local businesses, consistent with the purposes of this Act; and

["(B) provide incentives and technical assistance to assist local areas in more fully engaging large and small employers in local workforce development activities, to make the workforce investment system more relevant to the needs of area businesses, and to better coordinate workforce investment and economic development efforts to contribute to the economic well being of the local area, as determined appropriate by the local board;

["(23) a description of the State strategy for ensuring cooperation between transportation providers, including public transportation providers, and workforce investment activities;

["(24) a description of how the State will assist local areas in assuring physical and programmatic assessability for individuals with disabilities at one-stop centers;

["(25) a description of the process and methodology that will be used by the State board to—

["(A) review statewide policies and provide guidance on the coordinated provision of services through the one-stop delivery system described in section 121;

["(B) establish, in consultation with chief elected officials and local boards, procedures and objective criteria for use by local boards in periodically assessing the effectiveness and continuous improvement of one-stop centers and one-stop delivery systems as described in section 121(g); and

["(C) determine one-stop partner program contributions for—

["(i) the costs of the infrastructure of one-stop centers under section 121(h)(2); and

["(ii) the formula for allocating the funds described in section 121(h)(2) to local areas; and

["(26) a description of the State strategy for ensuring that activities carried out under this title are placing men and women in jobs, education, or training that lead to comparable pay.".

[(c) Modifications to Plan.—Section 112(d) (29 U.S.C. 2822(d)) is amended—

[(1) by striking "5-year period" and inserting "4-year period"; and

[(2) by adding at the end the following: "In addition, the State shall submit the modifications to the State plan required under subsection (a), and under circumstances prescribed by the Secretary that are due to changes in Federal law that significantly affect elements of the State plan.".

[SEC. 114. LOCAL WORKFORCE INVESTMENT AREAS.

[(a) Designation of Areas.—

[(1) Considerations.—Section 116(a)(1)(B) (29 U.S.C. 2831(a)(1)(B)) is amended by adding at the end the following:

["(vi) The extent to which such local areas will promote maximum effectiveness in the administration and provision of services.".

[(2) Automatic designation.—Section 116(a)(2) (29 U.S.C. 2831(a)(2)) is amended to read as follows:

["(2) Automatic designation.—

["(A) In general.—The Governor shall approve a request for designation as a local area that is submitted prior to the submission of the State plan, or of a modification to the State plan relating to area designation, from any area that—

["(i) is a unit of general local government with a population of 500,000 or more, except that after the initial 2-year period following such designation pursuant to this clause that occurs after the date of enactment of the Workforce Investment Act Amendments of 2003, the Governor shall only be required to approve a request for designation from such area if such area—

["(I) performed successfully; and

["(II) sustained fiscal integrity;

["(ii) was a local area under this title for the preceding 2-year period, if such local area—

["(I) performed successfully; and

["(II) sustained fiscal integrity; or

["(iii) is served by a rural concentrated employment program grant recipient, except that after the 2-year period following any such designation under the initial State plan submitted after the date of enactment of the Workforce Investment Act Amendments of 2003, the Governor shall only be required to approve a request for designation under this clause if such area—

["(I) performed successfully; and

["(II) sustained fiscal integrity.

["(B) Definitions.—For purposes of this paragraph:

["(i) Performed successfully.—The term 'performed successfully' means that the local area involved is not subject to sanctions under section 136(h)(2) due to the failure to meet the levels of performance established under section 136(c) for 2 consecutive years.

["(ii) Sustained fiscal integrity.—The term 'sustained fiscal integrity' means that the Secretary has not made a formal determination during the preceding 2-year period that either the grant recipient or the administrative entity of the area misexpended funds provided under this title due to willful disregard of the requirements of the Act involved, gross negligence, or failure to comply with accepted standards of administration.".

[(3) Conforming amendments.—Section 116(a) (29 U.S.C. 2831(a)) is amended—

[(A) by striking paragraph (3);

[(B) by redesignating paragraphs (4) and (5) as paragraph (3) and (4), respectively;

[(C) in paragraph (3) (as redesignated by subparagraph (B))—

[(i) by striking "(including temporary designation)"; and

[(ii) by striking "(v)" and inserting "(vi)"; and

[(D) in paragraph (4) (as redesignated by subparagraph (B))—

[(i) by striking "under paragraph (2) or (3)" and inserting "under paragraph (2)"; and

[(ii) by striking the second sentence.

[(b) Single Local Area States.—Section 116(b) (29 U.S.C. 2831(b)) is amended to read as follows:

["(b) Single Local Area States.—

["(1) Continuation of previous designation.—Notwithstanding subsection (a)(2), the Governor of any State that was a single local area for purposes of this title as of July 1, 2002, may continue to designate the State as a single local area for purposes of this title if the Governor identifies the State as a local area in the State plan under section 112(b)(5).

["(2) Redesignation.—The Governor may redesignate the State as a single local area if, prior to the submission of the State plan or modification to such plan so designating the State, no local area meeting the requirements for automatic designation under subsection (a)(2) requests such designation as a separate local area.

["(3) Effect on local plan.—In any case in which a State is designated as a local area pursuant to this subsection, the local plan epared under section 118 for the area shall be submitted to the Secretary for approval as part of the State plan under section 112.".

[(c) Regional Planning.—Section 116(c) (29 U.S.C. 2831(c)) is amended—

[(1) by striking paragraph (1) and inserting the following:

["(1) Planning.—

["(A) In general.—As part of the process for developing the State plan, a State may require regional planning by local boards for a designated region in the State. The State may require the local boards for a designated region to participate in a regional planning process that results in the establishment of regional performance measures for workforce investment activities authorized under this subtitle. The State, after consultation with local boards and chief elected officials, may require the local boards for the designated region to prepare, submit, and obtain approval of a single regional plan that incorporates local plans for each of the local areas in the region, as required under section 118. The State may award regional incentive grants to the designated regions that meet or exceed the regional performance measures pursuant to section 134(a)(2)(C).

["(B) Technical assistance.—If the State requires regional planning as provided in subparagraph (A), the State shall provide technical assistance and labor market information to such local areas in the designated regions to assist with such regional planning and subsequent service delivery efforts.";

[(2) in paragraph (2), by inserting "information about the skill requirements of existing and emerging industries and industry clusters," after "information about employment opportunities and trends,"; and

[(3) in paragraph (3), by adding at the end the following: "Such services may be required to be coordinated with regional economic development services and strategies.".

[SEC. 115. LOCAL WORKFORCE INVESTMENT BOARDS.

[(a) Composition.—Section 117(b) (29 U.S.C. 2832(b)) is amended—

[(1) in paragraph (2)(A)—

[(A) in clause (i), by striking subclause (II) and inserting the following:

["(II) collectively, represent businesses with employment opportunities that reflect the employment opportunities of the local area, and include representatives of businesses that are in high-growth and emerging industries, and representatives of all businesses, including small businesses, in the local area; and";

[(B) by striking clause (ii) and inserting the following:

["(ii)(I) a superintendent representing the local school districts involved or another high-level official from such districts;

["(II) the president or highest ranking official of an institution of higher education serving the local area; and

["(III) an administrator of local entities providing adult education and literacy activities in the local area;";

[(C) in clause (iv), by inserting ", hard-to-serve populations," after "disabilities"; and

[(D) by striking clause (vi) and inserting the following:

["(vi) if the local board does not establish a youth council, representatives with experience serving out-of-school youth, particularly out-of-school youth facing barriers to employment."; and

[(2) by adding at the end the following:

["(6) Special rule.—In the case that there are multiple school districts or institutions of higher education serving a local area, the representatives described in paragraph

(2)(A)(ii) shall be appointed from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such agencies or institutions.".

[(b) Authority of Board Members.—Section 117(b)(3) (29 U.S.C. 2832(b)(3)) is amended—

[(1) in the heading, by inserting "AND REPRESENTATION" after "AUTHORITY"; and

[(2) by adding at the end the following: "The members of the board shall represent diverse geographic sections within the local area.".

[(c) Conforming Amendment.—Section 117(c)(1)(C) (29 U.S.C. 2832 (c)(1)(C)) is amended by striking "section 116(a)(2)(B)" and inserting "section 116(a)(2)(A)(ii)".

[(d) Functions.—Section 117(d) (29 U.S.C. 2832(d)) is amended—

[(1) in paragraph (2)—

[(A) in subparagraph (B)—

[(i) by inserting "(except as provided in section 123(b))" after "basis"; and

[(ii) by inserting "where appropriate" after "youth council"; and

[(B) by adding at the end the following:

["(E) Consumer choice requirements.—Consistent with section 134(d)(3) and (d)(4), the local board shall work to ensure there are sufficient providers of intensive services and training services serving the local area in a manner that maximizes consumer choice, including providers with expertise in assisting individuals with disabilities.";

[(2) in paragraph (4), by inserting ", and shall ensure the appropriate use and management of the funds provided under this subtitle for such programs, activities, and system" after "area";

[(3) in paragraph (8)—

[(A) by inserting "all" before "private sector";

[(B) by inserting ", including small employers," after "private sector employers"; and

[(C) by striking the period and inserting ", taking into account the unique needs of small businesses."; and

[(4) by adding at the end the following:

["(9) Technology improvements.—The local board shall develop strategies for technology improvements to facilitate access to services, in remote areas, for services authorized under this subtitle and carried out in the local area.".

[(e) Conforming Amendment.—Section 117(f)(2) (29 U.S.C. 2832(f)(2)) is amended by striking "described in section 134(c)".

[(f) Authority To Establish Councils and Elimination of Requirement for Youth Councils.—Section 117(h) (29 U.S.C. 2832(h)) is amended to read as follows:

["(h) Councils.—The local board may establish or continue councils to provide information and advice to assist the local board in carrying out activities under this title. Such councils may include—

["(1) a council composed of one-stop partners to advise the local board on the operation of the one-stop delivery system involved;

["(2) a youth council composed of experts and stakeholders in youth programs to advise the local board on youth activities; and

["(3) such other councils as the local board determines are appropriate.".

[(g) Alternative Entity Provision.—Section 117(i)(1) (29 U.S.C. 2832(i)(1)) is amended—

[(1) by striking subparagraph (B) and inserting the following:

["(B) was in existence on August 7, 1998, pursuant to State law; and";

[(2) by striking subparagraph (C); and

[(3) by redesignating subparagraph (D) as subparagraph (C).

[SEC. 116. LOCAL PLAN.

[(a) Planning Cycle.—Section 118(a) (29 U.S.C. 2833(a)) is amended—

[(1) by striking "5-year" and inserting "4-year"; and

[(2) by adding at the end the following: "At the end of the first 2-year period of the 4-year plan, the local board shall review and, as needed, amend the 4-year plan to reflect labor market and economic conditions.".

[(b) Contents.—Section 118(b) (29 U.S.C. 2833(b)) is amended—

[(1) in paragraph (2)—

[(A) in subparagraph (A), by striking "and" after the semicolon;

[(B) by striking subparagraph (B) and inserting the following:

["(B) a description of how the local board will facilitate access to services provided through the one-stop delivery system, in remote areas, including facilitating access through the use of technology; and"; and

[(C) by adding at the end the following:

["(C) a description of how the local board will ensure physical and programmatic assessability for individuals with disabilities at one-stop centers;";

[(2) in paragraph (9), by striking "; and" and inserting a semicolon;

[(3) by redesignating paragraph (10) as paragraph (14); and

[(4) by inserting after paragraph (9) the following:

["(10) a description of how the local board will coordinate workforce investment activities carried out in the local area with economic development activities carried out in the local area;

["(11) a description of the strategies and services that will be initiated in the local area to more fully engage all employers, including small employers, in workforce development activities, to make the workforce investment system more relevant to the needs of area businesses, and to better coordinate workforce investment and economic development efforts, which may include the implementation of innovative initiatives such as incumbent worker training programs, sectoral and industry cluster strategies, regional skills alliances, career ladder programs, utilization of effective business intermediaries, and other business services and strategies designed to meet the needs of area employers and contribute to the economic well being of the local area, as determined appropriate by the local board, consistent with the purposes of this Act;

["(12) a description of how the local board will expand access to education and training services for eligible individuals who are in need of such services through—

["(A) the utilization of programs funded under this title; and

["(B) the increased leveraging of resources other than those provided under this title, including tax credits, private sector-provided training, and other Federal, State, local, and private funding sources that are brokered through the one-stop centers for training;

["(13) a description of how the local board will coordinate workforce investment activities carried out in the local area with the provision of transportation, including public transportation, in the local area; and".

[SEC. 117. ESTABLISHMENT OF ONE-STOP DELIVERY SYSTEMS.

[(a) One-Stop Partners.—

[(1) Required partners.—Section 121(b)(1) (29 U.S.C. 2841(b)(1)) is amended—

[(A) by striking subparagraph (A) and inserting the following:

["(A) Roles and responsibilities of one-stop partners.—Each entity that carries out a program or activities described in subparagraph (B) shall—

["(i) provide access through the one-stop delivery system to the programs and activities carried out by the entity, including making the core services described in section 134(d)(2) that are applicable to the program of the entity available at the comprehensive one-stop centers (in addition to any other appropriate locations);

["(ii) use a portion of the funds available to the program of the entity to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers in accordance with subsection (h);

["(iii) enter into the local memorandum of understanding with the local board relating to the operation of the one-stop system that meets the requirements of subsection (c);

["(iv) participate in the operation of the one-stop system consistent with the terms of the memorandum of understanding, the requirements of this title, and the requirements of the Federal laws authorizing the programs carried out by the entity; and

["(v) provide representation on the State board to the extent provided under section 111.";

[(B) in subparagraph (B)—

[(i) by striking clause (v);

[(ii) by redesignating clauses (vi) through (xii) as clauses (v) through (xi), respectively;

[(iii) in clause (x) (as redesignated by clause (ii)), by striking "and" at the end;

[(iv) in clause (xi) (as redesignated by clause (ii)), by striking the period and inserting "; and"; and

[(v) by adding at the end the following:

["(xii) programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), subject to subparagraph (C)."; and

[(C) by adding at the end the following:

["(C) Determination by the governor.—

["(i) In general.—An entity that carries out programs referred to in subparagraph (B)(xii) shall be included in the one-stop partners for the local area, as a required partner, for purposes of this title unless the Governor of the State provides the notification described in clause (ii).

["(ii) Notification.—The notification referred to in clause (i) is a notification that—

["(I) is made in writing of a determination by the Governor not to include such entity in the one-stop partners described in clause (i); and

["(II) is provided to the Secretary and the Secretary of Health and Human Services.".

[(2) Additional partners.—

[(A) In general.—Section 121(b)(2)(A) (29 U.S.C. 2841(b)(2)(A)) is amended to read as follows:

["(A) In general.—With the approval of the local board and chief elected official, in addition to the entities described in paragraph (1), other entities that carry out a human resource program described in subparagraph (B) may be a one-stop partner and carry out the responsibilities described in paragraph (1)(A).".

[(B) Additional partners.—Section 121(b)(2)(B) (29 U.S.C. 2841(b)(2)(B)) is amended—

[(i) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

[(ii) by striking clauses (i) through (iii) and inserting the following:

["(i) employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19);

["(ii) programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to mental retardation and developmental disabilities, Statewide Independent Living Councils established under section 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d), and centers for independent living defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a);

["(iii) employment and training programs carried out by the Small Business Administration;

["(iv) programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4));".

[(b) Local Memorandum of Understanding.—

[(1) Contents of memorandum.—Section 121(c)(2)(A) (29 U.S.C. 2841(c)(2)(A)) is amended to read as follows:

["(A) provisions describing—

["(i) the services to be provided through the one-stop delivery system consistent with the requirements of this section, including the manner in which the services will be coordinated through such system;

["(ii) how the costs of such services and the operating costs of such system will be funded to provide a stable and equitable funding stream for ongoing one-stop system operations, including the funding of the infrastructure costs of one-stop centers in accordance with subsection (h);

["(iii) methods of referral of individuals between the one-stop operator and the one-stop partners for appropriate services and activities;

["(iv) methods to ensure the needs of hard-to-serve populations are addressed in accessing services through the one-stop system; and

["(v) the duration of the memorandum of understanding and the procedures for amending the memorandum during the term of the memorandum, and assurances that such memorandum shall be reviewed not less than once every 2-year period to ensure appropriate funding and delivery of services; and".

[(c) Conforming Amendment.—Section 121(d)(2) (29 U.S.C. 2841(d)(2)) is amended by striking "section 134(c)" and inserting "section 121(e)".

[(d) Provision of Services.—

[(1) Elimination of provisions concerning established systems.—Section 121 (29 U.S.C. 2841) is amended by striking subsection (e).

[(2) Redesignation.—Subtitle B of title I is amended—

[(A) in section 134 (29 U.S.C. 2864), by redesignating subsection (c) as subsection (e); and

[(B) by transferring that subsection (e) so that the subsection appears after subsection (d) of section 121.

[(3) One-stop delivery systems.—Paragraph (1) of section 121(e) (29 U.S.C. 2841(e)) (as redesignated by paragraph (2)) is amended—

[(A) in subparagraph (A), by striking "subsection (d)(2)" and inserting "section 134(d)(2)";

[(B) in subparagraph (B)—

[(i) by striking "subsection (d)" and inserting "section 134(d)";

[(ii) by striking "individual training accounts" and inserting "career scholarship accounts"; and

[(iii) by striking "subsection (d)(4)(G)" and inserting "section 134(d)(4)(G)";

[(C) in subparagraph (C), by striking "subsection (e)" and inserting "section 134(e)";

[(D) in subparagraph (D), by striking "section 121(b)" and inserting "subsection (b)"; and

[(E) in subparagraph (E), by striking "information described in section 15" and inserting "data, information, and analysis described in section 15(a)".

[(e) Continuous Improvement of One-Stop Centers.—Section 121 (29 U.S.C. 2841) is amended by adding at the end the following:

["(g) Continuous Improvement of One-Stop Centers.—

["(1) In general.—The State board, in consultation with chief local elected officials and local boards, shall establish procedures and objective criteria for use by local boards in periodically assessing the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and one-stop delivery systems.

["(2) Criteria.—The procedures and criteria developed under this subsection shall include minimum standards relating to the scope and degree of service coordination achieved by the one-stop delivery system with respect to the programs administered by the one-stop partners at the one-stop centers, consistent with the guidance provided by the Governor and by the State board, in consultation with the chief elected official and local boards, for such partners' participation under subsections (h)(1)(B) and subsection (i), respectively, and such other factors relating to the quality, accessibility, and effectiveness of the one-stop delivery system as the State board determines appropriate.

["(3) Local boards.—Consistent with the criteria developed by the State, the local board may develop additional criteria of higher standards to respond to local labor market and demographic conditions and trends.

["(h) Funding of One-Stop Infrastructure and Other Costs.—

["(1) In general.—

["(A) Options for infrastructure funding.—

["(i) Local options.—The local board, chief elected officials, and one-stop partners in a local area may choose to fund the costs of the infrastructure of one-stop centers through—

["(I) alternative methods described in the local memorandum of understanding, if one-stop partners, the local board, and chief elected official agree to such alternative methods; or

["(II) the State infrastructure funding mechanism described in paragraph (2).

["(ii) Failure to reach agreement on funding methods.—If, as of July 1, 2004, the local board, chief elected official, and one-stop partners in a local area fail to reach agreement on methods of funding the infrastructure costs of one-stop centers, the State infrastructure funding mechanism described in paragraph (2) shall be applicable to such local area.".

["(B) Guidance for infrastructure funding.—In addition to carrying out the requirements relating to the State mechanism for one-stop center infrastructure funding described in paragraph (2), the Governor, after consultation with chief local elected official, local boards, and the State board, and consistent with the guidelines provided by the State board under subsection (i), shall provide—

["(i) guidelines for State administered one-stop partner programs in determining such program's contributions to and participation in the one-stop delivery system, including funding for the costs of infrastructure as described in paragraph (4), negotiated pursuant to the local memorandum of understanding under subsection (b); and

["(ii) guidance to assist local areas in identifying equitable and stable alternative methods of funding of the costs of the infrastructure of one-stop centers in local areas.

["(2) State one-stop infrastructure funding.—

["(A) Partner contributions.—

["(i) In general.—Notwithstanding any other provision of law, but subject to clause (iii), a portion determined under clause (ii) of the Federal funds provided to the State and areas within the State under the Federal laws authorizing the programs described in subsection (b) and administered by one-stop partners for a fiscal year shall be provided to the Governor from such programs to assist in paying the costs of infrastructure of one-stop centers in those local areas of the State not funded under the option described in paragraph (1)(B)(i)(I).

["(ii) Determination of governor.—

["(I) In general.—Subject to subclause (II) and clause (iii), the Governor, after consultation with chief local elected officials, local boards, and the State board, shall determine the portion of funds to be provided under clause (i) by each one-stop partner from each program described in clause (i). In making such determination, the Governor shall consider the proportionate use of the one-stop centers pursuant to clause (i)(II) or (ii) of paragraph (1)(A) by each partner, the costs of administration for purposes not related to one-stop centers for each partner, and other relevant factors described in paragraph (3). The Governor shall exclude from such determination the portion of funds and use of one-stop centers attributable to the programs of one-stop partners for those local areas of the State where the infrastructure of one-stop centers is funded under the option described in paragraph (1)(B)(i)(I).

["(II) Special rule.—In a State in which the State constitution places policymaking authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities authorized under title II and for postsecondary vocational and technical education activities authorized under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), or vocational rehabilitation services offered under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the determination described in subclause (I) with respect to the programs authorized under that title and that Act shall be made by the Governor and the appropriate entity or official with such independent policymaking authority.

["(III) Appeal by one-stop partners.—The Governor shall establish a procedure for the one-stop partner administering a program described in subsection (b) to appeal a determination regarding the portion of funds to be contributed under this paragraph on the basis that such determination is inconsistent with the criteria described in the State plan or with the requirements of this paragraph. Such procedure shall ensure prompt resolution of the appeal.

["(iii) Limitations.—

["(I) Provision from administrative funds.—The funds provided under this paragraph by each one-stop partner shall be provided only from funds available for the costs of administration under the program administered by such partner, and shall be subject to the program limitations with respect to the portion of funds under such program that may be used for administration.

[“(II) CAP ON REQUIRED CONTRIBUTIONS.—

[“(aa) WIA FORMULA PROGRAMS AND EMPLOYMENT SERVICE.—The portion of funds required to be contributed under this paragraph by the programs authorized under chapters 4 and 5 of this title and under the Wagner-Peyser Act shall not be in excess of 3 percent of the amount of Federal funds provided to carry out each such program in the State for a fiscal year.

[“(bb) OTHER ONE-STOP PARTNERS.—The portion of funds required to be contributed under paragraph (1)(B)(ii) by a one-stop partner from a program described in subsection (b)(1) other than the programs described under item (aa) shall not be in excess of 1 and ½ percent of the amount of Federal funds provided to carry out such program in the State for a fiscal year.

[“(cc) SPECIAL RULE.—Notwithstanding items (aa) and (bb), an agreement, including local memorandums of understanding, entered into prior to the date of enactment of the Workforce Investment Act Amendments of 2003 by an entity regarding contributions under this title that permits the percentages described in such items to be exceeded, may continue to be in effect until terminated by the parties.

[“(dd) VOCATIONAL REHABILITATION.—Notwithstanding items (aa) and (bb), an entity administering a program under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) shall not be required to provide, for the purposes of this paragraph, an amount in excess of—

[“(AA) 0.75 percent of the amount provided for such program in the State for the second program year that begins after the date of enactment of the Workforce Investment Act Amendments of 2003;

[“(BB) 1.0 percent of the amount provided for such program in the State for the third program year that begins after such date;

[“(CC) 1.25 percent of the amount provided for such program in the State for the fourth program year that begins after such date; and

[“(DD) 1.5 percent of the amount provided for such program in the State for the fifth and each succeeding program year that begins after such date.

[“(III) FEDERAL DIRECT SPENDING PROGRAMS.—An entity administering a program funded with direct spending as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(8)) shall not be required to provide, for purposes of this paragraph, an amount in excess of the amount determined to be equivalent to the cost of the proportionate use of the one-stop centers for such program in the State.

[“(IV) NATIVE AMERICAN PROGRAMS.—Native American programs established under section 166 shall not be subject to the provisions of this subsection or subsection (i). The method for determining the appropriate portion of funds to be provided by such Native American programs to pay for the costs of infrastructure of a one-stop center certified under subsection (g) shall be determined as part of the development of the memorandum of understanding under subsection (c) for the one-stop center and shall be stated in the memorandum.

[“(B) ALLOCATION BY GOVERNOR.—From the funds provided under subparagraph (A), the Governor shall allocate the funds to local areas in accordance with the formula established under subparagraph (C) for the purposes of assisting in paying the costs of infrastructure of one-stop centers.

[“(C) ALLOCATION FORMULA.—The State board shall develop a formula to be used by the Governor to allocate the funds provided under subparagraph (A) to local areas not funding infrastructure costs under the option described in paragraph (1)(B)(i)(II). The formula shall be based on factors including the number of one-stop centers in a local area, the population served by such centers, the services provided by such centers, and other factors relating to the performance of such centers that the State board determines are appropriate.

[“(D) COSTS OF INFRASTRUCTURE.—In this subsection, the term ‘costs of infrastructure’, used with respect to a one-stop center, means the nonpersonnel costs that are necessary for the general operation of the one-stop center, including the rental costs of the facilities, the costs of utilities and maintenance, equipment (including adaptive technology for individuals with disabilities), and technology to facilitate remote access to the one-stop center's strategic planning activities, and common outreach activities.

[“(i) OTHER FUNDS.—

[“(1) IN GENERAL.—In addition to the funds provided to carry out subsection (h), a portion of funds made available under Federal law authorizing the programs described in subsection (b) and administered by one-stop partners, or the noncash resources available under such programs, shall be used to pay the additional costs relating to the operation of the one-stop delivery system involved that are not paid from the funds provided under subsection (h), as determined in accordance with paragraph (2), to the extent not inconsistent with the Federal law involved. Such costs shall include the costs of the provision of core services described in section 134(d)(2) applicable to each program and may include—

[“(A) costs of infrastructure, as defined in subsection (h), that are in excess of the amount of funds provided under subsection (h); and

[“(B) common costs that are in addition to the costs of infrastructure that are not paid from the funds provided under subsection (h).

[“(2) DETERMINATION AND GUIDANCE.—The method for determining the appropriate portion of funds and noncash resources to be provided by each program under paragraph (1) for a one-stop center shall be determined as part of the development of the memorandum of understanding under subsection (c) for the one-stop center and shall be stated in the memorandum. The State board shall provide guidance to facilitate the determination of an appropriate allocation of the funds and noncash resources in local areas.”.

[SEC. 118. ELIGIBLE PROVIDERS OF TRAINING SERVICES.

[Section 122 (29 U.S.C. 2842) is amended to read as follows:

[“SEC. 122. IDENTIFICATION OF ELIGIBLE PROVIDERS OF TRAINING SERVICES.

[“(a) IN GENERAL.—The Governor, after consultation with the State board, shall establish criteria and procedures regarding the eligibility of providers of training services described in section 134(d)(4) (referred to in this section as ‘training services’) to receive funds provided under section 133(b) for the provision of training services.

[“(b) CRITERIA.—

[“(1) IN GENERAL.—The criteria established by the Governor pursuant to subsection (a) shall take into account—

[“(A) the performance of providers of training services with respect to the performance measures described in section 136 or other appropriate measures of performance outcomes for those individuals receiving training services under this subtitle (taking into consideration the characteristics of the population served and relevant economic conditions);

[“(B) the need to ensure access to training services throughout the State, including any rural areas;

[“(C) the information such providers are required to report to State agencies with respect to Federal and State programs (other than the program carried out under this subtitle), including partner programs;

[“(D) the requirements for State licensing of providers of training services, and the licensing status of each provider of training services if applicable;

[“(E) to the extent practicable, encouraging the use of industry recognized standards and certification;

[“(F) the ability to provide training services to hard-to-serve populations, including individuals with disabilities; and

[“(G) such other factors as the Governor determines are appropriate to ensure—

[“(i) the quality of services provided;

[“(ii) the accountability of the providers;

[“(iii) that the one-stop centers in the State will ensure that such providers meet the needs of local employers and participants;

[“(iv) the informed choice of participants under chapter 5; and

[“(v) that the collection of information required is not unduly burdensome or costly to providers.

[“(2) INFORMATION AND RENEWAL.—The criteria established by the Governor shall require that a provider of training services submit appropriate, accurate, and timely information to the State for purposes of carrying out subsection (d). The criteria shall also provide for annual review and renewal of eligibility under this section for providers of training services.

[“(3) LOCAL CRITERIA.—A local board in the State may establish criteria in addition to the criteria established by the Governor, or may require higher levels of performance than required under the criteria established by the Governor, for purposes of determining the eligibility of providers of training services to receive funds described in subsection (a) to provide the services in the local areas involved.

[“(c) PROCEDURES.—The procedures established under subsection (a) shall identify the application process for a provider of training services to become eligible to receive funds provided under section 133(b) for the provision of training services, and identify the respective roles of the State and local areas in receiving and reviewing the applications and in making determinations of such eligibility based on the criteria established under this section. The procedures shall also establish a process for a provider of training services to appeal a denial or termination of eligibility under this section, that includes an opportunity for a hearing and prescribes appropriate time limits to ensure prompt resolution of the appeal.

[“(d) INFORMATION TO ASSIST PARTICIPANTS IN CHOOSING PROVIDERS.—

[“(1) IN GENERAL.—In order to facilitate and assist participants in choosing employment and training activities under chapter 5 and in choosing providers of training services, the Governor shall ensure that an appropriate list of providers determined to be eligible under this section in the State, accompanied by appropriate information provided by providers of training in the State in accordance with subsection (b) and such other information as the Governor determines is appropriate, including information on program costs for participants in applicable programs, is provided to the one-stop delivery system in the State. The list and the information shall be made available to such participants and to members of the public through the one-stop delivery system in the State.

[“(2) SPECIAL RULE.—An entity that carries out programs under the Act of August 16, 1937 (commonly known as the ‘National Apprenticeship Act’, 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) shall be included on the list of eligible providers described in paragraph (1) for so long as such entity remains certified by the Department of Labor.

[“(e) ENFORCEMENT.—

[“(1) IN GENERAL.—The criteria and procedures established under this section shall provide the following:

[“(A) INTENTIONALLY SUPPLYING INACCURATE INFORMATION.—Upon a determination that a provider of training services, or individual providing information on behalf of the provider, intentionally supplied inaccurate information under this section, the eligibility of such provider to receive funds under chapter 5 shall be terminated for a period of time that is not less than 2 years.

[“(B) SUBSTANTIAL VIOLATIONS.—Upon a determination that a provider of training services substantially violated any requirement under this title, the eligibility of such provider to receive funds under the program involved may be terminated, or other appropriate action may be taken.

[“(C) REPAYMENT.—A provider of training services whose eligibility is terminated under subparagraph (A) or (B) shall be liable for the repayment of funds received under chapter 5 during a period of noncompliance described in such paragraph.

[“(2) CONSTRUCTION.—Paragraph (1) shall be construed to provide remedies and penalties that supplement, but do not supplant, other civil and criminal remedies and penalties.”.

[“(f) AGREEMENTS WITH OTHER STATES.—States may enter into agreements, on a reciprocal basis, to permit eligible providers of training services to accept career scholarship accounts provided in another State.

[“(g) OPPORTUNITY TO SUBMIT COMMENTS.—In establishing criteria, procedures, and information required under this section, the Governor shall provide an opportunity for interested members of the public to make recommendations and submit comments regarding such criteria, procedures, and information.

[“(h) TRANSITION PERIOD FOR IMPLEMENTATION.—The requirements of this section shall be implemented not later than December 31, 2004. In order to facilitate early implementation of this section, the Governor may establish transition procedures under which providers eligible to provide training services under chapter 5 of this title as such chapter was in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003 may continue to be eligible to provide such services until December 31, 2004, or until such earlier date as the Governor determines appropriate.

[“(i) ON-THE-JOB TRAINING OR CUSTOMIZED TRAINING EXCEPTION.—

[“(1) IN GENERAL.—Providers of on-the-job training or customized training shall not be subject to the requirements of subsections (a) through (h).

[“(2) COLLECTION AND DISSEMINATION OF INFORMATION.—A one-stop operator in a local area shall collect such performance information from on-the-job training and customized training providers as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate information identifying providers that meet the criteria as eligible providers, and the performance information, through the one-stop delivery system. Providers determined to meet the criteria shall be considered to be identified as eligible providers of training services.”.

[SEC. 119. ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES.

[Section 123 (29 U.S.C. 2843) is amended to read as follows:

[“SEC. 123. ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES.

[“(a) IN GENERAL.—From the funds allocated under section 128(b) to a local area, the local board for such area shall award grants or contracts on a competitive basis to providers of youth activities identified based on the criteria in the State plan described in section 112 and shall conduct oversight with respect to such providers.

[“(b) EXCEPTIONS.—A local board may award grants or contracts on a sole-source basis if such board determines there is an insufficient number of eligible providers of youth activities in the local area involved (such as a rural area) for grants and contracts to be awarded on a competitive basis under subsection (a).”.

[SEC. 120. YOUTH ACTIVITIES.

[(a) STATE ALLOTMENTS.—Section 127 (29 U.S.C. 2852) is amended—

[(1) in subsection (a)(1), by striking “opportunity” and inserting “challenge”; and

[(2) by striking subsection (b) and inserting the following:

[“(b) ALLOTMENT AMONG STATES.—

[“(1) YOUTH ACTIVITIES.—

[“(A) YOUTH CHALLENGE GRANTS.—

[“(i) IN GENERAL.—For each fiscal year in which the amount appropriated under section 137(a) exceeds $1,000,000,000, the Secretary shall reserve a portion of the amount to provide youth challenge grants and other activities under section 169 (relating to youth challenge grants) and provide youth activities under section 167 (relating to migrant and seasonal farmworker programs).

[“(ii) PORTION.—The portion referred to in clause (i) shall equal, for a fiscal year—

[“(I) except as provided in subclause (II), the difference obtained by subtracting $1,000,000,000 from the amount appropriated under section 137(a) for the fiscal year; or

[“(II) for any fiscal year in which the amount is $1,250,000,000 or greater, $250,000,000.

[“(iii) YOUTH ACTIVITIES FOR FARMWORKERS.—The Secretary shall reserve the greater of $10,000,000 or 4 percent of the portion described in clause (i) for a fiscal year to provide youth activities under section 167.

[“(iv) NATIVE AMERICANS.—From the remainder of the amount appropriated under section 137(a) for each fiscal year the Secretary shall reserve not more than 1½ percent of such amount to provide youth activities under section 166 (relating to native Americans).

[“(B) OUTLYING AREAS.—

[“(i) IN GENERAL.—From the amount made available under subsection (a)(2) for each fiscal year the Secretary shall reserve not more than ¼ of 1 percent of the amount appropriated under section 137(a) for the fiscal year to provide assistance to the outlying areas to carry out youth activities and statewide workforce investment activities.

[“(ii) LIMITATION FOR FREELY ASSOCIATED STATES.—

[“(I) COMPETITIVE GRANTS.—The Secretary shall use funds described in clause (i)(II) to award grants to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States to carry out youth activities and statewide workforce investment activities.

[“(II) AWARD BASIS.—The Secretary shall award grants pursuant to subclause (I) on a competitive basis and pursuant to the recommendations of experts in the field of employment and training, working through the Pacific Region Educational Laboratory in Honolulu, Hawaii.

[“(III) ASSISTANCE REQUIREMENTS.—Any Freely Associated State that desires to receive assistance under this subparagraph shall submit an application to the Secretary and shall include in the application for assistance—

[“(aa) information demonstrating that the Freely Associated State will meet all conditions that apply to States under this title;

[“(bb) an assurance that, notwithstanding any other provision of this title, the Freely Associated State will use such assistance only for the direct provision of services; and

[“(cc) such other information and assurances as the Secretary may require.

[“(IV) ADMINISTRATIVE COSTS.—The Secretary may provide not more than 5 percent of the funds made available for grants under subclause (I) to pay the administrative costs of the Pacific Region Educational Laboratory in Honolulu, Hawaii, regarding activities assisted under this clause.

[“(iii) ADDITIONAL REQUIREMENT.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to assistance provided to those areas, including the Freely Associated States, under this subparagraph.

[“(C) STATES.—

[“(i) IN GENERAL.—From the remainder of the amount appropriated under section 137(a) for a fiscal year that exists after the Secretary determines the amounts to be reserved under subparagraphs (A) and (B), the Secretary shall allot to the States—

[“(I) an amount of the remainder that is less than or equal to the total amount that was allotted to States for fiscal year 2003 under section 127(b)(1)(C) of this Act (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003), in accordance with the requirements of such section 127(b)(1)(C); and

[“(II) the amount of the remainder, if any, in excess of the amount referred to in subclause (I), in accordance with clause (ii).

[“(ii) FORMULA.—Subject to clauses (iii) and (iv), of the amount described in clause (i)(II)—

[“(I) 33⅓ percent shall be allotted on the basis of the relative number of individuals in the civilian labor force who are ages 16 through 21 in each State, compared to the total number of individuals in the civilian labor force who are ages 16 through 21 in all States;

[“(II) 33⅓ percent shall be allotted on the basis of the relative number of unemployed individuals in each State, compared to the total number of unemployed individuals in all States; and

[“(III) 33⅓ percent shall be allotted on the basis of the relative number of disadvantaged youth who are ages 16 through 21 in each State, compared to the total number of disadvantaged youth who are ages 16 through 21 in all States.

[“(iii) MINIMUM AND MAXIMUM PERCENTAGES.—

[“(I) MINIMUM PERCENTAGE.—The Secretary shall ensure that no State shall receive an allotment percentage under this subparagraph for a fiscal year that is less than 90 percent of the allotment percentage of the State for the preceding fiscal year.

["(II) Maximum percentage.—Subject to subclause (I), the Secretary shall ensure that no State shall receive an allotment percentage under this subparagraph for a fiscal year that is more than 130 percent of the allotment percentage of the State for the preceding fiscal year.

["(iv) Small state minimum allotment.—Subject to clause (iii), the Secretary shall ensure that no State shall receive an allotment under this subparagraph that is less than the total of—

["(I) 3/10 of 1 percent of $1,000,000,000 of the remainder described in clause (i) for the fiscal year; and

["(II) if the remainder described in clause (i) for the fiscal year exceeds $1,000,000,000, 2/5 of 1 percent of the excess.

["(2) Definitions.—For the purposes of paragraph (1):

["(A) Allotment percentage.—The term 'allotment percentage', used with respect to fiscal year 2004 or a subsequent fiscal year, means a percentage of the remainder described in paragraph (1)(C)(i) that is received by the State involved through an allotment made under this subsection for the fiscal year. The term, used with respect to fiscal year 2003, means the percentage of the amounts allotted to States under this chapter (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003) that is received by the State involved for fiscal year 2003.

["(B) Disadvantaged youth.—Subject to paragraph (3), the term 'disadvantaged youth' means an individual who is age 16 through 21 who received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the poverty line.

["(C) Freely associated states.—The term 'Freely Associated States' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

["(3) Special rule.—For purposes of the formula specified in paragraph (1)(C), the Secretary shall, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of disadvantaged youth.".

[(b) Reallotment.—

[(1) Amendment.—Section 127(c) (29 U.S.C. 2852(c)) is amended—

[(A) by striking paragraph (2) and inserting the following:

["(2) Amount.—The amount available for reallotment for a program year is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the State under this section during such prior program year (including amounts allotted to the State in all prior program years that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

["(A) the total amount of funds available to the State under this section during the program year prior to the program year for which the determination is made (including amounts allotted to the State in all prior program years that remained available); and

["(B) the accrued expenditures during such prior program year.";

[(B) in paragraph (3)—

[(i) by striking "for the prior program year" and inserting "for the program year for which the determination is made"; and

[(ii) by striking "such prior program year" and inserting "such program year";

[(C) by striking paragraph (4) and inserting the following:

["(4) Eligibility.—For purposes of this subsection, an eligible State means a State that does not have an amount available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made."; and

[(D) in paragraph (5), by striking "obligation" and inserting "expenditure".

[(2) Effective date.—The amendments made by paragraph (1)(C) shall take effect for the later of—

[(A) the program year that begins after the date of enactment of this Act; or

[(B) program year 2004.

[(c) Within State Allocations.—

[(1) Reservation for statewide activities.—Section 128(a) (29 U.S.C. 2853(a)) is amended to read as follows:

["(a) Reservations for Statewide Activities.—

["(1) In general.—The Governor of a State shall reserve not more than 15 percent of each of the amounts allotted to the State under section 127(b)(1)(C) and paragraphs (1)(B) and (2)(B) of section 132(b) for a fiscal year for statewide workforce investment activities.

["(2) Use of funds.—Regardless of whether the reserved amounts were allotted under section 127(b)(1)(C), or under paragraph (1)(B) or (2)(B) of section 132(b), the Governor may use the reserved amounts to carry out statewide youth activities under section 129(b) or statewide employment and training activities, for adults or dislocated workers, under section 134(a).".

[(2) Within state allocation.—Section 128(b) (29 U.S.C. 2853(b)) is amended to read as follows:

["(b) Within State Allocations.—

["(1) In general.—Of the amount allotted to the State under section 127(b)(1)(C) and not reserved under subsection (a)(1)—

["(A) a portion equal to not less than 80 percent of such amount shall be allocated by the Governor to local areas in accordance with paragraph (2); and

["(B) a portion equal to not more than 20 percent of such amount may be allocated by the Governor to local areas in accordance with paragraph (3).

["(2) Established formula.—

["(A) In general.—Of the portion described in paragraph (1)(A), the Governor shall allocate—

["(i) 33⅓ percent on the basis of the relative number of individuals in the civilian labor force who are ages 16 through 21 in each local area, compared to the total number of individuals in the civilian labor force who are ages 16 through 21 in all local areas in the State;

["(ii) 33⅓ percent on the basis of the relative number of unemployed individuals in each local area, compared to the total number of unemployed individuals in all local areas in the State; and

["(iii) 33⅓ percent on the basis of the relative number of disadvantaged youth who are ages 16 through 21 in each local area, compared to the total number of disadvantaged youth who are ages 16 through 21 in all local areas in the State.

["(B) Minimum and maximum percentages.—

["(i) Minimum percentage.—The Governor shall ensure that no local area shall receive an allocation percentage under this paragraph for a fiscal year that is less than 90 percent of the allocation percentage of the local area for the preceding fiscal year.

["(ii) Maximum percentage.—Subject to clause (i), the Governor shall ensure that no local area shall receive an allocation percentage under this paragraph for a fiscal year that is more than 130 percent of the allocation percentage of the local area for the preceding fiscal year.

["(C) Definitions.—In this paragraph:

["(i) Allocation percentage.—The term 'allocation percentage', used with respect to fiscal year 2004 or a subsequent fiscal year, means a percentage of the portion described in paragraph (1)(A) that is received by the local area involved through an allocation made under this paragraph for the fiscal year. The term, used with respect to fiscal year 2003, means the percentage of the amounts allocated to local areas under this chapter (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003) that is received by the local area involved for fiscal year 2003.

["(ii) Disadvantaged youth.—The term 'disadvantaged youth' means an individual who—

["(I) is age 16 through 21;

["(II) is not a college student or member of the Armed Forces; and

["(III) received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the poverty line.

["(3) Youth discretionary allocation.—The Governor may allocate the portion described in paragraph (1)(B) to local areas where there are a significant number of eligible youth, after consultation with the State board and local board.

["(4) Local administrative cost limit.—

["(A) In general.—Of the amount allocated to a local area under this subsection and section 133(b) for a fiscal year, not more than 10 percent of the amount may be used by the local board involved for the administrative costs of carrying out local workforce investment activities under this chapter or chapter 5.

["(B) Use of funds.—Funds made available for administrative costs under subparagraph (A) may be used for the administrative costs of any of the local workforce investment activities described in this chapter or chapter 5, regardless of whether the funds were allocated under this subsection or section 133(b).".

[(3) Reallocation.—

[(A) Amendment.—Section 128(c) (29 U.S.C. 2853(c)) is amended—

[(i) in paragraph (1), by striking "paragraph (2)(A) or (3) of";

[(ii) by striking paragraph (2) and inserting the following:

["(2) Amount.—The amount available for reallocation for a program year is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the local area under this section during such prior program year (including amounts allocated to the local area in all prior program years that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

["(A) the total amount of funds available to the local area under this section during the program year prior to the program year for which the determination is made (including amounts allocated to the local area in all prior program years that remained available); and

[''(B) the accrued expenditures during such prior program year.'';

[(iii) by amending paragraph (3)—

[(I) by striking ''subsection (b)(3)'' each place it appears and inserting ''subsection (b)'';

[(II) by striking ''for the prior program year'' and inserting ''for the program year for which the determination is made'';

[(III) by striking ''such prior program year'' and inserting ''such program year''; and

[(IV) by striking the last sentence; and

[(iv) by striking paragraph (4) and inserting the following:

[''(4) ELIGIBILITY.—For purposes of this subsection, an eligible local area means a local area that does not have an amount available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made.''.

[(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect for the later of—

[(i) the program year that begins after the date of enactment of this Act; or

[(ii) program year 2004.

[(d) YOUTH PARTICIPANT ELIGIBILITY.—Section 129(a) (29 U.S.C. 2854(a)) is amended to read as follows:

[''(a) YOUTH PARTICIPANT ELIGIBILITY.—

[''(1) ELIGIBILITY.—

[''(A) IN GENERAL.—To be eligible to participate in activities carried out under this chapter during any program year an individual shall, at the time the eligibility determination is made, be an out-of-school youth or an in-school youth.

[''(B) OUT-OF-SCHOOL YOUTH.—In this section the term 'out-of-school youth' means an individual who is—

[''(i) not younger than age 16 (subject to paragraph (3)) nor older than age 21; and

[''(ii) one of the following:

[''(I) A school dropout.

[''(II) A youth who is within the age for compulsory school attendance, but has not attended school for at least 1 school year calendar quarter.

[''(III) A recipient of a secondary school diploma or its equivalent who is—

[''(aa) deficient in basic skills, including limited English proficiency;

[''(bb) a low-income individual; and

[''(cc) not attending any school; or

[''(IV) Subject to the juvenile justice system or ordered by a court to an alternative school.

[''(V) A low-income individual who is pregnant or parenting and not attending any school.

[''(VI) A youth who is not attending school or a youth attending an alternative school, who is homeless, a runaway, a foster child, a child eligible for assistance under section 477 of the Social Security Act, or in an out-of-home placement.

[''(C) IN-SCHOOL YOUTH.—In this section the term 'in-school youth' means an individual who is—

[''(i) not younger than age 14 nor older than age 21;

[''(ii) a low-income individual; and

[''(iii) one or more of the following:

[''(I) Deficient in basic literacy skills, including limited English proficiency.

[''(II) Homeless, a runaway, a foster child, a child eligible for assistance under section 477 of the Social Security Act, or in an out-of-home placement.

[''(III) Pregnant or parenting.

[''(IV) An offender (other than an individual described in subparagraph (B)(ii)(IV)).

[''(V) An individual who requires additional assistance to complete an educational program, or to secure or hold employment.

[''(2) EXCEPTION.—Not more than 5 percent of the individuals assisted under this section in each local area may be individuals who are not low-income with respect to individuals for whom low-income is a requirement for eligibility under this section.

[''(3) LIMITATIONS ON ACTIVITIES FOR IN-SCHOOL YOUTH.—

[''(A) IN GENERAL.—For any program year, not more than 60 percent of the funds available for statewide activities that serve youth under subsection (b), and not more than 60 percent of funds available to local areas under subsection (c), may be used to provide activities for in-school youth meeting the requirements of paragraph (1)(B).

[''(B) EXCEPTION.—A State that receives a minimum allotment under section 127(b)(1) in accordance with section 127(b)(1)(C)(iv)(II) or under section 132(b)(1) in accordance with section 132(b)(1)(B)(iv)(II) may increase the percentage described in subparagraph (A) for a local area in the State, if—

[''(i) after an analysis of the eligible youth population in the local area, the State determines that the local area will be unable to use at least 40 percent of the funds available for activities that serve youth under subsection (b) to serve out-of-school youth due to a low number of out-of-school youth; and

[''(ii)(I) the State submits to the Secretary, for the local area, a request including a proposed reduced percentage for purposes of subparagraph (A), and the summary of the eligible youth population analysis; and

[''(II) the request is approved by the Secretary.

[''(4) CONSISTENCY WITH COMPULSORY SCHOOL ATTENDANCE LAWS.—In providing assistance under this section to an individual who is required to attend school under applicable State compulsory school attendance laws, the priority in providing such assistance shall be for the individual to attend school regularly.''.

[(e) STATEWIDE ACTIVITIES.—Section 129(b) (29 U.S.C. 2854(b)) is amended to read as follows:

[''(b) STATEWIDE ACTIVITIES.—

[''(1) IN GENERAL.—Funds reserved by a Governor for a State as described in sections 128(a) and 133(a)(1) shall be used, regardless of whether the funds were allotted to the State under section 127(b)(1)(C) or under paragraph (1) or (2) of section 132(b) for statewide activities, which may include—

[''(A) conducting—

[''(i) evaluations under section 136(e) of activities authorized under this chapter and chapter 5 in coordination with evaluations carried out by the Secretary under section 172;

[''(ii) research; and

[''(iii) demonstration projects;

[''(B) providing incentive grants to local areas for regional cooperation among local boards (including local boards in a designated region as described in section 116(c)), for local coordination of activities carried out under this title, and for exemplary performance by local areas under section 136(i)(2);

[''(C) providing technical assistance and capacity building activities to local areas, one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the development of exemplary program activities, the provision of technical assistance to local areas that fail to meet local performance measures described in section 136(c), and the provision of technology to facilitate remote access to services provided through one-stop delivery systems;

[''(D) operating a fiscal and management accountability information system under section 136(f);

[''(E) carrying out monitoring and oversight of activities carried out under this chapter and chapter 5, which may include a review comparing the services provided to male and female youth;

[''(F) providing additional assistance to local areas that have high concentrations of eligible youth;

[''(G) supporting the development of alternative programs and other activities that enhance the choices available to eligible youth and encourage such youth to reenter secondary education, enroll in postsecondary education and advanced training, and obtain career path employment; and

[''(H) supporting the provision of core services described in section 134(d)(2) in the one-stop delivery system in the State;

[''(2) LIMITATION.—Not more than 5 percent of the funds allotted to a State under section 127(b)(1)(C) shall be used by the State for administrative activities carried out under this subsection or section 134(a).

[''(3) PROHIBITION.—No funds described in this subsection may be used to develop or implement education curricula for school systems in the State.''.

[(f) LOCAL ELEMENTS AND REQUIREMENTS.—

[(1) PROGRAM DESIGN.—Section 129(c)(1) (29 U.S.C. 2854(c)(1)) is amended—

[(A) in the matter that precedes subparagraph (A), by striking ''paragraph (2)(A) or (3), as appropriate, of'';

[(B) in subparagraph (B), by inserting ''are directly linked to 1 or more of the performance measures relating to this chapter under section 136, and that'' after ''for each participant that''; and

[(C) in subparagraph (C)—

[(i) by redesignating clauses (i) through (iv) as clauses (ii) through (v), respectively;

[(ii) by inserting before clause (ii) (as redesignated by clause (i)) the following:

[''(i) activities leading to the attainment of a secondary school diploma or its equivalent, or another recognized credential;'';

[(iii) in clause (ii) (as redesignated by clause (i)), by inserting ''and advanced training'' after ''opportunities'';

[(iv) in clause (iii) (as redesignated by clause (i))—

[(I) by inserting ''instruction based on State academic content and student academic achievement standards established under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311)'' after ''academic''; and

[(II) by inserting ''that lead to the attainment of recognized credentials'' after ''learning''; and

[(v) by striking clause (v) (as redesignated by clause (i)) and inserting the following:

[''(v) effective connections to all employers, including small employers, in sectors of the local and regional labor markets that are experiencing high growth in employment opportunities.''.

[(2) PROGRAM ELEMENTS.—Section 129(c)(2) (29 U.S.C. 2854(c)(2)) is amended—

[(A) in subparagraph (A), by striking ''secondary school, including dropout prevention strategies'' and inserting ''the requirements for a secondary school diploma or its recognized equivalent (including recognized alternative standards for individuals with disabilities) or for another recognized credential, including dropout prevention strategies'';

[(B) in subparagraph (B), by inserting “, with a priority on exposing youth to technology and nontraditional jobs” before the semicolon;

[(C) in subparagraph (F), by striking “during nonschool hours”;

[(D) in subparagraph (I), by striking “and” at the end;

[(E) in subparagraph (J), by striking the period at the end and inserting a semicolon; and

[(F) by adding at the end the following:

[“(K) on-the-job training opportunities;

[“(L) opportunities to acquire financial literacy skills;

[“(M) entrepreneurial skills training and microenterprise services; and

[“(N) information about average wages for a range of jobs available in the local area, including technology jobs.”.

[(3) ADDITIONAL REQUIREMENTS.—Section 129(c)(3)(A) (29 U.S.C. 2854(c)(3)(A)) is amended in the matter preceding clause (i) by striking “or applicant who meets the minimum income criteria to be considered an eligible youth”.

[(4) PRIORITY AND EXCEPTIONS.—Section 129(c) (29 U.S.C. 2854(c)) is amended by striking paragraphs (4) and (5).

[(5) PROHIBITIONS AND LINKAGES.—Section 129(c) (29 U.S.C. 2854(c)), as amended by paragraph (4), is further amended—

[(A) by redesignating paragraphs (6), (7), and (8) as paragraphs (4), (5), and (6), respectively;

[(B) in paragraph (4) (as redesignated by subparagraph (A))—

[(i) by striking subparagraph (B); and

[(ii) by redesignating subparagraph (C) as subparagraph (B); and

[(C) in paragraph (5) (as redesignated by subparagraph (A)), by striking “youth councils” and inserting “local boards”.

[SEC. 121. ADULT AND DISLOCATED WORKER EMPLOYMENT AND TRAINING ACTIVITIES.

[(a) STATE ALLOTMENTS.—

[(1) RESERVATIONS.—Section 132(a)(2)(A) is amended by striking “national emergency grants” and inserting “national dislocated worker grants”.

[(2) ALLOTMENT AMONG STATES.—Section 132(b) (29 U.S.C. 2862(b)) is amended—

[(A) in paragraph (1)(A)(ii), by striking “section 127(b)(1)(B)” and all that follows and inserting “section 127(b)(1)(D).”;

[(B) by striking paragraph (1)(B)(ii) and inserting the following:

[“(ii) FORMULA.—Subject to clauses (iii) and (iv), of the remainder—

[“(I) 40 percent shall be allotted on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each State, compared to the total number of unemployed individuals in areas of substantial unemployment in all States;

[“(II) 25 percent shall be allotted on the basis of the relative number of individuals in the civilian labor force in each State, compared to the total number of such individuals in all States; and

[“(III) 35 percent shall be allotted on the basis of the relative number of disadvantaged adults in each State, compared to the total number of disadvantaged adults in all States, except as described in clause (iii).”;

[(C) in paragraph (1)(B)(iii), by striking “section 116(a)(2)(B)” and inserting “section 116(a)(2)(A)(ii)”; and

[(D) in paragraph (2)(A)(ii), by striking “section 127(b)(1)(B)” and all that follows and inserting “section 127(b)(1)(D).”.

[(3) REALLOTMENT.—Section 132(c) (29 U.S.C. 2862(c)) is amended—

[(A) by striking paragraph (2) and inserting the following:

[“(2) AMOUNT.—The amount available for reallotment for a program year for programs funded under subsection (b)(1)(B) (relating to adult employment and training) and subsection (b)(2)(B) (relating to dislocated worker employment and training), respectively, is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the State under subsection (b)(1)(B) or (b)(2)(B), respectively, during such prior program year (including amounts allotted to the State in all prior program years under such provisions that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

[“(A) the total amount of funds available to the State under subsection (b)(1)(B) or (b)(2)(B), respectively, during the program year prior to the program year for which the determination is made (including amounts allotted to the State in all prior program years under such provisions that remained available); and

[“(B) the accrued expenditures from such total amount of funds available under subsection (b)(1)(B) or (b)(2)(B), respectively, during such prior program year.”;

[(B) in paragraph (3)—

[(i) by striking “under this section for such activities for the prior program year” and inserting “under subsection (b)(1)(B) or (b)(2)(B), as appropriate, for the program year for which the determination is made”; and

[(ii) by striking “under this subsection for such activities for such prior program year” and inserting “under subsection (b)(1)(B) or (b)(2)(B), as appropriate, for such program year”;

[(C) by striking paragraph (4) and inserting the following:

[“(4) ELIGIBILITY.—For purposes of this subsection, an eligible State means—

[“(A) with respect to funds allotted under subsection (b)(1)(B), a State that does not have an amount of such funds available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made; and

[“(B) with respect to funds allotted under subsection (b)(2)(B), a State that does not have an amount of such funds available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made.”; and

[(D) in paragraph (5), by striking “obligation” and inserting “expenditure”.

[(4) EFFECTIVE DATE.—The amendments made by paragraph (3) shall take effect for the later of—

[(A) the program year that begins after the date of enactment of this Act; or

[(B) program year 2004.

[(b) WITHIN STATE ALLOCATIONS.—

[(1) ALLOCATION.—Section 133(b)(5)(B)(ii) (29 U.S.C. 2863(b)(5)(B)(ii)) is amended by striking “section 134(c)” and inserting “section 121(e)”.

[(2) REALLOCATION.—Section 133(c) (29 U.S.C. 2863(c)) is amended—

[(A) in paragraph (1), by inserting “, and under subsection (b)(2)(B) for dislocated worker employment and training activities,” after “activities”;

[(B) by striking paragraph (2) and inserting the following:

[“(2) AMOUNT.—The amount available for reallocation for a program year for programs funded under paragraphs (2)(A) and (3) of subsection (b) (relating to adult employment and training) and subsection (b)(2)(B) (relating to dislocated worker employment and training), respectively, is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the local area under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during such prior program year (including amounts allocated to the local area in all prior program years under such provisions that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

[“(A) the total amount of funds available to the local area under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during the program year prior to the program year for which the determination is made (including amounts allotted to the local area in all prior program years under such provisions that remained available); and

[“(B) the accrued expenditures from such total amount of funds available under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during such prior program year.”;

[(C) by striking paragraph (3) and inserting the following:

[“(3) REALLOCATION.—In making reallocations to eligible local areas of amounts available pursuant to paragraph (2) for a program year, the Governor shall allocate to each eligible local area within the State—

[“(A) with respect to amounts that are available for reallocation under paragraph (2) that were allocated under paragraphs (2)(A) or (3) of subsection (b), an amount based on the relative amount allocated to such local area under paragraphs (2)(A) or (3) of subsection (b), as appropriate, for the program year for which the determination is made, as compared to the total amount allocated to all eligible local areas under paragraphs (2)(A) or (3) of subsection (b), as appropriate, of such program year; and

[“(B) with respect to amounts that are available for reallocation under paragraph (2) that were allocated under subsection (b)(2)(B), an amount based on the relative amount allocated to such local area under subsection (b)(2)(B) for the program year for which the determination is made, as compared to the total amount allocated to all eligible local areas under subsection (b)(2)(B) for such program year.”; and

[(D) by striking paragraph (4) and inserting the following:

[“(4) ELIGIBILITY.—For purposes of this subsection, an eligible local area means—

[“(A) with respect to funds allocated under paragraphs (2)(A) or (3) of subsection (b), a local area that does not have an amount of such funds available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made; and

[“(B) with respect to funds allocated under subsection (b)(2)(B), a local area that does not have an amount of such funds available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made.”.

[(3) EFFECTIVE DATE.—The amendments made by paragraph (2) shall take effect for the later of—

[(A) the program year that begins after the date of enactment of this Act; or

[(B) program year 2004.

[(c) USE OF FUNDS FOR EMPLOYMENT AND TRAINING ACTIVITIES.—

[(1) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—

[(A) STATEWIDE RAPID RESPONSE ACTIVITIES.—Section 134(a)(2)(A) (29 U.S.C. 2864(a)(2)(A)) is amended to read as follows:

["(A) STATEWIDE RAPID RESPONSE ACTIVITIES.—

["(i) IN GENERAL.—A State shall carry out statewide rapid response activities using funds reserved by a Governor for a State under section 133(a)(2). Such activities shall include—

["(I) provision of rapid response activities, carried out in local areas by the State or by an entity designated by the State, working in conjunction with the local boards and the chief elected officials for the local areas; and

["(II) provision of additional assistance to local areas that experience disasters, mass layoffs, or plant closings, or other events that precipitate substantial increases in the number of unemployed individuals, carried out in local areas by the State, working in conjunction with the local boards and the chief elected officials for the local areas.

["(ii) USE OF UNEXPENDED FUNDS.—Funds reserved under section 133(a)(2) to carry out this subparagraph that remain unexpended after the first program year for which such funds were allotted may be used by the Governor to carry out statewide activities authorized under subparagraphs (B) and (C) in addition to activities under this subparagraph.".

[(B) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Section 134(a)(2) (29 U.S.C. 2864(a)(2)) is amended by striking subparagraph (B) and inserting the following:

["(B) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Funds reserved by a Governor for a State under sections 128(a)(1) and 133(a)(1) and not used under paragraph (1)(A) shall be used for statewide employment and training activities, including—

["(i) disseminating—

["(I) the State list of eligible providers of training services, including eligible providers of nontraditional training services;

["(II) information identifying eligible providers of on-the-job training and customized training;

["(III) performance information and program cost information, as described in subsections (e) and (h) of section 122; and

["(IV) information on physical and programmatic assessability for individuals with disabilities;

["(ii) conducting evaluations under section 136(e) of activities authorized under this chapter and chapter 5 in coordination with evaluations carried out by the Secretary under section 172;

["(iii) providing incentive grants to local areas in recognition of exceptional achievement relating to—

["(I) regional cooperation among local boards (including local boards in a designated region as described in section 116(c));

["(II) expanded local coordination of programs and activities carried out as part of a comprehensive workforce investment system, including—

["(aa) coordination of employment services under the Wagner-Peyser Act and core activities under this title; and

["(bb) partner programs described in section 121;

["(III) exemplary performance by local areas as described in section 136(i)(2); and

["(IV) providing expanded access to education and training services, especially through increased leveraging of resources other than those provided through programs under this title;

["(iv) providing technical assistance and capacity building to local areas, one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the development of exemplary program activities, and the provision of technical assistance to local areas that fail to meet local performance measures described in section 136(c), which may include the development and training of staff to provide opportunities for hard-to-serve populations to enter high-wage, high-skilled, and nontraditional occupations;

["(v) operating a fiscal and management accountability system under section 136(f); and

["(vi) carrying out monitoring and oversight of activities carried out under this chapter and chapter 4.".

[(C) ALLOWABLE STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Section 134(a)(3)(A) (29 U.S.C. 2864(a)(3)(A) is amended to read as follows:

["(A) IN GENERAL.—A State may use funds reserved as described in sections 128(a) and 133(a)(1) (regardless of whether the funds were allotted to the State under section 127(b)(1) or paragraph (1) or (2) of section 132(b)) to carry out additional statewide employment and training activities, which may include—

["(i) implementing innovative programs and strategies designed to meet the needs of all businesses in the State, including small businesses, which may include incumbent worker training programs, sectoral and industry cluster strategies and partnerships, including regional skills alliances, career ladder programs, micro-enterprise and entrepreneurial training and support programs, utilization of effective business intermediaries, activities to improve linkages between the one-stop delivery systems in the State and all employers (including small employers), in the State and other business services and strategies that better engage employers in workforce activities and make the workforce investment system more relevant to the needs of State and local businesses, consistent with the purposes of this Act;

["(ii) developing strategies for effectively serving hard-to-serve populations and for coordinating programs and services among one-stop partners;

["(iii) implementing innovative programs for displaced homemakers, which for purposes of this subparagraph may include an individual who is receiving public assistance and is within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

["(iv) developing strategies for ensuring that activities carried out under this section are placing men and women in jobs, education, and training that lead to comparable pay;

["(v) implementing programs to increase the number of individuals training for and placed in nontraditional employment;

["(vi) carrying out activities to facilitate remote access to services, including training services described in subsection (d)(4), provided through a one-stop delivery system, including facilitating access through the use of technology;

["(vii) supporting the provision of core services described in subsection (d)(2) in the one-stop delivery system in the State;

["(viii) coordinating with the child welfare system to facilitate services for children in foster care and those who are eligible for assistance under section 477 of the Social Security Act;

["(ix) activities—

["(I) to improve coordination between workforce investment activities carried out within the State involved and economic development activities;

["(II) to improve coordination between employment and training assistance and child support services and assistance provided by State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.);

["(III) to improve coordination between employment and training assistance and cooperative extension programs carried out by the Department of Agriculture; and

["(IV) to develop and disseminate workforce and labor market information;

["(x) conducting—

["(I) research; and

["(II) demonstration projects; and

["(xi) adopting, calculating, or commissioning a minimum self-sufficiency standard that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations.".

[(2) REQUIRED LOCAL EMPLOYMENT AND TRAINING ACTIVITIES.—

[(A) ALLOCATED FUNDS.—Section 134(d)(1) (29 U.S.C. 2864(d)(1)) is amended—

[(i) in clause (i), by striking "described in subsection (c)";

[(ii) in clause (iii), by striking "and" at the end;

[(iii) in clause (iv), by striking the period and inserting a semicolon; and

[(iv) by adding at the end the following:

["(v) to designate a dedicated business liaison in the local area who may be funded with funds provided under this title or from other sources to establish and develop relationships and networks with large and small employers and their intermediaries; and

["(vi) in order to avoid duplication of services and enhance coordination of services, to require the colocation of employment services provided under the Wagner-Peyser Act at the comprehensive one-stop centers.".

[(B) CORE SERVICES.—Section 134(d)(2) (29 U.S.C. 2864(d)(2)) is amended—

[(i) in the matter preceding subparagraph (A), by striking "paragraph (1)(A)" and inserting "paragraph (1)";

[(ii) in subparagraph (A), by striking "under this subtitle" and inserting "under the programs described in section 121(b) and administered by one-stop partners, consistent with the requirements of such programs";

[(iii) by striking subparagraph (D) and inserting the following:

["(D) labor exchange services, including—

["(i) job search and placement assistance and, in appropriate cases, career counseling, including—

["(I) exposure to high wage, high skill jobs; and

["(II) nontraditional employment; and

["(ii) appropriate recruitment and other business services for all employers, including small employers, in the local area, which may include services described in this subsection, including information and referral to specialized business services not traditionally offered through the one-stop delivery system;";

[(iv) in subparagraph (E)(iii)—

[(I) by inserting ", career ladders," after "earnings"; and

[(II) by striking "and" at the end;

[(v) in subparagraph (F)—

[(I) by striking "and program cost information"; and

[(II) by striking "described in section 123";

[(vi) by striking subparagraph (H) and inserting the following:

["(H) provision of accurate information, in formats that are usable and understandable to all one-stop customers, relating to the availability of supportive services or assistance, including childcare, child support, medical or child health assistance under title XIX or XXI of the Social Security Act, benefits under the Food Stamp Act of 1977, the earned income tax credit under section 32 of the Internal Revenue Code of 1986, and assistance under a State program funded under part A of title IV of the Social Security Act and other supportive services and transportation provided through funds made available under such part, available in the local area, and referral to such services or assistance as appropriate;"; and

[(vii) in subparagraph (J), by striking "for—" and all that follows through "(ii) programs" and inserting "for programs".

[(C) INTENSIVE SERVICES.—Section 134(d)(3) (29 U.S.C. 2864(d)(3)) is amended—

[(i) by striking subparagraph (A) and inserting the following:

["(A) IN GENERAL.—

["(i) ELIGIBILITY.—Except as provided in clause (ii), funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), shall be used to provide intensive services to adults and dislocated workers, respectively—

["(I) who are unemployed and who, after an interview, evaluation, or assessment, have been determined by a one-stop operator or one-stop partner to be—

["(aa) unlikely or unable to obtain employment, that leads to self-sufficiency or wages comparable to or higher than previous employment, through core services described in paragraph (2); and

["(bb) in need of intensive services in order to obtain employment that leads to self-sufficiency or wages comparable to or higher than previous employment; or

["(II) who are employed, but who, after an interview, evaluation, or assessment are determined by a one-stop operator or one-stop partner to be in need of intensive services to obtain or retain employment that leads to self-sufficiency.

["(ii) SPECIAL RULE.—A new interview, evaluation, or assessment of a participant is not required under clause (i) if the one-stop operator or one-stop partner determines that it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program."; and

[(ii) in subparagraph (C)—

[(I) in clause (v), by striking "for participants seeking training services under paragraph (4)"; and

[(II) by adding at the end the following:

["(vii) Internships and work experience.

["(viii) Literacy activities relating to basic work readiness, and financial literacy activities.

["(ix) Out-of-area job search assistance and relocation assistance.

["(x) English language acquisition and integrated training programs.".

[(D) TRAINING SERVICES.—Section 134(d)(4) (29 U.S.C. 2864(d)(4)) is amended—

[(i) by striking subparagraph (A) and inserting the following:

["(A) IN GENERAL.—

["(i) ELIGIBILITY.—Except as provided in clause (ii), funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), shall be used to provide training services to adults and dislocated workers, respectively—

["(I) who, after an interview, evaluation, or assessment, and case management, have been determined by a one-stop operator or one-stop partner, as appropriate, to—

["(aa) be unlikely or unable to obtain or retain employment, that leads to self-sufficiency or wages comparable to or higher than previous employment, through the intensive services described in paragraph (3);

["(bb) be in need of training services to obtain or retain employment that leads to self-sufficiency or wages comparable to or higher than previous employment; and

["(cc) have the skills and qualifications to successfully participate in the selected program of training services;

["(II) who select programs of training services that are directly linked to the employment opportunities in the local area or region involved or in another area to which the adults or dislocated workers are willing to commute or relocate;

["(III) who meet the requirements of subparagraph (B); and

["(IV) who are determined to be eligible in accordance with the priority system in effect under subparagraph (E).

["(ii) SPECIAL RULE.—A new interview, evaluation, or assessment of a participant is not required under clause (i) if the one-stop operator or one-stop partner determines that it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program.";

[(ii) in subparagraph (B)(i), by striking "Except" and inserting "Notwithstanding section 479B of the Higher Education Act of 1965 (20 U.S.C. 1087uu) and except";

[(iii) in subparagraph (D)—

[(I) in clause (viii), by striking "and" after the semicolon;

[(II) in clause (ix), by striking the period and inserting "; and"; and

[(III) by adding at the end the following:

["(x) English language acquisition and integrated training programs.";

[(iv) in subparagraph (F)—

[(I) in clause (ii), by striking "referred to in subsection (c), shall make available—" and all that follows and inserting "shall make available a list of eligible providers of training services, and accompanying information, in accordance with section 122(d).";

[(II) in the heading of clause (iii), by striking "INDIVIDUAL TRAINING ACCOUNTS" and inserting "CAREER SCHOLARSHIP ACCOUNTS";

[(III) in clause (iii)—

[(aa) by striking "identifying information" and inserting "accompanying information";

[(bb) by striking "clause (ii)(I)" and inserting "clause (ii)"; and

[(cc) by striking "individual training account" and inserting "career scholarship account"; and

[(IV) by adding the following clause after clause (iii):

["(iv) COORDINATION.—Each local board may, through one-stop centers, coordinate career scholarship accounts with other Federal, State, local, or private job training programs or sources to assist the individual in obtaining training services."; and

[(v) in subparagraph (G)—

[(I) in the subparagraph heading, by striking "INDIVIDUAL TRAINING ACCOUNTS" and inserting "CAREER SCHOLARSHIP ACCOUNTS";

[(II) in clause (i), by striking "individual training accounts" and inserting "career scholarship accounts";

[(III) in clause (ii)—

[(aa) by striking "individual training account" and inserting "career scholarship account"; and

[(bb) in subclause (II), by striking "individual training accounts" and inserting "career scholarship accounts";

[(cc) in subclause (II), by striking "or" after the semicolon;

[(dd) in subclause (III), by striking the period and inserting "; or"; and

[(ee) by adding at the end the following:

["(IV) the local board determines that it would be most appropriate to award a contract to an institution of higher education in order to facilitate the training of multiple individuals in high-demand occupations, if such contract does not limit customer choice."; and

[(IV) in clause (iv)—

[(aa) by redesignating subclause (IV) as subclause (V); and

[(bb) by inserting after subclause (III) the following:

["(IV) Individuals with disabilities.".

[(3) PERMISSIBLE ACTIVITIES.—Section 134(e) (29 U.S.C. 2864(e)) is amended—

[(A) by striking the matter preceding paragraph (2) and inserting the following:

["(e) PERMISSIBLE LOCAL EMPLOYMENT AND TRAINING ACTIVITIES.—

["(1) IN GENERAL.—

["(A) ACTIVITIES.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide, through the one-stop delivery system involved—

["(i) customized screening and referral of qualified participants in training services described in subsection (d)(4) to employment;

["(ii) customized employment-related services to employers on a fee-for-service basis;

["(iii) customer support to enable members of hard-to-serve populations, including individuals with disabilities, to navigate among multiple services and activities for such populations;

["(iv) technical assistance and capacity building for serving individuals with disabilities in local areas, and by one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the provision of outreach, intake, assessments, and service delivery, and the development of performance measures;

["(v) employment and training assistance provided in coordination with child support enforcement activities of the State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

["(vi) activities to improve coordination between employment and training assistance and child support services and assistance provided by State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.);

["(vii) activities to improve coordination between employment and training assistance and cooperative extension programs carried out by the Department of Agriculture;

["(viii) activities to facilitate remote access to services provided through a one-stop delivery system, including facilitating access through the use of technology;

["(ix) activities—

["(I) to improve coordination between workforce investment activities carried out within the local area involved and economic development activities; and

["(II) to improve services and linkages between the local workforce investment system including the local one-stop delivery system, and all employers, including small employers in the local area, through services described under this section, including subparagraph (B);

["(x) training programs for displaced homemakers and for individuals training for nontraditional occupations, in conjunction with programs operated in the local area;

["(xi) using a portion of the funds allocated under section 133(b), activities to carry out business services and strategies that meet the workforce development needs of local area employers, as determined by the local board, consistent with the local plan under section 118, which services—

["(I) may be provided through effective business intermediaries working in conjunction with the local board, and may also be provided on a fee for service basis or through the leveraging of economic development and other resources as determined appropriate by the local board; and

["(II) may include—

["(aa) identifying for and disseminating to business, educators, and job seekers, information related to the workforce, economic and community development needs, and opportunities of the local economy;

["(bb) development and delivery of innovative workforce investment services and strategies for area businesses, which may include sectoral, industry cluster, regional skills alliances, career ladder, skills upgrading, skill standard development and certification, apprenticeship, and other effective initiatives for meeting the workforce development needs of area employers and workers;

["(cc) participation in seminars and classes offered in partnership with relevant organizations focusing on the workforce-related needs of area employers and job seekers;

["(dd) training consulting, needs analysis, and brokering services for area businesses, including the organization and aggregation of training (which may be paid for with funds other than those provided under this title), for individual employers and coalitions of employers with similar interests, products, or workforce needs;

["(ee) assistance to area employers in the aversion of layoffs and in managing reductions in force in coordination with rapid response activities;

["(ff) the marketing of business services offered under this Act, to appropriate area employers, including small and mid-sized employers;

["(gg) information referral on concerns affecting local employers; and

["(hh) other business services and strategies designed to better engage employers in workforce development activities and to make the workforce investment system more relevant to the workforce development needs of area businesses, as determined by the local board to be consistent with the purposes of this Act; and

["(xii) activities to adjust the self-sufficiency standards for local factors, or activities to adopt, calculate, or commission a self-sufficiency standard that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations.

["(B) WORK SUPPORT ACTIVITIES FOR LOW-WAGE WORKERS.—

["(i) IN GENERAL.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide, through the one-stop delivery system involved, work support activities designed to assist low-wage workers in retaining and enhancing employment. The one-stop partners shall coordinate the appropriate programs and resources of the partners with the activities and resources provided under this subparagraph.

["(ii) ACTIVITIES.—The activities described in clause (i) may include the provision of activities described in this section through the one-stop delivery system in a manner that enhances the opportunities of such workers to participate in the activities, such as the provision of activities described in this section during nontraditional hours and the provision of on-site child care while such activities are being provided.";

[(B) in paragraph (2), by striking the matter preceding subparagraph (A) and inserting the following:

["(2) SUPPORTIVE SERVICES.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide supportive services to adults and dislocated workers, respectively—"; and

[(C) by adding at the end the following:

["(4) INCUMBENT WORKER TRAINING PROGRAMS.—

["(A) IN GENERAL.—The local board may use up to 10 percent of the funds allocated to the local area involved under section 133(b) to pay for the Federal share of the cost of providing training through an incumbent worker training program carried out in accordance with this paragraph. The Governor or State board may make recommendations to the local board regarding incumbent worker training with statewide impact.

["(B) TRAINING ACTIVITIES.—The training program for incumbent workers carried out under this paragraph shall be carried out by the local board in conjunction with the employers or groups of employers of such workers for the purpose of assisting such workers in obtaining the skills necessary to retain employment or avert layoffs.

["(C) EMPLOYER SHARE REQUIRED.—

["(i) IN GENERAL.—Employers participating in the program carried out under this paragraph shall be required to pay the non-Federal share of the costs of providing the training to incumbent workers of the employers. The local board shall establish the non-Federal share of such costs, which may include in kind contributions. The non-Federal share shall not be less than—

["(I) 10 percent of the costs, for employers with 50 or fewer employees;

["(II) 25 percent of the costs, for employers with more than 50 employees but fewer than 100 employees; and

["(III) 50 percent of the costs, for employers with 100 or more employees.

["(ii) CALCULATION OF EMPLOYER SHARE.—The non-Federal share paid by such an employer may include the amount of the wages paid by the employer to a worker while the worker is attending a training program under this paragraph.".

[SEC. 122. PERFORMANCE ACCOUNTABILITY SYSTEM.

[(a) STATE PERFORMANCE MEASURES.—

[(1) INDICATORS OF PERFORMANCE.—Section 136(b)(2)(A) (29 U.S.C. 2871(b)(2)(A)) is amended—

[(A) in clause (i)—

[(i) in the matter preceding subclause (I), by striking " and (for participants who are eligible youth age 19 through 21) for youth activities authorized under section 129";

[(ii) by striking subclause (III) and inserting the following:

["(III) increases in earnings from unsubsidized employment; and"; and

[(iii) in subclause (IV), by striking ", or by participants" and all that follows through "unsubsidized employment"; and

[(B) by striking clause (ii) and inserting the following:

["(ii) CORE INDICATORS FOR ELIGIBLE YOUTH.—The core indicators of performance for youth activities authorized under section 129 shall consist of—

["(I) entry into employment, education or advanced training, or military service;

["(II) attainment of secondary school diplomas or their recognized equivalents, and postsecondary certificates; and

["(III) literacy or numeracy gains.".

[(2) ADDITIONAL INDICATORS.—Section 136(b)(2)(C) (29 U.S.C. 2871(b)(2)(C)) is amended to read as follows:

["(C) ADDITIONAL INDICATORS.—A State may identify in the State plan additional indicators for workforce investment activities under this subtitle, including indicators identified in collaboration with State business and industry associations, with employee representatives where applicable, and with local boards, to measure the performance of the workforce investment system in serving the workforce needs of business and industry in the State.".

[(3) LEVELS OF PERFORMANCE.—Section 136(b)(3)(A) (29 U.S.C. 2871(b)(3)(A)) is amended—

[(A) in clause (iii)—

[(i) in the heading, by striking "FOR FIRST 3 YEARS";

[(ii) by striking "and the customer satisfaction indicator of performance, for the first 3" and inserting "described in clauses (i) and (ii) of paragraph (2)(A) and the customer satisfaction indicator of performance, for the first 2"; and

[(iii) by inserting at the end the following: "Agreements on levels of performance for each of the core indicators of performance for the third and fourth program years covered by the State plan shall be reached prior to the beginning of the third program year covered by the State plan, and incorporated as a modification to the State plan.";

[(B) in clause (iv)—

[(i) in subclause (II)—

[(I) by striking "taking into account" and inserting "and shall ensure that the levels involved are adjusted, using objective statistical methods, based on";

[(II) by inserting "(such as differences in unemployment rates and job losses or gains in particular industries)" after "economic conditions";

[(III) by inserting "(such as indicators of poor work history, lack of work experience, educational or occupational skills attainment, dislocation from high-wage and benefit employment, low levels of literacy or English proficiency, disability status, homelessness, and welfare dependency)" after "program"; and

[(IV) by striking "and" at the end;

[(ii) in subclause (III), by striking the period and inserting "; and"; and

[(iii) by adding at the end the following:

["(IV) the extent to which the levels involved will assist the State in meeting the national goals described in clause (v).";

[(C) by striking clause (v) and inserting the following:

["(v) ESTABLISHMENT OF NATIONAL GOALS.—In order to promote enhanced performance outcomes on the performance measures and to facilitate the process of reaching agreements with the States under clause (iii) and to measure systemwide performance for the one-stop delivery systems of the States, the Secretary shall establish long-term national goals for the adjusted levels of performance for that systemwide performance to be achieved by the programs assisted under chapters 4 and 5 on the core indicators of performance described in subparagraphs (A) and (B) of subsection (b)(2). Such goals shall be established in accordance with the Government Performance and Results Act of 1993 in consultation with the States and other appropriate parties."; and

[(D) in clause (vi)—

[(i) by striking "or (v)"; and

[(ii) by striking "with the representatives described in subsection (i)" and inserting "with the States and other interested parties".

[(b) Local Performance Measures.—Section 136(c)(3) (29 U.S.C. 2871(c)(3))—

[(1) by striking "shall take into account" and inserting "shall ensure such levels are adjusted based on";

[(2) by inserting "(characteristics such as unemployment rates and job losses or gains in particular industries)" after "economic"; and

[(3) by inserting "(characteristics such as indicators of poor work history, lack of work experience, educational and occupational skills attainment, dislocation from high-wage and benefit employment, low levels of literacy or English proficiency, disability status, homelessness, and welfare dependency)" after "demographic".

[(c) Report.—Section 136(d) (29 U.S.C. 2871(d)) is amended—

[(1) in paragraph (1), by adding at the end the following: "In the case of a State or local area that chooses to expend funds under section 134(a)(3)(A)(i) or 134(e)(1)(A)(vii), respectively, the report also shall include the amount of such funds so expended and the percentage that such funds are of the funds available under section 134;

[(2) in paragraph (2)—

[(A) in subparagraph (E)—

[(i) by striking "(excluding participants who received only self-service and informational activities)"; and

[(ii) by striking "and" after the semicolon;

[(B) in subparagraph (F)—

[(i) by inserting "noncustodial parents with child support obligations, homeless individuals," after "displaced homemakers,"; and

[(ii) by striking the period and inserting a semicolon; and

[(C) by adding at the end the following:

["(G) the number of participants served and the cost per participant; and

["(H) the amount of adult and dislocated worker funds spent on—

["(i) core, intensive, and training services, respectively; and

["(ii) services provided under section 134(a)(3)(A)(i) or 134(e)(1)(A)(iii), if applicable."; and

[(3) by adding at the end the following:

["(4) Data validation.—In preparing the reports described in this subsection, the States shall establish procedures, consistent with guidelines issued by the Secretary, to ensure that the information contained in the reports is valid and reliable.".

[(d) Sanctions for State.—Section 136(g) is amended—

[(1) in paragraph (1)(B), by ,striking "If such failure continues for a second consecutive year" and inserting "If a State performs at less than 80 percent of the adjusted level of performance for a core indicator of performance described in subsection (b)(2)(A) for 2 consecutive years with respect to the same indicator of performance"; and

[(2) in paragraph (2), by striking "section 503" and inserting "subsection (i)(1)".

[(e) Sanctions for Local Area.—Section 136(h)(2)(A) (29 U.S.C. 2871(h)(2)(A)) is amended—

[(1) in the matter preceding clause (i), by striking "If such failure continues for a second consecutive year" and inserting "If a local area performs at less than 80 percent of the adjusted level of performance for a core indicator of performance described in subsection (b)(2)(A) for 2 consecutive years with respect to the same indicator of performance";

[(2) in clause (ii), by striking "or" after the semicolon;

[(3) by redesignating clause (iii) as clause (iv); and

[(4) by inserting after clause (ii) the following:

["(iii) redesignate the local area in accordance with section 116(a)(2); or".

[(f) Incentive Grants.—Section 136(i) (29 U.S.C. 2871(i)) is amended to read as follows:

["(i) Incentive Grants for States and Local Areas.—

["(1) Incentive grants for states.—

["(A) In general.—From funds appropriated under section 174(b) and made available under subsection (g)(2), the Secretary may award incentive grants to States for exemplary performance in carrying out programs under chapters 4 and 5.

["(B) Basis.—The Secretary shall award the grants on the basis—

["(i) of the States meeting or exceeding the performance measures established under subsection (b)(3)(A)(iii);

["(ii) of exemplary performance of the States in serving hard-to-serve populations (including performance relating to the levels of service provided and the performance outcomes on such performance measures with respect to the populations);

["(iii) of States that are effectively—

["(I) coordinating multiple systems into a more effective workforce development system, including coordination of employment services under the Wagner-Peyser Act and core activities under this title as well as partner programs described in section 121;

["(II) expanding access to training, including through increased leveraging of resources other than those funded through programs under this title; or

["(III) implementing innovative business and economic development initiatives.

["(iv) of such other factors relating to the performance of the States under this title as the Secretary determines are appropriate.

["(C) Use of funds.—The funds awarded to a State under this paragraph may be used to carry out any activities authorized for States under chapters 4 and 5, title II of this Act, and the Carl D. Perkins Vocational and Technical Education Act of 1998, including demonstration projects and innovative programs for hard-to-serve populations.

["(2) Incentive grants for local areas.—

["(A) In general.—From funds reserved under sections 128(a) and 133(a)(1), the Governor involved shall award incentive grants to local areas for exemplary performance in carrying out programs under chapters 4 and 5.

["(B) Basis.—The Governor shall award the grants on the basis—

["(i) that the local areas met or exceeded the performance measures established under subsection (c)(2) relating to indicators described in subsection (b)(3)(A)(iii);

["(ii) of exemplary performance of the local areas in serving hard-to-serve populations; or

["(iii) of States and local areas that are effectively—

["(I) coordinating multiple systems into a comprehensive workforce development system, including coordination of employment services under the Wagner-Peyser Act and core activities under this title as well as partner programs described in section 121;

["(II) expanding access to training, including through increased leveraging of resources other than those funded through programs under this title; or

["(III) implementing innovative business and economic development initiatives.

["(C) Use of funds.—The funds awarded to a local area under this paragraph may be used to carry out activities authorized for local areas under chapters 4 and 5, and such demonstration projects or innovative programs for hard-to-serve populations as may be approved by the Governor.".

[(g) Use of Core Measures in Other Department of Labor Programs.—Section 136 (29 U.S.C. 2871) is amended by adding at the end the following:

["(j) Use of Core Indicators for Other Programs.—In addition to the programs carried out under chapters 4 and 5, and consistent with the requirements of the applicable authorizing laws, the Secretary shall use the indicators of performance described in subparagraphs (A) and (B) of subsection (b)(2) to assess the effectiveness of the programs described in clauses (i), (ii), and (vi) of section 121(b)(1)(B) that are carried out by the Secretary.".

[(h) Previous Definitions of Core Indicators and Incentive Grants.—Sections 502 and 503 (29 U.S.C. 9272 and 9273) are repealed.

[SEC. 123. AUTHORIZATION OF APPROPRIATIONS.

[(a) Youth Activities.—Section 137(a) (29 U.S.C. 2872(a)) is amended by striking "such sums as may be necessary for each of fiscal years 1999 through 2003" and inserting " such sums as may be necessary for each of fiscal years 2004 through 2009".

[(b) Adult Employment and Training Activities.—Section 137(b) (29 U.S.C. 2872(b)) is amended by striking "such sums as may be necessary for each of fiscal years 1999 through 2003" and inserting " such sums as may be necessary for each of fiscal years 2004 through 2009".

[(c) Dislocated Worker Employment and Training Activities.—Section 137(c) (29 U.S.C. 2872(c)) is amended by striking "such sums as may be necessary for each of fiscal years 1999 through 2003" and inserting "such sums as may be necessary for each of fiscal years 2004 through 2009".

[Subtitle C—Job Corps

[SEC. 131. JOB CORPS.

[(a) Eligibility.—Section 144(3) (29 U.S.C. 2884(3)) is amended by adding at the end the following:

["(F) A child eligible for assistance under section 477 of the Social Security Act.".

[(b) Implementation of Standards and Procedures.—Section 145(a)(3) (29 U.S.C. 2885(a)(3)) is amended—

[(1) in subparagraph (B), by striking "and" after the semicolon;

[(2) in subparagraph (C), by striking the period and inserting "; and"; and

[(3) by adding at the end the following:

["(D) child welfare agencies that are responsible for children in foster care and children eligible for assistance under section 477 of the Social Security Act.".

[(c) Industry Councils.—Section 154(b) (29 U.S.C. 2894(b)) is amended—

[(1) in paragraph (1)(A), by striking "local and distant"; and

[(2) by adding at the end the following:

["(3) EMPLOYERS OUTSIDE OF LOCAL AREA.—The industry council may include, or otherwise provide for consultation with, employers from outside the local area who are likely to hire a significant number of enrollees from the Job Corps center.

["(4) SPECIAL RULE FOR SINGLE LOCAL AREA STATES.—In the case of a single local area State designated under section 116(b), the industry council shall include a representative of the State Board.".

[(d) INDICATORS OF PERFORMANCE.—Section 159 (29 U.S.C. 2983) is amended—

[(1) in subsection (c)—

[(A) by striking paragraph (1) and inserting the following:

["(1) PERFORMANCE INDICATORS.—The Secretary shall annually establish expected levels of performance for Job Corps centers and the Job Corps program relating to each of the core indicators of performance for youth activities identified in section 136(b)(2)(A)(ii).";

[(B) in paragraph (2), by striking "measures" each place it appears and inserting "indicators"; and

[(C) in paragraph (3)—

[(i) in the first sentence, by striking "core performance measures, as compared to the expected performance level for each performance measure" and inserting "performance indicators described in paragraph (1), as compared to the expected level of performance established under paragraph (1) for each performance measure"; and

[(ii) in the second sentence, by striking "measures" each place it appears and inserting "indicators"; and

[(2) in subsection (f)(2), in the first sentence, by striking "core performance measures" and inserting "indicators of performance".

[(e) AUTHORIZATION OF APPROPRIATIONS.—Section 161 (29 U.S.C. 2901) is amended by striking "1999 through 2003" and inserting "2004 through 2009".

[Subtitle D—National Programs

[SEC. 141. NATIVE AMERICAN PROGRAMS.

[(a) ADVISORY COUNCIL.—Section 166(h)(4)(C) (29 U.S.C. 2911(h)(4)(C)) is amended to read as follows:

["(C) DUTIES.—The Council shall advise the Secretary on the operation and administration of the programs assisted under this section, including the selection of the individual appointed as head of the unit established under paragraph (1).".

[(b) ASSISTANCE TO UNIQUE NATIVE POPULATIONS IN ALASKA AND HAWAII.—Section 166(j) (29 U.S.C. 2911(j)) is amended to read as follows:

["(j) ASSISTANCE TO UNIQUE NATIVE POPULATIONS IN ALASKA AND HAWAII.—

["(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary is authorized to provide assistance to unique native populations who reside in Alaska or Hawaii to improve job training and workforce investment activities.

["(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 2004.".

[(c) PERFORMANCE INDICATORS.—Section 166 (29 U.S.C. 2911 is amended by adding at the end the following:

["(c) PERFORMANCE INDICATORS.—

["(1) DEVELOPMENT OF INDICATORS.—The Secretary, in consultation with the Native American Employment and Training Council, shall develop a set of performance indicators and standards which shall be applicable to programs under this section.

["(2) SPECIAL CONSIDERATIONS.—Such performance indicators and standards shall take into account—

["(A) the purposes of the programs under this section as described in paragraph (a)(1);

["(B) the needs of the groups served by this section, including the differences in needs among such groups in various geographic service areas; and

["(C) the economic circumstances of the communities served, including differences in circumstances among various geographic service areas.".

[SEC. 142. MIGRANT AND SEASONAL FARMWORKER PROGRAMS.

[Section 167(d) (29 U.S.C. 2912(d)) is amended by inserting "(including permanent housing)" after "housing".

[SEC. 143. VETERANS' WORKFORCE INVESTMENT PROGRAMS.

[Section 168(a)(3)(C) (29 U.S.C. 2913(a)(3)(C)) is amended by striking "section 134(c)" and inserting "section 121(e)".

[SEC. 144. YOUTH CHALLENGE GRANTS.

[Section 169 (29 U.S.C. 2914) is amended to read as follows:

["SEC. 169. YOUTH CHALLENGE GRANTS.

["(a) IN GENERAL.—Of the amounts reserved by the Secretary under section 127(a)(1)(A) for a fiscal year—

["(1) the Secretary shall use not less than 80 percent to award competitive grants under subsection (b); and

["(2) the Secretary may use not more than 20 percent to award discretionary grants under subsection (c).

["(b) COMPETITIVE GRANTS TO STATES AND LOCAL AREAS.—

["(1) ESTABLISHMENT.—From the funds described in subsection (a)(1), the Secretary shall award competitive grants to eligible entities to carry out activities authorized under this subsection to assist eligible youth in acquiring the skills, credentials, and employment experience necessary to achieve the performance outcomes for youth described in section 136.

["(2) ELIGIBLE ENTITY.—In this subsection, the term 'eligible entity' means—

["(A) a State or consortium of States;

["(B) a local board or consortium of local boards;

["(C) a recipient of a grant under section 166 (relating to Native American programs); or

["(D) a public or private entity (including a consortium of such entities) with expertise in the provision of youth activities, applying in partnership with a local board or consortium of local boards.

["(3) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

["(A) a description of the activities the eligible entity will provide to eligible youth under this subsection, and how the eligible entity will collaborate with State and local workforce investments systems established under this title in the provision of such activities;

["(B) a description of the programs of demonstrated effectiveness on which the provision of the activities under subparagraph (A) are based, and a description of how such activities will expand the base of knowledge relating to the provision of activities for youth;

["(C) a description of the State, local, and private resources that will be leveraged to provide the activities described under subparagraph (A) in addition to funds provided under this subsection, and a description of the extent of the involvement of employers in the activities;

["(D) the levels of performance the eligible entity expects to achieve with respect to the indicators of performance for youth specified in section 136(b)(2)(A)(ii); and

["(E) an assurance that the State board of each State in which the proposed activities are to be carried out had the opportunity to review the application, and including the comments, if any, of the affected State boards on the application, except that this subparagraph shall not apply to an eligible entity described in paragraph (2)(C).

["(4) FACTORS FOR AWARD.—

["(A) IN GENERAL.—In awarding grants under this subsection the Secretary shall consider—

["(i) the quality of the proposed activities;

["(ii) the goals to be achieved;

["(iii) the likelihood of successful implementation;

["(iv) the extent to which the proposed activities are based on proven strategies or the extent to which the proposed activities will expand the base of knowledge relating to the provision of activities for youth;

["(v) the extent of collaboration with the State and local workforce investment systems in carrying out the proposed activities;

["(vi) the extent of employer involvement in the proposed activities;

["(vii) whether there are other Federal and non-Federal funds available for similar activities to the proposed activities, and the additional State, local, and private resources that will be provided to carry out the proposed activities; and

["(viii) the quality of proposed activities in meeting the needs of the youth to be served.

["(B) EQUITABLE GEOGRAPHIC DISTRIBUTION.—In awarding grants under this subsection the Secretary shall ensure an equitable distribution of such grants across geographically diverse areas.

["(5) USE OF FUNDS.—

["(A) IN GENERAL.—An eligible entity that receives a grant under this subsection shall use the grant funds to carry out activities that are designed to assist youth in acquiring the skills, credentials, and employment experience that are necessary to succeed in the labor market, including the activities identified in section 129.

["(B) ACTIVITIES.—The activities carried out pursuant to subparagraph (A) may include the following:

["(i) Training and internships for out-of-school youth in sectors of the economy experiencing, or projected to experience, high growth.

["(ii) Dropout prevention activities for in-school youth.

["(iii) Activities designed to assist special youth populations, such as court-involved youth and youth with disabilities.

["(iv) Activities combining remediation of academic skills, work readiness training, and work experience, and including linkages to postsecondary education, apprenticeships, and career-ladder employment.

["(v) Activities, including work experience, paid internships, and entrepreneurial training, in areas where there is a migration of youth out of the areas.

["(C) PARTICIPANT ELIGIBILITY.—Youth who are 14 years of age through 21 years of age, as of the time the eligibility determination is made, may be eligible to participate in activities carried out under this subsection.

["(6) GRANT PERIOD.—The Secretary shall make a grant under this subsection for a period of 2 years and may renew the grant, if the eligible entity has performed successfully, for a period of not more than 3 succeeding years.

["(7) MATCHING FUNDS REQUIRED.—The Secretary shall require that an eligible entity that receives a grant under this subsection provide non-Federal matching funds in an amount to be determined by the Secretary that is not less than 10 percent of the cost of activities carried out under the grant. The Secretary may require that such non-Federal matching funds be provided in cash resources, noncash resources, or a combination of cash and noncash resources.

["(8) EVALUATION.—The Secretary shall reserve not more than 3 percent of the funds described in subsection (a)(1) to provide technical assistance to, and conduct evaluations of (using appropriate techniques as described in section 172(c)), the projects funded under this subsection.

["(c) DISCRETIONARY GRANTS FOR YOUTH ACTIVITIES.—

["(1) IN GENERAL.—From the funds described in subsection (a)(2), the Secretary may award grants to eligible entities to provide activities that will assist youth in preparing for, and entering and retaining, employment.

["(2) ELIGIBLE ENTITY.—In this subsection, the term 'eligible entity' means a public or private entity that the Secretary determines would effectively carry out activities relating to youth under this subsection.

["(3) EQUITABLE DISTRIBUTION TO RURAL AREAS.—In awarding grants under this subsection the Secretary shall ensure an equitable distribution of such grants to rural areas.

["(4) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

["(5) USE OF FUNDS.—

["(A) IN GENERAL.—An eligible entity that receives a grant under this subsection shall use the grant funds to carry out—

["(i) activities that will assist youth in preparing for, and entering and retaining, employment, including the activities described in section 129 for out-of-school youth;

["(ii) activities designed to assist in-school youth to stay in school and gain work experience;

["(iii) activities designed to assist youth in economically distressed areas; and

["(iv) such other activities that the Secretary determines are appropriate to ensure that youth entering the workforce have the skills needed by employers.

["(B) PARTICIPANT ELIGIBILITY.—Youth who are 14 years of age through 21 years of age, as of the time the eligibility determination is made, may be eligible to participate in activities carried out under this subsection.

["(6) MATCHING FUNDS REQUIRED.—The Secretary shall require that an eligible entity that receives a grant under this subsection provide non-Federal matching funds in an amount to be determined by the Secretary that is not less than 10 percent of the cost of activities carried out under the grant. The Secretary may require that such non-Federal matching funds be provided in cash resources, noncash resources, or a combination of cash and noncash resources.

["(7) EVALUATIONS.—The Secretary may require that an eligible entity that receives a grant under this subsection participate in an evaluation of activities carried out under this subsection, including an evaluation using the techniques described in section 172(c).".

[SEC. 145. TECHNICAL ASSISTANCE.

[Section 170 (29 U.S.C. 2915) is amended—

[(1) in subsection (a)(1), by—

[(A) inserting "the training of staff providing rapid response services, the training of other staff of recipients of funds under this title, the training of members of State boards and local boards, peer review activities under this title," after "localities,"; and

[(B) striking "from carrying out activities" and all that follows through the period and inserting "to implement the amendments made by the Workforce Investment Act Amendments of 2003.";

[(2) in subsection (a)(2), by adding at the end the following: "The Secretary shall also hire staff qualified to provide the assistance described in paragraph (1).";

[(3) in subsection (b)(2), by striking the last sentence and inserting "Such projects shall be administered by the Employment and Training Administration."; and

[(4) by adding at the end the following:

["(c) BEST PRACTICES COORDINATION.—The Secretary shall—

["(1) establish a system through which States may share information regarding best practices with regard to the operation of workforce investment activities under this Act;

["(2) evaluate and disseminate information regarding best practices and identify knowledge gaps; and

["(3) commission research under section 172 to address knowledge gaps identified under paragraph (2).".

[SEC. 146. DEMONSTRATION, PILOT, MULTISERVICE, RESEARCH, AND MULTISTATE PROJECTS.

[(a) DEMONSTRATION AND PILOT PROJECTS.—Section 171(b) (29 U.S.C. 2916(b)) is amended—

[(1) in paragraph (1)—

[(A) by striking "Under a" and inserting "Consistent with the priorities specified in the";

[(B) by striking subparagraphs (A) through (E) and inserting the following:

["(A) projects that assist national employers in connecting with the workforce investment system established under this title in order to facilitate the recruitment and employment of needed workers for career ladder jobs and to provide information to such system on skills and occupations in demand;

["(B) projects that promote the development of systems that will improve the maximum effectiveness of programs carried out under this title;

["(C) projects that focus on opportunities for employment in industries and sectors of industries that are experiencing, or are likely to experience, high rates of growth and jobs with wages leading to self-sufficiency;

["(D) projects that establish and implement innovative integrated systems training programs targeted to dislocated, disadvantaged incumbent workers that utilize equipment and curriculum designed in partnership with local, regional, or national industries that is computerized, individualized, self-paced, and interactive that delivers skills and proficiencies that are measurable to train workers for employment in the operations, repair, and maintenance of high-tech equipment that is used in integrated systems technology;

["(E) projects carried out by States and local areas to test innovative approaches to delivering employment-related services;";

[(C) in subparagraph (G), by striking "and" after the semicolon; and

[(D) by striking subparagraph (H) and inserting the following:

["(H) projects that provide retention grants to qualified job training programs upon placement or retention of a low-income individual trained by the program in employment with a single employer for a period of 1 year, if such employment provides the low-income individual with an annual salary that is not less than twice the poverty line applicable to the individual;

["(I) targeted innovation projects that improve access to and delivery of employment and training services, with emphasis given to projects that incorporate advanced technologies to facilitate the connection of individuals to the information and tools they need to upgrade skills; and

["(J) projects that promote the use of distance learning, enabling students to take courses through the use of media technology such as videos, teleconferencing computers, and the Internet."; and

[(2) in paragraph (2)—

[(A) by striking subparagraph (B); and

[(B) by redesignating subparagraph (C) as subparagraph (B).

[(b) MULTISERVICE PROJECTS.—Section 171(c)(2)(B) (29 U.S.C. 2916(c)(2)(B)) is amended to read as follows:

["(B) STUDIES AND REPORTS.—

["(i) NET IMPACT STUDIES AND REPORTS.—

["(I) IN GENERAL.—The Secretary shall conduct studies to determine the net impacts of programs, services, and activities carried out under this title.

["(II) REPORTS.—The Secretary shall prepare and disseminate to the public reports containing the results of the studies conducted under subclause (I).

["(ii) STUDY ON RESOURCES AVAILABLE TO ASSIST OUT-OF-SCHOOL YOUTH.—The Secretary, in coordination with the Secretary of Education, may conduct a study examining the resources available at the Federal, State, and local levels to assist out-of-school youth in obtaining the skills, credentials, and work experience necessary to become successfully employed, including the availability of funds provided through average daily attendance and other methodologies used by States and local areas to distribute funds.

["(iii) STUDY OF INDUSTRY-BASED CERTIFICATION AND CREDENTIALS.—

["(I) IN GENERAL.—The Secretary shall conduct a study concerning the role and benefits of credentialing and certification to businesses and workers in the economy and the implications of certification to the services provided through the workforce investment system. The study may examine issues such as—

["(aa) the characteristics of successful credentialing and certification systems that serve business and individual needs;

["(bb) the relative proportions of certificates and credentials attained with assistance from the public sector, with private-sector training of new hires or incumbent workers, and by individuals on their own initiative without other assistance, respectively;

["(cc) the return on human capital investments from occupational credentials and industry-based skill certifications, including the extent to which acquisition of such credentials or certificates enhances outcomes such as entry into employment, retention, earnings (including the number and amount of wage increases), career advancement, and layoff aversion;

["(dd) the implications of the effects of skill certifications and credentials to the types and delivery of services provided through the workforce investment system;

[“(ee) the role that Federal and State governments play in fostering the development of and disseminating credentials and skill standards; and

[“(ff) the use of credentials by businesses to achieve goals for workforce skill upgrading and greater operating efficiency.

[“(II) REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress a report containing the results of the study conducted pursuant to subclause (I). Such report may include any recommendations that the Secretary determines are appropriate to include in such report relating to promoting the acquisition of industry-based certification and credentials, and the appropriate role of the Department of Labor and the workforce investment system in supporting the needs of business and individuals with respect to such certification and credentials.

[“(iv) STUDY OF EFFECTIVENESS OF WORKFORCE INVESTMENT SYSTEM IN MEETING BUSINESS NEEDS.—

[“(I) IN GENERAL.—Using funds available to carry out this section jointly with funds available to the Secretary of Commerce and Administrator of the Small Business Administration, the Secretary, in coordination with the Secretary of Commerce and the Administrator of the Small Business Administration, may conduct a study of the effectiveness of the workforce investment system in meeting the needs of business, with particular attention to the needs of small business, including in assisting workers to obtain the skills needed to utilize emerging technologies. In conducting the study, the Secretary, in coordination with the Secretary of Commerce and the Administrator of the Small Business Administration, may examine issues such as—

[“(aa) methods for identifying the workforce needs of businesses and how the requirements of small businesses may differ from larger establishments;

[“(bb) business satisfaction with the workforce investment system, with particular emphasis on the satisfaction of small businesses;

[“(cc) the extent to which business is engaged as a collaborative partner in the workforce investment system, including the extent of business involvement as members of State boards and local boards, and the extent to which such boards and one-stop centers effectively collaborate with business and industry leaders in developing workforce investment strategies, including strategies to identify high growth opportunities;

[“(dd) ways in which the workforce investment system addresses changing skill needs of business that result from changes in technology and work processes;

[“(ee) promising practices for serving small businesses;

[“(ff) the extent and manner in which the workforce investment system uses technology to serve business and individual needs, and how uses of technology could enhance efficiency and effectiveness in providing services; and

[“(gg) the extent to which various segments of the labor force have access to and utilize technology to locate job openings and apply for jobs, and characteristics of individuals utilizing such technology (such as age, gender, race or ethnicity, industry sector, and occupational groups).

[“(II) REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress a report containing the results of the study described in clause (I). Such report may include any recommendations the Secretary determines are appropriate to include in such report, including ways to enhance the effectiveness of the workforce investment system in meeting the needs of business for skilled workers.”.

[(c) CONFORMING AMENDMENT.—Section 171(d) (29 U.S.C. 2916(d)) is amended by striking the last sentence.

[(d) WAIVER AUTHORITY TO CARRY OUT DEMONSTRATIONS AND EVALUATIONS.—Section 171 (29 U.S.C. 2916) is amended by adding at the end the following:

[“(d) WAIVER AUTHORITY.—In carrying out demonstration, pilot, multiservice, research, and multistate projects under this section and evaluations under section 172, the Secretary may waive any provisions of this section that the Secretary determines would prevent the Secretary from carrying out such projects and evaluations, except for provisions relating to wage and labor standards such as nondisplacement protections, grievance procedures and judicial review, and nondiscrimination provisions.”.

[(e) NEXT GENERATION TECHNOLOGIES.—Section 171 (29 U.S.C. 2916) is amended further by adding at the end the following:

[“(e) SKILL CERTIFICATION PILOT PROJECTS.—

[“(1) PILOT PROJECTS.—In accordance with subsection (b) and from funds appropriated pursuant to paragraph (10), the Secretary of Labor shall establish and carry out not more than 10 pilot projects to establish a system of industry-validated national certifications of skills, including—

[“(A) not more than 8 national certifications of skills in high-technology industries, including biotechnology, telecommunications, highly automated manufacturing (including semiconductors), nanotechnology, and energy technology; and

[“(B) not more than 2 cross-disciplinary national certifications of skills in homeland security technology.

[“(2) GRANTS TO ELIGIBLE ENTITIES.—In carrying out the pilot projects, the Secretary of Labor shall make grants to eligible entities, for periods of not less than 36 months and not more than 48 months, to carry out the authorized activities described in paragraph (7) with respect to the certifications described in paragraph (1). In awarding grants under this subsection the Secretary of Labor shall take into consideration awarding grants to eligible entities from diverse geographic areas, including rural areas.

[“(3) ELIGIBLE ENTITIES.—

[“(A) DEFINITION OF ELIGIBLE ENTITY.—In this subsection the term ‘eligible entity’ means an entity that shall work in conjunction with a local board and shall include as a principal participant one or more of the following:

[“(i) A community college or consortium of community colleges.

[“(ii) An advanced technology education center.

[“(iii) A local workforce investment board.

[“(iv) A representative of a business in a target industry for the certification involved.

[“(v) A representative of an industry association, labor organization, or community development organization.

[“(B) HISTORY OF DEMONSTRATED CAPABILITY REQUIRED.—To be eligible to receive a grant under this subsection, an eligible entity shall have a history of demonstrated capability for effective collaboration with industry on workforce development activities that is consistent with the goals of this Act.

[“(4) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary of Labor at such time, in such manner, and containing such information as the Secretary may require.

[“(5) CRITERIA.—The Secretary of Labor shall establish criteria, consistent with paragraph (6), for awarding grants under this subsection.

[“(6) PRIORITY.—In selecting eligible entities to receive grants under this subsection, the Secretary of Labor shall give priority to eligible entities that demonstrate the availability of and ability to provide matching funds from industry or nonprofit sources. Such matching funds may be provided in cash or in kind.

[“(7) AUTHORIZED ACTIVITIES.—

[“(A) IN GENERAL.—An eligible entity that receives a grant under this subsection shall use the funds made available through the grant—

[“(i) to facilitate the establishment of certification requirements for a certification described in paragraph (1) for an industry;

[“(ii) to develop and initiate a certification program that includes preparatory courses, course materials, procedures, and examinations, for the certification; and

[“(iii) to collect and analyze data related to the program at the program's completion, and to identify best practices (consistent with paragraph (8)) that may be used by local and State workforce investment boards in the future.

[“(B) BASIS FOR REQUIREMENTS.—The certification requirements shall be based on applicable skill standards for the industry involved that have been developed by or linked to national centers of excellence under the National Science Foundation's Advanced Technological Education Program. The requirements shall require an individual to demonstrate an identifiable set of competencies relevant to the industry in order to receive certification. The requirements shall be designed to provide evidence of a transferable skill set that allows flexibility and mobility of workers within a high technology industry.

[“(C) RELATIONSHIP TO TRAINING AND EDUCATION PROGRAMS.—The eligible entity shall ensure that—

[“(i) a training and education program related to competencies for the industry involved, that is flexible in mode and timeframe for delivery and that meets the needs of those seeking the certification, is offered; and

[“(ii) the certification program is offered at the completion of the training and education program.

[“(D) RELATIONSHIP TO THE ASSOCIATE DEGREE.—The eligible entity shall ensure that the certification program is consistent with the requirements for a 2-year associate degree.

[“(E) AVAILABILITY.—The eligible entity shall ensure that the certification program is open to students pursuing associate degrees, employed workers, and displaced workers.

[“(8) CONSULTATION.—The Secretary of Labor shall consult with the Director of the National Science Foundation to ensure that the pilot projects build on the expertise and information about best practices gained through the implementation of the National Science Foundation's Advanced Technological Education Program.

[“(9) CORE COMPONENTS; GUIDELINES; REPORTS.—After collecting and analyzing the data obtained from the pilot programs, the Secretary of Labor shall—

[“(A) establish the core components of a model high-technology certification program;

[“(B) establish guidelines to assure development of a uniform set of standards and policies for such programs;

[“(C) submit and prepare a report on the pilot projects to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives; and

[“(D) make available to the public both the data and the report.

[“(10) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated under section 174(b), there is authorized to be appropriated $30,000,000 for fiscal year 2004 to carry out this subsection.”.

[(f) INTEGRATED WORKFORCE TRAINING PROGRAMS FOR ADULTS WITH LIMITED ENGLISH PROFICIENCY.—Section 171 (29 U.S.C. 2916) is amended further by adding at the end the following:

[“(f) INTEGRATED WORKFORCE TRAINING PROGRAMS FOR ADULTS WITH LIMITED ENGLISH PROFICIENCY.—

[“(1) DEFINITIONS.—In this subsection:

[“(A) INTEGRATED WORKFORCE TRAINING.—The term ‘integrated workforce training’ means training that integrates occupational skills training with language acquisition.

[“(B) SECRETARY.—The term ‘Secretary’ means the Secretary of Labor in consultation with the Secretary of Education.

[“(2) DEMONSTRATION PROJECT.—In accordance with subsection (b) and from funds appropriated pursuant to paragraph (11), the Secretary shall establish and implement a national demonstration project designed to both analyze and provide data on workforce training programs that integrate English language acquisition and occupational training.

[“(3) GRANTS.—

[“(A) IN GENERAL.—In carrying out the demonstration project, the Secretary shall make not less than 10 grants, on a competitive basis, to eligible entities to provide the integrated workforce training programs. In awarding grants under this subsection the Secretary shall take into consideration awarding grants to eligible entities from diverse geographic areas, including rural areas.

[“(B) PERIODS.—The Secretary shall make the grants for periods of not less than 24 months and not more than 48 months.

[“(4) ELIGIBLE ENTITIES.—

[“(A) IN GENERAL.—To be eligible to receive a grant under this subsection, an eligible entity shall work in conjunction with a local board and shall include as a principal participant one or more of the following:

[“(i) An employer or employer association.

[“(ii) A nonprofit provider of English language instruction.

[“(iii) A provider of occupational or skills training.

[“(iv) A community-based organization.

[“(v) An educational institution, including a 2- or 4-year college, or a technical or vocational school.

[“(vi) A labor organization.

[“(vii) A local board.

[“(B) EXPERTISE.—To be eligible to receive a grant under this subsection, an eligible entity shall have proven expertise in—

[“(i) serving individuals with limited English proficiency, including individuals with lower levels of oral and written English; and

[“(ii) providing workforce programs with training and English language instruction.

[“(5) APPLICATIONS.—

[“(A) IN GENERAL.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[“(B) CONTENTS.—Each application submitted under subparagraph (A) shall—

[“(i) contain information, including capability statements, that demonstrates that the eligible entity has the expertise described in paragraph (4)(B); and

[“(ii) include an assurance that the program to be assisted shall—

[“(I) establish a generalized adult bilingual workforce training and education model that integrates English language acquisition and occupational training, and incorporates the unique linguistic and cultural factors of the participants;

[“(II) establish a framework by which the employer, employee, and other relevant members of the eligible entity can create a career development and training plan that assists both the employer and the employee to meet their long-term needs;

[“(III) ensure that this framework takes into consideration the knowledge, skills, and abilities of the employee with respect to both the current and economic conditions of the employer and future labor market conditions relevant to the local area; and

[“(IV) establish identifiable measures so that the progress of the employee and employer and the relative efficacy of the program can be evaluated and best practices identified.

[“(6) CRITERIA.—The Secretary of Labor shall establish criteria for awarding grants under this subsection.

[“(7) INTEGRATED WORKFORCE TRAINING PROGRAMS.—

[“(A) PROGRAM COMPONENTS.—

[“(i) REQUIRED COMPONENTS.—Each program that receives funding under this subsection shall—

[“(I) test an individual's English language proficiency levels to assess oral and literacy gains from the beginning and throughout program enrollment;

[“(II) combine training specific to a particular occupation or occupational cluster, with—

[“(aa) English language instruction, such as instruction through English as a Second Language program, or English for Speakers of Other Languages;

[“(bb) basic skills instruction; and

[“(cc) supportive services;

[“(III) effectively integrate public and private sector entities, including the local workforce investment system and its functions, to achieve the goals of the program; and

[“(IV) require matching or in-kind resources from private and nonprofit entities.

[“(ii) PERMISSIBLE COMPONENTS.—The program may offer other services, as necessary to promote successful participation and completion, including work-based learning, substance abuse treatment, and mental health services.

[“(B) GOAL.—Each program that receives funding under this subsection shall be designed to prepare limited English proficient adults for and place such adults in employment in growing industries with identifiable career ladder paths.

[“(C) PROGRAM TYPES.—In selecting programs to receive funding under this subsection, the Secretary shall select programs that meet 1 or more of the following criteria:

[“(i) A program that—

[“(I) serves unemployed, limited English proficient individuals with significant work experience or substantial education but persistently low wages; and

[“(II) aims to prepare such individuals for and place such individuals in higher paying employment, defined for purposes of this subparagraph as employment that provides at least 75 percent of the median wage in the local area.

[“(ii) A program that—

[“(I) serves limited English proficient individuals with lower levels of oral and written fluency, who are working but at persistently low wages; and

[“(II) aims to prepare such individuals for and place such individuals in higher paying employment, through services provided at the worksite, or at a location central to several worksites, during work hours.

[“(iii) A program that—

[“(I) serves unemployed, limited English proficient individuals with lower levels of oral and written fluency, who have little or no work experience; and

[“(II) aims to prepare such individuals for and place such individuals in employment through services that include subsidized employment, in addition to the components required in subparagraph (A)(i).

[“(iv) A program that includes funds from private and nonprofit entities.

[“(D) PROGRAM APPROACHES.—In selecting programs to receive funding under this subsection, the Secretary shall select programs with different approaches to integrated workforce training, in different contexts, in order to obtain comparative data on multiple approaches to integrated workforce training and English language instruction, to ensure programs are tailored to characteristics of individuals with varying skill levels and to assess how different curricula work for limited English proficient populations. Such approaches may include—

[“(i) bilingual programs in which the workplace language component and the training are conducted in a combination of an individual's native language and English;

[“(ii) integrated workforce training programs that combine basic skills, language instruction, and job specific skills training; or

[“(iii) sequential programs that provide a progression of skills, language, and training to ensure success upon an individual's completion of the program.

[“(8) EVALUATION BY ELIGIBLE ENTITY.—Each eligible entity that receives a grant under this subsection for a program shall carry out a continuous program evaluation and an evaluation specific to the last phase of the program operations.

[“(9) EVALUATION BY SECRETARY.—

[“(A) IN GENERAL.—The Secretary shall conduct an evaluation of program impacts of the programs funded under the demonstration project, with a random assignment, experimental design impact study done at each worksite at which such a program is carried out.

[“(B) DATA COLLECTION AND ANALYSIS.—The Secretary shall collect and analyze the data from the demonstration project to determine program effectiveness, including gains in language proficiency, acquisition of skills, and job advancement for program participants.

[“(C) REPORT.—The Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives, and make available to the public, a report on the demonstration project, including the results of the evaluation.

[“(10) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to recipients of grants under this subsection throughout the grant periods.

["(11) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated under section 174(b), there is authorized to be appropriated $10,000,000 for fiscal year 2004 to carry out this subsection.".

[SEC. 147. NATIONAL DISLOCATED WORKER GRANTS.

[(a) IN GENERAL.—Section 173 (29 U.S.C. 2918) is amended—

[(1) by striking the heading and inserting the following:

["SEC. 173. NATIONAL DISLOCATED WORKER GRANTS.";

[and

[(2) in subsection (a)—

[(A) by striking "national emergency grants" and inserting "national dislocated worker grants";

[(B) in paragraph (1), by striking "subsection (c)" and inserting "subsection (b)";

[(C) in paragraph (3), by striking "and" after the semicolon; and

[(D) by striking paragraph (4) and inserting the following:

["(4) to a State or entity (as defined in subsection (b)(1)(B)) to carry out subsection (d), including providing assistance to eligible individuals;

["(5) to a State or entity (as defined in subsection (b)(1)(B)) to carry out subsection (e), including providing assistance to eligible individuals; and

["(6) to provide additional assistance to a State board or local board where a higher than average demand for employment and training services for dislocated members of the Armed Forces, or spouses of members of the Armed Forces as described in subsection (c)(2)(A)(iv), exceeds State and local resources for providing such services, and where such programs are to be carried out in partnership with the Departments of Defense and Veterans Affairs transition assistance programs.".

[(b) ADMINISTRATION AND ADDITIONAL ASSISTANCE.—Section 173 (29 U.S.C. 2918) is amended—

[(1) by striking subsection (b);

[(2) by redesignating subsections (c) through (g) as subsections (b) through (f), respectively;

[(3) by striking subsection (d) (as redesignated by paragraph (2)) and inserting the following:

["(d) ADDITIONAL ASSISTANCE.—

["(1) IN GENERAL.—From the amount appropriated and made available to carry out this section for any program year, the Secretary shall use not more than $20,000,000 to make grants to States to provide employment and training activities under section 134, in accordance with subtitle B.

["(2) ELIGIBLE STATES.—The Secretary shall make a grant under paragraph (1) to a State for a program year if—

["(A) the amount of the allotment that would be made to the State for the program year 2003 under the formula specified in section 132(b)(1)(B) as such section was in effect on July 1, 2003, is greater than

["(B) the amount of the allotment that would be made to the State for the program year under the formula specified in section 132(b)(1)(B).

["(3) AMOUNT OF GRANTS.—Subject to paragraph (1), the amount of the grant made under paragraph (1) to a State for a program year shall be based on the difference between—

["(A) the amount of the allotment that would be made to the State for the program year 2003 under the formula specified in section 132(b)(1)(B) as such section was in effect on July 1, 2003; and

["(B) the amount of the allotment that would be made to the State for the program year under the formula specified in section 132(b)(1)(B).";

[(4) in subsection (e) (as redesignated by paragraph (2))—

[(A) in paragraph (1), by striking "paragraph (4)(A)" and inserting "paragraph (4)";

[(B) in paragraph (2), by striking "subsection (g)" and inserting "subsection (e)";

[(C) in paragraph (4), by striking "subsection (g)" and inserting "subsection (e)";

[(D) in paragraph (5), by striking "subsection (g)" and inserting "subsection (e)"; and

[(E) in paragraph (6)—

[(i) by striking "subsection (g)" and inserting "subsection (e)"; and

[(ii) by striking "subsection (c)(1)(B)" and inserting "subsection (b)(1)(B)"; and

[(5) in subsection (f)(1) (as redesignated by paragraph (2))—

[(A) by striking "paragraph (4)(B)" and inserting "paragraph (4)"; and

[(B) by striking "subsection (f)(1)(A)" and inserting "subsection (d)(1)(A)".

[SEC. 148. AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL ACTIVITIES.

[(a) IN GENERAL.—Section 174(a)(1) (29 U.S.C. 2919(a)(1)) is amended by striking "1999 through 2003" and inserting "2004 through 2009".

[(b) RESERVATIONS.—Section 174(b) (29 U.S.C. 2919(b)) is amended to read as follows:

["(b) TECHNICAL ASSISTANCE; DEMONSTRATION AND PILOT PROJECTS, EVALUATIONS, INCENTIVE GRANTS.—There are authorized to be appropriated to carry out sections 170 through 172 and section 136(i) such sums as may be necessary for each of fiscal years 2004 through 2009.".

[Subtitle E—Administration

[SEC. 151. REQUIREMENTS AND RESTRICTIONS.

[Section 181(e) (29 U.S.C. 2931(e)) is amended by striking "economic development activities,".

[SEC. 152. COST PRINCIPLES.

[The matter preceding clause (i) of section 184(a)(2)(B) (29 U.S.C. 2934(a)(2)(B)) is amended by striking "section 134(a)(3)(B)" and inserting "section 134(a)(4)".

[SEC. 153. REPORTS.

[Section 185(c) (29 U.S.C. 2935(c)) is amended—

[(1) in paragraph (2), by striking "and" after the semicolon"

[(2) in paragraph (3), by striking the period and inserting "; and"; and

[(3) by adding at the end the following:

["(4) shall have the option to submit or disseminate electronically any reports, records, plans, or any other data that are required to be collected or disseminated under this Act.".

[SEC. 154. ADMINISTRATIVE PROVISIONS.

[(a) ANNUAL REPORT.—Section 189(d) (29 U.S.C. 2939(d)) is amended—

[(1) in paragraph (3), by striking "and" after the semicolon;

[(2) by redesignating paragraph (4) as paragraph (5); and

[(3) by inserting after paragraph (3) the following:

["(4) the negotiated levels of performance of the States, the States' requests for adjustments of such levels, and the adjustments of such levels that are made; and".

[(b) PROGRAM YEAR.—Section 189(g)(1)(B) (29 U.S.C. 2939(g)(1)(B)) is amended—

[(1) by striking "The" and inserting "For fiscal years preceding fiscal year 2005, the"; and

[(2) by inserting "such" after "any".

[(c) AVAILABILITY.—Section 189(g)(2) (29 U.S.C. 2939(g)(2)) is amended, in the first sentence—

[(1) by striking "Funds" and inserting "Except as otherwise provided in this paragraph, funds"; and

[(2) by striking "each State receiving" and inserting "each recipient of".

[(d) GENERAL WAIVERS.—Section 189(i)(4) (29 U.S.C. 2939(i)(4)) is amended by adding at the end the following:

["(D) EXPEDITED REQUESTS.—The Secretary shall expedite requests for waivers of statutory or regulatory requirements that have been approved for a State pursuant to subparagraph (B), provided the requirements of this section have been satisfied.".

[SEC. 155. USE OF CERTAIN REAL PROPERTY.

[Section 193 (29 U.S.C. 2943) is amended to read as follows:

["SEC. 193. TRANSFER OF FEDERAL EQUITY IN STATE EMPLOYMENT SECURITY AGENCY REAL PROPERTY TO THE STATES.

["(a) TRANSFER OF FEDERAL EQUITY.—Notwithstanding any other provision of law, any Federal equity acquired in real property through grants to States awarded under title III of the Social Security Act (42 U.S.C. 501 et seq.) or under the Wagner-Peyser Act is transferred to the States that used the grants for the acquisition of such equity. The portion of any real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under title III of the Social Security Act or the Wagner-Peyser Act. Any disposition of such real property shall be carried out in accordance with the procedures prescribed by the Secretary and the portion of the proceeds from the disposition of such real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under title III of the Social Security Act or the Wagner-Peyser Act.

["(b) LIMITATION ON USE.—A State shall not use funds awarded under title III of the Social Security Act or the Wagner-Peyser Act to amortize the costs of real property that is purchased by any State on or after the effective date of this provision.".

[SEC. 156. TABLE OF CONTENTS.

[Section 1(b) (29 U.S.C. 9201 note) is amended—

[(1) by striking the item relating to section 123 and inserting the following:

["Sec. 123. Eligible providers of youth activities.";

[(2) by striking the item relating to section 169 and inserting the following:

["Sec. 169. Youth challenge grants.";

[(3) by striking the item relating to section 193 and inserting the following:

["Sec. 193. Transfer of Federal equity in State employment security agency real property to the States.";

[(4) by striking the item relating to section 173 and inserting the following:

["Sec. 173. National dislocated worker grants.";

[(5) by inserting after the item relating to section 212 the following:

["Sec. 213. Incentive grants for States.";

and

[(6) by inserting after the item relating to section 243 the following:

["Sec. 244. Integrated english literacy and civics education.".

[TITLE II—AMENDMENTS TO THE ADULT EDUCATION AND FAMILY LITERACY ACT

[SEC. 201. SHORT TITLE; PURPOSE.

[(a) SHORT TITLE.—This title may be cited as the “Adult Education and Family Literacy Act Amendments of 2003”.

[(b) PURPOSE.—Section 202 of the Adult Education and Family Literacy Act (20 U.S.C. 9201) is amended—

[(1) in paragraph (2), by striking “and” after the semicolon;

[(2) in paragraph (3), by striking “education.” and inserting “education and in the transition to postsecondary education; and”; and

[(3) by adding at the end the following:

[“(4) assist immigrants and other individuals with limited English proficiency in improving their reading, writing, speaking, and mathematics skills and acquiring an understanding of the American free enterprise system, individual freedom, and the responsibilities of citizenship.”.

[SEC. 202. DEFINITIONS.

[Section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202) is amended—

[(1) in paragraph (1)—

[(A) in the matter preceding subparagraph (A), by striking “services or instruction below the postsecondary level” and inserting “academic instruction and education services below the postsecondary level that increase an individual's ability to read, write, and speak in English and perform mathematics skills”; and

[(B) by striking subparagraph (C)(i) and inserting the following:

[“(i) are basic skills deficient as defined in section 101;”;

[(2) in paragraph (2), by striking “activities described in section 231(b)” and inserting “programs and services which include reading, writing, speaking, or mathematics skills, workplace literacy activities, family literacy activities, English language acquisition activities, or other activities necessary for the attainment of a secondary school diploma or its State recognized equivalent”;

[(3) in paragraph (5)—

[(A) by inserting “an organization that has demonstrated effectiveness in providing adult education, that may include” after “means”;

[(B) in subparagraph (B), by striking “of demonstrated effectiveness”;

[(C) in subparagraph (C), by striking “of demonstrated effectiveness”; and

[(D) in subparagraph (I), by inserting “or coalition” after “consortium”;

[(4) in paragraph (6)—

[(A) by striking “LITERACY PROGRAM” and inserting “LANGUAGE ACQUISITION PROGRAM”;

[(B) by striking “literacy program” and inserting “language acquisition program”; and

[(C) by inserting “reading, writing, and speaking” after “competence in”;

[(5) by redesignating paragraphs (7) through (18) as paragraphs (8) through (19), respectively;

[(6) by inserting after paragraph (6) the following:

[“(7) ESSENTIAL COMPONENTS OF READING INSTRUCTION.—The term ‘essential components of reading instruction’ has the meaning given the term in section 1208 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6368).”; and

[(7) by striking paragraph (19), as redesignated by paragraph (4), and inserting the following:

[“(19) WORKPLACE LITERACY PROGRAM.—The term ‘workplace literacy program’ means an educational program designed to improve the productivity of the workforce through the improvement of literacy skills that is offered by an eligible provider in collaboration with an employer or an employee organization at a workplace, at an off-site location, or in a simulated workplace environment.”.

[SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

[Section 205 of the Adult Education and Family Literacy Act (20 U.S.C. 9204) is amended—

[(1) by striking “1999” and inserting “2004”; and

[(2) by striking “2003” and inserting “2009”.

[SEC. 204. RESERVATION OF FUNDS; GRANTS TO ELIGIBLE AGENCIES; ALLOTMENTS.

[Section 211 of the Adult Education and Family Literacy Act (20 U.S.C. 9211) is amended—

[(1) by striking subsection (a) and inserting the following:

[“(a) RESERVATION OF FUNDS.—From the sum appropriated under section 205 for a fiscal year, the Secretary—

[“(1) shall reserve 1.5 percent to carry out section 242, except that the amount so reserved shall not exceed $10,000,000;

[“(2) shall reserve 1.5 percent to carry out section 243, except that the amount so reserved shall not exceed $8,000,000;

[“(3) shall make available, to the Secretary of Labor, 1.72 percent for incentive grants under section 136(i); and

[“(4) shall reserve 12 percent of the amount that remains after reserving funds under paragraphs (1), (2) and (3) to carry out section 244.”;

[(2) by striking subsection (d) and inserting the following:

[“(d) QUALIFYING ADULT.—For the purpose of subsection (c)(2), the term ‘qualifying adult’ means an adult who—

[“(1) is not less than 16 years of age;

[“(2) is beyond the age of compulsory school attendance under the law of the State or outlying area;

[“(3) does not have a secondary school diploma or its recognized equivalent (including recognized alternative standards for individuals with disabilities); and

[“(4) is not enrolled in secondary school.”;

[(3) in subsection (e)—

[(A) by striking paragraph (2) and inserting the following:

[“(2) AWARD BASIS.—The Secretary shall award grants pursuant to paragraph (1) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii.”; and

[(B) in paragraph (3), by striking “shall” and all that follows through the period and inserting “shall be eligible to receive a grant under this title until the date when an agreement for the extension of the United States education assistance under the Compact of Free Association for each of the Freely Associated States becomes effective.”; and

[(4) in subsection (f)—

[(A) in the heading, by inserting “PROVISIONS” after “HOLD-HARMLESS”;

[(B) by redesignating paragraph (2) as paragraph (3); and

[(C) by striking paragraph (1) and inserting the following:

[“(1) IN GENERAL.—Notwithstanding subsection (c) and subject to paragraphs (2) and (3), for fiscal year 2004 and each succeeding fiscal year, no eligible agency shall receive an allotment under this title that is less than 90 percent of the allotment the eligible agency received for the preceding fiscal year under this title.

[“(2) 100 PERCENT ALLOTMENT.—An eligible agency shall receive an allotment under this title that is equal to 100 percent of the allotment the eligible agency received for the preceding fiscal year under this title if the eligible agency received, for the preceding fiscal year, only an initial allotment under subsection (c)(1) and did not receive an additional allotment under subsection (c)(2).”.

[SEC. 205. PERFORMANCE ACCOUNTABILITY SYSTEM.

[Section 212 of the Adult Education and Family Literacy Act (20 U.S.C. 9212) is amended—

[(1) in subsection (b)—

[(A) in paragraph (1)(A)(ii), by striking “additional indicators of performance (if any)” and inserting “employment performance indicators”;

[(B) in paragraph (2)—

[(i) in subparagraph (A)—

[(I) in clause (i), by striking “Demonstrated” and inserting “Measurable”;

[(II) by striking clause (ii) and inserting the following:

[“(ii) Placement in, retention in, or completion of, postsecondary education or other training programs.”; and

[(III) in clause (iii), by inserting “(including recognized alternative standards for individuals with disabilities)” after “equivalent”;

[(ii) by redesignating subparagraph (B) as subparagraph (C);

[(iii) by inserting after subparagraph (A), the following:

[“(B) EMPLOYMENT PERFORMANCE INDICATORS.—An eligible agency shall identify in the State plan individual participant employment performance indicators, including entry into unsubsidized employment, retention in unsubsidized employment, and career advancement. The State workforce investment board shall assist the eligible agency in obtaining and using quarterly wage records to collect data for such indicators, consistent with applicable Federal and State privacy laws.”;

[(iv) in subparagraph (C), as redesignated by clause (ii), by inserting “relevant” after “additional”; and

[(v) by adding at the end the following:

[“(D) INDICATORS FOR WORKPLACE LITERACY PROGRAMS.—Special accountability measures may be negotiated for workplace literacy programs.”; and

[(C) in paragraph (3)—

[(i) in subparagraph (A)—

[(I) in clause (i)(II), by striking “in performance” and inserting “the agency's performance outcomes in an objective, quantifiable, and measurable form”;

[(II) in clause (ii), by striking “3 programs years” and inserting “2 program years”;

[(III) in clause (iii), by striking “FIRST 3 YEARS” and inserting “FIRST 2 YEARS”;

[(IV) in clause (iii), by striking “first 3 program years” and inserting “first 2 program years”;

[(V) in clause (v), by striking “4TH AND 5TH” and inserting “3RD AND 4TH”;

[(VI) in clause (v), by striking “to the fourth” and inserting “to the third”;

[(VII) in clause (v), by striking “fourth and fifth” and inserting “third and fourth”; and

[(VIII) in clause (vi), by striking “(II)” and inserting “(I)”;

[(ii) in subparagraph (B)—

[(I) by striking the heading and inserting “LEVELS OF EMPLOYMENT PERFORMANCE”;

[(II) by striking “may” and inserting “shall”; and

[(III) by striking “additional” and inserting “employment”; and [(iii) by adding at the end the following:

[''(C) ALTERNATIVE ASSESSMENT SYSTEMS.—Eligible agencies may approve the use of assessment systems that are not commercially available standardized systems if such systems meet the Standards for Educational and Psychological Testing issued by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.'';

[(2) in subsection (c)—

[(A) in paragraph (1)—

[(i) by inserting ''the Governor, the State legislature, and the State workforce investment board'' after ''Secretary''; and

[(ii) by striking ''including'' and all that follows through the period and inserting ''including the following:

[''(A) Information on the levels of performance achieved by the eligible agency with respect to the core indicators of performance, and employment performance indicators.

[''(B) The number and type of each eligible provider that receives funding under such grant.

[''(C) The number of enrollees 16 to 18 years of age who enrolled in adult education not later than 1 year after participating in secondary school education.'';

[(B) in paragraph (2)(A), by inserting ''eligible providers and'' after ''available to''; and

[(C) by adding at the end the following:

[''(3) DATA ACCESS.—The report made available under paragraph (2) shall indicate which eligible agencies did not have access to State unemployment insurance wage data in measuring employment performance indicators.''; and

[(3) by adding at the end the following:

[''(d) PROGRAM IMPROVEMENT.—

[''(1) IN GENERAL.—If the Secretary determines that an eligible agency did not meet its adjusted levels of performance for the core indicators of performance described in subsection (b)(2)(A) for any program year, the eligible agency shall—

[''(A) work with the Secretary to develop and implement a program improvement plan for the 2 program years succeeding the program year in which the eligible agency did not meet its adjusted levels of performance; and

[''(B) revise its State plan under section 224, if necessary, to reflect the changes agreed to in the program improvement plan.

[''(2) FURTHER ASSISTANCE.—If, after the period described in paragraph (1)(A), the Secretary has provided technical assistance to the eligible agency but determines that the eligible agency did not meet its adjusted levels of performance for the core indicators of performance described in subsection (b)(2)(A), the Secretary may require the eligible agency to make further revisions to the program improvement plan described in paragraph (1). Such further revisions shall be accompanied by further technical assistance from the Secretary.''.

[SEC. 206. STATE ADMINISTRATION.

[Section 221(1) of the Adult Education and Family Literacy Act (20 U.S.C. 9221(1)) is amended by striking ''and implementation'' and inserting ''implementation, and monitoring''.

[SEC. 207. STATE DISTRIBUTION OF FUNDS; MATCHING REQUIREMENT.

[Section 222 of the Adult Education and Family Literacy Act (20 U.S.C. 9222) is amended—

[(1) in subsection (a)—

[(A) in paragraph (1)—

[(i) by striking ''82.5'' the first place such term appears and inserting ''80''; and

[(ii) by striking ''the 82.5 percent'' and inserting ''such amount'';

[(B) in paragraph (2), by striking ''not more than 12.5 percent'' and inserting ''not more than 15 percent''; and

[(C) in paragraph (3), by striking ''$65,000'' and inserting ''$75,000''; and

[(2) in subsection (b)(1), by striking ''equal to'' and inserting ''that is not less than''.

[SEC. 208. STATE LEADERSHIP ACTIVITIES.

[Section 223 of the Adult Education and Family Literacy Act (20 U.S.C. 9223) is amended—

[(1) in subsection (a)—

[(A) in the matter preceding paragraph (1), by inserting ''to develop or enhance the adult education system of the State'' after ''activities'';

[(B) in paragraph (1), by striking ''instruction incorporating'' and all that follows through the period and inserting ''instruction incorporating the essential components of reading instruction and instruction provided by volunteers or by personnel of a State or outlying area.'';

[(C) in paragraph (2), by inserting '', including development and dissemination of instructional and programmatic practices based on the most rigorous research available in reading, writing, speaking, mathematics, English language acquisition programs, distance learning and staff training'' after ''activities'';

[(D) in paragraph (5), by striking ''monitoring and'';

[(E) by striking paragraph (6) and inserting the following:

[''(6) The development and implementation of technology applications, translation technology, or distance learning, including professional development to support the use of instructional technology.''; and

[(F) by striking paragraph (7) through paragraph (11) and inserting the following:

[''(7) Coordination with—

[''(A) other partners carrying out activities authorized under this Act; and

[''(B) existing support services, such as transportation, child care, mental health services, and other assistance designed to increase rates of enrollment in, and successful completion of adult education and literacy activities, for adults enrolled in such activities.

[''(8) Developing and disseminating curricula, including curricula incorporating the essential components of reading instruction as they relate to adults.

[''(9) The provision of assistance to eligible providers in developing, implementing, and reporting measurable progress in achieving the objectives of this subtitle.

[''(10) The development and implementation of a system to assist in the transition from adult basic education to postsecondary education, including linkages with postsecondary educational institutions.

[''(11) Integration of literacy and English language instruction with occupational skill training, and promoting linkages with employers.

[''(12) Activities to promote workplace literacy programs.

[''(13) Activities to promote and complement local outreach initiatives described in section 243(c)(2)(H).

[''(14) In cooperation with efforts funded under sections 242 and 243, the development of curriculum frameworks and rigorous content standards that—

[''(A) specify what adult learners should know and be able to do in the areas of reading and language arts, mathematics, and English language acquisition: and

[''(B) take into consideration the following:

[''(i) State academic standards established under section 1111(b) of the Elementary and Secondary Education Act of 1965.

[''(ii) The current adult skills and literacy assessments used in the State.

[''(iii) The core indicators of performance established under section 212(b)(2)(A).

[''(iv) Standards and academic requirements for enrollment in non-remedial, for-credit, courses in State supported postsecondary education institutions.

[''(v) Where appropriate, the basic and literacy skill content of occupational and industry skill standards widely used by business and industry in the State.

[''(15) In cooperation with efforts funded under sections 242 and 243, development and piloting of—

[''(A) new assessment tools and strategies that identify the needs and capture the gains of students at all levels, with particular emphasis on—

[''(i) students at the lowest achievement level;

[''(ii) students who have limited English proficiency; and

[''(iii) adults with learning disabilities;

[''(B) options for improving teacher quality and retention; and

[''(C) assistance in converting research into practice.

[''(16) The development and implementation of programs and services to meet the needs of adult learners with learning disabilities or limited English proficiency.

[''(17) Other activities of statewide significance that promote the purpose of this title.''; and

[(2) in subsection (c), by striking ''being State- or outlying area-imposed'' and inserting ''being imposed by the State or outlying area''.

[SEC. 209. STATE PLAN.

[Section 224 of the Adult Education and Family Literacy Act (20 U.S.C. 9224) is amended—

[(1) in subsection (a)—

[(A) by striking the heading and inserting ''4-YEAR PLANS''; and

[(B) in paragraph (1), by striking ''5'' and inserting ''4'';

[(2) in subsection (b)—

[(A) in paragraph (1), by inserting ''and the role of provider and cooperating agencies in preparing the assessment'' after ''serve'';

[(B) by striking paragraph (2) and inserting the following:

[''(2) a description of how the eligible agency will address the adult education and literacy needs identified under paragraph (1) in each workforce development area of the State, using funds received under this subtitle, as well as other Federal, State, or local funds received in partnership with other agencies for the purpose of adult literacy as applicable;'';

[(C) in paragraph (3)—

[(i) by inserting ''and measure'' after ''evaluate'';

[(ii) by inserting ''and improvement'' after ''effectiveness''; and

[(iii) by striking ''212'' and inserting ''212, including—

[''(A) how the eligible agency will evaluate and measure annually such effectiveness on a grant-by-grant basis; and

[''(B) how the eligible agency—

[''(i) will hold eligible providers accountable regarding the progress of such providers in improving the academic achievement of participants in adult education programs under this subtitle and regarding the core indicators of performance described in section 212(b)(2)(A); and

["(ii) will use technical assistance, sanctions, and rewards (including allocation of grant funds based on performance and termination of grant funds based on performance)";

[(D) in paragraph (4), by striking "will ensure the improvement of" and inserting "improved";

[(E) by redesignating paragraphs (5) through (12) as paragraphs (6) through (13), respectively;

[(F) by inserting after paragraph (4) the following:

["(5) a description of how the eligible agency will improve teacher quality, the professional development of eligible providers, and instruction;";

[(G) in paragraph (6) (as redesignated by subparagraph (E)), by striking "who" and all that follows through the semicolon and inserting "that—

["(A) offers flexible schedules and coordinates with necessary Federal, State, and local support services (such as child care, transportation, mental health services, and case management) to enable individuals, including individuals with disabilities or individuals with other special needs, to participate in adult education and literacy activities; and

["(B) attempts to coordinate with support services that are not provided under this subtitle prior to using funds for adult education and literacy activities provided under this subtitle for support services;";

[(H) in paragraph (10) (as redesignated by subparagraph (E)), by striking "plan" and inserting "plan, which process—

["(A) shall include the State Workforce Investment Board, the Governor, State officials representing public schools, community colleges, welfare agencies, agencies that provide services to individuals with disabilities, other State agencies that promote or operate adult education and literacy activities, and direct providers of such adult literacy services; and

["(B) may include consultation with the State agency for higher education, institutions responsible for professional development of adult education and literacy education program instructors, institutions of higher education, representatives of business and industry, refugee assistance programs, and community-based organizations, as defined in section 101;";

[(I) in paragraph (11) (as redesignated by subparagraph (E))—

[(i) by inserting "assess potential population needs and" after "will";

[(ii) in subparagraph (A), by striking "students" and inserting "individuals";

[(iii) in subparagraph (C), by striking "and" after the semicolon; and

[(iv) by adding at the end the following:

["(E) the unemployed; and

["(F) those who are employed, but at levels below self-sufficiency, as defined in section 101.";

[(J) in paragraph (12) (as redesignated by subparagraph (E))—

[(i) by inserting "and how the plan submitted under this subtitle is coordinated with the plan submitted by the State under title I" after "eligible agency"; and

[(ii) by striking "and" after the semicolon;

[(K) in paragraph (13) (as redesignated by subparagraph (E)), by striking "231(c)(1)." and inserting "231(c)(1), including—

["(A) how the State will build the capacity of organizations that provide adult education and literacy activities; and

["(B) how the State will increase the participation of business and industry in adult education and literacy activities;"; and

[(L) by adding at the end the following:

["(14) a description of how the eligible agency will consult with any State agency responsible for postsecondary education to develop adult education programs and services (including academic skill development and support services) that prepare students to enter postsecondary education upon completion of secondary school programs or their recognized equivalent;

["(15) a description of how the eligible agency will consult with the State agency responsible for workforce development to develop adult education programs and services that are designed to prepare students to enter the workforce; and

["(16) a description of how the eligible agency will improve the professional development of eligible providers of adult education and literacy activities.";

[(3) in subsection (c), by adding at the end the following: "At a minimum, such revision shall occur every 2 years."; and

[(4) in subsection (d)—

[(A) in paragraph (1), by inserting ", the chief State school officer, the State officer responsible for administering community and technical colleges, and the State Workforce Investment Board" after "Governor"; and

[(B) in paragraph (2), by striking "comments" and all that follows through the period and inserting "comments regarding the State plan by the Governor, the chief State school officer, the State officer responsible for administering community and technical colleges, and the State Workforce Investment Board, and any revision to the State plan, are submitted to the Secretary.".

[SEC. 210. PROGRAMS FOR CORRECTIONS EDUCATION AND OTHER INSTITUTIONALIZED INDIVIDUALS.

[Section 225 of the Adult Education and Family Literacy Act (20 U.S.C. 9225) is amended—

[(1) in subsection (b)—

[(A) in paragraph (1), by striking "basic education" and inserting "adult education and literacy activities";

[(B) in paragraph (2) by inserting "and" after the semicolon;

[(C) by striking paragraph (3); and

[(D) by redesignating paragraph (4) as paragraph (3); and

[(2) in subsection (d), by striking "DEFINITION OF CRIMINAL OFFENDER.—" and inserting "DEFINITIONS.—In this section:".

[SEC. 211. GRANTS AND CONTRACTS FOR ELIGIBLE PROVIDERS.

[Section 231 of the Adult Education and Family Literacy Act (20 U.S.C. 9241) is amended—

[(1) in subsection (b)—

[(A) in paragraph (1), by striking "workplace literacy services" and inserting "workplace literacy programs"; and

[(B) in paragraph (3), by striking "literacy" and inserting "language acquisition";

[(2) in subsection (e)—

[(A) in paragraph (1), by inserting "to be achieved annually on the core indicators of performance and employment performance indicators described in section 212(b)(2)" after "outcomes";

[(B) by striking paragraph (3) and inserting the following:

["(3) the commitment of the eligible provider to be responsive to local needs and to serve individuals in the community who were identified by the assessment as most in need of adult literacy services, including individuals who are low-income, have minimal literacy skills, have learning disabilities, or have limited English proficiency;";

[(C) in paragraph (4)(B), by striking ", such as" and all that follows through the semicolon and inserting "that include the essential components of reading instruction;";

[(D) in paragraph (5), by striking "research" and inserting "the most rigorous research available";

[(E) in paragraph (7), by inserting ", when appropriate and based on the most rigorous research available," after "real life contexts";

[(F) in paragraph (9), by inserting "education, job-training, and social service" after "other available";

[(G) in paragraph (10)—

[(i) by inserting "coordination with Federal, State, and local" after "schedules and"; and

[(ii) by striking "and transportation" and inserting ", transportation, mental health services, and case management";

[(H) in paragraph (11)—

[(i) by inserting "measurable" after "report";

[(ii) by striking "eligible agency";

[(iii) by inserting "established by the eligible agency" after "performance measures"; and

[(iv) by striking "and" after the semicolon;

[(I) in paragraph (12), by striking "literacy programs." and inserting "language acquisition programs and civics education programs;"; and

[(J) by adding at the end the following:

["(13) the capacity of the eligible provider to produce information on performance results, including enrollments and measurable participant outcomes;

["(14) whether reading, writing, speaking, mathematics, and English language acquisition instruction provided by the eligible provider are based on the best practices derived from the most rigorous research available;

["(15) whether the eligible provider's applications of technology and services to be provided are sufficient to increase the amount and quality of learning and lead to measurable learning gains within specified time periods; and

["(16) the capacity of the eligible provider to serve adult learners with learning disabilities.".

[SEC. 212. LOCAL APPLICATION.

[Section 232 of the Adult Education and Family Literacy Act (20 U.S.C. 9242) is amended—

[(1) in paragraph (1)—

[(A) by inserting "consistent with the requirements of this subtitle" after "spent"; and

[(B) by striking "and" after the semicolon;

[(2) in paragraph (2), by striking the period at the end and inserting "; and"; and

[(3) by adding at the end the following:

["(3) each of the demonstrations required under section 231(e).".

[SEC. 213. LOCAL ADMINISTRATIVE COST LIMITS.

[Section 233 of the Adult Education and Family Literacy Act (20 U.S.C. 9243) is amended—

[(1) in subsection (a)(2)—

[(A) by inserting "and professional" after "personnel"; and

[(B) by inserting "development of measurable goals in reading, writing, and speaking the English language, and in mathematical computation," after "development,"; and

[(2) in subsection (b)—

[(A) by inserting "and professional" after "personnel"; and

[(B) by inserting "development of measurable goals in reading, writing, and speaking the English language, and in mathematical computation," after "development,".

[SEC. 214. ADMINISTRATIVE PROVISIONS.

[Section 241(b) of the Adult Education and Family Literacy Act (20 U.S.C. 9251(b)) is amended—

[(1) in paragraph (1)(A)—

[(A) by striking "adult education and literacy activities" both places such terms appear and inserting "activities under this subtitle"; and

[(B) by striking "was" and inserting "were"; and

[(2) in paragraph (4)—

[(A) by inserting "not more than" after "this subsection for"; and

[(B) by striking "only".

[SEC. 215. NATIONAL INSTITUTE FOR LITERACY.

[Section 242 of the Adult Education and Family Literacy Act (20 U.S.C. 9252) is amended—

[(1) in subsection (a)—

[(A) in paragraph (1), by striking "literacy" and inserting "effective literacy programs for children, youth, adults, and families";

[(B) in paragraph (2), by inserting "and disseminates information on" after "coordinates"; and

[(C) by striking paragraph (3)(A) and inserting the following:

["(A) coordinating and participating in the Federal effort to identify and disseminate information on literacy that is derived from scientifically based research, or the most rigorous research available and effective programs that serve children, youth, adults, and families.";

[(2) by striking subsection (b)(3) and inserting the following:

["(3) RECOMMENDATIONS.—The Interagency Group, in consultation with the National Institute for Literacy Advisory Board (in this section referred to as the 'Board') established under subsection (e), shall plan the goals of the Institute and the implementation of any programs to achieve the goals. The Board may also request a meeting of the Interagency Group to discuss any recommendations the Board may make.";

[(3) in subsection (c)—

[(A) in paragraph (1)—

[(i) in subparagraph (A)—

[(I) by striking "to establish" and inserting "to maintain";

[(II) in clause (i), by striking "phonemic awareness, systematic phonics, fluency, and reading comprehension" and inserting "the essential components of reading instruction";

[(III) in clause (iii), by striking "and" after the semicolon;

[(IV) in clause (iv), by inserting "and" after the semicolon; and

[(V) by adding at the end the following:

["(v) a list of local adult education and literacy programs;";

[(ii) in subparagraph (C)—

[(I) by striking "reliable and replicable research" and inserting "reliable and replicable research as defined by the Institute of Education Sciences"; and

[(II) by striking "especially with the Office of Educational Research and Improvement in the Department of Education,";

[(iii) in subparagraph (D), by striking "phonemic awareness, systematic phonics, fluency, and reading comprehension based on" and inserting "the essential components of reading instruction and";

[(iv) in subparagraph (H), by striking "and" after the semicolon;

[(v) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

[(vi) by adding at the end the following:

["(J) to work cooperatively with the Department of Education to assist States that are pursuing the implementation of standards-based educational improvements for adults through the dissemination of training, technical assistance, and related support and through the development and dissemination of related standards-based assessment instruments; and

["(K) to identify rigorous research on the effectiveness of instructional practices and organizational strategies relating to literacy programs on the acquisition of skills in reading, writing, English acquisition, and mathematics."; and

[(B) by adding at the end the following:

["(3) COORDINATION.—In identifying the reliable and replicable research the Institute will support, the Institute shall use standards for research quality that are consistent with those of the Institute of Education Sciences.";

[(4) in subsection (e)—

[(A) in paragraph (1)(B)—

[(i) in clause (i), by striking "literacy programs" and inserting "language acquisition programs";

[(ii) in clause (ii), by striking "literacy programs" and inserting "or have participated in or partnered with workplace literacy programs";

[(iii) in clause (iv), by inserting ", including adult literacy research" after "research";

[(iv) in clause (vi), by striking "and" after the semicolon;

[(v) in clause (vii), by striking the period at the end and inserting "; and"; and

[(vi) by adding at the end the following:

["(viii) institutions of higher education.";

[(B) in paragraph (2)—

[(i) in subparagraph (B), by striking "and" after the semicolon;

[(ii) in subparagraph (C), by striking the period at the end and inserting "; and"; and

[(iii) by adding at the end the following:

["(D) review the biennial report submitted to Congress pursuant to subsection (k)."; and

[(C) in paragraph (5), by striking the second sentence and inserting the following: "A recommendation of the Board may be passed only by a majority of the Board's members present at a meeting for which there is a quorum."; and

[(5) in subsection (k)—

[(A) by striking "Labor and Human Resources" and inserting "Health, Education, Labor, and Pensions"; and

[(B) by striking "The Institute shall submit a report biennially to" and inserting "Not later than 1 year after the date of enactment of the Adult Education and Family Literacy Act Amendments of 2003, and biennially thereafter, the Institute shall submit a report to".

[SEC. 216. NATIONAL LEADERSHIP ACTIVITIES.

[Section 243 of the Adult Education and Family Literacy Act (20 U.S.C. 9253) is amended to read as follows:

["SEC. 243. NATIONAL LEADERSHIP ACTIVITIES.

["(a) IN GENERAL.—The Secretary shall establish and carry out a program of national leadership activities to enhance the quality of adult education and literacy programs nationwide.

["(b) PERMISSIVE ACTIVITIES.—The national leadership activities described in subsection (a) may include the following:

["(1) Technical assistance, including—

["(A) assistance provided to eligible providers in developing and using performance measures for the improvement of adult education and literacy activities, including family literacy services;

["(B) assistance related to professional development activities, and assistance for the purposes of developing, improving, identifying, and disseminating the most successful methods and techniques for providing adult education and literacy activities, including family literacy services, based on scientific evidence where available;

["(C) assistance in distance learning and promoting and improving the use of technology in the classroom;

["(D) assistance in developing valid, measurable, and reliable performance data, including data around employment and employment outcome, and using performance information for the improvement of adult education and literacy programs; and

["(E) assistance to help States, particularly low-performing States, meet the requirements of section 212.

["(2) A program of grants, contracts, or cooperative agreements awarded on a competitive basis to national, regional, or local networks of private nonprofit organizations, public libraries, or institutions of higher education to build the capacity of such networks' members to meet the performance requirements of eligible providers under this title and involve adult learners in program improvement.

["(3) Funding national leadership activities that are not described in paragraph (1), either directly or through grants, contracts, or cooperative agreements awarded on a competitive basis to or with postsecondary educational institutions, public or private organizations or agencies, or consortia of such institutions, organizations, or agencies, such as—

["(A) developing, improving, and identifying the most successful methods and techniques for addressing the education needs of adults, including instructional practices using the essential components of reading instruction based on the work of the National Institute of Child Health and Human Development;

["(B) increasing the effectiveness of, and improving the quality of, adult education and literacy activities, including family literacy services;

["(C) carrying out research on national literacy basic skill acquisition for adult learning, including estimating the number of adults functioning at the lowest levels of literacy proficiency;

["(D)(i) carrying out demonstration programs;

["(ii) disseminating best practices information, including information regarding promising practices resulting from federally funded demonstration programs; and

["(iii) developing and replicating best practices and innovative programs, including—

["(I) the development of models for basic skill certificates;

["(II) the identification of effective strategies for working with adults with learning disabilities and with adults with limited English proficiency;

["(III) integrated basic and workplace skills education programs;

["(IV) coordinated literacy and employment services; and

[“(V) postsecondary education transition programs;

[“(E) providing for the conduct of an independent evaluation and assessment of adult education and literacy activities through studies and analyses conducted independently through grants and contracts awarded on a competitive basis, which evaluation and assessment shall include descriptions of—

[“(i) the effect of performance measures and other measures of accountability on the delivery of adult education and literacy activities, including family literacy services;

[“(ii) the extent to which the adult education and literacy activities, including family literacy services, increase the literacy skills of adults (and of children, in the case of family literacy services), lead the participants in such activities to involvement in further education and training, enhance the employment and earnings of such participants, and, if applicable, lead to other positive outcomes, such as reductions in recidivism in the case of prison-based adult education and literacy activities;

[“(iii) the extent to which the provision of support services to adults enrolled in adult education and family literacy programs increase the rate of enrollment in, and successful completion of, such programs; and

[“(iv) the extent to which different types of providers measurably improve the skills of participants in adult education and literacy programs;

[“(F) supporting efforts aimed at capacity building of programs at the State and local levels such as technical assistance in program planning, assessment, evaluation, and monitoring of activities carried out under this subtitle;

[“(G) collecting data, such as data regarding the improvement of both local and State data systems, through technical assistance and development of model performance data collection systems;

[“(H) supporting the development of an entity that would produce and distribute technology-based programs and materials for adult education and literacy programs using an interconnection system (as defined in section 397 of the Communications Act of 1934 (47 U.S.C. 397)) and expand the effective outreach and use of such programs and materials to adult education eligible providers;

[“(I) determining how participation in adult education and literacy activities prepares individuals for entry into postsecondary education and employment and, in the case of prison-based services, has an effect on recidivism; and

[“(J) other activities designed to enhance the quality of adult education and literacy activities nationwide.”.

[SEC. 217. INTEGRATED ENGLISH LITERACY AND CIVICS EDUCATION.

[Chapter 4 of subtitle A of title II (29 U.S.C. 9251 et seq.) is amended by adding at the end the following:

[“SEC. 244. INTEGRATED ENGLISH LITERACY AND CIVICS EDUCATION.

[“(a) IN GENERAL.—From funds made available under section 211(a)(4) for each fiscal year the Secretary shall award grants to States, from allotments under subsection (b), for integrated English literacy and civics education.

[“(b) ALLOTMENT.—

[“(1) IN GENERAL.—Subject to paragraph (2), from amounts made available under section 211(a)(4) for a fiscal year the Secretary shall allocate—

[“(A) 65 percent to the States on the basis of a State's need for integrated English literacy and civics education as determined by calculating each State's share of a 10-year average of the Immigration and Naturalization Service data for immigrants admitted for legal permanent residence for the 10 most recent years; and

[“(B) 35 percent to the States on the basis of whether the State experienced growth as measured by the average of the 3 most recent years for which Immigration and Naturalization Service data for immigrants admitted for legal permanent residence are available.

[“(2) MINIMUM.—No State shall receive an allotment under paragraph (1) in an amount that is less than $60,000.”.

[SEC. 218. TRANSITION.

[The Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to the authority of the Adult Education and Family Literacy Act (as amended by this title) from any authority under provisions of the Adult Education and Family Literacy Act (as such Act was in effect on the day before the date of enactment of the Adult Education and Family Literacy Act Amendments of 2003).

[TITLE III—AMENDMENTS TO OTHER PROVISIONS OF LAW

[SEC. 301. WAGNER-PEYSER ACT.

[(a) CONFORMING AMENDMENT.—Section 2(3) of the Wagner-Peyser Act (29 U.S.C. 49a(3)) is amended by striking “section 134(c)” and inserting “section 121(e)”.

[(b) COLOCATION.—Section 3 of the Wagner-Peyser Act (29 U.S.C. 49b) is amended by adding at the end the following:

[“(d) In order to avoid duplication of services and enhance integration of services, employment services offices in each State shall be colocated with comprehensive one-stop centers established under title I of the Workforce Investment Act of 1998.”.

[(c) COOPERATIVE STATISTICAL PROGRAM.—Section 14 of the Wagner-Peyser Act (29 U.S.C. 491–1) is amended by striking the section heading and all that follows through “There” and inserting the following:

[“SEC. 14. COOPERATIVE STATISTICAL PROGRAM.

[“There”.

[(d) WORKFORCE AND LABOR MARKET INFORMATION SYSTEM.—Section 15 of the Wagner-Peyser Act (29 U.S.C. 491–2) is amended—

[(1) by striking the section heading and inserting the following:

[“SEC. 15. WORKFORCE AND LABOR MARKET INFORMATION SYSTEM.”;

[(2) by striking “employment statistics system” each place it appears and inserting “workforce and labor market information system”;

[(3) in subsection (a)(1), by striking “of employment statistics”;

[(4) in subsection (b)(2)(E)—

[(A) in clause (i), by adding “and” at the end;

[(B) in clause (ii), by striking “; and” and inserting a period; and

[(C) by striking clause (iii);

[(5) by striking subsections (c) and (d) and inserting the following:

[“(c) NATIONAL ELECTRONIC TOOLS TO PROVIDE SERVICES.—The Secretary, in consultation with States, is authorized to assist in the development of national electronic tools that may be used to improve access to workforce information for individuals through—

[“(1) the one-stop delivery systems established under section 121(e); and

[“(2) such other delivery systems as the Secretary determines to be appropriate.

[“(d) TWO-YEAR PLAN.—The Secretary, working through the Bureau of Labor Statistics, and in cooperation with the States and with the assistance of the Employment and Training Administration and other appropriate Federal agencies, shall prepare a 2-year plan which shall be the mechanism for achieving cooperative management of the nationwide workforce and labor market information system described in subsection (a) and the statewide workforce and labor market information systems that comprise the nationwide system. The plan shall—

[“(1) describe the steps to be taken in the following 2 years to carry out the duties described in subsection (b)(2);

[“(2) evaluate the performance of the system and recommend needed improvements, with particular attention to the improvements needed at the State and local levels; and

[“(3) describe the involvement of States in the development of the plan, pursuant to a process established by the Secretary in cooperation with the States in accordance with subsection (d).

[“(e) COORDINATION WITH THE STATES.—The Secretary, working though the Bureau of Labor Statistics and in coordination with the Employment and Training Administration, shall consult at least annually with representatives of each of the 10 Federal regions of the Department of Labor, elected (pursuant to a process established by the Secretary) by and from the State workforce and labor market information directors affiliated with the State agencies that perform the duties described in subsection (e)(2).”;

[(6) in subsection (e)(2)—

[(A) in subparagraph (G), by adding “and” at the end;

[(B) by striking subparagraph (H); and

[(C) by redesignating subparagraph (I) as subparagraph (H); and

[(7) in subsection (g), by striking “1999 through 2004” and inserting “2004 through 2009 to enable the Secretary to carry out the provisions of this section through grants or cooperative agreements with the States”.

[TITLE IV—REHABILITATION ACT AMENDMENTS

[SEC. 401. SHORT TITLE.

[This title may be cited as the “Rehabilitation Act Amendments of 2003”.

[SEC. 402. TECHNICAL AMENDMENTS TO TABLE OF CONTENTS.

[(a) INCENTIVE GRANTS.—Section 1(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701 note) is amended by inserting after the item relating to section 112 the following:

[“Sec. 113. Incentive grants.”.

[(b) INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND.—Section 1(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701 note) is amended by striking the items relating to sections 752 and 753 and inserting the following:

[“Sec. 752. Training and technical assistance.

[“Sec. 753. Program of grants.

[“Sec. 754. Authorization of appropriations.”.

[SEC. 403. PURPOSE.

[Section 2(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701(b)) is amended—

[(1) in paragraph (1)(F), by striking “and” after the semicolon;

[(2) in paragraph (2), by striking the period at the end and inserting “; and”; and

[(3) by adding at the end the following:

[“(3) to provide opportunities for employers and rehabilitation service providers to provide meaningful input at all levels of government to ensure successful employment of individuals with disabilities.”.

[SEC. 404. DEFINITIONS.

[Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

[(1) in paragraph (2)(B)—

[(A) in the matter preceding clause (i), by inserting "and literacy services" after "supported employment"; and

[(B) in clause (iii), by inserting "and literacy skills" after "educational achievements";

[(2) in paragraph (17)—

[(A) in subparagraph (C), by striking "and" after the semicolon;

[(B) in subparagraph (D), by striking the period at the end and inserting "; and"; and

[(C) by adding at the end the following:

["(E) maintaining individuals with disabilities in, or transitioning individuals with disabilities to, community-based living.";

[(3) by redesignating paragraphs (24) through (28), (29) through (34), and (35) through (39), as paragraphs (25) through (29), (31) through (36), and (38) through (42), respectively;

[(4) by inserting after paragraph (23) the following:

["(24) Literacy.—The term 'literacy' has the meaning given the term in section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202).";

[(5) by inserting after paragraph (29), as redesignated by paragraph (3), the following:

["(30) Post-employment service.—The term 'post-employment' service means a service identified in section 103(a) that is—

["(A) provided subsequent to the achievement of an employment outcome; and

["(B) necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.";

[(6) by inserting after paragraph (36), as redesignated by paragraph (3), the following:

["(37) Student with a disability.—

["(A) In general.—The term 'student with a disability' means an individual with a disability who attends an elementary school or secondary school and who—

["(i) is not younger than 14 years of age;

["(ii) is not older than 21 years of age;

["(iii) has been determined to be eligible under section 102(a) for assistance under title I; and

["(iv)(I) is eligible for, and receiving, special education and related services under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

["(II) is an individual with a disability, for purposes of section 504.

["(B) Students with disabilities.—The term 'students with disabilities' means more than 1 student with a disability."; and

[(7) in paragraph (38)(A)(ii), as redesignated by paragraph (3), by striking "paragraph (36)(C)" and inserting "paragraph (39)(C)".

[SEC. 405. ADMINISTRATION OF THE ACT.

[Section 12(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(1)) is amended—

[(1) by inserting "(A)" after "(1)";

[(2) by striking the semicolon and inserting "; and"; and

[(3) by adding at the end the following:

["(B) provide technical assistance to the designated State units on developing successful partnerships with employers;".

[SEC. 406. CARRYOVER.

[Section 19 of the Rehabilitation Act of 1973 (29 U.S.C. 716) is amended—

[(1) in subsection (a)(1)—

[(A) by striking ", section 509 (except as provided in section 509(b))";

[(B) by striking "or (C)"; and

[(C) by striking "752(b)" and inserting "753(b)"; and

[(2) by adding at the end the following:

["(c) Protection and Advocacy of Individual Rights.—

["(1) Appropriated amounts.—Notwithstanding any other provision of law, any funds appropriated for a fiscal year to carry out a grant program under section 509 (except as provided in section 509(b)), including any funds reallotted under such grant program, that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year shall remain available for obligation and expenditure by such recipients during such succeeding fiscal year.

["(2) Program income.—Notwithstanding any other provision of law, any amounts of program income received by recipients under a grant program under section 509 that are not obligated and expended by recipients prior to the beginning of the fiscal year succeeding the fiscal year in which such amounts were received, shall remain available for obligation and expenditure by such recipients during any of the 4 succeeding fiscal years.".

[Subtitle A—Vocational Rehabilitation Services

[SEC. 411. DECLARATION OF POLICY; AUTHORIZATION OF APPROPRIATIONS.

[Section 100(b)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 720(b)(1)) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[SEC. 412. STATE PLANS.

[Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended—

[(1) in paragraph (6)(B), by striking "to employ and advance in employment" and inserting "to recruit, employ, and advance in employment";

[(2) in paragraph (8)(A), by adding at the end the following:

["(iii) Services identified in individualized work plan.—For purposes of clause (i), for an individual who receives assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), comparable benefits and services available under such program only include those benefits and services identified in the individual's individualized work plan developed by an employment network pursuant to such section.";

[(3) in paragraph (11)—

[(A) by striking subparagraph (D)(ii) and inserting the following:

["(ii) transition planning by personnel of the designated State agency and the State educational agency that will facilitate the development and completion of the individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)) and, as appropriate, the development and completion of the individualized plan for employment, in order to achieve post-school employment outcomes of students with disabilities;"; and

[(B) by adding at the end the following:

["(G) Coordination with ticket to work and self-sufficiency program.—The State plan shall provide that the designated State unit will coordinate activities with any other State agency that administers a Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19)."; and

[(4) in paragraph (20)—

[(A) by redesignating subparagraph (B) as subparagraph (D);

[(B) by inserting after subparagraph (A) the following:

["(B) Information on assistance for beneficiaries of assistance under title II or XVI of the social security act.—The State plan shall include an assurance that the designated State agency will make available to individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness, information on the availability of—

["(i) medical assistance under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

["(ii) benefits under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

["(iii) assistance through benefits planning and assistance programs under section 1149 of the Social Security Act (42 U.S.C. 1320b–20) and protection and advocacy programs under section 1150 of the Social Security Act (42 U.S.C. 1320b–21); and

["(iv) medical assistance under other federally-funded programs.

["(C) Information for individuals under the ticket to work program.—The State plan shall include an assurance that the designated State agency will make available to individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness and eligible for assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), general information regarding the Ticket to Work and Self-Sufficiency Program and specific information on how to contact the program manager of the Ticket to Work and Self-Sufficiency Program to obtain information on approved employment networks."; and

[(C) in subparagraph (D)(ii), as redesignated by subparagraph (A)—

[(i) in subclause (II), by inserting ", to the maximum extent possible," after "point of contact"; and

[(ii) in subclause (III), by striking "or regain" and inserting "regain, or advance in".

[SEC. 413. ELIGIBILITY AND INDIVIDUALIZED PLAN FOR EMPLOYMENT.

[Section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722) is amended—

[(1) in subsection (b)—

[(A) in paragraph (1)—

[(i) in subparagraph (A), by striking the semicolon at the end and inserting ", including a listing of all the community resources (including resources from organizations of individuals with disabilities), to the maximum extent possible, to assist in the development of such individual's individualized plan for employment to enable the individual to make informed and effective choices in developing the individualized plan for employment;"; and

[(ii) in subparagraph (D)—

[(I) in clause (i), by striking "and" after the semicolon;

[(II) in clause (ii), by striking the period at the end and inserting a semicolon; and

[(III) by adding at the end the following:

["(iii) for individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness, information on the availability of—

["(I) medical assistance under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

["(II) benefits under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

["(III) assistance through benefits planning and assistance programs under section

1149 of the Social Security Act (42 U.S.C. 1320b–20) and protection and advocacy programs under section 1150 of the Social Security Act (42 U.S.C. 1320b–21); and

["(IV) medical assistance under other federally-funded programs; and

["(iv) for individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness and eligible for assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), information—

["(I) on the options under the Ticket to Work and Self-Sufficiency Program; and

["(II) on how to contact the program manager of the Ticket to Work and Self-Sufficiency Program who has contact information on approved employment networks, the benefits planning and assistance programs in the area, and the protection and advocacy programs in the area.";

[(B) in paragraph (2)(E)—

[(i) in clause (i)(II), by striking "and" after the semicolon;

[(ii) in clause (ii), by striking the period at the end and inserting "; and"; and

[(iii) by adding at the end the following:

["(iii) amended, as necessary, to include the post-employment services and service providers that are necessary for the individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice."; and

[(C) in paragraph (3)—

[(i) in subparagraph (B)(i)(I), by striking "and personal assistance services" and inserting "mentoring services, and personal assistance services";

[(ii) in subparagraph (F)(ii), by striking "and" after the semicolon;

[(iii) in subparagraph (G), by striking the period at the end and inserting a semicolon; and

[(iv) by adding at the end the following:

["(H) for a student with a disability, the description—

["(i) in paragraph (3)(A), may be a description of the student's projected post-school employment outcome; and

["(ii) in paragraph (3)(B), shall include the specific transition services (including, as appropriate, work experience and mentoring activities) needed to achieve the student's employment outcome or projected employment outcome; and

["(I) for an individual who is receiving assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), a list of services such individual receives from an employment network other than the designated State unit."; and

[(2) in subsection (c)(7), by inserting "that take into consideration the informed choice of the individual," after "plan development,".

[SEC. 414. VOCATIONAL REHABILITATION SERVICES.

[Section 103(a) of the Rehabilitation Act of 1973 (29 U.S.C. 723(a)) is amended—

[(1) in paragraph (5), by inserting "literacy services," after "vocational adjustment services,";

[(2) in paragraph (17), by striking "and" after the semicolon;

[(3) in paragraph (18), by striking the period at the end and inserting "; and"; and

[(4) by adding at the end the following:

["(19) mentoring services.".

[SEC. 415. STATE REHABILITATION COUNCIL.

[Section 105(b)(1)(A)(ix) of the Rehabilitation Act of 1973 (29 U.S.C. 725(b)(1)(A)(ix)) is amended to read as follows:

["(ix) in a State in which 1 or more projects provide services under section 121, not less than 1 representative of the directors of the projects;".

[SEC. 416. EVALUATION STANDARDS AND PERFORMANCE INDICATORS.

[Section 106(b)(2)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 726(b)(2)(B)(i)) is amended by striking ", if necessary" and all that follows through the semicolon and inserting "if the State has not improved its performance to acceptable levels, as determined by the Commissioner, direct the State to make further revisions to the plan to improve performance, which may include allocating a higher proportion of the State's resources for services to individuals with disabilities if the State's spending on such services is low in comparison to spending on such services in comparable agencies in other States;".

[SEC. 417. STATE ALLOTMENTS.

[Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730) is amended—

[(1) by striking subsection (b) and inserting the following:

["(b) Reallotment.—

["(1) Determination.—Not later than 45 days prior to the end of the fiscal year, the Commissioner shall determine, after reasonable opportunity for the submission to the Commissioner of comments by the State agency administering or supervising the program established under this title, that any payment of an allotment to a State under section 111(a) for any fiscal year will not be utilized by such State in carrying out the purposes of this title.

["(2) Formula.—

["(A) In general.—As soon as practicable but not later than the end of the fiscal year, the Commissioner shall reallot the amount available under paragraph (1) to other States, consistent with subparagraphs (B) and (C), for carrying out the purposes of this title to the extent the Commissioner determines such other State will be able to use such additional amount during that fiscal year or the subsequent fiscal year for carrying out such purposes.

["(B) Formula.—

["(i) Eligible states.—The Commissioner shall reallot the amount available under paragraph (1) for a fiscal year to each State whose allotment under subsection (a) for such fiscal year is less than such State's allotment under subsection (a) for the immediately preceding fiscal year increased by the percentage change in the funds available for subsection (a) from the immediately preceding fiscal year.

["(ii) Amount.—

["(I) In general.—A State that is eligible to receive a reallotment under clause (i) shall receive an amount for a fiscal year from the amount available for reallotment under paragraph (1) that is equal to the difference between—

["(aa) the amount such State received for such fiscal year; and

["(bb) the amount such State was allotted under subsection (a) for the immediately preceding fiscal year adjusted by the percentage change in the funds available for subsection (a) from the immediately preceding fiscal year.

["(II) Insufficient funds.—If the amount available for reallotment under paragraph (1) is insufficient to provide each State eligible to receive a reallotment with the amount described in subclause (I), the amount reallotted to each eligible State shall be determined by the Commissioner.

["(C) Remaining funds.—If there are funds remaining after each State eligible to receive a reallotment under subparagraph (B)(i) receives the amount described in subparagraph (B)(ii), the Commissioner shall reallot the remaining funds among the States requesting a reallotment.

["(3) Non-federal share.—The Commissioner shall reallot an amount to a State under this subsection only if the State will be able to make sufficient payments from non-Federal sources to pay for the non-Federal share of the cost of vocational rehabilitation services under the State plan for the fiscal year for which the amount was appropriated.

["(4) Increase in allotment.—For the purposes of this part, any amount made available to a State for any fiscal year pursuant to this subsection shall be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year."; and

[(2) by striking subsection (c)(2) and inserting the following:

["(2)(A) In this paragraph:

["(i) The term 'appropriated amount' means the amount appropriated under section 100(b)(1) for allotment under this section.

["(ii) The term 'covered year' means a fiscal year—

["(I) that begins after September 30, 2003; and

["(II) for which the appropriated amount exceeds the total of—

["(aa) the appropriated amount for the preceding fiscal year; and

["(bb) 0.1 percent of the appropriated amount for the preceding fiscal year.

["(B) For each covered year, the sum referred to in paragraph (1) shall be, as determined by the Secretary, the lesser of—

["(i) the total of the sum reserved under this subsection for the preceding fiscal year and 0.1 percent of the appropriated amount for the covered year; and

["(ii) 1.5 percent of the appropriated amount for the covered year.".

[SEC. 418. CLIENT ASSISTANCE PROGRAM.

[Section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732) is amended—

[(1) in subsection (a), by striking "States" and inserting "agencies designated under subsection (c)";

[(2) in subsection (e)—

[(A) in paragraph (1)—

[(i) in subparagraph (A), by striking "The Secretary" and all that follows through the period and inserting the following: "After reserving funds under subparagraphs (E) and (F), the Secretary shall allot the remainder of the sums appropriated for each fiscal year under this section among the agencies designated under subsection (c) within the States on the basis of relative population of each State, except that no such agency shall receive less than $50,000.";

[(ii) in subparagraph (B), by inserting "the designated agencies located in" after "each to";

[(iii) in subparagraph (D)(i)—

[(I) by inserting "the designated agencies located in" after "$100,000 for"; and

[(II) by inserting "the designated agencies located in" after "$45,000 for"; and

[(iv) by adding at the end the following:

["(E)(i) Beginning on October 1, 2004, for any fiscal year for which the amount appropriated to carry out this section equals or exceeds $13,000,000, the Secretary shall reserve funds appropriated under this section to make grants to the protection and advocacy system serving the American Indian Consortium to provide client assistance services in accordance with this section. The amount of such grants shall be the same amount as provided to territories under subparagraph (B), as increased under clauses (i) and (ii) of subparagraph (D).

[“(ii) In this subparagraph:

[“(I) The term ‘American Indian Consortium’ has the meaning given the term in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002).

[“(II) The term ‘protection and advocacy system’ means a protection and advocacy system established under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

[“(F) For any fiscal year for which the amount appropriated to carry out this section equals or exceeds $14,000,000, the Secretary shall reserve not less than 1.8 percent and not more than 2.2 percent of such amount to provide training and technical assistance to the programs established under this section. Such training and technical assistance shall be coordinated with funds available under section 509(c)(1)(A).”;

[(B) in paragraph (2)—

[(i) by striking “State” each place such term appears and inserting “designated agency”; and

[(ii) by striking “States” each place such term appears and inserting “designated agencies”; and

[(C) in paragraph (3), by striking “Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay” and inserting “The Secretary shall pay directly”;

[(3) in subsection (f), by striking “State” and inserting “agency designated under subsection (c)”; and

[(4) in subsection (h), by striking “fiscal years 1999 through 2003” and inserting “fiscal years 2004 through 2009”.

[SEC. 419. INCENTIVE GRANTS.

[Part B of title I of the Rehabilitation Act of 1973 (29 U.S.C. 730 et seq.) is amended by adding at the end the following:

[“SEC. 113. INCENTIVE GRANTS.

[“(a) AUTHORITY.—The Commissioner is authorized to make incentive grants to States that, based on the criteria established under subsection (b)(1), demonstrate—

[“(1) a high level of performance; or

[“(2) a significantly improved level of performance as compared to the previous reporting period or periods.

[“(b) CRITERIA.—

[“(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Commissioner shall establish, and publish in the Federal Register, criteria for making grant awards under subsection (a).

[“(2) DEVELOPMENT AND EVALUATION STANDARDS.—The criteria under paragraph (1) shall—

[“(A) be developed with input from State vocational rehabilitation agencies and other vocational rehabilitation stakeholders, including vocational rehabilitation consumers and consumer organizations; and

[“(B) be based upon the evaluation standards and performance indicators established under section 106 and other performance related measures that the Commissioner determines to be appropriate.

[“(c) USE OF FUNDS.—A State that receives a grant under subsection (a) shall use the grant funds for any approved activities in the State's State plan submitted under section 101.

[“(d) NO NON-FEDERAL SHARE REQUIREMENT.—The provisions of sections 101(a)(3) and 111(a)(2) shall not apply to this section.

[“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2004 through 2009.”.

[SEC. 420. VOCATIONAL REHABILITATION SERVICES GRANTS.

[Section 121 of the Rehabilitation Act of 1973 (29 U.S.C. 741) is amended—

[(1) in subsection (a), in the first sentence, by inserting “, consistent with such individuals’ strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for, and engage in, gainful employment” before the period at the end; and

[(2) in subsection (b)—

[(A) in paragraph (1)—

[(i) in subparagraph (B), by striking “and” after the semicolon;

[(ii) in subparagraph (C), by striking the period at the end and inserting “; and”; and

[(iii) by adding at the end the following:

[“(D) contains assurances that—

[“(i) all decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of such services, will be made by a representative of the tribal vocational rehabilitation program; and

[“(ii) such decisions will not be delegated to another agency or individual.”;

[(B) in paragraph (3), by striking the first sentence and inserting the following: “An application approved under this part that complies with the program requirements set forth in the regulations promulgated to carry out this part shall be effective for 5 years and shall be renewed for additional 5-year periods if the Commissioner determines that the grantee demonstrated acceptable past performance and the grantee submits a plan, including a proposed budget, to the Commissioner that the Commissioner approves that identifies future performance criteria, goals, and objectives.”; and

[(C) by striking paragraph (4) and inserting the following:

[“(4) In allocating funds under this part, the Secretary shall give priority to paying the continuation costs of existing projects and may provide for increases in funding for such projects as determined necessary.”.

[SEC. 421. GAO STUDIES.

[(a) STUDY ON TITLE I AND TICKET TO WORK.—

[(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the interaction of title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) with the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), including the impact of the interaction on beneficiaries, community rehabilitation programs, and State vocational rehabilitation agencies.

[(2) CONDUCT OF STUDY.—In conducting the study under paragraph (1), the Comptroller General of the United States shall consult with all participants in the Ticket to Work and Self-Sufficiency Program, including the Social Security Administration, the Rehabilitation Services Administration, ticketholders, State agencies, community rehabilitation programs (including employment networks and nonemployment networks), protection and advocacy agencies, MAXIMUS, and organizations representing the interests of ticketholders.

[(3) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this title, the Comptroller General of the United States shall submit the study conducted pursuant to this subsection to the appropriate committees of Congress.

[(b) STUDY ON THE ALLOTMENT FORMULA.—

[(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the relationship between the State allotment formula under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730) and the ability of States to provide vocational rehabilitation services in accordance with the State's State plan under section 101 of such Act.

[(2) CONDUCT OF STUDY.—In conducting the study under paragraph (1), the Comptroller General of the United States shall consult with appropriate entities.

[(3) REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this title, the Comptroller General of the United States shall submit the study conducted pursuant to this subsection to the appropriate committees of Congress.

[Subtitle B—Research and Training

[SEC. 431. AUTHORIZATION OF APPROPRIATIONS.

[Section 201(a) of the Rehabilitation Act of 1973 (29 U.S.C. 761(a)) is amended—

[(1) in paragraph (1), by striking “fiscal years 1999 through 2003” and inserting “fiscal years 2004 through 2009”; and

[(2) in paragraph (2), by striking “fiscal years 1999 through 2003” and inserting “fiscal years 2004 through 2009”.

[SEC. 432. NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH.

[Section 202(f)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 762(f)(1)) is amended by striking “Federal employees” and inserting “Department of Education employees”.

[SEC. 433. RESEARCH AND OTHER COVERED ACTIVITIES.

[Section 204(c)(2) of the Rehabilitation Act of 1973 (29 U.S.C. 764(c)(2)) is amended by striking “$500,000” and inserting “$750,000”.

[SEC. 434. REHABILITATION RESEARCH ADVISORY COUNCIL.

[Section 205(c) of the Rehabilitation Act of 1973 (29 U.S.C. 765(c)) is amended by adding at the end the following: “The Council also shall include a representative from the business community who has experience with the vocational rehabilitation system and hiring individuals with disabilities.”.

[Subtitle C—Professional Development and Special Projects and Demonstrations

[SEC. 441. TRAINING.

[Section 302 of the Rehabilitation Act of 1973 (29 U.S.C. 772) is amended—

[(1) in subsection (b)(1)(B)(i), by striking “or prosthetics and orthotics” and inserting “prosthetics and orthotics, rehabilitation for the blind, or orientation and mobility instruction”; and

[(2) in subsection (i), by striking “fiscal years 1999 through 2003” and inserting “fiscal years 2004 through 2009”.

[SEC. 442. DEMONSTRATION AND TRAINING PROGRAMS.

[Section 303 of the Rehabilitation Act of 1973 (29 U.S.C. 773) is amended—

[(1) by redesigrating subsection (e) as subsection (f);

[(2) in subsection (f), as redesignated by paragraph (1), by striking “fiscal years 1999 through 2003” and inserting “fiscal years 2004 through 2009”; and

[(3) by inserting after subsection (d) the following:

[“(e) ACCESS TO TELEWORK.—

[“(1) DEFINITION OF TELEWORK.—In this subsection, the term ‘telework’ means to work from home and other telework sites with the assistance of a computer and with reasonable accommodations, including the necessary equipment to facilitate successful work from home and other telework sites.

["(2) AUTHORIZATION OF PROGRAM.—The Commissioner is authorized to make grants to States and governing bodies of American Indian tribes located on Federal and State reservations (and consortia of such governing bodies) to pay for the Federal share of the cost of establishing or expanding a telework program.

["(3) APPLICATION.—A State that desires to receive a grant under this subsection shall submit an application to the Commissioner at such time, in such manner, and containing such information as the Commissioner may require.

["(4) USE OF FUNDS.—A State that receives a grant under this subsection shall establish or expand a telework program that shall provide loans or other alternative financing mechanisms to individuals with disabilities to enable such individuals to purchase computers or other equipment, including adaptive equipment, that facilitates work from home and other telework sites so that such individuals are able to telework.

["(5) ANNUAL REPORT.—

["(A) IN GENERAL.—A State that receives a grant under this subsection shall submit an annual report to the Commissioner.

["(B) CONTENTS.—The report under subparagraph (A) shall include the following:

["(i) The characteristics of each individual with a disability that receives a loan or other alternative financing mechanism under the program, including information about the individual such as the following:

["(I) Age.

["(II) Ethnicity.

["(III) Type of disability.

["(IV) Employment status at the time of application for a loan or other alternative financing mechanism under this subsection.

["(V) Whether the individual attempted to secure financial support from other sources to enable the individual to telework and, if so, a description of such sources.

["(VI) Whether the individual is working and, if so, whether the individual teleworks, the occupation in which the individual is working, the hourly salary the individual receives, and the hourly salary of the individual prior to receiving a loan or other alternative financing mechanism under the program.

["(VII) Whether the individual has repaid the loan or other alternative financing mechanism received under the program, is in repayment status, is delinquent on repayments, or has defaulted on the loan or other alternative financing mechanism.

["(ii) Any other information that the Commissioner may require.

["(6) FEDERAL SHARE.—The Federal share of the cost of establishing a telework program shall be 10 percent of the cost.".

[SEC. 443. MIGRANT AND SEASONAL FARMWORKERS.

[Section 304(b) of the Rehabilitation Act of 1973 (29 U.S.C. 774(b)) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[SEC. 444. RECREATIONAL PROGRAMS.

[Section 305 of the Rehabilitation Act of 1973 (29 U.S.C. 775) is amended—

[(1) in subsection (a)(1)(B), by striking "construction of facilities for aquatic rehabilitation therapy,"; and

[(2) in subsection (b), by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[Subtitle D—National Council on Disability

[SEC. 451. AUTHORIZATION OF APPROPRIATIONS.

[Section 405 of the Rehabilitation Act of 1973 (29 U.S.C. 785) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[Subtitle E—Rights and Advocacy

[SEC. 461. ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

[Section 502(j) of the Rehabilitation Act of 1973 (29 U.S.C. 792(j)) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[SEC. 462. PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS.

[Section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e) is amended—

[(1) in subsection (g)(2), by striking "was paid" and inserting "was paid, except that program income generated from the amount paid to an eligible system shall remain available to such system for obligation during any succeeding fiscal year"; and

[(2) in subsection (*l*), by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[Subtitle F—Employment Opportunities for Individuals With Disabilities

[SEC. 471. PROJECTS WITH INDUSTRY AUTHORIZATION OF APPROPRIATIONS.

[Section 612 of the Rehabilitation Act of 1973 (29 U.S.C. 795a) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[SEC. 472. SERVICES FOR INDIVIDUALS WITH SIGNIFICANT DISABILITIES AUTHORIZATION OF APPROPRIATIONS.

[Section 628 of the Rehabilitation Act of 1973 (29 U.S.C. 795n) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[Subtitle G—Independent Living Services and Centers for Independent Living

[SEC. 481. STATE PLAN.

[Section 704 of the Rehabilitation Act of 1973 (42 U.S.C. 795c) is amended by adding at the end the following:

["(o) PROMOTING FULL ACCESS TO COMMUNITY LIFE.—The plan shall describe how the State will provide independent living services that promote full access to community life for individuals with significant disabilities. The services shall include, as appropriate, facilitating transitions from nursing homes and other institutions, including institutions serving individuals with cognitive disabilities, to community-based residences, assisting individuals with significant disabilities at risk of entering institutions to remain in the community, and promoting home ownership among individuals with significant disabilities.".

[SEC. 482. STATEWIDE INDEPENDENT LIVING COUNCIL.

[Section 705(b)(5) of the Rehabilitation Act of 1973 (29 U.S.C. 796d(b)(5)) is amended to read as follows:

["(5) CHAIRPERSON.—The Council shall select a chairperson from among the voting membership of the Council.".

[SEC. 483. INDEPENDENT LIVING SERVICES AUTHORIZATION OF APPROPRIATIONS.

[Section 714 of the Rehabilitation Act of 1973 (29 U.S.C. 796e–3) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[SEC. 484. PROGRAM AUTHORIZATION.

[Section 721 of the Rehabilitation Act of 1973 (42 U.S.C. 796f) is amended—

[(1) by striking subsection (c) and inserting the following:

["(c) ALLOTMENTS TO STATES.—

["(1) DEFINITIONS.—In this subsection:

["(A) ADDITIONAL APPROPRIATION.—The term 'additional appropriation' means the amount (if any) by which the appropriation for a fiscal year exceeds the total of—

["(i) the amount reserved under subsection (b) for that fiscal year; and

["(ii) the appropriation for fiscal year 2003.

["(B) APPROPRIATION.—The term 'appropriation' means the amount appropriated to carry out this part.

["(C) BASE APPROPRIATION.—The term 'base appropriation' means the portion of the appropriation for a fiscal year that is equal to the lesser of—

["(i) an amount equal to 100 percent of the appropriation, minus the amount reserved under subsection (b) for that fiscal year; or

["(ii) the appropriation for fiscal year 2003.

["(2) ALLOTMENTS TO STATES FROM BASE APPROPRIATION.—After the reservation required by subsection (b) has been made, the Commissioner shall allot to each State whose State plan has been approved under section 706 an amount that bears the same ratio to the base appropriation as the amount the State received under this subsection for fiscal year 2003 bears to the total amount that all States received under this subsection for fiscal year 2003.

["(3) ALLOTMENTS TO STATES OF ADDITIONAL APPROPRIATION.—From any additional appropriation for each fiscal year, the Commissioner shall allot to each State whose State plan has been approved under section 706 an amount equal to the sum of—

["(A) an amount that bears the same ratio to 50 percent of the additional appropriation as the population of the State bears to the population of all States; and

["(B) $\frac{1}{56}$ of 50 percent of the additional appropriation."; and

[(2) by adding at the end the following:

["(e) CARRYOVER AUTHORITY.—Any amount paid to an agency to operate a center for independent living under this chapter for a fiscal year and any amount of program income that remains unobligated at the end of such year shall remain available to such agency for obligation during the next 2 fiscal years for the purposes for which such amount was paid.".

[SEC. 485. GRANTS TO CENTERS FOR INDEPENDENT LIVING IN STATES IN WHICH FEDERAL FUNDING EXCEEDS STATE FUNDING.

[Section 722(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–1(c)) is amended by striking "by September 30, 1997" and inserting "during the preceding year".

[SEC. 486. GRANTS TO CENTERS FOR INDEPENDENT LIVING IN STATES IN WHICH STATE FUNDING EQUALS OR EXCEEDS FEDERAL FUNDING.

[Section 723(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–2(c)) is amended by striking "by September 30, 1997" and inserting "during the preceding year".

[SEC. 487. STANDARDS AND ASSURANCES FOR CENTERS FOR INDEPENDENT LIVING.

[Section 725(b) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–4(b)) is amended—

[(1) in paragraph (4), by striking "disabilities." and inserting "disabilities, including maintaining individuals with disabilities in, or transitioning individuals with disabilities to, community-based living."; and

[(2) by adding at the end the following:

["(8) PROMOTING FULL ACCESS TO COMMUNITY LIFE.—The center shall provide independent living services that promote full access to community life for individuals with significant disabilities. The services shall include, as appropriate, facilitating transitions from nursing homes and other institutions, including institutions serving individuals with cognitive disabilities, to community-based residences, assisting individuals with significant disabilities at risk of entering institutions to remain in the community, and promoting home ownership among individuals with significant disabilities.".

[SEC. 488. CENTERS FOR INDEPENDENT LIVING AUTHORIZATION OF APPROPRIATIONS.

[Section 727 of the Rehabilitation Act of 1973 (29 U.S.C. 796f–6) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[SEC. 489. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND.

[Chapter 2 of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796j et seq.) is amended—

[(1) by redesignating sections 752 and 753 as sections 753 and 754, respectively; and

[(2) by inserting after section 751 the following:

["SEC. 752. TRAINING AND TECHNICAL ASSISTANCE.

["(a) GRANTS; CONTRACTS; OTHER ARRANGEMENTS.—For any fiscal year for which the funds appropriated to carry out this chapter exceed the funds appropriated to carry out this chapter for fiscal year 2003, the Commissioner shall first reserve from such excess, to provide training and technical assistance to eligible entities for such fiscal year, not less than 1.8 percent, and not more than 2 percent, of the funds appropriated to carry out this chapter for the fiscal year involved.

["(b) ALLOCATION.—From the funds reserved under subsection (a), the Commissioner shall make grants to, and enter into contracts and other arrangements with, entities that demonstrate expertise in the provision of services to older individuals who are blind to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating independent living programs for older individuals who are blind.

["(c) FUNDING PRIORITIES.—The Commissioner shall conduct a survey of designated State agencies that receive grants under section 753 regarding training and technical assistance needs in order to determine funding priorities for grants, contracts, and other arrangements under this section.

["(d) REVIEW.—To be eligible to receive a grant or enter into a contract or other arrangement under this section, an eligible entity shall submit an application to the Commissioner at such time, in such manner, containing a proposal to provide such training and technical assistance, and containing such additional information as the Commissioner may require.

["(e) PROHIBITION ON COMBINED FUNDS.—No funds reserved by the Commissioner under this section may be combined with funds appropriated under any other Act or part of this Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this chapter are separately identified in such grant or payment and are used for the purposes of this chapter.".

[SEC. 490. PROGRAM OF GRANTS.

[Section 753 of the Rehabilitation Act of 1973, as redesignated by section 489, is amended—

[(1) in subsection (g), by inserting ", or contracts with," after "grants to";

[(2) by striking subsection (h);

[(3) by redesignating subsections (i) and (j) as subsections (h) and (i), respectively;

[(4) in subsection (b), by striking "section 753" and inserting "section 754";

[(5) in subsection (c)—

[(A) in paragraph (1), by striking "section 753" and inserting "section 754"; and

[(B) in paragraph (2)—

[(i) by striking "subsection (i)" and inserting "subsection (h)"; and

[(ii) by striking "subsection (j)" and inserting "subsection (i)";

[(6) in subsection (h), as redesignated by paragraph (3)—

[(A) in paragraph (1), by striking "subsection (j)(4)" and inserting "subsection (i)(4)"; and

[(B) in paragraph (2)—

[(i) in subparagraph (A)(vi), by adding "and" after the semicolon;

[(ii) in subparagraph (B)(ii)(III), by striking "; and" and inserting a period; and

[(iii) by striking subparagraph (C); and

[(7) in subsection (i), as redesignated by paragraph (3)—

[(A) by striking paragraph (2) and inserting the following:

["(2) MINIMUM ALLOTMENT.—

["(A) STATES.—In the case of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, the amount referred to in paragraph (1)(A) for a fiscal year is the greater of—

["(i) $350,000;

["(ii) an amount equal to the amount the State, the District of Columbia, or the Commonwealth of Puerto Rico received to carry out this chapter for fiscal year 2003; or

["(iii) an amount equal to ⅓ of 1 percent of the amount appropriated under section 754, and not reserved under section 752, for the fiscal year and available for allotments under subsection (a).

["(B) CERTAIN TERRITORIES.—In the case of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the amount referred to in paragraph (1)(A) for a fiscal year is $60,000.";

[(B) in paragraph (3)(A), by striking "section 753" and inserting "section 754, and not reserved under section 752,"; and

[(C) in paragraph (4)(B)(i), by striking "subsection (i)" and inserting "subsection (h)".

[SEC. 491. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND AUTHORIZATION OF APPROPRIATIONS.

[Section 754 of the Rehabilitation Act of 1973, as redesignated by section 489, is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

[Subtitle H—Miscellaneous

[SEC. 495. HELEN KELLER NATIONAL CENTER ACT.

[(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—The first sentence of section 205(a) of the Helen Keller National Center Act (29 U.S.C. 1904(a)) is amended by striking "1999 through 2003" and inserting "2004 through 2009".

[(b) HELEN KELLER NATIONAL CENTER FEDERAL ENDOWMENT FUND.—The first sentence of section 208(h) of the Helen Keller National Center Act (29 U.S.C. 1907(h)) is amended by striking "1999 through 2003" and inserting "2004 through 2009".

[TITLE V—TRANSITION AND EFFECTIVE DATE

[SEC. 501. TRANSITION PROVISIONS.

[The Secretary of Labor shall, at the discretion of the Secretary, take such actions as the Secretary determines to be appropriate to provide for the orderly implementation of this Act.

[SEC. 502. EFFECTIVE DATE.

[Except as otherwise provided in this Act, this Act and the amendments made by this Act, shall take effect on the date of enactment of this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Workforce Investment Act Amendments of 2003".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.

TITLE I—AMENDMENTS TO TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998

Subtitle A—Definitions

Sec. 101. Definitions.

Subtitle B—Statewide and Local Workforce Investment Systems

Sec. 111. Purpose.
Sec. 112. State workforce investment boards.
Sec. 113. State plan.
Sec. 114. Local workforce investment areas.
Sec. 115. Local workforce investment boards.
Sec. 116. Local plan.
Sec. 117. Establishment of one-stop delivery systems.
Sec. 118. Eligible providers of training services.
Sec. 119. Eligible providers of youth activities.
Sec. 120. Youth activities.
Sec. 121. Adult and dislocated worker employment and training activities.
Sec. 122. Performance accountability system.
Sec. 123. Authorization of appropriations.

Subtitle C—Job Corps

Sec. 131. Job Corps.

Subtitle D—National Programs

Sec. 141. Native American programs.
Sec. 142. Migrant and seasonal farmworker programs.
Sec. 143. Veterans' workforce investment programs.
Sec. 144. Youth challenge grants.
Sec. 145. Technical assistance.
Sec. 146. Demonstration, pilot, multiservice, research, and multistate projects.
Sec. 147. National dislocated worker grants.
Sec. 148. Authorization of appropriations for national activities.

Subtitle E—Administration

Sec. 151. Requirements and restrictions.
Sec. 152. Reports.
Sec. 153. Administrative provisions.
Sec. 154. Use of certain real property.
Sec. 155. Table of contents.

Subtitle F—Incentive Grants

Sec. 161. Incentive grants.

TITLE II—AMENDMENTS TO THE ADULT EDUCATION AND FAMILY LITERACY ACT

Sec. 201. Short title; purpose.
Sec. 202. Definitions.
Sec. 203. Authorization of appropriations.
Sec. 204. Home schools.
Sec. 205. Reservation of funds; grants to eligible agencies; allotments.
Sec. 206. Performance accountability system.
Sec. 207. State administration.
Sec. 208. State distribution of funds; matching requirement.
Sec. 209. State leadership activities.
Sec. 210. State plan.
Sec. 211. Programs for corrections education and other institutionalized individuals.
Sec. 212. Grants and contracts for eligible providers.
Sec. 213. Local application.
Sec. 214. Local administrative cost limits.

Sec. 215. Administrative provisions.
Sec. 216. National Institute for Literacy.
Sec. 217. National leadership activities.
Sec. 218. Integrated English literacy and civics education.
Sec. 219. Transition.

TITLE III—AMENDMENTS TO OTHER PROVISIONS OF LAW

Sec. 301. Wagner-Peyser Act.

TITLE IV—REHABILITATION ACT AMENDMENTS

Sec. 401. Short title.
Sec. 402. Technical amendments to table of contents.
Sec. 403. Purpose.
Sec. 404. Definitions.
Sec. 405. Administration of the Act.
Sec. 406. Carryover.

Subtitle A—Vocational Rehabilitation Services

Sec. 411. Declaration of policy; authorization of appropriations.
Sec. 412. State plans.
Sec. 413. Eligibility and individualized plan for employment.
Sec. 414. Vocational rehabilitation services.
Sec. 415. State rehabilitation council.
Sec. 416. Evaluation standards and performance indicators.
Sec. 417. State allotments.
Sec. 418. Client assistance program.
Sec. 419. Incentive grants.
Sec. 420. Vocational rehabilitation services grants.
Sec. 421. GAO studies.

Subtitle B—Research and Training

Sec. 431. Authorization of appropriations.
Sec. 432. National Institute on Disability and Rehabilitation Research.
Sec. 433. Research and other covered activities.
Sec. 434. Rehabilitation research advisory council.

Subtitle C—Professional Development and Special Projects and Demonstrations

Sec. 441. Training.
Sec. 442. Demonstration and training programs.
Sec. 443. Migrant and seasonal farmworkers.
Sec. 444. Recreational programs.

Subtitle D—National Council on Disability

Sec. 451. Authorization of appropriations.

Subtitle E—Rights and Advocacy

Sec. 461. Architectural and transportation barriers compliance board.
Sec. 462. Protection and advocacy of individual rights.

Subtitle F—Employment Opportunities for Individuals With Disabilities

Sec. 471. Projects with industry authorization of appropriations.
Sec. 472. Services for individuals with significant disabilities authorization of appropriations.

Subtitle G—Independent Living Services and Centers for Independent Living

Sec. 481. State plan.
Sec. 482. Statewide independent living council.
Sec. 483. Independent living services authorization of appropriations.
Sec. 484. Program authorization.
Sec. 485. Grants to centers for independent living in States in which Federal funding exceeds State funding.
Sec. 486. Grants to centers for independent living in States in which State funding equals or exceeds Federal funding.
Sec. 487. Standards and assurances for centers for independent living.
Sec. 488. Centers for independent living authorization of appropriations.
Sec. 489. Independent living services for older individuals who are blind.
Sec. 490. Program of grants.
Sec. 491. Independent living services for older individuals who are blind authorization of appropriations.

Subtitle H—Miscellaneous

Sec. 495. Helen Keller National Center Act.

TITLE V—TRANSITION AND EFFECTIVE DATE

Sec. 501. Transition provisions.
Sec. 502. Effective date.

SEC. 3. REFERENCES.

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

TITLE I—AMENDMENTS TO TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998

Subtitle A—Definitions

SEC. 101. DEFINITIONS.

Section 101 (29 U.S.C. 2801) is amended—

(1) by redesignating paragraphs (1) through (4), (5) through (16), (17), (18) through (41), and (42) through (53) as paragraphs (2) through (5), (7) through (18), (20), (23) through (46), and (48) through (59), respectively;

(2) by inserting before paragraph (2) (as redesignated by paragraph (1)) the following:

"(1) ACCRUED EXPENDITURES.—The term 'accrued expenditures' means charges incurred by recipients of funds under this title for a given period requiring the provision of funds for—

"(A) goods or other tangible property received;

"(B) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

"(C) other amounts becoming owed under programs assisted under this title for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.";

(3) in paragraph (2) (as redesignated by paragraph (1)), by striking "Except in sections 127 and 132," and inserting "Except in section 132,";

(4) by striking paragraph (5) (as redesignated by paragraph (1)) and inserting the following:

"(5) BASIC SKILLS DEFICIENT.—The term 'basic skills deficient' means, with respect to an individual, that the individual—

"(A) has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test; or

"(B) is unable to compute or solve problems, read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society.";

(5) by inserting after paragraph (5) (as redesignated by paragraph (1)) the following:

"(6) BUSINESS INTERMEDIARY.—The term 'business intermediary' means an entity that brings together various stakeholders with an expertise in an industry or business sector.";

(6) in paragraph (9) (as redesignated by paragraph (1)), by inserting ", including a faith-based organization," after "nonprofit organization";

(7) in paragraph (10) (as redesignated by paragraph (1))—

(A) in subparagraph (B), by striking "and" after the semicolon;

(B) in subparagraph (C)—

(i) by striking "for not less than 50 percent of the cost of the training." and inserting "for—

"(i) a significant portion of the cost of training as determined by the local board, taking into account the size of the employer and such other factors as the local board determines to be appropriate; and

"(ii) for customized training (as defined in subparagraphs (A) and (B)) with an employer in multiple local areas in the State, a significant portion of the cost of the training, as determined by the Governor, taking into account the size of the employer and such other factors as the Governor determines to be appropriate.";

(8) in paragraph (11) (as redesignated by paragraph (1))—

(A) in subparagraph (A)(ii)(II), by striking "section 134(c)" and inserting "section 121(e)";

(B) in subparagraph (C), by striking "or" after the semicolon;

(C) in subparagraph (D), by striking the period and inserting "; or"; and

(D) by adding at the end the following:

"(E)(i) is the spouse of a member of the Armed Forces on active duty for a period of more than 30 days (as defined in section 101(d)(2) of title 10, United States Code) who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member; or

"(ii) is the spouse of a member of the Armed Forces on active duty who meets the criteria described in paragraph (12)(B).";

(9) in paragraph (12)(A) (as redesignated by paragraph (1))—

(A) by striking "and" after the semicolon and inserting "or";

(B) by striking "(A)" and inserting "(A)(i)"; and

(C) by adding at the end the following:

"(ii) is the dependent spouse of a member of the Armed Forces on active duty for a period of more than 30 days (as defined in section 101(d)(2) of title 10, United States Code) whose family income is significantly reduced because of a deployment (as defined in section 991(b) of title 10, United States Code, or pursuant to paragraph (4) of such section), a call or order to active duty pursuant to a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, a permanent change of station, or the service-connected (as defined in section 101(16) of title 38, United States Code) death or disability of the member; and";

(10) in paragraph (14)(A) (as redesignated by paragraph (1)), by striking "section 122(e)(3)" and inserting "section 122";

(11) by inserting after paragraph (18) (as redesignated by paragraph (1)) the following:

"(19) HARD-TO-SERVE POPULATIONS.—The term 'hard-to-serve populations' means populations of individuals who are hard to serve, including displaced homemakers, low-income individuals, Native Americans, individuals with disabilities, older individuals, ex-offenders, homeless individuals, individuals with limited English proficiency, individuals who do not meet the definition of literacy in section 203, individuals facing substantial cultural barriers, migrant and seasonal farmworkers, individuals within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and such other groups as the Governor determines to be hard to serve.";

(12) by inserting after paragraph (20) (as redesignated by paragraph (1)) the following:

"(21) INTEGRATED TRAINING PROGRAM.—The term 'integrated training program' means a program that combines occupational skills training with English language acquisition.

"(22) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given the term in section 101(a), and subparagraphs (A) and (B) of section 102(a)(1), of the Higher Education Act of 1965 (20 U.S.C. 1001(a), 1002(a)(1)).";

(13) in paragraph (30) (as redesignated by paragraph (1))—

(A) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively; and

(B) by inserting after subparagraph (C) the following:

"(D) receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);";

(14) in paragraph (35) (as redesignated by paragraph (1)), by inserting ", subject to section 121(b)(1)(C)" after "121(b)(1)";

(15) by striking paragraph (38) (as redesignated by paragraph (1)) and inserting the following:

"(38) OUT-OF-SCHOOL YOUTH.—The term 'out-of-school youth' means an out-of-school youth as defined in section 129(a)(1)(B).";

(16) in paragraph (46) (as redesignated by paragraph (1)), by striking ", and the term means such Secretary for purposes of section 503";

(17) by inserting after paragraph (46) (as redesignated by paragraph (1)) the following:

"(47) SELF-SUFFICIENCY.—The term 'self-sufficiency' means self-sufficiency within the meaning of subsections (a)(3)(A)(x) and (e)(1)(A)(xii) of section 134.";

(18) in paragraph (49) (as redesignated by paragraph (1)), by striking "clause (iii) or (v) of section 136(b)(3)(A)" and inserting "section 136(b)(3)(A)(iii)";

(19) in paragraph (58) (as redesignated by paragraph (1)), by striking "(or as described in section 129(c)(5))" and inserting "(or as described in section 129(a)(2))"; and

(20) in paragraph (59) (as redesignated by paragraph (1)), by striking "established under section 117(h)" and inserting "that may be established under section 117(h)(2)".

Subtitle B—Statewide and Local Workforce Investment Systems

SEC. 111. PURPOSE.

Section 106 (29 U.S.C. 2811) is amended to read as follows:

"SEC. 106. PURPOSES.

"The purposes of this subtitle are the following:

"(1)(A) Primarily, to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, self-sufficiency, and earnings of participants, and increase occupational skill attainment by participants.

"(B) As a result of the provision of the activities, to improve the quality of the workforce, reduce welfare dependency, increase self-sufficiency, and enhance the productivity and competitiveness of the Nation.

"(2) To enhance the workforce investment system of the Nation by strengthening one-stop centers, providing for more effective governance arrangements, promoting access to a more comprehensive array of employment and training and related services, establishing a targeted approach to serving youth, improving performance accountability, and promoting State and local flexibility.

"(3) To provide workforce investment activities in a manner that promotes the informed choice of participants and actively involves participants in decisions affecting their participation in such activities.

"(4) To provide workforce investment systems that are demand-driven and responsive to the needs of all employers, including small employers.

"(5) To provide workforce investment systems that work in all areas of the Nation, including urban and rural areas.

"(6) To allow flexibility to meet State, local, regional, and individual workforce investment needs.

"(7) To recognize and reinforce the vital link between economic development and workforce investment activities.

"(8) To provide for accurate data collection, reporting, and performance measures that are not unduly burdensome.

"(9) To address the ongoing shortage of essential skills in the United States workforce related to both manufacturing and knowledge-based economies to ensure that the United States remains competitive in the global economy.

"(10) To equip workers with higher skills and contribute to lifelong education.

"(11) To eliminate training disincentives for hard-to-serve populations and minority workers, including effectively utilizing community programs, services, and agencies.

"(12) To educate limited English proficient individuals about skills and language so the individuals are employable.

"(13) To increase the employment, retention and earnings of individuals with disabilities.".

SEC. 112. STATE WORKFORCE INVESTMENT BOARDS.

(a) MEMBERSHIP.—

(1) IN GENERAL.—Section 111(b) (29 U.S.C. 2821(b)) is amended—

(A) in paragraph (1), by striking subparagraph (C) and inserting the following:

"(C) representatives appointed by the Governor, who—

"(i) are the lead State agency officials with responsibility for the programs and activities that are described in section 121(b) and carried out by one-stop partners, except that—

"(I) in any case in which no lead State agency official has responsibility for such a program or activity, the representative shall be a representative in the State with expertise relating to such program or activity; and

"(II) in the case of the programs authorized under title I of the Rehabilitation Act of 1973, the representative shall be the director of the designated State unit, as defined in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705);

"(ii) are the State agency officials responsible for economic development;

"(iii) are representatives of business in the State, including small businesses, who—

"(I) are owners of businesses, chief executive or operating officers of businesses, or other business executives or employers with optimum policymaking or hiring authority;

"(II) represent businesses with employment opportunities that reflect employment opportunities in the State; and

"(III) are appointed from among individuals nominated by State business organizations, business trade associations, and local boards;

"(iv) are chief elected officials (representing cities and counties, where appropriate);

"(v) are representatives of labor organizations, who have been nominated by State labor federations; and

"(vi) are such other State agency officials and other representatives as the Governor may designate."; and

(B) in paragraph (3), by striking "paragraph (1)(C)(i)" and inserting "paragraph (1)(C)(iii)".

(2) CONFORMING AMENDMENT.—Section 111(c) (29 U.S.C. 2821(c)) is amended by striking "subsection (b)(1)(C)(i)" and inserting "subsection (b)(1)(C)(iii)".

(b) FUNCTIONS.—Section 111(d) (29 U.S.C. 2811(d)) is amended—

(1) in paragraph (1), by striking "development" and inserting "development, implementation, and revision";

(2) in paragraph (2), by striking "section 134(c)" and inserting "section 121(e)";

(3) by striking paragraph (3) and inserting the following:

"(3) reviewing and providing comment on the State plans of all one-stop partner programs, where applicable, in order to provide effective strategic leadership in the development of a high quality, comprehensive statewide workforce investment system, including commenting at least once annually on the measures taken pursuant to section 113(b)(3) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C 2323(b)(3)) and title II of this Act;

(4) by redesignating paragraphs (4) through (9) as paragraphs (5) through (10), respectively;

(5) by inserting after paragraph (3) the following:

"(4) development and review of statewide policies affecting the coordinated provision of services through the one-stop delivery systems described in section 121(e) within the State, including—

"(A) the development of objective criteria and procedures for use by local boards in assessing the effectiveness and continuous improvement of one-stop centers under section 121(g);

"(B) the development of guidance for the allocation of one-stop center infrastructure funds under section 121(h)(1)(B);

"(C) the development of—

"(i) statewide policies relating to the appropriate roles and contributions of one-stop partner programs within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation in the one-stop delivery system;

"(ii) statewide strategies for providing effective outreach to individuals, including hard-to-serve populations, and employers who could benefit from services provided through the one-stop delivery system; and

"(iii) strategies for technology improvements to facilitate access to services provided through the one-stop delivery system, in remote areas, and for individuals with disabilities, which may be utilized throughout the State;

"(D) identification and dissemination of information on best practices for effective operation of one-stop centers, including use of innovative business outreach, partnerships, and service delivery strategies, including for hard-to-serve populations; and

"(E) conduct of such other matters as may promote statewide objectives for, and enhance the performance of, the one-stop delivery systems;";

(6) in paragraph (5) (as redesignated by paragraph (4)), by inserting "and the development of statewide criteria to be used by chief elected officials for the appointment of local boards consistent with section 117" after "section 116";

(7) in paragraph (6) (as redesignated by paragraph (4)), by striking "sections 128(b)(3)(B) and 133(b)(3)(B)" and inserting "sections 128(b)(3) and 133(b)(3)(B)";

(8) in paragraph (9) (as redesignated by paragraph (4)), by striking "and" after the semicolon;

(9) in paragraph (10) (as redesignated by paragraph (4))—

(A) by striking "section 503" and inserting "section 136(i)(1)"; and

(B) by striking the period and inserting "; and"; and

(10) by adding at the end the following:

"(11) increasing the availability of skills training, employment opportunities, and career advancement, for hard-to-serve populations.".

(c) ALTERNATIVE ENTITY.—Section 111(e) (29 U.S.C. 2811(e)) is amended—

(1) in paragraph (1), by striking "For" and inserting "Subject to paragraph (3), for"; and

(2) by adding at the end the following:

"(3) FAILURE TO MEET PERFORMANCE MEASURES.—If a State fails to have performed successfully, as defined in section 116(a)(2), the Secretary may require the State to establish a State board in accordance with subsections (a), (b), and (c) in lieu of the alternative entity established under paragraph (1).".

(d) SUNSHINE PROVISION.—Section 111(g) (29 U.S.C. 2822(g)) is amended—

(1) by inserting ", and modifications to the State plan," before "prior"; and

(2) by inserting ", and modifications to the State plan" after "the plan".

(e) AUTHORITY TO HIRE STAFF.—Section 111 (29 U.S.C. 2811)) is amended by adding at the end the following:

"(h) AUTHORITY TO HIRE STAFF.—The State board may hire staff to assist in carrying out the functions described in subsection (d) using funds allocated under sections 127(b)(1)(C) and 132(b).".

SEC. 113. STATE PLAN.

(a) PLANNING CYCLE.—Section 112(a) (29 U.S.C. 2822(a)) is amended—

(1) by striking "5-year strategy" and inserting "4-year strategy"; and

(2) by adding at the end the following: "At the end of the first 2-year period of the 4-year State plan, the State board shall review and, as needed, amend the 4-year State plan to reflect labor market and economic conditions. In addition, the State shall submit a modification to the State plan at the end of the first 2-year period of the State plan, which may include redesignation of local areas pursuant to section 116(a) and specification of the levels of performance under sections 136 for the third and fourth years of the plan.".

(b) CONTENTS.—Section 112(b) (29 U.S.C. 2822(b)) is amended—

(1) in paragraph (8)(A)—

(A) in clause (ix), by striking "and" after the semicolon; and

(B) by adding at the end the following:

"(xi) programs authorized under title II of the Social Security Act (42 U.S.C. 401 et seq.) (relating to Federal old-age, survivors, and disability insurance benefits), title XVI of such Act (42 U.S.C. 1381 et seq.) (relating to supplemental security income), title XIX of such Act (42 U.S.C. 1396 et seq.) (relating to medicaid), and title XX of such Act (relating to block grants to States for social services), programs authorized under title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796 et seq.), and programs carried out by State agencies relating to mental retardation and developmental disabilities; and";

(2) by striking paragraph (10) and inserting the following:

"(10) a description of how the State will use funds the State received under this subtitle to leverage other Federal, State, local, and private resources, in order to maximize the effectiveness of such resources, expand resources for the provision of education and training services, and expand the participation of businesses, employees, and individuals in the statewide workforce investment system, including a description of incentives and technical assistance the State will provide to local areas for such purposes;";

(3) in paragraph (12)(A), by striking "sections 128(b)(3)(B) and 133(b)(3)(B)" and inserting "sections 128(b)(3) and 133(b)(3)(B)";

(4) in paragraph (14), by striking "section 134(c)" and inserting "section 121(e)";

(5) in paragraph (17)—

(A) in subparagraph (A)—

(i) in clause (iii)—

(I) by inserting "local" before "customized training"; and

(II) by striking "and" at the end;

(ii) in clause (iv), by striking "(including displaced homemakers)," and all that follows through "disabilities)" and inserting ", hard-to-serve populations and individuals training for nontraditional employment"; and

(iii) by adding after clause (iv) the following:

"(v) how the State will serve the employment and training needs of individuals with disabilities, consistent with section 188 and Executive Order 13217 (42 U.S.C. 12131 note; relating to community-based alternatives for individuals with disabilities), including the provision of outreach, intake, the conduct of assessments, service delivery, the development of adjustments to performance measures established under section 136, and the training of staff; and"; and

(B) in subparagraph (B), by striking "and" at the end;

(6) in paragraph (18)(D)—

(A) by striking "youth opportunity grants" and inserting "youth challenge grants authorized under section 169 and other federally funded youth programs"; and

(B) by striking the period and inserting a semicolon; and

(7) by adding at the end the following:

"(19) a description of how the State will utilize technology to facilitate access to services in remote areas, which may be utilized throughout the State;

"(20) a description of the State strategy for coordinating workforce investment activities and economic development activities;

"(21) a description of the State strategy and assistance to be provided for ensuring regional cooperation within the State and across State borders as appropriate;

"(22) a description of how the State will use funds the State receives under this subtitle to—

"(A) implement innovative programs and strategies designed to meet the needs of all businesses in the State, including small businesses, which may include incumbent worker training programs, sectoral and industry cluster strategies, regional skills alliances, career ladder programs, utilization of effective business intermediaries, and other business services and strategies that better engage employers in workforce investment activities and make the statewide workforce investment system more relevant to the needs of State and local businesses, consistent with the objectives of this title; and

"(B) provide incentives and technical assistance to assist local areas in more fully engaging all employers, including small employers, in local workforce investment activities, to make the workforce investment system more relevant to the needs of area businesses, and to better coordinate workforce investment and economic development efforts to contribute to the economic well-being of the local area, as determined appropriate by the local board;

"(23) a description of the State strategy—

"(A) for ensuring cooperation between transportation providers, including public transportation providers, and providers of workforce investment activities; and

"(B) for ensuring coordination among appropriate State agencies and programs to make available skills training, employment services and opportunities, and career advancement activities, that will assist ex-offenders in reentering the workforce;

"(24) a description of how the State will assist local areas in assuring physical and programmatic accessibility for individuals with disabilities at one-stop centers;

"(25) a description of the process and methodology that will be used by the State board to—

"(A) review statewide policies and provide guidance on the coordinated provision of services through the one-stop delivery system described in section 121;

"(B) establish, in consultation with chief elected officials and local boards, objective criteria and procedures for use by local boards in periodically assessing the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and one-stop delivery systems as described in section 121(g); and

"(C) determine—

"(i) one-stop partner program contributions for the costs of the infrastructure of one-stop centers under section 121(h)(2); and

"(ii) the formula for allocating the funds described in section 121(h)(2) to local areas;

"(26) a description of the State strategy for ensuring that activities carried out under this title are placing men and women in jobs, education, or training that lead to comparable pay; and

"(27) a description of the technical assistance available to one-stop operators and providers of training services for strategies to serve hard-to-serve populations and promote placement in nontraditional employment.".

(c) MODIFICATIONS TO PLAN.—Section 112(d) (29 U.S.C. 2822(d)) is amended—

(1) by striking "5-year period" and inserting "4-year period"; and

(2) by adding at the end the following: "In addition, the State shall submit the modifications to the State plan required under subsection (a), under circumstances prescribed by the Secretary that are due to changes in Federal law that significantly affect elements of the State plan.".

SEC. 114. LOCAL WORKFORCE INVESTMENT AREAS.

(a) DESIGNATION OF AREAS.—

(1) CONSIDERATIONS.—Section 116(a)(1)(B) (29 U.S.C. 2831(a)(1)(B)) is amended by adding at the end the following:

"(vi) The extent to which such local areas will promote maximum effectiveness in the administration and provision of services.".

(2) AUTOMATIC DESIGNATION.—Section 116(a)(2) (29 U.S.C. 2831(a)(2)) is amended to read as follows:

"(2) AUTOMATIC DESIGNATION.—

"(A) IN GENERAL.—The Governor shall approve a request for designation as a local area that is submitted prior to the submission of the State plan, or of a modification to the State plan relating to area designation, from any area that—

"(i) is a unit of general local government with a population of 500,000 or more, except that after the initial 2-year period following such designation pursuant to this clause that occurs after the date of enactment of the Workforce Investment Act Amendments of 2003, the Governor shall only be required to approve a request for designation from such area if such area—

"(I) performed successfully; and

"(II) sustained fiscal integrity;

"(ii) was a local area under this title for the preceding 2-year period, if such local area—

"(I) performed successfully; and

"(II) sustained fiscal integrity;

"(iii) is served by a rural concentrated employment program grant recipient, except that after the initial 2-year period following any such designation under the initial State plan submitted after the date of enactment of the Workforce Investment Act Amendments of 2003, the Governor shall only be required to approve a request for designation under this clause for such area if such area—

"(I) performed successfully; and

"(II) sustained fiscal integrity; or

"(iv) was a local area under section 116(a)(2)(C) (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003), except that after the initial 2-year period following such designation pursuant to this clause that occurs after that date of enactment, the Governor shall only be required to approve a request for designation under this clause for such area if such area—

"(I) performed successfully; and

"(II) sustained fiscal integrity.

"(B) DEFINITIONS.—For purposes of this paragraph:

"(i) PERFORMED SUCCESSFULLY.—The term 'performed successfully', when used with respect to a local area, means the local area performed at 80 percent or more of the adjusted level of performance for core indicators of performance described in section 136(b)(2)(A) for 2 consecutive years.

"(ii) SUSTAINED FISCAL INTEGRITY.—The term 'sustained fiscal integrity', used with respect to *an area, means that the Secretary has not made a formal determination during the preceding 2-year period that either the grant recipient or the administrative entity of the area misexpended funds provided under this title due to willful disregard of the requirements of the Act involved, gross negligence, or failure to comply with accepted standards of administration.".*

(3) CONFORMING AMENDMENTS.—Section 116(a) (29 U.S.C. 2831(a)) is amended—

(A) by striking paragraph (3);

(B) by redesignating paragraphs (4) and (5) as paragraph (3) and (4), respectively;

(C) in paragraph (3) (as redesignated by subparagraph (B))—

(i) by striking "(including temporary designation)"; and

(ii) by striking "(v)" and inserting "(vi)"; and

(D) in paragraph (4) (as redesignated by subparagraph (B))—

(i) by striking "under paragraph (2) or (3)" and inserting "under paragraph (2)"; and

(ii) by striking the second sentence.

(b) SINGLE LOCAL AREA STATES.—Section 116(b) (29 U.S.C. 2831(b)) is amended to read as follows:

"(b) SINGLE LOCAL AREA STATES.—

"(1) CONTINUATION OF PREVIOUS DESIGNATION.—Notwithstanding subsection (a)(2), the Governor of any State that was a single local area for purposes of this title as of July 1, 2002, may continue to designate the State as a single local area for purposes of this title if the Governor identifies the State as a local area in the State plan under section 112(b)(5).

"(2) REDESIGNATION.—The Governor of a State not described in paragraph (1) may designate the State as a single local area if, prior to the submission of the State plan or modification to such plan so designating the State, no local area meeting the requirements for automatic designation under subsection (a)(2) requests such designation as a separate local area.

"(3) EFFECT ON LOCAL PLAN.—In any case in which a State is designated as a local area pursuant to this subsection, the local plan prepared under section 118 for the area shall be submitted to the Secretary for approval as part of the State plan under section 112.".

(c) REGIONAL PLANNING.—Section 116(c) (29 U.S.C. 2831(c)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) PLANNING.—

"(A) IN GENERAL.—As part of the process for developing the State plan, a State may require regional planning by local boards for a designated region in the State. The State may require the local boards for a designated region to participate in a regional planning process that results in the establishment of regional performance measures for workforce investment activities authorized under this subtitle. The State, after consultation with local boards and chief elected officials, may require the local boards for the designated region to prepare, submit, and obtain approval of a single regional plan that incorporates local plans for each of the local areas in the region, as required under section 118. The State may award regional incentive grants to the designated regions that meet or exceed the regional performance measures pursuant to section 134(a)(2)(B)(iii).

"(B) TECHNICAL ASSISTANCE.—If the State requires regional planning as provided in subparagraph (A), the State shall provide technical assistance and labor market information to such local areas in the designated regions to assist with such regional planning and subsequent service delivery efforts.";

(2) in paragraph (2), by inserting "information about the skill requirements of existing and emerging industries and industry clusters," after "information about employment opportunities and trends,"; and

(3) in paragraph (3), by adding at the end the following: "Such services may be required to be coordinated with regional economic development services and strategies.".

SEC. 115. LOCAL WORKFORCE INVESTMENT BOARDS.

(a) COMPOSITION.—Section 117(b) (29 U.S.C. 2832(b)) is amended—

(1) in paragraph (2)(A)—

(A) in clause (i), by striking subclause (II) and inserting the following:

"(II) collectively, represent businesses with employment opportunities that reflect the employment opportunities of the local area, and include representatives of businesses that are in high-growth and emerging industries, and representatives of businesses, including small businesses, in the local area; and";

(B) by striking clause (ii) and inserting the following:

"(ii)(I) a superintendent representing the local school districts involved or another high-level official from such districts;

"(II) the president or highest ranking official of an institution of higher education serving the local area; and

"(III) an administrator of local entities providing adult education and literacy activities in the local area;";

(C) in clause (iv), by inserting ", hard-to-serve populations," after "disabilities"; and

(D) by striking clause (vi) and inserting the following:

"(vi) if the local board does not establish or continue a youth council, representatives with experience serving out-of-school youth, particularly out-of-school youth facing barriers to employment; and"; and

(2) by adding at the end the following:

"(6) SPECIAL RULE.—In the case that there are multiple school districts or institutions of higher education serving a local area, the representatives described in subclause (I) or (II) of paragraph (2)(A)(ii), respectively, shall be appointed from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such agencies or institutions.".

(b) AUTHORITY OF BOARD MEMBERS.—Section 117(b)(3) (29 U.S.C. 2832(b)(3)) is amended—

(1) in the heading, by inserting "AND REPRESENTATION" after "AUTHORITY"; and

(2) by adding at the end the following: "The members of the board shall represent diverse geographic sections within the local area.".

(c) CONFORMING AMENDMENT.—Section 117(c)(1)(C) (29 U.S.C. 2832(c)(1)(C)) is amended by striking "section 116(a)(2)(B)" and inserting "section 116(a)(2)(A)(ii)".

(d) FUNCTIONS.—Section 117(d) (29 U.S.C. 2832(d)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (B)—

(i) by inserting "(except as provided in section 123(b))" after "basis"; and

(ii) by inserting "(where appropriate)" after "youth council"; and

(B) by adding at the end the following:

"(E) CONSUMER CHOICE REQUIREMENTS.—Consistent with sections 122 and paragraphs (3) and (4) of 134(d), the local board shall work to ensure there are sufficient providers of intensive services and training services serving the local area in a manner that maximizes consumer choice, including providers with expertise in assisting individuals with disabilities.";

(2) in paragraph (4), by inserting ", and shall ensure the appropriate use and management of the funds provided under this subtitle for such programs, activities, and system" after "area";

(3) in paragraph (8)—

(A) by inserting ", including small employers," after "private sector employers"; and

(B) by striking the period and inserting ", taking into account the unique needs of small businesses."; and

(4) by adding at the end the following:

"(9) TECHNOLOGY IMPROVEMENTS.—The local board shall develop strategies for technology improvements to facilitate access to services, in remote areas, for services authorized under this subtitle and carried out in the local area.".

(e) CONFORMING AMENDMENT.—Section 117(f)(2) (29 U.S.C. 2832(f)(2)) is amended by striking "described in section 134(c)".

(f) AUTHORITY TO ESTABLISH COUNCILS AND ELIMINATION OF REQUIREMENT FOR YOUTH COUNCILS.—Section 117(h) (29 U.S.C. 2832(h)) is amended to read as follows:

"(h) COUNCILS.—The local board may establish or continue councils to provide information and advice to assist the local board in carrying out activities under this title. Such councils may include—

"(1) a council composed of one-stop partners to advise the local board on the operation of the one-stop delivery system involved;

"(2) a youth council composed of experts and stakeholders in youth programs to advise the local board on youth activities; and

"(3) such other councils as the local board determines are appropriate.".

(g) ALTERNATIVE ENTITY PROVISION.—Section 117(i)(1) (29 U.S.C. 2832(i)(1)) is amended—

(1) by striking subparagraph (B) and inserting the following:

"(B) was in existence on August 7, 1998, pursuant to State law; and";

(2) by striking subparagraph (C); and

(3) by redesignating subparagraph (D) as subparagraph (C).

SEC. 116. LOCAL PLAN.

(a) PLANNING CYCLE.—Section 118(a) (29 U.S.C. 2833(a)) is amended—

(1) by striking "5-year" and inserting "4-year"; and

(2) by adding at the end the following: "At the end of the first 2-year period of the 4-year plan, the local board shall review and, as needed, amend the 4-year plan to reflect labor market and economic conditions.".

(b) CONTENTS.—Section 118(b) (29 U.S.C. 2833(b)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking "and" after the semicolon;

(B) by striking subparagraph (B) and inserting the following:

"(B) a description of how the local board will facilitate access to services provided through the one-stop delivery system, in remote areas, including facilitating access through the use of technology; and"; and

(C) by adding at the end the following:

"(C) a description of how the local board will ensure physical and programmatic accessibility for individuals with disabilities at one-stop centers;";

(2) in paragraph (9), by striking "; and" and inserting a semicolon;

(3) by redesignating paragraph (10) as paragraph (14); and

(4) by inserting after paragraph (9) the following:

"(10) a description of how the local board will coordinate workforce investment activities carried out in the local area with economic development activities carried out in the local area;

"(11) a description of the strategies and services that will be initiated in the local area to more fully engage all employers, including small employers, in workforce investment activities, to make the workforce investment system more relevant to the needs of area businesses, and to better coordinate workforce investment and economic development efforts, which may include the implementation of innovative initiatives such as incumbent worker training programs, sectoral and industry cluster strategies, regional

skills alliance initiatives, career ladder programs, utilization of effective business intermediaries, and other business services and strategies designed to meet the needs of area employers and contribute to the economic well-being of the local area, as determined appropriate by the local board, consistent with the objectives of this title;

"(12) a description of how the local board will expand access to education and training services for eligible individuals who are in need of such services through—

"(A) the utilization of programs funded under this title; and

"(B) the increased leveraging of resources other than those provided under this title, including tax credits, private sector-provided training, and other Federal, State, local, and private funds that are brokered through the one-stop centers for training services;

"(13) a description of how the local board will coordinate workforce investment activities carried out in the local area with the provision of transportation, including public transportation, in the local area; and".

SEC. 117. ESTABLISHMENT OF ONE-STOP DELIVERY SYSTEMS.

(a) ONE-STOP PARTNERS.—

(1) REQUIRED PARTNERS.—Section 121(b)(1) (29 U.S.C. 2841(b)(1)) is amended—

(A) by striking subparagraph (A) and inserting the following:

"(A) ROLES AND RESPONSIBILITIES OF ONE-STOP PARTNERS.—Each entity that carries out a program or activities described in subparagraph (B) shall—

"(i) provide access through the one-stop delivery system to the programs and activities carried out by the entity, including making the core services described in section 134(d)(2) that are applicable to the program of the entity available at the comprehensive one-stop centers (in addition to any other appropriate locations);

"(ii) use a portion of the funds available to the program of the entity to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers in accordance with subsection (h);

"(iii) enter into a local memorandum of understanding with the local board relating to the operation of the one-stop system that meets the requirements of subsection (c);

"(iv) participate in the operation of the one-stop system consistent with the terms of the memorandum of understanding, the requirements of this title, and the requirements of the Federal laws authorizing the programs carried out by the entity; and

"(v) provide representation on the State board to the extent provided under section 111.";

(B) in subparagraph (B)—

(i) by striking clause (v);

(ii) by redesignating clauses (vi) through (xii) as clauses (v) through (xi), respectively;

(iii) in clause (x) (as redesignated by clause (ii)), by striking "and" at the end;

(iv) in clause (xi) (as redesignated by clause (ii)), by striking the period and inserting "; and"; and

(v) by adding at the end the following:

"(xii) programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), subject to subparagraph (C)."; and

(C) by adding at the end the following:

"(C) DETERMINATION BY THE GOVERNOR.—

"(i) IN GENERAL.—An entity that carries out programs referred to in subparagraph (B)(xii) shall be included in the one-stop partners for the local area, as a required partner, for purposes of this title unless the Governor of the State provides the notification described in clause (ii).

"(ii) NOTIFICATION.—The notification referred to in clause (i) is a notification that—

"(I) is made in writing of a determination by the Governor not to include such entity in the one-stop partners described in clause (i); and

"(II) is provided to the Secretary and the Secretary of Health and Human Services.".

(2) ADDITIONAL PARTNERS.—

(A) IN GENERAL.—Section 121(b)(2)(A) (29 U.S.C. 2841(b)(2)(A)) is amended to read as follows:

"(A) IN GENERAL.—With the approval of the local board and chief elected official, in addition to the entities described in paragraph (1), other entities that carry out human resource programs described in subparagraph (B) may be one-stop partners and carry out the responsibilities described in paragraph (1)(A).".

(B) ADDITIONAL PARTNERS.—Section 121(b)(2)(B) (29 U.S.C. 2841(b)(2)(B)) is amended by striking clauses (i) through (iii) and inserting the following:

"(i) employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19);

"(ii) employment and training programs carried out by the Small Business Administration;

"(iii) programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4));".

(b) LOCAL MEMORANDUM OF UNDERSTANDING.—Section 121(c)(2)(A) (29 U.S.C. 2841(c)(2)(A)) is amended to read as follows:

"(A) provisions describing—

"(i) the services to be provided through the one-stop delivery system consistent with the requirements of this section, including the manner in which the services will be coordinated through such system;

"(ii) how the costs of such services and the operating costs of such system will be funded to provide a stable and equitable funding stream for ongoing one-stop system operations, including the funding of the infrastructure costs of one-stop centers in accordance with subsection (h);

"(iii) methods of referral of individuals between the one-stop operator and the one-stop partners for appropriate services and activities;

"(iv) methods to ensure the needs of hard-to-serve populations are addressed in providing access to services through the one-stop system; and

"(v) the duration of the memorandum of understanding and the procedures for amending the memorandum during the term of the memorandum, and assurances that such memorandum shall be reviewed not less than once every 2-year period to ensure appropriate funding and delivery of services; and".

(c) CONFORMING AMENDMENT.—Section 121(d)(2) (29 U.S.C. 2841(d)(2)) is amended by striking "section 134(c)" and inserting "section 121(e)".

(d) PROVISION OF SERVICES.—

(1) ELIMINATION OF PROVISIONS CONCERNING ESTABLISHED SYSTEMS.—Section 121 (29 U.S.C. 2841) is amended by striking subsection (e).

(2) REDESIGNATION.—Subtitle B of title I is amended—

(A) in section 134 (29 U.S.C. 2864), by redesignating subsection (c) as subsection (e); and

(B) by transferring that subsection (e) so that the subsection appears after subsection (d) of section 121.

(3) ONE-STOP DELIVERY SYSTEMS.—Paragraph (1) of section 121(e) (29 U.S.C. 2841(e)) (as redesignated by paragraph (2)) is amended—

(A) in subparagraph (A), by striking "subsection (d)(2)" and inserting "section 134(d)(2)";

(B) in subparagraph (B)—

(i) by striking "subsection (d)" and inserting "section 134(d)";

(ii) by striking "individual training accounts" and inserting "career scholarship accounts"; and

(iii) by striking "subsection (d)(4)(G)" and inserting "section 134(d)(4)(G)";

(C) in subparagraph (C), by striking "subsection (e)" and inserting "section 134(e)";

(D) in subparagraph (D), by striking "section 121(b)" and inserting "subsection (b)"; and

(E) in subparagraph (E), by striking "information described in section 15" and inserting "data, information, and analysis described in section 15(a)".

(e) CONTINUOUS IMPROVEMENT OF ONE-STOP CENTERS.—Section 121 (29 U.S.C. 2841) is amended by adding at the end the following:

"(g) CONTINUOUS IMPROVEMENT OF ONE-STOP CENTERS.—

"(1) IN GENERAL.—The State board, in consultation with chief local elected officials and local boards, shall establish objective criteria and procedures for use by local boards in periodically assessing the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and one-stop delivery systems.

"(2) CRITERIA.—The procedures and criteria developed under this subsection shall include minimum standards relating to the scope and degree of service coordination achieved by the one-stop delivery system with respect to the programs administered by the one-stop partners at the one-stop centers, consistent with the guidelines and guidance provided by the Governor and by the State board, in consultation with the chief elected official and local boards, for such partners' participation under subsections (h)(1)(B) and subsection (i), respectively, and such other factors relating to the quality, accessibility, and effectiveness of the one-stop delivery system as the State board determines to be appropriate.

"(3) LOCAL BOARDS.—Consistent with the criteria developed by the State, the local board may develop additional criteria of higher standards to respond to local labor market and demographic conditions and trends.

"(h) FUNDING OF ONE-STOP INFRASTRUCTURE.—

"(1) IN GENERAL.—

"(A) OPTIONS FOR INFRASTRUCTURE FUNDING.—

"(i) LOCAL OPTIONS.—The local board, chief elected officials, and one-stop partners in a local area may choose to fund the costs of the infrastructure of one-stop centers through—

"(I) methods described in the local memorandum of understanding, if, the local board, chief elected officials, and one-stop partners agree to such methods; or

"(II) the State infrastructure funding mechanism described in paragraph (2).

"(ii) FAILURE TO REACH AGREEMENT ON FUNDING METHODS.—If, as of July 1, 2004, the local board, chief elected officials, and one-stop partners in a local area fail to reach agreement on methods of sufficient funding of the infrastructure costs of one-stop centers, as determined by the local area, the State infrastructure funding mechanism described in paragraph (2) shall be applicable to such local area.

"(B) GUIDANCE FOR INFRASTRUCTURE FUNDING.—In addition to carrying out the requirements relating to the State mechanism for one-stop center infrastructure funding described in paragraph (2), the Governor, after consultation with chief local elected officials, local boards, and the State board, and consistent with the guidelines provided by the State board under subsection (i), shall provide—

"(i) guidelines for State administered one-stop partner programs in determining such programs' contributions to and participation in the one-stop delivery system, including funding for the costs of infrastructure as defined in paragraph (2)(D), negotiated pursuant to the local memorandum of understanding under subsection (c); and

“(ii) guidance to assist local areas in identifying equitable and stable alternative methods of funding of the costs of the infrastructure of one-stop centers in local areas.

“(2) STATE ONE-STOP INFRASTRUCTURE FUNDING.—

“(A) PARTNER CONTRIBUTIONS.—

“(i) IN GENERAL.—Subject to clause (iii), a portion determined under clause (ii) of the Federal funds provided to the State and areas within the State under the Federal laws authorizing the programs described in subsection (b)(1) and administered by one-stop partners for a fiscal year shall be provided to the Governor from such programs to assist in paying the costs of infrastructure of one-stop centers in those local areas of the State not funded under the option described in paragraph (1)(A)(i)(I).

“(ii) DETERMINATION OF GOVERNOR.—

“(I) IN GENERAL.—Subject to subclause (II) and clause (iii), the Governor, after consultation with chief local elected officials, local boards, and the State board, shall determine the portion of funds to be provided under clause (i) by each one-stop partner from each program described in clause (i). In making such determination, the Governor shall calculate the proportionate use of the one-stop centers for the purpose of determining funding contributions pursuant to clause (i)(II) or (ii) of paragraph (1)(A) by each partner, and the costs of administration for purposes not related to one-stop centers for each partner. The Governor shall exclude from such determination the portion of funds and use of one-stop centers attributable to the programs of one-stop partners for those local areas of the State where the infrastructure of one-stop centers is funded under the option described in paragraph (1)(A)(i)(I).

“(II) SPECIAL RULE.—In a State in which the State constitution places policymaking authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities authorized under title II and for postsecondary vocational and technical education activities authorized under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), or vocational rehabilitation services offered under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the determination described in subclause (I) with respect to the programs authorized under that title and those Acts shall be made by the chief officer of the entity with such authority in consultation with the Governor.

“(III) APPEAL BY ONE-STOP PARTNERS.—The Governor shall establish a procedure for the one-stop partner administering a program described in subsection (b) to appeal a determination regarding the portion of funds to be contributed under this paragraph on the basis that such determination is inconsistent with the criteria described in the State plan or with the requirements of this paragraph. Such procedure shall ensure prompt resolution of the appeal.

“(iii) LIMITATIONS.—

“(I) PROVISION FROM ADMINISTRATIVE FUNDS.—The funds provided under this paragraph by each one-stop partner shall be provided only from funds available for the costs of administration under the program administered by such partner, and shall be subject to the program limitations with respect to the portion of funds under such program that may be used for administration.

“(II) CAP ON REQUIRED CONTRIBUTIONS.—

“(aa) WIA FORMULA PROGRAMS AND EMPLOYMENT SERVICE.—The portion of funds required to be contributed under clause (i)(II) or (ii) of paragraph (1)(A) by the programs authorized under chapters 4 and 5 and under the Wagner-Peyser Act shall not be in excess of 3 percent of the amount of Federal funds provided to carry out each such program in the State for a fiscal year.

“(bb) OTHER ONE-STOP PARTNERS.—The portion of funds required to be contributed under clause (i)(II) or (ii) of paragraph (1)(A) by a one-stop partner from a program described in subsection (b)(1) other than the programs described under item (aa) shall not be in excess of 1½ percent of the amount of Federal funds provided to carry out such program in the State for a fiscal year.

“(cc) SPECIAL RULE.—Notwithstanding items (aa) and (bb), an agreement, including a local memorandum of understanding, entered into prior to the date of enactment of the Workforce Investment Act Amendments of 2003 by an entity regarding contributions under this title that permits the percentages described in such items to be exceeded, may continue to be in effect until terminated by the parties.

“(dd) VOCATIONAL REHABILITATION.—Notwithstanding items (aa) and (bb), an entity administering a program under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) shall not be required to provide, for the purposes of this paragraph, an amount in excess of—

“(AA) 0.75 percent of the amount provided for such program in the State for the second program year that begins after the date of enactment of the Workforce Investment Act Amendments of 2003;

“(BB) 1.0 percent of the amount provided for such program in the State for the third program year that begins after such date;

“(CC) 1.25 percent of the amount provided for such program in the State for the fourth program year that begins after such date; and

“(DD) 1.5 percent of the amount provided for such program in the State for the fifth and each succeeding program year that begins after such date.

“(III) FEDERAL DIRECT SPENDING PROGRAMS.—An entity administering a program funded with direct spending as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(8)) shall not be required to provide, for purposes of this paragraph, an amount in excess of the amount determined to be equivalent to the cost of the proportionate use of the one-stop centers for such program in the State.

“(IV) NATIVE AMERICAN PROGRAMS.—Native American programs established under section 166 shall not be subject to the provisions of this subsection or subsection (i). The method for determining the appropriate portion of funds to be provided by such Native American programs to pay for the costs of infrastructure of a one-stop center shall be determined as part of the development of the memorandum of understanding under subsection (c) for the one-stop center and shall be stated in the memorandum.

“(B) ALLOCATION BY GOVERNOR.—From the funds provided under subparagraph (A), the Governor shall allocate the funds to local areas in accordance with the formula established under subparagraph (C) for the purposes of assisting in paying the costs of infrastructure of one-stop centers.

“(C) ALLOCATION FORMULA.—The State board shall develop a formula to be used by the Governor to allocate the funds provided under subparagraph (A) to local areas not funding infrastructure costs under the option described in paragraph (1)(A)(i)(I). The formula shall be based on factors including the number of one-stop centers in a local area, the population served by such centers, the services provided by such centers, and other factors relating to the performance of such centers that the State board determines are appropriate.

“(D) COSTS OF INFRASTRUCTURE.—In this subsection, the term ‘costs of infrastructure’, used with respect to a one-stop center, means the nonpersonnel costs that are necessary for the general operation of the one-stop center, including the rental costs of the facilities, the costs of utilities and maintenance, equipment (including adaptive technology for individuals with disabilities), and technology to facilitate remote access to the one-stop center’s strategic planning activities, and common outreach activities.

“(i) OTHER FUNDS.—

“(1) IN GENERAL.—Subject to the memorandum of understanding described in subsection (c) for the one-stop delivery system involved, in addition to the funds provided to carry out subsection (h), a portion of funds made available under Federal law authorizing the programs described in subsection (b) and administered by one-stop partners, or the noncash resources available under such programs, shall be used to pay the additional costs relating to the operation of the one-stop delivery system that are not paid from the funds provided under subsection (h), as determined in accordance with paragraph (2), to the extent not inconsistent with the Federal law involved. Such costs shall include the costs of the provision of core services described in section 134(d)(2) applicable to each program and may include common costs that are not paid from the funds provided under subsection (h).

“(2) DETERMINATION AND GUIDANCE.—The method for determining the appropriate portion of funds and noncash resources to be provided by each program under paragraph (1) for a one-stop center shall be determined as part of the development of the memorandum of understanding under subsection (c) for the one-stop center and shall be stated in the memorandum. The State board shall provide guidance to facilitate the determination of an appropriate allocation of the funds and noncash resources in local areas.”.

SEC. 118. ELIGIBLE PROVIDERS OF TRAINING SERVICES.

Section 122 (29 U.S.C. 2842) is amended to read as follows:

“SEC. 122. IDENTIFICATION OF ELIGIBLE PROVIDERS OF TRAINING SERVICES.

“(a) IN GENERAL.—The Governor, after consultation with the State board, shall establish criteria and procedures regarding the eligibility of providers of training services described in section 134(d)(4) (referred to in this section as ‘training services’) to receive funds provided under section 133(b) for the provision of training services.

“(b) CRITERIA.—

“(1) IN GENERAL.—The criteria established by the Governor pursuant to subsection (a) shall take into account—

“(A) the performance of providers of training services with respect to the performance measures described in section 136 or other appropriate measures of performance outcomes for those individuals receiving training services under this subtitle (taking into consideration the characteristics of the population served and relevant economic conditions);

“(B) the need to ensure access to training services throughout the State, including any rural areas;

“(C) the information such providers are required to report to State agencies with respect to Federal and State programs (other than the program carried out under this subtitle), including one-stop partner programs;

“(D) the requirements for State licensing of providers of training services, and the licensing status of each provider of training services if applicable;

“(E) to the extent practicable, encouraging the use of industry-recognized standards and certification;

“(F) the ability to provide training services to hard-to-serve populations, including individuals with disabilities; and

"(G) such other factors as the Governor determines are appropriate to ensure—

"(i) the quality of services provided;

"(ii) the accountability of the providers;

"(iii) that the one-stop centers in the State will ensure that such providers meet the needs of local employers and participants;

"(iv) the informed choice of participants under chapter 5; and

"(v) that the collection of information required is not unduly burdensome or costly to providers.

"(2) INFORMATION AND RENEWAL.—The criteria established by the Governor shall require that a provider of training services submit appropriate, accurate, and timely information to the State for purposes of carrying out subsection (d). The criteria shall also provide for annual review and renewal of eligibility under this section for providers of training services.

"(3) LOCAL CRITERIA.—A local board in the State may establish criteria in addition to the criteria established by the Governor, or may require higher levels of performance than required under the criteria established by the Governor, for purposes of determining the eligibility of providers of training services to receive funds described in subsection (a) to provide the services in the local area involved.

"(c) PROCEDURES.—The procedures established under subsection (a) shall identify the application process for a provider of training services to become eligible to receive funds provided under section 133(b) for the provision of training services, and identify the respective roles of the State and local areas in receiving and reviewing the applications and in making determinations of such eligibility based on the criteria established under this section. The procedures shall also establish a process for a provider of training services to appeal a denial or termination of eligibility under this section, that includes an opportunity for a hearing and prescribes appropriate time limits to ensure prompt resolution of the appeal.

"(d) INFORMATION TO ASSIST PARTICIPANTS IN CHOOSING PROVIDERS.—

"(1) IN GENERAL.—In order to facilitate and assist participants in choosing employment and training activities under chapter 5 and in choosing providers of training services, the Governor shall ensure that an appropriate list of providers determined to be eligible under this section in the State, accompanied by appropriate information provided by providers of training services in the State in accordance with subsection (b) and such other information as the Governor determines is appropriate, including information on program costs for participants in applicable programs, is provided to the one-stop delivery system in the State. The list and the information shall be made available to such participants and to members of the public through the one-stop delivery system in the State.

"(2) SPECIAL RULE.—An entity that carries out programs under the Act of August 16, 1937 (commonly known as the 'National Apprenticeship Act', 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) shall be included on the list of eligible providers described in paragraph (1) for so long as such entity remains certified by the Department of Labor.

"(e) ENFORCEMENT.—

"(1) IN GENERAL.—The criteria and procedures established under this section shall provide the following:

"(A) INTENTIONALLY SUPPLYING INACCURATE INFORMATION.—Upon a determination, by an individual or entity specified in the criteria or procedures, that a provider of training services, or individual providing information on behalf of the provider, intentionally supplied inaccurate information under this section, the eligibility of such provider to receive funds under chapter 5 shall be terminated for a period of time that is not less than 2 years.

"(B) SUBSTANTIAL VIOLATIONS.—Upon a determination, by an individual or entity specified in the criteria or procedures, that a provider of training services substantially violated any requirement under this title, the eligibility of such provider to receive funds under the program involved may be terminated, or other appropriate action may be taken.

"(C) REPAYMENT.—A provider of training services whose eligibility is terminated under subparagraph (A) or (B) shall be liable for the repayment of funds received under chapter 5 during a period of noncompliance described in such subparagraph.

"(2) CONSTRUCTION.—Paragraph (1) shall be construed to provide remedies and penalties that supplement, but do not supplant, other civil and criminal remedies and penalties.

"(f) AGREEMENTS WITH OTHER STATES.—States may enter into agreements, on a reciprocal basis, to permit eligible providers of training services to accept career scholarship accounts provided in another State.

"(g) OPPORTUNITY TO SUBMIT COMMENTS.—In establishing criteria, procedures, and information required under this section, the Governor shall provide an opportunity for interested members of the public to make recommendations and submit comments regarding such criteria, procedures, and information.

"(h) TRANSITION PERIOD FOR IMPLEMENTATION.—The requirements of this section shall be implemented not later than December 31, 2004. In order to facilitate early implementation of this section, the Governor may establish transition procedures under which providers eligible to provide training services under chapter 5 as such chapter was in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003 may continue to be eligible to provide such services until December 31, 2004, or until such earlier date as the Governor determines to be appropriate.

"(i) ON-THE-JOB TRAINING OR CUSTOMIZED TRAINING EXCEPTION.—

"(1) IN GENERAL.—Providers of on-the-job training or customized training shall not be subject to the requirements of subsections (a) through (h).

"(2) COLLECTION AND DISSEMINATION OF INFORMATION.—A one-stop operator in a local area shall collect such performance information from on-the-job training and customized training providers as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate information identifying providers that meet the criteria as eligible providers, and the performance information, through the one-stop delivery system. Providers determined to meet the criteria shall be considered to be identified as eligible providers of training services.".

SEC. 119. ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES.

Section 123 (29 U.S.C. 2843) is amended to read as follows:

"SEC. 123. ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES.

"(a) IN GENERAL.—From the funds allocated under section 128(b) to a local area, the local board for such area shall award grants or contracts on a competitive basis to providers of youth activities identified based on the criteria in the State plan described in section 112 and shall conduct oversight with respect to such providers.

"(b) EXCEPTIONS.—A local board may award grants or contracts on a sole-source basis if such board determines there is an insufficient number of eligible providers of youth activities in the local area involved (such as a rural area) for grants and contracts to be awarded on a competitive basis under subsection (a).".

SEC. 120. YOUTH ACTIVITIES.

(a) STATE ALLOTMENTS.—Section 127 (29 U.S.C. 2852) is amended—

(1) in subsection (a)(1), by striking "opportunity" and inserting "challenge"; and

(2) by striking subsection (b) and inserting the following:

"(b) ALLOTMENT AMONG STATES.—

"(1) YOUTH ACTIVITIES.—

"(A) YOUTH CHALLENGE GRANTS.—

"(i) IN GENERAL.—For each fiscal year in which the amount appropriated under section 137(a) exceeds $1,000,000,000, the Secretary shall reserve a portion of the amount to provide youth challenge grants and other activities under section 169 (relating to youth challenge grants) and provide youth activities under section 167 (relating to migrant and seasonal farmworker programs).

"(ii) PORTION.—The portion referred to in clause (i) shall equal, for a fiscal year—

"(I) except as provided in subclause (II), the difference obtained by subtracting $1,000,000,000 from the amount appropriated under section 137(a) for the fiscal year; or

"(II) for any fiscal year in which the amount is $1,250,000,000 or greater, $250,000,000.

"(iii) YOUTH ACTIVITIES FOR FARMWORKERS.—The Secretary shall reserve the greater of $10,000,000 or 4 percent of the portion described in clause (i) for a fiscal year to provide youth activities under section 167.

"(iv) NATIVE AMERICANS.—From the remainder of the amount appropriated under section 137(a) for each fiscal year the Secretary shall reserve not more than 1½ percent of such amount to provide youth activities under section 166 (relating to Native Americans).

"(B) OUTLYING AREAS.—

"(i) IN GENERAL.—From the amount made available under subsection (a)(2) for each fiscal year the Secretary shall reserve not more than ¼ of 1 percent of the amount appropriated under section 137(a) for the fiscal year to provide assistance to the outlying areas to carry out youth activities and statewide workforce investment activities.

"(ii) LIMITATION FOR FREELY ASSOCIATED STATES.—

"(I) COMPETITIVE GRANTS.—The Secretary shall use funds described in clause (i) to award grants to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States to carry out youth activities and statewide workforce investment activities.

"(II) AWARD BASIS.—The Secretary shall award grants pursuant to subclause (I) on a competitive basis and pursuant to the recommendations of experts in the field of employment and training, working through the Pacific Region Educational Laboratory in Honolulu, Hawaii.

"(III) ASSISTANCE REQUIREMENTS.—Any Freely Associated State that desires to receive assistance under this subparagraph shall submit an application to the Secretary and shall include in the application for assistance—

"(aa) information demonstrating that the Freely Associated State will meet all conditions that apply to States under this title;

"(bb) an assurance that, notwithstanding any other provision of this title, the Freely Associated State will use such assistance only for the direct provision of services; and

"(cc) such other information and assurances as the Secretary may require.

"(IV) ADMINISTRATIVE COSTS.—The Secretary may provide not more than 5 percent of the funds made available for grants under subclause (I) to pay the administrative costs of the Pacific Region Educational Laboratory in Honolulu, *Hawaii, regarding activities assisted under this clause.*

"(iii) ADDITIONAL REQUIREMENT.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to assistance provided to those areas, including the Freely Associated States, under this subparagraph.

"(C) STATES.—

"(i) IN GENERAL.—From the remainder of the amount appropriated under section 137(a) for a fiscal year that exists after the Secretary determines the amounts to be reserved under subparagraphs (A) and (B), the Secretary shall allot to the States—

"(I) an amount of the remainder that is less than or equal to the total amount that was allotted to States for fiscal year 2003 under section 127(b)(1)(C) of this Act (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003), in accordance with the requirements of such section 127(b)(1)(C); and

"(II) the amount of the remainder, if any, in excess of the amount referred to in subclause (I), in accordance with clause (ii).

"(ii) FORMULA.—Subject to clauses (iii) and (iv), of the amount described in clause (i)(II)—

"(I) $33\frac{1}{3}$ percent shall be allotted on the basis of the relative number of individuals in the civilian labor force who are ages 16 through 21 in each State, compared to the total number of individuals in the civilian labor force who are ages 16 through 21 in all States;

"(II) $33\frac{1}{3}$ percent shall be allotted on the basis of the relative number of unemployed individuals in each State, compared to the total number of unemployed individuals in all States; and

"(III) $33\frac{1}{3}$ percent shall be allotted on the basis of the relative number of disadvantaged youth who are ages 16 through 21 in each State, compared to the total number of disadvantaged youth who are ages 16 through 21 in all States.

"(iii) MINIMUM AND MAXIMUM PERCENTAGES.—

"(I) MINIMUM PERCENTAGE.—The Secretary shall ensure that no State shall receive an allotment percentage under this subparagraph for a fiscal year that is less than 90 percent of the allotment percentage of the State for the preceding fiscal year.

"(II) MAXIMUM PERCENTAGE.—Subject to subclause (I), the Secretary shall ensure that no State shall receive an allotment percentage under this subparagraph for a fiscal year that is more than 130 percent of the allotment percentage of the State for the preceding fiscal year.

"(iv) SMALL STATE MINIMUM ALLOTMENT.—Subject to clause (iii), the Secretary shall ensure that no State shall receive an allotment under this subparagraph that is less than the total of—

"(I) $\frac{3}{10}$ of 1 percent of $1,000,000,000 of the remainder described in clause (i) for the fiscal year; and

"(II) if the remainder described in clause (i) for the fiscal year exceeds $1,000,000,000, $\frac{2}{5}$ of 1 percent of the excess.

"(2) DEFINITIONS.—For the purposes of paragraph (1):

"(A) ALLOTMENT PERCENTAGE.—The term 'allotment percentage', used with respect to fiscal year 2004 or a subsequent fiscal year, means a percentage of the remainder described in paragraph (1)(C)(i) that is received by the State involved through an allotment made under this subsection for the fiscal year. The term, used with respect to fiscal year 2003, means the percentage of the amounts allotted to States under this chapter (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003) that is received by the State involved for fiscal year 2003.

"(B) DISADVANTAGED YOUTH.—Subject to paragraph (3), the term 'disadvantaged youth' means an individual who is age 16 through 21 who received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the higher of—

"(i) the poverty line; or

"(ii) 70 percent of the lower living standard income level.

"(C) FREELY ASSOCIATED STATE.—The term 'Freely Associated State' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

"(3) SPECIAL RULE.—For purposes of the formula specified in paragraph (1)(C), the Secretary shall, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of disadvantaged youth.".

(b) REALLOTMENT.—

(1) AMENDMENT.—Section 127(c) (29 U.S.C. 2852(c)) is amended—

(A) by striking paragraph (2) and inserting the following:

"(2) AMOUNT.—The amount available for reallotment for a program year is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the State under this section during such prior program year (including amounts allotted to the State in all prior program years that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

"(A) the total amount of funds available to the State under this section during the program year prior to the program year for which the determination is made (including amounts allotted to the State in all prior program years that remained available); and

"(B) the accrued expenditures during such prior program year.";

(B) in paragraph (3)—

(i) by striking "for the prior program year" and inserting "for the program year for which the determination is made"; and

(ii) by striking "such prior program year" and inserting "such program year";

(C) by striking paragraph (4) and inserting the following:

"(4) ELIGIBILITY.—For purposes of this subsection, an eligible State means a State that does not have an amount available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made."; and

(D) in paragraph (5), by striking "obligation" and inserting "accrued expenditure".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect for the program year that begins after the date of enactment of this Act.

(c) WITHIN STATE ALLOCATIONS.—

(1) RESERVATION FOR STATEWIDE ACTIVITIES.—Section 128(a) (29 U.S.C. 2853(a)) is amended to read as follows:

"(a) RESERVATIONS FOR STATEWIDE ACTIVITIES.—

"(1) IN GENERAL.—The Governor of a State shall reserve not more than 15 percent of each of the amounts allotted to the State under section 127(b)(1)(C) and paragraphs (1)(B) and (2)(B) of section 132(b) for a fiscal year for statewide workforce investment activities.

"(2) USE OF FUNDS.—Regardless of whether the reserved amounts were allotted under section 127(b)(1)(C), or under paragraph (1)(B) or (2)(B) of section 132(b), the Governor may use the reserved amounts to carry out statewide activities under section 129(b) or statewide employment and training activities, for adults or dislocated workers, under section 134(a).".

(2) WITHIN STATE ALLOCATION.—Section 128(b) (29 U.S.C. 2853(b)) is amended to read as follows:

"(b) WITHIN STATE ALLOCATIONS.—

"(1) IN GENERAL.—Of the amount allotted to the State under section 127(b)(1)(C) and not reserved under subsection (a)(1)—

"(A) a portion equal to not less than 80 percent of such amount shall be allocated by the Governor to local areas in accordance with paragraph (2); and

"(B) a portion equal to not more than 20 percent of such amount may be allocated by the Governor to local areas in accordance with paragraph (3).

"(2) ESTABLISHED FORMULA.—

"(A) IN GENERAL.—Of the portion described in paragraph (1)(A), the Governor shall allocate—

"(i) $33\frac{1}{3}$ percent on the basis of the relative number of individuals in the civilian labor force who are ages 16 through 21 in each local area, compared to the total number of individuals in the civilian labor force who are ages 16 through 21 in all local areas in the State;

"(ii) $33\frac{1}{3}$ percent on the basis of the relative number of unemployed individuals in each local area, compared to the total number of unemployed individuals in all local areas in the State; and

"(iii) $33\frac{1}{3}$ percent on the basis of the relative number of disadvantaged youth who are ages 16 through 21 in each local area, compared to the total number of disadvantaged youth who are ages 16 through 21 in all local areas in the State.

"(B) MINIMUM AND MAXIMUM PERCENTAGES.—

"(i) MINIMUM PERCENTAGE.—The Governor shall ensure that no local area shall receive an allocation percentage under this paragraph for a fiscal year that is less than 90 percent of the allocation percentage of the local area for the preceding fiscal year.

"(ii) MAXIMUM PERCENTAGE.—Subject to clause (i), the Governor shall ensure that no local area shall receive an allocation percentage under this paragraph for a fiscal year that is more than 130 percent of the allocation percentage of the local area for the preceding fiscal year.

"(C) DEFINITIONS.—In this paragraph:

"(i) ALLOCATION PERCENTAGE.—The term 'allocation percentage', used with respect to fiscal year 2004 or a subsequent fiscal year, means a percentage of the portion described in paragraph (1)(A) that is received by the local area involved through an allocation made under this paragraph for the fiscal year. The term, used with respect to fiscal year 2003, means the percentage of the amounts allocated to local areas under this chapter (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003) that is received by the local area involved for fiscal year 2003.

"(ii) DISADVANTAGED YOUTH.—The term 'disadvantaged youth' means an individual who—

"(I) is age 16 through 21;

"(II) is not a college student or member of the Armed Forces; and

"(III) received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the higher of—

"(aa) the poverty line; or

"(bb) 70 percent of the lower living standard income level.

"(3) YOUTH DISCRETIONARY ALLOCATION.—The Governor may allocate the portion described in paragraph (1)(B) to local areas where there are a significant number of eligible youth, after consultation with the State board and local boards.

"(4) LOCAL ADMINISTRATIVE COST LIMIT.—

"(A) IN GENERAL.—Of the amount allocated to a local area under this subsection and section 133(b) for a fiscal year, not more than 10 percent of the amount may be used by the local board involved for the administrative costs of carrying

out local workforce investment activities under this chapter or chapter 5.

"(B) USE OF FUNDS.—Funds made available for administrative costs under subparagraph (A) may be used for the administrative costs of any of the local workforce investment activities described in this chapter or chapter 5, regardless of whether the funds were allocated under this subsection or section 133(b).".

(3) REALLOCATION.—

(A) AMENDMENT.—Section 128(c) (29 U.S.C. 2853(c)) is amended—

(i) in paragraph (1), by striking "paragraph (2)(A) or (3) of";

(ii) by striking paragraph (2) and inserting the following:

"(2) AMOUNT.—The amount available for reallocation for a program year is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the local area under this section during such prior program year (including amounts allocated to the local area in all prior program years that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

"(A) the total amount of funds available to the local area under this section during the program year prior to the program year for which the determination is made (including amounts allocated to the local area in all prior program years that remained available); and

"(B) the accrued expenditures during such prior program year.";

(iii) by amending paragraph (3)—

(I) by striking "subsection (b)(3)" each place it appears and inserting "subsection (b)";

(II) by striking "for the prior program year" the first place it appears and inserting "for the program year for which the determination is made";

(III) by striking "such prior program year" and inserting "such program year"; and

(IV) by striking the last sentence; and

(iv) by striking paragraph (4) and inserting the following:

"(4) ELIGIBILITY.—For purposes of this subsection, an eligible local area means a local area that does not have an amount available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made.".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect for the later of—

(i) the program year that begins after the date of enactment of this Act; or

(ii) program year 2004.

(d) YOUTH PARTICIPANT ELIGIBILITY.—Section 129(a) (29 U.S.C. 2854(a)) is amended to read as follows:

"(a) YOUTH PARTICIPANT ELIGIBILITY.—

"(1) ELIGIBILITY.—

"(A) IN GENERAL.—To be eligible to participate in activities carried out under this chapter during any program year an individual shall, at the time the eligibility determination is made, be an out-of-school youth or an in-school youth.

"(B) OUT-OF-SCHOOL YOUTH.—In this title the term 'out-of-school youth' means an individual who is—

"(i) not younger than age 16 (subject to paragraph (3)) nor older than age 21; and

"(ii) one of the following:

"(I) A school dropout.

"(II) A youth who is within the age for compulsory school attendance, but has not attended school for at least 1 school year calendar quarter.

"(III) A recipient of a secondary school diploma or its equivalent who is—

"(aa) deficient in basic skills, including limited English proficiency;

"(bb) a low-income individual; and

"(cc) not attending any school.

"(IV) Subject to the juvenile justice system or ordered by a court to an alternative school.

"(V) A low-income individual who is pregnant or parenting and not attending any school.

"(VI) A youth who is not attending school or a youth attending an alternative school, who is homeless, a runaway, a foster child, a child eligible for assistance under section 477 of the Social Security Act, or in an out-of-home placement.

"(VII) A low-income individual who requires additional assistance to complete an educational program or to secure or hold employment.

"(C) IN-SCHOOL YOUTH.—In this section the term 'in-school youth' means an individual who is—

"(i) not younger than age 14 nor older than age 21;

"(ii) a low-income individual; and

"(iii) one or more of the following:

"(I) Deficient in basic literacy skills, including limited English proficiency.

"(II) Homeless, a runaway, a foster child, a child eligible for assistance under section 477 of the Social Security Act, or in an out-of-home placement.

"(III) Pregnant or parenting.

"(IV) An offender (other than an individual described in subparagraph (B)(ii)(IV)).

"(V) An individual who requires additional assistance to complete an educational program or to secure or hold employment.

"(2) EXCEPTION.—Not more than 5 percent of the individuals assisted under this section in each local area, in the case of individuals for whom low income is a requirement for eligibility under this section, may be individuals who are not low income.

"(3) LIMITATIONS ON ACTIVITIES FOR IN-SCHOOL YOUTH.—

"(A) IN GENERAL.—For any program year, not more than 60 percent of the funds available for statewide activities under subsection (b), and not more than 60 percent of funds available to local areas under subsection (c), may be used to provide activities for in-school youth meeting the requirements of paragraph (1)(B).

"(B) EXCEPTION.—A State that receives a minimum allotment under section 127(b)(1) in accordance with section 127(b)(1)(C)(iv) or under section 132(b)(1) in accordance with section 132(b)(1)(B)(iv)(II) may increase the percentage described in subparagraph (A) for a local area in the State, if—

"(i) after an analysis of the eligible youth population in the local area, the State determines that the local area will be unable to use at least 40 percent of the funds available for activities under subsection (b) or (c) to serve out-of-school youth due to a low number of out-of-school youth; and

"(ii)(I) the State submits to the Secretary, for the local area, a request including a proposed increased percentage for purposes of subparagraph (A), and the summary of the eligible youth population analysis; and

"(II) the request is approved by the Secretary.

"(4) CONSISTENCY WITH COMPULSORY SCHOOL ATTENDANCE LAWS.—In providing assistance under this section to an individual who is required to attend school under applicable State compulsory school attendance laws, the priority in providing such assistance shall be for the individual to attend school regularly.".

(e) STATEWIDE ACTIVITIES.—Section 129(b) (29 U.S.C. 2854(b)) is amended to read as follows:

"(b) STATEWIDE ACTIVITIES.—

"(1) IN GENERAL.—Funds reserved by a Governor for a State as described in sections 128(a) and 133(a)(1) shall be used, regardless of whether the funds were allotted to the State under section 127(b)(1)(C) or under paragraph (1)(B) or (2)(B) of section 132(b) for statewide activities, which may include—

"(A) conducting—

"(i) evaluations under section 136(e) of activities authorized under this chapter and chapter 5 in coordination with evaluations carried out by the Secretary under section 172;

"(ii) research; and

"(iii) demonstration projects;

"(B) providing incentive grants to local areas for regional cooperation among local boards (including local boards in a designated region as described in section 116(c)), for local coordination of activities carried out under this title, and for performance by local areas as described in section 136(i)(2);

"(C) providing technical assistance and capacity building activities to local areas, one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the development of exemplary program activities, the provision of technical assistance to local areas that fail to meet local performance measures described in section 136(c), and the provision of technology to facilitate remote access to services provided through one-stop delivery systems;

"(D) operating a fiscal and management accountability information system under section 136(f);

"(E) carrying out monitoring and oversight of activities carried out under this chapter and chapter 5, which may include a review comparing the services provided to male and female youth;

"(F) providing additional assistance to local areas that have high concentrations of eligible youth;

"(G) supporting the development of alternative programs and other activities that enhance the choices available to eligible youth and encourage such youth to reenter secondary education, enroll in postsecondary education and advanced training, and obtain career path employment; and

"(H) supporting the provision of core services described in section 134(d)(2) in the one-stop delivery system in the State.

"(2) LIMITATION.—Not more than 5 percent of the funds allotted to a State under section 127(b)(1)(C) shall be used by the State for administrative activities carried out under this subsection or section 134(a).

"(3) PROHIBITION.—No funds described in this subsection may be used to develop or implement education curricula for school systems in the State.".

(f) LOCAL ELEMENTS AND REQUIREMENTS.—

(1) PROGRAM DESIGN.—Section 129(c)(1) (29 U.S.C. 2854(c)(1)) is amended—

(A) in the matter that precedes subparagraph (A), by striking "paragraph (2)(A) or (3), as appropriate, of";

(B) in subparagraph (B), by inserting "are directly linked to 1 or more of the performance measures relating to this chapter under section 136, and that" after "for each participant that"; and

(C) in subparagraph (C)—

(i) by redesignating clauses (i) through.(iv) as clauses (ii) through (v), respectively;

(ii) by inserting before clause (ii) (as redesignated by clause (i)) the following:

"(i) activities leading to the attainment of a secondary school diploma or its equivalent, or another recognized credential;";

(iii) in clause (ii) (as redesignated by clause (i)), by inserting "and advanced training" after "opportunities";

(iv) in clause (iii) (as redesignated by clause (i))—

(I) by inserting "instruction based on State academic content and student academic achievement standards established under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311)" after "academic"; and

(II) by inserting "that lead to the attainment of recognized credentials" after "learning"; and

(v) by striking clause (v) (as redesignated by clause (i)) and inserting the following:

"(v) effective connections to all employers, including small employers, in sectors of the local and regional labor markets that are experiencing high growth in employment opportunities.".

(2) Program Elements.—Section 129(c)(2) (29 U.S.C. 2854(c)(2)) is amended—

(A) in subparagraph (A), by striking "secondary school, including dropout prevention strategies" and inserting "the requirements for a secondary school diploma or its recognized equivalent (including recognized alternative standards for individuals with disabilities) or for another recognized credential, including dropout prevention strategies";

(B) in subparagraph (B), by inserting ", with a priority on exposing youth to technology and nontraditional jobs" before the semicolon;

(C) in subparagraph (F), by striking "during nonschool.hours";

(D) in subparagraph (I), by striking "and" at the end;

(E) in subparagraph (J), by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

"(K) on-the-job training opportunities;

"(L) opportunities to acquire financial literacy skills;

"(M) entrepreneurial skills training and microenterprise services; and

"(N) information about average wages for a range of jobs available in the local area, including technology jobs.".

(3) Additional Requirements.—Section 129(c)(3)(A) (29 U.S.C. 2854(c)(3)(A)) is amended in the matter preceding clause (i) by striking "or applicant who meets the minimum income criteria to be considered an eligible youth".

(4) Priority and Exceptions.—Section 129(c) (29 U.S.C. 2854(c)) is amended by striking paragraphs (4) and (5).

(5) Prohibitions and Linkages.—Section 129(c) (29 U.S.C. 2854(c)), as amended by paragraph (4), is further amended—

(A) by redesignating paragraphs (6), (7), and (8) as paragraphs (4), (5), and (6), respectively;

(B) in paragraph (4) (as redesignated by subparagraph (A))—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(C) in paragraph (5) (as redesignated by subparagraph (A)), by striking "youth councils" and inserting "local boards".

SEC. 121. ADULT AND DISLOCATED WORKER EMPLOYMENT AND TRAINING ACTIVITIES.

(a) State Allotments.—

(1) Reservations.—Section 132(a)(2)(A) is amended by striking "national emergency grants" and inserting "national dislocated worker grants".

(2) Allotment Among States.—Section 132(b) (29 U.S.C. 2862(b)) is amended—

(A) in paragraph (1)(A)(ii), by striking "section 127(b)(1)(B)" and all that follows and inserting "section 127(b)(1)(B).";

(B) by striking paragraph (1)(B)(ii) and inserting the following:

"(ii) Formula.—Subject to clauses (iii) and (iv), of the remainder—

"(I) 40 percent shall be allotted on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each State, compared to the total number of unemployed individuals in areas of substantial unemployment in all States;

"(II) 25 percent shall be allotted on the basis of the relative number of individuals in the civilian labor force in each State, compared to the total number of such individuals in all States; and

"(III) 35 percent shall be allotted on the basis of the relative number of disadvantaged adults in each State, compared to the total number of disadvantaged adults in all States, except as described in clause (iii).";

(C) in paragraph (1)(B)—

(i) in clause (iii), by striking "section 116(a)(2)(B)" and inserting "section 116(a)(2)(A)(iii)"; and

(ii) in clause (iv)—

(I) in subclause (II), by striking "subclauses (I), (III), and (IV)" and inserting "subclauses (I) and (III)"; and

(II) by striking subclause (IV); and

(D) in paragraph (2)(A)(ii), by striking "section 127(b)(1)(B)" and all that follows and inserting "section 127(b)(1)(B).".

(3) Reallotment.—Section 132(c) (29 U.S.C. 2862(c)) is amended—

(A) by striking paragraph (2) and inserting the following:

"(2) Amount.—The amount available for reallotment for a program year for programs funded under subsection (b)(1)(B) (relating to adult employment and training) and subsection (b)(2)(B) (relating to dislocated worker employment and training), respectively, is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the State under subsection (b)(1)(B) or (b)(2)(B), respectively, during such prior program year (including amounts allotted to the State in all prior program years under such provisions that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

"(A) the total amount of funds available to the State under subsection (b)(1)(B) or (b)(2)(B), respectively, during the program year prior to the program year for which the determination is made (including amounts allotted to the State in all prior program years under such provisions that remained available); and

"(B) the accrued expenditures from such total amount of funds available under subsection (b)(1)(B) or (b)(2)(B), respectively, during such prior program year.";

(B) in paragraph (3)—

(i) by striking "under this section for such activities for the prior program year" and inserting "under subsection (b)(1)(B) or (b)(2)(B), as appropriate, for the program year for which the determination is made"; and

(ii) by striking "under this subsection for such activities for such prior program year" and inserting "under subsection (b)(1)(B) or (b)(2)(B), as appropriate, for such program year";

(C) by striking paragraph (4) and inserting the following:

"(4) Eligibility.—For purposes of this subsection, an eligible State means—

"(A) with respect to funds allotted under subsection (b)(1)(B), a State that does not have an amount of such funds available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made; and

"(B) with respect to funds allotted under subsection (b)(2)(B), a State that does not have an amount of such funds available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made."; and

(D) in paragraph (5), by striking "obligation" and inserting "accrued expenditure".

(4) Effective Date.—The amendments made by paragraph (3) shall take effect for the later of—

(A) the program year that begins after the date of enactment of this Act; or

(B) program year 2004.

(b) Within State Allocations.—

(1) Allocation.—Section 133(b)(5)(B)(ii) (29 U.S.C. 2863(b)(5)(B)(ii)) is amended by striking "section 134(c)" and inserting "section 121(e)".

(2) Reallocation.—Section 133(c) (29 U.S.C. 2863(c)) is amended—

(A) in paragraph (1), by inserting ", and under subsection (b)(2)(B) for dislocated worker employment and training activities," after "activities";

(B) by striking paragraph (2) and inserting the following:

"(2) Amount.—The amount available for reallocation for a program year for programs funded under paragraphs (2)(A) and (3) of subsection (b) (relating to adult employment and training) and subsection (b)(2)(B) (relating to dislocated worker employment and training), respectively, is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the local area under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during such prior program year (including amounts allocated to the local area in all prior program years under such provisions that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

"(A) the total amount of funds available to the local area under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during the program year prior to the program year for which the determination is made (including amounts allotted to the local area in all prior program years under such provisions that remained available); and

"(B) the accrued expenditures from such total amount of funds available under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during such prior program year.";

(C) by striking paragraph (3) and inserting the following:

"(3) Reallocation.—In making reallocations to eligible local areas of amounts available pursuant to paragraph (2) for a program year, the Governor shall allocate to each eligible local area within the State—

"(A) with respect to amounts that are available for reallocation under paragraph (2) that were allocated under paragraphs (2)(A) or (3) of subsection (b), an amount based on the relative amount allocated to such local area under paragraphs (2)(A) or (3) of subsection (b), as appropriate, for the program year for which the determination is made, as compared to the total amount allocated to all eligible local areas under paragraphs (2)(A) or (3) of subsection (b), as appropriate, of such program year; and

"(B) with respect to amounts that are available for reallocation under paragraph (2) that were allocated under subsection (b)(2)(B), an amount based on the relative amount allocated to such local area under subsection (b)(2)(B) for the program year for which the determination is made, as compared to the total amount allocated to all eligible local areas under subsection (b)(2)(B) for such program year."; and

(D) by striking paragraph (4) and inserting the following:

"(4) Eligibility.—For purposes of this subsection, an eligible local area means—

"(A) with respect to funds allocated under paragraphs (2)(A) or (3) of subsection (b), a local area that does not have an amount of such funds available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made; and

"(B) with respect to funds allocated under subsection (b)(2)(B), a local area that does not have an amount of such funds available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made.".

(3) EFFECTIVE DATE.—The amendments made by paragraph (2) shall take effect for the later of—

(A) the program year that begins after the date of enactment of this Act; or

(B) program year 2004.

(c) USE OF FUNDS FOR EMPLOYMENT AND TRAINING ACTIVITIES.—

(1) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—

(A) STATEWIDE RAPID RESPONSE ACTIVITIES.—Section 134(a)(2)(A) (29 U.S.C. 2864(a)(2)(A)) is amended to read as follows:

"(A) STATEWIDE RAPID RESPONSE ACTIVITIES.—

"(i) IN GENERAL.—A State shall carry out statewide rapid response activities using funds reserved by a Governor for a State under section 133(a)(2). Such activities shall include—

"(I) provision of rapid response activities, carried out in local areas by the State or by an entity designated by the State, working in conjunction with the local boards and the chief elected officials for the local areas; and

"(II) provision of additional assistance to local areas that experience disasters, mass layoffs, or plant closings, or other events that precipitate substantial increases in the number of unemployed individuals, carried out in local areas by the State, working in conjunction with the local boards and the chief elected officials for the local areas.

"(ii) USE OF UNEXPENDED FUNDS.—Funds reserved under section 133(a)(2) to carry out this subparagraph that remain unexpended after the first program year for which such funds were allotted may be used by the Governor to carry out statewide activities authorized under subparagraph (B) and paragraph (3)(A) in addition to activities under this subparagraph.".

(B) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Section 134(a)(2) (29 U.S.C. 2864(a)(2)) is amended by striking subparagraph (B) and inserting the following:

"(B) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Funds reserved by a Governor for a State under sections 128(a)(1) and 133(a)(1) and not used under paragraph (1)(A) (regardless of whether the funds were allotted to the States under section 127(b)(1)(C) or paragraphs (1)(B) or (2)(B) of section 132(b)) shall be used for statewide employment and training activities, including—

"(i) disseminating—

"(I) the State list of eligible providers of training services, including eligible providers of nontraditional training services;

"(II) information identifying eligible providers of on-the-job training and customized training;

"(III) performance information and program cost information, as described in subsections (d) and (i) of section 122; and

"(IV) information on physical and programmatic accessibility for individuals with disabilities;

"(ii) conducting evaluations under section 136(e) of activities authorized under this chapter and chapter 5 in coordination with evaluations carried out by the Secretary under section 172;

"(iii) providing incentive grants to local areas in recognition of exceptional achievement relating to—

"(I) regional cooperation among local boards (including local boards in a designated region as described in section 116(c));

"(II) expanded local coordination of programs and activities carried out as part of a comprehensive workforce investment system, including—

"(aa) employment services under the Wagner-Peyser Act and core activities under this title; and

"(bb) one-stop partner programs described in section 121;

"(III) performance by local areas as described in section 136(i)(2); and

"(IV) providing expanded access to education and training services, especially through increased leveraging of resources other than those provided through programs under this title;

"(iv) developing strategies for ensuring that activities carried out under this section are placing men and women in jobs, education, and training that lead to comparable pay;

"(v) providing technical assistance and capacity building to local areas, one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the development of exemplary program activities, and the provision of technical assistance to local areas that fail to meet local performance measures described in section 136(c), which may include the development and training of staff to provide opportunities for hard-to-serve populations to enter high-wage, high-skilled, and nontraditional occupations;

"(vi) operating a fiscal and management accountability system under section 136(f); and

"(vii) carrying out monitoring and oversight of activities carried out under this chapter and chapter 4.".

(C) ALLOWABLE STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Section 134(a)(3)(A) (29 U.S.C. 2864(a)(3)(A) is amended to read as follows:

"(A) IN GENERAL.—Funds reserved by a Governor for a State under sections 128(a)(1) and 133(a)(1) and not used under paragraph (1)(A) or (2)(B) (regardless of whether the funds were allotted to the State under section 127(b)(1)(C) or paragraph (1)(B) or (2)(B) of section 132(b)) may be used to carry out additional statewide employment and training activities, which may include—

"(i) implementing innovative programs and strategies designed to meet the needs of all businesses in the State, including small businesses, which may include incumbent worker training programs, sectoral and industry cluster strategies and partnerships, including regional skills alliances, career ladder programs, micro-enterprise and entrepreneurial training and support programs, utilization of effective business intermediaries, activities to improve linkages between the one-stop delivery systems in the State and all employers (including small employers) in the State, and other business services and strategies that better engage employers in workforce investment activities and make the workforce investment system more relevant to the needs of State and local businesses, consistent with the objectives of this title;

"(ii) developing strategies for effectively serving hard-to-serve populations and for coordinating programs and services among one-stop partners;

"(iii) implementing innovative programs for displaced homemakers, which for purposes of this clause may include an individual who is receiving public assistance and is within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

"(iv) implementing programs to increase the number of individuals training for and placed in nontraditional employment;

"(v) carrying out activities to facilitate remote access to services, including training services described in subsection (d)(4), provided through a one-stop delivery system, including facilitating access through the use of technology;

"(vi) supporting the provision of core services described in subsection (d)(2) in the one-stop delivery system in the State;

"(vii) coordinating with the child welfare system to facilitate services for children in foster care and those who are eligible for assistance under section 477 of the Social Security Act;

"(viii) activities—

"(I) to improve coordination between workforce investment activities carried out within the State involved and economic development activities;

"(II) to improve coordination between employment and training assistance, child support services, and assistance provided by State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.);

"(III) to improve coordination between employment and training assistance and cooperative extension programs carried out by the Department of Agriculture;

"(IV) to improve coordination between employment and training assistance and programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to mental retardation and developmental disabilities, Statewide Independent Living Councils established under section 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d), and centers for independent living defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a);

"(V) to develop and disseminate workforce and labor market information; and

"(VI) to improve coordination with the corrections system to facilitate provision of training services and employment opportunities that will assist ex-offenders in reentering the workforce;

"(ix) conducting—

"(I) research; and

"(II) demonstration projects; and

"(x) adopting, calculating, or commissioning a minimum self-sufficiency standard that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations.".

(2) REQUIRED LOCAL EMPLOYMENT AND TRAINING ACTIVITIES.—

(A) ALLOCATED FUNDS.—Section 134(d)(1)(A) (29 U.S.C. 2864(d)(1)(A)) is amended—

(i) in clause (i), by striking "described in subsection (c)";

(ii) in clause (iii), by striking "and" at the end;

(iii) in clause (iv), by striking the period and inserting a semicolon; and

(iv) by adding at the end the following:

"(v) to designate a dedicated business liaison in the local area who may be funded with funds provided under this title or from other sources to establish and develop relationships and networks with large and small employers and their intermediaries; and

"(vi) in order to avoid duplication of services and enhance coordination of services, to require the colocation of employment services provided under the Wagner-Peyser Act at the comprehensive one-stop centers.".

(B) CORE SERVICES.—Section 134(d)(2) (29 U.S.C. 2864(d)(2)) is amended—

(i) in the matter preceding subparagraph (A), by striking "paragraph (1)(A)" and inserting "paragraph (1)";

(ii) by striking subparagraph (D) and inserting the following:

"(D) labor exchange services, including—

"(i) job search and placement assistance and, in appropriate cases, career counseling, including—

"(I) exposure to high wage, high skill jobs; and

"(II) nontraditional employment; and

"(ii) appropriate recruitment and other business services for all employers, including small employers, in the local area, which may include services described in this subsection, including information and referral to specialized business services not traditionally offered through the one-stop delivery system;";

(iii) in subparagraph (E)(iii)—

(I) by inserting ", career ladders," after "earnings"; and

(II) by striking "and" at the end;

(iv) in subparagraph (F)—

(I) by striking "and program cost information"; and

(II) by striking "described in section 123";

(v) by striking subparagraph (H) and inserting the following:

"(H) provision of accurate information, in formats that are usable and understandable to all one-stop center customers, relating to the availability of supportive services or assistance, including child care, child support, medical or child health assistance under title XIX or XXI of the Social Security Act, benefits under the Food Stamp Act of 1977, the earned income tax credit under section 32 of the Internal Revenue Code of 1986, and assistance under a State program funded under part A of title IV of the Social Security Act and other supportive services and transportation provided through funds made available under such part, available in the local area, and referral to such services or assistance as appropriate;"; and

(vi) in subparagraph (J), by striking "for—" and all that follows through "(ii) programs" and inserting "for programs".

(C) INTENSIVE SERVICES.—Section 134(d)(3) (29 U.S.C. 2864(d)(3)) is amended—

(i) by striking subparagraph (A) and inserting the following:

"(A) IN GENERAL.—

"(i) ELIGIBILITY.—Except as provided in clause (ii), funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), shall be used to provide intensive services to adults and dislocated workers, respectively—

"(I) who are unemployed and who, after an interview, evaluation, or assessment, have been determined by a one-stop operator or one-stop partner to be—

"(aa) unlikely or unable to obtain employment, that leads to self-fficiency or wages comparable to or higher than previous employment, through core services described in paragraph (2); and

"(bb) in need of intensive services to obtain employment that leads to self-sufficiency or wages comparable to or higher than previous employment; or

"(II) who are employed, but who, after an interview, evaluation, or assessment are determined by a one-stop operator or one-stop partner to be in need of intensive services to obtain or retain employment that leads to self-sufficiency.

"(ii) SPECIAL RULE.—A new interview, evaluation, or assessment of a participant is not required under clause (i) if the one-stop operator or one-stop partner determines that it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program."; and

(ii) in subparagraph (C)—

(I) in clause (v), by striking "for participants seeking training services under paragraph (4)"; and

(II) by adding at the end the following:

"(vii) Internships and work experience.

"(viii) Literacy activities relating to basic work readiness, and financial literacy activities.

"(ix) Out-of-area job search assistance and relocation assistance.

"(x) English language acquisition and integrated training programs.".

(D) TRAINING SERVICES.—Section 134(d)(4) (29 U.S.C. 2864(d)(4)) is amended—

(i) by striking subparagraph (A) and inserting the following:

"(A) IN GENERAL.—

"(i) ELIGIBILITY.—Except as provided in clause (ii), funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), shall be used to provide training services to adults and dislocated workers, respectively—

"(I) who, after an interview, evaluation, or assessment, and case management, have been determined by a one-stop operator or one-stop partner, as appropriate, to—

"(aa) be unlikely or unable to obtain or retain employment, that leads to self-sufficiency or wages comparable to or higher than previous employment, through the intensive services described in paragraph (3);

"(bb) be in need of training services to obtain or retain employment that leads to self-sufficiency or wages comparable to or higher than previous employment; and

"(cc) have the skills and qualifications to successfully participate in the selected program of training services;

"(II) who select programs of training services that are directly linked to the employment opportunities in the local area or region involved or in another area to which the adults or dislocated workers are willing to commute or relocate;

"(III) who meet the requirements of subparagraph (B); and

"(IV) who are determined to be eligible in accordance with the priority system in effect under subparagraph (E).

"(ii) SPECIAL RULE.—A new interview, evaluation, or assessment of a participant is not required under clause (i) if the one-stop operator or one-stop partner determines that it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program.";

(ii) in subparagraph (B)(i), by striking "Except" and inserting "Notwithstanding section 479B of the Higher Education Act of 1965 (20 U.S.C. 1087uu) and except";

(iii) in subparagraph (D)—

(I) in clause (viii), by striking "and" after the semicolon;

(II) in clause (ix), by striking the period and inserting "; and"; and

(III) by adding at the end the following:

"(x) English language acquisition and integrated training programs.";

(iv) in subparagraph (F)—

(I) in clause (ii), by striking "referred to in subsection (c), shall make available—" and all that follows and inserting "shall make available a list of eligible providers of training services, and accompanying information, in accordance with section 122(d).";

(II) in the heading of clause (iii), by striking "INDIVIDUAL TRAINING ACCOUNTS" and inserting "CAREER SCHOLARSHIP ACCOUNTS";

(III) in clause (iii)—

(aa) by striking "identifying information" and inserting "accompanying information";

(bb) by striking "clause (ii)(I)" and inserting "clause (ii)"; and

(cc) by striking "individual training account" and inserting "career scholarship account"; and

(IV) by adding at the end the following:

"(iv) COORDINATION.—Each local board may, through one-stop centers, coordinate career scholarship accounts with other Federal, State, local, or private job training programs or sources to assist the individual in obtaining training services."; and

(v) in subparagraph (G)—

(I) in the subparagraph heading, by striking "INDIVIDUAL TRAINING ACCOUNTS" and inserting "CAREER SCHOLARSHIP ACCOUNTS";

(II) in clause (i), by striking "individual training accounts" and inserting "career scholarship accounts";

(III) in clause (ii)—

(aa) by striking "individual training account" and inserting "career scholarship account";

(bb) in subclause (II), by striking "individual training accounts" and inserting "career scholarship accounts";

(cc) in subclause (II) by striking "or" after the semicolon;

(dd) in subclause (III), by striking "special participant populations that face multiple barriers to employment" and inserting "hard-to-serve populations";

(ee) in subclause (III), by striking the period and inserting "'; or"; and

(ff) by adding at the end the following:

"(IV) the local board determines that it would be most appropriate to award a contract to an institution of higher education in order to facilitate the training of multiple individuals in high-demand occupations, if such contract does not limit customer choice."; and

(IV) in clause (iv)—

(aa) by redesignating subclause (IV) as subclause (V); and

(bb) by inserting after subclause (III) the following:

"(IV) Individuals with disabilities.".

(3) PERMISSIBLE ACTIVITIES.—Section 134(e) (29 U.S.C. 2864(e)) is amended—

(A) by striking the matter preceding paragraph (2) and inserting the following:

"(e) PERMISSIBLE LOCAL EMPLOYMENT AND TRAINING ACTIVITIES.—

"(1) IN GENERAL.—

"(A) ACTIVITIES.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide, through the one-stop delivery system involved—

"(i) customized screening and referral of qualified participants in training services described in subsection (d)(4) to employment;

"(ii) customized employment-related services to employers on a fee-for-service basis;

"(iii) customer support to enable members of hard-to-serve populations, including individuals with disabilities, to navigate among multiple services and activities for such populations;

"(iv) technical assistance and capacity building for serving individuals with disabilities in local areas, for one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the provision of outreach, intake, assessments, and service delivery, and the development of performance measures;

"(v) employment and training assistance provided in coordination with child support enforcement activities of the State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

"(vi) activities to improve coordination between employment and training assistance, child support services, and assistance provided by State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.);

"(vii) activities to improve coordination between employment and training assistance and cooperative extension programs carried out by the Department of Agriculture;

"(viii) activities to facilitate remote access to services provided through a one-stop delivery system, including facilitating access through the use of technology;

"(ix) activities—

"(I) to improve coordination between workforce investment activities carried out within the local area involved and economic development activities; and

"(II) to improve services and linkages between the local workforce investment system including the local one-stop delivery system, and all employers, including small employers in the local area, through services described in this section, including subparagraph (B);

"(x) training programs for displaced homemakers and for individuals training for nontraditional occupations, in conjunction with programs operated in the local area;

"(xi) using a portion of the funds allocated under section 133(b), activities to carry out business services and strategies that meet the workforce investment needs of local area employers, as determined by the local board, consistent with the local plan under section 118, which services—

"(I) may be provided through effective business intermediaries working in conjunction with the local board, and may also be provided on a fee-for-service basis or through the leveraging of economic development and other resources as determined appropriate by the local board; and

"(II) may include—

"(aa) identifying and disseminating to business, educators, and job seekers, information related to the workforce, economic and community development needs, and opportunities of the local economy;

"(bb) development and delivery of innovative workforce investment services and strategies for area businesses, which may include sectoral, industry cluster, regional skills alliances, career ladder, skills upgrading, skill standard development and certification, apprenticeship, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

"(cc) participation in seminars and classes offered in partnership with relevant organizations focusing on the workforce-related needs of area employers and job seekers;

"(dd) training consulting, needs analysis, and brokering services for area businesses, including the organization and aggregation of training (which may be paid for with funds other than those provided under this title), for individual employers and coalitions of employers with similar interests, products, or workforce needs;

"(ee) assistance to area employers in the aversion of layoffs and in managing reductions in force in coordination with rapid response activities;

"(ff) the marketing of business services offered under this title, to appropriate area employers, including small and mid-sized employers;

"(gg) information referral on concerns affecting local employers; and

"(hh) other business services and strategies designed to better engage employers in workforce investment activities and to make the workforce investment system more relevant to the workforce investment needs of area businesses, as determined by the local board to be consistent with the objectives of this title;

"(xii) activities to adjust the self-sufficiency standards for local factors, or activities to adopt, calculate, or commission a self-sufficiency standard that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations; and

"(xiii) improved coordination between employment and training assistance and programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to mental retardation and developmental disabilities, Statewide Independent Living Councils established under section 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d), and centers for independent living defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a).

"(B) WORK SUPPORT ACTIVITIES FOR LOW-WAGE WORKERS.—

"(i) IN GENERAL.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide, through the one-stop delivery system involved, work support activities designed to assist low-wage workers in retaining and enhancing employment. The one-stop partners shall coordinate the appropriate programs and resources of the partners with the activities and resources provided under this subparagraph.

"(ii) ACTIVITIES.—The activities described in clause (i) may include the provision of activities described in this section through the one-stop delivery system in a manner that enhances the opportunities of such workers to participate in the activities, such as the provision of activities described in this section during nontraditional hours and the provision of onsite child care while such activities are being provided.";

(B) in paragraph (2), by striking the matter preceding subparagraph (A) and inserting the following:

"(2) SUPPORTIVE SERVICES.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide supportive services to adults and dislocated workers, respectively—"; and

(C) by adding at the end the following:

"(4) INCUMBENT WORKER TRAINING PROGRAMS.—

"(A) IN GENERAL.—The local board may use up to 10 percent of the funds allocated to the local area involved under section 133(b) to pay for the Federal share of the cost of providing training through an incumbent worker training program carried out in accordance with this paragraph. The Governor or State board may make recommendations to the local board regarding incumbent worker training with statewide impact.

"(B) TRAINING ACTIVITIES.—The training program for incumbent workers carried out under this paragraph shall be carried out by the local board in conjunction with the employers or groups of employers of such workers for the purpose of assisting such workers in obtaining the skills necessary to retain employment or avert layoffs.

"(C) EMPLOYER SHARE REQUIRED.—

"(i) IN GENERAL.—Employers participating in the program carried out under this paragraph shall be required to pay the non-Federal share of the costs of providing the training to incumbent workers of the employers. The local board shall establish the non-Federal share of such costs, which may include in-kind contributions. The non-Federal share shall not be less than—

"(I) 10 percent of the costs, for employers with 50 or fewer employees;

"(II) 25 percent of the costs, for employers with more than 50 employees but fewer than 100 employees; and

"(III) 50 percent of the costs, for employers with 100 or more employees.

"(ii) CALCULATION OF EMPLOYER SHARE.—The non-Federal share paid by such an employer may include the amount of the wages paid by the employer to a worker while the worker is attending a training program under this paragraph.".

SEC. 122. PERFORMANCE ACCOUNTABILITY SYSTEM.

(a) STATE PERFORMANCE MEASURES.—

(1) INDICATORS OF PERFORMANCE.—Section 136(b)(2)(A) (29 U.S.C. 2871(b)(2)(A)) is amended—

(A) in clause (i)—

(i) in the matter preceding subclause (I), by striking "and (for participants who are eligible youth age 19 through 21) for youth activities authorized under section 129";

(ii) by striking subclause (III) and inserting the following:

"(III) increases in earnings from unsubsidized employment; and"; and

(iii) in subclause (IV), by striking ", or by participants" and all that follows through "unsubsidized employment"; and

(B) by striking clause (ii) and inserting the following:

"(ii) CORE INDICATORS FOR ELIGIBLE YOUTH.—The core indicators of performance for youth activities authorized under section 129 shall consist of—

"(I) entry into employment, education or advanced training, or military service;

"(II) attainment of secondary school diplomas or their recognized equivalents, and postsecondary certificates; and

"(III) literacy or numeracy gains.".

(2) ADDITIONAL INDICATORS.—Section 136(b)(2)(C) (29 U.S.C. 2871(b)(2)(C)) is amended to read as follows:

"(C) ADDITIONAL INDICATORS.—A State may identify in the State plan additional indicators for workforce investment activities under this subtitle, including indicators identified in collaboration with State business and industry associations, with employee representatives where applicable, and with local boards, to measure the performance of the workforce investment system in serving the workforce needs of business and industry in the State.".

(3) LEVELS OF PERFORMANCE.—Section 136(b)(3)(A) (29 U.S.C. 2871(b)(3)(A)) is amended—

(A) in clause (iii)—

(i) in the heading, by striking "FOR FIRST 3 YEARS";

(ii) by striking "and the customer satisfaction indicator of performance, for the first 3" and inserting "described in clauses (i) and (ii) of paragraph (2)(A) and the customer satisfaction indicator of performance, for the first 2"; and

(iii) by inserting at the end the following: "Agreements on levels of performance for each of the core indicators of performance for the third and fourth program years covered by the State plan shall be reached prior to the beginning of the third program year covered by the State plan, and incorporated as a modification to the State plan.";

(B) in clause (iv)—

(i) in subclause (II)—

(I) by striking "taking into account" and inserting "and shall ensure that the levels involved are adjusted, using objective statistical methods, based on";

(II) by inserting "(such as differences in unemployment rates and job losses or gains in particular industries)" after "economic conditions";

(III) by inserting "(such as indicators of poor work history, lack of work experience, lack of educational or occupational skills attainment, dislocation from high-wage and benefit employment, low levels of literacy or English proficiency, disability status, homelessness, and welfare dependency)" after "program"; and

(IV) by striking "and" at the end;

(ii) in subclause (III), by striking the period and inserting "; and"; and

(iii) by adding at the end the following:

"(IV) the extent to which the levels involved will assist the State in meeting the national goals described in clause (v).";

(C) by striking clause (v) and inserting the following:

"(v) ESTABLISHMENT OF NATIONAL GOALS.—In order to promote enhanced performance outcomes on the performance measures and to facilitate the process of reaching agreements with the States under clause (iii) and to measure systemwide performance for the one-stop delivery systems of the States, the Secretary shall establish long-term national goals for the adjusted

levels of performance for that systemwide performance to be achieved by the programs assisted under chapters 4 and 5 on the core indicators of performance described in subparagraphs (A) and (B) of subsection (b)(2). Such goals shall be established in accordance with the Government Performance and Results Act of 1993 in consultation with the States and other appropriate parties."; and

(D) in clause (vi)—

(i) by striking "or (v)"; and

(ii) by striking "with the representatives described in subsection (i)" and inserting "with the States and other interested parties".

(b) LOCAL PERFORMANCE MEASURES.—Section 136(c)(3) (29 U.S.C 2871(c)(3))—

(1) by striking "shall take into account" and inserting "shall ensure that the levels involved are adjusted, using objective statistical methods, based on";

(2) by inserting "(characteristics such as unemployment rates and job losses or gains in particular industries)" after "economic"; and

(3) by inserting "(characteristics such as indicators of poor work history, lack of work experience, lack of educational and occupational skills attainment, dislocation from high-wage and benefit employment, low levels of literacy or English proficiency, disability status, homelessness, and welfare dependency)" after "demographic".

(c) REPORT.—Section 136(d) (29 U.S.C. 2871(d)) is amended—

(1) in paragraph (1), by adding at the end the following: "In the case of a State or local area that chooses to expend funds for activities under subsection (a)(3)(A)(i) or (e)(1)(A)(xi), respectively, of section 134, the report also shall include the amount of such funds so expended and the percentage that such funds are of the funds available for activities under section 134.";

(2) in paragraph (2)—

(A) in subparagraph (E)—

(i) by striking "(excluding participants who received only self-service and informational activities)"; and

(ii) by striking "and" after the semicolon;

(B) in subparagraph (F)—

(i) by inserting "noncustodial parents with child support obligations, homeless individuals," after "displaced homemakers,"; and

(ii) by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

"(G) the number of participants served and the cost per participant; and

"(H) the amount of adult and dislocated worker funds spent on—

"(i) core, intensive, and training services, respectively; and

"(ii) services provided under subsection (a)(3)(A)(i) or (e)(1)(A)(xi) of section 134, if applicable."; and

(3) by adding at the end the following:

"(4) DATA VALIDATION.—In preparing the reports described in this subsection, the States shall establish procedures, consistent with guidelines issued by the Secretary, to ensure that the information contained in the reports is valid and reliable.".

(d) EVALUATION OF STATE PROGRAMS.—Section 136(e)(3) is amended by inserting ", including information on promoting self-sufficiency and comparable pay between men and women" after "employers".

(e) SANCTIONS FOR STATE.—Section 136(g) is amended—

(1) in paragraph (1)(B), by striking "If such failure continues for a second consecutive year" and inserting "If a State performs at less than 80 percent of the adjusted level of performance for core indicators of performance described in subsection (b)(2)(A) for 2 consecutive years"; and

(2) in paragraph (2), by striking "section 503" and inserting "subsection (i)(1)".

(f) SANCTIONS FOR LOCAL AREA.—Section 136(h)(2)(A) (29 U.S.C. 2871(h)(2)(A)) is amended—

(1) in the matter preceding clause (i), by striking "If such failure continues for a second consecutive year" and inserting "If a local area performs at less than 80 percent of the adjusted level of performance for core indicators of performance described in subsection (b)(2)(A) for 2 consecutive years";

(2) in clause (ii), by striking "or" after the semicolon;

(3) by redesignating clause (iii) as clause (iv); and

(4) by inserting after clause (ii) the following:

"(iii) redesignate the local area in accordance with section 116(b)(2); or".

(g) INCENTIVE GRANTS.—Section 136(i) (29 U.S.C. 2871(i)) is amended to read as follows:

"(i) INCENTIVE GRANTS FOR LOCAL AREAS.—

"(1) IN GENERAL.—From funds reserved under sections 128(a) and 133(a)(1), the Governor involved shall award incentive grants to local areas for performance described in paragraph (2) in carrying out programs under chapters 4 and 5.

"(2) BASIS.—The Governor shall award the grants on the basis—

"(A) that the local areas met or exceeded the performance measures established under subsection (c)(2) relating to indicators described in subsection (b)(3)(A)(iii);

"(B) of exemplary performance of the local areas in serving hard-to-serve populations; or

"(C) that the local areas are effectively—

"(i) coordinating multiple systems into a comprehensive workforce investment system, including coordination of employment services under the Wagner-Peyser Act and core activities under this title as well as one-stop partner programs described in section 121;

"(ii) expanding access to training, including through increased leveraging of resources other than those funded through programs under this title; or

"(iii) implementing innovative business and economic development initiatives.

"(3) USE OF FUNDS.—The funds awarded to a local area under this paragraph may be used to carry out activities authorized for local areas under chapters 4 and 5, and such demonstration projects or innovative programs for hard-to-serve populations as may be approved by the Governor.".

(g) USE OF CORE MEASURES IN OTHER DEPARTMENT OF LABOR PROGRAMS.—Section 136 (29 U.S.C. 2871) is amended by adding at the end the following:

"(j) USE OF CORE INDICATORS FOR OTHER PROGRAMS.—In addition to the programs carried out under chapters 4 and 5, and consistent with the requirements of the applicable authorizing laws, the Secretary shall use the indicators of performance described in subparagraphs (A) and (B) of subsection (b)(2) to assess the effectiveness of the programs described in clauses (i), (ii), and (vi) of section 121(b)(1)(B) that are carried out by the Secretary.".

(h) PREVIOUS DEFINITIONS OF CORE INDICATORS.—Section 502 (29 U.S.C. 9272) is repealed.

SEC. 123. AUTHORIZATION OF APPROPRIATIONS.

(a) YOUTH ACTIVITIES.—Section 137(a) (29 U.S.C. 2872(a)) is amended by striking "such sums as may be necessary for each of fiscal years 1999 through 2003" and inserting "such sums as may be necessary for each of fiscal years 2004 through 2009".

(b) ADULT EMPLOYMENT AND TRAINING ACTIVITIES.—Section 137(b) (29 U.S.C. 2872(b)) is amended by striking "such sums as may be necessary for each of fiscal years 1999 through 2003" and inserting "such sums as may be necessary for each of fiscal years 2004 through 2009".

(c) DISLOCATED WORKER EMPLOYMENT AND TRAINING ACTIVITIES.—Section 137(c) (29 U.S.C. 2872(c)) is amended by striking "such sums as may be necessary for each of fiscal years 1999 through 2003" and inserting "such sums as may be necessary for each of fiscal years 2004 through 2009".

Subtitle C—Job Corps

SEC. 131. JOB CORPS.

(a) ELIGIBILITY.—Section 144(3) (29 U.S.C. 2884(3)) is amended by adding at the end the following:

"(F) A child eligible for assistance under section 477 of the Social Security Act.".

(b) IMPLEMENTATION OF STANDARDS AND PROCEDURES.—Section 145(a)(3) (29 U.S.C. 2885(a)(3)) is amended—

(1) in subparagraph (B), by striking "and" after the semicolon;

(2) in subparagraph (C), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(D) child welfare agencies that are responsible for children in foster care and children eligible for assistance under section 477 of the Social Security Act.".

(c) INDUSTRY COUNCILS.—Section 154(b) (29 U.S.C. 2894(b)) is amended—

(1) in paragraph (1)(A), by striking "local and distant"; and

(2) by adding at the end the following:

"(3) EMPLOYERS OUTSIDE OF LOCAL AREA.—The industry council may include, or otherwise provide for consultation with, employers from outside the local area who are likely to hire a significant number of enrollees from the Job Corps center.

"(4) SPECIAL RULE FOR SINGLE LOCAL AREA STATES.—In the case of a single local area State designated under section 116(b), the industry council shall include a representative of the State Board.".

(d) INDICATORS OF PERFORMANCE.—Section 159 (29 U.S.C. 2899) is amended—

(1) in subsection (c)—

(A) by striking paragraph (1) and inserting the following:

"(1) PERFORMANCE INDICATORS.—The Secretary shall annually establish expected levels of performance for Job Corps centers and the Job Corps program relating to each of the core indicators of performance for youth activities identified in section 136(b)(2)(A)(ii).";

(B) in paragraph (2), by striking "measures" each place it appears and inserting "indicators"; and

(C) in paragraph (3)—

(i) in the first sentence, by striking "core performance measures, as compared to the expected performance level for each performance measure" and inserting "performance indicators described in paragraph (1), as compared to the expected level of performance established under paragraph (1) for each performance measure"; and

(ii) in the second sentence, by striking "measures" each place it appears and inserting "indicators"; and

(2) in subsection (f)(2), in the first sentence, by striking "core performance measures" and inserting "indicators of performance".

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 161 (29 U.S.C. 2901) is amended by striking "1999 through 2003" and inserting "2004 through 2009".

Subtitle D—National Programs

SEC. 141. NATIVE AMERICAN PROGRAMS.

(a) ADVISORY COUNCIL.—Section 166(h)(4)(C) (29 U.S.C. 2911(h)(4)(C)) is amended to read as follows:

"(C) DUTIES.—The Council shall advise the Secretary on the operation and administration

of the programs assisted under this section, including the selection of the individual appointed as head of the unit established under paragraph (1).".

(b) Assistance to Unique Populations in Alaska and Hawaii.—Section 166(j) (29 U.S.C. 2911(j)) is amended to read as follows:

"(j) Assistance to Unique Populations in Alaska and Hawaii.—

"(1) In general.—Notwithstanding any other provision of law, the Secretary is authorized to provide assistance to unique populations who reside in Alaska or Hawaii to improve job training and workforce investment activities.

"(2) Authorization of appropriations.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 2004.".

(c) Performance Indicators.—Section 166 (29 U.S.C. 2911) is amended by adding at the end the following':

"(k) Performance Indicators.—

"(1) Development of indicators.—The Secretary, in consultation with the Native American Employment and Training Council, shall develop a set of performance indicators and standards which shall be applicable to programs under this section.

"(2) Special considerations.—Such performance indicators and standards shall take into account—

"(A) the purposes of the programs under this section as described in paragraph (a)(1);

"(B) the needs of the groups served by this section, including the differences in needs among such groups in various geographic service areas; and

"(C) the economic circumstances of the communities served, including differences in circumstances among various geographic service areas.".

SEC. 142. MIGRANT AND SEASONAL FARMWORKER PROGRAMS.

Section 167(d) (29 U.S.C. 2912(d)) is amended by inserting "(including permanent housing)" after "housing".

SEC. 143. VETERANS' WORKFORCE INVESTMENT PROGRAMS.

Section 168(a)(3)(C) (29 U.S.C. 2913(a)(3)(C)) is amended by striking "section 134(c)" and inserting "section 121(e)".

SEC. 144. YOUTH CHALLENGE GRANTS.

Section 169 (29 U.S.C. 2914) is amended to read as follows:

"SEC. 169. YOUTH CHALLENGE GRANTS.

"(a) In General.—Of the amounts reserved by the Secretary under section 127(b)(1)(A) for a fiscal year—

"(1) the Secretary shall use not less than 80 percent to award competitive grants under subsection (b); and

"(2) the Secretary may use not more than 20 percent to award discretionary grants under subsection (c).

"(b) Competitive Grants to States and Local Areas.—

"(1) Establishment.—From the funds described in subsection (a)(1), the Secretary shall award competitive grants to eligible entities to carry out activities authorized under this subsection to assist eligible youth in acquiring the skills, credentials, and employment experience necessary to achieve the performance outcomes for youth described in section 136

"(2) Eligible entity.—In this subsection, the term 'eligible entity' means—

"(A) a State or consortium of States;

"(B) a local board or consortium of local boards;

"(C) a recipient of a grant under section 166 (relating to Native American programs); or

"(D) a public or private entity (including a consortium of such entities) with expertise in the provision of youth activities, applying in partnership with a local board or consortium of local boards.

"(3) Applications.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

"(A) a description of the activities the eligible entity will provide to eligible youth under this subsection, and how the eligible entity will collaborate with State and local workforce investment systems established under this title in the provision of such activities;

"(B) a description of the programs of demonstrated effectiveness on which the provision of the activities under subparagraph (A) are based, and a description of how such activities will expand the base of knowledge relating to the provision of activities for youth;

"(C) a description of the State, local, and private resources that will be leveraged to provide the activities described under subparagraph (A) in addition to funds provided under this subsection, and a description of the extent of the involvement of employers in the activities;

"(D) the levels of performance the eligible entity expects to achieve with respect to the indicators of performance for youth specified in section 136(b)(2)(A)(ii); and

"(E) an assurance that the State board of each State in which the proposed activities are to be carried out had the opportunity to review the application, and including the comments, if any, of the affected State boards on the application, except that this subparagraph shall not apply to an eligible entity described in paragraph (2)(C).

"(4) Factors for award.—

"(A) In general.—In awarding grants under this subsection the Secretary shall consider—

"(i) the quality of the proposed activities;

"(ii) the goals to be achieved;

"(iii) the likelihood of successful implementation;

"(iv) the extent to which the proposed activities are based on proven strategies or the extent to which the proposed activities will expand the base of knowledge relating to the provision of activities for youth;

"(v) the extent of collaboration with the State and local workforce investment systems in carrying out the proposed activities;

"(vi) the extent of employer involvement in the proposed activities;

"(vii) whether there are other Federal and non-Federal funds available for similar activities to the proposed activities, and the additional State, local, and private resources that will be provided to carry out the proposed activities; and

"(viii) the quality of proposed activities in meeting the needs of the youth to be served.

"(B) Equitable geographic distribution.—In awarding grants under this subsection the Secretary shall ensure an equitable distribution of such grants across geographically diverse areas.

"(5) Use of funds.—

"(A) In general.—An eligible entity that receives a grant under this subsection shall use the grant funds to carry out activities that are designed to assist youth in acquiring the skills, credentials, and employment experience that are necessary to succeed in the labor market, including the activities identified in section 129.

"(B) Activities.—The activities carried out pursuant to subparagraph (A) may include the following:

"(i) Training and internships for out-of-school youth in sectors of the economy experiencing, or projected to experience, high growth.

"(ii) Dropout prevention activities for in-school youth.

"(iii) Activities designed to assist special youth populations, such as court-involved youth and youth with disabilities.

"(iv) Activities combining remediation of academic skills, work readiness training, and work experience, and including linkages to postsecondary education, apprenticeships, and career-ladder employment.

"(v) Activities, including work experience, paid internships, and entrepreneurial training, in areas where there is a migration of youth out of the areas.

"(C) Participant eligibility.—Youth who are 14 years of age through 21 years of age, as of the time the eligibility determination is made, may be eligible to participate in activities carried out under this subsection.

"(6) Grant period.—The Secretary shall make a grant under this subsection for a period of 2 years and may renew the grant, if the eligible entity has performed successfully, for a period of not more than 3 succeeding years.

"(7) Matching funds required.—The Secretary shall require that an eligible entity that receives a grant under this subsection provide non-Federal matching funds in an amount to be determined by the Secretary that is not less than 10 percent of the cost of activities carried out under the grant. The Secretary may require that such non-Federal matching funds be provided in cash resources, noncash resources, or a combination of cash and noncash resources.

"(8) Evaluation.—The Secretary shall reserve not more than 3 percent of the funds described in subsection (a)(1) to provide technical assistance to, and conduct evaluations of (using appropriate techniques as described in section 172(c)), the projects funded under this subsection.

"(c) Discretionary Grants for Youth Activities.—

"(1) In general.—From the funds described in subsection (a)(2), the Secretary may award grants to eligible entities to provide activities that will assist youth in preparing for, and entering and retaining, employment.

"(2) Eligible entity.—In this subsection, the term 'eligible entity' means a public or private entity that the Secretary determines would effectively carry out activities relating to youth under this subsection.

"(3) Equitable distribution to rural areas.—In awarding grants under this subsection the Secretary shall ensure an equitable distribution of such grants to rural areas.

"(4) Applications.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(5) Use of funds.—

"(A) In general.—An eligible entity that receives a grant under this subsection shall use the grant funds to carry out—

"(i) activities that will assist youth in preparing for, and entering and retaining, employment, including the activities described in section 129 for out-of-school youth;

"(ii) activities designed to assist in-school youth to stay in school and gain work experience;

"(iii) activities designed to assist youth in economically distressed areas; and

"(iv) such other activities that the Secretary determines are appropriate to ensure that youth entering the workforce have the skills needed by employers.

"(B) Participant eligibility.—Youth who are 14 years of age through 21 years of age, as of the time the eligibility determination is made, may be eligible to participate in activities carried out under this subsection.

"(6) Matching funds required.—The Secretary shall require that an eligible entity that

receives a grant under this subsection provide non-Federal matching funds in an amount to be determined by the Secretary that is not less than 10 percent of the cost of activities carried out under the grant. The Secretary may require that such non-Federal matching funds be provided in cash resources, noncash resources, or a combination of cash and noncash resources.

"(7) Evaluations.—The Secretary may require that an eligible entity that receives a grant under this subsection participate in an evaluation of activities carried out under this subsection, including an evaluation using the techniques described in section 172(c).".

SEC. 145. TECHNICAL ASSISTANCE.

Section 170 (29 U.S.C. 2915) is amended—

(1) in subsection (a)(1), by—

(A) inserting "the training of staff providing rapid response services, the training of other staff of recipients of funds under this title, the training of members of State boards and local boards, peer review activities under this title," after "localities,"; and

(B) striking "from carrying out activities" and all that follows through the period and inserting "to implement the amendments made by the Workforce Investment Act Amendments of 2003.";

(2) in subsection (a)(2), by adding at the end the following: "The Secretary shall also hire staff qualified to provide the assistance described in paragraph (1).";

(3) in subsection (b)(2), by striking the last sentence and inserting "Such projects shall be administered by the Employment and Training Administration."; and

(4) by adding at the end the following:

"(c) Best Practices Coordination.—The Secretary shall—

"(1) establish a system through which States may share information regarding best practices with regard to the operation of workforce investment activities under this Act;

"(2) evaluate and disseminate information regarding best practices and identify knowledge gaps; and

"(3) commission research under section 172 to address knowledge gaps identified under paragraph (2).".

SEC. 146. DEMONSTRATION, PILOT, MULTISERVICE, RESEARCH, AND MULTISTATE PROJECTS.

(a) Demonstration and Pilot Projects.—Section 171(b) (29 U.S.C. 2916(b)) is amended—

(1) in paragraph (1)—

(A) by striking "Under a" and inserting "Consistent with the priorities specified in the";

(B) by striking subparagraphs (A) through (E) and inserting the following:

"(A) projects that assist national employers in connecting with the workforce investment system established under this title in order to facilitate the recruitment and employment of needed workers for career ladder jobs and to provide information to such system on skills and occupations in demand;

"(B) projects that promote the development of systems that will improve the maximum effectiveness of programs carried out under this title;

"(C) projects that focus on opportunities for employment in industries and sectors of industries that are experiencing, or are likely to experience, high rates of growth and jobs with wages leading to self-sufficiency;

"(D) computerized, individualized, self-paced training projects targeted to dislocated, disadvantaged, or incumbent workers utilizing equipment and curriculum designed in partnership with industries for employment in the operations, repair, and maintenance of high-tech equipment that is used in integrated systems technology;

"(E) projects carried out by States and local areas to test innovative approaches to delivering employment-related services;";

(C) in subparagraph (G), by striking "and" after the semicolon; and

(D) by striking subparagraph (H) and inserting the following:

"(H) projects that provide retention grants, which shall—

"(i) be made to qualified job training programs offering instruction, assessment, or professional coaching, upon placement of a low-income individual trained by the program involved in employment with an employer and retention of the low-income individual in that employment with that employer for a period of 1 year, if that employment provides the low-income individual with an annual salary—

"(I) that is at least $10,000 more than the individual's federally adjusted income for the previous year; and

"(II) that is not less than twice the poverty line applicable to the individual; and

"(ii) be made taking into account the economic benefit received by the Federal Government from the employment and retention of the individual, including the economic benefit from tax revenue and decreased public subsidies;

"(I) targeted innovation projects that improve access to and delivery of employment and training services, with emphasis given to projects that incorporate advanced technologies to facilitate the connection of individuals to the information and tools they need to upgrade skills;

"(J) projects that promote the use of distance learning, enabling students to take courses through the use of media technology such as videos, teleconferencing computers, and the Internet; and

"(K) projects that provide comprehensive education and training services, and support services, in coordination with local boards, for populations in targeted high poverty areas where the greatest barriers to employment exist, including ex-offenders, out-of-school youth, and public assistance recipient populations."; and

(2) in paragraph (2)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B).

(b) Multiservice Projects.—Section 171(c)(2)(B) (29 U.S.C. 2916(c)(2)(B)) is amended to read as follows:

"(B) Studies and reports.—

"(i) Net impact studies and reports.—

"(I) In general.—The Secretary, in coordination with the Secretary of Education, shall conduct studies to determine the net impacts of programs, services, and activities carried out under this title.

"(II) Reports.—The Secretary shall prepare and disseminate to the public reports containing the results of the studies conducted under subclause (I).

"(ii) Study on resources available to assist out-of-school youth.—The Secretary, in coordination with the Secretary of Education, may conduct a study examining the resources available at the Federal, State, and local levels to assist out-of-school youth in obtaining the skills, credentials, and work experience necessary to become successfully employed, including the availability of funds provided through average daily attendance and other methodologies used by States and local areas to distribute funds.

"(iii) Study of industry-based certification and credentials.—

"(I) In general.—The Secretary shall conduct a study concerning the role and benefits of credentialing and certification to businesses and workers in the economy and the implications of certification to the services provided through the workforce investment system. The study may examine issues such as—

"(aa) the characteristics of successful credentialing and certification systems that serve business and individual needs;

"(bb) the relative proportions of certificates and credentials attained with assistance from the public sector, with private-sector training of new hires or incumbent workers, and by individuals on their own initiative without other assistance, respectively;

"(cc) the return on human capital investments from occupational credentials and industry-based skill certifications, including the extent to which acquisition of such credentials or certificates enhances outcomes such as entry into employment, retention, earnings (including the number and amount of wage increases), career advancement, and layoff aversion;

"(dd) the implications of the effects of skill certifications and credentials to the types and delivery of services provided through the workforce investment system;

"(ee) the role that Federal and State governments play in fostering the development of and disseminating credentials and skill standards; and

"(ff) the use of credentials by businesses to achieve goals for workforce skill upgrading and greater operating efficiency.

"(II) Report to Congress.—The Secretary shall prepare and submit to Congress a report containing the results of the study conducted pursuant to subclause (I). Such report may include any recommendations that the Secretary determines are appropriate to include in such report relating to promoting the acquisition of industry-based certification and credentials, and the appropriate role of the Department of Labor and the workforce investment system in supporting the needs of business and individuals with respect to such certification and credentials.

"(iv) Study of effectiveness of workforce investment system in meeting business needs.—

"(I) In general.—Using funds available to carry out this section jointly with funds available to the Secretary of Commerce and Administrator of the Small Business Administration, the Secretary, in coordination with the Secretary of Commerce and the Administrator of the Small Business Administration, may conduct a study of the effectiveness of the workforce investment system in meeting the needs of business, with particular attention to the needs of small business, including in assisting workers to obtain the skills needed to utilize emerging technologies. In conducting the study, the Secretary, in coordination with the Secretary of Commerce and the Administrator of the Small Business Administration, may examine issues such as—

"(aa) methods for identifying the workforce needs of businesses and how the requirements of small businesses may differ from larger establishments;

"(bb) business satisfaction with the workforce investment system, with particular emphasis on the satisfaction of small businesses;

"(cc) the extent to which business is engaged as a collaborative partner in the workforce investment system, including the extent of business involvement as members of State boards and local boards, and the extent to which such boards and one-stop centers effectively collaborate with business and industry leaders in developing workforce investment strategies, including strategies to identify high growth opportunities;

"(dd) ways in which the workforce investment system addresses changing skill needs of business that result from changes in technology and work processes;

"(ee) promising practices for serving small businesses;

"(ff) the extent and manner in which the workforce investment system uses technology to serve business and individual needs, and how

uses of technology could enhance efficiency and effectiveness in providing services; and

''(gg) the extent to which various segments of the labor force have access to and utilize technology to locate job openings and apply for jobs, and characteristics of individuals utilizing such technology (such as age, gender, race or ethnicity, industry sector, and occupational groups).

''(II) REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress a report containing the results of the study described in clause (I). Such report may include any recommendations the Secretary determines are appropriate to include in such report, including ways to enhance the effectiveness of the workforce investment system in meeting the needs of business for skilled workers.''.

(c) NEXT GENERATION TECHNOLOGIES.—Section 171 (29 U.S.C. 2916) is amended by adding at the end the following:

''(e) SKILL CERTIFICATION PILOT PROJECTS.—

''(1) PILOT PROJECTS.—In accordance with subsection (b) and from funds appropriated pursuant to paragraph (10), the Secretary shall establish and carry out not more than 10 pilot projects to establish a system of industry-validated national certifications of skills, including—

''(A) not more than 8 national certifications of skills in high-technology industries, including biotechnology, telecommunications, highly automated manufacturing (including semiconductors), nanotechnology, and energy technology; and

''(B) not more than 2 cross-disciplinary national certifications of skills in homeland security technology.

''(2) GRANTS TO ELIGIBLE ENTITIES.—In carrying out the pilot projects, the Secretary shall make grants to eligible entities, for periods of not less than 36 months and not more than 48 months, to carry out the authorized activities described in paragraph (7) with respect to the certifications described in paragraph (1). In awarding grants under this subsection the Secretary shall take into consideration awarding grants to eligible entities from diverse geographic areas, including rural areas.

''(3) ELIGIBLE ENTITIES.—

''(A) DEFINITION OF ELIGIBLE ENTITY.—In this subsection the term 'eligible entity' means an entity that shall work in conjunction with a local board and shall include as a principal participant one or more of the following:

''(i) An educational institution, including a 2- or 4-year college, or a technical or vocational school.

''(ii) An advanced technology education center.

''(iii) A local board.

''(iv) A representative of a business in a target industry for the certification involved.

''(v) A representative of an industry association, labor organization, or community development organization.

''(B) HISTORY OF DEMONSTRATED CAPABILITY REQUIRED.—To be eligible to receive a grant under this subsection, an eligible entity shall have a history of demonstrated capability for effective collaboration with industry on workforce investment activities that is consistent with the objectives of this title.

''(4) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(5) CRITERIA.—The Secretary shall establish criteria, consistent with paragraph (6), for awarding grants under this subsection.

''(6) PRIORITY.—In selecting eligible entities to receive grants under this subsection, the Secretary shall give priority to eligible entities that demonstrate the availability of and ability to provide matching funds from industry or nonprofit sources. Such matching funds may be provided in cash or in kind.

''(7) AUTHORIZED ACTIVITIES.—

''(A) IN GENERAL.—An eligible entity that receives a grant under this subsection shall use the funds made available through the grant—

''(i) to facilitate the establishment of certification requirements for a certification described in paragraph (1) for an industry;

''(ii) to develop and initiate a certification program that includes preparatory courses, course materials, procedures, and examinations, for the certification; and

''(iii) to collect and analyze data related to the program at the program's completion, and to identify best practices (consistent with paragraph (8)) that may be used by local and State workforce investment boards in the future.

''(B) BASIS FOR REQUIREMENTS.—The certification requirements established under the grant shall be based on applicable skill standards for the industry involved that have been developed by or linked to national centers of excellence under the National Science Foundation's Advanced Technological Education Program. The requirements shall require an individual to demonstrate an identifiable set of competencies relevant to the industry in order to receive certification. The requirements shall be designed to provide evidence of a transferable skill set that allows flexibility and mobility of workers within a high technology industry.

''(C) RELATIONSHIP TO TRAINING AND EDUCATION PROGRAMS.—The eligible entity shall ensure that—

''(i) a training and education program related to competencies for the industry involved, that is flexible in mode and timeframe for delivery and that meets the needs of those seeking the certification, is offered; and

''(ii) the certification program is offered at the completion of the training and education program.

''(D) RELATIONSHIP TO THE ASSOCIATE DEGREE.—The eligible entity shall ensure that the certification program is consistent with the requirements for a 2-year associate degree.

''(E) AVAILABILITY.—The eligible entity shall ensure that the certification program is open to students pursuing associate degrees, employed workers, and displaced workers.

''(8) CONSULTATION.—The Secretary shall consult with the Director of the National Science Foundation to ensure that the pilot projects build on the expertise and information about best practices gained through the implementation of the National Science Foundation's Advanced Technological Education Program.

''(9) CORE COMPONENTS; GUIDELINES; REPORTS.—After collecting and analyzing the data obtained from the pilot programs, the Secretary shall—

''(A) establish the core components of a model high-technology certification program;

''(B) establish guidelines to assure development of a uniform set of standards and policies for such programs;

''(C) prepare and submit a report on the pilot projects to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives; and

''(D) make available to the public both the data and the report.

''(10) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated under section 174(b), there is authorized to be appropriated $30,000,000 for fiscal year 2004 to carry out this subsection.''.

(d) INTEGRATED WORKFORCE TRAINING PROGRAMS FOR ADULTS WITH LIMITED ENGLISH PROFICIENCY.—Section 171 (29 U.S.C. 2916), as amended by subsection (c), is further amended by adding at the end the following:

''(f) INTEGRATED WORKFORCE TRAINING PROGRAMS FOR ADULTS WITH LIMITED ENGLISH PROFICIENCY.—

''(1) DEFINITIONS.—In this subsection:

''(A) INTEGRATED WORKFORCE TRAINING.—The term 'integrated workforce training' means training that integrates occupational skills training with language acquisition.

''(B) SECRETARY.—The term 'Secretary' means the Secretary of Labor in consultation with the Secretary of Education.

''(2) DEMONSTRATION PROJECT.—In accordance with subsection (b) and from funds appropriated pursuant to paragraph (11), the Secretary shall establish and implement a national demonstration project designed to both analyze and provide data on workforce training programs that integrate English language acquisition and occupational training.

''(3) GRANTS.—

''(A) IN GENERAL.—In carrying out the demonstration project, the Secretary shall make not less than 10 grants, on a competitive basis, to eligible entities to provide the integrated workforce training programs. In awarding grants under this subsection the Secretary shall take into consideration awarding grants to eligible entities from diverse geographic areas, including rural areas.

''(B) PERIODS.—The Secretary shall make the grants for periods of not less than 24 months and not more than 48 months.

''(4) ELIGIBLE ENTITIES.—

''(A) IN GENERAL.—To be eligible to receive a grant under this subsection, an eligible entity shall work in conjunction with a local board and shall include as a principal participant one or more of the following:

''(i) An employer or employer association.

''(ii) A nonprofit provider of English language instruction.

''(iii) A provider of occupational or skills training.

''(iv) A community-based organization.

''(v) An educational institution, including a 2- or 4-year college, or a technical or vocational school.

''(vi) A labor organization.

''(vii) A local board.

''(B) EXPERTISE.—To be eligible to receive a grant under this subsection, an eligible entity shall have proven expertise in—

''(i) serving individuals with limited English proficiency, including individuals with lower levels of oral and written English; and

''(ii) providing workforce programs with training and English language instruction.

''(5) APPLICATIONS.—

''(A) IN GENERAL.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(B) CONTENTS.—Each application submitted under subparagraph (A) shall—

''(i) contain information, including capability statements, that demonstrates that the eligible entity has the expertise described in paragraph (4)(B); and

''(ii) include an assurance that the program to be assisted shall—

''(I) establish a generalized adult bilingual workforce training and education model that integrates English language acquisition and occupational training, and incorporates the unique linguistic and cultural factors of the participants;

''(II) establish a framework by which the employer, employee, and other relevant members of the eligible entity can create a career development and training plan that assists both the employer and the employee to meet their long-term needs;

"(III) ensure that the framework established under subclause (II) takes into consideration the knowledge, skills, and abilities of the employee with respect to both the current and economic conditions of the employer and future labor market conditions relevant to the local area; and

"(IV) establish identifiable measures so that the progress of the employee and employer and the relative efficacy of the program can be evaluated and best practices identified.

"(6) CRITERIA.—The Secretary shall establish criteria for awarding grants under this subsection.

"(7) INTEGRATED WORKFORCE TRAINING PROGRAMS.—

"(A) PROGRAM COMPONENTS.—

"(i) REQUIRED COMPONENTS.—Each program that receives funding under this subsection shall—

"(I) test an individual's English language proficiency levels to assess oral and literacy gains from the beginning and throughout program enrollment;

"(II) combine training specific to a particular occupation or occupational cluster, with—

"(aa) English language instruction, such as instruction through an English as a Second Language program, or an English for Speakers of Other Languages program;

"(bb) basic skills instruction; and

"(cc) supportive services;

"(III) effectively integrate public and private sector entities, including the local workforce investment system and its functions, to achieve the goals of the program; and

"(IV) require matching or in-kind resources from private and nonprofit entities.

"(ii) PERMISSIBLE COMPONENTS.—The program may offer other services, as necessary to promote successful participation and completion, including work-based learning, substance abuse treatment, and mental health services.

"(B) GOAL.—Each program that receives funding under this subsection shall be designed to prepare limited English proficient adults for, and place such adults in employment in, growing industries with identifiable career ladder paths.

"(C) PROGRAM TYPES.—In selecting programs to receive funding under this subsection, the Secretary shall select programs that meet 1 or more of the following criteria:

"(i) A program that—

"(I) serves unemployed, limited English proficient individuals with significant work experience or substantial education but persistently low wages; and

"(II) aims to prepare such individuals for, and place such individuals in, higher paying employment, defined for purposes of this subparagraph as employment that provides at least 75 percent of the median wage in the local area.

"(ii) A program that—

"(I) serves limited English proficient individuals with lower levels of oral and written fluency, who are working but at persistently low wages; and

"(II) aims to prepare such individuals for, and place such individuals in, higher paying employment, through services provided at the worksite, or at a location central to several work sites, during work hours.

"(iii) A program that—

"(I) serves unemployed, limited English proficient individuals with lower levels of oral and written fluency, who have little or no work experience; and

"(II) aims to prepare such individuals for, and place such individuals in, employment through services that include subsidized employment, in addition to the components required in subparagraph (A)(i).

"(iv) A program that includes funds from private and nonprofit entities.

"(D) PROGRAM APPROACHES.—In selecting programs to receive funding under this subsection, the Secretary shall select programs with different approaches to integrated workforce training, in different contexts, in order to obtain comparative data on multiple approaches to integrated workforce training and English language instruction, to ensure programs are tailored to characteristics of individuals with varying skill levels and to assess how different curricula work for limited English proficient populations. Such approaches may include—

"(i) bilingual programs in which the workplace language component and the training are conducted in a combination of an individual's native language and English;

"(ii) integrated workforce training programs that combine basic skills, language instruction, and job specific skills training; or

"(iii) sequential programs that provide a progression of skills, language, and training to ensure success upon an individual's completion of the program.

"(8) EVALUATION BY ELIGIBLE ENTITY.—Each eligible entity that receives a grant under this subsection for a program shall carry out a continuous program evaluation and an evaluation specific to the last phase of the program operations.

"(9) EVALUATION BY SECRETARY.—

"(A) IN GENERAL.—The Secretary shall conduct an evaluation of program impacts of the programs funded under the demonstration project, with a random assignment, experimental design impact study done at each worksite at which such a program is carried out.

"(B) DATA COLLECTION AND ANALYSIS.—The Secretary shall collect and analyze the data from the demonstration project to determine program effectiveness, including gains in language proficiency, acquisition of skills, and job advancement for program participants.

"(C) REPORT.—The Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives, and make available to the public, a report on the demonstration project, including the results of the evaluation.

"(10) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to recipients of grants under this subsection throughout the grant periods.

"(11) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated under section 174(b), there is authorized to be appropriated $10,000,000 for fiscal year 2004 to carry out this subsection.".

SEC. 147. NATIONAL DISLOCATED WORKER GRANTS.

(a) IN GENERAL.—Section 173 (29 U.S.C. 2918) is amended—

(1) by striking the heading and inserting the following:

"SEC. 173. NATIONAL DISLOCATED WORKER GRANTS.";

and

(2) in subsection (a)—

(A) by striking the matter preceding paragraph (1) and inserting the following:

"(a) IN GENERAL.—The Secretary is authorized to award national dislocated worker grants—";

(B) in paragraph (1), by striking "subsection (c)" and inserting "subsection (b)";

(C) in paragraph (3), by striking "and" after the semicolon; and

(D) by striking paragraph (4) and inserting the following:

"(4) to a State or entity (as defined in subsection (b)(1)(B)) to carry out subsection (e), including providing assistance to eligible individuals;

"(5) to a State or entity (as defined in subsection (b)(1)(B)) to carry out subsection (f), including providing assistance to eligible individuals;

"(6) to provide additional assistance to a State board or local board where a higher than average demand for employment and training services for dislocated members of the Armed Forces, or spouses, as defined in section 101(9)(E), of members of the Armed Forces as described in subsection (b)(2)(A)(iv), exceeds State and local resources for providing such services, and where such programs are to be carried out in partnership with the Department of Defense and Department of Veterans Affairs transition assistance programs; and

"(7) to provide assistance to a State for statewide or local use in order to—

"(A) address cases in which there have been worker dislocations across multiple sectors or across multiple local areas and such workers remain dislocated;

"(B) coordinate the State plan described in section 112 with emerging economic development needs; and

"(C) train eligible individuals who are dislocated workers described in subparagraph (A).

The Secretary shall issue a final decision on an application for a national dislocated worker grant under this subsection not later than 60 calendar days after receipt of the application. The Secretary shall issue a notice of obligation for such a grant not later than 10 days after the award of the grant.".

(b) ADMINISTRATION AND ADDITIONAL ASSISTANCE.—Section 173 (29 U.S.C. 2918) is amended—

(1) by striking subsection (b);

(2) by redesignating subsections (c) through (g) as subsections (b) through (f), respectively;

(3) by striking subsection (d) (as redesignated by paragraph (2)) and inserting the following:

"(d) ADDITIONAL ASSISTANCE.—

"(1) IN GENERAL.—From the amount appropriated and made available to carry out this section for any program year, the Secretary shall use not more than $20,000,000 to make grants to States to provide employment and training activities under section 134, in accordance with subtitle B.

"(2) ELIGIBLE STATES.—The Secretary shall make a grant under paragraph (1) to a State for a program year if—

"(A) the amount of the allotment that was made to the State for the program year 2003 under the formula specified in section 132(b)(1)(B) as such section was in effect on July 1, 2003, is greater than

"(B) the amount of the allotment that would be made to the State for the program year under the formula specified in section 132(b)(1)(B).

"(3) AMOUNT OF GRANTS.—Subject to paragraph (1), the amount of the grant made under paragraph (1) to a State for a program year shall be based on the difference between—

"(A) the amount of the allotment that was made to the State for the program year 2003 under the formula specified in section 132(b)(1)(B) as such section was in effect on July 1, 2003; and

"(B) the amount of the allotment that would be made to the State for the program year under the formula specified in section 132(b)(1)(B).";

(4) in subsection (e) (as redesignated by paragraph (2))—

(A) in paragraph (1), by striking "paragraph (4)(A)" and inserting "paragraph (4)";

(B) in paragraph (2), by striking "subsection (g)" and inserting "subsection (f)";

(C) in paragraph (4), by striking "subsection (g)" and inserting "subsection (f)";

(D) in paragraph (5), by striking "subsection (g)" and inserting "subsection (f)"; and

(E) in paragraph (6)—

(i) by striking "subsection (g)" and inserting "subsection (f)"; and *(ii) by striking "subsection (c)(1)(B)" and inserting "subsection (b)(1)(B)"; and*

(5) in subsection (f)(1) (as redesignated by paragraph (2))—

(A) by striking "paragraph (4)(B)" and inserting "paragraph (4)"; and

(B) by striking "subsection (f)(1)(A)" and inserting "subsection (e)(1)(A)".

SEC. 148. AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL ACTIVITIES.

(a) IN GENERAL.—Section 174(a)(1) (29 U.S.C. 2919(a)(1)) is amended by striking "1999 through 2003" and inserting "2004 through 2009".

(b) RESERVATIONS.—Section 174(b) (29 U.S.C. 2919(b)) is amended to read as follows:

"(b) TECHNICAL ASSISTANCE; DEMONSTRATION AND PILOT PROJECTS, EVALUATIONS, INCENTIVE GRANTS.—There are authorized to be appropriated to carry out sections 170 through 172 and section 136(i) such sums as may be necessary for each of fiscal years 2004 through 2009.".

Subtitle E—Administration

SEC. 151. REQUIREMENTS AND RESTRICTIONS.

Section 181(e) (29 U.S.C. 2931(e)) is amended by striking "economic development activities,".

SEC. 152. REPORTS.

Section 185(c) (29 U.S.C. 2935(c)) is amended—

(1) in paragraph (2), by striking "and" after the semicolon;

(2) in paragraph (3), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(4) shall have the option to submit or disseminate electronically any reports, records, plans, or any other data that are required to be collected or disseminated under this title.".

SEC. 153. ADMINISTRATIVE PROVISIONS.

(a) ANNUAL REPORT.—Section 189(d) (29 U.S.C. 2939(d)) is amended—

(1) in paragraph (3), by striking "and" after the semicolon;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

"(4) the negotiated levels of performance of the States, the States' requests for adjustments of such levels, and the adjustments of such levels that are made; and".

(b) AVAILABILITY.—Section 189(g)(2) (29 U.S.C. 2939(g)(2)) is amended, in the first sentence—

(1) by striking "Funds" and inserting "Except as otherwise provided in this paragraph, funds"; and

(2) by striking "each State receiving" and inserting "each recipient of".

(c) GENERAL WAIVERS.—Section 189(i)(4) (29 U.S.C. 2939(i)(4)) is amended—

(1) in subparagraph (A)(i), by inserting "the funding of infrastructure costs for one-stop centers," after "local boards,"; and

(2) by adding at the end the following:

"(D) EXPEDITED REQUESTS.—The Secretary shall expedite requests for waivers of statutory or regulatory requirements that have been approved for a State pursuant to subparagraph (B), if the requirements of this paragraph have been satisfied.".

SEC. 154. USE OF CERTAIN REAL PROPERTY.

Section 193 (29 U.S.C. 2943) is amended to read as follows:

"SEC. 193. TRANSFER OF FEDERAL EQUITY IN STATE EMPLOYMENT SECURITY AGENCY REAL PROPERTY TO THE STATES.

"(a) TRANSFER OF FEDERAL EQUITY.—Notwithstanding any other provision of law, any Federal equity acquired in real property through grants to States awarded under title III of the Social Security Act (42 U.S.C. 501 et seq.) or under the Wagner-Peyser Act is transferred to the States that used the grants for the acquisition of such equity. The portion of any real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under title III of the Social Security Act or the Wagner-Peyser Act. Any disposition of such real property shall be carried out in accordance with the procedures prescribed by the Secretary and the portion of the proceeds from the disposition of such real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under title III of the Social Security Act or the Wagner-Peyser Act.

"(b) LIMITATION ON USE.—A State shall not use funds awarded under title III of the Social Security Act or the Wagner-Peyser Act to amortize the costs of real property that is purchased by any State on or after the effective date of this provision.".

SEC. 155. TABLE OF CONTENTS.

Section 1(b) (29 U.S.C. 9201 note) is amended—

(1) by striking the item relating to section 106 and inserting the following:

"Sec. 106. Purposes.";

(2) by striking the item relating to section 123 and inserting the following:

"Sec. 123. Eligible providers of youth activities.";

(3) by striking the item relating to section 169 and inserting the following:

"Sec. 169. Youth challenge grants.";

(4) by striking the item relating to section 173 and inserting the following:

"Sec. 173. National dislocated worker grants.";

(5) by striking the item relating to section 193 and inserting the following:

"Sec. 193. Transfer of Federal equity in State employment security agency real property to the States.";

and

(6) by inserting after the item relating to section 243 the following:

"Sec. 244. Integrated english literacy and civics education.".

Subtitle F—Incentive Grants

SEC. 161. INCENTIVE GRANTS.

Section 503 (20 U.S.C. 9273) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) IN GENERAL.—

"(1) PRIOR TO JULY 1, 2005.—Prior to July 1, 2005, the Secretary shall award a grant to each State in accordance with the provisions of this section as this section was in effect on July 1, 2003.

"(2) BEGINNING ON JULY 1, 2005.—Beginning on July 1, 2005, the Secretary shall award a grant to each State on the basis—

"(A) of the State's exceeding the State adjusted levels of performance for title I, the adjusted levels of performance for title II, and the levels of performance for programs under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), for the purpose of carrying out an innovative program consistent with the requirements of any one or more of the programs within title I, title II, or such Act, respectively;

"(B) of exemplary performance of the States in serving hard-to-serve populations (as defined in section 101) (including performance relating to the levels of service provided and the performance outcomes on such performance measures with respect to the populations);

"(C) of States that are effectively—

"(i) coordinating multiple systems into a more effective workforce investment system, including coordination of employment services under the Wagner-Peyser Act and core activities under title I as well as partner programs described in section 121;

"(ii) expanding access to training, including through increased leveraging of resources other than those funded through programs under title I; or

"(iii) implementing innovative business and economic development initiatives; or

"(D) of such other factors relating to the performance of the States under title I as the Secretary determines are appropriate."; and

(2) in subsection (b)(2), by adding at the end the following:

"(D) USE OF FUNDS.—The funds awarded to a State under this section may be used to carry out any activities authorized for States under chapters 4 and 5 of subtitle B of title I, title II, and the Carl D. Perkins Vocational and Technical Education Act of 1998, including demonstration projects and innovative programs for hard-to-serve populations (as defined in section 101).".

TITLE II—AMENDMENTS TO THE ADULT EDUCATION AND FAMILY LITERACY ACT

SEC. 201. SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This title may be cited as the "Adult Education and Family Literacy Act Amendments of 2003".

(b) PURPOSE.—Section 202 of the Adult Education and Family Literacy Act (20 U.S.C. 9201) is amended—

(1) in paragraph (2), by striking "and" after the semicolon;

(2) in paragraph (3), by striking "education." and inserting "education and in the transition to postsecondary education; and"; and

(3) by adding at the end the following:

"(4) assist immigrants and other individuals with limited English proficiency in improving their reading, writing, speaking, and mathematics skills and acquiring an understanding of the American free enterprise system, individual freedom, and the responsibilities of citizenship.".

SEC. 202. DEFINITIONS.

Section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking "services or instruction below the postsecondary level" and inserting "academic instruction and education services below the postsecondary level that increase an individual's ability to read, write, and speak in English and perform mathematics"; and

(B) by striking subparagraph (C)(i) and inserting the following:

"(i) are basic skills deficient as defined in section 101;";

(2) in paragraph (2), by striking "activities described in section 231(b)" and inserting "programs and services which include reading, writing, speaking, or mathematics skills, workplace literacy activities, family literacy activities, English language acquisition activities, or other activities necessary for the attainment of a secondary school diploma or its State recognized equivalent";

(3) in paragraph (5)—

(A) by inserting "an organization that has demonstrated effectiveness in providing adult education, that may include" after "means";

(B) in subparagraph (B), by striking "of demonstrated effectiveness";

(C) in subparagraph (C), by striking "of demonstrated effectiveness"; and

(D) in subparagraph (I), by inserting "or coalition" after "consortium";

(4) in paragraph (6)—

(A) by striking "LITERACY PROGRAM" and inserting "LANGUAGE ACQUISITION PROGRAM";

(B) by striking "literacy program" and inserting "language acquisition program"; and

(C) by inserting "reading, writing, and speaking" after "competence in";

(5) by redesignating paragraphs (7) through (18) as paragraphs (8) through (19), respectively;

(6) by inserting after paragraph (6) the following:

"(7) ESSENTIAL COMPONENTS OF READING INSTRUCTION.—The term 'essential components of reading instruction' has the meaning given the term in section 1208 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6368)."; and

(7) by striking paragraph (19), as redesignated by paragraph (4), and inserting the following:

"(19) WORKPLACE LITERACY PROGRAM.—The term 'workplace literacy program' means an educational program designed to improve the productivity of the workforce through the improvement of literacy skills that is offered by an eligible provider in collaboration with an employer or an employee organization at a workplace, at an off-site location, or in a simulated workplace environment.".

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

Section 205 of the Adult Education and Family Literacy Act (20 U.S.C. 9204) is amended—

(1) by striking "1999" and inserting "2004"; and

(2) by striking "2003" and inserting "2009".

SEC. 204. HOME SCHOOLS.

Section 204 of the Adult Education and Family Literacy Act (20 U.S.C. 9203) is amended to read as follows:

"SEC. 204. HOME SCHOOLS.

"Nothing in this title shall be construed to affect home schools, whether a home school is treated as a home school or a private school under State law, or to compel a parent engaged in home schooling to participate in an English literacy program, family literacy services, or adult education.".

SEC. 205. RESERVATION OF FUNDS; GRANTS TO ELIGIBLE AGENCIES; ALLOTMENTS.

Section 211 of the Adult Education and Family Literacy Act (20 U.S.C. 9211) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) RESERVATION OF FUNDS.—From the sum appropriated under section 205 for a fiscal year, the Secretary—

"(1) shall reserve 1.5 percent to carry out section 242, except that the amount so reserved shall not exceed $10,000,000;

"(2) shall reserve 1.5 percent to carry out section 243 and subsection (f)(4), except that the amount so reserved shall not exceed $8,000,000;

"(3) shall make available, to the Secretary of Labor, 1.72 percent for incentive grants under section 136(i); and

"(4) shall reserve 12 percent of the amount that remains after reserving funds under paragraphs (1), (2) and (3) to carry out section 244.";

(2) in subsection (c)(1)(B), by striking "$250,000" and inserting "$350,000";

(3) by striking subsection (d) and inserting the following:

"(d) QUALIFYING ADULT.—For the purpose of subsection (c)(2), the term 'qualifying adult' means an adult who—

"(1) is not less than 16 years of age;

"(2) is beyond the age of compulsory school attendance under the law of the State or outlying area;

"(3) does not have a secondary school diploma or its recognized equivalent; and

"(4) is not enrolled in secondary school.";

(4) in subsection (e)—

(A) by striking paragraph (2) and inserting the following:

"(2) AWARD BASIS.—The Secretary shall award grants pursuant to paragraph (1) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii."; and

(B) in paragraph (3), by striking "shall" and all that follows through the period and inserting "shall be eligible to receive a grant under this title until the date when an agreement for the extension of the United States education assistance under the Compact of Free Association for each of the Freely Associated States becomes effective."; and

(5) by striking subsection (f) and inserting the following:

"(f) HOLD-HARMLESS PROVISIONS.—

"(1) IN GENERAL.—Notwithstanding subsection (c) and subject to paragraph (2), for fiscal year 2004 and each succeeding fiscal year, no eligible agency shall receive an allotment under this section that is less than 90 percent of the allotment the eligible agency received for the preceding fiscal year under this section.

"(2) 100 PERCENT ALLOTMENT.—Notwithstanding paragraphs (1) and (2) of subsection (e), an eligible agency that receives only an initial allotment under subsection (c)(1) (and no additional allotment under subsection (c)(2)) shall receive an allotment under this section that is equal to 100 percent of the initial allotment under subsection (c)(1).

"(3) RATABLE REDUCTION.—If for any fiscal year the amount available for allotment under this subtitle is insufficient to satisfy the provisions of paragraphs (1) and (2), the Secretary shall ratably reduce the payments to all eligible agencies, as necessary.

"(4) ADDITIONAL ASSISTANCE.—

"(A) IN GENERAL.—From amounts reserved under subsection (a)(2), the Secretary shall make grants to eligible agencies described in subparagraph (B) to enable such agencies to provide activities authorized under chapter 2.

"(B) ELIGIBILITY.—An eligible agency is eligible to receive a grant under this paragraph for a fiscal year if the amount of the allotment such agency receives under this section for the fiscal year is less than the amount such agency would have received for the fiscal year if the allotment formula under this section as in effect on September 30, 2003, were in effect for such year.

"(C) AMOUNT OF GRANT.—The amount of a grant made to an eligible agency under this paragraph for a fiscal year shall be the difference between—

"(i) the amount of the allotment such agency would have received for the fiscal year if the allotment formula under this section as in effect on September 30, 2003, were in effect for such year; and

"(ii) the amount of the allotment such agency receives under this section for the fiscal year.".

SEC. 206. PERFORMANCE ACCOUNTABILITY SYSTEM.

Section 212 of the Adult Education and Family Literacy Act (20 U.S.C. 9212) is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A)(ii), by striking "additional indicators of performance (if any)" and inserting "employment performance indicators";

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in clause (i), by striking "Demonstrated" and inserting "Measurable";

(II) by striking clause (ii) and inserting the following:

"(ii) Placement in, retention in, or completion of, postsecondary education or other training programs."; and

(III) in clause (iii), by inserting "(including recognized alternative standards for individuals with disabilities)" after "equivalent";

(ii) by redesignating subparagraph (B) as subparagraph (C);

(iii) by inserting after subparagraph (A), the following:

"(B) EMPLOYMENT PERFORMANCE INDICATORS.—An eligible agency shall identify in the State plan individual participant employment performance indicators, including entry into unsubsidized employment, retention in unsubsidized employment, and career advancement. The State workforce investment board shall assist the eligible agency in obtaining and using quarterly wage records to collect data for such indicators, consistent with applicable Federal and State privacy laws.";

(iv) in subparagraph (C), as redesignated by clause (ii), by inserting "relevant" after "additional"; and

(v) by adding at the end the following:

"(D) INDICATORS FOR WORKPLACE LITERACY PROGRAMS.—Special accountability measures may be negotiated for workplace literacy programs."; and

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) in clause (i)(II), by striking "in performance" and inserting "the agency's performance outcomes in an objective, quantifiable, and measurable form";

(II) in clause (ii), by striking "3 programs years" and inserting "2 program years";

(III) in clause (iii), by striking "FIRST 3 YEARS" and inserting "FIRST 2 YEARS";

(IV) in clause (iii), by striking "first 3 program years" and inserting "first 2 program years";

(V) in clause (v), by striking "4TH AND 5TH" and inserting "3RD AND 4TH";

(VI) in clause (v), by striking "to the fourth" and inserting "to the third";

(VII) in clause (v), by striking "fourth and fifth" and inserting "third and fourth"; and

(VIII) in clause (vi), by striking "(II)" and inserting "(I)";

(ii) in subparagraph (B)—

(I) by striking the heading and inserting "LEVELS OF EMPLOYMENT PERFORMANCE";

(II) by striking "may" and inserting "shall"; and

(III) by striking "additional" and inserting "employment"; and

(iii) by adding at the end the following:

"(C) ALTERNATIVE ASSESSMENT SYSTEMS.—Eligible agencies may approve the use of assessment systems that are not commercially available standardized systems if such systems meet the Standards for Educational and Psychological Testing issued by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.";

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting "the Governor, the State legislature, and the State workforce investment board" after "Secretary"; and

(ii) by striking "including" and all that follows through the period and inserting "including the following:

"(A) Information on the levels of performance achieved by the eligible agency with respect to the core indicators of performance, and employment performance indicators.

"(B) The number and type of each eligible provider that receives funding under such grant.

"(C) The number of enrollees 16 to 18 years of age who enrolled in adult education not later than 1 year after participating in secondary school education.";

(B) in paragraph (2)(A), by inserting "eligible providers and" after "available to"; and

(C) by adding at the end the following:

"(3) DATA ACCESS.—The report made available under paragraph (2) shall indicate which eligible agencies did not have access to State unemployment insurance wage data in measuring employment performance indicators."; and

(3) by adding at the end the following:

"(d) PROGRAM IMPROVEMENT.—

"(1) IN GENERAL.—If the Secretary determines that an eligible agency did not meet its adjusted

levels of performance for the core indicators of performance described in subsection (b)(2)(A) for any program year, the eligible agency shall—

"(A) work with the Secretary to develop and implement a program improvement plan for the 2 program years succeeding the program year in which the eligible agency did not meet its adjusted levels of performance; and

"(B) revise its State plan under section 224, if necessary, to reflect the changes agreed to in the program improvement plan.

"(2) FURTHER ASSISTANCE.—If, after the period described in paragraph (1)(A), the Secretary has provided technical assistance to the eligible agency but determines that the eligible agency did not meet its adjusted levels of performance for the core indicators of performance described in subsection (b)(2)(A), the Secretary may require the eligible agency to make further revisions to the program improvement plan described in paragraph (1). Such further revisions shall be accompanied by further technical assistance from the Secretary.".

SEC. 207. STATE ADMINISTRATION.

Section 221(1) of the Adult Education and Family Literacy Act (20 U.S.C. 9221(1)) is amended by striking "and implementation" and inserting "implementation, and monitoring".

SEC. 208. STATE DISTRIBUTION OF FUNDS; MATCHING REQUIREMENT.

Section 222 of the Adult Education and Family Literacy Act (20 U.S.C. 9222) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking "82.5" the first place such term appears and inserting "80"; and

(ii) by striking "the 82.5 percent" and inserting "such amount";

(B) in paragraph (2), by striking "not more than 12.5 percent" and inserting "not more than 15 percent"; and

(C) in paragraph (3), by striking "$65,000" and inserting "$75,000"; and

(2) in subsection (b)(1), by striking "equal to" and inserting "that is not less than".

SEC. 209. STATE LEADERSHIP ACTIVITIES.

Section 223 of the Adult Education and Family Literacy Act (20 U.S.C. 9223) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting "to develop or enhance the adult education system of the State" after "activities";

(B) in paragraph (1), by striking "instruction incorporating" and all that follows through the period and inserting "instruction incorporating the essential components of reading instruction and instruction provided by volunteers or by personnel of a State or outlying area.";

(C) in paragraph (2), by inserting ", including development and dissemination of instructional and programmatic practices based on the most rigorous research available in reading, writing, speaking, mathematics, English language acquisition programs, distance learning and staff training" after "activities";

(D) in paragraph (5), by striking "monitoring and";

(E) by striking paragraph (6) and inserting the following:

"(6) The development and implementation of technology applications, translation technology, or distance learning, including professional development to support the use of instructional technology."; and

(F) by striking paragraph (7) through paragraph (11) and inserting the following:

"(7) Coordination with—

"(A) other partners carrying out activities authorized under this Act;

"(B) existing support services, such as transportation, child care, mental health services, and other assistance designed to increase rates of enrollment in, and successful completion of adult education and literacy activities, for adults enrolled in such activities.

"(8) Developing and disseminating curricula, including curricula incorporating the essential components of reading instruction as they relate to adults.

"(9) The provision of assistance to eligible providers in developing, implementing, and reporting measurable progress in achieving the objectives of this subtitle.

"(10) The development and implementation of a system to assist in the transition from adult basic education to postsecondary education, including linkages with postsecondary educational institutions.

"(11) Integration of literacy and English language instruction with occupational skill training, and promoting linkages with employers.

"(12) Activities to promote workplace literacy programs.

"(13) Activities to promote and complement local outreach initiatives described in section 243(b)(3)(F).

"(14) In cooperation with efforts funded under sections 242 and 243, the development of curriculum frameworks and rigorous content standards that—

"(A) specify what adult learners should know and be able to do in the areas of reading and language arts, mathematics, and English language acquisition; and

"(B) take into consideration the following:

"(i) State academic standards established under section 1111(b) of the Elementary and Secondary Education Act of 1965.

"(ii) The current adult skills and literacy assessments used in the State.

"(iii) The core indicators of performance established under section 212(b)(2)(A).

"(iv) Standards and academic requirements for enrollment in non-remedial, for-credit, courses in State supported postsecondary education institutions.

"(v) Where appropriate, the basic and literacy skill content of occupational and industry skill standards widely used by business and industry in the State.

"(15) In cooperation with efforts funded under sections 242 and 243, development and piloting of—

"(A) new assessment tools and strategies that identify the needs and capture the gains of students at all levels, with particular emphasis on—

"(i) students at the lowest achievement level;

"(ii) students who have limited English proficiency; and

"(iii) adults with learning disabilities;

"(B) options for improving teacher quality and retention; and

"(C) assistance in converting research into practice.

"(16) The development and implementation of programs and services to meet the needs of adult learners with learning disabilities or limited English proficiency.

"(17) Other activities of statewide significance that promote the purpose of this title."; and

(2) in subsection (c), by striking "being State-or outlying area-imposed" and inserting "being imposed by the State or outlying area".

SEC. 210. STATE PLAN.

Section 224 of the Adult Education and Family Literacy Act (20 U.S.C. 9224) is amended—

(1) in subsection (a)—

(A) by striking the heading and inserting "4-YEAR PLANS"; and

(B) in paragraph (1), by striking "5" and inserting "4";

(2) in subsection (b)—

(A) in paragraph (1), by inserting "and the role of provider and cooperating agencies in preparing the assessment" after "serve";

(B) by striking paragraph (2) and inserting the following:

"(2) a description of how the eligible agency will address the adult education and literacy needs identified under paragraph (1) in each workforce development area of the State, using funds received under this subtitle, as well as other Federal, State, or local funds received in partnership with other agencies for the purpose of adult literacy as applicable;";

(C) in paragraph (3)—

(i) by inserting "and measure" after "evaluate";

(ii) by inserting "and improvement" after "effectiveness"; and

(iii) by striking "212" and inserting "212, including—

"(A) how the eligible agency will evaluate and measure annually such effectiveness on a grant-by-grant basis; and

"(B) how the eligible agency—

"(i) will hold eligible providers accountable regarding the progress of such providers in improving the academic achievement of participants in adult education programs under this subtitle and regarding the core indicators of performance described in section 212(b)(2)(A); and

"(ii) will use technical assistance, sanctions, and rewards (including allocation of grant funds based on performance and termination of grant funds based on performance)";

(D) in paragraph (4), by striking "will ensure the improvement of" and inserting "improved";

(E) by redesignating paragraphs (5) through (12) as paragraphs (6) through (13), respectively;

(F) by inserting after paragraph (4) the following:

"(5) a description of how the eligible agency will improve teacher quality, the professional development of eligible providers, and instruction;";

(G) in paragraph (6) (as redesignated by subparagraph (E)), by striking "who" and all that follows through the semicolon and inserting "that—

"(A) offers flexible schedules and coordinates with necessary Federal, State, and local support services (such as child care, transportation, mental health services, and case management) to enable individuals, including individuals with disabilities or individuals with other special needs, to participate in adult education and literacy activities; and

"(B) attempts to coordinate with support services that are not provided under this subtitle prior to using funds for adult education and literacy activities provided under this subtitle for support services;";

(H) in paragraph (10) (as redesignated by subparagraph (E)), by striking "plan" and inserting "plan, which process—

"(A) shall include the State Workforce Investment Board, the Governor, State officials representing public schools, community colleges, welfare agencies, agencies that provide services to individuals with disabilities, other State agencies that promote or operate adult education and literacy activities, and direct providers of such adult literacy services;

"(B) may include consultation with the State agency for higher education, institutions responsible for professional development of adult education and literacy education program instructors, institutions of higher education, representatives of business and industry, refugee assistance programs, and community-based organizations, as defined in section 101;";

(I) in paragraph (11) (as redesignated by subparagraph (E))—

(i) by inserting "assess potential population needs and" after "will";

(ii) in subparagraph (A), by striking "students" and inserting "individuals";

(iii) in subparagraph (C), by striking "and" after the semicolon; and

(iv) by adding at the end the following:

"(E) the unemployed; and

"(F) those who are employed, but at levels below self-sufficiency, as defined in section 101.";

(J) in paragraph (12) (as redesignated by subparagraph (E))—

(i) by inserting "and how the plan submitted under this subtitle is coordinated with the plan submitted by the State under title I" after "eligible agency"; and

(ii) by striking "and" after the semicolon;

(K) in paragraph (13) (as redesignated by subparagraph (E)), by striking "231(c)(1)." and inserting "231(c)(1), including—

"(A) how the State will build the capacity of organizations that provide adult education and literacy activities; and

"(B) how the State will increase the participation of business and industry in adult education and literacy activities;"; and

(L) by adding at the end the following:

"(14) a description of how the eligible agency will consult with any State agency responsible for postsecondary education to develop adult education programs and services (including academic skill development and support services) that prepare students to enter postsecondary education upon completion of secondary school programs or their recognized equivalent;

"(15) a description of how the eligible agency will consult with the State agency responsible for workforce development to develop adult education programs and services that are designed to prepare students to enter the workforce; and

"(16) a description of how the eligible agency will improve the professional development of eligible providers of adult education and literacy activities.";

(3) in subsection (c), by adding at the end the following: "At the end of the first 2-year period of the 4-year State plan, the eligible agency shall review and, as needed, revise the 4-year State plan."; and

(4) in subsection (d)—

(A) in paragraph (1), by inserting ", the chief State school officer, the State officer responsible for administering community and technical colleges, and the State Workforce Investment Board" after "Governor"; and

(B) in paragraph (2), by striking "comments" and all that follows through the period and inserting "comments regarding the State plan by the Governor, the chief State school officer, the State officer responsible for administering community and technical colleges, and the State Workforce Investment Board, and any revision to the State plan, are submitted to the Secretary.".

SEC. 211. PROGRAMS FOR CORRECTIONS EDUCATION AND OTHER INSTITUTIONALIZED INDIVIDUALS.

Section 225 of the Adult Education and Family Literacy Act (20 U.S.C. 9225) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking "basic education" and inserting "adult education and literacy activities";

(B) in paragraph (2), by inserting "and" after the semicolon;

(C) by striking paragraph (3); and

(D) by redesignating paragraph (4) as paragraph (3); and

(2) in subsection (d), by striking "DEFINITION OF CRIMINAL OFFENDER.—" and inserting "DEFINITIONS.—In this section:".

SEC. 212. GRANTS AND CONTRACTS FOR ELIGIBLE PROVIDERS.

Section 231 of the Adult Education and Family Literacy Act (20 U.S.C. 9241) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking "workplace literacy services" and inserting "workplace literacy programs"; and

(B) in paragraph (3), by striking "literacy" and inserting "language acquisition";

(2) in subsection (e)—

(A) in paragraph (1), by inserting "to be achieved annually on the core indicators of performance and employment performance indicators described in section 212(b)(2)" after "outcomes";

(B) by striking paragraph (3) and inserting the following:

"(3) the commitment of the eligible provider to be responsive to local needs and to serve individuals in the community who were identified by the assessment as most in need of adult literacy services, including individuals who are low-income, have minimal literacy skills, have learning disabilities, or have limited English proficiency;";

(C) in paragraph (4)(B), by striking ", such as" and all that follows through the semicolon and inserting "that include the essential components of reading instruction;";

(D) in paragraph (5), by striking "research" and inserting "the most rigorous research available";

(E) in paragraph (7), by inserting ", when appropriate and based on the most rigorous research available," after "real life contexts";

(F) in paragraph (9), by inserting "education, job-training, and social service" after "other available";

(G) in paragraph (10)—

(i) by inserting "coordination with Federal, State, and local" after "schedules and"; and

(ii) by striking "and transportation" and inserting ", transportation, mental health services, and case management";

(H) in paragraph (11)—

(i) by inserting "measurable" after "report";

(ii) by striking "eligible agency";

(iii) by inserting "established by the eligible agency" after "performance measures"; and

(iv) by striking "and" after the semicolon;

(I) in paragraph (12), by striking "literacy programs." and inserting "language acquisition programs and civics education programs;"; and

(J) by adding at the end the following:

"(13) the capacity of the eligible provider to produce information on performance results, including enrollments and measurable participant outcomes;

"(14) whether reading, writing, speaking, mathematics, and English language acquisition instruction provided by the eligible provider are based on the best practices derived from the most rigorous research available;

"(15) whether the eligible provider's applications of technology and services to be provided are sufficient to increase the amount and quality of learning and lead to measurable learning gains within specified time periods; and

"(16) the capacity of the eligible provider to serve adult learners with learning disabilities.".

SEC. 213. LOCAL APPLICATION.

Section 232 of the Adult Education and Family Literacy Act (20 U.S.C. 9242) is amended—

(1) in paragraph (1)—

(A) by inserting "consistent with the requirements of this subtitle" after "spent"; and

(B) by striking "and" after the semicolon;

(2) in paragraph (2), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(3) information that addresses each of the considerations required under section 231(e).".

SEC. 214. LOCAL ADMINISTRATIVE COST LIMITS.

Section 233 of the Adult Education and Family Literacy Act (20 U.S.C. 9243) is amended—

(1) in subsection (a)(2)—

(A) by inserting "and professional" after "personnel"; and

(B) by inserting "development of measurable goals in reading, writing, and speaking the English language, and in mathematical computation," after "development,"; and

(2) in subsection (b)—

(A) by inserting "and professional" after "personnel"; and

(B) by inserting "development of measurable goals in reading, writing, and speaking the English language, and in mathematical computation," after "development,".

SEC. 215. ADMINISTRATIVE PROVISIONS.

Section 241(b) of the Adult Education and Family Literacy Act (20 U.S.C. 9251(b)) is amended—

(1) in paragraph (1)(A)—

(A) by striking "adult education and literacy activities" both places such terms appear and inserting "activities under this subtitle"; and

(B) by striking "was" and inserting "were"; and

(2) in paragraph (4)—

(A) by inserting "not more than" after "this subsection for"; and

(B) by striking "only".

SEC. 216. NATIONAL INSTITUTE FOR LITERACY.

Section 242 of the Adult Education and Family Literacy Act (20 U.S.C. 9252) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "literacy" and inserting "effective literacy programs for children, youth, adults, and families";

(B) in paragraph (2), by inserting "and disseminates information on" after "coordinates"; and

(C) by striking paragraph (3)(A) and inserting the following:

"(A) coordinating and participating in the Federal effort to identify and disseminate information on literacy that is derived from scientifically based research, or the most rigorous research available and effective programs that serve children, youth, adults, and families; and";

(2) by striking subsection (b)(3) and inserting the following:

"(3) RECOMMENDATIONS.—The Interagency Group, in consultation with the National Institute for Literacy Advisory Board (in this section referred to as the 'Board') established under subsection (e), shall plan the goals of the Institute and the implementation of any programs to achieve the goals. The Board may also request a meeting of the Interagency Group to discuss any recommendations the Board may make.";

(3) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) by striking "to establish" and inserting "to maintain";

(II) in clause (i), by striking "phonemic awareness, systematic phonics, fluency, and reading comprehension" and inserting "the essential components of reading instruction";

(III) in clause (iii), by striking "and" after the semicolon;

(IV) in clause (iv), by inserting "and" after the semicolon; and

(V) by adding at the end the following:

"(v) a list of local adult education and literacy programs;";

(ii) in subparagraph (C)—

(I) by striking "reliable and replicable research" and inserting "reliable and replicable research as defined by the Institute of Education Sciences"; and

(II) by striking "especially with the Office of Educational Research and Improvement in the Department of Education,";

(iii) in subparagraph (D), by striking "phonemic awareness, systematic phonics, fluency, and reading comprehension based on" and inserting "the essential components of reading instruction and";

(iv) in subparagraph (H), by striking "and" after the semicolon;

(v) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

(vi) by adding at the end the following:

"(J) to work cooperatively with the Department of Education to assist States that are pursuing the implementation of standards-based educational improvements for adults through

the dissemination of training, technical assistance, and related support and through the development and dissemination of related standards-based assessment instruments; and

“(K) to identify rigorous research on the effectiveness of instructional practices and organizational strategies relating to literacy programs on the acquisition of skills in reading, writing, English acquisition, and mathematics.”; and

(B) by adding at the end the following:

“(3) COORDINATION.—In identifying the reliable and replicable research the Institute will support, the Institute shall use standards for research quality that are consistent with those of the Institute of Education Sciences.”;

(4) in subsection (e)—

(A) in paragraph (1)(B)—

(i) in clause (i), by striking “literacy programs” and inserting “language acquisition programs”;

(ii) in clause (ii), by striking “literacy programs” and inserting “or have participated in or partnered with workplace literacy programs”;

(iii) in clause (iv), by inserting “, including adult literacy research” after “research”;

(iv) in clause (vi), by striking “and” after the semicolon;

(v) in clause (vii), by striking the period at the end and inserting “; and”; and

(vi) by adding at the end the following:

“(viii) institutions of higher education.”;

(B) in paragraph (2)—

(i) in subparagraph (B), by striking “and” after the semicolon;

(ii) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(iii) by adding at the end the following:

“(D) review the biennial report submitted to Congress pursuant to subsection (k).”; and

(C) in paragraph (5), by striking the second sentence and inserting the following: “A recommendation of the Board may be passed only by a majority of the Board's members present at a meeting for which there is a quorum.”; and

(5) in subsection (k)—

(A) by striking “Labor and Human Resources” and inserting “Health, Education, Labor, and Pensions”; and

(B) by striking “The Institute shall submit a report biennially to” and inserting “Not later than 1 year after the date of enactment of the Adult Education and Family Literacy Act Amendments of 2003, and biennially thereafter, the Institute shall submit a report to”.

SEC. 217. NATIONAL LEADERSHIP ACTIVITIES.

Section 243 of the Adult Education and Family Literacy Act (20 U.S.C. 9253) is amended to read as follows:

“SEC. 243. NATIONAL LEADERSHIP ACTIVITIES.

“(a) IN GENERAL.—The Secretary shall establish and carry out a program of national leadership activities to enhance the quality of adult education and literacy programs nationwide.

“(b) PERMISSIVE ACTIVITIES.—The national leadership activities described in subsection (a) may include the following:

“(1) Technical assistance, including—

“(A) assistance provided to eligible providers in developing and using performance measures for the improvement of adult education and literacy activities, including family literacy services;

“(B) assistance related to professional development activities, and assistance for the purposes of developing, improving, identifying, and disseminating the most successful methods and techniques for providing adult education and literacy activities, including family literacy services, based on scientific evidence where available;

“(C) assistance in distance learning and promoting and improving the use of technology in the classroom;

“(D) assistance in developing valid, measurable, and reliable performance data, including data around employment and employment outcome, and using performance information for the improvement of adult education and literacy programs; and

“(E) assistance to help States, particularly low-performing States, meet the requirements of section 212.

“(2) A program of grants, contracts, or cooperative agreements awarded on a competitive basis to national, regional, or local networks of private nonprofit organizations, public libraries, or institutions of higher education to build the capacity of such networks' members to meet the performance requirements of eligible providers under this title and involve adult learners in program improvement.

“(3) Funding national leadership activities that are not described in paragraph (1), either directly or through grants, contracts, or cooperative agreements awarded on a competitive basis to or with postsecondary educational institutions, public or private organizations or agencies, or consortia of such institutions, organizations, or agencies, such as—

“(A) developing, improving, and identifying the most successful methods and techniques for addressing the education needs of adults, including instructional practices using the essential components of reading instruction based on the work of the National Institute of Child Health and Human Development;

“(B) increasing the effectiveness of, and improving the quality of, adult education and literacy activities, including family literacy services;

“(C) carrying out research on national literacy basic skill acquisition for adult learning, including estimating the number of adults functioning at the lowest levels of literacy proficiency;

“(D)(i) carrying out demonstration programs;

“(ii) disseminating best practices information, including information regarding promising practices resulting from federally funded demonstration programs; and

“(iii) developing and replicating best practices and innovative programs, including—

“(I) the development of models for basic skill certificates;

“(II) the identification of effective strategies for working with adults with learning disabilities and with adults with limited English proficiency;

“(III) integrated basic and workplace skills education programs;

“(IV) coordinated literacy and employment services; and

“(V) postsecondary education transition programs;

“(E) providing for the conduct of an independent evaluation and assessment of adult education and literacy activities through studies and analyses conducted independently through grants and contracts awarded on a competitive basis, which evaluation and assessment shall include descriptions of—

“(i) the effect of performance measures and other measures of accountability on the delivery of adult education and literacy activities, including family literacy services;

“(ii) the extent to which the adult education and literacy activities, including family literacy services, increase the literacy skills of adults (and of children, in the case of family literacy services), lead the participants in such activities to involvement in further education and training, enhance the employment and earnings of such participants, and, if applicable, lead to other positive outcomes, such as reductions in recidivism in the case of prison-based adult education and literacy activities;

“(iii) the extent to which the provision of support services to adults enrolled in adult education and family literacy programs increase the rate of enrollment in, and successful completion of, such programs; and

“(iv) the extent to which different types of providers measurably improve the skills of participants in adult education and literacy programs;

“(F) supporting efforts aimed at capacity building of programs at the State and local levels such as technical assistance in program planning, assessment, evaluation, and monitoring of activities carried out under this subtitle;

“(G) collecting data, such as data regarding the improvement of both local and State data systems, through technical assistance and development of model performance data collection systems;

“(H) supporting the development of an entity that would produce and distribute technology-based programs and materials for adult education and literacy programs using an interconnection system (as defined in section 397 of the Communications Act of 1934 (47 U.S.C. 397)) and expand the effective outreach and use of such programs and materials to adult education eligible providers;

“(I) determining how participation in adult education and literacy activities prepares individuals for entry into postsecondary education and employment and, in the case of prison-based services, has an effect on recidivism; and

“(J) other activities designed to enhance the quality of adult education and literacy activities nationwide.”.

SEC. 218. INTEGRATED ENGLISH LITERACY AND CIVICS EDUCATION.

Chapter 4 of subtitle A of title II (29 U.S.C. 9251 et seq.) is amended by adding at the end the following:

“SEC. 244. INTEGRATED ENGLISH LITERACY AND CIVICS EDUCATION.

“(a) IN GENERAL.—From funds made available under section 211(a)(4) for each fiscal year the Secretary shall award grants to States, from allotments under subsection (b), for integrated English literacy and civics education.

“(b) ALLOTMENT.—

“(1) IN GENERAL.—Subject to paragraph (2), from amounts made available under section 211(a)(4) for a fiscal year the Secretary shall allocate—

“(A) 65 percent to the States on the basis of a State's need for integrated English literacy and civics education as determined by calculating each State's share of a 10-year average of the Immigration and Naturalization Service data for immigrants admitted for legal permanent residence for the 10 most recent years; and

“(B) 35 percent to the States on the basis of whether the State experienced growth as measured by the average of the 3 most recent years for which Immigration and Naturalization Service data for immigrants admitted for legal permanent residence are available.

“(2) MINIMUM.—No State shall receive an allotment under paragraph (1) in an amount that is less than $60,000.”.

SEC. 219. TRANSITION.

The Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to the authority of the Adult Education and Family Literacy Act (as amended by this title) from any authority under provisions of the Adult Education and Family Literacy Act (as such Act was in effect on the day before the date of enactment of the Adult Education and Family Literacy Act Amendments of 2003.

TITLE III—AMENDMENTS TO OTHER PROVISIONS OF LAW

SEC. 301. WAGNER-PEYSER ACT.

(a) CONFORMING AMENDMENT.—Section 2(3) of the Wagner-Peyser Act (29 U.S.C. 49a(3)) is

amended by striking "section 134(c)" and inserting "section 121(e)".

(b) COLOCATION.—Section 3 of the Wagner-Peyser Act (29 U.S.C. 49b) is amended by adding at the end the following:

"(d) In order to avoid duplication of services and enhance integration of services, employment services offices in each State shall be colocated with comprehensive one-stop centers established under title I of the Workforce Investment Act of 1998.".

(c) COOPERATIVE STATISTICAL PROGRAM.—Section 14 of the Wagner-Peyser Act (29 U.S.C. 49l–1) is amended by striking the section heading and all that follows through "There" and inserting the following:

"SEC. 14. COOPERATIVE STATISTICAL PROGRAM.

"There".

(d) WORKFORCE AND LABOR MARKET INFORMATION SYSTEM.—Section 15 of the Wagner-Peyser Act (29 U.S.C. 49l–2) is amended—

(1) by striking the section heading and inserting the following:

"SEC. 15. WORKFORCE AND LABOR MARKET INFORMATION SYSTEM.";

(2) by striking "employment statistics system" each place it appears and inserting "workforce and labor market information system";

(3) in subsection (a)(1), by striking "of employment statistics";

(4) in subsection (b)(2)(E)—

(A) in clause (i), by adding "and" at the end;

(B) in clause (ii), by striking "; and" and inserting a period; and

(C) by striking clause (iii);

(5) by striking subsections (c) and (d) and inserting the following:

"(c) NATIONAL ELECTRONIC TOOLS TO PROVIDE SERVICES.—The Secretary, in consultation with States, is authorized to assist in the development of national electronic tools that may be used to improve access to workforce information for individuals through—

"(1) the one-stop delivery systems established under section 121(e); and

"(2) such other delivery systems as the Secretary determines to be appropriate.

"(d) TWO-YEAR PLAN.—The Secretary, working through the Bureau of Labor Statistics, and in cooperation with the States and with the assistance of the Employment and Training Administration and other appropriate Federal agencies, shall prepare a 2-year plan which shall be the mechanism for achieving cooperative management of the nationwide workforce and labor market information system described in subsection (a) and the statewide workforce and labor market information systems that comprise the nationwide system. The plan shall—

"(1) describe the steps the to be taken in the following 2 years to carry out the duties described in subsection (b)(2);

"(2) evaluate the performance of the system and recommend needed improvements, with particular attention to the improvements needed at the State and local levels; and

"(3) describe the involvement of States in the development of the plan, pursuant to a process established by the Secretary in cooperation with the States in accordance with subsection (i).";

(6) in subsection (e)(2)—

(A) in subparagraph (G), by adding "and" at the end;

(B) by striking subparagraph (H); and

(C) by redesignating subparagraph (I) as subparagraph (H);

(7) in subsection (g), by striking "1999 through 2004" and inserting "2004 through 2009 to enable the Secretary to carry out the provisions of this section in a timely manner through grants or cooperative agreements with the States";

(8) in subsection (g)—

(A) by striking "There are" and inserting the following:

"(1) IN GENERAL.—There are"; and

(B) by adding at the end the following:

"(2) DISTRIBUTION OF FUNDS.—With regard to distributing funds appropriated under paragraph (1) (relating to workforce and labor market information funding) for fiscal years 2004 through 2009, the Secretary shall continue to distribute the funds to the States in the manner in which the Secretary distributed funds to the States under this section for fiscal years 1999 through 2003."; and

(9) by adding at the end the following:

"(i) COORDINATION WITH THE STATES.—The Secretary, working though the Bureau of Labor Statistics and in coordination with the Employment and Training Administration, shall consult at least annually with representatives of each of the 10 Federal regions of the Department of Labor, elected (pursuant to a process established by the Secretary) by and from the State workforce and labor market information directors affiliated with the State agencies that perform the duties described in subsection (e)(2).".

TITLE IV—REHABILITATION ACT AMENDMENTS

SEC. 401. SHORT TITLE.

This title may be cited as the "Rehabilitation Act Amendments of 2003".

SEC. 402. TECHNICAL AMENDMENTS TO TABLE OF CONTENTS.

(a) INCENTIVE GRANTS.—Section 1(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701 note) is amended by inserting after the item relating to section 112 the following:

"Sec. 113. Incentive grants.".

(b) INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND.—Section 1(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701 note) is amended by striking the items relating to sections 752 and 753 and inserting the following:

"Sec. 752. Training and technical assistance.

"Sec. 753. Program of grants.

"Sec. 754. Authorization of appropriations.".

SEC. 403. PURPOSE.

Section 2(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701(b)) is amended—

(1) in paragraph (1)(F), by striking "and" after the semicolon;

(2) in paragraph (2), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(3) to provide opportunities for employers and rehabilitation service providers to provide meaningful input at all levels of government to ensure successful employment of individuals with disabilities.".

SEC. 404. DEFINITIONS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) in paragraph (2)(B)—

(A) in the matter preceding clause (i), by inserting "and literacy services" after "supported employment"; and

(B) in clause (iii), by inserting "and literacy skills" after "educational achievements";

(2) by striking paragraph (7) and inserting the following:

"(7) CONSUMER ORGANIZATION.—The term 'consumer organization' means a membership organization in which a majority of the organization's members and a majority of the organization's officers are individuals with disabilities.";

(3) in paragraph (17)—

(A) in subparagraph (C), by striking "and" after the semicolon;

(B) in subparagraph (D), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(E) maintaining individuals with significant disabilities in, or transitioning individuals with significant disabilities to, community-based living.";

(4) by redesignating paragraphs (24) through (28), (29) through (34), and (35) through (39), as paragraphs (25) through (29), (31) through (36), and (38) through (42), respectively;

(5) by inserting after paragraph (23) the following:

"(24) LITERACY.—The term 'literacy' has the meaning given the term in section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202).";

(6) by inserting after paragraph (29), as redesignated by paragraph (4), the following:

"(30) POST-EMPLOYMENT SERVICE.—The term 'post-employment' service means a service identified in section 103(a) that is—

"(A) provided subsequent to the achievement of an employment outcome; and

"(B) necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.";

(7) by inserting after paragraph (36), as redesignated by paragraph (4), the following:

"(37) STUDENT WITH A DISABILITY.—

"(A) IN GENERAL.—The term 'student with a disability' means an individual with a disability who attends an elementary school or secondary school and who—

"(i) is not younger than 14 years of age;

"(ii) is not older than 21 years of age;

"(iii) has been determined to be eligible under section 102(a) for assistance under title I; and

"(iv)(I) is eligible for, and receiving, special education and related services under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

"(II) is an individual with a disability, for purposes of section 504.

"(B) STUDENTS WITH DISABILITIES.—The term 'students with disabilities' means more than 1 student with a disability."; and

(8) in paragraph (38)(A)(ii), as redesignated by paragraph (4), by striking "paragraph (36)(C)" and inserting "paragraph (39)(C)".

SEC. 405. ADMINISTRATION OF THE ACT.

Section 12(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking the semicolon and inserting "; and"; and

(3) by adding at the end the following:

"(B) provide technical assistance to the designated State units on developing successful partnerships with employers;".

SEC. 406. CARRYOVER.

Section 19 of the Rehabilitation Act of 1973 (29 U.S.C. 716) is amended—

(1) in subsection (a)(1)—

(A) by striking ", section 509 (except as provided in section 509(b))";

(B) by striking "or (C)"; and

(C) by striking "752(b)" and inserting "753(b)"; and

(2) by adding at the end the following:

"(c) PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS.—

"(1) APPROPRIATED AMOUNTS.—Notwithstanding any other provision of law, any funds appropriated for a fiscal year to carry out a grant program under section 509 (except as provided in section 509(b)), including any funds reallotted under such grant program, that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year shall remain available for obligation and expenditure by such recipients during such succeeding fiscal year.

"(2) PROGRAM INCOME.—Notwithstanding any other provision of law, any amounts of program income received by recipients under a grant program under section 509 in a fiscal year that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year, shall remain available until expended.''.

Subtitle A—Vocational Rehabilitation Services

SEC. 411. DECLARATION OF POLICY; AUTHORIZATION OF APPROPRIATIONS.

Section 100(b)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 720(b)(1)) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 412. STATE PLANS.

Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended—

(1) in paragraph (6)(B), by striking ''to employ and advance in employment'' and inserting ''to recruit, employ, and advance in employment'';

(2) in paragraph (7)(A)(v), by striking subclause (I) and inserting the following:

''(I) a system for the continuing education of rehabilitation professionals and paraprofessionals within the designated State unit, particularly with respect to rehabilitation technology, including training implemented in coordination with State programs carried out under section 101 of the Assistive Technology Act of 1998 (29 U.S.C. 3011); and'';

(3) in paragraph (8)(A), by adding at the end the following:

''(iii) SERVICES IDENTIFIED IN INDIVIDUALIZED WORK PLAN.—For purposes of clause (i), for an individual who receives assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), comparable benefits and services available under such program only include those benefits and services identified in the individual's individualized work plan developed by an employment network pursuant to such section.'';

(4) in paragraph (10)—

(A) in subparagraph (B), by striking ''annual reporting on the eligible individuals receiving the services, on those specific data elements described in section 136(d)(2) of the Workforce Investment Act of 1998'' and inserting ''annual reporting of information on eligible individuals receiving services that is needed to assess performance on the core indicators of performance described in section 136(b)(2)(A)(i) of the Workforce Investment Act of 1998'';

(B) in subparagraph (C), by striking clauses (iii) and (iv) and inserting the following:

''(iii) the number of applicants and eligible recipients, including the number of individuals with significant disabilities, who exited the program carried out under this title and the number of such individuals who achieved employment outcomes after receiving vocational rehabilitation services; and

''(iv) the number of individuals who received vocational rehabilitation services who entered and retained employment and the increases in earnings of such individuals, consistent with State reporting responsibilities pursuant to section 136(b)(2)(A)(i) of the Workforce Investment Act of 1998.''; and

(C) in subparagraph (E)(ii), by striking ''in meeting'' and all that follows through the period and inserting ''in meeting the standards and indicators established pursuant to section 106.'';

(5) in paragraph (11)—

(A) by striking subparagraph (C) and inserting the following:

''(C) INTERAGENCY COOPERATION WITH OTHER AGENCIES.—The State plan shall include descriptions of interagency cooperation with, and utilization of the services and facilities of, Federal, State, and local agencies and programs, including the State programs carried out under section 101 of the Assistive Technology Act of 1998 (29 U.S.C. 3011), programs carried out by the Under Secretary for Rural Development of the Department of Agriculture, and State use contracting programs, to the extent that such agencies and programs are not carrying out activities through the statewide workforce investment system.'';

(B) by striking subparagraph (D)(ii) and inserting the following:

''(ii) transition planning by personnel of the designated State agency and the State educational agency that will facilitate the development and completion of the individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)) and, as appropriate, the development and completion of the individualized plan for employment, in order to achieve post-school employment outcomes of students with disabilities;''; and

(C) by adding at the end the following:

''(G) COORDINATION WITH TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.—The State plan shall provide that the designated State unit will coordinate activities with any other State agency that administers a Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19).''; and

(6) in paragraph (20)—

(A) by redesignating subparagraph (B) as subparagraph (D);

(B) by inserting after subparagraph (A) the following:

''(B) INFORMATION ON ASSISTANCE FOR BENEFICIARIES OF ASSISTANCE UNDER TITLE II OR XVI OF THE SOCIAL SECURITY ACT.—The State plan shall include an assurance that the designated State agency will make available to individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness, information on the availability of—

''(i) medical assistance under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

''(ii) benefits under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

''(iii) assistance through benefits planning and assistance programs under section 1149 of the Social Security Act (42 U.S.C. 1320b–20) and protection and advocacy programs under section 1150 of the Social Security Act (42 U.S.C. 1320b–21); and

''(iv) medical assistance under other federally funded programs.

''(C) INFORMATION FOR INDIVIDUALS UNDER THE TICKET TO WORK PROGRAM.—The State plan shall include an assurance that the designated State agency will make available to individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness and eligible for assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), general information regarding the Ticket to Work and Self-Sufficiency Program and specific information on how to contact the program manager of the Ticket to Work and Self-Sufficiency Program to obtain information on approved employment networks.''; and

(C) in subparagraph (D)(ii), as redesignated by subparagraph (A)—

(i) in subclause (II), by inserting '', to the maximum extent possible,'' after ''point of contact''; and

(ii) in subclause (III), by striking ''or regain'' and inserting ''regain, or advance in''.

SEC. 413. ELIGIBILITY AND INDIVIDUALIZED PLAN FOR EMPLOYMENT.

Section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking the semicolon at the end and inserting '', including a listing of all the community resources (including resources from consumer organizations), to the maximum extent possible, to assist in the development of such individual's individualized plan for employment to enable the individual to make informed and effective choices in developing the individualized plan for employment;''; and

(ii) in subparagraph (D)—

(I) in clause (i), by striking ''and'' after the semicolon;

(II) in clause (ii), by striking the period at the end and inserting a semicolon; and

(III) by adding at the end the following:

''(iii) for individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness, information on the availability of—

''(I) medical assistance under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

''(II) benefits under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

''(III) assistance through benefits planning and assistance programs under section 1149 of the Social Security Act (42 U.S.C. 1320b–20) and protection and advocacy programs under section 1150 of the Social Security Act (42 U.S.C. 1320b–21); and

''(IV) medical assistance under other federally funded programs; and

''(iv) for individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness and eligible for assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), information—

''(I) on the options under the Ticket to Work and Self-Sufficiency Program; and

''(II) on how to contact the program manager of the Ticket to Work and Self-Sufficiency Program who has contact information on approved employment networks, the benefits planning and assistance programs in the area, and the protection and advocacy programs in the area.'';

(B) in paragraph (2)(E)—

(i) in clause (i)(II), by striking ''and'' after the semicolon;

(ii) in clause (ii), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(iii) amended, as necessary, to include the post-employment services and service providers that are necessary for the individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.''; and

(C) in paragraph (3)—

(i) in subparagraph (B)(i)(I), by striking ''and personal assistance services'' and inserting ''mentoring services, and personal assistance services'';

(ii) in subparagraph (F)(ii), by striking ''and'' after the semicolon;

(iii) in subparagraph (G), by striking the period at the end and inserting a semicolon; and

(iv) by adding at the end the following:

''(H) for a student with a disability, the description—

''(i) in paragraph (3)(A), may be a description of the student's projected post-school employment outcome; and

''(ii) in paragraph (3)(B), shall include the specific transition services (including, as appropriate, work experience and mentoring activities) needed to achieve the student's employment outcome or projected employment outcome; and

"(I) for an individual who is receiving assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), a list of services such individual receives from an employment network other than the designated State unit."; and

(2) in subsection (c)(7), by inserting "that take into consideration the informed choice of the individual," after "plan development,".

SEC. 414. VOCATIONAL REHABILITATION SERVICES.

Section 103(a) of the Rehabilitation Act of 1973 (29 U.S.C. 723(a)) is amended—

(1) in paragraph (5), by inserting "literacy services," after "vocational adjustment services,";

(2) in paragraph (17), by striking "and" after the semicolon;

(3) in paragraph (18), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(19) mentoring services.".

SEC. 415. STATE REHABILITATION COUNCIL.

Section 105(b) of the Rehabilitation Act of 1973 (29 U.S.C. 725(b)) is amended—

(1) in paragraph (1)(A), by striking clause (ix) and inserting the following:

"(ix) in a State in which 1 or more projects provide services under section 121, not less than 1 representative of the directors of the projects;"; and

(2) by striking paragraph (5) and inserting the following:

"(5) Chairperson.—The Council shall select a chairperson from among the voting membership of the Council.".

SEC. 416. EVALUATION STANDARDS AND PERFORMANCE INDICATORS.

Section 106(b)(2)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 726(b)(2)(B)(i)) is amended by striking ", if necessary" and all that follows through the semicolon and inserting "if the State has not improved its performance to acceptable levels, as determined by the Commissioner, direct the State to make further revisions to the plan to improve performance, which may include allocating a higher proportion of the State's resources for services to individuals with disabilities if the State's spending on such services is low in comparison to spending on such services in comparable agencies in other States;".

SEC. 417. STATE ALLOTMENTS.

Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) Reallotment.—

"(1) Determination.—Not later than 45 days prior to the end of the fiscal year, the Commissioner shall determine, after reasonable opportunity for the submission to the Commissioner of comments by the State agency administering or supervising the program established under this title, that any payment of an allotment to a State under section 111(a) for any fiscal year will not be utilized by such State in carrying out the purposes of this title.

"(2) Formula.—

"(A) In general.—As soon as practicable but not later than the end of the fiscal year, the Commissioner shall reallot the amount available under paragraph (1) to other States, consistent with subparagraphs (B) and (C), for carrying out the purposes of this title to the extent the Commissioner determines such other State will be able to use such additional amount during that fiscal year or the subsequent fiscal year for carrying out such purposes.

"(B) Formula.—

"(i) Eligible states.—The Commissioner shall reallot the amount available under paragraph (1) for a fiscal year to each State whose allotment under subsection (a) for such fiscal year is less than such State's allotment under subsection (a) for the immediately preceding fiscal year increased by the percentage change in the funds available for subsection (a) from the immediately preceding fiscal year.

"(ii) Amount.—

"(I) In general.—A State that is eligible to receive a reallotment under clause (i) shall receive an amount for a fiscal year from the amount available for reallotment under paragraph (1) that is equal to the difference between—

"(aa) the amount such State received for such fiscal year; and

"(bb) the amount such State was allotted under subsection (a) for the immediately preceding fiscal year adjusted by the percentage change in the funds available for subsection (a) from the immediately preceding fiscal year.

"(II) Insufficient funds.—If the amount available for reallotment under paragraph (1) is insufficient to provide each State eligible to receive a reallotment with the amount described in subclause (I), the amount reallotted to each eligible State shall be determined by the Commissioner.

"(C) Remaining funds.—If there are funds remaining after each State eligible to receive a reallotment under subparagraph (B)(i) receives the amount described in subparagraph (B)(ii), the Commissioner shall reallot the remaining funds among the States requesting a reallotment.

"(3) Non-federal share.—The Commissioner shall reallot an amount to a State under this subsection only if the State will be able to make sufficient payments from non-Federal sources to pay for the non-Federal share of the cost of vocational rehabilitation services under the State plan for the fiscal year for which the amount was appropriated.

"(4) Increase in allotment.—For the purposes of this part, any amount made available to a State for any fiscal year pursuant to this subsection shall be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year."; and

(2) by striking subsection (c)(2) and inserting the following:

"(2)(A) In this paragraph:

"(i) The term 'appropriated amount' means the amount appropriated under section 100(b)(1) for allotment under this section.

"(ii) The term 'covered year' means a fiscal year—

"(I) that begins after September 30, 2003; and

"(II) for which the appropriated amount exceeds the total of—

"(aa) the appropriated amount for the preceding fiscal year; and

"(bb) 0.075 percent of the appropriated amount for the preceding fiscal year.

"(B) For each covered year, the sum referred to in paragraph (1) shall be, as determined by the Secretary—

"(i) not less than the total of the sum reserved under this subsection for the preceding fiscal year and 0.1 percent of the appropriated amount for the covered year; and

"(ii) not more than 1.5 percent of the appropriated amount for the covered year.".

SEC. 418. CLIENT ASSISTANCE PROGRAM.

Section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732) is amended—

(1) in subsection (a), by striking "States" and inserting "agencies designated under subsection (c)";

(2) in subsection (e)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "The Secretary" and all that follows through the period and inserting the following: "After reserving funds under subparagraphs (E) and (F), the Secretary shall allot the remainder of the sums appropriated for each fiscal year under this section among the agencies designated under subsection (c) within the States on the basis of relative population of each State, except that no such agency shall receive less than $50,000.";

(ii) in subparagraph (B), by inserting "the designated agencies located in" after "each to";

(iii) in subparagraph (D)(i)—

(I) by inserting "the designated agencies located in" after "$100,000 for"; and

(II) by inserting "the designated agencies located in" after "$45,000 for"; and

(iv) by adding at the end the following:

"(E)(i) Beginning on October 1, 2004, for any fiscal year for which the amount appropriated to carry out this section equals or exceeds $13,000,000, the Secretary shall reserve funds appropriated under this section to make grants to the protection and advocacy system serving the American Indian Consortium to provide client assistance services in accordance with this section. The amount of such grants shall be the same amount as provided to territories under subparagraph (B), as increased under clauses (i) and (ii) of subparagraph (D).

"(ii) In this subparagraph:

"(I) The term 'American Indian Consortium' has the meaning given the term in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002).

"(II) The term 'protection and advocacy system' means a protection and advocacy system established under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

"(F) For any fiscal year for which the amount appropriated to carry out this section equals or exceeds $14,000,000, the Secretary shall reserve not less than 1.8 percent and not more than 2.2 percent of such amount to provide training and technical assistance to the programs established under this section. Such training and technical assistance shall be coordinated with activities provided under section 509(c)(1)(A).";

(B) in paragraph (2)—

(i) by striking "State" each place such term appears and inserting "designated agency"; and

(ii) by striking "States" each place such term appears and inserting "designated agencies"; and

(C) in paragraph (3), by striking "Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay" and inserting "The Secretary shall pay directly";

(3) in subsection (f), by striking "State" and inserting "agency designated under subsection (c)"; and

(4) in subsection (h), by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

SEC. 419. INCENTIVE GRANTS.

Part B of title I of the Rehabilitation Act of 1973 (29 U.S.C. 730 et seq.) is amended by adding at the end the following:

"SEC. 113. INCENTIVE GRANTS.

"(a) Authority.—The Commissioner is authorized to make incentive grants to States that, based on the criteria established under subsection (b)(1), demonstrate—

"(1) a high level of performance; or

"(2) a significantly improved level of performance as compared to the previous reporting period or periods.

"(b) Criteria.—

"(1) Establishment.—Not later than 180 days after the date of enactment of this section, the Commissioner shall establish, and publish in the Federal Register, criteria for making grant awards under subsection (a).

"(2) Development and evaluation standards.—The criteria under paragraph (1) shall—

"(A) be developed with input from State vocational rehabilitation agencies and other vocational rehabilitation stakeholders, including vocational rehabilitation consumers and consumer organizations; and

"(B) be based upon the evaluation standards and performance indicators established under section 106 and other performance related measures that the Commissioner determines to be appropriate.

"(c) USE OF FUNDS.—A State that receives a grant under subsection (a) shall use the grant funds for any approved activities in the State's State plan submitted under section 101.

"(d) NO NON-FEDERAL SHARE REQUIREMENT.—The provisions of sections 101(a)(3) and 111(a)(2) shall not apply to this section.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2004 through 2009.".

SEC. 420. VOCATIONAL REHABILITATION SERVICES GRANTS.

Section 121 of the Rehabilitation Act of 1973 (29 U.S.C. 741) is amended—

(1) in subsection (a), in the first sentence, by inserting ", consistent with such individuals' strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for, and engage in, gainful employment" before the period at the end; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (B), by striking "and" after the semicolon;

(ii) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following:

"(D) contains assurances that—

"(i) all decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of such services, will be made by a representative of the tribal vocational rehabilitation program; and

"(ii) such decisions will not be delegated to another agency or individual.";

(B) in paragraph (3), by striking the first sentence and inserting the following: "An application approved under this part that complies with the program requirements set forth in the regulations promulgated to carry out this part shall be effective for 5 years and shall be renewed for additional 5-year periods if the Commissioner determines that the grantee demonstrated acceptable past performance and the grantee submits a plan, including a proposed budget, to the Commissioner that the Commissioner approves that identifies future performance criteria, goals, and objectives."; and

(C) by striking paragraph (4) and inserting the following:

"(4) In allocating funds under this part, the Secretary shall give priority to paying the continuation costs of existing projects and may provide for increases in funding for such projects as determined necessary.".

SEC. 421. GAO STUDIES.

(a) STUDY ON TITLE I AND TICKET TO WORK.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the interaction of title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) with the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), including the impact of the interaction on beneficiaries, community rehabilitation programs, and State vocational rehabilitation agencies.

(2) CONDUCT OF STUDY.—In conducting the study under paragraph (1), the Comptroller General of the United States shall consult with all participants in the Ticket to Work and Self-Sufficiency Program, including the Social Security Administration, the Rehabilitation Services Administration, ticketholders, State agencies, community rehabilitation programs (including employment networks and nonemployment networks), protection and advocacy agencies, MAXIMUS, and organizations representing the interests of ticketholders.

(3) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this title, the Comptroller General of the United States shall submit the study conducted pursuant to this subsection to the appropriate committees of Congress.

(b) STUDY ON THE ALLOTMENT FORMULA.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the relationship between the State allotment formula under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730) and the ability of States to provide vocational rehabilitation services in accordance with the State's State plan under section 101 of such Act.

(2) CONDUCT OF STUDY.—In conducting the study under paragraph (1), the Comptroller General of the United States shall consult with appropriate entities.

(3) REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this title, the Comptroller General of the United States shall submit the study conducted pursuant to this subsection to the appropriate committees of Congress.

Subtitle B—Research and Training

SEC. 431. AUTHORIZATION OF APPROPRIATIONS.

Section 201(a) of the Rehabilitation Act of 1973 (29 U.S.C. 761(a)) is amended—

(1) in paragraph (1), by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009"; and

(2) in paragraph (2), by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

SEC. 432. NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH.

Section 202(f)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 762(f)(1)) is amended by striking "Federal employees" and inserting "Department of Education employees".

SEC. 433. RESEARCH AND OTHER COVERED ACTIVITIES.

Section 204(c)(2) of the Rehabilitation Act of 1973 (29 U.S.C. 764(c)(2)) is amended by striking "$500,000" and inserting "$750,000".

SEC. 434. REHABILITATION RESEARCH ADVISORY COUNCIL.

Section 205(c) of the Rehabilitation Act of 1973 (29 U.S.C. 765(c)) is amended by adding at the end the following: "The Council also shall include a representative from the business community who has experience with the vocational rehabilitation system and hiring individuals with disabilities.".

Subtitle C—Professional Development and Special Projects and Demonstrations

SEC. 441. TRAINING.

Section 302 of the Rehabilitation Act of 1973 (29 U.S.C. 772) is amended—

(1) in subsection (b)(1)(B)(i), by striking "or prosthetics and orthotics" and inserting "prosthetics and orthotics, rehabilitation for the blind, or orientation and mobility instruction"; and

(2) in subsection (i), by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

SEC. 442. DEMONSTRATION AND TRAINING PROGRAMS.

Section 303 of the Rehabilitation Act of 1973 (29 U.S.C. 773) is amended—

(1) in subsection (b)(5)(A)(i), by striking "special projects" and inserting "not less than 2 special projects";

(2) by redesignating subsections (c), (d), and (e) as subsections (e), (f), and (h), respectively;

(3) by inserting after subsection (b) the following:

"(c) DEMONSTRATION PROJECTS FOR EMPLOYMENT OF STUDENTS WITH INTELLECTUAL DISABILITIES OR MENTAL ILLNESS.—

"(1) PURPOSE.—The purpose of this subsection is to support model demonstration projects to provide supported and competitive employment experiences for students with intellectual disabilities or students with mental illness, and training for personnel that work with students described in this paragraph, to enable the students to gain employment skills and experience that will promote effective transitions from school to employment and adult living.

"(2) GRANTS AUTHORIZED.—

"(A) COMPETITIVE GRANTS AUTHORIZED.—The Secretary may award grants, contracts, and cooperative agreements, on a competitive basis, to eligible organizations described in paragraph (3), to enable the organizations to carry out demonstration projects described in paragraph (1).

"(B) DURATION.—The Secretary shall award grants under this subsection for periods of 3 to 5 years.

"(3) ELIGIBLE ORGANIZATIONS.—To be eligible to receive a grant, contract, or cooperative agreement under this subsection, an organization shall—

"(A) have expertise in providing employment and support services for individuals with intellectual disabilities or individuals with mental illness;

"(B) have a proven track record in successfully running supported employment programs;

"(C) provide employment services that are exclusively integrated community-based supported employment services;

"(D) have expertise in creating natural supports for employment;

"(E) have expertise in providing computer training for the targeted population for the project involved; and

"(F) have experience operating mentoring programs for the target population in middle and high schools for at least a decade in diverse communities throughout the Nation.

"(4) APPLICATIONS.—Each organization desiring to receive a grant, contract, or cooperative agreement under this subsection shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may require. Each application shall include—

"(A) a description of how the organization plans to carry out the activities authorized in this subsection through a demonstration project;

"(B) a description of how the organization will evaluate the project;

"(C) a description of how the organization will disseminate information about the activities and the impact of the activities on the lives of students served by the project; and

"(D) a description of how the organization will coordinate activities with any other relevant service providers in the locality where the organization is based, including federally supported independent living centers.

"(5) AUTHORIZED ACTIVITIES.—An organization that receives a grant under this subsection shall use the funds made available through the grant to carry out 1 or more of the following activities for individuals, ages 14 through 21, who are students with intellectual disabilities or students with mental illness:

"(A) PROVIDING SUPPORTED AND COMPETITIVE EMPLOYMENT EXPERIENCES.—The development of innovative and effective supported and competitive employment experiences after school, on weekends, and in the summer, utilizing natural supports that lead to competitive high-paying jobs.

"(B) PROVIDING TRAINING TO SCHOOL AND TRANSITION PERSONNEL.—The development and deployment of experts to work with transition programs (including personnel working with students on transition) so that personnel from the programs develop skills needed to train students with intellectual disabilities or students with mental illness to be successful in competitive employment in a range of settings, including office settings. The training shall include training for the personnel in providing instruction to students in computer skills, office skills, interview etiquette, and appropriate social behavior required for successful long-term employment in professional environments.

"(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $5,000,000 for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2008.

"(d) DEMONSTRATION PROJECT FOR EMPLOYMENT OF INDIVIDUALS WHO ARE DEAF AND LOW FUNCTIONING.—

"(1) PURPOSE.—It is the purpose of this subsection to support a model demonstration project to provide training and support services for individuals who are deaf and low functioning to enable them to gain employment skills that will allow them to become employed and economically self-sufficient.

"(2) DEFINITION.—

"(A) IN GENERAL.—In this subsection, the term 'individual who is deaf and low functioning' means an individual who has been deaf from birth or very early childhood, reads at or below the second grade level, has little or no intelligible speech, and lacks a high school diploma or GED.

"(B) SECONDARY DISABILITIES.—Such term may include an individual with a secondary disability.

"(3) GRANTS AUTHORIZED.—

"(A) COMPETITIVE GRANTS AUTHORIZED.—The Secretary may award grants to State agencies, other public agencies or organizations, or not-for-profit organizations with expertise in providing employment training and support services for individuals who are deaf and low functioning to support model demonstration projects.

"(B) DURATION.—Grants under this subsection shall be awarded for a period not to exceed 5 years.

"(4) AUTHORIZED ACTIVITIES.—

"(A) DEVELOPING A COMPREHENSIVE TRAINING PROGRAM.—Each grant recipient shall develop an innovative, comprehensive program of instruction for individuals who are deaf and low functioning that can be implemented at multiple training locations through such means as distance learning and use of advanced technology, as appropriate. Such training program shall be developed to maximize the potential for replication of the program by other training providers.

"(B) IMPLEMENTATION.—Each grant recipient shall implement the comprehensive training program developed in subparagraph (A) as soon as feasible. Such training shall provide instruction on the job and the social skills necessary for successful long-term employment of individuals who are deaf and low functioning.

"(C) ESTABLISHING A POST-TRAINING PROGRAM OF EMPLOYMENT AND SUPPORT SERVICES.—Each grant recipient shall implement employment and support services to assist individuals who complete the training program under subparagraph (A) in securing employment and transitioning to the workplace for a period of not less than 90 days subsequent to placement.

"(5) APPLICATIONS.—Each entity desiring to receive a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require including—

"(A) a description of how the applicant plans to address the activities authorized under this subsection;

"(B) a description of the evaluation plan to be used in the project;

"(C) a description of how the applicant will disseminate information about the training program developed and the results of the model demonstration project; and

"(D) a description of how the project will coordinate with any other relevant service providers or entities providing employment training and supports for individuals who are deaf and low functioning.

"(6) MANDATED EVALUATION AND DISSEMINATION ACTIVITIES.—

"(A) ANNUAL REPORT.—Not later than 2 years after the date on which a grant under this subsection is awarded and annually thereafter, each grant recipient shall submit to the Commissioner a report containing—

"(i) the number of individuals who are participating in the demonstration project funded under this subsection;

"(ii) the employment and other skills being taught in the project;

"(iii) the number of individuals participating in the project that are placed in employment;

"(iv) the job sites in which those individuals are placed and the type of jobs they are placed in; and

"(v) the number of individuals who have dropped out of the project and the reasons for their terminating participation in the project.

"(B) EVALUATION OF THE PROJECT.—Each grant recipient shall implement the evaluation plan approved in its application for determining the results of the project within the timeframe specified in, and following the provisions of, its approved application.

"(C) PARTICIPANT EVALUATION PROCESS; FINAL EVALUATION.—In the final year of the project, the grant recipient will produce a final evaluation report of the results of the model demonstration project containing—

"(i) the number of individuals who participated in the training program;

"(ii) a description of the job sites in which those individuals were placed;

"(iii) the number of individuals placed in employment and the type of employment in which they were placed;

"(iv) the number of individuals who did not complete their training and the reasons those individuals dropped out of the project;

"(v) the number of individuals who participated in the training project and who remain employed as of 2 months prior to the date on which the final report is submitted to the Secretary;

"(vi) a written analysis of the model project, including both the strengths and weaknesses of the project, to assist other entities in replicating the training program developed through this model demonstration project; and

"(vii) such other information as the Secretary determines appropriate.

"(D) DISSEMINATION.—Not later than 5 years after the date on which an award is granted under this subsection, the evaluations and results of activities funded by such grant shall be disseminated to State vocational rehabilitation agencies, school systems providing instruction to students who are deaf, supported employment providers, postsecondary vocational training programs, employers, the Social Security Administration, and other interested parties.

"(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, $5,000,000 for fiscal year 2004 and such sums as may be necessary for each of fiscal years 2005 through 2008.";

(4) by inserting after subsection (f), as redesignated by paragraph (2), the following:

"(g) ACCESS TO TELEWORK.—

"(1) DEFINITION OF TELEWORK.—In this subsection, the term 'telework' means to work from home and other telework sites with the assistance of a computer and with reasonable accommodations, including the necessary equipment to facilitate successful work from home and other telework sites.

"(2) AUTHORIZATION OF PROGRAM.—The Commissioner is authorized to make grants to States and governing bodies of American Indian tribes located on Federal and State reservations (and consortia of such governing bodies) to pay for the Federal share of the cost of establishing or expanding a telework program.

"(3) APPLICATION.—A State that desires to receive a grant under this subsection shall submit an application to the Commissioner at such time, in such manner, and containing such information as the Commissioner may require.

"(4) USE OF FUNDS.—A State that receives a grant under this subsection shall establish or expand a telework program that shall provide loans or other alternative financing mechanisms to individuals with disabilities to enable such individuals to purchase computers or other equipment, including adaptive equipment, that facilitates work from home and other telework sites so that such individuals are able to telework.

"(5) ANNUAL REPORT.—

"(A) IN GENERAL.—A State that receives a grant under this subsection shall submit an annual report to the Commissioner.

"(B) CONTENTS.—The report under subparagraph (A) shall include the following:

"(i) The characteristics of each individual with a disability that receives a loan or other alternative financing mechanism under the program, including information about the individual such as the following:

"(I) Age.

"(II) Ethnicity.

"(III) Type of disability.

"(IV) Employment status at the time of application for a loan or other alternative financing mechanism under this subsection.

"(V) Whether the individual attempted to secure financial support from other sources to enable the individual to telework and, if so, a description of such sources.

"(VI) Whether the individual is working and, if so, whether the individual teleworks, the occupation in which the individual is working, the hourly salary the individual receives, and the hourly salary of the individual prior to receiving a loan or other alternative financing mechanism under the program.

"(VII) Whether the individual has repaid the loan or other alternative financing mechanism received under the program, is in repayment status, is delinquent on repayments, or has defaulted on the loan or other alternative financing mechanism.

"(ii) Any other information that the Commissioner may require.

"(6) FEDERAL SHARE.—The Federal share of the cost of establishing a telework program shall be 10 percent of the cost."; and

(5) in subsection (h), as redesignated by paragraph (2)—

(A) by striking "this section" and inserting "this section (other than subsections (c) and (d))"; and

(B) by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

SEC. 443. MIGRANT AND SEASONAL FARMWORKERS.

Section 304(b) of the Rehabilitation Act of 1973 (29 U.S.C. 774(b)) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

SEC. 444. RECREATIONAL PROGRAMS.

Section 305 of the Rehabilitation Act of 1973 (29 U.S.C. 775) is amended—

(1) in subsection (a)(1)(B), by striking "construction of facilities for aquatic rehabilitation therapy,"; and

(2) in subsection (b), by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

Subtitle D—National Council on Disability

SEC. 451. AUTHORIZATION OF APPROPRIATIONS.

Section 405 of the Rehabilitation Act of 1973 (29 U.S.C. 785) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

Subtitle E—Rights and Advocacy

SEC. 461. ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

Section 502(j) of the Rehabilitation Act of 1973 (29 U.S.C. 792(j)) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

SEC. 462. PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS.

Section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e) is amended—

(1) in subsection (g)(2), by striking "was paid" and inserting "was paid, except that program income generated from the amount paid to an eligible system shall remain available to such system until expended"; and

(2) in subsection (l), by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

Subtitle F—Employment Opportunities for Individuals With Disabilities

SEC. 471. PROJECTS WITH INDUSTRY AUTHORIZATION OF APPROPRIATIONS.

Section 612 of the Rehabilitation Act of 1973 (29 U.S.C. 795a) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

SEC. 472. SERVICES FOR INDIVIDUALS WITH SIGNIFICANT DISABILITIES AUTHORIZATION OF APPROPRIATIONS.

Section 628 of the Rehabilitation Act of 1973 (29 U.S.C. 795n) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

Subtitle G—Independent Living Services and Centers for Independent Living

SEC. 481. STATE PLAN.

Section 704 of the Rehabilitation Act of 1973 (42 U.S.C. 795c) is amended by adding at the end the following:

"(o) PROMOTING FULL ACCESS TO COMMUNITY LIFE.—The plan shall describe how the State will provide independent living services that promote full access to community life for individuals with significant disabilities. The services shall include, as appropriate, facilitating transitions from nursing homes and other institutions, including institutions serving individuals with cognitive disabilities, to community-based residences, assisting individuals with significant disabilities at risk of entering institutions to remain in the community, and promoting home ownership among individuals with significant disabilities.".

SEC. 482. STATEWIDE INDEPENDENT LIVING COUNCIL.

(a) Section 705(b) of the Rehabilitation Act of 1973 (29 U.S.C. 796d(b)) is amended—

(1) in paragraph (2), by striking subparagraph (C) and inserting the following:

"(C) in a State in which 1 or more projects provide services under section 121, not less than 1 representative of the directors of the projects."; and

(2) by striking paragraph (5) and inserting the following:

"(5) CHAIRPERSON.—The Council shall select a chairperson from among the voting membership of the Council.".

SEC. 483. INDEPENDENT LIVING SERVICES AUTHORIZATION OF APPROPRIATIONS.

Section 714 of the Rehabilitation Act of 1973 (29 U.S.C. 796e–3) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

SEC. 484. PROGRAM AUTHORIZATION.

Section 721 of the Rehabilitation Act of 1973 (42 U.S.C. 796f) is amended—

(1) by striking subsection (c) and inserting the following:

"(c) ALLOTMENTS TO STATES.—

"(1) DEFINITIONS.—In this subsection:

"(A) ADDITIONAL APPROPRIATION.—The term 'additional appropriation' means the amount (if any) by which the appropriation for a fiscal year exceeds the total of—

"(i) the amount reserved under subsection (b) for that fiscal year; and

"(ii) the appropriation for fiscal year 2003.

"(B) APPROPRIATION.—The term 'appropriation' means the amount appropriated to carry out this part.

"(C) BASE APPROPRIATION.—The term 'base appropriation' means the portion of the appropriation for a fiscal year that is equal to the lesser of—

"(i) an amount equal to 100 percent of the appropriation, minus the amount reserved under subsection (b) for that fiscal year; or

"(ii) the appropriation for fiscal year 2003.

"(2) ALLOTMENTS TO STATES FROM BASE APPROPRIATION.—After the reservation required by subsection (b) has been made, the Commissioner shall allot to each State whose State plan has been approved under section 706 an amount that bears the same ratio to the base appropriation as the amount the State received under this subsection for fiscal year 2003 bears to the total amount that all States received under this subsection for fiscal year 2003.

"(3) ALLOTMENTS TO STATES OF ADDITIONAL APPROPRIATION.—From any additional appropriation for each fiscal year, the Commissioner shall allot to each State whose State plan has been approved under section 706 an amount equal to the sum of—

"(A) an amount that bears the same ratio to 50 percent of the additional appropriation as the population of the State bears to the population of all States; and

"(B) 1/56 of 50 percent of the additional appropriation."; and

(2) by adding at the end the following:

"(e) CARRYOVER AUTHORITY.—Notwithstanding any other provision of law—

"(1) any funds appropriated for a fiscal year to carry out a grant program under section 722 or 723, that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year shall remain available for obligation and expenditure by such recipients during that succeeding fiscal year and the subsequent fiscal year; and

"(2) any amounts of program income received by recipients under a grant program under section 722 or 723 in a fiscal year that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year, shall remain available for obligation and expenditure by such recipients during that succeeding fiscal year and the subsequent fiscal year.".

SEC. 485. GRANTS TO CENTERS FOR INDEPENDENT LIVING IN STATES IN WHICH FEDERAL FUNDING EXCEEDS STATE FUNDING.

Section 722(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–1(c)) is amended by striking "by September 30, 1997" and inserting "during the preceding year".

SEC. 486. GRANTS TO CENTERS FOR INDEPENDENT LIVING IN STATES IN WHICH STATE FUNDING EQUALS OR EXCEEDS FEDERAL FUNDING.

Section 723(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–2(c)) is amended by striking "by September 30, 1997" and inserting "during the preceding year".

SEC. 487. STANDARDS AND ASSURANCES FOR CENTERS FOR INDEPENDENT LIVING.

Section 725(b) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–4(b)) is amended by adding at the end the following:

"(8) PROMOTING FULL ACCESS TO COMMUNITY LIFE.—The center shall provide independent living services that promote full access to community life for individuals with significant disabilities. The services shall include, as appropriate, facilitating transitions from nursing homes and other institutions, including institutions serving individuals with cognitive disabilities, to community-based residences, assisting individuals with significant disabilities at risk of entering institutions to remain in the community, and promoting home ownership among individuals with significant disabilities.".

SEC. 488. CENTERS FOR INDEPENDENT LIVING AUTHORIZATION OF APPROPRIATIONS.

Section 727 of the Rehabilitation Act of 1973 (29 U.S.C. 796f–6) is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

SEC. 489. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND.

Chapter 2 of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796j et seq.) is amended—

(1) by redesignating sections 752 and 753 as sections 753 and 754, respectively; and

(2) by inserting after section 751 the following:

"SEC. 752. TRAINING AND TECHNICAL ASSISTANCE.

"(a) GRANTS; CONTRACTS; OTHER ARRANGEMENTS.—For any fiscal year for which the funds appropriated to carry out this chapter exceed the funds appropriated to carry out this chapter for fiscal year 2003, the Commissioner shall first reserve from such excess, to provide training and technical assistance to designated State agencies for such fiscal year, not less than 1.8 percent, and not more than 2 percent, of the funds appropriated to carry out this chapter for the fiscal year involved.

"(b) ALLOCATION.—From the funds reserved under subsection (a), the Commissioner shall make grants to, and enter into contracts and other arrangements with, entities that demonstrate expertise in the provision of services to older individuals who are blind to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating independent living programs for older individuals who are blind.

"(c) FUNDING PRIORITIES.—The Commissioner shall conduct a survey of designated State agencies that receive grants under section 753 regarding training and technical assistance needs in order to determine funding priorities for grants, contracts, and other arrangements under this section.

"(d) REVIEW.—To be eligible to receive a grant or enter into a contract or other arrangement under this section, an eligible entity shall submit an application to the Commissioner at such time, in such manner, containing a proposal to provide such training and technical assistance, and containing such additional information as the Commissioner may require.

"(e) PROHIBITION ON COMBINED FUNDS.—No funds reserved by the Commissioner under this section may be combined with funds appropriated under any other Act or part of this Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this chapter are separately identified in such grant or payment and are used for the purposes of this chapter.".

SEC. 490. PROGRAM OF GRANTS.

Section 753 of the Rehabilitation Act of 1973, as redesignated by section 489, is amended—

(1) in subsection (g), by inserting ", or contracts with," after "grants to";

(2) by striking subsection (h);

(3) by redesignating subsections (i) and (j) as subsections (h) and (i), respectively;

(4) in subsection (b), by striking "section 753" and inserting "section 754";

(5) in subsection (c)—

(A) in paragraph (1), by striking "section 753" and inserting "section 754"; and

(B) in paragraph (2)—

(i) by striking "subsection (i)" and inserting "subsection (h)"; and

(ii) by striking "subsection (j)" and inserting "subsection (i)";

(6) in subsection (h), as redesignated by paragraph (3)—

(A) in paragraph (1), by striking "subsection (j)(4)" and inserting "subsection (i)(4)"; and

(B) in paragraph (2)—

(i) in subparagraph (A)(vi), by adding "and" after the semicolon;

(ii) in subparagraph (B)(ii)(III), by striking "; and" and inserting a period; and

(iii) by striking subparagraph (C); and

(7) in subsection (i), as redesignated by paragraph (3)—

(A) by striking paragraph (2) and inserting the following:

"(2) MINIMUM ALLOTMENT.—

"(A) STATES.—In the case of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, the amount referred to in paragraph (1)(A) for a fiscal year is the greater of—

"(i) $350,000;

"(ii) an amount equal to the amount the State, the District of Columbia, or the Commonwealth of Puerto Rico received to carry out this chapter for fiscal year 2003; or

"(iii) an amount equal to ⅓ of 1 percent of the amount appropriated under section 754, and not reserved under section 752, for the fiscal year and available for allotments under subsection (a).

"(B) CERTAIN TERRITORIES.—In the case of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the amount referred to in paragraph (1)(A) for a fiscal year is $60,000.";

(B) in paragraph (3)(A), by striking "section 753" and inserting "section 754, and not reserved under section 752,"; and

(C) in paragraph (4)(B)(i), by striking "subsection (i)" and inserting "subsection (h)".

SEC. 491. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND AUTHORIZATION OF APPROPRIATIONS.

Section 754 of the Rehabilitation Act of 1973, as redesignated by section 489, is amended by striking "fiscal years 1999 through 2003" and inserting "fiscal years 2004 through 2009".

Subtitle H—Miscellaneous

SEC. 495. HELEN KELLER NATIONAL CENTER ACT.

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—The first sentence of section 205(a) of the Helen Keller National Center Act (29 U.S.C. 1904(a)) is amended by striking "1999 through 2003" and inserting "2004 through 2009".

(b) HELEN KELLER NATIONAL CENTER FEDERAL ENDOWMENT FUND.—The first sentence of section 208(h) of the Helen Keller National Center Act (29 U.S.C. 1907(h)) is amended by striking "1999 through 2003" and inserting "2004 through 2009".

TITLE V—TRANSITION AND EFFECTIVE DATE

SEC. 501. TRANSITION PROVISIONS.

The Secretary of Labor shall, at the discretion of the Secretary, take such actions as the Secretary determines to be appropriate to provide for the orderly implementation of titles I and III of this Act. The Secretary of Education shall, at the discretion of the Secretary, take such actions as the Secretary determines to be appropriate to provide for the orderly implementation of titles II and IV of this Act.

SEC. 502. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues to support a bipartisan bill to reauthorize the Workforce Investment Act and increase the opportunities for workers to obtain the services and training they need to hold good jobs in the years ahead.

This bill strengthens the current one-stop system, so that many more can be served in the system we created in 1998. The bill creates stronger partnerships with businesses to recruit new workers, collaborate in training of current workers, improve career ladder opportunities, and work with local leaders to meet the development needs of their community.

The one-stop system is needed more than ever now, to serve hard-working Americans who have lost their job through no fault of their own in the current economic downturn, who need effective training to be eligible for the available jobs in their area.

We have worked to remove the sequencing of services for people entering the workforce who face barriers to employment. Providers can move adults directly to skills training or create training programs that include literacy and language training as well, so that skills training is not delayed.

The bill also encourages local providers to stay with workers until they earn self-sufficient wages. A minimum wage is a start—and the support system should be there to help them qualify for the better paying jobs that will enable them to support their families.

The bill will also help young people. Last summer, as the youth unemployment rate rose to 19 percent, we were all acutely aware of the special challenges that young workers face in this economy. The youth program will continue to work with both in-school and out-of-school youth to help them obtain the education and the real job experience they need to be competitive.

The bill also contains the Adult Literacy Act, which funds critical programs in States to assist adults in obtaining the basic reading, writing, numeracy, and English language skills that they need to be full participants in the workplace and in society at large. We all know that education is the great equalizer. Improving basic literacy services is a critical component of job training as well.

Finally, this bill also contains the Vocational Rehabilitation Act. For over 30 years, since the Vocational Rehabilitation Act was first enacted in 1973, State vocational rehabilitation systems have brought new hope to individuals with disabilities throughout the country, so that they can reach their full potential and actively participate in their communities.

Through vocational rehabilitation, individuals with disabilities can obtain the training, counseling, support, and job opportunities they need in order to have independent, productive, and fulfilling lives. For millions of these Americans, vocational rehabilitation is the difference between dependence and independence, between lost potential and a productive career.

In 1998, vocational rehabilitation became part of the State-wide work force system in each State. This reauthorization will strengthen that partnership, so that many more working-age individuals with disabilities, even those with the most significant disabilities, have realistic opportunities to obtain the services and support they need to reach their employment goals.

The legislation also strengthens other aspects of independent living, so that students and adults with disabilities receive the services and support they need for community-based living.

Our goal in this reauthorization is to see that the talents and strengths of all individuals with disabilities are recognized, enhanced, and fairly rewarded in communities and workplaces across the Nation.

I thank my colleagues and the many organizations representing governors, mayors, county officials, youth, women, labor, and low-income persons who were all actively involved in preparing this legislation. We have tried to listen carefully to the many leaders who implement these laws.

This bipartisan bill was the result of months of dedicated staff work, and I would like to give special thanks to Jane Oates of my staff, Ilyse Schuman and Scott Fleming of Senator ENZI's staff, Bill Kamela with Senator MURRAY, Sherry Kaiman with Senator JEFFORDS, Randy Soderquist with Senator BINGAMAN, Elyse Wasch and Didem Nisanci with Senator JACK REED, Catherine Brown with Senator CLINTON, Lindsay Lovlien with Senator ENSIGN, Tom Horgan and Julie Jolly with Senator BOND, Andrea Becker with Senator FRIST, Prim Formby with Senator SESSIONS, Mary Beth Luna with Senator DEWINE, and Annie White and Tracy Locklin with Chairman GREGG.

I would also like to thank Sigurd Nilsen with the GAO whose staff prepared countless reports to get us the information we needed to make critical decisions; Ann Lordeman and Paul Irwin of CRS for their technical support and Mark Koster, Amy Gaynor, and Liz King of Legislative Counsel who prepared the bill. In addition, I thank the floor staff who are so helpful on every piece of legislation.

I look forward to continuing this bipartisan effort as we continue into conference with the House, and I thank my colleagues for their willingness to work so well in the completion of this bill.

Mr. ENZI. Mr. President, the signs are all around us. They can be seen in the economic reports in the papers, in the economic forecasts that are discussed on the weekend talk shows, and in reports on the job market. It all adds up to some good news for the people of this Nation—the economy is getting stronger.

It hasn't happened overnight, of course. By taking action to lay the groundwork for our economic recovery, we have ensured the presence of more capital in our economy which has already started to lead to the creation of more jobs. There are telling signs that the labor market is on the mend. The economy gained 126,000 jobs in October—almost twice the market forecast of 65,000.

Now we will take the next step. With the passage of the Workforce Investment Act Amendments of 2003, we lay the groundwork for helping millions of Americans get back to work or find new or better jobs through training and employment assistance.

It is very clear that the face of our Nation's economy is changing. The kind of jobs that are available now—and will be in the future—are different from those that were highly valued a few years, or even months, ago. Last month, for instance, there was significant job growth in the professional, educational and health related services sectors. The manufacturing sector, however, continued to lose jobs. To keep the American dream within the grasp of all Americans, we will have to deal with the changing face of our economy. To do that we must ensure that job seekers have the skills they need for the new economy. We must also bring together workforce supply and demand to ensure that our businesses have the skilled employees they need to compete in a more global economy.

That is why this legislation is so very important. Workforce development is a powerful economic development tool. This legislation builds upon the successes of the Workforce Investment Act of 1998 while addressing its shortcomings. In so doing, this bill will improve the lives of millions of our workers, and increase the strength of our businesses and communities.

This legislation that I introduced along with Senators KENNEDY, GREGG, and MURRAY is the product of an extensive bipartisan effort. It reflects significant input from the Department of Labor and Department of Education, as well as major stakeholders in job training, adult education, and vocational rehabilitation.

The workforce investment system may be fairly new, but we've already learned a great deal about its strengths and weaknesses. These lessons reinforce what I learned as a small business owner in Wyoming:

> Real opportunity in America comes from the small business sector; economic development and workforce development go hand in hand; rural areas face unique workforce development challenges; Washington cannot—and should not—determine state, local and individual workforce needs; and, overly burdensome administrative requirements divert resources from serving customers.

Our bill improves upon the existing One-Stop Career Center delivery system to ensure that it can respond quickly and effectively to the changing needs of employers and workers in the new economy. Doing so will provide the 21st century workforce with the skills they will need for career opportunities in high-growth sectors. Our bill removes barriers in the law that have discouraged business involvement in workforce training, particularly small businesses. Our bill also removes barriers to access to services created by distance in many rural and frontier areas like Wyoming. This legislation will leverage technology to improve access to employment and training services in all areas of the country.

This legislation will also help keep the American dream within the grasp of men and women alike by ensuring that men and women have access to jobs, education, and training that will lead to comparable pay.

Some States and localities have found creative ways to overcome the challenges imposed by current law. Wyoming has done a magnificent job with the resources they have been allotted, and I commend their ingenuity. With this legislation, we will give Wyoming and the other States and localities the tools they need to help the unemployed or underemployed find new or better jobs.

I want to thank Senator KENNEDY, Senator GREGG, Senator MURRAY and the rest of my colleagues on the committee for all their work on this bipartisan bill. I also want to thank the Department of Labor and Department of Education for their assistance. I look forward to getting this bill into conference and quickly enacting this vital legislation.

I would also like to thank the staff on both sides of the aisle who worked on this bill—Ilyse Schuman, Scott Fleming, Annie White, Lindsay Loulien, Tracy Locklin, Jane Oates, Bill Kamela, Sherry Kaiman and all the other HELP Committee staff who worked so hard to make this possible. I would also like to extend a special thank you to Denise Dendy, the Committee's Editor.

This legislation builds a bridge between the jobs of yesterday and the jobs of tomorrow. The bridge is a workforce investment system that is flexible, innovative, and responsive to the needs of employers—both large and small. At the other end of the bridge is the American dream, and good, solid careers for our Nation's workers.

Mr. FRIST. Mr. President, I ask unanimous consent that the committee-reported substitute be agreed to; the bill, as amended, be read a third time and passed; the HELP Committee be discharged from further consideration of H.R. 1261; that the Senate proceed to its immediate consideration; provided that all after the enacting clause be stricken; the text of S. 1627, as amended, be inserted in lieu thereof; that the bill, as amended, be read a third time and passed, and the motion to reconsider be laid upon the table en bloc; that any statements relating to the bill be printed in the RECORD.

I further ask unanimous consent that S. 1627 be returned to the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill H.R. 1261, as amended, was read the third time and passed.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR NOS. 418 AND 436 THROUGH 450

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that at a time determined by the majority leader, with the concurrence of the Democratic leader, the Senate may proceed to executive session for the consideration of Calendar No. 418, MG Robert T. Clark, to be lieutenant general in the Army; further, that there be 2 hours equally divided between the chairman and the ranking member; provided further, that under the time controlled by the minority, 40 minutes be allocated to Senator KENNEDY and 15 minutes to Senator DAYTON. I further ask consent that following the use or yielding back of time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. I further ask unanimous consent that following the confirmation vote, the Senate proceed to the consideration of the following nominations en bloc, Nos. 436 through 450, and all remaining nominations on the Secretary's desk; further, that the nominations be confirmed, and the motions to reconsider be laid upon the table, the President be immediately notified of all of the above action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MEASURES READ THE FIRST TIME—S. 1862 THROUGH S. 1866

Mr. FRIST. Mr. President, I understand there are five bills, numbered S. 1862 through S. 1866, at the desk, and I ask that they be read for the first time en bloc.

The PRESIDING OFFICER. The clerk will report the bills by title.

The assistant legislative clerk read as follows:

A bill (S. 1862) to provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations.

A bill (S. 1863) to authorize the transfer of certain naval vessels.

A bill (S. 1864) to enhance the security of the United States and United States allies.

A bill (S. 1865) to enhance the security of the United States and United States allies.

A bill (S. 1866) to enhance the security of the United States and United States allies.

Mr. FRIST. I now ask for their second reading and object to further proceeding on these matters en bloc.

The PRESIDING OFFICER. Objection having been heard, the bills will remain at the desk.

THIS WEEK IN THE SENATE

Mr. FRIST. Mr. President, in looking over the course of the last week, much of the focus of the last 40 hours or so, the last 2 days, has been on the issue of judges. The three cloture votes failed this morning.

Earlier in the week, we really accomplished a reasonable amount, as I look over what we have done. The Syria Accountability Act—Chairman Lugar and Senator Santorum and many others in the body who brought that forward had it debated, and it was passed. The MILCON conference report was completed this week, and the Defense authorization conference report. We had another bill, the armed cargo pilots bill. We had the District of Columbia Retirement Equity Act by Senator Collins and others.

Today, we had the OPIC reauthorization, which we just did, with a lot of bipartisan work done by Chairman Lugar and others; a bill that has been worked on for a long period of time in a bipartisan way with Senator Mike Enzi, the Workforce Investment Reauthorization Act, a lot of work reflected in that bill. I am glad we have completed action on that bill today.

With regard to the last 48 hours, I want to extend the comments that were made earlier by the Democratic leader a few hours ago in thanking everybody, expressing my heartfelt appreciation to all of the people who participated over what was a very long and challenging schedule the last couple of days: The Secretary of the Senate, Emily Reynolds, and her staff, Dave Tinsley and Allen Frumin, along with their team of legislative clerks and Parliamentarians; the folks in the Official Reporters of Debates and in Closed Captioning Services who worked around the clock; the Sergeant at Arms Bill Pickle, and all of his support staff, including Skip Rouse and his crew with Capitol facilities, for the around-the-clock services, everything from cots to different bedding materials; Myron Flemming and his doorkeepers who kept control of the galleries because we had a lot of people through over the course of the last 2 days; the Capitol Police who, as always, do such a superb job watching over this Capitol complex, keeping it safe, and very long hours through the night and through the morning with a lot of visitors in and out of the building; Margo Conner and Jorge Castro, along with the Senate restaurants that helped provide food and made sure we were all well fed over the course of the last couple of days; Joy Ogden and the women of the appointments desk for ably handling all of the many guests who came through; the Press Gallery, the folks in the Senate Library, Printing and Document Services, Information Systems, and the Senate pages with whom I was just talking a few moments ago, all for their willingness to help in any way; we have the floor staff here, the cloakroom staff in the cloakrooms behind us, all who helped to make things run as smoothly as possible.

A lot of staff are involved for each Senator. Behind each and every one are a number of staff members on both sides of the aisle who worked very long hours.

As I got home very late last night, when I said hello to Karen, my wife, I realized I hadn't seen her in quite a few days. It made me realize, once again, that the Senators on this floor work long hours, and there is a lot of patience and a lot of understanding by Senate spouses who sacrifice their time for their loved ones, especially with a lot of understanding.

I thank my own staff who have worked with a lot of dedication, including Manny Miranda, Marty Gold, Ramona Lessen, Holly Nass, Brook Whitfield, Tom Craig, Meg Gregory, and Abby Clinton. I thank everybody who has participated in the last several days. It has been extraordinary in many ways, made possible by a lot of hard work.

ORDERS FOR MONDAY, NOVEMBER 17, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 12 noon, Monday, November 17. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of the VA-HUD appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, on Monday, the Senate will resume the VA-HUD appropriations bill. If Senators have amendments, they should be prepared to offer and debate those amendments during Monday's session. At 4:30 p.m. the Senate will resume consideration of the FAA reauthorization conference report. Under the previous order there will be 1 hour of debate prior to a vote on the motion to invoke cloture on the conference report. The cloture vote on the FAA conference report will occur at approximately 5:30 p.m., and that will be the first vote on Monday's session.

I would also remind my colleagues that two cloture motions were filed on the Dorr nomination today. Those cloture votes will occur on Tuesday morning.

Before closing, I see the distinguished Senator and colleague, the person who is most responsible in many ways for this Workforce Investment Reauthorization Act, Senator Enzi. I am happy to yield to him.

Mr. ENZI. Mr. President, I thank the leadership on both sides of the aisle for bringing this bill to fruition at this point in time. I thank Senator Gregg for allowing me to work this issue through to this point. I thank Senator Kennedy and Senator Murray for their tremendous effort and willingness to work toward the goal of getting more people in the workforce and eliminating some of the disparity between men's and women's wages. It has been a tremendous effort. This is normally a very controversial bill, but through some very steady effort over many months, we have come to this point. I thank everybody. I will have additional comments.

Mr. FRIST. Mr. President, again, I congratulate Senator Enzi for outstanding work. This is a bill he has worked on for a long period of time, as we have talked about jobs, job creation, what the workplace is like. This is a very exciting bill. I congratulate him and his colleagues who worked in a bipartisan way on an excellent piece of legislation that will have a true impact on what we all care so much about; that is, the economy, jobs, and the setting in which those jobs are carried out.

ADJOURNMENT UNTIL MONDAY, NOVEMBER 17, 2003

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 3:06 p.m., adjourned until Monday, November 17, 2003, at noon.

NOMINATIONS

Executive nominations received by the Senate November 14, 2003:

THE JUDICIARY

DIANE S. SYKES, OF WISCONSIN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT, VICE JOHN L. COFFEY, RETIRING.

DEPARTMENT OF STATE

DAVID C. MULFORD, OF ILLINOIS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO INDIA.

CONFIRMATION

Executive nomination confirmed by the Senate November 14, 2003:

DEPARTMENT OF STATE

ZALMAY KHALILZAD, OF MARYLAND, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE TRANSITIONAL ISLAMIC STATE OF AFGHANISTAN.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

EXTENSIONS OF REMARKS

INTRODUCTION OF AFFORDABLE HOUSING PRESERVATION TAX RELIEF ACT

HON. JIM RAMSTAD

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 12, 2003

Mr. RAMSTAD. Mr. Speaker, today I am introducing the "Affordable Housing Preservation Tax Relief Act," legislation to maintain and increase the stock of affordable housing in this country. I am delighted to be joined in this effort by my friend and colleague from Maryland, Mr. CARDIN.

In 1999, Congress recognized the need to look at this issue by establishing the bipartisan Millennial Housing Commission (MHC). That Commission was charged with taking a thorough look at what the government was doing to fill the huge unmet gap for affordable housing.

The MHC released their report in May of 2000. The report stated, "In 1999 one in four—almost 28 million—American households reported spending more on housing than the Federal Government considers affordable and appropriate (more than 30 percent of income)."

The MHC report also contained a list of 13 recommendations for making housing more affordable. One of those recommendations was for Congress to provide a "new tool" to encourage the transfer of affordable housing to entities that agree to maintain these properties and keep them affordable. They recommended doing so by forgiving the depreciated recapture tax for owners who sell their properties to purchasers who agree to maintain them for a 30-year period and to keep them affordable. The MHC recommendation would still hold owners responsible for any capital gains taxes due above and beyond the depreciated amount.

The lack of affordable housing is something I hear about and see all across my congressional district and my State. Indeed recent data shows that approximately 35 percent of renters in Minnesota pay over 30 percent of their income on housing and 15 percent of renters pay over 50 percent of their income on their housing.

The legislation we are introducing today tracks closely with the recommendation made by the MHC. I believe enactment of this legislation would be an important step toward maintaining and increasing affordable housing in this country, and I urge my colleagues to join me as a cosponsor of this legislation.

TRIBUTE TO EDWARD J. DRAKE

HON. PETE SESSIONS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 12, 2003

Mr. SESSIONS. Mr. Speaker, I rise today in honor of Edward J. Drake, a son of Dallas, Texas, and a good servant to his family, his faith, and his community.

In the Bible, Timothy describes charity as, "out of a pure heart, and of a good conscience, and of faith unfeigned." Over the years, Ed Drake has served those around him, not only with charity, but also with dedication and humility. The breadth of his service to the Dallas community and to our Nation is wide, and includes activities such as representing human health needs, developing positive environments for business, and fighting for the democracy that he cherishes.

Through his leadership in organizations such as the National Easter Seal Society, the American Cancer Society, and the Science Place, Ed Drake has helped our Nation address critical health needs. In his professional life, his integrity and loyalty have carried him to the top of the Dallas business community and earned him honors such as his appointment as Commissioner of the Texas Advisory Commission on Intergovernmental Relations, among many others. Finally, Mr. Drake's love of democracy and work defending freedom as a B–17 pilot in World War II has made him an example for future generations of citizens.

This noble leader of the Dallas community personifies service to his country through the light of charity. As steadfast a patriot and compassionate a humanitarian as I have ever known, Ed Drake shines to those in his community as he does to his wife Donda and their family. I am proud to be his Representative in Congress.

* * *

CONFERENCE REPORT ON H.R. 1588, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

SPEECH OF

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 7, 2003

Mr. PAUL. Mr. Speaker, while I am pleased to see that this conference report has addressed the issue of concurrent receipt, I note with dismay that the provision as included in the report is inadequate. It will leave hundreds of thousands of veterans out in the cold, many of whom will likely not live long enough to benefit from this unacceptable pseudo-solution.

This provision will allow only those 20-year retiree combat-disabled veterans to receive concurrent receipt, which completely ignores that many if not most soldiers who are combat-disabled do not remain in the military for 20 years. Upon becoming disabled they are discharged from the military. This means that, according to some estimates, two-thirds of disabled veterans will be left behind by this provision. In this, the provision is a slap in the face of our veterans.

Additionally, the 10 year phase-in of concurrent receipt for the remaining who are at least 50 percent disabled effectively means that thousands of our veterans—particularly those of the World War II and Korea generations—will not live to receive this earned and deserved benefit.

Mr. Speaker, we need to make our veterans and our soldiers our top priority. We have entered into a contract with each of them. They have done their part and are doing their part every day—in conflicts across the globe including the increasingly deadly Iraq occupation. We must keep our end of the contract. I am sad to note that provisions like this watered-down concurrent receipt are not in keeping with our end of the contract.

I also must object to the procedure in bringing this conference report to the Floor. We were once again given only hours to read a conference report that ran hundreds and hundreds of pages. This is a disturbing pattern that seems to surface when we are required to vote on controversial legislation. Are Members not anymore supposed to at least review legislation before voting?

* * *

THE NEED FOR LEGISLATION TO AUTHORIZE ADDITIONAL JUDGESHIPS FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

HON. WILLIAM M. THOMAS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 12, 2003

Mr. THOMAS. Mr. Speaker, I rise today to introduce legislation that, in accordance with the recommendation of the United States Judicial Conference, would authorize the creation of three additional judgeships for the United States District Court for the Eastern District of California, as well as convert a temporary judgeship into a permanent judgeship.

There is no question that these additional judgeships are needed. The average weighted caseload per judge in the Eastern District is 733, as compared to 649 a year ago, an increase of almost 12 percent. This is extremely significant, as the national average for weighted caseloads per judge is 524, and an average weighted caseload in excess of 430 is the United States Judicial Conference's standard for determining if additional permanent judgeships are required. The Eastern District's average weighted caseload of 733 exceeds this standard by 70 percent. In addition, the Eastern District's average weighted caseload surpasses the national average by more than 39 percent and has exceeded 430 since 1994.

In 2003, there was a significant increase in the total number of filings in the Eastern District; in fact, total filings in 2003 rose 11.7 percent to 5,523. Criminal case filings, for which our Constitution guarantees an individual the right to have a speedy trial, rose 12.7 percent. In addition, there are now a total of 6,343 cases pending before the Eastern District; an increase of 11.5 percent in 2003 and an 18.5 percent increase over the past five years. Moreover, as the temporary judgeship expired in February 2002, upon a permanent judge's decision to take senior status, this situation will be exacerbated because the President will be unable to appoint a replacement unless Congress acts to convert the temporary judgeship into a permanent judgeship before that time.

Accordingly, I ask my colleagues to work with me to enact this legislation and thereby improve the administration of our Nation's laws in the Eastern District of California.

IN RECOGNITION OF JUDITH ZITTER

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 12, 2003

Mr. SCHIFF. Mr. Speaker, I rise today to honor Judith Zitter, who is being honored by the Zonta Club of Pasadena as their 2003 Woman of Achievement. Each year, the Zonta Club of Pasadena pays special tribute to the accomplishments made by an extraordinary woman who has made a difference in our community.

A Pasadena native, Ms. Zitter received her Masters in Social Work from California State University, San Francisco in 1982. Judith is married to her Blair High School sweetheart, Neal Wrightson, who is the founder of the Children's Community School in Van Nuys. She and Neal have two children, Erica, a freshman at University of California, Santa Barbara and Max, a sophomore at the Los Angeles High School for the Arts.

Ms. Zitter's strong commitment to her community is clearly reflected in her career path. She has worked as an adoption social worker, director of a senior center, and a field representative for Pasadena Mayor Rick Cole. During her tenure with Mayor Cole, she was instrumental in implementing positive changes in the Old Pasadena and Northwest Pasadena neighborhoods. Currently, Judith is a community health manager for Kaiser Permanente. In this capacity, she has helped create relationships to support community organizations, such as the formation of a statewide partnership with free and community clinics in California, and the American Diabetes Association.

The consummate volunteer, Judith currently serves on the boards of El Centro de Accion Social, Day One, the Asian Pacific Community Fund and the Pasadena Center Operating Company. Her past volunteer efforts include Haven House, the Los Angeles Women's Foundation, Community Health Councils, Artists Beyond Disabilities, United Way, and numerous political organizations.

Judith has received many awards, including the Pasadena YWCA Second Century Award in 1998, the Outstanding Community Service Award from the American Diabetes Association in 2002, and the Kaiser Permanente Public Affairs Award in 2000 and 2003.

The time, energy and love Judith gives to our community is extraordinary, and the residents of my district have benefited greatly from her dedicated service. For her lifetime of service, I am proud to ask all Members to join with me in commending Judith Zitter upon receiving the 2003 Zonta Club of Pasadena's Woman of Achievement Award.

WELCOMING THE MOST REVEREND ANTHONY SABLAN APURON, OFM CAP, DD, METROPOLITAN ARCHBISHOP OF AGANA

HON. MADELEINE Z. BORDALLO

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 12, 2003

Ms. BORDALLO. Mr. Speaker, it is my honor and privilege to welcome the Most Reverend Anthony Sablan Apuron, OFM Cap, DD, Metropolitan Archbishop of Agana to the People's House and to thank him for offering today's prayer.

Archbishop Apuron has served God and His people first as priest and now bishop for over 31 years. Born November 1, 1945, he was ordained a priest in the Order of Friars Minor Capuchin on August 26, 1972. He was appointed Auxiliary Bishop of Agana by the late Archbishop Felixberto C. Flores on December 8, 1983 and consecrated Titular Bishop of Muzuca on February 19, 1984. On May 11, 1986, the Most Reverend Anthony S. Apuron was elevated to Metropolitan Archbishop of Agana.

As the head of the Roman Catholic Archdiocese of Agana, he is the spiritual leader for over 350,000 Roman Catholics in Guam, the Diocese of Chalan Kanoa in the Northern Mariana Islands, and the Diocese of the Caroline and the Marshall Islands. He has been the moral voice for the faithful who look to him for direction in these difficult times. Under his leadership, the Archdiocese of Agana has expanded its ministries to meet the changing needs of the community.

On behalf of the people of Guam, I want to thank Archbishop Apuron for being with us today and for his leadership and guidance of the people of Metropolitan Archdiocese of Agana. Si Yu'os Ma'ase.

HONORING ANDREA BAGLEY

HON. TAMMY BALDWIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 12, 2003

Ms. BALDWIN. Mr. Speaker, I rise today to pay tribute to a woman who has ably served the House of Representatives and the citizens of Wisconsin for more than 20 years. In the offices of four Members of Congress, on both sides of the aisle, Andrea Bagley has worked diligently and compassionately to better the lives of our constituents.

Andrea first became a congressional caseworker in 1983, in the office of Representative Steve Gunderson, for whose father she had initially worked as a bookkeeper. In her first case, she helped a young person resolve a problem with a student loan. As a mother of three sons, Andy was already adept at solving problems and offering caring support.

When she began her congressional service, Andy handled roughly 500 cases a year, without benefit of fax machines or computers. It's hard for young staffers to even imagine a world of onion skins and carbon copies or the joy of an electric typewriter with memory. In 20 years, she's seen the technology grow with her caseload . . . to more than a thousand a year, yet she's handled them all with calm persistence. To every constituent with a problem she says, "We can't guarantee you'll get the answer you want, but we guarantee you'll get fair consideration." Thanks to her, they have.

Andy describes her job as being part detective, part problem-solver, part researcher, and part social worker. For every case, she meticulously amasses bits of information, institutional knowledge, documentation, and paper trails to piece together solutions to problems as finely stitched as the elaborate quilts she makes for her dozens of fortunate friends and family.

The gratitude of our constituents is apparent—from the thanks Andy recently received from a man gaining citizenship, to the wedding photos of a bride whose family needed visas to attend the wedding, to the visits of grateful parents and the children they adopted from foreign lands.

Congressmen Gunderson, Klug, and Barrett join me in adding our words of gratitude to Andrea Bagley for her 20 years of honorable service to our offices and our constituents. Selfishly, I wish for many more.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, November 13, 2003 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

NOVEMBER 18

9:30 a.m.

Judiciary

To hold hearings to examine America after the 9/11 terrorist attacks.

SD–226

Governmental Affairs

Investigations Subcommittee

To hold hearings to examine the role of professional organizations like accounting firms, law firms, and financial institutions in developing, marketing and implementing tax shelters.

SH–216

10 a.m.

Banking, Housing, and Urban Affairs

To hold hearings to examine current investigations and regulatory actions regarding the mutual fund industry.

SD–538

2:30 p.m.

Governmental Affairs

To hold hearings to examine the nomination of James M. Loy, of Virginia, to be Deputy Secretary of Homeland Security.

SD–342

Energy and Natural Resources

Public Lands and Forests Subcommittee

To hold hearings to examine S. 1209, to provide for the acquisition of property in Washington County, Utah, for implementation of a desert tortoise habitat conservation plan, H.R. 708, to require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, S. 1467, to establish the Rio Grande Outstanding Natural Area in the State of Colorado, S. 1167, to resolve the boundary conflicts in Barry and Stone Counties in the State of Missouri, and S. 1848, to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administration Site in the State of Oregon.

SD–366

4 p.m.

Armed Services

To hold hearings to examine the nomination of Michael W. Wynne, of Florida, to be Under Secretary of Defense for Acquisition, Technology, and Logistics.

SR–222

NOVEMBER 19

9:30 a.m.

Governmental Affairs

To hold hearings to examine the threat of agroterrorism.

SD–342

10 a.m.

Health, Education, Labor, and Pensions

To hold hearings to examine S. 741, to amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, proposed Mammography Quality Standards Reauthorization Act, proposed Medical Device Technical Corrections Act, proposed Organ Donation and Recovery Improvement Act, and pending nominations.

SD–430

Judiciary

To hold hearings to examine pending judicial nominations.

SD–226

2:30 p.m.

Governmental Affairs

Oversight of Government Management, the Federal Workforce, and the District of Columbia Subcommittee

To resume hearings to examine the August 2003 Northeast blackouts and the federal role in managing the nation's electricity.

SD–342

NOVEMBER 20

9:30 a.m.

Governmental Affairs

Investigations Subcommittee

To resume hearings to examine the role of professional organizations like accounting firms, law firms, and financial institutions in developing, marketing and implementing tax shelters.

SH–216

10 a.m.

Banking, Housing, and Urban Affairs

To hold hearings to examine improving the corporate governance of the NYSE.

SD–538

2 p.m.

Banking, Housing, and Urban Affairs

To resume hearings to examine current investigations and regulatory actions regarding the mutual fund industry.

SD–538

CANCELLATIONS

NOVEMBER 14

10 a.m.

Energy and Natural Resources

To hold oversight hearings to examine the implementation of the Energy Employees Occupational Illness Compensation Program.

SD–366

HOUSE OF REPRESENTATIVES—*Friday, November 14, 2003*

The House met at 2 p.m. and was called to order by the Speaker pro tempore (Mr. THORNBERRY).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 14, 2003.

I hereby appoint the Honorable MAC THORNBERRY to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, Your prophetic servant Isaiah tells the Nation:

"Listen . . . in silence.

Let all people renew their strength . . .

Let them approach . . . Let them speak.

Let us together draw near to the Sacred."

Lord, out of silence comes the deepest words. The human heart overwhelmed with love or sorrow rests. It is there in the prayer of silence that cultures and religious practices meet.

So bless America, all the Members of Congress and our military in Iraq this weekend with that silent moment when the wonder of Your sacred presence is noticed and the gift of peace is ushered into the world from the depths of our being.

For we are called to worship You and You alone, now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. The Chair will lead the House in the Pledge of Allegiance.

The SPEAKER pro tempore led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested.

S. 1685. An act to extend and expand the basic pilot program for employment eligibility verification, and for other purposes.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 12, 2003.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on November 12, 2003 at 5:04 p.m.:

That the Senate agreed to conference report H.R. 1588.

That the Senate agreed to conference report H.R. 2559.

With best wishes, I am
Sincerely,

JEFF TRANDAHL,
Clerk of the House.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 4 of rule I, the Speaker signed the following enrolled bills on Wednesday, November 12, 2003:

H.R. 274, to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge;

H.R. 3232, to reauthorize certain school lunch and child nutrition programs through March 31, 2004;

S. 313, to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs;

and the following enrolled bills on Thursday, November 13, 2003:

H.R. 2559, making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes;

H.R. 3054, to amend the Policemen and Firemen's Retirement and Disability Act to permit military service previously performed by members and former members of the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police, and the United States Secret Service to count as creditable service for purposes of calculating retirement annuities payable to such members upon payment of a contribution by such members, and for other purposes.

HOUSE BILLS AND JOINT RESOLUTIONS APPROVED BY THE PRESIDENT

The President notified the Clerk of the House that on the following dates he had approved and signed bills and joint resolutions of the following titles:

January 10, 2003:

H.J. Res. 1. Joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

January 13, 2003:

H.R. 11. An Act to extend the national flood insurance program.

January 31, 2003:

H.R. Res. 13. Joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

February 7, 2003:

H.J. Res. 18. Joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

February 13, 2003:

H.R. 16. An Act to authorize salary adjustments for Justices and judges of the United States for fiscal year 2003.

February 20, 2003:

H.J. Res. 2. Joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

March 6, 2003:

H.J. Res. 19. Joint resolution recognizing the 92d birthday of Ronald Reagan.

March 11, 2003:

H.R. 395. An Act to authorize the Federal Trade Commission to collect fees for the implementation and enforcement of a "do-not-call" registry, and for other purposes.

April 16, 2003:

H.R. 1559. An Act making emergency wartime supplemental appropriations for the fiscal year ending September 30, 2003, and for other purposes.

April 22, 2003:

H.R. 397 An Act to reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois.

H.R. 672. An Act to rename the Guam South Elementary/Middle School of the Department of Defense Domestic Dependents Elementary and Secondary Schools System in honor of Navy Commander William "Willie" McCool, who was the pilot of the Space Shuttle Columbia when it was tragically lost on February 1, 2003.

April 23, 2003:

H.R. 145. An Act to designate the Federal building located at 290 Broadway in New

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

York, New York, as the "Ted Weiss Federal Building".

H.R. 258. An Act to ensure continuity for the design of the 5-cent coin, establish the Citizens Coinage Advisory Committee, and for other purposes.

H.R. 273. An Act to provide for the eradication and control of nutria in Maryland and Louisiana.

H.R. 1505. An Act to designate the facility of the United States Postal Service located at 2127 Beatties Ford Road in Charlotte, North Carolina, as the "Jim Richardson Post Office".

April 25, 2003:

H.R. 1584. An Act to implement effective measures to stop trade in conflict diamonds, and for other purposes.

April 30, 2003:

H.R. 1770. An Act to provide benefits and other compensation for certain individuals with injuries resulting from administration of smallpox countermeasures, and for other purposes.

May 19, 2003:

H.R. 289. An Act to expand the boundaries of the Ottawa National Wildlife Refuge Complex and the Detroit River International Wildlife Refuge.

May 27, 2003:

H.R. 1298. An Act to provide assistance to foreign countries to combat HIV/AIDS, tuberculosis, and malaria, and for other purposes.

H.J. Res. 51. Joint resolution increasing the statutory limit on the public debt.

May 28, 2003:

H.R. 2. An Act to provide for reconciliation pursuant to section 201 of the concurrent resolution on the budget for fiscal year 2004.

H.R. 2185. An Act to extend the Temporary Extend Unemployment Compensation Act of 2002.

June 17, 2003:

H.R. 192. An Act to amend the Microenterprise for Self-Reliance Act of 2000 and the Foreign Assistance Act of 1961 to increase assistance for the poorest people in developing countries under microenterprise assistance programs under those Acts, and for other purposes.

June 23, 2003:

H.R. 1625. An Act to designate the facility of the United States Postal Service located at 1114 Main Avenue in Clifton, New Jersey, as the "Robert P. Hammer Post Office Building".

June 30, 2003:

H.R. 2312. An Act to amend the Communications Satellite Act of 1962 to provide for the orderly dilution of the ownership interest in Inmarsat by former signatories to the Inmarsat Operating Agreement.

H.R. 2350. An Act to reauthorize the Temporary Assistance for Needy Families block grant program through fiscal year 2003, and for other purposes.

July 1, 2003:

H.R. 389. An Act to authorize the use of certain grant funds to establish an information clearinghouse that provides information to increase public access to defibrillation in schools.

H.R. 519. An Act to authorize the Secretary of the Interior to conduct a study of the San Gabriel River Watershed, and for other purposes.

H.R. 788. An Act to revise the boundary of the Glen Canyon National Recreation Area in the States of Utah and Arizona.

July 3, 2003:

H.R. 658. An Act to provide for the protection of investors, increase confidence in the capital markets system, and fully implement the Sarbanes-Oxley Act of 2002 by streamlining the hiring process for certain employment positions in the Securities and Exchange Commission.

July 14, 2003:

H.R. 825. An Act to redesignate the facility of the United States Postal Service located at 7401 West 100th Place in Bridgeview, Illinois, as the "Michael J. Healy Post Office Building".

H.R. 917. An Act to designate the facility of the United States Postal Service located at 1830 South Lake Drive in Lexington, South Carolina, as the "Floyd Spence Post Office Building".

H.R. 925. An Act to redesignate the facility of the United States Postal Service located at 1859 South Ashland Avenue in Chicago, Illinois, as the "Cesar Chavez Post Office".

H.R. 981. An Act to designate the facility of the United States Postal Service located at 141 Erie Street in Linesville, Pennsylvania, as the "James R. Merry Post Office".

H.R. 985. An Act to designate the facility of the United States Postal Service located at 111 West Washington Street in Bowling Green, Ohio, as the "Delbert L. Latta Post Office Building".

H.R. 1055. An Act to designate the facility of the United States Postal Service located at 1901 West Evans Street in Florence, South Carolina, as the "Dr. Roswell N. Beck Post Office Building".

H.R. 1368. An Act to designate the facility of the United States Postal Service located at 7554 Pacific Avenue in Stockton, California, as the "Norman D. Shumway Post Office Building".

H.R. 1465. An Act to designate the facility of the United States Postal Service located at 4832 East Highway 27 in Iron Station, North Carolina, as the "General Charles Gabriel Post Office".

H.R. 1596. An Act to designate the facility of the United States Postal Service located at 2318 Woodson Road in St. Louis, Missouri, as the "Timothy Michael Gaffney Post Office Building".

H.R. 1609. An Act to designate the facility of the United States Postal Service located at 201 West Boston Street in Brookfield, Missouri, as the "Admiral Donald Davis Post Office Building".

H.R. 1740. An Act to designate the facility of the United States Postal Service located in Dallas, Texas, as the "Dr. Caesar A.W. Clark, Sr. Post Office Building".

H.R. 2030. An Act to designate the facility of the United States Postal Service located at 120 Baldwin Avenue in Pala, Maui, Hawaii, as the "Patsy Takemoto Mink Post Office Building".

H.R. 2474. An Act to authorize the Congressional Hunger Center to award Bill Emerson and Mickey Leland Hunger Fellowships for fiscal years 2003 and 2004.

July 29, 2003:

H.R. 2330. An Act to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the Legitimate representative of the Burmese people, and for other purposes.

July 29, 2003:

H.R. 255. An Act to authorize the Secretary of the Interior to grant an easement to facilitate access to the Lewis and Clark Interpretative Center in Nebraska City, Nebraska.

H.R. 733. An Act to authorize the Secretary of the Interior to acquire the McLoughlin House in Oregon City, Oregon, for inclusion in Fort Vancouver National Historic Site, and for other purposes.

H.R. 1577. An Act to designate the visitor center in Organ Pipe Cactus National Monument in Arizona as the "Kris Eggle Visitor Center", and for other purposes.

August 1, 2003:

H.R. 74. An Act to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California.

August 8, 2003:

H.R. 2859. An Act making emergency supplemental appropriations for the fiscal year ending September 30, 2003.

August 14, 2003:

H.R. 1018. An Act to designate the building located at 1 Federal Plaza in New York, New York, as the "James L. Watson United States Court of International Trade Building".

H.R. 1761. An Act to designate the facility of the United States Postal Service located at 9350 East Corporate Hill Drive in Wichita, Kansas, as the "Garner E. Shriver Post Office Building".

August 15, 2003:

H.R. 2195. An Act to provide for additional space and resources for national collections held by the Smithsonian Institution, and for other purposes.

H.R. 2465. An Act to extend for six months the period for which chapter 12 of title 11 of the United States Code is reenacted.

H.R. 2854. An Act to amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes.

August 18, 2003:

H.R. 1412. An Act to provide the Secretary of Education with specific waiver authority to respond to a war or other military operation or national emergency.

September 3, 2003:

H.R. 2738. An Act to implement the United States-Chile Free Trade Agreement.

H.R. 2739. An Act to implement the United States-Singapore Free Trade Agreement.

September 17, 2003:

H.R. 1668. An Act to designate the United States courthouse located at 202 North Fifth Street in Muckogee, Oklahoma, as the "Ed Edmondson United States Courthouse".

September 25, 2003:

H.R. 13. An Act to reauthorize the Museum and Library Services Act, and for other purposes.

September 29, 2003:

H.R. 3161. An Act to ratify the authority of the Federal Trade Commission to establish a do-not-call registry.

September 30, 2003:

H.R. 2657. An Act making appropriations for the Legislative Branch for the fiscal year ending September 30, 2004, and for other purposes.

H.R. 2658. An Act making appropriations for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes.

H.R. 3087. An Act to provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

H.J. Res. 69. Joint resolution making continuing appropriations for the fiscal year 2004, and for other purposes.

October 1, 2003:

H.R. 2555. An Act making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2004, and for other purposes.

H.R. 3146. An Act to extend the Temporary Assistance for Needy Families block grant program, and certain tax and trade programs, and for other purposes.

October 3, 2003:

H.R. 659. An Act to amend section 242 of the National Housing Act regarding the requirements for mortgage insurance under such Act for hospitals.

H.R. 978. An Act to amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes.

October 10, 2003:

H.R. 1925. An Act to reauthorize programs under the Runaway and Homeless Youth Act and the Missing Children's Assistance Act, and for other purposes.

H.R. 2826. An Act to designate the facility of the United States Postal Service located at 1000 Avenida Sanchez Osorio in Carolina, Puerto Rico, as the "Roberto Clemente Walker Post Office Building".

October 15, 2003:

H.R. 2152. An Act to amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program.

SENATE BILLS AND A JOINT RESOLUTION APPROVED BY THE PRESIDENT

The President notified the Clerk of the House that on the following dates he had approved and signed bills and a joint resolution of the Senate of the following titles:

January 8, 2003:

S. 23. An Act to provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends.

February 25, 2003:

S. 141. An Act to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes.

April 23, 2003:

S. 380. An Act to amend chapter 83 of title 5, United States Code, to reform the funding of benefits under the Civil Service Retirement System for employees of the United States Postal Service, and for other purposes.

April 30, 2003:

S. 151. An Act to prevent child abduction and the sexual exploitation of children, and for other purposes.

May 14, 2003:

S. 162. An Act to provide for the use and distribution of certain funds awarded to the Gila River Prima-Maricopa Indian Community, and for other purposes.

May 29, 2003:

S. 243. An Act concerning participation of Taiwan in the World Health Organization.

S. 330. An Act to further the protection and recognition of veterans' memorials, and for other purposes.

S. 870. An Act to amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program.

June 17, 2003:

S. 273. An Act to provide for the expeditious completion of the acquisition of land owned by the State of Wyoming within the boundaries of Grand Teton National Park, and for other purposes.

June 23, 2003:

S. 222. An Act to approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes.

S. 763. An Act to designate the Federal building and United States courthouse located at 46 East Ohio Street in Indianapolis, Indiana, as the "Birch Bayh Federal Building and United States Courthouse".

June 25, 2003:

S. 342. An Act to amend the Child Abuse Prevention and Treatment Act to make improvements and reauthorize programs under that Act, and for other purposes.

June 26, 2003:

S. 703. An Act to designate the regional headquarters building for the National Park Service under construction in Omaha, Nebraska, as the "Carl T. Curtis National Park Service Midwest Regional Headquarters Building".

S.J. Res. 8. Joint Resolution expressing the sense of Congress with respect to raising awareness and encouraging prevention of sexual assault in the United States and supporting the goals and ideals of National Sexual Assault Awareness and Prevention Month.

July 3, 2003:

S. 1276. An Act to improve the manner in which the Corporation for National and Community Service approves, and records obligations relating to, national service positions.

July 14, 2003:

S. 858. An Act to extend the Abraham Lincoln Bicentennial Commission, and for other purposes.

July 17, 2003:

S. 709. An Act to award a congressional gold medal to Prime Minister Tony Blair.

July 29, 2003:

S. 1399. An Act to redesignate the facility of the United States Postal Service located at 101 South Vine Street in Glenwood, Iowa, as the "William J. Scherle Post Office Building".

July 30, 2003:

S. 246. An Act to provide that certain Bureau of Land Management land shall be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico.

August 1, 2003:

S. 1280. An Act to amend the PROTECT Act to clarify certain volunteer liability.

August 15, 2003:

S. 1015. An Act to authorize grants through the Centers for Disease Control and Prevention for mosquito control programs to prevent mosquito-borne diseases, and for other purposes.

September 4, 2003:

S. 1435. An Act to provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.

September 30, 2003:

S. 520. An Act to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho.

S. 678. An Act to amend chapter 10 of title 39, United States Code, to include postmasters and postmasters' organizations in the process for the development and planning of certain policies, schedules, and programs, and for other purposes.

October 3, 2003:

S. 111. An Act to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes.

S. 233. An Act to direct the Secretary of the Interior to conduct a study of Coltsville in the State of Connecticut for potential inclusion in the National Park System.

S. 278. An Act to make certain adjustments to the boundaries of the Mount Naomi Wilderness Area, and for other purposes.

October 10, 2003:

S. 570. An Act to amend the Higher Education Act of 1965 with respect to the qualifications of foreign schools.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 589. An act to strengthen and improve the management of national security, encourage Government service in areas of critical national security, and to assist government agencies in addressing deficiencies in personnel possessing specialized skills important to national security and incorporating the goals and strategies for recruitment and retention for such skilled personnel into the strategic and performance management systems of Federal agencies; to the Committee on Government Reform in addition to the Committee on Education and the Workforce for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

ENROLLED BILLS SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 274. An act to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge.

H.R. 2559. An act making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes.

H.R. 3054. An act to amend the Policemen and Firemen's Retirement and Disability Act to permit military service previously performed by members and former members of the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police, and the United States Secret Service to count as creditable service for purposes of calculating retirement annuities payable to such members upon payment of a contribution by such members, and for other purposes.

H.R. 3232. An act to reauthorize certain school lunch and child nutrition programs through March 31, 2004.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 313. An act to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs.

BILLS PRESENTED TO THE PRESIDENT

Jeff Trandahl, Clerk of the House reports that on November 13, 2003 he presented to the President of the United States, for his approval, the following bills.

H.R. 274. To authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge.

H.R. 2559. Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes.

H.R. 3054. To amend the Policemen and Firemen's Retirement and Disability Act to permit military service previously performed by members and former members of the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police, and the United States Secret Service to count as creditable service for purposes of calculating retirement annuities payable to such members upon payment of a contribution by such members, and for other purposes.

H.R. 3232. To reauthorize certain school lunch and child nutrition programs through March 31, 2004.

ADJOURNMENT

The SPEAKER pro tempore. Without objection, the House stands adjourned until 12:30 p.m. Monday, November 17, 2003, for morning hour debates.

There was no objection.

Accordingly (at 2 o'clock and 4 minutes p.m.), under its previous order, the House adjourned until Monday, November 17, 2003, at 12:30 p.m., for morning hour debates.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

5278. A communication from the President of the United States, transmitting notification that the Iran emergency declared by Executive Order 12170 on November 14, 1979 is to continue beyond November 14, 2003, pursuant to 50 U.S.C. 1622(d); (H. Doc. No. 108–141); to the Committee on International Relations and ordered to be printed.

5279. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report, determination and certification on chemical weapons proliferation activities; pursuant to section 81(a) of the Arms Export Control Act, and Section 11C(b)(3) of the Export Administration Act of 1979; to the Committee on International Relations.

5280. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 15-210, "Sports and Entertainment Commission Financial Affairs Temporary Amendment Act of 2003," pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

5281. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone Regulations: Atlantic Ocean, Cocoa Beach, FL. [COTP Jacksonville 03-107] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5282. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; West Lake Tohopekaliga, Kissimmee Lakefront Park, Kissimmee, FL. [COTP Jacksonville 03-108] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5283. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Ohio River, Miles 469.5 to 470.5, Cincinnati, OH [COTP Louisville-03-011] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5284. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Sanford Marina, Lake Monroe Harbor, Sanford, FL. [COTP Jacksonville 03-109] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5285. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Ohio River Mile 470.8 to 471.8, Cincinnati, OH [COTP Louisville-03-014] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5286. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Lake Eustis, FL. [COTP Jacksonville 03-110] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5287. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; McClellan-Kerr Arkansas River Mil 307.0 to 309.5, Fort Smith, AR [COTP Memphis-03-002] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5288. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Lake Dora, Mount Dora, FL. [COTP Jacksonville 03-111] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5289. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Atlantic Intracostal Waterway, Sisters Creek, Jacksonville, FL. [COTP Jacksonville 03-125] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5290. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Viscayan 4th of July Fireworks Display [COTP Miami 03-089] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5291. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Water ski races Long Beach, CA [COTP Los Angeles-Long Beach 03-003] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5292. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: Fort Lauderdale Yacht Club 4th of July Fireworks Display [COTP Miami 03-090] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5293. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Ohio River, Miles 603.0 to 604.0, Louisville, KY [COTP Louisville-03-005] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5294. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Ohio River, Miles 496.5 to 497.5, Aurora, IN [COTP Louisville-03-006] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5295. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: American Legion 4th of July Fireworks Display [COTP Miami 03-091] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5296. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: Fisher Island 4th of July Fireworks Display [COTP Miami 03-092] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5297. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Ohio River, Miles 602.0 to 604.0, Louisville, KY [COTP Louisville-03-010] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5298. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: City of West Palm Beach 4th of July Fireworks Display [COTP Miami 03-101] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5299. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: Bayside

Park 4th of July Fireworks Display [COTP Miami 03-102] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5300. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Pascagoula River, Hwy 90, Pascagoula, MS [COTP Mobile-03-012] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5301. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Mississippi Sound, Pascagoula, MS [COTP Mobile-03-014] (RIN: 1625 — AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5302. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: San Diego, CA [COTP San Diego, CA; 03-028] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5303. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; GICW Mile 361.4, Apalachicola Bay, Eastpoint, FL [COTP Mobile-03-015] (RIN: 1625 — AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5304. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; San Diego Bay, San Diego, CA [COTP San Diego 03-029] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5305. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Gulf of Mexico, Orange Beach, AL [COTP Mobile-03-016] (RIN: 1625 — AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5306. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; San Juan Bay, San Juan, Puerto Rico [COTP San Juan 03-120] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5307. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; 300 Yards East and West of Mile Marker 8, Back Bay Biloxi Industrial Seaway/Big Lake, Biloxi, MS [COTP Mobile-03-018] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5308. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Brunswick River, Brunswick, GA [COTP Savannah-03-116] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5309. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Brunswick River, Brunswick, GA [COTP Savannah-03-117] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5310. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Savannah River, Savannah, GA [COTP Savannah-03-122] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5311. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Harbortown (Calibogue Sound), Hilton Head Island, SC [COTP Savannah-03-123] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5312. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Lower Mississippi River, Miles 136.0 to 138.0, Laplace, LA [COTP New Orleans-03-017] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5313. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Skull Creek, Hilton Head Island, SC [COTP Savannah-03-124] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5314. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Casino Magic Canal, Bay St. Louis, MS [COTP New Orleans-03-018] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5315. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Savannah River, Savannah, GA [COTP Savannah-03-126] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5316. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Lower Mississippi River, Miles 174.5 to 176.5, in Donaldsonville, LA [COTP New Orleans-03-019] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5317. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Savannah River, Savannah, GA [COTP Savannah-03-133] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5318. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Monongahela River, mile marker 0.0 to mile marker 1.0; Allegheny River, mile marker 0.5 to mile marker 1.5, Pittsburgh, PA [COTP Pittsburgh, PA 03-017] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5319. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Mississippi River, 362.0 to 364.0, in the vicinity of the Vidalia Bridge, Highway 84, Natchez, MS [COTP New Orleans-03-020] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5320. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Allegheny River Mile Marker 0.3 to Mile Marker 0.7, Pittsburgh, PA [COTP Pittsburgh-03-018] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5321. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Yazoo Diversion Canal, Vicksburg, MS [COTP New Orleans-03-021] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5322. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Monongahela River Mile Marker 2.2 to Mile Marker 3.1, Pittsburgh, PA [COTP Pittsburgh 03-020] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5323. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Red River, Miles 227.0 to 229.0, in the vicinity north of the I-20 bridge, Shreveport, LA [COTP New Orleans-03-022] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5324. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Neches River, Beaumont, TX [COTP Port Arthur-03-010] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5325. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Lower Mississippi River, Miles 121.0 to 123.0, Luling, LA [COTP New Orleans-03-023] (RIN: 1625-AA00) received Novmeber 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5326. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Sabine-Neches Canal, Port Arthur, TX [COTP Port Arthur-03-011] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C.

801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5327. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Port Arthur Ship Canal and Sabine River Pass Channel, Port Arthur, TX [COTP Port Arthur, TX-03-012] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5328. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Port Arthur, Ship Canal, Port Arthur, TX [COTP Port Arthur, TX-03-013] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5329. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Sabine Jetty Channel, Sabine, TX [COTP Port Arthur, TX-03-015] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5330. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Sabine Jetty Channel, Sabine, TX [COTP Port Arthur-03-016] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5331. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Neches/Sabine Ship Canal, Beaumont/Orange, TX [COTP Port Arthur, TX-03-017] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5332. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Neches/Sabine Ship Canal, Beaumont/Orange, TX [COTP Port Arthur, TX-03-018] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5333. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Neches River, Beaumont, TX [COTP Port Arthur-03-019] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5334. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Outer Bar Channel, Sabine Pass, TX [COTP Port Arthur, TX-03-021] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5335. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Outer Bar Channel, Sabine Pass, TX [COTP Port Arthur, TX-03-022] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5336. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Waters Surrounding Coast Guard Activities San Diego, California [COTP San Diego 03-026] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5337. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Breton Sound, Pos 29 degrees 30′10N and 89 degrees 11′41W, Gulf of Mexico [COTP New Orleans-03-025] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5338. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Sharko's Canal, Pos 29 degrees 16′25N and 89 degrees 21′1W, Venice, LA [COTP New Orleans-03-026] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5339. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Mississippi River, Miles 228.0 to 230.0 in the vicinity of the U.S.S. KIDD, Baton Rouge, LA [COTP New Orleans-03-028] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5340. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Mississippi River, Miles 51.0 to 53.0, Cape Girardeau, MO [COTP Paducah-03-014] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5341. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Knoxville, TN — Boomsday, Tennessee River Mile 646.8 to Mile 649.0, Knoxville, TN [COTP Paducah-03-015] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5342. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Riverfest 2003, Cumberland River Mile 125.2 to Mile 125.6, Clarksville, TN [COTP Paducah-03-016] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5343. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Ohio River, Mile Marker 932.0 to 935.0, Paducah, KY [COTP Paducah, KY-03-017] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5344. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Cumberland River Mile 191.0 to 192.5- Nashville, TN [COTP Paducah-03-018] (RIN: 1625 — AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5345. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Allegheny River Mile Marker 0.0 to Mile Marker 1.5, Pittsburgh, Pennsylvania [COTP Pittsburgh-03-007] (RIN: 1625-AA00) received Novmber 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5346. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Allegheny River Mile Marker 0.3 to Mile Marker 0.7, Pittsburgh, PA [COTP Pittsburgh-03-011] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5347. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Allegheny River Mile Marker 0.7 to Mile Marker 1.0, Pittsburgh, PA [COTP Pittsburgh-03-012] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5348. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Ohio River Mile Marker 90.0 to Mile Marker 90.5, Pittsburgh, Pennsylvania. [COTP Pittsburgh-03-013] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5349. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Allegheny River Mile Marker 0.3 to Mile Marker 0.7, Pittsburgh, PA [COTP Pittsburgh-03-015] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5350. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting The Department's final rule — Safety Zone; Ohio River Mile Marker 0.0 to Mile Marker 0.2, Pittsburgh, PA [COTP Pittsburgh-03-016] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5351. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Savannah River, Savannah, GA [COTP Savannah-03-135] (RIN: 1625-AA00) received Novmber 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5352. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Savannah River, Savannah, GA [COTP Savannah-03-139] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5353. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Savannah River, Savannah, GA [COTP Savannah-03-140] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5354. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Brunswick River, Brunswick, GA [COTP Savannah-03-143] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5355. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; San Francisco Bay, Oakland Inner Harbor, Oakland, California [COTP San Francisco Bay 03-017] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5356. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; San Francisco Bay, San Francisco Bay, San Francisco, California [COTP San Francisco Bay 03-020] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5357. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; San Francisco Bay, San Francisco, California [COTP San Francisco Bay 03-022] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5358. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; San Francisco Bay, San Francisco, California [COTP San Francisco Bay 03-022] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5359. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Illinois River Mile 162.2 to 163.0, Peoria, IL [COTP St. Louis-03-001] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5360. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Fair St. Louis 2003, Upper Mississippi River Miles 179.2-180.0, St. Louis, MO [COTP St. Louis-03-002] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5361. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Mississippi River Mile 556.1 to 557.1, Bellevue, IA [COTP St Louis-03-004] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5362. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Mississippi River Mile 454.0 to 455.5 Muscatine, IA [COTP St. Louis-03-005] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5363. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Mississippi River Mile 383.0 to 384.0, Ft. Madison, IA [COTP St. Louis-03-006] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5364. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Ohio River Miles 460.0 to 480.0, Cincinnati, OH [COTP Louisville-03-001] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5365. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Mississippi River Mile 518.5 to 519.5, Clinton, IA [COTP St. Louis-03-008] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5366. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: Uni-Pro Group Holiday, Port of Miami, FL [COTP Miami 02-135] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5367. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Port of Miami, Miami, FL [COTP Miami-03-103] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5368. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Mississippi River Mile 581.2 to 583.0, Dubuque, IA [COTP St. Louis-03-009] (RIN: 1625-AA0) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5369. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Atlantic Ocean, Fort Lauderdale, FL [COTP Miami-03-112] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5370. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone Regulations: Captain of the Port Mobile, AL Area of Responsibility [COTP Mobile, AL 01-012] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5371. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Missouri River, Mile 28.2 — 29.0, St. Charles, MO [COTP St. Louis-03-010] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5372. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Illinois River Mile 59.0 to 61.0, Valley City, IL [COTP S. Louis-03-021] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5373. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Missouri River, Miles 442.0 to 422.5, Atchison, KS [COTP St. Louis-03-011] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5374. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Mississippi River Mile 158.0 to 162.0, St. Louis, MO [COTP St. Louis-03-022] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5375. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: Transport of High Value Asset from Quonset Point, RI to Groton, CT [CGD01-02-137] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5376. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Missouri River, Mile 98.0 — 99.0, Hermann, MO [COTP St. Louis-03-012] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5377. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulations: Cape Cod Canal, MA [CGD01-03-068] received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5378. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Missouri River, Mile 143.3 to 144.3, Jefferson City, MO [COTP St. Louis-03-013] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5379. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters [CGD05-01-066] (RIN: 2115-AE84) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5380. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Elk River, Chesapeake Bay, Maryland [CGD05-02-007] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5381. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Illinois River Mile 179.0 to 181.0, Chillicothe, IL [COTP St. Louis-03-014] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5382. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Thimble Shoals Channel, Chesapeake Bay, Hampton Roads, VA [CGD05-02-034] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5383. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Missouri River, Mile 373.0 — 374.0, Riverside, MO [COTP St. Loui-03-015] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5384. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Amtrack Railroad Bridge, Susquehanna River, Havre de Grace, Maryland [CGD05-03-034] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5385. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Chesapeake Bay, Hampton Roads, Elizabeth River, VA [CGD05-03-064] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5386. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Missouri River Mile 650.5 to 651.5, Blair, NE [COTP St. Louis-03-016] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5387. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: Atlantic Ocean, Isle of Wight Bay, Ocean City, Maryland [CGD05-03-068] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5388. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Mississippi River Mile 480.0 to 482.0, Davenport, IA/Rock Island, IL [COTP St. Louis-03-018] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5389. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Atlantic Ocean, Chesapeake & Delaware Canal, Delaware Bay. Delaware River and its tributaries [CGD05-03-084] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5390. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; San Juan, Puerto Rico [CGD 07-02-015] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5391. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Mississippi River Mile 483.0 to 488.2, Moline, IL [COTP St. Louis-03-019] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5392. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Savannah River, City Front Channel, Savannah, GA [CGD07-02-063] (RIN: 2115-AE46) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5393. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Mississippi River Miles 165.0 to 168.0, St. Louis. MO [COTP St. Louis-03-020] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5394. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Savannah River, Savannah, GA [CGD07-02-108] (RIN: 2115-AE46) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5395. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Savannah River, Savannah, GA [CGD07-02-111] (RIN: 2115-AE46) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5396. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Savannah River, Savannah, GA [CGD07-02-121] (RIN: 2115-AE46) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5397. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Oswego Harbor, Oswego, NY [CGD09-01-105] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5398. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Navy Pier, Lake Michigan, Chicago Harbor, IL [CGD09-02-519] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5399. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Temporary Emergency Safety Zone; St. Clair River, Michigan [CGD09-03-211] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5400. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Harborfest 2003, South Haven, MI [CGD09-03-225] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. WALDEN of Oregon (for himself, Mr. DeFazio, Ms. Hooley of Oregon, Mr. Wu, Mr. Blumenauer, and Ms. Dunn):

H.R. 3487. A bill to establish an alternative trigger for determining if an extended benefit period is in effect for a State for purposes of certain benefits under the Temporary Extended Unemployment Compensation Act of 2002; to the Committee on Ways and Means.

By Mr. HINOJOSA (for himself, Mr. Rodriguez, Mr. Ortiz, and Mr. Grijalva):

H.R. 3488. A bill to allow certain Mexican nationals to be admitted as nonimmigrant visitors for a period of 6 months; to the Committee on the Judiciary.

By Mr. ORTIZ (for himself, Mr. Hinojosa, and Mr. Rodriguez):

H. Res. 440. A resolution providing that the executive branch should remove certain entry restrictions for Mexican nationals, and for other purposes; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 3 of rule XII,

Mr. BURTON of Indiana introduced a bill (H.R. 3489) to authorize the appointment of Brigadier General Charles E. Yeager, United States Air Force (Retired), to the grade of major general on the retired list; which was referred to the Committee on Armed Services.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 284: Mr. Kline, Mr. Stenholm, Mr. Calvert, and Mrs. Cubin.

H.R. 806: Mr. Davis of Tennessee.

H.R. 1508: Mr. Fattah.

H.R. 1713: Mr. Menendez.

H.R. 1873: Mr. Burr.

H.R. 2239: Mr. Payne, Mr. Cooper, and Mr. Doggett.

H.R. 2512: Mr. Fossella.

H.R. 2823: Mr. Scott of Virginia and Mr. Foley.

H.R. 3125: Mr. Manzullo.

H.R. 3134: Mr. SOUDER and Mr. SIMMONS.
H.R. 3247: Mr. PETERSON of Pennsylvania.
H.R. 3318: Mr. OTTER.
H. Con. Res. 281: Mr. PAYNE, Mr. JACKSON of Illinois, Mr. GRIJALVA, and Ms. CARSON of Indiana.
H. Res. 419: Ms. MAJETTE and Mr. FARR.

EXTENSIONS OF REMARKS

TRIBUTE TO ELIZABETH PORTER

HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 14, 2003

Ms. LEE. Mr. Speaker, I rise today to pay tribute to the life, work, and memory of Elizabeth Porter. Liz dedicated her life to serving and empowering people in the pursuit of peace and justice. Tragically, at only 38 years old, Liz was taken from us on Saturday, October 25th due to a brain aneurysm. It is no surprise that this alarming news brought people from all over to Roberts Park in my district last Saturday to honor her amazing life.

Liz's work in the pursuit of global peace and justice was extraordinary. Fluent in Spanish and French, she began her career in public service by serving in the Peace Corps in Niger, Africa. Despite contracting falciparum malaria in her first month on the job and being flown to France for treatment, Liz didn't hesitate to immediately return to West Africa to complete her two-year assignment. Following her Peace Corps work, Liz then took part in the World Teach program in Manta, Ecuador.

Liz returned to the United States in the early 1990's, and earned a law degree from the University of San Francisco. Liz began serving the immigrant community as a staff attorney for California Rural Legal Assistance in Modesto, winning numerous cases. After more than 3 years, Liz moved on to the legal department at the California School Employees Association where she worked until her untimely death 2 weeks ago.

Liz was serious about her beliefs, but more than anything else, she was fun. She loved music, the outdoors, a good glass of wine—and her laughter was infectious. She also never missed sending a note or gift to one of her countless nieces and nephews. Liz—or "Fizz" as she was known to her 7 brothers and sisters—was a light for peace and justice in a world that desperately needed her passion, her strength, her laughter, and her love.

Liz is survived by her husband, John Gragnani, a marriage and family counselor with Contra Costa County, and a memorial fund has been established to continue assistance to a family in Togo, West Africa, that Liz had been supporting. I join my colleagues today in honoring her memory and her life.

CONGRATULATING SCOT STORM ON WINNING THE 2003 FEDERAL DUCK STAMP CONTEST

HON. MARK R. KENNEDY

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 14, 2003

Mr. KENNEDY of Minnesota. Mr. Speaker, I rise today to congratulate Scot Storm of Sartell, Minnesota, on winning the 2003 Federal Duck Stamp Contest. Scot's painting depicts a pair of redhead ducks flying over a pond. His inspiration for the painting came from a photograph he took in North Dakota.

The U.S. Fish and Wildlife Service sponsors the annual Duck Stamp Contest and I am proud to represent the winner for the second consecutive year. Groups from stamp collectors to conservationists purchase the stamps for their collections. Additionally, all waterfowl hunters are required to purchase and carry the Duck Stamp as a part of their license. Proceeds from the sale of the stamp go to purchase wetlands for the National Wildlife Refuge System. Since 1934, over half a billion dollars in proceeds from the Duck Stamp have purchased 5 million acres of habitat.

Mr. Speaker, Minnesota is proud of its hunting and fishing tradition and its commitment to conservation, exemplified in Scot Storm's winning stamp. On behalf of all Minnesotans, I congratulate him on this prestigious award.

HONORING THE BIRTHDAY OF THE UNITED STATES MARINE CORPS

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 14, 2003

Mr. MARKEY. Mr. Speaker, I rise to honor the United States Marine Corps on its 228th birthday. This organization, founded on November 10th, 1775, has a proud history of challenges met and overcome in every war in which our country has been involved. From the historic battles of Mellow Wood in the First World War to the battles of Guadalcanal, Iwo Jima, and Tarawa in the Second World War, to the modern conflicts in Panama, Somalia, and Iraq, the fighting men and women of the U.S. Marines have displayed the greatest valor and spirit. I wish to congratulate and honor all Marines and Marine veterans, with particular attention paid to those currently serving from the Commonwealth of Massachusetts, including 2,934 active duty Marines and 3,989 active reserve Marines in addition to the 2,259 retired Marines from our state. The U.S. Marines continue to be a storied organization upholding a proud tradition of freedom throughout the world. Congratulations to the U.S. Marine Corps.

HONORING BERKELEY-ALBANY YMCA

HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 14, 2003

Ms. LEE. Mr. Speaker, I rise today to honor the Berkeley-Albany YMCA on its centennial anniversary and acknowledge its years of dedicated educational service to the community.

In 1903, a group of 21 young Berkeley men gathered in the basement of the First Baptist Church to create the Berkeley-Albany YMCA. They elected William Waste, then a young attorney, to be President. He continued on in that position for the next 37 years, even after he became Chief Justice of the California Supreme Court.

In 1906, the Berkeley-Albany YMCA performed its first act of community service, providing shelter and care to refugees of the San Francisco earthquake. That same year, meeting rooms, a gym, and showers were added to its rented quarters.

From 1909 to 1938, hundreds of thousands of dollars were donated by the public and prominent Berkeley citizens for the construction of a downtown Berkeley facility, an Albany structure, and a branch in West Berkeley. Additionally, 413 acres were purchased in Annapolis, California for the construction of a summer camp, YMCA Camp Gualala.

Bigger and better things soon followed, including day camps, several new buildings and additions, remodeling and expansion. An international exchange program began in 1968 with 16 students from Sakai, Japan whose visit was followed a year later by 16 students from Berkeley and Albany. In 1972, the YMCA became the grantee for a reorganized Head Start program, which it continues to operate, now in seven locations.

Today, with more than 30,000 members, the Berkeley-Albany YMCA is truly a community center for all. Opportunities for physical and mental advancement abound, whether in learning to swim, studying for a math test, or specialized aerobics programs for new mothers. The YMCA brings participants closer to a stronger physical, mental, and spiritual self.

Finally, as we honor the Berkeley-Albany YMCA today, I want to thank this organization for providing an endless stream of role models for our youth and teachers for our schools. I take great pride in joining the residents of Berkeley and Albany and all the alumni of the Berkeley-Albany YMCA to recognize and salute its accomplishments. I hope that the next 100 years are as exciting and gratifying.

HONORING THE LIFE OF BROTHER MICHAEL GAWORSKI

HON. MARK R. KENNEDY

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 14, 2003

Mr. KENNEDY of Minnesota. Mr. Speaker, I rise today to honor the life of Franciscan Brother Michael Gaworski, who died of complications from pneumonia on August 28, 2003. Brother Michael was born in Tulsa,

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Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Oklahoma and raised in Eagan, Minnesota. He attended St. Thomas Academy and St. Thomas College.

In 1982, with encouragement from Archbishop John Roach, Brother Michael founded the St. Paul archdiocese's first community of religious brothers, the Franciscan Brothers of Peace. Additionally, Brother Michael was well known for his involvement in the pro-life movement, founding the Pro-Life Action Ministries, a group that now has 20,000 members.

Brother Michael valued every life and dedicated his work to helping those that needed help the most. However, it was Brother Michael who was the recipient of tremendous support when, 12 years ago, he was left a quadriplegic as a result of a bout with pneumonia. His Franciscan Brothers worked out rotating shifts, so that one of them was with Brother Michael every day, taking care of all his needs.

The Brothers believe that their ministry has blossomed from this experience, teaching them to love and give unconditionally. While the Brothers mourn the loss of their founder, they celebrate his life and will continue his mission of service.

Mr. Speaker, Brother Michael and his brothers in the Franciscan Brothers of Peace exemplify what it means to give of yourself to others and to live life as an example.

HONORING THE 40TH ANNIVERSARY OF DATA SYSTEMS ANALYSTS, INC.

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 14, 2003

Mr. TOM DAVIS of Virginia. Mr. Speaker, I would like to honor the 40th Anniversary of Data Systems Analysts, Inc. (DSA).

In 1963, a team of software engineers aspired to provide people across the globe with sophisticated, technology-based, communication systems. Out of this objective, an information technology company, DSA, was born. Soon afterward, the company landed its first contract with the U.S. Department of Defense.

Since then, DSA has remained committed to providing innovative defense solutions. This commitment most recently was demonstrated during Operation Iraqi Freedom. Today, DSA provides secure information and communication systems for governments and businesses in over twenty countries around the world.

DSA is a major regional employer, continuously providing jobs for Virginia, Maryland, New Jersey, and Pennsylvania residents. Moreover, through one of the nation's longest running Employee Stock Ownership Plans, DSA is one hundred percent employee owned.

These employees have thrived in a corporate culture of integrity and trust, working together to strengthen DSA's customers' businesses and national security. For example, in an effort to protect our nation's children, DSA brought business, management, and information technology experts together to assist the National Center for Missing and Exploited Children.

Committed to keeping the United States on the leading edge of technology, DSA has taken an active role in bridging the "digital divide," making it possible for those with limited resources to pursue an education in technology. In this endeavor, DSA is one of the founding members of the successful non-profit organization, the Open Door Foundation.

DSA also has been honored as developer of the award-winning U.S. Army Knowledge Center and recently was named a "2003 New Jersey Finest" by the newspaper NJBIZ.

I want to make a special note that Ms. Frances R. Pierce has been with DSA for 32 of its 40 years, serving the last 12 as chairman, president, and chief executive officer. I would like to recognize and thank Ms. Pierce for her contributions.

Mr. Speaker, in closing, I want to congratulate DSA on 40 years of success in providing information technology solutions and wish them my best for the years to come.

I call upon my colleagues to join me in saluting Data Systems Analysts, Inc. as it celebrates its 40th Anniversary.

IN RECOGNITION OF NATIONAL ADOPTION AWARENESS MONTH

HON. JAMES T. WALSH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, November 14, 2003

Mr. WALSH. Mr. Speaker, each year in November American families across the country gather together in thanksgiving to recognize the variety of blessings they have received. It is fitting that we also choose this month to recognize the importance of adoption in our society.

Currently, thousands of children across the country, freed for adoption, are waiting to be a part of a loving and caring family with a stable home and attentive parents. Many of these children have special physical, mental, or emotional needs and require special nurturing from devoted parents and families. Let it be known that their adoption by special people who elect to take full responsibility for their care, their upbringing, and their overall well-being is an important service not only to these children, but to our country at large.

Adoption not only provides obvious benefits to the affected child, but it has proven to be one of the most rewarding experiences for many adoptive parents. We all benefit when a needy child is adopted.

The County of Onondaga in New York's 25th Congressional District will be recognizing the importance of adoption on Friday, November 21, in ceremonies at Onondaga County Family Court. It is my privilege to recognize and thank all those families, caseworkers, and staff gathered for this important event who have dedicated themselves to improving the welfare of our community's children. It is my hope that this recognition further promotes the importance and benefits of adoption for all those involved. I thank all those responsible for organizing this special local observance of National Adoption Awareness Month.

TRIBUTE TO REVEREND CLEMENT CARDILLO

HON. BILL PASCRELL, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 14, 2003

Mr. PASCRELL. Mr. Speaker, I would like to call your attention to the life of an outstanding individual who I am honored to call my friend, Father Clement Cardillo. On Sunday, November 9, 2003, Father Cardillo was recognized by St. Gerard's Roman Catholic Church as the 2003 Man of the Year.

In his own unique way, Father Clement Cardillo has dedicated his life to guiding the spiritual and intellectual lives of the men and women of Paterson, New Jersey. His devoted commitment to serving the needs of others has left an indelible mark on the lives of all who have had the pleasure of knowing and working with him. It is only fitting that he be honored in this, the permanent record of the greatest freely elected body on earth.

Born in Portchester, New York, Clement Cardillo first studied with the Salesians of St. John Don Bosco at the seminary in Newton, New Jersey and made his Profession of Vows on September 8, 1944—the Feast of the Birth of the Blessed Virgin Mary. Upon his graduation from Don Bosco College with a Bachelor's Degree in Philosophy and a minor in Education, he began his first year of theological study before being sent to the theologate in Bollengo, Italy for the remainder of his studies. It was here, in Bollengo, that Clement was ordained into the Salesian Order on July 1, 1954.

On returning to the United States, Father Cardillo began a long and distinguished career as an educator. Shortly after his ordination, Father Cardillo was assigned to the staff of the Salesian Minor Seminary in West Haverstraw, New York where he taught Geometry and French and headed up the music department. Subsequent years found him teaching at a Salesian Middle School in Goshen, New York, and later, at a minor seminary in Ipswich, Massachusetts. Most remarkable, however, is the fact that Father Cardillo was able to balance his teaching responsibilities with his studies, ultimately receiving his Masters of Education in Counseling Psychology from Boston College.

In 1965, Father Cardillo accepted the pastorship of St. Anthony Church in Paterson, New Jersey—a post that he retained for 15 years. While at St. Anthony's, Father Cardillo was appointed by Bishop Casey as the Director of the Consultation Center (a psychological office dedicated to assisting priests and nuns who are leaving their vocation) and as the diocesan director of the Pre-Cana Program. In 1980, he was reassigned to his present position at St. Gerard's Church in Paterson where he currently serves the Diocese of Paterson as a psychologist on the Diocesan Review Board.

Over the past twenty-five years, Father Cardillo has dedicated himself to tending the spiritual and emotional lives of each of his parishioners. As a New Jersey Licensed Psychologist and as an ordained priest, he has selflessly given of himself to improve the quality of life of all of the men and women in his care. It is no surprise, then, to learn that his work on behalf of the citizens of Paterson has been widely recognized. In 1982, Father Cardillo received Congressional Recognition from the U.S. House of Representatives and on September 27, 1998, he was awarded the Papal Medal Pro Ecclesia ET Pontifice (translation: on behalf of the church and Pope).

Mr. Speaker, the job of a United States Congressman involves so much that is rewarding, yet nothing compares to recognizing the life and work of an individual as devoted to ministering to the faith as Reverend Cardillo. Today, a little more than twenty years after first being recognized by Congress, I ask that you join our colleagues, the men and women of St. Gerard's Roman Catholic Church, and myself in recognizing Reverend Clement Cardillo for touching the hearts and souls of so many in his parish.

COAST GUARD AND MARITIME TRANSPORTATION ACT OF 2003

SPEECH OF

HON. CORRINE BROWN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 5, 2003

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2443) to authorize appropriations for the Coast Guard for fiscal year 2004, to amend various laws administered by the Coast Guard, and for other purposes:

Ms. CORRINE BROWN of Florida. Madam Chairman, I commend the efforts of the Chairman of the Subcommittee and the Ranking Minority Member for their leadership in the effort to establish a dedicated West Coast Helicopter Interdiction Tactical Squadron (HITRON).

As former Ranking Member of Coast Guard Subcommittee, I was deeply involved in the creation of the HITRON program. The current HITRON squadron is composed of eight leased and armed helicopters and is based in my district just outside Jacksonville. I have inspected the squadron on several occasions and have been very impressed with the level of training they have received and their state of readiness to pursue the "go-fast" boats. The "go fasts" have traditionally been a highly effective method for smuggling large volumes of drugs into the United States. HITRON has posed the first real threat to this mode of transportation. In the short life of this program there have been 41 fast boat chases and 41 drug busts which have prevented nearly $3 billion in cocaine and other illegal drugs from reaching our kids on the streets. Thus the Sting Ray HITRON program has a remarkable success rate of 100 percent. Today, HITRON aircrews routinely deploy aboard U.S. Coast Guard cutters patrolling the high seas in the Caribbean to stem the tide of illegal drugs flowing into the United States. As intelligence reports dictate they are diverted to the Pacific. About 50 percent of the fast boat drug interdiction has now occurred in the Eastern Pacific.

The MH–68A HITRON helicopters have been named the Sting Ray. Since 9–11, Sting Rays have been pressed into the anti-terrorist mission, defending our ports and waterways from waterborne terrorist attack, and even providing protection for presidential visits. Not even these wonderful pilots with their feisty little aircraft can be in more than one place at a time! Two years after 9–11 there are only 8 armed Homeland Security helicopters authorized for airborne use of force over our tens of thousands of miles of ports and waterways which are dotted with strategic facilities such as nuclear plants. Shame, Mr. Speaker! Shame!

I agree with those advocates in Congress who feel it is time to acquire a new larger state-of-the-art cutter capable helicopter that can perform multiple airborne use of force missions. We could at any day be confronted by suicide terrorists headed toward a port or critical bridge on a small boat or a container ship. We must have a helicopter that can transport and support six-man tactical teams and can deliver and retrieve sea marshals as well as engage in port coverage and drug interdiction. In other words we should have a bigger helicopter with cutter capability in the inventory. The Coast Guard should waste no time initiating a competition for a new multi-purpose helicopter.

Under the best circumstances, if a competition were initiated today and executed with vigor, we would only have a limited number of such helicopters by January, 2006. For the interim period we need more Sting-Ray helicopters. In fact, the Sting Rays are the only helicopters authorized for airborne use of force over civilian populations. Thus, the Sting Rays are the only interim solution available until new Multi-purpose Cutter Helicopters can be acquired.

One year ago I worked diligently with our former colleague from Pennsylvania, Mr. Borski, the gentleman from North Carolina Mr. COBLE, and the gentleman from California, Mr. FILNER to assure there would be no interruption in the HITRON program. At that time HITRON was threatened by looming lease expiration on the armed helicopter fleet. Thirty-eight Members of Congress joined in this effort. We initially pressed for a purchase of the aircraft. However, the Commandant informed us that he wanted to hold open the option of acquiring a new multi-purpose helicopter. As a result of our efforts, the Coast Guard extended the lease for 8 HITRON helicopters currently in the inventory for 5 years and made provision to lease additional helicopters. In signing that lease, Coast Guard had the foresight to open the lease terms in order to permit the addition of as many Sting Rays as may be required. The Sting-Rays may be returned to the manufacturer in any lease year if new helicopters come on line.

It is important that we assist the Coast Guard in every way possible to carry out their post 9–11 role. With the HITRON Sting-Rays we have an ideal interim program until the new helicopters can be acquired. In fact I would be surprised if there is not a permanent role for these light, fast and aggressive little helicopters. I know for a fact they should not be shuttled back and forth between the East Coast and the West Coast. Each Coast must have a permanent installation. I know for a fact we need more Sting Ray helicopters for East Coast anti-terrorist port protection as well as Caribbean fast boat drug interdiction. This bill, which authorizes funding for a West Coast fleet, jump starts the process and is a good beginning. We have wasted two years with no expansion of our assets capable of airborne use of force. Lets roll!

TRIBUTE TO JAY S. PIFER

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 14, 2003

Mr. MURTHA. Mr. Speaker, it is with both pleasure and sadness that I rise today to recognize Jay S. Pifer, who is planning his retirement on December 1st after more than 40 years with Allegheny Energy. Jay has been a good friend to Pennsylvania and an outstanding corporate leader. I am pleased to recognize some of his achievements here today, but I must say that he will be greatly missed.

Jay is a native of Pennsylvania, graduated from Ridgway Area High School, and has degrees from both Penn State University and Clarion State University. He has received numerous awards including Penn State's Outstanding Engineering Alumni and the University's Alumni Fellow Award. He began his career at Allegheny as a college student.

He was named interim President and CEO at Allegheny Energy before being named Chief Operating Officer in June. He has worked in almost every department in the company including sales, marketing, engineering, customer service, accounting and management. In fact, Jay has performed admirably at almost every job in the company. He has held a number of leadership positions, including President of its Allegheny Power energy delivery subsidiary—which supplies power throughout Western Pennsylvania, and in Maryland, West Virginia, Virginia, and Ohio. During a time of recent financial challenges for Allegheny, Jay played a leading role in preserving the company. Through it all—and some very difficult weather from ice storms to Hurricane Isabel—Allegheny Power was recognized by J.D. Power and Associates as the second best company in customer satisfaction in the East and 10th best in the Nation. This is an honor of which Jay is justifiably proud.

Jay also has been involved in many civic and community activities, dedicating himself to education, economic development, and conservation efforts in Western Pennsylvania and her neighboring states. He serves on the boards of the United Way and the Business Roundtables of Pennsylvania and West Virginia. His many other honors include membership on the Advisory Board of Penn State University and the University of Pittsburgh at Greensburg, honorary chair of the NAACP, director of the Westmoreland Trust, and membership in the Western Pennsylvania Conservancy. He is an ordained Lay Pastor in the United Methodist Church and has long been associated with the Boy Scouts of America. He currently serves on the Advisory Board of the Northeast Region of the Boy Scouts.

His accomplishments are really too numerous to mention, but I wish Jay well in his retirement and thank him for his tireless commitment to Allegheny Energy and Pennsylvania.

REGARDING WASHINGTON STATE PROFESSOR OF THE YEAR DR. TERRY L. MARTIN

HON. DOC HASTINGS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, November 14, 2003

Mr. HASTINGS of Washington. Mr. Speaker, I rise today to recognize and honor Dr. Terry Martin who has been named the Washington State Professor of the year by the Carnegie Foundation for the Advancement of Teaching and the Council for Advancement and Support of Education.

Each year outstanding professors are honored by the Carnegie Foundation and the Council for Advancement and Support of Education for their service as models of excellence in undergraduate instruction. I would like to take this opportunity to congratulate the 2003 Washington State award winner, Dr. Terry Martin, an English professor at Central Washington University. Clearly, Dr. Martin has demonstrated her dedication to teaching and her students.

Dr. Martin has been honored for her commitment to academic excellence in the classroom and her contribution to the education community. She has published over 35 articles in professional journals, judged numerous writing and poetry contests, served as a member of the Washington State Steering Committee for Improving Undergraduate Education, and served as a State Board member for the Washington Council of Teachers of English.

Thank you for the opportunity to recognize Dr. Martin. Her innovation and commitment to teaching has clearly had a tremendous impact on the lives of her students and colleagues, and serves as an example of excellence in education.

SENATE—*Monday, November 17, 2003*

The Senate met at 12 noon and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Spirit, Your righteousness is like the mighty mountains, Your justice like the ocean depths. You clothe the meadows and provide carpet for the valleys.

Lord, You have given us the new chapter of another week with opportunities and challenges. We have opportunities to build bridges and to mend the defective. But we face the challenges of a world filled with divisive forces that desecrate and destroy. May the things that unite us overcome the powers that divide us.

Today, bless Your servants in this place with patience. Remind them that laudable goals usually take time. Slow us down, Lord, that we may take time to appreciate Your many blessings. Keep us from feelings of futility and may we feel the uplift of Your everlasting arms. We pray in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. McCONNELL. Mr. President, today the Senate will resume consideration of the VA-HUD appropriations measure. We were unable to reach an agreement for finishing the bill, and it is unclear how much further progress we can make on this bill. At this time, we will continue with the bill this afternoon and make a determination later today as to whether the Senate can complete action on this important measure.

Under a previous order, beginning at 4:30 p.m. today, the Senate will begin 1 hour of debate prior to the vote on invoking cloture on the FAA reauthorization bill. It is hoped that cloture will be invoked and that the Senate can complete its work on the conference report today. Again, that vote is expected around 5:30 this afternoon.

Also later today, the Senate will conduct a 1-hour debate on the issue of jobs and the economy. There will be two Members from each side of the aisle engaged in that debate, and all Senators are encouraged to be present for the discussion.

As a reminder, two cloture motions were filed with respect to the nomination of Thomas Dorr to be Under Secretary of Agriculture for Rural Development. Those cloture votes will occur tomorrow morning, and Senators will be notified of the exact timing of those votes.

Finally, on behalf of the majority leader, I remind everyone this is expected to be a busy workweek in the Senate. There are a number of important conferences that have been completed and others that will be finished shortly. These legislative matters will be scheduled as soon as they are available so the Senate may adjourn at the earliest possible time. All Senators should adjust their schedules for a busy session as we approach what will very likely be the final week of this session.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The acting minority leader is recognized.

Mr. REID. Mr. President, through the Chair to the distinguished majority whip, is there some estimate as to when we would get to the conference reports on Energy and Medicare?

Mr. McCONNELL. Mr. President, I say to my friend from Nevada, it is a little bit difficult to ascertain exactly when, but we hope the Energy bill might be ready by Wednesday. We are going to work as hard as we can to get those measures ready for consideration in the Senate certainly this week. Hopefully, we can get to Energy by Wednesday.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Nevada.

Mr. REID. Mr. President, I hate to broach the subject because last time it didn't work out as well as I had contemplated, but I hope if something comes up that we can't finish our work on Friday, we will go over into the weekend because everyone believes they would rather work—I don't know about everyone—most people believe they would rather work this weekend knowing we don't have to come back until after the first of the year. I hope the leadership on the other side will keep that in mind and alert Senators that we may have to work Saturday and maybe even Sunday to get out of here for the Thanksgiving holiday and the year generally.

Mr. McCONNELL. Mr. President, I say to my friend from Nevada, I think that is a widely held sentiment on this side of the aisle as well. It will be vastly more desirable to wrap it up this week, even if this week means a longer week than normal, than to carry it over to next week or certainly December. We are going to be pushing to complete the business of the Senate this week. This week ideally would be Friday, but it could end up being Saturday or later. It is our goal to wrap up this session of the 108th Congress this week.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COCHRAN). Without objection, it is so ordered.

MORNING BUSINESS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business until 1:30 p.m. with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, like every loyal Red Sox fan, I believe that next season my team will be victorious. I bring this same level of optimism to my efforts to reduce the amount of wasted resources and litter caused by discarded beverage containers.

I rise today to speak again to the National Beverage Producer Responsibility Act of 2003, the bottle bill, convinced that this is our year.

I have long been an advocate for increased recycling. Vermont passed its bottle bill in 1972 when I was state attorney general. In 1975, during my first session as a Representative in the U.S. House, I introduced a national bottle bill, closely resembling Vermont's very successful example. Last Congress, as chairman of the Environment and Public Works Committee, I convened the first Congressional hearing in many years on recycling, in which the committee heard expert testimony on the merits of a national program to recycle beverage containers.

The reason that I continue to push this issue is simple—it makes sense.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Beverage container recycling is one of the simplest ways to see a dramatic improvement in our environment. As this chart shows, 120 billion—let me repeat, 120 billion with a "b"—beverage containers were wasted by not being recycled in 2001.

If we could raise the Nation's recycling rate to 80 percent, we would save the equivalent of 300 million barrels of oil over the next 10 years and eliminate 4 million tons of greenhouse gas emissions annually. States that have enacted bottle bills also have benefited by reducing road side litter by up to 84 percent.

These savings may sound unrealistic. But in Vermont alone, recycling efforts in 2001 reduced greenhouse gas emissions by 94,000 metric tons of carbon equivalent. That's equal to approximately two-thirds of all industrial carbon dioxide emissions from fossil fuel combustion in Vermont and 4.5 percent of greenhouse gas emissions. To me, those savings sound remarkable.

Why a refundable deposit program? Thirty years of experience demonstrates that refundable deposit bottle bills are dramatically more effective than voluntary efforts. As this chart illustrates, the ten States that have implemented deposit laws recycle more containers than all of the other 40 States combined.

While I applaud curbside and other voluntary recycling efforts, the 71 percent of Americans who live in non-bottle bill States account for only 28 percent of recycled beverage containers. My bill, the National Beverage Producer Responsibility Act of 2003, strikes a balance between the wishes of industry, the authority of individual States, and the needs of a healthy environment.

Unlike traditional bottle bills, this legislation would fully harness market incentives by setting an 80 percent recovery performance standard and allowing industry the freedom to design the most efficient deposit-return program to reach the standard. States that already have bottle bills will retain their authority to continue their programs in their own individual ways as long as they meet the national performance standard.

This past Saturday, November 15, 2003, was America Recycles Day in Vermont and across the country. Two years ago, to help commemorate the 2001 America Recycles Day, I participated in a public service announcement to raise awareness regarding the need to buy recycled goods.

The importance of recycling deserves, however, more than a 30-second public service announcement and more than its own day on the calendar. For it to work, recycling must be a commitment of all of ours each and every day of the year.

Vermont's commitment to recycling has provided some impressive statistics. For example, in 2001, 31 percent of Vermont's municipal waste was diverted from landfills. That year, 13,260 tons of containers were recycled through soft drink and beer distributors and materials recovery facilities.

The benefit of these programs is, of course, that they help keep our Green Mountains green.

I commend and thank Governor Jim Douglas for his many recent initiatives to encourage and improve the efficiency of recycling across Vermont. For example, under Governor Douglas' leadership, Vermont has implemented beverage container recycling programs at 20 State information centers.

In the first phase, in less than 2 months, over 200 pounds of aluminum, glass, and plastic were recovered from 51,00 visitors passing through one such information center in Willison, VT. And today, the U.S. Senate's other Vermonter, PATRICK LEAHY, joins me and Senators JOSEPH LIEBERMAN, DANIEL AKAKA, and JOHN KERRY as original cosponsors as I introduce the National Beverage Producer Responsibility Act of 2003.

I recommend that all take advantage of this wonderful system we have in Vermont and in other States. I ask everyone to take a close look and see if we wouldn't be much better off if the rest of the country follows suit.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. I ask unanimous consent to speak in morning business for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENVIRONMENTAL PROVISIONS IN THE CONFERENCE REPORT ON H.R. 6

Mr. JEFFORDS. Mr. President, the conference report on H.R. 6, the comprehensive energy legislation, was released over the weekend. As the ranking member of the Environment and Public Works Committee, I have come to the floor today to share my deep concern that this bill will endanger our environment and unfairly benefit special interests.

The final conference report contains provisions that significantly change environmental law and undermine long-standing environmental protections. It is my sincere hope that the conference will remove many of these provisions during their meeting today.

The Environment and Public Works Committee, on which I serve, has jurisdiction over environmental matters, and we were not consulted in the development of any of these provisions.

This bill drastically rewrites existing clean air law. It postpones ozone attainment standards across the country. This is a matter never considered in either House or Senate bill that has been inserted into the conference report. By inserting this language, the conference will expose the public to dangerous air pollution emissions for far more time than under existing law. Several Federal courts have already struck down regulatory proposals similar to the provisions in the conference report as violations of the Clean Air Act.

The gasoline additive MTBE, which is known to contaminate groundwater, would have been phased out in 4 years in the Senate bill. This conference report extends the phaseout for a decade and includes provisions that would allow the President to decide to continue the MTBE use.

This bill provides legal immunity to large petrochemical companies from "defective product" liability arising from the contamination of groundwater supplies by the gasoline additive MTBE.

It also terminates a lawsuit filed by the State of New Hampshire by reaching back to provide immunity as of September 5, 2003. This language allows a contaminating product to be used, possibly indefinitely, and provides communities with no fiscal remedies to clean it up.

As a further subsidy to the industry, the bill exempts all construction activities at oil and gas drilling sites from coverage under the runoff requirements of the Clean Water Act.

This means that contaminants, such as toxic chemicals, grease, and other pollutants from oil and gas drilling, will end up in our waterways.

Conferees have also removed hydraulic fracturing, an underground oil and gas recovery technique, from coverage under the Safe Drinking Water Act. This is a process in which water, sand, and toxic chemicals are injected under high pressure into oil- and gas-bearing rocks, potentially polluting drinking water supplies.

This bill suspends these existing drinking water protections, even though courts have found that hydraulic fracturing should be regulated to protect the public health.

Also, the conferees have included language to speed up energy exploration and development at the expense of environmental review and public participation on both Federal and non-Federal lands. The public will have less time to review and consider the impact of these projects.

When these reviews occur, oil, gas and geothermal energy companies can be reimbursed through credits against future royalties payable to the taxpayer for the costs of undertaking environmental assessments. These provisions subsidize energy development on our public lands.

The conferees have also included provisions that mandate specific timeframes and deadlines for agency decisions on Federal oil and gas leases. This would establish oil and gas development as the dominant use of our Federal public lands.

Our other Federal lands are at risk of becoming electric transmission corridors with this bill as well. The Department of Energy can open new areas for transmission line construction, harming the wildlife, water quality, recreational and other values we have sought to protect for years.

My colleagues should know that this is not an exhaustive list of the environmental provisions of concern in this bill.

In almost every title, there are significant changes to long standing environmental law and policy. In addition, important issues which received majority support in the Senate, such as a Renewable Portfolio Standard for electricity, requirements to reduce our dependency on foreign oil, and adoption of sensible climate change policy, have been dropped.

While I support the establishment of a comprehensive energy policy for the United States, we should not use the final energy bill as a means to roll back important environmental protections.

This bill will not promote energy self-sufficiency, will not promote it, and will cause environmental damage. It is my sincere hope that these unwise provisions will be removed, and I urge my colleagues to consider seriously the environmental effects of this legislation in making their final decisions regarding whether or not to support this measure when it come before the Senate.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER (Mr. ROBERTS). Without objection, it is so ordered.

MEDICARE PRESCRIPTION DRUG BENEFIT

Mr. KENNEDY. Mr. President, I wanted to take a short time this afternoon to talk about some of the concerns that I have on the recently agreed to proposition on the Medicare prescription drug agreement that was reached over the course of the weekend.

As we are anticipating this measure which is now being examined in terms of the Congressional Budget Office estimates and the legislative language that is being prepared, I expect that we will be addressing it at the end of this week or sometime in the very near future. I want to at least bring some focus and attention to some of the provisions in the legislation that haven't gotten the focus and attention they deserve, which they should have, and which I hope our Members will give study.

There is no truer indication of a nation's priorities than the investment it makes, and the legislation the Senate considers today I believe squanders a historic opportunity with a disregard for the Nation's health, particularly for our seniors. There is a provision in this bill dealing with a $12 billion slush fund to lure HMOs into Medicare.

Let's see if I have the reasoning behind this fund right. The supporters of the legislation are so concerned that HMOs can provide health care to seniors more efficiently than Medicare that they give HMOs a $12 billion payoff so they can compete. If they are so efficient, why do they need the handout? I guess the sponsors of the legislation believe a 9 percent reimbursement bonus for HMOs is not enough. In this legislation there is the assurance the HMOs will get a 9 percent increase over Medicare in reimbursement rates.

In addition, there is what they call a stabilization fund which is effectively a $12 billion slush fund which will also be available to subsidize the HMOs.

That package adds up to a rather extraordinary benefit to the HMOs. The bill calls for competition between Medicare and the HMOs. Yet in this agreement private plans are going to get paid 109 percent of traditional Medicare reimbursements. And, those enrolled in HMOs are 16 percent healthier. That cumulatively is a 25 percent bonus to the private sector to compete with Medicare, without even considering the $12 billion slush fund. Our friends on the other side say we want competition in this system. Yet they are giving them the 25 percent advantage in order to compete with Medicare.

The bill that passed the Senate was a prescription drug bill that had bipartisan support, with 76 Members for it. I was proud to stand here and support it. But now we basically have the restructuring of our Medicare system. We do it in a way that provides a fundamental risk to the Medicare system. That is why I am opposed to this agreement and the proposal.

I have given one illustration of why this proposal that is strongly supported by our friends in the House is going to weight this agreement so heavily for the HMOs and the PPOs. They talk about a fair playing field between the private sector and the Medicare. That is hogwash. In the Senate bill we passed a prescription bill. It had real competition for all parts of the country with a backup system of Medicare, but not in the proposal that comes out of the conference.

I remind our seniors the 25 percent bonus that is going to the HMOs is effectively being paid by our seniors today in the Medicare premiums. They are the ones, on the one hand, who are paying into this fund; on the other hand, it is the conference report that is effectively taking the 25 percent and giving it over to the private sector.

And we wonder why seniors might be somewhat concerned about that arrangement. Do Members think the seniors at home will not ask: Why aren't we using all that money to either make sure the benefit package is a stronger benefit package to help me, to help my family, or to help my grandparents? The decision made in the conference was no, we insist on "competition." But they are going to take the 25 percent, which has been paid in dollar by dollar by dollar by hard-working Americans over a lifetime that they thought was going to be put into the Medicare system, and we are going to use that to subsidize the private sector. I hope we will have a chance for explanations.

Second, there is a provision included in this conference that was not included in the Senate proposal, premium support. I never heard the President indicate strong support for it, or those who speak for the President. I don't think a great many of our colleagues are able to define what premium support is, but they will learn about it soon enough if they vote for this legislation. Premium support is a proposal that is primarily sponsored by those who are opposed to the Medicare system.

Let's make no bones about it. There are a number of other colleagues who are still strongly opposed to Medicare. That is no mystery, no secret. This proposal puts forward one of their strongest beliefs—that we need to change the Medicare system—I say undermine the Medicare system—with premium support. What that means is the averaging of various premium bids to determine the Medicare system reimbursement rate. The difference between what the Medicare system reimburses and what real cost is going to be paid by the individual. The premium support proposal does what the insurance companies do best, and that is cherry pick the healthiest senior citizens for their plans so they are able to make money, and leave those who are sicker and older in the Medicare system where the premiums will rise.

I will demonstrate with this chart. This is the Medicare actuarial estimates of the disparity of the premium support, what the premium would be under the proposed legislation. The national average of the current law is $1,200. Several years ago, the estimate under the premium support was $1,771. The new average this year is $1,501. How do we know what the true estimates will be? Premium support is untested, untried, unworkable. We are playing roulette with premium costs for our senior citizens. This is a social experiment that uses our seniors as guinea pigs. That is what premium support is.

Look at the difference, say, if you are in Florida. The agreement reached said by the year 2010 the Secretary will be able to designate six metropolitan statistical areas that qualify. Currently, half the States have those areas. With the kind of subsidies we are providing in this legislation, by the year 2010, I doubt whether there is any State that will not have the opportunity to qualify. I hope our colleagues listen carefully to that because this diversity in premiums is going to come to your State and you are going to have to explain why a senior in one county, who pays same taxes, worked just as hard all his life, and who deserves Medicare, has to pay twice as much as his neighbor in the next county over in premiums for medicare.

Medicare is a universal system that guarantees everyone will be treated equally, according to their medical needs. This legislation turns that proposition on its head and makes your medicare benefits dependent on where you live and what will help private insurance companies the most.

This is the House Budget Committee, the Medicare actuarial data. The difference if we have premium support in Florida, what the premiums would be 1 year in Dade County and another year in Osceola, Fl: Double the premium for the Medicare patients living in Dade; half that for those in Osceola. Now that is in Florida.

Take premium support in California. If you live in Los Angeles, $1,700; in Yolo, CA, $775.

It is just based on where you live. You have lived there all your life. You have your home. You have paid your taxes. You have brought up your children, and you have retired, and you find you are going to pay $1,700 for your premium; and someone in Yolo County, CA, is going to pay $775. Why? Because of this new concept of premium support.

It will happen in every State. For New York City, the Medicare actuaries' estimate that in Queens, seniors would pay $2,000, but only $975 in Erie, NY, because that is the estimate of what the premiums will be with competition in New York.

Try to explain that to your seniors who have lived their life, who have served this country, brought the Nation out of the Depression, fought in the wars, are living back home, and find out their premiums have increased 100 percent or 200 percent or 300 percent.

This is not just what I am saying about premium support, these are the Medicare actuaries. This information comes to us from testimony given before the Finance Committee.

Here we have figures from my home State of Massachusetts: $1,450 in Barnstable, $1,000 in Hampden, MA. So, $400 more if you live down in Barnstable County, in Cape Cod, than the center part of the State.

So if you support this proposal, and you support the premium support, then you are going to have to explain to your constituents and to your elderly people that if they live in one community, they may be paying double what their neighbors are paying in another community.

What this proposal puts forward has never been tried. It has never been tested. And it is mandated—mandated—in this compromise from the House of Representatives. It is mandated in this bill.

You will hear the other side saying: Senator KENNEDY has not got it quite right. You will hear them say: We put a restriction in there, they can only go up 5 percent this year. Five percent this year, 10 percent the next year, 50 percent the year after.

Let's get real. Look at the direction in which we are going. This proposal has heavy subsidies for the HMOs and a roll of the dice on the premiums for our senior citizens. And that is not even the beginning.

Currently, of our 40 million seniors, there are 6 million who have Medicare but also who have what they call Medicaid to those who are very poor, we are talking about 100 percent of poverty or below. Those beneficiaries have to pay copayments for medical care. Most of the States pick up those copayments. That is what is existing today.

Do you think that is going to continue under this bill? No. No, no. No, no, that does not continue under this proposal. That is actually prohibited under this legislation.

There will be 6 million of our seniors who are getting help and assistance from their States today who will be prohibited from getting it under this proposal. Why? This all saves the money—probably $9 to $12 billion—to use for other purposes.

If you come from a State with large numbers of very poor, and where the State is paying that $1, $3, $5, in terms of the prescription drugs, it does not sound like a lot of money. But if seniors need that drug two or three times a week, it piles up every week, it piles up every month, and it piles up every year.

Why does the conference bill do that? Why in the world did they do that? It was not in the Senate bill. It was in the House bill, and it was accepted in the conference.

Now we come back to those who are the very needy and the very poor, and we see many of our elderly who are excluded from this program with what we call an asset test.

The asset test is basically the following: If you own a car that is worth more than $4,500, you have a wedding ring worth $2,300, you have $6,200 in savings, and you have a burial plot that is worth more than $1,500, all that is considered in terms of your assets to exclude you from being eligible for benefits targeted to the poorest of the poor.

The Senate bill said that low-income people could get the assistance they needed without going through a cruel and demeaning assets test.

Senators from New Mexico, Mr. BINGAMAN and Mr. DOMENICI offered an amendment, which passed by 67 votes, to reaffirmed the Senate's desire not to penalize people because they managed to save a small amount of money during their working lives. I was proud of the Senate, of Republicans and Democrats alike, for recognizing that if we were going to pass a prescription drug bill, it ought to be targeted on the neediest of the needy. But the bill put forward by this conference went in the opposite direction and restored that cruel and demeaning assets test.

We had a good bill. We did not provide these large subsidies to the PPOs and the HMOs. We did not have premium support program that so threatens, undermines and endangers Medicare. No, no, we did not have those. Ours was basically a prescription drug program focused on the neediest seniors built on private sector delivery with a backup in terms of the Medicare system. That was the compromise.

But not here. The conference needed more money to pay for what they call health savings account, the medical savings account, which they have put in this particular conference report, at the cost of anywhere from $6 to $7 billion, draining our national deficit even more and adds to the total cost of the legislation.

Health savings accounts are designed for the healthiest and wealthiest people in our society leaving the sickest and poorest of the workers in this country in the private sector where their premiums could be increased by 20 to 30 to 40 percent. As the debate unfolds, we will be presenting further estimates on this. It was best estimated, from the Urban Institute, at 60 percent increases.

This conference report gives us a whole new kind of a system. We have the heavy subsidizing of private plans with 25 percent more being paid for by seniors. We have the experimental system where you are going to have those enormous swings in premiums all over the country without any predictability, and it is untested and untried. We have the cutting back of 3 million of the neediest people because of the reimposition of the asset test. We have the introduction of the health savings account which is going to skew the health delivery system for millions of workers and the young people in this country.

Many people are going to bail out of their traditional system, and leave their coworkers, who may have greater kinds of health threats, to pay a very enhanced premium and also enhance the premium of the companies themselves.

What are we talking about with this legislation? Let's add it up. Of the about 10 to 12 million American workers who now have retiree accounts, under this proposal, the best estimate is that 2 to 3 million of those who are covered today will lose that, according to CBO.

We heard the estimate—this was a real good one—that up to 30 percent of those who were getting coverage were going to lose it. And then some of our Republican friends said that is too much, that is too many, so let's expand the base, which they did. Let's include all the Federal employees. Let's include other groups in there to lower the percentage. Now they come out and say: I know it was 33 percent before; now it is only 12 or 14 percent.

The total numbers are the same. You are going to lose the 3 million.

This is what we have: 6 million Medicaid beneficiaries who now have wraparound coverage; they are going to be paying more. You have 2 to 3 million retirees who lose their coverage. They are going to be hurt by this legislation.

We have 6 million people in the untested, untried premium support demonstration. Add that up, 15 million of the elderly and disabled are going to be impacted or affected by this program. At the same time we are talking about billions of dollars in the slush fund for the PPOs. We are talking about the health savings accounts, which are billions of dollars, that the taxpayers are going to end up paying. Then we have the asset test which is going to exclude many of our seniors.

This legislation has been altered and changed. It was a prescription drug program when it passed the Senate with strong bipartisan support. Now it is a Medicare Program. At the heart of this program are the kinds of instruments that can undermine Medicare and threaten our seniors now and in the years to come. It doesn't deserve to pass.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BOND. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business with Members permitted to speak up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURES PLACED ON THE CALENDAR—S. 1862, S. 1863, S. 1864, S. 1865, S. 1877

Mr. BOND. Mr. President, I understand there are five bills at the desk, and they are due for a second reading. I ask unanimous consent that the clerk read the titles of the bills en bloc for a second time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will read the bills by title.

The assistant legislative clerk read as follows:

A bill (S. 1862) to provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations.

A bill (S. 1863) to authorize the transfer of certain Naval vessels.

A bill (S. 1864) to enhance the security of the United States and United States allies.

A bill (S. 1865) to enhance the security of the United States and United States allies.

A bill (S. 1866) to enhance the security of the United States and United States allies.

Mr. BOND. I would object to further proceedings en bloc.

The PRESIDING OFFICER. The objection is heard. The bills will be placed on the calendar.

Mr. BOND. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, is the Senate in morning business?

The PRESIDING OFFICER. The Senate is in morning business.

SMALL ENGINE POLLUTION

Mrs. FEINSTEIN. Mr. President, I will make my remarks as if in morning business, but my remarks pertain to the HUD–VA bill, and in particular to the small engine provision of that bill.

If Members will remember, the Senator from Missouri, in the Appropriations Committee, placed an environmental rider into the HUD–VA bill which would prevent California from moving forward with its regulation to regulate off-road engines under 175 horsepower. The State has developed a regulatory scheme to do so because these engines were a substantial part—17 percent—of the mobile source pollution in the State, and it was believed by the California Air Resources Board that regulation of these engines could be achieved and, in fact, could reduce pollutants considerably.

On the floor of the Senate, the Senator from Missouri offered an amendment to his amendment from committee. The new language which changed the amendment, in my view, making it better, by only affecting engines under 50 horsepower. I spoke against his amendment in the Appropriations Committee. I did not press for a vote on the small engine amendment which he offered on the floor largely because I thought we would lose it and that we had a better chance of trying to remove the language from the bill in conference.

The bill has been preconferenced. Sadly, we have not been able to remove that language from the bill. I am told today that if I were to submit the amendment we had prepared which would eliminate the Bond amendment in its entirety, I would not be allowed a vote on that amendment. I believe the rationale is because I agreed to go to conference. I had only because I didn't want to lose on the floor and I thought I didn't have the votes.

Since that time, a number of States have realized that their regulatory schemes would also be impacted by this provision. Other States would be affected because the 1990 amendments to the Clean Air Act essentially said that California has the ability to regulate these engines, and other States may then take various components of that regulation and enact them as their own State law if they so choose. Since last week, a number of States have weighed in indicating they have regulatory regimes underway that would be affected and that they are opposed to the Bond amendment. Nonetheless, we are where we are.

I have come to the floor today simply to speak about why I think this is so egregious—and I do think it is egregious. I believe it is the first major setback from the clean air amendments of 1990, and specifically from the amendments allowing States to regulate air quality for the protection of their own people. By eliminating this, we are taking important rights away from the States certain rights and diminishing the States' ability to take care of their own people.

As the fire chiefs have said to me in a letter, if they waited for the Federal Government to regulate bedding and upholstery, they would be still be waiting for that regulation. Instead, the States have taken it on their own to make those regulations. The people of California are much safer because of it.

Let there be no doubt. I believe very strongly that this small engine provision should be removed from the bill and that we should restore the States' rights to protect public health under the Clean Air Act.

On the surface, the amendment that was adopted on Wednesday looked like a substantial improvement. At the time I thought it was an improvement simply because it dropped from 175 horsepower to 50 horsepower. However, the amendment still blocks all States from regulating some of the dirtiest engines out there.

The States will lose the ability to reduce pollution from all spark-ignition engines smaller than 50 horsepower. This includes lawn and garden equipment, some forklifts, recreational boats, off-road motorcycles, and all-terrain vehicles. The original small engine provision would not have affected boats or off-road motorcycles. But the amendment adopted on Wednesday is broad enough to affect a whole new group of engines.

This provision will take four California regulations off the books. My State will lose regulations on lawn and garden equipment, recreational boats, and off-road motorcycles.

I don't know whether the effects on additional engines were intentional or not. We told the Senator from Missouri about them and the language did not change.

But I want to point out another important fact about the amendment adopted on Wednesday. The language requires the U.S. Environmental Protection Agency to propose a new national regulation by December 1, 2004. It does not require the EPA to finalize that regulation, ever. They could propose a regulation and never finalize it. The one promising part of this amendment guarantees nothing. The States need to reduce these emissions now.

I want to remind my colleagues just how dirty these engines are. You will see here that mowing the lawn produces as much pollution as driving a car for 13 hours. I didn't know that before. I didn't know that if you mow your lawn for 1 hour it is like driving the automobile for 13 hours.

This chart shows how long you would have to drive a car to produce as much pollution as when you operate various types of equipment for one hour.

In other words, using a weed trimmer for 1 hour produces as much pollution as driving a car for 8 hours, mowing a lawn for 1 hour produces as much pollution as driving a car for 13 hours, and operating a forklift for 1 hour produces as much pollution as driving a car for a full 17 hours.

Clearly, this is a problem. In 8 hours a person can drive from Washington to Charleston, SC. Or he can mow the lawn for an hour and produce just as much pollution. The States need to be able to clean up these engines.

The small engine provision is bad for the States and for public health. The compromise from last week did not change the substantive issues.

The small engine provision is still using an appropriations bill to make fundamental changes to the Clean Air Act. It is an environmental rider on the HUD–VA bill. It has had no authorization. It has had no hearing. It does not belong in this bill.

The amendment from Wednesday still takes a longstanding right away from the States. States with serious air pollution need to be able to reduce emissions from these engines. The 1990 amendments to the Clean Air Act guarantee the States the right to do so. This provision overturns that right without even going through the proper channels.

Under the compromise, my State alone will lose the right to regulate over 4 million cars' worth of pollution. That is what is being taken away—access to 4 million cars' worth of pollution. That means the State is most likely going to have to tighten regulations on stationary sources, which is going to mean more expense to major industries in the State of California. That means job loss in other industries.

I cannot see how building cleaner engines should cost jobs to individuals at one company when every other company has said they will be able to build the engines without job loss. Because Briggs & Stratton does not like one California regulation, every State in the Union is going to permanently lose the right to reduce pollution from these engines. States with serious pollution problems need to be able to reduce these emissions or risk harming public health and losing transportation funds.

This provision affects every single State, not just California. For example, I understand that New York has already adopted the California regulation affecting recreational boat motors. New York will lose that regulation because of this provision.

Eight southeastern States—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee—have all written a letter opposing this provision. The letter clearly states that any compromise that does not fully restore the State's rights is unacceptable to those States.

Mr. President, I ask unanimous consent that the November 10 letter from the Southeastern States Air Resources Managers be printed in the RECORD following my remarks.

The PRESIDING OFFICER (Mr. CRAPO). Without objection, it is so ordered.

(See exhibit No. 1.)

Mrs. FEINSTEIN. Thirdly, States still need flexibility to improve air quality. One size-fits-all solutions just do not work. We should not force every State to rely on national regulations. National regulations move too slowly and are often just not strong enough for States with a lot of pollution.

We have heard a lot about unfunded mandates lately in the Senate. We have given the States a duty to protect public health. The small engine provision does not change the States' responsibility but it takes away a mechanism by which they might comply with this mandate. This provision, in a sense, creates another unfunded mandate.

The amended provision still creates a very bad precedent. I don't think one company should be allowed to overturn States' rights under the Clean Air Act, especially when that company said on their annual report to the Securities and Exchange Commission on September 11, 2003, that the disputed regulation would not "have a material effect on their financial condition or results of operations, given that California represents a relatively small percentage of Briggs & Stratton's engine sales and increased costs will be passed on to California consumers."

This is their 10–K, their report to the Securities and Exchange Commission, from just 2 months ago. Where does the truth really lie? If California is just a small part of the company's market and the company will just pass on the costs, why does Briggs and Stratton object to the California regulation and insist on changing the Clean Air Act? It makes no sense.

I believe people will pay the necessary costs for cleaner engines. I believe that people will pay for cleaner lawnmowers when they learn that you have to drive your car for 13 hours to produce as much pollution as your lawn mower does in 1 hour.

Every company and every industry needs to do their part to protect public health. Briggs & Stratton should be no different. We should not allow them to pass the buck to other industries.

Once again I will quote from a letter from Allen Lloyd, the Chairman of the California Air Resources Board, about this provision. According to Mr. Lloyd,

> . . . the aggregate impact of the 50 hp [horsepower] preemption will be 70 tons per day of smog by 2010, the date by which California's various offroad regulations would have been fully effective. This tonnage impact is over and above Federal regulations for the same emission sources and reflects California's more health-protective rules. For context, 70 tons per day is equivalent to adding 2.4 million cars to California roadways . . .

So when the conference committee includes this provision in their conference report, they are effectively adding 70 tons of pollutants to California's air each day. The California Air Resources Board has also said that this provision could well result in the death of more than 300 people per year in California alone.

California already has seven nonattainment areas, more than any other

State. My State has the worst air quality in the country, and now this provision is taking away the State's right to regulate some of the dirtiest engines available. It is a strike at the core of States' rights under the Clean Air Act.

The small engine provision also threatens our economy. California has to reduce emissions from these engines to comply with air quality requirements under the Clean Air Act. Taking away the State's right to reduce emissions threatens our State Implementation Plan, with serious economic consequences.

Violating the State's plan will jeopardize $1 billion in transportation funds per year in Southern California alone. The South Coast could lose those funds next summer. The South Coast has the worst air quality in the nation and cannot afford to lose $1 billion per year in transportation funds.

Statewide, this provision threatens $2.4 billion in transportation funds. And this is just in California.

So this has huge ramifications for my State and every other State facing serious pollution. They will all be in a serious situation in the future when the time comes and they find their hands are tied because one company did not want to build cleaner engines.

It has become clear that the supporters of the small engine provision have confused two very different ideas. Just because a group is concerned about the California regulation on lawn and garden equipment does not mean they support the small engine provision.

The California Association of Fire Chiefs has expressed important safety concerns about a specific regulation. But the chiefs have also clearly said they oppose the small engine provision because of its affect on States' rights. The Fire Chiefs understand the importance of state leadership on these issues. To quote the chiefs' November 11 letter in reference to the small engine provision:

> We were never asked to comment on this matter, but for the record, we do not support legislation that would interfere with a state's ability to protect its own citizens.

Mr. President, I ask unanimous consent that the Fire Chiefs' letter from November 11 be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mrs. FEINSTEIN. Mr. President, I do not quite know what to do. I would very much like to have a vote on this matter. I have tried to importune the conferees. I am told the Governor of California, Mr. Schwarzenegger, now inducted as Governor, has indicated his support for the removal of this amendment. It is my understanding that a whole panoply of States oppose this provision.

It is clear to me this is a bad thing. It is clear to me this is going to set back the cause of clean air. It is clear to me this is going to impact youngsters and the elderly with asthma and other lung diseases. It is clear to me that it is going to impact our transportation dollars. It is clear to me that by 2010, because of one company, California is going to have deal with 70 additional tons of smog per day. None of this needs to happen.

I regret that I cannot send an amendment to the desk. I regret I am not being allowed a vote on the amendment. But this is the wrong thing to do.

I yield the floor, Mr. President.

EXHIBIT 1

SOUTHEASTERN STATES AIR
RESOURCE MANAGERS, INC.,
November 10, 2003.

Hon. ZELL MILLER,
Dirksen Senate Office Bldg.,
Washington, DC.

DEAR SEN. MILLER: Southeastern States Air Resource Managers, Inc. (SESARM), representing the directors of the southeastern state air pollution control agencies in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, is writing this letter to encourage your support of the removal of a position introduced by Senator Bond in S. 1584, the Fiscal Year 2004 VA, HUD and Independent Agencies Appropriations Bill. The provision would amend Section 209(e)(1)(A) of the Clean Air Act to curtail a state's authority to reduce emissions from diesel and gasoline off-road equipment and engines.

While Senator Bond's proposed provision regarding the off-road engines apparently was intended to address rules adopted only in California, it will limit the ability of all states to solve serious public health-related air quality problems. Senator Bond's proposal revises a very important provision of the Clean Air Act which allows states to adopt engine emission standards more stringent than the federal standards as long as appropriate federal review processes are followed. Congress wisely put this provision into the Act to give states the ability to deal with serious air quality problems across the country. SESARM opposes the impact of the Bond proposal on this important provision.

Please note that other compromise amendments which fall short of fully restoring Section 209(e)(1)(A) are, in our opinion, unacceptable and will constrain states as discussed above. SESARM and your state air pollution control agency would appreciate your support of removal of the Bond Amendment from S. 1584.

Sincerely,

JOHN E. HORNBACK,
Executive Director.

EXHIBIT 2

CALIFORNIA FIRE CHIEFS ASSOCIATION,
November 11, 2003.

Sen. DIANNE FEINSTEIN,
Hart Senate Office Building,
Washington, DC.

DEAR SEN. FEINSTEIN: The California Fire Chiefs Association (CFCA) has been expressing concerns about the potential fire hazard posed by catalytic converters that may be required for certain lawnmowers and other outdoor power equipment. In just the past few days, out concerns seem to be receiving significant attention.

After further investigation we have determined that there were some misunderstandings between CFCA representatives and the California Air Resources Board (CARB) as it relates to the regulations.

The fire safety issues we raised need more attention and require independent assessment before engineering and production decisions are made. In our most recent discussions with CARB, they support the idea of an independent study, and have proposed moving forward with a study, much the same as what is now underway with catalytic converters being used in marine applications. We enthusiastically support this idea, and will be working closely with CARB, the Sate Fire Marshal, and the US Environmental Protection Agency to ensure that all fire safety concerns are addressed. We wish to make clear that we regard fire safety and environmental quality as being equally important, and wish to make it clear that we support without reservation the air quality goals of the proposed requirements. We support the regulation moving forward as we have received assurances from CARB that our safety concerns will be addressed through the independent study.

Finally, we understand that as a separate matter, the Senate is debating the question of whether states are free to develop safety and environmental standards. We were never asked to comment on this matter, but for the record, we do not support legislation that would interfere with a state's ability to protect its own citizens. To the contrary, we have had to count on the Sate of California to develop fire safety standards for upholstered furniture, mattresses and bedding because the federal government has failed to do so. The issues of fire safety and air quality as they relate to outdoor power equipment can be addressed, and I believe that working closely with CARB we will find a solution that will provide a high degree of fire safety while maintaining CARB's goals for air quality.

In closing, allow me to express my personal apologies to you. We were not aware that you had an interest in this matter or that we were engaged in anything beyond fire safety. As you know, we have had our hands full in the past month. Even so, if we had been aware of your interest, we would have asked for your help in sorting through these issues. You have always been there when we've needed your help. We look forward to moving beyond the current issues and working with you on higher levels of air quality and fire safety for the communities of California.

Sincerely,

WILLIAM J. MCCAMMON,
President,
California Fire Chiefs Association.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I have had numerous discussions with the Senator from California. Obviously, we see these issues very differently.

Let me point out to my colleagues, this is not something that has just come up. When we had the committee markup of this bill, the Senator and I had an opportunity to debate it at that point. An amendment, not modified, such as the one I presented on the floor last week, was kept in the bill. Her motion to strike failed 17 to 12.

After that time, we met with the Senator from California and other concerned Senators to make sure we did not do the things that the current California Air Resources Board regulation would do; that is, cost 22,000 American jobs and put at risk of fire, burn, and explosion people using small engines, whether they be in a lawnmower, a leaf blower, a weed eater, or a chain saw. These were the real problems in the California Air Regulation Board proposal.

Now, when I listened to the Senators, they wanted to make sure, No. 1, they did not affect diesels. I said good point; make sure we cut diesels. They wanted to make sure it only applied to smaller engines, and that is why we put the 50 horsepower and smaller engine limitation in it. They wanted to make sure you could require retrofitting, and we made it clear it was only for new engines.

Most of all, almost every State wanted to get some form of reduction of pollution from these small engines, so we crafted an amendment that made all those changes and specifically directed the EPA to move forward with a rule. The fastest they can do that rule is that it is to be proposed by December 1, 2004; and then the EPA is required to move forward on it. That would be a quicker reduction in emissions than under CARB, the California Air Resources Board, proposal.

Now, when this measure came to the floor, I had a number of cosponsors, people who felt very strongly, as do I, about this amendment, and we debated it on the floor. The Democratic leadership came to us and said: We do not want to vote on this. We want to accept it by voice vote. We said: All right, we will cut off the debate, accept it by voice vote, if that is the last we are going to deal with it.

Now, today, my colleague from California says she was not a party to that agreement and she wants a vote on it. Well, I view it as a failure to live up to that agreement.

Nevertheless, there are a very significant number of Senators on my side, and I assume on the other side, who would want to weigh in on it, and some of those Senators are not back. As I said, we have a deadline this afternoon when we are going to try to take other amendments on this bill. I said we would not be debating this amendment today because other Senators have amendments that must come up.

But there is so much misunderstanding about what the Clean Air Act provides, what CARB has done, and what my amendment would do.

First, the Senator has said, on a number of instances, that every State loses the right to fight pollution. States can take bits and pieces of the California ruling and use it in their State.

Well, No. 1, California is the only State that has a narrow exemption for engines under 175 horsepower that do not affect agriculture and construction. Obviously, many of these engines that are affected would affect agriculture and construction. No State can pick and choose and develop its own regulations from part of the California regulation or take bits and pieces of the California regulation. No State, on its own, can go out and regulate these small engines. There was a presumption in the Clean Air Act that we would have a national standard.

Now, the EPA has moved forward on regulations on a wide variety of engines. We are directing them specifically to go after these small engines and get the proposed rule out within 1 year, to consider job loss, and to consider the fire hazard of these catalytic converters.

I understand the CARB regulation would not go into effect until 2007. My colleague from California said we cannot force all States to rely on national standards. Well, that is what the Clean Air Act does. We want to make sure the national standards are imposed to give every State the reduction in air pollution which comes about from implementing the kinds of changes that were made for ATVs and snowmobiles that do not require catalytic converters.

At the end of the day, if they cannot get the reductions, then EPA, which has a national responsibility, can listen to all of these arguments. Frankly, many of the arguments made by the Senator from California reflect a completely different understanding than I have on the science and on the technology involved.

Under these circumstances, I do not think we ought to be exporting 22,000 jobs to the Far East, perhaps China, and posing a significant fire risk to anybody using small engines.

As I have said before, I use those small engines. When I am using a chainsaw, I am very aware of the danger of that saw blade. If it had a catalytic converter-heated engine, at 1,100 degrees, I do not know how I would do it. I would probably, if I cut down a tree, set the tree on fire with the catalytic converter.

When we are talking about fire hazards, as I would think anybody in California would be very much concerned about, a catalytic converter is a tremendous fire hazard. I will go into that in a moment.

But my colleague said one company, referring to Briggs and Stratton, should not be allowed to change our air quality rules. Frankly, California wrote a rule that favors one company, Honda, which manufactures small engines and has very significant production in the Far East already.

They could start up just like that because the American companies would not be able to retool immediately. Honda would capture the market. I am arguing for the jobs of 5,000 workers in Missouri, 5,101 workers for Briggs & Stratton, and about 2,000 of them work for Briggs & Stratton; 3,000 of them work for other companies that have part of this: In Wisconsin, 5,158 jobs; Georgia, 2,542 jobs; Kentucky, 2,198 jobs; Illinois, 2,116 jobs; Alabama, 1,288 jobs.

I am worried about the workers. I have visited those workers. I did not know the Senator from California was coming to the floor today. Otherwise, I would have brought out a scroll signed by the workers who would lose their jobs if this amendment were adopted.

The Senator points out that Briggs & Stratton said it wouldn't cause them much trouble. Well, they are a multi-billion-dollar company. They can move their production to China as well. I fully expect that they would. It wouldn't make much of a difference to the shareholders. They said it wouldn't affect the shareholders, no. But it will affect 22,000 jobs in the United States. That is why this amendment is important.

These arguments and the totally differing view of how this problem can be addressed should rightly be debated at the national level. The EPA is directed to move forward, take all the technological information, take the arguments, listen to the safety concerns, listen to the cost benefit arguments, and figure out how the Nation can get cleaner air by further limiting the pollution from these small engines. If they come down with a modified catalytic converter proposal at the end of the day, so be it.

But the California fire chiefs were excluded from the negotiations. The negotiation went on between CARB and Honda. The California fire chiefs were stunned because they had been assured that there would not be a problem with the regulation causing fire.

After they saw the CARB rule, the California State fire marshals wrote a letter saying:

> We categorically do not support the CARB proposed regulation because we believe it will lead to a substantial increase in residential and wildland fires.

The Senator and the chief of staff from California have had very direct conversations with representatives of the California fire chiefs. They must have been very persuasive because now their letter says:

> We are sure that the safety concerns can be addressed.

I think that suggests that there was a great deal of effective persuasion applied. But they were not the only ones who believed there was a problem, when you look at the other people who have raised questions about it. The National Association of State Fire Marshals remains very concerned that the CARB rule cannot be safely met. The U.S. Consumer Product Safety Commission expressed concerns over the potential for burn, fire, or material hazards that remain unaddressed. The Missouri State fire marshals remain concerned that the CARB rule creates a significant threat to the safety of the people, property, and the environment. The National Marine Manufacturing Association is concerned that California's activities create marine safety issues that must be evaluated further before they are imposed on industry.

There is one place where they can evaluate those concerns and evaluate the technology and make sure we clean up the air without an undue cost, a cost in risk of fire and explosion. I was talking with a fellow in Missouri this weekend at a football game. His neighbor drove a car with a catalytic converter out into the field, caught the field on fire. A lot of people are very much concerned, in addition to these groups, as to the dangerousness of catalytic converters, which can get up to 1,151 degrees.

In the November 6 letter I received before there was this very persuasive meeting with the eloquent Senator from California, the California fire chiefs said:

> Earlier this year, in oral and written communications to the California Air Resources Board, our association expressed serious concerns about the CARB's plan to require catalytic converters on lawn mowers and other lawn and garden power equipment. Firefighters have far too much experience suppressing fires caused by catalytic converters on automobiles carelessly parked on combustible grass and leaves. After this past month of fighting wildland fires, we are almost too tired to think about catalytic converters on lawn mowers which, after all, are intended for use on grass. California does not need yet another way of igniting fires.

That was the November 6 letter sent to me.

Grass ignites at about 500 degrees. Grass clippings ignite at 518 degrees. High efficiency catalytic converters from CARB's own testing reach temperatures of 1,126 degrees Fahrenheit. We wrote to CARB. I asked them if they had any safety data, if they had done any studies, had they looked at alternative methods, had they tried out any of these small engines with catalytic converters, had they done any tests. We asked them a whole list of questions that any responsible agency would be expected to answer. I fully expect the Environmental Protection Agency to make sure we have a rule that cleans up the environment but doesn't cost jobs and doesn't increase significantly the risk of fire.

There are many issues we are not going to be able to resolve here today. I want to see these technology issues debated, worked out on a prompt schedule, and produced in a resolution by the EPA.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. BOND. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue the call of the roll.

The legislative clerk continued with the call of the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I have been working with the distinguished Senator from California for more than a day. I am trying to work out this very sensitive issue dealing with small engines, which has been talked about at some length.

I am very disappointed that the majority is not going to allow the Senator from California to have a vote on this amendment. It is too bad. It happens. It happens too much around here. When there is some decision made that they may not be able to win the vote, they just don't give us a vote. I think that is unfortunate.

I have spoken to the Senator from California and, of course, everybody needs to hear it from her. We are going to take our chances in conference on this matter. The House has said this should not be in the bill. The Senator from California, if she wanted to be like too many people are around here and say if she doesn't get what she wants, nobody will get anything, could hold up action on this important legislation that Senator MIKULSKI has worked on for many months with the majority.

The only thing I can say is I applaud the Senator from California for what she has indicated she reasonably might do, and that is not go forward on this amendment. I think it is too bad.

I have said it before, and I will say it again. I personally think she is on the right side of this issue. If this matter were brought to a vote, I think she would win it on the Senate floor. Obviously, we have been here now for 3½ hours, and the majority has indicated they are not going to allow a vote. When this amendment goes down, it will allow us to move forward with other pieces of this legislation.

I say to my friend from California, it is my understanding that she has heard the statements that I have made. And as I have indicated through the Chair to the Senator from California, this happens far too often here. When it appears there is a chance that we can win a vote, they don't give us a vote. As a result of that, we are not going to be able to have a vote. But for the Senator from California, being the team player she is, we would not be able to go forward on the bill. I still think the Senator from California and the Senator from Nevada are members of the conference, and we will do our best in full conference to see that justice prevails. I will do what I can.

I express my appreciation to the Senator from California for her not moving forward with the amendment at this time.

Mrs. FEINSTEIN. Mr. President, I thank the Democratic whip for his concern and his words.

I want to correct a couple of things. The Senator from Missouri pointed out that catalytic converters are fire hazards. That may be true with some. But virtually every automobile, every pickup truck, every sport utility vehicle driving on the roads and highways of California today is equipped with a catalytic converter. It has been that way for a substantial period of time. Catalytic converters are nothing new.

Secondly, I want you to know that Honda has said that they would increase their U.S. production of these engines even with the California regulation. So, in other words, there are other companies manufacturing these engines in the United States that have said they would adhere to these new regulations and produce cleaner engines.

Thirdly, I want you to know that Briggs & Stratton has already moved some of its operations to China. I very much doubt that this California regulation has much to do with it. I am told they have been manufacturing in China since 1986, and in April of this year they increased their ownership share of two factories in China from 52 percent to a controlling 90 percent. I am also told that California regulators have incorporated Briggs & Stratton's own recommendations into its final rule issued in September. The Air Resources Board relaxed the regulation's exhaust emissions standard, relying instead on controlling evaporative emissions, as recommended by Briggs & Stratton.

So I don't know why this is being done. But I will tell you one thing: everybody who votes to sustain this will be also voting to put 70 more tons of smog into California's skies in 2010. That is how important this issue is to our State.

I yield the floor.

Mr. REID. Mr. President, it is my understanding that the Senator is going to withdraw the amendment.

Mrs. FEINSTEIN. I did not send it to the desk.

The PRESIDING OFFICER. The Senate is in morning business at this time.

Mr. REID. Could the bill be reported?

Mr. BOND. Mr. President, I ask that we go to the bill.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004—Resumed

The PRESIDING OFFICER. The clerk will state the bill.

The legislative clerk read as follows:

> A bill (H.R. 2861) making appropriations for the Departments of Veterans Affairs and

Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

Pending:

Bond/Mikulski amendment No. 2150, in the nature of a substitute.

Clinton amendment No. 2152 (to amendment No. 2150), to permit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative of the Department of Veterans Affairs for purposes of enhanced services while limiting the use of funds for the initiative for purposes of the closure or reduction of services pending a modification of the initiative to take into account long-term care, domiciliary care, and mental health services and other matters.

Mr. REID. Mr. President, I ask unanimous consent that the only amendments in order on this bill be the Dayton amendment on the Wellstone Center; Durbin amendment on senior discount; Jeffords amendment on new source review study; Bingaman sense-of-the-Senate amendment on DOD smallpox vaccine; Schumer, EPA clean air amendment; Feingold, VA health care fairs/outreach; Reid-Graham, Iraq prisoners; Daschle, Agent Orange; and the managers' amendments that are approved by Senators MIKULSKI and BOND.

Mr. BOND. Mr. President, I have no objection on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, I appreciate the actions taken by the distinguished minority whip, the Senator from Nevada, and also the agreement by the Senator from California to withdraw her amendment.

All I can say about it is, No. 1, we had an agreement, we thought, with the floor staff when we debated this last week—requested by the minority floor staff—that there not be a vote because they did not want a vote. Our condition was we needed to move on to other things. We would have a brief time schedule. As you can see, there is no way that we can restart, in the 45 minutes we have left, this entire debate.

I will state that I categorically disagree with the views reached by the Senator from California. If we are successful in including the measure in the final VA–HUD amendment, all these issues will be resolved by the EPA.

Mr. President, we had an oversight. Senator MCCAIN has an amendment that he was promised the other day. I ask the minority leader if he would agree to adding that since we told Senator MCCAIN he could bring his amendment up.

Mr. REID. Yes, I agree that he should be able to do so.

I ask unanimous consent that the McCain amendment be added to the list.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, we are open for business. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2194 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I send an amendment to the desk on behalf of Senator REID of Nevada and Senator GRAHAM of Florida, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to laying aside the pending amendment?

Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Mr. REID, for himself, and Mr. GRAHAM of Florida, proposes an amendment numbered 2194 to amendment No. 2150.

Mr. BOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To express the sense of Congress on damages caused by the regime of Saddam Hussein during the First Gulf War)

On page 125, between lines 7 and 8, insert the following new section:

SEC. 418. (a) Congress makes the following findings:

(1) During Operation Desert Shield and Operation Desert Storm (in this section, collectively referred to as the "First Gulf War"), the regime of Saddam Hussein committed grave human rights abuses and acts of terrorism against the people of Iraq and citizens of the United States.

(2) United States citizens who were taken prisoner by the regime of Saddam Hussein during the First Gulf War were brutally tortured and forced to endure severe physical trauma and emotional abuse.

(3) The regime of Saddam Hussein used civilian citizens of the United States who were working in the Persian Gulf region before and during the First Gulf War as so-called human shields, threatening the personal safety and emotional well-being of such civilians.

(4) Congress has recognized and authorized the right of United States citizens, including prisoners of war, to hold terrorist states, such as Iraq during the regime of Saddam Hussein, liable for injuries caused by such states.

(5) The United States district courts are authorized to adjudicate cases brought by individuals injured by terrorist states.

(b) It is the sense of Congress that—

(1) notwithstanding section 1503 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 117 Stat. 579) and any other provision of law, a citizen of the United States who was a prisoner of war or who was used by the regime of Saddam Hussein and by Iraq as a so-called human shield during the First Gulf War should have the opportunity to have any claim for damages caused by the regime of Saddam Hussein and by Iraq incurred by such citizen fully adjudicated in the appropriate United States district court;

(2) any judgment for such damages awarded to such citizen, or the family of such citizen, should be fully enforced; and

(3) the Attorney General should enter into negotiations with each such citizen, or the family of each such citizen, to develop a fair and reasonable method of providing compensation for the damages each such citizen incurred, including using assets of the regime of Saddam Hussein held by the Government of the United States or any other appropriate sources to provide such compensation.

Mr. REID. Mr. President, I rise on behalf of myself and Senator GRAHAM of Florida, and on behalf of 17 brave Americans who were taken hostage and tortured by Saddam Hussein during the first Gulf War.

I have already spoken in this Chamber about the horrible treatment these Americans endured. Saddam's evil henchmen violated international law in the treatment of these war prisoners, and they violated every law of human decency.

After the war, these prisoners sought justice against Saddam. They did it not only because he had tortured them in violation of the law, but also to send a message that would protect other Americans in the future. And Congress supported their effort. In 1996, Congress amended the Foreign Sovereign Immunities Act so their case would be able to proceed.

They won their case in court on its merits because they had the truth and the law on their side. But now they are in danger of losing the judgment they legally obtained because they do not have the United States Government on their side.

The Justice Department intervened to prevent them from collecting their judgment from seized Iraqi assets. And when this Senate responded by passing this very same amendment a few weeks ago, the State Department intervened by seeking to strike the amendment from the special Iraq-Afghanistan appropriations bill.

In a letter dated October 27, Deputy Secretary of State Armitage wrote these words:

> Under the President's May 7, 2003 Determination . . . any provision of law that applies to countries that have supported terrorism was made inapplicable to Iraq.

This is the country we invaded as part of our war on terrorism . . . yet the President has said that Iraq will not be treated as a nation that supported terrorists.

I think that is wrong, and my amendment, which is exactly the same as the one the Senate earlier approved, makes perfectly clear the longstanding intent of Congress that terrorists who torture U.S. citizens must be held accountable.

Saddam Hussein was a tyrant who committee horrible atrocities against his own people and against Americans.

In fact, many believe that he is behind the continuing attacks on our American solders. It is beyond my comprehension why these Federal bureaucrats are now siding with Saddam Hussein and against these former prisoners of war who suffered at his hands.

These brave heroes are merely seeking to hold Iraq accountable for its crimes, and deter the torture of any American citizen by a terrorist state in the future. A civilized world cannot let such crimes go unpunished. The perpetrators must be held to account.

I urge adoption of this amendment.

Mr. GRAHAM of Florida. Mr. President, I join Senator REID today in offering an amendment that would allow a group of 17 prisoners of war from the first war in Iraq and their families, to collect the damages that have been awarded to them in a court of law, that are being blocked by the Bush administration.

Historically, foreign nations and their diplomats have been protected from lawsuits in the United States, for their actions. However, that historical protection has been limited in certain instances. In 1996, Congress amended the Foreign Sovereign Immunities Act to allow American citizens and families of American citizens to sue nations that have been found to be "terrorist states," for acts of terrorism such as torture or taking of hostages. Congress went on to enact the Terrorism Risk Insurance Act of 2002, which included a provision to allow frozen assets of terrorist states in U.S. banks to be used to pay court-awarded damages.

Relying upon this legal framework, 17 of 21 prisoners of war of the 1991 Persian Gulf War and 37 members of their immediate families filed suit against Iraq. I won't describe the horrific experiences of every one of these brave men or the unimaginable distress of their families. But I do want to tell you about the experience of three of these POWs: LTC Michael Robert; LTC Russell Sanborn; and LTC Craig Berryman, three service members from Florida. It is important for the Senate and the American people to understand what they suffered while they were held in captivity.

These soldiers endured horrendous treatment and are fortunate just to have survived. LTC H. Michael Roberts was shot down while flying over Iraq on January 19, 1991, He was able to eject but was immediately captured when he landed. In captivity, he suffered repeated beatings—his captors cut his head from repeated blows from their rifle butts and he was shocked with an electronic prod.

LTC Russell Sanborn's plane was shot down on February 9, 1991, and he was taken prisoner by a group of Iraqi soldiers. He was brutally beaten and suffered severe malnutrition. He lost 14 pounds in 26 days. Upon his release, Russell was diagnosed with parasitic anomalies and hearing loss.

LTC Craig Berryman's aircraft was shot down on January 28, 1991. In captivity he survived numerous beatings and torture. As a result of his abuse in Iraq, Craig has continued to experience health problems.

After having to relive these horrors in court, on July 7, 2003, a judgment was rendered in their favor and they were awarded compensatory and punitive damages. The problem is that when they went to collect their damages against the frozen Iraqi assets held in U.S. banks, the money was no longer there. That is because on March 20, 2003, immediately after start of military action against Iraq, President Bush issued an executive order confiscating Iraq's frozen assets in the United States and placing them in the Iraq Development Fund for use in its reconstruction.

The Bush administration has done every thing in its power to undermine the integrity of this judicial process and to protect the interests of Iraq over the interests of American former prisoners of war. On May 22, 2003, the President issued another executive order which prohibits any judicial action that would seek funds from the Development Fun for Iraq, or other Iraqi national assets. The Bush administration went on to interpret the language in the 2003 emergency war supplemental intended to remove restrictions to providing foreign assistance to Iraq as a bar attachment of Iraqi foreign asset.

When repeatedly asked about why the administration is standing in the way of these veterans being paid their court-awarded damages, the White House spokesman, never answered the question, but reiterated, three times, that "there is no amount of money that can truly compensate these brave men and women for the suffering they went through at the hands of Saddam Hussein." If the Bush White House has their way, there will, in fact be no amount of money to compensate these brave men and women despite having proven their case in a court of law.

Earlier this month, Congress approved President Bush's $87 billion supplemental appropriation request for the occupation and rebuilding of Iraq. At that time, I raised some significant questions as to our national priorities. We are facing mounting national debt. While our roads, bridges, schools, water and sewer lines, and electric grids are deteriorating, we will be sending billions of dollars to rebuild Iraq.

This is another one of those questions. We are sending money to rebuild Iraq, but we are turning our back on a judicial decision that was achieved under laws this body created. We are turning our backs on the torture inflicted upon these 17 veterans who were taken as prisoners of war while serving our country.

Mr. President, the costs of war do not end at the borders of Iraq; veterans will continue to pay them for years to come. I urge my colleagues to join us in this effort to see this injustice is rectified. I thank Senator REID for his leadership on this issue.

Mr. BOND. Mr. President, we are willing to accept the amendment on this side.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, again this is an amendment that was offered and adopted earlier. It deals with Americans who were held prisoner of war in the first gulf war. This is legislation that is directly in keeping with the sense of the last amendment that was adopted. Senator GRAHAM feels strongly about this issue, as do I. I ask that the Senate approve the amendment.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to amendment No. 2194.

The amendment (No. 2194) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCONNELL. I ask unanimous consent that I be permitted to speak as in morning business for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. MCCONNELL are printed in today's RECORD under "Morning Business.")

Mr. McCONNELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, are we on the VA-HUD appropriations bill?

The PRESIDING OFFICER. We are.

Mr. DURBIN. It is my understanding that at 4:30 we are going to move to the FAA reauthorization bill. Understanding that deadline faces us, with the approval of the chairman of the subcommittee—I hope to have his attention before I make this request—if I might ask the Senator from Missouri, would it be acceptable for me to divide the time between now and 4:30 so that

I would use 15 minutes and then yield to Senator DAYTON for 15 minutes, who also has an amendment to offer? That way, we would reach the 4:30 deadline by dividing the time equally. If that meets with the approval of the chairman of the subcommittee, I would like to make a unanimous consent request along those lines.

Mr. BOND. Mr. President, to respond to my good friend, No. 1, we are ready to accept his amendment. If we could have some more time to handle other business, I would like to. If, perhaps, the Senator—each Senator could take 5 minutes or 10 minutes?

Mr. DURBIN. Let me thank the chairman for accepting my amendment. I will take 5 minutes and that is all. I would like to give 15 minutes, if it is acceptable, to Senator DAYTON to offer his amendment, and then I think that leaves you a balance of 10 minutes before 4:30.

Let me say I accept the offer of the Senator from Missouri. I will speak for 5 minutes.

Mr. BOND. I thank the Chair.

AMENDMENT NO. 2195

Mr. DURBIN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, the pending amendment is set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself Ms. SNOWE, Mr. JEFFORDS, Mrs. BOXER, Mr. LAUTENBERG, Ms. CANTWELL, and Mr. LIEBERMAN, proposes an amendment numbered 2195.

Mr. DURBIN. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

None of the funds provided in this Act may be expended to apply, in a numerical estimate of the benefits of an agency action prepared pursuant to Executive Order 12866 or section 812 of the Clean Air Act, monetary values for adult premature mortality that differ based on the age of the adult.

Mr. DURBIN. Mr. President, I ask the following Senators be added as cosponsors of this amendment: Senators SNOWE, JEFFORDS, BOXER, LAUTENBERG, CANTWELL, and LIEBERMAN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. In 5 minutes, I will try to describe very briefly what this amendment does.

This amendment will stop the Environmental Protection Agency and other agencies funded in this bill from using the discriminatory method known as the senior death discount. Right now, heart disease, cancer, and strokes are the leading causes of death of people over 65. According to CDC, air pollution can be particularly devastating to the health of seniors.

The EPA should be creating regulations to protect everybody. However, now we are in the cost-benefit era, and that means each regulation has to be costed out. In other words, we must determine the burden regulations have on the private sector of our economy, including what will it cost them. We must also determine the benefit regulations have for all Americans.

In order to reach the proper evaluation of any regulation, you have to determine the cost of the harm that is being done. That is why this amendment is being offered.

Right now, the EPA is discounting the lives of senior citizens. You may have seen this ad in magazines and newspapers showing this forlorn senior. This lady has been told that since she is over the age of 70, she is only worth 63 percent of any other person, say someone age 69. You can understand her sadness, and a sadness that might be shared, incidentally, by some 19 Senators who are 70 years old or older. Try to tell these Senators they are worth only two-thirds of those younger, and you are in for a fight—and rightly so. Their lives are as important to them and to our Nation as anyone else's life.

We need to try to establish the cost to America in honest terms, to determine, for example, the real cost of the regulation relating to heavy diesel equipment, and not say senior citizens are worth less today than others.

I ask unanimous consent that a letter in support of my amendment from the AARP be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AARP,
Washington, DC, November 14, 2003.

Hon. RICHARD J. DURBIN,
Senate Dirksen Office Building,
U.S. Senate, Washington, DC.

DEAR SENATOR DURBIN: AARP commends you for your efforts to amend H.R. 2861, the Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations bill for Fiscal Year 2004, to prohibit the use of funds to "apply numerical values for adult premature mortality that differ based on the age of the adult in a numerical estimate of the costs and benefits of an agency action. . . ." We urge that you continue your efforts as the bill is folded into an omnibus appropriations measure.

AARP submitted comments in May to the Office of Management and Budget in response to its Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations. In them, we expressed our deep concerns regarding the arbitrary 37 percent discount to the life value of adults aged 70 and over incorporated by the Environmental Protection Agency in its cost-benefit analysis of the Administration's Clear Skies Initiative. We noted that the discount lacked a sound scientific basis, and we voiced concerns regarding its ultimate impact not only on older persons, but on the rest of the population as well.

OMB's Office of Information and Regulatory Affairs subsequently called upon EPA to discontinue use of the age adjustment factor cited above, and advised other federal agency analysts that they should not use it either. At the same time, the agency appeared to encourage other methodologies that might assign monetary values for adult premature mortality that differ based on the age of the adult. Application of age-related analytical methodologies or others involving population subgroupings—particularly when monetary assessments are assigned to life value—hold great risks. We are concerned that there may be insufficient science to justify such action.

Again, AARP strongly supports your efforts as well as those of Representative Thomas Allen, to ensure that the lives of older people not be devalued, and that needed protections not be shortchanged by the application of biased analytical approaches. We urge your colleagues in conference to do the same.

Should you have any questions, please contact me or have your staff contact Jo Reed or Tim Gearan in our Federal Affairs office at 202-434-3800.

Sincerely,

MICHAEL NAYLOR,
Director of Advocacy.

Mr. DURBIN. What we see, and I will summarize, is an effort by some to discount the lives of senior citizens in America, when judging the impact of public health regulations. That has to come to an end. We have to make certain the policy we follow in this country, the policy that is being articulated by John Graham, the head of the OMB regulatory office, is one that counts senior citizens the same as any other citizen.

Some of the statements made by Mr. Graham are troubling. But with this statement, and the amendment we have offered today, which is identical to the one offered by the House of Representatives, this bill will say once and for all that senior death discounting has to come to an end.

I ask unanimous consent that a list of supporting groups be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DURBIN. To reiterate, this amendment would stop the EPA and other agencies funded in this bill from using a discriminatory method of regulatory analysis known as the senior death discount.

Heart disease, cancer, and strokes are the leading causes of death for people age 65 and older. According to the CDC, air pollution can be devastating to the healthiest Americans, but can be deadly for senior citizens and other vulnerable populations with these diseases. The EPA should be creating regulations that maximize health protections for everyone, especially older Americans.

However, instead of maximizing the benefits for everyone, the regulatory analysis is being manipulated in a way that makes seniors' lives, and the lives of other vulnerable populations, worth less than the lives of other Americans.

This practice, commonly known as the senior death discount, devalues the lives of almost 30 million Americans who are over the age of 70.

To give you a sense of how this works, when the EPA develops environmental regulations, it must evaluate the costs and benefits of multiple regulatory alternatives. As part of the calculation of benefits, the EPA places a dollar amount on each life that can be saved by implementing each alternative. The EPA often makes a determination about which regulatory alternative to adopt based on the comparison of the benefits and costs.

Historically, the EPA valued all lives equally by using the same dollar amount for every potential life saved. But now the OMB is encouraging agencies to base the value of a life on the age of a person. In many cases, when discounting was applied, the life of each person over the age of 70 was valued at 37 percent less than the life of a younger person. In other cases, each year people aged, their lives were considered to be worth less—leading to some lives being worth a de minimus amount. In still other cases, the lives of people with illnesses or other health conditions were further devalued.

The use of the senior death discount has played a significant role in some very important environmental policies. In a rule to cut emissions from heavy diesel equipment, the EPA not only lowered the value of saving the lives of seniors, but also for children and the disabled. In the end, discounting calculations shrank the benefits from over $81 billion to just over $12 billion.

In a regulatory proposal to control air pollution from snowmobiles, the benefits were originally calculated to be approximately $77 billion by 2030. However, the health benefits dropped to only $8.8 billion—half of this decrease was due to the senior death discount and half was due to selective use of scientific studies limiting the amount of people who were affected. Applying the senior death discount in this instance made certain regulatory alternatives less appealing, and the rule was ultimately weakened as a result.

Some of my colleagues may wonder whether this amendment is still necessary, given that former EPA administrator Christine Todd Whitman said the agency would no longer discount the lives of seniors by 37 percent when calculating the benefits of regulatory policies. However, there is no guarantee that the new administrator or other agencies will follow this policy.

In addition, Whitman's remarks did not apply to other forms of discounting, which continue to be used. These other forms of discounting also reduce the benefits of important regulatory policies. Besides seniors, vulnerable populations, such as children and those with chronic illnesses and disabilities, are affected when these forms of discounting are used.

John Graham, the head of the OMB regulatory office, has backed away from his support of the 37 percent discount rate for seniors. However, as recently as June 16, he is still insisting that the value of saving lives should depend on a person's age, and he is still pushing agencies to use forms of discounting.

It seems that the end goal is to whittle down the benefits, until they are so close to the costs that regulations will be difficult to justify. So unless we take action today, it appears that the lives of vulnerable Americans will continue to be devalued.

The House already passed Congressman ALLEN's amendment to the House VA-HUD bill, which is similar to my amendment. Members from both sides of the aisle spoke in favor of the amendment and it was accepted unanimously. It's now time for the Senate to act.

Twenty-two national organizations, including AARP and a host of environmental and faith-based organizations, support this amendment.

Our Nation's regulatory system must use methods of analysis that produce regulations that will fairly protect all Americans from the effects of air pollution, toxic waste and other dangerous substances in our environment. We cannot afford to back away from decades of environmental laws that have improved the quality of life for all of us.

EXHIBIT 1

The following organizations support stopping the Senior Death Discount: 20/20 Vision; American Association of Retired Persons; American Baptist Churches USA; American Lung Association; Breakthrough Technologies Institute; Christian Church Disciples of Christ; Church Women United; Clean Air Task Force; Clear The Air; Coalition on the Environment and Jewish Life (COEJL); League of Conservation Voters; Natural Resources Defense Council; National Environmental Trust; OMB Watch; Physicians for Social Responsibility; Presbyterian Church (USA), Washington Office; Sierra Club; Sisters of Mercy of the Americas, Institute Leadership Team; United Church of Christ Justice and Witness Ministries; United Methodist Church General Board of Church and Society; United States Public Interest Research Group; Unitarian Universalist Association of Congregations.

Mr. DURBIN. I thank the chairman for accepting the amendment. I ask the chairman if at this point we could move the adoption, but I defer to him first.

Mr. BOND. As I indicated, we are ready to accept the amendment by the Senator from Illinois by voice vote.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. LIEBERMAN. Mr. President, I support this important amendment, to put a halt to the Bush administration's disrespectful and disturbing treatment of the lives of America's seniors in setting environmental policy. It is unconscionable that the administration continues to push agencies to evaluate pollution-control proposals on the basis of the age of the individuals who are protected. Judging people as less worth protecting based on their age—and to do so for the benefit of polluters—is preposterous and wrong.

Despite statements by administration officials aimed to quiet protest over the "senior death discount" factor —a factor used by the Environmental Protection Agency in recent regulatory cost-benefit analyses that literally devalues the lives of Americans 70 and older—the administration continues to push agencies to apply economic techniques for evaluating pollution-control proposals on the basis of the life expectancies of the individuals protected, slanting the analysis against the elderly who, of course, have fewer years left.

This effort by the administration reinforces the broader bias against the environment inherent in economic cost-benefit analysis, which can give short shrift to unquantifiable values of human health and a strong ecology, while overestimating the economic costs to polluters. By lowering the calculated economic benefit of protecting the elderly, these techniques will understate the apparent benefits of environmental protection, because the old are among the most vulnerable to respiratory and other diseases caused by pollution. The intended result is to block tougher environmental protections.

Selling out America's grandparents at a discount for the benefit of polluters is discriminatory and wrong. I am pleased to support this amendment to put a halt to this repugnant practice.•

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2195) was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Mr. DURBIN. I move to lay that motion on the table.

The motion to lay on the table was agreed.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. What is the pending business, Mr President?

The PRESIDING OFFICER. The pending business is the Clinton amendment.

AMENDMENT NO. 2193

Mr. DAYTON. I ask unanimous consent the amendment be set aside and that I be allowed to offer amendment No. 2193.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DAYTON] proposes an amendment numbered 2193.

Mr. DAYTON. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To fully fund the Paul and Sheila Wellstone Center for Community Building)

On page 58, line 21, strike "$1,112,130,000" and insert "$1,111,030,000".

On page 125, between lines 7 and 8, insert the following:

SEC. 418. There shall be made available $1,100,000 to the Secretary of Housing and Urban Development for the purposes of making the grant authorized under section 3 of the Paul and Sheila Wellstone Center for Community Building Act.

Mr. DAYTON. Mr. President, this amendment will provide $1.1 million in funding for the Paul and Sheila Wellstone Center for Community Building at the Neighborhood House in St. Paul, MN. It is funding for the completion of a commitment which Congress made last year as a memorial for the late Senator Paul Wellstone, my colleague and my friend, who lost his life in an airplane crash last October along with his wife Sheila, his daughter Marcia, and three staff members and two pilots.

This is a very emotional subject for me at an emotional time, so I ask my colleagues for their forbearance. We just passed the first anniversary of that terrible day Paul and Sheila and the others were lost forever. One of Minnesota's greatest Senators and most passionately loved and admired political leaders—not unanimous, but the most widely shared and deeply felt connection that I have ever seen in my lifetime between a political figure and the people of Minnesota.

He lost his life while flying to northern Minnesota for the funeral of the father of a State legislator, up on the Iron Range of Minnesota where a funeral is community. He knew, even though he had other commitments elsewhere, and even though Senator TED KENNEDY had graciously come to Minnesota to the metropolitan area on his behalf before the elections, which were just a few days away—those events were important, but Paul knew the family of the deceased would be helped in their grief by his presence. The community up there would be honored by his presence as a United States Senator, so he left his campaign schedule and the media market to go worship and pray and mourn with those others, friends and family and relatives, fellow citizens, as their U.S. Senator and as their friend..

That is what all of us do all the time in our jobs—Republicans, Democrats, liberals, conservatives, Senators here, Congressmen and Congresswomen, across the country—we drive, and if there is not time we charter small planes into small airports in our States. That day Paul's plane didn't land on the runway. It crashed perpendicular to it 2 miles away into a Minnesota forest and peat bog and caught on fire and burned eight people.

Tomorrow—another reason this is an emotional topic for all of Minnesota—we are told in the news reports today, the National Transportation Safety Board will hold a hearing to pass final judgment on the causes of that crash. Whatever they were, they will not bring Paul and Sheila and Marcia and the others back. The circumstances, as they are reported, are unofficial, so I will not comment on them here, but as they report them in the press, it will make it, if anything, more difficult, more painful, more awful an accident that didn't have to happen.

Paul Wellstone lost his life as a U.S. Senator in service of his country.

As the late Senator John Heinz, Republican from Pennsylvania, lost his life several years ago in a small plane crash in the service of his country; as other Senators, Members of the House, Governors, Cabinet Secretaries, and public officials have lost their lives in airplane crashes or other accidents in the performance of their official duties in the service of their country; and when brave men and women lose their lives in the service of their country, I call that man or woman a true American hero. If they are wearing the service uniform of our Armed Forces in Iraq, Afghanistan, or elsewhere around the world, they are true American heroes. If they are wounded or maimed when serving in those awful conditions, they are American heroes.

I have been to funerals for Minnesotans who lost their lives in training exercises in this country and overseas. They gave their lives and paid the ultimate price in the service of their country. They are true American heroes.

Paul Wellstone is a true American hero. He would have been under any circumstances losing his life, but he is even more so, and forever, in my judgment. That is why it is so fitting and appropriate—and I was glad that I thought it only appropriate—that the Senate last year did what I would want to do for any colleague of this body or of the House who lost his or her life under similar—or any—circumstances in the performance of his or her official duties—to find a suitable memorial, a fitting tribute to that American hero.

The surviving members of the Wellstone family—two sons, David and Mark Wellstone—through their own deliberations, identified this project and St. Paul, MN, where especially people from other countries—recent immigrants to the United States—in need of all sorts of assistance but who want to become part of this country, who want to have a chance to participate and raise their kids as American citizens and become the next Paul and Sheila Wellstone, so they can get the help they need and give a helping hand as Paul and Sheila would have given themselves.

We authorized $10 million. The House didn't have anything in there on that matter. But we went to the President of the United States. He was gracious enough to assist, and we got the funding provided in that bill—the authorization of $10 million. President Bush invited the Minnesota congressional delegation and members of the Wellstone family to the Oval Office last December for the signing ceremony. He just couldn't have been more extraordinary in his graciousness to the surviving members of Paul and Sheila's families. He took the time and extended his schedule to be with us, to share his condolences and make it a truly memorable occasion for the members of that family. I know they were enormously grateful, as I was to the President for his compassion and for his humanity.

When we got to the appropriations for this fiscal year, it was delayed. The bill that finally came forward provided $8.9 million for the $10 million project that was authorized. I am hopeful the balance of that commitment as a memorial to our former colleague will be part of the committee bill that is coming before us today.

I was disappointed there was nothing provided in it, and there is nothing provided in the House bill. I pursued this matter and indicated my intention to offer this amendment for $1.1 million—that is an "m" for million, not "b" for billion—$1.1 million to complete the commitment that was made—the authorization to commit the money the President authorized by his own signature into law. I was told via my staff and in talking with committee staff that if this amendment were agreed to by the Senate, then it would be taken out of some other project for the people of Minnesota—from the people in Roseville, MN, in the northwestern part of the State who were victims of flooding last spring, who need help in relocating, who are still rebuilding and trying to reconfigure the locks and dams in that river so they don't flood again—and from all sorts of other projects around the State in counties that need sewer systems so people can have safe drinking water, so the kids don't get sick.

I have to share with the people of Minnesota a confession. They think when they send us out here, we each have a vote; since we are all taxpayers, and since Minnesotans' taxes as a relatively high income State are proportionate to others that send tax money to this great Federal Government, we get back at least our fair proportionate share. But it doesn't work that way in this legislation. It doesn't work that way. We get the appropriations and those who have more seniority, who have been here longer, have more influence, connections, whatever—it doesn't come out the same. If you were to rank Minnesota with other States, you would find that we give more than our share in contributions to this great center of our Nation and we get in return relatively less than most other States.

I find it deeply offending that I am essentially being told, forewarned, threatened, that if I bring this amendment forward and it passes the Senate, it is going to come out of some other Minnesota project. I appreciate at least being told that so I know what I am getting into here.

So much happens in these conference committees. It is just a sneak attack behind closed doors. In Minnesota, we have an open meeting law where you can't go behind closed doors with three or four members of the elected body and conduct public business in private somewhere. That law is a foreign concept here on Capitol Hill; it happens all the time. People go behind closed doors and members of conference committees can't even get into the conference room to find out what is going on.

They have a bill coming up next for reauthorizing the FAA. Somebody in that conference committee stuck something in the bill that hurts the people of Minnesota—thousands of people in and around airports in my State—no hearings, no deliberation, no vote in the Senate, no vote in the House, just put in by Senators who don't represent the people of Minnesota.

The conference committees are great places where you can put something in there and you can vote on it. I had an amendment to the Medicare bill which is coming up, and it is going to come out of committee, I am told and I am quite sure. I have an amendment that would require Members of Congress to receive prescription drug coverage that is the same and is no better than seniors of America and other Medicare beneficiaries receive. Boy, it passed the Senate by a vote of 93 to 3. That is pretty overwhelming support.

I thought: My goodness gracious, the Senate is going to back this one because the people of America would back that one. I know from my experience in Minnesota that we sure agree with that concept and principle—that Members of Congress should receive a prescription drug benefit no better than we vote for senior citizens. But then I read an article the next week stating that many of those who voted for it had been told they could do so because it was guaranteed to die in the conference committee and it would not become part of the law.

I respect those three who voted against my amendment because they weren't going to take that escape route and say, Oh, I voted for that amendment, and to my great dismay it is not going to get conference support.

So Members of Congress can continue to get drug coverage twice as good or more or better than those senior citizens of America.

In this case, before this bill goes into the conference committee, I urge my colleagues—and I will ask for the yeas and nays on this amendment—if they don't particularly think enough of the situation, and circumstances, and the memory of Paul Wellstone, then vote against it. I will ask the conferees, if it passes and goes to conference and is going to come out of some other Minnesota project, to drop the amendment because I know what Paul would say. I know what he would want us to do. That would be to do what is best for all the people of Minnesota. This project is true to the people of Minnesota. But the last thing Paul Wellstone would want to do is take $1.1 million away from people who are suffering and need help and give it to other people in Minnesota in his memory. That would be the antithesis of what is good, for what he believed in, and what he spoke for on this floor. It would be far preferable if the Senate said forthrightly, that is the view of the Members or the powers that be, that $1.1 million of the $10 million authorized last year is too much to bear, too much money, and it is just not available in the budget for the people of Minnesota, for the State of Minnesota. Unlike other States, we would not have this discussion on the Senate floor—it would be $1.1 million for anything any Member wanted.

If they cannot find it, won't find it, do not want to find it, forget it. But tell the American people that. Tell the people of Minnesota that. Don't take it out of somewhere else in Minnesota for a project that is underfunded to begin with, that is needed to save people's lives, that makes their communities stronger. They elected the two Senators to do just as much as any other State in this Nation. Tell them that straight, and then Paul will wait. He should not have to, but he will.

The Senate should do the right thing, pass this amendment, put it in the bill, and instruct the conferees to come out of the conference report with the money for the Wellstone Community Center and every project in Minnesota, and not sell anybody out behind closed doors, behind our backs, and I will once again respect this body, the Senate of the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I know the Senator from Minnesota feels strongly about this; both Senators do.

I ask that Senator COLEMAN be added as a cosponsor.

We are willing to accept the amendment. I ask that it be accepted by voice vote.

Mr. DAYTON. I object. I ask for the yeas and nays.

The PRESIDING OFFICER. Does the Senator object to the adding of a cosponsor?

Mr. DAYTON. The Senator does not object to that.

The PRESIDING OFFICER. Without objection, the Senator is added as a cosponsor.

Mr. DAYTON. I repeat my request for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

At this moment, there is not a sufficient second.

Mr. DAYTON. I will restate my request when there is a sufficient second. What number of Members constitute a sufficient number?

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BOND. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, I ask that the pending Dayton-Coleman amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2152 WITHDRAWN

Mr. BOND. Mr. President, I ask that the Clinton-Enzi amendment on which there is a colloquy be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2152) was withdrawn.

AMENDMENT NO. 2196 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I send to the desk an amendment on behalf of Senator DASCHLE relating to an agreement with the Institute of Medicine and the National Academy of Sciences to develop epidemiological studies on Vietnam veterans with respect to Agent Orange, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Mr. DASCHLE, proposes an amendment numbered 2196 to amendment No. 2150.

Mr. BOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for epidemiological studies on Vietnam veterans exposed to Agent Orange and other herbicides used in Vietnam)

At the end of title I, add the following:

SEC. 116. Not later than 120 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall enter into an agreement with the Institute of Medicine of the National Academy of Sciences under which agreement the Institute of Medicine shall develop and evaluate epidemiological studies on Vietnam veterans in accordance with the recommendations of the 2003 National Academy of Sciences report entitled

"Characterizing Exposure of Veterans to Agent Orange and Other Herbicides Used in Vietnam: Interim Findings and Recommendations".

Mr. BOND. There are no objections on either side. I ask that it be agreed to by voice vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (No. 2196) was agreed to.

Mr. BOND. I move to reconsider the vote.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2197 TO AMENDMENT NO. 2150

Mr. BOND. I send an amendment to the desk on behalf of Senator FEINGOLD.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND, for Mr. FEINGOLD, proposes an amendment numbered 2197 to amendment No. 2150.

Mr. BOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To prohibit the use of funds by the Department of Veterans Affairs to implement policies that prohibit the Veterans Integrated Service Networks from conducting outreach or marketing to enroll new veterans in such Networks)

At the end of title I, insert the following:

SEC. 116. No funds appropriated or otherwise made available for the Department of Veterans Affairs by this Act or any other Act may be obligated or expended to implement the policy contained in the memorandum of the Department of Veterans Affairs dated July 18, 2002, from the Deputy Under Secretary for Health for Operations and Management with the subject "Status of VHA Enrollment and Associated Issues" or any other policy prohibiting the Directors of the Veterans Integrated Service Networks (VISNs) from conducting outreach or marketing to enroll new veterans within their Networks.

Mr. FEINGOLD. Mr. President, I want to thank the chairman and the ranking member of the subcommittee for agreeing to accept my amendment pertaining to veterans outreach programs. My amendment would restore a valuable—and statutorily mandated—service to our nation's veterans and their families.

In July 2002, the Department of Veterans Affairs Deputy Under Secretary for Health for Operations and Management sent a memo to Veterans Integrated Service Network Directors ordering them to "ensure that no marketing activities to enroll new veterans occur within [their] networks."

This memo cited an increased demand for VA health care services as the reason for this change in policy. While it is clear that more funding should be provided for VA health care and other programs and I strongly support doing so it is inappropriate for the VA to institute a policy to stop making veterans aware of the health care services for which they may be eligible.

I joined with a number of our colleagues last year in sending a letter to the President asking that this policy be immediately reversed. I regret that the VA's reply indicated that the Secretary of Veterans Affairs stands by this policy, which remains in effect.

My amendment would prohibit the VA from using Federal funds to enforce this policy, or any other policy prohibiting regional health care directors from conducting outreach to enroll new veterans into the VA health care system. A similar amendment offered earlier this year by Congressmen SANDERS and KANJORSKI was accepted to the House version of the underlying VA-HUD appropriations bill.

I have long been concerned that tens of thousands of our veterans are unaware of Federal health care and other benefits for which they may be eligible. We can and should do more to educate our veterans and their families about these benefits, and to provide adequate funding to ensure that all veterans who wish to take advantage of their benefits are able to do so. Halting health care marketing activities is not the answer. Our brave veterans have earned these benefits. The Federal department that is charged with advocating for and providing benefits to our veterans should not be allowed to continue to restrict health care outreach activities.

This is especially important as we welcome home a new generation of veterans who are serving in Iraq and in the fight against terrorism. Today's soldiers, sailors, airmen, and marines are tomorrow's veterans. These men and women selflessly put their lives on the line to protect our freedoms, as have countless military personnel before them. We must ensure that their service and sacrifice, which is much lauded during times of conflict, is not forgotten once the battles have ended and our troops have come home.

Our veterans and their families have made great personal sacrifices to protect our freedoms. We owe them a great debt of gratitude. Making sure that our veterans know about the benefits that they have earned is an important first step in starting to repay this debt.

Again, I thank the chairman and the ranking member of the subcommittee for working with me on this important issue.

Mr. BOND. Mr. President, this is an amendment with respect to VA marketing. It is acceptable on both sides. I ask that be it be agreed to on a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2197) was agreed to.

Mr. BOND. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2198 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, because we had done a list of amendments and we neglected to include an amendment by Senators CANTWELL, CARPER, BROWNBACK, HAGEL, and others with respect to section 8 public housing, moving to work demonstration agreements, I ask unanimous consent that this be acceptable and I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Ms. CANTWELL, for herself, Mr. CARPER, Mr. BROWNBACK, Mr. HAGEL, Mr. ROBERTS, Mr. NELSON of Nebraska, Mrs. MURRAY, and Mr. DEWINE, proposes an amendment numbered 2198 to amendment No. 2150.

Mr. BOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require a study of the Moving to Work demonstration program, and for other purposes)

On page 125, between lines 7 and 8, insert the following:

SEC. 418. EXTENSION OF CERTAIN PUBLIC HOUSING/SECTION 8 MOVING TO WORK DEMONSTRATION AGREEMENTS.

(a) EXTENSION.—The Secretary of Housing and Urban Development shall extend the term of the Moving to Work Demonstration Agreement entered into between a public housing agency and the Secretary under section 204, title V, of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, April 26, 1996) if—

(1) the public housing agency requests such extension in writing;

(2) the public housing agency is not at the time of such request for extension in default under its Moving to Work Demonstration Agreement; and

(3) the Moving to Work Demonstration Agreement to be extended would otherwise expire on or before December 31, 2004.

(b) TERMS.—Unless the Secretary of Housing and Urban Development and the public housing agency otherwise agree, the extension under subsection (a) shall be upon the identical terms and conditions set forth in the extending agency's existing Moving to Work Demonstration Agreement, except that for each public housing agency that has been or will be granted an extension to its original Moving to Work agreement, the Secretary shall require that data be collected so that the effect of Moving to Work policy changes on residents can be measured.

(c) EXTENSION PERIOD.—The extension under subsection (a) shall be for such period as is requested by the public housing agency, not to exceed 3 years from the date of expiration of the extending agency's existing Moving to Work Demonstration Agreement.

(d) BREACH OF AGREEMENT.—Nothing contained in this section shall limit the authority of the Secretary of Housing and Urban Development to terminate any Moving to Work Demonstration Agreement of a public housing agency if the public housing agency is in breach of the provisions of such agreement.

SEC. 419. STUDY OF MOVING TO WORK PROGRAM.

(a) IN GENERAL.—The General Accounting Office shall conduct a study of the Moving to Work demonstration program to evaluate—

(1) whether the statutory goals of the Moving to Work demonstration program are being met;

(2) the effects policy changes related to the Moving to Work demonstration program have had on residents; and

(3) whether public housing agencies participating in the Moving to Work program are meeting the requirements of the Moving to Work demonstration program under law and any agreements with the Department of Housing and Urban Development.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall submit to Congress a report on the study conducted under subsection (a).

Mr. BOND. Mr. President, this is acceptable on our side.

Mr. REID. There is no objection on this side.

Mr. BOND. I suggest we agree to it by voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2198) was agreed to.

Mr. BOND. I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I ask unanimous consent that we delay the FAA bill for 5 minutes and the debate would be from 4:35 to 5:35 and a vote occur at that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONGRESSIONAL AWARD PROGRAM

Mr. CRAIG. Mr. President, several Senators were prepared to offer an amendment today to provide for support for the Congressional Award Program, through a collaboration with the Corporation for National and Community Service. I understand from the Subcommittee the difficulties that this would present and will not press forward with such an amendment at this time. I did want to engage the Chairman of the VA-HUD-Independent Agencies Subcommittee in a colloquy about this valuable program.

Congress established the highly successful Congressional Award in 1979 to recognize initiative, achievement, and service in young people. The Congressional Award is the U.S. Congress' award for young Americans. It is nonpartisan, voluntary, and noncompetitive. The award enjoys broad bipartisan support. This excellent program has grown by more than 3,000 participants during fiscal year 2003, and currently, there are some 14,750 active participants from across the nation.

In the past, the Congressional Award Program has been able to sustain itself. Because of the tremendous growth of this program, its resources have been stretched to the breaking point. After the events of 9/11 and the recent recession, patterns of charitable giving have changed and this program, like many worthy causes, has had an extremely difficult time maintaining earlier levels of contributions, much less accommodating its rapid growth. The congressional award needs a modest amount in a funding base to regain its footing and momentum and continue its growth for the future. Congressional support is needed to leverage renewed and increased private donations.

Supporters of this program had looked to this bill because the Congressional Award Program already is being cited by the Corporation for National and Community service as the kind of program it supports and encourages and already is listed as an official partner of America's Promise, another related program. Congress already has explicitly provided in the Congressional Award Act that, while this program may not receive a direct appropriation, it may receive financial support through collaborations with other programs receiving appropriated funds.

I note that the Appropriations Committee, in the report accompanying this bill, has expressed its concern with current costs per participant in volunteer service programs. In particular, the report mentioned the $16,000 cost per AmeriCorps members for program and education award costs and called upon the Corporation to reduce costs. In contrast, the Congressional Award Program costs only about $68 per participant. It is more than just a great program, it is a bargain.

The Congressional Award is one of only two standing awards given by Congress. The other is the Congressional Medal of Honor. It is time that Congress became a partner of the congressional award in more than just name.

Mr. BAUCUS. I add my comments in support of the Congressional Award Program. This excellent program is open to all 14- to 23-year-olds. Participants earn bronze, silver, and gold congressional award certificates and bronze, silver, and gold congressional award medals. Each level involves setting goals in four program areas: volunteer/public service, personal development, physical fitness, and expedition/exploration. Earning the award is a fun and interesting way to get more involved in something young men and women already enjoy or something they might like to try for the first time.

Regardless of an individual's situation, he or she can earn this award. The congressional award has no minimum grade point average requirements. It accommodates young people with special needs or disabilities who are willing to take the challenge. The award is open to all. We consider this to be a valuable priority within a fiscally responsible appropriations bill.

Mr. President, this is a program that all of us want to see grow and flourish. It is not just another program. It is not just another foundation pursuing a worthy cause. It is our award—a unique program created by the Congress to recognize and encourage leadership and voluntary service to the community by our young people. It requires and deserves our support.

Mr. BOND. I thank my colleagues for their attention to this matter.

It is certainly our intent, in continuing congressional support for the corporation, that it look for additional ways for actively partnering and collaborating with organizations such as the Congressional Award Program. I look forward to working with my colleagues on appropriate ways to carry that goal forward.

CAPITAL ASSET REALIGNMENT FOR ENHANCED SERVICES (CARES) INITIATIVE

Mrs. CLINTON. Mr. President, I thank the managers for working with Senator ENZI, Senator SCHUMER and myself on a compromise to ensure that our concerns are addressed. We understand that they have committed to pursue language in the conference report that expresses the committee's concerns about the Draft National CARES Plan recommendations of closure and reduction of services in long-term care, domiciliary care, and mental health services at VA facilities. The language urges that no closures or reduction in long-term care, domiciliary care, and mental health care services take place until the full analysis is completed. The language would also require the VA to submit updates on their progress in this analysis to the appropriate committees. Finally, the managers have agreed to send a letter to VA Secretary Principi outlining these concerns on our behalf.

Mr. ENZI. I would like to add to my colleague's discussion. I got involved in this process to bring attention to the concerns of veterans in rural and frontier areas. Based on these concerns, I hope in any further analysis on the future needs of veterans health care the VA will consider all access issues related to travel, such as road conditions, the number of lanes on roads, and seasonal changes and other factors relating to the weather. I know many of my colleagues share these concerns and I appreciate their taking this opportunity to address them.

Mr. SCHUMER. I thank my friends from Missouri and Maryland for engaging us in this colloquy, and appreciate their efforts to work with us on addressing our concerns with the CARES process. Among these concerns, I am particularly pleased that the managers of this bill have agreed to work with us in addressing the participation of veterans at hearings held by the CARES Commission. The participation of veterans is critical to a process that so directly impacts the quality of healthcare they receive from the VA. It is my understanding that the managers have committed to addressing this specific issue by presenting language to the conference that would recognize the benefits of and the need to have CARES related hearings within 30 miles of all facilities facing closure or a reduction in services, as well as the importance of veteran participation at these hearings. I also understand that the managers have committed to presenting language to the conference that encourages the VA to hold additional hearings in all affected communities following the Secretary's final recommendation.

Mr. BOND. Mr. President I thank the Senators from New York and the Senator from Wyoming for their thoughtful comments. Their understanding is correct, and we will pursue such language in the conference report. Senator MIKULSKI and I will also be sending a letter on their behalf to Secretary Principi with these concerns.

Ms. MIKULSKI. I acknowledge the validity of my colleagues' concerns and look forward to working with them to try to address these concerns in conference and with Secretary Principi.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, I think we have reached the point where we are ready to get a final list and a means of proceeding. So if it is agreeable on both sides, I ask unanimous consent that the only other amendments in order to the VA-HUD bill, other than the substitute, be the following: Dayton No. 2193 with 5 minutes equally divided; Senator MCCAIN, amendment on NASA; Senator INHOFE, amendment on air quality; Senator JEFFORDS, National Academy of Sciences study; further that following the scheduled cloture votes on Tuesday, the Senate resume consideration of the VA-HUD appropriations bill for the consideration of the remaining amendments.

Ms. MIKULSKI. No objection.

Mr. REID. Mr. President, I ask unanimous consent that the time for debate on cloture dealing with FAA be for a full 1 hour, with the time equally divided pursuant to the previous order.

The PRESIDING OFFICER. Is there objection to any of the foregoing requests?

Mr. REID. I express my appreciation to Senator LAUTENBERG and Senator LOTT for allowing us to go forward.

The PRESIDING OFFICER. Without objection, it is so ordered.

VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT—CONFERENCE REPORT—Resumed

The PRESIDING OFFICER. Under the previous order, the hour of 4:40 having arrived, the Senate will proceed to consideration of the conference report to accompany H.R. 2115, which the clerk will report.

The assistant legislative clerk read as follows:

> Conference report to accompany H.R. 2115, an act to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour equally divided for debate prior to a vote. The Senator from Mississippi will control one-half hour, the Senator from New Jersey will control one-half hour.

The Senator from Mississippi.

Mr. LOTT. Mr. President, this is an important piece of legislation that has been in the process all year now. As we know, the aviation industry has had its difficulties since the events of 9/11 and the Iraq war. Aviation across the board has struggled to comply with additional security requirements and to become economically viable again. A lot of changes are happening in the industry.

But Congress certainly has not been insensitive to the needs of this industry. We passed legislation to be of assistance in, I guess, 6 weeks after the 9/11 events, and then earlier this year additional assistance was provided to the airline industry as a result of losses they were experiencing and expected to experience as a result of the war in Iraq.

But they need the broader long-term Federal Aviation Administration reauthorization. I consider this legislation to be the third leg of the stool to give the aviation industry, as a whole, an opportunity to get up and running, to provide service to the American people, and to, frankly, see blue skies again. That is why this legislation is very important.

If we do not extend this FAA reauthorization, there are certain parts of the program that will either be deferred or will have to shut down. So it is not insignificant that we are up against the wall in terms of extending the Federal Aviation Administration legislation.

I emphasize, too, that this is not just about the agency. This is about an important part of our economy. We are very mobile in America. Transportation is such an important part of our economy. Americans are flying all over the country, as we speak, on airlines and in general aviation. They are in our airports. It is an important part of our economy. It creates hundreds of thousands of jobs, when it is allowed to function as it should. So we need to get this legislation passed.

It is, in my opinion, about safety in the aviation industry at our airports, in general aviation, with the airlines. We need to make sure the money is there for the aviation program, for the security that needs to be put in place on the airplanes, in the airports, on the perimeters. This is very important legislation. It is part of our overall homeland security program.

I remind my colleagues that H.R. 2115, the FAA reauthorization bill, is a 4-year $60 billion bill. This is a huge piece of legislation. We need to get it done.

I would like to point out to my colleagues some of the impacts we see as a result of this industry and what it means. First, aviation generates more than $900 billion in GDP every year. Over the life of this bill, the legislation is expected to create approximately 665,000 jobs; $14.2 billion in airport grant funding would create these 665,000 jobs. There would be 162,000 jobs in 2004 alone; $14.2 billion will be used for security, safety, and capacity projects at airports; $13.3 billion would be to modernize the air traffic control system, and $500 million for the Essential Air Service program.

This is an important piece of legislation. A lot of money is involved. It is not just about the big airports; this is about the smaller airports. We do have good programs included here, including the Essential Air Service, and also a program that allows communities to be involved and participate with some funding of their own.

We have had an experimental program in place now for the last couple years. This would extend that small community Essential Air Service program. A number of communities around the country are very much interested in having that opportunity.

It also provides new opportunities for flights out of Reagan National Airport, 8 new flights inside and 12 new flights outside the perimeter. So this is very important legislation in terms of the airports.

For the first time we actually make sure the regional airlines get some assistance. When we passed the big legislation back in 2001, the regional airlines were sort of left out. So we would get that done.

It provides for cost-effective programs that could save the taxpayers $173 million per year. It has a huge impact on States all over the country. I would like to show a chart to give you some idea of the amount of money and the amount of jobs that would be affected by this legislation. I have the list here. It is too small probably for most of you to see, but I will just pick a couple of them: Alaska, $522 million, 24,000-plus jobs.

I see the Senator from Georgia, a very important terminal in Atlanta, one of the most important in the country, $162.6 million; 7,722 jobs; a smaller State, North Dakota, $59.2 million, 2,814 jobs.

The list is here. If you want to see how your State would be affected with dollars and jobs, we have the information for you.

The question would be, Why has this taken so long? We passed it back in May in the Senate. It passed the House. We went to conference. We worked out an agreement on good legislation. But it did include some language that became controversial. It did say there would not be privatization of the air traffic control system, but it identified 69 sites in medium and small communities where contract hours could be considered or could be actually put into place. So there was a criticism about that.

After trying to work it out in a variety of ways, we went back to conference and took that language out. So we basically went back to the status quo. We don't say there won't be privatization of the air traffic control system, and there won't be. We didn't say that, well, these 69 contract areas might be considered for contract hours. We took both of those out, thinking, well, we are ready to go now.

Strangely enough, that was not acceptable, either. So we have been working in a bipartisan way to try to come up with some solution that would satisfy both parties, all parties, and how this could be handled.

Senator McCAIN, Senator HOLLINGS, Senator ROCKEFELLER, Senator DORGAN, and I sent a letter to the FAA Administrator, Marion Blakey, last week saying we thought it would be appropriate to have a 1-year moratorium on any effort of privatization. We have been working with the administration on that issue since that time.

The administration, I believe, is willing to make a commitment to not go forward for 1 year, for a moratorium, while GAO does a study of the impact of privatization, and also so the Commerce Committee, chaired by the Senator from Arizona, can have hearings on that matter. But they want to be able to go forward with those things that are already underway.

The net result for the air traffic controllers and for other unions within the FAA would be a 1-year moratorium. However, where there is an ongoing A-76 study, that would not be stopped. Now I am being told maybe even that is not enough. I ask, how much is enough?

This is very important legislation that affects the economy of the country and this industry. Are we going to let 1 or 2 groups decide we will not have this $60 billion bill unless they get some guarantee on something that is not going to happen, anyway? I don't believe that is reasonable. I think we need to go forward and have this vote. Let the American people see who wants to be of assistance to aviation, who really wants to have safety in the skies.

Let me say to all of my colleagues on both sides of the aisle, be careful how you vote because this legislation provides funds for security at airports. It changes who pays for the security costs and where that money would go. The AIP, airport improvement program, which was used for $500 million in security costs over the last couple of years would not continue to be used for that purpose. It would go back to being used for what it was originally intended—improvements at terminals, runways, and aprons, but there would be a dedicated line of money that would go to security. If you vote against this legislation, and it continues to drag out indefinitely, and we don't get these security funds to the proper place they are supposed to go—particularly the airports—if we have another instance at an airport, or with the airline industry, I would not want to be on record voting against this very important legislation that has been developed over a long period of time, in a bipartisan way.

Mr. McCAIN. Will the Senator yield for a question?

Mr. LOTT. Yes.

Mr. McCAIN. Mr. President, I thank Senator LOTT for all the work he did as chairman of the subcommittee on this issue. I know we don't have a great deal of time. Is the Senator aware in this bill we have $14.2 billion for security and safety for AIP, $13 billion to modernize the air traffic control system, $31 billion to operate—the list goes on and on. There are billions of dollars, including drastically needed improvements in security and essential air service.

I note the Senator from West Virginia, as long as I have been on the committee, has sought money for essential air service. We also have environmental provisions. These are all being held up on one issue on which we have tried to reach some kind of compromise.

My question to the Senator from Mississippi is this: Let's suppose we don't achieve cloture and we don't have 60 votes on this bill. What do the opponents gain by that? It seems to me what they gain is sooner or later we are going to extend the existing programs, which allows further privatization of the towers and other aspects of our air traffic control system, which is what they are fighting against. Yet they will lose. Is this some kind of a statement being made or is this reality? Is there anybody who believes we are going to shut down the air traffic control system, shut down aviation in America if we don't pass this bill? Either existing law will be extended or we are going to pass this bill. Is that the Senator's assessment? I think our colleagues ought to know what the consequences of this vote will be if we fail to achieve cloture.

Mr. LOTT. Mr. President, I say to the distinguished chairman of the subcommittee he has put his finger right on the heart of the problem. There are funds that would not go out for security and airport improvement if we don't pass this legislation. The alternative would just be to extend the current law for, I don't know, 6 months. The Senator is right that in that case the status quo is in place. As a matter of fact, any privatization efforts that might be underway or they want to do in that period could go forward. We had worked it out where we had language both in the conference report and in a letter that would say there would not be privatization of the air traffic control system.

Finally, even other parts of the FAA would get a 1-year moratorium. This is the classic example of where my colleagues in the Senate—Democrats—seem to be hopelessly pursuing where the last rose lingers. We have a whole bouquet in this bill. It is good for the American people. It is going to be good for the industry and it will create jobs. We are looking for this one last thorny rose we can claim and say, well, we got it done. I note the House has already passed this legislation and we are, I assume, sometime in the next month going to complete our session of this year. We need to get this done. It would be very positive for the industry and for the Congress for us to go ahead and complete this action.

The Senator is absolutely right. The alternative, if we don't pass this legislation, is the status quo, which would allow the administration to do whatever they please in terms of privatization under legislation Congress has previously passed.

I will make one other note. On this idea of contract towers, there are mixed emotions on both sides of the aisle. It is not a Republican or Democrat thing. But there have been hundreds of these contractors put into place. Usually, they are supported by local congressmen and senators—and, by the way, it is an idea that really exploded and was used extensively during the Clinton administration. I am not being critical. In many cases, it makes common sense. In many communities, if you don't have the contract towers, you would not have anything.

For the life of me, I cannot understand why we haven't been able to bring this to conclusion. I think it is time to vote and see who is for getting this legislation done and who wants to preserve the status quo, I guess, or have nothing, which would hold up funds to the tune of billions for security and improvements at our airports.

Since the chairman is here, and I know Senator LAUTENBERG is waiting to speak, I will reserve the remainder of my time. We will claim more time after Senator LAUTENBERG has had a chance to speak.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. On my time, I ask the Senator from Mississippi just one question, if the Senator is available. I want to put a question to him.

Can the Senator tell me why Congressman YOUNG from Alaska fought so hard to take two of his airports off of the privatization possibility?

Mr. LOTT. Mr. President, on the time of the Senator, I am glad to respond.

Mr. LAUTENBERG. Take a short minute, if you will.

Mr. LOTT. I will give the Senator a direct answer. Senator STEVENS indicated that is what he wanted. I understand there are extenuating circumstances with those two areas in Alaska. That varies from State to State. In some States, they want contract towers for a particular site, and in others not. I agree with the Senator on that. I think we should not have excluded them.

Mr. LAUTENBERG. Mr. President, it is apparent the Congressman from Alaska wants to make sure his people are safe when they are in and out of that airport. He doesn't want to be privatized, and neither do I, or most of the people in the Chamber.

I have great respect for the Senator from Mississippi. He and I will agree on lots of things. When we don't, they are usually deep disagreements. We all want the system to function. The Senator from Arizona certainly understands aviation and how the system operates, but he said something in his remarks that really struck me. No matter what happens, this program is going to get funded. It is going to get funded regardless of the action we take tonight. Why it is that the President of the United States and his people decided to delay implementation of this reauthorization, I will never know. This is kind of like a Custer's last stand: We are going to teach you Democrats something.

Don't teach us; teach the American people how you care about them, about their safety. Why, suddenly, are we so concerned about going commercial? We took roughly 28,000 baggage handlers and said, you know what. The private sector can't handle them. They mess up all the inspections. They are terrible. We have to get them in Government hands where we know things can be properly operated. But when it comes to the FAA, the people who responded so heroically when the tragedy of 9/11 struck our country, no, then we want to put security on the cheap. We want them to be operated by Acme Air, or whoever else it is.

The aviation industry has had a lot of difficulty. Much of that is because our country had an overwhelming tragedy strike us on 9/11, and so our citizens were afraid to travel. They were afraid to get up in an airplane. Now they don't have to worry so much, except for shoulder-guided missile launchers and except for terrorists constantly trying to break through. And now, to make life easier, we are going to take the FAA, the most well-trained group in the country, people who are on the job 24/7, constantly, they are always there when we need them, regardless of weather, regardless of what else happens—when those airplanes struck the Trade Towers, we are now talking about my neighborhood.

I saw the Trade Towers from my apartment house. I didn't see them that day because I happened not to be there, but I notice their absence. It is very clear. The people in the tower at Newark—I know those guys and the ladies. I know them well. I have been up in that tower many times. I used to be commissioner of the Port Authority of New York and New Jersey. I know what goes on in towers. I know we used to gauge rainfall with a pail outside. It wasn't that long ago. The fact is, they could see the buildings burning, and when the order came to take safer action, they did.

We are going to soon be voting cloture on the FAA conference report, and it would have passed except for the fact there was an insert put in after neither House had a Democrat in the conference—neither the Senate nor the House of Representatives, neither had a Democrat in the conference. Nevertheless, we are now suddenly delivered a program that includes a recommendation from the White House, which neither body acted upon, and when we voted overwhelmingly to preserve the no-privatization view.

On June 24, 2002, just in the aftermath of 9/11, the President signed an Executive order. So this issue has been in the works for some time. We don't have to talk about who is delaying the movement of the reauthorization bill. There it is. June 4, 2002: Section 1 of this Executive order:

> The first sentence of that order is amended by deleting " . . . an inherently governmental function."

That is what the President of the United States said on June 4, 2002, not too many months after 9/11 took place.

We took up the FAA bill in June. The Senate spoke loudly and clearly: No privatization. The House also spoke loudly: No privatization. But in the conference, the prohibitions disappeared. Conference leaders simply dropped all the language dealing with privatization.

Why did the Members of the conference, sitting behind closed doors, ignore the mandates for safety and security of our aviation system? If you ask them, they say the White House said we had to; so the order. Both Houses of Congress were clear. Both Houses spoke on the issue. Both Houses said no privatization of air traffic controllers. But in the conference, that commitment disappears. Why? Apparently in this Congress, we pass bills in both Houses, and then the White House writes the conference report.

It is presented graphically on this chart. House bill: No privatization. Senate bill: No privatization of air traffic controllers. White House position: Silence on privatization. Conference bill: Silence on privatization. That is a coverup. What that means is they can go ahead and do it any time they want to.

In this Congress, if the House and Senate agree on something and you throw it out and allow the White House to write whatever they want, we don't usually respond favorably to that happening. The stakes are high because the safety and security of our families, our friends, and our neighbors are at stake. The clearest evidence of this is how our air traffic control system performed on September 11, 2001.

The first airplane struck one of the Trade Towers at 8:45 a.m. This chart shows what the skies looked like at that time. The little light green areas represent airplanes. You can barely see the ground. This was 1 hour, and it was even more crowded than that. The order came out to get the airplanes out of the sky, get them on the ground, get people safely to someplace where they could call their families and let them know what was happening.

One hour later, 5,000 airplanes were taken out of the sky, directed to land at destinations that were not originally planned, and the picture looks like this chart. It is a lot safer. If my family was flying, I would have been very happy to hear they landed someplace, whether it was in Wyoming or Arizona—anyplace else besides New Jersey. I would have just been happy to know they were on the ground.

My State suffered major losses. Almost 700 people—691, to be exact—from New Jersey lost their lives that day in the World Trade Center attack. We are very sensitive to safety. We know this hits home. This is no academic exercise for us. We know there are families tortured by the loss of a father or mother or brother or sister. My oldest daughter lost her best friend in that World Trade Center. They worked together at one financial firm. My daughter went to law school, and this lady went to a place called Kantor Fitzgerald. They lost 700 of their 1,000 employees.

These acts of terror utilizing our aviation system introduced a new era of fear for the U.S. travelers.

September 11 also highlighted the heroic act of many public employees who did their jobs, as they do every day, with skill, courage, and professionalism. Emergency responders, rescuers, firefighters, police officers, and other government employees aided people out of the burning buildings. We heard of a historic incident where a couple of policemen and firemen went into the buildings knowing very well their lives were at stake. Unfortunately, they were right; their lives were at stake, but they tried to save others.

As our aviation system was both under attack and being used as a means of attack, it was the air traffic controllers who protected the tens of thousands of Americans aboard aircraft at that time. The snapshots we have seen tell us the picture quite precisely. Within an hour of the time that the flights were ordered to the ground, the Nation's air traffic controllers made unbelievable progress. We saw that in the chart. Within an hour, numbers of those planes—huge numbers—were successfully grounded.

I repeat, almost 5,000 aircraft were guided safely to the ground in a matter of hours, a tremendous feat. All parts of the system worked well, worked together, and worked safely to bring home those traveling by plane that day. This included roughly 15,000 air controllers, 6,000 technicians, and 2,800 flight service station employees.

These people acted bravely and professionally. So why does President Bush want to honor these heroes of 9/11 by firing them? I do not get that at all. The administration plans to privatize our air traffic control system.

I heard the distinguished Senator from Mississippi say there are no plans, no, but just take away the safeguards and anything one wants can be done. This conference report allows them to do exactly that. It is a bad idea, truly disrespectful to the thousands of September 11 heroes and disrespectful to all of those who worry about air travel when they read about shoulder-fired weapons and even worse.

It is no coincidence that this important section of the FAA bill was omitted without any Democratic input or debate. The American people do not want safety and security on the cheap. They want air traffic control to remain essentially a Government safety function, as it was before President Bush signed that Executive order in 2002. That is why the Senate voted on June 12 of this year—I remind my colleagues who are in the Chamber, talking about who should vote for what—I want everybody in this Chamber to feel like they can look in the mirror and answer the question: What was the best thing I did for the safety and the safeguarding of our airplanes and our passengers? That is to make sure this system stays intact.

The Senate voted on June 12, a vote of 56 to 41—we do not have 56 on this side—to ban this privatization. I remind my colleagues that safety and security are not partisan issues. Eleven of my Republican colleagues voted for safety and security. This conference report on the FAA is not the first conference report produced on this bill. Conferees produced an original conference report that was downright strange.

How much time do we have remaining on our side?

The PRESIDING OFFICER. Fifteen and a half minutes remaining.

Mr. LAUTENBERG. For starters, it exempted the State of Alaska. Of course, that has something to do with the fact the chairman of the House Transportation Committee is from Alaska. He did not want his airports privatized. He was very specific.

He said: Of course, the criticism of myself is that I exempted the State of Alaska, and here is the reason for that. One, he describes Juneau Field itself to be going under Capstone next year so it would not be eligible to be contracted out. The Merrill Field is a real complex issue. He winds up saying that the airplanes take off right toward my hotel room every morning. I look out and there is one coming right at me. It is an interesting experience and I want to make sure everything is done right in that field.

He does not want Acme air controllers to be there perhaps in the middle of a labor dispute or something like that. He wants to know that the tried and trusted hand of the FAA as it is presently composed continues. If he thinks that exempting Alaska is a good idea, let the other States have an exemption, too. The other 49 should just as well be exempt.

If the Chair would let me know when we have 10 minutes, I would like to turn that time over to the Senator from West Virginia.

The PRESIDING OFFICER (Mr. CORNYN). The Senator will be so notified.

Mr. LAUTENBERG. Privatizing the air traffic control system is a bad idea for many reasons. We should heed the lessons of other countries that tried this already: Canada, Australia, and the United Kingdom. All of these attempts resulted in failures.

We should heed the lessons of the blackouts we experienced in the Northeast this summer that shut down six major airports. Our air traffic control system guided stranded flights safely to the ground.

I do not think it can be any clearer that air traffic control is a vital Government safety and security function.

I sense my colleague from West Virginia would like to use his 10 minutes now.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, for the sake of a flow back and forth, I yield 5 minutes of our remaining time to the chairman of the full committee.

Mr. LAUTENBERG. I yield the time with unanimous consent that I regain it and turn it over to my friend from West Virginia.

Mr. LOTT. I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. First, when Air Force One takes the President down to his ranch in Texas, guess what. Horrors, the plane lands at an airport with a contract tower. When the Vice President travels to Jackson Hole, WY, his plane lands at an airport with a contract tower. Perhaps the safety concerns that always surrounds a President and Vice President have been waived in this case.

One of the most respected men in Washington is Ken Mead. He is the inspector general of the Department of Transportation. He did a study on the issue of contract towers. I ask unanimous consent that his letter and that of the Professional Air Traffic Controllers Organization be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF TRANSPORTATION,
Washington, DC, July 22, 2003.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, U.S. House of Representatives,
Washington, DC.

DEAR CHAIRMAN YOUNG: We understand that the House and Senate Conferees may be meeting this week to discuss the Federal Aviation Administration's (FAA) Reauthorization. One issue that will no doubt be included in those deliberations is the provision of the legislation that prohibits FAA from contracting out any Air Traffic Control functions. Specifically, we are concerned that this restriction would eliminate even the option of expanding FAA's Contract Tower Program to the 71 visual flight rule (VFR) towers still operated by the FAA, regardless of how safely and cost efficiently towers in the existing Contract Tower Program are operated.

Based on our work, we think the Conferees should take into account the track record of the 218 VFR towers in the Contract Tower Program. Since 1998, we have conducted audits of various aspects of the Contract Tower Program and have found consistently that the program works well. We found that contract towers provide cost-effective services that are comparable to the quality and safety of FAA-operated towers. For example, last year the level of operational errors at contract towers was comparable to the level of operational errors at FAA VFR towers. The Contract Tower Program also provides services at towers that FAA would otherwise not have staffed because they were too expensive to operate. In 2002, we estimated that contracting out the VFR tower still operated by FAA could save the agency about $780,000 per tower each year. That translates into about $55 million in annual savings if all 71 towers were contracted out.

Our point here is not that the 71 VFR towers still operated by FAA should be converted to the Contract Tower Program, but that the option should remain open. We do not support expanding this option beyond the remaining 71 VFR towers still operated by FAA. But in light of the sharp decline in Aviation Trust Fund revenues and the most recent projections of the Federal deficit, we think FAA needs the flexibility to evaluate alternatives for ensuring its operations at all VFR towers are conducted in the safest and most cost-effective manner possible.

We urge the Conferees to consider preserving at least the option of expanding the Contract Tower Program to the 71 VFR towers still operated by the FAA.

If I can answer any questions or be of further assistance in this or any other matter, please feel free to call me at (202) 366–1959, or my Deputy, Todd J. Zinser, at (202) 366–6767.

Sincerely,

KENNETH M. MEAD,
Inspector General.

PROFESSIONAL AIR TRAFFIC
CONTROLLERS ORGANIZATION,
Douglasville, GA, November 6, 2003.

Hon. TRENT LOTT,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LOTT: I am writing to urge you to support the conference report accompanying H.R. 2115, Vision 100—The Century of Aviation Reauthorization Bill. Please make no mistake; Labor is divided on this issue.

I am the National Representative for the Professional Air Traffic Controllers Organization, PATCO/AFL–CIO, and represent the air traffic controllers in 50 FAA contract air traffic visual flight rule (VFR) control towers (ATC) across the United States. I take exception to the National Air Traffic Controllers Association position that the FAA contract controllers are unsafe. The DOT Inspector General's report released on September 5th states unequivocally the safety benefits to the aviation community and the cost savings to the American taxpayers of the Federal Contract Tower Program. The FAA contract controllers are all FAA certified, most have 15–20 years of experience and the large majority are retired military and former FAA controllers. FAA also closely monitors and oversees all FAA contract tower operations.

H.R. 2115 will enhance aviation safety, security and supports the Airport Improvement Program. The important issue of expanding capacity to aid congested airports is also addressed by the building of new runways and other projects, all of this resulting in the creation of new jobs.

There are those who oppose this bill because they believe it mandates privatization. It does not. The measure, as you know, is now silent on the issue of privatization, leaving the FAA with the management flexibility they have held for decades to evaluate staffing at individual facilities and to make appropriate decisions with regard to safety, efficiency, and fiscal responsibility. Please support the conference report accompanying H.R. 2115 and encourage your colleagues to pass this legislation as quickly as possible.

Sincerely,

JERRY TUSO,
PATCO National Representative.

Mr. McCAIN. He says:

Since 1998, we have conducted audits of various aspects of the Contract Tower Program and have found consistently that the program works well. We found that contract towers provide cost-effective services that are comparable in quality and safety to FAA-operated towers.

The difference is it saves $170 million a year for the taxpayers. By the way, I hope the Senator from New Jersey can get over the Alaska issue. This is a fairly big bill. In all deep sympathy, I hope he can get over two towers in Alaska as we consider this serious issue.

The process was not perfect. We probably should not have put this provision in in conference. We did so at the urging of the administration because there was the threat of a veto by the administration. Ever since then, we have tried to reach some kind of an agreement. We have agreed to have it language neutral. We have agreed there would be a year-long moratorium while GAO and other studies are conducted.

The Senator from Mississippi and I have spent literally hundreds of hours trying to reach some accommodation to avoid a veto by the President of the United States who flat out said that—guaranteed in writing that we would have a veto—and at the same time try to satisfy the legitimate concerns because of the position of Senator LAUTENBERG and others who voted for the measure to which Senator LAUTENBERG referred.

It seems to me we should have been able to come to some kind of an agreement, including the commitment that we got from the administration, or at least we would have held to, for an all-out moratorium.

Now, if the Senator from New Jersey prevails on this vote, we have previous authorization and privatization will go on. So the Senator from New Jersey may feel great about it but the fact is that with the compromises we offered, he would have been far better off. Instead, we worry about two towers in Alaska.

The point is, we have tried. We have tried to address this issue, which is a very small part of very large legislation, that has to do with aviation security; it has to do with airports; it has to do with all kinds of things. It is a massive bill and we are hung up on this one aspect for which there is a refusal to compromise on the part of the Senator from New Jersey, and I regret it. I deeply regret it because we may lose this vote, although I hope Members realize the consequences of the loss of this vote. Believe me, we are not going to shut down aviation in the United States of America over this issue. We are not going to allow that to happen. It is far too important to all of America's citizens.

Again, I hope my colleagues will pay attention to the letter from Ken Mead, the inspector general of the Department of Transportation, that says clearly that the contract-operated towers are safe consistently, they are cost effective, and their quality and safety is comparable to FAA-operated towers.

I reserve the remainder of Senator LOTT's time.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, this is all odd, perplexing.

Mr. LAUTENBERG. Mr. President, I am sorry, but there was a unanimous consent that was agreed to that the time would be turned back, and I just want to make sure we divide it up properly. So I would like to be able to recover the time and then just make a decision to hear our chairman of the subcommittee. How much time is remaining on our side?

The PRESIDING OFFICER. Twelve and a half minutes remain.

Mr. LAUTENBERG. I yield up to 10 minutes to the Senator from West Virginia.

Mr. ROCKEFELLER. I am grateful to my colleague from New Jersey for that. But I am still perplexed. This is all kind of odd to me.

We could, I think, pass this whole thing, the entire authorization bill. The chairman of the full committee and Senator HOLLINGS and Senator LOTT, both of whom have spoken here, myself, the ranking member on the Aviation Subcommittee, and BYRON DORGAN—we wrote to FAA Administrator Blakey and made a reasonable request, asking for an extension on a certain part of this for a period of a year. We might get that in the next 7 or 8. We might very well get it. The language didn't appear to be quite proper at the time.

We do have the President's statement. As the Senator from New Jersey pointed out, he specifically deleted "an inherently governmental function" when it referred to air traffic performance-based organizations.

I want to support the FAA conference report. I think virtually everybody in the Senate would want to do it. It includes a lot of things that are very important to me for West Virginia. West Virginia is not at the center. We are not exactly a hub of jet aviation, but we are served by many good airlines that do their best to help us. We all know the issue of privatizing the air traffic control system has held this whole thing up for months. It is perplexing, because it does not seem to me to be that big an issue. Yet if we are simply to accede to it, in language which is potentially very vague, we have no idea what might happen.

That is why we sent this letter—my good friend and chairman, and I, and the chairman of the full committee—to try to get this extended for a year so we could look at it and go ahead and pass the rest of all this.

But we have not gotten the letter. We still have 7½ minutes, if I read the clock correctly. It could come in. Then we could all vote for the entire conference report. But short of getting that letter and that commitment, which we all signed on a bipartisan basis, then I think we have to vote against cloture because it is entirely a matter of employees being accountable to the public who maintain the airplanes, who are the service stations that send them from one place to another. That is accountability to the public. It is not accountability to the bottom line. It is not a matter of contracting out. This is fundamental safety.

If you ever go out to Herndon, VA, as I have, and you see the latest technology and you see all the airplanes in the air at any given moment in the United States of America, you can hardly see the country. There are airplanes everywhere and they are all traveling. They have to be guided. A lot of them are general aviation. Some of them are not, obviously.

The inability of Congress to resolve this issue has created a very significant uncertainty for our airports in particular. These are hard times for aviation. I don't think it is the right time to add more trouble in their life, more uncertainty in their life, less predictability in their life, and the worry about less safety in their life.

Last week we did attempt to resolve the main issue that held this up. As I indicated, Senators McCAIN, HOLLINGS, LOTT, DORGAN, and myself did send the FAA Administrator a very straightforward, honest letter and we requested the FAA impose a 1-year moratorium on the actual contracting out of any air traffic control functions, including flight service stations, which provide enormously important information to pilots. You can't do without them.

I have a little community in my State called Elkins, WV, which is currently not served by commercial aviation, but it does have a critically important flight service station that handles traffic for a significant part of the Washington, DC metropolitan area that is at risk of being contracted out—and will be.

Flight service stations such as these are absolutely vital security links in our Nation's air traffic control system and they have to be protected from privatization.

I come from a private enterprise background, and that has been pointed out to me humorously, or not, but you just can't fool around with public safety. You can't do it. Police officers are not contracted out. I guess they are in Iraq, but they are not in this country. They are public servants. Or you hire a private guard if you want to, something of that sort, but basically, protection of public life and public passage is in the hands of the Federal Government. And it should be. It has always been there. People trust it. If you took it away, or parts of it away, people would be stunned. I think they would be stunned.

This Senator can only support cloture if the administration has made a strong commitment to hold off any changes to the management of the air traffic control system for a year. And we have still 4 minutes to get that letter. Then we will vote for the conference report and I will happily do so because I agree with the Senator from Mississippi, there are lots of good things in it. But safety, unfortunately, is one of those things you cannot compromise.

The Senator from Arizona spoke about Air Force One and Air Force Two. I have never had any doubt they are well cared for. But there is a lot of other general aviation that may not be quite as well tended to, and we have to worry about that.

I don't think the conference report is going to pass the Senate if this letter doesn't arrive. It is not just a case of where the perfect is the enemy of the good but, rather, it is a fundamental debate over the future of aviation and security. It is a huge subject. Aviation is an enormous employer, creating enormous economic activity in our country.

This is not the process we should have to use for the FAA conference report. I would be the first to say that. It grieves me. This legislation has always enjoyed bipartisan support.

I want to set the record straight for 1 second and then I will be finished, on how this came about. When the Senate debated, as has been said by the Senator from New Jersey, we debated this important bipartisan bill. We had a bipartisan majority of Senators express serious concerns over the executive branch's future plans for the safety management of the air traffic control system as a whole. As the Senator indicated, we voted 56 to 41 to impose restrictions on the administration's proposal precisely to avoid the very outcome of the conference report we are now facing, which is allowing the administration to privatize functions of the air traffic control system.

I will not get into the House of Representatives. They also had voted to impose these safety restrictions. In the end, the majority of conferees—we were never invited to be a part of, I was never invited be a part of, but I have become accustomed to that because I was part of the Medicare conference and I wasn't part of that, so my threshold of expectations was low. But we had the will of both Chambers being expressed. Unfortunately, the conferees bent to the desire of the administration.

Congress has clearly spoken on its concerns over air traffic control privatization. Let us use next year to develop policies and make the system more secure, more safe, and more efficient. I urge my colleagues to reject cloture unless we get a letter in the next minute and a half which commits to this protection which I think we all want.

This is an enormous subject. I deeply regret we have come to this point. There is no reason we should have, but we have. Assuming that letter will not come, I will have to ask my colleagues to vote against cloture.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, before he leaves the Chamber, I thank the Senator from West Virginia for his work on the Commerce Committee, and specifically for his work and his cooperation on the development of this legislation, both at the subcommittee and full committee level and here in the Chamber of the Senate, and also for the tone of his remarks. He wants to get this done and that is the attitude we should all have. In fact, that has been my goal. I am trying to find a way we can get a bill completed that has $60 billion in it, billions of dollars for security for our airports and for the airline industry as a whole and that the President will sign.

Is this about trying to win the point—the congressional position will prevail and the President's position will prevail? How about finding a position we can both live with? That is, fortunately or unfortunately, how it works sometimes in a legislative body. That has always been my attitude. I am not interested in making statements. We came here to get things done. We need to get this legislation completed. That is why we have been working feverishly to try to come to a conclusion.

With regard to contract towers, we have one in Tupelo, MS. It works fine.

I believe the record will show that the Senator from New Jersey has over the years supported the concept of contract towers. As a matter of fact, when he was chairman of the Transportation Appropriations Subcommittee, in 1994, the number of contract towers grew from 14 in 1987 to 59 at the end of 1994—an increase of 300 percent while he was subcommittee chairman.

I repeat again something I said: This is not a Republican idea. I am not even sure it is a Democrat idea. But it is an idea that was used effectively during Democratic administrations and Republican administrations.

The 1994 Senate report says:

> In light of the recent recommendations in the "Report of the National Performance Review" which calls for converting level I control towers to contract operations, the Committee has provided an additional $1 million above the amount requested for this program.

That was in the Transportation Appropriations Subcommittee report in 1994.

Here is the most important language from the subcommittee chairman, Senator LAUTENBERG.

> The Committee believes this public/private sector program (contract towers) has provided significant safety and economic benefits to smaller communities at a reduced cost to the Federal Government since its inception in 1982. The Committee urges FAA to expand the programs where appropriate.

Now, all of a sudden, contract towers are something really heinous. What is the difference in 1994 and 2003? We have done a lot more—I think over 200 of them. I think most of them work just fine.

I do not know. We are doing a little revisionist history here.

I emphasize this: There is no language in this conference report that would identify contract towers for Alaska, in or out. We took that out. It is not here.

We also had language in the conference report that said we would not have privatization of the air traffic control system.

Declare victory? Oh, no. That was a problem because it didn't apply to all parts and all unions involved in FAA.

That is what this is really all about. It is about making sure that every one of the unions that are involved in the Federal Aviation Administration are excluded.

Again, we are, I guess, looking for the perfect here. All the talk is about air traffic controllers, but as a matter of fact, it involves the Federal Flight Weather Service people, it involves maintenance, it involves everybody.

We can't have privatization of any part of the FAA, would be the attitude of some. I just do not understand that language here.

So it is very important that we realize what is actually in this conference report and what is not. My guess is, Can you accept victory? Can you accept victory? The administration has said they will put it in writing; they would have supported it in legislation; no privatization of air traffic control systems.

I ask the Senator from New Jersey. He addressed a question to me. I address a question to the Senator from New Jersey. Will he accept a commitment of a 1-year moratorium of no privatization of the air traffic controllers?

Mr. LAUTENBERG. If the Senator from Mississippi would read that infamous letter we are talking about, it says no actual privatization will take place.

Mr. LOTT. That is my point.

Mr. LAUTENBERG. My goodness, we couldn't privatize it within a year if we started today. That letter doesn't say what it is purported to say.

Mr. THOMAS. Mr. President, the FAA conference report before us this evening is critical because it provides funding for crucial safety, security and capacity projects at airports across the country.

I strongly believe that all Senators should support this cloture vote—especially since it includes provisions to strengthen our Nation's air service. However, a handful of Members on the other side of the aisle have held this measure up due to inaccurate claims that the administration wants to privatize our air traffic control system. I would like to take a few minutes to set the record straight.

The objective of the FAA contract tower program is to reduce costs to the Federal Government by contracting out the operation of low-activity towers while providing a safe and efficient service to users of the National Airspace System. Without the contract tower program, many smaller airports would be left with no air traffic control services.

Since 1982, the FAA has used the contract tower program to provide air traffic control services at low activity Visual Flight Rules towers across the country.

In 1994, the Program was expanded to include the conversion of FAA Level 1 Visual Flight Rule towers to contract operations. This expansion was included in Vice President Gore's National Performance Review and supported by Congress. The Department of Transportation's Inspector General has publicly stated how important the contract tower program is. This program makes sense because it allows the FAA to realign its resources in a more efficient and effective manner; it has a better safety rate than FAA towers; and, it saves taxpayer dollars.

All contract controllers are certified by FAA, and contract tower facilities are monitored on a regular basis by the agency. Additionally, the vast majority of contract controllers are former FAA and military controllers. All contract controllers are subject to the same training requirements and operating rules and procedures.

Presently, the FAA is operating 219 contract towers at airports throughout the continental United States, Alaska, Hawaii, Guam, and Puerto Rico. The Contract Tower program cost for FY 2002 was $73.5 million. This program results in annual savings of over $54 million.

A recent audit by the Inspector General at the Department of Transportation validated the cost savings, and found that contract towers operate as safely and efficiently as FAA towers. Contract tower locations are evaluated by the FAA under the same requirements as FAA staffed towers.

Contract towers are staffed at the levels required under current contracts. Contracts are required to submit monthly staffing reports—which provides verification that they are in compliance with their FAA approved staffing plans.

Several audits have commended the FAA's Contract Tower program for oversight of contractors and strict monitoring of controller staffing levels.

According to Department of Transportation Inspector General Kenneth Mead, the contract tower program provides "cost-effective services that are comparable to the quality and safety of FAA-operated towers." Additionally, the National Transportation Safety Board—NTSB—supports the contract tower program.

I find it hard to believe that a handful of Democrats know more than NTSB or the inspector general when it comes to aviation safety.

There are many aspects of our Nation's aviation system. Nothing in the FAA Conference Report would allow for privitization. Simply put, under this bill the FAA would continue to exercise the authority it has had since 1982.

A number of my colleagues have implied that this bill is an attempt to contract out the job of Enroute Control Centers. Enroute controllers are responsible for directing traffic across the United States—the Contract Tower Program has nothing to do with these positions.

At Congressional hearings this year, DOT's inspector general stated that with the sharp decline in revenues to the aviation trust fund and the most recent projections of the federal deficit, the FAA needs the flexibility to ensure VFR towers are conducted in the safest and most cost-effective manner possible.

Wyoming's busiest commercial airport—Jackson Hole—operates under a contract tower. The Jackson Airport handles over 63 percent of Wyoming's commercial air traffic.

For those who question the safety of contract towers, I would like to point out that Vice President CHENEY and President Bush both use contract towers when they fly to their respective home States. If the contract towers are safe enough for the President and Vice President—I believe they are safe enough for the American public.

I would like to quote Senator LAUTENBERG'S floor statement during consideration of the fiscal year 1994 Department of Transportation and Related Agencies Appropriations Act on October 4, 1993. He said:

> The use of contract towers is an example of how we can reduce the costs of Government services and achieve savings over the long run. FAA estimates that the use of a contract control tower saves $200,000 annually because of the flexibility available in scheduling controller working hours around changes in air traffic activity levels.

I ask unanimous consent that the Talon News article by Jeff Gannon dated September 23, 2003 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Talon News Sept. 23, 2003]

Daschle, Lautenberg Vow to Fight FAA Privatization They Supported in 1994

(By Jeff Gannon)

WASHINGTON (TALON NEWS).—New Jersey Democrat Sen. Frank Lautenberg is promising to hold up the Federal Aviation Administration reauthorization bill over the subcontracting of some air traffic control jobs. He cited safety concerns as the basis for his opposition to the outsourcing of air traffic control functions.

President Bush has threatened to veto a bill that does not include language to allow the privatization that his administration says will result in increased savings with no reduction in safety. Democrats are challenging competitive sourcing of thousands of federal jobs through insertion of amendments into departmental appropriations bills that would prohibit the practice.

Some are characterizing Lautenberg's opposition to the privatization as political, since he championed a similar program in 1994.

Geoffrey Segal, the Director of Government Reform Policy for the Reason Foundation, told Talon News, "The change in position clearly is pandering to special interests, in this case NATCA (National Air Traffic Controllers Association), who have aggressively stepped up their lobbying efforts to fight competition in the FAA."

Segal pointed out that, while serving as chairman of the Senate Transportation Appropriations Subcommittee, Lautenberg supported the part of Vice President Al Gore's program for "reinventing government" that included the changes now being proposed by President Bush.

Segal continued his criticism of Lautenberg, saying, "The flip-flop in position is pure partisan politics—it's reform when proposed by a Democrat, but it's trading safety and security for profits when it's a Republican proposal."

Lautenberg was quoted in the Washington Post in 1994, saying, "The [Clinton] administration's proposal to privatize the air traffic control system is consistent with the desire to bring more efficiency and reform to government and should be reviewed seriously."

On the Senate floor in 1993, the New Jersey Democrat declared, "I strongly endorse the FAA's contract tower program for level 1 (the smallest) control towers. . . . The use of contract towers is an example of how we can reduce the costs of Government services and achieve savings over the long run."

Lautenberg justified his support of privatization by saying, "FAA estimates that the use of a contact tower saves $200,000 annually because of the flexibility available in scheduling controller working hours around changes in air traffic activity levels."

At the time, South Dakota Sen. Tom Daschle (D–SD) praised Lautenberg's efforts, saying, "I would like to compliment the Senator from New Jersey for once again doing a masterful job in providing the Senate with an appropriations bill that recognizes the importance of our transportation systems to the health of our economy and fairly balances the competing demands for improved transportation services throughout the United States." .

Daschle continued his complimentary assessment of the privatization provision, saying, "I am grateful that report directs the FAA to include the Aberdeen (South Dakota) Airport in the FAA's contract tower program."

Lind Hall Daschle, the senator's wife, was a deputy administrator for the FAA from 1993 until 1997.

The Reason Foundation's Segal summarized his assessment of the political motivation of the Senate Democrats by saying, "Of course, the larger picture is that both Sens. Lautenberg and Daschle supported bringing competition to government, however, as part of President Bush's plan to do the same, both senators are outspoken opponents of the plan. It seems that competition in Aberdeen is good for Sen. Daschle's constituents but not for American taxpayers."

FAA officials have suggested that unless action is taken by the September 30 expiration of the current authorization, it would begin to furlough non-essential personnel. Marion C. Blakey, the agency's administrator, predicts more dire consequences. The New York Times quotes her as saying, "We see ourselves on the brink of closing the doors."

A temporary reauthorization measure is being proposed to break the impasse and to avoid a shutdown of the FAA. Two Republicans, Sens. Trent Lott (R–MS) and John McCain (R–AZ), indicated they would oppose any short-term extension and intend to continue work on the full four-year bill.

Mr. THOMAS. Mr. President, I hope my colleagues and the American public see that under the Clinton administration the Contract Tower Program was okay but it's not today—under a Republican administration.

This conference report includes many important provisions for our aviation system. It includes billions in funding for the Airport Improvement Program; provides continuation of the Essential Air Service and Small Community Air Service programs; funds FAA operations, air traffic control facilities and equipment; extends War Risk Insurance to March 2008; and it provides streamlining for airport capacity, safety and security projects.

Secretary Norman Mineta has stated that "passage of this legislation offers millions of American travelers the assurance that the Nation's aviation system will remain the safest, most efficient and most competitive in the world." The facts speak for themselves. The Contract Tower Program provides cost effective, quality and safe air traffic control services to smaller airports.

I urge my colleagues to support cloture on this important bill.

Mr. KENNEDY. Mr. President, the tragedy of September 11 has been seared into all our memories. We will never forget the sudden massive loss of lives, and the realization that our country was now extremely vulnerable to terrorist attack. We remember the extraordinary courage of the passengers on the fourth plane who prevented the terrorists from completing their murderous mission. We also remember the extraordinary courage of the firefighters, police officers, and other rescue workers at the sites of the attacks, and millions of our fellow citizens who reached out to help the families of the victims.

We remember as well the extraordinary performance of the air traffic controllers, who took on the incredible challenge of protecting the whole aviation network and ensuring the safety of the public on that tragic day and in the days that followed. Their professionalism and patriotism inspired us all.

So why in the world is the administration now attempting to undermine those brave citizens? We must defend them instead, because the air traffic controllers are defending us and defending the safety of the American flying public.

Over and over again we see the problems in the administration's privatization policy throughout the Federal Government. We have been fighting other battles to correct those policies and make them fair for Federal employees.

But we must be especially careful with these policies when they affect homeland security. We all know what a disaster it was when private companies screened bags at our airports. Now, Federal workers are doing the job better, and Americans are feeling safer.

Both the House and the Senate specifically voted to protect air traffic controllers and keep these vital safety jobs as part of the Federal workforce. Yet now, because of a shameful veto threat from the White House, the House and Senate Republican leadership have yielded to and agreed to a privatization of these jobs. That change is unacceptable.

In fact, the Senate bill contained even stronger protections than the House bill. The Senate voted 56 to 41 to approve Senator LAUTENBERG's amendment to protect not just air traffic controllers, but also systems specialists and flight service station controllers from privatization. I commend my colleague from New Jersey for his continued leadership in this important battle.

The FAA reauthorization bill now before us defies the will of the majority in both the House and the Senate. It undermines the safety of our aviation system, and I urge my colleagues to vote "no" on cloture.

Mr. REID. Mr. President, the U.S. air traffic control system works miraculously well. It is a public system that is admired around the world. American air traffic controllers safely and efficiently guide 9 million flights a year with more than 600 million passengers.

When it comes to the safety of air travel, the American people demand perfection, and rightfully so. That is why the Federal Aviation Administration has set a goal of reducing air traffic fatalities to near zero. This challenge has become increasingly complex as flights have increased to meet the growing needs of the traveling public. There isn't much room for error.

Unfortunately, the administration and House Republican leaders are backing a plan that compromises passenger safety by privatizing the air traffic control system. This flawed and misguided plan is contained in the conference report on this FAA bill. It is opposed by 71 percent of Americans.

Earlier this summer, the U.S. Senate and House of Representatives both voted in their respective FAA bills to maintain air traffic control as a public function and prevent it from being privatized. That is the will of Congress.

Instead of affirming that the safety of air travelers is the responsibility of the United States Government, members of the conference committee, at the urging of the administration, passed an initial conference report that allowed for immediate privatization of 69 air traffic control towers.

This brazen attempt at privatization was met with such opposition that the House was forced to recommit the bill to conference. However, once recommitted, the House simply stripped language in the conference report dealing with privatization. No conference committee meetings were held. The bill was passed along party lines. And our Republican friends say this is the status quo.

Nothing could be further from the truth. The House and Senate passed language to prohibit privatization in response to an Executive order by the administration to privatize the air traffic control system.

Put simply, the conference report allows the FAA to privatize any air traffic control functions at its whim. This policy creates a puzzling contradiction. Our Government has declared that your luggage is important enough to be screened by trained Federal workers, but once you are up in the sky, with your life in the balance, the administration apparently feels that your safety isn't as important as your suitcase.

Any meaningful legislation must follow the mandate of the Senate and House bills and refrain from trying to privatize our air traffic control system.

If the House attempts to force privatization of our Nation's air traffic control system, it will only delay funding of essential airport infrastructure and security programs. That would be irresponsible and even reckless.

We urge our colleagues to work with us to craft a revised FAA bill that honors the overwhelming sentiment in Congress against privatization of air traffic control operations and maintenance, that protects the U.S. aviation industry from unfair foreign competition and maintains Federal support of the essential air service, and a bill that ensures that our Nation's flight attendants receive mandatory antiterrorism training.

Let's move forward by passing a straight 6-month extension of all FAA programs that will provide the necessary time to work through these issues. An extension bill, introduced by Senators ROCKEFELLER, LAUTENBERG, and DASCHLE, will provide a vehicle for the Congress to get the process and substance of the FAA bill right.

I am confident that both Chambers of Congress will reassert their intent to block privatization, protect the integrity of essential air service, continue the ban on cabotage, and train flight attendants as mandated under existing legislation.

Americans entrust their lives every day to our air traffic controllers. Now they are trusting us to protect their safety.

FAA PRIVATIZATION

Mr. REID. Our friends of the other side of the aisle suggest that President Bush has no plans to privatize the air traffic control system. They point out that the President hasn't privatized any towers in the past 3 years. Then why is the President threatening to veto this bill if it includes language to prohibit privatization? Why is the President delaying the funding for essential airport construction projects? Does this make any sense to the Senator?

Mr. LAUTENBERG. Unfortunately, certain Senate conferees to the FAA bill decided to remove all barriers to privatizing our national air traffic control system. But both the Senate and the House voted to put these barriers in the bill as a response to President Bush's actions, including the issuance of an Executive order, to move towards privatizing air traffic control. And the President feels so strongly about privatizing that he has forced conference leaders not to take any actions in the bill. And this is not agreeable to those of us concerned about the safety impacts of the President's plan. To my dismay, this ideological crusade by the White House has held up passage of the legislation for over 3 months, and I am disappointed that some of my colleagues are willing to sacrifice safety for this zeal to privatize.

Mr. REID. Our colleagues also point out that President Clinton privatized 116 of the current 219 contract towers. Isn't it inconsistent for Democrats to argue privatization when it was a common practice under the Clinton administration?

Mr. LAUTENBERG. Between 1994 and 2000, the FAA did contract out 130 small FAA towers. These were "level I towers"—generally with less than 25 operations per hour and operating under "visual flight rules"—that is, without radar equipment. I also note that the current list of 219 towers constitutes a small fraction of overall air traffic in the United States. While exploring ways to modernize air traffic control equipment for the entire national system, the Clinton administration proposed a Federal corporation to take over air traffic operations. While I initially was willing to consider this proposal, it was rapidly determined to be a poor idea, and the President eventually made the determination that air traffic control is an inherently governmental function. So during reauthorization of the FAA bill in 1996 and 2000, we agreed to FAA management reforms, to give FAA the flexibility it needs to act as a better manager, not privatization. In the end, the President and the Congress agreed that air traffic control is an inherently governmental function, and recognized that it was not wise to pursue privatization. Unfortunately, the Bush administration reversed the Clinton administration's executive order last year, reclassifying air traffic control functions so that privatization could proceed. And this was after September 11. In summary, the Clinton administration did not support privatization, while the Bush administration does support privatization.

Mr. REID. You mentioned that the Bush administration reversed the Executive order issued by the Clinton administration establishing air traffic control as an inherently governmental function. Did the Bush administration have second thoughts about that after September 11, 2001?

Mr. LAUTENBERG. I say to Senator REID, this may be hard to believe, but the Bush administration issued their Executive order after September 11. I find that especially troubling in light of the incredible and even heroic performance by the Federal employees of our Nation's air traffic control system on September 11. The security of the Nation's airlines became so important that we felt the need to federalize baggage screening. But somehow, this administration still wants to privatize the air traffic control system.

Mr. JEFFORDS. Mr. President, I have serious concerns about several provisions found in the FAA reauthorization conference report. Before the Senate passed S. 824, the FAA reauthorization bill, we expressly prohibited additional privatization of air traffic controllers. We also eliminated a proposed cost-sharing requirement for local communities that participate in the essential air service program. This requirement would have placed an insurmountable burden on many remote communities struggling to maintain commercial air service.

Our colleagues in the House responded similarly to these issues. When the Senate and House bills went to conference, neither Chamber's legislation permitted privatization of air traffic controllers, nor did either bill contain an essential air service cost-share requirement.

Therefore, I was surprised and disappointed to learn that the final conference report allows both.

I am also very concerned about the provisions in this bill affecting the National Environmental Policy Act, NEPA. While not actually an amendment to NEPA, these provisions are more likely to lead to extended conflict, litigation and confusion—far from a streamlined result. In addition, the Department of Transportation has neither the authority nor the expertise to determine the environmental impact of various alternatives to a project under environmental statutes such as the Clean Water Act and the Endangered Species Act. Other Federal entities, such as the Army Corps of Engineers or the Fish and Wildlife Service who have specific statutory mandates, must evaluate alternatives under Federal law when their jurisdiction is invoked.

For example, regulations governing wetlands permits under section 404 of the Clean Water Act require the Army Corps of Engineers to evaluate several factors such as "fish and wildlife values," "water quality," "conservation," and "aesthetics" in determining whether a permit is in the public's interest. The Clean Water Act imposes specific substantive standards on the Corps' decision and prohibits the Corps from issuing a permit to fill a wetland if there is a less damaging practicable alternative. Under current law, the Corps has the authority to supplement NEPA documents with additional information in order to fulfill its legal responsibility. The legal obligations of these other agencies have not been repealed by the language in this bill, nor should they be.

There is ample authority contained in the existing NEPA statute and regulations for coordination among Federal agencies in performing required environmental reviews. The confusing statutory directions contained in this bill are both unnecessary and counterproductive if the desired result is efficient project completion.

Given its current content, I cannot support this conference report.

Just last year, Congress determined that, for security reasons, airport passenger screeners should be Federal employees. Why would we treat air traffic controllers differently? They play an equally important role in ensuring the safety of our air travelers.

Our air traffic control network safely guides more than 700 million passengers a year. In addition, the ATC network provides a crucial national security service by coordinating the national air space for military aircraft as well as for commercial aircraft. As we saw immediately following the terrorist attacks of September 11, 2001, the ATC system must be prepared to respond quickly and efficiently in emergency situations.

In order to best ensure the safety of air travel in this country, our air traffic control network must remain a Federal responsibility. This bill permits privatization of air traffic control towers around the country.

I am also very concerned that the essential air service cost-share language found its way back into this legislation. The EAS program was created in 1978, when Congress passed the Airline Deregulation Act, reflecting Congress's belief that deregulation should not result in the elimination of airport service in rural communities. In my home State of Vermont, the Rutland State Airport depends on this program to maintain commercial service in and out of the Rutland region.

For many cash-strapped EAS communities, the local match required by the cost-share provision in this bill is insurmountable. Mandatory cost-shares will mean the end of commercial air service in many economically depressed rural areas. If we adopt this provision, we have essentially defeated the goal of the EAS program.

Both the House and the Senate acted on these two provisions earlier this year. The FAA conference report reverses the positions that a majority of our Members agreed to on the House and Senate floors. Rather than endorse the flaws found in this legislation, I urge my colleagues to support S. 1618, Senator ROCKEFELLER's short-term extension of the Federal Aviation Administration programs. This bill provides the additional time we need to work out a long-term reauthorization package that represents the positions of a majority of Members of both Houses of Congress.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. KERRY. Mr. President, I would like the record to reflect my opposition to the Vision 100—Century of Flight conference report. The final bill does not include any prohibition against privatizing the air traffic control system, an issue that has serious safety and national security implications. I voted in favor of the Lautenberg amendment in June and will oppose ending debate today because passage of this bill without language protecting ATC from privatization will make our aviation system less secure and more vulnerable to terrorist attacks.

After the September 11 attacks it was obvious that the Federal Government needed to assume a greater role in aviation security. Although we passed legislation that made baggage and passenger screening a federal responsibility—legislation that the administration supported—the President signed an executive order that designated air traffic control as a "commercially competitive" enterprise. This is a strange dichotomy. The President seems to believe that, in the realm of aviation security, airport security and air traffic control are mutually exclusive. I fail to see how these issues are mutually exclusive and am disturbed at the administration's efforts to undermine the protections that were originally included in both the House and Senate bills.

Mr. President, if this bill passes without a prohibition on privatization, the executive order signed by the President will stand and he will be able to contract out the Nation's ATC to the lowest bidder. I cannot imagine a worse policy for our Nation. This work should only be performed by well trained and experienced Federal workers. These men and women perform a valuable service to their country and their jobs should not be shipped out to a private entity. I urge my colleagues to oppose this bill.•

Mrs. MURRAY. Mr. President, I oppose the motion to close debate on the FAA reauthorization bill.

While I strongly support the bill's authorized funding for infrastructure and operations for our Nation's aviation system, I am troubled that this bill still gives the Administration too much leeway to privatize our Nation's air traffic control, ATC, system.

We know this administration is eager to privatize government jobs even when it costs more money and does not improve productivity. We also know that air traffic control involves special considerations like safety, cost and flight delays.

That's why both the House and Senate passed amendments to the FAA bill to explicitly limit the administration's ability to privatize FAA-controlled towers. I voted for the Lautenberg Amendment in June, and it passed the Senate 56-41.

You would have thought that the White House would recognize that it was on the wrong side of this bipartisan issue. But instead of accepting this reality, the White House pressured the members of the conference committee to remove the limiting language during the first conference. Regrettably, a majority on the conference committee followed the White House's request.

In its place, the conferees added new language that goes even further in supporting privatization. That new language would allow 69 of current FAA controlled towers to be eligible for privatization. Eleven of those towers are among the 50 busiest in the nation, including Boeing Field in Seattle.

The conferees then presented that proposal, only to realize that it faced strong opposition in both Houses of Congress.

The conferees were forced to take their first report back for further deliberation. Their second conference report, which is before us today, dropped the expanded privatization provision. However, it did not reinstate the initial language that both chambers supported, which would explicitly limit the administration's ability to privatize our air traffic control system.

Given the administration's disregard for congressional intent, I believe that this limiting language is critical.

As ranking Member of the Transportation, Treasury and General Government Appropriations Subcommittee, I have supported some privatization of ATC, but only at low-traffic airports that would otherwise not have a tower.

This is not just a process or philosophical issue but raises questions about benefits, safety and cost. The countries that have privatized their ATC systems—Canada, Australia and the U.K.—have seen increased flight delays and—in the case of Great Britain—an increase in "near misses" that could result in accidents. In addition, this private control requires more resources than government-run systems.

It is important to note that the Lautenberg amendment would have allowed the government to continue to provide private air traffic control to smaller airports.

Senator ROCKEFELLER has offered a simple 6-month extension of AIR–21, which will allow us to reexamine this issue and put together a package that reflects the will of Congress and the people.

I urge my colleagues to oppose this conference report.

Mrs. BOXER. Mr. President, I discuss why I am voting against cloture on the FAA Reauthorization bill.

This bill includes some very good provisions, including funding for our Nation's airports and two provisions that I was able to include in this bill—certification of flight attendant anti-terrorism training and allowing trained cargo pilots to carry guns in the cockpit.

However, these good provisions do not make up for the threat to the safety of air travel that this bill will cause.

On June 12, 2003, Senator LAUTENBERG's amendment to the FAA bill passed 56 to 41. His amendment, which I supported, would have prevented the Administration from privatizing the U.S. air traffic control system. The House bill had a similar provision.

However, during the conference process the provisions in both bills were ignored. This summer, Republican conference leaders filed a conference report that specifically sanctioned privatization at up to 69 airports, some of which are the busiest in the country in terms of flight operations. For instance, Van Nuys airport in California is the eighth busiest airport in the country in terms of flight operations.

When that clearly did not have the support of the Congress, the conference report was rewritten, and the privatization language was dropped. But, the language prohibiting privatization was not reinserted, and the administration has indicated it intends to go forward.

Privatizing the controllers is a bad idea. The system is not broken, and we should not try to "fix" it. Our air traffic controllers did a valiant job after the terrorist attacks on September 11 by closing air space and by landing all of the planes safely. We should not mess with success.

Safety must be a top priority in air travel. Privatization puts that safety at risk.

Mr. FEINGOLD. Mr. President, today the Federal Aviation Administration reauthorization conference report comes before the full Senate. I plan to vote against cloture on the conference report to accompany H.R. 2115 because it would permit the contracting out of certain air traffic controller positions currently filled by Federal Government employees.

I do not support efforts to contract out air traffic controller positions because these positions are vital to our national security. I regret that the FAA conference report does not include language passed by both the Senate and the House—which I supported—that would have prohibited the administration from contracting out these important positions.

I support the funding for airports and airline industries in our country that this bill contains and it is not my intention to slow down funding for airports or airlines. However, the safety of Americans must outweigh the possibility of airlines and airports being temporarily inconvenienced.

Supporters of this legislation will argue that airport construction projects will be delayed if we do not pass this bill soon. However, how can the lives of Americans be compared to the value of construction projects? Airport projects are certainly important, but the lives of Americans are worth a slight delay in the passage of this bill.

Safety is one of the most important elements of this bill for me and for Wisconsin residents. I have been contacted by a number of constituents from my home State of Wisconsin who stated their opposition to the contracting out of air traffic controller positions. I share their concerns and I am not prepared to vote for cloture on a bill that does not contain adequate safeguards to ensure passenger safety.

The contracting out of air traffic controller positions would be a major mistake with potentially life-threatening consequences. In recent years, other countries have attempted to privatize their air traffic control systems only to encounter major problems, with increases in "near-misses" of airplanes or actual airplane crashes. Furthermore, in attempting to privatize their air traffic control systems, other countries have experienced increased delays and higher costs and fees for passengers. With our economy in its current condition, higher costs and fees are the last thing that consumers want or deserve.

In Canada, where air traffic control privatization was established in 1998, the Canadian Transportation Safety Board found that under-staffing at some towers has been a major concern and may have contributed to near mid-air collisions. According to the London Daily Telegraph in Great Britain, flight delays caused by air traffic control increased by 20 percent since the system there was outsourced. More importantly, the UK Airport Board found that "near miss" plane crash incidents had risen to their highest levels in a decade. We cannot and must not take that risk here in the United States.

Those supporting this bill as it presently stands argue that the legislation needs to be passed immediately and should not be held up because of the privatization debate. The safety of Americans is no minor issue. The bill as it currently stands puts many American lives at risk, as demonstrated by the increased danger of air collisions that we have seen in other countries.

This conference report also fails to address an important issue regarding flight attendants. This issue is an important one following the events of September 11, 2001. Since that tragic event in our Nation's history, cockpit doors have been reinforced, some pilots have been trained and certified to carry firearms and marshals have been added to some flights. Pilots have also been directed to remain in the cockpit during a highjacking, leaving flight attendants alone in the cabin with only minimal training on how to work with a marshal or respond alone to such an event. The provision that was not included in the legislation before us seeks to protect flight attendants by making it mandatory that the Transportation Security Administration issue minimum training standards for flight attendant self-defense training within one year.

The current legislation states that the Transportation Security Administration "may" issue minimum training standards for flight attendant self-defense training. This is simply not enough to protect the flight attendants or the flying public.

For the above reasons I regret that I cannot vote for cloture.

Mr. LOTT. Mr. President, I reserve the remainder of my time.

Mr. LAUTENBERG. How much time is left on our side, Mr. President?

The PRESIDING OFFICER. Two minutes 32 seconds.

Mr. LAUTENBERG. On the majority side?

The PRESIDING OFFICER. Five minutes on the majority side.

Mr. LAUTENBERG. Mr. President, I have listened, and if I were not experienced I would be shocked at what is being said. Get over Alaska. What do you care about Alaska? I care about my family. I even care about the other guy's family.

Why was FAA started in the first place?

June 30, 1956: TWA Flight 2 collided with United Flight 17 killing 128 people. The record shows that one probable cause of the accident was insufficiency of the en route traffic control advisory.

They can trivialize it on the other side all they want—smile and smirk.

But the fact is that Don Young was the smartest of them all. And why didn't we hear from the Republican side when the vote was taking place in June? We had 11 Republicans vote with us. I did not hear the cry that: We are not going to be able to fund this. We are going to be able to fund it.

Senator ROCKEFELLER and I proposed a compromise in S. 1618, which was an FAA temporary extension act. Let us get it all out there. But no, the other side persists in getting this thing through by one hook or another.

The fact is that by any sense of one's decency, don't throw FAA into the same pot out of which we dug the baggage screeners. It is ridiculous to have this kind of a debate.

Sure, we can prove Air Force One can land anyplace. We know the President lands it all over in fundraising, for goodness' sake. We see that airplane going out there. But that is a different situation than the one we are talking about when we have pilots who can occasionally make mistakes even when aided by the guidance of the FAA controllers. They know exactly what to do with the weather, they know what wind sheer looks like, and they know all of the conditions. And I am not the pilot. Senator MCCAIN is the pilot in this room.

The fact is it is safety; that is what I am concerned about. I am not interested in protecting anybody's turf except the families who fly every day across this country and the people who want to know they are going to get there in a timely and safe fashion. With the scares we suddenly see coming out, and shoulder-fired missiles, and here—oh, no; we don't have to talk about safety; let us talk about process.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LOTT. Mr. President, I yield whatever time remains to Senator MCCAIN who will wrap up. Any time he doesn't use I would like to retain.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank my colleague. I will be brief.

The letter says:

> Let me be absolutely clear. The administration has no plans to privatize the Nation's air traffic control system.

I would resist and join in efforts to prevent that.

It is very interesting: Baggage screeners? Could the Senator from New Jersey be talking about TSA, talking about baggage screeners? That is an interesting depiction. They are required to make sure there is security in our airports, I inform my colleague.

We are talking about hundreds of thousands of jobs here. We are talking about safety. We are talking about improved security. We know what needs to be done to improve security at our airports. That is in this bill. These come from the recommendations of the TSA and the Department of Homeland Security. They are vital.

If the Senator from New Jersey is interested in safety, then he will support the passage of this bill because it enhances in a broad variety of ways the safety of the airports in America. It is vital we implement these safety procedures.

If they were not interested, Vice President Gore's National Performance Review in 1994, recommendation No. 9 for Department of Transportation, recommended converting 99 FAA staff control towers to contract operations. I wonder if the Vice President had that in mind at the time this process began.

The important point is we tried very hard to come to some agreement. I don't think this has been a good process, but we made offer after offer. We have pressured the administration to come up with other offers. But the reality we were faced with was the threat of a Presidential veto. So we tried to reach accommodation. Obviously, that has not been enough.

But I assure my colleagues that if we don't pass this legislation, we will be back to the status quo, and the status quo—because we are not going to let this authorization die—will be continued privatization of towers in America, a program which has been a successful experiment.

I thank Senator ROCKEFELLER for his hard work on this issue. I appreciate it. Especially, I thank Senator LOTT for the many hours he put in trying to get this very important legislation passed.

The PRESIDING OFFICER. The Senator from Mississippi has 2 minutes.

Mr. LOTT. I ask unanimous consent that the letter to which Senator MCCAIN referred a moment ago from administrator Marion C. Blakely be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION,
Washington, DC, November 17, 2003.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I have received your November 13, 2003, letter regarding the issue of contracting our functions performed by Federal Aviation Administration (FAA) employees. It is unfortunate that the recent debate on FAA's pending reauthorization bill, Vision 100—The Century of Aviation Reauthorization Act has led some to confuse maintaining the status quo of the FAA's Contract Tower Program with privatizing our nation's air traffic control system. Let me be absolutely clear: the Administration has no plans to privatize the nation's air traffic control system.

I welcome and respect the Committee's duty to perform oversight of the FAA. I look forward to participating in the hearings you described, as there are many misconceptions as to the FAA's plans with respect to competitive sourcing that I would like to correct. In the meantime, if the legislation is enacted in its current form, you have my commitment that during the current fiscal year the FAA will not contract out any air traffic separation and control function currently performed by the FAA. Further, during that period, the FAA will not convert any Visual Flight Rule (VFR) tower to a contract tower.

I look forward to working with the Committee on the important challenges facing the Federal Aviation Administration. The Conference Report contains many provisions which will provide us with important tools to enhance aviation safety, security, and capacity. I hope that my assurances to the Committee will allow us to move forward on this important piece of legislation.

Sincerely,

MARION C. BLAKEY,
Administrator.

Mr. LOTT. Let me read from part of that letter. She acknowledges the letter the bipartisan group sent her last week, dated November 13, regarding contracting out functions performed by the Federal Aviation Administration employees.

> It is unfortunate that the recent debate on FAA's pending reauthorization bill, Vision 100—the Century of Aviation Reauthorization Act has led to some confusing maintaining the status quo of FAA's Contract Tower Program with privatizing our nation's air traffic control system. Let me be absolutely clear: The Administration has no plans to privatize the nation's air traffic control system.
>
> I welcome and respect the Committee's duty to perform oversight of the FAA. I look forward to participating in the hearings you describe, as there are many misconceptions as to the FAA's plans with respect to competitive sourcing that I would like to correct. In the meantime, if the legislation is enacted in its current form, you have my commitment that during the current fiscal year the FAA will not contract out any air traffic separation and control function currently performed by the FAA. Further, during that period, the FAA will not convert any Visual Flight Rule (VFR) tower to a contract tower.

What more can you ask? This is a letter from the Administrator, responding to our letter assuring us of those things we have been asking. They are not going to contract the air traffic control system, and they are not going to convert the visual flight rule tower to a contract tower.

I urge my colleagues, for the safety of the American people, for the importance of jobs in the economy, to vote for cloture. Let's pass this legislation and move it to the President for his signature.

Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays are mandatory under the rule.

Mr. LOTT. I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the

Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 2115, the Flight 100–Century of Aviation Reauthorization Act.

Bill Frist, John McCain, Conrad Burns, Ben Nighthorse Campbell, Wayne Allard, Jeff Sessions, Mike Crapo, Larry E. Craig, Kay Bailey Hutchison, John E. Sununu, George Allen, Saxby Chambliss, Rick Santorum, Norm Coleman, Craig Thomas, Pat Roberts, Trent Lott.

Mr. CORNYN. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 2115 shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Utah (Mr. BENNETT), the Senator from Kansas (Mr. BROWNBACK), the Senator from Kentucky (Mr. BUNNING), the Senator from South Carolina (Mr. GRAHAM), the Senator from New Hampshire (Mr. GREGG), and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

I further announce that if present and voting the Senator from Kentucky (Mr. BUNNING) would vote "yes."

Mr. REID. I announce that the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. DODD), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "nay."

The PRESIDING OFFICER (Mr. ALLARD). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 45, nays 43, as follows:

[Rollcall Vote No. 453 Leg.]

YEAS—45

Alexander
Allard
Allen
Baucus
Burns
Campbell
Chafee
Chambliss
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeWine
Dole
Domenici
Ensign
Enzi
Fitzgerald
Grassley
Hagel
Hatch
Hutchison
Inhofe
Kyl
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Stevens
Talent
Thomas
Voinovich
Warner

NAYS—43

Akaka
Bayh
Biden
Bingaman
Bond
Boxer
Breaux
Byrd
Cantwell
Carper
Clinton
Conrad
Daschle
Dayton
Dorgan
Durbin
Feingold
Feinstein
Frist
Harkin
Hollings
Inouye
Jeffords
Johnson
Kennedy
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lincoln
Mikulski
Murray
Nelson (FL)
Pryor
Reed
Reid
Rockefeller
Sarbanes
Schumer
Specter
Stabenow
Wyden

NOT VOTING—12

Bennett
Brownback
Bunning
Corzine
Dodd
Edwards
Graham (FL)
Graham (SC)
Gregg
Kerry
Lieberman
Sununu

The PRESIDING OFFICER. On this vote, the yeas are 45, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

Mr. FRIST. Mr. President, I enter a motion to reconsider the vote by which cloture failed.

The PRESIDING OFFICER. That motion is entered.

Mr. FRIST. Mr. President, for the information of colleagues, we will have no more rollcall votes tonight. For my colleagues' planning purposes, we will come in tomorrow morning at 9:30 and have two cloture votes beginning at 10:30 tomorrow morning. Tonight, we will continue with the debate for which we will get unanimous consent in a moment. I encourage our colleagues to participate and to stay for this debate for which we will propound a unanimous consent request at this juncture.

Again, we will have no more rollcall votes tonight. We will have two cloture votes at 10:30 tomorrow morning.

MORNING BUSINESS

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent that there now be a period for morning business for up to 65 minutes, with the time divided as follows:

Senators DORGAN and KYL be recognized first in this order for up to 1 minute each; the next 20 minutes be divided with the Democratic side in control of the first 5 minutes, to be followed by 5 minutes under the control of the Republican side, to be followed by an additional 5 minutes for the Republican side, with the final 5 minutes under Democratic control.

I further ask unanimous consent that the next period of time be divided, as follows:

Each side be permitted to ask up to four questions for up to 1 minute each in an alternating fashion, to be followed by a response of up to 2 minutes to be controlled by the other side of the aisle; to be followed by an additional minute by the first side, with the Republicans to ask the first question.

I further ask unanimous consent that the next 8 minutes be allotted in 2-minute segments alternating with the Democrats first and the Republicans concluding; further, that Senator DORGAN then be recognized to speak for up to 1 minute, to be followed by Senator KYL for the final minute; that upon the yielding of the floor, any debate time remaining during that period of controlled time be yielded back.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, let me announce to my colleagues that this is the second in a series of scheduled debates between the Republican and Democratic sides of the Senate on subjects of importance to the American people to be conducted in actual debate format. Rather than the usual situation where we speak to an empty Chamber or talk across each other, we have actually set up a debate in which two Republicans and two Democrats will tackle a subject of interest today and respond to each other and engage in debate the way it was originally intended by our Founders and by the people who set up the rules of the Senate.

All of the speakers will go through the Chair, but they will be addressing this subject in prepared remarks and then in rebuttal and response to each other. Senator DORGAN and I, who chair our respective policy committees, hope we can thus establish a precedent in this body that at least once a month we will pick a topic and engage in debates the way it was intended to be. We hope both our colleagues and the American people will be edified by this process, not to mention the other Senators in the body.

The PRESIDING OFFICER. The Senator has used 1 minute. The Senator from North Dakota.

Mr. DORGAN. Mr. President, before we begin, let me say to my colleague from Arizona that I think this is a good idea. We will engage now for the second time today in a debate about a specific topic. We will do it for 1 hour talking about something that is very important to the country. In this circumstance, it is going to be jobs and economic policies that create jobs.

This Senate is considered the greatest deliberative body in the world and, from time to time, people might tune in and wonder whether that description best suits the Senate these days. I think it does, however.

There are some extraordinary men and women who serve in this body, very capable of debating the issues. So Senator KYL and myself, as chairmen of the respective policy committees, have decided to establish this 1-hour debate on important issues. I am going to participate in the debate on our side at this time, and I believe Senator KYL will participate in a future debate.

The PRESIDING OFFICER. The Senator has spoken for 1 minute.

Mr. DORGAN. Mr. President, I look forward to this debate.

The PRESIDING OFFICER. The Democrats now have 5 minutes. The Senator from Iowa is recognized.

JOBS AND THE ECONOMY

Mr. HARKIN. Mr. President, again I join Senator DORGAN and my colleagues on the other side in saying how pleased we are to be here this evening to continue this process of having legitimate debates on the Senate floor regarding topics of importance to the American people.

Tonight we will be talking about jobs and the economy. In my 5-minute opening statement, I am prepared to show that Democratic economic policies are superior to Republican economic policies as it benefits the American public.

How are Democratic policies better? Simply because we create more and better jobs.

We create a better standard of living and quality of life for the majority of Americans who are working. We do this through worker and consumer protections, equal opportunity for women and minorities with basic measures such as the Family and Medical Leave Act, all historic steps led by Democrats, with Republicans either trailing or opposing outright.

Now, another example: The last Democratic administration and our economic plan, embodied in the 1993 budget, set us on a course of adding 6.4 million jobs in just 2 years. We eroded the annual deficits and eventually created the actual largest projected Federal budget surpluses in history. Every Republican in the Congress voted against that budget in 1993, with dire warnings about its effect.

We invested in people and family. We balanced the budget and we set the conditions for the most successful economic recovery and expansion ever in the history of the United States. Our friends on the other side cannot match our record on jobs, and I point to this chart I have. If we look at the average monthly change in jobs, Democratic versus Republican Presidents, jobs gained or lost per month, going clear back to Lyndon Johnson, we can see that under Johnson, Carter, and Clinton, we had tremendous job growth. Under Nixon, Reagan, Ford, and Bush 1, we had job growth but not as much as under Democrats.

If we look to the far right, we will see some devastating things that have happened since this President took office, not a job growth but an actual job loss, my point being that under Democrats we build better jobs and more jobs.

In 3 years, this administration has lost 3 million private sector jobs and their budget and tax policies have contributed to the largest and actual budget deficits in the history of the country.

The last quarter showed some improvement in our economy, and that is good, but it is not nearly enough. This administration will be the first since Herbert Hoover's to preside over a net loss of jobs over a 4-year period. We need to be creating about 150,000 jobs a month just to stay even. We are not doing that today. We are not even treading water in terms of job creation.

If my colleagues think the economy is tough now, look at the economic future the Republicans are creating. This administration turned a projected 10-year, $5.7 trillion surplus into a $4 trillion deficit over the coming 10 years. That debt imperils Social Security and Medicare, which might not bother some of my friends on that side who would like to privatize Social Security or Medicare or end it as we know it. That debt hurts our economy, it crowds our private sector investments we need for economic growth. It makes it difficult for us to make the investments in education, health, schools, roads, and our infrastructure.

For the long term, the Federal Government will have to borrow $400 billion a year, squeezing out private sector investment we need for a growing economy. The law of supply and demand which cannot be repealed means that borrowing will make investment dollars scarce and interest rates higher. Higher interest rates in the future will limit growth and limit jobs.

Now, instead of massive tax cuts that benefit the wealthiest, the answer should have been our approach: Fiscal responsibility, tax cuts targeted to low- and middle-income working families, and good job-creating, direct investments such as building roads and schools, our economic infrastructure. That should be the path we should be on.

The PRESIDING OFFICER. The Republicans are recognized for 5 minutes.

Mr. ALLEN. Mr. President, I thank my colleagues for joining with us in this debate on the most important issue we have facing us in the Senate and in our country. That is: How can we work to make sure we have the best policies for more investment and more job creation?

The reality is, right now things are getting better. They need to get better, though, than they are currently. Nevertheless, the facts are clear. Job growth is up by 126,000 in October. When my colleagues talk about the last 20 years, last month we had an annual growth rate of 7.2 percent. That is the best in 20 years.

The Republicans' point of view, I would say to my colleagues, is that we want to make sure every American, regardless of their race, their gender, their ethnicity, or their religious beliefs, has the opportunity to compete and succeed. That means our tax policies have to be conducive to investment. Regulations need to be based on sound science, not political science.

We also need to make sure the people of our country, in our States, have the capabilities and the knowledge to get the good jobs in the future. We also need to have security. When we see people in communities worried about crime or worried about terrorism, those are adverse impacts, on confidence and investment and therefore job creation. We have seen the adverse impacts of 9/11, particularly in the travel and tourism industry.

I know as Governor of the Commonwealth of Virginia what matters to businesses when they are looking to invest. They look at what is the cost of doing business, what is the tax rate, what is the cost of workers compensation. Ours are low in Virginia because we keep lawyers out of workers compensation. We get the money to the person who is injured so he or she can get back to work. Unemployment insurance taxes matter. The fact that we have a right to work law, which gives individuals the right, if they so desire, not to join a union as a condition of work, that helps attract business. Health insurance matters as well.

In a variety of areas, we have found Virginia ended up with much more job growth, more investment. It was called the Silicon Dominion because of the investment, because of having taxes competitively low, prompt permitting, reasonable regulations, and also investment in security and also in the capabilities of our students for high academic standards.

The Democrats talk about all of these Presidents. Interesting. Richard Nixon was elected after President Johnson. If one wants to call Jimmy Carter their second best President, with the malaise and the high interest rates, the high unemployment, and the high inflation. People put in Ronald Reagan to help revive this economy and make us stronger as well as, of course, keep our peace through strength.

I find it interesting my good friend from Iowa talks about, oh, the Republicans somehow want to imperil Social Security and gets off on these tangents on privatization. Of course the Democrats care about Social Security because in 1993 they not only taxed all families and all small businesses and every taxpayer, they even taxed Social Security benefits. When given the opportunity most recently on a measure introduced by Senator BUNNING of the Commonwealth of Kentucky, virtually every Democrat voted against that effort to repeal the tax on Social Security benefits.

The fact is, we are making good progress. We need to keep moving forward. We have ideas, as Republicans, in a variety of ways that we can make sure the American economy can compete internationally, can help create more jobs and greater opportunity. Indeed, we want to make health care costs more affordable and predictable, reduce the burden of lawsuits on our economy, whether it is asbestos reform or class action reform, make sure we have an affordable, reliable energy supply, streamline regulations, open new markets for American products, and also make sure there is confidence in investment in this country by making sure the tax reductions are permanent.

I will close with the words of Mr. Jefferson who said that the Government should restrain men from injuring one another but otherwise leave them free to regulate their own pursuits of industry and improvement and shall not take from the mouths of labor the bread they have earned.

That remains the sum of good government today.

The PRESIDING OFFICER. A Democrat is recognized.

Mr. DORGAN. Mr. President, I am not someone who believes Democrats are all right and the Republicans are all wrong. I believe both political parties contribute to this process.

We do not have to debate theory today about jobs. Let's just debate what we know. Here is what we know. In the 8 years under the Presidency of President Clinton, 237,000 jobs a month were created. Since President Bush took over, we have lost 70,000 jobs a month. There were 22.7 million jobs created during the 8 years of the Clinton administration; since President Bush took office, 2.3 million jobs lost. On June 7, 2002, the White House said: The tax cut will help create 800,000 new jobs by the end of 2002. In fact, we lost 1.9 million jobs during that period.

Finally, take a look at the red line, and my colleagues will see where these jobs have gone, and my colleagues will see the improvement about which my colleague just talked. They said, gosh, things are turning around. Here is the improvement; right here. All of us want good jobs in this country. They come with three things in my judgment: Fiscal policy that is responsible—no, not $500 billion deficits, which this administration is proposing and running up but fiscal policy that is responsible, trade policies that are fair to this country, to its businesses and workers, and especially as a result of good policies in both of those areas, confidence the American people would have in the future.

In 1993, we put a new economic plan in place by one vote in the House, one vote in the Senate, and we didn't get one vote for it on that side of the aisle—not one, not even by accident. As a result: 22.7 million jobs. On your side of the aisle they predicted catastrophe—the economy is going to be in terrible trouble. We had the strongest growth of any President, 22.7 million jobs.

Let me talk for just a moment about trade. We now have a trade ambassador trying to negotiate trade agreements in every part of the world. Let me talk just a moment about Huffy bicycles. Mr. President, 850 people in Ohio lost their jobs. They used to put American flags on the front of Huffy bicycles. They replaced that with a globe because they now make them in China. Why? Because the folks in Ohio who make them—who got fired, by the way—were making too much money, $11 an hour. So Huffy bicycles are now made in China for 33 cents an hour and sold at Wal-Mart, Target, and Sears. But they are not cheaper because they pay 33 cents an hour; it is just that Americans lost their jobs. Our trade policy is bankrupt, and we have a trade ambassador right now trying to do three more free trade agreements, more of the same. If you want good jobs in this country, then you have to stand up for American interests. You have to have a fiscal policy that adds up. This administration's doesn't. We are running the biggest deficits in history.

You have to have a trade policy that stands for this country's interest, and this trade policy doesn't. We have the highest trade deficits in history, and we have jobs moving wholesale overseas, where you can hire 12-year-old kids, work them 12 hours a day, and pay them 12 cents an hour, and that simply is not fair.

As a result of trade and fiscal policies that do not add up, the American people do not have the confidence in the future they ought to have. Confidence, after all, is what relates to the expansion side of the business cycle. When people are confident about the future, they buy a home; they take a trip; they buy a car; they do the things that expand the economy. When they are not confident, they do exactly the opposite.

We need to get to work and fix this country's fiscal policy, fix this country's trade policies, and not just go back right over the same old recipe about regulation and taxes and all those sorts of things. We know what creates jobs. We don't have to describe theory here. We can talk about the facts.

The facts are we put in place a plan in 1993 that created 22.7 million jobs because it said to the American people we are serious about fiscal responsibility. It said to the American people we are going to stop this sea of red ink, and we did. It was a hard vote, but it was the right vote. I have always been proud of it.

Now we have a sea of red ink, the largest budget surplus in this country's history when President Bush took office has been turned to the largest budget deficit in our history, and that is not going to breed confidence for the American people about the future. We need to put this country's economic house in order, and we need to do it soon.

Fiscal policy and trade policy that represents the long-term interests of the American people will represent expansion and jobs and opportunity once again for our country.

The PRESIDING OFFICER. Who seeks recognition on the Republican side? The Senator from Minnesota is recognized.

Mr. COLEMAN. Mr. President, before I arrived here, I read many times about the Senate as the "world's greatest deliberative body." Over my first 10 months, I would say that I have not experienced as much deliberating as I'd hoped. And I am glad my colleague, Senator ALLEN and I are doing this today—and that we are doing it deliberately.

The subjects of jobs and the economy are very personal and important to every American family. With the lone exception of maintaining national security at home and abroad, we have no greater responsibility as a government. I note to my colleague from North Dakota that, by the way, consumer spending is up 6.6 percent in the last quarter. Confidence is up. It must tell you something about the way the American people are thinking.

I want to begin by making a general observation. It seems to me that as a country we are awakening to a set of stark realities after what I'd call a decade of unrealism in the 1990s.

In the 1990s we came to believe that somehow we had conquered the business cycle—that we had ended the age old rise and inevitable fall of economic activity.

In the 1990s we came to believe that we are safe behind our borders from the violence and chaos that is a daily reality of many in the world because of the scourge of terrorism.

We have had a rude awakening. The speculative bubble of dot com industries burst. Revenues generated by our highly progressive tax system fell rapidly at the national and State level. We were attacked, at the very symbol of our commercial strength. How can you talk about job loss without once mentioning 9/11? Every conceivable threat to the confidence of the American people was leveled at us. But like the residents of the Massachusetts countryside in 1775, when Paul Revere rode by, we were awakened, and we are fighting a difficult war to restore our safety and our prosperity.

On Minnesota's Lake Superior; huge ore boats ply the world's largest body of fresh water. It literally takes miles and hours to turn around one of their massive boats. So it is with the American economy. The bigger the object, the longer it takes to turn. As we look at the American economy, we need to recognize a few critical facts.

First, the economic difficulty we are in began in 2000, the year before President Bush took office. In March 2000, the NASDAQ lost 44 percent of its value. In the year before the President took office, economic growth in this country fell from 3.9 percent to .9 percent.

Second, we have not repealed the laws of economics. The aftermath of a long expansion and a speculative economic bubble is recession, a slow recovery and large Government deficits. Even it its peak, our unemployment rate is substantially below that of previous recessions. In 1983 unemployment was over 10 percent and in 1992 it was almost 8 percent. And the difference between 6 percent and 8 percent or 10 percent represents millions of families back at work.

And third, the economy is now moving forward. The American economy has been bent, but it did not break.

Historic growth in the GDP—a growth rate of 7.2 percent—is nothing to scoff at. Yet, my Democratic colleagues seem to be able to find gloom and doom even during the brightest days.

We've added 225,000 new jobs in the last 2 months. A jobless recovery? I think not. Job growth is still a challenge, but a we have always seen, employment gains are the lagging feature of recovery.

I have not been the White House as often as some of my colleagues. But as far as I know there is not a brake pedal or a throttle for the economy under the president's desk.

But the President has done good work with the tools at his disposal. Federal Reserve Chairman Alan Greenspan has lauded the 2001 tax cut, which the Treasury Department has reported saved some 1.5 million jobs. The most recent tax cuts for both mom's and dad's and small businesses have been key to the 7.2 percent growth in GDP in the last quarter.

More than a generation ago there was Nobel Prize winning economic research done at the University of Minnesota. It seems obvious to us now, but the point of that research was that raw numbers and events are not the only thing that moves the economy. An equal or greater affect is the way people perceive what is happening.

At this point, I am forced to point out there is a drag on the economy from nine candidates for President constantly standing up and bad mouthing the economy. It seems they are living in that weird political world where good news is bad news and bad news is good news. I would like to remind these Democrats of something a hero of theirs and mine one said in a similar situation. "We have nothing to fear," said FDR, "but fear itself." Those who talk tough and breed fear and cynicism to get notice in a political environment bear some responsibility for the fear they spread.

Tough times are not new to the American people. Each generation has its own new challenges. Ours is that we are asked to deal with overlapping threats to our national security and our economic security.

But almost all of the key economic indicators; job growth, business investment, consumer spending, have shown that we are making progress on both fronts. We need to listen to the voices of hope and optimism at such times, or we can become our own enemy.

Today we face unparalleled challenges to our security—and concerns about our economy.

We will only get through them if we say yes to the things Republicans are working on now, such as tax cuts, continuing our jobs agenda by passing an energy bill; stemming the costly litigation mentality, keeping the lid on spending, and say no to those who would snatch defeat from the jaw of victory.

I yield the floor.

The PRESIDING OFFICER. The Republicans have 1 minute to ask a question.

Mr. COLEMAN. Mr. President, contrary to specific evidence that shows the economy is growing, Alan Greenspan's positive comment about the 2001 tax cut, and most observers crediting the 2003 tax cut for creating the recent 7.2 percent GDP figure, some of the leading Democratic candidates for President, Dean and GEPHARDT, have said we should repeal all the tax cuts, in effect raising taxes just as our economy is beginning to grow. Senator EDWARDS has said that Governor Dean misses the point. On that, I quote:

> Unfortunately, instead of addressing the problem, he makes it worse by raising taxes on the middle class and families that work.

Senator LIEBERMAN has said repealing all the Bush tax cuts, as Dean and GEPHARDT have proposed, would hurt the middle class. I wonder if my colleagues will join me by rejecting the proposals by Dean and GEPHARDT to roll back the entire tax cut, which would raise the lowest tax bracket back up to 15 percent from 10 percent, reduce the child tax credit from $1,000 to $500, and force 4 million working poor people to pay taxes.

The PRESIDING OFFICER. There are now 2 minutes to respond from the Democrat side.

Mr. DORGAN. Mr. President, it is an interesting question posed by my colleague from Minnesota, and prior to him posing the question, he talked about more tax cuts and a lid on spending. Frankly, he is proposing and his party is proposing more defense spending, more homeland security spending, more spending in virtually every category, and then tax cuts in addition, which leaves us with very large deficits.

But he asked specifically about tax cuts, so let me describe the difference in tax cuts relative to our party and their party. We believe in tax cuts and support tax cuts for working families. In fact, we had a very significant tax cut plan that would have said to working families in this country who bear a pretty significant tax, payroll tax and income tax, that we are going to give you a pretty good size tax cut. But the majority party said that is not what we want to do.

But the majority party said: That is not what we want to do. We want to say to the person who is making $1 million a year, you really need the relief. We are going to give you a $93,000 tax cut because we believe the economy works better when you put something in at the top and somehow it trickles down. We happen to believe the percolate-up approach is what makes this economic engine of ours work. And we believe if you give working people something to work with, tax cuts targeted to working people, we will have an economy that regains its footing, provides economic growth, opportunity, and hope once again. That is the way to engineer economic growth and new jobs and expansion of opportunity in this country.

The PRESIDING OFFICER. There is 1 minute for rebuttal on the Republican side.

Mr. COLEMAN. Mr. President, the comments of my colleague from North Dakota indicate that they do reject the Dean-Gephardt proposal that will roll back all the tax cuts.

Two observations: No. 1, spending. Goodness gracious, the Republican Conference has rejected $1.3 trillion in additional spending proposals from my colleagues across the aisle since the beginning of January. That is like the kid who kills his parents and throws himself on the mercy of the court and says: I need mercy. I am an orphan.

You are talking about spending and, in addition, talking about tax cuts. We always hear: Tax cuts for the rich, tax cuts for the rich. Seventy-nine percent of the tax cuts at the top bracket are small business people. They are folks in Minnesota I deal with all of the time who come to me and say: This makes a difference; this is important to us. Seventy-nine percent. We have to get away from the class warfare and recognize that we are growing jobs by helping small business.

The PRESIDING OFFICER. The Senator's time has expired.

The Democrats are recognized for 1 minute to ask a question.

Mr. HARKIN. Mr. President, the Bush administration wants to eliminate overtime pay for some 8 million Americans, including many policemen, firefighters, and nurses. One big reason overtime pay was created in 1938 was to create jobs by Franklin Roosevelt to give employers the incentive to hire new workers rather than paying time and a half to current workers. By killing overtime for millions of workers, the administration will also kill the incentive to create new jobs and hire new workers.

At a time when we are struggling to create new jobs, why in the world do so many Republicans want to give employers a new disincentive to begin hiring again by taking away what we have had since 1938—overtime pay protection for almost 8 million American workers? Why would we want to take that away and give employers more of an incentive to continue to hire people—or to work people longer in the day or the week without paying them any more money?

The PRESIDING OFFICER. The Republicans are recognized for 2 minutes to respond.

Mr. COLEMAN. Mr. President, first, we can have a great debate about overtime. I can tell you from talking to folks in Minnesota—I get calls from the building trades and others—that the issue doesn't affect them.

The fact is what we are looking to do is make business more efficient. That is what it is about. We do not want to hurt workers. I think it is about time we addressed the root causes. What is it that helps business expand or not? I think that is what my colleagues on the other side of the aisle at times just do not seem to get.

You talk to business people, and what do they tell you? Cut taxes, cut regulation, give them the opportunity. That is what is in the tax cut. Increasing depreciation, increasing expensing for small business, if we do those things, they will grow jobs.

There are a whole range of issues on which I hope we can find common ground when it comes to protecting workers. I will work with you, but in the end, you have to have workers, and you can't have workers unless you do those things that allow small business to grow. If you roll back tax cuts and roll back expanding accelerated depreciation, if you roll back the increased expensing, if you continue to short business and increase regulation, in the end there will be no jobs for folks to work overtime. That is what it is all about.

Let us address the root causes of things that grow jobs. That is what this Republican agenda is doing. That is what the President's tax cuts are doing. Let us keep moving in that direction.

The PRESIDING OFFICER. The Democrats have 1 minute for rebuttal.

Mr. HARKIN. Mr. President, I had some calls like that, too, from labor groups and building trades on the overtime issue. I thought, well, it doesn't affect you. With a union contract they get their overtime pay. But check with their spouses. They will be told to stay another 2 or 4 hours. Right now, sometimes in America almost 25 percent of a family's income comes from overtime pay. That is taking away family income. It is taking away time from ones family. And, it is reducing the need to hire additional workers. That is why we oppose the administration's regulation to take away overtime pay protection.

The PRESIDING OFFICER. The Senator's time has expired. The Republicans have 1 minute to pose a question.

Mr. ALLEN. Mr. President, I would like to pose a question to Mr. HARKIN, the Senator from Iowa. This question gets into the issue we are talking about, which is jobs.

Taxes cuts help create more jobs for small businesses, especially the most recent tax cuts for accelerated depreciation. Regulations from the Federal Government also can reduce choice and cost jobs. For example, we believe free people and families ought to be able to keep working. The proposal would harm those choices and jobs.

For example, the proposal which has strong Democrat support would increase the cost of purchasing pickup trucks, SUVs, and minivans. America is dominant in the manufacturing of minivans, SUVs, and pickup trucks. Many people are choosing to buy them for the safety of their families.

I ask the Senator from Iowa: How many SUV jobs would have been lost had your side prevailed?

Mr. HARKIN. Mr. President, I am trying to understand the question posed by my friend from Virginia.

Mr. ALLEN. How many jobs would have been lost had your position prevailed?

Mr. HARKIN. On SUVs and pickup trucks?

Mr. ALLEN. I am talking about the CAFE standards.

Mr. HARKIN. I see.

First of all, as my friend from Virginia knows, I represent a rural State, as does my colleague from North Dakota. We have a particular use for SUVs as pickup trucks and heavy vehicles in the country.

I happen to have a house out in the Senator's State, in Fairfax County. I drive back and forth to work 12 miles every day. There is traffic congestion. I can't believe how many SUVs, pickup trucks, and big trucks I see. I do not believe that we need to give high income doctors a special $100,000 tax deduction if they buy an oversized SUV weighing more than what is the tax definition of a car so they can drive around the suburbs. For legitimate business reasons, a farmer or a rancher might need them out in the countryside for that kind of work, you bet. They need that, but not the people who live in this city.

We are hemorrhaging debt and don't need to create that tax break.

CAFE standards: I have to say to my friend from Virginia, you can't have long-term sustained economic growth in this country if you are destroying the environment or if we continue to sharply increase our oil supply. That makes us far more dependent on Mideast oil. There has to be a balance. We do have to have balance. But what I see from the other side is just to heck with any regulations, throw caution to the wind, pollute as much as you want and not to worry about the huge oil bills we are paying to the Mideast.

Our taxpayers today—the Senator's taxpayers and mine—are coughing up billions of dollars every year to clean up the toxic waste sites that big corporations left and walked away from, and now our taxpayers have to pay to clean it up. That is why it is important to have regulations to make sure that companies don't pollute and that they do things in the best environmentally sound manner.

The PRESIDING OFFICER. One minute is remaining for the Republicans.

Mr. ALLEN. Mr. President, I don't think SUVs, minivans, and pickup trucks cause toxic waste sites. I will agree with one thing, and I think most people in America will agree: The comments of the Senator about all of these SUVs, minivans, and pickup trucks driving around in northern Virginia are driving to nowhere; most people in America would probably consider DC nowhere.

Cost in lives: 4,500 deaths would occur each year if they had increased these standards. Vehicle costs would have gone up $2,500 for cars and $2,750 for SUVs and pickup trucks. The United Auto Workers said this proposal would have cost hundreds of thousands of jobs.

We have a Ford assembly plant in Virginia. And I would hate to see a 20-percent loss there and have to go to those 2,200 employees and say 1 out of every 10 of you is going to lose a job because the nannies up in Washington want to take away your choice to drive a vehicle that people would want for their families and for their safety.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for the next question.

Mr. DORGAN. Mr. President, the issue this evening is jobs. Let me ask a question of my colleagues about the insidious and perverse incentives in our Tax Code that subsidize companies which move their United States jobs overseas.

I mentioned Huffy Bicycles, gone from Ohio because they made $11 an hour. That is too much. They can produce bicycles where they pay 33 cents an hour. I am saying your party has included, and is at the moment, coming from the Finance Committee, including more incentives to move jobs overseas. I ask the question whether you are prepared to vote with us to shut down the incentives in the Tax Code that tell people if you move your United States jobs overseas and shut your U.S. plant down, we will give you a benefit in the Tax Code. Where I come from, that does not add up and it makes no sense. Are you prepared to join with us and vote to end all of those subsidies now?

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. I am not sure what the Senator from North Dakota is actually talking about. What we are talking about and what we are trying to do is make sure the United States of America is a place that is conducive to do business. It is a shame and it is aggravating to all of us when a company goes overseas. It takes jobs away. One of the reasons they will move away is the cost of doing business. We are in competition with other countries. It is our view what we ought to be doing is target assistance to businesses to invest in this country. That is why we tripled the amount that could be expensed for small businesses, allowed also that if people buy new equipment, new technology, to be more productive and more competitive, they could write it off more quickly.

These initiatives, the depreciation, the writeoffs, have actually had a beneficial impact on our economy, not only those businesses that are investing in this country, most of which are small businesses that create about 75 percent of the jobs, but those that fabricate or manufacture whatever equipment or manufacturing efforts they have, whoever is assembling it, whoever is transporting it, packaging it, or selling it. That is all beneficial.

Our point of view is we need to make sure America has tax laws and the regulatory policies that allow America to compete so companies do not have any incentives or need to move overseas. I will later bring up a question which I think will be very helpful for getting those profits back into this country.

Republicans will join with Democrats saying we do not like to see companies go overseas, but we have positive, constructive solutions and ideas to keep those jobs here, so companies do not feel they have to go to another country with less regulations and lower taxes for them to provide for themselves and their shareholders.

The PRESIDING OFFICER. One minute for the minority.

Mr. DORGAN. One of the issues of competition is wages. Companies now leave this country because they can find somewhere in the world where they can hire a 12-year-old and pay them 12 cents an hour. Some think that is global competition. That ignores that which we fought for, for a century, about safe workplaces, environmental standards, child labor laws, and fair compensation.

Let me also say there is a bill coming from the Finance Committee that will give us a chance to vote on the question of whether we want to keep subsidizing the movement of jobs overseas. That bill will once again say to companies, we will give you a break. Move your jobs overseas, you do not have to pay tax on your income until you repatriate. And when you do, by the way, we will charge you 5 percent. We will charge you a third or fourth the tax rate a receptionist is paid, the lowest in the office.

Is that fair? The answer is no. Once again, it is another incentive to say to people, if you move your jobs overseas, go find lower labor rates somewhere else, call yourself an American firm but hire foreign labor, we will give you a benefit. That ought to be shut out of the Tax Code. Your party is opening it up.

The PRESIDING OFFICER. The time has expired. One minute for the next question from the majority.

Mr. COLEMAN. Mr. President, Democrats express concern of a loss of manufacturing jobs and our country's ability to compete in the world; again, a concern I share. But then Democrats turn around and oppose each and every policy objective the National Association of Manufacturers says it needs to stay competitive.

That is what this is about. How do we stay competitive—including medical malpractice reform, to rein in runaway health care costs killing our small businesses, asbestos reform, class action reform, and a myriad of other reforms.

In addition, there is talk of perhaps Democratic obstruction to an Energy bill that will create 500,000 to 700,000 new jobs. Are the Democrats prepared to come around on these issues and finally support the thing our Nation's manufacturers say they need to stay alive?

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have not heard a description of my colleagues riding Huffy bicycles or their desire to ride a Huffy bicycle in the future, but let me come back to that point. You are talking about U.S. manufacturers and the conditions of competition. Do you think Huffy bicycles decided to make bikes in China rather than Ohio because of some bill we did or did not pass in the Senate? I am sorry, they went China because they could pay 33 cent an hour in China, they could have people work 7 days a week, 15 hours a day, and they could not do that in this country. That reduced the price and the cost of producing that bicycle.

I ask, if you have bought a bicycle for your child lately, whether you saw a reduction in the price of Huffy bicycles just because they went from $11 an hour to 33 cents an hour. I will answer for you. The answer is no. It was about profits.

The question is, do you want to have a race to the bottom? Is that what you want for the American businesses and the American workers? Do you want to have a race to the bottom on wages, on health standards? Is that where we are? I don't think so.

We can compete anywhere in the world, but the competition has to be fair. American companies and American workers ought not to have to compete with 12 cents an hour or 33 cents an hour labor. That is not fair competition. That is why I raised the issue of trade.

We have the trade ambassador busy running around the world right now trying to do more trade agreements. The last one, incidentally, which both of you voted for, put in an immigration provision that had nothing to do with the trade agreement, so that we could have an enormous number of people come through Singapore to take jobs in this country. We could not get it out. They will displace American workers, coming into this country to take American jobs, and we had an amendment we could not get out. Instead, they pass an amendment that says you better watch it, but you cannot take something out of a trade bill because of fast track.

This issue of competition—you want to change the subject, let's talk about what fair competition is for American businesses and American workers.

The PRESIDING OFFICER. The Senator's time is expired.

One minute for rebuttal for the majority.

Mr. COLEMAN. I deeply appreciate my colleague's concern for fair compensation. I note Senator DORGAN has been one of the chief advocates for trade with Cuba. I hope he would take that same philosophy about human rights and workers rights in dealing with Cuba.

I would also reflect a little bit on the comment about trade. NAFTA was signed by President Clinton and the Uruguay Round after being approved by a Democrat House and Democrat Senate. I believe Senator HARKIN supported both of those votes. On NTR trade with China, I believe both Senators DORGAN and HARKIN supported that. The reality is, we have a trade ambassador going there right now to push for some controls, push for expanded buying by China, cut down the deficit. But the bottom line is, How do we make us competitive?

Going back to the National Association of Manufacturers, they say the U.S. industry is burdened by legal and regulatory systems that retard growth and destroy jobs. That is what we have to deal with. We have to deal with the underlying things that make it impossible for businesses to grow in this country.

The PRESIDING OFFICER. The Senator's time has expired. One minute for the minority to ask a question.

Members are reminded to direct their remarks through the Chair.

Mr. HARKIN. Mr. President, in less than 3 years time President Bush has turned a projected surplus of $5.7 trillion into a projected deficit of $4.2 trillion over the next 10 years. Now not even Congress is powerful enough to reverse the law of supply and demand.

This vast new debt will raise interest rates and damage the economy in the long run. It is going to hurt the Federal Government's ability to cover the Social Security and Medicare costs of baby boomers and the education of our kids.

The tax bill gave a $93,000 tax cut, on average, to those earning more than $1 million a year. The majority of Americans, however, get less than $100.

Also, right now, more and more foreign countries are owning our debt and more and more will be owning that debt over the next 10 years.

My question is, are these tax cuts for wealthy Americans worth the long-term damage they will cause our economy?

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. I thank the Senator from Iowa for that great question. What we care about is fiscal discipline and we do care about fiscal deficits, but what we care most about, as Republicans, is the job deficit.

As my wonderful colleague from Minnesota, Senator COLEMAN, said, this country has been hit by something that is unprecedented, other than maybe Pearl Harbor, with the attacks on September 11. That had a devastating impact on the confidence and the capabilities of our economy for a short while, but we are coming back, even in the midst of a war on terrorism.

When our friends on the Democrat side of the aisle talk about fiscal discipline, what they are talking about is continuing to tax the taxpayers. The bottom line is they think taxes ought to be higher on married people, on families, on individuals, on small businesses; even on people who die.

When you discuss fiscal discipline, as shown on this chart, here is the reality. As we were trying to cut taxes to help create more jobs and more investment in this country, Democrats proposed a variety of different amendments on the floor, as shown on this chart, is how much it would have raised spending: Each year it would be about $87.9 billion; over 10 years, $1.3 trillion—$1.3 trillion additionally spent.

Our view is, the best way to raise revenues for the Government, for key priorities in research, in aeronautics, in education, for national defense and homeland security is to have a vibrant economy where people are working and paying taxes, and businesses are prospering and paying taxes, rather than going bankrupt or having people unemployed.

Shown on this chart is the cost of Democratic proposals in the Senate. Fortuitously, we have a majority, and we are able to include responsible spending so that the taxpayers will get more of their money and not have added burdensome debt for the future.

The PRESIDING OFFICER (Mr. SUNUNU). There is 1 minute for the minority to rebut.

Mr. HARKIN. Mr. President, I am somewhat taken. I cannot believe it. The Republicans are in charge of the White House, the Senate, and the House, and they are blaming the Democrats for this economic downturn and for the fact that we have these huge budget deficits. They are the ones who are in charge.

They are the ones that produced an 8 percent increase in domestic discretionary spending last year, far more than the average increase in the Clinton years. And, that excludes Iraq and Defense.

I would respond to my friend from Virginia, no, we do not believe in higher taxes, but we do believe in fairer taxes—fairer taxes—for the American people.

Right now, the corporate income tax rate is the lowest it has been since the 1930s except for 1983—1.2 percent—yet payroll taxes, paid by every hard-working American, is at the highest level ever. That is what has been happening; not that the people ought to pay more taxes, we ought to have fairer taxes.

Why is it fair that in the 2003 tax bill those making over a million dollars a year are getting, on average, $93,000 while half the taxpayers got $100 or less. That is what we are opposed to.

The PRESIDING OFFICER. There is 1 minute for the majority to ask a question.

The Senator from Virginia.

Mr. ALLEN. Thank you, Mr. President.

Mr. President, I would like to ask the Senator from North Dakota, Mr. DORGAN, this question. It follows up on some of his questions to me, and that has to do with what we call the Invest in the USA Act, which the Senate has passed, although there were dozens of Democrats who voted against it.

Current tax policies in this country hinder and punish U.S. companies that conduct business overseas. We would like them to do well and get into other markets, but if they want to bring that money back into this country, they are taxed at 35 percent.

Now, Senator DORGAN and Senator HARKIN oppose this investment in America. Can Senator DORGAN share with us the positive economic impact if this were actually put into law?

Mr. DORGAN. Mr. President, it is interesting that this behaves in exactly the opposite way as the Senator from Virginia understands it.

When you say to a company in this country, if you will simply invest overseas, heck, move a plant overseas, fire your workers in North Dakota and Virginia and Ohio, and employ foreign workers, if you will just do that, we will give you a deal. You will never, ever have to pay taxes on your earnings overseas. So get rid of that U.S. plant. Move it overseas. Earn your money there. And you simply do not have to pay taxes on it. That is called deferral. And the only time you will ever have to pay taxes is if you repatriate your income to this country. So there is a built-in incentive to move your company overseas.

I am surprised the Senator from Virginia would ask a question about that because, in fact, the Finance Committee is now saying: I have an even better deal. We will keep deferral in the law—which is the perverse incentive—and we will allow you to repatriate that which you did earn, and we will charge you only a 5-percent income tax.

Any company that takes a look at that would say: Well, I can't have a better deal than this. They will continually support me to invest overseas. And there will now be precedent to allow me to repatriate the income and pay—I don't know—a fourth of the tax of the lowest paid workers in this country. What a deal, except that every company will now understand that is the way this Congress works, and so there is a big bonus for me to shut down my U.S. plant and invest overseas.

You talk about perversity, look, I am interested in jobs. I am interested in companies to expand their job base. The way to do that is to encourage that expansion in this country, to hire American workers, and pay them well, and to give them good benefits, and then, through them, earn good profits.

That is what I want for this country. But this country cannot any longer ignore the perversity in the Tax Code. And one of them is exactly what the Senator from Virginia alleged, that subsidizes the flight of jobs overseas.

The PRESIDING OFFICER. There is 1 minute for the Republican side to rebut.

The Senator from Virginia.

Mr. ALLEN. Mr. President, I would say, thank goodness the views of the Senator from North Dakota are the minority view. The reality is, most countries do not impose these 35 percent taxes. The current tax law prohibits businesses or impinges on their ability to bring profits back into this country to help create jobs.

A number of people, from Dr. Allen Sinai to Decision Economics to JP Morgan, have shown there would be 400,000 to 500,000 new U.S. jobs in this country, $100 billion in increased investment in this country in equipment and research and development, and a reduction in corporate debt if this legislation were enacted.

You can keep the laws the way they are without this provision, and what you will see is more jobs going overseas. But if you have this 1-year benefit, you will find the benefit being in the hundreds of thousands of new jobs, with important investment here in America as opposed to overseas.

Mr. DORGAN. Mr. President, as I ask a question, might I say, I don't know about all these doctors and analysts, but I know about Americans who lost their jobs because of this perverse incentive; and that is what I want to shut down.

But let me ask my colleagues a question about this record. Again, we do not have to debate theory tonight. Let's just debate what has happened.

The odds against this being a coincidence are highly unlikely. Every Democratic administration has produced far more jobs than every Republican administration. Does that mean one is good and one is bad? No. It means different strategies produce different results.

Isn't it the case that, over many years, the strategy by which we invest in working people and invest in small businesses, and giving them something to work with, produces the robust economic opportunity and economic growth across this land? It is true with Clinton, . Carter, Johnson, right on down the line. And the evidence does not lie.

As I said, might this be a coincidence? Mathematicians say the odds are highly unlikely against that being a coincidence. In the last 40 years, every Democratic administration has done better than every Republican administration in creating jobs.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Minnesota.

Mr. COLEMAN. Thank you, Mr. President. I love that chart. Let's go back to Jimmy Carter: 18 percent inflation, 23 percent interest rates, long lines at the gas pump. You talk about turning a sow's ear into a silk purse, that chart does it.

But let's talk about reality and let's get away from the abstract. I agree with my colleague from North Dakota: Let's get away from what the economists say. I want to quote Joan Thompson, executive vice president and CFO of Midwest Wire and Cable in St. Paul, Minnesota, a small business. She says:

> Our company will be stronger, continue to grow and provide more jobs with these type of incentives [we have seen in the tax cut].

She singled out the increase in small business expensing for new investment and increase in first year bonus depreciation as two keys in her company's resurgence.

Cirrus Manufacturing, one of the largest private employers in Duluth, MN, an area up north that suffered a lot of job loss right after the tax cut was passed—they sell private airplanes—talked about how they got sales that all of a sudden happened, that had been on hold for ages, because of the increase in depreciation.

I am not going to talk about charts. I am going to talk about reality.

I have to hit one other thing about reality; and that is, the reality is we were hit with September 11. We were hit with Enron and Worldcom. We were hit with the burst of the dot.coms. And we have come back. And why? That is the choice here today. Do we come back with providing the opportunity for small business to invest and grow jobs or do we continue to tax? Do we continue to regulate? Do we continue to overspend and drive this economy further down?

We are moving forward. Business investment is up, consumer spending is up, GDP is up. Housing starts are up. Jobless claims are down. Payroll jobs are up. Productivity is increasing substantially. Total investment is up. The unemployment rate is down.

We are moving in the right direction with this President's and this Republican Senate's vision. Let's keep moving in that direction.

The PRESIDING OFFICER. There is 1 minute for the minority.

Mr. DORGAN. Mr. President, we certainly agree. I hope very much that we are moving in the right direction. We want economic expansion and jobs. But the fact is, Jimmy Carter has come up several times here. I am not surprised it is Grover Cleveland. There are so many excuses.

We are choking on Federal budget deficits. We are choking on a trade deficit that is the highest in history. The fact is, the American people lack confidence in the future because we don't have our fiscal house in order. We can blame others but we are dramatically increasing spending on defense, on homeland security, and cutting taxes substantially, and we have a fiscal policy that does not add up.

I want one that adds up, that creates new jobs and new economic expansion and hope for the American people. Most families just want a good job that pays well, that gives them some security. Most small businesses want a chance to expand in order to create new employment. That is all we want. The question is rooted in this chart. Where has the performance been? We don't have to debate theory. Just debate the performance of those who believe if you invest in working families, our economy does just fine.

The PRESIDING OFFICER. At this time, each Member will have 2 minutes for closing argument, beginning with a Member on the minority.

The Senator from Iowa.

Mr. HARKIN. Mr. President, this has been a good debate. I wish we could go for another hour.

Just a couple points. First, on job growth, that I have heard my friends on the other side talk about here this evening and the last month. The fact is, manufacturing jobs are going down. The service sector has increased. Manufacturing jobs continue to lose. One in seven manufacturing jobs were lost during the Bush administration. We are now at the lowest level of manufacturing jobs in our country since 1958, and it continues to go down. So when they talk about job growth, they are talking about the lowest kinds of jobs and the lowest paid kinds of jobs in the service sector.

Again, what we ought to be talking about are jobs. Again, as my colleague from North Dakota said, just look at the facts, the three major budget bills and job creation bills. In 1981, 1.4 million jobs were lost in 2 years after the Republican budget bill past. Under the Democratic budget bill passed in 1993, under our economic plan, 6.4 million jobs were created in 2 years. Of course, we know what is happening under this President Bush: after his budget bill passed in 2001, 2.1 million jobs were lost in the next two years. It is the same old thing—Republican trickle-down economics was tried in 1981 and 2001. Put it in at the top, hope that it trickles down. That is the fundamental difference between Democratic and Republican economic policies.

We have long believed—and the proof is what we did in the 1990s—that if you put it in at the bottom, give it more to working families, invest in education and health care, educational opportunities, make the economy more efficient, it percolates up. It is percolate-up economics that works versus trickle down.

The problem with trickle down is when you give it to those at the top, they take too big a cut and it never quite trickles down. But when you put it at the bottom, you put people to work and you get the economy humming. We need to do it by expanding educational opportunities. Under this President, we have had the lowest request for educational funding in the last 30 years. That policy is going to mean a less well trained work force in the long-term, an economy that will not compete as well and larger deficits for our country.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Minnesota.

Mr. COLEMAN. Again, I thank my Democratic colleagues for participating in this debate. Much of the reasoning I have heard this evening reminds me of the definition of an economist: Someone who sees something beginning to work in reality and tells you why it won't in theory.

Simply put: The President's tax cuts have begun to stimulate the economy and grow jobs. I will go out on a limb here and say as a fact that the sky has not fallen, that we are not in the worst economy since Herbert Hoover, and the United States is not selling off the Grand Canyon to cover its debts.

Facts are facts. The business cycle lives. The economy started down long before George Bush became President. After a relatively short time of negative growth, the economy began to recover. Despite serious setbacks not of the President's making, such as 9/11, the economy is coming back strong.

Jobs and deficits are the remaining problems. In the aftermath of recessions, they always are for a period. But we are headed strongly in the right direction. What every person knows is what matters is what we do here.

This is the question: Which do you think helps the economy and which hurts, raising taxes on everyone, especially on small business and job creators and then increasing Federal spending, or leaving that money in the pockets of consumers to consume or save or invest?

Tax increases would clearly hurt the economy more than increased spending would help. Today we need to look forward. To my Democratic colleagues, I ask you to join your Republican colleagues to keep the wheels of economic progress turning. I ask you to join us in enacting class-action reform, medical malpractice reform, asbestos reform, all of which the National Association of Manufacturers says is absolutely critical to this country's ability to maintain domestic manufacturing jobs. Help put an end to the perception that Democrats care about manufacturing jobs, just not enough to offend the trial lawyers.

As for the deficit, talk about the kid who killed his folks and then threw himself on the mercy of the court because he was an orphan. Here we have Democrats offering $1.3 trillion in new spending above and beyond what the budget will allow since January.

The question before us is whether Democrats will roll up their sleeves and help get the job done by passing an Energy bill or will more obstruction be the order of the day?

The PRESIDING OFFICER. The Senator's time has expired. The Senator from North Dakota.

Mr. DORGAN. My dad always told me never buy something from somebody who is out of breath. There is kind of a breathless quality to this debate from the other side. They want us to essentially ignore the fact that we have lost more than 3 million jobs in a couple of years. Of the biggest fiscal policy budget deficit in history, the biggest trade deficit in history, just ignore that. Be happy. In fact, call for more tax cuts, preferably tax cuts for businesses that are moving jobs overseas and tax cuts for people at the top of the income ladder.

Let's talk about jobs, though. What is the menu that creates new jobs? The Oscar Meyer Company had an opening for their Weinermobile driver. Eight hundred college graduates showed up to apply to drive the Weinermobile. What does that tell you about jobs in this country? This is a sad commentary on our job situation.

This country needs new jobs. We don't need an economic strategy that shrinks. We need one that expands jobs. We will best serve the American people if we decide these things matter. Deficits matter. Trade policies matter. If we decide these things matter and start working on them in a bipartisan way, in a thoughtful way, in a commonsense way, we will best serve this country's interests.

But facts remain. This is the first administration since Herbert Hoover that had a net loss of jobs, nearly 3 million jobs since it took office. I take no pleasure in saying that. I wish it were not so. I hope a year from now I can say there are massive new jobs being created and our economy is growing.

But I tell you this: That won't happen if we ignore the fundamentals. Let's get back to the fundamentals: fiscal policy that adds up and works; trade policy that adds up and supports this country's best interests in a way that can give confidence to the American people about the future. We won't provide confidence by putting our head in the sand and saying: Be happy. Just call for more tax cuts.

I am for tax cuts, but I am also for a world-class educational system, protecting our environment, and creating more jobs.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I thank my colleagues for joining in this debate. I think we all do share the same goals for this country: a strong national defense, homeland security; education, stronger nanotechnology, aeronautics and so forth. The question though is, How do you get there? How do you achieve this goal? That is where the difference lies.

We have been pushing for tax cuts because we trust free people and free enterprise. We figure families who have children, when they got that $400 check this summer, needed that money for their kids. You have seen the results. They spent it on shoes or clothes or electronics, and it increased retail selling, which is great for the retailers and manufacturers of the products and the transporters and all the rest.

You see the job growth. Is it where we want to be? Of course not. What we are doing on the Republican side is putting forward a positive, constructive agenda and solutions to move America forward and help create more jobs. The difference is, on the Democrat side, their view is more taxes. They opposed our efforts to reduce taxes on married people. We wanted to get rid of the marriage penalty tax. We wanted to reduce taxes on families, on small businesses, entrepreneurs. They opposed us. But things are moving forward in the right direction.

We also disagree on their taxing of Social Security benefits. I know some of them, my friend from North Dakota, even want to tax the Internet which I believe ought to be free from burdensome regulations.

The bottom line of our philosophy was best summed up by Ronald Reagan who said in 1985: Every dollar the Government does not take from us, every decision it does not make for us will make our economy stronger, our lives more abundant, and our future more free.

That sums up the Republican approach and, indeed, its current success shows that it is right.

The PRESIDING OFFICER. Under the previous order, at this time the Senator from North Dakota, Mr. DORGAN, and the Senator from Arizona, Mr. KYL, will each be recognized for 1 minute.

Mr. DORGAN. Mr. President, first of all, I have enjoyed the opportunity to exchange views with my colleagues. They are very able legislators. I thank my colleague from Iowa and my colleagues from Virginia and Minnesota and also my colleague from Arizona, chairman of the Republican Policy Committee.

I must, however, correct one little misstatement at the end. My good friend from Virginia just raised this little issue about the Internet tax, and nobody is suggesting we tax the Internet. We will save that for another day. We can have another date—just the two of us—on that subject. We need to do that based on facts.

I will say that I think this is a good exchange of views. My colleague from Arizona and I, with our caucuses, have created an opportunity—and we will try to do this each month—which allows us to exchange views on specific subjects. I think it merits additional opportunities in the Senate, and I will be pleased in the coming months when we are in session to work with my friend, Senator KYL, to find additional topics and debaters and to further advance discussions on public policy in our country.

I yield the floor.

Mr. KYL. Mr. President, I, too, thank our four debaters this evening, and especially my colleague from North Dakota, Senator DORGAN. He and I chair the policy committees of our respective conferences. We decided that too much of our debate in this body wasn't very civil or very much in the way of debate because we were frequently talking to an empty Chamber. We basically were talking past each other rather than engaging with each other.

The best way for the American people to understand our different philosophies and actually test ideas was to see us in a situation in which, like tonight, you saw questions being asked of each other and the responses being given at that same period, the rebuttals and the replies in proximity to each other, so that these ideas could be evaluated in a context of real meaning, rather than the way the debate frequently occurs here. That is not to denigrate our colleagues in the way we conduct other debates, but we think that by having this kind of an opportunity, we will not only elucidate particular issues, as was done this past week, but we can work together as friends and colleagues and bring out the best ideas and participate in debate of the kind that was originally contemplated in this Chamber.

Again, I thank the debaters. As was indicated, we intend to do this about once a month, and we hope everybody will tune in again. With that, I think we have a wrap-up request.

For the time being, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REAL MEDICARE REFORM IS POSSIBLE WITHOUT OBSTRUCTIONISM

Mr. McCONNELL. Mr. President, for 3 continuous days last week we focused on the obstructions imposed over the past year against President Bush's circuit court nominees by the Democratic minority in the Senate. The Senate obstructionism has claimed victims, and unless we break their holds, more highly qualified legal scholars will be lost due to their ongoing obstructionism.

Obstructionism is not just for judges anymore. It has been used also against the Healthy Forests Act, a bill that was approved while the southern California fires raged on but was subjected to obstructionism by a minority when it was time to go to conference.

Now our seniors are on the verge of receiving a new Medicare prescription drug benefit unless the Senate chooses to obstruct it. After 38 years of broken promises, a real Medicare drug benefit is right around the corner. Opponents claim that reforms in the Medicare conference are too great and the spending too little. I disagree. Seniors have waited too long and this bill does too much for it to be subjected to obstructionism.

As I indicated a moment ago, after 38 years of broken promises our seniors will finally get a Medicare drug benefit unless the Senate obstructs it. After 38 years of delay, help can begin in as soon as 6 months unless the Senate obstructs it.

Looking at the second chart, this Medicare bill will provide unprecedented resources for seniors' prescription drug benefits, almost one and a half times what President Clinton proposed and a third more than Senate Democrats wanted just 2 years ago, and we will have all of this unless the Senate obstructs it.

Looking at the third chart, the Medicare bill will cover nearly all prescription drug costs for low-income seniors—nearly all prescription drug costs for low-income seniors. This is a terrific deal for our low-income elderly in America. We will have this unless the Senate obstructs it.

This Medicare bill will cover nearly all catastrophic drug costs for seniors with high drug bills—nearly all catastrophic costs for seniors with high prescription drug bills. Let me say that again. This Medicare bill will cover 95 percent of catastrophic costs for seniors with high prescription drug bills. This is a good deal for America's seniors and we will have this unless the Senate obstructs it.

The Medicare bill will give seniors unprecedented choices. All of these new choices in yellow on this chart are choices that are not available to seniors today. Senior will have all of these new choices, both the drug plan as well as comprehensive health plans with choices that Federal workers currently enjoy, unless the Senate obstructs it.

The Medicare bill will use competition to stop waste and abuse and give seniors group purchasing power. A specialty cane that Medicare pays $44 for is purchased by the VA for $15. That waste of Medicare and retirees' money will stop unless the Senate obstructs it.

This is a picture of that cane, for which Medicare currently overpays, that the VA can get for a mere $15. Medicare pays $44. All of this kind of waste will stop unless the Senate obstructs this bill.

The Medicare bill will protect seniors by keeping the drug benefits both available and voluntary. Let me just say that again. This Medicare bill will keep seniors' drug benefits both voluntary and available. Retirees can keep what they have or get help to maintain their employer-based plans, can get a drug benefit through traditional Medicare, will get new choices in improved Medicare, will be protected by a Government backup plan and substantial resources to make sure the choices are really there, not just on paper but choices that are really there. Seniors get all of this protection unless the Senate obstructs it.

This Medicare bill will protect Medicare for tomorrow's seniors by controlling costs and preserving the system. While the bill provides an unprecedented amount of resources—again, almost one and a half times what President Clinton proposed and a third more than Senate Democrats wanted just 2 years ago—the bill requires that costs be monitored to control spending in excess of $400 billion. The bill adds competitive forces to drive down costs, reward efficiency, eliminate waste and abuse, and weed out fraud so that Medicare will be preserved for our children. All of this will happen unless the Senate obstructs this measure.

Finally, looking at chart 9, the Medicare bill provides real resources, real benefits, real health, real choice, real protections, real competition, and real cost control. All of those items are in this measure, and we will have a chance to approve it later this week.

After 38 years, seniors will finally get a good prescription drug benefit unless the Senate obstructs it. I think it is the poorest and frailest seniors who will suffer enormously from more obstructionism this time against this Medicare prescription drug bill.

So that is where we are. This is a great new plan that will be before the Senate later this week, an opportunity to really help seniors with prescription drugs for the first time, after years of conversation. Let us not miss that opportunity.

I yield the floor.

RECENT BROADCAST FLAG REGULATIONS

Mr. LEAHY. Mr. President, I rise today to commend the Federal Communications Commission for its continuing work on the important broadcast flag regulations. Over-the-air-television remains a critical part of the distribution of American television, and these regulations help to promote and improve over-the-air broadcasting of high quality digital programming. They do this by giving broadcasters the tools they need to protect their digital broadcasts against piracy. Without this protection, broadcasters would simply not broadcast their high value content over the air, and we would be left with two classes of American consumers: those who can afford, and live somewhere where they can receive, cable television with its high-value content, and those who receive only low-value over-the-air television. We must not allow this to happen.

While I am encouraged by the FCC's progress, and in particular pleased to see that they have taken steps to keep the setting of technical criteria for protective technologies open and transparent, the FCC's recent notice of proposed rulemaking raises some concerns. First, the FCC should make the process inclusive of all parties with an interest in the outcome, especially consumers. Second, a sound final regulation should address the effect of a broadcast flag on fair use rights and works that are already in the public domain. Third, the final regulation should address the broadcast flag's effect on privacy. What is intended as a technological measure to ensure the security of over-the-air broadcasts should not turn into an ability to track viewer behavior. Last, the final regulation must continue to ensure that no one player becomes dominant in this industry, and that the American consumer continues to reap the benefits of innovative new technologies. Most of all, the FCC should not lose sight of the most important goal of these regulations: to provide the highest quality content possible through over-the-air television. I am confident that it will do so.

NOMINATION OF JAMES COMEY

Mr. GRASSLEY. Mr. President, I rise today to state that I object to proceeding to the consideration of executive nominee James Comey to be Deputy Attorney General at the Justice Department.

I have placed a hold on this person because I have been unable to resolve outstanding issues with the Justice Department. I have been working with the Justice Department to get a satisfactory promise to ensure there are no reprisals against certain Justice Department employees in connection with testimony before the Senate Finance Committee. Although I support Mr. Comey's nomination, I intend to reserve my right to object to the Senate proceeding with this nominee of this legislation at this time.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe one such crime today. In protest of a wedding between two men in Seattle, WA, several young men and one adult who call themselves "Deliverance Unlimited" refused to leave a local Christian Church. In the October 25, 2003 incident, the co-pastor of the church asked the protestors to leave, and the group then began verbally assaulting the church staff. One of the protestors, Christopher Dudley, entered the sanctuary and began yelling that the church needed to be cleansed of sin. He then vandalized the church by spraying and wiping oil on the walls and furniture. The co-pastor told police that he was afraid for his own life and the lives of his staff.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

TRIBUTE TO BOB STILLER OF GREEN MOUNTAIN COFFEE ROASTERS

Mr. LEAHY. Mr. President, the Burlington Free Press recently ran a story about expansion plans by Green Mountain Coffee Roasters in Waterbury, VT. The company has begun work on a 52,000-square-foot warehouse and distribution center that will significantly expand manufacturing capacity. Under the leadership of Bob Stiller, Green Mountain Coffee has consistently been rated one of the fastest growing and best managed small public companies in the United States.

Small businesses are the backbone of Vermont's economy, and Green Mountain Coffee has been an outstanding corporate partner in our State for over 20 years. Started in a small café in Waitsfield, VT, in 1981, growing into a publicly traded company in 1993, and now announcing this $8.4 million expansion in Waterbury, Green Mountain has been a national leader in the specialty coffee market and an international leader in promoting fair trade coffee.

I commend Bob and all the employees at Green Mountain Coffee for their success at not only selling great coffee but also promoting sustainable farming throughout the world. I ask unanimous consent that a copy of the article that appeared in the Burlington Free Press be printed in the RECORD so that all Senators can read about the success of this company.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Burlington Free Press, Nov. 6, 2003]

GMC HAS EXPANSION BREWING

Green Mountain Coffee Roasters Inc. plans to begin construction this month on a 52,000-square-foot warehouse and distribution center in Waterbury in an $8.4 million project that's intended to also expand the specialty coffee company's manufacturing capacity, the company said Wednesday.

"We are impressed with Waterbury's support, which enables us to expand our facilities in the downtown Waterbury location contiguous to our manufacturing and roasting operations," Green Mountain Coffee Chairman and CEO Robert Stiller said.

Green Mountain Coffee said the company expects to save money over the long term thanks to new automation equipment to be installed in the new building. The additional warehouse space also will allow for more product diversity and eliminate outside storage expenses.

This expansion will mean the company's packaging, warehousing and distribution capacities will match its current coffee roasting capacity of about 40 million to 50 million pounds.

Moving functions into the new building will allow Green Mountain Coffee to increase its packaging capacity in its 65,000-square-foot plant that houses its roasting, warehouse and distribution operations, the company said.

The company expects the building to be finished by fall 2004, and the transfer of distribution and warehousing functions completed by the spring 2005.

"This expansion is critical to our success in executing our long-term growth plans to be the leader in roasting and selling specialty coffee to a broad array of customers," Stiller said.

ADDITIONAL STATEMENTS

TRIBUTE TO MORTIMER CAPLIN

• Mr. WARNER. Mr. President, I rise today to recognize a remarkable man, Mr. Mortimer M. Caplin, on his outstanding legal career as an academic, public servant and distinguished practitioner. Through the years, Mr. Caplin, has been an inspiration to us all and a shining example of what hard work, dedication and perseverance can accomplish.

I feel a special connection with Mr. Caplin as we both graduated from the University of Virginia School of Law and both served our country proudly during World War II in the United States Navy. As an undergraduate and law student at the University of Virginia, Mr. Caplin earned a reputation as a hard working student who always had time to lend a helping hand. During his undergraduate career at Mr. Jefferson's University, Mr. Caplin was elected to Phi Beta Kappa while becoming a standout on Johnny LaRowe's great boxing teams of the mid '30's.

After earning his Bachelor of Science degree, Mr. Caplin went on to the University's law school where he continued his excellent academic career and his affiliation with the University's boxing team. As coach of the First Year team. Mr. Caplin instilled in the newly arrived First Years the value of a well rounded education. He also managed to find the time to be selected and serve as Editor-in-Chief of the Virginia Law Review in 1940.

Upon graduation in 1940, Mr. Caplin clerked for Judge Armistead M. Dobie on the United States Court of Appeals for the Fourth Circuit in Richmond. Upon completing his clerkship, he joined the New York law firm Paul, Weiss, Rifkind, Wharton & Garrison as an associate but, like so many of us during this era, interrupted his career to defend this country and the freedom we all enjoy. Mr. Caplin joined the Navy and on June 6, 1944, came ashore on Omaha Beach as a member of the initial landing force where he served as U.S. Navy beachmaster.

After the war, Mr. Caplin returned to the legal profession and eventually made his way back to the University of Virginia in 1950 where he became a law professor concentrating on tax and corporate law. From 1950 to 1962, he taught countless students the value of a legal education until he was again called into public service by President John F. Kennedy to head the Internal Revenue Service.

After retiring from the post in 1964, Mr. Caplin received the Alexander Hamilton Award, the highest honor bestowed by the Treasury Department. Thereafter, he founded Caplin & Drysdale which became, and remains today, one of the leading tax firms in the United States. Mr. Caplin was the 2001 recipient of the Thomas Jefferson Foundation Medal in Law which is awarded to individuals that exemplify the Jeffersonian ideal of the lawyer as public citizen. He truly embodies this ideal and it is right to honor his accomplishments.

On May 18, 2003, Mr. Caplin was invited to address the University of Virginia's 2003 graduating class. His words about the importance of public service are an inspiration to us all. As a tribute to his achievements and his contributions, I ask that his remarks be entered into the RECORD at this time.

The remarks follow:

A DEBT OF SERVICE

I must confess, in trying to recall who spoke and what was said at my own college graduation—"The Great Class of 1937"—my mind remains a blank.

The one commencement I do remember was here at my law graduation in 1940. The speaker was the president of the United States—Franklin Delano Roosevelt. He came to the University to attend the law graduation of his son, Franklin Jr., one of our classmates.

The Nazi armies of Adolph Hitler were then overrunning Europe and threatening the freedom of the entire world. On that very morning, Mussolini's fascist forces—joining Hitler—had invaded their neighbor France. Soon, every member of our class would be required to register under the vigorously debated Selective Service Act, the first peacetime military draft in our nation's history.

In Memorial Gymnasium, the president delivered a historic speech—the most sensitive part inserted by him during his train ride from Washington, contrary to the State Department's specific pleas that America's neutrality would be compromised.

FDR dramatically declared: "On this tenth day of June 1940, the hand that held the dagger has struck it into the back of its neighbor. On this tenth day of June 1940, in this University founded by the first great American teacher of democracy, we send forth our prayers and our hopes to those beyond the seas who are maintaining with magnificent valor their battle for freedom."

Remember, in 1940 there was no television, no cell phones, no Internet. Until then, we heard President Roosevelt only on the radio. To have the president of the United States before us in person, delivering to the world his famous "dagger-in-the-back" speech, is a moment I will never forget.

That day, he also gave us a glimpse into what lay before us when he solemnly committed, for the first time and without congressional approval, to "extend . . . the material resources of this nation" to the embattled democracies.

First Lady Eleanor Roosevelt later said: "Franklin's address was not just a commencement address, it was a speech to the nation . . . that brought us one step nearer to total war."

For us, World War II had begun. It was not at all what we graduates had been planning.

As a law student, I spent many hours thinking about my postgraduation career and dreams. I had already accepted a legal clerkship with Judge Armistead Mason Dobie, our former Law School dean and, at that time, a U.S. Circuit Court of Appeals judge. Next, I would go to New York to begin the practice of law. With two U.Va. degrees in hand, I felt prepared to face and perhaps conquer the world. But on Dec. 7, 1941, the Japanese attacked Pearl Harbor and all our lives changed.

I had hardly begun my Wall Street law practice, when I found myself in uniform, commissioned an ensign, U.S. Naval Reserve. When my training was completed, I said goodbye to Ruth, my wife of just one year, and set sail for duty as a beachmaster on Omaha Beach on June 6, 1944, for the D-Day landing on the Normandy coast of France.

World War II and the Navy did teach me a number of important life skills—many still of help in my private career. Two, in particular, are worth remembering. First, avoid fixed and rigid plans. Instead, allow for flexibility, innovation and possible change—but always hold true to your personal values. Second, be willing to accept risk when necessary as you move forward toward your goals.

Philosopher William James acutely observed: "It is only by risking our persons from one hour to another that we live at all. And often enough our faith beforehand in an uncertified result is the only thing that makes the result come true."

Simply put, have faith in your choices, and be at the ready to risk challenge as well as change. You will grow in strength as you do.

We've heard a great deal of late about those involved in what has been dubbed "The Greatest Generation"—glorifying our ordinary citizens who, through hard work, courage and sacrifice, successfully confronted the Great Depression and World War II. Let me confess, though—as a duly designated member of that body—I find the anointment somewhat overdone. Countless generations, both before and after—including today—have also faced challenging times and national crises. And, in each case, everyday Americans have always demonstrated equal patriotism, equal devotion, equal courage—all inherently part of our national culture, traditions and training.

What may we expect of your generation? A former U.Va. Law School student of mine—who later became attorney general of the United States—Robert F. Kennedy, offered an answer in his 1966 Capetown University speech: "Few will have the greatness to bend history; but each of us can work to change a small portion of events, and in the total of all these acts will be written the history of this generation."

Mr. Jefferson consistently laid stress on, not just the rights of citizens of this country, but also on the responsibilities. Writing in 1796—shortly before he assumed the unhappy post of vice president—he stated strongly: "There is a debt of service due from every man to his country, proportioned to the bounties which nature and fortune have measured to him."•

RECOGNITION OF JAMES J. GILLIN, JR.

• Mr. SPECTER. Mr. President, I rise today to salute James J. Gillin, Jr., of Philadelphia, a premier Pennsylvania business and community leader. Pennsylvanians for Effective Government, the Commonwealth's oldest and largest probusiness PAC, recently recognized Jim Gillin's contributions by selecting him to receive its prestigious new civic leadership award.

The Clifford L. Jones Award, which Jim will formally receive next month, recognizes Pennsylvanians who "have demonstrated exemplary civic leadership in support of free enterprise and democratic processes" and focuses on a lifetime of achievement rather than a single effort.

Jim Gillin certainly qualifies. He was president of the Philadelphia-based Petroleum Heat and Power Company, a major fuel distributor throughout the Delaware Valley. He was also a member of the Executive Board of Continental Bank of New Jersey, president of Transport Employers, Inc., and chairman of the Philadelphia Parking Authority.

Jim was also active politically, serving as treasurer of the Philadelphia County Democratic Executive Committee and as a member of the Democratic House and Senate Council in Washington, DC. He has always been bipartisan, willing to reach across the aisle to support political leaders who support business.

Jim has helped shape PEG for a quarter century, serving as chairman from 1985 through 1989 and on its board since 1979. He also played major roles at the Pennsylvania Chamber of Business and Industry during the late 1980s.

PEG has made a superb choice in presenting its important new award to Jim Gillin. I join them in their tribute.•

RECOGNITION OF BING JUDD

• Mr. GREGG. Mr. President, this January, Burnham A. Judd will be stepping down from his position as chairman of the Board of Selectmen of Pittsburg, NH. Bing, as he is known to all throughout New Hampshire's North Country, has served on the board in Pittsburg for 34 years, since 1969, and I rise in tribute to his outstanding service to his community, its residents and the State of New Hampshire throughout this time.

Pittsburg is New Hampshire's largest town in area and its farthest north, sharing borders with Canada, Maine, and Vermont. Located well north of the notches through New Hampshire's White Mountains, Pittsburg contains the majestic Connecticut Lakes and Lake Francis, headwaters of the Connecticut River, and areas of unparalleled scenic and wild beauty. It is a community with a rich heritage of residents skilled in the ways of the woods and with a passion for life in the outdoors.

Throughout its rich history, no one has been more true to the community, its residents, its landscape, and its lifestyles than Bing Judd. An avid and skillful sportsman, knowledgeable in the woods and with an uncanny knack of always knowing where the fish are, his vast experience includes a varied and accomplished record of service to the public: A Pittsburg road agent in the 1960s, a New Hampshire State Representative in 1974, 17 years of service as a forest ranger for the State of New Hampshire from 1975 to 1992, a New Hampshire fish and game commissioner for 10 years, on the Pittsburg Police and Fire Departments for many years and service continuing to this day as Pittsburg health officer, as a Coos County commissioner since 1997 and on the State of New Hampshire's Water Resources Council and New Hampshire Wetlands Board. In addition, as chairman of the Connecticut Lakes Headwaters Citizens Advisory Committee, Bing has been, and continues to be, instrumental in assisting to guide policy for preserving and protecting the vital water and woodland resources of this important region, especially in the recent successful effort to preserve for future generations and traditional uses over 170,000 acres of area woodlands.

In my time of service to New Hampshire as Second District Congressman, Governor and U.S. Senator, I have had no higher privilege than to count on Bing Judd for his sound judgement, sage advice and friendship. I know of no individual more dedicated to his community and his region or more able in its governance. The Town of Pittsburg, Coos County, and the State of New Hampshire have been fortunate he has been willing to share his wisdom and experience on our behalf for so well and for so long. While he will continue to serve his town, region, and State in many roles, it is important his longevity of quality service to his town as selectman be recognized and honored. It is because of the outstanding community service performed by citizens like Bing Judd that civil needs are met, our communities prosper, and our Nation hands to future generations a landscape and a society better off for his selfless and committed participation.

I thank Bing Judd on behalf of his many constituents and neighbors of Pittsburg, NH, who he has served and helped throughout the years.●

TRIBUTE TO THE 100TH ANNIVERSARY OF THE BELLOWS FREE ACADEMY OF FAIRFAX, VT

● Mr. JEFFORDS. Mr. President, I rise today to recognize the 100th anniversary of the founding of Bellows Free Academy in Fairfax, VT.

Bellows Free Academy is one of the last schools in Vermont that serves student from kindergarten through 12th grade. As such, many families in Fairfax enjoy the advantage of having their children attend the facility from their first day of school through high school graduation.

And it is a very nice facility. The original 1903 building, which burned down in January 1941, was replaced and dedicated in 1942. Additions in 1960, 1973, 1990, and 1999 have kept the school up to date with modern space, equipment and facilities. Located in the heart of one of Vermont's fastest growing towns, BFA is a venerable school whose playgrounds and athletic fields are framed by woods and meadows, with a new land acquisition providing access to the nearby Lamoille River. Several vantage points reveal majestic views of Mount Mansfield, Vermont's tallest mountain.

In discussing BFA, a point of clarity is in order, as there are two schools in Vermont named Bellows Free Academy, and both are in Franklin County. Each school owes its founding to the same benefactor, but people in Fairfax are quick to point out that theirs is the original BFA, even if it is smaller, in terms of student enrollment, to its namesake in St. Albans.

BFA, Fairfax, was established through the generous provisions of the 1876 will of Hiram Bellows, who was born in Fairfax in 1798.

As a young person, Hiram Bellows lived at the farm of his birth and attended grammar school at a nearby schoolhouse. He advanced to the small graded school in town when good fortune brought a college graduate to Fairfax to teach for a short period of time. Hiram was unable to progress further in formal education, however, because his parents could not afford the academy fees to attend the high school equivalent of his day.

Hiram Bellows was an industrious man and an able judge of character. For some time, he made his living operating a general store and 'tinkering' in real estate. It is said that he liked to bargain, and invariably whittled on a piece of wood while studying the face of the man with whom a deal was being contemplated.

He served as State senator from Franklin County; was a charter member of the Vermont and Canada Railroad Company; founding associate of the Parish of Christ Church, Episcopal; and first president of the First National Bank of St. Albans.

In regard to his nature and character, a niece once recalled that he was "a kind, delightful gentleman, whose house was always open."

Upon his death, Hiram Bellows' will included provisions for the establishment of a free academy in Fairfax. Here follows several terms of his will:

> I give, and bequeath in trust to my native town of Fairfax, two hundred and fifty shares in the Chicago, Rock Island and Pacific Railroad Company, the par value, one hundred dollars each.
>
> The dividends thereon as far as practical, to be invested in said stock, until the same shall amount to two hundred and fifty thousand dollars, for the purpose of establishing a free school in said town of Fairfax. Said school to be located upon the premises hereinafter mentioned and described.
>
> Said school to be known and called 'the Bellows Free Academy of Fairfax, Vermont'. In which Academy the primary and higher branches of learning shall be taught. Said Academy shall be conducted in all respects in such a manner as to further the education of children and young men, so as to fit them for usefulness, and so as is practical, it is my wish that children of indigent parents receive an advantage of said school in preference to those who have ample means of support of their children . . .

And so, in the same year that Orville and Wilbur Wright achieved human flight from a sand dune in Kitty Hawk, NC, Hiram Bellows' estate of railroad stock founded a free academy on a village lot in Fairfax, VT.

Generations of Hiram Bellows' family have attended and graduated from the school he so generously established. I am told his descendants attend BFA to this day. And with the generations of Bellows', so have been graduated generation after generation of other familiar Fairfax families.

A school of course, does not exist and cannot thrive in and of itself. In this regard, Fairfax has a strong tradition of community support for its school, and that tradition is reflected in the quality of students, teachers, administrators, directors, and staff at BFA over the century of its existence.

The list of those responsible for the continued growth and success of the academy goes on and on. There are specific individuals who, I am sure, are worthy of specific praise. But perhaps even more importantly, there are the countless people who contribute immeasurable hours in innumerable ways to endless projects. They are the backbone of the community; they comprise the sustaining force of the school.

So the Bellows Free Academy of Fairfax owes its beginnings to a remarkable man named Hiram Bellows. It does its proud history to its administration, teachers, students, and above all, its community.

Its future depends on sustaining all of the above. And while there are indeed numerous families who count generations of graduates from Bellows Free Academy, judging by its rate of growth, Fairfax also benefits greatly from contributions of newer residents, many drawn to this community, I suspect, precisely because of the strong reputation of its school system.

So, it is with great pleasure that I offer my congratulations to all those, past and present, involved with the Bellows Free Academy of Fairfax, VT.

Moreover, I am pleased to recognize the generosity and foresight of its founder, Hiram Bellows.

Happy 100th birthday, BFA.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a treaty, and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 1862. A bill to provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations.

S. 1863. A bill to authorize the transfer of certain naval vessels.

S. 1864. A bill to enhance the security of the United States and United States allies.

S. 1865. A bill to enhance the security of the United States and United States allies.

S. 1866. A bill to enhance the security of the United States and United States allies.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 1875. A bill to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to extend the mental health benefits parity provisions for an additional year.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5240. A communication from the Secretary of Agriculture, transmitting, a draft of proposed legislation relative to the Commodity Promotion, Research, and Information Act of 1996; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5241. A communication from the Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, transmitting, pursuant to law, a report relative to financial holding companies; to the Committee on Banking, Housing, and Urban Affairs.

EC–5242. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled "Closure of the Commercial Fishery for King Mackerel in the Exclusive Economic Zone in the Western Zone of the Gulf of Mexico" received on November 13, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5243. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Colorado: Final Authorization of State Hazardous Waste Management Program Revision" (FRL#7586–9) received on November 13, 2003; to the Committee on Environment and Public Works.

EC–5244. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, several documents related to the Agency's regulatory programs; to the Committee on Environment and Public Works.

EC–5245. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Annual Pensions Plan, etc. Cost of Living Adjustments for 2004" (Notice 2003–73) received on November 13, 2003; to the Committee on Finance.

EC–5246. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Weighted Average Interest Rate Update Notice" (Notice 2003–74) received on November 13, 2003; to the Committee on Finance.

EC–5247. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Bureau of Labor Statistics Price Indexes for Department Stores" (Rev. Rule 2003–121) received on November 13, 2003; to the Committee on Finance.

EC–5248. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "TD: Return of Partnership Income" (RIN1545–BC01) received on November 13, 2003; to the Committee on Finance.

EC–5249. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "CPI Adjustment for Section 7872(g) for 2004" (Rev. Rul. 2003–118) received on November 13, 2003; to the Committee on Finance.

EC–5250. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Computation of Required Interest Using Mean Reserves" (Rev. Rul. 2003–120) received on November 13, 2003; to the Committee on Finance.

EC–5251. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Tax Exempt Bond Partnership Revenue Procedure" (Rev. Proc. 2003–84) received on November 13, 2003; to the Committee on Finance.

EC–5252. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "CPI Adjustment for Section 1274A for 2004" (Rev. Rul. 2003–119) received on November 13, 2003; to the Committee on Finance.

EC–5253. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a request to permit the use of Foreign Military Financing for the sale of 125 M1A1 ABRAMS tank kits for Egypt; to the Committee on Foreign Relations.

EC–5254. A communication from the Assistant Secretary for Legislative Affairs, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–5255. A communication from the Assistant Secretary for Legislative Affairs, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles and defense services sold under a contract in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–5256. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Miscellaneous Changes in Office of Personnel Management's Regulations" (RIN3206–AJ54) received on November 13, 2003; to the Committee on Governmental Affairs.

EC–5257. A communication from the Director, Workforce Compensation and Performance Service, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Final Regulations Locality-Based Comparability Payments" (RIN3206–AI81) received on November 13, 2003; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 720. A bill to amend title IX of the Public Health Service Act to provide for the improvement of patient safety and to reduce the incidence of events that adversely effect patient safety (Rept. No. 108–196).

By Mr. SPECTER, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute:

S. 1136. A bill to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940 (Rept. No. 108–197).

By Mr. INHOFE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 793. A bill to provide for increased energy savings and environmental benefits through the increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete (Rept. No. 108–198).

By Mr. HATCH, from the Committee on the Judiciary, without amendment and with a preamble:

S. Res. 253. A resolution to recognize the evolution and importance of motorsports.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH for the Committee on the Judiciary.

James B. Comey, of New York, to be Deputy Attorney General.

*Michael J. Garcia, of New York, to be an Assistant Secretary of Homeland Security.

Federico Lawrence Rocha, of California, to be United States Marshal for the Northern District of California for the term of four years.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CRAIG (for himself, Ms. CANTWELL, Mrs. MURRAY, Mr. ENZI, Mr. BURNS, and Mr. BAUCUS):

S. 1868. A bill to authorize a 3-year demonstration program to recruit and train physicians to serve in rural settings; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN:

S. 1869. A bill for the relief of Robert Kuan Liang and Chun-Mei Hsu-Liang; to the Committee on the Judiciary.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 1870. A bill to establish an alternative trigger for determining if an extended benefit period is in effect for a State for purposes of certain benefits under the Temporary Extended Unemployment Compensation Act of 2002; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. LEAHY, and Mr. CHAMBLISS):

S. 1871. A bill to authorize salary adjustments for Justices and judges of the United States for fiscal year 2004; to the Committee on the Judiciary.

By Mr. SMITH (for himself, Mr. BIDEN, Mr. CHAMBLISS, Mr. COCHRAN, Mr. HAGEL, Mr. LIEBERMAN, Mr. LUGAR, and Mr. VOINOVICH):

S. 1872. A bill to award a congressional gold medal to Lord Robertson of Port Ellen; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DASCHLE (for Mr. KERRY):

S. 1873. A bill to require employees at a call center who either initiate or receive telephone calls to disclose the physical location of such employees, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. FEINGOLD (for himself and Mr. MCCAIN):

S. 1874. A bill to require Senate candidates to file designations, statements, and reports in electronic form; to the Committee on Rules and Administration.

By Mr. GREGG (for himself and Mr. KENNEDY):

S. 1875. A bill to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to extend the mental health benefits parity provisions for an additional year; read the first time.

* * *

ADDITIONAL COSPONSORS

S. 50

At the request of Mr. JOHNSON, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 50, a bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans health care, and for other purposes.

S. 417

At the request of Ms. SNOWE, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 417, a bill to amend title 5, United States Code, to ensure that coverage of bone mass measurements is provided under the health benefits program for Federal employees.

S. 419

At the request of Ms. SNOWE, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 419, a bill to amend title XVIII of the Social Security Act to expand coverage of bone mass measurements under part B of the medicare program to all individuals at clinical risk of osteoporosis.

S. 595

At the request of Mr. HATCH, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 595, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financings to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 596

At the request of Mr. ENSIGN, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 596, a bill to amend the Internal Revenue Code of 1986 to encourage the investment of foreign earnings within the United States for productive business investments and job creation.

S. 664

At the request of Mr. HATCH, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 664, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 1143

At the request of Mrs. HUTCHISON, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1143, a bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, research, and medical management referral program for hepatitis C virus infection.

S. 1172

At the request of Mr. FRIST, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1172, a bill to establish grants to provide health services for improved nutrition, increased physical activity, obesity prevention, and for other purposes.

S. 1195

At the request of Mr. KYL, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1195, a bill to amend title XIX of the Social Security Act to clarify that inpatient drug prices charged to certain public hospitals are included in the best price exemptions for the medicaid drug rebate program.

S. 1197

At the request of Mr. ENZI, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1197, a bill to amend the Public Health Service Act to ensure the safety and accuracy of medical imaging examinations and radiation therapy treatments.

S. 1246

At the request of Mr. ROBERTS, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1246, a bill to amend the Internal Revenue Code of 1986 to provide for collegiate housing and infrastructure grants.

S. 1647

At the request of Mr. JOHNSON, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1647, a bill to amend title XVIII of the Social Security Act to provide for direct access to audiologists for medicare beneficiaries, and for other purposes.

S. 1793

At the request of Mr. KENNEDY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1793, a bill to provide for college quality, affordability, and diversity, and for other purposes.

S. 1841

At the request of Mrs. CLINTON, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1841, a bill to amend title 10, United States code, to provide for the award of a military service medal to members of the Armed Forces who served honorably during the Cold War era.

S. 1856

At the request of Mrs. CLINTON, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1856, a bill to designate the Department of Veterans Affairs outpatient clinic in Sunnyside, Queens, New York, as the "Thomas P. Noonan, Jr., Department of Veterans Affairs Outpatient Clinic".

S. RES. 253

At the request of Mr. CAMPBELL, the names of the Senator from Indiana (Mr. LUGAR) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. Res. 253, a resolution to recognize the evolution and importance of motorsports.

S. RES. 263

At the request of Mr. GRASSLEY, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. Res. 263, a resolution honoring the men and women of the Drug Enforcement Administration on the occasion of its 30th Anniversary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE (for Mr. KERRY):

S. 1873. A bill to require employees at a call center who either initiate or receive telephone calls to disclose the physical location of such employees, and for other purposes; to the Committee on Commerce, Science, and Transportation.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. KERRY. Mr. President, I am pleased to introduce today the "Call Center Consumer's Right to Know Act." This legislation is in response to the mounting evidence showing that U.S. corporations are rapidly shifting hundreds of thousands high-tech and service sector jobs abroad. Labor officials, business leaders, economists, elected officials and ordinary Americans are concerned that this bleeding of American jobs will further slow our economy. In addition to the more than 2 million manufacturing jobs that have been lost since 2000, some have indicated that we may also be witnessing the largest out-sourcing of non-manufacturing jobs in the history of the U.S. economy. The statistics are staggering. In the month of July 2003 alone, between 25,000 and 30,000 jobs were outsourced to India. According to the Bureau of Labor Statistics, roughly one in ten jobs held by Americans in 2001 are now at risk to be outsourced abroad.

These jobs are not specific to one sector or a select few companies, but span a broad array of services, including customer call service centers, payroll and other back-office related activities, stock market research for financial firms, medical transcription services, legal online database research and data analysis for consulting firms. In addition, firms involved with software services and business process outsourcing are rapidly expanding to a host of different countries, including India, the Philippines, Malaysia, China, Russia, Israel, and Ireland.

In addition to rapid service sector job losses, consumers are concerned with the growing threat of identity theft. So far, efforts to stem this tide and keep up with the technological advancements that enable these crimes have done little to allay concerns. This trend becomes all the more alarming when millions of calls involving personal financial transactions are routed beyond our borders, where they are not protected by our laws and law enforcement. Aside from the very serious concerns related to identify theft, there is also a consumer awareness element of this problem, as very few Americans are aware that the person on the other end of the telephone line is in another country. Americans should have full information about the outsourcing of call center jobs when they decide who they will purchase their products and services from.

The "Call Center Consumer's Right to Know Act" is a simple and straightforward answer to the challenges posed by these unprecedented service sector job losses and growing risks of identity theft. The bill simply requires call center representatives to disclose their physical location at the beginning of each phone call. Consumers will therefore have important information about who is providing the services in question and the level of risk involved in proceeding with their transaction by phone. This legislation will help American consumers make informed choices about who is providing the services they purchase, and at the same time, addresses the growing problem of U.S. corporations moving hundreds of thousands of service sector jobs abroad. Furthermore, my bill will go a long way to restoring consumer confidence in the booming call center market and help provide a measure of security for telephone and Internet consumer transactions.

There can be no doubt that the outsourcing of these important American service sector jobs abroad has played a part in the jobless, or what some call the "job-loss" economic recovery of 2003. It is predicted that future outsourcing of service sector jobs may provide more costly to the US. economy than the loss of American manufacturing jobs we are witnessing today. Unfortunately, the economics that produced this trend are unlikely to change without a concerted effort to both provide companies with an incentive to keep their jobs in American and promote consumer awareness of the services they unknowingly purchase from other countries. This is precisely what the Call Center Consumer's Right to Know Act seeks to accomplish.

I ask unanimous consent that the text of the bill be printed in the RECORD.•

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1873

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Call Center Consumer's Right to Know Act of 2003".

SEC. 2. CALL CENTER REQUIREMENTS.

(a) IN GENERAL.—A United States corporation or its subsidiaries that utilizes a call center to initiate telephone calls to, or receive telephone calls from, individuals located in the United States, shall require each employee in the call center to disclose the physical location of such employee at the beginning of each telephone call so initiated or received.

(b) CERTIFICATION REQUIREMENT.—A corporation or subsidiary described in subsection (a) shall annually certify to the Federal Trade Commission whether or not the corporation or subsidiary, and the employees of the corporation or subsidiary at its call centers, have complied with that subsection.

(c) NONCOMPLIANCE.—A corporation or subsidiary that violates subsection (a) shall be subject to such civil penalties as the Federal Trade Commission prescribes under section 3.

(d) CALL CENTER DEFINED.—In this section, the term "call center" means a location that provides customer-based service and sales assistance or technical assistance and expertise to individuals located in the United States via telephone, the Internet, or other telecommunications and information technology.

SEC. 3. FEDERAL TRADE COMMISSION RULES.

Not later than 9 months after the date of enactment of this Act, the Federal Trade Commission shall prescribe rules to provide for effective monitoring and compliance with this Act. The Federal Trade Commission's rulemaking shall include appropriate civil penalties for noncompliance with this Act.

By Mr. FEINGOLD (for himself and Mr. MCCAIN):

S. 1874. A bill to require Senate candidates to file designations, statements, and reports in electronic form; to the Committee on Rules and Administration.

Mr. FEINGOLD. Mr. President, today I will introduce with the Senator from Arizona, Mr. MCCAIN, a bill to bring Senate campaigns into the 21st century by requiring that Senate candidates file their campaign finance disclosure reports electronically and that those reports be promptly made available to the public. This step is long overdue, and I hope the Senate will act quickly on this legislation.

A recent report by the Campaign Finance Institute highlighted the anomaly in the election laws that makes it nearly impossible for the public to get access to Senate campaign finance reports while most other reports are available on the Internet within 24 hours of their filing with the Federal Election Commission (FEC). The Campaign Finance Institute report opened with a rhetorical question: "What makes the Senate so special that it exempts itself from a key requirement of campaign finance disclosure that applies to everyone else, including candidates for the House of Representatives and Political Action Committees?"

The answer, of course, is nothing. The United States Senate is special in many ways. I am proud to serve here. But there is no justification for not making our campaign finance information as readily accessible to the public as the information filed by House candidates or others.

My bill amends the section of the election laws dealing with electronic filing to require reports filed with the Secretary of the Senate to be filed electronically and forwarded to the FEC within 24 hours. The FEC is required to make available on the Internet within 24 hours any filing it receives electronically. So if this bill is enacted, electronic versions of Senate reports should be available to the public within 48 hours of their filing. That will be a vast improvement over the current situation, which, according to CFI, requires journalists and interested members of the public to review computer images of paper-filed copies of reports, and involves a completely wasteful expenditure of hundreds of thousands of dollars to re-enter information into databases that almost every campaign has available in electronic format.

The current filing system also means that the detailed coding that the FEC does, which allows for more sophisticated searches and analysis, is completed over a week later for Senate reports than for House reports. This means that the final disclosure reports covering the first 2 weeks of October are not susceptible to detailed scrutiny before the election.

It is time for the Senate to relinquish its Luddite attitude toward campaign finance disclosure. I urge the enactment of this simple bill that will make our reports subject to the same prompt, public scrutiny as those filed by PACs and candidates for the other body.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1874

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senate Campaign Disclosure Parity Act".

SEC. 2. SENATE CANDIDATES REQUIRED TO FILE ELECTION REPORTS IN ELECTRONIC FORM.

(a) IN GENERAL.—Section 304(a)(11)(D) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(11)(D)) is amended to read as follows:

"(D) As used in this paragraph, the terms 'designation', 'statement', or 'report' mean a designation, statement or report, respectively, which—

"(i) is required by this Act to be filed with the Commission, or

"(ii) is required under section 302(g) to be filed with the Secretary of the Senate and forwarded by the Secretary to the Commission."

(b) CONFORMING AMENDMENTS.—

(1) Section 302(g)(2) of such Act (2 U.S.C. 432(g)(2)) is amended by inserting "or 1 working day in the case of a designation, statement, or report filed electronically" after "2 working days".

(2) Section 304(a)(11)(B) of such Act (2 U.S.C. 434(a)(11)(B)) is amended by inserting "or filed with the Secretary of the Senate under section 302(g)(1) and forwarded to the Commission" after "Act".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any designation, statement, or report required to be filed after the date of enactment of this Act.

Mr. MCCAIN. Mr. President, I am proud to join Senator RUSS FEINGOLD as a co-sponsor of legislation that will require Senate candidates to file campaign finance reports in electronic form. This bill will finally remove the exemption the Senate has given itself from an important requirement of campaign finance disclosure laws that apply to everyone else, including candidates for the U.S. House of Representatives and Political Action Committees, PACs.

Political committees active in federal elections must submit their quarterly financial reports for disclosure by the Federal Election Commission, FEC. Anyone interested can nearly instantaneously download the reports from the FEC website and conduct computer searches to learn about the contributions and expenditures of individual candidates for the House, non-Senate national party committees and PACs. The current problem is that they cannot do the same for Senate candidates and parties because of the Senate's insistence on paper rather than electronic filing. The FEC must do more processing of Senate paper reports than of House electronic ones. This involves printing or copying the Senate reports, up to 10,000 pages a day at times, hand-coding transactions that cannot be automatically processed, and keypunching the data into the electronic database. House electronic reports do not need the same treatment. The end result is that in contrast to the House, information from the Senate paper reports are often available well after the election has occurred.

Due to this problem, voters are not well-informed about the campaign finance information of their Senators and Senate candidates. For voters who want to consider the nature of the campaign finance support received by a Senate candidate and its relationship to Senate legislative votes as a factor in deciding for whom they will cast a vote, they clearly cannot.

To address this problem, our legislation requires Senate candidates to file their campaign finance reports electronically with the Secretary of the Senate. Within 24 hours of receipt of those reports, the Secretary is required to forward those reports to the FEC. The FEC, in turn is required to make those reports available on the Internet within 24 hours as they do other reports. Therefore, electronic versions of Senate reports will be available to the public within 48 hours of their filing.

Electronic reports are not only transmitted instantly but are more accurate than paper submissions because software can easily correct mistakes. On the other hand, hand entering of data is always prone to error. Furthermore, the data in electronic reports can be rapidly searched via the Internet for answers to specific questions. Voters will no longer have to go through the time consuming process of reading pages and pages filed by Senate candidates or Senate party committees to figure out the major donors and their employers, and the major recipients of campaign spending. Instead, they can download a filed report from the FEC website onto their personal computers and quickly locate the information they need. This creates effective public disclosure.

The Senate's current failure to provide its constituents with electronically disclosed, timely information is unconscionable. Senate filings should follow the same criteria as other campaign finance reports. There must not be a separate standard for the Senate. Ironically, while they do not currently file electronically, Senators and Senate candidates already use electronic software in compiling their paper reports. If Senators and Senate candidates can use technology to run their offices and websites, why can't they use it to better inform their own constituents about how their campaigns are funded? Their constituents have earned a right to that information. The public interest will be better served and voters' faith in their elected leaders will be restored.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2191. Ms. CANTWELL (for herself, Mr. CARPER, Mr. BROWNBACK, Mr. HAGEL, Mr. ROBERTS, Mr. NELSON of Nebraska, Mrs. MURRAY, and Mr. DEWINE) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table.

SA 2192. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2193. Mr. DAYTON (for himself and Mr. COLEMAN) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2194. Mr. BOND (for Mr. REID (for himself and Mr. GRAHAM, of Florida)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2195. Mr. DURBIN (for himself, Ms. SNOWE, Mr. JEFFORDS, Mrs. BOXER, Mr. LAUTENBERG, Ms. CANTWELL, and Mr. LIEBERMAN) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2196. Mr. BOND (for Mr. DASCHLE) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2197. Mr. BOND (for Mr. FEINGOLD) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2198. Mr. BOND (for Ms. CANTWELL (for herself, Mr. CARPER, Mr. BROWNBACK, Mr. HAGEL, Mr. ROBERTS, Mr. NELSON of Nebraska, Mrs. MURRAY, and Mr. DEWINE)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

TEXT OF AMENDMENTS

SA 2191. Ms. CANTWELL (for herself, Mr. CARPER, Mr. BROWNBACK, Mr. HAGEL, Mr. ROBERTS, Mr. NELSON of Nebraska, Mrs. MURRAY, and Mr. DEWINE) submitted an amendment intended to be proposed to amendment SA 2150 by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. EXTENSION OF CERTAIN PUBLIC HOUSING/SECTION 8 MOVING TO WORK DEMONSTRATION AGREEMENTS.

(a) EXTENSION.—The Secretary of Housing and Urban Development shall extend the term of the Moving to Work Demonstration Agreement entered into between a public housing agency and the Secretary under section 204, title V, of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, April 26, 1996) if—

(1) the public housing agency requests such extension in writing;

(2) the public housing agency is not at the time of such request for extension in default under its Moving to Work Demonstration Agreement; and

(3) the Moving to Work Demonstration Agreement to be extended would otherwise expire on or before December 31, 2004.

(b) TERMS.—Unless the Secretary of Housing and Urban Development and the public housing agency otherwise agree, the extension under subsection (a) shall be upon the identical terms and conditions set forth in the extending agency's existing Moving to Work Demonstration Agreement, except that for each public housing agency that has been or will be granted an extension to its original Moving to Work agreement, the Secretary shall require that data be collected so that the effect of Moving to Work policy changes on residents can be measured.

(c) EXTENSION PERIOD.—The extension under subsection (a) shall be for such period as is requested by the public housing agency, not to exceed 3 years from the date of expiration of the extending agency's existing Moving to Work Demonstration Agreement.

(d) BREACH OF AGREEMENT.—Nothing contained in this section shall limit the authority of the Secretary of Housing and Urban Development to terminate any Moving to Work Demonstration Agreement of a public housing agency if the public housing agency is in breach of the provisions of such agreement.

SEC. 419. STUDY OF MOVING TO WORK PROGRAM.

(a) IN GENERAL.—The General Accounting Office shall conduct a study of the Moving to Work demonstration program to evaluate—

(1) whether the statutory goals of the Moving to Work demonstration program are being met;

(2) the effects policy changes related to the Moving to Work demonstration program have had on residents; and

(3) whether public housing agencies participating in the Moving to Work program are meeting the requirements of the Moving to Work demonstration program under law and any agreements with the Department of Housing and Urban Development.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall submit to Congress a report on the study conducted under subsection (a).

SA 2192. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 106, strike line 14 and all that follows through "PRESIDENT" and insert the following:

as determined by the Administrator.

EXECUTIVE OFFICE OF THE PRESIDENT

SA 2193. Mr. DAYTON (for himself and Mr. COLEMAN) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 58, line 21, strike "$1,112,130,000" and insert "$1,111,030,000".

On page 125, between lines 7 and 8, insert the following:

SEC. 418. There shall be made available $1,100,000 to the Secretary of Housing and Urban Development for the purposes of making the grant authorized under section 3 of the Paul and Sheila Wellstone Center for Community Building Act.

SA 2194. Mr. BOND (for Mr. REID (for himself and Mr. GRAHAM of Florida)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 125, between lines 7 and 8, insert the following new section:

SEC. 418. (a) Congress makes the following findings:

(1) During Operation Desert Shield and Operation Desert Storm (in this section, collectively referred to as the "First Gulf War"), the regime of Saddam Hussein committed grave human rights abuses and acts of terrorism against the people of Iraq and citizens of the United States.

(2) United States citizens who were taken prisoner by the regime of Saddam Hussein during the First Gulf War were brutally tortured and forced to endure severe physical trauma and emotional abuse.

(3) The regime of Saddam Hussein used civilian citizens of the United States who were working in the Persian Gulf region before and during the First Gulf War as so-called human shields, threatening the personal safety and emotional well-being of such civilians.

(4) Congress has recognized and authorized the right of United States citizens, including prisoners of war, to hold terrorist states, such as Iraq during the regime of Saddam Hussein, liable for injuries caused by such states.

(5) The United States district courts are authorized to adjudicate cases brought by individuals injured by terrorist states.

(b) It is the sense of Congress that—

(1) notwithstanding section 1503 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 117 Stat. 579) and any other provision of law, a citizen of the United States who was a prisoner of war or who was used by the regime of Saddam Hussein and by Iraq as a so-called human shield during the First Gulf War should have the opportunity to have any claim for damages caused by the regime of Saddam Hussein and by Iraq incurred by such citizen fully adjudicated in the appropriate United States district court;

(2) any judgment for such damages awarded to such citizen, or the family of such citizen, should be fully enforced; and

(3) the Attorney General should enter into negotiations with each such citizen, or the family of each such citizen, to develop a fair and reasonable method of providing compensation for the damages each such citizen incurred, including using assets of the regime of Saddam Hussein held by the Government of the United States or any other appropriate sources to provide such compensation.

SA 2195. Mr. DURBIN (for himself, Ms. SNOWE, Mr. JEFFORDS, Mrs. BOXER, Mr. LAUTENBERG, Ms. CANTWELL, and Mr. LIEBERMAN) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

None of the funds provided in this Act may be expended to apply, in a numerical estimate of the benefits of an agency action prepared pursuant to Executive Order 12866 or section 812 of the Clean Air Act, monetary values for adult premature mortality that differ based on the age of the adult.

SA 2196. Mr. BOND (for Mr. DASCHLE) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title I, add the following:

SEC. 116. Not later than 120 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall enter into an agreement with the Institute of Medicine of the National Academy of Sciences under which agreement the Institute of Medicine shall develop and evaluate epidemiological studies on Vietnam veterans in accordance with the recommendations of the 2003 National Academy of Sciences report entitled "Characterizing Exposure of Veterans to Agent Orange and Other Herbicides Used in Vietnam: Interim Findings and Recommendations".

SA 2197. Mr. BOND (for Mr. FEINGOLD) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title I, insert the following:

SEC. 116. No funds appropriated or otherwise made available for the Department of Veterans Affairs by this Act or any other Act may be obligated or expended to implement the policy contained in the memorandum of the Department of Veterans Affairs dated July 18, 2002, from the Deputy Under Secretary for Health for Operations and Management with the subject "Status of VHA Enrollment and Associated Issues" or any other policy prohibiting the Directors of the Veterans Integrated Service Networks (VISNs) from conducting outreach or marketing to enroll new veterans within their Networks.

SA 2198. Mr. BOND (for Ms. CANTWELL (for herself, Mr. CARPER, Mr. BROWNBACK, Mr. HAGEL, Mr. ROBERTS, Mr. NELSON of Nebraska, Mrs. MURRAY, and Mr. DEWINE)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. EXTENSION OF CERTAIN PUBLIC HOUSING/SECTION 8 MOVING TO WORK DEMONSTRATION AGREEMENTS.

(a) EXTENSION.—The Secretary of Housing and Urban Development shall extend the term of the Moving to Work Demonstration Agreement entered into between a public housing agency and the Secretary under section 204, title V, of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, April 26, 1996) if—

(1) the public housing agency requests such extension in writing;

(2) the public housing agency is not at the time of such request for extension in default under its Moving to Work Demonstration Agreement; and

(3) the Moving to Work Demonstration Agreement to be extended would otherwise expire on or before December 31, 2004.

(b) TERMS.—Unless the Secretary of Housing and Urban Development and the public housing agency otherwise agree, the extension under subsection (a) shall be upon the identical terms and conditions set forth in the extending agency's existing Moving to Work Demonstration Agreement, except that for each public housing agency that has been or will be granted an extension to its original Moving to Work agreement, the Secretary shall require that data be collected so that the effect of Moving to Work policy changes on residents can be measured.

(c) EXTENSION PERIOD.—The extension under subsection (a) shall be for such period as is requested by the public housing agency, not to exceed 3 years from the date of expiration of the extending agency's existing Moving to Work Demonstration Agreement.

(d) BREACH OF AGREEMENT.—Nothing contained in this section shall limit the authority of the Secretary of Housing and Urban Development to terminate any Moving to Work Demonstration Agreement of a public housing agency if the public housing agency is in breach of the provisions of such agreement.

SEC. 419. STUDY OF MOVING TO WORK PROGRAM.

(a) IN GENERAL.—The General Accounting Office shall conduct a study of the Moving to Work demonstration program to evaluate—

(1) whether the statutory goals of the Moving to Work demonstration program are being met;

(2) the effects policy changes related to the Moving to Work demonstration program have had on residents; and

(3) whether public housing agencies participating in the Moving to Work program are meeting the requirements of the Moving to Work demonstration program under law and any agreements with the Department of Housing and Urban Development.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall submit to Congress a report on the study conducted under subsection (a).

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Monday, November 17, 2003, at 5:40 p.m. in the President's Room 216, The Capitol. Note: This markup was rescheduled from Thursday, November 13, 2003.

Agenda:

I. Nominations: Henry W. Saad to be U.S. Circuit Judge for the Sixth Circuit; James B. Comey to be Deputy Attorney General; Michael J. Garcia to be Assistant Secretary of U.S. Immigration and Customs Enforcement; Claude A. Allen to be U.S. Circuit Judge for the Fourth Circuit; and Federico L. Rocha to be U.S. Marshal for the Northern District of California.

II. Bills: H.R. 1437—To improve the United States Code [Sensenbrenner, Conyers]; S. Res. 253—To recognize the evolution and importance of motorsports [Campbell, Kyl].

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, first I ask unanimous consent that Theresa Frueh of my office be given privileges of the floor tonight and tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 108–11

Mr. KYL. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on November 17, 2003, by the President of the United States:

Cybercrime Convention (Treaty Document 108–11).

I further ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Council of Europe Convention on Cybercrime (the "Cybercrime Convention" or the "Convention"), which was signed by the United States on November 23, 2001. In addition, for the information of the Senate, I transmit the report of the Department of State with respect to the Convention and the Convention's official Explanatory Report.

The United States, in its capacity as an observer at the Council of Europe, participated actively in the elaboration of the Convention, which is the only multilateral treaty to address the problems of computer-related crime and electronic evidence gathering. An overview of the Convention's provisions is provided in the report of the Department of State. The report also sets forth proposed reservations and declarations that would be deposited by the United States with its instrument of ratification. With these reservations and declarations, the Convention would not require implementing legislation for the United States.

The Convention promises to be an effective tool in the global effort to combat computer-related crime. It requires Parties to criminalize, if they have not already done so, certain conduct that is committed through, against, or related to computer systems. Such substantive crimes include offenses against the "confidentiality, integrity and availability" of computer data and systems, as well as using computer systems to engage in conduct that would be criminal if committed outside the cyber-realm, i.e., forgery, fraud, child pornography, and certain copyright-related offenses. The Convention also requires Parties to have the ability to investigate computer-related crime effectively and to obtain electronic evidence in all types of criminal investigations and proceedings.

By providing for broad international cooperation in the form of extradition and mutual legal assistance, the Cybercrime Convention would remove or minimize legal obstacles to international cooperation that delay or endanger U.S. investigations and prosecutions of computer-related crime. As such, it would help deny "safe havens" to criminals, including terrorists, who can cause damage to U.S. interests from abroad using computer systems. At the same time, the Convention contains safeguards that protect civil liberties and other legitimate interests.

I recommend that the Senate give early and favorable consideration to the Cybercrime Convention, and that it give its advice and consent to ratification, subject to the reservations, declarations, and understanding described in the accompanying report of the Department of State.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 17, 2003.*

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Majority Leader, pursuant to Public Law 96–114, as amended, announces the appointment of John M. Falk, of Washington, DC, to be Chairman of the Congressional Award Board.

PRIVATE SECURITY OFFICER EMPLOYMENT AUTHORIZATION ACT OF 2003

Mr. KYL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 322, S. 1743.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1743) to permit reviews of criminal records of applicants for private security officer employment.

There being no objection, the Senate proceeded to consider the bill.

Mr. KYL. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate; that any statements relating to this measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1743) was read the third time and passed, as follows:

S. 1743

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Security Officer Employment Authorization Act of 2003".

SEC. 2. FINDINGS.

Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;

(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions;

(6) the trend in the Nation toward growth in such security services has accelerated rapidly;

(7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes, including terrorism;

(8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and

(9) private security officers and applicants for private security officer positions should be thoroughly screened and trained.

SEC. 3. DEFINITIONS.

In this Act:

(1) EMPLOYEE.—The term "employee" includes both a current employee and an applicant for employment as a private security officer.

(2) AUTHORIZED EMPLOYER.—The term "authorized employer" means any person that—

(A) employs private security officers; and

(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

(3) PRIVATE SECURITY OFFICER.— The term "private security officer"—

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full- or part-time, for consideration, whether armed or unarmed and in uniform or plain clothes (except for services excluded from coverage under this Act if the Attorney General determines by regulation that such exclusion would serve the public interest); but

(B) does not include—

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.—The term "security services" means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.—The term "State identification bureau" means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

SEC. 4. CRIMINAL HISTORY RECORD INFORMATION SEARCH.

(a) IN GENERAL.—

(1) SUBMISSION OF FINGERPRINTS.—An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this Act.

(2) EMPLOYEE RIGHTS.—

(A) PERMISSION.—An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of a participating State the request to search the criminal history record information of the employee under this Act.

(B) ACCESS.—An authorized employer shall provide to the employee confidential access to any information relating to the employee received by the authorized employer pursuant to this Act.

(3) PROVIDING INFORMATION TO THE STATE IDENTIFICATION BUREAU.—Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this Act, submitted through the State identification bureau of a participating State, the Attorney General shall—

(A) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(B) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(4) USE OF INFORMATION.—

(A) IN GENERAL.—Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in subparagraph (B).

(B) TERMS.—In the case of—

(i) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized employer as to the fact of whether an employee has been—

(I) convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(II) charged with a criminal felony for which there has been no resolution during the preceding 365 days; or

(ii) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this Act in applying the State standards and shall only notify the employer of the results of the application of the State standards.

(5) FREQUENCY OF REQUESTS.—An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

(b) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this Act, including—

(1) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and recordkeeping;

(2) standards for qualification as an authorized employer; and

(3) the imposition of reasonable fees necessary for conducting the background checks.

(c) CRIMINAL PENALTIES FOR USE OF INFORMATION.—Whoever knowingly and intentionally uses any information obtained pursuant to this Act other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(d) USER FEES.—

(1) IN GENERAL.—The Director of the Federal Bureau of Investigation may—

(A) collect fees to process background checks provided for by this Act; and

(B) establish such fees at a level to include an additional amount to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(2) LIMITATIONS.—Any fee collected under this subsection—

(A) shall, consistent with Public Law 101-515 and Public Law 104-99, be credited to the appropriation to be used for salaries and other expenses incurred through providing the services described in such Public Laws and in paragraph (1);

(B) shall be available for expenditure only to pay the costs of such activities and services; and

(C) shall remain available until expended.

(3) STATE COSTS.—Nothing in this Act shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this Act.

(e) STATE OPT OUT.—A State may decline to participate in the background check system authorized by this Act by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this subsection.

MEASURE READ THE FIRST TIME—S. 1875

Mr. KYL. Mr. President, I understand that S. 1875, which was introduced earlier today, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the first time.

The assistant legislative clerk read as follows:

A bill (S. 1875) to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to extend the mental health benefits parity provisions for an additional year.

Mr. KYL. Mr. President, I now ask for its second reading and object to further proceedings on the matter.

The PRESIDING OFFICER. Objection is heard. The bill will receive its second reading on the next legislative day.

APPOINTMENT OF ADDITIONAL CONFEREES

Mr. KYL. Mr. President, I ask unanimous consent that the number of conferees appointed for H.R. 2673, the Agriculture appropriations bill for fiscal year 2004, be expanded to include the following additional members of the Senate Appropriations Committee: Senators DOMENICI, SHELBY, GREGG, CAMPBELL, HUTCHISON, DEWINE, INOUYE, HOLLINGS, LEAHY, MIKULSKI, REID, and MURRAY.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY, NOVEMBER 18, 2003

Mr. KYL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Tuesday, November 18. I further ask unanimous consent that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then proceed to executive session to consider the nomination of Thomas Dorr, with the time until 10:30 a.m. equally divided between the chairman and ranking member of the Agriculture Committee, or their designees; provided, that at 10:30 a.m., the Senate proceed to the two cloture votes in relation to the nomination; that following the two votes, and regardless of the outcome of either vote, the Senate return to legislative session and resume consideration of H.R. 2861, the VA-HUD appropriations bill. I further ask unanimous consent that the Senate recess from 12:30 p.m. to 2:15 p.m. for the weekly party luncheons.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. KYL. Mr. President, for the information of all Senators, tomorrow the Senate will consider the nomination of Thomas Dorr to be Under Secretary of Agriculture for Rural Development and to be a member of the board of directors of the Commodity Credit Corporation. At 10:30 a.m., the Senate will proceed to two cloture votes in relation to the nomination. Those two votes will be the first votes of tomorrow's session.

Following the two cloture votes, the Senate will resume consideration of the VA-HUD appropriations bill. It is the hope and expectation of the majority leader that we will be able to dispose of the remaining amendments quickly and move to vote on passage of the bill.

For the remainder of the day, the Senate will consider any legislative or executive items that are available for action. Last week, we reached a unanimous consent agreement limiting the debate on the nomination of Robert Clark to be a lieutenant general in the Army, and the Senate may take up the nomination tomorrow. In addition, the Senate may take up appropriations conference reports as they become available. Therefore, Senators should expect rollcall votes throughout the day tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. KYL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:41 p.m., adjourned until Tuesday, November 18, 2003, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate November 17, 2003:

DEPARTMENT OF TRANSPORTATION

FRANCIS MULVEY, OF MARYLAND, TO BE A MEMBER OF THE SURFACE TRANSPORTATION BOARD FOR A TERM EXPIRING DECEMBER 31, 2007, VICE WAYNE O. BURKES, RESIGNED.

W. DOUGLAS BUTTREY, OF TENNESSEE, TO BE A MEMBER OF THE SURFACE TRANSPORTATION BOARD FOR A TERM EXPIRING DECEMBER 31, 2008, VICE LINDA JOAN MORGAN, RESIGNED.

DEPARTMENT OF STATE

JAMES C. OBERWETTER, OF TEXAS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF SAUDI ARABIA.

GLYN T. DAVIES, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS THE POLITICAL DIRECTOR FOR THE UNITED STATES PRESIDENCY OF THE G-8.

CORPORATION FOR PUBLIC BROADCASTING

GAY HART GAINES, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 2010, VICE RITAJEAN HARTUNG BUTTERWORTH, TERM EXPIRING.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 531 AND 1552:

To be lieutenant colonel

ROBERT G. CATES III, 1542

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE, UNDER TITLE 10, U.S.C., SECTIONS 624 AND 1552:

To be lieutenant colonel

MARY J. QUINN, 8013

THE FOLLOWING NAMED OFFICERS FOR A REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U. S. C., SECTION 531:

To be lieutenant colonel

CHRISTOPHER C. ERICKSON, 9054
MARK A. MCCLAIN, 0234

IN THE COAST GUARD

THE FOLLOWING INDIVIDUALS FOR APPOINTMENT AS PERMANENT COMMISSIONED REGULAR OFFICERS IN THE

UNITED STATES COAST GUARD IN THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 211:

To be lieutenant

MICHAEL P. GULDIN, 6590
LAURIE J. MOSIER, 5037

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

JOHN D. MCGOWAN II, 1177
KENNETH E. NETTLES, 6752

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

VERNAL G. ANDERSON, 6763
DONALD J. KERR, 9895

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

GASTON P. BATHALON, 7704
STEVEN D. HUNTE, 3839
PAULA J. RUTAN, 0787

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

WILLIAM B. CARR JR., 1988

I NOMINATE THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT IN THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

JOHN E. ATWOOD, 3895
CRAIG B. COLLIER, 2174
WILLIAM E. ZOESCH, 4276

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

CHERYL KYLE, 5584
TERRY C. WASHAM, 0670

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY VETERINARY CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

MICHAEL A. BULEY, 9818
DAVID S. ROLFE, 1350
PAUL W. SCHMIDT, 8659
DAVID R. SCHUCKENBROCK, 4488
PETER J. SCHULTHEISS, 3211
JOHN P. SKVORAK, 6280
STANLEY E. SMITH, 4892
BOB E. WALTERS, 7410
GARY M. ZAUCHA, 2008

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY NURSE CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be colonel

JULIA A. ADAMS, 2052
CARYL J. DOWELL, 1389
ELLEN E. FORSTER, 0905
HOGSTON S. HAGA, 0136
MARGARET A. HAWTHORNE, 9613
BARBARA J. HECTOR, 8223
JOSEPH J. HELMINIAK, 8108
TEMPSIE L. JONES, 7749
RONALD S. KEEN, 0051
JAMES M. LARSEN, 9438
PATTI A. *LEDERER, 4868
STEPHEN W. LOMAX, 3942
CONSTANCE J. MOORE, 4825
JOHN H. MORSE, 5712
WAYNE C. NYGREN, 2668
DIANA L. RUZICKA, 3654
FATEMEH T. STRITMATTER, 9673
JANET L. WILSON, 5305

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be colonel

STEPHEN G. BEARDSLEY III, 9155
FRED H. BROWN JR., 0161
WAYNE W. CLARK, 6688
KAYLENE M. CURTIS, 8360
MARK K. DAVIS, 2537
HAROLD C. *DICKENS, 1539
BEAU J. FREUND, 8882
DAVID E. FULBRIGHT, 1506
JOHN A. GIDDENS, 3984
DONALD L. GOODE, 0794
RONALD A. HAMILTON, 5014
CHRISTOPHER J. HARRINGTON, 2224
MARK W. HEGERLE, 2899
SHEILA A. HOBBS, 6811
RICHARD N. JOHNSON, 6484
GEORGE W. KORCH, 5694
MICHAEL J. KRUKAR, 1396
TIMOTHY E. LAMB, 0756
VASEAL M. LEWIS, 7515
ANGEL L. LUGO, 1735
COLEEN K. MARTINEZ, 7660
WENDY L. MARTINSON, 9921
REGINALD A. MILLER, 7572
ULMONT C. NANTON JR., 8482
ANTONIO F. REYES, 3082
JAMES S. RICE, 3825
MARTHA A. SANDERS, 7099
EDWARD R. SCHOWALTER III, 7549
JOHN C. SHERO, 6464
PATRICK O. WILSON, 5869

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

GARY R. MCMEEN, 9206

HOUSE OF REPRESENTATIVES—*Monday, November 17, 2003*

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore (Mr. PENCE).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 17, 2003.

I hereby appoint the Honorable MIKE PENCE to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 1261. An act to enhance the workforce investment system of the Nation by strengthening one-stop career centers, providing for more effective governance arrangements, promoting access to a more comprehensive array of employment, training, and related services, establishing a targeted approach to serving youth, and improving performance accountability, and for other purposes.

The message also announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 1824. An act to amend the Foreign Assistance Act of 1961 to reauthorize the Overseas Private Investment Corporation, and for other purposes.

MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates.

The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member, except the majority leader, the minority leader, or the minority whip, limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from Florida (Mr. STEARNS) for 5 minutes.

STEMMING THE SPREAD OF CARGO THEFT

Mr. STEARNS. Mr. Speaker, billions and billions of dollars are sapped from our economy each year by cargo theft. It is a staggering problem, and, at the same time, a problem that really no one is aware of.

Every day, millions of cargo carrying trucks transport their contents across the highways of our districts. And, every day, millions of dollars of goods are stolen from these trucks, often times with violent results.

Mr. Speaker, this week I will introduce legislation that will seek to address the growing tide of cargo theft in hopes of bringing awareness of this problem to the national spotlight.

With the prevalence of cargo theft today, insurance companies have placed a heavy burden on the trucking industry. The costs associated with investigation, insurance payments, are only exacerbating what is already an industry crisis.

Typical targets for cargo theft often include shipments of clothing, prescription drugs, computers and jewelry. A truckload of computer microprocessors can be worth millions of dollars. A single pallet of pharmaceuticals, another common target, can be worth upwards of $2 million dollars, and cargo containers are capable of carrying dozens of such pallets.

The high value-to-volume ratio of these goods has encouraged criminals previously involved in drug dealing to move into this area of activity, where they run less risk of detection and suffer less severe penalties if they are caught. The National Cargo Security Council reported that cargo worth $12 billion is stolen in the United States every year, and yet the penalties for cargo theft are lower than those for selling drugs.

Cargo thieves employ creative means to prey on cargo carriers and have managed to stay one step ahead of authorities. Thieves know what they want and where they can find it, striking cargo containers at ports and at trains and 18-wheelers.

Thieves will either roll the dice, stealing containers with unknown contents, or they will go as far as camping outside of distribution centers. This method is called "full load truck theft." It involves monitoring shipments out of distribution centers that are known for putting out expensive goods. The thieves will then follow the trucks in rental cars waiting for the right time to pounce. This will often occur at truck rest stops, where the driver leaves the vehicle. The process can amazingly take but a few minutes. These professional criminals are usually licensed truck drivers, who can hot wire a truck quickly and efficiently.

The legislation that I have proposed will seek to finally give both lawmakers and law enforcement officials the tools they need to combat this growing crime. Cargo theft does not receive the attention it deserves because very little concrete information exists today concerning this problem. There currently is no all-inclusive database that collects, contains or processes distinct information and data concerning cargo theft. My bill would require the creation of such a database that will allow State and local law enforcement officials to coordinate reports of cargo theft, helping them prove to lawmakers just how severe this problem really is.

Also, after speaking with officials in my Congressional District, it has become clear to me that stricter criminal penalties are needed in order to keep criminals from turning to cargo theft. My bill does just this, requiring that the United States Sentencing Commission determine what sentencing enhancement must be made.

Finally, this legislation would ensure that cargo theft reports would be reflected as a separate category in the Uniform Crime Reporting System, the data collection system used by the FBI. Currently no such category exists, resulting in ambiguous data and the inability to track and monitor trends.

Mr. Speaker, Members in this Chamber need to be aware of this problem, a problem not only specific to the large port cities of this country, but a problem specific to all Congressional districts. Flowing up and down I–75, through the heart of my district, thieves transport goods to and from Miami. Billions of dollars are being sapped from our economy, and this body is doing little to stop it. It is time that we get aggressive and make our highways safe again for commerce.

This body must make an example of cargo thieves. We must let them know that they will not get away with merely a slap on the hand. And as sheriff's departments begin integrating special cargo theft task forces, we must arm them with the ability to prosecute criminals with stiffer penalties.

Mr. Speaker, my bill represents a cohesive effort backed by law enforcement and industry representatives alike. I urge Members to support this bill, in hopes of bringing acknowledgment of this fight against cargo theft at the Federal level.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

With links even to terrorism, cargo theft is a problem that has flown under our radar screens for far too long. Until we strengthen these laws, this 30-year-old crime wave will persist, threatening our ports and roads and costing our economy billions of dollars.

LOOMING DIABETES EPIDEMIC CAUSING HEALTHCARE CRISIS

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from New Mexico (Mr. UDALL) is recognized during morning hour debates for 5 minutes.

Mr. UDALL of New Mexico. Mr. Speaker, the headlines shout out: "Healthcare crisis looms." "Diabetes epidemic." "Increase in childhood obesity." Solutions abound, but the one which could make a real difference, prevention, is only paid lip service. We say "an ounce of prevention is worth a pound of cure," but then we fail to reinvent our health policy to make prevention a cornerstone.

The facts are ominous, unrelenting and tell it all:

An obesity epidemic started in the early 1980s and equally impacts all age groups. Nearly one in four Americans are obese. Obesity is highly predictive of diabetes.

One in three children now being born in the United States ultimately will become diabetic.

Diabetes incidence increased 61 percent in the last decade; 76 percent for people in their thirties.

An alarming British study reported one-third of 5-year-old girls were overweight and showing signs of developing Type II diabetes, formerly called adult onset diabetes.

The Surgeon General in his December 2001 report left no doubt where we are headed. "Left unabated, overweight and obesity may soon cause as much preventable disease and death as cigarette smoking."

The healthcare costs to deal with these trends are overwhelming and unaffordable. The National Institutes of Health has estimated that diabetes costs the United States close to $138 billion each year in direct and indirect costs. Let me repeat, $138 billion. We cannot afford to double, triple and quadruple these costs. Even if we could find the resources, would this be a wise expenditure of our finite healthcare dollars?

Today we spend 95 percent of our healthcare dollars on treating chronic and acute illnesses, many of which could be prevented in the first place. In other cases we could at least delay the onset of disease for a number of years and provide a higher quality of life. The dollars we spend on prevention are minuscule, and we do not track the outcomes in a meaningful way.

This Nation needs a new approach to healthcare, which puts prevention front and center. The key to prevention is personal responsibility and personal action. If people are given the facts and alternatives, they can take charge of their health.

We are facing an epidemic of diabetes in New Mexico due to obesity and unhealthy lifestyles. Minority communities are disproportionately impacted. But there is hope in many of our communities, where individuals are taking charge of their health and their future.

I was in the Navajo community of Thoreau recently and saw some dynamic seniors reshaping the health of their community. These Navajo seniors knew that decades ago, when the Navajo people were leading an active life and herding their sheep and livestock and eating traditional food, there was very little disease. They remember diabetes and other modern ailments were also unheard of in the Navajo population. So with the help of the Centers for Disease Control and the University of New Mexico Preventive Health Center, they designed a menu of healthy traditional foods.

They call the regimen of regular exercise and healthier eating "The Healthy Path." The seniors are teaching younger parents and their grandchildren the benefits of these healthier foods and how to begin The Healthy Path. Word has spread, and there are now a dozen healthy path initiatives ongoing in Navajo chapter houses.

This is not rocket science. We know prevention works. We have the tests and screening to know when someone is pre-diabetic, on a path to diabetes. Doctors have known for years that regular exercise, weight loss and healthy diet will virtually eliminate Type II diabetes. Let us put this knowledge to work and create healthier individuals and communities.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 12 o'clock and 44 minutes p.m.), the House stood in recess until 2 p.m.

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. PETRI) at 2 p.m.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, all Your ways are just. You alone are the source of true compassion and love. We turn to You to be strengthened this week so we may accomplish the work You set before us.

By their deeds You judge all peoples. May this Congress prove to be just stewards of the resources of this Nation and worthy leaders who gain the respect of the people.

Above all and in all, guide their judgment and place prudence and practicality in their hearts. May they meet their responsibilities with fair and open debate, seeking the best means to achieve common goals.

May their work, conversations and all their efforts be dedicated to Your service and meet the needs of the least in our midst now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Minnesota (Mr. GUTKNECHT) come forward and lead the House in the Pledge of Allegiance.

Mr. GUTKNECHT led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken after 6:30 p.m. today.

RECOGNIZING AGRICULTURAL RESEARCH SERVICE FOR 50 YEARS OF OUTSTANDING SERVICE

Mr. GUTKNECHT. Mr. Speaker, I move to suspend the rules and pass the Senate joint resolution (S.J. Res. 22) recognizing the Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research.

The Clerk read as follows:

S.J. RES. 22

Whereas the Agricultural Research Service is the primary research agency of the Department of Agriculture and provides the Department of Agriculture and other Federal offices with objective research that is critical to the missions of those offices;

Whereas the agricultural research conducted by the Agricultural Research Service has an enormous impact on the economic viability of agriculture in the United States and around the world;

Whereas people around the world, especially rural Americans, enjoy a higher quality of life due in part to the work of the Agricultural Research Service to expand scientific knowledge;

Whereas the Agricultural Research Service has achieved major scientific breakthroughs that have benefited farmers, ranchers, agribusiness, and consumers;

Whereas the Agricultural Research Service has made scientific discoveries and technological developments that address agricultural problems of broad scope and high national priority, ensure safe and high quality food and other agricultural products that meet nutritional needs, and maintain a quality environment and natural resource base; and

Whereas the Agricultural Research Service continues to play a vital role in maintaining the global competitiveness and leadership of the United States in the next millennium: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress—

(1) recognizes the Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research; and

(2) acknowledges the promise of the Agricultural Research Service to continue to perform outstanding agricultural research in the next 50 years and beyond.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota (Mr. GUTKNECHT) and the gentleman from Texas (Mr. STENHOLM) each will control 20 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. GUTKNECHT).

Mr. GUTKNECHT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Senate Joint Resolution 22 honors the Agricultural Research Service, the primary research agency of the United States Department of Agriculture. On Wednesday, October 29, the House Committee on Agriculture reported out an identical resolution, House Joint Resolution 74.

Although ARS can trace its heritage back to early 19th century seed collection activities in the U.S. Patent Office, it was originally organized on November 2, 1953, when the USDA consolidated most of its research functions into one newly-named Agricultural Research Service.

I am very pleased to help ARS mark its 50th anniversary and to use this occasion to recognize the important contributions ARS has made to the agricultural community, as well as to our Nation.

ARS is a public institution that conducts agricultural research exclusively for the public good. ARS scientists and other employees serve the Nation in their capacity of public servants and are accountable to the American people. The research is often long-term and costly and unlikely to be undertaken by the private sector. The ARS discoveries and innovations touch the lives of every American through the food we eat, the clothes we wear, and the environment in which we all live. Those of us from rural districts see firsthand the impact of ARS research but we should all be mindful of the agency's unique contributions to the quality of life for people everywhere. This impact is far greater than anyone could have imagined 50 years ago.

To mark its five decades of public service and to look forward to the next 50 years and beyond of even greater service to this Nation, ARS will be celebrating with various events throughout the next year. In fact, in recognition of the local and national partnerships that are the foundation of much of their research, ARS has declared this a year of outreach and will hold an open house or in some other way throw open their doors at each location over the next year. With over 100 locations across the country, I hope you will support these activities and provide special encouragement for continued ARS leadership in the agricultural, natural resources and technological arenas.

I urge all Members to support this important resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. STENHOLM. Mr. Speaker, I yield myself such time as I may consume.

I rise today in support of S.J. Res. 22, a resolution commending the USDA Agricultural Research Service for their 50 years of service to America. For half a century now, the ARS has been a leader in publicly-funded basic and applied research. Given the structure of U.S. agriculture, individual family farms are certainly not able to provide for their own technical and research needs. Publicly-funded research entities such as ARS can provide the lead for long-term projects and have been an obvious and significant success to the benefit of the American people.

Over the years, ARS scientists have made hundreds of technical advances, released thousands of new plant varieties, and contributed to the abundant food supply that all our citizens enjoy. My own State and district have benefited in many tangible ways from the work of the Agricultural Research Service, and I doubt that there are any of us here today who could not say the same thing. The ARS has contributed so very much to advances in the quality and quantity of our food supply, benefiting rural and urban dwellers alike.

I congratulate the Agricultural Research Service on their 50 years of service and I look forward to continue working with them to enhance both American agriculture and the well-being of all our citizens. I encourage all Members to support this well-deserved resolution of commendation.

Mr. Speaker, I yield back the balance of my time.

Mr. GUTKNECHT. Mr. Speaker, I yield myself such time as I may consume.

This is a very important resolution. The ARS has done some wonderful work for us. This is one small way that Congress can say thank you and recognize their efforts.

Mr. HOYER. Mr. Speaker, I rise today to recognize the Agriculture Research Service (ARS) of the Department of Agriculture for 50 years of outstanding research. ARS is the established leader in agriculture science, producing quality research used by many to help create responsible science-based policy. As we prepare to celebrate their accomplishments of the past half-century, it is also an opportunity for us to bear in mind future achievements.

ARS is the largest science organization in the world dedicated to agriculture research. As the Department of Agriculture's in-house agency. ARS conducts research to solve problems that are of high national priority and in the best interests of the Nation. This science is vital to the mission area of several Department of Agriculture agencies such as the Animal and Plant Health Inspection Service (APHIS), Food Safety Inspection Service (FSIS), Grain Inspection, Packers and Stockyard Administration (GIPSA), and the Natural Resources Conservation Service (NRCS). ARS also serves a number of other Federal agencies such as the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA), and some components within the Department of Defense (DOD), and the Department of Interior (DOI). Not only is ARS responsible for providing data to these agencies, they also distribute information to producers, consumers, and other stakeholders.

It is easy to see that research is an essential tool, but it is also a worthy investment. Federal agriculture research is a critical element in maintaining our competitive edge in the international arena as well as helps us address environmental challenges. We can better protect our resources from plant pests and animal diseases and can expect improved water quality, resource conservation, and renewable sources of energy. The value of these should research programs benefit not only agriculture, but all Americans.

ARS is able to carry out their mission of providing scientific research through collaborative efforts. There are more than 2,100 scientists conducting research at approximately 100 locations across the country and overseas. At any given time, ARS has more than 1,000 research projects underway, each of which is incorporated into one of 22 national programs. The network of laboratories and research centers across the country allows ARS to address problems quickly and efficiently.

I am proud to represent one center that has significantly contributed to this effort, the Beltsville Area Research Center (BARC), located in Beltsville, MD. I have worked with BARC over the years and have witnessed the work these researchers do and how critical it is to our daily lives.

BARC is the largest and most diversified agricultural research complex in the world. Beltsville's record of accomplishments and programs has earned the center international accolade and attracts thousands of visitors each year. Research in the Beltsville area addresses issues of agriculture importance and high national priority through programs in the Plant Sciences Institute, the Animal and Natural Resources Institute, the Beltsville Human Nutrition Research Center, and the U.S. National Arboretum. I am sure BARC will live up to its reputation of producing high quality research on the cutting edge that will propel U.S. agriculture into the future.

We should take great pride for the many milestones that have been met and continue to support ARS and American agriculture.

Mr. VISCLOSKY. Mr. Speaker, for the past 50 years, the Agriculture Research Service, or ARS as they are better known, has performed indispensable agriculture research across the country, including in the Congressional District I represent. I would like to take this opportunity to recognize ARS in honor of their 50th anniversary as the U.S. Department of Agriculture's main research authority.

From improving food safety to protecting crops and livestock, ARS has proved itself invaluable throughout the past 50 years. As the Department of Agriculture's research arm, they have been able to translate their raw data into profitability for farmers and lower costs for consumers. ARS has formed lasting partnerships with Universities throughout the nation, and has done so at Purdue University since 1965 when they released their first nationwide soil erosion-prediction equation. ARS maintains top-notch Crop Production and Pest Control, Livestock Behavior, and National Soil Erosion Laboratory units at Purdue. ARS, in conjunction with Purdue, continues to stay on the leading edge of agricultural research. Just this summer, they released their cutting edge Water Erosion Prediction Project over the Internet with software known as GeoWEPP.

From this research station, individuals such as Larry Dunkle, Donald Lay, and Darrell Norton have been able to study the agricultural dynamic of Northwest Indiana. They have all contributed a fundamental service to Northwest Indiana as well as the rest of the state, and their service with the ARS is indeed recognized and deeply appreciated. The agricultural community of Northwest Indiana has counted on their contributions of ARS for 50 years now, and that strong partnership will continue into the future.

Mr. Speaker, I ask that my colleagues join me as I congratulate ARS and its researchers on their 50th anniversary by supporting S.J. Res. 22. I would further like to express my gratitude for their service to the agricultural community. Their accomplishments speak volumes, and I thank them for their vital public service.

Mr. GUTKNECHT. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota (Mr. GUTKNECHT) that the House suspend the rules and pass the Senate joint resolution, S.J. Res. 22.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. GUTKNECHT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

NATIONAL VETERINARY MEDICAL SERVICE ACT

Mr. GUTKNECHT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1367) to authorize the Secretary of Agriculture to conduct a loan repayment program regarding the provision of veterinary services in shortage situations, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1367

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "National Veterinary Medical Service Act".

SEC. 2. ESTABLISHMENT OF LOAN REPAYMENT PROGRAM REGARDING VETERINARY MEDICINE.

The National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3101 et seq.) is amended by inserting after section 1415 the following new section:

"SEC. 1415A. VETERINARY MEDICINE LOAN REPAYMENT.

"(a) PROGRAM.—

"(1) SERVICE IN SHORTAGE SITUATIONS.—The Secretary shall carry out a program of entering into agreements with veterinarians under which the veterinarians agree to provide, for a period of time as determined by the Secretary and specified in the agreement, veterinary services in veterinarian shortage situations. For each year of such service under an agreement under this paragraph, the Secretary shall pay an amount, as determined by the Secretary and specified in the agreement, of the principal and interest of qualifying educational loans of the veterinarians.

"(2) SERVICE TO FEDERAL GOVERNMENT IN EMERGENCY SITUATIONS.—

"(A) IN GENERAL.—The Secretary may enter into agreements of one year duration with veterinarians who have agreements pursuant to paragraph (1) for such veterinarians to provide services to the Federal Government in emergency situations, as determined by the Secretary, under terms and conditions specified in the agreement. Pursuant to an agreement under this paragraph, the Secretary shall pay an amount, in addition to the amount paid pursuant to the agreement in paragraph (1), as determined by the Secretary and specified in the agreement, of the principal and interest of qualifying educational loans of the veterinarians.

"(B) REQUIREMENTS.—Agreements entered into under this paragraph shall include the following:

"(i) A veterinarian shall not be required to serve more than 60 working days per year of the agreement.

"(ii) A veterinarian who provides service pursuant to the agreement shall receive a salary commensurate with the duties and shall be reimbursed for travel and per diem expenses as appropriate for the duration of the service.

"(b) DETERMINATION OF VETERINARIAN SHORTAGE SITUATIONS.—In determining 'veterinarian shortage situations' the Secretary may consider the following:

"(1) Urban or rural areas that the Secretary determines have a shortage of veterinarians.

"(2) Areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as public health, epidemiology, and food safety.

"(3) Areas of veterinary need in the Federal Government.

"(4) Other factors that the Secretary considers to be relevant.

"(c) ADMINISTRATION.—

"(1) AUTHORITY.—The Secretary may carry out this program directly or enter into agreements with another Federal agency or other service provider to assist in the administration of this program.

"(2) BREACH REMEDIES.—

"(A) IN GENERAL.—Agreements with program participants shall provide remedies for any breach of an agreement by a participant, including repayment or partial repayment of financial assistance received, with interest.

"(B) AMOUNTS RECOVERED.—Funds recovered under this subsection shall be credited to the account available to carry out this section and shall remain available until expended.

"(3) WAIVER.—The Secretary may grant a waiver of the repayment obligation for breach of contract in the event of extreme hardship or extreme need, as determined by the Secretary.

"(4) AMOUNT.—The Secretary shall develop regulations to determine the amount of loan repayment for a year of service by a veterinarian. In making the determination, the Secretary shall consider the extent to which such determination—

"(A) affects the ability of the Secretary to maximize the number of agreements that can be provided under the Veterinary Medicine Loan Repayment Program from the amounts appropriated for such agreements; and

"(B) provides an incentive to serve in veterinary service shortage areas with the greatest need.

"(5) QUALIFYING EDUCATIONAL LOANS.—Loan repayments provided under this section may consist of payments on behalf of participating individuals of the principal and interest on government and commercial loans received by the individual for attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine or the equivalent, which loans were made for—

"(A) tuition expenses;

"(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; or

"(C) reasonable living expenses as determined by the Secretary.

"(6) REPAYMENT SCHEDULE.—The Secretary may enter into an agreement with the holder of any loan for which payments are made under this section to establish a schedule for the making of such payments.

"(7) TAX LIABILITY.—In addition to educational loan repayments, the Secretary shall make such additional payments to participants as the Secretary determines to be appropriate for the purpose of providing reimbursements to participants for individual tax liability resulting from participation in this program.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for carrying out this section such sums as may be necessary and such sums shall remain available to the Secretary for the purposes of this section until expended.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota (Mr. GUTKNECHT) and the gentleman from Texas (Mr. STENHOLM) each will control 20 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. GUTKNECHT).

Mr. GUTKNECHT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 1367, the National Veterinary Medical Service Act. I commend the gentleman from Mississippi (Mr. PICKERING) for his leadership on this issue.

H.R. 1367, as amended, authorizes the Secretary of Agriculture, subject to the availability of appropriations, to assist veterinarians in repaying their educational loans if they agree to provide veterinary medical services in areas where the Secretary has determined a shortage of qualified veterinarians exists.

In addition, at the request of the USDA, the bill authorizes the Secretary to provide additional loan repayment for those veterinarians in this program who agree to provide services to the Federal Government in emergency situations. Examples of when this may be important include California's recent experience with Exotic Newcastle Disease, or in a case closer to home, an outbreak of low pathogenic Avian influenza in Virginia here in 2002. In both of these examples, the Federal Government, acting through USDA's Animal and Plant Health Inspection Service, mobilizes its resources in order to detect, control and eradicate disease. Having a pool of qualified veterinarians able to assist in a time of emergency simply bolsters our ability to rapidly contain diseases which can cost our economy millions or even billions of dollars.

Once again, I commend the gentleman from Mississippi for his hard work on this important legislation and urge all Members to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. STENHOLM. Mr. Speaker, I yield myself such time as I may consume.

I rise today in support of H.R. 1367, the National Veterinary Medical Services Act. I want to commend the gentleman from Mississippi (Mr. PICKERING) and the gentleman from Texas (Mr. TURNER) for their good work in advancing this legislation.

Assuring an adequate supply of veterinarians in many underserved rural and urban areas is a critical issue for our Nation's animal health infrastructure. It is generally private veterinarians who are the first to identify and respond to animal disease outbreaks. In addition, there is a great need for private veterinarians to supplement the Federal response during future animal health emergencies. The assistance that this legislation will provide to encourage veterinary practice in underserved areas, along with the creation of something like a "National Guard" for private veterinarians who can be called up in emergencies, should wisely enhance our preparation to deal with future animal health emergencies.

The bill under consideration will help to encourage both goals through a very modest public investment with the U.S. Department of Agriculture. I believe H.R. 1367 is a good, cost-effective policy. I encourage Members to support passage of this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. GUTKNECHT. Mr. Speaker, I yield such time as he may consume to the gentleman from Mississippi (Mr. PICKERING), the author of the bill.

Mr. PICKERING. Mr. Speaker, I want to thank the gentleman from Minnesota (Mr. GUTKNECHT), the gentleman from Texas (Mr. STENHOLM), and the gentleman from Virginia (Mr. GOODLATTE) and all of his staff who have worked in a bipartisan manner with the gentleman from Texas (Mr. TURNER) and myself as we have brought this much-needed legislation through the committee and now to the floor of the U.S. House of Representatives.

I want to thank those leaders at Mississippi State University who had the foresight and the ability to bring to our attention here on the committee and in my office the need that we have, the critical need, the desperate need that we have to be able to help our students, our veterinarian students who often end up their education with up to, on average, $70,000 in debt. When that occurs, it is so difficult for them to pay the debt and practice in rural or underserved markets and make the type of salary that is needed to be able to retire that debt and pay that debt and raise a family, start a family and start their dreams. And so we are doing just as we have done for medical doctors and dentists and nurses and teachers, and, that is, starting a program that will help them repay their debt, that will pick up those obligations, if in return, they will agree to serve in those areas where we have critical shortages in the rural and the large-animal practices and the underserved markets. Not only will they fill that critical need that is so important not only in animal health, but as it relates to the connections to human health, and in national security, and in homeland security, where we have new threats of bioterrorism, or we have the outbreaks of dreaded diseases that we have seen ravage not only Europe, the economy and the agricultural economy in Europe with mad cow disease, that in those times of crisis those that sign up and meet these requirements and then have their debts repaid, will agree to serve their country, in essence, a National Guard for veterinarians.

□ 1415

So we see today a way to meet the critical shortage of veterinarians in rural and underserved markets. We see a way to encourage the service to our country in homeland security and to meet the threats of either bioterrorism or major animal disease outbreaks. This is much-needed legislation that will help us as we go forward.

Again, I want to thank the committee, the staff, the chairman, and the ranking member for all their help and assistance in getting us to this point. We hope that this legislation can pass not only today in the House but move quickly through the Senate as we address this much-needed legislation and to address the critical shortages that we face in rural districts like mine and across the country.

Mr. STENHOLM. Mr. Speaker, I yield myself such time as I may consume.

I would ask to engage the gentleman from Minnesota (Mr. GUTKNECHT) on behalf of the gentleman from Virginia (Chairman GOODLATTE) in a brief colloquy.

During the Committee consideration of H.R. 1367, I raised some concerns about the potential that implementation of this bill, should it be passed and signed into law, might include an arbitrary graduation cutoff date for veterinarians wishing to participate. We certainly do not want to preclude participation by veterinarians that may have years of valuable experience. This has been a problem with regard to a different educational loan repayment program that folks from my district have tried to access in the past. It is my understanding that nothing in this legislation before us today would encourage the establishment of such a standard by USDA. It is my understanding that any veterinarian who meets the general standards for participation would be eligible to apply for this program no matter how long might have elapsed since her or his graduation from an accredited school of veterinary medicine. Is that the gentleman's understanding of the bill language?

Mr. GUTKNECHT. Mr. Speaker, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from Minnesota.

Mr. GUTKNECHT. Mr. Speaker, I thank the gentleman from Texas (Mr. STENHOLM) for yielding and for raising this issue. We have talked to the gentleman from Virginia (Chairman GOODLATTE), and it is our understanding and intent that nothing in this language would preclude any veterinarian, no matter when they graduated from vet school, from applying or to participate so long as they have eligible student loan debt and meet other criteria for participation as described in the legislation.

Mr. STENHOLM. Mr. Speaker, I thank the gentleman for helping to make this point clear.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GUTKNECHT. Mr. Speaker, I yield myself such time as I may consume.

I would like to thank the gentleman from Mississippi (Mr. PICKERING). I think this is a very important piece of legislation. I think veterinarians in some respects are like tourniquets: we do not need one often; but when we do need one, we need one rapidly; and in underserved areas, it could become a very serious problem. So I think this is an important piece of legislation. I hope my colleagues will join me in supporting this bill.

Mr. HAYES. Mr. Speaker, I want to commend my colleagues for this needed legislation which ensures the Federal Government's deep commitment to a highly trained and diverse workforce in rural and underserved areas, and encourages veterinarians to assist the U.S. Department of Agriculture in emergency disease outbreak situations. But we should go even further. In order to best maximize Federal Government resources, both in this program at the Department of Agriculture, as well as loan repayment programs throughout the Federal Government, we should allow competition within other aspects of the student loan program, including consolidation loans.

The 1998 reauthorization of the Higher Education Act allowed Federal Family Education Loan (FFEL) student loan borrowers who hold loans from more than one underlying lender to select from those lenders when consolidating their loans. This change has enabled many recent college graduates to refinance their loans at a lower fixed-interest rate. However, student loan borrowers who hold loans through a single lender must consolidate loans through their current lender. This rule is known as the "Single Holder Rule."

In order to ensure that we instill competition, we will need to make sure that during the reauthorization of the Higher Education Act, which is currently moving through the Education and the Workforce Committee, we repeal the single holder rule. I want to thank Chairman BOEHNER and Congressman MCKEON for their efforts to keep college costs under control during consideration of this important legislation. It will be part of my commitment to Federal agencies, students and families everywhere that they have the benefit of competition from qualified lenders in the program when they consolidate their loans and, thus, allow them to take advantage of historically low fixed interest rates—just as other borrowers are able to do every day.

Mr. GUTKNECHT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PETRI). The question is on the motion offered by the gentleman from Minnesota (Mr. GUTKNECHT) that the House suspend the rules and pass the bill, H.R. 1367, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

PROVIDING FOR CONVEYANCE OF LAND IN APALACHICOLA NATIONAL FOREST, FLORIDA

Mr. GUTKNECHT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3217) to provide for the conveyance of several small parcels of National Forest System land in the Apalachicola National Forest, Florida, to resolve boundary discrepancies involving the Mt. Trial Primitive Baptist Church of Wakulla County, Florida, and for other purposes.

The Clerk read as follows:

H.R. 3217

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LAND CONVEYANCE, APALACHICOLA NATIONAL FOREST, FLORIDA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of Agriculture may convey, without consideration, to the Mt. Trial Primitive Baptist Church of Wakulla County, Florida, all right, title, and interest of the United States in and to four parcels of real property in the Apalachicola National Forest, Florida, located in section 5 of township 5 south, range 2 west, Tallahassee meridian, and consisting of approximately 9.95 acres, 0.09 acres, 0.09 acres, and 0.096 acres, respectively, as depicted on a map, plat number 5-118, prepared as part of a 1983 Forest Service survey.

(b) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by the Secretary.

(c) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota (Mr. GUTKNECHT) and the gentleman from Texas (Mr. STENHOLM) each will control 20 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. GUTKNECHT).

Mr. GUTKNECHT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3217 allows the Forest Service to convey without consideration 10.2 acres of the Apalachicola National Forest to the Mt. Trial Primitive Baptist Church of Wakulla County, Florida.

This parcel of land was purchased by the Mt. Trial church in the 1930s; but for a variety of reasons, the deed was never recorded. Unfortunately, the original landowner subsequently resold the land to the National Forest Service in the 1950s. While the Forest Service now technically owns the land, it is more than happy to return this cemetery to the church. This is a fair and equitable resolution to this unfortunate situation.

H.R. 3217 was marked up by the Committee on Agriculture on October 29, 2003. It was approved by the committee on a voice vote without amendment. The bill enjoys the support of the local community and the administration. I urge all Members to support this legislation and return this property to its rightful owner.

Mr. STENHOLM. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of H.R. 3217, legislation to convey several small parcels of National Forest System land in the Apalachicola National Forest in order to resolve boundary discrepancies involving the U.S. Forest Service and the Mt. Trial Primitive Baptist Church of Wakulla County, Florida.

Briefly, H.R. 3217 would allow the Mt. Trial church to expand a cemetery that it maintains next to its church building. This legislation would correct boundary discrepancies that resulted from the church and the Forest Service claiming ownership to the same 10-acre tract of land.

By way of background, the Mt. Trial Primitive Baptist Church is a historically African American church that purchased 10 acres of land in the 1930s in anticipation of expanding its cemetery. The church, however, never recorded the deed for the land purchased at the local county courthouse.

In 1938, the U.S. Forest Service purchased the same 10 acres of land as part of a larger tract that was incorporated into the Apalachicola National Forest. In that instance, the Forest Service did record its deed; and while there is no dispute about the validity of the church's purchase, the Department of Agriculture's legal counsel has ruled that because the Federal Government did file its deed with the county, it is the rightful owner of the property. I would also note that two graves are already located on the Federal Government property and the church's existing cemetery is full.

Mr. Speaker, H.R. 3217 will solve the boundary discrepancies by giving the Secretary of Agriculture the authority to transfer the property to the Mt. Trial Primitive Baptist Church. I encourage my colleagues to support this measure. This measure has been brought to our attention by the gentleman from Florida (Mr. BOYD).

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GUTKNECHT. Mr. Speaker, I yield myself such time as I may consume.

This is a fair and equitable way to deal with this problem. All parties agree to it, and hopefully the Members of the House will join us in support of this important legislation.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota (Mr. GUTKNECHT) that the House suspend the rules and pass the bill, H.R. 3217.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GUTKNECHT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3217, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

PROVIDING FOR DESIGNATION OF A DEPARTMENT OF AGRICULTURE DISASTER LIAISON

Mr. GUTKNECHT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3157) to provide for the designation of a Department of Agriculture disaster liaison to assist State and local employees of the Department in coordination with other disaster agencies in response to a federally declared disaster area as a result of a disaster, as amended.

The Clerk read as follows:

H.R. 3157

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIAISON FOR DISASTER EMERGENCIES.

(a) DEPLOYMENT OF DISASTER LIAISON.—The Secretary of Agriculture shall deploy disaster liaisons to State and local Department of Agriculture Service Centers in a federally declared disaster area whenever Federal Emergency Management Agency Personnel are deployed in that area, to coordinate Department programs with the appropriate disaster agencies designated under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(b) QUALIFICATIONS.—Disaster liaisons shall be selected from among Department employees who have experience providing emergency disaster relief in federally declared disaster areas.

(c) DUTIES.—A disaster liaison shall—

(1) serve as a liaison to State and Federal Emergency Services;

(2) be deployed to a federally declared disaster area to coordinate Department interagency programs in assistance to agricultural producers in the declared disaster area;

(3) facilitate the claims and applications of agricultural producers who are victims of the disaster that are forwarded to the Department by the appropriate State Department of Agriculture agency director; and

(4) coordinate with the Director of the State office of the appropriate Department agency to assist with the application for and distribution of economic assistance.

(d) DURATION OF DEPLOYMENT.—The deployment of a disaster liaison under subsection (a) may not exceed 30 days.

(e) DEFINITION.—In this section, the term "federally declared disaster area" means—

(1) an area covered by a Presidential declaration of major disaster, including a disaster caused by a wildfire, issued under section 301 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170); or

(2) determined to be a disaster area, including a disaster caused by a wildfire, by the Secretary under subpart A of part 1945 of title 7, Code of Federal Regulations.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota (Mr. GUTKNECHT) and the gentleman from Texas (Mr. STENHOLM) each will control 20 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. GUTKNECHT).

Mr. GUTKNECHT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3157, a bill to designate and deploy U.S. Department of Agriculture liaison teams to areas of the country declared disaster areas, was approved by the Committee on Agriculture on October 29 of this year.

The bill seeks to ensure prompt Federal assistance to agricultural producers in rural areas affected by natural disasters that have been declared by the President or the Secretary of Agriculture. The teams will coordinate the activities of USDA employees assisting agricultural producers within the disaster area. The teams will facilitate the making of claims and applications for economic assistance of affected producers and others as they deal with the agencies designated under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

During the business meeting to consider H.R. 3157, the committee considered and adopted as a substitute amendment four changes to the legislation as originally introduced by the gentleman from Missouri (Mr. BLUNT). These changes include directing the Secretary of Agriculture to use USDA Food and Agriculture Council as a point of contact for the liaison team, requiring the Secretary to make the deployment only when FEMA has been sent to the disaster area, providing that the team will conduct and conclude its business within 30 days of the deployment, and, finally, adding wildfire as a specific disaster under a secretarial disaster declaration.

The bill before the House this afternoon makes a minor amendment to the committee-reported bill by returning to the Secretary of Agriculture the full discretion to assign USDA employees to the liaison positions, instead of acting through the Department's Food and Agriculture Council.

As I am certain my colleagues can understand, natural disasters over large geographical areas often are followed by chaotic circumstances on the ground. Traditionally, USDA has had a significant role along with FEMA in assisting farmers, ranchers, and other rural residents; and this bill attempts to make those circumstances more orderly and more predictable for our rural constituents during a time when those residents and the communities in which they live need Federal help.

I hope the House will join with me in supporting this bill that seeks to improve Federal disaster assistance on our farms and in rural communities.

Mr. Speaker, I reserve the balance of my time.

Mr. STENHOLM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3157 is a bipartisan piece of legislation that attempts to address the very serious issue of USDA program coordination and information dissemination during times of federally declared national disasters.

Currently, there is no statutory requirement that USDA make a representative available at the Emergency Operations Center following a catastrophic disaster. As a result, if a farmer or rancher suffers a loss due to a natural disaster, there is no USDA point of contact on site to answer questions or provide information about departmental relief programs. Such information is obviously critical, and this legislation simply ensures that farmers and ranchers will have access to an on-site USDA point of contact.

While expressing support for this bill, let me briefly address a bigger issue for farmers and ranchers that have been adversely affected by a disaster. The fact is there are only minimal standing disaster programs within USDA to help farmers and ranchers deal with the variety of losses that can occur as a result of a natural disaster. In effect, all that USDA on-site points of contact can do is to tell farmers and ranchers, Sorry, the United States Department of Agriculture cannot help you. In addition, farmers and ranchers do not qualify for Small Business Administration programs and, in point of fact, receive very little help from FEMA.

So again, while I support H.R. 3157, the bigger question is what can be done to provide farmers and ranchers with greater certainty in terms of permanent disaster programs so that they may have some hope of recovering from such disasters.

Mr. BLUNT. Mr. Speaker, I rise today to urge support for the Rural Disaster Liaison Bill (H.R. 3157).

This past May, my district saw devastating losses in the aftermath of a series of tornadoes.

Estimates indicate that our agriculture community in southwest Missouri lost an estimated $27 billion in damages.

On the ground at home following those tornadoes, I noticed that the U.S. Department of Agriculture (USDA) had no staff in the statewide disaster field office (DFO) where officials from FEMA and the Small Business Administration were helping individuals and business owners.

Because Disaster Act declarations make no arrangements for a USDA representative, a single voice from USDA was noticeably absent on the ground in Southwest Missouri during disaster response discussions in the days and weeks after those terrible tornadoes.

This legislation will bring greater coordination from the USDA's three major agencies—Natural Resources Conservation Service, the Farm Service Agency and Rural Development—by requiring that a liaison from USDA be a member of future Federal disaster response teams. This individual would be dispatched to a disaster to work side-by-side with representatives from the local Farm Service Agency (FSA) for 30 days to help find relief for those disaster victims. Once the 30 days are up, the liaison will return to his or her post in Washington, DC, and continue to work on behalf of the farmers and others who need the services that the USDA provides.

Mr. Speaker, I hope that a disaster response team is never necessary in any of the districts my colleagues represent. However, should disaster strike, let's make sure that our agriculture communities are represented and that they get the help they deserve in a prompt fashion.

I urge my colleagues to support the passage of H.R. 3157.

Mr. BACA. Mr. Speaker, I rise in support of H.R. 3157. I am proud to support this legislation that will help farmers recover from national disasters because I believe that far too often, farmers are not thought of during times of emergency.

Representative BLUNT has authored a good bill. I supported it in the House Agriculture Committee and I even introduced an amendment that would make sure that the people in my home State of California, who suffered from the recent wildfires, could be helped by this bill.

Too many Californians have no idea how they will get by without their orchards, olive groves, and other farming operations that burned to the ground.

This legislation will compel the Department of Agriculture to create disaster liaisons and dispatch them to disaster zones.

In California, we have suffered greatly from several wildfires that have caused great damage throughout the state.

In San Bernardino County, over 40,000 people were evacuated from their homes, and nearly 1,200 buildings burned to the ground.

Far too many people lost their homes, farms, and in some cases—their lives—to these wild fires.

This bill and my amendment are only a small step in the right direction. We must funnel Federal attention and resources to rebuild after these deadly wildfires and help prevent similar events in the future.

Mr. CARDOZA. Mr. Speaker, H.R. 3157 would require USDA to designate employees of the Department to serve as disaster liaisons to State and local emergency agencies in a federally declared disaster area. These liaisons would be responsible for coordinating interagency programs and assisting agricultural producers in the area to navigate through the bureaucracy of Federal Government support.

I want to thank Majority Whip BLUNT for taking the initiative to introduce this legislation on behalf of farmers and growers in the United States. I was more than happy to sign on as the lead cosponsor because of a situation faced by a handful of growers in my congressional district earlier this year.

During this past April, an unusual hailstorm descended upon Merced Country, ruining acres and acres of peach orchards. That event set off a chain of events involving numerous agencies within USDA, which in turn led to me and my staff to negotiate on their behalf with countless officials and administrators throughout USDA attempting to elicit some type of assistance from the Federal Government. It was a trying experience to say the least.

When a disaster happens now, multiple USDA agencies involved with numerous programs actively assess damage in a disaster area, while compiling information from hundreds of phone calls and by talking to numerous disaster victims. This information is then assembled and sent to representatives of the State. The farmer is left to fend for himself or herself with no point of contact for follow up.

Those situations are what Mr. BLUNT and I are trying to avoid with this legislation.

When enacted, H.R. 3157 will require USDA to recognize the importance of quick response time to agricultural disasters by deploying an experienced disaster specialist to an affected area. This official will facilitate such things as crop insurance claims processing and other applications for economic assistance as well as provide one legitimate source of information and comfort from the Federal Government.

My growers affected by the hailstorm were continually given conflicting information from different USDA employees. It is imperative that growers, especially the more skeptical growers in my home State of California, be able to receive clear and concise information on how to proceed after a Federal disaster as been declared in order to most efficiently proceed to the next crop year.

H.R. 3157 is the right thing to do for America's agricultural industry and I am proud to be a sponsor of this bill.

Again, I would like to thank Chairman GOODLATTE, Ranking Member STENHOLM, and Majority Whip BLUNT for recognizing the importance of the legislation. I urge an aye vote on this bill.

Ms. BORDALLO. Mr. Speaker, I rise today in support of H.R. 3157, which will direct the Secretary of Agriculture to designate employees of the Department of Agriculture to serve as liaisons between the federal agencies and state and local governments in the event of a federally declared disaster area.

As Delegate and long-term resident of Guam, I can attest to the debilitating state of confusion in the after math of a disaster. Just last year, individuals and businesses on Guam sustained millions of dollars in damage as result of the destruction wrought by two supertyphoons, Cha'at'an in May and Pongsona in December, 2002. While federal agencies worked quickly to implement disaster recovery plans for Guam, the central communications mechanism between GovGuam and the various agencies through FEMA and its designated liaisons was crucial to the typhoon recovery.

H.R. 3157 will create a consistent mechanism of communication between the federal government and state and local entities for agricultural issues in the event of a disaster. I strongly support passage of H.R. 3157 and encourage my colleagues to vote in favor of this important disaster legislation.

Mr. STENHOLM. Mr. Speaker, I yield back the balance of my time.

Mr. GUTKNECHT. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota (Mr. GUTKNECHT) that the House suspend the rules and pass the bill, H.R. 3157, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GUTKNECHT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill, H.R. 3157, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

RESOLVING BOUNDARY CONFLICTS IN VICINITY OF MARK TWAIN NATIONAL FOREST IN BARRY AND STONE COUNTIES, MISSOURI

Mr. GUTKNECHT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2304) to resolve boundary conflicts in the vicinity of the Mark Twain National Forest in Barry and Stone Counties, Missouri, that resulted from private landowner reliance on a subsequent Federal survey, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2304

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Certain landowners in Barry and Stone Counties, Missouri, innocently and in good faith relied on subsequent land surveys, which they believed to be correct, and occupied, improved, or claimed portions of adjoining Federal lands based on such survey information.

(2) The appropriate Federal agencies should undertake actions to correctly reestablish the corners of the Public Land Survey System in Barry and Stone Counties, Missouri, and rectify boundary conflicts and landownership claims against Federal lands resulting from subsequent land surveys, and do so in a manner which imposes the least cost and inconvenience to affected private landowners.

(b) PURPOSES.—The purposes of this Act are—

(1) to resolve boundary conflicts in Barry and Stone Counties, Missouri, arising from subsequent land surveys; and

(2) to minimize costs and inconvenience to the affected private property owners in Barry and Stone Counties, Missouri.

SEC. 2. RESOLUTION OF BOUNDARY CONFLICTS, VICINITY OF MARK TWAIN NATIONAL FOREST, BARRY AND STONE COUNTIES, MISSOURI.

(a) DEFINITIONS.—In this section:

(1) The term "appropriate Secretary" means the Secretary of the Army or the Secretary of Agriculture.

(2) The term "boundary conflict" means the situation in which the private claim of ownership to certain lands, based on subsequent land surveys, overlaps or conflicts with Federal ownership of the same lands.

(3) The term "Federal land surveys" means any land survey made by any agency or department of the Federal Government using Federal employees, or by Federal contract with State-licensed private land surveyors or corporations and businesses licensed to provide professional land surveying services in the State of Missouri.

(4) The term "original land surveys" means the land surveys made by the United States General Land Office as part of the Public Land Survey System in the State of Missouri, and upon which Government land patents were issued conveying the land.

(5) The term "Public Land Survey System" means the rectangular system of original Government lands surveys made by the United States General Land Office and its successor, the Bureau of Land Management, under Federal laws providing for the survey of the public lands upon which the original land patents were issued.

(6) The term "qualifying claimant" means a private owner of real property in Barry or Stone County, Missouri, who has a boundary conflict as a result of good faith and innocent reliance on subsequent land surveys, and as a result of such reliance, has occupied, improved, or made ownership claims to Federal lands.

(7) The term "subsequent land surveys" mean any land surveys made after the original land surveys.

(b) NOTICE OF BOUNDARY CONFLICT.—

(1) SUBMISSION AND CONTENTS.—A qualifying claimant shall notify the appropriate Secretary in writing of a claim that a boundary conflict exists with Federal land administered by the appropriate Secretary. The notice shall be accompanied by the following information, which, except as provided in subsection (d)(2)(B), shall be provided without cost to the United States:

(A) A land survey plat and legal description of the affected Federal lands, which are based upon a land survey completed and certified by a Missouri State-licensed professional land surveyor, and done in conformity with the Public Land Survey System and in compliance with the applicable State and Federal land surveying laws.

(B) Information relating to the claim of ownership of the Federal lands, including supporting documentation showing the landowner relied on a subsequent land survey due to actions by the Federal Government in making or approving surveys for the Table Rock Reservoir.

(2) DEADLINE FOR SUBMISSION.—To obtain relief under this section, a qualifying claimant shall submit the notice required by paragraph (1) within 15 years after the date of the enactment of this Act.

(3) RESPONSIBILITIES OF CLAIMANTS.—The qualifying claimant shall have the responsibility for establishing that the qualifying claimant qualifies for the remedies provided in subsection (c).

(c) RESOLUTION AUTHORITIES.—The appropriate Secretary may take any of the following actions, or combination of actions, in order to resolve boundary conflicts with qualifying claimants involving lands under the administrative jurisdiction of the appropriate Secretary:

(1) Convey and quitclaim all right, title, and interest of the United States in land subject to a boundary conflict.

(2) Confirm Federal title to, and retain in Federal management, any land subject to a boundary conflict, if the appropriate Secretary determines there are Federal interests, including improvements, authorized uses, easements, hazardous materials, or historical and cultural resources, on the land that necessitates retention of the land.

(3) Compensate the qualifying claimant for the value of the overlapping property for which title is confirmed and retained in Federal management pursuant to paragraph (2).

(d) CONSIDERATION AND COST.—

(1) CONVEYANCE WITHOUT CONSIDERATION.—The conveyance of land under subsection (c)(1) shall be made without consideration if the appropriate Secretary determines that the boundary conflict was the result of the innocent detrimental reliance by the qualifying claimant on a subsequent land survey.

(2) COSTS.—The appropriate Secretary shall—

(A) pay administrative, personnel, and any other costs associated with the implementation of this section, including the costs of survey, marking, and monumenting property lines and corners; and

(B) reimburse the qualifying claimant for reasonable out-of-pocket survey costs necessary to establish a claim under this section.

(3) VALUATION.—Compensation paid to a qualifying claimant pursuant to subsection (c)(3) for land retained in Federal ownership pursuant to subsection (c)(2) shall be valued on the basis of the contributory value of the tract of land to the larger adjoining private parcel and not on the basis of the land being a separate tract. The appropriate Secretary shall not consider the value of any Federal improvements to the land.

(e) PREEXISTING CONDITIONS; RESERVATIONS; EXISTING RIGHTS AND USES.—

(1) PREEXISTING CONDITIONS.—The appropriate Secretary shall not compensate a qualifying claimant or any other person for any preexisting condition or reduction in value of any land subject to a boundary conflict because of any existing or outstanding permits, use authorizations, reservations, timber removal, or other land use or condition.

(2) EXISTING RESERVATIONS AND RIGHTS AND USES.—Any conveyance pursuant to subsection (c)(1) shall be subject to—

(A) reservations for existing public uses for roads, utilities, and facilities; and

(B) permits, rights-of-way, contracts and any other authorization to use the property.

(3) TREATMENT OF LAND SUBJECT TO SPECIAL USE AUTHORIZATION OR PERMIT.—For any land subject to a special use authorization or permit for access or utilities, the appropriate Secretary may convert, at the request of the holder, such authorization to a permanent easement prior to any conveyance pursuant to subsection (c)(1).

(4) FUTURE RESERVATIONS.—The appropriate Secretary may reserve rights for future public uses in a conveyance made pursuant to subsection (c)(1) if the qualifying claimant is compensated for the reservation in cash or in land of equal value.

(f) RELATION TO OTHER CONVEYANCE AUTHORITY.—Nothing in this section affects the Quiet Title Act (28 U.S.C. 2409a) or other applicable law, or affects the exchange and disposal authorities of the Secretary of Agriculture, including the Small Tracts Act (16 U.S.C. 521c), or the exchange and disposal authorities of the Secretary of the Army.

(g) ADDITIONAL TERMS AND CONDITIONS.—The appropriate Secretary may require such additional terms and conditions in connection with a conveyance under subsection (c)(1) as the Secretary considers appropriate to protect the interests of the United States.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota (Mr. GUTKNECHT) and the gentleman from Texas (Mr. STENHOLM) each will control 20 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. GUTKNECHT).

☐ 1430

Mr. GUTKNECHT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill provides a mechanism for the Forest Service and the Army Corps of Engineers to resolve boundary conflicts between the Mark Twain National Forest and adjacent private landowners. The dispute over boundaries stems from recent surveys conducted by contractors to the U.S. Army Corps of Engineers, which have subsequently been found severely flawed by the State Surveyor for Missouri.

The measure sets a process for dealing with disputed boundaries. The landowner would notify the Secretary of Agriculture of a disputed boundary, prompting a new land survey. If the Secretary determines that the boundary conflict is the result of a reliance on a previous land survey, the land in dispute can be returned to the property owner.

It is important to note that the bill does not require the conveyance of any particular lands. Where a new survey shows that the lands in question were surveyed improperly, the Forest Service can either execute a quit claim deed, assert Federal ownership if the Federal Government has improved the land, or compensate the landowner for the land.

We made one minor change to the bill which requires that any liability for environmental hazards on the property, if any, be settled through an agreement between the landowner and the Federal Government. This change was requested by the Committee on Transportation and Infrastructure.

This is a case where the Federal Government has not exercised adequate due diligence in maintaining their land surveys to the detriment of their neighbors. Rather than redrawing map boundaries from Washington, we are creating a process where these folks can address their claims closer to home. The Committee on Agriculture regards this as an equitable solution to a local problem created by the Federal Government. I urge my colleagues to join me in support of this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. STENHOLM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 2304, legislation to resolve boundary conflicts in the vicinity of the Mark Twain National Forest in Barry and Stone Counties, Missouri, resulting from private landowner reliance on a subsequent Federal survey.

These boundary conflicts resulted from discrepancies between recent land surveys conducted by the U.S. Forest Service and its implementation of the Restoration of Original Corners Program, and decades-old surveys conducted by the Army Corps of Engineers. As a result of the more recent land surveys, private property lands adjoining Federal lands were moved, and private property landowners discovered that, due to their reliance on the older land surveys, they had inadvertently trespassed on Federal land.

Mr. Speaker, H.R. 2304 would remedy these boundary discrepancies by authorizing and directing the Secretary of Agriculture to convey title to U.S. Forest Service land on which private landowners can demonstrate that they inadvertently trespassed because of their reliance on a previous inaccurate Federal survey, or relied on a survey based on a previous inaccurate survey.

I urge my colleagues to support this legislation in order to resolve these boundary discrepancies.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GUTKNECHT. Mr. Speaker, I yield myself such time as I may consume.

This is a commonsense solution at the local level to problems that the Federal Government has created. The Committee on Agriculture strongly supports this bill, and I hope that Members will join us in supporting this bill.

Mr. BLUNT. Mr. Speaker, I rise today to urge support for the speedy resolution of a boundary dispute affecting private property owners in my Congressional District.

Apparently, there are some local issues that apparently only an act of Congress can solve.

This issue surfaced when private property owners' historic boundary lines neighboring the Mark Twain National Forest and Table Rock Lake in Missouri's Barry and Stone Counties were blurred when the U.S. Forest Service restored the mid-1800s Corners program.

Over the years, the Forest Service has been effectively shaving off substantial sections of private property that adjoins federal lands. Recent land surveys have found major differences in surveys conducted by the Forest Service and the Army Corps of Engineers. My legislation would resolve these discrepancies, so private property owners don't lose property adjoining Federal lands.

A fight with the Federal Government over a boundary line can be an uphill battle. This bill will maintain the original property lines and hand the title of the disputed land to the private landowner.

The Federal Government already owns a third of the nation's land, and inaccuracies in federally conducted surveys should never force landowners to forfeit their property.

Mr. Speaker, I urge the House's approval of this common-sense bill.

Mr. GUTKNECHT. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PETRI). The question is on the motion offered by the gentleman from Minnesota (Mr. GUTKNECHT) that the House suspend the rules and pass the bill, H.R. 2304, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GUTKNECHT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2304, the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess for approximately 10 minutes.

Accordingly (at 2 o'clock and 34 minutes p.m.), the House stood in recess for approximately 10 minutes.

□ 1448

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. PETRI) at 2 o'clock and 48 minutes p.m.

GEORGE HENRY WHITE POST OFFICE BUILDING

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3353) to designate the facility of the United States Postal Service located at 525 Main Street in Tarboro, North Carolina, as the "George Henry White Post Office Building".

The Clerk read as follows:

H.R. 3353

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GEORGE HENRY WHITE POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 525 Main Street in Tarboro, North Carolina, shall be known and designated as the "George Henry White Post Office Building".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the George Henry White Post Office Building.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from North Carolina (Mr. BALLANCE) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on behalf of the Committee on Government Reform, I am pleased that the House is considering H.R. 3353. This bill names a post office after a great American statesman, George Henry White. From 1897 to 1901, Republican George Henry White served two terms as the U.S. Representative for North Carolina's Second Congressional District. At that time, he was the only African American Member of Congress. As such, not only was Congressman White responsible for his North Carolina constituents, but as the highest-ranking black government official in the Nation he also shouldered the burden of representing the 10 million African Americans at the turn of the century.

Congressman White took principled stands against the racial inequality that was far too prevalent for this time period in American history. His eloquence and temperance toward injustice made him a well-respected Member of Congress, and he is truly worthy of commendation by this body from which he departed more than 100 years ago.

Mr. Speaker, this legislation commemorates George Henry White's courageous legacy as the last black Member of this House following Reconstruction. I congratulate the gentleman from North Carolina (Mr. BALLANCE) for having his bill considered by the whole House.

Mr. Speaker, I urge passage of H.R. 3353.

Mr. Speaker, I reserve the balance of my time.

Mr. BALLANCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we gather this afternoon to honor a great man and leader who blazed trails for African Americans not only in North Carolina but throughout the Nation, Congressman George Henry White from my home State of North Carolina.

I want to express my appreciation for the strong bipartisan support from the North Carolina delegation and the sponsorship of this bill.

We are here today, Mr. Speaker, to show our appreciation for Congressman White by naming the post office after him in Tarboro, North Carolina, the town which he represented; and the County of Edgecombe, which he represented with distinction as a part of the second congressional district, I now have the great privilege of representing that same community, humbly following in his footsteps.

Mr. George Henry White was born in Rosendale, Bladen County, North Carolina, during slavery. He grew up the son of a sharecropper in nearby Columbus County. He was educated at the Whitten School in Lumberton. He first embarked on his trail of excellence when he left his job as a farm laborer and ventured here to the Nation's Capital to attend Howard University. Many people mistake him as being a graduate of Howard Law School, but actually he was a graduate of high school and Howard undergraduate school.

Upon graduation from Howard University in 1877, Mr. White returned to North Carolina settling in the coastal town of New Bern, to begin the fight to better his North Carolina for all families and helping empower the African American community.

He became a teacher and then a principal and is credited with establishing four new schools. Mr. White knew then what we all know now: information is power, and the key to steering one's own course is a quality education.

While living in New Bern, where he also worked as an attorney, having read law to become a lawyer, Mr. White embarked upon a career in public service spanning more than 2 decades when, in 1880, he was elected to the North Carolina House of Representatives.

In 1884 he was elected to the North Carolina State Senate. And in 1886 he was elected as a solicitor for the second judicial district of North Carolina where he served two terms. During this time, George Henry White was the only African American district attorney in the United States. Continuing a political career steeped in innovation and leadership, blazing trails unheard of in his day, in 1894 Mr. White moved to Tarboro. It might be interesting to know that the one reason he moved was because there was redistricting going on and his hometown of New Bern was carved out of the second district. So he just packed up and moved down to Tarboro, North Carolina, his wife's hometown.

Three years later, he would become Congressman White, and only the third African American elected to the U.S. House of Representatives from North Carolina, John Adams Hyman being the first, Henry P. Cheatham the second.

Congressman White was the only African American in the United States Congress during his two terms and was the highest-ranking elected African American in the United States. He essentially represented not only citizens of the second congressional district but all 10 million African Americans across the Nation. He was the last former slave and the last African American to serve in the Congress during the post-Reconstruction era.

He opened doors while in Congress to pave the way for the civil rights movement more than half a century later. He campaigned against racial discrimination and urged enforcement of the second section of the 14th amendment.

In January 1901, his last year in office, Congressman White proposed a bill that would make lynching of African Americans a Federal crime. Unfortunately, this bill did not pass; but it did have some impact in the Deep South in particular. Despite Congressman White's passionate plea, as I indicated, the term ended without his bill passing.

George Henry White's farewell speech on the floor of Congress, often referred to as the "Phoenix Speech," or his farewell speech, was made January 29, 1901: "This, Mr. Chairman, is perhaps the Negroes' temporary farewell to the American Congress; but let me say, Phoenix-like he will rise up some day and come again. These parting words on behalf of an outraged, heartbroken, bruised and bleeding, but God-fearing people, faithful, industrious, loyal, rising people full of potential force."

Mr. Speaker, while Congressman White is deserving of far greater accolades, and I am sure they will come in time, it is my great pleasure to offer this legislation on his behalf. I urge the passage of this bill.

Mr. Speaker, I yield back the balance of my time.

Mr. DUNCAN. Mr. Speaker, I commend the gentleman from North Carolina (Mr. BALLANCE) for introducing this very appropriate bill, and I urge all of our colleagues to support the passage of H.R. 3353.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and pass the bill, H.R. 3353.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

JAMES E. DAVIS POST OFFICE BUILDING

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1590) to redesignate the facility of the United States Postal Service, located at 315 Empire Boulevard in Crown Heights, Brooklyn, New York, as the "James E. Davis Post Office Building".

The Clerk read as follows:

S. 1590

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JAMES E. DAVIS POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 315 Empire Boulevard in Crown Heights, Brooklyn, New York, shall be known as designated as the "James E. Davis Post Office Building".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the James E. Davis Post Office Building.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from North Carolina (Mr. BALLANCE) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1590, a bill sponsored by Senator SCHUMER of New York, names a postal facility in Brooklyn, New York, as the James E. Davis Post Office Building. My distinguished colleague on the Committee on Government Reform, the gentleman from New York (Mr. TOWNS), authored the House version of this postal naming bill, H.R. 3012. I commend both the gentleman from New York (Mr. TOWNS) and Senator SCHUMER for their work on this meaningful effort.

Mr. Speaker, James E. Davis was a devoted public official who lived and worked in Brooklyn all of his life. The son of a corrections officer himself, Davis became an officer in the New York Police Department in 1983. After nearly 2 decades on the police force, he was elected to the New York City Council in November of 2001. In that capacity Davis was able to utilize his dynamic public speaking ability. He truly had a gift for connecting with audiences and delivering messages that advocated non-violence.

Mr. Speaker, defeating crime and eliminating violence in inner-city New York were lifelong missions for James E. Davis both as a law enforcement and elected official. This reality made July

23, 2003, an even more ironically tragic day for New Yorkers as well as all Americans. On that afternoon, James Davis had invited a political rival to City Hall to attend a council meeting. Just after 2 o'clock, Councilman Davis' guest brandished a handgun and inexplicably shot Davis twice in the chest. Mr. Davis sadly passed away at a nearby hospital later that afternoon.

Mr. Speaker, many of us saw the story of James E. Davis' tragic murder in New York City Hall on national newscasts last summer. I want to join with the gentleman from New York (Mr. TOWNS) and Senator SCHUMER in extending the sympathy of all Members of Congress to the family, friends, and supporters of James E. Davis. I am pleased that passage of this legislation will immortalize James E. Davis' contributions to his community and to the Nation.

Mr. Speaker, I urge passage of S. 1590.

Mr. Speaker, I reserve the balance of my time.

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Mr. BALLANCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to stand at this time as the designee for the gentleman from Illinois (Mr. DAVIS) on behalf of this resolution. I am pleased to join my colleagues in consideration of S. 1590, legislation naming a postal facility after the late James E. Davis.

S. 1509, which was introduced by Senator SCHUMER on September 8, 2003, was unanimously adopted by the Committee on Government Reform on November 6, 2003. An identical bill, H.R. 3012, sponsored by the gentleman from New York (Mr. TOWNS) has the support and cosponsorship of the entire New York delegation.

Mr. James Davis was born in 1962 and graduated from Tilden High School in Brooklyn, New York in 1980. He obtained a degree from Pace University in 1989 and then joined the New York City Correctional Department. He became a police officer in 1991 and was assigned to the 73rd Precinct in Brooklyn. A youth officer, Mr. DAVIS served in the New York Police Department until he decided to enter the political arena in 1988 by running for assemblyman for the 43rd District. Although unsuccessful, he ran again and won office in November 2001, where he served as councilman for the 35th District.

Tragically, as we have just heard, Councilman Davis's life was cut short when he was gunned down in a violent shooting in the City Hall at the young age of 41.

Mr. Speaker, James Davis was a man of the community. He has dedicated his life to improving conditions in Brooklyn, New York, helping young people realize their dreams and stopping urban violence.

I commend my colleagues, the gentleman from New York (Mr. TOWNS) and Senator SCHUMER for seeking to honor the legacy of Councilmember James Davis and urge the adoption of this bill.

Mr. Speaker, I yield back the balance of my time.

Mr. DUNCAN. Mr. Speaker, I have no additional speakers. I urge passage of S. 1590, and I urge all of my colleagues to join in support of this very worthwhile and appropriate measure.

Mr. TOWNS. Mr. Speaker, as the lead sponsor of the House version of S. 1590, I am pleased that we are considering this legislation today. S. 1590 would rename the post office located at 315 Empire Boulevard in Crown Heights, Brooklyn, New York, as the "James E. Davis Post Office Building." I would also like to note that this bill has been cosponsored by the entire New York delegation, and I would like to thank my colleagues from New York for doing so.

On that tragic day when Councilman James Davis of Brooklyn was murdered in a violent shooting in City Hall, New York City, we lost a true public servant. He was an intelligent, passionate, and energetic young man who had an extremely bright future. He worked very hard and took his duties as a public servant very, very seriously. He was only 41 years old and had served almost one term in the New York City Council. But he had already made his mark.

I met James through the Youth March Against Violence that he organized. His commitment to this issue was genuine.

However, when I think of him, I remember one of the last conversations we had, which I think really embodies his approach to public service. We were meeting with housing authority officials, and he told them we weren't there to point fingers at every one. But if we didn't work together to get thing done, we would all take the blame. Sound advice that I think all public officials should take to heart.

With James, it was always about the community. He was dedicated to its betterment, having served as a police officer and district leader before being elected to the city council. One could always see the love he had for his neighbors and constituents. Naming a post office after him would be a lasting tribute to all of his hard work for the community that he loved so much. While we still have a heavy heart for losing such a good friend, the James E. Davis post office can help us celebrate his life. I think I can speak for all of Brooklyn when I say that the James E. Davis post office is something that we will all be proud of.

Mr. DUNCAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PETRI). The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and pass the Senate bill, S. 1590.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

HUGH GREGG POST OFFICE BUILDING

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3185) to designate the facility of the United States Postal Service located at 38 Spring Street in Nashua, New Hampshire, as the "Hugh Gregg Post Office Building".

The Clerk read as follows:

H.R. 3185

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. HUGH GREGG POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 38 Spring Street in Nashua, New Hampshire, shall be known and designated as the "Hugh Gregg Post Office Building".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Hugh Gregg Post Office Building.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from North Carolina (Mr. BALLANCE) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3185.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on behalf of the Committee on Government Reform, I am pleased to call up H.R. 3185 for consideration. This legislation introduced by my colleague, the gentleman from New Hampshire (Mr. BASS) designates the postal facility at 38 Spring Street in Nashua, New Hampshire, as the Hugh Gregg Post Office Building.

Hugh Gregg, a giant in New Hampshire politics for several decades, was elected Governor of the Granite State in 1953 at the age of 34. As a result, he was forevermore nicknamed the "Boy Governor." One of his most notable achievements was his work in organizing the first-in-the-Nation Presidential primary in New Hampshire. What began as little more than a beauty contest for candidates in 1952, his tireless work is a big reason the New Hampshire primary has evolved into such a critical date for modern Presidential candidates.

It is also important to note that Governor Gregg's son, Judd, went on to be elected Governor of New Hampshire in 1989, and he now serves as the State's senior United States Senator.

Mr. Speaker, America mourned on September 24th of this year, when Hugh Gregg passed away at age 85. He is survived by his wife, Catherine Warner Gregg, two sons, five grandchildren and one great-grandchild.

Mr. Speaker, I commend the gentleman from New Hampshire (Mr. BASS) for his work on H.R. 3185, and I strongly support its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. BALLANCE. Mr. Speaker, I yield myself such time as I may consume.

I am honored and pleased to join my colleagues in consideration of H.R. 3185, legislation naming a postal facility after Hugh Gregg. H.R. 3185 which was introduced by the gentleman from New Hampshire (Mr. BASS) on September 25, 2003, was unanimously approved by the Committee on Government Reform on October 8, 2003.

H.R. 3185 has the support and cosponsorship of the entire New Hampshire Congressional delegation. Hugh Gregg, a former Republican Governor of New Hampshire from 1953 until 1955, was born in New Hampshire and became its youngest Governor at the age of 34. A graduate of Yale and Harvard Law School, he served as a Special Agent of the Counterintelligence Corps during World War II and the Korean Crisis.

A well-known businessman and community leader, Mr. Gregg passed away on September 24, 2003 at the age of 85. Hugh Gregg was remembered as a statesman and gentleman. His love for his State and country and dedication to public service was well known.

Mr. Speaker, I commend my colleagues for seeking to honor the late Hugh Gregg and urge swift adoption on H.R. 3185.

Mr. Speaker, I yield back the balance of my time.

Mr. DUNCAN. Mr. Speaker, I yield as much time as he may consume to the gentleman from New Hampshire (Mr. BASS), the author of the bill.

Mr. BASS. Mr. Speaker, I thank my friend, the gentleman from Tennessee (Mr. DUNCAN) for recognizing me and for making it possible along with my friend, the gentleman from North Carolina (Mr. BALLANCE) to have the opportunity to bring this bill to the floor.

As the gentleman said at the end of his speech just previously, Governor Hugh Gregg died on September 24th of this year after a brief illness, and brief it was, because just prior to that illness, the city of Nashua, which is the largest city in my district, celebrated its 150th anniversary. And guess who walked at the front of the line in a top hat and tuxedo with a cane but Hugh Gregg, the grand marshall of the parade. Governor Hugh Gregg celebrating the city that he loved and lived in his entire life.

Indeed, he served our country during World War II, not once, but twice. He served in the Korean War. He served on the Nashua City Council. He became its mayor, and he was elected Governor of the State of New Hampshire in his early thirties, the year I was born.

Hugh Gregg also took on big projects. He was not one to think about things pragmatically or think about things in any small way.

During my political career, he achieved two major accomplishments. First, he sought out to establish a museum of political history in New Hampshire. It is no secret that New Hampshire is the first part of the Nation's primary and always will be. Hugh Gregg wanted to make sure that the political history of the State, going back as far as anybody cared to, was properly recorded. And as time went on, candidates running for office would have a place to repose their memorabilia and great events and so forth. He published no less than three books on the subject of New Hampshire political history, the latest with our Secretary of State, Bill Gardner. Hugh Gregg is responsible for the establishment of this institution, which will live on in perpetuity.

The second big project he took on was an effort to try to prove that New Hampshire was the birthplace of the Republican party and not Ripon, Wisconsin, as it has been previously thought. No offense to our distinguished presiding officer here today, but he turned out to be right about that. He made extensive research and determined that the records of the party originated in Exeter, New Hampshire, and he established a society called the Amos Tuck Society.

Indeed, Mr. Speaker, Hugh Gregg was not only Governor, mayor of Nashua, father of U.S. Senator JUDD GREGG and Cy Gregg, long-time husband of Catherine Gregg, a great political crusader for many different causes, not all of which were necessarily associated with Republicans, but were really focussed on the good of the State of New Hampshire and the good of the lives of the people around him. The efforts he made on behalf of others, not only in the area of politics, but in charity through the Crotched Mountain Rehabilitation Center which is one of the Nation's leading centers for the treatment of those brain-injured and developmentally-disabled individuals established by his father but nurtured and expanded significantly by him.

He served on a number of different boards, serving on the board of the Fleet Bank, at that time Indian Head Bank. He was involved in businesses all over the place.

Hugh Gregg was a man of courage. He was a man that some might say was tactless on occasion. I know, as Governor of the State of New Hampshire, on a couple of occasions he was known to become frustrated with people he came in contact with, and he had a habit of taking scissors and snipping their ties off just to get their attention and, indeed, it did.

Hugh Gregg campaigned with me during one of my many campaigns in the Nashua Recycling Center. We were trying to meet people there, of course. He was in his early eighties or late seventies. He said, You go over there and work over there in recycling, where they bring in bottles and cans. That is a nice clean thing for you to do. I will go over and carry the garbage because nobody is going to tell a 75-year-old man that they do not like him for carrying their garbage over to the garbage area.

Hugh Gregg was the kind of man that was full of energy, full of enthusiasm and full of compassion and a commitment to the folks around him in the city of Nashua and the State of New Hampshire. He will be sorely missed by all of us. I think this is a wonderful opportunity to name the Nashua Post Office after this great American citizen.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, since the gentleman from New Hampshire (Mr. BASS) has brought up the founding of the Republican party and Mr. Gregg's interest in that, I would mention that I have the privilege of representing the only district in the United States that has had continuous Republican representation in the United States House of Representatives since the founding of the Republican party.

This legislation seems to be very fitting and proper to name this post office facility after Hugh Gregg who was a very great American, who saw the American dream come true in his life in several different ways. I urge passage of this bill.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and pass the bill, H.R. 3185.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

COMMENDING INSPECTORS GENERAL FOR EFFORTS DURING PAST 25 YEARS

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and pass the Senate joint resolution (S.J. Res. 18) commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years.

The Clerk read as follows:

S.J. RES. 18

Whereas the Inspector General Act of 1978 (5 U.S.C. App.) was signed into law on October 12, 1978, with overwhelming bipartisan support;

Whereas Inspectors General now exist in the 29 largest executive branch agencies and in 28 other designated Federal entities;

Whereas Inspectors General work to serve the American taxpayer by promoting economy, efficiency, effectiveness, and integrity in the administration of the programs and operations of the Federal Government;

Whereas Inspectors General conduct audits and investigations to both prevent and detect waste, fraud, abuse, and mismanagement in the programs and operations of the Federal Government;

Whereas Inspectors General make Congress and agency heads aware, through semiannual reports and other communications, of problems and deficiencies in the administration of programs and operations of the Federal Government;

Whereas Congress and agency heads utilize the recommendations of Inspectors General in the development and implementation of policies that promote economy and efficiency in the administration of, or prevent and detect waste, fraud, abuse, and mismanagement in, the programs and operations of the Federal Government;

Whereas Federal employees and other dedicated citizens report information to Inspectors General regarding the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety;

Whereas Inspector General audits and investigations result in annual recommendations for more effective spending of billions of taxpayer dollars, thousands of successful criminal prosecutions, hundreds of millions of dollars returned to the United States Treasury through investigative recoveries, and the suspension and debarment of thousands of individuals or entities from doing business with the Government; and

Whereas for 25 years the Inspectors General have worked with Congress to facilitate effective oversight to improve the programs and operations of the Federal Government: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress—

(1) recognizes the many accomplishments of the Inspectors General in preventing and detecting waste, fraud, abuse, and mismanagement in the Federal Government;

(2) commends the Inspectors General and their employees for the dedication and professionalism displayed in the performance of their duties; and

(3) reaffirms the role of Inspectors General in promoting economy, efficiency, and effectiveness in the administration of the programs and operations of the Federal Government.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from North Carolina (Mr. BALLANCE) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on S.J. Res. 18.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Senate Joint Resolution 18 commends Inspectors General across the Federal Government for their contributions to taxpayers and overall government efficiency over the last 25 years.

This year marks the 25th anniversary of the Inspector General Act of 1978 that created the position of Inspector General in Federal agencies and departments. I had the honor of introducing the original legislation to name an Inspector General or create an Inspector General position for the Tennessee Valley Authority.

Today, Inspectors General exist in 57 executive branch agencies. Their work has eliminated waste in management at all levels of the Federal Government and saved countless taxpayer dollars.

Mr. Speaker, this body has already passed the House version of this resolution, so I will similarly urge all Members to support the adoption of Senate Joint Resolution 18.

Mr. Speaker, I reserve the balance of my time.

Mr. BALLANCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support Senate Joint Resolution 18 which recognizes Inspectors General for their efforts to prevent waste, fraud and abuse over the past 25 years. In fact, as has been just pointed out, the House passed H.J. Res. 70 by voice just a few days ago.

Twenty-five years ago the Inspector General Act of 1978 established, for the first time, IG's in 12 executive branch agencies. They proved so successful that today there are IG's in 59 Federal agencies. The Inspectors General report both to the agency head and to Congress and are one of Congress's principal watchdogs in the executive branch.

☐ 1515

IGs have a tough job. As independent investigators within Federal agencies, they are often the last person a manager wants to hear from.

The IGs returned over $4.5 billion to the Federal Government during fiscal year 2002 in restitutions and recoveries. IG audits also identified another $72 billion in funds that could be used more efficiently and effectively. They also had more than 10,000 successful criminal prosecutions.

The IGs make similar contributions year after year. They have more than proven their usefulness to Congress and the American people. I urge my colleagues to support this resolution commemorating their 25th anniversary.

Mr. Speaker, I yield back the balance of my time.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume to close by saying that many, many people have paid lip service to waste, fraud, and abuse within the Federal Government, but these Inspectors General and their staffs are on the front lines trying to do something about this to save taxpayers money and help make our Federal Government run more honestly and efficiently, so I urge passage of this legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PETRI). The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and pass the Senate joint resolution, S.J. Res. 18.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. DUNCAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

HONORING MR. SARGENT SHRIVER

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 299) honoring Mr. Sargent Shriver for his dedication and service to the United States of America, for his service in the United States Navy, and for his lifetime of work as an ambassador for the poor and powerless citizens of the United States of America, and for other purposes.

The Clerk read as follows:

H. CON. RES. 299

Whereas from 1955 to 1960, Mr. Shriver served as president of the Chicago Board of Education;

Whereas Mr. Shriver earned the rank of Lieutenant Commander after 5 years of service in the United States Navy;

Whereas in 1960, Mr. Shriver began his career in public service by working as a political and organization coordinator for Senator John F. Kennedy in the Wisconsin and West Virginia Presidential primaries;

Whereas from 1961 to 1966, Mr. Shriver organized and directed the Peace Corps, developing volunteer activities in Africa, Asia, and Latin America;

Whereas from 1964 to 1968, as the first Director of the Office of Economic Opportunity during President Lyndon B. Johnson's administration, Mr. Shriver helped establish Head Start, VISTA, Community Action, Job Corps, Legal Services, Foster Grandparents, Indian and Migrant Opportunities, and Neighborhood Health Services;

Whereas in 1964, Mr. Shriver was appointed by President Johnson to serve as United States Ambassador to France;

Whereas in 1972, Mr. Shriver was selected by the Democratic party as the Vice Presidential candidate during Senator George McGovern's Presidential campaign against President Nixon;

Whereas in 1984, Mr. Shriver served as president of the Board of Directors of Special Olympics and was responsible for the operation and international development of sports programs around the world;

Whereas in 1990, Mr. Shriver was appointed chairman of the Board of Special Olympics;

Whereas in 2003, Mr. Shriver was appointed chairman of the Board Emeritus of Special Olympics and has held positions in many associations, including the American Council on Germany, the National Interreligious Task Force on Soviet Jewry, the Navy League, the Veterans of Foreign Wars, and the Knights of Columbus;

Whereas Mr. Shriver has been honored with numerous awards, including the Distinguished American Award from the John F. Kennedy Library and Foundation for his work with the Peace Corps and the Presidential Medal of Freedom, the United States' highest civilian honor; and

Whereas Mr. Shriver has been honored with more than 24 honorary degrees from universities around the world, including Yale University, Brandeis University, Boston College, Yeshiva University, the University of Liberia, and Chulalongkorn University in Bangkok, Thailand: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress—

(1) honors Mr. Sargent Shriver for his dedication and service to the United States of America, for his service in the United States Navy, and for his lifetime of work acting as an ambassador for the poor and powerless citizens of the United States; and

(2) recognizes Mr. Sargent Shriver for his steadfast dedication and lifelong service to his country.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from North Carolina (Mr. BALLANCE) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H. Con. Res. 299, the resolution now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Concurrent Resolution 299 honors Mr. Sargent Shriver for his dedication and service to the United States of America. In 1961, President John F. Kennedy appointed Sargent Shriver the first director of the United States Peace Corps, an organization that continues to help millions of people all over the globe today. Three years later, because of his success establishing the Peace Corps, Sargent Shriver was also named director of the Office of Economic Opportunity by President Lyndon Johnson. He ultimately resigned from the Peace Corps in 1966 to devote himself full time to the OEO. In 1968, he was selected as our Ambassador to France. Ambassador Shriver joined the national Presidential ticket in 1972, when he became George McGovern's Vice Presidential running mate in that year.

Mr. Speaker, Sargent Shriver lived a remarkable life committed to public service in the U.S. and around the world. I congratulate the gentleman from California for recognizing Mr. Sargent Shriver for his steadfast dedication and lifelong service to his country.

Mr. Speaker, I reserve the balance of my time.

Mr. BALLANCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Sargent Shriver is a humanitarian, an advocate, a public servant, and a leader whose contributions to his country and his fellow man are immeasurable. Leading President Johnson's War on Poverty, Shriver ushered in many of the great society programs aimed at helping Americans better their lives. A list of programs Sargent Shriver started, defended, and expanded, and which remain in place today, are the Peace Corps, which in 1961 he helped organize and became its first director, Head Start, Job Corps, Legal Services, Upward Bound, Community Action, Foster Grandparents, and VISTA. Along with his wife Eunice, the founder of Special Olympics International, Sargent Shriver has nurtured the Special Olympics since 1968.

A man of stellar character and tireless energy, Shriver was raised on a farm in Westminster, Maryland. He worked his way through college, graduating from Yale University, cum laude, in 1938, and Yale Law School in 1941. Shriver served 5 years in the Navy during World War II ending his service as Lieutenant Commander.

Sargent Shriver worked to unite common concerns of the citizens of America and of the world. In 2001, during a speech at the 40th Anniversary of the Peace Corps Vigil at the Lincoln Memorial, Shriver stated: "Be servants of peace: work at home as you have worked abroad, humbly, persistently, intelligently. Weep with those who are sorrowful, care for those who are sick. Serve your wives, serve your husbands, serve your families, serve your neighbors, serve your citizens, serve your cities, serve the poor. Join others who serve. Serve, serve, serve. That's the end. That is the challenge. For in the end, it will be the servants who save us all."

Be servants of peace. This is an important directive not only for the Peace Corps, but for all of us who work to seek to make America and the world a better place, as Sargent Shriver has. We owe men and women like Sargent Shriver a debt of gratitude and this resolution serves to do that.

Mr. Speaker, I yield back the balance of my time.

Mr. DUNCAN. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. MCKEON).

Mr. MCKEON. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise today as the proud sponsor of House Concurrent Resolution 299, honoring the life and accomplishments of my friend Sargent Shriver. I have another good friend here today who I met on the Hill and have known for many years, David Bradley. Mr. Bradley worked for Sargent, considers him a mentor, and is the one that really got me interested in studying more about what Sargent Shriver has accomplished in this life. Just a short week after his 88th birthday, we honor this American Patriot for his accomplishments in life, for his compassion for humanity, for his philanthropy, for his generosity, and for his commitment to public service.

As children, we all have visions and dreams of one day being able to change the world, to make a real difference to mankind, to be remembered. But in reality, it is difficult to find a person who has actually done so. As an ambassador and advocate for the poor and powerless, as a man of strong conviction, faith, and devotion, as a man who genuinely loves his country and all that it stands for, it is safe to say that Sargent Shriver truly has made a difference in the world.

Born 88 years ago last Sunday, Sargent received both his undergraduate and law degrees from Yale University. He married his long-time sweetheart, Eunice Kennedy, and 50 years later, their love remains as strong as the day they met. His devotion to his wife and his five children, throughout his life, exemplify his character and represent the true American spirit.

His love for family is followed closely by his love of country. As an international lawyer and administrator, Sargent Shriver has compiled an unparalleled record of public service at every tier, from the local level to the world community. Sargent served as an attorney in the United States Navy during World War II and retired as a Lieutenant Commander after 5 years of service.

After ending his military career, Mr. Shriver worked briefly as an editorial assistant at Newsweek magazine. In 1955, he began a 5-year tenure as president of the Chicago Board of Education, a position that would teach him the sense of patriotism and community activism, which he would carry throughout his life.

In 1961, Mr. Shriver answered the call of duty again, this time by President John F. Kennedy. Sargent established and directed the newly-founded organization called the Peace Corps, and helped organize operations around the world, from Africa and Asia to Latin America. The Peace Corps would eventually come to the aid of foreign communities needing medical, educational and technical assistance, while giving millions of Americans the opportunity share our culture and values and democratic way of life to those less fortunate around the world.

After September 11, many Americans have been searching for their role in the war against terrorism, asking what can I do. President Bush has called on every citizen to devote a portion of their lives to service. Since September 2001, more than 3,000 potential Peace Corps volunteers have started applications and almost 7,000 men and women have contacted the Peace Corps to ask about volunteering. The Peace Corps estimates that there has been a 300 percent increase in volunteer interest. Sargent Shriver deserves the gratitude of every American for his contributions to this most noble of causes.

As the true patriot he is, Sargent's commitment to those in need did not stop there. He served as the first director of the Office of Economic Opportunity under President Johnson. Using his principles as his guiding light, Sargent played the American Dream a reality for millions of Americans across America. And, today, at the young age of 88, Sargent's mission of service continues. He was elected president of the Special Olympics in 1984 and was appointed Chairman of the Board Emeritus of Special Olympics earlier this year.

Martin Luther King said, "You ought to believe in something in life, and believe that thing so fervently that you will stand up for it until the end of your days." As a man of unflinching moral character, visionary leadership, and a compassion that sees no end, Sargent Shriver embodies the idealism that helped make the United States the world's cornerstone of freedom, opportunity, and democracy.

Mr. Shriver once said that the politics of life is personal initiative, creativity, experience, and grace. Mr. Speaker, Sargent Shriver exemplifies the American spirit which represents the very best in humanity. His life is a celebration of democracy. I am proud to have sponsored this resolution and encourage all Members to follow the example set by my friend, Sargent Shriver.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume to commend the gentleman from California for introducing this very worthwhile legislation, and I join him in commending Sargent Shriver on his career. He has led a life of public service that has set a great example for everyone in this Nation. He has tried to serve this Nation well.

Mr. MCGOVERN. Mr. Speaker, I am pleased to join my colleagues in honoring Sargent Shriver for his years of outstanding service to our country. As a lawyer, government administrator, ambassador, and passionate spokesman for the poor, Mr. Shriver has devoted his life to the most vulnerable among us.

Sargent Shriver is perhaps best known as the founder and first administrator of President John F. Kennedy's Peace Corps. In that position, Mr. Shriver organized Peace Corps operations in more than 50 countries in the developing world.

After founding the Peace Corps, Mr. Shriver dedicated himself to President Lyndon B. Johnson's Great Society. Within the Great Society, Mr. Shriver founded Head Start; he created the Job Corps; he organized Legal Services; and he created Volunteers in Service to America.

In time, Mr. Shriver's service to our country took on a diplomatic perspective when he went to Paris as our ambassador to France under both President Johnson and President Richard M. Nixon.

Upon his return from Paris, Mr. Shriver threw himself into Democratic politics. During the 1970 election, he traveled the country on behalf of Democratic House and Senate candidates. And then in 1972 he was the Democratic nominee for vice president joining the ticket with my good friend George McGovern. In 1976, Mr. Shriver ran in the Democratic presidential primaries.

Mr. Speaker, throughout the 1980s and 1990s, Mr. Shriver devoted himself to philanthropic causes. Among other things, he served on the Rockefeller University Council; he was elected president of the Special Olympics; he was later appointed Chairman of the Board of Special Olympics, Inc. Mr. Shriver went on to receive numerous awards and honorary degrees from colleges and universities.

Mr. Speaker, this summer I had the opportunity to see and talk with Sargent Shriver in Massachusetts. He shared with me his dreams of a peaceful world and his hopes for a brighter future. And he looks great.

Mr. Speaker, as we honor Mr. Shriver today, I believe it is important that we reflect on his life of service to our country and how we can learn from him. In a letter he composed about his fight with Alzheimer's disease, he wrote of the challenges we face as a country "to search for the pathways to peace . . . to overcome the horrors of poverty and neglect in this country and around the world. Indeed, Mr. Shriver's words should guide us each day.

Again, Mr. Speaker, I am pleased to join my colleagues in honoring Mr. Shriver for his decades of selfless service to our country and the world community.

Mr. HOYER. Mr. Speaker, in 5 days, we will observe the 40th anniversary of one of the darkest moments in American history—the assassination of our 35th President, John F. Kennedy.

President Kennedy stirred the imagination of our Nation and inspired a generation to "ask not what your country can do for you—ask what you can do for your country."

Today, Mr. Speaker, I join my colleagues in honoring a man who answered that clarion call to a life in public service; a man who quite literally was a pillar in President Kennedy's New Frontier; and a man who is one of the greatest public servants in the history of our Nation.

I, of course, am referring to Robert Sargent Shriver, Jr., who celebrated his 88th birthday one week ago.

Sargent Shriver's devotion to this nation—and humanity—sets an example for all to emulate and a high bar that only a few will ever hope to exceed.

A native of the State of Maryland, and in fact a member of one of the Free State's founding families, Sargent Shriver has dedicated his life to improving the lives of others.

A few years ago, Sarge was asked to explain his lifelong commitment to public service. "I just feel my faith," he said. "A life of service is like catching a disease. In a family it's passed on. . . . Our five children are all involved in service. It's in their veins."

There is no doubt that this generation and future generations of Americans are the beneficiaries of his life of service.

After graduating from Yale Law School in 1941, Sarge enlisted in the Navy, where he received the Navy Unit Citation and the Submarine Medal for service in both the Atlantic and Pacific.

After World War II, Sarge accepted a position as assistant editor with Newsweek magazine. He later went into business with Joseph Kennedy, President Kennedy's father, and met Eunice, his wife of more than 50 years.

Sarge then moved his family to Chicago, where he served on the Board of Education. In 1956, he was elected President of the Board, the youngest person to serve in such a position in any major American city.

And in 1960, he joined the Presidential campaign of then-Senator Kennedy. After the election, he was asked by President Kennedy to create the Peace Corps and in March 1961 was appointed its founding Director.

Sarge's vision for the Peace Corps was straight-forward and strong: "to permit Americans to participate directly, personally, and effectively in this struggle for human dignity."

In nearly 6 years at the Peace Corps, Sarge developed programs in 55 countries with more than 14,500 volunteers. Forty-two years later, the solid foundation that he created has only strengthened and expanded. Today, 163,000 Peace Corps volunteers have served in 135 countries.

However, while Sarge is rightly identified as the founding father of this great American idea, his contributions to the Peace Corps do not tell the whole story.

Sarge also served as the first Director of the Office of Economic Opportunity under President Johnson. Then, between 1964 and 1968, he created VISTA, Head Start, Community Action, Foster Grandparents, Job Corps, Legal Services, Indian and Migrant Opportunities and Neighborhood Health Services.

And, then, from 1968 to 1970, he served as U.S. Ambassador to France, before being nominated in 1372 to serve as the Vice Presidential candidate on the Democratic Party's ticket with George McGovern.

Few Americans have given so much to help so many. Yet, in the twilight of this incredible life, Sarge and Eunice continue to give.

To call this record of public service exemplary is a vast understatement. Words cannot adequately convey the decency and humanity that has been brought into the lives of millions worldwide through the work of Sargent Shriver—international lawyer, ambassador, humanitarian. His life's work shall live on long after this and succeeding generations have passed the torch of public service to their progeny.

"Serve, serve, serve," Sarge was know to say, "because in the end it is the servants who save us all."

Mr. Speaker, today, I honor a great American and wish him only the best, and I urge all my colleagues on both sides of the aisle to support this Resolution recognizing Sargent Shriver.

Mr. DUNCAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 299.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. DUNCAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

WALTER F. EHRNFELT, JR. POST OFFICE BUILDING

Mr. DUNCAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3300) to designate the facility of the United States Postal Service located at 15500 Pearl Road in Strongsville, Ohio, as the "Walter F. Ehrnfelt, Jr. Post Office Building."

The Clerk read as follows:

H.R. 3300

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WALTER F. EHRNFELT, JR. POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 15500 Pearl Road in Strongsville, Ohio, shall be known and designated as the "Walter F. Ehrnfelt, Jr. Post Office Building".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Walter F. Ehrnfelt, Jr. Post Office Building.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. DUNCAN) and the gentleman from North Carolina (Mr. BALLANCE) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. DUNCAN).

GENERAL LEAVE

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3300, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3300, introduced by another of my distinguished colleagues on the Committee on Government Reform, the gentleman from Ohio (Mr. LATOURETTE), designates the postal facility in Strongsville, Ohio, as the Walter F. Ehrnfelt, Jr. Post Office Building. All Members of the Ohio delegation have signed on as cosponsors to this legislation.

Walter Ehrnfelt served as Mayor of Strongsville, Ohio, for 25 years, and he was a civic and social institution in this northern Ohio community outside of Cleveland for even longer than that.

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He was reelected six times after first being appointed as mayor in 1978. The town of Strongsville nearly doubled its population during Mayor Ehrnfelt's tenure. Largely due to the mayor's efforts over the years, Strongsville boasts a fantastic school system, a productive industrial base, and many safe and wonderful neighborhoods.

Mr. Speaker, Mayor Ehrnfelt sadly passed away in office after suffering a heart attack on May 25 of this year. Naming this post office after Mayor Ehrnfelt in the city he governed and loved would be a small, but very deserved, tribute to his leadership. I urge all Members to support passage of H.R. 3300. I commend the gentleman from Ohio (Mr. LATOURETTE) for working to honor Mr. Walter Ehrnfelt.

Mr. Speaker, I reserve the balance of my time.

Mr. BALLANCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to join my colleagues in support of H.R. 3300, sponsored by the gentleman from Ohio (Mr. LATOURETTE).

Walter Ehrnfelt, Jr., was first elected mayor of Strongsville, Ohio, in 1978. He was elected for six 4-year terms until his death on May 25, 2003. He was a devoted family man, public servant, and businessman. He served the citizens of Strongsville in many capacities. He was a member of the Strongsville school board, and was later elected president of the board and served as county councilman prior to being elected mayor. In addition to holding positions in many civic organizations, he was an honorary trustee of the Strongsville Chamber of Commerce and a member of the Strongsville United Methodist Church.

I am honored to join my colleagues seeking to honor the many contributions of Walter Ehrnfelt, and I urge swift passage of H.R. 3300.

Mr. KUCINICH. Mr. Speaker, I feel honored today to support H.R. 3300, a bill to rename the United States Post Office in Strongsville, OH in tribute to the city's distinguished and dedicated former mayor and my friend, the late Walter F. Ehrnfelt. I would also like to extend special thanks to my colleague, Congressman LATOURETTE, for helping to bring his legislation to the floor, along with all of the Ohio delegation for co-sponsoring this bill.

Mayor Ehrnfelt's impact on the city of Strongsville will never be forgotten. After graduating from Strongsville High School, he began what would become a lifetime commitment to civic involvement. In 1973, while running Ehrnfelt Meats, a family business that operates still today, his neighbors convinced him to run for the Strongsville School Board, leading the fight against a campaign to dismiss teachers and ban books in the school district. He won that race, and in 1978 he was appointed mayor of Strongsville, later winning his first mayoral race in November 1979 by more than a 2 to 1 margin. Voters rewarded his effective leadership by re-electing him to six consecutive 4-year terms, the last beginning in 2000.

As mayor, Walter Ehrnfelt guided Strongsville through an unprecedented period of growth, evolving from a community of 22,000 to a thriving suburb of 45,000 residents. He served on Governor Taft's State and Local Government Commission and was president of the Ohio Municipal League. But most importantly, Mayor Ehrnfelt lived each day with the people of Strongsville close to his heart, truly living his life for the betterment of others.

I'm pleased we have the opportunity to honor Mayor Ehrnfelt for his service and spirit today. The people of Strongsville, the state of Ohio, and everyone who knew him will miss him greatly.

Mr. BALLANCE. Mr. Speaker, I yield back the balance of my time.

Mr. DUNCAN. Mr. Speaker, I urge support for this very fitting and proper legislation, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PETRI). The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and pass the bill, H.R. 3300.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. DUNCAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

JOHN F. KENNEDY CENTER REAUTHORIZATION ACT OF 2003

Mr. PORTER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3198) to amend the John F. Kennedy Center Act to authorize appropriations for the John F. Kennedy Center for the Performing Arts, and for other purposes.

The Clerk read as follows:

H.R. 3198

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "John F. Kennedy Center Reauthorization Act of 2003".

SEC. 2. AUTHORIZATIONS OF APPROPRIATIONS.

Section 13 of the John F. Kennedy Center Act (20 U.S.C. 76r) is amended by striking subsections (a) and (b) and inserting the following:

"(a) Maintenance, Repair, and Security.—There are authorized to be appropriated to the Board to carry out section 4(a)(1)(H)—

"(1) $17,000,000 for fiscal year 2004; and

"(2) $18,000,000 for each of fiscal years 2005 and 2006.

"(b) Capital Projects.—There are authorized to be appropriated to the Board to carry out subparagraphs (F) and (G) of section 4(a)(1)—

"(1) $16,000,000 for fiscal year 2004; and

"(2) $18,000,000 for each of fiscal years 2005 and 2006.".

SEC. 3. JOHN F. KENNEDY CENTER PLAZA.

(a) Responsibilities of the Secretary.—Section 12(b) of the John F. Kennedy Center Act (20 U.S.C. 76q–1(b)) is amended by adding at the end the following:

"(6) Project team.—

"(A) Establishment.—To further construction of the Project, the Secretary shall establish a Project Team.

"(B) Membership.—The Protect Team shall be composed of the following members:

"(i) The Secretary (or the Secretary's designee).

"(ii) The Administrator of General Services (or the Administrator's designee).

"(iii) The Chairman of the Board (or the Chairman's designee).

"(iv) Such other individuals as the Secretary considers appropriate.

"(C) Project director.—The Project Team shall have a Project Director who shall be appointed by the Secretary, in consultation with the Administrator of General Services and the Chairman of the Board. The Project Director shall report directly to the Project Team.".

(b) Responsibilities of the Board.—

(1) In general.—Section 12(c)(1) of such Act (20 U.S.C. 76q–1(c)(1)) is amended by inserting ", in consultation with the Project Team," after "The Board".

(2) Construction of buildings.—Section 12(c)(3) of such Act (20 U.S.C. 76q–1(c)(3)) is amended by inserting ", in consultation with the Project Team," after "The Board".

(3) Approval by project team.—Section 12(c) of such Act (20 U.S.C. 76q–1(c)) is amended by adding at the end the following:

"(5) Approval by project team.—Notwithstanding section 5(e), any decision by the Board that will significantly affect the scope, cost, schedule, or engineering feasibility of any element of the Project, other than buildings to be constructed on the Plaza, shall be subject to the approval of the Project Team.".

(c) GAO Review.—Section 12 of such Act (20 U.S.C. 76q–1) is amended by adding at the end the following:

"(g) GAO Review.—

"(1) In general.—Until completion of the Project, the Comptroller General shall review the management and oversight of construction of the Project by the Board and report periodically on the results of the review to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

"(2) Objectives.—In carrying out paragraph (1), the Comptroller General shall assess the progress made by the Board in achieving each of the following objectives:

"(A) Development and implementation of adequate policies and procedures to guide the planning and management of the Project.

"(B) Receipt of timely construction data on schedules and costs related to the Project.

"(C) Improvement of human capital resources and expertise in managing construction of the Project.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. PORTER) and the gentleman from New York (Mr. BISHOP) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. PORTER).

Mr. PORTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3198 reauthorizes the John F. Kennedy Center for the Performing Arts for 3 years, authorizing funding for its capital repair and maintenance, allows for the GAO review of ongoing construction projects, and creates a new mechanism to ensure effective project oversight.

This bill is the product of a thorough legislative process. The subcommittee held an oversight hearing that included the GAO and the Kennedy Center, reviewed their comprehensive building plan and capital program, and discussed options for improving upon their programs. This process resulted in the bipartisan legislation we are bringing to the floor this afternoon.

I would like to recognize and congratulate the subcommittee chairman, the gentleman from Ohio (Mr. LATOURETTE), and the ranking member, the gentlewoman from the District of Columbia (Ms. NORTON), as well as full committee chairman, the gentleman from Alaska (Mr. YOUNG), and the ranking member, the gentleman from Minnesota (Mr. OBERSTAR), for their hard work in developing this legislation.

Since its founding, the Kennedy Center has become one of the world's premier entertainment venues, featuring award-winning theater, opera, and symphony performances. The funds we are authorizing today will go solely towards the upkeep and maintenance of the facility, for such repairs as elevator upgrades, handicap accessibility, enhanced fire and life safety equipment, and improved security systems. These repairs are in line with a comprehensive building plan maintained by the Kennedy Center and created at the direction of Congress in 1994. This legislation also incorporates several provisions that ensure effective project oversight.

It is no secret that there are Federal construction projects that have gone beyond their original budget, beyond schedule, and well beyond their original scope. Oftentimes it is the lack of adequate project management and oversight that allow this type of growth. That was the finding of a GAO report requested by the Committee on Transportation and Infrastructure on the Kennedy Center's garage expansion project.

The provision in this bill, including the creation of a project team, the requirement of a project director, and enhanced oversight by the GAO, should prevent such problems as the Kennedy Center goes forward with the construction of a new plaza and two new buildings. However, this reauthorization does not include any money for the plaza project. All of the funding authorized in this bill will be used for the existing structure and its surroundings. By supporting the regular maintenance and upkeep of the Kennedy Center, we will ensure that the center will continue to be a world-class venue well into the future. I support this legislation and urge my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

Mr. BISHOP of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to rise in support of H.R. 3198, a bill to authorize appropriations for the John F. Kennedy Center for the Performing Arts. Almost a decade ago, the Committee on Public Works, recognizing the inefficiency of years of divided responsibility for the operations, maintenance, and capital repairs of the Kennedy Center, passed H.R. 3567, which gave the board of trustees of the Kennedy Center centralized responsibilities for these matters.

In an effort to prevent continued deterioration of this landmark structure and Presidential memorial, the board asked for and received authority to maintain and improve the center. Former presidents Wolfensohn and Wilker, along with the current president, Michael Kaiser, continually worked to identify and put in place a capital improvement program to enhance the building. They believed it was of the utmost importance that the Kennedy Center management have the responsible and accountability for the building as well as its performing arts and education activities.

The Committee on Transportation and Infrastructure's interest then, as it is now, focuses on the use of appropriated funds for the capital improvement program and the repair and alteration of this Presidential memorial. To avoid the previous situation of unmet building needs and delayed repair, the center is now required to submit a 5-year capital plan to the committee. H.R. 3198 authorizes $53 million over 3 years for routine repair and alteration and $52 million for capital projects.

To address improved management for the plaza project, the bill authorizes the Secretary of Transportation, our former colleague, Norman Mineta, to establish a project team and appoint a project director. The president of the Kennedy Center and the administrator of General Services will serve on the team. The plaza project, when completed, will change the face of Washington in the West End. It is a monumental project that will not only enhance our Nation's Capital, but also provide safer and easier access to the center for patrons, visitors, and tourists. The center, under the leadership of Michael Kaiser, is working diligently to address general management of the facility as well as unmet personal needs. I support H.R. 3198 and urge its passage.

Mr. YOUNG of Alaska. Mr. Speaker, I rise today to offer my strong support for H.R. 3198, "The John F. Kennedy Center Reauthorization Act of 2003."

The Kennedy Center serves an important role in our Nation. Not only is it one of the most active theaters in the world, hosting millions of patrons each year to its seven stages, but is also one of the most recognizable theater buildings.

The legislation we are considering this afternoon, which I have offered with my colleagues Mr. OBERSTAR, Mr. LATOURETTE, and Ms. HOLMES-NORTON, reauthorizes the Capital Infrastructure program of the Kennedy Center for an additional three years. The bill also makes a number of important changes that will improve the management of large construction projects at the Kennedy Center.

This legislation will help ensure that the Kennedy Center continues to have a world class facility to house world class entertainment, which includes everything from classical opera to cutting edge films.

In addition to authorizing funds for maintenance, repair, and security as well as other capital projects, this legislation puts into place important tools for improved project management.

The legislation creates a project team for the plaza project. This team will include the secretary of transportation, administrator of general services, and chairman of the board of trustees of The Kennedy Center. This team will be responsible for overseeing all aspects of the plaza project through a project director, who reports to the project team and is appointed by the Secretary of Transportation.

The legislation also provides for ongoing review by the General Accounting Office of the plaza project until its completion, with periodic reporting to the Congress. The GAO will be looking at the personnel, policies and procedures used to carry out the project.

I support The Kennedy Center Reauthorization and encourage my colleagues to do the same.

Mr. BISHOP of New York. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. PORTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. PORTER) that the House suspend the rules and pass the bill, H.R. 3198.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

CONVEYANCE TO FRESNO COUNTY, CALIFORNIA, OF EXISTING FEDERAL COURTHOUSE

Mr. PORTER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1274) to direct the Administrator of General Services to convey to Fresno County, California, the existing Federal courthouse in that county, as amended.

The Clerk read as follows:

H.R. 1274

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. CONVEYANCE TO FRESNO COUNTY, CALIFORNIA.

[On completion of a new Federal courthouse in Fresno, California, the Administrator of General Services shall convey to Fresno County, California, without consideration, the existing Federal courthouse in that county.]

SECTION 1. CONVEYANCE OF B.F. SISK FEDERAL BUILDING AND UNITED STATES COURTHOUSE, CALIFORNIA.

(a) CONVEYANCE AUTHORIZED.—Notwithstanding any other provision of law, the Administrator of General Services may convey to Fresno County, California, for nominal consideration, all right, title, and interest of the United States in and to the building and site located at 1130 O Street in Fresno, California, known as the B.F. Sisk Federal Building and United States Courthouse.

(b) TIMING OF CONVEYANCE.—The Administrator may make the conveyance under subsection (a) only after the completion of construction of a new Federal courthouse in Fresno County and the relocation of the tenants in the building referred to in subsection (a) to the new Federal courthouse.

(c) RESTRICTIONS ON USE.—

(1) IN GENERAL.—The deed for the conveyance under subsection (a) shall include a covenant that provides that the property will be used for public use purposes, and specifically provides for substantial use of the property for the administration of justice.

(2) REVERSION.—If the Administrator determines that the property is not being used for the purposes described in paragraph (1), all right, title, and interest in and to the property shall revert to the United States, at the option of the United States.

(3) EXPIRATION.—The reversionary interest of the United States in the property under this subsection shall expire 20 years after the date of the conveyance.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Administrator may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Administrator considers appropriate to protect the interests of the United States.

(e) APPLICATION OF OTHER LAWS.—This section is not subject to the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. PORTER) and the gentleman from New York (Mr. BISHOP) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. PORTER).

Mr. PORTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1274, introduced by the gentleman from California (Mr. DOOLEY) and the gentleman from California (Mr. RADANOVICH), allows the administrator of General Services to convey the B.F. Sisk United States Courthouse located in Fresno, California, to Fresno County. This is a worthwhile endeavor, as the GSA is currently constructing a new Federal courthouse in Fresno, and this legislation will ensure that the people of Fresno County continue to receive a judicial benefit from the existing Federal courthouse.

This legislation also includes a number of provisions that will help protect the interests of the Federal Government. Among the provisions included in this legislation are the requirement that the courthouse be used for public purpose for at least 20 years, that the transfer not take place until the new courthouse is completed and occupied, and the conveyance may also include any additional provisions the administrator deems necessary to protect the interests of the government. I support this legislation and urge my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

Mr. BISHOP of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 1274, as amended, a bill to convey a Federal courthouse in Fresno, California, to the County of Fresno. The bill transfers for a nominal fee an obsolete Federal building in Fresno, California, to the County of Fresno. The bill ensures that the transfer documents contain a reverter clause, as well as a public use clause, both of which protect Federal interests.

I would like to thank the chairman of the Subcommittee on Economic Development, Public Buildings and Emergency Management, the gentleman from Ohio (Mr. LATOURETTE), and ranking member, the gentlewoman from the District of Columbia (Ms. NORTON), for their work on this legislation and for recognizing that outmoded Federal buildings are still viable and can continue to serve a public purpose. I also commend the gentleman from California (Mr. DOOLEY) for introducing this bill, which is a win/win for all parties involved.

I support H.R. 1274 and urge its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. PORTER. Mr. Speaker, I reserve the balance of my time.

Mr. BISHOP of New York. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. DOOLEY).

Mr. DOOLEY of California. Mr. Speaker, I rise in support of H.R. 1274 as introduced by the gentleman from California (Mr. RADANOVICH) and me, and I want to thank the gentleman from Ohio (Mr. LATOURETTE) and the gentlewoman from the District of Columbia (Ms. NORTON) for their work in advancing this piece of legislation.

The Eastern District of California is very pleased that they have decided to build a new Federal courthouse in the city of Fresno. The entire community, as well as the surrounding areas, is very pleased with this investment into the construction of a new courthouse which will serve the needs of the entire Eastern District of California.

This legislation is also very important in that it will transfer the B.F. Sisk Building to the County of Fresno, with the appropriate stipulations that this legislation embodies, ensuring that it remains in public use for a considerable period of time. This also meets the needs of Fresno, it meets the needs of public service, and ensures that the taxpayers' interests are protected. I thank the committee members for advancing this legislation.

Mr. BISHOP of New York. Mr. Speaker, I yield back the balance of my time.

Mr. PORTER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. PORTER) that the House suspend the rules and pass the bill, H.R. 1274, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. PORTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. PORTER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3198 and H.R. 1274, the measures just considered by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

□ 1545

CLARIFYING ACREAGE FOR IRRIGATION WATER UNDER MISSOURI RIVER BASIN PROJECT

Mr. OSBORNE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3209) to amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project.

The Clerk read as follows:

H.R. 3209

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF ACREAGE FOR IRRIGATION WATER.

Section 501 of the Reclamation Project Authorization Act of 1972 (43 U.S.C. 615dddd) is amended by striking "fifty-three thousand acres" and inserting "approximately 53,000 acres".

The SPEAKER pro tempore (Mr. PETRI). Pursuant to the rule, the gentleman from Nebraska (Mr. OSBORNE) and the gentlewoman from California (Mrs. NAPOLITANO) each will control 20 minutes.

The Chair recognizes the gentleman from Nebraska (Mr. OSBORNE).

GENERAL LEAVE

Mr. OSBORNE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. OSBORNE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3209 is a bill I introduced to clarify the amount of acreage for which the North Loup Division is authorized under the Missouri River Basin Project. This bill provides for a technical correction by inserting the word "approximately" on the amount of acreage authorized under the project.

Under current law, irrigators must cite the specific amount of irrigated acreage served under the North Loup project. Conflicting Federal and State statutes for reporting irrigable service areas, conversion of irrigated ground to right-of-ways, land conservation programs and habitat easements are causing ever-changing and misunderstood adjustments to irrigated acreage. This bill allows for more flexibility in determining the amount of irrigated acreage.

This is not a new concept and would bring consistency to the act, as well as to contracts between the irrigation districts and the United States. I urge my colleagues to support this noncontroversial bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. NAPOLITANO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3209 would make a minor change by requiring the North Loup Division of the Pick-Sloan Missouri Basin Program to deliver water to "approximately" 53,000 acres. Existing law, as was explained by my colleague, requires the project to deliver to exactly 53,000 acres. Yet, the project does not annually deliver water to precisely 53,000 acres.

The bill is not controversial. I urge Members to support this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. OSBORNE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. OSBORNE) that the House suspend the rules and pass the bill, H.R. 3209.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

AUTHORIZING PARTICIPATION IN WILLIAMSON COUNTY, TEXAS, WATER RECYCLING AND REUSE PROJECT

Mr. OSBORNE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1732) to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1732

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROJECT AUTHORIZATION.

(a) SHORT TITLE.—This section may be cited as the "Williamson County Water Recycling Act of 2003".

(b) IN GENERAL.—The Reclamation Wastewater and Groundwater Study and Facilities Act (Title XVI of Public Law 102–575; 43 U.S.C. 390h et seq.) is amended by inserting after section 1635 the following new section:

"SEC. 1636. WILLIAMSON COUNTY, TEXAS, WATER RECYCLING AND REUSE PROJECT.

"(a) AUTHORIZATION.—The Secretary, in cooperation with the Lower Colorado River Authority, Texas, is authorized to participate in the design, planning, and construction of permanent facilities to reclaim and reuse water in Williamson County, Texas.

"(b) COST SHARE.—The Federal share of the costs of the project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) LIMITATION.—The Secretary shall not provide funds for the operation and maintenance of the project described in subsection (a).".

(c) CLERICAL AMENDMENT.—The table of sections in section 2 of the Reclamation Projects Authorization and Adjustment Act of 1992 is amended by inserting after the item relating to section 1635 the following:

"Sec. 1636. Williamson County, Texas, Water Recycling and Reuse Project.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from

Nebraska (Mr. OSBORNE) and the gentlewoman from California (Mrs. NAPOLITANO) each will control 20 minutes.

The Chair recognizes the gentleman from Nebraska (Mr. OSBORNE).

GENERAL LEAVE

Mr. OSBORNE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. OSBORNE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1732, offered by the gentleman from Texas (Mr. CARTER) and the gentleman from Texas (Mr. EDWARDS), authorizes the Secretary of the Interior to participate in the design, planning and construction of facilities to reclaim and reuse water in Williamson County, Texas. Williamson County is one of the fastest growing counties in the State of Texas. The Texas Water Development Board has concluded that existing water wells are being overdrawn, and surface water supplies are not meeting current drinking water demands. This bill will allow the communities to stretch potable water resources by replacing drinking water with recycled water on parks, golf courses and school grounds.

This bill is a commonsense solution for communities that want to safeguard drinking water supplies for future generations. I urge my colleagues to support this bipartisan bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. NAPOLITANO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 1732. This bill provides the Secretary of the Interior with authority to help finance a water recycling project to serve residents of Williamson County, Texas. As my colleagues know, these water recycling projects are becoming not only increasingly popular but necessary with communities who need reliable and cost-effective ways to firm up their community clean water supplies. It is unfortunate, however, that this administration refuses to understand and fund the potential of these projects. We will continue to press the administration to support these projects.

H.R. 1732 is not controversial. I urge support for this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. OSBORNE. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. CARTER).

Mr. CARTER. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise to strongly support H.R. 1732 which authorizes the Secretary of the Interior to participate in the Williamson County, Texas, water recycling and reuse project. I am proud to represent Williamson County, or most of it, and I have been living there for over 30 years. During this time, I have witnessed Williamson County become one of the fastest growing communities in the entire Nation and it has been consistently the fastest growing county for over a decade. I have observed the needs of this county because it has a limited supply of water. Today some would say that water has replaced oil as the commodity most important to the future of Texas. Unfortunately, current water supplies will simply not meet the growing needs of Williamson County and that community.

To meet this need, I introduced H.R. 1732 to allow the Lower Colorado River Authority, the Brazos River Authority and local communities to work with the Bureau of Reclamation to design, build and construct permanent facilities to reclaim and reuse water in Williamson County. This partnership will be an essential part of the county's water planning efforts.

In short, this legislation will ensure current and future sources of drinking water are made available for the residents of Williamson County. I am excited about this partnership and believe it is a great example of Federal and local agencies working together to make a positive difference.

Mr. Speaker, I would like to thank the gentleman from California (Mr. POMBO), the gentleman from California (Mr. CALVERT) and their staffs for their efforts in having this legislation brought to the floor in a timely manner. I would also like to thank the gentleman from Texas (Mr. EDWARDS), my neighbor to the north, for joining me in this effort. I urge my colleagues to support this legislation.

Mrs. NAPOLITANO. Mr. Speaker, I yield myself such time as I may consume.

I am very happy to hear the remarks of my colleagues. Water reuse, water recycling has been a very, very critical project and favorite subject of mine. Having been born and raised in Brownsville, Texas, I understand a lot of the Texas issues with the drought along the border that is creating havoc with farming and the economy thereof. I hope that we can continue to address and include funding to be able to expand not only to those areas that are in critical need but also those areas that can be used.

We have no new water in this world. It is all the same water that Mother Earth is recycling for us and we are helping recycle. We just trust that we can convince the administration of its need and begin doing it before we face very critical needs.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. EDWARDS), the coauthor of this bill.

Mr. EDWARDS. Mr. Speaker, I would first like to thank the gentlewoman from California for her leadership in this very, very important area. I also want to congratulate my colleague and neighbor in Williamson County (Mr. CARTER) for offering this important piece of legislation. Just as oil and gas was the economic engine for Texas in the 20th century, the availability of water will be the economic engine to Texas in the future in the 21st century.

As someone who represents part of Williamson County, the gentleman from Texas (Mr. CARTER) represents about 80 percent of that county, it is one of the largest, fastest-growing counties in the country. Water usage there is increasing dramatically. Yet our water supply is limited. I was very glad to cosponsor this bill with the gentleman from Texas (Mr. CARTER) and will look forward to working with him to try to see that we find the appropriations to fund this important piece of legislation.

Mrs. NAPOLITANO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. OSBORNE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. OSBORNE) that the House suspend the rules and pass the bill, H.R. 1732, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CORRECTING TECHNICAL ERROR FROM UNIT OF JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM

Mr. OSBORNE. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1066) to correct a technical error from Unit T–07 of the John H. Chafee Coastal Barrier Resources System.

The Clerk read as follows:

S. 1066

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPLACEMENT OF JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM MAP.

(a) IN GENERAL.—The map described in subsection (b) is replaced by the map entitled "John H. Chafee Coastal Barrier Resources System Matagorda Peninsula Unit T07/T07P" and dated July 12, 2002.

(b) DESCRIPTION OF REPLACED MAP.—The map referred to in subsection (a) is the map relating to the John H. Chafee Coastal Barrier System unit designated as Coastal Barrier Resources System Matagorda Peninsula Unit T07/T07P that is subtitled "T07/T07P" and included in the set of maps entitled "Coastal Barrier Resources System" and referred to in section 4(a) of the Coastal Barrier Resources Act (16 U.S.C. 3503(a)).

(c) AVAILABILITY.—The Secretary of the Interior shall keep the replacement map referred to in subsection (a) on file and available for inspection in accordance with section 4(b) of the Coastal Barrier Resources Act (16 U.S.C. 3503(b)).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nebraska (Mr. OSBORNE) and the gentlewoman from California (Mrs. NAPOLITANO) each will control 20 minutes.

The Chair recognizes the gentleman from Nebraska (Mr. OSBORNE).

GENERAL LEAVE

Mr. OSBORNE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. OSBORNE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1066 introduced by Senator KAY BAILEY HUTCHISON will remove 19 acres of private property that has been mistakenly included within the Coastal Barrier Resources System. An identical bill, H.R. 154, has been proposed by the gentleman from Texas (Mr. PAUL). I compliment him for his leadership on behalf of this measure.

Specifically, the Matagorda dunes subdivision in Matagorda, Texas, was placed into the system despite the fact that a full complement of infrastructure, including roads and electricity, existed prior to 1977 and that it exceeded the number of structures per acre rule that is required for inclusion under the act.

For more than 20 years, these homeowners were told they were not within the system and therefore eligible for both Federal flood insurance and State wind insurance. These policies have now been canceled, and it is essential that this mistake be corrected so that their property can be protected from any future flooding problems. It is difficult, if not impossible, to sell coastal property or obtain a home mortgage without access to Federal flood insurance.

During the hearing before the Committee on Resources on this legislation, the administration expressed strong support and a local county judge testified, "A mistake was made 21 years ago that placed this little subdivision in CBRA. It does not matter who made the mistake, but now since the mistake has come to light, please help us fix it."

Finally, the House version of this bill was unanimously approved by the Committee on Resources. I urge my colleagues to support Senate 1066. I again compliment the gentleman from Texas (Mr. PAUL) for representing his constituents in such an effective way.

Mr. Speaker, I reserve the balance of my time.

Mrs. NAPOLITANO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1066 is a noncontroversial piece of legislation that is identical to companion legislation, H.R. 154, passed and reported by the Committee on Resources earlier this year as was just addressed by my colleague.

By all evidence this technical correction appears to be genuine and needed to fix a legitimate error in the maps depicting the Matagorda subdivision in Unit T–07. For this reason and because this legislation would not undermine the policies of the Coastal Barrier Resources Act, Members should not oppose this legislation, and I recommend they vote for it.

Mr. PAUL. Mr. Speaker, I am pleased to support S. 1066, the Senate version of my H.R. 154, which I introduced on the first day of the 108th Congress. This legislation fixes a mistake in the official Fish and Wildlife Services' maps by removing a 19-acre area known as Matagorda Dunes, in Matagorda County, Texas, from the John H. Chafee Coastal Barrier Resources Act (COBRA). This change is fully supported by the Fish and Wildlife Service. In fact, a Fish and Wildlife Service created map, dated July 12, 2002, acknowledges the error.

This change will ensure property owners who had already begun developing this area are able to obtain insurance. Congress never intended to deny these landowners access to insurance. Matagorda Dunes was included in COBRA as a result of a drafting error when the COBRA maps were revised in the early eighties. Unless this mistake is fixed, the result could be catastrophic for these property owners who invested in developing Matagorda Dunes under the belief that the land was excluded from COBRA. A failure to fix this mistake could also be quite costly to the American taxpayers.

Fixing this mistake is also quite important to the people of Matagorda County, which is why a county official traveled to Washington to testify at a hearing on this bill in September. In conclusion, I thank Chairman POMBO and my colleague from Texas, Senator HUTCHISON, for their work on this issue and I urge my colleagues to support this important bill.

Mr. Speaker, I yield back the balance of my time.

Mr. OSBORNE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. OSBORNE) that the House suspend the rules and pass the Senate bill, S. 1066.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

CARPINTERIA AND MONTECITO WATER DISTRIBUTION SYSTEMS CONVEYANCE ACT OF 2003

Mr. OSBORNE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1648) to authorize the Secretary of the Interior to convey certain water distribution systems of the Cachuma Project, California, to the Carpinteria Valley Water District and the Montecito Water District.

The Clerk read as follows:

H.R. 1648

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Carpinteria and Montecito Water Distribution Systems Conveyance Act of 2003".

SEC. 2. CONVEYANCE OF WATER DISTRIBUTION SYSTEMS OF THE CACHUMA PROJECT, CALIFORNIA.

(a) IN GENERAL.—The Secretary of the Interior—

(1) may convey to the Carpinteria Valley Water District, located in Santa Barbara County, California, all right, title, and interest of the United States in and to the Carpinteria Distribution System of the Cachuma Project, California, consistent with the terms and conditions set forth in the agreement entitled "Agreement Between the United States and the Carpinteria Valley Water District to Transfer Title to the Federally Owned Distribution System to the Carpinteria Valley Water District" (Agreement No. 00–XC–20–0364); and

(2) may convey to the Montecito Water District, located in Santa Barbara County, California, all right, title, and interest of the United States in and to the Montecito Water Distribution System of the Cachuma Project, California, consistent with the terms and conditions set forth in the agreement entitled "Agreement Between the United States and the Montecito Water District to Transfer Title to the Federally Owned Distribution System to the Montecito Water District" (Agreement No. 01–XC–20–0365).

(b) LIABILITY.—Effective upon the date of conveyance of a distribution system under this section, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the distribution system, except for damages caused by acts of negligence committed by the United States or by its employees or agents prior to the date of conveyance. Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28, United States Code (popularly known as the Federal Tort Claims Act) on the date of the enactment of this Act.

(c) BENEFITS.—After conveyance of a water distribution system to the Carpinteria Valley Water District or the Montecito Water District under this section—

(1) such water distribution system shall not be considered to be a part of a Federal reclamation project; and

(2) such water district shall not be eligible to receive any benefits with respect to any facility comprising that distribution system, except benefits that would be available to a similarly situated person with respect to such a facility that is not part of a Federal reclamation project.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from

Nebraska (Mr. OSBORNE) and the gentlewoman from California (Mrs. NAPOLITANO) each will control 20 minutes.

The Chair recognizes the gentleman from Nebraska (Mr. OSBORNE).

GENERAL LEAVE

Mr. OSBORNE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

□ 1600

Mr. OSBORNE. Mr. Speaker, I yield myself such time as I may consume.

This bill authorizes the Secretary of the Interior to transfer specific water distribution systems of the Cachuma Project of the Carpinteria Valley Water District and the Montecito Water District in Santa Barbara County, California.

While this transfer would only apply to land and facilities and would not affect the repayment obligations of the Federal Government, it will help simplify the operation and maintenance of the districts' water delivery systems and eliminate unnecessary paperwork. Both districts have worked through all Federal requirements and need only to complete the process with an act of Congress.

Transfers such as those included in this bill help shrink the size and budget of Federal Government and help our communities manage our water resources in a more efficient manner. I urge my colleagues to support this consensus bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. NAPOLITANO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1648 simply authorizes the transfer of certain features of the Bureau of Reclamation's Cachuma Project near Santa Barbara, California, to the local water districts. Allowing the local districts to take over parts of the project will help simplify the operation and maintenance of the districts' water distribution systems. I would like very much to commend the gentlewoman from California (Mrs. CAPPS), my Democratic colleague and sponsor of this bill, who is unable to be on the floor at this moment, for her efforts to get this very important bill passed.

Mr. Speaker, H.R. 1648 is not controversial, and I urge my colleagues to support this bill.

Mrs. CAPPS. Mr. Speaker, I rise in strong support of H.R. 1648, the Carpinteria and Montecito Water Distribution Systems Conveyance Act of 2003—a bill I introduced that would authorize the title transfer of federally owned water distribution systems in my congressional district.

I want to commend my colleagues from California, the chairman of the Resources Committee, Mr. POMBO, the chairman and ranking member of the Subcommittee on Water and Power, Mr. CALVERT and Mrs. NAPOLITANO, as well as the ranking member of the full Committee, Mr. RAHALL for expediting the consideration of this legislation in their respective committees and for bringing H.R. 1648 before us today.

This legislation will authorize the title transfer of two federally owned water distribution systems from the Bureau of Reclamation to the Carpinteria Valley Water District and Montecito Water District, as requested by the two Santa Barbara area Districts.

The purpose of the legislation is to simplify the operation and maintenance of the Districts' water distribution systems and eliminate unnecessary paperwork and consultation between the Districts and the Bureau of Reclamation.

The Carpinteria Valley Water District and Montecito Water District, which have operated and maintained the facilities proposed for transfer since 1956 and 1995, respectively. The Districts have worked through all requirements of the Bureau of Reclamation's title transfer process including public meetings, fulfillment of their repayment obligations, completion of an environmental assessment, which resulted in a finding of no significant impact (FONSI), and compliance with all other applicable laws. The only step remaining to complete the process is an act of Congress enabling the Secretary of the Interior to transfer title.

The proposed transfer would apply only to lands and facilities associated with these facilities and would not affect the Districts' existing water service contract with the Santa Barbara County Water Agency nor the Federal government receipts from water deliveries under the contract. In addition, the proposed transfer does not envision any new physical modification or expansion of the service infrastructure.

Mr. Speaker, the proposed transfer of ownership would include the following facilities:

Carpinteria: The distribution system consisting of 36 miles of pipeline and laterals; Gobernador Reservoir; Shephard Mesa Tank; Lateral 10L, Carpinteria and Shephard Mesa pumping plants; several pressure regulating vaults located throughout the system; fences and structures; and rights-of-way, easements, leases and other property permitting access to the Federal system.

Montecito: 9.5 miles of pipelines and laterals; the Asegra Pumping Plant (a deactivated pumping plant connected to a portion of lateral 3 located on Asegra Road); Ortega Ridge Pumping plant located on Ortega Ridge Road; pressure regulating vaults, fences and structures appurtenant to the distribution system; and rights-of-way, easements, leases, and other property permitting access to the Federal system.

Again, I would like to thank the Committee on Resources for supporting this bill, and urge its immediate passage.

Mrs. NAPOLITANO. Mr. Speaker, I yield back the balance of my time.

Mr. OSBORNE. Mr. Speaker, I commend the gentlewoman from California for her assistance through this process.

I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CULBERSON). The question is on the motion offered by the gentleman from Nebraska (Mr. OSBORNE) that the House suspend the rules and pass the bill, H.R. 1648.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

HONORING THE 101ST AIRBORNE AT FORT CAMPBELL

(Mrs. BLACKBURN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BLACKBURN. Mr. Speaker, today I rise to talk a little bit about the 101st Airborne at Fort Campbell, which is in Clarksville, Tennessee, and in my district. And I have visited with General Petreaus, commander of the 101st, and members of this elite group of American soldiers in Mosul where they are working to stabilize Iraq. Their work in Iraq is absolutely astounding. What they have accomplished is astounding, and it is a testament to their training, to their dedication, and to their love of liberty.

For the past 2 weeks the activity has absolutely broken our hearts. We have lost some of our Nation's finest, and Fort Campbell has lost some loved ones. And to the family, the friends, and their colleagues, we offer our thoughts and our prayers. And we want them to know that America is grateful not only for their service but certainly grateful for their sacrifice.

Throughout the history of the 101st, this country has relied on these brave soldiers, these brave defenders of freedom, to keep us free; and today is no different. We ask that God bless America, that He bless our Fort Campbell families and our fallen heroes.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 6:30 p.m.

Accordingly (at 4 o'clock and 4 minutes p.m.), the House stood in recess until approximately 6:30 p.m.

□ 1900

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. DUNCAN) at 7 p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

S.J. Res. 22, by the yeas and nays;

S.J. Res. 18, by the yeas and nays;

H. Con. Res. 299, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. The remaining votes in this series will be conducted as 5-minute votes.

RECOGNIZING AGRICULTURAL RESEARCH SERVICE FOR 50 YEARS OF OUTSTANDING SERVICE

The SPEAKER pro tempore. The pending business is the question of suspending the rules and pass the Senate joint resolution, S.J. Res. 22.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota (Mr. GUTKNECHT) that the House suspend the rules and pass the Senate joint resolution, S.J. Res. 22, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 332, nays 0, not voting 102, as follows:

[Roll No. 620]

YEAS—332

Abercrombie
Alexander
Andrews
Baca
Baird
Baker
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Bell
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Boehlert
Boehner
Boozman
Boswell
Boucher
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Burgess
Burns
Burton (IN)
Buyer
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carter
Case
Castle
Chabot
Chocola
Clay
Coble
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Duncan
Edwards
Ehlers
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutknecht
Hall
Harman
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Hill
Hinchey
Hinojosa
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hyde
Inslee
Israel
Jackson (IL)
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
McCarthy (MO)
McCarthy (NY)
McCotter
McCrery
McDermott
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meeks (NY)
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (NC)
Miller, Gary
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Nadler
Napolitano
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Oberstar
Obey
Olver
Osborne
Ose
Otter
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pence
Peterson (MN)
Petri
Pickering
Platts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Rahall
Ramstad
Regula
Rehberg
Renzi
Rodriguez
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sabo
Sanchez, Loretta
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Tancredo
Tauscher
Tauzin
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Watson
Watt
Waxman
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Young (AK)
Young (FL)
Pelosi
Peterson (PA)
Pitts
Pombo
Quinn
Radanovich
Rangel
Reyes
Reynolds
Rogers (AL)
Ryun (KS)
Sánchez, Linda T.
Sanders
Schakowsky
Serrano
Sessions
Simmons
Sweeney
Tanner
Taylor (NC)
Tierney
Velázquez
Waters
Weiner
Wexler
Wynn

NOT VOTING—102

Ackerman
Aderholt
Akin
Allen
Bachus
Baldwin
Beauprez
Becerra
Bereuter
Berman
Blumenauer
Blunt
Bonilla
Bonner
Bono
Boyd
Brown-Waite, Ginny
Burr
Calvert
Capuano
Carson (IN)
Carson (OK)
Clyburn
Cole
Collins
Davis (IL)
DeLay
DeMint
Doolittle
Doyle
Dreier
Dunn
Emanuel
Fletcher
Forbes
Frank (MA)
Gephardt
Gibbons
Gilchrest
Gonzalez
Gutierrez
Harris
Hart
Herger
Hobson
Hoyer
Hulshof
Hunter
Isakson
Issa
Istook
Jackson-Lee (TX)
Janklow
Jenkins
Kaptur
Kind
King (IA)
Kucinich
Lampson
Lipinski
Lucas (OK)
Majette
Matsui
McCollum
McGovern
Meek (FL)
Menendez
Miller (MI)
Miller, George
Mollohan
Murtha
Myrick
Neal (MA)
Nussle
Ortiz
Oxley

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. DUNCAN) (during the vote). There are 2 minutes remaining in this vote.

☐ 1922

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the remainder of votes in this series will be conducted as 5-minute votes.

COMMENDING INSPECTORS GENERAL FOR EFFORTS DURING PAST 25 YEARS

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the Senate joint resolution, S.J. Res. 18.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and pass the Senate joint resolution, S.J. Res. 18, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 326, nays 3, not voting 105, as follows:

[Roll No. 621]

YEAS—326

Abercrombie
Alexander
Andrews
Baca
Baird
Baker
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Bell
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Boehlert
Boehner
Boozman
Boswell
Boucher
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Burgess
Burns
Burton (IN)
Buyer
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carter
Case
Castle
Chabot
Clay
Coble
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Duncan
Edwards

Ehlers
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutknecht
Hall
Harman
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Hill
Hinchey
Hinojosa
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hyde
Inslee
Israel
Jackson (IL)
Janklow
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lucas (KY)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
McCarthy (MO)
McCarthy (NY)
McCotter
McCrery
McDermott
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meeks (NY)
Mica
Michaud
Millender-McDonald
Miller (NC)
Miller, Gary
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Nadler
Napolitano
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Oberstar
Obey
Olver
Osborne
Ose
Otter
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pence
Peterson (MN)
Petri
Pickering
Platts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Rahall
Ramstad
Regula
Rehberg
Renzi
Rodriguez
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sabo
Sanchez, Loretta
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Tancredo
Tauscher
Tauzin
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Visclosky
Vitter
Walden (OR)
Wamp
Watson
Watt
Waxman
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Young (AK)
Young (FL)

NAYS—3

Chocola
Miller (FL)
Souder

NOT VOTING—105

Ackerman
Aderholt
Akin
Allen
Bachus
Baldwin
Beauprez
Becerra
Bereuter
Berman
Blumenauer
Blunt
Bonilla
Bonner
Bono
Boyd
Brown-Waite, Ginny
Burr
Calvert
Capuano
Carson (IN)
Carson (OK)
Clyburn
Cole
Collins
Davis (IL)
DeLay
DeMint
Doolittle
Doyle
Dreier
Dunn
Emanuel
Fletcher
Forbes
Frank (MA)
Gephardt
Gibbons
Gilchrest
Gonzalez
Gutierrez
Harris
Hart
Herger
Hobson
Hoyer
Hulshof
Hunter
Isakson
Issa
Istook
Jackson-Lee (TX)
Jenkins
Kaptur
Kind
King (IA)
Kolbe
Kucinich
Lampson
Lipinski
Lowey
Lucas (OK)
Majette
Matsui
McCollum
McGovern
Meek (FL)
Menendez
Miller (MI)
Miller, George
Mollohan
Murtha
Myrick
Neal (MA)
Nussle
Ortiz
Oxley
Pelosi
Peterson (PA)
Pitts
Pombo
Quinn
Radanovich
Rangel
Reyes
Reynolds
Rogers (AL)
Ryun (KS)
Sánchez, Linda T.
Sanders
Schakowsky
Serrano
Sessions
Simmons
Stenholm
Sweeney
Tanner
Taylor (NC)
Tierney
Velázquez
Walsh
Waters
Weiner
Wexler
Wynn

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1931

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mrs. BONO. Mr. Speaker, on November 17, 2003, had I been present, I would have voted "yes" on S.J. Res. 18 and S.J. Res. 22.

HONORING MR. SARGENT SHRIVER

The SPEAKER pro tempore (Mr. DUNCAN). The pending business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 299.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 299, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 325, nays 3, not voting 106, as follows:

[Roll No. 622]

YEAS—325

Abercrombie
Alexander
Andrews
Baca
Baird
Baker
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Bell
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Boehlert
Boehner
Boozman
Boswell
Boucher
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Burgess
Burns
Burton (IN)
Buyer
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carter
Case
Castle
Chabot
Chocola
Clay
Coble
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Duncan
Edwards
Ehlers
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutknecht
Hall
Harman
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hensarling
Hill
Hinchey
Hinojosa
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hulshof
Hyde
Inslee
Israel
Jackson (IL)
Janklow
Jefferson
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lowey
Lucas (KY)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
McCarthy (MO)
McCarthy (NY)
McCotter
McCrery
McDermott
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meeks (NY)
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (NC)
Miller, Gary
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Nadler
Napolitano
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Oberstar
Obey
Olver
Osborne
Ose
Otter
Owens
Pallone
Pascrell
Pastor
Payne
Pearce
Pence
Peterson (MN)
Petri
Platts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Rahall
Ramstad
Regula
Rehberg
Renzi
Rodriguez
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sabo
Sanchez, Loretta
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Tancredo
Tauscher
Tauzin
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Watson
Watt
Waxman
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker

Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Young (AK)

NAYS—3

Hefley
Johnson, Sam
Paul

NOT VOTING—106

Ackerman
Aderholt
Akin
Allen
Bachus
Baldwin
Beauprez
Becerra
Bereuter
Berman
Blumenauer
Blunt
Bonilla
Bonner
Bono
Boyd
Brown-Waite, Ginny
Burr
Calvert
Capuano
Carson (IN)
Carson (OK)
Clyburn
Cole
Collins
Davis (IL)
DeLay
DeMint
Doolittle
Doyle
Dreier
Dunn
Emanuel
Fletcher
Forbes
Frank (MA)
Gephardt
Gibbons
Gilchrest
Gonzalez
Gutierrez
Harris
Hart
Herger
Hobson
Hoyer
Hunter
Isakson
Issa
Istook
Jackson-Lee (TX)
Jenkins
John
Kaptur
Kind
King (IA)
Kucinich
Lampson
Lipinski
Lofgren
Lucas (OK)
Majette
Matsui
McCollum
McGovern
Meek (FL)
Menendez
Miller (MI)
Miller, George
Mollohan
Murtha
Myrick
Neal (MA)
Nussle
Ortiz
Oxley
Pelosi
Peterson (PA)
Pickering
Pitts
Pombo
Quinn
Radanovich
Rangel
Reyes
Reynolds
Rogers (AL)
Royce
Ryun (KS)
Sànchez, Linda T.
Sanders
Schakowsky
Serrano
Sessions
Simmons
Stenholm
Sweeney
Tanner
Taylor (NC)
Tierney
Velázquez
Waters
Weiner
Wexler
Wynn
Young (FL)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

☐ 1938

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. COLLINS. Mr. Speaker, I was unavoidably detained and not present on rollcall vote 620, recognizing the Agricultural Research of the Department of Agriculture (S.J. Res. 22); rollcall vote 621, commending the Inspectors General (S.J. Res. 18); and rollcall vote 622, honoring Mr. Sargent Shriver (H. Con. Res. 299). Had I been present, I would have voted "yea" for rollcall votes 620, 621, 622.

PERSONAL EXPLANATION

Mr. OXLEY. Mr. Speaker, I was returning from an official delegation trip to Iraq on Monday evening, and was absent from the House floor during the rollcall votes on S.J. Res. 22, recognizing the Agricultural Research Service, S.J. Res. 18, commending the service of Inspectors General; and H. Con. Res. 299, honoring Sargent Shriver. Had I been present, I would have voted "aye" on each of these resolutions.

HOUR OF MEETING ON TUESDAY, NOVEMBER 18, 2003

Mr. LINDER. Mr. Speaker, I move that when the House adjourns today, it adjourn to meet at 10 a.m. tomorrow for morning hour debates.

The SPEAKER pro tempore. The motion is not debatable.

The question is on the motion offered by the gentleman from Georgia (Mr. LINDER).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Ms. DEGETTE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 296, noes 25, not voting 113, as follows:

[Roll No. 623]

AYES—296

Abercrombie
Alexander
Andrews
Baca
Baird
Baker
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Bell
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Boehlert
Boehner
Boozman
Boswell
Boucher
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (SC)
Brown, Corrine
Burgess
Burton (IN)
Buyer
Camp
Cannon
Cantor
Capito
Cardin
Cardoza
Carter
Case
Castle
Chabot
Chocola
Clay
Coble
Conyers
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Duncan
Edwards
Ehlers
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Foley
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gillmor
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harman
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Hill
Hinchey
Hinojosa
Hoeffel
Hoekstra
Holden
Holt
Honda
Houghton
Hulshof
Hyde
Inslee
Israel
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Janklow
Jefferson
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Johnson (CT)
Johnson (IL)
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Johnson, Sam
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lowey
Lucas (KY)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
McCarthy (MO)
McCarthy (NY)
McCotter
McCrery
McHugh
McIntyre
McKeon
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Meehan
Meeks (NY)
Mica
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Millender-McDonald
Miller (FL)
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Moran (KS)
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Northup
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Owens
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Paul
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Pearce
Pence
Peterson (MN)
Petri
Pickering
Platts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Ramstad
Regula
Rehberg
Renzi
Rodriguez
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roybal-Allard
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Sabo
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Simpson
Skelton
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Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
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Souder
Spratt
Stark
Stearns
Strickland
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Tancredo
Tauscher
Tauzin
Taylor (MS)
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Thompson (CA)
Thornberry
Tiahrt
Tiberi
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (NM)
Upton
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Watson
Waxman
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (AK)

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Capps
Cooper
DeFazio
Filner
Green (TX)
Grijalva
Hastings (FL)
Hooley (OR)
Lee
McDermott
Miller (NC)
Moore
Oberstar
Obey
Olver
Rahall
Ross
Rothman
Slaughter
Thompson (MS)
Udall (CO)
Van Hollen
Watt
Woolsey

NOT VOTING—113

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Aderholt
Akin
Allen
Bachus
Baldwin
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Bonilla
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Bono
Boyd
Brown-Waite, Ginny
Burns
Burr
Calvert
Capuano
Carson (IN)
Carson (OK)
Clyburn
Cole
Collins
Davis (IL)
DeLay
DeMint
Doolittle
Doyle
Dreier
Dunn
Emanuel
Flake
Fletcher
Forbes
Frank (MA)
Gephardt
Gibbons
Gilchrest
Gingrey
Gonzalez
Gutierrez
Harris
Hart
Herger
Hobson
Hostettler
Hoyer
Hunter
Isakson
Issa
Istook
Jackson-Lee (TX)
Jenkins
Jones (NC)
Kaptur
Kind
King (IA)
Kucinich
Lampson
Lewis (GA)
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Lofgren
Lucas (OK)
Majette
Matsui
McCollum
McGovern
McInnis
Meek (FL)
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Miller (MI)
Miller, George
Mollohan
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Rogers (AL)
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Sánchez, Linda T.
Sanders
Schakowsky
Serrano
Sessions
Simmons
Stenholm
Sweeney
Tanner
Taylor (NC)
Tierney
Velázquez
Waters
Weiner
Wexler
Wynn
Young (FL)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. NEUGEBAUER) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1954

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. EMANUEL. Mr. Speaker, due to a previously scheduled commitment, I missed rollcall votes 620 through 623 on Monday, November 17. Had I been present, I would have voted "yes" on each measure.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 1, MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003

Ms. BERKLEY. Mr. Speaker, under rule XXII, clause 7(c), I hereby announce my intention to offer a motion to instruct on H.R. 1, the prescription drug bill.

The form of the motion is as follows:

I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill, H.R. 1, be instructed as follows:

(1) To reject the provisions of subtitle C of title II of the House bill.

(2) To reject the provisions of section 231 of the Senate amendment.

(3) Within the scope of conference, to increase payments for physician services by an amount equal to the amount of savings attributable to the rejection of the aforementioned provisions.

(4) To insist upon section 601 of the House bill.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 2660, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

Mr. KENNEDY of Rhode Island. Mr. Speaker, pursuant to clause 7(c) of House rule XXII, I hereby notify the House of my intention tomorrow to offer the following motion to instruct House conferees on H.R. 2660, the fiscal year 2004 Labor, Health and Human Services, Education and Related Agencies Appropriations Act.

The form of the motion is as follows:

I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 2660, be instructed to insist on the highest funding levels possible for nutrition programs for our Nation's seniors authorized by the Older Americans Act.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on additional motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken tomorrow.

CONGRATULATING JOHN GAGLIARDI ON OCCASION OF HIS BECOMING ALL-TIME WINNINGEST COACH IN COLLEGIATE FOOTBALL HISTORY

Mr. KLINE. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 438) congratulating John Gagliardi, football coach of St. John's University, on the occasion of his becoming the all-time winningest coach in collegiate football history.

The Clerk read as follows:

H. Res. 438

Whereas John Gagliardi began his coaching career in 1943 at the age of 16 when his high school football coach was drafted and John Gagliardi asked to take over his position;

Whereas John Gagliardi won four conference titles during the six years he coached high school football;

Whereas John Gagliardi graduated from Colorado College in 1949 and began coaching football, basketball, and baseball at Carroll College in Helena, Montana, winning titles in all three sports;

Whereas John Gagliardi took over the football program at St. John's University in Collegeville, Minnesota, in 1953 and the football team won the Minnesota Intercollegiate Athletic Conference title in his first year as coach;

Whereas by the end of the 2002 season, John Gagliardi had won three national championships, coached 25 conference title teams, appeared in 45 post-season games and compiled a 400–114–11 record during his 50 years at St. John's University;

Whereas under the leadership of John Gagliardi, St. John's University has been nationally ranked 37 times in the past 39 years, and the university set a record with a 61.5 points per game average in 1993;

Whereas over 150 students participate in the St. John's University football program each year and every player dresses for home games;

Whereas John Gagliardi's coaching methods follow the "Winning with No's" theory: no blocking sleds or dummies, no whistles, no tackling in practices, no athletic scholarships, and no long practices;

Whereas John Gagliardi has coached over 5,000 players during his 50 years at St. John's University, and no player has failed to graduate and most have graduated in four years;

Whereas, in 1993, the John Gagliardi trophy was unveiled, and it is given each year to the most outstanding Division III football player;

Whereas on November 1, 2003, John Gagliardi tied Grambling University coach Eddie Robinson's record of 408 wins with a 15 to 12 victory over the University of St. Thomas;

Whereas on November 8, 2003, John Gagliardi broke Eddie Robinson's record with a 29 to 26 victory over Bethel College;

Whereas John Gagliardi is admired by his players, as well as by the students, faculty, and fans of St. John's University for his ability to motivate and inspire;

Whereas students who take his course, Theory of Football, credit John Gagliardi for teaching them more about life than about football;

Whereas those closest to John Gagliardi will tell you that football is only part of his life—he values the time he spends with Peg, his wife of 47 years, and their four children; and

Whereas the on- and off-the-field accomplishments of John Gagliardi have placed him in an elite club that includes the best coaches in history: Now, therefore, be it

Resolved, That the House of Representatives congratulates John Gagliardi, football coach of St. John's University in Collegeville, Minnesota, on becoming the all-time winningest coach in collegiate football history.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota (Mr. KLINE) and the gentlewoman from California (Ms. WOOLSEY) each will control 20 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. KLINE).

GENERAL LEAVE

Mr. KLINE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H. Res. 438.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. KLINE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of House Resolution 438. I would like to thank my colleague, the gentleman from Minnesota (Mr. KENNEDY), for bringing this resolution forward. Mr. Speaker, this resolution recognizes the achievement of Coach John Gagliardi of St. John's University for becoming the all-time winningest coach in collegiate football history.

Coach Gagliardi—John to his players, colleagues and friends—has long been a force in college athletics and in life. In his 51 years at St. Johns, John has found great success on the field, leading St. John's to 23 conference titles and the winningest record in Division III history.

His performance as a coach is impressive, but it tells only one side of the story of this great man. John has invested in thousands of lives over his career in the coaching business. The success earned by the St. John's team reflects the dedication he inspires in each player. John's investment in these young lives is, to him, the most important contribution he can make, and to them the most important reward they will receive.

I extend my congratulations to Coach John Gagliardi on this important day for him and for the St. John's community. I am happy to join my colleagues in honoring a great man and wishing him continued success.

I ask my colleagues to support this resolution.

Mr. Speaker, I reserve the balance of my time.

Ms. WOOLSEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Res. 438. This resolution honors John Gagliardi, the football coach at St. Johns University. Coach Gagliardi is the winningest coach in college football history. This month he overtook the legendary Eddie Robinson by winning the 409th football game of his career. This record puts Coach Gagliardi at the very top of his profession. It should come as no surprise that the students, the student athletes, the faculty and fans of St. John's University greatly admire Coach Gagliardi. Fortunately, we are not only honoring Coach Gagliardi for his winning ways but also his commitment to his school, his team and, most importantly, his players and their education.

Coach Gagliardi has coached over 5,000 players during his 50 years at St. John's. Over that time, none of his players have failed to graduate and most have graduated within 4 years.

□ 2000

This is an amazing feat in today's world of college athletes. Coach Gagliardi more than deserves the honor we are bestowing on him today. Mr. Speaker, I urge all Members of the House to support this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. KLINE. Mr. Speaker, I yield 10 minutes to the gentleman from Minnesota (Mr. KENNEDY).

Mr. KENNEDY of Minnesota. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise today to honor St. John's University's Coach John Gagliardi for becoming the winningest college football coach ever. After beating archrival St. Thomas to tie Eddie Robinson's record of 408 wins at Grambling, Coach Gagliardi's Johnnies set a new record by defeating nationally ranked Bethel in a hard-fought game before over 13,000 fans in the natural bowl of Clemens Stadium. That is quite a crowd, since the stadium only seats 5,500.

As a graduate of St. John's, I was honored to be able to join John at the White House today where the President rightly praised both his achievement and his character. Both St. John's University and Coach John Gagliardi are quite special; and as one might expect from a relationship stretching over half a century, they are special for many of the same reasons. Indeed, the similarities begin with both the university and the coach being named ultimately after St. John.

St. John's, with 1,900 male students, is one of the oldest universities in the State of Minnesota, having been founded by Benedictine monks in 1856. It sits on a beautiful campus of 2,400 acres with four lakes on campus. Their sister school, St. Benedict's, with 2,000 students, was founded by Benedictine nuns in 1913.

The Benedictines live according to the Rule of St. Benedict with an emphasis on faithfulness, community, study, work, prayer, and humility. They have infused these values into the culture of St. John's and St. Ben's as well. Community is important to Johnnie and Bennie alumni, who are among the most loyal anywhere.

Coach Gagliardi has personified these values. After coaching 4 years at Carroll College in Helena, Montana, John has coached at St. John's for the last 51 seasons. That record of faithfulness has been matched with 47 years of marriage to the partner of his life, his wife, Peggy.

The Gagliardi family has been intertwined with the St. John's community. They live on campus, and all four of their children have attended St. John's or St. Ben's. I attended St. John's with their son John, Jr. Their son Jim is one of St. John's assistant coaches and joined him today at the White House. Since he is assistant coach there at St. John's, the President said that he appreciated sons following in their father's footsteps.

Consistent with John's commitment to community, he cuts no one from games, from coming out for football, and over 150 players regularly suit up for home games. In fact, St. John's was recently penalized for having two players with the same number on the field, a penalty few teams ever have to worry about. And while Gagliardi is acclaimed for his perennial success on the football field, he is equally loved and admired at St. John's for his commitment to making sure that his players get a quality education.

Consistent with his commitment to study, I am proud to say that no player has ever failed to graduate in John's over a half century of coaching. Every class of graduating football players includes those who go on to graduate, law, or medical school. St. John's and St. Ben's, which are ranked as among the best Catholic national liberal arts colleges in the country by "U.S. News and World Report," match Gagliardi's commitment to educational excellence. The Benedictine monks have long stressed work and in their early days were almost entirely self-sufficient, growing and building most of what they needed. Coach Gagliardi's personal work ethic is reflected in his intent to continue coaching even after he has achieved this important milestone.

Yet John has a nontraditional view towards work in the form of practice. His practices involve no blocking sleds, no dummies, no whistles, no pads, no tackling, and no mandatory weight training. John does not conduct spring practices, and he gives his team the day off if it is too cold, too hot, or there are too many mosquitos, as is often the case in Minnesota.

But where Gagliardi asks his players to work is on game day. They work and they win. In over 55 years of coaching, he has now had 410 wins and only 114 losses. My son Peter recently commented that it is impossible to be a fair-weather fan of St. John's because they always win. Gagliardi's teams have won 26 conference titles, appeared in 45 post-season games, and won three national championships. Their most recent national championship was in 1976, while I was a student at St. John's, when they beat Towson State of Maryland, a school 10 times its size.

Playing bigger schools is not unusual for St. John's with its 1,900 students. I fondly remember sitting at a playoff game with St. John's president, Brother Dietrich Reinhart, in Dayton, Ohio, against the University of Dayton. They were playing St. John's in football, but Michigan State in basketball that evening.

According to St. John's folklore, prayer is vitally important to their football success. The St. John's abbey is the largest Benedictine abbey in the world. As the saying goes, if the team gets it close, they will pray it in.

Despite John's unmatched record of success, he remains amongst the most humble people one will ever meet. His news director, Michael Hemisch, has a hard time getting him to speak to the press. John avoids the limelight and wears a coat during games that everyone is happy to see has now been contributed to the College Football Hall of Fame, so he will not wear it anymore. But he said it is the only coat that will keep him warm enough for Minnesota falls.

Some were surprised that he accepted President Bush's invitation to come to the White House today. When the press asked him what was the secret of his success, he answered: talented players, luck, and prayers.

Certainly, the many players that have played for Coach Gagliardi should be congratulated on this achievement. John took no credit for himself but would be happy to ascribe some of the credit to his current coaching staff and his coaching staff over the years, three of whom joined him: his son Jim, Jerry Haugen, and Gary Fasching. He would also give credit to the monks, including athletic director Father Tim Backous, who joined him as well at the White House. Father Tim and I sang together at men's chorus at St. John's. And John likes to joke that the monks said they would always be with him, win or tie.

Though John is humble, my fellow alumni at St. John's and St. Ben's, including 13 of my family members, have great pride not just in his success as the winningest college football coach ever but the way his life has modeled the Benedictine values of faithfulness, community, study, work, prayer, and humility.

I appreciated the Johnnies who joined John at the White House and the many that came out to the reception this afternoon here in Washington to honor John, including Senator Dave Durenberger; Al Eisele, editor of "The Hill," David Rehr from the Beer Wholesalers; and Tom Super, whose wife, Kathy, works for President Bush, Sr.

I encourage my fellow Members to join me in honoring his achievement.

Ms. WOOLSEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. KLINE. Mr. Speaker, I yield myself such time as I may consume.

I thank the gentlewoman for her very kind remarks on this occasion, and I thank the gentleman from Minnesota (Mr. KENNEDY) for bringing this forward. I encourage all of my colleagues to vote for this, with a hearty congratulations to Coach John Gagliardi.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. NEUGEBAUER). The question is on the motion offered by the gentleman from Minnesota (Mr. KLINE) that the House suspend the rules and agree to the resolution, H. Res. 438.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

HONORING RICE UNIVERSITY OWLS BASEBALL TEAM

Mr. KLINE. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 379) honoring the Rice University Owls baseball team for winning the NCAA baseball championship.

The Clerk read as follows:

H. RES. 379

Whereas, on June 23, 2003, the Rice University Owls baseball team won the NCAA baseball championship, defeating Stanford, with a final score of 14 to 2, before 18,494 Owls fans in the final game at the College World Series;

Whereas Rice University is a small but prestigious school, which opened in 1912, and prides itself on being one of the Nation's best academic institutions;

Whereas winning the national championship in a major Division I sport is a remarkable accomplishment for Rice University, which has an undergraduate enrollment of only 2,700 students and holds its athletes to the same high academic standards as the rest of the school population;

Whereas, before this 2003 victory, the Owls made three trips to the College World Series, in 1997, 1999, and 2002, but won just one of seven games;

Whereas the Owls' coach, Wayne Graham, advanced Rice University's baseball program from obscurity to a national championship in 12 years;

Whereas the Owls' victory at the College World Series is Rice University's first national championship in any team sport and easily the University's crowning athletic achievement;

Whereas Rice University is the second school in the State of Texas to win the NCAA baseball title, joining the University of Texas, which won titles in 1949, 1950, 1975, 1983, and 2002;

Whereas the Owls' victory completed a remarkable season in which Rice University won 58 of the 70 games it played;

Whereas the Owls opened the 2003 College World Series by first defeating Southwest Missouri State and then by defeating Texas University twice in a span of three days, eliminating the defending national champions and securing a spot in the championship round;

Whereas Rice University defeated Stanford, with a score of 4 to 3, in the first championship game, and then lost to Stanford, with a score of 8 to 3, in the second game, forcing the final game; and

Whereas the final score of 14 to 2, establishing Rice University's national championship victory, is the largest margin of victory in a College World Series final game: Now, therefore, be it

Resolved, That the House of Representatives honors and congratulates the Rice University Owls baseball team for their successful season and their historic, outstanding, and memorable NCAA baseball championship victory.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota (Mr. KLINE) and the gentlewoman from California (Ms. WOOLSEY) each will control 20 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. KLINE).

GENERAL LEAVE

Mr. KLINE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H. Res. 379.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. KLINE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 379. This resolution honors the Rice University Owls baseball team for their victory in the 2003 NCAA baseball championship. With their 14 to 2 victory over Stanford, the Rice Owls scored the largest margin of victory in a College World Series championship game and earned their first, their first, NCAA baseball championship ever. The Owls won five of six games in their fourth College World Series appearance to complete a remarkable season in which they won 58 of their 70 games. The Owls' victory at the College World Series was Rice University's first national championship in any team sport. The distinction earned by these players and the remarkable repeat victories of the team reflect the dedication of each player, the leadership of Coach Wayne Graham, and the support of family, friends, and fans.

I want to thank the gentleman from Texas (Mr. BELL) for introducing this resolution and extend my congratulations to Coach Graham, Rice University, and each of the hardworking players on the successful Owls team. As the only Member of Congress to claim Rice University as my alma mater, I am especially proud and happy to join my colleagues and am very thankful to have the opportunity to join my colleagues in honoring the accomplishment of this team and wishing them continued success. I ask my colleagues to support this resolution.

Mr. Speaker, I reserve the balance of my time.

Ms. WOOLSEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Res. 379. This resolution honors the Rice University Owls baseball team for winning the NCAA baseball championship. This summer the Rice University Owls captured the national championship in their fourth trip to the College World Series in the past 7 years. College fans, student athletes, and the general public were treated to an exciting 14 to 2 win in the final game of the year's College World Series. I want to extend my hearty congratulations to the Owls' head coach, Wayne Graham. His leadership over the past 12 years has taken baseball at Rice University from obscurity to national prominence. Rice University's student athletes also deserve our congratulations. We are on the floor today because of their hard work, their determination, and their winning ways.

I would be remiss if I did not also recognize the outstanding play by Stanford University's student athletes in the College World Series. Both teams are to be congratulated for their excellent play.

Winning a championship has brought national acclaim to Rice University. I hope the Owls fans and their community treasure this moment for many years to come. And in closing, Mr. Speaker, I urge Members to support this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. KLINE. Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Ms. WOOLSEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. BELL), the author of this resolution.

Mr. BELL. Mr. Speaker, I rise in support of the resolution to honor the Rice University Owls, the 2003 NCAA baseball national champions. It is a study in persistence. Before this victory, the Owls made three trips to the College World Series in 1997, 1999, and 2002, but won just one of seven games during those three trips.

The Owls' convincing win over Stanford in the College World Series championship game this year brought home the school's first national championship in any team sport.

Rice University is a tremendous source of pride for my 25th Congressional District in Texas. As one of the Nation's most highly regarded universities, Rice has always been well known for its academic excellence. The school now has the added distinction of being a baseball powerhouse. Winning a national title in a major Division I sport is a remarkable accomplishment for a school as small as Rice with only 2,700 undergraduates.

□ 2015

Additionally, Rice athletes are held to the same high academic standards as all of the other students, signifying the incredible well-roundedness of these ball players.

Since starting at Rice 12 years ago, coaching legend Wayne Graham has catapulted the team into baseball history. Coach Graham's leadership took Rice to the NCAA tournament in 1995 and to the College World Series in 1997, 1999 and 2002. Previously, Coach Graham won five national junior college titles at San Jacinto College.

The Owls had an unforgettable season, winning 58 of their 70 games. Early in the season, the team broke a school record by winning 30 games in a row. In the College World Series, Rice beat Southwest Missouri State and last year's champion University of Texas team twice, before meeting Stanford in the championship round. Rice beat Stanford 4–3 in the first game, lost 8–3 in the second, and won the championship, 14–2, the largest margin of victory in the history of the College World Series championship games.

Mr. Speaker, with wholehearted enthusiasm, I congratulate Coach Graham and the entire Rice Owl College World Series championship team, including Philip Umber, Jeff Niemann, Wade Townsend, Vincent Sinisi, Enrique Cruz, Craig Stansberry, Paul Janish, Chris Kolkhorst, Austin Davis, Dan Bubela, Justin Ruchti, David Aardsma, Joseph Baker, Jeff Blackinton, Matthew Cavanaugh, Lyndon Duplessis, Matthew Emerson, Jonathan Gillespie, Steven Herce, Sean Hirsch, Jeff Jorgensen, Colin Matheny, Matthew Moake, and Lance Pendleton.

These players' success, both in the classroom and on the baseball field, make them stand out as the very best college sports has to offer. They played with honor and sportsmanship and raised the bar for the expectations of college athletes everywhere. Well done, Owls. You have made Houston, Texas very proud.

Ms. WOOLSEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. RODRIGUEZ).

Mr. RODRIGUEZ. Mr. Speaker, I rise today to join my colleagues and the gentleman from Texas (Mr. BELL) for authoring this legislation in honoring the National Champion Rice University baseball team. I commend the hard work of the players and their coaches. Their years of training and preparation, combined with their ability to work together as a team, led to an outstanding and overwhelming victory.

It is also important to recognize the unwavering dedication of the Rice supporters who cheered the team to victory. All Texans are proud of Rice University. Rice University, its alumni, the city of Houston, the Houston Astros and others have honored the Rice baseball team, and now the Congress is joining the local community and the State to show our support for their achievement.

I have the great honor of being a father of a Rice Owl. My daughter Xochil attends Rice University, and I am proud that she has chosen to be a part of this outstanding academic institution. Not only is Rice University one of the Nation's top-ranking schools, Rice University students have distinguished themselves by creating a unique academic atmosphere that provides a well-rounded educational experience.

The win at this year's College World Series marks the first national championship for a Rice University sports team, but with the hard work and the discipline shown by the group of student athletes, I have no doubt that this is only the first of many accomplishments and championships. Congratulations, Rice University.

Ms. WOOLSEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. GREEN).

Mr. GREEN of Texas. Mr. Speaker, I rise to place in the RECORD a statement in offering my congratulations to the Rice University baseball team for winning the College World Series.

Mr. Speaker, I rise today to offer my congratulations to the Rice University Baseball team. An exemplary group of young men, the Rice team won its first baseball national championship this year and showed the true grit needed to win the College World Series.

The Owls have been no stranger to the College World Series, appearing with the best of college baseball for 4 out of the last 7 years. The championship eluded them, however, until this year when they finished the regular season with an impressive 58–12 record. Thirty of those wins came during a remarkable winning streak.

And being a University of Houston graduate, it pains me to admit that the Owls' streak began with a 3–0 win over my beloved Cougars. However, if we had to lose to a crosstown rival, I'm glad that it was one who went on to win the national championship.

The national championship was even sweeter for Houstonians considering that the Owls crushed a Stanford team that had made its third trip to the finals in the past 4 years. And in winning the final game 14–2, the Rice team secured the largest margin of victory in any College World Series final game. Without a doubt, Rice's national championship is a well-deserved honor for a first-rate team.

My congratulations go out to the Owls, along with my best wishes for a successful 2004 season in defense of their title.

Ms. WOOLSEY. Mr. Speaker, I yield back the balance of my time.

Mr. KLINE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to thank, again, the gentlewoman from California for her kind remarks and the other speakers today, and certainly the gentleman from Texas (Mr. BELL) for authoring this resolution. I will dare to speak on behalf of all Rice alumni and say to Coach Graham and to the team, congratulations and thank you from the bottom of our hearts. The first-ever NCAA championship is a big thing to the alumni community and Rice University.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. NEUGEBAUER). The question is on the motion offered by the gentleman from Minnesota (Mr. KLINE) that the House suspend the rules and agree to the resolution, H. Res. 379.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

PERMISSION TO HAVE UNTIL 6 A.M. TUESDAY, NOVEMBER 18, 2003 TO FILE CONFERENCE REPORT ON H.R. 6, ENERGY POLICY ACT OF 2003

Mr. MORAN of Kansas. Mr. Speaker, I ask unanimous consent that the managers on the part of the House may have until 6 a.m. on November 18, 2003 to file a conference report to accompany the bill (H.R. 6) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

TWENTY-FIFTH ANNIVERSARY OF JONESTOWN AND THE DEATH OF CONGRESSMAN LEO RYAN

(Mr. LANTOS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LANTOS. Mr. Speaker, tomorrow is the 25th anniversary of the massacre at Jonestown where more than 900 people lost their lives to the sick cause of a sociopath masquerading as a visionary.

Among the victims was my distinguished predecessor and good friend, Congressman Leo Ryan, the first Member of Congress ever killed in the line of duty. He was gunned down along with four others of his delegation whom he led to investigate reports of human rights abuses in the jungles of Guyana.

Mr. Speaker, while we continue to struggle to understand such events, let us also continue to commemorate the people they affect.

I would like to ask all of my colleagues for a moment of silence to remember our fallen colleague, my predecessor representing the San Francisco peninsula in Congress, Congressman Leo Ryan, and to honor his work for justice and human rights.

Mr. Speaker, November 18, is the 25th anniversary of the massacre at Jonestown. A quarter century ago, more than 900 people lost their lives to the sick cause of a sociopath masquerading as a visionary.

Among the victims was Congressman Leo Ryan, the first Member of Congress ever killed in the line of duty. He was gunned down, along with four others of the delegation that he led to investigate reports of human rights abuses at a compound in the jungles of Guyana. Ten members of his group were wounded, some of them seriously, including California State Senator Jackie Speier, who was then a member of Congressman Ryan's staff.

In addition to those who died, thousands more were directly affected by the Jonestown tragedy: the grieving family members and friends of those who had misplaced their faith in the so-called Peoples Temple led by Jim Jones.

Mr. Speaker, survivors of that misguided movement, as well as relatives of Leo Ryan and of others who died, are gathering in Foster City, California, in a park that bears Congressman Ryan's name. They will consider his gifts and accomplishments as a public servant, and they will carry on with the struggle to make sense of the events that cut short his life and those of so many others.

Leo Ryan dedicated his life to protecting the oppressed. Elected to the California State Assembly in 1962, he was so moved by the conditions that led to the Watts Riots two years later that he volunteered as a substitute schoolteacher in Watts while the community rebuilt itself. This was typical of Leo Ryan: Confronted with a complex situation of social injustice, he insisted on getting his facts firsthand. In 1970, after hearing about abuses against convicts in California's top-security institutions, he spent a week undercover behind bars in Folsom Prison to see for himself how they were treated.

Mr. Speaker, this hands-on approach characterized Leo Ryan's work here in Congress, where he served on the Foreign Affairs Committee. In early 1978, concerns had been raised about U.S. citizens being held against their will in Guyana; stories were filtering out about beatings and forced rehearsals for mass suicides. When constituents brought the issue to Leo Ryan's attention, he took action.

There were warnings, but characteristically, Congressman Ryan was undeterred. He moved with caution, yet without trepidation, to organize a trip to Guyana. And to alert the world to what he expected to find, he brought along with him a handful of journalists, as well as members of the Concerned Relatives group whose loved ones were in the thrall of Jim Jones. But after challenging Jones and confirming some of his concerns, Leo Ryan, three of the journalists and a defector from the Peoples Temple were to lose their lives on a jungle airstrip as the cataclysm at Jonestown began.

What lessons can be drawn from these experiences, Mr. Speaker? What can we conclude when we continue to see the rise of aberrant social groups that use violence to control their members, and are capable of unleashing brutality upon the world?

Jim Jones' methods of control mirror those of totalitarian leaders throughout history. He created a cult of personality centered on himself, demanded absolute obedience, isolated those who surrounded him from their former lives, and instilled in them a profound sense of paranoia about the outside world.

The Peoples Temple's members were manipulated to see in it whatever they wanted it to be. It was a self-help group for some, for others a religious movement, and for many it represented a new means to address society's shortcomings. Jim Jones also managed to legitimize the group among some conventional religious and political leaders by supporting their public events and contributing money to their causes during the years when the Peoples Temple was based in San Francisco.

How could so many people find themselves hoodwinked to varying degrees, letting themselves even be linked with this deviant community, much less joining its ranks and sacrificing their lives?

Mr. Speaker, it is a hard question to confront. And the Peoples Temple example teaches us most dramatically not to be seduced by easy answers. It is left to historians and specialists in mass psychology to piece together and place in context the puzzle of Jonestown, the rise of Fascism in Europe, and any number of other instances in which a twisted and charismatic individual has found ways to exploit the weaknesses of large groups and to destroy their will.

As John Ross Hall wrote in one of the definitive studies of Jonestown, Gone From the Promised Land, "We hear the screams, but we do not entirely understand them, and we will continue to wrestle with the apocalypse they unveiled."

And I would add, we will continue to commemorate the victims, and to pay tribute to their lives. Mr. Speaker, I would like to ask for a moment of silence here in this chamber to remember our fallen colleague, my predecessor representing the San Francisco Peninsula in Congress, Leo Ryan, and to honor his work for justice and human rights.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. NEUGEBAUER). Under the Speaker's announced policy of January 7, 2003, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

H.R. 876, THE LOCAL RAILROAD REHABILITATION AND INVESTMENT ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. MORAN) is recognized for 5 minutes.

Mr. MORAN of Kansas. Mr. Speaker, I rise tonight on behalf of thousands of America's rural communities, and I would like to focus attention on a looming crisis within our Nation's transportation infrastructure. Short line railroads, rural America's link to the national rail network, are approaching a crisis point.

Before the rail industry was deregulated, Federal policy created a tremendous investment disincentive whose repercussions can still be felt today. With America's generation of heavier rail cars, which many short lines cannot accommodate, this situation has grown worse. We must move quickly, because thousands of miles of track are in danger of being abandoned forever.

Over 550 short line rail carriers now operate 30 percent of the Nation's rail network. Short line railroads exist in all 50 States and in over 70 percent of all congressional districts. They operate 50,000 miles of track, employ over 23,000 workers at an average wage of $47,000, and earn $3 billion in annual revenue.

Today, this local service is threatened due to the introduction of heavier 286,000 pound railcars that have become a new industry standard. Because of the interconnectivity of our Nation's rail network, short lines are forced to use these heavier cars, placing an added strain on track structure and making rehabilitation urgent. Studies indicate that it will take $7 billion in new investment for our Nation's short lines to accommodate these heavier railcars. To keep our constituents connected with the national rail network, these lines must be upgraded. Unfortunately, the small railroad revenue is insufficient to get the job done.

Today, our Nation's short line railroads need help to make the capital investment required to maintain and rebuild rail service between rural and urban America. This is why I introduced H.R. 876, the Local Railroad Rehabilitation and Investment Act. This legislation has enjoyed bipartisan support with, currently, 178 cosponsors. H.R. 876 provides a $10,000-per-mile tax credit as an offset for rehabilitation investments needed to maintain and strengthen local rail service. This temporary incentive program provides a valuable tool for our railroads to rebuild and improve as they work to meet our Nation's increasing shipping needs.

Short line railroads play an important role in my home State of Kansas. Kansas ranks second in the Nation in the amount of farm products it ships out of State by rail. These railroads keep our farmers and small businesses connected to a national rail network. However, since 1980, approximately 2,500 miles of short line rail in Kansas have been abandoned.

In my State alone, the loss of short line railroads would add nearly $50 million in annual repair costs to the State's highway system. The loss of short line rail service could also add over $20 million to the annual cost of transporting and handling the State's wheat harvest, which would result in an annual net decline in farm income of over $17 million. Nearly every State and every congressional district would experience similar consequences without short line rail service.

Congress should have a strong interest in preserving the freight connection between rural and urban America, because once track is abandoned, odds are it will never be replaced. In today's world, a disruption of the network that carries our food, raw materials, and the fuel for our power plants can be ill afforded. Tens of thousands of jobs in agriculture, manufacturing, refining, and mining in almost every congressional district depend upon this service. I urge my colleagues to join me in cosponsoring this vital transportation infrastructure legislation, and I ask the leadership of this Congress to bring this bill forward.

PHARMACEUTICAL PROMOTION AND PROFITS PROTECTION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

Mr. DEFAZIO. Mr. Speaker, Christmas has come early for the pharmaceutical and insurance industries, and it is going to be presented as a very large and complex piece of legislation that as yet no rank and file Member of Congress, no Democrat on this side of the Hill, has been able to review, and it will be voted on later this week.

It is being cast as simply a pharmaceutical benefit for seniors and some sort of a revision of Medicare to make it competitive and so on and so forth. But what it really is is legislation that was written by and for the pharmaceutical and insurance industries, the most powerful lobbies in this country and the most generous of campaign contributors, particularly to the President and the Republican Party; and it is first and foremost designed to protect their profits. In fact, perhaps we should call it the "Pharmaceutical Promotion and Profits Protection Act." That would be an apt title.

Boston University School of Public Health has analyzed the bill and they said, 61 percent of the benefits will flow as increased profits to the pharmaceutical industry. The bill specifically prohibits the Government of the United States of America, on behalf of America's seniors and, indeed, all of the American people, to do anything to lower the extortionate price of prescription drugs in the United States. In fact, it closes the door on the importation of prescription drugs from Canada, which is the only relief that many Americans are able to find today. Oh, they say, well, we do not close the door; we are going to give the authority to the Secretary of Health and Human Services to certify whether or not American-manufactured, FDA-approved pharmaceuticals that have had a short vacation in Canada, where their price goes down by 50 percent or more, would be safe if they flowed back into the United States. And, of course, the Secretary of Health and Human Services, in his wisdom, has already said that he will not find them to be safe, just to reassure the industry. So they will give him a power which he will not use, or which he has already arbitrarily decided.

In fact, it is arguable that the chain of custody of drugs in Canada is safer than in the United States of America, and it would be arguable that, in fact, those drugs would be safer than those that are sometimes made available in the system here because of unregulated, unlicensed pharmacies, and phoney, closed-door pharmacies and other things that were exposed recently in a series by the Washington Post. But nonetheless, we are going to act to protect here, and what we are really protecting, the Congress will vote, and I am sure the House will vote; the President is proposing and the conference committee has proposed to protect the profits of the pharmaceutical industry.

Then, not to leave out the insurance industry, because they are almost as generous in their campaign contributions, we are going to set up a new market for them where we will subsidize the private health insurance industry to create competition. Now, is that not ironic?

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The only industry in the United States of America exempted from antitrust law, an industry which can, and does, legally fix prices, collude with their so-called competitors, and, you know, collude also to determine who they might cover or not cover, we are going to bring about competition by subsidizing them.

There are quite a few seniors in my district that have a rather bitter taste in their mouths about the HMO Medicare+Choice and all these other foolhardy things that have been levied upon them. Those companies walked away one day and left them high and dry. And under this bill they will be able to walk away again and leave people high and dry or they will be able to choose the people they want to cover and tell the rest of them to go over to the Medicare fee-for-service plan which will be more expensive. It will get ever more expensive because all the low-risk people will be moved out and taken by the insurance industry and these subsidized plans until they become high risk, until they have to actually file a claim. That is the way the insurance industry works in America today: they will cover you until you ask them to cover something that you have been paying premiums for. And the next time renewal comes up, sorry, we will not renew you. This does not go on just in health care; it is going on in homeowners and car insurance and everything else. But it is particularly egregious in the area of health care. This bill is going to do nothing to rectify that problem.

Let us look at what the great benefits will be. In the first year, next year, there will be discount cards that will come out before the election so the President can say he did something for people, which will be to give a discount, maybe as much as 15 to 25 percent. That means that seniors will only have to pay 50 to 75 percent more than they would have to pay for those drugs imported from Canada. Oh, what a benefit that is. No, but it is a wonderful windfall for the pharmaceutical industry. They will still be paying prices higher than people covered by other private insurance plans, as are Federal employees, as am I, Blue Cross/Blue Shield, and many others; but they will get that juicy 15 to 25 percent discount.

Then the big plan kicks in in 2007. Why 2007? Because people, if it went into effect sooner, if it was such a great deal, people might figure out what a turkey it is before the next election. So they will dangle it out there 4 years in the future and say this will be really great, you just wait. It is so complicated, few people can figure it out. But here are a couple of numbers. A person who pays $1,000 for pharmaceuticals under this great plan would only pay $945 for their pharmaceuticals after they did their premiums and copayments and deductibles. They would get a benefit of $55 on an annual $1,000 prescription drug benefit.

Well, let us look at someone who has much bigger costs. Someone who pays $3,700, $300 a month. Their benefit would be a grand total of $855. Only about, you know, half of that they could get purchasing the drugs from Canada. This is a sham.

MEDICARE LEGISLATION

The SPEAKER pro tempore (Mr. NEUGEBAUER). Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

Mr. BROWN of Ohio. Mr. Speaker, this summer AARP devised a litmus test for Medicare legislation. Specifically, AARP said Congress must be careful not to pass any legislation that jeopardizes employer-sponsored retiree benefits, or that leaves such large gaps in the drug coverage that seniors still will not be able to afford needed medicines, or that includes a premium support privatization provision which will invariably give HMOs control over Medicare, or undercuts popular support for the Medicare program by requiring higher-income beneficiaries to pay more for the same coverage. In other words, we should not pass any legislation that introduces means testing into Medicare.

The Medicare conference committee agreement that was outlined this weekend still jeopardizes employer-sponsored retiree coverage for 12 million seniors. In other words, as many as a third of the seniors who now have prescription drug coverage will lose it under this bill because employers will say why should we do it, we will put you in that government program.

It still leaves such huge gaps in coverage the average senior will run out of drug benefits by August each year. Understand that the average senior will run out of drug benefits two-thirds of the way through the year, but, get this, will still be required to pay the premiums through December. That is a great deal.

It still includes a premium support provision that stacks the deck so resolutely against Medicare fee-for-service, the Medicare that seniors in this country respect and love and have benefited so greatly from. It stacks the deck so resolutely against the Medicare fee-for-service program that seniors will have no choice but to join a private insurance HMO. And it still means tests seniors.

What else does this bill do? It creates a $12 billion slush fund for HMOs to induce them to provide coverage. If anyone still believes privatizing Medicare will reduce health care costs, this $12 billion bribe going to the insurance industry from U.S. taxpayers, this $12 billion bribe should cure them of that misperception.

Mr. Speaker, there is no surprise here. After all, the insurance industry gives tens of billions of dollars to my friends on the other side of the aisle, to President Bush, to Vice President CHENEY, to Republican legislative leadership. This bill also increases drug profits by nearly 40 percent, an estimated $139 billion over 8 years. Again, no surprise there, Mr. Speaker. The drug industry gives actually tens and tens of billions of dollars to President Bush. The word on the street in Washington is they may give $100 million to President Bush's reelection. So, of course, they are going to look out for the drug industry.

Coincidentally, this bill specifically prohibits the Federal Government from negotiating lower prices on behalf of seniors and taxpayers to secure lower drug prices. It abandons the one strategy that would deliver meaningful drug savings to seniors, businesses, and all prescription drug purchasers. It abandons legislation that my friend, the gentleman from Minnesota (Mr. GUTKNECHT), who is in this Chamber, worked on; the gentleman from Washington (Mr. MCDERMOTT); the gentleman from New Jersey (Mr. PALLONE); the gentleman from Arkansas (Mr. ROSS); the gentleman from Texas (Mr. GREEN); the gentlewoman from California (Ms. WOOLSEY), a lot of us on both sides of the aisle worked on. It abandons legislation to allow importation of prescription drugs, safe, affordable prescription drugs from Canada and other countries that charge one-third, one-fourth, one-fifth as much as they do in the United States.

Other countries negotiate for lower drug prices, but the U.S. is a passive drug taker. As a result, U.S. consumers get robbed; the drug industry gets rich. This bill ignores public support for prescription drug reimportation from other countries for lower price, the same drug but for lower price, ignores the consequences for consumers, for employers, and for the Federal Treasury if we fail to bring drug prices down.

Seniors cannot afford the high cost, employers cannot afford the high cost, taxpayers cannot afford the high cost of prescription drugs anymore in this country.

If anyone still believes the drug industry and the insurance industry are not the ghost writers of this bill and are not its principal beneficiaries, perhaps the $12 billion HMO slush fund, the $139 billion in additional drug industry profits, the prohibition on negotiated drug prices, and the stifling of prescription drug importation just might convince you.

One more thing. While the drug and insurance industries fair extremely well under this legislation, the bill's authors decided to cut corners by barring 3.9 million seniors living at or near poverty from receiving low-income prescription drug assistance.

Under the deal described this weekend, a senior earning $8,000 a year may still be required to pay as much as $2,500 to $3,500 for coverage. That is not protection, Mr. Speaker. It is a cruel joke.

FALSE PROMISE FOR AMERICA'S SENIORS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ROSS) is recognized for 5 minutes.

Mr. ROSS. Mr. Speaker, after years of talk about the need to help our seniors with the high cost of prescription drugs, it appears that sometime this week, or perhaps this weekend, this Congress will be voting. They will be voting on a bill that is nothing more than a false hope and a false promise for America's seniors. In fact, Max Richmond, the head of the National Committee to Preserve Social Security and Medicare, a nonpartisan, not bipartisan, but a nonpartisan, nonprofit organization, has been quoted as saying, "Have you ever heard of Medicare fraud? Well, this Republican prescription drug bill is Medicare fraud."

Let me tell you why. As I see it, there are three major problems with the bill. Problem number one: the Republican leadership actually had the nerve to put language in the bill that says the Federal Government shall be prohibited from negotiating with the big drug manufacturers to bring down the high cost of medicine. That is in the bill. Then they call it a seniors bill.

Problem number two is the prescription drug plan will be privatized. And what is worse than that is the rest of Medicare could very well be privatized by 2010 under this bill. Insurance is about spreading the risk. When our homeowners policy comes due, sure, we complain; but when you think about the fact that they will replace everything in our house and build us a new house if something happens, it is fairly reasonable, the premium we pay. And why is that? When is the last time you saw a home in your neighborhood burn down or get blown away? It does not happen very often. Insurance is about spreading the risk.

Well, with seniors there is no risk to spread. Seniors require a lot of medicine and a lot of health care to either get well or to stay healthy. That is why we created Medicare 38 years ago.

So why do the Republican leadership and the big drug manufacturers want to privatize the Medicare prescription drug benefit? Well, let me tell you why. You hear about how prescription drugs are less expensive in other countries. It is true. I did a survey about a year ago where I compared the price paid by seniors of the five most commonly used brand-name drugs in my district with seven other countries. And guess what we found: seniors in my district pay on average 110 percent more than seniors in these other countries.

Now, why is that? Because America is the only industrialized Nation in the world where people go without health insurance; 43.6 million of them today, 10 million of them are children and the rest of them, for the most part, are people that are trying to do the right thing and work jobs, but they are working the jobs with no benefits.

In other countries everybody has health care. And in other countries they tell the big drug manufacturers if you want your medicine, your brand in our country, you are going to give us a discount. And they do. And the drug manufacturers and the Republican leadership know good and well that if we have 40 million seniors under one plan in America, that we too will demand those kinds of discounts to help offset the cost of this program.

So they want to privatize the plan and spread seniors out over about 100 plans and have 100 different insurance companies knocking on your door and calling and sending mail to your mother or dad or grandfather or grandmother all trying to sell them, what? Exactly the same plan. Privatization will not work.

The third big problem with this is it is not really a meaningful benefit. Most people who are fortunate enough to have a private health insurance company, and every plan is a little different, but most people who are fortunate to have private health insurance, well, the first $3,500 worth of medicine they pay about $700 out of pocket. Under this Republican prescription drug plan, on the first $3,500 worth of medicine, seniors are going to get stuck with $2,600 of it. All this talk in Washington amounts to $900 worth of help on the first $3,500 worth of medicine.

You see, it is going to have a $250 deductible. And during that time, you have got to pay the monthly premium, which they say may be $35; but they are not real sure what it will be, it could be more. And then after $250 up to $2,000, Medicare is going to pay 80 percent and you pay 20 percent. That sounds pretty good. But on a $100 prescription, once you get to the $250 mark and you are paying $20, what happens when you hit $2,000? All the way up to $3,500 you are back paying the full $100. Medicare pays nothing. But they still bill you monthly for this premium. This is Medicare fraud. It is wrong. This is America, and we can do better than that by our seniors.

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EXCHANGE OF SPECIAL ORDER TIME

Mr. GUTKNECHT. Mr. Speaker, I ask unanimous consent to claim the time of the gentleman from North Carolina (Mr. COBLE).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

PRESCRIPTION DRUG MARKET ACCESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. GUTKNECHT) is recognized for 5 minutes.

Mr. GUTKNECHT. Mr. Speaker, I will not take the whole 5 minutes. I have been listening to the discussions about Medicare reforms, and I must tell my colleagues that some of the arguments they are making on the other side, I agree with. Some of them, I do not agree with.

I do want to let Members know that in first hour there will be a special order, and I invite Members from the Republican and Democrat and Independent parties to join us tonight and talk about the issue of market access because I think that is one thing that most Members here in the House agree on, and that is, that Americans deserve to have world class prices for world class drugs.

As the gentleman from Arkansas (Mr. ROSS) was just saying, in the studies that he has done, in the studies that I have done, the studies that other Americans have done, that have been done by the press and other groups, they all come to the same conclusion; and that is that Americans pay by far and away the world's highest prices, even though we are the world's best customers.

Later on tonight, we will be talking about that issue and whether or not there is a way that we, here in the House, can exercise the will of the people and get something done on that issue before we go home for the break.

BEWARE THE GHOSTS OF CHRISTMAS PAST

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GREEN) is recognized for 5 minutes.

Mr. GREEN of Texas. Mr. Speaker, I want to associate myself with the remarks of both my colleague, the gentleman from Arkansas (Mr. ROSS) and also my colleague, the gentleman from Ohio (Mr. BROWN) in the concern about what happened in the Medicare conference committee on prescription drugs.

It is sad that we came here to talk about a prescription drug plan for seniors, but we are actually going to take it away from them in the process. But the reason I am here tonight, Mr. Speaker, is to talk about the problem we have in our country with the unemployment.

Mr. Speaker, as we embark on what we hope will be our last week in sessions before the holiday recess, I rise to warn my colleagues about the ghost of Christmas Past, the economic mistakes that Congress and this administration have made on the eve of past holidays. Let us take time to learn from those mistakes and not recreate them.

I can say with confidence that each Member of this Chamber was pleased to hear the impressive economic growth figures for July through September. Over the past 3 years, this country has suffered through some of the worst economic conditions since the Great Depression, and it was certainly uplifting to see the reports of 7.2 percent growth in gross domestic product. While we remain optimistic about an economic rebound for the country, I, however, caution my colleagues against relying on the sustainability of this economic growth.

Economic indicators show that these figures were the result of consumer spending and a tremendous boost in the housing market. Yet with consumer spending outpacing consumer income, it is clear that spending cannot fuel our economic growth indefinitely. Let us remember our reaction to similar news in 2002. After months of job losses and a dismal economic growth, the country boasted growth of 5 percent in the first quarter of 2002. Despite our optimism, however, job losses continued and the next quarter yielded a 1.3 percent growth.

This time last year we were celebrating third quarter growth of 4 percent, and like today, entering the holidays with high hopes. Needless to say, our hopes were dashed and the country has since endured the worst job conditions in 20 years. These are our ghosts of Christmas Past, the flurry of mistaken optimism that failed to deliver on its economic promises.

Like the optimism of Christmas Past, this recent economic growth belies the fact that our manufacturing sector has cut jobs for the 39th straight month. My State of Texas, with 1.6 million lost jobs, ranks third in the amount of manufacturing jobs lost since September of 2000. While the country may be making modest gains in employment, 6 percent of America's workers are still unemployed. Almost one-quarter of these 8.8 million people have been out of work for more than 6 months. These figures do not even count the discouraged workers, 462,000 Americans who have completely given up looking for jobs and are no longer on our unemployment roles.

Fortunately, many former unemployed workers have found jobs, but we must examine the kind of jobs they are turning to; 4.8 million Americans work part-time, but only because they cannot find full-time work, and many of these workers are former engineers, former computer technicians who previously earned up to $60,000 a year, but now must settle for $7.50 an hour at a retail store.

No amount of economic statistics can hide the realities that these people face. Our unemployed workers are hurting. Our unemployed families are draining their savings to survive. And this Congress holds in its hands the ability to extend their unemployment benefits.

Let me remind my colleagues that the holiday season is the time of the year when we give thanks for our blessings and extend our hearts to the less fortunate. Last year, that important lesson must have been lost on the majority's leadership, because Congress packed up for the year without extending unemployment benefits.

That is right. Congress left town to enjoy the holidays and in doing so, left America's unemployed workers in the cold.

Mr. Speaker, this year is no different. Unfortunately, if we do not act soon, the Ghost of Christmas Past will be forced to remind us of the tremendous mistake we made by withholding these benefits last year. Even Scrooge learned from his mistakes.

I implore the administration and my colleagues to let us take a hard, realistic look at our economy and make sure that any recovery helps the Americans who have been most hurt by this downturn, and above all, let us pass the extension of the temporary unemployment benefits before we adjourn for the holidays.

It is the right thing to do for our economy and for America's unemployed.

IRAQ PROPAGANDA CAMPAIGN

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, the Coalition Provisional Authority which is the title of the American authority overseeing the reconstruction of Iraq, and the Bush administration which created it, are openly dissatisfied with the stories the media has chosen to broadcast regarding the United States' role in Iraq. In fact, they say the news media too often covers the negative events that occur in Iraq, but rarely reports any positive happenings there. They even pressured reporters to find the so-called good news in Iraq or lose access in an attempt to manipulate the stories coming out of Iraq.

Let us keep in mind that over 400 American soldiers have died in Iraq since the start of the war in March. That is more than 11 brave young men and women killed each week. It is hard to find the good news when our sons and daughters keep coming home in body bags. And it is exceptionally insulting to the families of these victims to complain about media bias at the same time four helicopters have been destroyed by enemy fire over the last 2 weeks.

The situation in Iraq is getting less safe for our troops, not safer. In addition to the 404 troops killed in action, over 2,000 have been wounded and another 7,000 have been evacuated for noncombat medical conditions. And yet, the President continues to complain about media bias. So what has the White House decided to do about the quote/unquote "unfair reporting" by the media?

Why, bypass that very media, of course. The President's handlers plan to influence public perception by creating a government-run broadcast operation to provide American news agencies unfettered access to the real stories in Iraq. This broadcasting system which the administration unofficially refers to as C-SPAN Bagdad will run via satellite 24 hours a day. C-SPAN Bagdad. More like American Al-Jazeera, the media giant that reports to the Arab world in a very biased fashion.

The White House is increasingly aware, of course, that President Bush's fate in the upcoming 2004 election is directly linked to the progress of the war in Iraq. So bypassing the third-party national media allows the Bush administration to mold public perception of the war effort. I think our country's founders would be ashamed to know that at the same time hundreds of our soldiers and thousands of Iraqi civilians are dying, President Bush is thinking about the chances for reelection. That is nothing short of appalling.

But equally appalling is that the American taxpayer will finance this shameful propaganda machine. That is right. The administration is directing money from the $87 billion emergency supplemental spending bill that Congress approved last month to help pay for the new Bush media machine. This is not emergency spending. This is campaign spending. This is propaganda spending. Instead of trying to win the hearts and minds of Americans through propaganda, President Bush should be trying to win the hearts and minds of the insurgents who are making Iraq less stable. He should show them a United States to which burgeoning democracies like Iraq can aspire, a United States that would be a democratic model for the rest of the world. I daresay an autocratic state-sponsored propaganda campaign is not a part of this model.

TENTATIVE AGREEMENT ON MEDICARE CONFERENCE REPORT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

Mr. PALLONE. Mr. Speaker, I rise this evening to express my extreme disappointment regarding the tentative agreement that has been reached by the Republicans in Congress with regard to Medicare and prescription drugs.

Mr. Speaker, the source of my frustration stems from the fact that this agreement is not good public policy. It is not good for seniors or any Medicare consumer and it does nothing to reduce the cost of soaring prescription drugs.

What this bill does, simply stated, is it kills the Medicare program and, in the process, shores up hundreds of billions of dollars of funding for the HMO industry and for the name-brand pharmaceutical industry. If this so-called deal is enacted into law, make no mistake about it, the Medicare program will be privatized. Medicare, as we know it today, will be turned into a voucher system and seniors will be forced into HMO's.

Republicans are trying to fool us into believing that their privatization provisions are merely a demonstration project or a test, but nothing could be further from the truth.

Mr. Speaker, the Republican Medicare provisions are unacceptable because they have nothing to do with prescription drugs. The "demo" goes way beyond the scope of providing seniors with prescription drug coverage, and, in fact, aims to bankrupt seniors, denying them their right to adequate health care under Medicare, and ultimately forcing them into HMOs because they can no longer afford Medicare.

This is exactly where the insurance companies come in to get their big payoff because greater risk and cost are shifted to senior citizens.

Furthermore, the provisions in the medicare agreement that deal with prescription drug coverage are completely inadequate in terms of benefit structure. We are talking about a $275 deductible, a $35 monthly premium, 75-25 coverage, in other words, 75 percent paid by the Federal Government, 25 percent by the senior to the first $2,200 and no assistance until $3,600, at which point, the catastrophic is reached. So there is a huge doughnut hole; basically, between $2,200 and $3,600, in assistance, seniors get nothing. This means that seniors will have to pay nearly $2,600 before the government pays for all drug costs.

Twenty million seniors or half of all seniors will be paying premiums year-round but would have no coverage for part of the year due to this large gap or doughnut hole in the coverage.

Now, the combination of this insufficient benefit combined with watered-down generic provisions, watered-down reimportation provisions, and the prohibition of the Medicare Administrator to negotiate lower drug prices brings me to my point that this Medicare final agreement is a giveaway to the name-brand pharmaceutical industry.

Mr. Speaker, there are so many fundamental problems with this upcoming Medicare agreement beyond what I have discussed tonight. There is no Medicare fallback in this bill that is favorable to seniors. We expect 2 to 3 million retirees to have their coverage dropped. Ten million, or one out of four, seniors will be forced to pay more for Medicare or to join an HMO. Low-income seniors are not financially protected and will be subject to an assets test for the first time in Medicare history. And the Medicare Part B will rise for the first time in 12 years. Means testing will be implemented in the Medicare program for the first time in its history, and tax sheltered accounts for the wealthy are going to be part of this bill, even though it is not really a Medicare bill.

Mr. Speaker, the list of problems in this so-called Medicare agreement is overwhelming, and I really do not know how the Republicans or groups like the AARP or the President and others who have endorsed this agreement can live with their deceit and ill will against America's seniors.

□ 2100

UNDERMINING THE WHOLE CONCEPT OF MEDICARE

The SPEAKER pro tempore (Mr. TANCREDO). Under a previous order of the House, the gentleman from Washington (Mr. MCDERMOTT) is recognized for 5 minutes.

Mr. MCDERMOTT. Mr. Speaker, I want to associate myself with the remarks of the gentleman from New Jersey (Mr. PALLONE). This week is one of the most important weeks that I have seen in the 16 years I have been in the Congress because we are dealing with an issue that is about the question of what is in the common good.

We have no problem in this country believing that fire departments and police departments and road systems and schools are issues of the common good. We all pay our taxes. We all get benefits from them, and we have since 1964 had a program in this country called Medicare which was a program in which everybody put their money and people over the age of 65 took out their money to pay for health care benefits when they needed them. Everybody got the same thing everywhere in the whole country.

But there have been people in this Congress who have always thought that the idea of doing something collectively was somehow, I do not know, socialism or something bad. I do not know. They believe that everybody should be individually responsible for themselves, that they should be on their own and that they should deal with these things in a market, like they were buying cars or buying refrigerators or television sets.

So we have a bill before us that is going to undo what we have had in this country for senior citizens for the last 38 years. They have been waiting. They have been trying to do this for 4 or 5 years.

I was on the Medicare commission. One of the Members of the other body and the gentleman from Michigan (Mr. DINGELL) of this body and I represented the Democrats on that commission, and we managed to hold off the disaster which is being foisted on the senior citizens and the country itself in the next week.

This attitude about the common good really began to be undermined under Mr. Reagan. It was his campaign slogan in 1980: Are you better off than you were 4 years ago? Not are "we" better off than we were 4 years ago, but are "you."

This bill is going to say we are going to guarantee a premium support to every senior citizen in this country; we are going to write them a check, $5,900, $6,000, $6,300, whatever; and we are going to say now you, grandma, take that check out and find yourself an insurance company that will take care of what your needs are. You can stay in the program of Medicare as we know it, but since the healthy and the least sick will go out and find these good deals somewhere, who will be left in the regular program? The old and the sick.

The price per person is going to go up, so they are going to raise the premium on anybody who stays in the regular program. Is that thinking about the common good, that we are going to pick on the ones who are the old and the sick, and we are going to let the young and the healthy seniors go off and make a good deal somewhere? No, it is not. It is wrong, it is un-American, and it is undermining the whole concept of Medicare.

The idea that all seniors put their money into the pot, nobody sits around in this country and says, gee, I hope I get sick so I can use some money out of the pot. There is nobody that crazy in our country. Everybody wants insurance there when they are sick and particularly they want to feel independent, they have taken care of it themselves. It is not their children that have to do it or their grandchildren.

My father died a couple of years ago at 93. My mother is 93, and we four kids in my family have not had to spend anything on our mother's health or our father's health. Like every American, we pay our taxes into the pot, and they have taken out when they needed to; and that has gone on over the entire country.

What they are saying in this bill is send your mother out and let her pick her own plan. That is wrong; and as we watch this debate, understand that is what they are saying to every senior citizen. Here is your money; good luck, Grandma; I hope you find something for yourself.

I hope every Member votes "no" on this. We could do better than this.

PRESCRIPTION DRUG PRICES

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from Texas (Mr. NEUGEBAUER) is recognized for 60 minutes as the designee of the majority leader.

Mr. NEUGEBAUER. Mr. Speaker, I yield to the gentleman from Minnesota (Mr. GUTKNECHT).

Mr. GUTKNECHT. Mr. Speaker, I want to thank the gentleman from Texas (Mr. NEUGEBAUER) for yielding to me, and I want to thank him for claiming the time.

I rise tonight to talk about an issue where we have had a lot of discussion so far tonight. We have had a lot of discussion during this entire legislative session. In fact, we have had a lot of discussion for a number of years, and that is the issue of the price that Americans pay for prescription drugs relative to the rest of the industrialized world; and the gentleman from Texas (Mr. NEUGEBAUER) was good enough to join us in what really is an overwhelming majority of Members of the House who voted on this issue earlier this year.

It all started several years ago for me when I went to a town hall meeting in Faribault, Minnesota, and there were a lot of seniors there; and they were talking about their trips up to Canada to save some money on prescription drugs. It was a little like a Nolan Ryan fastball. It just blew right by me, and I guess I decided if they wanted to go to Canada to buy their drugs, that is fine by me; and I never thought much about the issue.

They continued to pester me about this, saying things like, why is it we as seniors are treated like common criminal, just because we are trying to save a few bucks on prescription drugs; and still I did not pay much attention to the issue until something totally unrelated happened.

The price of pigs collapsed. Live hogs dropped from about $37 per hundred weight down to about $7, and we produce a lot of hogs in my part of the world. My pork producers kept calling me saying, Congressman, can you not do something about this; and so I called the Secretary of Commerce, and I called the Secretary of Agriculture. I got essentially the same answer. I should finish the story. What they really complained about was all of these Canadian hogs coming across our borders making our supply-and-demand situation even worse, and they said can you not do something at least about all these Canadian hogs.

I called the Secretary of Agriculture, called the Secretary of Commerce, got essentially the same answer. They said, well, that is NAFTA. That is free trade. We cannot stop the Canadian hogs from coming in, and all of a sudden a lightbulb went on over my head, and I said, wait a minute, you mean we have free markets and free trades when it comes to pork bellies, but not when it comes to Prilosec? I think the Secretary of Commerce sort of chuckled and said, well, I guess that is right.

That is when I began this little crusade of mine, and I began to study this issue even more, and Mr. Speaker, the more I have learned, the more I realized we in Congress need to do something about this because we created this environment. Unlike some of my friends on the left, I usually do not spend a whole lot of time saying shame on the pharmaceutical companies. I say shame on us because essentially we have created an environment that they are taking advantage of. We protect them like no other product from foreign competition, but let me talk first about the differences between what we pay in the United States versus what they pay in the rest of the industrialized world.

Let me give my colleagues some examples. We were in Munich, Germany, earlier this year; and we purchased 10 of the most commonly prescribed prescription drugs off the shelf at the Munich airport pharmacy, and here are some of the prices we paid.

We bought 10 tablets of Cipro, 250 milligrams for $35.12 American. That same product here in Washington, D.C., is $55. We bought Coumadin. That is a drug my father takes. It is a blood thinner that was developed at the University of Wisconsin. The generic version is called Warfarin. It actually is a rat poison. We bought it in Germany, 100 tablets, 5 milligrams for $21. That same package of drugs here in the United States, same product, made by the same company, under the same FDA approval, sells here in the United States not for $21 but for $89.95.

Glucophage, a miracle drug for diabetes, a drug that we purchased in Germany, 30 tablets, 850 milligrams, $5 in Germany, $29.95.

Pravachol, Prozac, Synthroid, all the same story. Come down here to this one, and this is the one that really gets to my gizzard, and that is the issue of the anticancer drugs, where we, American taxpayers, have paid so much to develop these drugs. Tamoxifen, we bought, in fact the actual number, we rounded it off here. It was $59.05 for 60 tablets, 20 milligrams of Tamoxifen. An amazing drug, a miracle drug in terms of the treatment of breast cancer. That same drug we checked here in Washington, D.C., local pharmacy, $360, six times more in the United States. Here is what really chaps my hide.

American taxpayers paid to develop that drug. As a matter of fact, through the NIH we paid to take that drug all the way through phrase two trials. The American taxpayer paid to take that drug through phase two trials, and then we licensed it to one of the pharmaceutical companies, and they sell it back to us.

Clearly, we ought to pay our fair share of the cost of research. I think we ought to subsidize the people in sub-Saharan Africa, but I do not think the American taxpayers and the American consumers should have to subsidize the starving Swiss or the starving Germans. It really is time for them to pay their fair share.

Mr. Speaker, we have to ask is it really fair to make American consumers pay six times more for a drug that they paid to develop and take through phase two trials? This story goes on.

If we look down here at Zoloft, $82.52 in Germany, $132.95 for American consumers and the story goes on; and some people say, well, that is because in some countries they fix' the prices. They have price controls. In some respects that is true, but it is not always true.

For example, in Great Britain, the pharmaceutical companies can sell their drugs for whatever they want. There are no price controls in Great Britain. That is according to a report that was done and paid for by the Pharmaceutical Association in Europe, done, we have a copy of it in my office; and if any Member would like a copy, they can just call and we will send them a copy. Essentially what they do in Great Britain is they can charge whatever they want, but the British medical plan will only reimburse so much for these drugs, and they found that consumers in Great Britain have a tremendous amount of resistance to paying huge co-pays.

I have a drug here, Cipro, a marvelous drug. We bought this in Germany, $35 in Germany, $55 here in the United States, and my colleagues do not have to take my word for it. They do not have to just take my word for it now. More and more of the media are actually doing their own research, and here is another copy and Members can get a copy of this by going to my office, calling my office. I think we may even have this on our Web site. There is one done by USA Today. This was done by the Associated Press; and I will not bore my colleagues with all the numbers, but they are exactly the same, and they compare the prices.

For example, Lipitor in the United States, the best price they could find online in the U.S., 10 milligrams, 90 tablets each, Lipitor, $207.99. One can buy that drug in Canada, the online price, $132.07. Paxil, $80.99 in the United States, $40.80 in Canada; and those stories go on and on. Vioxx, an amazing drug. I guess it is an antirheumatoid-type drug. Fortunately, I do not have to take it yet, but it is $85.99 in the United States. It is only $36.17 in Canada.

But the real issue is, why is it that the world's best customers pay the world's highest prices? That is a fair question. It seems to me we as policymakers for the United States of America ought to ask that question, and we ought to demand better answers.

I want to come back to something I mentioned earlier; and I had the Congressional Research Service do a little research for me, and I asked is there any other product class that you can think of where we provide so much protection from competition from the same product from abroad? They went through and they did some research, and in fact, I will just read from what the CRS says, and they are our official researcher. I will quote. It said: "We have been unable to locate any statutory provisions similar in language and structure to the one in the Food and Drug Cosmetic Act." In other words, nobody enjoys that kind of protection.

Matter of fact, they went even further. They said: "As indicated above, our research has uncovered no other statute that contains language similar to that in section 381(d)," and this is the interesting thing. Even heavily regulated industries such as chemicals, pollutants and munitions are not apparently subject to the statutory provisions limiting reimportation of the product to its original manufacturer.

□ 2115

In other words, there is no other product class.

Now, some people say, well, safety. It is all about safety. We want to protect the consumers. Members, understand this, we keep incredibly good records in terms of how many people have become seriously ill or died from taking drugs from other countries. The FDA keeps those records and the CDC keeps those records. As far as we can determine, and this is under testimony that was given in front of a subcommittee of the Committee on Government Reform, and it is an easy number to remember, it is zero. It is a nice round number.

Now, you contrast that to how many people get very ill and die every year from food-borne pathogens. Now, it is the Food and Drug Administration, and yet for some unknown reason, some reason unknown to me, we have set, for things like Cipro, we have set the bar impossibly high. We have an absolutist standard. But when it comes to fruits and vegetables, we barely even look at them when they come into the country.

The bottom line is you can get just as sick, as a matter of fact you can die, from food-borne pathogens. By their own studies, the FDA acknowledges that 2 percent of the fruits and vegetables that come into the United States every day, 2 percent of them, are contaminated with food-borne pathogens, including things like salmonella. My colleagues, if you get salmonella, and particularly if you have any other kind of medical problem going on in your system at that time, you can die.

We know, for example, in the last 2 years, that 2,264 Americans have become seriously ill from eating raspberries from Guatemala. Do we stop raspberries from Guatemala from coming in today? I do not think so. Forty percent of the orange juice that Americans consume comes from other countries, and yet it comes right in. They say, well, gee whiz, somebody might get in there and contaminate the drug supply. What about contaminating the orange juice supply? It seems to me we have this ridiculous measure when it comes to safety for prescription drugs and virtually no measure when it comes to our food supply.

Now, I am not saying we need to have a much stronger implementation of a security system for fruits and vegetables, but it seems to me if you are going to have one standard for fruits and vegetables and another standard for prescription drugs, at least we, as public policymakers, ought to demand some kind of a rationale from the Food and Drug Administration.

Now, the bill we are going to probably consider here at the end of the week does nothing about allowing Americans to have access to world-class drugs at world-market prices, and I think that is a terrible mistake. Because I think, here in Washington, we have spent so much time talking about coverage, we have to find ways to get people coverage for prescription drug benefits, that we have missed the big picture. The issue is not so much about coverage. Every senior in America qualifies to buy prescription drug coverage. They can buy it through the AARP. Prescription drug coverage is available in lots of ways from lots of sources. The issue is not coverage, the issue is affordability. And that is the tragic problem with the bill that we will consider later this week, and that is that it does precious little to deal with affordability.

Now, the sponsors are going to say, well, wait a second, Congressman GUTKNECHT, we are going to create these systems, sort of like the Federal Employees Health Benefit Plan, and that is going to bring down and hold down the price of prescription drugs. Well, we have some evidence of just how well the Federal Employees Health Benefit Plan does in terms of lowering the cost of prescription drugs. Let me give some examples.

For example, the Blue Cross/Blue Shield plan that services Federal employees, they do get a discount on Coumadin. I mentioned here that Coumadin, at the retail price in the United States, can be $90, or $89.95. Well, the Blue Cross/Blue Shield plan does not pay $89.95. They get a discount. They buy it for $55.31. The Mail Handlers Plan, however, does not get their drugs for $55, they pay $72.24. My colleagues, you can buy that same drug off the shelf in Munich, Germany, at the Munich Airport pharmacy, for $21. In other words, the Blue Cross/Blue Shield plan pays more than double what the Blue Cross/Blue Shield Federal Employees Benefit Plan does.

And it goes on. Take Glucophage. We talked about Glucophage. Well, this is in a different quantity. We are talking about a larger prescription. But the Glucophage they are buying using the Federal Employees Benefit Plan, they buy it for $90 for the Blue Cross/Blue Shield plan. The Mail Handlers pay $118. The HMO plan, they get a heck of a deal, they buy it for $18.30. But you can buy it right off the shelf in Germany for $22 for that exact same drug.

And the story goes on with all of the plans. And Members, do not take my word for it. This is information that was done by the gentleman from Oklahoma (Mr. ISTOOK) and his subcommittee staff, where they did some comparisons about what we pay even through the Federal Employees Benefit Plan versus prices off the shelf in Canada, in Europe, and other industrialized countries. And the answer is that in every category we pay a lot more, even with the discounts that we get for the Federal employees.

As I say, I think we ought to pay our fair share, and I believe research is important. I am vice president of the Committee on Science, and I am proud of the fact we Americans represent 6 percent of the world's population, but we represent over half of the basic research done in the world. That is important. And I think it is important that the pharmaceutical companies continue to do that kind of research. But I think Members have to understand that we subsidize that research here in the United States in three separate ways.

First of all, we subsidize it through the Tax Code. Now, when these pharmaceutical companies say, well, we spend so much on research, well, you might just ask them how much are you able to write-off on your Federal tax forms? And if you do business in Puerto Rico, how much Federal income tax do you pay? And in addition to that, is it not true over the last 10 years you have taken over $28 billion in investment tax credits for the research that you do: for research and development tax credits? So you add it up, and the net real cost to the pharmaceutical industry is much less than they sometimes say.

And, incidentally, more and more independent groups, bipartisan groups, nonpartisan groups are coming to the same conclusion, and that is that the pharmaceutical industry is now spending more money on marketing and advertising, in fact, in some cases some companies dramatically more on marketing and advertising than they are for research. So research is important, but we pay for it through the Tax Code. We subsidize it through the Tax Code.

We subsidize it also in the amount that we spend on research. I mentioned that I am proud of the fact that we finance an awful lot of research with taxpayers' dollars here in Washington. This year we will spend upwards of $27 billion through the NIH, the CDC, even the Department of Defense on research projects which will directly or indirectly benefit the pharmaceutical industry.

And then, finally, of course, the way we subsidize them is in the prices we pay. I think once is enough. I think once we help to develop Taxoxiphen, we ought to at least be able to buy it at world market prices for American consumers.

This is a huge issue, my colleagues. And it is one that more and more seniors, and not only seniors but American consumers in general understand this issue. And I think there is a feeling here that if we just pass this prescription drug benefit plan that somehow this will go away. Well, Members, you need to understand a few things about, ultimately, the facts about this prescription drug benefit. And I am not here to criticize the Medicare reforms, I think most of the Medicare reforms we are talking about in this bill are very good, very necessary, and perhaps even overdue. But when you start talking about the prescription drug benefit, I hope you will understand, at least from my perspective, the facts:

First of all, this bill, they purport, is going to cost $400 billion. I think it is going to be a lot more than $400 billion, because we do not have effective ways of dealing with the cost, we are going to pay in the affordability of these drugs. But let us say it is $400 billion. Well, the CBO tells us virtually every dollar of that is going to have to be borrowed. To pay for this new entitlement, we are literally going to have to borrow the money from our kids and grandkids. In some respects, I think that is a terrible tragedy.

But as we look at the overall issue, what is going to happen is next year, by the time people begin to understand this, they are going to say, now, wait a second, and whether it is going to be 16 percent or 36 percent, no one really knows, but we do know this, there will be people who have prescription drug coverage today, through their former employers, who are going to be pushed off of the system and all of a sudden they are going to be thrown into this new government plan, and what they are going to find out is it is not as generous as the plan that they had through their former employer, for the most part. And they are not going to be happy.

I think a lot of conservatives and taxpayers are not going to be happy when they see the cost of this. And I think as they look at the final issue, if next year they look at the system and say, wait a second, you mean even after this, we are still going to be spending $360, or some number, let us say we get a 15 percent discount or a 20 percent discount off $360, that is roughly a $72 discount, that gets the prices down to about $290. That still is a lot more than they are paying in Europe for the same drugs.

No, I think Americans should pay their fair share. I think we are paying our fair share. But I think if we pass this bill later this week without dealing with the fundamental cause, or one of the fundamental drivers of this whole debate in affordability, it seems to me we are making a huge mistake. And it is one I think the voters will not be appreciative of once they begin to realize.

Yes, we need to reform Medicare. We have 50 million baby boomers moving on their way towards retirement. And it is inevitable that as we go forward, we have to do something about reforming the Medicare system. We have to make it fairer. We have to give consumers and seniors more choices. But if we are going to add a prescription drug benefit to the package, this new $400 billion entitlement, and going up in my opinion, then it seems to me we have an obligation to make sure American consumers, American taxpayers are getting their monies worth.

So I would hope that Members would at least pause and ask the question what are we going to do about opening up markets? What are we going to do to control the cost of these prescription drugs? What are we going to do to make them more affordable for American consumers? I think the answer ultimately to me is quite simple, and that is give the market access. Do what we do with those pig producers, require some competition across the border. Allow prescription drugs to work as virtually every other market does.

When markets work, when competition works, prices will level. And the net result is that we will pay considerably less in the United States. And some of the people in other industrialized countries are going to probably have to pay a little more. But that is the way markets work. They tend to level.

Mr. Speaker, again I want to thank the gentleman from Texas (Mr. NEUGEBAUER) for giving me the chance to present some of these things tonight. I know that not everyone agrees with me. I try to be respectful when I debate and discuss these, but it is such an important issue. And if I could just close with one other point, because some people say this cannot be done safely.

Members, I would encourage you to take a look at the newest technology that exists today. This is not pie in the sky. I have the technology right here in this little vial literally about 100 computer clips. And within 2 years, most of the products being sold at Wal-Mart stores will have these on them. This is the new UPC codes. And these little computer chips in this vial, there are about 100 of them, they are so small you cannot see them, but they will be able to track that product literally so that you will know when it runs through the scanner that this Cipro was produced at the Munich, Germany, plant on September 3, 2001 at 1 p.m. in the afternoon and it is in fact Cipro.

So the idea that we do not have the technology to do this today is really laughable. It exists. It is being used on other products. It will expand and be used even more. But, Mr. Speaker, and particularly the gentleman from Texas (Mr. NEUGEBAUER), I appreciate having the opportunity to present some of these things. If Members would like more information from my office or want to go to my Web site, simply go to gil.house.gov. We have some great charts which explain this.

As John Adams said, "Facts are stubborn things." This is a stubborn thing. This chart is not going to go away. And under the bill we are considering this week, it will not change much. Ultimately, we have the power to change it. The FDA works for us, not the other way around. It is not shame on the pharmaceutical industry, it is shame on us.

DECLINING MEDICARE REIMBURSEMENT FOR PHYSICIANS

The SPEAKER pro tempore (Mr. TANCREDO). Under a previous order of the House, the gentleman from Alabama (Mr. GINGREY) is recognized for 5 minutes.

Mr. GINGREY. Mr. Speaker, I rise again today, as I have a number of times before, to call attention to declining Medicare reimbursements for physicians.

Effective January 1, 2004, physicians and other providers paid pursuant to the Medicare physician fee schedule, face at least a 4.5 percent cut in reimbursements.

□ 2130

Mr. Speaker, I have been outspoken on this issue and have described several instances in which the citizens of Georgia and our Nation will be negatively affected by this cut. There is a staffing issue within the trauma center at Grady Memorial Hospital in Atlanta. Dr. Harry Sherman in Augusta is contemplating retirement due to a lack of adequate Medicare reimbursement and the high cost of liability premiums. And more specifically, I demonstrated the decreasing reimbursement for, and thus the eventual reduction in access to very common procedures provided to Medicare recipients.

I would like to bring the attention of my colleagues to a survey conducted by the American Academy of Family Physicians. This survey is not necessarily scientific, but I believe it is indicative of the problem we are facing. AAFP found that 24 percent of family physicians no longer accept new Medicare patients. After the 4.5 percent cut was announced, AAFP surveyed again to find out what its members would do if the cut takes effect. As detailed in a release from the American Academy of Family Physicians, only 36 percent said they would take new Medicare patients if these new cuts occur.

Mr. Speaker, come January, doctors are going to take a cut in their reimbursement for treating our Nation's most needy individuals. There is an old saying, however, that the night is always darkest just before the dawn. With a physician-reimbursement disaster looming, Congress is on the verge of a breakthrough. Housed within the Medicare modernization bill is temporary relief for the medical community. House and Senate negotiators have announced an agreement that will potentially bring this legislation before the Congress this week. I thank the gentleman from California (Mr. THOMAS) and the subcommittee chair, the gentlewoman from Connecticut (Mrs. JOHNSON), and those from the other Chamber, such as Senators FRIST, GRASSLEY, BAUCUS and BREAUX, who have worked so hard to get us to where we are today.

I encourage all of those involved in this process to continue to act in the best interests of the American people, but especially our seniors and the medical community on which they so desperately depend. Let me be clear, as a physician Member of the United States House of Representatives, I believe that we must pass the Medicare conference report now. For nearly 40 years, Medicare has provided necessary health care to millions of patients across this country. Another steep cut in reimbursement rates would have been devastating for the physicians who care for Medicare patients; but with the language that has been crafted, the physician-reimbursement update would be a positive 1.5 percent.

This chart is representative of the positive impact the current Medicare legislation will have on Medicare providers throughout the country. For example, New York will see a benefit of $865 million; Washington State benefits $155 million; Texas, $641 million; and most important to me and my colleagues from Georgia, our State will benefit $254 million. All 50 States will see a positive impact from the current version of the Medicare conference report.

I cannot overstate the importance of just this one piece of the overall Medicare bill. It is my hope this will allow for the continued access to quality health care for our seniors. I am proud that as the door was slamming shut on our seniors' health care, this Congress stood up, and will stand up, in a bipartisan fashion and hold this door open.

Mr. Speaker, one of the greatest achievements of the Medicare program is the access to high-quality care it has brought to our Nation's seniors and disabled patients. This level of access is more likely to continue in light of this temporary fix. This legislation will allow Congress and the Center for Medicare Services the time to work together to finally find a more permanent solution by revamping the Medicare payment formula.

Doctors are the linchpin of the Medicare program. Let me say that a prescription drug plan is no benefit at all unless there are physicians willing to accept Medicare patients and to write those prescriptions. We need to pass this conference report and pass it now.

IRAQ WATCH

The SPEAKER pro tempore (Mr. TANCREDO). Under the Speaker's announced policy of January 7, 2003, the gentleman from Pennsylvania (Mr. HOEFFEL) is recognized for 60 minutes as the designee of the minority leader.

Mr. HOEFFEL. Mr. Speaker, I am here tonight with my colleagues to resume the Iraq Watch we have been conducting almost every week on the floor since sometime last spring. I believe it was April that we started speaking every week on the floor about our concerns about our policies in Iraq, trying to ask questions, trying to seek answers from the administration regarding the policies that we have been pursuing. Also, we have been suggesting changes that we would like to see in those policies. Of course, a lot has happened in Iraq since last spring, since the very impressive and brave work of our military men and women, the impressive victory that they won over Saddam Hussein, a victory no one thought was in doubt, but everyone was happy to see with minimal loss of life. We thought that the military performed with great courage and great skill.

Since that time, of course, it has become clear as the military battle was conducted, the planning for and the actual reconstruction and security of Iraq has been very poor. We have all been disappointed in the difficulties. The continuing casualties have been heartbreaking. The inability to get the American-appointed Governing Council to work effectively to try to bring the Iraqi society together has been disappointing. I think the Bush administration finally understands they need to change their plan for the ultimate creation of a new government and a representative democracy and hopefully a pluralistic society in Iraq.

Recently the administration has announced a change. They will no longer ask that the Governing Council in Iraq be responsible for writing a new constitution and holding new elections before America gives up authority for the reconstruction and the occupation of Iraq.

Instead, Mr. Speaker, we are now putting time limits on our occupation. We have apparently announced that we will give to the Iraqis the responsibility for their reconstruction next summer, although the President has been clear, and I agree with the President that we must continue to keep our forces there to make sure the tyrants and the murderers do not come back if the Iraqi democrats-to-be fail to move forward and secure their country.

The question is what is the best policy for this country? How do we best achieve a stable and secure Iraq, which is a goal all of us share? How do we best achieve the creation of a pluralistic society? How do we best establish a representative government based upon principles of self-government and tolerance and cooperation with the rights of women protected, with sharing of responsibility between the three great ethnic groups in Iraq, the Sunnis, the Shiites and the Kurds? How do we best achieve this in the face of a security threat in Iraq where our troops are not safe, where the guerilla attacks against our troops continue, where there is no Iraqi Army yet ready to step forward to provide for its own security, where the Iraqi police are not yet capable of providing for security domestically? How do we best proceed?

Some fear that the President after holding on to power and not allowing the Iraqi Governing Council or any other group to have any decision-making power, some fear that the President now is moving too quickly to give up power to the Iraqis; and I think it is a very legitimate question because if we leave too early, if we leave a vacuum in any way in Iraq, only bad things can happen, whether Saddam Hussein or his followers attempt to come back, whether a new group of lawless thugs attempt to take over, whether forces from other countries attempt to infiltrate and take over Iraq, none of that would be good. None of that would be good for the Western democracies; none of that would honor the sacrifices that brave young Americans have made, including those who have made the ultimate sacrifice and have died serving their country.

A premature departure from Iraq by this country could lead to a less stable country in Iraq. It could lead to a less stable Middle East. It could allow Iraq to become a haven for terrorists, which is a process, unfortunately, already under way, a haven which did not exist when Saddam Hussein was in power. As murderous a tyrant as he was, he operated in a secular fashion and did not apparently have relationships with the religious fundamentalists and extremists that form al Qaeda and other terrorist groups. But now with the instability in Iraq, it has become a magnet for those who want to attack Americans and disrupt the search for peace in the Middle East.

It is my view, Mr. Speaker, the way to best achieve our national goals in Iraq is to recognize that while this country is uniquely capable of winning military victories and facing down tyrants and working for the liberation of oppressed people, we are perhaps not best suited for nation-building; that we are probably not using our resources and our skills to our highest potential when we get bogged down in having to administer a country. It is admirable that we are willing to pay for the reconstruction or some of the reconstruction of a nation, and that is a great and wonderful American tradition of rebuilding vanquished foes and those less fortunate. But how do we best achieve this stabilized society, representative government and the creation of a pluralistic society where tolerance and economic freedom and personal liberty can flourish?

I am here tonight to say that I continue to believe that we should turn to our multinational organizations such as the United Nations, NATO, and others, to help us with nation-building in Iraq. I would point out that the United Nations is perhaps uniquely qualified through experience and organization to be responsible for reconstruction and nation-building.

In fact, this is what the United Nations was created to do in 1945. I fear that an almost irrational opposition to the notion and the concept of the United Nations from some on the other side of the aisle is preventing this country from calling upon the United Nations to assume this burden. There are many reasons why I would like to see this happen. It is not only to get out from under the financial burden of reconstructing Iraq on our own. It is partly that; it is also partly to share the responsibility for the reconstruction of Iraq. It is to share the credibility that is needed, to call upon other nations and multilateral organizations like the United Nations to provide the stability and take away from the equation some of the animosity that has wrongfully built up against America, but nonetheless exists in some part of the world.

□ 2145

Frankly, the United Nations is designed to do this kind of work. It is designed to relieve the United States from taking on all of the burden of reconstructing a country and building a new Nation. If we turn to the United Nations, we will still be the senior partner. We pay 25 percent of the bills of the United Nations. We will still have tremendous influence over what happens, but we would be in a position where the responsibility and accountability and the burden of reconstruction would be shared with an organization that is created to do that very thing.

Secondly, I do not believe, Mr. Speaker, that anyone, the United States, the United Nations, or anyone else, will have success in the stabilization of Iraq, not the least of which I would include the Iraqi Governing Council itself, unless we establish security in Iraq, and that has not been done. Again, I think it is asking too much of our American military to become a long-term occupying power, to have our young men and women serving in what, in parts of Iraq, seems to be, literally, a shooting gallery, with 20 or 25 daily attacks on American Forces and our Coalition Forces. We are not in a position to have secured Iraq. We clearly need more troops to do that. Yet, in my view, it should not be America's burden to send more troops.

So I would say that it is by far the best strategy to turn to NATO, the North Atlantic Treaty Organization, which is a military organization, to provide security in Iraq. NATO, of course, historically never fired a shot, was designed as a defensive alliance to keep the world safe from any hostility from the Soviet Union. In the conflict in Kosovo, the NATO forces were used for the first time out of the traditional confines of Europe, or at least on the southern stretches of Europe, used for the first time in a proactive way to defeat another tyrant, another dictator, Milosevic, in Kosovo. And NATO performed brilliantly and was able to liberate that country from the abuses of that dictator and has also now moved into Afghanistan to take over some of the security functions in that country. I believe that NATO would be the appropriate international organization to provide security in Iraq while we turn to the United Nations to take primary responsibility for the reconstruction of Iraq.

Now, none of this will happen, Mr. Speaker, none of this will happen until the United States is willing to give up some authority in Iraq. We cannot continue to call all of the shots in Iraq and expect our traditional allies to send troops or money or advice or anything else. It is time for us not just to put Iraqis back in charge, because it is not yet clear Iraqis are able to be back in charge, particularly, with the insecure conditions that exist there; but it is time for us, in concert with our traditional allies, in concert with international organizations that we created at the end of the Second World War, that we established for the very purpose of Nation-building. Nation-building was not a phrase then, it is a newer phrase, but the concept is exactly why NATO was established, and, particularly, why the United Nations was established. It is time for us to use our diplomatic skill to give up the necessary authority and responsibility, to share the obligations with these two international organizations, so that we can more quickly and more effectively and more safely stabilize Iraq, establish a pluralistic society, and move them towards self-government.

Now, Mr. Speaker, I would like to turn to my colleague, the gentleman from Massachusetts (Mr. DELAHUNT), one of the senior members of the House Committee on International Relations and a founding member of Iraq Watch, my good friend.

Mr. DELAHUNT. Mr. Speaker, I thank the gentleman. It is good to be here with my colleague tonight and share a few observations regarding this situation in Iraq. Also, I think at some point in time, I think it is necessary to present some information to the American people and to those who are listening here tonight relative to what is transpiring in Afghanistan.

I think to sum up what the gentleman said, one only has to look at the cover of the November 3 edition of Newsweek magazine, and it is entitled, "Bush's $87 Billion Mess. Waste, Chaos, and Cronyism. The Real Cost of Rebuilding Iraq."

It has become a matter of concern, as the gentleman well knows, not only to Members on this side of the aisle, Democrats, but clearly to our colleagues on the Republican side, particularly in the United States Senate, because if there is any term that best characterizes what is occurring, it is chaos.

Mr. Speaker, in our previous efforts in terms of Iraq Watch, we discussed the lack of post-major combat phase planning. And again, that opinion was shared by many, most specifically, the chairman of the Senate Foreign Relations Committee, RICHARD LUGAR who, in fact, had written an article that I thought was very incisive and appeared in the Washington Post. But not only do we not have a plan, but the plan seems to change almost on a daily basis.

If my colleagues remember, I think it was, in fact, a colleague of ours here in the House, a senior Republican Member of the House Committee on International Relations, the gentleman from Iowa (Mr. LEACH), highly-regarded and well-respected by all Members, who implored the President to establish, once and for all, who is in charge of whatever plan may or may not exist out there. Initially, Jay Garner, a former general, was dispatched to Iraq to work with Iraqis that were favorably disposed to the United States to begin the process of rebuilding. And, after a relatively short period of time, there was a change there. And L. Paul Bremer became, if you will, the viceroy of Iraq. Mr. Bremer indicated that his boss to whom he reported directly was the Secretary of Defense Mr. Rumsfeld. Yet, several months thereafter, there was an announcement from the White House that in fact it was the National Security Adviser, Condoleezza Rice, who was vested with the responsibility of coordinating the plan for Iraq. Of course, recently we learn that Mr. Bremer, because of the deteriorating situation in Iraq, either reached out or was summonsed by the White House for a special meeting directly with the President.

Mr. Speaker, I think it is important that there be one individual that can be held accountable, other than the President, for the shaping of this policy that means so much to the American people with our sons and daughters tragically dying there on an all-too-frequent basis, and to the American taxpayers who were asked by this White House to appropriate some $87 billion on top of the $79 billion that we have already spent in Iraq to create security in Iraq and to rebuild Iraq, if you will, to reconstruct Iraq. Many of us on this side of the aisle were adamantly opposed, primarily based on the fact that this money was not in the form of a loan, but was a gift to Iraq, a nation with incredible resources, some of the largest reserves in terms of energy anywhere in the world, second only to Saudi Arabia. And hopefully, at some time in the not-too-distant future, would clearly be able to repay the American taxpayers for the sacrifices that they are making now while we are dealing with these burgeoning deficits that will at some point in time be a severe drag on our economy.

But not only do we have a confusion in terms of who is in charge, but we have had a series of different plans. It would appear now that the most recent plan is what I would describe as the French plan, the plan that France suggested would be the most fruitful initiative in terms of bringing stability and rebuilding Iraq. I find that rather ironic, given our recent rather divisive relationship with France.

Mr. HOEFFEL. Mr. Speaker, the gentleman refers to the latest plan as the French plan. The New York Times on Sunday, in looking at the plan that they characterize as throwing the problem to the Iraqis, called it the "hot potato plan." French, hot potato french fries perhaps, whatever.

Mr. DELAHUNT. Mr. Speaker, maybe this was a hot french fries plan; I honestly do not know.

I notice we have been joined by the gentleman from Ohio (Mr. STRICKLAND), our friend, who is also a member of our Iraq Watch group. But I think what is difficult to accept is that what we have now achieved is the expenditure of billions of dollars of American taxpayers' money. Of course, the White House made note of the fact that there were other international donors in a conference in Madrid. But what I thought was particularly noticeable in Madrid was that not a single donor there, with the exception of the Japanese, provided gifts, outright grants like this institution did and like this White House did, but no, they decided they would loan the money so that their people would be repaid rather than our people who are carrying the entire burden.

But here we are, we have suffered, and let us be very candid and frank: We have suffered a loss of prestige all over the world. One only has to turn to nightly news shows. Leading the news now are the preparations in Great Britain for the visit of our President, President Bush who, according to the most recent polls is viewed negatively by our ally, the English people, by 60 percent. Sixty percent of the English people disapprove of President Bush. Whether one is a Democrat or whether one is a Republican, that is painful to us. That is painful to us. We do not wish our President to be viewed as negative by our ally. And recently during the course of a hearing on the Subcommittee on Latin America, data was put forward that 87 percent of our neighbors here in this hemisphere disapprove of our President. Again, that pains us all.

□ 2200

That pains us all.

Mr. HOEFFEL. Mr. Speaker, may I interrupt the gentleman from Massachusetts (Mr. DELAHUNT) again?

There was additional polling information made available over the weekend from a European pollster, I do not know the name, saying that a majority of citizens in virtually every European country except, I believe, Italy, view the United States as the most likely country to start a war or to create instability. Now, I reject that view completely. We are the peacemakers and we are not the war makers; but I wanted to emphasize the gentleman's point that something has gone wrong with the way we are viewed by our friends around the world, let alone how we are viewed by our enemies. I am not so concerned about how the enemies look at us, but when the Western European democracies have a negative view of our President and our country, a negative view that I do not share, but that they have come to that conclusion, something is dramatically wrong.

Mr. Speaker, would the gentleman from Massachusetts (Mr. DELAHUNT) mind if we bring our colleague into the conversation?

Mr. DELAHUNT. Mr. Speaker, I would welcome our friend, the gentleman from Ohio (Mr. STRICKLAND).

Mr. STRICKLAND. Mr. Speaker, it is good to be with you this evening. I was asked a few days ago by a reporter in my district why the emphasis on what has gone wrong in Iraq. The question was phrased in this way: Should you not be concerned about the future and what we do next? And my response was this: The same people who are in charge of planning for the future are the people who have gotten us to the point where we are now. And unless we look at how we got into this situation, unless we scrutinize the decision-makers who brought us to this point, we cannot have confidence that we are being taken in the right direction as far as the future is concerned.

If I could just say a word about the $87 billion that my friend referred to earlier. I think the American people need to know that if we were to take the 435 congressional districts in this country, and we were to divide $87 billion by the 435 congressional districts, what we would come out with is $200 million that could be spent in every congressional district in this country for the needs that exist back home, for the jobless people, for the children who do not have health care, for the older people who do not have prescription drugs.

Mr. DELAHUNT. And, Mr. Speaker, for our veterans.

Mr. STRICKLAND. For our veterans. And that leads me to the fact that we are underfunding veterans health care by $1.8 billion. $1.8 billion. We are sending $87 billion to Iraq in addition to what we have already spent this year, and we are being so stingy with our veterans that we are underfunding their health care by $1.8 billion.

And the American people need to know that over in the Senate they passed an amendment to add an additional $1.3 billion of that $1.8 billion shortfall. And the very day that amendment passed the Senate, the White House put out a statement opposing it. Now, think of that. Here we have a President, we have a President who has asked for $87 billion for Iraq and takes active opposition toward the efforts in this Congress to give an additional $1.8 billion to our veterans. I mean, I think that is shocking; I think it is something the American people would object to. And they need to know about that.

But I want to talk about one other thing, if I can, in regard to this war effort, and it is something that I have talked about and I think others have talked about on this floor before. But it is something that the American people need to know about. As our soldiers continue to die on a daily basis in Iraq, I think Americans have a right to ask for answers from the President, from our Secretary of Defense, from the Pentagon: Why do all of our troops who are fighting for us this very moment in Iraq not have the best protective armor available? When will this armor be available to all of our soldiers? Why were soldiers sent into battle with these cheap, Vietnam-era flak jackets that are not capable of stopping bullets?

I have asked the Secretary of Defense, Mr. Rumsfeld, to provide answers as to how many American soldiers have been killed or have been seriously wounded in part because they were not adequately protected. And I have asked the Secretary to commit that we will not provide this protection to foreign troops until every, every American soldier in harm's way is so protected.

Somebody needs to be held accountable for this. We had months to prepare for this war, months during which we knew we were likely to be sending young Americans into harm's way. And yet we did so without giving them this protection. Somebody ought to be held responsible. Either the President or Secretary Rumsfeld or some lower-level individual apparently made the decision that this was not a priority. And I believe American soldiers have lost their lives because of this failure to plan, failure to set appropriate priorities. And who is going to be helped accountable, and when is the situation going to be altered?

Americans need to know that as we sit in our homes and watch TV, and those of us who work in this Chamber are here, we carry out our daily lives, that there are young Americans over there in tanks and in Humvees and walking patrols that do not have the most basic protection, this body armor that is capable of stopping bullets. Why do they not have that protection?

Mr. DELAHUNT. Mr. Speaker, would the gentleman from Ohio (Mr. STRICKLAND) yield for just a moment.

I met with families of Reservists and National Guard, military that are serving in Iraq currently. They have been trained as a transportation unit. They are now serving in a different role that exposes them to great danger. They are using their own equipment, trucks that have no armor protection, that are open, that leave these men and women on the back of what I would call a large pickup vehicle as a sitting target. These families were outraged. One actually had to go to a military hardware store, presumably, to purchase for their son a $900 kevlar suit because the parents simply could not sleep at night. And it cost that family $400 to send it via the United States Post Office.

Mr. STRICKLAND. General Myers and others have been widely quoted in the press as saying this is not a money problem; it is a supply problem. Well, it is a supply problem because this war was under way for almost 7 months before the first request came to this Congress for resources to provide this protection. But even beyond that, I got a call in my office, week before last, from a company that told me they had 30,000 of these plates in stock, plates that meet specifications. Because they say they also provide them to our Army Rangers.

I do not know how those responsible can sleep at night. They ought to stay up until they solve this problem.

I just met with a young soldier back in my district who was wounded by shrapnel. He told me that he sees no way that this Pentagon commitment to have these vests delivered to all of our troops by December is going to be possible. He says there are thousands of troops over there without this most basic protection.

Now, how can we trust these people to tell us what is the best course of action for the future of this war in Iraq when they have been so incompetent and negligent in providing our troops with this most basic protection?

Mr. DELAHUNT. And yet, Mr. Speaker, they would criticize those who ask those questions and instead put forth, if you will, a PR campaign to say what is right in Iraq. But it is time, I believe, to listen to the troops who give us insight. We all know, for example, because we travel abroad and oftentimes we visit our troops, that these trips are very carefully structured so that only those things the civilian leadership of the Department of Defense wants us to hear is provided us.

If I could just indulge my two friends for a moment. Back in mid-October there was a report in The Washington Post and it is entitled, "Many Troops Dissatisfied, Iraq Poll Finds." A broad survey of U.S. troops in Iraq found that half of those questioned described their unit's morale as low and their training as insufficient and said they do not plan to reenlist. Now, this was not a poll conducted by The Washington Post or the New York Times, or the Los Angeles Times or the Boston Globe. It was a poll that was conducted by the Stars and Stripes newspaper, a newspaper funded by our Pentagon, our Department of Defense.

The findings, if I can just go on, the findings drawn from 1,900 questionnaires presented to U.S. servicemembers throughout Iraq conflict with statements by military commanders and Bush administration officials that portray the deployed troops as highly spirited and generally well prepared. Though not obtained through scientific methods, the survey results indicate that prolonged tours in Iraq are wearing down a significant portion of the U.S. force and threatening to provoke a sizable exodus from military service. And yet the paper quotes General Sanchez, commander of the U.S. forces in Iraq, saying in a September 9 interview for this particular series, "There is no moral problem."

Of course, as we know, the Bush administration has launched this campaign. But the Stars and Stripes, the military's paper, raised questions about what visiting dignitaries, such as us and our other colleagues who have visited Iraq, get to see. Let me quote again from the Stars and Stripes: "Many soldiers, including several officers, allege that VIP visits from the Pentagon and Capitol Hill are only given hand-picked troops to meet with during their tours of Iraq," the newspaper said in its interview with General Sanchez.

The phrase "dog and pony show" is usually used. Some troops even go so far as to say they have been ordered not to talk to VIPs because leaders are afraid of what they might say.

Let me say it is about time for the unvarnished truth to be presented to the American people. And that is what we attempt to do during the course of this hour, of which we have had many.

Mr. STRICKLAND. Mr. Speaker, if I could just say a word about the troops. I spent some time last weekend with two young soldiers from my district, both of whom have been wounded, and they have come back for medical treatment. They are good, loyal, patriotic soldiers. They are going ,to do their duty. They care about Iraq. They care about the Iraqi people. They care about the final outcome in that country. The problem is not with our troops. These are wonderful young Americans who are simply doing what they are called upon to do. And they are doing it well.

The problem, as I see it, exists with the decision-makers, those who sit here in the safety of the offices in Washington D.C. and elsewhere and make decisions which affect real lives. I had breakfast in a restaurant in Ohio a couple of weekends ago. As I was finishing my breakfast, I struck up a conversation with a young woman sitting in a booth next to me. She was leaving Ohio as soon as she finished her breakfast and driving to Baltimore to meet her husband, who is stationed in Africa and who is coming home, who is coming home for a 2-week leave. And then she told me that she had just gotten her orders and she is being deployed to Iraq. The children are going to be taken care of by the grandparents.

□ 2215

I just share that with you to emphasize the fact that we are talking about real people, real mothers and dads, real sweethearts, real sons and daughters. These are real Americans, and decisions are being made to expose them to the most incredible danger.

The question is, is this war being pursued in a way that is rationale and reasonable? I still wish that this President, this administration would go to the world community, would seek out the help that we need, would internationalize the effort in Iraq, would stop our soldiers being the only targets basically.

We hear talk about a coalition. Let us face it. There are a handful basically of coalition forces in Iraq. Most of the young people there are being killed and injured and shot at are American troops; and we need to internationalize our effort, spread this responsibility and not just simply allow our kids, our children for the next, no one knows for sure. The most recent estimate I have heard is that at least for 5 years our troops are likely to be there, and I just do not think the American people want this to continue as it is unfolding before our eyes. Every day we see it happening.

Mr. HOEFFEL. Mr. Speaker, I agree with the gentleman. The problem is not with our troops. It is with the policymakers and our planners here in Washington.

I referred earlier to the New York Times article this Sunday. They entitled it "Iraq Goes Sour." And I take issue, actually, with one of the claims they make here. They blame the intelligence agencies for the failures to understand what was actually happening in Iraq. The editorial said, for example, the Central Intelligence Agency we now realize had no idea what was going on inside Iraq. They continue, the CIA's estimate regarding weapons of mass destruction were basically worst-case scenarios of what the Hussein regime might have been up to in the interim, in 1998 when inspections were cut off.

They continue, that was apparently a mistake, if an understandable one. The reality I think is different. I think that while the intelligence agencies clearly did not get it right, they were telling the policymakers last fall before Congress voted on whether or not to authorize the war, they were telling the White House that there was great uncertainty about what Hussein had and what he did not have. We know that now. We did not know it then.

This past Spring, 6 months after we voted, and after the war was fought and won, at least according to the President's proclamation on May 1, at least the military's battle was won, if not the guerilla battle. The House Permanent Select Committee on Intelligence made available to rank and file members 18 or 20 boxes of intelligence information, most notably the Defense Intelligence Agency report of September 2002. And then the great summary report the national intelligence estimate of October of 2002. And I have read the executive summaries of those documents. It is very long, and I spent a couple of hours reading it. It would take days to read all of those boxes, but those summaries which are still classified are replete with uncertainties, with the agencies saying, well, we believe he has got this. We believe he has got that but we are not sure. He had this amount of weapons in the past and we are not quite sure where they are today.

They have made the case, as the Vice President has said, that Hussein was trying to do certain things, but they were full of uncertainty. And my objection is none of that uncertainty was communicated to Congress and to the American people. The President and all of his people, and I want to give an example in a second, told us with complete clarity and certainty that Hussein had these weapons. We knew where they were. We knew how much they weighed. We knew everything about them. We were going to get them and we could not trust him for another moment. And it is my view that it is not the intelligence agencies that failed, but the politicians.

Mr. DELAHUNT. Mr. Speaker, I thank the gentleman for yielding to me.

I cannot agree more. Ironically, in this week's edition of Newsweek magazine, there is an article that I would commend to all of our colleagues here in the House and to the viewing audience here tonight. This is very important to read. As one can see, there is a picture of the Vice President on the cover. It is entitled, "How Dick Cheney Sold the War. Why He Fell for Bad Intelligence and Pitched It to the President."

The Central Intelligence Agency, I daresay, made a solid effort from what information now appears to be back in the public domain. I think it is safe to conclude that key players led by the Vice President, supported by Secretary Rumsfeld, and Under Secretary Wolfowitz, and Under Secretary Fife, cherry-picked, if you will, those pieces of information that buttress their case and made unequivocal statement to the American people.

It is very fascinating when the American people and the United States Congress learn that there is a special covert group within the Department of Defense. And this is within the civilian leadership, called the Office for Special Plans that was running a parallel operation in terms of intelligence analysis. It was that group that was doing the cherry-picking. It was that group that got us into this war. They made unequivocal statements, like Secretary Rumsfeld, that those weapons of mass destruction, we know where they are. They are in Tikrit, in the west here and in the east here. And, of course, we have discovered after expending close to a billion dollars to just simply looking for them that they do not exist, much to our embarrassment and again our loss of prestige.

So I think it is important that those who attack the CIA often do it in a way that I think reveals their own political agenda. Again, demeaning the professionalism of the men and women that serve in the CIA is not the way to have a constructive debate about what we ought to occur, what we ought to be doing right now.

Mr. STRICKLAND. Mr. Speaker, I would just concur with the gentleman that that is a very interesting Newsweek article. I read it a few hours ago. It is very disturbing because it does lay out how under the Vice President's leadership, this Office of Special Plans collected their own information and drew their own conclusions, and then they use those conclusions to encourage the kind of action that occurred.

Now, the fact is that the President has finally admitted quite publicly, in spite of the Vice President's statement to the contrary, that there is no evidence that Iraq or Saddam Hussein was responsible for the attack upon our Nation on September 11, 2001. That is a very critical conclusion, I think, for us to have come to. Because given that and given the fact that we had weapons inspectors in Iraq and they were asking for more time, would not you think that if there is uncertainty about exactly what Saddam Hussein has or may have, that there is no evidence that he was involved in the direct attack upon our country, that we would have approached this situation a little more cautiously, a little more thoughtfully, that we would have expended the time that the inspectors were asking for.

If we had done that, it may have been possible. It may have been possible.

Mr. DELAHUNT. Again, this is a situation that is continuing today where a conclusion or an opinion or a predisposed policy is searching for facts.

Talking about the CIA, what prompted Paul Bremer to come to Washington, DC, was a new top secret CIA report from Iraq that growing numbers of Iraqis are concluding that the U.S.-led coalition can be defeated and a supporting the insurgents.

Again, I am quoting from a newspaper report, "The report paints a bleak picture of the political and security situation in Iraq and cautions that the U.S.-led drive to rebuild a country as a democracy could collapse."

The report's bleak tone and Bremer's private endorsement differ sharply with the upbeat public assessments that President Bush, his chief aids, and even Bremer are giving as part of an aggressive publicity campaign aimed at countering rising anxieties over increasing U.S. causalities in Iraq. Let us be honest with the American people. Remember in Vietnam what, I daresay, forced Lyndon Johnson to reassess his plans for reelection, was the fact that there was such a great divergence and disparity between the reality that was being presented to the American people and the reality on the ground.

Mr. HOEFFEL. Mr. Speaker, let me introduce our colleague who has been waiting patiently. The gentleman from Washington (Mr. MCDERMOTT).

Mr. MCDERMOTT. Mr. Speaker, I thank the gentleman for putting this special order together.

I think that it is very clear we now know that they wanted to go to war immediately after 9/11 in Iraq. They went to Afghanistan really because that was more obvious to people at that point, but they were clearly planning for a long time and they simply misled us about what was there.

Everybody understands that now. There is no mystery in this country or anywhere else in the world. The question is, What are we going to do now?

I picked up the Sunday morning newspaper and last Thursday I came back to Washington, DC and went out to MCI Center to a hockey game with a bunch of amputees from Walter Reed. The next day I went up there and walked through several of the wards. There are two pictures of the front page of young men who have been severely injured that I know. I have met them. These are young kids who did what their country asked them, and we honored them.

I told them I was there because I wanted to say thank you. But the fact is that that is exactly what happened in Vietnam. Young people went and died doing exactly what they were asked to do. It is the leadership that ought to have to pay the price and they ought to start paying it right now.

We have a President who simply will not get off the fact that he made a mistake. He simply went the wrong place. He should never have stopped the war on terror. He should have finished what was going on in Afghanistan and then perhaps you look later at something, but Afghanistan is as bad or worse than it was when we went in there.

We still have people dying there. One died yesterday from the State of Washington. And we continued to allow our young people, men and women, now to be killed in a war that makes no sense in the way it is being run. And the President will not admit it. The whole world has told him that. They told him on the 25th of February, ten million people marched in the streets this in this country. The President said, It is just a focus group. We are going to war.

Now, my belief is that we have to figure out how we get out and how we, with honor, get out of this thing. It is going to be very difficult to do that.

□ 2230

When they called Bremer back here in the other day, it was simply because they said, gee, it is 1 year to the election. How in the heck are we going to explain this mess at election time? We have got to end it. So we are now, in every decision that will be made, it will be made not about what is good for our troops or what is good for the Reservists or the Guard people or anybody else, but what is seen to be good for the President's reelection campaign.

I am afraid that unless the Congress raises some noise about this, we are going to see more people sacrificed in this process because they will not get the international community in. If the President would say tomorrow, I want Kofi Annan to take over the reconstruction and Kofi Annan to take over the military peacekeeping in the country, we will make a contribution as we have but we are not going to run it, things would begin to change dramatically.

This is viewed as an occupation. The actual choice of where do they go with their headquarters when they came into Baghdad, they went to the palaces that Saddam Hussein had built and they moved in, and they said to the people, this is where we belong; we are running the place. No Iraqi missed the message.

Mr. STRICKLAND. Mr. Speaker, if the good doctor will allow me to interject a thought here, the President tries to set this up as a two choice paradigm. We either do exactly what we are doing now or, as he says, we cut and run, as if there are no other options, but the gentleman is describing a third option. There may be a fourth or a fifth option. We ought to be looking at the situation, not just simply blindly pursuing a course of action that is resulting in more and more death.

Quite frankly, I resent it when the President refers to those of us who question his policies as those who want to cut and run. The last thing I want to do in Iraq is cut and run. We cannot cut and run, and I know not a single

Democrat who is suggesting that course of action, but that does not mean that we endorse his plan because his plan is getting us deeper and deeper and deeper into a quagmire. More and more young Americans are being killed, and even more are being seriously wounded. We cannot allow this situation to continue.

Mr. McDERMOTT. The hardest part about this is that the American people are not being told the truth. If we read the American newspapers, they are told there are only 5,000 in al Qaeda over in Iraq. If we read the European papers, they say 50,000. We do not see any bodies coming back. They have absolutely prohibited the press and the media from going out to Dover when the troops come back or to go to cemeteries when people are being buried. They are simply blinding the American people's eyes. In my view, the American people have to demand that they know what is going on, and I think there is really no excuse for what they have done except that they have to make the political campaign look better.

This is a mess. Everywhere in the world we look at the press, any country in the world we see the press. They have all analyzed the President made a big mistake. The French, in fact, were right. If people really want to understand what is going on here, go watch the movie The Battle of Algiers. The French went through exactly the same thing in Algeria. There has not been a country in the 20th century that invaded a sovereign country and came out whole. Everybody loses.

Whether we are talking about Vietnam or we are talking about Algeria or we are talking about Lebanon or we are talking about any of those countries, the people who invaded always back out with their tail between their legs, and that is where we are today. Those kids, we have still got them out on the line; hold on, kid; keep fighting; try and save yourself. The people behind them are making bad decisions, again and again and again. It is a terrifying thing, and I think the American people cannot let them be blinded from it. They have to begin to demand that they see what the truth is.

Mr. HOEFFEL. Mr. Speaker, I thank the gentleman for his comments.

I believe our hour is up. I thank all of my colleagues for taking part in Iraq Watch tonight, and we will be back next week.

RECESS

The SPEAKER pro tempore (Mr. TANCREDO). Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 10 o'clock and 35 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 0850

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HASTINGS of Washington) at 8 o'clock and 50 minutes a.m.

CONFERENCE REPORT ON H.R. 6

Mr. TAUZIN submitted the following conference report and statement on the bill (H.R. 6), to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes:

CONFERENCE REPORT (H. REPT. 108–375)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6), to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Energy Policy Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—ENERGY EFFICIENCY

Subtitle A—Federal Programs

Sec. 101. Energy and water saving measures in congressional buildings.
Sec. 102. Energy management requirements.
Sec. 103. Energy use measurement and accountability.
Sec. 104. Procurement of energy efficient products.
Sec. 105. Energy savings performance contracts.
Sec. 106. Energy savings performance contracts pilot program for nonbuilding applications.
Sec. 107. Voluntary commitments to reduce industrial energy intensity.
Sec. 108. Advanced Building Efficiency Testbed.
Sec. 109. Federal building performance standards.
Sec. 110. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.

Subtitle B—Energy Assistance and State Programs

Sec. 121. Low Income Home Energy Assistance Program.
Sec. 122. Weatherization assistance.
Sec. 123. State energy programs.
Sec. 124. Energy efficient appliance rebate programs.
Sec. 125. Energy efficient public buildings.
Sec. 126. Low income community energy efficiency pilot program.

Subtitle C—Energy Efficient Products

Sec. 131. Energy Star program.
Sec. 132. HVAC maintenance consumer education program.
Sec. 133. Energy conservation standards for additional products.
Sec. 134. Energy labeling.

Subtitle D—Public Housing

Sec. 141. Capacity building for energy-efficient, affordable housing.
Sec. 142. Increase of CDBG public services cap for energy conservation and efficiency activities.
Sec. 143. FHA mortgage insurance incentives for energy efficient housing.
Sec. 144. Public Housing Capital Fund.
Sec. 145. Grants for energy-conserving improvements for assisted housing.
Sec. 146. North American Development Bank.
Sec. 147. Energy-efficient appliances.
Sec. 148. Energy efficiency standards.
Sec. 149. Energy strategy for HUD.

TITLE II—RENEWABLE ENERGY

Subtitle A—General Provisions

Sec. 201. Assessment of renewable energy resources.
Sec. 202. Renewable energy production incentive.
Sec. 203. Federal purchase requirement.
Sec. 204. Insular areas energy security.
Sec. 205. Use of photovoltaic energy in public buildings.
Sec. 206. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, petroleum-based product substitutes, and other commercial purposes.
Sec. 207. Biobased products.

Subtitle B—Geothermal Energy

Sec. 211. Short title.
Sec. 212. Competitive lease sale requirements.
Sec. 213. Direct use.
Sec. 214. Royalties and near-term production incentives.
Sec. 215. Geothermal leasing and permitting on Federal lands.
Sec. 216. Review and report to Congress.
Sec. 217. Reimbursement for costs of NEPA analyses, documentation, and studies.
Sec. 218. Assessment of geothermal energy potential.
Sec. 219. Cooperative or unit plans.
Sec. 220. Royalty on byproducts.
Sec. 221. Repeal of authorities of Secretary to readjust terms, conditions, rentals, and royalties.
Sec. 222. Crediting of rental toward royalty.
Sec. 223. Lease duration and work commitment requirements.
Sec. 224. Advanced royalties required for suspension of production.
Sec. 225. Annual rental.
Sec. 226. Leasing and permitting on Federal lands withdrawn for military purposes.
Sec. 227. Technical amendments.

Subtitle C—Hydroelectric

PART I—ALTERNATIVE CONDITIONS

Sec. 231. Alternative conditions and fishways.

PART II—ADDITIONAL HYDROPOWER

Sec. 241. Hydroelectric production incentives.
Sec. 242. Hydroelectric efficiency improvement.
Sec. 243. Small hydroelectric power projects.
Sec. 244. Increased hydroelectric generation at existing Federal facilities.
Sec. 245. Shift of project loads to off-peak periods.
Sec. 246. Corps of Engineers hydropower operation and maintenance funding.
Sec. 247. Limitation on certain charges assessed to the Flint Creek Project, Montana.
Sec. 248. Reinstatement and transfer.

TITLE III—OIL AND GAS

Subtitle A—Petroleum Reserve and Home Heating Oil

Sec. 301. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs.
Sec. 302. National Oilheat Research Alliance.

Subtitle B—Production Incentives

Sec. 311. Definition of Secretary.
Sec. 312. Program on oil and gas royalties in-kind.
Sec. 313. Marginal property production incentives.
Sec. 314. Incentives for natural gas production from deep wells in the shallow waters of the Gulf of Mexico.
Sec. 315. Royalty relief for deep water production.
Sec. 316. Alaska offshore royalty suspension.
Sec. 317. Oil and gas leasing in the National Petroleum Reserve in Alaska.
Sec. 318. Orphaned, abandoned, or idled wells on Federal land.
Sec. 319. Combined hydrocarbon leasing.
Sec. 320. Liquified natural gas.
Sec. 321. Alternate energy-related uses on the Outer Continental Shelf.
Sec. 322. Preservation of geological and geophysical data.
Sec. 323. Oil and gas lease acreage limitations.
Sec. 324. Assessment of dependence of State of Hawaii on oil.
Sec. 325. Deadline for decision on appeals of consistency determination under the Coastal Zone Management Act of 1972.
Sec. 326. Reimbursement for costs of NEPA analyses, documentation, and studies.
Sec. 327. Hydraulic fracturing.
Sec. 328. Oil and gas exploration and production defined.
Sec. 329. Outer Continental Shelf provisions.
Sec. 330. Appeals relating to pipeline construction or offshore mineral development projects.
Sec. 331. Bilateral international oil supply agreements.
Sec. 332. Natural gas market reform.
Sec. 333. Natural gas market transparency.

Subtitle C—Access to Federal Land

Sec. 341. Office of Federal Energy Project Coordination.
Sec. 342. Federal onshore oil and gas leasing and permitting practices.
Sec. 343. Management of Federal oil and gas leasing programs.
Sec. 344. Consultation regarding oil and gas leasing on public land.
Sec. 345. Estimates of oil and gas resources underlying onshore Federal land.
Sec. 346. Compliance with Executive Order 13211; actions concerning regulations that significantly affect energy supply, distribution, or use.
Sec. 347. Pilot project to improve Federal permit coordination.
Sec. 348. Deadline for consideration of applications for permits.
Sec. 349. Clarification of fair market rental value determinations for public land and Forest Service rights-of-way.
Sec. 350. Energy facility rights-of-way and corridors on Federal land.
Sec. 351. Consultation regarding energy rights-of-way on public land.
Sec. 352. Renewable energy on Federal land.
Sec. 353. Electricity transmission line right-of-way, Cleveland National Forest and adjacent public land, California.
Sec. 354. Sense of Congress regarding development of minerals under Padre Island National Seashore.
Sec. 355. Encouraging prohibition of off-shore drilling in the Great Lakes.
Sec. 356. Finger Lakes National Forest withdrawal.
Sec. 357. Study on lease exchanges in the Rocky Mountain Front.
Sec. 358. Federal coalbed methane regulation.
Sec. 359. Livingston Parish mineral rights transfer.

Subtitle D—Alaska Natural Gas Pipeline

Sec. 371. Short title.
Sec. 372. Definitions.
Sec. 373. Issuance of certificate of public convenience and necessity.
Sec. 374. Environmental reviews.
Sec. 375. Pipeline expansion.
Sec. 376. Federal Coordinator.
Sec. 377. Judicial review.
Sec. 378. State jurisdiction over in-State delivery of natural gas.
Sec. 379. Study of alternative means of construction.
Sec. 380. Clarification of ANGTA status and authorities.
Sec. 381. Sense of Congress concerning use of steel manufactured in North America negotiation of a project labor agreement.
Sec. 382. Sense of Congress and study concerning participation by small business concerns.
Sec. 383. Alaska pipeline construction training program.
Sec. 384. Sense of Congress concerning natural gas demand.
Sec. 385. Sense of Congress concerning Alaskan ownership.
Sec. 386. Loan guarantees.

TITLE IV—COAL

Subtitle A—Clean Coal Power Initiative

Sec. 401. Authorization of appropriations.
Sec. 402. Project criteria.
Sec. 403. Report.
Sec. 404. Clean coal Centers of Excellence.

Subtitle B—Clean Power Projects

Sec. 411. Coal technology loan.
Sec. 412. Coal gasification.
Sec. 413. Integrated gasification combined cycle technology.
Sec. 414. Petroleum coke gasification.
Sec. 415. Integrated coal/renewable energy system.
Sec. 416. Electron scrubbing demonstration.

Subtitle C—Federal Coal Leases

Sec. 421. Repeal of the 160-acre limitation for coal leases.
Sec. 422. Mining plans.
Sec. 423. Payment of advance royalties under coal leases.
Sec. 424. Elimination of deadline for submission of coal lease operation and reclamation plan.
Sec. 425. Amendment relating to financial assurances with respect to bonus bids.
Sec. 426. Inventory requirement.
Sec. 427. Application of amendments.

Subtitle D—Coal and Related Programs

Sec. 441. Clean air coal program.

TITLE V—INDIAN ENERGY

Sec. 501. Short title.
Sec. 502. Office of Indian Energy Policy and Programs.
Sec. 503. Indian energy.
Sec. 504. Four Corners transmission line project.
Sec. 505. Energy efficiency in federally assisted housing.
Sec. 506. Consultation with Indian tribes.

TITLE VI—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

Sec. 601. Short title.
Sec. 602. Extension of indemnification authority.
Sec. 603. Maximum assessment.
Sec. 604. Department of Energy liability limit.
Sec. 605. Incidents outside the United States.
Sec. 606. Reports.
Sec. 607. Inflation adjustment.
Sec. 608. Treatment of modular reactors.
Sec. 609. Applicability.
Sec. 610. Prohibition on assumption by United States Government of liability for certain foreign incidents.
Sec. 611. Civil penalties.

Subtitle B—General Nuclear Matters

Sec. 621. Licenses.
Sec. 622. NRC training program.
Sec. 623. Cost recovery from Government agencies.
Sec. 624. Elimination of pension offset.
Sec. 625. Antitrust review.
Sec. 626. Decommissioning.
Sec. 627. Limitation on legal fee reimbursement.
Sec. 628. Decommissioning pilot program.
Sec. 629. Report on feasibility of developing commercial nuclear energy generation facilities at existing Department of Energy sites.
Sec. 630. Uranium sales.
Sec. 631. Cooperative research and development and special demonstration projects for the uranium mining industry.
Sec. 632. Whistleblower protection.
Sec. 633. Medical isotope production.
Sec. 634. Fernald byproduct material.
Sec. 635. Safe disposal of greater-than-class C radioactive waste.
Sec. 636. Prohibition on nuclear exports to countries that sponsor terrorism.
Sec. 637. Uranium enrichment facilities.
Sec. 638. National uranium stockpile.

Subtitle C—Advanced Reactor Hydrogen Cogeneration Project

Sec. 651. Project establishment.
Sec. 652. Project definition.
Sec. 653. Project management.
Sec. 654. Project requirements.
Sec. 655. Authorization of appropriations.

Subtitle D—Nuclear Security

Sec. 661. Nuclear facility threats.
Sec. 662. Fingerprinting for criminal history record checks.
Sec. 663. Use of firearms by security personnel of licensees and certificate holders of the Commission.
Sec. 664. Unauthorized introduction of dangerous weapons.
Sec. 665. Sabotage of nuclear facilities or fuel.
Sec. 666. Secure transfer of nuclear materials.
Sec. 667. Department of Homeland Security consultation.
Sec. 668. Authorization of appropriations.

TITLE VII—VEHICLES AND FUELS

Subtitle A—Existing Programs

Sec. 701. Use of alternative fuels by dual-fueled vehicles.
Sec. 702. Neighborhood electric vehicles.
Sec. 703. Credits for medium and heavy duty dedicated vehicles.
Sec. 704. Incremental cost allocation.
Sec. 705. Alternative compliance and flexibility.
Sec. 706. Review of Energy Policy Act of 1992 programs.
Sec. 707. Report concerning compliance with alternative fueled vehicle purchasing requirements.

Subtitle B—Hybrid Vehicles, Advanced Vehicles, and Fuel Cell Buses

PART 1—HYBRID VEHICLES

Sec. 711. Hybrid vehicles.

PART 2—ADVANCED VEHICLES

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Sec. 722. Pilot program.
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PART 3—FUEL CELL BUSES
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Sec. 742. Program for replacement of certain school buses with clean school buses.
Sec. 743. Diesel retrofit program.
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Sec. 752. Mobile emission reductions trading and crediting.
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Sec. 772. Revised considerations for decisions on maximum feasible average fuel economy.
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Sec. 916. Reciprocating power.
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Sec. 919. Bioenergy programs.
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Sec. 921. Miscellaneous projects.
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Sec. 923. Study of marine renewable energy options.
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Sec. 926. Advanced fuel cycle initiative.
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Sec. 957. Nanoscale science and engineering research, development, demonstration, and commercial application.
Sec. 958. Advanced scientific computing for energy missions.
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Sec. 977. Interagency cooperation.
Sec. 978. Technology infrastructure program.
Sec. 979. Reprogramming.
Sec. 980. Construction with other laws.
Sec. 981. Report on research and development program evaluation methodologies.
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Sec. 983. Report on equal employment opportunity practices.
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Sec. 985. Report on mobility of scientific and technical personnel.
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Sec. 1263. Repeal of the Public Utility Holding Company Act of 1935.
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Subtitle G—Market Transparency, Enforcement, and Consumer Protection

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Subtitle H—Merger Reform

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PART I—RESIDENTIAL AND BUSINESS PROPERTY

Sec. 1301. Credit for residential energy efficient property.
Sec. 1302. Extension and expansion of credit for electricity produced from certain renewable resources.
Sec. 1303. Credit for business installation of qualified fuel cells.
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Sec. 1306. Energy credit for combined heat and power system property.
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Sec. 1308. Energy efficient commercial buildings deduction.
Sec. 1309. Three-year applicable recovery period for depreciation of qualified energy management devices.
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PART II—FUELS AND ALTERNATIVE MOTOR VEHICLES

Sec. 1311. Repeal of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.
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Sec. 1316. Nonapplication of export exemption to delivery of fuel to motor vehicles removed from United States.
Sec. 1317. Repeal of phaseouts for qualified electric vehicle credit and deduction for clean fuel-vehicles.
Sec. 1318. Alternative motor vehicle credit.
Sec. 1319. Modifications of deduction for certain refueling property.

Subtitle B—Reliability

Sec. 1321. Natural gas gathering lines treated as 7-year property.
Sec. 1322. Natural gas distribution lines treated as 15-year property.
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Sec. 1324. Expensing of capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
Sec. 1325. Credit for production of low sulfur diesel fuel.
Sec. 1326. Determination of small refiner exception to oil depletion deduction.
Sec. 1327. Sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy.
Sec. 1328. Modifications to special rules for nuclear decommissioning costs.
Sec. 1329. Treatment of certain income of cooperatives.
Sec. 1330. Arbitrage rules not to apply to prepayments for natural gas.

Subtitle C—Production

PART I—OIL AND GAS PROVISIONS

Sec. 1341. Oil and gas from marginal wells.
Sec. 1342. Temporary suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income limit with respect to marginal production.
Sec. 1343. Amortization of delay rental payments.
Sec. 1344. Amortization of geological and geophysical expenditures.
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PART II—ALTERNATIVE MINIMUM TAX PROVISIONS

Sec. 1346. New nonrefundable personal credits allowed against regular and minimum taxes.
Sec. 1347. Business related energy credits allowed against regular and minimum tax.
Sec. 1348. Temporary repeal of alternative minimum tax preference for intangible drilling costs.

PART III—CLEAN COAL INCENTIVES

Sec. 1351. Credit for clean coal technology units.
Sec. 1352. Expansion of amortization for certain pollution control facilities.
Sec. 1353. 5-year recovery period for eligible integrated gasification combined cycle technology unit eligible for credit.

PART IV—HIGH VOLUME NATURAL GAS PROVISIONS

Sec. 1355. High volume natural gas pipe treated as 7-year property.
Sec. 1356. Extension of enhanced oil recovery credit to high volume natural gas facilities.

Subtitle D—Additional Provisions

Sec. 1361. Extension of accelerated depreciation benefit for energy-related businesses on Indian reservations.
Sec. 1362. Payment of dividends on stock of cooperatives without reducing patronage dividends.
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Sec. 1364. Ceiling fans.
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Sec. 1366. Brownfields demonstration program for qualified green building and sustainable design projects.

TITLE XIV—MISCELLANEOUS

Subtitle A—Rural and Remote Electricity Construction

Sec. 1401. Denali Commission programs.
Sec. 1402. Rural and remote community assistance.

Subtitle B—Coastal Programs

Sec. 1411. Royalty payments under leases under the Outer Continental Shelf Lands Act.
Sec. 1412. Domestic offshore energy reinvestment.

Subtitle C—Reforms to the Board of Directors of the Tennessee Valley Authority

Sec. 1431. Change in composition, operation, and duties of the board of directors of the Tennessee Valley Authority.
Sec. 1432. Change in manner of appointment of staff.
Sec. 1433. Conforming amendments.
Sec. 1434. Appointments; effective date; transition.

Subtitle D—Other Provisions

Sec. 1441. Continuation of transmission security order.
Sec. 1442. Review of agency determinations.
Sec. 1443. Attainment dates for downwind ozone nonattainment areas.
Sec. 1444. Energy production incentives
Sec. 1445. Use of granular mine tailings.

TITLE XV—ETHANOL AND MOTOR FUELS

Subtitle A—General Provisions

Sec. 1501. Renewable content of motor vehicle fuel.
Sec. 1502. Fuels safe harbor.
Sec. 1503. Findings and MTBE transition assistance.
Sec. 1504. Use of MTBE.
Sec. 1505. National Academy of Sciences review and presidential determination.
Sec. 1506. Elimination of oxygen content requirement for reformulated gasoline.
Sec. 1507. Analyses of motor vehicle fuel changes.
Sec. 1508. Data collection.
Sec. 1509. Reducing the proliferation of State fuel controls.
Sec. 1510. Fuel system requirements harmonization study.
Sec. 1511. Commercial byproducts from municipal solid waste and cellulosic biomass loan guarantee program.
Sec. 1512. Resource center.
Sec. 1513. Cellulosic biomass and waste-derived ethanol conversion assistance.
Sec. 1514. Blending of compliant reformulated gasolines.

Subtitle B—Underground Storage Tank Compliance

Sec. 1521. Short title.
Sec. 1522. Leaking underground storage tanks.
Sec. 1523. Inspection of underground storage tanks.
Sec. 1524. Operator training.
Sec. 1525. Remediation from oxygenated fuel additives.
Sec. 1526. Release prevention, compliance, and enforcement.
Sec. 1527. Delivery prohibition.
Sec. 1528. Federal facilities.
Sec. 1529. Tanks on tribal lands.
Sec. 1530. Future release containment technology.
Sec. 1531. Authorization of appropriations.
Sec. 1532. Conforming amendments.
Sec. 1533. Technical amendments.

TITLE XVI—STUDIES
Sec. 1601. Study on inventory of petroleum and natural gas storage.
Sec. 1602. Natural gas supply shortage report.
Sec. 1603. Split-estate Federal oil and gas leasing and development practices.
Sec. 1604. Resolution of Federal resource development conflicts in the Powder River Basin.
Sec. 1605. Study of energy efficiency standards.
Sec. 1606. Telecommuting study.
Sec. 1607. LIHEAP report.
Sec. 1608. Oil bypass filtration technology.
Sec. 1609. Total integrated thermal systems.
Sec. 1610. University collaboration.
Sec. 1611. Reliability and consumer protection assessment.

TITLE I—ENERGY EFFICIENCY

Subtitle A—Federal Programs

SEC. 101. ENERGY AND WATER SAVING MEASURES IN CONGRESSIONAL BUILDINGS.

(a) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.) is amended by adding at the end the following:

“SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN CONGRESSIONAL BUILDINGS.

“(a) IN GENERAL.—The Architect of the Capitol—

“(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the ‘plan’) for all facilities administered by Congress (referred to in this section as ‘congressional buildings’) to meet the energy performance requirements for Federal buildings established under section 543(a)(1); and

“(2) shall submit the plan to Congress, not later than 180 days after the date of enactment of this section.

“(b) PLAN REQUIREMENTS.—The plan shall include—

“(1) a description of the life cycle cost analysis used to determine the cost-effectiveness of proposed energy efficiency projects;

“(2) a schedule of energy surveys to ensure complete surveys of all congressional buildings every 5 years to determine the cost and payback period of energy and water conservation measures;

“(3) a strategy for installation of life cycle cost-effective energy and water conservation measures;

“(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

“(5) information packages and ‘how-to’ guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

“(c) ANNUAL REPORT.—The Architect of the Capitol shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

“(1) energy expenditures and savings estimates for each facility;

“(2) energy management and conservation projects; and

“(3) future priorities to ensure compliance with this section.”.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the National Energy Conservation Policy Act is amended by adding at the end of the items relating to part 3 of title V the following new item:

“Sec. 552. Energy and water savings measures in congressional buildings.”.

(c) REPEAL.—Section 310 of the Legislative Branch Appropriations Act, 1999 (2 U.S.C. 1815), is repealed.

(d) ENERGY INFRASTRUCTURE.—The Architect of the Capitol, building on the Master Plan Study completed in July 2000, shall commission a study to evaluate the energy infrastructure of the Capital Complex to determine how the infrastructure could be augmented to become more energy efficient, using unconventional and renewable energy resources, in a way that would enable the Complex to have reliable utility service in the event of power fluctuations, shortages, or outages.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Architect of the Capitol to carry out subsection (d), $2,000,000 for each of fiscal years 2004 through 2008.

SEC. 102. ENERGY MANAGEMENT REQUIREMENTS.

(a) ENERGY REDUCTION GOALS.—

(1) AMENDMENT.—Section 543(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)) is amended by striking “its Federal buildings so that” and all that follows through the end and inserting “the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2004 through 2013 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2001, by the percentage specified in the following table:

“Fiscal Year	**Percentage reduction**
2004	2
2005	4
2006	6
2007	8
2008	10
2009	12
2010	14
2011	16
2012	18
2013	20.”.

(2) REPORTING BASELINE.—The energy reduction goals and baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)), as amended by this subsection, supersede all previous goals and baselines under such paragraph, and related reporting requirements.

(b) REVIEW AND REVISION OF ENERGY PERFORMANCE REQUIREMENT.—Section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)) is further amended by adding at the end the following:

“(3) Not later than December 31, 2012, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2014 through 2023.”.

(c) EXCLUSIONS.—Section 543(c)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(1)) is amended by striking “An agency may exclude” and all that follows through the end and inserting “(A) An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—

“(i) compliance with those requirements would be impracticable;

“(ii) the agency has completed and submitted all federally required energy management reports;

“(iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executive orders, and other Federal law; and

“(iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

“(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

“(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

“(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.”.

(d) REVIEW BY SECRETARY.—Section 543(c)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(2)) is amended—

(1) by striking “impracticability standards” and inserting “standards for exclusion”;

(2) by striking “a finding of impracticability” and inserting “the exclusion”; and

(3) by striking “energy consumption requirements” and inserting “requirements of subsections (a) and (b)(1)”.

(e) CRITERIA.—Section 543(c) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)) is further amended by adding at the end the following:

“(3) Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).”.

(f) RETENTION OF ENERGY AND WATER SAVINGS.—Section 546 of the National Energy Conservation Policy Act (42 U.S.C. 8256) is amended by adding at the end the following new subsection:

“(e) RETENTION OF ENERGY AND WATER SAVINGS.—An agency may retain any funds appropriated to that agency for energy expenditures, water expenditures, or wastewater treatment expenditures, at buildings subject to the requirements of section 543(a) and (b), that are not made because of energy savings or water savings. Except as otherwise provided by law, such funds may be used only for energy efficiency, water conservation, or unconventional and renewable energy resources projects.”.

(g) REPORTS.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

(1) in the subsection heading, by inserting “THE PRESIDENT AND” before “CONGRESS”; and

(2) by inserting “President and” before “Congress”.

(h) CONFORMING AMENDMENT.—Section 550(d) of the National Energy Conservation Policy Act (42 U.S.C. 8258b(d)) is amended in the second sentence by striking “the 20 percent reduction goal established under section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)).” and inserting “each of the energy reduction goals established under section 543(a).”.

SEC. 103. ENERGY USE MEASUREMENT AND ACCOUNTABILITY.

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253 is further amended by adding at the end the following:

“(e) METERING OF ENERGY USE.—

“(1) DEADLINE.—By October 1, 2010, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered or submetered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility energy managers.

“(2) GUIDELINES.—

“(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, energy efficiency advocacy organizations, national laboratories, universities, and Federal facility energy managers, shall establish guidelines for agencies to carry out paragraph (1).

"(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

"(i) take into consideration—

"(I) the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;

"(II) the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

"(III) the measurement and verification protocols of the Department of Energy;

"(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

"(iii) establish priorities for types and locations of buildings to be metered and submetered based on cost-effectiveness and a schedule of 1 or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and

"(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

"(3) PLAN.—Not later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily responsible for achieving the requirements and (B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.".

SEC. 104. PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

(a) REQUIREMENTS.—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.), as amended by section 101, is amended by adding at the end the following:

"SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

"(a) DEFINITIONS.—In this section:

"(1) ENERGY STAR PRODUCT.—The term 'Energy Star product' means a product that is rated for energy efficiency under an Energy Star program.

"(2) ENERGY STAR PROGRAM.—The term 'Energy Star program' means the program established by section 324A of the Energy Policy and Conservation Act.

"(3) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

"(4) FEMP DESIGNATED PRODUCT.—The term 'FEMP designated product' means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

"(b) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

"(1) REQUIREMENT.—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure—

"(A) an Energy Star product; or

"(B) a FEMP designated product.

"(2) EXCEPTIONS.—The head of an executive agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the executive agency finds in writing that—

"(A) an Energy Star product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or

"(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the executive agency.

"(3) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

"(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

"(d) SPECIFIC PRODUCTS.—(1) In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard not later than 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

"(2) All Federal agencies are encouraged to take actions to maximize the efficiency of air conditioning and refrigeration equipment, including appropriate cleaning and maintenance, including the use of any system treatment or additive that will reduce the electricity consumed by air conditioning and refrigeration equipment. Any such treatment or additive must be—

"(A) determined by the Secretary to be effective in increasing the efficiency of air conditioning and refrigeration equipment without having an adverse impact on air conditioning performance (including cooling capacity) or equipment useful life;

"(B) determined by the Administrator of the Environmental Protection Agency to be environmentally safe; and

"(C) shown to increase seasonal energy efficiency ratio (SEER) or energy efficiency ratio (EER) when tested by the National Institute of Standards and Technology according to Department of Energy test procedures without causing any adverse impact on the system, system components, the refrigerant or lubricant, or other materials in the system.

Results of testing described in subparagraph (C) shall be published in the Federal Register for public review and comment. For purposes of this section, a hardware device or primary refrigerant shall not be considered an additive.

"(e) REGULATIONS.—Not later than 180 days after the date of the enactment of this section, the Secretary shall issue guidelines to carry out this section.".

(b) CONFORMING AMENDMENT.—The table of contents of the National Energy Conservation Policy Act is further amended by inserting after the item relating to section 552 the following new item:

"Sec. 553. Federal procurement of energy efficient products.".

SEC. 105. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) PERMANENT EXTENSION.—Effective September 30, 2003, section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

(b) PAYMENT OF COSTS.—Section 802 of the National Energy Conservation Policy Act (42 U.S.C. 8287a) is amended by inserting ", water, or wastewater treatment" after "payment of energy".

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

"(2) The term 'energy savings' means a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

"(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

"(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

"(C) the increased efficient use of existing water sources in either interior or exterior applications.".

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

"(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40, United States Code), be in compliance with the prospectus requirements and procedures of section 3307 of title 40, United States Code.".

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

"(4) The term 'energy or water conservation measure' means—

"(A) an energy conservation measure, as defined in section 551; or

"(B) a water conservation measure that improves the efficiency of water use, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.".

(f) REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative *obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.*

(g) Extension of Authority.—Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act, shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.

SEC. 106. ENERGY SAVINGS PERFORMANCE CONTRACTS PILOT PROGRAM FOR NONBUILDING APPLICATIONS.

(a) In General.—The Secretary of Defense and the heads of other interested Federal agencies are authorized to enter into up to 10 energy savings performance contracts using procedures, established under subsection (b), based on the procedures under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.), for the purpose of achieving energy or water savings, secondary savings, and benefits incidental to those purposes, in nonbuilding applications. The payments to be made by the Federal Government under such contracts shall not exceed a total of $200,000,000 for all such contracts combined.

(b) Procedures.—The Secretary of Energy, in consultation with the Administrator of General Services and the Secretary of Defense, shall establish procedures based on the procedures under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.), for implementing this section.

(c) Definitions.—In this section:

(1) Nonbuilding application.—The term "nonbuilding application" means—

(A) any class of vehicles, devices, or equipment that are transportable under their own power by land, sea, or air that consume energy from any fuel source for the purpose of such transportability, or to maintain a controlled environment within such vehicle, device, or equipment; or

(B) any Federally owned equipment used to generate electricity or transport water.

(2) Secondary savings.—The term "secondary savings" means additional energy or cost savings that are a direct consequence of the energy or water savings that result from the financing and implementation of the energy savings performance contract, including, but not limited to, energy or cost savings that result from a reduction in the need for fuel delivery and logistical support, or the increased efficiency in the production of electricity.

(d) Report.—Not later than 3 years after the date of enactment of this section, the Secretary of Energy shall report to Congress on the progress and results of the projects funded pursuant to this section. Such report, shall include a description of projects undertaken; the energy, water, and cost savings, secondary savings, and other benefits that resulted from such projects; and recommendations on whether the pilot program should be extended, expanded, or authorized permanently as a part of the program authorized under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.).

SEC. 107. VOLUNTARY COMMITMENTS TO REDUCE INDUSTRIAL ENERGY INTENSITY.

(a) Voluntary Agreements.—The Secretary of Energy is authorized to enter into voluntary agreements with 1 or more persons in industrial sectors that consume significant amounts of primary energy per unit of physical output to reduce the energy intensity of their production activities by a significant amount relative to improvements in each sector in recent years.

(b) Recognition.—The Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency and other appropriate Federal agencies, shall recognize and publicize the achievements of participants in voluntary agreements under this section.

(c) Definition.—In this section, the term "energy intensity" means the primary energy consumed per unit of physical output in an industrial process.

SEC. 108. ADVANCED BUILDING EFFICIENCY TESTBED.

(a) Establishment.—The Secretary of Energy, in consultation with the Administrator of General Services, shall establish an Advanced Building Efficiency Testbed program for the development, testing, and demonstration of advanced engineering systems, components, and materials to enable innovations in building technologies. The program shall evaluate efficiency concepts for government and industry buildings, and demonstrate the ability of next generation buildings to support individual and organizational productivity and health (including by improving indoor air quality) as well as flexibility and technological change to improve environmental sustainability. Such program shall complement and not duplicate existing national programs.

(b) Participants.—The program established under subsection (a) shall be led by a university with the ability to combine the expertise from numerous academic fields including, at a minimum, intelligent workplaces and advanced building systems and engineering, electrical and computer engineering, computer science, architecture, urban design, and environmental and mechanical engineering. Such university shall partner with other universities and entities who have established programs and the capability of advancing innovative building efficiency technologies.

(c) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary of Energy to carry out this section $6,000,000 for each of the fiscal years 2004 through 2006, to remain available until expended. For any fiscal year in which funds are expended under this section, the Secretary shall provide ⅓ of the total amount to the lead university described in subsection (b), and provide the remaining ⅔ to the other participants referred to in subsection (b) on an equal basis.

SEC. 109. FEDERAL BUILDING PERFORMANCE STANDARDS.

Section 305(a) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)) is amended—

(1) in paragraph (2)(A), by striking "CABO Model Energy Code, 1992" and inserting "the 2003 International Energy Conservation Code"; and

(2) by adding at the end the following:

"(3) Revised federal building energy efficiency performance standards.—

"(A) In general.—Not later than 1 year after the date of enactment of this paragraph, the Secretary of Energy shall establish, by rule, revised Federal building energy efficiency performance standards that require that—

"(i) if life-cycle cost-effective, for new Federal buildings—

"(I) such buildings be designed so as to achieve energy consumption levels at least 30 percent below those of the version current as of the date of enactment of this paragraph of the ASHRAE Standard or the International Energy Conservation Code, as appropriate; and

"(II) sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings; and

"(ii) where water is used to achieve energy efficiency, water conservation technologies shall be applied to the extent they are life-cycle cost effective.

"(B) Additional revisions.—Not later than 1 year after the date of approval of each subsequent revision of the ASHRAE Standard or the International Energy Conservation Code, as appropriate, the Secretary of Energy shall determine, based on the cost-effectiveness of the requirements under the amendments, whether the revised standards established under this paragraph should be updated to reflect the amendments.

"(C) Statement on compliance of new buildings.—In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 548(a) of the National Energy Conservation Policy Act (42 U.S.C. 8258(a)), the head of each Federal agency shall include—

"(i) a list of all new Federal buildings owned, operated, or controlled by the Federal agency; and

"(ii) a statement concerning whether the Federal buildings meet or exceed the revised standards established under this paragraph.".

SEC. 110. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) Amendment.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following new section:

"INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE

"Sec. 6005. (a) Definitions.—In this section:

"(1) Agency head.—The term 'agency head' means—

"(A) the Secretary of Transportation; and

"(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

"(2) Cement or concrete project.—The term 'cement or concrete project' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

"(A) involves the procurement of cement or concrete; and

"(B) is carried out in whole or in part using Federal funds.

"(3) Recovered mineral component.—The term 'recovered mineral component' means—

"(A) ground granulated blast furnace slag;

"(B) coal combustion fly ash; and

"(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

"(b) Implementation of Requirements.—

"(1) In general.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

"(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

"(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

"(c) FULL IMPLEMENTATION STUDY.—

"(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

"(2) MATTERS TO BE ADDRESSED.—The study shall—

"(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

"(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

"(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

"(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

"(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

"(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

"(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

"(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

"(2) eliminate barriers identified under subsection (c).

"(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Solid Waste Disposal Act is amended by adding after the item relating to section 6004 the following new item:

"Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.".

Subtitle B—Energy Assistance and State Programs

SEC. 121. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM.

Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended by striking "and \$2,000,000,000 for each of fiscal years 2002 through 2004" and inserting "\$2,000,000,000 for fiscal years 2002 and 2003, and \$3,400,000,000 for each of fiscal years 2004 through 2006".

SEC. 122. WEATHERIZATION ASSISTANCE.

Section 422 of the Energy Conservation and Production Act (42 U.S.C. 6872) is amended by striking "for fiscal years 1999 through 2003 such sums as may be necessary" and inserting "\$325,000,000 for fiscal year 2004, \$400,000,000 for fiscal year 2005, and \$500,000,000 for fiscal year 2006".

SEC. 123. STATE ENERGY PROGRAMS.

(a) STATE ENERGY CONSERVATION PLANS.—Section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322) is amended by inserting at the end the following new subsection:

"(g) The Secretary shall, at least once every 3 years, invite the Governor of each State to review and, if necessary, revise the energy conservation plan of such State submitted under subsection (b) or (e). Such reviews should consider the energy conservation plans of other States within the region, and identify opportunities and actions carried out in pursuit of common energy conservation goals.".

(b) STATE ENERGY EFFICIENCY GOALS.—Section 364 of the Energy Policy and Conservation Act (42 U.S.C. 6324) is amended to read as follows:

"STATE ENERGY EFFICIENCY GOALS

"SEC. 364. Each State energy conservation plan with respect to which assistance is made available under this part on or after the date of enactment of the Energy Policy Act of 2003 shall contain a goal, consisting of an improvement of 25 percent or more in the efficiency of use of energy in the State concerned in calendar year 2010 as compared to calendar year 1990, and may contain interim goals.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 365(f) of the Energy Policy and Conservation Act (42 U.S.C. 6325(f)) is amended by striking "for fiscal years 1999 through 2003 such sums as may be necessary" and inserting "\$100,000,000 for each of the fiscal years 2004 and 2005 and \$125,000,000 for fiscal year 2006".

SEC. 124. ENERGY EFFICIENT APPLIANCE REBATE PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE STATE.—The term "eligible State" means a State that meets the requirements of subsection (b).

(2) ENERGY STAR PROGRAM.—The term "Energy Star program" means the program established by section 324A of the Energy Policy and Conservation Act.

(3) RESIDENTIAL ENERGY STAR PRODUCT.—The term "residential Energy Star product" means a product for a residence that is rated for energy efficiency under the Energy Star program.

(4) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(5) STATE ENERGY OFFICE.—The term "State energy office" means the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322).

(6) STATE PROGRAM.—The term "State program" means a State energy efficient appliance rebate program described in subsection (b)(1).

(b) ELIGIBLE STATES.—A State shall be eligible to receive an allocation under subsection (c) if the State—

(1) establishes (or has established) a State energy efficient appliance rebate program to provide rebates to residential consumers for the purchase of residential Energy Star products to replace used appliances of the same type;

(2) submits an application for the allocation at such time, in such form, and containing such information as the Secretary may require; and

(3) provides assurances satisfactory to the Secretary that the State will use the allocation to supplement, but not supplant, funds made available to carry out the State program.

(c) AMOUNT OF ALLOCATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), for each fiscal year, the Secretary shall allocate to the State energy office of each eligible State to carry out subsection (d) an amount equal to the product obtained by multiplying the amount made available under subsection (f) for the fiscal year by the ratio that the population of the State in the most recent calendar year for which data are available bears to the total population of all eligible States in that calendar year.

(2) MINIMUM ALLOCATIONS.—For each fiscal year, the amounts allocated under this subsection shall be adjusted proportionately so that no eligible State is allocated a sum that is less than an amount determined by the Secretary.

(d) USE OF ALLOCATED FUNDS.—The allocation to a State energy office under subsection (c) may be used to pay up to 50 percent of the cost of establishing and carrying out a State program.

(e) ISSUANCE OF REBATES.—Rebates may be provided to residential consumers that meet the requirements of the State program. The amount of a rebate shall be determined by the State energy office, taking into consideration—

(1) the amount of the allocation to the State energy office under subsection (c);

(2) the amount of any Federal or State tax incentive available for the purchase of the residential Energy Star product; and

(3) the difference between the cost of the residential Energy Star product and the cost of an appliance that is not a residential Energy Star product, but is of the same type as, and is the nearest capacity, performance, and other relevant characteristics (as determined by the State energy office) to, the residential Energy Star product.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section \$50,000,000 for each of the fiscal years 2004 through 2008.

SEC. 125. ENERGY EFFICIENT PUBLIC BUILDINGS.

(a) GRANTS.—The Secretary of Energy may make grants to the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322), or, if no such agency exists, a State agency designated by the Governor of the State, to assist units of local government in the State in improving the energy efficiency of public buildings and facilities—

(1) through construction of new energy efficient public buildings that use at least 30 percent less energy than a comparable public building constructed in compliance with standards prescribed in the most recent version of the International Energy Conservation Code, or a similar State code intended to achieve substantially equivalent efficiency levels; or

(2) through renovation of existing public buildings to achieve reductions in energy use of at least 30 percent as compared to the baseline energy use in such buildings prior to renovation, assuming a 3-year, weather-normalized average for calculating such baseline.

(b) ADMINISTRATION.—State energy offices receiving grants under this section shall—

(1) maintain such records and evidence of compliance as the Secretary may require; and

(2) develop and distribute information and materials and conduct programs to provide technical services and assistance to encourage planning, financing, and design of energy efficient public buildings by units of local government.

(c) Authorization of Appropriations.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $30,000,000 for each of fiscal years 2004 through 2008. Not more than 10 percent of appropriated funds shall be used for administration.

SEC. 126. LOW INCOME COMMUNITY ENERGY EFFICIENCY PILOT PROGRAM.

(a) Grants.—The Secretary of Energy is authorized to make grants to units of local government, private, non-profit community development organizations, and Indian tribe economic development entities to improve energy efficiency; identify and develop alternative, renewable, and distributed energy supplies; and increase energy conservation in low income rural and urban communities.

(b) Purpose of Grants.—The Secretary may make grants on a competitive basis for—

(1) investments that develop alternative, renewable, and distributed energy supplies;

(2) energy efficiency projects and energy conservation programs;

(3) studies and other activities that improve energy efficiency in low income rural and urban communities;

(4) planning and development assistance for increasing the energy efficiency of buildings and facilities; and

(5) technical and financial assistance to local government and private entities on developing new renewable and distributed sources of power or combined heat and power generation.

(c) Definition.—For purposes of this section, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) Authorization of Appropriations.—For the purposes of this section there are authorized to be appropriated to the Secretary of Energy $20,000,000 for each of fiscal years 2004 through 2006.

Subtitle C—Energy Efficient Products

SEC. 131. ENERGY STAR PROGRAM.

(a) Amendment.—The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.) is amended by inserting the following after section 324:

"SEC. 324A. ENERGY STAR PROGRAM.

"There is established at the Department of Energy and the Environmental Protection Agency a voluntary program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of or other forms of communication about products and buildings that meet the highest energy efficiency standards. Responsibilities under the program shall be divided between the Department of Energy and the Environmental Protection Agency consistent with the terms of agreements between the 2 agencies. The Administrator and the Secretary shall—

"(1) promote Energy Star compliant technologies as the preferred technologies in the marketplace for achieving energy efficiency and to reduce pollution;

"(2) work to enhance public awareness of the Energy Star label, including special outreach to small businesses;

"(3) preserve the integrity of the Energy Star label;

"(4) solicit comments from interested parties prior to establishing or revising an Energy Star product category, specification, or criterion (or effective dates for any of the foregoing);

"(5) upon adoption of a new or revised product category, specification, or criterion, provide reasonable notice to interested parties of any changes (including effective dates) in product categories, specifications, or criteria along with an explanation of such changes and, where appropriate, responses to comments submitted by interested parties; and

"(6) provide appropriate lead time (which shall be 9 months, unless the Agency or Department determines otherwise) prior to the effective date for a new or a significant revision to a product category, specification, or criterion, taking into account the timing requirements of the manufacturing, product marketing, and distribution process for the specific product addressed.".

(b) Table of Contents Amendment.—The table of contents of the Energy Policy and Conservation Act is amended by inserting after the item relating to section 324 the following new item:

"Sec. 324A. Energy Star program.".

SEC. 132. HVAC MAINTENANCE CONSUMER EDUCATION PROGRAM.

Section 337 of the Energy Policy and Conservation Act (42 U.S.C. 6307) is amended by adding at the end the following:

"(c) HVAC Maintenance.—For the purpose of ensuring that installed air conditioning and heating systems operate at their maximum rated efficiency levels, the Secretary shall, not later than 180 days after the date of enactment of this subsection, carry out a program to educate homeowners and small business owners concerning the energy savings resulting from properly conducted maintenance of air conditioning, heating, and ventilating systems. The Secretary shall carry out the program in a cost-shared manner in cooperation with the Administrator of the Environmental Protection Agency and such other entities as the Secretary considers appropriate, including industry trade associations, industry members, and energy efficiency organizations.

"(d) Small Business Education and Assistance.—The Administrator of the Small Business Administration, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop and coordinate a Government-wide program, building on the existing Energy Star for Small Business Program, to assist small businesses to become more energy efficient, understand the cost savings obtainable through efficiencies, and identify financing options for energy efficiency upgrades. The Secretary and the Administrator of the Small Business Administration shall make the program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Program and the Department of Agriculture.".

SEC. 133. ENERGY CONSERVATION STANDARDS FOR ADDITIONAL PRODUCTS.

(a) Definitions.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended—

(1) in paragraph (30)(S), by striking the period and adding at the end the following: "but does not include any lamp specifically designed to be used for special purpose applications and that is unlikely to be used in general purpose applications such as those described in subparagraph (D), and also does not include any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule, because the lamp is designed for special applications and is unlikely to be used in general purpose applications."; and

(2) by adding at the end the following:

"(32) The term 'battery charger' means a device that charges batteries for consumer products and includes battery chargers embedded in other consumer products.

"(33) The term 'commercial refrigerators, freezers, and refrigerator-freezers' means refrigerators, freezers, or refrigerator-freezers that—

"(A) are not consumer products regulated under this Act; and

"(B) incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single package.

"(34) The term 'external power supply' means an external power supply circuit that is used to convert household electric current into either DC current or lower-voltage AC current to operate a consumer product.

"(35) The term 'illuminated exit sign' means a sign that—

"(A) is designed to be permanently fixed in place to identify an exit; and

"(B) consists of an electrically powered integral light source that illuminates the legend 'EXIT' and any directional indicators and provides contrast between the legend, any directional indicators, and the background.

"(36)(A) Except as provided in subparagraph (B), the term 'distribution transformer' means a transformer that—

"(i) has an input voltage of 34.5 kilovolts or less;

"(ii) has an output voltage of 600 volts or less; and

"(iii) is rated for operation at a frequency of 60 Hertz.

"(B) The term 'distribution transformer' does not include—

"(i) transformers with multiple voltage taps, with the highest voltage tap equaling at least 20 percent more than the lowest voltage tap;

"(ii) transformers, such as those commonly known as drive transformers, rectifier transformers, auto-transformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application and are unlikely to be used in general purpose applications; or

"(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because—

"(I) the transformer is designed for a special application;

"(II) the transformer is unlikely to be used in general purpose applications; and

"(III) the application of standards to the transformer would not result in significant energy savings.

"(37) The term 'low-voltage dry-type distribution transformer' means a distribution transformer that—

"(A) has an input voltage of 600 volts or less;

"(B) is air-cooled; and

"(C) does not use oil as a coolant.

"(38) The term 'standby mode' means the lowest power consumption mode that—

"(A) cannot be switched off or influenced by the user; and

"(B) may persist for an indefinite time when an appliance is connected to the main electricity supply and used in accordance with the manufacturer's instructions,

as defined on an individual product basis by the Secretary.

"(39) The term 'torchiere' means a portable electric lamp with a reflector bowl that directs light upward so as to give indirect illumination.

"(40) The term 'traffic signal module' means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation, that communicates movement messages to drivers through red, amber, and green colors.

"(41) The term 'transformer' means a device consisting of 2 or more coils of insulated wire

that transfers alternating current by electromagnetic induction from 1 coil to another to change the original voltage or current value.

"(42) The term 'unit heater' means a self-contained fan-type heater designed to be installed within the heated space, except that such term does not include a warm air furnace.".

(b) TEST PROCEDURES.—Section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) is amended—

(1) in subsection (b), by adding at the end the following:

"(9) Test procedures for illuminated exit signs shall be based on the test method used under Version 2.0 of the Energy Star program of the Environmental Protection Agency for illuminated exit signs.

"(10) Test procedures for distribution transformers and low voltage dry-type distribution transformers shall be based on the 'Standard Test Method for Measuring the Energy Consumption of Distribution Transformers' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998). The Secretary may review and revise this test procedure. For purposes of section 346(a), this test procedure shall be deemed to be testing requirements prescribed by the Secretary under section 346(a)(1) for distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

"(11) Test procedures for traffic signal modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on the date of enactment of this paragraph.

"(12) Test procedures for medium base compact fluorescent lamps shall be based on the test methods used under the August 9, 2001, version of the Energy Star program of the Environmental Protection Agency and Department of Energy for compact fluorescent lamps. Covered products shall meet all test requirements for regulated parameters in section 325(bb). However, covered products may be marketed prior to completion of lamp life and lumen maintenance at 40 percent of rated life testing provided manufacturers document engineering predictions and analysis that support expected attainment of lumen maintenance at 40 percent rated life and lamp life time."; and

(2) by adding at the end the following:

"(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—The Secretary shall, not later than 24 months after the date of enactment of this subsection, prescribe testing requirements for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, and commercial refrigerators, freezers, and refrigerator-freezers. Such testing requirements shall be based on existing test procedures used in industry to the extent practical and reasonable. In the case of suspended ceiling fans, such test procedures shall include efficiency at both maximum output and at an output no more than 50 percent of the maximum output.".

(c) NEW STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended by adding at the end the following:

"(u) BATTERY CHARGER AND EXTERNAL POWER SUPPLY ELECTRIC ENERGY CONSUMPTION.—

"(1) INITIAL RULEMAKING.—(A) The Secretary shall, within 18 months after the date of enactment of this subsection, prescribe by notice and comment, definitions and test procedures for the power use of battery chargers and external power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, existing definitions and test procedures used for measuring energy consumption in standby mode and other modes and assess the current and projected future market for battery chargers and external power supplies. This assessment shall include estimates of the significance of potential energy savings from technical improvements to these products and suggested product classes for standards: Prior to the end of this time period, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for energy use for these products.

"(B) The Secretary shall, within 3 years after the date of enactment of this subsection, issue a final rule that determines whether energy conservation standards shall be issued for battery chargers and external power supplies or classes thereof. For each product class, any such standards shall be set at the lowest level of energy use that—

"(i) meets the criteria and procedures of subsections (o), (p), (q), (r), (s), and (t); and

"(ii) will result in significant overall annual energy savings, considering both standby mode and other operating modes.

"(2) REVIEW OF STANDBY ENERGY USE IN COVERED PRODUCTS.—In determining pursuant to section 323 whether test procedures and energy conservation standards pursuant to this section should be revised, the Secretary shall consider, for covered products that are major sources of standby mode energy consumption, whether to incorporate standby mode into such test procedures and energy conservation standards, taking into account, among other relevant factors, standby mode power consumption compared to overall product energy consumption.

"(3) RULEMAKING.—The Secretary shall not propose a standard under this section unless the Secretary has issued applicable test procedures for each product pursuant to section 323.

"(4) EFFECTIVE DATE.—Any standard issued under this subsection shall be applicable to products manufactured or imported 3 years after the date of issuance.

"(5) VOLUNTARY PROGRAMS.—The Secretary and the Administrator shall collaborate and develop programs, including programs pursuant to section 324A (relating to Energy Star Programs) and other voluntary industry agreements or codes of conduct, that are designed to reduce standby mode energy use.

"(v) SUSPENDED CEILING FANS, VENDING MACHINES, AND COMMERCIAL REFRIGERATORS, FREEZERS, AND REFRIGERATOR-FREEZERS.—The Secretary shall not later than 36 months after the date on which testing requirements are prescribed by the Secretary pursuant to section 323(f), prescribe, by rule, energy conservation standards for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, and commercial refrigerators, freezers, and refrigerator-freezers. In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (o) and (p). Any standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing such standard.

"(w) ILLUMINATED EXIT SIGNS.—Illuminated exit signs manufactured on or after January 1, 2005, shall meet the Version 2.0 Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency.

"(x) TORCHIERES.—Torchieres manufactured on or after January 1, 2005—

"(1) shall consume not more than 190 watts of power; and

"(2) shall not be capable of operating with lamps that total more than 190 watts.

"(y) LOW VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS.—The efficiency of low voltage dry-type distribution transformers manufactured on or after January 1, 2005, shall be the Class I Efficiency Levels for distribution transformers specified in Table 4-2 of the 'Guide for Determining Energy Efficiency for Distribution Transformers' published by the National Electrical Manufacturers Association (NEMA TP–1–2002).

"(z) TRAFFIC SIGNAL MODULES.—Traffic signal modules manufactured on or after January 1, 2006, shall meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this subsection, and shall be installed with compatible, electrically connected signal control interface devices and conflict monitoring systems.

"(aa) UNIT HEATERS.—Unit heaters manufactured on or after the date that is 3 years after the date of enactment of this subsection shall be equipped with an intermittent ignition device and shall have either power venting or an automatic flue damper.

"(bb) MEDIUM BASE COMPACT FLUORESCENT LAMPS.—Bare lamp and covered lamp (no reflector) medium base compact fluorescent lamps manufactured on or after January 1, 2005, shall meet the following requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps, Energy Star Eligibility Criteria, Energy-Efficiency Specification issued by the Environmental Protection Agency and Department of Energy: minimum initial efficacy; lumen maintenance at 1000 hours; lumen maintenance at 40 percent of rated life; rapid cycle stress test; and lamp life. The Secretary may, by rule, establish requirements for color quality (CRI); power factor; operating frequency; and maximum allowable start time based on the requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps. The Secretary may, by rule, revise these requirements or establish other requirements considering energy savings, cost effectiveness, and consumer satisfaction.

"(cc) EFFECTIVE DATE.—Section 327 shall apply—

"(1) to products for which standards are to be established under subsections (u) and (v) on the date on which a final rule is issued by the Department of Energy, except that any State or local standards prescribed or enacted for any such product prior to the date on which such final rule is issued shall not be preempted until the standard established under subsection (u) or (v) for that product takes effect; and

"(2) to products for which standards are established under subsections (w) through (bb) on the date of enactment of those subsections, except that any State or local standards prescribed or enacted prior to the date of enactment of those subsections shall not be preempted until the standards established under subsections (w) through (bb) take effect.".

(d) RESIDENTIAL FURNACE FANS.—Section 325(f)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6295(f)(3)) is amended by adding the following new subparagraph at the end:

"(D) Notwithstanding any provision of this Act, the Secretary may consider, and prescribe, if the requirements of subsection (o) of this section are met, energy efficiency or energy use standards for electricity used for purposes of circulating air through duct work.".

SEC. 134. ENERGY LABELING.

(a) RULEMAKING ON EFFECTIVENESS OF CONSUMER PRODUCT LABELING.—Section 324(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is amended by adding at the end the following:

"(F) Not later than 3 months after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider the effectiveness of the current consumer products

labeling program in assisting consumers in making purchasing decisions and improving energy efficiency and to consider changes to the labeling rules that would improve the effectiveness of consumer product labels. Such rulemaking shall be completed not later than 2 years after the date of enactment of this subparagraph.''.

(b) Rulemaking on Labeling for Additional Products.—Section 324(a) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)) is further amended by adding at the end the following:

''(5) The Secretary or the Commission, as appropriate, may, for covered products referred to in subsections (u) through (aa) of section 325, prescribe, by rule, pursuant to this section, labeling requirements for such products after a test procedure has been set pursuant to section 323. In the case of products to which TP–1 standards under section 325(y) apply, labeling requirements shall be based on the 'Standard for the Labeling of Distribution Transformer Efficiency' prescribed by the National Electrical Manufacturers Association (NEMA TP–3) as in effect upon the date of enactment of this paragraph.''.

Subtitle D—Public Housing

SEC. 141. CAPACITY BUILDING FOR ENERGY-EFFICIENT, AFFORDABLE HOUSING.

Section 4(b) of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note) is amended—

(1) in paragraph (1), by inserting before the semicolon at the end the following: '', including capabilities regarding the provision of energy efficient, affordable housing and residential energy conservation measures''; and

(2) in paragraph (2), by inserting before the semicolon the following: '', including such activities relating to the provision of energy efficient, affordable housing and residential energy conservation measures that benefit low-income families''.

SEC. 142. INCREASE OF CDBG PUBLIC SERVICES CAP FOR ENERGY CONSERVATION AND EFFICIENCY ACTIVITIES.

Section 105(a)(8) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(8)) is amended—

(1) by inserting ''or efficiency'' after ''energy conservation'';

(2) by striking '', and except that'' and inserting ''; except that''; and

(3) by inserting before the semicolon at the end the following: ''; and except that each percentage limitation under this paragraph on the amount of assistance provided under this title that may be used for the provision of public services is hereby increased by 10 percent, but such percentage increase may be used only for the provision of public services concerning energy conservation or efficiency''.

SEC. 143. FHA MORTGAGE INSURANCE INCENTIVES FOR ENERGY EFFICIENT HOUSING.

(a) Single Family Housing Mortgage Insurance.—Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended, in the first undesignated paragraph beginning after subparagraph (B)(ii)(IV) (relating to solar energy systems), by striking ''20 percent'' and inserting ''30 percent''.

(b) Multifamily Housing Mortgage Insurance.—Section 207(c) of the National Housing Act (12 U.S.C. 1713(c)) is amended, in the last undesignated paragraph beginning after paragraph (3) (relating to solar energy systems and residential energy conservation measures), by striking ''20 percent'' and inserting ''30 percent''.

(c) Cooperative Housing Mortgage Insurance.—Section 213(p) of the National Housing Act (12 U.S.C. 1715e(p)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(d) Rehabilitation and Neighborhood Conservation Housing Mortgage Insurance.—Section 220(d)(3)(B)(iii)(IV) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)(IV)) is amended—

(1) by striking ''with respect to rehabilitation projects involving not more than five family units,''; and

(2) by striking ''20 per centum'' and inserting ''30 percent''.

(e) Low-Income Multifamily Housing Mortgage Insurance.—Section 221(k) of the National Housing Act (12 U.S.C. 1715l(k)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(f) Elderly Housing Mortgage Insurance.—Section 231(c)(2)(C) of the National Housing Act (12 U.S.C. 1715v(c)(2)(C)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(g) Condominium Housing Mortgage Insurance.—Section 234(j) of the National Housing Act (12 U.S.C. 1715y(j)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

SEC. 144. PUBLIC HOUSING CAPITAL FUND.

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) is amended—

(1) in subsection (d)(1)—

(A) in subparagraph (I), by striking ''and'' at the end;

(B) in subparagraph (J), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

''(K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2-1998 and A112.18.1-2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate; and

''(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.''; and

(2) in subsection (e)(2)(C)—

(A) by striking ''The'' and inserting the following:

''(i) In general.—The''; and

(B) by adding at the end the following:

''(ii) Third party contracts.—Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

''(iii) Term of contract.—The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.''.

SEC. 145. GRANTS FOR ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

Section 251(b)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8231(1)) is amended—

(1) by striking ''financed with loans'' and inserting ''assisted'';

(2) by inserting after ''1959,'' the following: ''which are eligible multifamily housing projects (as such term is defined in section 512 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note)) and are subject to mortgage restructuring and rental assistance sufficiency plans under such Act,''; and

(3) by inserting after the period at the end of the first sentence the following new sentence: ''Such improvements may also include the installation of energy and water conserving fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2-1998 and A112.18.1-2000, or any revision thereto, applicable at the time of installation.''.

SEC. 146. NORTH AMERICAN DEVELOPMENT BANK.

Part 2 of subtitle D of title V of the North American Free Trade Agreement Implementation Act (22 U.S.C. 290m–290m-3) is amended by adding at the end the following:

''SEC. 545. SUPPORT FOR CERTAIN ENERGY POLICIES.

''Consistent with the focus of the Bank's Charter on environmental infrastructure projects, the Board members representing the United States should use their voice and vote to encourage the Bank to finance projects related to clean and efficient energy, including energy conservation, that prevent, control, or reduce environmental pollutants or contaminants.''.

SEC. 147. ENERGY-EFFICIENT APPLIANCES.

In purchasing appliances, a public housing agency shall purchase energy-efficient appliances that are Energy Star products or FEMP-designated products, as such terms are defined in section 553 of the National Energy Conservation Policy Act (as amended by this title), unless the purchase of energy-efficient appliances is not cost-effective to the agency.

SEC. 148. ENERGY EFFICIENCY STANDARDS.

Section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''1 year after the date of the enactment of the Energy Policy Act of 1992'' and inserting ''September 30, 2004'';

(ii) in subparagraph (A), by striking ''and'' at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(C) rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), where such standards are determined to be cost effective by the Secretary of Housing and Urban Development.''; and

(B) in paragraph (2), by striking ''Council of American'' and all that follows through ''90.1–1989')'' and inserting ''2003 International Energy Conservation Code'';

(2) in subsection (b)—

(A) by striking ''within 1 year after the date of the enactment of the Energy Policy Act of 1992'' and inserting ''by September 30, 2004''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2003 International Energy Conservation Code''; and

(3) in subsection (c)—

(A) in the heading, by striking ''Model Energy Code'' and inserting ''The International Energy Conservation Code''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2003 International Energy Conservation Code''.

SEC. 149. ENERGY STRATEGY FOR HUD.

The Secretary of Housing and Urban Development shall develop and implement an integrated strategy to reduce utility expenses through cost-effective energy conservation and efficiency measures and energy efficient design and construction of public and assisted housing. The energy strategy shall include the development of energy reduction goals and incentives for public housing agencies. The Secretary shall submit a report to Congress, not later than 1 year after *the date of the enactment of this Act, on the energy strategy and the actions taken by the Department of Housing and Urban Development to monitor the energy usage of public housing agencies and shall submit an update every 2 years thereafter on progress in implementing the strategy.*

TITLE II—RENEWABLE ENERGY

Subtitle A—General Provisions

SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RESOURCES.

(a) RESOURCE ASSESSMENT.—Not later than 6 months after the date of enactment of this Act, and each year thereafter, the Secretary of Energy shall review the available assessments of renewable energy resources within the United States, including solar, wind, biomass, ocean (tidal, wave, current, and thermal), geothermal, and hydroelectric energy resources, and undertake new assessments as necessary, taking into account changes in market conditions, available technologies, and other relevant factors.

(b) CONTENTS OF REPORTS.—Not later than 1 year after the date of enactment of this Act, and each year thereafter, the Secretary shall publish a report based on the assessment under subsection (a). The report shall contain—

(1) a detailed inventory describing the available amount and characteristics of the renewable energy resources; and

(2) such other information as the Secretary believes would be useful in developing such renewable energy resources, including descriptions of surrounding terrain, population and load centers, nearby energy infrastructure, location of energy and water resources, and available estimates of the costs needed to develop each resource, together with an identification of any barriers to providing adequate transmission for remote sources of renewable energy resources to current and emerging markets, recommendations for removing or addressing such barriers, and ways to provide access to the grid that do not unfairly disadvantage renewable or other energy producers.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $10,000,000 for each of fiscal years 2004 through 2008.

SEC. 202. RENEWABLE ENERGY PRODUCTION INCENTIVE.

(a) INCENTIVE PAYMENTS.—Section 1212(a) of the Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended by striking "and which satisfies" and all that follows through "Secretary shall establish." and inserting ". If there are insufficient appropriations to make full payments for electric production from all qualified renewable energy facilities in any given year, the Secretary shall assign 60 percent of appropriated funds for that year to facilities that use solar, wind, geothermal, or closed-loop (dedicated energy crops) biomass technologies to generate electricity, and assign the remaining 40 percent to other projects. The Secretary may, after transmitting to Congress an explanation of the reasons therefor, alter the percentage requirements of the preceding sentence.".

(b) QUALIFIED RENEWABLE ENERGY FACILITY.—Section 1212(b) of the Energy Policy Act of 1992 (42 U.S.C. 13317(b)) is amended—

(1) by striking "a State or any political" and all that follows through "nonprofit electrical cooperative" and inserting "a not-for-profit electric cooperative, a public utility described in section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or possession of the United States or the District of Columbia, or a political subdivision thereof, or an Indian tribal government or subdivision thereof,"; and

(2) by inserting "landfill gas," after "wind, biomass,".

(c) ELIGIBILITY WINDOW.—Section 1212(c) of the Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended by striking "during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section" and inserting "after October 1, 2003, and before October 1, 2013".

(d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1)) is amended by inserting "landfill gas," after "wind, biomass,".

(e) SUNSET.—Section 1212(f) of the Energy Policy Act of 1992 (42 U.S.C. 13317(f)) is amended by striking "the expiration of" and all that follows through "of this section" and inserting "September 30, 2023".

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 1212(g) of the Energy Policy Act of 1992 (42 U.S.C. 13317(g)) is amended to read as follows:

"(g) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2003 through 2023.

"(2) AVAILABILITY OF FUNDS.—Funds made available under paragraph (1) shall remain available until expended.".

SEC. 203. FEDERAL PURCHASE REQUIREMENT.

(a) REQUIREMENT.—The President, acting through the Secretary of Energy, shall seek to ensure that, to the extent economically feasible and technically practicable, of the total amount of electric energy the Federal Government consumes during any fiscal year, the following amounts shall be renewable energy:

(1) Not less than 3 percent in fiscal years 2005 through 2007.

(2) Not less than 5 percent in fiscal years 2008 through 2010.

(3) Not less than 7.5 percent in fiscal year 2011 and each fiscal year thereafter.

(b) DEFINITIONS.—In this section:

(1) BIOMASS.—The term "biomass" means any solid, nonhazardous, cellulosic material that is derived from—

(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush, or nonmerchantable material;

(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled;

(C) agriculture wastes, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues, and livestock waste nutrients; or

(D) a plant that is grown exclusively as a fuel for the production of electricity.

(2) RENEWABLE ENERGY.—The term "renewable energy" means electric energy generated from solar, wind, biomass, landfill gas, geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

(c) CALCULATION.—For purposes of determining compliance with the requirement of this section, the amount of renewable energy shall be doubled if—

(1) the renewable energy is produced and used on-site at a Federal facility;

(2) the renewable energy is produced on Federal lands and used at a Federal facility; or

(3) the renewable energy is produced on Indian land as defined in title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et. seq.) and used at a Federal facility.

(d) REPORT.—Not later than April 15, 2005, and every 2 years thereafter, the Secretary of Energy shall provide a report to Congress on the progress of the Federal Government in meeting the goals established by this section.

SEC. 204. INSULAR AREAS ENERGY SECURITY.

Section 604 of the Act entitled "An Act to authorize appropriations for certain insular areas of the United States, and for other purposes", approved December 24, 1980 (48 U.S.C. 1492), is amended—

(1) in subsection (a)(4) by striking the period and inserting a semicolon;

(2) by adding at the end of subsection (a) the following new paragraphs:

"(5) electric power transmission and distribution lines in insular areas are inadequate to withstand damage caused by the hurricanes and typhoons which frequently occur in insular areas and such damage often costs millions of dollars to repair; and

"(6) the refinement of renewable energy technologies since the publication of the 1982 Territorial Energy Assessment prepared pursuant to subsection (c) reveals the need to reassess the state of energy production, consumption, infrastructure, reliance on imported energy, opportunities for energy conservation and increased energy efficiency, and indigenous sources in regard to the insular areas.";

(3) by amending subsection (e) to read as follows:

"(e)(1) The Secretary of the Interior, in consultation with the Secretary of Energy and the head of government of each insular area, shall update the plans required under subsection (c) by—

"(A) updating the contents required by subsection (c);

"(B) drafting long-term energy plans for such insular areas with the objective of reducing, to the exteni feasible, their reliance on energy imports by the year 2010, increasing energy conservation and energy efficiency, and maximizing, to the extent feasible, use of indigenous energy sources; and

"(C) drafting long-term energy transmission line plans for such insular areas with the objective that the maximum percentage feasible of electric power transmission and distribution lines in each insular area be protected from damage caused by hurricanes and typhoons.

"(2) Not later than December 31, 2005, the Secretary of the Interior shall submit to Congress the updated plans for each insular area required by this subsection."; and

(4) by amending subsection (g)(4) to read as follows:

"(4) POWER LINE GRANTS FOR INSULAR AREAS.—

"(A) IN GENERAL.—The Secretary of the Interior is authorized to make grants to governments of insular areas of the United States to carry out eligible projects to protect electric power transmission and distribution lines in such insular areas from damage caused by hurricanes and typhoons.

"(B) ELIGIBLE PROJECTS.—The Secretary may award grants under subparagraph (A) only to governments of insular areas of the United States that submit written project plans to the Secretary for projects that meet the following criteria:

"(i) The project is designed to protect electric power transmission and distribution lines located in 1 or more of the insular areas of the United States from damage caused by hurricanes and typhoons.

"(ii) The project is likely to substantially reduce the risk of future damage, hardship, loss, or suffering.

"(iii) The project addresses 1 or more problems that have been repetitive or that pose a significant risk to public health and safety.

"(iv) The project is not likely to cost more than the value of the reduction in direct damage and other negative impacts that the project is designed to prevent or mitigate. The cost benefit analysis required by this criterion shall be computed on a net present value basis.

"(v) The project design has taken into consideration long-term changes to the areas and persons it is designed to protect and has manageable future maintenance and modification requirements.

"(vi) The project plan includes an analysis of a range of options to address the problem it is designed to prevent or mitigate and a justification for the selection of the project in light of that analysis.

"(vii) The applicant has demonstrated to the Secretary that the matching funds required by subparagraph (D) are available.

"(C) PRIORITY.—When making grants under this paragraph, the Secretary shall give priority to grants for projects which are likely to—

"(i) have the greatest impact on reducing future disaster losses; and

"(ii) best conform with plans that have been approved by the Federal Government or the government of the insular area where the project is to be carried out for development or hazard mitigation for that insular area.

"(D) MATCHING REQUIREMENT.—The Federal share of the cost for a project for which a grant is provided under this paragraph shall not exceed 75 percent of the total cost of that project. The non-Federal share of the cost may be provided in the form of cash or services.

"(E) TREATMENT OF FUNDS FOR CERTAIN PURPOSES.—Grants provided under this paragraph shall not be considered as income, a resource, or a duplicative program when determining eligibility or benefit levels for Federal major disaster and emergency assistance.

"(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $5,000,000 for each fiscal year beginning after the date of the enactment of this paragraph.".

SEC. 205. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC BUILDINGS.

(a) IN GENERAL.—Subchapter VI of chapter 31 of title 40, United States Code, is amended by adding at the end the following:

"§3177. Use of photovoltaic energy in public buildings

"(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—

"(1) IN GENERAL.—The Administrator of General Services may establish a photovoltaic energy commercialization program for the procurement and installation of photovoltaic solar electric systems for electric production in new and existing public buildings.

"(2) PURPOSES.—The purposes of the program shall be to accomplish the following:

"(A) To accelerate the growth of a commercially viable photovoltaic industry to make this energy system available to the general public as an option which can reduce the national consumption of fossil fuel.

"(B) To reduce the fossil fuel consumption and costs of the Federal Government.

"(C) To attain the goal of installing solar energy systems in 20,000 Federal buildings by 2010, as contained in the Federal Government's Million Solar Roof Initiative of 1997.

"(D) To stimulate the general use within the Federal Government of life-cycle costing and innovative procurement methods.

"(E) To develop program performance data to support policy decisions on future incentive programs with respect to energy.

"(3) ACQUISITION OF PHOTOVOLTAIC SOLAR ELECTRIC SYSTEMS.—

"(A) IN GENERAL.—The program shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability for use in public buildings.

"(B) ACQUISITION LEVELS.—The acquisition of photovoltaic electric systems shall be at a level substantial enough to allow use of low-cost production techniques with at least 150 megawatts (peak) cumulative acquired during the 5 years of the program.

"(4) ADMINISTRATION.—The Administrator shall administer the program and shall—

"(A) issue such rules and regulations as may be appropriate to monitor and assess the performance and operation of photovoltaic solar electric systems installed pursuant to this subsection;

"(B) develop innovative procurement strategies for the acquisition of such systems; and

"(C) transmit to Congress an annual report on the results of the program.

"(b) PHOTOVOLTAIC SYSTEMS EVALUATION PROGRAM.—

"(1) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Energy, shall establish a photovoltaic solar energy systems evaluation program to evaluate such photovoltaic solar energy systems as are required in public buildings.

"(2) PROGRAM REQUIREMENT.—In evaluating photovoltaic solar energy systems under the program, the Administrator shall ensure that such systems reflect the most advanced technology.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—There are authorized to be appropriated to carry out subsection (a) $50,000,000 for each of fiscal years 2004 through 2008. Such sums shall remain available until expended.

"(2) PHOTOVOLTAIC SYSTEMS EVALUATION PROGRAM.—There are authorized to be appropriated to carry out subsection (b) $10,000,000 for each of fiscal years 2004 through 2008. Such sums shall remain available until expended.".

(b) CONFORMING AMENDMENT.—The section analysis for such chapter is amended by inserting after the item relating to section 3176 the following:

"3177. Use of photovoltaic energy in public buildings.".

SEC. 206. GRANTS TO IMPROVE THE COMMERCIAL VALUE OF FOREST BIOMASS FOR ELECTRIC ENERGY, USEFUL HEAT, TRANSPORTATION FUELS, PETROLEUM-BASED PRODUCT SUBSTITUTES, AND OTHER COMMERCIAL PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Thousands of communities in the United States, many located near Federal lands, are at risk to wildfire. Approximately 190,000,000 acres of land managed by the Secretary of Agriculture and the Secretary of the Interior are at risk of catastrophic fire in the near future. The accumulation of heavy forest fuel loads continues to increase as a result of disease, insect infestations, and drought, further raising the risk of fire each year.

(2) In addition, more than 70,000,000 acres across all land ownerships are at risk to higher than normal mortality over the next 15 years from insect infestation and disease. High levels of tree mortality from insects and disease result in increased fire risk, loss of old growth, degraded watershed conditions, and changes in species diversity and productivity, as well as diminished fish and wildlife habitat and decreased timber values.

(3) Preventive treatments such as removing fuel loading, ladder fuels, and hazard trees, planting proper species mix and restoring and protecting early successional habitat, and other specific restoration treatments designed to reduce the susceptibility of forest land, woodland, and rangeland to insect outbreaks, disease, and catastrophic fire present the greatest opportunity for long-term forest health by creating a mosaic of species-mix and age distribution. Such prevention treatments are widely acknowledged to be more successful and cost effective than suppression treatments in the case of insects, disease, and fire.

(4) The byproducts of preventive treatment (wood, brush, thinnings, chips, slash, and other hazardous fuels) removed from forest lands, woodlands and rangelands represent an abundant supply of biomass for biomass-to-energy facilities and raw material for business. There are currently few markets for the extraordinary volumes of byproducts being generated as a result of the necessary large-scale preventive treatment activities.

(5) The United States should—

(A) promote economic and entrepreneurial opportunities in using byproducts removed through preventive treatment activities related to hazardous fuels reduction, disease, and insect infestation; and

(B) develop and expand markets for traditionally underused wood and biomass as an outlet for byproducts of preventive treatment activities.

(b) DEFINITIONS.—In this section:

(1) BIOMASS.—The term "biomass" means trees and woody plants, including limbs, tops, needles, and other woody parts, and byproducts of preventive treatment, such as wood, brush, thinnings, chips, and slash, that are removed—

(A) to reduce hazardous fuels; or

(B) to reduce the risk of or to contain disease or insect infestation.

(2) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(3) PERSON.—The term "person" includes—

(A) an individual;

(B) a community (as determined by the Secretary concerned);

(C) an Indian tribe;

(D) a small business, micro-business, or a corporation that is incorporated in the United States; and

(E) a nonprofit organization.

(4) PREFERRED COMMUNITY.—The term "preferred community" means—

(A) any town, township, municipality, or other similar unit of local government (as determined by the Secretary concerned) that—

(i) has a population of not more than 50,000 individuals; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation; or

(B) any county that—

(i) is not contained within a metropolitan statistical area; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation.

(5) SECRETARY CONCERNED.—The term "Secretary concerned" means—

(A) the Secretary of Agriculture with respect to National Forest System lands; and

(B) the Secretary of the Interior with respect to Federal lands under the jurisdiction of the Secretary of the Interior and Indian lands.

(c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary concerned may make grants to any person that owns or operates a facility that uses biomass as a raw material to produce electric energy, sensible heat, transportation fuels, or substitutes for petroleum-based products to offset the costs incurred to purchase biomass for use by such facility.

(2) GRANT AMOUNTS.—A grant under this subsection may not exceed $20 per green ton of biomass delivered.

(3) MONITORING OF GRANT RECIPIENT ACTIVITIES.—As a condition of a grant under this subsection, the grant recipient shall keep such

records as the Secretary concerned may require to fully and correctly disclose the use of the grant funds and all transactions involved in the purchase of biomass. Upon notice by a representative of the Secretary concerned, the grant recipient shall afford the representative reasonable access to the facility that purchases or uses biomass and an opportunity to examine the inventory and records of the facility.

(d) IMPROVED BIOMASS USE GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary concerned may make grants to persons to offset the cost of projects to develop or research opportunities to improve the use of, or add value to, biomass. In making such grants, the Secretary concerned shall give preference to persons in preferred communities.

(2) SELECTION.—The Secretary concerned shall select a grant recipient under paragraph (1) after giving consideration to the anticipated public benefits of the project, including the potential to develop thermal or electric energy resources or affordable energy, opportunities for the creation or expansion of small businesses and micro-businesses, and the potential for new job creation.

(3) GRANT AMOUNT.—A grant under this subsection may not exceed $500,000.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $50,000,000 for each of the fiscal years 2004 through 2014 to carry out this section.

(f) REPORT.—Not later than October 1, 2010, the Secretary of Agriculture, in consultation with the Secretary of the Interior, shall submit to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Resources, the Committee on Energy and Commerce, and the Committee on Agriculture of the House of Representatives a report describing the results of the grant programs authorized by this section. The report shall include the following:

(1) An identification of the size, type, and the use of biomass by persons that receive grants under this section.

(2) The distance between the land from which the biomass was removed and the facility that used the biomass.

(3) The economic impacts, particularly new job creation, resulting from the grants to and operation of the eligible operations.

SEC. 207. BIOBASED PRODUCTS.

Section 9002(c)(1) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102(c)(1)) is amended by inserting "or such items that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1)" after "practicable".

Subtitle B—Geothermal Energy

SEC. 211. SHORT TITLE.

This subtitle may be cited as the "John Rishel Geothermal Steam Act Amendments of 2003".

SEC. 212. COMPETITIVE LEASE SALE REQUIREMENTS.

Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) is amended to read as follows:

"SEC. 4. LEASING PROCEDURES.

"(a) NOMINATIONS.—The Secretary shall accept nominations of lands to be leased at any time from qualified companies and individuals under this Act.

"(b) COMPETITIVE LEASE SALE REQUIRED.—The Secretary shall hold a competitive lease sale at least once every 2 years for lands in a State which has nominations pending under subsection (a) if such lands are otherwise available for leasing.

"(c) NONCOMPETITIVE LEASING.—The Secretary shall make available for a period of 2 years for noncompetitive leasing any tract for which a competitive lease sale is held, but for which the Secretary does not receive any bids in a competitive lease sale.

"(d) LEASES SOLD AS A BLOCK.—If information is available to the Secretary indicating a geothermal resource that could be produced as 1 unit can reasonably be expected to underlie more than 1 parcel to be offered in a competitive lease sale, the parcels for such a resource may be offered for bidding as a block in the competitive lease sale.

"(e) PENDING LEASE APPLICATIONS ON APRIL 1, 2003.—It shall be a priority for the Secretary of the Interior, and for the Secretary of Agriculture with respect to National Forest Systems lands, to ensure timely completion of administrative actions necessary to process applications for geothermal leasing pending on April 1, 2003. Such an application, and any lease issued pursuant to such an application—

"(1) except as provided in paragraph (2), shall be subject to this section as in effect on April 1, 2003; or

"(2) at the election of the applicant, shall be subject to this section as in effect on the effective date of this paragraph.".

SEC. 213. DIRECT USE.

(a) FEES FOR DIRECT USE.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is amended—

(1) in paragraph (c) by redesignating subparagraphs (1) and (2) as subparagraphs (A) and (B);

(2) by redesignating paragraphs (a) through (d) in order as paragraphs (1) through (4);

(3) by inserting "(a) IN GENERAL.—" after "SEC. 5."; and

(4) by adding at the end the following:

"(b) DIRECT USE.—Notwithstanding subsection (a)(1), with respect to the direct use of geothermal resources for purposes other than the commercial generation of electricity, the Secretary of the Interior shall establish a schedule of fees and collect fees pursuant to such a schedule in lieu of royalties based upon the total amount of the geothermal resources used. The schedule of fees shall ensure that there is a fair return to the public for the use of a geothermal resource based upon comparable fees charged for direct use of geothermal resources by States or private persons. For direct use by a State or local government for public purposes there shall be no royalty and the fee charged shall be nominal. Leases in existence on the date of enactment of the Energy Policy Act of 2003 shall be modified in order to reflect the provisions of this subsection.".

(b) LEASING FOR DIRECT USE.—Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) is further amended by adding at the end the following:

"(f) LEASING FOR DIRECT USE OF GEOTHERMAL RESOURCES.—Lands leased under this Act exclusively for direct use of geothermal resources shall be leased to any qualified applicant who first applies for such a lease under regulations issued by the Secretary, if—

"(1) the Secretary publishes a notice of the lands proposed for leasing 60 days before the date of the issuance of the lease; and

"(2) the Secretary does not receive in the 60-day period beginning on the date of such publication any nomination to include the lands concerned in the next competitive lease sale.

"(g) AREA SUBJECT TO LEASE FOR DIRECT USE.—A geothermal lease for the direct use of geothermal resources shall embrace not more than the amount of acreage determined by the Secretary to be reasonably necessary for such proposed utilization.".

(c) EXISTING LEASES WITH A DIRECT USE FACILITY.—

(1) APPLICATION TO CONVERT.—Any lessee under a lease under the Geothermal Steam Act of 1970 that was issued before the date of the enactment of this Act may apply to the Secretary of the Interior, by not later than 18 months after the date of the enactment of this Act, to convert such lease to a lease for direct utilization of geothermal resources in accordance with the amendments made by this section.

(2) CONVERSION.—The Secretary shall approve such an application and convert such a lease to a lease in accordance with the amendments by not later than 180 days after receipt of such application, unless the Secretary determines that the applicant is not a qualified applicant with respect to the lease.

(3) APPLICATION OF NEW LEASE TERMS.—The amendment made by subsection (a)(4) shall apply with respect to payments under a lease converted under this subsection that are due and owing to the United States on or after July 16, 2003.

SEC. 214. ROYALTIES AND NEAR-TERM PRODUCTION INCENTIVES.

(a) ROYALTY.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended—

(1) in subsection (a) by striking paragraph (1) and inserting the following:

"(1) a royalty on electricity produced using geothermal steam and associated geothermal resources, other than direct use of geothermal resources, that shall be—

"(A) not less than 1 percent and not more than 2.5 percent of the gross proceeds from the sale of electricity produced from such resources during the first 10 years of production under the lease; and

"(B) not less than 2 and not more than 5 percent of the gross proceeds from the sale of electricity produced from such resources during each year after such 10-year period;"; and

(2) by adding at the end the following:

"(c) FINAL REGULATION ESTABLISHING ROYALTY RATES.—In issuing any final regulation establishing royalty rates under this section, the Secretary shall seek—

"(1) to provide lessees a simplified administrative system;

"(2) to encourage new development; and

"(3) to achieve the same long-term level of royalty revenues to States and counties as the regulation in effect on the date of enactment of this subsection.

"(d) CREDITS FOR IN-KIND PAYMENTS OF ELECTRICITY.—The Secretary may provide to a lessee a credit against royalties owed under this Act, in an amount equal to the value of electricity provided under contract to a State or county government that is entitled to a portion of such royalties under section 20 of this Act, section 35 of the Mineral Leasing Act (30 U.S.C. 191), or section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355), if—

"(1) the Secretary has approved in advance the contract between the lessee and the State or county government for such in-kind payments;

"(2) the contract establishes a specific methodology to determine the value of such credits; and

"(3) the maximum credit will be equal to the royalty value owed to the State or county that is a party to the contract and the electricity received will serve as the royalty payment from the Federal Government to that entity.".

(b) DISPOSAL OF MONEYS FROM SALES, BONUSES, ROYALTIES, AND RENTALS.—Section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019) is amended to read as follows:

"SEC. 20. DISPOSAL OF MONEYS FROM SALES, BONUSES, RENTALS, AND ROYALTIES.

"(a) IN GENERAL.—Except with respect to lands in the State of Alaska, all monies received by the United States from sales, bonuses, rentals, and royalties under this Act shall be paid into the Treasury of the United States. Of

amounts deposited under this subsection, subject to the provisions of section 35 of the Mineral Leasing Act (30 U.S.C. 191(b)) and section 5(a)(2) of this Act—

"(1) 50 percent shall be paid to the State within the boundaries of which the leased lands or geothermal resources are or were located; and

"(2) 25 percent shall be paid to the County within the boundaries of which the leased lands or geothermal resources are or were located.

"(b) Use of Payments.—Amounts paid to a State or county under subsection (a) shall be used consistent with the terms of section 35 of the Mineral Leasing Act (30 U.S.C. 191).".

(c) Near-Term Production Incentive for Existing Leases.—

(1) In general.—Notwithstanding section 5(a) of the Geothermal Steam Act of 1970, the royalty required to be paid shall be 50 percent of the amount of the royalty otherwise required, on any lease issued before the date of enactment of this Act that does not convert to new royalty terms under subsection (e)—

(A) with respect to commercial production of energy from a facility that begins such production in the 6-year period beginning on the date of the enactment of this Act; or

(B) on qualified expansion geothermal energy.

(2) 4-year application.—Paragraph (1) applies only to new commercial production of energy from a facility in the first 4 years of such production.

(d) Definition of Qualified Expansion Geothermal Energy.—In this section, the term "qualified expansion geothermal energy" means geothermal energy produced from a generation facility for which—

(1) the production is increased by more than 10 percent as a result of expansion of the facility carried out in the 6-year period beginning on the date of the enactment of this Act; and

(2) such production increase is greater than 10 percent of the average production by the facility during the 5-year period preceding the expansion of the facility.

(e) Royalty Under Existing Leases.—

(1) In general.—Any lessee under a lease issued under the Geothermal Steam Act of 1970 before the date of the enactment of this Act may modify the terms of the lease relating to payment of royalties to comply with the amendment made by subsection (a), by applying to the Secretary of the Interior by not later than 18 months after the date of the enactment of this Act.

(2) Application of modification.—Such modification shall apply to any use of geothermal steam and any associated geothermal resources to which the amendment applies that occurs after the date of that application.

(3) Consultation.—The Secretary—

(A) shall consult with the State and local governments affected by any proposed changes in lease royalty terms under this subsection; and

(B) may establish a gross proceeds percentage within the range specified in the amendment made by subsection (a)(1) and with the concurrence of the lessee and the State.

SEC. 215. GEOTHERMAL LEASING AND PERMITTING ON FEDERAL LANDS.

(a) In General.—Not later than 180 days after the date of the enactment of this section, the Secretary of the Interior and the Secretary of Agriculture shall enter into and submit to Congress a memorandum of understanding in accordance with this section regarding leasing and permitting for geothermal development of public lands and National Forest System lands under their respective jurisdictions.

(b) Lease and Permit Applications.—The memorandum of understanding shall—

(1) identify areas with geothermal potential on lands included in the National Forest System and, when necessary, require review of management plans to consider leasing under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) as a land use; and

(2) establish an administrative procedure for processing geothermal lease applications, including lines of authority, steps in application processing, and time limits for application procession.

(c) Data Retrieval System.—The memorandum of understanding shall establish a joint data retrieval system that is capable of tracking lease and permit applications and providing to the applicant information as to their status within the Departments of the Interior and Agriculture, including an estimate of the time required for administrative action.

SEC. 216. REVIEW AND REPORT TO CONGRESS.

The Secretary of the Interior shall promptly review and report to Congress not later than 3 years after the date of the enactment of this Act regarding the status of all withdrawals from leasing under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) of Federal lands, specifying for each such area whether the basis for such withdrawal still applies.

SEC. 217. REIMBURSEMENT FOR COSTS OF NEPA ANALYSES, DOCUMENTATION, AND STUDIES.

(a) In General.—The Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) is amended by adding at the end the following:

"SEC. 30. REIMBURSEMENT FOR COSTS OF CERTAIN ANALYSES, DOCUMENTATION, AND STUDIES.

"(a) In General.—The Secretary of the Interior may reimburse a person that is a lessee, operator, operating rights owner, or applicant for any lease under this Act for reasonable amounts paid by the person for preparation for the Secretary by a contractor or other person selected by the Secretary of any project-level analysis, documentation, or related study required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the lease.

"(b) Conditions.—The Secretary may provide reimbursement under subsection (a) only if—

"(1) adequate funding to enable the Secretary to timely prepare the analysis, documentation, or related study is not appropriated;

"(2) the person paid the costs voluntarily;

"(3) the person maintains records of its costs in accordance with regulations issued by the Secretary;

"(4) the reimbursement is in the form of a reduction in the Federal share of the royalty required to be paid for the lease for which the analysis, documentation, or related study is conducted, and is agreed to by the Secretary and the person reimbursed prior to commencing the analysis, documentation, or related study; and

"(5) the agreement required under paragraph (4) contains provisions—

"(A) reducing royalties owed on lease production based on market prices;

"(B) stipulating an automatic termination of the royalty reduction upon recovery of documented costs; and

"(C) providing a process by which the lessee may seek reimbursement for circumstances in which production from the specified lease is not possible.".

(b) Application.—The amendment made by this section shall apply with respect to an analysis, documentation, or a related study conducted on or after the date of enactment of this Act for any lease entered into before, on, or after the date of enactment of this Act.

(c) Deadline for Regulations.—The Secretary shall issue regulations implementing the amendment made by this section by not later than 1 year after the date of enactment of this Act.

SEC. 218. ASSESSMENT OF GEOTHERMAL ENERGY POTENTIAL.

The Secretary of Interior, acting through the Director of the United States Geological Survey and in cooperation with the States, shall update the 1978 Assessment of Geothermal Resources, and submit that updated assessment to Congress—

(1) not later than 3 years after the date of enactment of this Act; and

(2) thereafter as the availability of data and developments in technology warrant.

SEC. 219. COOPERATIVE OR UNIT PLANS.

Section 18 of the Geothermal Steam Act of 1970 (30 U.S.C. 1017) is amended to read as follows:

"SEC. 18. UNIT AND COMMUNITIZATION AGREEMENTS.

"(a) Adoption of Units by Lessees.—

"(1) In general.—For the purpose of more properly conserving the natural resources of any geothermal reservoir, field, or like area, or any part thereof (whether or not any part of the geothermal field, or like area, is then subject to any Unit Agreement (cooperative plan of development or operation)), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a Unit Agreement for such field, or like area, or any part thereof including direct use resources, if determined and certified by the Secretary to be necessary or advisable in the public interest. A majority interest of owners of any single lease shall have the authority to commit that lease to a Unit Agreement. The Secretary of the Interior may also initiate the formation of a Unit Agreement if in the public interest.

"(2) Modification of lease requirements by secretary.—The Secretary may, in the discretion of the Secretary, and with the consent of the holders of leases involved, establish, alter, change, or revoke rates of operations (including drilling, operations, production, and other requirements) of such leases and make conditions with reference to such leases, with the consent of the lessees, in connection with the creation and operation of any such Unit Agreement as the Secretary may deem necessary or proper to secure the proper protection of the public interest. Leases with unlike lease terms or royalty rates do not need to be modified to be in the same unit.

"(b) Requirement of Plans Under New Leases.—The Secretary—

"(1) may provide that geothermal leases issued under this Act shall contain a provision requiring the lessee to operate under such a reasonable Unit Agreement; and

"(2) may prescribe such an Agreement under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

"(c) Modification of Rate of Prospecting, Development, and Production.—The Secretary may require that any Agreement authorized by this section that applies to lands owned by the United States contain a provision under which authority is vested in the Secretary, or any person, committee, or State or Federal officer or agency as may be designated in the Agreement to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such an Agreement.

"(d) Exclusion From Determination of Holding or Control.—Any lands that are subject to any Agreement approved or prescribed by the Secretary under this section shall not be considered in determining holdings or control under any provision of this Act.

"(e) Pooling of Certain Lands.—If separate tracts of lands cannot be independently developed and operated to use geothermal steam and associated geothermal resources pursuant to any section of this Act—

"(1) such lands, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, for purposes of development and operation under a Communitization Agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the production unit, if such pooling is determined by the Secretary to be in the public interest; and

"(2) operation or production pursuant to such an Agreement shall be treated as operation or production with respect to each tract of land that is subject to the agreement.

"(f) Unit Agreement Review.—No more than 5 years after approval of any cooperative or Unit Agreement and at least every 5 years thereafter, the Secretary shall review each such Agreement and, after notice and opportunity for comment, eliminate from inclusion in such Agreement any lands that the Secretary determines are not reasonably necessary for Unit operations under the Agreement. Such elimination shall be based on scientific evidence, and shall occur only if it is determined by the Secretary to be for the purpose of conserving and properly managing the geothermal resource. Any land so eliminated shall be eligible for an extension under subsection (g) of section 6 if it meets the requirements for such an extension.

"(g) Drilling or Development Contracts.— The Secretary may, on such conditions as the Secretary may prescribe, approve drilling or development contracts made by 1 or more lessees of geothermal leases, with 1 or more persons, associations, or corporations if, in the discretion of the Secretary, the conservation of natural resources or the public convenience or necessity may require or the interests of the United States may be best served thereby. All leases operated under such approved drilling or development contracts, and interests thereunder, shall be excepted in determining holdings or control under section 7.

"(h) Coordination With State Governments.—The Secretary shall coordinate unitization and pooling activities with the appropriate State agencies and shall ensure that State leases included in any unitization or pooling arrangement are treated equally with Federal leases.".

SEC. 220. ROYALTY ON BYPRODUCTS.

Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended in subsection (a) by striking paragraph (2) and inserting the following:

"(2) a royalty on any byproduct that is a mineral named in the first section of the Mineral Leasing Act (30 U.S.C. 181), and that is derived from production under the lease, at the rate of the royalty that applies under that Act to production of such mineral under a lease under that Act;".

SEC. 221. REPEAL OF AUTHORITIES OF SECRETARY TO READJUST TERMS, CONDITIONS, RENTALS, AND ROYALTIES.

Section 8 of the Geothermal Steam Act of 1970 (30 U.S.C. 1007) is amended by repealing subsection (b), and by redesignating subsection (c) as subsection (b).

SEC. 222. CREDITING OF RENTAL TOWARD ROYALTY.

Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended—

(1) in subsection (a)(2) by inserting "and" after the semicolon at the end;

(2) in subsection (a)(3) by striking "; and" and inserting a period;

(3) by striking paragraph (4) of subsection (a); and

(4) by adding at the end the following:

"(e) Crediting of Rental Toward Royalty.—Any annual rental under this section that is paid with respect to a lease before the first day of the year for which the annual rental is owed shall be credited to the amount of royalty that is required to be paid under the lease for that year.".

SEC. 223. LEASE DURATION AND WORK COMMITMENT REQUIREMENTS.

Section 6 of the Geothermal Steam Act of 1970 (30 U.S.C. 1005) is amended—

(1) by striking so much as precedes subsection (c), and striking subsections (e), (g), (h), (i), and (j);

(2) by redesignating subsections (c), (d), and (f) in order as subsections (g), (h), and (i); and

(3) by inserting before subsection (g), as so redesignated, the following:

"SEC. 6. LEASE TERM AND WORK COMMITMENT REQUIREMENTS.

"(a) In General.—

"(1) Primary term.—A geothermal lease shall be for a primary term of 10 years.

"(2) Initial extension.—The Secretary shall extend the primary term of a geothermal lease for 5 years if, for each year after the fifth year of the lease—

"(A) the Secretary determined under subsection (c) that the lessee satisfied the work commitment requirements that applied to the lease for that year; or

"(B) the lessee paid in accordance with subsection (d) the value of any work that was not completed in accordance with those requirements.

"(3) Additional extension.—The Secretary shall extend the primary term of a geothermal lease (after an initial extension under paragraph (2)) for an additional 5 years if, for each year of the initial extension under paragraph (2), the Secretary determined under subsection (c) that the lessee satisfied the work commitment requirements that applied to the lease for that year.

"(b) Requirement to Satisfy Annual Work Commitment Requirement.—

"(1) In general.—The lessee for a geothermal lease shall, for each year after the fifth year of the lease, satisfy work commitment requirements prescribed by the Secretary that apply to the lease for that year.

"(2) Prescription of work commitment requirements.—The Secretary shall issue regulations prescribing minimum equivalent dollar value work commitment requirements for geothermal leases, that—

"(A) require that a lessee, in each year after the fifth year of the primary term of a geothermal lease, diligently work to achieve commercial production or utilization of steam under the lease;

"(B) require that in each year to which work commitment requirements under the regulations apply, the lessee shall significantly reduce the amount of work that remains to be done to achieve such production or utilization;

"(C) describe specific work that must be completed by a lessee by the end of each year to which the work commitment requirements apply and factors, such as force majeure events, that suspend or modify the work commitment obligation;

"(D) carry forward and apply to work commitment requirements for a year, work completed in any year in the preceding 3-year period that was in excess of the work required to be performed in that preceding year;

"(E) establish transition rules for leases issued before the date of the enactment of this subsection, including terms under which a lease that is near the end of its term on the date of enactment of this subsection may be extended for up to 2 years—

"(i) to allow achievement of production under the lease; or

"(ii) to allow the lease to be included in a producing unit; and

"(F) establish an annual payment that, at the option of the lessee, may be exercised in lieu of meeting any work requirement for a limited number of years that the Secretary determines will not impair achieving diligent development of the geothermal resource.

"(3) Termination of application of requirements.—Work commitment requirements prescribed under this subsection shall not apply to a geothermal lease after the date on which geothermal steam is produced or utilized under the lease in commercial quantities.

"(c) Determination of Whether Requirements Satisfied.—The Secretary shall, by not later than 90 days after the end of each year for which work commitment requirements under subsection (b) apply to a geothermal lease—

"(1) determine whether the lessee has satisfied the requirements that apply for that year;

"(2) notify the lessee of that determination; and

"(3) in the case of a notification that the lessee did not satisfy work commitment requirements for the year, include in the notification—

"(A) a description of the specific work that was not completed by the lessee in accordance with the requirements; and

"(B) the amount of the dollar value of such work that was not completed, reduced by the amount of expenditures made for work completed in a prior year that is carried forward pursuant to subsection (b)(2)(D).

"(d) Payment of Value of Uncompleted Work.—

"(1) In general.—If the Secretary notifies a lessee that the lessee failed to satisfy work commitment requirements under subsection (b), the lessee shall pay to the Secretary, by not later than the end of the 60-day period beginning on the date of the notification, the dollar value of work that was not completed by the lessee, in the amount stated in the notification (as reduced under subsection (c)(3)(B)).

"(2) Failure to pay value of uncompleted work.—If a lessee fails to pay such amount to the Secretary before the end of that period, the lease shall terminate upon the expiration of the period.

"(e) Continuation After Commercial Production or Utilization.—If geothermal steam is produced or utilized in commercial quantities within the primary term of the lease under subsection (a) (including any extension of the lease under subsection (a)), such lease shall continue until the date on which geothermal steam is no longer produced or utilized in commercial quantities.

"(f) Conversion of Geothermal Lease to Mineral Lease.—The lessee under a lease that has produced geothermal steam for electrical generation, has been determined by the Secretary to be incapable of any further commercial production or utilization of geothermal steam, and that is producing any valuable byproduct in payable quantities may, within 6 months after such determination—

"(1) convert the lease to a mineral lease under the Mineral Leasing Act (30 U.S.C. 181 et seq.) or under the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.), if the lands that are subject to the lease can be leased under that Act for the production of such byproduct; or

"(2) convert the lease to a mining claim under the general mining laws, if the byproduct is a locatable mineral.".

SEC. 224. ADVANCED ROYALTIES REQUIRED FOR SUSPENSION OF PRODUCTION.

Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended by adding at the end the following:

"(f) Advanced Royalties Required for Suspension of Production.—

"(1) Continuation of lease following cessation of production.—If, at any time after commercial production under a lease is achieved, production ceases for any cause the lease shall remain in full force and effect—

"(A) during the 1-year period beginning on the date production ceases; and

"(B) after such period if, and so long as, the lessee commences and continues diligently and in good faith until such production is resumed the steps, operations, or procedures necessary to cause a resumption of such production.

"(2) If production of heat or energy under a geothermal lease is suspended after the date of any such production for which royalty is required under subsection (a) and the terms of paragraph (1) are not met, the Secretary shall require the lessee, until the end of such suspension, to pay royalty in advance at the monthly pro-rata rate of the average annual rate at which such royalty was paid each year in the 5-year-period preceding the date of suspension.

"(3) Paragraph (2) shall not apply if the suspension is required or otherwise caused by the Secretary, the Secretary of a military department, a State or local government, or a force majeure.".

SEC. 225. ANNUAL RENTAL.

(a) Annual Rental Rate.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended in subsection (a) in paragraph (3) by striking "$1 per acre or fraction thereof for each year of the lease" and all that follows through the end of the paragraph and inserting "$1 per acre or fraction thereof for each year of the lease through the tenth year in the case of a lease awarded in a noncompetitive lease sale; or $2 per acre or fraction thereof for the first year, $3 per acre or fraction thereof for each of the second through tenth years, in the case of a lease awarded in a competitive lease sale; and $5 per acre or fraction thereof for each year after the 10th year thereof for all leases.".

(b) Termination of Lease for Failure to Pay Rental.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended by adding at the end the following:

"(g) Termination of Lease for Failure to Pay Rental.—

"(1) In general.—The Secretary shall terminate any lease with respect to which rental is not paid in accordance with this Act and the terms of the lease under which the rental is required, upon the expiration of the 45-day period beginning on the date of the failure to pay such rental.

"(2) Notification.—The Secretary shall promptly notify a lessee that has not paid rental required under the lease that the lease will be terminated at the end of the period referred to in paragraph (1).

"(3) Reinstatement.—A lease that would otherwise terminate under paragraph (1) shall not terminate under that paragraph if the lessee pays to the Secretary, before the end of the period referred to in paragraph (1), the amount of rental due plus a late fee equal to 10 percent of such amount.".

SEC. 226. LEASING AND PERMITTING ON FEDERAL LANDS WITHDRAWN FOR MILITARY PURPOSES.

Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Defense, in consultation with each military service and with interested States, counties, representatives of the geothermal industry, and other persons, shall submit to Congress a joint report concerning leasing and permitting activities for geothermal energy on Federal lands withdrawn for military purposes. Such report shall include the following:

(1) A description of the Military Geothermal Program, including any differences between it and the non-Military Geothermal Program, including required security procedures, and operational considerations, and discussions as to the differences, and why they are important. Further, the report shall describe revenues or energy provided to the Department of Defense and its facilities, royalty structures, where applicable, and any revenue sharing with States and counties or other benefits between—

(A) the implementation of the Geothermal Steam Act of 1970 (30 U.S.C 1001 et seq.) and other applicable Federal law by the Secretary of the Interior; and

(B) the administration of geothermal leasing under section 2689 of title 10, United States Code, by the Secretary of Defense.

(2) If appropriate, a description of the current methods and procedures used to ensure interagency coordination, where needed, in developing renewable energy sources on Federal lands withdrawn for military purposes, and an identification of any new procedures that might be required in the future for the improvement of interagency coordination to ensure efficient processing and administration of leases or contracts for geothermal energy on Federal lands withdrawn for military purposes, consistent with the defense purposes of such withdrawals.

(3) Recommendations for any legislative or administrative actions that might better achieve increased geothermal production, including a common royalty structure, leasing procedures, or other changes that increase production, offset military operation costs, or enhance the Federal agencies' ability to develop geothermal resources.

Except as provided in this section, nothing in this subtitle shall affect the legal status of the Department of the Interior and the Department of the Defense with respect to each other regarding geothermal leasing and development until such status is changed by law.

SEC. 227. TECHNICAL AMENDMENTS.

The Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) is further amended as follows:

(1) By striking "geothermal steam and associated geothermal resources" each place it appears and inserting "geothermal resources".

(2) Section 2(e) (30 U.S.C. 1001(e)) is amended to read as follows:

"(e) 'direct use' means utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production of electricity; and".

(3) Section 21 (30 U.S.C. 1020) is amended by striking "(a) Within one hundred" and all that follows through "(b) Geothermal" and inserting "Geothermal".

(4) The first section (30 U.S.C. 1001 note) is amended by striking "That this" and inserting the following:

"SECTION 1. SHORT TITLE.

"This".

(5) Section 2 (30 U.S.C. 1001) is amended by striking "Sec. 2. As" and inserting the following:

"SEC. 2. DEFINITIONS.

"As".

(6) Section 3 (30 U.S.C. 1002) is amended by striking "Sec. 3. Subject" and inserting the following:

"SEC. 3 . LANDS SUBJECT TO GEOTHERMAL LEASING.

"Subject".

(7) Section 5 (30 U.S.C. 1004) is further amended by striking "Sec. 5.", and by inserting immediately before and above subsection (a) the following:

"SEC. 5. RENTS AND ROYALTIES.".

(8) Section 7 (30 U.S.C. 1006) is amended by striking "Sec. 7. A geothermal" and inserting the following:

"SEC. 7. ACREAGE OF GEOTHERMAL LEASE.

"A geothermal".

(9) Section 8 (30 U.S.C. 1007) is amended by striking "Sec. 8. (a) The" and inserting the following:

"SEC. 8. READJUSTMENT OF LEASE TERMS AND CONDITIONS.

"(a) The".

(10) Section 9 (30 U.S.C. 1008) is amended by striking "Sec. 9. If" and inserting the following:

"SEC. 9. BYPRODUCTS.

"If".

(11) Section 10 (30 U.S.C. 1009) is amended by striking "Sec. 10. The" and inserting the following:

"SEC. 10. RELINQUISHMENT OF GEOTHERMAL RIGHTS.

"The".

(12) Section 11 (30 U.S.C. 1010) is amended by striking "Sec. 11. The" and inserting the following:

"SEC. 11. SUSPENSION OF OPERATIONS AND PRODUCTION.

"The".

(13) Section 12 (30 U.S.C. 1011) is amended by striking "Sec. 12. Leases" and inserting the following:

"SEC. 12. TERMINATION OF LEASES.

"Leases".

(14) Section 13 (30 U.S.C. 1012) is amended by striking "Sec. 13. The" and inserting the following:

"SEC. 13. WAIVER, SUSPENSION, OR REDUCTION OF RENTAL OR ROYALTY.

"The".

(15) Section 14 (30 U.S.C. 1013) is amended by striking "Sec. 14. Subject" and inserting the following:

"SEC. 14. SURFACE LAND USE.

"Subject".

(16) Section 15 (30 U.S.C. 1014) is amended by striking "Sec. 15. (a) Geothermal" and inserting the following:

"SEC. 15. LANDS SUBJECT TO GEOTHERMAL LEASING.

"(a) Geothermal".

(17) Section 16 (30 U.S.C. 1015) is amended by striking "Sec. 16. Leases" and inserting the following:

"SEC. 16. REQUIREMENT FOR LESSEES.

"Leases".

(18) Section 17 (30 U.S.C. 1016) is amended by striking "Sec. 17. Administration" and inserting the following:

"SEC. 17. ADMINISTRATION.

"Administration".

(19) Section 19 (30 U.S.C. 1018) is amended by striking "Sec. 19. Upon" and inserting the following:

"SEC. 19. DATA FROM FEDERAL AGENCIES.

"Upon".

(20) Section 21 (30 U.S.C. 1020) is further amended by striking "Sec. 21.", and by inserting immediately before and above the remainder of that section the following:

"SEC. 21. PUBLICATION IN FEDERAL REGISTER; RESERVATION OF MINERAL RIGHTS.".

(21) Section 22 (30 U.S.C. 1021) is amended by striking "Sec. 22. Nothing" and inserting the following:

"SEC. 22. FEDERAL EXEMPTION FROM STATE WATER LAWS.

"Nothing".

(22) Section 23 (30 U.S.C. 1022) is amended by striking "Sec. 23. (a) All" and inserting the following:

"SEC. 23. PREVENTION OF WASTE; EXCLUSIVITY.

"(a) All".

(23) Section 24 (30 U.S.C. 1023) is amended by striking "Sec. 24. The" and inserting the following:

"SEC. 24. RULES AND REGULATIONS.

"The".

(24) Section 25 (30 U.S.C. 1024) is amended by striking "Sec. 25. As" and inserting the following:

"SEC. 25. INCLUSION OF GEOTHERMAL LEASING UNDER CERTAIN OTHER LAWS.

"As".

(25) Section 26 is amended by striking "SEC. 26. The" and inserting the following:

"SEC. 26. AMENDMENT.

"The".

(26) Section 27 (30 U.S.C. 1025) is amended by striking "SEC. 27. The" and inserting the following:

"SEC. 27. FEDERAL RESERVATION OF CERTAIN MINERAL RIGHTS.

"The".

(27) Section 28 (30 U.S.C. 1026) is amended by striking "SEC. 28. (a)(1) The" and inserting the following:

"SEC. 28. SIGNIFICANT THERMAL FEATURES.

"(a)(1) The".

(28) Section 29 (30 U.S.C. 1027) is amended by striking "SEC. 29. The" and inserting the following:

"SEC. 29. LAND SUBJECT TO PROHIBITION ON LEASING.

"The".

Subtitle C—Hydroelectric

PART I—ALTERNATIVE CONDITIONS

SEC. 231. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) FEDERAL RESERVATIONS.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by inserting after "adequate protection and utilization of such reservation." at the end of the first proviso the following: "The license applicant shall be entitled to a determination on the record, after opportunity for an expedited agency trial-type hearing of any disputed issues of material fact, with respect to such conditions. Such hearing may be conducted in accordance with procedures established by agency regulation in consultation with the Federal Energy Regulatory Commission.".

(b) FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after "and such fishways as may be prescribed by the Secretary of Commerce." the following: "The license applicant shall be entitled to a determination on the record, after opportunity for an expedited agency trial-type hearing of any disputed issues of material fact, with respect to such fishways. Such hearing may be conducted in accordance with procedures established by agency regulation in consultation with the Federal Energy Regulatory Commission.".

(c) ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.—Part I of the Federal Power Act (16 U.S.C. 791a et seq.) is amended by adding the following new section at the end thereof:

"SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

"(a) ALTERNATIVE CONDITIONS.—(1) Whenever any person applies for a license for any project works within any reservation of the United States, and the Secretary of the department under whose supervision such reservation falls (referred to in this subsection as 'the Secretary') deems a condition to such license to be necessary under the first proviso of section 4(e), the license applicant may propose an alternative condition.

"(2) Notwithstanding the first proviso of section 4(e), the Secretary shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary determines, based on substantial evidence provided by the license applicant or otherwise available to the Secretary, that such alternative condition—

"(A) provides for the adequate protection and utilization of the reservation; and

"(B) will either—

"(i) cost less to implement; or

"(ii) result in improved operation of the project works for electricity production,

as compared to the condition initially deemed necessary by the Secretary.

"(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under section 4(e) or alternative condition it accepts under this section, a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

"(4) Nothing in this section shall prohibit other interested parties from proposing alternative conditions.

"(5) If the Secretary does not accept an applicant's alternative condition under this section, and the Commission finds that the Secretary's condition would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not provide for the adequate protection and utilization of the reservation. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

"(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under section 18, the license applicant or licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway.

"(2) Notwithstanding section 18, the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the licensee or otherwise available to the Secretary, that such alternative—

"(A) will be no less protective than the fishway initially prescribed by the Secretary; and

"(B) will either—

"(i) cost less to implement; or

"(ii) result in improved operation of the project works for electricity production,

as compared to the fishway initially deemed necessary by the Secretary.

"(3) The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 18 or alternative prescription it accepts under this section, a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

"(4) Nothing in this section shall prohibit other interested parties from proposing alternative prescriptions.

"(5) If the Secretary concerned does not accept an applicant's alternative prescription under this section, and the Commission finds that the Secretary's prescription would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will be less protective than the fishway initially prescribed by the Secretary. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.".

PART II—ADDITIONAL HYDROPOWER

SEC. 241. HYDROELECTRIC PRODUCTION INCENTIVES.

(a) INCENTIVE PAYMENTS.—For electric energy generated and sold by a qualified hydroelectric facility during the incentive period, the Secretary of Energy (referred to in this section as the "Secretary") shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility. The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.

(b) DEFINITIONS.—For purposes of this section:

(1) QUALIFIED HYDROELECTRIC FACILITY.—The term "qualified hydroelectric facility" means a turbine or other generating device owned or solely operated by a non-Federal entity which generates hydroelectric energy for sale and which is added to an existing dam or conduit.

(2) EXISTING DAM OR CONDUIT.—The term "existing dam or conduit" means any dam or conduit the construction of which was completed before the date of the enactment of this section and which does not require any construction or enlargement of impoundment or diversion structures (other than repair or reconstruction) in connection with the installation of a turbine or other generating device.

(3) CONDUIT.—The term "conduit" has the same meaning as when used in section 30(a)(2) of the Federal Power Act (16 U.S.C. 823a(a)(2)).

The terms defined in this subsection shall apply without regard to the hydroelectric kilowatt capacity of the facility concerned, without regard to whether the facility uses a dam owned by a governmental or nongovernmental entity, and without regard to whether the facility begins operation on or after the date of the enactment of this section.

(c) ELIGIBILITY WINDOW.—Payments may be made under this section only for electric energy generated from a qualified hydroelectric facility which begins operation during the period of 10 fiscal years beginning with the first full fiscal year occurring after the date of enactment of this subtitle.

(d) INCENTIVE PERIOD.—A qualified hydroelectric facility may receive payments under this section for a period of 10 fiscal years (referred to in this section as the "incentive period"). Such *period shall begin with the fiscal year in which electric energy generated from the facility is first eligible for such payments.*

(e) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—Payments made by the Secretary under this section to the owner or operator of a qualified hydroelectric facility shall be based on the number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. For any such facility, the amount of such payment shall be 1.8 cents per kilowatt hour (adjusted as provided in paragraph (2)), subject to the availability of appropriations under subsection (g), except that no facility may receive more than $750,000 in 1 calendar year.

(2) ADJUSTMENTS.—The amount of the payment made to any person under this section as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 2003 in the same manner as provided in the provisions of section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions the calendar year 2003 shall be substituted for calendar year 1979.

(f) SUNSET.—No payment may be made under this section to any qualified hydroelectric facility after the expiration of the period of 20 fiscal years beginning with the first full fiscal year occurring after the date of enactment of this subtitle, and no payment may be made under this section to any such facility after a payment has been made with respect to such facility for a period of 10 fiscal years.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the purposes of this section $10,000,000 for each of the fiscal years 2004 through 2013.

SEC. 242. HYDROELECTRIC EFFICIENCY IMPROVEMENT.

(a) INCENTIVE PAYMENTS.—The Secretary of Energy shall make incentive payments to the owners or operators of hydroelectric facilities at existing dams to be used to make capital improvements in the facilities that are directly related to improving the efficiency of such facilities by at least 3 percent.

(b) LIMITATIONS.—Incentive payments under this section shall not exceed 10 percent of the costs of the capital improvement concerned and not more than 1 payment may be made with respect to improvements at a single facility. No payment in excess of $750,000 may be made with respect to improvements at a single facility.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section not more than $10,000,000 for each of the fiscal years 2004 through 2013.

SEC. 243. SMALL HYDROELECTRIC POWER PROJECTS.

Section 408(a)(6) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2708(a)(6)) is amended by striking "April 20, 1977" and inserting "March 4, 2003".

SEC. 244. INCREASED HYDROELECTRIC GENERATION AT EXISTING FEDERAL FACILITIES.

(a) IN GENERAL.—The Secretary of the Interior and the Secretary of Energy, in consultation with the Secretary of the Army, shall jointly conduct a study of the potential for increasing electric power production capability at federally owned or operated water regulation, storage, and conveyance facilities.

(b) CONTENT.—The study under this section shall include identification and description in detail of each facility that is capable, with or without modification, of producing additional hydroelectric power, including estimation of the existing potential for the facility to generate hydroelectric power.

(c) REPORT.—The Secretaries shall submit to the Committees on Energy and Commerce, Resources, and Transportation and Infrastructure of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the findings, conclusions, and recommendations of the study under this section by not later than 18 months after the date of the enactment of this Act. The report shall include each of the following:

(1) The identifications, descriptions, and estimations referred to in subsection (b).

(2) A description of activities currently conducted or considered, or that could be considered, to produce additional hydroelectric power from each identified facility.

(3) A summary of prior actions taken by the Secretaries to produce additional hydroelectric power from each identified facility.

(4) The costs to install, upgrade, or modify equipment or take other actions to produce additional hydroelectric power from each identified facility and the level of Federal power customer involvement in the determination of such costs.

(5) The benefits that would be achieved by such installation, upgrade, modification, or other action, including quantified estimates of any additional energy or capacity from each facility identified under subsection (b).

(6) A description of actions that are planned, underway, or might reasonably be considered to increase hydroelectric power production by replacing turbine runners, by performing generator upgrades or rewinds, or construction of pumped storage facilities.

(7) The impact of increased hydroelectric power production on irrigation, fish, wildlife, Indian tribes, river health, water quality, navigation, recreation, fishing, and flood control.

(8) Any additional recommendations to increase hydroelectric power production from, and reduce costs and improve efficiency at, federally owned or operated water regulation, storage, and conveyance facilities.

SEC. 245. SHIFT OF PROJECT LOADS TO OFF-PEAK PERIODS.

(a) IN GENERAL.—The Secretary of the Interior shall—

(1) review electric power consumption by Bureau of Reclamation facilities for water pumping purposes; and

(2) make such adjustments in such pumping as possible to minimize the amount of electric power consumed for such pumping during periods of peak electric power consumption, including by performing as much of such pumping as possible during off-peak hours at night.

(b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS REQUIRED.—The Secretary may not under this section make any adjustment in pumping at a facility without the consent of each person that has contracted with the United States for delivery of water from the facility for use for irrigation and that would be affected by such adjustment.

(c) EXISTING OBLIGATIONS NOT AFFECTED.—This section shall not be construed to affect any existing obligation of the Secretary to provide electric power, water, or other benefits from Bureau of Reclamation facilities, including recreational releases.

SEC. 246. CORPS OF ENGINEERS HYDROPOWER OPERATION AND MAINTENANCE FUNDING.

(a) IN GENERAL.—Notwithstanding the last sentence of section 5 of the Act of December 22, 1944 (commonly known as the "Flood Control Act of 1944") (58 Stat. 890, chapter 665; 16 U.S.C. 825s), the 11th paragraph under the heading "OFFICE OF THE SECRETARY" in title I of the Act of October 12, 1949 (63 Stat. 767, chapter 680; 16 U.S.C. 825s–1), the matter under the heading "CONTINUING FUND, SOUTHEASTERN POWER ADMINISTRATION" in title I of the Act of August 31, 1951 (65 Stat. 249, chapter 375; 16 U.S.C. 825s–2), section 3302 of title 31, United States Code, or any other law, and without further appropriation or fiscal year limitation, for fiscal year 2004, the Administrator of the Southeastern Power Administration, the Administrator of the Southwestern Power Administration, and the Administrator of the Western Area Power Administration may credit to the Secretary of the Army (referred to in this section as the "Secretary"), receipts, in an amount determined under subsection (c), from the sale of power and related services.

(b) USE OF FUNDS.—

(1) IN GENERAL.—The Secretary—

(A) shall, except as provided in paragraph (2), use the amounts credited under subsection (a) to fund only the Corps of Engineers annual operation and maintenance activities that are allocated exclusively to the power function and assigned to the respective power marketing administration and respective project system as applicable for repayment; and

(B) shall not use the amounts for any costs allocated to non-power functions of Corps of Engineer operations.

(2) EXCEPTION.—The Secretary may use amounts credited by the Southwestern Power Administration under subsection (a) for capital and nonrecurring costs.

(c) AMOUNT.—The amount of the receipts credited under subsection (a) shall be equal to such amount as—

(1) the Secretary of the Army requests; and

(2) the appropriate Administrator, in consultation with the power customers of the Administrator's power marketing administration, determines to be appropriate to apply to the costs referred to in subsection (b).

(d) APPLICABLE LAW.—The amounts credited under subsection (a) are exempt from sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.).

SEC. 247. LIMITATION ON CERTAIN CHARGES ASSESSED TO THE FLINT CREEK PROJECT, MONTANA.

Notwithstanding section 10(e)(1) of the Federal Power Act (16 U.S.C. 803(e)(1)) or any other provision of Federal law providing for the payment to the United States of charges for the use of Federal land for the purposes of operating and maintaining a hydroelectric development licensed by the Federal Energy Regulatory Commission (referred to in this section as the "Commission"), any political subdivision of the State of Montana that holds a license for Commission Project No. 1473 in Granite and Deer Lodge Counties, Montana, shall be required to pay to the United States for the use of that land for each year during which the political subdivision continues to hold the license for the project, the lesser of—

(1) $25,000; or

(2) such annual charge as the Commission or any other department or agency of the Federal Government may assess.

SEC. 248. REINSTATEMENT AND TRANSFER.

(a) REINSTATEMENT AND TRANSFER OF FEDERAL LICENSE FOR PROJECT NUMBERED 2696.—Notwithstanding section 8 of the Federal Power Act (16 U.S.C. 801) or any other provision of such Act, the Federal Energy Regulatory Commission shall reinstate the license for Project No. 2696 and transfer the license, without delay or the institution of any proceedings, to the Town of Stuyvesant, New York, holder of Federal Energy Regulatory Commission Preliminary Permit No. 11787, within 30 days after the date of enactment of this Act.

(b) HYDROELECTRIC INCENTIVES.—Project No. 2696 shall be entitled to the full benefit of any Federal legislation that promotes hydroelectric development that is enacted within 2 years either before or after the date of enactment of this Act.

(c) PROJECT DEVELOPMENT AND FINANCING.—The Federal Energy Regulatory Commission shall permit the Town of Stuyvesant to add as a colicensee any private or public entity or entities to the reinstated license at any time, notwithstanding the issuance of a preliminary permit to the Town of Stuyvesant and any consideration of municipal preference. The town shall be entitled, to the extent that funds are available or shall be made available, to receive loans under sections 402 and 403 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2702 and 2703), or similar programs, for the reimbursement of feasibility studies or development costs, or both, incurred since January 1, 2001, through and including December 31, 2006. All power produced by the project shall be deemed incremental hydropower for purpose of qualifying for any energy credit or similar benefits.

TITLE III—OIL AND GAS

Subtitle A—Petroleum Reserve and Home Heating Oil

SEC. 301. PERMANENT AUTHORITY TO OPERATE THE STRATEGIC PETROLEUM RESERVE AND OTHER ENERGY PROGRAMS.

(a) AMENDMENT TO TITLE I OF THE ENERGY POLICY AND CONSERVATION ACT.—Title I of the Energy Policy and Conservation Act (42 U.S.C. 6211 et seq.) is amended—

(1) by striking section 166 (42 U.S.C. 6246) and inserting the following:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 166. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part and part D, to remain available until expended.";

(2) by striking section 186 (42 U.S.C. 6250e); and

(3) by striking part E (42 U.S.C. 6251; relating to the expiration of title I of the Act).

(b) AMENDMENT TO TITLE II OF THE ENERGY POLICY AND CONSERVATION ACT.—Title II of the Energy Policy and Conservation Act (42 U.S.C. 6271 et seq.) is amended—

(1) by inserting before section 273 (42 U.S.C. 6283) the following:

"PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS";

(2) by striking section 273(e) (42 U.S.C. 6283(e); relating to the expiration of summer fill and fuel budgeting programs); and

(3) by striking part D (42 U.S.C. 6285; relating to the expiration of title II of the Act).

(c) TECHNICAL AMENDMENTS.—The table of contents for the Energy Policy and Conservation Act is amended—

(1) by inserting after the items relating to part C of title I the following:

"PART D—NORTHEAST HOME HEATING OIL RESERVE

"Sec. 181. Establishment.
"Sec. 182. Authority.
"Sec. 183. Conditions for release; plan.
"Sec. 184. Northeast Home Heating Oil Reserve Account.
"Sec. 185. Exemptions.";

(2) by amending the items relating to part C of title II to read as follows:

"PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

"Sec. 273. Summer fill and fuel budgeting programs.";

and

(3) by striking the items relating to part D of title II.

(d) AMENDMENT TO THE ENERGY POLICY AND CONSERVATION ACT.—Section 183(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6250(b)(1)) is amended by striking all after "increases" through to "mid-October through March" and inserting "by more than 60 percent over its 5-year rolling average for the months of mid-October through March (considered as a heating season average)".

(e) FILL STRATEGIC PETROLEUM RESERVE TO CAPACITY.—The Secretary of Energy shall, as expeditiously as practicable, acquire petroleum in amounts sufficient to fill the Strategic Petroleum Reserve to the 1,000,000,000 barrel capacity authorized under section 154(a) of the Energy Policy and Conservation Act (42 U.S.C. 6234(a)), consistent with the provisions of sections 159 and 160 of such Act (42 U.S.C. 6239, 6240).

SEC. 302. NATIONAL OILHEAT RESEARCH ALLIANCE.

Section 713 of the Energy Act of 2000 (42 U.S.C. 6201 note) is amended by striking "4" and inserting "9".

Subtitle B—Production Incentives

SEC. 311. DEFINITION OF SECRETARY.

In this subtitle, the term "Secretary" means the Secretary of the Interior.

SEC. 312. PROGRAM ON OIL AND GAS ROYALTIES IN-KIND.

(a) APPLICABILITY OF SECTION.—Notwithstanding any other provision of law, this section applies to all royalty in-kind accepted by the Secretary on or after the date of enactment of this Act under any Federal oil or gas lease or permit under section 36 of the Mineral Leasing Act (30 U.S.C. 192), section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353), or any other Federal law governing leasing of Federal land for oil and gas development.

(b) TERMS AND CONDITIONS.—All royalty accruing to the United States shall, on the demand of the Secretary, be paid in oil or gas. If the Secretary makes such a demand, the following provisions apply to such payment:

(1) SATISFACTION OF ROYALTY OBLIGATION.—Delivery by, or on behalf of, the lessee of the royalty amount and quality due under the lease satisfies the lessee's royalty obligation for the amount delivered, except that transportation and processing reimbursements paid to, or deductions claimed by, the lessee shall be subject to review and audit.

(2) MARKETABLE CONDITION.—

(A) IN GENERAL.—Royalty production shall be placed in marketable condition by the lessee at no cost to the United States.

(B) DEFINITION OF MARKETABLE CONDITION.—In this paragraph, the term "in marketable condition" means sufficiently free from impurities and otherwise in a condition that the royalty production will be accepted by a purchaser under a sales contract typical of the field or area in which the royalty production was produced.

(3) DISPOSITION BY THE SECRETARY.—The Secretary may—

(A) sell or otherwise dispose of any royalty production taken in-kind (other than oil or gas transferred under section 27(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(3)) for not less than the market price; and

(B) transport or process (or both) any royalty production taken in-kind.

(4) RETENTION BY THE SECRETARY.—The Secretary may, notwithstanding section 3302 of title 31, United States Code, retain and use a portion of the revenues from the sale of oil and gas taken in-kind that otherwise would be deposited to miscellaneous receipts, without regard to fiscal year limitation, or may use oil or gas received as royalty taken in-kind (in this paragraph referred to as "royalty production") to pay the cost of—

(A) transporting the royalty production;

(B) processing the royalty production;

(C) disposing of the royalty production; or

(D) any combination of transporting, processing, and disposing of the royalty production.

(5) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may not use revenues from the sale of oil and gas taken in-kind to pay for personnel, travel, or other administrative costs of the Federal Government.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Secretary may use a portion of the revenues from the sale of oil taken in-kind, without fiscal year limitation, to pay transportation costs, salaries, and other administrative costs directly related to filling the Strategic Petroleum Reserve.

(c) REIMBURSEMENT OF COST.—If the lessee, pursuant to an agreement with the United States or as provided in the lease, processes the royalty gas or delivers the royalty oil or gas at a point not on or adjacent to the lease area, the Secretary shall—

(1) reimburse the lessee for the reasonable costs of transportation (not including gathering) from the lease to the point of delivery or for processing costs; or

(2) allow the lessee to deduct the transportation or processing costs in reporting and paying royalties in-value for other Federal oil and gas leases.

(d) BENEFIT TO THE UNITED STATES REQUIRED.—The Secretary may receive oil or gas royalties in-kind only if the Secretary determines that receiving royalties in-kind provides benefits to the United States that are greater than or equal to the benefits that are likely to have been received had royalties been taken in-value.

(e) REPORTS.—

(1) IN GENERAL.—Not later than September 30, 2005, the Secretary shall submit to Congress a report that addresses—

(A) actions taken to develop businesses processes and automated systems to fully support the royalty-in-kind capability to be used in tandem with the royalty-in-value approach in managing Federal oil and gas revenue; and

(B) future royalty-in-kind businesses operation plans and objectives.

(2) REPORTS ON OIL OR GAS ROYALTIES TAKEN IN-KIND.—For each of fiscal years 2004 through 2013 in which the United States takes oil or gas royalties in-kind from production in any State or from the outer Continental Shelf, excluding royalties taken in-kind and sold to refineries under subsection (h), the Secretary shall submit to Congress a report that describes—

(A) the methodology or methodologies used by the Secretary to determine compliance with subsection (d), including the performance standard for comparing amounts received by the United States derived from royalties in-kind to amounts likely to have been received had royalties been taken in-value;

(B) an explanation of the evaluation that led the Secretary to take royalties in-kind from a lease or group of leases, including the expected revenue effect of taking royalties in-kind;

(C) actual amounts received by the United States derived from taking royalties in-kind and costs and savings incurred by the United States associated with taking royalties in-kind, including, but not limited to, administrative savings and any new or increased administrative costs; and

(D) an evaluation of other relevant public benefits or detriments associated with taking royalties in-kind.

(f) DEDUCTION OF EXPENSES.—

(1) IN GENERAL.—Before making payments under section 35 of the Mineral Leasing Act (30 U.S.C. 191) or section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)) of revenues derived from the sale of royalty production taken in-kind from a lease, the Secretary shall deduct amounts paid or deducted under subsections (b)(4) and (c) and deposit the amount of the deductions in the miscellaneous receipts of the United States Treasury.

(2) ACCOUNTING FOR DEDUCTIONS.—When the Secretary allows the lessee to deduct transportation or processing costs under subsection (c), the Secretary may not reduce any payments to recipients of revenues derived from any other Federal oil and gas lease as a consequence of that deduction.

(g) CONSULTATION WITH STATES.—The Secretary—

(1) shall consult with a State before conducting a royalty in-kind program under this subtitle within the State, and may delegate management of any portion of the Federal royalty in-kind program to the State except as otherwise prohibited by Federal law; and

(2) shall consult annually with any State from which Federal oil or gas royalty is being taken in-kind to ensure, to the maximum extent practicable, that the royalty in-kind program provides revenues to the State greater than or equal to those likely to have been received had royalties been taken in-value.

(h) SMALL REFINERIES.—

(1) PREFERENCE.—If the Secretary finds that sufficient supplies of crude oil are not available in the open market to refineries that do not have their own source of supply for crude oil, the Secretary may grant preference to such refineries in the sale of any royalty oil accruing or reserved to the United States under Federal oil and gas leases issued under any mineral leasing law, for processing or use in such refineries at private sale at not less than the market price.

(2) PRORATION AMONG REFINERIES IN PRODUCTION AREA.—In disposing of oil under this subsection, the Secretary of Energy may, at the discretion of the Secretary, prorate the oil among refineries described in paragraph (1) in the area in which the oil is produced.

(i) DISPOSITION TO FEDERAL AGENCIES.—

(1) ONSHORE ROYALTY.—Any royalty oil or gas taken by the Secretary in-kind from onshore oil and gas leases may be sold at not less than the market price to any Federal agency.

(2) OFFSHORE ROYALTY.—Any royalty oil or gas taken in-kind from a Federal oil or gas lease on the outer Continental Shelf may be disposed of only under section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353).

(j) FEDERAL LOW-INCOME ENERGY ASSISTANCE PROGRAMS.—

(1) PREFERENCE.—In disposing of royalty oil or gas taken in-kind under this section, the Secretary may grant a preference to any person, including any Federal or State agency, for the purpose of providing additional resources to any Federal low-income energy assistance program.

(2) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall transmit a report to Congress, assessing the effectiveness of granting preferences specified in paragraph (1) and providing a specific recommendation on the continuation of authority to grant preferences.

SEC. 313. MARGINAL PROPERTY PRODUCTION INCENTIVES.

(a) DEFINITION OF MARGINAL PROPERTY.—Until such time as the Secretary issues regulations under subsection (e) that prescribe a different definition, in this section the term "marginal property" means an onshore unit, communitization agreement, or lease not within a unit or communitization agreement, that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 million British thermal units of gas per well per day calculated based on the average over the 3 most recent production months, including only wells that produce on more than half of the days during those 3 production months.

(b) CONDITIONS FOR REDUCTION OF ROYALTY RATE.—Until such time as the Secretary issues regulations under subsection (e) that prescribe different thresholds or standards, the Secretary shall reduce the royalty rate on—

(1) oil production from marginal properties as prescribed in subsection (c) when the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, is, on average, less than $15 per barrel for 90 consecutive trading days; and

(2) gas production from marginal properties as prescribed in subsection (c) when the spot price of natural gas delivered at Henry Hub, Louisiana, is, on average, less than $2.00 per million British thermal units for 90 consecutive trading days.

(c) REDUCED ROYALTY RATE.—

(1) IN GENERAL.—When a marginal property meets the conditions specified in subsection (b), the royalty rate shall be the lesser of—

(A) 5 percent; or

(B) the applicable rate under any other statutory or regulatory royalty relief provision that applies to the affected production.

(2) PERIOD OF EFFECTIVENESS.—The reduced royalty rate under this subsection shall be effective beginning on the first day of the production month following the date on which the applicable condition specified in subsection (b) is met.

(d) TERMINATION OF REDUCED ROYALTY RATE.—A royalty rate prescribed in subsection (d)(1)(A) shall terminate—

(1) with respect to oil production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, on average, exceeds $15 per barrel for 90 consecutive trading days; or

(B) the property no longer qualifies as a marginal property; and

(2) with respect to gas production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of natural gas delivered at Henry Hub, Louisiana, on average, exceeds $2.00 per million British thermal units for 90 consecutive trading days; or

(B) the property no longer qualifies as a marginal property.

(e) REGULATIONS PRESCRIBING DIFFERENT RELIEF.—

(1) DISCRETIONARY REGULATIONS.—The Secretary may by regulation prescribe different parameters, standards, and requirements for, and a different degree or extent of, royalty relief for marginal properties in lieu of those prescribed in subsections (a) through (d).

(2) MANDATORY REGULATIONS.—Not later than 18 months after the date of enactment of this Act, the Secretary shall by regulation—

(A) prescribe standards and requirements for, and the extent of royalty relief for, marginal properties for oil and gas leases on the outer Continental Shelf; and

(B) define what constitutes a marginal property on the outer Continental Shelf for purposes of this section.

(3) CONSIDERATIONS.—In promulgating regulations under this subsection, the Secretary may consider—

(A) oil and gas prices and market trends;

(B) production costs;

(C) abandonment costs;

(D) Federal and State tax provisions and the effects of those provisions on production economics;

(E) other royalty relief programs;

(F) regional differences in average wellhead prices;

(G) national energy security issues; and

(H) other relevant matters.

(f) SAVINGS PROVISION.—Nothing in this section prevents a lessee from receiving royalty relief or a royalty reduction pursuant to any other law (including a regulation) that provides more relief than the amounts provided by this section.

SEC. 314. INCENTIVES FOR NATURAL GAS PRODUCTION FROM DEEP WELLS IN THE SHALLOW WATERS OF THE GULF OF MEXICO.

(a) ROYALTY INCENTIVE REGULATIONS.—The Secretary shall publish a final regulation to complete the rulemaking begun by the Notice of Proposed Rulemaking entitled "Relief or Reduction in Royalty Rates—Deep Gas Provisions", published in the Federal Register on March 26, 2003 (Federal Register, volume 68, number 58, 14868-14886).

(b) ROYALTY INCENTIVE REGULATIONS FOR ULTRA DEEP GAS WELLS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, in addition to any other regulations that may provide royalty incentives for natural gas produced from deep wells on oil and gas leases issued pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), the Secretary shall issue regulations, in accordance with the regulations published pursuant to subsection (a), granting royalty relief suspension volumes of not less than 35,000,000,000 cubic feet with respect to the production of natural gas from ultra deep wells on leases issued before January 1, 2001., in shallow waters less than 200 meters deep located in the Gulf of Mexico wholly west of 87 degrees, 30 minutes West longitude. Regulations issued under this subsection shall be retroactive to the date that the Notice of Proposed Rulemaking is published in the Federal Register.

(2) DEFINITION OF ULTRA DEEP WELL.—In this subsection, the term "ultra deep well" means a well drilled with a perforated interval, the top of which is at least 20,000 feet true vertical depth below the datum at mean sea level.

SEC. 315. ROYALTY RELIEF FOR DEEP WATER PRODUCTION.

(a) IN GENERAL.—For all tracts located in water depths of greater than 400 meters in the Western and Central Planning Area of the Gulf of Mexico, including the portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, any oil or gas lease sale under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) occurring within 5 years after the date of enactment of this Act shall use the bidding system authorized in section 8(a)(1)(H) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(1)(H)), except that the suspension of royalties shall be set at a volume of not less than—

(1) 5,000,000 barrels of oil equivalent for each lease in water depths of 400 to 800 meters;

(2) 9,000,000 barrels of oil equivalent for each lease in water depths of 800 to 1,600 meters; and

(3) 12,000,000 barrels of oil equivalent for each lease in water depths greater than 1,600 meters.

(b) LIMITATION.—The Secretary may place limitations on the suspension of royalty relief granted based on market price.

SEC. 316. ALASKA OFFSHORE ROYALTY SUSPENSION.

Section 8(a)(3)(B) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(3)(B)) is amended by inserting "and in the Planning Areas offshore Alaska" after "West longitude".

SEC. 317. OIL AND GAS LEASING IN THE NATIONAL PETROLEUM RESERVE IN ALASKA.

(a) TRANSFER OF AUTHORITY.—

(1) REDESIGNATION.—The Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et seq.) is amended by redesignating section 107 (42 U.S.C. 6507) as section 108.

(2) TRANSFER.—The matter under the heading "EXPLORATION OF NATIONAL PETROLEUM RESERVE IN ALASKA" under the heading "ENERGY AND MINERALS" of title I of Public Law 96-514 (42 U.S.C. 6508) is—

(A) transferred to the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et seq.);

(B) redesignated as section 107 of that Act; and

(C) moved so as to appear after section 106 of that Act (42 U.S.C. 6506).

(b) Competitive Leasing.—Section 107 of the Naval Petroleum Reserves Production Act of 1976 (as amended by subsection (a) of this section) is amended—

(1) by striking the heading and all that follows through "Provided, That (1) activities" and inserting the following:

"SEC. 107. COMPETITIVE LEASING OF OIL AND GAS.

"(a) In General.—Notwithstanding any other provision of law and pursuant to regulations issued by the Secretary, the Secretary shall conduct an expeditious program of competitive leasing of oil and gas in the National Petroleum Reserve in Alaska (referred to in this section as the 'Reserve').

"(b) Mitigation of Adverse Effects.—Activities";

(2) by striking "Alaska (the Reserve); (2) the" and inserting "Alaska.

"(c) Land Use Planning; BLM Wilderness Study.—The";

(3) by striking "Reserve; (3) the" and inserting "Reserve.

"(d) First Lease Sale.—The";

(4) by striking "4332); (4) the" and inserting "4321 et seq.).

"(e) Withdrawals.—The";

(5) by striking "herein; (5) bidding" and inserting "under this section.

"(f) Bidding Systems.—Bidding";

(6) by striking "629); (6) lease" and inserting "629).

"(g) Geological Structures.—Lease";

(7) by striking "structures; (7) the" and inserting "structures.

"(h) Size of Lease Tracts.—The";

(8) by striking "Secretary; (8)" and all that follows through "Drilling, production," and inserting "Secretary.

"(i) Terms.—

"(1) In general.—Each lease shall be—

"(A) issued for an initial period of not more than 10 years; and

"(B) renewed for successive 10-year terms if—

"(i) oil or gas is produced from the lease in paying quantities;

"(ii) oil or gas is capable of being produced in paying quantities; or

"(iii) drilling or reworking operations, as approved by the Secretary, are conducted on the leased land.

"(2) Renewal of nonproducing leases.—The Secretary shall renew for an additional 10-year term a lease that does not meet the requirements of paragraph (1)(B) if the lessee submits to the Secretary an application for renewal not later than 60 days before the expiration of the primary lease and—

"(A) the lessee certifies, and the Secretary agrees, that hydrocarbon resources were discovered on 1 or more wells drilled on the leased land in such quantities that a prudent operator would hold the lease for potential future development;

"(B) the lessee—

"(i) pays the Secretary a renewal fee of $100 per acre of leased land; and

"(ii) provides evidence, and the Secretary agrees that, the lessee has diligently pursued exploration that warrants continuation with the intent of continued exploration or future development of the leased land; or

"(C) all or part of the lease—

"(i) is part of a unit agreement covering a lease described in subparagraph (A) or (B); and

"(ii) has not been previously contracted out of the unit.

"(3) Applicability.—This subsection applies to a lease that—

"(A) is entered into before, on, or after the date of enactment of the Energy Policy Act of 2003; and

"(B) is effective on or after the date of enactment of that Act.

"(j) Unit Agreements.—

"(1) In general.—For the purpose of conservation of the natural resources of all or part of any oil or gas pool, field, reservoir, or like area, lessees (including representatives) of the pool, field, reservoir, or like area may unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for all or part of the pool, field, reservoir, or like area (whether or not any other part of the oil or gas pool, field, reservoir, or like area is already subject to any cooperative or unit plan of development or operation), if the Secretary determines the action to be necessary or advisable in the public interest.

"(2) Participation by State of Alaska.—The Secretary shall ensure that the State of Alaska is provided the opportunity for active participation concerning creation and management of units formed or expanded under this subsection that include acreage in which the State of Alaska has an interest in the mineral estate.

"(3) Participation by regional corporations.—The Secretary shall ensure that any Regional Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) is provided the opportunity for active participation concerning creation and management of units that include acreage in which the Regional Corporation has an interest in the mineral estate.

"(4) Production allocation methodology.—The Secretary may use a production allocation methodology for each participating area within a unit created for land in the Reserve, State of Alaska land, or Regional Corporation land shall, when appropriate, be based on the characteristics of each specific oil or gas pool, field, reservoir, or like area to take into account reservoir heterogeneity and a real variation in reservoir producibility across diverse leasehold interests.

"(5) Benefit of operations.—Drilling, production,";

(9) by striking "When separate" and inserting the following:

"(6) Pooling.—If separate";

(10) by inserting "(in consultation with the owners of the other land)" after "determined by the Secretary of the Interior";

(11) by striking "thereto; (10) to" and all that follows through "the terms provided therein" and inserting "to the agreement.

"(k) Exploration Incentives.—

"(1) In general.—

"(A) Waiver, suspension, or reduction.—To encourage the greatest ultimate recovery of oil or gas or in the interest of conservation, the Secretary may waive, suspend, or reduce the rental fees or minimum royalty, or reduce the royalty on an entire leasehold (including on any lease operated pursuant to a unit agreement), if (after consultation with the State of Alaska and the North Slope Borough of Alaska and the concurrence of any Regional Corporation for leases that include lands available for acquisition by the Regional Corporation under the provisions of section 1431(o) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.)) the Secretary determines that the waiver, suspension, or reduction is in the public interest.

"(B) Applicability.—This paragraph applies to a lease that—

"(i) is entered into before, on, or after the date of enactment of the Energy Policy Act of 2003; and

"(ii) is effective on or after the date of enactment of that Act.";

(12) by striking "The Secretary is authorized to" and inserting the following:

"(2) Suspension of operations and production.—The Secretary may";

(13) by striking "In the event" and inserting the following:

"(3) Suspension of payments.—If";

(14) by striking "thereto; and (11) all" and inserting "to the lease.

"(l) Receipts.—All";

(15) by redesignating clauses (A), (B), and (C) as clauses (1), (2), and (3), respectively;

(16) by striking "Any agency" and inserting the following:

"(m) Explorations.—Any agency";

(17) by striking "Any action" and inserting the following:

"(n) Environmental Impact Statements.—

"(1) Judicial review.—Any action";

(18) by striking "The detailed" and inserting the following:

"(2) Initial lease sales.—The detailed";

(19) by striking "of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 304; 42 U.S.C. 6504)"; and

(20) by adding at the end the following:

"(o) Waiver of Administration for Conveyed Lands.—Notwithstanding section 14(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g)) or any other provision of law—

"(1) the Secretary of the Interior shall waive administration of any oil and gas lease insofar as such lease covers any land in the National Petroleum Reserve in Alaska in which the subsurface estate is conveyed to the Arctic Slope Regional Corporation; and

"(2) if any such conveyance of such subsurface estate does not cover all the land embraced within any such oil and gas lease—

"(A) the person who owns the subsurface estate in any particular portion of the land covered by such lease shall be entitled to all of the revenues reserved under such lease as to such portion, including, without limitation, all the royalty payable with respect to oil or gas produced from or allocated to such particular portion of the land covered by such lease; and

"(B) the Secretary of the Interior shall segregate such lease into 2 leases, 1 of which shall cover only the subsurface estate conveyed to the Arctic Slope Regional Corporation, and operations, production, or other circumstances (other than payment of rentals or royalties) that satisfy obligations of the lessee under, or maintain, either of the segregated leases shall likewise satisfy obligations of the lessee under, or maintain, the other segregated lease to the same extent as if such segregated leases remained a part of the original unsegregated lease.".

SEC. 318. ORPHANED, ABANDONED, OR IDLED WELLS ON FEDERAL LAND.

(a) In General.—The Secretary, in cooperation with the Secretary of Agriculture, shall establish a program not later than 1 year after the date of enactment of this Act to remediate, reclaim, and close orphaned, abandoned, or idled oil and gas wells located on land administered by the land management agencies within the Department of the Interior and the Department of Agriculture.

(b) Activities.—The program under subsection (a) shall—

(1) include a means of ranking orphaned, abandoned, or idled wells sites for priority in remediation, reclamation, and closure, based on public health and safety, potential environmental harm, and other land use priorities;

(2) provide for identification and recovery of the costs of remediation, reclamation, and closure from persons or other entities currently providing a bond or other financial assurance required under State or Federal law for an oil or gas well that is orphaned, abandoned, or idled; and

(3) provide for recovery from the persons or entities identified under paragraph (2), or their sureties or guarantors, of the costs of remediation, reclamation, and closure of such wells.

(c) Cooperation and Consultations.—In carrying out the program under subsection (a), the Secretary shall—

(1) work cooperatively with the Secretary of Agriculture and the States within which Federal land is located; and

(2) consult with the Secretary of Energy and the Interstate Oil and Gas Compact Commission.

(d) Plan.—Not later than 1 year after the date of enactment of this Act, the Secretary, in cooperation with the Secretary of Agriculture, shall submit to Congress a plan for carrying out the program under subsection (a).

(e) Idled Well.—For the purposes of this section, a well is idled if—

(1) the well has been nonoperational for at least 7 years; and

(2) there is no anticipated beneficial use for the well.

(f) Technical Assistance Program for Non-Federal Land.—

(1) In general.—The Secretary of Energy shall establish a program to provide technical and financial assistance to oil and gas producing States to facilitate State efforts over a 10-year period to ensure a practical and economical remedy for environmental problems caused by orphaned or abandoned oil and gas exploration or production well sites on State or private land.

(2) Assistance.—The Secretary of Energy shall work with the States, through the Interstate Oil and Gas Compact Commission, to assist the States in quantifying and mitigating environmental risks of onshore orphaned or abandoned oil or gas wells on State and private land.

(3) Activities.—The program under paragraph (1) shall include—

(A) mechanisms to facilitate identification, if feasible, of the persons currently providing a bond or other form of financial assurance required under State or Federal law for an oil or gas well that is orphaned or abandoned;

(B) criteria for ranking orphaned or abandoned well sites based on factors such as public health and safety, potential environmental harm, and other land use priorities;

(C) information and training programs on best practices for remediation of different types of sites; and

(D) funding of State mitigation efforts on a cost-shared basis.

(g) Federal Reimbursement for Orphaned Well Reclamation Pilot Program.—

(1) Reimbursement for remediating, reclaiming, and closing wells on land subject to a new lease.—The Secretary shall carry out a pilot program under which, in issuing a new oil and gas lease on federally owned land on which 1 or more orphaned wells are located, the Secretary—

(A) may require, but not as a condition of the lease, that the lessee remediate, reclaim, and close in accordance with standards established by the Secretary, all orphaned wells on the land leased; and

(B) shall develop a program to reimburse a lessee, through a royalty credit against the Federal share of royalties owed or other means, for the reasonable actual costs of remediating, reclaiming, and closing the orphaned well pursuant to that requirement.

(2) Reimbursement for reclaiming orphaned wells on other land.—In carrying out this subsection, the Secretary—

(A) may authorize any lessee under an oil and gas lease on federally owned land to reclaim in accordance with the Secretary's standards—

(i) an orphaned well on unleased federally owned land; or

(ii) an orphaned well located on an existing lease on federally owned land for the reclamation of which the lessee is not legally responsible; and

(B) shall develop a program to provide reimbursement of 115 percent of the reasonable actual costs of remediating, reclaiming, and closing the orphaned well, through credits against the Federal share of royalties or other means.

(3) Effect of remediation, reclamation, or closure of well pursuant to an approved remediation plan.—

(A) Definition of remediating party.—In this paragraph the term "remediating party" means a person who remediates, reclaims, or closes an abandoned, orphaned, or idled well pursuant to this subsection.

(B) General rule.—A remediating party who remediates, reclaims, or closes an abandoned, orphaned, or idled well in accordance with a detailed written remediation plan approved by the Secretary under this subsection, shall be immune from civil liability under Federal environmental laws, for—

(i) pre-existing environmental conditions at or associated with the well, unless the remediating party owns or operates, in the past owned or operated, or is related to a person that owns or operates or in the past owned or operated, the well or the land on which the well is located; or

(ii) any remaining releases of pollutants from the well during or after completion of the remediation, reclamation, or closure of the well, unless the remediating party causes increased pollution as a result of activities that are not in accordance with the approved remediation plan.

(C) Limitations.—Nothing in this section shall limit in any way the liability of a remediating party for injury, damage, or pollution resulting from the remediating party's acts or omissions that are not in accordance with the approved remediation plan, are reckless or willful, constitute gross negligence or wanton misconduct, or are unlawful.

(4) Regulations.—The Secretary may issue such regulations as are appropriate to carry out this subsection.

(h) Authorization of Appropriations.—

(1) In general.—There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 2005 through 2009.

(2) Use.—Of the amounts authorized under paragraph (1), $5,000,000 are authorized for each fiscal year for activities under subsection (f).

SEC. 319. COMBINED HYDROCARBON LEASING.

(a) Special Provisions Regarding Leasing.—Section 17(b)(2) of the Mineral Leasing Act (30 U.S.C. 226(b)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following:

"(B) For any area that contains any combination of tar sand and oil or gas (or both), the Secretary may issue under this Act, separately—

"(i) a lease for exploration for and extraction of tar sand; and

"(ii) a lease for exploration for and development of oil and gas.

"(C) A lease issued for tar sand shall be issued using the same bidding process, annual rental, and posting period as a lease issued for oil and gas, except that the minimum acceptable bid required for a lease issued for tar sand shall be $2 per acre.

"(D) The Secretary may waive, suspend, or alter any requirement under section 26 that a permittee under a permit authorizing prospecting for tar sand must exercise due diligence, to promote any resource covered by a combined hydrocarbon lease.".

(b) Conforming Amendment.—Section 17(b)(1)(B) of the Mineral Leasing Act (30 U.S.C. 226(b)(1)(B)) is amended in the second sentence by inserting ", subject to paragraph (2)(B)," after "Secretary".

(c) Regulations.—Not later than 45 days after the date of enactment of this Act, the Secretary shall issue final regulations to implement this section.

SEC. 320. LIQUIFIED NATURAL GAS.

Section 3 of the Natural Gas Act (15 U.S.C. 717b) is amended by adding at the end the following:

"(d) Limitation on Commission Authority.—If an applicant under this section proposes to construct or expand a liquified natural gas terminal either onshore or in State waters for the purpose of importing liquified natural gas into the United States, the Commission shall not deny or condition the application solely on the basis that the applicant proposes to utilize the terminal exclusively or partially for gas that the applicant or any affiliate thereof will supply thereto. In all other respects, subsection (a) shall remain applicable to any such proposal.".

SEC. 321. ALTERNATE ENERGY-RELATED USES ON THE OUTER CONTINENTAL SHELF.

(a) Amendment to Outer Continental Shelf Lands Act.—Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended by adding at the end the following:

"(p) Leases, Easements, or Rights-of-Way for Energy and Related Purposes.—

"(1) In General.—The Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating and other relevant departments and agencies of the Federal Government, may grant a lease, easement, or right-of-way on the outer Continental Shelf for activities not otherwise authorized in this Act, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), or the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law, if those activities—

"(A) support exploration, development, production, transportation, or storage of oil, natural gas, or other minerals;

"(B) produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

"(C) use, for energy-related or marine-related purposes, facilities currently or previously used for activities authorized under this Act.

"(2) Payments.—The Secretary shall establish reasonable forms of payments for any easement or right-of-way granted under this subsection. Such payments shall not be assessed on the basis of throughput or production. The Secretary may establish fees, rentals, bonus, or other payments by rule or by agreement with the party to which the lease, easement, or right-of-way is granted.

"(3) Consultation.—Before exercising authority under this subsection, the Secretary shall consult with the Secretary of Defense and other appropriate agencies concerning issues related to national security and navigational obstruction.

"(4) Competitive or noncompetitive basis.—

"(A) In general.—The Secretary may issue a lease, easement, or right-of-way for energy and related purposes as described in paragraph (1) on a competitive or noncompetitive basis.

"(B) Considerations.—In determining whether a lease, easement, or right-of-way shall be granted competitively or noncompetitively, the Secretary shall consider such factors as—

"(i) prevention of waste and conservation of natural resources;

"(ii) the economic viability of an energy project;

"(iii) protection of the environment;

"(iv) the national interest and national security;

"(v) human safety;

"(vi) protection of correlative rights; and

"(vii) potential return for the lease, easement, or right-of-way.

"(5) REGULATIONS.—Not later than 270 days after the date of enactment of the Energy Policy Act of 2003, the Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating and other relevant agencies of the Federal Government and affected States, shall issue any necessary regulations to ensure safety, protection of the environment, prevention of waste, and conservation of the natural resources of the outer Continental Shelf, protection of national security interests, and protection of correlative rights in the outer Continental Shelf.

"(6) SECURITY.—The Secretary shall require the holder of a lease, easement, or right-of-way granted under this subsection to furnish a surety bond or other form of security, as prescribed by the Secretary, and to comply with such other requirements as the Secretary considers necessary to protect the interests of the United States.

"(7) EFFECT OF SUBSECTION.—Nothing in this subsection displaces, supersedes, limits, or modifies the jurisdiction, responsibility, or authority of any Federal or State agency under any other Federal law.

"(8) APPLICABILITY.—This subsection does not apply to any area on the outer Continental Shelf designated as a National Marine Sanctuary.".

(b) CONFORMING AMENDMENT.—Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended by striking the section heading and inserting the following: "LEASES, EASEMENTS, AND RIGHTS-OF-WAY ON THE OUTER CONTINENTAL SHELF.—".

(c) SAVINGS PROVISION.—Nothing in the amendment made by subsection (a) requires, with respect to any project—

(1) for which offshore test facilities have been constructed before the date of enactment of this Act; or

(2) for which a request for proposals has been issued by a public authority,

any resubmittal of documents previously submitted or any reauthorization of actions previously authorized.

SEC. 322. PRESERVATION OF GEOLOGICAL AND GEOPHYSICAL DATA.

(a) SHORT TITLE.—This section may be cited as the "National Geological and Geophysical Data Preservation Program Act of 2003".

(b) PROGRAM.—The Secretary shall carry out a National Geological and Geophysical Data Preservation Program in accordance with this section—

(1) to archive geologic, geophysical, and engineering data, maps, well logs, and samples;

(2) to provide a national catalog of such archival material; and

(3) to provide technical and financial assistance related to the archival material.

(c) PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a plan for the implementation of the Program.

(d) DATA ARCHIVE SYSTEM.—

(1) ESTABLISHMENT.—The Secretary shall establish, as a component of the Program, a data archive system to provide for the storage, preservation, and archiving of subsurface, surface, geological, geophysical, and engineering data and samples. The Secretary, in consultation with the Advisory Committee, shall develop guidelines relating to the data archive system, including the types of data and samples to be preserved.

(2) SYSTEM COMPONENTS.—The system shall be comprised of State agencies that elect to be part of the system and agencies within the Department of the Interior that maintain geological and geophysical data and samples that are designated by the Secretary in accordance with this subsection. The Program shall provide for the storage of data and samples through data repositories operated by such agencies.

(3) LIMITATION OF DESIGNATION.—The Secretary may not designate a State agency as a component of the data archive system unless that agency is the agency that acts as the geological survey in the State.

(4) DATA FROM FEDERAL LAND.—The data archive system shall provide for the archiving of relevant subsurface data and samples obtained from Federal land—

(A) in the most appropriate repository designated under paragraph (2), with preference being given to archiving data in the State in which the data were collected; and

(B) consistent with all applicable law and requirements relating to confidentiality and proprietary data.

(e) NATIONAL CATALOG.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall develop and maintain, as a component of the Program, a national catalog that identifies—

(A) data and samples available in the data archive system established under subsection (d);

(B) the repository for particular material in the system; and

(C) the means of accessing the material.

(2) AVAILABILITY.—The Secretary shall make the national catalog accessible to the public on the site of the Survey on the Internet, consistent with all applicable requirements related to confidentiality and proprietary data.

(f) ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Advisory Committee shall advise the Secretary on planning and implementation of the Program.

(2) NEW DUTIES.—In addition to its duties under the National Geologic Mapping Act of 1992 (43 U.S.C. 31a et seq.), the Advisory Committee shall perform the following duties:

(A) Advise the Secretary on developing guidelines and procedures for providing assistance for facilities under subsection (g)(1).

(B) Review and critique the draft implementation plan prepared by the Secretary under subsection (c).

(C) Identify useful studies of data archived under the Program that will advance understanding of the Nation's energy and mineral resources, geologic hazards, and engineering geology.

(D) Review the progress of the Program in archiving significant data and preventing the loss of such data, and the scientific progress of the studies funded under the Program.

(E) Include in the annual report to the Secretary required under section 5(b)(3) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d(b)(3)) an evaluation of the progress of the Program toward fulfilling the purposes of the Program under subsection (b).

(g) FINANCIAL ASSISTANCE.—

(1) ARCHIVE FACILITIES.—Subject to the availability of appropriations, the Secretary shall provide financial assistance to a State agency that is designated under subsection (d)(2) for providing facilities to archive energy material.

(2) STUDIES.—Subject to the availability of appropriations, the Secretary shall provide financial assistance to any State agency designated under subsection (d)(2) for studies and technical assistance activities that enhance understanding, interpretation, and use of materials archived in the data archive system established under subsection (d).

(3) FEDERAL SHARE.—The Federal share of the cost of an activity carried out with assistance under this subsection shall be not more than 50 percent of the total cost of the activity.

(4) PRIVATE CONTRIBUTIONS.—The Secretary shall apply to the non-Federal share of the cost of an activity carried out with assistance under this subsection the value of private contributions of property and services used for that activity.

(h) REPORT.—The Secretary shall include in each report under section 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31g)—

(1) a description of the status of the Program;

(2) an evaluation of the progress achieved in developing the Program during the period covered by the report; and

(3) any recommendations for legislative or other action the Secretary considers necessary and appropriate to fulfill the purposes of the Program under subsection (b).

(i) MAINTENANCE OF STATE EFFORT.—It is the intent of Congress that the States not use this section as an opportunity to reduce State resources applied to the activities that are the subject of the Program.

(j) DEFINITIONS.—In this section:

(1) ADVISORY COMMITTEE.—The term "Advisory Committee" means the advisory committee established under section 5 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d).

(2) PROGRAM.—The term "Program" means the National Geological and Geophysical Data Preservation Program carried out under this section.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Director of the United States Geological Survey.

(4) SURVEY.—The term "Survey" means the United States Geological Survey.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $30,000,000 for each of fiscal years 2004 through 2008.

SEC. 323. OIL AND GAS LEASE ACREAGE LIMITATIONS.

Section 27(d)(1) of the Mineral Leasing Act (30 U.S.C. 184(d)(1)) is amended by inserting after "acreage held in special tar sand areas" the following: ", and acreage under any lease any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement or for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year,".

SEC. 324. ASSESSMENT OF DEPENDENCE OF STATE OF HAWAII ON OIL.

(a) ASSESSMENT.—The Secretary of Energy shall assess the economic implication of the dependence of the State of Hawaii on oil as the principal source of energy for the State, including—

(1) the short- and long-term prospects for crude oil supply disruption and price volatility and potential impacts on the economy of Hawaii;

(2) the economic relationship between oil-fired generation of electricity from residual fuel and refined petroleum products consumed for ground, marine, and air transportation;

(3) the technical and economic feasibility of increasing the contribution of renewable energy resources for generation of electricity, on an island-by-island basis, including—

(A) siting and facility configuration;

(B) environmental, operational, and safety considerations;

(C) the availability of technology;

(D) effects on the utility system including reliability;

(E) infrastructure and transport requirements;

(F) community support; and

(G) other factors affecting the economic impact of such an increase and any effect on the economic relationship described in paragraph (2);

(4) the technical and economic feasibility of using liquified natural gas to displace residual fuel oil for electric generation, including neighbor island opportunities, and the effect of the displacement on the economic relationship described in paragraph (2), including—

(A) the availability of supply;

(B) siting and facility configuration for onshore and offshore liquified natural gas receiving terminals;

(C) the factors described in subparagraphs (B) through (F) of paragraph (3); and

(D) other economic factors;

(5) the technical and economic feasibility of using renewable energy sources (including hydrogen) for ground, marine, and air transportation energy applications to displace the use of refined petroleum products, on an island-by-island basis, and the economic impact of the displacement on the relationship described in (2); and

(6) an island-by-island approach to—

(A) the development of hydrogen from renewable resources; and

(B) the application of hydrogen to the energy needs of Hawaii

(b) CONTRACTING AUTHORITY.—The Secretary of Energy may carry out the assessment under subsection (a) directly or, in whole or in part, through 1 or more contracts with qualified public or private entities.

(c) REPORT.—Not later than 300 days after the date of enactment of this Act, the Secretary of Energy shall prepare, in consultation with agencies of the State of Hawaii and other stakeholders, as appropriate, and submit to Congress, a report detailing the findings, conclusions, and recommendations resulting from the assessment.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 325. DEADLINE FOR DECISION ON APPEALS OF CONSISTENCY DETERMINATION UNDER THE COASTAL ZONE MANAGEMENT ACT OF 1972.

(a) IN GENERAL.—Section 319 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1465) is amended to read as follows:

"APPEALS TO THE SECRETARY

"SEC. 319. (a) NOTICE.—The Secretary shall publish an initial notice in the Federal Register not later than 30 days after the date of the filing of any appeal to the Secretary of a consistency determination under section 307.

"(b) CLOSURE OF RECORD.—

"(1) IN GENERAL.—Not later than the end of the 120-day period beginning on the date of publication of an initial notice under subsection (a), the Secretary shall receive no more filings on the appeal and the administrative record regarding the appeal shall be closed.

"(2) NOTICE.—Upon the closure of the administrative record, the Secretary shall immediately publish a notice that the administrative record has been closed.

"(c) DEADLINE FOR DECISION.—The Secretary shall issue a decision in any appeal filed under section 307 not later than 120 days after the closure of the administrative record.

"(d) APPLICATION.—This section applies to appeals initiated by the Secretary and appeals filed by an applicant.".

(b) APPLICATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply with respect to any appeal initiated or filed before, on, or after the date of enactment of this Act.

(2) LIMITATION.—Subsection (a) of section 319 of the Coastal Zone Management Act of 1972 (as amended by subsection (a)) shall not apply with respect to an appeal initiated or filed before the date of enactment of this Act.

(c) CLOSURE OF RECORD FOR APPEAL FILED BEFORE DATE OF ENACTMENT.—Notwithstanding section 319(b)(1) of the Coastal Zone Management Act of 1972 (as amended by this section), in the case of an appeal of a consistency determination under section 307 of that Act initiated or filed before the date of enactment of this Act, the Secretary of Commerce shall receive no more filings on the appeal and the administrative record regarding the appeal shall be closed not later than 120 days after the date of enactment of this Act.

SEC. 326. REIMBURSEMENT FOR COSTS OF NEPA ANALYSES, DOCUMENTATION, AND STUDIES.

(a) IN GENERAL.—The Mineral Leasing Act is amended by inserting after section 37 (30 U.S.C. 193) the following:

"REIMBURSEMENT FOR COSTS OF CERTAIN ANALYSES, DOCUMENTATION, AND STUDIES

"SEC. 38. (a) IN GENERAL.—The Secretary of the Interior may reimburse a person that is a lessee, operator, operating rights owner, or applicant for any lease under this Act for reasonable amounts paid by the person for preparation for the Secretary by a contractor or other person selected by the Secretary of any project-level analysis, documentation, or related study required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the lease.

"(b) CONDITIONS.—The Secretary may provide reimbursement under subsection (a) only if—

"(1) adequate funding to enable the Secretary to timely prepare the analysis, documentation, or related study is not appropriated;

"(2) the person paid the costs voluntarily;

"(3) the person maintains records of its costs in accordance with regulations issued by the Secretary;

"(4) the reimbursement is in the form of a reduction in the Federal share of the royalty required to be paid for the lease for which the analysis, documentation, or related study is conducted, and is agreed to by the Secretary and the person reimbursed prior to commencing the analysis, documentation, or related study; and

"(5) the agreement required under paragraph (4) contains provisions—

"(A) reducing royalties owed on lease production based on market prices;

"(B) stipulating an automatic termination of the royalty reduction upon recovery of documented costs; and

"(C) providing a process by which the lessee may seek reimbursement for circumstances in which production from the specified lease is not possible.".

(b) APPLICATION.—The amendment made by this section shall apply with respect to an analysis, documentation, or a related study conducted on or after the date of enactment of this Act for any lease entered into before, on, or after the date of enactment of this Act.

(c) DEADLINE FOR REGULATIONS.—The Secretary shall issue regulations implementing the amendment made by this section by not later than 1 year after the date of enactment of this Act.

SEC. 327. HYDRAULIC FRACTURING.

Paragraph (1) of section 1421(d) of the Safe Drinking Water Act (42 U.S.C. 300h(d)) is amended to read as follows:

"(1) UNDERGROUND INJECTION.—The term 'underground injection'—

"(A) means the subsurface emplacement of fluids by well injection; and

"(B) excludes—

"(i) the underground injection of natural gas for purposes of storage; and

"(ii) the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations related to oil or gas production activities.".

SEC. 328. OIL AND GAS EXPLORATION AND PRODUCTION DEFINED.

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended by adding at the end the following:

"(24) OIL AND GAS EXPLORATION AND PRODUCTION.—The term 'oil and gas exploration, production, processing, or treatment operations or transmission facilities' means all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.".

SEC. 329. OUTER CONTINENTAL SHELF PROVISIONS.

(a) STORAGE ON THE OUTER CONTINENTAL SHELF.—Section 5(a)(5) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(a)(5)) is amended by inserting "from any source" after "oil and gas".

(b) DEEPWATER PROJECTS.—Section 6 of the Deepwater Port Act of 1974 (33 U.S.C. 1505) is amended by adding at the end the following:

"(d) RELIANCE ON ACTIVITIES OF OTHER AGENCIES.—In fulfilling the requirements of section 5(f)—

"(1) to the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may use the information derived from those activities in lieu of directly conducting such activities; and

"(2) the Secretary may use information obtained from any State or local government or from any person.".

(c) NATURAL GAS DEFINED.—Section 3(13) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(13)) is amended to read as follows:

"(13) natural gas means—

"(A) natural gas unmixed; or

"(B) any mixture of natural or artificial gas, including compressed or liquefied natural gas, natural gas liquids, liquefied petroleum gas, and condensate recovered from natural gas;".

SEC. 330. APPEALS RELATING TO PIPELINE CONSTRUCTION OR OFFSHORE MINERAL DEVELOPMENT PROJECTS.

(a) AGENCY OF RECORD, PIPELINE CONSTRUCTION PROJECTS.—Any Federal administrative agency proceeding that is an appeal or review under section 319 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1465), as amended by this Act, related to Federal authority for an interstate natural gas pipeline construction project, including construction of natural gas storage and liquefied natural gas facilities, shall use as its exclusive record for all purposes the record compiled by the Federal Energy Regulatory Commission pursuant to the Commission's proceeding under sections 3 and 7 of the Natural Gas Act (15 U.S.C. 717b, 717f).

(b) SENSE OF CONGRESS.—It is the sense of Congress that all Federal and State agencies with jurisdiction over interstate natural gas pipeline construction activities should coordinate their proceedings within the timeframes established by the Federal Energy Regulatory Commission when the Commission is acting under sections 3 and 7 of the Natural Gas Act (15 U.S.C. 717b, 717f) to determine whether a certificate of public convenience and necessity should be issued for a proposed interstate natural gas pipeline.

(c) AGENCY OF RECORD, OFFSHORE MINERAL DEVELOPMENT PROJECTS.—Any Federal administrative agency proceeding that is an appeal or review under section 319 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1465), as amended by this Act, related to Federal authority for the permitting, approval, or other authorization of energy projects, including projects to explore, develop, or produce mineral resources in or underlying the outer Continental Shelf shall use as its exclusive record for all purposes (except for the filing of pleadings) the record compiled by the relevant Federal permitting agency.

SEC. 331. BILATERAL INTERNATIONAL OIL SUPPLY AGREEMENTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President may export oil to, or secure oil for, any country pursuant to a bilateral international oil supply agreement entered into by the United States with the country before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(b) MEMORANDUM OF AGREEMENT.—The following agreements are deemed to have entered into force by operation of law and are deemed to have no termination date:

(1) The agreement entitled "Agreement amending and extending the memorandum of agreement of June 22, 1979", entered into force November 13, 1994 (TIAS 12580).

(2) The agreement entitled "Agreement amending the contingency implementing arrangements of October 17, 1980", entered into force June 27, 1995 (TIAS 12670).

SEC. 332. NATURAL GAS MARKET REFORM.

(a) CLARIFICATION OF EXISTING CFTC AUTHORITY.—

(1) FALSE REPORTING.—Section 9(a)(2) of the Commodity Exchange Act (7 U.S.C. 13(a)(2)) is amended by striking "false or misleading or knowingly inaccurate reports" and inserting "knowingly false or knowingly misleading or knowingly inaccurate reports".

(2) COMMISSION ADMINISTRATIVE AND CIVIL AUTHORITY.—Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended by redesignating subsection (f) as subsection (e), and adding:

"(f) COMMISSION ADMINISTRATIVE AND CIVIL AUTHORITY.—The Commission may bring administrative or civil actions as provided in this Act against any person for a violation of any provision of this section including, but not limited to, false reporting under subsection (a)(2).".

(3) EFFECT OF AMENDMENTS.—The amendments made by paragraphs (1) and (2) restate, without substantive change, existing burden of proof provisions and existing Commission civil enforcement authority, respectively. These clarifying changes do not alter any existing burden of proof or grant any new statutory authority. The provisions of this section, as restated herein, continue to apply to any action pending on or commenced after the date of enactment of this Act for any act, omission, or violation occurring before, on, or after, such date of enactment.

(b) FRAUD AUTHORITY.—Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by striking subsection (a) and inserting the following:

"(a) It shall be unlawful—

"(1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery or in interstate commerce, that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person; or

"(2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to section 5a(g) (1) and (2) of this Act, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market—

"(A) to cheat or defraud or attempt to cheat or defraud such other person;

"(B) willfully to make or cause to be made to such other person any false report or statement or willfully to enter or cause to be entered for such other person any false record;

"(C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of subsection (a)(2), with such other person; or

"(D)(i) to bucket an order if such order is either represented by such person as an order to be executed, or required to be executed, on or subject to the rules of a designated contract market; or

"(ii) to fill an order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such other person to become the buyer in respect to any selling order of such other person, or become the seller in respect to any buying order of such other person, if such order is either represented by such person as an order to be executed, or required to be executed, on or subject to the rules of a designated contract market.

"(b) Subsection (a)(2) shall not obligate any person, in connection with a transaction in a contract of sale of a commodity for future delivery, or other agreement, contract or transaction subject to section 5a(g) (1) and (2) of this Act, with another person, to disclose to such other person nonpublic information that may be material to the market price of such commodity or transaction, except as necessary to make any statement made to such other person in connection with such transaction, not misleading in any material respect.".

(c) JURISDICTION OF THE CFTC.—The Natural Gas Act (15 U.S.C. 717 et seq.) is amended by adding at the end:

"SEC. 26. JURISDICTION.

"This Act shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Any request for information by the Commission to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas, electricity, and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the Commodity Futures Trading Commission, which shall cooperate in responding to any information request by the Commission.".

(d) INCREASED PENALTIES.—Section 21 of the Natural Gas Act (15 U.S.C. 717t) is amended—

(1) in subsection (a)—

(A) by striking "$5,000" and inserting "$1,000,000"; and

(B) by striking "two years" and inserting "5 years"; and

(2) in subsection (b), by striking "$500" and inserting "$50,000".

SEC. 333. NATURAL GAS MARKET TRANSPARENCY.

The Natural Gas Act (15 U.S.C 717 et seq.) is amended—

(1) by redesignating section 24 as section 25; and

(2) by inserting after section 23 the following:

"SEC. 24. NATURAL GAS MARKET TRANSPARENCY.

"(a) AUTHORIZATION.—(1) Not later than 180 days after the date of enactment of the Energy Policy Act of 2003, the Federal Energy Regulatory Commission shall issue rules directing all entities subject to the Commission's jurisdiction as provided under this Act to timely report information about the availability and prices of natural gas sold at wholesale in interstate commerce to the Commission and price publishers.

"(2) The Commission shall evaluate the data for adequate price transparency and accuracy.

"(3) Rules issued under this subsection requiring the reporting of information to the Commission that may become publicly available shall be limited to aggregate data and transaction-specific data that are otherwise required by the Commission to be made public.

"(4) In exercising its authority under this section, the Commission shall not—

"(A) compete with, or displace from the market place, any price publisher; or

"(B) regulate price publishers or impose any requirements on the publication of information.

"(b) TIMELY ENFORCEMENT.—No person shall be subject to any penalty under this section with respect to a violation occurring more than 3 years before the date on which the Federal Energy Regulatory Commission seeks to assess a penalty.

"(c) LIMITATION ON COMMISSION AUTHORITY.—(1) The Commission shall not condition access to interstate pipeline transportation upon the reporting requirements authorized under this section.

"(2) Natural gas sales by a producer that are attributable to volumes of natural gas produced by such producer shall not be subject to the rules issued pursuant to this section.

"(3) The Commission shall not require natural gas producers, processors, or users who have a de minimis market presence to participate in the reporting requirements provided in this section.".

Subtitle C—Access to Federal Land

SEC. 341. OFFICE OF FEDERAL ENERGY PROJECT COORDINATION.

(a) ESTABLISHMENT.—The President shall establish the Office of Federal Energy Project Coordination (referred to in this section as the "Office") within the Executive Office of the President in the same manner and with the same mission as the White House Energy Projects Task Force established by Executive Order No. 13212 (42 U.S.C. 13201 note).

(b) STAFFING.—The Office shall be staffed by functional experts from relevant Federal agencies on a nonreimbursable basis to carry out the mission of the Office.

(c) REPORT.—The Office shall transmit an annual report to Congress that describes the activities put in place to coordinate and expedite Federal decisions on energy projects. The report shall list accomplishments in improving the Federal decisionmaking process and shall include any additional recommendations or systemic changes needed to establish a more effective and efficient Federal permitting process.

SEC. 342. FEDERAL ONSHORE OIL AND GAS LEASING AND PERMITTING PRACTICES.

(a) REVIEW OF ONSHORE OIL AND GAS LEASING PRACTICES.—

(1) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretary of Agriculture with respect to National Forest System lands under the jurisdiction of the Department of Agriculture, shall perform an internal review of current Federal onshore oil and gas leasing and permitting practices.

(2) INCLUSIONS.—The review shall include the process for—

(A) accepting or rejecting offers to lease;

(B) administrative appeals of decisions or orders of officers or employees of the Bureau of Land Management with respect to a Federal oil or gas lease;

(C) considering surface use plans of operation, including the timeframes in which the plans are considered, and any recommendations for improving and expediting the process; and

(D) identifying stipulations to address site-specific concerns and conditions, including those stipulations relating to the environment and resource use conflicts.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall transmit a report to Congress that describes—

(1) actions taken under section 3 of Executive Order No. 13212 (42 U.S.C. 13201 note); and

(2) actions taken or any plans to improve the Federal onshore oil and gas leasing program.

SEC. 343. MANAGEMENT OF FEDERAL OIL AND GAS LEASING PROGRAMS.

(a) Timely Action on Leases and Permits.—To ensure timely action on oil and gas leases and applications for permits to drill on land otherwise available for leasing, the Secretary of the Interior (in this section referred to as the "Secretary") shall—

(1) ensure expeditious compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(2) improve consultation and coordination with the States and the public; and

(3) improve the collection, storage, and retrieval of information relating to the leasing activities.

(b) Best Management Practices.—

(1) In general.—Not later than 18 months after the date of enactment of this Act, the Secretary shall develop and implement best management practices to—

(A) improve the administration of the onshore oil and gas leasing program under the Mineral Leasing Act (30 U.S.C. 181 et seq.); and

(B) ensure timely action on oil and gas leases and applications for permits to drill on lands otherwise available for leasing.

(2) Considerations.—In developing the best management practices under paragraph (1), the Secretary shall consider any recommendations from the review under section 342.

(3) Regulations.—Not later than 180 days after the development of best management practices under paragraph (1), the Secretary shall publish, for public comment, proposed regulations that set forth specific timeframes for processing leases and applications in accordance with the practices, including deadlines for—

(A) approving or disapproving resource management plans and related documents, lease applications, and surface use plans; and

(B) related administrative appeals.

(c) Improved Enforcement.—The Secretary shall improve inspection and enforcement of oil and gas activities, including enforcement of terms and conditions in permits to drill.

(d) Authorization of Appropriations.—In addition to amounts authorized to be appropriated to carry out section 17 of the Mineral Leasing Act (30 U.S.C. 226), there are authorized to be appropriated to the Secretary for each of fiscal years 2004 through 2007—

(1) $40,000,000 to carry out subsections (a) and (b); and

(2) $20,000,000 to carry out subsection (c).

SEC. 344. CONSULTATION REGARDING OIL AND GAS LEASING ON PUBLIC LAND.

(a) In General.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall enter into a memorandum of understanding regarding oil and gas leasing on—

(1) public lands under the jurisdiction of the Secretary of the Interior; and

(2) National Forest System lands under the jurisdiction of the Secretary of Agriculture.

(b) Contents.—The memorandum of understanding shall include provisions that—

(1) establish administrative procedures and lines of authority that ensure timely processing of oil and gas lease applications, surface use plans of operation, and applications for permits to drill, including steps for processing surface use plans and applications for permits to drill consistent with the timelines established by the amendment made by section 348;

(2) eliminate duplication of effort by providing for coordination of planning and environmental compliance efforts; and

(3) ensure that lease stipulations are—

(A) applied consistently;

(B) coordinated between agencies; and

(C) only as restrictive as necessary to protect the resource for which the stipulations are applied.

(c) Data Retrieval System.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall establish a joint data retrieval system that is capable of—

(A) tracking applications and formal requests made in accordance with procedures of the Federal onshore oil and gas leasing program; and

(B) providing information regarding the status of the applications and requests within the Department of the Interior and the Department of Agriculture.

(2) Resource mapping.—Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall establish a joint Geographic Information System mapping system for use in—

(A) tracking surface resource values to aid in resource management; and

(B) processing surface use plans of operation and applications for permits to drill.

SEC. 345. ESTIMATES OF OIL AND GAS RESOURCES UNDERLYING ONSHORE FEDERAL LAND.

(a) Assessment.—Section 604 of the Energy Act of 2000 (42 U.S.C. 6217) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking "reserve"; and

(ii) by striking "and" after the semicolon; and

(B) by striking paragraph (2) and inserting the following:

"(2) the extent and nature of any restrictions or impediments to the development of the resources, including—

"(A) impediments to the timely granting of leases;

"(B) post-lease restrictions, impediments, or delays on development for conditions of approval, applications for permits to drill, or processing of environmental permits; and

"(C) permits or restrictions associated with transporting the resources for entry into commerce; and

"(3) the quantity of resources not produced or introduced into commerce because of the restrictions.";

(2) in subsection (b)—

(A) by striking "reserve" and inserting "resource"; and

(B) by striking "publically" and inserting "publicly"; and

(3) by striking subsection (d) and inserting the following:

"(d) Assessments.—Using the inventory, the Secretary of Energy shall make periodic assessments of economically recoverable resources accounting for a range of parameters such as current costs, commodity prices, technology, and regulations.".

(b) Methodology.—The Secretary of the Interior shall use the same assessment methodology across all geological provinces, areas, and regions in preparing and issuing national geological assessments to ensure accurate comparisons of geological resources.

SEC. 346. COMPLIANCE WITH EXECUTIVE ORDER 13211; ACTIONS CONCERNING REGULATIONS THAT SIGNIFICANTLY AFFECT ENERGY SUPPLY, DISTRIBUTION, OR USE.

(a) Requirement.—The head of each Federal agency shall require that before the Federal agency takes any action that could have a significant adverse effect on the supply of domestic energy resources from Federal public land, the Federal agency taking the action shall comply with Executive Order No. 13211 (42 U.S.C. 13201 note).

(b) Guidance.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall publish guidance for purposes of this section describing what constitutes a significant adverse effect on the supply of domestic energy resources under Executive Order No. 13211 (42 U.S.C. 13201 note).

(c) Memorandum of Understanding.—The Secretary of the Interior and the Secretary of Agriculture shall include in the memorandum of understanding under section 344 provisions for implementing subsection (a) of this section.

SEC. 347. PILOT PROJECT TO IMPROVE FEDERAL PERMIT COORDINATION.

(a) Establishment.—The Secretary of the Interior (in this section referred to as the "Secretary") shall establish a Federal Permit Streamlining Pilot Project (in this section referred to as the "Pilot Project").

(b) Memorandum of Understanding.—

(1) In general.—Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into a memorandum of understanding with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the Chief of Engineers of the Army Corps of Engineers for purposes of this section.

(2) State participation.—The Secretary may request that the Governors of Wyoming, Montana, Colorado, Utah, and New Mexico be signatories to the memorandum of understanding.

(c) Designation of Qualified Staff.—

(1) In general.—Not later than 30 days after the date of the signing of the memorandum of understanding under subsection (b), all Federal signatory parties shall assign to each of the field offices identified in subsection (d), on a nonreimbursable basis, an employee who has expertise in the regulatory issues relating to the office in which the employee is employed, including, as applicable, particular expertise in—

(A) the consultations and the preparation of biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(B) permits under section 404 of Federal Water Pollution Control Act (33 U.S.C. 1344);

(C) regulatory matters under the Clean Air Act (42 U.S.C. 7401 et seq.);

(D) planning under the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.); and

(E) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Duties.—Each employee assigned under paragraph (1) shall—

(A) not later than 90 days after the date of assignment, report to the Bureau of Land Management Field Managers in the office to which the employee is assigned;

(B) be responsible for all issues relating to the jurisdiction of the home office or agency of the employee; and

(C) participate as part of the team of personnel working on proposed energy projects, planning, and environmental analyses.

(d) Field Offices.—The following Bureau of Land Management Field Offices shall serve as the Pilot Project offices:

(1) Rawlins, Wyoming.

(2) Buffalo, Wyoming.

(3) Miles City, Montana

(4) Farmington, New Mexico.

(5) Carlsbad, New Mexico.

(6) Glenwood Springs, Colorado.

(7) Vernal, Utah.

(e) Reports.—Not later than 3 years after the date of enactment of this Act, the Secretary shall transmit to Congress a report that—

(1) outlines the results of the Pilot Project to date; and

(2) makes a recommendation to the President regarding whether the Pilot Project should be implemented throughout the United States.

(f) Additional Personnel.—The Secretary shall assign to each field office identified in subsection (d) any additional personnel that are

necessary to ensure the effective implementation of—

(1) the Pilot Project; and

(2) other programs administered by the field offices, including inspection and enforcement relating to energy development on Federal land, in accordance with the multiple use mandate of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq).

(g) Savings Provision.—Nothing in this section affects—

(1) the operation of any Federal or State law; or

(2) any delegation of authority made by the head of a Federal agency whose employees are participating in the Pilot Project.

SEC. 348. DEADLINE FOR CONSIDERATION OF APPLICATIONS FOR PERMITS.

Section 17 of the Mineral Leasing Act (30 U.S.C. 226) is amended by adding at the end the following:

"(p) Deadlines for Consideration of Applications for Permits.—

"(1) In general.—Not later than 10 days after the date on which the Secretary receives an application for any permit to drill, the Secretary shall—

"(A) notify the applicant that the application is complete; or

"(B) notify the applicant that information is missing and specify any information that is required to be submitted for the application to be complete.

"(2) Issuance or deferral.—Not later than 30 days after the applicant for a permit has submitted a complete application, the Secretary shall—

"(A) issue the permit; or

"(B)(i) defer decision on the permit; and

"(ii) provide to the applicant a notice that specifies any steps that the applicant could take for the permit to be issued.

"(3) Requirements for deferred applications.—

"(A) In general.—If the Secretary provides notice under paragraph (2)(B)(ii), the applicant shall have a period of 2 years from the date of receipt of the notice in which to complete all requirements specified by the Secretary, including providing information needed for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(B) Issuance of decision on permit.—If the applicant completes the requirements within the period specified in subparagraph (A), the Secretary shall issue a decision on the permit not later than 10 days after the date of completion of the requirements described in subparagraph (A).

"(C) Denial of permit.—If the applicant does not complete the requirements within the period specified in subparagraph (A), the Secretary shall deny the permit.

"(q) Report.—On a quarterly basis, each field office of the Bureau of Land Management and the Forest Service shall transmit to the Secretary of the Interior or the Secretary of Agriculture, respectively, a report that—

"(1) specifies the number of applications for permits to drill received by the field office in the period covered by the report; and

"(2) describes how each of the applications was disposed of by the field office.".

SEC. 349. CLARIFICATION OF FAIR MARKET RENTAL VALUE DETERMINATIONS FOR PUBLIC LAND AND FOREST SERVICE RIGHTS-OF-WAY.

(a) Linear Rights-of-Way Under Federal Land Policy and Management Act of 1976.—Section 504 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764) is amended by adding at the end the following:

"(k) Determination of Fair Market Value of Linear Rights-of-Way.—

"(1) In general.—Effective beginning on the date of the issuance of the rules required by paragraph (2), for purposes of subsection (g), the Secretary concerned shall determine the fair market value for the use of land encumbered by a linear right-of-way granted, issued, or renewed under this title using the valuation method described in paragraphs (2), (3), and (4).

"(2) Revisions.—Not later than 1 year after the date of enactment of this subsection—

"(A) the Secretary of the Interior shall amend section 2803.1-2 of title 43, Code of Federal Regulations, as in effect on the date of enactment of this subsection, to revise the per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone; and

"(B) the Secretary of Agriculture shall make the same revision for linear rights-of-way granted, issued, or renewed under this title on National Forest System land.

"(3) Updates.—The Secretary concerned shall annually update the schedule revised under paragraph (2) by multiplying the current year's rental per acre by the annual change, second quarter to second quarter (June 30 to June 30) in the Gross National Product Implicit Price Deflator Index published in the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis.

"(4) Review.—If the cumulative change in the index referred to in paragraph (3) exceeds 30 percent, or the change in the 3-year average of the 1-year Treasury interest rate used to determine per acre rental fee zone values exceeds plus or minus 50 percent, the Secretary concerned shall conduct a review of the zones and rental per acre figures to determine whether the value of Federal land has differed sufficiently from the index referred to in paragraph (3) to warrant a revision in the base zones and rental per acre figures. If, as a result of the review, the Secretary concerned determines that such a revision is warranted, the Secretary concerned shall revise the base zones and rental per acre figures accordingly. Any revision of base zones and rental per acre figure shall only affect lease rental rates at inception or renewal.".

(b) Rights-of-Way Under Mineral Leasing Act.—Section 28(l) of the Mineral Leasing Act (30 U.S.C. 185(l)) is amended by inserting before the period at the end the following: "using the valuation method described in section 2803.1-2 of title 43, Code of Federal Regulations, as revised in accordance with section 504(k) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(k))".

SEC. 350. ENERGY FACILITY RIGHTS-OF-WAY AND CORRIDORS ON FEDERAL LAND.

(a) Report to Congress.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Secretary of Agriculture and the Secretary of the Interior, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Federal Energy Regulatory Commission, shall submit to Congress a joint report—

(A) that addresses—

(i) the location of existing rights-of-way and designated and de facto corridors for oil and gas pipelines and electric transmission and distribution facilities on Federal land; and

(ii) opportunities for additional oil and gas pipeline and electric transmission capacity within those rights-of-way and corridors; and

(B) that includes a plan for making available, on request, to the appropriate Federal, State, and local agencies, tribal governments, and other persons involved in the siting of oil and gas pipelines and electricity transmission facilities Geographic Information System-based information regarding the location of the existing rights-of-way and corridors and any planned rights-of-way and corridors.

(2) Consultations and considerations.—In preparing the report, the Secretary of the Interior and the Secretary of Agriculture shall consult with—

(A) other agencies of Federal, State, tribal, or local units of government, as appropriate;

(B) persons involved in the siting of oil and gas pipelines and electric transmission facilities; and

(C) other interested members of the public.

(3) Limitation.—The Secretary of the Interior and the Secretary of Agriculture shall limit the distribution of the report and Geographic Information System-based information referred to in paragraph (1) as necessary for national and infrastructure security reasons, if either Secretary determines that the information may be withheld from public disclosure under a national security or other exception under section 552(b) of title 5, United States Code.

(b) Corridor Designations.—

(1) 11 contiguous western states.—Not later than 2 years after the date of enactment of this Act, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, shall jointly—

(A) designate, under title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.) and other applicable Federal laws, corridors for oil and gas pipelines and electricity transmission and facilities on Federal land in the eleven contiguous Western States (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702));

(B) perform any environmental reviews that may be required to complete the designations of corridors for the facilities on Federal land in the eleven contiguous Western States; and

(C) incorporate the designated corridors into—

(i) the relevant departmental and agency land use and resource management plans; or

(ii) equivalent plans.

(2) Other states.—Not later than 4 years after the date of enactment of this Act, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, shall jointly—

(A) identify corridors for oil and gas pipelines and electricity transmission and distribution facilities on Federal land in the States other than those described in paragraph (1); and

(B) schedule prompt action to identify, designate, and incorporate the corridors into the land use plan.

(3) Ongoing responsibilities.—After completing the requirements under paragraphs (1) and (2), the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior, with respect to lands under their respective jurisdictions, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, shall establish procedures that—

(A) ensure that additional corridors for oil and gas pipelines and electricity transmission and distribution facilities on Federal land are promptly identified and designated; and

(B) expedite applications to construct or modify oil and gas pipelines and electricity transmission and distribution facilities within the corridors, taking into account prior analyses and environmental reviews undertaken during the designation of corridors.

(c) Considerations.—In carrying out this section, the Secretaries shall take into account the need for upgraded and new electricity transmission and distribution facilities to—

(1) improve reliability;

(2) relieve congestion; and

(3) enhance the capability of the national grid to deliver electricity.

(d) DEFINITION OF CORRIDOR.—

(1) IN GENERAL.—In this section and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.), the term "corridor" means—

(A) a linear strip of land—

(i) with a width determined with consideration given to technological, environmental, and topographical factors; and

(ii) that contains, or may in the future contain, 1 or more utility, communication, or transportation facilities;

(B) a land use designation that is established—

(i) by law;

(ii) by Secretarial Order;

(iii) through the land use planning process; or

(iv) by other management decision; and

(C) a designation made for the purpose of establishing the preferred location of compatible linear facilities and land uses.

(2) SPECIFICATIONS OF CORRIDOR.—On designation of a corridor under this section, the centerline, width, and compatible uses of a corridor shall be specified.

SEC. 351. CONSULTATION REGARDING ENERGY RIGHTS-OF-WAY ON PUBLIC LAND.

(a) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Energy, in consultation with the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense with respect to lands under their respective jurisdictions, shall enter into a memorandum of understanding to coordinate all applicable Federal authorizations and environmental reviews relating to a proposed or existing utility facility. To the maximum extent practicable under applicable law, the Secretary of Energy shall, to ensure timely review and permit decisions, coordinate such authorizations and reviews with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the affected utility facility.

(2) CONTENTS.—The memorandum of understanding shall include provisions that—

(A) establish—

(i) a unified right-of-way application form; and

(ii) an administrative procedure for processing right-of-way applications, including lines of authority, steps in application processing, and timeframes for application processing;

(B) provide for coordination of planning relating to the granting of the rights-of-way;

(C) provide for an agreement among the affected Federal agencies to prepare a single environmental review document to be used as the basis for all Federal authorization decisions; and

(D) provide for coordination of use of right-of-way stipulations to achieve consistency.

(b) NATURAL GAS PIPELINES.—

(1) IN GENERAL.—With respect to permitting activities for interstate natural gas pipelines, the May 2002 document entitled "Interagency Agreement On Early Coordination Of Required Environmental And Historic Preservation Reviews Conducted In Conjunction With The Issuance Of Authorizations To Construct And Operate Interstate Natural Gas Pipelines Certificated By The Federal Energy Regulatory Commission" shall constitute compliance with subsection (a).

(2) REPORT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and every 2 years thereafter, agencies that are signatories to the document referred to in paragraph (1) shall transmit to Congress a report on how the agencies under the jurisdiction of the Secretaries are incorporating and implementing the provisions of the document referred to in paragraph (1).

(B) CONTENTS.—The report shall address—

(i) efforts to implement the provisions of the document referred to in paragraph (1);

(ii) whether the efforts have had a streamlining effect;

(iii) further improvements to the permitting process of the agency; and

(iv) recommendations for inclusion of State and tribal governments in a coordinated permitting process.

(c) DEFINITION OF UTILITY FACILITY.—In this section, the term "utility facility" means any privately, publicly, or cooperatively owned line, facility, or system—

(1) for the transportation of—

(A) oil, natural gas, synthetic liquid fuel, or gaseous fuel;

(B) any refined product produced from oil, natural gas, synthetic liquid fuel, or gaseous fuel; or

(C) products in support of the production of material referred to in subparagraph (A) or (B);

(2) for storage and terminal facilities in connection with the production of material referred to in paragraph (1); or

(3) for the generation, transmission, and distribution of electric energy.

SEC. 352. RENEWABLE ENERGY ON FEDERAL LAND.

(a) REPORT.—

(1) IN GENERAL.—Not later than 24 months after the date of enactment of this Act, the Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall develop and transmit to Congress a report that includes recommendations on opportunities to develop renewable energy on—

(A) public lands under the jurisdiction of the Secretary of the Interior; and

(B) National Forest System lands under the jurisdiction of the Secretary of Agriculture.

(2) CONTENTS.—The report shall include—

(A) 5-year plans developed by the Secretary of the Interior and the Secretary of Agriculture, respectively, for encouraging the development of renewable energy consistent with applicable law and management plans;

(B) an analysis of—

(i) the use of rights-of-way, leases, or other methods to develop renewable energy on such lands;

(ii) the anticipated benefits of grants, loans, tax credits, or other provisions to promote renewable energy development on such lands; and

(iii) any issues that the Secretary of the Interior or the Secretary of Agriculture have encountered in managing renewable energy projects on such lands, believe are likely to arise in relation to the development of renewable energy on such lands;

(C) a list, developed in consultation with the Secretary of Energy and the Secretary of Defense, of lands under the jurisdiction of the Department of Energy or the Department of Defense that would be suitable for development for renewable energy, and any recommended statutory and regulatory mechanisms for such development; and

(D) any recommendations relating to the issues addressed in the report.

(b) NATIONAL ACADEMY OF SCIENCES STUDY.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Interior shall contract with the National Academy of Sciences to—

(A) study the potential for the development of wind, solar, and ocean energy (including tidal, wave, and thermal energy) on the outer Continental Shelf;

(B) assess existing Federal authorities for the development of such resources; and

(C) recommend statutory and regulatory mechanisms for such development.

(2) TRANSMITTAL.—The results of the study shall be transmitted to Congress not later than 2 years after the date of enactment of this Act.

(c) GENERATION CAPACITY OF ELECTRICITY FROM RENEWABLE ENERGY RESOURCES ON PUBLIC LAND.—The Secretary of the Interior shall, not later than 10 years after the date of enactment of this Act, seek to approve renewable energy projects located (or to be located) on public lands with a generation capacity of at least 10,000 megawatts of electricity.

SEC. 353. ELECTRICITY TRANSMISSION LINE RIGHT-OF-WAY, CLEVELAND NATIONAL FOREST AND ADJACENT PUBLIC LAND, CALIFORNIA.

(a) ISSUANCE.—

(1) IN GENERAL.—Not later than 60 days after the completion of the environmental reviews under subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall issue all necessary grants, easements, permits, plan amendments, and other approvals to allow for the siting and construction of a high-voltage electricity transmission line right-of-way running approximately north to south through the Trabuco Ranger District of the Cleveland National Forest in the State of California and adjacent lands under the jurisdiction of the Bureau of Land Management and the Forest Service.

(2) INCLUSIONS.—The right-of-way approvals under paragraph (1) shall provide all necessary Federal authorization from the Secretary of the Interior and the Secretary of Agriculture for the routing, construction, operation, and maintenance of a 500-kilovolt transmission line capable of meeting the long-term electricity transmission needs of the region between the existing Valley-Serrano transmission line to the north and the Telega-Escondido transmission line to the south, and for connecting to future generating capacity that may be developed in the region.

(b) PROTECTION OF WILDERNESS AREAS.—The Secretary of the Interior and the Secretary of Agriculture shall not allow any portion of a transmission line right-of-way corridor identified in subsection (a) to enter any identified wilderness area in existence as of the date of enactment of this Act.

(c) ENVIRONMENTAL AND ADMINISTRATIVE REVIEWS.—

(1) DEPARTMENT OF INTERIOR OR LOCAL AGENCY.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall be the lead Federal agency with overall responsibility to ensure completion of required environmental and other reviews of the approvals to be issued under subsection (a).

(2) NATIONAL FOREST SYSTEM LAND.—For the portions of the corridor on National Forest System lands, the Secretary of Agriculture shall complete all required environmental reviews and administrative actions in coordination with the Secretary of the Interior.

(3) EXPEDITIOUS COMPLETION.—The reviews required for issuance of the approvals under subsection (a) shall be completed not later than 1 year after the date of the enactment of this Act.

(d) OTHER TERMS AND CONDITIONS.—The transmission line right-of-way shall be subject to such terms and conditions as the Secretary of the Interior and the Secretary of Agriculture consider necessary, based on the environmental reviews under subsection (c), to protect the value of historic, cultural, and natural resources under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture.

(e) PREFERENCE AMONG PROPOSALS.—The Secretary of the Interior and the Secretary of Agriculture shall give a preference to any application or preapplication proposal for a transmission line right-of-way referred to in subsection (a) that was submitted before December 31, 2002, over all other applications and proposals for the same or a similar right-of-way submitted on or after that date.

SEC. 354. SENSE OF CONGRESS REGARDING DEVELOPMENT OF MINERALS UNDER PADRE ISLAND NATIONAL SEASHORE.

(a) FINDINGS.—Congress finds the following:

(1) Pursuant to Public Law 87–712 (16 U.S.C. 459d et seq.; popularly known as the "Federal Enabling Act") and various deeds and actions under that Act, the United States is the owner of only the surface estate of certain lands constituting the Padre Island National Seashore.

(2) Ownership of the oil, gas, and other minerals in the subsurface estate of the lands constituting the Padre Island National Seashore was never acquired by the United States, and ownership of those interests is held by the State of Texas and private parties.

(3) Public Law 87–712 (16 U.S.C. 459d et seq.)—

(A) expressly contemplated that the United States would recognize the ownership and future development of the oil, gas, and other minerals in the subsurface estate of the lands constituting the Padre Island National Seashore by the owners and their mineral lessees; and

(B) recognized that approval of the State of Texas was required to create Padre Island National Seashore.

(4) Approval was given for the creation of Padre Island National Seashore by the State of Texas through Tex. Rev. Civ. Stat. Ann. Art. 6077(t) (Vernon 1970), which expressly recognized that development of the oil, gas, and other minerals in the subsurface of the lands constituting Padre Island National Seashore would be conducted with full rights of ingress and egress under the laws of the State of Texas.

(b) SENSE OF CONGRESS.—It is the sense of Congress that with regard to Federal law, any regulation of the development of oil, gas, or other minerals in the subsurface of the lands constituting Padre Island National Seashore should be made as if those lands retained the status that the lands had on September 27, 1962.

SEC. 355. ENCOURAGING PROHIBITION OF OFFSHORE DRILLING IN THE GREAT LAKES.

Congress encourages—

(1) the States of Illinois, Michigan, New York, Pennsylvania, and Wisconsin to continue to prohibit offshore drilling in the Great Lakes for oil and gas; and

(2) the States of Indiana, Minnesota, and Ohio to enact a prohibition of such drilling.

SEC. 356. FINGER LAKES NATIONAL FOREST WITHDRAWAL.

All Federal land within the boundary of Finger Lakes National Forest in the State of New York is withdrawn from—

(1) all forms of entry, appropriation, or disposal under the public land laws; and

(2) disposition under all laws relating to oil and gas leasing.

SEC. 357. STUDY ON LEASE EXCHANGES IN THE ROCKY MOUNTAIN FRONT.

(a) DEFINITIONS.—For the purposes of this section:

(1) BADGER-TWO MEDICINE AREA.—The term "Badger-Two Medicine Area" means the Forest Service land located in—

(A) T. 31 N., R. 12–13 W.;

(B) T. 30 N., R. 11–13 W.;

(C) T. 29 N., R. 10–16 W.; and

(D) T. 28 N., R. 10–14 W.

(2) BLACKLEAF AREA.—The term "Blackleaf Area" means the Federal land owned by the Forest Service and Bureau of Land Management that is located in—

(A) T. 27 N., R. 9 W.;

(B) T. 26 N., R. 9–10 W.;

(C) T. 25 N., R. 8–10 W.; and

(D) T. 24 N., R. 8–9 W.

(3) ELIGIBLE LESSEE.—The term "eligible lessee" means a lessee under a nonproducing lease.

(4) NONPRODUCING LEASE.—The term "nonproducing lease" means a Federal oil or gas lease—

(A) that is in existence and in good standing on the date of enactment of this Act; and

(B) that is located in the Badger-Two Medicine Area or the Blackleaf Area.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(6) STATE.—The term "State" means the State of Montana.

(b) EVALUATION.—

(1) IN GENERAL.—The Secretary, in consultation with the Governor of the State, and the eligible lessees, shall evaluate opportunities for domestic oil and gas production through the exchange of the nonproducing leases.

(2) REQUIREMENTS.—In carrying out the evaluation under subsection (a), the Secretary shall—

(A) consider opportunities for domestic production of oil and gas through—

(i) the exchange of the nonproducing leases for oil and gas lease tracts of comparable value in the State; and

(ii) the issuance of bidding, royalty, or rental credits for Federal oil and gas leases in the State in exchange for the cancellation of the nonproducing leases;

(B) consider any other appropriate means to exchange, or provide compensation for the cancellation of, nonproducing leases, subject to the consent of the eligible lessees;

(C) consider the views of any interested persons, including the State;

(D) determine the level of interest of the eligible lessees in exchanging the nonproducing leases;

(E) assess the economic impact on the lessees and the State of lease exchange, lease cancellation, and final judicial or administrative decisions related to the nonproducing leases; and

(F) provide recommendations on—

(i) whether to pursue an exchange of the nonproducing leases;

(ii) any changes in laws (including regulations) that are necessary for the Secretary to carry out the exchange; and

(iii) any other appropriate means to exchange or provide compensation for the cancellation of a nonproducing lease, subject to the consent of the eligible lessee.

(c) VALUATION OF NONPRODUCING LEASES.—For the purpose of the evaluation under subsection (a), the value of a nonproducing lease shall be an amount equal to the difference between—

(1) the sum of—

(A) the amount paid by the eligible lessee for the nonproducing lease;

(B) any direct expenditures made by the eligible lessee before the transmittal of the report in subsection (c) associated with the exploration and development of the nonproducing lease; and

(C) interest on any amounts under subparagraphs (A) and (B) during the period beginning on the date on which the amount was paid and ending on the date on which credits are issued under subsection (b)(2)(A)(ii); and

(2) the sum of the revenues from the nonproducing lease.

(d) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall initiate the evaluation in subsection (b) and transmit to Congress a report on the evaluation.

SEC. 358. FEDERAL COALBED METHANE REGULATION.

Any State currently on the list of Affected States established under section 1339(b) of the Energy Policy Act of 1992 (42 U.S.C. 13368(b)) shall be removed from the list if, not later than 3 years after the date of enactment of this Act, the State takes, or prior to the date of enactment has taken, any of the actions required for removal from the list under such section 1339(b).

SEC. 359. LIVINGSTON PARISH MINERAL RIGHTS TRANSFER.

(a) AMENDMENTS.—Section 102 of Public Law 102–562 (106 Stat. 4234) is amended—

(1) by striking "(a) IN GENERAL.—";

(2) by striking "and subject to the reservation in subsection (b),"; and

(3) by striking subsection (b).

(b) IMPLEMENTATION OF AMENDMENT.—The Secretary of the Interior shall execute the legal instruments necessary to effectuate the amendment made by subsection (a)(3).

Subtitle D—Alaska Natural Gas Pipeline

SEC. 371. SHORT TITLE.

This subtitle may be cited as the "Alaska Natural Gas Pipeline Act".

SEC. 372. DEFINITIONS.

In this subtitle:

(1) ALASKA NATURAL GAS.—The term "Alaska natural gas" means natural gas derived from the area of the State of Alaska lying north of 64 degrees north latitude.

(2) ALASKA NATURAL GAS TRANSPORTATION PROJECT.—The term "Alaska natural gas transportation project" means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under—

(A) the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.); or

(B) section 373.

(3) ALASKA NATURAL GAS TRANSPORTATION SYSTEM.—The term "Alaska natural gas transportation system" means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.) and designated and described in section 2 of the President's decision.

(4) COMMISSION.—The term "Commission" means the Federal Energy Regulatory Commission.

(5) FEDERAL COORDINATOR.—The term "Federal Coordinator" means the head of the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects established by section 376(a).

(6) PRESIDENT'S DECISION.—The term "President's decision" means the decision and report to Congress on the Alaska natural gas transportation system—

(A) issued by the President on September 22, 1977, in accordance with section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719e); and

(B) approved by Public Law 95–158 (15 U.S.C. 719f note; 91 Stat. 1268).

(7) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(8) STATE.—The term "State" means the State of Alaska.

SEC. 373. ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(a) AUTHORITY OF THE COMMISSION.—Notwithstanding the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), the Commission may, in accordance with section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska natural gas transportation system.

(b) ISSUANCE OF CERTIFICATE.—

(1) IN GENERAL.—The Commission shall issue a certificate of public convenience and necessity

authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) Considerations.—In considering an application under this section, the Commission shall presume that—

(A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and

(B) sufficient downstream capacity will exist to transport the Alaska natural gas moving through the project to markets in the contiguous United States.

(c) Expedited Approval Process.—Not later than 60 days after the date of issuance of the final environmental impact statement under section 374 for an Alaska natural gas transportation project, the Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity for the project under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section.

(d) Prohibition of Certain Pipeline Route.—No license, permit, lease, right-of-way, authorization, or other approval required under Federal law for the construction of any pipeline to transport natural gas from land within the Prudhoe Bay oil and gas lease area may be granted for any pipeline that follows a route that—

(1) traverses land beneath navigable waters (as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301)) beneath, or the adjacent shoreline of, the Beaufort Sea; and

(2) enters Canada at any point north of 68 degrees north latitude.

(e) Open Season.—

(1) In general.—Not later than 120 days after the date of enactment of this Act, the Commission shall issue regulations governing the conduct of open seasons for Alaska natural gas transportation projects (including procedures for the allocation of capacity).

(2) Regulations.—The regulations referred to in paragraph (1) shall—

(A) include the criteria for and timing of any open seasons;

(B) promote competition in the exploration, development, and production of Alaska natural gas; and

(C) for any open season for capacity exceeding the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

(3) Applicability.—Except in a case in which an expansion is ordered in accordance with section 375, initial or expansion capacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations issued under paragraph (1).

(f) Projects in the Contiguous United States.—

(1) In general.—An application for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made in accordance with the Natural Gas Act (15 U.S.C. 717a et seq.).

(2) Expansion.—To the extent that a pipeline facility described in paragraph (1) includes the expansion of any facility constructed in accordance with the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), that Act shall continue to apply.

(g) Study of In-State Needs.—The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that the holder has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

(h) Alaska Royalty Gas.—

(1) In general.—Except as provided in paragraph (2), the Commission, on a request by the State and after a hearing, may provide for reasonable access to the Alaska natural gas transportation project by the State (or State designee) for the transportation of royalty gas of the State for the purpose of meeting local consumption needs within the State.

(2) Exception.—The rates of shippers of subscribed capacity on an Alaska natural gas transportation project described in paragraph (1), as in effect as of the date on which access under that paragraph is granted, shall not be increased as a result of such access.

(i) Regulations.—The Commission may issue such regulations as are necessary to carry out this section.

SEC. 374. ENVIRONMENTAL REVIEWS.

(a) Compliance With NEPA.—The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 373 shall be treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) Designation of Lead Agency.—

(1) In general.—The Commission—

(A) shall be the lead agency for purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) shall be responsible for preparing the environmental impact statement required by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c)) with respect to an Alaska natural gas transportation project under section 373.

(2) Consolidation of statements.—In carrying out paragraph (1), the Commission shall prepare a single environmental impact statement, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the Alaska natural gas transportation project covered by the environmental impact statement.

(c) Other Agencies.—

(1) In general.—Each Federal agency considering an aspect of the construction and operation of an Alaska natural gas transportation project under section 373 shall—

(A) cooperate with the Commission; and

(B) comply with deadlines established by the Commission in the preparation of the environmental impact statement under this section.

(2) Satisfaction of NEPA requirements.—The environmental impact statement prepared under this section shall be adopted by each Federal agency described in paragraph (1) in satisfaction of the responsibilities of the Federal agency under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to the Alaska natural gas transportation project covered by the environmental impact statement.

(d) Expedited Process.—The Commission shall—

(1) not later than 1 year after the Commission determines that the application under section 373 with respect to an Alaska natural gas transportation project is complete, issue a draft environmental impact statement under this section; and

(2) not later than 180 days after the date of issuance of the draft environmental impact statement, issue a final environmental impact statement, unless the Commission for good cause determines that additional time is needed.

SEC. 375. PIPELINE EXPANSION.

(a) Authority.—With respect to any Alaska natural gas transportation project, on a request by 1 or more persons and after giving notice and an opportunity for a hearing, the Commission may order the expansion of the Alaska natural gas project if the Commission determines that such an expansion is required by the present and future public convenience and necessity.

(b) Responsibilities of Commission.—Before ordering an expansion under subsection (a), the Commission shall—

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that a proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the tariff of the Alaska natural gas transportation project in effect as of the date of the expansion;

(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

(8) find that adequate downstream facilities exist or are expected to exist to deliver incremental Alaska natural gas to market.

(c) Requirement for a Firm Transportation Agreement.—Any order of the Commission issued in accordance with this section shall be void unless the person requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within such reasonable period of time as the order may specify.

(d) Limitation.—Nothing in this section expands or otherwise affects any authority of the Commission with respect to any natural gas pipeline located outside the State.

(e) Regulations.—The Commission may issue such regulations as are necessary to carry out this section.

SEC. 376. FEDERAL COORDINATOR.

(a) Establishment.—There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) Federal Coordinator.—

(1) Appointment.—The Office shall be headed by a Federal Coordinator for Alaska Natural Gas Transportation Projects, who shall be appointed by the President, by and with the advice and consent of the Senate, to serve a term to last until 1 year following the completion of the project referred to in section 373.

(2) Compensation.—The Federal Coordinator shall be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314).

(c) Duties.—The Federal Coordinator shall be responsible for—

(1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and

(2) ensuring the compliance of Federal agencies with the provisions of this subtitle.

(d) Reviews and Actions of Other Federal Agencies.—

(1) Expedited reviews and actions.—All reviews conducted and actions taken by any Federal agency relating to an Alaska natural gas

transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines under this subtitle.

(2) PROHIBITION OF CERTAIN TERMS AND CONDITIONS.—No Federal agency may include in any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project any term or condition that may be permitted, but is not required, by any applicable law if the Federal Coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(3) PROHIBITION OF CERTAIN ACTIONS.—Unless required by law, no Federal agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the action would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(4) LIMITATION.—The Federal Coordinator shall not have authority to—

(A) override—

(i) the implementation or enforcement of regulations issued by the Commission under section 373; or

(ii) an order by the Commission to expand the project under section 375; or

(B) impose any terms, conditions, or requirements in addition to those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

(e) STATE COORDINATION.—

(1) IN GENERAL.—The Federal Coordinator and the State shall enter into a joint surveillance and monitoring agreement similar to the agreement in effect during construction of the Trans-Alaska Pipeline, to be approved by the President and the Governor of the State, for the purpose of monitoring the construction of the Alaska natural gas transportation project.

(2) PRIMARY RESPONSIBILITY.—With respect to an Alaska natural gas transportation project—

(A) the Federal Government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses Federal land or private land; and

(B) the State government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses State land.

(f) TRANSFER OF FEDERAL INSPECTOR FUNCTIONS AND AUTHORITY.—On appointment of the Federal Coordinator by the President, all of the functions and authority of the Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System vested in the Secretary under section 3012(b) of the Energy Policy Act of 1992 (15 U.S.C. 719e note; Public Law 102–486), including all functions and authority described and enumerated in the Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33663), Executive Order No. 12142 of June 21, 1979 (44 Fed. Reg. 36927), and section 5 of the President's decision, shall be transferred to the Federal Coordinator.

(g) TEMPORARY AUTHORITY.—The functions, authorities, duties, and responsibilities of the Federal Coordinator shall be vested in the Secretary until the later of the appointment of the Federal Coordinator by the President, or 18 months after the date of enactment of this Act.

SEC. 377. JUDICIAL REVIEW.

(a) EXCLUSIVE JURISDICTION.—Except for review by the Supreme Court on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this subtitle;

(2) the constitutionality of any provision of this subtitle, or any decision made or action taken under this subtitle; or

(3) the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this subtitle.

(b) DEADLINE FOR FILING CLAIM.—A claim arising under this subtitle may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) EXPEDITED CONSIDERATION.—The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) for expedited consideration, taking into account the national interest of enhancing national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(d) AMENDMENT OF THE ALASKA NATURAL GAS TRANSPORTATION ACT OF 1976.—Section 10(c) of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719h) is amended—

(1) by striking "(c)(1) A claim" and inserting the following:

"(c) JURISDICTION.—

"(1) SPECIAL COURTS.—

"(A) IN GENERAL.—A claim";

(2) by striking "Such court shall have" and inserting the following:

"(B) EXCLUSIVE JURISDICTION.—The Special Court shall have";

(3) by inserting after paragraph (1) the following:

"(2) EXPEDITED CONSIDERATION.—The Special Court shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 2."; and

(4) in paragraph (3), by striking "(3) The enactment" and inserting the following:

"(3) ENVIRONMENTAL IMPACT STATEMENTS.—The enactment".

SEC. 378. STATE JURISDICTION OVER IN-STATE DELIVERY OF NATURAL GAS.

(a) LOCAL DISTRIBUTION.—Any facility receiving natural gas from an Alaska natural gas transportation project for delivery to consumers within the State—

(1) shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)); and

(2) shall not be subject to the jurisdiction of the Commission.

(b) ADDITIONAL PIPELINES.—Except as provided in section 373(d), nothing in this subtitle shall preclude or otherwise affect a future natural gas pipeline that may be constructed to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State for consumption within or distribution outside the State.

(c) RATE COORDINATION.—

(1) IN GENERAL.—In accordance with the Natural Gas Act (15 U.S.C. 717a et seq.), the Commission shall establish rates for the transportation of natural gas on any Alaska natural gas transportation project.

(2) CONSULTATION.—In carrying out paragraph (1), the Commission, in accordance with section 17(b) of the Natural Gas Act (15 U.S.C. 717p(b)), shall consult with the State regarding rates (including rate settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State.

SEC. 379. STUDY OF ALTERNATIVE MEANS OF CONSTRUCTION.

(a) REQUIREMENT OF STUDY.—If no application for the issuance of a certificate or amended certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project has been filed with the Commission by the date that is 18 months after the date of enactment of this Act, the Secretary shall conduct a study of alternative approaches to the construction and operation of such an Alaska natural gas transportation project.

(b) SCOPE OF STUDY.—The study under subsection (a) shall take into consideration the feasibility of—

(1) establishing a Federal Government corporation to construct an Alaska natural gas transportation project; and

(2) securing alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the Alaska natural gas transportation project.

(c) CONSULTATION.—In conducting the study under subsection (a), the Secretary shall consult with the Secretary of the Treasury and the Secretary of the Army (acting through the Chief of Engineers).

(d) REPORT.—On completion of any study under subsection (a), the Secretary shall submit to Congress a report that describes—

(1) the results of the study; and

(2) any recommendations of the Secretary (including proposals for legislation to implement the recommendations).

SEC. 380. CLARIFICATION OF ANGTA STATUS AND AUTHORITIES.

(a) SAVINGS CLAUSE.—Nothing in this subtitle affects—

(1) any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g); or

(2) any Presidential finding or waiver issued in accordance with that Act.

(b) CLARIFICATION OF AUTHORITY TO AMEND TERMS AND CONDITIONS TO MEET CURRENT PROJECT REQUIREMENTS.—Any Federal agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or rescind any term or condition included in the certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), if the addition, amendment, or rescision—

(1) would not compel any change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision; or

(2) would not otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska natural gas transportation system.

(c) UPDATED ENVIRONMENTAL REVIEWS.—The Secretary shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.

SEC. 381. SENSE OF CONGRESS CONCERNING USE OF STEEL MANUFACTURED IN NORTH AMERICA NEGOTIATION OF A PROJECT LABOR AGREEMENT.

It is the sense of Congress that—

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should make every effort to—

(A) use steel that is manufactured in North America; and

(B) negotiate a project labor agreement to expedite construction of the pipeline.

SEC. 382. SENSE OF CONGRESS AND STUDY CONCERNING PARTICIPATION BY SMALL BUSINESS CONCERNS.

(a) DEFINITION OF SMALL BUSINESS CONCERN.—In this section, the term "small business concern" has the meaning given the term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(c) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study to determine the extent to which small business concerns participate in the construction of oil and gas pipelines in the United States.

(2) REPORT.—Not later that 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report that describes results of the study under paragraph (1).

(3) UPDATES.—The Comptroller General shall—

(A) update the study at least once every 5 years until construction of an Alaska natural gas transportation project is completed; and

(B) on completion of each update, submit to Congress a report containing the results of the update.

SEC. 383. ALASKA PIPELINE CONSTRUCTION TRAINING PROGRAM.

(a) PROGRAM.—

(1) ESTABLISHMENT.—The Secretary of Labor (in this section referred to as the "Secretary") shall make grants to the Alaska Workforce Investment Board—

(A) to recruit and train adult and dislocated workers in Alaska, including Alaska Natives, in the skills required to construct and operate an Alaska gas pipeline system; and

(B) for the design and construction of a training facility to be located in Fairbanks, Alaska, to support an Alaska gas pipeline training program.

(2) COORDINATION WITH EXISTING PROGRAMS.—The training program established with the grants authorized under paragraph (1) shall be consistent with the vision and goals set forth in the State of Alaska Unified Plan, as developed pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(b) REQUIREMENTS FOR GRANTS.—The Secretary shall make a grant under subsection (a) only if—

(1) the Governor of the State of Alaska requests the grant funds and certifies in writing to the Secretary that there is a reasonable expectation that the construction of the Alaska natural gas pipeline system will commence by the date that is 2 years after the date of the certification; and

(2) the Secretary of Energy concurs in writing to the Secretary with the certification made under paragraph (1) after considering—

(A) the status of necessary Federal and State permits;

(B) the availability of financing for the Alaska natural gas pipeline project; and

(C) other relevant factors.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $20,000,000. Not more than 15 percent of the funds may be used for the facility described in subsection (a)(1)(B).

SEC. 384. SENSE OF CONGRESS CONCERNING NATURAL GAS DEMAND.

It is the sense of Congress that—

(1) North American demand for natural gas will increase dramatically over the course of the next several decades;

(2) both the Alaska Natural Gas Pipeline and the Mackenzie Delta Natural Gas project in Canada will be necessary to help meet the increased demand for natural gas in North America;

(3) Federal and State officials should work together with officials in Canada to ensure both projects can move forward in a mutually beneficial fashion;

(4) Federal and State officials should acknowledge that the smaller scope, fewer permitting requirements, and lower cost of the Mackenzie Delta project means it will most likely be completed before the Alaska Natural Gas Pipeline;

(5) natural gas production in the 48 contiguous States and Canada will not be able to meet all domestic demand in the coming decades; and

(6) as a result, natural gas delivered from Alaskan North Slope will not displace or reduce the commercial viability of Canadian natural gas produced from the Mackenzie Delta or production from the 48 contiguous States.

SEC. 385. SENSE OF CONGRESS CONCERNING ALASKAN OWNERSHIP.

It is the sense of Congress that—

(1) Alaska Native Regional Corporations, companies owned and operated by Alaskans, and individual Alaskans should have the opportunity to own shares of the Alaska natural gas pipeline in a way that promotes economic development for the State; and

(2) to facilitate economic development in the State, all project sponsors should negotiate in good faith with any willing Alaskan person that desires to be involved in the project.

SEC. 386. LOAN GUARANTEES.

(a) AUTHORITY.—(1) The Secretary may enter into agreements with 1 or more holders of a certificate of public convenience and necessity issued under section 373(b) of this Act or section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project.

(2) Subject to the requirements of this section, the Secretary may also enter into agreements with 1 or more owners of the Canadian portion of a qualified infrastructure project to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project as though such owner were a holder described in paragraph (1).

(3) The authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project. A final certificate shall be considered to have been issued when all certificates of public convenience and necessity have been issued that are required for the initial transportation of commercially economic quantities of natural gas from Alaska to the continental United States.

(b) CONDITIONS.—(1) The Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity under section 373(b) of this Act or an amended certificate under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) has been issued for the project.

(2) The Secretary may issue a Federal guarantee instrument under this section for a qualified infrastructure project only if the loan or other debt obligation guaranteed by the instrument has been issued by an eligible lender.

(3) The Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees), or any throughput or other guarantee from prospective shippers greater than such guarantees as shall be required by the project owners.

(c) LIMITATIONS ON AMOUNTS.—(1) The amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.

(2) The principal amount of loans and other debt obligations guaranteed under this section shall not exceed, in the aggregate, $18,000,000,000, which amount shall be indexed for United States dollar inflation from the date of enactment of this Act, as measured by the Consumer Price Index.

(d) LOAN TERMS AND FEES.—(1) The Secretary may issue Federal guarantee instruments under this section that take into account repayment profiles and grace periods justified by project cash flows and project-specific considerations. The term of any loan guaranteed under this section shall not exceed 30 years.

(2) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan or other debt obligation as are reasonable and customary for a project finance transaction in the oil and gas sector.

(e) REGULATIONS.—The Secretary may issue regulations to carry out this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to cover the cost of loan guarantees under this section, as defined by section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)). Such sums shall remain available until expended.

(g) DEFINITIONS.—In this section, the following definitions apply:

(1) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics, or if such index shall cease to be published, any successor index or reasonable substitute thereof.

(2) The term "eligible lender" means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933), including—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986 (26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. 414(d)) that is a qualified institutional buyer.

(3) The term "Federal guarantee instrument" means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.

(4) The term "qualified infrastructure project" means an Alaskan natural gas transportation

project consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment plants), and appurtenances thereto, that are used to transport natural gas from the Alaska North Slope to the continental United States.

TITLE IV—COAL

Subtitle A—Clean Coal Power Initiative

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

(a) Clean Coal Power Initiative.—There are authorized to be appropriated to the Secretary of Energy (referred to in this title as the "Secretary") to carry out the activities authorized by this subtitle $200,000,000 for each of fiscal years 2004 through 2012, to remain available until expended.

(b) Report.—The Secretary shall submit to Congress the report required by this subsection not later than March 31, 2005. The report shall include, with respect to subsection (a), a 10-year plan containing—

(1) a detailed assessment of whether the aggregate funding levels provided under subsection (a) are the appropriate funding levels for that program;

(2) a detailed description of how proposals will be solicited and evaluated, including a list of all activities expected to be undertaken;

(3) a detailed list of technical milestones for each coal and related technology that will be pursued; and

(4) a detailed description of how the program will avoid problems enumerated in General Accounting Office reports on the Clean Coal Technology Program, including problems that have resulted in unspent funds and projects that failed either financially or scientifically.

SEC. 402. PROJECT CRITERIA.

(a) In General.—The Secretary shall not provide funding under this subtitle for any project that does not advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in commercial service or have been demonstrated on a scale that the Secretary determines is sufficient to demonstrate that commercial service is viable as of the date of enactment of this Act.

(b) Technical Criteria for Clean Coal Power Initiative.—

(1) Gasification projects.—

(A) In general.—In allocating the funds made available under section 401(a), the Secretary shall ensure that at least 60 percent of the funds are used only for projects on coal-based gasification technologies, including gasification combined cycle, gasification fuel cells, gasification coproduction, and hybrid gasification/combustion.

(B) Technical milestones.—The Secretary shall periodically set technical milestones specifying the emission and thermal efficiency levels that coal gasification projects under this subtitle shall be designed, and reasonably expected, to achieve. The technical milestones shall become more restrictive during the life of the program. The Secretary shall set the periodic milestones so as to achieve by 2020 coal gasification projects able—

(i) to remove 99 percent of sulfur dioxide;

(ii) to emit not more than .05 lbs of NO_x per million Btu;

(iii) to achieve substantial reductions in mercury emissions; and

(iv) to achieve a thermal efficiency of—

(I) 60 percent for coal of more than 9,000 Btu;

(II) 59 percent for coal of 7,000 to 9,000 Btu; and

(III) 50 percent for coal of less than 7,000 Btu.

(2) Other projects.—The Secretary shall periodically set technical milestones and ensure that up to 40 percent of the funds appropriated pursuant to section 401(a) are used for projects not described in paragraph (1). The milestones shall specify the emission and thermal efficiency levels that projects funded under this paragraph shall be designed to and reasonably expected to achieve. The technical milestones shall become more restrictive during the life of the program. The Secretary shall set the periodic milestones so as to achieve by 2010 projects able—

(A) to remove 97 percent of sulfur dioxide;

(B) to emit no more than .08 lbs of NO_x per million Btu;

(C) to achieve substantial reductions in mercury emissions; and

(D) to achieve a thermal efficiency of—

(i) 45 percent for coal of more than 9,000 Btu;

(ii) 44 percent for coal of 7,000 to 9,000 Btu; and

(iii) 40 percent for coal of less than 7,000 Btu.

(3) Consultation.—Before setting the technical milestones under paragraphs (1)(B) and (2), the Secretary shall consult with the Administrator of the Environmental Protection Agency and interested entities, including coal producers, industries using coal, organizations to promote coal or advanced coal technologies, environmental organizations, and organizations representing workers.

(4) Existing units.—In the case of projects at units in existence on the date of enactment of this Act, in lieu of the thermal efficiency requirements set forth in paragraph (1)(B)(iv) and (2)(D), the milestones shall be designed to achieve an overall thermal design efficiency improvement, compared to the efficiency of the unit as operated, of not less than—

(A) 7 percent for coal of more than 9,000 Btu;

(B) 6 percent for coal of 7,000 to 9,000 Btu; or

(C) 4 percent for coal of less than 7,000 Btu.

(5) Permitted uses.—In carrying out this subtitle, the Secretary may fund projects that include, as part of the project, the separation and capture of carbon dioxide.

(c) Financial Criteria.—The Secretary shall not provide a funding award under this subtitle unless the recipient documents to the satisfaction of the Secretary that—

(1) the award recipient is financially viable without the receipt of additional Federal funding;

(2) the recipient will provide sufficient information to the Secretary to enable the Secretary to ensure that the award funds are spent efficiently and effectively; and

(3) a market exists for the technology being demonstrated or applied, as evidenced by statements of interest in writing from potential purchasers of the technology.

(d) Financial Assistance.—The Secretary shall provide financial assistance to projects that meet the requirements of subsections (a), (b), and (c) and are likely to—

(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy;

(2) improve the competitiveness of coal among various forms of energy in order to maintain a diversity of fuel choices in the United States to meet electricity generation requirements; and

(3) demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities, using various types of coal, that use coal as the primary feedstock as of the date of enactment of this Act.

(e) Federal Share.—The Federal share of the cost of a coal or related technology project funded by the Secretary under this subtitle shall not exceed 50 percent.

(f) Applicability.—No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411), achievable for purposes of section 169 of that Act (42 U.S.C. 7479), or achievable in practice for purposes of section 171 of that Act (42 U.S.C. 7501) solely by reason of the use of such technology, or the achievement of such emission reduction, by 1 or more facilities receiving assistance under this subtitle.

SEC. 403. REPORT.

Not later than 1 year after the date of enactment of this Act, and once every 2 years thereafter through 2012, the Secretary, in consultation with other appropriate Federal agencies, shall submit to Congress a report describing—

(1) the technical milestones set forth in section 402 and how those milestones ensure progress toward meeting the requirements of subsections (b)(1)(B) and (b)(2) of section 402; and

(2) the status of projects funded under this subtitle.

SEC. 404. CLEAN COAL CENTERS OF EXCELLENCE.

As part of the program authorized in section 401, the Secretary shall award competitive, merit-based grants to universities for the establishment of Centers of Excellence for Energy Systems of the Future. The Secretary shall provide grants to universities that show the greatest potential for advancing new clean coal technologies.

Subtitle B—Clean Power Projects

SEC. 411. COAL TECHNOLOGY LOAN.

There are authorized to be appropriated to the Secretary $125,000,000 to provide a loan to the owner of the experimental plant constructed under United States Department of Energy cooperative agreement number DE–FC–22–91PC90544 on such terms and conditions as the Secretary determines, including interest rates and upfront payments.

SEC. 412. COAL GASIFICATION.

The Secretary is authorized to provide loan guarantees for a project to produce energy from a plant using integrated gasification combined cycle technology of at least 400 megawatts in capacity that produces power at competitive rates in deregulated energy generation markets and that does not receive any subsidy (direct or indirect) from ratepayers.

SEC. 413. INTEGRATED GASIFICATION COMBINED CYCLE TECHNOLOGY.

The Secretary is authorized to provide loan guarantees for a project to produce energy from a plant using integrated gasification combined cycle technology located in a taconite-producing region of the United States that is entitled under the law of the State in which the plant is located to enter into a long-term contract approved by a State Public Utility Commission to sell at least 450 megawatts of output to a utility.

SEC. 414. PETROLEUM COKE GASIFICATION.

The Secretary is authorized to provide loan guarantees for at least 1 petroleum coke gasification polygeneration project.

SEC. 415. INTEGRATED COAL/RENEWABLE ENERGY SYSTEM.

The Secretary is authorized, subject to the availability of appropriations, to provide loan guarantees for a project to produce energy from coal of less than 7000 btu/lb using appropriate advanced integrated gasification combined cycle technology, including repowering of existing facilities, that is combined with wind and other renewable sources, minimizes and offers the potential to sequester carbon dioxide emissions, and provides a ready source of hydrogen for near-site fuel cell demonstrations. The facility may be built in stages, combined output shall be at least 200 megawatts at successively more competitive rates, and the facility shall be located in the Upper Great Plains. Section 402(b) technical criteria apply, and the Federal cost share shall not exceed 50 percent. The loan guarantees provided under this section do not preclude the facility from receiving an allocation for investment tax credits under section 48A of the Internal Revenue Code of 1986. Utilizing this investment tax credit does not prohibit the use of other Clean Coal Program funding.

SEC. 416. ELECTRON SCRUBBING DEMONSTRATION.

The Secretary shall use $5,000,000 from amounts appropriated to initiate, through the Chicago Operations Office, a project to demonstrate the viability of high-energy electron scrubbing technology on commercial-scale electrical generation using high-sulfur coal.

Subtitle C—Federal Coal Leases

SEC. 421. REPEAL OF THE 160-ACRE LIMITATION FOR COAL LEASES.

Section 3 of the Mineral Leasing Act (30 U.S.C. 203) is amended—

(1) in the first sentence—

(A) by striking "Any person" and inserting "(a) Any person";

(B) by inserting a comma after "may"; and

(C) by striking "upon" and all that follows through the period and inserting the following: "upon a finding by the Secretary that the lease—

"(1) would be in the interest of the United States;

"(2) would not displace a competitive interest in the land; and

"(3) would not include land or deposits that can be developed as part of another potential or existing operation;

secure modifications of the original coal lease by including additional coal land or coal deposits contiguous or cornering to those embraced in the lease, but in no event shall the total area added by any modifications to an existing coal lease exceed 1280 acres, or add acreage larger than the acreage in the original lease.";

(2) in the second sentence, by striking "The Secretary" and inserting the following: "(b) The Secretary"; and

(3) in the third sentence, by striking "The minimum" and inserting the following: "(c) The minimum".

SEC. 422. MINING PLANS.

Section 2(d)(2) of the Mineral Leasing Act (30 U.S.C. 202a(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following:

"(B) The Secretary may establish a period of more than 40 years if the Secretary determines that the longer period—

"(i) will ensure the maximum economic recovery of a coal deposit; or

"(ii) the longer period is in the interest of the orderly, efficient, or economic development of a coal resource.".

SEC. 423. PAYMENT OF ADVANCE ROYALTIES UNDER COAL LEASES.

Section 7(b) of the Mineral Leasing Act (30 U.S.C. 207(b)) is amended to read as follows:

"(b)(1) Each lease shall be subjected to the condition of diligent development and continued operation of the mine or mines, except in a case in which operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee.

"(2)(A) The Secretary of the Interior may suspend the condition of continued operation upon the payment of advance royalties, if the Secretary determines that the public interest will be served by the suspension.

"(B) Advance royalties required under subparagraph (A) shall be computed based on—

"(i) the average price for coal sold in the spot market from the same region during the last month of each applicable continued operation year; or

"(ii) by using other methods established by the Secretary of the Interior to capture the commercial value of coal,

and based on commercial quantities, as defined by regulation by the Secretary of the Interior.

"(C) The aggregate number of years during the initial and any extended term of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed 20.

"(3) The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under the lease, to the extent that the advance royalties have not been used to reduce production royalties for a prior year.

"(4) The Secretary may, upon 6 months' notice to a lessee, cease to accept advance royalties in lieu of the requirement of continued operation.

"(5) Nothing in this subsection affects the requirement contained in the second sentence of subsection (a) relating to commencement of production at the end of 10 years.".

SEC. 424. ELIMINATION OF DEADLINE FOR SUBMISSION OF COAL LEASE OPERATION AND RECLAMATION PLAN.

Section 7(c) of the Mineral Leasing Act (30 U.S.C. 207(c)) is amended in the first sentence by striking "and not later than three years after a lease is issued,".

SEC. 425. AMENDMENT RELATING TO FINANCIAL ASSURANCES WITH RESPECT TO BONUS BIDS.

Section 2(a) of the Mineral Leasing Act (30 U.S.C. 201(a)) is amended by adding at the end the following:

"(4)(A) The Secretary shall not require a surety bond or any other financial assurance to guarantee payment of deferred bonus bid installments with respect to any coal lease issued on a cash bonus bid to a lessee or successor in interest having a history of a timely payment of noncontested coal royalties and advanced coal royalties in lieu of production (where applicable) and bonus bid installment payments.

"(B) The Secretary may waive any requirement that a lessee provide a surety bond or other financial assurance for a coal lease issued before the date of the enactment of the Energy Policy Act of 2003 only if the Secretary determines that the lessee has a history of making timely payments referred to in subparagraph (A).

"(5) Notwithstanding any other provision of law, if the lessee under a coal lease fails to pay any installment of a deferred cash bonus bid within 10 days after the Secretary provides written notice that payment of the installment is past due—

"(A) the lease shall automatically terminate; and

"(B) any bonus payments already made to the United States with respect to the lease shall not be returned to the lessee or credited in any future lease sale.".

SEC. 426. INVENTORY REQUIREMENT.

(a) Review of Assessments.—

(1) In general.—The Secretary of the Interior, in consultation with the Secretary of Agriculture and the Secretary, shall review coal assessments and other available data to identify—

(A) public lands, other than National Park lands, with coal resources;

(B) the extent and nature of any restrictions or impediments to the development of coal resources on public lands identified under subparagraph (A); and

(C) with respect to areas of such lands for which sufficient data exists, resources of compliant coal and supercompliant coal.

(2) Definitions.—In this subsection:

(A) Compliant coal.—The term "compliant coal" means coal that contains not less than 1.0 and not more than 1.2 pounds of sulfur dioxide per million Btu.

(B) Supercompliant coal.—The term "supercompliant coal" means coal that contains less than 1.0 pounds of sulfur dioxide per million Btu.

(b) Completion and Updating of the Inventory.—The Secretary of the Interior—

(1) shall complete the inventory under subsection (a)(1) by not later than 2 years after the date of the enactment of this Act; and

(2) shall update the inventory as the availability of data and developments in technology warrant.

(c) Report.—The Secretary of the Interior shall submit to Congress, and make publicly available—

(1) a report containing the inventory under this section by not later than 2 years after the effective date of this section; and

(2) each update of that inventory.

SEC. 427. APPLICATION OF AMENDMENTS.

The amendments made by this subtitle apply—

(1) with respect to any coal lease issued on or after the date of enactment of this Act; and

(2) with respect to any coal lease issued before the date of enactment of this Act, upon the earlier of—

(A) the date of readjustment of the lease as provided for by section 7(a) of the Mineral Leasing Act (30 U.S.C. 207(a)); or

(B) the date the lessee requests such application.

Subtitle D—Coal and Related Programs

SEC. 441. CLEAN AIR COAL PROGRAM.

(a) Amendment.—The Energy Policy Act of 1992 is amended by adding the following new title at the end thereof:

"TITLE XXXI—CLEAN AIR COAL PROGRAM

"SEC. 3101. FINDINGS; PURPOSES; DEFINITIONS.

"(a) Findings.—The Congress finds that—

"(1) new environmental regulations present additional challenges for coal-fired electrical generation in the private marketplace; and

"(2) the Department of Energy, in cooperation with industry, has already fully developed and commercialized several new clean-coal technologies that will allow the clean use of coal.

"(b) Purposes.—The purposes of this title are to—

"(1) promote national energy policy and energy security, diversity, and economic competitiveness benefits that result from the increased use of coal;

"(2) mitigate financial risks, reduce the cost, and increase the marketplace acceptance of the new clean coal technologies; and

"(3) advance the deployment of pollution control equipment to meet the current and future obligations of coal-fired generation units regulated under the Clean Air Act (42 U.S.C. 7402 and following).

"SEC. 3102. AUTHORIZATION OF PROGRAM.

"The Secretary shall carry out a program to facilitate production and generation of coal-based power and the installation of pollution control equipment.

"SEC. 3103. AUTHORIZATION OF APPROPRIATIONS.

"(a) Pollution Control Projects.—There are authorized to be appropriated to the Secretary $300,000,000 for fiscal year 2005, $100,000,000 for fiscal year 2006, $40,000,000 for fiscal year 2007, $30,000,000 for fiscal year 2008, and $30,000,000 for fiscal year 2009, to remain available until expended, for carrying out the program for pollution control projects, which may include—

"(1) pollution control equipment and processes for the control of mercury air emissions;

"(2) pollution control equipment and processes for the control of nitrogen dioxide air emissions or sulfur dioxide emissions;

"(3) pollution control equipment and processes for the mitigation or collection of more than one pollutant;

"(4) advanced combustion technology for the control of at least two pollutants, including mercury, particulate matter, nitrogen oxides, and sulfur dioxide, which may also be designed to improve the energy efficiency of the unit; and

"(5) advanced pollution control equipment and processes designed to allow use of the waste byproducts or other byproducts of the equipment or an electrical generation unit designed to allow the use of byproducts.

Funds appropriated under this subsection which are not awarded before fiscal year 2011 may be applied to projects under subsection (b), in addition to amounts authorized under subsection (b).

"(b) Generation Projects.—There are authorized to be appropriated to the Secretary $150,000,000 for fiscal year 2006, $250,000,000 for each of the fiscal years 2007 through 2011, and $100,000,000 for fiscal year 2012, to remain available until expended, for generation projects and air pollution control projects. Such projects may include—

"(1) coal-based electrical generation equipment and processes, including gasification combined cycle or other coal-based generation equipment and processes;

"(2) associated environmental control equipment, that will be cost-effective and that is designed to meet anticipated regulatory requirements;

"(3) coal-based electrical generation equipment and processes, including gasification fuel cells, gasification coproduction, and hybrid gasification/combustion projects; and

"(4) advanced coal-based electrical generation equipment and processes, including oxidation combustion techniques, ultra-supercritical boilers, and chemical looping, which the Secretary determines will be cost-effective and could substantially contribute to meeting anticipated environmental or energy needs.

"(c) Limitation.—Funds placed at risk during any fiscal year for Federal loans or loan guarantees pursuant to this title may not exceed 30 percent of the total funds obligated under this title.

"SEC. 3104. AIR POLLUTION CONTROL PROJECT CRITERIA.

"The Secretary shall pursuant to authorizations contained in section 3103 provide funding for air pollution control projects designed to facilitate compliance with Federal and State environmental regulations, including any regulation that may be established with respect to mercury.

"SEC. 3105. CRITERIA FOR GENERATION PROJECTS.

"(a) Criteria.—The Secretary shall establish criteria on which selection of individual projects described in section 3103(b) should be based. The Secretary may modify the criteria as appropriate to reflect improvements in equipment, except that the criteria shall not be modified to be less stringent. These selection criteria shall include—

"(1) prioritization of projects whose installation is likely to result in significant air quality improvements in nonattainment air quality areas;

"(2) prioritization of projects that result in the repowering or replacement of older, less efficient units;

"(3) documented broad interest in the procurement of the equipment and utilization of the processes used in the projects by electrical generator owners or operators;

"(4) equipment and processes beginning in 2005 through 2010 that are projected to achieve an thermal efficiency of—

"(A) 40 percent for coal of more than 9,000 Btu per pound based on higher heating values;

"(B) 38 percent for coal of 7,000 to 9,000 Btu per pound based on higher heating values; and

"(C) 36 percent for coal of less than 7,000 Btu per pound based on higher heating values,

except that energy used for coproduction or cogeneration shall not be counted in calculating the thermal efficiency under this paragraph; and

"(5) equipment and processes beginning in 2011 and 2012 that are projected to achieve an thermal efficiency of—

"(A) 45 percent for coal of more than 9,000 Btu per pound based on higher heating values;

"(B) 44 percent for coal of 7,000 to 9,000 Btu per pound based on higher heating values; and

"(C) 40 percent for coal of less than 7,000 Btu per pound based on higher heating values,

except that energy used for coproduction or cogeneration shall not be counted in calculating the thermal efficiency under this paragraph.

"(b) Selection.—(1) In selecting the projects, up to 25 percent of the projects selected may be either coproduction or cogeneration or other gasification projects, but at least 25 percent of the projects shall be for the sole purpose of electrical generation, and priority should be given to equipment and projects less than 600 MW to foster and promote standard designs.

"(2) The Secretary shall give priority to projects that have been developed and demonstrated that are not yet cost competitive, and for coal energy generation projects that advance efficiency, environmental performance, or cost competitiveness significantly beyond the level of pollution control equipment that is in operation on a full scale.

"SEC. 3106. FINANCIAL CRITERIA.

"(a) In General.—The Secretary shall only provide financial assistance to projects that meet the requirements of sections 3103 and 3104 and are likely to—

"(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy; and

"(2) improve the competitiveness of coal in order to maintain a diversity of domestic fuel choices in the United States to meet electricity generation requirements.

"(b) Conditions.—The Secretary shall not provide a funding award under this title unless—

"(1) the award recipient is financially viable without the receipt of additional Federal funding; and

"(2) the recipient provides sufficient information to the Secretary for the Secretary to ensure that the award funds are spent efficiently and effectively.

"(c) Equal Access.—The Secretary shall, to the extent practical, utilize cooperative agreement, loan guarantee, and direct Federal loan mechanisms designed to ensure that all electrical generation owners have equal access to these technology deployment incentives. The Secretary shall develop and direct a competitive solicitation process for the selection of technologies and projects under this title.

"SEC. 3107. FEDERAL SHARE.

"The Federal share of the cost of a coal or related technology project funded by the Secretary under this title shall not exceed 50 percent. For purposes of this title, Federal funding includes only appropriated funds.

"SEC. 3108. APPLICABILITY.

"No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411), achievable for purposes of section 169 of the Clean Air Act (42 U.S.C. 7479), or achievable in practice for purposes of section 171 of the Clean Air Act (42 U.S.C. 7501) solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under this title.".

(b) Table of Contents Amendment.—The table of contents of the Energy Policy Act of 1992 is amended by adding at the end the following:

"TITLE XXXI—CLEAN AIR COAL PROGRAM
"Sec. 3101. Findings; purposes; definitions.
"Sec. 3102. Authorization of program.
"Sec. 3103. Authorization of appropriations.
"Sec. 3104. Air pollution control project criteria.
"Sec. 3105. Criteria for generation projects.
"Sec. 3106. Financial criteria.
"Sec. 3107. Federal share.
"Sec. 3108. Applicability.".

TITLE V—INDIAN ENERGY

SEC. 501. SHORT TITLE.

This title may be cited as the "Indian Tribal Energy Development and Self-Determination Act of 2003".

SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

(a) In General.—Title II of the Department of Energy Organization Act (42 U.S.C. 7131 et seq.) is amended by adding at the end the following:

"OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

"Sec. 217. (a) Establishment.—There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the 'Office'). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) Duties of Director.—The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this Act, shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

"(1) promote Indian tribal energy development, efficiency, and use;

"(2) reduce or stabilize energy costs;

"(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

"(4) bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds.".

(b) Conforming Amendments.—

(1) The table of contents of the Department of Energy Organization Act (42 U.S.C. prec. 7101) is amended—

(A) in the item relating to section 209, by striking "Section" and inserting "Sec."; and

(B) by striking the items relating to sections 213 through 216 and inserting the following:

"Sec. 213. Establishment of policy for National Nuclear Security Administration.
"Sec. 214. Establishment of security, counterintelligence, and intelligence policies.
"Sec. 215. Office of Counterintelligence.
"Sec. 216. Office of Intelligence.
"Sec. 217. Office of Indian Energy Policy and Programs.".

(2) Section 5315 of title 5, United States Code, is amended by inserting "Director, Office of Indian Energy Policy and Programs, Department of Energy." after "Inspector General, Department of Energy.".

SEC. 503. INDIAN ENERGY.

(a) In General.—Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read as follows:

"TITLE XXVI—INDIAN ENERGY

"SEC. 2601. DEFINITIONS.

"For purposes of this title:

"(1) The term 'Director' means the Director of the Office of Indian Energy Policy and Programs, Department of Energy.

"(2) The term 'Indian land' means—

"(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;

“(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

“(i) in trust by the United States for the benefit of an Indian tribe or an individual Indian;

“(ii) by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or

“(iii) by a dependent Indian community; and

“(C) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land.

“(3) The term ‘Indian reservation’ includes—

“(A) an Indian reservation in existence in any State or States as of the date of enactment of this paragraph;

“(B) a public domain Indian allotment; and

“(C) a dependent Indian community located within the borders of the United States, regardless of whether the community is located—

“(i) on original or acquired territory of the community; or

“(ii) within or outside the boundaries of any particular State.

“(4) The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term ‘Indian tribe’, for the purpose of paragraph (11) and sections 2603(b)(3) and 2604, shall not include any Native Corporation.

“(5) The term ‘integration of energy resources’ means any project or activity that promotes the location and operation of a facility (including any pipeline, gathering system, transportation system or facility, or electric transmission or distribution facility) on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.

“(6) The term ‘Native Corporation’ has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

“(7) The term ‘organization’ means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.

“(8) The term ‘Program’ means the Indian energy resource development program established under section 2602(a).

“(9) The term ‘Secretary’ means the Secretary of the Interior.

“(10) The term ‘tribal energy resource development organization’ means an organization of 2 or more entities, at least 1 of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance authorized by section 2602.

“(11) The term ‘tribal land’ means any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States or which is subject to a restriction against alienation under laws of the United States.

“SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOPMENT.

“(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

“(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and tribal energy resource development organizations in achieving the purposes of this title.

“(2) In carrying out the Program, the Secretary shall—

“(A) provide development grants to Indian tribes and tribal energy resource development organizations for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land, and to properly account for resulting energy production and revenues;

“(B) provide grants to Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land; and

“(C) provide low-interest loans to Indian tribes and tribal energy resource development organizations for use in the promotion of energy resource development on Indian land and integration of energy resources.

“(3) There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2014.

“(b) DEPARTMENT OF ENERGY INDIAN ENERGY EDUCATION PLANNING AND MANAGEMENT ASSISTANCE PROGRAM.—

“(1) The Director shall establish programs to assist consenting Indian tribes in meeting energy education, research and development, planning, and management needs.

“(2) In carrying out this subsection, the Director may provide grants, on a competitive basis, to an Indian tribe or tribal energy resource development organization for use in carrying out—

“(A) energy, energy efficiency, and energy conservation programs;

“(B) studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities;

“(C) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

“(D) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

“(3)(A) The Director may develop, in consultation with Indian tribes, a formula for providing grants under this subsection.

“(B) In providing a grant under this subsection, the Director shall give priority to an application received from an Indian tribe with inadequate electric service (as determined by the Director).

“(4) The Secretary of Energy may issue such regulations as necessary to carry out this subsection.

“(5) There are authorized to be appropriated to carry out this subsection $20,000,000 for each of fiscal years 2004 through 2014.

“(c) DEPARTMENT OF ENERGY LOAN GUARANTEE PROGRAM.—

“(1) Subject to paragraph (3), the Secretary of Energy may provide loan guarantees (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) for not more than 90 percent of the unpaid principal and interest due on any loan made to any Indian tribe for energy development.

“(2) A loan guarantee under this subsection shall be made by—

“(A) a financial institution subject to examination by the Secretary of Energy; or

“(B) an Indian tribe, from funds of the Indian tribe.

“(3) The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed $2,000,000,000.

“(4) The Secretary of Energy may issue such regulations as the Secretary of Energy determines are necessary to carry out this subsection.

“(5) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

“(6) Not later than 1 year from the date of enactment of this section, the Secretary of Energy shall report to Congress on the financing requirements of Indian tribes for energy development on Indian land.

“(d) FEDERAL AGENCIES-INDIAN ENERGY PREFERENCE.—

“(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

“(2) In carrying out this subsection, a Federal agency or department shall not—

“(A) pay more than the prevailing market price for an energy product or byproduct; or

“(B) obtain less than prevailing market terms and conditions.

“SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULATION.

“(a) GRANTS.—The Secretary may provide to Indian tribes, on an annual basis, grants for use in accordance with subsection (b).

“(b) USE OF FUNDS.—Funds from a grant provided under this section may be used—

“(1) by an Indian tribe for the development of a tribal energy resource inventory or tribal energy resource on Indian land;

“(2) by an Indian tribe for the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

“(3) by an Indian tribe (other than an Indian Tribe in Alaska except the Metlakatla Indian Community) for the development and enforcement of tribal laws (including regulations) relating to tribal energy resource development and the development of technical infrastructure to protect the environment under applicable law; or

“(4) by a Native Corporation for the development and implementation of corporate policies and the development of technical infrastructure to protect the environment under applicable law; and

“(5) by an Indian tribe for the training of employees that—

“(A) are engaged in the development of energy resources on Indian land; or

“(B) are responsible for protecting the environment.

“(c) OTHER ASSISTANCE.—In carrying out the obligations of the United States under this title, the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that upon the request of an Indian tribe, the Indian tribe shall have available scientific and technical information and expertise, for use in the Indian tribe's regulation, development, and management of energy resources on Indian land. The Secretary may fulfill this responsibility either directly, through the use of Federal officials, or indirectly, by providing financial assistance to the Indian tribe to secure independent assistance.

“SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-OF-WAY INVOLVING ENERGY DEVELOPMENT OR TRANSMISSION.

“(a) LEASES AND BUSINESS AGREEMENTS.—Subject to the provisions of this section—

“(1) an Indian tribe may, at its discretion, enter into a lease or business agreement for the purpose of energy resource development on tribal land, including a lease or business agreement for—

“(A) exploration for, extraction of, processing of, or other development of the Indian tribe's energy mineral resources located on tribal land; and

“(B) construction or operation of an electric generation, transmission, or distribution facility

located on tribal land or a facility to process or refine energy resources developed on tribal land; and

"(2) such lease or business agreement described in paragraph (1) shall not require the approval of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) or any other provision of law, if—

"(A) the lease or business agreement is executed pursuant to a tribal energy resource agreement approved by the Secretary under subsection (e);

"(B) the term of the lease or business agreement does not exceed—

"(i) 30 years; or

"(ii) in the case of a lease for the production of oil resources, gas resources, or both, 10 years and as long thereafter as oil or gas is produced in paying quantities; and

"(C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to the provisions required by subsection (e)(2)(D)(i)).

"(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC TRANSMISSION OR DISTRIBUTION LINES.—An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without approval by the Secretary if—

"(1) the right-of-way is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);

"(2) the term of the right-of-way does not exceed 30 years;

"(3) the pipeline or electric transmission or distribution line serves—

"(A) an electric generation, transmission, or distribution facility located on tribal land; or

"(B) a facility located on tribal land that processes or refines energy resources developed on tribal land; and

"(4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the Indian tribe's activities under such agreement described in subparagraphs (D) and (E) of subsection (e)(2)).

"(c) RENEWALS.—A lease or business agreement entered into or a right-of-way granted by an Indian tribe under this section may be renewed at the discretion of the Indian tribe in accordance with this section.

"(d) VALIDITY.—No lease, business agreement, or right-of-way relating to the development of tribal energy resources pursuant to the provisions of this section shall be valid unless the lease, business agreement, or right-of-way is authorized by the provisions of a tribal energy resource agreement approved by the Secretary under subsection (e)(2).

"(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

"(1) On issuance of regulations under paragraph (8), an Indian tribe may submit to the Secretary for approval a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.

"(2)(A) Not later than 180 days after the date on which the Secretary receives a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), or not later than 60 days after the Secretary receives a revised tribal energy resource agreement submitted by an Indian tribe under paragraph (4)(C), (or such later date as may be agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.

"(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—

"(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe;

"(ii) the tribal energy resource agreement includes provisions required under subparagraph (D); and

"(iii) the tribal energy resource agreement includes provisions that, with respect to a lease, business agreement, or right-of-way under this section—

"(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

"(II) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

"(III) address amendments and renewals;

"(IV) address the economic return to the Indian tribe under leases, business agreements, and rights-of-way;

"(V) address technical or other relevant requirements;

"(VI) establish requirements for environmental review in accordance with subparagraph (C);

"(VII) ensure compliance with all applicable environmental laws;

"(VIII) identify final approval authority;

"(IX) provide for public notification of final approvals;

"(X) establish a process for consultation with any affected States concerning off-reservation impacts, if any, identified pursuant to the provisions required under subparagraph (C)(i);

"(XI) describe the remedies for breach of the lease, business agreement, or right-of-way;

"(XII) require each lease, business agreement, and right-of-way to include a statement that, in the event that any of its provisions violates an express term or requirement set forth in the tribal energy resource agreement pursuant to which it was executed—

"(aa) such provision shall be null and void; and

"(bb) if the Secretary determines such provision to be material, the Secretary shall have the authority to suspend or rescind the lease, business agreement, or right-of-way or take other appropriate action that the Secretary determines to be in the best interest of the Indian tribe;

"(XIII) require each lease, business agreement, and right-of-way to provide that it will become effective on the date on which a copy of the executed lease, business agreement, or right-of-way is delivered to the Secretary in accordance with regulations adopted pursuant to this subsection; and

"(XIV) include citations to tribal laws, regulations, or procedures, if any, that set out tribal remedies that must be exhausted before a petition may be submitted to the Secretary pursuant to paragraph (7)(B).

"(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for—

"(i) the identification and evaluation of all significant environmental impacts (as compared with a no-action alternative), including effects on cultural resources;

"(ii) the identification of proposed mitigation;

"(iii) a process for ensuring that the public is informed of and has an opportunity to comment on the environmental impacts of the proposed action before tribal approval of the lease, business agreement, or right-of-way; and

"(iv) sufficient administrative support and technical capability to carry out the environmental review process.

"(D) A tribal energy resource agreement negotiated between the Secretary and an Indian tribe in accordance with this subsection shall include—

"(i) provisions requiring the Secretary to conduct a periodic review and evaluation to monitor the performance of the Indian tribe's activities associated with the development of energy resources under the tribal energy resource agreement; and

"(ii) when such review and evaluation result in a finding by the Secretary of imminent jeopardy to a physical trust asset arising from a violation of the tribal energy resource agreement or applicable Federal laws, provisions authorizing the Secretary to take appropriate actions determined by the Secretary to be necessary to protect such asset, which actions may include reassumption of responsibility for activities associated with the development of energy resources on tribal land until the violation and conditions that gave rise to such jeopardy have been corrected.

"(E) The periodic review and evaluation described in subparagraph (D) shall be conducted on an annual basis, except that, after the third such annual review and evaluation, the Secretary and the Indian tribe may mutually agree to amend the tribal energy resource agreement to authorize the review and evaluation required by subparagraph (D) to be conducted once every 2 years.

"(3) The Secretary shall provide notice and opportunity for public comment on tribal energy resource agreements submitted for approval under paragraph (1). The Secretary's review of a tribal energy resource agreement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be limited to the direct effects of that approval.

"(4) If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall, not later than 10 days after the date of disapproval—

"(A) notify the Indian tribe in writing of the basis for the disapproval;

"(B) identify what changes or other actions are required to address the concerns of the Secretary; and

"(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.

"(5) If an Indian tribe executes a lease or business agreement or grants a right-of-way in accordance with a tribal energy resource agreement approved under this subsection, the Indian tribe shall, in accordance with the process and requirements set forth in the Secretary's regulations adopted pursuant to paragraph (8), provide to the Secretary—

"(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and

"(B) in the case of a tribal energy resource agreement or a lease, business agreement, or right-of-way that permits payments to be made directly to the Indian tribe, information and documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the Indian tribe's rights under, the lease, business agreement, or right-of-way.

"(6)(A) For purposes of the activities to be undertaken by the Secretary pursuant to this section, the Secretary shall—

"(i) carry out such activities in a manner consistent with the trust responsibility of the United States relating to mineral and other trust resources; and

"(ii) act in good faith and in the best interests of the Indian tribes.

"(B) Subject to the provisions of subsections (a)(2), (b), and (c) waiving the requirement of Secretarial approval of leases, business agreements, and rights-of-way executed pursuant to

tribal energy resource agreements approved under this section, and the provisions of subparagraph (D), nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive Orders, or agreements between the United States and any Indian tribe.

“(C) The Secretary shall continue to have a trust obligation to ensure that the rights and interests of an Indian tribe are protected in the event that—

“(i) any other party to any such lease, business agreement, or right-of-way violates any applicable provision of Federal law or the terms of any lease, business agreement, or right-of-way under this section; or

“(ii) any provision in such lease, business agreement, or right-of-way violates any express provision or requirement set forth in the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed.

“(D) Notwithstanding subparagraph (B), the United States shall not be liable to any party (including any Indian tribe) for any of the negotiated terms of, or any losses resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement approved by the Secretary under paragraph (2). For the purpose of this subparagraph, the term ‘negotiated terms’ means any terms or provisions that are negotiated by an Indian tribe and any other party or parties to a lease, business agreement, or right-of-way entered into pursuant to an approved tribal energy resource agreement.

“(7)(A) In this paragraph, the term ‘interested party’ means any person or entity the interests of which have sustained or will sustain a significant adverse environmental impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

“(B) After exhaustion of tribal remedies, and in accordance with the process and requirements set forth in regulations adopted by the Secretary pursuant to paragraph (8), an interested party may submit to the Secretary a petition to review compliance of an Indian tribe with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

“(C)(i) Not later than 120 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall determine whether the Indian tribe is not in compliance with the tribal energy resource agreement, as alleged in the petition.

“(ii) The Secretary may adopt procedures under paragraph (8) authorizing an extension of time, not to exceed 120 days, for making the determination under clause (i) in any case in which the Secretary determines that additional time is necessary to evaluate the allegations of the petition.

“(iii) Subject to subparagraph (D), if the Secretary determines that the Indian tribe is not in compliance with the tribal energy resource agreement as alleged in the petition, the Secretary shall take such action as is necessary to ensure compliance with the provisions of the tribal energy resource agreement; which action may include—

“(I) temporarily suspending some or all activities under a lease, business agreement, or right-of-way under this section until the Indian tribe or such activities are in compliance with the provisions of the approved tribal energy resource agreement; or

“(II) rescinding approval of all or part of the tribal energy resource agreement, and if all of such agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way described in subsections (a) and (b).

“(D) Prior to seeking to ensure compliance with the provisions of the tribal energy resource agreement of an Indian tribe under subparagraph (C)(iii), the Secretary shall—

“(i) make a written determination that describes the manner in which the tribal energy resource agreement has been violated;

“(ii) provide the Indian tribe with a written notice of the violations together with the written determination; and

“(iii) before taking any action described in subparagraph (C)(iii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.

“(E) An Indian tribe described in subparagraph (D) shall retain all rights to appeal as provided in regulations issued by the Secretary.

“(8) Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary shall issue regulations that implement the provisions of this subsection, including—

“(A) criteria to be used in determining the capacity of an Indian tribe described in paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe;

“(B) a process and requirements in accordance with which an Indian tribe may—

“(i) voluntarily rescind a tribal energy resource agreement approved by the Secretary under this subsection; and

“(ii) return to the Secretary the responsibility to approve any future leases, business agreements, and rights-of-way described in this subsection;

“(C) provisions setting forth the scope of, and procedures for, the periodic review and evaluation described in subparagraphs (D) and (E) of paragraph (2), including provisions for review of transactions, reports, site inspections, and any other review activities the Secretary determines to be appropriate; and

“(D) provisions defining final agency actions after exhaustion of administrative appeals from determinations of the Secretary under paragraph (7).

“(f) No Effect on Other Law.—Nothing in this section affects the application of—

“(1) any Federal environment law;

“(2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

“(3) except as otherwise provided in this title, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(g) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2004 through 2014 to implement the provisions of this section and to make grants or provide other appropriate assistance to Indian tribes to assist the Indian tribes in developing and implementing tribal energy resource agreements in accordance with the provisions of this section.

“SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.

“(a) In General.—The Secretary shall conduct a review of all activities being conducted under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) as of that date.

“(b) Report.—Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary shall submit to Congress a report that includes—

“(1) the results of the review;

“(2) recommendations to ensure that Indian tribes have the opportunity to develop Indian energy resources; and

“(3) an analysis of the barriers to the development of energy resources on Indian land (including legal, fiscal, market, and other barriers), along with recommendations for the removal of those barriers.

“SEC. 2606. FEDERAL POWER MARKETING ADMINISTRATIONS.

“(a) Definitions.—In this section:

“(1) The term “Administrator” means the Administrator of the Bonneville Power Administration and the Administrator of the Western Area Power Administration.

“(2) The term “power marketing administration” means—

“(A) the Bonneville Power Administration;

“(B) the Western Area Power Administration; and

“(C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

“(b) Encouragement of Indian Tribal Energy Development.—Each Administrator shall encourage Indian tribal energy development by taking such actions as are appropriate, including administration of programs of the Bonneville Power Administration and the Western Area Power Administration, in accordance with this section.

“(c) Action by the Administrator.—In carrying out this section, and in accordance with existing law—

“(1) each Administrator shall consider the unique relationship that exists between the United States and Indian tribes;

“(2) power allocations from the Western Area Power Administration to Indian tribes may be used to meet firming and reserve needs of Indian-owned energy projects on Indian land;

“(3) the Administrator of the Western Area Power Administration may purchase non-federally generated power from Indian tribes to meet the firming and reserve requirements of the Western Area Power Administration; and

“(4) each Administrator shall not pay more than the prevailing market price for an energy product nor obtain less than prevailing market terms and conditions.

“(d) Assistance for Transmission System Use.—(1) An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

“(2) The costs of technical assistance provided under paragraph (1) shall be funded by the Secretary of Energy using nonreimbursable funds appropriated for that purpose, or by the applicable Indian tribes.

“(e) Power Allocation Study.—Not later than 2 years after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary of Energy shall submit to Congress a report that—

“(1) describes the use by Indian tribes of Federal power allocations of the Western Area Power Administration (or power sold by the Southwestern Power Administration) and the Bonneville Power Administration to or for the benefit of Indian tribes in service areas of those administrations; and

“(2) identifies—

“(A) the quantity of power allocated to, or used for the benefit of, Indian tribes by the Western Area Power Administration;

“(B) the quantity of power sold to Indian tribes by other power marketing administrations; and

"(C) barriers that impede tribal access to and use of Federal power, including an assessment of opportunities to remove those barriers and improve the ability of power marketing administrations to deliver Federal power.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $750,000, which shall remain available until expended and shall not be reimbursable.

"SEC. 2607. WIND AND HYDROPOWER FEASIBILITY STUDY.

"(a) STUDY.—The Secretary of Energy, in coordination with the Secretary of the Army and the Secretary, shall conduct a study of the cost and feasibility of developing a demonstration project that would use wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

"(b) SCOPE OF STUDY.—The study shall—

"(1) determine the feasibility of the blending of wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers;

"(2) review historical and projected requirements for firming power and the patterns of availability and use of firming power;

"(3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;

"(4) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation; and

"(5) include an independent tribal engineer as a study team member.

"(c) REPORT.—Not later than 1 year after the date of enactment of the Energy Policy Act of 2003, the Secretary and Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

"(1) an analysis of the potential energy cost or benefits to the customers of the Western Area Power Administration through the use of combined wind and hydropower;

"(2) an evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

"(3) recommendations for a demonstration project that could be carried out by the Western Area Power Administration in partnership with an Indian tribal government or tribal energy resource development organization to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration or any other Federal power marketing agency; and

"(4) an identification of—

"(A) the economic and environmental costs or benefits to be realized through such a Federal-tribal partnership; and

"(B) the manner in which such a partnership could contribute to the energy security of the United States.

"(d) FUNDING.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $500,000, to remain available until expended.

"(2) NONREIMBURSABILITY.—Costs incurred by the Secretary in carrying out this section shall be nonreimbursable.".

(b) CONFORMING AMENDMENTS.—The table of contents for the Energy Policy Act of 1992 is amended by striking the items relating to title XXVI and inserting the following:

"Sec. 2601. Definitions.
"Sec. 2602. Indian tribal energy resource development.
"Sec. 2603. Indian tribal energy resource regulation.
"Sec. 2604. Leases, business agreements, and rights-of-way involving energy development or transmission.
"Sec. 2605. Indian mineral development review.
"Sec. 2606. Federal Power Marketing Administrations.
"Sec. 2607. Wind and hydropower feasibility study.".

SEC. 504. FOUR CORNERS TRANSMISSION LINE PROJECT.

The Dine Power Authority, an enterprise of the Navajo Nation, shall be eligible to receive grants and other assistance as authorized by section 217 of the Department of Energy Organization Act, as added by section 502 of this title, and section 2602 of the Energy Policy Act of 1992, as amended by this title, for activities associated with the development of a transmission line from the Four Corners Area to southern Nevada, including related power generation opportunities.

SEC. 505. ENERGY EFFICIENCY IN FEDERALLY ASSISTED HOUSING.

(a) IN GENERAL.—The Secretary of Housing and Urban Development shall promote energy conservation in housing that is located on Indian land and assisted with Federal resources through—

(1) the use of energy-efficient technologies and innovations (including the procurement of energy-efficient refrigerators and other appliances);

(2) the promotion of shared savings contracts; and

(3) the use and implementation of such other similar technologies and innovations as the Secretary of Housing and Urban Development considers to be appropriate.

(b) AMENDMENT.—Section 202(2) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(2)) is amended by inserting "improvement to achieve greater energy efficiency," after "planning,".

SEC. 506. CONSULTATION WITH INDIAN TRIBES.

In carrying out this title and the amendments made by this title, the Secretary of Energy and the Secretary shall, as appropriate and to the maximum extent practicable, involve and consult with Indian tribes in a manner that is consistent with the Federal trust and the government-to-government relationships between Indian tribes and the United States.

TITLE VI—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

SEC. 601. SHORT TITLE.

This subtitle may be cited as the "Price-Anderson Amendments Act of 2003".

SEC. 602. EXTENSION OF INDEMNIFICATION AUTHORITY.

(a) INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES.—Section 170 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

(1) in the subsection heading, by striking "LICENSES" and inserting "LICENSEES"; and

(2) by striking "December 31, 2003" each place it appears and inserting "December 31, 2023".

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170 d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking "December 31, 2004" and inserting "December 31, 2023".

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by striking "August 1, 2002" each place it appears and inserting "December 31, 2023".

SEC. 603. MAXIMUM ASSESSMENT.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended—

(1) in the second proviso of the third sentence of subsection b.(1)—

(A) by striking "$63,000,000" and inserting "$95,800,000"; and

(B) by striking "$10,000,000 in any 1 year" and inserting "$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.)"; and

(2) in subsection t.(1)—

(A) by inserting "total and annual" after "amount of the maximum";

(B) by striking "the date of the enactment of the Price-Anderson Amendments Act of 1988" and inserting "August 20, 2003"; and

(C) in subparagraph (A), by striking "such date of enactment" and inserting "August 20, 2003".

SEC. 604. DEPARTMENT OF ENERGY LIABILITY LIMIT.

(a) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (2) and inserting the following:

"(2) In an agreement of indemnification entered into under paragraph (1), the Secretary—

"(A) may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

"(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.".

(b) CONTRACT AMENDMENTS.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further amended by striking paragraph (3) and inserting the following—

"(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2003, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.".

(c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is amended—

(1) by striking "the maximum amount of financial protection required under subsection b. or"; and

(2) by striking "paragraph (3) of subsection d., whichever amount is more" and inserting "paragraph (2) of subsection d.".

SEC. 605. INCIDENTS OUTSIDE THE UNITED STATES.

(a) AMOUNT OF INDEMNIFICATION.—Section 170 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5)) is amended by striking "$100,000,000" and inserting "$500,000,000".

(b) LIABILITY LIMIT.—Section 170 e.(4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by striking "$100,000,000" and inserting "$500,000,000".

SEC. 606. REPORTS.

Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended by striking "August 1, 1998" and inserting "December 31, 2019".

SEC. 607. INFLATION ADJUSTMENT.

Section 170 t. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(t)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

"(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—

"(A) that date, in the case of the first adjustment under this paragraph; or

"(B) the previous adjustment under this paragraph.".

SEC. 608. TREATMENT OF MODULAR REACTORS.

Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended by adding at the end the following:

"(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

"(B) A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.".

SEC. 609. APPLICABILITY.

The amendments made by sections 603, 604, and 605 do not apply to a nuclear incident that occurs before the date of the enactment of this Act.

SEC. 610. PROHIBITION ON ASSUMPTION BY UNITED STATES GOVERNMENT OF LIABILITY FOR CERTAIN FOREIGN INCIDENTS.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following new subsection:

"u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR CERTAIN FOREIGN INCIDENTS.—Notwithstanding this section or any other provision of law, no officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear incidents occurring in connection with the design, construction, or operation of a production facility or utilization facility in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism). This subsection shall not apply to nuclear incidents occurring as a result of missions, carried out under the direction of the Secretary of Energy, the Secretary of Defense, or the Secretary of State, that are necessary to safely secure, store, transport, or remove nuclear materials for nuclear safety or nonproliferation purposes.".

SEC. 611. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234A b.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NOT-FOR-PROFIT INSTITUTIONS.—Subsection d. of section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read as follows:

"d.(1) Notwithstanding subsection a., in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection a. may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract under which the violation occurs.

"(2) For purposes of this section, the term "not-for-profit" means that no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.".

(c) EFFECTIVE DATE.—The amendments made by this section shall not apply to any violation of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) occurring under a contract entered into before the date of enactment of this section.

Subtitle B—General Nuclear Matters

SEC. 621. LICENSES.

Section 103 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended by inserting "from the authorization to commence operations" after "forty years".

SEC. 622. NRC TRAINING PROGRAM.

(a) IN GENERAL.—In order to maintain the human resource investment and infrastructure of the United States in the nuclear sciences, health physics, and engineering fields, in accordance with the statutory authorities of the Nuclear Regulatory Commission relating to the civilian nuclear energy program, the Nuclear Regulatory Commission shall carry out a training and fellowship program to address shortages of individuals with critical nuclear safety regulatory skills.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Nuclear Regulatory Commission to carry out this section $1,000,000 for each of fiscal years 2004 through 2008.

(2) AVAILABILITY.—Funds made available under paragraph (1) shall remain available until expended.

SEC. 623. COST RECOVERY FROM GOVERNMENT AGENCIES.

Section 161 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(w)) is amended—

(1) by striking "for or is issued" and all that follows through "1702" and inserting "to the Commission for, or is issued by the Commission, a license or certificate";

(2) by striking "483a" and inserting "9701"; and

(3) by striking ", of applicants for, or holders of, such licenses or certificates".

SEC. 624. ELIMINATION OF PENSION OFFSET.

Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) is amended by adding at the end the following:

"y. Exempt from the application of sections 8344 and 8468 of title 5, United States Code, an annuitant who was formerly an employee of the Commission who is hired by the Commission as a consultant, if the Commission finds that the annuitant has a skill that is critical to the performance of the duties of the Commission.".

SEC. 625. ANTITRUST REVIEW.

Section 105 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2135(c)) is amended by adding at the end the following:

"(9) APPLICABILITY.—This subsection does not apply to an application for a license to construct or operate a utilization facility or production facility under section 103 or 104 b. that is filed on or after the date of enactment of this paragraph.".

SEC. 626. DECOMMISSIONING.

Section 161 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(i)) is amended—

(1) by striking "and (3)" and inserting "(3)"; and

(2) by inserting before the semicolon at the end the following: ", and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104 b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility".

SEC. 627. LIMITATION ON LEGAL FEE REIMBURSEMENT.

The Department of Energy shall not, except as required under a contract entered into before the date of enactment of this Act, reimburse any contractor or subcontractor of the Department for any legal fees or expenses incurred with respect to a complaint subsequent to—

(1) an adverse determination on the merits with respect to such complaint against the contractor or subcontractor by the Director of the Department of Energy's Office of Hearings and Appeals pursuant to part 708 of title 10, Code of Federal Regulations, or by a Department of Labor Administrative Law Judge pursuant to section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851); or

(2) an adverse final judgment by any State or Federal court with respect to such complaint against the contractor or subcontractor for wrongful termination or retaliation due to the making of disclosures protected under chapter 12 of title 5, United States Code, section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851), or any comparable State law,

unless the adverse determination or final judgment is reversed upon further administrative or judicial review.

SEC. 628. DECOMMISSIONING PILOT PROGRAM.

(a) PILOT PROGRAM.—The Secretary of Energy shall establish a decommissioning pilot program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas in accordance with the decommissioning activities contained in the August 31, 1998, Department of Energy report on the reactor.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section $16,000,000.

SEC. 629. REPORT ON FEASIBILITY OF DEVELOPING COMMERCIAL NUCLEAR ENERGY GENERATION FACILITIES AT EXISTING DEPARTMENT OF ENERGY SITES.

Not later than 1 year after the date of the enactment of this Act, the Secretary of Energy shall submit to Congress a report on the feasibility of developing commercial nuclear energy generation facilities at Department of Energy sites in existence on the date of enactment of this Act.

SEC. 630. URANIUM SALES.

(a) SALES, TRANSFERS, AND SERVICES.—Section 3112 of the USEC Privatization Act (42 U.S.C. 2297h–10) is amended by striking subsections (d), (e), and (f) and inserting the following:

"(3) The Secretary may transfer to the Corporation, notwithstanding subsections (b)(2) and (d), natural uranium in amounts sufficient to fulfill the Department of Energy's commitments under Article 4(B) of the Agreement between the Department and the Corporation dated June 17, 2002.

"(d) INVENTORY SALES.—(1) In addition to the transfers and sales authorized under subsections (b) and (c) and under paragraph (5) of this subsection, the United States Government may transfer or sell uranium in any form subject to paragraphs (2), (3), and (4).

"(2) Except as provided in subsections (b) and (c) and paragraph (5) of this subsection, no sale or transfer of uranium shall be made under this subsection by the United States Government unless—

"(A) the President determines that the material is not necessary for national security needs and the sale or transfer has no adverse impact on implementation of existing government-to-government agreements;

"(B) the price paid to the appropriate Federal agency, if the transaction is a sale, will not be less than the fair market value of the material; and

"(C) the sale or transfer to commercial nuclear power end users is made pursuant to a contract of at least 3 years' duration.

"(3) Except as provided in paragraph (5), the United States Government shall not make any transfer or sale of uranium in any form under this subsection that would cause the total amount of uranium transferred or sold pursuant to this subsection that is delivered for consumption by commercial nuclear power end users to exceed—

"(A) 3,000,000 pounds of U_3O_8 *equivalent in fiscal year 2004, 2005, 2006, 2007, 2008, or 2009;*

"(B) 5,000,000 pounds of U_3O_8 *equivalent in fiscal year 2010 or 2011;*

"(C) 7,000,000 pounds of U_3O_8 *equivalent in fiscal year 2012; and*

"(D) 10,000,000 pounds of U_3O_8 *equivalent in fiscal year 2013 or any fiscal year thereafter.*

"(4) Except for sales or transfers under paragraph (5), for the purposes of this subsection, the recovery of uranium from uranium bearing materials transferred or sold by the United States Government to the domestic uranium industry shall be the preferred method of making uranium available. The recovered uranium shall be counted against the annual maximum deliveries set forth in this section, when such uranium is sold to end users.

"(5) The United States Government may make the following sales and transfers:

"(A) Sales or transfers to a Federal agency if the material is transferred for the use of the receiving agency without any resale or transfer to another entity and the material does not meet commercial specifications.

"(B) Sales or transfers to any person for national security purposes, as determined by the Secretary.

"(C) Sales or transfers to any State or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.

"(D) Sales or transfers to the Department of Energy research reactor sales program.

"(E) Sales or transfers, at fair market value, for emergency purposes in the event of a disruption in supply to commercial nuclear power end users in the United States.

"(F) Sales or transfers, at fair market value, for use in a commercial reactor in the United States with nonstandard fuel requirements.

"(G) Sales or transfers provided for under law for use by the Tennessee Valley Authority in relation to the Department of Energy's highly enriched uranium or tritium programs.

"(6) For purposes of this subsection, the term "United States Government" does not include the Tennessee Valley Authority.

"(e) SAVINGS PROVISION.—Nothing in this subchapter modifies the terms of the Russian HEU Agreement.——

"(f) SERVICES.—Notwithstanding any other provision of this section, if the Secretary determines that the Corporation has failed, or may fail, to perform any obligation under the Agreement between the Department of Energy and the Corporation dated June 17, 2002, and as amended thereafter, which failure could result in termination of the Agreement, the Secretary shall notify Congress, in such a manner that affords Congress an opportunity to comment, prior to a determination by the Secretary whether termination, waiver, or modification of the Agreement is required. The Secretary is authorized to take such action as he determines necessary under the Agreement to terminate, waive, or modify provisions of the Agreement to achieve its purposes.".

(b) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary of Energy shall report to Congress on the implementation of this section. The report shall include a discussion of available excess uranium inventories; all sales or transfers made by the United States Government; the impact of such sales or transfers on the domestic uranium industry, the spot market uranium price, and the national security interests of the United States; and any steps taken to remediate any adverse impacts of such sales or transfers.

SEC. 631. COOPERATIVE RESEARCH AND DEVELOPMENT AND SPECIAL DEMONSTRATION PROJECTS FOR THE URANIUM MINING INDUSTRY.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy $10,000,000 for each of fiscal years 2004, 2005, and 2006 for—

(1) cooperative, cost-shared agreements between the Department of Energy and domestic uranium producers to identify, test, and develop improved in situ leaching mining technologies, including low-cost environmental restoration technologies that may be applied to sites after completion of in situ leaching operations; and

(2) funding for competitively selected demonstration projects with domestic uranium producers relating to—

(A) enhanced production with minimal environmental impacts;

(B) restoration of well fields; and

(C) decommissioning and decontamination activities.

(b) DOMESTIC URANIUM PRODUCER.—For purposes of this section, the term "domestic uranium producer" has the meaning given that term in section 1018(4) of the Energy Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except that the term shall not include any producer that has not produced uranium from domestic reserves on or after July 30, 1998.

(c) LIMITATION.—No activities funded under this section may be carried out in the State of New Mexico.

SEC. 632. WHISTLEBLOWER PROTECTION.

(a) DEFINITION OF EMPLOYER.—Section 211(a)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)(2)) is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period at the end and inserting "; and" and

(3) by adding at the end the following:

"(E) a contractor or subcontractor of the Commission.".–

(b) DE NOVO REVIEW.—Subsection (b) of such section 211 is amended by adding at the end the following new paragraph:

"(4) If the Secretary has not issued a final decision within 540 days after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the person seeking relief under this paragraph, such person may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.".

SEC. 633. MEDICAL ISOTOPE PRODUCTION.

Section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) is amended—

(1) in subsection a., by striking "a. The Commission" and inserting "a. IN GENERAL.—Except as provided in subsection b., the Commission";

(2) by redesignating subsection b. as subsection c.; and

(3) by inserting after subsection a. the following:

"b. MEDICAL ISOTOPE PRODUCTION.—

"(1) DEFINITIONS.—In this subsection:

"(A) HIGHLY ENRICHED URANIUM.—The term 'highly enriched uranium' means uranium enriched to include concentration of U–235 above 20 percent.

"(B) MEDICAL ISOTOPE.—The term 'medical isotope' includes Molybdenum 99, Iodine 131, Xenon 133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

"(C) RADIOPHARMACEUTICAL.—The term 'radiopharmaceutical' means a radioactive isotope that—

"(i) contains byproduct material combined with chemical or biological material; and

"(ii) is designed to accumulate temporarily in a part of the body for therapeutic purposes or for enabling the production of a useful image for use in a diagnosis of a medical condition.

"(D) RECIPIENT COUNTRY.—The term 'recipient country' means Canada, Belgium, France, Germany, and the Netherlands.

"(2) LICENSES.—The Commission may issue a license authorizing the export (including shipment to and use at intermediate and ultimate consignees specified in the license) to a recipient country of highly enriched uranium for medical isotope production if, in addition to any other requirements of this Act (except subsection a.), the Commission determines that—

"(A) a recipient country that supplies an assurance letter to the United States Government in connection with the consideration by the Commission of the export license application has informed the United States Government that any intermediate consignees and the ultimate consignee specified in the application are required to use the highly enriched uranium solely to produce medical isotopes; and

"(B) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a recipient country that—

"(i) uses an alternative nuclear reactor fuel; or

"(ii) is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when alternative nuclear reactor fuel can be used in the reactor.

"(3) REVIEW OF PHYSICAL PROTECTION REQUIREMENTS.—

"(A) IN GENERAL.—The Commission shall review the adequacy of physical protection requirements that, as of the date of an application under paragraph (2), are applicable to the transportation and storage of highly enriched uranium for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

"(B) IMPOSITION OF ADDITIONAL REQUIREMENTS.—If the Commission determines that additional physical protection requirements are necessary (including a limit on the quantity of highly enriched uranium that may be contained in a single shipment), the Commission shall impose such requirements as license conditions or through other appropriate means.

"(4) FIRST REPORT TO CONGRESS.—

"(A) NAS STUDY.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study to determine—

"(i) the feasibility of procuring supplies of medical isotopes from commercial sources that do not use highly enriched uranium;

"(ii) the current and projected demand and availability of medical isotopes in regular current domestic use;

"(iii) the progress that is being made by the Department of Energy and others to eliminate all use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities; and

"(iv) the potential cost differential in medical isotope production in the reactors and target processing facilities if the products were derived from production systems that do not involve fuels and targets with highly enriched uranium.

"(B) Feasibility.—For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if—

"(i) low enriched uranium targets have been developed and demonstrated for use in the reactors and target processing facilities that produce significant quantities of medical isotopes to serve United States needs for such isotopes;

"(ii) sufficient quantities of medical isotopes are available from low enriched uranium targets and fuel to meet United States domestic needs; and

"(iii) the average anticipated total cost increase from production of medical isotopes in such facilities without use of highly enriched uranium is less than 10 percent.

"(C) Report by the Secretary.—Not later than 5 years after the date of enactment of the Energy Policy Act of 2003, the Secretary shall submit to Congress a report that—

"(i) contains the findings of the National Academy of Sciences made in the study under subparagraph (A); and

"(ii) discloses the existence of any commitments from commercial producers to provide domestic requirements for medical isotopes without use of highly enriched uranium consistent with the feasibility criteria described in subparagraph (B) not later than the date that is 4 years after the date of submission of the report.

"(5) Second report to Congress.—If the study of the National Academy of Sciences determines under paragraph (4)(A)(i) that the procurement of supplies of medical isotopes from commercial sources that do not use highly enriched uranium is feasible, but the Secretary is unable to report the existence of commitments under paragraph (4)(C)(ii), not later than the date that is 6 years after the date of enactment of the Energy Policy Act of 2003, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).

"(6) Certification.—At such time as commercial facilities that do not use highly enriched uranium are capable of meeting domestic requirements for medical isotopes, within the cost increase described in paragraph (4)(B)(iii) and without impairing the reliable supply of medical isotopes for domestic utilization, the Secretary shall submit to Congress a certification to that effect.

"(7) Sunset provision.—After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate its review of export license applications under this subsection.".

SEC. 634. FERNALD BYPRODUCT MATERIAL.

Notwithstanding any other law, the material in the concrete silos at the Fernald uranium processing facility managed on the date of enactment of this Act by the Department of Energy shall be considered byproduct material (as defined by section 11 e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2))). The Department of Energy may dispose of the material in a facility regulated by the Nuclear Regulatory Commission or by an Agreement State. If the Department of Energy disposes of the material in such a facility, the Nuclear Regulatory Commission or the Agreement State shall regulate the material as byproduct material under that Act. This material shall remain subject to the jurisdiction of the Department of Energy until it is received at a commercial, Nuclear Regulatory Commission-licensed, or Agreement State-licensed facility, at which time the material shall be subject to the health and safety requirements of the Nuclear Regulatory Commission or the Agreement State with jurisdiction over the disposal site.

SEC. 635. SAFE DISPOSAL OF GREATER-THAN-CLASS C RADIOACTIVE WASTE.

(a) Designation of Responsibility.—The Secretary of Energy shall designate an Office within the Department of Energy to have the responsibility for activities needed to develop a new, or use an existing, facility for safely disposing of all low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Nuclear Regulatory Commission for Class C radioactive waste (referred to in this section as "GTCC waste").

(b) Comprehensive Plan.—The Secretary of Energy shall develop a comprehensive plan for permanent disposal of GTCC waste which includes plans for a disposal facility. This plan shall be transmitted to Congress in a series of reports, including the following:

(1) Report on short-term plan.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall submit to Congress a plan describing the Secretary's operational strategy for continued recovery and storage of GTCC waste until a permanent disposal facility is available.

(2) Update of 1987 report.—

(A) In general.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall submit to Congress an update of the Secretary's February 1987 report submitted to Congress that made comprehensive recommendations for the disposal of GTCC waste.

(B) Contents.—The update under this paragraph shall contain—

(i) a detailed description and identification of the GTCC waste that is to be disposed;

(ii) a description of current domestic and international programs, both Federal and commercial, for management and disposition of GTCC waste;

(iii) an identification of the Federal and private options and costs for the safe disposal of GTCC waste;

(iv) an identification of the options for ensuring that, wherever possible, generators and users of GTCC waste bear all reasonable costs of waste disposal;

(v) an identification of any new statutory authority required for disposal of GTCC waste; and

(vi) in coordination with the Environmental Protection Agency and the Nuclear Regulatory Commission, an identification of any new regulatory guidance needed for the disposal of GTCC waste.

(3) Report on cost and schedule for completion of environmental impact statement and record of decision.—Not later than 180 days after the date of submission of the update required under paragraph (2), the Secretary of Energy shall submit to Congress a report containing an estimate of the cost and schedule to complete a draft and final environmental impact statement and to issue a record of decision for a permanent disposal facility, utilizing either a new or existing facility, for GTCC waste.

SEC. 636. PROHIBITION ON NUCLEAR EXPORTS TO COUNTRIES THAT SPONSOR TERRORISM.

(a) In General.—Section 129 of the Atomic Energy Act of 1954 (42 U.S.C. 2158) is amended—

(1) by inserting "a." before "No nuclear materials and equipment"; and

(2) by adding at the end the following new subsection:

"b.(1) Notwithstanding any other provision of law, including specifically section 121 of this Act, and except as provided in paragraphs (2) and (3), no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by section 57 b. of this Act and regulated under part 810 of title 10, Code of Federal Regulations, and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations, shall be exported or reexported, or transferred or retransferred whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance (as defined in this paragraph) to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which has been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism).

"(2) This subsection shall not apply to exports, reexports, transfers, or retransfers of radiation monitoring technologies, surveillance equipment, seals, cameras, tamper-indication devices, nuclear detectors, monitoring systems, or equipment necessary to safely store, transport, or remove hazardous materials, whether such items, services, or information are regulated by the Department of Energy, the Department of Commerce, or the Nuclear Regulatory Commission, except to the extent that such technologies, equipment, seals, cameras, devices, detectors, or systems are available for use in the design or construction of nuclear reactors or nuclear weapons.

"(3) The President may waive the application of paragraph (1) to a country if the President determines and certifies to Congress that the waiver will not result in any increased risk that the country receiving the waiver will acquire nuclear weapons, nuclear reactors, or any materials or components of nuclear weapons and—

"(A) the government of such country has not within the preceding 12-month period willfully aided or abetted the international proliferation of nuclear explosive devices to individuals or groups or willfully aided and abetted an individual or groups in acquiring unsafeguarded nuclear materials;

"(B) in the judgment of the President, the government of such country has provided adequate, verifiable assurances that it will cease its support for acts of international terrorism;

"(C) the waiver of that paragraph is in the vital national security interest of the United States; or

"(D) such a waiver is essential to prevent or respond to a serious radiological hazard in the country receiving the waiver that may or does threaten public health and safety.".

(b) Applicability To Exports Approved for Transfer but Not Transferred.—Subsection b. of section 129 of Atomic Energy Act of 1954, as added by subsection (a) of this section, shall apply with respect to exports that have been approved for transfer as of the date of the enactment of this Act but have not yet been transferred as of that date.

SEC. 637. URANIUM ENRICHMENT FACILITIES.

(a) Nuclear Regulatory Commission Review of Applications.—

(1) In general.—In order to facilitate a timely review and approval of an application in a proceeding for a license for the construction and operation of a uranium enrichment facility under sections 53 and 63 of the Atomic Energy Act of 1954 (42 U.S.C. 2073, 2093) (referred to in this subsection as a "covered proceeding"), the

Nuclear Regulatory Commission shall, not later than 30 days after the receipt of the application, establish, by order, the schedule for the conduct of any hearing that may be requested by any person whose interest may be affected by the covered proceeding.

(2) Final Agency Decision.—The schedule shall provide that a final decision by the Commission on the application shall be made not later than the date that is 2 years after the date of submission of the application by the applicant.

(3) Compliance With Schedule.—

(A) In General.—The Commission shall establish a process to assess compliance with the schedule established under paragraph (1) on an ongoing basis during the course of the review of the application, including ensuring compliance with schedules and milestones that are established for the conduct of any covered proceeding by the Atomic Safety and Licensing Board.

(B) Report.—The Commission shall submit to Congress on a bimonthly basis a report describing the status of compliance with the schedule established under paragraph (1), including a description of the status of actions required to be completed pursuant to the schedule by officers and employees of—

(i) the Commission in undertaking the safety and environmental review of applications; and

(ii) the Atomic Safety and Licensing Board in the conduct of any covered proceeding.

(4) Environmental Review.—

(A) In General.—In evaluating an application under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for licensing of a facility in a covered proceeding, the Commission shall limit the consideration of need to whether the licensing of the facility would advance the national interest of encouraging in the United States—

(i) additional secure, reliable uranium enrichment capacity;

(ii) diverse supplies and suppliers of uranium enrichment capacity; and

(iii) the deployment of advanced centrifuge enrichment technology.

(B) Comment.—In carrying out subparagraph (A), the Commission shall consider and solicit the views of other affected Federal agencies.

(C) Atomic Safety and Licensing Board.—

(i) In General.—Except as provided in clause (ii), in any covered proceeding, the Commission shall allow the litigation and resolution by the Atomic Safety and Licensing Board of issues arising under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the basis of information submitted by the applicant in its environmental report, prior to publication of any required environmental impact statement.

(ii) Exceptions.—On the publication of any required environmental impact statement, issues may be proffered for resolution by the Atomic Safety and Licensing Board only if information or conclusions in the environmental impact statement differ significantly from the information or conclusions in the environmental report submitted by the applicant.

(D) Environmental Justice.—In a covered proceeding, the Commission shall apply the criteria in Appendix C of the final report entitled "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" (NUREG-1748), published in August 2003, in any required review of environmental justice.

(5) Low-Level Waste.—In any covered proceeding, the Commission shall—

(A) deem the obligation of the Secretary of Energy pursuant to section 3113 of the USEC Privitization Act (42 U.S.C. 2297 h-11) to constitute a plausible strategy with regard to the disposition of depleted uranium generated by such facility; and

(B) treat any residual material that remains following the extraction of any usable resource value from depleted uranium as low-level radioactive waste under part 61 of title 10, Code of Federal Regulations.

(6) Adjudicatory Hearing on Licensing of Uranium Enrichment Facilities.—Section 193(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2243(b)) is amended by striking paragraph (2) and inserting the following:

"(2) Timing.—On the issuance of a final decision on the application by the Atomic Safety and Licensing Board, the Commission shall issue and make immediately effective any license for the construction and operation of a uranium enrichment facility under sections 53 and 63, on a determination by the Commission that the issuance of the license would not cause irreparable injury to the public health and safety or the common defense and security, notwithstanding the pendency before the Commission of any appeal or petition for review of any decision of the Atomic Safety and Licensing Board.".

(b) Department of Energy Responsibilities.—

(1) In General.—Not later than 180 days after a request is made to the Secretary of Energy by an applicant for or recipient of a license for a uranium enrichment facility under section 53, 63, or 193 of the Atomic Energy Act of 1954 ((42 U.S.C. 2073, 2093, 2243), the Secretary shall enter into a memorandum of agreement with the applicant or licensee that provides a schedule for the transfer to the Secretary, not later than 5 years after the generation of any depleted uranium hexafluoride, of title and possession of the depleted uranium hexafluoride to be generated by the applicant or licensee.

(2) Cost.—

(A) In General.—Subject to subparagraphs (B) and (C), the memorandum of agreement shall specify the cost to be assessed by the Secretary for the transfer to the Secretary of the depleted uranium hexafluoride.

(B) Nondiscriminatory Basis.—The cost shall be determined by the Secretary on a nondiscriminatory basis.

(C) Cost.—Taking into account the physical and chemical characteristics of such depleted uranium hexafluoride, the cost shall not exceed the cost assessed by the Secretary for the acceptance of depleted uranium hexafluoride under—

(i) the memorandum of agreement between the United States Department of Energy and the United States Enrichment Corporation Relating to Depleted Uranium, dated June 30, 1998; and

(ii) the Agreement Between the U.S. Department of Energy and USEC Inc., dated June 17, 2002.

SEC. 638. NATIONAL URANIUM STOCKPILE.

(a) Stockpile Creation.—The Secretary of Energy may create a national low-enriched uranium stockpile with the goals to—

(1) enhance national energy security; and

(2) reduce global proliferation threats.

(b) Source of Material.—The Secretary shall obtain material for the stockpile from—

(1) material derived from blend-down of Russian highly enriched uranium derived from weapons materials; and

(2) domestically mined and enriched uranium.

(c) Limitation on Sales or Transfers.—Sales or transfer of materials in the stockpile shall occur pursuant to section 3112 of the USEC Privitization Act (42 U.S.C. 2297h–10), as amended by section 630 of this Act.

Subtitle C—Advanced Reactor Hydrogen Cogeneration Project

SEC. 651. PROJECT ESTABLISHMENT.

The Secretary of Energy (in this subtitle referred to as the "Secretary") is directed to establish an Advanced Reactor Hydrogen Cogeneration Project.

SEC. 652. PROJECT DEFINITION.

The project shall consist of the research, development, design, construction, and operation of a hydrogen production cogeneration research facility that, relative to the current commercial reactors, enhances safety features, reduces waste production, enhances thermal efficiencies, increases proliferation resistance, and has the potential for improved economics and physical security in reactor siting. This facility shall be constructed so as to enable research and development on advanced reactors of the type selected and on alternative approaches for reactor-based production of hydrogen.

SEC. 653. PROJECT MANAGEMENT.

(a) Management.—The project shall be managed within the Department by the Office of Nuclear Energy, Science, and Technology.

(b) Lead Laboratory.—The lead laboratory for the project, providing the site for the reactor construction, shall be the Idaho National Engineering and Environmental Laboratory (in this subtitle referred to as "INEEL").

(c) Steering Committee.—The Secretary shall establish a national steering committee with membership from the national laboratories, universities, and industry to provide advice to the Secretary and the Director of the Office of Nuclear Energy, Science, and Technology on technical and program management aspects of the project.

(d) Collaboration.—Project activities shall be conducted at INEEL, other national laboratories, universities, domestic industry, and international partners.

SEC. 654. PROJECT REQUIREMENTS.

(a) Research and Development.—

(1) In General.—The project shall include planning, research and development, design, and construction of an advanced, next-generation, nuclear energy system suitable for enabling further research and development on advanced reactor technologies and alternative approaches for reactor-based generation of hydrogen.

(2) Reactor Test Capabilities at INEEL.—The project shall utilize, where appropriate, extensive reactor test capabilities resident at INEEL.

(3) Alternatives.—The project shall be designed to explore technical, environmental, and economic feasibility of alternative approaches for reactor-based hydrogen production.

(4) Industrial Lead.—The industrial lead for the project shall be a company incorporated in the United States.

(b) International Collaboration.—

(1) In General.—The Secretary shall seek international cooperation, participation, and financial contribution in this project.

(2) Assistance From International Partners.—The Secretary may contract for assistance from specialists or facilities from member countries of the Generation IV International Forum, the Russian Federation, or other international partners where such specialists or facilities provide access to cost-effective and relevant skills or test capabilities.

(3) Generation IV International Forum.—International activities shall be coordinated with the Generation IV International Forum.

(4) Generation IV Nuclear Energy Systems Program.—The Secretary may combine this project with the Generation IV Nuclear Energy Systems Program.

(c) Demonstration.—The overall project, which may involve demonstration of selected project objectives in a partner nation, must demonstrate both electricity and hydrogen production and may provide flexibility, where technically and economically feasible in the design and construction, to enable tests of alternative reactor core and cooling configurations.

(d) PARTNERSHIPS.—The Secretary shall establish cost-shared partnerships with domestic industry or international participants for the research, development, design, construction, and operation of the research facility, and preference in determining the final project structure shall be given to an overall project which retains United States leadership while maximizing cost sharing opportunities and minimizing Federal funding responsibilities.

(e) TARGET DATE.—The Secretary shall select technologies and develop the project to provide initial testing of either hydrogen production or electricity generation by 2010, or provide a report to Congress explaining why this date is not feasible.

(f) WAIVER OF CONSTRUCTION TIMELINES.—The Secretary is authorized to conduct the Advanced Reactor Hydrogen Cogeneration Project without the constraints of DOE Order 413.3, relating to program and project management for the acquisition of capital assets, as necessary to meet the specified operational date.

(g) COMPETITION.—The Secretary may fund up to 2 teams for up to 1 year to develop detailed proposals for competitive evaluation and selection of a single proposal and concept for further progress. The Secretary shall define the format of the competitive evaluation of proposals.

(h) USE OF FACILITIES.—Research facilities in industry, national laboratories, or universities either within the United States or with cooperating international partners may be used to develop the enabling technologies for the research facility. Utilization of domestic university-based facilities shall be encouraged to provide educational opportunities for student development.

(i) ROLE OF NUCLEAR REGULATORY COMMISSION.—

(1) IN GENERAL.—The Nuclear Regulatory Commission shall have licensing and regulatory authority for any reactor authorized under this subtitle, pursuant to section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842).

(2) RISK-BASED CRITERIA.—The Secretary shall seek active participation of the Nuclear Regulatory Commission throughout the project to develop risk-based criteria for any future commercial development of a similar reactor architecture.

(j) REPORT—The Secretary shall develop and transmit to Congress a comprehensive project plan not later than April 30, 2004. The project plan shall be updated annually with each annual budget submission.

SEC. 655. AUTHORIZATION OF APPROPRIATIONS.

(a) RESEARCH, DEVELOPMENT, AND DESIGN PROGRAMS.—The following sums are authorized to be appropriated to the Secretary for all activities under this subtitle except for construction activities described in subsection (b):

(1) For fiscal year 2004, $35,000,000.

(2) For each of fiscal years 2005 through 2008, $150,000,000.

(3) For fiscal years beyond 2008, such sums as are necessary.

(b) CONSTRUCTION.—There are authorized to be appropriated to the Secretary for all project-related construction activities, to be available until expended, $500,000,000.

Subtitle D—Nuclear Security

SEC. 661. NUCLEAR FACILITY THREATS.

(a) STUDY.—The President, in consultation with the Nuclear Regulatory Commission (referred to in this subtitle as the "Commission") and other appropriate Federal, State, and local agencies and private entities, shall conduct a study to identify the types of threats that pose an appreciable risk to the security of the various classes of facilities licensed by the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Such study shall take into account, but not be limited to—

(1) the events of September 11, 2001;

(2) an assessment of physical, cyber, biochemical, and other terrorist threats;

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) the potential for assistance in an attack from several persons employed at the facility;

(5) the potential for suicide attacks;

(6) the potential for water-based and air-based threats;

(7) the potential use of explosive devices of considerable size and other modern weaponry;

(8) the potential for attacks by persons with a sophisticated knowledge of facility operations;

(9) the potential for fires, especially fires of long duration;

(10) the potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals;

(11) the adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility; and

(12) the potential for theft and diversion of nuclear materials from such facilities.

(b) SUMMARY AND CLASSIFICATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to Congress and the Commission a report—

(1) summarizing the types of threats identified under subsection (a); and

(2) classifying each type of threat identified under subsection (a), in accordance with existing laws and regulations, as either—

(A) involving attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or otherwise falling under the responsibilities of the Federal Government; or

(B) involving the type of risks that Commission licensees should be responsible for guarding against.

(c) FEDERAL ACTION REPORT.—Not later than 90 days after the date on which a report is transmitted under subsection (b), the President shall transmit to Congress a report on actions taken, or to be taken, to address the types of threats identified under subsection (b)(2)(A), including identification of the Federal, State, and local agencies responsible for carrying out the obligations and authorities of the United States. Such report may include a classified annex, as appropriate.

(d) REGULATIONS.—Not later than 180 days after the date on which a report is transmitted under subsection (b), the Commission may revise, by rule, the design basis threats issued before the date of enactment of this section as the Commission considers appropriate based on the summary and classification report.

(e) PHYSICAL SECURITY PROGRAM.—The Commission shall establish an operational safeguards response evaluation program that ensures that the physical protection capability and operational safeguards response for sensitive nuclear facilities, as determined by the Commission consistent with the protection of public health and the common defense and security, shall be tested periodically through Commission approved or designed, observed, and evaluated force-on-force exercises to determine whether the ability to defeat the design basis threat is being maintained. For purposes of this subsection, the term "sensitive nuclear facilities" includes at a minimum commercial nuclear power plants and category I fuel cycle facilities.

(f) CONTROL OF INFORMATION.—Notwithstanding any other provision of law, the Commission may undertake any rulemaking under this subtitle in a manner that will fully protect safeguards and classified national security information.

(g) FEDERAL SECURITY COORDINATORS.—

(1) REGIONAL OFFICES.—Not later than 18 months after the date of enactment of this Act, the Commission shall assign a Federal security coordinator, under the employment of the Commission, to each region of the Commission.

(2) RESPONSIBILITIES.—The Federal security coordinator shall be responsible for—

(A) communicating with the Commission and other Federal, State, and local authorities concerning threats, including threats against such classes of facilities as the Commission determines to be appropriate;

(B) ensuring that such classes of facilities as the Commission determines to be appropriate maintain security consistent with the security plan in accordance with the appropriate threat level; and

(C) assisting in the coordination of security measures among the private security forces at such classes of facilities as the Commission determines to be appropriate and Federal, State, and local authorities, as appropriate.

(h) TRAINING PROGRAM.—The President shall establish a program to provide technical assistance and training to Federal agencies, the National Guard, and State and local law enforcement and emergency response agencies in responding to threats against a designated nuclear facility.

SEC. 662. FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.

(a) IN GENERAL.—Subsection a. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(a)) is amended—

(1) by striking "a. The Nuclear" and all that follows through "section 147." and inserting the following:

"a. IN GENERAL.—

"(1) REQUIREMENTS.—

"(A) IN GENERAL.— The Commission shall require each individual or entity—

"(i) that is licensed or certified to engage in an activity subject to regulation by the Commission;

"(ii) that has filed an application for a license or certificate to engage in an activity subject to regulation by the Commission; or

"(iii) that has notified the Commission, in writing, of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission,

to fingerprint each individual described in subparagraph (B) before the individual is permitted unescorted access or access, whichever is applicable, as described in subparagraph (B).

"(B) INDIVIDUALS REQUIRED TO BE FINGERPRINTED.—The Commission shall require to be fingerprinted each individual who—

"(i) is permitted unescorted access to—

"(I) a utilization facility; or

"(II) radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks; or

"(ii) is permitted access to safeguards information under section 147.";

(2) by striking "All fingerprints obtained by a licensee or applicant as required in the preceding sentence" and inserting the following:

"(2) SUBMISSION TO THE ATTORNEY GENERAL.—All fingerprints obtained by an individual or entity as required in paragraph (1)";

(3) by striking "The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant." and inserting the following:

"(3) COSTS.—The costs of any identification and records check conducted pursuant to paragraph (1) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A)."; and

(4) by striking "Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to licensee or applicant submitting such fingerprints." and inserting the following:

"(4) PROVISION TO INDIVIDUAL OR ENTITY REQUIRED TO CONDUCT FINGERPRINTING.—Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).".

(b) ADMINISTRATION—Subsection c. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(c)) is amended—

(1) by striking ", subject to public notice and comment, regulations—" and inserting "requirements—"; and

(2) by striking, in paragraph (2)(B), "unescorted access to the facility of a licensee or applicant" and inserting "unescorted access to a utilization facility, radioactive material, or other property described in subsection a.(1)(B)".

(c) BIOMETRIC METHODS.—Subsection d. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(d)) is redesignated as subsection e., and the following is inserted after subsection c.:

"d. USE OF OTHER BIOMETRIC METHODS.—The Commission may satisfy any requirement for a person to conduct fingerprinting under this section using any other biometric method for identification approved for use by the Attorney General, after the Commission has approved the alternative method by rule.".

SEC. 663. USE OF FIREARMS BY SECURITY PERSONNEL OF LICENSEES AND CERTIFICATE HOLDERS OF THE COMMISSION.

Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) is amended by adding at the end the following subsection:

"(z)(1) notwithstanding section 922(o), (v), and (w) of title 18, United States Code, or any similar provision of any State law or any similar rule or regulation of a State or any political subdivision of a State prohibiting the transfer or possession of a handgun, a rifle or shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for the foregoing, or a large capacity ammunition feeding device, authorize security personnel of licensees and certificate holders of the Commission (including employees of contractors of licensees and certificate holders) to receive, possess, transport, import, and use 1 or more of those weapons, ammunition, or devices, if the Commission determines that—

"(A) such authorization is necessary to the discharge of the security personnel's official duties; and

"(B) the security personnel—

"(i) are not otherwise prohibited from possessing or receiving a firearm under Federal or State laws pertaining to possession of firearms by certain categories of persons;

"(ii) have successfully completed requirements established through guidelines implementing this subsection for training in use of firearms and tactical maneuvers;

"(iii) are engaged in the protection of—

"(I) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission; or

"(II) radioactive material or other property owned or possessed by a person that is a licensee or certificate holder of the Commission, or that is being transported to or from a facility owned or operated by such a licensee or certificate holder, and that has been determined by the Commission to be of significance to the common defense and security or public health and safety; and

"(iv) are discharging their official duties.

"(2) Such receipt, possession, transportation, importation, or use shall be subject to—

"(A) chapter 44 of title 18, United States Code, except for section 922(a)(4), (o), (v), and (w);

"(B) chapter 53 of title 26, United States Code, except for section 5844; and

"(C) a background check by the Attorney General, based on fingerprints and including a check of the system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) to determine whether the person applying for the authority is prohibited from possessing or receiving a firearm under Federal or State law.

"(3) This subsection shall become effective upon the issuance of guidelines by the Commission, with the approval of the Attorney General, to govern the implementation of this subsection.

"(4) In this subsection, the terms "handgun", "rifle", "shotgun", "firearm", "ammunition", "machinegun", "semiautomatic assault weapon", "large capacity ammunition feeding device", "short-barreled shotgun", and "short-barreled rifle" shall have the meanings given those terms in section 921(a) of title 18, United States Code.".

SEC. 664. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended in the first sentence by inserting "or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act" before the period at the end.

SEC. 665. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

(a) IN GENERAL.—Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended—

(1) in paragraph (2), by striking "storage facility" and inserting "storage, treatment, or disposal facility";

(2) in paragraph (3)—

(A) by striking "such a utilization facility" and inserting "a utilization facility licensed under this Act"; and

(B) by striking "or" at the end;

(3) in paragraph (4)—

(A) by striking "facility licensed" and inserting ", uranium conversion, or nuclear fuel fabrication facility licensed or certified"; and

(B) by striking the comma at the end and inserting a semicolon; and

(4) by inserting after paragraph (4) the following:

"(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility subject to licensing or certification under this Act during construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;

"(6) any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or

"(7) any radioactive material or other property subject to regulation by the Nuclear Regulatory Commission that, before the date of the offense, the Nuclear Regulatory Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security,".

(b) PENALTIES.—Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284) is amended by striking "$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life" both places it appears and inserting "$1,000,000 or imprisoned for up to life without parole".

SEC. 666. SECURE TRANSFER OF NUCLEAR MATERIALS.

(a) AMENDMENT.—Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201–2210b) is amended by adding at the end the following new section:

"SEC. 170C. SECURE TRANSFER OF NUCLEAR MATERIALS.

"a. The Nuclear Regulatory Commission shall establish a system to ensure that materials described in subsection b., when transferred or received in the United States by any party pursuant to an import or export license issued pursuant to this Act, are accompanied by a manifest describing the type and amount of materials being transferred or received. Each individual receiving or accompanying the transfer of such materials shall be subject to a security background check conducted by appropriate Federal entities.

"b. Except as otherwise provided by the Commission by regulation, the materials referred to in subsection a. are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 2(16) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(16))).".

(b) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, and from time to time thereafter as it considers necessary, the Nuclear Regulatory Commission shall issue regulations identifying radioactive materials or classes of individuals that, consistent with the protection of public health and safety and the common defense and security, are appropriate exceptions to the requirements of section 170C of the Atomic Energy Act of 1954, as added by subsection (a) of this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect upon the issuance of regulations under subsection (b), except that the background check requirement shall become effective on a date established by the Commission.

(d) EFFECT ON OTHER LAW.—Nothing in this section or the amendment made by this section shall waive, modify, or affect the application of chapter 51 of title 49, United States Code, part A of subtitle V of title 49, United States Code, part B of subtitle VI of title 49, United States Code, and title 23, United States Code.

(e) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 14 of the Atomic Energy Act of 1954 is amended by adding at the end the following new item:

"Sec. 170C. Secure transfer of nuclear materials.".

SEC. 667. DEPARTMENT OF HOMELAND SECURITY CONSULTATION.

Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

SEC. 668. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this subtitle and the amendments made by this subtitle.

(b) AGGREGATE AMOUNT OF CHARGES.—Section 6101(c)(2)(A) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(c)(2)(A)) is amended—

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the period at the end and inserting "; and" and

(3) by adding at the end the following:

"(iii) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of

fingerprinting and background checks required by section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections.".

TITLE VII—VEHICLES AND FUELS

Subtitle A—Existing Programs

SEC. 701. USE OF ALTERNATIVE FUELS BY DUAL-FUELED VEHICLES.

Section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended to read as follows:

"(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency qualifies for a waiver of such requirement for vehicles operated by the agency in a particular geographic area in which—

"(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or

"(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified to the Secretary by the head of the agency.

"(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved from the use of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.".

SEC. 702. NEIGHBORHOOD ELECTRIC VEHICLES.

(a) AMENDMENTS.—Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended—

(1) in paragraph (3), by striking "or a dual fueled vehicle" and inserting ", a dual fueled vehicle, or a neighborhood electric vehicle";

(2) in paragraph (13), by striking "and" at the end;

(3) in paragraph (14), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(15) the term 'neighborhood electric vehicle' means a motor vehicle that—

"(A) meets the definition of a low-speed vehicle (as defined in part 571 of title 49, Code of Federal Regulations);

"(B) meets the definition of a zero-emission vehicle (as defined in section 86.1702–99 of title 40, Code of Federal Regulations);

"(C) meets the requirements of Federal Motor Vehicle Safety Standard No. 500; and

"(D) has a maximum speed of not greater than 25 miles per hour.".

(b) CREDITS.—Notwithstanding section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) or any other provision of law, a neighborhood electric vehicle shall not be allocated credit as more than 1 vehicle for purposes of determining compliance with any requirement under title III or title V of such Act.

SEC. 703. CREDITS FOR MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.

Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) is amended by adding at the end the following:

"(e) CREDIT FOR PURCHASE OF MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.—

"(1) DEFINITIONS.—In this subsection:

"(A) HEAVY DUTY DEDICATED VEHICLE.—The term 'heavy duty dedicated vehicle' means a dedicated vehicle that has a gross vehicle weight rating of more than 14,000 pounds.

"(B) MEDIUM DUTY DEDICATED VEHICLE.—The term 'medium duty dedicated vehicle' means a dedicated vehicle that has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds.

"(2) CREDITS FOR MEDIUM DUTY VEHICLES.—The Secretary shall issue 2 full credits to a fleet or covered person under this title, if the fleet or covered person acquires a medium duty dedicated vehicle.

"(3) CREDITS FOR HEAVY DUTY VEHICLES.—The Secretary shall issue 3 full credits to a fleet or covered person under this title, if the fleet or covered person acquires a heavy duty dedicated vehicle.

"(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the dedicated vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.".

SEC. 704. INCREMENTAL COST ALLOCATION.

Section 303(c) of the Energy Policy Act of 1992 (42 U.S.C. 13212(c)) is amended by striking "may" and inserting "shall".

SEC. 705. ALTERNATIVE COMPLIANCE AND FLEXIBILITY.

(a) ALTERNATIVE COMPLIANCE.—

(1) IN GENERAL.—Title V of the Energy Policy Act of 1992 (42 U.S.C. 13251 et seq.) is amended—

(A) by redesignating section 514 as section 515; and

(B) by inserting after section 513 the following:

"SEC. 514. ALTERNATIVE COMPLIANCE.

"(a) APPLICATION FOR WAIVER.—Any covered person subject to section 501 and any State subject to section 507(o) may petition the Secretary for a waiver of the applicable requirements of section 501 or 507(o).

"(b) GRANT OF WAIVER.—The Secretary may grant a waiver of the requirements of section 501 or 507(o) upon a showing that the fleet owned, operated, leased, or otherwise controlled by the State or covered person—

"(1) will achieve a reduction in its annual consumption of petroleum fuels equal to the reduction in consumption of petroleum that would result from 100 percent compliance with fuel use requirements in section 501, or, for entities covered under section 507(o), a reduction equal to the covered State entity's consumption of alternative fuels if all its alternative fuel vehicles given credit under section 508 were to use alternative fuel 100 percent of the time; and

"(2) is in compliance with all applicable vehicle emission standards established by the Administrator under the Clean Air Act (42 U.S.C. 7401 et seq.).

"(c) REVOCATION OF WAIVER.—The Secretary shall revoke any waiver granted under this section if the State or covered person fails to comply with subsection (b).".

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy Act of 1992 (42 U.S.C. prec. 13201) is amended by striking the item relating to section 514 and inserting the following:

"Sec. 514. Alternative compliance.
"Sec. 515. Authorization of appropriations.".

(b) CREDITS.—Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) (as amended by section 703) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively;

(2) by striking subsection (a) and inserting the following:

"(a) IN GENERAL.—The Secretary shall allocate a credit to a fleet or covered person that is required to acquire an alternative fueled vehicle under this title, if that fleet or person acquires an alternative fueled vehicle—

"(1) in excess of the number that fleet or person is required to acquire under this title;

"(2) before the date on which that fleet or person is required to acquire an alternative fueled vehicle under this title; or

"(3) that is eligible to receive credit under subsection (b).

"(b) MAXIMUM AVAILABLE POWER.—The Secretary shall allocate credit to a fleet under subsection (a)(3) for the acquisition by the fleet of a hybrid vehicle as follows:

"(1) For a hybrid vehicle with at least 4 percent but less than 10 percent maximum available power, the Secretary shall allocate 25 percent of 1 credit.

"(2) For a hybrid vehicle with at least 10 percent but less than 20 percent maximum available power, the Secretary shall allocate 50 percent of 1 credit.

"(3) For a hybrid vehicle with at least 20 percent but less than 30 percent maximum available power, the Secretary shall allocate 75 percent of 1 credit.

"(4) For a hybrid vehicle with 30 percent or more maximum available power, the Secretary shall allocate 1 credit."; and

(3) by adding at the end the following:

"(g) CREDIT FOR INVESTMENT IN ALTERNATIVE FUEL INFRASTRUCTURE.—

"(1) DEFINITION OF QUALIFYING INFRASTRUCTURE.—In this subsection, the term 'qualifying infrastructure' means—

"(A) equipment required to refuel or recharge alternative fueled vehicles;

"(B) facilities or equipment required to maintain, repair, or operate alternative fueled vehicles; and

"(C) such other activities as the Secretary considers to constitute an appropriate expenditure in support of the operation, maintenance, or further widespread adoption of or utilization of alternative fueled vehicles.

"(2) ISSUANCE OF CREDITS.—The Secretary shall issue a credit to a fleet or covered person under this title for investment in qualifying infrastructure if the qualifying infrastructure is open to the general public during regular business hours.

"(3) AMOUNT.—For the purpose of credits under this subsection—

"(A) 1 credit shall be equal to a minimum investment of $25,000 in cash or equivalent expenditure, as determined by the Secretary; and

"(B) except in the case of a Federal or State fleet, no part of the investment may be provided by Federal or State funds.

"(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the investment is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

"(h) DEFINITION OF MAXIMUM AVAILABLE POWER.—In this section, the term 'maximum available power' means the quotient obtained by dividing—

"(1) the maximum power available from the energy storage device of a hybrid vehicle, during a standard 10-second pulse power or equivalent test; by

"(2) the sum of—

"(A) the maximum power described in subparagraph (A); and

"(B) the net power of the internal combustion or heat engine, as determined in accordance with standards established by the Society of Automobile Engineers.".

(c) LEASE CONDENSATE FUELS.—Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) (as amended by section 702) is amended—

(1) in paragraph (2), by inserting "mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate;" after "liquefied petroleum gas;";

(2) in paragraph (14)—

(A) by inserting "mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate," after "liquefied petroleum gas,"; and

(B) by striking "and" at the end;

(3) in paragraph (15), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(16) the term 'lease condensate' means a mixture, primarily of pentanes and heavier hydrocarbons, that is recovered as a liquid from natural gas in lease separation facilities.".

(d) LEASE CONDENSATE USE CREDITS.—

(1) IN GENERAL.—Title III of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.) is amended by adding at the end the following:

"SEC. 313. LEASE CONDENSATE USE CREDITS.

"(a) IN GENERAL.—Subject to subsection (d), the Secretary shall allocate 1 credit under this section to a fleet or covered person for each qualifying volume of the lease condensate component of fuel containing at least 50 percent lease condensate, or fuels extracted from lease condensate, after the date of enactment of this section for use by the fleet or covered person in vehicles owned or operated by the fleet or covered person that weigh more than 8,500 pounds gross vehicle weight rating.

"(b) REQUIREMENTS.—A credit allocated under this section—

"(1) shall be subject to the same exceptions, authority, documentation, and use of credits that are specified for qualifying volumes of biodiesel in section 312; and

"(2) shall not be considered a credit under section 508.

"(c) REGULATION.—

"(1) IN GENERAL.—Subject to subsection (d), not later than January 1, 2004, after the collection of appropriate information and data that consider usage options, uses in other industries, products, or processes, potential volume capacities, costs, air emissions, and fuel efficiencies, the Secretary shall issue a regulation establishing requirements and procedures for the implementation of this section.

"(2) QUALIFYING VOLUME.—The regulation shall include a determination of an appropriate qualifying volume for lease condensate, except that in no case shall the Secretary determine that the qualifying volume for lease condensate is less than 1,125 gallons.

"(d) APPLICABILITY.—This section applies unless the Secretary finds that the use of lease condensate as an alternative fuel would adversely affect public health or safety or ambient air quality or the environment.".

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy Act of 1992 (42 U.S.C. prec. 13201) is amended by adding at the end of the items relating to title III the following:

"Sec. 313. Lease condensate use credits.".

(e) EMERGENCY EXEMPTION.—Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) (as amended by section 702 and this section) is amended in paragraph (9)(E) by inserting before the semicolon at the end ", including vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages, as determined by the Secretary".

SEC. 706. REVIEW OF ENERGY POLICY ACT OF 1992 PROGRAMS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary of Energy shall complete a study to determine the effect that titles III, IV, and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.) have had on—

(1) the development of alternative fueled vehicle technology;

(2) the availability of that technology in the market; and

(3) the cost of alternative fueled vehicles.

(b) TOPICS.—As part of the study under subsection (a), the Secretary shall specifically identify—

(1) the number of alternative fueled vehicles acquired by fleets or covered persons required to acquire alternative fueled vehicles;

(2) the quantity, by type, of alternative fuel actually used in alternative fueled vehicles acquired by fleets or covered persons;

(3) the quantity of petroleum displaced by the use of alternative fuels in alternative fueled vehicles acquired by fleets or covered persons;

(4) the direct and indirect costs of compliance with requirements under titles III, IV, and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.), including—

(A) vehicle acquisition requirements imposed on fleets or covered persons;

(B) administrative and recordkeeping expenses;

(C) fuel and fuel infrastructure costs;

(D) associated training and employee expenses; and

(E) any other factors or expenses the Secretary determines to be necessary to compile reliable estimates of the overall costs and benefits of complying with programs under those titles for fleets, covered persons, and the national economy;

(5) the existence of obstacles preventing compliance with vehicle acquisition requirements and increased use of alternative fuel in alternative fueled vehicles acquired by fleets or covered persons; and

(6) the projected impact of amendments to the Energy Policy Act of 1992 made by this title.

(c) REPORT.—Upon completion of the study under this section, the Secretary shall submit to Congress a report that describes the results of the study and includes any recommendations of the Secretary for legislative or administrative changes concerning the alternative fueled vehicle requirements under titles III, IV and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.).

SEC. 707. REPORT CONCERNING COMPLIANCE WITH ALTERNATIVE FUELED VEHICLE PURCHASING REQUIREMENTS.

Section 310(b)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13218(b)(1)) is amended by striking "1 year after the date of enactment of this subsection" and inserting "February 15, 2004".

Subtitle B—Hybrid Vehicles, Advanced Vehicles, and Fuel Cell Buses

PART 1—HYBRID VEHICLES

SEC. 711. HYBRID VEHICLES.

The Secretary of Energy shall accelerate efforts directed toward the improvement of batteries and other rechargeable energy storage systems, power electronics, hybrid systems integration, and other technologies for use in hybrid vehicles.

PART 2—ADVANCED VEHICLES

SEC. 721. DEFINITIONS.

In this part:

(1) ALTERNATIVE FUELED VEHICLE.—

(A) IN GENERAL.—The term "alternative fueled vehicle" means a vehicle propelled solely on an alternative fuel (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)).

(B) EXCLUSION.—The term "alternative fueled vehicle" does not include a vehicle that the Secretary determines, by regulation, does not yield substantial environmental benefits over a vehicle operating solely on gasoline or diesel derived from fossil fuels.

(2) FUEL CELL VEHICLE.—The term "fuel cell vehicle" means a vehicle propelled by an electric motor powered by a fuel cell system that converts chemical energy into electricity by combining oxygen (from air) with hydrogen fuel that is stored on the vehicle or is produced onboard by reformation of a hydrocarbon fuel. Such fuel cell system may or may not include the use of auxiliary energy storage systems to enhance vehicle performance.

(3) HYBRID VEHICLE.—The term "hybrid vehicle" means a medium or heavy duty vehicle propelled by an internal combustion engine or heat engine using any combustible fuel and an onboard rechargeable energy storage device.

(4) NEIGHBORHOOD ELECTRIC VEHICLE.—The term "neighborhood electric vehicle" means a motor vehicle that—

(A) meets the definition of a low-speed vehicle (as defined in part 571 of title 49, Code of Federal Regulations);

(B) meets the definition of a zero-emission vehicle (as defined in section 86.1702-99 of title 40, Code of Federal Regulations);

(C) meets the requirements of Federal Motor Vehicle Safety Standard No. 500; and

(D) has a maximum speed of not greater than 25 miles per hour.

(5) PILOT PROGRAM.—The term "pilot program" means the competitive grant program established under section 722.

(6) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(7) ULTRA-LOW SULFUR DIESEL VEHICLE.—The term "ultra-low sulfur diesel vehicle" means a vehicle manufactured in any of model years 2003 through 2006 powered by a heavy-duty diesel engine that—

(A) is fueled by diesel fuel that contains sulfur at not more than 15 parts per million; and

(B) emits not more than the lesser of—

(i) for vehicles manufactured in—

(I) model year 2003, 3.0 grams per brake horsepower-hour of oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(II) model years 2004 through 2006, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; or

(ii) the quantity of emissions of nonmethane hydrocarbons, oxides of nitrogen, and particulate matter of the best-performing technology of ultra-low sulfur diesel vehicles of the same class and application that are commercially available.

SEC. 722. PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of Transportation, shall establish a competitive grant pilot program, to be administered through the Clean Cities Program of the Department of Energy, to provide not more than 15 geographically dispersed project grants to State governments, local governments, or metropolitan transportation authorities to carry out a project or projects for the purposes described in subsection (b).

(b) GRANT PURPOSES.—A grant under this section may be used for the following purposes:

(1) The acquisition of alternative fueled vehicles or fuel cell vehicles, including—

(A) passenger vehicles (including neighborhood electric vehicles); and

(B) motorized 2-wheel bicycles, scooters, or other vehicles for use by law enforcement personnel or other State or local government or metropolitan transportation authority employees.

(2) The acquisition of alternative fueled vehicles, hybrid vehicles, or fuel cell vehicles, including—

(A) buses used for public transportation or transportation to and from schools;

(B) delivery vehicles for goods or services; and

(C) ground support vehicles at public airports (including vehicles to carry baggage or push or pull airplanes toward or away from terminal gates).

(3) The acquisition of ultra-low sulfur diesel vehicles.

(4) Installation or acquisition of infrastructure necessary to directly support an alternative fueled vehicle, fuel cell vehicle, or hybrid vehicle project funded by the grant, including fueling and other support equipment.

(5) Operation and maintenance of vehicles, infrastructure, and equipment acquired as part of a project funded by the grant.

(c) APPLICATIONS.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—The Secretary shall issue requirements for applying for grants under the pilot program.

(B) MINIMUM REQUIREMENTS.—At a minimum, the Secretary shall require that an application for a grant—

(i) be submitted by the head of a State or local government or a metropolitan transportation authority, or any combination thereof, and a registered participant in the Clean Cities Program of the Department of Energy; and

(ii) include—

(I) a description of the project proposed in the application, including how the project meets the requirements of this part;

(II) an estimate of the ridership or degree of use of the project;

(III) an estimate of the air pollution emissions reduced and fossil fuel displaced as a result of the project, and a plan to collect and disseminate environmental data, related to the project to be funded under the grant, over the life of the project;

(IV) a description of how the project will be sustainable without Federal assistance after the completion of the term of the grant;

(V) a complete description of the costs of the project, including acquisition, construction, operation, and maintenance costs over the expected life of the project;

(VI) a description of which costs of the project will be supported by Federal assistance under this part; and

(VII) documentation to the satisfaction of the Secretary that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the project, and a commitment by the applicant to use such fuel in carrying out the project.

(2) PARTNERS.—An applicant under paragraph (1) may carry out a project under the pilot program in partnership with public and private entities.

(d) SELECTION CRITERIA.—In evaluating applications under the pilot program, the Secretary shall—

(1) consider each applicant's previous experience with similar projects; and

(2) give priority consideration to applications that—

(A) are most likely to maximize protection of the environment;

(B) demonstrate the greatest commitment on the part of the applicant to ensure funding for the proposed project and the greatest likelihood that the project will be maintained or expanded after Federal assistance under this part is completed; and

(C) exceed the minimum requirements of subsection (c)(1)(B)(ii).

(e) PILOT PROJECT REQUIREMENTS.—

(1) MAXIMUM AMOUNT.—The Secretary shall not provide more than $20,000,000 in Federal assistance under the pilot program to any applicant.

(2) COST SHARING.—The Secretary shall not provide more than 50 percent of the cost, incurred during the period of the grant, of any project under the pilot program.

(3) MAXIMUM PERIOD OF GRANTS.—The Secretary shall not fund any applicant under the pilot program for more than 5 years.

(4) DEPLOYMENT AND DISTRIBUTION.—The Secretary shall seek to the maximum extent practicable to ensure a broad geographic distribution of project sites.

(5) TRANSFER OF INFORMATION AND KNOWLEDGE.—The Secretary shall establish mechanisms to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(f) SCHEDULE.—

(1) PUBLICATION.—Not later than 90 days after the date of enactment of this Act, the Secretary shall publish in the Federal Register, Commerce Business Daily, and elsewhere as appropriate, a request for applications to undertake projects under the pilot program. Applications shall be due not later than 180 days after the date of publication of the notice.

(2) SELECTION.—Not later than 180 days after the date by which applications for grants are due, the Secretary shall select by competitive, peer reviewed proposal, all applications for projects to be awarded a grant under the pilot program.

(g) LIMIT ON FUNDING.—The Secretary shall provide not less than 20 nor more than 25 percent of the grant funding made available under this section for the acquisition of ultra-low sulfur diesel vehicles.

SEC. 723. REPORTS TO CONGRESS.

(a) INITIAL REPORT.—Not later than 60 days after the date on which grants are awarded under this part, the Secretary shall submit to Congress a report containing—

(1) an identification of the grant recipients and a description of the projects to be funded;

(2) an identification of other applicants that submitted applications for the pilot program; and

(3) a description of the mechanisms used by the Secretary to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(b) EVALUATION.—Not later than 3 years after the date of enactment of this Act, and annually thereafter until the pilot program ends, the Secretary shall submit to Congress a report containing an evaluation of the effectiveness of the pilot program, including—

(1) an assessment of the benefits to the environment derived from the projects included in the pilot program; and

(2) an estimate of the potential benefits to the environment to be derived from widespread application of alternative fueled vehicles and ultra-low sulfur diesel vehicles.

SEC. 724. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this part $200,000,000, to remain available until expended.

PART 3—FUEL CELL BUSES

SEC. 731. FUEL CELL TRANSIT BUS DEMONSTRATION.

(a) IN GENERAL.—The Secretary of Energy, in consultation with the Secretary of Transportation, shall establish a transit bus demonstration program to make competitive, merit-based awards for 5-year projects to demonstrate not more than 25 fuel cell transit buses (and necessary infrastructure) in 5 geographically dispersed localities.

(b) PREFERENCE.—In selecting projects under this section, the Secretary of Energy shall give preference to projects that are most likely to mitigate congestion and improve air quality.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section $10,000,000 for each of fiscal years 2004 through 2008.

Subtitle C—Clean School Buses

SEC. 741. DEFINITIONS.

In this subtitle:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ALTERNATIVE FUEL.—The term "alternative fuel" means liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, propane, or methanol or ethanol at no less than 85 percent by volume.

(3) ALTERNATIVE FUEL SCHOOL BUS.—The term "alternative fuel school bus" means a school bus that meets all of the requirements of this subtitle and is operated solely on an alternative fuel.

(4) EMISSIONS CONTROL RETROFIT TECHNOLOGY.—The term "emissions control retrofit technology" means a particulate filter or other emissions control equipment that is verified or certified by the Administrator or the California Air Resources Board as an effective emission reduction technology when installed on an existing school bus.

(5) IDLING.—The term "idling" means operating an engine while remaining stationary for more than approximately 15 minutes, except that the term does not apply to routine stoppages associated with traffic movement or congestion.

(6) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(7) ULTRA-LOW SULFUR DIESEL FUEL.—The term "ultra-low sulfur diesel fuel" means diesel fuel that contains sulfur at not more than 15 parts per million.

(8) ULTRA-LOW SULFUR DIESEL FUEL SCHOOL BUS.—The term "ultra-low sulfur diesel fuel school bus" means a school bus that meets all of the requirements of this subtitle and is operated solely on ultra-low sulfur diesel fuel.

SEC. 742. PROGRAM FOR REPLACEMENT OF CERTAIN SCHOOL BUSES WITH CLEAN SCHOOL BUSES.

(a) ESTABLISHMENT.—The Administrator, in consultation with the Secretary and other appropriate Federal departments and agencies, shall establish a program for awarding grants on a competitive basis to eligible entities for the replacement of existing school buses manufactured before model year 1991 with alternative fuel school buses and ultra-low sulfur diesel fuel school buses.

(b) REQUIREMENTS.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall establish and publish in the Federal Register grant requirements on eligibility for assistance, and on implementation of the program established under subsection (a), including instructions for the submission of grant applications and certification requirements to ensure compliance with this subtitle.

(2) APPLICATION DEADLINES.—The requirements established under paragraph (1) shall require submission of grant applications not later than—

(A) in the case of the first year of program implementation, the date that is 180 days after the publication of the requirements in the Federal Register; and

(B) in the case of each subsequent year, June 1 of the year.

(c) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to 1 or more local or State governmental entities responsible for providing school bus service to 1 or more public school systems or responsible for the purchase of school buses;

(2) to 1 or more contracting entities that provide school bus service to 1 or more public school systems, if the grant application is submitted jointly with the 1 or more school systems to be served by the buses, except that the application may provide that buses purchased using funds awarded shall be owned, operated, and maintained exclusively by the 1 or more contracting entities; or

(3) to a nonprofit school transportation association representing private contracting entities,

if the association has notified and received approval from the 1 or more school systems to be served by the buses.

(d) AWARD DEADLINES.—

(1) IN GENERAL.—Subject to paragraph (2), the Administrator shall award a grant made to a qualified applicant for a fiscal year—

(A) in the case of the first fiscal year of program implementation, not later than the date that is 90 days after the application deadline established under subsection (b)(2); and

(B) in the case of each subsequent fiscal year, not later than August 1 of the fiscal year.

(2) INSUFFICIENT NUMBER OF QUALIFIED GRANT APPLICATIONS.—If the Administrator does not receive a sufficient number of qualified grant applications to meet the requirements of subsection (i)(1) for a fiscal year, the Administrator shall award a grant made to a qualified applicant under subsection (i)(2) not later than September 30 of the fiscal year.

(e) TYPES OF GRANTS.—

(1) IN GENERAL.—A grant under this section shall be used for the replacement of school buses manufactured before model year 1991 with alternative fuel school buses and ultra-low sulfur diesel fuel school buses.

(2) NO ECONOMIC BENEFIT.—Other than the receipt of the grant, a recipient of a grant under this section may not receive any economic benefit in connection with the receipt of the grant.

(3) PRIORITY OF GRANT APPLICATIONS.—The Administrator shall give priority to applicants that propose to replace school buses manufactured before model year 1977.

(f) CONDITIONS OF GRANT.—A grant provided under this section shall include the following conditions:

(1) SCHOOL BUS FLEET.—All buses acquired with funds provided under the grant shall be operated as part of the school bus fleet for which the grant was made for a minimum of 5 years.

(2) USE OF FUNDS.—Funds provided under the grant may only be used—

(A) to pay the cost, except as provided in paragraph (3), of new alternative fuel school buses or ultra-low sulfur diesel fuel school buses, including State taxes and contract fees associated with the acquisition of such buses; and

(B) to provide—

(i) up to 20 percent of the price of the alternative fuel school buses acquired, for necessary alternative fuel infrastructure if the infrastructure will only be available to the grant recipient; and

(ii) up to 25 percent of the price of the alternative fuel school buses acquired, for necessary alternative fuel infrastructure if the infrastructure will be available to the grant recipient and to other bus fleets.

(3) GRANT RECIPIENT FUNDS.—The grant recipient shall be required to provide at least—

(A) in the case of a grant recipient described in paragraph (1) or (3) of subsection (c), the lesser of—

(i) an amount equal to 15 percent of the total cost of each bus received; or

(ii) $15,000 per bus; and

(B) in the case of a grant recipient described in subsection (c)(2), the lesser of—

(i) an amount equal to 20 percent of the total cost of each bus received; or

(ii) $20,000 per bus.

(4) ULTRA-LOW SULFUR DIESEL FUEL.—In the case of a grant recipient receiving a grant for ultra-low sulfur diesel fuel school buses, the grant recipient shall be required to provide documentation to the satisfaction of the Administrator that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant, and a commitment by the applicant to use such fuel in carrying out the purposes of the grant.

(5) TIMING.—All alternative fuel school buses, ultra-low sulfur diesel fuel school buses, or alternative fuel infrastructure acquired under a grant awarded under this section shall be purchased and placed in service as soon as practicable.

(g) BUSES.—

(1) IN GENERAL.—Except as provided in paragraph (2), funding under a grant made under this section for the acquisition of new alternative fuel school buses or ultra-low sulfur diesel fuel school buses shall only be used to acquire school buses—

(A) with a gross vehicle weight of greater than 14,000 pounds;

(B) that are powered by a heavy duty engine;

(C) in the case of alternative fuel school buses manufactured in model years 2004 through 2006, that emit not more than 1.8 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(D) in the case of ultra-low sulfur diesel fuel school buses manufactured in model years 2004 through 2006, that emit not more than 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter.

(2) LIMITATIONS.—A bus shall not be acquired under this section that emits nonmethane hydrocarbons, oxides of nitrogen, or particulate matter at a rate greater than the best performing technology of the same class of ultra-low sulfur diesel fuel school buses commercially available at the time the grant is made.

(h) DEPLOYMENT AND DISTRIBUTION.—The Administrator shall—

(1) seek, to the maximum extent practicable, to achieve nationwide deployment of alternative fuel school buses and ultra-low sulfur diesel fuel school buses through the program under this section; and

(2) ensure a broad geographic distribution of grant awards, with a goal of no State receiving more than 10 percent of the grant funding made available under this section for a fiscal year.

(i) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—Subject to paragraph (2), of the amount of grant funding made available to carry out this section for any fiscal year, the Administrator shall use—

(A) 70 percent for the acquisition of alternative fuel school buses or supporting infrastructure; and

(B) 30 percent for the acquisition of ultra-low sulfur diesel fuel school buses.

(2) INSUFFICIENT NUMBER OF QUALIFIED GRANT APPLICATIONS.—After the first fiscal year in which this program is in effect, if the Administrator does not receive a sufficient number of qualified grant applications to meet the requirements of subparagraph (A) or (B) of paragraph (1) for a fiscal year, effective beginning on August 1 of the fiscal year, the Administrator shall make the remaining funds available to other qualified grant applicants under this section.

(j) REDUCTION OF SCHOOL BUS IDLING.—Each local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) that receives Federal funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is encouraged to develop a policy, consistent with the health, safety, and welfare of students and the proper operation and maintenance of school buses, to reduce the incidence of unnecessary school bus idling at schools when picking up and unloading students.

(k) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than January 31 of each year, the Administrator shall transmit to Congress a report evaluating implementation of the programs under this section and section 743.

(2) COMPONENTS.—The reports shall include a description of—

(A) the total number of grant applications received;

(B) the number and types of alternative fuel school buses, ultra-low sulfur diesel fuel school buses, and retrofitted buses requested in grant applications;

(C) grants awarded and the criteria used to select the grant recipients;

(D) certified engine emission levels of all buses purchased or retrofitted under the programs under this section and section 743;

(E) an evaluation of the in-use emission level of buses purchased or retrofitted under the programs under this section and section 743; and

(F) any other information the Administrator considers appropriate.

(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $45,000,000 for fiscal year 2005;

(2) $65,000,000 for fiscal year 2006;

(3) $90,000,000 for fiscal year 2007; and

(4) such sums as are necessary for each of fiscal years 2008 and 2009.

SEC. 743. DIESEL RETROFIT PROGRAM.

(a) ESTABLISHMENT.—The Administrator, in consultation with the Secretary, shall establish a program for awarding grants on a competitive basis to entities for the installation of retrofit technologies for diesel school buses.

(b) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to a local or State governmental entity responsible for providing school bus service to 1 or more public school systems;

(2) to 1 or more contracting entities that provide school bus service to 1 or more public school systems, if the grant application is submitted jointly with the 1 or more school systems that the buses will serve, except that the application may provide that buses purchased using funds awarded shall be owned, operated, and maintained exclusively by the 1 or more contracting entities; or

(3) to a nonprofit school transportation association representing private contracting entities, if the association has notified and received approval from the 1 or more school systems to be served by the buses.

(c) AWARDS.—

(1) IN GENERAL.—The Administrator shall seek, to the maximum extent practicable, to ensure a broad geographic distribution of grants under this section.

(2) PREFERENCES.—In making awards of grants under this section, the Administrator shall give preference to proposals that—

(A) will achieve the greatest reductions in emissions of nonmethane hydrocarbons, oxides of nitrogen, or particulate matter per proposal or per bus; or

(B) involve the use of emissions control retrofit technology on diesel school buses that operate solely on ultra-low sulfur diesel fuel.

(d) CONDITIONS OF GRANT.—A grant shall be provided under this section on the conditions that—

(1) buses on which retrofit emissions-control technology are to be demonstrated—

(A) will operate on ultra-low sulfur diesel fuel where such fuel is reasonably available or required for sale by State or local law or regulation;

(B) were manufactured in model year 1991 or later; and

(C) will be used for the transportation of school children to and from school for a minimum of 5 years;

(2) grant funds will be used for the purchase of emission control retrofit technology, including State taxes and contract fees; and

(3) grant recipients will provide at least 15 percent of the total cost of the retrofit, including the purchase of emission control retrofit technology and all necessary labor for installation of the retrofit.

(e) VERIFICATION.—Not later than 90 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register procedures to verify—

(1) the retrofit emissions-control technology to be demonstrated;

(2) that buses powered by ultra-low sulfur diesel fuel on which retrofit emissions-control technology are to be demonstrated will operate on diesel fuel containing not more than 15 parts per million of sulfur; and

(3) that grants are administered in accordance with this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $20,000,000 for fiscal year 2005;

(2) $35,000,000 for fiscal year 2006;

(3) $45,000,000 for fiscal year 2007; and

(4) such sums as are necessary for each of fiscal years 2008 and 2009.

SEC. 744. FUEL CELL SCHOOL BUSES.

(a) ESTABLISHMENT.—The Secretary shall establish a program for entering into cooperative agreements—

(1) with private sector fuel cell bus developers for the development of fuel cell-powered school buses; and

(2) subsequently, with not less than 2 units of local government using natural gas-powered school buses and such private sector fuel cell bus developers to demonstrate the use of fuel cell-powered school buses.

(b) COST SHARING.—The non-Federal contribution for activities funded under this section shall be not less than—

(1) 20 percent for fuel infrastructure development activities; and

(2) 50 percent for demonstration activities and for development activities not described in paragraph (1).

(c) REPORTS TO CONGRESS.—Not later than 3 years after the date of enactment of this Act, the Secretary shall transmit to Congress a report that—

(1) evaluates the process of converting natural gas infrastructure to accommodate fuel cell-powered school buses; and

(2) assesses the results of the development and demonstration program under this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $25,000,000 for the period of fiscal years 2004 through 2006.

Subtitle D—Miscellaneous

SEC. 751. RAILROAD EFFICIENCY.

(a) ESTABLISHMENT.—The Secretary of Energy shall, in cooperation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, establish a cost-shared, public-private research partnership involving the Federal Government, railroad carriers, locomotive manufacturers and equipment suppliers, and the Association of American Railroads, to develop and demonstrate railroad locomotive technologies that increase fuel economy, reduce emissions, and lower costs of operation.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section—

(1) $25,000,000 for fiscal year 2005;

(2) $35,000,000 for fiscal year 2006; and

(3) $50,000,000 for fiscal year 2007.

SEC. 752. MOBILE EMISSION REDUCTIONS TRADING AND CREDITING.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall submit to Congress a report on the experience of the Administrator with the trading of mobile source emission reduction credits for use by owners and operators of stationary source emission sources to meet emission offset requirements within a nonattainment area.

(b) CONTENTS.—The report shall describe—

(1) projects approved by the Administrator that include the trading of mobile source emission reduction credits for use by stationary sources in complying with offset requirements, including a description of—

(A) project and stationary sources location;

(B) volumes of emissions offset and traded;

(C) the sources of mobile emission reduction credits; and

(D) if available, the cost of the credits;

(2) the significant issues identified by the Administrator in consideration and approval of trading in the projects;

(3) the requirements for monitoring and assessing the air quality benefits of any approved project;

(4) the statutory authority on which the Administrator has based approval of the projects;

(5) an evaluation of how the resolution of issues in approved projects could be used in other projects; and

(6) any other issues that the Administrator considers relevant to the trading and generation of mobile source emission reduction credits for use by stationary sources or for other purposes.

SEC. 753. AVIATION FUEL CONSERVATION AND EMISSIONS.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall jointly initiate a study to identify—

(1) the impact of aircraft emissions on air quality in nonattainment areas; and

(2) ways to promote fuel conservation measures for aviation to—

(A) enhance fuel efficiency; and

(B) reduce emissions.

(b) FOCUS.—The study under subsection (a) shall focus on how air traffic management inefficiencies, such as aircraft idling at airports, result in unnecessary fuel burn and air emissions.

(c) REPORT.—Not later than 1 year after the date of the initiation of the study under subsection (a), the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall jointly submit to the Committee on Energy and Commerce and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate a report that—

(1) describes the results of the study; and

(2) includes any recommendations on ways in which unnecessary fuel use and emissions affecting air quality may be reduced—

(A) without adversely affecting safety and security and increasing individual aircraft noise; and

(B) while taking into account all aircraft emissions and the impact of the emissions on human health.

SEC. 754. DIESEL FUELED VEHICLES.

(a) DEFINITION OF TIER 2 EMISSION STANDARDS.—In this section, the term "tier 2 emission standards" means the motor vehicle emission standards that apply to passenger cars, light trucks, and larger passenger vehicles manufactured after the 2003 model year, as issued on February 10, 2000, by the Administrator of the Environmental Protection Agency under sections 202 and 211 of the Clean Air Act (42 U.S.C. 7521, 7545).

(b) DIESEL COMBUSTION AND AFTER-TREATMENT TECHNOLOGIES.—The Secretary of Energy shall accelerate efforts to improve diesel combustion and after-treatment technologies for use in diesel fueled motor vehicles.

(c) GOALS.—The Secretary shall carry out subsection (b) with a view toward achieving the following goals:

(1) Developing and demonstrating diesel technologies that, not later than 2010, meet the following standards:

(A) Tier 2 emission standards.

(B) The heavy-duty emissions standards of 2007 that are applicable to heavy-duty vehicles under regulations issued by the Administrator of the Environmental Protection Agency as of the date of enactment of this Act.

(2) Developing the next generation of low-emission, high efficiency diesel engine technologies, including homogeneous charge compression ignition technology.

SEC. 755. CONSERVE BY BICYCLING PROGRAM.

(a) DEFINITIONS.—In this section:

(1) PROGRAM.—The term "program" means the Conserve by Bicycling Program established by subsection (b).

(2) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(b) ESTABLISHMENT.—There is established within the Department of Transportation a program to be known as the "Conserve by Bicycling Program".

(c) PROJECTS.—

(1) IN GENERAL.—In carrying out the program, the Secretary shall establish not more than 10 pilot projects that are—

(A) dispersed geographically throughout the United States; and

(B) designed to conserve energy resources by encouraging the use of bicycles in place of motor vehicles.

(2) REQUIREMENTS.—A pilot project described in paragraph (1) shall—

(A) use education and marketing to convert motor vehicle trips to bicycle trips;

(B) document project results and energy savings (in estimated units of energy conserved);

(C) facilitate partnerships among interested parties in at least 2 of the fields of—

(i) transportation;

(ii) law enforcement;

(iii) education;

(iv) public health;

(v) environment; and

(vi) energy;

(D) maximize bicycle facility investments;

(E) demonstrate methods that may be used in other regions of the United States; and

(F) facilitate the continuation of ongoing programs that are sustained by local resources.

(3) COST SHARING.—At least 20 percent of the cost of each pilot project described in paragraph (1) shall be provided from State or local sources.

(d) ENERGY AND BICYCLING RESEARCH STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall enter into a contract with the National Academy of Sciences for, and the National Academy of Sciences shall conduct and submit to Congress a report on, a study on the feasibility of converting motor vehicle trips to bicycle trips.

(2) COMPONENTS.—The study shall—

(A) document the results or progress of the pilot projects under subsection (c);

(B) determine the type and duration of motor vehicle trips that people in the United States may feasibly make by bicycle, taking into consideration factors such as—

(i) weather;

(ii) land use and traffic patterns;

(iii) the carrying capacity of bicycles; and

(iv) bicycle infrastructure;

(C) determine any energy savings that would result from the conversion of motor vehicle trips to bicycle trips;

(D) include a cost-benefit analysis of bicycle infrastructure investments; and

(E) include a description of any factors that would encourage more motor vehicle trips to be replaced with bicycle trips.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $6,200,000, to remain available until expended, of which—

(1) $5,150,000 shall be used to carry out pilot projects described in subsection (c);

(2) $300,000 shall be used by the Secretary to coordinate, publicize, and disseminate the results of the program; and

(3) $750,000 shall be used to carry out subsection (d).

SEC. 756. REDUCTION OF ENGINE IDLING OF HEAVY-DUTY VEHICLES.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ADVANCED TRUCK STOP ELECTRIFICATION SYSTEM.—The term "advanced truck stop electrification system" means a stationary system that delivers heat, air conditioning, electricity, and communications, and is capable of providing verifiable and auditable evidence of use of those services, to a heavy-duty vehicle and any occupants of the heavy-duty vehicle without relying on components mounted onboard the heavy-duty vehicle for delivery of those services.

(3) AUXILIARY POWER UNIT.—The term "auxiliary power unit" means an integrated system that—

(A) provides heat, air conditioning, engine warming, and electricity to the factory-installed components on a heavy-duty vehicle as if the main drive engine of the heavy-duty vehicle were running; and

(B) is certified by the Administrator under part 89 of title 40, Code of Federal Regulations (or any successor regulation), as meeting applicable emission standards.

(4) HEAVY-DUTY VEHICLE.—The term "heavy-duty vehicle" means a vehicle that—

(A) has a gross vehicle weight rating greater than 12,500 pounds; and

(B) is powered by a diesel engine.

(5) IDLE REDUCTION TECHNOLOGY.—The term "idle reduction technology" means an advanced truck stop electrification system, auxiliary power unit, or other device or system of devices that—

(A) is used to reduce long-duration idling of a heavy-duty vehicle; and

(B) allows for the main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle to be shut down.

(6) LONG-DURATION IDLING.—

(A) IN GENERAL.—The term "long-duration idling" means the operation of a main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle, for a period greater than 15 consecutive minutes, at a time at which the main drive engine is not engaged in gear.

(B) EXCLUSIONS.—The term "long-duration idling" does not include the operation of a main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle during a routine stoppage associated with traffic movement or congestion.

(b) IDLE REDUCTION TECHNOLOGY BENEFITS, PROGRAMS, AND STUDIES.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall—

(A)(i) commence a review of the mobile source air emission models of the Environmental Protection Agency used under the Clean Air Act (42 U.S.C. 7401 et seq.) to determine whether the models accurately reflect the emissions resulting from long-duration idling of heavy-duty vehicles and other vehicles and engines; and

(ii) update those models as the Administrator determines to be appropriate; and

(B)(i) commence a review of the emission reductions achieved by the use of idle reduction technology; and

(ii) complete such revisions of the regulations and guidance of the Environmental Protection Agency as the Administrator determines to be appropriate.

(2) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall—

(A) complete the reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1); and

(B) prepare and make publicly available 1 or more reports on the results of the reviews.

(3) DISCRETIONARY INCLUSIONS.—The reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1) and the reports under paragraph (2)(B) may address the potential fuel savings resulting from use of idle reduction technology.

(4) IDLE REDUCTION DEPLOYMENT PROGRAM.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Transportation, shall establish a program to support deployment of idle reduction technology.

(ii) PRIORITY.—The Administrator shall give priority to the deployment of idle reduction technology based on beneficial effects on air quality and ability to lessen the emission of criteria air pollutants.

(B) FUNDING.—

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out subparagraph (A) $19,500,000 for fiscal year 2004, $30,000,000 for fiscal year 2005, and $45,000,000 for fiscal year 2006.

(ii) COST SHARING.—Subject to clause (iii), the Administrator shall require at least 50 percent of the costs directly and specifically related to any project under this section to be provided from non-Federal sources.

(iii) NECESSARY AND APPROPRIATE REDUCTIONS.—The Administrator may reduce the non-Federal requirement under clause (ii) if the Administrator determines that the reduction is necessary and appropriate to meet the objectives of this section.

(5) IDLING LOCATION STUDY.—

(A) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Transportation, shall commence a study to analyze all locations at which heavy-duty vehicles stop for long-duration idling, including—

(i) truck stops;

(ii) rest areas;

(iii) border crossings;

(iv) ports;

(v) transfer facilities; and

(vi) private terminals.

(B) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall—

(i) complete the study under subparagraph (A); and

(ii) prepare and make publicly available 1 or more reports of the results of the study.

(c) VEHICLE WEIGHT EXEMPTION.—Section 127(a) of title 23, United States Code, is amended—

(1) by designating the first through eleventh sentences as paragraphs (1) through (11), respectively; and

(2) by adding at the end the following:

"(12) HEAVY DUTY VEHICLES.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), in order to promote reduction of fuel use and emissions because of engine idling, the maximum gross vehicle weight limit and the axle weight limit for any heavy-duty vehicle equipped with an idle reduction technology shall be increased by a quantity necessary to compensate for the additional weight of the idle reduction system.

"(B) MAXIMUM WEIGHT INCREASE.—The weight increase under subparagraph (A) shall be not greater than 250 pounds.

"(C) PROOF.—On request by a regulatory agency or law enforcement agency, the vehicle operator shall provide proof (through demonstration or certification) that—

"(i) the idle reduction technology is fully functional at all times; and

"(ii) the 250-pound gross weight increase is not used for any purpose other than the use of idle reduction technology described in subparagraph (A).".

SEC. 757. BIODIESEL ENGINE TESTING PROGRAM.

(a) IN GENERAL.—Not later that 180 days after the date of enactment of this Act, the Secretary shall initiate a partnership with diesel engine, diesel fuel injection system, and diesel vehicle manufacturers and diesel and biodiesel fuel providers, to include biodiesel testing in advanced diesel engine and fuel system technology.

(b) SCOPE.—The program shall provide for testing to determine the impact of biodiesel from different sources on current and future emission control technologies, with emphasis on—

(1) the impact of biodiesel on emissions warranty, in-use liability, and antitampering provisions;

(2) the impact of long-term use of biodiesel on engine operations;

(3) the options for optimizing these technologies for both emissions and performance when switching between biodiesel and diesel fuel; and

(4) the impact of using biodiesel in these fueling systems and engines when used as a blend with 2006 Environmental Protection Agency-mandated diesel fuel containing a maximum of 15-parts-per-million sulfur content.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall provide an interim report to Congress on the findings of the program, including a comprehensive analysis of impacts from biodiesel on engine operation for both existing and expected future diesel technologies, and recommendations for ensuring optimal emissions reductions and engine performance with biodiesel.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2004 through 2008 to carry out this section.

(e) DEFINITION.—For purposes of this section, the term "biodiesel" means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the American Society for Testing and Materials D6751-02a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

SEC. 758. HIGH OCCUPANCY VEHICLE EXCEPTION.

Notwithstanding section 102(a) of title 23, United States Code, a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicle—

(1) is a dedicated vehicle (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S. 13211)); or

(2) is a hybrid vehicle (as defined by the State for the purpose of this section).

Subtitle E—Automobile Efficiency

SEC. 771. AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION AND ENFORCEMENT OF FUEL ECONOMY STANDARDS.

In addition to any other funds authorized by law, there are authorized to be appropriated to the National Highway Traffic Safety Administration to carry out its obligations with respect to average fuel economy standards $2,000,000 for each of fiscal years 2004 through 2008.

SEC. 772. REVISED CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.

Section 32902(f) of title 49, United States Code, is amended to read as follows:

"(f) Considerations For Decisions on Maximum Feasible Average Fuel Economy.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider the following matters:

"(1) Technological feasibility.

"(2) Economic practicability.

"(3) The effect of other motor vehicle standards of the Government on fuel economy.

"(4) The need of the United States to conserve energy.

"(5) The effects of fuel economy standards on passenger automobiles, nonpassenger automobiles, and occupant safety.

"(6) The effects of compliance with average fuel economy standards on levels of automobile industry employment in the United States.".

SEC. 773. EXTENSION OF MAXIMUM FUEL ECONOMY INCREASE FOR ALTERNATIVE FUELED VEHICLES.

(a) Manufacturing Incentives.—Section 32905 of title 49, United States Code, is amended—

(1) in each of subsections (b) and (d), by striking "1993–2004" and inserting "1993–2008";

(2) in subsection (f), by striking "2001" and inserting "2005"; and

(3) in subsection (f)(1), by striking "2004" and inserting "2008".

(b) Maximum Fuel Economy Increase.—Subsection (a)(1) of section 32906 of title 49, United States Code, is amended—

(1) in subparagraph (A), by striking "the model years 1993–2004" and inserting "model years 1993–2008"; and

(2) in subparagraph (B), by striking "the model years 2005–2008" and inserting "model years 2009–2012".

SEC. 774. STUDY OF FEASIBILITY AND EFFECTS OF REDUCING USE OF FUEL FOR AUTOMOBILES.

(a) In General.—Not later than 30 days after the date of the enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall initiate a study of the feasibility and effects of reducing by model year 2012, by a significant percentage, the amount of fuel consumed by automobiles.

(b) Subjects of Study.—The study under this section shall include—

(1) examination of, and recommendation of alternatives to, the policy under current Federal law of establishing average fuel economy standards for automobiles and requiring each automobile manufacturer to comply with average fuel economy standards that apply to the automobiles it manufactures;

(2) examination of how automobile manufacturers could contribute toward achieving the reduction referred to in subsection (a);

(3) examination of the potential of fuel cell technology in motor vehicles in order to determine the extent to which such technology may contribute to achieving the reduction referred to in subsection (a); and

(4) examination of the effects of the reduction referred to in subsection (a) on—

(A) gasoline supplies;

(B) the automobile industry, including sales of automobiles manufactured in the United States;

(C) motor vehicle safety; and

(D) air quality.

(c) Report.—The Administrator shall submit to Congress a report on the findings, conclusion, and recommendations of the study under this section by not later than 1 year after the date of the enactment of this Act.

TITLE VIII—HYDROGEN

SEC. 801. DEFINITIONS.

In this title:

(1) Advisory committee.—The term "Advisory Committee" means the Hydrogen Technical and Fuel Cell Advisory Committee established under section 805.

(2) Department.—The term "Department" means the Department of Energy.

(3) Fuel cell.—The term "fuel cell" means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by an electrochemical process taking place at separate electrodes in the device.

(4) Infrastructure.—The term "infrastructure" means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen.

(5) Light duty vehicle.—The term "light duty vehicle" means a car or truck classified by the Department of Transportation as a Class I or IIA vehicle.

(6) Secretary.—The term "Secretary" means the Secretary of Energy.

SEC. 802. PLAN.

Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a coordinated plan for the programs described in this title and any other programs of the Department that are directly related to fuel cells or hydrogen. The plan shall describe, at a minimum—

(1) the agenda for the next 5 years for the programs authorized under this title, including the agenda for each activity enumerated in section 803(a);

(2) the types of entities that will carry out the activities under this title and what role each entity is expected to play;

(3) the milestones that will be used to evaluate the programs for the next 5 years;-

(4) the most significant technical and nontechnical hurdles that stand in the way of achieving the goals described in section 803(b), and how the programs will address those hurdles; and-

(5) the policy assumptions that are implicit in the plan, including any assumptions that would affect the sources of hydrogen or the marketability of hydrogen-related products.

SEC. 803. PROGRAMS.

(a) Activities.—The Secretary, in partnership with the private sector, shall conduct programs to address—

(1) production of hydrogen from diverse energy sources, including—

(A) fossil fuels, which may include carbon capture and sequestration;

(B) hydrogen-carrier fuels (including ethanol and methanol);

(C) renewable energy resources, including biomass; and

(D) nuclear energy;

(2) use of hydrogen for commercial, industrial, and residential electric power generation;

(3) safe delivery of hydrogen or hydrogen-carrier fuels, including—

(A) transmission by pipeline and other distribution methods; and

(B) convenient and economic refueling of vehicles either at central refueling stations or through distributed on-site generation;

(4) advanced vehicle technologies, including—

(A) engine and emission control systems;

(B) energy storage, electric propulsion, and hybrid systems;

(C) automotive materials; and

(D) other advanced vehicle technologies;

(5) storage of hydrogen or hydrogen-carrier fuels, including development of materials for safe and economic storage in gaseous, liquid, or solid form at refueling facilities and onboard vehicles;

(6) development of safe, durable, affordable, and efficient fuel cells, including fuel-flexible fuel cell power systems, improved manufacturing processes, high-temperature membranes, cost-effective fuel processing for natural gas, fuel cell stack and system reliability, low temperature operation, and cold start capability;

(7) development, after consultation with the private sector, of necessary codes and standards (including international codes and standards and voluntary consensus standards adopted in accordance with OMB Circular A–119) and safety practices for the production, distribution, storage, and use of hydrogen, hydrogen-carrier fuels, and related products; and

(8) a public education program to develop improved knowledge and acceptability of hydrogen-based systems.

(b) Program Goals.—

(1) Vehicles.—For vehicles, the goals of the program are—

(A) to enable a commitment by automakers no later than year 2015 to offer safe, affordable, and technically viable hydrogen fuel cell vehicles in the mass consumer market; and

(B) to enable production, delivery, and acceptance by consumers of model year 2020 hydrogen fuel cell and other hydrogen-powered vehicles that will have—

(i) a range of at least 300 miles;

(ii) improved performance and ease of driving;

(iii) safety and performance comparable to vehicle technologies in the market; and

(iv) when compared to light duty vehicles in model year 2003—

(I) fuel economy that is substantially higher;

(II) substantially lower emissions of air pollutants; and

(III) equivalent or improved vehicle fuel system crash integrity and occupant protection.

(2) Hydrogen energy and energy infrastructure.—For hydrogen energy and energy infrastructure, the goals of the program are to enable a commitment not later than 2015 that will lead to infrastructure by 2020 that will provide—

(A) safe and convenient refueling;

(B) improved overall efficiency;

(C) widespread availability of hydrogen from domestic energy sources through—

(i) production, with consideration of emissions levels;

(ii) delivery, including transmission by pipeline and other distribution methods for hydrogen; and

(iii) storage, including storage in surface transportation vehicles;

(D) hydrogen for fuel cells, internal combustion engines, and other energy conversion devices for portable, stationary, and transportation applications; and

(E) other technologies consistent with the Department's plan.

(3) Fuel cells.—The goals for fuel cells and their portable, stationary, and transportation applications are to enable—

(A) safe, economical, and environmentally sound hydrogen fuel cells;

(B) fuel cells for light duty and other vehicles; and

(C) other technologies consistent with the Department's plan.

(c) Demonstration.—In carrying out the programs under this section, the Secretary shall

fund a limited number of demonstration projects, consistent with a determination of the maturity, cost-effectiveness, and environmental impacts of technologies supporting each project. In selecting projects under this subsection, the Secretary shall, to the extent practicable and in the public interest, select projects that—

(1) involve using hydrogen and related products at existing facilities or installations, such as existing office buildings, military bases, vehicle fleet centers, transit bus authorities, or units of the National Park System;

(2) depend on reliable power from hydrogen to carry out essential activities;-

(3) lead to the replication of hydrogen technologies and draw such technologies into the marketplace;

(4) include vehicle, portable, and stationary demonstrations of fuel cell and hydrogen-based energy technologies;

(5) address the interdependency of demand for hydrogen fuel cell applications and hydrogen fuel infrastructure;

(6) raise awareness of hydrogen technology among the public;

(7) facilitate identification of an optimum technology among competing alternatives;

(8) address distributed generation using renewable sources; and

(9) address applications specific to rural or remote locations, including isolated villages and islands, the National Park System, and tribal entities.

The Secretary shall give preference to projects which address multiple elements contained in paragraphs (1) through (9).

(d) DEPLOYMENT.—In carrying out the programs under this section, the Secretary shall, in partnership with the private sector, conduct activities to facilitate the deployment of hydrogen energy and energy infrastructure, fuel cells, and advanced vehicle technologies.

(e) FUNDING.—

(1) IN GENERAL.—The Secretary shall carry out the programs under this section using a competitive, merit-based review process and consistent with the generally applicable Federal laws and regulations governing awards of financial assistance, contracts, or other agreements.

(2) RESEARCH CENTERS.—Activities under this section may be carried out by funding nationally recognized university-based or Federal laboratory research centers.

(f) COST SHARING.—

(1) RESEARCH AND DEVELOPMENT.—Except as otherwise provided in this title, for research and development programs carried out under this title the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. The Secretary may reduce or eliminate the non-Federal requirement under this paragraph if the Secretary determines that the research and development is of a basic or fundamental nature or involves technical analyses or educational activities.

(2) DEMONSTRATION AND COMMERCIAL APPLICATION.—Except as otherwise provided in this title, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this title to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this paragraph if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this title.

(3) CALCULATION OF AMOUNT.—In calculating the amount of the non-Federal commitment under paragraph (1) or (2), the Secretary may include personnel, services, equipment, and other resources.

(4) SIZE OF NON-FEDERAL SHARE.—The Secretary may consider the size of the non-Federal share in selecting projects.

(g) DISCLOSURE.—Section 623 of the Energy Policy Act of 1992 (42 U.S.C. 13293) relating to the protection of information shall apply to projects carried out through grants, cooperative agreements, or contracts under this title.

SEC. 804. INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this Act, the President shall establish an interagency task force chaired by the Secretary with representatives from each of the following:

(1) The Office of Science and Technology Policy within the Executive Office of the President.

(2) The Department of Transportation.

(3) The Department of Defense.

(4) The Department of Commerce (including the National Institute of Standards and Technology).

(5) The Department of State.

(6) The Environmental Protection Agency.

(7) The National Aeronautics and Space Administration.

(8) Other Federal agencies as the Secretary determines appropriate.

(b) DUTIES.—

(1) PLANNING.—The interagency task force shall work toward—

(A) a safe, economical, and environmentally sound fuel infrastructure for hydrogen and hydrogen-carrier fuels, including an infrastructure that supports buses and other fleet transportation;

(B) fuel cells in government and other applications, including portable, stationary, and transportation applications;

(C) distributed power generation, including the generation of combined heat, power, and clean fuels including hydrogen;

(D) uniform hydrogen codes, standards, and safety protocols; and

(E) vehicle hydrogen fuel system integrity safety performance.

(2) ACTIVITIES.—The interagency task force may organize workshops and conferences, may issue publications, and may create databases to carry out its duties. The interagency task force shall—

(A) foster the exchange of generic, nonproprietary information and technology among industry, academia, and government;

(B) develop and maintain an inventory and assessment of hydrogen, fuel cells, and other advanced technologies, including the commercial capability of each technology for the economic and environmentally safe production, distribution, delivery, storage, and use of hydrogen;

(C) integrate technical and other information made available as a result of the programs and activities under this title;

(D) promote the marketplace introduction of infrastructure for hydrogen fuel vehicles; and

(E) conduct an education program to provide hydrogen and fuel cell information to potential end-users.

(c) AGENCY COOPERATION.—The heads of all agencies, including those whose agencies are not represented on the interagency task force, shall cooperate with and furnish information to the interagency task force, the Advisory Committee, and the Department.

SEC. 805. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Hydrogen Technical and Fuel Cell Advisory Committee is established to advise the Secretary on the programs and activities under this title.

(b) MEMBERSHIP.—

(1) MEMBERS.—The Advisory Committee shall be comprised of not fewer than 12 nor more than 25 members. The members shall be appointed by the Secretary to represent domestic industry, academia, professional societies, government agencies, Federal laboratories, previous advisory panels, and financial, environmental, and other appropriate organizations based on the Department's assessment of the technical and other qualifications of committee members and the needs of the Advisory Committee.

(2) TERMS.—The term of a member of the Advisory Committee shall not be more than 3 years. The Secretary may appoint members of the Advisory Committee in a manner that allows the terms of the members serving at any time to expire at spaced intervals so as to ensure continuity in the functioning of the Advisory Committee. A member of the Advisory Committee whose term is expiring may be reappointed.

(3) CHAIRPERSON.—The Advisory Committee shall have a chairperson, who is elected by the members from among their number.

(c) REVIEW.—The Advisory Committee shall review and make recommendations to the Secretary on—

(1) the implementation of programs and activities under this title;

(2) the safety, economical, and environmental consequences of technologies for the production, distribution, delivery, storage, or use of hydrogen energy and fuel cells; and

(3) the plan under section 802.

(d) RESPONSE.—

(1) CONSIDERATION OF RECOMMENDATIONS.—The Secretary shall consider, but need not adopt, any recommendations of the Advisory Committee under subsection (c).

(2) BIENNIAL REPORT.—The Secretary shall transmit a biennial report to Congress describing any recommendations made by the Advisory Committee since the previous report. The report shall include a description of how the Secretary has implemented or plans to implement the recommendations, or an explanation of the reasons that a recommendation will not be implemented. The report shall be transmitted along with the President's budget proposal.

(e) SUPPORT.—The Secretary shall provide resources necessary in the judgment of the Secretary for the Advisory Committee to carry out its responsibilities under this title.

SEC. 806. EXTERNAL REVIEW.

(a) PLAN.—The Secretary shall enter into an arrangement with the National Academy of Sciences to review the plan prepared under section 802, which shall be completed not later than 6 months after the Academy receives the plan. Not later than 45 days after receiving the review, the Secretary shall transmit the review to Congress along with a plan to implement the review's recommendations or an explanation of the reasons that a recommendation will not be implemented.

(b) ADDITIONAL REVIEW.—The Secretary shall enter into an arrangement with the National Academy of Sciences under which the Academy will review the programs under section 803 during the fourth year following the date of enactment of this Act. The Academy's review shall include the research priorities and technical milestones, and evaluate the progress toward achieving them. The review shall be completed not later than 5 years after the date of enactment of this Act. Not later than 45 days after receiving the review, the Secretary shall transmit the review to Congress along with a plan to implement the review's recommendations or an explanation for the reasons that a recommendation will not be implemented.

SEC. 807. MISCELLANEOUS PROVISIONS.

(a) REPRESENTATION.—The Secretary may represent the United States interests with respect to activities and programs under this title, in coordination with the Department of Transportation, the National Institute of Standards and Technology, and other relevant Federal agencies, before governments and nongovernmental organizations including—

(1) other Federal, State, regional, and local governments and their representatives;

(2) industry and its representatives, including members of the energy and transportation industries; and

(3) in consultation with the Department of State, foreign governments and their representatives including international organizations.

(b) Regulatory Authority.—Nothing in this title shall be construed to alter the regulatory authority of the Department.

SEC. 808. SAVINGS CLAUSE.

Nothing in this title shall be construed to affect the authority of the Secretary of Transportation that may exist prior to the date of enactment of this Act with respect to—

(1) research into, and regulation of, hydrogen-powered vehicles fuel systems integrity, standards, and safety under subtitle VI of title 49, United States Code;

(2) regulation of hazardous materials transportation under chapter 51 of title 49, United States Code;

(3) regulation of pipeline safety under chapter 601 of title 49, United States Code;

(4) encouragement and promotion of research, development, and deployment activities relating to advanced vehicle technologies under section 5506 of title 49, United States Code;

(5) regulation of motor vehicle safety under chapter 301 of title 49, United States Code;

(6) automobile fuel economy under chapter 329 of title 49, United States Code; or

(7) representation of the interests of the United States with respect to the activities and programs under the authority of title 49, United States Code.

SEC. 809. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this title, in addition to any amounts made available for these purposes under other Acts—

(1) $273,500,000 for fiscal year 2004;

(2) $375,000,000 for fiscal year 2005;

(3) $450,000,000 for fiscal year 2006;

(4) $500,000,000 for fiscal year 2007; and

(5) $550,000,000 for fiscal year 2008.

TITLE IX—RESEARCH AND DEVELOPMENT

SEC. 901. GOALS.

(a) In General.—The Secretary shall conduct a balanced set of programs of energy research, development, demonstration, and commercial application to support Federal energy policy and programs by the Department. Such programs shall be focused on—

(1) increasing the efficiency of all energy intensive sectors through conservation and improved technologies;

(2) promoting diversity of energy supply;

(3) decreasing the Nation's dependence on foreign energy supplies;

(4) improving United States energy security; and

(5) decreasing the environmental impact of energy-related activities.

(b) Goals.—The Secretary shall publish measurable 5-year cost and performance-based goals with each annual budget submission in at least the following areas:

(1) Energy efficiency for buildings, energy-consuming industries, and vehicles.

(2) Electric energy generation (including distributed generation), transmission, and storage.

(3) Renewable energy technologies including wind power, photovoltaics, solar thermal systems, geothermal energy, hydrogen-fueled systems, biomass-based systems, biofuels, and hydropower.

(4) Fossil energy including power generation, onshore and offshore oil and gas resource recovery, and transportation.

(5) Nuclear energy including programs for existing and advanced reactors and education of future specialists.

(c) Public Comment.—The Secretary shall provide mechanisms for input on the annually published goals from industry, university, and other public sources.

(d) Effect of Goals.—

(1) No new authority or requirement.—Nothing in subsection (a) or the annually published goals shall—

(A) create any new—

(i) authority for any Federal agency; or

(ii) requirement for any other person;

(B) be used by a Federal agency to support the establishment of regulatory standards or regulatory requirements; or

(C) alter the authority of the Secretary to make grants or other awards.

(2) No limitation.—Nothing in this subsection shall be construed to limit the authority of the Secretary to impose conditions on grants or other awards based on the goals in subsection (a) or any subsequent modification thereto.

SEC. 902. DEFINITIONS.

For purposes of this title:

(1) Department.—The term "Department" means the Department of Energy.

(2) Departmental mission.—The term "departmental mission" means any of the functions vested in the Secretary of Energy by the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) or other law.

(3) Institution of higher education.—The term "institution of higher education" has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(4) National laboratory.—The term "National Laboratory" means any of the following laboratories owned by the Department:

(A) Ames Laboratory.

(B) Argonne National Laboratory.

(C) Brookhaven National Laboratory.

(D) Fermi National Accelerator Laboratory.

(E) Idaho National Engineering and Environmental Laboratory.

(F) Lawrence Berkeley National Laboratory.

(G) Lawrence Livermore National Laboratory.

(H) Los Alamos National Laboratory.

(I) National Energy Technology Laboratory.

(J) National Renewable Energy Laboratory.

(K) Oak Ridge National Laboratory.

(L) Pacific Northwest National Laboratory.

(M) Princeton Plasma Physics Laboratory.

(N) Sandia National Laboratories.

(O) Stanford Linear Accelerator Center.

(P) Thomas Jefferson National Accelerator Facility.

(5) Nonmilitary energy laboratory.—The term "nonmilitary energy laboratory" means the laboratories listed in paragraph (4), except for those listed in subparagraphs (G), (H), and (N).

(6) Secretary.—The term "Secretary" means the Secretary of Energy.

(7) Single-purpose research facility.—The term "single-purpose research facility" means any of the primarily single-purpose entities owned by the Department or any other organization of the Department designated by the Secretary.

Subtitle A—Energy Efficiency

SEC. 904. ENERGY EFFICIENCY.

(a) In General.—The following sums are authorized to be appropriated to the Secretary for energy efficiency and conservation research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $616,000,000.

(2) For fiscal year 2005, $695,000,000.

(3) For fiscal year 2006, $772,000,000.

(4) For fiscal year 2007, $865,000,000.

(5) For fiscal year 2008, $920,000,000.

(b) Allocations.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 905—

(A) for fiscal year 2004, $20,000,000;

(B) for fiscal year 2005, $30,000,000;

(C) for fiscal year 2006, $50,000,000;

(D) for fiscal year 2007, $50,000,000; and

(E) for fiscal year 2008, $50,000,000.

(2) For activities under section 907—

(A) for fiscal year 2004, $4,000,000; and

(B) for each of fiscal years 2005 through 2008, $7,000,000.

(3) For activities under section 908—

(A) for fiscal year 2004, $20,000,000;

(B) for fiscal year 2005, $25,000,000;

(C) for fiscal year 2006, $30,000,000;

(D) for fiscal year 2007, $35,000,000; and

(E) for fiscal year 2008, $40,000,000.

(4) For activities under section 909, $2,000,000 for each of fiscal years 2005 through 2008.

(c) Extended Authorization.—There are authorized to be appropriated to the Secretary for activities under section 905, $50,000,000 for each of fiscal years 2009 through 2013.

(d) Limitation on Use of Funds.—None of the funds authorized to be appropriated under this section may be used for—

(1) the issuance and implementation of energy efficiency regulations;

(2) the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.);

(3) the State Energy Program under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.); or

(4) the Federal Energy Management Program under part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.).

SEC. 905. NEXT GENERATION LIGHTING INITIATIVE.

(a) In General.—The Secretary shall carry out a Next Generation Lighting Initiative in accordance with this section to support research, development, demonstration, and commercial application activities related to advanced solid-state lighting technologies based on white light emitting diodes.

(b) Objectives.—The objectives of the initiative shall be to develop advanced solid-state organic and inorganic lighting technologies based on white light emitting diodes that, compared to incandescent and fluorescent lighting technologies, are longer lasting; more energy-efficient; and cost-competitive, and have less environmental impact.

(c) Industry Alliance.—The Secretary shall, not later than 3 months after the date of enactment of this section, competitively select an Industry Alliance to represent participants that are private, for-profit firms which, as a group, are broadly representative of United States solid state lighting research, development, infrastructure, and manufacturing expertise as a whole.

(d) Research.—

(1) In general.—The Secretary shall carry out the research activities of the Next Generation Lighting Initiative through competitively awarded grants to researchers, including Industry Alliance participants, National Laboratories, and institutions of higher education.

(2) Assistance from the industry alliance.—The Secretary shall annually solicit from the Industry Alliance—

(A) comments to identify solid-state lighting technology needs;

(B) assessment of the progress of the Initiative's research activities; and

(C) assistance in annually updating solid-state lighting technology roadmaps.

(3) Availability of information and roadmaps.—The information and roadmaps under paragraph (2) shall be available to the public and public response shall be solicited by the Secretary.

(e) Development, Demonstration, and Commercial Application.—The Secretary shall carry out a development, demonstration, and commercial application program for the Next Generation Lighting Initiative through competitively selected awards. The Secretary may give

preference to participants of the Industry Alliance selected pursuant to subsection (c).

(f) INTELLECTUAL PROPERTY.—The Secretary may require, in accordance with the authorities provided in section 202(a)(ii) of title 35, United States Code, section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), and section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), that—

(1) for any new invention resulting from activities under subsection (d)—

(A) the Industry Alliance members that are active participants in research, development, and demonstration activities related to the advanced solid-state lighting technologies that are the subject of this section shall be granted first option to negotiate with the invention owner nonexclusive licenses and royalties for uses of the invention related to solid-state lighting on terms that are reasonable under the circumstances; and

(B)(i) for 1 year after a United States patent is issued for the invention, the patent holder shall not negotiate any license or royalty with any entity that is not a participant in the Industry Alliance described in subparagraph (A); and

(ii) during the year described in clause (i), the invention owner shall negotiate nonexclusive licenses and royalties in good faith with any interested participant in the Industry Alliance described in subparagraph (A); and

(2) such other terms as the Secretary determines are required to promote accelerated commercialization of inventions made under the Initiative.

(g) NATIONAL ACADEMY REVIEW.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct periodic reviews of the Next Generation Lighting Initiative. The Academy shall review the research priorities, technical milestones, and plans for technology transfer and progress towards achieving them. The Secretary shall consider the results of such reviews in evaluating the information obtained under subsection (d)(2).

(h) DEFINITIONS.—As used in this section:

(1) ADVANCED SOLID-STATE LIGHTING.—The term “advanced solid-state lighting” means a semiconducting device package and delivery system that produces white light using externally applied voltage.

(2) RESEARCH.—The term “research” includes research on the technologies, materials, and manufacturing processes required for white light emitting diodes.

(3) INDUSTRY ALLIANCE.—The term “Industry Alliance” means an entity selected by the Secretary under subsection (c).

(4) WHITE LIGHT EMITTING DIODE.—The term “white light emitting diode” means a semiconducting package, utilizing either organic or inorganic materials, that produces white light using externally applied voltage.

SEC. 906. NATIONAL BUILDING PERFORMANCE INITIATIVE.

(a) INTERAGENCY GROUP.—Not later than 90 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall establish an interagency group to develop, in coordination with the advisory committee established under subsection (e), a National Building Performance Initiative (in this section referred to as the “Initiative”). The interagency group shall be co-chaired by appropriate officials of the Department and the Department of Commerce, who shall jointly arrange for the provision of necessary administrative support to the group.

(b) INTEGRATION OF EFFORTS.—The Initiative, working with the National Institute of Building Sciences, shall integrate Federal, State, and voluntary private sector efforts to reduce the costs of construction, operation, maintenance, and renovation of commercial, industrial, institutional, and residential buildings.

(c) PLAN.—Not later than 1 year after the date of enactment of this Act, the interagency group shall submit to Congress a plan for carrying out the appropriate Federal role in the Initiative. The plan shall include—

(1) research, development, demonstration, and commercial application of systems and materials for new construction and retrofit relating to the building envelope and building system components; and

(2) the collection, analysis, and dissemination of research results and other pertinent information on enhancing building performance to industry, government entities, and the public.

(d) DEPARTMENT OF ENERGY ROLE.—Within the Federal portion of the Initiative, the Department shall be the lead agency for all aspects of building performance related to use and conservation of energy.

(e) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of Commerce and the Director of the Office of Science and Technology Policy, shall establish an advisory committee to—

(A) analyze and provide recommendations on potential private sector roles and participation in the Initiative; and

(B) review and provide recommendations on the plan described in subsection (c).

(2) MEMBERSHIP.—Membership of the advisory committee shall include representatives with a broad range of appropriate expertise, including expertise in—

(A) building research and technology;

(B) architecture, engineering, and building materials and systems; and

(C) the residential, commercial, and industrial sectors of the construction industry.

(f) CONSTRUCTION.—Nothing in this section provides any Federal agency with new authority to regulate building performance.

SEC. 907. SECONDARY ELECTRIC VEHICLE BATTERY USE PROGRAM.

(a) DEFINITIONS.—For purposes of this section:

(1) ASSOCIATED EQUIPMENT.—The term “associated equipment” means equipment located where the batteries will be used that is necessary to enable the use of the energy stored in the batteries.

(2) BATTERY.—The term ‘battery” means an energy storage device that previously has been used to provide motive power in a vehicle powered in whole or in part by electricity.

(b) PROGRAM.—The Secretary shall establish and conduct a research, development, demonstration, and commercial application program for the secondary use of batteries if the Secretary finds that there are sufficient numbers of such batteries to support the program. The program shall be—

(1) designed to demonstrate the use of batteries in secondary applications, including utility and commercial power storage and power quality;

(2) structured to evaluate the performance, including useful service life and costs, of such batteries in field operations, and the necessary supporting infrastructure, including reuse and disposal of batteries; and

(3) coordinated with ongoing secondary battery use programs at the National Laboratories and in industry.

(c) SOLICITATION.—Not later than 180 days after the date of enactment of this Act, if the Secretary finds under subsection (b) that there are sufficient numbers of batteries to support the program, the Secretary shall solicit proposals to demonstrate the secondary use of batteries and associated equipment and supporting infrastructure in geographic locations throughout the United States. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this section.

(d) SELECTION OF PROPOSALS.—

(1) IN GENERAL.—The Secretary shall, not later than 90 days after the closing date established by the Secretary for receipt of proposals under subsection (c), select up to 5 proposals which may receive financial assistance under this section, subject to the availability of appropriations.

(2) DIVERSITY; ENVIRONMENTAL EFFECT.—In selecting proposals, the Secretary shall consider diversity of battery type, geographic and climatic diversity, and life-cycle environmental effects of the approaches.

(3) LIMITATION.—No 1 project selected under this section shall receive more than 25 percent of the funds authorized for the program under this section.

(4) OPTIMIZATION OF FEDERAL RESOURCES.—The Secretary shall consider the extent of involvement of State or local government and other persons in each demonstration project to optimize use of Federal resources.

(5) OTHER CRITERIA.—The Secretary may consider such other criteria as the Secretary considers appropriate.

(e) CONDITIONS.—The Secretary shall require that—

(1) relevant information be provided to the Department, the users of the batteries, the proposers, and the battery manufacturers;

(2) the proposer provide at least 50 percent of the costs associated with the proposal; and

(3) the proposer provide to the Secretary such information regarding the disposal of the batteries as the Secretary may require to ensure that the proposer disposes of the batteries in accordance with applicable law.

SEC. 908. ENERGY EFFICIENCY SCIENCE INITIATIVE.

(a) ESTABLISHMENT.—The Secretary shall establish an Energy Efficiency Science Initiative to be managed by the Assistant Secretary in the Department with responsibility for energy conservation under section 203(a)(9) of the Department of Energy Organization Act (42 U.S.C. 7133(a)(9)), in consultation with the Director of the Office of Science, for grants to be competitively awarded and subject to peer review for research relating to energy efficiency.

(b) REPORT.—The Secretary shall submit to Congress, along with the President's annual budget request under section 1105(a) of title 31, United States Code, a report on the activities of the Energy Efficiency Science Initiative, including a description of the process used to award the funds and an explanation of how the research relates to energy efficiency.

SEC. 909. ELECTRIC MOTOR CONTROL TECHNOLOGY.

The Secretary shall conduct a research, development, demonstration, and commercial application program on advanced control devices to improve the energy efficiency of electric motors used in heating, ventilation, air conditioning, and comparable systems.

SEC. 910. ADVANCED ENERGY TECHNOLOGY TRANSFER CENTERS.

(a) GRANTS.—Not later than 18 months after the date of enactment of this Act, the Secretary shall make grants to nonprofit institutions, State and local governments, or universities (or consortia thereof), to establish a geographically dispersed network of Advanced Energy Technology Transfer Centers, to be located in areas the Secretary determines have the greatest need of the services of such Centers.

(b) ACTIVITIES.—

(1) IN GENERAL.—Each Center shall operate a program to encourage demonstration and commercial application of advanced energy methods

and technologies through education and outreach to building and industrial professionals, and to other individuals and organizations with an interest in efficient energy use.

(2) ADVISORY PANEL.—Each Center shall establish an advisory panel to advise the Center on how best to accomplish the activities under paragraph (1).

(c) APPLICATION.—A person seeking a grant under this section shall submit to the Secretary an application in such form and containing such information as the Secretary may require. The Secretary may award a grant under this section to an entity already in existence if the entity is otherwise eligible under this section.

(d) SELECTION CRITERIA.—The Secretary shall award grants under this section on the basis of the following criteria, at a minimum:

(1) The ability of the applicant to carry out the activities in subsection (b).

(2) The extent to which the applicant will coordinate the activities of the Center with other entities, such as State and local governments, utilities, and educational and research institutions.

(e) MATCHING FUNDS.—The Secretary shall require a non-Federal matching requirement of at least 50 percent of the costs of establishing and operating each Center.

(f) ADVISORY COMMITTEE.—The Secretary shall establish an advisory committee to advise the Secretary on the establishment of Centers under this section. The advisory committee shall be composed of individuals with expertise in the area of advanced energy methods and technologies, including at least 1 representative from—

(1) State or local energy offices;

(2) energy professionals;

(3) trade or professional associations;

(4) architects, engineers, or construction professionals;

(5) manufacturers;

(6) the research community; and

(7) nonprofit energy or environmental organizations.

(g) DEFINITIONS.—For purposes of this section:

(1) ADVANCED ENERGY METHODS AND TECHNOLOGIES.—The term "advanced energy methods and technologies" means all methods and technologies that promote energy efficiency and conservation, including distributed generation technologies, and life-cycle analysis of energy use.

(2) CENTER.—The term "Center" means an Advanced Energy Technology Transfer Center established pursuant to this section.

(3) DISTRIBUTED GENERATION.—The term "distributed generation" means an electric power generation facility that is designed to serve retail electric consumers at or near the facility site.

Subtitle B—Distributed Energy and Electric Energy Systems

SEC. 911. DISTRIBUTED ENERGY AND ELECTRIC ENERGY SYSTEMS.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for distributed energy and electric energy systems activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $190,000,000.

(2) For fiscal year 2005, $200,000,000.

(3) For fiscal year 2006, $220,000,000.

(4) For fiscal year 2007, $240,000,000.

(5) For fiscal year 2008, $260,000,000.

(b) MICRO-COGENERATION ENERGY TECHNOLOGY.—From amounts authorized under subsection (a), $20,000,000 for each of fiscal years 2004 and 2005 is authorized for activities under section 914.

SEC. 912. HYBRID DISTRIBUTED POWER SYSTEMS.

(a) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop and transmit to Congress a strategy for a comprehensive research, development, demonstration, and commercial application program to develop hybrid distributed power systems that combine—

(1) 1 or more renewable electric power generation technologies of 10 megawatts or less located near the site of electric energy use; and

(2) nonintermittent electric power generation technologies suitable for use in a distributed power system.

(b) CONTENTS.—The strategy shall—

(1) identify the needs best met with such hybrid distributed power systems and the technological barriers to the use of such systems;

(2) provide for the development of methods to design, test, integrate into systems, and operate such hybrid distributed power systems;

(3) include, as appropriate, research, development, demonstration, and commercial application on related technologies needed for the adoption of such hybrid distributed power systems, including energy storage devices and environmental control technologies;

(4) include research, development, demonstration, and commercial application of interconnection technologies for communications and controls of distributed generation architectures, particularly technologies promoting real-time response to power market information and physical conditions on the electrical grid; and

(5) describe how activities under the strategy will be integrated with other research, development, demonstration, and commercial application activities supported by the Department related to electric power technologies.

SEC. 913. HIGH POWER DENSITY INDUSTRY PROGRAM.

The Secretary shall establish a comprehensive research, development, demonstration, and commercial application program to improve energy efficiency of high power density facilities, including data centers, server farms, and telecommunications facilities. Such program shall consider technologies that provide significant improvement in thermal controls, metering, load management, peak load reduction, or the efficient cooling of electronics.

SEC. 914. MICRO-COGENERATION ENERGY TECHNOLOGY.

The Secretary shall make competitive, merit-based grants to consortia for the development of micro-cogeneration energy technology. The consortia shall explore—

(1) the use of small-scale combined heat and power in residential heating appliances; and

(2) the use of excess power to operate other appliances within the residence and supply excess generated power to the power grid.

SEC. 915. DISTRIBUTED ENERGY TECHNOLOGY DEMONSTRATION PROGRAM.

The Secretary, within the sums authorized under section 911(a), may provide financial assistance to coordinating consortia of interdisciplinary participants for demonstrations designed to accelerate the utilization of distributed energy technologies, such as fuel cells, microturbines, reciprocating engines, thermally activated technologies, and combined heat and power systems, in highly energy intensive commercial applications.

SEC. 916. RECIPROCATING POWER.

The Secretary shall conduct a research, development, and demonstration program regarding fuel system optimization and emissions reduction after-treatment technologies for industrial reciprocating engines. Such after-treatment technologies shall use processes that reduce emissions by recirculating exhaust gases and shall be designed to be retrofitted to any new or existing diesel or natural gas engine used for power generation, peaking power generation, combined heat and power, or compression.

Subtitle C—Renewable Energy

SEC. 918. RENEWABLE ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for renewable energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $480,000,000.

(2) For fiscal year 2005, $550,000,000.

(3) For fiscal year 2006, $610,000,000.

(4) For fiscal year 2007, $659,000,000.

(5) For fiscal year 2008, $710,000,000.

(b) BIOENERGY.—From the amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 919:

(1) For fiscal year 2004, $135,425,000.

(2) For fiscal year 2005, $155,600,000.

(3) For fiscal year 2006, $167,650,000.

(4) For fiscal year 2007, $180,000,000.

(5) For fiscal year 2008, $192,000,000.

(c) CONCENTRATING SOLAR POWER.—From amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 920:

(1) For fiscal year 2004, $20,000,000.

(2) For fiscal year 2005, $40,000,000.

(3) For each of fiscal years 2006, 2007 and 2008, $50,000,000.

(d) PUBLIC BUILDINGS.—From the amounts authorized under subsection (a), $30,000,000 for each of the fiscal years 2004 through 2008 are authorized to be appropriated to carry out section 922.

(e) LIMITS ON USE OF FUNDS.—

(1) NO FUNDS FOR RENEWABLE SUPPORT AND IMPLEMENTATION.—None of the funds authorized to be appropriated under this section may be used for Renewable Support and Implementation.

(2) GRANTS.—Of the funds authorized under subsection (b), not less than $5,000,000 for each fiscal year shall be made available for grants to Historically Black Colleges and Universities, Tribal Colleges, and Hispanic-Serving Institutions.

(3) REGIONAL FIELD VERIFICATION PROGRAM.—Of the funds authorized under subsection (a), not less than $4,000,000 for each fiscal year shall be made available for the Regional Field Verification Program of the Department.

(4) OFF-STREAM PUMPED STORAGE HYDROPOWER.—Of the funds authorized under subsection (a), such sums as may be necessary shall be made available for demonstration projects of off-stream pumped storage hydropower.

(f) CONSULTATION.—In carrying out this subtitle, the Secretary, in consultation with the Secretary of Agriculture, shall demonstrate the use of advanced wind power technology, including combined use with coal gasification; biomass; geothermal energy systems; and other renewable energy technologies to assist in delivering electricity to rural and remote locations.

SEC. 919. BIOENERGY PROGRAMS.

(a) DEFINITIONS.—For the purposes of this section:

(1) The term "agricultural byproducts", includes waste products, including poultry fat and poultry waste.

(2) The term "cellulosic biomass" means any portion of a crop containing lignocellulose or hemicellulose, including barley grain, grapeseed, forest thinnings, rice bran, rice hulls, rice straw, soybean matter, and sugarcane bagasse, or any crop grown specifically for the purpose of producing cellulosic feedstocks.

(b) PROGRAM.—The Secretary shall conduct a program of research, development, demonstration, and commercial application for bioenergy, including—

(1) biopower energy systems;

(2) biofuels;

(3) bio-based products;

(4) integrated biorefineries that may produce biopower, biofuels, and bio-based products;

(5) cross-cutting research and development in feedstocks and enzymes; and

(6) economic analysis.

(c) BIOFUELS AND BIO-BASED PRODUCTS.—The goals of the biofuels and bio-based products programs shall be to develop, in partnership with industry—

(1) advanced biochemical and thermochemical conversion technologies capable of making biofuels that are price-competitive with gasoline or diesel in either internal combustion engines or fuel cell-powered vehicles, and bio-based products from a variety of feedstocks, including grains, cellulosic biomass, and other agricultural byproducts; and

(2) advanced biotechnology processes capable of making biofuels and bio-based products with emphasis on development of biorefinery technologies using enzyme-based processing systems.

SEC. 920. CONCENTRATING SOLAR POWER RESEARCH AND DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall conduct a program of research and development to evaluate the potential of concentrating solar power for hydrogen production, including cogeneration approaches for both hydrogen and electricity. Such program shall take advantage of existing facilities to the extent possible and shall include—

(1) development of optimized technologies that are common to both electricity and hydrogen production;

(2) evaluation of thermochemical cycles for hydrogen production at the temperatures attainable with concentrating solar power;

(3) evaluation of materials issues for the thermochemical cycles described in paragraph (2);

(4) system architectures and economics studies; and

(5) coordination with activities in the Advanced Reactor Hydrogen Cogeneration Project on high temperature materials, thermochemical cycles, and economic issues.

(b) ASSESSMENT.—In carrying out the program under this section, the Secretary shall—

(1) assess conflicting guidance on the economic potential of concentrating solar power for electricity production received from the National Research Council report entitled "Renewable Power Pathways: A Review of the U.S. Department of Energy's Renewable Energy Programs" in 2000 and subsequent Department-funded reviews of that report; and

(2) provide an assessment of the potential impact of the technology before, or concurrent with, submission of the fiscal year 2006 budget.

(c) REPORT.—Not later than 5 years after the date of enactment of this Act, the Secretary shall provide a report to Congress on the economic and technical potential for electricity or hydrogen production, with or without cogeneration, with concentrating solar power, including the economic and technical feasibility of potential construction of a pilot demonstration facility suitable for commercial production of electricity or hydrogen from concentrating solar power.

SEC. 921. MISCELLANEOUS PROJECTS.

The Secretary may conduct research, development, demonstration, and commercial application programs for—

(1) ocean energy, including wave energy; and

(2) the combined use of renewable energy technologies with one another and with other energy technologies, including the combined use of wind power and coal gasification technologies.

SEC. 922. RENEWABLE ENERGY IN PUBLIC BUILDINGS.

(a) DEMONSTRATION AND TECHNOLOGY TRANSFER PROGRAM.—The Secretary shall establish a program for the demonstration of innovative technologies for solar and other renewable energy sources in buildings owned or operated by a State or local government, and for the dissemination of information resulting from such demonstration to interested parties.

(b) LIMIT ON FEDERAL FUNDING.—The Secretary shall provide under this section no more than 40 percent of the incremental costs of the solar or other renewable energy source project funded.

(c) REQUIREMENT.—As part of the application for awards under this section, the Secretary shall require all applicants—

(1) to demonstrate a continuing commitment to the use of solar and other renewable energy sources in buildings they own or operate; and

(2) to state how they expect any award to further their transition to the significant use of renewable energy.

SEC. 923. STUDY OF MARINE RENEWABLE ENERGY OPTIONS.

(a) IN GENERAL.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study on—

(1) the feasibility of various methods of renewable generation of energy from the ocean, including energy from waves, tides, currents, and thermal gradients; and

(2) the research, development, demonstration, and commercial application activities required to make marine renewable energy generation competitive with other forms of electricity generation.

(b) TRANSMITTAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit the study to Congress along with the Secretary's recommendations for implementing the results of the study.

Subtitle D—Nuclear Energy

SEC. 924. NUCLEAR ENERGY.

(a) CORE PROGRAMS.—The following sums are authorized to be appropriated to the Secretary for nuclear energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle, other than those described in subsection (b):

(1) For fiscal year 2004, $273,000,000.
(2) For fiscal year 2005, $355,000,000.
(3) For fiscal year 2006, $430,000,000.
(4) For fiscal year 2007, $455,000,000.
(5) For fiscal year 2008, $545,000,000.

(b) NUCLEAR INFRASTRUCTURE SUPPORT.—The following sums are authorized to be appropriated to the Secretary for activities under section 925(e):

(1) For fiscal year 2004, $125,000,000.
(2) For fiscal year 2005, $130,000,000.
(3) For fiscal year 2006, $135,000,000.
(4) For fiscal year 2007, $140,000,000.
(5) For fiscal year 2008, $145,000,000.

(c) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 926—
(A) for fiscal year 2004, $140,000,000;
(B) for fiscal year 2005, $145,000,000;
(C) for fiscal year 2006, $150,000,000;
(D) for fiscal year 2007, $155,000,000; and
(E) for fiscal year 2008, $275,000,000.
(2) For activities under section 927—
(A) for fiscal year 2004, $35,200,000;
(B) for fiscal year 2005, $44,350,000;
(C) for fiscal year 2006, $49,200,000;
(D) for fiscal year 2007, $54,950,000; and
(E) for fiscal year 2008, $60,000,000.

(3) For activities under section 929, for each of fiscal years 2004 through 2008, $6,000,000.

(d) LIMITATION ON USE OF FUNDS.—None of the funds authorized under this section may be used for decommissioning the Fast Flux Test Facility.

SEC. 925. NUCLEAR ENERGY RESEARCH AND DEVELOPMENT PROGRAMS.

(a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The Secretary shall carry out a Nuclear Energy Research Initiative for research and development related to nuclear energy.

(b) NUCLEAR ENERGY PLANT OPTIMIZATION PROGRAM.—The Secretary shall carry out a Nuclear Energy Plant Optimization Program to support research and development activities addressing reliability, availability, productivity, component aging, safety, and security of existing nuclear power plants.

(c) NUCLEAR POWER 2010 PROGRAM.—The Secretary shall carry out a Nuclear Power 2010 Program, consistent with recommendations in the October 2001 report entitled "A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010" issued by the Nuclear Energy Research Advisory Committee of the Department. Whatever type of reactor is chosen for the hydrogen cogeneration project under subtitle C of title VI, that type shall not be addressed in the Program under this section. The Program shall include—

(1) support for first-of-a-kind engineering design and certification expenses of advanced nuclear power plant designs, which offer improved safety and economics over current conventional plants and the promise of near-term to medium-term commercial deployment;

(2) action by the Secretary to encourage domestic power companies to install new nuclear plant capacity as soon as possible;

(3) utilization of the expertise and capabilities of industry, universities, and National Laboratories in evaluation of advanced nuclear fuel cycles and fuels testing;

(4) consideration of proliferation-resistant passively-safe, small reactors suitable for long-term electricity production without refueling and suitable for use in remote installations;

(5) participation of international collaborators in research, development, design, and deployment efforts as appropriate and consistent with United States interests in nonproliferation of nuclear weapons;

(6) encouragement for university and industry participation; and

(7) selection of projects such as to strengthen the competitive position of the domestic nuclear power industrial infrastructure.

(d) GENERATION IV NUCLEAR ENERGY SYSTEMS INITIATIVE.—The Secretary shall carry out a Generation IV Nuclear Energy Systems Initiative to develop an overall technology plan and to support research and development necessary to make an informed technical decision about the most promising candidates for eventual commercial application. The Initiative shall examine advanced proliferation-resistant and passively safe reactor designs, including designs that—

(1) are economically competitive with other electric power generation plants;

(2) have higher efficiency, lower cost, and improved safety compared to reactors in operation on the date of enactment of this Act;

(3) use fuels that are proliferation-resistant and have substantially reduced production of high-level waste per unit of output; and

(4) use improved instrumentation.

(e) NUCLEAR INFRASTRUCTURE SUPPORT.—The Secretary shall develop and implement a strategy for the facilities of the Office of Nuclear Energy, Science, and Technology and shall transmit a report containing the strategy along with the President's budget request to Congress for fiscal year 2006.

SEC. 926. ADVANCED FUEL CYCLE INITIATIVE.

(a) IN GENERAL.—The Secretary, through the Director of the Office of Nuclear Energy, Science, and Technology, shall conduct an advanced fuel recycling technology research and development program to evaluate proliferation-resistant fuel recycling and transmutation technologies that minimize environmental or public health and safety impacts as an alternative to aqueous reprocessing technologies deployed as *of the date of enactment of this Act in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts, subject to annual review by the Secretary's Nuclear Energy Research Advisory Committee or other independent entity, as appropriate. Opportunities to enhance progress of the program through international cooperation should be sought.*

(b) REPORTS.—The Secretary shall report on the activities of the advanced fuel recycling technology research and development program as part of the Department's annual budget submission.

SEC. 927. UNIVERSITY NUCLEAR SCIENCE AND ENGINEERING SUPPORT.

(a) ESTABLISHMENT.—The Secretary shall support a program to invest in human resources and infrastructure in the nuclear sciences and engineering and related fields (including health physics and nuclear and radiochemistry), consistent with departmental missions related to civilian nuclear research and development.

(b) DUTIES.—In carrying out the program under this section, the Secretary shall establish fellowship and faculty assistance programs, as well as provide support for fundamental research and encourage collaborative research among industry, National Laboratories, and universities through the Nuclear Energy Research Initiative. The Secretary is encouraged to support activities addressing the entire fuel cycle through involvement of both the Office of Nuclear Energy, Science, and Technology and the Office of Civilian Radioactive Waste Management. The Secretary shall support communication and outreach related to nuclear science, engineering, and nuclear waste management, consistent with interests of the United States in nonproliferation of nuclear weapons capabilities.

(c) STRENGTHENING UNIVERSITY RESEARCH AND TRAINING REACTORS AND ASSOCIATED INFRASTRUCTURE.—Activities under this section may include—

(1) converting research and training reactors currently using high-enrichment fuels to low-enrichment fuels, upgrading operational instrumentation, and sharing of reactors among institutions of higher education;

(2) providing technical assistance, in collaboration with the United States nuclear industry, in relicensing and upgrading research and training reactors as part of a student training program; and

(3) providing funding, through the Innovations in Nuclear Infrastructure and Education Program, for reactor improvements as part of a focused effort that emphasizes research, training, and education.

(d) UNIVERSITY NATIONAL LABORATORY INTERACTIONS.—The Secretary shall develop sabbatical fellowship and visiting scientist programs to encourage sharing of personnel between National Laboratories and universities.

(e) OPERATING AND MAINTENANCE COSTS.—Funding for a research project provided under this section may be used to offset a portion of the operating and maintenance costs of a research and training reactor at an institution of higher education used in the research project.

SEC. 928. SECURITY OF REACTOR DESIGNS.

The Secretary, through the Director of the Office of Nuclear Energy, Science, and Technology, shall conduct a research and development program on cost-effective technologies for increasing the safety of reactor designs from natural phenomena and the security of reactor designs from deliberate attacks.

SEC. 929. ALTERNATIVES TO INDUSTRIAL RADIOACTIVE SOURCES.

(a) STUDY.—The Secretary shall conduct a study and provide a report to Congress not later than August 1, 2004. The study shall—

(1) survey industrial applications of large radioactive sources, including well-logging sources;

(2) review current domestic and international Department, Department of Defense, Department of State, and commercial programs to manage and dispose of radioactive sources;

(3) discuss disposal options and practices for currently deployed or future sources and, if deficiencies are noted in existing disposal options or practices for either deployed or future sources, recommend options to remedy deficiencies; and

(4) develop a program plan for research and development to develop alternatives to large industrial sources that reduce safety, environmental, or proliferation risks to either workers using the sources or the public.

(b) PROGRAM.—The Secretary shall establish a research and development program to implement the program plan developed under subsection (a)(4). The program shall include miniaturized particle accelerators for well-logging or other industrial applications and portable accelerators for production of short-lived radioactive materials at an industrial site.

SEC. 930. GEOLOGICAL ISOLATION OF SPENT FUEL.

The Secretary shall conduct a study to determine the feasibility of deep borehole disposal of spent nuclear fuel and high-level radioactive waste. The study shall emphasize geological, chemical, and hydrological characterization of, and design of engineered structures for, deep borehole environments. Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit the study to Congress.

Subtitle E—Fossil Energy

PART I—RESEARCH PROGRAMS

SEC. 931. FOSSIL ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for fossil energy research, development, demonstration, and commercial application activities, including activities authorized under this part:

(1) For fiscal year 2004, $530,000,000.

(2) For fiscal year 2005, $556,000,000.

(3) For fiscal year 2006, $583,000,000.

(4) For fiscal year 2007, $611,000,000.

(5) For fiscal year 2008, $626,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 932(b)(2), $28,000,000 for each of the fiscal years 2004 through 2008.

(2) For activities under section 934—

(A) for fiscal year 2004, $12,000,000;

(B) for fiscal year 2005, $15,000,000; and

(C) for each of fiscal years 2006 through 2008, $20,000,000.

(3) For activities under section 935—

(A) for fiscal year 2004, $259,000,000;

(B) for fiscal year 2005, $272,000,000;

(C) for fiscal year 2006, $285,000,000;

(D) for fiscal year 2007, $298,000,000; and

(E) for fiscal year 2008, $308,000,000.

(4) For the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (42 U.S.C. 7144d), $25,000,000 for each of fiscal years 2004 through 2008.

(5) For activities under section 933, $4,000,000 for fiscal year 2004 and $2,000,000 for each of fiscal years 2005 through 2008.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (42 U.S.C. 7144d), $25,000,000 for each of fiscal years 2009 through 2012.

(d) LIMITS ON USE OF FUNDS.—

(1) NO FUNDS FOR CERTAIN PROGRAMS.—None of the funds authorized under this section may be used for Fossil Energy Environmental Restoration or Import/Export Authorization.

(2) INSTITUTIONS OF HIGHER EDUCATION.—Of the funds authorized under subsection (b)(2), not less than 20 percent of the funds appropriated for each fiscal year shall be dedicated to research and development carried out at institutions of higher education.

SEC. 932. OIL AND GAS RESEARCH PROGRAMS.

(a) OIL AND GAS RESEARCH.—The Secretary shall conduct a program of research, development, demonstration, and commercial application on oil and gas, including—

(1) exploration and production;

(2) gas hydrates;

(3) reservoir life and extension;

(4) transportation and distribution infrastructure;

(5) ultraclean fuels;

(6) heavy oil and oil shale;

(7) related environmental research; and

(8) compressed natural gas marine transport.

(b) FUEL CELLS.—

(1) IN GENERAL.—The Secretary shall conduct a program of research, development, demonstration, and commercial application on fuel cells for low-cost, high-efficiency, fuel-flexible, modular power systems.

(2) IMPROVED MANUFACTURING PRODUCTION AND PROCESSES.—The demonstrations under paragraph (1) shall include fuel cell technology for commercial, residential, and transportation applications, and distributed generation systems, utilizing improved manufacturing production and processes.

(c) NATURAL GAS AND OIL DEPOSITS REPORT.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Secretary of the Interior, in consultation with other appropriate Federal agencies, shall transmit a report to Congress of the latest estimates of natural gas and oil reserves, reserves growth, and undiscovered resources in Federal and State waters off the coast of Louisiana and Texas.

(d) INTEGRATED CLEAN POWER AND ENERGY RESEARCH.—

(1) NATIONAL CENTER OR CONSORTIUM OF EXCELLENCE.—The Secretary shall establish a national center or consortium of excellence in clean energy and power generation, utilizing the resources of the existing Clean Power and Energy Research Consortium, to address the Nation's critical dependence on energy and the need to reduce emissions.

(2) PROGRAM.—The center or consortium shall conduct a program of research, development, demonstration, and commercial application on integrating the following focus areas:

(A) Efficiency and reliability of gas turbines for power generation.

(B) Reduction in emissions from power generation.

(C) Promotion of energy conservation issues.

(D) Effectively utilizing alternative fuels and renewable energy.

(E) Development of advanced materials technology for oil and gas exploration and utilization in harsh environments.

(F) Education on energy and power generation issues.

SEC. 933. TECHNOLOGY TRANSFER.

The Secretary shall establish a competitive program to award a contract to a nonprofit entity for the purpose of transferring technologies developed with public funds. The entity selected under this section shall have experience in offshore oil and gas technology research management, in the transfer of technologies developed with public funds to the offshore and maritime industry, and in management of an offshore and maritime industry consortium. The program *consortium selected under section 942 shall not be eligible for selection under this section. When appropriate, the Secretary shall consider utilizing the entity selected under this section when implementing the activities authorized by section 975.*

SEC. 934. RESEARCH AND DEVELOPMENT FOR COAL MINING TECHNOLOGIES.

(a) Establishment.—The Secretary shall carry out a program of research and development on coal mining technologies. The Secretary shall cooperate with appropriate Federal agencies, coal producers, trade associations, equipment manufacturers, institutions of higher education with mining engineering departments, and other relevant entities.

(b) Program.—The research and development activities carried out under this section shall—

(1) be guided by the mining research and development priorities identified by the Mining Industry of the Future Program and in the recommendations from relevant reports of the National Academy of Sciences on mining technologies;

(2) include activities exploring minimization of contaminants in mined coal that contribute to environmental concerns including development and demonstration of electromagnetic wave imaging ahead of mining operations;

(3) develop and demonstrate electromagnetic wave imaging and radar techniques for horizontal drilling in coal beds in order to increase methane recovery efficiency, prevent spoilage of domestic coal reserves, and minimize water disposal associated with methane extraction; and

(4) expand mining research capabilities at institutions of higher education.

SEC. 935. COAL AND RELATED TECHNOLOGIES PROGRAM.

(a) In General.—In addition to the programs authorized under title IV, the Secretary shall conduct a program of technology research, development, demonstration, and commercial application for coal and power systems, including programs to facilitate production and generation of coal-based power through—

(1) innovations for existing plants;

(2) integrated gasification combined cycle;

(3) advanced combustion systems;

(4) turbines for synthesis gas derived from coal;

(5) carbon capture and sequestration research and development;

(6) coal-derived transportation fuels and chemicals;

(7) solid fuels and feedstocks;

(8) advanced coal-related research;

(9) advanced separation technologies; and

(10) a joint project for permeability enhancement in coals for natural gas production and carbon dioxide sequestration.

(b) Cost and Performance Goals.—In carrying out programs authorized by this section, the Secretary shall identify cost and performance goals for coal-based technologies that would permit the continued cost-competitive use of coal for electricity generation, as chemical feedstocks, and as transportation fuel in 2007, 2015, and the years after 2020. In establishing such cost and performance goals, the Secretary shall—

(1) consider activities and studies undertaken to date by industry in cooperation with the Department in support of such assessment;

(2) consult with interested entities, including coal producers, industries using coal, organizations to promote coal and advanced coal technologies, environmental organizations, and organizations representing workers;

(3) not later than 120 days after the date of enactment of this Act, publish in the Federal Register proposed draft cost and performance goals for public comments; and

(4) not later than 180 days after the date of enactment of this Act and every 4 years thereafter, submit to Congress a report describing final cost and performance goals for such technologies that includes a list of technical milestones as well as an explanation of how programs authorized in this section will not duplicate the activities authorized under the Clean Coal Power Initiative authorized under subtitle A of title IV.

SEC. 936. COMPLEX WELL TECHNOLOGY TESTING FACILITY.

The Secretary, in coordination with industry leaders in extended research drilling technology, shall establish a Complex Well Technology Testing Facility at the Rocky Mountain Oilfield Testing Center to increase the range of extended drilling technologies.

SEC. 937. FISCHER-TROPSCH DIESEL FUEL LOAN GUARANTEE PROGRAM.

(a) Definition of Fischer-Tropsch Diesel Fuel.—In this section, the term "Fischer-Tropsch diesel fuel" means diesel fuel that—

(1) contains less than 10 parts per million sulfur; and

(2) is produced through the Fischer-Tropsch liquification process from coal or waste from coal that was mined in the United States.

(b) Loan Guarantees.—

(1) Establishment of program.—The Secretary of Energy shall establish a program to provide guarantees of loans by private lending institutions for the construction of facilities for the production of Fischer-Tropsch diesel fuel and commercial byproducts of that production.

(2) Requirements.—The Secretary may provide a loan guarantee under paragraph (1) if—

(A) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in paragraph (1);

(B) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(C) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(3) Criteria.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(A) meet all Federal and State permitting requirements;

(B) are most likely to be successful; and

(C) are located in local markets that have the greatest need for the facility because of—

(i) the availability of domestic coal or coal waste for conversion; or

(ii) a projected high level of demand for Fischer-Tropsch diesel fuel or other commercial byproducts of the facility.

(4) Maturity.—A loan guaranteed under paragraph (1) shall have a maturity of not more than 25 years.

(5) Terms and conditions.—The loan agreement for a loan guaranteed under paragraph (1) shall provide that no provision of the loan may be amended or waived without the consent of the Secretary.

(6) Guarantee fee.—A recipient of a loan guarantee under paragraph (1) shall pay the Secretary an amount to be determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(7) Full faith and credit.—

(A) In general.—The full faith and credit of the United States is pledged to payment of loan guarantees made under this section.

(B) Conclusive evidence.—Any loan guarantee made by the Secretary under this section shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest.

(C) Validity.—The validity of a loan guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(8) Reports.—Until each guaranteed loan under this section is repaid in full, the Secretary shall annually submit to Congress a report on the activities of the Secretary under this section.

(9) Authorization of appropriations.—There are authorized to be appropriated such sums as are necessary to carry out this section.

(10) Termination of authority.—The authority of the Secretary to issue a new loan guarantee under paragraph (1) terminates on the date that is 5 years after the date of enactment of this Act.

PART II—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES

SEC. 941. PROGRAM AUTHORITY.

(a) In General.—The Secretary shall carry out a program under this part of research, development, demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including addressing the technology challenges for small producers, safe operations, and environmental mitigation (including reduction of greenhouse gas emissions and sequestration of carbon).

(b) Program Elements.—The program under this part shall address the following areas, including improving safety and minimizing environmental impacts of activities within each area:

(1) Ultra-deepwater technology, including drilling to formations in the Outer Continental Shelf to depths greater than 15,000 feet.

(2) Ultra-deepwater architecture.

(3) Unconventional natural gas and other petroleum resource exploration and production technology, including the technology challenges of small producers.

(c) Limitation on Location of Field Activities.—Field activities under the program under this part shall be carried out only—

(1) in—

(A) areas in the territorial waters of the United States not under any Outer Continental Shelf moratorium as of September 30, 2002;

(B) areas onshore in the United States on public land administered by the Secretary of the Interior available for oil and gas leasing, where consistent with applicable law and land use plans; and

(C) areas onshore in the United States on State or private land, subject to applicable law; and

(2) with the approval of the appropriate Federal or State land management agency or private land owner.

(d) Research at National Energy Technology Laboratory.—The Secretary, through the National Energy Technology Laboratory, shall carry out research complementary to research under subsection (b).

(e) Consultation with Secretary of the Interior.—In carrying out this part, the Secretary shall consult regularly with the Secretary of the Interior.

SEC. 942. ULTRA-DEEPWATER PROGRAM.

(a) In general.—The Secretary shall carry out the activities under section 941(a), to maximize the use of the ultra-deepwater natural gas and other petroleum resources of the United States by increasing the supply of such resources, through reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts.

(b) ROLE OF THE SECRETARY.—The Secretary shall have ultimate responsibility for, and oversight of, all aspects of the program under this section.

(c) ROLE OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary may contract with a consortium to—

(A) manage awards pursuant to subsection (f)(4);

(B) make recommendations to the Secretary for project solicitations;

(C) disburse funds awarded under subsection (f) as directed by the Secretary in accordance with the annual plan under subsection (e); and

(D) carry out other activities assigned to the program consortium by this section.

(2) LIMITATION.—The Secretary may not assign any activities to the program consortium except as specifically authorized under this section.

(3) CONFLICT OF INTEREST.—

(A) PROCEDURES.—The Secretary shall establish procedures—

(i) to ensure that each board member, officer, or employee of the program consortium who is in a decision-making capacity under subsection (f)(3) or (4) shall disclose to the Secretary any financial interests in, or financial relationships with, applicants for or recipients of awards under this section, including those of his or her spouse or minor child, unless such relationships or interests would be considered to be remote or inconsequential; and

(ii) to require any board member, officer, or employee with a financial relationship or interest disclosed under clause (i) to recuse himself or herself from any review under subsection (f)(3) or oversight under subsection (f)(4) with respect to such applicant or recipient.

(B) FAILURE TO COMPLY.—The Secretary may disqualify an application or revoke an award under this section if a board member, officer, or employee has failed to comply with procedures required under subparagraph (A)(ii).

(d) SELECTION OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall select the program consortium through an open, competitive process.

(2) MEMBERS.—The program consortium may include corporations, trade associations, institutions of higher education, National Laboratories, or other research institutions. After submitting a proposal under paragraph (4), the program consortium may not add members without the consent of the Secretary.

(3) TAX STATUS.—The program consortium shall be an entity that is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986.

(4) SCHEDULE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall solicit proposals from eligible consortia to perform the duties in subsection (c)(1), which shall be submitted not later than 360 days after the date of enactment of this Act. The Secretary shall select the program consortium not later than 18 months after such date of enactment.

(5) APPLICATION.—Applicants shall submit a proposal including such information as the Secretary may require. At a minimum, each proposal shall—

(A) list all members of the consortium;

(B) fully describe the structure of the consortium, including any provisions relating to intellectual property; and

(C) describe how the applicant would carry out the activities of the program consortium under this section.

(6) ELIGIBILITY.—To be eligible to be selected as the program consortium, an applicant must be an entity whose members collectively have demonstrated capabilities in planning and managing research, development, demonstration, and commercial application programs in natural gas or other petroleum exploration or production.

(7) CRITERION.—The Secretary shall consider the amount of the fee an applicant proposes to receive under subsection (g) in selecting a consortium under this section.

(e) ANNUAL PLAN.—

(1) IN GENERAL.—The program under this section shall be carried out pursuant to an annual plan prepared by the Secretary in accordance with paragraph (2).

(2) DEVELOPMENT.—

(A) SOLICITATION OF RECOMMENDATIONS.—Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the program consortium for each element to be addressed in the plan, including those described in paragraph (4). The Secretary may request that the program consortium submit its recommendations in the form of a draft annual plan.

(B) SUBMISSION OF RECOMMENDATIONS; OTHER COMMENT.—The Secretary shall submit the recommendations of the program consortium under subparagraph (A) to the Ultra-Deepwater Advisory Committee established under section 945(a) for review, and such Advisory Committee shall provide to the Secretary written comments by a date determined by the Secretary. The Secretary may also solicit comments from any other experts.

(C) CONSULTATION.—The Secretary shall consult regularly with the program consortium throughout the preparation of the annual plan.

(3) PUBLICATION.—The Secretary shall transmit to Congress and publish in the Federal Register the annual plan, along with any written comments received under paragraph (2)(A) and (B).

(4) CONTENTS.—The annual plan shall describe the ongoing and prospective activities of the program under this section and shall include—

(A) a list of any solicitations for awards that the Secretary plans to issue to carry out research, development, demonstration, or commercial application activities, including the topics for such work, who would be eligible to apply, selection criteria, and the duration of awards; and

(B) a description of the activities expected of the program consortium to carry out subsection (f)(4).

(5) ESTIMATES OF INCREASED ROYALTY RECEIPTS.—The Secretary, in consultation with the Secretary of the Interior, shall provide an annual report to Congress with the President's budget on the estimated cumulative increase in Federal royalty receipts (if any) resulting from the implementation of this part. The initial report under this paragraph shall be submitted in the first President's budget following the completion of the first annual plan required under this subsection.

(f) AWARDS.—

(1) IN GENERAL.—The Secretary shall make awards to carry out research, development, demonstration, and commercial application activities under the program under this section. The program consortium shall not be eligible to receive such awards, but members of the program consortium may receive such awards.

(2) PROPOSALS.—The Secretary shall solicit proposals for awards under this subsection in such manner and at such time as the Secretary may prescribe, in consultation with the program consortium.

(3) REVIEW.—The Secretary shall make awards under this subsection through a competitive process, which shall include a review by individuals selected by the Secretary. Such individuals shall include, for each application, Federal officials, the program consortium, and non-Federal experts who are not board members, officers, or employees of the program consortium or of a member of the program consortium.

(4) OVERSIGHT.—

(A) IN GENERAL.—The program consortium shall oversee the implementation of awards under this subsection, consistent with the annual plan under subsection (e), including disbursing funds and monitoring activities carried out under such awards for compliance with the terms and conditions of the awards.

(B) EFFECT.—Nothing in subparagraph (A) shall limit the authority or responsibility of the Secretary to oversee awards, or limit the authority of the Secretary to review or revoke awards.

(C) PROVISION OF INFORMATION.—The Secretary shall provide to the program consortium the information necessary for the program consortium to carry out its responsibilities under this paragraph.

(g) ADMINISTRATIVE COSTS.—

(1) IN GENERAL.—To compensate the program consortium for carrying out its activities under this section, the Secretary shall provide to the program consortium funds sufficient to administer the program. This compensation may include a management fee consistent with Department of Energy contracting practices and procedures.

(2) ADVANCE.—The Secretary shall advance funds to the program consortium upon selection of the consortium, which shall be deducted from amounts to be provided under paragraph (1).

(h) AUDIT.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds provided to the program consortium, and funds provided under awards made under subsection (f), have been expended in a manner consistent with the purposes and requirements of this part. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

SEC. 943. UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES PROGRAM.

(a) IN GENERAL.—The Secretary shall carry out activities under subsection 941(b)(3), to maximize the use of the onshore unconventional natural gas and other petroleum resources of the United States, by increasing the supply of such resources, through reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts.

(b) AWARDS.—

(1) IN GENERAL.—The Secretary shall carry out this section through awards to research consortia made through an open, competitive process. As a condition of award of funds, qualified research consortia shall—

(A) demonstrate capability and experience in unconventional onshore natural gas or other petroleum research and development;

(B) provide a research plan that demonstrates how additional natural gas or oil production will be achieved; and

(C) at the request of the Secretary, provide technical advice to the Secretary for the purposes of developing the annual plan required under subsection (e).

(2) PRODUCTION POTENTIAL.—The Secretary shall seek to ensure that the number and types of awards made under this subsection have reasonable potential to lead to additional oil and natural gas production on Federal lands.

(3) SCHEDULE.—To carry out this subsection, not later than 180 days after the date of enactment of this Act, the Secretary shall solicit proposals from research consortia, which shall be submitted not later than 360 days after the date of enactment of this Act. The Secretary shall select the first group of research consortia to receive awards under this subsection not later than 18 months after such date of enactment.

(c) Audit.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds provided under awards made under this section have been expended in a manner consistent with the purposes and requirements of this part. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

(d) Focus Areas for Awards.—

(1) Unconventional resources.—Awards from allocations under section 949(d)(2) shall focus on areas including advanced coalbed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, stranded gas, innovative exploration and production techniques, enhanced recovery techniques, and environmental mitigation of unconventional natural gas and other petroleum resources exploration and production.

(2) Small producers.—Awards from allocations under section 949(d)(3) shall be made to consortia consisting of small producers or organized primarily for the benefit of small producers, and shall focus on areas including complex geology involving rapid changes in the type and quality of the oil and gas reservoirs across the reservoir; low reservoir pressure; unconventional natural gas reservoirs in coalbeds, deep reservoirs, tight sands, or shales; and unconventional oil reservoirs in tar sands and oil shales.

(e) Annual Plan.—

(1) In general.—The program under this section shall be carried out pursuant to an annual plan prepared by the Secretary in accordance with paragraph (2).

(2) Development.—

(A) Written recommendations.—Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the research consortia receiving awards under subsection (b) and the Unconventional Resources Technology Advisory Committee for each element to be addressed in the plan, including those described in subparagraph (D).

(B) Consultation.—The Secretary shall consult regularly with the research consortia throughout the preparation of the annual plan.

(C) Publication.—The Secretary shall transmit to Congress and publish in the Federal Register the annual plan, along with any written comments received under subparagraph (A).

(D) Contents.—The annual plan shall describe the ongoing and prospective activities under this section and shall include a list of any solicitations for awards that the Secretary plans to issue to carry out research, development, demonstration, or commercial application activities, including the topics for such work, who would be eligible to apply, selection criteria, and the duration of awards.

(3) Estimates of increased royalty receipts.—The Secretary, in consultation with the Secretary of the Interior, shall provide an annual report to Congress with the President's budget on the estimated cumulative increase in Federal royalty receipts (if any) resulting from the implementation of this part. The initial report under this paragraph shall be submitted in the first President's budget following the completion of the first annual plan required under this subsection.

(f) Activities by the United States Geological Survey.—The Secretary of the Interior, through the United States Geological Survey, shall, where appropriate, carry out programs of long-term research to complement the programs under this section.

SEC. 944. ADDITIONAL REQUIREMENTS FOR AWARDS.

(a) Demonstration Projects.—An application for an award under this part for a demonstration project shall describe with specificity the intended commercial use of the technology to be demonstrated.

(b) Flexibility in Locating Demonstration Projects.—Subject to the limitation in section 941(c), a demonstration project under this part relating to an ultra-deepwater technology or an ultra-deepwater architecture may be conducted in deepwater depths.

(c) Intellectual Property Agreements.—If an award under this part is made to a consortium (other than the program consortium), the consortium shall provide to the Secretary a signed contract agreed to by all members of the consortium describing the rights of each member to intellectual property used or developed under the award.

(d) Technology Transfer.—2.5 percent of the amount of each award made under this part shall be designated for technology transfer and outreach activities under this title.

(e) Cost Sharing Reduction for Independent Producers.—In applying the cost sharing requirements under section 972 to an award under this part the Secretary may reduce or eliminate the non-Federal requirement if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project.

SEC. 945. ADVISORY COMMITTEES.

(a) Ultra-Deepwater Advisory Committee.—

(1) Establishment.—Not later than 270 days after the date of enactment of this Act, the Secretary shall establish an advisory committee to be known as the Ultra-Deepwater Advisory Committee.

(2) Membership.—The advisory committee under this subsection shall be composed of members appointed by the Secretary including—

(A) individuals with extensive research experience or operational knowledge of offshore natural gas and other petroleum exploration and production;

(B) individuals broadly representative of the affected interests in ultra-deepwater natural gas and other petroleum production, including interests in environmental protection and safe operations;

(C) no individuals who are Federal employees; and

(D) no individuals who are board members, officers, or employees of the program consortium.

(3) Duties.—The advisory committee under this subsection shall—

(A) advise the Secretary on the development and implementation of programs under this part related to ultra-deepwater natural gas and other petroleum resources; and

(B) carry out section 942(e)(2)(B).

(4) Compensation.—A member of the advisory committee under this subsection shall serve without compensation but shall receive travel expenses in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(b) Unconventional Resources Technology Advisory Committee.—

(1) Establishment.—Not later than 270 days after the date of enactment of this Act, the Secretary shall establish an advisory committee to be known as the Unconventional Resources Technology Advisory Committee.

(2) Membership.—The advisory committee under this subsection shall be composed of members appointed by the Secretary including—

(A) a majority of members who are employees or representatives of independent producers of natural gas and other petroleum, including small producers;

(B) individuals with extensive research experience or operational knowledge of unconventional natural gas and other petroleum resource exploration and production;

(C) individuals broadly representative of the affected interests in unconventional natural gas and other petroleum resource exploration and production, including interests in environmental protection and safe operations; and

(D) no individuals who are Federal employees.

(3) Duties.—The advisory committee under this subsection shall advise the Secretary on the development and implementation of activities under this part related to unconventional natural gas and other petroleum resources.

(4) Compensation.—A member of the advisory committee under this subsection shall serve without compensation but shall receive travel expenses in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(c) Prohibition.—No advisory committee established under this section shall make recommendations on funding awards to particular consortia or other entities, or for specific projects.

SEC. 946. LIMITS ON PARTICIPATION.

An entity shall be eligible to receive an award under this part only if the Secretary finds—

(1) that the entity's participation in the program under this part would be in the economic interest of the United States; and

(2) that either—

(A) the entity is a United States-owned entity organized under the laws of the United States; or

(B) the entity is organized under the laws of the United States and has a parent entity organized under the laws of a country that affords—

(i) to United States-owned entities opportunities, comparable to those afforded to any other entity, to participate in any cooperative research venture similar to those authorized under this part;

(ii) to United States-owned entities local investment opportunities comparable to those afforded to any other entity; and

(iii) adequate and effective protection for the intellectual property rights of United States-owned entities.

SEC. 947. SUNSET.

The authority provided by this part shall terminate on September 30, 2011.

SEC. 948. DEFINITIONS.

In this part:

(1) Deepwater.—The term "deepwater" means a water depth that is greater than 200 but less than 1,500 meters.

(2) Independent producer of oil or gas.—

(A) In general.—The term "independent producer of oil or gas" means any person that produces oil or gas other than a person to whom subsection (c) of section 613A of the Internal Revenue Code of 1986 does not apply by reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners) of section 613A(d) of such Code.

(B) Rules for applying paragraphs (2) and (4) of section 613A(d).—For purposes of subparagraph (A), paragraphs (2) and (4) of section 613A(d) of the Internal Revenue Code of 1986 shall be applied by substituting "calendar year" for "taxable year" each place it appears in such paragraphs.

(3) Program consortium.—The term "program consortium" means the consortium selected under section 942(d).

(4) Remote or inconsequential.—The term "remote or inconsequential" has the meaning given that term in regulations issued by the Office of Government Ethics under section 208(b)(2) of title 18, United States Code.

(5) Small producer.—The term "small producer" means an entity organized under the laws of the United States with production levels of less than 1,000 barrels per day of oil equivalent.

(6) Ultra-deepwater.—The term "ultra-deepwater" means a water depth that is equal to or greater than 1,500 meters.

(7) ULTRA-DEEPWATER ARCHITECTURE.—The term "ultra-deepwater architecture" means the integration of technologies for the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(8) ULTRA-DEEPWATER TECHNOLOGY.—The term "ultra-deepwater technology" means a discrete technology that is specially suited to address 1 or more challenges associated with the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(9) UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCE.—The term "unconventional natural gas and other petroleum resource" means natural gas and other petroleum resource located onshore in an economically inaccessible geological formation, including resources of small producers.

SEC. 949. FUNDING.

(a) IN GENERAL.—

(1) OIL AND GAS LEASE INCOME.—For each of fiscal years 2004 through 2013, from any Federal royalties, rents, and bonuses derived from Federal onshore and offshore oil and gas leases issued under the Outer Continental Shelf Lands Act and the Mineral Leasing Act which are deposited in the Treasury, and after distribution of any such funds as described in subsection (c), $150,000,000 shall be deposited into the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund (in this section referred to as the Fund). For purposes of this section, the term "royalties" excludes proceeds from the sale of royalty production taken in kind and royalty production that is transferred under section 27(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(3)).

(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts described in paragraph (1), there are authorized to be appropriated to the Secretary, to be deposited in the Fund, $50,000,000 for each of the fiscal years 2004 through 2013, to remain available until expended.

(b) OBLIGATIONAL AUTHORITY.—Monies in the Fund shall be available to the Secretary for obligation under this part without fiscal year limitation, to remain available until expended.

(c) PRIOR DISTRIBUTIONS.—The distributions described in subsection (a) are those required by law—

(A) to States and to the Reclamation Fund under the Mineral Leasing Act (30 U.S.C. 191(a)); and

(B) to other funds receiving monies from Federal oil and gas leasing programs, including—

(i) any recipients pursuant to section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g));

(ii) the Land and Water Conservation Fund, pursuant to section 2(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5(c));

(iii) the Historic Preservation Fund, pursuant to section 108 of the National Historic Preservation Act (16 U.S.C. 470h); and

(iv) the Secure Energy Reinvestment Fund.

(d) ALLOCATION.—Amounts obligated from the Fund under this section in each fiscal year shall be allocated as follows:

(1) 50 percent shall be for activities under section 942.

(2) 35 percent shall be for activities under section 943(d)(1).

(3) 10 percent shall be for activities under section 943(d)(2).

(4) 5 percent shall be for research under section 941(d).

(e) FUND.—There is hereby established in the Treasury of the United States a separate fund to be known as the "Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund".

Subtitle F—Science

SEC. 951. SCIENCE.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for research, development, demonstration, and commercial application activities of the Office of Science, including activities authorized under this subtitle, including the amounts authorized under the amendment made by section 958(c)(2)(C), and including basic energy sciences, advanced scientific computing research, biological and environmental research, fusion energy sciences, high energy physics, nuclear physics, and research analysis and infrastructure support:

(1) For fiscal year 2004, $3,785,000,000.

(2) For fiscal year 2005, $4,153,000,000.

(3) For fiscal year 2006, $4,618,000,000.

(4) For fiscal year 2007, $5,310,000,000.

(5) For fiscal year 2008, $5,800,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities of the Fusion Energy Sciences Program, including activities under sections 952 and 953—

(A) for fiscal year 2004, $335,000,000;

(B) for fiscal year 2005, $349,000,000;

(C) for fiscal year 2006, $362,000,000;

(D) for fiscal year 2007, $377,000,000; and

(E) for fiscal year 2008, $393,000,000.

(2) For the Spallation Neutron Source—

(A) for construction in fiscal year 2004, $124,600,000;

(B) for construction in fiscal year 2005, $79,800,000;

(C) for completion of construction in fiscal year 2006, $41,100,000; and

(D) for other project costs (including research and development necessary to complete the project, preoperations costs, and capital equipment related to construction), $103,279,000 for the period encompassing fiscal years 2003 through 2006, to remain available until expended through September 30, 2006.

(3) For Catalysis Research activities under section 956—

(A) for fiscal year 2004, $33,000,000;

(B) for fiscal year 2005, $35,000,000;

(C) for fiscal year 2006, $36,500,000;

(D) for fiscal year 2007, $38,200,000; and

(E) for fiscal year 2008, $40,100,000.

(4) For Nanoscale Science and Engineering Research activities under section 957—

(A) for fiscal year 2004, $270,000,000;

(B) for fiscal year 2005, $292,000,000;

(C) for fiscal year 2006, $322,000,000;

(D) for fiscal year 2007, $355,000,000; and

(E) for fiscal year 2008, $390,000,000.

(5) For activities under section 957(c), from the amounts authorized under paragraph (4) of this subsection—

(A) for fiscal year 2004, $135,000,000;

(B) for fiscal year 2005, $150,000,000;

(C) for fiscal year 2006, $120,000,000;

(D) for fiscal year 2007, $100,000,000; and

(E) for fiscal year 2008, $125,000,000.

(6) For activities in the Genomes to Life Program under section 959—

(A) for fiscal year 2004, $100,000,000; and

(B) for fiscal years 2005 through 2008, such sums as may be necessary.

(7) For activities in the Energy-Water Supply Program under section 961, $30,000,000 for each of fiscal years 2004 through 2008.

(c) ITER CONSTRUCTION.—In addition to the funds authorized under subsection (b)(1), such sums as may be necessary for costs associated with ITER construction, consistent with limitations under section 952.

SEC. 952. UNITED STATES PARTICIPATION IN ITER.

(a) IN GENERAL.—The United States may participate in ITER in accordance with the provisions of this section.

(b) AGREEMENT.—

(1) IN GENERAL.—The Secretary is authorized to negotiate an agreement for United States participation in ITER.

(2) CONTENTS.—Any agreement for United States participation in ITER shall, at a minimum—

(A) clearly define the United States financial contribution to construction and operating costs;

(B) ensure that the share of ITER's high-technology components manufactured in the United States is at least proportionate to the United States financial contribution to ITER;

(C) ensure that the United States will not be financially responsible for cost overruns in components manufactured in other ITER participating countries;

(D) guarantee the United States full access to all data generated by ITER;

(E) enable United States researchers to propose and carry out an equitable share of the experiments at ITER;

(F) provide the United States with a role in all collective decisionmaking related to ITER; and

(G) describe the process for discontinuing or decommissioning ITER and any United States role in those processes.

(c) PLAN.—The Secretary, in consultation with the Fusion Energy Sciences Advisory Committee, shall develop a plan for the participation of United States scientists in ITER that shall include the United States research agenda for ITER, methods to evaluate whether ITER is promoting progress toward making fusion a reliable and affordable source of power, and a description of how work at ITER will relate to other elements of the United States fusion program. The Secretary shall request a review of the plan by the National Academy of Sciences.

(d) LIMITATION.—No funds shall be expended for the construction of ITER until the Secretary has transmitted to Congress—

(1) the agreement negotiated pursuant to subsection (b) and 120 days have elapsed since that transmission;

(2) a report describing the management structure of ITER and providing a fixed dollar estimate of the cost of United States participation in the construction of ITER, and 120 days have elapsed since that transmission;

(3) a report describing how United States participation in ITER will be funded without reducing funding for other programs in the Office of Science, including other fusion programs, and 60 days have elapsed since that transmission; and

(4) the plan required by subsection (c) (but not the National Academy of Sciences review of that plan), and 60 days have elapsed since that transmission.

(e) ALTERNATIVE TO ITER.—If at any time during the negotiations on ITER, the Secretary determines that construction and operation of ITER is unlikely or infeasible, the Secretary shall send to Congress, as part of the budget request for the following year, a plan for implementing the domestic burning plasma experiment known as FIRE, including costs and schedules for such a plan. The Secretary shall refine such plan in full consultation with the Fusion Energy Sciences Advisory Committee and shall also transmit such plan to the National Academy of Sciences for review.

(f) DEFINITIONS.—In this section and sections 951(b)(1) and (c):

(1) CONSTRUCTION.—The term "construction" means the physical construction of the ITER facility, and the physical construction, purchase, or manufacture of equipment or components that are specifically designed for the ITER facility, but does not mean the design of the facility, equipment, or components.

(2) FIRE.—The term "FIRE" means the Fusion Ignition Research Experiment, the fusion

research experiment for which design work has been supported by the Department as a possible alternative burning plasma experiment in the event that ITER fails to move forward.

(3) ITER.—The term "ITER" means the international burning plasma fusion research project in which the President announced United States participation on January 30, 2003.

SEC. 953. PLAN FOR FUSION ENERGY SCIENCES PROGRAM.

(a) DECLARATION OF POLICY.—It shall be the policy of the United States to conduct research, development, demonstration, and commercial application to provide for the scientific, engineering, and commercial infrastructure necessary to ensure that the United States is competitive with other nations in providing fusion energy for its own needs and the needs of other nations, including by demonstrating electric power or hydrogen production for the United States energy grid utilizing fusion energy at the earliest date possible.

(b) PLANNING.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall present to Congress a plan, with proposed cost estimates, budgets, and potential international partners, for the implementation of the policy described in subsection (a). The plan shall ensure that—

(A) existing fusion research facilities are more fully utilized;

(B) fusion science, technology, theory, advanced computation, modeling, and simulation are strengthened;

(C) new magnetic and inertial fusion research facilities are selected based on scientific innovation, cost effectiveness, and their potential to advance the goal of practical fusion energy at the earliest date possible, and those that are selected are funded at a cost-effective rate;

(D) communication of scientific results and methods between the fusion energy science community and the broader scientific and technology communities is improved;

(E) inertial confinement fusion facilities are utilized to the extent practicable for the purpose of inertial fusion energy research and development; and

(F) attractive alternative inertial and magnetic fusion energy approaches are more fully explored.

(2) COSTS AND SCHEDULES.—Such plan shall also address the status of and, to the degree possible, costs and schedules for—

(A) in coordination with the program under section 960, the design and implementation of international or national facilities for the testing of fusion materials; and

(B) the design and implementation of international or national facilities for the testing and development of key fusion technologies.

SEC. 954. SPALLATION NEUTRON SOURCE.

(a) DEFINITION.—For the purposes of this section, the term "Spallation Neutron Source" means Department Project 99–E–334, Oak Ridge National Laboratory, Oak Ridge, Tennessee.

(b) REPORT.—The Secretary shall report on the Spallation Neutron Source as part of the Department's annual budget submission, including a description of the achievement of milestones, a comparison of actual costs to estimated costs, and any changes in estimated project costs or schedule.

(c) LIMITATIONS.—The total amount obligated by the Department, including prior year appropriations, for the Spallation Neutron Source shall not exceed—

(1) $1,192,700,000 for costs of construction;

(2) $219,000,000 for other project costs; and

(3) $1,411,700,000 for total project cost.

SEC. 955. SUPPORT FOR SCIENCE AND ENERGY FACILITIES AND INFRASTRUCTURE.

(a) FACILITY AND INFRASTRUCTURE POLICY.—The Secretary shall develop and implement a strategy for facilities and infrastructure supported primarily from the Office of Science, the Office of Energy Efficiency and Renewable Energy, the Office of Fossil Energy, or the Office of Nuclear Energy, Science, and Technology Programs at all National Laboratories and single-purpose research facilities. Such strategy shall provide cost-effective means for—

(1) maintaining existing facilities and infrastructure, as needed;

(2) closing unneeded facilities;

(3) making facility modifications; and

(4) building new facilities.

(b) REPORT.—

(1) IN GENERAL.—The Secretary shall prepare and transmit, along with the President's budget request to Congress for fiscal year 2006, a report containing the strategy developed under subsection (a).

(2) CONTENTS.—For each National Laboratory and single-purpose research facility, for the facilities primarily used for science and energy research, such report shall contain—

(A) the current priority list of proposed facilities and infrastructure projects, including cost and schedule requirements;

(B) a current 10-year plan that demonstrates the reconfiguration of its facilities and infrastructure to meet its missions and to address its long-term operational costs and return on investment;

(C) the total current budget for all facilities and infrastructure funding; and

(D) the current status of each facility and infrastructure project compared to the original baseline cost, schedule, and scope.

SEC. 956. CATALYSIS RESEARCH AND DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary, through the Office of Science, shall support a program of research and development in catalysis science consistent with the Department's statutory authorities related to research and development. The program shall include efforts to—

(1) enable catalyst design using combinations of experimental and mechanistic methodologies coupled with computational modeling of catalytic reactions at the molecular level;

(2) develop techniques for high throughput synthesis, assay, and characterization at nanometer and subnanometer scales in situ under actual operating conditions;

(3) synthesize catalysts with specific site architectures;

(4) conduct research on the use of precious metals for catalysis; and

(5) translate molecular understanding to the design of catalytic compounds.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Director of the Office of Science shall—

(1) support both individual investigators and multidisciplinary teams of investigators to pioneer new approaches in catalytic design;

(2) develop, plan, construct, acquire, share, or operate special equipment or facilities for the use of investigators in collaboration with national user facilities such as nanoscience and engineering centers;

(3) support technology transfer activities to benefit industry and other users of catalysis science and engineering; and

(4) coordinate research and development activities with industry and other Federal agencies.

(c) TRIENNIAL ASSESSMENT.—The National Academy of Sciences shall review the catalysis program every 3 years to report on gains made in the fundamental science of catalysis and its progress towards developing new fuels for energy production and material fabrication processes.

SEC. 957. NANOSCALE SCIENCE AND ENGINEERING RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION.

(a) ESTABLISHMENT.—The Secretary, acting through the Office of Science, shall support a program of research, development, demonstration, and commercial application in nanoscience and nanoengineering. The program shall include efforts to further the understanding of the chemistry, physics, materials science, and engineering of phenomena on the scale of nanometers and to apply that knowledge to the Department's mission areas.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) support both individual investigators and teams of investigators, including multidisciplinary teams;

(2) carry out activities under subsection (c);

(3) support technology transfer activities to benefit industry and other users of nanoscience and nanoengineering;

(4) coordinate research and development activities with other Department programs, industry, and other Federal agencies;

(5) ensure that societal and ethical concerns will be addressed as the technology is developed by—

(A) establishing a research program to identify societal and ethical concerns related to nanotechnology, and ensuring that the results of such research are widely disseminated; and

(B) integrating, insofar as possible, research on societal and ethical concerns with nanotechnology research and development; and

(6) ensure that the potential of nanotechnology to produce or facilitate the production of clean, inexpensive energy is realized by supporting nanotechnology energy applications research and development.

(c) NANOSCIENCE AND NANOENGINEERING RESEARCH CENTERS AND MAJOR INSTRUMENTATION.—

(1) IN GENERAL.—The Secretary shall carry out projects to develop, plan, construct, acquire, operate, or support special equipment, instrumentation, or facilities for investigators conducting research and development in nanoscience and nanoengineering.

(2) ACTIVITIES.—Projects under paragraph (1) may include the measurement of properties at the scale of nanometers, manipulation at such scales, and the integration of technologies based on nanoscience or nanoengineering into bulk materials or other technologies.

(3) FACILITIES.—Facilities under paragraph (1) may include electron microcharacterization facilities, microlithography facilities, scanning probe facilities, and related instrumentation.

(4) COLLABORATIONS.—The Secretary shall encourage collaborations among Department programs, institutions of higher education, laboratories, and industry at facilities under this subsection.

SEC. 958. ADVANCED SCIENTIFIC COMPUTING FOR ENERGY MISSIONS.

(a) IN GENERAL.—The Secretary, acting through the Office of Science, shall support a program to advance the Nation's computing capability across a diverse set of grand challenge, computationally based, science problems related to departmental missions.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) advance basic science through computation by developing software to solve grand challenge science problems on new generations of computing platforms in collaboration with other Department program offices;

(2) enhance the foundations for scientific computing by developing the basic mathematical and computing systems software needed to take

full advantage of the computing capabilities of computers with peak speeds of 100 teraflops or more, some of which may be unique to the scientific problem of interest;

(3) enhance national collaboratory and networking capabilities by developing software to integrate geographically separated researchers into effective research teams and to facilitate access to and movement and analysis of large (petabyte) data sets;

(4) develop and maintain a robust scientific computing hardware infrastructure to ensure that the computing resources needed to address departmental missions are available; and

(5) explore new computing approaches and technologies that promise to advance scientific computing, including developments in quantum computing.

(c) HIGH-PERFORMANCE COMPUTING ACT OF 1991 AMENDMENTS.—The High-Performance Computing Act of 1991 is amended—

(1) in section 4 (15 U.S.C. 5503)—

(A) in paragraph (3) by striking "means" and inserting "and networking and information technology mean", and by striking "(including vector supercomputers and large scale parallel systems)"; and

(B) in paragraph (4), by striking "packet switched"; and

(2) in section 203 (15 U.S.C. 5523)—

(A) in subsection (a), by striking all after "As part of the" and inserting "Networking and Information Technology Research and Development Program, the Secretary of Energy shall conduct basic and applied research in networking and information technology, with emphasis on supporting fundamental research in the physical sciences and engineering, and energy applications; providing supercomputer access and advanced communication capabilities and facilities to scientific researchers; and developing tools for distributed scientific collaboration.";

(B) in subsection (b), by striking "Program" and inserting "Networking and Information Technology Research and Development Program"; and

(C) by amending subsection (e) to read as follows:

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out the Networking and Information Technology Research and Development Program such sums as may be necessary for fiscal years 2004 through 2008.".

(d) COORDINATION.—The Secretary shall ensure that the program under this section is integrated and consistent with—

(1) the Advanced Simulation and Computing Program, formerly known as the Accelerated Strategic Computing Initiative, of the National Nuclear Security Administration; and

(2) other national efforts related to advanced scientific computing for science and engineering.

(e) REPORT.—

(1) IN GENERAL.—Before undertaking any new initiative to develop any new advanced architecture for high-speed computing, the Secretary, through the Director of the Office of Science, shall transmit a report to Congress describing—

(A) the expected duration and cost of the initiative;

(B) the technical milestones the initiative is designed to achieve;

(C) how institutions of higher education and private firms will participate in the initiative; and

(D) why the goals of the initiative could not be achieved through existing programs.

(2) LIMITATION.—No funds may be expended on any initiative described in paragraph (1) until 30 days after the report required by that paragraph is transmitted to Congress.

SEC. 959. GENOMES TO LIFE PROGRAM.

(a) PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall establish a research, development, and demonstration program in genetics, protein science, and computational biology to support the energy, national security, and environmental mission of the Department.

(2) GRANTS.—The program shall support individual investigators and multidisciplinary teams of investigators through competitive, merit-reviewed grants.

(3) CONSULTATION.—In carrying out the program, the Secretary shall consult with other Federal agencies that conduct genetic and protein research.

(b) GOALS.—The program shall have the goal of developing technologies and methods based on the biological functions of genomes, microbes, and plants that—

(1) can facilitate the production of fuels, including hydrogen

(2) convert carbon dioxide to organic carbon;

(3) improve national security and combat terrorism;

(4) detoxify soils and water at Department facilities contaminated with heavy metals and radiological materials; and

(5) address other Department missions as identified by the Secretary.

(c) PLAN.—

(1) DEVELOPMENT OF PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary shall prepare and transmit to Congress a research plan describing how the program authorized pursuant to this section will be undertaken to accomplish the program goals established in subsection (b).

(2) REVIEW OF PLAN.—The Secretary shall contract with the National Academy of Sciences to review the research plan developed under this subsection. The Secretary shall transmit the review to Congress not later than 18 months after transmittal of the research plan under paragraph (1), along with the Secretary's response to the recommendations contained in the review.

(d) GENOMES TO LIFE USER FACILITIES AND ANCILLARY EQUIPMENT.—

(1) IN GENERAL.—Within the funds authorized to be appropriated pursuant to this Act, the amounts specified under section 951(b)(6) shall, subject to appropriations, be available for projects to develop, plan, construct, acquire, or operate special equipment, instrumentation, or facilities for investigators conducting research, development, demonstration, and commercial application in systems biology and proteomics and associated biological disciplines.

(2) FACILITIES.—Facilities under paragraph (1) may include facilities, equipment, or instrumentation for—

(A) the production and characterization of proteins;

(B) whole proteome analysis;

(C) characterization and imaging of molecular machines; and

(D) analysis and modeling of cellular systems.

(3) COLLABORATIONS.—The Secretary shall encourage collaborations among universities, laboratories, and industry at facilities under this subsection. All facilities under this subsection shall have a specific mission of technology transfer to other institutions.

(e) PROHIBITION ON BIOMEDICAL AND HUMAN CELL AND HUMAN SUBJECT RESEARCH.—

(1) NO BIOMEDICAL RESEARCH.—In carrying out the program under this section, the Secretary shall not conduct biomedical research.

(2) LIMITATIONS.—Nothing in this section shall authorize the Secretary to conduct any research or demonstrations—

(A) on human cells or human subjects; or

(B) designed to have direct application with respect to human cells or human subjects.

SEC. 960. FISSION AND FUSION ENERGY MATERIALS RESEARCH PROGRAM.

In the President's fiscal year 2006 budget request, the Secretary shall establish a research and development program on material science issues presented by advanced fission reactors and the Department's fusion energy program. The program shall develop a catalog of material properties required for these applications, develop theoretical models for materials possessing the required properties, benchmark models against existing data, and develop a roadmap to guide further research and development in this area.

SEC. 961. ENERGY-WATER SUPPLY PROGRAM.

(a) ESTABLISHMENT.—There is established within the Department the Energy-Water Supply Program, to study energy-related and certain other issues associated with the supply of drinking water and operation of community water systems and to study water supply issues related to energy.

(b) DEFINITIONS.—For the purposes of this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) AGENCY.—The term "Agency" means the Environmental Protection Agency.

(3) FOUNDATION.—The term "Foundation" means the American Water Works Association Research Foundation.

(4) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PROGRAM.—The term "Program" means the Energy-Water Supply Program established by this section.

(c) PROGRAM AREAS.—The Program shall develop methods, means, procedures, equipment, and improved technologies relating to—

(1) the arsenic removal program under subsection (d);

(2) the desalination program under subsection (e); and

(3) the water and energy sustainability program under subsection (f).

(d) ARSENIC REMOVAL PROGRAM.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary, in coordination with the Administrator and in partnership with the Foundation, shall utilize the facilities, institutions, and relationships established in the Consolidated Appropriations Resolution, 2003 as described in Senate Report 107–220 to carry out a research program to provide innovative methods and means for removal of arsenic.

(2) REQUIRED EVALUATIONS.—The program shall, to the maximum extent practicable, evaluate the means of—

(A) reducing energy costs incurred in using arsenic removal technologies;

(B) minimizing materials, operating, and maintenance costs; and

(C) minimizing any quantities of waste (especially hazardous waste) that result from use of arsenic removal technologies.

(3) PEER REVIEW.—Where applicable and reasonably available, projects undertaken under this subsection shall be peer-reviewed.

(4) COMMUNITY WATER SYSTEMS.—In carrying out the program under this subsection, the Secretary, in coordination with the Administrator, shall—

(A) select projects involving a geographically and hydrologically diverse group of community water systems (as defined in section 1003 of the Public Health Service Act (42 U.S.C. 300)) and water chemistries, that have experienced technical or economic difficulties in providing drinking water with levels of arsenic at 10 parts-per-billion or lower, which projects shall be designed to develop innovative methods and means to deliver drinking water that contains less than 10 parts per billion of arsenic; and

(B) provide not less than 40 percent of all funds spent pursuant to this subsection to address the needs of, and in collaboration with, rural communities or Indian tribes.

(5) Cost effectiveness.—The Foundation shall create methods for determining cost effectiveness of arsenic removal technologies used in the program.

(6) Education, training, and technology.—The Foundation shall include education, training, and technology transfer as part of the program.

(7) Coordination.—The Secretary shall consult with the Administrator to ensure that all activities conducted under the program are coordinated with the Agency and do not duplicate other programs in the Agency and other Federal agencies, State programs, and academia.

(8) Reports.—Not later than 1 year after the date of commencement of the program under this subsection, and once every year thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate a report on the results of the program under this subsection.

(e) Desalination Program.—

(1) In general.—The Secretary, in cooperation with the Commissioner of Reclamation of the Department of the Interior, shall carry out a program to conduct research and develop methods and means for desalination in accordance with the desalination technology progress plan developed under title II of the Energy and Water Development Appropriations Act, 2002 (115 Stat. 498), and described in Senate Report 107–39 under the heading "WATER AND RELATED RESOURCES" in the "Bureau of Reclamation" section.

(2) Requirements.—The desalination program shall—

(A) use the resources of the Department and the Department of the Interior that were involved in the development of the 2003 National Desalination and Water Purification Technology Roadmap for next-generation desalination technology;

(B) focus on technologies that are appropriate for use in desalinating brackish groundwater, drinking water, wastewater and other saline water supplies, or disposal of residual brine or salt; and

(C) consider the use of renewable energy sources.

(3) Construction projects.—Funds made available to carry out this subsection may be used for construction projects, including completion of the National Desalination Research Center for brackish groundwater and ongoing operational costs of this facility.

(4) Steering committee.—The Secretary and the Commissioner of Reclamation of the Department of the Interior shall jointly establish a steering committee for activities conducted under this subsection. The steering committee shall be jointly chaired by 1 representative from the program and 1 representative from the Bureau of Reclamation.

(f) Water and Energy Sustainability Program.—

(1) In general.—The Secretary shall develop a program to identify methods, means, procedures, equipment, and improved technologies necessary to ensure that sufficient quantities of water are available to meet energy needs and sufficient energy is available to meet water needs.

(2) Assessments.—In order to acquire information and avoid duplication, the Secretary shall work in collaboration with the Secretary of the Interior, the Army Corps of Engineers, the Administrator, the Secretary of Commerce, the Secretary of Defense, relevant State agencies, nongovernmental organizations, and academia, to assess—

(A) future water resources needed to support energy development and production within the United States including water used for hydropower, and production of, or electricity generation by, hydrogen, biomass, fossil fuels, and nuclear fuel;

(B) future energy resources needed to support water purification and wastewater treatment, including desalination and water conveyance;

(C) use of impaired and nontraditional water supplies for energy production other than oil and gas extraction;

(D) technology and programs for improving water use efficiency; and

(E) technologies to reduce water use in energy development and production.

(3) Roadmap; tools.—The Secretary shall—

(A) develop a program plan and technology development roadmap for the Water and Energy Sustainability Program to identify scientific and technical requirements and activities that are required to support planning for energy sustainability under current and potential future conditions of water availability, use of impaired water for energy production and other uses, and reduction of water use in energy development and production;

(B) develop tools for national and local energy and water sustainability planning, including numerical models, decision analysis tools, economic analysis tools, databases, and planning methodologies and strategies;

(C) implement at least 3 planning projects involving energy development or production that use the tools described in subparagraph (B) and assess the viability of those tools at the scale of river basins with at least 1 demonstration involving an international border; and

(D) transfer those tools to other Federal agencies, State agencies, nonprofit organizations, industry, and academia.

(4) Report.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the Water and Energy Sustainability Program that—

(A) includes the results of the assessment under paragraph (2) and the program plan and technology development roadmap; and

(B) identifies policy, legal, and institutional issues related to water and energy sustainability.

SEC. 962. NITROGEN FIXATION.

The Secretary, acting through the Office of Science, shall support a program of research, development, demonstration, and commercial application on biological nitrogen fixation, including plant genomics research relevant to the development of commercial crop varieties with enhanced nitrogen fixation efficiency and ability.

Subtitle G—Energy and Environment

SEC. 964. UNITED STATES-MEXICO ENERGY TECHNOLOGY COOPERATION.

(a) Program.—The Secretary shall establish a research, development, demonstration, and commercial application program to be carried out in collaboration with entities in Mexico and the United States to promote energy efficient, environmentally sound economic development along the United States-Mexico border that minimizes public health risks from industrial activities in the border region.

(b) Program Management.—The program under subsection (a) shall be managed by the Department of Energy Carlsbad Environmental Management Field Office.

(c) Technology Transfer.—In carrying out projects and activities under this section, the Secretary shall assess the applicability of technology developed under the Environmental Management Science Program of the Department.

(d) Intellectual Property.—In carrying out this section, the Secretary shall comply with the requirements of any agreement entered into between the United States and Mexico regarding intellectual property protection.

(e) Authorization of Appropriations.—The following sums are authorized to be appropriated to the Secretary to carry out activities under this section:

(1) For each of fiscal years 2004 and 2005, $5,000,000.

(2) For each of fiscal years 2006, 2007, and 2008, $6,000,000.

SEC. 965. WESTERN HEMISPHERE ENERGY COOPERATION.

(a) Program.—The Secretary shall carry out a program to promote cooperation on energy issues with Western Hemisphere countries.

(b) Activities.—Under the program, the Secretary shall fund activities to work with Western Hemisphere countries to—

(1) assist the countries in formulating and adopting changes in economic policies and other policies to—

(A) increase the production of energy supplies; and

(B) improve energy efficiency; and

(2) assist in the development and transfer of energy supply and efficiency technologies that would have a beneficial impact on world energy markets.

(c) University Participation.—To the extent practicable, the Secretary shall carry out the program under this section with the participation of universities so as to take advantage of the acceptance of universities by Western Hemisphere countries as sources of unbiased technical and policy expertise when assisting the Secretary in—

(1) evaluating new technologies;

(2) resolving technical issues;

(3) working with those countries in the development of new policies; and

(4) training policymakers, particularly in the case of universities that involve the participation of minority students, such as Hispanic-serving institutions and Historically Black Colleges and Universities.

(d) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section—

(1) $8,000,000 for fiscal year 2004;

(2) $10,000,000 for fiscal year 2005;

(3) $13,000,000 for fiscal year 2006;

(4) $16,000,000 for fiscal year 2007; and

(5) $19,000,000 for fiscal year 2008.

SEC. 966. WASTE REDUCTION AND USE OF ALTERNATIVES.

(a) Grant Authority.—The Secretary may make a single grant to a qualified institution to examine and develop the feasibility of burning post-consumer carpet in cement kilns as an alternative energy source. The purposes of the grant shall include determining—

(1) how post-consumer carpet can be burned without disrupting kiln operations;

(2) the extent to which overall kiln emissions may be reduced;

(3) the emissions of air pollutants and other relevant environmental impacts; and

(4) how this process provides benefits to both cement kiln operations and carpet suppliers.

(b) Qualified Institution.—For the purposes of subsection (a), a qualified institution is a research-intensive institution of higher education with demonstrated expertise in the fields of fiber recycling and logistical modeling of carpet waste collection and preparation.

(c) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary for carrying out this section $500,000.

SEC. 967. REPORT ON FUEL CELL TEST CENTER.

(a) Report.—Not later than 1 year after the date of enactment of this Act, the Secretary

shall transmit to Congress a report on the results of a study of the establishment of a test center for next-generation fuel cells at an institution of higher education that has available a continuous source of hydrogen and access to the electric transmission grid. Such report shall include a conceptual design for such test center and a projection of the costs of establishing the test center.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section $500,000.

SEC. 968. ARCTIC ENGINEERING RESEARCH CENTER.

(a) IN GENERAL.—The Secretary of Energy (referred to in this section as the "Secretary") in consultation with the Secretary of Transportation and the United States Arctic Research Commission shall provide annual grants to a university located adjacent to the Arctic Energy Office of the Department of Energy, to establish and operate a university research center to be headquartered in Fairbanks and to be known as the "Arctic Engineering Research Center" (referred to in this section as the "Center").

(b) PURPOSE.—The purpose of the Center shall be to conduct research on, and develop improved methods of, construction and use of materials to improve the overall performance of roads, bridges, residential, commercial, and industrial structures, and other infrastructure in the Arctic region, with an emphasis on developing—

(1) new construction techniques for roads, bridges, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure that are capable of withstanding the Arctic environment and using limited energy resources as efficiently as possible;

(2) technologies and procedures for increasing road, bridge, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure safety, reliability, and integrity in the Arctic region;

(3) new materials and improving the performance and energy efficiency of existing materials for the construction of roads, bridges, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure in the Arctic region; and

(4) recommendations for new local, regional, and State permitting and building codes to ensure transportation and building safety and efficient energy use when constructing, using, and occupying such infrastructure in the Arctic region.

(c) OBJECTIVES.—The Center shall carry out—

(1) basic and applied research in the subjects described in subsection (b), the products of which shall be judged by peers or other experts in the field to advance the body of knowledge in road, bridge, rail, and infrastructure engineering in the Arctic region; and

(2) an ongoing program of technology transfer that makes research results available to potential users in a form that can be implemented.

(d) AMOUNT OF GRANT.—For each of fiscal years 2004 through 2009, the Secretary shall provide a grant in the amount of $3,000,000 to the institution specified in subsection (a) to carry out this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2004 through 2009.

SEC. 969. BARROW GEOPHYSICAL RESEARCH FACILITY.

(a) ESTABLISHMENT.—The Secretary of Commerce, in consultation with the Secretaries of Energy and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, shall establish a joint research facility in Barrow, Alaska, to be known as the "Barrow Geophysical Research Facility", to support scientific research activities in the Arctic.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretaries of Commerce, Energy, and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency for the planning, design, construction, and support of the Barrow Geophysical Research Facility $61,000,000.

SEC. 970. WESTERN MICHIGAN DEMONSTRATION PROJECT.

The Administrator of the Environmental Protection Agency, in consultation with the State of Michigan and affected local officials, shall conduct a demonstration project to address the effect of transported ozone and ozone precursors in Southwestern Michigan. The demonstration program shall address projected nonattainment areas in Southwestern Michigan that include counties with design values for ozone of less than .095 based on years 2000 to 2002 or the most current 3-year period of air quality data. The Administrator shall assess any difficulties such areas may experience in meeting the 8 hour national ambient air quality standard for ozone due to the effect of transported ozone or ozone precursors into the areas. The Administrator shall work with State and local officials to determine the extent of ozone and ozone precursor transport, to assess alternatives to achieve compliance with the 8 hour standard apart from local controls, and to determine the timeframe in which such compliance could take place. The Administrator shall complete this demonstration project no later than 2 years after the date of enactment of this section and shall not impose any requirement or sanction that might otherwise apply during the pendency of the demonstration project.

Subtitle H—Management

SEC. 971. AVAILABILITY OF FUNDS.

Funds authorized to be appropriated to the Department under this title shall remain available until expended.

SEC. 972. COST SHARING.

(a) RESEARCH AND DEVELOPMENT.—Except as otherwise provided in this title, for research and development programs carried out under this title the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. The Secretary may reduce or eliminate the non-Federal requirement under this subsection if the Secretary determines that the research and development is of a basic or fundamental nature or involves technical analyses or educational activities.

(b) DEMONSTRATION AND COMMERCIAL APPLICATION.—Except as otherwise provided in this title, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this title to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this subsection if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this title.

(c) CALCULATION OF AMOUNT.—In calculating the amount of the non-Federal commitment under subsection (a) or (b), the Secretary may include personnel, services, equipment, and other resources.

(d) SIZE OF NON-FEDERAL SHARE.—The Secretary may consider the size of the non-Federal share in selecting projects.

SEC. 973. MERIT REVIEW OF PROPOSALS.

Awards of funds authorized under this title shall be made only after an impartial review of the scientific and technical merit of the proposals for such awards has been carried out by or for the Department.

SEC. 974. EXTERNAL TECHNICAL REVIEW OF DEPARTMENTAL PROGRAMS.

(a) NATIONAL ENERGY RESEARCH AND DEVELOPMENT ADVISORY BOARDS.—

(1) IN GENERAL.—The Secretary shall establish 1 or more advisory boards to review Department research, development, demonstration, and commercial application programs in energy efficiency, renewable energy, nuclear energy, and fossil energy.

(2) EXISTING ADVISORY BOARDS.—The Secretary may designate an existing advisory board within the Department to fulfill the responsibilities of an advisory board under this subsection, and may enter into appropriate arrangements with the National Academy of Sciences to establish such an advisory board.

(b) OFFICE OF SCIENCE ADVISORY COMMITTEES.—

(1) UTILIZATION OF EXISTING COMMITTEES.—The Secretary shall continue to use the scientific program advisory committees chartered under the Federal Advisory Committee Act (5 U.S.C. App.) by the Office of Science to oversee research and development programs under that Office.

(2) SCIENCE ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—There shall be in the Office of Science a Science Advisory Committee that includes the chairs of each of the advisory committees described in paragraph (1).

(B) RESPONSIBILITIES.—The Science Advisory Committee shall—

(i) serve as the science advisor to the Director of the Office of Science;

(ii) advise the Director with respect to the well-being and management of the National Laboratories and single-purpose research facilities;

(iii) advise the Director with respect to education and workforce training activities required for effective short-term and long-term basic and applied research activities of the Office of Science; and

(iv) advise the Director with respect to the well being of the university research programs supported by the Office of Science.

(c) MEMBERSHIP.—Each advisory board under this section shall consist of persons with appropriate expertise representing a diverse range of interests.

(d) MEETINGS AND PURPOSES.—Each advisory board under this section shall meet at least semiannually to review and advise on the progress made by the respective research, development, demonstration, and commercial application program or programs. The advisory board shall also review the measurable cost and performance-based goals for such programs as established under section 901(b), and the progress on meeting such goals.

(e) PERIODIC REVIEWS AND ASSESSMENTS.—The Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct periodic reviews and assessments of the programs authorized by this title, the measurable cost and performance-based goals for such programs as established under section 901(b), if any, and the progress on meeting such goals. Such reviews and assessments shall be conducted every 5 years, or more often as the Secretary considers necessary, and the Secretary shall transmit to Congress reports containing the results of all such reviews and assessments.

SEC. 975. IMPROVED COORDINATION OF TECHNOLOGY TRANSFER ACTIVITIES.

(a) TECHNOLOGY TRANSFER COORDINATOR.—The Secretary shall designate a Technology Transfer Coordinator to perform oversight of and policy development for technology transfer activities at the Department. The Technology Transfer Coordinator shall—

(1) coordinate the activities of the Technology Transfer Working Group;

(2) oversee the expenditure of funds allocated to the Technology Transfer Working Group; and

(3) coordinate with each technology partnership ombudsman appointed under section 11 of the Technology Transfer Commercialization Act of 2000 (42 U.S.C. 7261c).

(b) TECHNOLOGY TRANSFER WORKING GROUP.—The Secretary shall establish a Technology Transfer Working Group, which shall consist of representatives of the National Laboratories and single-purpose research facilities, to—

(1) coordinate technology transfer activities occurring at National Laboratories and single-purpose research facilities;

(2) exchange information about technology transfer practices, including alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters; and

(3) develop and disseminate to the public and prospective technology partners information about opportunities and procedures for technology transfer with the Department, including those related to alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters.

(c) TECHNOLOGY TRANSFER RESPONSIBILITY.—Nothing in this section shall affect the technology transfer responsibilities of Federal employees under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

SEC. 976. FEDERAL LABORATORY EDUCATIONAL PARTNERS.

(a) DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.—Section 14(a)(1)(B)(v) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(B)(v)), is amended to read as follows:

"(v) for scientific research and development and for educational assistance and other purposes consistent with the missions and objectives of the agency and the laboratory.".

(b) COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.—Section 12(b)(5)(C) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(b)(5)(C)) is amended to read as follows:

"(C) for scientific research and development and for educational assistance consistent with the missions and objectives of the agency and the laboratory.".

SEC. 977. INTERAGENCY COOPERATION.

The Secretary shall enter into discussions with the Administrator of the National Aeronautics and Space Administration with the goal of reaching an interagency working agreement between the 2 agencies that would make the National Aeronautics and Space Administration's expertise in energy, gained from its existing and planned programs, more readily available to the relevant research, development, demonstration, and commercial applications programs of the Department. Technologies to be discussed should include the National Aeronautics and Space Administration's modeling, research, development, testing, and evaluation of new energy technologies, including solar, wind, fuel cells, and hydrogen storage and distribution.

SEC. 978. TECHNOLOGY INFRASTRUCTURE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a Technology Infrastructure Program in accordance with this section.

(b) PURPOSE.—The purpose of the Technology Infrastructure Program shall be to improve the ability of National Laboratories and single-purpose research facilities to support departmental missions by—

(1) stimulating the development of technology clusters that can support departmental missions at the National Laboratories or single-purpose research facilities;

(2) improving the ability of National Laboratories and single-purpose research facilities to leverage and benefit from commercial research, technology, products, processes, and services; and

(3) encouraging the exchange of scientific and technological expertise between National Laboratories or single-purpose research facilities and entities that can support departmental missions at the National Laboratories or single-purpose research facilities, such as institutions of higher education; technology-related business concerns; nonprofit institutions; and agencies of State, tribal, or local governments.

(c) PROJECTS.—The Secretary shall authorize the Director of each National Laboratory or single-purpose research facility to implement the Technology Infrastructure Program at such National Laboratory or facility through projects that meet the requirements of subsections (d) and (e).

(d) PROGRAM REQUIREMENTS.—Each project funded under this section shall meet the following requirements:

(1) Each project shall include at least 1 of each of the following entities: a business; an institution of higher education; a nonprofit institution; and an agency of a State, local, or tribal government.

(2) Not less than 50 percent of the costs of each project funded under this section shall be provided from non-Federal sources. The calculation of costs paid by the non-Federal sources to a project shall include cash, personnel, services, equipment, and other resources expended on the project after start of the project. Independent research and development expenses of Government contractors that qualify for reimbursement under section 31.205–18(e) of the Federal Acquisition Regulation issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) may be credited toward costs paid by non-Federal sources to a project, if the expenses meet the other requirements of this section.

(3) All projects under this section shall be competitively selected using procedures determined by the Secretary.

(4) Any participant that receives funds under this section may use generally accepted accounting principles for maintaining accounts, books, and records relating to the project.

(5) No Federal funds shall be made available under this section for construction or any project for more than 5 years.

(e) SELECTION CRITERIA.—

(1) IN GENERAL.—The Secretary shall allocate funds under this section only if the Director of the National Laboratory or single-purpose research facility managing the project determines that the project is likely to improve the ability of the National Laboratory or single-purpose research facility to achieve technical success in meeting departmental missions.

(2) CRITERIA.—The Secretary shall consider the following criteria in selecting a project to receive Federal funds:

(A) The potential of the project to promote the development of a commercially sustainable technology cluster following the period of Department investment, which will derive most of the demand for its products or services from the private sector, and which will support departmental missions at the participating National Laboratory or single-purpose research facility.

(B) The potential of the project to promote the use of commercial research, technology, products, processes, and services by the participating National Laboratory or single-purpose research facility to achieve its mission or the commercial development of technological innovations made at the participating National Laboratory or single-purpose research facility.

(C) The extent to which the project involves a wide variety and number of institutions of higher education, nonprofit institutions, and technology-related business concerns that can support the missions of the participating National Laboratory or single-purpose research facility and that will make substantive contributions to achieving the goals of the project.

(D) The extent to which the project focuses on promoting the development of technology-related business concerns that are small businesses or involves such small businesses substantively in the project.

(E) Such other criteria as the Secretary determines to be appropriate.

(f) ALLOCATION.—In allocating funds for projects approved under this section, the Secretary shall provide—

(1) the Federal share of the project costs; and

(2) additional funds to the National Laboratory or single-purpose research facility managing the project to permit the National Laboratory or single-purpose research facility to carry out activities relating to the project, and to coordinate such activities with the project.

(g) REPORT TO CONGRESS.—Not later than July 1, 2006, the Secretary shall report to Congress on whether the Technology Infrastructure Program should be continued and, if so, how the program should be managed.

(h) DEFINITIONS.—In this section:

(1) TECHNOLOGY CLUSTER.—The term "technology cluster" means a concentration of technology-related business concerns, institutions of higher education, or nonprofit institutions that reinforce each other's performance in the areas of technology development through formal or informal relationships.

(2) TECHNOLOGY-RELATED BUSINESS CONCERN.—The term "technology-related business concern" means a for-profit corporation, company, association, firm, partnership, or small business concern that conducts scientific or engineering research; develops new technologies; manufactures products based on new technologies; or performs technological services.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for activities under this section $10,000,000 for each of fiscal years 2004, 2005, and 2006.

SEC. 979. REPROGRAMMING.

(a) DISTRIBUTION REPORT.—Not later than 60 days after the date of the enactment of an Act appropriating amounts authorized under this title, the Secretary shall transmit to the appropriate authorizing committees of Congress a report explaining how such amounts will be distributed among the authorizations contained in this title.

(b) PROHIBITION.—

(1) IN GENERAL.—No amount identified under subsection (a) shall be reprogrammed if such reprogramming would result in an obligation which changes an individual distribution required to be reported under subsection (a) by more than 5 percent unless the Secretary has transmitted to the appropriate authorizing committees of Congress a report described in subsection (c) and a period of 30 days has elapsed after such committees receive the report.

(2) COMPUTATION.—In the computation of the 30-day period described in paragraph (1), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain.

(c) REPROGRAMMING REPORT.—A report referred to in subsection (b)(1) shall contain a full and complete statement of the action proposed to be taken and the facts and circumstances relied on in support of the proposed action.

SEC. 980. CONSTRUCTION WITH OTHER LAWS.

Except as otherwise provided in this title, the Secretary shall carry out the research, development, demonstration, and commercial application programs, projects, and activities authorized by this title in accordance with the applicable provisions of the Atomic Energy Act of 1954

(42 U.S.C. 2011 et seq.), the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.), the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), chapter 18 of title 35, United States Code (commonly referred to as the Bayh-Dole Act), and any other Act under which the Secretary is authorized to carry out such activities.

SEC. 981. REPORT ON RESEARCH AND DEVELOPMENT PROGRAM EVALUATION METHODOLOGIES.

Not later than 180 days after the date of enactment of this Act, the Secretary shall enter into appropriate arrangements with the National Academy of Sciences to investigate and report on the scientific and technical merits of any evaluation methodology currently in use or proposed for use in relation to the scientific and technical programs of the Department by the Secretary or other Federal official. Not later than 6 months after receiving the report of the National Academy, the Secretary shall submit such report to Congress, along with any other views or plans of the Secretary with respect to the future use of such evaluation methodology.

SEC. 982. DEPARTMENT OF ENERGY SCIENCE AND TECHNOLOGY SCHOLARSHIP PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—The Secretary is authorized to establish a Department of Energy Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Department.

(2) COMPETITIVE PROCESS.—Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(3) SERVICE AGREEMENTS.—To carry out the Program the Secretary shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Department, for the period described in subsection (f)(1), in positions needed by the Department and for which the individuals are qualified, in exchange for receiving a scholarship.

(b) SCHOLARSHIP ELIGIBILITY.—In order to be eligible to participate in the Program, an individual must—

(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic program or field of study described in the list made available under subsection (d);

(2) be a United States citizen; and

(3) at the time of the initial scholarship award, not be a Federal employee as defined in section 2105 of title 5 of the United States Code.

(c) APPLICATION REQUIRED.—An individual seeking a scholarship under this section shall submit an application to the Secretary at such time, in such manner, and containing such information, agreements, or assurances as the Secretary may require.

(d) ELIGIBLE ACADEMIC PROGRAMS.—The Secretary shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized, and shall update the list as necessary.

(e) SCHOLARSHIP REQUIREMENT.—

(1) IN GENERAL.—The Secretary may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Secretary, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

(2) DURATION OF ELIGIBILITY.—An individual may not receive a scholarship under this section for more than 4 academic years, unless the Secretary grants a waiver.

(3) SCHOLARSHIP AMOUNT.—The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Secretary, but shall in no case exceed the cost of attendance.

(4) AUTHORIZED USES.—A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Secretary by regulation.

(5) CONTRACTS REGARDING DIRECT PAYMENTS TO INSTITUTIONS.—The Secretary may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

(f) PERIOD OF OBLIGATED SERVICE.—

(1) DURATION OF SERVICE.—The period of service for which an individual shall be obligated to serve as an employee of the Department is, except as provided in subsection (h)(2), 24 months for each academic year for which a scholarship under this section is provided.

(2) SCHEDULE FOR SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

(B) DEFERRAL.—The Secretary may defer the obligation of an individual to provide a period of service under paragraph (1) if the Secretary determines that such a deferral is appropriate. The Secretary shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

(g) PENALTIES FOR BREACH OF SCHOLARSHIP AGREEMENT.—

(1) FAILURE TO COMPLETE ACADEMIC TRAINING.—Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Secretary by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment not later than 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Secretary when determined to be necessary, as established by regulation.

(2) FAILURE TO BEGIN OR COMPLETE THE SERVICE OBLIGATION OR MEET THE TERMS AND CONDITIONS OF DEFERMENT.—A scholarship recipient who, for any reason, fails to begin or complete a service obligation under this section after completion of academic training, or fails to comply with the terms and conditions of deferment established by the Secretary pursuant to subsection (f)(2)(B), shall be in breach of the contractual agreement. When a recipient breaches an agreement for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

(A) the total amount of scholarships received by such individual under this section; plus

(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 3.

(h) WAIVER OR SUSPENSION OF OBLIGATION.—

(1) DEATH OF INDIVIDUAL.—Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

(2) IMPOSSIBILITY OR EXTREME HARDSHIP.—The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

(i) DEFINITIONS.—In this section the following definitions apply:

(1) COST OF ATTENDANCE.—The term "cost of attendance" has the meaning given that term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll).

(2) PROGRAM.—The term "Program" means the Department of Energy Science and Technology Scholarship Program established under this section.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for activities under this section—

(1) for fiscal year 2004, $800,000;

(2) for fiscal year 2005, $1,600,000;

(3) for fiscal year 2006, $2,000,000;

(4) for fiscal year 2007, $2,000,000; and

(5) for fiscal year 2008, $2,000,000.

SEC. 983. REPORT ON EQUAL EMPLOYMENT OPPORTUNITY PRACTICES.

Not later than 12 months after the date of enactment of this Act, and biennially thereafter, the Secretary shall transmit to Congress a report on the equal employment opportunity practices at National Laboratories. Such report shall include—

(1) a thorough review of each laboratory contractor's equal employment opportunity policies, including promotion to management and professional positions and pay raises;

(2) a statistical report on complaints and their disposition in the laboratories;

(3) a description of how equal employment opportunity practices at the laboratories are treated in the contract and in calculating award fees for each contractor;

(4) a summary of disciplinary actions and their disposition by either the Department or the relevant contractors for each laboratory;

(5) a summary of outreach efforts to attract women and minorities to the laboratories;

(6) a summary of efforts to retain women and minorities in the laboratories; and

(7) a summary of collaboration efforts with the Office of Federal Contract Compliance Programs to improve equal employment opportunity practices at the laboratories.

SEC. 984. SMALL BUSINESS ADVOCACY AND ASSISTANCE.

(a) SMALL BUSINESS ADVOCATE.—The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to designate a small business advocate to—

(1) increase the participation of small business concerns, including socially and economically disadvantaged small business concerns, in procurement, collaborative research, technology licensing, and technology transfer activities conducted by the National Laboratory or single-purpose research facility;

(2) report to the Director of the National Laboratory or single-purpose research facility on

the actual participation of small business concerns, including socially and economically disadvantaged small business concerns, in procurement, collaborative research, technology licensing, and technology transfer activities along with recommendations, if appropriate, on how to improve participation;

(3) make available to small businesses training, mentoring, and information on how to participate in procurement and collaborative research activities;

(4) increase the awareness inside the National Laboratory or single-purpose research facility of the capabilities and opportunities presented by small business concerns; and

(5) establish guidelines for the program under subsection (b) and report on the effectiveness of such program to the Director of the National Laboratory or single-purpose research facility.

(b) ESTABLISHMENT OF SMALL BUSINESS ASSISTANCE PROGRAM.—The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to establish a program to provide small business concerns—

(1) assistance directed at making them more effective and efficient subcontractors or suppliers to the National Laboratory or single-purpose research facility; or

(2) general technical assistance, the cost of which shall not exceed $10,000 per instance of assistance, to improve the small business concerns' products or services.

(c) USE OF FUNDS.—None of the funds expended under subsection (b) may be used for direct grants to the small business concerns.

(d) DEFINITIONS.—In this section:

(1) SMALL BUSINESS CONCERN.—The term ''small business concern'' has the meaning given such term in section 3 of the Small Business Act (15 U.S.C. 632).

(2) SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS.—The term ''socially and economically disadvantaged small business concerns'' has the meaning given such term in section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for activities under this section $5,000,000 for each of fiscal years 2004 through 2008.

SEC. 985. REPORT ON MOBILITY OF SCIENTIFIC AND TECHNICAL PERSONNEL.

Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit a report to Congress identifying any policies or procedures of a contractor operating a National Laboratory or single-purpose research facility that create disincentives to the temporary transfer of scientific and technical personnel among the contractor-operated National Laboratories or contractor-operated single-purpose research facilities and provide suggestions for improving interlaboratory exchange of scientific and technical personnel.

SEC. 986. NATIONAL ACADEMY OF SCIENCES REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into an arrangement with the National Academy of Sciences for the Academy to—

(1) conduct a study on—

(A) the obstacles to accelerating the commercial application of energy technology; and

(B) the adequacy of Department policies and procedures for, and oversight of, technology transfer-related disputes between contractors of the Department and the private sector; and

(2) transmit a report to Congress on recommendations developed as a result of the study.

SEC. 987. OUTREACH.

The Secretary shall ensure that each program authorized by this title includes an outreach component to provide information, as appropriate, to manufacturers, consumers, engineers, architects, builders, energy service companies, institutions of higher education, small businesses, facility planners and managers, State and local governments, and other entities.

SEC. 988. COMPETITIVE AWARD OF MANAGEMENT CONTRACTS.

None of the funds authorized to be appropriated to the Secretary by this title may be used to award a management and operating contract for a nonmilitary energy laboratory of the Department unless such contract is competitively awarded or the Secretary grants, on a case-by-case basis, a waiver to allow for such a deviation. The Secretary may not delegate the authority to grant such a waiver and shall submit to Congress a report notifying Congress of the waiver and setting forth the reasons for the waiver at least 60 days prior to the date of the award of such a contract.

SEC. 989. EDUCATIONAL PROGRAMS IN SCIENCE AND MATHEMATICS.

(a) ACTIVITIES.—Section 3165(a) of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381b(a)) is amended by adding at the end the following:

''(14) Support competitive events for students, under supervision of teachers, designed to encourage student interest and knowledge in science and mathematics.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 3169 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381e), as so redesignated by section 1102(b), is amended by inserting before the period ''; and $40,000,000 for each of fiscal years 2004 through 2008''.

TITLE X—DEPARTMENT OF ENERGY MANAGEMENT

SEC. 1001. ADDITIONAL ASSISTANT SECRETARY POSITION.

(a) ADDITIONAL ASSISTANT SECRETARY POSITION TO ENABLE IMPROVED MANAGEMENT OF NUCLEAR ENERGY ISSUES.—

(1) IN GENERAL.—Section 203(a) of the Department of Energy Organization Act (42 U.S.C. 7133(a)) is amended by striking ''six Assistant Secretaries'' and inserting ''7 Assistant Secretaries''.

(2) SENSE OF CONGRESS.—It is the sense of Congress that the leadership for departmental missions in nuclear energy should be at the Assistant Secretary level.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 5.—Section 5315 of title 5, United States Code, is amended by striking ''Assistant Secretaries of Energy (6)'' and inserting ''Assistant Secretaries of Energy (7)''.

(2) DEPARTMENT OF ENERGY ORGANIZATION ACT.—The table of contents for the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended—

(A) by striking ''Section 209'' and inserting ''Sec. 209'';

(B) by striking ''213.'' and inserting ''Sec. 213.'';

(C) by striking ''214.'' and inserting ''Sec. 214.'';

(D) by striking ''215.'' and inserting ''Sec. 215.''; and

(E) by striking ''216.'' and inserting ''Sec. 216.''.

SEC. 1002. OTHER TRANSACTIONS AUTHORITY.

Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) is amended by adding at the end the following:

''(g)(1) In addition to other authorities granted to the Secretary under law, the Secretary may enter into other transactions on such terms as the Secretary may deem appropriate in furtherance of research, development, or demonstration functions vested in the Secretary. Such other transactions shall not be subject to the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908) or section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

''(2)(A) The Secretary shall ensure that—

''(i) to the maximum extent the Secretary determines practicable, no transaction entered into under paragraph (1) provides for research, development, or demonstration that duplicates research, development, or demonstration being conducted under existing projects carried out by the Department;

''(ii) to the extent the Secretary determines practicable, the funds provided by the Government under a transaction authorized by paragraph (1) do not exceed the total amount provided by other parties to the transaction; and

''(iii) to the extent the Secretary determines practicable, competitive, merit-based selection procedures shall be used when entering into transactions under paragraph (1).

''(B) A transaction authorized by paragraph (1) may be used for a research, development, or demonstration project only if the Secretary makes a written determination that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

''(3)(A) The Secretary shall protect from disclosure, including disclosure under section 552 of title 5, United States Code, for up to 5 years after the date the information is received by the Secretary—

''(i) a proposal, proposal abstract, and supporting documents submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award under paragraph (1) to the party submitting the information; and

''(ii) a business plan and technical information relating to a transaction authorized by paragraph (1) submitted to the Department as confidential business information.

''(B) The Secretary may protect from disclosure, for up to 5 years after the information was developed, any information developed pursuant to a transaction under paragraph (1) which developed information is of a character that it would be protected from disclosure under section 552(b)(4) of title 5, United States Code, if obtained from a person other than a Federal agency.

''(4) Not later than 90 days after the date of enactment of this subsection, the Secretary shall prescribe guidelines for using other transactions authorized by paragraph (1). Such guidelines shall be published in the Federal Register for public comment under rulemaking procedures of the Department.

''(5) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate and may not be delegated to any other person.

''(6)(A) Not later than September 31, 2005, the Comptroller General of the United States shall report to Congress on the Department's use of the authorities granted under this section, including the ability to attract nontraditional government contractors and whether additional safeguards are needed with respect to the use of such authorities.

''(B) In this section, the term 'nontraditional Government contractor' has the same meaning as the term 'nontraditional defense contractor' as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note).''.

TITLE XI—PERSONNEL AND TRAINING

SEC. 1101. TRAINING GUIDELINES FOR ELECTRIC ENERGY INDUSTRY PERSONNEL.

The Secretary of Energy, in consultation with the Secretary of Labor and jointly with the electric industry and recognized employee representatives, shall develop model personnel training guidelines to support electric system reliability and safety. The training guidelines shall, at a minimum—

(1) include training requirements for workers engaged in the construction, operation, inspection, and maintenance of electric generation, transmission, and distribution, including competency and certification requirements, and assessment requirements that include initial and ongoing evaluation of workers, recertification assessment procedures, and methods for examining or testing the qualification of individuals performing covered tasks; and

(2) consolidate existing training guidelines on the construction, operation, maintenance, and inspection of electric generation, transmission, and distribution facilities, such as those established by the National Electric Safety Code and other industry consensus standards.

SEC. 1102. IMPROVED ACCESS TO ENERGY-RELATED SCIENTIFIC AND TECHNICAL CAREERS.

(a) DEPARTMENT OF ENERGY SCIENCE EDUCATION PROGRAMS.—Section 3164 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) is amended by adding at the end the following:

"(c) PROGRAMS FOR STUDENTS FROM UNDERREPRESENTED GROUPS.—In carrying out a program under subsection (a), the Secretary shall give priority to activities that are designed to encourage students from underrepresented groups to pursue scientific and technical careers.".

(b) PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVICING INSTITUTIONS, AND TRIBAL COLLEGES.—The Department of Energy Science Education Enhancement Act (42 U.S.C. 7381 et seq.) is amended—

(1) by redesignating sections 3167 and 3168 as sections 3168 and 3169, respectively; and

(2) by inserting after section 3166 the following:

"SEC. 3167. PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVING INSTITUTIONS, AND TRIBAL COLLEGES.

"(a) DEFINITIONS.—In this section:

"(1) HISPANIC-SERVING INSTITUTION.—The term 'Hispanic-serving institution' has the meaning given that term in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

"(2) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term 'historically Black college or university' has the meaning given the term 'part B institution' in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

"(3) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given that term in section 902 of the Energy Policy Act of 2003.

"(4) SCIENCE FACILITY.—The term 'science facility' has the meaning given the term 'single-purpose research facility' in section 902 of the Energy Policy Act of 2003.

"(5) TRIBAL COLLEGE.—The term 'tribal college' has the meaning given the term 'Tribal College or University' in section 316(b)(3) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)(3)).

"(b) EDUCATION PARTNERSHIP.—The Secretary shall direct the Director of each National Laboratory and, to the extent practicable, the head of any science facility to increase the participation of historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges in activities that increase the capacity of the historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges to train personnel in science or engineering.

"(c) ACTIVITIES.—An activity under subsection (b) may include—

"(1) collaborative research;

"(2) equipment transfer;

"(3) training activities conducted at a National Laboratory or science facility; and

"(4) mentoring activities conducted at a National Laboratory or science facility.

"(d) REPORT.—Not later than 2 years after the date of enactment of the Energy Policy Act of 2003, the Secretary shall submit to Congress a report on the activities carried out under this section.".

SEC. 1103. NATIONAL POWER PLANT OPERATIONS TECHNOLOGY AND EDUCATION CENTER.

(a) ESTABLISHMENT.—The Secretary shall support the establishment of a National Power Plant Operations Technology and Education Center (in this section referred to as the "Center"), to address the need for training and educating certified operators for nonnuclear electric power generation plants.

(b) ROLE.—The Center shall provide both training and continuing education relating to nonnuclear electric power generation plant technologies and operations. The Center shall conduct training and education activities on site and through Internet-based information technologies that allow for learning at remote sites.

(c) CRITERIA FOR COMPETITIVE SELECTION.—The Secretary shall support the establishment of the Center at an institution of higher education with expertise in power plant technology and operation and with the ability to provide onsite as well as Internet-based training.

SEC. 1104. INTERNATIONAL ENERGY TRAINING.

(a) IN GENERAL.—The Secretary of Energy, in consultation with the Secretaries of Commerce, Interior, and State and the Federal Energy Regulatory Commission, shall coordinate training and outreach efforts for international commercial energy markets in countries with developing and restructuring economies.

(b) COMPONENTS.—The efforts may address—

(1) production-related fiscal regimes;

(2) grid and network issues;

(3) energy user and demand side response;

(4) international trade of energy; and

(5) international transportation of energy.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $1,500,000 for each of fiscal years 2004 through 2007.

TITLE XII—ELECTRICITY

SEC. 1201. SHORT TITLE.

This title may be cited as the "Electric Reliability Act of 2003".

Subtitle A—Reliability Standards

SEC. 1211. ELECTRIC RELIABILITY STANDARDS.

(a) IN GENERAL.—Part II of the Federal Power Act (16 U.S.C 824 et seq.) is amended by adding at the end the following:

"SEC. 215. ELECTRIC RELIABILITY.

"(a) DEFINITIONS.—For purposes of this section:

"(1) The term 'bulk-power system' means—

"(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

"(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

"(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

"(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

"(4) The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system elements.

"(5) The term 'Interconnection' means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of 1 or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

"(6) The term 'transmission organization' means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

"(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

"(b) JURISDICTION AND APPLICABILITY.—(1) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

"(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

"(c) CERTIFICATION.—Following the issuance of a Commission rule under subsection (b)(2), any person may submit an application to the Commission for certification as the Electric Reliability Organization. The Commission may certify 1 such ERO if the Commission determines that such ERO—

"(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system; and

"(2) has established rules that—

"(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

"(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

"(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

"(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

"(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

"(d) RELIABILITY STANDARDS.—(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

"(2) The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

"(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

"(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

"(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

"(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

"(A) the Commission finds a conflict exists between a reliability standard and any such provision;

"(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

"(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

"(e) ENFORCEMENT.—(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

"(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

"(B) files notice and the record of the proceeding with the Commission.

"(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

"(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

"(4) The Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

"(A) the regional entity is governed by—

"(i) an independent board;

"(ii) a balanced stakeholder board; or

"(iii) a combination independent and balanced stakeholder board.

"(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

"(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

"(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

"(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

"(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZATION RULES.—The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

"(g) RELIABILITY REPORTS.—The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

"(h) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

"(i) SAVINGS PROVISIONS.—(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

"(2) This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

"(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

"(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

"(5) The Commission, after consultation with the ERO and the State taking action, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

"(j) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least ⅔ of the States within a region that have more than ½ of their electric load served within the region. A regional advisory body shall be composed of 1 member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

"(k) ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.".

(b) STATUS OF ERO.—The Electric Reliability Organization certified by the Federal Energy Regulatory Commission under section 215(c) of the Federal Power Act and any regional entity delegated enforcement authority pursuant to section 215(e)(4) of that Act are not departments, agencies, or instrumentalities of the United States Government.

Subtitle B—Transmission Infrastructure Modernization

SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

(a) Amendment of Federal Power Act.—Part II of the Federal Power Act is amended by adding at the end the following:

“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

“(a) Designation of National Interest Electric Transmission Corridors.—

“(1) Transmission congestion study.—Within 1 year after the enactment of this section, and every 3 years thereafter, the Secretary of Energy, in consultation with affected States, shall conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties, including an opportunity for comment from affected States, the Secretary shall issue a report, based on such study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor. The Secretary shall conduct the study and issue the report in consultation with any appropriate regional entity referenced in section 215 of this Act.

“(2) Considerations.—In determining whether to designate a national interest electric transmission corridor referred to in paragraph (1) under this section, the Secretary may consider whether—

“(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

“(B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and

“(ii) a diversification of supply is warranted;

“(C) the energy independence of the United States would be served by the designation;

“(D) the designation would be in the interest of national energy policy; and

“(E) the designation would enhance national defense and homeland security.

“(b) Construction Permit.—Except as provided in subsection (i), the Commission is authorized, after notice and an opportunity for hearing, to issue a permit or permits for the construction or modification of electric transmission facilities in a national interest electric transmission corridor designated by the Secretary under subsection (a) if the Commission finds that—

“(1)(A) a State in which the transmission facilities are to be constructed or modified is without authority to—

“(i) approve the siting of the facilities; or

“(ii) consider the interstate benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;

“(B) the applicant for a permit is a transmitting utility under this Act but does not qualify to apply for a permit or siting approval for the proposed project in a State because the applicant does not serve end-use customers in the State; or

“(C) a State commission or other entity that has authority to approve the siting of the facilities has—

“(i) withheld approval for more than 1 year after the filing of an application pursuant to applicable law seeking approval or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later; or

“(ii) conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible;

“(2) the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce;

“(3) the proposed construction or modification is consistent with the public interest;

“(4) the proposed construction or modification will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers; and

“(5) the proposed construction or modification is consistent with sound national energy policy and will enhance energy independence.

“(c) Permit Applications.—Permit applications under subsection (b) shall be made in writing to the Commission. The Commission shall issue rules setting forth the form of the application, the information to be contained in the application, and the manner of service of notice of the permit application upon interested persons.

“(d) Comments.—In any proceeding before the Commission under subsection (b), the Commission shall afford each State in which a transmission facility covered by the permit is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons, a reasonable opportunity to present their views and recommendations with respect to the need for and impact of a facility covered by the permit.

“(e) Rights-of-Way.—In the case of a permit under subsection (b) for electric transmission facilities to be located on property other than property owned by the United States or a State, if the permit holder cannot acquire by contract, or is unable to agree with the owner of the property to the compensation to be paid for, the necessary right-of-way to construct or modify such transmission facilities, the permit holder may acquire the right-of-way by the exercise of the right of eminent domain in the district court of the United States for the district in which the property concerned is located, or in the appropriate court of the State in which the property is located. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated.

“(f) State Law.—Nothing in this section shall preclude any person from constructing or modifying any transmission facility pursuant to State law.

“(g) Compensation.—Any exercise of eminent domain authority pursuant to this section shall be considered a taking of private property for which just compensation is due. Just compensation shall be an amount equal to the full fair market value of the property taken on the date of the exercise of eminent domain authority, except that the compensation shall exceed fair market value if necessary to make the landowner whole for decreases in the value of any portion of the land not subject to eminent domain. Any parcel of land acquired by eminent domain under this subsection shall be transferred back to the owner from whom it was acquired (or his heirs or assigns) if the land is not used for the construction or modification of electric transmission facilities within a reasonable period of time after the acquisition. Other than construction, modification, operation, or maintenance of electric transmission facilities and related facilities, property acquired under subsection (e) may not be used for any purpose (including use for any heritage area, recreational trail, or park) without the consent of the owner of the parcel from whom the property was acquired (or the owner's heirs or assigns).

“(h) Coordination of Federal Authorizations for Transmission and Distribution Facilities.—

“(1) Lead agency.—If an applicant, or prospective applicant, for a Federal authorization related to an electric transmission or distribution facility so requests, the Department of Energy (DOE) shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility. For purposes of this subsection, the term ‘Federal authorization’ means any authorization required under Federal law in order to site a transmission or distribution facility, including but not limited to such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal or a State agency. To the maximum extent practicable under applicable Federal law, the Secretary of Energy shall coordinate this Federal authorization and review process with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the facility, to ensure timely and efficient review and permit decisions.

“(2) Authority to set deadlines.—As lead agency, the Department of Energy, in consultation with agencies responsible for Federal authorizations and, as appropriate, with Indian tribes, multi-State entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environmental reviews, shall establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility. The Secretary of Energy shall ensure that once an application has been submitted with such data as the Secretary considers necessary, all permit decisions and related environmental reviews under all applicable Federal laws shall be completed within 1 year or, if a requirement of another provision of Federal law makes this impossible, as soon thereafter as is practicable. The Secretary of Energy also shall provide an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved to have each such agency determine and communicate to the prospective applicant within 60 days of when the prospective applicant submits a request for such information concerning—

“(A) the likelihood of approval for a potential facility; and

“(B) key issues of concern to the agencies and public.

“(3) Consolidated environmental review and record of decision.—As lead agency head, the Secretary of Energy, in consultation with the affected agencies, shall prepare a single environmental review document, which shall be used as the basis for all decisions on the proposed project under Federal law. The document may be an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 if warranted, or such other form of analysis as may be warranted. The Secretary of Energy and the heads of other agencies shall streamline the review and permitting of transmission and distribution facilities within corridors designated under section 503 of the Federal Land Policy and Management Act (43 U.S.C. 1763) by fully taking into account prior analyses and decisions relating to the corridors. Such document shall include consideration by the relevant agencies of any applicable criteria or other matters as required under applicable laws.

“(4) Appeals.—In the event that any agency has denied a Federal authorization required for a transmission or distribution facility, or has failed to act by the deadline established by the Secretary pursuant to this section for deciding whether to issue the authorization, the applicant or any State in which the facility would be located may file an appeal with the Secretary,

who shall, in consultation with the affected agency, review the denial or take action on the pending application. Based on the overall record and in consultation with the affected agency, the Secretary may then either issue the necessary authorization with any appropriate conditions, or deny the application. The Secretary shall issue a decision within 90 days of the filing of the appeal. In making a decision under this paragraph, the Secretary shall comply with applicable requirements of Federal law, including any requirements of the Endangered Species Act, the Clean Water Act, the National Forest Management Act, the National Environmental Policy Act of 1969, and the Federal Land Policy and Management Act.

"(5) CONFORMING REGULATIONS AND MEMORANDA OF UNDERSTANDING.—Not later than 18 months after the date of enactment of this section, the Secretary of Energy shall issue any regulations necessary to implement this subsection. Not later than 1 year after the date of enactment of this section, the Secretary and the heads of all Federal agencies with authority to issue Federal authorizations shall enter into Memoranda of Understanding to ensure the timely and coordinated review and permitting of electricity transmission and distribution facilities. The head of each Federal agency with authority to issue a Federal authorization shall designate a senior official responsible for, and dedicate sufficient other staff and resources to ensure, full implementation of the DOE regulations and any Memoranda. Interested Indian tribes, multi-State entities, and State agencies may enter such Memoranda of Understanding.

"(6) DURATION AND RENEWAL.—Each Federal land use authorization for an electricity transmission or distribution facility shall be issued—

"(A) for a duration, as determined by the Secretary of Energy, commensurate with the anticipated use of the facility, and

"(B) with appropriate authority to manage the right-of-way for reliability and environmental protection.

Upon the expiration of any such authorization (including an authorization issued prior to enactment of this section), the authorization shall be reviewed for renewal taking fully into account reliance on such electricity infrastructure, recognizing its importance for public health, safety and economic welfare and as a legitimate use of Federal lands.

"(7) MAINTAINING AND ENHANCING THE TRANSMISSION INFRASTRUCTURE.—In exercising the responsibilities under this section, the Secretary of Energy shall consult regularly with the Federal Energy Regulatory Commission (FERC), FERC-approved electric reliability organizations (including related regional entities), and FERC-approved Regional Transmission Organizations and Independent System Operators.

"(i) INTERSTATE COMPACTS.—The consent of Congress is hereby given for 3 or more contiguous States to enter into an interstate compact, subject to approval by Congress, establishing regional transmission siting agencies to facilitate siting of future electric energy transmission facilities within such States and to carry out the electric energy transmission siting responsibilities of such States. The Secretary of Energy may provide technical assistance to regional transmission siting agencies established under this subsection. Such regional transmission siting agencies shall have the authority to review, certify, and permit siting of transmission facilities, including facilities in national interest electric transmission corridors (other than facilities on property owned by the United States). The Commission shall have no authority to issue a permit for the construction or modification of electric transmission facilities within a State that is a party to a compact, unless the members of a compact are in disagreement and the Secretary makes, after notice and an opportunity for a hearing, the finding described in section (b)(1)(C).

"(j) SAVINGS CLAUSE.—Nothing in this section shall be construed to affect any requirement of the environmental laws of the United States, including, but not limited to, the National Environmental Policy Act of 1969. Subsection (h)(4) of this section shall not apply to any Congressionally-designated components of the National Wilderness Preservation System, the National Wild and Scenic Rivers System, or the National Park system (including National Monuments therein).

"(k) ERCOT.—This section shall not apply within the area referred to in section 212(k)(2)(A).".

(b) REPORTS TO CONGRESS ON CORRIDORS AND RIGHTS OF WAY ON FEDERAL LANDS.—The Secretary of the Interior, the Secretary of Energy, the Secretary of Agriculture, and the Chairman of the Council on Environmental Quality shall, within 90 days of the date of enactment of this subsection, submit a joint report to Congress identifying each of the following:

(1) All existing designated transmission and distribution corridors on Federal land and the status of work related to proposed transmission and distribution corridor designations under Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761 et. Seq.), the schedule for completing such work, any impediments to completing the work, and steps that Congress could take to expedite the process.

(2) The number of pending applications to locate transmission and distribution facilities on Federal lands, key information relating to each such facility, how long each application has been pending, the schedule for issuing a timely decision as to each facility, and progress in incorporating existing and new such rights-of-way into relevant land use and resource management plans or their equivalent.

(3) The number of existing transmission and distribution rights-of-way on Federal lands that will come up for renewal within the following 5, 10, and 15 year periods, and a description of how the Secretaries plan to manage such renewals.

SEC. 1222. THIRD-PARTY FINANCE.

(a) EXISTING FACILITIES.—The Secretary of Energy (hereinafter in this section referred to as the "Secretary"), acting through the Administrator of the Western Area Power Administration (hereinafter in this section referred to as "WAPA"), or through the Administrator of the Southwestern Power Administration (hereinafter in this section referred to as "SWPA"), or both, may design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, an electric power transmission facility and related facilities ("Project") needed to upgrade existing transmission facilities owned by SWPA or WAPA if the Secretary of Energy, in consultation with the applicable Administrator, determines that the proposed Project—

(1)(A) is located in a national interest electric transmission corridor designated under section 216(a) of the Federal Power Act and will reduce congestion of electric transmission in interstate commerce; or

(B) is necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

(2) is consistent with—

(A) transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Regional Transmission Organization or Independent System Operator (as defined in the Federal Power Act), if any, or approved regional reliability organization; and

(B) efficient and reliable operation of the transmission grid; and

(3) would be operated in conformance with prudent utility practice.

(b) NEW FACILITIES.—The Secretary, acting through WAPA or SWPA, or both, may design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, a new electric power transmission facility and related facilities ("Project") located within any State in which WAPA or SWPA operates if the Secretary, in consultation with the applicable Administrator, determines that the proposed Project—

(1)(A) is located in an area designated under section 216(a) of the Federal Power Act and will reduce congestion of electric transmission in interstate commerce; or

(B) is necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

(2) is consistent with—

(A) transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Regional Transmission Organization or Independent System Operator, if any, or approved regional reliability organization; and

(B) efficient and reliable operation of the transmission grid;

(3) will be operated in conformance with prudent utility practice;

(4) will be operated by, or in conformance with the rules of, the appropriate (A) Regional Transmission Organization or Independent System Operator, if any, or (B) if such an organization does not exist, regional reliability organization; and

(5) will not duplicate the functions of existing transmission facilities or proposed facilities which are the subject of ongoing or approved siting and related permitting proceedings.

(c) OTHER FUNDS.—

(1) IN GENERAL.—In carrying out a Project under subsection (a) or (b), the Secretary may accept and use funds contributed by another entity for the purpose of carrying out the Project.

(2) AVAILABILITY.—The contributed funds shall be available for expenditure for the purpose of carrying out the Project—

(A) without fiscal year limitation; and

(B) as if the funds had been appropriated specifically for that Project.

(3) ALLOCATION OF COSTS.—In carrying out a Project under subsection (a) or (b), any costs of the Project not paid for by contributions from another entity shall be collected through rates charged to customers using the new transmission capability provided by the Project and allocated equitably among these project beneficiaries using the new transmission capability.

(d) RELATIONSHIP TO OTHER LAWS.—Nothing in this section affects any requirement of—

(1) any Federal environmental law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) any Federal or State law relating to the siting of energy facilities; or

(3) any existing authorizing statutes.

(e) SAVINGS CLAUSE.—Nothing in this section shall constrain or restrict an Administrator in the utilization of other authority delegated to the Administrator of WAPA or SWPA.

(f) SECRETARIAL DETERMINATIONS.—Any determination made pursuant to subsections (a) or (b) shall be based on findings by the Secretary using the best available data.

(g) MAXIMUM FUNDING AMOUNT.—The Secretary shall not accept and use more than $100,000,000 under subsection (c)(1) for the period encompassing fiscal years 2004 through 2013.

SEC. 1223. TRANSMISSION SYSTEM MONITORING.

Within 6 months after the date of enactment of this Act, the Secretary of Energy and the Federal Energy Regulatory Commission shall *study and report to Congress on the steps which must be taken to establish a system to make available to all transmission system owners and Regional Transmission Organizations (as defined in the Federal Power Act) within the Eastern and Western Interconnections real-time information on the functional status of all transmission lines within such Interconnections. In such study, the Commission shall assess technical means for implementing such transmission information system and identify the steps the Commission or Congress must take to require the implementation of such system.*

SEC. 1224. ADVANCED TRANSMISSION TECHNOLOGIES.

(a) AUTHORITY.—The Federal Energy Regulatory Commission, in the exercise of its authorities under the Federal Power Act and the Public Utility Regulatory Policies Act of 1978, shall encourage the deployment of advanced transmission technologies.

(b) DEFINITION.—For the purposes of this section, the term "advanced transmission technologies" means technologies that increase the capacity, efficiency, or reliability of existing or new transmission facilities, including, but not limited to—

(1) high-temperature lines (including superconducting cables);

(2) underground cables;

(3) advanced conductor technology (including advanced composite conductors, high-temperature low-sag conductors, and fiber optic temperature sensing conductors);

(4) high-capacity ceramic electric wire, connectors, and insulators;

(5) optimized transmission line configurations (including multiple phased transmission lines);

(6) modular equipment;

(7) wireless power transmission;

(8) ultra-high voltage lines;

(9) high-voltage DC technology;

(10) flexible AC transmission systems;

(11) energy storage devices (including pumped hydro, compressed air, superconducting magnetic energy storage, flywheels, and batteries);

(12) controllable load;

(13) distributed generation (including PV, fuel cells, microturbines);

(14) enhanced power device monitoring;

(15) direct system state sensors;

(16) fiber optic technologies;

(17) power electronics and related software (including real time monitoring and analytical software); and

(18) any other technologies the Commission considers appropriate.

(c) OBSOLETE OR IMPRACTICABLE TECHNOLOGIES.—The Commission is authorized to cease encouraging the deployment of any technology described in this section on a finding that such technology has been rendered obsolete or otherwise impracticable to deploy.

SEC. 1225. ELECTRIC TRANSMISSION AND DISTRIBUTION PROGRAMS.

(a) ELECTRIC TRANSMISSION AND DISTRIBUTION PROGRAM.—The Secretary of Energy (hereinafter in this section referred to as the "Secretary") acting through the Director of the Office of Electric Transmission and Distribution shall establish a comprehensive research, development, demonstration and commercial application program to promote improved reliability and efficiency of electrical transmission and distribution systems. This program shall include—

(1) advanced energy delivery and storage technologies, materials, and systems, including new transmission technologies, such as flexible alternating current transmission systems, composite conductor materials and other technologies that enhance reliability, operational flexibility, or power-carrying capability;

(2) advanced grid reliability and efficiency technology development;

(3) technologies contributing to significant load reductions;

(4) advanced metering, load management, and control technologies;

(5) technologies to enhance existing grid components;

(6) the development and use of high-temperature superconductors to—

(A) enhance the reliability, operational flexibility, or power-carrying capability of electric transmission or distribution systems; or

(B) increase the efficiency of electric energy generation, transmission, distribution, or storage systems;

(7) integration of power systems, including systems to deliver high-quality electric power, electric power reliability, and combined heat and power;

(8) supply of electricity to the power grid by small scale, distributed and residential-based power generators;

(9) the development and use of advanced grid design, operation and planning tools;

(10) any other infrastructure technologies, as appropriate; and

(11) technology transfer and education.

(b) PROGRAM PLAN.—Not later than 1 year after the date of the enactment of this legislation, the Secretary, in consultation with other appropriate Federal agencies, shall prepare and transmit to Congress a 5-year program plan to guide activities under this section. In preparing the program plan, the Secretary may consult with utilities, energy services providers, manufacturers, institutions of higher education, other appropriate State and local agencies, environmental organizations, professional and technical societies, and any other persons the Secretary considers appropriate.

(c) IMPLEMENTATION.—The Secretary shall consider implementing this program using a consortium of industry, university and national laboratory participants.

(d) REPORT.—Not later than 2 years after the transmittal of the plan under subsection (b), the Secretary shall transmit a report to Congress describing the progress made under this section and identifying any additional resources needed to continue the development and commercial application of transmission and distribution infrastructure technologies.

(e) POWER DELIVERY RESEARCH INITIATIVE.—

(1) IN GENERAL.—The Secretary shall establish a research, development, demonstration, and commercial application initiative specifically focused on power delivery utilizing components incorporating high temperature superconductivity.

(2) GOALS.—The goals of this initiative shall be to—

(A) establish facilities to develop high temperature superconductivity power applications in partnership with manufacturers and utilities;

(B) provide technical leadership for establishing reliability for high temperature superconductivity power applications including suitable modeling and analysis;

(C) facilitate commercial transition toward direct current power transmission, storage, and use for high power systems utilizing high temperature superconductivity; and

(D) facilitate the integration of very low impedance high temperature superconducting wires and cables in existing electric networks to improve system performance, power flow control and reliability.

(3) REQUIREMENTS.—The initiative shall include—

(A) feasibility analysis, planning, research, and design to construct demonstrations of superconducting links in high power, direct current and controllable alternating current transmission systems;

(B) public-private partnerships to demonstrate deployment of high temperature superconducting cable into testbeds simulating a realistic transmission grid and under varying transmission conditions, including actual grid insertions; and

(C) testbeds developed in cooperation with national laboratories, industries, and universities to demonstrate these technologies, prepare the technologies for commercial introduction, and address cost or performance roadblocks to successful commercial use.

(4) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this subsection, there are authorized to be appropriated—

(A) for fiscal year 2004, $15,000,000;

(B) for fiscal year 2005, $20,000,000;

(C) for fiscal year 2006, $30,000,000;

(D) for fiscal year 2007, $35,000,000; and

(E) for fiscal year 2008, $40,000,000.

SEC. 1226. ADVANCED POWER SYSTEM TECHNOLOGY INCENTIVE PROGRAM.

(a) PROGRAM.—The Secretary of Energy is authorized to establish an Advanced Power System Technology Incentive Program to support the deployment of certain advanced power system technologies and to improve and protect certain critical governmental, industrial, and commercial processes. Funds provided under this section shall be used by the Secretary to make incentive payments to eligible owners or operators of advanced power system technologies to increase power generation through enhanced operational, economic, and environmental performance. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application establishing an applicant as either—

(1) a qualifying advanced power system technology facility; or

(2) a qualifying security and assured power facility.

(b) INCENTIVES.—Subject to availability of funds, a payment of 1.8 cents per kilowatt-hour shall be paid to the owner or operator of a qualifying advanced power system technology facility under this section for electricity generated at such facility. An additional 0.7 cents per kilowatt-hour shall be paid to the owner or operator of a qualifying security and assured power facility for electricity generated at such facility. Any facility qualifying under this section shall be eligible for an incentive payment for up to, but not more than, the first 10,000,000 kilowatt-hours produced in any fiscal year.

(c) ELIGIBILITY.—For purposes of this section:

(1) QUALIFYING ADVANCED POWER SYSTEM TECHNOLOGY FACILITY.—The term "qualifying advanced power system technology facility" means a facility using an advanced fuel cell, turbine, or hybrid power system or power storage system to generate or store electric energy.

(2) QUALIFYING SECURITY AND ASSURED POWER FACILITY.—The term "qualifying security and assured power facility" means a qualifying advanced power system technology facility determined by the Secretary of Energy, in consultation with the Secretary of Homeland Security, to be in critical need of secure, reliable, rapidly available, high-quality power for critical governmental, industrial, or commercial applications.

(d) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Energy for the purposes of this section, $10,000,000 for each of the fiscal years 2004 through 2010.

SEC. 1227. OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.

(a) CREATION OF AN OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.—Title II of the Department of Energy Organization Act (42 U.S.C. 7131 et seq.) (as amended by section 502(a) of this Act) is amended by inserting the following after section 217, as added by title V of this Act:

"SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.

"(a) ESTABLISHMENT.—There is established within the Department an Office of Electric Transmission and Distribution. This Office shall be headed by a Director, subject to the authority of the Secretary. The Director shall be appointed by the Secretary. The Director shall be compensated at the annual rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) DIRECTOR.—The Director shall—

"(1) coordinate and develop a comprehensive, multi-year strategy to improve the Nation's electricity transmission and distribution;

"(2) implement or, where appropriate, coordinate the implementation of, the recommendations made in the Secretary's May 2002 National Transmission Grid Study;

"(3) oversee research, development, and demonstration to support Federal energy policy related to electricity transmission and distribution;

"(4) grant authorizations for electricity import and export pursuant to section 202(c), (d), (e), and (f) of the Federal Power Act (16 U.S.C. 824a);

"(5) perform other functions, assigned by the Secretary, related to electricity transmission and distribution; and

"(6) develop programs for workforce training in power and transmission engineering.".

(b) CONFORMING AMENDMENTS.—(1) The table of contents of the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended by inserting after the item relating to section 217 the following new item:

"Sec. 218. Office of Electric Transmission and Distribution.".

(2) Section 5315 of title 5, United States Code, is amended by inserting after the item relating to "Inspector General, Department of Energy." the following:

"Director, Office of Electric Transmission and Distribution, Department of Energy.".

Subtitle C—Transmission Operation Improvements

SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following new section:

"SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.

"(a) TRANSMISSION SERVICES.—Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

"(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

"(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

"(b) EXEMPTION.—The Commission shall exempt from any rule or order under this section any unregulated transmitting utility that—

"(1) sells no more than 4,000,000 megawatt hours of electricity per year; or

"(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

"(3) meets other criteria the Commission determines to be in the public interest.

"(c) LOCAL DISTRIBUTION FACILITIES.—The requirements of subsection (a) shall not apply to facilities used in local distribution.

"(d) EXEMPTION TERMINATION.—Whenever the Commission, after an evidentiary hearing held upon a complaint and after giving consideration to reliability standards established under section 215, finds on the basis of a preponderance of the evidence that any exemption granted pursuant to subsection (b) unreasonably impairs the continued reliability of an interconnected transmission system, it shall revoke the exemption granted to that transmitting utility.

"(e) APPLICATION TO UNREGULATED TRANSMITTING UTILITIES.—The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

"(f) REMAND.—In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

"(g) OTHER REQUESTS.—The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

"(h) LIMITATION.—The Commission may not require a State or municipality to take action under this section that would violate a private activity bond rule for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

"(i) TRANSFER OF CONTROL OF TRANSMITTING FACILITIES.—Nothing in this section authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control of its transmitting facilities to an RTO or any other Commission-approved independent transmission organization designated to provide nondiscriminatory transmission access.

"(j) DEFINITION.—For purposes of this section, the term 'unregulated transmitting utility' means an entity that—

"(1) owns or operates facilities used for the transmission of electric energy in interstate commerce; and

"(2) is an entity described in section 201(f).".

SEC. 1232. SENSE OF CONGRESS ON REGIONAL TRANSMISSION ORGANIZATIONS.

It is the sense of Congress that, in order to promote fair, open access to electric transmission service, benefit retail consumers, facilitate wholesale competition, improve efficiencies in transmission grid management, promote grid reliability, remove opportunities for unduly discriminatory or preferential transmission practices, and provide for the efficient development of transmission infrastructure needed to meet the growing demands of competitive wholesale power markets, all transmitting utilities in interstate commerce should voluntarily become members of Regional Transmission Organizations as defined in section 3 of the Federal Power Act.

SEC. 1233. REGIONAL TRANSMISSION ORGANIZATION APPLICATIONS PROGRESS REPORT.

Not later than 120 days after the date of enactment of this section, the Federal Energy Regulatory Commission shall submit to Congress a report containing each of the following:

(1) A list of all regional transmission organization applications filed at the Commission pursuant to subpart F of part 35 of title 18, Code of Federal Regulations (in this section referred to as "Order No. 2000"), including an identification of each public utility and other entity included within the proposed membership of the regional transmission organization.

(2) A brief description of the status of each pending regional transmission organization application, including a precise explanation of how each fails to comply with the minimal requirements of Order No. 2000 and what steps need to be taken to bring each application into such compliance.

(3) For any application that has not been finally approved by the Commission, a detailed description of every aspect of the application that the Commission has determined does not conform to the requirements of Order No. 2000.

(4) For any application that has not been finally approved by the Commission, an explanation by the Commission of why the items described pursuant to paragraph (3) constitute material noncompliance with the requirements of the Commission's Order No. 2000 sufficient to justify denial of approval by the Commission.

(5) For all regional transmission organization applications filed pursuant to the Commission's Order No. 2000, whether finally approved or not—

(A) a discussion of that regional transmission organization's efforts to minimize rate seams between itself and—

(i) other regional transmission organizations; and

(ii) entities not participating in a regional transmission organization;

(B) a discussion of the impact of such seams on consumers and wholesale competition; and

(C) a discussion of minimizing cost-shifting on consumers.

SEC. 1234. FEDERAL UTILITY PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.

(a) DEFINITIONS.—For purposes of this section—

(1) APPROPRIATE FEDERAL REGULATORY AUTHORITY.—The term "appropriate Federal regulatory authority" means—

(A) with respect to a Federal power marketing agency (as defined in the Federal Power Act), the Secretary of Energy, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the appropriate Federal regulatory authority with respect to the transmission system of that Federal power marketing agency; and

(B) with respect to the Tennessee Valley Authority, the Board of Directors of the Tennessee Valley Authority.

(2) FEDERAL UTILITY.—The term "Federal utility" means a Federal power marketing agency or the Tennessee Valley Authority.

(3) TRANSMISSION SYSTEM.—The term "transmission system" means electric transmission facilities owned, leased, or contracted for by the United States and operated by a Federal utility.

(b) TRANSFER.—The appropriate Federal regulatory authority is authorized to enter into a contract, agreement or other arrangement transferring control and use of all or part of the Federal utility's transmission system to an RTO or ISO (as defined in the Federal Power Act), approved by the Federal Energy Regulatory Commission. Such contract, agreement or arrangement shall include—

(1) performance standards for operation and use of the transmission system that the head of the Federal utility determines necessary or appropriate, including standards that assure recovery of all the Federal utility's costs and expenses related to the transmission facilities that are the subject of the contract, agreement or other arrangement; consistency with existing contracts and third-party financing arrangements; and consistency with said Federal utility's statutory authorities, obligations, and limitations;

(2) provisions for monitoring and oversight by the Federal utility of the RTO's or ISO's fulfillment of the terms and conditions of the contract, agreement or other arrangement, including a provision for the resolution of disputes through arbitration or other means with the regional transmission organization or with other participants, notwithstanding the obligations and limitations of any other law regarding arbitration; and

(3) a provision that allows the Federal utility to withdraw from the RTO or ISO and terminate the contract, agreement or other arrangement in accordance with its terms.

Neither this section, actions taken pursuant to it, nor any other transaction of a Federal utility using an RTO or ISO shall confer upon the Federal Energy Regulatory Commission jurisdiction or authority over the Federal utility's electric generation assets, electric capacity or energy that the Federal utility is authorized by law to market, or the Federal utility's power sales activities.

(c) Existing Statutory and Other Obligations.—

(1) System operation requirements.—No statutory provision requiring or authorizing a Federal utility to transmit electric power or to construct, operate or maintain its transmission system shall be construed to prohibit a transfer of control and use of its transmission system pursuant to, and subject to all requirements of subsection (b).

(2) Other obligations.—This subsection shall not be construed to—

(A) suspend, or exempt any Federal utility from, any provision of existing Federal law, including but not limited to any requirement or direction relating to the use of the Federal utility's transmission system, environmental protection, fish and wildlife protection, flood control, navigation, water delivery, or recreation; or

(B) authorize abrogation of any contract or treaty obligation.

(3) Repeal.—Section 311 of title III of Appendix B of the Act of October 27, 2000 (P.L. 106–377, section 1(a)(2); 114 Stat. 1441, 1441A–80; 16 U.S.C. 824n) is repealed.

SEC. 1235. STANDARD MARKET DESIGN.

(a) Remand.—The Commission's proposed rulemaking entitled "Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design" (Docket No. RM01–12–000) ("SMD NOPR") is remanded to the Commission for reconsideration. No final rule mandating a standard electricity market design pursuant to the proposed rulemaking, including any rule or order of general applicability within the scope of the proposed rulemaking, may be issued before October 31, 2006, or take effect before December 31, 2006. Any final rule issued by the Commission pursuant to the proposed rulemaking shall be preceded by a second notice of proposed rulemaking issued after the date of enactment of this Act and an opportunity for public comment.

(b) Savings Clause.—This section shall not be construed to modify or diminish any authority or obligation the Commission has under this Act, the Federal Power Act, or other applicable law, including, but not limited to, any authority to—

(1) issue any rule or order (of general or particular applicability) pursuant to any such authority or obligation; or

(2) act on a filing or filings by 1 or more transmitting utilities for the voluntary formation of a Regional Transmission Organization or Independent System Operator (as defined in the Federal Power Act) (and related market structures or rules) or voluntary modification of an existing Regional Transmission Organization or Independent System Operator (and related market structures or rules).

SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 217. NATIVE LOAD SERVICE OBLIGATION.

"(a) Meeting Service Obligations.—(1) Any load-serving entity that, as of the date of enactment of this section—

"(A) owns generation facilities, markets the output of Federal generation facilities, or holds rights under 1 or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation, and

"(B) by reason of ownership of transmission facilities, or 1 or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of the output of such generation facilities or such purchased energy to meet such service obligation,

is entitled to use such firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver such output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet its service obligation.

"(2) To the extent that all or a portion of the service obligation covered by such firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

"(3) The Commission shall exercise its authority under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations.

"(b) Allocation of Transmission Rights.—Nothing in this section shall affect any methodology approved by the Commission prior to September 15, 2003, for the allocation of transmission rights by an RTO or ISO that has been authorized by the Commission to allocate transmission rights.

"(c) Certain Transmission Rights.—The Commission may exercise authority under this Act to make transmission rights not used to meet an obligation covered by subsection (a) available to other entities in a manner determined by the Commission to be just, reasonable, and not unduly discriminatory or preferential.

"(d) Obligation To Build.—Nothing in this Act shall relieve a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet its service obligations.

"(e) Contracts.—Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of the date of the enactment of this subsection.

"(f) Water Pumping Facilities.—The Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to such facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

"(g) ERCOT.—This section shall not apply within the area referred to in section 212(k)(2)(A).

"(h) Jurisdiction.—This section does not authorize the Commission to take any action not otherwise within its jurisdiction.

"(i) Effect of Exercising Rights.—An entity that lawfully exercises rights granted under subsection (a) shall not be considered by such action as engaging in undue discrimination or preference under this Act.

"(j) TVA Area.—For purposes of subsection (a)(1)(B), a load-serving entity that is located within the service area of the Tennessee Valley Authority and that has a firm wholesale power supply contract with the Tennessee Valley Authority shall be deemed to hold firm transmission rights for the transmission of such power.

"(k) Definitions.—For purposes of this section:

"(1) The term 'distribution utility' means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through 1 or more additional State utilities or electric cooperatives, provides electric service to end-users.

"(2) The term 'load-serving entity' means a distribution utility or an electric utility that has a service obligation.

"(3) The term 'service obligation' means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

"(4) The term 'State utility' means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any 1 or more of the foregoing, or a corporation which is wholly owned, directly or indirectly, by any 1 or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing or distributing power.".

SEC. 1237. STUDY ON THE BENEFITS OF ECONOMIC DISPATCH.

(a) Study.—The Secretary of Energy, in coordination and consultation with the States, shall conduct a study on—

(1) the procedures currently used by electric utilities to perform economic dispatch;

(2) identifying possible revisions to those procedures to improve the ability of nonutility generation resources to offer their output for sale for the purpose of inclusion in economic dispatch; and

(3) the potential benefits to residential, commercial, and industrial electricity consumers nationally and in each state if economic dispatch procedures were revised to improve the ability of nonutility generation resources to offer their output for inclusion in economic dispatch.

(b) Definition.—The term "economic dispatch" when used in this section means the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities.

(c) Report to Congress and the States.—Not later than 90 days after the date of enactment of this Act, and on a yearly basis following, the Secretary of Energy shall submit a report to Congress and the States on the results of the study conducted under subsection (a), including recommendations to Congress and the States for any suggested legislative or regulatory changes.

Subtitle D—Transmission Rate Reform

SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.

"(a) Rulemaking Requirement.—Within 1 year after the enactment of this section, the Commission shall establish, by rule, incentive-based (including, but not limited to performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. Such rule shall—

"(1) promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance and operation of facilities for the transmission of electric energy in interstate commerce;

"(2) provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies);

"(3) encourage deployment of transmission technologies and other measures to increase the

capacity and efficiency of existing transmission facilities and improve the operation of such facilities; and

"(4) allow recovery of all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 215 of this Act.

The Commission may, from time to time, revise such rule.

"(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPATION.—In the rule issued under this section, the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Regional Transmission Organization or Independent System Operator. Incentives provided by the Commission pursuant to such rule shall include—

"(1) recovery of all prudently incurred costs to develop and participate in any proposed or approved RTO, ISO, or independent transmission company;

"(2) recovery of all costs previously approved by a State commission which exercised jurisdiction over the transmission facilities prior to the utility's participation in the RTO or ISO, including costs necessary to honor preexisting transmission service contracts, in a manner which does not reduce the revenues the utility receives for transmission services for a reasonable transition period after the utility joins the RTO or ISO;

"(3) recovery as an expense in rates of the costs prudently incurred to conduct transmission planning and reliability activities, including the costs of participating in RTO, ISO and other regional planning activities and design, study and other precertification costs involved in seeking permits and approvals for proposed transmission facilities;

"(4) a current return in rates for construction work in progress for transmission facilities and full recovery of prudently incurred costs for constructing transmission facilities;

"(5) formula transmission rates; and

"(6) a maximum 15 year accelerated depreciation on new transmission facilities for rate treatment purposes.

The Commission shall ensure that any costs recoverable pursuant to this subsection may be recovered by such utility through the transmission rates charged by such utility or through the transmission rates charged by the RTO or ISO that provides transmission service to such utility.

"(c) JUST AND REASONABLE RATES.—All rates approved under the rules adopted pursuant to this section, including any revisions to such rules, are subject to the requirement of sections 205 and 206 that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.".

SEC. 1242. VOLUNTARY TRANSMISSION PRICING PLANS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 219. VOLUNTARY TRANSMISSION PRICING PLANS.

"(a) IN GENERAL.—Any transmission provider, including an RTO or ISO, may submit to the Commission a plan or plans under section 205 containing the criteria for determining the person or persons that will be required to pay for any construction of new transmission facilities or expansion, modification or upgrade of transmission facilities (in this section referred to as 'transmission service related expansion') or new generator interconnection.

"(b) VOLUNTARY TRANSMISSION PRICING PLANS.—(1) Any plan or plans submitted under subsection (a) shall specify the method or methods by which costs may be allocated or assigned. Such methods may include, but are not limited to:

"(A) directly assigned;

"(B) participant funded; or

"(C) rolled into regional or sub-regional rates.–

"(2) FERC shall approve a plan or plans submitted under subparagraph (B) of paragraph (1) if such plan or plans—

"(A) result in rates that are just and reasonable and not unduly discriminatory or preferential consistent with section 205; and

"(B) ensure that the costs of any transmission service related expansion or new generator interconnection not required to meet applicable reliability standards established under section 215 are assigned in a fair manner, meaning that those who benefit from the transmission service related expansion or new generator interconnection pay an appropriate share of the associated costs, provided that—

"(i) costs may not be assigned or allocated to an electric utility if the native load customers of that utility would not have required such transmission service related expansion or new generator interconnection absent the request for transmission service related expansion or new generator interconnection that necessitated the investment;

"(ii) the party requesting such transmission service related expansion or new generator interconnection shall not be required to pay for both—

"(I) the assigned cost of the upgrade; and

"(II) the difference between—

"(aa) the embedded cost paid for transmission services (including the cost of the requested upgrade); and

"(bb) the embedded cost that would have been paid absent the upgrade; and

"(iii) the party or parties who pay for facilities necessary for the transmission service related expansion or new generator interconnection receives full compensation for its costs for the participant funded facilities in the form of—

"(I) monetary credit equal to the cost of the participant funded facilities (accounting for the time value of money at the Gross Domestic Product deflator), which credit shall be pro-rated in equal installments over a period of not more than 30 years and shall not exceed in total the amount of the initial investment, against the transmission charges that the funding entity or its assignee is otherwise assessed by the transmission provider;

"(II) appropriate financial or physical rights; or

"(III) any other method of cost recovery or compensation approved by the Commission.

"(3) A plan submitted under this section shall apply only to—

"(A) a contract or interconnection agreement executed or filed with the Commission after the date of enactment of this section; or

"(B) an interconnection agreement pending rehearing as of November 1, 2003.

"(4) Nothing in this section diminishes or alters the rights of individual members of an RTO or ISO under this Act.

"(5) Nothing in this section shall affect the allocation of costs or the cost methodology employed by an RTO or ISO authorized by the Commission to allocate costs (including costs for transmission service related expansion or new generator interconnection) prior to the date of enactment of this section.

"(6) This section shall not apply within the area referred to in section 212(k)(2)(A).

"(7) The term 'transmission provider' means a public utility that owns or operates facilities that provide interconnection or transmission service in interstate commerce.".

Subtitle E—Amendments to PURPA

SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

"(11) NET METERING.—Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

"(12) FUEL SOURCES.—Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

"(13) FOSSIL FUEL GENERATION EFFICIENCY.—Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.".

(b) COMPLIANCE.—

(1) TIME LIMITATIONS.—Section 112(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b)) is amended by adding at the end the following:

"(3)(A) Not later than 2 years after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by paragraphs (11) through (13) of section 111(d).

"(B) Not later than 3 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraphs (11) through (13) of section 111(d).".

(2) FAILURE TO COMPLY.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding at the end the following:

"In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13).".

(3) PRIOR STATE ACTIONS.—

(A) IN GENERAL.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following:

"(d) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standards established by paragraphs (11) through (13) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

"(1) the State has implemented for such utility the standard concerned (or a comparable standard);

"(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or

"(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.".

(B) CROSS REFERENCE.—Section 124 of such Act (16 U.S.C. 2634) is amended by adding the following at the end thereof: "In the case of each standard established by paragraphs (11) *through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13).".*

SEC. 1252. SMART METERING.

(a) In General.—Section 111(d) of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

"(14) Time-based metering and communications.—

"(A) Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

"(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others—

"(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

"(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption; and

"(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly.

"(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

"(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

"(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of the electric utility.

"(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than 18 months after the date of enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).".

(b) State Investigation of Demand Response and Time-Based Metering.—Section 115 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended as follows:

(1) By inserting in subsection (b) after the phrase "the standard for time-of-day rates established by section 111(d)(3)" the following: "and the standard for time-based metering and communications established by section 111(d)(14)".

(2) By inserting in subsection (b) after the phrase "are likely to exceed the metering" the following: "and communications".

(3) By adding the at the end the following:

"(i) Time-based metering and communications.—In making a determination with respect to the standard established by section 111(d)(14), the investigation requirement of section 111(d)(14)(F) shall be as follows: Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.".

(c) Federal Assistance on Demand Response.—Section 132(a) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by striking "and" at the end of paragraph (3), striking the period at the end of paragraph (4) and inserting "; and", and by adding the following at the end thereof:

"(5) technologies, techniques, and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.".

(d) Federal Guidance.—Section 132 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642) is amended by adding the following at the end thereof:

"(d) Demand response.—The Secretary shall be responsible for—

"(1) educating consumers on the availability, advantages, and benefits of advanced metering and communications technologies, including the funding of demonstration or pilot projects;

"(2) working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs; and

"(3) not later than 180 days after the date of enactment of the Energy Policy Act of 2003, providing Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2005.".

(e) Demand Response and Regional Coordination.—

(1) In general.—It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public.

(2) Technical assistance.—The Secretary of Energy shall provide technical assistance to States and regional organizations formed by 2 or more States to assist them in—

(A) identifying the areas with the greatest demand response potential;

(B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response;

(C) developing plans and programs to use demand response to respond to peak demand or emergency needs; and

(D) identifying specific measures consumers can take to participate in these demand response programs.

(3) Report.—Not later than 1 year after the date of enactment of the Energy Policy Act of 2003, the Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews—

(A) saturation and penetration rate of advanced meters and communications technologies, devices and systems;

(B) existing demand response programs and time-based rate programs;

(C) the annual resource contribution of demand resources;

(D) the potential for demand response as a quantifiable, reliable resource for regional planning purposes; and

(E) steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party.

(f) Federal Encouragement of Demand Response Devices.—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, and the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated. It is further the policy of the United States that the benefits of such demand response that accrue to those not deploying such technology and devices, but who are part of the same regional electricity entity, shall be recognized.

(g) Time Limitations.—Section 112(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b)) is amended by adding at the end the following:

"(4)(A) Not later than 1 year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to the standard established by paragraph (14) of section 111(d).

"(B) Not later than 2 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to the standard established by paragraph (14) of section 111(d).".

(h) Failure To Comply.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding at the end the following:

"In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14).".

(i) Prior State Actions Regarding Smart Metering Standards.—

(1) In general.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following:

"(e) Prior State Actions.—Subsections (b) and (c) of this section shall not apply to the standard established by paragraph (14) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

"(1) the State has implemented for such utility the standard concerned (or a comparable standard);

"(2) the State regulatory authority for such State or relevant nonregulated electric utility

has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility within the previous 3 years; or

"(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility within the previous 3 years.".

(2) CROSS REFERENCE.—Section 124 of such Act (16 U.S.C. 2634) is amended by adding the following at the end thereof: "In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14).".

SEC. 1253. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end the following:

"(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—

"(1) OBLIGATION TO PURCHASE.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to—

"(A)(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or

"(B)(i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

"(C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

"(2) REVISED PURCHASE AND SALE OBLIGATION FOR NEW FACILITIES.—(A) After the date of enactment of this subsection, no electric utility shall be required pursuant to this section to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for qualifying cogeneration facilities established by the Commission pursuant to the rulemaking required by subsection (n).

"(B) For the purposes of this paragraph, the term 'existing qualifying cogeneration facility' means a facility that—

"(i) was a qualifying cogeneration facility on the date of enactment of subsection (m); or

"(ii) had filed with the Commission a notice of self-certification, self recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by subsection (n).

"(3) COMMISSION REVIEW.—Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection have been met. After notice, including sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) have been met.

"(4) REINSTATEMENT OF OBLIGATION TO PURCHASE.—At any time after the Commission makes a finding under paragraph (3) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) which relieved the obligation to purchase, are no longer met.

"(5) OBLIGATION TO SELL.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that—

"(A) competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and

"(B) the electric utility is not required by State law to sell electric energy in its service territory.

"(6) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

"(7) RECOVERY OF COSTS.—(A) The Commission shall issue and enforce such regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a qualifying cogeneration facility or qualifying small power production facility in accordance with any legally enforceable obligation entered into or imposed under this section recovers all prudently incurred costs associated with the purchase.

"(B) A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).

"(n) RULEMAKING FOR NEW QUALIFYING FACILITIES.—(1)(A) Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule revising the criteria in 18 C.F.R. 292.205 for new qualifying cogeneration facilities seeking to sell electric energy pursuant to section 210 of this Act to ensure—

"(i) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

"(ii) the electrical, thermal, and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility; and

"(iii) continuing progress in the development of efficient electric energy generating technology.

"(B) The rule issued pursuant to section (n)(1)(A) shall be applicable only to facilities that seek to sell electric energy pursuant to section 210 of this Act. For all other purposes, except as specifically provided in section (m)(2)(A), qualifying facility status shall be determined in accordance with the rules and regulations of this Act.

"(2) Notwithstanding rule revisions under paragraph (1), the Commission's criteria for qualifying cogeneration facilities in effect prior to the date on which the Commission issues the final rule required by paragraph (1) shall continue to apply to any cogeneration facility that—

"(A) was a qualifying cogeneration facility on the date of enactment of subsection (m), or

"(B) had filed with the Commission a notice of self-certification, self-recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by paragraph (1).".

(b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

(1) QUALIFYING SMALL POWER PRODUCTION FACILITY.—Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to read as follows:

"(C) 'qualifying small power production facility' means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe;".

(2) QUALIFYING COGENERATION FACILITY.—Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to read as follows:

"(B) 'qualifying cogeneration facility' means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe;".

Subtitle F—Repeal of PUHCA

SEC. 1261. SHORT TITLE.

This subtitle may be cited as the "Public Utility Holding Company Act of 2003".

SEC. 1262. DEFINITIONS.

For purposes of this subtitle:

(1) AFFILIATE.—The term "affiliate" of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term "associate company" of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term "Commission" means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term "company" means a corporation, partnership, association, joint

stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term "electric utility company" means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms "exempt wholesale generator" and "foreign utility company" have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term "gas utility company" means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term "holding company" means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with 1 or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) HOLDING COMPANY SYSTEM.—The term "holding company system" means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term "jurisdictional rates" means rates accepted or established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term "natural gas company" means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—The term "person" means an individual or company.

(13) PUBLIC UTILITY.—The term "public utility" means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC-UTILITY COMPANY.—The term "public-utility company" means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term "State commission" means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term "subsidiary company" of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with 1 or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public-utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public-utility company, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission determines are relevant to costs incurred by such public-utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) LIMITATION.—Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of 1 or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(c) CONFIDENTIALITY OF INFORMATION.—The production of books, accounts, memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

(d) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, and other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, and other records under any other Federal law, contract, or otherwise.

(e) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 1266. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later than 90 days after the effective date of this subtitle, the Commission shall issue a final rule to exempt from the requirements of section 1264 (relating to Federal access to books and records) any person that is a holding company, solely with respect to 1 or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.);

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—The Commission shall exempt a person or transaction from the requirements of section 1264 (relating to Federal access to books and records) if, upon application or upon the motion of the Commission—

(1) the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

(2) the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

SEC. 1267. AFFILIATE TRANSACTIONS.

(a) COMMISSION AUTHORITY UNAFFECTED.—Nothing in this subtitle shall limit the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) to require that jurisdictional rates are just and reasonable, including the ability to deny or approve the pass through of costs, the prevention of cross-subsidization, and the issuance of such rules and regulations as are necessary or appropriate for the protection of utility consumers.

(b) RECOVERY OF COSTS.—Nothing in this subtitle shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public-utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public-utility company from an associate company.

SEC. 1268. APPLICABILITY.

Except as otherwise specifically provided in this subtitle, no provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), (3), or (4) acting as such in the course of his or her official duty.

SEC. 1269. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 1270. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 1271. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle, or otherwise in the Public Utility Holding Company Act of 1935, or rules, regulations, or orders thereunder, prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act, if that person continues to comply with the terms (other than an expiration date or termination date) of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

SEC. 1272. IMPLEMENTATION.

Not later than 12 months after the date of enactment of this subtitle, the Commission shall—

(1) issue such regulations as may be necessary or appropriate to implement this subtitle (other than section 1265, relating to State access to books and records); and

(2) submit to Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

SEC. 1273. TRANSFER OF RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

SEC. 1274. EFFECTIVE DATE.

(a) IN GENERAL.—Except for section 1272 (relating to implementation), this subtitle shall take effect 12 months after the date of enactment of this subtitle.

(b) COMPLIANCE WITH CERTAIN RULES.—If the Commission approves and makes effective any final rulemaking modifying the standards of conduct governing entities that own, operate, or control facilities for transmission of electricity in interstate commerce or transportation of natural gas in interstate commerce prior to the effective date of this subtitle, any action taken by a public-utility company or utility holding company to comply with the requirements of such rulemaking shall not subject such public-utility company or utility holding company to any regulatory requirement applicable to a holding company under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.).

SEC. 1275. SERVICE ALLOCATION.

(a) FERC REVIEW.—In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a State commission having jurisdiction over the public utility, the Commission, after the effective date of this subtitle, shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company in order to assure that each allocation is appropriate for the protection of investors and consumers of such public utility.

(b) COST ALLOCATION.—Nothing in this section shall preclude the Commission or a State commission from exercising its jurisdiction under other applicable law with respect to the review or authorization of any costs allocated to a public utility in a holding company system located in the affected State as a result of the acquisition of non-power goods or administrative and management services by such public utility from an associate company organized specifically for that purpose.

(c) RULES.—Not later than 6 months after the date of enactment of this Act, the Commission shall issue rules (which rules shall be effective no earlier than the effective date of this subtitle) to exempt from the requirements of this section any company in a holding company system whose public utility operations are confined substantially to a single State and any other class of transactions that the Commission finds is not relevant to the jurisdictional rates of a public utility.

(d) PUBLIC UTILITY.—As used in this section, the term "public utility" has the meaning given that term in section 201(e) of the Federal Power Act.

SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this subtitle.

SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL POWER ACT.

(a) CONFLICT OF JURISDICTION.—Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

(b) DEFINITIONS.—(1) Section 201(g)(5) of the Federal Power Act (16 U.S.C. 824(g)(5)) is amended by striking "1935" and inserting "2003".

(2) Section 214 of the Federal Power Act (16 U.S.C. 824m) is amended by striking "1935" and inserting "2003".

Subtitle G—Market Transparency, Enforcement, and Consumer Protection

SEC. 1281. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 220. MARKET TRANSPARENCY RULES.

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction under this Act. Such systems shall provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis. The Commission shall have authority to obtain such information from any electric utility or transmitting utility, including any entity described in section 201(f).

"(b) EXEMPTIONS.—The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security. This section shall not apply to transactions for the purchase or sale of wholesale electric energy or transmission services within the area described in section 212(k)(2)(A). In determining the information to be made available under this section and time to make such information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

"(c) COMMODITY FUTURES TRADING COMMISSION.—This section shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Any request for information to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas, electricity and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the Commodity Futures Trading Commission.

"(d) SAVINGS PROVISION.—In exercising its authority under this section, the Commission shall not—

"(1) compete with, or displace from the market place, any price publisher; or

"(2) regulate price publishers or impose any requirements on the publication of information.".

SEC. 1282. MARKET MANIPULATION.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

"SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.

"No person or other entity (including an entity described in section 201(f)) shall willfully and knowingly report any information relating to the price of electricity sold at wholesale or availability of transmission capacity, which information the person or any other entity knew to be false at the time of the reporting, to a Federal agency with intent to fraudulently affect the data being compiled by such Federal agency.

"SEC. 222. PROHIBITION ON ROUND TRIP TRADING.

"(a) PROHIBITION.—No person or other entity (including an entity described in section 201(f)) shall willfully and knowingly enter into any contract or other arrangement to execute a 'round trip trade' for the purchase or sale of electric energy at wholesale.

"(b) DEFINITION.—For the purposes of this section, the term 'round trip trade' means a transaction, or combination of transactions, in which a person or any other entity—

"(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

"(2) simultaneously with entering into the contract or arrangement described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same such electric energy, at the same location, price, quantity and terms so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

"(3) enters into the contract or arrangement with a specific intent to fraudulently affect reported revenues, trading volumes, or prices.".

SEC. 1283. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended as follows:

(1) By inserting "electric utility," after "Any person,".

(2) By inserting ", transmitting utility," after "licensee" each place it appears.

(b) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting 'electric utility,' after 'person,' in the first 2 places it appears and by striking 'any person unless such person' and inserting 'any entity unless such entity'.

(c) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is amended as follows:

(1) By inserting ', electric utility, transmitting utility, or other entity' after 'person' each time it appears.

(2) By striking the period at the end of the first sentence and inserting the following: "or in obtaining information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.".

(d) Criminal Penalties.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(1) in subsection (a), by striking "$5,000" and inserting "$1,000,000", and by striking "two years" and inserting "5 years";

(2) in subsection (b), by striking "$500" and inserting "$25,000"; and

(3) by striking subsection (c).

(e) Civil Penalties.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended as follows:

(1) In subsections (a) and (b), by striking "section 211, 212, 213, or 214" each place it appears and inserting "Part II".

(2) In subsection (b), by striking "$10,000" and inserting "$1,000,000".

SEC. 1284. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended as follows:

(1) By striking "the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period" in the second sentence and inserting "the date of the filing of such complaint nor later than 5 months after the filing of such complaint".

(2) By striking "60 days after" in the third sentence and inserting "of".

(3) By striking "expiration of such 60-day period" in the third sentence and inserting "publication date".

(4) By striking the fifth sentence and inserting the following: "If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision.".

SEC. 1285. REFUND AUTHORITY.

Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding the following new subsection at the end thereof:

"(e)(1) Except as provided in paragraph (2), if an entity described in section 201(f) voluntarily makes a short-term sale of electric energy and the sale violates Commission rules in effect at the time of the sale, such entity shall be subject to the Commission's refund authority under this section with respect to such violation.

"(2) This section shall not apply to—

"(A) any entity that sells less than 8,000,000 megawatt hours of electricity per year; or

"(B) any electric cooperative.

"(3) For purposes of this subsection, the term 'short-term sale' means an agreement for the sale of electric energy at wholesale in interstate commerce that is for a period of 31 days or less (excluding monthly contracts subject to automatic renewal).

"(4) The Commission shall have refund authority under subsection (e)(1) with respect to a voluntary short-term sale of electric energy by the Bonneville Power Administration (in this section 'Bonneville') only if the sale is at an unjust and unreasonable rate and, in that event, may order a refund only for short-term sales made by Bonneville at rates that are higher than the highest just and reasonable rate charged by any other entity for a short-term sale of electric energy in the same geographic market for the same, or most nearly comparable, period as the sale by Bonneville.

"(5) With respect to any Federal power marketing agency or the Tennessee Valley Authority, the Commission shall not assert or exercise any regulatory authority or powers under subsection (e)(1) other than the ordering of refunds to achieve a just and reasonable rate.".

SEC. 1286. SANCTITY OF CONTRACT.

(a) In General.—The Federal Energy Regulatory Commission (in this section, "the Commission") shall have no authority to abrogate or modify any provision of an executed contract or executed contract amendment described in subsection (b) that has been entered into or taken effect, except upon a finding that failure to take such action would be contrary to the public interest.

(b) Limitation.—Except as provided in subsection (c), this section shall apply only to a contract or contract amendment—

(1) executed on or after the date of enactment of this Act; and

(2) entered into—

(A) for the purchase or sale of electric energy under section 205 of the Federal Power Act (16 U.S.C. 824d) where the seller has been authorized by the Commission to charge market-based rates; or

(B) under section 4 of the Natural Gas Act (15 U.S.C. 717c) where the natural gas company has been authorized by the Commission to charge market-based rates for the service described in the contract.

(c) Exclusion.—This section shall not apply to an executed contract or executed contract amendment that expressly provides for a standard of review other than the public interest standard.

(d) Savings Provision.—With respect to contracts to which this section does not apply, nothing in this section alters existing law regarding the applicable standard of review for a contract subject to the jurisdiction of the Commission.

SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRACTICES.

(a) Privacy.—The Federal Trade Commission may issue rules protecting the privacy of electric consumers from the disclosure of consumer information obtained in connection with the sale or delivery of electric energy to electric consumers.

(b) Slamming.—The Federal Trade Commission may issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer or if approved by the appropriate State regulatory authority.

(c) Cramming.—The Federal Trade Commission may issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

(d) Rulemaking.—The Federal Trade Commission shall proceed in accordance with section 553 of title 5, United States Code, when prescribing a rule under this section.

(e) State Authority.—If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

(f) Definitions.—For purposes of this section:

(1) State regulatory authority.—The term "State regulatory authority" has the meaning given that term in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)).

(2) Electric consumer and electric utility.—The terms "electric consumer" and "electric utility" have the meanings given those terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

Subtitle H—Merger Reform

SEC. 1291. MERGER REVIEW REFORM AND ACCOUNTABILITY.

(a) Merger Review Reform.—Within 180 days after the date of enactment of this Act, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Attorney General of the United States, shall prepare, and transmit to Congress each of the following:

(1) A study of the extent to which the authorities vested in the Federal Energy Regulatory Commission under section 203 of the Federal Power Act are duplicative of authorities vested in—

(A) other agencies of Federal and State Government; and

(B) the Federal Energy Regulatory Commission, including under sections 205 and 206 of the Federal Power Act.

(2) Recommendations on reforms to the Federal Power Act that would eliminate any unnecessary duplication in the exercise of regulatory authority or unnecessary delays in the approval (or disapproval) of applications for the sale, lease, or other disposition of public utility facilities.

(b) Merger Review Accountability.—Not later than 1 year after the date of enactment of this Act and annually thereafter, with respect to all orders issued within the preceding year that impose a condition on a sale, lease, or other disposition of public utility facilities under section 203(b) of the Federal Power Act, the Federal Energy Regulatory Commission shall transmit a report to Congress explaining each of the following:

(1) The condition imposed.

(2) Whether the Commission could have imposed such condition by exercising its authority under any provision of the Federal Power Act other than under section 203(b).

(3) If the Commission could not have imposed such condition other than under section 203(b), why the Commission determined that such condition was consistent with the public interest.

SEC. 1292. ELECTRIC UTILITY MERGERS.

(a) Amendment.—Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) is amended to read as follows:

"(a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

"(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10,000,000;

"(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever; or

"(C) purchase, acquire, or take any security with a value in excess of $10,000,000 of any other public utility.

"(2) No holding company in a holding company system that includes a public utility shall purchase, acquire, or take any security with a value in excess of $10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a public utility or a holding company in a holding company system that includes a public utility with a value in excess of $10,000,000 without first having secured an order of the Commission authorizing it to do so.

"(3) Upon receipt of an application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable.

"(4) After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest. In evaluating whether a transaction will be consistent with the public interest, the Commission shall consider whether the proposed transaction—

"(A) will adequately protect consumer interests;

"(B) will be consistent with competitive wholesale markets;

"(C) will impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction; and

"(D) satisfies such other criteria as the Commission considers consistent with the public interest.

"(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4). The Commission shall provide expedited review for such transactions. The Commission shall grant or deny any other application for approval of a transaction not later than 180 days after the application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

"(6) For purposes of this subsection, the terms 'associate company', 'holding company', and 'holding company system' have the meaning given those terms in the Public Utility Holding Company Act of 2003.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 12 months after the date of enactment of this section.

Subtitle I—Definitions

SEC. 1295. DEFINITIONS.

(a) ELECTRIC UTILITY.—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is amended to read as follows:

"(22) ELECTRIC UTILITY.—The term 'electric utility' means any person or Federal or State agency (including any entity described in section 201(f)) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing administration.".

(b) TRANSMITTING UTILITY.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is amended to read as follows:

"(23) TRANSMITTING UTILITY.—The term 'transmitting utility' means an entity, including any entity described in section 201(f), that owns, operates, or controls facilities used for the transmission of electric energy—

"(A) in interstate commerce; or

"(B) for the sale of electric energy at wholesale.".

(c) ADDITIONAL DEFINITIONS.—Section 3 of the Federal Power Act (16 U.S.C. 796) is amended by adding at the end the following:

"(26) ELECTRIC COOPERATIVE.—The term 'electric cooperative' means a cooperatively owned electric utility.

"(27) RTO.—The term 'Regional Transmission Organization' or 'RTO' means an entity of sufficient regional scope approved by the Commission to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure nondiscriminatory access to such facilities.

"(28) ISO.—The term 'Independent System Operator' or 'ISO' means an entity approved by the Commission to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure nondiscriminatory access to such facilities.".

(d) COMMISSION.—For the purposes of this title, the term "Commission" means the Federal Energy Regulatory Commission.

(e) APPLICABILITY.—Section 201(f) of the Federal Power Act (16 U.S.C. 824(f)) is amended by adding after "political subdivision of a state," the following: "an electric cooperative that has financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year,".

Subtitle J—Technical and Conforming Amendments

SEC. 1297. CONFORMING AMENDMENTS.

The Federal Power Act is amended as follows:

(1) Section 201(b)(2) of such Act (16 U.S.C. 824(b)(2)) is amended as follows:

(A) In the first sentence by striking "210, 211, and 212" and inserting "203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222".

(B) In the second sentence by striking "210 or 211" and inserting "203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222".

(C) Section 201(b)(2) of such Act is amended by striking "The" in the first place it appears and inserting "Notwithstanding section 201(f), the" and in the second sentence after "any order" by inserting "or rule".

(2) Section 201(e) of such Act is amended by striking "210, 211, or 212" and inserting "206(e), 206(f), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222".

(3) Section 206 of such Act (16 U.S.C. 824e) is amended as follows:

(A) In subsection (b), in the seventh sentence, by striking "the public utility to make".

(B) In the first sentence of subsection (a), by striking 'hearing had' and inserting "hearing held".

(4) Section 211(c) of such Act (16 U.S.C. 824j(c)) is amended by—

(A) striking "(2)";

(B) striking "(A)" and inserting "(1)"

(C) striking "(B)" and inserting "(2)"; and

(D) striking "termination of modification" and inserting "termination or modification".

(5) Section 211(d)(1) of such Act (16 U.S.C. 824j(d)(1)) is amended by striking "electric utility" the second time it appears and inserting "transmitting utility".

(6) Section 315 (c) of such Act (16 U.S.C. 825n(c)) is amended by striking "subsection" and inserting "section".

TITLE XIII—ENERGY TAX INCENTIVES

SEC. 1300. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This title may be cited as the "Energy Tax Policy Act of 2003".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A—Conservation

PART I—RESIDENTIAL AND BUSINESS PROPERTY

SEC. 1301. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

"SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during such year,

"(2) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year,

"(3) 15 percent of the qualified wind energy property expenditures made by the taxpayer during such year, and

"(4) 20 percent of the qualified fuel cell property expenditures made by the taxpayer during such year.

"(b) LIMITATIONS.—

"(1) MAXIMUM CREDIT.—

"(A) IN GENERAL.—The credit allowed under subsection (a) shall not exceed—

"(i) $2,000 for property described in paragraph (1), (2), or (3) of subsection (c), and

"(ii) $500 for each 0.5 kilowatt of capacity of property described in subsection (c)(4).

"(B) PRIOR EXPENDITURES BY TAXPAYER ON SAME RESIDENCE TAKEN INTO ACCOUNT.—In determining the amount of the credit allowed to a taxpayer with respect to any dwelling unit under this section, the dollar amount under subparagraph (A)(i) with respect to each type of property described in such subparagraph shall be reduced by the credit allowed to the taxpayer under this section with respect to such property for all preceding taxable years with respect to such dwelling unit.

"(2) PROPERTY STANDARDS.—No credit shall be allowed under this section for an item of property unless—

"(A) the original use of such property commences with the taxpayer,

"(B) such property reasonably can be expected to remain in use for at least 5 years,

"(C) such property is installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer,

"(D) in the case of solar water heating property, such property is certified for performance by the non-profit Solar Rating and Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed,

"(E) in the case of fuel cell property, such property meets the performance and quality standards (if any) which have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

"(F) in the case of any photovoltaic property, fuel cell property, or wind energy property, such property meets appropriate fire and electric code requirements.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term 'qualified solar water heating property expenditure' means an expenditure for property which uses solar energy to heat water for use in a dwelling unit.

"(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term 'qualified photovoltaic property expenditure' means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit and which is not described in paragraph (1).

"(3) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE.—The term 'qualified wind energy property expenditure' means an expenditure for property which uses wind energy to generate electricity for use in a dwelling unit.

"(4) QUALIFIED FUEL CELL PROPERTY EXPENDITURE.—The term 'qualified fuel cell property expenditure' means an expenditure for any qualified fuel cell property (as defined in section 48(c)(1)).

"(d) SPECIAL RULES.—For purposes of this section—

"(1) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) of subsection (c) solely because it constitutes a *structural component of the structure on which it is installed.*

"(2) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

"(3) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals, the following rules shall apply:

"(A) The amount of the credit allowable under subsection (a) by reason of expenditures made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

"(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

"(C) Subparagraphs (A) and (B) shall be applied separately with respect to expenditures described in paragraphs (1), (2), (3), and (4) of subsection (c).

"(4) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made the individual's tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

"(5) CONDOMINIUMS.—

"(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

"(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

"(6) ALLOCATION IN CERTAIN CASES.—Except in the case of qualified wind energy property expenditures, if less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

"(7) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

"(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

"(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

"(8) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).

"(9) DENIAL OF DEPRECIATION ON WIND ENERGY PROPERTY FOR WHICH CREDIT ALLOWED.—No deduction shall be allowed under section 167 for property which uses wind energy to generate electricity if the taxpayer is allowed a credit under this section with respect to such property.

"(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(f) TERMINATION.—The credit allowed under this section shall not apply to taxable years beginning after December 31, 2006 (December 31, 2008, with respect to qualified photovoltaic property expenditures).".

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking "and" at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting ", and", and by adding at the end the following new paragraph:

"(29) to the extent provided in section 25C(e), in the case of amounts with respect to which a credit has been allowed under section 25C.".

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25B the following new item:

"Sec. 25C. Residential energy efficient property.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2003.

SEC. 1302. EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—Subsection (c) of section 45 (relating to electricity produced from certain renewable resources) is amended to read as follows:

"(c) QUALIFIED ENERGY RESOURCES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified energy resources' means—

"(A) wind,

"(B) closed-loop biomass,

"(C) open-loop biomass,

"(D) geothermal energy,

"(E) solar energy,

"(F) small irrigation power, and

"(G) municipal solid waste.

"(2) CLOSED-LOOP BIOMASS.—The term 'closed-loop biomass' means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

"(3) OPEN-LOOP BIOMASS.—

"(A) IN GENERAL.—The term 'open-loop biomass' means—

"(i) any agricultural livestock waste nutrients, or

"(ii) any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

"(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

"(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

"(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass.

"(B) AGRICULTURAL LIVESTOCK WASTE NUTRIENTS.—

"(i) IN GENERAL.—The term 'agricultural livestock waste nutrients' means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

"(ii) AGRICULTURAL LIVESTOCK.—The term 'agricultural livestock' includes bovine, swine, poultry, and sheep.

"(4) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

"(5) SMALL IRRIGATION POWER.—The term 'small irrigation power' means power—

"(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

"(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.

"(6) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given the term 'solid waste' under section 2(27) of the Solid Waste Disposal Act (42 U.S.C. 6903).".

(b) EXTENSION AND EXPANSION OF QUALIFIED FACILITIES.—

(1) IN GENERAL.—Section 45 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED FACILITIES.—For purposes of this section—

"(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2007.

"(2) CLOSED-LOOP BIOMASS FACILITY.—

"(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term 'qualified facility' means any facility—

"(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2007, or

"(ii) owned by the taxpayer which before January 1, 2007, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

"(B) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(ii)—

"(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of the Energy Tax Policy Act of 2003,

"(ii) the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and

"(iii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

"(3) OPEN-LOOP BIOMASS FACILITIES.—

"(A) IN GENERAL.—In the case of a facility using open-loop biomass to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which—

"(i) in the case of a facility using agricultural livestock waste nutrients—

"(I) is originally placed in service after the date of the enactment of the Energy Tax Policy Act of 2003 and before January 1, 2007, and

"(II) the nameplate capacity rating of which is not less than 150 kilowatts, and

"(ii) in the case of any other facility, is originally placed in service before January 1, 2007.

"(B) CREDIT ELIGIBILITY.—In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

"(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—In the case of a facility using geothermal or solar energy to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of the Energy Tax Policy Act of 2003 and before January 1, 2007. Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

"(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of the Energy Tax Policy Act of 2003 and before January 1, 2007.

"(6) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of the Energy Tax Policy Act of 2003 and before January 1, 2007.

"(7) TRASH COMBUSTION FACILITIES.—In the case of a facility which burns municipal solid waste to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of the Energy Tax Policy Act of 2003 and before January 1, 2007.".

(2) CONFORMING AMENDMENT.—Section 45(e), as so redesignated, is amended by striking "subsection (c)(3)(A)" in paragraph (7)(A)(i) and inserting "subsection (d)(1)".

(c) SPECIAL CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD AFTER ENACTMENT DATE.—Section 45(b) is amended by adding at the end the following new paragraph:

"(4) CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD FROM CERTAIN FACILITIES.—

"(A) CREDIT RATE.—In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3), (5), (6), or (7) of subsection (d), the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-third.

"(B) CREDIT PERIOD.—

"(i) IN GENERAL.—Except as provided in clause (ii), in the case of any facility described in paragraph (3), (4), (5), (6), or (7) of subsection (d), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

"(ii) CERTAIN OPEN-LOOP BIOMASS FACILITIES.—In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before the date of the enactment of this paragraph, the 5-year period beginning on January 1, 2004, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).".

(d) COORDINATION WITH OTHER CREDITS.—Section 45(e), as so redesignated, is amended by adding at the end the following new paragraph:

"(8) COORDINATION WITH OTHER CREDITS.—The term 'qualified facility' shall not include—

"(A) any property with respect to which a credit is allowed under section 25C, and

"(B) any facility the production from which is allowed as a credit under section 45K,

for the taxable year or any prior taxable year.".

(e) COORDINATION WITH SECTION 48.—Section 48(a)(3) (defining energy property) is amended by adding at the end the following new sentence: "Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.".

(f) ELIMINATION OF CERTAIN CREDIT REDUCTIONS.—Section 45(b)(3) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by inserting "the lesser of ½ or" before "a fraction" in the matter preceding subparagraph (A), and

(2) by adding at the end the following new sentence: "This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).".

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2003, in taxable years ending after such date.

(3) CREDIT RATE AND PERIOD FOR NEW FACILITIES.—The amendments made by subsection (c) shall apply to electricity produced and sold after December 31, 2003, in taxable years ending after such date.

(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on the day before the date of the enactment of this Act) placed in service before January 1, 2004.

(h) GAO STUDY.—The Comptroller General of the United States shall conduct a study on the market viability of producing electricity from resources with respect to which credit is allowed under section 45 of the Internal Revenue Code of 1986 but without such credit. In the case of open-loop biomass and municipal solid waste resources, the study should take into account savings associated with not having to dispose of such resources. In conducting such study, the Comptroller shall estimate the dollar value of the environmental impact of producing electricity from such resources relative to producing electricity from fossil fuels using the latest generation of technology. Not later than June 30, 2006, the Comptroller shall report on such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 1303. CREDIT FOR BUSINESS INSTALLATION OF QUALIFIED FUEL CELLS.

(a) IN GENERAL.—Section 48(a)(3)(A) (defining energy property) is amended by striking "or" at the end of clause (i), by adding "or" at the end of clause (ii), and by inserting after clause (ii) the following new clause:

"(iii) qualified fuel cell property,".

(b) QUALIFIED FUEL CELL PROPERTY.—Section 48 (relating to energy credit; reforestation credit) is amended by adding at the end the following new subsection:

"(c) QUALIFIED FUEL CELL PROPERTY.—For purposes of subsection (a)(3)(A)(iii)—

"(1) IN GENERAL.—The term 'qualified fuel cell property' means a fuel cell power plant which generates at least 0.5 kilowatt of electricity using an electrochemical process.

"(2) LIMITATION.—The energy credit with respect to any qualified fuel cell property shall not exceed an amount equal to $500 for each 0.5 kilowatt of capacity of such property.

"(3) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system, comprised of a fuel cell stack assembly and associated balance of plant components, which converts a fuel into electricity using electrochemical means.

"(4) TERMINATION.—The term 'qualified fuel cell property' shall not include any property placed in service after December 31, 2006.".

(c) ENERGY PERCENTAGE.—Subparagraph (A) of section 48(a)(2) (relating to energy percentage) is amended to read as follows:

"(A) IN GENERAL.—The energy percentage is—

"(i) in the case of qualified fuel cell property, 20 percent, and

"(ii) in the case of any other energy property, 10 percent.".

(d) CONFORMING AMENDMENT.—Section 48(a)(1) is amended by inserting "except as provided in subsection (c)(2)," before "the energy".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 2003, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 1304. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits), as amended by this Act, is amended by inserting after section 25C the following new section:

"SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 20 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

"(b) LIMITATIONS.—

"(1) MAXIMUM CREDIT.—The credit allowed by this section with respect to a dwelling unit shall not exceed $2,000.

"(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER ON SAME DWELLING TAKEN INTO ACCOUNT.—If a credit was allowed to the taxpayer under subsection (a) with respect to a dwelling unit in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling unit shall be reduced by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling unit for all prior taxable years.

"(c) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section, the term 'qualified energy efficiency improvements' means any energy efficient building envelope component which meets the prescriptive criteria for such component established by the 2000 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section (or, in the case of a metal roof with appropriate pigmented coatings which meet the Energy Star program requirements), if—

"(1) such component is installed in or on a dwelling unit—

"(A) located in the United States,

"(B) owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121), and

"(C) which has not been treated as a qualified new energy efficient home for purposes of any credit allowed under section 45G,

"(2) the original use of such component commences with the taxpayer, and

"(3) such component reasonably can be expected to remain in use for at least 5 years.

If the aggregate cost of such components with respect to any dwelling unit exceeds $1,000, such components shall be treated as qualified energy efficiency improvements only if such components are also certified in accordance with subsection (d) as meeting such prescriptive criteria.

"(d) CERTIFICATION.—The certification described in subsection (c) shall be—

"(1) determined on the basis of the technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency (based upon energy use or building envelope component performance) for the energy efficient building envelope component,

"(2) provided by a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating system provider who is accredited by or otherwise authorized to use approved energy performance measurement methods by the Residential Energy Services Network (RESNET), and

"(3) made in writing in a manner which specifies in readily verifiable fashion the energy efficient building envelope components installed and their respective energy efficiency levels.

"(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

"(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit,

"(B) exterior windows (including skylights),

"(C) exterior doors, and

"(D) any metal roof installed on a dwelling unit, but only if such roof has appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of such dwelling unit.

"(2) MANUFACTURED HOMES INCLUDED.—The term 'dwelling unit' includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations).

"(3) APPLICATION OF RULES.—Rules similar to the rules under paragraphs (3), (4), and (5) of section 25C(d) shall apply.

"(f) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(g) APPLICATION OF SECTION.—This section shall apply to qualified energy efficiency improvements installed after December 31, 2003, and before January 1, 2007.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 1016, as amended by this Act, is amended by striking "and" at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting ", and", and by adding at the end the following new paragraph:

"(30) to the extent provided in section 25D(f), in the case of amounts with respect to which a credit has been allowed under section 25D.".

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 25C the following new item:

"Sec. 25D. Energy efficiency improvements to existing homes.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2003.

SEC. 1305. CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOMES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.

"(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor with respect to a qualified new energy efficient home, the credit determined under this section for the taxable year with respect to such home is an amount equal to the aggregate adjusted bases of all energy efficient property installed in such home during construction of such home.

"(b) LIMITATIONS.—

"(1) MAXIMUM CREDIT.—

"(A) IN GENERAL.—The credit allowed by this section with respect to a dwelling unit shall not exceed—

"(i) in the case of a dwelling unit described in clause (i) or (iii) of subsection (c)(3)(D), $1,000, and

"(ii) in the case of a dwelling unit described in subsection (c)(3)(D)(ii), $2,000.

"(B) PRIOR CREDIT AMOUNTS ON SAME DWELLING UNIT TAKEN INTO ACCOUNT.—If a credit was allowed under subsection (a) with respect to a dwelling unit in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to such dwelling unit shall be reduced by the sum of the credits allowed under subsection (a) with respect to the dwelling unit for all prior taxable years.

"(2) COORDINATION WITH CERTAIN CREDITS.—For purposes of this section—

"(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)) or to the energy percentage of energy property (as determined under section 48(a)), and

"(B) expenditures taken into account under section 47 or 48(a) shall not be taken into account under this section.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means—

"(A) the person who constructed the qualified new energy efficient home, or

"(B) in the case of a qualified new energy efficient home which is a manufactured home, the manufactured home producer of such home.

If more than 1 person is described in subparagraph (A) or (B) with respect to any qualified new energy efficient home, such term means the person designated as such by the owner of such home.

"(2) ENERGY EFFICIENT PROPERTY.—The term 'energy efficient property' means any energy efficient building envelope component, and any energy efficient heating or cooling equipment or system, which can, individually or in combination with other components, result in a dwelling unit meeting the requirements of this section.

"(3) QUALIFIED NEW ENERGY EFFICIENT HOME.—The term 'qualified new energy efficient home' means a dwelling unit—

"(A) located in the United States,

"(B) the construction of which is substantially completed after December 31, 2003,

"(C) the original use of which, after such construction, is reasonably expected to be as a residence by the person who acquires such dwelling unit from the eligible contractor,

"(D) which is—

"(i) certified to have a level of annual heating and cooling energy consumption which is at least 30 percent below the annual level of heating and cooling energy consumption of a comparable dwelling unit constructed in accordance with the standards of chapter 4 of the 2000 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section, and to have building envelope component improvements account for at least $\frac{1}{3}$ of such 30 percent,

"(ii) certified to have a level of annual heating and cooling energy consumption which is at least 50 percent below such annual level and to have building envelope component improvements account for at least $\frac{1}{5}$ of such 50 percent, or

"(iii) a manufactured home which—

"(I) conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations), and

"(II) meets the applicable standards required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

"(4) CONSTRUCTION.—The term 'construction' includes substantial reconstruction and rehabilitation.

"(5) ACQUIRE.—The term 'acquire' includes purchase and, in the case of reconstruction and rehabilitation, such term includes a binding written contract for such reconstruction or rehabilitation.

"(6) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

"(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit,

"(B) exterior windows (including skylights),

"(C) exterior doors, and

"(D) any metal roof installed on a dwelling unit, but only if such roof has appropriate pigmented coatings which—

"(i) are specifically and primarily designed to reduce the heat gain of such dwelling unit, and

"(ii) meet the Energy Star program requirements.

"(d) CERTIFICATION.—

"(1) METHOD OF CERTIFICATION.—A certification described in subsection (c)(3)(D) shall be determined in accordance with guidance prescribed by the Secretary. Such guidance shall specify procedures and methods for calculating energy and cost savings.

"(2) FORM.—A certification described in subsection (c)(3)(D) shall be made in writing—

"(A) in a manner which specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance, and

"(B) in the case of a qualified new energy efficient home which is a manufactured home, accompanied by such documentation as required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

"(e) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

"(f) APPLICATION OF SECTION.—Subsection (a) shall apply to qualified new energy efficient homes acquired during the period beginning on January 1, 2004, and ending on December 31, 2006.".

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year

business credit) is amended by striking "plus" at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ", plus", and by adding at the end the following new paragraph:

"(16) the new energy efficient home credit determined under section 45G(a).".

(c) Basis Adjustment.—Subsection (a) of section 1016, as amended by this Act, is amended by striking "and" at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting ", and", and by adding at the end the following new paragraph:

"(31) to the extent provided in section 45G(e), in the case of amounts with respect to which a credit has been allowed under section 45G.".

(d) Limitation on Carryback.—

(1) In general.—Subsection (d) of section 39 is amended to read as follows:

"(d) Transitional Rule.—No portion of the unused business credit for any taxable year which is attributable to a credit specified in section 38(b) or any portion thereof may be carried back to any taxable year before the first taxable year for which such specified credit or such portion is allowable (without regard to subsection (a)).".

(2) Effective date.—The amendment made by paragraph (1) shall apply with respect to taxable years ending after December 31, 2002.

(e) Deduction for Certain Unused Business Credits.—Section 196(c) (defining qualified business credits) is amended by striking "and" at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting ", and", and by adding after paragraph (11) the following new paragraph:

"(12) the new energy efficient home credit determined under section 45G(a).".

(f) Clerical Amendment.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45G. New energy efficient home credit.".

(g) Effective Date.—The amendments made by this section shall apply to taxable years ending after December 31, 2003.

SEC. 1306. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) In General.—Section 48(a)(3)(A) (defining energy property), as amended by this Act, is amended by striking "or" at the end of clause (ii), by adding "or" at the end of clause (iii), and by inserting after clause (iii) the following new clause:

"(iv) combined heat and power system property,".

(b) Combined Heat and Power System Property.—Section 48 (relating to energy credit; reforestation credit), as amended by this Act, is amended by adding at the end the following new subsection:

"(d) Combined Heat and Power System Property.—For purposes of subsection (a)(3)(A)(iv)—

"(1) Combined heat and power system property.—The term 'combined heat and power system property' means property comprising a system—

"(A) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

"(B) which has an electrical capacity of not more than 15 megawatts or a mechanical energy capacity of not more than 2,000 horsepower or an equivalent combination of electrical and mechanical energy capacities,

"(C) which produces—

"(i) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

"(ii) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

"(D) the energy efficiency percentage of which exceeds 60 percent, and

"(E) which is placed in service before January 1, 2007.

"(2) Special rules.—

"(A) Energy efficiency percentage.—For purposes of this subsection, the energy efficiency percentage of a system is the fraction—

"(i) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

"(ii) the denominator of which is the lower heating value of the fuel sources for the system.

"(B) Determinations made on btu basis.—The energy efficiency percentage and the percentages under paragraph (1)(C) shall be determined on a Btu basis.

"(C) Input and output property not included.—The term 'combined heat and power system property' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

"(D) Public utility property.—

"(i) Accounting rule for public utility property.—If the combined heat and power system property is public utility property (as defined in section 168(i)(10)), the taxpayer may only claim the credit under subsection (a) if, with respect to such property, the taxpayer uses a normalization method of accounting.

"(ii) Certain exception not to apply.—The matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to combined heat and power system property.

"(3) Systems using bagasse.—If a system is designed to use bagasse for at least 90 percent of the energy source—

"(A) paragraph (1)(D) shall not apply, but

"(B) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this paragraph) as the energy efficiency percentage of such system bears to 60 percent.".

(c) Effective Date.—The amendments made by this subsection shall apply to periods after December 31, 2003, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 1307. CREDIT FOR ENERGY EFFICIENT APPLIANCES.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.

"(a) Allowance of Credit.—For purposes of section 38, the energy efficient appliance credit determined under this section for the taxable year is an amount equal to the sum of—

"(1) the tier I appliance amount, and

"(2) the tier II appliance amount,

with respect to qualified energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

"(b) Appliance Amounts.—For purposes of subsection (a)—

"(1) Tier I appliance amount.—The tier I appliance amount is equal to—

"(A) $100, multiplied by

"(B) an amount (rounded to the nearest whole number) equal to the applicable percentage of the eligible production.

"(2) Tier II appliance amount.—The tier II appliance amount is equal to $150, multiplied by an amount equal to the eligible production reduced by the amount determined under paragraph (1)(B).

"(3) Applicable percentage.—The applicable percentage is the percentage determined by dividing the tier I appliances produced by the taxpayer during the calendar year by the sum of the tier I and tier II appliances so produced.

"(4) Eligible production.—The eligible production of qualified energy efficient appliances by the taxpayer for any calendar year is the excess of—

"(A) the number of such appliances which are produced by the taxpayer during such calendar year, over

"(B) 110 percent of the average annual number of such appliances which were produced by the taxpayer (or any predecessor) during the preceding 3-calendar year period.

"(c) Qualified Energy Efficient Appliance.—For purposes of this section—

"(1) In general.—The term 'qualified energy efficient appliance' means any tier I appliance or tier II appliance which is produced in the United States.

"(2) Tier I appliance.—The term 'tier I appliance' means—

"(A) a clothes washer which is produced with at least a 1.50 MEF, and

"(B) a refrigerator which consumes at least 15 percent (20 percent in the case of a refrigerator produced after 2006) less kilowatt hours per year than the energy conservation standards for refrigerators promulgated by the Department of Energy and effective on July 1, 2001.

"(3) Tier II appliance.—The term 'tier II appliance' means a refrigerator produced before 2007 which consumes at least 20 percent less kilowatt hours per year than the energy conservation standards described in paragraph (2)(B).

"(4) Clothes washer.—The term 'clothes washer' means a residential clothes washer, including a residential style coin operated washer.

"(5) Refrigerator.—The term 'refrigerator' means an automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

"(6) MEF.—The term 'MEF' means Modified Energy Factor (as determined by the Secretary of Energy).

"(7) Produced.—The term 'produced' includes manufactured.

"(d) Limitation on Maximum Credit.—

"(1) In general.—The amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $60,000,000, reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for any prior taxable year.

"(2) Limitation based on gross receipts.—The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year for which the credit is determined.

"(3) Gross receipts.—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

"(e) Special Rules.—For purposes of this section—

"(1) In general.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

"(2) Controlled groups.—

"(A) In general.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as a single manufacturer.

"(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 to this section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

"(f) VERIFICATION.—The taxpayer shall submit such information or certification as the Secretary, after consultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).

"(g) TERMINATION.—This section shall not apply with respect to appliances produced after December 31, 2007.".

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking "plus" at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting ", plus", and by adding at the end the following new paragraph:

"(17) the energy efficient appliance credit determined under section 45H(a).".

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

"Sec. 45H. Energy efficient appliance credit.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2003, in taxable years ending after such date.

SEC. 1308. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179A the following new section:

"SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

"(a) IN GENERAL.—There shall be allowed as a deduction an amount equal to the cost of energy efficient commercial building property placed in service during the taxable year.

"(b) MAXIMUM AMOUNT OF DEDUCTION.—The deduction under subsection (a) with respect to any building for the taxable year and all prior taxable years shall not exceed an amount equal to the product of—

"(1) $1.50, and

"(2) the square footage of the building.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY.—The term 'energy efficient commercial building property' means property—

"(A) which is installed on or in a building—

"(i) which is located in the United States, and

"(ii) which is the type of structure to which the Standard 90.1–2001 is applicable,

"(B) which is installed as part of—

"(i) the lighting systems,

"(ii) the heating, cooling, ventilation, and hot water systems, or

"(iii) the building envelope, and

"(C) which is certified in accordance with subsection (d)(4) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2001 using methods of calculation under subsection (d)(2).

"(2) STANDARD 90.1–2001.—The term 'Standard 90.1–2001' means Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on April 2, 2003).

"(d) SPECIAL RULES.—

"(1) PARTIAL ALLOWANCE.—

"(A) IN GENERAL.—Except as provided in subsection (f), in the case of a building placed in service on or before the date of the enactment of this section, if—

"(i) the requirement of subsection (c)(1)(C) is not met, but

"(ii) there is a certification in accordance with subsection (d)(4) that any system referred to in subsection (c)(1)(B) satisfies the energy-savings targets established by the Secretary under subparagraph (B) with respect to such system,

then the requirement of subsection (c)(1)(C) shall be treated as met with respect to such system, and the deduction under subsection (a) shall be allowed with respect to energy efficient commercial building property installed as part of such system and as part of a plan to meet such targets, except that subsection (b) shall be applied to such property by substituting '$.50' for '$1.50'.

"(B) REGULATIONS.—The Secretary, after consultation with the Secretary of Energy, shall establish a target for each system described in subsection (c)(1)(B) which, if such targets were met for all such systems, the building would meet the requirements of subsection (c)(1)(C).

"(2) METHODS OF CALCULATION.—The Secretary, after consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power cost for purposes of this section.

"(3) NOTICE TO OWNER.—Each certification required under this section shall include an explanation to the building owner regarding the energy efficiency features of the building and its projected annual energy costs.

"(4) CERTIFICATION.—

"(A) IN GENERAL.—The Secretary shall prescribe the manner and method for the making of certifications under this section.

"(B) PROCEDURES.—The Secretary shall include as part of the certification process procedures for inspection and testing by qualified individuals described in subparagraph (C) to ensure compliance of buildings with energy-savings plans and targets. Such procedures shall be—

"(i) comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems, and

"(ii) fuel neutral such that the same energy efficiency measures allow a building to be eligible for the deduction under this section regardless of whether such building uses a gas or oil furnace or boiler, an electric heat pump, or other fuel source.

"(C) QUALIFIED INDIVIDUALS.—Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes.

"(e) BASIS REDUCTION.—For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient commercial building property, the basis of such property shall be reduced by the amount of the deduction so allowed.

"(f) INTERIM RULES FOR LIGHTING SYSTEMS.—Until such time as the Secretary issues final regulations under subsection (d)(1)(B) with respect to property which is part of a lighting system—

"(1) IN GENERAL.—The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1–2001.

"(2) REDUCTION IN DEDUCTION IF REDUCTION LESS THAN 40 PERCENT.—

"(A) IN GENERAL.—If, with respect to the lighting system of any building other than a warehouse, the reduction in lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of deduction otherwise allowable under this section with respect to such property shall be allowed.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage is the number of percentage points (not greater than 100) equal to the sum of—

"(i) 50, and

"(ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

"(C) EXCEPTIONS.—This subsection shall not apply to any system—

"(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1–2001 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

"(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

"(g) REGULATIONS.—The Secretary shall promulgate such regulations as necessary—

"(1) to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section, and

"(2) to provide for a recapture of the deduction allowed under this section if the plan described in subsection (c)(1)(C) or (d)(1)(A) is not fully implemented.

"(h) TERMINATION.—This section shall not apply with respect to property placed in service after December 31, 2007.".

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this section, is amended by striking "and" at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting ", and", and by adding at the end the following new paragraph:

"(32) to the extent provided in section 179B(e).".

(2) Section 1245(a) is amended by inserting "179B," after "179A," both places it appears in paragraphs (2)(C) and (3)(C).

(3) Section 1250(b)(3) is amended by inserting before the period at the end of the first sentence "or by section 179B".

(4) Section 263(a)(1) is amended by striking "or" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ", or", and by inserting after subparagraph (H) the following new subparagraph:

"(I) expenditures for which a deduction is allowed under section 179B.".

(5) Section 312(k)(3)(B) is amended by striking "or 179A" each place it appears in the heading and text and inserting ", 179A, or 179B".

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after section 179A the following new item:

"Sec. 179B. Energy efficient commercial buildings deduction.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act in taxable years ending after such date.

SEC. 1309. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property) is amended by striking

"and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) any qualified energy management device.".

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) (relating to definitions and special rules) is amended by inserting at the end the following new paragraph:

"(15) QUALIFIED ENERGY MANAGEMENT DEVICE.—

"(A) IN GENERAL.—The term 'qualified energy management device' means any energy management device which is placed in service before January 1, 2008, by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

"(B) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term 'energy management device' means any meter or metering device which is used by the taxpayer—

"(i) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and

"(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.".

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (A)(iii) the following:

"(A)(iv) .... 20".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 1310. CREDIT FOR PRODUCTION FROM ADVANCED NUCLEAR POWER FACILITIES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding after section 45K the following new section:

"SEC. 45L. CREDIT FOR PRODUCTION FROM ADVANCED NUCLEAR POWER FACILITIES.

"(a) GENERAL RULE.—For purposes of section 38, the advanced nuclear power facility production credit of any taxpayer for any taxable year is equal to the product of—

"(1) 1.8 cents, multiplied by

"(2) the kilowatt hours of electricity—

"(A) produced by the taxpayer at an advanced nuclear power facility during the 8-year period beginning on the date the facility was originally placed in service, and

"(B) sold by the taxpayer to an unrelated person during the taxable year.

"(b) NATIONAL LIMITATION.—

"(1) IN GENERAL.—The amount of credit which would (but for this subsection and subsection (c)) be allowed with respect to any facility for any taxable year shall not exceed the amount which bears the same ratio to such amount of credit as—

"(A) the national megawatt capacity limitation allocated to the facility, bears to

"(B) the total megawatt nameplate capacity of such facility.

"(2) AMOUNT OF NATIONAL LIMITATION.—The national megawatt capacity limitation shall be 6,000 megawatts.

"(3) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation in such manner as the Secretary may prescribe.

"(4) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations shall provide a certification process under which the Secretary, after consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation.

"(c) OTHER LIMITATIONS.—

"(1) ANNUAL LIMITATION.—The amount of the credit allowable under subsection (a) (after the application of subsection (b)) for any taxable year with respect to any facility shall not exceed an amount which bears the same ratio to $125,000,000 as—

"(A) the national megawatt capacity limitation allocated under subsection (b) to the facility, bears to

"(B) 1,000.

"(2) OTHER LIMITATIONS.—Rules similar to the rules of section 45(b) shall apply for purposes of this section, except that paragraph (2) thereof shall not apply to the 1.8 cents under subsection (a)(1).

"(d) ADVANCED NUCLEAR POWER FACILITY.—For purposes of this section—

"(1) IN GENERAL.—The term 'advanced nuclear power facility' means any advanced nuclear facility—

"(A) which is owned by the taxpayer and which uses nuclear energy to produce electricity, and

"(B) which is placed in service after the date of the enactment of this paragraph and before January 1, 2021.

"(2) ADVANCED NUCLEAR FACILITY.—For purposes of paragraph (1), the term 'advanced nuclear facility' means any nuclear facility the reactor design for which is approved after the date of the enactment of this paragraph by the Nuclear Regulatory Commission (and such design or a substantially similar design of comparable capacity was not approved on or before such date).

"(e) OTHER RULES TO APPLY.—Rules similar to the rules of paragraphs (1), (2), (3), (4), and (5) of section 45(e) shall apply for purposes of this section."

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking "plus" at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ", plus", and by adding at the end the following:

"(22) the advanced nuclear power facility production credit determined under section 45L(a).".

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following:

"Sec. 45L. Credit for production from advanced nuclear power facilities.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years beginning after December 31, 2003.

PART II—FUELS AND ALTERNATIVE MOTOR VEHICLES

SEC. 1311. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(a)(1) is amended by striking "or a diesel-powered train" each place it appears and by striking "or train".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 4041(a)(1) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(B) Subparagraph (C) of section 4041(b)(1) is amended by striking all that follows "section 6421(e)(2)" and inserting a period.

(C) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.".

(D) Subsection (f) of section 4082 is amended by striking "section 4041(a)(1)" and inserting "subsections (d)(3) and (a)(1) of section 4041, respectively".

(E) Paragraph (3) of section 4083(a) is amended by striking "or a diesel-powered train".

(F) Paragraph (3) of section 6421(f) is amended to read as follows:

"(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.".

(G) Paragraph (3) of section 6427(l) is amended to read as follows:

"(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof.".

(b) FUEL USED ON INLAND WATERWAYS.—

(1) IN GENERAL.—Paragraph (1) of section 4042(b) is amended by adding "and" at the end of subparagraph (A), by striking ", and" at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 4042(b) is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

SEC. 1312. REDUCED MOTOR FUEL EXCISE TAX ON CERTAIN MIXTURES OF DIESEL FUEL.

(a) IN GENERAL.—Paragraph (2) of section 4081(a) is amended by adding at the end the following:

"(C) DIESEL-WATER FUEL EMULSION.—In the case of diesel-water fuel emulsion at least 14 percent of which is water and with respect to which the emulsion additive is registered by a United States manufacturer with the Environmental Protection Agency pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003), subparagraph (A)(iii) shall be applied by substituting '19.7 cents' for '24.3 cents'.".

(b) SPECIAL RULES FOR DIESEL-WATER FUEL EMULSIONS.—

(1) REFUNDS FOR TAX-PAID PURCHASES.—Section 6427 is amended by redesignating subsections (m) through (p) as subsections (n) through (q), respectively, and by inserting after subsection (l) the following new subsection:

"(m) DIESEL FUEL USED TO PRODUCE EMULSION.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at the regular tax rate is used by any person in producing an emulsion described in section 4081(a)(2)(C) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means the aggregate rate of tax imposed by section 4081 determined without regard to section 4081(a)(2)(C).

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means the aggregate rate of tax imposed by section 4081 determined with regard to section 4081(a)(2)(C).".

(2) LATER SEPARATION OF FUEL.—

(A) IN GENERAL.—Section 4081 (relating to imposition of tax) is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) LATER SEPARATION OF FUEL FROM DIESEL-WATER FUEL EMULSION.—If any person separates the taxable fuel from a diesel-water fuel emulsion on which tax was imposed under subsection (a) at a rate determined under subsection (a)(2)(C) (or with respect to which a credit or payment was allowed or made by reason of section 6427), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.".

(B) CONFORMING AMENDMENT.—Subsection (d) of section 6416 is amended by striking "section 4081(e)" and inserting "section 4081(f)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

SEC. 1313. SMALL ETHANOL PRODUCER CREDIT.

(a) ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by adding at the end the following new paragraph:

"(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

"(A) ELECTION TO ALLOCATE.—

"(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

"(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

"(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to patrons under subparagraph (A)—

"(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

"(ii) shall be included in the amount determined under subsection (a) for the taxable year of each patron for which the patronage dividends for the taxable year described in subparagraph (A) are included in gross income.

"(C) SPECIAL RULE.—If the amount of a credit which has been apportioned to any patron under this paragraph is decreased for any reason—

"(i) such amount shall not increase the tax imposed on such patron, and

"(ii) the tax imposed by this chapter on such organization shall be increased by such amount.

The increase under clause (ii) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.".

(b) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking "30,000,000" each place it appears and inserting "60,000,000".

(c) CONFORMING AMENDMENT.—Section 1388 (relating to definitions and special rules for cooperative organizations) is amended by adding at the end the following new subsection:

"(k) CROSS REFERENCE.—

"For provisions relating to the apportionment of the alcohol fuels credit between cooperative organizations and their patrons, see section 40(g)(6).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 1314. INCENTIVES FOR BIODIESEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

"SEC. 40A. BIODIESEL USED AS FUEL.

"(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

"(1) the biodiesel mixture credit, plus

"(2) the biodiesel credit.

"(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

"(1) BIODIESEL MIXTURE CREDIT.—

"(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

"(B) QUALIFIED BIODIESEL MIXTURE.—The term 'qualified biodiesel mixture' means a mixture of biodiesel and a taxable fuel (within the meaning of section 4083(a)(1)) which—

"(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

"(ii) is used as a fuel by the taxpayer producing such mixture.

"(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

"(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

"(ii) for the taxable year in which such sale or use occurs.

"(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

"(2) BIODIESEL CREDIT.—

"(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture and which during the taxable year—

"(i) is used by the taxpayer as a fuel in a trade or business, or

"(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

"(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

"(3) CREDIT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.

"(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

"(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) BIODIESEL.—The term 'biodiesel' means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

"(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

"(B) the requirements of the American Society of Testing and Materials D6751.

"(2) AGRI-BIODIESEL.—The term 'agri-biodiesel' means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

"(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL, ETC.—

"(A) MIXTURES.—If—

"(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

"(ii) any person—

"(I) separates the biodiesel from the mixture, or

"(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

"(B) BIODIESEL.—If—

"(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

"(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

"(C) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

"(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(e) TERMINATION.—This section shall not apply to any sale or use after December 31, 2005.".

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking "plus" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting ", plus", and by adding at the end the following new paragraph:

"(18) the biodiesel fuels credit determined under section 40A(a).".

(c) CONFORMING AMENDMENTS.—

(1)(A) Section 87 is amended to read as follows:

"SEC. 87. ALCOHOL AND BIODIESEL FUELS CREDITS.

"Gross income includes—

"(1) the amount of the alcohol fuels credit determined with respect to the taxpayer for the taxable year under section 40(a), and

"(2) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40A(a).".

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter

1 is amended by striking "fuel credit" and inserting "and biodiesel fuels credits".

(2) Section 196(c), as amended by this Act, is amended by striking "and" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting ", and", and by adding at the end the following new paragraph:

"(13) the biodiesel fuels credit determined under section 40A(a).".

(3) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 40 the following new item:

"Sec. 40A. Biodiesel used as fuel.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel produced, and sold or used, after December 31, 2003, in taxable years ending after such date.

SEC. 1315. ALCOHOL FUEL AND BIODIESEL MIXTURES EXCISE TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

"SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

"(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

"(1) the alcohol fuel mixture credit, plus

"(2) the biodiesel mixture credit.

"(b) ALCOHOL FUEL MIXTURE CREDIT.—

"(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

"(2) APPLICABLE AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 52 cents (51 cents in the case of any sale or use after 2004).

"(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

"(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term 'alcohol fuel mixture' means a mixture of alcohol and a taxable fuel which—

"(A) is sold by the taxpayer producing such mixture to any person for use as a fuel,

"(B) is used as a fuel by the taxpayer producing such mixture, or

"(C) is removed from the refinery by a person producing such mixture.

"(4) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) ALCOHOL.—The term 'alcohol' includes methanol and ethanol but does not include—

"(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

"(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

"(B) TAXABLE FUEL.—The term 'taxable fuel' has the meaning given such term by section 4083(a)(1).

"(5) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.

"(c) BIODIESEL MIXTURE CREDIT.—

"(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

"(2) APPLICABLE AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

"(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.

"(3) BIODIESEL MIXTURE.—For purposes of this section, the term 'biodiesel mixture' means a mixture of biodiesel and a taxable fuel which—

"(A) is sold by the taxpayer producing such mixture to any person for use as a fuel,

"(B) is used as a fuel by the taxpayer producing such mixture, or

"(C) is removed from the refinery by a person producing such mixture.

"(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

"(5) OTHER DEFINITIONS.—Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

"(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2005.

"(d) MIXTURE NOT USED AS A FUEL, ETC.—

"(1) IMPOSITION OF TAX.—If—

"(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or biodiesel mixture, respectively, and

"(B) any person—

"(i) separates the alcohol or biodiesel from the mixture, or

"(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

"(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

"(e) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—Rules similar to the rules under section 40(c) shall apply for purposes of this section.".

(b) REGISTRATION REQUIREMENT.—Section 4101(a) (relating to registration) is amended by inserting "and every person producing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))" after "4091".

(c) ADDITIONAL AMENDMENTS.—

(1) Section 40(c) is amended by striking "or section 4091(c)" and inserting "section 4091(c), or section 6426".

(2) Section 40(e)(1) is amended—

(A) by striking "2007" in subparagraph (A) and inserting "2010", and

(B) by striking "2008" in subparagraph (B) and inserting "2011".

(3) Section 40(h) is amended—

(A) by striking "2007" in paragraph (1) and inserting "2010", and

(B) by striking ", 2006, or 2007" in the table contained in paragraph (2) and inserting "through 2010".

(4)(A) Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new section:

"SEC. 4104. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

"(a) IN GENERAL.—The Secretary shall require any person claiming tax benefits under the provisions of section 34, 40, 40A, 4041(b)(2), 4041(k), 4081(c), 6426, or 6427(f) to file a quarterly return (in such manner as the Secretary may prescribe) providing such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

"(b) ENFORCEMENT.—With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.".

(B) The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new item:

"Sec. 4104. Information reporting for persons claiming certain tax benefits.".

(5) Section 6427(i)(3) is amended—

(A) by adding at the end of subparagraph (A) the following new flush sentence:

"In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).", and

(B) by striking "20 days of the date of the filing of such claim" in subparagraph (B) and inserting "45 days of the date of the filing of such claim (20 days in the case of an electronic claim)".

(6) Section 9503(b)(1) is amended by adding at the end the following new flush sentence:

"For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.".

(d) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

"Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to fuel sold, used, or removed after December 31, 2003.

(2) SUBSECTION (c)(4).—The amendments made by subsection (c)(4) shall take effect on January 1, 2004.

(3) SUBSECTION (c)(5).—The amendments made by subsection (c)(5) shall apply to claims filed after December 31, 2004.

(f) FORMAT FOR FILING.—The Secretary of the Treasury shall prescribe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (c)(5)(A)) not later than December 31, 2004.

SEC. 1316. NONAPPLICATION OF EXPORT EXEMPTION TO DELIVERY OF FUEL TO MOTOR VEHICLES REMOVED FROM UNITED STATES.

(a) IN GENERAL.—Section 4221(d)(2) (defining export) is amended by adding at the end the following new sentence: "Such term does not include the delivery of a taxable fuel (as defined in section 4083(a)(1)) into a fuel tank of a motor vehicle which is shipped or driven out of the United States.".

(b) CONFORMING AMENDMENTS.—

(1) Section 4041(g) (relating to other exemptions) is amended by adding at the end the following new sentence: "Paragraph (3) shall not apply to the sale for delivery of a liquid into a fuel tank of a motor vehicle which is shipped or driven out of the United States.".

(2) Clause (iv) of section 4081(a)(1)(A) (relating to tax on removal, entry, or sale) is amended by inserting "or at a duty-free sales enterprise (as defined in section 555(b)(8) of the Tariff Act of 1930)" after "section 4101".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or deliveries made after the date of the enactment of this Act.

SEC. 1317. REPEAL OF PHASEOUTS FOR QUALIFIED ELECTRIC VEHICLE CREDIT AND DEDUCTION FOR CLEAN FUEL-VEHICLES.

(a) CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Subsection (b) of section 30 (relating to limitations) is amended by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(b) DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.—Paragraph (1) of section 179A(b) (relating to qualified clean-fuel vehicle property) is amended to read as follows:

"(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.— The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

"(A) in the case of a motor vehicle not described in subparagraph (B) or (C), $2,000,

"(B) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

"(C) $50,000 in the case of—

"(i) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

"(ii) any bus which has a seating capacity of at least 20 adults (not including the driver).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 1318. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following:

"SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

"(2) the new advanced lean burn technology motor vehicle credit determined under subsection (c),

"(3) the new qualified hybrid motor vehicle credit determined under subsection (d), and

"(4) the new qualified alternative fuel motor vehicle credit determined under subsection (e).

"(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

"(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year shall be determined in accordance with the following table:

"In the case of a vehicle which has a gross vehicle weight rating of—	The new qualified fuel cell motor vehicle credit is—
Not more than 8,500 lbs	$4,000
More than 8,500 lbs but not more than 14,000 lbs.	$10,000
More than 14,000 lbs but not more than 26,000 lbs.	$20,000
More than 26,000 lbs	$40,000.

"(2) INCREASE FOR FUEL EFFICIENCY.—

"(A) IN GENERAL.—The amount determined under paragraph (1) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by the additional credit amount.

"(B) ADDITIONAL CREDIT AMOUNT.—For purposes of subparagraph (A), the additional credit amount shall be determined in accordance with the following table:

"In the case of a vehicle which achieves a fuel economy (expressed as a percentage of the 2002 model year city fuel economy) of—	The additional credit amount is—
At least 150 percent but less than 175 percent.	$1,000
At least 175 percent but less than 200 percent.	$1,500
At least 200 percent but less than 225 percent.	$2,000
At least 225 percent but less than 250 percent.	$2,500
At least 250 percent but less than 275 percent.	$3,000
At least 275 percent but less than 300 percent.	$3,500
At least 300 percent	$4,000.

"(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term 'new qualified fuel cell motor vehicle' means a motor vehicle—

"(A) which is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

"(B) which, in the case of a passenger automobile or light truck, has received—

"(i) a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

"(ii) a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

"(C) the original use of which commences with the taxpayer,

"(D) which is acquired for use or lease by the taxpayer and not for resale, and

"(E) which is made by a manufacturer.

"(c) NEW ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE CREDIT.—

"(1) IN GENERAL.—For purposes of subsection (a), the new advanced lean burn technology motor vehicle credit determined under this subsection with respect to a new advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

"(2) CREDIT AMOUNT.—

"(A) FUEL ECONOMY.—The credit amount determined under this paragraph shall be determined in accordance with the following table:

"In the case of a vehicle which achieves a fuel economy (expressed as a percentage of the 2002 model year city fuel economy) of—	**The credit amount is—**
At least 125 percent but less than 150 percent.	$400
At least 150 percent but less than 175 percent.	$800
At least 175 percent but less than 200 percent.	$1,200
At least 200 percent but less than 225 percent.	$1,600
At least 225 percent but less than 250 percent.	$2,000
At least 250 percent	$2,400.

"(B) CONSERVATION CREDIT.—The amount determined under subparagraph (A) with respect to a new advanced lean burn technology motor vehicle shall be increased by the conservation credit amount determined in accordance with the following table:

"In the case of a vehicle which achieves a lifetime fuel savings (expressed in gallons of gasoline) of—	**The conservation credit amount is—**
At least 1,200 but less than 1,800	$250
At least 1,800 but less than 2,400	$500
At least 2,400 but less than 3,000	$750
At least 3,000	$1,000.

"(3) NEW ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE.—For purposes of this subsection, the term 'new advanced lean burn technology motor vehicle' means a passenger automobile or a light truck—

"(A) with an internal combustion engine which--

"(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

"(ii) incorporates direct injection,

"(iii) achieves at least 125 percent of the 2002 model year city fuel economy,

"(iv) for 2004 and later model vehicles.,has received a certificate that such vehicle meets or exceeds—

"(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

"(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established.

"(B) the original use of which commences with the taxpayer,

"(C) which is acquired for use or lease by the taxpayer and not for resale, and

"(D) which is made by a manufacturer.

"(4) LIFETIME FUEL SAVINGS.—For purposes of this subsection, the term 'lifetime fuel savings' means, in the case of any new advanced lean burn technology motor vehicle, an amount equal to the excess (if any) of—

"(A) 120,000 divided by the 2002 model year city fuel economy for the vehicle inertia weight class, over

"(B) 120,000 divided by the city fuel economy for such vehicle.

"(d) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

"(1) IN GENERAL.—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

"(2) CREDIT AMOUNT.—

"(A) CREDIT AMOUNT FOR PASSENGER AUTOMOBILES AND LIGHT TRUCKS.—In the case of a new qualified hybrid motor vehicle which is a passenger automobile or light truck and which has a gross vehicle weight rating of not more than 8,500 pounds, the amount determined under this paragraph is the sum of the amounts determined under clauses (i) and (ii).

"(i) FUEL ECONOMY.—The amount determined under this clause is the amount which would be determined under subsection (c)(2)(A) if such vehicle were a vehicle referred to in such subsection.

"(ii) CONSERVATION CREDIT.—The amount determined under this clause is the amount which would be determined under subsection (c)(2)(B) if such vehicle were a vehicle referred to in such subsection.

"(B) CREDIT AMOUNT FOR OTHER MOTOR VEHICLES.—

"(i) IN GENERAL.—In the case of any new qualified hybrid motor vehicle to which subparagraph (A) does not apply, the amount determined under this paragraph is the amount equal to the applicable percentage of the qualified incremental hybrid cost of the vehicle as certified under clause (v).

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is—

"(I) 20 percent if the vehicle achieves an increase in city fuel economy relative to a comparable vehicle of at least 30 percent but less than 40 percent,

"(II) 30 percent if the vehicle achieves such an increase of at least 40 percent but less than 50 percent, and

"(III) 40 percent if the vehicle achieves such an increase of at least 50 percent.

"(iii) QUALIFIED INCREMENTAL HYBRID COST.—For purposes of this subparagraph, the qualified incremental hybrid cost of any vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a comparable vehicle, to the extent such amount does not exceed—

"(I) $7,500, if such vehicle has a gross vehicle weight rating of not more than 14,000 pounds,

"(II) $15,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

"(III) $30,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

"(iv) COMPARABLE VEHICLE.—For purposes of this subparagraph, the term 'comparable vehicle' means, with respect to any new qualified hybrid motor vehicle, any vehicle which is powered solely by a gasoline or diesel internal combustion engine and which is comparable in weight, size, and use to such vehicle.

"(v) CERTIFICATION.—A certification described in clause (i) shall be made by the manufacturer and shall be determined in accordance with guidance prescribed by the Secretary. Such guidance shall specify procedures and methods for calculating fuel economy savings and incremental hybrid costs.

"(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'new qualified hybrid motor vehicle' means a motor vehicle—

"(i) which draws propulsion energy from onboard sources of stored energy which are both—

"(I) an internal combustion or heat engine using consumable fuel, and

"(II) a rechargeable energy storage system,

"(ii) which, in the case of a vehicle to which paragraph (2)(A) applies, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

"(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

"(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

"(iii) which has a maximum available power of at least—

"(I) 4 percent in the case of a vehicle to which paragraph (2)(A) applies,

"(II) 10 percent in the case of a vehicle which has a gross vehicle weight rating or more than 8,500 pounds and not than 14,000 pounds, and

"(III) 15 percent in the case of a vehicle in excess of 14,000 pounds,

"(iv) which, in the case of a vehicle to which paragraph (2)(B) applies, has an internal combustion or heat engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy duty engines or ottocycle heavy duty engines, as applicable,

"(v) the original use of which commences with the taxpayer,

"(vi) which is acquired for use or lease by the taxpayer and not for resale, and

"(vii) which is made by a manufacturer.

Such term shall not include any vehicle which is not a passenger automobile or light truck if such vehicle has a gross vehicle weight rating of less than 8,500 pounds.

"(B) CONSUMABLE FUEL.—For purposes of subparagraph (A)(i)(I), the term 'consumable fuel' means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

"(C) MAXIMUM AVAILABLE POWER.—

"(i) CERTAIN PASSENGER AUTOMOBILES AND LIGHT TRUCKS.—In the case of a vehicle to which paragraph (2)(A) applies, the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

"(ii) OTHER MOTOR VEHICLES.—In the case of a vehicle to which paragraph (2)(B) applies, the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. For purposes of the preceding sentence, the term 'total traction power' means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

"(e) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—

"(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the new qualified alternative fuel motor vehicle credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

"(A) 40 percent, plus

"(B) 30 percent, if such vehicle—

"(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

"(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

For purposes of the preceding sentence, in the case of any new qualified alternative fuel motor vehicle which has a gross vehicle weight rating of more than 14,000 pounds, the most stringent standard available shall be such standard available for certification on the date of the enactment of the Energy Tax Policy Act of 2003.

"(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

"(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

"(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

"(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

"(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

"(4) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'new qualified alternative fuel motor vehicle' means any motor vehicle—

"(i) which is only capable of operating on an alternative fuel,

"(ii) the original use of which commences with the taxpayer,

"(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

"(iv) which is made by a manufacturer.

"(B) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

"(5) CREDIT FOR MIXED-FUEL VEHICLES.—

"(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

"(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

"(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

"(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term 'mixed-fuel vehicle' means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

"(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

"(ii) either—

"(I) has received a certificate of conformity under the Clean Air Act, or

"(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

"(iii) the original use of which commences with the taxpayer,

"(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

"(v) which is made by a manufacturer.

"(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '75/25 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

"(D) 90/10 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '90/10 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

''(f) LIMITATION ON NUMBER OF NEW QUALIFIED HYBRID AND ADVANCED LEAN-BURN TECHNOLOGY VEHICLES ELIGIBLE FOR CREDIT.—

''(1) IN GENERAL.—In the case of a qualified vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (c) or (d) shall be allowed.

''(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of qualified vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after the date of the enactment of this section is at least 80,000.

''(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

''(A) 50 percent for the first 2 calendar quarters of the phaseout period,

''(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

''(C) 0 percent for each calendar quarter thereafter.

''(4) CONTROLLED GROUPS.—

''(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as a single manufacturer.

''(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 to this section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

''(5) QUALIFIED VEHICLE.—For purposes of this subsection, the term 'qualified vehicle' means any new qualified hybrid motor vehicle and any new advanced lean burn technology motor vehicle.

''(g) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(2) the sum of the credits allowable under subpart A and sections 27 and 30 for the taxable year.

''(h) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given such term by section 30(c)(2).

''(2) OTHER TERMS.—The terms 'automobile', 'passenger automobile', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(3) 2002 MODEL YEAR CITY FUEL ECONOMY.—

''(A) IN GENERAL.—The 2002 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

''(i) In the case of a passenger automobile:

“If vehicle inertia weight class is:	**The 2002 model year city fuel economy is:**
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

''(ii) In the case of a light truck:

“If vehicle inertia weight class is:	**The 2002 model year city fuel economy is:**
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

''(B) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (A), the term 'vehicle inertia weight class' has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(4) FUEL ECONOMY.—Fuel economy with respect to any vehicle shall be measured under rules similar to the rules under section 4064(c).

''(5) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this paragraph) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(6) NO DOUBLE BENEFIT.—The amount of any deduction or credit allowable under this chapter (other than the credits allowable under this section and section 30) shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

''(7) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

''(8) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

''(9) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

''(10) BUSINESS CARRYOVERS ALLOWED.—If the credit allowable under subsection (a) for a taxable year exceeds the limitation under subsection (g) for such taxable year, such excess (to the extent of the credit allowable with respect to property subject to the allowance for depreciation) shall be allowed as a credit carryback and carryforward under rules similar to the rules of section 39.

''(11) INTERACTION WITH MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

''(i) REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

''(2) DETERMINATION OF MOTOR VEHICLE ELIGIBILITY.—The Secretary, after coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

''(j) TERMINATION.—This section shall not apply to any property placed in service after—

''(1) in the case of a new qualified alternative fuel motor vehicle, December 31, 2006,

''(2) in the case of a new advanced lean burn technology motor vehicle or a new qualified hybrid motor vehicle, December 31, 2008, and

''(3) in the case of a new qualified fuel cell motor vehicle, December 31, 2012.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 30(d) (relating to special rules) is amended by adding at the end the following new paragraphs:

''(5) NO DOUBLE BENEFIT.—No credit shall be allowed under this section for any motor vehicle for which a credit is also allowed under section 30B.''.

(2) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting '', and'', and by adding at the end the following:

''(33) to the extent provided in section 30B(h)(5).''.

(3) Section 6501(m) is amended by inserting ''30B(h)(9),'' after ''30(d)(4),''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following:

''Sec. 30B. Alternative motor vehicle credit.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

(d) STICKER INFORMATION REQUIRED AT RETAIL SALE.—

(1) IN GENERAL.—The Secretary of the Treasury shall issue regulations under which each qualified vehicle sold at retail shall display a notice—

(A) that such vehicle is a qualified vehicle, and

(B) that the buyer may not benefit from the credit allowed under section 30B of the Internal Revenue Code of 1986 if such buyer has insufficient tax liability.

(2) QUALIFIED VEHICLE.—For purposes of paragraph (1), the term ''qualified vehicle'' means a vehicle with respect to which a credit is allowed under section 30B of the Internal Revenue Code of 1986.

SEC. 1319. MODIFICATIONS OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.

(a) IN GENERAL.—Subsection (f) of section 179A is amended to read as follows:

''(f) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2008.''.

(b) INCENTIVE FOR PRODUCTION OF HYDROGEN AT QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—Section 179A(d) (defining qualified clean-fuel vehicle refueling property) is amended by adding at the end the following new flush sentence:

''In the case of clean-burning fuel which is hydrogen produced from another clean-burning fuel, paragraph (3)(A) shall be applied by substituting 'production, storage, or dispensing' for 'storage or dispensing' both places it appears.''.

(c) INCREASE IN LOCATION EXPENDITURES.—Section 179A(b)(2)(A)(i) is amended by striking ''$100,000'' and inserting ''$150,000''.

(d) NONBUSINESS USE OF QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—Section 179A(d) is amended by striking paragraph (1) *and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.*

(e) Effective Date.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

Subtitle B—Reliability

SEC. 1321. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) In General.—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by striking "and" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

"(ii) any natural gas gathering line, and".

(b) Natural Gas Gathering Line.—Subsection (i) of section 168, as amended by this Act, is amended by adding after paragraph (15) the following new paragraph:

"(16) Natural gas gathering line.—The term 'natural gas gathering line' means—

"(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, or

"(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

"(i) a gas processing plant,

"(ii) an interconnection with a transmission pipeline for which a certificate as an interstate transmission pipeline has been issued by the Federal Energy Regulatory Commission,

"(iii) an interconnection with an intrastate transmission pipeline, or

"(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.".

(c) Alternative System.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (C)(i) the following:

"(C)(ii) .... 14".

(d) Alternative Minimum Tax Exception.—Subparagraph (B) of section 56(a)(1) is amended by inserting before the period the following: ", or in section 168(e)(3)(C)(ii)".

(e) Effective Date.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 1322. NATURAL GAS DISTRIBUTION LINES TREATED AS 15-YEAR PROPERTY.

(a) In General.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and by inserting ", and", and by adding at the end the following new clause:

"(iv) any natural gas distribution line.".

(b) Alternative System.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (E)(iii) the following:

"(E)(iv) .... 35".

(c) Effective Date.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 1323. ELECTRIC TRANSMISSION PROPERTY TREATED AS 15-YEAR PROPERTY.

(a) In General.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property), as amended by this Act, is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and by inserting ", and", and by adding at the end the following new clause:

"(v) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale the original use of which commences with the taxpayer after the date of the enactment of this clause.".

(b) Alternative System.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (E)(iv) the following:

"(E)(v) .... 30".

(c) Effective Date.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 1324. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) In General.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179B the following new section:

"SEC. 179C. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

"(a) Treatment as Expenses.—A small business refiner (as defined in section 45I(c)(1)) may elect to treat 75 percent of qualified capital costs (as defined in section 45I(c)(2)) which are paid or incurred by the taxpayer during the taxable year as expenses which are not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which paid or incurred.

"(b) Reduced Percentage.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

"(c) Basis Reduction.—

"(1) In general.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

"(2) Ordinary income recapture.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.".

"(d) Coordination With Other Provisions.—Section 280B shall not apply to amounts which are treated as expenses under this section.".

(b) Conforming Amendments.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking "or" at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting "; or", and by adding at the end the following new subparagraph:

"(J) expenditures for which a deduction is allowed under section 179C.".

(2) Section 263A(c)(3) is amended by inserting "179C," after "section".

(3) Section 312(k)(3)(B), as amended by this Act, is amended by striking "or 179B" each place it appears in the heading and text and inserting "179B, or 179C".

(4) Section 1016(a), as amended by this Act, is amended by striking "and" at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting ", and", and by adding at the end the following new paragraph:

"(34) to the extent provided in section 179C(c)."

(5) Paragraphs (2)(C) and (3)(C) of section 1245(a), as amended by this Act, are each amended by inserting "179C," after "179B,".

(6) The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179B the following new item:

"Sec. 179C. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.".

(c) Effective Date.—The amendment made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 1325. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 45I. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

"(a) In General.—For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

"(b) Maximum Credit.—

"(1) In general.—The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

"(A) 25 percent of the qualified capital costs incurred by the small business refiner with respect to such facility, reduced by

"(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

"(2) Reduced percentage.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

"(c) Definitions and Special Rule.—For purposes of this section—

"(1) Small business refiner.—The term 'small business refiner' means, with respect to any taxable year, a refiner of crude oil—

"(A) with respect to which not more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year, and

"(B) the average daily domestic refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

"(2) Qualified capital costs.—The term 'qualified capital costs' means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

"(3) Applicable EPA regulations.—The term 'applicable EPA regulations' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

"(4) Applicable period.—The term 'applicable period' means, with respect to any facility, the period beginning on January 1, 2003, and ending on the earlier of the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility or December 31, 2009.

"(5) LOW SULFUR DIESEL FUEL.—The term 'low sulfur diesel fuel' means diesel fuel with a sulfur content of 15 parts per million or less.

"(d) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

"(e) SPECIAL RULE FOR DETERMINATION OF REFINERY RUNS.—For purposes this section and section 179C(b), in the calculation of average daily domestic refinery run or retained production, only refineries which on April 1, 2003, were refineries of the refiner or a related person (within the meaning of section 613A(d)(3)), shall be taken into account.

"(f) CERTIFICATION.—

"(1) REQUIRED.—No credit shall be allowed unless, not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is allowed with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

"(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

"(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

"(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

"(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends with respect to the taxpayer, and

"(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(g) COOPERATIVE ORGANIZATIONS.—

"(1) APPORTIONMENT OF CREDIT.—

"(A) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

"(B) FORM AND EFFECT OF ELECTION.—An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

"(2) TREATMENT OF ORGANIZATIONS AND PATRONS.—

"(A) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

"(B) PATRONS.—The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

"(3) SPECIAL RULE.—If the amount of a credit which has been apportioned to any patron under this subsection is decreased for any reason—

"(A) such amount shall not increase the tax imposed on such patron, and

"(B) the tax imposed by this chapter on such organization shall be increased by such amount. The increase under subparagraph (B) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.".

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking "plus" at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ", plus", and by adding at the end the following new paragraph:

"(19) in the case of a small business refiner, the low sulfur diesel fuel production credit determined under section 45I(a).".

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end the following new subsection:

"(d) LOW SULFUR DIESEL FUEL PRODUCTION CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45I(a).".

(d) BASIS ADJUSTMENT.—Section 1016(a) (relating to adjustments to basis), as amended by this Act, is amended by striking "and" at the end of paragraph (33), by striking the period at the end of paragraph (34) and inserting ", and", and by adding at the end the following new paragraph:

"(35) in the case of a facility with respect to which a credit was allowed under section 45I, to the extent provided in section 45I(d).".

(e) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Section 196(c) (defining qualified business credits), as amended by this Act, is amended by striking "and" at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting ", and", and by adding after paragraph (13) the following new paragraph:

"(14) the low sulfur diesel fuel production credit determined under section 45I(a).".

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

"Sec. 45I. Credit for production of low sulfur diesel fuel.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 1326. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

(a) IN GENERAL.—Paragraph (4) of section 613A(d) (relating to limitations on application of subsection (c)) is amended to read as follows:

"(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or 1 or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 67,500 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 1327. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

"(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

"(1) IN GENERAL.—In the case of any qualifying electric transmission transaction for which the taxpayer elects the application of this section, qualified gain from such transaction shall be recognized—

"(A) in the taxable year which includes the date of such transaction to the extent the amount realized from such transaction exceeds—

"(i) the cost of exempt utility property which is purchased by the taxpayer during the 4-year period beginning on such date, reduced (but not below zero) by

"(ii) any portion of such cost previously taken into account under this subsection, and

"(B) ratably over the 8-taxable year period beginning with the taxable year which includes the date of such transaction, in the case of any such gain not recognized under subparagraph (A).

"(2) QUALIFIED GAIN.—For purposes of this subsection, the term 'qualified gain' means, with respect to any qualifying electric transmission transaction in any taxable year—

"(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

"(B) any income derived from such transaction in excess of the amount described in subparagraph (A) which is required to be included in gross income for such taxable year (determined without regard to this subsection).

"(3) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2007, of—

"(A) property used in the trade or business of providing electric transmission services, or

"(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

"(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term 'independent transmission company' means— .

"(A) an independent transmission provider approved by the Federal Energy Regulatory Commission,

"(B) a person—

"(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order is not a market participant within the meaning of such Commission's rules applicable to independent transmission providers, and

"(ii) whose transmission facilities to which the election under this subsection applies are

under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2), or

"(C) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas—

"(i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission provider, or

"(ii) a political subdivision or affiliate thereof whose transmission facilities are under the operational control of a person described in clause (i).

"(5) EXEMPT UTILITY PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'exempt utility property' means property used in the trade or business of—

"(i) generating, transmitting, distributing, or selling electricity, or

"(ii) producing, transmitting, distributing, or selling natural gas.

"(B) NONRECOGNITION OF GAIN BY REASON OF ACQUISITION OF STOCK.—Acquisition of control of a corporation shall be taken into account under this subsection with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

"(6) SPECIAL RULE FOR CONSOLIDATED GROUPS.—In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated as purchased by such corporation for purposes of applying paragraph (1)(A).

"(7) TIME FOR ASSESSMENT OF DEFICIENCIES.—If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

"(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on the transaction is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the purchase of exempt utility property or of an intention not to purchase such property, and

"(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

"(8) PURCHASE.—For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of such property is its cost within the meaning of section 1012.

"(9) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.

"(10) NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 1328. MODIFICATIONS TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER FUNDING PERIOD.—Subsection (b) of section 468A (relating to special rules for nuclear decommissioning costs) is amended to read as follows:

"(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

"(1) IN GENERAL.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.

"(2) CONTRIBUTIONS AFTER FUNDING PERIOD.—Notwithstanding any other provision of this section, a taxpayer may pay into the Fund in any taxable year after the last taxable year to which the ruling amount applies. Payments may not be made under the preceding sentence to the extent such payments would cause the assets of the Fund to exceed the nuclear decommissioning costs allocable to the taxpayer's current or former interest in the nuclear power plant to which the Fund relates. The limitation under the preceding sentence shall be determined by taking into account a reasonable rate of inflation for the nuclear decommissioning costs and a reasonable after-tax rate of return on the assets of the Fund until such assets are anticipated to be expended.".

(b) CLARIFICATION OF TREATMENT OF FUND TRANSFERS.—Section 468A(e) (relating to Nuclear Decommissioning Reserve Fund) is amended by adding at the end the following new paragraph:

"(8) TREATMENT OF FUND TRANSFERS.—

"(A) IN GENERAL.—If, in connection with the transfer of the taxpayer's interest in a nuclear power plant, the taxpayer transfers the Fund with respect to such power plant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

"(i) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

"(ii) no amount shall be treated as distributed from such Fund, or be includable in gross income, by reason of such transfer.

"(B) SPECIAL RULES IF TRANSFEROR IS TAX-EXEMPT ENTITY.—

"(i) IN GENERAL.—If—

"(I) a person exempt from taxation under this title transfers an interest in a nuclear power plant,

"(II) such person has set aside amounts for nuclear decommissioning which are transferred to the transferee of the interest, and

"(III) the transferee elects the application of this subparagraph no later than the due date (including extensions) of its return of tax for the taxable year in which the transfer occurs,

the amounts so set aside shall be treated as if contributed by such person to a Fund immediately before the transfer and then transferred in the Fund to the transferee.

"(ii) LIMITATION.—The amount treated as transferred to a Fund under clause (i) shall not exceed the amount which bears the same ratio to the present value of the nuclear decommissioning costs of the transferor with respect to the nuclear power plant as the number of years the nuclear power plant has been in service bears to the estimated useful life of such power plant.

"(iii) BASIS.—The transferee's basis in any asset treated as transferred in the Fund shall be the same as the adjusted basis of such asset in the hands of the transferor.

"(iv) RULING AMOUNT REQUIRED.—This subparagraph shall not apply to any transfer unless the transferee requests from the Secretary a schedule of ruling amounts.

"(v) ELECTION DISREGARDED.—An election under this subparagraph shall be disregarded in determining the Federal income tax of the transferor."

(c) TREATMENT OF CERTAIN DECOMMISSIONING COSTS.—

(1) IN GENERAL.—Section 468A is amended by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by inserting after subsection (e) the following new subsection:

"(f) TRANSFERS INTO QUALIFIED FUNDS.—

"(1) IN GENERAL.—Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund not more than an amount equal to the present value of the portion of the total nuclear decommissioning costs with respect to such nuclear power plant previously excluded for such nuclear power plant under subsection (d)(2)(A) as in effect immediately before the date of the enactment of the Energy Tax Policy Act of 2003.

"(2) DEDUCTION FOR AMOUNTS TRANSFERRED.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

"(B) DENIAL OF DEDUCTION FOR PREVIOUSLY DEDUCTED AMOUNTS.—No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed to the taxpayer (or a predecessor) or a corresponding amount was not included in gross income of the taxpayer (or a predecessor). For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

"(C) TRANSFERS OF QUALIFIED FUNDS.—If—

"(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

"(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferor for the taxable year which includes such date.

"(D) SPECIAL RULES.—

"(i) GAIN OR LOSS NOT RECOGNIZED.—No gain or loss shall be recognized on any transfer permitted by this subsection.

"(ii) TRANSFERS OF APPRECIATED PROPERTY.—If appreciated property is transferred in a transfer permitted by this subsection, the amount of the deduction shall not exceed the adjusted basis of such property.

"(3) NEW RULING AMOUNT REQUIRED.—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

"(4) NO BASIS IN QUALIFIED FUNDS.—Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.".

(2) NEW RULING AMOUNT TO TAKE INTO ACCOUNT TOTAL COSTS.—Subparagraph (A) of section 468A(d)(2) (defining ruling amount) is amended to read as follows:

"(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and".

(d) TECHNICAL AMENDMENTS.—Section 468A(e)(2) (relating to taxation of Fund) is amended—

(1) by striking "rate set forth in subparagraph (B)" in subparagraph (A) and inserting "rate of 20 percent",

(2) by striking subparagraph (B), and

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 1329. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Subparagraph (C) of section 501(c)(12) is amended by striking "or" at the end of clause (i), by striking clause (ii), and by adding at the end the following new clauses:

"(ii) from any provision or sale of electric energy transmission services or ancillary services if such services are provided on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (other than income received or accrued directly or indirectly from a member),

"(iii) from the provision or sale of electric energy distribution services or ancillary services if such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the mutual or electric cooperative company—

"(I) to end-users who are served by distribution facilities not owned by such company or any of its members (other than income received or accrued directly or indirectly from a member), or

"(II) generated by a generation facility not owned or leased by such company or any of its members and which is directly connected to distribution facilities owned by such company or any of its members (other than income received or accrued directly or indirectly from a member),

"(iv) from any nuclear decommissioning transaction, or

"(v) from any asset exchange or conversion transaction.".

(2) DEFINITIONS AND SPECIAL RULES.—Paragraph (12) of section 501(c) is amended by adding at the end the following new subparagraphs:

"(E) For purposes of subparagraph (C)(ii), the term 'FERC' means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

"(F) For purposes of subparagraph (C)(iii), the term 'nuclear decommissioning transaction' means—

"(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

"(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

"(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

"(G) For purposes of subparagraph (C)(iv), the term 'asset exchange or conversion transaction' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

"(i) generating, transmitting, distributing, or selling electric energy, or

"(ii) producing, transmitting, distributing, or selling natural gas.".

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS, ETC.—Paragraph (12) of section 501(c), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

"(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

"(ii) For purposes of clause (i), the term 'load loss transaction' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

"(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

"(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

"(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

"(II) the megawatt hours of electric energy sold during the base year to such members.

"(v) For purposes of clause (iv)(II), the term 'base year' means—

"(I) the calendar year preceding the start-up year, or

"(II) at the election of the mutual or cooperative electric company, the second or third calendar years preceding the start-up year.

"(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

"(vii) For purposes of this subparagraph, the start-up year is the first year that the mutual or cooperative electric company offers nondiscriminatory open access or the calendar year which includes the date of the enactment of this subparagraph, if later, at the election of such company.

"(viii) A company shall not fail to be treated as a mutual or cooperative electric company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

"(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.".

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end the following new paragraph:

"(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.".

(d) CROSS REFERENCE.—Section 1381 is amended by adding at the end the following new subsection:

"(c) CROSS REFERENCE.—

"For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 1330. ARBITRAGE RULES NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.

(a) IN GENERAL.—Subsection (b) of section 148 (relating to higher yielding investments) is amended by adding at the end the following new paragraph:

"(4) SAFE HARBOR FOR PREPAID NATURAL GAS.—

"(A) IN GENERAL.—The term 'investment-type property' does not include a prepayment under a qualified natural gas supply contract.

"(B) QUALIFIED NATURAL GAS SUPPLY CONTRACT.—For purposes of this paragraph, the term 'qualified natural gas supply contract' means any contract to acquire natural gas for resale by a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract by the utility during any year does not exceed the sum of—

"(i) the annual average amount during the testing period of natural gas purchased (other than for resale) by customers of such utility who are located within the service area of such utility, and

"(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

"(C) NATURAL GAS USED TO GENERATE ELECTRICITY.—Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

"(i) only if the electricity is generated by a utility owned by a governmental unit, and

"(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

"(D) ADJUSTMENTS FOR CHANGES IN CUSTOMER BASE.—

"(i) NEW BUSINESS CUSTOMERS.—If—

"(I) after the close of the testing period and before the date of issuance of the issue, the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for a business use at a property within the service area of such utility, and

"(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

"(ii) LOST CUSTOMERS.—The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

"(E) RULING REQUESTS.—The Secretary may increase the average under subparagraph (B)(i) for any period if the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

"(F) ADJUSTMENT FOR NATURAL GAS OTHERWISE ON HAND.—

"(i) IN GENERAL.—The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

"(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

"(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

"(ii) APPLICABLE SHARE.—For purposes of the clause (i), the term 'applicable share' means,

with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

"(G) INTENTIONAL ACTS.—Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

"(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

"(ii) the amount of natural gas used to transport such natural gas to the utility.

"(H) TESTING PERIOD.—For purposes of this paragraph, the term 'testing period' means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

"(I) SERVICE AREA.—For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

"(i) any area throughout which such utility provided at all times during the testing period—

"(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

"(II) in the case of an electric utility, electricity distribution services,

"(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

"(iii) any area recognized as the service area of such utility under State or Federal law.".

(b) PRIVATE LOAN FINANCING TEST NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.—Paragraph (2) of section 141(c) (providing exceptions to the private loan financing test) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by adding at the end the following new subparagraph:

"(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).".

(c) EXCEPTION FOR QUALIFIED ELECTRIC AND NATURAL GAS SUPPLY CONTRACTS.—Section 141(d) is amended by adding at the end the following new paragraph:

"(7) EXCEPTION FOR QUALIFIED ELECTRIC AND NATURAL GAS SUPPLY CONTRACTS.—The term 'nongovernmental output property' shall not include any contract for the prepayment of electricity or natural gas which is not investment property under section 148(b)(2).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

Subtitle C—Production

PART I—OIL AND GAS PROVISIONS

SEC. 1341. OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits), as amended by this Act, is amended by adding at the end the following:

"SEC. 45J. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

"(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

"(1) the credit amount, and

"(2) the qualified credit oil production and the qualified natural gas production which is attributable to the taxpayer.

"(b) CREDIT AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The credit amount is—

"(A) $3 per barrel of qualified crude oil production, and

"(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

"(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

"(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

"(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

"(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

"(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2003, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting '2002' for '1990').

"(C) REFERENCE PRICE.—For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year—

"(i) in the case of qualified crude oil production, the reference price determined under section 45K(d)(2)(C), and

"(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

"(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

"(1) IN GENERAL.—The terms 'qualified crude oil production' and 'qualified natural gas production' mean domestic crude oil or natural gas which is produced from a qualified marginal well.

"(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

"(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel-of-oil equivalents (as defined in section 45K(d)(5)).

"(B) PROPORTIONATE REDUCTIONS.—

"(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

"(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

"(3) DEFINITIONS.—

"(A) QUALIFIED MARGINAL WELL.—The term 'qualified marginal well' means a domestic well—

"(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

"(ii) which, during the taxable year—

"(I) has average daily production of not more than 25 barrel-of-oil equivalents (as so defined), and

"(II) produces water at a rate not less than 95 percent of total well effluent.

"(B) CRUDE OIL, ETC.—The terms 'crude oil', 'natural gas', 'domestic', and 'barrel' have the meanings given such terms by section 613A(e).

"(d) OTHER RULES.—

"(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

"(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

"(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 45K for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 45K with respect to the well.".

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking "plus" at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting ", plus", and by adding at the end the following:

"(20) the marginal oil and gas well production credit determined under section 45J(a).".

(c) CARRYBACK.—Subsection (a) of section 39 (relating to carryback and carryforward of unused credits generally) is amended by adding at the end the following:

"(3) 5-YEAR CARRYBACK FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—Notwithstanding subsection (d), in the case of the marginal oil and gas well production credit—

"(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit),

"(B) paragraph (1) shall be applied by substituting '5 taxable years' for '1 taxable years' in subparagraph (A) thereof, and

"(C) paragraph (2) shall be applied—

"(i) by substituting '25 taxable years' for '21 taxable years' in subparagraph (A) thereof, and

"(ii) by substituting '24 taxable years' for '20 taxable years' in subparagraph (B) thereof.".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following:

"Sec. 45J. Credit for producing oil and gas from marginal wells.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years beginning after December 31, 2003.

SEC. 1342. TEMPORARY SUSPENSION OF LIMITATION BASED ON 65 PERCENT OF TAXABLE INCOME AND EXTENSION OF SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.

(a) LIMITATION BASED ON 65 PERCENT OF TAXABLE INCOME.—Subsection (d) of section 613A (relating to limitation on percentage depletion in case of oil and gas wells) is amended by adding at the end the following new paragraph:

"(6) TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT.—Paragraph (1) shall not apply to taxable years beginning after December 31, 2003, and before January 1, 2005, including with respect to amounts carried under the second sentence of paragraph (1) to such taxable years.".

(b) EXTENSION OF SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.—Subparagraph (H) of section 613A(c)(6) (relating to temporary suspension of taxable income limit with respect to marginal *production) is amended by striking "2004" and inserting "2005".*

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 1343. AMORTIZATION OF DELAY RENTAL PAYMENTS.

(a) IN GENERAL.—Section 167 (relating to depreciation) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) AMORTIZATION OF DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.—

"(1) IN GENERAL.—Any delay rental payment paid or incurred in connection with the development of oil or gas wells within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such payment was paid or incurred.

"(2) HALF-YEAR CONVENTION.—For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

"(3) EXCLUSIVE METHOD.—Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

"(4) TREATMENT UPON ABANDONMENT.—If any property to which a delay rental payment relates is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

"(5) DELAY RENTAL PAYMENTS.—For purposes of this subsection, the term 'delay rental payment' means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after the date of the enactment of this Act.

SEC. 1344. AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) IN GENERAL.—Section 167 (relating to depreciation), as amended by this Act, is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.—

"(1) IN GENERAL.—Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

"(2) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of paragraphs (2), (3), and (4) of subsection (h) shall apply.".

(b) CONFORMING AMENDMENT.—Section 263A(c)(3) is amended by inserting "167(h), 167(i)," after "under section".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after the date of the enactment of this Act.

SEC. 1345. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Section 29 (relating to credit for producing fuel from a nonconventional source) is amended by adding at the end the following new subsection:

"(h) EXTENSION FOR OTHER FACILITIES.—Notwithstanding subsection (f)—

"(1) NEW OIL AND GAS WELLS AND FACILITIES.—In the case of a well or facility for producing qualified fuels described in subparagraph (A) or (B) of subsection (c)(1) which was drilled or placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to such fuels produced at such well or facility and sold during the period—

"(A) beginning on the later of January 1, 2004, or the date that such well is drilled or such facility is placed in service, and

"(B) ending on the earlier of the date which is 4 years after the date such period began or December 31, 2009.

"(2) OLD OIL AND GAS WELLS AND FACILITIES.—In the case of a well or facility producing qualified fuels described in subparagraph (A) or (B)(i) of subsection (c)(1) or a facility producing natural gas and byproducts by coal gasification from lignite, subsection (f)(2) shall be applied by substituting '2008' for '2003' with respect to wells and facilities described in subsection (f)(1) with respect to such fuels.

"(3) EXTENSION FOR FACILITIES PRODUCING QUALIFIED FUEL FROM LANDFILL GAS.—

"(A) IN GENERAL.—In the case of a facility for producing qualified fuel from landfill gas which was placed in service after June 30, 1998, and before January 1, 2007, this section shall apply to fuel produced at such facility and sold during the period—

"(i) beginning on the later of January 1, 2004, or the date that such facility is placed in service, and

"(ii) ending on the earlier of the date which is 4 years after the date such period began or December 31, 2009.

"(B) REDUCTION OF CREDIT FOR CERTAIN LANDFILL FACILITIES.—In the case of a facility to which subparagraph (A) applies and which is located at a landfill which is required pursuant to section 60.751(b)(2) or section 60.33c of title 40, Code of Federal Regulations (as in effect on April 3, 2003) to install and operate a collection and control system which captures gas generated within the landfill, subsection (a)(1) shall be applied to gas so captured by substituting '$2' for '$3' for the taxable year during which such system is required to be installed and operated.

"(4) FACILITIES PRODUCING FUELS FROM AGRICULTURAL AND ANIMAL WASTE.—

"(A) IN GENERAL.—In the case of any facility for producing liquid, gaseous, or solid fuels from qualified agricultural and animal wastes, including such fuels when used as feedstocks, which is placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to fuel produced at such facility and sold during the period—

"(i) beginning on the later of January 1, 2004, or the date that such facility is placed in service, and

"(ii) ending on the earlier of the date which is 4 years after the date such period began or December 31, 2009.

"(B) QUALIFIED AGRICULTURAL AND ANIMAL WASTE.—For purposes of this paragraph, the term 'qualified agricultural and animal waste' means agriculture and animal waste, including by-products, packaging, and any materials associated with the processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes.

"(5) FACILITIES PRODUCING REFINED COAL.—

"(A) IN GENERAL.—In the case of a facility described in subparagraph (C) for producing refined coal which is placed in service after the date of the enactment of this subsection and before January 1, 2008, this section shall apply with respect to fuel produced at such facility and sold before the close of the 5-year period beginning on the date such facility is placed in service.

"(B) REFINED COAL.—For purposes of this paragraph, the term 'refined coal' means a fuel which is a liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock.

"(C) COVERED FACILITIES.—

"(i) IN GENERAL.—A facility is described in this subparagraph if such facility produces refined coal using a technology which the taxpayer certifies (in such manner as the Secretary may prescribe) results in—

"(I) a qualified emission reduction, and

"(II) a qualified enhanced value.

"(ii) QUALIFIED EMISSION REDUCTION.—For purposes of this subparagraph, the term 'qualified emission reduction' means a reduction of at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

"(iii) QUALIFIED ENHANCED VALUE.—For purposes of this subparagraph, the term 'qualified enhanced value' means an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal.

"(iv) ADVANCED CLEAN COAL TECHNOLOGY UNITS EXCLUDED.—A facility described in this subparagraph shall not include any advanced clean coal technology unit (as defined in section 48A(e)).

"(6) COALMINE GAS.—

"(A) IN GENERAL.—This section shall apply to coalmine gas—

"(i) captured or extracted by the taxpayer during the period beginning on the day after the date of the enactment of this subsection and ending on December 31, 2006, and

"(ii) utilized as a fuel source or sold by or on behalf of the taxpayer to an unrelated person during such period.

"(B) COALMINE GAS.—For purposes of this paragraph, the term 'coalmine gas' means any methane gas which is—

"(i) liberated during or as a result of coal mining operations, or

"(ii) extracted up to 10 years in advance of coal mining operations as part of a specific plan to mine a coal deposit.

"(C) SPECIAL RULE FOR ADVANCED EXTRACTION.—In the case of coalmine gas which is captured in advance of coal mining operations, the credit under subsection (a) shall be allowed only after the date the coal extraction occurs in the immediate area where the coalmine gas was removed.

"(D) NONCOMPLIANCE WITH POLLUTION LAWS.—This paragraph shall not apply to the capture or extraction of coalmine gas from coal mining operations with respect to any period in which such coal mining operations are not in compliance with applicable Federal pollution prevention, control, and permit requirements.

"(7) COKE AND COKE GAS.—In the case of a facility for producing coke or coke gas which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2007, this section shall apply with respect to coke and coke gas produced in such facility and sold during the during the period—

"(A) beginning on the later of January 1, 2004, or the date that such facility is placed in service, and

"(B) ending on the earlier of the date which is 4 years after the date such period began or December 31, 2009.

"(8) SPECIAL RULES.—In determining the amount of credit allowable under this section solely by reason of this subsection—

"(A) FUELS TREATED AS QUALIFIED FUELS.—Any fuel described in paragraph (3), (4), (5), or (6) shall be treated as a qualified fuel for purposes of this section.

"(B) DAILY LIMIT.—The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any property or facility shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the property or facility is placed in service shall not be taken into account in determining such average.

"(C) EXTENSION PERIOD TO COMMENCE WITH UNADJUSTED CREDIT AMOUNT AND NEW PHASEOUT ADJUSTMENT.—For purposes of applying subsection (b)(2), in the case of fuels sold after 2003—

"(i) paragraphs (1)(A) and (2) of subsection (b) shall be applied by substituting '$35.00' for '$23.50', and

"(ii) subparagraph (B) of subsection (d)(2) shall be applied by substituting '2002' for '1979'.

"(D) DENIAL OF DOUBLE BENEFIT.—This subsection shall not apply to any facility producing qualified fuels for which a credit was allowed under this section for the taxable year or any preceding taxable year by reason of subsection (g).".

(b) TREATMENT AS BUSINESS CREDIT.—

(1) CREDIT MOVED TO SUBPART RELATING TO BUSINESS RELATED CREDITS.—The Internal Revenue Code of 1986 is amended by redesignating section 29, as amended by this Act, as section 45K and by moving section 45K (as so redesignated) from subpart B of part IV of subchapter A of chapter 1 to the end of subpart D of part IV of subchapter A of chapter 1.

(2) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) is amended by striking "plus" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting ", plus", and by adding at the end the following:

"(21) the nonconventional source production credit determined under section 45K(a).".

(3) CONFORMING AMENDMENTS.—

(A) Section 30(b)(2)(A), as redesignated by section 1317(a), is amended by striking "sections 27 and 29" and inserting "section 27".

(B) Sections 43(b)(2) and 613A(c)(6)(C) are each amended by striking "section 29(d)(2)(C)" and inserting "section 45K(d)(2)(C)".

(C) Section 45K(a), as redesignated by paragraph (1), is amended by striking "At the election of the taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year" and inserting "For purposes of section 38, if the taxpayer elects to have this section apply, the nonconventional source production credit determined under this section for the taxable year is".

(D) Section 45K(b), as so redesignated, is amended by striking paragraph (6).

(E) Section 53(d)(1)(B)(iii) is amended by striking "under section 29" and all that follows through "or not allowed".

(F) Section 55(c)(2) is amended by striking "29(b)(6),".

(G) Subsection (a) of section 772 is amended by inserting "and" at the end of paragraph (9), by striking paragraph (10), and by redesignating paragraph (11) as paragraph (10).

(H) Paragraph (5) of section 772(d) is amended by striking "the foreign tax credit, and the credit allowable under section 29" and inserting "and the foreign tax credit".

(I) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 29.

(J) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45J the following new item:

"Sec. 45K. Credit for producing fuel from a nonconventional source.".

(c) DETERMINATIONS UNDER NATURAL GAS POLICY ACT OF 1978.—Subparagraph (A) of section 45K(c)(2), as redesignated by subsection (b)(1), is amended—

(1) by inserting "by the Secretary, after consultation with the Federal Energy Regulatory Commission," after "shall be made", and

(2) by inserting "(as in effect before the repeal of such section)" after "1978".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to fuel produced and sold after December 31, 2003, in taxable years ending after such date.

(2) DETERMINATIONS UNDER NATURAL GAS POLICY ACT OF 1978.—The amendments made by subsection (c) shall apply as if included in the provisions repealing section 503 of the Natural Gas Policy Act of 1978.

PART II—ALTERNATIVE MINIMUM TAX PROVISIONS

SEC. 1346. NEW NONREFUNDABLE PERSONAL CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAXES.

(a) IN GENERAL.—

(1) SECTION 25C.—Section 25C(b), as added by section 1301 of this Act, is amended by adding at the end the following new paragraph:

"(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year.".

(2) SECTION 25D.—Section 25D(b), as added by section 1304 of this Act, is amended by adding at the end the following new paragraph:

"(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.".

(b) CONFORMING AMENDMENTS.—

(1) Section 23(b)(4)(B) is amended by inserting "and sections 25C and 25D" after "this section".

(2) Section 24(b)(3)(B) is amended by striking "and 25B" and inserting ", 25B, 25C, and 25D".

(3) Section 25(e)(1)(C) is amended by inserting "25C, and 25D" after "25B,".

(4) Section 25B(g)(2) is amended by striking "section 23" and inserting "sections 23, 25C, and 25D".

(5) Section 26(a)(1) is amended by striking "and 25B" and inserting "25B, 25C, and 25D".

(6) Section 904(h) is amended by striking "and 25B" and inserting "25B, 25C, and 25D".

(7) Section 1400C(d) is amended by striking "and 25B" and inserting "25B, 25C, and 25D".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 1347. BUSINESS RELATED ENERGY CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) SPECIAL RULES FOR SPECIFIED ENERGY CREDITS.—

"(A) IN GENERAL.—In the case of specified energy credits—

"(i) this section and section 39 shall be applied separately with respect to such credits, and

"(ii) in applying paragraph (1) to such credits—

"(I) the tentative minimum tax shall be treated as being zero, and

"(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the specified energy credits).

"(B) SPECIFIED ENERGY CREDITS.—For purposes of this subsection, the term 'specified energy credits' means the credits determined under sections 45G, 45H, 45I, and 45J. For taxable years beginning after December 31, 2003, such term includes the credit determined under section 40. For taxable years beginning after December 31, 2003, and before January 1, 2006, such term includes the credit determined under section 43.

"(C) SPECIAL RULE FOR ELECTRICITY PRODUCED FROM QUALIFIED FACILITIES.—For purposes of this subsection, the term 'specified energy credits' shall include the credit determined under section 45 to the extent that such credit is attributable to electricity produced—

"(i) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

"(ii) during the 4-year period beginning on the date that such facility was originally placed in service.".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2)(A)(ii)(II) of section 38(c) is amended by striking "or" and inserting a comma and by inserting ", and the specified energy credits" after "employee credit".

(2) Paragraph (3)(A)(ii)(II) of section 38(c) is amended by inserting "and the specified energy credits" after "employee credit".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 1348. TEMPORARY REPEAL OF ALTERNATIVE MINIMUM TAX PREFERENCE FOR INTANGIBLE DRILLING COSTS.

(a) IN GENERAL.—Clause (ii) of section 57(a)(2)(E) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to taxable years beginning after December 31, 2003, and before January 1, 2006.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

PART III—CLEAN COAL INCENTIVES

SEC. 1351. CREDIT FOR CLEAN COAL TECHNOLOGY UNITS.

(a) IN GENERAL.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

"SEC. 48A. CLEAN COAL TECHNOLOGY CREDIT.

"(a) IN GENERAL.—For purposes of section 46, the clean coal technology credit for any taxable year is an amount equal to the applicable percentage of the basis of qualified clean coal property placed in service during such year.

"(b) APPLICABLE PERCENTAGE.—For purposes of this section, the applicable percentage is—

"(1) 15 percent in the case of property placed in service in connection with any basic clean coal technology unit, and

"(2) 17.5 percent in the case of property placed in service in connection with any advanced clean coal technology unit.

"(c) QUALIFIED CLEAN COAL PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified clean coal property' means section 1245 property—

“(A) which is installed in connection with—

“(i) an existing coal-based unit as part of the conversion of such unit to any basic or advanced clean coal technology unit, or

“(ii) any new advanced clean coal technology unit,

“(B) which is placed in service after December 31, 2003, and before—

“(i) in the case of property to which subsection (b)(1) applies, January 1, 2014, and

“(ii) in the case of property to which subsection (b)(2) applies, January 1, 2017 (January 1, 2013, in the case of property installed in connection with an eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit),

“(C) the original use of which commences with the taxpayer, and

“(D) which has a useful life of not less than 4 years.

“(2) Existing coal-based unit.—The term ‘existing coal-based unit’ means a coal-based electricity generating steam generator-turbine unit—

“(A) which is not a basic or advanced clean coal technology unit, and

“(B) which is in operation on or before January 1, 2004.

In the case of a unit being converted to a basic clean coal technology unit, such term shall not include a unit having a nameplate capacity rating of more than 300 megawatts.

“(3) New advanced clean coal technology unit.—The term ‘new advanced clean coal technology unit’ means any advanced clean coal technology unit which is placed in service after December 31, 2003, and the original use of which commences with the taxpayer.

“(d) Basic Clean Coal Technology Unit.—For purposes of this section—

“(1) In general.—The term ‘basic clean coal technology unit’ means a unit which—

“(A) uses clean coal technology (including advanced pulverized coal or atmospheric fluidized bed combustion, pressurized fluidized bed combustion, and integrated gasification combined cycle) for the production of electricity,

“(B) uses an input of at least 75 percent coal to produce at least 50 percent of its thermal output as electricity,

“(C) has a design net heat rate of at least 500 less than that of the existing coal-based unit prior to its conversion,

“(D) has a maximum design net heat rate of not more than 9,500, and

“(E) meets the pollution control requirements of paragraph (2).

Such term shall not include an advanced clean coal technology unit.

“(2) Pollution control requirements.—

“(A) In general.—A unit meets the requirements of this paragraph if—

“(i) its emissions of sulfur dioxide, nitrogen oxide, or particulates meet the lower of the emission levels for each such emission specified in—

“(I) subparagraph (B), or

“(II) the new source performance standards of the Clean Air Act (42 U.S.C. 7411) which are in effect for the category of source at the time of the conversion of the unit, and

“(ii) its emissions do not exceed any relevant emission level specified by regulation pursuant to the hazardous air pollutant requirements of the Clean Air Act (42 U.S.C. 7412) in effect at the time of the conversion of the unit.

“(B) Specific levels.—The levels specified in this subparagraph are—

“(i) in the case of sulfur dioxide emissions, 50 percent of the sulfur dioxide emission levels specified in the new source performance standards of the Clean Air Act (42 U.S.C. 7411) in effect on the date of the enactment of this section for the category of source,

“(ii) in the case of nitrogen oxide emissions—

“(I) 0.1 pound per million Btu of heat input if the unit is not a cyclone-fired boiler, and

“(II) if the unit is a cyclone-fired boiler, 15 percent of the uncontrolled nitrogen oxide emissions from such boilers, and

“(iii) in the case of particulate emissions, 0.02 pound per million Btu of heat input.

“(3) Design net heat rate.—The design net heat rate with respect to any unit, measured in Btu per kilowatt hour (HHV)—

“(A) shall be based on the design annual heat input to and the design annual net electrical power, fuels, and chemicals output from such unit (determined without regard to such unit's co-generation of steam),

“(B) shall be adjusted for the heat content of the design coal to be used by the unit if it is less than 12,000 Btu per pound according to the following formula:

Design net heat rate = Unit net heat rate [1−{((12,000-design coal heat content, Btu per pound)/1,000) 0.013}].

“(C) shall be corrected for the site reference conditions of—

“(i) elevation above sea level of 500 feet,

“(ii) air pressure of 14.4 pounds per square inch absolute (psia),

“(iii) temperature, dry bulb of 63° F,

“(iv) temperature, wet bulb of 54° F, and

“(v) relative humidity of 55 percent, and

“(D) if carbon capture controls have been installed with respect to any existing coal-based unit and such controls remove at least 50 percent of the unit's carbon dioxide emissions, shall be adjusted up to the design heat rate level which would have resulted without the installation of such controls.

“(4) HHV.—The term ‘HHV’ means higher heating value.

“(e) Advanced Clean Coal Technology Unit.—For purposes of this section—

“(1) In general.—The term ‘advanced clean coal technology unit’ means any electricity generating unit of the taxpayer—

“(A) which is—

“(i) an eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit,

“(ii) an eligible pressurized fluidized bed combustion technology unit,

“(iii) an eligible integrated gasification combined cycle technology unit, or

“(iv) an eligible other technology unit,

“(B) which uses an input of at least 75 percent coal to produce at least 50 percent of its thermal output as electricity, and

“(C) which meets the carbon emission rate requirements of paragraph (6).

“(2) Eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit.—The term ‘eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit’ means a clean coal technology unit using advanced pulverized coal or atmospheric fluidized bed combustion technology which has a design net heat rate of not more than 8,500 (8,900 in the case of units placed in service before 2009).

“(3) Eligible pressurized fluidized bed combustion technology unit.—The term ‘eligible pressurized fluidized bed combustion technology unit’ means a clean coal technology unit using pressurized fluidized bed combustion technology which has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2009, and 8,500 in the case of units placed in service after 2008 and before 2013).

“(4) Eligible integrated gasification combined cycle technology unit.—The term ‘eligible integrated gasification combined cycle technology unit’ means a clean coal technology unit using integrated gasification combined cycle technology, with or without fuel or chemical co-production—

“(A) which has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2009, and 8,500 in the case of units placed in service after 2008 and before 2013), and

“(B) has a net thermal efficiency (HHV) using coal with fuel or chemical co-production of not less than 44.2 percent (38.4 percent in the case of units placed in service before 2009, and 40.2 percent in the case of units placed in service after 2008 and before 2013).

“(5) Eligible other technology unit.—The term ‘eligible other technology unit’ means a clean coal technology unit—

“(A) which uses any other technology for the production of electricity, and

“(B) which has a design net heat rate which meets the requirement of paragraph (2).

“(6) Carbon emission rate requirements.—

“(A) In general.—Except as provided in subparagraph (B), a unit meets the requirements of this paragraph if—

“(i) in the case of a unit using design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate is less than 0.60 pound of carbon per kilowatt hour, and

“(ii) in the case of a unit using design coal with a heat content of more than 9,000 Btu per pound, the carbon emission rate is less than 0.54 pound of carbon per kilowatt hour.

“(B) Eligible other technology unit.—In the case of an eligible other technology unit, subparagraph (A) shall be applied by substituting ‘0.51’ and ‘0.459’ for ‘0.60’ and ‘0.54’, respectively.

“(f) National Limitations on Credit.—For purposes of this section—

“(1) In general.—The amount of credit which would (but for this subsection) be allowed with respect to any property shall not exceed the amount which bears the same ratio to such amount of credit as—

“(A) the national megawatt capacity limitation allocated to the taxpayer with respect to the basic or advanced clean coal technology unit to which such property relates, bears to

“(B) the total megawatt capacity of such unit. The capacity described in subparagraph (B) shall be the reasonably expected capacity after the installation of the property.

“(2) Amount of national limitation.—

“(A) Advanced units.—The national megawatt capacity limitation for advanced clean coal technology units shall be 6,000 megawatts. Of such amount, the national megawatt capacity limitation is—

“(i) for advanced clean coal technology units using advanced pulverized coal or atmospheric fluidized bed combustion technology, not more than 1,500 megawatts (not more than 750 megawatts in the case of units placed in service before 2009),

“(ii) for such units using pressurized fluidized bed combustion technology, not more than 750 megawatts (not more than 375 megawatts in the case of units placed in service before 2009),

“(iii) for such units using integrated gasification combined cycle technology, with or without fuel or chemical co-production, not more than 3,000 megawatts (not more than 1,250 megawatts in the case of units placed in service before 2009), and

“(iv) for such units using other technology for the production of electricity, not more than 750 megawatts (not more than 375 megawatts in the case of units placed in service before 2009).

“(B) Basic units.—The national megawatt capacity limitation for basic clean coal technology units shall be 4,000 megawatts.

“(3) Allocation of limitation.—The Secretary shall allocate the national megawatt capacity limitations in such manner as the Secretary may prescribe, except that the Secretary may not allocate more than 300 megawatts to any basic clean coal technology unit.

"(4) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations shall provide a certification process under which the Secretary, after consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitations—

"(A) to encourage that units with the highest thermal efficiencies, when adjusted for the heat content of the design coal and site reference conditions, and environmental performance, be placed in service as soon as possible, and

"(B) to allocate capacity to taxpayers which have a definite and credible plan for placing into commercial operation a basic or advanced clean coal technology unit, including—

"(i) a site,

"(ii) contractual commitments for procurement and construction or, in the case of regulated utilities, the agreement of the State utility commission,

"(iii) filings for all necessary preconstruction approvals,

"(iv) a demonstrated record of having successfully completed comparable projects on a timely basis, and

"(v) such other factors which the Secretary determines are appropriate.

"(g) SPECIAL RULES.—For purposes of this section—

"(1) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

"(2) PROPERTY FINANCED BY SUBSIDIZED FINANCING OR INDUSTRIAL DEVELOPMENT BONDS.—Rules similar to the rules of section 45(b)(3) shall apply for purposes of this section.

"(3) NONCOMPLIANCE WITH POLLUTION LAWS.—The terms 'basic clean coal technology unit' and 'advanced clean coal technology unit' shall not include any unit which is not in compliance with the applicable Federal pollution prevention, control, and permit requirements at any time during the period applicable under subsection (c)(1)(B).

"(4) DENIAL OF CREDIT FOR UNITS RECEIVING CERTAIN OTHER FEDERAL ASSISTANCE.—The terms 'basic clean coal technology unit' and 'advanced clean coal technology unit' shall not include any unit if, at any time during the period applicable under subsection (c)(1)(B), any funding is provided to such unit under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy.

"(5) COORDINATION WITH OTHER CREDITS.—This section shall not apply to any property with respect to which the rehabilitation credit under section 47, the energy credit under section 48, or any credit under section 45 or 45K is allowable unless the taxpayer elects to waive the application of such credit to such property.".

(b) SPECIAL RECAPTURE RULES.—

(1) Subsection (a) of section 50 is amended by redesignating paragraph (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) SPECIAL RULES FOR CLEAN COAL TECHNOLOGY CREDITS.—

"(A) EARLY DISPOSITION, ETC.—If, during any taxable year, qualified clean coal property is disposed of, or otherwise ceases to be part of a basic or advanced clean coal technology unit with respect to the taxpayer, before the close of the recovery period under section 168 for such unit, then the tax under this chapter for such taxable year shall be increased by—

"(i) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under section 48A with respect to such property, multiplied by

"(ii) a fraction—

"(I) the numerator of which is the number of years in the period beginning with the year of such disposition or cessation and ending with the last year of such recovery period, and

"(II) the denominator of which is the total number of years in such recovery period.

"(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of this paragraph shall apply in cases where qualified progress expenditures were taken into account under the rules referred to in section 48A(g)(1).

"(C) INCREASED RECAPTURE IN CERTAIN CASES.—The fraction in subparagraph (A)(ii) shall be 1 in any case in which the property ceases to be a basic or advanced clean coal technology unit by reason of paragraph (3), (4), or (5) of section 48A(g).

"(D) COORDINATION WITH OTHER RECAPTURE RULES.—Paragraphs (1) and (2) shall not apply to qualified clean coal property.

"(E) DEFINITIONS.—Terms used in this section which are also used in section 48A shall have the meanings given to such terms in section 48A.".

(2) Paragraph (4) of section 50(a), as redesignated by paragraph (1), is amended by striking "or (2)" and inserting ", (2), or (3)".

(3) Paragraph (5) of section 50(a), as so redesignated, is amended by striking "and (2)" and inserting ", (2), and (3)".

(4) Section 1371(d)(1) is amended by striking "section 50(a)(4)" and inserting "section 50(a)(5)".

(c) TECHNICAL AMENDMENTS.—

(1) Section 46 (relating to amount of credit) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding at the end the following new paragraph:

"(4) the clean coal technology credit.".

(2) Section 49(a)(1)(C) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) the portion of the basis of any qualified clean coal property (as defined by section 48A(c)).".

(3) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48 the following new item:

"Sec. 48A. Clean coal technology credit.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 2003, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 1352. EXPANSION OF AMORTIZATION FOR CERTAIN POLLUTION CONTROL FACILITIES.

(a) ELIGIBILITY OF POST-1975 POLLUTION CONTROL FACILITIES.—

(1) IN GENERAL.—Paragraph (1) of section 169(d) is amended by striking "before January 1, 1976," and by striking "a new identifiable" and inserting "an identifiable".

(2) IDENTIFIABLE TREATMENT FACILITY.—Paragraph (4) of section 169(d) is amended to read as follows:

"(4) IDENTIFIABLE TREATMENT FACILITY.—For purposes of paragraph (1), the term 'identifiable treatment facility' includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in section 167, which is identifiable as a treatment facility, and which is property—

"(A) the construction, reconstruction, or erection of which is completed by the taxpayer, or

"(B) the original use of the property commences with the taxpayer."

(3) TECHNICAL AMENDMENT.—Section 169(d)(3) is amended by striking "Health, Education, and Welfare" and inserting "Health and Human Services".

(b) COORDINATION WITH SECTION 48A INVESTMENT CREDIT.—Section 169 is amended by redesignating subsections (e) though (j) as subsection (f) through (k), respectively, and by inserting after subsection (d) the following new subsection:

"(e) COORDINATION WITH SECTION 48A INVESTMENT CREDIT.—

"(1) IN GENERAL.—In the case of any treatment facility used in connection with a plant or other property to which an amount is allocated under section 48A(f), this section shall apply only if such plant or other property was in operation before January 1, 1976.

"(2) 36-MONTH AMORTIZATION WITH RESPECT TO PRE-1976 PLANTS NOT ALLOCATED CREDIT.—References in this section to 60 months shall be treated as references to 36 months in the case of treatment facilities used in connection with a plant or other property in operation before January 1, 1976, if no allocation is made under section 48A(f) with respect to such plant or property."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to facilities placed in service after the date of the enactment of this Act.

SEC. 1353. 5-YEAR RECOVERY PERIOD FOR ELIGIBLE INTEGRATED GASIFICATION COMBINED CYCLE TECHNOLOGY UNIT ELIGIBLE FOR CREDIT.

(a) IN GENERAL.—Subparagraph (B) of section 168(e)(3) (defining 5-year property) is amended by striking "and" at the end of clause (v), by striking the period at the end of clause (vi) and inserting ", and", and by inserting after clause (vi) the following new clause:

"(vii) any section 1245 property which is part of an eligible integrated gasification combined cycle technology unit (as defined in section 48A(e)(4)) for which an allocation is made under section 48A(f)."

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes) is amended by inserting after the item relating to subparagraph (B)(iii) the following new item:

"(B)(vii) .... 20".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act in taxable years ending after such date.

PART IV—HIGH VOLUME NATURAL GAS PROVISIONS

SEC. 1355. HIGH VOLUME NATURAL GAS PIPE TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking "and" at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

"(iii) any high volume natural gas pipe the original use of which commences with the taxpayer after the date of the enactment of this clause, and".

(b) HIGH VOLUME NATURAL GAS PIPE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

"(17) HIGH VOLUME NATURAL GAS PIPE.—The term 'high volume natural gas pipe' means—

"(A) pipe which has an interior diameter of at least 42 inches and which is part of a natural gas pipeline system, and

"(B) any related equipment and appurtenances used in connection with such pipe.".

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes), as amended by this Act, is amended by inserting after the item relating to subparagraph (C)(ii) the following new item:

"(C)(iii) .... 22".

(d) ALTERNATIVE MINIMUM TAX EXCEPTION.—Subparagraph (B) of section 56(a)(1), as amended by this Act, is amended by inserting before the period the following: ", or in section 168(e)(3)(C)(iii)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service on or after the date of the enactment of this Act.

SEC. 1356. EXTENSION OF ENHANCED OIL RECOVERY CREDIT TO HIGH VOLUME NATURAL GAS FACILITIES.

(a) IN GENERAL.—Section 43(c)(1) (defining qualified enhanced oil recovery costs) is amended by adding at the end the following new subparagraph:

"(D) Any amount which is paid or incurred during the taxable year in connection with the construction of a gas treatment plant which—

"(i) prepares natural gas for transportation through a pipeline with a capacity of at least 1,000,000,000,000 Btu of natural gas per day, and

"(ii) produces carbon dioxide which is injected into hydrocarbon-bearing geological formations.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2003.

Subtitle D—Additional Provisions

SEC. 1361. EXTENSION OF ACCELERATED DEPRECIATION BENEFIT FOR ENERGY-RELATED BUSINESSES ON INDIAN RESERVATIONS.

Paragraph (8) of section 168(j) (relating to termination) is amended by adding at the end the following new sentence: "The preceding sentence shall be applied by substituting 'December 31, 2005' for 'December 31, 2004' in the case of property placed in service as part of a facility for—

"(A) the generation or transmission of electricity (including from any qualified energy resource, as defined in section 45(c)),

"(B) an oil or gas well,

"(C) the transmission or refining of oil or gas, or

"(D) the production of any qualified fuel (as defined in section 45K(c)).".

SEC. 1362. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) IN GENERAL.—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following: "For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in taxable years ending after the date of the enactment of this Act.

SEC. 1363. DISTRIBUTIONS FROM PUBLICLY TRADED PARTNERSHIPS TREATED AS QUALIFYING INCOME OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (2) of section 851(b) (defining regulated investment company) is amended to read as follows:

"(2) at least 90 percent of its gross income is derived from—

"(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

"(B) distributions or other income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and"

(b) SOURCE FLOW-THROUGH RULE NOT TO APPLY.—The last sentence of section 851(b) is amended by inserting "(other than a qualified publicly traded partnership as defined in subsection (h))" after "derived from a partnership".

(c) LIMITATION ON OWNERSHIP.—Subsection (c) of section 851 is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

"(5) The term 'outstanding voting securities of such issuer' shall include the equity securities of a qualified publicly traded partnership (as defined in subsection (h)).".

(d) DEFINITION OF QUALIFIED PUBLICLY TRADED PARTNERSHIP.—Section 851 is amended by adding at the end the following new subsection:

"(h) QUALIFIED PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'qualified publicly traded partnership' means a publicly traded partnership described in section 7704(b) other than a partnership which would satisfy the gross income requirements of section 7704(c)(2) if qualifying income included only income described in subsection (b)(2)(A).".

(e) DEFINITION OF QUALIFYING INCOME.—Section 7704(d)(4) is amended by striking "section 851(b)(2)" and inserting "section 851(b)(2)(A)".

(f) LIMITATION ON COMPOSITION OF ASSETS.—Subparagraph (B) of section 851(b)(3) is amended to read as follows:

"(B) not more than 25 percent of the value of its total assets is invested in—

"(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

"(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

"(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).".

(g) APPLICATION OF SPECIAL PASSIVE ACTIVITY RULE TO REGULATED INVESTMENT COMPANIES.—Subsection (k) of section 469 (relating to separate application of section in case of publicly traded partnerships) is amended by adding at the end the following new paragraph:

"(4) APPLICATION TO REGULATED INVESTMENT COMPANIES.—For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.".

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 1364. CEILING FANS.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

9902.84.14	Ceiling fans for permanent installation (provided for in subheading 8414.51.00).	Free	No change	No change	On or before 12/31/2005	."

(b) EFFECTIVE DATE.—The amendment made by this section applies to goods entered, or withdrawn from warehouse, for consumption on or after the 15th day after the date of enactment of this Act.

SEC. 1365. CERTAIN STEAM GENERATORS, AND CERTAIN REACTOR VESSEL HEADS, USED IN NUCLEAR FACILITIES.

(a) CERTAIN STEAM GENERATORS.—Heading 9902.84.02 of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/2006" and inserting "12/31/2008".

(b) CERTAIN REACTOR VESSEL HEADS.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

9902.84.03	Reactor vessel heads for nuclear reactors (provided for in subheading 8401.40.00).	Free	No change	No change	On or before 12/31/2007	."

(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to goods entered, or withdrawn from warehouse, for consumption on or after the 15th day after the date of the enactment of this Act.

SEC. 1366. BROWNFIELDS DEMONSTRATION PROGRAM FOR QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to the definition of exempt facility bond) is amended by striking "or" at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting ", or", and by inserting at the end the following new paragraph:

"(14) qualified green building and sustainable design projects.".

(b) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—Section 142 (relating to exempt facility bonds) is amended by adding at the end thereof the following new subsection:

"(l) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—

"(1) IN GENERAL.—For purposes of subsection (a)(14), the term 'qualified green building and sustainable design project' means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

"(2) DESIGNATIONS.—

"(A) IN GENERAL.—Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

"(B) MINIMUM CONSERVATION AND TECHNOLOGY INNOVATION OBJECTIVES.—The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

"(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional construction,

"(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

"(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

"(iv) use at least 25 megawatts of fuel cell energy generation.

"(3) LIMITED DESIGNATIONS.—A project may not be designated under this subsection unless—

"(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

"(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

"(4) APPLICATION.—

"(A) IN GENERAL.—A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

"(i) GREEN BUILDING AND SUSTAINABLE DESIGN.—At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification.

"(ii) BROWNFIELD REDEVELOPMENT.—The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

"(iii) STATE AND LOCAL SUPPORT.—The project receives specific State or local government resources which will support the project in an amount equal to at least $5,000,000. For purposes of the preceding sentence, the term 'resources' includes tax abatement benefits and contributions in kind.

"(iv) SIZE.—The project includes at least one of the following:

"(I) At least 1,000,000 square feet of building.

"(II) At least 20 acres.

"(v) USE OF TAX BENEFIT.—The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

"(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

"(II) Compliance with LEED certification standards.

"(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

"(vi) EMPLOYMENT.—The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project's economic impact, including the amount of projected employment.

"(B) PROJECT DESCRIPTION.—Each application described in subparagraph (A) shall contain for each project a description of—

"(i) the amount of electric consumption reduced as compared to conventional construction,

"(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

"(iii) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts, and

"(iv) the amount, in megawatts, of the project's fuel cell energy generation.

"(5) CERTIFICATION OF USE OF TAX BENEFIT.—No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) RURAL STATE.—The term 'rural State' means any State which has—

"(i) a population of less than 4,500,000 according to the 2000 census,

"(ii) a population density of less than 150 people per square mile according to the 2000 census, and

"(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

"(B) LOCAL GOVERNMENT.—The term 'local government' has the meaning given such term by section 1393(a)(5).

"(C) NET BENEFIT OF TAX-EXEMPT FINANCING.—The term 'net benefit of tax-exempt financing' means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

"(7) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING.—

"(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

"(B) LIMITATION ON AMOUNT OF BONDS.—The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding $2,000,000,000.

"(8) TERMINATION.—Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2009.

"(9) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2009, if—

"(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

"(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).".

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) (relating to exception for certain bonds) is amended—

(1) by striking "or (13)" and inserting "(13), or (14)", and

(2) by striking "and qualified public educational facilities" and inserting "qualified public educational facilities, and qualified green building and sustainable design projects".

(d) SPECIAL RULE FOR ASSETS FINANCED UNDER THIS SECTION AND ACCOUNTABILITY.—

(1) DENIAL OF DOUBLE BENEFIT.—Any asset financed with bonds issued pursuant to this section shall be ineligible for any credit or deduction established under the Energy Tax Policy Act of 2003.

(2) ACCOUNTABILITY.—Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(l)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(l)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

TITLE XIV—MISCELLANEOUS

Subtitle A—Rural and Remote Electricity Construction

SEC. 1401. DENALI COMMISSION PROGRAMS.

(a) POWER COST EQUALIZATION PROGRAM.—There are authorized to be appropriated to the Denali Commission established by the Denali Commission Act of 1998 (42 U.S.C. 3121 note) not more than $5,000,000 for each of fiscal years 2005 through 2011 for the purposes of funding the power cost equalization program established under section 42.45.100 of the Alaska Statutes.

(b) AVAILABILITY OF FUNDS.—

(1) PURPOSE.—Amounts described in paragraph (2) shall be available to the Denali Commission to permit energy generation and development (including fuel cells, hydroelectric, solar, wind, wave, and tidal energy, and alternative energy sources), energy transmission (including interties), fuel tank replacement and clean-up, fuel transportation networks and related facilities, power cost equalization programs, and other energy programs, notwithstanding any other provision of law.

(2) AMOUNTS.—(A) Except as provided in subparagraph (B), the amounts referred to in paragraph (1) shall be any Federal royalties, rents, and bonuses derived from the Federal share of Federal oil and gas leases in the National Petroleum Reserve in Alaska, up to a maximum of $50,000,000, for each of the fiscal years 2004 through 2013.

(B) If amounts available under subparagraph (A) for one of the fiscal years 2004 through 2013 are less than $50,000,000, the Secretary of Energy shall make available an amount sufficient to ensure that the amount available under this subsection for that fiscal year equals $50,000,000, from amounts remaining after deposits are made under section 949(a)(1), from the same source from which those deposits are made.

SEC. 1402. RURAL AND REMOTE COMMUNITY ASSISTANCE.

(a) PROGRAM.—Section 19 of the Rural Electrification Act of 1936 (7 U.S.C 918a) is amended by striking all that precedes subsection (b) and inserting the following:

"SEC. 19. ELECTRIC GENERATION, TRANSMISSION, AND DISTRIBUTION FACILITIES EFFICIENCY GRANTS AND LOANS TO RURAL AND REMOTE COMMUNITIES WITH EXTREMELY HIGH ELECTRICITY COSTS.

"(a) IN GENERAL.—The Secretary, acting through the Rural Utilities Service, may—

"(1) in coordination with State rural development initiatives, make grants and loans to persons, States, political subdivisions of States, and other entities organized under the laws of States, to acquire, construct, extend, upgrade, and otherwise improve electric generation, transmission, and distribution facilities serving communities in which the average revenue per kilowatt hour of electricity for all consumers is greater than 150 percent of the average revenue per kilowatt hour of electricity for all consumers in the United States (as determined by the Energy Information Administration using the most recent data available);

"(2) make grants and loans to the Denali Commission established by the Denali Commission Act of 1998 (42 U.S.C. 3121 note; Public 105-277) to be used for the purpose of providing funds to acquire, construct, extend, upgrade, finance, and otherwise improve electric generation, transmission, and distribution facilities serving communities described in paragraph (1); and

"(3) make grants to State entities to establish and support a revolving fund to provide a more cost-effective means of purchasing fuel in areas where the fuel cannot be shipped by means of surface transportation.".

(b) DEFINITION OF PERSON.—Section 13 of the Rural Electrification Act of 1936 (7 U.S.C. 913) is amended by striking "or association" and inserting "association, or Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act)".

Subtitle B—Coastal Programs

SEC. 1411. ROYALTY PAYMENTS UNDER LEASES UNDER THE OUTER CONTINENTAL SHELF LANDS ACT.

(a) ROYALTY RELIEF.—

(1) IN GENERAL.—For purposes of providing compensation for lessees and a State for which amounts are authorized by section 6004(c) of the Oil Pollution Act of 1990 (Public Law 101-380), a lessee may withhold from payment any royalty due and owing to the United States under any leases under the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.) for offshore oil or gas production from a covered lease tract if, on or before the date that the payment is due and payable to the United States, the lessee makes a payment to the Secretary of the Interior of 44 cents for every $1 of royalty withheld.

(2) USE OF AMOUNTS PAID TO SECRETARY.—Within 30 days after the Secretary of the Interior receives payments under paragraph (1), the Secretary of the Interior shall—

(A) make 47.5 percent of such payments available to the State referred to in section 6004(c) of the Oil Pollution Act of 1990; and

(B) make 52.5 percent of such payments available equally, only for the programs and purposes identified as number 282 at page 1389 of House Report number 108-10 and for a program described at page 1159 of that Report in the State referred to in such section 6004(c).

(3) TREATMENT OF AMOUNTS.—Any royalty withheld by a lessee in accordance with this section (including any portion thereof that is paid to the Secretary of the Interior under paragraph (1)) shall be treated as paid for purposes of satisfaction of the royalty obligations of the lessee to the United States.

(4) CERTIFICATION OF WITHHELD AMOUNTS.—The Secretary of the Treasury shall—

(A) determine the amount of royalty withheld by a lessee under this section; and

(B) promptly publish a certification when the total amount of royalty withheld by the lessee under this section is equal to—

(i) the dollar amount stated at page 47 of Senate Report number 101-534, which is designated therein as the total drainage claim for the West Delta field; plus

(ii) interest as described at page 47 of that Report.

(b) PERIOD OF ROYALTY RELIEF.—Subsection (a) shall apply to royalty amounts that are due and payable in the period beginning on January 1, 2004, and ending on the date on which the Secretary of the Treasury publishes a certification under subsection (a)(4)(B).

(c) DEFINITIONS.—As used in this section:

(1) COVERED LEASE TRACT.—The term "covered lease tract" means a leased tract (or portion of a leased tract)—

(A) lying seaward of the zone defined and governed by section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)); or

(B) lying within such zone but to which such section does not apply.

(2) LESSEE.—The term "lessee"—

(A) means a person or entity that, on the date of the enactment of the Oil Pollution Act of 1990, was a lessee referred to in section 6004(c) of that Act (as in effect on that date of the enactment), but did not hold lease rights in Federal offshore lease OCS-G-5669; and

(B) includes successors and affiliates of a person or entity described in subparagraph (A).

SEC. 1412. DOMESTIC OFFSHORE ENERGY REINVESTMENT.

(a) DOMESTIC OFFSHORE ENERGY REINVESTMENT PROGRAM.—The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding at the end the following:

"SEC. 32. DOMESTIC OFFSHORE ENERGY REINVESTMENT PROGRAM.

"(a) DEFINITIONS.—In this section:

"(1) APPROVED PLAN.—The term 'approved plan' means a Secure Energy Reinvestment Plan approved by the Secretary under this section.

"(2) COASTAL ENERGY STATE.—The term 'Coastal Energy State' means a Coastal State off the coastline of which, within the seaward lateral boundary as determined by the map referenced in subsection (c)(2)(A), outer Continental Shelf bonus bids or royalties are generated, other than bonus bids or royalties from a leased tract within any area of the outer Continental Shelf for which a moratorium on new leasing was in effect as of January 1, 2002, unless the lease was issued before the establishment of the moratorium and was in production on such date.

"(3) COASTAL POLITICAL SUBDIVISION.—The term 'coastal political subdivision' means a county, parish, or other equivalent subdivision of a Coastal Energy State, all or part of which lies within the boundaries of the coastal zone of the State, as identified in the State's approved coastal zone management program under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) on the date of the enactment of this section.

"(4) COASTAL POPULATION.—The term 'coastal population' means the population of a coastal political subdivision, as determined by the most recent official data of the Census Bureau.

"(5) COASTLINE.—The term 'coastline' has the same meaning as the term 'coast line' in subsection 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

"(6) FUND.—The term 'Fund' means the Secure Energy Reinvestment Fund established by this section.

"(7) LEASED TRACT.—The term 'leased tract' means a tract maintained under section 6 or leased under section 8 for the purpose of drilling for, developing, and producing oil and natural gas resources.

"(8) QUALIFIED OUTER CONTINENTAL SHELF REVENUES.—(A) Except as provided in subparagraph (B), the term 'qualified outer Continental Shelf revenues' means all amounts received by the United States on or after October 1, 2003, from each leased tract or portion of a leased tract lying seaward of the zone defined and governed by section 8(g), or lying within such zone but to which section 8(g) does not apply, including bonus bids, rents, royalties (including payments for royalties taken in kind and sold), net profit share payments, and related interest.

"(B) Such term does not include any revenues from a leased tract or portion of a leased tract that is included within any area of the outer Continental Shelf for which a moratorium on new leasing was in effect as of January 1, 2002, unless the lease was issued before the establishment of the moratorium and was in production on such date.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(b) SECURE ENERGY REINVESTMENT FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate account which shall be known as the 'Secure Energy Reinvestment Fund'. The Fund shall consist of amounts deposited under paragraph (2), and such other amounts as may be appropriated to the Fund.

"(2) DEPOSITS.—For each fiscal year after fiscal year 2003, the Secretary of the Treasury shall deposit into the Fund the following:

"(A) Notwithstanding section 9, all qualified outer Continental Shelf revenues attributable to royalties received by the United States in the fiscal year that are in excess of the following amount:

"(i) $3,455,000,000 in the case of royalties received in fiscal year 2004.

"(ii) $3,726,000,000 in the case of royalties received in fiscal year 2005.

"(iii) $4,613,000,000 in the case of royalties received in fiscal year 2006.

"(iv) $5,226,000,000 in the case of royalties received in fiscal year 2007.

"(v) $5,841,000,000 in the case of royalties received in fiscal year 2008.

"(vi) $5,763,000,000 in the case of royalties received in fiscal year 2009.

"(vii) $6,276,000,000 in the case of royalties received in fiscal year 2010.

"(viii) $6,351,000,000 in the case of royalties received in fiscal year 2011.

"(ix) $6,551,000,000 in the case of royalties received in fiscal year 2012.

"(x) $5,120,000,000 in the case of royalties received in fiscal year 2013.

"(B) Notwithstanding section 9, all qualified outer Continental shelf revenues attributable to bonus bids received by the United States in each of the fiscal years 2004 through 2013 that are in excess of $1,000,000,000.

"(C) Notwithstanding section 9, in addition to amounts deposited under subparagraphs (A) and (B), $35,000,000 of amounts received by the United States each fiscal year as royalties for oil or gas production on the outer Continental Shelf, except that no amounts shall be deposited under this subparagraph before fiscal year 2004 or after fiscal year 2013.

"(D) All interest earned under paragraph (4).

"(E) All repayments under subsection (f).

"(3) REDUCTION IN DEPOSIT.—(A) For each fiscal year after fiscal year 2013 in which amounts received by the United States as royalties for oil or gas production on the outer Continental Shelf are less than the sum of the amounts described in subparagraph (B) (before the application of this subparagraph), the Secretary of the Treasury shall reduce each of the amounts described in subparagraph (B) proportionately.

"(B) The amounts referred to in subparagraph (A) are the following:

"(i) The amount required to be covered into the Historic Preservation Fund under section 108 of the National Historic Preservation Act (16 U.S.C. 470h) on the date of the enactment of this paragraph.

"(ii) The amount required to be credited to the Land and Water Conservation Fund under section 2(c)(2) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5(c)(2)) on the date of the enactment of this paragraph.

"(iii) The amount required to be deposited under subparagraph (C) of paragraph (2) of this subsection.

"(4) INVESTMENT.—The Secretary of the Treasury shall invest moneys in the Fund (including interest) in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of the Treasury, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Such invested moneys shall remain invested until needed to meet requirements for disbursement under this section.

"(5) REVIEW AND REVISION OF BASELINE AMOUNTS.—Not later than December 31, 2008, the Secretary of the Interior, in consultation with the Secretary of the Treasury, shall—

"(A) determine the amount and composition of outer Continental Shelf revenues that were received by the United States in each of the fiscal years 2004 through 2008;

"(B) project the amount and composition of outer Continental Shelf revenues that will be received in the United States in each of the fiscal years 2009 through 2013; and

"(C) submit to the Congress a report regarding whether any of the dollar amounts set forth in clauses (v) though (x) of paragraph (2)(A) or paragraph (2)(B) should be modified to reflect those projections.

"(6) AUTHORIZATION OF APPROPRIATION OF ADDITIONAL AMOUNTS.—In addition to the amounts deposited into the Fund under paragraph (2) there are authorized to be appropriated to the Fund—

"(A) for each of fiscal years 2004 through 2013 up to $500,000,000; and

"(B) for each fiscal year after fiscal year 2013 up to 25 percent of qualified outer Continental Shelf revenues received by the United States in the preceding fiscal year.

"(c) USE OF SECURE ENERGY REINVESTMENT FUND.—

"(1) IN GENERAL.—(A) The Secretary shall use amounts in the Fund remaining after the application of subsections (h) and (i) to pay to each Coastal Energy State that has a Secure Energy Reinvestment Plan approved by the Secretary under this section, and to coastal political subdivisions of such State, the amount allocated to the State or coastal political subdivision, respectively, under this subsection.

"(B) The Secretary shall make payments under this paragraph in December of 2004, and of each year thereafter, from revenues received by the United States in the immediately preceding fiscal year.

"(2) ALLOCATION.—The Secretary shall allocate amounts deposited into the Fund in a fiscal year, and other amounts determined by the Secretary to be available, among Coastal Energy States that have an approved plan, and to coastal political subdivisions of such States, as follows:

"(A)(i) Of the amounts made available for each of the first 10 fiscal years for which amounts are available for allocation under this paragraph, the allocation for each Coastal Energy State shall be calculated based on the ratio of qualified outer Continental Shelf revenues generated off the coastline of the Coastal Energy State to the qualified outer Continental Shelf revenues generated off the coastlines of all Coastal Energy States for the period beginning January 1, 1992, and ending December 31, 2001.

"(ii) Of the amounts available for a fiscal year in a subsequent 10-fiscal-year period, the allocation for each Coastal Energy State shall be calculated based on such ratio determined by the Secretary with respect to qualified outer Continental Shelf revenues generated in each subsequent corresponding 10-year period.

"(iii) For purposes of this subparagraph, qualified outer Continental Shelf revenues shall be considered to be generated off the coastline of a Coastal Energy State if the geographic center of the lease tract from which the revenues are generated is located within the area formed by the extension of the State's seaward lateral boundaries, calculated using the strict and scientifically derived conventions established to delimit international lateral boundaries under the Law of the Sea, as indicated on the map entitled 'Calculated Seaward Lateral Boundaries' and dated October 2003, on file in the Office of the Director, Minerals Management Service.

"(B) 35 percent of each Coastal Energy State's allocable share as determined under subparagraph (A) shall be allocated among and paid directly to the coastal political subdivisions of the State by the Secretary based on the following formula:

"(i) 25 percent shall be allocated based on the ratio of each coastal political subdivision's coastal population to the coastal population of all coastal political subdivisions of the Coastal Energy State.

"(ii) 25 percent shall be allocated based on the ratio of each coastal political subdivision's coastline miles to the coastline miles of all coastal political subdivisions of the State. In the case of a coastal political subdivision without a coastline, the coastline of the political subdivision for purposes of this clause shall be one-third the average length of the coastline of the other coastal political subdivisions of the State.

"(iii) 50 percent shall be allocated based on a formula that allocates 75 percent of the funds based on such coastal political subdivision's relative distance from any leased tract used to calculate that State's allocation and 25 percent of the funds based on the relative level of outer Continental Shelf oil and gas activities in a coastal political subdivision to the level of outer Continental Shelf oil and gas activities in all coastal political subdivisions in such State, as determined by the Secretary, except that in the case of a coastal political subdivision in the State of California that has a coastal shoreline, that is not within 200 miles of the geographic center of a leased tract or portion of a leased tract, and in which there is located one or more oil refineries the allocation under this clause shall be determined as if that coastal political subdivision were located within a distance of 50 miles from the geographic center of the closest leased tract with qualified outer Continental Shelf revenues.

"(3) REALLOCATION.—Any amount allocated to a Coastal Energy State or coastal political subdivision of such a State but not disbursed because of a failure of a Coastal Energy State to have an approved plan shall be reallocated by the Secretary among all other Coastal Energy States in a manner consistent with this subsection, except that the Secretary—

"(A) shall hold the amount in escrow within the Fund until the earlier of the end of the next fiscal year in which the allocation is made or the final resolution of any appeal regarding the disapproval of a plan submitted by the State under this section; and

"(B) shall continue to hold such amount in escrow until the end of the subsequent fiscal year thereafter, if the Secretary determines that such State is making a good faith effort to develop and submit, or update, a Secure Energy Reinvestment Plan under subsection (d).

"(4) MINIMUM SHARE.—Notwithstanding any other provision of this subsection, the amount allocated under this subsection to each Coastal Energy State each fiscal year shall be not less than 5 percent of the total amount available for that fiscal year for allocation under this subsection to Coastal Energy States, except that for any Coastal Energy State determined by the Secretary to have an area formed by the extension of the State's seaward lateral boundary, as designated by the map referenced in paragraph (2)(A)(iii), of less than 490 square statute miles, the amount allocated to such State shall not be less than 10 percent of the total amount available for that fiscal year for allocation under this subsection.

"(5) RECOMPUTATION.—If the allocation to one or more Coastal Energy States under paragraph (4) with respect to a fiscal year is greater than the amount that would be allocated to such States under this subsection if paragraph (4) did not apply, then the allocations under this subsection to all other Coastal Energy States shall be paid from the amount remaining after deduction of the amounts allocated under paragraph (4), but shall be reduced on a pro rata basis by the sum of the allocations under paragraph (4) so that not more than 100 percent of the funds available in the Fund for allocation with respect to that fiscal year is allocated.

"(d) SECURE ENERGY REINVESTMENT PLAN.—

"(1) DEVELOPMENT AND SUBMISSION OF STATE PLANS.—The Governor of each State seeking to receive funds under this section shall prepare, and submit to the Secretary, a Secure Energy Reinvestment Plan describing planned expenditures of funds received under this section. The Governor shall include in the State plan submitted to the Secretary plans prepared by the coastal political subdivisions of the State. The Governor and the coastal political subdivision shall solicit local input and provide for public participation in the development of the State plan. In describing the planned expenditures, the State and coastal political subdivisions shall include only items that are uses authorized under subsection (e).

"(2) APPROVAL OR DISAPPROVAL.—

"(A) IN GENERAL.—The Secretary may not disburse funds to a State or coastal political subdivision of a State under this section before the date the State has an approved plan. The Secretary shall approve a Secure Energy Reinvestment Plan submitted by a State under paragraph (1) if the Secretary determines that the expenditures provided for in the plan are uses authorized under subsection (e), and that the plan contains each of the following:

"(i) The name of the State agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of this section.

"(ii) A program for the implementation of the plan, that (I) has as a goal improving the environment, (II) has as a goal addressing the impacts of oil and gas production from the outer Continental Shelf, and (III) includes a description of how the State and coastal political subdivisions of the State will evaluate the effectiveness of the plan.

"(iii) Certification by the Governor that ample opportunity has been accorded for public participation in the development and revision of the plan.

"(iv) Measures for taking into account other relevant Federal resources and programs. The plan shall be correlated so far as practicable with other State, regional, and local plans.

"(v) For any State for which the ratio determined under subsection (c)(2)(A)(i) or (c)(2)(A)(ii), as appropriate, expressed as a percentage, exceeds 25 percent, a plan to spend not less than 30 percent of the total funds provided under this section each fiscal year to that State and appropriate coastal political subdivisions, to address the socioeconomic or environmental impacts identified in the plan that remain significant or progressive after implementation of mitigation measures identified in the most current environmental impact statement (as of the date of the enactment of this clause) required under the National Environmental Protection Act of 1969 for lease sales under this Act.

"(vi) A plan to utilize at least one-half of the funds provided pursuant to subsection (c)(2)(B), and a portion of other funds provided to such State under this section, on programs or projects that are coordinated and conducted in partnership between the State and coastal political subdivision.

"(B) PROCEDURE AND TIMING.—The Secretary shall approve or disapprove each plan submitted in accordance with this subsection within 90 days after its submission.

"(3) AMENDMENT OR REVISION.—Any amendment to or revision of an approved plan shall be prepared and submitted in accordance with the requirements under this paragraph for the submittal of plans, and shall be approved or disapproved by the Secretary in accordance with paragraph (2)(B).

"(e) AUTHORIZED USES.—A Coastal Energy State, and a coastal political subdivision of such a State, shall use amounts paid under this section (including any such amounts deposited into a trust fund administered by the State or coastal political subdivision dedicated to uses consistent with this subsection), in compliance with Federal and State law and the approved plan of the State, only for one or more of the following purposes:

"(1) Projects and activities, including educational activities, for the conservation, protection, or restoration of coastal areas including wetlands.

"(2) Mitigating damage to, or the protection of, fish, wildlife, or natural resources.

"(3) To the extent of such sums as are considered reasonable by the Secretary, planning assistance and administrative costs of complying with this section.

"(4) Implementation of federally approved plans or programs for marine, coastal, subsidence, or conservation management or for protection of resources from natural disasters.

"(5) Mitigating impacts of outer Continental Shelf activities through funding onshore infrastructure and public service needs.

"(f) COMPLIANCE WITH AUTHORIZED USES.—If the Secretary determines that an expenditure of an amount made by a Coastal Energy State or coastal political subdivision is not in accordance with the approved plan of the State (including the plans of coastal political subdivisions included in such plan), the Secretary shall not disburse any further amounts under this section to that Coastal Energy State or coastal political subdivision until—

"(1) the amount is repaid to the Secretary; or

"(2) the Secretary approves an amendment to the plan that authorizes the expenditure.

"(g) ARBITRATION OF STATE AND LOCAL DISPUTES.—The Secretary may require, as a condition of any payment under this section, that a State or coastal political subdivision in a State must submit to arbitration—

"(1) any dispute between the State or coastal political subdivision (or both) and the Secretary regarding implementation of this section; and

"(2) any dispute between the State and political subdivision regarding implementation of this section, including any failure to include, in the plan submitted by the State for purposes of subsection (d), any spending plan of the coastal political subdivision.

"(h) ADMINISTRATIVE EXPENSES.—Of amounts in the Fund each fiscal year, the Secretary may use up to one-half of one percent for the administrative costs of implementing this section.

"(i) FUNDING FOR CONSORTIUM.—

"(1) IN GENERAL.—Of amounts deposited into the Fund in each fiscal year 2004 through 2013, 2 percent shall be available to the Secretary of the Interior to provide funding for the Coastal Restoration and Enhancement through Science and Technology program.

"(2) TREATMENT.—Any amount available under this subsection for a fiscal year shall, for purposes of determining the amount appropriated under any other provision of law that authorizes appropriations to carry out the program referred to in paragraph (1), be treated as appropriated under that other provision.

"(j) DISPOSITION OF FUNDS.—A Coastal Energy State or coastal political subdivision may use funds provided to such entity under this section, subject to subsection (e), for any payment that is eligible to be made with funds provided to States under section 35 of the Mineral Leasing Act (30 U.S.C. 191).

"(k) REPORTS.—Each fiscal year following a fiscal year in which a Coastal Energy State or coastal political subdivision of a Coastal Energy State receives funds under this section, the Governor of the Coastal Energy State, in coordination with such State's coastal political subdivisions, shall account for all funds so received for the previous fiscal year in a written report to the Secretary. The report shall include, in accordance with regulations prescribed by the Secretary, a description of all projects and activities that received such funds. In order to avoid duplication, such report may incorporate, by reference, any other reports required to be submitted under other provisions of law.

"(l) SIGNS.—The Secretary shall require, as a condition of any allocation of funds provided with amounts made available by this section, that each State and coastal political subdivision shall include on any sign otherwise installed at any site at or near an entrance or public use focal point area for which such funds are used, a statement that the existence or development of the site (or both), as appropriate, is a product of such funds.".

(b) ADDITIONAL AMENDMENTS.—Section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a) is amended—

(1) by striking subsection (a);

(2) in subsection (c) by striking "For fiscal year 2001, $150,000,000 is" and inserting "Such sums as may be necessary to carry out this section are";

(3) in subsection (d)(1)(B) by striking ", except" and all that follows through the end of the sentence and inserting a period;

(4) by redesignating subsections (b) though (g) in order as subsection (a) through (f); and

(5) by striking "subsection (f)" each place it appears and inserting "subsection (e)".

(c) UTILIZATION OF COASTAL RESTORATION AND ENHANCEMENT THROUGH SCIENCE AND TECHNOLOGY PROGRAM.—

(1) AUTHORIZATION.—The Secretary of the Interior and the Secretary of Commerce may each use the Coastal Restoration and Enhancement through Science and Technology program for the purposes of—

(A) assessing the effects of coastal habitat restoration techniques;

(B) developing improved ecosystem modeling capabilities for improved predictions of coastal conditions and habitat change and for developing new technologies for restoration activities; and

(C) identifying economic options to address socioeconomic consequences of coastal degradation.

(2) CONDITION.—The Secretary of the Interior, in consultation with the Secretary of Commerce, shall ensure that the program—

(A) establishes procedures designed to avoid duplicative activities among Federal agencies and entities receiving Federal funds;

(B) coordinates with persons involved in similar activities; and

(C) establishes a mechanism to collect, organize, and make available information and findings on coastal restoration.

(3) REPORT.—Not later than September 30, 2008, the Secretary of the Interior, in consultation with the Secretary of Commerce, shall transmit a report to the Congress on the effectiveness of any Federal and State restoration efforts conducted pursuant to this subsection and make recommendations to improve coordinated coastal restoration efforts.

(4) FUNDING.—For each of fiscal years 2004 through 2013, there is authorized to be appropriated to the Secretary $10,000,000 to carry out activities under this subsection.

Subtitle C—Reforms to the Board of Directors of the Tennessee Valley Authority

SEC. 1431. CHANGE IN COMPOSITION, OPERATION, AND DUTIES OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY.

The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended by striking section 2 and inserting the following:

"SEC. 2. MEMBERSHIP, OPERATION, AND DUTIES OF THE BOARD OF DIRECTORS.

"(a) MEMBERSHIP.—

"(1) APPOINTMENT.—The Board of Directors of the Corporation (referred to in this Act as the 'Board') shall be composed of 9 members appointed by the President by and with the advice and consent of the Senate, at least 5 of whom shall be a legal resident of a State any part of which is in the service area of the Corporation.

"(2) CHAIRMAN.—The members of the Board shall select 1 of the members to act as chairman of the Board.

"(b) QUALIFICATIONS.—To be eligible to be appointed as a member of the Board, an individual—

"(1) shall be a citizen of the United States;

"(2) shall have management expertise relative to a large for-profit or nonprofit corporate, government, or academic structure;

"(3) shall not be an employee of the Corporation; and

"(4) shall make full disclosure to Congress of any investment or other financial interest that the individual holds in the energy industry.

"(c) RECOMMENDATIONS.—In appointing members of the Board, the President shall—

"(1) consider recommendations from such public officials as—

"(A) the Governors of States in the service area;

"(B) individual citizens;

"(C) business, industrial, labor, electric power distribution, environmental, civic, and service organizations; and

"(D) the congressional delegations of the States in the service area; and

"(2) seek qualified members from among persons who reflect the diversity, including the geographical diversity, and needs of the service area of the Corporation.

"(d) TERMS.—

"(1) IN GENERAL.—A member of the Board shall serve a term of 5 years. A member of the Board whose term has expired may continue to serve after the member's term has expired until the date on which a successor takes office, except that the member shall not serve beyond the end of the session of Congress in which the term of the member expires.

"(2) VACANCIES.—A member appointed to fill a vacancy on the Board occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of that term.

"(e) QUORUM.—

"(1) IN GENERAL.—Five of the members of the Board shall constitute a quorum for the transaction of business.

"(2) VACANCIES.—A vacancy on the Board shall not impair the power of the Board to act.

"(f) COMPENSATION.—

"(1) IN GENERAL.—A member of the Board shall be entitled to receive—

"(A) a stipend of—

"(i) $45,000 per year; or

"(ii)(I) in the case of the chairman of any committee of the Board created by the Board, $46,000 per year; or

"(II) in the case of the chairman of the Board, $50,000 per year; and

"(B) travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703 of title 5, United States Code.

"(2) ADJUSTMENTS IN STIPENDS.—The amount of the stipend under paragraph (1)(A)(i) shall be adjusted by the same percentage, at the same time and manner, and subject to the same limitations as are applicable to adjustments under section 5318 of title 5, United States Code.

"(g) DUTIES.—

"(1) IN GENERAL.—The Board shall—

"(A) establish the broad goals, objectives, and policies of the Corporation that are appropriate to carry out this Act;

"(B) develop long-range plans to guide the Corporation in achieving the goals, objectives, and policies of the Corporation and provide assistance to the chief executive officer to achieve those goals, objectives, and policies;

"(C) ensure that those goals, objectives, and policies are achieved;

"(D) approve an annual budget for the Corporation;

"(E) adopt and submit to Congress a conflict-of-interest policy applicable to members of the Board and employees of the Corporation;

"(F) establish a compensation plan for employees of the Corporation in accordance with subsection (i);

"(G) approve all compensation (including salary or any other pay, bonuses, benefits, incentives, and any other form of remuneration) of all managers and technical personnel that report directly to the chief executive officer (including any adjustment to compensation);

"(H) ensure that all activities of the Corporation are carried out in compliance with applicable law;

"(I) create an audit committee, composed solely of Board members independent of the management of the Corporation, which shall—

"(i) in consultation with the inspector general of the Corporation, recommend to the Board an external auditor;

"(ii) receive and review reports from the external auditor of the Corporation and inspector general of the Corporation; and

"(iii) make such recommendations to the Board as the audit committee considers necessary;

"(J) create such other committees of Board members as the Board considers to be appropriate;

"(K) conduct such public hearings as it deems appropriate on issues that could have a substantial effect on—

"(i) the electric ratepayers in the service area; or

"(ii) the economic, environmental, social, or physical well-being of the people of the service area;

"(L) establish the electricity rates charged by the Corporation; and

"(M) engage the services of an external auditor for the Corporation.

"(2) MEETINGS.—The Board shall meet at least 4 times each year.

"(h) CHIEF EXECUTIVE OFFICER.—

"(1) APPOINTMENT.—The Board shall appoint a person to serve as chief executive officer of the Corporation.

"(2) QUALIFICATIONS.—

"(A) IN GENERAL.—To serve as chief executive officer of the Corporation, a person—

"(i) shall have senior executive-level management experience in large, complex organizations;

"(ii) shall not be a current member of the Board or have served as a member of the Board within 2 years before being appointed chief executive officer; and

"(iii) shall comply with the conflict-of-interest policy adopted by the Board.

"(B) EXPERTISE.—In appointing a chief executive officer, the Board shall give particular consideration to appointing an individual with expertise in the electric industry and with strong financial skills.

"(3) TENURE.—The chief executive officer shall serve at the pleasure of the Board.

"(i) COMPENSATION PLAN.—

"(1) IN GENERAL.—The Board shall approve a compensation plan that specifies all compensation (including salary or any other pay, bonuses, benefits, incentives, and any other form of remuneration) for the chief executive officer and employees of the Corporation.

"(2) ANNUAL SURVEY.—The compensation plan shall be based on an annual survey of the prevailing compensation for similar positions in private industry, including engineering and electric utility companies, publicly owned electric utilities, and Federal, State, and local governments.

"(3) CONSIDERATIONS.—The compensation plan shall provide that education, experience, level of responsibility, geographic differences, and retention and recruitment needs will be taken into account in determining compensation of employees.

"(4) POSITIONS AT OR BELOW LEVEL IV.—The chief executive officer shall determine the salary and benefits of employees whose annual salary is not greater than the annual rate payable for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(5) POSITIONS ABOVE LEVEL IV.—On the recommendation of the chief executive officer, the Board shall approve the salaries of employees whose annual salaries would be in excess of the annual rate payable for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.".

SEC. 1432. CHANGE IN MANNER OF APPOINTMENT OF STAFF.

Section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b) is amended—

(1) by striking the first undesignated paragraph and inserting the following:

"(a) APPOINTMENT BY THE CHIEF EXECUTIVE OFFICER.—The chief executive officer shall appoint, with the advice and consent of the Board, and without regard to the provisions of the civil service laws applicable to officers and employees of the United States, such managers, assistant managers, officers, employees, attorneys, and agents as are necessary for the transaction of the business of the Corporation."; and

(2) by striking "All contracts" and inserting the following:

"(b) WAGE RATES.—All contracts".

SEC. 1433. CONFORMING AMENDMENTS.

(a) The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended—

(1) by striking "board of directors" each place it appears and inserting "Board of Directors"; and

(2) by striking "board" each place it appears and inserting "Board".

(b) Section 9 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h) is amended—

(1) by striking "The Comptroller General of the United States shall audit" and inserting the following:

"(c) AUDITS.—The Comptroller General of the United States shall audit"; and

(2) by striking "The Corporation shall determine" and inserting the following:

"(d) ADMINISTRATIVE ACCOUNTS AND BUSINESS DOCUMENTS.—The Corporation shall determine".

(c) Title 5, United States Code, is amended—

(1) in section 5314, by striking "Chairman, Board of Directors of the Tennessee Valley Authority."; and

(2) in section 5315, by striking "Members, Board of Directors of the Tennessee Valley Authority.".

SEC. 1434. APPOINTMENTS; EFFECTIVE DATE; TRANSITION.

(a) APPOINTMENTS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the President shall submit to the Senate nominations of 6 persons to serve as members of the Board of Directors of the Tennessee Valley Authority in addition to the members serving on the date of enactment of this Act.

(2) INITIAL TERMS.—Notwithstanding section 2(d) of the Tennessee Valley Authority Act of 1933 (as amended by this subtitle), in making the appointments under paragraph (1), the President shall appoint—

(A) 2 members for a term to expire on May 18, 2006;

(B) 2 members for a term to expire on May 18, 2008; and

(C) 2 members for a term to expire on May 18, 2010.

(b) EFFECTIVE DATE.—The amendments made by this section and sections 1431, 1432, and 1433 take effect on the later of the date on which at least 3 persons nominated under subsection (a) take office or May 18, 2005.

(c) SELECTION OF CHAIRMAN.—The Board of Directors of the Tennessee Valley Authority shall select 1 of the members to act as chairman of the Board not later than 30 days after the effective date of this section.

(d) CONFLICT-OF-INTEREST POLICY.—The Board of Directors of the Tennessee Valley Authority shall adopt and submit to Congress a conflict-of-interest policy, as required by section 2(g)(1)(E) of the Tennessee Valley Authority Act of 1933 (as amended by this subtitle), as soon as practicable after the effective date of this section.

(e) TRANSITION.—A person who is serving as a member of the board of directors of the Tennessee Valley Authority on the date of enactment of this Act—

(1) shall continue to serve until the end of the current term of the member; but

(2) after the effective date specified in subsection (b), shall serve under the terms of the Tennessee Valley Authority Act of 1933 (as amended by this subtitle); and

(3) may not be reappointed.

Subtitle D—Other Provisions

SEC. 1441. CONTINUATION OF TRANSMISSION SECURITY ORDER.

Department of Energy Order No. 202-03-2, issued by the Secretary of Energy on August 28, 2003, shall remain in effect unless rescinded by Federal statute.

SEC. 1442. REVIEW OF AGENCY DETERMINATIONS.

Section 7 of the Natural Gas Act (15 U.S.C. 717f) is amended by adding at the end the following:

“(i)(1) The United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any civil action—

“(A) for review of any order or action of any Federal or State administrative agency or officer to issue, condition, or deny any permit, license, concurrence, or approval issued under authority of any Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), required for the construction of a natural gas pipeline for which a certificate of public convenience and necessity is issued by the Commission under this section;

“(B) alleging unreasonable delay by any Federal or State administrative agency or officer in entering an order or taking other action described in subparagraph (A); or

“(C) challenging any decision made or action taken under this subsection.

“(2)(A) If the Court finds that the order, action, or failure to act is not consistent with the public convenience and necessity (as determined by the Commission under this section), or would prevent the construction and operation of natural gas facilities authorized by the certificate of public convenience and necessity, the permit, license, concurrence, or approval that is the subject of the order, action, or failure to act shall be deemed to have been issued subject to any conditions set forth in the reviewed order or action that the Court finds to be consistent with the public convenience and necessity.

“(B) For purposes of paragraph (1)(B), the failure of an agency or officer to issue any such permit, license, concurrence, or approval within the later of 1 year after the date of filing of an application for the permit, license, concurrence, or approval or 60 days after the date of issuance of the certificate of public convenience and necessity under this section, shall be considered to be unreasonable delay unless the Court, for good cause shown, determines otherwise.

“(C) The Court shall set any action brought under paragraph (1) for expedited consideration.”.

SEC. 1443. ATTAINMENT DATES FOR DOWNWIND OZONE NONATTAINMENT AREAS.

Section 181 of the Clean Air Act (42 U.S.C.7511) is amended by adding the following new subsection at the end thereof:

“(d) EXTENDED ATTAINMENT DATE FOR CERTAIN DOWNWIND AREAS.—

“(1) DEFINITIONS.—(A) The term ‘upwind area’ means an area that—

“(i) significantly contributes to nonattainment in another area, hereinafter referred to as a ‘downwind area’; and

“(ii) is either—

“(I) a nonattainment area with a later attainment date than the downwind area, or

“(II) an area in another State that the Administrator has found to be significantly contributing to nonattainment in the downwind area in violation of section 110(a)(2)(D) and for which the Administrator has established requirements through notice and comment rulemaking to eliminate the emissions causing such significant contribution.

“(B) The term ‘current classification’ means the classification of a downwind area under this section at the time of the determination under paragraph (2).

“(2) EXTENSION.—If the Administrator—

“(A) determines that any area is a downwind area with respect to a particular national ambient air quality standard for ozone; and

“(B) approves a plan revision for such area as provided in paragraph (3) prior to a reclassification under subsection (b)(2)(A),

the Administrator, in lieu of such reclassification, shall extend the attainment date for such downwind area for such standard in accordance with paragraph (5).

“(3) REQUIRED APPROVAL.—In order to extend the attainment date for a downwind area under this subsection, the Administrator must approve a revision of the applicable implementation plan for the downwind area for such standard that—

“(A) complies with all requirements of this Act applicable under the current classification of the downwind area, including any requirements applicable to the area under section 172(c) for such standard; and

“(B) includes any additional measures needed to demonstrate attainment by the extended attainment date provided under this subsection.

“(4) PRIOR RECLASSIFICATION DETERMINATION.—If, no more than 18 months prior to the date of enactment of this subsection, the Administrator made a reclassification determination under subsection (b)(2)(A) for any downwind area, and the Administrator approves the plan revision referred to in paragraph (3) for such area within 12 months after the date of enactment of this subsection, the reclassification shall be withdrawn and the attainment date extended in accordance with paragraph (5) upon such approval. The Administrator shall also withdraw a reclassification determination under subsection (b)(2)(A) made after the date of enactment of this subsection and extend the attainment date in accordance with paragraph (5) if the Administrator approves the plan revision referred to in paragraph (3) within 12 months of the date the reclassification determination under subsection (b)(2)(A) is issued. In such instances the ‘current classification’ used for evaluating the revision of the applicable implementation plan under paragraph (3) shall be the classification of the downwind area under this section immediately prior to such reclassification.

“(5) EXTENDED DATE.—The attainment date extended under this subsection shall provide for attainment of such national ambient air quality standard for ozone in the downwind area as expeditiously as practicable but no later than the date on which the last reductions in pollution transport necessary for attainment in the downwind area are required to be achieved by the upwind area or areas.”.

SEC. 1444. ENERGY PRODUCTION INCENTIVES

(a) IN GENERAL.—A State may provide to any entity—

(1) a credit against any tax or fee owed to the State under a State law, or

(2) any other tax incentive,

determined by the State to be appropriate, in the amount calculated under and in accordance with a formula determined by the State, for production described in subsection (b) in the State by the entity that receives such credit or such incentive.

(b) ELIGIBLE ENTITIES.—Subsection (a) shall apply with respect to the production in the State of—

(1) electricity from coal mined in the State and used in a facility, if such production meets all applicable Federal and State laws and if such facility uses scrubbers or other forms of clean coal technology,

(2) electricity from a renewable source such as wind, solar, or biomass, or

(3) ethanol.

(c) EFFECT ON INTERSTATE COMMERCE—Any action taken by a State in accordance with this section with respect to a tax or fee payable, or incentive applicable, for any period beginning after the date of the enactment of this Act shall—

(1) be considered to be a reasonable regulation of commerce; and

(2) not be considered to impose an undue burden on interstate commerce or to otherwise impair, restrain, or discriminate, against interstate commerce.

SEC. 1445. USE OF GRANULAR MINE TAILINGS.

(a) AMENDMENT.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following:

“SEC. 6006. USE OF GRANULAR MINE TAILINGS.

“(a) MINE TAILINGS.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as ‘chat’, for—

“(A) cement or concrete projects; and

“(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

“(2) REQUIREMENTS.—In establishing criteria under paragraph (1), the Administrator shall consider—

“(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

“(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

“(3) PUBLIC PARTICIPATION.—In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

“(4) APPLICABILITY OF CRITERIA.—On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

“(b) EFFECT OF SECTIONS.—Nothing in this section or section 6005 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.”.

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle F the following:

“Sec. 6006. Use of granular mine tailings.”.

TITLE XV—ETHANOL AND MOTOR FUELS

Subtitle A—General Provisions

SEC. 1501. RENEWABLE CONTENT OF MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended—

(1) by redesignating subsection (o) as subsection (q); and

(2) by inserting after subsection (n) the following:

“(o) RENEWABLE FUEL PROGRAM.—

“(1) DEFINITIONS.—In this section:

“(A) ETHANOL.—(i) The term ‘cellulosic biomass ethanol’ means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

“(I) dedicated energy crops and trees;

“(II) wood and wood residues;

“(III) plants;

“(IV) grasses;

''(V) agricultural residues; and

''(VI) fibers.

''(ii) The term 'waste derived ethanol' means ethanol derived from—

''(I) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

''(II) municipal solid waste.

''(B) RENEWABLE FUEL.—

''(i) IN GENERAL.—The term 'renewable fuel' means motor vehicle fuel that—

''(I)(aa) is produced from grain, starch, oilseeds, or other biomass; or

''(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found; and

''(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

''(ii) INCLUSION.—The term 'renewable fuel' includes cellulosic biomass ethanol, waste derived ethanol, and biodiesel (as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)) and any blending components derived from renewable fuel (provided that only the renewable fuel portion of any such blending component shall be considered part of the applicable volume under the renewable fuel program established by this subsection).

''(C) SMALL REFINERY.—The term 'small refinery' means a refinery for which average aggregate daily crude oil throughput for the calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

''(2) RENEWABLE FUEL PROGRAM.—

''(A) IN GENERAL.—Not later than 1 year after the enactment of this subsection, the Administrator shall promulgate regulations ensuring that motor vehicle fuel sold or dispensed to consumers in the contiguous United States, on an annual average basis, contains the applicable volume of renewable fuel as specified in subparagraph (B). Regardless of the date of promulgation, such regulations shall contain compliance provisions for refiners, blenders, and importers, as appropriate, to ensure that the requirements of this section are met, but shall not restrict where renewable fuel can be used, or impose any per-gallon obligation for the use of renewable fuel. If the Administrator does not promulgate such regulations, the applicable percentage referred to in paragraph (4), on a volume percentage of gasoline basis, shall be 2.2 in 2005.

''(B) APPLICABLE VOLUME.—

''(i) CALENDAR YEARS 2005 THROUGH 2012.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2005 through 2012 shall be determined in accordance with the following table:

“Applicable volume of renewable fuel

Calendar year:	**(In billions of gallons)**
2005	3.1
2006	3.3
2007	3.5
2008	3.8
2009	4.1
2010	4.4
2011	4.7
2012	5.0

''(ii) CALENDAR YEAR 2013 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2013 and each calendar year thereafter shall be equal to the product obtained by multiplying—

''(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce in the calendar year; and

''(II) the ratio that—

''(aa) 5.0 billion gallons of renewable fuels; bears to

''(bb) the number of gallons of gasoline sold or introduced into commerce in calendar year 2012.

''(3) NON-CONTIGUOUS STATE OPT-IN.—Upon the petition of a non-contiguous State, the Administrator may allow the renewable fuel program established by subtitle A of title XV of the Energy Policy Act of 2003 to apply in such non-contiguous State at the same time or any time after the Administrator promulgates regulations under paragraph (2). The Administrator may promulgate or revise regulations under paragraph (2), establish applicable percentages under paragraph (4), provide for the generation of credits under paragraph (6), and take such other actions as may be necessary to allow for the application of the renewable fuels program in a non-contiguous State.

''(4) APPLICABLE PERCENTAGES.—

''(A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE SALES.—Not later than October 31 of each of calendar years 2004 through 2011, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate of the volumes of gasoline that will be sold or introduced into commerce in the United States during the following calendar year.

''(B) DETERMINATION OF APPLICABLE PERCENTAGES.—

''(i) IN GENERAL.—Not later than November 30 of each of the calendar years 2004 through 2011, based on the estimate provided under subparagraph (A), the Administrator shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

''(ii) REQUIRED ELEMENTS.—The renewable fuel obligation determined for a calendar year under clause (i) shall—

''(I) be applicable to refiners, blenders, and importers, as appropriate;

''(II) be expressed in terms of a volume percentage of gasoline sold or introduced into commerce; and

''(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

''(C) ADJUSTMENTS.—In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

''(i) to prevent the imposition of redundant obligations to any person specified in subparagraph (B)(ii)(I); and

''(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (11).

''(5) EQUIVALENCY.—For the purpose of paragraph (2), 1 gallon of either cellulosic biomass ethanol or waste derived ethanol—

''(A) shall be considered to be the equivalent of 1.5 gallon of renewable fuel; or

''(B) if the cellulostic biomass ethanol or waste derived ethanol is derived from agricultural residue or is an agricultural byproduct (as that term is used in section 919 of the Energy Policy Act of 2003), shall be considered to be the equivalent of 2.5 gallons of renewable fuel.

''(6) CREDIT PROGRAM.—

''(A) IN GENERAL.—The regulations promulgated to carry out this subsection shall provide for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2). Such regulations shall provide for the generation of an appropriate amount of credits for biodiesel fuel. If a small refinery notifies the Administrator that it waives the exemption provided paragraph (11), the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

''(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

''(C) LIFE OF CREDITS.—A credit generated under this paragraph shall be valid to show compliance—

''(i) in the calendar year in which the credit was generated or the next calendar year; or

''(ii) in the calendar year in which the credit was generated or next two consecutive calendar years if the Administrator promulgates regulations under paragraph (7).

''(D) INABILITY TO PURCHASE SUFFICIENT CREDITS.—The regulations promulgated to carry out this subsection shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements under paragraph (2) to carry forward a renewable fuel deficit provided that, in the calendar year following the year in which the renewable fuel deficit is created, such person shall achieve compliance with the renewable fuel requirement under paragraph (2), and shall generate or purchase additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

''(7) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

''(A) STUDY.—For each of the calendar years 2005 through 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuels blending to determine whether there are excessive seasonal variations in the use of renewable fuels.

''(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator shall promulgate regulations to ensure that 35 percent or more of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) is used during each of the periods specified in subparagraph (D) of each subsequent calendar year.

''(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

''(i) less than 35 percent of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) has been used during one of the periods specified in subparagraph (D) of the calendar year;

''(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

''(iii) promulgating regulations or other requirements to impose a 35 percent or more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

''(D) PERIODS.—The two periods referred to in this paragraph are—

''(i) April through September; and

''(ii) January through March and October through December.

''(E) EXCLUSIONS.—Renewable fuels blended or consumed in 2005 in a State which has received a waiver under section 209(b) shall not be included in the study in subparagraph (A).

''(8) WAIVERS.—

''(A) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirement of paragraph (2) in whole or in part on petition by one or more States by reducing the national quantity of renewable fuel required under this subsection—

''(i) based on a determination by the Administrator, after public notice and opportunity for *comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or*

"(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply or distribution capacity to meet the requirement.

"(B) PETITIONS FOR WAIVERS.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirement of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

"(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

"(9) STUDY AND WAIVER FOR INITIAL YEAR OF PROGRAM.—Not later than 180 days after the enactment of this subsection, the Secretary of Energy shall complete for the Administrator a study assessing whether the renewable fuels requirement under paragraph (2) will likely result in significant adverse consumer impacts in 2005, on a national, regional, or State basis. Such study shall evaluate renewable fuel supplies and prices, blendstock supplies, and supply and distribution system capabilities. Based on such study, the Secretary shall make specific recommendations to the Administrator regarding waiver of the requirements of paragraph (2), in whole or in part, to avoid any such adverse impacts. Within 270 days after the enactment of this subsection, the Administrator shall, consistent with the recommendations of the Secretary, waive, in whole or in part, the renewable fuels requirement under paragraph (2) by reducing the national quantity of renewable fuel required under this subsection in 2005. This paragraph shall not be interpreted as limiting the Administrator's authority to waive the requirements of paragraph (2) in whole, or in part, under paragraph (8) or paragraph (10), pertaining to waivers.

"(10) ASSESSMENT AND WAIVER.—The Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall evaluate the requirement of paragraph (2) and determine, prior to January 1, 2007, and prior to January 1 of any subsequent year in which the applicable volume of renewable fuel is increased under paragraph (2)(B), whether the requirement of paragraph (2), including the applicable volume of renewable fuel contained in paragraph (2)(B) should remain in effect, in whole or in part, during 2007 or any year or years subsequent to 2007. In evaluating the requirement of paragraph (2) and in making any determination under this section, the Administrator shall consider the best available information and data collected by accepted methods or best available means regarding—

"(A) the capacity of renewable fuel producers to supply an adequate amount of renewable fuel at competitive prices to fulfill the requirement of paragraph (2);

"(B) the potential of the requirement of paragraph (2) to significantly raise the price of gasoline, food (excluding the net price impact on the requirement in paragraph (2) on commodities used in the production of ethanol), or heating oil for consumers in any significant area or region of the country above the price that would otherwise apply to such commodities in the absence of such requirement;

"(C) the potential of the requirement of paragraph (2) to interfere with the supply of fuel in any significant gasoline market or region of the country, including interference with the efficient operation of refiners, blenders, importers, wholesale suppliers, and retail vendors of gasoline, and other motor fuels; and

"(D) the potential of the requirement of paragraph (2) to cause or promote exceedances of Federal, State, or local air quality standards.

If the Administrator determines, by clear and convincing information, after public notice and the opportunity for comment, that the requirement of paragraph (2) would have significant and meaningful adverse impact on the supply of fuel and related infrastructure or on the economy, public health, or environment of any significant area or region of the country, the Administrator may waive, in whole or in part, the requirement of paragraph (2) in any one year for which the determination is made for that area or region of the country, except that any such waiver shall not have the effect of reducing the applicable volume of renewable fuel specified in paragraph (2)(B) with respect to any year for which the determination is made. In determining economic impact under this paragraph, the Administrator shall not consider the reduced revenues available from the Highway Trust Fund (section 9503 of the Internal Revenue Code of 1986) as a result of the use of ethanol.

"(11) SMALL REFINERIES.—

"(A) IN GENERAL.—The requirement of paragraph (2) shall not apply to small refineries until the first calendar year beginning more than 5 years after the first year set forth in the table in paragraph (2)(B)(i). Not later than December 31, 2007, the Secretary of Energy shall complete for the Administrator a study to determine whether the requirement of paragraph (2) would impose a disproportionate economic hardship on small refineries. For any small refinery that the Secretary of Energy determines would experience a disproportionate economic hardship, the Administrator shall extend the small refinery exemption for such small refinery for no less than two additional years.

"(B) ECONOMIC HARDSHIP.—

"(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the Administrator for an extension of the exemption from the requirement of paragraph (2) for the reason of disproportionate economic hardship. In evaluating a hardship petition, the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study in addition to other economic factors.

"(ii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the receipt of the petition.

"(C) CREDIT PROGRAM.—If a small refinery notifies the Administrator that it waives the exemption provided by this Act, the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

"(D) OPT-IN FOR SMALL REFINERS.—A small refinery shall be subject to the requirements of this section if it notifies the Administrator that it waives the exemption under subparagraph (A).

"(12) ETHANOL MARKET CONCENTRATION ANALYSIS.—

"(A) ANALYSIS.—

"(i) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, and annually thereafter, the Federal Trade Commission shall perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price setting and other anticompetitive behavior.

"(ii) SCORING.—For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

"(B) REPORT.—Not later than December 1, 2004, and annually thereafter, the Federal Trade Commission shall submit to Congress and the Administrator a report on the results of the market concentration analysis performed under subparagraph (A)(i).".

(b) PENALTIES AND ENFORCEMENT.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended as follows:

(1) In paragraph (1)—

(A) in the first sentence, by striking "or (n)" each place it appears and inserting "(n), or (o)"; and

(B) in the second sentence, by striking "or (m)" and inserting "(m), or (o)".

(2) In the first sentence of paragraph (2), by striking "and (n)" each place it appears and inserting "(n), and (o)".

(c) SURVEY OF RENEWABLE FUEL MARKET.—

(1) SURVEY AND REPORT.—Not later than December 1, 2006, and annually thereafter, the Administrator of the Environmental Protection Agency (in consultation with the Secretary of Energy acting through the Administrator of the Energy Information Administration) shall—

(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

(i) conventional gasoline containing ethanol;

(ii) reformulated gasoline containing ethanol;

(iii) conventional gasoline containing renewable fuel; and

(iv) reformulated gasoline containing renewable fuel; and

(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the "Administrator") may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate. The Administrator, to avoid duplicative requirements, shall rely, to the extent practicable, on existing reporting and recordkeeping requirements and other information available to the Administrator including gasoline distribution patterns that include multistate use areas.

(3) APPLICABLE LAW.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.

SEC. 1502. FUELS SAFE HARBOR.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, no renewable fuel, as defined by section 211(o)(1) of the Clean Air Act, or methyl tertiary butyl ether (hereinafterin this section referred to as "MTBE"), used or intended to be used as a motor vehicle fuel, nor any motor vehicle fuel containing such renewable fuel or MTBE, shall be deemed a defective product by virtue of the fact that it is, or contains, such a renewable fuel or MTBE, if it does not violate a control or prohibition imposed by the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") under section 211 of such Act, and the manufacturer is in compliance with all requests for information under subsection (b) of such section 211 of such Act. If the safe harbor provided by this section does not apply, the existence of a claim of defective product shall be determined under otherwise applicable law. Nothing in this subsection shall be construed to affect the liability of any person for environmental remediation costs, drinking water contamination, negligence for spills or other reasonably foreseeable events.

public or private nuisance, trespass, breach of warranty, breach of contract, or any other liability other than liability based upon a claim of defective product.

(b) EFFECTIVE DATE.—This section shall be effective as of September 5, 2003, and shall apply with respect to all claims filed on or after that date.

SEC. 1503. FINDINGS AND MTBE TRANSITION ASSISTANCE.

(a) FINDINGS.—Congress finds that—

(1) since 1979, methyl tertiary butyl ether (hereinafter in this section referred to as "MTBE") has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;

(2) Public Law 101–549 (commonly known as the "Clean Air Act Amendments of 1990") (42 U.S.C. 7401 et seq.) established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight;

(3) at the time of the adoption of the fuel oxygen standard, Congress was aware that significant use of MTBE would result from the adoption of that standard, and that the use of MTBE would likely be important to the cost-effective implementation of that program;

(4) Congress was aware that gasoline and its component additives can and do leak from storage tanks;

(5) the fuel industry responded to the fuel oxygenate standard established by Public Law 101–549 by making substantial investments in—

(A) MTBE production capacity; and

(B) systems to deliver MTBE-containing gasoline to the marketplace;

(6) having previously required oxygenates like MTBE for air quality purposes, Congress has—

(A) reconsidered the relative value of MTBE in gasoline;

(B) decided to establish a date certain for action by the Environmental Protection Agency to prohibit the use of MTBE in gasoline; and

(C) decided to provide for the elimination of the oxygenate requirement for reformulated gasoline and to provide for a renewable fuels content requirement for motor fuel; and

(7) it is appropriate for Congress to provide some limited transition assistance—

(A) to merchant producers of MTBE who produced MTBE in response to a market created by the oxygenate requirement contained in the Clean Air Act; and

(B) for the purpose of mitigating any fuel supply problems that may result from the elimination of the oxygenate requirement for reformulated gasoline and from the decision to establish a date certain for action by the Environmental Protection Agency to prohibit the use of MTBE in gasoline.

(b) PURPOSES.—The purpose of this section is to provide assistance to merchant producers of MTBE in making the transition from producing MTBE to producing other fuel additives.

(c) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—Section 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amended by adding at the end the following:

"(5) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

"(A) IN GENERAL.—

"(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether (hereinafter in this subsection referred to as 'MTBE') in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of iso-octane, iso-octene, alkylates, or renewable fuels.

"(ii) DETERMINATION.—The Administrator, in consultation with the Secretary of Energy, may determine that transition assistance for the production of iso-octane, iso-octene, alkylates, or renewable fuels is inconsistent with the provisions of subparagraph (B) and, on that basis, may deny applications for grants authorized by this paragraph.

"(B) FURTHER GRANTS.—The Secretary of Energy, in consultation with the Administrator, may also further make grants to merchant producers of MTBE in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of such other fuel additives (unless the Administrator determines that such fuel additives may reasonably be anticipated to endanger public health or the environment) that, consistent with this subsection—

"(i) have been registered and have been tested or are being tested in accordance with the requirements of this section; and

"(ii) will contribute to replacing gasoline volumes lost as a result of amendments made to subsection (k) of this section by section 1504(a) and 1506 of the Energy Policy Act of 2003.

"(C) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this paragraph if the production facility—

"(i) is located in the United States; and

"(ii) produced MTBE for consumption before April 1, 2003 and ceased production at any time after the date of enactment of this paragraph.

"(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $250,000,000 for each of fiscal years 2005 through 2012, to remain available until expended.".

(d) EFFECT ON STATE LAW.—The amendments made to the Clean Air Act by this title have no effect regarding any available authority of States to limit the use of methyl tertiary butyl ether in motor vehicle fuel.

SEC. 1504. USE OF MTBE.

(a) IN GENERAL.—Subject to subsections (e) and (f), not later than December 31, 2014, the use of methyl tertiary butyl ether (hereinafter in this section referred to as "MTBE") in motor vehicle fuel in any State other than a State described in subsection (c) is prohibited.

(b) REGULATIONS.—The Administrator of the Environmental Protection Agency (hereafter referred to in this section as the "Administrator") shall promulgate regulations to effect the prohibition in subsection (a).

(c) STATES THAT AUTHORIZE USE.—A State described in this subsection is a State in which the Governor of the State submits a notification to the Administrator authorizing the use of MTBE in motor vehicle fuel sold or used in the State.

(d) PUBLICATION OF NOTICE.—The Administrator shall publish in the Federal Register each notice submitted by a State under subsection (c).

(e) TRACE QUANTITIES.—In carrying out subsection (a), the Administrator may allow trace quantities of MTBE, not to exceed 0.5 percent by volume, to be present in motor vehicle fuel in cases that the Administrator determines to be appropriate.

(f) LIMITATION.—The Administrator, under authority of subsection (a), shall not prohibit or control the production of MTBE for export from the United States or for any other use other than for use in motor vehicle fuel.

SEC. 1505. NATIONAL ACADEMY OF SCIENCES REVIEW AND PRESIDENTIAL DETERMINATION.

(a) NAS REVIEW.—Not later than May 31, 2013, the Secretary shall enter into an arrangement with the National Academy of Sciences to review the use of methyl tertiary butyl ether (hereafter referred to in this section as "MTBE") in fuel and fuel additives. The review shall only use the best available scientific information and data collected by accepted methods or the best available means. The review shall examine the use of MTBE in fuel and fuel additives, significant beneficial and detrimental effects of this use on environmental quality or public health or welfare including the costs and benefits of such effects, likely effects of controls or prohibitions on MTBE regarding fuel availability and price, and other appropriate and reasonable actions that are available to protect the environment or public health or welfare from any detrimental effects of the use of MTBE in fuel or fuel additives. The review shall be peer-reviewed prior to publication and all supporting data and analytical models shall be available to the public. The review shall be completed no later than May 31, 2014.

(b) PRESIDENTIAL DETERMINATION.—No later than June 30, 2014, the President may make a determination that restrictions on the use of MTBE to be implemented pursuant to section 1504 shall not take place and that the legal authority contained in section 1504 to prohibit the use of MTBE in motor vehicle fuel shall become null and void.

SEC. 1506. ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.

(a) ELIMINATION.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended as follows:

(A) In paragraph (2)—

(i) in the second sentence of subparagraph (A), by striking "(including the oxygen content requirement contained in subparagraph (B))";

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(B) In paragraph (3)(A), by striking clause (v).

(C) In paragraph (7)—

(i) in subparagraph (A)—

(I) by striking clause (i); and

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(ii) in subparagraph (C)—

(I) by striking clause (ii).

(II) by redesignating clause (iii) as clause (ii).

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect 270 days after the date of enactment of this Act, except that such amendments shall take effect upon such date of enactment in any State that has received a waiver under section 209(b) of the Clean Air Act.

(b) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSION REDUCTIONS.—Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended as follows:

(1) By striking "Within 1 year after the enactment of the Clean Air Act Amendments of 1990," and inserting the following:

"(A) IN GENERAL.—Not later than November 15, 1991,".

(2) By adding at the end the following:

"(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—

"(i) DEFINITIONS.—In this subparagraph the term 'PADD' means a Petroleum Administration for Defense District.

"(ii) REGULATIONS REGARDING EMISSIONS OF TOXIC AIR POLLUTANTS.—Not later than 270 days after the date of enactment of this subparagraph the Administrator shall establish, for each refinery or importer, standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refinery or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000, determined on the basis of data collected by the Administrator with respect to the refinery or importer.

"(iii) STANDARDS APPLICABLE TO SPECIFIC REFINERIES OR IMPORTERS.—

"(I) APPLICABILITY OF STANDARDS.—For any calendar year, the standards applicable to a refinery or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refinery or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000.

"(II) APPLICABILITY OF OTHER STANDARDS.—For any calendar year, the quantity of gasoline produced or distributed by a refinery or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

"(iv) CREDIT PROGRAM.—The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

"(v) REGIONAL PROTECTION OF TOXICS REDUCTION BASELINES.—

"(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, and not later than April 1 of each calendar year that begins after that date of enactment, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

"(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 1999 and 2000; and

"(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

"(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 1999 and 2000, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

"(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

"(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refinery or importer shall meet the standards applicable under clause (ii) not later than April 1 of the year following the report in subclause (II) and for subsequent years.

"(vi) REGULATIONS TO CONTROL HAZARDOUS AIR POLLUTANTS FROM MOTOR VEHICLES AND MOTOR VEHICLE FUELS.—Not later than July 1, 2004, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).".

(c) CONSOLIDATION IN REFORMULATED GASOLINE REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall revise the reformulated gasoline regulations under subpart D of part 80 of title 40, Code of Federal Regulations, to consolidate the regulations applicable to VOC-Control Regions 1 and 2 under section 80.41 of that title by eliminating the less stringent requirements applicable to gasoline designated for VOC-Control Region 2 and instead applying the more stringent requirements applicable to gasoline designated for VOC-Control Region 1.

(d) SAVINGS CLAUSE.—Nothing in this section is intended to affect or prejudice either any legal claims or actions with respect to regulations promulgated by the Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the "Administrator") prior to the date of enactment of this Act regarding emissions of toxic air pollutants from motor vehicles or the adjustment of standards applicable to a specific refinery or importer made under such prior regulations and the Administrator may apply such adjustments to the standards applicable to such refinery or importer under clause (iii)(I) of section 211(k)(1)(B) of the Clean Air Act, except that—

(1) the Administrator shall revise such adjustments to be based only on calendar years 1999–2000; and

(2) for adjustments based on toxic air pollutant emissions from reformulated gasoline significantly below the national annual average emissions of toxic air pollutants from all reformulated gasoline, the Administrator may revise such adjustments to take account of the scope of Federal or State prohibitions on the use of methyl tertiary butyl ether imposed after the date of the enactment of this paragraph, except that any such adjustment shall require such refiner or importer, to the greatest extent practicable, to maintain the reduction achieved during calendar years 1999–2000 in the average annual aggregate emissions of toxic air pollutants from reformulated gasoline produced or distributed by the refinery or importer; Provided that, any such adjustment shall not be made at a level below the average percentage of reductions of emissions of toxic air pollutants for reformulated gasoline supplied to PADD I during calendar years 1999–2000.

SEC. 1507. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by inserting after subsection (o) the following:

"(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

"(1) ANTI-BACKSLIDING ANALYSIS.—

"(A) DRAFT ANALYSIS.—Not later than 4 years after the date of enactment of this subsection, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by subtitle A of title XV of the Energy Policy Act of 2003.

"(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment but not later than 5 years after the date of enactment of this paragraph, the Administrator shall publish the analysis in final form.

"(2) EMISSIONS MODEL.—For the purposes of this subsection, as soon as the necessary data are available, the Administrator shall develop and finalize an emissions model that reasonably reflects the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2005.".

SEC. 1508. DATA COLLECTION.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following:

"(m) RENEWABLE FUELS SURVEY.—(1) In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information both on a national and regional basis, including each of the following:

"(A) The quantity of renewable fuels produced.

"(B) The quantity of renewable fuels blended.

"(C) The quantity of renewable fuels imported.

"(D) The quantity of renewable fuels demanded.

"(E) Market price data.

"(F) Such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this section.

"(2) The Administrator shall also collect or estimate information both on a national and regional basis, pursuant to subparagraphs (A) through (F) of paragraph (1), for the 5 years prior to implementation of this subsection.

"(3) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).".

SEC. 1509. REDUCING THE PROLIFERATION OF STATE FUEL CONTROLS.

(a) EPA APPROVAL OF STATE PLANS WITH FUEL CONTROLS.—Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended by adding at the end the following: "The Administrator shall not approve a control or prohibition respecting the use of a fuel or fuel additive under this subparagraph unless the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register a finding that, in the Administrator's judgment, such control or prohibition will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.".

(b) STUDY.—The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the "Administrator"), in cooperation with the Secretary of Energy, shall undertake a study of the projected effects on air quality, the proliferation of fuel blends, fuel availability, and fuel costs of providing a preference for each of the following:

(A) Reformulated gasoline referred to in subsection (k) of section 211 of the Clean Air Act.

(B) A low RVP gasoline blend that has been certified by the Administrator as having a Reid Vapor Pressure of 7.0 pounds per square inch (psi).

(C) A low RVP gasoline blend that has been certified by the Administrator as having a Reid Vapor Pressure of 7.8 pounds per square inch (psi).

In carrying out such study, the Administrator shall obtain comments from affected parties. The Administrator shall submit the results of such study to the Congress not later than 18 months after the date of enactment of this Act, together with any recommended legislative changes.

SEC. 1510. FUEL SYSTEM REQUIREMENTS HARMONIZATION STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") and the Secretary of Energy shall jointly conduct a study of Federal, State, and local requirements concerning motor vehicle fuels, including—

(A) requirements relating to reformulated gasoline, volatility (measured in Reid vapor pressure), oxygenated fuel, and diesel fuel; and

(B) other requirements that vary from State to State, region to region, or locality to locality.

(2) REQUIRED ELEMENTS.—The study shall assess—

(A) the effect of the variety of requirements described in paragraph (1) on the supply, quality, and price of motor vehicle fuels available to consumers in various States and localities;

(B) the effect of the requirements described in paragraph (1) on achievement of—

(i) national, regional, and local air quality standards and goals; and

(ii) related environmental and public health protection standards and goals;

(C) the effect of Federal, State, and local motor vehicle fuel regulations, including multiple motor vehicle fuel requirements, on—

(i) domestic refineries;

(ii) the fuel distribution system; and

(iii) industry investment in new capacity;

(D) the effect of the requirements described in paragraph (1) on emissions from vehicles, refineries, and fuel handling facilities;

(E) the feasibility of developing national or regional motor vehicle fuel slates for the 48 contiguous States that, while improving air quality at the national, regional and local levels consistent with the attainment of national ambient air quality standards, could—

(i) enhance flexibility in the fuel distribution infrastructure and improve fuel fungibility;

(ii) reduce price volatility and costs to consumers and producers;

(iii) provide increased liquidity to the gasoline market; and

(iv) enhance fuel quality, consistency, and supply;

(F) the feasibility of providing incentives to promote cleaner burning motor vehicle fuel; and

(G) the extent to which improvements in air quality and any increases or decreases in the price of motor fuel can be projected to result from the Environmental Protection Agency's Tier II requirements for conventional gasoline and vehicle emission systems, the reformulated gasoline program, the renewable content requirements established by this subtitle, State programs regarding gasoline volatility, and any other requirements imposed by States or localities affecting the composition of motor fuel.

(b) Report.—

(1) In general.—Not later than December 31, 2007, the Administrator and the Secretary of Energy shall submit to Congress a report on the results of the study conducted under subsection (a).

(2) Recommendations.—

(A) In general.—The report under this subsection shall contain recommendations for legislative and administrative actions that may be taken—

(i) to improve air quality;

(ii) to reduce costs to consumers and producers; and

(iii) to increase supply liquidity.

(B) Required considerations.—The recommendations under subparagraph (A) shall take into account the need to provide advance notice of required modifications to refinery and fuel distribution systems in order to ensure an adequate supply of motor vehicle fuel in all States.

(3) Consultation.—In developing the report under this subsection, the Administrator and the Secretary of Energy shall consult with—

(A) the Governors of the States;

(B) automobile manufacturers;

(C) motor vehicle fuel producers and distributors; and

(D) the public.

SEC. 1511. COMMERCIAL BYPRODUCTS FROM MUNICIPAL SOLID WASTE AND CELLULOSIC BIOMASS LOAN GUARANTEE PROGRAM.

(a) Definition of Municipal Solid Waste.—In this section, the term "municipal solid waste" has the meaning given the term "solid waste" in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(b) Establishment of Program.—The Secretary of Energy (hereinafter in this section referred to as the "Secretary") shall establish a program to provide guarantees of loans by private institutions for the construction of facilities for the processing and conversion of municipal solid waste and cellulosic biomass into fuel ethanol and other commercial byproducts.

(c) Requirements.—The Secretary may provide a loan guarantee under subsection (b) to an applicant if—

(1) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in subsection (b);

(2) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(3) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(d) Criteria.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(1) meet all applicable Federal and State permitting requirements;

(2) are most likely to be successful; and

(3) are located in local markets that have the greatest need for the facility because of—

(A) the limited availability of land for waste disposal;

(B) the availability of sufficient quantities of cellulosic biomass; or

(C) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

(e) Maturity.—A loan guaranteed under subsection (b) shall have a maturity of not more than 20 years.

(f) Terms and Conditions.—The loan agreement for a loan guaranteed under subsection (b) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

(g) Assurance of Repayment.—The Secretary shall require that an applicant for a loan guarantee under subsection (b) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

(h) Guarantee Fee.—The recipient of a loan guarantee under subsection (b) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(i) Full Faith and Credit.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest. The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(j) Reports.—Until each guaranteed loan under this section has been repaid in full, the Secretary shall annually submit to Congress a report on the activities of the Secretary under this section.

(k) Authorization of Appropriations.—There are authorized to be appropriated such sums as are necessary to carry out this section.

(l) Termination of Authority.—The authority of the Secretary to issue a loan guarantee under subsection (b) terminates on the date that is 10 years after the date of enactment of this Act.

SEC. 1512. RESOURCE CENTER.

(a) Definition.—In this section, the term "RFG State" means a State in which is located one or more covered areas (as defined in section 211(k)(10)(D) of the Clean Air Act (42 U.S.C. 7545(k)(10)(D)).

(b) Authorization of Appropriations for Resource Center.—There are authorized to be appropriated, for a resource center to further develop bioconversion technology using low-cost biomass for the production of ethanol at the Center for Biomass-Based Energy at the University of Mississippi and the University of Oklahoma, $4,000,000 for each of fiscal years 2004 through 2006.

(c) Renewable Fuel Production Research and Development Grants.—

(1) In general.—The Administrator of the Environmental Protection Agency shall provide grants for the research into, and development and implementation of, renewable fuel production technologies in RFG States with low rates of ethanol production, including low rates of production of cellulosic biomass ethanol.

(2) Eligibility.—

(A) In general.—The entities eligible to receive a grant under this subsection are academic institutions in RFG States, and consortia made up of combinations of academic institutions, industry, State government agencies, or local government agencies in RFG States, that have proven experience and capabilities with relevant technologies.

(B) Application.—To be eligible to receive a grant under this subsection, an eligible entity shall submit to the Administrator an application in such manner and form, and accompanied by such information, as the Administrator may specify.

(3) Authorization of appropriations.—There are authorized to be appropriated to carry out this subsection $25,000,000 for each of fiscal years 2004 through 2008.

SEC. 1513. CELLULOSIC BIOMASS AND WASTE-DERIVED ETHANOL CONVERSION ASSISTANCE.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding at the end the following:

"(r) Cellulosic Biomass and Waste-Derived Ethanol Conversion Assistance.—

"(1) In general.—The Secretary of Energy may provide grants to merchant producers of cellulosic biomass ethanol and waste-derived ethanol in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of ethanol.

"(2) Eligible production facilities.—A production facility shall be eligible to receive a grant under this subsection if the production facility—

"(A) is located in the United States; and

"(B) uses cellulosic biomass or waste-derived feedstocks derived from agricultural residues, municipal solid waste, or agricultural byproducts as that term is used in section 919 of the Energy Policy Act of 2003.

"(3) Authorization of appropriations.—There are authorized to be appropriated the following amounts to carry out this subsection:

"(A) $100,000,000 for fiscal year 2004.

"(B) $250,000,000 for fiscal year 2005.

"(C) $400,000,000 for fiscal year 2006.".

SEC. 1514. BLENDING OF COMPLIANT REFORMULATED GASOLINES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding at the end the following:

"(s) Blending of Compliant Reformulated Gasolines.—

"(1) In general.—Notwithstanding subsections (h) and (k) and subject to the limitations in paragraph (2) of this subsection, it shall not be a violation of this subtitle for a gasoline retailer, during any month of the year, to blend at a retail location batches of ethanol-blended

and non-ethanol-blended reformulated gasoline, provided that—

"(A) each batch of gasoline to be blended has been individually certified as in compliance with subsections (h) and (k) prior to being blended;

"(B) the retailer notifies the Administrator prior to such blending, and identifies the exact location of the retail station and the specific tank in which such blending will take place;

"(C) the retailer retains and, as requested by the Administrator or the Administrator's designee, makes available for inspection such certifications accounting for all gasoline at the retail outlet; and

"(D) the retailer does not, between June 1 and September 15 of each year, blend a batch of VOC-controlled, or 'summer', gasoline with a batch of non-VOC-controlled, or 'winter', gasoline (as these terms are defined under subsections (h) and (k)).

"(2) LIMITATIONS.—

"(A) FREQUENCY LIMITATION.—A retailer shall only be permitted to blend batches of compliant reformulated gasoline under this subsection a maximum of two blending periods between May 1 and September 15 of each calendar year.

"(B) DURATION OF BLENDING PERIOD.—Each blending period authorized under subparagraph (A) shall extend for a period of no more than 10 consecutive calendar days.

"(3) SURVEYS.—A sample of gasoline taken from a retail location that has blended gasoline within the past 30 days and is in compliance with subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not be used in a VOC survey mandated by 40 C.F.R. Part 80.

"(4) STATE IMPLEMENTATION PLANS.—A State shall be held harmless and shall not be required to revise its State implementation plan under section 110 to account for the emissions from blended gasoline authorized under paragraph (1).

"(5) PRESERVATION OF STATE LAW.—Nothing in this subsection shall—

"(A) preempt existing State laws or regulations regulating the blending of compliant gasolines; or

"(B) prohibit a State from adopting such restrictions in the future.

"(6) REGULATIONS.—The Administrator shall promulgate, after notice and comment, regulations implementing this subsection within one year after the date of enactment of this subsection.

"(7) EFFECTIVE DATE.—This subsection shall become effective 15 months after the date of its enactment and shall apply to blended batches of reformulated gasoline on or after that date, regardless of whether the implementing regulations required by paragraph (6) have been promulgated by the Administrator by that date.

"(8) LIABILITY.—No person other than the person responsible for blending under this subsection shall be subject to an enforcement action or penalties under subsection (d) solely arising from the blending of compliant reformulated gasolines by the retailers.

"(9) FORMULATION OF GASOLINE.—This subsection does not grant authority to the Administrator or any State (or any subdivision thereof) to require reformulation of gasoline at the refinery to adjust for potential or actual emissions increases due to the blending authorized by this subsection.".

Subtitle B—Underground Storage Tank Compliance

SEC. 1521. SHORT TITLE.

This subtitle may be cited as the "Underground Storage Tank Compliance Act of 2003".

SEC. 1522. LEAKING UNDERGROUND STORAGE TANKS.

(a) IN GENERAL.—Section 9004 of the Solid Waste Disposal Act (42 U.S.C. 6991c) is amended by adding at the end the following:

"(f) TRUST FUND DISTRIBUTION.—

"(1) IN GENERAL.—

"(A) AMOUNT AND PERMITTED USES OF DISTRIBUTION.—The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 9014(2)(A) for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—

"(i) actions taken by the State under section 9003(h)(7)(A);

"(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1);

"(iii) any State fund or State assurance program carried out under subsection (c)(1) for a release from an underground storage tank regulated under this subtitle to the extent that, as determined by the State in accordance with guidelines developed jointly by the Administrator and the States, the financial resources of the owner and operator of the underground storage tank (including resources provided by a program in accordance with subsection (c)(1)) are not adequate to pay the cost of a corrective action without significantly impairing the ability of the owner or operator to continue in business; or

"(iv) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subtitle.

"(B) USE OF FUNDS FOR ENFORCEMENT.—In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subtitle.

"(C) PROHIBITED USES.—Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

"(2) ALLOCATION.—

"(A) PROCESS.—Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 9003(h)(7)(A), the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

"(B) DIVERSION OF STATE FUNDS.—The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subtitle, with the exception of those transfers that had been completed earlier than the date of enactment of this subsection.

"(C) REVISIONS TO PROCESS.—The Administrator may revise the allocation process referred to in subparagraph (A) after—

"(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and

"(ii) taking into consideration, at a minimum, each of the following:

"(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.

"(II) The number of federally regulated underground storage tanks in the States.

"(III) The performance of the States in implementing and enforcing the program.

"(IV) The financial needs of the States.

"(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

"(3) DISTRIBUTIONS TO STATE AGENCIES.—Distributions from the Trust Fund under this subsection shall be made directly to a State agency that—

"(A) enters into a cooperative agreement referred to in paragraph (2)(A); or

"(B) is enforcing a State program approved under this section.

"(4) COST RECOVERY PROHIBITION.—Funds from the Trust Fund provided by States to owners or operators under paragraph (1)(A)(iii) shall not be subject to cost recovery by the Administrator under section 9003(h)(6).".

(b) WITHDRAWAL OF APPROVAL OF STATE FUNDS.—Section 9004(c) of the Solid Waste Disposal Act (42 U.S.C. 6991c(c)) is amended by inserting the following new paragraph at the end thereof:

"(6) WITHDRAWAL OF APPROVAL.—After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial responsibility mechanism without withdrawing approval of a State underground storage tank program under section 9004(a).".

SEC. 1523. INSPECTION OF UNDERGROUND STORAGE TANKS.

(a) INSPECTION REQUIREMENTS.—Section 9005 of the Solid Waste Disposal Act (42 U.S.C. 6991d) is amended by inserting the following new subsection at the end thereof:

"(c) INSPECTION REQUIREMENTS.—

"(1) UNINSPECTED TANKS.—In the case of underground storage tanks regulated under this subtitle that have not undergone an inspection since December 22, 1998, not later than 2 years after the date of enactment of this subsection, the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subtitle and the regulations under this subtitle (40 C.F.R. 280) or a requirement or standard of a State program developed under section 9004.

"(2) PERIODIC INSPECTIONS.—After completion of all inspections required under paragraph (1), the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of each underground storage tank regulated under this subtitle at least once every 3 years to determine compliance with this subtitle and the regulations under this subtitle (40 C.F.R. 280) or a requirement or standard of a State program developed under section 9004. The Administrator may extend for up to one additional year the first 3-year inspection interval under this paragraph if the State demonstrates that it has insufficient resources to complete all such inspections within the first 3-year period.

"(3) INSPECTION AUTHORITY.—Nothing in this section shall be construed to diminish the Administrator's or a State's authorities under section 9005(a).".

(b) STUDY OF ALTERNATIVE INSPECTION PROGRAMS.—The Administrator of the Environmental Protection Agency, in coordination with a State, shall gather information on compliance assurance programs that could serve as an alternative to the inspection programs under section 9005(c) of the Solid Waste Disposal Act (42 U.S.C. 6991d(c)) and shall, within 4 years after the date of enactment of this Act, submit a report to the Congress containing the results of such study.

SEC. 1524. OPERATOR TRAINING.

(a) IN GENERAL.—Section 9010 of the Solid Waste Disposal Act (42 U.S.C. 6991i) is amended to read as follows:

"SEC. 9010. OPERATOR TRAINING.

"(a) GUIDELINES.—

"(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Underground Storage Tank Compliance Act of 2003, in consultation and cooperation with States and after public notice and opportunity for comment, the Administrator shall publish guidelines that specify training requirements for persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks.

"(2) CONSIDERATIONS.—The guidelines described in paragraph (1) shall take into account—

"(A) State training programs in existence as of the date of publication of the guidelines;

"(B) training programs that are being employed by tank owners and tank operators as of the date of enactment of the Underground Storage Tank Compliance Act of 2003;

"(C) the high turnover rate of tank operators and other personnel;

"(D) the frequency of improvement in underground storage tank equipment technology;

"(E) the nature of the businesses in which the tank operators are engaged; and

"(F) such other factors as the Administrator determines to be necessary to carry out this section.

"(b) STATE PROGRAMS.—

"(1) IN GENERAL.—Not later than 2 years after the date on which the Administrator publishes the guidelines under subsection (a)(1), each State that receives funding under this subtitle shall develop State-specific training requirements that are consistent with the guidelines developed under subsection (a)(1).

"(2) REQUIREMENTS.—State requirements described in paragraph (1) shall—

"(A) be consistent with subsection (a);

"(B) be developed in cooperation with tank owners and tank operators;

"(C) take into consideration training programs implemented by tank owners and tank operators as of the date of enactment of this section; and

"(D) be appropriately communicated to tank owners and operators.

"(3) FINANCIAL INCENTIVE.—The Administrator may award to a State that develops and implements requirements described in paragraph (1), in addition to any funds that the State is entitled to receive under this subtitle, not more than $200,000, to be used to carry out the requirements.

"(c) OPERATORS.—All persons having primary daily on-site management responsibility for the operation and maintenance of any underground storage tank shall—

"(1) meet the training requirements developed under subsection (b); and

"(2) repeat the applicable requirements developed under subsection (b), if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with—

"(A) a requirement or standard promulgated by the Administrator under section 9003; or

"(B) a requirement or standard of a State program approved under section 9004.".

(b) STATE PROGRAM REQUIREMENT.—Section 9004(a) of the Solid Waste Disposal Act (42 U.S.C. 6991c(a)) is amended by striking "and" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting "; and", and by adding the following new paragraph at the end thereof:

"(9) State-specific training requirements as required by section 9010.".

(c) ENFORCEMENT.—Section 9006(d)(2) of such Act (42 U.S.C. 6991e) is amended as follows:

(1) By striking "or" at the end of subparagraph (B).

(2) By adding the following new subparagraph after subparagraph (C):

"(D) the training requirements established by States pursuant to section 9010 (relating to operator training); or".

(d) TABLE OF CONTENTS.—The item relating to section 9010 in table of contents for the Solid Waste Disposal Act is amended to read as follows:

"Sec. 9010. Operator training.".

SEC. 1525. REMEDIATION FROM OXYGENATED FUEL ADDITIVES.

Section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)) is amended as follows:

(1) In paragraph (7)(A)—

(A) by striking "paragraphs (1) and (2) of this subsection" and inserting "paragraphs (1), (2), and (12)" ; and

(B) by striking "and including the authorities of paragraphs (4), (6), and (8) of this subsection" and inserting "and the authority under sections 9011 and 9012 and paragraphs (4), (6), and (8),".

(2) By adding at the end the following:

"(12) REMEDIATION OF OXYGENATED FUEL CONTAMINATION.—

"(A) IN GENERAL.—The Administrator and the States may use funds made available under section 9014(2)(B) to carry out corrective actions with respect to a release of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment.

"(B) APPLICABLE AUTHORITY.—The Administrator or a State shall carry out subparagraph (A) in accordance with paragraph (2), and in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).".

SEC. 1526. RELEASE PREVENTION, COMPLIANCE, AND ENFORCEMENT.

(a) RELEASE PREVENTION AND COMPLIANCE.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding at the end the following:

"SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND COMPLIANCE.

"Funds made available under section 9014(2)(D) from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subtitle—

"(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of State regulations pertaining to underground storage tanks regulated under this subtitle; and

"(2) by the Administrator, for tanks regulated under this subtitle (including under a State program approved under section 9004).".

(b) GOVERNMENT-OWNED TANKS.—Section 9003 of the Solid Waste Disposal Act (42 U.S.C. 6991b) is amended by adding at the end the following:

"(i) GOVERNMENT-OWNED TANKS.—

"(1) STATE COMPLIANCE REPORT.—(A) Not later than 2 years after the date of enactment of this subsection, each State that receives funding under this subtitle shall submit to the Administrator a State compliance report that—

"(i) lists the location and owner of each underground storage tank described in subparagraph (B) in the State that, as of the date of submission of the report, is not in compliance with section 9003; and

"(ii) specifies the date of the last inspection and describes the actions that have been and will be taken to ensure compliance of the underground storage tank listed under clause (i) with this subtitle.

"(B) An underground storage tank described in this subparagraph is an underground storage tank that is—

"(i) regulated under this subtitle; and

"(ii) owned or operated by the Federal, State, or local government.

"(C) The Administrator shall make each report, received under subparagraph (A), available to the public through an appropriate media.

"(2) FINANCIAL INCENTIVE.—The Administrator may award to a State that develops a report described in paragraph (1), in addition to any other funds that the State is entitled to receive under this subtitle, not more than $50,000, to be used to carry out the report.

"(3) NOT A SAFE HARBOR.—This subsection does not relieve any person from any obligation or requirement under this subtitle.".

(c) PUBLIC RECORD.—Section 9002 of the Solid Waste Disposal Act (42 U.S.C. 6991a) is amended by adding at the end the following:

"(d) PUBLIC RECORD.—

"(1) IN GENERAL.—The Administrator shall require each State that receives Federal funds to carry out this subtitle to maintain, update at least annually, and make available to the public, in such manner and form as the Administrator shall prescribe (after consultation with States), a record of underground storage tanks regulated under this subtitle.

"(2) CONSIDERATIONS.—To the maximum extent practicable, the public record of a State, respectively, shall include, for each year—

"(A) the number, sources, and causes of underground storage tank releases in the State;

"(B) the record of compliance by underground storage tanks in the State with—

"(i) this subtitle; or

"(ii) an applicable State program approved under section 9004; and

"(C) data on the number of underground storage tank equipment failures in the State.".

(d) INCENTIVE FOR PERFORMANCE.—Section 9006 of the Solid Waste Disposal Act (42 U.S.C. 6991e) is amended by adding at the end the following:

"(e) INCENTIVE FOR PERFORMANCE.—Both of the following may be taken into account in determining the terms of a civil penalty under subsection (d):

"(1) The compliance history of an owner or operator in accordance with this subtitle or a program approved under section 9004.

"(2) Any other factor the Administrator considers appropriate.".

(e) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

"Sec. 9011. Use of funds for release prevention and compliance.".

SEC. 1527. DELIVERY PROHIBITION.

(a) IN GENERAL.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding at the end the following:

"SEC. 9012. DELIVERY PROHIBITION.

"(a) REQUIREMENTS.—

"(1) PROHIBITION OF DELIVERY OR DEPOSIT.—Beginning 2 years after the date of enactment of this section, it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for fuel delivery or deposit.

"(2) GUIDANCE.—Within 1 year after the date of enactment of this section, the Administrator and States that receive funding under this subtitle shall, in consultation with the underground storage tank owner and product delivery industries, for territory for which they are the primary implementing agencies, publish guidelines detailing the specific processes and procedures they will use to implement the provisions of this section. The processes and procedures include, at a minimum—

"(A) the criteria for determining which underground storage tank facilities are ineligible for delivery or deposit;

"(B) the mechanisms for identifying which facilities are ineligible for delivery or deposit to the underground storage tank owning and fuel delivery industries;

''(C) the process for reclassifying ineligible facilities as eligible for delivery or deposit; and

''(D) a delineation of, or a process for determining, the specified geographic areas subject to paragraph (4).

''(3) Delivery prohibition notice.—

''(A) Roster.—The Administrator and each State implementing agency that receives funding under this subtitle shall establish within 24 months after the date of enactment of this section a Delivery Prohibition Roster listing underground storage tanks under the Administrator's or the State's jurisdiction that are determined to be ineligible for delivery or deposit pursuant to paragraph (2).

''(B) Notification.—The Administrator and each State, as appropriate, shall make readily known, to underground storage tank owners and operators and to product delivery industries, the underground storage tanks listed on a Delivery Prohibition Roster by:

''(i) posting such Rosters, including the physical location and street address of each listed underground storage tank, on official web sites and, if the Administrator or the State so chooses, other electronic means;

''(ii) updating these Rosters periodically; and

''(iii) installing a tamper-proof tag, seal, or other device blocking the fill pipes of such underground storage tanks to prevent the delivery of product into such underground storage tanks.

''(C) Roster updates.—The Administrator and the State shall update the Delivery Prohibition Rosters as appropriate, but not less than once a month on the first day of the month.

''(D) Tampering with device.—

''(i) Prohibition.—It shall be unlawful for any person, other than an authorized representative of the Administrator or a State, as appropriate, to remove, tamper with, destroy, or damage a device installed by the Administrator or a State, as appropriate, under subparagraph (B)(iii) of this subsection.

''(ii) Civil penalties.—Any person violating clause (i) of this subparagraph shall be subject to a civil penalty not to exceed $10,000 for each violation.

''(4) Limitation.—

''(A) Rural and remote areas.—Subject to subparagraph (B), the Administrator or a State shall not include an underground storage tank on a Delivery Prohibition Roster under paragraph (3) if an urgent threat to public health, as determined by the Administrator, does not exist and if such a delivery prohibition would jeopardize the availability of, or access to, fuel in any rural and remote areas.

''(B) Applicability of limitation.—The limitation under subparagraph (A) shall apply only during the 180-day period following the date of a determination by the Administrator or the appropriate State that exercising the authority of paragraph (3) is limited by subparagraph (A).

''(b) Effect on state authority.—Nothing in this section shall affect the authority of a State to prohibit the delivery of a regulated substance to an underground storage tank.

''(c) Defense to violation.—A person shall not be in violation of subsection (a)(1) if the underground storage tank into which a regulated substance is delivered is not listed on the Administrator's or the appropriate State's Prohibited Delivery Roster 7 calendar days prior to the delivery being made.''.

(b) Enforcement.—Section 9006(d)(2) of such Act (42 U.S.C. 6991e(d)(2)) is amended as follows:

(1) By adding the following new subparagraph after subparagraph (D):

''(E) the delivery prohibition requirement established by section 9012,''.

(2) By adding the following new sentence at the end thereof: ''Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 9012 shall also be subject to the same civil penalty for each day of such violation.''.

(c) Table of Contents.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

''Sec. 9012. Delivery prohibition.''.

SEC. 1528. FEDERAL FACILITIES.

Section 9007 of the Solid Waste Disposal Act (42 U.S.C. 6991f) is amended to read as follows:

''SEC. 9007. FEDERAL FACILITIES.

''(a) In General.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank or underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local underground storage tank regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning underground storage tanks with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State law concerning underground storage tanks, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any underground storage tank of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

''(b) Review of and Report on Federal Underground Storage Tanks.—

''(1) Review.—Not later than 12 months after the date of enactment of the Underground Storage Tank Compliance Act of 2003, each Federal agency that owns or operates 1 or more underground storage tanks, or that manages land on which 1 or more underground storage tanks are located, shall submit to the Administrator, the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on the Environment and Public Works of the United States Senate a compliance strategy report that—

''(A) lists the location and owner of each underground storage tank described in this paragraph;

''(B) lists all tanks that are not in compliance with this subtitle that are owned or operated by the Federal agency;

''(C) specifies the date of the last inspection by a State or Federal inspector of each underground storage tank owned or operated by the agency;

''(D) lists each violation of this subtitle respecting any underground storage tank owned or operated by the agency;

''(E) describes the operator training that has been provided to the operator and other persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks owned or operated by the agency; and

''(F) describes the actions that have been and will be taken to ensure compliance for each underground storage tank identified under subparagraph (B).

''(2) Not a safe harbor.—This subsection does not relieve any person from any obligation or requirement under this subtitle.''.

SEC. 1529. TANKS ON TRIBAL LANDS.

(a) In General.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding the following at the end thereof:

''SEC. 9013. TANKS ON TRIBAL LANDS.

''(a) Strategy.—The Administrator, in coordination with Indian tribes, shall, not later than 1 year after the date of enactment of this section, develop and implement a strategy—

''(1) giving priority to releases that present the greatest threat to human health or the environment, to take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of—

''(A) an Indian reservation; or

''(B) any other area under the jurisdiction of an Indian tribe; and

''(2) to implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of—

''(A) an Indian reservation; or

''(B) any other area under the jurisdiction of an Indian tribe.

''(b) Report.—Not later than 2 years after the date of enactment of this section, the Administrator shall submit to Congress a report that summarizes the status of implementation and

enforcement of this subtitle in areas located wholly within—

"(1) the boundaries of Indian reservations; and

"(2) any other areas under the jurisdiction of an Indian tribe.

The Administrator shall make the report under this subsection available to the public.

"(c) NOT A SAFE HARBOR.—This section does not relieve any person from any obligation or requirement under this subtitle.

"(d) STATE AUTHORITY.—Nothing in this section applies to any underground storage tank that is located in an area under the jurisdiction of a State, or that is subject to regulation by a State, as of the date of enactment of this section.".

(b) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

"Sec. 9013. Tanks on Tribal lands.".

SEC. 1530. FUTURE RELEASE CONTAINMENT TECHNOLOGY.

Not later than 2 years after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, after consultation with States, shall make available to the public and to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate information on the effectiveness of alternative possible methods and means for containing releases from underground storage tanks systems.

SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding at the end the following:

"SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Administrator the following amounts:

"(1) To carry out subtitle I (except sections 9003(h), 9005(c), 9011 and 9012) $50,000,000 for each of fiscal years 2004 through 2008.

"(2) From the Trust Fund, notwithstanding section 9508(c)(1) of the Internal Revenue Code of 1986:

"(A) to carry out section 9003(h) (except section 9003(h)(12)) $200,000,000 for each of fiscal years 2004 through 2008;

"(B) to carry out section 9003(h)(12), $200,000,000 for each of fiscal years 2004 through 2008;

"(C) to carry out sections 9004(f) and 9005(c) $100,000,000 for each of fiscal years 2004 through 2008; and

"(D) to carry out sections 9011 and 9012 $55,000,000 for each of fiscal years 2004 through 2008.".

(b) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

"Sec. 9014. Authorization of appropriations.".

SEC. 1532. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Section 9001 of the Solid Waste Disposal Act (42 U.S.C. 6991) is amended as follows:

(1) By striking "For the purposes of this subtitle—" and inserting "In this subtitle:".

(2) By redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) as paragraphs (10), (7), (4), (3), (8), (5), (2), and (6), respectively.

(3) By inserting before paragraph (2) (as redesignated by paragraph (2) of this subsection) the following:

"(1) INDIAN TRIBE.—

"(A) IN GENERAL.— The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for special programs and services provided by the United States to Indians because of their status as Indians.

"(B) INCLUSIONS.—The term 'Indian tribe' includes an Alaska Native village, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and".

(4) By inserting after paragraph (8) (as redesignated by paragraph (2) of this subsection) the following:

"(9) TRUST FUND.— The term 'Trust Fund' means the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986.".

(b) CONFORMING AMENDMENTS.—The Solid Waste Disposal Act (42 U.S.C. 6901 and following) is amended as follows:

(1) Section 9003(f) (42 U.S.C. 6991b(f)) is amended—

(A) in paragraph (1), by striking "9001(2)(B)" and inserting "9001(7)(B)"; and

(B) in paragraphs (2) and (3), by striking "9001(2)(A)" each place it appears and inserting "9001(7)(A)".

(2) Section 9003(h) (42 U.S.C. 6991b(h)) is amended in paragraphs (1), (2)(C), (7)(A), and (11) by striking "Leaking Underground Storage Tank Trust Fund" each place it appears and inserting "Trust Fund".

(3) Section 9009 (42 U.S.C. 6991h) is amended—

(A) in subsection (a), by striking "9001(2)(B)" and inserting "9001(7)(B)"; and

(B) in subsection (d), by striking "section 9001(1) (A) and (B)" and inserting "subparagraphs (A) and (B) of section 9001(10)".

SEC. 1533. TECHNICAL AMENDMENTS.

The Solid Waste Disposal Act is amended as follows:

(1) Section 9001(4)(A) (42 U.S.C. 6991(4)(A)) is amended by striking "sustances" and inserting "substances".

(2) Section 9003(f)(1) (42 U.S.C. 6991b(f)(1)) is amended by striking "subsection (c) and (d) of this section" and inserting "subsections (c) and (d)".

(3) Section 9004(a) (42 U.S.C. 6991c(a)) is amended by striking "in 9001(2) (A) or (B) or both" and inserting "in subparagraph (A) or (B) of section 9001(7)".

(4) Section 9005 (42 U.S.C. 6991d) is amended—

(A) in subsection (a), by striking "study taking" and inserting "study, taking";

(B) in subsection (b)(1), by striking "relevent" and inserting "relevant"; and

(C) in subsection (b)(4), by striking "Evironmental" and inserting "Environmental".

TITLE XVI—STUDIES

SEC. 1601. STUDY ON INVENTORY OF PETROLEUM AND NATURAL GAS STORAGE.

(a) DEFINITION.—For purposes of this section "petroleum" means crude oil, motor gasoline, jet fuel, distillates, and propane.

(b) STUDY.—The Secretary of Energy shall conduct a study on petroleum and natural gas storage capacity and operational inventory levels, nationwide and by major geographical regions.

(c) CONTENTS.—The study shall address—

(1) historical normal ranges for petroleum and natural gas inventory levels;

(2) historical and projected storage capacity trends;

(3) estimated operation inventory levels below which outages, delivery slowdown, rationing interruptions in service, or other indicators of shortage begin to appear;

(4) explanations for inventory levels dropping below normal ranges; and

(5) the ability of industry to meet United States demand for petroleum and natural gas without shortages or price spikes, when inventory levels are below normal ranges.

(d) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall submit a report to Congress on the results of the study, including findings and any recommendations for preventing future supply shortages.

SEC. 1602. NATURAL GAS SUPPLY SHORTAGE REPORT.

(a) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary of Energy shall submit to Congress a report on natural gas supplies and demand. In preparing the report, the Secretary shall consult with experts in natural gas supply and demand as well as representatives of State and local units of government, tribal organizations, and consumer and other organizations. As the Secretary deems advisable, the Secretary may hold public hearings and provide other opportunities for public comment. The report shall contain recommendations for Federal actions that, if implemented, will result in a balance between natural gas supply and demand at a level that will ensure, to the maximum extent practicable, achievement of the objectives established in subsection (b).

(b) OBJECTIVES OF REPORT.—In preparing the report, the Secretary shall seek to develop a series of recommendations that will result in a balance between natural gas supply and demand adequate to—

(1) provide residential consumers with natural gas at reasonable and stable prices;

(2) accommodate long-term maintenance and growth of domestic natural gas-dependent industrial, manufacturing, and commercial enterprises;

(3) facilitate the attainment of national ambient air quality standards under the Clean Air Act;

(4) permit continued progress in reducing emissions associated with electric power generation; and

(5) support development of the preliminary phases of hydrogen-based energy technologies.

(c) CONTENTS OF REPORT.—The report shall provide a comprehensive analysis of natural gas supply and demand in the United States for the period from 2004 to 2015. The analysis shall include, at a minimum—

(1) estimates of annual domestic demand for natural gas that take into account the effect of Federal policies and actions that are likely to increase and decrease demand for natural gas;

(2) projections of annual natural gas supplies, from domestic and foreign sources, under existing Federal policies;

(3) an identification of estimated natural gas supplies that are not available under existing Federal policies;

(4) scenarios for decreasing natural gas demand and increasing natural gas supplies comparing relative economic and environmental impacts of Federal policies that—

(A) encourage or require the use of natural gas to meet air quality, carbon dioxide emission reduction, or energy security goals;

(B) encourage or require the use of energy sources other than natural gas, including coal, nuclear, and renewable sources;

(C) support technologies to develop alternative sources of natural gas and synthetic gas, including coal gasification technologies;

(D) encourage or require the use of energy conservation and demand side management practices; and

(E) affect access to domestic natural gas supplies; and

(5) recommendations for Federal actions to achieve the objectives of the report, including recommendations that—

(A) encourage or require the use of energy sources other than natural gas, including coal, nuclear, and renewable sources;

(B) encourage or require the use of energy conservation or demand side management practices;

(C) support technologies for the development of alternative sources of natural gas and synthetic gas, including coal gasification technologies; and

(D) will improve access to domestic natural gas supplies.

SEC. 1603. SPLIT-ESTATE FEDERAL OIL AND GAS LEASING AND DEVELOPMENT PRACTICES.

(a) Review.—In consultation with affected private surface owners, oil and gas industry, and other interested parties, the Secretary of the Interior shall undertake a review of the current policies and practices with respect to management of Federal subsurface oil and gas development activities and their effects on the privately owned surface. This review shall include—

(1) a comparison of the rights and responsibilities under existing mineral and land law for the owner of a Federal mineral lease, the private surface owners and the Department;

(2) a comparison of the surface owner consent provisions in section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304) concerning surface mining of Federal coal deposits and the surface owner consent provisions for oil and gas development, including coalbed methane production; and

(3) recommendations for administrative or legislative action necessary to facilitate reasonable access for Federal oil and gas activities while addressing surface owner concerns and minimizing impacts to private surface.

(b) Report.—The Secretary of the Interior shall report the results of such review to Congress not later than 180 days after the date of enactment of this Act.

SEC. 1604. RESOLUTION OF FEDERAL RESOURCE DEVELOPMENT CONFLICTS IN THE POWDER RIVER BASIN.

The Secretary of the Interior shall—

(1) undertake a review of existing authorities to resolve conflicts between the development of Federal coal and the development of Federal and non-Federal coalbed methane in the Powder River Basin in Wyoming and Montana; and

(2) not later than 6 months after the date of enactment of this Act, report to Congress on alternatives to resolve these conflicts and identification of a preferred alternative with specific legislative language, if any, required to implement the preferred alternative.

SEC. 1605. STUDY OF ENERGY EFFICIENCY STANDARDS.

The Secretary of Energy shall contract with the National Academy of Sciences for a study, to be completed within 1 year after the date of enactment of this Act, to examine whether the goals of energy efficiency standards are best served by measurement of energy consumed, and efficiency improvements, at the actual site of energy consumption, or through the full fuel cycle, beginning at the source of energy production. The Secretary shall submit the report to Congress.

SEC. 1606. TELECOMMUTING STUDY.

(a) Study Required.—The Secretary, in consultation with the Commission, the Director of the Office of Personnel Management, the Administrator of General Services, and the Administrator of NTIA, shall conduct a study of the energy conservation implications of the widespread adoption of telecommuting by Federal employees in the United States.

(b) Required Subjects of Study.—The study required by subsection (a) shall analyze the following subjects in relation to the energy saving potential of telecommuting by Federal employees:

(1) Reductions of energy use and energy costs in commuting and regular office heating, cooling, and other operations.

(2) Other energy reductions accomplished by telecommuting.

(3) Existing regulatory barriers that hamper telecommuting, including barriers to broadband telecommunications services deployment.

(4) Collateral benefits to the environment, family life, and other values.

(c) Report Required.—The Secretary shall submit to the President and Congress a report on the study required by this section not later than 6 months after the date of enactment of this Act. Such report shall include a description of the results of the analysis of each of the subject described in subsection (b).

(d) Definitions.—As used in this section:

(1) Secretary.—The term "Secretary" means the Secretary of Energy.

(2) Commission.—The term "Commission" means the Federal Communications Commission.

(3) NTIA.—The term "NTIA" means the National Telecommunications and Information Administration of the Department of Commerce.

(4) Telecommuting.—The term "telecommuting" means the performance of work functions using communications technologies, thereby eliminating or substantially reducing the need to commute to and from traditional worksites.

(5) Federal employee.—The term "Federal employee" has the meaning provided the term "employee" by section 2105 of title 5, United States Code.

SEC. 1607. LIHEAP REPORT.

Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall transmit to Congress a report on how the Low-Income Home Energy Assistance Program could be used more effectively to prevent loss of life from extreme temperatures. In preparing such report, the Secretary shall consult with appropriate officials in all 50 States and the District of Columbia.

SEC. 1608. OIL BYPASS FILTRATION TECHNOLOGY.

The Secretary of Energy and the Administrator of the Environmental Protection Agency shall—

(1) conduct a joint study of the benefits of oil bypass filtration technology in reducing demand for oil and protecting the environment;

(2) examine the feasibility of using oil bypass filtration technology in Federal motor vehicle fleets; and

(3) include in such study, prior to any determination of the feasibility of using oil bypass filtration technology, the evaluation of products and various manufacturers.

SEC. 1609. TOTAL INTEGRATED THERMAL SYSTEMS.

The Secretary of Energy shall—

(1) conduct a study of the benefits of total integrated thermal systems in reducing demand for oil and protecting the environment; and

(2) examine the feasibility of using total integrated thermal systems in Department of Defense and other Federal motor vehicle fleets.

SEC. 1610. UNIVERSITY COLLABORATION.

Not later than 2 years after the date of enactment of this Act, the Secretary of Energy shall transmit to Congress a report that examines the feasibility of promoting collaborations between large institutions of higher education and small institutions of higher education through grants, contracts, and cooperative agreements made by the Secretary for energy projects. The Secretary shall also consider providing incentives for the inclusion of small institutions of higher education, including minority-serving institutions, in energy research grants, contracts, and cooperative agreements.

SEC. 1611. RELIABILITY AND CONSUMER PROTECTION ASSESSMENT.

Not later than 5 years after the date of enactment of this Act, and each 5 years thereafter, the Federal Energy Regulatory Commission shall assess the effects of the exemption of electric cooperatives and government-owned utilities from Commission regulation under section 201(f) of the Federal Power Act. The assessment shall include any effects on—

(1) reliability of interstate electric transmission networks;

(2) benefit to consumers, and efficiency, of competitive wholesale electricity markets;

(3) just and reasonable rates for electricity consumers; and

(4) the ability of the Commission to protect electricity consumers.

If the Commission finds that the 201(f) exemption results in adverse effects on consumers or electric reliability, the Commission shall make appropriate recommendations to Congress pursuant to section 311 of the Federal Power Act.

And the Senate agree to the same.

From the Committee on Energy and Commerce, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

Billy Tauzin,
Michael Bilirakis,
Joe Barton,
Fred Upton,
Cliff Stearns,
Paul Gillmor,
John Shimkus,

From the Committee on Agriculture, for consideration of secs. 30202, 30208, 30212, Title III of Division C, secs. 30604, 30901, and 30903 of the House bill and secs. 265, 301, 604, 941–948, 950, 1103, 1221, 1311–1313, and 2008 of the Senate amendment, and modifications committed to conference:

Bob Goodlatte,
Frank D. Lucas,
Charles W. Stenholm,

From the Committee on Armed Services, for consideration of secs. 11005, 11010, 14001–14007, 14009–14015, 21805 and 21806 of the House bill and secs. 301, 501–507, 509, 513, 809, 821, 914, 920, 1401, 1407–1409, 1411, 1801, and 1803 of the Senate amendment, and modifications committed to conference:

Duncan Hunter,
Curt Weldon,

From the Committee on Education and the Workforce, for consideration of secs. 11021, 12014, 14033, and 30406 of the House bill and secs. 715, 774, 901, 903, 1505, and 1507 of the Senate amendment, and modifications committed to conference:

Sam Johnson,

From the Committee on Financial Services, for consideration of Division G of the House bill and secs. 931–940 and 950 of the Senate amendment and modifications committed to conference:

Robert W. Ney,

From the Committee on Government Reform, for consideration of secs. 11002, 11005, 11006, 11010, 11011, 14025, 14033, and 22002 of the House bill and secs. 263, 805, 806, 914–916, 918, 920, 1406, and 1410 of the Senate amendment, and modifications committed to conference:

Tom Davis,
Tim Murphy,

From the Committee on the Judiciary, for consideration of secs. 12008, 12401, 14014, 14026, 14027, 14028, 14033, 16012, 16045, 16084, 30101, 30210, and 30408 of the House bill and secs. 206, 209, 253, 531–532, 708, 767, 783, and 1109 of the Senate amendment, and modifications committed to conference:

Lamar Smith,

From the Committee on Resources, for consideration of secs. 12005, 12007, 12011, 12101, 13001, 21501, 21521–21530, Division C, and sec. 60009 of the House bill and secs. 201, 265, 272, 301, 401–407, 602–606, 609, 612, 705, 707, 712, 721, 1234, 1351–1352, 1704, and 1811 of the Senate amendment, and modifications committed to conference:

Richard Pombo,
Barbara Cubin,

Provided that Mr. Kind is appointed in lieu of Mr. Rahall for consideration of Title IV of

Division C of the House bill, and modifications committed to conference:

From the Committee on Science, for consideration of secs. 11009, 11025, 12301–12312, 14001–14007, 14009–14015, 14029, 15021–15024, 15031–15034, 15041, 15045, Division B, sec. 30301, Division E, and Division F of the House bill and secs. 501–507, 509, 513–516, 770–772, 807–809, 814–816, 824, 832, 1001–1022, Title XI, Title XII, Title XIII, Title XIV, secs. 1502, 1504–1505, Title XVI, and secs. 1801–1805 of the Senate amendment, and modifications committed to conference:

Judy Biggert,
Ralph M. Hall,

Provided that Mr. Costello is appointed in lieu of Mr. Hall of Texas for consideration of Division E of the House bill, and modifications committed to conference:

Jerry Costello,

Provided that Mr. Lampson is appointed in lieu of Mr. Hall of Texas for consideration of sec. 21708 and Division F of the House bill, and secs. 824 and 1223 of the Senate amendment and modifications committed to conference:

Nick Lampson,

From the Committee on Transportation and Infrastructure, for consideration of secs. 11001–11004, 11006, 11009–11011, 12001–12012, 12014, 12401, 12403, 13001, 13201, 13202, 15021–15024, 15031–15034, 15041, 15043, 15051, 16012, 16021, 16022, 16023, 16031, 16081, 16082, 16092, 23001–23004, 30407, 30410, and 30901 of the House bill and secs. 102, 201, 205, 301, 701–783, 812, 814, 816, 823, 911–916, 918–920, 949, 1214, 1261–1262, and 1351–1352 of the Senate amendment, and modifications committed to conference:

Don Young,
Thomas Petri,

From the Committee on Ways and Means, for consideration of Division D of the House bill and Division H and I of the Senate amendment, and modifications committed to conference:

William Thomas,
Jim McCrery,
Managers on the Part of the House.
Pete V. Domenici,
Don Nickles,
Larry E. Craig,
Ben Nighthorse
Campbell,
Craig Thomas,
Chuck Grassley,
Trent Lott,
Byron L. Dorgan,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6), to provide for security and diversity in the energy supply for the American people, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—ENERGY EFFICIENCY

Title I of the conference report sets new performance requirements for the operations of Federal agencies and buildings, requires Federal agencies to procure energy efficient products, and mandates metering of energy use in Federal buildings. The title has a permanent authorization for the Energy Savings Performance Contracts (ESPC) program, and establishes a pilot program for ESPC non-building applications. The conference report authorizes funding for new programs to expand State and local energy efficiency programs in low-income communities and in public buildings such as schools, hospitals and government facilities. It provides funding to States and local governments to encourage consumers to replace existing appliances with more energy efficient units. The conference report sets energy efficiency standards for a number of new consumer products, and directs the Department of Energy to initiate rulemakings to set standards for others. It requires the Federal Trade Commission to review and improve energy efficiency labeling programs. The conference report also authorizes funding for the Energy Star program and a consumer education program on HVAC maintenance. Authorization for the Low-Income Home Energy Assistance Program is extended and expanded, and additional funds are provided for state energy and weatherization programs. The report includes a number of changes to public housing law that encourage improved energy efficiency in the construction and maintenance of public housing, improve Federal efficiency standards for public housing facilities, and require public housing agencies to purchase energy efficient products.

TITLE II—RENEWABLE ENERGY

Title II of the conference report provides for an ongoing assessment of renewable energy resources, extends existing authority for incentive programs for production of renewable electricity, requires an update of energy plans for insular areas, and requires the Federal government to purchase a set amount of electric energy from renewable resources. The report authorizes $300 million for solar programs, and sets a goal of installing 20,000 solar roof-top systems in Federal buildings by 2010. The use of biomass from Federal or Indian lands is encouraged by the creation of a grant program to produce electric energy, transportation fuels, or substitutes for petroleum products from biomass. The program encourages removal of hazardous fuels from the highest risk areas on Federal and Indian lands and development of new technologies to use biomass.

Subtitle B updates the Geothermal Steam Act by amending the leasing provisions to provide for a competitive leasing system. The subtitle also directs other actions that will facilitate new development of geothermal resources. Subtitle C amends the Federal Power Act to streamline the process for issuance of hydroelectric licenses. It also provides production incentives and promotes efficiency improvements at hydroelectric facilities.

TITLE III—OIL AND GAS

Title III of the conference report includes a variety of oil and gas production provisions. It improves the Federal permitting process and expedites the construction of the Alaska Natural Gas Pipeline.

Subtitle A permanently authorizes the Strategic Petroleum Reserve and extends authorization for the National Oilheat Research Alliance. Subtitle B provides financial incentives to encourage production in deep water and production from deep natural gas wells in the Gulf of Mexico. The subtitle also provides royalty relief to marginal wells located on Federal lands and the Outer Continental Shelf. The Secretary of the Interior is authorized to provide royalty relief to existing, non-producing offshore leases in Alaska. The report addresses natural gas market transparency, and provides additional market reforms.

Subtitle C authorizes provisions that will improve access to Federal lands and expedite the approval of permits on multiple-use lands. There are also provisions to improve inspection and enforcement of existing permits. The Secretaries of the Interior and Agriculture are instructed to designate energy corridors on western lands that can be used for the deployment of energy transportation and transmission rights-of-way. A regional pilot program is established to develop procedures for the timely processing of applications and permits for Federal lands.

Subtitle D authorizes expedited certification and permitting of a pipeline to transport natural gas from Alaska to markets in the continental United States to meet the rapidly growing demand for natural gas. The conference report includes loan guarantee authority to support the construction of the pipeline, and establishes an executive-level office to coordinate agency actions related to the pipeline.

TITLE IV—COAL

Title IV of the conference report contains provisions that provide critical research related to the country's most abundant fossil resource: coal: Subtitle A authorizes a Clean Coal Power Initiative, providing $200 million annually for clean coal research in coal-based gasification technologies. The Secretary of Energy is directed to set increasingly restrictive emission targets over the life of the program to develop state-of-the-art technology. Subtitle B provides financial assistance to a variety of clean coal projects around the nation. Subtitle C amends several provisions of the Mineral Leasing Act governing the Federal Coal Leasing Program, including those pertaining to: lease modifications to avoid the bypass of coal; mining requirements for logical mining units; payment of advance royalties; and the deadline for submission of a coal lease operation and reclamation plan.

TITLE V—INDIAN ENERGY

Title V of the conference report, referred to as the Indian Tribal Energy Development and Self-Determination Act of 2003, assists Indian Tribes in the development of Indian energy resources by increasing Tribes' internal capacity to develop their own resources. The title provides grants and technical assistance, and streamlines the approval profess for Tribal leases, agreements, and rights-of-way so that outside parties have more incentive to partner with Tribes in developing energy resources. Included in this title are provisions creating an Office of Indian Energy Policy and Programs within the Department of Energy to support the development of tribal energy resources. Section 505 makes Dine Power Authority, a Navajo Nation enterprise, eligible for funding under this title. Section 506 directs the Secretary of Housing and Urban Development to promote energy efficiency for Indian housing.

The title also provides a complete substitute for title 26 of the Energy Policy Act of 1992. Sections 2602 and 2603 authorize the

Secretary of the Interior to provide grants to tribes to develop and utilize their energy resources and to enhance the legal and administrative ability of tribes to manage their resources. Section 2604 establishes a process by which an Indian tribe, upon demonstrating its technical and financial capacity, could negotiate and execute energy resource development leases, agreements and rights-of-way with third parties without first obtaining the approval of the Secretary of the Interior. Section 2605 authorizes the Secretary of the Interior to review activities authorized under the Indian Mineral Development Act. Section 2606 authorizes WAPA to make power allocations to meet the firming and reserve needs of Indian-owned energy projects and acquire power generated by Indian tribes for firming and reserve needs, so long as the rates and terms are competitive. Section 2607 authorizes a study of wind and hydropower potential along the Missouri River.

TITLE VI—NUCLEAR MATTERS

Title VI of the conference report provides for programs to ensure that nuclear energy remains a major component of the Nation's energy supply. Price Anderson liability protection is extended for both NRC licensees and DOE contractors. Coverage is increased and indexed for inflation, and non-profit contractors of the Department are made subject to payment of penalties assessed for nuclear safety violations. A research, development, and construction project is authorized for a new test reactor to be constructed at the Idaho National Engineering and Environmental Laboratory. The reactor will serve as a national testbed for advanced reactor technologies that provide improved attributes over existing plants, and for co-generation of hydrogen by nuclear energy. Limits, with several listed exemptions, are imposed on future sales or transfers of government stockpiles of uranium, subject to tests that fair market value is received for sales and that national security is not adversely impacted. Important nuclear security programs are established, along with industry reforms, including whistleblower protection, antitrust review, and legal fee reimbursement.

TITLE VII—FUELS AND VEHICLES

Title VII of the conference report makes a number of changes to the alternative fuel vehicle mandate program applicable to Federal, State, local and fuel provider vehicle fleets pursuant to the Energy Policy Act of 1992. In particular, credits towards compliance with fleet mandates can be accrued for the actual use of alternative fuels, the purchase of neighborhood electric vehicles, investment in alternative fuel infrastructures, or equivalent contributions toward compliance by other fleets with their mandates through the purchase of vehicles or fueling infrastructure. The bill requires a complete review of alternative fuel mandates, and enables States to enact regulations to allow alternative fuel vehicles to use High Occupancy Vehicle lanes regardless of the number of passengers carried. The conference report requires the National Highway Transportation Safety Administration (NHTSA) to additionally consider the effects on passenger safety and employment levels in the U.S. auto industry when setting fuel economy standards, requires an analysis of the fuel economy program, and extends incentives for "dual-fuel" vehicles for another four years.

TITLE VIII—HYDROGEN

Title VIII of the conference report provides for basic hydrogen energy research and development programs. The title authorizes new research and development programs for hydrogen vehicle technologies and hydrogen fuel. The title provides authorization for a variety of programs to demonstrate hydrogen and fuel cells for use in light- and heavy-duty vehicle fleets, stationary power applications, and international projects. The title requires Federal agencies to consider methods of incorporating hydrogen and fuel cell technologies into their missions, and establishes an interagency task force to oversee hydrogen initiatives.

TITLE IX—RESEARCH AND DEVELOPMENT

Title IX of the conference report provides the research and development base for the full range of energy-related technologies. Subtitles include those devoted to Energy Efficiency, Distributed Energy and Electric Energy Systems, Renewable Energy, Nuclear Energy, Fossil Energy, Science, Energy and Environment, and Management. Broad goals are established to guide the research and development activities of diversifying energy supplies, increasing energy efficiency, decreasing dependence on foreign energy supplies, improving energy security, and decreasing environmental impact. The Secretary is annually directed to publish specific goals in major program areas consistent with these broad goals.

TITLE X—DEPARTMENT OF ENERGY MANAGEMENT

Title X of the conference report creates a new Assistant Secretary position and expresses the sense of the Congress that the position should be used to improve management of Nuclear Energy at the Department of Energy, and grants the Secretary of Energy authority to enter into other transactions as appropriate to further research, development, or demonstration goals of the Department.

TITLE XI—PERSONNEL AND TRAINING

Title XI of the conference report requires establishment of training guidelines for electric energy industry personnel and centers for building technologies and power plant operations training. It also directs increased activity by the Department of Energy to improve recruitment of under-represented groups into energy professions. The title directs the Secretary of Energy to support establishment of a National Power Plant Operations Center, and encourages agency coordination for training and outreach efforts for international commercial energy markets in countries with developing and restructuring economies.

TITLE XII—ELECTRICITY

Title XII of the conference report reduces regulatory uncertainty, promotes transmission infrastructure development and security, and increases consumer protections associated with the production and delivery of electricity. Subtitle A requires development of mandatory rules to ensure transmission grid reliability. Subtitle B addresses transmission siting, third-party financing of transmission, and research programs related to transmission upgrades and improvements. Subtitle C protects transmission access for native load customers and authorizes the Federal Energy Regulatory Commission [FERC] to exercise limited jurisdiction over currently unregulated transmitting utilities to ensure open access to the transmission grid. It also remands the proposed rulemaking on Standard Market Design to FERC and prohibits a final rule before December 31, 2006. Subtitle D directs FERC to issue rules on transmission pricing policies and cost allocation for transmission expansion. Subtitle E amends the Public Utility Regulatory Policies Act of 1978 (PURPA). It prospectively repeals the requirement for mandatory purchase from qualifying facilities by electric utilities if a competitive market exists and establishes new criteria for qualifying cogeneration facilities. Subtitle F repeals the Public Utility Holding Company Act of 1935 (PUHCA). Subtitle G addresses market transparency and manipulation, contract sanctity, and unfair trade practices. It also increases penalties for violations of the Federal Power Act. Subtitle H provides for merger review reform and accountability. Subtitle I defines new terms in the Federal Power Act, and Subtitle J makes technical and conforming amendments.

TITLE XIII—ENERGY TAXES

I. CONSERVATION

A. RESIDENTIAL AND BUSINESS PROPERTY

1. Residential solar hot water, photovoltaics and other energy efficient property (sec. 41001 of the House bill, sec. 2103 of the Senate amendment, and new sec. 25C of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law personal tax credit for energy efficient residential property.

HOUSE BILL

The provision provides a personal tax credit for the purchase of qualified photovoltaic property and qualified solar water heating property that is used exclusively for purposes other than heating swimming pools and hot tubs. The credit is equal to 15 percent of qualified investment up to a maximum credit of $2,000 for solar water heating property and $2,000 for rooftop photovoltaic property. This credit is nonrefundable, and the depreciable basis of the property is reduced by the amount of the credit.

Qualifying solar water heating property is property that heats water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun. Qualified photovoltaic property is property that uses solar energy to generate electricity for use in a dwelling unit. Expenditures for labor costs allocable to onsite preparation, assembly, or original installation of property eligible for the credit are eligible expenditures.

Certain equipment safety requirements need to be met to qualify for the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations.

Effective date.—The credit applies to purchases in taxable years ending after December 31, 2003 and before January 1, 2007 (January 1, 2009 in the case of qualified photovoltaic property).

SENATE AMENDMENT

The Senate amendment includes the provisions of the House bill. Additionally, the Senate amendment adds a 30-percent credit for qualified wind energy property, up to a maximum credit of $2,000. Qualified wind energy property is property that uses wind energy to generate electricity for use in a dwelling unit.

The Senate amendment also provides a 100 percent credit, with caps, for the purchase of other qualified energy efficient property, as described below.

Electric heat pump hot water heaters with an energy factor of at least 1.7. The maximum credit is $75 per unit.

Electric heat pumps with a heating efficiency of at least 9 HSPF (Heating Seasonal Performance Factor) and a cooling efficiency of at least 15 SEER (Seasonal Energy Efficiency Rating) and an energy efficiency ratio (EER) of 12.5 or greater. The maximum credit is $250 per unit.

Advanced natural gas furnaces that achieve a 95 percent annual fuel utilization efficiency. The maximum credit is $250 per unit.

Central air conditioners with an efficiency of at least 15 SEER and an EER of 12.5 or greater. The maximum credit is $250 per unit.

Natural gas water heaters with an Energy Factor of at least 0.8. The maximum credit is $75 per unit.

Geothermal heat pumps that have an EER of at least 21. The maximum credit is $250 per unit.

With the exception of wind energy property, if less than 80 percent of the property is used for nonbusiness purposes, only that portion of expenditures that is used for nonbusiness purposes is taken into account.

Effective date.—The credit applies to purchases after December 31, 2002, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill with respect to residential solar and photovoltaic property. With respect to wind energy property, the conference agreement follows the Senate amendment with two modifications. First, the credit rate is reduced to 15 percent. Second, with respect to property a portion of which is used in business, the taxpayer may choose either to claim the personal credit, or to claim depreciation for the business use portion of the property, but not both. The conference agreement clarifies that the $2,000 credit cap that applies to solar, photovoltaic, and wind energy property applies across all taxable years. Thus, with respect to a given dwelling, a taxpayer can claim at most $2,000 in credits for solar water heating property, $2,000 for photovoltaic property, and $2,000 for wind energy property. The conference agreement also clarifies that no section 45 credit may be claimed with respect to any electricity produced from property for which a residential energy efficient property credit has been claimed.

The conference agreement does not follow the Senate amendment with respect to all other energy efficient property.

It is intended under the conference agreement that availability of the credit for photovoltaic and wind energy property would not be impacted by any net-metering or net-billing arrangements under which the taxpayer sells excess electricity back to a utility. It is also intended that expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of qualifying property and for piping or wiring to interconnect such property to the dwelling unit can be taken into account for determining the amount of the credit.

Effective date.—The credit applies to purchases in taxable years ending after December 31, 2003, and before January 1, 2007 (January 1, 2009, in the case of qualified photovoltaic property).

2. Credit for electricity produced from certain sources (sec. 41002 of the House bill, secs. 1901, 1902, 1903, 1904, 1905, and 1906 of Senate amendment, and sec. 45 of the Code)

PRESENT LAW

An income tax credit is allowed for the production of electricity from either qualified wind energy, qualified "closed-loop" biomass, or qualified poultry waste facilities (sec. 45). The amount of the credit is 1.5 cents per kilowatt-hour (indexed for inflation) of electricity produced. The amount of the credit is 1.8 cents per kilowatt-hour for 2003. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits.

The credit applies to electricity produced by a wind energy facility placed in service after December 31, 1993, and before January 1, 2004, to electricity produced by a closed-loop biomass facility placed in service after December 31, 1992, and before January 1, 2004, and to a poultry waste facility placed in service after December 31, 1999, and before January 1, 2004. The credit is allowable for production during the 10-year period after a facility is originally placed in service. In order to claim the credit, a taxpayer must own the facility and sell the electricity produced by the facility to an unrelated party. In the case of a poultry waste facility, the taxpayer may claim the credit as a lessee/operator of a facility owned by a governmental unit.

HOUSE BILL

Extension of placed in service date for existing facilities

The House bill extends the placed in service date for wind facilities and closed-loop biomass facilities to facilities placed in service after December 31, 1993 (December 31, 1992, in the case of closed-loop biomass facilities) and before January 1, 2007. The House bill does not extend the placed in service date for poultry waste facilities.

Additional qualifying facilities

The House bill also defines three new qualifying facilities: open-loop biomass facilities, landfill gas facilities, and trash combustion facilities. Open-loop biomass is defined as any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from any of forest-related resources, solid wood waste materials, or agricultural sources. Landfill gas is defined as methane gas derived from the biodegradation of municipal solid waste. Trash combustion facilities are facilities that burn municipal solid waste (garbage) to produce steam to drive a turbine for the production of electricity. Qualifying open-loop biomass facilities and qualifying landfill gas facilities include facilities used to produce electricity placed in service before January 1, 2007. Qualifying trash combustion facilities include facilities placed in service after the date of enactment and before January 1, 2007.

In the case of qualifying open-loop biomass facilities and qualifying landfill gas facilities placed in service on or before the date of enactment, the taxpayer may claim the section 45 production credit for only five years, commencing on the date of enactment. In the case of qualifying open-loop biomass facilities and qualifying landfill gas facilities placed in service on or before the date of enactment, the taxpayer may claim two-thirds of the otherwise allowable credit for electricity produced at the facility.

Credit claimants and treatment of other subsidies

In the case of qualifying open-loop biomass facilities originally placed in service on or before the date of enactment, a lessee or operator may claim the credit in lieu of the owner of the qualifying facility. In addition, for such facilities, any reduction in credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits cannot exceed 50 percent.

Alternative minimum tax

In the case of wind facilities placed in service after the date of enactment, the taxpayer may claim credit for electricity production against both the taxpayer's regular tax and the taxpayer's alternative minimum tax, if any, for electricity produced during the first four years of production measured from the date on which the facility is placed in service.

No facility that previously claimed or currently claims credit under section 29 of the Code is a qualifying facility for purposes of section 45.

Effective date.—The provision is effective for electricity sold from qualifying facilities after the date of enactment.

SENATE AMENDMENT

Extension of placed in service date for existing facilities

The Senate amendment extends the placed in service date for wind facilities, closed-loop biomass facilities, and poultry waste facilities to facilities placed in service after December 31, 1993 (December 31, 1992, in the case of closed-loop biomass facilities and December 31, 1999, in the case of poultry waste facilities) and before January 1, 2007.

Additional qualifying facilities

The Senate amendment also defines seven new qualifying energy resources: open-loop biomass, swine and bovine waste nutrients, geothermal energy, solar energy, municipal biosolids, recycled sludge, and small irrigation.

Open-loop biomass is defined as any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from any of forest-related resources, solid wood waste materials, or agricultural sources. Eligible forest-related resources are mill residues, precommercial thinnings, slash, and brush, but not including old-growth timber (other than old growth timber that has been permitted or contracted for removal by appropriate Federal authority under the National

Environmental Policy Act or appropriate State law authority). Solid wood waste materials include waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings. Agricultural sources include orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues. However, qualifying open-loop biomass does not include municipal solid waste (garbage), gas derived from biodegradation of solid waste, or paper that is commonly recycled.

Swine and bovine waste nutrients are defined as swine and bovine manure and litter, including bedding material for the disposition of manure.

Geothermal energy is energy derived from a geothermal deposit which is a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure).

Municipal biosolids are the residue or solids removed by a municipal wastewater treatment facility.

Recycled sludge is the recycled residue byproduct created in the treatment of commercial, industrial, municipal, or navigational wastewater, but not including residues from incineration.

A small irrigation power facility is a facility that generates electric power through an irrigation system canal or ditch without any dam or impoundment of water. The installed capacity of a qualified facility is less than five megawatts.

Qualifying open-loop biomass facilities are facilities using open-loop biomass to produce electricity that are placed in service prior to January 1, 2005. Qualifying swine and bovine waste nutrient facilities are facilities using swine and bovine waste nutrients to produce electricity that are placed in service after the date of enactment and before January 1, 2007. Qualifying geothermal energy facilities are facilities using geothermal deposits to produce electricity that are placed in service after the date of enactment and before January 1, 2007. Qualifying solar energy facilities are facilities using solar energy to generate electricity that are placed in service after the date of enactment and before January 1, 2007. Qualifying municipal biosolids facilities are facilities using municipal biosolids to generate electricity that are originally placed in service after December 31, 2001, and before January 1, 2007. Qualifying recycled sludge facilities are facilities using recycled sludge to generate electricity that are originally placed in service before January 1, 2007. Qualifying small irrigation power facilities are facilities using small irrigation power systems to generate electricity that are originally placed in service after the date of enactment and before January 1, 2007.

In the case of qualifying open-loop biomass facilities, taxpayers may claim the otherwise allowable credit for a three-year period. For a facility placed in service after the date of enactment, the three-year period commences when the facility is placed in service. In the case of open-loop biomass facility originally placed in service before the date of enactment, the three-year period commences after December 31, 2002, and the otherwise allowable 1.5 cent-per-kilowatt-hour credit (adjusted for inflation) is reduced to 1.0 cent-per-kilowatt-hour credit (adjusted for inflation). In the case of qualifying geothermal energy and solar energy facilities, taxpayers may claim the otherwise allowable credit for the five-year period commencing when the facility is placed service. In the case of electricity generated from a recycled sludge facility the 10-year credit period shall begin no earlier than the date of enactment.

In addition, the Senate amendment modifies present law to provide that qualifying closed-loop biomass facilities include any facility originally placed in service before December 31, 1992 and modified to use closed-loop biomass to co-fire with coal before January 1, 2007. The taxpayer may claim credit for all electricity produced at such qualifying facilities with no reduction for the thermal value of the coal.

Credit claimants and treatment of other subsidies

In the case of qualifying open-loop biomass facilities and qualifying closed-loop biomass facilities modified to use closed-loop biomass to co-fire with coal, the Senate amendment permits a lessee operator to claim the credit in lieu of the owner of the facilities.

The Senate amendment provides that certain persons (public utilities, electric cooperatives, rural electric cooperatives, and Indian tribes) may sell, trade, or assign to any taxpayer any credits that would otherwise be allowable to that person, if that person were a taxpayer, for production of electricity from a qualified facility owned by such person. However, any credit sold, traded, or assigned may only be sold, traded, or assigned once. Subsequent trades are not permitted. In addition, any credits that would otherwise be allowable to such person, to the extent provided by the Administrator of the Rural Electrification Administration, may be applied as a prepayment to certain loans or obligations undertaken by such person under the Rural Electrification Act of 1936.

The Senate amendment repeals the present-law reduction in allowable credit for facilities financed with tax-exempt bonds or with certain loans received under the Rural Electrification Act of 1936.

Effective date.—The Senate amendment generally is effective for electricity sold from qualifying facilities after the date of enactment. For electricity produced from qualifying open-loop biomass facilities originally placed in service prior to the date of enactment, the provision is effective January 1, 2003.

CONFERENCE AGREEMENT

Extension of placed in service date for existing facilities

The conference agreement extends the placed in service date for wind facilities and closed-loop biomass facilities to facilities placed in service after December 31, 1993 (December 31, 1992, in the case of closed-loop biomass facilities) and before January 1, 2007.

Under the conference agreement, qualifying closed-loop biomass facilities include any facility originally placed in service before December 31, 1992, and modified to use closed-loop biomass to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass before January 1, 2007. The taxpayer may claim credit for electricity produced at such qualifying facilities with the credit amount equal to the otherwise allowable credit multiplied by the ratio of the thermal content of the closed-loop biomass fuel burned in the facility to the thermal content of all fuels burned in the facility.

Additional qualifying resource and facilities

The conference agreement also defines five new qualifying resources: open-loop biomass (including agricultural livestock waste nutrients), geothermal energy, solar energy, small irrigation power, and municipal solid waste. Two different qualifying facilities use municipal solid waste as a qualifying resource: landfill gas facilities and trash combustion facilities.

Qualifying open-loop biomass facilities are facilities using biomass to produce electricity that are placed in service prior to January 1, 2007. Qualifying agricultural livestock waste nutrient facilities are facilities using agricultural livestock waste nutrients to produce electricity that are placed in service after the date of enactment and before January 1, 2007.[1] The installed capacity of a qualified agricultural livestock waste nutrient facility is not less than 150 kilowatts.

Qualifying geothermal energy facilities are facilities using geothermal deposits to produce electricity that are placed in service after the date of enactment and before January 1, 2007. Qualifying solar energy facilities are facilities using solar energy to generate electricity that are placed in service after the date of enactment and before January 1, 2007. A qualifying geothermal energy facility or solar energy facility may not have claimed any credit under sec. 48 of the Code.[2]

A qualified small irrigation power facility is a facility originally placed in service after the date of enactment and before January 1, 2007. A small irrigation power facility is a facility that generates electric power through an irrigation system canal or ditch without any dam or impoundment of water. The installed capacity of a qualified facility is not less than 150 kilowatts and less than five megawatts.

Landfill gas is defined as methane gas derived from the biodegradation of municipal solid waste. Trash combustion facilities are facilities that burn municipal solid waste (garbage) to produce steam to drive a turbine for the production of electricity. Qualifying landfill gas facilities and qualifying trash combustion facilities include facilities used to produce electricity placed in service after the date of enactment and before January 1, 2007.

Credit period and credit rates

In general, as under present law, taxpayers may claim the credit at a rate of 1.5 cents per kilowatt-hour (indexed for inflation and currently 1.8 cents per kilowatt-hour) for 10 years of production commencing on the date the facility is placed in service. In the case of open-loop biomass facilities (including agricultural livestock waste nutrients), geothermal energy, solar energy, small irrigation power, landfill gas facilities, and trash combustion facilities the 10-year credit period is reduced to five years commencing on the date the facility is placed in service. In general, for facilities placed in service prior to January 1, 2004, the credit period commences on January 1, 2004. In the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, the credit period shall begin no earlier than the date of enactment.

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[1] The provision deletes poultry litter as a separate qualifying facility for facilities placed in service after the effective date. Poultry litter facilities remain qualifying facilities as agricultural waste nutrient facilities. Any poultry litter facility placed in service on or prior to December 31, 2003, is unaffected by the modifications made by this provision. For example, the value of the credit that may be claimed for production from such a facility would not be reduced by one-third as would be the case for other animal waste nutrient facilities.

[2] If a geothermal facility or solar facility claims credit for any year under section 45 of the Code, the facility is precluded from claiming any investment credit under section 48 of the Code in the future.

In the case of open-loop biomass facilities (including agricultural livestock waste nutrients), small irrigation power, landfill gas facilities, and trash combustion facilities, the otherwise allowable credit amount is reduced by one-third.

Credit claimants and treatment of other subsidies

A lessee or operation may claim the credit in lieu of the owner of the qualifying facility in the case of qualifying open-loop biomass facilities originally placed in service on or before the date of enactment and in the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass.

In addition, for all qualifying facilities, other than closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, any reduction in credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits cannot exceed 50 percent. In the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, there is no reduction in credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits.

No facility that previously claimed or currently claims credit under section 45K of the Code (as amended by the conference agreement)[3] is a qualifying facility for purposes of section 45.

Alternative minimum tax

In the case of qualifying facilities placed in service after the date of enactment, the taxpayer may claim credit for electricity production against both the taxpayer's regular tax and the taxpayer's alternative minimum tax, if any, for electricity produced during the first four years of production measured from the date on which the facility is placed in service.

GAO study

The conference agreement directs the Comptroller General of the United States to conduct a study of the market viability of producing electricity from resources qualifying for the section 45 production credit (as amended by the conference agreement). The conferees seek a comparison of the cost of producing electricity from the various qualifying resources compared to the cost of producing electricity from fossil fuels (i.e., coal, oil, and natural gas) using the latest generation of production technology currently in service in the United States. The cost of producing electricity should be reported, on a per kilowatt-hour basis, both as the incremental cost of production from a facility and on a fully-amortized cost basis assuming capital costs are amortized over the useful life of the property. In the case of facilities using open-loop biomass and municipal solid waste resources, the measurement of costs should take into account the avoided costs of waste disposal for which taxpayers otherwise would be responsible. The study is to estimate the dollar value of the environmental impact of producing electricity from qualifying resources compared to fossil fuels. The Comptroller General is to report his findings to the Committee on Ways and Means and Committee on Finance not later than June 30, 2006.

Effective date.—The provision is effective for electricity produced and sold from qualifying facilities after the date of enactment.

3. Tax incentives for fuel cells (sec. 41003 of the House bill, secs. 2103 and 2104 of the Senate amendment, and sec. 48 and new sec. 25C of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for stationary fuel cell power plant property.

HOUSE BILL

The provision provides a 10-percent credit for the purchase of qualified fuel cell power plants for businesses and individuals. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, and which has an electricity-only generation efficiency of greater than 30 percent. The credit may not exceed $500 for each 0.5 kilowatt of capacity. For individuals, the qualified fuel cell power plant must be installed on or in connection with a dwelling unit located in the United States and used by the taxpayer as a residence. The credit is nonrefundable. The taxpayer's basis in the property is reduced by the amount of the credit claimed.

Effective date.—The credit for businesses applies to property placed in service after December 31, 2003, and before January 1, 2007, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990). The credit for individuals applies to expenditures made after December 31, 2003, and before January 1, 2007.

SENATE AMENDMENT

The Senate amendment provides a 30-percent business energy credit for the purchase of qualified fuel cell power plants for businesses. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, and which has an electricity-only generation efficiency of greater than 30 percent and generates at least 500 watts of electricity. The credit for any fuel cell may not exceed $500 for each kilowatt of capacity. The taxpayer's basis in the property is reduced by the amount of the credit claimed.

The proposal also provides a 30-percent credit for individuals for the purchase of qualified fuel cell power plants. The credit for any fuel cell may not exceed $1,000 for each kilowatt of capacity. The qualified fuel cell power plant must be installed on or in connection with a dwelling unit located in the United States and used by the taxpayer as a principal residence.

Additionally, the Senate amendment provides a 10-percent credit for the purchase of qualifying stationary microturbine power plants. A qualified stationary microturbine power plant is a system comprising a rotary engine that is actuated by the aerodynamic reaction or impulse or both on radial or axial curved full-circumferential-admission airfoils on a central axial rotating spindle. Such system must have an electricity-only generation efficiency of not less that 26 percent at International Standard Organization conditions. The credit is limited to the lesser of 10 percent of the basis of the property or $200 for each kilowatt of capacity.

Effective date.—The credit for businesses applies to property placed in service after December 31, 2002, and before January 1, 2008 (January 1, 2007, in the case of microturbines), under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990). The credit for individuals applies to expenditures made after December 31, 2002, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the modification that the credit rate is increased to 20 percent.

Effective date.—The provision applies to periods after December 31, 2003, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990), for property placed in service before January 1, 2007. The credit for individuals applies to expenditures made after December 31, 2003, and before January 1, 2007.

4. Energy efficient improvements to existing homes (secs. 41004 of the House bill, sec. 2109 of the Senate amendment, and new sec. 25D of the Code)

PRESENT LAW

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present law credit for energy efficiency improvements to existing homes.

HOUSE BILL

The provision provides a 20-percent nonrefundable credit for the purchase of qualified energy efficiency improvements. The maximum credit for a taxpayer with respect to the same dwelling for all taxable years is $2,000. A qualified energy efficiency improvement is any energy efficiency building envelope component that is certified (in the case of expenditures that exceed $1,000) to meet or exceed the prescriptive criteria for such a component established by the 2000 International Energy Conservation Code (or, in the case of metal roofs with appropriate pigmented coatings, meets the Energy Star program requirements), and (1) that is installed in or on a dwelling located in the United States; (2) owned and used by the taxpayer as the taxpayer's principal residence; (3) the original use of which commences with the taxpayer; and (4) such component reasonably can be expected to remain in use for at least five years.

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[3] The conference agreement modifies present-law section 29 as described below and moves present-law section 29 to new Code section 45K.

Building envelope components are: (1) insulation materials or systems which are specifically and primarily designed to reduce the heat loss or gain for a dwelling; (2) exterior windows (including skylights) and doors; and (3) metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat loss or gain for a dwelling.

The taxpayer's basis in the property is reduced by the amount of the credit. Special rules apply in the case of condominiums and tenant-stockholders in cooperative housing corporations.

Any unused credit may be carried forward to future years.

Effective date.—The credit is effective for qualified energy efficiency improvements installed after December 31, 2003 and before January 1, 2007.

SENATE AMENDMENT

The provision provides a 10-percent nonrefundable credit for the purchase of qualified energy efficiency improvements. The maximum credit for a taxpayer with respect to the same dwelling for all taxable years is $300. A qualified energy efficiency improvement is any energy efficiency building envelope component that is certified to meet or exceed the prescriptive criteria for such a component established by the 2000 International Energy Conservation Code, or any combination of energy efficiency measures that is certified to achieve at least a 30 percent reduction in heating and cooling energy usage for the dwelling and (1) that is installed in or on a dwelling located in the United States; (2) that is owned and used by the taxpayer as the taxpayer's principal residence; (3) the original use of which commences with the taxpayer; and (4) such component can reasonably be expected to remain in use for at least five years.

Building envelope components are: (1) insulation materials or systems which are specifically and primarily designed to reduce the heat loss or gain for a dwelling; and (2) exterior windows (including skylights) and doors.

Homes must be certified according to a component-based method or a performance-based method. The component-based method is based on applicable energy-efficiency ratings, including current product labeling requirements. The performance-based method is based on a comparison of the projected energy consumption of the dwelling in its original condition and after the completion of energy efficiency measures. The performance-based method of certification must be conducted by an individual or organization recognized by the Secretary for such purposes.

The certification process requires that energy savings to the consumer be measured in terms of energy costs. To ensure consistent and reasonable energy cost analyses, the Department of Energy shall include in its rulemaking related to this bill specific reference data to be used for qualification for the credit.

The taxpayer's basis in the property is reduced by the amount of the credit. Special rules apply in the case of condominiums and tenant-stockholders in cooperative housing corporations.

The credit is allowed against the regular and alternative minimum tax.

Effective date.—The credit is effective for qualified energy efficiency improvements installed on or after the date of enactment and before January 1, 2006.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill with the modification that the credit may not be carried forward. Additionally, the efficiency is to be measured relative to the 2000 IECC standards as supplemented and as in effect on the date of enactment.

Effective date.—The credit is effective for qualified energy efficiency improvements installed after December 31, 2003, and before January 1, 2007.

5. Energy efficient new homes (sec. 41005 of the House bill, sec. 2101 of the Senate amendment, and new sec. 45G of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for the construction of new energy-efficient homes.

HOUSE BILL

The provision provides a credit to an eligible contractor (up to $2,000 per dwelling) of an amount equal to the aggregate adjusted bases of all energy-efficient property installed in a qualified new energy-efficient home during construction.

The eligible contractor is the person who constructs the home, or in the case of a manufactured home, the producer of such home. Energy efficiency property is any energy-efficient building envelope component (insulation materials, exterior windows and doors, metal roofs with appropriate pigmented coatings) and any energy-efficient heating or cooling appliance.

To qualify as an energy-efficient new home, the home must be: (1) a dwelling located in the United States; (2) the principal residence of the person who acquires the dwelling from the eligible contractor; (3) certified to have a level of annual heating and cooling energy consumption that is at least 30 percent below the annual level of heating and cooling energy consumption of a comparable dwelling constructed in accordance with the standards of the 2000 International Energy Conservation Code; and (4) with respect to the building envelope alone, certified to have a level of annual heating and cooling energy consumption that is 10 percent below the annual level of heating and cooling energy consumption of a comparable dwelling constructed in accordance with the standards of the 2000 International Energy Conservation Code.

Effective date.—The credit applies to homes whose construction is substantially completed after December 31, 2003, and which are purchased during the period beginning on January 1, 2003, and ending on December 31, 2006.

SENATE AMENDMENT

The proposal provides a credit to an eligible contractor of an amount equal to the aggregate adjusted bases of all energy-efficient property installed in a qualified new energy-efficient home during construction. The credit cannot exceed $1,250 ($2,000) in the case of a new home which has a projected level of annual heating and cooling costs that is 30 percent (50 percent) less than a comparable dwelling constructed in accordance with Chapter 4 of the 2000 International Energy Conservation Code.

The eligible contractor is the person who constructed the home, or in the case of a manufactured home, the producer of such home. Energy efficiency property is any energy-efficient building envelope component (insulation materials or system designed to reduce heat loss or gain, and exterior windows, including skylights, and doors) and any energy-efficient heating or cooling appliance that can, individually or in combination with other components, meet the standards for the home.

To qualify as an energy-efficient new home, the home must be: (1) a dwelling located in the United States; (2) the principal residence of the person who acquires the dwelling from the eligible contractor; and (3) certified to have a projected level of annual heating and cooling energy consumption that is either 30-percent or 50-percent less than a comparable dwelling constructed in accordance with Chapter 4 of the 2000 International Energy Conservation Code. The home may be certified according to a component-based method or an energy performance based method. Manufactured homes that meet the standards of the Department of Energy's Energy Star program are deemed to satisfy the 30-percent energy efficiency standard.

The component-based method of certification will be based on applicable energy-efficiency specifications or ratings, including current product labeling requirements. The Secretary will develop component-based packages that are equivalent in energy performance to properties that qualify for the credit.

The performance-based method of certification will be based on an evaluation of the home in reference to a home which uses the same energy source and system heating type, and is constructed in accordance with the Chapter 4 of the 2000 International Energy Conservation Code. The certification will be provided by an individual recognized by the Secretary for such purposes.

The certification process requires that energy savings to the consumer be measured in terms of energy costs. To ensure consistent and reasonable energy cost analyses, the Department of Energy will include in its rulemaking related to this bill specific reference data to be used for qualification for the credit.

The credit will be part of the general business credit. No credits attributable to energy efficient homes may be carried back to any taxable year ending on or before the effective date of the credit.

Effective date.—The credit applies to homes whose construction is substantially completed after the date of enactment and which are purchased during the period beginning on the date of enactment and ending on December 31, 2007.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill with modifications. The requirement that the qualified new energy efficient home be used as the principal residence of the person acquiring the home is modified to provide that the contractor reasonably expect such home to be used as a residence of the person who acquires the home from the contractor. The credit amount is limited to $1,000 for new homes that are 30 percent more efficient than the 2000 IECC standards, as supplemented and as in effect on the date of enactment. The credit amount is limited to $2,000 for new homes that are 50 percent more efficient than the 2000 IECC standards, as supplemented and as in effect on the date of enactment. With respect to the building envelope alone, all qualifying new homes must be at least 10 percent more efficient than the 2000 IECC standard as supplemented and as in effect on the date of enactment. Additionally, the conference agreement includes the Senate amendment provision with respect to Energy Star manufactured homes, though the credit is limited to $1,000.

Certification requirements are to be met in accordance with guidance prescribed by the Secretary of the Treasury. Such guidance shall specify procedures and methods for calculating energy and cost savings. It is expected that such guidance will allow for third-party certification, but will also allow the eligible contractor to meet the certification requirements without necessarily involving a third-party certifier. It is also expected that such guidance will provide sufficient safeguards to ensure that only homes meeting the required standards will obtain certification.

The certification shall be made in writing in a manner which specifies the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective energy efficiency performance. In the case of homes qualifying under the Energy Star program, the certification shall be accompanied by documentation as required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

The credit is treated as part of the general business credit and, under a special transition rule, may not be carried back to a taxable year ending before or on the effective date of the provision.

Effective date.—The credit applies to homes whose construction is substantially completed after December 31, 2003, and which are purchased during the period beginning on January 1, 2004, and ending on December 31, 2006.

6. Energy credit for combined heat and power system property (sec. 41006 of the House bill, sec. 2108 of the Senate amendment, and sec. 48 of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for combined heat and power ("CHP") property.

HOUSE BILL

The provision provides a 10-percent credit for the purchase of CHP property.

CHP property is property: (1) that uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications); (2) that has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities; (3) that produces at least 20 percent of its total useful energy in the form of thermal energy and at least 20 percent in the form of electrical or mechanical power (or a combination thereof); and (4) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical capacities.)

CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

If a taxpayer is allowed a credit for CHP property, and the property would ordinarily have a depreciation class life of 15 years or less, the depreciation period for the property is treated as having a 22-year class life. The present-law carry back rules of the general business credit generally apply except that no credits attributable to combined heat and power property may be carried back before the effective date of this provision.

Effective date.—The credit applies to property placed in service after December 31, 2003 and before January 1, 2007.

SENATE AMENDMENT

The Senate amendment is similar to the House bill. However, for purposes of determining whether CHP property includes technologies which generate electricity or mechanical power using back-pressure steam turbines in place of existing pressure-reducing valves, or which make use of waste heat from industrial processes such as by using organic rankine, stirling, or kalina heat engine systems, the energy output requirements related to heat versus power described under (3), above, and the energy efficiency requirements of (4), above, may be disregarded.

Effective date.—The credit applies to property placed in service after December 31, 2002 and before January 1, 2007.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with modifications. The first modification removes the minimum system size requirement and limits the availability of the credit to systems with capacity less than 15 megawatts or 2,000 horsepower. The second modification eliminates the extension of the depreciation period from 15 to 22 years. The third modification is that systems whose fuel source is at least 90 percent bagasse and that would qualify for the credit, but for the failure to meet the efficiency standard, are eligible for a credit that is reduced in proportion to the degree to which the system fails to meet the efficiency standard. For example, a system that would otherwise be required to meet the 60-percent efficiency standard, but which only achieves 30-percent efficiency, would be permitted a credit equal to one-half of the otherwise allowable credit (i.e., a 5-percent credit).

The credit may not be carried back to a taxable year ending before January 1, 2004.

Effective date.—The provision applies to periods after December 31, 2003, in taxable years ending after such date, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990), for property placed in service before January 1, 2007.

7. Energy efficient appliances (sec. 2102 of the Senate amendment and new sec. 45H of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment: (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat; or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of: (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for the manufacture of energy-efficient appliances.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a credit for the production of certain energy-efficient clothes washers and refrigerators. The credit would equal $50 per appliance for energy-efficient clothes washers produced with a modified energy factor ("MEF") of 1.26 or greater and for refrigerators produced that consume 10 percent less kilowatt-hours per year than the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. The credit equals $100 for energy-efficient clothes washers produced with a MEF of 1.42 or greater (1.5 or greater for clothes washers produced after 2004) and for refrigerators produced that consume 15 percent less kilowatt-hours per year than the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. A refrigerator must be an automatic defrost refrigerator-freezer with an internal volume of at least 16.5 cubic feet to qualify for the credit. A clothes washer is any residential clothes washer, including a residential style coin operated washer, that satisfies the relevant efficiency standard.

For each category of appliances (i.e., clothes washers that meet the lower MEF standard, washers that meet the higher MEF standard, refrigerators that meet the 10 percent standard, refrigerators that meet the 15 percent standard), only production in excess of average production for each such category during calendar years 1999–2001 would be eligible for the credit. The taxpayer may not claim credits in excess of $30 million for all taxable years for appliances that qualify for the $50 credit, and may not claim credits in excess of $30 million for all taxable years for appliances that qualify for the $100 credit. Additionally, the credit allowed for all appliances may not exceed two percent of the average annual gross receipts of the taxpayer for the three taxable years preceding the taxable year in which the credit is determined.

The credit will be part of the general business credit. No credits attributable to energy-efficient appliances may be carried back to taxable years ending before January 1, 2003.

Effective date.—The credit applies to appliances produced after December 31, 2002, and prior to (1) January 1, 2005, in the case of refrigerators that only meet the 10 percent credit standard, or (2) January 1, 2007, in the case of all other qualified energy-efficient appliances.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment with modifications. The $50 credit is eliminated for clothes washers and refrigerators. A credit of $100 is allowed for refrigerators that consume 15 percent (20 percent for refrigerators produced after 2006) less kilowatt-hours per year than the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. A credit of $100 is allowed for clothes washers with a MEF of 1.5 or greater. A credit of $150 is allowed for refrigerators produced prior to 2007 that consume 20 percent less kilowatt-hours per year than the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. The $30 million overall credit limitation for each of two separate categories of appliances is replaced with a cap of $60 million across all appliances combined.

The three prior years are the base period years for calculation of the credit for any specific year. To qualify for any credit, production must exceed 110 percent of the average annual production in the base period years. Additionally, in order to determine if production has exceeded the baseline, all clothes washers and refrigerators are treated as a single group, rather than separately by their credit-specific efficiency standard. For example, if in the base period a producer produced an average of 1000 refrigerators and clothes washers combined that would have met the $100 credit standard, and no refrigerators that would have met the $150 credit standard, such producer would need to produce a combination of at least 1100 (110 percent of base period average) refrigerators or clothes washers that met the efficiency standards in order to receive any tax credit. Thus, even though the base period production of refrigerators meeting the $150 credit standard is zero, a producer would not be eligible to receive a credit for production of such refrigerators unless a combination of at least 1100 refrigerators or clothes washers meeting any of the efficiency standards were produced. The aggregate amount of production eligible for a credit is allocated between the $100 and $150 credit categories in proportion to the total production in each credit category. Only production in the United States is eligible for credit and only U.S. production is considered for the base-period production levels.

The credit is treated as part of the general business credit and, under a special transition rule, may not be carried back to a taxable year ending before or on the effective date of the provision.

Effective date.—The credit applies to appliances produced after December 31, 2003, and before January 1, 2008.

8. Energy efficient commercial building deduction (sec. 2105 of Senate amendment, and new sec. 179B of the Code)

PRESENT LAW

No special deduction is currently provided for expenses incurred for energy-efficient commercial building property.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property expenditures are defined as amounts paid or incurred for energy-efficient commercial building property installed in connection with the new construction or reconstruction of property: (1) which is depreciable property, (2) which is located in the United States, and (3) the construction or erection of which is completed by the taxpayer. The deduction is limited to an amount equal to the product of $2.25 and the square footage of the property for which such expenditures were made. The deduction is allowed in the taxable year in which the construction of the building is completed.

Energy-efficient commercial building property means any property that reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a reference building which meets the requirements of a Standard 90.1–1999 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America ("ASHRAE/IESNA").

Certain certification requirements must be met in order to qualify for the deduction. The Secretary, in consultation with the Secretary of Energy, is directed to promulgate regulations that describe methods of calculating and verifying energy and power costs, taking into consideration the provisions of the 2001 California Nonresidential Alternative Calculation Method Approval Manual. To allow proper calculations of cost, the Secretary shall prescribe the costs per unit of energy and power, such as kilowatt hour, kilowatt, gallon of fuel oil, and cubic foot or Btu of natural gas, which may be dependent on time of usage.

The Secretary shall promulgate procedures for the inspection and testing for compliance of buildings that are comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Home Energy Rating Standards. Such procedures are to be fuel neutral, such that the same energy efficiency features shall qualify a building for the deduction under this subsection regardless of whether the heating source is a gas or oil furnace or an electric heat pump. Individuals qualified to determine compliance shall only be those recognized by one or more organizations certified by the Secretary for such purposes.

When final regulations are adopted, such regulations shall, with respect to methods of calculating and verifying energy and power costs, take into consideration appropriate energy savings from design methodologies and technologies not otherwise credited in ASHRAE/IESNA Standard 90.1–1999 or in the 2001 California Nonresidential Alternative Calculation Method Approval Manual.

For public property, such as schools, the Secretary will issue regulations to allow the deduction to be allocated to the person primarily responsible for designing the property in lieu of the public entity owner.

The basis of the property is reduced by the amount of the deduction allowed.

Effective date.—The Senate amendment is effective for taxable years beginning after September 1, 2002, for plans certified prior to December 31, 2007, whose construction is completed on or before December 31, 2009.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. The maximum deduction is limited to $1.50 per square foot, and energy efficiency is to be measured relative to the Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America, as in effect on April 2, 2003. Additionally, with respect to public property, no transfer of the deduction to the person primarily responsible for designing the property is allowed.

In the case of a retrofitted or reconstructed building, but not a new building placed in service after the date of enactment, that does not meet the overall building requirement of a 50-percent energy savings, a partial deduction is allowed with respect to each separate building system that comprises energy efficient property and which is certified by a qualified professional as meeting or exceeding the applicable system-specific savings targets established by the Secretary of the Treasury. The applicable system-specific savings targets to be established by the Secretary are those that would result in a total annual energy savings with respect to the whole building of 50 percent, if each of the separate systems met the system specific target. The separate building systems are (1) the lighting system, (2) the heating cooling and ventilation and hot water systems, and (3) the building envelope. The maximum allowable deduction is $0.50 per square foot for each separate system.

In the case of system-specific partial deductions for retrofitted or reconstructed buildings, in general no deduction is allowed until the Secretary establishes system-specific targets. However, in the case of lighting system retrofits, until such time as the Secretary issues final regulations, the system-specific energy savings target for the lighting system is deemed to be met by a reduction in Lighting Power Density of 40 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 of ASHRAE/IESNA Standard 90.1-2001. Also, in the case of a lighting system that reduces lighting power density by 25 percent, a partial deduction of 25 cents per square foot is allowed. A prorated partial deduction is allowed in the case of a lighting system that reduces lighting power density between 25 percent and 40 percent. Certain lighting level and lighting control requirements must also be met in order to qualify for the partial lighting deductions.

The conference agreement provides that the Secretary shall establish procedures for certifying eligibility to claim the deduction. The Secretary shall include as part of the certification process procedures for inspection and testing by qualified individuals to ensure compliance of buildings with energy savings plans and targets. Individuals qualified to determine compliance shall only be those individuals who are recognized by an organization certified by the Secretary for such purposes.

The Secretary, in consultation with the Secretary of Energy, is directed to promulgate regulations that describe methods of calculating and verifying energy and power costs. Additionally, the Secretary is directed to promulgate regulations as necessary to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings. Additionally, the Secretary shall promulgate regulations for recapture of the deduction if the deduction is taken pursuant to a plan to achieve the requisite energy efficiency standard that is subsequently not fully implemented as necessary to achieve such standard.

Effective date.—The provision is effective for property placed in service after the date of enactment and on or before December 31, 2007.

9. Three-year applicable recovery period for depreciation of qualified energy management devices and qualified water submetering devices (secs. 2107 and 2111 of the Senate amendment and sec. 168 of the Code)

PRESENT LAW

No special recovery period is currently provided for depreciation of energy management devices or water submetering devices.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a three-year recovery period for qualified new or retrofitted energy management devices placed in service by any taxpayer who is a supplier of electric energy or natural gas or is a provider of electric energy or natural gas services. A qualified energy management device is any tangible property eligible for accelerated depreciation under section 168 and which is acquired and used by the taxpayer to enable consumers or others to manage their purchase, sale, or use of electricity in response to energy price and usage signals and which permits reading of energy price and usage signals on at least a daily basis.

Additionally, the provision provides a three-year recovery period for qualified new water submetering devices placed in service by any taxpayer who is an eligible resupplier. An eligible resupplier is any taxpayer who purchases and installs qualified water submetering devices in every unit in any multi-unit property. A qualified water submetering device is any tangible property eligible for accelerated depreciation under section 168 that enables consumers to manage their purchase or use of water in response to water price and usage signals and that permits reading of water price and usage signals on at least a daily basis.

Effective date.—The provision is effective for any qualified energy management device placed in service after the date of enactment of the Act, and for any water submetering device placed in service after the date of enactment of the Act and prior to January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment with respect to energy management devices, but with modifications. The conference agreement provides a three-year recovery period for qualified new energy management devices placed in service by any taxpayer who is a supplier of electric energy or is a provider of electric energy services. A qualified energy management device is any meter or metering device eligible for accelerated depreciation under section 168 and which is used by the taxpayer (1) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and (2) to provide such data on at least a monthly basis to both consumers and the taxpayer.

The conference agreement does not include the Senate amendment provision related to water submetering devices.

Effective date.—The provision is effective for any qualified energy management device placed in service after the date of enactment and prior to January 1, 2008.

10. Allowance of deduction for qualified energy management devices and qualified water submetering devices (secs. 2106 and 2110 of the Senate amendment)

PRESENT LAW

No special deduction is currently provided for expenses incurred for energy management devices or water submetering devices.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a $30 deduction for each qualified new or retrofitted energy management device placed in service by any taxpayer who is a supplier of electric energy or natural gas or is a provider of electric energy or natural gas services. A qualified energy management device is any tangible property eligible for accelerated depreciation under section 168 and which is acquired and used by the taxpayer to enable consumers or others to manage their purchase, sale, or use of electricity in response to energy price and usage signals and which permits reading of energy price and usage signals on at least a daily basis.

The deduction is not allowed to property used outside of the United States. The taxpayer would have basis reduction for such property equal to the deduction. Other rules apply.

In addition, the Senate amendment provides a $30 deduction for qualified water submetering devices. A qualified water submetering device is any tangible property eligible for accelerated depreciation under section 168 that enables consumers to manage their purchase or use of water in response to water price and usage signals and that permits reading of water price and usage signals on at least a daily basis.

Effective date.—The provision is effective for any qualified energy management device placed in service after the date of enactment of the Act, and for any water submetering device placed in service after the date of enactment of the Act and prior to January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

11. Credit for electricity produced from advanced nuclear power facilities (new sec. 45L of the Code)

PRESENT LAW

An income tax credit is allowed for the production of electricity from either qualified wind energy, qualified "closed-loop" biomass, or qualified poultry waste facilities (sec. 45). The amount of the credit is 1.5 cents per kilowatt-hour (indexed for inflation) of electricity produced. The amount of the credit is 1.8 cents per kilowatt-hour for 2003. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement that a taxpayer producing electricity at a qualifying advanced nuclear power facility may claim a credit equal to 1.8 cents per kilowatt-hour of electricity produced for the eight year period starting when the facility is placed in service.[4] The aggregate amount of credit that a taxpayer may claim in any year during the eight-year period is subject to limitation based on allocated capacity and an annual limitation as described below.

A qualifying advanced nuclear facility is an advanced nuclear facility for which the taxpayer has received an allocation of megawatt capacity from the Secretary and is placed in service before January 1, 2021. The taxpayer may only claim credit for production of electricity equal to the ratio of the allocated capacity that the taxpayer receives from the Secretary to the rated nameplate capacity of the taxpayer's facility. For example, if the taxpayer receives an allocation of 750 megawatts of capacity from the Secretary and the taxpayer's facility has a rated nameplate capacity of 1,000 megawatts, then the taxpayer may claim three-quarters of the otherwise allowable credit, or 1.35 cents per kilowatt-hour, for each kilowatt-hour of electricity produced at the facility

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[4] The 1.8-cents credit amount is reduced, but not below zero, if the annual average contract price per kilowatt-hour of electricity generated from advanced nuclear power facilities in the preceding year exceeds eight cents per kilowatt-hour. The eight-cent price comparison level is indexed for inflation after 1992.

(subject to the annual limitation described below). The Secretary may allocate up to 6,000 megawatts of capacity.

A taxpayer operating a qualified facility may claim no more than $125 million in tax credits per 1,000 megawatts of allocated capacity in any one year of the eight-year credit period. If the taxpayer operates a 1,350 megawatt rated nameplate capacity system and has received an allocation from the Secretary for 1,350 megawatts of capacity eligible for the credit, the taxpayer's annual limitation on credits that may be claimed is equal to 1.35 time $125 million, or $168.75 million. If the taxpayer operates a facility with a nameplate rated capacity of 1,350 megawatts, but has received an allocation from the Secretary for 750 megawatts of credit eligible capacity, then the two limitations apply such that the taxpayer may claim a credit equal to 1.35 cents per kilowatt-hour of electricity produced (as described above) subject to an annual credit limitation of $93.75 million in credits (three-quarters of $125 million).

An advanced nuclear facility is any nuclear facility for the production of electricity, the reactor design for which is approved after the date of enactment. For this purpose, a qualifying advanced nuclear facility is not any facility for which a substantial similar design for a facility of comparable capacity was approved on or before the date of enactment.

In addition, the credit allowable to the taxpayer is reduced by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits, but such reduction cannot exceed 50 percent of the otherwise allowable credit. The credit is treated as part of the general business credit and, under a special transition rule may not be carried back to a taxable year ending before or on the effective date of the provision.

Effective date.—The provision is effective for production in taxable years beginning after December 31, 2003.

B. FUELS AND ALTERNATIVE MOTOR VEHICLES

1. Repeal certain excise taxes on rail diesel fuel and inland waterway barge fuels (sec. 41008 of the House bill and secs. 4041, 4042, 6421, and 6427 of the Code)

PRESENT LAW

Under present law, diesel fuel used in trains is subject to a 4.4-cents-per gallon excise tax. Revenues from 4.3 cents per gallon of this excise tax are retained in the General Fund of the Treasury. The remaining 0.1 cent per gallon is deposited in the Leaking Underground Storage Tank ("LUST") Trust Fund.

Similarly, fuels used in barges operating on the designated inland waterways system are subject to a 4.3-cents-per-gallon General Fund excise tax. This tax is in addition to the 20.1-cents-per-gallon tax rates that are imposed on fuels used in these barges to fund the Inland Waterways Trust Fund and the Leaking Underground Storage Tank Trust Fund.

In both cases, the 4.3-cents-per-gallon excise tax rates are permanent. The LUST tax is scheduled to expire after March 31, 2005.

HOUSE BILL

The 4.3-cents-per-gallon General Fund excise tax rate on diesel fuel used in trains and fuels used in barges operating on the designated inland waterways system is repealed. The 0.1 cent per gallon for the Leaking Underground Storage Tank ("LUST") Trust Fund is unchanged by the provision.

Effective date.—The provision is effective on January 1, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

2. Btu-based rate for diesel/water emulsion fuel (sec. 41009 of the House bill and secs. 4081 and 6427 of the Code)

PRESENT LAW

A 24.3 cents per gallon excise tax is imposed on diesel fuel to finance the Highway Trust Fund. Gasoline and most special motor fuels are subject to tax at 18.3 cents per gallon for the Trust Fund. The statutory rate for certain special motor fuels is determined on an energy equivalent basis, as follows:

Liquefied petroleum gas (propane)	13.6 cents per gallon.
Liquefied natural gas	11.9 cents per gallon.
Methanol derived from petroleum or natural gas	9.15 cents per gallon.
Compressed natural gas	48.54 cents per MCF.

No special tax rate is provided for diesel fuel blended in a water emulsion fuel.

HOUSE BILL

A special tax rate of 19.7 cents per gallon is provided for diesel fuel blended with water into a diesel/water emulsion fuel to reflect the reduced Btu content per gallon resulting from the water. Emulsion fuels eligible for the special rate must consist of not more than 86 percent diesel fuel (and other minor chemical additives to enhance combustion) and at least 14 percent water. Anyone who separates the diesel fuel from the diesel-water fuel emulsion on which a reduced rate of tax was imposed is treated as a refiner of the fuel and is liable for the difference between the amount of tax on the latest removal of the separated fuel and the amount of tax that was imposed on any prior removal or entry of such fuel.

Effective date.—The provision applies to fuels removed after September 30, 2003.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill except as to the effective date.

Effective date.—The provision is effective January 1, 2004.

3. Modifications to small producer ethanol credit (sec. 2005 of the Senate amendment and sec. 40 of the Code)

PRESENT LAW

Small producer credit

Present law provides several tax benefits for ethanol and methanol produced from renewable sources (e.g., biomass) that are used as a motor fuel or that are blended with other fuels (e.g., gasoline) for such a use. In the case of ethanol, a separate 10-cents-per-gallon credit is provided for small producers, defined generally as persons whose production does not exceed 15 million gallons per year and whose production capacity does not exceed 30 million gallons per year. The small producer credit is part of the alcohol fuels tax credit under section 40 of the Code. The alcohol fuels tax credits are includible in income. This credit, like tax credits generally, may not be used to offset alternative minimum tax liability. The credit is treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally. The alcohol fuels tax credit is scheduled to expire after December 31, 2007.

Taxation of cooperatives and their patrons

Under present law, cooperatives in essence are treated as pass-through entities in that the cooperative is not subject to corporate income tax to the extent the cooperative timely pays patronage dividends. Under present law (sec. 38(d)(4)), the only excess credits that may be passed through to cooperative patrons are the rehabilitation credit (sec. 47), the energy property credit (sec. 48(a)), and the reforestation credit (sec. 48(b)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment makes several modifications to the rules governing the small producer ethanol credit. First, the provision liberalizes the definition of an eligible small producer to include persons whose production capacity does not exceed 60 million gallons. Second, the provision allows cooperatives to elect to pass through the small ethanol producer credits to its patrons. The credit is apportioned pro rata among patrons of the cooperative on the basis of the quantity or value of the business done with or for such patrons for the taxable year. An election to pass through the credit is made on a timely filed return for the taxable year and is irrevocable for such taxable year.

Third, the provision repeals the rule that includes the small producer credit in income of taxpayers claiming it. Fourth, the provision allows the small producer credit to be claimed against the alternative minimum tax. Finally, the provision provides that the small producer ethanol credit is not treated as derived from a passive activity under the Code rules restricting credits and deductions attributable to such activities.

Effective date.—The provision is effective for taxable years beginning after date of enactment.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment except the small producer credit will continue to be included in the income of taxpayers claiming it and no exemption from the passive activity rules under the Code is provided. With respect to the alternative minimum tax, the conference agreement provides the same treatment given other business related energy credits that are the subject of the agreement as described below (see sec. 1347 of the Act).

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

4. Transfer full amount of excise tax imposed on gasohol to the highway trust fund (sec. 2006 of the Senate amendment)

PRESENT LAW

An 18.4 cents-per-gallon excise tax is imposed on gasoline. The tax is imposed when the fuel is removed from a refinery unless the removal is to a bulk transportation facility (e.g., removal by pipeline or barge to a registered terminal). In the case of gasoline removed in bulk by registered parties, tax is imposed when the gasoline is removed from the terminal facility, typically by truck (i.e., "breaks bulk"). If gasoline is sold to an unregistered party before it is removed from a terminal, tax is imposed on that sale. When the gasoline subsequently breaks bulk, a second tax is imposed. The payor of the second tax may file a refund claim if it can prove payment of the first tax. The party liable for payment of the gasoline excise tax is called a "position holder," defined as the owner of record inside the refinery or terminal facility.

A 52-cents-per-gallon income tax credit is allowed for ethanol used as a motor fuel (the ``alcohol fuels credit''). The benefit of the alcohol fuels tax credit may be claimed as a reduction in excise tax payments when the ethanol is blended with gasoline (``gasohol''). The reduction is based on the amount of ethanol contained in the gasohol. The excise tax benefits apply to gasohol blends of 90 percent gasoline/10 percent ethanol, 92.3 percent gasoline/7.7 percent ethanol, or 94.3 percent gasoline/5.7 percent ethanol. The income tax credit is based on the amount of alcohol contained in the blended fuel.

In general, 18.3 cents per gallon of the gasoline excise tax is deposited in the Highway Trust Fund and 0.1 cent per gallon is deposited in the Leaking Underground Storage Tank Trust Fund (the ``LUST'' rate). In the case of gasohol with respect to which a reduced excise tax is paid, 2.5 cents per gallon of the reduced tax is retained in the General Fund. The balance of the reduced rate (less the LUST rate) is deposited in the Highway Trust Fund.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment transfers the 2.5 cents per gallon of excise tax on gasohol that currently is retained in the General Fund to the Highway Trust Fund.

Effective date.—The Senate amendment would be effective for taxes imposed after September 30, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Incentives for biodiesel (sec. 2008 of the Senate amendment and new sec. 40A of the Code)

PRESENT LAW

No income tax credit or excise tax rate reduction is provided for biodiesel fuels under present law.

However, a 52-cents-per-gallon income tax credit (the ``alcohol fuels credit'') is allowed for ethanol and methanol (derived from renewable sources) when the alcohol is used as a highway motor fuel. The 52-cents-per-gallon rate is scheduled to decline to 51 cents per gallon beginning in calendar year 2005. The benefit of this income tax credit may be claimed through reductions in excise taxes paid on alcohol fuels. In the case of alcohol blended with other fuels (e.g., gasoline), the excise tax rate reductions are allowable only for blends of 90 percent gasoline/10 percent alcohol, 92.3 percent gasoline/7.7 percent alcohol, or 94.3 percent gasoline/5.7 percent alcohol. These present-law provisions are scheduled to expire after 2007.

HOUSE BILL

No provision.

SENATE AMENDMENT

A new income tax credit is provided for biodiesel fuel mixtures (``biodiesel V'' and ``biodiesel NV''). The structure of the new credit is similar to structure of the present-law alcohol fuels credit. Biodiesel V is derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, or mustard seeds, for use in diesel engines. Biodiesel NV is derived from nonvirgin vegetable oils or animal fats for use in diesel engines. Both biodiesel V and biodiesel NV must meet the requirements of the Environmental Protection Agency under section 211 of the Clean Air Act (42 USC 7545) and the American Society of Testing and Materials D6751.

The per gallon biodiesel mixture credit rate for biodiesel V equals one cent for each percentage point of biodiesel in the fuels mixture, subject to a maximum credit of 20 cents per blended gallon of fuel. The per gallon biodiesel mixture credit rate for biodiesel NV equals .5 cent for each percentage point of biodiesel in the fuels mixture, subject to a maximum credit of 20 cents per blended gallon of fuel. The amount of the biodiesel fuel mixture credit is includible in income. The credit cannot be carried back to a taxable year beginning before January 1, 2003.

Mixtures of biodiesel V are subject to a reduced rate of excise tax, which is coordinated with the income tax credit. An excise tax reduction is not available for biodiesel NV.

The provision further provides for transfers to the Highway Trust Fund from the funds of the Commodity Credit Corporation of amounts equivalent to the reduction in receipts to the Trust Fund resulting from the excise tax rate reduction allowed under the provision.

Effective date.—The income tax provision is effective for taxable years beginning after December 31, 2002, for fuel sold before January 1, 2006. The excise tax provision is effective for fuel sold after December 31, 2002, and before January 1, 2006.

CONFERENCE AGREEMENT

The conference agreement generally follows S. 1548 as ordered reported by the Committee on Finance on September 17, 2003, with respect to the income tax credit for biodiesel and biodiesel mixtures. The conference agreement does not provide for any reduced excise tax rate for mixtures of biodiesel, including virgin biodiesel.

The provision provides a new income tax credit for biodiesel and qualified biodiesel mixtures, the biodiesel fuels credit. The biodiesel fuels credit is the sum of the biodiesel mixture credit plus the biodiesel credit and is treated as a general business credit. The amount of the biodiesel fuels credit is includable in gross income. The biodiesel fuels credit is coordinated to take into account benefits from the excise tax credit for qualified biodiesel mixtures. The credit is treated as part of the general business credit and, under a special transition rule, may not be carried back to a taxable year ending before or on the effective date of the provision. The provision does not apply to fuel used or sold after December 31, 2005.

Biodiesel may be taken into account for purposes of the credit only if the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel that identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product. Biodiesel is monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet (1) the registration requirements established by the Environmental Protection Agency under section 211 of the Clean Air Act, and (2) the requirements of the American Society of Testing and Materials D6751. Agri-biodiesel is biodiesel derived from virgin oils including esters derived from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, or animal fats.

Biodiesel mixture credit

The biodiesel mixture credit is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture. For agri-biodiesel, the credit is $1.00 per gallon. A qualified biodiesel mixture is a mixture of biodiesel and a taxable fuel that is (1) sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) is used as a fuel by the taxpayer producing such mixture. The sale or use must be in the trade or business of the taxpayer and must be taken into account for the taxable year in which such sale or use occurs. No credit is allowed with respect to any casual off-farm production of a qualified biodiesel mixture.

Biodiesel credit

The biodiesel credit is 50 cents for each gallon of 100 percent biodiesel that is not in a mixture and which during the taxable year is (1) used by the taxpayer as a fuel in a trade or business or (2) sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle. The first condition is not satisfied by a person who acquires the biodiesel in a sale that satisfies the second condition. For agri-biodiesel, the credit is $1.00 per gallon.

Later separation or failure to use as fuel

In a manner similar to the treatment of alcohol fuels, a tax is imposed if a biodiesel fuels credit is claimed with respect to biodiesel that is subsequently used for a purpose for which the credit is not allowed or that is changed into a substance that does not qualify for the credit. The first tax applies if two conditions are satisfied. First, a biodiesel mixture credit must have been allowed with respect to biodiesel used in the production of a qualified mixture. Second, any person either separates the biodiesel from the mixture or, without separation, uses the mixture other than as a fuel. The tax equals the applicable amount ($1.00 in the case of agri-biodiesel or 50 cents in the case of other biodiesel) multiplied by the number of gallons of biodiesel in such mixture. The second tax applies if two conditions are satisfied. First, a biodiesel credit must have been allowed with respect to the retail sale of any biodiesel. Second, any person mixes that biodiesel or uses it other than as a fuel. The tax equals the applicable amount multiplied by the number of gallons of biodiesel.

Effective date.—The biodiesel fuel income tax credit provision is effective for fuel produced, and sold or used, after December 31, 2003, in taxable years ending after such date.

6. Alcohol and biodiesel excise tax credit and extension of alcohol fuels income tax credit (secs. 40, 4101, 6427, 9503 and new secs. 4104, and 6426 of the Code)

PRESENT LAW

Alcohol fuels income tax credit

The alcohol fuels credit is the sum of three credits: the alcohol mixture credit, the alcohol credit, and the small ethanol producer credit. Generally, the alcohol fuels credit expires after December 31, 2007.[5]

A taxpayer (generally a petroleum refiner, distributor, or marketer) who mixes ethanol with gasoline (or a special fuel)[6] is an ``ethanol blender.'' Ethanol blenders are eligible for an income tax credit of 52 cents per gallon of ethanol used in the production of a qualified mixture (the ``alcohol mixture credit''). A qualified mixture means a mixture of alcohol and gasoline, (or of alcohol and a special fuel) sold by the blender as fuel, or used as fuel by the blender in producing the mixture. The term alcohol includes methanol and ethanol but does not include (1) alcohol produced from petroleum, natural gas, or coal (including peat), or (2) alcohol with a proof of less than 150. Businesses also may reduce their income taxes by 52 cents for each gallon of ethanol (not mixed with gasoline or other special fuel) that they sell at the retail level as vehicle fuel or use themselves as a fuel in their trade or business ("the alcohol credit"). The 52-cents-per-gallon income tax credit rate is scheduled to decline to 51 cents per gallon during the period 2005 through 2007. For blenders using an alcohol other than ethanol, the rate is 60 cents per gallon.[7]

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[5] The alcohol fuels credit is unavailable when, for any period before January 1, 2008, the tax rates for gasoline and diesel fuels drop to 4.3 cents per gallon.

[6] A special fuel includes any liquid (other than gasoline) that is suitable for use in an internal combustion engine.

A separate income tax credit is available for small ethanol producers (the "small ethanol producer credit"). A small ethanol producer is defined as a person whose ethanol production capacity does not exceed 30 million gallons per year. The small ethanol producer credit is 10 cents per gallon of ethanol produced during the taxable year for up to a maximum of 15 million gallons.

The credits that comprise the alcohol fuels tax credit are includible in income. The credit may not be used to offset alternative minimum tax liability. The credit is treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally.

Excise tax reductions for alcohol mixture fuels

Generally, motor fuels tax rates are as follows:[8]

Gasoline	18.4 cents per gallon.
Diesel fuel and kerosene	24.4 cents per gallon.
Special motor fuels	18.4 cents per gallon generally.

Alcohol-blended fuels are subject to a reduced rate of tax. The benefits provided by the alcohol fuels income tax credit and the excise tax reduction are integrated such that the alcohol fuels credit is reduced to take into account the benefit of any excise tax reduction.

Gasohol

Registered ethanol blenders may forgo the full income tax credit and instead pay reduced rates of excise tax on gasoline that they purchase for blending with ethanol. Most of the benefit of the alcohol fuels credit is claimed through the excise tax system.

The reduced excise tax rates apply to gasohol upon its removal or entry. Gasohol is defined as a gasoline/ethanol blend that contains 5.7 percent ethanol, 7.7 percent ethanol, or 10 percent ethanol. For the calendar year 2003, the following reduced rates apply to gasohol:[9]

5.7 percent ethanol	15.436 cents per gallon.
7.7 percent ethanol	14.396 cents per gallon.
10.0 percent ethanol	13.200 cents per gallon.

Reduced excise tax rates also apply when gasoline is being purchased for the production of "gasohol." When gasoline is purchased for blending into gasohol, the rates above are multiplied by a fraction (e.g., 10/9 for 10-percent gasohol) so that the increased volume of motor fuel will be subject to tax. The reduced tax rates apply if the person liable for the tax is registered with the IRS and (1) produces gasohol with gasoline within 24 hours of removing or entering the gasoline or (2) gasoline is sold upon its removal or entry and such person has an unexpired certificate from the buyer and has no reason to believe the certificate is false.[10]

Qualified methanol and ethanol fuels

Qualified methanol or ethanol fuel is any liquid that contains at least 85 percent methanol or ethanol or other alcohol produced from a substance other than petroleum or natural gas. These fuels are taxed at reduced rates.[11] The rate of tax on qualified methanol is 12.35 cents per gallon. The rate on qualified ethanol in 2003 and 2004 is 13.15 cents. From January 1, 2005, through September 30, 2007, the rate of tax on qualified ethanol is 13.25 cents.[12]

Alcohol produced from natural gas

A mixture of methanol, ethanol, or other alcohol produced from natural gas that consists of at least 85 percent alcohol is also taxed at reduced rates.[13] For mixtures not containing ethanol, the applicable rate of tax is 9.25 cents per gallon before October 1, 2005. In all other cases, the rate is 11.4 cents per gallon. After September 31, 2005, the rate is reduced to 2.15 cents per gallon when the mixture does not contain ethanol and 4.3 cents per gallon in all other cases.

Blends of alcohol and diesel fuel or special motor fuels

A reduced rate of tax applies to diesel fuel or kerosene that is combined with alcohol as long as at least 10 percent of the finished mixture is alcohol. If none of the alcohol in the mixture is ethanol, the rate of tax is 18.4 cents per gallon. For alcohol mixtures containing ethanol, the rate of tax in 2003 and 2004 is 19.2 cents per gallon and for 2005 through September 30, 2007, the rate for ethanol mixtures is 19.3 cents per gallon. Fuel removed or entered for use in producing a 10 percent diesel-alcohol fuel mixture (without ethanol), is subject to a tax of 20.44 cents. The rate of tax for fuel removed or entered to produce a 10 percent diesel-ethanol fuel mixture is 21.333 cents per gallon for 2003 and 2004 and 21.444 cents per gallon for the period January 1, 2005, through September 30, 2007.

Special motor fuel (nongasoline) mixtures with alcohol also are taxed at reduced rates.

Aviation fuel

Noncommercial aviation fuel is subject to a tax of 21.9 cents per gallon.[14] Fuel mixtures containing at least 10 percent alcohol are taxed at lower rates.[15] In the case of 10 percent ethanol mixtures, any sale or use during 2003 and 2004, the 21.9 cents is reduced by 13.2 cents (for a tax of 8.7 cents per gallon), for 2005, 2006, and 2007 the reduction is 13.1 cents (for a tax of 8.8 cents per gallon) and is reduced by 13.4 cents in the case of any sale during 2008 or thereafter. For mixtures not containing ethanol, the 21.9 cents is reduced by 14 cents for a tax of 7.9 cents. These reduced rates expire after September 30, 2007.[16]

When aviation fuel is purchased for blending with alcohol, the rates above are multiplied by a fraction (10/9) so that the increased volume of aviation fuel will be subject to tax.

Refunds and payments

If fully taxed gasoline (or other taxable fuel) is used to produce a qualified alcohol mixture, the Code permits the blender to file a claim for a quick excise tax refund. The refund is equal to the difference between the gasoline (or other taxable fuel) excise tax that was paid and the tax that would have been paid by a registered blender on the alcohol fuel mixture being produced. Generally, the IRS pays these quick refunds within 20 days. Interest accrues if the refund is paid more than 20 days after filing. A claim may be filed by any person with respect to gasoline, diesel fuel, or kerosene used to produce a qualified alcohol fuel mixture for any period for which $200 or more is payable and which is not less than one week.

Ethyl tertiary butyl ether (ETBE)

Ethyl tertiary butyl ether ("ETBE") is an ether that is manufactured using ethanol. Unlike ethanol, ETBE can be blended with gasoline before the gasoline enters a pipeline because ETBE does not result in contamination of fuel with water while in transport. Treasury regulations provide that gasohol blenders may claim the income tax credit and excise tax rate reductions for ethanol used in the production of ETBE. The regulations also provide a special election allowing refiners to claim the benefit of the excise tax rate reduction even though the fuel being removed from terminals does not contain the requisite percentages of ethanol for claiming the excise tax rate reduction.

Highway Trust Fund

With certain exceptions, the taxes imposed by section 4041 (relating to retail taxes on diesel fuels and special motor fuels) and section 4081 (relating to tax on gasoline, diesel fuel and kerosene) are credited to the Highway Trust Fund. In the case of alcohol fuels, 2.5 cents per gallon of the tax imposed is retained in the General Fund.[17] In the case of a taxable fuel taxed at a reduced rate upon removal or entry prior to mixing with alcohol, 2.8 cents of the reduced rate is retained in the General Fund.[18]

Biodiesel

If biodiesel is used in the production of blended taxable fuel, the Code imposes tax on the removal or sale of the blended taxable fuel.[19] In addition, the Code imposes tax on

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[7] In the case of any alcohol (other than ethanol) with a proof that is at least 150 but less than 190, the credit is 45 cents per gallon (the "low-proof blender amount"). For ethanol with a proof that is at least 150 but less than 190, the low-proof blender amount is 38.52 cents for sales or uses during calendar year 2003 and 2004, and 37.78 cents for calendar years 2005, 2006, and 2007.

[8] These rates include an additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund. See secs. 4041(d) and 4081(a)(2)(B). In addition, the basic fuel tax rate will drop to 4.3 cents per gallon beginning on October 1, 2005.

[9] These rates include the additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund. These special rates will terminate after September 30, 2007 (sec. 4081(c)(8)).

[10] Treas. Reg. sec. 48.4081-6(c). A certificate from the buyer assures that the gasoline will be used to produce gasohol within 24 hours after purchase. A copy of the registrant's letter of registration cannot be used as a gasohol blender's certificate.

[11] A 0.05-cent-per-gallon Leaking Underground Storage Tank Trust Fund tax is imposed on such fuel. This provision expires on October 1, 2007 (sec. 4041(b)(2)).

[12] These reduced rates terminate after September 30, 2007.

[13] These rates include the additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund (sec. 4041(d)(1)).

[14] This rate includes the additional 0.1 cent-per-gallon tax for the Leaking Underground Storage Tank Trust fund.

[15] Sec. 4041(k)(1) and 4091(c).

[16] Sec. 4091(c)(1).

[17] Sec. 9503(b)(4)(E).

[18] Sec. 9503(b)(4)(F).

[19] Sec. 4081(b); Rev. Rul. 2002-76, 2002-46 I.R.B. 841 (2002). "Taxable fuels" are gasoline, diesel and kerosene (sec. 4083). Biodiesel, although suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train, contains less than four percent normal paraffins and, therefore, is not treated as diesel fuel under the applicable Treasury regulations. Treas. Reg. secs. 48.4081-1(c)(2)(i) and (ii), and

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any liquid other than gasoline sold for use or used as a fuel in a diesel-powered highway vehicle or diesel-powered train unless tax was previously imposed and not refunded or credited.[20] If biodiesel that was not previously taxed or exempt is sold for use or used as a fuel in a diesel-powered highway vehicle or a diesel-powered train, tax is imposed.[21] There are no reduced excise tax rates for biodiesel.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement creates two new excise tax credits, the alcohol fuel mixture excise tax credit and the biodiesel fuel mixture excise tax credit. The sum of these credits may be taken against the tax imposed on taxable fuels (by section 4081). The amount of fuel taxes transferred to the Highway Trust Fund is not reduced by any excise tax credits claimed. The conference agreement also extends the alcohol fuels income tax credit (sec. 40) through December 31, 2010.[22]

Alcohol fuel mixture excise tax credit

The conference agreement provides for an excise tax credit, the alcohol fuel mixture credit. The alcohol fuel mixture credit is 52 cents for each gallon of alcohol used by a person in producing an alcohol fuel mixture for sale or use in a trade or business of the taxpayer. The credit declines to 51 cents per gallon after calendar year 2004. For mixtures not containing ethanol (renewable source methanol), the credit is 60 cents per gallon.

For purposes of the alcohol fuel mixture credit, an "alcohol fuel mixture" is a mixture of alcohol and a taxable fuel that is (1) sold for use or used as a fuel by the taxpayer producing the mixture or (2) removed from the refinery by a person producing the mixture. Alcohol for this purpose includes methanol, ethanol, and alcohol gallon equivalents of ETBE or other ethers produced from such alcohol. It does not include alcohol produced from petroleum, natural gas, or coal (including peat), or alcohol with a proof of less than 190 (determined without regard to any added denaturants). Taxable fuel is gasoline, diesel, and kerosene.[23]

The excise tax credit is coordinated with the alcohol fuels income tax credit and is available through December 31, 2010. In addition, any excise tax exemption for alcohol fuels reduces the amount of the alcohol fuel excise tax credit.[24]

Biodiesel mixture excise tax credit

The provision provides an excise tax credit for biodiesel mixtures.[25] The credit is 50 cents for each gallon of biodiesel used by the taxpayer in producing a qualified biodiesel mixture for sale or use in a trade or business of the taxpayer. A qualified biodiesel mixture is a mixture of biodiesel and taxable fuel that is (1) sold for use or used by the taxpayer producing such mixture as a fuel, or (2) removed from the refinery by a person producing the mixture. In the case of agri-biodiesel, the amount of the credit is $1.00 per gallon. The credit applies only if the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

The credit is not available for any sale, use or removal for any period after December 31, 2005. This excise tax credit is coordinated with the income tax credit for biodiesel such that the credit for the same biodiesel cannot be claimed for both income and excise tax purposes.

Later separation or mixture not used as fuel

Under certain circumstances, a tax is imposed if an alcohol fuel mixture credit or biodiesel fuel mixture credit is claimed with respect to alcohol or biodiesel used in the production of any alcohol or biodiesel mixture, that is subsequently used for a purpose for which the credit is not allowed or changed into a substance that does not qualify for the credit. The tax applies if two conditions are satisfied. First, a credit must have been allowed with respect to alcohol or biodiesel used in the production of a qualified mixture. Second, any person either separates the alcohol or biodiesel from the mixture or, without separation, uses the mixture other than as a fuel. The tax equals the applicable amount multiplied by the number of gallons of such alcohol or biodiesel.

Registration requirements

Under the provision, the Secretary shall require registration of every person that produces biodiesel or alcohol.

Information reporting for persons claiming certain tax benefits

The Secretary shall require any person claiming tax benefits under certain sections relating to alcohol and biodiesel fuels[26] to file a quarterly return (in such manner as the Secretary may prescribe) providing such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits. With respect to persons required to register with the Secretary, failure to comply with these information-reporting requirements could subject such a person to the denial, revocation or suspension of registration.

Refund claims

If fully taxed gasoline (or other taxable fuel) is used to produce a qualified alcohol mixture, the Code permits the blender to file a claim for a quick excise tax refund. For claims filed after December 31, 2004, if such claims are not paid within 45 days, the claim is to be paid with interest. In the case of an electronic claim, if such claim is not paid within 20 days, the claim is to be paid with interest. If claims are filed electronically, the claimant may make a claim for less than $200. The Secretary is to prescribe the electronic format for filing claims not later than December 31, 2004.

Highway Trust Fund

The provision provides that the amount of fuel taxes to be appropriated to the Highway Trust Fund shall be determined without reduction for amounts equivalent to the excise tax credits allowed for alcohol fuel mixtures and biodiesel mixtures.

Effective date.—In general, the provisions are effective for fuel sold, used, or removed after December 31, 2003. The provisions relating to refund claims are effective for claims filed after December 31, 2004.

7. Nonapplication of export exemption to delivery of fuel to motor vehicles removed from United States (sec. 2504 of the Senate amendment and secs. 4221, 4041, and 4081 of the Code)

PRESENT LAW

A manufacturer's excise tax is imposed upon

(1) The removal of any taxable fuel from a refinery or terminal;

(2) The entry of any taxable fuel into the United States for consumption, use or warehousing; or

(3) The sale of any taxable fuel to any person who is not registered, unless there was a prior taxable removal or entry.[27]

The term "taxable fuel" means gasoline, diesel fuel and kerosene.

Special provisions under the Code provide for a refund of tax to any person who sells gasoline to another for exportation.[28] Section 6421(c) provides "If gasoline is sold to any person for any purpose described in paragraph (2), (3), (4), or (5) of section 4221(a), the Secretary shall pay (without interest) to such person an amount equal to the product of the number of gallons so sold multiplied by the rate at which tax was imposed on such gasoline by section 4081." Section 4221 provides, in pertinent part, "Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter * * * on the sale by the manufacturer * * * of an article— * * * for export, or for resale by the purchaser to a second purchaser for export * * * but only if such exportation or use is to occur before any other use. * * *"

It is the IRS administrative position that the exemption from manufacturers excise tax by reason of exportation does not apply to the sale of motor fuel pumped into a fuel tank of a vehicle that is to be driven, or shipped, directly out of the United States.[29]

A duty-free sales facility that meets certain conditions may sell and deliver for export from the customs territory of the United States duty-free merchandise. Duty-free merchandise is merchandise sold by a duty-free sales facility on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory of the United States. The statutes covering duty-free facilities do not contain any limitation on what goods may qualify for duty-free treatment.

The United States Court of Federal Claims ("Claims Court") and a District Court in Michigan have taken different positions on whether fuel sold from a duty-free facility and placed into the tank of an automobile that is then driven out of the country is exported fuel.[30] Both cases involved the same

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48.4081-1(b); Rev. Rul. 2002-76, 2002-46 I.R.B. 841 (2002). As a result, biodiesel alone is not a taxable fuel for purposes of section 4081. As noted above, however, tax is imposed upon the removal or entry of blended taxable fuel made with biodiesel.

[20] Sec. 4041. The tax imposed under section 4041 also will not apply if an exemption from tax applies.

[21] Rev. Rul. 2002-76, 2002-46 I.R.B. 841 (2002).

[22] The conference agreement contains several provisions found in S. 1548 as ordered reported by the Committee on Finance on September 17, 2003. While similar to S. 1548, the conference agreement differs from S. 1548 in several respects. Unlike S. 1548, the conference agreement leaves in place the present-law reduced rate excise tax structure. Also, the conference agreement does not eliminate the requirement that 2.5 and 2.8 cents per gallon of the reduced rate of excise tax be retained in the General Fund. In addition, the conference agreement does not contain any provisions regarding payments with respect to qualified alcohol and biodiesel fuel mixtures nor with respect to alcohol and biodiesel used as a fuel.

[23] Sec. 4083(a)(1). As under present law, dyed fuels are taxable fuels that have been exempted from tax.

[24] Rules similar to those found in section 40(c) regarding the income tax credit for alcohol fuels apply.

[25] The excise tax credit uses the same definitions as the biodiesel fuels income tax credit.

[26] These sections are sections 34, 40, 40A, 4041(b)(2), 4041(k), 4081(c), 6426, and 6427(f).

[27] Sec. 4081(a)(1).

[28] Secs. 6421(c) and 4221(a)(2).

[29] Rev. Rul. 69-150.

[30] See, *Ammex Inc.* v. *United States*, 52 Fed. Cl. 303 (2002) (on cross-motions for summary judgment, the

duty-free facility, which is near the Canadian border and is configured in such a way that anyone leaving the facility must depart the United States and enter into Canada. The District Court agreed with the IRS position that such fuel is not exported, while the Claims Court reached the opposite conclusion. The Claims Court concluded that the act of exportation began with the consumer's purchase and that the fuel necessarily enters into the stream of exportation at the moment it is placed into the fuel supply tank and the customer drives into Canada.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment amends section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) to provide that gasoline or diesel fuel sold at duty-free facilities are considered to be entered for consumption into the United States and thus ineligible for classification as duty-free merchandise.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement reaffirms the long-standing IRS position taken in Rev. Rul. 69-150 and restates present law by amending the Code definition of export to exclude the delivery of a taxable fuel into a fuel tank of a motor vehicle that is shipped or driven out of the United States. It also imposes a tax on the sale of taxable fuel at a duty-free sales enterprise unless there was a prior taxable removal, or entry of such fuel.

Effective date.—The provision applies to sales or deliveries made after the date of enactment.

8. Modification of credit for electric vehicles (sec. 41010 of the House bill, sec. 2002 of Senate amendment, and sec. 30 of the Code)

PRESENT LAW

A 10-percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of $4,000 (sec. 30). A qualified electric vehicle is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current, the original use of which commences with the taxpayer, and that is acquired for the use by the taxpayer and not for resale. The full amount of the credit is available for purchases prior to 2002. The credit phases down in the years 2004 through 2006, and is unavailable for purchases after December 31, 2006. There is no carry forward or carryback of the credit for electric vehicles.

HOUSE BILL

The House bill repeals the phased-down reduction in the credit for years 2004, 2005, and 2006. Thus, the House bill provides that a taxpayer may claim the full 10-percent credit (up to a $4,000) maximum for the purchase of qualified electric vehicles before January 1, 2007.

Effective date.—The House bill provision is effective for property placed in service after the date of enactment.

SENATE AMENDMENT

The Senate amendment modifies the present-law credit for electric vehicles to provide that the credit for qualifying vehicles generally ranges between $3,500 and $40,000 depending upon the weight of the vehicle and, for certain vehicles, the driving range of the vehicle. In the case of property purchased by tax-exempt persons, the seller may claim the credit. The taxpayer would be ineligible for the deduction allowable under present-law section 179A for a qualified battery electric vehicle on which a credit is allowable. The provision also extends the expiration date of the credit from December 31, 2004, to December 31, 2006, and would repeal the phase-out schedule of present law. The taxpayer would be able to carry forward unused credits for 20 years or carry unused credits back for three years (but not carried back to taxable years beginning before October 1, 2002).

Effective date.—The Senate amendment is effective for property placed in service after September 30, 2002.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

9. Alternative motor vehicle credit (sec. 41011 of the House bill, secs. 2001 and 2010 of Senate amendment, and new sec. 30B of the Code)

PRESENT LAW

Certain costs of qualified clean-fuel vehicle may be expensed and deducted when such property is placed in service (sec. 179A). Qualified clean-fuel vehicle property includes motor vehicles that use certain clean-burning fuels (natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity and any other fuel at least 85 percent of which is methanol, ethanol, any other alcohol or ether).[31] The maximum amount of the deduction is $50,000 for a truck or van with a gross vehicle weight over 26,000 pounds or a bus with seating capacities of at least 20 adults; $5,000 in the case of a truck or van with a gross vehicle weight between 10,000 and 26,000 pounds; and $2,000 in the case of any other motor vehicle. Qualified electric vehicles do not qualify for the clean-fuel vehicle deduction. The deduction phases down in the years 2004 through 2006, and is unavailable for purchases after December 31, 2006.

HOUSE BILL

Clean-fuel vehicles

The House bill repeals the phased-down reduction in the allowable deduction for years 2004, 2005, and 2006. Thus, the provision provides that a taxpayer could claim a full deduction for allowable costs of clean-fuel vehicles purchased before January 1, 2007.

Fuel cell vehicles

The House bill provides a credit for the purchase of a new qualified fuel cell motor vehicle. A qualifying fuel cell vehicle is a motor vehicle that is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle and may or may not require reformation prior to use. In general the House bill provides that the buyer claims the credit, unless the buyer is a tax-exempt entity in which case the seller or lessor of the vehicle may claim the credit. The provision permits unused credits to be carried forward for up to 20 years. Qualified fuel cell motor vehicles are vehicles placed in service before 2013.

The amount of credit for the purchase of a fuel cell vehicle is determined by a base credit amount that depends upon the weight class of the vehicle and, in the case of automobiles or light trucks, an additional credit amount that depends upon the rated fuel economy of the vehicle compared to a base fuel economy. For these purposes the base fuel economy is the 2000 model year city fuel economy rating for vehicles of various weight classes (see below). Table 1, below, shows the base credit amounts.

TABLE 1.—BASE CREDIT AMOUNT FOR FUEL CELL VEHICLES

Vehicle gross weight rating in pounds	Credit amount
Vehicle = 8,500	$4,000
8,500 < vehicle = 14,000	10,000
14,000 < vehicle = 26,000	20,000
26,000 < vehicle	40,000

Table 2, below, shows the additional credits for automobiles or light trucks.

TABLE 2.—CREDIT FOR QUALIFYING FUEL CELL VEHICLES

[Percent of base fuel economy]

Credit	If fuel economy of the fuel cell vehicle is:	
	At least	But less than
$1,000	150	175
1,500	175	200
2,000	200	225
2,500	225	250
3,000	250	275
3,500	275	300
4,000	300	

Advanced lean-burn technology motor vehicle

The House bill provides a credit for the purchase of a new advanced lean burn technology motor vehicle. A qualifying advanced lean burn technology motor vehicle must meet the Environmental Protection Agency's Tier II bin 8 emissions standards. In general the provision provides that the buyer claims the credit, unless the buyer is a tax-exempt entity in which case the seller or lessor of the vehicle may claim the credit. The House bill permits unused credits to be carried forward for up to 20 years. Qualified advanced lean burn technology motor vehicles are vehicles placed in service before 2007. Table 3, below, shows the credits for the purchase of an advanced lean burn technology motor vehicle.

TABLE 3.—CREDIT FOR QUALIFYING ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLES

[Percent of base fuel economy]

Credit	If fuel economy of the vehicle is:	
	At least	But less than
$500	125	150
1,000	150	175
1,500	175	200
2,000	200	225
2,500	225	250
3,000	250	

In addition to the credit amount shown in Table 3, an advanced lean burn technology automobile or light truck may be eligible for

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court found that plaintiff established standing to proceed to trial pursuant to sec. 6421(c) respecting its gasoline purchases only); and *Ammex Inc.* v. *United States*, 2002 U.S. Dist. LEXIS 25771 (E.D. Mich. July 31, 2002) (granting defendant's motion for summary judgment), reconsideration denied, *Ammex, Inc.* v. *United States*, 2002 U.S. Dist. LEXIS 22893 (E.D. Mich. Oct. 22, 2002). Although the Claims Court ruled that Ammex had standing to challenge the excise tax on gasoline, it subsequently held that Ammex was not entitled to a payment pursuant to sec. 6421(c) because it failed to prove at trial that it did not pass the tax on to its customers. *Ammex Inc.* v. *United States*, 2003 U.S. Claims LEXIS 63 (Fed. Cl. Mar. 26, 2003).

[31] A hybrid-electric vehicle may qualify as a clean-fuel vehicle under present law.

an additional credit of $250 if the vehicle achieves an estimated lifetime fuel savings of at least 1,500 gallons of fuel and a further additional credit of $500 if the vehicle achieves an estimated lifetime fuel savings of at least 2,500 gallons compared to a like conventional vehicle (using the 2000 model year city fuel economy rating for the like vehicle and assuming 120,000 miles driven).

Base fuel economy

The base fuel economy is the 2000 model year city fuel economy for vehicles by inertia weight class by vehicle type. The "vehicle inertia weight class" is that defined in regulations prescribed by the Environmental Protection Agency for purposes of Title II of the Clean Air Act.

Effective date.—The House bill provision is effective for property placed in service after the date of enactment.

SENATE AMENDMENT

Section 179A

The Senate amendment extends the present-law deduction through December 31, 2011, for hydrogen-related property and through December 31, 2007, for all other vehicles. The Senate amendment provides that the otherwise allowable deduction is reduced by 25 percent in 2004 through 2009 for hydrogen-related property and in 2004 and 2005 for all other vehicles. The Senate amendment reduces the otherwise allowable deduction by 50 percent and 75 percent in 2010 and 2011 respectively in the case of hydrogen-related property and in 2006 and 2007 for all other vehicles.

Fuel cell motor vehicles

The Senate amendment provides a credit for the purchase of qualified fuel cell motor vehicles. The base credit for the purchase of new qualified fuel cell motor vehicles ranges between $4,000 and $40,000 depending upon the weight class of the vehicle. For automobiles and light trucks, the otherwise allowable credit amount ($4,000) is increased by an amount from $1,000 to $4,000 if the vehicle meets certain fuel economy increases compared to a stated standard. Credit may not be claimed for qualified fuel cell motor vehicles purchased after December 31, 2011.

Hybrid motor vehicles

The Senate amendment provides a credit for the purchase of qualified hybrid motor vehicles. The base credit for the purchase of a new qualified hybrid motor vehicle ranges from $250 to $10,000 depending upon the weight of the vehicle and the maximum power available from the vehicle's rechargeable energy storage system. For automobiles and light trucks, the otherwise allowable credit amount ($250 to $1,000) is increased by an amount from $500 to $3,000 if the vehicle meets certain fuel economy increases. For heavy duty hybrid motor vehicles, the otherwise allowable credit ($1,000 to $10,000) is increased depending upon the vehicle's weight and provided the vehicle meets certain 2007 (and beyond) emissions standards. The amount of credit is increased by between $3,500 and $14,000 for vehicles placed in service in 2002; is increased by between $3,000 and $12,000 for vehicles placed in service in 2003, is increased by between $2,500 and $10,000 for vehicles placed in service in 2004, is increased by between $2,000 and $8,000 for vehicles placed in service in 2005, and is increased by between $1,500 and $6,000 for vehicles placed in service in 2006. Credit may not be claimed for qualified hybrid motor vehicles purchased after December 31, 2006.

Alternative fuel motor vehicles

The Senate amendment provides a credit for the purchase of qualified alternative fuel motor vehicles. The base credit for the purchase of a new alternative fuel motor vehicle equals 40 percent of the incremental cost of such vehicle. The otherwise allowable credit for 40 percent of the incremental cost is increased by an additional 30 percent of the incremental cost of the vehicle if the vehicle meets certain emissions standards. For computation of the credit, the incremental cost of the vehicle may not exceed between $5,000 and $40,000 (resulting in a maximum total credit of between $3,500 and $28,000) depending upon the weight of the vehicle. For this purpose, incremental cost generally is defined as the amount of the increase of the manufacturer's suggested retail price of such a vehicle compared to the manufacturer's suggested retail price of a comparable gasoline or diesel model. Qualifying alternative fuel motor vehicles are vehicles that operate only on qualifying alternative fuels and are incapable of operating on gasoline or diesel (except in the extent gasoline or diesel fuel is part of a qualified mixed fuel). Qualifying alternative fuels are compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid mixture consisting of at least 85 percent methanol.

Taxpayers purchasing certain mixed-fuel vehicles also may claim the alternative fuel motor vehicle credit, at a reduced rate. A mixed-fuel vehicle is a vehicle with gross weight of seven tons or more and is certified by the manufacturer as being able to operate on a combination of alternative fuel and a petroleum-based fuel. A qualifying mixed-fuel vehicle must use at least 75 percent alternative fuel (a "75/25 mixed-fuel vehicle") or 90 percent alternative fuel (a "90/10 mixed-fuel vehicle") and be incapable of operating on a mixture containing less than 75 percent alternative fuel in the case of a 75/25 vehicle (less than 90 percent alternative fuel in the case of a 90/10 vehicle). A taxpayer purchasing a 75/25 mixed-fuel vehicle may claim 70 percent of the otherwise allowable credit. A taxpayer purchasing a 90/10 mixed-fuel vehicle may claim 90 percent of the otherwise allowable credit.

Credit may not be claimed for qualified alternative fuel motor vehicles purchased after December 31, 2006. The taxpayer's basis in the property is reduced by the amount of credit claimed.

Provisions of general application

The Senate amendment provides that unused credits may be carried forward for 20 years and three years (but not into taxable years beginning before October 1, 2002).

If a tax-exempt person purchases or leases a qualifying vehicle, the seller or lessor may claim the credit.

Effective date

The Senate amendment is effective for property placed in service after September 30, 2002.

CONFERENCE AGREEMENT

Clean-fuel vehicles (section 179A)

The conference agreement follows the House bill with respect to modifications to present-law section 179A.

Fuel cell vehicles

The conference agreement follows the House bill with respect to providing a credit for the purchase of a new qualified fuel cell motor vehicle, except the base-year for fuel economy comparisons is modified as described below.

Hybrid motor vehicles

A qualifying hybrid vehicle is a motor vehicle that draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine or heat engine using combustible fuel and a rechargeable energy storage system (e.g., batteries). A qualifying hybrid motor vehicle must be placed in service before January 1, 2009.

In the case of an automobile or light truck (vehicles weighing 8,500 pounds or less), the amount of credit for the purchase of a hybrid vehicle is the sum of two components: a fuel economy credit amount that varies with the rated fuel economy of the vehicle compared to a 2002 model year standard and a conservation credit based on the estimated lifetime fuel savings of a qualifying vehicle compared to a comparable 2002 model year vehicle. A qualifying hybrid automobile or light truck must have a maximum available power from the rechargeable energy storage system of at least four percent. In addition, the vehicle must meet or exceed certain EPA emissions standards. For a vehicle with a gross vehicle weight rating of 6,000 pounds or less the applicable emissions standards are the Bin 5 Tier II emissions standards. For a vehicle with a gross vehicle weight rating greater than 6,000 pounds and less than or equal to 8,500 pounds, the applicable emissions standards are the Bin 8 Tier II emissions standards.

Table 4, below, shows the fuel economy credit available to a hybrid passenger automobile or light truck whose fuel economy (on a gasoline gallon equivalent basis) exceeds that of a base fuel economy.

TABLE 4.—FUEL ECONOMY CREDIT

[Percent of base fuel economy]

Credit	If fuel economy of the hybrid vehicle is:	
	At least	But less than
$400	125	150
800	150	175
1,200	175	200
1,600	200	225
2,000	225	250
2,400	250	

Table 5, below, shows the conservation credit.

TABLE 5.—CONSERVATION CREDIT

Estimated lifetime fuel savings	Conservation amount
At least 1,200 but less than 1,800	$250
At least 1,800 but less than 2,400	500
At least 2,400 but less than 3,000	750
At least 3,000	1,000

In the case of a qualifying hybrid motor vehicle weighing more than 8,500 pounds, the amount of credit is determined by the estimated increase in fuel economy and the incremental cost of the hybrid vehicle compared to a comparable vehicle powered solely by a gasoline or diesel internal combustion engine and that is comparable in weight, size, and use of the vehicle. For a vehicle that achieves a fuel economy increase of at least 30 percent but less than 40 percent, the credit is equal to 20 percent of the incremental cost of the hybrid vehicle. For a vehicle that achieves a fuel economy increase of at least 40 percent but less than 50 percent, the credit is equal to 30 percent of the incremental cost of the hybrid vehicle. For a vehicle that achieves a fuel economy increase of 50 percent or more, the credit is equal to 40 percent of the incremental cost of the hybrid vehicle.

The credit is subject to certain maximum applicable incremental cost amounts. For a qualifying hybrid motor vehicle weighing more than 8,500 pounds but not more than 14,000 pounds, the maximum allowable incremental cost amount is $7,500. For a qualifying hybrid motor vehicle weighing more than 14,000 pounds but not more than 26,000 pounds, the maximum allowable incremental cost amount is $15,000. For a qualifying hybrid motor vehicle weighing more than 26,000 pounds, the maximum allowable incremental cost amount is $30,000.

A qualifying hybrid motor vehicle weighing more than 8,500 pounds but not more than 14,000 pounds must have a maximum available power from the rechargeable energy storage system of at least 10 percent. A qualifying hybrid vehicle weighing more than 14,000 pounds must have a maximum available power from the rechargeable energy storage system of at least 15 percent.

The conferees recognize that these heavier hybrid vehicles generally are trucks and vans. The fuel economy performance of trucks and vans varies by the use of such equipment. For example, used by a plumbing company generally carry more weight than an otherwise identical van used by a florist. Hence, the fuel economy performance of the plumbing vans should be worse than that of the floral vans. In basing the credit for these heavier hybrid vehicles on fuel economy, the conferees do not intend that any fuel economy standards for such heavier vehicles be promogulated. Rather, the conferees intend that the Secretary provide guidance so that fuel economy increases may be assessed on a case-by-case basis accounting for the intended use of the vehicles.

Advanced lean-burn technology motor vehicles

The conference agreement a credit for the purchase of a new advanced lean burn technology motor vehicle. The amount of credit for the purchase of an advanced lean burn technology motor vehicle is the sum of two components: a fuel economy credit amount that varies with the rated fuel economy of the vehicle compared to a 2002 model year standard as described in Table 4, above and a conservation credit based on the estimated lifetime fuel savings of a qualifying vehicle compared to a comparable 2002 model year vehicle as described in Table 5 above.

A qualifying advanced lean burn technology motor vehicle that incorporates direct injection, achieves at least 125 percent of the 2002 model year city fuel economy, and 2004 and later model vehicles meets or exceeds certain Environmental Protection Agency emissions standards. For a vehicle with a gross vehicle weight rating of 6,000 pounds or less the applicable emissions standards are the Bin 5 Tier II emissions standards. For a vehicle with a gross vehicle weight rating greater than 6,000 pounds and less than or equal to 8,500 pounds, the applicable emissions standards are the Bin 8 Tier II emissions standards. A qualifying advanced lean burn technology motor vehicle must be placed in service before January 1, 2009.

Limitation on number of qualified hybrid and advanced lean-burn technology motor vehicles eligible for the credit

The conference agreement imposes a limitation on the number of qualified hybrid motor vehicles and advanced lean-burn technology motor vehicles sold by each manufacturer of such vehicles that are eligible for the credit. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter in which the manufacturer records its sale of the 80,000th hybrid and advanced lean-burn technology motor vehicle. Taxpayers may claim one half of the otherwise allowable credit during the two calendar quarters subsequent to the quarter after the manufacturer has recorded its 80,000th such sale. In the third and fourth calendar quarters subsequent to the quarter after the manufacturer has recorded its 80,000th such sale, the taxpayer may claim one quarter of the otherwise allowable credit.

Thus, summing the sales of qualifying hybrid motor vehicles of all weight classes and all sales of qualifying advanced lean-burn technology motor vehicles, if a manufacturer records the sale of its 80,000th in February of 2006, taxpayers purchasing such vehicles from the manufacturer may claim the full amount of the credit on their purchases of qualifying vehicles through June 20, 2006. For the period July 1, 2006, through December 31, 2006, taxpayers may claim one half of the otherwise allowable credit on purchases of qualifying vehicles of the manufacturer. For the period January 1, 2007, through June 30, 2007, taxpayers may claim one quarter of the otherwise allowable credit on the purchases of qualifying vehicles of the manufacturer. After June 30, 2007, no credit may be claimed for purchases of hybrid motor vehicles or advanced lean-burn technology motor vehicles sold by the manufacturer.

Alternative fuel motor vehicles

The credit for the purchase of a new alternative fuel vehicle is 40 percent of the incremental cost of such vehicle, plus an additional 30 percent if the vehicle meets certain emissions standards, but not more than between $5,000 and $40,000 depending upon the weight of the vehicle. Table 6, below, shows the maximum permitted incremental cost for the purpose of calculating the credit for alternative fuel vehicles by vehicle weight class.

TABLE 6.—MAXIMUM ALLOWABLE INCREMENTAL COST FOR CALCULATION OF ALTERNATIVE FUEL VEHICLE CREDIT

Vehicle gross weight rating in pounds	Maximum allowable incremental cost
Vehicle = 8,500	$5,000
8,500 < vehicle = 14,000	10,000
14,000 < vehicle = 26,000	25,000
26,000 < vehicle	40,000

Alternative fuels comprise compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid fuel that is at least 85 percent methanol. Qualifying alternative fuel motor vehicles are vehicles that operate only on qualifying alternative fuels and are incapable of operating on gasoline or diesel (except in the extent gasoline or diesel fuel is part of a qualified mixed fuel, described below).

Certain mixed fuel vehicles, that is vehicles that use a combination of an alternative fuel and a petroleum-based fuel, are eligible for a reduced credit. If the vehicle operates on a mixed fuel that is at least 75 percent alternative fuel, the vehicle is eligible for 70 percent of the otherwise allowable alternative fuel vehicle credit. If the vehicle operates on a mixed fuel that is at least 90 percent alternative fuel, the vehicle is eligible for 90 percent of the otherwise allowable alternative fuel vehicle credit.

A qualifying alternative fuel vehicle (or mixed fuel vehicle) must be placed in service before January 1, 2007.

Base fuel economy

The base fuel economy is the 2002 model year city fuel economy for vehicles by inertia weight class by vehicle type. The "vehicle inertia weight class" is that defined in regulations prescribed by the Environmental Protection Agency for purposes of Title II of the Clean Air Act.

Alternative minimum tax and credit carry forward or carry back

Taxpayers may claim credits with respect to purchases of qualified vehicles against both their regular and alternative minimum tax liabilities.

The conference agreement provides that credits allowable, but unused in the current year, from the purchase of a qualifying vehicle for business use may be carried back one year and forward 20 years.[32] Credit allowable with respect to a vehicle purchased for personal use may only be claimed in the year of purchase. The Secretary shall issue regulations under which qualified vehicle sold at retail is display a notice stating that the vehicle is a qualified vehicle and that the buyer may not benefit from the credit allowed if the buyer has insufficient tax liability to be offset by the allowable credit.

Effective date.—The provision is effective for property placed in service after the date of enactment.

10. Modifications of deduction for refueling property (secs. 2003 and 2010 of Senate amendment and sec. 179A of the Code)

PRESENT LAW

Certain costs of qualified clean-fuel vehicle refueling property may be expensed and deducted when such property is placed in service (sec. 179A). Up to $100,000 of such property at each location owned by the taxpayer may be expensed with respect to that location. Natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity and any other fuel at least 85 percent of which is methanol, ethanol, or any other alcohol or ether comprise clean-burning fuels.

The deduction is unavailable for property placed in service after December 31, 2006.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment extends the present-law deduction to property placed in service before January 1, 2008, and to property placed in service before January 1, 2012, in the case of hydrogen refueling property.

In addition, the Senate amendment provision permits taxpayers to claim a 50-percent credit for the cost of installing clean-fuel vehicle refueling property to be used in a trade or business of the taxpayer or installed at the principal residence of the taxpayer. In the case of retail clean-fuel vehicle refueling property the allowable credit may not exceed $30,000. In the case of residential clean-fuel vehicle refueling property the allowable credit may not exceed $1,000. The taxpayer's basis in the property is reduced by the amount of the credit and the taxpayer may not claim deductions under section 179A with respect to property for which the credit is claimed.

In the case of refueling property installed on property owned or used by a tax-exempt person, the taxpayer that installs the property may claim the credit. To be eligible for the credit, the property must be placed in service before January 1, 2007 (before January 1, 2012 in the hydrogen refueling property). The credit allowable in the taxable year cannot exceed the difference between the taxpayer's regular tax (reduced by certain other credits) and the taxpayer's tentative minimum tax. The taxpayer may carry forward unused credits for 20 years.

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[32] The credit, however, is not made part of the general business credit.

Effective date.—The Senate amendment is effective for property placed in service after September 30, 2002.

CONFERENCE AGREEMENT

The conference agreement extends and modifies present-law section 179A with respect to refueling property. The conference agreement increases the present-law limitation of $100,000 of qualifying expenses per refueling location of the taxpayer to $150,000 per location. In addition, the conference agreement modifies the definition of refueling property with respect to hydrogen produced from another clean-burning fuel (i.e., natural gas, liquefied natural gas, liquefied petroleum gas, any fuel at least 85 percent of which is one or more of methanol, ethanol, or other alcohol or ether) such that qualified refueling property included property for the production of hydrogen fuel, in addition to property for the storage and dispensing of hydrogen fuel, if such property is located at the point where hydrogen fuel is delivered into the fuel tank of a motor vehicle.

The conference agreement extends the placed in service date for qualifying refueling property to property placed in service prior to January 1, 2009 (January 1, 2012, in the case of property related to hydrogen fuel).

Effective date.—The provision is effective for property placed in service after the date of enactment.

11. Credit for retail sale of alternative motor vehicle fuels (secs. 2004 and 2010 of Senate amendment)

PRESENT LAW

There is no retail credit for the sale of alternative motor vehicle fuels. However, a 52-cents-per-gallon income tax credit is allowed for alcohol fuels for 2003 and 2004 (51 cents for 2005–2007). The alcohol fuels credit may be claimed as a reduction in excise tax payments. Such tax payments generally are made before the retail level. In the case of ethanol, the Code provides a separate 10-cents-per-gallon credit for small producers.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment permits taxpayers to claim a credit equal to the gasoline gallon equivalent of 30 cents per gallon of alternative fuel sold 2002 and in 2003, 40 cents per gallon in 2004, and 50 cents per gallon thereafter. Qualifying alternative fuels are compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, any liquid mixture consisting of at least 85 percent methanol, and any liquid mixture consisting of at least 85 percent ethanol. The credit may be claimed for sales prior to January 1, 2007. Under the provision, the credit is part of the general business credit.

Effective date.—The Senate amendment is effective for fuel sold at retail after September 30, 2002.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

II. RELIABILITY

A. NATURAL GAS GATHERING LINES TREATED AS SEVEN-YEAR PROPERTY

(sec. 42001 of the House bill, sec. 2302 of the Senate amendment, and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the “class life of the property.” The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56.[33] Revenue Procedure 87–56 includes two asset classes that could describe natural gas gathering lines owned by nonproducers of natural gas. Asset class 46.0, describing pipeline transportation, provides a class life of 22 years and a recovery period of 15 years. Asset class 13.2, describing assets used in the exploration for and production of petroleum and natural gas deposits, provides a class life of 14 years and a depreciation recovery period of seven years. The uncertainty regarding the appropriate recovery period of natural gas gathering lines has resulted in litigation between taxpayers and the IRS. The 10th Circuit Court of Appeals and the 6th Circuit Court of Appeals have held that natural gas gathering lines owned by nonproducers falls within the scope of Asset class 13.2 (i.e., seven-year recovery period).[34] The Tax Court has held that natural gas gathering lines owned by nonproducers falls within the scope of Asset class 46.0 (i.e., 15-year recovery period).[35]

HOUSE BILL

The House bill establishes a statutory 7-year recovery period and a class life of 10 years for natural gas gathering lines. In addition, the House bill provides that there is no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to such property. A natural gas gathering line is defined to include any pipe, equipment, and appurtenance that is (1) determined to be a gathering line by the Federal Energy Regulatory Commission, or (2) used to deliver natural gas from the wellhead or a common point to the point at which such gas first reaches (a) a gas processing plant, (b) an interconnection with an interstate transmission line, (c) an interconnection with an intrastate transmission line, or (d) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

Effective date.—The provision is effective for property placed in service after the date of enactment. No inference is intended as to the proper treatment of natural gas gathering lines placed in service before the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that it does not include the provision providing that there is no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to natural gas gathering lines.

Effective date.—The provision is effective for property placed in service after the date of enactment. No inference is intended as to the proper treatment of natural gas gathering lines placed in service before the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following modification. The conference agreement provides a class life of 14 years for natural gas gathering lines (instead of 10 years).

B. NATURAL GAS DISTRIBUTION LINES TREATED AS FIFTEEN-YEAR PROPERTY

(sec. 42002 of the House bill, sec. 2311 of the Senate amendment, and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the “class life of the property.” The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56.[36] Natural gas distribution pipelines are assigned a 20-year recovery period and a class life of 35 years.

HOUSE BILL

The House bill establishes a statutory 15-year recovery period and a class life of 20 years for natural gas distribution lines. In addition, the House bill provides that there would be no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to such property.

Effective date.—The provision is effective for property placed in service after the date of enactment.

SENATE AMENDMENT

The Senate amendment establishes a statutory 15-year recovery period and a class life of 20 years for natural gas distribution lines.

Effective date.—The provision is effective for property placed in service after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following modification. The conference agreement provides a class life of 35 years for natural gas distribution lines (instead of 20 years).

C. TRANSMISSION PROPERTY TREATED AS FIFTEEN-YEAR PROPERTY

(sec. 42003 of the House bill and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the “class life of the property.” The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56. Assets used in the transmission and distribution of electricity for sale and related land improvements are assigned a 20-year recovery period and a class life of 30 years.

HOUSE BILL

The House bill establishes a statutory 15-year recovery period and a class life of 20 years for certain assets used in the transmission of electricity for sale and related land improvements. For purposes of the provision, section 1245 property used in the transmission of electricity for sale at 69 kilovolts and above will qualify for the new recovery period. In addition, the House bill provides that there would be no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to such property.

Effective date.—The provision is effective for property placed in service after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following modifications.

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[33] 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785).

[34] *Duke Energy* v. *Commissioner*, 172 F.3d 1255 (10th Cir. 1999), *rev'g* 109 T.C. 416 (1997). *Saginaw Bay Pipeline Co.* v. *United States*, 2003 FED App. 0259P (6th Cir.) *rev'g* 124 F. Supp. 2d 465 (E.D. Mich. 2001). See also *True* v. *United States*, 97–2 U.S. Tax Cas. (CCH) par. 50,946 (D. Wyo. 1997).

[35] *Clajon Gas Co., L.P.* v. *Commissioner*, 119 T.C. 197 (2002).

[36] 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785).

The conference agreement limits the provision to property the original use[37] of which commences after the date of enactment and alters the class life of such property to 30 years (instead of 20 years).

D. EXPENSING OF CAPITAL COSTS INCURRED FOR PRODUCTION IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS FOR SMALL REFINERS

(sec. 42004 of the House bill, sec. 2303 of the Senate amendment, and new sec. 179C of the Code)

PRESENT LAW

Taxpayers generally may recover the costs of investments in refinery property through annual depreciation deductions.

HOUSE BILL

The bill permits small business refiners to claim an immediate deduction (i.e., expensing) for up to 75 percent of the costs paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency ("EPA").

For these purposes a small business refiner is a taxpayer who is within the business of refining petroleum products employs not more than 1,500 employees directly in refining and has less than 205,000 barrels per day (average) of total refinery capacity. The deduction is reduced, pro rata, for taxpayers with capacity in excess of 155,000 barrels per day.

Effective date.—The provision is effective for expenses paid or incurred after March 31, 2003.

SENATE AMENDMENT

The Senate amendment generally is the same as the House bill.

Effective date.—The provision is effective for expenses paid or incurred after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill and the Senate amendment except with respect to the effective date. The conference agreement also clarifies that qualifying expenditures are those expenditures paid or incurred with respect to a facility beginning January 1, 2003, and ending the earlier of the date that is one year after the date on which the taxpayer must comply with applicable EPA regulation or December 31, 2009. In addition, with respect to the definition of a small business refiner, the conferees intend that, in any case in which refinery through-put or retained production of the refinery differs substantially from its average daily output of refined product, capacity be measured by reference to the average daily output of refined product.

Effective date.—The provision is effective for expenses paid or incurred after December 31, 2002.

E. CREDIT FOR SMALL REFINERS FOR PRODUCTION OF DIESEL FUEL IN COMPLIANCE WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS FOR SMALL REFINERS

(sec. 42005 of the House bill, sec. 2304 of Senate amendment, and new sec. 45I of the Code)

PRESENT LAW

Present law does not provide a credit for the production of low-sulfur diesel fuel.

HOUSE BILL

The House bill provides that a small business refiner may claim credit equal to five cents per gallon for each gallon of low sulfur diesel fuel produced during the taxable year that is in compliance with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency ("EPA"). The total production credit claimed by the taxpayer is limited to 25 percent of the capital costs incurred to come into compliance with the EPA diesel fuel requirements. The taxpayer's basis in such property is reduced by the amount of production credit claimed.

For these purposes a small business refiner is a taxpayer who is within the business of refining petroleum products employs not more than 1,500 employees directly in refining and has less than 205,000 barrels per day (average) of total refinery capacity. The credit is reduced, pro rata, for taxpayers with capacity in excess of 155,000 barrels per day.

Effective date.—The provision is effective for expenses paid or incurred after March 31, 2003.

SENATE AMENDMENT

The Senate amendment generally is the same as the House. In the case of a qualifying small business refiner that is owned by a cooperative, the cooperative is allowed to elect to pass any production credits to patrons of the organization.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. The conference agreement provides that a small business refiner may claim credit equal to five cents per gallon for each gallon of low sulfur diesel fuel produced during the taxable year that is in compliance with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency ("EPA"). The total production credit claimed by the taxpayer is limited to 25 percent of the capital costs incurred to come into compliance with the EPA diesel fuel requirements. The taxpayer's basis in such property is reduced by the amount of production credit claimed. In the case of a qualifying small business refiner that is owned by a cooperative, the cooperative is allowed to elect to pass any production credits to patrons of the organization.

In addition, with respect to the definition of a small business refiner, the conferees intend that, in any case where refinery through-put or retained production of the refinery differs substantially from its average daily output of refined product, capacity be measured by reference to the average daily output of refined product.

The conference agreement also clarifies that qualifying expenditures are those expenditures paid or incurred with respect to a facility beginning January 1, 2003 and ending the earlier of the date that is one year after the date on which the taxpayer must comply with applicable EPA regulation or December 31, 2009.

Effective date.—The provision is effective for expenses paid or incurred after December 31, 2002.

F. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION

(sec. 42006 of the House bill, sec. 2305 of the Senate amendment, and sec. 613A of the Code)

PRESENT LAW

Present law classifies oil and gas producers as independent producers or integrated companies. The Code provides numerous special tax rules for operations by independent producers. One such rule allows independent producers to claim percentage depletion deductions rather than deducting the costs of their asset, a producing well, based on actual production from the well (i.e., cost depletion).

A producer is an independent producer only if its refining and retail operations are relatively small. For example, an independent producer may not have refining operations the runs from which exceed 50,000 barrels on any day in the taxable year during which independent producer status is claimed.

HOUSE BILL

The provision increases the current 50,000-barrel-per-day limitation to 75,000. In addition, the provision changes the refinery limitation on claiming independent producer status from a limit based on actual daily production to a limit based on average daily production for the taxable year. Accordingly, the average daily refinery run for the taxable year may not exceed 75,000 barrels. For this purpose, the taxpayer calculates average daily production by dividing total production for the taxable year by the total number of days in the taxable year.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

SENATE AMENDMENT

The Senate amendment is similar to the House Bill except the average daily refinery run may not exceed 60,000 barrels.

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2002.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except the average daily refinery run for the taxable year may not exceed 67,500 barrels.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

G. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY

(sec. 42007 of the House bill, sec. 2404 of the Senate amendment, and sec. 451 of the Code)

PRESENT LAW

Generally, a taxpayer recognizes gain to the extent the sales price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

HOUSE BILL

The House bill permits a taxpayer to elect to recognize gain from a qualifying electric transmission transaction ratably over an eight-year period beginning in the year of sale if the amount realized from such sale is used to purchase exempt utility property within the applicable period[38] (the "reinvestment property"). If the amount realized exceeds the amount used to purchase reinvestment property, any realized gain shall be recognized to the extent of such excess in the year of the qualifying electric transmission transaction. Any remaining realized gain is recognized ratably over the eight-year period.

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[37] The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. It is intended that, when evaluating whether property qualifies as "original use," the factors used to determine whether property qualified as "new section 38 property" for purposes of the investment tax credit would apply. See Treasury Regulation 1.48-2. Thus, it is intended that additional capital expenditures incurred to recondition or rebuild acquired property (or owned property) would satisfy the "original use" requirement. However, the cost of reconditioned or rebuilt property acquired by the taxpayer would not satisfy the "original use" requirement. For example, if on August 11, 2004, a taxpayer buys from RCM for $200,000 transmission lines that have been previously used by RCM. Subsequent to the purchase, the taxpayer makes an expenditure on the property of $50,000 of the type that must be capitalized. Regardless of whether the $50,000 is added to the basis of such property or is capitalized as a separate asset, such amount would be treated as satisfying the "original use" requirement and would be eligible for the reduced recovery period. No part of the $200,000 purchase price qualifies for the reduced recovery period.

A qualifying electric transmission transaction is the sale or other disposition of property used by the taxpayer in the trade or business of providing electric transmission services, or an ownership interest in such an entity, to an independent transmission company prior to January 1, 2007. In general, an independent transmission company is defined as: (1) an independent transmission provider[39] approved by the FERC; (2) a person (i) who the FERC determines under section 203 of the Federal Power Act (or by declaratory order) is not a "market participant" and (ii) whose transmission facilities are placed under the operational control of a FERC-approved independent transmission provider before the close of the period specified in such authorization, but not later than January 1, 2007; or (3) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas, (i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization, or (ii) a political subdivision, or affiliate thereof, whose transmission facilities are under the operational control of an organization described in (i).

Exempt utility property is defined as: (1) property used in the trade or business of generating, transmitting, distributing, or selling electricity or producing, transmitting, distributing, or selling natural gas, or (2) stock in a controlled corporation whose principal trade or business consists of the activities described in (1).

If a taxpayer is a member of an affiliated group of corporations filing a consolidated return, the provision permits the reinvestment property to be purchased by any member of the affiliated group (in lieu of the taxpayer).

If a taxpayer elects the application of the House bill, then the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain eligible for the provision is realized, attributable to such gain shall not expire prior to the expiration of three years from the date the Secretary of the Treasury is notified by the taxpayer of the reinvestment property or an intention not to reinvest.

An electing taxpayer is required to attach a statement to that effect in the tax return for the taxable year in which the transaction takes place in the manner as the Secretary shall prescribe. The election shall be binding for that taxable year and all subsequent taxable years.[40] In addition, an electing taxpayer is required to attach a statement that identifies the reinvestment property in the manner as the Secretary shall prescribe.

Effective date.—The provision is effective for transactions occurring after the date of enactment.

SENATE AMENDMENT

Similar to the House bill, but does not have a reinvestment obligation.

Effective date.—The provision is effective for transactions occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

H. MODIFICATION TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS

(sec. 42008 of the House bill, sec. 2402 of the Senate amendment, and sec. 468A of the Code)

PRESENT LAW

Overview

Special rules dealing with nuclear decommissioning reserve funds were adopted by Congress in the Deficit Reduction Act of 1984 ("1984 Act"), when tax issues regarding the time value of money were addressed generally. Under general tax accounting rules, a deduction for accrual basis taxpayers is deferred until there is economic performance for the item for which the deduction is claimed. However, the 1984 Act contains an exception under which a taxpayer responsible for nuclear powerplant decommissioning may elect to deduct contributions made to a qualified nuclear decommissioning fund for future decommissioning costs. Taxpayers who do not elect this provision are subject to general tax accounting rules.

Qualified nuclear decommissioning fund

A qualified nuclear decommissioning fund (a "qualified fund") is a segregated fund established by a taxpayer that is used exclusively for the payment of decommissioning costs, taxes on fund income, management costs of the fund, and for making investments. The income of the fund is taxed at a reduced rate of 20 percent for taxable years beginning after December 31, 1995.[41]

Contributions to a qualified fund are deductible in the year made to the extent that these amounts were collected as part of the cost of service to ratepayers (the "cost of service requirement").[42] Funds withdrawn by the taxpayer to pay for decommissioning costs are included in the taxpayer's income, but the taxpayer also is entitled to a deduction for decommissioning costs as economic performance for such costs occurs.

Accumulations in a qualified fund are limited to the amount required to fund decommissioning costs of a nuclear powerplant for the period during which the qualified fund is in existence (generally post-1984 decommissioning costs of a nuclear powerplant). For this purpose, decommissioning costs are considered to accrue ratably over a nuclear powerplant's estimated useful life. In order to prevent accumulations of funds over the remaining life of a nuclear powerplant in excess of those required to pay future decommissioning costs of such nuclear powerplant and to ensure that contributions to a qualified fund are not deducted more rapidly than level funding (taking into account an appropriate discount rate), taxpayers must obtain a ruling from the IRS to establish the maximum annual contribution that may be made to a qualified fund (the "ruling amount"). In certain instances (e.g., change in estimates), a taxpayer is required to obtain a new ruling amount to reflect updated information.

A qualified fund may be transferred in connection with the sale, exchange or other transfer of the nuclear powerplant to which it relates. If the transferee is a regulated public utility and meets certain other requirements, the transfer will be treated as a nontaxable transaction. No gain or loss will be recognized on the transfer of the qualified fund and the transferee will take the transferor's basis in the fund.[43] The transferee is required to obtain a new ruling amount from the IRS or accept a discretionary determination by the IRS.[44]

Nonqualified nuclear decommissioning funds

Federal and State regulators may require utilities to set aside funds for nuclear decommissioning costs in excess of the amount allowed as a deductible contribution to a qualified fund. In addition, taxpayers may have set aside funds prior to the effective date of the qualified fund rules.[45] The treatment of amounts set aside for decommissioning costs prior to 1984 varies. Some taxpayers may have received no tax benefit while others may have deducted such amounts or excluded such amounts from income. Since 1984, taxpayers have been required to include in gross income customer charges for decommissioning costs (sec. 88), and a deduction has not been allowed for amounts set aside to pay for decommissioning costs except through the use of a qualified fund. Income earned in a nonqualified fund is taxable to the fund's owner as it is earned.

HOUSE BILL

Repeal of cost of service requirement

The House bill repeals the cost of service requirement for deductible contributions to a nuclear decommissioning fund. Thus, all taxpayers, including unregulated taxpayers, are allowed a deduction for amounts contributed to a qualified fund.

Permit contributions to a qualified fund for pre-1984 decommissioning costs

The House bill also repeals the limitation that a qualified fund only accumulate an amount sufficient to pay for a nuclear powerplant's decommissioning costs incurred during the period that the qualified fund is in existence (generally post-1984 decommissioning costs). Thus, any taxpayer is permitted to accumulate an amount sufficient to cover the present value of 100 percent of a nuclear powerplant's estimated decommissioning costs in a qualified fund. The House bill does not change the requirement that contributions to a qualified fund not be deducted more rapidly than level funding.

Exception to ruling amount for certain decommissioning costs

The House bill permits a taxpayer to make contributions to a qualified fund in excess of the ruling amount in one circumstance. Specifically, a taxpayer is permitted to contribute up to the present value of the amount required to fund a nuclear powerplant's decommissioning costs which under present law section 468A(d)(2)(A) is not permitted to be accumulated in a qualified fund (generally pre-1984 decommissioning costs).[46] It is anticipated that an amount that is permitted to be contributed under this special rule shall be determined using the estimate of total decommissioning costs used for purposes of determining the taxpayer's most recent ruling amount. Any amount transferred to the qualified fund under this special rule that has not previously been deducted or excluded from gross income is allowed as a deduction over the remaining useful life of the nuclear powerplant.[47] If a qualified fund that has received amounts under this rule is transferred to another person, the transferor will be permitted a deduction for any remaining deductible amounts at the time of transfer.

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[38] The applicable period for a taxpayer to reinvest the proceeds is four years after the close of the taxable year in which the qualifying electric transmission transaction occurs.

[39] For example, a regional transmission organization, an independent system operator, or an independent transmission company.

[40] The provision also provides that the installment sale rules shall not apply to any qualifying electric transmission transaction for which a taxpayer elects the application of this provision.

[41] As originally enacted in 1984, a qualified fund paid tax on its earnings at the top corporate rate and, as a result, there was no present-value tax benefit of making deductible contributions to a qualified fund. Also, as originally enacted, the funds in the trust could be invested only in certain low risk investments. Subsequent amendments to the provision have reduced the rate of tax on a qualified fund to 20 percent and removed the restrictions on the types of permitted investments that a qualified fund can make.

[42] Taxpayers are required to include in gross income customer charges for decommissioning costs (sec. 88).

[43] Treas. reg. sec. 1.468A-6.

[44] Treas. reg. sec. 1.468A-6(f).

[45] These funds are generally referred to as "nonqualified funds."

Contributions to a qualified fund after useful life of powerplant

The House bill also allows deductible contributions to a qualified fund subsequent to the end of a nuclear powerplant's estimated useful life. Such payments are permitted to the extent they do not cause the assets of the qualified fund to exceed the present value of the taxpayer's allocable share (current or former) of the nuclear decommissioning costs of such nuclear powerplant.

Clarify treatment of transfers of qualified funds

The House bill clarifies the Federal income tax treatment of the transfer of a qualified fund. No gain or loss would be recognized to the transferor or the transferee as a result of the transfer of a qualified fund in connection with the transfer of the power plant with respect to which such fund was established.

Effective date.—The provision would be effective for taxable years beginning after December 31, 2003.

SENATE AMENDMENT

Repeal of cost of service requirement

The Senate amendment repeals the cost of service requirement for deductible contributions to a nuclear decommissioning fund. Thus, all taxpayers, including unregulated taxpayers, would be allowed a deduction for amounts contributed to a qualified fund.

Clarify treatment of transfers of qualified funds and deductibility of decommissioning costs

The Senate amendment clarifies the Federal income tax treatment of the transfer of a qualified fund. No gain or loss would be recognized to the transferor or the transferee (or the qualified fund) as a result of the transfer of a qualified fund in connection with the transfer of the power plant with respect to which such fund was established. In addition, the Senate amendment provides that all nuclear decommissioning costs are deductible when paid or incurred.

Effective date.—The provision is effective for taxable years beginning after December 31, 2002.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following modifications. The conference agreement clarifies that, for purposes of the exception to ruling amount for certain costs (generally pre-1984 decommissioning costs), only the present value of total nuclear decommissioning costs with respect to a nuclear powerplant previously excluded under section 468A(d)(2)(A) may be contributed to a qualified fund. For example, if $100 is the present value of the total decommissioning costs of a nuclear powerplant, and if under present law the qualified fund is only permitted to accumulate (and has in fact accumulated) $75 of decommissioning costs over such plant's estimated useful life (because the qualified fund was not in existence during 25 percent of the estimated useful life of the nuclear powerplant), a taxpayer could contribute $25 to the qualified fund under this component of the provision.

In addition, the Conference agreement provides that a purchaser of an interest in a nuclear powerplant may elect to treat certain amounts previously set aside for nuclear decommissioning by the seller and transferred to the taxpayer as part of the sale as if such amounts had been contributed to a qualified fund immediately prior to the transfer.[48] The adjusted basis of such assets shall be the same as in the hands of the seller. The election is available only if the seller of the interest in the nuclear powerplant is a tax-exempt entity. In addition, the maximum amount eligible for such treatment is limited to the product of the present value of the estimated nuclear decommissioning costs and the applicable percentage. The "applicable percentage" is a fraction equal to the number of years the powerplant has been in service over the estimated useful life of such powerplant. A taxpayer shall make the election in the manner prescribed by the Secretary by the due date (including extensions of time) for its return of tax for the year in which the acquisition occurs. In addition, a taxpayer must request a new ruling amount from the IRS to be eligible for this provision.

I. TREATMENT OF CERTAIN INCOME OF ELECTRIC COOPERATIVES

(sec. 42009 of the House bill, secs. 2403 and 2406 of the Senate amendment, and sec. 501 of the Code)

PRESENT LAW

In general

Under present law, an entity must be operated on a cooperative basis in order to be treated as a cooperative for Federal income tax purposes. Although not defined by statute or regulation, the two principal criteria for determining whether an entity is operating on a cooperative basis are: (1) ownership of the cooperative by persons who patronize the cooperative; and (2) return of earnings to patrons in proportion to their patronage. The Internal Revenue Service requires that cooperatives must operate under the following principles: (1) subordination of capital in control over the cooperative undertaking and in ownership of the financial benefits from ownership; (2) democratic control by the members of the cooperative; (3) vesting in and allocation among the members of all excess of operating revenues over the expenses incurred to generate revenues in proportion to their participation in the cooperative (patronage); and (4) operation at cost (not operating for profit or below cost).[49]

In general, cooperative members are those who participate in the management of the cooperative and who share in patronage capital. As described below, income from the sale of electric energy by an electric cooperative may be member or non-member income to the cooperative, depending on the membership status of the purchaser. A municipal corporation may be a member of a cooperative.

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception—the cooperative may exclude from its taxable income distributions of patronage dividends. In general, patronage dividends are the profits of the cooperative that are rebated to its patrons pursuant to a pre-existing obligation of the cooperative to do so. The rebate must be made in some equitable fashion on the basis of the quantity or value of business done with the cooperative.

Except for tax-exempt farmers' cooperatives, cooperatives that are subject to the cooperative tax rules of subchapter T of the Code (sec. 1381, et seq.) are permitted a deduction for patronage dividends from their taxable income only to the extent of net income that is derived from transactions with patrons who are members of the cooperative (sec. 1382). The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative.

Cooperatives that qualify as tax-exempt farmers' cooperatives are permitted to exclude patronage dividends from their taxable income to the extent of all net income, including net income that is derived from transactions with patrons who are not members of the cooperative, provided the value of transactions with patrons who are not members of the cooperative does not exceed the value of transactions with patrons who are members of the cooperative (sec. 521).

Taxation of electric cooperatives exempt from subchapter T

In general, the cooperative tax rules of subchapter T apply to any corporation operating on a cooperative basis (except mutual savings banks, insurance companies, other tax-exempt organizations, and certain utilities), including tax-exempt farmers' cooperatives (described in sec. 521(b)). However, subchapter T does not apply to an organization that is "engaged in furnishing electric energy, or providing telephone service, to persons in rural areas" (sec. 1381(a)(2)(C)). Instead, electric cooperatives are taxed under rules that were generally applicable to cooperatives prior to the enactment of subchapter T in 1962. Under these rules, an electric cooperative can exclude patronage dividends from taxable income to the extent of all net income of the cooperative, including net income derived from transactions with patrons who are not members of the cooperative.[50]

Tax exemption of rural electric cooperatives

Section 501(c)(12) provides an income tax exemption for rural electric cooperatives if at least 85 percent of the cooperative's income consists of amounts collected from members for the sole purpose of meeting losses and expenses of providing service to its members. The IRS takes the position that rural electric cooperatives also must comply with the fundamental cooperative principles described above in order to qualify for tax exemption under section 501(c)(12).[51] The 85-percent test is determined without taking into account any income from qualified pole rentals and cancellation of indebtedness income from the prepayment of a loan under sections 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987). The exclusion for cancellation of indebtedness income applies to such income arising in 1987, 1988, or 1989 on debt that either originated with, or is guaranteed by, the Federal Government.

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[46] The ability to transfer property into a qualified fund under this special rule is available only to the extent the taxpayer has not obtained a new ruling amount incorporating the repeal of the limitation that a qualified fund only accumulate an amount sufficient to pay for decommissioning costs of a nuclear powerplant incurred during the period that the fund is in existence (generally post 1984 decommissioning costs).

[47] A taxpayer recognizes no gain or loss on the contribution of property to a qualified fund under this special rule. The qualified fund will take a transferred (carryover) basis in such property. Correspondingly, a taxpayer's deduction (over the estimated life of the nuclear powerplant) is to be based on the adjusted tax basis of the property contributed rather than the fair market value of such property.

[48] An election under this special rule shall be disregarded in determining the Federal income tax treatment of the sale to the seller.

[49] Announcement 96-24, "Proposed Examination Guidelines Regarding Rural Electric Cooperatives," 1996-16 I.R.B. 35.

[50] See Rev. Rul. 83-135, 1983-2 C.B. 149.

The receipt by a rural electric cooperative of contributions in aid of construction and connection charges is taken into account for purposes of applying the 85-percent test.

Rural electric cooperatives generally are subject to the tax on unrelated trade or business income under section 511.

Credit for producing fuel from a nonconventional source

Under present law, an income tax credit is allowed for certain fuels produced from "non-conventional sources" and sold to unrelated parties. The amount of the credit is equal to $3 (generally adjusted for inflation) per barrel or BTU oil barrel equivalent (sec. 29), subject to a phaseout. Qualified fuels must be produced within the United States, and include: oil produced from shale and tar sands; gas produced from geopressured brine, Devonian shale, coal seams, tight formations ("tight sands"), or biomass; and liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

The credit applies to fuels produced from wells drilled or facilities placed in service after December 31, 1979, and before January 1, 1993. An exception extends the January 1, 1993 expiration date for facilities producing gas from biomass and synthetic fuel from coal if the facility producing the fuel is placed in service before July 1, 1998, pursuant to a binding contract entered into before January 1, 1997.

The credit applies to qualified fuels produced and sold before January 1, 2003 (in the case of non-conventional sources subject to the January 1, 1993 expiration date) or January 1, 2008 (in the case of biomass gas and synthetic fuel facilities eligible for the extension period).

HOUSE BILL

Treatment of income from open access transactions

The House bill provides that income received or accrued by a rural electric cooperative (other than income received or accrued directly or indirectly from a member of the cooperative) from the provision or sale of electric energy transmission services or ancillary services on a nondiscriminatory open access basis under an independent transmission provider agreement approved by FERC (including an agreement providing for the transfer of control—but not ownership—of transmission facilities)[52] is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12).

For purposes of the 85-percent test, the House bill also provides that income received or accrued by a rural electric cooperative is treated as an amount collected from members for the sole purpose of meeting losses and expenses if the income is received or accrued indirectly from a member of the cooperative, provided that such income is derived from a "like organization" activity of the cooperative under present law.[53]

Treatment of income from nuclear decommissioning transactions

The House bill provides that income received or accrued by a rural electric cooperative from any "nuclear decommissioning transaction" also is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The term "nuclear decommissioning transaction" is defined as—

(1) Any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the cooperative's interest in a nuclear powerplant or nuclear powerplant unit;

(2) Any distribution from a trust, fund, or instrument established to pay any nuclear decommissioning costs; or

(3) Any earnings from a trust, fund, or instrument established to pay any nuclear decommissioning costs.

Treatment of income from asset exchange or conversion transactions

The House bill provides that gain realized by a tax-exempt rural electric cooperative from a voluntary exchange or involuntary conversion of certain property is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). This provision only applies to the extent that: (1) the gain would qualify for deferred recognition under section 1031 (relating to exchanges of property held for productive use or investment) or section 1033 (relating to involuntary conversions); and (2) the replacement property that is acquired by the cooperative pursuant to section 1031 or section 1033 (as the case may be) constitutes property that is used, or to be used, for the purpose of generating, transmitting, distributing, or selling electricity or methane-based natural gas.

Treatment of income from load loss transactions

Tax-exempt rural electric cooperatives.—The House bill provides that income received or accrued by a tax-exempt rural electric cooperative from a "load loss transaction" is treated under 501(c)(12) as income collected from members for the sole purpose of meeting losses and expenses of providing service to its members. Therefore, income from load loss transactions is treated as member income in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The House bill also provides that income from load loss transactions does not cause a tax-exempt electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

The term "load loss transaction" generally is defined as any wholesale or retail sale of electric energy (other than to a member of the cooperative) to the extent that the aggregate amount of such sales during a seven-year period beginning with the "start-up year" does not exceed the reduction in the amount of sales of electric energy during such period by the cooperative to members. The "start-up year" is defined as the calendar year which includes the date of enactment of this provision or, if later, at the election of the cooperative: (1) the first year that the cooperative offers nondiscriminatory open access; or (2) the first year in which at least 10 percent of the cooperative's sales of electric energy are to patrons who are not members of the cooperative.

The House bill also excludes income received or accrued by rural electric cooperatives from load loss transactions from the tax on unrelated trade or business income.

Taxable electric cooperatives.—The House bill provides that the receipt or accrual of income from load loss transactions by taxable electric cooperatives is treated as income from patrons who are members of the cooperative. Thus, income from a load loss transaction is excludible from the taxable income of a taxable electric cooperative if the cooperative distributes such income pursuant to a pre-existing contract to distribute the income to a patron who is not a member of the cooperative. The House bill also provides that income from load loss transactions does not cause a taxable electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

Effective date

The House bill provision is effective for taxable years beginning after the date of enactment.

SENATE AMENDMENT

Treatment of income from open access transactions

The Senate amendment provides that income received or accrued by a rural electric cooperative from any "open access transaction" (other than income received or accrued directly or indirectly from a member of the cooperative) is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The term "open access transaction" is defined as—

(1) The provision or sale of electric energy transmission services or ancillary services on a nondiscriminatory open access basis: (i) pursuant to an open access transmission tariff filed with and approved by the Federal Energy Regulatory Commission ("FERC") (including acceptable reciprocity tariffs), but only if (in the case of a voluntarily filed tariff) the cooperative files a report with FERC within 90 days of enactment of this provision relating to whether or not the cooperative will join a regional transmission organization ("RTO"); or (ii) under an RTO agreement approved by FERC (including an agreement providing for the transfer of control—but not ownership—of transmission facilities);[54]

(2) The provision or sale of electric energy distribution services or ancillary services on a nondiscriminatory open access basis to end-users served by distribution facilities owned by the cooperative or its members; or

(3) The delivery or sale of electric energy on a nondiscriminatory open access basis, provided that such electric energy is generated by a generation facility that is directly connected to distribution facilities owned by the cooperative (or its members) which owns the generation facility.

For purposes of the 85-percent test, the Senate amendment also provides that income received or accrued by a rural electric cooperative from any "open access transaction" is treated as an amount collected from members for the sole purpose of meeting losses and expenses if the income is received or accrued indirectly from a member of the cooperative.

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[51] Rev. Rul. 72-36, 1972-1 C.B. 151.

[52] Under this provision, references to FERC are treated as including references to the Public Utility Commission of Texas.

[53] See, e.g., Rev. Rul. 2002-54, 2002-37 I.R.B. 527; Rev. Rul. 83-170, 1983-2 C.B. 97; Rev. Rul. 65-201, 1965-2 C.B. 170.

[54] Under this provision, references to FERC are treated as including references to the Public Utility Commission of Texas or the Rural Utilities Service.

Treatment of income from nuclear decommissioning transactions

The Senate amendment provides that income received or accrued by a rural electric cooperative from any "nuclear decommissioning transaction" also is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The term "nuclear decommissioning transaction" is defined as—

(1) Any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the cooperative's interest in a nuclear powerplant or nuclear powerplant unit;

(2) Any distribution from a trust, fund, or instrument established to pay any nuclear decommissioning costs; or

(3) Any earnings from a trust, fund, or instrument established to pay any nuclear decommissioning costs.

Treatment of income from asset exchange or conversion transactions

The Senate amendment provides that gain realized by a tax-exempt rural electric cooperative from a voluntary exchange or involuntary conversion of certain property is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). This provision only applies to the extent that: (1) the gain would qualify for deferred recognition under section 1031 (relating to exchanges of property held for productive use or investment) or section 1033 (relating to involuntary conversions); and (2) the replacement property that is acquired by the cooperative pursuant to section 1031 or section 1033 (as the case may be) constitutes property that is used, or to be used, for the purpose of generating, transmitting, distributing, or selling electricity or natural gas.

Treatment of cancellation of indebtedness income from prepayment of certain loans

The Senate amendment provides that income from the prepayment of any loan, debt, or obligation of a tax-exempt rural electric cooperative that is originated, insured, or guaranteed by the Federal Government under the Rural Electrification Act of 1936 is excluded in determining whether the cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12).

Treatment of income from load loss transactions

Tax-exempt rural electric cooperatives.—The Senate amendment provides that income received or accrued by a tax-exempt rural electric cooperative from a "load loss transaction" is treated under 501(c)(12) as income collected from members for the sole purpose of meeting losses and expenses of providing service to its members. Therefore, income from load loss transactions is treated as member income in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The bill also provides that income from load loss transactions does not cause a tax-exempt electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

The term "load loss transaction" is generally defined as any wholesale or retail sale of electric energy (other than to a member of the cooperative) to the extent that the aggregate amount of such sales during a seven-year period beginning with the "start-up year" does not exceed the reduction in the amount of sales of electric energy during such period by the cooperative to members. The "start-up year" is defined as the calendar year which includes the date of enactment of this provision or, if later, at the election of the cooperative: (1) the first year that the cooperative offers nondiscriminatory open access; or (2) the first year in which at least 10 percent of the cooperative's sales of electric energy are to patrons who are not members of the cooperative.

The Senate amendment also excludes income received or accrued by rural electric cooperatives from load loss transactions from the tax on unrelated trade or business income.

Taxable electric cooperatives.—The Senate amendment provides that the receipt or accrual of income from load loss transactions by taxable electric cooperatives is treated as income from patrons who are members of the cooperative. Thus, income from a load loss transaction is excludible from the taxable income of a taxable electric cooperative if the cooperative distributes such income pursuant to a pre-existing contract to distribute the income to a patron who is not a member of the cooperative. The Senate amendment also provides that income from load loss transactions does not cause a taxable electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

Treatment of income from certain contributions in aid of construction

The Senate amendment excludes from the 85-percent test for tax exemption under section 501(c)(12) the receipt by an electric cooperative, before January 1, 2007, of any contribution in aid of construction or connection charge (in the form of money, property, capital or otherwise) that is intended to facilitate the provision of electric service by the cooperative for the purpose of the development, by the recipient of such electric service, of qualified fuels from nonconventional sources (within the meaning of section 29, as modified elsewhere in the Senate amendment).

Effective date

The Senate amendment provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following modifications:

Treatment of income from open access transactions

Income received or accrued by a rural electric cooperative (other than income received or accrued directly or indirectly from a member of the cooperative) from the provision or sale of electric energy transmission services or ancillary services on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (including an agreement providing for the transfer of control—but not ownership—of transmission facilities)[55] is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12).

In addition, income is excluded for purposes of the 85-percent test if it is received or accrued by a rural electric cooperative (other than income received or accrued directly or indirectly from a member of the cooperative) from the provision or sale of electric energy distribution services or ancillary services, provided such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the cooperative: (1) to end-users who are served by distribution facilities not owned by the cooperative or any of its members; or (2) generated by a generation facility that is not owned or leased by the cooperative or any of its members and that is directly connected to distribution facilities owned by the cooperative or any of its members.

Treatment of income from load loss transactions

For purposes of this provision, the "start-up year" is defined as the first year that the cooperative offers nondiscriminatory open access or, if later and at the election of the cooperative, the calendar year that includes the date of enactment of this provision.

Effective date

The conference agreement provision is effective for taxable years beginning after the date of enactment.

1. Exempt certain prepayments for natural gas from tax-exempt bond arbitrage rules (sec. 3213 of the House bill and secs. 141 and 148 of the Code)

PRESENT LAW

Interest on bonds issued by States or local governments to finance activities carried out or paid for by those entities generally is exempt from income tax (sec. 103). Restrictions are imposed on the ability of States or local governments to invest the proceeds of these bonds for profit (the "arbitrage restrictions"). One such restriction limits the use of bond proceeds to acquire "investment-type property." The term investment-type property includes the acquisition of property in a transaction involving a prepayment. A prepayment can produce prohibited arbitrage profits when the discount received for prepaying the costs exceeds the yield on the tax-exempt bonds. In general, prohibited prepayments include all prepayments that are not customary in an industry by both beneficiaries of tax-exempt bonds and other persons using taxable financing for the same transaction.

On August 4, 2003, the Treasury Department issued final regulations deeming to be customary, and not in violation of the arbitrage rules, certain prepayments for natural gas and electricity. Generally, a qualified prepayment under the regulations requires that 90 percent of the natural gas or electricity purchased with the prepayment be used for a qualifying use. Generally, natural gas is used for a qualifying use if it is to be (1) furnished to retail gas customers of the issuing municipal utility who are located in the natural gas service area of the issuing municipal utility, however, gas used to produce electricity for sale is not included under this provision (2) used by the issuing municipal utility to produce electricity that will be furnished to retail electric service area customers of the issuing utility, (3) used by the issuing municipal utility to produce electricity that will be sold to a utility owned by a governmental person and furnished to the service area retail electric customers of the purchaser, (4) sold to a utility that is owned by a governmental person if the requirements of (1), (2) or (3) are satisfied by the purchasing utility (treating the purchaser as the issuing utility) or (5) used to fuel the pipeline transportation of the prepaid gas supply. Electricity is used for a qualifying use if it is to be (1) furnished to retail service area electric customers of the issuing municipal utility or (2) sold to a municipal utility and furnished to retail electric customers of the purchaser who are located in the electricity service area of the purchaser. Both governmental gas and electric utilities may take advantage of this regulatory provision.

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[55] Under this provision, references to FERC are treated as including references to the Public Utility Commission of Texas.

HOUSE BILL

In general

The provision creates a safe harbor exception to the general rule that tax-exempt bond-financed prepayments violate the arbitrage restrictions. The term "investment type property" does not include a prepayment under a qualified natural gas supply contract. The provision also provides that such prepayments are not treated as private loans for purposes of the private business tests.

Under the provision, a prepayment financed with tax-exempt bond proceeds for the purpose of obtaining a supply of natural gas for service area customers of a governmental utility is not treated as the acquisition of investment-type property. A contract is a qualified natural gas contract if the volume of natural gas secured for any year covered by the prepayment does not exceed the sum of (1) the average annual natural gas purchased (other than for resale) by customers of the utility within the service area of the utility ("retail natural gas consumption") during the testing period, and (2) the amount of natural gas that is needed to fuel transportation of the natural gas to the governmental utility. The testing period is the 5-calendar-year period immediately preceding the calendar year in which the bonds are issued. A retail customer is one who does not purchase natural gas for resale. Natural gas used to generate electricity by a governmental utility is counted as retail natural gas consumption if the electricity was sold to retail customers within the service area of the governmental electric utility.

Adjustments

The volume of gas permitted by the general rule is reduced by natural gas otherwise available on the date of issuance. Specifically, the amount of natural gas permitted to be acquired under a qualified natural gas contract for any period is to be reduced by natural gas held by the utility on the date of issuance of the bonds and natural gas that the utility has a right to acquire for the prepayment period (determined as of the date of issuance).[56] For purposes of the preceding sentence, applicable share means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

For purposes of the safe harbor, if after the close of the testing period and before the issue date of the bonds (1) the government utility enters into a contract to supply natural gas (other than for resale) for a commercial person for use at a property within the service area of such utility and (2) the gas consumption for such property was not included in the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period, then the amount of gas permitted to be purchased may be increased to accommodate the contract.

The average annual retail natural gas consumption calculation for purposes of the safe harbor, however, is not to exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

Intentional acts

The safe harbor does not apply if the utility engages in intentional acts to render (1) the volume of natural gas covered by the prepayment to be in excess of that needed for retail natural gas consumption, and (2) the amount of natural gas that is needed to fuel transportation of the natural gas to the governmental utility.

Definition of service area

Service area is defined as (1) any area throughout which the governmental utility provided (at all times during the testing period) in the case of a natural gas utility, natural gas transmission or distribution service, or in the case of an electric utility, electric distribution service; (2) limited areas contiguous to such areas, and (3) any area recognized as the service area of the governmental utility under State or Federal law. Contiguous areas are limited to any area within a county contiguous to the area described in (1) in which retail customers of the utility are located if such area is not also served by another utility providing the same service.

Ruling request for higher prepayment amounts

Upon written request, the Secretary may allow an issuer to prepay for an amount of gas greater than that allowed by the safe harbor based on objective evidence of growth in gas consumption or population that demonstrates that the amount permitted by the exception is insufficient.

Effective date

The provision is effective for obligations issued after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with a conforming amendment. The conferees understand that a qualified natural gas supply contract as defined in the conference agreement is not nongovernmental output property for purposes of subsection (d) of section 141. The conference agreement provides that subsection (d) of section 141 does not apply to prepayment contracts for natural gas or electricity that either under the Treasury regulations or statutory safe harbor are not investment-type property for purposes of the arbitrage rules under section 148. No inference is intended regarding the application of subsection 141(d) to prepayment contracts not covered by the statutory safe harbor or Treasury regulations.

The conferees also recognize that a number of States have created under State law joint action agencies that can serve as purchasing agents for their member municipal gas utilities. The conferees intend the provision to allow municipal utilities in a State to participate in such buying arrangements as established under State law, subject to the same limitations that would apply if an individual utility were to purchase gas directly. When acting on behalf of its municipal gas utility members, the total amount of gas that can be purchased by a joint action agency under the bill's exception to the arbitrage rules is the aggregate of what each such member could purchase for itself on a direct basis. Thus, with respect to qualified natural gas supply contracts entered into by joint action agencies for or on behalf of one or more member municipal utilities, the requirements of the safe harbor are tested at the individual municipal utility level based on the amount of gas that would be allocated to such member during any year covered by the contract.

III. PRODUCTION

A. OIL AND GAS PROVISIONS

1. Oil and gas production from marginal wells (sec. 43001 of the House bill, sec. 2301 of the Senate amendment, and secs. 38, 39, and new sec. 45J of the Code)

PRESENT LAW

There is no credit for the production of oil and gas from marginal wells. The costs of such production may be recovered under the Code's depreciation and depletion rules and in other cases as a deduction for ordinary and necessary business expenses.

HOUSE BILL

The provision would create a new, $3 per barrel credit for the production of crude oil and a $0.50 credit per 1,000 cubic feet of qualified natural gas production. The maximum amount of production on which credit could be claimed is 1,095 barrels or barrel equivalents. In both cases, the credit is available only for production from a "qualified marginal well." The credit is not available to production occurring if the reference price of oil exceeds $18 ($2.00 for natural gas). The credit is reduced proportionately as for reference prices between $15 and $18 ($1.67 and $2.00 for natural gas). Reference prices are determined on a one-year look-back basis.

A qualified marginal well is defined as: (1) a well production from which was marginal production for purposes of the Code percentage depletion rules; or (2) a well that during the taxable year had average daily production of not more than 25 barrel equivalents and produced water at a rate of not less than 95 percent of total well effluent.

The credit is treated as part of the general business credit; however, unused credits can be carried back for up to 10 years rather than the generally applicable carryback period of one year.

Effective date.—The provision is effective for production in taxable years beginning after December 31, 2003.

SENATE AMENDMENT

The Senate amendment is similar to the House bill, except it does not permit the credit to be carried back beyond the date of enactment and a marginal well that is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time is not considered a qualified marginal well during such period.

Effective date.—The Senate amendment is effective for production in taxable years beginning after date of enactment.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill except unused credits may be carried back only five years.

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[56] For example, natural gas otherwise available on the date the bonds are issued includes supply covered by other prepayment contracts for the period, and supply held in storage or subject to an option to purchase by such utility that is available for retail natural gas consumption during the period covered by the prepayment. It does not include supply that could be purchased on the open market during the prepayment period.

Effective date.—The provision is effective for production in taxable years beginning after December 31, 2003.

2. Temporary suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income limit with respect to marginal production (sec. 43002 of the House bill, sec. 2306 of the Senate amendment, and sec. 613A of the Code)

PRESENT LAW

In general

Depletion, like depreciation, is a form of capital cost recovery. In both cases, the taxpayer is allowed a deduction in recognition of the fact that an asset—in the case of depletion for oil or gas interests, the mineral reserve itself—is being expended in order to produce income. Certain costs incurred prior to drilling an oil or gas property are recovered through the depletion deduction. These include costs of acquiring the lease or other interest in the property and geological and geophysical costs (in advance of actual drilling).

Depletion is available to any person having an economic interest in a producing property. An economic interest is possessed in every case in which the taxpayer has acquired by investment any interest in minerals in place, and secures, by any form of legal relationship, income derived from the extraction of the mineral, to which it must look for a return of its capital.[57] Thus, for example, both working interests and royalty interests in an oil- or gas-producing property constitute economic interests, thereby qualifying the interest holders for depletion deductions with respect to the property. A taxpayer who has no capital investment in the mineral deposit does not possess an economic interest merely because it possesses an economic or pecuniary advantage derived from production through a contractual relation.

Cost depletion

Two methods of depletion are currently allowable under the Internal Revenue Code (the "Code"): (1) the cost depletion method, and (2) the percentage depletion method (secs. 611–613). Under the cost depletion method, the taxpayer deducts that portion of the adjusted basis of the depletable property which is equal to the ratio of units sold from that property during the taxable year to the number of units remaining as of the end of taxable year plus the number of units sold during the taxable year. Thus, the amount recovered under cost depletion may never exceed the taxpayer's basis in the property.

Percentage depletion and related income limitations

The Code generally limits the percentage depletion method for oil and gas properties to independent producers and royalty owners.[58] Generally, under the percentage depletion method 15 percent of the taxpayer's gross income from an oil- or gas-producing property is allowed as a deduction in each taxable year (sec. 613A(c)). The amount deducted generally may not exceed 100 percent of the net income from that property in any year (the "net-income limitation") (sec. 613(a)). The 100-percent net-income limitation for marginal wells is suspended for taxable years beginning after December 31, 1997, and before January 1, 2004.

Additionally, the percentage depletion deduction for all oil and gas properties may not exceed 65 percent of the taxpayer's overall taxable income (determined before such deduction and adjusted for certain loss carrybacks and certain trust distributions) (sec. 613A(d)(1)).[59] Because percentage depletion, unlike cost depletion, is computed without regard to the taxpayer's basis in the depletable property, cumulative depletion deductions may be greater than the amount expended by the taxpayer to acquire or develop the property.

A taxpayer is required to determine the depletion deduction for each oil or gas property under both the percentage depletion method (if the taxpayer is entitled to use this method) and the cost depletion method. If the cost depletion deduction is larger, the taxpayer must utilize that method for the taxable year in question (sec. 613(a)).

Limitation of oil and gas percentage depletion to independent producers and royalty owners

Generally, only independent producers and royalty owners (as contrasted to integrated oil companies) are allowed to claim percentage depletion. Percentage depletion for eligible taxpayers is allowed only with respect to up to 1,000 barrels of average daily production of domestic crude oil or an equivalent amount of domestic natural gas (sec. 613A(c)). For producers of both oil and natural gas, this limitation applies on a combined basis.

In addition to the independent producer and royalty owner exception, certain sales of natural gas under a fixed contract in effect on February 1, 1975, and certain natural gas from geopressured brine,[60] are eligible for percentage depletion, at rates of 22 percent and 10 percent, respectively. These exceptions apply without regard to the 1,000-barrel-per-day limitation and regardless of whether the producer is an independent producer or an integrated oil company.

HOUSE BILL

The limit on percentage depletion deductions to no more than 65 percent of the taxpayer's overall taxable income is suspended for taxable years beginning after December 31, 2003, and before January 1, 2007. The suspension of the 100-percent net-income limitation for marginal wells is extended an additional three years, through taxable years beginning before January 1, 2007.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

SENATE AMENDMENT

The Senate amendment suspends only the 100-percent net-income limitation for marginal wells through 2007.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement suspends the 100-percent net-income limitation for marginal wells through December 31, 2004. The conference agreement suspends the 65-percent-taxable-income limitation through December 31, 2004.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

3. Delay rental payments (sec. 43003 of the House bill, sec. 2308 of the Senate amendment, and sec. 167 of the Code)

PRESENT LAW

Present law generally requires costs associated with inventory and property held for resale to be capitalized rather than currently deducted as they are incurred. (sec. 263). Oil and gas producers typically contract for mineral production in exchange for royalty payments. If mineral production is delayed, these contracts provide for "delay rental payments" as a condition of their extension. The Treasury Department has taken the position that the uniform capitalization rules of section 263A require delay rental payments to be capitalized.

HOUSE BILL

The House bill permits delay rental payments incurred in connection with the development of oil or gas to be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

Effective date.—The House bill provision is effective for amounts paid or incurred in taxable years after 2003. No inference is intended from the prospective effective date of this proposal as to the proper treatment of pre-effective date delay rental payments.

SENATE AMENDMENT

The Senate amendment provides delay rental payments incurred in connection with the development of oil or gas must be amortized over two years.

Effective date.—The Senate amendment is effective for amounts paid or incurred in taxable years after 2002.

CONFERENCE AGREEMENT

The conferees adopt a provision nearly identical to a provision in S. 1149 as reported by the Senate Committee on Finance on May 23, 2003. The provision allows delay rental payments incurred in connection with the development of oil or gas within the United States to be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

Effective date.—The provision applies to delay rental payments paid or incurred in taxable years beginning after the date of enactment. No inference is intended from the prospective effective date of this proposal as to the proper treatment of pre-effective date delay rental payments.

4. Geological and geophysical costs (sec. 43004 of the House bill, sec. 2307 of the Senate amendment, and sec. 167 of the Code)

PRESENT LAW

Under present law, geological and geophysical expenditures are costs incurred by a taxpayer for the purpose of obtaining and accumulating data that will serve as the basis for the acquisition and retention of mineral properties by taxpayers exploring for minerals. Capital expenditures are not currently deductible as ordinary and necessary expenses, but are allocated to the cost of the property (sec. 263). Courts have held that geological and geophysical costs are capital, and therefore, are allocable to the cost of property acquired or retained. The costs attributable to such exploration are allocable to the cost of the property acquired or retained.

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[57] Treas. Reg. sec. 1.611-1(b)(1).

[58] Sec. 613A.

[59] Amounts disallowed as a result of this rule may be carried forward and deducted in subsequent taxable years, subject to the 65-percent taxable income limitation for those years.

[60] This exception is limited to wells, the drilling of which began between September 30, 1978, and January 1, 1984.

HOUSE BILL

The House Bill permits geological and geophysical costs incurred in connection with domestic oil and gas exploration to be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

Effective date.—The House bill provision is effective for costs paid or incurred in taxable years after 2003. No inference is intended from the prospective effective date of this proposal as to the proper treatment of pre-effective date geological and geophysical costs.

SENATE AMENDMENT

The Senate Amendment provides that geological and geophysical costs incurred in connection with domestic oil and gas exploration to be amortized over two years.

Effective date.—The Senate amendment is effective for costs paid or incurred in taxable years after 2002.

CONFERENCE AGREEMENT

The conferees adopt a provision nearly identical to a provision in S. 1149 as reported by the Senate Committee on Finance on May 23, 2003. The provision allows geological and geophysical amounts incurred in connection with oil and gas exploration in the United States to be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

Effective date.—The provision is effective for geological and geophysical amounts paid or incurred in taxable years beginning after the date of enactment. No inference is intended from the prospective effective date of this proposal as to the proper treatment of pre-effective date geological and geophysical costs.

B. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NON-CONVENTIONAL SOURCE

(sec. 43005 of the House bill, secs. 2309 and 2310 of the Senate amendment, and sec. 29 and new section 45K of the Code)

PRESENT LAW

An income tax credit is allowed for certain fuels produced from "non-conventional sources" and sold to unrelated parties. The amount of the credit is equal to $3 (generally adjusted for inflation[61]) per barrel or Btu oil barrel equivalent (sec. 29). Qualified fuels must be produced within the United States, and include: oil produced from shale and tar sands; gas produced from geopressured brine, Devonian shale, coal seams, tight formations ("tight sands"), or biomass; and liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

The credit applies to fuels produced from wells drilled or facilities placed in service after December 31, 1979, and before January 1, 1993. An exception extends the January 1, 1993 expiration date for facilities producing gas from biomass and synthetic fuel from coal if the facility producing the fuel is placed in service before July 1, 1998, pursuant to a binding contract entered into before January 1, 1997.

The credit applies to qualified fuels produced and sold before January 1, 2003 (in the case of non-conventional sources subject to the January 1, 1993, expiration date) or January 1, 2008 (in the case of biomass gas and synthetic fuel facilities eligible for the extension period).

HOUSE BILL

The House bill permits taxpayers to claim the section 29 credit for production of certain non-conventional fuels produced at wells placed in service after April 1, 2003, and before January 1, 2007. Qualifying fuels are oil from shale or tar sands, and gas from geopressured brine, Devonian shale, coal seams or a tight formation. The value of the credit is re-based to $3.00 for production in 2003 and is indexed for inflation commencing with the credit amount for 2004. The credit may be claimed for production from the well for each of the first four years of production, but not for any production occurring after December 31, 2009.

The House bill further permits production from certain existing wells (any well drilled after December 31, 1979, and before January 1, 1993) to claim a credit equal to the newly re-indexed value of $3.00 for production in 2003 after date of enactment through 2006.

The House bill also permits landfill gas sold to a third party from facilities placed in service after June 30, 1998 and before January 1, 2007, to be eligible for five years of credit from the later of the date of enactment or the date the facility is placed in service. The amount of credit is $3.00 per barrel equivalent in 2003 and is indexed for inflation commencing with the credit amount for 2004. In the case of a landfill subject to the Environmental Protection Agency's 1996 New Source Performance Standards/Emissions Guidelines, the amount of credit is $2.00 per barrel equivalent in 2003 and is indexed for inflation commencing with the credit amount for 2004.

Under the House bill, the taxpayer may not claim any credit for production in excess of a daily average[62] of 200,000 cubic feet of gas, or barrel of oil equivalent (200,000 cubic feet is equivalent to 35.4 barrels of oil) from a qualifying well or facility with respect to any production for which credit can be claimed under the modifications described.

The House bill adds section 29 to the list of general business credits.

Effective date.—The House bill provision is effective for fuel sold from qualifying wells and facilities after April 1, 2003.

SENATE AMENDMENT

Extension for certain non-conventional fuels

The Senate amendment provides a credit for production of certain non-conventional fuels produced at wells placed in service after the date of enactment and before January 1, 2005. The amount of the credit is $3.00 (unindexed) per barrel or Btu oil equivalent for three years of production commencing when the facility is placed in service. Qualified fuels are oil from, shale or tar sands, and gas from geopressured brine, Devonian shale, coal seams or a tight formation.

Extension and modification for "refined coal"

The Senate amendment provides a credit for production of "refined coal" from facilities placed in service after the date of enactment and before January 1, 2007. The amount of the credit is $3.00 (unindexed) per barrel or Btu oil equivalent for five years of production commencing when the facility is placed in service. Refined coal is a qualifying liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high-carbon fly ash, including such fuel used as a feedstock. A qualifying fuel is a fuel that when burned emits 20 percent less SO_2 and nitrogen oxides than the burning of feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2002, and if the fuel sells at prices at least 50 percent greater than the prices of the feedstock coal or comparable coal. However, no fuel produced at a qualifying advanced clean coal facility (as defined elsewhere) is a qualifying fuel.

Expansion for "viscous oil"

The Senate amendment provides a credit for production of certain viscous oil produced at wells placed in service after the date of enactment and before January 1, 2005. "Viscous oil" is domestic crude oil produced from any property if the crude oil has a weighted average gravity of 22 degrees API or less (corrected to 60 degrees Fahrenheit). The amount of the credit for viscous oil is $3.00 per barrel or Btu equivalent for three years of production commencing when the well is placed in service. The Senate amendment provides that qualifying sales to related parties for consumption not in the immediate vicinity of the wellhead qualify for the credit.

Credit for coalmine methane gas

The Senate amendment provides a credit for production of "coalmine methane gas" captured or extracted from a coal mine and sold after the date of enactment and before January 1, 2005. The amount of the credit is $3.00 (unindexed) per barrel or Btu oil equivalent (51.7 cents per million Btu of heat value in the gas) for gas utilized captured or sold, for three years of production commencing when the facility is placed in service. Qualifying coalmine methane gas is any methane gas liberated during qualified mining operations or extracted up to five years in advance of qualified mining operations as part of a specific plan to mine a coal deposit. In the case of coalmine methane gas that is captured in advance of qualified coal mining operations, the credit is allowed only after the date the coal extraction occurs in the immediate area where the coalmine methane gas was removed.

Expansion for agricultural and animal wastes

The Senate amendment adds facilities producing liquid, gaseous, or solid fuels, from agricultural and animal waste placed in service after the date of enactment and before January 1, 2005, to the list of qualified facilities for purposes of the non-conventional fuel credit. The amount of the credit is equal to $3.00 (unindexed) per barrel or Btu oil barrel equivalent, for three years of production commencing on the date the facility is placed in service. Agricultural and animal waste includes by-products, packaging, and any materials associated with processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes, including wood shavings, straw, rice hulls, and other bedding for the disposition of manure.

Extension of credit for certain existing facilities

The Senate amendment extends the present-law credit through December 31, 2004, for production from existing facilities producing coke, coke gas, or natural gas and by-products produced by coal gasification from lignite.

Study of coal bed methane gas

The Senate amendment provides that the Secretary of the Treasury undertake a study of the effect of section 29 on the production of coal bed methane. The Secretary's study is to be made in conjunction with the study to be undertaken by the Secretary of the Interior on the effects of coal bed methane production on surface and water resources, as provided in section 607 of the Energy Policy Act of 2002 (should that study be required by law). The study should estimate the total amount of credit claimed annually and in aggregate related to the production of coal bed methane since the enactment of section 29. The study should report the annual value of the credit allowable for coal bed methane compared to the average annual wellhead price of natural gas (per thousand cubic feet of natural gas). The study should estimate the incremental increase in production of coal bed methane that has resulted from the enactment of section 29. The study should also estimate the cost to the Federal government, in terms of the net tax benefits claimed, per thousand cubic feet of incremental coal bed methane produced annually and in aggregate since the enactment of section 29.

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[61] The value of the section 29 credit for production in 2002 was $6.35 per barrel of oil equivalent.

[62] The daily average is computed as total production divided by the total number of days the well or facility was in production during the year.

Effective date

The Senate amendment is effective for fuel sold after the date of enactment.

CONFERENCE AGREEMENT

In general

The conferees follow the House bill structure and a related provision in S. 1149 as reported by the Senate Committee on Finance on May 23, 2003. In general, the provision permits taxpayers to claim the section 29 credit for certain new wells or facilities placed in service after date of enactment and before January 1, 2007, and the provision also permits taxpayers to claim the section 29 credit for certain existing wells and facilities. For all qualifying wells and facilities the value of the credit is $3.00 for production in 2003 and is indexed for inflation commencing with the credit amount for 2004. The credit can be claimed for production for each of the first four years of production, but not for any production occurring after December 31, 2009. The amount of the credit a taxpayer may claim with respect to any well or facility is subject to the daily limit.

Extension of placed in service date for certain new facilities

For new facilities producing qualifying fuels that are oil from shale or tar sands, and gas from geopressured brine, Devonian shale, coal seams or a tight formation, the credit can be claimed for production from such new facilities placed in service after date of enactment and before January 1, 2007. Credit may be claimed for production for each of the first four years of production, but not for any production occurring after December 31, 2009.

Extension of credit for existing oil and gas wells or facilities

The provision permits production from certain existing wells (any well drilled after December 31, 1979, and before January 1, 1993) to claim a credit equal to the newly re-indexed value of $3.00 for production in 2003 after the date of enactment through 2007.

Extension of credit for certain other existing wells or facilities

The provision extends the present-law credit through 2007, for production from existing facilities producing natural gas and by-products produced by coal gasification from lignite.

Extension for landfill gas facilities

The provision permits landfill gas sold from facilities placed in service after June 30, 1998, and before January 1, 2007, to be eligible for four years of credit from the later of January 1, 2004, or the date such facility is placed in service and ending on the earlier of the date that is four years after the date such period began or December 31, 2009. In the case of a landfill subject to the Environmental Protection Agency's 1996 New Source Performance Standards/Emissions Guidelines the amount of credit is $2.00 per barrel equivalent in 2003 and is indexed for inflation commencing with the credit amount for 2004.

Expansion for coke facilities

The provision permits a facility for producing coke or coke gas which was placed in service before January 1, 1993, or after June 30, 1998, or after the date of enactment and before January 1, 2007, to claim a credit beginning on the later of January 1, 2004, or the date such facility is placed in service and ending the earlier of the date four years after such period began or December 31, 2009. A facility currently claiming the credit under section 29(g) may not claim any credit at the $3.00 rate in the future.

Expansion for fuels from agricultural and animal waste

The provision adds facilities producing liquid, gaseous, or solid fuels, from agricultural and animal waste placed in service after the date of enactment and before January 1, 2007, to the list of qualified facilities for purposes of the non-conventional fuel credit. Taxpayers may claim the credit beginning on the later of January 1, 2004, or the date such facility is placed in service and ending the earlier of the date which is four years after such date began or December 31, 2009. Agricultural and animal waste includes by-products, packaging, and any materials associated with processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes. An example of transforming agricultural and animal waste into qualifying fuels is through the use of the thermal depolymerization process.

Expansion for "refined coal"

The provision also expands section 29 to include certain "refined coal" as a qualified non-conventional fuel. "Refined coal" is a qualifying liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) from facilities placed in service after date of enactment and before January 1, 2008. Taxpayers may claim the credit for fuel produced during the five-year period beginning on the date the facility is placed in service and without being subject to the general rule disallowing credit for production and sale after December 31, 2009. A qualifying fuel is a fuel that when burned emits 20 percent less nitrogen oxide and either sulfur dioxide or mercury than the burning of feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003, and if the fuel sells at prices at least 50 percent greater than the prices of the feedstock coal or comparable coal. A facility qualifies if the taxpayer certifies (in such a manner as the Secretary may prescribe) that the refined coal meets these requirements. Refined coal also includes a qualifying fuel derived from high-carbon fly ash. However, no fuel produced at a qualifying advanced clean coal facility (as defined elsewhere) would be a qualifying fuel.

The conferees intend that fuels made from coal using the Fischer-Tropsch process would qualify as refined fuel provided that such fuels satisfy the environmental and value tests described above. The Fischer-Tropsch process for producing diesel fuel can be separated into three main parts: (1) the production of synthesis gas from the main feedstock; (2) the catalytic reaction which converts the synthesis gas into hydrocarbon components; and (3) the refining of these hydrocarbon components into diesel fuel. Production of synthesis gas is accomplished by reforming the feedstock through partial oxidation reforming, autotherman reforming,[63] or steam reforming.

Expansion for coalmine gas

In addition, the provision permits taxpayers to claim credit for coalmine gas captured or extracted by the taxpayer during the period beginning on the day after the date of enactment and ending on December 31, 2006, and utilized as a fuel source or sold by or on behalf of the taxpayer to an unrelated person. The term "coalmine gas" means any methane gas which is being liberated during qualified coal mining operations or as a result of past qualified coal mining operations, or which is captured 10 years in advance of qualified coal mining operations as part of a specific plan to mine a coal deposit. In the case of coalmine gas that is captured in advance of qualified coal mining operations, the credit is allowed only after the date the coal extraction occurs in the immediate area where the coalmine gas was removed. The capture or extraction of coalmine gas from coal mining operations is required to be in compliance with applicable Federal pollution prevention, control, and permit requirements in order to qualify for the credit.

Daily limit

Under the provision, a taxpayer would not be able to claim any credit for production in excess of a daily average[64] of 200,000 cubic feet of natural gas or barrel of oil equivalent (200,000 cubic feet is equivalent to approximately 35.4 barrels of oil) of such gas with respect to any property or facility for which credit can be claimed under the modifications above.[65] All facilities eligible for the $3.00 credit under the conference agreement are subject to this limitation.

New phaseout adjustment

In the case of fuels sold after 2003, the dollar amount is $3.00 (without regard to a phaseout adjustment). The new phaseout is increased to $35.00.

General business credit

The provision adds section 29 to the list of general business credits and relabels present section 29 of the Code as new Code section 45K.

Effective date

The provision is effective for fuel produced and sold from qualifying wells and facilities after December 31, 2003. For application of the general business credit, the provision is effective for taxable years ending after December 31, 2003.

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[63] Autotherman reforming can be accomplished with the use of ambient air, enriched air, or pure oxygen.

[64] The daily average is computed as total production divided by the total number of days the well or facility was in production during the year. Days before the date the project is placed in service are not taken into account in determining the daily average.

[65] The conferees observe that the daily limit adopted in the conference agreement is identical to the provision in H.R. 6 as passed by the House of Representatives and in S. 1149 as reported by the Senate Committee on Finance.

C. ALTERNATIVE MINIMUM TAX PROVISIONS

1. Allow personal energy credits against the alternative minimum tax (sec. 41007 of the House bill, secs. 2103(b) and 2109(b) of the Senate amendment, and sec. 26 of the Code)

PRESENT LAW

With certain exceptions, for taxable years beginning after December 31, 2003, nonrefundable personal credits may not exceed the excess of the regular tax liability over the tentative minimum tax.

The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount. To the extent the tentative minimum tax exceeds the regular tax, a taxpayer is subject to the alternative minimum tax.

HOUSE BILL

The House bill allows the personal energy credits added by the bill to offset both the regular tax and the alternative minimum tax. (The credits added by the House bill include the credit for residential solar energy property, the credit for qualified fuel cell power plants, and the credit for energy efficient improvements to existing homes)

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

SENATE AMENDMENT

The Senate amendment is the same as the House bill. (The credits added by the Senate amendment include the credit for residential energy efficient property and the credit for energy efficient improvements to existing homes.)

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment and allows the personal energy credits added by the conference agreement (credits for residential energy efficient property and energy efficiency improvements to existing homes) to offset both the regular tax and the alternative minimum tax.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

2. Increase tax limitation on use of business energy credits (secs. 43006 and 43008 of the House bill, secs. 2005(b)(3) and 2503(c) of the Senate amendment, and sec. 38 of the Code)

PRESENT LAW

Generally, business tax credits may not exceed the excess of the taxpayer's income tax liability over the tentative minimum tax (or, if greater, 25 percent of the regular tax liability). Credits in excess of the limitation may be carried back one year and carried over for up to 20 years.

The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount. To the extent the tentative minimum tax exceeds the regular tax, a taxpayer is subject to the alternative minimum tax.

HOUSE BILL

The House bill treats the tentative minimum tax as being zero for purposes of determining the tax liability limitation with respect to (1) the business energy credits added by the bill for construction of new energy efficient homes; for production of low sulfur diesel fuel; and for oil and gas production from marginal wells, (2) for taxable years beginning in 2004 and 2005, the enhanced oil recovery credit, and (3) the section 45 credit for electricity produced from a wind facility (placed in service after the date of enactment) during the first four years of production beginning on the date the facility is placed in service.

Effective date.—The provision is effective for taxable years ending after the date of enactment of the Act.

SENATE AMENDMENT

The Senate amendment allows the small ethanol producer credit and the Alaska natural gas credit to be claimed against the entire regular tax and alternative minimum tax; other business energy credits are subject to the present law limitation.

Effective date.—The provision is effective with effective date of the respective credits.

CONFERENCE AGREEMENT

The conference agreement treats the tentative minimum tax as being zero for purposes of determining the tax liability limitation with respect to (1) the business energy credits added by the bill for construction of new energy efficient homes, energy efficient appliances, production of low sulfur diesel fuel, and oil and gas production from marginal wells; (2) for taxable years beginning after December 31, 2003, the section 40 alcohol fuels credit; (3) for taxable years beginning in 2004 and 2005, the section 43 enhanced oil recovery credit; and (4) the section 45 credit for electricity produced from a facility (placed in service after the date of enactment) during the first four years of production beginning on the date the facility is placed in service.

Effective date.—The provision is effective for taxable years ending after the date of enactment of the Act.

3. Intangible drilling costs (IDCs) (sec. 43007 of the House bill and sec. 57 of the Code)

PRESENT LAW

Taxpayers who pay or incur intangible drilling or development costs ("IDCs") in the development of domestic oil or gas production may elect to either expense or capitalize these amounts. If an election to expense IDCs is made, the taxpayer deducts the amount of the IDCs as an expense in the taxable year the cost is paid or incurred.

The difference between the amount of a taxpayer's IDC deduction and the amount which would have been currently deductible had IDCs been capitalized and recovered over a 10-year period is an item of tax preference for the alternative minimum tax ("AMT") to the extent that this amount exceeds 65 percent of the taxpayer's net income from oil and gas properties for the taxable year. This preference applies to taxpayers other than integrated oil companies only to the extent that the failure to apply the preference would result in a reduction of the taxpayer's alternative minimum taxable income by more than 40 percent.

HOUSE BILL

The bill repeals the AMT preference for intangible drilling costs for oil and gas wells for taxpayers other than integrated oil companies.

Effective date.—The provision applies to taxable years beginning after December 31, 2003, and beginning before January 1, 2006.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

D. CLEAN COAL INCENTIVES

1. Credit for production from a clean coal technology unit (secs. 2201 and 2221 of Senate amendment)

PRESENT LAW

Present law does not provide a production credit for electricity generated at units that use coal as a fuel. However, an income tax credit is allowed for the production of electricity from either qualified wind energy, qualified "closed-loop" biomass, or qualified poultry waste units placed in service prior to January 1, 2002 (sec. 45). The credit allowed equals 1.5 cents per kilowatt-hour of electricity sold. The 1.5-cent figure is indexed for inflation and equals 1.8 cents for 2002. The credit is allowable for production during the 10-year period after a unit is originally placed in service. The production tax credit is a component of the general business credit (sec. 38(b)(1)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a production credit for electricity produced from certain units that have been retrofitted, repowered, or replaced with a clean coal technology within ten years of the date of enactment. The value of the credit is 0.34 cents per kilowatt-hour of electricity produced and is indexed for inflation occurring after 2002 with the first potential adjustment in 2004.

A qualifying clean coal technology unit must meet certain capacity standards, thermal efficiency standards, and emissions standards for SO_2, nitrous oxides, particulate emissions, and source emissions standards as provided in the Clean Air Act. To be a qualified clean coal technology unit, the taxpayer must receive a certificate from the Secretary of the Treasury. The Secretary may grant certificates to units only to the point that 4,000 megawatts of electricity production capacity qualifies for the credit. However, no qualifying unit would be eligible if the unit's capacity exceeded 300 megawatts.

Certain persons (public utilities, electric cooperatives, Indian tribes, and the Tennessee Valley Authority) are eligible to obtain certifications from the Secretary for these credits and sell, trade, or assign the credit to any taxpayer. However, any credit sold, traded, or assigned may only be sold, traded, or assigned once. Subsequent trades are not permitted.

Effective date.—The Senate amendment is effective for electricity sold after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Investment credit for clean coal technology units (secs. 2211 and 2221 of Senate amendment and new sec. 48A of the Code)

PRESENT LAW

Present law does not provide an investment credit for electricity generating units that use coal as a fuel. However, a nonrefundable, 10-percent investment tax credit ("business energy credit") is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) that is used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage (sec. 48). The business energy tax credit is a component of the general business credit (sec. 38(b)(1)).

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The Senate amendment provides a 10-percent investment tax credit for qualified investments in advanced clean coal technology units. Certain persons (public utilities, electric cooperatives, Indian tribes, and the Tennessee Valley Authority) will be eligible to obtain certifications from the Secretary of the Treasury (as described below) for these credits and sell, trade, or assign the credit to any taxpayer. However, any credit sold, traded, or assigned may only be sold, traded, or assigned once. Subsequent trades are not permitted.

Qualifying advanced clean coal technology units

Qualifying advanced clean coal technology units must utilize advanced pulverized coal or atmospheric fluidized bed combustion technology, pressurized fluidized bed combustion technology, integrated gasification combined cycle technology, or some other technology certified by the Secretary of Energy. Any qualifying advanced clean coal technology unit must meet certain capacity standards, thermal efficiency standards, and emissions standards for SO2, nitrous oxides, particulate emissions, and source emissions standards as provided in the Clean Air Act. In addition, a qualifying advanced clean coal technology unit must meet certain carbon emissions requirements.

If the advanced clean coal technology unit is an advanced pulverized coal or atmospheric fluidized bed combustion technology unit, a pressurized fluidized bed combustion technology unit, or an integrated gasification combined cycle technology unit and if the unit uses a design coal with a heat content of not more than 9,000 Btu per pound, the unit must have a carbon emission rate less than 0.60 pound of carbon per kilowatt hour of electricity produced. If the advanced clean coal technology unit is an advanced pulverized coal or atmospheric fluidized bed combustion technology unit, a pressurized fluidized bed combustion technology unit, or an integrated gasification combined cycle technology unit and if the unit uses a design coal with a heat content greater than 9,000 Btu per pound, the unit must have a carbon emission rate less than 0.54 pound of carbon per kilowatt hour of electricity produced. In the case of an advanced clean coal technology unit that uses another eligible technology and if the unit uses a design coal with a heat content of not more than 9,000 Btu per pound, the unit must have a carbon emission rate less than 0.51 pound of carbon per kilowatt hour of electricity produced. In the case of an advanced clean coal technology unit that uses another eligible technology and if the unit uses a design coal with a heat content greater than 9,000 Btu per pound, the unit must have a carbon emission rate less than 0.459 pound of carbon per kilowatt hour of electricity produced.

Allocation of credits

To be a qualified investment in advanced clean coal technology, the taxpayer must receive a certificate from the Secretary of the Treasury. The Secretary may grant certificates to investments only to the point that 4,000 megawatts of electricity production capacity qualifies for the credit. From the potential pool of 4,000 megawatts of capacity, not more than 1,000 megawatts in total and not more than 500 megawatts in years prior to 2009 shall be allocated to units using advanced pulverized coal or atmospheric fluidized bed combustion technology. From the potential pool of 4,000 megawatts of capacity, not more than 500 megawatts in total and not more than 250 megawatts in years prior to 2009 shall be allocated to units using pressurized fluidized bed combustion technology. From the potential pool of 4,000 megawatts of capacity, not more than 2,000 megawatts in total and not more than 1,000 megawatts in years prior to 2009 and not more than 1,500 megawatts in year prior to 2013 shall be allocated to units using integrated gasification combined cycle technology, with or without fuel or chemical co-production. From the potential pool of 4,000 megawatts of capacity, not more than 500 in total and not more than 250 megawatts in years prior to 2009 shall be allocated to any other technology certified by the Secretary of Energy.

Effective date

The Senate amendment is effective for property placed in service after the date of enactment.

CONFERENCE AGREEMENT

In general

The conference establishes an investment tax credit for qualified clean coal property. The credit amount is 15 percent for property placed in service in connection with any basic clean coal technology unit and 17.5 percent for property placed in service in connection with any advanced clean coal technology unit. Qualifying clean coal property is section 1245 property installed in connection with an existing coal-based unit for the production of electricity as part of a conversion to a basic or advanced clean coal technology unit, or is installed in connection with a new advanced clean coal technology unit. Qualifying property must be placed in service after December 31, 2003, and if part of a basic clean coal technology unit before January 1, 2014. If the qualifying property is placed in service as part of an advanced clean coal technology unit, it must be placed in service prior to January 1, 2017.

The total amount of clean coal property eligible for the credit is subject to a national megawatt limitation (detailed below). To be eligible to claim the credit, the taxpayer must receive an allocation of megawatt capacity from the Secretary. The amount of credit the taxpayer may claim with respect to clean coal property is the otherwise allowable credit amount multiplied by the ratio of the national megawatt capacity limitation allocated to the taxpayer over the total nameplate capacity of the taxpayer's unit.

In addition, the credit allowable to the taxpayer is reduced by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits, but such reduction cannot exceed 50 percent of the otherwise allowable credit. The credit is treated as part of the general business credit and, under a special transition rule may not be carried back to a taxable year ending before or on the effective date of the provision.

Basic clean coal technology units

A qualifying clean coal technology unit is a unit using clean coal technology (including advanced pulverized coal or atmospheric fluidized bed combustion, pressurized fluidized bed combustion, and integrated gasification combined cycle) for the production of electricity. The unit must use at least 75 percent coal to produce at least 50 percent of its thermal output as electricity. In addition, the unit must meet certain capacity standards, thermal efficiency standards, and emissions standards for SO_2, nitrous oxides, particulate emissions, and source emissions standards as provided in the Clean Air Act. In addition, a qualifying clean coal technology unit cannot be a unit that is receiving or is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of the Department of Energy. Lastly, to be a qualified clean coal technology unit, the taxpayer must receive a certificate from the Secretary of the Treasury. The Secretary may grant certificates to units only to the point that 4,000 megawatts of electricity production capacity qualifies for the credit. However, no qualifying unit is eligible if the unit's rated nameplate capacity prior to January 1, 2004, exceeded 300 megawatts. The maximum eligible allocation to any qualifying unit may not exceed 300 megawatts.

Advanced clean coal technology units

A qualifying advanced clean coal technology unit is a unit using: (1) advanced pulverized coal or atmospheric fluidized bed combustion technology; (2) qualifying pressurized fluidized bed combustion technology; (3) integrated gasification combined cycle technology; or (4) other qualifying technology.

(1) A qualifying advanced pulverized coal or atmospheric fluidized bed combustion technology unit is a unit placed in service after the date of enactment and before 2013 and having a design net heat rate of not more than 8,500 Btu (8,900 Btu if the unit is placed in service before 2009).

(2) A qualifying pressurized fluidized bed combustion technology unit is a unit placed in service after the date of enactment and before 2017 and having a design net heat rate of not more than 7,720 Btu (8,900 Btu if the unit is placed in service before 2009 and 8,500 Btu if the unit is placed in service after 2008 and before 2013).

(3) A qualifying integrated gasification combined cycle technology unit, with or without fuel or chemical co-production, is a unit placed in service after the date of enactment and before 2017 and having a design net heat rate of not more than 7,720 Btu (8,900 Btu if the unit is placed in service before 2009 and 8,500 Btu if the unit is placed in service after 2008 and before 2013).

(4) An other qualifying technology unit is a unit that uses any other technology and satisfies the design net heat rates of a qualifying advanced pulverized coal or atmospheric fluidized bed combustion technology unit.

Any qualifying advanced clean coal technology unit must meet certain capacity standards, thermal efficiency standards, and emissions standards for SO_2 nitrous oxides, particulate emissions, and source emissions standards as provided in the Clean Air Act. A qualifying advanced clean coal technology unit must use at least 75 percent coal to produce at least 50 percent of its thermal output as electricity. In addition, a qualifying advanced clean coal technology unit must meet certain carbon emissions requirements. For units using design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate must be less than 0.60 pound of carbon per kilowatt hour (0.51 if the unit qualifies as an other technology unit). For units using design coal with a heat content in excess of 9,000 Btu per pound, the carbon emission rate must be less than 0.54 pound of carbon per kilowatt hour (0.459 if the unit qualifies as an other technology unit).

To be a qualified investment in advanced clean coal technology, the taxpayer must receive a certificate from the Secretary of the

Treasury. The Secretary may grant certificates to investments only to the point that 6,000 megawatts of electricity production capacity qualifies for the credit. From the potential pool of 6,000 megawatts of capacity, not more than 1,500 megawatts in total and not more than 750 megawatts in years prior to 2009 shall be allocated to units using advanced pulverized coal or atmospheric fluidized bed combustion technology. From the potential pool of 6,000 megawatts of capacity, not more than 750 megawatts in total and not more than 375 megawatts in years prior to 2009 shall be allocated to units using pressurized fluidized bed combustion technology. From the potential pool of 6,000 megawatts of capacity, not more than 3,000 megawatts in total and not more than 1,250 megawatts in years prior to 2009 shall be allocated to units using integrated gasification combined cycle technology, with or without fuel or chemical co-production. From the potential pool of 6,000 megawatts of capacity, not more than 750 in total and not more than 375 megawatts in years prior to 2009 shall be allocated to any other technology unit.

Effective date.—The provision is effective for property placed in service after the date of enactment.

3. Credit for production from advanced clean coal technology (secs. 2212 and 2221 of Senate amendment)

PRESENT LAW

Present law does not provide a production credit for electricity generated at units that use coal as a fuel. However, an income tax credit is allowed for the production of electricity from either qualified wind energy, qualified "closed-loop" biomass, or qualified poultry waste units placed in service prior to January 1, 2002 (sec. 45). The credit allowed equals 1.5 cents per kilowatt-hour of electricity sold. The 1.5-cent figure is indexed for inflation and equals 1.8 cents for 2002. The credit is allowable for production during the 10-year period after a unit is originally placed in service. The production tax credit is a component of the general business credit (sec. 38(b)(1)).

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The Senate amendment creates a production credit for electricity produced from any qualified advanced clean coal technology electricity generation unit that qualifies for the investment credit for qualifying clean coal technology units, as described above. Certain persons (public utilities, electric cooperatives, Indian tribes, and the Tennessee Valley Authority) will be eligible to obtain certifications from the Secretary of the Treasury (as described below) for each of these credits and sell, trade, or assign the credit to any taxpayer. However, any credit sold, traded, or assigned may only be sold, traded, or assigned once. Subsequent trades are not permitted.

Value of production credit for electricity produced from qualifying advanced clean coal technology

The taxpayer may claim a production credit on the sum of each kilowatt-hour of electricity produced and the heat value of other fuels or chemicals produced by the taxpayer at the unit.[66] The taxpayer may claim the production credit for the 10-year period commencing with the date the qualifying unit is placed in service (or the date on which a conventional unit was retrofitted or repowered). The value of the credit varies depending upon the year the unit is placed in service, whether the unit produces solely electricity or electricity and fuels or chemicals, and the rated thermal efficiency of the unit. In addition, the value of the credit is reduced for the second five years of eligible production. The maximum value of the production credit from any qualifying unit during the first five years of production is $0.014 per kilowatt-hour and the minimum value is $0.001. During the second five years of production from a qualifying unit, the maximum value of the production credit is $0.0115 and the minimum value is $0.001. The value of the credit is indexed for inflation occurring after 2002 with the first potential adjustment in 2004.

Effective date

The Senate amendment is effective for electricity sold after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Amortization of pollution control facilities (sec. 169 of the Code)

PRESENT LAW

In general, a taxpayer may elect to recover the cost of any certified pollution control facility over a period of 60 months.[67] A certified pollution control facility is defined as a new, identifiable treatment facility which (1) is used in an existing plant in operation before January 1, 1976, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes or heat; and (2) which does which does not lead to a significant increase in output or capacity, a significant extension of useful life, or a significant reduction in total operating costs for such plant or other property (or any unit thereof), or a significant alteration in the nature of a manufacturing production process or facility. Certification is required by appropriate State and Federal authorities that the facility comply with appropriate standards.

For a pollution control facility with a useful life greater than 15 years, only the basis attributable to the first 15 years is eligible to be amortized over a 5-year period.[68] The remaining basis is depreciable under the regular rules for depreciation. In addition, a corporate taxpayer must reduce the amount of basis eligible for the 60-month recovery by 20 percent.[69] Such reduction is depreciable under the regular rules for depreciation.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement expands the ability to recover certified pollution control facilities over 60 months by repealing the requirement that only a certified pollution control facility used in connection with a plant in operation before January 1, 1976 qualify. Thus, a certified pollution control facility used in connection with a plant or other property that began operation after January 1, 1976, will generally be eligible for recovery over 60 months.[70] In addition, the conference agreement shortens the recovery period for a certified pollution control facility used in connection with a plant or other property in operation before January 1, 1976, to 36 months (from 60 months) if no allocation is made under section 48A(f) (as added by another provision of the conference agreement). The conference agreement does not alter the present law limitation on the benefits of the provision for corporate taxpayers and pollution control facilities with a useful life greater than 15 years.

Effective date.—The provision applies to facilities placed in service after the date of enactment.

5. Eligible integrated gasification combined cycle technology unit treated as five-year property (sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the "class life of the property." The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87-56.[71] Electric utility steam production plant property, which includes combustion turbines operated in a combined cycle with a conventional steam unit, is assigned a 20-year recovery period and a class life of 28 years.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement establishes a statutory 5-year recovery period and a class life of 20 years for an eligible integrated gasification combined cycle technology unit that receives an allocation of the clean coal technology credit.[72] An eligible integrated gasification combined cycle technology unit is defined as a clean coal technology unit using integrated gasification combined cycle technology, with or without fuel or chemical co-production, which meets a certain design heat rate and net thermal efficiency.[73]

Effective date.—The provision is effective for property placed in service after the date of enactment.

E. High Volume Natural Gas Provisions

1. High volume natural gas pipe treated as seven-year property (sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the "class life of the property." The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56.[74] Asset class 46.0, describing assets used in the private, commercial, andcontract carrying of petroleum, gas and other products by means of pipes and conveyors, are assigned a class life of 22 years and a recovery period of 15 years.

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[66] Each 3,413 Btu of heat content of the fuel or chemical is treated as equivalent to one kilowatt-hour of electricity.

[67] Sec. 169. For purposes of the alternative minimum tax, such property is recovered using the straight-line method over its general recovery period (for property placed in service prior to 1999 and after 1986 such property is recovered using the alternative system of depreciation contained in section 168(g)).

[68] The amount attributable to the first 15 years is equal to an amount which bears the same ratio to the portion of the adjusted basis of such facility, which would be eligible for amortization but for the application of this rule, as 15 bears to the number of years of useful life of such facility.

[69] Sec. 291(a)(5).

[70] In the case of a facility used in connection with a plant or other property to which an amount is allocated under section 48A(f) (as added by another provision in the conference agreement) the 60-month amortization period only applies if such plant or other property was in operation before January 1, 1976.

[71] 1987-2 C.B. 674 (as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785).

[72] Section 48A as added by another provision of the conference agreement.

[73] The design heat rate and net thermal efficiency standards are defined in section 48A(e)(4)(A) and (B) as added by another provision of the conference agreement.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement establishes a statutory seven-year recovery period and a class life of 22 years for any high volume natural gas pipe the original use[75] of which commences after the date of enactment. High volume natural gas pipe is defined as a pipe which has an interior diameter at least 42 inches and which is part of a natural gas pipeline system. Such property includes any related equipment and appurtenances used in connection with such pipe. In addition, the conference agreement provides that there is no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to such property.

Effective date.—The provision is effective for property placed in service on or after the date of enactment.

2. Credit for production of Alaska natural gas (sec. 2503 of Senate amendment)

PRESENT LAW

Present law does not provide a credit for conventional production of natural gas or delivery of fuels to a pipeline. However, certain fuels produced from "non-conventional sources" and sold to unrelated parties are eligible for an income tax credit equal to $3 (generally adjusted for inflation) per barrel or BTU oil barrel equivalent (sec. 29). Qualified fuels must be produced within the United States.

Qualified fuels include:

(1) Gas produced from geopressured brine, Devonian shale, coal seams, tight formations ("tight sands"), or biomass; and

(2) Liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

In general, the credit is available only with respect to fuels produced from wells drilled or facilities placed in service after December 31, 1979, and before January 1, 1993. An exception extends the January 1, 1993 expiration date for facilities producing gas from biomass and synthetic fuel from coal if the facility producing the fuel is placed in service before July 1, 1998, pursuant to a binding contract entered into before January 1, 1997.

The credit may be claimed for qualified fuels produced and sold before January 1, 2003 (in the case of non-conventional sources subject to the January 1, 1993 expiration date) or January 1, 2008 (in the case of biomass gas and synthetic fuel facilities eligible for the extension period).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a credit per million British thermal units (Btu) of natural gas for Alaska natural gas entering a pipeline during the 15-year period beginning the later of January 1, 2010 or the initial date for the interstate transportation of Alaska natural gas. Taxpayers may claim the credit against both the regular and minimum tax.

The credit amount for any month is the excess of $3.25 (indexed for inflation) per million Btu of natural gas over the average monthly price for that month for Alaska natural gas at the AECO C Hub in Alberta, Canada. Inflation adjustments in the $3.25 amount will be made by reference to changes in the GDP implicit price deflator for changes occurring after the first year in which the credit may be claimed.

If in any month commencing three years after the first year in which the credit may be claimed the average monthly price for that month for Alaska natural gas at the AECO C Hub in Alberta, Canada, exceeds $4.875 (indexed for inflation) per million Btu, any prior credits claimed are recaptured by increasing the taxpayer's tax liability by the lesser of the excess of the average monthly price for that month for Alaska natural gas at the AECO C Hub over $4.875 (indexed for inflation) per million Btu or the aggregate amount of credit claimed for Alaska natural gas in all prior years.

Alaska natural gas is any gas derived from an area of the State of Alaska lying north of 64 degrees North latitude generally from the area known as the "North Slope of Alaska," but not including the Alaska National Wildlife Refuge.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Enhanced oil recovery credit for certain gas processing facilities (sec. 43 of the Code)

PRESENT LAW

The taxpayer may claim a credit equal to 15 percent of enhanced oil recovery costs. Qualified enhanced oil recovery costs include costs of depreciable tangible property that is part of an enhanced oil recovery project, intangible drilling and development costs with respect to an enhanced oil recovery project, and tertiary injectant expenses incurred with respect to an enhanced oil recovery project. The credit is phased out when oil prices exceed a threshold amount.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that expenses in connection with the construction of any qualifying natural gas processing plant capable of processing one trillion British thermal units of natural gas into a natural gas pipeline system on a daily basis are qualified enhanced oil recovery costs eligible for the enhanced oil recovery credit. A qualifying natural gas processing plant also must produce carbon dioxide for re-injection into a producing oil or gas field.

Effective date.—The provision is effective for costs paid or incurred in taxable years beginning after 2003.

IV. ADDITIONAL PROVISIONS

A. EXTENSION OF TAX INCENTIVES FOR ENERGY-RELATED BUSINESSES ON INDIAN RESERVATIONS

(sec. 2501 of the Senate amendment and sec. 168 of the Code)

PRESENT LAW

The following tax incentives are available for businesses within Indian reservations.

Accelerated depreciation

With respect to certain property used in connection with the conduct of a trade or business within an Indian reservation, depreciation deductions under section 168(j) are determined using shorter recovery periods.

"Qualified Indian reservation property" eligible for accelerated depreciation includes property which is (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, (2) not used or located outside the reservation on a regular basis, (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer, and (4) described in the recovery-period table above. In addition, property is not "qualified Indian reservation property" if it is placed in service for purposes of conducting gaming activities. Certain "qualified infrastructure property" may be eligible for the accelerated depreciation even if located outside an Indian reservation.

The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax. The accelerated depreciation is available with respect to property placed in service on or after January 1, 1994, and before December 31, 2004.

Indian employment credit

In general, a credit against income tax liability is allowed to employers for the first $20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer with respect to certain employees (sec. 45A). The credit is equal to 20 percent of the excess of eligible employee qualified wages and health insurance costs during the current year over the amount of such wages and costs incurred by the employer during 1993. The credit is an incremental credit, such that an employer's current-year qualified wages and qualified employee health insurance costs (up to $20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable costs paid during 1993. No deduction is allowed for the portion of the wages equal to the amount of the credit.

The wage credit is available for wages paid or incurred on or after January 1, 1994, in taxable years that begin before December 31, 2004.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment extends the accelerated depreciation incentive to property placed in service before January 1, 2006, and the Indian employment credit incentive to taxable years beginning before January 1, 2006.

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[74] 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785).

[75] The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. It is intended that, when evaluating whether property qualifies as "original use," the factors used to determine whether property qualified as "new section 38 property" for purposes of the investment tax credit would apply. See Treasury Regulation 1.48–2. Thus, it is intended that additional capital expenditures incurred to recondition or rebuild acquired property (or owned property) would satisfy the "original use" requirement. However, the cost of reconditioned or rebuilt property acquired by the taxpayer would not satisfy the "original use" requirement. For example, if on April 13, 2004, a taxpayer buys from ACM for $20,000,000 a 42-inch natural gas pipeline that has been previously used by ACM. Subsequent to the purchase, the taxpayer makes an expenditure on the property of $5,000,000 for new 42-inch pipe that is required to be capitalized. Regardless of whether the $5,000,000 is added to the basis of such property or is capitalized as a separate asset, such amount would be treated as satisfying the "original use" requirement and would be eligible for the reduced recovery period. No part of the $20,000,000 purchase price qualifies for the reduced recovery period.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement extends the accelerated depreciation incentive for property placed in service before January 1, 2006, as part of a facility for: (1) the generation or transmission of electricity (including any qualified energy resource as defined in section 45(c) for purposes of the credit for electricity produced from certain renewable resources), (2) an oil or gas well, (3) the transmission or refining of oil or gas, or (4) the production of any qualified fuel (as defined for purposes of the credit for producing fuel from a nonconventional source).

Effective date.—The provision is effective on the date of enactment.

B. GAO STUDY

(sec. 2502 of the Senate amendment)

PRESENT LAW

Present law does not require study of the present law provisions relating to clean fuel vehicles and electric vehicles.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment directs the Comptroller General to undertake an ongoing analysis of the effectiveness of the tax credits allowed to alternative motor vehicles and the tax credits allowed to various alternative fuels under Title II of the bill and the tax credits and enhanced deductions allowed for energy conservation and efficiency under Title III of the bill. The studies should estimate the energy savings and reductions in pollutants achieved from taxpayer utilization of these provisions. The studies should estimate the dollar value of the benefits of reduced energy consumption and reduced air pollution in comparison to estimates of the revenue cost of these provisions to the U.S. Treasury. The studies should include an analysis of the distribution of the taxpayers who utilize these provisions by income and other relevant characteristics.

The bill directs the Comptroller General to submit annual reports to Congress beginning not later than December 31, 2002.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

C. TREATMENT OF CERTAIN DISPOSITIONS OF DAIRY PROPERTY TO IMPLEMENT BOVINE TUBERCULOSIS ERADICATION PROGRAM

(sec. 2505 of the Senate amendment)

PRESENT LAW

Generally, a taxpayer may elect not to recognize gain with respect to property that is involuntarily converted if the taxpayer acquires within an applicable period (generally the period ending two years after the end of the taxable year in which the first gain on the conversion is realized) property similar or related in service or use.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment extends involuntary conversion treatment to qualified dispositions of dairy property pursuant to the bovine tuberculosis eradication program. Treats any property acquired and held by the taxpayer either for productive use in a trade or business or for investment as property similar or related in use to the converted property. Extend the applicable acquisition period from two to four years and permits replacement property to be acquired from related parties. In addition to deferring gain, the provision also permits an ordinary loss equal to the adjusted basis of the converted property.

Finally, the provision allows expensing for amounts paid or incurred by the taxpayer to convert any real property into unimproved land pursuant to the bovine tuberculosis eradication program.

Effective date.—Effective for dispositions made and amounts received in taxable years beginning after May 22, 2001, but shall not apply to dispositions made after December 31, 2006.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

D. EXPAND EXEMPTION FROM AVIATION FUELS EXCISE TAXES FOR AERIAL APPLICATORS

(sec. 2506 of the Senate amendment)

PRESENT LAW

Excise taxes are imposed on aviation gasoline (19.4 cents per gallon) and jet fuel (21.9 cents per gallon) (secs. 4081 and 4091). Fuel used on a farm for farming purposes is exempt from tax. Aerial applicators (crop dusters) are allowed to claim the exemption on behalf of farm owners and operators, e.g., in the case of aviation gasoline if the owners or operators give written consent to the aerial applicators. This exemption applies only to fuel consumed in the airplane while operating over the farm, i.e., fuel consumed traveling to and from the farm is not exempt.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the present-law exception to include fuel used between farms and base airfields, and provides that the aerial applicator is the exclusive party entitled to the refund.

Effective date.—The provision is effective for fuel use and air transportation after December 31, 2001 and before January 1, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

E. MODIFICATION OF RURAL AIRPORT DEFINITION

(sec. 2507 of the Senate amendment)

PRESENT LAW

Most domestic air passenger transportation is subject to a two-part excise tax. First, an ad valorem tax is imposed at the rate of 7.5 percent of the amount paid for the transportation. Second, a flight segment tax of $3.00 per segment is imposed. The flight segment component of the tax does not apply to segments to or from qualified "rural airports." A rural airport is defined as an airport that (1) in the second preceding calendar year had fewer than 100,000 commercial passenger departures, and (2) either (a) is not located within 75 miles of another airport that had more than 100,000 such departures in that year, or (b) is eligible for payments under the Federal "essential air service" program.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision expands the definition of qualified rural airport to include an airport that (1) is not connected by paved roads to another airport and (2) had fewer that 100,000 passengers departing by air during the second preceding calendar year.

Effective date.—The provision is effective for calendar years beginning after 2002.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

F. EXEMPT TRANSPORTATION BY SEAPLANE FROM TICKET TAXES

(sec. 2508 of the Senate amendment)

PRESENT LAW

Most domestic air passenger transportation is subject to a two-part excise tax. First, an ad valorem tax is imposed at the rate of 7.5 percent of the amount paid for the transportation. Second, a flight segment tax of $3.00 per segment is imposed. Noncommercial aviation is subject to a higher fuel excise tax, but not the ticket tax.

Commercial aviation also is subject to a 4.4-cents-per-gallon fuels excise tax.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment exempts seaplane flights from the taxes on transportation of persons and property by air.

Effective date.—The provision is effective for calendar years beginning after 2002.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

G. CREDIT FOR TAXPAYERS OWNING COMMERCIAL POWER TAKEOFF VEHICLES

(sec. 2009 of the Senate amendment)

PRESENT LAW

If gasoline is used in an off-highway business use, the ultimate purchaser of the gasoline is entitled to a credit or refund of excise taxes paid in respect of the gasoline.[76] No credit or payment may be claimed in respect of gasoline used in a commercial highway vehicle solely by reason of the fact that the propulsion motor in the vehicle also is used for a purpose other than to propel the vehicle.[77] Thus, if the propulsion motor of a highway vehicle also operates special equipment, such as a mixing unit on a concrete mixer or a pump for discharging fuel from a tank truck, by means of a power takeoff or power transfer, no credit or payment may be claimed in respect of the gasoline used to operate the special equipment, even though the special equipment is mounted on the highway vehicle.[78]

If the highway vehicle is equipped with a separate motor to operate the special equipment, credit or refund payment may be claimed in respect of gasoline used in the separate motor. For example, if a separate motor is used to operate a refrigeration unit, pump, generator or mixing unit, the ultimate purchaser could seek a refund with respect to the gasoline used in that separate motor. If the gasoline used in a separate motor is drawn from the same tank as the one which supplies gasoline for the propulsion of the highway vehicle, the determination as to the quantity of gasoline used in the separate motor operating the special equipment is based on operating experience and supported by records.[79]

HOUSE BILL

No provision.

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[76] Sec. 6421(a).

[77] Treas. Reg. sec. 48.6421-1(d)(2).

[78] Id.

[79] Treas. Reg. sec. 48.6421-1(d)(3).

SENATE AMENDMENT

The provision provides a yearly $250-per-vehicle income tax credit to business owners of certain highway vehicles that consume fuel for both transportation and in non-transportation-related equipment, using a single motor. Specifically, the provision covers vehicles (1) designed to engage in the daily collection of refuse or recyclables from homes or businesses and is equipped with a mechanism under which the vehicles propulsion engine provides the power to operate a load compactor, ("refuse collection trucks") or (2) designed to deliver ready mixed concrete on a daily basis and is equipped with a mechanism under which the vehicles propulsion engine provides the power to operate a mixer drum to agitate and mix the product en route to the delivery site ("concrete mixers"). Governmental vehicles and those owned by tax-exempt organizations are not eligible for the credit. The credit expires after the calendar year 2004.

The provision further requires that by January 1, 2005, the Treasury provide by regulation a method for exempting refuse collection trucks and concrete mixers from the fuels excise tax on fuel used to power equipment attached to these vehicles.

Effective date.—The provision is effective for taxable years beginning after the date of enactment through 2004.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

H. Payment of Dividends on Stock of Cooperatives Without Reducing Patronage Dividends

(sec. 1388 of the Code)

PRESENT LAW

Under present law, cooperatives generally are entitled to deduct or exclude amounts distributed as patronage dividends in accordance with Subchapter T of the Code. In general, patronage dividends are comprised of amounts that are paid to patrons (1) on the basis of the quantity or value of business done with or for patrons, (2) under a valid and enforceable obligation to pay such amounts that was in existence before the cooperative received the amounts paid, and (3) which are determined by reference to the net earnings of the cooperative from business done with or for patrons.

Treasury Regulations provide that net earnings are reduced by dividends paid on capital stock or other proprietary capital interests (referred to as the "dividend allocation rule").[80] The dividend allocation rule has been interpreted to require that such dividends be allocated between a cooperative's patronage and nonpatronage operations, with the amount allocated to the patronage operations reducing the net earnings available for the payment of patronage dividends.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides a special rule for dividends on capital stock of a cooperative. To the extent provided in organizational documents of the cooperative, dividends on capital stock do not reduce patronage income and do not prevent the cooperative from being treated as operating on a cooperative basis.

Effective date.—The conference agreement provision is effective for distributions made in taxable years ending after the date of enactment.

I. Distributions From Publicly Traded Partnerships Treated as Qualifying Income of Regulated Investment Company

(secs. 851 and 469(k) of the Code)

PRESENT LAW

Treatment of regulated investment companies

A regulated investment company ("RIC") generally is treated as a conduit for Federal income tax purposes. In computing its taxable income, a RIC deducts dividends paid to its shareholders to achieve conduit treatment (sec. 852(b)). In order to qualify for conduit treatment, a RIC must be a domestic corporation that, at all times during the taxable year, is registered under the Investment Company Act of 1940 as a management company or as a unit investment trust, or has elected to be treated as a business development company under that Act (sec. 851(a)). In addition, the corporation must elect RIC status, and must satisfy certain other requirements (sec. 851(b)).

One of the RIC qualification requirements is that at least 90 percent of the RIC's gross income is derived from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of stock or securities or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies (sec. 851(b)(2)). Income derived from a partnership is treated as meeting this requirement only to the extent such income is attributable to items of income of the partnership that would meet the requirement if realized by the RIC in the same manner as realized by the partnership (the "look-through" rule for partnership income) (sec. 851(b)). Under present law, no distinction is made under this rule between a publicly traded partnership (that is treated as a partnership for Federal tax purposes) and any other partnership.

The RIC qualification rules include limitations on the ownership of assets and on the composition of the RIC's assets (sec. 851(b)(3)). Under the ownership limitation, at least 50 percent of the value of the RIC's total assets must be represented by cash, government securities and securities of other RICs, and other securities; however, in the case of such other securities, the RIC may invest no more than 5 percent of the value of the total assets of the RIC in the securities of any one issuer, and may hold no more than 10 percent of the outstanding voting securities of any one issuer. Under the limitation on the composition of the RIC's assets, no more than 25 percent of the value of the RIC's total assets may be invested in the securities of any one issuer (other than Government securities), or in securities of two or more controlled issuers in the same or similar trades or businesses. These limitations generally are applied at the end of each quarter (sec. 851(d)).

Treatment of publicly traded partnerships

Under present law, a publicly traded partnership is defined as a partnership, interests in which are traded on an established securities market, or are readily tradable on a secondary market (or the substantial equivalent thereof). In general, a publicly traded partnership is treated as a corporation (sec. 7704(a)), but an exception to corporate treatment is provided if 90 percent or more of its gross income is interest, dividends, real property rents, or certain other types of qualifying income (sec. 7704(c) and (d)).

A special rule for publicly traded partnerships applies under the passive loss rules. The passive loss rules limit deductions and credits from passive trade or business activities (sec. 469). Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income. Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activities in the next year. The suspended losses from a passive activity are allowed in full when a taxpayer disposes of his entire interest in the passive activity to an unrelated person. The special rule for publicly traded partnerships provides that the passive loss rules are applied separately with respect to items attributable to each publicly traded partnership (sec. 469(k)). Thus, income or loss from the publicly traded partnership is treated as separate from income or loss from other passive activities.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes a provision that modifies the 90 percent test with respect to income of a RIC to include income derived from an interest in certain publicly traded partnerships. The provision also modifies the lookthrough rule for partnership income of a RIC so that it applies only to income from a partnership other than such publicly traded partnerships.

The provision provides that the limitation on ownership and the limitation on composition of assets that apply to other investments of a RIC also apply to RIC investments in such publicly traded partnership interests.

A publicly traded partnership to which the provision applies is a publicly traded partnership described in section 7704(b) other than one that would satisfy the 90-percent gross income requirements for publicly traded partnerships if qualifying income included only income that is qualifying income described in section 851(b)(2)(A) for a RIC (i.e., income that is derived from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of stock or securities or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies).

The provision provides that the special rule for publicly traded partnerships under the passive loss rules (requiring separate treatment) applies to a RIC holding an interest in such a publicly traded partnership, with respect to items attributable to the interest in the publicly traded partnership.

The conferees intend that the provision not be used to avoid tax on the partnership's income in the hands of the mutual fund shareholders that would be subject to tax (e.g., unrelated business income tax) or to withholding (e.g., withholding on foreign partners) if they held the partnership interest directly. The conferees expect that guidance issued by the Treasury Department with respect to the provision will provide rules that carry out this intent.

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

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[80] Treas. Reg. sec. 1.1388-1(a)(1).

J. Suspension of Duties on Ceiling Fans (Chapter 99, II of the Harmonized Tariff Schedule of the United States)

PRESENT LAW

A 4.7-percent ad valorem customs duty is collected on imported ceiling fans from all sources.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement suspends the present customs duty applicable to ceiling fans through December 31, 2005.

Effective date.—The provision is effective on the fifteenth day after the date of enactment.

K. Suspension of Duties on Nuclear Steam Generators (Chapter 99, II of the Harmonized Tariff Schedule of the United States)

PRESENT LAW

Nuclear steam generators, as classified under heading 9902.84.02 of the Harmonized Tariff Schedule of the United States, enter the United States duty free until December 31, 2006. After December 31, 2006, the duty on nuclear steam generators returns to the column 1 rate of 5.2 percent under subheading 8402.11.00 of the Harmonized Tariff Schedule of the United States.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement extends the present-law suspension of customs duty applicable to nuclear steam generators through December 31, 2008.

Effective date.—The provision is effective on the fifteenth day after the date of enactment.

L. Suspension of Duties on Nuclear Reactor Vessel Heads (Chapter 99, II of the Harmonized Tariff Schedule of the United States)

PRESENT LAW

According to section 5202 of the Trade Act of 2002, nuclear vessel heads are classified under subheading 8401.40.00 of the Harmonized Tariff Schedule of the United States and enter the United States with a column 1 duty rate of 3.3 percent.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement temporarily suspends the present customs duty applicable to nuclear reactor vessel heads for column 1 countries through December 31, 2007.

Effective date.—The provision is effective on the date of enactment.

M. Brownfields Demonstration Program for Qualified Green Building and Sustainable Design Projects

(secs. 142 and 146 of the Code)

PRESENT LAW

Tax-exempt bonds

In general

Interest on debt incurred by States or local governments is excluded from income if the proceeds of the borrowing are used to carry out governmental functions of those entities or the debt is repaid with governmental funds (section 103). Interest on bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such a private person is taxable unless the purpose of the borrowing is approved specifically in the Code or in a non-Code provision of a revenue Act. These bonds are called "private activity bonds." The term "private person" includes the Federal Government and all other individuals and entities other than States or local governments.

Private activities eligible for financing with tax-exempt private activity bonds

Present law includes several exceptions permitting States or local governments to act as conduits providing tax-exempt financing for private activities. Both capital expenditures and limited working capital expenditures of charitable organizations described in section 501(c)(3) of the Code may be financed with tax-exempt bonds ("qualified 501(c)(3) bonds").

States or local governments may issue tax-exempt "exempt-facility bonds" to finance property for certain private businesses. Business facilities eligible for this financing include transportation (airports, ports, local mass commuting, and high speed intercity rail facilities); privately owned and/or privately operated public works facilities (sewage, solid waste disposal, local district heating or cooling, and hazardous waste disposal facilities); privately owned and/or operated low-income rental housing;[81] and certain private facilities for the local furnishing of electricity or gas. A further provision allows tax-exempt financing for "environmental enhancements of hydro-electric generating facilities." Tax-exempt financing also is authorized for capital expenditures for small manufacturing facilities and land and equipment for first-time farmers ("qualified small-issue bonds"), local redevelopment activities ("qualified redevelopment bonds"), and eligible empowerment zone and enterprise community businesses. Tax-exempt private activity bonds also may be issued to finance limited non-business purposes: certain student loans and mortgage loans for owner-occupied housing ("qualified mortgage bonds" and "qualified veterans' mortgage bonds").

With the exception of qualified 501(c)(3) bonds, private activity bonds may not be issued to finance working capital requirements of private businesses. In most cases, the aggregate volume of tax-exempt private activity bonds that may be issued in a State is restricted by annual volume limits.

Several additional restrictions apply to the issuance of tax-exempt bonds. First, private activity bonds (other than qualified 501(c)(3) bonds) may not be advance refunded. Governmental bonds and qualified 501(c)(3) bonds may be advance refunded one time. An advance refunding occurs when the refunded bonds are not retired within 90 days of issuance of the refunding bonds.

Issuance of private activity bonds is subject to restrictions on use of proceeds for the acquisition of land and existing property, use of proceeds to finance certain specified facilities (e.g., airplanes, skyboxes, other luxury boxes, health club facilities, gambling facilities, and liquor stores) and use of proceeds to pay costs of issuance (e.g., bond counsel and underwriter fees). Additionally, the term of the bonds generally may not exceed 120 percent of the economic life of the property being financed and certain public approval requirements (similar to requirements that typically apply under State law to issuance of governmental debt) apply under Federal law to issuance of private activity bonds. Present and prior law precludes substantial users of property financed with private activity bonds from owning the bonds to prevent their deducting tax-exempt interest paid to themselves. Finally, owners of most private-activity-bond-financed property are subject to special "change-in-use" penalties if the use of the bond-financed property changes to a use that is not eligible for tax-exempt financing while the bonds are outstanding.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The bill creates a new category of tax-exempt bonds, the qualified green building and sustainable design project bond. A qualified green building and sustainable design project bond is defined as any bond issued as part of an issue that finances a project designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency (the "Administrator") as a green building and sustainable design project that meets the following requirements: (1) at least 75 percent of the square footage of the commercial buildings that are part of the project is registered for the U.S. Green Building Council's LEED certification and is reasonably expected (at the time of designation) to meet such certification;[82] (2) the project includes a brownfield site;[83] (3) the project receives at least $5 million dollars in specific State or local resources; and (4) the project includes at least one million square feet of building or 20 acres of land.

Each project must be nominated by a State or local government within 180 days of enactment of this Act and such State or local government must provide written assurances that the project will satisfy certain eligibility criteria. Within 60 days after the end of the application period, the Secretary, after consultation with the Administrator, will designate the qualified green building and sustainable design projects. At least one of the projects must be in or within a ten-mile radius of an empowerment zone (as defined under section 1391 of the Code) and at least one must be in a rural State.[84] A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

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[81] Residential rental projects must satisfy low-income tenant occupancy requirements for a minimum period of 15 years.

[82] The LEED ("Leadership in Energy and Environmental Design) Green Building Rating System is a voluntary, consensus-based national standard for developing high-performance sustainable buildings. Registration is the first step toward LEED certification. Actual certification requires that the applicant project satisfy all prerequisites and receive a minimum number of points to attain a LEED rating level. Commercial buildings, as defined by standard building codes are eligible for certification. Commercial occupancies include, but are not limited to, offices, retail and service establishments, institutional buildings (e.g., libraries, schools, museums, churches, etc.), hotels, and residential buildings of four or more habitable stories. <*https://www.usgbc.org/LEED/Project/certprocess.asp*>.

[83] For this purpose a brownfield site is defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) (relating to a site that is contaminated by petroleum or a petroleum product excluded from the definition of "hazardous substance" under section 101.)

The Secretary, after consultation with the Administrator, shall also ensure that, in the aggregate, the projects designated shall: (1) reduce electric consumption by more than 150 megawatts annually as compared to conventional construction; (2) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power; (3) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002; and (4) use at least 25 megawatts of fuel cell energy generation.

Each application shall contain for each project a description of: (1) amount of electric consumption reduced as compared to conventional construction; (2) the amount of sulfur dioxide daily emissions reduced compared to coal generation; (3) the amount of gross installed capacity of the project's solar photovoltaic capacity measured in megawatts; and (4) the amount, measured in megawatts, of the project's fuel cell energy generation. Each project application must also demonstrate that: (1) at least 75 percent of the square footage of the commercial buildings that are part of the project is registered for the U.S. Green Building Council's LEED certification and is reasonably expected (at the time of designation) to meet such certification; (2) the project includes a brownfield site (as defined above); (3) the project receives at least $5 million dollars in specific State or local resources; (4) the project includes at least one million square feet of building or at least 20 acres of land; (5) the project is projected to provide permanent employment of at least 1500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1000 full time equivalents (100 full time equivalents in rural States);[85] and (6) the net benefit of the qualified green building and sustainable design project tax-exempt financing provided will be allocated for (i) the purchase, construction, integration or other use of energy efficiency, renewable energy and sustainable design features of the project, (ii) compliance with LEED certification standards, and/or (iii) the purchase, remediation, foundation construction, and preparation of the brownfield site. Not later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described.

Qualified green building and sustainable design project bonds are not subject to the State bond volume limitations. There is a national limitation of $2 billion of bonds. The Secretary may allocate, in the aggregate, no more than $2 billion of bonds to qualified green building and sustainable design projects.

Any asset financed with qualified green building and sustainable design project bonds is ineligible for any credit or deduction established or extended under the Energy Tax Policy Act of 2003. In addition, each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to one percent of the net proceeds of any qualified green building and sustainable design project bond issued for such project. Not later than five years after the date of issuance, the Secretary, after consultation with the Administrator, shall determine whether the project financed with such bonds has substantially complied requirements and commitments described in the project application for designation, including certification. If the Secretary, after such consultation, certifies that the project has substantially complied with requirements and commitments, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such requirements and commitments, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

Qualified green building and sustainable design project bonds may be currently refunded if certain conditions are met, but cannot be advance refunded.

Effective date.—The provisions are effective for bonds issued after the date of enactment and before October 1, 2009.

V. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the "Code") and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

TITLE XIV—MISCELLANEOUS PROVISIONS

Title XIV of the conference report provides funding for the power cost equalization program in Alaska, and authorizes assistance to rural communities for electric generation, transmission, and distribution upgrades and improvements. It establishes a coastal reinvestment program to assist coastal states in mitigating the impacts of offshore development, and allows lessees due compensation under the Oil Pollution Act of 1980 to withhold royalty payments for production from a covered lease tract in the outer Continental Shelf under certain circumstances. The report provides for changes in the composition, operation, and duties of the Tennessee Valley Authority board of directors, authorizes the continued operation of certain electric transmission facilities, reinstates a regulation for downwind ozone nonattainment areas, authorizes States to provide energy production incentives, and directs the Administrator of the Environmental Protection Agency to establish criteria for the use of granular mine tailings.

TITLE XV—ETHANOL

Title XV of the conference report establishes a renewable fuels standard requiring that 5.0 billion gallons of renewable fuels be introduced into the marketplace by 2012. It bans the use of MTBE in motor fuels after December 31, 2104, and authorizes transition assistance to aid manufacturers in converting production to other fuel additives. The title requires a National Academy of Sciences report on the use of MTBE to be completed by May 31, 2013, and provides opportunity for a Presidential determination concerning restrictions on the use of MTBE by June 30, 2013. It also provides limited liability protection for MTBE, fuels using MTBE, ethanol, and fuels using ethanol, for defective product claims. The title also makes changes to provisions related to leaking underground storage tanks, including requiring at least 80 percent of all dollars appropriated from the LUST Trust Fund to be sent to the States for operating leaking underground tanks programs. It requires onsite inspections of underground storage tanks every 3 years after a brief period for the State to update its backlog. The title also prohibits Federal facilities from exempting themselves from compliance with all federal, State, and local underground tank laws.

TITLE XVI—STUDIES

Title XVI of the conference report authorizes a variety of studies on issues such as petroleum and natural gas supplies, coal bed methane, telecommuting, oil bypass filtration, and the Low-Income Home Energy Assistance Program.

From the Committee on Energy and Commerce, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

Billy Tauzin,
Michael Bilirakis,
Joe Barton,
Fred Upton,
Cliff Stearns,
Paul Gillmor,
John Shimkus,

From the Committee on Agriculture, for consideration of secs. 30203, 30308, 30212, Title III of Division C, secs. 30604, 30901, and 30903 of the House bill and secs. 265, 301, 604, 941–948, 950, 1103, 1221, 1311–1313, and 2008 of the Senate amendment, and modifications committed to conference:

Bob Goodlatte,
Frank D. Lucas,
Charles W. Stenholm,

From the Committee on Armed Services, for consideration of secs. 11005, 11010, 14001–14007, 14009–14015, 21805 and 21806 of the House bill and secs. 301, 501–507, 509, 513, 809, 821, 914, 920, 1401, 1407–1409, 1411, 1801, and 1803 of the Senate amendment, and modifications committed to conference:

Duncan Hunter,
Curt Weldon,

From the Committee on Education and the Workforce, for consideration of secs. 11021, 12014, 14033, and 30406 of the House bill and secs. 715, 774, 901, 903, 1505, and 1507 of the Senate amendment, and modifications committed to conference:

Sam Johnson,

From the Committee on Financial Services, for consideration of Division G of the House bill and secs. 931–940 and 950 of the Senate amendment and modifications committed to conference:

Robert W. Ney,

From the Committee on Government Reform, for consideration of secs. 11002, 11005, 11006, 11010, 11011, 14025, 14033, and 22002 of the House bill and secs. 263, 805, 806, 914–916, 918, 920, 1406, and 1410 of the Senate amendment, and modifications committed to conference:

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[84] The term "rural State" means any State that has (1) a population of less than 4.5 million according to the 2000 census; (2) a population density of less than 150 people per square mile according to the 2000 census; and (3) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

[85] The application is to include an independent analysis that describes the project's economic impact, including the amount of projected employment.

Tom Davis,
Tim Murphy,

From the Committee on the Judiciary, for consideration of secs. 12008, 12401, 14014, 14026, 14027, 14028, 14033, 16012, 16045, 16084, 30101, 30210, and 30408 of the House bill and secs. 206, 209, 253, 531–532, 708, 767, 783, and 1109 of the Senate amendment, and modifications committed to conference:

Lamar Smith,

From the Committee on Resources, for consideration of secs. 12005, 12007, 12011, 12101, 13001, 21501, 21521–21530, Division C, and sec. 60009 of the House bill and secs. 201, 265, 272, 301, 401–407, 602–606, 609, 612, 705, 707, 712, 721, 1234, 1351–1352, 1704, and 1811 of the Senate amendment, and modifications committed to conference:

Richard Pombo,
Barbara Cubin,

Provided that Mr. Kind is appointed in lieu of Mr. Rahall for consideration of Title IV of Division C of the House bill, and modifications committed to conference:

From the Committee on Science, for consideration of secs. 11009, 11025, 12301–12312, 14001–14007, 14009–14015, 14029, 15021–15024, 15031–15034, 15041, 15045, Division B, sec 30301, Division E, and Division F of the House bill and secs. 501–507, 509, 513–516, 770–772, 807–809, 814–816, 824, 832, 1001–1022, Title XI, Title XII, Title XIII, Title XIV, secs. 1501, 1504–1505, Title XVI, and secs. 1801–1805 of the Senate amendment, and modifications committed to conference:

Judy Biggert,
Ralph M. Hall,

Provided that Mr. Costello is appointed in lieu of Mr. Hall of Texas for consideration of Division E of the House bill, and modifications committed to conference:

Jerry Costello,

Provided that Mr. Lampson is appointed in lieu of Mr. Hall of Texas for consideration of sec. 21708 and Division F of the House bill, and secs. 824 and 1223 of the Senate amendment and modifications committed to conference:

Nick Lampson,

From the Committee on Transportation and Infrastructure, for consideration of secs. 11001–11004, 11006, 11009–110011, 12001–12012, 12014, 12401, 12403, 13001, 13201, 13202, 15021–15024, 15031–15034, 15041, 15043, 15051, 16012, 16021, 16022, 16023, 16031, 16081, 16082, 16092, 23001–23004, 30407, 30410, and 30901 of the House bill and secs. 102, 201, 205, 301, 701–783, 812, 814, 816, 823, 911–916, 918–920, 949, 1214, 1261–1262, and 1351–1352 of the Senate amendment, and modifications committed to conference:

Don Young,
Thomas Petri,

From the Committee on Ways and Means, for consideration of Division D of the House bill and Division H and I of the Senate amendment, and modifications committed to conference:

William Thomas,
Jim McCrery,
Managers on the Part of the House.

Pete V. Domenici,
Don Nickles,
Larry E. Craig,
Ben Nighthorse Campbell,
Craig Thomas,
Chuck Grassley,
Trent Lott,
Byron L. Dorgan,
Managers on the Part of the Senate.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 6, ENERGY POLICY ACT OF 2003

Mr. REYNOLDS, from the Committee on Rules, submitted a privileged report (Rept. No. 108–376) on the resolution (H. Res. 443) waiving points of order against the conference report to accompany the bill (H.R. 6) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2754, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2004

Mr. REYNOLDS, from the Committee on Rules, submitted a privileged report (Rept. No. 108–377) on the resolution (H. Res. 444) waiving points of order against the conference report to accompany the bill (H.R. 2754) making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes, which was referred to the House Calendar and ordered to be printed.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. Carson of Indiana (at the request of Ms. Pelosi) for today on account of personal reasons.

Mr. Becerra (at the request of Ms. Pelosi) for today on account of personal reasons.

Mr. Davis of Illinois (at the request of Ms. Pelosi) for today on account of official business in the district.

Mr. Emanuel (at the request of Ms. Pelosi) for today on account of personal reasons.

Ms. Jackson-Lee of Texas (at the request of Ms. Pelosi) for today on account of official business.

Mr. Menendez (at the request of Ms. Pelosi) for today on account of official business.

Mr. Ortiz (at the request of Ms. Pelosi) for today on account of official business.

Mr. Lucas of Oklahoma (at the request of Mr. DeLay) for today on account of a travel delay.

Mrs. Bono (at the request of Mr. DeLay) for today on account of attending the inauguration ceremonies for the Governor of California.

Mr. Janklow (at the request of Mr. DeLay) for today on account of medical reasons.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Pallone) to revise and extend their remarks and include extraneous material:)

Mr. DeFazio, for 5 minutes, today.

Mr. Brown of Ohio, for 5 minutes, today.

Ms. Norton, for 5 minutes, today.

Mr. Ross, for 5 minutes, today.

Mr. Green of Texas, for 5 minutes, today.

Ms. Woolsey, for 5 minutes, today.

Ms. Solis, for 5 minutes, today.

Mr. Pallone, for 5 minutes, today.

Mr. McDermott, for 5 minutes, today.

Mr. Strickland, for 5 minutes, today.

(The following Members (at the request of Mr. Moran of Kansas) to revise and extend their remarks and include extraneous material:)

Mr. Moran of Kansas, for 5 minutes, today.

Mr. Osborne, for 5 minutes, November 18.

Mr. McCotter, for 5 minutes, November 19.

Mr. Burton of Indiana, for 5 minutes, today and November 18, 19, 20, 21.

Mr. Miller of Florida, for 5 minutes, today.

Mr. Coble, for 5 minutes, today.

Mr. Gingrey, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. Gutknecht, for 5 minutes, today.

ADJOURNMENT

Mr. REYNOLDS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 51 minutes a.m.), under its previous order, the House adjourned until today, Tuesday, November 18, 2003, at 10 a.m., for morning hour debates.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

5401. A letter from the Secretary, Department of the Treasury, transmitting as required by Executive Order 13313 of July 31, 2003, a 6-month periodic report on the national emergency with respect to Iran that was declared in Executive Order 12170 of November 14, 1979, pursuant to 50 U.S.C. 1641(c) 50 U.S.C. 1703(c); to the Committee on International Relations.

5402. A communication from the President of the United States, transmitting a supplemental report, consistent with the War Powers Resolution, to help ensure that the Congress is kept fully informed on continued

U.S. contributions in support of peacekeeping efforts in Kosovo; (H. Doc. No. 108–142); to the Committee on International Relations and ordered to be printed.

5403. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting Report for 2002 on IAEA Activities in Countries Described in Section 307 (a) of the Foreign Assistance Act, pursuant to Public Law 105–277, section 2809(c)(2); to the Committee on International Relations.

5404. A letter from the Director, Office of Human Resources Management, Department of Energy, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

5405. A letter from the Chairman, Postal Rate Commission, transmitting a report submitted in accordance with the Inspector General Act of 1978, as amended, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

5406. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting As required by Section 417(b) of the USA Patriot Act of 2001 (as enacted in Public Law 107–56), the second annual report on the status of the implementation of machine-readable passports (MRPs) in countries participating in the Visa Waiver Program (VWP); to the Committee on the Judiciary.

5407. A letter from the Assistant Secretary of the Army (Civil Works), Department of the Army, transmitting a Feasibility Study and Final Supplemental Environmental Impact Statement on the Port of Los Angeles Channel Deepening Project; to the Committee on Transportation and Infrastructure.

5408. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Lower Mississippi River, Miles 94.0 to 96.0, Above Head of Passes, New Orleans, LA [COTP New Orleans–03–003] (RIN: 2115–AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5409. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Security Zone; Arlington Channel Turning Basin, Mobile, AL [COTP Mobile–03–010] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5410. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Security Zones; Lower Mississippi River, Above Head of Passes, LA [COTP New Orleans—03–007] (RIN: 1625—AA–00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5411. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Port Arthur Ship Canal, Port Arthur, TX [COTP Port Arthur–03–008] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5412. A letter from the Chief, Regulations and Administrative Law, USCG,,Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Red River, Miles 88.0 to 89.0, Pineville, LA [COTP New Orleans–03–013] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5413. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Security Zone: Protection of High Capacity Passenger Vessels in Prince William Sound, Alaska [COTP–PWS–03–003] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5414. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Security Zone; San Juan, Puerto Rico [COTP San Juan 03–062] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5415. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Lower Mississippi River, Miles 85.0 to 91.0, Chalmette, LA [COTP New Orleans–03–016] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5416. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Tennessee River, Mile Marker 446.0 to 454.6, Chattanooga, TN [COTP Paducah, KY 03–004] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5417. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Tennessee River, Mile Marker 446.0 to 454.6, Chattanooga, TN [COTP Paducah–03–013] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5418. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Allegheny River Mile Marker 0.3 to Mile Marker 0.7, Pittsburgh, PA [COTP Pittsburgh–03–002] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5419. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zone; Allegheny River Mile Marker 0.3 to Mile Marker 0.7, Pittsburgh, Pennsylvania. [COTP Pittsburgh–03–006] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5420. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule—Safety Zones; Harley Owners Group (H.O.G.) Rally, Ohio River Mile Marker 0.7 to Mile Marker 0.3 on the Allegheny River Pittsburgh, PA [COTP Pittsburgh 03–008] (RIN: 1625–AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the clerk for printing and reference to the proper calendar, as follows:

Mr. POMBO: Committee on Resources. H.R. 154. A bill to exclude certain properties from the John H. Chafee Coastal Barrier Resources System; with an amendment (Rept. 108–359). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 521. A bill to establish the Steel Industry National Historic Site in the Commonwealth of Pennsylvania; with an amendment (Rept. 108–360). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 1594. A bill to direct the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the St. Croix National Heritage Area in St. Croix, United States Virgin Islands, and for other purposes; with an amendment (Rept. 108–361). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 1618. A bill to establish the Arabia Mountain National Heritage Area in the State of Georgia, and for other purposes; with an amendment (Rept. 108–362). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 1648. A bill to authorize the Secretary of the Interior to convey certain water distribution systems of the Cachuma Project, California, to the Carpinteria Valley Water District and the Montecito Water District (Rept. 108–363). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 1732. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project, and for other purposes (Rept. 108–364). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 1798. A bill to establish the Upper Housatonic Valley National Heritage Area in the State of Connecticut and the Commonwealth of Massachusetts, and for other purposes; with an amendment (Rept. 108–365). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 1862. A bill to establish the Oil Region National Heritage Area; with an amendment (Rept. 108–366). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 2425. A bill to provide for the use and distribution of the funds awarded to the Quinault Indian Nation under United States Claims Court Dockets 772–71, 773–71, 774–71, and 775–71, and for other purposes; with an amendment (Rept. 108–367). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 2489. A bill to provide for the distribution of judgment funds to the Cowlitz Indian Tribe; with an amendment (Rept. 108–368). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. S. 625. An act to authorize the Bureau of Reclamation to conduct certain feasibility studies in the Tualatin River Basin in Oregon, and for other purposes (Rept. 108–369). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 280. A bill to establish the National

Aviation Heritage Area, and for other purposes; with an amendment (Rept. 108–370). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 421. A bill to reauthorize the United States Institute for Environmental Conflict Resolution and for other purposes; (Rept. 108–371 Pt. 1). Ordered to be printed.

Mr. POMBO: Committee on Resources. S. 1233. An act to authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center (Rept. 108–372 Pt. 1). Ordered to be printed.

Mr. POMBO: Committee on Resources. H.R. 1964. A bill to establish the Highlands Stewardship Area in the States of Connecticut, New Jersey, New York, and Pennsylvania, and for other purposes; with an amendment (Rept. 108–373 Pt. 1). Ordered to be printed.

[Submitted November 18 (legislative day of November 17), 2003]

Mr. TAUZIN: Committee of Conference. Conference report on H.R. 6. A bill to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes (Rept. 108–375). Ordered to be printed.

Mr. HASTINGS of Washington: Committee on Rules. House Resolution 443. Resolution waiving points of order against the conference report to accompany the bill (H.R. 6) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes (Rept. 108–376). Referred to the House Calendar.

Mr. REYNOLDS: Committee on Rules. House Resolution 444. Resolution waiving points of order against the conference report to accompany the bill (H.R. 2754) making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes (Rept. 108–377). Referred to the House Calendar.

REPORTED BILL SEQUENTIALLY REFERRED

Under clause 2 of rule XII, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. POMBO: Committee on Resources. S. 523. An act to make technical corrections to law relating to Native Americans, and for other purposes (Rept. 108–374, Pt. 1); referred to the Committee on Agriculture for a period ending not later than November 21, 2003, for consideration of such provisions of the bill as fall within the jurisdiction of that committee pursuant to clause 1(a), rule X.

TIME LIMITATION OF REFERRED BILL

Pursuant to clause 2 of rule XII the following action was taken by the Speaker:

S. 1233. Referral to the Committee on the Judiciary extended for a period ending not later than November 21, 2003.

H.R. 1964. Referral to the Committee on Agriculture extended for a period ending not later than November 21, 2003.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. NEY (for himself and Mr. LARSON of Connecticut):

H.R. 3490. A bill to eliminate the requirement that the Public Printer make an additional contribution to the Civil Service Retirement and Disability Fund with respect to each employee of the Government Printing Office to whom a voluntary separation incentive payment has been paid; to the Committee on House Administration, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LEWIS of Georgia (for himself and Mr. KINGSTON):

H.R. 3491. A bill to establish within the Smithsonian Institution the National Museum of African American History and Culture, and for other purposes; to the Committee on House Administration, and in addition to the Committees on Transportation and Infrastructure, and Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FRANKS of Arizona (for himself, Mr. KING of Iowa, Mr. HOEKSTRA, Mr. MANZULLO, Mr. SOUDER, Mr. WILSON of South Carolina, Mr. BURTON of Indiana, Mrs. CHRISTENSEN, Mr. PETERSON of Pennsylvania, Mr. GARRETT of New Jersey, and Mrs. MYRICK):

H.R. 3492. A bill to amend title 38, United States Code, to allow claimants for benefits under laws administered by the Secretary of Veterans Affairs to pay fees for attorney services during any stage of the Department of Veterans Affairs claims process; to the Committee on Veterans' Affairs.

By Mr. GREENWOOD (for himself and Ms. ESHOO):

H.R. 3493. A bill to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments made by the Medical Device User Fee and Modernization Act of 2002, and for other purposes; to the Committee on Energy and Commerce.

By Mr. BEAUPREZ:

H.R. 3494. A bill to establish a National Commission to study the Highway Trust Fund; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BISHOP of Georgia:

H.R. 3495. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to modify eligibility requirements under an emergency preparedness demonstration program to assist disadvantaged communities; to the Committee on Transportation and Infrastructure.

By Mr. BLUNT:

H.R. 3496. A bill to extend trade benefits to certain tents imported into the United States; to the Committee on Ways and Means.

By Mr. ENGLISH (for himself and Mr. LEACH):

H.R. 3497. A bill to provide for the recovery, restitution, and protection of the cultural heritage of Iraq; to the Committee on Ways and Means.

By Mr. HOLT (for himself, Mrs. JO ANN DAVIS of Virginia, Mr. HINCHEY, Mr. MCHUGH, Mr. MARKEY, Mr. SWEENEY, Ms. KAPTUR, Mr. BOEHLERT, Mr. MCGOVERN, Mr. SOUDER, Mr. ROTHMAN, Mr. MCDERMOTT, Mr. BLUMENAUER, Mr. LARSON of Connecticut, Mr. LANTOS, Mr. SANDERS, Mr. SKELTON, Mr. CARDIN, Mr. CASE, Mr. WAXMAN, Mr. COOPER, Mr. SHAYS, Mr. TOM DAVIS of Virginia, and Mr. LANGEVIN):

H.R. 3498. A bill to amend the American Battlefield Protection Act of 1996 to establish a battlefield acquisition grant program for the acquisition and protection of nationally significant battlefields and associated sites of the Revolutionary War and the War of 1812, and for other purposes; to the Committee on Resources.

By Ms. HOOLEY of Oregon:

H.R. 3499. A bill to provide extended unemployment benefits to displaced workers, and to make other improvements in the unemployment insurance system; to the Committee on Ways and Means.

By Mr. JONES of North Carolina (for himself and Mr. GOODE):

H.R. 3500. A bill to prohibit the anticipated extreme reduction in the national marketing quotas for the 2004 crop of Flue-cured and Burley tobacco, which, if permitted to occur, would mean economic ruin for tobacco farmers and their families; to the Committee on Agriculture.

By Mrs. LOWEY:

H.R. 3501. A bill to grant an extension of authority for the establishment of the Thomas Paine Memorial, and for other purposes; to the Committee on Resources.

By Mr. PALLONE:

H.R. 3502. A bill to amend title II of the Social Security Act to provide that a monthly insurance benefit thereunder shall be paid for the month in which the recipient dies, and for other purposes; to the Committee on Ways and Means.

By Mr. RANGEL:

H.R. 3503. A bill to establish a national Civilian Volunteer Service Reserve program, a national volunteer service corps ready for service in response to domestic or international emergencies; to the Committee on Transportation and Infrastructure.

By Mr. RENZI:

H.R. 3504. A bill to amend the Indian Self-Determination and Education Assistance Act to redesignate the American Indian Education Foundation as the National Fund for Excellence in American Indian Education; to the Committee on Education and the Workforce, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WALDEN of Oregon:

H.R. 3505. A bill to amend the Bend Pine Nursery Land Conveyance Act to specify the recipients and consideration for conveyance of the Bend Pine Nursery, and for other purposes; to the Committee on Resources.

By Mr. ENGLISH (for himself, Mr. REGULA, Ms. HART, Mr. ADERHOLT, Mr. QUINN, Mr. NEY, Mr. HOUGHTON, Mr. WILSON of South Carolina, Mr. LATOURETTE, Mr. HAYES, Mr. BROWN of South Carolina, Mr. BOEHLERT, Mrs. MYRICK, and Mr. BISHOP of Utah):

H. Res. 441. A resolution condemning the report issued on November 10, 2003, by the World Trade Organization (WTO) dispute settlement Appellate Body in which the Appellate Body determined that imposition by the

United States of import restrictions on certain steel products was in violation of international law, and for other purposes; to the Committee on Ways and Means.

By Mr. OTTER (for himself and Mr. Simpson):

H. Res. 442. A resolution congratulating the United States nuclear energy industry on its 50th anniversary; to the Committee on Energy and Commerce.

MEMORIALS

Under clause 3 of rule XII,

214. The SPEAKER presented a memorial of the Senate of the State of Michigan, relative to Senate Resolution No. 162 memorializing the United States Congress to increase funding available for home heating assistance to cope with the rise in natural gas costs expected in winter; jointly to the Committees on Energy and Commerce and Education and the Workforce.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 211: Mr. Rangel, Ms. Norton, and Mr. Owens.

H.R. 333: Ms. Schakowsky.

H.R. 391: Mr. Burns.

H.R. 486: Mr. Stearns, Mr. Franks of Arizona, Mrs. Cubin, Mr. Manzullo, and Mrs. Blackburn.

H.R. 528: Mr. Cox.

H.R. 538: Mr. Owens.

H.R. 677: Mr. Andrews.

H.R. 717: Mr. Snyder.

H.R. 742: Ms. Lofgren, Mr. Meek of Florida, Mr. Brown of Ohio, and Ms. Carson of Indiana.

H.R. 775: Mr. DeFazio.

H.R. 811: Mr. Emanuel and Mr. Jefferson.

H.R. 857: Mr. Sullivan and Ms. Kaptur.

H.R. 876: Mr. Holden, Ms. McCarthy of Missouri, Mr. Thompson of California, Mr. Aderholt, Mr. Hall, Ms. Norton, Mr. Larsen of Washington. Ms. Eddie Bernice Johnson of Texas, Mr. Beauprez, Mr. Sanders, Mr. McCotter, and Mr. Young of Alaska.

H.R. 885: Mr. Baca.

H.R. 898: Mr. Graves.

H.R. 920: Mrs. Christensen.

H.R. 936: Ms. DeLauro.

H.R. 965: Mr. Frost.

H.R. 979: Ms. Millender-McDonald.

H.R. 1105: Mr. Houghton.

H.R. 1125: Mr. Becerra, Mr. Saxton, and Mr. Towns.

H.R. 1168: Mrs. Capps.

H.R. 1267: Mr. Jackson of Illinois.

H.R. 1345: Mrs. Capps and Mr. Green of Texas.

H.R. 1372: Mr. Cantor, Mr. Larsen of Washington, and Mrs. Tauscher.

H.R. 1563: Mr. Berman, Mr. Honda, and Mr. Dingell.

H.R. 1700: Mr. Emanuel, Mr. Tierney, and Mr. Frank of Massachusetts.

H.R. 1722: Mr. Honda and Mr. Rodriguez.

H.R. 1746: Mr. Smith of Washington, Mr. Matsui, and Mr. Payne.

H.R. 1758: Mr. Sanders and Mr. Quinn.

H.R. 1787: Mr. Beauprez.

H.R. 1812: Mrs. Jones of Ohio.

H.R. 1824: Mr. Smith of Washington, Mr. Grijalva, Mr. Jackson of Illinois, Mr. Rush, Mrs. Biggert, Mr. Gutierrez, and Mr. Shimkus.

H.R. 1868: Ms. Schakowsky.

H.R. 1910: Mr. Saxton.

H.R. 1958: Mr. Emanuel and Mr. Owens

H.R. 1993: Mr. Brown of Ohio.

H.R. 2131: Mr. Porter and Mr. Tom Davis of Virginia.

H.R. 2236: Mr. Van Hollen and Mr. Lipinski.

H.R. 2239: Mr. Gutierrez.

H.R. 2318: Mr. Edwards and Mr. Ruppersberger.

H.R. 2404: Mr. Smith of Texas, Mr. Hoeffel, Mr. Stenholm, and Mr. Castle.

H.R. 2456: Mr. Moran of Virginia.

H.R. 2494: Mr. Garrett of New Jersey.

H.R. 2519: Mrs. Biggert.

H.R. 2527: Mr. Spratt, Mr. Moran of Virginia, Mr. Etheridge, and Mr. Levin.

H.R. 2540: Mr. LoBiondo, Mr. Ose, and Mr. Lipinski.

H.R. 2553: Mr. Doyle and Ms. Watson.

H.R. 2625: Mr. Lantos.

H.R. 2705: Mrs. Christensen and Mr. Strickland.

H.R. 2720: Ms. Hart.

H.R. 2768: Mr. Lewis of Georgia, Mr. Akin, Ms. Kilpatrick, Mr. Davis of Tennessee, Mr. Markey, Mr. Meeks of New York, Mr. Kildee, Mr. Boehlert, Mr. Gordon, Mr. Shaw, Mr. Burr, Mr. Scott of Georgia, Mr. Tanner, Mr. Kline, Mr. McIntyre, and Mr. Hoyer.

H.R. 2771: Mrs. Kelly.

H.R. 2851: Mr. Hoekstra.

H.R. 2880: Ms. Norton.

H.R. 2980: Mr. Boehlert, Mr. Camp, Ms. Carson of Indiana, Mr. Houghton, Mr. Jefferson, Mrs. Kelly, Mr. Leach, Ms. Lee, Mr. Levin, Mr. Lewis of Kentucky, Mr. McInnis, Ms. Millender-McDonald, Mr. Moore, Mr. Pickering, Mr. Price of North Carolina, Mr. Radanovich, Mr. Rogers of Michigan, Mr. Sanders, Mr. Walden of Oregon, and Mrs. Wilson of New Mexico.

H.R. 2983: Mr. Gutierrez.

H.R. 3042: Mr. Barton of Texas.

H.R. 3058: Mr. LaTourette.

H.R. 3059: Mr. Ross, Mr. Boozman, and Mr. Snyder.

H.R. 3066: Mr. Owens, Mr. Goode, and Mr. Beauprez.

H.R. 3078: Mr. Michaud.

H.R. 3109: Mr. Calvert, Mrs. Jo Ann Davis of Virginia, Mr. Tom Davis of Virginia, Mr. Gibbons, Ms. Granger, Mr. Green of Wisconsin, Mr. Jenkins, Mr. King of New York, Mr. Kline, Mr. Lewis of California, Mr. Linder, Mr. Murphy, Mr. Putnam, and Mr. Wamp.

H.R. 3122: Mr. Peterson of Pennsylvania.

H.R. 3125: Mr. Culberson and Mr. Hall.

H.R. 3130: Mr. Wilson of South Carolina.

H.R. 3171: Ms. Norton.

H.R. 3178: Ms. Eshoo, Mr. Bartlett of Maryland, Mr. Tierney, and Mr. Stenholm.

H.R. 3194: Mr. Ackerman, Mr. McNulty, Mr. Owens, Ms. Millender-McDonald, and Mr. Lantos.

H.R. 3220: Mr. Moran of Virginia, Mr. Garrett of New Jersey, Mr. Coble, Mr. Isakson, and Mr. Gallegly.

H.R. 3242: Mr. Rahall and Mr. George Miller of California.

H.R. 3247: Mr. Porter.

H.R. 3287: Mr. Shaw.

H.R. 3292: Mr. Meeks of New York, Mr. Scott of Georgia, Mr. Frost, and Mr. Weller.

H.R. 3311: Mr. Simmons and Mr. Wilson of South Carolina.

H.R. 3313: Mr. Wamp.

H.R. 3341: Mr. Kucinich.

H.R. 3344: Ms. Lee, Mr. Van Hollen, and Mr. Menendez.

H.R. 3352: Ms. Carson of Indiana, Mr. Olver, Mr. Owens, Mr. Capuano, Ms. Schakowsky, Ms. Norton, and Mr. Filner.

H.R. 3355: Ms. DeLauro.

H.R. 3357: Mr. Hostettler, Ms. Berkley, Mr. Simpson, and Mr. Udall of New Mexico.

H.R. 3386: Mr. Sanders, Mr. Towns, and Mr. Rangel.

H.R. 3388: Mr. Vitter, Mr. McCotter, and Mr. Wilson of South Carolina.

H.R. 3411: Mr. Lantos and Mr. Hastings of Florida.

H.R. 3416: Mrs. Jones of Ohio, Mr. McNulty, Mr. Hinchey, Mr. Jackson of Illinois, and Mr. Cummings.

H.R. 3420: Mr. Sanders, Mr. Menendez, Mr. Acevedo-Vilá, Mr. Gonzalez, Mr. Cardoza, Mr. Markey, Ms. Millender-McDonald, Mr. Oberstar, Mr. Hinchey, Mr. Ackerman, Mr. Berman, Mr. Jackson of Illinois, Ms. Slaughter, Mr. Van Hollen, Ms. Solis, Mr. Filner, Ms. Carson of Indiana, and Mr. Cummings.

H.R. 3422: Mr. Abercrombie, Mrs. Christensen, and Mr. Capuano.

H.R. 3424: Mr. Van Hollen, Mr. Honda, Mr. Ackerman, Mr. Jefferson, and Mr. Rodriguez.

H.R. 3425: Ms. Roybal-Allard, Mr. Doggett, Mrs. Jones of Ohio, Ms. DeLauro, Mr. Honda, Mr. McDermott, Ms. Norton, and Mr. Jefferson.

H.R. 3429: Mr. Wynn, Mr. Andrews, Mr. Norwood, Mr. Kirk, and Mr. Burr.

H.R. 3431: Mr. Markey.

H.R. 3440: Mrs. Lowey, Mr. Markey, Mr. Johnson of Illinois, Mr. Lynch, Ms. Lee, Mr. Frank of Massachusetts, Mr. Alexander, and Mr. Tierney.

H.R. 3441: Mr. McGovern.

H.R. 3451: Mr. McDermott, Mr. Kildee, Mr. Grijalva, Mr. Bachus, Mr. Sanders, and Mr. Ackerman.

H.R. 3459: Mr. Bishop of Georgia, Mr. Ballance, Ms. Corrine Brown of Florida, Ms. Carson of Indiana, Mr. Clay, Mr. Conyers, Mr. Davis of Alabama, Mr. Davis of Illinois, Mr. Fattah, Mr. Ford, Mr. Hastings of Florida, Mr. Jackson of Illinois, Ms. Eddie Bernice Johnson of Texas, Mrs. Jones of Ohio, Ms. Kilpatrick, Ms. Lee, Mr. Lewis of Georgia, Ms. Majette, Mr. Meek of Florida, Mr. Meeks of New York, Ms. Millender-McDonald, Ms. Norton, Mr. Owens, Mr. Payne, Mr. Rush, Mr. Scott of Georgia, Mr. Scott of Virginia, Mr. Thompson of Mississippi, Mr. Towns, Ms. Waters, Ms. Watson, Mr. Watt, Mr. Wynn, Mr. Serrano, Mr. Hinojosa, Ms. McCarthy of Missouri, Mr. Udall of New Mexico, Mr. Crowley, and Mr. Doggett.

H.R. 3467: Mr. Calvert.

H.R. 3473: Mr. Shays and Mr. Norwood.

H.R. 3488: Mr. Doggett.

H.J. Res. 62: Mr. Doyle.

H. Con. Res. 87: Mr. Schiff and Mr. Doyle.

H. Con. Res. 194: Mr. English, Ms. Hart, Mr. Platts, Mr. Ford, Mr. Hastings of Florida, Mr. Wynn, Mr. Meeks of New York, and Mr. Costello.

H. Con. Res. 247: Mr. Ramstad, Mr. Janklow, Mr. Sullivan, Mr. Turner of Ohio, and Mr. Ehlers.

H. Con. Res. 250: Mr. Stearns, Mrs. Capps, Mr. Towns, Mrs. McCarthy of New York, Mr. Hinchey, Mr. McNulty, and Mr. Ackerman.

H. Con. Res. 288: Mr. Issa, Ms. Lee, Mr. Frank of Massachusetts, Mr. LaHood, Ms. Ros-Lehtinen, Mr. Filner, Ms. Solis, Mr. Ford, Mr. Emanuel, Mr. Udall of Colorado, and Mr. Doyle.

H. Con. Res. 298: Mr. Moran of Kansas, Mr. Turner of Ohio, and Mr. Whitfield.

H. Con. Res. 299: Ms. Solis.

H. Con. Res. 307: Mr. CASE and Mr. CLAY.

H. Con. Res. 311: Mr. SAXTON and Mr. RAMSTAD.

H. Con. Res. 314: Mr. MCNULTY, Mr. PAYNE, and Mr. ISRAEL.

H. Con. Res. 320: Mr. BURTON of Indiana, Mr. MICA, Mr. BOUCHER, Mr. TANCREDO, Mr. SIMMONS, Mr. BEAUPREZ, Mr. ROGERS of Alabama, Mr. PORTER, Mr. WILSON of South Carolina, and Mr. VITTER.

H. Con. Res. 324: Mr. TANNER, Mr. HAYWORTH, and Mr. BRADY of Texas.

H. Res. 38: Mr. GUTIERREZ.

H. Res. 129: Mr. WEINER.

H. Res. 141: Mr. HOLT.

H. Res. 157: Mr. CHABOT, Mr. FALEOMAVAEGA, Ms. ROS-LEHTINEN, Mr. GEORGE MILLER of California, Mr. TANCREDO, Mrs. CHRISTENSEN, Mr. OLVER, Mr. BLUMENAUER, Mr. SHERMAN, Ms. PELOSI, Mr. BURTON of Indiana, Mr. GREEN of Wisconsin, Mr. NADLER, Mr. LIPINSKI, and Mrs. JONES of Ohio.

H. Res. 320: Mrs. MALONEY and Mr. DOYLE.

H. Res. 384: Mr. KUCINICH.

H. Res. 393: Ms. SLAUGHTER.

H. Res. 402: Mr. ROGERS of Michigan.

H. Res. 410: Mr. FRANK of Massachusetts.

H. Res. 411: Mr. BUYER, Mr. PENCE, Ms. CARSON of Indiana, Mr. OSE, Mr. DOOLITTLE, Mr. GEORGE MILLER of California, Ms. PELOSI, Ms. LEE, Mr. POMBO, Mr. LANTOS, Mr. CARDOZA, Mr. RADANOVICH, Mr. SHERMAN, Mr. BERMAN, Mr. WAXMAN, Ms. WATSON, Ms. ROYBAL-ALLARD, Ms. WATERS, Ms. MILLENDER-MCDONALD, Mr. BACA, Mr. CALVERT, Mrs. BONO, Mr. ROHRABACHER, Mr. ISSA, Mr. CUNNINGHAM, Mr. HUNTER, Mrs. DAVIS of California, Mr. MATHESON, and Mr. HILL.

H. Res. 419: Mr. INSLEE.

H. Res. 432: Ms. SLAUGHTER, Mr. BERMAN, and Ms. CARSON of Indiana.

H. Res. 438: Mr. RAMSTAD, Mr. PETERSON of Minnesota, and Ms. MCCOLLUM.

PETITIONS, ETC.

Under clause 3 of rule XII,

42. The SPEAKER presented a petition of Gregory D. Watson, Austin, TX, relative to urging Congress to enact legislation providing relief for the costs of prescription medications; which was referred to the Committee on Energy and Commerce.

EXTENSIONS OF REMARKS

PRIVATE CALENDAR

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. COBLE. Mr. Speaker, my colleagues, Mr. CHABOT, Mr. BOUCHER, Mr. SCHIFF, Mr. GRIJALVA, Mrs. BLACKBURN and I would like to take this opportunity to set forth some of the history behind, as well as describe the workings of the Private Calendar. I hope this might be of some value to the Members of this House, especially our newer colleagues.

Of the five House Calendars, the Private Calendar is the one to which all Private Bills are referred. Private Bills deal with specific individuals, corporations, institutions, and so forth, as distinguished from public bills which deal with classes only.

Of the 108 laws approved by the First Congress, only 5 were Private Laws. But their number quickly grew as the wars of the new Republic produced veterans and veterans' widows seeking pensions and as more citizens came to have private claims and demands against the Federal Government. The 49th Congress, 1885 to 1887, the first Congress for which complete workload and output data is available, passed 1,031 Private Laws, as compared with 434 Public Laws. At the turn of the century the 56th Congress passed 1,498 Private Laws and 443 Public Laws—a better than three to one ratio.

Private bills were referred to the Committee on the Whole House as far back as 1820, and a calendar of private bills was established in 1839. These bills were initially brought before the House by special orders, but the 62nd Congress changed this procedure by its rule XXIV, clause six which provided for the consideration of the Private Calendar in lieu of special orders. This rule was amended in 1932, and then adopted in its present form on March 22, 1935.

A determined effort to reduce the private bill workload of the Congress was made in the Legislative Reorganization Act of 1946. Section 131 of that Act banned the introduction or the consideration of four types of private bills; first, those authorizing the payment of money for pensions; second, for personal or property damages for which suit may be brought under the Federal tort claims procedure; third, those authorizing the construction of a bridge across a navigable stream, or fourth, those authorizing the correction of a military or naval record.

This ban afforded some temporary relief but was soon offset by the rising postwar and cold war flood for private immigration bills. The 82nd Congress passed 1,023 Private Laws, as compared with 594 Public Laws. The 88th Congress passed 360 Private Laws compared with 666 Public Laws.

Under rule XXIV, clause six, the Private Calendar is called the first and third Tuesday of each month. The consideration of the Private Calendar bills on the first Tuesday is mandatory unless dispensed with by a two-thirds vote. On the third Tuesday, however, recognition for consideration of the Private Calendar is within the discretion of the Speaker and does not take precedence over other privileged business in the House.

On the first Tuesday of each month, after disposition of business on the Speaker's table for reference only, the Speaker directs the call of the Private Calendar. If a bill called is objected to by two or more Members, it is automatically recommitted to the Committee reporting it. No reservation of objection is entertained. Bills unobjected to are considered in the House in the Committee of the Whole.

On the third Tuesday of each month, the same procedure is followed with the exception that omnibus bills embodying bills previously rejected have preference and are in order regardless of objection.

Such omnibus bills are read by paragraph, and no amendments are entertained except to strike out or reduce amounts or provide limitations. Matters so stricken out shall not be again included in an omnibus bill during that session. Debate is limited to motions allowable under the rule and does not admit motions to strike out the last word or reservation of objections. The rules prohibit the Speaker from recognizing Members for statements or for requests for unanimous consent for debate. Omnibus bills so passed are thereupon resolved in their component bills, which are engrossed separately and disposed of as if passed separately.

Private Calendar bills unfinished on one Tuesday go over to the next Tuesday on which such bills are in order and are considered before the call of bills subsequently on the calendar. Omnibus bills follow the same procedure and go over to the next Tuesday on which that class of business is again in order. When the previous question is ordered on a Private Calendar bill, the bill comes up for disposition on the next legislative day.

Mr. Speaker, I would also like to describe to the newer Members the Official Objectors Committee, the system the House has established to deal with the great volume of Private Bills.

The Majority Leader and the Minority Leader each appoint three Members to serve as Private Calendar Objectors during a Congress. The Objectors are on the Floor ready to object to any Private Bill which they feel is objectionable for any reason. Seated near then to provide technical assistance are the majority and minority legislative clerks.

Should any Member have a doubt or question about a particular Private Bill, he or she can get assistance from objectors, their clerks, or from the Member who introduced the bill.

The great volume of private bills and the desire to have an opportunity to study them carefully before they are called on the Private Calendar has caused the six objectors to agree upon certain ground rules. The rules limit consideration of bills placed on the Private Calendar only shortly before the calendar is called. With this agreement, adopted on November 17, 2003, the Members of the Private Calendar Objectors Committee have agreed that during the 108th Congress, they will consider only those bills which have been on the Private Calendar for a period of seven (7) days, excluding the day the bill is reported and the day the calendar is called. Reports must be available to the Objectors for three (3) calendar days.

It is agreed that the majority and minority clerks will not submit to the Objectors any bills which do not meet this requirement.

This policy will be strictly enforced except during the closing days of a session when the House rules are suspended.

This agreement was entered into by: The gentleman from North Carolina (Mr. COBLE), the gentleman from Ohio (Mr. CHABOT), the gentlelady from Tennessee (Mrs. BLACKBURN), the gentleman from Virginia (Mr. BOUCHER), the gentleman from California (Mr. SCHIFF), and the gentleman from Arizona (Mr. GRIJALVA).

I feel confident that I speak for my colleagues when I request all Members to enable us to give the necessary advance considerations to private bills by not asking that we depart from the above agreement unless absolutely necessary.

HOWARD COBLE.
STEVE CHABOT.
MARSHA BLACKBURN.
RICK BOUCHER.
ADAM SCHIFF.
RAÚL GRIJALVA.

HONORING THE COX FAMILY

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. RADANOVICH. Mr. Speaker, I rise today to honor the Cox Family for its meritorious dedication to the United States Armed Forces. The Cox family has exemplified heroism throughout the years through their service during World War II and the Korean War.

The nine sisters and eight brothers of the Cox Family are the children of (Joseph) Riley and Mattie Cox. Eleven of the 17 children served in the United States Armed Forces with nearly 70 years combined service. The family began enlisting in the Armed Forces in 1943. Elijah, Warren, and Paula served in the United States Army. Mary, Sonja, and Paul served in the United States Air Force, as did James who had previously enlisted in the United States Army. Joseph served in the United States Navy, along with Clarence who later joined the Army and Air Force. Herbert first served in the

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

United States Maritime Service, then in the United States Army. Jerry served over 20 years in the United States Coast Guard.

The Cox family's time in the service demonstrates their commitment to our country. The contributions the Cox family made during our times of war and peace have gone above and beyond the normal call of duty.

Mr. Speaker, I rise today to honor the Cox Family for its patriotism and courageous efforts to promote freedom and democracy. I invite my colleagues to join me in conveying deep gratitude to the Cox Family.

THE NATIONAL ANTHEM "SINGAMERICA" COMMEMORATION PROJECT

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. TOM DAVIS of Virginia. Mr. Speaker, I rise today in strong support of H. Con. Res. 262, the National Anthem "SingAmerica" Project, and to bring to the attention of my colleagues this wonderful, new national initiative to commemorate American patriotic music and the role it has played in our history. This new initiative will involve several exciting music-related patriotic programs over the next 3 years.

The National Anthem "SingAmerica" project is designed to invigorate and inspire the American people to a greater appreciation of their patriotic musical heritage. Through this project, we will be able to renew our appreciation for the patriotic music that so movingly expresses our core national sentiments. The members of the National Association for Music Education, in collaboration with the Smithsonian Institution, and with support from the American Sportscasters Association, are already actively pursuing the laudable goals of the project.

The National Anthem "SingAmerica" project includes a series of activities calculated to bring the music, words, and sentiments of the Anthem and our nation's patriotic songs to everyone-and to energize the participation of students and adults alike in this essential expression of patriotism. America's youth will give voice to our national anthem and be able to sing it proudly, accurately, and with a full understanding of its rich text. The American Sportscasters Association will be working to increase the emphasis on our national anthem at major sporting events, reaching many of those who otherwise would not have this musical experience. The National Association for Music Education will release a CD with patriotic music played by the Marine Band, complete with a history of this music's role in our nation's development. Teachers' guides will be distributed across the nation to help educators bring the practice and meaning of this music to our nation's students.

All of this activity will culminate on June 14, 2006, when the Smithsonian's National Museum of American's History unveils the newly restored Star Spangled Banner. This event plans to include history's largest performance of the National Anthem with millions of participants from around the country joining thousands of high school band and chorus members on the National Mall to celebrate the display of the restored Star Spangled Banner, the Flag that inspired the National Anthem.

Even more than producing these rousing patriotic events, the National Anthem "SingAmerica" project is a catalyst for all Americans to experience a greater understanding and appreciation of our patriotic music history. It will also remind us of the countless sacrifices made by so many and of the courage displayed by all Veterans' who have served our country with great honor and pride.

Mr. Speaker, in closing, I am proud to introduce H. Con. Res. 262 and to honor the flag and the song that are the symbols of America. I call upon my colleagues for their unanimous support in passing the SingAmerica Act.

PERSONAL EXPLANATION

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. PORTMAN. Mr. Speaker, on November 5, 2003, I was unavoidably detained and missed the vote on rollcall No. 609 on H.R. 3365, the Fallen Patriots Tax Relief Act. Had I been present, I would have voted "yes."

PAYING TRIBUTE TO MEIJER INC. AND UNITED PARCEL SERVICE FOR REACHING OUT TO IRAQI ORPHANS

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. ROGERS of Michigan. Mr. Speaker, I rise today to honor the compassionate actions of two Michigan businesses for reaching across the globe to touch the lives of orphaned children living in an Iraqi orphanage.

Leaders at Meijer Inc. and United Parcel Service learned that soldiers in the U.S. Army 101st Airborne stationed near Mosul, Iraq, were helping nearly 70 children in a nearby orphanage.

Meijer, a large supermarket/department store, immediately agreed to donate several large cartons of toys for the children. United Parcel Service supported the project, providing additional funds for toys.

In September, the toys were shipped to soldiers at the 101st mobile military hospital near the orphanage and this past week, they were distributed to the children.

These two generous organizations are to be commended for their efforts that not only help the individual children but also impact the relationships our military men and women are building with the citizens of Iraq.

The long-range impact of this compassionate act by Americans is immeasurable. As these children grow up, they will remember the care and love of Americans who came to free their nation from tyranny and give them a future with hope.

Mr. Speaker, we wish to extend congratulations to Meijer Inc. and United Parcel Service for their generosity and for being willing to reach across geographic and cultural borders to express their care and concern for children in need.

We are honored to recognize their accomplishments and ask that our colleagues in the U.S. House of Representatives join in recognizing these Michigan businesses for their humanitarian efforts.

IN RECOGNITION OF LIONEL A. KAPLAN, ESQ.

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. PALLONE. Mr. Speaker, I rise today to honor the esteemed Lionel A. Kaplan, Esq., a man devoted to his community. On November 10, 2003 The Orthodox Union's Institute for Public Affairs, which serves the Orthodox community as the central voice for public policy advocacy and religious liberties, will present Mr. Kaplan with the National Distinguished Leadership Award.

Mr. Kaplan's extraordinary devotion to Israel and his love of the Jewish people have propelled his rise to the top levels of leadership in the American Jewish community. In 1988, Mr. Kaplan joined the American-Israel Public Affairs Committee, AIPAC, one of the leading pro-Israel lobby groups, as chairman of the Princeton/Mercer Area, a position he held until 2002. During those years, he also served as a member of the AIPAC Executive Committee; Member of the New York Regional Board; New Jersey State Chairman; Member of the National Board of Directors; and National Development Chairman. In addition, Mr. Kaplan became President of AIPAC from 1998–2000 and Chairman of the Board from 2000–2002. Throughout his career in AIPAC, he has always been known for his skills as a consummate fundraiser for pro-Israel causes.

Mr. Kaplan's contributions to his community do not stop with AIPAC. In the United Jewish Appeals, UJA, Federation, he served as a Member of the UJA National Young Leadership Cabinet, as a leadership and fundraising trainer at the UJA National Training Center, and has served as Vice President of the Jewish Federations of New Jersey. In his immediate community, Mr. Kaplan has assumed a variety of roles, including Campaign Chairman and President of the Jewish Federation of Princeton, Mercer, and Bucks Counties. Among his other community services, he has been the chairman of the New Jersey "Jerusalem 3000" Committee, which planned and coordinated events for the 3000-year anniversary of Jerusalem and Co-Chairman of the New Jersey Israel Communications.

Mr. Kaplan has a graduate degree from Harvard University and has received his J.D. from Rutgers University. He is a licensed attorney in the Firm of Joseph D. Kaplan & Son, P.C., in Trenton where he has been a partner since 1972. Mr. Kaplan is also a member of the American, New Jersey, and Mercer County Bar Associations. He and his wife reside in Princeton, New Jersey.

Mr. Speaker, Mr. Kaplan has demonstrated what it means to be a true contributor to one's community. The extensive list of his tireless efforts shows a genuine compassion and devotion to public service. Accordingly, I ask that my colleagues rise and join me in honoring Lionel A. Kaplan, Esq.

HONORING WILL GILL, JR., SENIOR FARMER OF THE YEAR

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. RADANOVICH. Mr. Speaker, I rise today to honor Will Gill, Jr., as the Madera County Chamber of Commerce and Madera County Farm Bureau Senior Farmer of the Year. Mr. Gill will be recognized at the Madera County Farm Bureau's 82nd Annual Members Meeting and Senior Farmer Presentation on November 6 in Madera, CA.

Will's dedication to his country and his strong work ethic have brought much success for him and his family. He has contributed 61 years to Madera County agriculture. Mr. Gill's family, natives of Iowa, migrated to Porterville, CA, in the 1870s and an agriculture legacy began. By the 1940s, the family's ranching operations were flourishing in Porterville and Madera. Upon the death of his father, Will, and his wife Jane, moved from Southern California to Madera to manage the family's local agriculture interests. Not long after his arrival, he was sent to Fort Sill, OK, where the U.S. Army needed his service in the midst of WWII. Mr. Gill served as an army sergeant of the Military Police in the China-Burma-India Theatre. In 1946, Will returned to Madera and resumed his work in the family's crop and livestock investments, which included oat and alfalfa hay, cows, and stocker and feeder cattle.

As a proud member of many organizations and the recipient of several awards, Will is no stranger to his community. He served on Governor Ronald Reagan's Advisory Committee on Foreign Trade, was past-president of the Madera Rotary Club, a member of the Madera County Air Pollution Board, a 60–year member of the California Cattlemen's and National Cattlemen's Associations, and the list goes on. Will was named Madera County Cattleman of the Year in 1963 and California Livestock Man of the Year in 1972. His favorite venture, raising quarter horses, has made his 53–year membership to the American Quarter Horse Association particularly enjoyable. The list of Will's achievements and commitments goes on, reinforcing his benevolent character.

Mr. Speaker, I rise today to congratulate Will Gill, Jr., for being named Senior Farmer of the Year by the Madera Chamber of Commerce and Madera County Farm Bureau. His contributions to America's agriculture communities have been invaluable. I invite my colleagues to join me in commending Mr. Gill for this achievement.

HONORING MASTER FOLTA

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. TOM DAVIS of Virginia. Mr. Speaker, I would like to congratulate Master Nestor Folta on his 50th birthday and 20 years of successful Uechi-Ryu Karate study.

Master Folta is a civil engineer with the U.S. Department of Energy. He resides in Oakton with his wife and two children. For years, he has dedicated notable time and energy to the study and teaching of Uechi-Ryu Karate.

Uechi-Ryu is traditional Okinawan Karate, developed by Master Kanbun Uechi and his son Kanei Uechi. Uechi-Ryu has its origin in the ancient Chinese tradition of martial arts. Today, it is the only form of Okinawan Karate that remains in its original Soke, handed down from father to son from generation to generation.

Master Folta is a seven-time world champion of Uechi-Ryu and an inductee in the martial arts hall of fame. He has demonstrated a strong aptitude for and commitment to the study of karate.

The Academy of World Champion Nestor Folta (AWCNF), located in Fairfax County, carries on the Uechi-Ryu tradition. Through the study of Uechi-Ryu Karate, over 100 AWCNF students learn self-defense, self-discipline, and self-respect. Uechi-Ryu encourages the formation of high personal standards and respect for fellow men and women. The AWCNF's mission is to use Uechi-Ryu to help students become positive, successful, respected, contributing members of society.

Each year, AWCNF tuition raises an estimated $25,000 for Fairfax County. In addition, the AWCNF has raised over $20,000 for 9/11 victims.

Mr. Speaker, in closing, I would like to recognize Master Folta's efforts to better himself, his students, and his community through the practice of Uechi-Ryu. I wish him a happy birthday, commend 20 years of success, and extend him all of my best for the years to come. I call upon all my colleagues to join me in applauding Master Folta.

HONORING WILLIAM J. MULVIHILL, SR. AS HE RECEIVES THE ARTHRITIS FOUNDATION'S CHARLES B. HARDING AWARD FOR DISTINGUISHED SERVICE

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. PORTMAN. Mr. Speaker, I rise today to honor William J. Mulvihill, a friend and constituent, who received the Arthritis Foundation's prestigious Charles B. Harding Award during the Foundation's national meeting on November 14, 2003. The Arthritis Foundation is the only nationwide nonprofit organization leading efforts to prevent, control and cure arthritis, which is our nation's number one cause of disability.

The Charles B. Harding Award is the highest honor the Arthritis Foundation presents for service as a volunteer. The award was established in 1976 and is given annually to the individual who best exemplifies the highest standards of concern and commitment to the arthritis cause. Previous recipients of this high honor include former First Lady Betty Ford and actress Jane Wyman.

Bill has spent more than 20 years raising awareness and advocating on behalf of the more than 43 million people affected by arthritis and its related diseases. Diagnosed with rheumatoid arthritis at the age of 25, he became active locally in the Southwestern Ohio Chapter of the Arthritis Foundation, and went on to serve as Senior Chair, Chair and Vice President.

In 1985, Bill became active with the Foundation on the national level, becoming a member of the House of Delegates and later National Vice Chair, Treasurer, a member of the Board of Trustees and National Chair. As National Chair, he was responsible for leading nearly 600,000 volunteers and staff nationwide. He is currently Trustee Emeritus, and is a member of the National Medical and Scientific Council. Bill also serves on the Board of Directors of the Alliance for Lupus Research, where he is a founding member.

A native Cincinnatian, Bill is Senior Associate Athletic Director at the University of Cincinnati, and has been with U.C. for 30 years. He is in his 24th year as head of the athletic department's fundraising efforts, and previously held positions in Alumni Affairs and Public Affairs. He is a graduate of St. Xavier High School, and received his Bachelor's of Business Administration from the University of Cincinnati and his Master's of Education from Ohio University.

Bill and his wife, Beth, live in Anderson Township. Their son, Billy, is a graduate of the University of Cincinnati and is a valued member of the staff of the U.S. House of Representatives' Committee on Ways and Means.

All of us in Southern Ohio congratulate Bill on receiving this prestigious honor, and appreciate his dedicated service.

RECOGNITION OF THE ARMED FORCES RELIEF TRUST FUND

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. ROGERS of Michigan. Mr. Speaker, I rise today to recognize the outstanding efforts of the National Association of Broadcasters for their partnership with the Armed Forces Relief Trust Fund. The Armed Forces Relief Trust Fund serves as an umbrella organization incorporating the four Military Aid Societies from the Army, Navy-Marine, Air Force and Coast Guard collecting and distributing donations that help reduce the burden on families of our military men and women. The partnership with National Association of Broadcasters will help create and broadcast public service announcements to encourage Americans to donate to the Armed Forces Relief Trust Fund.

While our military men and women are serving our country, it is paramount that the American people band together so that we can ensure that no family incurs hardships while their loved one is away. Military aid programs, funded by private donations, provide services like college tuition for children and health care for pregnant wives, services that could have been provided if their family member had not been called to duty. Last year alone, the four military aid societies provided over $109 million in grants and interest free loans to 145,000 families.

I am confident that with the help of the National Association of Broadcasters the Armed Forces Relief Trust Fund can far exceed the number of families it was able to help last year. As an increasing number of Americans answer the call to duty, more and more families will be asking the Armed Forces Relief Trust Fund for help. The public service announcements developed by The National Association of Broadcasters will help to increase donations and insure that the trust fund has the solvency to answer this call.

Mr. Speaker, the continued support of the brave men and women serving this country is extremely important to me. I ask my colleagues to join me in thanking the National Association of Broadcasters and the Armed Forces Relief Trust Fund for their assistance to our troops.

IN RECOGNITION OF BISHOP DONALD HILLIARD, JR.

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. PALLONE. Mr. Speaker, I rise today to laud the accomplishments of Bishop Donald Hilliard, Jr. Bishop Hilliard is a man of conviction and dedication, as well as an inspiration to his community. This year, the Cathedral International Church is celebrating twenty years of excellence under the leadership of Bishop Donald Hilliard.

Bishop Hilliard is someone who places a high value on education. He earned his Bachelor of Arts degree from Eastern University in St. David's, Pennsylvania. He later earned a Master of Divinity degree from Princeton Theological Seminary, and was awarded a Doctorate of Ministry degree from the United Theological Seminary in Dayton Ohio. Yet, Dr. Hilliard's accomplishments extend far beyond academia. His list of achievements range from economic and community developer to spiritual leader.

Bishop Hilliard always approaches life with a positive attitude, as revealed in his trademark "Say Yes" services at the Second Baptist Church in Perth Amboy, New Jersey. At the age of 26, Bishop Hilliard became the Church's Senior Pastor. Since then, the church has grown from 125 members in 1983 to over 7,000 members today. What started out as one church has grown to three located in urban settings throughout New Jersey. Dr. Hilliard's faith and inspirational words draws people from out the tri-state area of New York, Pennsylvania, and New Jersey. The Cathedral is recognized as a growing and influential church and as been cited by American Baptist churches, USA as a model church for growth.

In 1995, Bishop Hilliard was consecrated a bishop and is currently the presiding Bishop and founder of the Ecumenical Fellowship and Cathedral assemblies, Inc. In this role, Bishop Hilliard serves as the spiritual advisor and mentor for several pastors and churches across America and West Africa. The Bishop has also established the Clergy Leadership Institute where innovative leaders from different denominational backgrounds gather to confront and minister to various issues faced by the clergy daily, as well as to expand their theological and social horizons.

Bishop Hilliard and his church have been cited numerous times by the city of Perth Amboy and the State of New Jersey for their contributions to community development. Today, I rise to ask this national body to recognize the accomplishments of this esteemed gentleman. Mr. Speaker, a man such as Bishop Hilliard should be an inspiration to us all. He has given so much of his life to serving others in need. Accordingly, I ask that my colleagues rise and join me in honoring Bishop Donald Hilliard, Jr.

CONGRATULATING THE HOMENETMEN SCOUTS FRESNO SASSOON CHAPTER

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. RADANOVICH. Mr. Speaker, I rise today to congratulate the Homenetmen Scouts Fresno Sassoon Chapter on their 30th Anniversary. There will be a banquet held in their honor on Saturday, November 15 in Fresno, CA.

In its 30th year, the Homenetmen Scouts Fresno Sassoon Chapter strives to encourage Fresno's Armenian youth to be involved in competitive sports and Armenian Boy Scouts activities, while forming an efficient organization that preserves the grace of Armenian language and culture. Since its establishment in 1973, the organization's main purpose has been twofold: to provide the Armenian youth with a moral and physical education outside of the school environment; and teaching them the richness of Armenian culture while accepting and participating in the culture that surrounds them. Comprised of disciplinary and athletic divisions, the Fresno Chapter boasts ten basketball teams spanning a variety of ages, and a strong Troop 12 Armenian Boy Scouts group. The Homenetmen Scouts Fresno Sassoon Chapter is part of the world-wide organization with over 25,000 members on five continents.

The Armenian General Athletic Union and Scouts known as Homenetmen, is a nonprofit organization which was founded 85 years ago in Constantinople by Shavarsh Krisian, Hovhannes Hintlian, and Krikor Hagopian. The organization promotes a sense of fraternity and humanitarianism, which extends far beyond mere camaraderie and benevolence. Homenetmen's motto, "Elevate yourself and others with you," is a poignant reminder of the fundamental objective to strive for individual and collective excellence. In the United States, the first Homenetmen Olympic Games took place in Brooklyn, NY, in 1922, though the organization was not officially established in America until 1932 with chapters in New York, New Jersey, and Boston. From that point on, Homenetmen organized chapters in the communities wherever there was a large concentration of Armenians.

Mr. Speaker, it is my pleasure to congratulate the Homenetmen Scouts Fresno Sassoon Chapter on its 30th anniversary. I urge my colleagues to join me in wishing them many years of continued success.

HONORING HARRIS D. ARLINSKY (RET.), USA GREEN BERETS

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. TOM DAVIS of Virginia. Mr. Speaker, I rise today to recognize LTC Harris David Arlinsky (retired) for 50 years of service to our country.

This past June marks the 50th anniversary of when he volunteered for the Army National Guard at 17 years old. He did so proudly. After serving in the regular Army for a few years, Colonel Arlinsky attended college at the University of Arizona. He set his sights on being an Air Force pilot; unfortunately, his blurry vision made this impossible. Upon graduation and accepting a commission in the U.S. Army, then-Second Lieutenant Arlinsky attended training for the newly created U.S. Special Forces. The Special Forces, also known as the Green Berets, are the best of the best and have been instrumental in countless conflicts. Colonel Arlinsky knew he belonged with the elite forces and passed their extremely difficult tests to gain the coveted Green Beret.

As a Green Beret, he commanded a "B" Team for the Fifth Special Forces Group in Pleiku, Vietnam. He served two tours and was involved in pushing back Vietcong forces during the Tet Offensive. After the Vietnam War, Colonel Arlinsky continued to serve our nation through various Special Forces projects. Eventually, he left active duty to serve the civilian intelligence services, maintaining reserve status.

During the Reagan administration, Harris Arlinsky worked directly for Vice President George Bush as the Special Intelligence Advisor for the National Narcotics Border Interdiction System for the southwest U.S. border region. While in the region, he also commanded a U.S. Special Forces "B" team with five "A" teams in Texas and New Mexico. Upon completion of the assignment, he returned to Virginia to assist with other national intelligence agencies.

Today he is enjoying his retirement as a college professor, spending time with his wife, Kathleen; his children Beth, Abra, and Michael; and his grandson, Elias.

Mr. Speaker, in closing, I would like to commend COL Harris Arlinsky for his service to our Nation. He nobly has dedicated his life to the safety and well being of the United States of America. As COL Harris Arlinsky continues to celebrate his 50th anniversary of his first month of service to us, let us thank him and all our soldiers for their sacrifices. I ask that my colleagues join me in saluting COL Harris Arlinsky.

TRIBUTE TO M. DEAN HAINES

HON. JIM SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. SAXTON. Mr. Speaker, I rise today to pay tribute to M. Dean Haines on the occasion of his retirement as clerk of Ocean County.

As one of the County's Constitutional Officers, he has been responsible for the administration of a wide range of services offered by the Office of the County Clerk for two decades.

Serving the community is the main focus of the Clerk's Office, including assisting residents in real estate transfers, obtaining passports, courtesy photo identification and Alcoholic Beverage Control Cards, and supervision of elections in the county. Dean's office has been recognized as the most technologically advanced County Clerk's Office in our State, thanks to his leadership and innovation.

Dean Haines' involvement in many community service organizations such as his membership on the Southern Ocean County Hospital Board of Trustees, the Southern Ocean County Rotary, Jersey Shore Council Boy Scouts of America, Alcoholism and Drug Abuse Council of Ocean County, Barnegat Historical Society, and both Barnegat Fire Company Number One and the New Jersey State Fireman's Association is a demonstration of his commitment to the people of Ocean County.

I have always valued his friendship and support through the years. I hope Dean and his wife, Christine, will accept my congratulations and best wishes for a retirement filled with health, happiness, and dreams come true.

CONFERENCE REPORT ON H.R. 1588, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

SPEECH OF

HON. ELLEN O. TAUSCHER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 7, 2003

Mrs. TAUSCHER. Mr. Speaker, I have mixed emotions as I consider the fiscal year 2004 defense authorization conference report.

I would like to thank my chairman, Mr. HUNTER, and Ranking Member SKELTON for working with me on several items that will benefit the people in my district, Travis Air Force Base, and our military airlift capabilities overall.

Indeed, the language in the bill expediting the transfer of land from the Navy to the Housing Authority of the City of Dixon will improve the living and work conditions of migrant workers who contribute to the local economy.

The language preventing the Secretary of the Air Force from retiring C–5A aircraft until one has been modernized and tested is a crucial measure that not only sustains a critical investment in upgrading one of the United States' most reliable transport planes, but it also ensures that Travis Air Force Base will continue to be an important provider of strategic lift in the near future.

The bill also contains a number of important provisions for our men and women in uniform such as an increase in base pay; a reduction in housing expenses; an increase in family separation allowance; and an increase in the rate of special pay for our brave troops who serve in hostile situations and imminent danger.

Despite these important positive elements, the bill contains several reckless provisions that undermine the security of the United States and needlessly jeopardize civilian employees and the environment.

This bill puts the United States back in the business of making nuclear weapons, adds unnecessary regulations that hamstring the DOD's nonproliferation programs, takes away the protections of civilian personnel, and gratuitously endangers the environment.

By lifting the ban on research and development of low yield nuclear weapons, Congress is abetting the administration's efforts to build a new generation of nuclear weapons; is inviting an arms race with rogue states, terrorists and allies; and is making a nuclear conflict more likely in the long run by undoing decades of American leadership in controlling the spread of the most deadly weapons known to man.

The Defense Bill, rather than increasing the budget for the DOD's valuable cooperative threat reduction programs that dismantle and destroy weapons of mass destruction in the former Soviet Union, adds unnecessary funding restrictions that in the end will only hurt the security of the American people.

The broad environmental exemptions provided for in the bill will undermine efforts to protect our environment by, among other things, making it harder to wall-off parts of military facilities as protected areas for wildlife.

Proponents use spin to claim this is necessary for military readiness, but it's hard to see how a blanket environmental exemption for everything on military installations from golf courses to swimming pools are pressing matters of national defense.

Moreover, the Pentagon can already get waivers from the Endangered Species Act and the Marine Mammal Protection Act when national security is at stake. But in the three decades since these laws have been in effect, not a single waiver has been sought.

The bill also abolishes DOD's long-standing labor relations system and replaces it with one in which civilian employees have only minimal consultation with unions and Congress.

The bill allows DOD to remove basic due process rights that employees currently enjoy by waiving their right to a written response, their right to be represented by an attorney, and their right to a written decision explaining the action.

I am deeply disturbed that the Republican Party has hijacked an important bill for our troops and attached to it a radical slash-and-burn ideology that is sure to undermine civilian morale at the Pentagon, needlessly endanger the environment and most alarmingly, endanger the American people with an irresponsible nuclear agenda.

I am voting for this bill because I do not believe, especially in a time of war, we should punish our active troops by withholding funds and measures that would benefit them because of some of the administration's imprudent and over-reaching provisions in the bill.

HONORING SPC. JAMES "JIMMY" ANDERSON CHANCE, III

HON. CHARLES W. "CHIP" PICKERING

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. PICKERING. Mr. Speaker, I rise this evening before the House to pay tribute to Specialist James "Jimmy" Chance of Kokomo, Mississippi. Specialist Chance was a member of the Mississippi Army National Guard serving in C Company of the 890th Battalion attached to the Army's 3rd Armored Cavalry Regiment in Iraq.

Tragically, Specialist Chance was killed on Thursday, November 6, 2003, when his vehicle struck a landmine near the Syrian border. He was the first of our own Mississippi National Guardsmen to lose his life while bravely serving in the Iraq War.

Specialist Chance is a true American hero who has paid the ultimate price to protect our country from terrorists and defend the liberties of the citizens of the United States of America. Furthermore, he has unselfishly given his life to win freedom for the people of Iraq who suffered under the unbearable rule of an evil dictator. These are people he did not know, but yet, he has helped give millions of Iraqi men, women, and children, the chance to live lives of freedom and independence like we know at home in the United States.

Even though I know his family is enduring great suffering as a result of their loss, I hope they will find peace in knowing that Specialist Chance bravely served his country and his countrymen and defended the values and principles that Americans hold so dear. Specialist Chance was a defender of peace and a lion of liberty.

Specialist James Anderson Chance, III, represents the best of Mississippi and our Nation. I ask my colleagues in Congress to join me in honoring his courageous service, and ask that you pray that his family will find peace during this trying time.

A TRIBUTE TO THE WOMEN'S SOCIAL AND CULTURAL SOCIETY OF MOSUL

HON. DEBORAH PRYCE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Ms. PRYCE of Ohio. Mr. Speaker, as the leader of the first all women's United States

Congressional Delegation to Iraq, it is my pleasure on behalf of Representatives JENNIFER DUNN, SUE KELLY, ILEANA ROS-LEHTINEN, MARSHA BLACKBURN, KATHERINE HARRIS, DARLENE HOOLEY and CAROLYN MCCARTHY, to commend the excellent work being done at the Women's Social and Cultural Society of Mosul. Today, with great honor and privilege, I would like to recognize the major milestones the organization has achieved.

The Women's Social and Cultural Society, comprised of more than 200 members, represents a variety of ethnic, religious and professional affiliations. These women are truly creating a new ideal within their country as they promote social, political and educational equality for all Iraqis. For too long, Iraqi women have suffered without equal or even adequate access to education, justice within the legal system, employment opportunities, and representation within the government. The members of the Women's Social and Cultural Society of Mosul must be applauded for their commitment to end decades of oppression against women by fighting to give them a voice and a respected role of leadership within their communities. The challenge is immense, but their determination is steadfast and unwavering.

We commend and praise the Women's Social and Cultural Society of Mosul today and urge our colleagues to wish them continued success as they pave the way for future generations of Iraqi citizens.

IN HONOR OF HILARY KITASEI

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. ENGEL. Mr. Speaker, Riverdale is a fortunate community in that not only do the people who live here care for it, but newcomers after they arrive also do their best to make it even better.

Hilary Kitasei came to our community a few short years ago and in that relatively brief time has made a lasting impression on her new neighborhood and on how the community looks. She first took on a rather desolate piece of wasteland at Fieldston Road at the Henry Hudson Parkway overpass and using her considerable abilities transformed it into a woodland glade that is a highlight of the neighborhood.

It was planted by the students from almost all of the local schools as well as neighbors and is now a part of the New York City Parks Department Greenstreets Program.

Setting her eyes on a larger project she is spearheading the development of the Hudson Scenic Byway Program to create New York State's first urban scenic byway.

Riverdale, and by extension all of New York City, is lucky to have such people as Hilary Kitasei. I join all of our community in thanking her for the wonderful things she has done.

CONGRATULATING DR. GLORIA BROMELL-TINUBU ON HER APPOINTMENT AS THE 5TH PRESIDENT OF BETHUNE COOKMAN COLLEGE

HON. KENDRICK B. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. MEEK of Florida. Mr. Speaker, I rise today to congratulate Dr. Gloria Bromell-Tinubu on becoming the 5th president of Bethune-Cookman College in Daytona Beach, Florida.

An educator and a community leader, Dr. Bromell-Tinubu is an economics professor at Spelman College in Atlanta, and was a former member of the Georgia State Board of Education. She is currently the chief executive officer of the Atlanta Cooperative Development Board, a nonprofit agency that serves as a catalyst in developing cooperative-owned business enterprises. Within 9 months as CEO, she obtained a $1 million grant to assist the economically disadvantaged move toward self-sufficiency, and continues research that explores the use of cooperatives as a means of establishing economic security in asset-poor communities.

Dr. Bromell-Tinubu is a former member of the Atlanta City Council who has considerable community development experience, as shown by legislation she authored creating the Atlanta Neighborhood Deputies Program, a city-wide citizen driven code enforcement effort. She has served on numerous community development boards, including the Metropolitan Neighborhood Development Corporation (MNDC), which she founded.

In taking the helm of Bethune-Cookman College, Dr. Bromell-Tinubu becomes the fifth president of this private coeducational liberal arts college with a diverse student population of more than 2,700. Established in 1904 by Mary McLeod Bethune, the college is ranked among the top historically black colleges in the country. Most recently Bethune-Cookman College was selected as one of 10 colleges in the country to participate in Project Pericles, a program funded by the Eugene Lang Foundation to establish educational programs for social responsibility and participatory citizenship as an essential part of higher education learning, in the classroom, on the campus, and in the community.

The Bethune Cookman College could not have found a more perfect fit to fulfill their goals and mission. I know that all of my colleagues join me in congratulating Dr. Gloria Bromell-Tinubu today, and we wish her every success in her future.

HONORING SPECIAL AGENT LEANNE G. CHARETTE ON THE OCCASION OF HER RETIREMENT

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Ms. DELAURO. Mr. Speaker, it is with great pleasure that I stand to join the many family, friends, and colleagues who have gathered today to extend my sincere congratulations to Leanne G. Charette on the occasion of her retirement marking the end of a thirty-two year career with the Internal Revenue Service.

When the average American thinks about the Internal Revenue Service, often they only contemplate the time, energy, and paperwork it takes to file an annual tax return. While the Internal Revenue Service is charged with the task of collecting revenue, they are also responsible for ensuring the protection of American citizens from fraud and evasion. Every day we hear the stories of corporations and individuals who seek to undermine the government through waste, mismanagement, and fraud. It is through the efforts of Special Agents like Ms. Charette that American taxpayers are saved millions in lost revenue.

Throughout her career, Leanne Charette has demonstrated a unique commitment to public service. As a Special Agent with the Criminal Investigation Division of the Internal Revenue Service, she has been an active member of several complex investigations. As a member of the Health Care Fraud Task Force, she worked with representatives from several federal agencies to identify abuses in the health care field which were used to help develop health care reforms. More recently, Ms. Charette worked on a task force investigating a massive insurance fraud responsible for bilking insurance companies in several states of assets in excess of two hundred million dollars. Her efforts helped to identify several problems with the industry and the results will go a long way in helping to establish solutions to these issues. More importantly, the task force has been able to recover most of the stolen assets which will be distributed to the victims.

Too often, we overlook the tireless efforts of those in public service. Throughout her career, Ms. Charette has exemplified all that a public servant should be. Her commitment and diligence has earned her the respect and admiration of her colleagues and all of those with whom she has worked. For her many years of dedicated service, I am proud to rise today to extend my heart-felt congratulations to Leanne G. Charette as she joins her husband, Dick, in retirement. My very best wishes to you both for many more years of health and happiness.

TRIBUTE TO DR. YJEAN CHAMBERS OF GARY, INDIANA

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. VISCLOSKY. Mr. Speaker, it is with great remorse that I rise today to pay tribute to one of Gary, Indiana's most dedicated and caring citizens, Dr. YJean Chambers. YJean passed away on Wednesday, November 12th at Methodist Hospital after a longtime illness. Her efforts as a distinguished educator as well as her numerous contributions to her community are worthy of the highest commendation and recognition.

YJean and her family moved to Gary, Indiana from Kentucky when she was a young girl, seeking a better life for themselves. In 1939, she graduated from Gary Roosevelt High School ranking second in her class, and then went on to earn her Bachelor of Education degree from Illinois State University. She also went on to earn her Master of Arts degree from Purdue University, where she received Purdue University's highest award, Doctor of Humane Letters in 1993.

YJean knew how important education was to all members of her community and therefore shared her gift of knowledge and enthusiasm for learning by becoming a teacher in Madison, Illinois. After two years she began teaching speech and drama at her alma mater, Gary Roosevelt High School. In 1971, YJean became a full time professor at Purdue Calumet in Hammond, Indiana where she taught communications and was appointed Assistant Professor of Communications in 1973.

YJean gave selflessly to her community in so many ways, including being a member of several volunteer and service organizations. She served as President of the Steel City Hall of Fame, sat on the Service Academies Nomination Board, was a member of the Board of Trustees of the Gary Community Schools, and was also a member of the Board of Directors of the Indiana School Board Association. YJean made history in Northwest Indiana by becoming the first African American woman elected to the Northwest Indiana Crime Commission and the first woman to serve on the Advisory Board of the Bank of Indiana.

Although she dedicated her life to serving her community, YJean never limited the time she gave to her loving family. She is survived by her husband Mr. Herman Chambers, and their son Lanel.

Mr. Speaker, YJean Chambers was a caring and committed woman who gave of herself in so many ways to her community. I respectfully ask that you and my other distinguished colleagues join me in paying tribute to Dr. YJean Chambers, she will be remembered honorably and truly missed.

TRIBUTE TO JOSHUA PETERS

HON. MIKE PENCE

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. PENCE. Mr. Speaker, it is with great pleasure that I pay tribute today to Joshua Peters of Muncie, Indiana. Joshua is an Army medic currently serving in the 3rd Armored Cavalry Regiment in Iraq. This soldier's recent unselfishness and courageous acts of aiding to his fellow comrades demonstrated true American heroism. The citizens of Indiana's Sixth Congressional District, joined by all Americans, are proud of Joshua's extraordinary actions displayed toward his fellow Americans.

Earlier this month, one of two Chinook helicopters transporting soldiers to Baghdad International Airport for their R&R flights home to the United States was shot down. The second helicopter did an immediate harsh landing to assist the brave men aboard the downed Chinook. As Joshua and his fellow regiment members ran to help the injured, they came under heavy gunfire without any protective gear, weapons, or medical supplies readily available. Joshua was initially the only medic at the scene and attended to the wounded for more than 2 hours. During this time, Joshua's thoughts remained solely with the health and safety of his fellow servicemen. "God, don't let anything happen to me that would render me unable to help these guys—help me, Lord."

Mr. Speaker, I am honored today to rise and pay tribute to Joshua Peters, a man who by his actions has demonstrated a promise to help defend America's freedom. Heroes emerge from the significant events happening in Iraq, and I am proud to say that Joshua Peters is among them.

Mr. Speaker, it is my great privilege to stand today and honor Joshua Peters of Muncie, Indiana before Congress and the Nation.

HONORING THE ARTISTIC CONTRIBUTIONS OF CLIFF SEGERBLOM

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. PORTER. Mr. Speaker, I rise today to pay tribute to the life-long artistic contributions of Cliff Segerblom to the Southern Nevada community. The Boulder City Arts Council will present "Hanging with Cliff," a diverse selection of the artists works.

The works of Mr. Segerblom chronicle the history of the ever-changing Nevada landscape from his original assignment as the official photographer for the Bureau of Reclamation at the Hoover Dam in 1938 until his passing in 1980. Throughout this period, Cliff used a variety of media in portraying our environs in Southern Nevada, from the natural beauty that surrounds us to the feats of human endeavor that inspire us. I wish to thank Boulder City's most famous artist, and I urge all residents of Nevada to acquaint themselves with the powerful work of Mr. Cliff Segerblom.

RECOGNIZING VINCENT M. COULDRY FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Vincent M. Couldry, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 60, and in earning the most prestigious award of Eagle Scout.

Vincent has been very active with his troop, participating in many Scout activities. Over the 9 years Vincent has been involved with Scouting, he has earned over 60 merit badges and has held numerous leadership positions, serving as patrol leader, chaplain, quartermaster, and Cub Scout leader. Vincent had been involved with the Tribe of Mic-O-Say for 3 years and is in the Warrior Class.

For his Eagle Scout project, Vincent landscaped an area around Savannah High School and Savannah City Tennis Courts in Savannah, Missouri. With the assistance of 22 other Scouts and leaders, Vincent planned, gathered the needed materials, and mulched 78 trees.

Mr. Speaker, I proudly ask you to join me in commending Vincent M. Couldry for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

TRIBUTE TO TIM McCARTHY

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. McINNIS. Mr. Speaker, it is with a solemn heart that I rise today to pay tribute to the passing of a great man from my district. Tim McCarthy, a descendant of one of Pueblo, Colorado's pioneer families, was an enthusiastic figure who was known for his knowledge about Pueblo and its residents. His passing is a great loss for the Pueblo community, and I would like to take this opportunity to remember his life before this body of Congress.

After graduating from Pueblo Catholic High School, Tim spent a year studying Theater at the Pasadena Playhouse before completing a music degree at Northwestern University. Upon graduation, Tim moved back to Pueblo and became a dynamic music teacher who inspired his students to respect their fellow man. In 1957, Tim joined his father in the family funeral home business. He was a well-known art and theater enthusiast, and organized Tri-Hi Inc., a group dedicated to entertaining troops at military bases.

Tim loved to share his knowledge of Pueblo's history with others. On any given day, he could be found explaining historical events to his many friends and family members throughout town. Tim was a caring man who loved tradition and sought to keep it alive through educating his community on its past.

Mr. Speaker, Tim McCarthy was a compassionate human being who touched the lives of everyone he met. I am honored to pay tribute to a phenomenal soul who encouraged happiness and kindness in his community. Pueblo has lost a great man who exemplified the inner beauty that comes from a life-long pursuit of community service. My thoughts and prayers go out to Tim's family during this time of bereavement.

A TRIBUTE TO RALPH DICKERSON, JR. AND GLORIA DENNA DICKERSON

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. TOWNS. Mr. Speaker, I rise in honor of Ralph and Gloria Dickerson in recognition of their commitment and service to their community.

Ralph Dickerson, Jr. has served honorably as the President of United Way of New York City since May 1988. As President of United Way of New York City, he has led the organization into the position of being the largest private funder of health and human services in New York City and as a major force in forging bold new solutions to the city's most critical human care challenges.

Under his leadership, United Way of New York City's revenue has grown from $75.1 million to $135 million, making it the largest United Way in the nation. In addition, United Way of New York City has used its extensive knowledge of community-based human service agencies to broker and partner with government, foundations and business in ground breaking initiatives that are successfully addressing the city's human care issues and the high dropout rate.

Ralph has held key executive positions for 30 years in local United Ways including St. Louis, Missouri; Madison, Wisconsin; Cleveland, Ohio; and Pittsburgh, Pennsylvania. He holds a B.S. in Business Administration; and he received a M.B.A. from the University of Wisconsin.

Ralph and Gloria are the proud parents of two children, daughter, Maria Renee (deceased), and Ralph III. Their son, Ralph III and daughter-in-law, Michelle, have given them two grandsons, Cameron and Garrett and a granddaughter, Lauren.

Gloria is the President of Maral Enterprises, Inc., The Learning Tree, and Copy Bee, which she started in May 1988. Maral is a children's book distribution company while the Learning Tree, and Copy Bee are retail stores offering teachers, parents and children a full line of educational books, materials and learning guides. This entrepreneurial business came about as a result of Mrs. Dickerson's written bibliography and review of children's books mostly written by African-American authors.

Prior to this business venture, she served as Assistant Dean at the University of Wisconsin and Cleveland State University. She began her career as a special education teacher. Gloria holds a B.S. in Special Education, an M.S. degree, and completed her work toward a Ph.D. in educational psychology at the University of Missouri.

Gloria serves on educational, civic and volunteer organizations, boards and as a Trustee at her daughter's school, The Winchester Thurston in Pittsburgh. She is a member of several professional organizations including the Alpha Kappa Alpha National Sorority.

Ralph has served as a Director with several civic and corporate organizations and has received numerous city awards and honorary degrees. He was also inducted into the Alpha Kappa Psi Honorary Business Fraternity.

Mr. Speaker, Ralph and Gloria Dickerson have both made significant contributions to their community through both their professional and voluntary endeavors. As such, they are more than worthy of receiving our recognition today and I urge my colleagues to join me in honoring these truly remarkable people.

COMMENDING THE NATIONAL ASSOCIATION OF BROADCASTERS AND THE ARMED FORCES RELIEF TRUST

HON. ROY BLUNT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. BLUNT. Mr. Speaker, I rise in support of an important initiative undertaken by the National Association of Broadcasters and the Armed Forces Relief Trust.

With over 140,000 troops stationed in Iraq, in Afghanistan, and around the world, military families' budgets are stretched thin. In many cases, the personnel deployed are the sole breadwinners for their family, making it difficult to cope with unexpected expenses.

Last year, the relief agencies for each branch of the military raised and distributed over $109 million in assistance to military families in need. This year, with the support of the National Association of Broadcasters and its local radio and television station members, the four relief agencies have come together to form the Armed Forces Relief Trust.

In support of that effort—and to help respond to the escalating needs of military families, the NAB and its 6,000 radio station and 1,000 television station members have produced, distributed and aired Public Service Announcements to raise monies for the Trust.

Considering recent events in Iraq, I think Americans everywhere are looking for ways to support our troops. The AFRT provides valuable services to the family members of our brave men and women who are fighting terrorism abroad. The program pays for airfare so personnel can fly home to the funeral of a loved one.

It provides needed medical attention for the spouses of military personnel. It can help offset the cost of college tuition for the child of a soldier. While the military is dedicated to taking care of its own, the needs will only continue to escalate as the length of deployments stretch out. The Trust can help make up for some of the shortfall.

By providing access to the airwaves, local television and radio stations are supporting what I believe to be an important and timely cause.

I'm therefore well aware that deployments are not only emotionally trying for military families, but financially trying as well.

I therefore commend the AFRT for providing needed relief to these families and the National Association of Broadcasters for helping get out the word.

PERSONAL EXPLANATION

HON. SOLOMON P. ORTIZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. ORTIZ. Mr. Speaker, due to business in my district, I was unable to vote during the following rollcall votes. Had I been present, I would have voted as indicated below.

Rollcall No. 612, "yes"; rollcall No. 613, "yes"; rollcall No. 614, "yes"; rollcall No. 615, "yes"; rollcall No. 616. "yes"; rollcall No. 617. "yes"; rollcall No. 618, "no"' rollcall No. 619, "yes."

RECOGNIZING SHAUN THOMAS DIAMOND FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Shaun Thomas Diamond, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 374, and in earning the most prestigious award of Eagle Scout.

Shaun has been very active with his troop, participating in many Scout activities. Over the 9 years Shaun has been involved with Scouting, he has held numerous leadership positions, serving as assistant senior patrol leader, assistant patrol leader, patrol leader, and librarian. Shaun has been involved with the Tribe of Mic-O-Say and is a Keeper of the Sacred Bundle. He also served on staff for 2 years at H. Roe Bartle Scout Reservation.

For his Eagle Scout project, Shaun led a group of boys and adults in the removal of the obsolete woodland trail header and in the construction of a new woodland trail header for Martha Lafite Thompson Nature Sanctuary. The new header will be enjoyed by many visitors and has increased the safety of the trail.

Mr. Speaker, I proudly ask you to join me in commending Shaun Thomas Diamond for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

TRIBUTE TO STAR BAR

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. MCINNIS. Mr. Speaker, I rise before you today to pay tribute to a remarkable small business in my district. The Star Bar in Pueblo, Colorado has been serving customers and its community for nearly a century, and it is my privilege to recognize its longevity and dedication to its customers here today.

Over the years, a variety of owners have operated the renowned Star Bar. The bar's current proprietors, Louis and Linda DeNiro, bought the establishment approximately five years ago. Despite changes in ownership, the Star Bar has remained a constant in the lives of many Puebloans. In fact, little has changed since the business was featured in an issue of National Geographic. Due to its undeniable appeal, The Star Bar has been bringing customers back for decades, and will surely continue to do so for years to come.

Mr. Speaker, dining establishments such as the Star Bar hold a special and important place in communities across the nation. Their customers find comfort in the consistently warm and friendly service. I am honored to stand here today before this body of Congress and this nation to recognize Pueblo's Star Bar and its many years of tremendous service.

A TRIBUTE TO CHARLES E. SIMPSON, ESQ.

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. TOWNS. Mr. Speaker, I rise in honor of Charles E. Simpson, in recognition of his commitment and service to his community and his outstanding accomplishments in the field of law.

Charles is an attorney and a partner of Windels Marx Lane & Mittendorf, LLP., and chairs the firm's Bankruptcy, Corporate Restructuring and Workouts Practice Group. He is also a member of the Litigation and Real Estate Practice Groups.

Since 1981, Charles has served as one of the counsels to the Honorable Edolphus Towns of the 10th Congressional District, Brooklyn, New York. In addition, he is a former member of the Board of Directors of the Brooklyn Children's Museum, the Brooklyn Red Cross, the Queens Society for the Prevention of Cruelty to Children, and the Brooklyn Area Council of the Boy Scouts of America. From 1983 through 1987, Mr. Simpson served as Brooklyn's Representative on the Board of Directors of the then New York City Public Development Corporation. He also served as counsel to the Bed-Stuy/Crown Heights Area Health Plan and the Brooklyn Navy Yard Development Corporation. He was a member of the New York State Bar Association's Committee on Minorities in the Profession from 1987 to 1992.

Charles, who served in the U.S. Army from 1969–1972, graduated magna cum laude from Pepperdine University in Los Angeles, California in 1974 and received his law degree in 1977 from Harvard. He was named a Martin Luther King Jr. Fellow in 1974.

Mr. Speaker, Charles E. Simpson has dedicated his time to an array of local activities and causes, often using his legal expertise for the betterment of the community. As such, he is more than worthy of receiving our recognition today and I urge my colleagues to join me in honoring this truly remarkable person.

COMMENDING STUDENTS IN FREE ENTERPRISE 2003 WORLD CUP CHAMPION TEAM FROM DRURY UNIVERSITY

HON. ROY BLUNT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. BLUNT. Mr. Speaker, I rise today to commend the Students In Free Enterprise (SIFE) 2003 World Cup Champion Team from Drury University in Springfield, Missouri. These exceptional university students demonstrated on an international stage what it means to practice free enterprise with common sense in a socially and ethically responsible manner. Drury University's SIFE team prepared both a live presentation and a written report of their activities over the past year and competed against students from 30 countries to receive this prestigious award. A panel of 18 international business leaders, including representatives from KPMG, Wal-Mart, Sara Lee and Pepsi-Co, named Drury University's SIFE Team World Cup Champions for the second time in three years.

SIFE students are making a positive impact in their community and beyond, through service projects that teach entrepreneurship, market economics, ethics and financial responsibility to struggling business owners, school children and economically disadvantaged individuals. By applying the concepts they are learning in the classroom to everyday life, they are taking the guesswork out of economic theory.

Drury University's SIFE team worked on a number of projects over the past year, helping high school students develop a t-shirt company that is self-sustaining and student-run. The Drury team also established an entrepreneurial camp to teach young people in southwest Missouri's growing Hispanic communities the entrepreneurial skills needed to develop their own businesses.

Drury University SIFE team volunteered more than 5,000 hours of service to their community last year. The students at Drury, however, are not alone. SIFE teams around the world engaged in hundreds of thousands of hours of community service, impacting millions of people. Too often, the energy and idealism of our youth are never fully utilized. In SIFE, young people are given an opportunity to contribute meaningfully to their society. It is encouraging to see bright, passionate college and university students work to "change the world" with a common sense approach that stimulates economic empowerment.

Mr. Speaker, I commend the achievements of Alvin Rohrs, the President and CEO of Students In Free Enterprise, and his team of coworkers at the SIFE World Headquarters in Springfield, Missouri. His leadership has enabled SIFE to plant the seeds of free enterprise on campuses across our nation and around the world. Mr. Rohrs and his team work tirelessly to ensure the principles of free enterprise are firmly rooted in the hearts and minds of college and university students on more than 1,500 campuses worldwide. By encouraging social entrepreneurship among SIFE students, Mr. Rohrs and his staff have fostered real change in countries around the globe. In Ghana, SIFE teams taught impoverished villagers how to make and market soap from locally available resources. For the first time in that community, money now changes hands, and the people who live there have a source of income. Alvin Rohrs and his team are also supporting programs in places where free enterprise education is rare. In China, a SIFE team is helping managers of a state-owned enterprise privatize the business and develop a plan for success in the face of an emerging market economy.

The success of SIFE has been well documented by both the national and international business community. Business and industry leaders frequently participate in SIFE competitions, judging SIFE teams and scouting future business leaders. They see and understand the importance of SIFE to the economic future of our nation and our world, as we all learn to compete in a global market that emphasizes education and communication.

Mr. Speaker, I want to congratulate the students from Drury University's SIFE team. These students may be completing their studies on a small campus in southwest Missouri, but they are making a difference. Along with their peers in 37 countries, these young people are changing the world, one person, one community and one project at a time.

HONORING GLEN AND LYNN TOBIAS

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mrs. LOWEY. Mr. Speaker, I rise today to congratulate my friends Glen and Lynn Tobias as they are honored for their distinguished leadership by the Anti-Defamation League. The Tobias' years of service, integrity, and commitment should serve as an example to all of us. I ask unanimous consent to submit a letter of congratulations I recently sent them.

NOVEMBER 10, 2003.

GLEN AND LYNN TOBIAS
Anti-Defamation League,
New York, NY.

DEAR GLEN AND LYNN: I write with such respect, admiration, and gratitude for your invaluable contributions to the Anti-Defamation League. The ADL's Distinguished Leadership Award is a fitting tribute to your years of service to this vital institution, and I am proud to join with those who honor you as you receive the recognition you both so deeply deserve.

A key aspect of your leadership has been your constant willingness to battle against all forms of racism and intolerance. The dramatic rise in global anti-Semitism over the past few years threatens to undermine the stability and progress we seek in the Middle East, Europe, and around the world. Through your efforts, the ADL has led the counter-attack against this scourge, by seeking to measure the rise in anti-Semitism and to address it in meetings with key heads of state and foreign ministers, as well as at an international conference meant to bring Jewish and non-Jewish leaders together to create a strategy to combat the problem.

On our own shores, your efforts to educate the public have been greatly appreciated. You have led crucial initiatives to expand ADL's education programs on campuses and schools, especially about hate crime prevention. You also educated the public and Members of Congress on the threats to religious liberty and civil rights by federal and state voucher programs for private and religious schools—an effort greatly welcomed by myself and my colleagues on the Hill.

For all these reasons and many more, you are richly deserving of the ADL's Distinguished Leadership Award. I would like to thank you once again for your friendship and years of service to ADL, to the United States, and to the global community, which have all benefited from your wisdom, your diligence, and your desire for equity and peace.

Sincerely,

NITA M. LOWEY,
Member of Congress.

RECOGNIZING SAMUEL THEODORE HUCKE IV FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Samuel Theodore Hucke IV, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 374, and in earning the most prestigious award of Eagle Scout.

Sammy has been very active with his troop, participating in many scout activities. Over the years Sammy has been involved with Scouting, he has earned 38 merit badges and has held numerous leadership positions, serving as Patrol Leader, Assistant Patrol Leader, Den Chief, and Assistant Senior Patrol Leader. Sammy has been involved with the Tribe of Mic-O-Say and is a Keeper of the Sacred Bundle. He also served on staff for three years at H. Roe Bartle Scout Reservation.

For his Eagle Scout project, Sammy constructed three road signs for Camp Shawnee, a Campfire USA camp. The new signs will help direct new campers and visitors to the camp facilities.

Mr. Speaker, I proudly ask you to join me in commending Samuel Theodore Hucke IV for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

TRIBUTE TO HAROLD JAMES BOYD

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. McINNIS. Mr. Speaker, it is with a solemn heart that I rise to pay tribute to the passing of a great man from my District. Harold James Boyd, better known as Father Theo, served the Old Snowmass Saint Benedict's Monastery with dedication and commitment until his death on October 8th of this year. Father Theo will be remembered as a valued member of the Snowmass community, and I am honored to bring his many contributions to his community to the attention of this body of Congress.

Father Theo entered the monastic life in 1950 at St. Joseph's Abbey in Spencer, Massachusetts. After his first charge, he spent the rest of his years at Saint Benedict's Monastery, where he served as retreat director, confessor, and cantor. Father Theo was also an accomplished author who published a book entitled "Tales of the Magic Monastery" in 1981.

Mr. Speaker, Harold James Boyd was a warm and generous soul who selflessly gave his life to inspire others. Throughout his life, Father Theo touched many lives and I am honored to pay tribute to such an extraordinary man.

A TRIBUTE TO WESNER MOISE, M.D.

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. TOWNS. Mr. Speaker, I rise in honor of Wesner Moise, M.D. in recognition of his commitment and service to his community and his outstanding accomplishments in the field of medicine.

Wesner is the director of Geriatric Medicine at Interfaith Medical Center. He has been a solo practitioner at the same Brooklyn location for 27 years. He earned his medical degree from the State University of Haiti. He joined St. Johns Episcopal Hospital, now Interfaith Medical Center, for a rotative internship after completing an additional six-month rotation in pathology. He spent the next three years in the Department of Medicine and became chief resident. He remained very active in the Institution and served on different committees: Quality Assurance, Infection Control and the Medical Executive Committee.

Wesner has always had a special interest in the elderly. He provides free seminars to senior centers, screening examinations and flu vaccine. He is also a founding member of the Haitian Association of Physicians Abroad (AMHE), New York Chapter and frequently lectures on health care issues affecting the Haitian community. He is a member of the American College of Physicians, the New York State Medical Society, Kings County Medical Society and American Geriatric Society.

Dr. Moise and his wife Mireille, an artist, have been married for thirty-three years. They are very proud of their three children who all graduated from Harvard University. Patrick, an entrepreneur, is developing a software company in Seattle, Washington. Astrid is an aspiring academic cardiovascular surgeon. She is presently doing research on stem cells and angiogenesis at the University of Pennsylvania. Michael, a financial analyst, is presently pursuing his MBA at Columbia University. The Moises are the quintessential "Interfaith Family." His wife and four sisters all worked as registered nurses at Interfaith.

Dr. Moise's philosophy can be summarized as follows: Be all you can be, make a difference for your community, be a role model for your children, and be supportive of your family.

Mr. Speaker, Wesner Moise, M.D. has dedicated his time and medical expertise to the community through his own practice and his work at Interfaith Medical Center. As such, he is more than worthy of receiving our recognition today and I urge my colleagues to join me in honoring this truly remarkable person.

IN HONOR OF GARY A. BELLER

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mrs. MALONEY. Mr. Speaker, I rise today to pay tribute to Gary A. Beller of New York, in recognition of his retirement from an extraordinarily accomplished and distinguished career of over thirty years in the corporate legal profession.

The practice of law is itself a worthy pursuit. It is an accomplishment to do outstanding work for outstanding companies, as Mr. Beller has done for two venerable giants of the financial services industry—American Express early in his career and more recently MetLife. But what I have learned is that the preeminent characteristic of the career of Gary Beller is his devotion to best practices and legal excellence; setting the standard for highly ethical and skilled legal work and consistently exceeding that standard out of sheer energy, talent, and sense of responsibility.

As 2003 draws to a close, Gary Beller retires from his position as senior executive vice president and general counsel for MetLife. Mr. Beller joined MetLife in November 1994 and has since overseen the company's extensive legal affairs group as well as the mergers and acquisitions department. One of the notable accomplishments of his tenure at MetLife was his contribution to bringing the company public in 2003 from its previous status as a mutual company. MetLife became one of the most widely held public stocks as result of the successful completion of the transaction.

This is the kind of high quality work that has made Gary Beller well known and respected professionally. To those who know him and work with him, Mr. Beller personifies the best of the corporate legal profession. The perfect example is his chairmanship of the Insurance Marketplace Standards Association, an organization devoted to establishing the best in ethical market conduct for the insurance industry.

In addition to his professional success, Mr. Beller has also been a leader in his community. He served as Chairman of the Board of Directors of the Citizens Crime Commission of New York for 10 years and remains a Vice Chairman today. He is also a member of the Board of Directors of Lenox Hill Neighborhood House, one of New York City's renowned social service agencies.

In recognition of his outstanding accomplishments, I ask my colleagues to join me in honoring the dedication and service of Gary Beller as he retires from MetLife. He is a role model of civic involvement, corporate loyalty and professionalism, and service to the legal profession. He deserves our congratulations and well wishes as he begins his retirement.

RECOGNIZING JAMES RILEY TEETER FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize James Riley Teeter, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 351, and in earning the most prestigious award of Eagle Scout.

James has been very active with his troop, participating in many scout activities. Over the 4 years James has been involved with scouting, he has earned 32 merit badges and has held numerous leadership positions, serving as Patrol Leader, Quartermaster, Scribe, Assistant Patrol Leader, and Troop Guide. James is also a Brotherhood Member in the Order of the Arrow and is a Warrior in the Tribe of Mic-O-Say.

For his Eagle Scout project, James repaired the restroom facilities at the Platte County Fairgrounds in Tracy, Missouri. He pressure washed, painted, and mortared the restrooms, and also cleaned up the surrounding ground.

Mr. Speaker, I proudly ask you to join me in commending James Riley Teeter for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

TRIBUTE TO AL KELLY

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. McINNIS. Mr. Speaker, it is my honor to rise and pay tribute to a remarkable man from my district. Alfred E. Kelly from Alamosa, Colorado. He has dedicated his life to the betterment of others, and I am proud to call his contributions to this body of Congress.

Al has been the Director of the San Luis Valley Health Education Center for the last 25 years. His tenure in this position has been defined by his brilliance and unwavering dedication. Over the past quarter century, Al has been instrumental in the creation and administration of numerous charitable organizations, including the Tu Casa battered women's program, Hospice De Valle, and the Casa de Oro Center.

Al is also a founding member of the Valley Community Fund, an organization that assists 31 non-profit organizations in their fund raising efforts. He has also spearheaded numerous community programs for the benefit of low-income students, senior citizens and patients.

Despite his steadfast dedication to those in need, Al is a loving and devoted father, husband and friend. His engaging personality, integrity and conviction result in Al having a positive impact on everyone he meets. Scores of people throughout the San Luis Valley and our State have had their lives enhanced as the result of their interactions with Al.

Mr. Speaker, it is my honor to pay tribute to Al Kelly. Al's selfless dedication to serving those in need is a shining example to all Americans. The many charitable organizations that Al has supported are a testament to his altruistic spirit. On behalf of the countless people he has helped, and a grateful Nation, I would like to thank Al for all that he has done.

CONGRATULATIONS TO SENATOR RICHARD J. CODEY, PRESIDENT OF THE NEW JERSEY SENATE

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. PAYNE. Mr. Speaker, I am pleased to rise today to recognize an outstanding public servant from my home state, Senator Richard J. Codey; as he ascends to the position of President of the New Jersey Senate. Senator Codey is being honored by his many friends and family members at a special ceremony at the Essex County Hall of Records in Newark.

Senator Codey has established an outstanding reputation for both his legislative achievements and his contributions to the community. Senator Codey was elected to the Assembly in 1973 and re-elected three times. He has served in the Senate since 1981. He represents the 27th legislative district, which includes Caldwell, Essex Fells, Fairfield, Livingston, Maplewood, North Caldwell, Orange, Roseland, South Orange, West Orange, and part of Newark. Senator Codey was selected Senate Co-President for the 210th Legislative Session beginning January 8, 2002. He will be selected President at the 211th Session of the Legislature in January, 2004. Senator Codey was Senate Minority leader from 1998 until 2002. He chaired the Senate Health, Institutions and Welfare Committee from 1982 to 1992, and has been a champion of the mentally ill and disabled in state institutions and group homes statewide. As a result of an undercover investigation he initiated, strict background checks and improved training standards for all employees of state psychiatric institutions were put into effect.

Senator Codey has received numerous honors and awards, including the state Psychiatric Association's "Citizen of the Year" award and the state Mental Health Association's service award.

A graduate of Fairleigh Dickinson University, Senator Codey is a licensed insurance broker and president of the Olympic Agency. He is married to the former Mary Jo Rolli. They are the proud parents of two sons, Kevin and Christopher.

Mr. Speaker, I ask my colleagues here in the U.S. House of Representatives to join me in congratulating Senator Codey and wishing him all the best as he continues his outstanding public service.

THE IMPORTANCE OF SELECTING MIAMI AS THE PERMANENT SECRETARIAT OF THE FREE TRADE AREA OF THE AMERICAS AND THE VITAL PROTECTION OF FLORIDA CITRUS

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Ms. ROS-LEHTINEN. Mr. Speaker, South Florida is honored, as leaders from over thirty nations from the Western Hemisphere convene in my beautiful hometown of Miami to discuss what is to be one of the largest free trade agreements in history.

The FTAA would be the world's largest free market, with combined GDP of nearly $13 trillion in over 30 countries, and nearly 800 million consumers. The creation of the FTAA would foster economic growth and opportunity, promote regional integration and good governance. In concert with my colleagues in the U.S. Congress, I have corresponded and met numerous times with Ambassadors Zoellick and Cobb to discuss at length the selection of Miami as the headquarters for the Secretariat.

Miami is a perfect location for the Secretariat due to its bustling economy, multilingual population and its role as the hub for Latin America.

I have supported efforts on behalf of Miami that involve the Permanent Secretariat of the Free Trade Area of the Americas; especially the most current appropriations of $8.5 million that will assist our local South Florida community.

Free trade cannot encompass nations that are dictatorial, ruthless, and that lack regard for freedom and human rights. Ruthless regimes cannot be allowed entry into any free trade agreements as they lack the fundamental premise for market-based trade to succeed freedom. Without a democratic system of government, free trade cannot flourish. Brutal dictatorships in our Hemisphere should not have access into any form of free trade agreements until they hold independent elections, free its political prisoners, allow freedom of press, and respect and upheld other basic liberties.

It is the hope of our South Florida community that the Administration will select Miami as the U.S. candidate city to serve as home to the FTAA Secretariat, when an agreement is completed. Miami's special and close relationship with our Latin neighbors make the city a natural choice to play this important role.

As leaders of the Western Hemisphere meet to discuss the vital issue of a tentative FTAA, it is important to remember our local citrus industry.

As we strive to open new markets and expand opportunities for U.S. workers and businesses through seeking new trade agreements, we must ensure that our workers and businesses have fair opportunities to compete in the increasingly global marketplace.

Any reduction of tariffs on imported orange juice would impede these important objectives. These tariffs help to promote competition, enabling us to compete on a level playing field in the global marketplace.

It is very clear that any reduction in the tariff would have serious consequences on Florida's citrus industry and could potentially devastate the State's economy. The citrus industry is the State's second largest, contributing over $9 billion to our economy. In addition, the citrus industry accounts for nearly 90,000 direct and indirect jobs throughout Florida and the country.

As delegates congregate in South Florida to discuss the future of trade in the Western Hemisphere, I call upon our leaders of the Hemisphere to not forget the hard workers of Florida and the importance of Florida Citrus.

PAYING TRIBUTE TO AL HOMANN

SPEECH OF

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 11, 2003

Mr. McINNIS. Mr. Speaker, it is my honor to rise and pay tribute to a remarkable man from my district. Al Homann from Silverton, CO was recently named Silverton's "Citizen of the Year," and I am proud to call his contributions to the attention of this body of Congress.

The charitable acts that culminated in Al's recognition as "Citizen of the Year" are too numerous to list. He is an active member of the American Legion, and an organizer of the "Hoop Shoot," a yearly event that raises funds for local scholarships. In addition, Al has spread his joy for life to countless audience members as a performer in the Miner's Union Theater. Al has also volunteered in countless community events, including Fourth of July parades and sporting events. Silverton is truly a better place as the result of Al's selfless dedication

Mr. Speaker, it is my honor to pay tribute to Al Homann. His selfless dedication to serving others is a shining example to all Americans. The many charitable events that Al has supported are a testament to his altruistic spirit. On behalf of the countless people he has helped, and a grateful nation, I would like to thank Al Homann for all that he has done, and congratulate him on his receipt of a well-deserved award.

RECOGNIZING PATRICK TAYLOR SAMPSELL FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Patrick Taylor Sampsell, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 351, and in earning the most prestigious award of Eagle Scout.

Patrick has been very active with his troop, participating in many scout activities. Over the three years Patrick has been involved with scouting, he has earned 44 merit badges and has held numerous leadership positions, serving as Patrol Leader, Quartermaster, Scribe, Assistant Patrol Leader, and Senior Patrol Leader. Patrick has also received the honor of Arrow of Light, is a Brotherhood Member in the Order of the Arrow, and is a Brave in the Tribe of Mic-O-Say.

For his Eagle Scout project, Patrick refurbished 60 fire hydrants in Platte City, Missouri by scraping, cleaning, and repainting the hydrants orange and black. He also cleaned the area surrounding the hydrants.

Mr. Speaker, I proudly ask you to join me in commending Patrick Taylor Sampsell for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

RED HOT MAMAS

HON. C.L. "BUTCH" OTTER

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. OTTER. Mr. Speaker, I rise today to recognize and praise the efforts of a group of women known across America as "Idaho's Ambassadors of Fun." They are the Red Hot Mamas—a family oriented musical-comedy troupe from Coeur d'Alene, ID. These are women in the prime of their lives, all over the age of 30, who revel in sharing their good humor and infectious high spirits. The ladies wear brightly colored house dresses and 5-foot-tall hats made from empty grocery cartons, milk jugs, balloons or other household items. They can be found most days in one parking lot or another in Coeur d'Alene, practicing their precision drill-team routines. The Red Hot Mamas performed at the 54th Presidential Inaugural Parade in Washington, D.C., on ABC's "Good Morning America" and "Nightline" programs, at Philadelphia's Independence Day Parade; Hershey, Pennsylvania's Centennial Anniversary Parade; the Fiesta Bowl Parade in Tempe, Arizona; the Holiday Bowl Parade in San Diego; the Seafair Parade in Seattle and many more. Many of their performances have raised money for various charities. They soon will be traveling to England to perform in London's New Year's Day Parade—the world's largest. Once again they will be spreading the word about their beautiful home state of Idaho, and spreading joy in the process. I want to thank these unique, fun-loving ladies and let them know their efforts are appreciated.

TRIBUTE TO ABIGAIL RICE

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 11, 2003

Mr. McINNIS. Mr. Speaker, it is with profound sadness that I rise today to recognize the life and contributions of Abigail Rice from Durango, CO. Abi's life was recently cut short in a tragic accident. As her family mourns their loss, I think it is appropriate to call her tremendous contributions to the attention of this body of Congress and our Nation.

Abi was an excellent student. A member of the Dean's List at Colorado State University, she was majoring in Natural Sciences. Abi was also a member of the PreMedica Club, and the Air Force ROTC. She had plans to attend medical school following graduation and her dream was to serve her country in the United States Air Force as a flight surgeon.

Abi also excelled in athletics. She was a High School Barrel Racing State Champion, an accomplished participant in 4–H, and a co-captain of Colorado State's Varsity Trap and Skeet Team.

Despite Abi's many academic and athletic talents, those who knew her well say that her greatest attribute was her loving and caring personality. Abi had an infectious love of life and her many friends and family will miss her deeply.

Mr. Speaker, it is my honor to rise and pay tribute to Abigail Rice. Abi was an amazing young woman and my heart goes out to her family and friends during this difficult time.

RECOGNIZING KYLE D. SNYDER FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Kyle D. Snyder, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 351, and in earning the most prestigious award of Eagle Scout.

Kyle has been very active with his troop, participating in many Scout activities. Over the three years Kyle has been involved with Scouting, he has earned 40 merit badges and has held numerous leadership positions, serving as Assistant Patrol Leader, Patrol Leader, Quartermaster, and Chaplain Aide. Kyle has also received the honor of Arrow of Light, is a Brotherhood Member in the Order of the Arrow, and is a Brave in the Tribe of Mic-O-Say.

For his Eagle Scout project, Kyle planned and built ten blue birdhouses and one wood duck house. He then placed them along a nature trail and the pond at Riverview Park in Platte City, Missouri.

Mr. Speaker, I proudly ask you to join me in commending Kyle D. Snyder for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

RECOGNIZING THE RETIREMENT OF JIM L. RIDLING OF MONTGOMERY, ALABAMA

HON. MIKE ROGERS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. ROGERS of Alabama. Mr. Speaker, I rise today to pay tribute to Jim L. Ridling of

Montgomery, Alabama, on the occasion of his retirement as President, CEO and Chairman of the Board of Southern Guaranty, a part of Winterthur Insurance Company.

Jim was born and raised in Arkansas. He began his professional career as a Management Trainee with Fireman's Fund Insurance Companies in 1967. By 1984, he was Executive Vice President of United States Operations. In 1987, he traded his ownership in Fireman's Fund for ownership in Southern Guaranty Insurance Company, then a subsidiary of Fireman's Fund, and moved to Montgomery, Alabama, as President and CEO of Southern Guaranty.

Throughout his business career, Jim Ridling has been involved in varied professional organizations. He is a member of the International Insurance Society and the National Association of Independent Insurers. He is a past member of the University of Alabama School of Business' Board of Advisors; the Advisory Board of the University of Arkansas Business School; and a graduate of Stanford University's Inaugural Leadership Effectiveness Studies Program. Currently, he is a member of the School of Business Advisory Council for Troy State University.

Jim Ridling continues to be very much involved in his community. He is a member of the Executive Board of the Montgomery Air Force Association; a member of the Board of Directors of the Business Council of Alabama; a member of the Board of Directors of the Montgomery Area Chamber of Commerce and Chairman of their Military Council; and a member of the Montgomery Area Committee of 100. Jim is also President of the Board of Directors of the Montgomery Ballet; a member of the Board of Directors of the Montgomery Museum of Fine Arts and a Boy Scouts Board of Director.

I congratulate Jim Ridling for his accomplishments and his willingness to share of himself in service to his new adopted state. On the special occasion of his retirement celebration on November 20, I wish him, his lovely wife Cathy and their two daughters, Erin and Hannah, the very best in the future.

FREEDOM FOR NORMANDO HERNÁNDEZ GONZÁLEZ

HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I rise to inform this Congress about Normando Hernández González, a prisoner of conscience in totalitarian Cuba.

Mr. Hernández, age 32, and the director of the College of Independent Journalists, has been a chronicler of truth amid the lies and deceit of Castor's villainous regime. As a journalist who exposed the ruthless repression and failed policies of Cuba's totalitarian dictator, Mr. Hernández has been continuously harassed by Castro's political police. He was detained and released miles from his home on at least two occasions and his telephone has been cut off since June 15, 2002.

Men and women who seek truth and freedom are the enemies of Castro's totalitarian dictatorship. On March 24, 2003, Mr. Hernández was sentenced to 25 years in the Cuban totalitarian gulag. According to the sham indictment "He prepared reports . . . in which he attacked the health system (and) the education provided in this country, questioned the justice system, tourism, culture, agriculture. . . ."

Mr. Hernández, for the "crime" of reporting truth instead of government mandated lies, is languishing in Castro's gulag. According to a statement by his wife, Yarai Reyes, on September 3, 2003, the food in the gulag was often rotten, Mr. Hernández had no electricity in his cell and was being refused all medical care.

Mr. Speaker, last Thursday, in his address at the 20th anniversary of the National Endowment for Democracy, President George W. Bush said "Communism, and militarism and rule by the capricious and corrupt are the relics of a passing era. And we will stand with these oppressed peoples until the day of their freedom finally arrives." President Bush went on to state, "The advance of freedom is the calling of our time; it is the calling of our country."

My Colleagues, I applaud President Bush's stirring remarks and I ask that we answer his call to advance freedom by demanding liberty for every prisoner of conscience. Today I ask the entire Congress to cry with one, united, voice for the immediate release of Normando Hernández González.

RECOGNIZING BRETT MICHAEL BABCOCK FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Brett Michael Babcock, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 351, and in earning the most prestigious award of Eagle Scout.

Brett has been very active with his troop, participating in many Scout activities. Over the two years Brett has been involved with Scouting, he has earned 27 merit badges and has held numerous leadership positions, serving as Patrol Leader, Librarian, Senior Patrol Leader, and Assistant Senior Patrol Leader. Brett is also a Brotherhood Member in the Order of the Arrow and is a Brave in the Tribe of Mic-O-Say.

For his Eagle Scout project, Brett did landscaping for the courtyard at Heritage Village Assisted Living Center in Platte City, Missouri. Brett planted and mulched two trees, built a birdfeeder, and also constructed two wooden benches that were placed in the courtyard for use by the residents.

Mr. Speaker, I proudly ask you to join me in commending Brett Michael Babcock for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

PAYING TRIBUTE TO VERNA TOWNE

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. McINNIS. Mr. Speaker, it is my honor to rise and pay tribute to a remarkable woman from my district. Verna Towne from Mancos, Colorado was recently named "Citizen of the Year" for the Mancos Valley. I am proud to call her contributions to the attention of this body of Congress and this nation today.

The charitable acts that culminated in Verna's recognition as "Citizen of the Year" are too numerous to list. She is an active member of the VFW and Lioness clubs, volunteers her time at the Mancos Senior Center, and is instrumental in the organization of the USDA Commodity Give-Away. Although she donates her time in many ways, Verna is best known for her excellent cooking. She often serves meals at a church breakfast club for teens, the Good Samaritan Center, and 9 Health Fairs as well.

Verna always extends a hand to those in need. She can often be seen shoveling snow from a friend's driveway, or delivering food to those in need of a home-cooked meal. Verna's dedication can best be described as tireless altruism and her hard work on behalf of others often extends late into the night. Verna is truly a compassionate and loving woman and Mancos is lucky to have her.

Mr. Speaker, it is my honor to pay tribute to Verna Towne. Verna's selfless dedication to serving others is a shining example to all Americans. The many charitable events Verna has supported over the years are a testament to her vibrant and altruistic spirit. On behalf of the countless people she has helped, and a grateful nation, I would like to thank Verna for all she has done, and congratulate her on the receipt of a well-deserved award.

HONORING THE CONFEDERATED TRIBES OF SILETZ INDIANS ON THE 26TH ANNIVERSARY OF THE RESTORATION TO FEDERAL RECOGNITION

HON. DARLENE HOOLEY

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Ms. HOOLEY of Oregon. Mr. Speaker, I rise today to honor the Confederated Tribes of Siletz Indians as they celebrate their 26th anniversary of the Restoration to Federal Recognition on November 15, 2003.

The Confederated Tribes of Siletz Indians is a confederation of 27 tribes which originally ranged from Northern California to Southern Washington. In 1954, the Confederated Tribes of Siletz Indians were one of many tribes whose federal status was terminated by Congress, and all their lands were taken away. The Siletz reservation, which once exceeded 1.1 million acres was completely gone, and the confederation was no longer recognized.

While nothing could destroy the tribes' culture and traditions that were passed from generation to generation, the lack of federal recognition and support hurt the Siletz.

In the late 1960s, a group of tribal members which recognized the severe effects that the termination was having on the tribe began to work to reverse the effects. They restored the tribal cemetery and created programs for drug and alcohol rehabilitation, job training, and other social services. As they worked to fight against the ills that termination had brought on, the group realized that it must regain its federal recognition.

After many years of intense lobbying, the tribe regained its federal recognition on November 18th, 1977 when President Carter signed an act of Congress restoring the Siletz. The Confederated Tribes of Siletz Indians were the second tribe in the Untied States and the first in Oregon to have their federal recognition restored.

Since being restored, the tribe has blossomed and re-established nearly all of its institutions of government. This re-establishment of tribal government has led to better service programs and economic growth which in turn has led to greater preservation of tribal history and tradition.

With its recognition restored and tribal government re-established, the tribe began to grow, and that growth continues to this day. In 1983, a community center was built, serving as an all-purpose gathering place for tribal and non-tribal activities. 1991 brought the addition of a community health clinic which serves all members of the community, tribal and non-tribal. An administration building was developed in 1995 which provides many services to tribal members on the reservation and in eleven surrounding counties in Oregon.

In 1995 the tribe developed its biggest economic project to date, the Chinook Winds Casino and Convention Center. This venture, combined with the other tribal projects, made the tribe one of the largest employers in Lincoln County.

This growth didn't end with the creation of the casino and convention center. Since 1995, the tribe has built a Dance House, the Siletz Tribal Business Corporation, and most recently the Siletz Valley School. The school, a public charter school that serves 170 children from the surrounding community, was opened after the local school closed due to budget cuts.

As you can see, since their successful fight to regain federal recognition, the Confederated Tribes of Siletz Indians have been dedicated to improving the lives of their 4,000 members as well as the lives of the people of Oregon. One of the best examples of this dedication to improvement is the Siletz Tribal Charitable Contribution Fund, which has distributed more than $1.5 million to projects in Oregon.

Today it is my pleasure to honor and recognize the Confederated Tribes of Siletz Indians as they celebrate their 26th anniversary of their Restoration to Federal Recognition.

RECOGNIZING MR. FRED SALEM

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. KILDEE. Mr. Speaker, I rise before you today to recognize the accomplishments of my longtime friend Mr. Fred Salem. Fred Salem is a child advocate and philanthropist. His hard work and dedication to the people of Genesee County is without doubt commendable. On November 12, 2003, the community along with his family gathered to say thank you during a party held at the Ramada Inn located in my hometown of Flint, Michigan.

Fred Salem has been a resident of Mt. Morris Township for 35 years. If one could sum up the character of Fred Salem, it would be said that he is a concerned, compassionate, loyal and dedicated citizen. Fred is a humanitarian. Fred has dedicated numerous hours and dollars toward worthy causes. Through his efforts many children and organizations have been able to fulfill dreams that would have otherwise been dismissed. Fred is currently affiliated with a number of organizations, those organizations include but not limited to, the Whaley Children's Center, St. John Vianney Day Care, New Life Childcare & Preschool, Girl Scouts and Brownies Troops of Genesee County, Boy Scouts, The Sylvester Broome Center, Big Brothers and Sisters Organization. Fred is also involved with the Flushing Community Church of the Nazarene, Dr. John Socey and staff, Dr. Chambers & Staff, St. Pius Church and Bible groups, St. George, New Life Christian Fellowship, St. Robert's Pre-K classes (all), St. Robert's Kindergarten classes, Flushing Kindergarten, St. Agnes Church, 96.1 and 93.7 radio stations' picnic, Johnny Burke Birthday Party, and the Northern High School Class Reunion.

On a personal note, each year Fred and his wife Cindy host the annual Community Fourth of July fireworks display in their backyard. Fred steps up when the Government can't. At his residence Fred has transposed his backyard into a miniature Disney Land. Children from ages 2 and beyond come to partake in the fun festivities that are held there year around. One attraction that children enjoy is the go-cart course he had installed and also the historical walkthrough, which includes an old fashion store, antique cars and trucks.

Aside from being an outstanding leader and role model, he is a wonderful devoted family man to his wife Cindy.

Mr. Speaker, as a member of Congress, I ask my colleagues in the 108th Congress to please join me in congratulating my friend Fred Salem. He has served his community with enthusiasm and concern. I wish him all the best in the future.

RECOGNIZING MARCUS W. PHILLIPS FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Marcus W. Phillips, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 362, and in earning the most prestigious award of Eagle Scout.

Marcus has been very active with his troop, participating in many Scout activities. Over the ten years Marcus has been involved with scouting, he has earned 21 merit badges and has held numerous leadership positions, serving as Chaplain Aide, Quartermaster, Patrol Leader, and Scribe. Marcus earned the honor of Brave, Warrior, and Firebuilder in the Tribe of Mic-O-Say and served on staff at H. Roe Bartle Scout Reservation teaching younger scouts woodworking.

For his Eagle Scout project, Marcus organized and supervised ten other Scouts in the landscaping of a section of the Children's Garden at Duncan Road Baptist Church in Blue Springs, Missouri. They spent 150 hours planting trees and shrubs, placing decorative rock, and adding both edging and fencing to the Garden.

Mr. Speaker, I proudly ask you to join me in commending Marcus W. Phillips for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

TRIBUTE TO PAULA SCHAEFER

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. McINNIS. Mr. Speaker, it is with profound sadness that I rise today to recognize the life and contributions of a remarkable woman from my district. Paula Schaefer from Durango, Colorado passed away recently at the age of 54. She will long be remembered for charitable acts in her community, her friendly disposition, and her unyielding love for her family.

Paula was born in Wichita Falls, Texas in 1948. It was there that she met and married Lyndall, her husband of 36 years. Upon moving to Durango, Paula became an accomplished Businesswoman. She served as the President of the Durango area Association of Realtors, and was recognized as "Realtor of the Year" in 2003.

Paula's contributions to the Durango community were extensive. As a member of the Lion's Club, and co-founder of the local chapter of Habitat for Humanity, Paula was dedicated to helping those in need. There is no doubt that countless people are better off as the result of Paula's selfless commitment to others.

Mr. Speaker, the dedication and integrity demonstrated throughout Paula Schaefer's life certainly deserves the recognition of this body of Congress and our nation. There is no question that Paula will be remembered as a great businesswoman. However, she will best be remembered as a selfless person, a great friend, and a dedicated mother and wife. My heart goes out to Paula's loved ones in this difficult time of bereavement.

TRIBUTE TO WILLIAM AUSTIN

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. MATSUI. Mr. Speaker, I would like to congratulate William Austin on being honored with the National Caring Award for his efforts to help hearing-impaired children around the world. Through his tireless work at the Starkey Hearing Foundation, William has helped provide over 80,000 hearing aids to children in 70 countries since 2000.

William has worked constantly on innovative ways to improve hearing technology and serves many high profile celebrities and athletes. But his true calling lies in helping children around the world who suffer from hearing impairment. By donating hearing aids, batteries and other hearing products to countless needy children, he has given them the ultimate gift—the gift of hearing. Where there was once silence, thousands of children can now hear their mother's voice, the falling rain, and the sweet sound of music.

The Caring Institute, who honored William with the award, seeks to promote the values of caring, integrity and public service. Those selected to receive the National Caring Award, including William, represent the best of these qualities.

Again, I congratulate William. And thank you for all your work for hearing impaired children around the world.

TRIBUTE TO MR. ALBERT H. VIERLING, JR.

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. ANDREWS. Mr. Speaker, I rise today to pay tribute to Mr. Albert H. Vierling, Jr., a community leader and veterans advocate from Berlin, New Jersey who died suddenly on October 24, 2003.

A decorated Army Veteran of the Korean War, Al was a member of ANMAC VFW Post #6253 where he served as Service Officer and was the Commander for 12 years. He was a member, Service Officer, and past commander of American Legion Post #271. Al was the Commander of Camden County VFW District 1984–1985 receiving the All American District Commander Award. He was a 1977 founding member of the Camden County Veteran Advisory Committee. Al was a volunteer with the Camden County Veterans Affairs Office since 1990, becoming a part time employee with the Office while serving as Supervisor of Veterans Interment for Camden County.

Al was also a leader in the greater Philadelphia labor community. Retiring in 1977, Al was the Shop Steward for Teamsters Union Local 628 of Philadelphia where he worked for over 25 years. He was the building maintenance supervisor for the borough of Berlin for over 10 years. Additionally, Al was very active in community athletics as a founder and past president of the Interboro Athletic Association, former coach of the Overbrook Cowboys, and former member and coach of the Berlin Athletic Association.

Whether he was helping veterans navigate the Veterans Administration bureaucracy, selling poppies each May to raise money for South Jersey veterans or organizing scores of events to pay tribute to our nation's heroes, Mr. Vierling worked tirelessly to assist and honor veterans. Al did everything in his power to make sure that our government upheld the promises it made to veterans and that the American people did not forget the sacrifices made and the freedom won by those who served our nation in uniform. Additionally, on the athletic field, Al taught scores of South Jersey youth the value of hard work and dedication.

Mr. Speaker, Al Vierling left the First Congressional District of New Jersey a better place. He touched the lives of hundreds of people in South Jersey. His lifelong service will not be forgotten.

TRIBUTE TO JOSE MACARIO VALDEZ

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. MCINNIS. Mr. Speaker, it is with a solemn heart that I pay tribute to Jose Macario Valdez of Trinidad, Colorado. Jose passed away recently at the age of 79, and as I look back on his life, I see the story of a great American. As his family mourns their loss, I think it is appropriate that we remember Jose's life, and celebrate the outstanding contributions that he made to the community of Trinidad, and this country.

Jose was born in Trinidad in 1924. During World War II, he answered his country's call to duty and joined the Army Air Corps. As an Air Transportation Technician in the Pacific Theater, Jose served with remarkable valor and courage on nearly 100 missions. For his heroism, Jose was awarded the Distinguished Flying Cross, the Bronze Star, a Good Conduct Medal, and the Burma Asiatic Pacific Service Medal. Jose's awards are illustrative of the courage and valor that defined his selfless protection of our country.

Upon returning to Trinidad, Jose met and married Prospera Lovato, his wife of 56 years. He went to work for CF&I Steel for eight years. He then became a coal miner before going to work for the City of Trinidad as a power plant fireman, a position he held for 24 years. Jose was deeply involved in the Trinidad community. He was an active member of the Sociedad De San Antonia de Padua and the Holy Trinity Church as well.

Mr. Speaker, it is my honor to pay tribute today to a fine American. A loving and devoted husband, father, grandfather and great grandfather, Jose Macario Valdez will be deeply missed by his family and the Trinidad community. I am proud to call Jose's valiant protection of our country, and selfless dedication to the Trinidad community to the attention of this body of Congress and this nation here today. My thoughts go out to his family in this difficult time.

TRIBUTE TO PETE HAUTZINGER

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 17, 2003

Mr. MCINNIS. Mr. Speaker, it is my honor to rise and pay tribute to a remarkable man from my district. Pete Hautzinger of Mesa, Colorado was recently named "Prosecutor of the Year." As a District Attorney, Pete works tirelessly for the betterment of his community, and I am pleased to call his contributions to the attention of this body of Congress, and this Nation here today.

Pete graduated from the University of Colorado School of law in 1988, and upon graduation, he became a Deputy District Attorney for Adams County. Later, Pete took a position with the 21St Judicial District Attorney's Office in 1992, where he currently serves as a Chief Deputy District Attorney. Pete's experience is vast. He has tried 97 jury trials, 51 of which have been at the felony level.

Pete approaches his job with the best interests of his district's citizens in mind. As a leading advocate for the victims of domestic violence, Pete works tirelessly in conjunction with police and victims to assure that justice is achieved. Pete also works with various domestic violence organizations such as Men Against Violence, the Domestic Violence Taskforce, and the Western Slope Center for Children. He is truly dedicated to protecting women and children from the terrors of domestic violence.

Pete's contributions reach far beyond the courtroom. Despite his untiring dedication to his work, Pete manages to find time to be a great father and is the volunteer coach for his children's soccer and basketball teams. Pete is also involved in passing along his knowledge and ethics to the next generation of prosecutors and police officers. Each year, he teaches a number of classes and supervises a number of young Deputy District Attorneys.

Mr. Speaker, Pete Hautzinger is truly a tremendous asset to his community. I know that the people of Mesa, Colorado feel safer as the result of his tireless dedication to the pursuit of justice. I am proud to join the people of Mesa in thanking Pete for his service and congratulating him for his achievements.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference.

This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, November 18, 2003 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

NOVEMBER 19

9 a.m.
Armed Services
To hold hearings to examine current Army issues.
SH–216

9:30 a.m.
Governmental Affairs
To hold hearings to examine the threat of agroterrorism.
SD–342

Judiciary
To hold hearings to examine pending judicial nominations.
SD–226

10 a.m.
Health, Education, Labor, and Pensions
To hold hearings to examine S. 741, to amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, proposed Mammography Quality Standards Reauthorization Act, proposed Medical Device Technical Corrections Act, proposed Organ Donation and Recovery Improvement Act, and pending nominations.
SD–430

2:30 p.m.
Governmental Affairs
Oversight of Government Management, the Federal Workforce, and the District of Columbia Subcommittee
To resume hearings to examine the August 2003 Northeast blackouts and the Federal role in managing the nation's electricity.
SD–342

NOVEMBER 20

Time to be announced
Governmental Affairs
Business meeting to consider the nominations of James M. Loy, of Virginia, to be Deputy Secretary of Homeland Security, and Scott J. Bloch, of Kansas, to be Special Counsel, Office of Special Counsel.
Room to be announced

9 a.m.
Governmental Affairs
Investigations Subcommittee
To resume hearings to examine the role of professional organizations like accounting firms, law firms, and financial institutions in developing, marketing and implementing tax shelters.
SH–216

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings to examine drug importation.
SR–253

10 a.m.
Banking, Housing, and Urban Affairs
Business meeting to consider S. 1531, to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall, and the nominations of Alicia R. Castaneda, of the District of Columbia, to be a Director of the Federal Housing Finance Board, and Thomas J. Curry, of Massachusetts, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation; to be immediately followed by a hearing on improving the corporate governance of the NYSE.
SD–538

2 p.m.
Banking, Housing, and Urban Affairs
To resume hearings to examine current investigations and regulatory actions regarding the mutual fund industry.
SD–538

SENATE—*Tuesday, November 18, 2003*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, who is unsearchable in Your judgments and in Your ways past finding out, we experience awe before the mystery of Your being and confess that we can say nothing worthy of You. You decide the number of the stars, and call each one by name.

Lord, You have given us the gift of this day, so please help us to use it for Your glory. Continue to keep us from the whispers of sin and teach us to act wisely.

Guide our Senators in their deliberation. Keep their steps on Your path, and may they not waver from following You. Today, let our words, and even our thoughts, bring You pleasure. We love You, Lord, for You are our strength. We pray in Your loving Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HARRY REID led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will begin an hour of debate prior to the cloture votes on the nomination of Thomas Dorr to be Under Secretary of Agriculture for Rural Development. We hope that cloture will be invoked and allow the Senate to proceed to a vote on the confirmation of this nomination.

Following the cloture votes, the Senate will resume consideration of the VA–HUD appropriations bill. Senators BOND and MIKULSKI reached an agreement yesterday which should bring the bill to a conclusion early today. We may be able to finish this morning or early afternoon.

In addition, today we may consider the nomination of MG Robert T. Clark to be a lieutenant general in the U.S. Army. This nomination will be considered under a 2-hour time limit which was agreed to last week.

Finally, I add that we will also be scheduling any conference reports that may become available. Rollcall votes will occur throughout the day today and Members will be notified as they are scheduled.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

THOMAS C. DORR TO BE UNDER SECRETARY OF AGRICULTURE FOR RURAL DEVELOPMENT AND MEMBER OF THE BOARD OF DIRECTORS OF THE COMMODITY CREDIT CORPORATION

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the nomination of Thomas C. Dorr, which the clerk will report.

The legislative clerk read the nomination of Thomas C. Dorr, of Iowa, to be Under Secretary of Agriculture for Rural Development; and Thomas C. Dorr, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation.

The PRESIDENT pro tempore. Under the previous order, the time until 10:30 shall be divided equally between the chairman and ranking member of the Agriculture Committee or their designees.

The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, I yield myself such time as I may consume under the order.

As chairman of the Committee on Agriculture, I am pleased to announce that the committee acted favorably on the nomination of Thomas Dorr to be Under Secretary for the Department of Agriculture for Rural Development and has reported that nomination to the Senate. We understand that considerable debate time is planned to be used and so the leader decided to file a cloture on the nomination so we could bring this matter to a conclusion. We will have a vote on cloture after the debates. I hope the Senate will vote to cut off debate and we can move to a vote on this nomination and confirm Mr. Dorr in this job as Under Secretary of Agriculture.

Mr. Dorr has served capably under a recess appointment which was made by the President on August 9, 2002. The Senate committee reviewed his qualifications and found him to be well qualified. Hearings were held back in 2001 when the other party was in the majority and controlled the Senate Agriculture Committee. Opposition to the nomination of Mr. Dorr was expressed at that time, and the nomination was virtually blocked and returned to the President without being acted upon.

The President resubmitted that nomination, and it has languished, in effect, for a good while, while Senators who have been opposed to the nomination have expressed their concerns. It is clear that the nominee is very well qualified, not only because of his experience in business and his knowledge of rural America and the problems we face, but his understanding of the job at the Department of Agriculture which he has been asked to assume.

Mr. Dorr oversees the Department's rural development mission area that consists of three agencies, $14 billion of annual funding authority for loans, grants and technical assistance to rural residents, communities and businesses, and an $80 billion portfolio of existing infrastructure loans to rural America.

Rural development has over 7,000 employees across the United States, in Puerto Rico, the Virgin Islands, and the western Pacific trust territories. This is a big job. It is an enormous responsibility and requires someone with a business background and with administrative skills to manage an agency of this size.

Mr. Dorr has a broad base of experience to draw upon in agriculture, as well as financial and business experience. He has served as a member of the board of directors of the Seventh District Federal Reserve Bank of Chicago, the Iowa Board of Regents from 1991 to 1997, and as a member and officer of the Iowa and National Corn Growers Associations.

Prior to this appointment, Mr. Dorr was the president of a family agribusiness company consisting of corn and soybean farms, a State-licensed commercial grain elevator and warehouse, and two limited liability companies. Mr. Dorr is a graduate of Morningside College, has a BS degree in business administration, and he is from Marcus, IA. The support for the nomination is widespread. I ask unanimous consent that copies of letters endorsing his nomination be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

November 3, 2003.

Dear Senator: The below signed organizations urge you to vote in support of the confirmation of Thomas Dorr as Under Secretary of Rural Development, United States Department of Agriculture. The position of Under Secretary of Rural Development is critical in a number of ways to the success of rural America and agriculture communities.

Mr. Dorr has proven that he has the skill and experience necessary to lead USDA's Rural Development efforts. The Senate Committee on Agriculture, Forestry and Nutrition recognizes the importance of this position and favorably reported (14–7) Mr. Dorr's nomination in bipartisan fashion on June 18, 2003.

The confirmation of Mr. Dorr will allow these vital programs the greatest possibility of success. Mr. Dorr deserves an up or down vote in the United States Senate, we urge you to vote for his confirmation.

Sincerely,

American Farm Bureau Federation.
American Meat Institute.
American Soybean Association.
National Association of Wheat Growers.
National Cattlemen's Beef Association.
National Chicken Council.
National Corn Growers Association.
National Cotton Council.
National Milk Producers Federation.
National Pork Producers Council.
National Turkey Federation.
United Egg Association.
United Egg Producers.
United Fresh Fruits and Vegetables Association.
USA Rice Federation.

Office for the Advancement
of Public Black Colleges,
October 2, 2003.

Hon. Tom Harkin,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Dear Senator Harkin: As chair of the Council of 1890 Presidents/Chancellors, I am writing to express our appreciation for your continued leadership and to convey our support of Thomas C. Dorr, Under Secretary, Rural Development, U.S. Department of Agriculture.

For your information, the Council represents the nation's 18 Black-land-grant colleges/universities and is a policymaking body that is committed to advancing the land-grant mission. The 1890s are located in 17 states, the District of Columbia and the U.S. Virgin Islands and enroll nearly 50 percent of all students attending HBCUs. We work closely with the National Association of State Universities and Land-Grant Colleges and provide leadership for the Council of 1890 Colleges/Universities.

As ranking member of the Senate Agriculture, Nutrition and Forestry Committee, your support of the 1890s has made a significant difference in the infrastructure of our institutions and in our ability to assume greater responsibility for advancing and securing the nation's food and agricultural enterprise. Guided by our 1890 Strategic Plan (copy enclosed), our universities are investing heavily and wisely in:

Serving as a vital force in the conduct of teaching, research and extension and public service: serving as an adjunct to the American economy; expanding and creating new partnerships with socially and economically distressed communities and government, business and industry; transforming the knowledge we produce into solutions designed to improve the quality of life of farmers and families in rural communities and; providing a seamless network of resources and services to key stakeholders in the food and agricultural enterprise.

While these achievements are worth noting, the 1890s continue to face nearly insurmountable barriers in accessing the breath of programs administered by USDA. In response, Under Secretary Dorr has been an invaluable resource in helping us build new and complementary relationships within and without USDA. Most recently, he represented the Department at a town hall meeting, "Small Farmers' Voices," sponsored by the Council and held at Alcorn State University.

More than 200 farmers from the Delta area attended the forum—unabashed and relentless farmers who represent the bottom of America's agriculture industry. In spite of the challenge, Tom was superlative in guiding the farmers through the economic and political realities of the global marketplace and helping them to understand the makeup of programs and the allocation of resources at USDA. He has set the state for sustained dialogue between USDA, the 1890s and farmers in distress. This represents only a snapshot of the many challenges that Under Secretary Dorr has helped us negotiate.

With your strong leadership and unrelenting support of public servants like Thomas C. Dorr, we are confident that the 1890s will continue to serve as an economic instrument of the state and the nation.

Sincerely,

Clinton Bristow,
Chair, Council of 1890 Presidents/Chancellors & President, Alcorn State University.

Federal Reserve Bank of Chicago,
October 9, 2001.

Hon. Tom Harkin,
Chairman, Senate Committee on Agriculture, Nutrition and Forestry, Russell Senate Office Building, Washington, DC.

Dear Senator Harkin: I am writing to you in support of the nomination of Mr. Thomas C. Dorr. I have known Tom for almost seven years and have come to greatly respect and admire his dedication to the development of sound economic and agriculture policies. My initial interactions with Tom occurred during the time he served on the Board of Directors of the Federal Reserve Bank of Chicago. During this time and over the years that have followed, I have observed Tom in numerous settings. These settings have ranged from formal Chicago Fed Board of Directors' meetings, to a variety of less formal settings including celebratory dinners, social functions, and conventions, among others. No matter what the occasion, I can honestly say that I have always found Tom to be the consummate gentleman, a good listener, and someone who always offers comments and suggestions grounded in a solid understanding of the issues.

I have always found Tom's insights to be extremely valuable in a variety of areas, most notably that related to agricultural and economic policy. However, it would be an oversight not to mention the solid advice and counsel he has provided on issues dealing social problems in general and the impact of technological change on life in rural and agriculture communities, in particular. Tom was one of a handful of people to understand that while the adoption of technological advances in the farm sector would lift productivity to new levels, these same changes could also have adverse implications for the viability of the traditional family farm. In particular, he often expressed concern for the plight of the traditional family farm, an institution facing intense competitive pressures from larger more efficient operators and one typically requiring significant off-farm income just to break even. In the face of these developments, Tom continually raised concern about the lack of a coherent plan for maintaining the viability of the small farm on the one hand and dealing with the social issues likely to result from their potential displacement on the other.

As I noted above, I admire and respect Tom. I understand that some parties have claimed that Tom is insensitive to issues related to diversity. As an African American that recently sponsored the Federal Reserve Bank of Chicago's bank-wide diversity program, I can honestly say that I have never felt uncomfortable in Tom's presence. I have never heard him offer disparaging remarks about people of color, the intrinsic value of diversity, or about small farmers for that matter. Based on my years of interacting with Tom, I am certain that he is not racist in any way and would challenge anyone that would claim otherwise.

Needless to say, I am a big supporter of Tom Dorr. He is bright, articulate, and personable. He accepts critical comments well, is not afraid to speak his mind, and demonstrates rigorous economic thinking at all times. Finally, he has a deep understanding and appreciation of the issues confronting our rural and agriculture communities and I have no doubt that he will serve our country well. I hope that you find my assessment helpful in your deliberations. If I can provide any further information, please feel free to contact me.

Sincerely,

William C. Hunter.

National Corn Growers Association,
March 19, 2002.

Hon. Tom Harkin,
Chairman, Senate Agriculture, Nutrition and Forestry Committee, Senate Russell, Washington, DC.

Dear Chairman Harkin: For over forty-five years, the National Corn Growers Association (NCGA) and its affiliated states have represented US corn growers working towards a prosperous rural economy and a successful agricultural industry. With over 31,000 dues-paying corn growers from 48 states and representing the interest of more than 300,000 farmers who contribute to corn check off programs, NCGA takes seriously its commitment to our membership and our colleagues throughout the agricultural sector.

Recently, your Committee completed a hearing to review the nomination of Tom Dorr for Under-Secretary for Rural Development. For the past year, the Committee has let the nomination languish, thereby preventing the Department of Agriculture (USDA) from providing needed leadership in rural America. Throughout this process, we have been amazed regarding the controversy surrounding Mr. Dorr's nomination. While good people can disagree about ideology and philosophy, we do not agree holding rural America hostage to "inside the beltway" politics.

Mr. Dorr has devoted himself to the well being of the family farmer and his commitment to domestic agriculture is unparalleled. As a longtime farmer and livestock producer in Northwest Iowa, he is intimately familiar with the challenges facing the agriculture industry in the Midwest and throughout the country. The Department needs a leader like Tom to help breathe life into an agency whose future role will be to positively facilitate change in the farm economy.

You should know that our association is nonpartisan and does not endorse political candidates. Our Board and membership serve without respect to political affiliation and our policies and priorities have one singular purpose, to do what is best for rural America. We believe the Senate Agriculture Committee should act in a similar manner.

Mr. Dorr's patience throughout the confirmation process illustrates his commitment to public service and singular desire to help rural America. We respectfully request the Committee complete the nomination process as soon as possible. Not only is it the right thing to do, it is vital to ensure that domestic agriculture has a strong place in the future of this nation.

Tim Hume, President, Walsh, CO;
Ron Olson, Waubay, SD;
Fred Yoder, President-Elect, Plain City, OH;
Richard Peterson, Mountain Lake, MN;
Lee Klein, Chairman of the Board, Battle Creek, NE;
Kyle Phillips, Knoxville, IA;
Charles Alexander, Stonewall, NC;
John Tibbits, Minneapolis, KS;
Leon (Len) Corzine, Assumption; IL;
Gerald Tumbleson, Sherburn, MN;
Gregory Guenther, Belleville, IL;
Dee Vaughan, Dumas, TX;
William Horan, Rockwell City, IA;
Ron Woollen, Wilcox, NE;
Gene Youngquist, Cameron, IL.

NATIONAL ASSOCIATION
OF WHEAT GROWERS,
March 14, 2002.

Hon. TOM HARKIN,
Chairman, Senate Committee on Agriculture, Forestry and Nutrition, Senate Russell Building, Washington, DC.

DEAR SENATOR HARKIN: We are writing in support of Tom Dorr to be confirmed as Under Secretary for Rural Development. Mr. Dorr has the vision and experience to help revitalize the rural landscape of America.

It is our hope that farm-state Senators will support a person for Rural Development Under Secretary whom knows farm issues firsthand and has experienced success in this challenging and competitive environment. Tom Dorr is a true leader that has the talent and tenacity to be successful. National Association of Wheat Growers is confident that Tom will bring solid successful solutions to the challenging economic environment in America.

Rural America is in real trouble. Foreign Agricultural competition is accelerating at a rapid pace. Foreign producers can grow crops more economically because of fewer regulatory burdens, relative currency values, and a host of other factors. Agriculture needs strong people in senior positions of USDA who will fight for farmers and rural communities, and Tom Dorr is one of those people.

We encourage you to unite behind Tom Dorr as Under Secretary for Rural Development. He encompasses the creativity that can bring hope in stemming the exodus of people from our rural countryside because of lack of economic opportunity.

Sincerely,

GARY BROYLES,
President.

NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION,
May 20, 2003.

Hon. CHARLES E. GRASSLEY,
U.S. Senate, Senate Hart Building, Washington, DC.

DEAR SENATOR GRASSLEY: Thank you for giving me the opportunity to express the concerns of Rural Electric Cooperatives to you and Mr. Dorr, Under Secretary for Rural Development.

Mr. Dorr's frankness in addressing the issues facing Electric Cooperatives is much appreciated. His willingness to answer questions recently expressed by our membership is most helpful.

In light of your support and Mr. Dorr's commitment to Rural America, as well as his willingness to work with Rural Electric Cooperatives, we have no reservations regarding Mr. Dorr's confirmation.

Sincerely,

GLENN ENGLISH,
Chief Executive Officer.

Mr. COCHRAN. Mr. President, I am hopeful that the Senate will act favorably on the nomination. I stand ready to answer any questions specifically from any Senators about our findings during the background investigations and the hearings that were held on the nomination. I am convinced he will do an excellent job.

Before we reported this nomination, I had an opportunity to discuss the performance in office of this nominee with those who had had personal contact with him and had observed closely his management of this agency. I talked with the head of the State agency in Mississippi, for example, Nick Walters, to get his impressions because he had done an excellent job in our State of managing the rural development program. I have a lot of respect for Nick Walters. He works hard. He is a person of great ability, and I have known him a long time. He had unqualified support and strong words of endorsement of Mr. Dorr in how he had managed this department. He said he was tough minded but fair minded, and he did the job in a way that reflected credit on this administration.

I hope the Senate will vote to invoke cloture on the nomination and then confirm Mr. Dorr as Under Secretary of Agriculture for Rural Development.

I reserve the remainder of our time.

The PRESIDENT pro tempore. Who yields time?

Mr. BURNS. Mr. President, to break the impasse here—I never really got to communicate to my friend from Iowa—I have maybe about 3 minutes of morning business. It would go outside this debate. I do not want to be a part of this particular issue. If you don't want me to, that is quite all right with me. But I just ask unanimous consent to proceed as in morning business.

The PRESIDENT pro tempore. Without objection, it is so ordered. The Senator is recognized for 3 minutes.

(The remarks of Mr. BURNS are printed in today's RECORD under "Morning Business.")

The PRESIDENT pro tempore. Does the Senator from Iowa seek recognition?

Mr. HARKIN. Mr. President, I yield myself 15 minutes. I would appreciate the Chair notifying this Senator when I have consumed 15 minutes of my allotted 30 minutes.

The nomination of Thomas C. Dorr for the position of Under Secretary of Agriculture for Rural Development has been controversial from the outset. It has generated a great deal of concern and opposition and very serious questions. The controversy has continued from Mr. Dorr's nomination in a previous Congress to a recess appointment and then to his nomination in this Congress.

I regret very much so many problems have arisen regarding the nomination of a fellow Iowan. Just as any of us would feel, it is a matter of real pride to me when someone from my State is nominated to a high position in the Federal Government, regardless of party. This is the first time in my 19 years in the Senate and 10 years in the House that I have opposed the nomination of an Iowan to a position in the Federal Government. It gives me no pleasure to do this.

This is not personal. I have no personal acquaintanceship with Mr. Dorr. I met him. He came into my office last year. To the best of my knowledge, prior to that our paths had not crossed—maybe briefly at some point. I have no personal animosity at all toward Mr. Dorr. As I said, I don't know him personally. But the record speaks for itself.

I believe, however, we have a responsibility to review nominees as to whether they meet the minimum standards for the job. As a member of the Committee on Agriculture, Nutrition, and Forestry, I have a responsibility concerning nominations. We all do. I have worked with Chairman COCHRAN and formerly with Senator LUGAR, the former chairman and ranking member, to move nominees through the Agriculture Committee and to the floor fairly and expeditiously. I have done so both as chairman and ranking member, and that has been true of nominees for both parties.

It is important to stress that the Agriculture Committee did not, in this the 108th Congress, hold a hearing on the nomination of Mr. Dorr. Because of the serious concerns and unanswered questions about this nominee, I repeatedly requested that the committee hold such a hearing, as did other members of the committee, but that hearing was not held. The committee did hold a hearing in the preceding Congress but, as I will explain momentarily, that hearing raised a host of issues that remain unresolved to this day. The questions have not been cleared up. In fact, they have multiplied.

It was the responsibility, I believe, of the committee to hold a hearing on Mr.

Dorr before it reported the nomination to the full Senate, and the unusual circumstances of this nomination added to the importance of holding that hearing. This is not a minor nomination. The Under Secretary for Rural Development is critically important to family-size farms and ranches and to smaller communities all across America. The responsibilities include helping build water and waste-water facilities, financing decent, affordable housing, and supporting electrical power and rural businesses such as cooperatives. They also include promoting community development and helping to boost economic growth, create jobs, and improve the quality of life in rural America. These are the responsibilities of this position.

Given those responsibilities, one of this nominee's first controversies arose from Mr. Dorr's vision of agriculture, reported in the New York Times on May 4, 1998. Mr. Dorr proposed replacing the present-day version of the family farm with 225,000-acre megafarms, consisting of three computer-linked pods. With the average Iowa farm of about 350 acres, Mr. Dorr's vision calls for radical changes.

I ask unanimous consent that that article from the New York Times be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, May 4, 1998]

For Amber Waves of Data; After the Green Revolution Comes Farming's Geek Revolution

(By Barnaby J. Feder)

MARCUS, IOWA.—There is a haunting prescience to the "Evolution of Agriculture," an old chemical company poster on the wall of Tom Dorr's farm office. It ends in 1981 with the invention of a mobile rig to measure electronically the nutritional value of animal feed—the time line's first mention of a computer.

Seventeen years later, computers have infiltrated every conceivable element of agriculture, influencing what technology-savvy farmers like Mr. Dorr grow, how they grow it and how they market the fruits of their labor.

The terminal beside Mr. Dorr's desk, for instance, links him to DTN, a nationwide agricultural and weather data network. There is also his personal computer and printer, which is part of a local area network connecting five computers and a server in this small clapboard building. Formerly the home of a tenant worker, the office is now the information hub of 3,800 acres of northwestern Iowa prairie where Mr. Dorr and his 11 full- and part-time employees raise corn, soybeans and hogs, sell seed and run a grain elevator that serves his and neighboring farms.

With gross revenue of about $2 million in most years, the Dorr operations rank among the 4 percent of the largest commercial farms that account for 50 percent of the nation's agricultural output. Such commercial-scale farmers are usually among those most active in experimenting with new equipment and management techniques.

To really understand how far things have evolved and get a glimpse of where they might be headed, it helps to stroll past Mr. Dorr's secretary (and her computer), past the bathroom (crowded with three retired computers saved for spare parts), and into the electronics-stuffed lair of Francis Swain, the technology manager.

Mr. Swain, a tall, 27-year-old son of a used-car dealer whose reddish hair is greased back like a 1950's rock-and-roller, describes himself as "not in love with crops or pigs or cows." He represents a new breed of worker, though, whom many big farms will eventually need: an agro-geek with a passion for computers and the information revolution.

In the increasingly global agricultural market, American farmers will come to rely heavily on technology and information systems to compete with nations that have cheaper land and labor, according to experts like Jess Lowenberg-DeBoer, a Purdue University agriculture economist who has studied the adoption of computer-driven farm technology.

And so Mr. Dorr is doing what thousands of other American farmers are doing: using machinery laden with electronic controls and sensors to achieve pinpoint seed spacing, analyze soils for moisture and nutrients, track weather and manage the rates at which fertilizer and pesticides are applied. He has experimented with global positioning via satellites to track exactly where each machine is as it carries out these functions. And come harvest season, still other devices will calculate crop yields in real time.

What sets the Dorr operation apart from most, though, is having an employee like Mr. Swain assigned to the task of figuring out how to improve and harness the information flow.

Each tractor, pig and farm field is, in Mr. Swain's eyes, simply a source of data that can make the farm more profitable if properly analyzed. The questions that captivate him include how much it would cost to track soil conditions more thoroughly, how yield data from a combine might be correlated with weather data or fertilizer records, and how computer simulations of projected crop growth could be used to fine-tune marketing decisions like what portion of the crop to pre-sell before harvest.

"My dream is not to farm but to own the information company that farmers hook up to for information on logistics, crop data, whatever," Mr. Swain said.

Mr. Dorr, 51, who began farming with his father and his uncle in the 1970's, has a love of the soil that Mr. Swain lacks. But Mr. Dorr does not let agrarian sentimentality befuddle his business acumen. The family farm he grew up with was part of an agricultural enterprise that besides livestock and crops, included a feed store and turkey hatchery.

After graduating from Morningside College in Sioux City, Iowa, with a Bachelor of Science in business, Mr. Dorr worked for an educational research company for three years.

That experience exposed him to computers. While traveling for the research company, Mr. Dorr made side trips to visit farmers who were transforming family farms into far larger commercial operations. When he returned to join the Dorr farm, he was convinced of the need to scrupulously log as much information as possible about operations.

Mr. Dorr had already invested more than $20,000 in personal computers and farm management software when he hired Mr. Swain in 1990 as office manager and accountant. "Fran was ill at ease and less qualified on paper than other candidates," Mr. Dorr recalled. But Mr. Swain had studied computer science at Nettleton Business College in Sioux Falls, S.D., while completing the college's two-year accounting program and his references raved about his enthusiasm and organizational skills.

By last year, so much of Mr. Swain's work involved updating and expanding the farm's information technology systems that Mr. Dorr changed his title to technology manager.

Mr. Swain, who has often urged Mr. Dorr to invest more rapidly in cutting-edge technology, occasionally chafes at more mundane tasks like analyzing past weather data to be sure the strains of corn now going into particular fields are likely to have time to mature before harvest.

"His lack of experience in production gets him out into left field sometimes," Mr. Dorr said of Mr. Swain's proposals, like his suggestion to set up wireless communications from field equipment to the office so that the costs of pesticides are apportioned to the owners of a rented field as the chemicals are applied. While intriguing, such ideas would typically cost too much or not be reliable enough with current technology, Mr. Dorr said.

Still. Mr. Dorr gave Mr. Swain his new title to encourage him to continue thinking broadly and to make it clear to skeptical old-time farmhands that Mr. Dorr valued Mr. Swain's work.

Bob Kranig is a 56-year-old equipment operator and mechanic who, along with Mike Schwarz, a 38-year-old equipment operator for the Dorr farm, has been the main employee coping with the surge in data gathering. "Mike and I are intimidated to a point by the new technology," Mr. Kranig conceded.

They will have to get over those fears if Mr. Dorr and Mr. Swain are to pursue their vision of a 225,000-acre operation made up of three "pods," each with its own manager but sharing an information system back at farm headquarters. Such an enterprise would be big enough to keep 100-unit trains running to far-away seaports, making the farm likely to receive volume railroad discounts. Such an agricultural factory could also negotiate bargain prices from suppliers and other concessions, like just-in-time delivery.

To really prosper, though, this type of megafarm would need a 21st-century computer network capable of rapidly integrating information that is piling up in various, incompatible forms—as well as other data that so far go ungathered.

Such integration may be an uphill battle for years to come. Researchers have raised questions about just how precise soil samplers, yield monitors and other pieces of today's equipment really are. And internet chat sessions, farm conventions, and plain old coffee shop conversations in rural towns are alive these days with earthy gripes about proprietary product that do not interface with each other and new technology that promises more than it can deliver.

Still, Mr. Dorr clings to his vision of a farm sprawling over thousands of individual fields—many of which might be only partly owned by Mr. Dorr and his relatives, while others could be rented, either for money or for a share of the crop.

His information system would know what was grown in each field in the past and how much it yielded under different growing conditions. It would also know about crucial characteristics of the field like irrigation, drainage and soil.

The system would also have constantly updated information on available labor, machinery and supplies. Operations like storage, marketing and distribution would be tied in, so that the past and the projected profitability of each field would be constantly visible to Mr. Dorr, his employees, landowners and the investors he says would be needed to spread the financial risks of such a big enterprise.

Assembling this digitally enhanced megafarm would require, by Mr. Dorr's and Mr. Swain's guesstimate, at least a $2 million technology investment. Put it all together, though, and one can envision a farm that rearranges planting or harvesting on the fly as weather changes or new sales opportunities arise.

Without such size and information-management capabilities, Mr. Dorr fears that most farms will end up with as little control over their destiny and profitability as those that today raise chickens under contract to giant producers like Tyson and Perdue. In addition, he says, such size and sophistication will be needed to provide the kind of job opportunities that will keep the best and brightest rural youngsters from moving way.

So far, Mr. Dorr and Mr. Swain concede, it has been hard to sell their vision, which Mr. Dorr sees as too risky to pursue on his own. Investment bankers have said the project is too small and the business plan too fuzzy to interest them, and other farmers are hanging back.

Some are merely skeptical. Others are downright hostile to visions like Mr. Dorr's because they see aggressive growth strategies as a threat to the majority of family farms, which are run by part-time farmers who also hold down other jobs. But Mr. Dorr considers such thinking a denial of the inevitable. "The typical farmer's tendency is to go it alone until it's too late," he said.

Yet even Mr. Swain concedes the risks of racing toward a more computerized future. "About half of all information technology projects fail," he said.

And he knows full well that the problem is often the unpredictable human element. Noting that he has software on his Gateway 2000 laptop that keeps fitness records and designs workouts for him, he added, "The flaw is that it doesn't motivate me to exercise."

Mr. HARKIN. On another occasion, at a 1999 conference at Iowa State University, Mr. Dorr criticized the State of Iowa for failing to move aggressively toward very large, vertically integrated hog production facilities. The record also shows Mr. Dorr attacking the ISU extension service and harassing the director of the ISU Leopold Center for Sustainable Agriculture. Is this really the attitude and the vision for agriculture and rural communities the Under Secretary for Rural Development ought to bring to the job?

The person in that position also must be responsive and sensitive to the demands of serving America's very diverse citizens and communities. That requirement cannot be overemphasized in a department that has been plagued with civil rights abuses of both employees and clients. Here is what Mr. Dorr had to say about ethnic and religious diversity at that Iowa State University Congress; these are Mr. Dorr's own words on the record:

I know this is not at all the correct environment to say this, but I think you ought to perhaps go out and look at what you perceive [are] the three most successful rural economic environments in this state. . . . And you'll notice when you get to looking at them, that they're not particularly diverse, at least not ethnically diverse. They're very diverse in their economic growth, but they have been very focused, have been very non-diverse in their ethnic background and their religious background, and there's something there obviously that has enabled them to succeed and to succeed very well.

Again, I ask unanimous consent that the transcript of this meeting be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMENTS BY TOM DORR; TRANSCRIPTIONS OF IOWA TAPE

I've got just a couple of comments, and as one of the few farmers here, I think I'll take an opportunity—I listened to this comment earlier about the "wow" statements, that you wanted something to get to the New York Times. I caution you that that happened to me once a couple of years ago when I suggested to me that the appropriate model of a corn soybean farm in Iowa would mesh around 225,000 acre operation in an interview that got the front page of the New York Times business section. It screamed around the world and got back to my hometown, and I am now presently the pariah of Marcus?, so what you wish is what you may get if you're not careful.

My observation though today, that what you're really about, as precipitated by this gracious gift, is you're really trying to find your souls. Some of you have heard me say that before, and I say that in the context that I as a former member of the board of regents, and one who has always had an abiding interest in education, have felt that to some extent, some of the leadership, myself included, have failed the institutions starting back during the ag crisis of the '80s that particularly that precipitated all of this—in the sense that what actually diverted you from your primary responsibility of teaching and doing research and expected you to develop economic development opportunities that would quickly turn into more growth for the state. And I think that has been a rather misguided approach, not in every case, but I think that that was somewhat of a mistake. And as a result, I think you're really trying to grope with whether or not you are a group of physical scientists or social scientists. In agronomy, I guess I've always assumed that you were physical scientists, but I don't think that's necessarily the case. And I'm not sure—I'm not making judgmental—I'm not sure that's good or bad. You're obviously very very passionate about what you do and so am I. I'm very passionate about what I think we have to be doing in agriculture. My greatest fear in listening to this discussion for the last short day is that, as one of my peers on this panel suggested earlier, when I put it in the context if after 60 years of Triple A or Agriculture Adjustment Act Programs, our farm policy or farm policy governance has literally frozen us in our ability to be creative in our thought processes as it related to production agriculture.

I caution you in the standpoint that the Iowa agriculture rural landscapes are at great risk. They are truly at great risk of becoming barren economic landscapes. And I say this, and I've mentioned this earlier at least in a couple of the groups, and I don't say this from the standpoint of sounding like sour grapes. That's not what it's intended to, but most of you in this institution through the various programs, whether you're a merit employee P and S or an active (?) admission, your salaries and your retirement programs through TIA CREP will leave most of you much better off than most farmers that you think you're trying to advantage out here in the country at the time you complete 30 years of employment in the institution. And as a result, I think it has to be a paramount focus to a more income growth in the Iowa agriculture sector. Quality is fine—it's a laudable goal, but income growth has to be at the bottom of what you're about. And if it's not, then I think we'll be back here several more times trying to figure out what it is.

The other thing that's interesting to me, and I know this is not at all the correct environment to say this, but I think you ought to perhaps go out and look at what you perceive the three most successful rural economic environments in this state. And I'm not talking about those associated with metropolitan areas. But I would submit to you that they're probably the three most successful ones. If they're not the three, two of these are the three, and it would be Carroll County, Sioux County, and Lyon County. And you'll notice when you get to looking at them, that they're not particularly diverse, at least not ethnically diverse. They're very diverse in their economic growth, but they have been very focused and have been very non-diverse in their ethnic background and their religious background, and there's something there obviously that has enabled them to succeed and to succeed very well.

I think we also need to recognize the fact that the change in the hog industry did not occur in a vacuum, and it didn't occur in North Carolina and the South by accident. It occurred because we did not create the opportunities, the investment opportunities and the environment in this state to make it happen. And I submit to you that it would have occurred and it would have occurred with a lot more of our producers being involved in these kinds of enterprises in a much more broad scope had we been more aggressive about determining what was going to make it happen. And I will caution you that this very thing is going to happen in crop production in land management. The tools are in place, you have economists on this staff that understand what I'm talking about, and this will happen. It will evolve into large grain farming operations that if we battle it, if we don't analyze it and facilitate the growth in this, it could be very disheartening.

I think our goal ought to be to turn the state into a vibrant food producing value-added state, but it will not happen that way within the existing structure of production agriculture. So when we look at who we serve, I think in all honesty that if you truly focus on doing good research, good science driven research, and maintaining high pedagogical standards and teaching students, that you're products and your science, your products in terms of your students and your science will serve you most appropriately wherever they may end up at, and probably in a much finer model than you would perhaps suspect.

Thank you.

Mr. HARKIN. Again, should we have as Under Secretary for Rural Development someone who lacks the judgment to avoid uttering such intentionally provocative and divisive remarks? How does this sort of insensitivity serve the urgent need to reverse USDA's poor civil rights record?

I repeat what Mr. Dorr said:

> I know this is not at all the correct environment to say this.

Evidently he is saying it is all right to say it, it must be all right to believe it, but you just don't say it publicly in a meeting such as that. In other words, he is kind of saying be careful of where you say it but it is OK to go ahead and believe what he says here, that somehow economic progress equates with lack of ethnic and religious diversity.

Let me also point to a memorandum Mr. Dorr sent to me, in October of 1999, to complain about charges on his telephone bill for the national access fee and the Federal universal service fee. The proceeds from these relatively modest fees go to help provide telephone service and Internet access to rural communities, hospitals, and schools. It just strikes me as very odd that Mr. Dorr would have responsibility for helping rural communities obtain telecommunications services and technology when he was so vehemently opposed to a program that serves that very purpose. This is what he said in that letter, in reference to the national access fee and the Federal universal service fee:

> With these kind of taxation and subsidy games, you collectively are responsible for turning Iowa into a State of peasants, totally dependent on your largesse. But should you decide to take a few side trips through the Iowa countryside, you'll see an inordinate number of homes surrounded by five to 10 cars. The homes generally have a value of less than $10,000. This just confirms my "10 car $10,000 home theory." The more you try to help, the more you hinder. The results are everywhere.

What a slap in the face to poor rural people.

I ask unanimous consent that the entire substance of the letter and a memorandum that was sent to me dated 10–8–99 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MEMORANDUM

Date: 10/8/99
To: See Distribution List
From: Thomas C. Dorr
Re: Telephone and TeleCommunication Taxes

Attached to this memo-fax is an information insert I received with my recent long distance billing. The total tax for this statement is 14.65%. This is outrageous, especially when you consider that government has had minimal influence on the evolution of the telecommunications technology.

The monthly National Access Fee per business line of $4.31 in conjunction with the 4.5% "Federal Universal Access Fee" frequently exceeds the total monthly phone usage charges, which are necessary to have emergency phone lines at our individual farm and hog sites. Those taxes don't include the Federal and State excise and sales taxes.

These taxes are confiscatory. School and local government systems in Iowa alone have been subsidized so long without commensurate performance expectations that a large number have slipped into a slothful state far exceeding mediocrity. They probably don't receive 30% of these taxes, and they surely don't need them.

With these kinds of taxation and subsidy games, you collectively are responsible for turning Iowa into a state of peasants totally dependent on your largesse. This is unacceptable.

I am sure my ranting won't change your approach to maintaining a constituency dependent on government revenue. But should you decide to take a few side trips through the Iowa countryside, you'll see an inordinate number of homes surrounded by five to ten cars. The homes generally have a value of less than $10,000. This just confirms my "10 car $10,000 home theory". The more you try to help the more you hinder. The results are everywhere.

I strongly suggest you take time to read Thomas Friedman's new book "The Lexus and the Olive Tree", then ask yourselves what really makes sound governance policy. I don't think confiscatory tax initiatives count. It is a cinch we aren't getting wealth in Iowa.

IMPORTANT INFORMATION ON SERVICE FEES

Recent regulatory and industry changes will affect two charges on your current invoice. The Federal Communications Commission recently approved larger universal service subsidies for schools and libraries.

Like other carriers, MCI WorldCom℠ collects its contributions for the universal service fund by assessing a fee on customer invoices. In order to recover the cost of increased universal service contributions, beginning with this invoice, the monthly Federal Universal Service Fund charge (FUSF) is calculated at 4.5% of regulated interstate and international billing, reflecting an increase of 0.4%.

Also effective with this invoice, the monthly National Access Fee (NAF) increased to $4.31 per Business Line, $0.48 per Business Centrex line, and $21.55 per ISDN PRI or Supertrunk line. The NAF results from monthly per-line charges imposed by many local service providers on long distance carriers for connections to local telephone networks.

As a valued customer, you will continue to be notified of any future changes that affect what you pay for service.

Thank you for using the MCI WorldCom program. We appreciate your business and the opportunity to serve you.

Mr. HARKIN. Mr. President, Mr. Dorr was given every opportunity but could not explain this broad attack against helping rural communities. It seems clear that Mr. Dorr was degrading the very people and the very rural communities he is nominated to serve at USDA. He was making light of lower income Americans in rural communities who are struggling to make a living and get ahead. And he is saying that it is counterproductive to try to help. He said:

> The more you try to help the more you hinder.

In testimony before the committee, Mr. Dorr admitted that he had gotten federally guaranteed student loans. He admitted that he had gotten very generous farm program payments and that these did not seem to hinder him at all. But to try to help poor people who live in $10,000 homes, that hinders them, you see. Talk about insensitivity.

This is a letter he sent to me. In that letter, he was complaining about the taxation for the Federal universal service fee. Do you know what the bill was? It was $4.74. He is saying it is confiscatory. On the other page, here is the Federal universal service fee—3 cents out of a $21.27 bill, and he is complaining about it. This is someone who is going to be the Under Secretary of Rural Development?

To do any job well, one has to believe in its value. Yet the very purposes of USDA's Rural Development programs are an anathema to the beliefs and philosophy of Mr. Dorr.

Lastly, for any nominee the Senate has a responsibility to examine their financial backgrounds and dealings. Secretary Veneman put it perfectly when she wrote to me:

> Any person who serves this Nation should live by the highest standards.

Let us see if Mr. Dorr meets this standard.

Mr. Door was a self-described president and chief executive officer of Dorr's Pine Grove Farm Company of which he and his wife were the sole shareholders. In that position as president and CEO, Mr. Dorr created an exceedingly complex web of farming arrangements.

This is what it kind of looks like. I will not try to explain it. It is very complex and very interlocking. But the operations included land in two trusts that were set up in 1977. For a time, Tom Dorr through his company, Dorr's Pine Grove Farm, the major company, farmed the land held in these trusts under a 50–50 share lease with half of the crop proceeds and half of the farm program benefits going to Dorr's Pine Grove Farm and half to these trusts. This is what is normally called a crop share arrangement.

Then, beginning in 1988, Mr. Dorr filed documents with the USDA stating that his operation had changed. He was no longer farming on a crop share basis, but he was going to custom farm, saying that each trust had a 100-percent share in the crop proceeds and were entitled to receive 100 percent of Federal farm program benefits.

Tom Dorr, acting through Dorr's Pine Grove Farm, still farmed the land as before, but he had claimed and stated and signed his name on a document that the arrangement had become a custom farming arrangement.

This is very important. He knowingly signed that document.

At some point, one of the trust beneficiaries, Mr. Dorr's brother, Paul Dorr, began to question why the custom farming fees were so high. Paul Dorr taped at least two conversations with his brother, Tom Dorr, that corroborated his suspicions that Tom Dorr was engaged in misrepresentation. That tape was made public. Mr. Dorr admitted that that was his voice on the tape. Paul Dorr contacted the Farm Service Agency and persisted in his request for an investigation.

Finally, in the spring of 1996, the FSA conducted a review of the Melvin G. Dorr Irrevocable Trust. The FSA found that the forms filed and signed by Thomas Dorr for the 1993, 1994, and 1995 crop-years misrepresented the facts. The trust was required to repay $16,638 to the Federal Government.

Let us fast forward.

In the fall of 2001, the USDA Office of Inspector General conducted a further review of Mr. Dorr's affairs. The Office of Inspector General asked the Farm Service Agency to review another trust, the Harold E. Dorr Irrevocable Family Trust. Once again, the trust was found to be in violation of program rules because of the misrepresentation on forms signed by Thomas Dorr. The trust had to pay USDA a total of $17,151.87 in program benefits and interest for crop-years 1994 and 1995.

Investigations by the USDA Office of Inspector General and the Farm Service Agency determined that for the years examined, the forms signed by Tom Dorr misrepresented the trusts' shares in the crop proceeds. FSA found that in reality the land in both of these trusts was farmed on a 50–50 crop share basis and not on a custom farming basis. The trusts were, therefore, not eligible for the 100-percent share of program benefits because Tom Dorr had misrepresented the actual farming arrangement.

Mr. Dorr would have us believe that either the misrepresentations were innocent or that there were no misrepresentations. But the record shows that he knowingly carried on a crop share lease arrangement between Dorr's Pine Grove Farm Company and each of the trusts even as he represented to the Farm Service Agency that it was custom farming and not crop share leasing.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator's time has expired.

Mr. HARKIN. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. HARKIN. I yield myself an additional 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Madam President, in the telephone conversations that Paul Dorr taped, Tom Dorr admitted that the so-called custom farming arrangement was, in fact, a crop share. This is in a telephone conversation in which Mr. Dorr said:

> Besides those two machine charges, everything is done on a 50–50 normal crop share basis. It always has.

These are not my words; these are Tom Dorr's own words on tape.

I ask unanimous consent that the transcript of that tape be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TRANSCRIPT OF AUDIO TAPE PROVIDED UPON REQUEST FROM THE IOWA STATE FSA OFFICE, IDENTIFIED AS: COPY OF TAPE LABELED "EXCERPTS FROM CONVERSATION BETWEEN TOM DORR AND PAUL DORR 6/14/95"

The parties are identified as Person 1 (assumed to be Paul Dorr) and Person 2 (assumed to be Tom Dorr).

The following are excerpts from a telephone conversation that was recorded on June 14, 1995, occurring between Tom Dorr and Paul Dorr.

PERSON 1: I, I guess I'd like to know as a beneficiary what . . . you know, I know, I understand your desire to keep this all out fr . . ., in the government's eyes, um, but I still think there should be some sort of explanation as to how these, you know exactly how this percentage, allocation is broken out, how its, how its applied each year.

PERSON 2: 50/50. I charge the Trust their half of the inputs, not the machine work. And I charge the, I charge the, I take that back, the only machine charge, the machine charge that I have charged always is $12.50 an acre for combining. That was an arrangement that was entered into when dad and Harold were still alive because of the high cost of combines.

PERSON 1: Yeah . . .

PERSON 2: Beside from that, uh, I take that back, and they also, and we have always charged the landlords a nickel a bushel to haul the grain into the elevator.

PERSON 1: Um Hmm . . .

PERSON 2: Beside those two machine charges everything is done on a 50/50 normal crop share basis, it always has. And, and, and frequently, quite frankly, I've, I've kicked stuff in, or, you know, if there is a split that isn't quite equal I always try to err on the side of the, on the side of the Trust. So, that's, that's the way its been, that's the way it always has been and that's the way these numbers will all resolve themselves if somebody wants to sit down and go through them that way.

PERSON 1: It, this was all done that way in an effort to . . .

PERSON 2: . . . avoid the $50,000 payment limitation to Pine Grove Farms.

PERSON 1: And. . . to, it is to your benefit to your other crop acres . . .

PERSON 2: . . . that's right . . .

PERSON 1: . . . that, that um, this arrangement is set up in, in such a fashion?

PERSON 2: That's correct.

PERSON 1: Uh, do we, as a Trust, um, have any risk if the government ever audits such an arrangement? Or, was it done your saying back when it was legal? Is it still legal?

PERSON 2: I have no idea if its legal. No one has ever called me on it. I've done it this way. I've clearly kept track of all paper work this way. And, uh . . .

PERSON 1: I, I understand how it works, now . . .

PERSON 2: I have no idea. I suspect if they would audit, and, and somebody would decide to come in and take a look at this thing, they could, they could probably if they really wanted to, raise hell with us. Yep, you're absolutely right. Uh, and I'm trying to find out where I've overcharged at.

PERSON 1: Well, I, I don't know what the extension service includes in their, in their, um, uh, estimated figure on, on machinery expense.

PERSON 2: That, that, that figure, I mean if you look at that figure, and I believe, and I'd have to go back and find it, but I know that I discussed this with the trustees and I'm fairly certain that its in one of your annual reports. Uh, that custom fee actually is not a custom fee. That's crop rental income to me. That's my share of the income. I mean if you just sat down and, and, and . . . (5 second pause with music in the background) excuse me . . .

PERSON 1: That's ok.

PERSON 2: Uh, what actually happened there was way back in, uh, perhaps even 89, but no, no that was in 90 because that doesn't show up until then, Either 90 or 91, uh, I refiled the way the farm, the Trust land both for the Melvin Dorr Trust and the, the uh, Harold Dorr Trust are operated with the ASCS to, quite frankly, avoid minimum payment limitations. OK?

PERSON 1: Right

PERSON 2: And I basically told the ASCS and reregistered those two operations such that they are, uh, singularly farm operations on their own, OK?

PERSON 1: OK

PERSON 2: And I custom farm it. Alright, so how are you going to custom farm it? The reason I did it was, was to eliminate any potential, uh, when I could still do it at that point, of, of the government not liking the way I was doing it. I knew what was coming. I anticipated it the same as I did with proven corn yields way back in the 70's when I began to prove our yields and got basis and the proven yields up. I transferred these out when it was still legal and legitimate to do so and basically they stand alone. Now, obviously I'm not going to go out here and operate all this ground and provide all this management expertise singularly, uh, for the purpose of, of, of doing it on a $60 an acre custom fee basis. Subsequently, what's happened is, the farm, I mean the, the family Trust pays all of its expenses and then we reimburse it and it sells all the income, and it sells all the crop, and it reimburses us with the 50/50 split basis.

PERSON 1: I, I, I remember vaguely something being discussed about that, I'll have to go back to the file. . .

PERSON 2: . . . that's exactly what's going on (unintelligible) . . . those custom fees the way they are . . .

PERSON 1: . . . and then to determine, um, that, that was, again if that was in writing to us beneficiaries, I guess I missed that and I'll look for that again. Um . . .

PERSON 2: Even if it wasn't I know that that was clearly discussed with the trustees. The beneficiaries really had nothing to do with it.

PERSON 1: OK, well, well, I appreciate your correcting me on the interest and, uh, allocating those incomes to those different years. That does make a difference with that income. I think the custom fees, uh, when I took a look at that one, and I, you know, I just started looking at this in the last 6 weeks. When I took a look at that last figure, uh, and looking back on in the file, it may not hurt for you to remind everybody, um, maybe even in the annual report. . . .

PERSON 2: I don't, I don't, really want to tell everybody, not because I'm trying to hide the custom work fees from anybody, but because I don't want to make any bigger deal out of it than I have to, relative to everybody knowing about it, including the government.

END OF RECORDING.

Mr. HARKIN. Madam President, again he said on the tape,

> Everything is done on a 50–50 normal crop share basis. It always has.

He says that to his brother on the tape, but he says to the FSA, to the taxpayers of America: No, it is not. I am custom farming.

What would be the purpose of misrepresenting these arrangements? Mr. Dorr's own statements show the motives in this telephone call. As Tom Dorr said to his brother, the bogus custom farming arrangements were set up to "avoid the $50,000 payment limitation to Pine Grove Farms."

Again, my fellow Senators, these are not my words. These are Tom Dorr's own words—his own words. He admits in his own words that he misrepresented to the Federal Government his farming arrangements, and he did it to get around payment limitations.

There was the payment limitation connection. A part of the farm program payments for land in these two trusts should have been paid directly to Dorr's Pine Grove Farm under a normal crop share arrangement. But they would have counted against Mr. Dorr's payment limitation. But instead, because of Mr. Dorr's misrepresentations, the USDA payments that should have gone to him were funneled through the trusts and not counted against his payment limitations.

Indeed, the FSA review of Dorr's Pine Grove Farm Company found that Mr. Dorr's misrepresentations " . . . had the potential to result in Pine Grove Farms receiving benefits indirectly that would exceed the maximum payment limitation."

Federal law provides criminal penalties for knowingly making false statements for the purpose of obtaining farm program benefits. The USDA Office of Inspector General referred the Dorr matter to the U.S. Attorney for the Northern District of Iowa.

In February of 2002, that office declined criminal prosecution due to statute of limitations issues. We may hear some claim that the Office of Inspector General exonerated Mr. Dorr. That simply is not so. The OIG simply closed the case after the U.S. attorney decided it could not proceed because the statute of limitations had run.

Is this the rule by which we say to someone they can now get a position in the Federal Government? You tried to cheat the Federal Government out of money, you got caught, you had to pay it back, and you didn't get prosecuted because the statute of limitations had run. That is OK, you can take a position in the Federal Government.

Based on the seriousness of the violations involved, I believe it was the responsibility of the committee to exercise due diligence regarding other parts of his complex farming arrangement and to take a look at some years that had not been involved in the FSA and OIG investigations. Shortly after the March 2002 nomination hearing, Senator MARK DAYTON sent a letter dated March 21 asking for information on the various financial entities from 1988 through 1995, 1988 being the year in which he first changed or said he changed his operation. I wrote Secretary Venenman on May 17, 2002, and on June 6, 2002, seeking a response to the committee's questions.

We received some responses but critical questions remained unanswered and new questions arose. The materials provided in June show that over $70,000 in farm program payments had been received by the two trusts from 1988 through 1992 under, apparently, the very same type of misrepresentation that was found in later years. Each time the USDA provided the committee with some of the requested information that turned up new problems. Again, we tried to get to the bottom of his complex financial dealings. We know the crop shares were misrepresented for two of the entities but we did not have sufficient information about the others, so the committee requested additional documents from USDA. We asked the nominee additional questions. These were reasonable requests pertaining to valid questions. Secretary Venenman made clear in her letter back to the committee that neither the Department nor the nominee would cooperate with or provide any more information to the committee.

I ask consent that a letter from the Congressional Hispanic Caucus dated May 22, 2003, strongly opposing this nominee be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
Washington, DC, May 22, 2003.

Hon. THAD COCHRAN,
Chairman, Committee on Agriculture, Senate Office Building, Washington, DC.
Hon. TOM HARKIN,
Ranking Member, Committee on Agriculture, Senate Office Building, Washington, DC.

DEAR CHAIRMAN COCHRAN AND RANKING MEMBER HARKIN: On behalf of the Congressional Hispanic Caucus, we write to express our continued opposition to the confirmation of Thomas Dorr for Undersecretary of Agriculture for Rural Development. Furthermore, we urge that Mr. Dorr's confirmation process not bypass the required hearings necessary to provide a full accounting of Mr. Dorr's very troubling views on agriculture and his equally upsetting stated views on racial diversity in America.

This opposition is not arbitrary, but based on reasonable concerns. Our opposition is based on Mr. Dorr's vocal stances on his vision of farming and his resistance to sustainable agriculture. One of the biggest threats to independent producers, farm workers, and rural communities is the growing corporate control of the nation's food production system. Undersecretary Dorr's vision of farming is one of 225,000 acre operations—one farm for every 350 square miles. This is 656 times the size of the average farm. Such a vision is antithetical to a broader vision of broad-based and equitably distributed growth for all of rural America.

In addition, in comments made publicly and reported in the Des Moines press, Mr. Dorr believes that diversity of race, ethnicity, and religion detract from economic productivity. He claimed in a meeting in 1999 that three of Iowa's more prosperous counties do well economically because "they have been very non-diverse in their ethnic background and their religious background." These comments are puzzling, and raise concerns about his racial sensitivity.

The Undersecretary of Rural Development must support a viable and equitable vision for our rural communities. Mr. Dorr's opposition to sustainable agriculture programs, support for corporate control of farms, and his contention that economic prosperity can be contributed to lack of ethnic and religious diversity are the worst possible answers to the economic, social and environmental problems facing farm workers and their communities in rural America. Based on Mr. Dorr's background and his tenure at the U.S. Department of Agriculture, it is easy to understand why both civil rights and farmer interest organizations have opposed him, his extreme corporate views and racial insensitivity.

The Congressional Hispanic Caucus, Latinos, farmers, farmworkers, and farmer organizations throughout the country oppose the confirmation of Thomas Dorr. What we need are USDA officials who represent family farmers, farmworkers, and sensible farm policies. Farmers from his own state and from throughout the country oppose his confirmation. This opposition may explain why President Bush found it necessary to initially appoint Undersecretary Dorr through a recess appointment rather than allowing his nomination to move through a transparent and formal process in the US Senate. Last, the appointment of Mr. Dorr does little to improve the image of an agency plagued with civil rights violations and class action lawsuits from minority farmers.

For all of these reasons, we strongly oppose the confirmation of Mr. Thomas Dorr and strongly urge that his views and tenure at USDA be explored in confirmation hearings.

Sincerely,
THE CONGRESSIONAL HISPANIC CAUCUS.

Mr. HARKIN. I also have a letter from a number of groups dated October 8, 2003, representing family farmers and farm workers across America opposed to this nominee. I ask it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OCTOBER 8, 2003.

DEAR SENATOR: The undersigned organizations are dedicated to promoting social, environmental and economic justice throughout rural and urban America. We are writing to ask you to vote against the nomination of Thomas Dorr as USDA Undersecretary for Rural Development when it comes to the Senate floor. This nomination, now more than two years old, has received on-going, widespread grassroots opposition.

In August 2002 President Bush appointed Mr. Dorr to the USDA in order to avoid the certain rejection of this unsuitable nominee by the full Senate. His recess appointment followed the Senate Agriculture Committee's vote of no confidence when they released his nomination without recommendation. Earlier this year, the Senate Agriculture Committee, without a hearing, sent the nomination to the Senate floor.

We object to Thomas Dorr's nomination for many reasons. First, Mr. Dorr deliberately misrepresented his farming operations structure to order to cheat the U.S. government and circumvent payment limitations. On the morning of the Senate Agriculture Committee hearing on his nomination in March 2002 the Des Moines Register published excerpts from a taped conversation between Mr. Dorr and his brother. In this conversation, Mr. Dorr stated that he had misrepresented the structure of his farming operations to "quite frankly avoid minimum payment limitations." The U.S. government required he return $17,000 in 1995 after a review of his Iowa farm operation.

In 2002, in the wake of the Senate Agriculture hearing and further investigation, the Dorr family trust was obligated to repay another $17,000. During the August 2002 Senate Agriculture Committee meeting, Senator Harken raised concerned that according to materials provided in June, two Dorr family trusts received some $65,000 in farm program payments from 1988 through 1993. These payments apparently fall under the very same circumstances that led to the total repayment of $34,000 for 1994 and 1995. Nevertheless, the USDA continues to withhold further records of Mr. Dorr from the Committee and the public.

Second, Thomas Dorr's vision for increased concentration in U.S. agriculture and the consolidation of many family farms into singular "megafarms" is counter to effective rural development and the promotion of family farm and ranch-based agriculture that is at the foundation of healthy rural economies and agriculture communities. He is also on record as strongly opposing sustainable agriculture, including the cutting-edge work of the Leopold Center at Iowa State University.

Third, Mr. Dorr has made comments tying rural economic development with lack of ethnic and religious diversity. Diversity is increasing in our nation's rural communities, and we are concerned that Mr. Dorr's perspective will prevent him from effectively meeting the needs of minority populations. As Senator Harkin said during the Senate Agriculture Committee Hearing on August 1, how does Mr. Dorr's insensitivity fit the urgent need to reverse the USDA's poor civil rights record?

Fourth, Mr. Dorr strengthened our opposition to his nomination with his testimony before the Senate Agriculture Committee in March 2002 during which, in a letter to Senator Harkin written by Mr. Dorr himself, he revealed his disdain for rural residents who utilize government programs. In this letter, Mr. Dorr complained about a miniscule tax on his telephone service saying he believed government payments destroyed the initiative of beneficiaries. This seriously calls into question Mr. Dorr's ability to fairly administer programs providing millions of dollars in federal loans and grants to those he is mandated to serve, but about whom he has made antagonizing statements.

Mr. Dorr's track record in the USDA since his recess appointment has not mitigated our objections. On Friday May 16, 2003, Mr. Dorr testified before the Senate Appropriations Subcommittee on Agriculture and Rural Development. As part of the budget request for FY 2004, he stated that he views his agency as the "venture capitalists" of rural America, instead of lender of last resort, its primary historical mission.

It is not in our nation's best interest to have an Undersecretary for Rural Development who has admitted misuse of U.S. government programs, antagonized those he would be charged to serve, and who envisions a structure of agriculture that would further depopulate our rural communities. The Undersecretary for Rural Development should support policies that ensure thriving and viable rural communities and uphold USDA standards. This person should also believe in the government programs he administers.

The undersigned organizations remain concerned about Mr. Dorr's vision, his current USDA record, and the USDA's failure to respond to pending questions from the Senate Agriculture Committee. We strongly urge you to vote against Mr. Dorr's nomination.

Mr. HARKIN. I have a letter from the Black Caucus expressing deep concern about this nomination and pointing out: Before moving forward with the nomination, we urge you to carefully consider the concerns we have outlined here, "only when all parties are satisfied should he be given a vote." I ask unanimous consent that letter be printed in the RECORD, along with a letter signed by 44 Senators, dated June 24, 2003, to Majority Leader FRIST, basically saying they are opposed to going ahead with this nomination until one, the nominee furnishes requested information, and two, until a hearing under oath is held on Mr. Dorr's nomination according to committee rules and normal practice.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, June 24, 2003.

Hon. BILL FRIST,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR MR. LEADER: We write to express our deep concern about the nomination of Thomas C. Dorr as Under Secretary for Rural Development and member of the Commodity Credit Corporation board at the Department of Agriculture. The nomination was reported from the Committee on Agriculture, Nutrition and Forestry on June 18.

From the outset, Mr. Dorr has been a highly controversial nominee, due in part to his insensitive and divisive remarks concerning ethnic and religious diversity, his disparaging comments about low income rural Americans and his advocacy of huge megafarms at the expense of family farms. Accordingly, the Congressional Hispanic Caucus opposes Mr. Dorr's confirmation and the Congressional Black Caucus has expressed "deep concern" about the nomination.

Of critical importance is evidence that Mr. Dorr signed and submitted documents to the Department of Agriculture in which he misrepresented his farming arrangements with two family trusts for the purpose of evading statutory limitations on the amount of farm program payments he could receive. In fact, Mr. Dorr specifically stated in a conversation with his brother that he had set up the arrangements to "avoid a 50,000-dollar payment limitation" to his own farm corporation. The misrepresentations, made by Mr. Dorr on behalf of the trusts, were a necessary part of his plan to evade payment limitations. When USDA discovered the misrepresentations, it required the trusts to make restitution to the federal government of nearly $34,000. In addition, the evidence showed that USDA had paid out over $70,000 in earlier years in the same manner and under the same arrangements that USDA had found improper and which led to the required $34,000 payment. USDA failed to investigate these payments, but they raised additional doubts about Mr. Dorr's dealings with USDA, including those through other parts of his large and complex farming operations.

The Agriculture Committee has a responsibility to investigate these matters as part of its examination of the fitness of this nominee to serve. In the previous Congress, the Committee sought unravel the complicated web of Mr. Dorr's financial dealings with USDA. A hearing was held in February of 2002, but it raised more questions than it answered, including disturbing new issues about Mr. Dorr's truthfulness and veracity in sworn testimony to the Committee. The nominee and the administration rebuffed subsequent efforts by the Committee to obtain information that would have addressed these very serious questions pertaining directly to Mr. Dorr's honesty and integrity. Despite these unresolved problems, the nominee received a recess appointment in August of 2002.

Mr. Dorr was renominated for the position early this year. Despite repeated requests, the current Chairman of the Agriculture Committee has refused to hold a hearing on the serious issues involving Mr. Dorr's nomination, even though this is a new Congress with many new members of the Agriculture Committee, it is a new nomination and there are substantial concerns about Mr. Dorr's performance in his recess appointment. The nominee and the administration continue to stonewall reasonable efforts and requests intended to resolve the very serious unanswered issues about Mr. Dorr's fitness as a nominee for high federal office.

Indeed, during the June 18 Committee business meeting at which Mr. Dorr's nomination was reported, the Chairman would not even yield to allow the minority to debate the nomination or offer a motion for a hearing—contrary to normal practice and the Chairman's previous commitment on the record that the minority would be allowed to debate the nomination. A request for as little as three minutes to speak was denied.

Under the circumstances, we are opposed to any action on the Senate floor pertaining to the nomination of Mr. Dorr until such time as 1) the nominee furnishes requested information that would clear up serious questions about his honesty and integrity in financial dealings with USDA and his truthfulness and veracity in sworn testimony to a Senate Committee and 2) a hearing under oath is held on Mr. Dorr's nomination according to Committee rules and normal practice.

HOUSE OF REPRESENTATIVES,
Washington, DC, May 20, 2003.

Hon. THAD COCHRAN,
Chairman, Agriculture, Nutrition and Forestry Committee, U.S. Senate, Washington, DC.

Hon. TOM HARKIN,
Ranking Member, Agriculture, Nutrition and Forestry Committee, U.S. Senate, Washington, DC.

DEAR SENATORS: At the request of members of the Congressional Black Caucus, I am providing you with a copy of a letter which outlines the reservations many of us have regarding the nomination of Thomas Dorr for the Undersecretary of Rural Development at United States Department of Agriculture.

Please find the enclosed letter for your information. If additional information is required, please contact me.

Sincerely,

BENNIE G. THOMPSON,
Member of Congress.

CONGRESS OF THE UNITED STATES,
Washington, DC, May 23, 2001.
Hon. TOM HARKIN,
Ranking Member, Committee on Agriculture, Nutrition, and Forestry, Russell Senate Office Building, Washington DC.

DEAR SENATOR HARKIN: We are writing today to register our deep concern regarding the proposed nomination of Tom Dorr for the Undersecretary of Rural Development at the US Department of Agriculture. Recent developments have cast doubt upon the Mr. Dorr's ability to serve all American farmers in a way that is sensitive to their needs and struggles.

In particular, we are disturbed by recent remarks attributed to Mr. Dorr regarding ethnic diversity and economic development. On May 10, the DesMoines Register quoted Mr. Dorr as saying the following:

"This is not at all the correct environment to say this, but I think you ought to perhaps go out and look at what you perceive the three most successful rural economic environments in this state . . . you'll notice when you get to looking at them that they're not particularly diverse, at least not ethnically diverse. . . . There's something there obviously that has enabled them to succeed very well."

Given the past record of the United States Department of Agriculture on matters of ethnic diversity and civil rights, we are shocked to learn that the proposed nominee would express the belief that ethnic diversity is an impediment to economic growth. Mr. Dorr's nomination for a position that would require him to work in counties with extensive ethnic diversity makes it difficult for us to understand, much less reconcile ourselves to, such seemingly insensitive statements.

The Congressional Black Caucus has long worked to ameliorate USDA's historic bias against minority farmers and to improve the capacity of USDA to work with minority and economically disadvantaged farmers. Given the ongoing efforts that many members of this caucus have made in this regard, it is possible, even likely, that to confirm Mr. Dorr as the Undersecretary for Rural Development without a deeper investigation into his sentiments regarding ethnic diversity would send the message that the Administration lacks an adequate commitment to civil rights and minority farmers.

Additionally, we have reservations about reports that Mr. Dorr has proposed that the future of American farming lies in megafarms of 225,000 acres. As the American agricultural sector becomes increasingly concentrated and mechanized, small and medium size farms are already finding it difficult to compete with larger and more powerful agricultural operations and interests. In recent decades small farmers, especially minority farmers, have slowly disappeared as our agricultural system has increasingly become dependent upon a small number of large farms.

As large farms have gained marketshare, there has been no commensurate improvement in the fortunes of small and medium farmers. If they are able to stay in business at all, many of these farmers are forced to fight for an ever dwindling share of the agricultural market. In addition, those who are unable to maintain the economic viability of their farms find themselves faced with limited off-farm employment and educational opportunities.

Rather than accepting the demise of the small farmer as a historical inevitability, it is critical that the Department of Agriculture seek ways in which to harness new and creative means by which to ensure that farms of all sizes can flourish. The future of rural America need not reside only in ever increasing economies of scale and market concentration. Rural America faces struggles that go considerably beyond the fields. Rather, it faces issues of crumbling infrastructure, lack of planning capacity, outmigration of youth, and a growing digital divide between urban and rural communities. Any policy for rural America which does not recognize the interplay of these many complex and intersecting concerns does rural America injustice.

As you move forward with the consideration of the nomination of Mr. Dorr for the Undersecretary of Rural Development at USDA, we urge you to carefully consider the concerns that we have enumerated here. In particular, we urge you to delay confirmation until you have an adequate satisfaction that Mr. Dorr has the requisite expertise and sensitivity to enable him to address the broad range of needs and issues facing rural America, particularly issues relating to ethnic diversity and small farms.

Sincerely,
THE CONGRESSIONAL BLACK CAUCUS.

Mr. HARKIN. How much time remains?

The PRESIDING OFFICER. Six minutes.

Mr. COCHRAN. I am pleased to yield 12 minutes to the distinguished Senator from Iowa, Mr. GRASSLEY.

Mr. GRASSLEY. Madam President, we have heard about the past and Tom Dorr. I will speak about the present and the future because all the statements about the past are not in any way reflected in the year and a half that he served as Acting Under Secretary.

Madam President, I rise this morning to support the confirmation of Under Secretary Thomas Dorr.

I know this man. I know what he stands for. I know what he has accomplished. Tom Dorr is a fourth generation "dirt under the fingernails" family farmer. He is a man of vision, a successful farmer and business operator. He possesses outstanding financial and business expertise. He is a community leader and person of character. He is one of the best, in my opinion, thinkers on rural policy issues.

I respect what he has done with USDA's Rural Development mission area. USDA's Rural Development is one of the most vital mission areas in the U.S. Government for rural areas of this country, like those of my hone State of Iowa.

Rural America is home to 65 million Americans. USDA's Rural Development implements programs that aid in the development of the infrastructure, and provide assistance for housing and business development opportunities essential to rural America.

This position requires a leader and manager with vision, foresight, and leadership skills. President Bush appointed such a leader over 15 months ago. President Bush wants Tom Dorr confirmed to that position in order that he may continue to provide him guidance.

Because of his recess appointment, we have a track record by which to judge Tom. Tom has served 15 months as the Under Secretary for Rural Development. I, as have many of you, have heard from not only Secretary Veneman and others at USDA of Mr. Dorr's accomplishments, but also from career staff, and groups who originally had concerns. They talk about his leadership, his vision, his intellect, and most importantly, his commitment to rural America. When I hear of comments like this from his peers and those who work with him, I take particular note. Let me illustrate some of the results that have been brought to my attention.

No. 1, he expedited the release of $762 million of water and wastewater infrastructure funds provided in the 2002 farm bill in just 3 months.

No. 2, he led the effort to complete the rulemaking process in order that the $1.5 billion broadband program could begin taking applications this year. He believes that if Americans are to live locally and compete globally, that it is as imperative to wire the country for technology access as it was to electrify it over 60 years ago.

No. 3, in order to facilitate the review and announcement of the $37 million in value-added development grants, he is using private-sector resources to expedite the process.

No. 4, in order to deliver the financial grants authorized through the Delta Regional Authority, he helped develop and get signed a memorandum of understanding between Rural Development and the Delta Regional Authority. This will allow Rural Development to assist in delivering joint projects at no added cost to the DRA.

No. 5, he facilitated the development of a memorandum of understanding, signed last June by Secretaries Veneman and Martinez, between the Department of Agriculture and the Department of Housing and Urban Development that is focused on better serving housing and infrastructure needs.

No. 6, he has developed a series of initiatives with HUD that will allow Rural Development to more cost effectively meet the housing needs of rural America. These have allowed the Department to provide greater access to housing for all rural Americans, but especially minority rural Americans in fulfillment of the President's housing initiative.

No. 7, he has initiated a review of the Multi Family Housing program. This includes the hiring of an outside contractor to conduct a comprehensive property assessment to evaluate the physical condition, market position, and operational status of the more than 17,000 properties USDA has financed, all while determining how best to meet the needs of the underhoused throughout rural America.

No. 8, he has initiated a major outreach program to insure that USDA

Rural Development programs are more easily made available to all qualified individuals, communities and rural regions, and qualified organizations.

Although this is an incomplete list of his accomplishments, it is easy to see that Under Secretary Dorr has done a great job in the short 15 months that he has served at Rural Development. Why folks want to let him go now is beyond me.

I have known Thomas Dorr for many years and expected this kind of performance. I have also been very impressed with his ability to articulate a vision for rural America, when he appeared before my Senate Finance Committee in August, representing President Bush's programs.

In addition, I am not the only person that has been impressed by Tom's work at USDA. Listen to these testimonials:

> Secretary Dorr has been an invaluable resource in helping us build new and complementary relationships within and without USDA, the 1890's and farmers in distress.

That is a quote from Dr. Clinton Bristow, chair of the Council of 1890 Presidents and president of Alcorn State University.

> Under Secretary Dorr has been the first person in this position in several years to creatively tackle the tough problems facing Multi-Family Housing at USDA Rural Development.

That is a quote from Dr. Clinton Jones, senior counsel, House Financial Services Subcommittee on Housing and Community Opportunity.

Clearly, impartial leaders are impressed with Tom Dorr's job performance.

Tom Dorr has worked as a dedicated public servant for many years in our home State. Tom Dorr served on the Iowa Board of Regents for all of Iowa's universities. This speaks volumes about Tom's ability and character. Tom also served as a member of the Chicago Federal Reserve Bank Board of Directors for two complete 3-year terms, the maximum allowed. Tom also served as an officer and director of the Iowa and National Corn Growers Associations in the beginning stages of the push for ethanol and renewable energy.

Under Secretary Dorr has done an exemplary job at USDA. No one denies this. This is no surprise to those of us that know him or have worked with him in the past. The only thing that has come as a surprise, related to Tom's service, are the rumors that have been generated to undermine Tom.

Due to my great distaste for perpetuating false accusations, I have great reluctance even addressing these malicious points, but because of the fact that these issues have been raised, I will quickly address them.

The first false accusation: There is an issue with farm program payments to a family trust associated with Tom's farming operation. Tom's father and uncle each established a trust in the late 1970s to insure the family farming operation continued, and more importantly that Tom or any of his eight siblings and his uncle's five children might also farm if they wished.

When established, the trusts and the farm operating company were consistent with the provision of the farm bill. However, with the change of farm bills, there were questions raised whether the operations exceeded payment limitations. Rather than incur the legal costs to challenge to defend their structure, which would have been more costly, the family trust repaid $17,000 and changed their farming operations as recommended by the county FSA committee.

Further, and as a result of his nomination process, a nonpartisan IG investigation found that Tom nor any of his family members had done anything wrong. This opinion is consistent with the conclusions reached during two reviews by USDA under both the Clinton and Bush administrations. Tom Dorr has been cleared of any wrongdoing regarding farm payments by both Republicans and Democrats.

Second false accusation: Tom Dorr supports big farms, not family farms. I talked with Tom about this accusation because I am adamantly opposed to the concentration and consolidation occurring in rural America and I wanted to hear his explanation.

In 1998, Tom Dorr was interviewed by the New York Times and asked to provide his vision of efficient farming. With his strong understanding of economics, he explained his ideas for the use of new technologies to take advantage of input discounts. He also spoke about the ability to enhance machinery and logistics savings between family farmers, and to improve commodity marketing by establishing technology driven arrangements between cooperative groups of family farmers.

This is certainly not a new concept. This is the principle on which cooperatives were based and formed. Tom felt that there were more opportunities for cooperative efforts that farmers could take advantage of, including more efficient use of expensive harvesting and processing equipment. That is exactly the challenge that many new generation cooperatives are undertaking. We should appreciate new and bold thinking rather than criticize those the suggest new ideas or concepts.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GRASSLEY. I need maybe 2 more minutes.

Mr. COCHRAN. Madam President, before yielding further time, I ask unanimous consent that the time for debate prior to the cloture vote be extended by 15 minutes, to be equally divided in the usual form. This has been cleared on both sides of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COCHRAN. Madam President, I yield an additional 2 minutes to the distinguished Senator.

Mr. GRASSLEY. Finally, the third, and most egregious, false accusation: Tom is a racist.

This hurts me to even say it. From the projects listed earlier to the comments I read you, it is clear that Tom has demonstrated the ability as well as understands the importance of working to empower the underserved and underutilized minority communities.

Simply put Tom Dorr is no racist, and anyone who has worked with or around him knows that. The comment that has been manipulated to generate this accusation, made during a forum at Iowa State University, was taken out of context.

I have not yet met or had any participant of this conference tell me that he or she believes Tom's remarks were meant to promote a lack of diversity. Quite the contrary, his actions while at USDA have served to show anyone who is interested that he is insightful and extremely sensitive to the ongoing issues of the minority populations that are underhoused, underbanked, and in general, underserved.

If anyone should question Tom's service at USDA, all you need do is visit with former Congresswoman Eva Clayton, Dr. Clinton Bristow, Ralph Paige, executive director of the Federation of Southern Cooperatives, and see what they think of Tom Dorr.

Tom Dorr is the person for the job. His background, recommendations, and now his track record more than provide justification for him to be confirmed as the Under Secretary for Rural Development.

Tom has already suffered a terrible disservice through the political witch hunt to which he has been subjected. It would be outrageous if rural America were to be deprived of the leadership and talent that President Bush has provided for this terribly important position. Rural America is regaining its economic, social, and cultural momentum. It would be a shame to deprive it of leadership at this critical juncture.

Madam President, I urge my colleagues to vote for cloture and to support the ultimate confirmation of this committed and talented leader.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Madam President, I will use leader time so as not to take from the time that is currently allotted in the debate.

Let me first begin by saying how much I admire the distinguished senior Senator from Iowa. I have applauded him publicly and privately for weeks, if not months now, for all of his work on a number of issues that I care a great deal about and find myself in the uncomfortable position in this case disagreeing with him with regard to this nomination. But I admire him for many other reasons.

I also must say I am very grateful for the effort made by Senator HARKIN over the course of the last 2 days to educate us all with regard to this particular nominee. The concerns he has raised are ones that I share.

This is the first time, he told me last night, in I think he said 29 years, where he has ever opposed a nominee from Iowa. I know he doesn't do it lightly. I know he does it after a great deal of very careful thought about this man's qualifications.

Before I talk about the qualifications of Mr. Dorr, let me say we have a lot of good people down at the Department of Agriculture. They are Republicans. They are Democrats. They are Independents. They care a lot about rural America. They do their best to implement the laws we write, to regulate where regulation is required.

I believe we ought to salute them and thank them for the job they do. I am always appreciative of the extraordinary task they have been charged with implementing, given how little fanfare and how little thanks they oftentimes get. That is especially true for the FSA offices in every county in most of our States. So I salute them.

I am disappointed this matter has reached the Senate floor at all. I have two concerns about Mr. Dorr. The first is the one expressed very eloquently and powerfully last night. I think it sends all the wrong signals when a person who has falsified documents can be confirmed for one of the highest positions in the Department of Agriculture. We are told he wasn't prosecuted for having falsified documents, but we also know the reason he wasn't prosecuted is that the statute of limitations had run out. People hadn't fully been apprised of the circumstances until it was too late. That is the fact.

Falsifying documents in this day and age, given all of the repercussions legally and ethically in the Department of Agriculture as well as throughout the entire Government, ought to be taken very seriously. To promote somebody who falsifies documents not only destroys the credibility and the essence of our understanding of the respect for the rule of law but sends a clear message to others who are expected to abide by the law and the regulations of the land.

Falsifying documents is wrong. There can be no explanation. There can be no acceptance. And there ought to be no tolerance. There certainly should be no confirmation of someone who has been found in violation of the regulations with regard to those documents and the regulations provided by the legislation we have passed into law.

The second is the divisive nature of some of his views. To say that those counties succeed in large measure where there is no diversity, where there is no ethnic or religious difference, sends again the wrong message about the importance of embracing diversity, of embracing the kind of differences we find in our country to be a strength rather than a weakness.

I am not sure what he had in mind when he said it. In fact, he even recognized, as he was about to say it, that maybe he shouldn't have said it. Well, he was right. But, again, whether it was a comment or whether it is his philosophical approach, if we are going to discourage diversity, discourage ethnicity, discourage religious tolerance, that, too, raises grave questions about the eligibility of somebody of this stature in the Department of Agriculture or in the Federal Government under any circumstances.

I can't recall the last time I opposed a nominee for the Department of Agriculture for anything. In 25 years, I think I have supported virtually every nominee, Republican and Democrat.

I come to the floor, like my colleague Senator HARKIN, expressing regret that we have to be here at all, expressing regret that this nominee has reached this point, expressing regret that a nominee of the stature required for this position has falsified documents and used rhetoric that goes beyond what I consider to be the acceptable tenor of debate and approach with regard to diversity and the acceptance of our multiracial and multicultural society today.

I hope my colleagues will join us in recognition that we can do better than this and that we need, at those times when we find somebody who is not qualified, to simply say so. It is incumbent upon us to take the responsibility to do that. That is our task this morning as we vote.

I urge those who will vote to vote no on cloture.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. COCHRAN. Madam President, how much time remains on this side?

The PRESIDING OFFICER. Fifteen minutes, 43 seconds.

Mr. COCHRAN. Madam President, I yield 5 minutes to the distinguished Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Let me first of all say that while I appreciate the comments of the minority leader, I don't believe it is accurate to make some of the accusations in terms of destroying records. It is my understanding that the Farm Service Agencies have said that after examining it, there was no intent to deceive. It was something that was done in error and good faith or however you want to characterize it.

I don't want to see happening here what appears to be happening in a similar way to the nominee to be Administrator of the EPA. Certainly Mike Leavitt was one of the most qualified individuals, and yet his nomination was strung out for days and days and weeks. It ended up at 56 days. I hope we are not going to get so partisan that this happens again in this case.

I believe Tom Dorr has completely resurfaced USDA Rural Development. As Under Secretary, Dorr has set a clear vision for USDA Rural Development as a venture capital firm for rural America. The agency once was thought of as the lender of last resort, but the mindset has been changed to one where employees aggressively seek out investments to make in people and in organizations.

I am really pleased when I see what has happened in the State of Oklahoma. We have never had anyone who has performed like Tom Dorr has performed there. All I hear from Democrats and Republicans all around the State is what a truly great job he has done.

For example, 3 years ago my State had $29 million in guaranteed housing loans but, thanks to Tom Dorr, last year we had $60 million. It doubled, to the people who are really deserving of it, and now we have more and more Oklahomans who own their own homes rather than rent them.

In addition, since Tom Dorr has been the Under Secretary for Rural Development for the USDA, the amount of business loan programs in my State of Oklahoma has doubled. Both housing and loan programs have actually doubled in my State.

I would like also to go back to the people who speak to the real people out there, not the politicians, not people who somehow think they can have some kind of a gain if they can kill one of the President's nominees. Look at the National Corn Growers Association, the board of directors stated in a letter to Senator TOM HARKIN—this is a quote from the National Corn Growers Association; all those farmers out there who grow corn belong to this:

> The Department [of Agriculture] needs a leader like Tom Dorr to help breathe life into an agency whose future role will be to positively facilitate change in the farm economy.

The Wheat Growers Association—my State is a big wheat State, and we have an interest in this. You go out and see these people. These people are just trying to survive right now, and yet they are just praising the work of Tom Dorr.

The Wheat Growers said in a letter to TOM HARKIN:

> We encourage you to unite behind Tom Dorr as Under Secretary of Rural Development. He encompasses the creativity that can bring hope in stemming the exodus of people from our rural countrysides because of lack of economic opportunity.

That is all we are trying to do in Oklahoma is survive. Our farmers are trying to survive out there.

This is Terry Barr from the National Council of Farmer Cooperatives, the co-ops—I don't know what we would have done—who said:

> We understand the Senate may soon consider the nomination of Thomas Dorr as Under Secretary of Agriculture for Rural Development. . . .
>
> Rural development and related programs carried out by the United States Department of Agriculture are of vital importance to farmers and their cooperatives. These include programs aimed at encouraging and promoting the ability of farmers to join together in cooperative efforts to improve their income from the marketplace.

Again, this is the National Council of Farmer Cooperatives:

> Mr. Dorr, we believe, has demonstrated that he has the background, experience and understanding necessary for success in this important position of leadership.
>
> We urge the Senate to confirm his nomination.

So you hear from all the users out there and from the farmers—those individuals out there who are trying to survive.

Also, keep in mind one other thing. Thomas Dorr came from a small farmer community. He understands how they think. I think it is critical that we confirm him as soon as possible.

To reiterate, on March 22, 2001, President Bush announced his intention to nominate Tom Dorr of Marcus, IA, to serve as Under Secretary of Rural Development for USDA. Two and a half years later, his nomination is still pending.

This is obstruction. Thomas Dorr is not the only nominee being blocked for confirmation. As chairman of the EPW Committee, I dealt with this same problem—obstruction—with the nomination of Governor Mike Leavitt to be administrator of the EPA.

This is about politics, not nominees. Thomas Dorr is more than qualified to hold the position of Under Secretary for Rural Development of the U.S. Department of Agriculture. I don't think anyone has questioned that the motivation for these delays was partisan presidential politics.

Apparently nominations are no longer about a nominee's qualifications and support, but simply about partisan politics.

Americans expect and want the Senate confirmation process to be thoughtful and thorough, but they certainly don't think it should drag on year after year.

Tom Dorr has completely resurfaced USDA Rural Development. As Under Secretary, Dorr has set a clear vision for USDA Rural Development as the venture capital firm for rural America. The agency was once thought of as the lender of last resort, but the mindset has been changed to one where employees aggressively seek out investments to make in people and organizations that will fulfill the mission.

Under Secretary Dorr ran his farm and business from a small town so he understands well the needs of rural America, including the need for technology to allow these communities to compete. He believes that broadband is as meaningful to rural America today as rural electrification was in the mid-20th century. He led the effort to complete the rulemaking process and begin accepting applications for the new broadband program. Through his efforts, $1.5 billion is available this year to help build rural technology infrastructure.

The list of improvements that increased economic opportunity and improved the quality of life in rural America that were spearheaded by Tom Dorr is endless.

He has tackled the very complicated and difficult problems involved in the Multi Family Housing Program, that, according to the one congressional staffer, "were ignored by all previous Under Secretaries"—he believes all rural citizens deserve safe and secure housing.

Dorr initiated an aggressive marketing program to extend the outreach of USDA Rural Development programs to more deserving rural Americans and qualified organizations, especially minorities.

In addition, he is a proponent of renewable energy, which led to millions of dollars in grants to develop renewable energy sources; he has greatly boosted the morale of USDA Rural Development employees; has greatly aided in the development of community water/wastewater infrastructure—and the list goes on and on.

For my State of Oklahoma, the strong leadership at the top of Thomas Dorr has resulted in an increase of millions of dollars in rural development.

For example, 3 years ago my State had $29 million in guaranteed housing loans, but thanks to Tom Dorr, this last year Oklahoma had $60 million in guaranteed housing loans. That represents an increase of $31 million worth of Oklahomans that now own their homes rather than renting them.

In addition, since Thomas Dorr has been the Under Secretary of Rural Development of the USA, the State of Oklahoma's amount of business loan programs has doubled from $15 million to $30 million.

Tom Dorr has gained support from a spectrum of organizations and individuals: The National Corn Growers Association Board of Directors stated in a letter to Senator TOM HARKIN: "The Department [of Agriculture] needs a leader like Tom Dorr to help breathe life into an agency whose future role will be to positively facilitate change in the farm economy."

In another letter to TOM HARKIN, the President of the National Association of Wheat Growers stated: "We encourage you to unite behind Tom Dorr as Under Secretary for Rural Development. He encompasses the creativity that can bring hope in stemming the exodus of people from our rural countryside because of lack of economic opportunity."

However, surprisingly enough, TOM HARKIN is one of the main reasons Tom Dorr's application is still pending today.

In a letter to Senator BLANCHE LINCOLN, the USDA Assistant Secretary for Civil Rights points out that Tom Dorr is a leader in the advancement of civil rights: "I have no vested interest in seeing individuals advance in this administration who I fear will hamper the progress of civil rights within the USDA. Mr. Dorr is not such an individual. If confirmed, I believe that Mr. Dorr would continue to work with me to advance civil rights at USDA."

It is obvious that Tom Dorr is the most qualified person for the position of Under Secretary of Rural Development for the USDA. He has completely turned around the USDA office of Rural Development, and has clearly gained praise from all sorts of individuals, agencies, and organizations. Do not let this man fall victim to partisan politics.

Mr. CRAPO. Madam President, I rise today in support of Tom Dorr and to urge my colleagues to vote for cloture.

As chairman and one-time ranking member of the Agriculture Subcommittee on Forestry, Conservation, and Rural Revitalization, I have had the opportunity to work with Tom Dorr from the time he was nominated in April 2001, and I have had the pleasure of working with him for the past year in his capacity as Under Secretary of Rural Development.

I would like to share with my distinguished colleagues some of the comments that I have received from people in Idaho about Tom Dorr's efforts: "He has a real passion for rural America," "He has vision and courage," "It would be a real loss if he is not confirmed," "there is confidence in his clear vision for how Rural Development can help rural America". "He is providing real leadership, and has the trust of everyone that works here."

Mr. President, Tom Dorr has what we look for in our Under Secretaries, vision and leadership. He is making real changes at USDA that will benefit the rural citizens of my State and the country.

One of my priorities has been to help bring and build jobs in Idaho, particularly in rural Idaho. Tom Dorr shares those priorities and is working to build on USDA Rural Development's capacity as a jobs creation agency.

He recognizes that building the infrastructure to attract and develop long-term growth is vital to the well-being of the communities.

Many of us choose to live in rural America for its values, community, and character. We need to work to ensure that those who wish to live in rural America can. The jobs need to be there and the infrastructure needs to be there. Tom Dorr recognizes that.

In 2001 when Tom was first nominated for this position, and in 2002 when the Senate first began to consider his nomination, I was convinced that he was qualified to lead the agency.

Since the President appointed him during the August recess last year, he has proved that he is qualified to lead the agency.

To those who would argue that the Senate needs more deliberation, I say that the Senate has deliberated long enough.

Tom Dorr was first nominated in April 2001. A hearing was held in March 2002, after three previously scheduled hearings were cancelled. Prior to the committee reporting out his nomination, he answered hundreds of questions from Committee Members. In fact, the committee's ranking member requested more than 1,000 documents or pieces of information.

When the committee considered his nomination this year, it reported him out by a vote of 14 to 7. Did we report him out in one day, no. At the confirmation hearing, the ranking member was given the opportunity to expound on why he opposed the nominee, and he did so until the committee no longer had a quorum.

Madam President, Tom Dorr has been available for questioning and we've had the opportunity for oversight since his nomination in 2001 and his appointment in 2002.

Throughout this process, some have sought not to deliberate on his nomination, but to delay it in the hopes it might whither on the vine.

I ask my colleagues for an up or down vote on his nomination. He deserves it. And, I believe, the country deserves his leadership.

Mr. BIDEN. Madam President, today I am voting against ending the debate on the nominations of Thomas C. Dorr to serve as the Under Secretary for Rural Development at the Department of Agriculture and also as a member of the Commodity Credit Corporation because I believe it is premature for this body to be voting on the appropriateness of Mr. Dorr to assume these positions. This is an unusual step for me, but, then again, this is a very unusual situation.

I have long recognized that a President should generally be entitled to have executive branch agencies run by the people he chooses. While his selections should be given considerable deference, the President's power of appointment is limited by the duty of the Senate to provide "advice and consent." Throughout my tenure in the Senate, I have supported countless nominees for Cabinet and other high-level positions, including many with whom I have disagreed on certain policies, but I have also cast my vote against confirmation when I have become convinced that the nominee is not suitable to fill the role. In this instance, I do not believe the Senate has all the facts that are necessary to make an informed judgment.

During this confirmation process, serious questions were raised about misrepresentations made by Mr. Dorr to the U.S. Department of Agriculture regarding his farming arrangements with two family trusts in an effort to secure farm program payments, and the subsequent restitution made to the Federal Government of nearly $34,000. Rather than resolving these questions, last year's hearing on this nomination held by the Senate Agriculture Committee raised additional and disturbing questions, and the nominee thereafter failed to supply documents that might remove the cloud over this matter. That is why last June, I joined many of my colleagues in the Senate in urging the majority leader to withhold further Senate action on these nominations until the nominee furnished the requested information to clarify the important questions raised about his integrity in financial dealings with USDA and his truthfulness and veracity in sworn testimony before the Senate committee. I am disappointed that, rather than helping to secure a resolution of these serious issues, the majority leader has chosen to move these nominations forward. As such, I am left with no recourse other than to oppose cloture on these nominations.

Mr. FEINGOLD. Mr. President, I rise today to speak on the nomination of Thomas C. Dorr as Under Secretary for Rural Development and as a member of the Commodity Credit Corporation board at the Department of Agriculture (USDA). The position at USDA to which Mr. Dorr has been nominated is highly influential in the continued development of rural America, holding the unique responsibility of coordinating Federal assistance to rural areas of the Nation.

Many people, when they think of rural America, may think of small towns, miles of rivers and streams, and perhaps farm fields. But I know that rural Wisconsin is also characterized by communities in need of firefighting equipment, seniors who need access to affordable healthcare services, and low-income families in need of a home. The U.S. Department of Agriculture's Rural Development programs and services can help individuals, families, and communities address these and other concerns, which is why the office of Under Secretary for Rural Development is so important.

I have deep concerns regarding Mr. Dorr's comments and opinions about the future of rural America, particularly in light of his nomination to this important post. I disagree with Mr. Dorr's promotion of large corporate farms and his vision of the future of agriculture. Nevertheless, when it comes to confirming presidential nominees for positions advising the President, I will act in accordance with what I feel is the proper constitutional role of the Senate. I believe that the Senate should allow a President to appoint people to advise him who share his philosophy and principles. My approach to judicial nominations, of course, is different—nominees for lifetime positions in the judicial branch warrant particularly close scrutiny.

So, although I may disagree with Mr. Dorr's views on agriculture issues, I am not prepared at this point to oppose Mr. Dorr's nomination on those grounds. However, those are not the only grounds to oppose the nomination. I also have strong reservations about Mr. Dorr's public comments on issues of race and ethnicity and I am troubled by Mr. Dorr's apparent abuse of the Government's farm programs.

Furthermore, Mr. Dorr has not yet provided information to the Senate Committee on Agriculture, Nutrition, and Forestry that has been requested of him. This information would clarify questions about his honesty and integrity in financial dealings with the Department of Agriculture as well as in sworn testimony to the Committee. I am concerned that Agriculture Committee rules and practice were apparently not followed with respect to the nomination hearing of Mr. Dorr. I am not alone in expressing these sentiments—I joined with forty-two of my colleagues, led by the ranking member of the Agriculture Committee, in conveying these concerns to the majority leader.

The Senate should not be forced to vote on a nomination before we have all of the information that we feel is needed to make an informed decision. There may be good explanations for Mr. Dorr's testimony and answers, but the Senate does not have them yet. And we should get them before we vote on the nomination. I will therefore vote no on cloture.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Madam President, I am pleased to present to the Senate the President's nomination of Thomas Dorr to serve as the Under Secretary of Agriculture for Rural Development and to be a Member of the Board of Directors of the Commodity Credit Corporation. The President appointed Mr. Dorr to the position of Under Secretary of Agriculture and Rural Development during Senate recess on August 9, 2002.

Following the August recess of 2001, the nominations were resubmitted by the President, and received in the Senate on September 4, 2001.

The President then resubmitted the nominations to the Senate on September 30, 2002; again the nominations were not acted upon and consequently returned to the President on November 20, 2002.

Following the adjournment of the 107th Congress, the President once again resubmitted Mr. Dorr's nominations on January 9, 2003 for consideration during the 108th Congress.

Obviously, the President believes Mr. Dorr to be qualified for this post, and Mr. Dorr's record during the appointment to the position certainly supports the President's confidence in him. While serving in the position of Undersecretary of Agriculture for Rural Development, Mr. Dorr has performed his duties in a way that has reflected credit on the Administration of President Bush. He deserves to be confirmed.

Specifically, Mr. Dorr has helped expedite the release of $762 million to help reduce the backlog of community water and wastewater infrastructure applications.

Mr. Dorr led the effort to complete the rulemaking process and begin accepting applications for the new program to provide broadband Internet access to rural communities.

He has utilized private sector resources to help expedite the review and announcement of $37 million in Value Added Agriculture Product Market Development Grants.

Mr. Dorr has been instrumental in facilitating the pending agreement between the Small Business Administration and USDA Rural Development on the new Rural Business Investment Program created in the Farm Bill.

Under his stewardship, more rural families own homes where they live in safety and comfort: Mr. Dorr has worked with Congress to convert $11 million in carryover housing funds to support $900 million in new funding for guaranteed loans—creating an additional 12,000 homeownership opportunities.

He worked to help the families of economically distressed areas in the Southwest colonias through a formal agreement with the Department of Housing and Urban Development.

He has insisted on fairness to improve accountability and performance on minority homeownership loans by working with the Department of Housing and Urban Development, the Federal Housing Authority and Veterans Affairs in development of consolidated minority tracking reports.

Madam President, the committee has received numerous letters supporting this nomination.

For the benefit of Senators and for their information, I am going to point out a few things contained in the letters that I think are particularly persuasive and support this nomination.

This is a letter that is signed by 14 different agricultural commodity groups and organizations, and by the American Farm Bureau Federation:

> Mr. Dorr has proven that he has the skill and experience necessary to lead USDA's rural development efforts.

Another letter, written by a constituent from my State, a copy of which was given to all members of our committee, written by Dr. Clinton Bristow, the president of Alcorn State University at Lorman, MS. He wrote in his capacity as chair of the Council of 1890 Presidents and Chancellors. In his letter supporting this nomination he said:

> Secretary Dorr has been an invaluable resource in helping us build new and complementary relationships within and without USDA. . . .
>
> Most recently, he represented the department at a town hall meeting for small farmers voices, sponsored by the council and held at Alcorn State University. More than 200 farmers from the delta area attended the forum—unabashed and relentless farmers who represent the bottom of America's agricultural industry.
>
> In spite of the challenge, Tom was superlative in guiding the farmers through the economic and political realities of the global marketplace and helping them to understand the makeup of programs and the allocation of resources at USDA. He has set stage for sustained dialog between USDA, the 1890s, and farmers in distress. This represents only a snapshot of the many challenges that Under Secretary Dorr has helped us negotiate.

Madam President, another letter from William C. Hunter, senior vice president and director of research at the Federal Reserve Bank of Chicago. He says:

> As an African American, I can honestly say that I have never felt uncomfortable in Tom's presence. I have never heard him offer disparaging remarks about people of color, the intrinsic value of diversity, or about small farmers, for that matter. He is bright, articulate and personable. He accepts critical comments well and is not afraid to speak his mind and demonstrates rigorous economic thinking at all times.
>
> Finally, he has a deep understanding and appreciation of issues confronting our rural and agriculture communities.

I have additional letters by the National Corn Growers, National Association of Wheat Growers, and finally this letter from the National Rural Electric Cooperative Association:

> Mr. Dorr's frankness in addressing the issues facing electric cooperatives is much appreciated. We have no reservations regarding Mr. Dorr's confirmation.

That is signed by Glenn English, chief executive officer.

There are additional comments that we gleaned from newspapers, including an editorial supporting the nomination by the Des Moines Register editorial board. There are numerous other editorial comments in support of the nomination. Here is one entitled "Informed Iowans should support Tom Dorr" from the Sioux City Journal. There is an opinion piece in that newspaper, also. Here is something from the World Perspectives newsletter strongly supporting the confirmation of Tom Dorr. Here is another from the Webster Agricultural Letter, which is an interesting discussion of the political confrontation that is reflected in this nomination in opposition to it. Also, here is a copy of the National Review Online, with a description of the controversy over the Dorr nomination but coming down in support of his confirmation.

I ask unanimous consent copies of these editorials and newsletters be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the DesMoinesRegister.com, June 3, 2002]

Editorial: Make a Decision on Dorr

Every shred of evidence of alleged wrongdoing by USDA nominee Thomas Dorr has been pursued. To the point of tedium. It is time to move on: Senator Tom Harkin should quit holding Dorr hostage.

Dorr is a Marcus, Ia., farmer and agribusinessman who was appointed months ago by President Bush to be U.S. undersecretary of agriculture for rural development. Harkin is chairman of the Senate Agriculture Committee, which must decide whether to send Dorr's nomination to the full Senate for a confirmation vote.

Questions have been raised about Dorr's fitness for the job. Some of those questions are matters of philosophy that, like it or not, should be of no concern to the Senate. On appointments within the executive branch, the president should have wide discretion in staffing his administration with people of his choosing, even if that means confirming individuals some senators find distasteful.

Some questions—namely whether Dorr broke any rules when receiving federal farm payments—are relevant, but they seem to have been answered now that the USDA's inspector general has closed the books on its inquiry after finding insufficient evidence to pursue criminal charges.

Harkin may have good reason to persist in raising questions about whether Dorr properly followed the rules in receiving crop-subsidy payments: Just because there's insufficient evidence to warrant a criminal investigation does not mean Dorr's skirts are clean. Harkin should not, however, use that as an excuse to hold the Dorr nomination in limbo.

That is what the Republicans did to Clinton administration nominees for everything from surgeon general to the federal courts. It was wrong when the Republicans ran the Senate; and it is wrong now that the Democrats are in control.

Harkin owes it to Dorr and to the White House to move forward. Give Dorr another opportunity at another hearing to answer any and all questions, and then vote his confirmation up or down.

By delaying so long, Harkin gives credence to critics who say he's only playing political games.

[From the Sioux City Journal, July 10, 2001]

Informed Iowans Should Support Tom Dorr

(By Donald Etler)

Algona, Iowa.—A recent Associated Press article described a petition fronted by the National Farm Action Campaign, NFAC, and signed by representatives of 161 organizations calling for the rejection of Iowa businessman and farmer Tom Dorr in consideration of his nomination for USDA undersecretary for rural development. It is unfortunate that Dorr cannot respond in deference to the request of the White House. But, does anyone really believe the claim of the NFAC that Tom Dorr advocates one farmer for every 350 square miles or that he thinks 500 of every 501 farmers should go out of business?

I have dealt with Tom Dorr on both professional and personal levels. This man does not deserve the distorted, severe attacks upon his beliefs and character. I believe I know Tom well enough to be correct in believing that his work ethic, business sense, tenacity and moral foundation would serve rural America, and rural Iowa, quite well.

Those who choose to distort Dorr's words regarding farm program policies must be doing so solely for political reasons because as undersecretary for rural development Mr. Dorr's responsibilities would not be in areas that deal with USDA commodity programs or environmental regulations which most directly impact independent farmers. Political reasons probably explain why a website has been set up where with the click of a button a letter to the editor opposing Dorr can be downloaded. Seeing this reminds me of the old West lynch mobs.

The undersecretary for rural development is primarily responsible for policies affecting infrastructure and commerce in rural communities. Ninety percent of rural America's jobs are found in those communities and not on the farms. Most of our farmers now have off-farm jobs. As our rural communities struggle to survive with an aging and shrinking population, with the exit of businesses to larger regional communities, and with the retirement of up to 25 percent of surrounding cropland under existing farm programs, rural communities should be demanding that federal rural development policies to be retooled and redirected to reverse the long decline. In opposing Dorr, the NFAC empowers entrenched bureaucrats to continue failed programs to our continued harm.

Do the members of those groups that oppose Dorr's nomination truly want to hold the status quo which, in the case of the USDA rural public policy, has been ineffectual if not harmful for rural communities across the country? I believe Tom Dorr will tackle failed and misguided rural development programs from a new perspective. He will demand accountability of the entrenched bureaucracy and he will bring the new ideas and vision that are so sorely needed.

In the interests of the multitude of Iowa's struggling rural communities, informed Iowans would be well served to support the nomination of one of our own.

[From World Perspectives, Inc., Mar. 6, 2002]

APOLLO 13 AND THE TOM DORR HEARING

(By Emily S. French)

If you're Tom Dorr, the nominee for Undersecretary for Rural Development at USDA, you know you're having a bad day when the Senate Ag Committee Chairman Tom Harkin (D–IA) says, "to quote Apollo 13—Houston we've got a problem," just prior to a two hour recess during your confirmation hearing. That is what happened today.

Already a controversial federal nominee, Dorr came under additional fire as the Des Moines Register ran an article today, citing a recorded phone conversation in which Dorr allegedly said that government officials might "raise hell" if they audited his participation in federal farm subsidy programs. The tape was sent anonymously to the Des Moines Register last month; five people familiar with Dorr, according to the paper, identified his voice in what was represented as a 1995 phone conversation. The Register made no comments on how or why the tape was made. Surprisingly, no one defending Dorr referred to the . . .

The Controversy: The Iowa Farm Service Agency (FSA) reviewed one of the many trusts belonging to various members of the Dorr clan during 1995. During the taped conversations between, allegedly, Tom Dorr and his brother Paul Dorr, Tom Dorr said that the two trusts—the Belva Dorr Trust and the Harold Dorr Trust—are operated with the ASCS (now known as the FSA), to "quite frankly avoid" minimum payment limitations.

The Ruling: The state FSA office concluded that the farm wasn't properly structured within the family trust. But that there was no scheme on the part of the family to defraud the government. A repayment of $17,000 was ordered and made.

The Politics: The division of corporations, family farms or individuals who receive payments from the federal government under the Farm Bill program are allowed. There is nothing illegal with setting up a corporation, a limited partnership, a trust or an individual to receive payments from the federal government under this program and registering these entities with the FSA. The 1996 Farm Bill allows this under its "three entity rule" whereby one person is eligible for payments on up to three farm entities. The payment limit on the number 2 and 3 entities is half the amount on the first farm. It looks like this is what Dorr was doing, which is not surprising for any individual or company to look at all opportunities to legally maximize their operation's profitability, would be against any economic rationale.

The Senate farm bill changes this rule. In fact, Dorr supporter, Senator Charles Grassley (R–IA) is the author of the provision that tightens down payment caps. But it seems that Chairman Harkin, who didn't have such a provision in the bill he brought to the Senate floor, is ready to try Dorr for what he did in 1995, under rules that aren't even in effect yet in 2002.

This controversy has largely replaced the flap over statements Dorr made about ethnic and religious diversity in Iowa. In case clients missed that one—Dorr pointed out that there wasn't a lot of diversity in Iowa, and specifically in a couple counties that were growing economically anyway. And he did so in response to a question, stating fact. But Dorr's opponents have used this as a means of labeling him racist—an effective and particularly damning charge that is hard to shake. It seems, however, that payment limits, racial insensitivities, etc. are just side issues to the real reason why so many people in ag and farm policy so stridently oppose Dorr. He's a guy who openly talks about agriculture as a business that needs to be shaken up, revitalized, restructured, in order to re-capture its place in the U.S. and world economy.

WPI Analysis: This analysis is perhaps a bit more personal than usual, but it goes to a broader point about the economic future of agriculture. I will start by stating that until this morning, I had never met Tom Dorr (though several of my colleagues at WPI do know him). I knew of the controversy surrounding his appointment, but had not heard Mr. Dorr speak for himself. Instead, I had relied on translation of what his foes or friends say he said. Moreover, I should state that I grew up on a farm in Northern Idaho. There were 12 people in my high school class. I went on to attend a land-grant university. I am a product of rural America, a fact that defines me as a human being. I understand all the emotions of how "special" rural America and the ag economy are. But while I am extremely passionate about production agriculture—and the way of life that accompanies it—I chose to leave farming as a career. And, subsequently, I left rural America for better opportunities. I didn't want my future to be based on a farming operation that made a 5-6 percent return of investment in a "good" year. Tom Dorr is a guy who spent most of his career on the farm trying to wring out better returns and did a good job of it. Now he wants to come to Washington and take a job to try to change, for the better, economic opportunities in rural America.

After listening to comments from various Senators on the Senate Ag Committee, I can only shake my head in finally realizing why the farm bill has an additional $73 billion over 10 years in payments of one kind or another. I would challenge those "decision makers" over the idea that infusing cash and protecting the small family farm is somehow saving rural America or promoting rural development. It would seem all that it is doing is making more people reliant on the government and, in fact, rather than promoting development that spending probably hinders progress. All that federal spending buys more of is the status quo: there is no need to change, diversity or become more efficient.

It's clear to me after hearing him today, Tom Dorr feels the same way—that policies need to be changed. That—not any alleged payment scandal or racial insensitivities—is why so many policy makers oppose him, including one of his own home state Senators, Chairman Harkin. When asked by Harkin to clarify his ideas, Mr. Dorr summarized technology as the one thing that would give farmers the ability to access world markets, access information and, as a result, expand farm gate margins. That doesn't sound controversial. If a producer were able to expand margins and become more efficient, perhaps there would be less reliance on the government for bloated farm bill budgets? It's only controversial if you are used to being the ones that get credit doe providing those budgets.

If the USDA and the Bush Administration wants a person that understands rural development and understands the way of life in rural America, then it not be a person that has 'dirt under their fingers' as Senator Lugar said numerous times during the hearing this morning. Tom Dorr is such a person. His vision for farming, is one based on basic economics. Perhaps it is a little Darwinistic "survival of the fittest" approach, but the real irony is, as Undersecretary for Rural Development he wouldn't be in charge of farm programs or policy. No matter, there are still many Senators who think his views on farm policy disqualify him from having a job in Washington.

In closing, it is with amazement and frustration that I note: only Senator Thomas of Wyoming asked Mr. Dorr about his vision for rural development. And this was after almost two and half hours of testimony and questions. A sad state of affairs indeed as Washington, USDA, and rural development needs more "out of the box" thinkers whom challenge the status quo.

[From the Webster Agricultural Letter, June 15, 2001]

Dear Subscriber:

Killing the messenger? Can the Senate reject a nominee for stating the obvious? . . . A federal judge will hear a challenge to a state amendment restricting corporate agriculture . . . View from the country: the disconnect between farm policy and farm reality . . . Partisan divisions are put aside as a House committee approves USDA appropriations . . . Why don't higher prices help farmers? . . . Economics trumps politics in a milk price decision.

Dorr Confirmation Becomes a Test of Political Influence

Rarely does the Senate reject a nominee for a USDA sub-Cabinet post for expressing an opinion, let alone for telling a truth. Only three times in three decades have we seen even minimal pressure to block a nominee. Only one succeeded: the late Kathleen Lawrence asked her nomination by withdrawn in the face of bipartisan an opposition (see The Agricultural Credit Letter, 3/20/87 P6). Family farm advocates failed to stop Bank of American executive Robert W. Long from becoming assistant secretary for research in 1973. A farm women's group persuaded only a minority of Senate Agriculture Committee remembers to oppose Carol Tucker Foreman as assistant secretary for food and consumer services in 1977.

But those are the exceptions. By and large, senators believe presidents are entitled to their choices, absent overriding scandal or ideological aberration. Neither of those factors applies in the matter instant, the nomination of Iowa farmer Thomas C. Dorr to be under secretary of agriculture for rural development. Trouble for Dorr arises from two directions: family farm advocates who challenge his vision of agriculture and minority groups who feel his remarks about diversity raise questions about his commitment to protecting civil rights.

"The level and intensity of opposition to Dorr is unprecedented, testimony to today's issue-intensity politics and the near-instant organizing proficiency of interest groups. Opponents claim more than 160 organizations have joined the campaign. Most appear to have little more than a letterhead and some Willie Nelson money but some have real members or deep foundation pockets. Among those: American Corn Growers Association, Environmental Working Group, Federalism of Southern Cooperatives, Institute for Agriculture and Trade Policy and National Farmers Organization."

The critics engage in political hyperbole, reading too much into Dorr's impolitic style of provocative comment. A more balanced appraisal sees him merely stating the obvious—even foresight—in describing the industrialization of agriculture or in asking why three Iowa counties with little ethnic and religious diversity succeeded with economic development. Assuming he can take the heat and Secretary of Agriculture Ann M. Veneman and the White House stand fast (so far no evidence to the contrary) Dorr should make a persuasive case at a conformation hearing. He might adapt a line from Purdue's Mike Boehlje: "I'm not saying I like what I'm saying: I'm saying 'this is'." Scheduling a hearing depends on when the Senate agrees on rules to organize committees. Whether he's confirmed will test whether the political clout of his critics equals their formidable skill at using the news media.

Despite higher payments and marketing loan gains under the Senate bill in the first two years, the House version would favor the major program crops—by an average of $206 million a year over five years or $799 million a year over a decade. Soybeans would gain more under the Senate bill while corn, wheat, cotton and rice would gain more under the House.

"FAPRI estimates the Senate bill would result in slightly more acreage planted to major crops than the House bill, with the largest increases for wheat and feed grains. The Senate's payment limitations could have proportionally larger effects on cotton and rice producers than on producers of other crops. Senate dairy provisions would mean slightly higher average returns (14 cents per cwt.) to milk producers in 2002–06 than the House, with a greater boost in returns to farmers in the Northeast than in the rest of the country."

FAPRI calculates a chance of about one in three that either would cause the United States to exceed World Trade Organization limits on amber box subsidies but the probability would decline in later years. Federal spending on commodity and conservation programs over the next 10 years would increase by $59.8 billion for the House bill and by $63.5 billion for the Senate bill. The Senate bill would result in higher government costs in 2002 and 2003 while the House bill would mean more spending in seven of the next eight years.

Killing the Messenger? Visionary's Foes Hope To Extinguish a Vision

After persistent, mostly hostile questioning in a Senate Agriculture Committee hearing Wednesday, prospects for confirmation of Iowa farmer Thomas C. Dorr as under secretary of agriculture for rural development nominee are up in the air. But committee approval may not be as doomed as some think—USDA and White House lobbyists need to convince only one Democrat to join what likely will be 10 solid Republican votes to move the nomination to the floor, where a single opponent could, using a Senate prerogative, delay a vote indefinitely.

Given the first opportunity since his nomination last April to rebut allegations, Dorr clearly won the day on the merits. But he did not appear to convince Democrats who disagree with both his political philosophy and his clear vision of what is happening in agriculture. He was able to put to rest allegations that he advocated large-scale agriculture, opposed ethnic and religious diversity and was antagonistic to "sustainable" and organic agriculture and the agricultural extension. He also satisfied any impartial observer that he did not improperly farm the farm program, noting he repaid USDA $17,000 in program payments in the early 1990s—the result of a difference of opinion interpreting rules governing participation.

"To Sen. Charles Grassley, R–Iowa, the hearing had earmarks of a 'political lynching' with the 'opposition fomented from inside the beltway here in Washington, D.C.' Opposing witnesses appeared to make little headway with allegations he was a cheerleader for industrial-scale agriculture and antagonistic to racial and religious diversity. But skeptical Democrats were more receptive to recent revelations of his participation in farm programs and his philosophy about the federal rural development programs he would administer. To Sen. Max Baucus, D–Mont., Dorr's philosophy appeared 'antithetical to rural America.'"

Dorr's difficulty stems from an uncanny perception of the forces shaping agriculture and his willingness to describe them in blunt terms—attributes rarely found in public service. "He has simply stated the obvious," says University of Maryland agriculture dean Thomas A. Fretz, who was associate dean at Iowa State when Dorr was a member of the state board of regents. "What Tom Dorr brings is 'out of the box' thinking that challenges bureaucratic normalcy." Dorr's widely quoted comment that some ethnically homogeneous Iowa counties were successful with economic development, Fretz added, "simply stated the reality."

One of the strongest testimonials came from Varel Bailey, Anita, Iowa farmer and former National Corn Growers Association president who worked with Dorr in modernizing an antiquated NCGA in the late 1970s. "He is very aware of the plight of rural America," Bailey said of Dorr. "He has lived and farmed through the economic, social and political decline. The difference between Tom and most other people is that he steps up and tries to help."

[From the National Review Online, June 1, 2001]

Dorr-versity

(By Roger Clegg)

Once upon a time, if you read the words "diversity" and "farming" in the same sentence, you could be pretty sure that the article would be about crop rotation.

Those days, of course, are long gone. See the word "diversity" now, in any context, and you know it's going to be another article about melanin content and national origin.

On Wednesday this week, the New York Times and Washington Post both reported that the Bush administration's nominee to head the Agriculture Department's rural-development programs, Thomas C. Dorr, was under fire for comments that the Congressional Black Caucus, NAACP, and Black Farmers Association fear may show him to be anti-diversity. On December 11, 1999, Dorr was videotaped at a meeting at which the economic successes of three Iowa counties—populated largely by descendants of Dutch Protestant and German Catholic settlers—were being discussed. Said Mr. Dorr: "And you'll notice when you get to looking at them that they're not particularly diverse. At least not, uh, ethnically diverse. They're very diverse in their economic growth, but they're very focused, uh, have been very non-diverse in their ethnic background and their religious background, and there's something there that has enabled them to succeed and succeed very well."

The quoted statement underscores, in an unintentionally amusing way, that some kinds of diversity are politically correct and relevant but some aren't. It is at least a little odd that Dutch Protestants and German Catholics are now thrown together and considered to be just a bunch of white Christian dudes. Wasn't there some recent unpleasantness when the Dutch and Germans were shooting at each other with guns, and some less recent unpleasantness when Protestants and Catholics in Europe were shooting at each other with bows and arrows? No matter: Now they're all just "white," unless they're lesbians—no more diverse than those other white guys, Israelis and Palestinians.

Likewise, Americans with ancestors from Cuba, Mexico, Puerto Rico, and Brazil may have absolutely nothing in common when it comes to income, religion, language, politics, or culture, but they're all "Hispanic" because those ancestors come from countries that centuries ago were settled—probably a politically incorrect concept—by people who came from somewhere on the Iberian peninsula. Makes them all the same. Ditto for Filipinos, Japanese, Chinese, Indians, and Pakistanis—they may have hated each other for centuries, but in this country, by God, they're all "Asians and Pacific Islanders" as far as government bureaucracies, university admission officials, and the civil-rights establishment are concerned.

The Bush administration has announced that Mr. Dorr has its "full support," and an unnamed source there said that Dorr's words have been taken out of context, since he had simply been pointing out a demographic fact, not suggesting a causal relationship. How, it is quite possible that the words were taken out of context, as I'll discuss in a moment, but the words quoted from the videotape seem to make it pretty clear that he was in fact suggesting a causal relationship.

I haven't seen the videotape, but it wouldn't surprise me if Mr. Dorr brought up the lack of diversity in these three successful counties because, earlier in the discussion, someone had been talking about how diversity was essential for economic success—a common, if false, platitude these days, especially in academic settings (the meeting was of the Iowa State University board of regents). Oh yeah, says Dorr, well looky here: Economic success and no diversity in sight. So there.

Satisfying as it may have been, in making this observation Mr. Dorr touched the third rail of American politics. Elizabeth Salinas Newby, administrator of the Iowa Division of Latino Affairs, has retorted: "It sounds like he's trying to say diversity isn't important for growth. It is exactly diversity that has helped this state grow."

So who's right: Dorr, if in fact he was saying that lack of diversity can breed economic success, or Salinas Newby, who says that, to the contrary, diversity helps in succeeding economically? The answer is, to some extent both are right, but mostly both are wrong.

There may be some situations where diversity can help an enterprise. In a sales operation, for instance, it may make it marginally more likely that companies will develop insights into how best to market products to some demographic groups—although, I hasten to add, it might not: Non-Hispanics can learn how to market to Hispanics, and there are as many differences among Hispanics as there are similarities.

There are, conversely, probably some situations where a lack of diversity can help. Having a common heritage and set of values, customs, and manners can foster greater trust, better morale, and closer teamwork. It also cuts down on interracial and interethnic conflict, as well as other potential distractions. This point should be borne in mind by those who rely on pseudo-studies to support diversity through affirmative action. If these studies, and the benefits from diversity they purport to find, are viewed as sufficient to justify racial and ethnic preferences favoring "underrepresented" groups, then it follows that similar studies about the costs of diversity will be sufficient to justify racial and ethnic discrimination against those groups.

But in the vast majority of economic enterprises, diversity or lack of diversity is either completely irrelevant, cuts in both directions, or makes only a marginal difference. Any advantages or disadvantages will be completely swamped by factors having nothing to do with skin color or ancestry, like talent, intelligence, education, and willingness to work hard.

Whether one succeeds or fails as a farmer in Iowa will be influenced much more by the weather than the color of one's neighbor. What one learns and achieves, as a student at Iowa State will hinge on one's talent and teachers, not the distant ancestry of the other kids in the lecture hall. But no matter how the debate over Mr. Dorr's nomination plays out, one doubts that anyone involved will fail to genuflect before the altar of diversity.

Mr. COCHRAN. Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. How much time remains?

The PRESIDING OFFICER. There are 13 minutes 40 seconds remaining.

Mr. HARKIN. I yield 5 minutes to the Senator from Minnesota.

Mr. DAYTON. Madam President, I salute my colleague, Senator HARKIN, for his outstanding principles and his considerable fortitude. This is not a pleasant task, and I know it is one that has been very difficult for my friend and colleague, my neighbor to the south, who at the time of this coming forward was the chairman of the Senate Agriculture Committee.

Contrary to what some are perhaps alluding to, and what others observing this may suspect, this is not planned or contrived on anybody's part. In fact, it was the day of the Senate Agriculture confirmation hearing last year, Senator HARKIN chairing—and I served as a member—the very day of the hearing, the largest circulation paper in Iowa, highly respected for its integrity and its veracity, ran a major investigative story about Mr. Dorr and set forth many of the references that Senator HARKIN has just made, and others as well, detailing and making the charge and the case that Mr. Dorr had cheated the Federal farm programs; that he had misrepresented partnerships of which he was managing trustee; that he had misrepresented payments for what services they were being provided; and that he had falsified claims that he had signed as the managing trustee in order to get paid more public money from these Federal farm programs than he was legally entitled. It is not just for 1 year but for several years, not just one falsification but repetitive falsifications which resulted in determined overpayments of $17,000 for 3 years for one partnership. He himself testified before the committee that there were seven partnerships and there was a period of 7 to 8 years where these kinds of arrangements existed—those records, as others have said, not being available for examination.

Who brought these charges forward? Mr. Dorr's brother, also a partner in these family-owned trusts and farms, farming operations. He provided a tape recording of a telephone conversation to support these contentions he was making, and so we have on transcript Mr. Thomas Dorr's own words, his own statements about these matters.

At the end of that process of reviewing all of the information, I came to the conclusion, regretfully so, that Mr. Dorr does not meet the minimum requirements of honesty and integrity for the position he has now been recessed appointed to and is being considered for by this body today, and that his attitudes and his ideologies concerning the rural Americans he is supposed to serve make him an unacceptable choice for the Rural Development Under Secretary. I say that regretfully.

I served as State auditor for Minnesota for 4 years. I had the responsibility of upholding the public trust and oversight for the proper expenditure of State and local funds. I took very seriously the responsibility to approach these matters objectively, knowing I was going to be accused of being partisan, unprincipled, and unfair. I always tried to get the facts, set forth the facts, determine what the facts were, and let the facts make the determination one way or another.

I regret some of the assertions that this is a witch hunt or that it is unsubstantiated, and I refer to the Farm Service Agency's own letter, based on reviews both in 1996 and in 2001, which concluded that the arrangement between Mr. Dorr's Pine Grove Farms and each of these trusts—quoting FSA—was a crop share arrangement, not the custom farming arrangement it was represented to be.

It was on that basis that the trusts were required to pay some $17,000 in farm program payments they had improperly received for those years, but that did not occur until 2001 and in fact they were not even repaid until the summer of 2002, after Mr. Dorr had been nominated for this high office.

In fact, I have a letter from the USDA to Mr. Dorr dated June 5, 2002. Mr. Dorr, in his own comments to his brother, according to the transcript, admitted that what he had charged for a custom fee is not a custom fee, "it is actually crop rental income to me. That is my share of the income." Asked why he was following these procedures, he said it was to avoid a $50,000 payment limitation to Pine Grove Farms.

At another point the transcript says: Mr. Dorr, I, we filed away the farm, the trust land—both the Melvin Dorr trust and the Harold Dorr trust are operated with ASCS—to quite frankly avoid payment and limitations. Okay?

Now, we can all decide what to do with these facts, but I regret, for those who do not want to face them and claim they do not exist, we have a standard for this high office. Farmers in Minnesota, as do other farmers in this country, apply to this office for program funding. They deserve someone who can administer the programs faithfully because they have practiced them honestly.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. How much time is remaining on either side?

The PRESIDING OFFICER. There are 7 minutes on the minority side and 5 minutes on the majority side.

Mr. HARKIN. Madam President, I yield myself about 4 minutes right now.

There have been some statements made regarding the fact that the Office of Inspector General has somehow exonerated Mr. Dorr; that it found no wrongdoing. That is just simply not the case at all. Federal law provides criminal penalties for knowingly making false statements for the purpose of obtaining farm program payments. The USDA Office of Inspector General looked at all of this and they referred it. The OIG found enough concerns about Mr. Dorr's dealings with the USDA Farm Service Agency to refer the matter to the U.S. Attorney for the Northern District of Iowa.

As I said before, the U.S. attorney declined to proceed because the statute of limitations had run. So attempts by the administration to characterize this as an exoneration are simply wrong. Procedural technicalities do not equate to no wrongdoing.

I ask unanimous consent that a letter from the U.S. Attorney for the Northern District of Iowa dated February 2, 2002, be printed in the RECORD.

U.S. DEPARTMENT OF JUSTICE,
February 7, 2002.

S/A DALLAS L. HAYDEN,
U.S. Department of Agriculture,
Great Plains Region,
Mission, KS.

DEAR MR. HAYDEN: After reviewing the investigative report dated September 26, 2001, regarding the above subject and our telephone discussion of this date, we are declining criminal prosecution and any affirmative civil enforcement due to statute of limitations issues.

Sincerely,

CHARLES W. LARSON, SR.,
United States Attorney.
By: JUDITH A. WHETSTINE,
Assistant United States Attorney.

Mr. HARKIN. This is a letter to Dallas Hayden. I do not know who Dallas Hayden is. It says, regarding Thomas C. Dorr, Marcus, IA:

> Dear Mr. Hayden: After reviewing the investigative report dated September 26, 2001, regarding the above subject [that is Thomas Dorr] and our telephone discussion of this date, we are declining criminal prosecution and any affirmative civil enforcement due to statute of limitations issues. Sincerely, Charles W. Larson, Sr., United States Attorney.

So to characterize this as being an exoneration—he was exonerated because he beat the rap. He escaped the statute of limitations. That is hardly being exonerated.

Again, look at what he said with his own words, saying he had set this up to get around the payment limitation. These are Mr. Dorr's own words.

We know crop shares are misrepresented for two of the entities in this complex web he has woven for himself. We do not know about the rest, and that is what we did not have sufficient information about—about' the other corporations, partnerships, and individuals involved.

So the committee requested additional documents. We asked for additional documents and we asked the nominee additional questions. I believe these were reasonable requests pertaining to valid questions.

Secretary Veneman made clear in her letter back to the committee that neither the Department nor the nominee would cooperate with or provide any more information to the committee.

Almost without exception, nominees seek to clear up and resolve any questions about the propriety of their financial dealings most certainly when they involve the Federal Government. In this case, Mr. Dorr refused to provide information and answer questions. Instead, he and the administration decided to stonewall and withhold critical information. That is why 44 Senators said we do not want to take action until the nominee furnishes the requested information and, two, a hearing under oath is held on Mr. Dorr's nomination according to committee rules and normal practice.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. How much time remains on both sides of the issue?

The PRESIDING OFFICER. There are 5 minutes on the majority side and 3 minutes on the minority side.

Mr. COCHRAN. I yield the remainder of our time to the distinguished Senator from Iowa, Mr. GRASSLEY.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, we have just heard that Mr. Dorr escaped prosecution because of the statute of limitations. That is to assume guilt. There were not charges filed, and I think it is wrong for us to assume anybody is guilty, under our system of law that a person is innocent until proven guilty.

I wish to go to some records from people who live within no more than 25 miles of this operation and explain what authorities for the U.S. Department of Agriculture had to say about this, and I will enter these two letters in the RECORD. One is January 8, 1997, from Michael Houston, county executive director of the Farm Service Administration. It says:

> The Cherokee County Committee met on December 19, 1996, and determined that M.G. Dorr Irrevocable Trust had a shares violation for the years 1993, 1994 and 1995; that is the Trust's total contributions to the farming operation were not commensurate with the claimed shares for the crop years 1993, 1994 and 1995.
>
> The County Committee [meaning the county committee of the Farm Service Agency of the U.S. Department of Agriculture] determined a refund will be required but there was no criminal intent.

Then, on February 4, 2002, we have this letter signed by the same Michael Houston. It is entitled "End of Year Review, 1994–1995."

> The Cherokee County Committee reviewed the End of Year Review, in particular the worksheet number 9.5, pages 1 and 2—attached. The County Committee determined that there was no evidence of receiving benefits indirectly or directly that would exceed the maximum payment limitations. The County Committee also agrees that there was no evidence that the Dorr's Pine Grove Farm nor Tom Dorr participated in a scheme or device to evade the maximum payment limitations regulations.
>
> The End of Year Review for the year 2000 concluded that the Dorr's Pine Grove Farms had no deficiencies.

I ask unanimous consent to have those printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF AGRICULTURE,
FARM SERVICE AGENCY,
Cherokee, IA, January 8, 1997.

PAUL R. DORR,
Ocheyedan, IA.

DEAR SIR: The Cherokee County Committee met on December 19, 1996 and determined that M. G. Dorr Irrevocable Trust had a shares violation for the years 1993, 1994 and 1995; that is the Trust's total contributions to the farming operation were not commensurate with the claimed shares for the crop years 1993, 1994, and 1995.

The County Committee determined a refund will be required but there was no criminal intent.

Sincerely,

MICHAEL W. HOUSTON,
County Executive Director.

FEBRUARY 4, 2002.

DORR'S PINE GROVE FARMS,
Marcus, IA.

DEAR MR. DORR: The Cherokee County Committee reviewed the End of Year Review, in particular the worksheet #9 5 pages 1 & 2 (attached). The County Committee determined that there was no evidence of receiving benefits indirectly or directly that would exceed the maximum payment limitation. The County Committee also agrees there was no evidence that Dorr's Pine Grove Farm nor Tom Dorr participated in a scheme or device to evade the maximum payment limitation regulations.

The End of Year Review for the year 2000 concluded that the Dorr's Pine Grove Farms had no deficiencies.

Any questions please call (712) 225-5717. Thank you.

Sincerely,

MICHAEL W. HOUSTON,
County Executive Director,
Cherokee County FSA Office.

Mr. GRASSLEY. But I think I want to go to the bigger picture in ending my justification for this confirmation. That goes back to all that we heard during the year 2001, when this nomination was presented to the Senate, going into the year 2002. There were a lot of organizations that testified against his nomination. There were a lot of accusations made. There was a lot of discussion. There were a lot of newspaper articles.

This may not be a sound way to make a judgment about whether something is right or wrong, but if I hear from the grassroots of Iowa right away about a nomination, I take that much more seriously. But most of the accusations against Tom Dorr came after there were articles in the New York Times and the Washington Post, and then interest in this nomination in the Iowa newspapers came about the same time, and the accusations that were put in place.

Then I heard something. Obviously, when you hear from your constituents against a nominee you want to take that into consideration. So then nothing happened to this nomination until the President has pushed it, during the new Congress. In the meantime, then, Secretary Dorr has been in a position for well over a year. During that 1 year, none of the people or organizations that came out so strongly against Tom Dorr in the previous Congress has raised complaints about his doing the job that he is doing. It tells me, then, we ought to look at on-the-job performance as criteria for this person moving forward with this nomination.

That is what I ask my colleagues to do as they consider it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Madam President, how much time remains?

The PRESIDING OFFICER. There are 3 minutes remaining.

Mr. HARKIN. And how much on the other side?

The PRESIDING OFFICER. All time has expired.

Mr. HARKIN. I just have 3 minutes left? I will try to sum up here.

Madam President, as I said in the beginning I don't take any pleasure in what we are doing this morning and the position I am taking. In my 29 years here, 10 in the House and 19 in the Senate, I have never opposed an Iowan for a position in the Federal Government—under the Reagan administration, Ford, Carter, any of them. It does not give me a great deal of pleasure to oppose this one.

I think the record is clear. The record is clear that this individual, in his own words, said he misrepresented to the Federal Government what he was doing in order to avoid payment limitations.

These are not my words. These are his own words on tape. It is his own words when he denigrated racial diversity, ethnic diversity, religious diversity, in saying counties in Iowa which were very successful—were most successful—lacked diversity, and there is something there that caused that because they didn't have racial, ethnic, or religious diversity. Those were his own words.

It was Mr. Dorr's own words when he said you drive around Iowa and you see a $10,000 house and you see 10 cars, he said, which confirms my "10 cars-$10,000 home theory," denigrating poor people.

Sure they may have a lot of cars around because they can't afford a new one. They take parts off of one or another, we know that.

He said the more you help the more you hinder. But then he didn't mind taking Government money. He didn't mind taking student loans when he was a student. He didn't mind taking Federal payments for his farm. That didn't seem to hinder him any.

Last, on the OIG, I have to say again, the Office of Inspector General referred this to the U.S. attorney for prosecution. The U.S. attorney did not prosecute because the statute of limitations had run, that is all. They didn't say he was guilty or not, but that is not an exoneration either.

But on the matter of racial diversity, there was some mention about whether Ralph Paige supports Mr. Dorr. I previously put in the RECORD a letter opposing Mr. Dorr's nomination signed by the Federation of Southern Cooperatives, which is Mr. Paige's operation.

One of my friends in Iowa said if you can't get along with your neighbors, you probably can't get along with too many other people. This is in the record, in the newspaper, his neighbors talking about him. Verdell Johnson a Republican, a former neighbor who lives in a nearby Cleghorn, said:

> He would be very counter to rural development, unless you would consider that rural development is one farmer in every county.

Marvin Pick, whose farm is next to one of Dorr's farms said: "Who are his friends? I don't think he's got any."

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HARKIN. Madam President, until we get the documents for which we have asked, and until such time as we have him under oath to answer questions about these dealings, I do not think the Senate should invoke cloture and proceed with a vote until such time as we get that documentation.

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 237, the nomination of Thomas Dorr to be Under Secretary of Agriculture for Rural Development.

Bill Frist, Thad Cochran, Saxby Chambliss, Rick Santorum, Norm Coleman, Craig Thomas, Jeff Sessions, Pat Roberts, Kay Bailey Hutchison, George Voinovich, Chuck Grassley, Wayne Allard, Michael Enzi, Elizabeth Dole, John Sununu, Sam Brownback, John Warner.

The PRESIDING OFFICER. By unanimous consent the mandatory quorum call is raised.

The question is, Is it the sense of the Senate debate on Executive Calendar No. 237, the nomination of Thomas C. Dorr to be Under Secretary of Agriculture for Rural Development shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "nay."

The PRESIDING OFFICER. (Mr. ENZI). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 57, nays 39, as follows:

[Rollcall Vote No. 454 Ex.]

YEAS—57

Akaka
Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Chafee
Chambliss
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeWine
Dole
Domenici
Ensign
Enzi
Fitzgerald
Frist
Graham (SC)
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Jeffords
Kyl
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (NE)
Nickles
Pryor
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Voinovich
Warner

NAYS—39

Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Byrd
Cantwell
Carper
Clinton
Conrad
Corzine
Daschle
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Hollings
Inouye
Johnson
Kennedy
Kohl
Landrieu
Lautenberg
Leahy
Levin
Mikulski
Murray
Nelson (FL)
Reed
Reid
Rockefeller
Sarbanes
Schumer
Stabenow
Wyden

NOT VOTING—4

Edwards
Graham (FL)
Kerry
Lieberman

The PRESIDING OFFICER. On this vote the yeas are 57, the nays are 39. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

CLOTURE MOTION

Under the previous order, the clerk will report the motion to invoke cloture.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Is there objection?

Mr. COCHRAN. Reserving the right to object, what is the request?

The PRESIDING OFFICER. The Senator has suggested the absence of a quorum.

Mr. COCHRAN. Mr. President, I suggest there is a quorum present.

The PRESIDING OFFICER. Is there objection, then?

Mrs. HUTCHISON. I object.

The PRESIDING OFFICER. Objection is heard.

Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 238, the nomination of Thomas C. Dorr, of Iowa, to be a member of the Board of Directors of the Commodity Credit Corporation.

Bill Frist, Thad Cochran, Norm Coleman, Charles Grassley, Wayne Allard, Jim Bunning, Conrad Burns, Mitch McConnell, John Cornyn, Lamar Alexander, Larry Craig, Richard G. Lugar, Peter Fitzgerald, George Allen, Don Nickles, John Ensign, James Inhofe.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 238, the nomination of Thomas C. Dorr, of Iowa, to be a member of the Board of Directors of the Commodity Credit Corporation, shall be brought a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 57, nays 39, as follows:

The result was announced—yeas 57, nays 39, as follows:

[Rollcall Vote No. 455 Ex.]

YEAS—57

Akaka
Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Chafee
Chambliss
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeWine
Dole
Domenici
Ensign
Enzi
Fitzgerald
Frist
Graham (SC)
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Jeffords
Kyl
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (NE)
Nickles
Pryor
Roberts
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Voinovich
Warner

NAYS—39

Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Byrd
Cantwell
Carper
Clinton
Conrad
Corzine
Daschle
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Hollings
Inouye
Johnson
Kennedy
Kohl
Landrieu
Lautenberg
Leahy
Levin
Mikulski
Murray
Nelson (FL)
Reed
Reid
Rockefeller
Sarbanes
Schumer
Stabenow
Wyden

NOT VOTING—4

Edwards
Graham (FL)
Kerry
Lieberman

The PRESIDING OFFICER. On this vote, the yeas are 57, the nays are 39. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. HARKIN. Mr. President, I move to reconsider the vote on this vote and the previous vote.

Mr. REID. I move to lay both motions on the table.

The motions to lay on the table were agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

The Senator from Washington.

UNANIMOUS CONSENT REQUEST—S. 1853

Ms. CANTWELL. Mr. President, I know we are going to move on to other legislation and I am sure we are going to hear from our leaders today about what the rest of the week's schedule looks like and possible strategy for adjournment, but I think it is critically important before we adjourn we address the unemployment needs of Americans. While we in this body last year adjourned without fully taking care of the unemployed and the unemployment benefit extension program, I think it is unconscionable we would do that this year.

While the economy may have slightly improved, we still have huge unemployment across the country. For us in the State of Washington, with nearly 7½ percent unemployment, this problem continues.

Unemployment benefit insurance is a stimulus. For every dollar paid in unemployment benefits, it generates $2.15 into the economy. This is what we need to be doing to take care of Americans. We cannot continue to give tax breaks to the wealthiest of Americans and tax incentives in the Energy bill and tax breaks in a lot of other programs and not take care of basic Americans who would rather have a job but do not have that opportunity and are depending on those unemployment benefits to make mortgage and health care payments.

Last year we really did leave Americans with a lump of coal in their stocking. Instead of saying to them we are going to make sure that as the economy starts to recover we are taking care of you to give you that security, we said we are going to terminate this program. Even though the Senate did its homework and the House failed to pass this, we left many Americans without that security.

Constituents of mine basically took money out of their long-term pension savings at huge penalties just to make up for the unemployment benefit program that would not continue. It is imperative before we adjourn we pass the Unemployment Benefit Program extension.

I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to its immediate consideration, the bill be read a third time and passed and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. ENSIGN. Reserving the right to object, and I will object, very simply put, when the Democrats were in control of the House of Representatives, the Senate, and the Presidency back in 1993, the unemployment rate, when they terminated the program, was 6.4 percent nationally. It is now 6.0 percent, lower than it was in 1993 when every Democrat voted to terminate the program. So with that, I object.

The PRESIDING OFFICER. The objection is heard.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2861, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2861) to make appropriations for the Departments of Veterans Affairs and Housing and Urban Development and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

Pending:

Bond/Mikulski amendment No. 2150, in the nature of a substitute.

Dayton amendment No. 2193 (to amendment No. 2150), to fully fund the Paul and Sheila Wellstone Center for Community Building.

AMENDMENT NO. 2199 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I have some amendments that have been cleared on both sides. First, I send an amendment to the desk for Mr. JEFFORDS, Mr. LIEBERMAN, Mr. BINGAMAN, and Mr. EDWARDS, dealing with a study on Prevention of Significant Deterioration and Nonattainment New Source Review.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Mr. JEFFORDS, Mr. LIEBERMAN, Mr. BINGAMAN, and Mr. EDWARDS, proposes an amendment numbered 2199.

Mr. BOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To include an evaluation of the impact of a final rule promulgated by the Administrator of the Environmental Protection Agency in a study conducted by the National Academy of Sciences)

At the appropriate place, add the following:

SEC. ___ . NATIONAL ACADEMY OF SCIENCES STUDY.

The matter under the heading "ADMINISTRATIVE PROVISIONS" under the heading "ENVIRONMENTAL PROTECTION AGENCY" in title III of division K of section 2 of the Consolidated Appropriations Resolution, 2003 (117 Stat. 513), is amended—

(1) in the first sentence of the fifth undesignated paragraph (beginning "As soon as"), by inserting before the period at the end the following: ", and the impact of the final rule entitled 'Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion', amending parts 51 and 52 of title 40, Code of Federal Regulations, and published in electronic docket OAR-2002-0068 on August 27, 2003"; and

(2) in the sixth undesignated paragraph (beginning "The National Academy of Sciences"), by striking "March 3, 2004" and inserting "January 1, 2005."

Mr. JEFFORDS. Mr. President, in January 2003, the Senate approved a very similar amendment by Senator INHOFE to the Fiscal Year 2003 consolidated appropriations bill. That amendment initiated a study at the National Academy of Sciences to look at the effects of the EPA's first set of New Source Review rules, published on December 31, 2002, on emissions, human health, pollution control technology, and energy efficiency.

That amendment provided that the National Academy will submit an interim report to Congress no later than March 3, 2004, approximately 1 year after passage.

In September 2003, the EPA provided an oral authorization to the academy to begin work. Unfortunately, the agency has still not provided the contract papers necessary for the project to start. I do not know what the holdup might be.

However, that study, if it ever gets funded by EPA, would not review the effects of the second set of NSR rules on routine equipment replacement which were published on October 27, 2003. It should and, since EPA has not yet funded the study and it has not started, there is still plenty of time to revise the mission statement and do the work. I am advised by academy staff that this expansion would entail minimal additional cost to EPA.

As I have noted, my amendment simply extends the NAS study to cover the effects of the second set of rules looking at the same criteria and extends the interim report deadline by 10 months to January 1, 2005.

I am pleased the managers have agreed to accept this amendment.

Mr. BOND. Mr. President, we are ready to accept the amendment by voice vote.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to amendment No. 2199.

The amendment (No. 2199) was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2200 TO AMENDMENT NO. 2150

Mr. BOND. I send an amendment to the desk on behalf of Senator INHOFE, providing for implementation plans and no preclusion of other provisions relating to the Grand Canyon Visibility Transport Commission.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Mr. INHOFE, proposes an amendment numbered 2200.

Mr. BOND. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To include provisions relating to designations of areas for $PM_{2.5}$ national ambient air quality standards)

On page 106, between lines 20 and 21, insert the following:

SEC. ___ . DESIGNATIONS OF AREAS FOR $PM_{2.5}$ AND SUBMISSION OF IMPLEMENTATION PLANS FOR REGIONAL HAZE.

(a) IN GENERAL.—Section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) is amended by adding at the end the following:

"(6) DESIGNATIONS.—

"(A) SUBMISSION.—Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 $PM_{2.5}$ national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

"(B) PROMULGATION.—Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 $PM_{2.5}$ national ambient air quality standards.

"(7) IMPLEMENTATION PLAN FOR REGIONAL HAZE.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 169B(e)(1) (referred to in this paragraph as 'regional haze requirements').

"(B) NO PRECLUSION OF OTHER PROVISIONS.—Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.".

(b) RELATIONSHIP TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—Except as provided in paragraphs (6) and (7) of section 107(d) of the Clean Air Act (as added by subsection (a)), section 6101, subsections (a) and (b) of section 6102, and section 6103 of the Transportation Equity Act for the 21st Century (42 U.S.C. 7407 note; 112 Stat. 463), as in effect on the day before the date of enactment of this Act, shall remain in effect.

Mr. BOND. We have no further statements on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2200) was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2193

Mr. DAYTON. Mr. President, I call up amendment No. 2193 and ask for its immediate consideration.

The PRESIDING OFFICER. Amendment No. 2193 is pending.

Mr. DAYTON. I defer to the ranking member.

Ms. MIKULSKI. First, we acknowledge the very able Senator from Minnesota has offered an amendment for the full funding of the Wellstone Memorial in this year's appropriation.

We acknowledge the vigorous advocacy of Senator DAYTON for not only Minnesota but for his dear and beloved colleague, Senator Wellstone, of happy memory. We all remember with great melancholy that terrible day when Senator Wellstone lost his life. We promised we wanted to have a permanent memorial to the legacy of truly an extraordinary American. I assure the Senator from Minnesota and all the people of Minnesota, we have the will to help complete this memorial. We are a little tight on the wallet.

I wonder if the Senator would accept essentially a 2-year funding promise, that we fund this this year at $500,000 and that next year we complete it with $700,000. This way it keeps the money in the pipeline so the memorial can be sure it can meet its bottom line, and that we can continue to stay the course on creating this most appropriate memorial to our beloved colleague.

Would the Senator accept that as a way of keeping the process moving forward but understanding that we are a bit tight this year? I know, because the Wellstone legacy was in championing veterans, I say to my colleague from Minnesota, we have been able to add $1.3 billion, and if I know our colleague, that is what he would be happy about.

But we are not going to abandon the memorial, either. Does this sound like a reasonable, rational, and acceptable approach?

Mr. DAYTON. I thank the Senator and the chairman of the subcommittee. I know these two leaders have been under the greatest of pressures and financial strictures. They both have performed heroically in getting the money for veterans.

My colleague is right. My former colleague, Senator Wellstone, would be happy beyond belief for the veterans of Minnesota and of America. I thank you for your extraordinary efforts. I salute the efforts of both distinguished colleagues and I thank them for this matter.

I certainly meant no disrespect to anyone yesterday in my remarks. My distress was primarily because I felt that again my friend Paul's memory would not be well served by having the folks in Minnesota or anywhere else losing out. So his memory would be served, I wanted this memorial, this tribute from the Senate, the House of Representatives, and the President of the United States, and they have been very supportive and gracious throughout all this. We finally fulfill that.

I thank the chairman and ranking member for making this possible, and I yield the floor.

Ms. MIKULSKI. I further say to my unflagging colleague from Minnesota, this $500,000 will not come out of other Minnesota projects. OK? The memorial to Senator Wellstone is a national project of national impact and, therefore, will not impact upon the Minnesota projects which are also so important and needed.

Mr. DAYTON. I thank my colleague.

AMENDMENT NO. 2193, AS MODIFIED

MS. MIKULSKI. Mr. President, I send to the desk a modification of the Dayton amendment and ask such modification reflect the agreement we had here and I urge its adoption.

The PRESIDING OFFICER. Is there objection to modifying the Dayton amendment? Without objection, it is so ordered.

The amendment (No. 2193), as modified, is as follows:

On page 58, line 21, strike "$1,112,130,000" and insert "$1,111,530,000".

On page 125, between lines 7 and 8, insert the following:

SEC. 418. There shall be made available $1,500,000 to the Secretary of Housing and Urban Development for the purposes of making the grant authorized under section 3 of the Paul and Sheila Wellstone Center for Community Building Act.

Mr. BOND. We are happy to accept it. We appreciate working with the Senator from Minnesota, in fact both Senators from Minnesota. Senator DAYTON and Senator COLEMAN have both been very strong, vocal supporters. We know how important it is to Minnesota. We are sorry we are in such tight fiscal constraints, but we want to put the money in this year with the sure knowledge that we will be able to come back and finish it next year, which I trust will not delay the construction of the memorial.

Furthermore, since Senator COLEMAN has been active on this, on his behalf, I ask that he be listed as a cosponsor of the amendment. I know the people of Minnesota want to know both of their Senators are very vigorous champions of this great memorial to a man we will always miss.

I didn't always agree with him but it was always interesting, and I had many, many good and pleasant exchanges with him. We worked together on many issues. The Government Printing Office now uses soy ink because of our amendment. We used to tease each other, that in Minnesota he would claim it as the Wellstone amendment; I would claim it as the Bond amendment in Missouri. But neither one of us would mention the cosponsor in our States.

But we worked closely together. His is a wonderful spirit that is still with us.

I believe there are no further comments.

The PRESIDING OFFICER. Without objection, the Senator will be added as a cosponsor.

Mr. BOND. I ask we adopt it on a voice vote.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment as modified.

The amendment (No. 2193), as modified, was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DAYTON. Mr. President, may I have 1 minute?

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I thank, again, the chairman for his wonderful remarks. I know my departed colleague enjoyed his camaraderie with his colleagues here as much as he enjoyed the debates and disagreements. He respected all of them as individuals and the process as we are all engaged in as the essence of our democracy.

I thank the distinguished Senator from Missouri for those gracious comments. Again, I thank the ranking member, the great Senator from Maryland, for her help in this matter and our successful resolution.

I wish to give credit to my colleague, Senator COLEMAN, who is chairing a hearing of the Permanent Subcommittee on Investigations. He has been very supportive of this throughout and was instrumental earlier this year in getting the funding raised to its current level. I cannot speak for him, but I am sure he is grateful, as I am, that this has been resolved.

Thank you, Mr. President. I yield the floor.

Mr. NELSON of Florida. Mr. President, I rise to talk about the VA-HUD NASA flat-line budget. The bill has NASA funded at $15.3 billion. This is the same as the amount enacted in fiscal year 2003. As many of you may recall, I have fought to plus up the shuttle upgrades program for years. I still firmly believe that adequate supportability and safety upgrades budgets, coupled with supporting infrastructure, are needed to keep the shuttle operating safely.

The Columbia Accident Investigation Board chaired by Admiral Gehman concluded that throughout the decade, the Shuttle Program has had to function within an increasingly constrained budget. Both the shuttle budget and workforce have been reduced by over 40 percent during the past decade. The White House, Congress, and NASA leadership exerted constant pressure to reduce or at least freeze operating costs. As a result, there was little margin in the budget to deal with unexpected technical problems or make shuttle improvements.

Most people believe we will continue to fly the shuttle for the life of the station, but we continue to base our budgetary decisions on the long-lost premise that the shuttle will be replaced in the near term.

The fact of the matter is that the shuttle must return to flight to complete the assembly of the International Space Station. Return to flight will take funds, and we don't know if NASA has enough funds to fully cover the cost of return to flight since the fiscal year 2004 supplemental was never sent to Congress and the fiscal year 2005 budget remains embargoed. We do know that NASA plans to reprogram $200 million out of station reserves and $107 million out of the Service Life Extension Program, SLEP, to cover some of the fiscal year 2004 costs. The requisite funds should not be robbed from other NASA accounts as has been practiced in the past. Perhaps it would be better to provide NASA enough money to adequately fund all the NASA initiatives without resorting to starving one account to feed another.

The shuttle needs to be able to fly safely as long as this country needs it. To even consider using upgrade and infrastructure funds for return to flight is unconscionable and certainly not in the long-term best interest of our Nation's space program.

It is important that we build, maintain and fly the safest vehicle possible. We cannot afford to have accountants making technical decisions instead of engineers and program managers if we want to maintain our technology edge.

Reducing the NASA budget for the International Space Station program in fiscal year 2004 could force NASA to transfer skilled, knowledgeable personnel—civil service and contractor—to other programs. A lesson learned from the *Columbia* accident was that we must retain the technical knowledge within human space flight programs so that potential life-threatening problems can reliably be identified and correctly addressed.

The science and technology payback from the ISS is proportional to the size of the crew working there. There are now two crew members onboard but the program plan calls for an increase up to seven when the shuttle is returned to flight and emergency crew return capability is onboard. That increase also requires that the ISS's life support systems be beefed up to provide greater oxygen generation and carbon dioxide removal among other capabilities. The fiscal year 2004 ISS budget request includes capability upgrades that are the upfront systems that will allow that increase in crew size. This development is programmed to be continued in fiscal year 2005 from program budget reserves. If the ISS budget is reduced in fiscal year 2004 that reduction will come from existing reserves that would have been carried forward to fiscal year 2005 and paid for the continuation of these necessary developments. A cut this year will most likely force NASA to cut back on this development and further delay crew size increase and consequently the scientific return from the ISS.

Because a reduction in the ISS budget for fiscal year 2004 will likely be taken from program reserves that is like tying one arm behind the program's management. ISS is a developing human space flight vehicle, with inherent schedule and technical risks. Managing the unknowns that will occur requires appropriate flexibility in the management's budget, budget reserves. Reducing the program budget and as a consequence reducing those reserves is simply dangerous.

We cannot allow this budget to be flat lined from fiscal year 2003. NASA cannot do everything it hopes to do on the cheap. The fiscal year 2004 Presidential request should be approved and in addition $300 million added to ensure human space flight achieves its objectives without jeopardizing safety and delays to completing the ISS. I urge my colleagues to join me in supporting an increase to the NASA top line.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. KERRY. Mr. President, I would like to take this opportunity to express my appreciation to Chairman BOND and Senator MIKULSKI for their hard work in developing the Senate fiscal year 2004 VA–HUD and Independent Agencies appropriations bill. Considering the low authorization level for this important bill, they have done an excellent job maintaining priorities in Veterans health care, the environment and housing. It is vital that the full Senate-passed amount for Veterans healthcare be maintained in conference so that we don't lose more ground in caring for those who have borne the battle. However, it is obvious that additional resources are critically needed for many programs in these areas if they are to work as intended.

Understanding the difficult authorization level facing this committee, I would still like to express my strong support for additional funding for YouthBuild in the fiscal year 2004 VA–HUD and Independent Agencies conference report. Despite the repeated support of over 57 of our Senate colleagues for a funding level of $90 million, and despite the President's Budget request and House-passed level of $65 million, the Senate bill could only provide $60 million for a program that has proven its value and that is crucial to the lives of many young people. At the same time, 1,400 YouthBuild participants who are building housing for homeless and low-income people have lost access to AmeriCorps education awards due to the cutbacks in AmeriCorps.

Each year, YouthBuild receives strong bipartisan support because the program works. Eighty-five percent of students who complete the YouthBuild program either secure a job—at an average wage of more than $7.60 per hour—or go on to postsecondary education. The program's success rate is especially notable since YouthBuild serves an at-risk population, 80 percent of whom have previously dropped out of high school.

YouthBuild is a uniquely comprehensive program that offers at-risk youth an immediately productive role rebuilding their communities. Along with attending basic education classes for 50 percent of the program time, students receive job skills training in the well-paid construction field, personal counseling from respected mentors, a supportive peer group with positive values, and experience in community leadership and civic engagement. To date, 25,000 YouthBuild students have built over 10,000 units of affordable housing.

Despite its obvious success, YouthBuild is losing ground with more than 30 sites that have closed due to lack of funds since 1996. Most of the remaining programs enroll 25 percent fewer students than they did in 1997. In 2001, 56 experienced YouthBuild sites that qualified for funding from HUD did not receive it solely due to a lack of funding. Only two local programs have been funded continuously since 1994.

During the House-Senate conference, I hope that the Senate will yield to the House and provide $65 million for YouthBuild as the President has requested and the House of Representatives has provided. This is the least we can do. We must continue to fight to open the doors of opportunity and service to America's youth by supporting YouthBuild.●

Mr. McCAIN. Mr. President, I want to thank both Senator BOND and Senator MIKULSKI for their hard work on this important legislation which provides federal funding for the Departments of Veterans Affairs (VA) and Housing and Urban Development, and Independent Agencies. Unfortunately, I must again speak about the unacceptably high funding levels of parochial projects in this appropriations bill. Overall, this legislation contains approximately $1.2 billion in unrequested spending and locality-specific earmarks.

The Committee provides $29.3 billion in discretionary funding for the VA. That amount is $1.3 billion more than the President's budget request and $2.8 billion above the amount in fiscal year 2003. Some progress has been made to reduce the overall amount of earmarks for the VA in this spending bill.

Among other Senators who have stood on the Senate floor to fight for additional funding for veterans' healthcare, I am concerned that the Committee has directed critical dollars from veterans' healthcare to fund spending projects that have not been properly reviewed. Certain provisions funded under the VA in this legislation illustrate that Congress still does not have its priorities in order.

One especially troubling expense, neither budgeted for nor requested by the Administration over the past twelve years, is a provision that directs the VA to continue the twelve year old demonstration project involving the Clarksburg, WV, Veterans Affairs Medical Center (VAMC) and the Ruby Memorial Hospital at West Virginia University. Several years ago, the VA–HUD appropriations bill contained a plus-up of $2 million for the Clarksburg VAMC that ended up on the Administration's line-item veto list and since then the millions keep flowing.

Three years ago, the Committee 'recommended' $1 million for the design of a nursing home care unit at the Beckley, WV, VAMC. Two years ago they strengthened their report language urging 'the VA to accelerate the design of the nursing home care unit at the Beckley, WV VAMC.'' Last year, they have urged the VA "to include sufficient funding" for a new nursing home care unit at the Beckley, WV VAMC. This year, they urge the VA to include sufficient funding in the 2005 budget request.

For St. Louis, MO, the Committee 'encouraged' the VA to pursue an innovative approach at a cost of $7 million for leasing parking spaces at the John Cochran Division of the VA Medical Center in St. Louis as a means to address a parking shortfall at the VA hospital.

Additionally, the Committee "supports continuation" at the current spending level of the Rural Veterans Health Care Initiative at the White River Junction, VT VAMC. The current level is an astounding $7 million.

While I am encouraged by the increase specifically in veterans health care funding over last year's enacted levels, we must do much more. We made a promise to our veterans that we would take care of their mental and physical health needs incurred for their many sacrifices for our nation. The VA currently has an incredible backlog of claims. Currently, four out of every ten claims for veterans' disability benefits are decided incorrectly further contributing to the backlog. The millions in dollars wasted in pork barrel spending would go a long way to decreasing the backlog in veterans claims by funding additional claims adjudicators and training.

I would be remiss if I did not point out the provisions in this legislation related to AmeriCorps. Whether it is tutoring inner-city youth or fighting forest fires in the West, the lives of countless people are touched by AmeriCorps. AmeriCorps' efforts to reach out to those affected by natural disasters are paying serious dividends. Over 246,000 victims of fires, floods and hurricanes have been aided by AmeriCorps volunteers working in conjunction with groups such as the American Red Cross.

Despite AmeriCorps' countless success stories, the appropriators have funded AmeriCorps $93.2 million below the President's request, while imposing incredibly restrictive report language that could very well fundamentally change the face of a very successful program.

I was heartened when I saw that the President requested funding to expand AmeriCorps to 75,000 volunteers in Fiscal Year 2004. This was an important first step on the road to large scale expansion of AmeriCorps. Despite the President's request, the appropriators took it upon themselves to ensure that we do not provide adequate funding to reach this ambitious level set forth by the President. The Appropriations Committee's counterparts in the House of Representatives funded AmeriCorps with $23.4 million more than the Senate, yet only believe that they can fund 55,000 volunteers.

Everybody is well aware of money management problems that the Corporation for National Service and AmeriCorps have faced over the last few years. I am confident that the change in leadership at the corporation should help minimize the potential for these same problems to repeat themselves. However, if we do not provide the amount of money the corporation says it will need to fully fund 75,000 volunteers, we are inviting a disastrous repeat of history. If we do not want to repeat this summer's battle for supplemental funds for AmeriCorps, we must fully fund AmeriCorps to the level that the Corporation feels is adequate, not the appropriators.

The last authorization for the AmeriCorps program lapsed in 1996. It is time to reauthorize the program. The Health, Education, Labor and Pensions Committee has oversight responsibility for this program. It is time that we hold hearings to reauthorize this program and markup the Call to Service Act, which I authored with Senator BAYH and Senator KENNEDY. If there is a need to impose restrictions on how AmeriCorps chooses its volunteers or how awards are given out, the HELP committee is where that debate needs to take place, not by the appropriators, without so much as a hearing. We have no idea what effect the restrictions in this legislation will have on AmeriCorps. We have not bothered to run them by the Corporation. Mr. President, we are failing in our oversight responsibilities.

The overwhelming support for AmeriCorps among the grassroots groups is clear. Recently, an event called Voices for AmeriCorps was staged. This 100-hour event featured 130 AmeriCorps Alumni and 51 Members of Congress. In all over 700 people, representing 47 states expressed their support for AmeriCorps. During the summer, letters were sent to the President urging him to support an emergency appropriation request for AmeriCorps. These letters were sent by a bipartisan group of 79 Senators, 228 members of the House of Representatives, 44 Governors and 148 Mayors. The list of supporters is not restricted to elected officials. 250 private sector leaders took out a full page ad in The New York Times expressing support. 1100 community organizations have shown their support. The support for AmeriCorps is clear. It is time that we acknowledge their efforts and not only fully fund the President's request but expand AmeriCorps to new levels.

This legislation also contains the funding for the Department of Housing and Urban Development. The programs administered by HUD help our nation's families purchase their homes, helps many low-income families obtain affordable housing, combats discrimination in the housing market, assists in rehabilitating neighborhoods and helps our nation's most vulnerable—the elderly, disabled and disadvantaged—have access to safe and affordable housing

Unfortunately, this bill shifts money away from many critical housing and community programs by bypassing the appropriate competitive process and inserting earmarks and set-asides for special projects that received the attention of the Appropriations Committee. This is unfair to the many communities and families who do not have the good fortune of residing in a region of the country represented by a member of the Appropriations Committee.

In the report accompanying this bill, the Appropriators have taken two accounts, originally created as competitive grant programs to be administered by HUD, and earmarked close to 100% of those accounts. This bill funds the Economic Development Initiative at $140 million. However, the report lists 331 earmarks for that program, totaling over $136 million. Similarly, the committee funds the Neighborhood Initiatives program at $21 million, with report language listing 20 earmarks, totaling over $20 million. I am deeply concerned that once competitive programs have become nothing more than slush funds to fulfill influential members' parochial interests.

Some of the earmarks for special projects in this legislation include:

$1,000,000 for the Tongass Coast Aquarium in Ketchikan, AK for improvements;

$400,000 for Love, Inc. in Fairbanks, AK for a social service facility;

$250,000 for the Alaska Aviation Heritage Museum in Anchorage for improvements;

$1,000,000 for Fort Westernaire in Golden, CO for the expansion of the Westernaire museum;

$500,000 for Miami Dade County, FL for the construction of the Miami Dade County Performing Arts Center;

$500,000 for the Hawaii Nature Center in Wailuku, HI for the Maui Renovation Project;

$500,000 for the Field Museum in Chicago, IL;

$100,000 for the Iowa State Fair Board in DesMoines, IA for a statewide awareness and education/exhibit.

$280,000 for the City of Waterloo, IA for the John Deere brownfield and bio-based incubator project;

$500,000 for the B&O Railroad Museum in Baltimore, MD for building renovations;

$187,500 for Heartland Corn Products in Winthrop, MN for construction of a new facility;

$100,000 for the Graveyard of the Atlantic Museum in Hateras, NC to complete construction;

$450,000 for the Johnny Appleseed Heritage Center, Inc. in Ashland County, OH for construction of facilities;

$200,000 for Holt Hotel in Wichita Falls, TX for continued renovations to the Holt Hotel;

$250,000 for the Walter Clore Wine and Culinary Center in Prosser, WA for costs associated with its construction;

$500,000 for Appalachian Bible College in Beckley, WV to complete its library resource center; and

$1,000,000 for the Huntington Area Development Council in Huntington, WV for the construction of a business incubator.

This bill also funds the Environmental Protection Agency which provides resources to help state, local and tribal communities enhance capacity and infrastructure to better address their environmental needs.

Mr. President, the most egregious provision under the EPA section is the language that would significantly change states' authority under the Clean Air Act in order to protect an engine manufacturer in Missouri. This policy change has been advanced to serve the concerns of Briggs and Stratton, although its September 2003 filing to the SEC indicated that there would not be "a material effect on its financial condition or results of operations" and it has not been able to substantiate job loss claims. However, what has been substantiated by the many public health, state environmental departments, and environmental groups opposed to this are the detrimental effects it would have on air quality including ozone levels in many states, including my own. On behalf of the health of the citizens of our respective states, every Senator in this chamber should oppose this blatant and unacceptable change in national air pollution control policy which restricts every state's ability to make decisions that best serve the economic and environmental interests of the state.

I support directing more resources to communities that are most in need and facing serious public health and safety threats from environmental problems. Unfortunately, after a review of this year's bill for EPA programs, I do not believe that we are responding to the most urgent environmental needs. Our nation's key environmental laws are an empty promise of protection without adequate enforcement. I am gratified that Senator LAUTENBERG's amendment was accepted to bring essential enforcement activities at EPA to levels comparable to last year's appropriation. Enforcement actions have been declining significantly in conjunction with the Administration's enforcement budget cuts. We cannot allow this trend to continue and uphold our responsibility to protect human health and our vital natural resources under existing laws.

The funding priorities in this bill seem to be slanted toward satisfying parochial and institutional interests rather than providing for robust implementation of national environmental laws. Many of the earmarks provided for the EPA are targeted for consortiums, universities, or foundations. There are many environmental needs in communities back in my home state of Arizona, but these communities will be denied funding as long as we continue to tolerate earmarking that circumvents a regular merit-review process.

For example, some of the earmarks include:

An increase of $500,000 for the painting and coating assistance initiative through the University of Northern Iowa;

An increase of $500,000 for the Kenai River Center in Kenai, AK;

An increase of $1,000,000 for the University of South Alabama for the Center for Estuarine Research;

An increase of $250,000 for the Midwest Technology Assistance Center at the University of Illinois;

An increase of $400,00 for the County of Hawaii and the Hawaii Island Economic Development Board for community-based waste recycling and reuse system;

An increase of $425,000 for Southeastern Louisiana University for the Turtle Cove research station;

$1 million for the Solid Waste Authority of Palm Beach County, FL for continued construction of the Tri-County Biosolids Pelletization Facility;

$600,000 for the City of Jackson, TN for the Sandy Creek Sanitary Sewer Overflow Project;

$1 million for Washoe County, NV for the North Lemmon Valley Artificial Recharge Project;

$400,000 for Wright City, MO for the construction of an elevated water storage tank; and

$300,000 to the City of Lancaster to construct an advanced ultrafiltration membrane water treatment system in Lancaster County, PA.

While these projects may be important, why do they rank higher than other environmental priorities? It is also important to note that none of the earmarks for the EPA were even requested by the President's budget.

For independent agencies such as the National Aeronautics and Space Administration, this bill also includes earmarks of money for locality-specific projects such as:

An increase of $2.5 million to Marshall University in Bridgeport, WV for the Hubble Telescope Project;

An increase of $2.5 million to the University of Mississippi for the Enterprise for Innovative Geospatial Solutions;

An increase of $3 million for the University of Alaska for weather and ocean research;

An increase of $1 million to the Delaware Aerospace Education and Foundation in Kent County, DE;

An increase of $1.5 million for the Adventure Science Center in Nashville, TN for the Sudekum Planetarium;

An increase of $2 million to Texas Tech University in Lubbock, TX for equipment at the Experimental Sciences Building; and

An increase of $1 million to Utah State University in Logan, UT for the Intermountain Region Digital Image Archive and Processing Center.

I want to alert my colleagues to what I consider to be a very serious funding issue concerning the future of our space program.

As Chairman of the Senate Committee on Commerce, Science, and Transportation, which has authorizing jurisdiction over NASA, I am greatly concerned that we apparently have not learned from last February's tragic *Columbia* Space Shuttle accident. What I find to be particularly remarkable is that while the Appropriators were not able to fully fund NASA, somehow the accompanying report still earmarks $81.6 million worth of pork and unrequested items in NASA's Science, Aeronautics and Exploration Account. Clearly, now more than ever, we should be doing everything in our power to ensure we aren't short-changing NASA safety needs.

The Columbia Accident Investigation Board (CAIB), which was assigned to determine the cause of that accident and to prevent future accidents, describes NASA as, "An Agency Trying To Do Too Much With Too Little." The CAIB report, released in August, describes NASA's budget situation as follows:

> Between 1993 and 2002, the government's discretionary spending grew in purchasing power by more than 25 percent, defense spending by 15 percent, and non-defense spending by 40 percent. NASA's budget, in comparison, showed little change, going from $14.31 billion in Fiscal Year 1993 to a low of $13.6 billion in Fiscal Year 2000, and increasing to $14.87 billion in Fiscal Year 2002. This represented a loss of 13 percent in purchasing power over the decade.

The report also raised very serious concerns regarding how earmarking has restricted NASA's ability to fund its priorities:

> Pressure on NASA's budget has come not only from the White House, but also from the Congress. In recent years there has been an increasing tendency for the Congress to add "earmarks"—congressional additions to the NASA budget request that reflect targeted Members' interests. These earmarks come out of already-appropriated funds, reducing the amounts available for the original tasks.

Have we learned nothing from the Shuttle accident and the CAIB report findings? I am afraid not, since this bill does not provide the level of funding for NASA and its programs requested by the President, yet continues the disturbing trend of earmarking NASA's budget in ways that have nothing to do with fulfilling its mission and purpose. We must do better. As Admiral Gehman testified during one of the Senate Commerce Committee's hearings this year, when I asked him about the effects of the $167 million that was earmarked in last year's appropriations bill (FY 2003), he said "$100 million will buy a lot of safety engineers." Unfortunately, last year's earmarks did not allow for NASA to buy those needed safety engineers.

I am not alone in my concern over the earmarks envisioned in this bill. The Administration's Statement of Administrative Policy goes so far as to call out an earmark for an entity in Hampton, VA, to prepare a research budget as "one particularly troublesome earmark," stating that "[b]udget development is clearly the purview of the executive branch and the Congress and the proposed effort is redundant and unnecessary."

I think that it is important to know how we are spending the taxpayers' hard earned money, and have included a list of these earmarks at the end of my statement.

I would like to take a few moments to discuss the International Space Station (ISS). The bill provides $200 million less than the President's request at a time when a number of serious safety concerns have been raised about the Space Station.

For example, William F. Readdy, the NASA Associate Administrator at the Office of Space Flight, testified before the Commerce Committee that the Space Station onboard environmental monitoring system which, "provides very high accuracy information on atmospheric composition and presence of trace elements . . . is not operating at full capacity." He also testified that the crew health countermeasures, which include an onboard treadmill and associated resistive exercise devices, were "operating at various degrees of reduced capacity and needed to be repaired, upgraded or replaced."

Recent articles in the Washington Post paint an even more disturbing picture. An October 23, 2003, article describes:

> The problems with monitoring environmental conditions aboard the space station have festered for more than a year, some NASA medical officials said. Space station astronauts have shown such symptoms as headaches, dizziness and "an inability to think clearly," according to a medical officer who asked not to be named. The onboard sensors designed to provide real-time analysis of the air, water and radiation levels have been broken for months, which has made it impossible to determine at any given time whether there is a buildup of trace amounts of dangerous chemical compounds that could sicken astronauts, or worse.

A November 9, 2003, Washington Post article reports that:

> A recent NASA study found that the risk of fire aboard the station has grown because the crew is stowing large quantities of supplies, equipment and waste in front of or near 14 portals that would be crucial for detecting and extinguishing a fire in any of the station's various compartments. There is also concern that a portion of the station's water stores supplied by the Russians may have high levels of carbon tetrachloride, a toxic contaminant.

This article further stated that:

> As far back as March, internal studies warned of a host of dangers for six separate systems, including the thermal controls that cool the station's computers and interiors, that would likely grow out of trying to run the station with limited supplies and a caretaker crew of two instead of the normal complement of three.

Before the recent launch of Expedition 8, the Chief of NASA's Habitability and Environmental Factors Office and NASA's Chief of Space Medicine signed a dissent to the "flight readiness certificate." The dissent declared that "the continued degradation in the environmental monitoring system, exercise countermeasures system, and the health maintenance system, coupled with a planned increment duration of greater than 6 months and extremely limited resupply, all combine to increase the risk to the crew to the point where initiation of [the mission] is not recommended.

These are very serious issues that cannot be ignored, yet here we are, about to approve more than $81 million for unrequested earmarks while underfunding more pressing needs. How will these cuts to the President's budget request affect the safety of the space station? Are we really willing to take any risks?

Furthermore, how do we explain to the public that we could not find the money to fully fund the International Space Station, but were able to earmark $81.6 million worth of pork barrel funding in NASA's Science, Aeronautics and Exploration Account? Again, this is the very type of earmarking that the CAIB report identified as serious cause for concern.

That this practice continues in the face of legitimate safety concerns is simply unacceptable given the tragedies experienced just this year. When one considers the importance of ensuring the safety of the astronauts aboard the Space Station, don't you have to question the funding priority for projects such as the ultra-long balloon program at New Mexico State University, and the Classroom of the Future at Wheeling Jesuit University in West Virginia? These and other projects are the types of earmarks discussed by the CAIB.

The Statement of Administration Policy opposes this $200 million reduction, stating that: "After diligently rebuilding reserves to place the Station on sound financial ground, this reduction would deplete reserves deemed critical by independent cost estimates and limit the program's ability to address risks in FY 2004, including impacts from the Columbia accident." In addition, I have been informed that this reduction would place at risk actions that NASA is taking to address the Independent Management and Cost Evaluation (IMCE) Task Force recommendations to ensure a "credible" ISS Program.

This bill would also reduce funding for other NASA programs. For example, it would reduce funding for the Global Climate Change Research Initiative by $11 million, a decrease of 47 percent. This reduction would significantly impact the development of the Advanced Polarimeter Sensor, which is designed to measure methane, tropospheric ozone, aerosols and black carbon in the atmosphere. The proposed reduction would delay the purchase of "long-lead" item purchases, which could potentially delay the launch date of the satellite from 2007 to 2008.

The bill also would reduce funding for the Jupiter Icy Moons Orbiter (JIMO) by $20 million. This reduction would disrupt and delay the formulation of the JIMO and its associated space nuclear power and propulsion technologies. It also would also reduce funding for the preparation of solicitations for the science community and science investigations. In addition, it would reduce funding for spacecraft studies by three competing industry teams, which would result in delayed, less efficient, and disrupted spacecraft conceptual design work. Most importantly, funding for the Department of Energy reactor studies and technology recapture activities would be reduced. The reactor is the "long-lead" component of JIMO, and any delay to the reactor could eventually delay the launch of the vehicle.

Finally, the bill would reduce funding for NASA's Earth Science Applications by $15 million a 20 percent decrease. This decrease would suspend or terminate projects in over 12 states that support the integration of Earth observations into decision support systems. The reduction would also suspend NASA's interagency commitments to establish best-practice solutions for the integration of Earth science research results into products and services for food and fiber production, coastal management, energy management, aviation safety, disaster management, and air quality forecasting.

It is important to note for all of these projects that further delays usually equate to greater cost.

I think it is important to comment on the fact that the administration has not provided any cost estimates for the space shuttle's return to flight, even though NASA has issued two versions of its Return To Flight plan. It is difficult to expect an appropriations bill to provide sufficient resources without the relevant information from NASA regarding the cost of these Shuttle operations, and I continue to request the administration provide this critical information to the Congress.

The CAIB has listed 15 recommendations that must be implemented before the Space Shuttle can return to flight. These recommendations vary in technical complexity, and include modifying the Memorandum of Agreement with the National Imagery and Mapping Agency to ensure that images are taken of each Shuttle while on orbit, and developing a comprehensive inspection plan using non-destructive inspection technology to determine the structural integrity of all Reinforced Carbon-Carbon system components. The CAIB also recommends that NASA prepare a detailed plan for establishing an independent Technical Engineering Authority, independent safety program, and reorganized Space Shuttle Integration Office. Some of these recommendations will potentially be expensive to implement, and the Congress needs to have an estimate of their cost soon. We cannot wait until the FY 2005 budget submission to find out how much Return To Flight activities will cost if the Shuttle is expected to fly again next fall.

I am also concerned about the Orbital Space Plane program, the development of which is estimated to cost the taxpayers upwards of $15 billion. This amount is already close to the original estimated development costs of $17.4 billion for the International Space Station. It is amazing that the escape vehicle for the station is about to cost as much as the Station was originally expected to cost.

We must ensure due diligence is taken to protect this public investment. NASA has limited the competition to two companies, yet it has not provided a sufficient explanation to the authorizing committees of jurisdiction as to the merits of such a decision. I am not convinced this will generate either the cost savings or the innovation necessary to make this a successful program.

Perhaps the more fundamental question is whether the OSP is the right approach in the first place. As the rush begins to develop this vehicle, many Members in both Houses are not sure how or if this project fits within the overall plans for the future of NASA. I share these concerns.

We do not want to make the same mistakes that we made on the ISS. Those mistakes cost the American taxpayers dearly as the development costs of the ISS sky-rocketed by more than 50 percent. Even today, we still do not know the final costs of the Station, because of the delay caused by the grounding of the Space Shuttle.

I believe it wise to wait for the results of the on-going inter-agency review of the nation's space program being undertaken by the administration before we dole out $15 billion that may be inconsistent with the future goals of the space program.

We need to make the safety of the astronauts on the space station a top priority. We cannot risk placing the earmarks for parochial interests above the critical need to fund legitimate safety concerns.

Mr. BOND. Mr. President, we are awaiting one more Senator who has an amendment to be offered. We are getting to the point where we hope we can go to a voice vote on final passage as soon as possible to expedite the work of the committee. I have asked our cloakroom to check to see if the Senator is going to be joining us to offer his amendment.

Mr. REID. Mr. President, the managers have worked this down to one amendment being left. There was an agreement this morning, and Senator McCAIN is willing to take a very short time agreement. I think it is 20 minutes evenly divided. This bill will be finished before the normal recess.

Ms. MIKULSKI. Mr. President, if I might say to the wonderful distinguished whip and my colleague from Missouri, at 2:30 the Senator from Maryland, along with the distinguished Senator from Utah, Mr. HATCH, are receiving a national award. It will occur in Statuary Hall.

It is really important, if the Senator from Arizona could come next, we could finish this bill. It will be very awkward to try to do the bill at 2:30. I will be here. I will give up the reception of this award. It is really awkward when we are ready to go. I respect the impeccable credentials of the Senator from Arizona on national security. We know what he wants to offer. We could deal with this now and have him present his arguments and our rebuttal, and perhaps do this before the luncheon recess. We would like to get this done before the Senate recesses for the year.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I would like to speak for about 3 minutes.

First, I would like to express my appreciation to Senator BOND and Senator MIKULSKI for their work on this legislation and particularly for their commitment to the National Aeronautics and Space Administration.

This is such an important part of what we are as a people. We are a nation of explorers. This represents a commitment by the American people to explore our solar system and, as far as possible, the universe as we know it.

We have had a tough year. With the shuttle disaster and seven astronauts lost, a tremendous effort has been ongoing to deal with the problem so it will not happen again as part of the return to space program. It has cost us a good bit of money.

It is important to note NASA Administrator Sean O'Keefe is doing a terrific job. He has served as former Secretary of the Navy, former Comptroller of the Department of Defense, chaired departments at Johns Hopkins, Syracuse, Penn State, and has dealt with governmental management. He is doing a good job. That was confirmed just 2 days ago when NASA was rated the best place to work in the Federal Government. In fact, I was particularly proud that Marshall Space Flight Center in Huntsville, AL, the part of NASA where the Saturn 5 was originally set up by Werner Von Braun, is rated the best of the best in the entire U.S. Government. A lot of good things are happening despite the difficulties.

One thing, though, that our leaders were not able to do: Under the pressure that was upon them, they believed it necessary to reduce the International Space Station funding by $200 million. I know there is a lot of pressure. I understand the difficulties they face. The House has not done that.

I urge our colleagues as they go to conference—and I intend to support this bill—to see if we can't get back that $200 million. We don't know all of the challenges they will face, but we know we really have to do a lot of extra work on the return to space. It has drained a lot of our money. If we could keep that $200 million in and keep this space station going, I think it would maintain our progressive vision for space and continue our commitment to explore our solar system. I think it is very important.

I urge my colleagues to do all they can to see if that can be worked out. I thank them for their leadership.

I yield the floor.

Mr. BOND. Mr. President, I thank my colleague from Alabama for his comments on space exploration and the space station.

He noted the delays in the space station operations because of the unavailability of the space shuttle. That is one of the reasons we put some of those funds in other priority programs. We are trying to get back into space so we can get the space shuttle. We very much appreciate that.

VETERANS' CEMETERIES

Mr. GRAHAM of Florida. Mr. President, would the Senator from Missouri be willing to engage me in a colloquy?

Mr. BOND. I would be pleased to engage in a colloquy with my friend from Florida.

Mr. GRAHAM of Florida. I have come to the floor today to speak about an issue of great importance; the need to construct new national veterans cemeteries.

National cemeteries are reaching capacity throughout the United States as veterans, particularly those from World War II and the Korean War, die in increasing numbers. By the end of 2004, only 64 of the 124 veterans national cemeteries will be available for both casketed and cremated remains.

Recognizing the need to establish new cemeteries, Congress recently passed the National Cemetery Expansion Act of 2003 (H.R. 1516). This bill directs the Department of Veterans Affairs (VA) to construct a new national veterans cemetery in the following six cities: Jacksonville, FL; Sarasota, FL; Birmingham, AL; Bakersfield, CA; Philadelphia, PA; and Columbia, SC. These cities were identified by VA as being the areas in the greatest need of a new cemetery.

As cemetery service capabilities decrease, veterans in areas near cemeteries that are at capacity will lose access to burial options within a reasonable distance of their homes. In order to ensure that burial options are provided for veterans and their family members, we must develop new cemeteries and expand existing cemeteries. This process must start as soon as possible because the construction of a new cemetery takes an average of seven years.

I respectfully request that the distinguished chairman of the VA-HUD Subcommittee work to include advance planning funds in conference so we begin constructing these new cemeteries and ensure our veterans have the burial options they deserve.

Mr. BOND. I agree this is an important issue and I will try to address it in conference.

Mr. GRAHAM of Florida. I would like to thank the distinguished chairman for his efforts and I look forward to the final conference report.

Mr. BOND. Mr. President, I express my sincerest appreciation to my colleague, the Senator from Maryland, without whom we could not have gotten them done. We were under very tight time pressures and with very limited resources.

I express my thanks to the chairman, Senator STEVENS, and the ranking member, Senator BYRD, for making enough money available so we can restore the full amount of funding for veterans health care which was a top priority.

This was an extremely difficult year for us. We could not have gotten it done without an extremely able staff who worked, I imagine, more than 100 hours a week and 20 hours several days.

Thanks on the minority side to Paul Carliner, Alexa Sewell, Gabrielle Batkin; and, on my side, Jon Kamarck, Cheh Kim, Allan Cutler, Jennifer Storipan, and Rebecca Benn. We sincerely appreciate their good work.

I ask my colleague for any comments, and then we are ready to go to final passage.

Ms. MIKULSKI. Mr. President, we have fully funded the VA including a $1.5 billion increase over the President's request for VA medical care.

We have provided $28.5 billion for medical care, a 12 percent increase over last year's level. with no deductibles, no co-pays, and no membership fees for veterans. Promises made to our veterans must be promises kept and we have kept our promises to veterans in this bill.

In the area of housing and community development, we continue our commitment to core housing programs, including Community Development Block Grants, HOME, HOPE VI, and Section 8. These programs provide flexible funding for local communities for a range of activities, such as new rental housing, rehabilitation of dilapidated properties, and child care centers.

Last year, CDBG funds created or retained over 100,000 jobs nationwide.

We also keep our commitment to the environment helping local communities protect their citizens' health and their environment.

EPA helps communities by cleaning up Brownfields, improving air quality, and fixing water and sewer systems. We provide $8.2 billion to the EPA, $105 million above last year, and $500 million above the President's budget request.

In water and sewer needs, communities all across the country are faced with aging water and sewer systems. The costs of fixing and maintaining these aging systems continue to increase. That is why Senator BOND and I worked together to restore the administration's $500 million cut to the Clean Water State Revolving Loan Fund.

We have also fully funded environmental cops on the beat so that we catch polluters who threaten public health and the environment.

We have provided a record amount for Americorps, $340 million, so that Americorps can enroll more volunteers to serve in our communities.

In NASA, we provided the full amount for the Space Shuttle—$3.9 billion. Senator BOND and I have always made the Space Shuttle safety a priority.

The bill also funded all major programs in space science, earth science, and aeronautics.

In order to keep our manufacturing jobs here, we increase our investment in the National Science Foundation. We win the Nobel Prizes, and they win the markets. That is why we provide NSF with the largest budget in its history.

We have increased funding for education to attract and train more scientists, engineers and teachers of science.

Again, I joined this Subcommittee to meet the needs of our veterans, empower communities, and create new jobs. This bill has accomplished all three goals.

I support this bill, and I urge my colleagues to support it.

Mr. President, I thank Senator BOND for the wonderful job he has done on this bill on the part of representing the Democratic side. I thank him for all the courtesies and collegiality. Most of all, I thank him for really not playing politics with veterans health care, as I did not. As we approached this bill, when it came to looking out for veterans health care, we weren't the Republican Party; we weren't the Democratic Party; we were the red, white, and blue party. Therefore, we could raise the funding for veterans medical care by 12 percent with no deductibles, with no new deductibles, no new copayments, and no membership fees. That was due in large part to our mutual advocacy and the wonderful cooperation of Senator STEVENS and Senator BYRD.

I joined this subcommittee for two reasons: To meet the day-to-day needs of my constituents—our veterans—housing, the environment; and the long-range investments needed for our country in science and technology. I believe we have accomplished both.

I also thank the staff who enabled us to do this: On my own side, Paul Carliner, Gabrielle Batkin, Alexa Sewell, and Jennifer Storipan; and the staff of the distinguished Senator from Missouri: Jon Karmarck, Cheh Kim, Allan Cutler, and Rebecca Benn.

I also thank the floor staff of both the majority and the minority who helped us expedite the bill. No kinder words could be said by me than to express my gratitude to Senator HARRY REID, the whip on our side, who really also helped bring this bill to closure. This is why we come to the Senate, to try to use the taxpayers' money in a wise way. It keeps promises made to our U.S. veterans, but adds value to our country, whether through empowering neighborhoods, protecting the environment, or investing in science and technology so we not only win the Nobel Prizes but we win the markets.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Missouri.

Mr. BOND. We are ready for final passage.

The amendment (No. 2150), as amended, was agreed to.

The PRESIDING OFFICER. The question is on engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (H.R. 2861), as amended, was passed, as follows:

H.R. 2861

Resolved, That the bill from the House of Representatives (H.R. 2861) entitled "An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.", do pass with the following amendment:

Strike out all after the enacting clause and insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Veteran Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE I—DEPARTMENT OF VETERANS AFFAIRS

VETERANS BENEFITS ADMINISTRATION

COMPENSATION AND PENSIONS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation benefits to or on behalf of veterans and a pilot program for disability examinations as authorized by law (38 U.S.C. 107, chapters 11, 13, 18, 51, 53, 55, and 61); pension benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 15, 51, 53, 55, and 61; 92 Stat. 2508); and burial benefits, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment of premiums due on commercial life insurance policies guaranteed under the provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 540 et seq.) and for other benefits as authorized by law (38 U.S.C. 107, 1312, 1977, and 2106, chapters 23, 51, 53, 55, and 61; 50 U.S.C. App. 540–548; 43 Stat. 122, 123; 45 Stat. 735; 76 Stat. 1198), $29,845,127,000, to remain available until expended: Provided, That not to exceed $17,056,000 of the amount appropriated under this heading shall be reimbursed to "General operating expenses" and "Medical care" for necessary expenses in implementing those provisions authorized in the Omnibus Budget Reconciliation Act of 1990, and in the Veterans' Benefits Act of 1992 (38 U.S.C. chapters 51, 53, and 55), the funding source for which is specifically provided as the "Compensation and pensions" appropriation: Provided further, That such sums as may be earned on an actual qualifying patient basis, shall be reimbursed to "Medical facilities revolving fund" to augment the funding of individual medical facilities for nursing home care provided to pensioners as authorized.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 21, 30, 31, 34, 35, 36, 39, 51, 53, 55, and 61), $2,529,734,000, to remain available until expended: Provided, That expenses for rehabilitation program services and assistance which the Secretary is authorized to provide under section 3104(a) of title 38, United States Code, other than under subsection (a)(1), (2), (5), and (11) of that section, shall be charged to this account.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, service-disabled veterans insurance, and veterans mortgage life insurance as authorized by 38 U.S.C. chapter 19; 70 Stat. 887; 72 Stat. 487, $29,017,000, to remain available until expended.

VETERANS HOUSING BENEFIT PROGRAM FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct and guaranteed loans, such sums as may be necessary to carry out the program, as authorized by 38 U.S.C. chapter 37, as amended: Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: Provided further, That during fiscal year 2004, within the resources available, not to exceed $300,000 in gross obligations for direct loans are authorized for specially adapted housing loans.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, $154,850,000, which may be transferred to and merged with the appropriation for "General operating expenses".

EDUCATION LOAN FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $1,000, as authorized by 38 U.S.C. 3698, as amended: Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: Provided further, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $3,400.

In addition, for administrative expenses necessary to carry out the direct loan program, $70,000, which may be transferred to and merged with the appropriation for "General operating expenses".

VOCATIONAL REHABILITATION LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $52,000, as authorized by 38 U.S.C. chapter 31, as amended: Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: Provided further, That funds made available under this heading are available to subsidize gross obligations for the principal amount of direct loans not to exceed $3,938,000: Provided further, That the loan level shall be considered an estimate and not a limitation.

In addition, for administrative expenses necessary to carry out the direct loan program, $300,000, which may be transferred to and merged with the appropriation for "General operating expenses".

NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For administrative expenses to carry out the direct loan program authorized by 38 U.S.C. chapter 37, subchapter V, as amended, $571,000, which may be transferred to and merged with the appropriation for "General operating expenses".

GUARANTEED TRANSITIONAL HOUSING LOANS FOR HOMELESS VETERANS PROGRAM ACCOUNT

For the administrative expenses to carry out the guaranteed transitional housing loan program authorized by 38 U.S.C. chapter 37, subchapter VI, not to exceed $750,000 of the amounts appropriated by this Act for "General operating expenses" and "Medical care" may be expended.

VETERANS HEALTH ADMINISTRATION

MEDICAL CARE

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities; for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs, including care and treatment in facilities not under the jurisdiction of the department; and furnishing recreational facilities, supplies, and equipment; funeral, burial, and other expenses incidental thereto for beneficiaries receiving care in the department; administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction and renovation of any facility under the jurisdiction or for the use of the department; oversight, engineering and architectural activities not charged to project cost; repairing, altering, improving or providing facilities in the several hospitals and homes under the jurisdiction of the department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; aid to State homes as authorized by 38 U.S.C. 1741; administrative and legal expenses of the department for collecting and recovering amounts owed the department as authorized under 38 U.S.C. chapter 17, and the Federal Medical Care Recovery Act, 42 U.S.C. 2651 et seq., $25,488,080,000, plus reimbursements: Provided, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall establish a priority for treatment for veterans who are service-connected disabled, lower income, or have special needs: Provided further, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall give priority funding for the provision of basic medical benefits to veterans in enrollment priority groups 1 through 6: Provided further, That of the funds made available under this heading, $1,100,000,000 is for equipment and land and structures object classifications only, which amount shall not become available for obligation until August 1, 2004, and shall remain available until September 30, 2005: Provided further, That of the funds made available under this heading, not to exceed $1,100,000,000 shall be available until September 30, 2005: Provided further, That of the funds made available under this heading, the Secretary may transfer up to $400,000,000 to "Construction, major projects" for purposes of implementing CARES subject to a determination by the Secretary that such funds will improve access and quality of veteran's health care needs: Provided further, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs may provide prescription drugs to enrolled veterans with privately written prescriptions based on requirements established by the Secretary: Provided further, That the Secretary of Veterans Affairs shall conduct by contract a program of recovery audits for the fee basis and other medical services contracts with respect to payments for hospital care; and, notwithstanding 31 U.S.C. 3302(b), amounts collected, by setoff or otherwise, as the result of such audits shall be available, without fiscal year limitation, for the purposes for which funds are appropriated under this heading and the purposes of paying a contractor a percent of the amount collected as a result of an audit carried out by the contractor: Provided further, That all amounts so collected under the preceding proviso with respect to a designated health care region (as that term is defined in 38 U.S.C. 1729A(d)(2)) shall be allocated, net of payments to the contractor, to that region: Provided further, That such sums as may be deposited to the Medical Care Collections Fund pursuant to 38 U.S.C. 1729A may be transferred to this account, to remain available until expended for the purposes of this account: Provided further, That Medical Care Collections Funds may be used for construction, alteration and improvement of any parking facility set forth in 38 U.S.C. 8109: Provided further, That of the unobligated balances remaining from prior year recoveries under this heading, $270,000,000 is rescinded.

For an additional amount for "Medical care", $1,300,000,000.

MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development as authorized by 38 U.S.C. chapter 73, to remain available until September 30, 2005, $413,000,000 plus reimbursements.

MEDICAL ADMINISTRATION AND MISCELLANEOUS OPERATING EXPENSES

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law; administrative expenses in support of capital policy activities, $79,146,000: Provided further, That of the funds made available under this heading, not to exceed, $4,000,000 shall be available until September 30, 2005, plus reimbursements: Provided further, That technical and consulting services offered by the Facilities Management Field Support Service, including project management and real property administration (including leases, site acquisition and disposal activities directly supporting projects), shall be provided to Department of Veterans Affairs components only on a reimbursable basis, and such amounts will remain available until September 30, 2004.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For necessary operating expenses of the Department of Veterans Affairs, not otherwise provided for, including administrative expenses in support of department-wide capital planning, management and policy activities, uniforms or allowances therefor; not to exceed $25,000 for official reception and representation expenses; hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, and the Department of Defense for the cost of overseas employee mail, $1,283,272,000: Provided, That expenses for services and assistance authorized under 38 U.S.C. 3104(a)(1), (2), (5), and (11) that the Secretary determines are necessary to enable entitled veterans: (1) to the maximum extent feasible, to become employable and to obtain and maintain suitable employment; or (2) to achieve maximum independence in daily living, shall be charged to this account: Provided further, That the Veterans Benefits Administration shall be funded at not less than $1,004,704,000: Provided further, That of the funds made available under this heading, not to exceed $64,000,000 shall be available for obligation until September 30, 2005: Provided further, That from the funds made available under this heading, the Veterans Benefits Administration may purchase up to two passenger motor vehicles for use in operations of that Administration in Manila, Philippines.

NATIONAL CEMETERY ADMINISTRATION

For necessary expenses of the National Cemetery Administration for operations and maintenance, not otherwise provided for, including uniforms or allowances therefor; cemeterial expenses as authorized by law; purchase of one passenger motor vehicle for use in cemeterial operations; and hire of passenger motor vehicles, $144,203,000: Provided, That of the funds made available under this heading, not to exceed $7,200,000 shall be available until September 30, 2005.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $62,250,000, to remain available until September 30, 2005.

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending and improving any of the facilities under the jurisdiction or for the use of the Department of Veterans Affairs, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, and 8122 of title 38, United States Code, including planning, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, where the estimated cost of a project is more than the amount set forth in 38 U.S.C. 8104(a)(3)(A) or where funds for a project were made available in a previous major project appropriation, $272,690,000, to remain available until expended, of which $183,000,000 shall be for Capital Asset Realignment for Enhanced Services (CARES) activities; and of which $10,000,000 shall be to make reimbursements as provided in 41 U.S.C. 612 for claims paid for contract disputes: Provided, That except for advance planning activities, including needs assessments which may or may not lead to capital investments, and other capital asset management related activities, such as portfolio development and management activities, and investment strategy studies funded through the advance planning fund and the planning and design activities funded through the design fund and CARES funds, including needs assessments which may or may not lead to capital investments, none of the funds appropriated under this heading shall be used for any project which has not been approved by the Congress in the budgetary process: Provided further, That funds provided in this appropriation for fiscal year 2004, for each approved project (except those for CARES activities referenced above) shall be obligated: (1) by the awarding of a construction documents contract by September 30, 2004; and (2) by the awarding of a construction contract by September 30, 2005: Provided further, That the Secretary of Veterans Affairs shall promptly report in writing to the Committees on Appropriations any approved major construction project in which obligations are not incurred within the time limitations established above: Provided further, That no funds from any other account except the "Parking revolving fund", may be obligated for constructing, altering, extending, or improving a project which was approved in the budget process and funded in this account until 1 year after substantial completion and beneficial occupancy by the Department of Veterans Affairs of the project or any part thereof with respect to that part only.

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities under the jurisdiction or for the use of the Department of Veterans Affairs, including planning and assessments of needs which may lead to capital investments, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, 8122, and 8162 of title 38, United States Code, where the estimated cost of a project is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), $252,144,000, to remain available until expended, along with unobligated balances of previous "Construction, minor projects" appropriations which are hereby made available for any project where the estimated cost is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), of which $42,000,000 shall be for Capital Asset Realignment for Enhanced Services (CARES) activities: Provided, That from amounts appropriated under this heading, additional amounts may be used for CARES activities upon notification of and approval by the Committees on Appropriations: Provided further, That funds in this account shall be available for: (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the department which are necessary because of loss or damage caused by any natural disaster or catastrophe; and (2) temporary measures necessary to prevent or to minimize further loss by such causes.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify or alter existing hospital, nursing home and domiciliary facilities in State homes, for furnishing care to veterans as authorized by 38 U.S.C. 8131–8137, $102,100,000, to remain available until expended.

GRANTS FOR THE CONSTRUCTION OF STATE VETERANS CEMETERIES

For grants to aid States in establishing, expanding, or improving State veterans cemeteries as authorized by 38 U.S.C. 2408, $32,000,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

SEC. 101. Any appropriation for fiscal year 2004 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" may be transferred to any other of the mentioned appropriations.

SEC. 102. Appropriations available to the Department of Veterans Affairs for fiscal year 2004 for salaries and expenses shall be available for services authorized by 5 U.S.C. 3109.

SEC. 103. No appropriations in this Act for the Department of Veterans Affairs (except the appropriations for "Construction, major projects", "Construction, minor projects", and the "Parking revolving fund") shall be available for the purchase of any site for or toward the construction of any new hospital or home.

SEC. 104. No appropriations in this Act for the Department of Veterans Affairs shall be available for hospitalization or examination of any persons (except beneficiaries entitled under the laws bestowing such benefits to veterans, and persons receiving such treatment under 5 U.S.C. 7901–7904 or 42 U.S.C. 5141–5204), unless reimbursement of cost is made to the "Medical care" account at such rates as may be fixed by the Secretary of Veterans Affairs.

SEC. 105. Appropriations available to the Department of Veterans Affairs for fiscal year 2004 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" shall be available for payment of prior year accrued obligations required to be recorded by law against the corresponding prior year accounts within the last quarter of fiscal year 2003.

SEC. 106. Appropriations accounts available to the Department of Veterans Affairs for fiscal year 2004 shall be available to pay prior year obligations of corresponding prior year appropriations accounts resulting from title X of the Competitive Equality Banking Act, Public Law 100–86, except that if such obligations are from trust fund accounts they shall be payable from "Compensation and pensions".

SEC. 107. Notwithstanding any other provision of law, during fiscal year 2004, the Secretary of Veterans Affairs shall, from the National Service Life Insurance Fund (38 U.S.C. 1920), the Veterans' Special Life Insurance Fund (38 U.S.C. 1923), and the United States Government Life Insurance Fund (38 U.S.C. 1955), reimburse the "General operating expenses" account for the cost of administration of the insurance programs financed through those accounts: Provided, That reimbursement shall be made only from the surplus earnings accumulated in an insurance program in fiscal year 2004 that are available for dividends in that program after claims have been paid and actuarially determined reserves have been set aside: Provided further, That if the cost of administration of an insurance program exceeds the amount of surplus earnings accumulated in that program, reimbursement shall be made only to the extent of such surplus earnings: Provided further, That the Secretary shall determine the cost of administration for fiscal year 2004 which is properly allocable to the provision of each insurance program and to the provision of any total disability income insurance included in such insurance program.

SEC. 108. Notwithstanding any other provision of law, the Department of Veterans Affairs shall *continue the Franchise Fund pilot program authorized to be established by section 403 of Public Law 103–356 until October 1, 2004: Provided, That the Franchise Fund, established by title I of Public Law 104–204 to finance the operations of the Franchise Fund pilot program, shall continue until October 1, 2004.*

SEC. 109. Amounts deducted from enhanced-use lease proceeds to reimburse an account for expenses incurred by that account during a prior fiscal year for providing enhanced-use lease services, may be obligated during the fiscal year in which the proceeds are received.

SEC. 110. Funds available in any Department of Veterans Affairs appropriation for fiscal year 2004 or funds for salaries and other administrative expenses shall also be available to reimburse the Office of Resolution Management and the Office of Employment Discrimination Complaint Adjudication for all services provided at rates which will recover actual costs but not exceed $29,318,000 for the Office of Resolution Management and $3,059,000 for the Office of Employment and Discrimination Complaint Adjudication: Provided, That payments may be made in advance for services to be furnished based on estimated costs: Provided further, That amounts received shall be credited to "General operating expenses" for use by the office that provided the service.

SEC. 111. No appropriations in this Act for the Department of Veterans Affairs shall be available to enter into any new lease of real property if the estimated annual rental is more than $300,000 unless the Secretary submits a report which the Committees on Appropriations of the Congress approve within 30 days following the date on which the report is received.

SEC. 112. No appropriations in this Act for the Department of Veterans Affairs shall be available for hospitalization or treatment of any person by reason of eligibility under section 1710(a)(3) of title 38, United States Code, unless that person has disclosed to the Secretary of Veterans Affairs, in such form as the Secretary may require—

(1) current, accurate third-party reimbursement information for purposes of section 1729 of such title; and

(2) annual income information for purposes of section 1722 of such title.

SEC. 113. None of the funds in this Act may be used to implement sections 2 and 5 of Public Law 107–287.

SEC. 114. Receipts that would otherwise be credited to the Veterans Extended Care Revolving Fund, the Medical Facilities Revolving Fund, the Special Therapeutic and Rehabilitation Fund, the Nursing Home Revolving Fund, the Veterans Health Services Improvement Fund, and the Parking Revolving Fund shall be deposited into the Medical Care Collections Fund, and shall be transferred to the Medical Care account, to remain available until expended, to carry out the purposes of the Medical Care account.

SEC. 115. Notwithstanding any other provision of law, at the discretion of the Secretary of Veterans Affairs, proceeds or revenues derived from enhanced-use leasing activities (including disposal) that are deposited into the Medical Care Collections Fund may be transferred and merged with major construction and minor construction accounts and be used for construction (including site acquisition and disposition), alterations and improvements of any medical facility under the jurisdiction or for the use of the Department of Veterans Affairs. Such sums as realized are in addition to the amount provided for in the Major and Minor Construction appropriations.

SEC. 116. Notwithstanding paragraph (2) of section 8163(c) of title 38, United States Code, the Secretary of Veterans Affairs may enter into an enhanced-use lease with the Medical University Hospital Authority, a public authority of the State of South Carolina, for approximately 0.48 acres of underutilized property at the Charleston Department of Veterans Affairs Medical Center, Charleston, South Carolina, at any time after 30 days after the date of the submittal of the notice required by paragraph (1) of that section with respect to such property. The Secretary is not required to submit a report on the lease as otherwise required by paragraph (4) of that section.

SEC. 117. Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall make the North Chicago VA Medical Center available to the Navy to the maximum extent feasible. The Secretary shall report to the Senate Appropriations Committee by June 30, 2004, regarding the progress in modifying North Chicago VA Medical Center's surgical suite and emergency and urgent care centers for use by veterans and Department of Defense beneficiaries. Further, the Secretary shall consider having the new joint VA/Navy ambulatory care center to serve both veterans and Department of Defense beneficiaries sited on or adjacent to the North Chicago VA Medical Center and shall consult with the Secretary of the Navy to select the site for the center. The Secretary of Veterans Affairs shall report to the Senate Appropriations Committee on the site selection by June 30, 2004.

SEC. 118. (a) TREATMENT OF PIONEER HOMES IN ALASKA AS STATE HOME FOR VETERANS.—The Secretary of Veterans Affairs may—

(1) treat the Pioneer Homes in the State of Alaska collectively as a single State home for veterans for purposes of section 1741 of title 38, United States Code; and

(2) make per diem payments to the State of Alaska for care provided to veterans in the Pioneer Homes in accordance with the provisions of that section.

(b) TREATMENT NOTWITHSTANDING NON-VETERAN RESIDENCY.—The Secretary shall treat the Pioneer Homes as a State home under subsection (a) notwithstanding the residency of non-veterans in one or more of the Pioneer Homes.

(c) PIONEER HOMES DEFINED.—In this section, the term "Pioneer Homes" means the six regional homes in the State of Alaska known as Pioneer Homes, which are located in the following:

(1) Anchorage, Alaska.
(2) Fairbanks, Alaska.
(3) Juneau, Alaska.
(4) Ketchikan, Alaska.
(5) Palmer, Alaska.
(6) Sitka, Alaska.

SEC. 119. (a) FINDINGS ON ACCESS TO PRIMARY HEALTH CARE OF VETERANS IN RURAL AREAS.—The Senate makes the following findings:

(1) The Secretary of Veterans Affairs has appointed a commission, called the Capital Asset Realignment for Enhanced Services (CARES) Commission, and directed it to make specific recommendations regarding the realignment and allocation of capital assets necessary to meet the demand for veterans health care services over the next 20 years.

(2) The Department of Veterans Affairs accessibility standard for primary health care provides that at least 70 percent of the veterans enrolled in each of the regional "markets" of the Department should live within a specified driving time of a Department primary care facility. That driving time is 30 minutes for veterans living in urban and rural areas and 60 minutes for veterans living in highly rural areas.

(3) The Draft National CARES Plan issued by the Under Secretary for Health would place veterans in 18 rural and highly rural regional markets outside the Department accessibility standard for primary health care until at least fiscal year 2022, which means that thousands of veterans will have to continuing traveling up to 3–4 hours each way to visit a Department primary care facility.

(4) The 18 rural and highly rural markets that will remain outside the Department accessibility standard for primary health care comprise all or parts of Arkansas, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Washington, and West Virginia.

(5) Health care facilities for veterans are disproportionately needed in rural and highly rural areas because the residents of such areas are generally older, poorer, and sicker than their urban counterparts.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) the CARES Commission should give as much attention to solving the special needs of veterans who live in rural areas as it does to providing for the health care needs of veterans living in more highly populated areas;

(2) the CARES Commission should reject the portions of the Draft National CARES Plan that would prevent any regional market of the Department from complying with the Department accessibility standard for primary health care, which provides that at least 70 percent of the veterans residing in each market be within specified driving times of a Department primary care facility; and

(3) the CARES Commission should recommend to the Secretary the investments and initiatives that are necessary to achieve the Department accessibility standard for primary health care in each of the rural and highly rural health care markets of the Department.

SEC. 120. Not later than 120 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall enter into an agreement with the Institute of Medicine of the National Academy of Sciences under which agreement the Institute of Medicine shall develop and evaluate epidemiological studies on Vietnam veterans in accordance with the recommendations of the 2003 National Academy of Sciences report entitled "Characterizing Exposure of Veterans to Agent Orange and Other Herbicides Used in Vietnam: Interim Findings and Recommendations".

SEC. 121. No funds appropriated or otherwise made available for the Department of Veterans Affairs by this Act or any other Act may be obligated or expended to implement the policy contained in the memorandum of the Department of Veterans Affairs dated July 18, 2002, from the Deputy Under Secretary for Health for Operations and Management with the subject "Status of VHA Enrollment and Associated Issues" or any other policy prohibiting the Directors of the Veterans Integrated Service Networks (VISNs) from conducting outreach or marketing to enroll new veterans within their Networks.

TITLE II—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

HOUSING CERTIFICATE FUND

(INCLUDING TRANSFER AND RESCISSION OF FUNDS)

For activities and assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) ("the Act" herein), not otherwise provided for, $18,433,606,000, and amounts that are recaptured in this account, to remain available until expended: Provided, That of the amounts made available under this heading, $14,233,606,379 and the aforementioned recaptures shall be available on October 1, 2003 and $4,200,000,000 shall be available on October 1, 2004: Provided further, That amounts made available under this heading are provided as follows:

(1) $16,202,616,000 for expiring or terminating section 8 project-based subsidy contracts (including section 8 moderate rehabilitation contracts), for amendments to section 8 project-based subsidy contracts, for contracts entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act, for the 1-year renewal of section 8 contracts for units in projects that are subject to approved plans of action under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and for renewals of expiring section 8 tenant-based annual contributions contracts (including amendments and renewals of enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act (42 U.S.C. 1437f(t))): Provided, That notwithstanding any other provision of law, the Secretary shall renew expiring section 8 tenant-based annual contributions contracts for each public housing agency (including for agencies participating in the Moving to Work demonstration, unit months representing section 8 tenant-based assistance funds committed by the public housing agency for specific purposes, other than reserves, that are authorized pursuant to any agreement and conditions entered into under such demonstration, and utilized in compliance with any applicable program obligation deadlines) based on the total number of unit months which were under lease as reported on the most recent end-of-year financial statement submitted by the public housing agency to the Department, adjusted by such additional information submitted by the public housing agency to the Secretary which the Secretary determines to be timely and reliable regarding the total number of unit months under lease at the time of renewal of the annual contributions contract, and by applying an inflation factor based on local or regional factors to the actual per unit cost as reported: Provided further, That funds may be made available in this paragraph to support a total number of unit months under lease that exceeds a public housing agency's authorized level of units under lease to the extent that the use of these funds is part of a strategy for a public housing agency to attain its authorized level of units under contract: Provided further, That when a public housing agency is over its authorized contract level, that public housing agency may not issue another voucher (including turnover vouchers) until that public housing agency is at or below its authorized contract level for vouchers.

(2) $461,329,000 for a central fund to be allocated by the Secretary for the support of section 8 subsidy contracts or amendments to such contracts, and for such other purposes as are set forth in this paragraph: Provided, That subject to the following proviso, the Secretary shall use amounts in such fund, as necessary, for contract amendments to maintain the total number of unit months under lease (up to the authorized level) including turnover and reissuance of authorized vouchers, and for contract amendments resulting from a significant increase in per-unit costs, or otherwise provide funds so that public housing agencies may lease units up to their authorized unit level: Provided further, That the Secretary may use up to $36,000,000 in such funds for incremental vouchers under section 8 of the Act to be used for non-elderly disabled families affected by the designation of a public housing development under section 7 of the Act, the establishment of preferences in accordance with section 651 of the Housing and Community Development Act of 1992 (42 U.S.C. 13611), or the restriction of occupancy to elderly families in accordance with section 658 of such Act (42 U.S.C. 13618): Provided further, That the Secretary may only allocate the incremental vouchers under the previous proviso upon a determination that there are adequate funds under this heading to fund all voucher needs in this fiscal year: Provided further, That if a public housing agency, at any point in time during their fiscal year, has obligated the amounts made available to such agency pursuant to paragraph (1) under this heading for the renewal of expiring section 8 tenant-based annual contributions contracts, and if such agency has expended 50 percent of the amounts available to such agency in its annual contributions contract reserve account, the Secretary shall make available such amounts as are necessary from amounts available from such central fund to fund amendments under the preceding proviso within 30 days of a request from such agency: Provided further, That none of the funds made available in this paragraph may be used to support a total number of unit months under lease which exceeds a public housing agency's authorized level of units under contract: Provided further, That the Secretary shall provide quarterly reports to the Committees on Appropriations of the House and the Senate on the obligation of funds provided in this paragraph;

(3) $252,203,000 for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134), conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act (42 U.S.C.1437f(t)), and tenant protection assistance, including replacement and relocation assistance;

(4) $72,000,000 for family self-sufficiency coordinators under section 23 of the Act;

(5) not to exceed $1,339,448,400 for administrative and other expenses of public housing agencies in administering the section 8 tenant-based rental assistance program: Provided, That the fee otherwise authorized under section 8(q) of the Act shall be determined in accordance with section 8(q), as in effect immediately before the enactment of the Quality Housing and Work Responsibility Act of 1998;

(6) $100,000,000 for contract administrators for section 8 project-based assistance;

(7) not less than $3,010,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under "Public and Indian Housing"; and

(8) up to $3,000,000 for an outside audit by a major accounting firm to assess the current status of all funds within this account, including the amounts of obligated and unobligated funds for all programs funded under this heading for fiscal year 2004 as well as the availability of funds currently appropriated under this heading for fiscal years 2005 and thereafter.

The Secretary may transfer up to 15 percent of funds provided under paragraphs (1), (2), (3) or (5), herein to paragraphs (1), (2), (3) or (5), if the Secretary determines that such action is necessary because the funding provided under one such paragraph otherwise would be depleted and as a result, the maximum utilization of section 8 tenant-based assistance with the funds appropriated for this purpose by this Act would not be feasible: Provided, That prior to undertaking the transfer of funds in excess of 10 percent from any paragraph pursuant to the previous proviso, the Secretary shall notify the Chairman and Ranking Member of the Subcommittees on Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate and shall not transfer any such funds until 30 days after such notification: Provided further, That, hereafter, the Secretary shall require public housing agencies to submit accounting data for funds disbursed under this heading in this Act and prior Acts by source and purpose of such funds: Provided further, That incremental vouchers previously made available under this heading for non-elderly disabled families shall, to the extent practicable, continue to be provided to non-elderly disabled families upon turnover: Provided further, That $1,372,000,000 is rescinded from unobligated balances remaining from funds appropriated to the Department of Housing and Urban Development under this heading or the heading "Annual contributions for assisted housing" or any other heading for fiscal year 2003 and prior years, to be effected by the Secretary no later than September 30, 2004: Provided further, That any such balances governed by reallocation provisions under the statute authorizing the program for which the funds were originally appropriated shall be available for the rescission: Provided further, That any obligated balances of contract authority from fiscal year 1974 and prior that have been terminated shall be cancelled.

PUBLIC HOUSING CAPITAL FUND

(INCLUDING TRANSFER OF FUNDS)

For the Public Housing Capital Fund Program to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g), $2,641,000,000 (the "Act"), to remain available until September 30, 2007: Provided, That of the total amount provided under this heading, in addition to amounts otherwise allocated under this heading, $400,000,000 shall be allocated for such capital and management activities only among public housing agencies that have obligated all assistance for the agency for fiscal years 2001 and 2002 made available under this same heading in accordance with the requirements under paragraphs (1) and (2) of section 9(j) of such Act: Provided further, That notwithstanding any other provision of law or regulation, during fiscal year 2004, the Secretary may not delegate to any Department official other than the Deputy Secretary any authority under paragraph (2) of such section 9(j) regarding the extension of the time periods under such section for obligation of amounts made available for fiscal years 1998, 1999, 2000, 2001, 2002, 2003, or 2004: Provided further, That with respect to any amounts made available under the Public Housing Capital Fund for fiscal years 1999, 2000, 2001, 2002, 2003, or 2004 that remain unobligated in violation of paragraph (1) of such section 9(j) or unexpended in violation of paragraph (5)(A) of such section 9(j), the Secretary shall recapture any such amounts and reallocate such amounts among public housing agencies determined under 6(j) of the Act to be high-performing: Provided further, That for purposes of this heading, the term "obligate" means, with respect to amounts, that the amounts are subject to a binding agreement that will result in outlays immediately or in the future: Provided further, That of the total amount provided under this heading, up to $50,000,000 shall be for carrying out activities under section 9(h) of such Act, of which up to $13,000,000 shall be for the provision of remediation services to public housing agencies identified as "troubled" under the Section 8 Management Assessment Program and for surveys used to calculate local Fair Market Rents and assess housing conditions in connection with rental assistance under section 8 of the Act: Provided further, That of the total amount provided under this heading, up to $500,000 shall be for lease adjustments to section 23 projects, and no less than $10,610,000 shall be *transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under "Public and Indian housing": Provided further, That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended: Provided further, That of the total amount provided under this heading, up to $40,000,000 shall be available for the Secretary of Housing and Urban Development to make grants to public housing agencies for emergency capital needs resulting from emergencies and natural disasters in fiscal year 2003: Provided further, That of the total amount provided under this heading, $15,000,000 shall be for Neighborhood Networks grants for activities authorized in section 9(d)(1)(E) of the United States Housing Act of 1937, as amended: Provided further, That notwithstanding any other provision of law, amounts made available in the previous proviso shall be awarded to public housing agencies on a competitive basis as provided in section 102 of the Department of Housing and Urban Development Reform Act of 1989: Provided further, That of the total amount provided under this heading, $55,000,000 shall be for supportive services, service coordinators and congregate services as authorized by section 34 of the Act and the Native American Housing Assistance and Self-Determination Act of 1996: Provided further, That of the total amount provided under this heading, up to $125,000,000 shall be for grants and credit subsidy to support a loan guarantee and loan program for the development of public housing units in mixed income housing developments: Provided further, That the first proviso under this heading in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003 is amended by striking "1998, 1999".*

PUBLIC HOUSING OPERATING FUND

For payments to public housing agencies for the operation and management of public housing, as authorized by section 9(e) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g(e)), $3,576,600,000: Provided, That of the total amount provided under this heading, $10,000,000 shall be for programs, as determined appropriate by the Attorney General, which assist in the investigation, prosecution, and prevention of violent crimes and drug offenses in public and federally-assisted low-income housing, including Indian housing, which shall be administered by the Department of Justice through a reimbursable agreement with the Department of Housing and Urban Development: Provided further, That, in fiscal year 2004 and all fiscal years hereafter, no amounts under this heading in any appropriations Act may be used for payments to public housing agencies for the costs of operation and management of public housing for any year prior to the current year of such Act: Provided further, That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended.

REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING (HOPE VI)

For grants to public housing agencies for demolition, site revitalization, replacement housing, and tenant-based assistance grants to projects as authorized by section 24 of the United States Housing Act of 1937, as amended ("such Act"), $195,115,000, to remain available until expended: Provided, That the Secretary may recapture funds from grants previously awarded under this heading in fiscal year 1997 and prior fiscal years for use in making grants in fiscal year 2004 as authorized under section 24 of such Act: Provided further, That the Secretary may only recapture grants under the previous proviso where the Secretary determines that a project is less than 90 percent complete and that the project is unlikely to be completed successfully within the next 2 fiscal years: Provided further, That the Secretary shall not recapture funds from any HOPE VI project that has unobligated funds due to litigation or a court ordered consent decree: Provided further, That the Secretary shall establish an alternative housing plan to meet tenant needs where the Secretary is recapturing HOPE VI funds from a public housing agency with a failed HOPE VI project and the Secretary may recapture only the amount of funds which are not necessary to meet the requirements of the alternative housing plan: Provided further, That the Secretary shall report to the Congress by December 15, 2003 on the status of all HOPE VI projects that are unlikely to be completed according to program requirements: Provided further, That the Secretary shall report to the Congress on any decision to recapture funds from a HOPE VI project, including the justification for the decision and the provisions of the alternative housing plan: Provided further, That the Secretary may use up to $3,000,000 of the funds made available under this heading for technical assistance and contract expertise, to be provided directly or indirectly by grants, contracts or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of the department and of public housing agencies and to residents: Provided further, That none of such funds shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgments, unless expressly permitted herein.

NATIVE AMERICAN HOUSING BLOCK GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For the Native American Housing Block Grants program, as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4111 et seq.), $646,600,000, to remain available until expended, of which $2,200,000 shall be contracted through the Secretary as technical assistance and capacity building to be used by the National American Indian Housing Council in support of the implementation of NAHASDA; of which $4,000,000 shall be to support the inspection of Indian housing units, contract expertise, training, and technical assistance in the training, oversight, and management of Indian housing and tenant-based assistance, including up to $300,000 for related travel; and of which no less than $2,720,000 shall be transferred to the Working Capital Fund for development of and modifications to information technology systems which serve programs or activities under "Public and Indian housing": Provided, That of the amount provided under this heading, $2,000,000 shall be made available for the cost of guaranteed notes and other obligations, as authorized by title VI of NAHASDA: Provided further, That such costs, including the costs of modifying such notes and other obligations, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: Provided further, That these funds are available to subsidize the total principal amount of any notes and other obligations, any part of which is to be guaranteed, not to exceed $16,658,000: Provided further, That for administrative expenses to carry out the guaranteed loan program, up to $150,000 from amounts in the first proviso, which shall be transferred to and merged with the appropriation for "Salaries and expenses", to be used only for the administrative costs of these guarantees.

INDIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a), $5,300,000, to remain available until expended: Provided, That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: Provided further, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $197,243,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to $250,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for "Salaries and expenses", to be used only for the administrative costs of these guarantees.

NATIVE HAWAIIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b), $1,035,000, to remain available until expended: Provided, That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: Provided further, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $39,712,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to $35,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for "Salaries and expenses", to be used only for the administrative costs of these guarantees.

COMMUNITY PLANNING AND DEVELOPMENT

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

For carrying out the Housing Opportunities for Persons with AIDS program, as authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.), $291,000,000, to remain available until September 30, 2005: Provided, That the Secretary shall renew all expiring contracts for permanent supportive housing that were funded under section 854(c)(3) of such Act that meet all program requirements before awarding funds for new contracts and activities authorized under this section: Provided further, That the formula funds made available under this heading for fiscal year 2004 shall be awarded to eligible grantees under the same rules and requirements as were in effect for fiscal year 2003: Provided further, That the Secretary may use up to $3,000,000 of the funds under this heading for training, oversight, and technical assistance activities.

RURAL HOUSING AND ECONOMIC DEVELOPMENT

For the Office of Rural Housing and Economic Development in the Department of Housing and Urban Development, $25,000,000 to remain available until expended, which amount shall be awarded by June 1, 2004, to Indian tribes, State housing finance agencies, State community and/or economic development agencies, local rural nonprofits and community development corporations to support innovative housing and economic development activities in rural areas: Provided, That all grants shall be awarded on a competitive basis as specified in section 102 of the Department of Housing and Urban Development Reform Act of 1989.

COMMUNITY DEVELOPMENT FUND

(INCLUDING TRANSFERS OF FUNDS)

For assistance to units of State and local government, and to other entities, for economic and community development activities, and for other purposes, $4,950,000,000, to remain available until September 30, 2006: Provided, That of the amount provided, $4,545,700,000 is for carrying out the community development block grant program under title I of the Housing and Community Development Act of 1974, as amended (the

"Act" herein) (42 U.S.C. 5301 et seq.): Provided further, That not to exceed 20 percent of any grant made with funds appropriated under this heading (other than a grant made available in this paragraph to the Housing Assistance Council or the National American Indian Housing Council, or a grant using funds under section 107(b)(3) of the Act) shall be expended for "Planning and Management Development" and "Administration", as defined in regulations promulgated by the Department: Provided further, That $72,500,000 shall be for grants to Indian tribes notwithstanding section 106(a)(1) of such Act; $3,300,000 shall be for a grant to the Housing Assistance Council; $2,600,000 shall be for a grant to the National American Indian Housing Council; $52,500,000 shall be for grants pursuant to section 107 of the Act; no less than $4,900,000 shall be transferred to the Working Capital Fund for the development of and modification to information technology systems which serve programs or activities under "Community planning and development"; $12,000,000 shall be for grants pursuant to the Self Help Homeownership Opportunity Program; $35,500,000 shall be for capacity building, of which $31,500,000 shall be for Capacity Building for Community Development and Affordable Housing for LISC and the Enterprise Foundation for activities as authorized by section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, with not less than $5,000,000 of the funding to be used in rural areas, including tribal areas, and of which $4,000,000 shall be for capacity building activities administered by Habitat for Humanity International; $10,000,000 for the Native Hawaiian Housing Block Grant Program, as authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111 et seq.), of which $400,000 shall be for training and technical assistance; $60,000,000 shall be available for YouthBuild program activities authorized by subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, as amended, and such activities shall be an eligible activity with respect to any funds made available under this heading: Provided, That local YouthBuild programs that demonstrate an ability to leverage private and nonprofit funding shall be given a priority for YouthBuild funding: Provided further, That no more than 10 percent of any grant award under the YouthBuild program may be used for administrative costs: Provided further, That of the amount made available for YouthBuild not less than $10,000,000 is for grants to establish YouthBuild programs in underserved and rural areas and $2,000,000 is to be made available for a grant to YouthBuild USA for capacity building for community development and affordable housing activities as specified in section 4 of the HUD Demonstration Act of 1993, as amended.

Of the amount made available under this heading, $21,000,000 shall be available for neighborhood initiatives that are utilized to improve the conditions of distressed and blighted areas and neighborhoods, to stimulate investment, economic diversification, and community revitalization in areas with population outmigration or a stagnating or declining economic base, or to determine whether housing benefits can be integrated more effectively with welfare reform initiatives: Provided, That these grants shall be provided in accordance with the terms and conditions specified in the report accompanying this Act.

Of the amount made available under this heading, $140,000,000 shall be available for grants for the Economic Development Initiative (EDI) to finance a variety of targeted economic investments in accordance with the terms and conditions specified in the report accompanying this Act.

The referenced statement of the managers under this heading in title II of Division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; H. Rept. 108–10) is deemed to be amended with respect to item number 721 by striking "training" and inserting "creation, small business development and quality of life improvements within the State of South Carolina".

The referenced statement of the managers under this heading in title II of Division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; H. Rept. 108–10) is deemed to be amended with respect to item number 317 by striking "135,000" and inserting "151,000".

The referenced statement of the managers under this heading in title II of Division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; H. Rept. 108–10) is deemed to be amended with respect to item number 324 by striking "225,000" and inserting "209,000".

COMMUNITY DEVELOPMENT LOAN GUARANTEES PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, $6,325,000, to remain available until September 30, 2005, as authorized by section 108 of the Housing and Community Development Act of 1974, as amended: Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: Provided further, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $275,000,000, notwithstanding any aggregate limitation on outstanding obligations guaranteed in section 108(k) of the Housing and Community Development Act of 1974, as amended.

In addition, for administrative expenses to carry out the guaranteed loan program, $1,000,000 which shall be transferred to and merged with the appropriation for "Salaries and expenses".

BROWNFIELDS REDEVELOPMENT

For Economic Development Grants, as authorized by section 108(q) of the Housing and Community Development Act of 1974, as amended, for Brownfields redevelopment projects, $25,000,000, to remain available until September 30, 2005: Provided, That the Secretary of Housing and Urban Development shall make these grants available on a competitive basis as specified in section 102 of the Department of Housing and Urban Development Reform Act of 1989.

HOME INVESTMENT PARTNERSHIPS PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For the HOME investment partnerships program, as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, $1,925,000,000, to remain available until September 30, 2006: Provided, That of the total amount provided in this paragraph, up to $40,000,000 shall be available for housing counseling under section 106 of the Housing and Urban Development Act of 1968; and no less than $1,100,000 shall be transferred to the Working Capital Fund for the development of, maintenance of, and modification to information technology systems which serve programs or activities under "Community planning and development".

In addition to the amounts made available under this heading, $50,000,000, to remain available until September 30, 2006, for assistance to homebuyers as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended: Provided, That the Secretary shall provide such assistance in accordance with a formula developed through rulemaking.

HOMELESS ASSISTANCE GRANTS

(INCLUDING TRANSFER OF FUNDS)

For the emergency shelter grants program as authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, as amended; the supportive housing program as authorized under subtitle C of title IV of such Act; the section 8 moderate rehabilitation single room occupancy program as authorized under the United States Housing Act of 1937, as amended, to assist homeless individuals pursuant to section 441 of the McKinney-Vento Homeless Assistance Act; and the shelter plus care program as authorized under subtitle F of title IV of such Act, $1,325,000,000, to remain available until September 30, 2006: Provided, That not less than 30 percent of funds made available, excluding amounts provided for renewals under the shelter plus care program, shall be used for permanent housing: Provided further, That all funds awarded for services shall be matched by 25 percent in funding by each grantee: Provided further, That the Secretary shall renew on an annual basis expiring contracts or amendments to contracts funded under the shelter plus care program if the program is determined to be needed under the applicable continuum of care and meets appropriate program requirements and financial standards, as determined by the Secretary: Provided further, That all awards of assistance under this heading shall be required to coordinate and integrate homeless, programs with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health and Substance Abuse Block Grant, Workforce Investment Act, and the Welfare-to-Work grant program: Provided further, That $12,000,000 of the funds appropriated under this heading shall be available for the national homeless data analysis project and technical assistance: Provided further, That no less than $2,580,000 of the funds appropriated under this heading shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under "Community planning and development".

URBAN DEVELOPMENT ACTION GRANTS

From balances of the Urban Development Action Grant Program, as authorized by title I of the Housing and Community Development Act of 1974, as amended, $30,000,000 are cancelled.

HOUSING PROGRAMS

HOUSING FOR SPECIAL POPULATIONS

(INCLUDING TRANSFER OF FUNDS)

For assistance for the purchase, construction, acquisition, or development of additional public and subsidized housing units for low income families not otherwise provided for, $1,033,801,000, to remain available until September 30, 2007: Provided, That $783,286,000, plus recaptures or cancelled commitments, shall be for capital advances, including amendments to capital advance contracts, for housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and for project rental assistance for the elderly under section 202(c)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing, of which amount $50,000,000 shall be for service coordinators and the continuation of existing congregate service grants for residents of assisted housing projects, of which amount up to $30,000,000 shall be for grants under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) for conversion of eligible projects under such section to assisted *living or related use, including substantial capital repair, of which amount $25,000,000 shall be maintained by the Secretary as a revolving loan fund for use as gap financing to assist grantees in meeting all the initial cost requirements for developing projects under section 202 of such Act: Provided further, That of the amount under this heading, $250,515,000 shall be for capital advances, including amendments to capital advance contracts, for supportive housing for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act, for project rental assistance for supportive housing for persons with disabilities under section 811(d)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing for persons with disabilities as authorized by section 811(b)(1) of such Act, and for tenant-based rental assistance contracts entered into pursuant to section 811 of such Act: Provided further, That of the amount made available under this heading, $15,000,000 shall be available to the Secretary of Housing and Urban Development only for making grants to private nonprofit organizations and consumer cooperatives for covering costs of architectural and engineering work, site control, and other planning relating to the development of supportive housing for the elderly that is eligible for assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q): Provided further, That amounts made available in the previous proviso shall be awarded on a competitive basis as provided in section 102 of the Department of Housing and Urban Development Reform Act of 1989: Provided further, That no less than $940,000, to be divided evenly between the appropriations for the section 202 and section 811 programs, shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under "Housing programs" or "Federal housing administration": Provided further, That, in addition to amounts made available for renewal of tenant-based rental assistance contracts pursuant to the second proviso of this paragraph, the Secretary may designate up to 25 percent of the amounts earmarked under this paragraph for section 811 of such Act for tenant-based assistance, as authorized under that section, including such authority as may be waived under the next proviso, which assistance is 5 years in duration: Provided further, That the Secretary may waive the provisions governing the terms and conditions of project rental assistance and tenant-based rental assistance for such section 202 and such section 811, except that the initial contract term for such assistance shall not exceed 5 years in duration: Provided further, That all balances and recaptures, as of October 1, 2003, remaining in the "Congregate housing services" account as authorized by the Housing and Community Development Amendments of 1978, as amended, shall be transferred to and merged with the amounts for those purposes under this heading.*

FLEXIBLE SUBSIDY FUND

(TRANSFER OF FUNDS)

From the Rental Housing Assistance Fund, all uncommitted balances of excess rental charges as of September 30, 2003, and any collections made during fiscal year 2004 (with the exception of amounts required to make refunds of excess income remittances as authorized by Public Law 106–569), shall be transferred to the Flexible Subsidy Fund, as authorized by section 236(g) of the National Housing Act, as amended.

RENTAL HOUSING ASSISTANCE

(RESCISSION)

Up to $303,000,000 of recaptured section 236 budget authority resulting from prepayment of mortgages subsidized under section 236 of the National Housing Act (12 U.S.C. 1715z–1) shall be rescinded in fiscal year 2004: Provided, That the limitation otherwise applicable to the maximum payments that may be required in any fiscal year by all contracts entered into under section 236 is reduced in fiscal year 2004 by not more than $303,000,000 in uncommitted balances of authorizations of contract authority provided for this purpose in appropriations Acts.

MANUFACTURED HOUSING FEES TRUST FUND

For necessary expenses as authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5401 et seq.), $13,000,000, to remain available until expended, to be derived from the Manufactured Housing Fees Trust Fund: Provided, That not to exceed the total amount appropriated under this heading shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund pursuant to section 620 of such Act: Provided further, That the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year 2004 so as to result in a final fiscal year 2004 appropriation from the general fund estimated at not more than $0 and fees pursuant to such section 620 shall be modified as necessary to ensure such a final fiscal year 2004 appropriation.

FEDERAL HOUSING ADMINISTRATION

MUTUAL MORTGAGE INSURANCE PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

During fiscal year 2004, commitments to guarantee loans to carry out the purposes of section 203(b) of the National Housing Act, as amended, shall not exceed a loan principal of $185,000,000,000.

During fiscal year 2004, obligations to make direct loans to carry out the purposes of section 204(g) of the National Housing Act, as amended, shall not exceed $50,000,000: Provided, That the foregoing amount shall be for loans to nonprofit and governmental entities in connection with sales of single family real properties owned by the Secretary and formerly insured under the Mutual Mortgage Insurance Fund.

For administrative expenses necessary to carry out the guaranteed and direct loan program, $359,000,000, of which not to exceed $355,000,000 shall be transferred to the appropriation for "Salaries and expenses"; and not to exceed $4,000,000 shall be transferred to the appropriation for "Office of Inspector General". In addition, for administrative contract expenses, $85,000,000, of which no less than $20,744,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under "Housing programs" or "Federal housing administration": Provided, That to the extent guaranteed loan commitments exceed $65,500,000,000 on or before April 1, 2004, an additional $1,400 for administrative contract expenses shall be available for each $1,000,000 in additional guaranteed loan commitments (including a pro rata amount for any amount below $1,000,000), but in no case shall funds made available by this proviso exceed $30,000,000.

GENERAL AND SPECIAL RISK PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost of guaranteed loans, as authorized by sections 238 and 519 of the National Housing Act (12 U.S.C. 1715z–3 and 1735c), including the cost of loan guarantee modifications, as that term is defined in section 502 of the Congressional Budget Act of 1974, as amended, $15,000,000, to remain available until expended: Provided, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, of up to $25,000,000,000.

Gross obligations for the principal amount of direct loans, as authorized by sections 204(g), 207(l), 238, and 519(a) of the National Housing Act, shall not exceed $50,000,000, of which not to exceed $30,000,000 shall be for bridge financing in connection with the sale of multifamily real properties owned by the Secretary and formerly insured under such Act; and of which not to exceed $20,000,000 shall be for loans to nonprofit and governmental entities in connection with the sale of single-family real properties owned by the Secretary and formerly insured under such Act.

In addition, for administrative expenses necessary to carry out the guaranteed and direct loan programs, $229,000,000, of which $209,000,000, shall be transferred to the appropriation for "Salaries and expenses"; and of which $20,000,000 shall be transferred to the appropriation for "Office of Inspector General".

In addition, for administrative contract expenses necessary to carry out the guaranteed and direct loan programs, $93,780,000, of which no less than $16,946,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under "Housing programs" or "Federal housing administration": Provided, That to the extent guaranteed loan commitments exceed $8,426,000,000 on or before April 1, 2004, an additional $1,980 for administrative contract expenses shall be available for each $1,000,000 in additional guaranteed loan commitments over $8,426,000,000 (including a pro rata amount for any increment below $1,000,000), but in no case shall funds made available by this proviso exceed $14,400,000.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

GUARANTEES OF MORTGAGE-BACKED SECURITIES LOAN GUARANTEE PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

New commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act, as amended (12 U.S.C. 1721(g)), shall not exceed $200,000,000,000, to remain available until September 30, 2005.

For administrative expenses necessary to carry out the guaranteed mortgage-backed securities program, $10,695,000, to be derived from the GNMA guarantees of mortgage-backed securities guaranteed loan receipt account, of which not to exceed $10,695,000, shall be transferred to the appropriation for "Salaries and expenses".

POLICY DEVELOPMENT AND RESEARCH

RESEARCH AND TECHNOLOGY

For contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C. 1701z–1 et seq.), including carrying out the functions of the Secretary under section 1(a)(1)(i) of Reorganization Plan No. 2 of 1968, $47,000,000, to remain available until September 30, 2005: Provided, That of the total amount provided under this heading, $7,500,000 shall be for the Partnership for Advancing Technology in Housing (PATH) Initiative.

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ACTIVITIES

For contracts, grants, and other assistance, not otherwise provided for, as authorized by title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and section 561 of the Housing and Community Development Act of 1987, as amended, $50,000,000, to remain available until September 30, 2005, of which $20,000,000 shall be to *carry out activities pursuant to such section 561: Provided, That no funds made available under this heading shall be used to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan.*

OFFICE OF LEAD HAZARD CONTROL

LEAD HAZARD REDUCTION

For the Lead Hazard Reduction Program, as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, $175,000,000, to remain available until September 30, 2005, of which $10,000,000 shall be for the Healthy Homes Initiative, pursuant to sections 501 and 502 of the Housing and Urban Development Act of 1970: Provided, That both programs may include research, studies, evaluations, testing, and demonstration efforts, including education and outreach by units of general local government, community-based organizations and other appropriate entities concerning lead-based paint poisoning and other housing-related diseases and hazards: Provided, That of the total amount made available under this heading, $50,000,000 shall be made available on a competitive basis for areas with the highest lead paint abatement needs, as identified by the Secretary as having: (1) the highest number of pre-1940 units of rental housing; and (2) a disproportionately high number of documented cases of lead-poisoned children: Provided further, That each grantee receiving funds under the previous proviso shall target those privately owned units and multifamily buildings that are occupied by low-income families as defined under section 3(b)(2) of the United States Housing Act of 1937: Provided further, That not less than 90 percent of the funds made available under this paragraph shall be used exclusively for abatement, inspections, risk assessments, temporary relocations and interim control of lead-based hazards as defined by 42 U.S.C. 4851: Provided further, That each recipient of funds provided under the first proviso shall make a matching contribution in an amount not less than 25 percent: Provided further, That each applicant shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary of the Department of Housing and Urban Development to carry out the proposed use of funds pursuant to a Notice of Funding Availability.

MANAGEMENT AND ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary administrative and non-administrative expenses of the Department of Housing and Urban Development, not otherwise provided for, including purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed $25,000 for official reception and representation expenses, $1,111,530,000, of which $564,000,000 shall be provided from the various funds of the Federal Housing Administration, $10,695,000 shall be provided from funds of the Government National Mortgage Association, $1,000,000 shall be provided from the "Community development loan guarantees program" account, $150,000 shall be provided by transfer from the "Native American housing block grants" account, $250,000 shall be provided by transfer from the "Indian housing loan guarantee fund program" account and $35,000 shall be transferred from the "Native Hawaiian housing loan guarantee fund" account: Provided further, That the General Counsel of the Department of Housing and Urban Development shall have for fiscal year 2004 and all fiscal years hereafter overall responsibility for all issues related to appropriations law: Provided further, That the Secretary shall fill 7 out of 10 vacancies at the GS–14 and GS–15 levels until the total number of GS–14 and GS–15 positions in the Department has been reduced from the number of GS–14 and GS–15 positions on the date of enactment of Public Law 106–377 by 2½ percent: Provided further, That no funds shall be made available for the salaries (other than pensions and related costs) of any employees who had significant responsibility for allocating funding for the overleasing of vouchers by public housing agencies.

WORKING CAPITAL FUND

For additional capital for the Working Capitol Fund (42 U.S.C. 3535) for the development of, modifications to, and infrastructure for Department-wide information technology systems, and for the continuing operation of both Department-wide and program-specific information systems, $240,000,000, to remain available until September 30, 2005: Provided, That any amounts transferred to this Fund under this Act shall remain available until expended.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $102,000,000, of which $24,000,000 shall be provided from the various funds of the Federal Housing Administration: Provided, That the Inspector General shall have independent authority over all personnel issues within this office: Provided further, That no less than $300,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems for the Office of Inspector General.

CONSOLIDATED FEE FUND

(RESCISSION)

All unobligated balances remaining available from fees and charges under section 7(j) of the Department of Housing and Urban Development Act on October 1, 2003 are rescinded.

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For carrying out the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, including not to exceed $500 for official reception and representation expenses, $39,915,000, to remain available until expended, to be derived from the Federal Housing Enterprise Oversight Fund: Provided, That not less than 60 percent of the total amount made available under this heading shall be used for licensed audit personnel and audit support: Provided further, That an additional $10,000,000 shall be made available until expended, to be derived from the Federal Housing Enterprise Oversight Fund only upon a certification by the Secretary of the Treasury that these funds are necessary to meet an emergency need: Provided further, That not to exceed such amounts shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: Provided further, That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than $0.

ADMINISTRATIVE PROVISIONS

SEC. 201. Fifty percent of the amounts of budget authority, or in lieu thereof 50 percent of the cash amounts associated with such budget authority, that are recaptured from projects described in section 1012(a) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 1437 note) shall be rescinded, or in the case of cash, shall be remitted to the Treasury, and such amounts of budget authority or cash recaptured and not rescinded or remitted to the Treasury shall be used by State housing finance agencies or local governments or local housing agencies with projects approved by the Secretary of Housing and Urban Development for which settlement occurred after January 1, 1992, in accordance with such section. Notwithstanding the previous sentence, the Secretary may award up to 15 percent of the budget authority or cash recaptured and not rescinded or remitted to the Treasury to provide project owners with incentives to refinance their project at a lower interest rate.

SEC. 202. None of the amounts made available under this Act may be used during fiscal year 2004 to investigate or prosecute under the Fair Housing Act any otherwise lawful activity engaged in by one or more persons, including the filing or maintaining of a non-frivolous legal action, that is engaged in solely for the purpose of achieving or preventing action by a Government official or entity, or a court of competent jurisdiction.

SEC. 203. (a) Notwithstanding section 854(c)(1)(A) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)(1)(A)), from any amounts made available under this title for fiscal year 2004 that are allocated under such section, the Secretary of Housing and Urban Development shall allocate and make a grant, in the amount determined under subsection (b), for any State that—

(1) received an allocation in a prior fiscal year under clause (ii) of such section; and

(2) is not otherwise eligible for an allocation for fiscal year 2004 under such clause (ii) because the areas in the State outside of the metropolitan statistical areas that qualify under clause (i) in fiscal year 2004 do not have the number of cases of acquired immunodeficiency syndrome (AIDS) required under such clause.

(b) The amount of the allocation and grant for any State described in subsection (a) shall be an amount based on the cumulative number of AIDS cases in the areas of that State that are outside of metropolitan statistical areas that qualify under clause (i) of such section 854(c)(1)(A) in fiscal year 2004, in proportion to AIDS cases among cities and States that qualify under clauses (i) and (ii) of such section and States deemed eligible under subsection (a).

SEC. 204. Except as explicitly provided in law, any grant or assistance made pursuant to title II of this Act shall be made on a competitive basis in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989.

SEC. 205. Funds of the Department of Housing and Urban Development subject to the Government Corporation Control Act or section 402 of the Housing Act of 1950 shall be available, without regard to the limitations on administrative expenses, for legal services on a contract or fee basis, and for utilizing and making payment for services and facilities of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, Federal Reserve banks or any member thereof, Federal Home Loan banks, and any insured bank within the meaning of the Federal Deposit Insurance Corporation Act, as amended (12 U.S.C. 1811–1831).

SEC. 206. Unless otherwise provided for in this Act or through a reprogramming of funds, no part of any appropriation for the Department of Housing and Urban Development shall be available for any program, project or activity in excess of amounts set forth in the budget estimates submitted to Congress.

SEC. 207. Corporations and agencies of the Department of Housing and Urban Development which are subject to the Government Corporation Control Act, as amended, are hereby authorized to make such expenditures, within the *limits of funds and borrowing authority available to each such corporation or agency and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of such Act as may be necessary in carrying out the programs set forth in the budget for 2004 for such corporation or agency except as hereinafter provided: Provided, That collections of these corporations and agencies may be used for new loan or mortgage purchase commitments only to the extent expressly provided for in this Act (unless such loans are in support of other forms of assistance provided for in this or prior appropriations Acts), except that this proviso shall not apply to the mortgage insurance or guaranty operations of these corporations, or where loans or mortgage purchases are necessary to protect the financial interest of the United States Government.*

SEC. 208. None of the funds provided in this title for technical assistance, training, or management improvements may be obligated or expended unless HUD provides to the Committees on Appropriations a description of each proposed activity and a detailed budget estimate of the costs associated with each program, project or activity as part of the Budget Justifications. For fiscal year 2004, HUD shall transmit this information to the Committees by March 15, 2004 for 30 days of review.

SEC. 209. Notwithstanding any other provision of law, in fiscal year 2004, in managing and disposing of any multifamily property that is owned or held by the Secretary and is occupied primarily by elderly or disabled families, the Secretary of Housing and Urban Development shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 that are attached to any dwelling units in the property. To the extent the Secretary determines that such a multifamily property owned or held by the Secretary is not feasible for continued rental assistance payments under such section 8, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties or provide other rental assistance.

SEC. 210. A public housing agency or such other entity that administers Federal housing assistance in the States of Alaska, Iowa, and Mississippi shall not be required to include a resident of public housing or a recipient of assistance provided under section 8 of the United States Housing Act of 1937 on the board of directors or a similar governing board of such agency or entity as required under section (2)(b) of such Act. Each public housing agency or other entity that administers Federal housing assistance under section 8 in the States of Alaska, Iowa and Mississippi shall establish an advisory board of not less than 6 residents of public housing or recipients of section 8 assistance to provide advice and comment to the public housing agency or other administering entity on issues related to public housing and section 8. Such advisory board shall meet not less than quarterly.

SEC. 211. Section 24(n) of the United States Housing Act of 1937 (42 U.S.C. 1437v(n)) is amended by striking "September 30, 2004" and inserting "September 30, 2006".

SEC. 212. The Secretary of Housing and Urban Development shall provide quarterly reports to the House and Senate Committees on Appropriations regarding all uncommitted, unobligated, and excess funds in each program and activity within the jurisdiction of the Department and shall submit additional, updated budget information to these committees upon request.

SEC. 213. The Secretary of Housing and Urban Development shall submit an annual report no later than August 30, 2004 and annually thereafter to the House and Senate Committees on Appropriations regarding the number of Federally assisted units under lease and the per unit cost of these units to the Department of Housing and Urban Development.

SEC. 214. (a) Notwithstanding any other provision of law, the amount allocated for fiscal year 2004 and thereafter to the City of Philadelphia, Pennsylvania on behalf of the Philadelphia, PA–NJ Primary Metropolitan Statistical Area (hereafter "metropolitan area"), under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), shall be adjusted by the Secretary of Housing and Urban Development by allocating to the State of New Jersey the proportion of the metropolitan area's amount that is based on the number of cases of AIDS reported in the portion of the metropolitan area that is located in New Jersey. The State of New Jersey shall use amounts allocated to the State under this subsection to carry out eligible activities under section 855 of the AIDS Housing Opportunity Act (42 U.S.C. 12904) in the portion of the metropolitan area that is located in New Jersey.

(b) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development shall allocate to Wake County, North Carolina, the amounts that otherwise would be allocated for fiscal year 2004 and thereafter under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) to the City of Raleigh, North Carolina, on behalf of the Raleigh-Durham-Chapel Hill, North Carolina Metropolitan Statistical Area. Any amounts allocated to Wake County shall be used to carry out eligible activities under section 855 of such Act (42 U.S.C. 12904) within such metropolitan statistical area.

SEC. 215. (a) During fiscal year 2004, in the provision of rental assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) in connection with a program to demonstrate the economy and effectiveness of providing such assistance for use in assisted living facilities that is carried out in the counties of the State of Michigan specified in subsection (b) of this section, notwithstanding paragraphs (3) and (18)(B)(iii) of such section 8(o), a family residing in an assisted living facility in any such county, on behalf of which a public housing agency provides assistance pursuant to section 8(o)(18) of such Act, may be required, at the time the family initially receives such assistance, to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such a percentage or amount as the Secretary of Housing and Urban Development determines to be appropriate.

(b) The counties specified in this subsection are Oakland County, Macomb County, Wayne County, and Washtenaw County, in the State of Michigan.

SEC. 216. Section 683(2) of the Housing and Community Development Act of 1992 is amended—

(1) in subparagraph (F), by striking "and";

(2) in subparagraph (G), by striking "section." and inserting "section; and"; and

(3) by adding the following new subparagraph at the end:

"(H) housing that is assisted under section 811 of the Cranston-Gonzalez National Affordable Housing Act.".

SEC. 217. Section 224 of the National Housing Act (12 U.S.C. 1735o) is amended by adding the following new sentence at the end of the first paragraph: "Notwithstanding the preceding sentence and the following paragraph, if an insurance claim is paid in cash for any mortgage that is insured under section 203 or 234 of this Act and is endorsed for mortgage insurance after the date of enactment of this sentence, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of ten years.".

SEC. 218. The McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) is amended—

(1) in section 101(b), by striking "Interagency Council on the Homeless" and inserting "United States Interagency Council on Homelessness";

(2) in section 102(b)(1), by striking "an Interagency Council on the Homeless" and inserting "the United States Interagency Council on Homelessness";

(3) in the heading for title II, by striking "INTERAGENCY COUNCIL ON THE HOMELESS" and inserting "UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS";

(4) in sections 201, 207(1), 501(c)(2)(a), and 501(d)(3), by striking "Interagency Council on the Homeless" and inserting "United States Interagency Council on Homelessness"; and

(5) in section 204(c), by inserting after "reimbursable" the two places it appears the following: "or nonreimbursable".

SEC. 219. Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding the following new section at the end:

"PAYMENT REWARDS FOR CERTAIN SINGLE FAMILY MORTGAGES

"SEC. 257. For purposes of establishing an alternative to high cost mortgages for borrowers with credit impairments, the Secretary may insure under sections 203(b) and 234(c) of this title any mortgage that meets the requirements of such sections, except as provided in the following sentences. The Secretary may establish lower percentage of appraised value limitations than those provided in section 203(b)(2)(B). Notwithstanding section 203(c)(2)(B), the Secretary may establish and collect annual premium payments in an amount not exceeding 1.0 percent of the remaining insured principal balance and such payments may be reduced or eliminated in subsequent years based on mortgage payment performance. All mortgages insured pursuant to this section shall be obligations of the Mutual Mortgage Insurance Fund notwithstanding section 519 of this Act.".

SEC. 220. (a) INFORMATION COMPARISONS FOR PUBLIC AND ASSISTED HOUSING PROGRAMS.—Section 453(j) of the Social Security Act (42 U.S.C. 653(j)) is amended by adding at the end the following new paragraph:

"(7) INFORMATION COMPARISONS FOR HOUSING ASSISTANCE PROGRAMS.—

"(A) FURNISHING OF INFORMATION BY HUD.—Subject to subparagraph (G), the Secretary of Housing and Urban Development shall furnish to the Secretary, on such periodic basis as determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to individuals who are participating in any program under—

"(i) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

"(ii) section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

"(iii) section 221(d)(3), 221(d)(5), or 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z–1);

"(iv) section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

"(v) section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

"(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.—The Secretary of Housing and Urban

Development shall seek information pursuant to this section only to the extent necessary to verify the employment and income of individuals described in subparagraph (A).

"(C) DUTIES OF THE SECRETARY.—

"(i) INFORMATION DISCLOSURE.—The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information provided by the Secretary of Housing and Urban Development with respect to individuals described in subparagraph (A), and shall disclose information in such Directory regarding such individuals to the Secretary of Housing and Urban Development, in accordance with this paragraph, for the purposes specified in this paragraph.

"(ii) CONDITION ON DISCLOSURE.—The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

"(D) USE OF INFORMATION BY HUD.—The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only—

"(i) for the purpose of verifying the employment and income of individuals described in subparagraph (A); and

"(ii) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals described in subparagraph (A).

"(E) DISCLOSURE OF INFORMATION BY HUD.—

"(i) PURPOSE OF DISCLOSURE.—The Secretary of Housing and Urban Development may make a disclosure under this subparagraph only for the purpose of verifying the employment and income of individuals described in subparagraph (A).

"(ii) DISCLOSURES PERMITTED.—Subject to clause (iii), the Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph shall not be made available under section 552 of title 5, United States Code.

"(iii) CONDITIONS ON DISCLOSURE.—Disclosures under this paragraph shall be—

"(I) made in accordance with data security and control policies established by the Secretary of Housing and Urban Development and approved by the Secretary;

"(II) subject to audit in a manner satisfactory to the Secretary; and

"(III) subject to the sanctions under subsection (l)(2).

"(iv) ADDITIONAL DISCLOSURES.—

"(I) DETERMINATION BY SECRETARIES.—The Secretary of Housing and Urban Development and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of Housing and Urban Development (in consultation with and approved by the Secretary), of the costs and benefits of disclosures made under clause (ii) and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

"(II) PERMITTED PERSONS OR ENTITIES.—If the Secretary of Housing and Urban Development and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of Housing and Urban Development to a private owner, a management agent, and a contract administrator in connection with the administration of a program described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

"(v) RESTRICTIONS ON REDISCLOSURE.—A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for verifying the employment and income of individuals described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

"(F) REIMBURSEMENT OF HHS COSTS.—The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

"(G) CONSENT.—The Secretary of Housing and Urban Development shall not seek, use, or disclose information under this paragraph relating to an individual without the prior written consent of such individual (or of a person legally authorized to consent on behalf of such individual).".

(b) CONSENT TO INFORMATION COMPARISON AND USE AS CONDITION OF HUD PROGRAM ELIGIBILITY.—As a condition of participating in any program authorized under—

(1) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(2) section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(3) section 221(d)(3), 221(d)(5), or 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z–1);

(4) section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

(5) section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s),

the Secretary of Housing and Urban Development may require consent by an individual (or by a person legally authorized to consent on behalf of such individual) for such Secretary to obtain, use, and disclose information with respect to such individual in accordance with section 453(j)(7) of the Social Security Act (42 U.S.C. 653(j)(7)).

SEC. 221. Section 9 of the United States Housing Act of 1937 is amended by inserting at the end the following new subsection:

"(o) LOAN GUARANTEE DEVELOPMENT FUNDING.—

"(1) In order to facilitate the financing of the rehabilitation and development needs of public housing, the Secretary is authorized to provide loan guarantees for public housing agencies to enter into loans or other financial obligations with financial institutions for the purpose of financing the rehabilitation of a portion of public housing or the development off-site of public housing in mixed income developments (including demolition costs of the public housing units to be replaced), provided that the number of public housing units developed off-site replaces no less than an equal number of on-site public housing units in a project. Loans or other obligations entered into pursuant to this subsection shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary.

"(2) The Secretary may prohibit a public housing agency from obtaining a loan under this subsection only if the rehabilitation or replacement housing proposed by a public housing agency is inconsistent with its Public Housing Agency Plan, as submitted under section 5A, or the proposed terms of the guaranteed loan constitutes an unacceptable financial risk to the public housing agency or for repayment of the loan under this subsection.

"(3) Notwithstanding any other provision of this title, funding allocated to a public housing agency under subsections (d)(2) and (e)(2) of this section for capital and operating funds is authorized for use in the payment of the principal and interest due (including such servicing, underwriting or other costs as may be specified in the regulations of the Secretary) on the loans or other obligations entered into pursuant to this subsection.

"(4) The amount of any loan or other obligation entered into under this subsection shall not exceed in total the pro-rata amount of funds that would be allocated over a period not to exceed 30 years under subsections (d)(2) and (e)(2) of this section on a per unit basis as a percentage of the number of units that are designated to be rehabilitated or replaced under this subsection by a public housing agency as compared to the total number of units in the public housing development, as determined on the basis of funds made available under such subsections (d)(2) and (e)(2) in the previous year. Any reduction in the total amount of funds provided to a public housing agency under this section in subsequent years shall not reduce the amount of funds to be paid under a loan entered into under this subsection but instead shall reduce the capital and operating funds which are available for the other housing units in the public housing development in that fiscal year. Any additional income, including the receipt of rental income from tenants, generated by the rehabilitated or replaced units may be used to establish a loan loss reserve for the public housing agency to assist in the repayment of loans or other obligations entered into under this subsection or to address any shortfall in the operating or capital needs of the public housing agency in any fiscal year.

"(5) Subject to appropriations, the Secretary may use funds from the Public Housing Capital Fund to—

"(A) establish a loan loss reserve account within the Department of Housing and Urban Development to minimize the risk of loss associated with the repayment of loans guaranteed under this subsection,

"(B) make grants to a public housing agency for capital investment needs or for the creation of a loan loss reserve account to be used in conjunction with a loan made under this subsection for the rehabilitation of a portion of public housing or the development off-site of public housing in mixed income developments (including demolition costs of the public housing units to be replaced), or

"(C) or repay any losses associated with a loan guarantee under this subsection.

"(6) The Secretary may, to the extent approved in appropriations Acts, assist in the payment of all or a portion of the principal and interest amount due under the loan or other obligation entered into under this subsection, if the Secretary determines that the public housing agency is unable to pay the amount it owes because of circumstances of extreme hardship beyond the control of the public housing agency.".

SEC. 222. Section 204(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11314(a)) is amended by striking in the first sentence after the word "level", "V", and inserting in its place "III".

SEC. 223. Notwithstanding any other provision of law, the State of Hawaii may elect by July 31, 2004 to distribute funds under section 106(d)(2) of the Housing and Community Development Act of 1974, to units of general local government located in nonentitlement areas of that State. If the State of Hawaii fails to make such election, the Secretary shall for fiscal years 2005 and thereafter make grants to the units of general local government located in the State of Hawaii's nonentitlement areas (Hawaii, Kauai, *and Maui counties). The Secretary of Housing and Urban Development shall allocate funds under section 106(d) of such Act to units of general local government located in nonentitlement areas within the State of Hawaii in accordance with a formula which bears the same ratio to the total amount available for the nonentitlement areas of the State as the weighted average of the ratios between (1) the population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State; (2) the extent of poverty in that eligible unit of general local government and the extent of poverty in all of the eligible units of general local government in the nonentitlement areas of the State; and (3) the extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all of the eligible units of general local government in the nonentitlement areas of the State. In determining the weighted average of the ratios described in the previous sentence, the ratio described in clause (2) shall be counted twice and the ratios described in clauses (1) and (3) shall be counted once. Notwithstanding any other provision, grants made under this section shall be subject to the program requirements of section 104 of the Housing and Community Development Act of 1974 in the same manner as such requirements are made applicable to grants made under section 106(b) of the Housing and Community Development Act of 1974.*

SEC. 224. The Secretary of Housing and Urban Development shall issue a proposed rulemaking, in accordance with Title V, United States Code, not later than 90 days from the date of enactment of this Act that—

(1) addresses and expands, as necessary, the participation and certification requirements for the sale of HUD-owned multifamily housing projects and the foreclosure sale of any multifamily housing securing a mortgage held by the Secretary, including whether a potential purchaser is in substantial compliance with applicable state or local government housing statutes, regulations, ordinances and codes with regard to other properties owned by the purchaser; and

(2) requires any state, city, or municipality that exercises its right of first refusal for the purchase of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(i)) to ensure that potential purchasers of the project from the state, city, or municipality are subject to the same standards that they would otherwise be subject to if they had purchased the project directly from the Secretary, including whether a potential purchaser is in substantial compliance with applicable state or local government housing statutes, regulations, ordinances and codes with regard to other properties owned by the purchaser.

SEC. 225. Section 217 of Public Law 107–73 is amended by striking "the rehabilitation" and inserting in lieu thereof: "redevelopment, including demolition and new construction".

SEC. 226. NATIVE AMERICAN HOUSING. Of the amounts made available to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) for fiscal year 2004, there shall be made available to each grant recipient the same percentage of funding as each recipient received for fiscal year 2003.

SEC. 227. RURAL TEACHER HOUSING. Section 307 of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) is amended by adding at the end the following:

"(e) RURAL TEACHER HOUSING.—The Commission may make grants and loans to public school districts serving remote incorporated cities and unincorporated communities in Alaska (including Alaska Native Villages) with a population of 6,500 or fewer persons for expenses associated with the construction, purchase, lease, and rehabilitation of housing units in such cities and communities. Unless otherwise authorized by the Commission, such units may be occupied only by teachers, school administrators, and other school staff (including members of their households).".

SEC. 228. The Secretary of Housing and Urban Development shall conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 31, 2004.

TITLE III—INDEPENDENT AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one for replacement only) and hire of passenger motor vehicles; and insurance of official motor vehicles in foreign countries, when required by law of such countries, $35,000,000, to remain available until expended.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

SALARIES AND EXPENSES

For necessary expenses in carrying out activities pursuant to section 112(r)(6) of the Clean Air Act, as amended, including hire of passenger vehicles, uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902, and for services authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376, $8,000,000, of which $5,500,000 is to remain available until September 30, 2004 and $2,500,000, of which is to remain available until September 30, 2005: Provided further, That the Chemical Safety and Hazard Investigation Board shall have not more than three career Senior Executive Service positions.

DEPARTMENT OF THE TREASURY

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT

To carry out the Community Development Banking and Financial Institutions Act of 1994, including services authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for ES–3, $70,000,000, to remain available until September 30, 2005, of which not less than $5,000,000 shall be for financial assistance, technical assistance, training and outreach programs designed to benefit Native American, Native Hawaiian, and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers, and up to $12,000,000 may be used for administrative expenses, including administration of the New Markets Tax Credit, up to $6,000,000 may be used for the cost of direct loans, and up to $250,000 may be used for administrative expenses to carry out the direct loan program: Provided, That the cost of direct loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: Provided further, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $11,000,000.

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable under 5 U.S.C. 5376, purchase of nominal awards to recognize non-Federal officials' contributions to Commission activities, and not to exceed $500 for official reception and representation expenses, $60,000,000.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

NATIONAL AND COMMUNITY SERVICE PROGRAMS OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Corporation for National and Community Service (the "Corporation") in carrying out programs, activities, and initiatives under the National and Community Service Act of 1990 (the "Act") (42 U.S.C. 12501 et seq.), $452,575,000, to remain available until September 30, 2005: Provided, That not more than $330,000,000 of the amount provided under this heading shall be available for the National Service Trust under subtitle D of title I of the Act (42 U.S.C. 12601 et seq.) and for grants under the National Service Trust Program authorized under subtitle C of title I of the Act (42 U.S.C. 12571 et seq.) (relating to activities of the AmeriCorps program), including grants to organizations operating projects under the AmeriCorps Education Awards Program (without regard to the requirements of sections 121(d) and (e), section 131(e), section 132, and sections 140(a), (d), and (e) of the Act): Provided further, That from the amount provided under the previous proviso, the Corporation may transfer funds as necessary, to remain available without fiscal year limitation, to the National Service Trust for educational awards authorized under subtitle D of title I of the Act (42 U.S.C. 12601), of which up to $5,000,000 shall be available to support national service scholarships for high school students performing community service: Provided further, That the Corporation shall approve and enroll AmeriCorps members pursuant to the Strengthen AmeriCorps Program Act (Public Law 108–45): Provided further, That of the amount provided under this heading for grants under the National Service Trust program authorized under subtitle C of title I of the Act, not more than $50,000,000 may be used to administer, reimburse, or support any national service program authorized under section 121(d)(2) of such Act (42 U.S.C. 12581(d)(2)): Provided further, That not more than $14,575,000 shall be available for quality and innovation activities authorized under subtitle H of title I of the Act (42 U.S.C. 12853 et seq.), of which $5,000,000 shall be available for challenge grants to non-profit organizations: Provided further, That notwithstanding subtitle H of title I of the Act (42 U.S.C. 12853), none of the funds provided under the previous proviso shall be used to support salaries and related expenses (including travel) attributable to Corporation employees: Provided further, That to the maximum extent feasible, funds appropriated under subtitle C of title I of the Act shall be provided in a manner that is consistent with the recommendations of peer review panels in order to ensure that priority is given to programs that demonstrate quality, innovation, replicability, and sustainability: Provided further, That not more than $10,000,000 of the funds made available under this heading shall be made available for the Points of Light Foundation for activities authorized under title III of the Act (42 U.S.C.

12661 et seq.), of which not more than $2,500,000 may be used to support an endowment fund, the corpus of which shall remain intact and the interest income from which shall be used to support activities described in title III of the Act, provided that the Foundation may invest the corpus and income in federally insured bank savings accounts or comparable interest bearing accounts, certificates of deposit, money market funds, mutual funds, obligations of the United States, and other market instruments and securities but not in real estate investments: Provided further, That no funds shall be available for national service programs run by Federal agencies authorized under section 121(b) of such Act (42 U.S.C. 12571(b)): Provided further, That not more than $5,000,000 of the funds made available under this heading shall be made available to America's Promise—The Alliance for Youth, Inc.: Provided further, That to the maximum extent practicable, the Corporation shall increase significantly the level of matching funds and in-kind contributions provided by the private sector, and shall reduce the total Federal costs per participant in all programs by not less than 10 percent: Provided further, That the Inspector General of the Corporation for National and Community Service shall conduct random audits of the grantees that administer activities under the AmeriCorps programs and shall debar any grantee (or successor in interest or any entity with substantially the same person or persons in control) that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs, including any grantee that has been determined to have violated the prohibition of using Federal funds to lobby the Congress: Provided further, That the Inspector General shall obtain reimbursements in the amount of any misused funds from any grantee that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs: Provided further, That, for fiscal year 2004 and every year thereafter, the Corporation shall make any significant changes to program requirements or policy only through public notice and comment rulemaking: Provided further, That, for fiscal year 2004 and every year thereafter, during any grant selection process, no officer or employee of the Corporation shall knowingly disclose any covered grant selection information regarding such selection, directly or indirectly, to any person other than an officer or employee of the Corporation that is authorized by the Corporation to receive such information: Provided further, That the Corporation shall offer any individual selected after October 31, 2002, for initial enrollment or reenrollment as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) the option of receiving a national service educational award under subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.)" after "programs".

SALARIES AND EXPENSES

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, the employment of experts and consultants authorized under 5 U.S.C. 3109, and not to exceed $2,500 for official reception and representation expenses) involved in carrying out the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) involved in administration as provided under section 501(a)(4) of the Act, $25,000,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $6,500,000, to remain available until September 30, 2005.

ADMINISTRATIVE PROVISIONS

Notwithstanding any other provision of law, the term "qualified student loan" with respect to national service education awards shall mean any loan determined by an institution of higher education to be necessary to cover a student's cost of attendance at such institution and made, insured, or guaranteed directly to a student by a State agency, in addition to other meanings under section 148(b)(7) of the National and Community Service Act.

Notwithstanding any other provision of law, funds made available under section 129(d)(5)(B) of the National and Community Service Act to assist entities in placing applicants who are individuals with disabilities may be provided to any entity that receives a grant under section 121 of the Act.

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

SALARIES AND EXPENSES

For necessary expenses for the operation of the United States Court of Appeals for Veterans Claims as authorized by 38 U.S.C. 7251–7298, $16,220,000 of which $1,175,000 shall be available for the purpose of providing financial assistance as described, and in accordance with the process and reporting procedures set forth, under this heading in Public Law 102–229.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, including the purchase of two passenger motor vehicles for replacement only, and not to exceed $1,000,000 for official reception and representation expenses, $32,000,000, to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

NATIONAL INSTITUTES OF HEALTH

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For necessary expenses for the National Institute of Environmental Health Sciences in carrying out activities set forth in section 311(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and section 126(g) of the Superfund Amendments and Reauthorization Act of 1986, $78,774,000.

AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

TOXIC SUBSTANCES AND ENVIRONMENTAL PUBLIC HEALTH

For necessary expenses for the Agency for Toxic Substances and Disease Registry (ATSDR) in carrying out activities set forth in sections 104(i), 111(c)(4), and 111(c)(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended; section 118(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended; and section 3019 of the Solid Waste Disposal Act, as amended, $73,467,000, which may be derived to the extent funds are available from the Hazardous Substance Superfund Trust Fund pursuant to section 517(a) of SARA (26 U.S.C. 9507): Provided, That notwithstanding any other provision of law, in lieu of performing a health assessment under section 104(i)(6) of CERCLA, the Administrator of ATSDR may conduct other appropriate health studies, evaluations, or activities, including, without limitation, biomedical testing, clinical evaluations, medical monitoring, and referral to accredited health care providers: Provided further, That in performing any such health assessment or health study, evaluation, or activity, the Administrator of ATSDR shall not be bound by the deadlines in section 104(i)(6)(A) of CERCLA: Provided further, That none of the funds appropriated under this heading shall be available for ATSDR to issue in excess of 40 toxicological profiles pursuant to section 104(i) of CERCLA during fiscal year 2004, and existing profiles may be updated as necessary.

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE AND TECHNOLOGY

For science and technology, including research and development activities, which shall include research and development activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; necessary expenses for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; procurement of laboratory equipment and supplies; other operating expenses in support of research and development; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project, $715,579,000, which shall remain available until September 30, 2005.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

For environmental programs and management, including necessary expenses, not otherwise provided for, for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project; and not to exceed $9,000 for official reception and representation expenses, $2,219,659,000, which shall remain available until September 30, 2005, including administrative costs of the brownfields program under theSmall Business Liability Relief and Brownfields Revitalization Act of 2002, of which, in addition to any other amounts provided under this heading for the Office of Enforcement and Compliance Assurance, $5,400,000 shall be made available for that office.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project, $36,808,000, to remain available until September 30, 2005.

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of, or for use by, the Environmental Protection Agency, $42,918,000, to remain available until expended.

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including sections 111(c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project; $1,265,000,000 (of which $100,000,000 shall not become available until September 1, *2003), to remain available until expended, consisting of such sums as are available in the Trust Fund as authorized by section 517(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and up to $1,265,000,000 as a payment from general revenues to the Hazardous Substance Superfund for purposes as authorized by section 517(b) of SARA, as amended: Provided, That funds appropriated under this heading may be allocated to other Federal agencies in accordance with section 111(a) of CERCLA: Provided further, That of the funds appropriated under this heading, $13,214,000 shall be transferred to the "Office of Inspector General" appropriation to remain available until September 30, 2005, and $45,000,000 shall be transferred to the "Science and technology" appropriation to remain available until September 30, 2005.*

LEAKING UNDERGROUND STORAGE TANK PROGRAM

For necessary expenses to carry out leaking underground storage tank cleanup activities authorized by section 205 of the Superfund Amendments and Reauthorization Act of 1986, and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project, $72,545,000, to remain available until expended.

OIL SPILL RESPONSE

For expenses necessary to carry out the Environmental Protection Agency's responsibilities under the Oil Pollution Act of 1990, $16,209,000, to be derived from the Oil Spill Liability trust fund, to remain available until expended.

STATE AND TRIBAL ASSISTANCE GRANTS

For environmental programs and infrastructure assistance, including capitalization grants for State revolving funds and performance partnership grants, $3,814,000,000, to remain available until expended, of which $1,350,000,000 shall be for making capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended (the "Act"); $850,000,000 shall be for capitalization grants for the Drinking Water State Revolving Funds under section 1452 of the Safe Drinking Water Act, as amended, except that, notwithstanding section 1452(n) of the Safe Drinking Water Act, as amended, none of the funds made available under this heading in this Act, or in previous appropriations Acts, shall be reserved by the Administrator for health effects studies on drinking water contaminants; $50,000,000 shall be for architectural, engineering, planning, design, construction and related activities in connection with the construction of high priority water and wastewater facilities in the area of the United States-Mexico Border, after consultation with the appropriate border commission; $45,000,000 shall be for grants to the State of Alaska to address drinking water and wastewater infrastructure needs of rural and Alaska Native Villages: Provided, That, of these funds (1) 25 percent will be set aside for regional hub communities of populations over 1,000 but under 5,000, (2) the State of Alaska shall provide a match of 25 percent, (3) no more than 5 percent of the fund may be used for administrative and overhead expenses, and (4) a statewide priority list shall be established which shall remain in effect for at least three years; $3,500,000 shall be for remediation of above ground leaking fuel tanks pursuant to Public Law 106–554; $130,000,000 shall be for making grants for the construction of drinking water, wastewater and storm water infrastructure and for water quality protection in accordance with the terms and conditions specified for such grants in the committee report accompanying this Act, and, notwithstanding any other provision of law, heretofore and hereafter, projects awarded such grants under this heading that also receive loans from a State water pollution control or drinking water revolving fund may be administered in accordance with applicable State water pollution control or drinking water revolving fund administrative and procedural requirements, and, for purposes of these grants, each grantee shall contribute not less than 45 percent of the cost of the project unless the grantee is approved for a waiver by the Administrator of the Environmental Protection Agency; $100,500,000 shall be to carry out section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including grants, interagency agreements, and associated program support costs; and $1,130,000,000 shall be for grants, including associated program support costs, to States, federally recognized tribes, interstate agencies, tribal consortia, and air pollution control agencies for multi-media or single media pollution prevention, control and abatement and related activities, including activities pursuant to the provisions set forth under this heading in Public Law 104–134, and for making grants under section 103 of the Clean Air Act for particulate matter monitoring and data collection activities of which and subject to terms and conditions specified by the Administrator, of which $60,000,000 shall be for carrying out section 128 of CERCLA, as amended, and $20,000,000 shall be for Environmental Information Exchange Network grants, including associated program support costs: Provided, That for fiscal year 2004, State authority under section 302(a) of Public Law 104–182 shall remain in effect: Provided further, That notwithstanding section 603(d)(7) of the Act, the limitation on the amounts in a State water pollution control revolving fund that may be used by a State to administer the fund shall not apply to amounts included as principal in loans made by such fund in fiscal year 2004 and prior years where such amounts represent costs of administering the fund to the extent that such amounts are or were deemed reasonable by the Administrator, accounted for separately from other assets in the fund, and used for eligible purposes of the fund, including administration: Provided further, That for fiscal year 2004, and notwithstanding section 518(f) of the Act, the Administrator is authorized to use the amounts appropriated for any fiscal year under section 319 of that Act to make grants to Indian tribes pursuant to sections 319(h) and 518(e) of that Act: Provided further, That for fiscal year 2004, notwithstanding the limitation on amounts in section 518(c) of the Act, up to a total of 1½ percent of the funds appropriated for State Revolving Funds under title VI of that Act may be reserved by the Administrator for grants under section 518(c) of such Act: Provided further, That no funds provided by this legislation to address the water, wastewater and other critical infrastructure needs of the colonias in the United States along the United States-Mexico border shall be made available to a county or municipal government unless that government has established an enforceable local ordinance, or other zoning rule, which prevents in that jurisdiction the development or construction of any additional colonia areas, or the development within an existing colonia the construction of any new home, business, or other structure which lacks water, wastewater, or other necessary infrastructure: Provided further, That the referenced statement of the managers under this heading in Public Law 106–377 is deemed to be amended by striking "wastewater" in reference to item number 219 and inserting "water": Provided further, That the referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended by striking "wastewater" in reference to item number 409 and inserting "water".

ADMINISTRATIVE PROVISIONS

For fiscal year 2004, notwithstanding 31 U.S.C. 6303(1) and 6305(1), the Administrator of the Environmental Protection Agency, in carrying out the Agency's function to implement directly Federal environmental programs required or authorized by law in the absence of an acceptable tribal program, may award cooperative agreements to federally-recognized Indian Tribes or Intertribal consortia, if authorized by their member Tribes, to assist the Administrator in implementing Federal environmental programs for Indian Tribes required or authorized by law, except that no such cooperative agreements may be awarded from funds designated for State financial assistance agreements.

Notwithstanding CERCLA 104(k)(4)(B)(i)(IV), appropriated funds may hereafter be used to award grants or loans under section 104(k) of CERCLA to eligible entities that satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was prior to the date of enactment of the Small Business Liability Relief and Brownfield Revitalization Act of 2001.

For fiscal year 2004, notwithstanding any other provision of law, recipients of grants awarded under section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) may use funds for reasonable administrative costs, as determined by the Administrator of the Environmental Protection Agency.

Section 209(e)(1) of the Clean Air Act (42 U.S.C. 7543(e)(1)) is amended by—

(1) striking the words "either of"; and

(2) in subparagraph (A), adding before the period at the end the following: ", and any new spark-ignition engines smaller than 50 horsepower".

Not later than December 1, 2004, the Administrator of the Environmental Protection Agency shall propose regulations containing new standards applicable to emissions from new nonroad spark-ignition engines smaller than 50 horsepower.

DESIGNATIONS OF AREAS FOR $PM_{2.5}$ AND SUBMISSION OF IMPLEMENTATION PLANS FOR REGIONAL HAZE.

(a) In General.—Section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) is amended by adding at the end the following:

"(6) Designations.—

"(A) Submission.—Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 $PM_{2.5}$ *national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.*

"(B) Promulgation.—Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 $PM_{2.5}$ *national ambient air quality standards.*

"(7) IMPLEMENTATION PLAN FOR REGIONAL HAZE.—

"(A) In General.—Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 169B(e)(1) (referred to in this paragraph as 'regional haze requirements').

"(B) NO PRECLUSION OF OTHER PROVISIONS.—Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.".

(b) RELATIONSHIP TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—Except as provided in paragraphs (6) and (7) of section 107(d) of the Clean Air Act (as added by subsection (a)), section 6101, subsections (a) and (b) of section 6102, and section 6103 of the Transportation Equity Act for the 21st Century (42 U.S.C. 7407 note; 112 Stat. 463), as in effect on the day before the date of enactment of this Act, shall remain in effect.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, not to exceed $2,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, $7,027,000.

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses to continue functions assigned to the Council on Environmental Quality and Office of Environmental Quality pursuant to the National Environmental Policy Act of 1969, the Environmental Quality Improvement Act of 1970, and Reorganization Plan No. 1 of 1977, and not to exceed $750 for official reception and representation expenses, $3,238,000: Provided, That, notwithstanding section 202 of the National Environmental Policy Act of 1970, the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council.

FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $30,848,000, to be derived from the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund.

GENERAL SERVICES ADMINISTRATION

FEDERAL CITIZEN INFORMATION CENTER FUND

For necessary expenses of the Federal Citizen Information Center, including services authorized by 5 U.S.C. 3109, $14,000,000, to be deposited into the Federal Citizen Information Center Fund: Provided, That the appropriations, revenues, and collections deposited into the Fund shall be available for necessary expenses of Federal Citizen Information Center activities in the aggregate amount not to exceed $21,000,000. Appropriations, revenues, and collections accruing to this Fund during fiscal year 2004 in excess of $21,000,000 shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS

OPERATING EXPENSES

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code) of the Interagency Council on the Homeless in carrying out the functions pursuant to title II of the McKinney-Vento Homeless Assistance Act, as amended, $1,500,000.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SPACE FLIGHT CAPABILITIES

For necessary expenses, not otherwise provided for, in the conduct and support of space flight capabilities research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $7,582,100,000, to remain available until September 30, 2005, of which no less than $3,968,000,000 shall be available for activities related to the Space Shuttle and shall not be available for transfer to any other program or account, and no more than $1,507,000,000 shall be available for activities related to the International Space Station.

SCIENCE, AERONAUTICS AND EXPLORATION

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of science, aeronautics and exploration research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $7,730,507,000, to remain available until September 30, 2005, of which amounts as determined by the Administrator for salaries and benefits; training, travel and awards; facility and related costs; information technology services; science, engineering, fabricating and testing services; and other administrative services may be transferred to "Space flight capabilities" in accordance with section 312(b) of the National Aeronautics and Space Act of 1958, as amended by Public Law 106–377.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $26,300,000.

ADMINISTRATIVE PROVISIONS

Notwithstanding the limitation on the availability of funds appropriated for "Science, aeronautics and exploration", or "Space flight capabilities" by this appropriations Act, when any activity has been initiated by the incurrence of obligations for construction of facilities as authorized by law, such amount available for such activity shall remain available until expended. This provision does not apply to the amounts appropriated for institutional minor revitalization and construction of facilities, and institutional facility planning and design.

Notwithstanding the limitation on the availability of funds appropriated for "Science, aeronautics and exploration", or "Space flight capabilities" by this appropriations Act, the amounts appropriated for construction of facilities shall remain available until September 30, 2006.

From amounts made available in this Act for these activities, the Administration may transfer amounts between aeronautics from the "Science, aeronautics and exploration" account to the "Space flight capabilities" account, provided NASA meets all reprogramming requirements.

Funds for announced prizes otherwise authorized shall remain available, without fiscal year limitation, until the prize is claimed or the offer is withdrawn.

NASA shall maintain a working capital fund in the United States Treasury and report to the Congress on the status of this fund by January 31, 2004. Amounts in the fund are available for financing activities, services, equipment, information, and facilities as authorized by law to be provided within the Administration; to other agencies or instrumentalities of the United States; to any State, Territory, or possession or political subdivision thereof; to other public or private agencies; or to any person, firm, association, corporation, or educational institution on a reimbursable basis. The fund shall also be available for the purpose of funding capital repairs, renovations, rehabilitation, sustainment, demolition, or replacement of NASA real property, on a reimbursable basis within the Administration. Amounts in the fund are available without regard to fiscal year limitation. The capital of the fund consists of amounts appropriated to the fund; the reasonable value of stocks of supplies, equipment, and other assets and inventories on order that the Administrator transfers to the fund, less the related liabilities and unpaid obligations; and payments received for loss or damage to property of the fund. The fund shall be reimbursed, in advance, for supplies and services at rates that will approximate the expenses of operation, such as the accrual of annual leave, depreciation of plant, property and equipment, and overhead.

The unexpired balances of prior appropriations to NASA for activities for which funds are provided under this Act may be transferred to the new account established for the appropriation that provides such activity under this Act. Balances so transferred may be merged with funds in the newly established account and thereafter may be accounted for as one fund under the same terms and conditions.

Notwithstanding any other provision of law, no funds under this Act or any other Act may be used to compensate any person who contracts with NASA who has otherwise chosen to retire early or has taken a buy-out.

NATIONAL CREDIT UNION ADMINISTRATION

CENTRAL LIQUIDITY FACILITY

During fiscal year 2004, gross obligations of the Central Liquidity Facility for the principal amount of new direct loans to member credit unions, as authorized by 12 U.S.C. 1795 et seq., shall not exceed $1,500,000,000: Provided, That administrative expenses of the Central Liquidity Facility in fiscal year 2004 shall not exceed $310,000.

COMMUNITY DEVELOPMENT REVOLVING LOAN FUND

For the Community Development Revolving Loan Fund program as authorized by 42 U.S.C. 9812, 9822 and 9910, $1,500,000 shall be available:

Provided, That of this amount $700,000, together with amounts of principal and interest on loans repaid, is available until expended for loans to community development credit unions, and $800,000 is available until September 30, 2005 for technical assistance to low-income and community development credit unions.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For necessary expenses in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880–1881); services as authorized by 5 U.S.C. 3109; maintenance and operation of aircraft and purchase of flight services for research support; acquisition of aircraft; and authorized travel; $4,220,610,000, of which not to exceed $341,730,000 shall remain available until expended for Polar research and operations support, and for reimbursement to other Federal agencies for operational and science support and logistical and other related activities for the United States Antarctic program; the balance to remain available until September 30, 2005: Provided, That receipts for scientific support services and materials furnished by the National Research Centers and other National Science Foundation supported research facilities may be credited to this appropriation: Provided further, That to the extent that the amount appropriated is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally: Provided further, That $90,000,000 of the funds available under this heading shall be made available for a comprehensive research initiative on plant genomes for economically significant crops.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For necessary expenses for the acquisition, construction, commissioning, and upgrading of major research equipment, facilities, and other such capital assets pursuant to the National Science Foundation Act of 1950, as amended, including authorized travel, $149,680,000, to remain available until expended.

EDUCATION AND HUMAN RESOURCES

For necessary expenses in carrying out science and engineering education and human resources programs and activities pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), including services as authorized by 5 U.S.C. 3109, authorized travel, and rental of conference rooms in the District of Columbia, $975,870,000, to remain available until September 30, 2005: Provided, That to the extent that the amount of this appropriation is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally.

SALARIES AND EXPENSES

For salaries and expenses necessary in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875); services authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; not to exceed $9,000 for official reception and representation expenses; uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; rental of conference rooms in the District of Columbia; and reimbursement of the General Services Administration for security guard services; $225,700,000: Provided, That contracts may be entered into under "Salaries and expenses" in fiscal year 2004 for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year.

OFFICE OF THE NATIONAL SCIENCE BOARD

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code) involved in carrying out section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) and Public Law 86–209 (42 U.S.C. 1880 et seq.), $3,900,000: Provided, That not more than $9,000 shall be available for official reception and representation expenses.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General as authorized by the Inspector General Act of 1978, as amended, $10,000,000, to remain available until September 30, 2005.

NEIGHBORHOOD REINVESTMENT CORPORATION

PAYMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION

For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101–8107), $115,000,000, of which $5,000,000 shall be for a multi-family rental housing program.

ADMINISTRATIVE PROVISION

Section 605(a) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8104) is amended by—

(1) striking out "compensation" and inserting "salary"; and striking out "highest rate provided for GS–18 of the General Schedule under section 5332 of title 5 United States Code"; and inserting "rate for level IV of the Executive Schedule"; and

(2) inserting after the end the following sentence: "The Corporation shall also apply the provisions of section 5307(a)(1), (b)(1) and (b)(2) of title 5, United States Code, governing limitations on certain pay as if its employees were Federal employees receiving payments under title 5.".

SELECTIVE SERVICE SYSTEM

SALARIES AND EXPENSES

For necessary expenses of the Selective Service System, including expenses of attendance at meetings and of training for uniformed personnel assigned to the Selective Service System, as authorized by 5 U.S.C. 4101–4118 for civilian employees; purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed $750 for official reception and representation expenses; $26,308,000: Provided, That during the current fiscal year, the President may exempt this appropriation from the provisions of 31 U.S.C. 1341, whenever the President deems such action to be necessary in the interest of national defense: Provided further, That none of the funds appropriated by this Act may be expended for or in connection with the induction of any person into the Armed Forces of the United States: Provided further, That none of the funds appropriated under this heading may be used in direct support of the Corporation for National and Community Service.

TITLE IV—GENERAL PROVISIONS

SEC. 401. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 402. No funds appropriated by this Act may be expended—

(1) pursuant to a certification of an officer or employee of the United States unless—

(A) such certification is accompanied by, or is part of, a voucher or abstract which describes the payee or payees and the items or services for which such expenditure is being made; or

(B) the expenditure of funds pursuant to such certification, and without such a voucher or abstract, is specifically authorized by law; and

(2) unless such expenditure is subject to audit by the General Accounting Office or is specifically exempt by law from such audit.

SEC. 403. None of the funds provided in this Act to any department or agency may be obligated or expended for: (1) the transportation of any officer or employee of such department or agency between the domicile and the place of employment of the officer or employee, with the exception of an officer or employee authorized such transportation under 31 U.S.C. 1344 or 5 U.S.C. 7905; or (2) to provide a cook, chauffeur, or other personal servants to any officer or employee of such department or agency.

SEC. 404. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals not specifically solicited by the Government: Provided, That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

SEC. 405. None of the funds provided in this Act may be used, directly or through grants, to pay or to provide reimbursement for payment of the salary of a consultant (whether retained by the Federal Government or a grantee) at more than the daily equivalent of the rate paid for level IV of the Executive Schedule, unless specifically authorized by law.

SEC. 406. None of the funds provided in this Act may be used to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings. Nothing herein affects the authority of the Consumer Product Safety Commission pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056 et seq.).

SEC. 407. Except as otherwise provided under existing law, or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are: (1) a matter of public record and available for public inspection; and (2) thereafter included in a publicly available list of all contracts entered into within 24 months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

SEC. 408. Except as otherwise provided by law, no part of any appropriation contained in this Act shall be obligated or expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), for a contract for services unless such executive agency: (1) has awarded and entered into such contract in full compliance with such Act and the regulations promulgated thereunder; and (2) requires any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report prepared pursuant to such contract, to contain information concerning: (A) the contract pursuant to which the report was prepared; and (B) the contractor who prepared the report pursuant to such contract.

SEC. 409. (a) It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

(b) In providing financial assistance to, or entering into any contract with, any entity using

funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

Sec. 410. None of the funds appropriated in this Act may be used to implement any cap on reimbursements to grantees for indirect costs, except as published in Office of Management and Budget Circular A–21.

Sec. 411. Such sums as may be necessary for fiscal year 2004 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

Sec. 412. None of the funds made available in this Act may be used for any program, project, or activity, when it is made known to the Federal entity or official to which the funds are made available that the program, project, or activity is not in compliance with any Federal law relating to risk assessment, the protection of private property rights, or unfunded mandates.

Sec. 413. Except in the case of entities that are funded solely with Federal funds or any natural persons that are funded under this Act, none of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties to lobby or litigate in respect to adjudicatory proceedings funded in this Act. A chief executive officer of any entity receiving funds under this Act shall certify that none of these funds have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

Sec. 414. No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

Sec. 415. All Departments and agencies funded under this Act are encouraged, within the limits of the existing statutory authorities and funding, to expand their use of "E-Commerce" technologies and procedures in the conduct of their business practices and public service activities.

Sec. 416. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government that is established after the date of the enactment of this Act, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

Sec. 417. None of the funds provided in this Act to any department or agency shall be obligated or expended to procure passenger automobiles as defined in 15 U.S.C. 2001 with an EPA estimated miles per gallon average of less than 22 miles per gallon.

Sec. 418. Sense of the Senate. (a) Findings.—The Senate finds that—

(1) 30 percent of American families have housing affordability problems, with 14,300,000 families paying more than half of their income for housing costs, and 17,300,000 families paying 30 to 50 percent of their income towards housing costs;

(2) 9,300,000 American families live in housing that is overcrowded or distressed;

(3) 3,500,000 households in the United States will experience homelessness at some point this year, including 1,350,000 children;

(4) the number of working families who are unable to afford adequate housing is increasing, as the gap between wages and housing costs grows;

(5) there is no county or metropolitan area in the country where a minimum wage earner can afford to rent a modest 2-bedroom apartment, and on average, a family must earn over $15 an hour to afford modest rental housing, which is almost 3 times the minimum wage;

(6) section 8 housing vouchers help approximately 2,000,000 families with children, senior citizens, and disabled individuals afford a safe and decent place to live;

(7) utilization of vouchers is at a high of 96 percent, and is on course to rise to 97 percent in fiscal year 2004, according to data provided by the Department of Housing and Urban Development;

(8) the average cost per voucher has also steadily increased from just over $6,400 in August of 2002, to $6,756 in April, 2003, due largely to rising rents in the private market, and the Congressional Budget Office estimates that the cost per voucher in fiscal year 2004 will be $7,028, $560 more per voucher than the estimate contained in the fiscal year 2004 budget request; and

(9) the congressionally appointed, bipartisan Millennial Housing Commission found that housing vouchers are "the linchpin of a national housing policy providing very low-income renters access to privately-owned housing stock".

(b) Sense of the Senate.—It is the sense of the Senate that—

(1) housing vouchers are a critical resource in ensuring that families in America can afford safe, decent, and adequate housing;

(2) public housing agencies must retain the ability to use 100 percent of their authorized vouchers to help house low-income families; and

(3) the Senate expects the Department of Housing and Urban Development to take all necessary actions to encourage full utilization of vouchers, and to use all legally available resources as needed to support full funding for housing vouchers in fiscal year 2004, so that every voucher can be used by a family in need.

Sec. 419. Section 106(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)) is amended—

(1) in paragraph (3)(A), by striking "shall not exceed 2 percent" and inserting "shall not, subject to paragraph (6), exceed 3 percent";

(2) in paragraph (5), by striking "not to exceed 1 percent" and inserting "subject to paragraph (6), not to exceed 3 percent";

(3) by redesignating the second paragraph (5) and paragraph (6) as paragraphs (7) and (8), respectively; and

(4) by inserting after paragraph (5) the following:

"(6) Of the amounts received under paragraph (1), the State may deduct not more than an aggregate total of 3 percent of such amounts for—

"(A) administrative expenses under paragraph (3)(A); and

"(B) technical assistance under paragraph (5).".

Sec. 420. Sewer Overflow Control Grants. Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) in subsection (f), by striking "2002 and 2003" and inserting "2005 and 2006";

(2) in subsection (g)(1)—

(A) in the paragraph heading, by striking "2002" and inserting "2005"; and

(B) by striking "2002" and inserting "2005";

(3) in subsection (g)(2)—

(A) in the paragraph heading, by striking "2003" and inserting "2006"; and

(B) by striking "2003" and inserting "2006"; and

(4) in subsection (i), by striking "2003" and inserting "2006".

Sec. 421. (a) Congress makes the following findings:

(1) During Operation Desert Shield and Operation Desert Storm (in this section, collectively referred to as the "First Gulf War"), the regime of Saddam Hussein committed grave human rights abuses and acts of terrorism against the people of Iraq and citizens of the United States.

(2) United States citizens who were taken prisoner by the regime of Saddam Hussein during the First Gulf War were brutally tortured and forced to endure severe physical trauma and emotional abuse.

(3) The regime of Saddam Hussein used civilian citizens of the United States who were working in the Persian Gulf region before and during the First Gulf War as so-called human shields, threatening the personal safety and emotional well-being of such civilians.

(4) Congress has recognized and authorized the right of United States citizens, including prisoners of war, to hold terrorist states, such as Iraq during the regime of Saddam Hussein, liable for injuries caused by such states.

(5) The United States district courts are authorized to adjudicate cases brought by individuals injured by terrorist states.

(b) It is the sense of Congress that—

(1) notwithstanding section 1503 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 117 Stat. 579) and any other provision of law, a citizen of the United States who was a prisoner of war or who was used by the regime of Saddam Hussein and by Iraq as a so-called human shield during the First Gulf War should have the opportunity to have any claim for damages caused by the regime of Saddam Hussein and by Iraq incurred by such citizen fully adjudicated in the appropriate United States district court;

(2) any judgment for such damages awarded to such citizen, or the family of such citizen, should be fully enforced; and

(3) the Attorney General should enter into negotiations with each such citizen, or the family of each such citizen, to develop a fair and reasonable method of providing compensation for the damages each such citizen incurred, including using assets of the regime of Saddam Hussein held by the Government of the United States or any other appropriate sources to provide such compensation.

Sec. 422. None of the funds provided in this Act may be expended to apply, in a numerical estimate of the benefits of an agency action prepared pursuant to Executive Order 12866 or section 812 of the Clean Air Act, monetary values for adult premature mortality that differ based on the age of the adult.

Sec. 423. Extension of Certain Public Housing/Section 8 Moving to Work Demonstration Agreements. (a) Extension.—The Secretary of Housing and Urban Development shall extend the term of the Moving to Work Demonstration Agreement entered into between a public housing agency and the Secretary under section 204, title V, of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134, April 26, 1996) if—

(1) the public housing agency requests such extension in writing;

(2) the public housing agency is not at the time of such request for extension in default under its Moving to Work Demonstration Agreement; and

(3) the Moving to Work Demonstration Agreement to be extended would otherwise expire on or before December 31, 2004.

(b) Terms.—Unless the Secretary of Housing and Urban Development and the public housing agency otherwise agree, the extension under subsection (a) shall be upon the identical terms and conditions set forth in the extending agency's existing Moving to Work Demonstration Agreement, except that for each public housing agency that has been or will be granted an extension to its original Moving to Work agreement, the Secretary shall require that data be *collected so that the effect of Moving to Work policy changes on residents can be measured.*

(c) EXTENSION PERIOD.—The extension under subsection (a) shall be for such period as is requested by the public housing agency, not to exceed 3 years from the date of expiration of the extending agency's existing Moving to Work Demonstration Agreement.

(d) BREACH OF AGREEMENT.—Nothing contained in this section shall limit the authority of the Secretary of Housing and Urban Development to terminate any Moving to Work Demonstration Agreement of a public housing agency if the public housing agency is in breach of the provisions of such agreement.

SEC. 424. STUDY OF MOVING TO WORK PROGRAM. (a) IN GENERAL.—The General Accounting Office shall conduct a study of the Moving to Work demonstration program to evaluate—

(1) whether the statutory goals of the Moving to Work demonstration program are being met;

(2) the effects policy changes related to the Moving to Work demonstration program have had on residents; and

(3) whether public housing agencies participating in the Moving to Work program are meeting the requirements of the Moving to Work demonstration program under law and any agreements with the Department of Housing and Urban Development.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall submit to Congress a report on the study conducted under subsection (a).

SEC. 425. NATIONAL ACADEMY OF SCIENCES STUDY. The matter under the heading "ADMINISTRATIVE PROVISIONS" under the heading "ENVIRONMENTAL PROTECTION AGENCY" in title III of division K of section 2 of the Consolidated Appropriations Resolution, 2003 (117 Stat. 513), is amended—

(1) in the first sentence of the fifth undesignated paragraph (beginning "As soon as"), by inserting before the period at the end the following: ", and the impact of the final rule entitled 'Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion', amending parts 51 and 52 of title 40, Code of Federal Regulations, and published in electronic docket OAR-2002-0068 on August 27, 2003"; and

(2) in the sixth undesignated paragraph (beginning "The National Academy of Sciences"), by striking "March 3, 2004" and inserting "January 1, 2005".

SEC. 426. There shall be made available $500,000 to the Secretary of Housing and Urban Development for the purposes of making the grant authorized under section 3 of the Paul and Sheila Wellstone Center for Community Building Act.

TITLE V—PESTICIDE PRODUCTS AND FEES

SEC. 501. PESTICIDE REGISTRATION. (a) SHORT TITLE.—This title may be cited as the "Pesticide Registration Improvement Act of 2003".

(b) REGISTRATION REQUIREMENTS FOR ANTIMICROBIAL PESTICIDES.—Section 3(h) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(h)) is amended—

(1) in paragraph (2)(F), by striking "90 to 180 days" and inserting "120 days"; and

(2) in paragraph (3)—

(A) in subparagraph (D)(vi), by striking "240 days" and inserting "120 days"; and

(B) in subparagraph (F), by adding at the end the following:

"(iv) LIMITATION.—Notwithstanding clause (ii), the failure of the Administrator to notify an applicant for an amendment to a registration for an antimicrobial pesticide shall not be judicially reviewable in a Federal or State court if the amendment requires scientific review of data within—

"(I) the time period specified in subparagraph (D)(vi), in the absence of a final regulation under subparagraph (B); or

"(II) the time period specified in paragraph (2)(F), if adopted in a final regulation under subparagraph (B).".

(c) MAINTENANCE FEES.—

(1) AMOUNTS FOR REGISTRANTS.—Section 4(i)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)) is amended—

(A) in subparagraph (A)—

(i) by striking "(A) Subject" and inserting the following:

"(A) IN GENERAL.—Subject"; and

(ii) by striking "of—" and all that follows through "additional registration" and inserting "for each registration";

(B) in subparagraph (D)—

(i) by striking "(D) The" and inserting the following:

"(D) MAXIMUM AMOUNT OF FEES FOR REGISTRANTS.—The";

(ii) in clause (i), by striking "shall be $55,000; and" and inserting "shall be—

"(I) for fiscal year 2004, $84,000;

"(II) for each of fiscal years 2005 and 2006, $87,000;

"(III) for fiscal year 2007, $68,000; and

"(IV) for fiscal year 2008, $55,000; and"; and

(iii) in clause (ii), by striking "shall be $95,000." and inserting "shall be—

"(I) for fiscal year 2004, $145,000;

"(II) for each of fiscal years 2005 and 2006, $151,000;

"(III) for fiscal year 2007, $117,000; and

"(IV) for fiscal year 2008, $95,000."; and

(C) in subparagraph (E)—

(i) by striking "(E)(i) For" and inserting the following:

"(E) MAXIMUM AMOUNT OF FEES FOR SMALL BUSINESSES.—

"(i) IN GENERAL.—For";

(ii) by indenting the margins of subclauses (I) and (II) of clause (i) appropriately; and

(iii) in clause (i)—

(I) subclause (I), by striking "shall be $38,500; and" and inserting "shall be—

"(aa) for fiscal year 2004, $59,000;

"(bb) for each of fiscal years 2005 and 2006, $61,000;

"(cc) for fiscal year 2007, $48,000; and

"(dd) for fiscal year 2008, $38,500; and"; and

(II) in subclause (II), by striking "shall be $66,500." and inserting "shall be—

"(aa) for fiscal year 2004, $102,000;

"(bb) for each of fiscal years 2005 and 2006, $106,000;

"(cc) for fiscal year 2007, $82,000; and

"(dd) for fiscal year 2008, $66,500.".

(2) TOTAL AMOUNT OF FEES.—Section 4(i)(5)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(a)–1(i)(5)(C)) is amended—

(A) by striking "(C)(i) The" and inserting the following:

"(C) TOTAL AMOUNT OF FEES.—The"; and

(B) by striking "aggregate amount" and all that follows through clause (ii) and inserting "aggregate amount of—

"(i) for fiscal year 2004, $26,000,000;

"(ii) for fiscal year 2005, $27,000,000;

"(iii) for fiscal year 2006, $27,000,000;

"(iv) for fiscal year 2007, $21,000,000; and

"(v) for fiscal year 2008, $15,000,000.".

(3) DEFINITION OF SMALL BUSINESS.—Section 4(i)(5)(E)(ii) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)(E)(ii)) is amended—

(A) by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively, and indenting the margins appropriately;

(B) by striking "(ii) For purposes of" and inserting the following:

"(ii) DEFINITION OF SMALL BUSINESS.—

"(I) IN GENERAL.—In";

(C) in item (aa) (as so redesignated), by striking "150" and inserting "500";

(D) in item (bb) (as so redesignated), by striking "gross revenue from chemicals that did not exceed $40,000,000." and inserting "global gross revenue from pesticides that did not exceed $60,000,000."; and

(E) by adding at the end the following:

"(II) AFFILIATES.—

"(aa) IN GENERAL.—In the case of a business entity with 1 or more affiliates, the gross revenue limit under subclause (I)(bb) shall apply to the gross revenue for the entity and all of the affiliates of the entity, including parents and subsidiaries, if applicable.

"(bb) AFFILIATED PERSONS.—For the purpose of item (aa), persons are affiliates of each other if, directly or indirectly, either person controls or has the power to control the other person, or a third person controls or has the power to control both persons.

"(cc) INDICIA OF CONTROL.—For the purpose of item (aa), indicia of control include interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees.".

(4) EXTENSION OF AUTHORITY FOR COLLECTING MAINTENANCE FEES.—Section 4(i)(5)(H) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)(H)) is amended by striking "2003" and inserting "2008".

(5) REREGISTRATION AND OTHER ACTIVITIES.—Section 4(g)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136a–1(g)(2)) is amended—

(A) by striking subparagraph (A) and inserting the following:

"(A) IN GENERAL.—The Administrator shall make a determination as to eligibility for reregistration—

"(i) for all active ingredients subject to reregistration under this section for which tolerances or exemptions from tolerances are required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), not later than the last date for tolerance reassessment established under section 408(q)(1)(C) of that Act (21 U.S.C. 346a(q)(1)(C)); and

"(ii) for all other active ingredients subject to reregistration under this section, not later than October 3, 2008.";

(B) in subparagraph (B)—

(i) by striking "(B) Before" and inserting the following:

"(B) PRODUCT-SPECIFIC DATA.—

"(i) IN GENERAL.—Before";

(ii) by striking "The Administrator" and inserting the following:

"(ii) TIMING.—

"(I) IN GENERAL.—Subject to subclause (II), the Administrator"; and

(iii) by adding at the end the following:

"(II) EXTRAORDINARY CIRCUMSTANCES.—In the case of extraordinary circumstances, the Administrator may provide such a longer period, of not more than 2 additional years, for submission of data to the Administrator under this subparagraph."; and

(C) in subparagraph (D)—

(i) by striking "(D) If" and inserting the following:

"(D) DETERMINATION TO NOT REREGISTER.—

"(i) IN GENERAL.—If"; and

(ii) by adding at the end the following:

"(ii) TIMING FOR REGULATORY ACTION.—Regulatory action under clause (i) shall be completed as expeditiously as possible.".

(d) OTHER FEES.—

(1) IN GENERAL.—Section 4(i)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(6)) is amended—

(A) by striking "During" and inserting "Except as provided in section 33, during"; and

(B) by striking "2003" and inserting "2010".

(2) TOLERANCE FEES.—Notwithstanding section 408(m)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(m)(1)), during the period beginning on October 1, 2003, and ending on September 30, 2008, the Administrator of the Environmental Protection Agency shall not collect any tolerance fees under that section.

(e) EXPEDITED PROCESSING OF SIMILAR APPLICATIONS.—Section 4(k)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(k)(3)) is amended—

(1) in the paragraph heading, by striking "EXPEDITED" and inserting "REVIEW OF INERT INGREDIENTS; EXPEDITED"; and

(2) in subparagraph (A)—

(A) by striking "1997" and all that follows through "of the maintenance fees" and inserting "2004 through 2006, approximately $3,300,000, and for each of fiscal years 2007 and 2008, between 1/8 and 1/7, of the maintenance fees";

(B) by redesignating clauses (i), (ii), and (iii) as subclauses (I), (II) and (III), respectively, and indenting appropriately; and

(C) by striking "resources to assure the expedited processing and review of any application that" and inserting "resources—

"(i) to review and evaluate new inert ingredients; and

"(ii) to ensure the expedited processing and review of any application
that—".

(f) PESTICIDE REGISTRATION SERVICE FEES.—The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a et seq.) is amended—

(1) by redesignating sections 33 and 34 (7 U.S.C. 136x, 136y) as sections 34 and 35, respectively; and

(2) by inserting after section 32 (7 U.S.C. 136w–7) the following:

"SEC. 33. PESTICIDE REGISTRATION SERVICE FEES.

"(a) DEFINITION OF COSTS.—In this section, the term 'costs', when used with respect to review and decisionmaking pertaining to an application for which registration service fees are paid under this section, means—

"(1) costs to the extent that—

"(A) officers and employees provide direct support for the review and decisionmaking for covered pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses;

"(B) persons and organizations under contract with the Administrator engage in the review of the applications, and corresponding risk and benefits information and assessments; and

"(C) advisory committees and other accredited persons or organizations, on the request of the Administrator, engage in the peer review of risk or benefits information associated with covered pesticide applications;

"(2) costs of management of information, and the acquisition, maintenance, and repair of computer and telecommunication resources (including software), used to support review of pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses; and

"(3) costs of collecting registration service fees under subsections (b) and (c) and reporting, auditing, and accounting under this section.

"(b) FEES.—

"(1) IN GENERAL.—Effective beginning on the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall assess and collect covered pesticide registration service fees in accordance with this section.

"(2) COVERED PESTICIDE REGISTRATION APPLICATIONS.—

"(A) IN GENERAL.—An application for the registration of a pesticide covered by this Act that is received by the Administrator on or after the effective date of the Pesticide Registration Improvement Act of 2003 shall be subject to a registration service fee under this section.

"(B) EXISTING APPLICATIONS.—

"(i) IN GENERAL.—Subject to clause (ii), an application for the registration of a pesticide that was submitted to the Administrator before the effective date of the Pesticide Registration Improvement Act of 2003 and is pending on that effective date shall be subject to a service fee under this section if the application is for the registration of a new active ingredient that is not listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency.

"(ii) TOLERANCE OR EXEMPTION FEES.—The amount of any fee otherwise payable for an application described in clause (i) under this section shall be reduced by the amount of any fees paid to support the related petition for a pesticide tolerance or exemption under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

"(C) DOCUMENTATION.—An application subject to a registration service fee under this section shall be submitted with documentation certifying—

"(i) payment of the registration service fee; or

"(ii) a request for a waiver from or reduction of the registration service fee.

"(3) SCHEDULE OF COVERED APPLICATIONS AND REGISTRATION SERVICE FEES.—

"(A) IN GENERAL.—Not later than 30 days after the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall publish in the Federal Register a schedule of covered pesticide registration applications and corresponding registration service fees.

"(B) REPORT.—Subject to paragraph (6), the schedule shall be the same as the applicable schedule appearing in the Congressional Record on pages S11631 through S11633, dated September 17, 2003.

"(4) PENDING PESTICIDE REGISTRATION APPLICATIONS.—

"(A) IN GENERAL.—An applicant that submitted a registration application to the Administrator before the effective date of the Pesticide Registration Improvement Act of 2003, but that is not required to pay a registration service fee under paragraph (2)(B), may, on a voluntary basis, pay a registration service fee in accordance with paragraph (2)(B).

"(B) VOLUNTARY FEE.—The Administrator may not compel payment of a registration service fee for an application described in subparagraph (A).

"(C) DOCUMENTATION.—An application for which a voluntary registration service fee is paid under this paragraph shall be submitted with documentation certifying—

"(i) payment of the registration service fee; or

"(ii) a request for a waiver from or reduction of the registration service fee.

"(5) RESUBMISSION OF PESTICIDE REGISTRATION APPLICATIONS.—If a pesticide registration application is submitted by a person that paid the fee for the application under paragraph (2), is determined by the Administrator to be complete, and is not approved or is withdrawn (without a waiver or refund), the submission of the same pesticide registration application by the same person (or a licensee, assignee, or successor of the person) shall not be subject to a fee under paragraph (2).

"(6) FEE ADJUSTMENT.—Effective for a covered pesticide registration application received on or after October 1, 2005, the Administrator shall—

"(A) increase by 5 percent the service fee payable for the application under paragraph (3); and

"(B) publish in the Federal Register the revised registration service fee schedule.

"(7) WAIVERS AND REDUCTIONS.—

"(A) IN GENERAL.—An applicant for a covered pesticide registration may request the Administrator to waive or reduce the amount of a registration service fee payable under this section under the circumstances described in subparagraphs (D) through (G).

"(B) DOCUMENTATION.—

"(i) IN GENERAL.—A request for a waiver from or reduction of the registration service fee shall be accompanied by appropriate documentation demonstrating the basis for the waiver or reduction.

"(ii) CERTIFICATION.—The applicant shall provide to the Administrator a written certification, signed by a responsible officer, that the documentation submitted to support the waiver or reduction request is accurate.

"(iii) INACCURATE DOCUMENTATION.—An application shall be subject to the applicable registration service fee payable under paragraph (3) if, at any time, the Administrator determines that—

"(I) the documentation supporting the waiver or reduction request is not accurate; or

"(II) based on the documentation or any other information, the waiver or reduction should not have been granted or should not be granted.

"(C) DETERMINATION TO GRANT OR DENY REQUEST.—As soon as practicable, but not later than 60 days, after the date on which the Administrator receives a request for a waiver or reduction of a registration service fee under this paragraph, the Administrator shall—

"(i) determine whether to grant or deny the request; and

"(ii) notify the applicant of the determination.

"(D) MINOR USES.—

"(i) IN GENERAL.—The Administrator may waive or reduce a registration service fee for an application for minor uses for a pesticide.

"(ii) SUPPORTING DOCUMENTATION.—An applicant requesting a waiver under this subparagraph shall provide supporting documentation that demonstrates, to the satisfaction of the Administrator, that anticipated revenues from the uses that are the subject of the application would be insufficient to justify imposition of the full application fee.

"(E) IR–4 WAIVER.—The Administrator shall waive the registration service fee for an application if the Administrator determines that—

"(i) the application is solely associated with a tolerance petition submitted in connection with the Inter-Regional Project Number 4 (IR–4) as described in section 2 of Public Law 89–106 (7 U.S.C. 450i(e)); and

"(ii) the waiver is in the public interest.

"(F) SMALL BUSINESSES.—

"(i) IN GENERAL.—The Administrator shall waive 50 percent of the registration service fees payable by an entity for a covered pesticide registration application under this section if the entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application.

"(ii) WAIVER OF FEES.—The Administrator shall waive all of the registration service fees payable by an entity under this section if the entity—

"(I) is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

"(II) has average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed $10,000,000, at the time of application.

"(iii) FORMATION FOR WAIVER.—The Administrator shall not grant a waiver under this subparagraph if the Administrator determines that the entity submitting the application has been formed or manipulated primarily for the purpose of qualifying for the waiver.

"(iv) DOCUMENTATION.—An entity requesting a waiver under this subparagraph shall provide to the Administrator—

"(I) documentation demonstrating that the entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

"(II) if the entity is requesting a waiver of all registration service fees payable under this section, documentation demonstrating that the entity has an average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed $10,000,000, at the time of application.

"(G) FEDERAL AND STATE AGENCY EXEMPTIONS.—An agency of the Federal Government or a State government shall be exempt from covered registration service fees under this section.

"(8) REFUNDS.—

"(A) EARLY WITHDRAWALS.—If, during the first 60 days after the beginning of the applicable decision time review period under subsection (f)(3), a covered pesticide registration application is withdrawn by the applicant, the Administrator shall refund all but 10 percent of the total registration service fee payable under paragraph (3) for the application.

"(B) WITHDRAWALS AFTER THE FIRST 60 DAYS OF DECISION REVIEW TIME PERIOD.—

"(i) IN GENERAL.—If a covered pesticide registration application is withdrawn after the first 60 days of the applicable decision time review period, the Administrator shall determine what portion, if any, of the total registration service fee payable under paragraph (3) for the application may be refunded based on the proportion of the work completed at the time of withdrawal.

"(ii) TIMING.—The Administrator shall—

"(I) make the determination described in clause (i) not later than 90 days after the date the application is withdrawn; and

"(II) provide any refund as soon as practicable after the determination.

"(C) DISCRETIONARY REFUNDS.—

"(i) IN GENERAL.—In the case of a pesticide registration application that has been filed with the Administrator and has not been withdrawn by the applicant, but for which the Administrator has not yet made a final determination, the Administrator may refund a portion of a covered registration service fee if the Administrator determines that the refund is justified.

"(ii) BASIS.—The Administrator may provide a refund for an application under this subparagraph—

"(I) on the basis that, in reviewing the application, the Administrator has considered data submitted in support of another pesticide registration application; or

"(II) on the basis that the Administrator completed portions of the review of the application before the effective date of this section.

"(D) CREDITED FEES.—In determining whether to grant a refund under this paragraph, the Administrator shall take into account any portion of the registration service fees credited under paragraph (2) or (4).

"(c) PESTICIDE REGISTRATION FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a Pesticide Registration Fund to be used in carrying out this section (referred to in this section as the 'Fund'), consisting of—

"(A) such amounts as are deposited in the Fund under paragraph (2);

"(B) any interest earned on investment of amounts in the Fund under paragraph (4); and

"(C) any proceeds from the sale or redemption of investments held in the Fund.

"(2) DEPOSITS IN FUND.—Subject to paragraph (4), the Administrator shall deposit fees collected under this section in the Fund.

"(3) EXPENDITURES FROM FUND.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C) and paragraph (4), the Administrator may make expenditures from the Fund—

"(i) to cover the costs associated with the review and decisionmaking pertaining to all applications for which registration service fees have been paid under this section; and

"(ii) to otherwise carry out this section.

"(B) WORKER PROTECTION.—For each of fiscal years 2004 through 2008, the Administrator shall use approximately $^1/_{17}$ *of the amount in the Fund (but not more than $1,000,000, and not less than $750,000, for any fiscal year) to enhance current scientific and regulatory activities related to worker protection.*

"(C) NEW INERT INGREDIENTS.—For each of fiscal years 2004 and 2005, the Administrator shall use approximately $^1/_{34}$ *of the amount in the Fund (but not to exceed $500,000 for any fiscal year) for the review and evaluation of new inert ingredients.*

"(4) COLLECTIONS AND APPROPRIATIONS ACTS.—The fees authorized by this section and amounts deposited in the Fund—

"(A) shall be collected and made available for obligation only to the extent provided in advance in appropriations Acts; and

"(B) shall be available without fiscal year limitation.

"(5) UNUSED FUNDS.—Amounts in the Fund not currently needed to carry out this section shall be—

"(A) maintained readily available or on deposit;

"(B) invested in obligations of the United States or guaranteed by the United States; or

"(C) invested in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

"(d) ASSESSMENT OF FEES.—

"(1) DEFINITION OF COVERED FUNCTIONS.—In this subsection, the term 'covered functions' means functions of the Office of Pesticide Programs of the Environmental Protection Agency, as identified in key programs and projects of the final operating plan for the Environmental Protection Agency submitted as part of the budget process for fiscal year 2002, regardless of any subsequent transfer of 1 or more of the functions to another office or agency or the subsequent transfer of a new function to the Office of Pesticide Programs.

"(2) MINIMUM AMOUNT OF APPROPRIATIONS.—Registration service fees may not be assessed for a fiscal year under this section unless the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2002) of the Office of Pesticide Programs of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) are equal to or greater than the amount of appropriations for covered functions for fiscal year 2002 (excluding the amount of any fees appropriated for the fiscal year).

"(3) USE OF FEES.—Registration service fees authorized by this section shall be available, in the aggregate, only to defray increases in the costs associated with the review and decisionmaking for the review of pesticide registration applications and associated tolerances (including increases in the number of full-time equivalent positions in the Environmental Protection Agency engaged in those activities) over the costs for fiscal year 2002, excluding costs paid from fees appropriated for the fiscal year.

"(4) COMPLIANCE.—The requirements of paragraph (2) shall have been considered to have been met for any fiscal year if the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2002) of the Office of Pesticide Programs of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) is not more than 3 percent below the amount of appropriations for covered functions for fiscal year 2002 (excluding the amount of any fees appropriated for the fiscal year).

"(5) SUBSEQUENT AUTHORITY.—If the Administrator does not assess registration service fees under subsection (b) during any portion of a fiscal year as the result of paragraph (2) and is subsequently permitted to assess the fees under subsection (b) during the fiscal year, the Administrator shall assess and collect the fees, without any modification in rate, at any time during the fiscal year, notwithstanding any provisions of subsection (b) relating to the date fees are to be paid.

"(e) REFORMS TO REDUCE DECISION TIME REVIEW PERIODS.—To the maximum extent practicable consistent with the degrees of risk presented by pesticides and the type of review appropriate to evaluate risks, the Administrator shall identify and evaluate reforms to the pesticide registration process under this Act with the goal of reducing decision review periods in effect on the effective date of the Pesticide Registration Improvement Act of 2003 for pesticide registration actions for covered pesticide registration applications (including reduced risk applications).

"(f) DECISION TIME REVIEW PERIODS.—

"(1) IN GENERAL.—Not later than 30 days after the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall publish in the Federal Register a schedule of decision review periods for covered pesticide registration actions and corresponding registration service fees under this Act.

"(2) REPORT.—The schedule shall be the same as the applicable schedule appearing in the Congressional Record on pages S11631 through S11633, dated September 17, 2003.

"(3) APPLICATIONS SUBJECT TO DECISION TIME REVIEW PERIODS.—The decision time review periods specified in paragraph (1) shall apply to—

"(A) covered pesticide registration applications subject to registration service fees under subsection (b)(2);

"(B) covered pesticide registration applications for which an applicant has voluntarily paid registration service fees under subsection (b)(4); and

"(C) covered pesticide registration applications listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency.

"(4) START OF DECISION TIME REVIEW PERIOD.—

"(A) IN GENERAL.—Except as provided in subparagraphs (C), (D), and (E), in the case of a pesticide registration application accompanied by the registration service fee required under this section, the decision time review period begins 21 days after the date on which the Administrator receives the covered pesticide registration application.

"(B) COMPLETENESS OF APPLICATION.—In conducting an initial screening of an application, the Administrator shall determine—

"(i) whether—

"(I) the applicable registration service fee has been paid; or

"(II) the application contains a waiver or refund request; and

"(ii) whether the application—

"(I) contains all necessary forms, data, draft labeling, and, documentation certifying payment of any registration service fee required under this section; or

"(II) establishes a basis for any requested waiver or reduction.

"(C) APPLICATIONS WITH WAIVER OR REDUCTION REQUESTS.—

"(i) IN GENERAL.—In the case of an application submitted with a request for a waiver or reduction of registration service fees under subsection (b)(7), the decision time review period shall be determined in accordance with this subparagraph.

"(ii) REQUEST GRANTED WITH NO ADDITIONAL FEES REQUIRED.—If the Administrator grants the waiver or reduction request and no additional fee is required, the decision time review period begins on the earlier of—

"(I) the date on which the Administrator grants the request; or

"(II) the date that is 60 days after the date of receipt of the application.

"(iii) REQUEST GRANTED WITH ADDITIONAL FEES REQUIRED.—If the Administrator grants the waiver or reduction request, in whole or in part, but an additional registration service fee is required, the decision time review period begins on the date on which the Administrator receives certification of payment of the applicable registration service fee.

"(iv) REQUEST DENIED.—If the Administrator denies the waiver or reduction request, the decision time review period begins on the date on which the Administrator receives certification of payment of the applicable registration service fee.

"(D) PENDING APPLICATIONS.—

"(i) IN GENERAL.—The start of the decision time review period for applications described in clause (ii) shall be the date on which the Administrator receives certification of payment of the applicable registration service fee.

"(ii) APPLICATIONS.—Clause (i) applies to—

"(I) covered pesticide registration applications for which voluntary fees have been paid under subsection (b)(4); and

"(II) covered pesticide registration applications received on or after the effective date of the Pesticide Registration Improvement Act of 2003 but submitted without the applicable registration service fee required under this section due to the inability of the Administrator to assess fees under subsection (d)(1).

"(E) 2003 WORK PLAN.—In the case of a covered pesticide registration application listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency, the decision time review period begins on the date that is 30 days after the effective date of the Pesticide Registration Improvement Act of 2003.

"(5) EXTENSION OF DECISION TIME REVIEW PERIOD.—The Administrator and the applicant may mutually agree in writing to extend a decision time review period under this subsection.

"(g) JUDICIAL REVIEW.—

"(1) IN GENERAL.—Any applicant adversely affected by the failure of the Administrator to make a determination on the application of the applicant for registration of a new active ingredient or new use for which a registration service fee is paid under this section may obtain judicial review of the failure solely under this section.

"(2) SCOPE.—

"(A) IN GENERAL.—In an action brought under this subsection, the only issue on review is whether the Administrator failed to make a determination on the application specified in paragraph (1) by the end of the applicable decision time review period required under subsection (f) for the application.

"(B) OTHER ACTIONS.—No other action authorized or required under this section shall be judicially reviewable by a Federal or State court.

"(3) TIMING.—

"(A) IN GENERAL.—A person may not obtain judicial review of the failure of the Administrator to make a determination on the application specified in paragraph (1) before the expiration of the 2-year period that begins on the date on which the decision time review period for the application ends.

"(B) MEETING WITH ADMINISTRATOR.—To be eligible to seek judicial review under this subsection, a person seeking the review shall first request in writing, at least 120 days before filing the complaint for judicial review, a decision review meeting with the Administrator.

"(4) REMEDIES.—The Administrator may not be required or permitted to refund any portion of a registration service fee paid in response to a complaint that the Administrator has failed to make a determination on the covered pesticide registration application specified in paragraph (1) by the end of the applicable decision review period.

"(h) ACCOUNTING.—The Administrator shall—

"(1) provide an annual accounting of the registration service fees paid to the Administrator and disbursed from the Fund, by providing financial statements in accordance with—

"(A) the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838) and amendments made by that Act; and

"(B) the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410) and amendments made by that Act;

"(2) provide an accounting describing expenditures from the Fund authorized under subsection (c); and

"(3) provide an annual accounting describing collections and expenditures authorized under subsection (d).

"(i) AUDITING.—

"(1) FINANCIAL STATEMENTS OF AGENCIES.—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of an executive agency.

"(2) COMPONENTS.—The annual audit required under sections 3515(b) and 3521 of that title of the financial statements of activities under this section shall include an analysis of—

"(A) the fees collected under subsection (b) and disbursed;

"(B) compliance with subsection (f);

"(C) the amount appropriated to meet the requirements of subsection (d)(1); and

"(D) the reasonableness of the allocation of the overhead allocation of costs associated with the review and decisionmaking pertaining to applications under this section.

"(3) INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall—

"(A) conduct the annual audit required under this subsection; and

"(B) report the findings and recommendations of the audit to the Administrator and to the appropriate committees of Congress.

"(j) PERSONNEL LEVELS.—All full-time equivalent positions supported by fees authorized and collected under this section shall not be counted against the agency-wide personnel level goals of the Environmental Protection Agency.

"(k) REPORTS.—

"(1) IN GENERAL.—Not later than March 1, 2005, and each March 1 thereafter through March 1, 2009, the Administrator shall publish an annual report describing actions taken under this section.

"(2) CONTENTS.—The report shall include—

"(A) a review of the progress made in carrying out each requirement of subsections (e) and (f), including—

"(i) the number of applications reviewed, including the decision times for each application specified in subsection (f);

"(ii) the number of actions pending in each category of actions described in subsection (f)(3), as well as the number of inert ingredients;

"(iii) to the extent determined appropriate by the Administrator and consistent with the authorities of the Administrator and limitations on delegation of functions by the Administrator, recommendations for—

"(I) expanding the use of self-certification in all appropriate areas of the registration process;

"(II) providing for accreditation of outside reviewers and the use of outside reviewers to conduct the review of major portions of applications; and

"(III) reviewing the scope of use of the notification process to cover broader categories of registration actions; and

"(iv) the use of performance-based contracts, other contracts, and procurement to ensure that—

"(I) the goals of this Act for the timely review of applications for registration are met; and

"(II) the registration program is administered in the most productive and cost effective manner practicable;

"(B) a description of the staffing and resources relating to the costs associated with the review and decisionmaking pertaining to applications; and

"(C) a review of the progress in meeting the timeline requirements of section 4(g).

"(3) METHOD.—The Administrator shall publish a report required by this subsection by such method as the Administrator determines to be the most effective for efficiently disseminating the report, including publication of the report on the Internet site of the Environmental Protection Agency.

"(l) SAVINGS CLAUSE.—Nothing in this section affects any other duties, obligations, or authorities established by any other section of this Act, including the right to judicial review of duties, obligations, or authorities established by any other section of this Act.

"(m) TERMINATION OF EFFECTIVENESS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the authority provided by this section terminates on September 30, 2008.

"(2) PHASE OUT.—

"(A) FISCAL YEAR 2009.—During fiscal year 2009, the requirement to pay and collect registration service fees applies, except that the level of registration service fees payable under this section shall be reduced 40 percent below the level in effect on September 30, 2008.

"(B) FISCAL YEAR 2010.—During fiscal year 2010, the requirement to pay and collect registration service fees applies, except that the level of registration service fees payable under this section shall be reduced 70 percent below the level in effect on September 30, 2008.

"(C) SEPTEMBER 30, 2010.—Effective September 30, 2010, the requirement to pay and collect registration service fees terminates.

"(D) DECISION REVIEW PERIODS.—

"(i) PENDING APPLICATIONS.—In the case of an application received under this section before September 30, 2008, the application shall be reviewed in accordance with subsection (f).

"(ii) NEW APPLICATIONS.—In the case of an application received under this section on or after September 30, 2008, subsection (f) shall not apply to the application.".

(g) CONFORMING AMENDMENTS.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 136) is amended—

(1) by striking the item relating to section 4(k)(3) and inserting the following:

"(3) Review of inert ingredients; expedited processing of similar applications.";

and

(2) by striking the items relating to sections 30 and 31 and inserting the following:

"Sec. 30. Minimum requirements for training of maintenance applicators and service technicians.
"Sec. 31. Environmental Protection Agency minor use program.
"Sec. 32. Department of Agriculture minor use program.
"(a) In general.
"(b)(1) Minor use pesticide data.
"(2) Minor Use Pesticide Data Revolving Fund.

"Sec. 33. Pesticide registration service fees.
"(a) Definition of costs.
"(b) Fees.
"(1) In general.
"(2) Covered pesticide registration applications.
"(3) Schedule of covered applications and registration service fees.
"(4) Pending pesticide registration applications.
"(5) Resubmission of pesticide registration applications.
"(6) Fee adjustment.
"(7) Waivers and reductions.
"(8) Refunds.
"(c) Pesticide Registration Fund.
"(1) Establishment.
"(2) Transfers to Fund.
"(3) Expenditures from Fund.
"(4) Collections and appropriations Acts.
"(5) Unused funds.
"(d) Assessment of fees.
"(1) Definition of covered functions.
"(2) Minimum amount of appropriations.
"(3) Use of fees.
"(4) Compliance.
"(5) Subsequent authority.
"(e) Reforms To reduce decision time review periods.
"(f) Decision time review periods.
"(1) In general.
"(2) Report.
"(3) Applications subject to decision time review periods.
"(4) Start of decision time review period.
"(5) Extension of decision time review period.
"(g) Judicial review.
"(1) In general.
"(2) Scope.
"(3) Timing.
"(4) Remedies.
"(h) Accounting.
"(i) Auditing.
"(1) Financial statements of agencies.
"(2) Components.
"(3) Inspector General.
"(j) Personnel levels.
"(k) Reports.
"(1) In general.
"(2) Contents.
"(l) Savings clause.
"(m) Termination of effectiveness.
"(1) In general.
"(2) Phase out.
"Sec. 34. Severability.
"Sec. 35. Authorization for appropriations.".

(h) EFFECTIVE DATE.—Except as otherwise provided in this section and the amendments made by this section, this section and the amendments made by this section take effect on the date that is 60 days after the date of enactment of this Act.

SEC. 502. It is the sense of the Senate that human dosing studies of pesticides raises ethical and health questions.

This Act may be cited as the "Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004".

Mr. BOND. I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOND. I ask unanimous consent the Senate insist upon its amendment, request a conference with the House on the disagreeing votes, and the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Presiding Officer appointed Mr. BOND, Mr. BURNS, Mr. SHELBY, Mr. CRAIG, Mr. DOMENICI, Mr. DEWINE, Mrs. HUTCHISON, Mr. STEVENS, Ms. MIKULSKI, Mr. LEAHY, Mr. HARKIN, Mr. BYRD, Mr. JOHNSON, Mr. REID, and Mr. INOUYE conferees on the part of the Senate.

Mr. BOND. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 2004

Mr. BOND. Mr. President, I ask unanimous consent that the Senate now resume consideration of H.R. 2765, the D.C. Appropriations bill; further, that an amendment that is at the desk regarding title II be agreed to, the motion to reconsider be laid upon the table. I further ask that the substitute amendment then be agreed to, the bill be read the third time and passed, the motion to reconsider be laid upon the table; provided further that the Senate then insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate.

Ms. LANDRIEU. Reserving the right to object, I do intend to make a few brief remarks and then will not object to the unanimous consent, but I would like to speak for as much time as I might consume. Hopefully, it will not be more than about 7 to 10 minutes.

The PRESIDING OFFICER. The Senator is recognized on her reservation.

Ms. LANDRIEU. Mr. President, I first compliment Senator DEWINE for the outstanding job he has done. He is in a meeting and is not in the Senate at this moment, but we have worked closely together in our capacity now as chair and ranking member, as when I chaired the committee and he served as the ranking member. We have worked together through many different issues. I cannot say enough about his commitment to helping steer a bill that in many instances is contentious—not necessarily because of anything related to the District of Columbia specifically, but of other ideas and ideologies that sometimes find their way into this bill. He and I are both very sensitive to that and support the new leadership team of the District and have tried our best to steer this bill through for the District as well as for the Nation.

I wanted to begin by complimenting him and also say, second, there are some terrific new initiatives in this bill, very much needed. One, led by Senator DEWINE, is the continued effort to reform the foster care system, first acknowledging the Mayor himself has taken quite a leadership role and has appointed very able leaders in the District to take a system that is broken, that was in many ways completely dysfunctional, and to begin to bring framework, parameters, results to it which will literally save children's lives, heal families, and find homes for children who have no homes.

Senator DEWINE and I believe, along with Mayor Williams, there is no such thing as an unwanted child; there are just unfound families. There are indeed families not only in the District of Columbia but around the Nation which are in need of our assistance, our charity, our help, and our care. When we cannot heal a family and keep them strong to raise the children born to them, it is our responsibility to find a new family for that child or that sibling as quickly as possible. We will not stop until it is achieved. Senator DEWINE has provided some additional framework in which to make that possible.

In addition, I am very pleased, along with Senator BYRD, who chaired this committee for many years, that there is also a critical infrastructure piece which indicates we as a Congress have a responsibility, in that the District is not a State, it does not have a State government but it has the same needs, and Congress has stepped up for infrastructure investments in the District which benefit the whole region—Maryland and Virginia as well. One of the primary projects we have funded is the cleanup of the Anacostia waterway which affects the region. It is a major environmental project getting tremendous help and support in this bill.

The security enhancements for emergency planning for the District, I need not tell of its importance. It is in the Nation's Capital, under the threat of terror, that we continue to function. We know how important that is. I begin with compliments to the Chair for including these and many other provisions.

I take the next 5 minutes to lay down some other important points regarding the most contentious issue in this bill. This issue was at the core or center of the debate over the future of public education in the United States of America. It has to do with a proposal of vouchers, taking money from public schools to send children to private schools. That issue is the center of debate over the future of public schools in America. It is that issue, unfortunately, because of the nature of the process in the Senate, which is going to be put into the omnibus appropriations bill. I want to go on record as strongly objecting to it once again and to set the myths from the facts.

The first myth is: The voucher proposal does not drain money from public schools or from other Federal priorities, that this is "new" money.

For the record, the $40 million used to pay for this three-pronged approach—of which a third is for vouchers—was taken from the Commerce-Justice-State bill. In other words, that is $39 million less spent on law enforcement, homeland security, or health care.

Again, this is not new money. There were no new taxes raised. There were no new taxes identified to pay for this. This $39 million came out of already existing Federal revenues that are now going to fund vouchers for 1,500 children in the District of Columbia. It is not new money. It is coming from the Commerce-Justice-State bill. I contend unless a new tax is raised at the Federal level or in the District of Columbia, it is not new money. It is a myth.

The next myth I would like to put to rest is the voucher proposal is limited to children in failing schools. Some of us who have opposed this proposal, without certain amendments, have continued to say—not everybody on the Democratic side, for sure, but I have said, as the ranking member, I could support a program that had full accountability and was aimed at helping children in failing schools. Why? Because it is not their fault the schools have failed. It is our fault. It is not necessarily their parents' fault, because parents do not run the schools. Parents are busy trying to run their households, take care of their children, and sometimes work two or three jobs. If we have failed the children, then let us give them help as we reconstitute those schools under the new accountability proposal, and give them some temporary help to move to a school that might be performing.

I offered that proposal. It was rejected. This proposal is not limited or designed specifically for children in failing schools because the power behind this wants to undermine public schools, not help poor children in failing schools. That is the truth.

The fact is, there is nothing in this language that prevents a child enrolled in a high-performing public school or a private school, for that matter, from attending a private school at public expense.

Let me repeat, there is nothing in the language the Republican majority is pushing that prevents a child enrolled in a high-performing public or private school from attending a private school at public expense, with no accountability to the public taxpayer.

The third myth is this is not just a voucher demonstration program; it is a balanced, three-pronged approach for school improvement.

The fact is, in the language pushed by the Republican majority, the only part of this three-pronged demonstration program that is authorized to receive funding for more than 1 year is the voucher portion. What is more, the only one that will be evaluated for success at the end of 5 years is the voucher program.

First, let me say the only part of this demonstration program that is authorized in this bill to receive funding for more than 1 year is for vouchers. My opponents will say: Senator, the other funding is authorized in other parts of the education bill. That may be correct. Technically, it is correct. But in this proposal—that has been sold, and sold again, once, twice, and sold as a three-pronged approach—this language only has one prong that is authorized and funded, and that is vouchers. That is a fact, and that is wrong.

What is more, the proponents will say at least one good thing at the end of this 5-year "demonstration project" is, we will know definitively whether vouchers work or not. The fact is, Senator CARPER and I, who tried to negotiate a compromise, felt strongly that would be a very good benefit to know finally. Cleveland and Milwaukee have demonstrated with this. There is so much misinformation. We said, at least it would be worth it to our Democrats who oppose it and to Republicans who think vouchers are the answer, the only answer, to public schools in the Nation, and that is what they want. I think they are wrong. We said, let's have a comprehensive demonstration program. But this language does not have the evaluation language. It dropped the evaluation language. The only thing we will know is, do children who receive vouchers do better in higher performing private schools than they did in poorly performing public schools? I would suggest we already know the answer to that. We do not have to spend $13 million of taxpayer money that is unaccountable to find out. We already know the answer to that.

What we do not know the answer to is if children are given vouchers to leave a low-performing public school to go to a higher performing private school, or if those same children are given a chance in a higher performing public school, or if those same children are given a chance in a higher performing public charter school, do they do essentially better? Does the voucher itself, the essence of the voucher itself, have any bearing on the academic achievement of the child? That we do not know, and we will not find out, thanks to the language that is in this bill.

The fourth myth is: At the end of this 5-year demonstration program, we will finally know if vouchers are a solution. I spoke about that.

The fifth myth is: Vouchers help to improve student achievement. We will not know that after 5 years because of the language that was taken out.

In conclusion, there were some of us willing to support a true three-pronged demonstration program. This is only one prong. There were some of us who would be willing to say we could go through the demonstration if, at the end, we actually knew and had the tight evaluation that would tell us some answers the country would be very interested in knowing. That language was dropped.

There were some of us who said, if accountability was part of this, as the administration promised—accountability, not just to the parents, and not just responsibility to students, but accountability to the taxpayers who pick up millions and millions of dollars—billions of dollars—in education expenses—they want to know, is their money working. But the authors—not Senator DEWINE, the chairman, but others who have pushed this—are obviously not interested in letting the taxpayers know if their money is actually accomplishing anything, because the test language and the accountability language has been dropped. It is a false hope.

I will conclude. When we make promises to people with power and money and status, and we do not keep those promises, that is bad enough. But when we offer false hope to children who have very little, to families which have been discriminated against, to poor people who have little, and we fail to keep those promises, that is a sin indeed. We should be ashamed of the actions that represent this bill today.

I withdraw my objection to the unanimous consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2201) was agreed to, as follows:

AMENDMENT NO. 2201 TO AMENDMENT NO. 1783

Strike all of title II, beginning on page 14, line 17, and ending on page 33, line 14.

On page 13, line 21, strike "40,000,000" and insert "27,000,000".

On page 14, line 1, strike all after the semicolon until the end of the heading.

On page 9, line 19, strike "20,000,000" and insert "33,000,000".

The amendment (No. 1783) in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 2765), as amended, was read the third time and passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 2765) entitled "An Act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2004, and for other purposes.", do pass with the following *amendment:*

Strike out all after the enacting clause and insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the District of Columbia and related agencies for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE I—FEDERAL FUNDS

FEDERAL PAYMENT FOR RESIDENT TUITION SUPPORT

For a Federal payment to the District of Columbia, to be deposited into a dedicated account, for a nationwide program to be administered by the Mayor, for District of Columbia resident tuition support, $17,000,000, to remain available until expended: Provided, That such funds, including any interest accrued thereon, may be used on behalf of eligible District of Columbia residents to pay an amount based upon the difference between in-State and out-of-State tuition at public institutions of higher education, or to pay up to $2,500 each year at eligible private institutions of higher education: Provided further, That the awarding of such funds may be prioritized on the basis of a resident's academic merit, the income and need of eligible students and such other factors as may be authorized: Provided further, That the District of Columbia government shall maintain a dedicated account for the Resident Tuition Support Program that shall consist of the Federal funds appropriated to the Program in this Act and any subsequent appropriations, any unobligated balances from prior fiscal years, and any interest earned in this or any fiscal year: Provided further, That the account shall be under the control of the District of Columbia Chief Financial Officer who shall use those funds solely for the purposes of carrying out the Resident Tuition Support Program: Provided further, That the Resident Tuition Support Program Office and the Office of the Chief Financial Officer shall provide a quarterly financial report to the Committees on Appropriations of the House of Representatives and Senate for these funds showing, by object class, the expenditures made and the purpose therefor: Provided further, That not more than 7 percent of the total amount appropriated for this program may be used for administrative expenses.

FEDERAL PAYMENT FOR EMERGENCY PLANNING AND SECURITY COSTS IN THE DISTRICT OF COLUMBIA

For necessary expenses, as determined by the Mayor of the District of Columbia in written consultation with the elected county or city officials of surrounding jurisdictions, $15,000,000, to remain available until expended, to reimburse the District of Columbia for the costs of public safety expenses related to security events in the District of Columbia and for the costs of providing support to respond to immediate and specific terrorist threats or attacks in the District of Columbia or surrounding jurisdictions: Provided, That any amount provided under this heading shall be available only after notice of its proposed use has been transmitted by the President to Congress and such amount has been apportioned pursuant to chapter 15 of title 31, United States Code.

FEDERAL PAYMENT FOR HOSPITAL BIOTERRORISM PREPAREDNESS IN THE DISTRICT OF COLUMBIA

For a Federal payment to support hospital bioterrorism preparedness in the District of Columbia, $10,000,000, of which $7,000,000 shall be for the Children's National Medical Center in the District of Columbia for the expansion of quarantine facilities and the establishment of a decontamination facility, and $3,000,000 shall be for the Washington Hospital Center for construction of containment facilities.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA COURTS

For salaries and expenses for the District of Columbia Courts, $172,104,000, to be allocated as follows: for the District of Columbia Court of Appeals, $8,775,000, of which not to exceed $1,500 is for official reception and representation expenses; for the District of Columbia Superior Court, $83,387,000, of which not to exceed $1,500 is for official reception and representation expenses; for the District of Columbia Court System, $40,006,000, of which not to exceed $1,500 is for official reception and representation expenses; and $39,936,000 for capital improvements for District of Columbia courthouse facilities: Provided, That funds made available for capital improvements shall be expended consistent with the General Services Administration master plan study and building evaluation report: Provided further, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies, with payroll and financial services to be provided on a contractual basis with the General Services Administration (GSA), said services to include the preparation of monthly financial reports, copies of which shall be submitted directly by GSA to the President and to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate: Provided further, That funds made available for capital improvements may remain available until September 30, 2005: Provided further, That 30 days after providing written notice to the Committees on Appropriations of the House of Representatives and Senate, the District of Columbia Courts may reallocate not more than $1,000,000 of the funds provided under this heading among the items and entities funded under such heading.

DEFENDER SERVICES IN DISTRICT OF COLUMBIA COURTS

For payments authorized under section 11–2604 and section 11–2605, D.C. Official Code (relating to representation provided under the District of Columbia Criminal Justice Act), payments for counsel appointed in adoption proceedings under Chapter 3 of title 16, D.C. Code, payments for counsel appointed in proceedings in the Family Court of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Official Code or pursuant to a contract with a non-profit organization to provide guardian ad litem representation, training, technical assistance and such other services as are necessary to improve the quality of guardian ad litem representation, and payments for counsel authorized under section 21–2060, D.C. Official Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986), $32,000,000, to remain available until expended: Provided, That funds provided under this heading shall be administered by the Joint Committee on Judicial Administration in the District of Columbia: Provided further, That notwithstanding any other provision of law, this appropriation shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for expenses of other Federal agencies, with payroll and financial services to be provided on a contractual basis with the General Services Administration (GSA), said services to include the preparation of monthly financial reports, copies of which shall be submitted directly by GSA to the President and to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate.

FEDERAL PAYMENT TO THE COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

(INCLUDING TRANSFER OF FUNDS)

For salaries and expenses, including the transfer and hire of motor vehicles, of the Court Services and Offender Supervision Agency for the District of Columbia, and the Public Defender Service for the District of Columbia as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997, $173,396,000, of which not to exceed $25,000 is for dues and assessments relating to the implementation of the Court Services and Offender Supervision Agency Interstate Supervision Act of 2002, of which not to exceed $2,000 is for official receptions and representation expenses related to Community and Pretrial Services Agency Programs; of which $110,775,000 shall be for necessary expenses of Community Supervision and Sex Offender Registration, to include expenses relating to the supervision of adults subject to protection orders or the provision of services for or related to such persons; of which $25,210,000 shall be transferred to the Public Defender Service for the District of Columbia to include expenses relating to the provision of legal representation and including related services provided to the local courts and Criminal Justice Act bar; and of which $37,411,000 shall be available to the Pretrial Services Agency: Provided, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies: Provided further, That notwithstanding chapter 33 of title 40, United States Code, the Director shall acquire by purchase, lease, condemnation, or donation, and renovate as necessary, Building Number 17, 1900 Massachusetts Avenue, Southeast, Washington, District of Columbia to house or supervise offenders and defendants, with funds made available for this purpose in Public Law 107–96: Provided further, That the Director is authorized to accept and use gifts in the form of in-kind contributions of space and hospitality to support offender and defendant programs, and equipment and vocational training services to educate and train offenders and defendants: Provided further, That the Director shall keep accurate and detailed records of the acceptance and use of any gift or donation under the previous proviso, and shall make such records available for audit and public inspection: Provided further, That the Director is authorized to accept appropriation reimbursements from the District of Columbia Government for space and services provided on a cost reimbursable basis: Provided further, That these reimbursements are subject to approved apportionments from the Office of Management and Budget.

FEDERAL PAYMENT TO THE CHIEF FINANCIAL OFFICER OF THE DISTRICT OF COLUMBIA

For a Federal payment to the Chief Financial Officer of the District of Columbia, $33,000,000: Provided, That these funds shall be available for the projects and in the amounts specified in the statement of the managers on the conference report accompanying this Act: Provided further, That each entity that receives funding under this heading shall submit to the Committees on Appropriations of the House of Representatives and Senate a report due March 15, 2004, on the activities carried out with such funds.

FEDERAL PAYMENT FOR TRANSPORTATION ASSISTANCE

For a Federal payment to the District of Columbia Department of Transportation, $3,500,000, of which $500,000 shall be allocated to implement a downtown circulator transit system, and of which $3,000,000 shall be to offset a *portion of the District of Columbia's allocated operating subsidy payment to the Washington Metropolitan Area Transit Authority.*

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

For a Federal payment to the District of Columbia Water and Sewer Authority, $25,000,000, to remain available until expended, to continue implementing the Combined Sewer Overflow Long-Term Control Plan: Provided, That the District of Columbia Water and Sewer Authority provides a 100 percent match for the fiscal year 2004 Federal contribution.

FEDERAL PAYMENT FOR THE ANACOSTIA WATERFRONT INITIATIVE IN THE DISTRICT OF COLUMBIA

For a Federal payment to the District of Columbia Department of Transportation, for implementation of the Anacostia Waterfront Initiative, $6,000,000, to remain available until expended.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA FOR CAPITAL DEVELOPMENT

For a Federal payment to the District of Columbia for capital development, $5,000,000, to remain available until expended, for the Unified Communications Center.

FEDERAL PAYMENT TO CHILDREN'S NATIONAL MEDICAL CENTER

For a Federal payment to Children's National Medical Center, $10,000,000, for construction costs associated with the expansion of a neonatal care unit, pediatric intensive care unit, and cardiac intensive care unit.

FEDERAL PAYMENT TO ST. COLETTA OF GREATER WASHINGTON EXPANSION PROJECT

For a Federal payment to St. Coletta of Greater Washington, Inc., $2,000,000, for costs associated with establishment of a day program and comprehensive case management services for mentally retarded and multiple-handicapped adolescents and adults in the District of Columbia, including property acquisition and construction.

FEDERAL PAYMENT FOR FOSTER CARE IMPROVEMENTS IN THE DISTRICT OF COLUMBIA

For a Federal payment to the District of Columbia for foster care improvements, $14,000,000: Provided, That $9,000,000 shall be for the Child and Family Services Agency, of which $2,000,000 shall be to establish an early intervention unit to provide intensive and immediate services for foster children; of which $1,000,000 shall be to establish an emergency support fund to purchase items necessary to allow children to remain in the care of an approved family member; of which $3,000,000 shall be for a loan repayment program for social workers who meet certain agency-established requirements; of which $3,000,000 shall be to upgrade the agency's computer database to a web-based technology and to provide computer technology for social workers: Provided further, That $3,900,000 shall be for the Department of Mental Health to provide all court-ordered mental health assessments and treatments for children under the supervision of the Child and Family Services Agency: Provided further, That the Director of the Department of Mental Health shall ensure that court-ordered mental health assessments are completed within 15 days of the court order and that all assessments be provided to the Court within 5 days of completion of the assessment: Provided further, That the Director shall initiate court-ordered mental health services within 10 days of the issuance of an order: Provided further, That $1,100,000 shall be for the Washington Metropolitan Council of Governments to develop a program to provide respite care for and recruitment of foster parents: Provided further, That the Mayor shall submit a detailed expenditure plan for the use of funds provided under this heading within 15 days of enactment of this legislation to the Committees on Appropriations of the House of Representatives and Senate: Provided further, That the funds provided under this heading shall not be made available until 30 calendar days after the submission to Congress of a spending plan: Provided further, That no part of this appropriation may be used for contractual community-based services: Provided further, That the Comptroller General shall prepare and submit to the Committees on Appropriations of the House and Senate an accounting of all obligations and expenditures of the funds provided under this heading: Provided further, That the Comptroller General shall initiate management reviews of the Child and Family Services Agency and the Department of Mental Health and submit a report to the Committees on Appropriations of the House and Senate no later than 6 months after enactment of this Act.

FEDERAL PAYMENT FOR SCHOOL IMPROVEMENT

For a Federal payment for a School Improvement Program in the District of Columbia, $27,000,000, to be allocated as follows: for the State Education Office, $13,000,000 to improve public school education in the District of Columbia; for the State Education Office, $13,000,000 to expand quality charter schools in the District of Columbia.

AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to carry out this Act such sums as may be necessary.

TITLE II—DISTRICT OF COLUMBIA FUNDS

OPERATING EXPENSES

DIVISION OF EXPENSES

The following amounts are appropriated for the District of Columbia for the current fiscal year out of the general fund of the District of Columbia, except as otherwise specifically provided: Provided, That notwithstanding any other provision of law, except as provided in section 450A of the District of Columbia Home Rule Act and provisions of this Act (D.C. Official Code, sec. 1–204.50a), the total amount appropriated in this Act for operating expenses for the District of Columbia for fiscal year 2004 under this heading shall not exceed the lesser of the sum of the total revenues of the District of Columbia for such fiscal year or $6,326,138,000 (of which $3,832,734,000 shall be from local funds (of which $96,248,000 shall be funds identified in the fiscal year 2002 comprehensive annual financial report as the District of Columbia's fund balance funds), $1,568,734,000 shall be from Federal grant funds, $13,766,000 shall be from private funds, $910,904,000 shall be from other funds) and $109,500,000 from funds previously appropriated in this Act as Federal payments: Provided further, That an amount of $263,759,000 shall be for Intra-District funds: Provided further, That this amount may be increased by proceeds of one-time transactions, which are expended for emergency or unanticipated operating or capital needs: Provided further, That such increases shall be approved by enactment of local District law and shall comply with all reserve requirements contained in the District of Columbia Home Rule Act: Provided further, That the Chief Financial Officer of the District of Columbia shall take such steps as are necessary to assure that the District of Columbia meets these requirements, including the apportioning by the Chief Financial Officer of the appropriations and funds made available to the District during fiscal year 2004, except that the Chief Financial Officer may not reprogram for operating expenses any funds derived from bonds, notes, or other obligations issued for capital projects.

GOVERNMENTAL DIRECTION AND SUPPORT

Governmental direction and support, $284,415,000 (including $206,825,000 from local funds, $57,440,000 from Federal funds, and $20,150,000 from other funds), in addition, $20,000,000 from funds previously appropriated in this Act under the heading "Federal Payment to the Chief Financial Officer of the District of Columbia", and $1,100,000 from funds previously appropriated in this Act under the heading "Federal Payment for Foster Care Improvement in the District of Columbia": Provided, That not to exceed $2,500 for the Mayor, $2,500 for the Chairman of the Council of the District of Columbia, $2,500 for the City Administrator, and $2,500 for the Office of the Chief Financial Officer shall be available from this appropriation for official purposes: Provided further, That any program fees collected from the issuance of debt shall be available for the payment of expenses of the debt management program of the District of Columbia: Provided further, That no revenues from Federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission: Provided further, That the District of Columbia shall identify the sources of funding for Admission to Statehood from its own locally generated revenues: Provided further, That notwithstanding any other provision of law, or Mayor's Order 86–45, issued March 18, 1986, the Office of the Chief Technology Officer's delegated small purchase authority shall be $500,000: Provided further, That the District of Columbia government may not require the Office of the Chief Technology Officer to submit to any other procurement review process, or to obtain the approval of or be restricted in any manner by any official or employee of the District of Columbia government, for purchases that do not exceed $500,000: Provided further, That an amount not to exceed $25,000 of the funds in the Antifraud Fund established pursuant to section 820 of the District of Columbia Procurement Practices Act of 1985, effective May 8, 1998 (D.C. Law 12–104; D.C. Official Code, sec. 2–308.20), is hereby made available, to remain available until expended, for the use of the Office of the Corporation Counsel of the District of Columbia in accordance with the laws establishing this fund.

ECONOMIC DEVELOPMENT AND REGULATION

Economic development and regulation, $276,647,000 (including $53,336,000 from local funds, $91,077,000 from Federal funds, $125,000 from private funds, and $132,109,000 from other funds), of which $15,000,000 collected by the District of Columbia in the form of BID tax revenue shall be paid to the respective BIDs pursuant to the Business Improvement Districts Act of 1996 (D.C. Law 11–134; D.C. Official Code, sec. 2–1215.01 et seq.), and the Business Improvement Districts Amendment Act of 1997 (D.C. Law 12–26; D.C. Official Code, sec. 2–1215.15 et seq.): Provided, That such funds are available for acquiring services provided by the General Services Administration: Provided further, That Business Improvement Districts shall be exempt from taxes levied by the District of Columbia.

PUBLIC SAFETY AND JUSTICE

Public safety and justice, $745,958,000 (including $716,715,000 from local funds, $10,290,000 from Federal funds, $9,000 from private funds, and $18,944,000 from other funds): Provided, That not to exceed $500,000 shall be available from this appropriation for the Chief of Police for the prevention and detection of crime: Provided further, That the Mayor shall reimburse the District of Columbia National Guard for expenses incurred in connection with services that are performed in emergencies by the National Guard in a militia status and are requested by the Mayor, in amounts that shall be jointly determined and certified as due and payable for *these services by the Mayor and the Commanding General of the District of Columbia National Guard: Provided further, That such sums as may be necessary for reimbursement to the District of Columbia National Guard under the preceding proviso shall be available from this appropriation, and the availability of the sums shall be deemed as constituting payment in advance for emergency services involved.*

PUBLIC EDUCATION SYSTEM

(INCLUDING TRANSFERS OF FUNDS)

Public education system, including the development of national defense education programs, $1,157,841,000 (including $962,941,000 from local funds, $156,708,000 from Federal grant funds, $4,302,000 from private funds, and not to exceed $6,816,000, to remain available until expended, from the Medicaid and Special Education Reform Fund), in addition, $17,000,000 from funds previously appropriated in this Act under the heading "Federal Payment for Resident Tuition Support" and $26,000,000 from funds previously appropriated in this Act under the heading "Federal Payment for School Improvement in the District of Columbia", to be allocated as follows:

(1) DISTRICT OF COLUMBIA PUBLIC SCHOOLS.—$870,135,000 (including $738,444,000 from local funds, $114,749,000 from Federal funds, $3,599,000 from private funds, and $6,527,000 from other funds shall be available for District of Columbia Public Schools: Provided, That notwithstanding any other provision of law, rule, or regulation, the evaluation process and instruments for evaluating District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes: Provided further, That this appropriation shall not be available to subsidize the education of any nonresident of the District of Columbia at any District of Columbia public elementary or secondary school during fiscal year 2004, unless the nonresident pays tuition to the District of Columbia at a rate that covers 100 percent of the costs incurred by the District of Columbia that are attributable to the education of the nonresident (as established by the Superintendent of the District of Columbia Public Schools): Provided further, That notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the District of Columbia Public Schools on July 1, 2004, an amount equal to 10 percent of the total amount provided for the District of Columbia Public Schools in the proposed budget of the District of Columbia for fiscal year 2005 (as submitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for the District of Columbia Public Schools under the District of Columbia Appropriations Act, 2005: Provided further, That not to exceed $2,500 for the Superintendent of Schools shall be available from this appropriation for official purposes: Provided further, That the District of Columbia Public Schools shall submit to the Board of Education by January 1 and July 1 of each year a Schedule A showing all the current funded positions of the District of Columbia Public Schools, their compensation levels, and indicating whether the positions are encumbered: Provided further, That the Board of Education shall approve or disapprove each Schedule A within 30 days of its submission and provide the Council of the District of Columbia a copy of the Schedule A upon its approval.

(2) STATE EDUCATION OFFICE.—$38,752,000 (including $9,959,000 from local funds, $28,617,000 from Federal grant funds, and $176,000 from other funds), in addition, $17,000,000 from funds previously appropriated in this Act under the heading "Federal Payment for Resident Tuition Support" and $26,000,000 from funds previously appropriated in this Act under the heading "Federal Payment for School Improvement in the District of Columbia" shall be available for the State Education Office: Provided, That of the amounts provided to the State Education Office, $500,000 from local funds shall remain available until June 30, 2005 for an audit of the student enrollment of each District of Columbia Public School and of each District of Columbia public charter school.

(3) DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOLS.—$137,531,000 from local funds shall be available for District of Columbia public charter schools: Provided, That there shall be quarterly disbursement of funds to the District of Columbia public charter schools, with the first payment to occur within 15 days of the beginning of the fiscal year: Provided further, That if the entirety of this allocation has not been provided as payments to any public charter school currently in operation through the per pupil funding formula, the funds shall be available as follows: (1) the first $3,000,000 shall be deposited in the Credit Enhancement Revolving Fund established pursuant to section 603(e) of the Student Loan Marketing Association Reorganization Act of 1996, approved September 20, 1996 (Public Law 104–208; 110 Stat. 3009; 20 U.S.C. 1155(e)); and (2) the balance shall be for public education in accordance with section 2403(b)(2) of the District of Columbia School Reform Act of 1995, approved November 19, 1997 (Public Law 105–100, section 172; D.C. Official Code, section 38–1804.03(b)(2)): Provided further, That of the amounts made available to District of Columbia public charter schools, $25,000 shall be made available to the Office of the Chief Financial Officer as authorized by section 2403(b)(6) of the District of Columbia School Reform Act of 1995 (D.C. Official Code, sec. 38–1804.03(b)(6)): Provided further, That $660,000 of this amount shall be available to the District of Columbia Public Charter School Board for administrative costs: Provided further, That notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the District of Columbia public charter schools on July 1, 2004, an amount equal to 25 percent of the total amount provided for payments to public charter schools in the proposed budget of the District of Columbia for fiscal year 2005 (as submitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for such payments under the District of Columbia Appropriations Act, 2005.

(4) UNIVERSITY OF THE DISTRICT OF COLUMBIA.—$80,660,000 (including $48,656,000 from local funds, $11,867,000 from Federal funds, $703,000 from private funds, and $19,434,000 from other funds) shall be available for the University of the District of Columbia: Provided, That this appropriation shall not be available to subsidize the education of nonresidents of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 2004, a tuition rate schedule that will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area: Provided further, That notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the University of the District of Columbia on July 1, 2004, an amount equal to 10 percent of the total amount provided for the University of the District of Columbia in the proposed budget of the District of Columbia for fiscal year 2005 (as submitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for the University of the District of Columbia under the District of Columbia Appropriations Act, 2005: Provided further, That not to exceed $2,500 for the President of the University of the District of Columbia shall be available from this appropriation for official purposes.

(5) DISTRICT OF COLUMBIA PUBLIC LIBRARIES.—$28,287,000 (including $26,750,000 from local funds, $1,000,000 from Federal funds, and $537,000 from other funds) shall be available for the District of Columbia Public Libraries: Provided, That not to exceed $2,000 for the Public Librarian shall be available from this appropriation for official purposes.

(6) COMMISSION ON THE ARTS AND HUMANITIES.—$2,476,000 (including $1,601,000 from local funds, $475,000 from Federal funds, and $400,000 from other funds) shall be available for the Commission on the Arts and Humanities.

HUMAN SUPPORT SERVICES

(INCLUDING TRANSFER OF FUNDS)

Human support services, $2,360,067,000 (including $1,030,223,000 from local funds, $1,247,945,000 from Federal funds, $9,330,000 from private funds, and $24,330,000 from other funds, of which $48,239,000, to remain available until expended, shall be available for deposit in the Medicaid and Special Education Reform Fund established pursuant to the Medicaid and Special Education Reform Fund Establishment Act of 2002, effective October 1, 2002 (D.C. Law 14–190; D.C. Official Code 4–204.51 et seq.)), in addition, $12,900,000 from funds previously appropriated in this Act under the heading "Federal Payment to Foster Care Improvement in the District of Columbia": Provided, That the funds deposited in the Medicaid and Special Education Reform Fund are allocated as follows: no more than $6,816,000 for District of Columbia Public Schools, no more than $18,744,000 for Child and Family Services, no more than $7,795,000 for the Department of Human Services, and no more than $21,700,000 for the Department of Mental Health: Provided further, That $27,959,000 of this appropriation, to remain available until expended, shall be available solely for District of Columbia employees' disability compensation: Provided further, That $7,500,000 of this appropriation, to remain available until expended, shall be deposited in the Addiction Recovery Fund, established pursuant to section 5 of the Choice in Drug Treatment Act of 2000 (D.C. Law 13–146; D.C. Official Code, sec. 7–3004) and used exclusively for the purpose of the Drug Treatment Choice Program established pursuant to section 4 of the Choice in Drug Treatment Act of 2000 (D.C. Law 13–146; D.C. Official Code, sec. 7–3003): Provided further, That no less than $2,000,000 of this appropriation shall be available exclusively for the purpose of funding the pilot substance abuse program for youth ages 14 through 21 years established pursuant to section 4212 of the Pilot Substance Abuse Program for Youth Act of 2001 (D.C. Law 14–28; D.C. Official Code, sec. 7–3101): Provided further, That $4,500,000 of this appropriation, to remain available until expended, shall be deposited in the Interim Disability Assistance Fund established pursuant to section 201 of the District of Columbia Public Assistance Act of 1982 (D.C. Law 4–101; D.C. Official Code, sec. 4–202.01), to be used exclusively for the Interim Disability Assistance program and the purposes for that program set forth in section 407 of the District of Columbia Public Assistance Act of 1982 (D.C. Law 13–252; D.C. Official Code, sec. 4–204.07): Provided further, That no less than $640,531 of this appropriation shall be available exclusively for the purpose of funding the Burial Assistance Program established by section 1802 of the Burial Assistance Program Reestablishment Act of 1999, effective October 20, 1999 (D.C. Law 13–38; D.C. Official Code, section 4–1001).

PUBLIC WORKS

Public works, including rental of one passenger-carrying vehicle for use by the Mayor and three passenger-carrying vehicles for use by the Council of the District of Columbia and leasing of passenger-carrying vehicles, $327,046,000 (including $308,028,000 from local funds, $5,274,000 from Federal funds, and $13,744,000 from other funds): Provided, That this appropriation shall not be available for collecting ashes or miscellaneous refuse from hotels and places of business.

EMERGENCY AND CONTINGENCY RESERVE FUNDS

For the emergency reserve fund and the contingency reserve fund under section 450A of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1–204.50a), such amounts from local funds as are necessary to meet the balance requirements for such funds under such section.

REPAYMENT OF LOANS AND INTEREST

For payment of principal, interest, and certain fees directly resulting from borrowing by the District of Columbia to fund District of Columbia capital projects as authorized by sections 462, 475, and 490 of the District of Columbia Home Rule Act (D.C. Official Code, secs. 1–204.62, 1–204.75, and 1–204.90), $311,504,000 from local funds: Provided, That for equipment leases, the Mayor may finance $14,300,000 of equipment cost, plus cost of issuance not to exceed 2 percent of the par amount being financed on a lease purchase basis with a maturity not to exceed 5 years.

PAYMENT OF INTEREST ON SHORT-TERM BORROWING

For payment of interest on short-term borrowing, $3,000,000 from local funds.

CERTIFICATES OF PARTICIPATION

For principal and interest payments on the District's Certificates of Participation, issued to finance the ground lease underlying the building located at One Judiciary Square, $4,911,000 from local funds.

SETTLEMENTS AND JUDGMENTS

For making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government, $22,522,000: Provided, That this appropriation shall not be construed as modifying or affecting the provisions of section 103 of this Act.

WILSON BUILDING

For expenses associated with the John A. Wilson Building, $3,704,000 from local funds.

WORKFORCE INVESTMENTS

For workforce investments, $22,308,000 from local funds, to be transferred by the Mayor of the District of Columbia within the various appropriation headings in this Act for which employees are properly payable.

NON-DEPARTMENTAL AGENCY

To account for anticipated costs that cannot be allocated to specific agencies during the development of the proposed budget, $19,639,000 (including $11,455,000 from local funds, and $8,184,000 from other funds) to be transferred by the Mayor of the District of Columbia within the various appropriation headings in this Act: Provided, That $5,000,000 in local funds shall be available to meet contractual obligations, and $11,455,000 in local funds shall be for anticipated costs associated with the No Child Left Behind Act.

EMERGENCY PLANNING AND SECURITY COSTS

From funds previously appropriated in this Act under the heading "Federal Payment for Emergency Planning and Security Costs in the District of Columbia", $15,000,000.

TRANSPORTATION ASSISTANCE

From funds previously appropriated in this Act under the heading "Federal Payment for Transportation Assistance", $3,500,000.

PAY-AS-YOU-GO CAPITAL

For Pay-As-You-Go Capital funds in lieu of capital financing, $11,267,000, to be transferred to the Capital Fund, subject to the Criteria for Spending Pay-as-You-Go Funding Amendment Act of 2003, approved by the Council of the District of Columbia on 1st reading, May 6, 2003 (Title 25 of Bill 15–218). Pursuant to this Act, there are authorized to be transferred from Pay-As-You-Go Capital funds to other headings of this Act, as necessary to carry out the purposes of this Act.

TAX INCREMENT FINANCING PROGRAM

For a Tax Increment Financing Program, $1,940,000 from local funds.

CASH RESERVE

For the cumulative cash reserve established pursuant to section 202(j)(2) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (Public Law 107–96; D.C. Official Code, section 47–392.02(j)(2)), $50,000,000 from local funds.

MEDICAID DISALLOWANCE

For making refunds associated with disallowed Medicaid funding an amount not to exceed $57,000,000 in local funds to remain available until expended: Provided, That funds are derived from a transfer from the funds identified in the fiscal year 2002 comprehensive annual financial report as the District of Columbia's Grants Disallowance balance.

ENTERPRISE AND OTHER FUNDS

WATER AND SEWER AUTHORITY

For operation of the Water and Sewer Authority, $259,095,000 from other funds, of which $18,692,000 shall be apportioned for repayment of loans and interest incurred for capital improvement projects ($18,094,000 and payable to the District's debt service fund).

For construction projects, $199,807,000, to be distributed as follows: $99,449,000 for the Blue Plains Wastewater Treatment Plant, $16,739,000 for the sewer program, $42,047,000 for the combined sewer program, $42,047,000 for the Combined Sewer Overflow Long-Term Control Plan, $5,993,000 for the stormwater program, $24,431,000 for the water program, and $11,148,000 for the capital equipment program, in addition, $25,000,000 from funds previously appropriated in this Act under the heading "Federal Payment to the District of Columbia Water and Sewer Authority".

WASHINGTON AQUEDUCT

For operation of the Washington Aqueduct, $55,553,000 from other funds.

STORMWATER PERMIT COMPLIANCE ENTERPRISE FUND

For operation of the Stormwater Permit Compliance Enterprise Fund, $3,501,000 from other funds.

LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND

For the Lottery and Charitable Games Enterprise Fund, established by the District of Columbia Appropriation Act, 1982, for the purpose of implementing the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia (D.C. Law 3–172; D.C. Official Code, sec. 3–1301 et seq. and sec. 22–1716 et seq.), $242,755,000: Provided, That the District of Columbia shall identify the source of funding for this appropriation title from the District's own locally generated revenues: Provided further, That no revenues from Federal sources shall be used to support the operations or activities of the Lottery and Charitable Games Control Board.

SPORTS AND ENTERTAINMENT COMMISSION

For the Sports and Entertainment Commission, $13,979,000 from local funds.

DISTRICT OF COLUMBIA RETIREMENT BOARD

For the District of Columbia Retirement Board, established pursuant to section 121 of the District of Columbia Retirement Reform Act of 1979 (D.C. Official Code, sec. 1–711), $13,895,000 from the earnings of the applicable retirement funds to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board: Provided, That the District of Columbia Retirement Board shall provide to the Congress and to the Council of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds: Provided further, That the District of Columbia Retirement Board shall provide the Mayor, for transmittal to the Council of the District of Columbia, an itemized accounting of the planned use of appropriated funds in time for each annual budget submission and the actual use of such funds in time for each annual audited financial report.

WASHINGTON CONVENTION CENTER ENTERPRISE FUND

For the Washington Convention Center Enterprise Fund, $69,742,000 from other funds.

NATIONAL CAPITAL REVITALIZATION CORPORATION

For the National Capital Revitalization Corporation, $7,849,000 from other funds.

CAPITAL OUTLAY

(INCLUDING RESCISSIONS)

For construction projects, an increase of $1,004,796,000, of which $601,708,000 shall be from local funds, $46,014,000 from Highway Trust funds, $38,311,000 from the Rights-of-way funds, $218,880,000 from Federal funds, and a rescission of $99,884,000 from local funds appropriated under this heading in prior fiscal years, for a net amount of $904,913,000, to remain available until expended, in addition, $5,000,000 from funds previously appropriated in this Act under the heading "Federal Payment for Capital Development in the District of Columbia" and $6,000,000 from funds previously appropriated in this Act for the "Anacostia Waterfront Initiative": Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended.

TITLE III GENERAL PROVISIONS

SEC. 301. Whenever in this Act, an amount is specified within an appropriation for particular purposes or objects of expenditure, such amount, unless otherwise specified, shall be considered as the maximum amount that may be expended for said purpose or object rather than an amount set apart exclusively therefor.

SEC. 302. Appropriations in this Act shall be available for expenses of travel and for the payment of dues of organizations concerned with the work of the District of Columbia government, when authorized by the Mayor: Provided, That in the case of the Council of the District of Columbia, funds may be expended with the authorization of the Chairman of the Council.

SEC. 303. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government: Provided, That nothing contained in this section shall be *construed as modifying or affecting the provisions of section 11(c)(3) of title XII of the District of Columbia Income and Franchise Tax Act of 1947 (D.C. Official Code, sec. 47–1812.11(c)(3)).*

SEC. 304. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 305. No funds appropriated in this Act for the District of Columbia government for the operation of educational institutions, the compensation of personnel, or for other educational purposes may be used to permit, encourage, facilitate, or further partisan political activities. Nothing herein is intended to prohibit the availability of school buildings for the use of any community or partisan political group during non-school hours.

SEC. 306. None of the funds appropriated in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name, title, grade, and salary are not available for inspection by the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Council of the District of Columbia, or their duly authorized representative.

SEC. 307. None of the Federal funds provided in this Act may be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

SEC. 308. (a) None of the Federal funds provided in this Act may be used to carry out lobbying activities on any matter.

(b) Nothing in this section may be construed to prohibit any elected official from advocating with respect to any issue.

SEC. 309. (a) None of the funds provided under this Act to the agencies funded by this Act, both Federal and District government agencies, that remain available for obligation or expenditure in fiscal year 2004, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for an agency through a reprogramming of funds which—

(1) creates new programs;

(2) eliminates a program, project, or responsibility center;

(3) establishes or changes allocations specifically denied, limited or increased under this Act;

(4) increases funds or personnel by any means for any program, project, or responsibility center for which funds have been denied or restricted;

(5) reestablishes any program or project previously deferred through reprogramming;

(6) augments any existing program, project, or responsibility center through a reprogramming of funds in excess of $1,000,000 or 10 percent, whichever is less; or

(7) increases by 20 percent or more personnel assigned to a specific program, project or responsibility center,

unless the Committees on Appropriations of the House of Representatives and Senate are notified in writing 30 days in advance of the reprogramming.

(b) None of the local funds contained in this Act may be available for obligation or expenditure for an agency through a transfer of any local funds from one appropriation heading to another unless the Committees on Appropriations of the House of Representatives and Senate are notified in writing 30 days in advance of the transfer, except that in no event may the amount of any funds transferred exceed 4 percent of the local funds in the appropriation.

SEC. 310. Consistent with the provisions of section 1301(a) of title 31, United States Code, appropriations under this Act shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

SEC. 311. Notwithstanding any other provisions of law, the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2–139; D.C. Official Code, sec. 1–601.01 et seq.), enacted pursuant to section 422(3) of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1–204.22(3)), shall apply with respect to the compensation of District of Columbia employees: Provided, That for pay purposes, employees of the District of Columbia government shall not be subject to the provisions of title 5, United States Code.

SEC. 312. No later than 30 days after the end of the first quarter of fiscal year 2004, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia and the Committees on Appropriations of the House of Representatives and Senate the new fiscal year 2004 revenue estimates as of the end of such quarter. These estimates shall be used in the budget request for fiscal year 2005. The officially revised estimates at midyear shall be used for the midyear report.

SEC. 313. No sole source contract with the District of Columbia government or any agency thereof may be renewed or extended without opening that contract to the competitive bidding process as set forth in section 303 of the District of Columbia Procurement Practices Act of 1985 (D.C. Law 6–85; D.C. Official Code, sec. 2–303.03), except that the District of Columbia government or any agency thereof may renew or extend sole source contracts for which competition is not feasible or practical, but only if the determination as to whether to invoke the competitive bidding process has been made in accordance with duly promulgated rules and procedures and has been reviewed and certified by the Chief Financial Officer of the District of Columbia.

SEC. 314. (a) In the event a sequestration order is issued pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 after the amounts appropriated to the District of Columbia for the fiscal year involved have been paid to the District of Columbia, the Mayor of the District of Columbia shall pay to the Secretary of the Treasury, within 15 days after receipt of a request therefor from the Secretary of the Treasury, such amounts as are sequestered by the order: Provided, That the sequestration percentage specified in the order shall be applied proportionately to each of the Federal appropriation accounts in this Act that are not specifically exempted from sequestration by such Act.

(b) For purposes of the Balanced Budget and Emergency Deficit Control Act of 1985, the term "program, project, and activity" shall be synonymous with and refer specifically to each account appropriating Federal funds in this Act, and any sequestration order shall be applied to each of the accounts rather than to the aggregate total of those accounts: Provided, That sequestration orders shall not be applied to any account that is specifically exempted from sequestration by the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 315. (a)(1) An entity of the District of Columbia government may accept and use a gift or donation during fiscal year 2004 if—

(A) the Mayor approves the acceptance and use of the gift or donation (except as provided in paragraph (2) of this subsection); and

(B) the entity uses the gift or donation to carry out its authorized functions or duties.

(2) The Council of the District of Columbia and the District of Columbia courts may accept and use gifts without prior approval by the Mayor.

(b) Each entity of the District of Columbia government shall keep accurate and detailed records of the acceptance and use of any gift or donation under subsection (a), and shall make such records available for audit and public inspection.

(c) For the purposes of this section, the term "entity of the District of Columbia government" includes an independent agency of the District of Columbia.

(d) This section shall not apply to the District of Columbia Board of Education, which may, pursuant to the laws and regulations of the District of Columbia, accept and use gifts to the public schools without prior approval by the Mayor.

SEC. 316. None of the Federal funds provided in this Act may be used by the District of Columbia to provide for salaries, expenses, or other costs associated with the offices of United States Senator or United States Representative under section 4(d) of the District of Columbia Statehood Constitutional Convention Initiatives of 1979 (D.C. Law 3–171; D.C. Official Code, sec. 1–123).

SEC. 317. None of the funds appropriated under this Act shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.

SEC. 318. None of the Federal funds made available in this Act may be used to implement or enforce the Health Care Benefits Expansion Act of 1992 (D.C. Law 9–114; D.C. Official Code, sec. 32–701 et seq.) or to otherwise implement or enforce any system of registration of unmarried, cohabiting couples, including but not limited to registration for the purpose of extending employment, health, or governmental benefits to such couples on the same basis that such benefits are extended to legally married couples.

SEC. 319. (a) Notwithstanding any other provision of this Act, the Mayor, in consultation with the Chief Financial Officer of the District of Columbia may accept, obligate, and expend Federal, private, and other grants received by the District government that are not reflected in the amounts appropriated in this Act.

(b) No such Federal, private, or other grant may be accepted, obligated, or expended pursuant to subsection (a) until—

(1) the Chief Financial Officer of the District of Columbia submits to the Council a report setting forth detailed information regarding such grant; and

(2) the Council within 15 calendar days after receipt of the report submitted under paragraph (1) has reviewed and approved the acceptance, obligation, and expenditure of such grant.

(c) No amount may be obligated or expended from the general fund or other funds of the District of Columbia government in anticipation of the approval or receipt of a grant under subsection (b)(2) or in anticipation of the approval or receipt of a Federal, private, or other grant not subject to such subsection.

(d) The Chief Financial Officer of the District of Columbia shall prepare a quarterly report setting forth detailed information regarding all Federal, private, and other grants subject to this section. Each such report shall be submitted to the Council of the District of Columbia and to the Committees on Appropriations of the House of Representatives and Senate not later than 15 days after the end of the quarter covered by the report.

SEC. 320. (a) Except as otherwise provided in this section, none of the funds made available by this Act or by any other Act may be used to provide any officer or employee of the District of Columbia with an official vehicle unless the officer or employee uses the vehicle only in the performance of the officer's or employee's official duties. For purposes of this paragraph, the *term "official duties" does not include travel between the officer's or employee's residence and workplace, except in the case of—*

(1) an officer or employee of the Metropolitan Police Department who resides in the District of Columbia or is otherwise designated by the Chief of the Department;

(2) at the discretion of the Fire Chief, an officer or employee of the District of Columbia Fire and Emergency Medical Services Department who resides in the District of Columbia and is on call 24 hours a day;

(3) the Mayor of the District of Columbia; and

(4) the Chairman of the Council of the District of Columbia.

(b) The Chief Financial Officer of the District of Columbia shall submit by March 1, 2004 an inventory, as of September 30, 2003, of all vehicles owned, leased or operated by the District of Columbia government. The inventory shall include, but not be limited to, the department to which the vehicle is assigned; the year and make of the vehicle; the acquisition date and cost; the general condition of the vehicle; annual operating and maintenance costs; current mileage; and whether the vehicle is allowed to be taken home by a District officer or employee and if so, the officer or employee's title and resident location.

SEC. 321. No officer or employee of the District of Columbia government (including any independent agency of the District of Columbia, but excluding the Office of the Chief Technology Officer, the Office of the Chief Financial Officer of the District of Columbia, and the Metropolitan Police Department) may enter into an agreement in excess of $2,500 for the procurement of goods or services on behalf of any entity of the District government until the officer or employee has conducted an analysis of how the procurement of the goods and services involved under the applicable regulations and procedures of the District government would differ from the procurement of the goods and services involved under the Federal supply schedule and other applicable regulations and procedures of the General Services Administration, including an analysis of any differences in the costs to be incurred and the time required to obtain the goods or services.

SEC. 322. None of the funds contained in this Act may be used for purposes of the annual independent audit of the District of Columbia government for fiscal year 2004 unless—

(1) the audit is conducted by the Inspector General of the District of Columbia, in coordination with the Chief Financial Officer of the District of Columbia, pursuant to section 208(a)(4) of the District of Columbia Procurement Practices Act of 1985 (D.C. Official Code, sec. 2–302.8); and

(2) the audit includes as a basic financial statement a comparison of audited actual year-end results with the revenues submitted in the budget document for such year and the appropriations enacted into law for such year using the format, terminology, and classifications contained in the law making the appropriations for the year and its legislative history.

SEC. 323. (a) None of the funds contained in this Act may be used by the District of Columbia Corporation Counsel or any other officer or entity of the District government to provide assistance for any petition drive or civil action which seeks to require Congress to provide for voting representation in Congress for the District of Columbia.

(b) Nothing in this section bars the District of Columbia Corporation Counsel from reviewing or commenting on briefs in private lawsuits, or from consulting with officials of the District government regarding such lawsuits.

SEC. 324. (a) None of the Federal funds contained in this Act may be used for any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

(b) Any individual or entity who receives any funds contained in this Act and who carries out any program described in subsection (a) shall account for all funds used for such program separately from any funds contained in this Act.

SEC. 325. None of the funds contained in this Act may be used after the expiration of the 60-day period that begins on the date of the enactment of this Act to pay the salary of any chief financial officer of any office of the District of Columbia government (including any independent agency of the District of Columbia) who has not filed a certification with the Mayor and the Chief Financial Officer of the District of Columbia that the officer understands the duties and restrictions applicable to the officer and the officer's agency as a result of this Act (and the amendments made by this Act), including any duty to prepare a report requested either in the Act or in any of the reports accompanying the Act and the deadline by which each report must be submitted. The Chief Financial Officer of the District of Columbia shall provide to the Committees on Appropriations of the House of Representatives and Senate by the 10th day after the end of each quarter a summary list showing each report, the due date, and the date submitted to the Committees.

SEC. 326. (a) None of the funds contained in this Act may be used to enact or carry out any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act (21 U.S.C. 802) or any tetrahydrocannabinols derivative.

(b) The Legalization of Marijuana for Medical Treatment Initiative of 1998, also known as Initiative 59, approved by the electors of the District of Columbia on November 3, 1998, shall not take effect.

SEC. 327. Nothing in this Act may be construed to prevent the Council or Mayor of the District of Columbia from addressing the issue of the provision of contraceptive coverage by health insurance plans, but it is the intent of Congress that any legislation enacted on such issue should include a "conscience clause" which provides exceptions for religious beliefs and moral convictions.

SEC. 328. (a) If the Superior Court of the District of Columbia or the District of Columbia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

(b) A payment described in this subsection is—

(1) a payment authorized under section 11–2604 and section 11–2605, D.C. Official Code (relating to representation provided under the District of Columbia Criminal Justice Act);

(2) a payment for counsel appointed in proceedings in the Family Court of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Official Code; or

(3) a payment for counsel authorized under section 21–2060, D.C. Official Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

(c) The chief judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

(d) Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

(e) This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2003 and any subsequent fiscal year.

SEC. 329. The Mayor of the District of Columbia shall submit to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate quarterly reports addressing the following issues—

(1) crime, including the homicide rate, implementation of community policing, the number of police officers on local beats, and the closing down of open-air drug markets;

(2) access to substance and alcohol abuse treatment, including the number of treatment slots, the number of people served, the number of people on waiting lists, and the effectiveness of treatment programs;

(3) management of parolees and pre-trial violent offenders, including the number of halfway house escapes and steps taken to improve monitoring and supervision of halfway house residents to reduce the number of escapes to be provided in consultation with the Court Services and Offender Supervision Agency for the District of Columbia;

(4) education, including access to special education services and student achievement to be provided in consultation with the District of Columbia Public Schools and the District of Columbia public charter schools;

(5) improvement in basic District services, including rat control and abatement;

(6) application for and management of Federal grants, including the number and type of grants for which the District was eligible but failed to apply and the number and type of grants awarded to the District but for which the District failed to spend the amounts received; and

(7) indicators of child well-being.

SEC. 330. No later than 30 calendar days after the date of the enactment of this Act, the Chief Financial Officer of the District of Columbia shall submit to the appropriate committees of Congress, the Mayor, and the Council of the District of Columbia a revised appropriated funds operating budget in the format of the budget that the District of Columbia government submitted pursuant to section 442 of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1–204.42), for all agencies of the District of Columbia government for fiscal year 2004 that is in the total amount of the approved appropriation and that realigns all budgeted data for personal services and other-than-personal-services, respectively, with anticipated actual expenditures.

SEC. 331. None of the funds contained in this Act may be used to issue, administer, or enforce any order by the District of Columbia Commission on Human Rights relating to docket numbers 93–030–(PA) and 93–031–(PA).

SEC. 332. None of the Federal funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 333. In addition to any other authority to pay claims and judgments, any department, agency, or instrumentality of the District government may pay the settlement or judgment of a claim or lawsuit in an amount less than

$10,000, in accordance with the Risk Management for Settlements and Judgments Amendment Act of 2000 (D.C. Law 13–172; D.C. Official Code, sec. 2–402).

SEC. 334. All funds from the Crime Victims Compensation Fund, established pursuant to section 16 of the Victims of Violent Crime Compensation Act of 1996 (D.C. Law 11–243; D.C. Official Code, sec. 4–514) ("Compensation Act"), that are designated for outreach activities pursuant to section 16(d)(2) of the Compensation Act shall be deposited in the Crime Victims Assistance Fund, established pursuant to section 16a of the Compensation Act, for the purpose of outreach activities, and shall remain available until expended.

SEC. 335. Notwithstanding any other law, the District of Columbia Courts shall transfer to the general treasury of the District of Columbia all fines levied and collected by the Courts in cases charging Driving Under the Influence and Driving While Impaired. The transferred funds shall remain available until expended and shall be used by the Office of the Corporation Counsel for enforcement and prosecution of District traffic alcohol laws in accordance with section 10(b)(3) of the District of Columbia Traffic Control Act (D.C. Official Code, sec. 50–2201.05(b)(3)).

SEC. 336. From the local funds appropriated under this Act, any agency of the District government may transfer to the Office of Labor Relations and Collective Bargaining (OLRCB) such amounts as may be necessary to pay for representation by OLRCB in third-party cases, grievances, and dispute resolution, pursuant to an intra-District agreement with OLRCB. These amounts shall be available for use by OLRCB to reimburse the cost of providing the representation.

SEC. 337. None of the funds contained in this Act may be made available to pay—

(1) the fees of an attorney who represents a party in an action or an attorney who defends any action, including an administrative proceeding, brought against the District of Columbia Public Schools under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) in excess of $4,000 for that action; or

(2) the fees of an attorney or firm whom the Chief Financial Officer of the District of Columbia determines to have a pecuniary interest, either through an attorney, officer or employee of the firm, in any special education diagnostic services, schools, or other special education service providers.

SEC. 338. The Chief Financial Officer of the District of Columbia shall require attorneys in special education cases brought under the Individuals with Disabilities Act (IDEA) in the District of Columbia to certify in writing that the attorney or representative rendered any and all services for which they receive awards, including those received under a settlement agreement or as part of an administrative proceeding, under the IDEA from the District of Columbia: Provided, That as part of the certification, the Chief Financial Officer of the District of Columbia require all attorneys in IDEA cases to disclose any financial, corporate, legal, memberships on boards of directors, or other relationships with any special education diagnostic services, schools, or other special education service providers to which the attorneys have referred any clients as part of this certification: Provided further, That the Chief Financial Officer shall prepare and submit quarterly reports to the Committees on Appropriations of the Senate and the House of Representatives on the certification of and the amount paid by the government of the District of Columbia, including the District of Columbia Public Schools, to attorneys in cases brought under IDEA: Provided further, That the Inspector General of the District of Columbia may conduct investigations to determine the accuracy of the certifications.

SEC. 339. Chapter 3 of title 16, District of Columbia Code, is amended by inserting at the end the following new section:

"SEC. 16–316. APPOINTMENT AND COMPENSATION OF COUNSEL; GUARDIAN AD LITEM.

"(a) When a petition for adoption has been filed and there has been no termination or relinquishment of parental rights with respect to the proposed adoptee or consent to the proposed adoption by a parent or guardian whose consent is required under D.C. Code section 16–304, the Court may appoint an attorney to represent such parent or guardian in the adoption proceeding if the individual is financially unable to obtain adequate representation.

"(b) The Court may appoint a guardian ad litem who is an attorney to represent the child in an adoption proceeding. The guardian ad litem shall in general be charged with the representation of the child's best interest.

"(c) An attorney appointed pursuant to subsection (a) or (b) of this section shall be compensated in accordance with D.C. Code section 16–2326.01, except that compensation in the adoption case shall be subject to the limitation set forth in D.C. Code section 16–2326.01(b)(2).".

The table of sections for chapter 3 of title 16, District of Columbia Code, is amended by inserting at the end the following new item:

"Sec. 16–316. Appointment and compensation of counsel; guardian ad litem.".

SEC. 340. (a) The amount appropriated by this Act as Other Type Funds may be increased no more than 25 percent to an account for unanticipated growth in revenue collections.

(b) CONDITIONS OF USE.—The District of Columbia may obligate or expend these amounts only in accordance with the following conditions:

(1) CERTIFICATION BY THE CHIEF FINANCIAL OFFICER.—The Chief Financial Officer of the District of Columbia shall certify that anticipated revenue collections support an increase in Other Type authority in the amount request.

(2) NOTICE REQUIREMENT.—The amounts may be obligated or expended only if the Mayor notifies the Committees on Appropriations of the House of Representatives and the Senate in writing 30 days in advance of any obligation or expenditure.

SEC. 341. (a) The amount appropriated by this Act may be increased by no more than $15,000,000 from funds identified in the comprehensive annual financial report as the District's fund balance.

(b) CONDITIONS ON USE.—The District of Columbia may obligate or expend these amounts only in accordance with the following conditions:

(1) CERTIFICATION BY THE CHIEF FINANCIAL OFFICER.—The Chief Financial Officer of the District of Columbia shall certify that the use of any such amounts is not anticipated to have a negative impact on the District of Columbia's long-term financial, fiscal, and economic vitality.

(2) PURPOSE.—The District of Columbia may only use these funds for the following expenditures:

(A) Unanticipated one-time expenditures;

(B) To address potential deficits;

(C) Debt reduction;

(D) Unanticipated program needs; or

(E) To cover revenue shortfalls.

(3) LOCAL LAW.—The amounts shall be obligated or expended in accordance with laws enacted by the Council in support of each such obligation or expenditure.

(4) RECEIVERSHIP.—The amounts may not be used to fund the agencies of the District of Columbia government under court-ordered receivership.

(5) NOTICE REQUIREMENT.—The amounts may be obligated or expended only if the Mayor notifies the Committees on Appropriations of the House of Representatives and the Senate in writing 30 days in advance of any obligation or expenditure.

(6) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section shall remain available until expended.

This Act may be cited as the "District of Columbia Appropriations Act, 2004".

The Presiding Officer appointed Mr. DEWINE, Mrs. HUTCHISON, Mr. BROWNBACK, Mr. STEVENS, Ms. LANDRIEU, Mr. DURBIN, and Mr. INOUYE conferees on the part of the Senate.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:39 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

EXECUTIVE SESSION

NOMINATION OF MAJ. GEN. ROBERT T. CLARK TO BE LIEUTENANT GENERAL

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, pursuant to the order of November 14, I ask that the Senate now proceed to executive session to begin consideration of Executive Calendar No. 418, the nomination of Maj. Gen. Robert T. Clark to be Lieutenant General.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read the nomination of Maj. Gen. Robert T. Clark to be Lieutenant General.

Mr. WARNER. Mr. President, there are a number of Senators who desire to speak. I will just say a few words. To accommodate my distinguished colleague from Kentucky, who has been a valiant supporter of this nomination and very persistent over this long period of time, I will yield the floor. He then could be followed by the Senator from Massachusetts and then I would continue my remarks.

I wonder if I just might ask unanimous consent that the Senator from Virginia proceed for not to exceed 3 or 4 minutes, followed by the Senator from Kentucky for about 10 or 12 minutes, followed by the Senator from Massachusetts. How much time does my colleague desire?

Mr. KENNEDY. I think 40 minutes.

Mr. WARNER. Not to exceed a period of about 40 minutes for the Senator from Massachusetts.

Mr. KENNEDY. I think Senator DAYTON also had 15 minutes. I think there is a unanimous consent agreement for this; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. I was not able to hear.

Mr. KENNEDY. I think there is a consent that has been agreed to whereby there are 2 hours equally divided, with 40 minutes for myself and 15 minutes for Senator DAYTON.

Mr. WARNER. The Senator is correct on that.

Mr. KENNEDY. I will not necessarily take all of that time.

Mr. WARNER. Mr. President, I thank my colleague.

Major General Clark is a highly qualified officer for promotion to the rank of lieutenant general. I have met with him several times. His proposed assignment by the Secretary of Defense is to be Commander of the Fifth U.S. Army.

He was first nominated for this position in the fall of 2002. He has appeared before the Senate Armed Services Committee in executive session on two separate occasions. On both occasions he conducted himself with deference and respect not only for the serious issues at hand but for all persons involved in this tragic sequence of facts which preceded his nomination.

He expressed great respect for the constitutionally-based advise and consent power and the responsibility of the Senate to look into this nomination with great thoroughness. Not surprisingly, General Clark has the full support of the Chief of Staff of the Army, General Schoomaker, and the civilian leadership of the Army for this promotion. Indeed, the Secretary of Defense personally, in a very respectful way, has talked to me about this nomination and his strong support for this nominee.

I will detail at length later on in the course of this debate the very thorough steps taken by the Senate Armed Services Committee. I commend my colleagues on the committee. There were unusual facts associated with this nomination involving tragic loss of life, a strong disciplinary action against those who brought about the direct harm to the victim who gave his life. In the course of that, I and other members of the committee took it upon ourselves to meet with the family members of the deceased victim in this particular case. I wish to commend them. They handled themselves in a manner of great distinction, given the depth of emotion on their part.

I also commend the former Vice Chief of the Army, General Keane. He took it upon himself time and time again, working with the distinguished Under Secretary of the Army, Les Brownlee, to repeatedly go back and reinvestigate certain aspects of this case, I hope to the satisfaction of all Members, certainly to this Senator and generally members of the committee.

Mr. President, I yield the floor to accommodate my colleague. I again thank him for his strong tenacity in supporting this nomination throughout.

Mr. BUNNING. Mr. President, I rise in strong support of MG Robert Clark to the rank of lieutenant general and commander of the Fifth Army. I first met General Clark over 5 years ago when he was commander of the 101st Airborne Division at Fort Campbell, KY. Since that time, I have known General Clark to be an honest man and an excellent soldier. The military communities in Kentucky and Tennessee surrounding Fort Campbell admire General Clark very much. He is well respected throughout the Army, and we should be grateful that we have soldiers like General Clark serving and protecting our Nation.

GEN Jack Keane, who commanded General Clark at Fort Campbell, said this about him:

> In my 37 years of service, I have never met an officer who is such a tower of character and integrity. His peers, subordinates, and superiors all respect and admire him for the truly special person that he is.

General Clark loves the Army and he loves his country. Some may even say that General Clark was born with the desire to serve his country in his blood. Both of his grandfathers served in both World War I and World War II. His father served for 31 years and fought in both World War II and the Korean conflict. His older brother served in Vietnam. One of his younger brothers is an Air Force colonel, and another brother is an Army lieutenant colonel on the front lines in Korea.

The Clark family has made many sacrifices so that future generations of Americans can live in peace. General Clark has given 33 years of his life in the armed service to this great Nation. He is a decorated soldier and has shed his own blood for our country. He led a platoon in Vietnam, commanded a brigade that was dropped deep into Iraq during Operation Desert Storm.

As commanding general of the 101st Screaming Eagles, he deployed himself, with his troops, all over the world, from Kuwait to El Salvador. Most recently, General Clark has been deputy commander of the Fifth Army and mobilized Guard and Reserves for homeland defense and Operation Iraqi Freedom. He has worn just about every hat the Army has to offer.

COL Mike Oates, who served under General Clark at Fort Campbell, said this about him:

> He spoke straight to the soldiers. He looked them in the eye and he set high standards for wearing our equipment and how we behaved. Discipline is what keeps good units effective and reliable. He enforced discipline and set the example himself.

I could go on and on about General Clark's distinguished career. But I need to address the tragic incident that has held up his nomination, which occurred while General Clark was at Fort Campbell. A murder occurred at Fort Campbell on July 5, 1999. PVT Barry Winchell was killed in a tragic event that none of us should ever forget. Private Winchell was murdered by a fellow soldier, who is serving—and deservedly so—a life sentence for this horrendous crime.

I do not wish to address the details of this horrible murder, but I do wish to extend my thoughts and prayers to Private Winchell's family and friends. I have spoken with General Clark several times about this tragic incident. I know how sorry he is about the murder of Private Winchell, especially since it did happen on his post and under his leadership.

But it is important to note that after the incident—and as the general court martial convening authority—General Clark approved the maximum punishment for the convicted murderer.

I want to set the record straight. A small, yet loud minority has blamed General Clark for this tragic death. Nothing could be further from the truth.

A man who has given 33 years of his life to protect all Americans—all Americans—does not deserve to be treated this way. Army investigations and many interviews were conducted to dispel the misinformation over this incident. And the Army has recommended General Clark for nomination to lieutenant general and commander of the Fifth Army because he is the most qualified soldier for this job.

The President nominated General Clark for this post and important rank. It is important to note that the Senate Armed Services Committee approved his nomination.

I thank Committee Chairman WARNER and Ranking Member LEVIN for helping to move his nomination through the committee.

Mr. President, our military has an old saying: "Not for self, but for country."

Those who know General Clark in the Army and in the communities in which he has served all think of him when they hear this statement. General Clark is a man who has given his entire life not for self but for God and country. I thank him for it.

We should all be grateful to him for all the sacrifices he has made for our freedoms and our protections. I urge my colleagues to support the nomination of GEN Robert Clark. He deserves it and he has earned it.

Mr. President, I yield the floor.

Mr. WARNER. Mr. President, may I express appreciation to my colleague from Kentucky again for his taking long hours to personally look into this case in a very objective way and in reaching his conclusions.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I ask the Chair to remind me when I have used 15 minutes.

The PRESIDING OFFICER. The Chair will do so.

Mr. KENNEDY. Mr. President, I oppose the nomination of Major General Clark to the rank of lieutenant general.

I agree that General Clark has a strong record as a soldier. He has received numerous decorations for his distinguished service and courage, and he has served in a number of leadership capacities during his more than 30 years in the Army.

I am concerned, however, about General Clark's performance as Commanding General at Fort Campbell, KY, at the time of the brutal murder of PVT Barry Winchell on the base in 1999.

There are few more respected units in the Army than the 101st Airborne Division at Fort Campbell. The "Screaming Eagles," as the division is called, has a well-deserved reputation of professionalism, heroism, and outstanding performance. Yet, in the months leading up to the murder of Private Winchell, the command climate at Fort Campbell was seriously deficient. According to a report by the Army inspector general, Fort Campbell had command-wide low morale, and inadequate delivery of health care to soldiers and their families, and the leadership condoned widespread, leader-condoned underage drinking in the barracks.

There is compelling evidence that anti-gay harassment was pervasive at Fort Campbell during this period. The inspector general reported multiple examples of anti-gay graffiti, the use of anti-gray slurs in cadences by noncommissioned officers during training runs, and routine remarks and bantering that, in the inspector general's words, "could be viewed as harassment." Outside groups have documented many instances of anti-gay harassment in the months leading up to the murder.

The inspector general also found that prior to the murder, there was no sustainment training at Fort Campbell on the proper implementation of the Homosexual Conduct Policy, known as "Don't Ask, Don't Tell" and that, as a result, "most officers, NCOs, and soldiers at Fort Campbell lacked an understanding and working knowledge of the Policy."

In his response to my questions, General Clark stated that he agrees with these findings, but that he was nevertheless not aware of even a single instance of anti-gay harassment before the murder.

On July 5, 1999, after enduring anti-gay harassment for many months, including harassment by members of his chain of command, Private Winchell was bludgeoned to death with a baseball bat by a fellow soldier in his barracks.

It seems clear that if General Clark had exercised his responsibility to deal with the serious anti-gay harassment that was prevalent at Fort Campbell during his 17 months of command leading up to the murder of Private Winchell, the murder would probably not have occurred.

Even more serious, however, was General Clark's performance at Fort Campbell in the days, weeks, and months following the murder. A brutal bias-motivated hate crime is an extraordinary event in any community, civilian or military, and it demands an extraordinary response from the community's leaders. Such a crime sends the poisonous message that some members of the community deserve to be victimized solely because of who they are. The potential for such a crime was magnified in this case because of the existing climate of anti-gay harassment at Fort Campbell, but the available evidence indicates that General Clark's response was not adequate with respect to his contacts with Private Winchell's family or his command responsibilities at Fort Campbell.

One factual issue which I have repeatedly asked the Army to resolve, without receiving a satisfactory response, is why General Clark did not meet with the parents of Private Barry Winchell, Patricia and Wally Kutteles, in the days following his murder.

Following such a brutal murder it is difficult to believe that such a meeting did not take place. Any responsible and compassionate commanding officer would want to meet with and console the parents of the murdered soldier, even if no request for such a meeting had formally been made.

I understand that during the 4 days immediately following the murder, General Clark was at the Walter Reed Army Medical Center in Washington with his wife, who was undergoing tests for a longstanding illness. It is understandable that General Clark had declined to meet with the parents for this reason, during that period and did not attend the memorial service for Private Winchell on July 9. But Clark did not meet with the parents in the days after his return to Fort Campbell from Walter Reed Hospital nor in the weeks and months that followed the Winchell murder. Instead, he states that he never received a request to meet with the parents, but he would gladly have met with then if he had received a request to do so.

Patricia Kutteles, Private Winchell's mother, has submitted a sworn affidavit stating that she and her husband traveled to Fort Campbell immediately after hearing about her son's murder. She was assigned an Army liaison officer, Lieutenant Colonel Stratis, as their point of contact with Fort Campbell and the Army. Two or three days after the murder, she made a request to Lieutenant Colonel Stratis to meet with General Clark to talk about her son's death. Lieutenant Colonel Stratis told her that General Clark was unable to meet with them.

There are three possible explanations for this dispute of fact: Ms. Kutteles may have submitted a false affidavit, General Clark may have given false information to the Committee, or General Clark was, for some reason, not informed by his staff about the parent's request.

Like others on the Armed Services Committee, I have met with the parents, and I was struck by their sincerity, their patriotism, and their continuing support for our Armed Forces in spite of the tragedy. I find it difficult to believe that they are lying or mistaken when they say they asked for a meeting with General Clark.

Nevertheless, that appears to be the position of the Army inspector general, who states in his most recent memorandum, dated October 20, 2003, that the mother's statement in the affidavit is "unfounded." The inspector general states that his office "determined, after extensive interviews, none of the key staff members and other relevant witnesses recalled receiving or learning of such a request."

I have seen several of the affidavits relied upon by the inspector general, and I found the statements relied on to be disturbingly non-responsive. These affidavits fail to resolve the serious factual dispute about whether the parents requested a meeting with General Clark, and it seems improper for the Army inspector general to suggest that no such request was made.

I believe that it is inappropriate for the Senate to act on this nomination until this issue is more satisfactorily resolved.

General Clark states that he was not aware of any instance of anti-gay harassment on the base before the murder. At the very least, the murder should have made painfully clear that anti-gay bias and anti-gay harassment were real and pressing problems at Fort Campbell, problems that demanded an immediate and effective response. Yet from the very start, and throughout the remainder of his command, General Clark and his office took patently ineffective steps to respond to these specific problems.

Two days after the murder, the Fort Campbell public affairs office issued a statement describing the incident as a "physical altercation in a post barracks," insinuating that Winchell was partly responsible for his own death. In fact, Winchell was asleep in the barracks when he was attacked by his killer. General Clark stated that he probably learned about the false press statement 3 or 4 days later, following his return to Fort Campbell from the Walter Reed Army Medical Center. He said he did not instruct the public affairs office to retract the statement or issue a correction because "comments by my command spokesperson regarding the case might well have influenced the investigation, or suggested that I had reached premature conclusions about the case, and might have influenced or tainted the deliberations of any soldier serving on a court martial-panel."

It is important for a commanding officer not to make statements that might influence an investigation or court-martial. But it is well established in military law that a statement may be made to correct a false public statement, in order to avoid prejudice to the Government or the accused.

General Clark's explanation is doubly unconvincing in the light of the fact that the Fort Campbell public affairs office made a statement, 2 days after Clark returned to Fort Campbell, that there was "no evidence" that Private Winchell was killed because he was gay. This statement was clearly false, and it also raised a far more serious issue about whether the command at Fort Campbell was undermining the ability of the Government to prosecute the murder as a bias-motivated offense.

In fact, anti-gay harassment continued in the months following the murder.

The continuing anti-gay harassment at Fort Campbell was also accompanied by a sudden exodus of soldiers discharged for violations of the Homosexual Conduct Policy. In the 10 months after the murder, 120 soldiers were discharged from Fort Campbell under this policy, compared to only 6 such discharges from Fort Campbell during the same time period in the previous year. In all of 1999, there were 271 such discharges in the entire Army.

Instead of dealing directly with the problem of anti-gay harassment, General Clark chose to deny that any problem existed. In an op-ed article in the New York Times, a year after the murder, he stated that "There is not, nor has there ever been during my times here, a climate of homophobia on post."

In addition, he refused to meet with groups concerned about the welfare of gay soldiers, including a local gay community group, and the Servicemembers Legal Defense Network, a national organization.

Another of General Clark's most serious failure of leadership after the murder is the fact that, from all the evidence we have seen, he did not even once speak out against the specific problems of anti-gay harassment and anti-gay violence, or implement any training for the soldiers against it.

He did take general steps after the Winchell murder to address the quality of life for soldiers at Fort Campbell, and he reinforced existing programs on the need to treat all soldiers with "dignity and respect." These measures were helpful, but hardly sufficient to address the specific problem of anti-gay harassment.

Private Winchell's murder was an anti-gay hate crime, and it called for, at the very least, a clear and unequivocal statement by Fort Campbell's commanding officer that violence against homosexuals is wrong. According to the record, no such statement was ever made.

General Clark has been asked repeatedly for instances in which he spoke publicly about anti-gay harassment. In his response last November 6, 2002 to written questions, he listed a number of speeches, press conferences, and publications, but none of these examples dealt with the specific problem of anti-gay harassment.

For example, General Clark wrote that on January 14, 2000:

> I published an article in the post newspaper, The Fort Campbell Courier, in which I emphasized the quality of soldiers serving at Fort Campbell, and outlines the initiatives we had undertaken to eliminate anti-gay harassment. I also reinforced our longstanding policy of treating all soldiers with dignity and respect.

In fact the article itself contains no information regarding efforts to address anti-gay harassment—not even a statement that such harassment is wrong. The article includes only two references to homosexuality.

First, General Clark writes that he has requested a review and assessment:

> to determine whether any member of this command violated the Department of Defense Homosexual Conduct Policy in any interaction with PFC Barry Winchell.

Second, he writes that he has:

> issued a policy on the handling of discharges for homosexual conduct to ensure these matters preserve the privacy and dignity of individual soldiers.

There is nothing in the article about anti-gay harassment. It deals only with the "Don't Ask, Don't Tell" policy.

The article refers only to General Clark's efforts to improve barracks conditions generally and his "special emphasis" on the dignity of all soldiers. Much of the article is defensive in tone; General Clark writes that the soldiers at Fort Campbell are the "best we have ever had," that they are "intolerant of abuse of anybody for any reason," and that "leaders" at Fort Campbell "set the example through word and deed." He concludes with this sentence:

> This is the climate that exists at Fort Campbell, in contrast to which you have seen on TV and in the papers during these past few months.

This tone has characterized much of General Clark's public statements during the remainder of his command at Fort Campbell. On June 9, 2000, he said at a news conference that he objects:

> in the strongest terms to the way our soldiers, and the climate that embraces them, have been characterized.

At a Rotary Club meeting in March 2000—another event listed by General Clark as an example of his efforts to address anti-gay harassment—press reports, say that he:

> used the Rotary speech to lambaste the Kentucky New Era and other area newspapers

for printing an earlier story on his refusal to allow Servicemembers Legal Defense Network to place an advertisement in the post newspaper.

The ad had listed an anonymous hotline number for the Army inspector general's office and the telephone number for the organization. General Clark justified his decision to reject the ad on the ground that the inspector general's office had all the access it needed to soldiers on post. Newspaper reports of General Clark's Rotary Club speech contained no mention of any statement condemning anti-gay harassment.

I have repeatedly asked the Department to investigate this issue further, to find out whether in fact General Clark made any statements specifically addressing anti-gay harassment and anti-gay violence following the Winchell murder. But the responses of the Department have been inadequate.

In response to similar questions by the parents, the inspector general stated:

> During the 6 months following the murder, Major General Clark was personally involved in talking to Commanders at all levels about the anti-gay harassment.

There have been other cases where commanding officers have had to respond to tragedies, and they have done so in a variety of ways that demonstrate their leadership.

Many have drawn comparisons between General Clark's response in this case and General John Keane's response to the murder of African American civilians at Fort Bragg by racist soldiers. After these murders, General Keane held a 1-year anniversary remembrance and publicly offered his condolences. He met with the NAACP and the Anti-Defamation League to discuss the murders and consider ways to improve the racial climate.

General Keane offered very strong public statements against racism, and he implemented sensitivity training on the base. General Clark did none of this.

In all the services, discrimination against gays is codified in the ban on their service in military. In reporting anti-gay discrimination, soldiers face potential investigation, further harassment, and even discharge. This makes this population even more vulnerable to acts of harassment and violence, which makes it even more essential for leaders to act quickly and effectively in response to attacks on soldiers perceived to be gay.

In the recent controversy at the Air Force Academy, the senior leadership has been held accountable, from the Commandant of the Academy, to the Secretary of the Air Force. The Commandant of the Air Force Academy has been held responsible for the shortcomings of his subordinate commanders.

General Clark never held a single officer responsible for the command climate that led to the murder of Private Winchell. General Clark did not take responsibility for addressing the problem of anti-gay harassment at Fort Campbell after the murder. He should bear the ultimate responsibility for the climate that led to this tragedy and for not remedying that climate afterwards.

These are important questions that go to the heart of this officer's suitability for promotion to lieutenant general. The Senate deserves better information acting on such a controversial nomination.

I will just review for a few moments the difference between Fort Bragg and Fort Campbell. This is the difference, the comparison between General Keane's response to the murder of two African-American civilians and General Clark's response to the murder of PVT Barry Winchell. Fort Bragg:

> In December 1995, three White Fort Bragg soldiers murdered two Black North Carolina civilians. Then Fort Bragg commanding general, LTG John Keane, currently General Keane, did the following actions after the murder:
>
> At Fort Bragg, an on-base memorial service for "remembrance and reconciliation" was held 1 year after the murders. Lieutenant General Keane publicly communicated strong condolences.

On General Clark's actions after the murder, he declined to meet with the Winchell family, did not attend the Winchells' on-base memorial service held shortly following the murder, and did not hold any subsequent memorial events.

LTG John Keane invited the NAACP and the ADL to discuss the murders and work with the base to improve the racial climate. The local NAACP leader, James Florence, on the NAACP's relationship with Fort Bragg, said:

> Since [the murders] we have had a liaison with Fort Bragg. We can talk with them almost any time we need.

General Clark declined to meet with the gay groups, declined to meet with the legal defense funds, and declined to meet with gay veterans organizations.

There is a dramatic difference between two commanding officers and how they dealt with the hate crimes. General Keane's response to the soldiers after the murders? LTG John Keane and the Army launched an aggressive program to "weed skinheads and extremists out of the military." General Keane said:

> We did not see this cancer coming. We missed the signs, symbols, and manifestations of extremism.

General Keane implemented sensitivity training at Fort Bragg regarding race relations. He said:

> We've educated our people, in terms of what to look for and how to deal with it, and when we find soldiers whose attitudes and behavior are disruptive to good order and discipline of our unit, we are going to act.

General Clark publicly stated there was not a climate of homophobia on Fort Campbell, did not make any public statements or issue any written directives and never publicly communicated an appreciation of the harm caused by the antigay murder.

There are dramatic differences between how an officer dealt with this, who continues to serve with great distinction in our service, and the nominee.

Finally, here is the comparison between General Clark's response to the murder of PVT Barry Winchell and the response of the Air Force Academy leaders on sexual assaults. At the Air Force Academy during the period of 1993 through 2003, 60 cases of sexual assault were reported. Earlier this year, LTG John Dallager, the academy commandant from 2000 to 2003, lost his third star and retired as a major general because the Secretary of the Air Force determined he "did not exercise the degree of leadership in this situation that we expect of our commanders."

In September 2003, an independent panel commissioned to review the climate situation issued a report supporting the demotion of General Dallager and recommending an additional review to assess the actions taken by other leaders and holding individuals accountable.

On General Clark, in July 1999, two Fort Campbell soldiers murdered Barry Winchell because they believed him to be gay. This murder occurred on the base, in the barracks. This murder and additional problems with antigay harassment occurred during the tenure of Commander Clark and there has been no response.

My final point on the ultimate responsibility:

> General Dallager is the Academy leader—[this was the finding]—bearing ultimate responsibility for the failure to adequately respond to sexual assault issues.
>
> The Panel concurs with the decision . . . to retire General Dallager. . . .

Retire him.

On the ultimate responsibility, Army leadership doctrine states that commanders:

> . . . have to answer for how their subordinates live and what they do after work.

That is in the field manual.

In a July 19, 2000 article in the New York Times, General Clark stated:

> There is no, nor has there ever been during my times here, a climate of homophobia on post.

General Shinseki, on July 21, 2000, stated in a DoD News Briefing:

> We take full responsibility for what happened to Private Winchell. . . .

There is General Shinseki taking responsibility. There is a general.

> We take full responsibility for what happened to Private Winchell.

General Clark has failed to accept similar responsibility in this case and doesn't deserve the promotion.

On another matter, I believe there is some remaining time.

Mr. WARNER. Mr. President, I was going to reply to some of the points my colleague from Massachusetts made. As you well know, the General——

Mr. KENNEDY. May I reserve the remainder of my time? Is this on the Senator's time?

Mr. WARNER. Yes.

Mr. KENNEDY. Since I had the floor, I want this additional comment I would like to make on another subject, but I also want to respond to the questions of the Senator, so I will be glad to do whatever you would like.

Mr. WARNER. Mr. President, parliamentary question: We are on this nomination with 2 hours of debate and 1 hour each divided equally. I manage this side and Senator KENNEDY manages that side. If the Senator wishes to go on to another matter, I am not sure how the Senator wishes to handle this.

Mr. KENNEDY. Mr. President, it is not difficult, I think, since I have 40 minutes. I will use my remaining time and ask that my comments be inserted into another part of the RECORD so it doesn't interfere, and then I will be glad to answer any questions of the Senator.

Mr. WARNER. Mr. President, I wonder if the Senator from Massachusetts will accommodate the Senator from Virginia. I would like to make some comments with respect to his important remarks while they are fresh in the minds of the listeners. I think it is appropriate that I take a little time. Then, as far as I am concerned, we will both yield back our time and the Senator from Massachusetts can take some time on another matter, if he wishes. Is that helpful?

Mr. KENNEDY. How long did the Senator plan to speak?

Mr. WARNER. I will summarize my comments in about 5 or 6 minutes, at the conclusion of which we could both yield our time.

Mr. KENNEDY. Mr. President, if the Senator wants to address the Senate first, Senator DAYTON was yielded 15 minutes.

Mr. WARNER. That is under the order. I didn't realize he just walked in the Chamber. I am trying to do the best I can to accommodate everybody and manage the time efficiently. But I do desire at this point in time an opportunity to reply to my colleague from Massachusetts.

Mr. KENNEDY. Mr. President, I will yield the floor for that purpose and ask unanimous consent that at the conclusion I be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, the Senate had a comparison between how General Keane and General Clark handled problems within their respective commands. General Clark was the convening authority, and the tragedy that occurred to which the Senator referred, and which is the subject of some comments here today, came up through the military command, was handled by the military courts and the military authorities, and adjudicated. As the convening authority, I think he took some prudent steps to make certain that in no way could he be accused of command influence. The tragedy in General Keane's command was tried in the civilian courts, and as such he was not the convening authority. He then had the opportunity to do some things which I believe General Clark did not.

Out of this tragedy, there were lessons learned in the Army. I think some important new policy matters were put into the regulations. Otherwise, not all was lost in this tragic situation.

I ask unanimous consent to have printed in the RECORD the Army Inspector General's Report on Fort Campbell at the conclusion of my remarks. That is the first section of it that addresses a number of points that are raised by the Senator from Massachusetts.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. WARNER. Mr. President, I believe from reading this report—not in the words of the Senator from Massachusetts that no one was trying to stop these tragic situations—that it was generally a positive command climate. There were some isolated instances of harassment, sexual in nature. I concede that is in the RECORD. But the total quantity of these incidents, in my judgment, was not indicative of a breakdown in the command responsibilities under General Clark.

General Clark, as I said, came to the committee on two occasions and subjected himself quite willingly—indeed, under oath; I put him under oath at the second hearing—and he responded to the cross-examination, much of which the distinguished colleague from Massachusetts has raised today.

In conclusion, he has an extremely impressive record of military service stretching back to 1970. Much of that has been covered by my colleague from Kentucky.

Mind you, Fort Campbell is an installation that can at times host a daily population of 24,000 military personnel and over 200 company-sized units.

In July of 1999, this brutal murder was committed at Fort Campbell by an intoxicated 18-year-old soldier who used frightful force against PFC Barry Winchell. This resulted in his death, allegedly while he was sleeping. No one underestimates the seriousness of this crime.

Senator LEVIN and I met in May of this year with the parents of Private First Class Winchell. Like General Clark, we extended our sympathy and sorrow for their loss. The committee listened very closely to the assertions they made about a lack of appropriate treatment by General Clark and shortfalls in discipline and a secure environment at Fort Campbell during the time their son was stationed there.

At the conclusion of the meeting, Senator LEVIN and I asked Private First Class Winchell's parents to put the questions and concerns they had raised with us at that meeting in a letter, and we would obtain answers from the Department of Defense—specifically, the Department of the Army—and share those answers with them. That we did. The parents sent us a letter and Senator LEVIN and I forwarded these questions to the Department. In September, the Department responded to questions and expressed continued support for Major General Clark's nomination.

I ask unanimous consent that all of these matters be printed in the RECORD at the end of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. WARNER. Mr. President, not only the steps taken by the Armed Services Committee, together with my distinguished colleague Senator LEVIN, but indeed by the Department of the Army into other areas overall reflect, I think, that our committee carefully looked into this matter and that the Department of the Army was responsive to the questions raised by my colleagues.

Mr. President, MG Clark is highly qualified for promotion to the rank of lieutenant general assignment as Commander of the Fifth United States Army. He was first nominated for this position in the fall of 2002. He has appeared before the Senate Armed Services Committee in executive session on two separate occasions, and, on both occasions conducted himself with deferrence and respect for the members of the committee, and with appreciation for the Constitutionally-based advise and consent power—and responsibility—of the Senate. Not surprisingly, General Clark has the full support of the Chief of Staff of the Army, General Schoomaker, and the civilian leadership of the Army for this promotion.

General Clark has an extremely impressive record of military service stretching back to his commissioning in 1970. General Clark's military record includes combat service in Viet Nam for which he was awarded the Bronze Star with Combat "V." He has served as a Battalion Commander and a Brigade Commander with the renowned "Screaming Eagles" of the 101st Airborne Division. In this capacity, he participated in Operations Desert Shield and Desert Storm. Major General Clark later served as Chief of Staff for the 101st Airborne Division, and from 1998 through 2000 as Commanding General of the 101st Airborne Division and Fort Campbell, KY.

Fort Campbell is an installation that can, at times, host a daily population of over 24,000 military personnel and over 200 company sized units. In July 1999, a brutal murder was committed at Fort Campbell by a drunken, 18-year-old soldier who bludgeoned Private First Class Barry Winchell to death in his sleep. This tragic and senseless crime was not foreseeable—not foreseeable by PFC Winchell's company commander and certainly not foreseeable by Major General Clark. General Clark capably and competently fulfilled his responsibility as General court-Martial convening authority in this murder trial and took steps necessary to ensure that the perpetrator of this crime and an accomplice were brought to justice. This was accomplished and the soldier who murdered PFC Winchell is serving a life sentence.

Senator LEVIN and I met in May of this year with the parents of PFC Winchell. We, like General Clark, extended our sympathy and sorrow for their loss. As leaders of the committee, we listened very closely to the assertions they made about a lack of appropriate treatment by General Clark, and shortfalls in discipline and a secure environment at Fort Campbell during the time their son was stationed there.

At the conclusion of our meeting, Senator LEVIN and I asked PFC Winchell's parents to put the questions and concerns that they had raised with us in a letter, and we would obtain answers from the department and share those answer with them. The parents did so, and we sent their questions to the department in June.

In late September, the department responded to the questions, and expressed continued support for Major General Clark's nomination. The Army undertook to conduct inquiries through the Army Inspector General in response to the questions raised by the parents, and, I believe, did respond fully to the issues that were raised.

In late September, Senator LEVIN and I forwarded the Department's response to PFC Winchell's parents inviting them to respond. They did so on October 8th. On October 10, Senator LEVIN and I forwarded their letter to the department together with additional questions from Senator KENNEDY requesting comment. We received a response from secretary Abell and Acting Secretary Brownlee on October 21st and, shortly thereafter, we conducted our second executive session.

The committee compiled a very thorough record about all the issues raised by Senator KENNEDY and others. I will not go into specific details, but it is important to note that the Army Inspector General conducted an investigation into the circumstances surrounding the July 1999 death of PFC Winchell after the court-martial was completed, and the IG found no basis to support accusations of dereliction of duty and failure of leadership by General Clark. To the contrary, the investigation found a positive command climate at Fort Campbell and refuted the assertions that Major General Clark should have done more or could have prevented this tragedy.

I am very concerned about ensuring accountability of military officers, and I have insisted at looking very closely at the actions of military leaders who are entrusted with command. I am satisfied that General Clark did not fail in his command responsibility and is fully deserving of promotion. I urge my colleagues to support this nomination.

EXHIBIT I

EXECUTIVE SUMMARY

Background

On 5 July 1999, Private First Class (PFC) Barry Winchell, D Company, 2nd Battalion, 502nd Infantry Regiment, Fort Campbell, Kentucky, was murdered by a fellow soldier. Following this incident, and amid claims that PFC Winchell was murdered because he was or was perceived to be a homosexual, allegations arose concerning the command climate at Fort Campbell particularly as it related to the command's enforcement of the Department of Defense (DOD) Homosexual Conduct Policy [hereinafter the Policy]. The Army pledged early on to assess the command climate and investigate the alleged violations of the Policy; however, to avoid interfering in the individual judicial proceedings underway, the Army could not begin that effort until the conclusion of the two courts-martial arising out of PFC Winchell's death.

On 10 January 2000, the Secretary of the Army (SA) directed that the Department of the Army Inspector General (DAIG) conduct an investigation into the facts and circumstances surrounding the death of PFC Winchell as it related to the Policy (enclosed) [hereinafter referred to as directive]. In addition, the DAIG was tasked to conduct an assessment of the command climate then existing in PFC Winchell's unit prior to his death and an overall assessment of the command climate existing at Fort Campbell prior to PFC Winchell's death, specifically as it related to the Policy. Finally, the DAIG was directed to provide an overall assessment of the Department of the Army's (DA) implementation of the Policy. The Fort Campbell assessment provided the initial data for the Army assessment of the Policy. The Army IG will continue to assess these issues as part of their continuing inspection program.

Task Force Composition, Training, and Methodology

A Task Force of 27 individuals was established to conduct the investigation and assessment in accordance with the directive. The Task Force was composed of inspectors general (IGs), one legal advisor, and subject matter experts. During early February, the Task Force received training from the subject matter experts in the areas of the Policy itself, Equal Opportunity (EO), interview techniques, and group dynamics. Further, the Task Force conducted mock individual interviews and group sensing sessions in order to validate the assessment strategy. Finally, at the request of the Servicemembers Legal Defense Network (SLDN), key leaders of the Task Force met with representatives of the SLDN to identify specific concerns of the organization. The SLDN is a national legal aid organization that assists soldiers affected by the Policy.

The scope of the assessment included the following: Interviews with the commanding general, 101st Airborne Division (Air Assault), both assistant division commanders who were occupying those positions in July 1999, and interviews with 47 brigade and battalion-level commanders from both divisional and nondivisional tenant units. In addition, the Task Force conducted 68 sensing sessions composed of soldiers randomly-selected by utilizing the last two digits of the social security number. In these sessions, 568 soldiers were interviewed and 1,385 command climate surveys were administered throughout Fort Campbell. With respect to the sensing sessions, it should be noted that all of these soldiers were assigned to Fort Campbell from the period of April 1999 through February 2000. In addition, participants who completed a command climate survey were informed that the responses would be anonymous.

In addition to interviews conducted on Fort Campbell, the investigation team conducted on-site interviews at Fort Benning and Fort Leonard Wood, as well as telephonic interviews with soldiers assigned to Korea, Fort Drum, Fort Knox, Fort Jackson and the United States Military Academy. Civilian members of the Fort Campbell community as well as former members of the Army were also interviewed by the investigation team.

Finally, Task Force members gathered relevant data through on-site inspections and additional periodic spot checks of unit recreation centers, public use areas, and barracks living areas. Finally, the Task Force secured information by directly observing on-post soldier events to include physical fitness training sessions.

History and Background of the Policy

On 29 January 1993, the President directed the Secretary of Defense (SecDef) to review DOD policy on homosexuals in the military. On 19 July 1993, the SecDef directed the following: applicants for military service as well as current servicemembers would not be asked nor required to reveal their sexual orientation; sexual orientation would not be a bar to entry into the service or continued service unless manifested by homosexual conduct; and commanders and investigating agencies would not initiate investigation solely to determine a member's sexual orientation. On 30 November 1993, Congress enacted 10 United States Code (USC), Section 654, policy concerning homosexuality in the armed forces.

ASSESSMENT RESULTS

Finding 1

Objective: Examine alleged violations of the DOD Homosexual Conduct Policy during the period preceding PFC Winchell's death.

Findings: 1. A preponderance of evidence indicated that two noncommissioned officers (NCOs) in PFC Winchell's chain of command and a fellow private (PVT) inquired into PFC Winchell's sexual orientation. In addition, at least one NCO referred to PFC Winchell as a "faggot."

2. In spite of this, however, the evidence gathered demonstrated that the chain of command was proactive in terminating the sporadic incidents of derogatory or offensive cadences during unit marches and physical training (PT) formations.

Summary: Evidence obtained from Fort Campbell indicated that in late May 1999 PFC Winchell asked an NCO from his unit, D Company, 2nd Battalion, 502nd Infantry Regiment, "What would happen if a guy in the military was gay?" In responding to that question, the NCO asked PFC Winchell if he was a homosexual. Testimony revealed that the NCO asked the question in an effort to offer assistance to PFC Winchell in getting professional guidance or assistance in addressing the issue.

Evidence gathered indicated that an NCO in PFC Winchell's unit referred to PFC Winchell as well as other members of the unit as "faggots" in describing those who failed to perform to his standards. On one occasion, the NCO referred to PFC Winchell as a "faggot" after PFC Winchell reported to work in what appeared to be an intoxicated state.

The preponderance of evidence demonstrated that PFC Winchell's chain of command did not condone demeaning or derogatory cadences made during the conduct of unit PT. In those instances where inappropriate remarks were made, company leaders made on-the-spot corrections.

Finding 2

Objective: Determine whether the local IG's office responded appropriately to any complaints of violations of the DOD Policy it may have received prior to PFC Winchell's death.

Finding: The Fort Campbell IG office properly responded to the only known complaint of a violation of the Policy prior to 5 July 1999 when they followed standard Army IG guidance by recommending PFC Winchell provide his commanders the opportunity to resolve his complaint prior to direct IG intervention with the command.

Summary: Immediately after the NCO called PFC Winchell a "faggot," another NCO escorted PFC Winchell to the IG office to file a complaint. Upon being advised that he should provide his commander the first opportunity to address the issue, PFC Winchell was then escorted to his company commander. Evidence obtained indicated that the company commander counseled the NCO regarding his inappropriate remarks.

Finding 3

Objectives: 1. Conduct an overall assessment of the command climate existing at Fort Campbell prior to 5 July 1999, specifically as it relates to the application and enforcement of the DOD Policy.

2. Assess the degree to which PFC Winchell's chain of command understood the application and enforcement of the DOD Policy.

3. Conduct sensing sessions with randomly-selected members at Fort Campbell to determine the degree to which members felt they understood the Policy and the degree to which the Policy was being enforced.

4. Assess the command climate of D Company, 2nd Battalion, 502nd Infantry Regiment before 5 July 1999.

Findings: 1. Through sensing sessions, interviews, and surveys across Fort Campbell, it was determined that the command climate at Fort Campbell before 5 July 1999 was a positive environment with exceptions related to medical support, on- and off-post housing, after-duty-hours recreation, and shortages of personnel in authorized grades. Most soldiers indicated satisfaction with their mission, training, and organizational leadership.

2. With respect to the Policy, it was clear that the chain of command, from commanding general (CG) through company leaders, responded appropriately to matters with respect to enforcement of the Policy.

3. The specific assessment of D Company, 2nd Battalion, 502nd Infantry Regiment's

command climate prior to 5 July 1999 was determined to be poor due primarily to leadership failure of a senior NCO, perceptions pertaining to underage drinking, and other factors beyond the direct control of the company, such as shortages of personnel in authorized grades and quality of life (QOL) issues.

Summary: In evaluating the overall command climate at Fort Campbell, personnel were asked to compare the command climate as it existed in February 2000 with the command climate the year prior. Overall, personnel indicated that the command climate was favorable. The majority of personnel questioned believed that the leadership at Fort Campbell was effective and concerned and treated personnel favorably. In addition, the majority of personnel questioned felt that the chain of command responded appropriately to issues presented to them. Finally, personnel believed that the leadership led by example.

QOL issues contributed to low morale at Fort Campbell. Specifically, issues relating to the conditions in the barracks, problems associated with medical care at Fort Campbell, and treatment received by soldiers from the civilian employees and individuals in the surrounding civilian communities were the major areas of concern to those questioned.

In general, the application and enforcement of the Policy did not appear to be a problem at Fort Campbell. Most leaders took appropriate action in instances where application of the Policy was warranted and appeared to be operating well within the confines of the Policy. Soldiers acknowledged, however, that the joking and bantering that had occurred prior to July 1999 on a regular basis could be viewed as harassment. Following training on the Policy and Consideration of Others (COO), soldiers are now more apt to reconsider uttering phrases that would likely be considered harassment.

However, the command climate of D Company, 2nd Battalion, 502nd Infantry Regiment, in the period prior to PFC Winchell's murder was poor. In addition to the QOL issues identified above, soldiers in PFC Winchell's unit believed that personnel shortages and underage drinking in the barracks to the poor command climate. The most significant factor contributing to the poor command climate, however, was the presence of an abusive NCO in a leadership position in the unit.

Finding 4

Objective: Review and resolve allegations by Private Second Class (PV2) Javier Torres and others of specific violations of the Policy.

Summary of Findings: The preponderance of evidence did not support PV2 Torres' allegation that he was personally harassed at Fort Campbell; however, evidence does support his allegation of routine personal harassment at Fort Benning and occasional personal harassment at Fort Knox. The preponderance of evidence supported PV2 Torres' allegations that during initial entry training (IET) at Fort Benning, one drill sergeant improperly addressed or referred to him as a homosexual, and another PVT provoked a fight with him by routinely taunting him and referring to him as a homosexual. The evidence also supported PV2 Torres' allegation that at Fort Campbell a senior NCO improperly used terms derogatory to homosexuals while trying to motivate male soldiers to perform to standard and two NCOs improperly used terms derogatory to homosexuals while singing cadences during a physical training run. It did not support his allegations that an NCO in his unit at Fort Campbell improperly used anti-homosexual language while conducting training on the Homosexual Conduct Policy, that a soldier at Fort Knox improperly inquired into his sexual orientation, and that an NCO in his unit at Fort Campbell improperly inquired into his sexual orientation.

The preponderance of evidence supported allegations that an NCO at Fort Campbell read a joke to soldiers that was demeaning to homosexuals; anti-homosexual graffiti was present on a wall of a latrine in a unit area, a latrine in a public recreation area, and a latrine in a work area at Fort Campbell; and a nongovernmental civilian, not a soldier, sent an e-mail containing anti-homosexual language to a former soldier at Fort Campbell. The preponderance of evidence did not support allegations that anti-homosexual comments made by soldiers at Fort Campbell were the "norm," soldiers made threatening and inappropriate comments during training on the Policy, an e-mail with a sound wave file attached that contained language demeaning to homosexuals was circulated at Fort Campbell, and an NCO's chain of command improperly inquired into his sexual orientation.

Finding 5

Objectives: 1. Assess the degree to which PFC Winchell's chain of command understood the application and enforcement of the Policy.

2. Conduct an overall assessment of the command climate that existed then at Fort Campbell, specifically as it relates to the application, enforcement, and training conducted on the Homosexual Conduct Policy.

3. Conduct sensing sessions with randomly-selected military members at Fort Campbell to determine the degree to which members felt they understood the Policy and the degree to which they believed the Policy was being enforced.

Finding: There was no sustainment training conducted at Fort Campbell on the Policy before 5 July 1999 because there was no clearly articulated requirement on how often personnel were to be trained and who was to receive the training. The published guidance indicated: "All officers and enlisted personnel of the Active Army and Reserve Components will receive briefings upon entry and periodically thereafter." Institutional training of personnel on the implementation and enforcement of the Policy was ineffective. Most officers, NCOs, and soldiers at Fort Campbell lacked an understanding and working knowledge of the Policy prior to 5 July 1999.

Summary: Nearly all soldiers, NCOs, and officers at Fort Campbell had received training on the Policy at some point in their military career. The training that was conducted, however, did not contribute meaningfully to an understanding or working knowledge of the Policy.

As a result, most personnel did not demonstrate a clear understanding of their responsibilities under the Policy and the standards contained within the Policy.

Finding 6

Objective: Assess whether current training materials adequately convey the substance of the Policy.

Findings: 1. Currently, commanders, leaders, and soldiers at Fort Campbell do not have a clear understanding of the Policy because training and informational materials do not adequately convey the substance of the Policy.

2. Training and informational guidance contain key words (Don't Ask, Don't Tell) that are not defined in doctrine.

Summary: Based on interviews with commanders, leaders, and soldiers, the results of the command climate survey, and a review of records and files at Fort Campbell, it was determined that the training provided on the Policy is not clearly written, not tailored to specific audiences based on rank and duty positions, fails to adequately convey the substance of the Policy, and is presented in a format which does not foster open and meaningful discussion on the issues.

Informational materials distributed to Army personnel, to include a Hot Topics pullout in Soldiers Magazine and a trifold pamphlet, suffered from the same defects according to personnel. The use of the terms "Don't Ask" and "Don't Tell" in the informational materials without providing definitions to explain these phrases created a large amount of anxiety and confusion.

Finding 7

Objective: Provide an overall assessment of the DA's implementation of the DOD Policy by assessing:

1. Whether the Policy is being fairly applied within units.

2. Whether there are currently any other perceived deficiencies in the Policy which preclude effective training, application, and enforcement of the Policy.

Findings: 1. The Policy is being fairly applied at Fort Campbell; however, the Policy with respect to discharges and substantial investigations is not being implemented as intended because commanders perceive an unacceptable risk to the unit and soldier by retaining soldiers who make admissions of homosexuality.

2. Commanders have difficulty in balancing their responsibility to maintain morale, unit cohesion, good order, and discipline while enforcing the Policy. They perceive that the current implementing instructions restrain their latitude to conduct inquiries and preclude them from exercising reasonable discretion in initiating inquiries.

3. AR 600-20 and subsequent Army guidance and messages regarding the reporting of harassment based on homosexual orientation do not adequately advise soldiers where or how to report harassment, and do not adequately advise commanders and agencies how to process these complaints.

Summary: The Task Force determined that the Policy was being fairly applied by commanders at Fort Campbell. The soldiers discharged under Chapter 15 were overall satisfied with their treatment during the process. The Fort Campbell commanders expressed concern in complying with the Policy. They believe it places them in a professional dilemma by requiring them to choose between retention of a soldier who declares a propensity for homosexual conduct and discharge when the truthfulness of his statement of homosexuality is suspect. They are reluctant to conduct inquiries of the truthfulness of an admission because of the perceived risk to both the unit and the individual soldier.

Commanders stated to the Task Force that they had difficulty in balancing the enforcement of the Policy and the requirement to maintain morale, unit cohesion, good order, and discipline. Commanders expressed concerns that the Policy precludes them from conducting an inquiry when presented with credible information of behavior that demonstrates a soldier may have a propensity to engage in homosexual conduct. They believe the Policy precludes them from exercising reasonable discretion in determining the necessity to conduct an inquiry.

Information gathered by the Task Force determined that guidance on reporting harassment based on sexual orientation by soldiers and investigation into such harassment by leaders is unclear and confusing. Soldiers and leaders expressed frustration with knowing how and to whom to report harassment and how to handle incidents of this type of harassment. They expressed the belief that all harassment should be dealt with uniformly.

In summary commanders and leaders at all levels have an inherent responsibility for establishing a command climate that promotes good order and discipline essential to accomplishing the Army's mission. This responsibility includes promoting unit cohesion by identifying and eliminating harassment before it occurs or results in reports of violations of Army Standards.

EXHIBIT II

OFFICE OF THE UNDER SECRETARY
OF DEFENSE
Washington, DC, March 11, 2003.

Hon. JOHN W. WARNER,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in reference to the nomination of Major General Robert T. Clark, United States Army, for appointment to the grade of lieutenant general and for assignment as Commanding General, Fifth United States Army that the President recently sent to the Senate. The President previously forwarded Major General Clark's nomination to the Senate on September 10, 2002; however, his nomination was not acted upon by the Senate prior to the Senate's sine die adjournment on November 22, 2002.

The Secretary of Defense considered reported information concerning Major General Clark. Major General Clark was in command of the 101st Airborne Division (Air Assault) and Fort Campbell at the time Private First Class Barry Winchell, a member of the command who was perceived to be homosexual, was murdered in his barracks by another member of the command. The Department of the Army Inspector General conducted an investigation into the facts and circumstances surrounding the death of Private First Class Winchell and the Inspector General conducted a command climate assessment at Fort Campbell. Neither the investigation nor the command climate assessment determined that Major General Clark was culpable. We previously provided you with a copy of the Department of the Army Inspector General's Report and this incident was addressed in detail at an Executive Session of the Senate Armed Services Committee in the 107th Congress.

I have attached a copy of the following information for your consideration: chronology of the actions and initiatives taken by the Department of Defense and the Department of the Army immediately following the death of Private First Class Winchell; a detailed chronology of published policies and actions of the dignity and respect for all soldiers directed by Major General Clark while serving as the Commanding General of the 101st Airborne Division and Fort Campbell; and a list of initiatives implemented by Major General Clark with respect to Homosexual Conduct Policy subsequent to the death of Private first Class Winchell.

After careful review of all information, the Secretary of Defense and the Secretary of the Army continued to support Major General Clark for appointment to the grade of lieutenant general and for assignment as Commanding General, Fifth United States Army. When considered in light of Major General Clark's past performance and future potential, we believe proceeding with the nomination is clearly in the best interest of the Department of the Army and the Department of Defense.

The Department appreciates your assistance in facilitating the confirmation of pending nominations.

Sincerely,

CHARLES S. ABELL,
Principal Deputy.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, I thank the chairman of the committee, Senator WARNER, for all of his courtesies during the consideration of this nominee. I mentioned during my comments that we wanted to get additional answers. He has been extremely accommodating to those of us who raised the questions, as he always is as the chairman of the committee. I thank him for his fairness and ensuring that all of those who had concerns were able to conduct our concerns in accordance with the rules. I thank him very much for all of his courtesies.

Mr. WARNER. I thank my colleague.

Mr. KENNEDY. Senator BUNNING I know has a great interest in this. I thank him also.

I will address the Senate briefly on another matter which is of importance and consequence to the Senate. Then I will yield the time because I know my colleague wants to address this issue. Then we will be prepared to move to a vote.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 17 minutes of the 40 minutes.

Mr. KENNEDY. I thank the Chair. If you would let me know when 15 minutes have been used, I would appreciate it.

CONFERENCE REPORT ON MEDICARE

Mr. President, in a very few days we are going to be confronted with the conference report on Medicare. There is no more important issue facing the Congress and no more important issue to senior citizens and their families. Every senior citizen, every child of senior citizens, and every American should understand that this legislation must be defeated or drastically modified.

This conference report represents a right-wing agenda to privatize Medicare and to force senior citizens into HMOs and private insurance plans. The day it is implemented, it will make millions of seniors worse off than they are today. It is a cynical attempt to use the elderly and the disabled's need for affordable prescription drugs as a Trojan horse to destroy the program on which they have relied for 40 years.

It is important to understand how we got to this point.

First of all, we all understand that Medicare is one of the most beloved programs this Nation has ever enacted. It is depended upon by seniors all over this country. It is a program which is relied on and depended upon, and it works. If there is a failure in the Medicare Program, it was not to have included a prescription drug program in the legislation we passed.

That really is not what this current conference report is all about. This conference report is going to threaten Medicare in a very significant and important way—in a way that those of us who believe in Medicare should not permit.

We started in the Senate with a bipartisan bill to expand the prescription drug coverage. We also provided additional choices to private insurance coverage for senior citizens as the President requested. The bill was not a solution for the problems senior citizens face. It only provided about $400 billion between now and 2012 toward the prescription costs that will total $1.8 trillion. But it was a start, a downpayment. It was a fair and balanced compromise that protected Medicare and protected senior citizens. That is why it passed by 76 votes. Only 11 Democrats voted no; only 10 Republicans voted no.

The House took a different course. They passed a bill that was designed to radically alter Medicare, not for the benefit of the elderly. That is why it passed by a slim partisan majority of one vote. Now the conference has been hijacked by those who want to radically alter Medicare, privatize, to voucherize it, to force seniors into HMOs and into private insurance plans.

The bill the Senate will consider shortly is not a bill to provide a prescription drug benefit. It is a bill to carry out the right wing agenda and asks the elderly to swallow unprecedented changes in Medicare in return for a limited and inadequate small prescription drug benefit.

This conference report is so ill-conceived, not only does it put the whole Medicare Program at risk, it makes 9 million seniors, almost a quarter of the Medicare population, worse off than they are today. If this bill passes, the country will want to know: Where was their Senator when the Senate debated a bill that left a quarter of all seniors with worse drug coverage than before the bill passed? Where was their Senator when the Senate debated a so-called premium support demonstration that jacked up senior citizens' premiums—senior citizens who live on a fixed income, who have a median income of about $14,000—starting us down the road to the unraveling of Medicare? Where was their Senator when the Senate debated a bill that stacked the deck against Medicare with a $12 billion slush fund for PPOs and much higher payments for HMOs than standard Medicare? Where was their Senator when the bill gave away $6 billion to health savings accounts that could jeopardize whole systems of health insurance?

On issue after issue after issue after issue, this report abandons the bipartisan Senate bill and capitulates to the partisan right-wing House bill. On some issues it is even to the right of what the House passed.

One of the most important of these destructive changes is a concept called premium support. It should really be called insurance company profit support or senior citizen coercion support. It replaces the stable, reliable, dependable premium that senior citizens pay for Medicare today with an unstable, unaffordable premium.

Under premium support, the administration's own estimates show the average Medicare premiums will initially jump 25 percent. That is the administration's estimate. Several years ago the estimate was a whopping 47 percent.

The truth is, no one really knows how high the Medicare premiums could rise. But rise they will. But we do know this. Over time, the increase will become higher and higher and higher and higher. That is just average premiums. Under premium support, how much you pay will depend on where one lives, and the amount could change dramatically from year to year. In Florida, you will pay $900 in Osceola and $2,000 if you live in Dade County. This chart demonstrates the price of premium support. This is not my estimate of what the premiums are going to be. This is the estimate of the Medicare actuaries. If you live in Dade County, you will pay $2,050; if you live in Osceola, you will pay $1,000, twice as much. Explain that to someone who has a house in Dade County when they find out their neighbor is paying half of what they are paying because of premium support. This is just the beginning.

Premium support is a vast social experiment using senior citizens as guinea pigs. If it works as the proponents intend, it will raise the premiums in Medicare dramatically and force senior citizens to join HMOs and PPOs to get prescription drugs. Why would anyone want to make the destructive changes to the Medicare Program that have served senior citizens so well for 40 years? The answer is a radical ideology. They say Medicare is bad. HMOs and PPOs are good.

There is no mystery here. We know what this is all about. The principal supporters of premium support are those people who are strongly opposed to Medicare. Many of our colleagues—our friends, but our political adversaries—want to see the Medicare system withdrawn or destroyed. What do they support? Premium support. What has been accepted in this conference? Premium support.

Some of the supporters of this program claim it's just a demonstration—nothing to get excited about. But it's not a demonstration. Under the terms of the demonstration, 7 million Americans could be forced into the program. Half the States have local areas where senior citizens could be forced to take part in this demonstration.

And that's just today. Tomorrow it will be 10 million senior citizens, or 20 million, or the whole country. People say we can change it. Change it? We will have to pass a law to change it. We will have to come to the Senate and the House of Representatives to change it.

This program will drain healthy seniors from Medicare and leave behind those who are sick and need help the most and it will send premiums for those who remain in traditional Medicare up through the roof. People who support this program make no secret what they want to do. They are on record as saying that Medicare is outdated and should be scrapped and seniors should be forced into HMOs. That is the same philosophy the President embraced when he initially proposed to give senior citizens a drug benefit only if they joined an HMO or PPO. Remember that? That is what this President wanted in March of this year. You only get the prescription drug program if you left the Medicare system and joined. We have carried that view forward with this program. I respect their opinions; but they should not use a prescription drug program as a Trojan horse to foist a bad idea on senior citizens.

The second way this program privatizes and voucherizes Medicare is by providing vast subsidies to the private sector at the expense of Medicare. Payments to the private sector will be 109 percent of the payments to Medicare for the private companies. If we want competition, can someone explain to me why we have to give 109 percent of what we are giving to Medicare to the private companies? Who is paying for those billions of dollars? It is the Medicare population. They have paid in. They are paying in. They are the ones who will pay the 109 percent.

I thought competition was supposed to be an even playing field. Not in this bill. Medicare is at one level; the HMOs are at 109 percent of Medicare. That is what they are getting. Medicare overpays by 16 percent because HMO enrollees are healthier. That is according to the CMS, the governmental institution that reviews these statistics. They find out seniors in private plans are 16 percent healthier than those in traditional Medicare. We ask for a level playing field yet they get 109 percent of what Medicare receives. And the people they are caring for are a good deal healthier than those in Medicare.

It does not stop there. The private plans have an additional $12 billion slush fund in case they are having difficulty. The 109 percent is not enough. They have a healthier population. But still, if you need some help, just come my way. We have $12 billion here with which to reach out and help you.

Medicare will pay at least 25 percent more to insurance companies for every senior citizen who joins an HMO and PPO than it would cost to care for the same person in Medicare. That is competition? That is competition, my friends? That is competition? That is what is in this conference report.

The Medicare trust fund, which today's retirees paid into and rely on, will be robbed to lavish billions of dollars on HMOs. That money, that 25 percent additional premium, ought to be invested right back in terms of the drug program for our seniors.

There is no truer indication of a nation's priorities than the investments it makes. The legislation the Senate considers today squanders that historic opportunity with reckless disregard for the Nation's health.

No provision in the bill reveals its warped priorities more clearly than the $12 billion slush fund to lure HMOs into Medicare.

Let's see if I have the reasoning behind this fund right. The supporters of this legislation are so convinced HMOs can provide health care to senior citizens more efficiently than Medicare that they have given HMOs a $12 billion payoff so they can compete. If they are so efficient, why do they need a handout?

I guess the sponsors believe the 9-percent reimbursement bonus HMOs already get is not enough, and that is on top of the 16 percent boost HMOs get from serving a healthier population. It is a good thing HMOs are so efficient or we might have to bleed Medicare completely dry to pay for them.

I wonder which HMO will be the lucky winner for the $12 billion Government handout. Will it be United Health Group, which made $1.4 billion last year? Or maybe the $12 billion lottery winner will be WellPoint, whose profits last year were $703 million, and whose CEO made $22.4 million. Perhaps the sponsors of this legislation think he needs a handout to make ends meet.

Anyone who reads the bill and comes to these provisions setting up this slush fund should be sickened at what they see. I challenge the supporters of this legislation to go to a senior center in their State, to go to the coffee shop on Main Street, to go to the churches and explain to the seniors they meet why their Medicare benefits are being stinted to give a $12 billion handout to HMOs. Explain to them why, with all the Medicare improvements that could be made with $12 billion, this bill decided the best use of that money is to inflate the profits of an HMO industry that is expected to make $6 billion this year.

This bill not only undermines Medicare, we find 6 million senior citizens and disabled people on Medicaid—the poorest of the poor—will be worse off. Their out-of-pocket payments will be raised, and their access to drugs could be curtailed.

Two to 3 million people with good employer retiree drug coverage will lose it, according to CBO estimates. This means almost a quarter of all Medicare beneficiaries will be worse off the day this bill passes.

This legislation reimposes the asset test, retreats from the positive things in the Senate bill. Not only does this agreement put all the dreadful things in that harm senior citizens, it unravels Medicare by reimposing the asset test. Three million people who were protected with the Senate bill are cut off in this program.

Finally, this conference puts in place an unrestricted program on health savings accounts, what used to be called medical savings accounts. They provide billions of new tax breaks for the healthy and the wealthy.

The PRESIDING OFFICER. The Senator has consumed all but 2 minutes.

Mr. KENNEDY. Worse, they encourage the healthy and wealthy to take high deductible policies, policies that require you to pay thousands of dollars before you get benefits. That is fine for people who can afford to put money into a tax-free savings account, but it is not good for ordinary working people.

We all know what is going on here. Not a word in this controversy is about prescription drugs for senior citizens. We have an agreement on that. In the Senate we had a solid bipartisan compromise that would have helped millions of seniors pay for the drugs they so desperately need. It was not full coverage, but it was a good start. That is not the issue here. We could send the bipartisan Senate bill to the White House this afternoon. President Bush could sign it before supper. But Republicans will not do that. They are holding prescription drug coverage hostage to their plan to destroy Medicare. They could never pass that plan on its own, so they are adding it to the prescription drug bill. Shame on them.

They say they have to destroy Medicare in order to save it. That is nonsense. There is nothing wrong with Medicare that Republicans can fix.

There is still time to do what is right. Let's stand up for senior citizens and for prescription drug coverage of Medicare. Let's stand up against this conference report and these shameful assaults on Medicare.

I will include at this point the organizations opposed to the Medicare conference report. 'Included are the National Committee to Preserve Social Security; the Alliance for Retired Americans; Families USA; Medicare Rights Center; Center for Medicare Advocacy; Consumers Union, National Senior Citizens Law Center; NETWORK: A Catholic Social Justice Lobby; American Public Health Association; the American Federation of State, County, and Municipal Employees; the American Federation of Teachers; NEA; Service Employees International Union; AFL–CIO; Older Women's League—there are .close to 40 groups here. I ask unanimous consent that list be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ORGANIZATIONS OPPOSED TO MEDICARE CONFERENCE REPORT

National committee to Preserve Social Security and Medicare
Alliance for Retired Americans
Families USA
US Action
Medicare Rights Center
Center for Medicare Advocacy
Consumers Union
National Health Law Program
National Senior Citizens Law Center
New York State Alliance for Retired Americans
Seniors Citizens Law, Albuquerque, NM
Legal Assistance to the Elderly, San Francisco, CA
Medicare Advocacy Project of Greater Boston Legal Services
Connecticut Association of Area Agencies on Aging
PRO Seniors Health Care Consumer Rights Project
NETWORK: A Catholic Social Justice Lobby
American Public Health Association
Arizona Center for Disability Law
Center for Health Care Rights, Los Angeles, CA
Florida Community Health Action Information Network
Florida Legal Services
Human Services Coalition of Miami Dade County
United Food and Commercial Workers
United Auto Workers
American Federation of State, County, and Municipal Employees
American Federation of Teachers
International Association of Fire Fighters
National Education Association
Service Employees International Union
AFL–CIO
International Association of Machinists and Aerospace Workers
International Longshore and Warehouse Union
Transport Workers Union of America
United Steelworkers of America
National Association of Area Agencies on Aging and the Center for Aging Policy
Older Women's League
National Taxpayers Union
United Food and Commercial Workers International Union.

The PRESIDING OFFICER (Mr. CRAPO). The Senator's time has expired.

Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I think Senator CORNYN is seeking recognition.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I came to the floor because I know this is the time that was set aside to talk about the nomination of MG Robert Clark and his promotion to lieutenant general. I want to talk about that in just a moment.

I would say I have been interested in listening to the comments of the Senator from Massachusetts on another topic, on the Medicare conference report that will soon come to the floor. I must confess when that bill was first considered by this body, I could not support it. It was always my hope that once it went through the conference committee it would be improved. Indeed, from what I know of the bill so far, it has been. But I am so far undecided on how to vote on the conference report.

Mr. DAYTON. Mr. President, will the Senator yield for a question? What is the order of business before the Senate?

The PRESIDING OFFICER. Does the Senator from Texas yield for a question?

Mr. CORNYN. Mr. President, if I can conclude my remarks, then I would be glad to yield for a question in the time that remains.

My concern was about some of the comments made or the characterization made about the bill as being the product of some rightwing agenda. I do note in the announcement I heard, along with the American people, on Saturday, with the majority leader and Chairman CHUCK GRASSLEY of the Senate Finance Committee seated there, and also the Speaker of the House DENNY HASTERT, and others, including the ranking member of the Senate Finance Committee, MAX BAUCUS, who is a Democrat, and JOHN BREAUX, the Senator from Louisiana, another Democrat, who both have been leaders on Medicare reform, and what was announced was a bipartisan conference committee agreement on principles.

I do not know how this debate will ultimately pan out, but I do not believe the debate is advanced by, frankly, characterizing it as a product of some conspiracy or captive of some special interest agenda. I do know there are a lot of people who have been active on this issue on both sides of the aisle who support the bill. There are others who express concerns, and I want to explore those in the coming days in deciding how I might ultimately vote.

But, Mr. President, I came to the floor to talk about what I thought was the subject of the day and of this hour, which is the promotion of MG Robert Clark to lieutenant general.

First and foremost, I am well aware of some of the concerns that have been expressed about Major General Clark. I do not believe these concerns are based on any facts, but perhaps sentiment alone.

As we know, as the record reflects, in July 1999, a soldier named PFC Barry Winchell in General Clark's division was murdered by a fellow soldier at

Fort Campbell in Kentucky. It is alleged this young man was murdered because he was perceived to be a homosexual.

I am sure I speak for the entire Senate when I say such inhumane acts deserve every condemnation. My heart, and that of others, goes out to the friends and family of Barry Winchell as they mourn his untimely demise.

The perpetrators of this heinous crime were, however, punished to the fullest extent of the law. As the convening authority for the court-martial, Major General Clark played a key role in ensuring the people who savagely killed Private First Class Winchell were, in fact, brought to justice.

Unfortunately, there are those who want to unfairly blame major General Clark for this tragic death.

This is a very serious charge and should not be made lightly. I commend Chairman WARNER for his excellent work in making sure that this nomination has been carefully considered by the Senate Armed Services Committee. In fact, the committee spent more than a year looking into this tragic situation so that we could make sure we knew everything that could be known about the facts and circumstances involving Private First Class Winchell's death and any alleged culpability or responsibility that General Clark might bear for this tragedy.

This is what we learned. The Department of the Army inspector general conducted a full investigation into the facts and circumstances of the death of Private First Class Winchell at Major General Clark's request. The inspector general also conducted an overall command climate assessment at Fort Campbell which, as Chairman WARNER pointed out, consisted of, at the time, about 25,000 soldiers. Neither the investigation nor the command climate assessment found that Major General Clark was in any way responsible for this sad event. The record, in fact, demonstrates that General Clark conducted himself as a consummate professional, before and after the homicide. He adopted enhanced unit level training programs to ensure that Department of Defense policy was understood and implemented. And he repeatedly took personal action to communicate the requirements of the proper conduct and respect each soldier deserves.

The murder of Barry Winchell was indeed a tragedy. But it would be wrong to allow the career of a great American soldier to be ended over false allegations of some vague perceived shortcomings, when it is clear that he joins all of us in condemning the despicable actions of the drunken soldier that took Barry Winchell's life.

General Clark is more than worthy of promotion to lieutenant general. A San Antonio native, General Clark is a graduate of Texas Tech University and, like many brave Texans, he chose to serve his country in a military career. In fact, 1 out of every 10 men and women in uniform today is from the State of Texas, something of which we are immensely proud. What a career General Clark has had, spanning more than three decades on as many continents. Among other decorations, General Clark has received the Distinguished Service Medal, the Legion of Merit with four Oak Leaf Clusters, the Bronze Star for Valor, and the Bronze Star with Oak Leaf Cluster for his service.

To my mind, these achievements alone would merit his promotion. His record demonstrates that he has been a fine officer and, indeed, a great American patriot.

But there is also this: When Major General Clark was only First Lieutenant Clark, barely a year in uniform, he was serving in Vietnam as the first platoon leader of Company A, the Second Battalion of the 8th Calvary, the 1st Calvary Division. As his men were being extracted from hostile territory following a ground reconnaissance mission, they were engaged by enemy mortar fire, and the first two rounds caused heavy casualties, including Lieutenant Clark. A lesser soldier might have faltered in this situation, but even though he was wounded, Lieutenant Clark did not forget his foremost duty was to his own men. With total disregard for his personal safety, for his wounds, Lieutenant Clark put himself in the line of mortar fire again to carry wounded members of his company out of harm's way. He bravely moved from position to position, urging his men on until help arrived.

For his wounds, Lieutenant Clark was awarded the Purple Heart; for his valor, the Bronze Star.

General Clark has literally bled for his country. He has put his life on the line for his men and, yes, for us. He has dedicated himself to defending American freedoms against all enemies. In short, he is a true American patriot.

There are brave young men and women who today are doing exactly the same thing that General Clark was doing then: fighting for the cause of freedom and democracy in the ongoing war on terror. They are serving a just cause with bravery and dedication. I can think of no better leader than Major General Clark to serve as a living example to them, the next generation of American heroes.

I yield back any remaining time to the Senator from Alabama.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I think the Senator from Minnesota is to be recognized next. Is there a time agreement, to clarify my own understanding?

The PRESIDING OFFICER. The Senator from Alabama controls 29 minutes at this point. The minority controls almost 20 minutes.

Mr. SESSIONS. I thank the Chair.

The PRESIDING OFFICER. Under the agreement, 15 of the minority's 20 minutes is pledged to the Senator from Minnesota.

Mr. SESSIONS. I see. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. I thank my colleague from Alabama. I had not intended to interrupt my distinguished colleague from Texas with whom I have traveled to Iraq and other places, but I misunderstood exactly where we were, given the subject matter that was being discussed. I apologize for the interruption. I will focus my remarks on this matter because it is one that is deserving of all the attention and concern of the Members of this body, and it is a very difficult matter, one that I wish we didn't have to confront in this Chamber and one I wish we didn't have to confront in this country.

But we do. We have a general with, generally, a very distinguished record, who now has been nominated for promotion to a very high office, commanding general of the Fifth Army. I have the greatest respect for the top echelon of our military command, as I have come to watch them, work with them, see their dedication and their professionalism and their compassion and concern for the men and women under their command. I regret having to raise these questions about any one of them.

But we have a dead American soldier on the other hand, a young man who lost his life while in uniform, while in the service of his country. He wasn't murdered in Iraq, as some of our brave soldiers are these days, or in Afghanistan, or somewhere else. He wasn't in a training accident, as some soldiers from Minnesota have been, in this country or abroad.

He was murdered. He was murdered by his own fellow American soldiers. His crime? His crime was that he was perceived and believed to be gay. I use that word "crime" rhetorically because I don't believe—I don't think Americans believe—that the sexual preference of an individual is a crime or should be a crime. It is not a crime in this country, punishable by death.

That can only happen in a country such as Iraq, or some country with a vicious totalitarian regime, where if someone is different in any way and somebody decides it is wrong, they are not only excluded by society or discriminated against, but they are harassed, tortured, or executed. But not in the United States of America.

However, it happened in this country at Fort Campbell, KY, in 1999, under General Clark's command. The soldiers who committed that terrible crime have been prosecuted, convicted, and are serving sentences.

The military system that allowed that atrocity to occur remains. It is a system which permitted a succession of actions—from taunts, humiliations, bullying, all sorts of prejudice, immoral and illegal behavior—to occur and recur. What happened as a consequence? Nothing. Nothing. Nothing, unfortunately, is what happens most of the time in the Army of this country today.

I am very proud of that Army in many respects, but I am not proud of an Army, or any other institution in this country, that permits discrimination against men and women because of their sexual preference. It is just that nothing usually happens when young women are assaulted and raped at the Air Force Academy—another matter we are dealing with on the Armed Services Committee. Their "crime" is that they are women.

Women have been admitted to the Air Force Academy for 30 years and have been flying side by side in airplanes, and taking all of the risks, and doing as well as their counterparts. But they are being assaulted and raped time after time. We have discovered that at the Air Force Academy, what has usually happened to the perpetrators of those crimes is very little or nothing.

These are impressionable young men and women in our Armed Forces—most of them. They are outstanding young men and women. I have interviewed a number of them. I think all of us have that responsibility. I find, when I have the opportunity to interview young men and women who are seeking admission to or nomination to our military academies, that they are really fine young men and women. There is a lot of competition to get in. When I have those interviews, when I am talking to other young men and women in uniform as I travel back and forth, I don't see these kinds of attitudes. I don't see young men and women who are looking at their fellow soldiers with this kind of prejudice or are considering these kinds of atrocities.

I just visited, in Minnesota over the weekend, a soldier who had one side of his arm shredded while serving in the Iraqi theater. He is recovering, thank God. He is a 21-year-old young man. He will recover. Another young Minnesotan lost most of his right leg, but he has great spirit and morale and he will live a great life.

But I have also visited parents of young men and women who are not recovering, who are not coming home because they paid the ultimate price for their service. I am on the Armed Services Committee, and when I look at the reports and the casualty figures of the brave young Americans who are being injured or wounded or maimed or who died in combat, I don't see categories of "heterosexual" or "gay" or "lesbian" and I don't see "women" or "men." I see American soldiers, with the same kind of blood and bodies. All they are asking is an equal opportunity to serve their country, to risk their lives in the service of their country—even to die in the service of their country.

Amazingly enough, that is what these young women who are going to the Air Force Academy, and the young men and women entering the Armed Forces, who have a same-sex affinity—that is what they want, the same opportunity to fight, to be heroic, and even to die for their country.

That is what makes it so inexplicable and inexcusable and unforgivable when they are discriminated against, when they are treated the way they are, and when they have nowhere to turn.

So who is responsible? Who is accountable? Who loses a rank or a promotion or a star because a gay soldier was murdered under his command? General Clark's actions following that atrocity were questionable and, I would say, barely marginal. General Clark's actions in many other instances throughout his distinguished career have been extraordinary, heroic, and commendable, and I salute him for them. But it wasn't only his actions after this atrocity that were called into question; it was the actions and inaction before this occurred, which permitted in this environment of opportunities for repeated discrimination and harassment—for an NCO who was clearly unfit to be responsible for impressionable young men who, by his own conduct—or misconduct—showed them how not to treat a fellow soldier. That is what concerns me about this today.

I expect we will confirm General Clark's promotion. He will go on, and I hope he performs with great distinction, as I believe he will, as a commanding general of the 5th Army. But what is going to happen to all the other gay and lesbian soldiers out there? What kind of message are we sending to them? What kind of message do we send to the young women who get raped at the Air Force Academy when they see those who commit the terrible acts being promoted? What happens to a military's network of people when those promotions occur untouched by these kinds of atrocities, and eventually they are the military command or they are throughout the military command? How are we ever going to change what is going on in these situations if no one is held accountable, if there is no consequence for not doing what a commander should do—what in some instances they are required by law to do?

Regardless, common sense and decency and morality would tell them that anybody responsible for the lives of young people ought to keep people from ganging up or abusing or assaulting or picking on or murdering a fellow human being—not to mention a fellow soldier but a fellow American citizen. What happens to all of us when we let that go on?

As I said earlier, I think the U.S. military is outstanding in so many respects. It is that institution where, historically, young men and women have been able to come from all over the country, all different backgrounds; it is the great opportunity provider. It doesn't matter if your parents don't have any money or if you don't have much education; you can find yourself and become somebody and either serve with great distinction and make it a career or you can come back into society and do just as well. But you are not going to be that kind of person or that kind of professional or that kind of citizen or leader of this country if you are learning that is what happens, and that is OK, and those who do it get promoted, and those who are the victims suffer the terrible consequences.

That is a terribly destructive message to those individuals, a terribly destructive result to our Nation; and if this body means the concerns it expressed here—and I take them at good faith, but if we mean that, we are not going to be satisfied, and we should not be, by doing nothing other than promoting this general today.

We owe it to those men and women who have suffered, and those who have lost their lives through these atrocities, to take responsibility and tell the military, because we are the civilian command, that we are not going to do it; the buck stops here because no one else will, that we are going to insist on an armed forces that reflects, represents, and defends the standards of the basic decency the founding principles of this country that all men and women are created equal, they are endowed by their Creator with certain unalienable rights, that among them are life, liberty, and the pursuit of happiness, and the right to defend their country and be a patriot and not have somebody attacking them, humiliating them, or murdering them because of who they are.

That is the responsibility of leadership. That starts at the top, all the way down. It does not come from the bottom because that is where the base level is. It has to come from the top, from the commanders, from the civilians who are responsible for the system which they command and for those who are putting their lives, their hopes, their dreams, and their careers on the line. We have a lot of work to do.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I yield to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I thank the Senator from Alabama for yielding me a few minutes to discuss the nomination of GEN Robert Clark. I rise in support of the nomination. This is a very sensitive issue and it is one that needs to be dealt with in the right way by this body, and I think it has been.

The tragic death of PVT Barry Winchell should never have occurred, nor should any murder of that sort. The fact is, once it did occur, General Clark did everything within his power, first, to see that justice was done.

During the course of seeing that justice was done, there was a review of all of his procedures and regulations that were in place at Fort Campbell relative to the circumstances that led up to this unfortunate death. General Clark was somewhat handicapped by not being able to speak out openly and publicly after the death because he was a convening authority for the court-martial and therefore he could not really come forward and have a whole lot to say about the facts and circumstances leading up to the death of Private Winchell.

The fact is that he did make some changes in the procedures. He did make sure other regulations that had been in place prior to this unfortunate death were enforced to an even greater degree than at the time this incident occurred.

It is truly a tragic situation that was of great concern to General Clark. I have had the opportunity to visit with him on a couple of different occasions, and one does not have to talk with him very long to see the concern in his eyes and in his heart relative to the death of Private Winchell.

I have also had the opportunity to meet with Private Winchell's parents. Again, we expressed to them deep sorrow and that our prayers go out to them. No matter what, we cannot bring their son back. I think we do need to make sure that as we move through this process we review what was done relative to the facts and circumstances leading up to this terrible murder and the facts and circumstances as they occurred after the death of Private Winchell.

As I reviewed this situation with General Clark and as I looked at the IG investigation that he ordered to take place after the death occurred and after the court-martial was completed, it is pretty obvious that he did everything he could have done to ensure that justice was done and that the atmosphere surrounding the troops at Fort Campbell was not poisoned and everybody was treated in an equal and fair manner.

It is very unfortunate that this situation had to occur, but at the same time it is very important that we make sure the procedures of the Army are followed very closely, and they were. It is very important that we make sure the sensitivity directed towards the family has taken place, and I believe it has. It has not been a perfect situation. General Clark, just as any officer or any individual in the corporate structure of any company in America, can look back on a situation as tragic as this and say that maybe they should have done something a little bit differently. The fact is, General Clark has always provided strong leadership during his career in the U.S. Army, and I think, once again, he exhibited strong leadership.

He did everything within his power to see that justice was done and to see that appropriate rules and regulations were put in place where they needed to be and that they were carried out to the highest degree. So I rise in support of GEN Clark, and I hope my colleagues will see fit to confirm his nomination.

I yield the floor.

Mr. LAUTENBERG. Mr. President, I will vote against the nomination of Major General Robert T. Clark to the rank of Lieutenant General and to the position of Commander, United States Fifth Army.

Former President Harry Truman placed a sign on his desk in the Oval Office that read "The Buck Stops Here." As Commander in Chief of the United States Armed Services, President Truman took full responsibility for every action that took place under his watch, at every rank. He never shifted blame, and he never accepted failure.

The same, cannot be said for General Clark.

In 1999, while General Clark was the commanding officer at Fort Campbell in Kentucky, Private First Class Barry Winchell was bludgeoned to death with a baseball bat by a fellow soldier who believed that Private Winchell was gay.

Did General Clark immediately accept responsibility for this terrible incident? Did he use his position of authority to stamp out the hateful and dangerous climate of anti-gay sentiment on the base?

No, he did not. Instead, General Clark claimed that there wasn't anything wrong on his base, denying that a vile culture of hate and harassment against gays had been pervasive for some time. But his sentiments do not jibe with reports from soldiers at the base detailing widespread harassment of soldiers thought to be homosexual and the ubiquitous presence of anti-gay graffiti.

The hazing and harassment that Private Winchell experienced before his murder were so pernicious that he bravely reported these episodes to the inspector general. This was a very risky course of action because it could have led to Private Winchell's discharge under the "Don't Ask, Don't Tell" policy.

On his departure from Fort Campbell, General Clark declared, "There is not, nor has there ever been during my time here, a climate of homophobia on post." Tell that to Barry Winchell's family.

Apparently, the buck did not stop with General Clark. Instead of addressing the problem of homophobia at Fort Campbell, General Clark ignored it. Immediately after Private Winchell's murder, General Clark remained silent. He did not condemn anti-gay behavior on his base. He refused to meet with gay rights organizations who simply wanted to address the homophobia prevalent there. Surprisingly, General Clark failed to request the psychological and training services provided by the Army on how to address anti-gay harassment after the murder.

General Clark even delayed meeting with Private Winchell's family—despite their repeated entreaties—for almost 4 years after his murder. I find this particularly inexplicable and inexcusable.

The tragic murder of Private Winchell was not the only problem occurring at Fort Campbell. According to an Inspector General review of the base, Fort Campbell suffered from low morale, dilapidated barracks in need of repair, inadequate health care, and significant problems with underage drinking.

Today, the Senate faces the decision whether to promote General Clark to a very high-ranking position in the U.S. military. This position requires proven leadership skills.

I do not think that General Clark showed leadership at Fort Campbell, either before or after Private Winchell was murdered. He let Private Winchell down. He passed the buck.

I rise today to say that General Clark's lack of leadership at Fort Campbell dissuade me from supporting his promotion. I believe this promotion sends the wrong message about what we expect from our commanding officers, especially now in a time of war.

I served in the Army Signal Corps in Europe during World War II. Over the course of my three years of service, I never encountered a superior officer who avoided responsibility for his soldiers or their actions. Each and every one of my commanding officers expected and demanded the best from me; their leadership, in turn, inspired me to do my best.

I don't think Major General Clark inspires such dedication and service. Therefore, I will vote against this nomination and urge my colleagues to do the same.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. KERRY. Mr. President, I oppose the nomination of MG Robert T. Clark to the rank of lieutenant general. The facts surrounding his conduct, prior to and after the murder of PFC Barry Winchell, raise questions about his leadership and judgment that have not been answered to my satisfaction.

The Inspector General of the Army, while clearing Major General Clark of fostering a hostile environment at Fort Campbell, raised serious issues about discipline at the base. Furthermore, some of Major General Clark's actions after Private Winchell's murder raise legitimate questions about his fitness for higher command. In the immediate aftermath of the murder, for example, a public affairs officer at the base issued a statement describing the murder as a "physical altercation in a post barracks." This gross distortion of the facts was not corrected. In fact, Private Winchell had been asleep at the time his murderer struck, goaded on by other soldiers. General Clark took no steps to correct this claim in public, and later defended his action as in keeping with his mandate not to prejudice the ongoing investigation. Regrettably, these actions leave the appearance of a general officer who did not want the negative attention that would result from a hate crime under his command.

General Officers are rightly held to incredibly high standards of conduct, and they should be. The men and women under their command are worthy of no less. In this case, Major General Clark appears to have come up short, as evidenced by the Senate Armed Services Committee's failure to pass this nomination unanimously. Instead of clarity, the nomination process has left us with lingering concerns about the general's fitness for higher command.

Mr. President, I recognize and appreciate Major General Clark's long service in the Armed Forces of our country. But there remain too many legitimate questions about his leadership and judgment stemming from his command of the 101st Airborne at the time of Private Winchell's murder to confirm his nomination to the rank of lieutenant general.●

Mr. FEINGOLD. Mr. President, I want to speak today on the nomination for promotion of Major General Robert T. Clark and the broader issue of the Department of Defense's "Don't Ask, Don't Tell" policy. The unusually lengthy and controversial nomination of General Clark has, once again, brought attention to the failure of the Pentagon's policy towards gay servicemembers. It is high time that we stop this policy of codified discrimination against our brave servicemen and women who happen to be gay.

I fear that this policy may have been a contributing factor in the June 5, 1999, brutal murder of PVT Barry Winchell at Fort Campbell, KY, a base commanded by General Clark. I will not reiterate the facts of that case at this time, but I will say that there are strong indications that there was a pervasive and hostile anti-gay climate at Fort Campbell both before and after the tragic murder of Private Winchell and that the base leadership, including General Clark, appears to have done little, if anything, to address it.

Mr. President, the "Don't Ask, Don't Tell" policy has failed. It failed to give Private Winchell useful options to combat the harassment he faced during the months prior to his murder. It failed to force General Clark to take effective action to eliminate the anti-gay climate at Fort Campbell. And it continues to fail to stop the discrimination and harassment faced by our brave gay servicemembers.

I want to take this opportunity to urge the Pentagon to begin instituting changes to its policy towards gay servicemembers. The Pentagon should provide, at a minimum, a safe place for gay and lesbian servicemembers to report harassment without fear that they will be kicked out of the military because of their sexual orientation. This modest step would be one small way to honor the memory of Private Winchell and to prevent what happened to him from ever happening again.

Mr. AKAKA. Mr. President, I rise today to discuss the promotion of Major General Robert T. Clark to Lieutenant General in the United States Army, which is pending consideration by the Senate. On October 23, 2003, the Senate Committee on Armed Services voted to favorably report General Clark's promotion for consideration by the Senate. The vote taken was a voice vote. I asked, however, that the record reflect that had there been a recorded vote, I would have voted to oppose this promotion.

I have deep respect and admiration for our military leaders. I have often said that anyone who achieves the rank of a flag or general officer deserves a Ph.D. for the amount of education and training they have successfully completed to attain such distinguished rank. In my capacity as a member of the Senate Armed Services Committee and the co-chair of the Senate Army Caucus, I have had the privilege of working with many of our Nation's most respected military leaders.

This has been a difficult decision for me. General Clark's promotion has been pending consideration before the Senate Armed Services Committee for 14 months. Military promotions are usually very simple to consider, and are rarely troublesome or controversial. I normally do not hear from my constituency about a military promotion. In this case, however, I was contacted by a number of my constituents asking me to oppose General Clark's promotion, primarily for his actions as Commanding General of the 101st Airborne Division at Fort Campbell, KY, during a difficult time when PFC Barry Winchell was murdered. For this reason, I made sure that I had the opportunity to review as much material as possible pertaining to General Clark's career as well as the facts surrounding the incident that led to Private First Class Winchell's death.

In March 2003, I joined some of my colleagues in writing a letter to the distinguished chairman and ranking member of the Senate Armed Services Committee to request information regarding the specific actions General Clark took to eliminate the climate of anti-gay harassment that existed at Fort Campbell prior to Private First Class Winchell's death; statements General Clark made regarding antigay harassment to officers, soldiers, and the public; the policies he promulgated addressing this issue; other steps he took to prevent further acts of violence and harassment; how he handled the Winchell case in comparison to other serious crimes occurring during his command; and his response, as well as the response of those around him, to requests by Private First Class Winchell's family to meet with him. I reviewed the information provided and participated in an executive session held on October 23, 2003, where General Clark was available for questions.

After reviewing all of the information and listening to General Clark's testimony, I decided that I could not support his promotion to Lieutenant General. General Clark's professional record reflects many distinguished accomplishments as a military officer. However, I remain concerned about his lack of what I believe to be leadership qualities that are necessary for today's military leaders.

I remain disturbed by General Clark's continued reliance on lack of knowledge regarding misconduct and antigay harassment on post as a rationale for his lack of action. General Clark had been in command of the 101st Airborne Division for 17 months prior to Private First Class Winchell's death. While I understand a commanding general is not responsible for the individual actions of his soldiers, I firmly believe that a commanding general sets the tone on an installation and can influence what his soldiers believe will be considered "acceptable" behavior. I was disturbed to learn of repeated instances of underage drinking and harassment, and of the assessment, particularly of those soldiers in Private First Class Winchell's unit, of the command climate prior to Private First Class Winchell's death.

I am also disturbed by General Clark's refusal to take responsibility for the incident. During his tenure as Chief of Staff of the Army, General Eric Shinseki took responsibility for what happened to Private First Class Winchell. This reflects official Army policy that commanders at all levels are accountable for everything their command does or fails to do. As a leader, I believe General Clark should have taken responsibility or expressed accountability for the circumstances that led to this Private First Class Winchell's death.

I believe his failure to initiate a meeting with Private First Class Winchell's family reflects poor leadership on his part. His position as convening authority did not prevent him from meeting with the parents of a soldier murdered on an installation over which he had command and responsibility.

Again, General Clark's record reflects that he has led a distinguished military career. However, I do not believe his actions as the Commanding General of the 101st Airborne Division at Fort Campbell, KY, warrant his promotion to lieutenant general.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, this has been a very difficult nomination for the Armed Services Committee. We worked very hard for over a year to ensure that we developed all of the relevant facts so we could make an informed decision. In fact, this nomination was first sent to the Congress in the last session and then was resubmitted in this session.

It is totally appropriate that we took this time to address Major General Clark's nomination because PFC Barry Winchell, a soldier serving in Major General Clark's command at Fort Campbell, was brutally murdered by another soldier on July 5, 1999.

Fort Campbell is a large fort, perhaps 25,000 soldiers and 46,000 family members. We were interested in what the command climate was in Major General Clark's command, particularly as it related to his command's implementation of the Department's Homosexual Conduct Policy. We also wanted to see how Major General Clark responded after the murder.

Major General Clark asked the Army Inspector General to conduct an investigation into the facts and circumstances surrounding the murder. The Inspector General conducted this investigation and also conducted an assessment of the command climate at Fort Campbell before the murder. Neither the investigation nor the command climate assessment found fault with Major General Clark's actions.

We met with Private Winchell's family. We met with Major General Clark on a number of occasions. We met with other Army officials. We met with organizations and individuals who expressed an interest in this nomination. So under Senator WARNER's leadership, I believe our committee has given full consideration to the nomination of Major General Clark and the events which have to be described as tragic when considering that nomination.

Every one of us, every human being who has knowledge of this incident, is appalled by the brutal murder of a soldier sleeping in his barracks. So we first wanted to look at, again, the incident and the command climate prior to the incident. We reviewed the Inspector General's report that stated that the chain of command, from commanding general through company leaders, responded appropriately to matters with respect to the enforcement of the Department of Defense Homosexual Conduct Policy.

One of the most difficult issues had to do with the statement of Private Winchell's family that they requested a personal meeting with Major General Clark and they did not receive a personal meeting with him.

I think the fact they made that request and it was not complied with was troubling to all of us. As we dug into it, we heard from Major General Clark on this issue. He looked us in the eye and said he never received such a request. That is not to say the request was not made. It is to say that I think most of us believed Major General Clark when he said that request was never forwarded to him. What happened to that request we do not know, and perhaps nobody ever will know.

Major General Clark wrote a letter to the family. It was a heartfelt letter. It was a personal letter about the death of their son. It was really a comment that he added in that letter, which was so personal and so heartfelt, that I think persuaded many of us that he was honest when he stated that there is no way he would not respond to a family request to meet with him.

As others have mentioned, he did have a special responsibility, as the General Court-Martial Convening Authority, to ensure that justice was done and to make sure nothing he would say would in any way create error in that trial.

The murderer, PVT Calvin Glover, was convicted of premeditated murder by the court-martial, which was convened by Major General Clark. He was sentenced to life imprisonment and, of course, a dishonorable discharge from the Army.

Another soldier was convicted of obstruction of justice and making a false official statement and was sentenced to 12½ years confinement and a dishonorable discharge.

To the extent that justice can ever be done following a brutal murder of this kind, justice was done in this case. It was done under the leadership of the convening authority, Major General Clark himself.

In the end, looking at all the information that is available to us, I have concluded that we should confirm this nomination and that it would be appropriate, at the same time, however, for us to take note of the events relative to this nomination, that surround it, the length of time this nomination has been pending, all of the inquiries and investigations and reports which have been requested, and hope all of this together will lead to a different environment and a different climate in the unit at issue here.

I ask for 1 additional minute, if I may, from the majority side.

Mr. SESSIONS. The Senator can use that from the majority side.

The PRESIDING OFFICER. The Senator may proceed.

Mr. LEVIN. I thank the Senator from Alabama.

When we put all this together, the hope, I think of all of us, is that the kind of climate that apparently existed in that one unit, not known to Major General Clark—because the Inspector General found no evidence that he knew of any anti-gay climate in any of the units, much less that one. There was in one unit some anti-gay rhetoric which was immediately responded to by the captain in charge of that unit. As a matter of fact, the captain counseled the noncommissioned officer and put an immediate end to the anti-gay rhetoric. But that was not known to General Clark.

For all these reasons, I think it is appropriate we now confirm this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator LEVIN for his work on this issue, and Senator WARNER's efforts as the Chairman. Senator LEVIN and Senator WARNER have discussed this issue in great detail. Senator WARNER made clear he was going to take it seriously, that there would be ample opportunity to evaluate any questions that arose from these terrible circumstances, and that the facts would come out in committee and could be presented forthwith. That was done. We heard all of the information that was available. I would note it is time, now, to move forward.

General Clark's nomination has been blocked for over a year now. He is a tremendously fine soldier. He is just not the one responsible here. I also should note that I do not think it is correct, as some have indicated, to say people who fail to adhere to DOD policy get promoted. General Clark acted aggressively against the climate and the actions that resulted in this terrible murder.

In July of 1999, PVT Barry Winchell was a member of the 502nd Infantry Regiment. He was murdered in his bed as a result of a brutal assault by another private, Calvin Glover. Before his death, Winchell had been perceived as gay by Private Glover, and Winchell had complained about harassment in his company to superiors.

I should note that there was evidence that a platoon sergeant had made insensitive comments about gays, but there was not evidence of command responsibility in any way.

In December of 1999, after General Clark convened a court-martial and a trial was conducted, Private Glover was convicted of first-degree premeditated murder and was given life without parole. The individual who was Private Glover's buddy, who obstructed the investigation to some degree, was given 12 years in jail, without parole. He is serving that time.

I know the Chair has served as a lawyer and clerk to Federal judges. General Clark was the convening authority for a general court-martial. He was the superior commander on a base with 25,000 people. We don't hold mayors responsible for crimes committed in cities of 25,000 people. In fact, one of the highest crime rates in America is among young males. So, what we have in this base is 25,000 of the kind of people who, statistically, tend to get in more fights, more crimes, and commit more murders than anyone else. That is my experience as a prosecutor. I think it is indisputable that that is so.

So it is therefore not possible for a commander of a 25,000 member facility or military base, to guarantee there are not going to be fights and even murders every now and then. Heaven help us, that they occur, and the climate ought to be set in a way that minimizes that. But we cannot hold every commander responsible for this, any more than we could hold a mayor responsible for a crime in a city.

But what I wish to emphasize is that the general took a number of direct and dramatic actions to indicate, without question, his revulsion with this murder. He clearly stated his expectation that everybody at Fort Campbell would be treated with respect, and that violence of this kind is unacceptable. He was quite strong on that point.

However, he was unfairly criticized for his actions following Private Winchell's death. The criticism was unfair because in the military he is the convening authority of the courts-martial. He is required, by the Uniformed Code of Military Justice to appoint the members of the courts-martial, and he has a duty to remain objective. He has to be careful that he does not conduct himself in a way that prejudices the officers he appointed to try the case.

I served as a JAG officer for several years in the Army Reserve. I know a commanding officer has to be careful because the defense lawyers who defend soldiers charged with crimes can raise, as a defense to the trial, that the commander had prejudiced the trial by suggesting the defendant was guilty before he had a trial.

General Clark testified at his confirmation hearing in the Senate Armed Services Committee that he was in regular contact with his staff judge advocate, his lawyer, advising him what he could say, and what he could not say.

Some say he should have been more open, he should have been more condemning of this act, he should have been more aggressive. It is clear that he was acting under the legal direction of his staff judge advocate. In fact, his staff judge advocate was talking to the staff judge advocate in Washington, for the Department of Defense. They exhausted every means possible to ensure they conducted themselves properly. They sought to ensure that the trial was fairly conducted, and that if a conviction was obtained, as it was obtained, that the verdict would be upheld. It was.

I just would want to say this is not so easy, as some would suggest, for him to be really aggressive in making comments about this while a trial is ongoing.

Complaints were certainly made about his conduct afterwards. General Clark, who, if you met him, you would understand, is a man of great integrity, great decency, who wants to do the right thing, said: Look, I haven't done anything wrong. I believe I have conducted myself properly. But I am personally requesting that the inspector general investigate my conduct and my actions. I want him to come in here and investigate this situation to see if I have done anything wrong.

Of course, the IG did investigate. An IG team conducted a thorough investigation into the command climate at Fort Campbell. This investigation of the command climate found that Major General Clark was not culpable of any dereliction or failure of leadership, as has been alleged by the Service Members Legal Defense Network—SLDN—which is an advocacy group that works to protect and ensure that homosexual soldiers are treated fairly in the military, as they have every right to be treated. They have a right to insist that they be treated fairly.

It is important that people know about this crime. I know it is important that people understand how civilization sometimes is fragile and people lose discipline and do things they should never ever do.

To highlight the problem that occurred at Fort Campbell, and to take action by an advocacy group—or by the military or any decent people, or for the Senate to take action in order to ensure that these kinds of things don't happen in future—there is no illegitimacy in that.

One of the things that has troubled me in recent years in this Senate is that we feed on information that is sometimes provided by people who have an agenda. As a result of that, sometimes people are unfairly treated. Everybody deserves fair treatment. This private who was murdered did not deserve what happened to him. I also believe General Clark does not deserve some of the charges that have been made against him.

A few other points; This group claims that Major General Clark failed to follow Federal law. There is no proof of that. There is no proof that he failed to provide a safe environment for soldiers—in fact, that claim has been rejected. They claim that he failed to exhibit leadership necessary for further promotion. After the inspector general's reviews were done, that proved not to be so.

The allegations were that Major General Clark had allowed "significant levels of antigay harassment under [his] command," and that it allowed a command climate in which "antigay harassment flourished"; it was just not true. The Army IG found sporadic incidents of the use of derogatory or offensive cadence calls used during marching. These problems which were quickly corrected and stopped as soon as they were discovered. It was clearly established that anti-homosexual comments were not the norm at Fort Campbell.

There were allegations that there was anti-gay graffiti in the public areas around Fort Campbell. The Army inspector general found one latrine at a unit level and one in a public recreation center at Fort Campbell which had anti-gay comments on them. This was clearly not a common thing on the base. I suspect you would find these comments in some of the public bathrooms in cities and gas stations around America. It is wrong, but I don't think that should be something the general would be found to be responsible for. There is simply no way that he can protect against each and every one of those incidents.

It was suggested that he took no action to deal with this problem. I have one document dated November 30, 1999—not long after the incident that occurred—in which General Clark wrote his command. He sent it to everyone basically on the base.

> Distribution A, Subject: Respect for all soldiers.
>
> Paragraph 1: The soldiers in the Army today are the best we have ever had.

I certainly agree with that.

> They are volunteers who merit our respect and they deserve to be treated with dignity in a climate of safety and security.

He goes on to say:

> We can and will do more to ensure that our soldiers are treated with dignity and respect. I accordingly direct that:
>
> All soldiers be briefed on the Department of Defense homosexual conduct policy upon their formal in-processing at Fort Campbell. When they come to the base.
>
> They are to be instructed on this policy of treating people fairly and with respect. As an interim measure, every soldier at Fort Campbell will receive the briefing.

In addition, he goes on to note:

> This instruction will also include the contents of the 25 October 1999 memorandum from the commanding general . . .

And another memorandum—both of which reiterate the roles and responsibilities of commanders regarding investigations of threats against or harassment of soldiers on the basis of alleged homosexuality;

> Subparagraph (c): All leaders will vigorously police the contents of run and march cadences.

They have always been a little bit risque over the years. But the general took aggressive action here.

> They will monitor the march and run cadences to ensure that they are positive and devoid of profanity or phrases demeaning to others.
>
> Subparagraph (d): All leaders will vigorously police the content of training briefings, classes, lectures, and all other instructions to ensure that they are devoid of profanity or phrases demeaning to others.
>
> Subparagraph (3) Respect for others is an Army value and a cornerstone of the discipline and esprit de corps and all soldiers will be treated with dignity and respect. Accordingly, I expect all Department of Defense, Department of Army and Fort Campbell directives, policies and regulations to be enforced by our leaders and adhered to by our soldiers.
>
> Robert C. Clark, General.

This is a superb soldier who served his country well in Vietnam. He was awarded the Purple Heart and the Bronze Star. He was wounded in combat and refused to be evacuated until he got others out of the line of fire.

He commanded the 3rd Brigade of the 101st Airborne Division, that great division, during Operation Desert Storm, the last Gulf War. His proven leadership is clear.

In the U.S. Army Command and General Staff College "Story of the Third Army in Desert Storm" by Richard Swain, published in 1994, he talks about how General Clark's brigade moved rapidly to cut off the retreat of the Iraqi soldiers, facing tremendously bad weather. It was so bad that motorcycle troops were mired down, but he moved successfully anyway and seized the objective before other units were able to.

He is a proven commander in combat. He is a proven commander in the peacetime Army. He has taken strong action to see that this kind of activity never happens again.

I am proud of him. I am also proud to note that he obtained his master's degree at Auburn University, one of America's great universities. I had occasion to meet him and to see him testify at hearings. I thought he did a superb job. There was little doubt of his sincerity in this matter and his capability to be a great general officer.

I thank the President.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The majority leader.

Mr. FRIST. Mr. President, I congratulate my colleague, Senator SESSIONS, for really putting into perspective a lot of the things that have been said on the floor, allegations from the past but also with respect for this man who is a true hero, an American hero.

I rise to support his elevation to the second highest rank in the U.S. Army as Commander of U.S. Army at Fort Sam Houston.

On October 3, 1971, this young man, Robert E. Clark, first platoon leader of Company A, 2nd Battalion, 8th Calvary of the 1st Calvary Division, became an American hero.

It was approximately 10:30 a.m. in Bin Tuy Province of the Republic of Vietnam. Company A was completing a reconnaissance mission. As they were being extracted, the men came under heavy fire. The first two enemy mortar rounds struck hard and inflicted heavy causalities, including wounding First Lieutenant Clark. At that time, at great risk to his own personal safety, and ignoring or at least putting aside his own wounds, First Lieutenant Clark ran forward into enemy fire to carry his fellow wounded soldiers back to cover.

Throughout the battle he pressed on, moving from position to position to direct his men to lay down a constant stream of smoke in order to mark their position for the helicopters flying overhead. The record clearly shows First Lieutenant Clark's heroic action ensured the success of Company A's mission. For his bravery in combat and service in Vietnam, First Lieutenant Clark received a Purple Heart. He received two Bronze Stars, one for valor and one for service.

In a letter of recommendation on behalf of Robert Clark, the company commander wrote:

> [First Lt Clark's] display of personal bravery and devotion to duty were in keeping with the highest traditions of the military service, and reflect great credit upon himself, his unit, and the United States Army.

I ask unanimous consent to have printed in the RECORD a copy of the letter of recommendation which lays out these events.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

> On 3 October 1971, first Lieutenant Robert T. Clark, First Platoon Leader Of Company (A), 2d Battalion (Airmobile), 8th Cavalry, 1st Cavalry Division, distinguished himself by heroic action while on ground combat operations against a hostile enemy force in Binh Tuy Province, Republic of Vietnam. At approximately 1030 hours Company (A) were being extracted after completing a ground reconnaissance mission, when they were engaged by an undetermined size enemy force, receiving enemy mortar fire. The first two mortar rounds that impacted took a heavy toll of friendly casualties including 1LT Clark. Although wounded 1LT Clark with total disregard for his own personal safety and his wounds exposed himself to enemy mortar fire as he moved forward and assist in carrying the other wounded members under cover. 1LT Clark continued to expose himself as he moved from position to position directing his men to lay down a constant screen of smoke marking their position to Gunships giving them fire support. 1LT Clark's heroic action and aggressiveness, enabled the mission to be a complete success. Resulting in one (1) enemy soldier killed. His display of personal bravery and devotion to duty were in keeping with the highest traditions of the military service, and reflect great credit upon himself, his unit, and the United States Army.

Mr. FRIST. In a career spanning over 30 years, Robert T. Clark has consistently displayed that uncommon courage and leadership he showed on the battlefield in Vietnam. He has earned the admiration of all who know him, both in and outside of military life.

GEN John Wickham, former Chief of Staff of the Army, says General Clark is unequivocally "one of the most ethical, moral, people-oriented and charismatic leaders I have ever known."

GEN John Keane, whom the senior Senator from Massachusetts so lavishly praised earlier, calls General Clark "a man of great character. He's a great moral force and a very compassionate person. Simply stated, he's one of the Army's very best leaders." Those are the words of GEN John Keane.

It is my honor to rise today and support this nomination of this outstanding soldier. General Clark has earned numerous awards for his extraordinary service, including four awards of the Legion of Merit, three Bronze Stars, the Purple Heart medal, four meritorious service medals, the Air Medal, the Air Commendation Medal, and numerous campaign service medals for service in Vietnam as well as Saudi Arabia.

He has earned the Combat Infantryman's Badge, the Army Staff Identification Badge, the Parachutist Badge, the Ranger Tab, and the Air Assault Badge.

During the gulf war, then Colonel Clark commanded the 3rd Brigade of the 101st Airborne. Under his leadership, the 3rd Brigade conducted one of the longest and largest airborne assaults in military history. More than 2,000 men, 50 transport vehicles, artillery, and tons of fuel and ammunition were air lifted at that time 50 miles into Iraq. Land vehicles took another 2,000 troops deep into the Iraqi territory. All of this was accomplished in 72 hours without a single American casualty. Only two Iraqi soldiers were killed and 22 wounded.

With characteristic modesty, General Clark explained the brigade's truly remarkable success by saying, "We're the first guys who ask them to lay down their weapons, and they did. It just took a little convincing."

General Clark earned a Bronze Star for his command of the historic mission.

In 1998, General Clark was elevated to command the 101st Airborne Division at Fort Campbell, which, as most know, is situated on the border of Tennessee and Kentucky. Indeed, Fort Campbell can be described as a small to midsize city comprised of about 50,000 soldiers and civilians. There are homes, schools, a fire department. It is a complex and diverse place. During his 2-year tenure there—and I had the opportunity to meet with General Clark there on several occasions—General Clark's reputation for fairness and compassion extended way beyond the base, well into the surrounding community.

In February of 2000, the Clarksville City Council unanimously passed a resolution praising General Clark for his "high standards of leadership, professionalism, and integrity."

The Montgomery County Board of Commissioners passed a similar resolution declaring:

> General Clark's reputation in the local communities is highly acknowledged as one of the brightest, caring, and respected division commanders that the Army has sent to our local community.

Indeed, General Clark is one of the finest men in uniform today. He currently serves as the acting commander of the 5th U.S. Army at Fort Sam Houston. I should mention, as an aside, that General Clark requested the assignment so that he could take care of his wife who suffers from a chronic illness.

General Clark's peers call him "a soldier's soldier." He descends from two generations of Clark men who have served the Army with dedication and honor.

And thus, as I began a few minutes ago, I close by saying, and I do call him a true hero. I strongly support his elevation to the second highest rank in the U.S. Army.

The PRESIDING OFFICER. All time having expired, the question is, Will the Senate advise and consent to the nomination of Maj. Gen. Robert T. Clark to be Lieutenant General.

The nomination was confirmed.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, Executive Calendar items 436 through 450, and all remaining nominations on the Secretary's desk, are confirmed; the motions to reconsider are tabled, the President is notified, and the Senate returns to legislative session.

The nominations considered and confirmed en bloc are as follows:

IN THE AIR FORCE

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Victor E. Renuart, Jr., 0278

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Richard V. Reynolds, 1156

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Charles L. Johnson, II, 5967

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Garry R. Trexler

IN THE ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Franklin L. Hagenbeck, 3956

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Joseph L. Yakovac, Jr., 1273

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. David W. Barno, 9794

IN THE MARINE CORPS

The following named officers for appointment in the United States Marine Corps to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brig. Gen. Tony L. Corwin, 1553
Brig. Gen. Jon A. Gallinetti, 2221
Brig. Gen. Thomas L. Moore, Jr., 2551

The following named officers for appointment in the United States Marine Corps to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Col. John R. Allen, 5762
Col. Thomas L. Conant, 7621
Col. Joseph V. Medina, 2528
Col. Robert E. Schmidle, Jr., 7820
Col. Thomas D. Waldhauser, 4358

The following named officer for appointment in the United States Marine Corps Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. James L. Williams, 0353

IN THE NAVY

The following named officers for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral

Rear Adm. (lh) Michael K. Loose, 4983
Rear Adm. (lh) Robert L. Phillips, 7293

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral

Rear Adm. (lh) Robert Ryland Percy, III, 4869

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral (lower half)

Capt. Henry B. Tomlin, III, 9713

The following named officers for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral (lower half)

Capt. Gary A. Engle, 3896

The following named officers for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral (lower half)

Capt. Mark A. Hugel, 9650

NOMINATIONS PLACED ON THE SECRETARY'S DESK

IN THE AIR FORCE

PN360 Air Force nominations (51) beginning Martin Alexis, and ending Jerome E. Wizda, which nominations were received by the Senate and appeared in the Congressional Record of February 25, 2003.

PN973 Air Force nomination of Michael A. Mansueto, which was received by the Senate and appeared in the Congressional Record of September 25, 2003.

PN974 Air Force nomination of Ronald C. Danielson, which was received by the Senate and appeared in the Congressional Record of September 25, 2003.

PN1047 Air Force nomination of Jefferson L. Severs, which was received by the Senate and appeared in the Congressional Record of October 16, 2003.

PN1048 Air Force nomination of Lesa M. Wagner, which was received by the Senate and appeared in the Congressional Record of October 16, 2003.

PN1049 Air Force nomination of Francis D. Pombar, which was received by the Senate and appeared in the Congressional Record of October 16, 2003.

PN1050 Air Force nomination of Alan T. Parmater, which was received by the Senate and appeared in the Congressional Record of October 16, 2003.

IN THE ARMY

PN1036 Army nomination of Michael P. Vinlove, which was received by the Senate and appeared in the Congressional Record of October 14, 2003.

PN1037 Army nominations (8) beginning Donald A. Black, and ending Debra S. Long, which nominations were received by the Senate and appeared in the Congressional Record of October 14, 2003.

PN1053 Army nominations (29) beginning Douglas B. Ashby, and ending Terry C. Washam, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2003.

PN1054 Army nominations (62) beginning Curtis J. Alitz, and ending Marshall F. Willis, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2003.

PN1055 Army nominations (42) beginning Debra E. Burr, and ending Janice B. Young, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2003.

PN1057 Army nominations (23) beginning Lionel Baker, and ending Warren S. Wong, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2003.

IN THE FOREIGN SERVICE

PN1019–1 Foreign Service nominations (141) beginning Kenneth C. Brill, and ending Steven C. Taylor, which nominations were received by the Senate and appeared in the Congressional Record of October 3, 2003.

PN1018 Foreign Service nominations (32) beginning Elena L. Brineman, and ending Stephen J. Hadley, which nominations were received by the Senate and appeared in the Congressional Record of October 3, 2003.

IN THE NAVY

PN1058 Navy nominations (416) beginning John A. Adcock, Jr., and ending Joseph Zuliani, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2003.

PN1062 Navy nominations (29) beginning Michael C. Beckette, and ending Robert S. Thompson, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2003.

PN1063 Navy nominations (458) beginning James C. Taylor, and ending Jeffery S. Young, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2003.

PN1064 Navy nomination of Jeffrey D. Dickson, which was received by the Senate and appeared in the Congressional Record of October 16, 2003.

Mr. LEVIN. I move to reconsider the vote.

Mr. FRIST. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

Mr. FRIST. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, what is the order of business at the moment?

The PRESIDING OFFICER. There is nothing currently pending before the Senate.

Mr. BYRD. I thank the Chair. I ask unanimous consent that I may speak on a matter out of order.

The PRESIDING OFFICER. Without objection, it is so ordered.

A. JAMES MANCHIN—WEST VIRGINIAN

Mr. BYRD. Mr. President, on November 3, the State of West Virginia lost one of its most enduring and most colorful political figures, A. James Manchin.

A. James Manchin was born in Farmington, WV, on April 7, 1927. He had a deep love for West Virginia and its people, and that deep love showed everywhere he went, in every office he held, in everything he did, and with every person he met.

With his booming voice, his flamboyant oratory, and his wonderful sense of humor, A. James was an undeniable presence. I find it difficult to imagine traveling around the State of West Virginia and speaking before a crowd without seeing my friend Jimmy Manchin standing there somewhere in the crowd, lifting his hat into the air—by the way, he wore big hats—and shouting out a greeting to me.

With his political skills and his tenacious determination to make West Virginia a better place in which to live and work and raise families, Jimmy Manchin won a place in the hearts and minds of people throughout West Virginia. He found a way to touch the hearts of all whom he met. Everybody loved him, even his political opponents. He was a man and a public servant who cared deeply for others and they, in turn, cared a lot for Jimmy Manchin.

I first met Jimmy Manchin in 1949. That was in my second term in the West Virginia House of Delegates. Jimmy had been elected to the house of delegates and was being sworn in that year, 1949. So I first met Jimmy Manchin in 1949, as he and I wove our political careers, when both of us served there in the house of delegates. After that, he pursued and held a multitude of political offices.

In 1961, President Kennedy named Jimmy Manchin as West Virginia State director of the Farmers Home Administration.

In 1972, he was appointed State director of the Rehabilitation Environmental Action Program, REAP, where he was placed in charge of cleaning up and restoring the natural beauty of our State's magnificent rolling green hills and beautiful valleys, which he loved so dearly. His campaign to restore our State's beauty was fueled by his personality and fashioned by his talent for poetic oratory. As part of his REAP campaign, Jimmy called on all West Virginians to "purge our proud peaks of these jumbled jungles of junkery." That was pure A. James Manchin politicking. He understood the theatrical part of politics better than most politicians of this era and, as a consequence, his incredibly successful work for REAP earned him a national "Keep America Beautiful" award.

In 1976, he was elected secretary of state, and in 1984, he was elected State treasurer.

In 1998, he again won a seat in the West Virginia House of Delegates, a half century after his first election to that body.

His political career, which spanned 55 years, earned him numerous awards, honors, and recognitions. In 1974, for example, Salem College named him "Mr. West Virginia," while, just this year, the West Virginia Italian Heritage Festival named him "Italian American of the Year."

He was an outspoken booster and promoter of West Virginia, a genuine public servant who will be sorely missed by the people of West Virginia.

The Bible says: "In my Father's house are many mansions." Well, Jimmy had a way of using this beautiful verbiage from the King James Bible and, before huge audiences he would quote that. "In my Father's house are many mansions." On November 3, our Father brought home one more. My friend, A. James Manchin.

Mr. President, my wife Erma and I offer our most heartfelt condolences to Jimmy Manchin's wife Stella and their children, Patricia Lee, Mark Anthony, and Rosanna.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. LINCOLN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRESCRIPTION DRUG BENEFIT IN MEDICARE

Mrs. LINCOLN. I rise today to offer a few thoughts on the Medicare prescription drug conference report that will soon be brought before the Senate. As I look back on the 10 years I have served in the Congress and I think about probably one of the most important issues we have dealt with, it has been looking toward trying to provide a component to Medicare that, had we seen or known the importance of prescription drugs when Medicare was designed, we would have included.

As we move forward in the discussion and the debate on the pending legislation or the conference report that is being formalized right now, I hope we will not lose sight of our original objective; that is, to do no harm to a program that has been incredible in this country. It has kept seniors out of poverty. It has provided insurance for health care in our senior community when private industry would not come to the table to provide insurance and health benefits for our aging population.

I hope we will keep our focus on doing no harm to a program that has done so much for the well-being of the elderly of this country, that we will look to the ways we can improve it and, more importantly, provide a prescription drug piece that is actually going to enhance our ability to keep down the costs of health care, providing health care to the elderly in this country, and improving the quality of life which, after all, is, has been, and should be our main objective.

First, I thank our chairman on the Finance Committee, Senator GRASSLEY, and the ranking member, Senator BAUCUS, along with their staffs, for their tireless effort in bringing this package together thus far, both in the committee when we marked up the bill and we worked hard to bring about a good, bipartisan measure we felt did provide reforms and improvements to Medicare but did no harm to the basis of a program that has provided so much to so many in this country.

The chairman and the ranking member have really bent over backwards to do all they could to keep this conference together and to keep a package together that was going to be beneficial for the elderly in this country. I know the negotiations at times have been contentious, but I am sure my colleagues join me in expressing our heartfelt gratitude for their leadership and patience on this critically important issue to all elderly Americans and to all American families because, as many of us know, it is not just the elderly who are going to be affected by this program; it is those of us who have aging parents and grandparents. It is those of us who ourselves in years to come will be a part of that aging community. It is not just the elderly of today, it is the elderly of tomorrow and the young of today who feel so involved and think it is such a critical issue to provide that quality of care for our patients and for our seniors.

It is with that that I urge the conferees to keep working and to remain committed to the bipartisan principles contained in the legislation we passed in the Senate last summer, that we poured over and really gave heartfelt consideration and debate to bringing about a program that would enhance Medicare and again would do no harm to a program that has done so much.

The bill we passed in the Senate gives all Medicare beneficiaries, no matter where they live, access to a Medicare drug benefit. For those of us who come from rural States, we find ourselves oftentimes at the low end of the totem pole. We find ourselves in a predicament where our seniors tend to be certainly living in more challenging demographic areas, where their needs and their concerns are more difficult to meet. We find our seniors tend to be more low income. It is critical we do not put a face on this bill that makes one demographic or one geographic area of this country more important than the other.

Most importantly, our Senate bill preserves the traditional Medicare Program as a viable option for seniors by ensuring there is a level playing field between the private sector and Medicare. As many of us know, the private sector can participate in Medicare today. They choose not to. Why? Because we have, over the years, crafted and improved a Medicare Program that is most efficient. The fact is, it is difficult for them to compete, to come in and to provide the same services, the same programs in a cost-effective way where they can actually make money.

Again, we want to do no harm in a program we have begun now to mold and shape in a way that is so productive to the seniors and is cost-effective for our Government.

I believe it is important we be honest with our Nation's seniors, with the taxpayers of this country, and with ourselves, so everyone understands what is in this bill, both good and bad, what have we accomplished in this conference report and what have we not, so we can honestly call this conference report what it is. After all, this is more than just a prescription drug package. It includes a wide range of other provisions that will affect health care for seniors.

Over the last several months, I have consulted with Senator GRASSLEY and Senator BAUCUS on this bill. They have been very kind and gracious with their time in listening to me as I offered my own advice and feedback on the contents of what was materializing as a conference report. Today I would like to take this opportunity to present some of the questions I have asked of them in these recent weeks, because this is not the bill I would have produced. As we look at this conference report, it is not the bill the Senate produced or that Senators would like to have before us, but it may be the best we are going to be able to get in this Congress under the leadership we have, both in the White House, in the administration, as well as in the House and in the Senate.

If that is the case, do we hold hostage some seniors because we do not have a perfect bill? We are going to have to weigh that out in the course of the next 6 to 7 days as we go through the motions of bringing that conference to a close and looking at what is actually going to be in that conference package.

I would like to make it very clear I asked these questions as someone who wants very much to support a prescription drug package. It is something I can see clearly as a tool that can aid this country, not only in the quality of care and the quality of life our seniors need and deserve in this Nation. The advancement of what pharmaceutical drugs and prescription drugs can do in making the aging loved ones in our families have a better quality of life is so apparent. It is such a critical part of what we must do.

We also have to know there are other things that are in this package. The questions so many of us have asked in looking for what we want to see happen—as I said, I want very much to support a prescription drug package. I have worked hard on this in the 10 years I have been in Congress. I see the importance of it. We want to be able to move forward. It is an issue I have championed throughout the years in my career in Congress. It is why I have worked hard to secure a seat on the Senate Finance Committee so I could have more influence on the shape of the final bill.

In fact, this bill contains several strong provisions which I shall address shortly, but I also think it is so important we be honest with ourselves in terms of what we are actually going to be dealing with.

Furthermore, I asked these questions on behalf of my constituents in Arkansas, along with the millions of other seniors in this Nation who will be affected by this legislation and who have been waiting so patiently for us to at least begin this process. They deserve to know about all of the components of this bill and how it will affect them, wherever they may live in this great country. Like us, they want to know this package will make Medicare stronger for the future, not weaker. We have not worked these some 40-plus years to now take a step in the wrong direction to weaken Medicare. We want to know even if this may not be the end-all, be-all package for Medicare, at least it is the beginning, the first step in looking at how we can strengthen Medicare, both through providing a prescription drug component in a way that reaches every senior in this country in a fair and equitable way, as well as looking at the ways we can reform and reinforce Medicare through coordinated care, through multiple-disease diagnosis and physician programs, where our physicians can look and see the multiple diseases our elderly are dealing with and deal with them in a comprehensive way. My first question concerns the premium support model, of which we have heard an awful lot. Premium support carries a lot of different visions that people have put on it. The model I would like to question is the one which the conferees want to add as a demonstration project. I would like to ask the conferees to explain to me and to the American people: How would this premium support policy make Medicare stronger? That is our question. I am not coming to the floor with a preconceived idea. I really want to know, and I think the American people want to know how it is going to make Medicare stronger.

My concern is that the premium support would force our traditional Medicare Program to compete with private insurance plans in an arena where the rules greatly favor the private plan. That is not true competition. That is asking a program that we have built over these many years to compete with a plan out there that might be able to provide something in a more cost-effective way. But we don't know because we have too many subsidies going there.

The Center for Medicare and Medicaid Services said this model would lead to wide variations in premium rates for Medicare beneficiaries living in different parts of the country and even, perhaps, within the same State. This could be devastating for seniors in Arkansas, especially in our rural areas. And Arkansas is not the only State that is concerned with a lot of rural areas. Why should a senior living in the rural delta of Arkansas pay a higher premium than a senior living in Little Rock, for the same benefit? That is the question I am asking our conferees. Seniors have paid into Medicare all their lives and they deserve to pay the same premium no matter where they live. Premium support would end this uniformity that has always existed in Medicare.

The CMS Office of Actuary also determined that premium support would significantly increase premiums for traditional Medicare. Healthier seniors would leave the traditional program for private plans, thus increasing the cost for traditional Medicare. This would mostly impact seniors in our rural areas where private plans are not likely to go, and where seniors are less healthy. Why are they not likely to go there? They are not there now. They have come in; they tried it; they left because it is not profitable for them. Without substantial subsidies, they are not going to come there again.

As to using this as a demonstration, we pretty much had a demonstration out in rural America to see what is going to happen. It is simply unfair to punish these seniors with a premium increase that estimates say could surpass 25 percent. The privatization advocates say it is only a demonstration of premium support and there are numerous exceptions to the policy. That just simply makes me wonder: If the policy is so great, why make all of these exceptions?

I urge the conferees to take a serious look at this controversial proposal. Look at the ways we can make it much more clear, much more beneficial, and certainly much more economical to the American taxpayer, as well as providing the uniform benefit, across the country, to all seniors who deserve it equally.

It is clear to me that its inclusion is based on privatization ideology alone rather than sound evidence that it saves money or improves the program for seniors. There are way too many studies that indicate the other way. I encourage these conferees, when we have a once-in-a-lifetime chance to be able to do something productive, make sure we are not wasting our time and energy and efforts, and most importantly our resources, on demonstration programs that we know because of past experience are not going to be profitable for anybody if we use our resources that way. Why drain those precious resources from the drug benefit for all on a demonstration that would affect only a few?

The premium support demonstration could destabilize the Medicare Program for all seniors, and it certainly has the possibility of threatening the integrity of Medicare for seniors in Arkansas and around the Nation. The Senate bill we passed, with a great bipartisan margin, did not include this provision, and it was a strong bipartisan bill.

My second question is, Why does the final agreement not retain the Senate's more generous low-income assistance provisions? I am enormously grateful because I know Chairman GRASSLEY and Senator BAUCUS worked very hard on the low-income assistance, and it is a good piece of this bill, so much better than what happened on the House side. So many of us who come from States with a large percentage of low-income seniors are very grateful.

The conferees, however, apparently decided to lower the income eligibility level from the 160 percent of poverty to 150 percent of poverty, and to subject all low-income seniors to somewhat humiliating asset tests.

When we talk about 150 percent of poverty around here, people just assume that everybody knows what that is. But most people don't. Most people don't know that 150 percent of poverty, which is what we are talking about to be the high end of low-income seniors, is only an annual income, for a couple, of $18,000—$18,000 for seniors to live on as a couple. For singles, it would be $13,470.

One hundred-fifty percent of poverty is what we are talking about as being the high end of low-income seniors, in terms of support for these low-income individuals. I don't know about you, but that is a tough annual income to live on as a senior when you are talking about all the different expenses they have.

This would help 3 million fewer people. Going from 160 percent of poverty to 150 percent of poverty would help 3 million fewer people with their copays than the Senate bill. So I urge the conferees to allow Medicaid to wrap around the cost-sharing requirements in the Medicare bill and allow them to pay for prescription drugs, not on the private plans formulary. This is another component that is going to be very advantageous to our low-income seniors.

This low-income assistance is of special importance to our Nation's older women. Those of us, as women in the Senate, recognize how the aging population is disproportionately reflected in the number of women. I have watched my own mother, as a caregiver, taking care of my father until his death last year, and watched how she put the stresses and strains on her own health care needs, as well as her own finances, to find herself now in the aging population category, more dependent on programs than she has ever been before. So, disproportionately, when we talk about our low-income seniors and their needs, there is a disproportionate amount of those individuals who are women.

Medicare seniors are disproportionately women and they are disproportionately poor, and will be far better served by the Senate's low-income provisions on which we worked so hard to come to a bipartisan agreement.

I am concerned that private drug-only plans may not provide the stability or the predictability that seniors want and need. The insurance companies have told me they don't want to offer a prescription-drug-only plan. The Administrator of the Centers for Medicare and Medicaid Services has said such a plan doesn't exist in nature.

Quite frankly, I believe we have proven that through the Medicare-Medicaid veterans programs the Government can do it in a much more cost-effective manner. But the point is, we are trying to create something that has not existed in nature, and really, quite frankly, those who are going to be there to create it don't want to do it.

I urge the conferees to take a good look at what we are providing there. That is why I am glad the Senate contains a Medicare-guaranteed drug plan, or safety net, called a fallback.

I urge the conferees again to retain the fallback and ensure that a contract is made available for at least 3 years. But the concern to come, if you are a senior out there in rural America and you choose to stay with Medicare fee for service, you have to go to one of these drug-only plans. There has to be two in your region, but one of those two could be a PPO, which means you have to shift your traditional fee for service into an overall PPO in order to qualify for that drug plan or you can go with one of those two plans. If one of them should leave, you have the option of going to the Government fallback. If one of those plans or another plan comes back next year, you immediately have to go out of the Government plan and go back into one or the other of the private plans.

Seniors are going to find from year to year those changes in their premiums, their deductibility, their formularies. They are going to find the list of physicians changing. It is really critical.

I urge our conferees to ensure the fallback is available for seniors as an option, even if the private insurers decide to test whether they want to offer a benefit in a community. Seniors should not have to have fallback plans, especially if the new private plan is significantly more expensive for them and it is more restrictive.

My third question is with regard to consistency and reliability in the Medicare Program. Based on what we know about the details of this agreement—we still have a lot of time ahead of us to be able to read and digest what has actually been negotiated out and put down on paper—it appears that the drug plans will vary throughout the country, meaning that seniors in Arkansas may have different premiums, cost sharing, and formularies than seniors in other States and in other parts of the country.

Even worse, these plans can change their premiums, cost sharing, and formularies for other years.

My question is, How does it strengthen Medicare to make the program less consistent and less reliable for our seniors?

If what we are trying to do is strengthen Medicare with a drug benefit and in the reforms we are trying to make, how does it strengthen that program if we make it more confusing for our seniors, if we make it less consistent and we make their choices less reliable?

I urge the conferees to make the prescription drug benefit less volatile for seniors. If there is anything I know about the seniors in my life, it is the confusion they see right now or which they may have to address in a package such as this. It is devastating to them. It gives them a sense of distrust. That is the last thing we want for our loved ones and those for whom we are working so hard to provide quality of life. This includes limiting variations in the amount seniors have to pay in premiums to only $10 above the national average, no matter where they live.

I, for one, think we should give seniors, most of whom live on fixed incomes, some assurance that their premiums will not vary or increase unreasonably.

I urge the conferees to ensure that those seniors who have employer-sponsored retiree coverage be able to retain it. It is pure and simple. We urge the conferees to ensure that the conference report preserve a level playing field between traditional Medicare and private insurance plans.

I am concerned—and have been—that the proposed agreement unfairly tips the deck against Medicare through the $12 billion stabilization fund that the Secretary of Health and Human Services can use to encourage private plans to participate in areas where they don't want to go. If they wanted to go, they would be there now. But we are going to use $12 billion to try to stabilize these plans to go into areas where they haven't wanted to go and where they aren't currently practicing.

The Senate bill, which we worked on in a bipartisan way, by contrast, provided billions of dollars for private plans to be able to help them in terms of incentives to come into these more difficult areas.

We also have $6 billion in there for Medicare enhancement and improvements in the traditional Medicare Program that all beneficiaries can use—not just those who happen to live in an area where private plans decide to go.

The conference agreement would allow private plans to be paid at a much higher rate than traditional Medicare with no enhancement added for beneficiaries.

I urge the conferees to consider this policy carefully. We want to make sure the traditional fee for service and the traditional Medicare that is there has the enhancement and the ability to improve itself so it can reach all of the seniors in this country, even those in the rural areas of my State and the State of the Presiding Officer and others who have multitudes of rural areas where seniors need health care.

I wish the drug bill did not have a coverage gap or a donut. I am concerned about those seniors who will hit that gap in coverage and have to continue to pay their premiums.

During debate on S. 1, I and many other Senators voted to allow employer-sponsored retiree health plan contributions to fill this gap. I also voted to eliminate the coverage gap altogether, and I voted to prevent seniors from paying premiums when they are in the coverage gap.

Unfortunately, all of these amendments were defeated, but it doesn't mean we can't still address some of these concerns. It doesn't mean our conferees can't work together and come up with some provision that can help to assist us in making sure some of these gaps, some of these holes that have been left are closed for the benefit of the seniors of this country.

I also voted for an amendment to try to contain the skyrocketing costs of prescription drugs. Every one of us in this Chamber knows that in the next 20 years or less we are going to almost double the number of seniors putting demands on the Medicare Program. We are going to go from 41 million seniors to over 70 million seniors in this country. It doesn't matter what kind of program we put together if we don't look at trying to have some kind of handle on the escalation in costs for whatever program we have. If we almost double our number of seniors who are putting pressure on this program, we are not going to be able to afford it. It is critical that we look at ways we can make more efficient the use of the dollars that we have.

One measure I supported which passed seeks to increase access to more affordable and equally effective generic drugs—something on which I think most of us could agree.

I also voted for an amendment which failed to help consumers better compare the cost effectiveness of prescription drugs.

Finally, I also voted for a successful amendment to allow wholesalers and pharmacists to import prescription drugs from Canada which will provide substantial savings to consumers while ensuring their safety.

These are just some of those components where we in the Senate made corrections and improvements to the bill, some of which were accepted, some of which were not, but most of which I hope, as a conference, they will look at, because the bill we are trying to produce out of this conference should be a bill that will enhance a program that has done so much for all seniors and all Americans.

I urge our conferees to try to retain some of those positions that we took in the Senate; the provisions that we passed.

I look forward to hopefully seeing us complete some of those things that I think will make the bill a better bill. I know reaching this point has been a long and difficult process.

I compliment my Senate colleagues for fighting to include several good provisions that are contained in this bill. This agreement contains a comprehensive rural package that significantly decreases or eliminates the disparity of Medicare payments between rural health care providers. I was very involved in working with the chairman, Members, and others to move some of those provisions forward and certainly making sure that health care was available to seniors and to all people in rural areas.

I can't tell how necessary these provisions are to rural hospitals and physicians and ambulance providers, home health providers and rural health clinics in Arkansas and elsewhere across the country.

It is my hope that the conference agreement will also contain the Senate policy for Medicaid low-DSG States. I am glad the physicians won't receive a cut in payment but a small update as in this conference report.

I encourage my colleagues to include a physician's demonstration on chronic care management that I helped to author in the Senate Finance Committee.

If there is anything we know, it is that our seniors are having multiple chronic illnesses which they are having to deal with. If we don't look at how we manage the chronic care multiple diseases they are dealing with, we will never get the economic efficiency out of Medicare that we could.

Many of my constituents have said when they finally have gotten a coordination for their elderly loved one, it is unbelievable. They were seeing five different doctors in five different places who were not talking to one another. They did not have a nutritionist or someone consulting on depression. When they got that coordination of care, they better understood all of the chronic illnesses their loved one was going through, not to mention getting more efficiency out of the dollars they were spending in Medicare. That individual, that loved one, that elderly person was getting the quality of care they deserve in a more cost-effective way. They were able to manage all of those things in a way that was making the quality of care the best it could be.

One of the demonstrations should take place in a State that has a department of geriatrics with a rural outreach site. Rural areas are one of the most difficult areas to serve our elderly. Unless we have the knowledge of how we can coordinate the care for individuals in rural America, we will never see the efficiency we need. It is critical we have this demonstration so we can determine the healthy outcomes that result when a geriatrician is paid appropriately for caring for a patient with multiple chronic conditions.

I am also pleased the drug bill will include coverage for insulin syringes and that there is a new benefit providing screening for diabetes. Roughly 40 percent of the senior population with diabetes, or 1.8 million seniors, uses syringes every day to inject insulin to control their diabetes. Without coverage, the syringe purchases, which could be especially expensive for seniors on fixed incomes, would not count toward cost-sharing and yearly out-of-pocket expenses. The new diabetes screening benefit will help with the fact that approximately one-third of the 7 million seniors with diabetes, or 2.3 million people, are undiagnosed. They simply do not know they have this very serious condition with complications that include heart disease, stroke, vision loss and blindness, amputation, and kidney disease.

I understand there is also a provision to temporarily waive the late-enrollment penalty for military retirees and their spouses who sign up for Medicare Part B and to permit year-round enrollments so retirees can access the new benefits immediately.

It is important in seeking to strengthen Medicare we reflect on the program's origins and mission. Medicare provides health care for a special population of Americans: millions of seniors, individuals with disabilities, and people with kidney failure, those who are uninsurable in the private marketplace. Over 50 percent of them were uninsurable in the private marketplace when Medicare was started. Congress created Medicare in the first place because private insurance plans were failing to provide affordable health-care coverage for this high-risk population. Therefore, we should proceed cautiously when making major changes to the traditional Medicare Program.

In my home State of Arkansas, over 400,000 people rely on Medicare for their health insurance. Without it, they likely would be among the ranks of the uninsured. This is why I want to ensure if this bill passes it is built upon policies that will make Medicare stronger and more reliable for all of its beneficiaries, that we know as we move forward there is no possible way we could do everything we needed to do in this bill. This is not the bill I would have written, but I was not in charge. I also do not want to see a missed opportunity for being able to move the ball down the field, to do something for which seniors in this country have been waiting patiently.

Some of my colleagues will argue, don't worry, it does not take effect until 2006. Some of these things do not happen until 2010. There will be so many elections between now and then; you do not have to worry. We will change it and fix it and it will have a new appearance by the time we get there. I hope if that is what we are hanging our hat on, we can be sincere as these conferees come out with a plan that will leave intact the purpose of Medicare originally: to provide for those who were the uninsurable, the elderly, the loved ones for every one of us in this body, to make sure when the marketplace would not provide for them, there would be an honest standard benefit so they could get the quality of care, regardless of where they live in this country, that they are due for the great things they have done for our country.

I look forward to reading the legislative language in the coming days to determine my ultimate support for this bill. I hope our conferees are not finished. I hope they continue to look at the ways this bill can be improved. Our work is never done in this Senate, whether we pass a bill into law and look toward 2006 or 2010 or whenever may be that we think some of the unreasonable things in here we can shut our eyes to and move forward with, but that we can make the changes now and we can create a bill that is the best we can do, knowing it is not perfect but that it will move us forward to provide a critical prescription drugs component in the 21st century to a program we started many years ago that has meant so much to so many.

Ultimately, I must weigh whether the benefit contained in this bill to provide prescription drugs is better than no benefit at all. I hope that is not the case. I hope the case will be we have done everything we possibly could, looking at the bipartisan package the Senate passed, and how hard we worked to get there to make this final product the best it can be for some of the most special people in this country.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Idaho.

MORNING BUSINESS

Mr. CRAIG. I ask unanimous consent that there now be a period of morning business with Senators permitted to speak up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

IN MEMORY OF PETE B. WILSON

Mr. CRAIG. Madam President, I come to the floor under the privilege to speak about a situation that occurred in Idaho that brought great sadness to me and to some of my staff.

In 1974, when I was elected to the State legislature, prior to that legislative session convening, I traveled to the north end of my State for the North Idaho Chamber Tour which goes on every 2 years for Idaho legislators. It was at that time I met the chairman of the North Idaho Chamber, a fellow by the name of Pete Wilson, who was a leader in his community of Bonners Ferry, who was well known across north Idaho as an attorney who gave so much of his time to his community and to the citizens of that area.

Little did I know years later when I ran for Congress, Pete Wilson would become one of my strong supporters. Pete became a friend down through the years. Just a few years after I got here, a young woman came to my office to seek employment, a young lady by the name of Brooke Roberts, who happened to be Pete Wilson's niece. Brooke Roberts is now my head of legislative affairs and my chief counsel and assistant manager of my office. Not only has Brooke played a tremendous role in my political life, but her uncle, Pete Wilson, has played a tremendous role. I say now, sadly, in the Senate, has played. Last Friday night or early Saturday, morning, Pete Wilson and his son Kip were killed by asphyxiation believed to be carbon monoxide poisoning. His wife Rhoda and another son who was there visiting because of Pete's illness at age 78 are still recuperating from a near-death experience of carbon monoxide poisoning.

My sympathies go out to Rhoda and to Duff, to Tim and to Neal, the remaining sons of this wonderful family. Idaho has lost an icon. Idaho has lost one of those kinds of citizens who gives and gives and gives more, not for himself but for the community he was a leader in, for the State he loved so well, for Boundary County, where he sought his professional life, where he raised his family, and where he made a mark on Idaho. Pete Wilson will be long remembered as a citizen of our State who gave.

He has always been in my political life, not just as someone who supported me but someone who advised me. Uncle Pete would pick up the phone and call and say: LARRY, you're wrong about this issue. You ought to do it this way or you ought to do it that way. And usually he was right. I took his advice because he was so well grounded in the community he served.

He served as president of the chamber, served as a lawyer who in many ways gave time and time again to the charities and to the communities of that marvelous community of Bonners Ferry and Boundary County.

Pete Wilson will be missed. Pete Wilson will be long remembered. It was a tragic accident that took him and his son, nearly took another son, and his wife.

To their family, I must say, on behalf of Suzanne and myself, we are so saddened by this situation, but we want

Idaho to know Pete Wilson will be remembered as someone who made our country work, someone who never wanted to aspire beyond being just that strong community leader who associated himself communitywide and statewide to make for his family and for his friends a better place to live.

Pete Wilson of Bonners Ferry, ID, of Boundary County, ID, made north Idaho a better place because he was there as a marvelous leader of that community. Pete will be long remembered.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, I want to speak in morning business, but I would be pleased to yield, with unanimous consent, to my friend from Delaware, Senator BIDEN.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, I feel like I am part of New Jersey. The Senator from New Jersey is—I don't want to hurt his reputation—my closest ally in the Senate. We share a common border. Although I always kid him, as big as New Jersey is, the Delaware River is owned by the State of Delaware up to the high river mark in New Jersey. It is one of our claims to fame. We literally lap upon New Jersey's shore. But I thank him. I will be very brief.

CONGRATULATING FRENCH PRESIDENT CHIRAC

Mr. BIDEN. Madam President, I rise today to congratulate French President Jacques Chirac for having taken resolute steps to stop attacks on Jewish sites in France and, more broadly, to address some of the causes of anti-Semitism among Muslim youths in that country.

As you know, Madam President, France has a large Muslim minority population. In the past, I have been strongly critical of President Chirac, the French, and other Europeans for not having been sufficiently attentive to the cancer of anti-Semitism that still exists in Europe, and in the United States to some extent.

Some have ignored the insidious way criticism of some Israeli policies has been conflated into pure anti-Semitism. Others have shied away from meeting the problem head on because of fears of provoking more violence in Europe. Still others have refrained from speaking out for fear of alienating domestic electoral constituencies.

Whatever their motives, until recently, precious few European leaders have demonstrated very much leadership with regard to combatting anti-Semitism, which is on the rise.

Last Saturday, a Jewish school near Paris was destroyed by an arson attack. Two days later, President Chirac convened a meeting attended by Prime Minister Raffarin and other top officials to react to this latest outrage. The result of the meeting, as reported in the New York Times, was a package of measures including beefed-up policing and prosecution of anti-Semitic violence, and also an earmark of nearly $8 billion worth of investment in urban renewal to clean up neighborhoods that breed Islamic fundamentalism.

President Chirac was quoted as saying: "Anti-Semitism is contrary to all the values of France," and that Jewish Frenchmen and Frenchwomen are at home in France just as are all other groups.

Last month, the Committee on Foreign Relations held a hearing on anti-Semitism in Europe, which revealed the shocking extent of the problem. Recent public opinion polls in Europe have confirmed our hearing's testimony.

One of the most important weapons in the fight against anti-Semitism is political leadership. Or as Justice Holmes said: The best disinfectant is the light of day. The best disinfectant is light, and shedding light on the anti-Semitism in Europe, and criticizing it, can only be done effectively by Europe's political leadership.

France's measures are, to be sure, only a beginning of a long struggle to eradicate this disease from the European body politic. I have been critical in the past when European leaders have not responded. Now President Chirac should be complimented for having had the courage to forcefully show the way. He deserves credit, and I hope it is the beginning of a process.

(The remarks of Mr. BIDEN pertaining to the submission of S. Con. Res. 82 and S. Con. Res. 83 are printed in today's RECORD under "Submitted Resolutions.")

Mr. BIDEN. Madam President, I thank my friend from New Jersey. We use that phrase very loosely around here, but he is my friend, and I thank him for his courtesy.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, before the Senator from Delaware leaves the floor, I commend him for his arduous effort here on behalf of reminding the French Government that anti-Semitism is antithetical to a democratic society and to those with whom we have relationships.

Senator BIDEN has worked on this for several years, and he is a voice they will listen to. We commend him again for his thoughts and his remarks.

Mr. BIDEN. I thank the Senator.

(The remarks of Mr. LAUTENBERG pertaining to the introduction of S. 1882 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LAUTENBERG. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 1888 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

(The remarks of Mr. SPECTER pertaining to the submission of S. Res. 267 located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. SPECTER. I thank the Chair. In the absence of any other Senator on the floor, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ALEXANDER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TALENT). Without objection, it is so ordered.

Mr. ALEXANDER. I ask unanimous consent that I be allowed to speak as in morning business for as long as I may require.

The PRESIDING OFFICER. The Senate is already in morning business.

AMERICA'S INVESTMENT IN SCIENCE AND TECHNOLOGY

Mr. ALEXANDER. Other than the war in Iraq, I suppose the subject we hear most about is jobs. We are worried, as are our constituents, about the future. How do we keep good-paying jobs? We are aware that in this country of not very many people, compared to the rest of the world, we have about 25 percent of all the money in the world. We are a fortunate country.

How do we, as the country grows, and as we worry about global competition—especially about how China develops—keep our good-paying manufacturing jobs? How do we keep our standard of living? We have struggled through that for a long time. We have worried about it for a long time.

After World War II, we helped Europe get back on its feet through the Marshall plan and basically provided direct competition there, as the people making lower wages began to make some of the things we made. We struggled with Japan, worrying about whether the Japanese, in the 1980s, might take us over economically. But that didn't happen. We were able to keep our standard of living. We have watched Africa, the former Soviet Union, and other parts of the world grow and develop, even though people there were making much lower wages than Americans. We have been able to keep our standard of living.

I want to talk today about one major reason why we have been able to keep that standard of living and why there is a lesson for us for the future there. I want to talk about our investments in the physical sciences, about our investments in science and technology.

Last week Energy Secretary Spencer Abraham released an exciting 20-year plan for the future of scientific facilities in our country. This plan provides for an exciting future for science that will revolutionize science and our society. The plan includes participation in international collaborations to make fusion power a reality. It strengthens our scientific computing capabilities to develop advanced methodologies ranging from modeling chemical reactions to predictions of weather and climate change. It includes facilities to develop and characterize proteins for microbial research on a grand scale. These are just a few of the facilities that are included in Secretary Abraham's visionary plan.

This ambitious plan serves as a reminder that since World War II, according to the National Academy of Sciences, half of our job growth can be attributed to our investments in science and technology. This should also remind us, especially in this era of global competition, that future investments in science will be even more important. To create more good-paying jobs for Americans, I therefore recommend Congress and the administration do for the physical sciences what it has done in the last few years for the health and life sciences: double the Department of Energy's Office of Science funding, from the current $3.3 billion to more than $6 billion per year within the next 5 years.

Our investments in science and technology have continued to create a remarkable legacy of innovation. U.S. patent rates exceed most other industrialized countries, a direct result of historically strong research and development investments and technological leadership. For example, in 1986, the United States had more than double the number of patents than the rest of the world, with nearly 80,000 patents granted. In 1999, the number of patents granted in the United States was over 160,000, while those in the rest of the world were less than 80,000. There were 160,000 in our country, 80,000 patents in the rest of the world. These patents, these innovations, led to new technologies and new jobs. Nearly 5.3 million new firms were launched between 1990 and 1998 that were mainly high-technology companies. Not all of them succeeded. But these new firms accounted for one-third of the 10 million new jobs created between 1990 and 1997.

However, last fall, the President's Council of Advisers on Science and Technology reported funding for research and development is becoming dangerously imbalanced. They recommended the funding levels for the physical sciences and engineering be improved and that funding levels be brought to parity with the life sciences. To correct this trend, we should increase the authorizations for a variety of scientific and technological endeavors at the DOE. The Department of Energy, through its Office of Science, is the largest supporter of physical science and engineering research and supports many of the federally funded research and development centers in our country. These centers are considered by many to be the crown jewels of the R&D enterprise in the Nation. These centers and our great research universities create the technology of the future that leads to the jobs of tomorrow.

Sometimes I think we take for granted these research universities and our great laboratories the Department of Energy runs. We not only have more of the great research universities in the world in our country, we have almost all of them. Nowhere in the world has national laboratories, such as Oak Ridge in my State, or Los Alamos, or more than a dozen others across our country. No other country in the world has the number of federally funded research institutions such as our laboratories that are operated by the Department of Energy, and the great research universities of America, which are funded to a great extent by Federal funding.

The Nation must have balanced investment to maintain the overall health of science and technology research. Recent funding increases in the National Institutes of Health and the National Science Foundation cannot compensate for the declines in funding at Federal agencies, such as the Department of Energy. Many of the advances in the health sciences could not have been realized without past investments in the physical sciences. Much of the basic work in the physical sciences, on which all other sciences, even the biological sciences, are based, is supported by the Department of Energy. Harold Varmus, Nobel Laureate and former director of the NIH, summed up very nicely the unique relationship between the medical and physical sciences in an editorial in the Washington Post.

He stated in that editorial:

> Medical science can visualize the inner workings of the body. . . . These techniques are the workhorses of medical diagnosis. And not a single one of them could have been developed without the contributions of scientists, such as mathematicians, physicists, and chemists supported by the agencies currently at risk.

Although this statement was made 3 years ago, it is still true today for the Department of Energy Office of Science.

The fundamental work in high energy and nuclear physics has led to a revolution in medicine. Our quality of life has been greatly improved with the advent of nuclear medicine. As President Bush recently acknowledged, one of every three hospital patients benefits from nuclear medicine. None of this would have been possible without the fundamental research of physicists in the last century and today, physicists who have been supported in large part by the Department of Energy and its predecessors.

Advances in magnetic resonance imaging—we call it MRIs in everyday language—could not have been possible without the development of superconductors. Small electron linear accelerators are used in hospitals every day to treat cancer patients. Yet this would not have been possible, without our investments in science.

Likewise, the development of laser and optics technology has led to a revolution in medical procedures. Surgeries, such as gall bladder removal, that were once invasive and required weeks of recovery, can now be performed with a minimal incision and require minimal recovery time. None of this would have been possible without the basic research performed by scientists at our research universities and National Laboratories funded by our Federal investments in science and technology.

We are advancing even further than once imagined, thanks to these investments in science. The Department of Energy is leading the way in developing materials for creating the artificial retina. The development of an artificial retina requires new and innovative materials, research, and nanoscale fabrication techniques that are on the forefront of science.

Preliminary models of the artificial retina have enabled patients to see for the first time. I saw some of that research being done at Oak Ridge. Although these patients did not regain full sight, this is just the beginning. This research caused three patients to see for the first time. With advancements in materials and fabrication techniques, sight may eventually be returned to those who cannot see. This is truly amazing. We are just at the edge of what science can do.

The physical science and engineering will also play a major role in advancing technology for homeland security. The development of detection systems for chemical, biological, radiological, and nuclear weapons will require investments in science and technology. Crisis response technologies and analyses will also be dependent on science and engineering. The daunting challenges of developing countermeasures for chemical, biological, radiological, and nuclear weapons will be addressed in large part by the development and application of our scientific capabilities. Our Nation has no choice. We must invest heavily in physical sciences and engineering to stay competitive in these fields. Our competitiveness is greatly impacted by the number of graduate students entering these fields.

A definite correlation exists between the number of graduate students enrolled in science and engineering and the funding levels for these fields. The funding levels for the medical sciences have increased more than 20 percent over the past decade, and graduate student enrollment has increased more than 40 percent. However, there were 20 percent fewer graduate students in physics and 9 percent fewer in chemistry in 2000 than in 1993 while the mathematical sciences had 19 percent fewer graduate students. These trends cannot be allowed to continue.

Science and technology are an integral part of our everyday lives. To sustain our Nation's technical and scientific leadership, we must support increased authorizations for our science programs. The Energy bill reported out of conference will help put our Nation on the path to sustained economic growth. But the Energy bill is not just investing in science; it is investing in jobs.

The quality of our lives and the prosperity of our Nation will be greatly enhanced and made better if we agree over the next 5 years to do for the physical sciences what we have done for the health sciences—double our spending—according to the visionary plan that the Secretary of Energy laid out for the next 20 years.

Thank you, Mr. President. I yield the floor.

SPECIAL BIRTHDAYS

Mr. BURNS. Mr. President, this is a special day today. I just want to take note of it now. It is a special day, the birthday of someone Americans all know. He is one of our senior citizens who has his birthday today. When this animated character burst on the scene, it changed our country. That change was bound to happen because of his appeal to the young and the old. He has changed the way we communicate. He has changed the way we travel.

He is just a little fellow, but size has meant nothing to this animated character. He has always held that it is not the size of the dog in the fight but the size of the fight in the dog.

He has changed our attitude on how we solve our problems and most times taught us to laugh at ourselves and lighten up on ourselves. He has entered our lives and he has changed us all, from the young to the old.

Today is the birthday of Mickey Mouse. It is also shared by our good friend, the President pro tempore now in the chair, Chairman STEVENS.

I yield the floor.

HONORING OUR ARMED FORCES

Mr. JOHNSON. Mr. President, I rise today to pay tribute to Chief Warrant Officer Two Scott A. Saboe, a resident of Willow Lake, SD, who died on November 15, 2003, while serving in Operation Iraqi Freedom.

Chief Warrant Officer Two Saboe, a member of A Company, 4th Battalion, 101st Aviation Regiment, 101st Airborne Division, was based out of Fort Campbell, KY. He was among 17 soldiers killed when two Army Black Hawk helicopters collided midair in the northern Iraq city of Mosul.

Answering America's call to the military, Chief Warrant Officer Two Saboe had planned a military career since attending high school at Willow Lake, SD. A member of the football, basketball, and track teams, friends remember him as a serious and committed person. Chief Warrant Officer Two Saboe's former coach and teacher Bill Stobbs said that "he died doing what he loved, and he was a dedicated soldier." His childhood friend, Darin Michalski, knew that "he was giving his all and believing in what he was doing."

For all of Chief Warrant Officer Two Saboe's commitment to public service, nothing was more important than his family. The 33-year-old leaves behind his wife Franceska and 6-year-old son, Dustin, as well as his sister Ann Remington, who is stationed at Walter Reed Medical Center in Bethesda, MD. He also leaves behind his father, Arlo Saboe, a decorated Vietnam war veteran, in addition to his proud, extended family and countless friends.

Chief Warrant Officer Two Saboe served our country and, as a hero, died fighting for it. He served as a model example of the loyalty and dedication in the preservation of freedom. The thoughts and prayers of my family as well as the rest of the country's are with his family during this time of mourning. Our thoughts continue to be with all those families with children, spouses, and loved ones serving overseas.

Chief Warrant Officer Two Saboe led a full life, committed to his family, his Nation, and his community. It is his incredible dedication to helping others that will serve as his greatest legacy. Our Nation is a far better place because of Chief Warrant Officer Two Saboe's life, and, while his family, friends, and Nation will miss him very much, the best way to honor his life is to emulate his commitment to service and community. In the words of Michalski, "Most of us go through our whole lives and don't really accomplish anything. And some of us only live to be 33, and we're heroes."

I join with all South Dakotans in expressing my sympathies to the family of Chief Warrant Officer Two Saboe. I know that he will always be missed, but his service to our Nation will never be forgotten.

Mr. President, today I pay tribute to Private First Class Sheldon R. Hawk Eagle, a former resident of Eagle Butte, SD, who died on November 15, 2003, while serving in Operation Iraqi Freedom.

Pfc. Hawk Eagle, a member of the 1st Battalion, 320th Field Artillery, 101st Airborne Division, was based out of Fort Campbell, KY. He was among 17 soldiers killed when two Army Black Hawk helicopters collided mid-air in the northern Iraq city of Mosul.

Answering America's call to the military, Pfc. Hawk Eagle enlisted in the Army during a visit to his sister in Grand Forks, ND. An enrolled member of the Cheyenne River Sioux Tribe, his Lakota name was Wanbli Ohitika, meaning Brave Eagle. A descendant of Crazy Horse, military duty was essentially a family duty in his home. His family, from his grandfather to his uncle to his father, all served their country in the armed forces.

News of his death spread rapidly through Indian Country, but not faster than on the Cheyenne River Reservation where he was raised by his aunt and uncle, Harvey and Bernadine Hawk Eagle, after his parents passed away. Emanuel Red Bear, a spiritual leader in the community, remembers Pfc. Hawk Eagle as "a role model in his quiet way. He was a modern-day warrior." His sister, Frankie Hawk Eagle remembers that, "His goals were important to him, and his whole persona was full of life. He was well-respected in the Armed Forces and believed that everything he did was for his family, his Native people and for the most, his country. He was Pfc. R. Hawk Eagle, a United States Army Soldier."

Pfc. Hawk Eagle served our country and, as a hero, died fighting for it. Native Americans have a great history of serving in the Armed Forces and fighting and dying to protect this country, including the "Code Talkers" of World War II. Pfc. Hawk Eagle served as a contemporary example of that loyalty and dedication to the preservation of freedom. The thoughts and prayers of my family as well as the rest of the country's are with his family during this time of mourning. Our thoughts continue to be with all those families with children, spouses, and loved ones serving overseas.

Pfc. Hawk Eagle led a full life, committed to his family, his Nation, and his community. It is his incredible dedication to helping others that will serve as his greatest legacy. Our Nation is a far better place because of his life, and, while his family, friends, and Nation will miss him very much, the best way to honor his life is to emulate his commitment to service and community.

I join with all South Dakotans in expressing my sympathies to the family of Private First Class Sheldon Hawk Eagle. I know that he will always be missed, but his service to our Nation will never be forgotten.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On January 23, 2003, Luis Collazo was attacked and beaten by a man who asked him for a smoke as he walked to his car from a bar and a pizza establishment in Palm Springs, CA. The attack came after the suspect made an antigay slur to Collazo, said Palm Springs police Detective Mark Melanson. Fortunately, Collazzo was quickly released from the hospital after being treated for facial bruises.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

VOTE EXPLANATION

Mr. NELSON of Florida. Mr. President, on November 14, 2003 I was necessarily absent and unable to cast my vote on rollcall votes 450, 451, and 452. In each case, I would have voted "nay," which would not have affected the outcome of the vote.

CAMBODIAN MOMENT

Mr. INOUYE. Mr. President, a few moments ago I read an article that appeared in The State newspaper of Columbia, SC: "Misled and Undermanned: the Truth on Iraq." It was prepared by my dear friend and colleague, ERNEST F. HOLLINGS, the senior Senator of South Carolina.

His words reminded me of sad moments—reminded me of a divided America—and reminded me of the pain we all experienced. I do hope my colleagues will set aside a few moments to read and reflect on these thoughts of my dear friend from South Carolina.

I do not believe that Senator HOLLINGS wrote this article with any other motive than to share his candid observations as someone who was there and who understands well the situation currently before us. His words are thought-provoking, and deserve the attention of all of our colleagues.

I ask unanimous consent that Senator HOLLINGS' article be printed in the RECORD:

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MISLED AND UNDERMANNED: THE TRUTH ON IRAQ

(By Senator Ernest F. Hollings)

The majority leader of the Senate, Mike Mansfield, quietly opposed the war in Vietnam for years. He had a practice of writing memos in opposition to the war to Presidents Johnson and Nixon while publicly supporting the war on the floor of the Senate. But finally, when Cambodia was invaded under President Nixon, he snapped.

Going on television, he said Vietnam was a mistake from the get-go. The next day he received a letter from an admirer who had just lost her son. She said: "I just buried my son to come home and watch you say that the Vietnam War was a mistake from the beginning. Why didn't you speak out sooner?"

I came to the Senate in 1966, and if Mansfield, an expert on the Far East, had spoken out at that time, we might have saved 50,000 lives. I have reached my "Cambodian moment."

In August and September of 2002, President Bush, Vice President Dick Cheney, National Security Adviser Condoleeza Rice and Defense Secretary Donald Rumsfeld all cautioned that Saddam was reconstituting a nuclear program. On September 8, the vice president said that we "know with absolute certainty" that this was what Saddam was about; then on October 7, President Bush went further, saying, "Facing clear evidence of peril, we cannot wait for the final proof—the smoking gun—that could come in the form of a mushroom cloud." Four days later, I voted for the Iraq resolution.

I was misled. Saddam was not reconstituting a nuclear program, and is no way was he connected to 9/11. There were no terrorists in Baghdad, no weapons of mass destruction, and Saddam was no threat to our national security. Iraq was not a part of the war on terrorism.

Now we have another Vietnam. Just as President Johnson misled us in Vietnam, President Bush has misled us into Iraq. As in Vietnam, they have not met us in the streets hailing democracy. Thousands of miles away, we are once again "fighting for the hearts and minds." Again, we are trying to build and destroy. Again, we are bogged down in a guerrilla war. Again, we are not allowing our troops to fight and win—we do not have enough troops. Again, we can't get in, can't get out. Again, instead of Vietnamizing Vietnam, we are trying to Iraqify Iraq. And already, with Rumsfeld's memo, we have the Pentagon papers.

Once more we are blaming intelligence. It's not bad intelligence; it's because we refuse to listen to good intelligence, like that from General Brent Scowcroft. We had plenty of warnings.

Iraq was under sanctions. We were overflying the north and the south; and you can bet your boots Israel knew whether or not Saddam had nuclear systems. Its survival depends on knowing. Iraq was no more a part of the war on terrorism than North Korea.

If the troops are to fight, there are too few. If they are to die, there are too many. My goal is to stop the killing and injuring of our GI's. To support the troops, we need more troops—at least 100,000 more. Get in, clean out Baghdad and the Sunni triangle. Get law and order. Then get a constitution and victory. But since General Eric Shinseki said we need "several hundred thousand troops," Secretary Rumsfeld is determined not to send troops, but to argue structure. "Operation Meatgrinder" continues.

Apparently, the game plan is to give 200,000 hungry Iraqis a uniform, a square meal, and then announce we have security and leave. We'll end up with exactly what Secretary Rumsfeld said we wouldn't have—a Shiite democracy, or another Iran. And, of course, a lot more terrorism.

For the first time in history, this administration, this Congress, will not pay for the war. And for the Guardsmen we are sending this time, Washington hopes they don't get killed so that they can hurry back and be given the bill. We are not going to pay for it; we need a tax cut.

We should have listened to former President "Papa" Bush, who wrote in A World transformed, "we should not march into Baghdad . . . turning the whole Arab world against us . . . assigning young soldiers . . . to fight in what would be an unwinnable urban guerrilla war."

RECOGNITION OF THE HONORABLE TOM OSBORNE

Mr. NELSON of Nebraska. Mr. President, I rise today to congratulate my friend and colleague from Nebraska, Congressman TOM OSBORNE, on his dedicated work for mentoring programs that has earned him a place in the Hall of Fame for Caring Americans.

Congressman OSBORNE has been awarded this honor by the Caring Institute for his commitment and understanding of the positive influence that mentors can have on a child's life. In 1991, while he was still head coach of the Nebraska football team and I was the Governor of Nebraska, TOM OSBORNE and his wife Nancy started a program called TeamMates. This program paired middle school students with university football players to give young people someone who could talk with them, help them set goals, and reinforce basic skills, attitudes, and other lessons of life. The program was a success and it soon expanded statewide.

TOM OSBORNE, the football coach, became Congressman TOM OSBORNE in 2000, the same year I joined the Senate, and it has been a pleasure to work with him on several mentoring projects. His Mentoring for Success Act authorized $50 million in new competitive grant awards to local school districts and community based organizations to fund mentoring initiatives. He also led the way in designating January "National Mentoring Month." He continues to work to fund these valuable programs.

I am glad to see that the Caring Institute has chosen to honor Congressman OSBORNE's efforts to make mentoring a priority in the United States. The environment in which many kids today are raised looks nothing like the one in which I grew up. Today, close to 50 percent of all children are raised in single-parent households. In most cases, single parents work long hours;

their energy and resources are stretched thin. In other cases, even two parent families cannot provide—for various reasons—the support a child needs. Congressman OSBORNE's Mentoring for Success Act is for these kids. It can make a big difference for so many young people and it can change these kids' lives and brighten their future.

It is appropriate that Congressman OSBORNE receive this award just before Thanksgiving because his programs have given so many young people a friend and a brighter future to be thankful for. Congratulations to Congressman OSBORNE and thank you for your continuing commitment to mentoring.

ADDITIONAL STATEMENTS

WORLD YOUTH ALLIANCE

• Mr. BROWNBACK. Mr. President, at a time when the global community's attention is focused on rebuilding Iraq and the relations that states have to one another, I would like to commend the World Youth Alliance, which offers itself as a way forward to address some of the critical questions with which we are faced.

Working with over 1 million young people from over 100 countries around the world, these young people have had a constant presence at the United Nations and other international institutions for the last 4 years. Their membership consists of young people of diverse faiths—Christian, Jewish, Muslim, and other—and young people of no faith. Their binding commitment is to work for the promotion of the dignity of the person at the international level and in each of their countries and communities around the world.

The World Youth Alliance understands that building sustainable, free and just societies can only be accomplished when the human person is recognized and placed at the center of all policy, programs, and culture. In doing this, they are reaching out to each other and to the world to impact the policy and culture that is being created around them.

The dignity of the person, according to the World Youth Alliance, is intrinsic and inviolable. The dignity of the person is the basis for all human rights. In this, they place themselves directly in the heart of the Universal Declaration of Human Rights, and the great human rights history that has particularly grown after the tragedy of World War II.

The World Youth Alliance recognizes that each individual, no matter how vulnerable, must be protected by the state. Otherwise, the state finds itself in the terrifying position of deciding the worth of a human being and objectifying the human person. At such a point, the freedom and justice of the state are called into question. The World Youth Alliance then reminds the global community that the person can never be seen as the problem, but must be recognized at all times with having the dignity and rights which the person possesses by simple right of being. This global coalition understands that to protect each human person and to build sustainable and free societies, this dignity must be extended to each member of the human family, unconditionally, from the moment of conception until natural death.

In the last 4 years, this coalition of young people has had extraordinary success. Their membership continues to grow. They have participated at major United Nations conferences. They have spoken to the General Assembly and to individual states, and they have helped to determine the outcomes of documents and resolutions.

This group of young people has trained over 10,000 young people on the importance of the international institutions and the relationship that these institutions have on their lives. They have initiated projects together: projects to build community centers in Nigeria for young people who are struggling to build up their communities and combat HIV/AIDS; projects to educate and rebuild schools in Tanzania, South Africa and Mexico; projects with street children in Latin America; projects with art and beauty to reawaken the transcendent among all of their generation and ours.

Most recently the World Youth Alliance has worked with a coalition of states at the United Nations, including the United States, on the draft discussions to prepare for an international treaty on human cloning. At the first discussion on cloning, the United States quoted from the World Youth Alliance in their statement to the General Assembly. Recognizing a shared commitment to protecting the dignity of each and every person, the statement read: "[this resolution] also responds to a call by over one million youth from all continents. They are members of the World Youth Alliance, who believe that only a total, comprehensive ban on human cloning would protect and respect the dignity of all human beings. They respectfully asked the Ad Hoc Committee to work towards a complete ban. To the youth, the future world leaders, we hope that the Sixth Committee will be able to say—we heard you!"

As the World Youth Alliance continues to grow and expand their work in Latin America, Africa, Asia and Europe, let us wish them the same kind of continued growth and success. Their work to train young people to engage at the international level, connecting a generation together in the promotion of the dignity of the person and human rights, is precisely what the world needs. I look forward to seeing many of them as the future world leaders, a role in which they have already found themselves, demonstrating remarkable integrity, vision and capability. Our work will be well served when it inspires this kind of response and commitment from the world's youth.•

RECOGNITION OF DR. G. TIMOTHY KAVEL'S RETIREMENT

• Mr. CARPER. Mr. President, I rise today in recognition of Dr. G. Timothy Kavel upon his retirement as vice president of Delaware Technical & Community College and Campus Director of the Jack F. Owens Campus in Georgetown, DE, serving all of Sussex County. His leadership over the years has won him the respect of faculty and students alike, along with the gratitude of our entire State. He has been, and remains, a trusted friend.

Delaware Technical and Community College was created in 1966 when the Delaware General Assembly approved House Bill 529. The Southern Campus, near Georgetown, opened in September 1967 with 367 enrolled students. The name was changed to the Jack F. Owens Campus in May, 1995. Today, the college has four campuses, the Owens Campus, the Terry Campus in Dover, and two northern locations, in Stanton and Wilmington. In 1999, Delaware Technical and Community College was named the Community College of the Year by the National Alliance of Business.

In his position as vice president, Tim has contributed to the overall policy-making, planning and development of the college system. As director of the Owens Campus, he assumed the responsibility of the total campus operation on a day-to-day basis. During his time at Delaware Technical and Community College, he has made many improvements to the campus, student and faculty life and school programs. The college houses the Carter Partnership Center, where several other postsecondary institutions, including the University of Delaware, Wilmington College and Delaware State University, utilize the classrooms for their own bachelor's, master's and doctorate classes.

Another of Tim's major contributions to the Owens Campus has been improving the campus. He has helped expand and beautify the physical plan of the college. Through Tim's leadership, the new Student Services Center was built to be a consolidated services center for students. It houses various service facilities, including a dining hall, meeting places for student activities, financial aid offices, and counselors' offices. This center is a fitting tribute to Tim's focus on students.

Tim has also aided in upgrading and renovating various buildings on the Owens campus, including the Jason

Technology Center, which is currently undergoing a complete refurbishment. This center, considered the birthplace of Delaware Technical and Community College, was built in the 1940s. It originally was a high school for Black students, and later became the start of the Community College. Tim made a case for the need of a new classroom facility, and after 8 years of construction, the final wing of this building will be completed by the end of this fiscal year. The new, state-of-the-art center houses new classrooms, science labs and a computer lab. This renovation serves as a testament to Tim's commitment to bring the college into the information age.

Tim also has a passion for maintaining the grounds of the campus. He has helped raised private funds for the enhancement of the grounds, a new entrance to the college, and outdoor furniture. His passion for keeping the campus clean has spread to faculty and students alike. Campus pride is so abundant that students and faculty will pick up trash voluntarily off the ground in an effort to keep the campus clean.

Tim's 38 years of experience as an educator includes teaching at both secondary and postsecondary school levels, counseling, fund raising, personnel and a wide variety of management activities. He has also consulted with other nations who are developing community colleges, offering them his perspective, and has participated in projects in Panama, Peru, Guatemala, Taiwan, Saudi Arabia, Mexico and Indonesia.

Tim has also been an active member of the community beyond his role at Delaware Technical and Community College. He has served as president and board member of various community and civic organizations, including Children and Families First, Partners of the Americans—Delaware Chapter, Kiwanis Club, Sussex Tech School District, Western Boys & Girls Club, Seaford School District, and Morning Star Publications.

Tim has been married to his high school sweetheart, Deanna, for 40 years. The two met when Deanna was in 10th grade and Tim was in 11th grade. They began dating, and the rest is history. The Kavel's only child Christopher and his wife Rebecca have a 3-year-old daughter, Jenna. Tim is a loving husband, father and grandfather, who enjoys spending time with his family, golfing, and reading nonfiction. He and his wife also have a home in St. Simon, GA, where they like to spend time vacationing and relaxing.

Through Tim's tireless efforts, he has made a profound difference in the lives of thousands of students and enhanced the quality of life for an entire State. Upon his retirement, he will leave behind a legacy of commitment to public service for both his children and grandchildren and for the generations that will follow. I thank him for the friendship that we share, and I congratulate him on a truly remarkable and distinguished career. I wish him and his family only the very best in all that lies ahead for each of them.•

2003 NEW JERSEY PROFESSOR OF THE YEAR

• Mr. CORZINE. Mr. President, it is my honor and pleasure to recognize Dr. Carole A Gavin, recipient of the 2003 New Jersey Professor of the Year Award. This award, which is sponsored by the Council for Advancement and Support of Education and the Carnegie Foundation for the Advancement of Teaching, acknowledges outstanding professors for their excellence in teaching and their commitment to students.

Dr. Gavin has been a professor of English as a Second Language, ESL, and French at Burlington County College since 1971. She has worked tirelessly to develop supportive infrastructures in which her students can learn and thrive. As a professor of ESL and the ESL program coordinator, Dr. Gavin uses innovative strategies to engage her students and help them reach their full potential. For example, the TNT Tutoring Team is an idea that Dr. Gavin developed to match her ESL students with retired professionals from an adult living community. Exposure to the English language is just the beginning of the program. Through writing journals and discussions of current issues, the students gain a cross-generational perspective that enhances their cultural experience. The education the students gain is not one that can be found in any classroom or textbook—the interactions between the senior citizens and the students offer knowledge that will not only help students succeed in passing a test but succeed in life.

Dr. Gavin is also the principal faculty advisor of the Phi Theta Kappa Honor Society. In order to strengthen the resources available to her students, Dr. Gavin assembled 17 new and current faculty members to join her in mentoring the students. Her efforts have succeeded in enriching the programs available to the members of Phi Theta Kappa by offering a diverse group of advisors who bring knowledge and experience from a variety of disciplines. Again, Dr. Gavin's creative ideas have positively impacted the lives of her students.

Along with the 2003 New Jersey Professor of the Year award, Dr. Gavin has been the recipient of several honors including the Lindbach Foundation Award for Teaching Excellence, South Jersey Literacy Award for ESL Program Teaching and various grants, including a Presidential grant to work with Fort Dix Kosovar refugees.

In a Nation where higher education is vital to an individual's success, I applaud the hard work, energy, and expertise of our Nation's professors. Dr. Carole Gavin's successful career as a teacher, mentor and innovator is an inspiration to us all and I am proud to acknowledge her as New Jersey's Professor of the Year.•

TECHLINK—MONTANA STATE UNIVERSITY

• Mr. BURNS. Mr. President, today I commend TechLink, a technology transfer center at Montana State University, for its outstanding achievements. TechLink has been highly successful at helping both the Department of Defense and NASA to develop, transfer, and commercialize new technology in partnership with industry.

Congress first appropriated funds in 1996 to establish TechLink as a pilot program. Since then, this program has exceeded all expectations. TechLink has established more than 250 partnerships between Federal laboratories and the private sector, including technology licensing agreements, cooperative R&D agreements, and contracts to small businesses for new technology development. These partnerships involve more than 50 different Federal research centers—including over 40 Department of Defense labs and all 10 NASA centers. TechLink has played a key role in linking the high-tech sector in the Northwestern United States with Federal laboratories nationwide. It has assisted more than 150 companies throughout the Northwest.

Beginning this last October, TechLink became a permanent part of the Department of Defense's technology transfer, transition, and acquisition activities. It is the only Department of Defense-wide technology transfer center serving the Army, Navy, Air Force, and various defense agencies. TechLink accounts for approximately one-fourth of all Department of Defense technology licensing agreements nationwide. It is playing a key role in transitioning innovative technology from Department of Defense labs and the private sector into commercial products that not only support our Nation's military and homeland security, but also contribute to national economic competitiveness and prosperity.

TechLink provides an outstanding return on investment. Partnerships that TechLink has established with industry are returning revenues and in-kind contributions to Department of Defense labs worth more than three times the Federal funds expended to support TechLink's activities.

As a result of its many innovations and achievements, the U.S. Department of Commerce recently recognized TechLink as one of 10 "exemplary models" nationwide of Federal technology transfer. I am proud to have played a key role in establishing TechLink, and wish this center the best in the years to come.•

MESSAGES FROM THE PRESIDENT

2003 NATIONAL MONEY LAUNDERING STRATEGY—PM 57

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on the Judiciary:

To the Congress of the United States:

Consistent with section 29(a) of the Money Laundering and Financial Crimes Strategy Act of 1998 (Public Law 105–310; 31 U.S.C. 5341(a)(2)), enclosed is the 2003 National Money Laundering Strategy, prepared by my Administration.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 18, 2003.*

MESSAGES FROM THE HOUSE

At 2:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills and joint resolutions, without amendment:

S. 1066. An act to correct a technical error from Unit T–07 of the John H. Chafee Coastal Barrier Resources System;

S. 1590. An act to redesignate the facility of the United States Postal Service, located at 315 Empire Boulevard in Crown Heights, Brooklyn, New York as the "James E. Davis Post Office Building";

S.J. Res. 18. Joint resolution commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years; and

S.J. Res. 22. Joint resolution recognizing the Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1367. An act to authorize the Secretary of Agriculture to conduct a loan repayment program regarding the provision of veterinary services in shortage situations, and for other purposes;

H.R. 1648. An act to authorize the Secretary of the Interior to convey certain water distribution systems of the Cachuma Project, California, to the Carpinteria Valley Water District and the Montecito Water District;

H.R. 1732. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project, and for other purposes;

H.R. 2304. An act to resolve boundary conflicts in the vicinity of the Mark Twain National Forest in Barry and Stone Counties, Missouri, that resulted from private landowner reliance on a subsequent Federal survey, and for other purposes;

H.R. 3157. An act to provide for the designation of a department of Agriculture disaster liaison to assist State and local employees of the Department in coordination with other disaster agencies in response to a federally declared disaster area as a result of a disaster.

H.R. 3185. An act to designate the facility of the United States Postal Service located at 38 Spring Street in Nashua, New Hampshire, as the "Hugh Gregg Post Office Building";

H.R. 3198. An act to amend the John F. Kennedy Center Act to authorize appropriations for the John F. Kennedy Center for the Performing Arts, and for other purposes;

H.R. 3209. An act to amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project;

H.R. 3217. An act to provide for the conveyance of several small parcels of National Forest System land in the Apalachicola National Forest, Florida, to resolve boundary discrepancies involving the Mt. Trial Primitive Baptist Church of Wakulla County, Florida, and for other purposes; and

H.R. 3353. An act to designate the facility of the United States Postal Service located at 525 Main Street in Tarboro, North Carolina, as the "George Henry White Post Office Building".

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res 299. Concurrent resolution honoring Mr. Sargent Shriver for his dedication and service to the United States of America, for his service in the United States Navy, and for his lifetime fo work as an ambassador for the poor and powerless citizens of the United States of Ameirca, and for other purposes.

At 5:16 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

The message also announced that the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2754) making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

At 7:17 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House disagree to the amendment of the Senate to the bill (H.R. 2417) to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following members as the managers of the conference on the part of the House:

From the Permanent Select Committee on Intelligence, for consideration of the House bill and the Senate amendment, and modifications committed to conference: Mr. GOSS, Mr. BEREUTER, Mr. BOEHLERT, Mr. GIBBONS, Mr. LAHOOD, Mr. CUNNINGHAM, Mr. HOEKSTRA, Mr. BURR, Mr. EVERETT, Mr. GALLEGLY, Mr. COLLINS, Ms. HARMAN, Mr. HASTINGS of Florida, Mr. REYES, Mr. BOSWELL, Mr. PETERSON of Minnesota, Mr. CRAMER, Ms. ESHOO, Mr. HOLT, and Mr. RUPPERSBERGER.

From the Committee on Armed Services, for consideration of defense tactical intelligence and related activities: Mr. HUNTER, Mr. WELDON of Pennsylvania, and Mr. SKELTON.

The message also announced that the House disagree to the amendment of the Senate to the bill (H.R. 2673) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and for other purposes, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses theron; and appoints the following members as the managers of the conference on the part of the House: Mr. YOUNG of Florida, Mr. REGULA, Mr. LEWIS of California, Mr. WOLF, Mr. WALSH, Mr. HOBSON, Mr. BONILLA, Mr. KINGSTON, Mr. FRELINGHUYSEN, Mr. NETHERCUTT, Mr. LATHAM, Mr. GOODE, Mr. LAHOOD, Mr. OBEY, Mr. MURTHA, Mr. MOLLOHAN, Ms. KAPTUR, Mr. SERRANO, Ms. DELAURO, Mr. HINCHEY, Mr. FARR of California, Mr. BOYD, and Mr. FATTAH.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1367. An act to authorize the Secretary of Agriculture to conduct a loan repayment program regarding the provision of veterinary services in shortage situations, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 1648. An act to authorize the Secretary of the Interior to convey certain water distribution systems of the Cachuma Project, California, to the Carpinteria Valley Water District and the Montecito Water District; to the Committee on Energy and Natural Resources.

H.R. 1732. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2304. An act to resolve boundary conflicts in the vicinity of the Mark Twain National Forest in Barry and Stone Counties, Missouri, that resulted from private landowner reliance on a subsequent Federal survey, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3157. An act to provide for the designation of a Department of Agriculture disaster liaison to assist State and local employees of the Department in coordination with other disaster agencies in response to a federally declared disaster area as a result of a disaster, to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 3209. An act to amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project; to the Committee on Energy and Natural Resources.

H.R. 3217. an act to provide for the conveyance of several small parcels of National Forest System land in the Apalachicola National Forest, Florida, to resolve boundary discrepancies involving the Mt. Trial Primitive Baptist Church of Wakulla County, Florida, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 3353. An act to designate the facility of the United States Postal Service located at 525 Main Street in Tarboro, NC, as the "George Henry White Post Office Building"; to the Committee on Governmental Affairs.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 299. Concurrent resolution honoring Mr. Sargent Shriver for his dedication and service to the United States of America, for his service in the United States Navy, and for his lifetime of work as an ambassador for the poor and powerless citizens of the United States of America, and for other purposes; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 1875. A bill to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to extend the mental health benefits parity provisions for an additional year.

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3185. An act to designate the facility of the United States Postal Service located at 38 Spring Street in Nashua, NH, as the "Hugh Gregg Post Office Building."

H.R. 3198. An act to amend the John F. Kennedy Center Act to authorize appropriations for the John F. Kennedy Center for the Performing Arts, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and where referred or ordered to lie on the table as indicated:

POM–315. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to danger pay and family separation allowances for members of the military in combat zones; to the Committee on Armed Services.

HOUSE RESOLUTION NO. 130

Whereas, at this moment, our troops serving in harm's way are facing some of the most trying situations; and

Whereas, with the end of the fiscal year on September 30, supplemental pay increases approved for serving in combat zones expire without action by Congress to extend this as part of defense appropriations. Rates of imminent danger pay and family separation allowances had been raised by $75 and $150 respectively, effective October 2002. Rates for imminent danger pay and family separation allowances are scheduled to return to the prior levels on October 1, 2003; and

Whereas, the effects of a pay reduction on the brave men and women representing us in the war on terror and their families could be demoralizing. Forcing added sacrifices, especially on the families at home, is inappropriate: Now, therefore, be it

Resolved by the house of representatives, That we memorialize the Congress of the United states to maintain the current imminent danger pay and family separation allowances for members of the military in combat zones; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–316. A resolution adopted by the General Assembly of the State of New Jersey relative to the New Jersey National Guard; to the Committee on Armed Services.

ASSEMBLY RESOLUTION NO. 254

Whereas, the Department of Military and Veterans' Affairs supports Homeland Security in this State by preparing the New Jersey National Guard and providing specialized teams and training to emergency first responders; and

Whereas, there are more than 1,700 New Jersey National Guard troops on State and federal active duty involved in Homeland Security and Homeland Defense missions; and

Whereas, the New Jersey Army National Guard provides mobilized combat ready military units for deployment in State and national activations; and

Whereas, the New Jersey Army National Guard provides combat-ready airmen, aircraft and equipment for world wide deployment in support of United States Air Force objectives; and

Whereas, the department is responsible for training and equipping domestic emergency response teams in support of New Jersey's Homeland Security program; and

Whereas, the federal government has failed to establish a Civil Support Team in this State; and

Whereas, the United States Congress is responsible for appropriating funds to the New Jersey National Guard for the procurement of critical resources to be deployed in the effective execution of all assigned missions; and

Whereas, it is necessary to provide critical funding and equipment to the New Jersey National Guard: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. This House calls upon the United States Congress to provide funding and equipment to the New Jersey National Guard to support the Guard in the execution of all assigned missions.

2. This House urges the United States Congress to appropriate sufficient funds to the New Jersey Army National Guard to procure 464 High Mobility Multi-Purpose Vehicles to meet its authorized strength; continue the replacement of its helicopter fleet with UH-60 Black Hawk Helicopters; accelerate the procurement of AH-64 Apache Helicopters; replace the M113 Armored Personnel Carrier with Bradley Fighting Vehicles, and provide the armor division with deployable M1A1 tanks.

3. This House requests the United States Congress to appropriate sufficient funds to the New Jersey Air National Guard for the procurement of new Block 50/52/plus aircraft and for the upgrading of KC-135E refueling airframes.

4. This House further calls upon the United States Congress to establish and fully fund a Civil Support team in the State of New Jersey and to provide more and better protective clothing for team members and body armor for counter terrorism missions and to appropriate capital construction funds for critical military construction projects, including the construction of a dedicated site for the arming and dearming of F-16 aircraft at the Atlantic City Air Base, the construction of the Consolidated Logistics and Training Facility at the Lakehurst Naval Engineering Station; and security enhancements at the McGuire Air Force Base.

5. Duty authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the Vice President of the United States, the Speaker of the United States House of Representatives, and to every member of Congress elected from this State.

POM–317. A resolution adopted by the General Assembly of the State of New Jersey relative to differential salary reimbursement for activated Reserve and National Guard members; to the Committee on Armed Services.

ASSEMBLY RESOLUTION NO. 283

Whereas, since September 11, 2001, tens of thousands of National Guard and Reserve members have been activated in the war against terrorism and in the conflict with Iraq; and

Whereas, to alleviate financial hardship for their activated employees, many states, counties and municipalities have generously opted to pay activated Reserve and National Guard members the difference between their regular salary and their military pay; and

Whereas, however, in these difficult economic times, many states, counties and municipalities are themselves suffering substantial budget deficits; and

Whereas, such a differential pay policy is helpful in recruiting and retaining Reserve and National Guard members; and

Whereas, given the crucial role Reserve and National Guard forces play in this nation's security, it is incumbent upon the federal government to assist state and local government employers in their efforts to alleviate hardship on these soldiers, sailors and aviators when they are activated: Now, therefore be it

Resolved by the General Assembly of the State of New Jersey:

1. This House calls upon the President and Congress of the United States to pass and enact legislation reimbursing state, county and municipal governments for differential salary payments made to members of Reserve and National Guard units activated in response to the September 11, 2001 terrorist attacks and the Iraq conflict.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United

States House of Representatives and every member of Congress elected from this State.

POM 318. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to the age for receipt of military retired pay for nonregular service; to the Committee on Armed Services.

House Resolution No. 271

Whereas, H.R. 742 has been introduced by Representative Jim Saxton to reduce the age for receipt of military retired pay for nonregular service from 60 to 55; and

Whereas, more and more military readiness and service are being contributed by Guard and Reserve service personnel, vis-a-vis Persian Gulf, Kosovo, Afghanistan and Iraq; and

Whereas, equity would indicate that Guard and Reserve service personnel should be treated fairly regarding their benefits and retirement pay; and

Whereas, the current law which withholds retirement pay until age 60 does not provide fair and actuarially realistic treatment: Now, therefore, be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania memorialize the Congress to pass H.R. 742; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–319. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to traffic stoppages at railroad crossings; to the Committee on Commerce, Science, and Transportation.

Senate Resolution No. 134

Whereas, local communities have long tried to address the issue of minimizing traffic stoppages caused by trains traveling within their municipal borders. Slow trains moving through a community bring traffic to a standstill. Even worse, trains may sometimes stop completely, bringing an entire city to a halt and backing up road traffic for blocks in all directions. Commuters, shoppers, and even emergency vehicles can be trapped on the one side of a railroad track, unable to reach the other side for long periods of time; and

Whereas, the State Legislature provided local governments with the means to regulate the length of time that trains may permissibly halt vehicle traffic. The authority to levy fines on train companies that block traffic for too long held the promise of compelling railroad companies to work with local governments to minimize the disruption to lives and commerce that had become routine. Unfortunately, the courts have struck down this state law, arguing that only the federal government may regulate the speed and length of trains operating in the interstate commerce; and

Whereas, with local and state options to resolve this local problem foreclosed, it is imperative that the United States Congress exercise its authority to compel a reasonable solution at the federal level. Without Congressional attention, railroad companies will continue to ignore the concerns of local governments, businesses, and citizens who must cope with unreasonable traffic stoppages: Now, therefore be it

Resolved by the senate, That we memorialize the United States Congress to address the issue of traffic stoppages at railroad crossings; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, the United States Senate Majority Leader, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–320. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to providing financial assistance to commercial airline companies; to the Committee on Commerce, Science, and Transportation.

House Resolution No. 331

Whereas, airline companies of this nation were required by the Federal Government to suspend operations for four days, September 11 through 14, 2001, for reasons of national security; and

Whereas, the aggregate estimates of daily lost revenues suffered by these companies during that four-day period range from $250 million to $500 million; and

Whereas, in the days since flights have been able to resume, cancellation of reservations has ranged between 20% and 40%, resulting in additional lost revenues to these companies, canceled flights and huge layoffs estimated at more than 100,000 employees; and

Whereas, US Airways, a major airline company in the Commonwealth of Pennsylvania, has announced that layoffs of approximately 20,000 of its employees have become necessary; and

Whereas, in the Pittsburgh region alone approximately 11,700 residents are employees of US Airways; and

Whereas, financially necessitated layoffs of airline employees in the numbers projected will have a profound impact on the national and State economies and on national security and should be prevented; and

Whereas, the health of the airline industry impacts so directly on our economic health and our national security that Federal and State financial assistance is desirable and imperative: Now, therefore, be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania memorialize the Congress of the United States to pass and the President of the United States to enact legislation to provide the necessary financial resources to commercial airline companies headquartered in the United States and their employees and traded on a national stock exchange; and be it further

Resolved, That this Legislature and our Governor likewise promptly pass and enact a financial package to provide assistance to those national airline companies who do business in the Commonwealth; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, to members of the Pennsylvania delegation of Congress, to the Governor of Pennsylvania and to the President pro tempore of the Senate of Pennsylvania.

POM–321. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to funding for home heating assistance; to the Committee on Energy and Natural Resources.

Senate Resolution No. 162

Whereas, for a variety of reasons, natural gas prices have risen significantly over the past year. These reasons include increasing demand for natural gas and declining production in both the United States and Canada. While this increase in cost has already exacted a toll in many areas of our national economy, the full impact has yet to be felt. This winter, when seasonal demand reaches its peak, costs are expected to strike a terrible blow to people who have had difficulties paying their home heating bills even before the recent increase in prices; and

Whereas, for many years, utilities and their customers have supplemented governmental programs through various heating assistance initiatives. However, public and private programs offering help to low-income families trying to heat their residences are already stretched thin. This winter's situation is expected to bring a crisis to many people, including the low-income seniors who will almost surely face difficult choices; and

Whereas, with summer prices of natural gas at near record highs, Michigan's Public Service Commission has warned that homeowners could expect increases of $30 a month or more if the winter is severely cold. Gas companies in Michigan and across the country are urging their customers to take steps to prepare for the winter's costs, including weatherization and budgeting. Another key part of dealing with this problem will be for Congress to significantly increase funding available to help state programs for low-income residents; and

Whereas, there are discussions under way in Congress over proposals to address this issue, including increasing the authorization funding level for the Low-Income Home Energy Assistance Program to at least $3 billion. Clearly, such actions to bring home heating help are in order: Now, therefore, be it

Resolved by the senate, That we memorialize the President and the Congress of the United States to increase funding available for home heating assistance to cope with the rise in natural gas costs expected this winter; and be it further

Resolved, That copies of this resolution be transmitted to the Office of President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–322. A resolution adopted by the Board of Commissioners of Ferry County of the State of Washington relative to federal lands in Ferry County, Washington; to the Committee on Energy and Natural Resources.

POM–323. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to out-of-state solid waste; to the Committee on Environment and Public Works.

Senate Resolution No. 4

Whereas, in 1992, the United States Supreme Court, in Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources, ruled that states could not regulate or ban the importation of solid waste because only Congress has the authority to regulate interstate commerce. Since that time, Michigan has become the dumping ground for increasing amounts of solid waste from outside of our state and, with large amounts of trash from Canada, from outside the country; and

Whereas, Michigan has become one of the largest recipients of improved solid waste in the country. Approximately 15 percent of all trash dumped in landfills in Michigan now originates elsewhere. The amounts have increased significantly in the past several years, and recent reports of a major contract with Ontario and of the closing of the nation's largest landfill in New York seem to indicate this situation will only become a bigger issue in the future; and

Whereas, several measures have been considered in Congress to address the issue of extending authority to states to regulate or ban out-of-state solid waste, including H.R. 1730; and

Whereas, accepting unlimited volumes of trash outside our state is a serious long-term commitment. Long after the money from the contract has been spent, there is a threat to the environment and an obligation to monitor sites to protect water and health. Clearly, any state accepting these long-term risks should be able to regulate what comes across state lines for disposal: Now, therefore, be it

Resolved by the senate, That we memorialize the Congress of the United States to enact legislation to give states the authority to ban out-of-state solid waste; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM 324. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to foreign municipal solid waste; to the Committee on Environment and Public Works.

SENATE RESOLUTION NO. 12

Whereas, Michigan has long been frustrated in efforts to regulate solid waste imported into our state. Our state is especially concerned about waste that is brought here from Ontario. Our citizens feel strongly that our environment should not be placed at additional risk from municipal solid waste and other materials that are generated elsewhere and transported here for disposal; and

Whereas, the volume of waste that comes into Michigan each year represents a significant portion of all trash handled here. As much as 20 percent of all solid waste in Michigan is from out of state, and the amount has increased significantly in recent years; and

Whereas, Congress has authority for regulating the transportation and disposal of solid waste between states and nations by virtue of the United States Constitution's interstate commerce clause. To protect the health, safety, and welfare of our environment and citizens, Congress must take action to provide states with the express means to regulate or prohibit the importation of trash. Congress has before it now a bill that would provide the appropriate authority to the states. Under H.R. 382, which has been introduced by Michigan's Congressman Rogers, states could prohibit or impose certain limitations on the receipt of foreign municipal solid waste; and

Whereas, Congress is also considering H.R. 411, which would direct the Administrator of the EPA to carry out duties under the agreement with Canada on the transboundary movement of hazardous waste; and

Whereas, hazardous waste and solid waste transported between Canada and the United States are provided for in the Agreement Between the Government of Canada and the Government of the United States Concerning the Transboundary Movement of Hazardous Waste. It has been reported, however, that the notification requirements and procedures set forth in the agreement have not been followed. It is most disturbing to think that the protections provided in the agreement between our nations are not working. The people of this state have every right to know that all prudent measures are being enforced to protect our citizens and environment: Now, therefore, be it

Resolved by the senate, That we memorialize the Congress of the United States to enact legislation to authorize states to prohibit or restrict foreign municipal solid waste and to urge the Environmental Protection Agency to ensure full compliance with the Agreement Between the Government of Canada and the Government of the United States Concerning the Transboundary Movement of Hazardous Waste; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, and the Environmental Protection Agency.

POM–325. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to solid waste management decisions; to the Committee on Environment and Public Works.

SENATE RESOLUTION NO. 167

Whereas, landfills and incinerators pose a variety of environmental risks to Michigan residents and our neighbors, from a potential to contaminate groundwater aquifers to the release of a variety of air pollutants; and

Whereas, certain items, such as used oil and batteries, increase significant health and safety risks if placed in disposal facilities; and

Whereas, banning recyclable or compostable items from our disposal facilities protects public health and the environment by prolonging the life of a landfill and minimizes the need for additional landfills, saving land resources and the other inherent risks of solid waste disposal facilities; and

Whereas, the reuse of recyclable materials reduces energy use and related negative impacts on our natural resources; and

Whereas, the reuse of recyclable materials reduces the demand for virgin materials. In some cases, the mining, collection, and processing of virgin materials can lead to degradation of our natural resources; and

Whereas, Michigan's recycling rates are significantly below average when compared to the region or national averages; and

Whereas, Michigan residents have chosen to spend considerable time and resources on diverting certain waste streams from solid waste disposal facilities such as beverage containers, yard waste, used oil, and scrap tires; and

Whereas, efforts to encourage people to recycle are undermined when residents do not see a link between their efforts to recycle materials and the extension of the usable life of area disposal facilities; and

Whereas, solid waste management is most effective when done on a local level where program implementation is conducted: Now, therefore, be it

Resolved by the senate, That is the sense of this legislative body that local units of governments need to be empowered to have greater control over solid waste management decisions; that the county level is the optimal planning unit of government due to the multi-jurisdictional nature of solid waste disposal facilities; that the state of Michigan should play a larger role in ensuring that products that Michigan residents have decided to divert from solid waste disposal facilities are not allowed in our facilities from other jurisdictions; and that the state of Michigan should support local units of governments in their efforts to provide alternative disposal mechanisms for those items banned from our solid waste disposal facilities; and be it further

Resolved, That we memorialize the Congress of the United States to enact legislation to extend to the states more authority for the management of solid waste; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

S. 616. A bill to amend the Solid Waste Disposal Act to reduce the quantity of mercury in the environment by limiting the use of mercury fever thermometers and improving the collection and proper management of mercury, and for other purposes (Rept. No. 108–199).

By Ms. COLLINS, from the Committee on Governmental Affairs, without amendment:

S. 1561. A bill to preserve existing judgeships on the Superior Court of the District of Columbia (Rept. No. 108–200).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. McCAIN for the Committee on Commerce, Science, and Transportation.

*Louis S. Thompson, of Maryland, to be a Member of the Reform Board (Amtrak) for a term of five years.

*Floyd Hall, of New Jersey, to be a Member of the Reform Board (Amtrak) for a term of five years.

*Robert L. Crandall, of Texas, to be a Member of the Reform Board (Amtrak) for a term of five years.

*Jeffrey A. Rosen, of Virginia, to be General Counsel of the Department of Transportation.

*Kirk Van Tine, of Virginia, to be Deputy Secretary of Transportation.

*Elizabeth Courtney, of Louisiana, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2010.

*Elizabeth Courtney, of Louisiana, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for the remainder of the term expiring January 31, 2004.

*Cheryl Feldman Halpern, of New Jersey, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2008.

*Michael D. Gallagher, of Washington, to be Assistant Secretary of Commerce for Communications and Information.

Mr. McCAIN. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without obligation, it is so ordered.

Coast Guard nominations beginning Jeffrey L. Busch and ending John S. Welch, which nominations were received by the Senate and appeared in the Congressional Record on November 3, 2003.

Cost Guard nominations beginning William D. Adkins and ending Michael S. Zidik, which nominations were received by the Senate and appeared in the Congressional Record on November 3, 2003.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BENNETT:

S. 1876. A bill to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project; to the Committee on Energy and Natural Resources.

By Mr. ROBERTS:

S. 1877. A bill to amend the Food Security Act of 1985 to improve the enrollment of cropland into the conservation reserve program through the farmable wetlands program; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GRAHAM of South Carolina:

S. 1878. A bill to amend title II of the Social Security Act to preserve and strengthen the Social Security program through the creation of personal retirement accounts funded by employer and employee Social Security payroll deductions, to restore the solvency of the old-age survivors, and disability insurance programs, and for other purposes; to the Committee on Finance.

By Ms. MIKULSKI (for herself, Mr. ENSIGN, Mrs. MURRAY, Ms. SNOWE, Mr. DODD, Mr. KENNEDY, Mr. JEFFORDS, and Ms. CANTWELL):

S. 1879. A bill to amend the Public Health Service Act to revise and extend provisions relating to mammography quality standards; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SARBANES (for himself, Ms. MIKULSKI, Mr. WARNER, Mr. ALLEN, and Mr. SANTORUM):

S. 1880. A bill to establish the Special Blue Ribbon Commission on Chesapeake Bay Nutrient Pollution Control Financing; to the Committee on Environment and Public Works.

By Mr. ALEXANDER (for himself, Mrs. MURRAY, Mr. ENZI, and Mr. GREGG):

S. 1881. A bill to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments by the Medical Device User Fee and Modernization Act of 2002, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LAUTENBERG (for himself, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. CORZINE, Mr. REED, and Mrs. CLINTON):

S. 1882. A bill to require that certain notifications occur whenever a query to the National Instant Criminal Background Check System reveals that a person listed in the Violent Gang and Terrorist Organization File is attempting to purchase a firearm, and for other purposes; to the Committee on the Judiciary.

By Mr. ENZI (for himself, Mr. BINGAMAN, Mr. THOMAS, and Mr. CRAIG):

S. 1883. A bill to amend the Public Health Service Act to provide greater access for residents of frontier areas to the healthcare services provided by community health centers; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DASCHLE (for Mr. KERRY):

S. 1884. A bill to assure a healthy American manufacturing sector, and for other purposes; to the Committee on Finance.

By Mr. DASCHLE (for Mr. KERRY):

S. 1885. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives for manufacturing businesses in the United States; to the Committee on Finance.

By Mr. DASCHLE (for Mr. KERRY):

S. 1886. A bill to amend the Small Business Act and the Small Business Act of 1958 to establish the National Office for the Development of Small Manufacturers, to increase the level of assistance available for small manufacturers, and for other purposes; to the Committee on Small Business and Entrepreneurship.

By Mr. HATCH (for himself, Mr. LEVIN, and Mr. BIDEN):

S. 1887. A bill to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices; to the Committee on the Judiciary.

By Mr. SPECTER (for himself, Mr. SCHUMER, Mr. GRAHAM of South Carolina, Mr. WYDEN, Ms. COLLINS, Mr. GRAHAM of Florida, and Mr. BAYH):

S. 1888. A bill to halt Saudi support for institutions that fund, train, incite, encourage, or in any other way aid and abet terrorism, and to secure full Saudi cooperation in the investigation of terrorist incidents; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SPECTER:

S. Res. 267. A resolution designating 2004 as "The Year of Polio Awareness"; to the Committee on the Judiciary.

By Mr. GRAHAM of South Carolina (for himself, Mr. FRIST, Mr. LUGAR, Mr. BIDEN, Mr. MCCAIN, Mr. PRYOR, Mr. SANTORUM, Mr. DEWINE, Mr. KYL, Mr. WARNER, Mr. LAUTENBERG, Mrs. FEINSTEIN, Mr. CORZINE, Mr. LIEBERMAN, Mr. CHAMBLISS, Mr. ALLEN, Mr. SPECTER, Mr. REED, Mr. BURNS, Mr. KENNEDY, Mr. LEAHY, Ms. LANDRIEU, Mr. COLEMAN, and Mr. BAUCUS):

S. Res. 268. A resolution to express the sense of the Senate regarding the deaths of 19 citizens of Italy in Iraq; considered and agreed to.

By Mr. BIDEN:

S. Con. Res. 82. A concurrent resolution recognizing the importance of Ralph Bunche as one of the great leaders of the United States, the first African-American Nobel Peace Prize winner, an accomplished scholar, a distinguished diplomat, and a tireless campaigner of civil rights for people throughout the world; to the Committee on the Judiciary.

By Mr. BIDEN:

S. Con. Res. 83. A concurrent resolution promoting the establishment of a democracy caucus within the United Nations; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 322

At the request of Mr. INOUYE, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 322, a bill to amend the Internal Revenue Code of 1986 to exempt certain sightseeing flights from taxes on air transportation.

S. 641

At the request of Mrs. LINCOLN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 641, a bill to amend title 10, United States Code, to support the Federal Excess Personal Property program of the Forest Service by making it a priority of the Department of Defense to transfer to the Forest Service excess personal property of the Department of Defense that is suitable to be loaned to rural fire departments.

S. 684

At the request of Mr. SMITH, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 684, a bill to create an office within the Department of Justice to undertake certain specific steps to ensure that all American citizens harmed by terrorism overseas receive equal treatment by the United States Government regardless of the terrorists' country of origin or residence, and to ensure that all terrorists involved in such attacks are pursued, prosecuted, and punished with equal vigor, regardless of the terrorists' country of origin or residence.

S. 985

At the request of Mr. DODD, the names of the Senator from Minnesota (Mr. COLEMAN) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1209

At the request of Mr. BENNETT, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1209, a bill to provide for the acquisition of property in Washington County, Utah, for implementation of a desert tortoise habitat conservation plan.

S. 1223

At the request of Mr. BINGAMAN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1223, a bill to increase the number of well-trained mental health service professionals (including those based in schools) providing clinical mental health care to children and adolescents, and for other purposes.

S. 1266

At the request of Mrs. CLINTON, the names of the Senator from North Carolina (Mr. EDWARDS), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Wisconsin (Mr. KOHL) and the Senator from Virginia (Mr. ALLEN) were added as cosponsors of S. 1266, a bill to award a congressional gold medal to Dr. Dorothy Height, in recognition of her many contributions to the Nation.

S. 1482

At the request of Mr. INOUYE, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 1482, a bill to amend the Internal Revenue Code of 1986 to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 1645

At the request of Mr. CRAIG, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1709

At the request of Mr. CRAIG, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1709, a bill to amend the USA PATRIOT ACT to place reasonable limitations on the use of surveillance and the issuance of search warrants, and for other purposes.

S. 1800

At the request of Mr. AKAKA, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1800, a bill to amend the Higher Education Act of 1965 to enhance literacy in finance and economics, and for other purposes.

S. 1813

At the request of Mr. LEAHY, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1813, a bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts in Iraq, and for other purposes.

S. 1871

At the request of Mr. HATCH, the names of the Senator from Texas (Mr. CORNYN) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 1871, a bill to authorize salary adjustments for Justices and judges of the United States for fiscal year 2004.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from Kentucky (Mr. MCCONNELL) were added as cosponsors of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. RES. 202

At the request of Mr. CAMPBELL, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932–33.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BENNETT:

S. 1876. A bill to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project; to the Committee on Energy and Natural Resources.

Mr. BENNETT. Mr. President, I rise today to introduce legislation authorizing the title transfer of certain features of the Provo River Project, UT, from the Bureau of Reclamation to non-Federal ownership. This title transfer will provide many benefits, both directly and indirectly, for both the local government and the Federal Government, including economic, environmental, recreational, and safety benefits.

The facilities to be transferred are the Provo Reservoir Canal and associated lands and structures, the Salt Lake Aqueduct and associated lands and structures, and a 3.79 acre parcel of land in Pleasant Grove, UT. The Provo Reservoir Canal is a large, open, mostly unlined, 21.5 mile long canal that was constructed by the United States in the 1940s. The water transported through the Provo Reservoir Canal is used principally for municipal and industrial purposes. The Salt Lake Aqueduct is a 41.7 mile long, 69 inch diameter pipe, constructed by the United States and completed in 1951. The Provo River Water Users Association recently constructed a $2 million office and shop complex on the Pleasant Grove property, without the use of Federal funds.

Title transfer will facilitate the use of tax-exempt bond financing and low-interest loan financing for needed improvements. Currently, there is no Reclamation program for rehabilitating aging Reclamation facilities. Federal ownership of the facilities to be improved prevents low interest loans by others. On the Federal level, the transfer would eliminate the demands on limited Reclamation resources for the administration of the Salt Lake Aqueduct and the Provo Reservoir Canal.

It is anticipated that following title transfer, needed improvements would be made. For example, the Provo Reservoir Canal will be enclosed to provide for the conservation of water, improved water quality and security, the construction of a public trail system on top of the canal, and to eliminate the hazards of an open unlined canal in an urban environment. The critical importance of eliminating the safety hazard of an open canal in an urban setting was recently reinforced by the tragic death of two young men who unfortunately were lured by the thrill of attempting a swim through the canal to the other end. The enclosure of the canal would eliminate this safety risk and hopefully prevent any others from making a similar mistake.

The transfer has significant local support, including Utah County, Salt Lake County, Sandy City, Salt Lake City, Lindon City, Draper, Pleasant Grove City, Orem City and American Fork City.

I look forward to working with the Metropolitan Water District of Salt Lake and Sandy, the Provo River Water Users Association, and all interested parties to make this title transfer a success.

By Ms. MIKULSKI (for herself, Mr. ENSIGN, Mrs. MURRAY, Ms. SNOWE, Mr. DODD, Mr. KENNEDY, Mr. JEFFORDS, and Ms. CANTWELL):

S. 1879. A bill to amend the Public Health Service Act to revise and extend provisions relating to mammography quality standards; to the Committee on Health, Education, Labor, and Pensions.

Ms. MIKULSKI. Mr. President, I rise to introduce the Mammography Quality Standards Reauthorization Act of 2003. I am pleased to be joined in introducing this bill by Senator ENSIGN and our bipartisan cosponsors. This important bipartisan bill is about saving lives. That's what the Mammography Quality Standards Act (MQSA) does. Accurate mammograms detect breast cancer early, so women can get treatment and be survivors.

Mammography is not perfect, but it is the best screening tool we have now. I authored MQSA over ten years ago to improve the quality of mammograms so that they are safe and accurate. Before MQSA became law, there was an uneven and conflicting patchwork of standards for mammography in this country. There were no national quality standards for personnel or equipment. Image quality of mammograms and patient exposure to radiation levels varied widely. The quality of mammography equipment was poor. Physicians and technologists were poorly trained. Inspections were lacking.

MQSA set federal safety and quality assurance standards for mammography facilities for: personnel, including doctors who interpret mammograms; equipment; and operating procedures. By creating national standards, Congress helped make mammograms a more reliable tool for detecting breast cancer. In 1998, Congress improved MQSA by giving information on test results directly to the women being tested, so no woman falls through the cracks because she never learns about a suspicious finding on her mammogram. Now it is time to renew MQSA and lay the foundation to strengthen it even further.

The bill that I am introducing with Senator ENSIGN today is a bipartisan agreement to extent MQSA for two years while making two additional changes to certificates that facilities are required to have to perform mammograms. First, the bill allows the Secretary of Health and Human Services to issue a temporary renewal certificate for up to 45 days to a facility seeking reaccreditation, if the accreditation body has issued an accreditation extension and other criteria are met. This will help ensure that a facility is not forced to close its doors to women seeking mammograms, while it is completing its reaccreditation and the quality of mammography is not compromised.

Second, the bill allows the Secretary, at the request of an accreditation body, to issue a limited provisional certificate to a facility to enable a facility to conduct examinations for educational purposes while an onsite visit from an accreditation body is in progress. This certificate would only be valid during the time the site visit team from the accreditation body is physically in the facility and would not be valid longer than 72 hours.

The two year reauthorization of MQSA is important. It will give Congress an opportunity to consider in the next reauthorization expert recommendations from an Institute of Medicine (IOM) study and a General Accounting Office (GAO) report on several issues related to MQSA. I have been working with the Labor, Health and Human Services (HHS), and Education Appropriations Subcommittee to get these studies going since I included them in the Senate fiscal year 2004 Labor/HHS Appropriations bill. The HELP Committee also heard testimony in support of a two year reauthorization at the HELP Committee's April hearing on MQSA.

As I talked to advocacy groups about ways to improve MQSA, the need to improve the skills of doctors reading mammograms was brought to my attention. One study found that a woman has a 50 percent chance of getting a "false positive" reading from her mammogram over 10 years. I'm gravely concerned about reports that doctors miss about 15 percent of breast cancers on mammograms. I was also disturbed by a New York Times investigation last year. It found that some radiologists were missing alarming numbers of breast cancers because they lacked the experience or training they needed for the difficult task of interpreting the X-ray. These are reasons why I requested the hearing that the HELP Committee held in April on this issue. While I am disappointed that the HELP Committee was not able to reach agreement this year on a continuing medical education provision to address this issue, I look forward to Congress reexamining this issue once the IOM and GAO studies are completed.

The IOM and GAO will look at several important issues such as: ways to improve physicians' interpretation of mammograms; possible changes to MQSA regulatory requirements; ways to ensure the recruitment and retention of sufficient numbers of adequately trained personnel to provide quality mammography; how data currently collected under MQSA could be better used; and factors that led to the closing of mammography facilities since 2001. I look forward to working with my colleagues in Congress to examine the recommendations from these studies in 2005 and to consider further improvements to MQSA in its next reauthorization.

The HELP Committee will mark up this bill tomorrow. This legislation is supported by groups including the American Cancer Society, the Susan G. Komen Breast Cancer Foundation, the national Alliance of Breast Cancer Organizations, and the American College of Radiology Association. I strongly urge Committee passage and swift Senate passage of the bill later this week. I hope that the House will also expeditiously pass this bill. There are an estimated 212,600 new cases of breast cancer and an estimated 40,200 breast cancer deaths in the United States this year. Early detection and treatment are essential to reducing breast cancer deaths. Congress should pass this bill this year to reauthorize MQSA and extend this valuable program that helps save the lives of women and men with breast cancer. I ask unanimous consent that letters of support be printed in the RECORD.

There being no objection, the material was ordered to be printed as follows:

AMERICAN CANCER SOCIETY,
November 18, 2003.

Hon. BARBARA MIKULSKI,
U.S. Senate,
Washington, DC.

DEAR SENATOR MIKULSKI: On behalf of the American Cancer Society and its more than 28 million supporters, I would like to thank you, along with Senator Ensign, for your continued leadership in sponsoring the "Mammography Quality Standards Act of 2003." As the largest national, community-based organization dedicated to eliminating the incidence and burden of cancer and improving cancer care, the Society strongly supports the reauthorization of the Mammography Quality standards Act of 1992 (MQSA) in the remaining days of this session.

In addition, we believe a two year reauthorization is appropriate at this time, as we continue to examine methods for mammography quality improvement. Currently, funding has been included in the LHHS Appropriation bill for the Institute of Medicine and General Accounting Office to study and recommend concrete improvement to MQSA. When the results of these studies are released, we look forward to again working with the Congress to further improve MQSA and ensure that women's access to high quality mammography continues.

The American Cancer Society, along with other professional societies and advocacy groups, was actively involved in the development of the 1992 MQSA law and its reauthorization in 1997, in an effort to further reduce deaths and disability from breast cancer. Mammography screening has led to earlier detection of breast cancer when it is in its most treatable stages, thereby providing a greater chance for life-saving treatments and a greater range of treatment options. Increasing utilization of mammography has been a major factor in the reduction of breast cancer deaths in the U.S. over the last decade. Based upon ongoing scientific evidence and improvements in technology, high-quality mammography continues to be the best available tool for the early detection of breast cancer. Therefore, the Society is honored to again lend our support to Congress in its commitment to ensure that women have access to high-quality mammograms.

The Society would like to commend you again for your leadership on this critical public health issue, and we look forward to continuing to work closely with you and the other cosponsors to ensure the enactment of this important legislation this year. If you or your staff have any questions, please contact Kelly Green Kahn, Manager of Federal Government Relations (202-661-5718).

Sincerely,

DANIEL E. SMITH,
National Vice President, Federal & State Government Relations.
WENDY K.D. SELIG,
Vice President, Legislative Affairs.

THE SUSAN G. KOMEN BREAST CANCER FOUNDATION,
November 17, 2003.

Re: Mammography Quality Standards Reauthorization Act of 2003

Hon. BARBARA MIKULSKI,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR MIKULSKI: The Susan G. Komen Breast Cancer Foundation supports your introduction of the Mammography Quality Standards Reauthorization Act of 2003, and we appreciate your leadership in ensuring patient access to quality breast health and breast cancer care.

Thanks to more than 75,000 volunteers dedicated to the fight against breast cancer, the Susan G. Komen Breast Cancer Foundation is a unique grassroots network with more than 100 Affiliates nationwide and internationally. Since its inception in 1982, Komen has raised nearly $600 million in furtherance of its mission—to eradicate breast cancer as a life-threatening disease by advancing research, education, screening and treatment. Komen dedicates millions of dollars annually towards scientific and community outreach projects. The Komen Foundation Research Program has awarded more than 850 grants, totaling more than $110 million for breast cancer research. In addition, Komen Affiliates have funded hundreds of non-duplicative, community-based breast health education and breast cancer screening and treatment projects for the medically underserved.

Early detection of breast cancer saves lives. Mammography screening remains the gold standard in the early detection of breast cancer. In the past decade, breast cancer mortality rates have declined in the United States. This is due, in large measure, to early detection and timely treatment. The MQSA establishes a national standard of mammography care. Since enactment of the MQSA, women throughout the country have gained further confidence in their mammograms, as well as in those individuals and facilities that provide services as part of screening for breast cancer.

The Komen Foundation wishes to lend our continued support to the efforts of you and your colleagues to ensure enactment of the Mammography Quality Standards Reauthorization Act, and we applaud your efforts in advancing an issue of utmost importance.

Very truly yours,

SUSAN BRAUN,
President and CEO.

NABCO®, NATIONAL ALLIANCE OF
BREAST CANCER ORGANIZATIONS,
New York, NY, November 18, 2003.

Hon. BARBARA MIKULSKI,
U.S. Senate, Washington, DC.

DEAR SENATOR MIKULSKI: On behalf of the millions of women, families, professionals and providers served by the education and information programs of the National Alliance of Breast Cancer Organizations (NABCO), I am writing to express support of 2003 legislation to reauthorize the Mammography Quality Standards Act of 1992 (MQSA). We thank you and your Senate co-sponsors for advancing this legislation.

Since our organization's founding in 1986, NABCO has been a visible proponent of high-quality early detection of breast cancer. We have worked with Congressional leaders on measures to educate women about good breast health, and on provisions to improve screening coverage and reimbursement, and to eliminate barriers to early diagnosis. Without question, early detection followed by prompt, state-of-the-art care offers women the best chance for successful treatment, and high-quality, regular mammograms are the best available tool to detect breast cancer at its earliest, treatable stages.

The MQSA system of certification, inspection and accreditation established basic standards that have improved the quality of mammography in the United States. After working with Congress to craft this legislation, it was my honor to serve as a consumer representative on the FDA's initial MQSA Advisory Committee. Since 1992, breast cancer survival has improved markedly—in large part because more women have taken advantage of regular, high-quality screening mammograms, available nationwide. The current reauthorization provisions will further strengthen this system.

However, new approaches are needed to continue to improve the quality and efficiency of this test, reflect technology innovations, disseminate outcomes, and attract dedicated professionals to the breast imaging field. We hope that you will seek NABCO's ongoing help to identify ways that MQSA can better serve facilities, medical professionals and consumers. We commend you and your staff for your recognition that high quality, accessible mammography is vital to making progress in the fight against breast cancer. With your support, we can offer women confidence that if they have breast cancer, it is likely to be detected, and that mammography and imaging services in the U.S. will continue to improve in quality.

Very truly yours,

AMY S. LANGER,
Executive Director.

AMERICAN COLLEGE OF RADIOLOGY,
Reston, VA, November 17, 2003.

Hon. BARBARA MIKULSKI,
U.S. Senate,
Washington, DC.

DEAR SENATOR MIKULSKI: On behalf of the 30,000 physician and physicist members of the American College of Radiology Association (ACRa), I would like to offer the College's full support for your introduction of legislation to reauthorize the Mammography Quality Standards Act (MQSA).

Since enactment of MQSA in 1992, women in the United States have gained confidence in the providers of their mammograms, through the knowledge that mammography facilities were being certified in accordance with federal standards. The successful collaboration of radiologists, mammography facility operators, federal and state regulators and consumer groups has produced significant improvements in the quality of mammograms nationwide. With the impending passage of this legislation, Congress and ACRa continue this legacy.

The technical corrections contained in this legislation will make sure that mammography facilities will not be closed due to administrative "Catch 22's." Had these problems not been addressed, access by thousands of women seeking timely breast cancer detection and treatment may have been threatened. Furthermore, the Committee's willingness to work with the breast cancer community and consider incorporating the results of pending studies into the next reauthorization is truly appreciated and has the potential of improving the act even more.

The College looks forward to working with you and other interested parties to enact this legislation and thanks you for your leadership as we continue to improve the quality of mammography services throughout the country.

Sincerely,

E. STEPHEN AMIS,
Chairman, Board of Chancellors.

Mr. ENSIGN. Mr. President, I rise today to introduce, with my distinguished colleague from Maryland, Senator MIKULSKI, the Mammography Quality Standards Reauthorization Act of 2003. The purpose of this legislation is to reauthorize the Mammography Quality Standards Act in order to maintain access to high quality mammography services for every woman in America.

Breast cancer is the second leading cause of cancer deaths among American women. An estimated 211,300 new cases of invasive breast cancer are expected to occur among women in the United States in 2003. In my home State of Nevada alone, 1,400 new cases of breast cancer will be diagnosed in women, and an estimated 300 women in Nevada will die of breast cancer next year.

The MQSA was originally passed in 1992 to ensure that all women have access to quality mammography for the detection of breast cancer in its earliest, most treatable stages. Congress re-authorized MQSA in 1998, extending the program through 2002. Although MQSA was scheduled for reauthorization last Congress, we unfortunately failed to act.

The MQSA has had a positive impact on mammography quality. FDA inspection data continues to show overall facility compliance with the national standards to ensure the quality of x-ray images. Currently, over 98 percent of all mammography facilities pass the phantom image test during their facility inspection. MQSA remains as essential tool for early detection and for combating mortality associated with breast cancer.

The legislation I introduce today would reauthorize MQSA for 2 years, signifying Congress' commitment to extending the life of this important program. Reauthorizing the act for a shorter amount of time than previously done will allow Congress the time it needs to examine some serious issues facing the long-term effectiveness of the act while still maintaining vital quality standards in the interim.

In addition, this legislation would permit the Secretary of the Department of Health and Human Services to issue two additional and temporary certificates that will allow facilities who offer mammography services to continue to provide uninterrupted care while they go through the process of reaccredidation. This is important as we encourage more and more women to seek screening services each year.

With these significant changes, MQSA, I believe, will be more effective than ever. While we are improving the act with this bill, we need to tread carefully as we look to make further changes. Mammography, like every health discipline, is an imperfect science. On average, radiologists estimate that somewhere around 75 percent of cancer can be found through mammography. Thus, until the technology improves, the quality of the reading is limited.

We have to remember that in the medical field, human error is unavoidable. Most doctors practicing today are excellent at what they do, and placing additional regulations on them, especially in an already highly-regulated subspecialty, can often times do more harm than good. Congress needs to be increasingly vigilant in making sure that practices below acceptable standards are eliminated. To that end, one of the real benefits of MQSA is its required medical audit procedure which mandates that each FDA-approved facility has a system for following up on mammograms that reveal problems. In other words, each facility performs a self-check on itself, helping to ensure quality care is being given.

The impact of medical liability on the radiological profession has been immense, leading to a shortage of quality doctors. As bad as it has been for the profession itself, the adverse effect it has had on patient access to care is intolerable. In places across the country, women are having to wait weeks, even months, to get a mammography screening. In a speech this February in Florida, the president of the American Medical Association stated that in a recent survey of Palm Beach, Miami Dade and Broward Counties, 7 of the 29 radiologists said they had stopped reading mammograms—and 8 others are considering that possibility. In addition, Orlando Regional Hospital reports that the average wait time for women seeking mammography rose from 20 days in 2000—to 150 days in 2002. The cause of all this is that many radiologists can't find or afford the necessary liability insurance.

The bottom line is that at a time when the medical liability crisis is hitting the industry harder than ever, the last thing the Federal Government should be doing is creating more avenues for abusive lawsuits. That is why Congress must balance the need to find ways to improve the quality and delivery of women's health, while at the same time preserving a positive and equitable medical environment for well-intentioned professionals to practice.

The MQSA has been an important program in increasing the quality of mammography services for women. I thank Senator MIKULSKI and HELP Committee Chairman GREGG for all of their hard work on this issue, and I look forward to seeing this legislation through to passage by the Senate and ultimately signed into law.

By Mr. SARBANES (for himself, Ms. MIKULSKI, Mr. WARNER, Mr. ALLEN, and Mr. SANTORUM):

S. 1880. A bill to establish the Special Blue Ribbon Commission on Chesapeake Bay Nutrient Pollution Control Financing; to the Committee on Environment and Public Works.

Mr. SARBANES. Mr. President, today I am introducing legislation to establish a special Blue Ribbon Commission on Chesapeake Bay Nutrient Pollution Control Financing. Joining me in sponsoring this measure are my colleagues Senators MIKULSKI, WARNER, ALLEN and SANTORUM.

On Tuesday, November 11, 2003, the Chesapeake Bay Foundation released its sixth annual State of the Bay report. The report is headlined "The Bay's Health Remains Dangerously Out of Balance and Is Getting Worse." Indeed, this summer the Chesapeake Bay's so-called "dead zone"—the area of oxygen-and life-depleted waters—extended more than 100 miles down the Bay, the largest area ever recorded. Scientists observed extensive algal blooms and watermen reported pulling up nets of dead fish and crab "jubilees"—a rare phenomenon of crabs fleeing the water for air. The cause of the pollution of the Chesapeake Bay is clear: high levels of nitrogen coming from sewage treatment plants, air deposition, runoff from farmlands, and stormwater runoff from urban and suburban areas. The water pollution caused by high levels of nutrients, particularly nitrogen, continues despite two decades of efforts from all the jurisdictions in the watershed, Maryland, Virginia, Pennsylvania and the District of Columbia, to address it.

Scientists, State and Federal agencies and citizen advocates know what must be done to address the excessive nutrients which pollute the Bay's water. The 304 major sewage treatment plants in the watershed must be upgraded to reduce the nutrients coming into the Bay. Farmers must be given the best technology and resources to keep excess fertilizer and sediments out of the Bay. Air deposition must be reduced. And new financing mechanisms must be developed to help local governments control stormwater runoff.

Earlier this year, a Chesapeake Bay Commission report entitled The Cost of a Clean Bay, found a $9.4 billion gap in the resources needed to reduce nutrients and sediments in the Bay to levels sufficient to remove the estuary from the Environmental Protection Agency's list of impaired waters. While $9.4 billion seems like an enormous sum, we should remember that the health of Chesapeake Bay is vital not only to the more than 15 million people who live in the watershed, but to the Nation. It is one of our Nation's and the world's greatest natural resources covering 64,000 square miles within six States. It is a world-class fishery that still produces a significant portion of the finfish and shellfish catch in the United States. It provides vital habitat for living resources, including more than 3600 species of plants, fish and animals. It is a major resting area for migratory waterfowls and birds along the Atlantic including many endangered and threatened species. It is also a one-of-a-kind recreational asset enjoyed by millions of people, a major commercial waterway and shipping center for much of the eastern United States, and provides jobs for thousands of people. In short, the Chesapeake Bay is a magnificent, multifaceted resource worthy of the highest levels of protection and restoration.

On November 3, 2003, I was joined by the six Senators and 16 Members of the House of Representatives from the Chesapeake Bay watershed States, in a bipartisan letter to President Bush urging him to commit $1 billion to restoring the Bay's water quality. We pointed out to the President that, with a matching State funding requirement and proper targeting, these funds would provide a tremendous boost to the efforts to reduce nutrient pollution in the Bay and that this investment would pay big dividends in restoring the ecological and economic health or our nation's greatest estuary. We realize that this request is but a first step to bring to bear the necessary resources to accomplish the nutrient reduction.

The legislation which we are offering today represents the next step in the effort to close the $9.4 billion gap and help assure that the effort to reduce nutrient pollution in Chesapeake Bay will be focused properly and funded adequately for the long term. It directs the Administrator of EPA to establish a special Blue Ribbon Commission on Chesapeake Bay Nutrient Pollution Control Financing to oversee development of a comprehensive implementation plan to address the funding needs and/or regulatory requirements for reducing nutrient pollution loads in Chesapeake Bay sufficient to comply with Clean Water Act standards by the year 2010. The Commission is charged to address the appropriate responsibilities of the Federal, State and local governments in financing sewage treatment plant upgrades, agricultural and other nonpoint source runoff controls, and urban stormwater management. It is also directed to address the opportunities for enhancing the role of the private sector in financial support for nutrient reduction either directly or through public/private partnerships.

The Commission will have a vital role to play in Chesapeake Bay restoration. Through the work of the Chesapeake Bay Program and its partners, our scientific and technical understanding of what needs to be done to reduce excess nutrients going into the Bay serves as a model for the Nation. Yet these practices cannot be implemented without sufficient funding, and current estimates suggest that a doubling of nutrient reduction efforts to date will be required. The Commission is critically needed to explore responsibilities, opportunities and mechanisms for generating the financial backing needed to restore the Chesapeake Bay. Let me add that the economics of nutrient reduction is an issue faced by many regions of the country. Many of the recommendations of this Commission regarding the financing of sewage treatment plant upgrades, agricultural nutrient reduction practices, and stormwater and air pollution control could be transferred to for use elsewhere around the Nation.

It is our expectation that, in carrying out its functions, the Commission will draw upon the expertise of other Federal agencies, including the U.S. Department of Agriculture, the Army Corps of Engineers, and NOAA as well as State and local governments, academia and the private and non-profit sector and establish a multidisciplinary advisory panel to assist the

Commission in preparing its report and recommendations. Valuable work is now being carried out by the Chesapeake Bay Program in a great number of areas including nutrient reduction, oyster restoration, submerged aquatic vegetation, and environmental education to mention a few and it is not intended that the Commission be in any way a substitute for the Bay Program. Rather it is to support the work of the Bay Program by dissecting financial responsibilities into component parts—Federal, State, local and private and by addressing the funding and/or regulatory requirements of the work to be done to end the Bay's water pollution from too much nutrient loading.

Establishment of the special Blue Ribbon Commission on Chesapeake Bay Nutrient Pollution Control Financing will serve to kick start the critical work which must now be done to restore the Chesapeake Bay. It is supported by the Chesapeake Bay Foundation and the Chesapeake Bay Commission as evidenced by their letters. I ask unanimous consent that the two letters be printed in the Record. I urge my colleagues to support this measure.

There being no objection, the additional material was ordered to be printed in the Record, as follows:

Chesapeake Bay Commission,
Annapolis, MD, November 17, 2003.

Hon. Paul S. Sarbanes,
SH–309 Hart Senate Office Building,
Washington, DC.

Dear Senator Sarbanes: I am writing on behalf of the Chesapeake Bay Commission to commend you on your efforts to direct the Environmental Protection Agency (EPA) to establish a special blue ribbon Chesapeake Bay Nutrient Pollution Control Commission. The Commission would examine how best to finance reductions in nutrient pollution sufficient to comply with Clean Water Act standards by the year 2010. It is the logical next step in our efforts to restore the nation's crown jewel estuary, the Chesapeake Bay.

Earlier this year, our members issued a report entitled The Cost of a Clean Bay. The report found a $9.4 billion gap in the resources needed to reduce nutrients and sediments sufficient to remove the Bay from the EPA list of impaired waters. While $9.4 billion seems like an enormous sum, we should remember that the health of Chesapeake Bay is vital not only to the more than 15 million people who live in the watershed, but to the nation. It is the world's largest, most productive estuary, with a worth estimated at nearly $1.2 trillion. The Bay restoration leads the world in devising new and innovative solutions to reduce nutrient and sediment pollution. If the Bay restoration fails, it speaks volumes for the fate of most water quality restoration projects, world-wide.

At this point, the partners in the Chesapeake Bay Restoration Program have a well fleshed-out game plan. The leaders know what needs to be done and have, for the most part, implemented policies that will support these efforts. The stumbling block is the lack of available funding or, in the absence of money, the identification of viable regulatory alternatives that can provide equitable solutions.

On November 3, 2003, you joined your colleagues in the Bay watershed in a bipartisan letter to President Bush urging him to commit $1 billion to restoring the Bay's water quality. You pointed out that, with a matching State funding requirement and proper targeting, these funds would provide a tremendous boost to the efforts to reduce nutrient pollution in the Bay and that this investment would pay big dividends in restoring the ecological and economic health of our nation's greatest estuary. We offer our strong support on this request. Furthermore, we believe that the blue ribbon panel is its perfect complement.

Your effort represents the next—and critical—step in the effort to close the $9.4 billion gap, ensuring that the nutrient reduction goals will be reached. We applaud you in your efforts and offer our assistance to you as you pursue the best next step for the Bay restoration effort.

Sincerely,

Ann Pesiri Swanson,
Executive Director.

Chesapeake Bay Foundation
Annapolis, MD, November 18, 2003.

Hon. Paul Sarbanes,
United States Senate,
Washington, DC.

Dear Senator Sarbanes: We wish to express our support and enthusiasm for your effort to establish a special Blue Ribbon Commission on financing the control of nutrient pollution in Chesapeake Bay. Your continued leadership on behalf of the Chesapeake is most appreciated.

As you know, this summer the Chesapeake Bay experienced one of the worst "dead zones" in history. Fish kills, beach closings, and algae blooms were commonplace. Over the past twenty years, the monitoring stations of the Chesapeake Bay Program have revealed little to no change in key water quality parameters such as dissolved oxygen, clarity, and algae concentration. The fundamental challenge remains controlling nitrogen and phosphorus pollution to the Chesapeake and its tributaries.

Over the past several years, a number of different reports have documented the financial needs of meeting the goals of the Chesapeake 2000 Agreement. These reports conclude that water pollution control, in particular, will require the most significant financial investments. Key water pollution control needs include sewage treatment, municipal storm water, and agricultural runoff.

Your effort to establish a Blue Ribbon Commission appropriately focuses on the biggest financial challenges confronting the Chesapeake Bay. It includes a diverse membership, and it engages the signatories to the Chesapeake Bay Agreement in developing specific recommendations to meet the needs of the Bay. Importantly, your effort acknowledges that regulatory mechanisms can be used to internalize pollution control costs to minimize burdens on the region's taxpayers.

The Chesapeake Bay Foundation believes that a financial commission is a timely and appropriate response to a number of the difficult challenges confronting the region's policy makers. We are very supportive of your effort, and we welcome the opportunity to work with you to implement your ideas.

Thank you again for your leadership on behalf of the Chesapeake Bay.

Sincerely,

William C. Baker,
President.

By Mr. LAUTENBERG (for himself, Mr. Schumer, Mrs. Feinstein, Mr. Corzine, Mr. Reed, and Mrs. Clinton):

S. 1882. A bill to require that certain notifications occur whenever a query to the National Instant Criminal Background Check System reveals that a person listed in the Violent Gang and Terrorist Organization File is attempting to purchase a firearm, and for other purposes; to the Committee on the Judiciary.

Mr. LAUTENBERG. Mr. President, I rise to introduce some legislation I consider an emergency because it overrides a misguided policy that threatens our homeland security and exposes our Nation to more vulnerable terrorist attacks.

The legislation I am introducing today is called the Terrorist Apprehension Act, and it is cosponsored by Senators Schumer, Feinstein, Corzine, and Reed of Rhode Island.

This bill directs the administration to do all it can to apprehend potential terrorists within our borders. Sometimes they do things that defy common sense and are simply hard to believe. This is one of the most outrageous disclosures yet.

We have found out if someone on a terrorist watch list—someone who is a potential threat to communities across the country—goes ahead, buys a weapon, applies for a permit to buy a gun, and that information is logged into the gun background check system, the Attorney General has ordered the gun background check system not alert or even be allowed to share critical information with law enforcement concerning the whereabouts of the terrorist—not to give it to the FBI or the ATF or any of the law enforcement agencies.

I have to say, this is a mind-boggling policy. We could have a nationwide lookout for a known terrorist within our borders, but if he obtained a weapon, got a permit approved, the Justice Department's current policy is to refuse to reveal any data that might be available for law enforcement officials.

It works this way: The subject is on a terrorist watch list. This is a formal thing. The person who is listed on a terrorist watch list—look out, this guy is bad news, and we do not want him to roam freely. He can go ahead and buy a gun under the rapid response network for a gun permit. The background check is done. Then it goes into a crime database, including the terrorist watch list. The FBI terrorist task force cannot get the information by virtue of this policy because by directive, the Attorney General has said this information should be protected. To me, the protection our citizens need overrides that of these people who are unwelcome to begin with. But nevertheless, once they are on the terrorist watch list, we don't want to give them a lot of courtesy, especially to buy a weapon.

In combatting terrorism, Attorney General Ashcroft has shown little concern for core civil rights. That all changes when it comes to gun rights. The Attorney General seems more interested in protecting the rights of terrorists to obtain guns than the protection of our citizens.

I know many gun support groups have said: Listen, the terrorists wouldn't buy a firearm on the legal market anyway. But evidence points to something otherwise.

An investigation by my staff revealed that since September 11, in somewhere between 13 instances and possibly as many as 21 times—and the reason for the disparity is the information comes from two different places, but it is at least 13 times and possibly as many as 21—a person on the terrorist watch list has attempted to or successfully purchased firearms. Imagine. The madness is that the person gets the firearm and the information is cut off here instead of being available to the FBI and other law enforcement people.

In addition, the terrorists know that our gun laws are weak. Found in the ruins of a terrorist training camp that was destroyed by U.S. missiles in Kabul, Afghanistan was a book called "How Can I Train Myself For Jihad." The book discusses the ease with which weapons can be purchased in the United States in order to engage in terrorism.

The guns that terrorists have access to in our country can be devastating, such as the 50-caliber assault weapon which would take down a helicopter, as we may have seen. This is according to the Congressional Research Service. That weapon can penetrate 6 inches of steel plating and has a range of a mile. One has to ask: Why is it available at all on the civilian market?

On this issue of terrorist access to weapons, it is peculiar, at least, to know that Attorney General Ashcroft's position is at odds with the Department of Homeland Security. During his confirmation earlier this year, Secretary Tom Ridge acknowledged to me in a question publicly that the link between access to guns and terrorism is a dangerous one.

Under oath at another hearing, the general counsel of the Department of Homeland Security told me it was his belief that someone on the terrorist watch list should not even be permitted to purchase guns.

Not only does the Attorney General think it is OK to allow these guns to be purchased by terrorists, but he thinks it should be done secretly, without law enforcement's knowledge. That has to change. We hope the Attorney General will reverse course immediately. Unfortunately, I doubt he even comprehends the anomaly this generates.

This is why it is critical that the Senate pass this emergency legislation before we leave for the year. If we don't, we will put our constituents at risk unnecessarily. My legislation is simple and to the point. It says, if a terrorist buys a gun, law enforcement must be notified right away. We would like to prevent them from getting the gun, but the law, as it is for now, is the FBI, the local police, and the regional terrorist task force must be told the time and the place of purchase.

I introduce this bill today and hope that we can pass it as soon as possible.

By Mr. ENZI (for himself, Mr. BINGAMAN, Mr. THOMAS, and Mr. CRAIG):

S. 1883. A bill to amend the Public Health Service Act to provide greater access for residents of frontier areas to the healthcare services provided by community health centers; to the Committee on Health, Education, Labor, and Pensions.

Mr. ENZI. Mr. President, I rise today to introduce legislation that would increase the likelihood that citizens who live on the American frontier and in other sparsely populated areas will have access to affordable healthcare in their communities.

Since my election to the Senate in 1996, one of my goals has been to educate folks in Washington about what life is like in the West.

Obviously there are rural areas along the East and West Coasts and in the Midwest. But people who live in these places are always surprised when they travel for the first time to places like my home State of Wyoming. They are amazed at just how rural Wyoming is.

Well, Wyoming is more than rural. Most Wyomingites live in the remaining stretches of the American frontier. Now, that's not to say that there aren't plenty of sparsely populated areas elsewhere, even in coastal States. There are many places outside the West that share the characteristics of the frontier. But almost all of Wyoming is sparsely populated. In fact, more people live in the 68 square miles of the District of Columbia than live in the 98,000 square miles of Wyoming.

People who live on the frontier and other sparsely populated areas face some unique challenges, and one of those challenges is access to affordable healthcare. People who live in frontier areas are more likely to lack health insurance than other rural and urban citizens. Also, frontier areas generally do not have population centers that can support the full range of healthcare services available in most urban and some rural areas.

One of the proven ways of improving healthcare in medically underserved areas is through the establishment of federally qualified community health centers, or CHCs. Community health centers are not-for-profit providers of health care to the working poor, the uninsured, and other vulnerable populations. These safety-net providers served ten million people across America in 2001.

Community health centers deliver preventive and primary care to patients regardless of their ability to pay. Almost half of the patients treated at community health centers have no insurance coverage at all. Community health centers set their charges according to income, and they do not collect any fees from their poorest clients.

President Bush has proposed major increases in funding for the establishment and expansion of community health centers, and Congress has begun to provide that funding. Senators across the political spectrum agree that community health centers play an important role in providing health services to the uninsured and underinsured in many medically underserved areas. We all agree that we ought to encourage the development of more sites where those in need but without means can get proper care.

Unfortunately, many frontier areas do not have community health centers. Wyoming, for example, only has one CHC, located in Casper. That center just opened a satellite clinic in Riverton, a town of 9,300 people almost 125 miles away, so now we have two sites.

The Federal Government keeps statistics on the degree of "health center penetration into the unserved." In other words, we keep track of what percentage of those who need access to affordable healthcare can get adequate service through community health centers.

In Wyoming, only 7.9 percent of the unserved had reasonable access to community health center services, based on 2001 data. Lest you think this is just a Wyoming problem, Mr. President, let me share some percentages from other states: Alabama: 15.9 percent; Georgia: 8.9 percent; Indiana: 10.1 percent; Kansas: 10.4 percent; Louisiana: 4.3 percent; Maryland: 15.8 percent; Nebraska: 5.3 percent; Nevada: 7.8 percent; North Carolina: 11.1 percent; Oklahoma: 7.8 percent; Texas: 9.0 percent; and Virginia: 12.2 percent.

Why are these access figures so low? It's not because communities aren't interested in helping their less fortunate neighbors. It's because many communities on the frontier and in other sparsely populated areas can't even apply for community health center funding.

Why can't they apply? Well, believe it or not, the Federal Government doesn't consider many isolated communities to be located in "medically underserved areas." And a community has to be designated as being a "medically underserved area" before one can even apply for CHC funding.

The barrier for frontier communities lies in the index that the Federal Government uses to determine "medical underservice." That index looks at four factors: the percentage of people over 65 years of age, and the ratio of primary-care physicians per 1,000 people.

Using these four factors, the agency has calculated that only four Wyoming's 23 counties qualify to be "medically underserved areas." I find this interesting, since Wyoming ranks 46th out of the 50 State in terms of physician-to-population ratio.

I have an idea about the source of this contradiction. When I went to accounting school, one of the things I learned about was a concept called "statistical validity." What I learned was that the statistical validity of a sample is a function of sample size: in other words, the larger the sample, the more accurate the results associated with the sample.

Well, as you can imagine, sparsely populated states like Wyoming offer less statistically valid samples than other states. Many of our counties score very well on factors like infant mortality. Take Weston County, for instance. Weston County has a very low infant mortality rate—in fact, their rate in 2002 was zero. But there were only 59 births in Weston County. Now I'm happy to see that statistic, but it really hurts Weston County's score on the agency index.

Even looking at 5 years of data in sparsely populated counties doesn't provide a statistically valid sample. From 1994 to 1998, Weston County's infant mortality rate was 8.5 per 1000 births, slightly above the national average. From 1995 to 1999, Weston County's rate jumped to 14.7 percent—nearly twice the national average.

Why did the infant mortality rate jump so dramatically in Weston County? The only difference was that in 1999, two of the 60 babies born in the county died soon after birth.

When two deaths have such a dramatic impact on the infant mortality rate, it's because the sample size simply isn't large enough to provide a valid result. Slight variations in small samples can result in huge differences when translated into statistical data. And in my opinion, we shouldn't be making decisions based on statistics that aren't valid indicators of the healthcare status of a community.

I am concerned that the Federal definition of "medically underserved areas" does not recognize the unique nature and needs of people who live in the sparsely populated areas of our country. This makes me concerned that frontier communities are going to miss out on a great opportunity to participate in our national expansion of community health centers.

That's why I'm joining today with my distinguished colleagues Senators BINGAMAN, THOMAS, and CRAIG to introduce the Frontier Healthcare Access Act. We believe that people who live on the frontier and in other sparsely populated areas ought to have a fair shot at competing for federal support as we grow the community health center program.

Our bill would automatically deem "frontier areas" to be eligible for Federal funding for the development and expansion of community health centers.

The bill would require no new funding—it would simply designate frontier communities as special populations eligible for federal CHC support. Nor would the bill create a new preference for frontier areas—it would simply allow frontier communities into the competition for funding. The bill would end the application of a statistical formula that doesn't provide a valid assessment of need in sparsely populated areas—but it would still require frontier communities to compete with other communities to receive federal CHC support.

The Frontier Healthcare Access Act also would direct the Federal Government to create a new definition of "frontier area." The bill would require that the new definition go beyond the traditional population-density approach to include important factors like distance in miles and travel time in minutes to the nearest significant healthcare service area or market. This is important, because defining frontier solely by population overlooks some important considerations.

For example, in some large counties, the presence of a city in one corner skews population density and overshadows the existence of many large frontier areas. Furthermore, a key component to frontier life is distance. Even areas with population density as high as 20 people per square mile should be considered frontier if the community is located far from the closest significant service center or market.

The National Rural Health Association and the Western Governors Association have already endorsed a definition using the factors proposed by the Frontier Healthcare Access Act. If the federal government adopts a similar definition, it would ensure eligibility for community health center development and expansion for about ten million citizens who live in more than 800 counties located in 38 states—not just the frontier West.

Mr. President, people in hundreds of cities and towns across the country have access to affordable healthcare services through community health centers. People who live in sparsely populated areas ought to have a fair opportunity to create the same sort of access.

The Frontier Healthcare Access Act would create this opportunity for people who live in isolated communities across our great country. I hope that my colleagues will join me in making this opportunity possible for our citizens who live in every part of our remaining American frontier—whether the buffalo still roam there or not.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1883

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Frontier Healthcare Access Act of 2003".

SEC. 2. FINDINGS AND PURPOSE.

Congress makes the following findings:

(1) People who live in frontier areas are medically underserved and face unique challenges in accessing affordable healthcare.

(2) People who live in frontier areas are more likely to lack health insurance than other rural and urban citizens.

(3) Frontier areas generally do not have population centers that can support the full range of healthcare services available in most urban and some rural areas.

(4) Community health centers play an important role in providing health services to many medically underserved areas and populations.

(5) Many frontier areas do not have community health centers.

(6) Many frontier areas cannot currently qualify for community health centers because the Federal definition of medically underserved areas or populations does not appropriately or effectively recognize the unique nature and needs of frontier areas and those who live in them.

(7) Any definition of frontier areas for purposes of eligibility for Federal or State healthcare programs should look beyond simple measures of population density to consider such factors as the distance from and travel time to the nearest significant healthcare service center or market.

(8) President George W. Bush has made the development of new community health centers a priority of his administration.

(9) People who live in frontier areas should be included explicitly in this expansion of the community health center program.

(b) PURPOSE.—It is the purpose of this Act to provide greater access for residents of frontier areas to the healthcare services provided by community health centers.

SEC. 3. FRONTIER COMMUNITY HEALTH CENTERS.

Section 330 of the Public Health Service Act (42 U.S.C. 254b) is amended—

(1) in subsection (a)(1), by striking "and residents of public housing" and inserting "residents of public housing, and residents of frontier areas";

(2) by redesignating subsections (j), (n), (o), (p), (q), (r), (s), (q), and (s) as subsections (k), (l), (m), (n), (o), (p), (q), (r), and (s), respectively; and

(3) by inserting after subsection (i), the following:

"(j) RESIDENTS OF FRONTIER AREAS.—

"(1) IN GENERAL.—The Secretary may award grants for the purposes described in subsections (c), (e), and (f) for the planning and delivery of services to areas identified under paragraph (3)(B).

"(2) SUPPLEMENT NOT SUPPLANT.—A grant awarded under this subsection shall be expended to supplement, and not supplant, the expenditures of the health center and the value of in-kind contributions for the delivery of services to the population described in paragraph (1).

"(3) DEFINITION.—

"(A) IN GENERAL.—In this subsection, the term 'frontier area' means a county or a rational area identified by the Secretary in consultation with appropriate State offices of rural health.

"(B) REGULATIONS.—The Secretary shall through regulations develop a definition to identify frontier areas and shall designate residents of such areas as medically underserved for purposes of this section. In developing such definition the Secretary shall consider factors such as population density, distance in miles from the nearest significant healthcare service center or market, and travel time in minutes from the nearest significant healthcare service center or market.".

By Mr. DASCHLE (for Mr. KERRY):

S. 1884. A bill to assure a healthy American manufacturing sector, and for other purposes; to the Committee on Finance.

By Mr. DASCHLE (for Mr. KERRY):

S. 1885. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives for manufacturing businesses in the United States; to the Committee on Finance.

By Mr. DASCHLE (for Mr. KERRY):

S. 1886. A bill to amend the Small Business Act and the Small Business Act of 1958 to establish the National Office for the Development of Small Manufacturers, to increase the level of assistance available for small manufacturers, and for other purposes; to the Committee on Small Business and Entrepreneurship.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. KERRY. Mr. President, I come to the floor today to introduce three bills to address the growing needs of small manufacturers, to stimulate the manufacturing sector of our economy, and to put back to work the millions of American workers in the manufacturing sector that have lost their jobs in the past 3 years. The three comprehensive bills are: the Manufacturing Assistance, Development and Education (MADE) in America Act, the Enhance Domestic Manufacturing and Worker Assistance Act, and the Manufacturing Jobs Production Act.

It's no secret that during the past 3 years, manufacturing employment in the United States has declined from 17.3 million to 14.6 million jobs. This loss of manufacturing jobs represents a loss of more than one in every seven such jobs. Over the past 3 years, the United States has lost an average of 80,000 manufacturing jobs a month. The States that rely the most on their manufacturing sector have suffered the most during the past 3 years. Indiana has lost 67,000 manufacturing jobs, California—297,000, Ohio—152,000, Illinois—126,000, Michigan—127,000, Pennsylvania—133,000, South Carolina—55,200, and North Carolina—145,300. Even in my home State of Massachusetts, we have lost approximately 80,000 manufacturing jobs since January 2001.

The loss of manufacturing jobs is of great concern because the manufacturing sector is more important than any other sector in supporting overall economic growth, technological innovation, and a high standard of living for Americans. Over the past 10 years, manufacturers have performed nearly 60 percent of research and development in the United States and have paid over one-third of all corporate tax payments to State and local governments.

Further, replacing manufacturing jobs with service sector jobs will not help stabilize the American economy. According to a University of Michigan study, 6.5 spin-off jobs are created as a result of every new job created in manufacturing. Service sector jobs simply cannot generate that type of economic activity. The benefits of manufacturing can also be found in national salary averages. In 2001, salaries and benefits averaged $54,000 in the manufacturing sector, while the average salary and benefits package in the private sector overall was only $45,600.

In 1955, manufacturing jobs were 30.5 percent of all U.S. employment, today they make up just 14 percent. The manufacturing decline has been marked by a relocation of factories abroad along with reduced exports and increased imports of manufactured goods. Both large and small companies have been affected and a continued shrinking of the manufacturing base may shift the manufacturing innovation process to other global centers and most certainly result in a decline in U.S. living standards.

As a member of the Finance and Commerce committees and ranking member of the Senate Committee on Small Business and Entrepreneurship, I have been fighting for the creation of new manufacturing jobs during debate over the President's tax cuts, and I will continue to do so in the months ahead. President Bush has done nothing to address the loss of manufacturing jobs, and many communities across the country are suffering because of it, as more and more plants close and more and more jobs move overseas. This administration is indifferent to these changes, and the pain being felt in million of American households, and that's unacceptable.

In fact, indifferent may be too kind a word. The Bush administration has been downright cruel to working Americans, pursuing billions of tax cuts for the most well-off in our society as their only economic policy, while millions of hard-working Americans have lost their jobs and will be left with the bill from this administration's reckless fiscal policies. In fact, you could argue that the manufacturing jobs picture is actually worse than the hard numbers tell us. While many estimates show that 2.5 million manufacturing jobs have been lost since President Bush took office, in previous postwar recoveries, manufacturing employment had recovered by this point in the business cycle and risen by more than 5 percent. Under the Bush presidency, manufacturing employment has continued to deteriorate steadily, falling so far by 8 percent. Morgan Stanley's respected economists tell us that the difference represents 2.1 million additional manufacturing jobs. More supply-side, trickle-down, ideologically driven tax cuts are not going to turn this around. Congress needs to take action and pass some policies that are meaningful to people, and will actually create jobs, and soon.

The President and his followers insist that his tax cuts are starting to work, basing their claims on a couple of months where the overall job creation numbers were positive. But the truth is that the meager job gains of the last three months have done little to lift most parts of the economy because nearly 80 percent of those small gains have come in just three sectors: government, temporary staffing, and education and health services. Manufacturing is not yet on the mend, and people who are finding new jobs are finding jobs at lower pay. We need to take action.

Small-business owners have made it clear to me, to Congress, and to the administration what actions are needed to reinvigorate the manufacturing sector. Unlike the Bush administration, which has ignored these requests for help, Congress must have the courage to make the tough decisions and not simply pander to wealthy Americans and giant corporations with unbalanced tax cuts. The Nation's gross domestic product may be temporarily up, but manufacturing jobs are still way down. To get those jobs back, and to continue competing on the international stage, our manufacturers, particularly our small manufacturers, need adequate representation and leadership at all levels of government, here and abroad. They need a well-educated, highly skilled, productive labor force; Federal contracting and subcontracting opportunities; greater access to capital; foreign patent protection; trade adjustment, global marketing, and entrepreneurial development assistance; and responsible, targeted tax credits. This legislation addresses those needs, while the President's tax cuts continue to undercut them.

Mr. President, we often receive complaints that the Federal and State small business programs duplicate, rather than complement, each other. While the SBA has stated that it has sufficient systems and programs in place to address the concerns of manufacturers, statistics on small manufacturers, as well as the business owners themselves, prove otherwise. Many state that accessing these programs is often confusing and difficult because they are fragmented, spread out and not tailored to bridge gaps found between State and Federal assistance programs. To address these problems, my bill will create the National Office for the Development of Small Manufacturers at the Small Business Administration, led by an associate administrator. This new office will be responsible for coordinating and strengthening existing programs, as well as establishing new SBA programs to address the needs of small manufacturers and to promote programs throughout the Federal Government that assist small- and medium-size manufacturers. While the President has established a "new" manufacturing czar at the Department of Commerce, this action is seen as lateral movement and does nothing to assist those manufacturers that are suffering the most, the Nation's small business manufacturers.

Once established, the National Office for the Development of Small Manufacturers will be responsible for implementing a Manufacturing Corps through block grants to each State that will address the skilled worker crisis in this country by promoting technical education pertinent to the manufacturing sector. First, the Manufacturing Corps would help current manufacturing workers improve their skill set and advance their technical abilities. Each State's grant would ultimately provide small manufacturers with more highly skilled workers—something that the industry has posed as a global competitive disadvantage—and allow the unemployed and those in declining industries to make the pivotal move back to work or to other manufacturing sectors, respectively.

Second, the Manufacturing Corps would help small manufacturers fill their skilled labor needs by encouraging college and university students studying engineering, computers, and other high-tech fields to work in the small manufacturing sector by offering to repay a portion of their student loans if they do so for a specified period of time. Similar to incentives for students going into the nonprofit or government work, the government would repay the loans of those who commit to working for a small manufacturer for 4 years following graduation if their annual employment compensation does not exceed $60,000.

Third, the Manufacturing Corps would establish a vocational and technology training for students at the high school level to prepare students who are not planning to attend college directly after graduation to enter the manufacturing sector. As in woodshop or auto-shop courses, high school students will learn the technical skills to become effective, skilled manufacturing employees, such as machinists or metal workers. Additionally, schools providing such assistance would partner with community manufacturers to address their skilled worker needs and to provide employment opportunities for students after graduation.

Another duty charged to the National Office for the Development of Small Manufacturers is to create a government-wide "One Stop Small Manufacturing Shop" for small manufacturers. This online web portal will serve as the single point of contact for information on entrepreneurial development assistance, access to capital, specific outreach programs, contracting opportunities, and R&D projects. We already have successful programs that can be used as a prototype for the web page such as the National Industrial Manufacturing Assistance Program's Web site at the Office of Industrial Technologies at the Department of Energy.

The greatest challenge to small businesses, as with all businesses, is the ability to obtain contracts. The BusinessLINC program within the SBA has been proven, since its inception, to successfully match small businesses with potential clients. The teaming model has created thousands of jobs and millions of dollars in contracts. The BusinessLINC–M program will also team small businesses with non-governmental organizations that can have a direct impact on their bottom-line through contracting or mentoring. There is a great potential for the BusinessLINC–M program to match suppliers with distributors, offer contracting and subcontracting opportunities, which directly benefits the local economy while allowing access to vendors in the distributors' backyards. The National Office for the Development of Small Manufacturers will create a similar program to foster symbiotic partnerships between small and large businesses to spur contracting opportunities. This BusinessLINC–M program would instead match up small manufacturers with larger firms that could utilize their products, creating subcontracting opportunities and a stronger supply chain.

Finally, the National Office for the Development of Small Manufacturers will develop a manufacturing mentor-protégé program to focus on improving the management practices, domestic and foreign marketing abilities, efficiency, and product development of small manufacturers by pairing them with larger, more experienced manufacturers that would provide such guidance.

One of the first things we can do to help small manufacturers is to tailor the SBA's loan and venture capital programs so that they offer small manufacturers affordable, long-term financing in amounts that are truly appropriate for them. This legislation will assist small businesses with fixed-asset costs, working capital, loan dollars to help them export what they have produced in the United States, and venture capital investments to spur expansion and growth.

To provide that capital, we have increased the loan amounts available to small manufacturers, increased venture leverage, and allowed refinancing of certain existing business debt. The maximum 504 loan, for equipment and property, will be raised from $1 million to $4 million, the maximum microloan will be raised from $35,000 to $50,000, and the gross loan amount for 7(a) working capital loans will increase from $1 million to $4 million for small manufacturers.

Investors should be encouraged to devote more of their money to the fastest growing small manufacturers. The SBIC program can provide that venture capital money. Under this bill, if SBICs invest 50 percent in small manufacturers, then a single fund can leverage $150 million instead of $115 million and a manager with several SBICs can leverage $185 million from the SBA. The legislation also restores and increases funding to establish additional New Markets Venture Capital firms and increases the SBA's leverage against private funds raised in the New Markets Venture Capital program from 150 percent to 200 percent so these venture capital firms can invest more in small manufacturers.

For growing small businesses using the loans from the 504 program to buy new equipment or buildings, we raise the limit for lenders so that they must create or retain one job for every $100,000 loaned to manufacturers. This is in place of the $35,000 that is currently in place. For non-manufacturers, it will be raised to $50,000. For manufacturers, the costs of retaining jobs are higher, and we want these jobs to be good living wages and not the $3 per hour or lower that exists in some countries.

After a natural disaster, the already slumping manufacturing industry faces an even greater challenge in returning business to normal and affording the costs of repair. Recognizing that they face these problems, the MADE in America Act changes several provisions to the SBA's disaster loan program. It increases the maximum loan size from $1.5 million to $5 million; allows small manufacturers to consolidate debt by refinancing not just existing disaster loans but any outstanding business loan; waives the principal and interest payments for 6 months; authorizes the administration to waive unreasonable size limitations; and prohibits the SBA from selling all disaster loans to other creditors. Disaster loans, at the most, have an interest rate of 4 percent and terms of up to 30 years. This low rate and long term keeps manufacturers' payments down as well as their debt, particularly when they refinance their more expensive business loans.

To help small manufacturers and small R&D firms, we need to reduce trade barriers, so that they are able to sell their products and technologies in other countries. Small-business owners commonly cited the expense required to secure foreign patent protection as a significant barrier to their ability to operate in international markets. Part of encouraging the spread of their innovations into other countries is decreasing their vulnerability to big foreign corporations that can take their ideas when they try to sell their products around the world. Our small businesses need patent protection. However, the costs associated with filing such patents are often prohibitively expensive.

For example, Mr. Clifford Hoyt, who is vice president and chief technology officer of Cambridge Research and Instrumentation, testified on June 21, 2001, as part of the Committee's hearing on reauthorization of the STTR program that cost of "patent protection in Europe is $20,000." Information from the American Intellectual Property Law Association's meeting shows that the costs of foreign patents range from $7,200 in Canada to $27,200 in Japan. Those costs include fees for filing, examination, translation and attorneys.

With this legislation, to address the intellectual property problem for small exporters, I propose enacting a variation of a bill I introduced 2 years ago. The MADE in America Act would establish a self-sustaining grant fund to help small manufacturers and R&D firms pay for the cost associated with foreign patent protection. Each company would be limited to one grant and, in order to be eligible for the grant, it must have already filed for patent protection in the United States. Both of these provisions are designed to ensure, to the extent possible, that companies apply for assistance for their most promising technology and therefore are in the best position to return money to the grant fund when their patented technology becomes profitable. By giving the companies only one shot at a grant to protect and make money from their technologies, it forces them to select the one most likely to succeed and have sales. At the same time, requiring companies to have already filed for patent protection in the United States prior to seeking a foreign patent grant is a gauge of the company's confidence in the commercial potential of its technology.

Ultimately, the goal is to create a self-sustaining grant fund. To do so, in return for the grants, each recipient would be obligated to pay 5 percent of its related export sales or licensing fees to the fund, to be known as the "Small Business Foreign Patent Protection Grant Fund." To maintain a reasonable incentive for the small businesses, the total amount recipients would be required to pay would be capped at four times the amount of the grant, which for a $25,000 grant would be $100,000.

When I first introduced this bill a couple of years ago, the grants were limited to companies that participate in the SBA's SBIR and STTR programs. However, this bill opens the grant funding to all small firms, while reserving 50 percent of the money for SBIR and STTR firms through the first three quarters to each year. Intellectual property protection is critical to these small firms that have a great product or invention, and keeping these innovations in the hands of American firms is important to the U.S. economy.

Mr. President, today I am also introducing the Enhance Domestic Manufacturing and Worker Assistance Act. America's manufacturing decline and the associated loss of good, stable manufacturing jobs has been marked by a relocation of factories abroad along with reduced exports and increased imports of manufactured goods. This legislation will respond to the manufacturing crisis in two ways. The proposal recognizes the harmful impact that trade has on small manufacturers and provides assistance to those workers, companies and communities that have suffered through Trade Adjustment Assistance programs. The proposal also provides critical assistance to U.S. domestic manufacturers to ensure that they adjust to the global economy and remain competitive in the 21st century.

First of all, for those workers, businesses and communities that have been harmed by trade, my bill assists them by reauthorizing our Trade Adjustment Assistance programs for workers and business firms. The bill includes elements of an innovative program to assist similarly situated communities. Recognizing that entire communities experience economic displacement, this proposal will assist harmed communities in exploring new avenues of economic development and job creation. Combined, these programs will assist hundreds of mostly small- and medium-sized manufacturing and agricultural companies that experience loss of jobs and sales due to import competition and other adverse consequences of trade. For example, TAA for workers provides income support, job search and worker relation assistance for affected workers.

Next, my legislation will enhance two programs that have proven effective in assisting domestic manufacturing firms. For example, the bill will strengthen the very effective Manufacturing Extension Partnership program. This program assists struggling small- and medium-size manufacturers to modernize, increase productivity, cut waste, achieve higher profits, and compete in the demanding global market. With increased funding, the MEP program can expand its program reach and decrease the fees paid by small manufacturers to access the assistance. It is exactly this type of program that will make American manufacturers competitive again, allowing them to maintain existing jobs and create additional high-skilled and high-paying jobs in the United States.

In addition, my legislation increases funding for the Advanced Technology Partnership program. This very important program fosters public-private partnerships to accelerate the development of innovative technologies and bridges the gap between the research lab and the market place. The program has been very effective in accelerating the development of innovative technologies that promise significant commercial payoffs and widespread benefits for the Nation. Unfortunately, the Bush administration has sought to eliminate this program, at a time when technological change is faster than ever before and small manufacturers must be technologically competitive.

Strengthening the MEP and ATP programs will go a long way in assisting small domestic manufacturers as they attempt to regain market share lost to international competition and recover from the resulting devastating job losses.

Finally, this bill will also create an "Office of Small Business" within the Office of the United States Trade Representative that will focus on the issues affecting small- and medium-size manufacturers as they relate to our international trade policy. This proposal is very similar to a proposal that I offered with Senator OLYMPIA SNOWE in the 107th Congress. Small manufacturers are directly impacted by our trade policies—often adversely—yet they do not have a seat at the table and lack the ability to effectively express their concerns. The establishment of this office will ensure that issues important to small manufacturers are taken into consideration as our Nation's trade policy is carried out in the future and will assist small businesses in export promotion and trade compliance.

The final piece of my legislation plan to enhance U.S. manufacturing is my bill titled the "Manufacturing Job Production Act." The bill has four components, all of which are fiscally responsible. None of them will by themselves completely make up for the jobs lost during this administration, but they will each do their part in stimulating new job creation and new investment in manufacturing firms.

The first component of my plan is a Temporary Manufacturing Job Creation Tax Credit. It is a similar proposal to one I introduced earlier this year, when we were debating the President's third major tax cut in 3 years.

My idea is straightforward: Any domestic manufacturer would receive an income tax credit based on a percentage of the net increase in taxable Social Security payroll linked to new manufacturing/production jobs, comparing total applicable payroll for one year to the previous year, adjusted for inflation. The credit would apply only to domestic production/manufacturing jobs created in 2004 and 2005, and it would include jobs created in U.S. territories, and those created by foreign-owned companies in the United States or its territories.

Unlike many of the administration's tax cuts, which carry huge costs at the vague promise of a positive economic result, my idea is outcome-based because it only costs money if it actually works. Plus, it has a built-in safety valve to prevent abuse, because it prevents firms from receiving tax credits if they create new manufacturing jobs while simultaneously laying off other workers, and it stops companies from tilting the benefits to high-salary workers because these salaries are already above the Social Security payroll tax cap. By comparing payroll taxes paid over a whole year, it also provides an incentive for firms to hire new workers and keep them on payroll and makes the calculation simple for businesses. It also provides an employment stimulus for U.S. companies with subsidiaries or manufacturing facilities on U.S. possessions, such as Puerto Rico.

My proposal would be in place for 2 years, and the Joint Committee on Taxation estimates that it would cost less than $4 billion. Surely we could pass this proposal and offset its modest cost by finally closing some of the Enron tax loopholes or passing the corporate inversion proposals that have previously passed this body unanimously, only to be opposed by the House. I think the percentage of Americans that would support that tradeoff would be upwards of 80 percent. Paying for this proposal by closing tax loopholes for wealthy corporation makes perfect sense. It will help our economy grow and help slow the flow of manufacturing jobs overseas.

The second element of may plan expands upon a capital gains provision that I have included in other legislation. Section 4 of S. 842, my small business tax stimulus bill, provides that there shall be no capital gains tax applied to new equity investments in small businesses with gross sales under $100 million, if the investments are held for at least 4 years. The zero capital gains tax applies to businesses involved in certain "critical technologies" as well as specialized Small Business Investment Companies, or SSBICs. For the Manufacturing Job Production Act, this capital gains proposal is expanded to include new equity investments in small manufacturing firms. Such a proposal should generate new investments in manufacturing, particularly small manufacturing companies that have been so damaged by recent economic trends. And like the job creation credit, it only costs significant money if it has the desired effect. That factor alone makes it far preferable to the Republican "throw it and see if it sticks" tax cut strategy.

The third part of my manufacturing plan is a revised BRIDGE Act, designed to give a little extra boost to small manufacturers. The BRIDGE Act stands for Business Retained Income During Growth and Expansion. It will help ensure that rapidly expanding, entrepreneurial businesses have access to the capital they need to continue creating jobs and stimulating the economy.

Each year, the United States economy generates 600,000 to 800,000 new businesses. Most new business start small and stay small—but some evolve into fast-growth companies with the capacity to propel the economy forward. These fast-growing companies create the most new jobs, yet access to financing—particularly in the current economic environment, but also when the economy is strong—presents a pivotal challenge to them. A typical start-up may open its doors with a combination of personal savings, credit card borrowing, and family lending. Once a business has grown past a certain size—say, when sales reach $10 million or more—the company is better able to attract external financing at a reasonable cost. However, there are many companies in a middle range, including many small manufacturers, which desperately need additional financing in the range of $250,000 to $1 million. These companies face a severe credit crunch that limits their growth and the number of new jobs they can create.

I believe that if congress does anything to assist small manufacturers, it should take steps to ease the credit crunch for those climbing the economic ladder from small- to medium-size enterprise, thereby generating new ones. The BRIDGE Act addresses this financing gap. As ranking member of the Committee on Small Business and Entrepreneurship, I have been the leading voice for this idea in the Senate, and it is something worth trying. Like my other proposals for tax relief for small manufacturers, it only generates cost to taxpayers if it actually works.

The BRIDGE Act is simple. It would allow a fast-growing business with less than $10 million in sales to temporarily defer up to $250,000 of its Federal income tax liability, but only if the money is reinvested in the company. The 2-year deferral would be repayable wit interest over a 4-year period. For small manufacturers, the maximum tax deferral would be $400,000, and the payback period would be extended to a maximum of 6 years. Thus, the act will free up new investment capital for growing companies by allowing them to use a portion of their Federal tax liability for self-financing. Its revenue cost is minimal—in fact, if the program is implemented temporarily, as in my bill, it actually raises a small amount in the 10-year budget window—since the deferred taxes are paid back with interest.

The fourth and final component of my tax relief plan for small manufacturers is to make permanent the increase in Section 179 small business expensing that was passed earlier this year as part of the President's third tax cut. However, this increase is set to expire at the end of 2005. While the recent increase does not help the smallest of small businesses, it can be helpful to small manufacturers who purchase more expensive equipment. It is one element of the various Bush tax cuts that deserves to be made permanent. My proposal would permanently increase the annual expensing limit to $100,000.

Mr. President, we may not have all the answers here in the Congress. Some of these trends in manufacturing employment have taken a long time to develop, and we won't be able to turn them around overnight. But at least we shouldn't ignore the changes and act as if more tax cuts will solve the problem. My manufacturing tax plan contains four reasonable, responsible components—and most will cost money only if they are actually effective. It's time for this administration to get its head out of the sand and start proposing job-creating strategies that will actually work.

Mr. President, nearly 3 million Americans, all across this Nation, have lost their jobs since 2000. We need to act now, with a comprehensive strategy that not only incorporates tax cuts but also includes real job training, business development, capital access, and levels the playing field for U.S. manufacturers. I believe this legislation addresses many of the concerns of the small business community and will take a significant step towards reversing the current trend of economic decline and job loss in the manufacturing sector.

I ask unanimous consent that the text of the MADE in America Act, the Enhance Domestic Manufacturing and Worker Assistance Act, and the Manufacturing Jobs Production Act be printed in the RECORD, and I urge all of my colleagues to support these bills.●

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1884

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Enhance Domestic Manufacturing and Worker Assistance Act of 2003".

TITLE I—EXTENSION AND EXPANSION OF TRADE ADJUSTMENT ASSISTANCE

SEC. 101. EXTENSION FOR WORKERS AND FIRMS.

(a) In General.—Section 285 (a) and (b) (1) and (2) of the Trade Act of 1974 (19 U.S.C. 2271 note) are amended by striking "September 30, 2007" each place it appears and inserting "September 30, 2012".

(b) Authorization.—

(1) Workers.—Section 245 of the Trade Act of 1974 (19 U.S.C. 2317) is amended by striking "September 30, 2007" and inserting "September 30, 2012".

(2) Firms.—

(A) In general.—Section 256(b) of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended—

(i) by striking "$16,000,000" and inserting "$32,000,000"; and

(ii) by striking "2007" and inserting "2012".

(B) Expansion of loans.—Section 255(h) of such Act (19 U.S.C. 2345) is amended—

(i) in paragraph (1), by striking "$3,000,000" and inserting "$6,000,000"; and

(ii) in paragraph (2), by striking "$1,000,000" and inserting "$2,000,000".

(3) Farmers.—Section 298(a) of the Trade Act of 1974 (19 U.S.C. 2401g) is amended by striking "2007" and inserting "2012".

(c) Fishermen.—Notwithstanding any other provision of law, for purposes of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) fishermen who harvest wild stock shall be eligible for adjustment assistance to the same extent and in the same manner as a group of workers under such chapter 2.

SEC. 102. TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES.

(a) In General.—Chapter 4 of title II of the Trade Act of 1974 (19 U.S.C. 2371 et seq.) is amended to read as follows:

"CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

"SEC. 271. DEFINITIONS.

"In this chapter:

"(1) Affected domestic producer.—The term 'affected domestic producer' means any manufacturer, producer, farmer, rancher, fisherman or worker representative (including associations of such persons) that was affected by a finding under the Antidumping Act of 1921, or by an antidumping or countervailing duty order issued under title VII of the Tariff Act of 1930.

"(2) Agricultural commodity producer.—The term 'agricultural commodity producer' has the same meaning as the term 'person' as prescribed by regulations promulgated under section 1001(5) of the Food Security Act of 1985 (7 U.S.C. 1308(5)).

"(3) Community.—The term 'community' means a city, county, or other political subdivision of a State or a consortium of political subdivisions of a State that the Secretary certifies as being negatively impacted by trade.

"(4) Community negatively impacted by trade.—A community negatively impacted by trade means a community with respect to which a determination has been made under section 273.

"(5) Eligible community.—The term 'eligible community' means a community certified under section 273 for assistance under this chapter.

"(6) Fisherman.—

"(A) In general.—The term 'fisherman' means any person who—

"(i) is engaged in commercial fishing; or

"(ii) is a United States fish processor.

"(B) Commercial fishing, fish, fishery, fishing, fishing vessel, person, and United States fish processor.—The terms 'commercial fishing', 'fish', 'fishery', 'fishing', 'fishing vessel', 'person', and 'United States fish processor' have the same meanings as such terms have in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

"(7) Job loss.—The term 'job loss' means the total or partial separation of an individual, as those terms are defined in section 247.

"(8) Secretary.—The term 'Secretary' means the Secretary of Commerce.

"SEC. 272. COMMUNITY TRADE ADJUSTMENT ASSISTANCE PROGRAM.

"(a) Establishment.—Within 6 months after the date of enactment of the Enhance Domestic Manufacturing and Worker Assistance Act of 2003, the Secretary shall establish a Trade Adjustment Assistance for Communities Program at the Department of Commerce.

"(b) Personnel.—The Secretary shall designate such staff as may be necessary to carry out the responsibilities described in this chapter.

"(c) Coordination of Federal Response.—The Secretary shall—

"(1) provide leadership, support, and coordination for a comprehensive management program to address economic dislocation in eligible communities;

"(2) coordinate the Federal response to an eligible community—

"(A) by identifying all Federal, State, and local resources that are available to assist the eligible community in recovering from economic distress;

"(B) by ensuring that all Federal agencies offering assistance to an eligible community do so in a targeted, integrated manner that ensures that an eligible community has access to all available Federal assistance;

"(C) by assuring timely consultation and cooperation between Federal, State, and regional officials concerning economic adjustment for an eligible community; and

"(D) by identifying and strengthening existing agency mechanisms designed to assist eligible communities in their efforts to achieve economic adjustment and workforce reemployment;

"(3) provide comprehensive technical assistance to any eligible community in the efforts of that community to—

"(A) identify serious economic problems in the community that are the result of negative impacts from trade;

"(B) integrate the major groups and organizations significantly affected by the economic adjustment;

"(C) access Federal, State, and local resources designed to assist in economic development and trade adjustment assistance;

"(D) diversify and strengthen the community economy; and

"(E) develop a community-based strategic plan to address economic development and workforce dislocation, including unemployment among agricultural commodity producers, and fishermen;

"(4) establish specific criteria for submission and evaluation of a strategic plan submitted under section 274(d);

"(5) establish specific criteria for submitting and evaluating applications for grants under section 275; and

"(6) administer the grant programs established under sections 274 and 275.

"SEC. 273. CERTIFICATION AND NOTIFICATION.

"(a) Certification.—Not later than 45 days after an event described in subsection (c)(1), the Secretary of Commerce shall determine if a community described in subsection (b)(1) is negatively impacted by trade, and if a positive determination is made, shall certify the community for assistance under this chapter.

"(b) Determination That Community Is Eligible.—

"(1) Community described.—A community described in this paragraph means a community with respect to which—

"(A) the Secretary of Labor certifies a group of workers (or their authorized representative) in the community as eligible for assistance pursuant to section 223;

"(B) the Secretary of Commerce certifies a firm located in the community as eligible for adjustment assistance under section 251;

"(C) the Secretary of Agriculture certifies a group of agricultural commodity producers (or their authorized representative) in the community as eligible for adjustment assistance under section 293;

"(D) an affected domestic producer is located in the community; or

"(E) the Secretary determines that a significant number of fishermen in the community is negatively impacted by trade.

"(2) Negatively impacted by trade.—The Secretary shall determine that a community is negatively impacted by trade, after taking into consideration—

"(A) the number of jobs affected compared to the size of workforce in the community;

"(B) the severity of the rates of unemployment in the community and the duration of the unemployment in the community;

"(C) the income levels and the extent of underemployment in the community;

"(D) the outmigration of population from the community and the extent to which the outmigration is causing economic injury in the community; and

"(E) the unique problems and needs of the community.

"(c) Definition and Special Rules.—

"(1) Event described.—An event described in this paragraph means one of the following:

"(A) A notification described in paragraph (2).

"(B) A certification of a firm under section 251.

"(C) A finding under the Antidumping Act of 1921, or an antidumping or countervailing duty order issued under title VII of the Tariff Act of 1930.

"(D) A determination by the Secretary that a significant number of fishermen in a community have been negatively impacted by trade.

"(2) Notification.—The Secretary of Labor, immediately upon making a determination that a group of workers is eligible for trade adjustment assistance under section 223, (or the Secretary of Agriculture, immediately upon making a determination that a group of agricultural commodity producers is eligible for adjustment assistance under section 293, as the case may be) shall notify the Secretary of Commerce of the determination.

"(d) Notification to Eligible Communities.—Immediately upon certification by the Secretary of Commerce that a community is eligible for assistance under subsection (b), the Secretary shall notify the community—

"(1) of the determination under subsection (b);

"(2) of the provisions of this chapter;

"(3) how to access the clearinghouse established by the Department of Commerce regarding available economic assistance;

"(4) how to obtain technical assistance provided under section 272(c)(3); and

"(5) how to obtain grants, tax credits, low income loans, and other appropriate economic assistance.

"SEC. 274. STRATEGIC PLANS.

"(a) IN GENERAL.—An eligible community may develop a strategic plan for community economic adjustment and diversification and shall be eligible for assistance as provided for under section 275.

"(b) REQUIREMENTS FOR STRATEGIC PLAN.—A strategic plan shall contain, at a minimum, the following:

"(1) A description and justification of the capacity for economic adjustment, including the method of financing to be used.

"(2) A description of the commitment of the community to the strategic plan over the long term and the participation and input of groups affected by economic dislocation.

"(3) A description of the projects to be undertaken by the eligible community.

"(4) A description of how the plan and the projects to be undertaken by the eligible community will lead to job creation and job retention in the community.

"(5) A description of how the plan will achieve economic adjustment and diversification.

"(6) A description of how the plan and the projects will contribute to establishing or maintaining a level of public services necessary to attract and retain economic investment.

"(7) A description and justification for the cost and timing of proposed basic and advanced infrastructure improvements in the eligible community.

"(8) A description of how the plan will address the occupational and workforce conditions in the eligible community.

"(9) A description of the educational programs available for workforce training and future employment needs.

"(10) A description of how the plan will adapt to changing markets and business cycles.

"(11) A description and justification for the cost and timing of the total funds required by the community for economic assistance.

"(12) A graduation strategy through which the eligible community demonstrates that the community will terminate the need for Federal assistance.

"(c) GRANTS TO DEVELOP STRATEGIC PLANS.—The Secretary, upon receipt of an application from an eligible community, may award a grant to that community to be used to develop and implement the strategic plan.

"(d) SUBMISSION OF PLAN.—A strategic plan developed under subsection (a) shall be submitted to the Secretary for evaluation and approval.

"SEC. 275. GRANTS FOR ECONOMIC DEVELOPMENT.

"(a) IN GENERAL.—The Secretary, upon approval of a strategic plan from an eligible community, may award a grant to that community to carry out any project or program that is certified by the Secretary to be included in the strategic plan approved under section 274(d), or consistent with that plan.

"(b) ADDITIONAL GRANTS.—Subject to paragraph (2), in order to assist eligible communities to obtain funds under Federal grant programs, other than the grants provided for in section 274(c) or subsection (a), the Secretary may, on the application of an eligible community, make a supplemental grant to the community if—

"(1) the purpose of the grant program from which the grant is made is to provide technical or other assistance for planning, constructing, or equipping public works facilities or to provide assistance for public service projects; and

"(2) the grant is 1 for which the community is eligible except for the community's inability to meet the non-Federal share requirements of the grant program.

"(c) RURAL COMMUNITY PREFERENCE.—The Secretary shall develop guidelines to ensure that rural communities receive preference in the allocation of resources.

"SEC. 276. GENERAL PROVISIONS.

"(a) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this chapter. Not later than 60 days before implementing any regulation or guideline proposed by the Secretary with respect to this chapter, the Secretary shall submit the regulation or guideline to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives for approval.

"(b) SUPPLEMENT NOT SUPPLANT.—Funds appropriated under this chapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide economic development assistance for communities.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this chapter amounts as follows:

"(1) For fiscal year 2005, $350,000,000.

"(2) For each of fiscal years 2006 through 2015, the amount authorized to be appropriated by this subsection for the preceding fiscal year increased by a percentage equal to the percentage by which—

"(A) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the August 31 of such preceding fiscal year, exceeds

"(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A). Amounts appropriated pursuant to this subsection shall remain available until expended.".

(b) CONFORMING AMENDMENTS.—

(1) TERMINATION.—Section 285(b) of the Trade Act of 1974 (19 U.S.C. 2271 note) is amended by adding at the end the following new paragraph:

"(3) ASSISTANCE FOR COMMUNITIES.—Technical assistance and other payments may not be provided under chapter 4 after September 30, 2015.".

(2) TABLE OF CONTENTS.—The table of contents for title II of the Trade Act of 1974 is amended by striking the items relating to chapter 4 of title II and inserting after the items relating to chapter 3 the following new items:

"CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

"Sec. 271. Definitions.
"Sec. 272. Community Trade Adjustment Assistance Program.
"Sec. 273. Certification and notification.
"Sec. 274. Strategic plans.
"Sec. 275. Grants for economic development.
"Sec. 276. General provisions.".

(c) JUDICIAL REVIEW.—Section 284(a) of the Trade Act of 1974 (19 U.S.C. 2395(a)) is amended by striking "section 271" and inserting "section 273".

(d) EFFECTIVE DATE.—The provisions of this section shall take effect on October 1, 2004.

SEC. 103. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.) is amended by inserting after section 255 the following new section:

"SEC. 255A. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

"(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Enhance Domestic Manufacturing and Worker Assistance Act of 2003, there shall be established in the International Trade Administration of the Department of Commerce an Office of Trade Adjustment Assistance.

"(b) PERSONNEL.—The Office shall be headed by a Director, and shall have such staff as may be necessary to carry out the responsibilities of the Secretary of Commerce described in this chapter.

"(c) FUNCTIONS.—The Office shall assist the Secretary of Commerce in carrying out the Secretary's responsibilities under this chapter.".

(b) CONFORMING AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 255, the following new item:

"Sec. 255A. Office of Trade Adjustment Assistance.".

TITLE II—REAUTHORIZATION OF CERTAIN DEPARTMENT OF COMMERCE PARTNERSHIP PROGRAMS

SEC. 201. MANUFACTURING EXTENSION PARTNERSHIP PROGRAM.

(a) IN GENERAL.—There is authorized to be appropriated for the National Institute of Standards and Technology for the Manufacturing Extension Partnership Program amounts as follows:

(1) For fiscal year 2005, $212,000,000.
(2) For fiscal year 2006, $272,000,000.
(3) For fiscal year 2007, $332,000,000.
(4) For fiscal year 2008, $392,000,000.
(5) For fiscal year 2009, $452,000,000.
(6) For fiscal year 2010, $512,000,000.
(7) For fiscal year 2011, $572,000,000.
(8) For fiscal year 2012, $632,000,000.
(9) For fiscal year 2013, $692,000,000.
(10) For fiscal year 2014, $752,000,000.
(11) For fiscal year 2015, $812,000,000.

(b) MANUFACTURING EXTENSION PARTNERSHIP PROGRAM DEFINED.—In this section, the term "Manufacturing Extension Partnership Program" means the program of Manufacturing Extension Partnership carried out by the National Institute of Standards and Technology under section 26 of the National Institute of Standards and Technology Act (15 U.S.C. 2781), as provided in part 292 of title 15, Code of Federal Regulations.

SEC. 202. ADVANCED TECHNOLOGY PROGRAM.

There are authorized to be appropriated for the National Institute of Standards and Technology for carrying out the Advanced Technology Program under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), $400,000,000 for each of fiscal years 2004 through 2013.

TITLE III—SMALL BUSINESS OFFICE

SEC. 301. ESTABLISHMENT OF OFFICE.

(a) IN GENERAL.—Chapter 4 of title I of the Trade Act of 1974 (19 U.S.C. 2171) is amended by adding after section 141, the following new section:

"SEC. 141A. SMALL BUSINESS OFFICE.

"(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Enhance Domestic Manufacturing and Worker Assistance Act of 2003, there shall be established in the Office of the United States Trade Representative an Office of Small Business.

"(b) PERSONNEL.—The Office shall be headed by a Director, and shall have such staff as may be necessary to carry out the functions and responsibilities described in this section.

"(c) Functions.—The Office shall—

"(1) assist the United States Trade Representative in carrying out the Trade Representative's responsibilities under this chapter; and

"(2) ensure that small business manufacturing issues are taken into consideration in carrying out those responsibilities.".

(b) Conforming Amendment.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 141, the following new item:

"Sec. 141A. Office of Small Business.".

S. 1885

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Manufacturing Job Production Act of 2003".

SEC. 2. TEMPORARY MANUFACTURING JOB CREATION TAX CREDIT.

(a) In General.—Subpart F of part IV of subchapter A of chapter 1 (relating to rules for computing work opportunity credit) is amended by inserting after section 51A the following new section:

"SEC. 51B. REFUND OF PAYROLL TAXES ATTRIBUTABLE TO NEW MANUFACTURING EMPLOYEES DURING 2004 AND 2005.

"(a) General Rule.—In the case of an employee's first taxable year beginning in any applicable calendar year, the amount of the work opportunity credit determined under section 51 (without regard to this section) for the taxable year shall be increased by the increased manufacturing wages payroll tax rebate amount.

"(b) Applicable Calendar Year.—For purposes of this section, the term 'applicable calendar year' means 2004 and 2005.

"(c) Increased Manufacturing Wages Payroll Tax Rebate Amount.—

"(1) In general.—For purposes of this section, the term 'increased manufacturing wages payroll tax rebate amount' means an amount equal to the applicable percentage of the excess (if any) of—

"(A) the qualified manufacturing wages paid or incurred by the employer with respect to employment during the applicable calendar year, over

"(B) the sum of—

"(i) the qualified manufacturing wages paid or incurred by the employer with respect to employment during the previous calendar year, plus

"(ii) an amount equal to the amount determined under clause (i) multiplied by a percentage equal to the percentage change in the contribution and benefit base under section 230 of the Social Security Act from the applicable calendar year to the previous calendar year.

"(2) Applicable percentage.—For purposes of this subsection, the term 'applicable percentage' means—

"(A) for 2004, 50 percent, and

"(B) for 2005, 25 percent.

"(d) Other Definitions and Rules.—For purposes of this section—

"(1) Qualified manufacturing wages.—

"(A) In general.—The term 'qualified manufacturing wages' means wages which are paid by the taxpayer and included under section 263A in the cost of property produced by the taxpayer.

"(B) Wages.—The term 'wages' has the meaning given such term by section 3121(a), except that in the case of any employer subject to tax under chapter 22 with respect to any employee, the such term includes compensation within the meaning of section 3231(e).

"(C) United States.—For purposes of this paragraph, the term 'United States' includes the territories and possessions of the United States.

"(2) Predecessors.—Any reference in this section to an employer shall include a reference to a predecessor.

"(3) Other rules.—Rules similar to the rules of sections 51(k) and 52 shall apply.

"(e) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out this section, including regulations for the application of this section in the case of acquisitions and dispositions.".

(b) Conforming Amendment.—The table of sections for subpart F of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 51A the following new item:

"Sec. 51B. Refund of payroll taxes attributable to new manufacturing employees during 2004 and 2005.".

SEC. 3. MODIFICATIONS OF EXCLUSIONS AND ROLLOVERS OF GAIN ON QUALIFIED SMALL BUSINESS STOCK.

(a) Exclusion of Gain on Qualified Small Business Stock.—

(1) Increase in exclusion percentage.—

(A) In general.—Section 1202(a)(1) (relating to exclusion for gain from certain small business stock) is amended by striking "50 percent" and inserting "75 percent".

(B) 100-percent exclusion for critical technology, small manufacturing, and specialized small business investment businesses.—Section 1202(a) is amended by adding at the end the following new paragraph:

"(3) Critical technology, small manufacturing, and specialized small business investment businesses.—

"(A) In general.—In the case of qualified small business stock acquired after the date of the enactment of this paragraph which is stock in—

"(i) a critical technology corporation,

"(ii) a manufacturing corporation, or

"(iii) a corporation which is a specialized small business investment company (as defined in subsection (c)(2)(B)(ii)),

paragraph (1) shall be applied by substituting '100 percent' for '75 percent'.

"(B) Critical technology corporation.—The term 'critical technology corporation' means a corporation substantially all of the active business activities of which during substantially all of a taxpayer's holding period of stock in the corporation are in connection with—

"(i) transportation or homeland security technologies,

"(ii) antiterrorism technologies,

"(iii) technologies enhancing security by improving methods of personal identification (including biometrics),

"(iv) environmental technologies for pollution minimization, remediation, or waste management,

"(v) national defense technologies, or

"(vi) energy efficiency or the development of non-fossil based fuel source technologies.

"(C) Manufacturing corporation.—The term 'manufacturing corporation' means a corporation substantially all of the active business activities of which during substantially all of a taxpayer's holding period of stock in the corporation are in connection with manufacturing (as determined under the North American Industrial Classification System).".

(C) Empowerment zone conforming amendment.—Section 1202(a)(2)(A) is amended—

(i) by striking "60 percent" and inserting "100 percent", and

(ii) by striking "50 percent" and inserting "75 percent".

(2) Decrease in holding period.—

(A) In general.—Section 1202(a)(1) is amended by striking "5 years" and inserting "4 years".

(B) Conforming amendment.—Section 1202(j)(1)(A) is amended by striking "5 years" and inserting "4 years".

(3) Exclusion available to corporations.—

(A) In general.—Subsection (a) of section 1202 (relating to partial exclusion for gains from certain small business stock) is amended by striking "other than a corporation".

(B) Technical amendment.—Subsection (c) of section 1202 is amended by adding at the end the following new paragraph:

"(4) Stock held among members of controlled group not eligible.—Stock of a member of a parent-subsidiary controlled group (as defined in subsection (d)(3)) shall not be treated as qualified small business stock while held by another member of such group.".

(4) Stock of larger businesses eligible for exclusion.—

(A) In general.—Paragraph (1) of section 1202(d) (defining qualified small business) is amended by striking "$50,000,000" each place it appears and inserting "$100,000,000".

(B) Inflation adjustment.—Section 1202(d) (defining qualified small business) is amended by adding at the end the following:

"(5) Inflation adjustment of asset limitation.—In the case of stock issued in any calendar year after 2004, the $100,000,000 amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting 'calendar year 2003' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.".

(b) Increase in Period To Purchase Replacement Stock and Qualify for Rollover.—

(1) In general.—Section 1045(a)(2) (relating to nonrecognition of gain) is amended by striking "60-day" and inserting "180-day".

(2) Conforming amendment.—Section 1045(b)(2) is amended by striking "60-day" and inserting "180-day".

(c) Effective Dates.—

(1) Exclusion.—The amendments made by subsection (a) shall apply to stock issued after the date of the enactment of this Act.

(2) Rollover.—The amendment made by subsection (b) shall apply to sales after the date of the enactment of this Act.

SEC. 4. DEFERRED PAYMENT OF TAX BY CERTAIN SMALL BUSINESSES.

(a) In General.—Subchapter B of chapter 62 of the Internal Revenue Code of 1986 (relating to extensions of time for payment of tax) is amended by adding at the end the following new section:

"SEC. 6168. EXTENSION OF TIME FOR PAYMENT OF TAX FOR CERTAIN SMALL BUSINESSES.

"(a) In General.—An eligible small business may elect to pay the tax imposed by chapter 1 in 4 equal installments (6 equal installments in the case of a qualified manufacturer).

"(b) Limitation.—The maximum amount of tax which may be paid in installments under this section for any taxable year shall not exceed whichever of the following is the least:

"(1) The tax imposed by chapter 1 for the taxable year.

"(2) The amount contributed by the taxpayer into a BRIDGE Account during such year.

"(3) The excess of—

"(A) $250,000 ($400,000 in the case of a qualified manufacturer), over

"(B) the aggregate amount of tax for which an election under this section was made by the taxpayer (or any predecessor) for all prior taxable years.

"(c) DEFINITIONS.—For proposes of this section—

"(1) ELIGIBLE SMALL BUSINESS.—

"(A) IN GENERAL.—The term 'eligible small business' means, with respect to any taxable year, any person if—

"(i) such person meets the active business requirements of section 1202(e) throughout such taxable year,

"(ii) the taxpayer has gross receipts of $10,000,000 or less for the taxable year,

"(iii) the gross receipts of the taxpayer for such taxable year are at least 10 percent greater than the average annual gross receipts of the taxpayer (or any predecessor) for the 2 prior taxable years, and

"(iv) the taxpayer uses an accrual method of accounting.

"(B) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply for purposes of this subsection.

"(2) QUALIFIED MANUFACTURER.—The term 'qualified manufacturer' means an eligible small business substantially all of the business activities of which are in connection with manufacturing (as determined under the North American Industrial Classification System).

"(d) DATE FOR PAYMENT OF INSTALLMENTS; TIME FOR PAYMENT OF INTEREST.—

"(1) DATE FOR PAYMENT OF INSTALLMENTS.—

"(A) IN GENERAL.—If an election is made under this section for any taxable year, the first installment shall be paid on or before the due date for such installment and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.

"(B) DUE DATE FOR FIRST INSTALLMENT.—The due date for the first installment for a taxable year shall be whichever of the following is the earliest:

"(i) The date selected by the taxpayer.

"(ii) The date which is 2 years after the date prescribed by section 6151(a) for payment of the tax for such taxable year.

"(2) TIME FOR PAYMENT OF INTEREST.—If the time for payment of any amount of tax has been extended under this section—

"(A) INTEREST FOR PERIOD BEFORE DUE DATE OF FIRST INSTALLMENT.—Interest payable under section 6601 on any unpaid portion of such amount attributable to the period before the due date for the first installment shall be paid annually.

"(B) INTEREST DURING INSTALLMENT PERIOD.—Interest payable under section 6601 on any unpaid portion of such amount attributable to any period after such period shall be paid at the same time as, and as a part of, each installment payment of the tax.

"(C) INTEREST IN THE CASE OF CERTAIN DEFICIENCIES.—In the case of a deficiency to which subsection (e)(3) applies for a taxable year which is assessed after the due date for the first installment for such year, interest attributable to the period before such due date, and interest assigned under subparagraph (B) to any installment the date for payment of which has arrived on or before the date of the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

"(e) SPECIAL RULES.—

"(1) APPLICATION OF LIMITATION TO PARTNERS AND S CORPORATION SHAREHOLDERS.—

"(A) IN GENERAL.—In applying this section to a partnership which is an eligible small business—

"(i) the election under subsection (a) shall be made by the partnership,

"(ii) the amount referred to in subsection (b)(1) shall be the sum of each partner's tax which is attributable to items of the partnership and assuming the highest marginal rate under section 1, and

"(iii) the partnership shall be treated as the taxpayer referred to in paragraphs (2) and (3) of subsection (b).

"(B) OVERALL LIMITATION ALSO APPLIED AT PARTNER LEVEL.—In the case of a partner in a partnership, the limitation under subsection (b)(3) shall be applied at the partnership and partner levels.

"(C) SIMILAR RULES FOR S CORPORATIONS.—Rules similar to the rules of subparagraphs (A) and (B) shall apply to shareholders in an S corporation.

"(2) ACCELERATION OF PAYMENT IN CERTAIN CASES.—

"(A) IN GENERAL.—If—

"(i) the taxpayer ceases to meet the requirement of subsection (c)(1)(A)(i), or

"(ii) there is an ownership change with respect to the taxpayer,

then the extension of time for payment of tax provided in subsection (a) shall cease to apply, and the unpaid portion of the tax payable in installments shall be paid on or before the due date for filing the return of tax imposed by chapter 1 for the first taxable year following such cessation.

"(B) OWNERSHIP CHANGE.—For purposes of subparagraph, in the case of a corporation, the term 'ownership change' has the meaning given to such term by section 382. Rules similar to the rules applicable under the preceding sentence shall apply to a partnership.

"(3) PRORATION OF DEFICIENCY TO INSTALLMENTS.—Rules similar to the rules of section 6166(e) shall apply for purposes of this section.

"(f) BRIDGE ACCOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'BRIDGE Account' means a trust created or organized in the United States for the exclusive benefit of an eligible small business, but only if the written governing instrument creating the trust meets the following requirements:

"(A) No contribution will be accepted for any taxable year in excess of the amount allowed as a deferral under subsection (b) for such year.

"(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

"(C) The assets of the trust consist entirely of cash or of obligations which have adequate stated interest (as defined in section 1274(c)(2)) and which pay such interest not less often than annually.

"(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(E) Amounts in the trust may be used only—

"(i) as security for a loan to the business or for repayment of such loan, or

"(ii) to pay the installments under this section.

"(2) ACCOUNT TAXED AS GRANTOR TRUST.—The grantor of a BRIDGE Account shall be treated for purposes of this title as the owner of such Account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

"(3) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to a BRIDGE Account on the last day of a taxable year if such payment is made on account of such taxable year and is made within 3½ months after the close of such taxable year.

"(g) REPORTS.—The Secretary may require such reporting as the Secretary determines to be appropriate to carry out this section.

"(h) APPLICATION OF SECTION.—This section shall apply to taxes imposed for taxable years beginning after December 31, 2003, and before January 1, 2008.".

(b) PRIORITY OF LENDER.—Subsection (b) of section 6323 of the Internal Revenue Code of 1986 (relating to protection for certain interests even though notice filed) is amended by adding at the end the following new paragraph:

"(11) LOANS SECURED BY BRIDGE ACCOUNTS.—With respect to a BRIDGE account (as defined in section 6168(f)) with any bank (as defined in section 408(n)), to the extent of any loan made by such bank without actual notice or knowledge of the existence of such lien, as against such bank, if such loan is secured by such account.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 62 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 6168. Extension of time for payment of tax for certain small businesses.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(e) STUDY BY GENERAL ACCOUNTING OFFICE.—

(1) STUDY.—In consultation with the Secretary of the Treasury, the Comptroller General of the United States shall undertake a study to evaluate the applicability (including administrative aspects) and impact of the amendments made by section 4 of the Manufacturing Job Production Act of 2003, including how it affects the capital funding needs of businesses under the Act and number of businesses benefiting.

(2) REPORT.—Not later than March 31, 2007, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the study conducted pursuant to this subsection, together with such recommendations for legislative or administrative changes as the Comptroller General determines are appropriate.

SEC. 5. PERMANENT EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESSES.

(a) IN GENERAL.—Paragraph (1) of section 179(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking "$25,000 ($100,000 in the case of taxable years beginning after 2002 and before 2006)" and inserting "$100,000".

(b) INCREASE IN QUALIFYING INVESTMENT AT WHICH PHASEOUT BEGINS.—Paragraph (2) of section 179(b) of the Internal Revenue Code of 1986 (relating to reduction in limitation) is amended by striking "$200,000 ($400,000 in the case of taxable years beginning after 2002 and before 2006)" and inserting "$400,000".

(c) OFF-THE-SHELF COMPUTER SOFTWARE.—Paragraph (1) of section 179(d) of the Internal Revenue Code of 1986 (defining section 179 property) is amended by striking ", and which is placed in service in a taxable year beginning after 2002 and before 2006".

(d) INFLATION ADJUSTMENT.—Subparagraph (A) of section 179(b)(5) of the Internal Revenue Code of 1986 (relating to inflation adjustments) is amended by striking "and before 2006".

(e) REVOCATION OF ELECTION.—Paragraph (2) of section 179(c) of the Internal Revenue Code of 1986 is amended by striking the last sentence.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

S. 1886

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Manufacturing Assistance, Development, and Education in America Act" or the "MADE in America Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definition of small manufacturer.

TITLE I—NATIONAL OFFICE FOR THE DEVELOPMENT OF SMALL MANUFACTURERS

Sec. 101. Establishment of office.

TITLE II—INVESTING IN THE FUTURE OF MANUFACTURING

Sec. 201. Increased access to capital.
Sec. 202. Loans and investments in small manufacturers.

TITLE III—EXPORT ASSISTANCE FOR SMALL MANUFACTURERS

Sec. 301. Small Business Foreign Patent Protection Grant Pilot Program.

SEC. 2. DEFINITION OF SMALL MANUFACTURER.

(a) SMALL BUSINESS ACT.—Section 3(j) of the Small Business Act (15 U.S.C. 632(j)) is amended by striking "For the purposes of section 7(b)(2) of this Act, the term" and inserting "As used in this Act—

"(1) the term 'small manufacturer' means a small business concern (as defined in subsection (a))—

"(A) whose primary business is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

"(B) whose production facilities are all located in the United States; and

"(2) the term".

(b) SMALL BUSINESS INVESTMENT ACT OF 1958.—Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) is amended—

(1) in paragraph (16), by striking "and" at the end;

(2) in paragraph (17), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(18) the term 'small manufacturer' means a small business concern (as defined in section 3(a) of the Small Business Act)—

"(A) whose primary business is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

"(B) whose production facilities are all located in the United States.".

TITLE I—NATIONAL OFFICE FOR THE DEVELOPMENT OF SMALL MANUFACTURERS

SEC. 101. ESTABLISHMENT OF OFFICE.

(a) IN GENERAL.—The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 36 as section 37; and

(2) by inserting after section 35 the following:

"SEC. 36. NATIONAL OFFICE FOR DEVELOPMENT OF SMALL MANUFACTURERS.

"(a) ESTABLISHMENT.—There is established in the Administration the National Office for the Development of Small Manufacturers (referred to in this section as the 'Office') to cultivate and develop small manufacturers through a variety of means.

"(b) ASSOCIATE ADMINISTRATOR FOR SMALL MANUFACTURING.—

"(1) APPOINTMENT.—The Office shall be administered by the Associate Administrator for Small Manufacturing (referred to in this section as the 'Associate Administrator'), who shall be appointed under section 4(b)(1).

"(2) RESPONSIBILITIES.—In administering the Office, the Associate Administrator, who shall be an appointee in the Senior Executive Service, shall—

"(A) oversee and coordinate the formulation, execution, and promotion of policies and programs of the Administration that provide assistance to small manufacturers, including the creation of the Manufacturing Corps;

"(B) direct Federal agencies and departments to provide information regarding their manufacturing resources and programs, and to take appropriate action to enhance assistance to small manufacturers;

"(C) coordinate the activities, and delivery of such activities, of Federal agencies and departments relating to manufacturing;

"(D) coordinate the activities of Federal agencies with manufacturing activities of the States; and

"(E) consult with and report to the Administrator regarding the fulfillment of responsibilities under this subsection.

"(c) MANUFACTURING CORPS.—

"(1) ESTABLISHMENT.—The Administrator shall establish a program within the Office to be known as the Manufacturing Corps to focus on the education and training of the existing and potential workforce of small manufacturers.

"(2) ADMINISTRATION.—The Manufacturing Corps shall be administered by the Associate Administrator.

"(3) RESPONSIBILITIES.—The Manufacturing Corps shall address the pressing need for more skilled workers by promoting vocational, technical, and academic education relating to the manufacturing sector.

"(4) CURRICULUM DEVELOPMENT.—

"(A) OUTREACH.—The Associate Administrator shall regularly seek input from small manufacturers regarding the human capital needs of the manufacturing industry.

"(B) COOPERATION.—The input received under subparagraph (A) shall be used to develop, and annually update, a detailed manufacturing training curriculum for each State through the cooperative effort of small manufacturers and educational institutions.

"(d) MANUFACTURING TRAINING BLOCK GRANTS.—

"(1) GRANTS AUTHORIZED.—The Administrator, in consultation with the Associate Administrator, shall award block grants to States, which shall allocate grant funds to individuals and eligible entities to develop and implement manufacturing training programs.

"(2) FUNDING FORMULA.—

"(A) IN GENERAL.—Subject to subparagraph (C), the amount of a formula grant received by a State under this subsection shall be equal to an amount determined in accordance with the following formula:

"(i) The annual amount made available under subsection (i) for the Manufacturer Corps Program shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared to the population of the United States.

"(ii) If the pro rata amount calculated under clause (i) for any State is less than the minimum funding level under subparagraph (C), the Administration shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

"(iii) The aggregate amount calculated under clause (ii) shall be deducted from the amount calculated under clause (i) for States eligible to receive more than the minimum funding level. The deductions shall be made on a pro rata basis, based on the population of each such State, as compared to the total population of all such States.

"(iv) The aggregate amount deducted under clause (iii) shall be added to the grants of those States that are not eligible to receive more than the minimum funding level in order to achieve the minimum funding level for each such State, except that the eligible amount of a grant to any State shall not be reduced to an amount below the minimum funding level.

"(B) GRANT DETERMINATION.—The amount of a grant that a State is eligible to apply for under this subsection shall be the amount determined under subparagraph (A), subject to any modifications required under subparagraph (C), and shall be based on the amount available for the fiscal year in which performance of the grant commences, but not including amounts distributed in accordance with subparagraph (D). The amount of a grant received by a State under any provision of this subparagraph shall not exceed the amount of matching funds from sources other than the Federal Government, as required under paragraph (7).

"(C) MINIMUM FUNDING LEVEL.—Each State shall receive a block grant under this subsection in an amount not less than—

"(i) $200,000 for any fiscal year in which the total amount appropriated for grants under this subsection is not more than $25,000,000;

"(ii) $300,000 for any fiscal year in which the total amount appropriated for grants under this subsection is more than $25,000,000, but not more than $50.000,000;

"(iii) $400,000 for any fiscal year in which the total amount appropriated for grants under this subsection is more than $50,000,000, but not more than $75,000,000; and

"(iv) $500,000 for any fiscal year in which the total amount appropriated for grants under this subsection is more than $75,000,000.

"(D) DISTRIBUTIONS.—Subject to subparagraph (C), if any State does not apply for, or use, its full funding eligibility for a fiscal year, the Administration shall distribute the remaining funds as supplemental grants to any State, as the Administration determines, in its discretion, to be appropriate.

"(3) ELIGIBLE ENTITIES.—Secondary, vocational, and postsecondary schools that receive public funding, manufacturing extension partnerships, small business development centers, women's business centers, and similar nonprofit organizations shall be eligible to receive grant funds from States under this subsection.

"(4) USE OF FUNDS.—

"(A) In general.—Grants awarded under this section may only be used to develop and implement vocational, technical, or academic training programs to educate and enhance the skills of—

"(i) individuals working in the field of manufacturing; and

"(ii) students who are interested in working in the field of manufacturing.

"(B) Secondary schools.—Secondary schools may use funds received under this subsection to develop and conduct vocational and technology training to high school students to prepare students who are not planning to attend college immediately after graduation for employment in the field of manufacturing. Schools are encouraged to partner with small manufacturers to address their skilled worker needs and to provide employment opportunities for students after graduation.

"(C) Continuing education.—Manufacturing extension partnerships, small business development centers, women's business centers, and similar nonprofit organizations may use funds received under this subsection to assist existing manufacturing workers to improve their skills and advance their technical abilities.

"(5) Student loan repayment program.—

"(A) In general.—States may use grant funds received under this subsection to encourage recent college graduates to work for a small manufacturer by repaying a portion of their student loans during the period of such employment.

"(B) Maximum amounts.—A State may make payments of not more than $300 per month toward the student loan principal and interest of any college graduate who has committed to work for a small manufacturer for a 4-year period beginning not sooner than the date on which the graduate submits an application under paragraph (6)(B). Aggregate payments to any individual under this paragraph may not exceed $25,000.

"(C) Renewal.—After the initial 4-year term established under subparagraph (B) has been completed, the State may annually renew its commitment under subparagraph (B) for successive 1-year periods if the college graduate commits to continue working for the small manufacturer.

"(D) Maximum compensation.—Individuals whose gross annual compensation (including bonuses) from the small manufacturer is greater than $60,000 are ineligible to participate in the student loan repayment program authorized by this paragraph.

"(6) Application.—

"(A) Institutional applicants.—Any eligible entity desiring funding under this subsection shall submit a proposal to the appropriate representative of the State in which it is located.

"(B) Individual applicants.—Any college graduate desiring to participate in the student loan repayment program authorized under paragraph (5) shall submit an application to the appropriate representative of the State in which the graduate resides in such form as such representative may reasonably require.

"(C) Criteria.—States may determine which applicants receive funding under this subsection based upon specific needs and available resources.

"(7) Matching requirement.—

"(A) Years 1 and 2.—During each of the first and second years of the grant program established under this subsection, each State receiving a block grant under this subsection shall provide $1 in non-Federal funding for each $3 received in Federal funding under this section.

"(B) Years 3 and 4.—During each of the third and fourth years of the grant program established under this subsection, each State receiving a block grant under this subsection shall provide $1 in non-Federal funding for each $2 received in Federal funding under this section.

"(C) Years 5 through 10.—During each of the fifth through tenth years of the grant program established under this subsection, each State receiving a block grant under this subsection shall provide $1 in non-Federal funding for each $1 received in Federal funding under this section.

"(8) State reporting requirement.—Each State receiving a grant under this subsection shall provide sufficient information to the Administration about the distribution of grant funds to complete the report required under subsection (e).

"(9) Defined term.—As used in this subsection, the term 'State' has the meaning given the term in section 34(a).

"(e) BusinessLINC Manufacturing.—

"(1) In general.—In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

"(A) to expand business-to-business relationships between large and small manufacturers; and

"(B) to provide large and small manufacturers, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs.

"(2) Matching requirement.—Subject to subparagraph (B), the Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

"(3) Authorization of appropriations.—There are authorized to be appropriated to carry out this subsection $2,000,000 for each of the fiscal years 2004 through 2008, which shall remain available until expended.

"(f) Website for Small Manufacturers.—The Associate Administrator shall establish a website that contains information for small manufacturers regarding—

"(1) entrepreneurial development assistance;

"(2) access to capital;

"(3) specific outreach programs;

"(4) contracting opportunities; and

"(5) research and development projects.

"(g) Mentor-Protege Program.—The Associate Administrator shall establish a mentor-protege program that pairs small manufacturers with larger, more experienced manufacturers to provide guidance regarding—

"(1) management practices;

"(2) domestic and foreign marketing;

"(3) efficiency improvements; and

"(4) product development.

"(h) Report.—

"(1) In general.—The Administrator, in consultation with the Associate Administrator, shall submit an annual report on the implementation of this section to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

"(2) Contents.—Each report submitted under paragraph (1) shall include, for the reporting period—

"(A) the number of persons assisted under this section, categorized by type of assistance received;

"(B) the number of persons described under subparagraph (A) who had previously received assistance under this section;

"(C) the number of persons described in subparagraph (A) who are working in the manufacturing sector;

"(D) the number and amount of grants awarded under this section, categorized by type of recipient;

"(E) the number of small manufacturers receiving grant funds under this section; and

"(F) the net increase in manufacturing jobs available at the small manufacturers described in subparagraph (E);

"(i) Authorization of Appropriations.—There are authorized to be appropriated $275,000,000 for each of the fiscal years 2005 through 2014 to carry out this subsections (c) and (d).".

(b) Conforming Amendments.—Section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)) is amended—

(1) by striking "five Associate Administrators" and inserting "6 Associate Administrators"; and

(2) by adding at the end the following: "One of the Associate Administrators shall be the Associate Administrator for Small Manufacturing, who shall administer the National Office for the Development of Small Manufacturers established under section 36.".

TITLE II—INVESTING IN THE FUTURE OF MANUFACTURING

SEC. 201. INCREASED ACCESS TO CAPITAL.

(a) Working Capital Loans.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (3)—

(A) by inserting "Total amount of loans.—" before "No loan";

(B) by amending subparagraph (A) to read as follows:

"(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower under section 7(a) would exceed $1,000,000 (or if the gross loan amount would exceed $2,000,000), except as provided in subparagraphs (B) and (D) and paragraph (14), plus an amount not to exceed the maximum amount of a development company financing under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), and the Administration shall report to Congress in its annual budget request and performance plan on the number of small business concerns that have financings under this subsection and under title V of the Small Business Investment Act of 1958, and the total amount and general performance of such financings;";

(C) in subparagraph (B)—

(i) by striking "$1,250,000" and inserting "$1,300,000"; and

(ii) by striking "and" at the end;

(D) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(E) by adding at the end the following:

"(D) to a small manufacturer if the total amount outstanding and committed to the borrower from the business loan and investment fund established by this Act would exceed $2,000,000 (or if the gross loan amount would exceed $4,000,000)."; and

(2) in paragraph (14), by adding at the end the following:

"(D) The total amount of financings under this paragraph that are outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established under this Act may not exceed $1,300,000 and the gross loan amount under this paragraph may not exceed $2,600,000.".

(b) Disaster Loans.—Section 7(b)(3) of the Small Business Act (15 U.S.C. 636(b)) is amended by inserting after subparagraph (F) the following:

"(G) Limitation on sales of loans.—The Administration may not sell a loan under this subsection as part of an asset sale.

"(H) Small manufacturers.—

"(i) Maximum loan amount.—Notwithstanding subparagraph (E), the Administration may make a disaster loan to a small manufacturer under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, in an amount greater than $1,500,000, if the total amount outstanding and committed to the borrower does not exceed $5,000,000.

"(ii) Refinancing disaster loans.—Any loan made to a small manufacturer under this subparagraph that was outstanding on the date of the disaster may be refinanced by a small manufacturer that is also eligible to receive a loan under this subsection. The refinanced amount shall be considered to be part of the new loan for purposes of this subsection and shall be in addition to any other loan eligibility for that small manufacturer under this Act and the Small Business Investment Act of 1958. With respect to a refinancing under this clause, payments of principal shall be deferred, and interest shall not accrue during the 6-month period following the date of refinancing.

"(iii) Refinancing business debt.—

"(I) In general.—Any business debt of a small manufacturer that was outstanding on the date of the disaster may be refinanced by the small manufacturer if it is also eligible to receive a loan under this subsection. With respect to a refinancing under this clause, payments of principal shall be deferred, and interest shall not accrue during the 6-month period following the date of refinancing.

"(II) Resumption of payments.—At the end of the 6-month period described in subclause (I), the payment of periodic installments of principal and interest shall be required with respect to such loan, in the same manner and subject to the same terms and conditions as would otherwise be applicable to any other loan made under this subsection.

"(iv) Authority to increase or waive size standards and size regulations.—

"(I) In general.—At the discretion of the Administrator, the Administrator may increase or waive otherwise applicable size standards or size regulations with respect to businesses applying for disaster loans under this subparagraph.

"(II) Exemption from administrative procedures.—The provisions of subchapter II of chapter 5, of title 5, United States Code, shall not apply to any increase or waiver by the Administrator under subclause (I).".

(c) Microloans.—Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) in clause (iii), by striking "and" at the end;

(ii) in clause (iv), by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following:

"(v) to assist small manufacturers."; and

(B) in subparagraph (B)(iii), by inserting "(or $50,000 if the borrower is a small manufacturer)" after "$35,000"; and

(2) in paragraph (3)(E)—

(A) by striking "In no case shall an intermediary" and inserting "An intermediary may not"; and

(B) by inserting before the period at the end the following: ", unless the borrower is a small manufacturer. An intermediary may not make a loan to a small manufacturer under this section of more than $50,000, or have outstanding or committed to any small manufacturer more than $50,000".

SEC. 202. LOANS AND INVESTMENTS IN SMALL MANUFACTURERS.

(a) Manufacturing Loans.—

(1) Job creation or retention standards.—Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended—

(A) in subsection (d)(2), by inserting "increasing the productive capacity of small manufacturers," after "area"; and

(B) by striking the undesignated paragraph at the end and inserting the following:

"(e) Job Creation or Retention.—A project being funded by the debenture is deemed to satisfy the job creation or retention requirement under subsection (d)(1) if the project creates or retains—

"(1) 1 job opportunity for every $50,000 guaranteed by the Administration; or

"(2) in the case of a manufacturing project, 1 job opportunity for every $100,000 guaranteed by the Administration.".

(2) Maximum amount.—Section 502(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) is amended to read as follows:

"(2) Maximum amount.—Loans made by the Administration under this section shall be limited to—

"(A) $1,000,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in subparagraph (B) or (C);

"(B) $1,300,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 501(d)(3); and

"(C) $4,000,000 for each small business concern if the loan proceeds will be directed toward manufacturing projects.".

(3) Rule of construction.—Section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) is amended by adding at the end the following:

"(7) Rule of construction.—A loan under this section shall not be construed to be limited by any loan guaranteed by the Administration under subsection (a) or (b) of section 7 of the Small Business Act (15 U.S.C. 636(a) and (b)).".

(b) Small Business Investment Companies.—Section 303(b)(4) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)(4)) is amended—

(1) in subparagraph (A), by striking "(as determined by the Administrator)" and all that follows and inserting "may not exceed $115,000,000."; and

(2) by amending subparagraph (B) to read as follows:

"(B) Exceptions.—

"(i) Majority of financings in small manufacturers.—If the licensee certifies in writing that not less than 50 percent of the aggregate dollar amount of its financings are to small manufacturers—

"(I) the maximum amount of outstanding leverage issued to any 1 company shall be $150,000,000; and

"(II) the maximum amount of outstanding leverage issued to companies that are under common control shall be $185,000,000.

"(ii) Companies under common control.—The Administrator may, on a case-by-case basis—

"(I) approve an amount of leverage that exceeds the amount described in clause (i) and subparagraph (A) for companies under common control; and

"(II) impose such additional terms and conditions as the Administrator determines to be appropriate to minimize the risk of loss to the Administration in the event of default.".

(c) New Market Venture Capital Program.—

(1) Purposes.—Section 352 of the Small Business Investment Act (15 U.S.C. 689a) is amended—

(A) in paragraph (1), by inserting "and small manufacturers" after "enterprises"; and

(B) in paragraph (2), by inserting "and small manufacturers" after "enterprises".

(2) Maximum guarantee for small manufacturers.—Section 355(d)(1) of the Small Business Investment Act (15 U.S.C. 689d(d)(1)) is amended—

(A) by striking "does not exceed 150 percent" and inserting "does not exceed—

"(A) 150 percent"; and

(B) by striking the period at the end and inserting "; and

"(B) 200 percent of the private capital of the company, if the New Markets Venture Capital company certifies in writing that not less than 50 percent of its investments are in small manufacturers.".

(d) Authorization of Additional Appropriations.—Section 368 of the Small Business Investment Act of 1958 (15 U.S.C. 689q) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

"(b) Authorization of Additional Appropriations.—In addition to the authorizations under subsection (a), there are authorized to be appropriated for each of fiscal years 2005 and 2006, to remain available until expended, the following sums:

"(1) Such subsidy budget authority as may be necessary to guarantee $75,000,000 of debentures under this part.

"(2) $15,000,000 to make grants under this part.".

TITLE III—EXPORT ASSISTANCE FOR SMALL MANUFACTURERS

SEC. 301. SMALL BUSINESS FOREIGN PATENT PROTECTION GRANT PILOT PROGRAM.

Section 9 of the Small Business Act (15 U.S.C. 638) is amended by adding at the end the following:

"(x) Small Business Foreign Patent Protection Grant Pilot Program.—

"(1) Grants authorized.—The Administrator shall make grants from the Fund established under paragraph (5) for the purpose of assisting small business concerns in seeking foreign patent protection in accordance with this subsection.

"(2) Number and amount of grants.—

"(A) Maximum amount.—The amount of a grant made to any small business concern under this subsection may not exceed $25,000, and no awardee may receive more than 1 grant under this subsection.

"(B) Reserved amounts.—

"(i) In general.—Not less than ½ of all amounts awarded under this section shall be reserved for recipients of awards under the Small Business Innovation Research Program or the Small Business Technology Transfer Program.

"(ii) Exception.—Any amount reserved for grants under clause (i) for any fiscal year that has not been obligated by July 1st of such fiscal year, may be used for grants under this subsection to any small business concern.

"(3) Grant purposes.—Grant amounts awarded under this subsection shall be used by grantees to underwrite costs associated with initial foreign patent applications for technologies or products developed by small business concerns, and for which an application for United States patent protection has already been filed.

"(4) CONSIDERATIONS.—In awarding grants under this subsection, the Director of the Office of Technology shall consider—

"(A) the size and financial need of the applicant;

"(B) the potential foreign market for the technology;

"(C) the timeframes for filing foreign patent applications; and

"(D) such other factors as the Administrator deems relevant.

"(5) ESTABLISHMENT OF REVOLVING FUND.—There is established in the Treasury of the United States a revolving fund, which shall be—

"(A) known as the 'Small Business Foreign Patent Protection Grant Fund' (referred to in this subsection as the 'Fund');

"(B) administered by the Office of Technology of the Administration, in consultation with the National Office for Development of Small Manufacturers; and

"(C) used solely to fund grants under this subsection and to pay the costs to the Administration of administering those grants.

"(6) ROYALTY FEES.—

"(A) IN GENERAL.—Each recipient of a grant under this subsection shall pay a fee to the Administration, to be deposited into the Fund, based on the export sales receipts or licensing fees, if any, from the product or technology that is the subject of the foreign patent petition.

"(B) ANNUAL INSTALLMENTS BASED ON RECEIPTS.—The fee required under subparagraph (A)—

"(i) shall be paid to the Administration in annual installments, based on the export sales receipts or licensing fees described in subparagraph (A) that are collected by the grant recipient in that calendar year;

"(ii) shall not be required to be paid in any calendar year in which no export sales receipts or licensing fees described in subparagraph (A) are collected by the grant recipient; and

"(iii) shall not exceed, in total, the lesser of—

"(I) 5 percent of the total export sales receipts and licensing fees referred to in subparagraph (A); or

"(II) 4 times the amount of the grant received.

"(7) ADMINISTRATIVE PROVISIONS.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall—

"(A) issue such regulations as are necessary to carry out this subsection; and

"(B) establish appropriate application and other administrative procedures, as the Administrator deems necessary.

"(8) REPORT.—The Administrator shall, not later than January 31, 2008, submit a report to Congress on the grants authorized by this subsection, which report shall include, categorized by year and total—

"(A) the number of grant recipients under this subsection since the date of enactment of this subsection;

"(B) the number and amount of sales or licensing fees of such grant recipients that have made foreign sales (or granted licenses to make foreign sales) and a brief description of each technology or product;

"(C) the number of technologies or products developed under the Small Business Innovation Research Program or the Small Business Technology Transfer Program, and the amounts of such sales (or licenses);

"(D) the total amount of fees paid into the Fund by recipients of grants under this subsection in accordance with paragraph (6);

"(E) recommendations for any adjustment in the percentages specified in paragraph (6)(B)(iii)(I) or the amount specified in paragraph (6)(B)(iii)(II) necessary to reduce to zero the cost to the Administration of making grants under this subsection;

"(F) any recommendations regarding the grant amount; and

"(G) any recommendations of the Administrator regarding improvements to the programs, whether authorization for grants under this subsection should be extended, and any necessary legislation related to such an extension.

"(9) STAFFING.—The Administrator shall ensure that there are sufficient staff in the Office of Technology, including not fewer than 2 full-time employees, to carry out the grant program established under this subsection.

"(10) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund, to remain available until expended—

"(A) $2,500,000 for fiscal years 2005;

"(B) $5,000,000 for fiscal year 2006;

"(C) $7,500,000 for fiscal year 2007; and

"(D) $10,000,000 for each of fiscal years 2008 and 2009.".

By Mr. SPECTER (for himself, Mr. SCHUMER, Mr. GRAHAM of South Carolina, Mr. WYDEN, Ms. COLLINS, Mr. GRAHAM of Florida, and Mr. BAYH):

S. 1888. A bill to half Saudi support for institutions that fund, train, incite, encourage, or in any other way aid and abet terrorism, and to secure full Saudi cooperation in the investigation of terrorist incidents; to the committee on Foreign Relations.

Mr. SPECTER. Mr. President, I have sought recognition to offer legislation to halt Saudi Arabia's support for institutions that fund, train, incite, encourage, or in any other way aid and abet terrorism, and to secure full Saudi cooperation in the investigation of terrorist incidents. I offer this bill on behalf of Senator COLLINS, Senator SCHUMER, Senator GRAHAM of South Carolina, Senator WYDEN, Senator GRAHAM of Florida, and Senator BAYH.

The activities of al-Qaida have shaken the world. They certainly shook the United States on September 11, 2001. Evidence has come to light that there has been enormous financing of al-Qaida, Hamas, and other organizations by the Saudis.

Hearings have been held by a number of committees, including the Governmental Affairs Committee presided over by the distinguished Senator who is presiding this evening, Ms. COLLINS. We made a detailed examination, in a hearing in which I participated along with Chairman COLLINS, to inquire into what the Saudis had done and to find details of Saudi backing of so-called charitable organizations, recognizing that those charitable organizations were, in large part, a front; that perhaps there was some charitable activity but a tremendous amount of funding went to terrorist activities.

The Saudis are a very wealthy nation. They are reported to have contributed as much as $4 billion to Hamas over the course of the latest intifada.

We have worked through the Governmental Affairs Committee, and also the Judiciary Committee on which I serve, to establish a basic point that anybody who contributes to an organization knowing it to be a terrorist organization is really an accessory before the fact to murder, and that when people contribute to Hamas knowing Hamas engages in suicide bombing, they are accessories to murder.

The Terrorist Prosecution Act, which I wrote back in 1986, authorizes prosecutions in Federal court of anyone who assaults, maims, or murders an American citizen anywhere in the world.

Many United States citizens have been murdered while visiting in Israel, and I have talked to Attorney General Rubenstein of Israel and Attorney General Ashcroft of the United States, trying to work out arrangements to bring those terrorists to the United States for trial where we have the potential to impose the death penalty.

We have been very lenient with the Saudis, in my judgment, over the years, really out of deference to the importance of Saudi oil. It is really an open scandal that we have not taken action to secure some independence from our reliance on Saudi oil.

In 1996, Khobar Towers was the scene of an attack by terrorists. I chaired the Intelligence Committee that year, during the 104th Congress. I made a trip to Khobar Towers and inspected what went on. A car bomb came very close, there was an enormous blast, and 19 airmen were killed and about 400 injured.

In that situation, the Saudis would not allow Federal investigators to talk to the suspects. I personally met with Crown Prince Abdullah of Saudi Arabia and asked him to allow our investigators—the FBI—to talk to those suspects. Crown Prince Abdullah said the United States should not meddle in Saudi internal affairs.

It was hardly a Saudi internal affair when 400 airmen were wounded and 19 airmen were killed.

Notwithstanding the efforts of FBI Director Louis Freeh, who made several personal trips there, and my efforts in talking to Crown Prince Abdullah, they refused to allow the United States to have its representatives talk to those suspects.

Later indictments were issued. Iran was a named co-conspirator in the Federal indictment.

While there has not been proof, the background circumstances lend some consideration to the thought that those who were involved in Khobar

Towers may well have been involved in September 11.

We recently passed the Syria Accountability Act. I believe in the overall scheme of operations in the Mideast that the Saudis are a much greater threat to U.S. interests, and there ought to be a very firm approach as to how we deal with the Saudis.

The bill which I am introducing today has detailed recitation of the findings by organizations which have studied the record of the Saudis. The United Nations Security Council resolution mandates that all states refrain from providing any foreign support, active or passive, to people involved in terrorist acts.

The Council on Foreign Relations concluded in an October 2002 report on terrorist finances:

> For years, individuals and charities based in Saudi Arabia have been the most important source of funds for al-Qaida, and, for years, Saudi officials have turned a blind eye.

The Middle East Media Institute concluded in their July 3, 2003, report again characterizing the Saudis' activities as supporting terrorists.

The New York Times cited sources reported on April 17, 2003, that at least 50 percent of the current operating budget of Hamas comes from the people of Saudi Arabia.

This resolution would call on the Government of the United States to prohibit the export to Saudi Arabia of any defense articles or services listed in the Arms Exports Control Act and prohibit import to Saudi Arabia of any items within the Commerce Control List and to restrict travel of Saudi diplomats appropriately.

The President's certification would be present to relieve these sanctions under specified circumstances.

I ask unanimous consent that the text of the bill and a summary of the bill be printed in the RECORD.

There being no objection, the additional material was ordered to be printed in the RECORD, as follows:

SAUDI ARABIA ACCOUNTABILITY ACT OF 2003

Cosponsors: Schumer, Lindsey Graham, Wyden, Collins, Bob Graham, Bayh.

CONTENT

Sanctions. Unless the President makes a certification that Saudi Arabia is making a maximum effort to fight terrorism (details below), he shall take the following actions:

Prohibit export to Saudi Arabia of any defense articles or services listed on the Arms Export Control Act. Prohibit export to Saudi Arabia of any items listed on the Commerce Control List (these are materials that have both economic and military uses). Restrict travel of Saudi diplomats to a 25-radius of the city in which their offices are located (would apply to the Saudi Embassy in DC, the Saudi UN mission in New York, and the Saudi Consulates in Houston and Los Angeles).

Presidential Certification. The President is not required to impose sanctions on Saudi Arabia if he certifies that Saudi Arabia is:

Fully cooperating with the United States in investigating and preventing terrorist attacks; Has permanently closed all Saudi-based terror organizations; Has ended any funding or other support by the Government of Saudi Arabia for any offshore terror organizations.

Presidential Waiver. Even if he has not made the certification, the President may waive the application of the sanctions if he determines that it is in the national security interest of the United States to do so.

DEFINITIONS

Offshore Terror Organizations are defined as "charities, schools, and any other organization or institution outside of Saudi Arabia that train, incite, encourage, or in any other way aid and abet terrorism anywhere in the world." Thus a religious school or madrassah that incites its students to terror would be defined as a terrorist organization for purposes of this bill.

Saudi-Based Terror Organizations are the same types of organizations located within the kingdom of Saudi Arabia.

S. 1888

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Saudi Arabia Accountability Act of 2003".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) United Nations Security Council Resolution 1373 (2001) mandates that all states "refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts", take "the necessary steps to prevent the commission of terrorist acts", and "deny safe haven to those who finance, plan, support, or commit terrorist acts".

(2) The Council on Foreign Relations concluded in an October 2002 report on terrorist financing that "[f]or years, individuals and charities based in Saudi Arabia have been the most important source of funds for al-Qaeda, and for years, Saudi officials have turned a blind eye to this problem".

(3) The Middle East Media Research Institute concluded in a July 3, 2003, report on Saudi support for Palestinian terrorists that "for decades, the royal family of the Kingdom of Saudi Arabia has been the main financial supporter of Palestinian groups fighting Israel". The report notes specifically that Saudi-sponsored organizations have funneled over $4,000,000,000 to finance the Palestinian intifada that began in September 2000.

(4) Much of this Saudi money has been directed to Hamas and to the families of suicide bombers, directly funding and rewarding suicide bombers. In December 2000, former Palestinian Prime Minister Mahmoud Abbas wrote to the Saudis to complain about their support for Hamas.

(5) The New York Times, citing United States and Israeli sources, reported on September 17, 2003, that at least 50 percent of the current operating budget of Hamas comes from "people in Saudi Arabia".

(6) Many Saudi-funded religious institutions and the literature they distribute teach a message of hate and intolerance that provides an ideological basis for anti-Western terrorism. The effects of these teachings are evidenced by the fact that Osama bin Laden himself and 15 of the 19 September 11th hijackers were Saudi citizens.

(7) After the 1996 bombing of the Khobar Towers housing complex at Dahran, Saudi Arabia, which killed 19 United States Air Force personnel and wounded approximately 400 people, the Government of Saudi Arabia refused to allow United States officials to question individuals held in detention by the Saudis in connection with the attack.

(8) During an October 2002 hearing on financing of terrorism before the Committee on the Judiciary of the Senate, the Undersecretary for Enforcement of the Department of the Treasury testified that the Government of Saudi Arabia had taken only "baby steps" toward stemming the financing of terrorist activities.

(9) During a July 2003 hearing on terrorism before the Subcommittee on Terrorism, Technology and Homeland Security of the Committee on the Judiciary of the Senate, David Aufhauser, General Counsel of the Treasury Department, stated that Saudi Arabia is, in many cases, the "epicenter" of financing for terrorism.

(10) A joint committee of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives issued a report on July 24, 2003, that quotes various United States Government personnel who complained that the Saudis refused to cooperate in the investigation of Osama bin Laden and his network both before and after the September 11, 2001, terrorist attacks.

(11) There are indications that, since the May 12, 2003, suicide bombings in Riyadh, the Government of Saudi Arabia is making a more serious effort to combat terrorism.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) it is imperative that the Government of Saudi Arabia immediately and unconditionally—

(A) provide complete, unrestricted, and unobstructed cooperation to the United States, including the unsolicited sharing of relevant intelligence in a consistent and timely fashion, in the investigation of groups and individuals that are suspected of financing, supporting, plotting, or committing an act of terror against United States citizens anywhere in the world, including within the Kingdom of Saudi Arabia;

(B) permanently close all charities, schools, or other organizations or institutions in the Kingdom of Saudi Arabia that fund, train, incite, encourage, or in any other way aid and abet terrorism anywhere in the world (hereafter in this Act referred to as "Saudi-based terror organizations"), including by means of providing support for the families of individuals who have committed acts of terrorism;

(C) end funding or other support by the Government of Saudi Arabia for charities, schools, and any other organizations or institutions outside the Kingdom of Saudi Arabia that train, incite, encourage, or in any other way aid and abet terrorism anywhere in the world (hereafter in this Act referred to as "offshore terror organizations"), including by means of providing support for the families of individuals who have committed acts of terrorism; and

(D) block all funding from private Saudi citizens and entities to any Saudi-based terror organization or offshore terrorism organization; and

(2) the President, in deciding whether to make the certification under section 4, should judge whether the Government of Saudi Arabia has continued and sufficiently expanded the efforts to combat terrorism that it redoubled after the May 12, 2003, bombing in Riyadh.

SEC. 4. SANCTIONS.

(a) RESTRICTIONS ON EXPORTS AND DIPLOMATIC TRAVEL.—Unless the President makes the certification described in subsection (c), the President shall take the following actions:

(1) Prohibit the export to the Kingdom of Saudi Arabia, and prohibit the issuance of a license for the export to the Kingdom of Saudi Arabia, of—

(A) any defense articles or defense services on the United States Munitions List under section 38 of the Arms Export Control Act (22 U.S.C. 2778) for which special export controls are warranted under such Act (22 U.S.C. 2751 et seq.); and

(B) any item identified on the Commerce Control List maintained under part 774 of title 15, Code of Federal Regulations.

(2) Restrict travel of Saudi diplomats assigned to Washington, District of Columbia, New York, New York, the Saudi Consulate General in Houston, or the Saudi Consulate in Los Angeles to a 25-mile radius of Washington, District of Columbia, New York, New York, the Saudi Consulate General in Houston, or the Saudi Consulate in Los Angeles, respectively.

(b) WAIVER.—The President may waive the application of subsection (a) if the President—

(1) determines that it is in the national security interest of the United States to do so; and

(2) submits to the appropriate congressional committees a report that contains the reasons for such determination.

(c) CERTIFICATION.—The President shall transmit to the appropriate congressional committees a certification of any determination made by the President after the date of the enactment of this Act that the Government of Saudi Arabia—

(1) is fully cooperating with the United States in investigating and preventing terrorist attacks;

(2) has permanently closed all Saudi-based terror organizations;

(3) has ended any funding or other support by the Government of Saudi Arabia for any offshore terror organization; and

(4) has exercised maximum efforts to block all funding from private Saudi citizens and entities to offshore terrorist organizations.

SEC. 5. REPORT.

(a) REQUIREMENT FOR REPORT.—Not later than 6 months after the date of the enactment of this Act, and every 12 months thereafter until the President makes the certification described in section 4(c), the Secretary of State shall submit to the appropriate congressional committees a report on the progress made by the Government of Saudi Arabia toward meeting the conditions described in paragraphs (1) through (4) of section 4(c).

(b) FORM.—The report submitted under subsection (a) shall be in unclassified form but may include a classified annex.

SEC. 6. DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES.

In this Act, the term "appropriate congressional committees" means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 267—DESIGNATING 2004 AS "THE YEAR OF POLIO AWARENESS"

Mr. SPECTER submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 267

Whereas 2004 is the 50th anniversary of the successful nationwide trial of the injectable killed polio vaccine that included "polio pioneer" children;

Whereas the injectable polio vaccines eliminated naturally occurring polio cases in the United States but have not yet eliminated polio in other parts of the world;

Whereas as few as 57 percent of American children receive all doses of necessary vaccines during childhood, including the polio vaccine;

Whereas the success of the polio vaccines has caused people to forget the 1,630,000 Americans born before the development of the vaccines who had polio during the epidemics in the middle of the 20th century;

Whereas at least 70 percent of paralytic polio survivors, and 40 percent of nonparalytic polio survivors, are developing post-polio sequelae, which are unexpected and often disabling symptoms that occur up to 35 years after the poliovirus attack, including overwhelming fatigue, muscle weakness, muscle and joint pain, sleep disorders, heightened sensitivity to anesthesia, cold pain, and difficulty swallowing and breathing;

Whereas 2004 is the 130th anniversary of the diagnosis of the first case of post-polio sequelae and the 20th anniversary of the creation of the International Post-Polio Task Force;

Whereas research and clinical work by members of the International Post-Polio Task Force have discovered that post-polio sequelae can be treated, and even prevented, if polio survivors are taught to conserve energy and use assistive devices to stop damaging and killing the reduced number of overworked, polio virus-damaged neurons in the spinal cord and brain that survived the polio attack;

Whereas many medical professionals, and polio survivors, do not know of the existence of post-polio sequelae, or of the available treatments; and

Whereas the mission of the International Post-Polio Task Force includes educating medical professionals and the 20,000,000 polio survivors in the world about post-polio sequelae through the international post-polio letter campaign, television public service announcements provided by the Columbia Broadcasting System and the National Broadcasting System Company, and a continuing plot about polio and post-polio sequelae on the National Broadcasting Company television series "American Dreams": Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the need for every American child to be vaccinated against polio;

(2) recognizes the 1,630,000 Americans who survived polio, their new battle with post-polio sequelae, and the need for education and appropriate medical care;

(3) requests that every State proclaim 2004 as "The Year of Polio Awareness" to promote vaccination and post-polio sequelae education and treatment; and

(4) requests that the President convene a White House Polio Awareness Summit, with members of the International Post-Polio Task Force and all appropriate departments and agencies, to take immediate action to educate—

(A) the people of the United States about the need for polio vaccination; and

(B) the polio survivors and the medical professionals in the United States about the cause and treatment of post-polio sequelae.

Mr. SPECTER. Mr. President, I now turn to another subject; that is, a resolution to designate the year 2004 as the Year of Polio Awareness.

During the 1940s and the early 1950s, between 30,000 and 50,000 cases of polio were recorded annually in the United States, causing widespread fear and panic.

I recall as a youngster a public swimming pool in Wichita, KS, in which there was a total scare, wondering if going to the swimming pool would cause polio.

The polio virus damages nerves that control muscles which results in muscle weakness. In severe illness, the person could lose the ability to move both arms and legs, may be unable to breathe without help and they may die.

Of course, President Franklin Delano Roosevelt was the personal symbol for the incapacitation of someone with polio, although it was only physical. He was a magnificent President and a great leader of the United States during the Depression and World War II. A great physical toll was taken on President Roosevelt.

The year 2004 will mark the 50th anniversary of the successful nationwide trial to administer the injectable polio vaccine to children. The invention of injectable polio vaccines eliminated naturally occurring polio cases in the United States.

However, as few as 57 percent of American children currently receive the full dose of vaccines, including the polio vaccination. The need for continued diligence to protect this country's youth from polio is critical. Unfortunately, those who were stricken with polio before vaccines were developed have not received the proper help they need.

The year 2004 will also mark the 130th anniversary of the first diagnosed case of post-polio sequelae. Post-polio sequelae is a condition that may develop several decades after a person has had polio. It affects the muscles and nerves, causing weakness, fatigue, pain, and other symptoms.

SENATE RESOLUTION 268—TO EXPRESS THE SENSE OF THE SENATE REGARDING THE DEATHS OF 19 CITIZENS OF ITALY IN IRAQ

Mr. GRAHAM of South Carolina (for himself, Mr. FRIST, Mr. LUGAR, Mr. BIDEN, Mr. MCCAIN, Mr. PRYOR, Mr. SANTORUM, Mr. DEWINE, Mr. KYL, Mr. WARNER, Mr. LAUTENBERG, Mrs. FEINSTEIN, Mr. CORZINE, Mr. LIEBERMAN, Mr. CHAMBLISS, Mr. ALLEN, Mr. SPECTER, Mr. REED, Mr. BURNS, Mr. KENNEDY, Mr. LEAHY, Ms. LANDRIEU, Mr. COLEMAN, and Mr. BAUCUS) submitted the following resolution; which was considered and agreed to:

S. RES. 268

Whereas the people of Italy are long-time and resolute allies of the United States;

Whereas the people of Italy sent 2,700 of their finest citizens in contribution to the international effort to stabilize Iraq; and

Whereas on Wednesday November 12, 2003, 19 Italians including 12 Carabinieri, 5 army soldiers, and 2 civilians were brutally murdered through cowardly acts of terrorism while on duty in Nassiriya, Iraq: Now, therefore, be it

Resolved, That the Senate—

(1) mourns with the people of Italy on their National Day of Mourning for these 19 brave souls;

(2) acknowledges the sacrifices of the Italian people; and

(3) recognizes the significant contributions that Italy continues to make towards stability and democracy around the world.

SENATE CONCURRENT RESOLUTION 82—RECOGNIZING THE IMPORTANCE OF RALPH BUNCHE AS ONE OF THE GREAT LEADERS OF THE UNITED STATES, THE FIRST AFRICAN-AMERICAN NOBEL PEACE PRIZE WINNER, AN ACCOMPLISHED SCHOLAR, A DISTINGUISHED DIPLOMAT, AND A TIRELESS CAMPAIGNER OF CIVIL RIGHTS FOR PEOPLE THROUGHOUT THE WORLD

Mr. BIDEN submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 82

Whereas Ralph Bunche's life of achievement made him one of the 20th century's foremost figures and a role model for youth;

Whereas Ralph Bunche graduated valedictorian, summa cum laude, and Phi Beta Kappa from the University of California at Los Angeles in 1927 with a degree in International Relations;

Whereas Ralph Bunche was the first African-American to receive a Ph.D. in Government and International Relations at Harvard University in 1934;

Whereas Ralph Bunche served as a professor and established and chaired the Political Science Department at Howard University from 1928 to 1941;

Whereas, in 1941, Ralph Bunche served as an analyst for the Office of Strategic Services;

Whereas Ralph Bunche joined the Department of State in 1944 as an advisor;

Whereas Ralph Bunche served as an advisor to the United States delegation to the 1945 San Francisco conference charged with establishing the United Nations and drafting the Charter of the organization;

Whereas Ralph Bunche was instrumental in drafting Chapters XI and XII of the United Nations Charter, dealing with non-self-governing territories and the International Trusteeship System, which helped African countries achieve their independence and assisted in their transition to self-governing, sovereign states;

Whereas, in 1946, Ralph Bunche was appointed Director of the Trusteeship Division of the United Nations;

Whereas, in 1948, Ralph Bunche was named acting Chief Mediator in Palestine for the United Nations, and, in 1949, successfully brokered an armistice agreement between Israel, Egypt, Jordan, Lebanon, and Syria;

Whereas Ralph Bunche was deeply committed to ending colonialism and restoring individual state sovereignty through peaceful means;

Whereas the National Association for the Advancement of Colored People awarded its highest honor, the Spingarn Medal, to Ralph Bunche in 1949;

Whereas for his many significant contributions and efforts toward achieving a peaceful resolution to seemingly intractable national and international disputes, Ralph Bunche was awarded the Nobel Peace Prize in 1950, the first African-American and the first person of color to be so honored;

Whereas Ralph Bunche was named United Nations Under-Secretary-General in 1955, in charge of directing peacekeeping missions in several countries;

Whereas, in 1963, Ralph Bunche received the United States' highest civilian award, the Medal of Freedom; and

Whereas Ralph Bunche's critical contributions to the attempt to resolve the Arab-Israeli conflict and towards the de-colonization of Africa, and his commitment to and long service in the United Nations and numerous other national and international humanitarian efforts, warrant his commemoration: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes and honors Ralph Bunche as a pivotal 20th century figure in the struggle for the realization and attainment of human rights on a global scale; and

(2) urges the President to take appropriate measures to encourage the celebration and remembrance of Ralph Bunche's many significant achievements.

Mr. BIDEN. Mr. President, I rise today in recognition of the centenary celebration of Ralph Bunche's birth

Ralph Bunche was an extraordinary man whose success was a definitive accomplishment in the history of America.

His grandmother was born into slavery.

His father was a barber in a shop for whites only.

His mother was a musician.

When his mother and father died his grandmother took him to California where her influence and the perspective she gave him on life and liberty shaped his future and, to some extent, the history of the Nation.

He was a brilliant man, a musician, debater, athlete, a summa cum laude student and valedictorian. A loving husband to Ruth and father of Joan, Jane and Ralph Jr.

He went to Harvard, taught at Howard University and earned his doctorate comparing French rule in Togoland and Dahomey.

And when the civil rights movement came he spoke out loudly and his message was clear: "Segregation and democracy are incompatible," he said. "Racial prejudice is an unreasoned phenomenon without scientific basis in biology or anthropology."

But Ralph Bunche did not want to be remembered for his race. He wanted to be remembered for his accomplishments and his competence, for his dedication to service and his commitment to the recognition of the fundamental rights of men and women to live in harmony and peace.

He came from a generation of Americans who believed that it was wrong to recognize a man for the color of his skin, that we should, instead, recognize men and women for the power of their ideas and the contribution they make to the community.

Ralph Bunche did not want to be remembered as the first African American who was the first to graduate from University of California at Los Angeles as valedictorian or the first to graduate from Harvard with a Ph.D. in government and international relations, or the first to become Chief U.N. Mediator.

Least of all, the first to win the Nobel Peace Prize. He wished to be remembered simply as an American who answered his country's call of duty.

That is not a shortcoming . . . It is not a slight to any man or woman of color in our society . . . it is, however, a statement of hope, the hope I grew up with, that we can one day be a society that judges us not for our differences but for our accomplishments and the fact that we, as human beings, made a difference.

Ralph Bunche was one of those human beings who made a difference and left an extraordinary legacy.

By tailoring the language in the 11th and 12th Chapters of the U.N. Charter, Bunche made it possible for the United Nations to recognize the peaceful self-determination of those being exploited by colonialism, and through sheer force of will he recovered from an assassination attempt which killed 4 of his colleagues to negotiate an armistice agreement ending the first Arab-Israeli war.

With an eye for the future he presided over the conference which finalized the statutes for the International Atomic Energy Agency.

And in response to an international crisis he established the foundations for the first international peacekeeping operation in Egypt.

This legacy is manifest in his dedication to the United Nations, and to the cause of peace for which we will always remember him.

His words were perhaps prophetic when he said: "If today we speak of peace, we also speak of the United Nations, for in this era peace and the United Nations have become inseparable. If the United Nations cannot ensure peace there will be none.

If war should come it will be only because the United Nations has failed.

But the United Nations need not fail.

Surely every man of reason must work and pray to the end that it will not fail."

Those are not popular words today but they are truthful words, a heartfelt notion from a man whose life and work centered on a way to bring people—all people—together to solve problems.

In concluding his Nobel Lecture, he said: "There will be no security in our world, no release from agonizing tension, no genuine progress, no enduring peace, until, in Shelley's fine words, reasons voice, loud as the voice of nature, shall have waked the nations."

Today we honor this visionary man of peace as an accomplished scholar, a distinguished diplomat, a tireless campaigner for the civil rights of all people in every nation, and as one of the 20th century's foremost figures and a role model for every young man and woman, black or white, Christian, Muslim, or Jew.

I ask all my colleagues to join with me in recognizing the life and work of Ralph Bunche by passing this resolution.

SENATE CONCURRENT RESOLUTION 83—PROMOTING THE ESTABLISHMENT OF A DEMOCRACY CAUCUS WITHIN THE UNITED NATIONS

Mr. BIDEN submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 83

Whereas a survey conducted by Freedom House in 2003, entitled "Freedom in the World", found that of the 192 governments of nations of the world, 121 (or 63 percent) of such governments have an electoral democracy form of government;

Whereas, the Community of Democracies, an association of democratic nations committed to promoting democratic principles and practices, held its First Ministerial Conference in Warsaw, Poland, in June 2000;

Whereas, in a speech at that Conference, Kofi Annan, the Secretary-General of the United Nations, stated that "when the United Nations can truly call itself a community of democracies, the [United Nations] Charter's noble ideals of protecting human rights and promoting 'social progress in larger freedoms' will have been brought much closer", that "democratically governed states rarely if ever make war on one another", and that "in this era of intra-state wars, is the fact that democratic governance—by protecting minorities, encouraging pluralism, and upholding the rule of law—can channel internal dissent peacefully, and thus help avert civil wars";

Whereas a report by an Independent Task Force cosponsored by the Council on Foreign Relations and Freedom House in 2002, entitled "Enhancing U.S. Leadership at the United Nations", concluded that "the United States is frequently outmaneuvered and outmatched at the [United Nations]" because the 115 members of the nonaligned movement "cooperate on substantive and procedural votes, binding the organization's many democratic nations to the objectives and blocking tactics of its remaining tyrannies";

Whereas, at the First Ministerial Conference of the Community of Democracies, the representatives of the participating governments agreed to "collaborate on democracy-related issues in existing international and regional institutions, forming coalitions and caucuses to support resolutions and other international activities aimed at the promotion of democratic governance"; and

Whereas that agreement was reaffirmed at the Second Ministerial Conference of the Community of Democracies in Seoul, Korea, in November 2002: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. PROMOTION OF A DEMOCRACY CAUCUS WITHIN THE UNITED NATIONS.

Congress urges the President to instruct any representative of the United States to a body of the United Nations to use the voice and vote of the United States to seek to establish a democracy caucus within the United Nations as described in this Resolution.

SEC. 2. PURPOSE OF THE DEMOCRACY CAUCUS.

The purpose of the democracy caucus referred to in section 1 should be to advance the interests of the United States and other nations that are committed to promoting democratic norms and practices by—

(1) supporting common objectives, including bolstering democracy and democratic principles, advancing human rights, and fighting terrorism in accordance with the rule of law;

(2) forging common positions on matters of concern that are brought before the United Nations or any of the bodies of the United Nations;

(3) working within and across regional lines to promote the positions of the democracy caucus;

(4) encouraging democratic states to assume leadership positions in the bodies of the United Nations; and

(5) advocating that states that permit gross violations of human rights, sponsor terrorist activities, or that are the subject of sanctions imposed by the United Nations Security Council are not elected—

(A) to leadership positions in the United Nations General Assembly; or

(B) to membership or leadership positions in the Commission on Human Rights, the Security Council, or any other body of the United Nations.

SEC. 3. CRITERIA FOR PARTICIPATION IN THE DEMOCRACY CAUCUS.

Participation in the democracy caucus referred to in section 1 should be limited to countries that—

(1) are qualified to participate in the Community of Democracies, an association of democratic nations committed to promoting democratic principles and practices; and

(2) have demonstrated a commitment—

(A) to the core democratic principles and practices set out in the Final Warsaw Declaration of the Community of Democracies, adopted at Warsaw June 27, 2000; and

(B) to the democratic principles set forth in—

(i) the United Nations Charter;

(ii) the Universal Declaration of Human Rights; and

(iii) the International Covenant on Civil and Political Rights.

SEC. 4. ANNUAL MEETING.

The members of the democracy caucus referred to in section 1 should hold a ministerial-level meeting at least once each year to coordinate policies and positions of the caucus.

Mr. BIDEN. Mr. President, today I rise to support a United Nations Democracy Caucus to address questions that underlie a countless number of our foreign policy decisions, particularly in today's climate:

How can the United States be more effective in advancing our foreign policy priorities?

How can we be more active in collaborating with our allies on issues of common concern?

How can we be more productive in promoting the values upon which this nation was founded and getting our message across to those around the world who look to us for leadership?

Three years ago, in Warsaw, Poland, the United States took a step to address these questions when it became one of eight convening countries of the "Community of Democracies," a network of representatives of over 100 nations that meets every 2 years to promote the advancement of global democracy and human rights.

Two years later, in Seoul, Korea, many of these countries reaffirmed their commitment to collaborating with one another and agreed to work together in existing international and regional organizations.

Hence, the idea of establishing a "democracy caucus" within the United Nations began to take form.

The idea is simply this: democratic nations share common values, and should work together at the United Nations to promote those values.

A simple notion that, in my view, makes extraordinary sense.

What has happened in the last several years is that support for the establishment of a democracy caucus in the United Nations has begun to take root among foreign policy experts in the United States.

Former Secretary of State Madeleine Albright has endorsed the idea, as has Jeane Kirkpatrick, former U.S. Ambassador to the United Nations.

In addition, it has been endorsed by a broad-based coalition of organizations and advocacy groups like Freedom House, Human Rights Watch, the American Jewish Committee, the American Bar Association and the Council for Community of Democracies.

In recent months, even senior Bush administration officials have expressed interest in the establishment of a democracy caucus—recognizing that the United States would be more effective if we were to work together and organize with other like-minded countries.

Assistant Secretary of State for International Organizations, Kim Holmes, recently deemed a U.N. democracy caucus as "an idea whose time has arrived".

Working together with like-minded nations is a logical and practical way to conduct foreign policy. We build coalitions in the Senate. We build coalitions in Congress. And it makes sense to build coalitions in the United Nations, not only for the sake of forging common positions on issues of mutual concern, but also to provide a counterbalance to other coalitions that are well organized in the United Nations, but do not necessarily share our goals.

The 115-member nonaligned movement (NAM) is an example. Last year, an Independent Task Force co-sponsored by the Council on Foreign Relations and Freedom House argued that "the United States is frequently outmaneuvered and outmatched at the UN" because the cooperative work of the NAM "binds the organization's many democratic nations to the objectives and blocking tactics of its remaining tyrannies."

A democracy caucus would give us a new and potentially effective tool within the United Nations to counter coalitions that act in a manner inimical to our interests.

So today I am submitting a resolution promoting the establishment of a democracy caucus within the United Nations.

The resolution is straightforward: it expresses the support of this Congress for a U.N. democracy caucus and outlines the vision that I, and others, have of what such a caucus would do, and how it would go about doing it.

The general idea is that a democracy caucus would convene at the U.N. General Assembly, the U.N. Commission on Human Rights, and other U.N. bodies on a regular basis.

Members of the democracy caucus would work together to forge common positions to bolster democracy and democratic principles, advance human rights, and fight terrorism.

Furthermore, this bill also talks about who will join a democracy caucus.

We need to establish a criteria for which countries would be considered democracies, and which would not. Fortunately, we are not starting from scratch.

The Community of Democracies forum has established such criteria by drawing on major principles of international law and international standards set forth in the U.N. Charter, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.

Drawing up this criteria was a collaborative process during the First Ministerial of the community of Democracies, and the guidelines have been effective in laying the foundation and advancing the goals of the forum.

Therefore, this legislation models the U.N. democracy caucus' eligibility criteria on that already established by and for the Community of Democracies.

I envision that the U.N. democracy caucus would advocate that states that are deemed to be gross violators of human rights, sponsors of terrorist activities, or subjects of United Nations sanctions, not be elected to leadership positions in the United Nations General Assembly or other United Nations bodies.

This issue has received, and deservedly so, much attention this year—particularly after Libya was elected to serve as chair of the Commission of Human Rights.

In my view, the credibility of U.N. institutions is undermined when the members of its bodies—and particularly those in leadership positions—fall into this camp of bad actors.

According to the Freedom House 2003 survey, of the world's 192 governments, 63 percent of them have an electoral democracy form of government.

Furthermore, in the 2002 meeting of the Community of Democracies in Seoul, 118 nations were invited to participate, based upon their commitment to shred democratic values.

These numbers tell us that a democracy caucus within the U.N. would have a strong base from which to begin its work; it could be robust from its inauguration.

At the First Ministerial Conference of the Community of Democracies in Warsaw, Poland, U.N. Secretary General Kofi Annan said, "When the United Nations can truly call itself a community of democracies, the charter's noble ideals of protecting human rights and promoting 'social progress in larger freedoms' will have been brought much closer."

In that spirit, I submit a resolution in support of the establishment of a U.N. democracy caucus.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2199. Mr. BOND (for Mr. JEFFORDS (for himself, Mr. LIEBERMAN, Mr. BINGAMAN, and Mr. EDWARDS)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

SA 2200. Mr. BOND (for Mr. INHOFE) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2201. Mr. BOND (for Mr. DEWINE) proposed an amendment to amendment SA 1783 proposed by Mr. DEWINE (for himself and Ms. LANDRIEU) to the bill H.R. 2765, making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30 , 2004, and for other purposes.

SA 2202. Mr. FRIST (for Mr. ALLEN (for himself, Mr. WYDEN, Mr. MCCAIN, Mr. STEVENS, and Mr. HOLLINGS)) submitted an amendment intended to be proposed by Mr. FRIST to the bill S. 189, to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

TEXT OF AMENDMENTS

SA 2199. Mr. BOND (for Mr. JEFFORDS (for himself, Mr. LIEBERMAN, Mr. BINGAMAN, and Mr. EDWARDS)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, add the following:

SEC. ——. NATIONAL ACADEMY OF SCIENCES STUDY.

The matter under the heading "ADMINISTRATIVE PROVISIONS" under the heading "ENVIRONMENTAL PROTECTION AGENCY" in title III of division K of section 2 of the Consolidated Appropriations Resolution, 2003 (117 Stat. 513), is amended—

(1) in the first sentence of the fifth undesignated paragraph (beginning "As soon as"), by inserting before the period at the end the following: ", and the impact of the final rule entitled 'Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion', amending parts 51 and 52 of title 40, Code of Federal Regulations, and published in electronic docket OAR–2002–0068 on August 27, 2003"; and

(2) in the sixth undesignated paragraph (beginning "The National Academy of Sciences"), by striking "March 3, 2004" and inserting "January 1, 2005."

SA 2200. Mr. BOND (for Mr. INHOFE) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Department of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 106, between lines 20 and 21, insert the following:

SEC. . DESIGNATIONS OF AREAS FOR $PM_{2.5}$ AND SUBMISSION OF IMPLEMENTATION PLANS FOR REGIONAL HAZE.

(A) IN GENERAL.—Section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) is amended by adding at the end the following:

"(6) DESIGNATIONS.—

"(A) SUBMISSION.—Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 $PM_{2.5}$ national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

"(B) PROMULGATION.—Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 $PM_{2.5}$ national ambient air quality standards.

"(7) IMPLEMENTATION PLAN FOR REGIONAL HAZE.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 169B(e)(1) (referred to in this paragraph as 'regional haze requirements').

"(B) NO PRECLUSION OF OTHER PROVISIONS.—Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.".

(b) RELATIONSHIP TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—Except as provided in paragraphs (6) and (7) of section 107(d) of the Clean Air Act (as added by subsection (a)), section 6101, subsections (a) and (b) of section 6102, and section 6103 of the Transportation Equity Act for the 21st Century (42 U.S.C. 7407 note; 112 Stat. 463), as in effect on the day before the date of enactment of this Act, shall remain in effect.

SA. 2201. Mr. BOND (for Mr. DEWINE) proposed an amendment to amendment SA 1783 proposed by Mr. DEWINE (for himself and Ms. LANDRIEU) to the bill H.R. 2765, making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2004, and for other purposes; as follows:

Strike all of title II, beginning on page 14, line 17, and ending on page 33, line 14.

On page 13, line 21, strike "40,000,000" and insert "27,000,000".

On page 14, line 1, strike all after the semicolon until the end of the heading.

On page 9, line 19, strike "20,000,000" and insert "33,000,000".

SA 2202. Mr. FRIST (for Mr. ALLEN (for himself, Mr. WYDEN, Mr. MCCAIN, Mr. STEVENS, and Mr. HOLLINGS)) submitted an amendment intended to be proposed by Mr. FRIST to the bill S. 189, to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "21st Century Nanotechnology Research and Development Act".

SEC. 2. NATIONAL NANOTECHNOLOGY PROGRAM.

(a) NATIONAL NANOTECHNOLOGY PROGRAM.—The President shall implement a National Nanotechnology Program. Through appropriate agencies, councils, and the National Nanotechnology Coordination Office established in section 3, the Program shall—

(1) establish the goals, priorities, and metrics for evaluation for Federal nanotechnology research, development, and other activities;

(2) invest in Federal research and development programs in nanotechnology and related sciences to achieve those goals; and

(3) provide for interagency coordination of Federal nanotechnology research, development, and other activities undertaken pursuant to the Program.

(b) PROGRAM ACTIVITIES.—The activities of the Program shall include

(1) developing a fundamental understanding of matter that enables control and manipulation at the nanoscale;

(2) providing grants to individual investigators and interdisciplinary teams of investigators;

(3) establishing a network of advanced technology user facilities and centers;

(4) establishing, on a merit-reviewed and competitive basis, interdisciplinary nanotechnology research centers, which shall—

(A) interact and collaborate to foster the exchange of technical information and best practices;

(B) involve academic institutions or national laboratories and other partners, which may include States and industry;

(C) make use of existing expertise in nanotechnology in their regions and nationally;

(D) make use of ongoing research and development at the micrometer scale to support their work in nanotechnology; and

(E) to the greatest extent possible, be established in geographically diverse locations, encourage the participation of Historically Black Colleges and Universities that are part B institutions as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2) and minority institutions (as defined in section 365(3) of that Act (20 U.S.C. 1067k(3))), and include institutions located in States participating in the Experimental Program to Stimulate Competitive Research (EPSCOR);

(5) ensuring United States global leadership in the development and application of nanotechnology;

(6) advancing the United States productivity and industrial competitiveness through stable, consistent, and coordinated investments in long-term scientific and engineering research in nanotechnology;

(7) accelerating the deployment and application of nanotechnology research and development in the private sector, including startup companies;

(8) encouraging interdisciplinary research, and ensuring that processes for solicitation and evaluation of proposals under the Program encourage interdisciplinary projects and collaborations;

(9) providing effective education and training for researchers and professionals skilled in the interdisciplinary perspectives necessary for nanotechnology so that a true interdisciplinary research culture for nanoscale science, engineering, and technology can emerge;

(10) ensuring that ethical, legal, environmental, and other appropriate societal concerns, including the potential use of nanotechnology in enhancing human intelligence and in developing artificial intelligence which exceeds human capacity, are considered during the development of nanotechnology by—

(A) establishing a research program to identify ethical, legal, environmental, and other appropriate societal concerns related to nanotechnology, and ensuring that the results of such research are widely disseminated;

(B) requiring that interdisciplinary nanotechnology research centers established under paragraph (4) include activities that ad dress societal, ethical, and environmental concerns;

(C) insofar as possible, integrating research on societal, ethical, and environmental concerns with nanotechnology research and development, and ensuring that advances in nanotechnology bring about improvements in quality of life for all Americans; and

(D) providing, through the National Nanotechnology Coordination Office established in section 3, for public input and outreach to be integrated into the Program by the convening of regular and ongoing public discussions, through mechanisms such as citizens' panels, consensus conferences, and educational events, as appropriate; and

(11) encouraging research on nanotechnology advances that utilize existing processes and technologies.

(c) PROGRAM MANAGEMENT.—The National Science ad Technology Council shall oversee the planning, management, and coordination of the Program. The Council, self or through an appropriate subgroup it designates or establishes, shall—

(1) establish goals and priorities for the Program, based on national needs for a set of broad applications of nanotechnology;

(2) establish program component areas, with specific priorities and technical goals, that reflect the goals and priorities established for the Program;

(3) oversee interagency coordination of the Program, including with the activities of the Defense Nanotechnology Research and Development Program established under section 246 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314) and the National Institutes of Health;

(4) develop, within 12 months after the date of enactment of this Act, and update every 3 years thereafter, a strategic plan to guide the activities described under subsection (b), meet the goals, priorities, and anticipated outcomes of the participating agencies, and describe—

(A) how the Program will move results out of the laboratory and into application for the benefit of society;

(B) the Program's support for long-term funding for interdisciplinary research and development in nanotechnology; and

(C) the allocation of funding for interagency nanotechnology projects;

(5) propose a coordinated interagency budget for the Program to the Office of Management and Budget to ensure the maintenance of a balanced nanotechnology research portfolio and an appropriate level of research effort;

(6) exchange information with academic, industry, State and local government (including State and regional nanotechnology programs), and other appropriate groups conducting research on and using nanotechnology;

(7) develop a plan to utilize Federal programs, such as the Small Business Innovation Research Program and the Small Business Technology Transfer Research Program, in support of the activity stated in subsection (b)(7)

(8) identify research areas that are not being adequately addressed by the agencies' current research programs and address such research areas;

(9) encourage progress on Program activities through the utilization of existing manufacturing facilities and industrial infrastructures such as, but not limited to, the employment of underutilized manufacturing facilities in areas of high unemployment as production engineering and research testbeds; and

(10) in carrying out its responsibilities under paragraphs (1) through (9), take into consideration the recommendations of the Advisory Panel, suggestions or recommendations developed pursuant to subsection (b)(10)(D), and the views of academic, State, industry, and other appropriate groups conducting research on and using nanotechnology.

(d) Annual Report.—The Council shall prepare an annual report, to be submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science, and other appropriate committees, at the time of the President's budget request to Congress, that includes—

(1) the Program budget, for the current fiscal year, for each agency that participates in the Program, including a breakout of spending for the development and acquisition of research facilities and instrumentation, for each program component area, and for all activities pursuant to subsection (b)(10);

(2) the proposed Program budget for the next fiscal year, for each agency that participates in the Program, including a breakout of spending for the development and acquisition of research facilities and instrumentation, for each program component area, and for all activities pursuant to subsection (b) (10);

(3) an analysis of the progress made toward achieving the goals and priorities established for the Program;

(4) an analysis of the extent to which the Program has incorporated the recommendations of the Advisory Panel; and

(5) an assessment of how Federal agencies are implementing the plan described in subsection (c)(7), and a description of the amount of Small Business Innovative Research and Small Business Technology Transfer Research funds supporting the plan.

SEC. 3. PROGRAM COORDINATION.

(a) In General.—The President shall establish a National Nanotechnology Coordination Office, with a Director and full-time staff, which shall—

(1) provide technical and administrative support to the Council and the Advisory Panel;

(2) serve as the point of contact on Federal nanotechnology activities for government organizations, academia, industry, professional societies, State nanotechnology programs, interested citizen groups, and others to exchange technical and programmatic information;

(3) conduct public outreach, including dissemination of findings and recommendations of the Advisory Panel, as appropriate; and

(4) promote access to and early application of the technologies, innovations, and expertise derived from Program activities to agency missions and systems across the Federal Government, and to United States industry, including startup companies.

(b) Funding.—The National Nanotechnology Coordination Office shall be funded through interagency funding in accordance with section 631 of Public Law 108-7.

(c) Report.—Within 90 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall report to the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Science on the funding of the National Nanotechnology Coordination Office. The report shall include—

(1) the amount of funding required to adequately fund the Office;

(2) the adequacy of existing mechanisms to fund this Office; and

(3) the actions taken by the Director to ensure stable funding of this Office.

SEC. 4. ADVISORY PANEL.

(a) In General.—The President shall establish or designate a National Nanotechnology Advisory Panel.

(b) Qualifications.—The Advisory Panel established or designated by the President under subsection (a) shall consist primarily of members from academic institutions and industry. Members of the Advisory Panel shall be qualified to provide advice and information on nanotechnology research, development, demonstrations, education, technology transfer, commercial application, or societal and ethical concerns. In selecting or designating an Advisory Panel, the President may also seek and give consideration to recommendations from the Congress, industry, the scientific community (including the National Academy of Sciences, scientific professional societies, and academia), the defense community, State and local governments, regional nanotechnology programs, and other appropriate organizations.

(c) Duties.—The Advisory Panel shall advise the President and the Council on matters relating to the Program, including assessing

(1) trends and developments in nanotechnology science and engineering;

(2) progress made in implementing the Program;

(3) the need to revise the Program;

(4) the balance among the components of the Program, including funding levels for the program component areas,

(5) whether the program component areas, priorities, and technical goals developed by the Council are helping to maintain United States leadership in nanotechnology;

(6) the management, coordination, implementation, and activities of the Program; and

(7) whether societal, ethical, legal, environmental, and workforce concerns are adequately addressed by the Program.

(d) Reports.—The Advisory Panel shall report, not . less frequently than once every 2 fiscal years, to the President on its assessments under subsection (c) and its recommendations for ways to improve the Program. The first report under this subsection shall be submitted within 1 year after the date of enactment of this Act. The Director of the Office of Science and Technology Policy shall transmit a copy of each report under this subsection to the Senate Committee on Commerce, Science, and Technology, the House of Representatives Committee on Science, and other appropriate committees of the Congress.

(e) Travel Expenses of Non-Federal Members.—Non-Federal members of the Advisory Panel, while attending meetings of the Advisory Panel or while otherwise serving at the request of the head of the Advisory Panel away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the government serving without pay. Nothing in this subsection shall be construed to prohibit members of the Advisory Panel who are officers or employees of the United States from being allowed travel expenses, including per diem in lieu of subsistence, in accordance with existing law.

(f) Exemption From Sunset.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Panel.

SEC. 5. TRIENNIAL EXTERNAL REVIEW OF THE NATIONAL NANOTECHNOLOGY PROGRAM.

(a) In General.—The Director of the National Nanotechnology Coordination Office shall enter into an arrangement with the National Research Council of the National Academy of Sciences to conduct a triennial evaluation of the Program, including—

(1) an evaluation of the technical accomplishments of the Program, including a review of whether the Program has achieved the goals under the metrics established by the Council;

(2) a review of the Program's management and coordination across agencies and disciplines;

(3) a review of the funding levels at each agency for the Program's activities and the ability of each agency to achieve the Program's stated goals with that funding;

(4) an evaluation of the Program's success in transferring technology to the private sector;

(5) an evaluation of whether the Program has been successful in fostering interdisciplinary research and development;

(6) an evaluation of the extent to which the Program has adequately considered ethical, legal, environmental, and other appropriate societal concerns;

(7) recommendations for new or revised Program goals;

(8) recommendations for new research areas, partnerships, coordination and management mechanisms, or programs to be established to achieve the Program's stated goals;

(9) recommendations on policy, program, and budget changes with respect to nanotechnology research and development activities,

(10) recommendations for improved metrics to evaluate the success of the Program in accomplishing its stated goals;

(11) a review of the performance of the National Nanotechnology Coordination Office and its efforts to promote access to and early application of the technologies, innovations, and expertise derived from Program activities to agency missions and systems across the Federal Government and to United States industry;

(12) an analysis of the relative position of the United States compared to other nations with respect to nanotechnology research and development, including the identification of any critical research areas where the United States should be the world leader to best achieve the goals of the Program; and

(13) an analysis of the current impact of nanotechnology on the United States economy and recommendations for increasing its future impact.

(b) Study on Molecular Self-Assembly.—As part of the first triennial review conducted in accordance with subsection (a), the National Research Council shall conduct a one-time study to determine the technical feasibility of molecular self-assembly for the manufacture of materials and devices at the molecular scale.

(c) Study on the Responsible Development of Nanotechnology.—As part of the first triennial review conducted in accordance with subsection (a), the National Research Council shall conduct a one-time study to assess the need for standards, guidelines, or strategies for ensuring the responsible development of nanotechnolgy, including, but not limited to—

(1) self-replicating nanoscale machines or devices;

(2) the release of such machines in natural environments;

(3) encryption;

(4) the development of defensive technologies;

(5) the use of nanotechnology in the enhancement of human intelligence; and

(6) the use of nanotechnology in developing artificial intelligence.

(d) Evaluation To Be Transmitted to Congress.—The Director of the National Nanotechnology Coordination Office shall transmit the results of any evaluation for which it made arrangements under subsection (a) to the Advisory Panel, the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science upon receipt. The first such evaluation shall be transmitted no later than June 10, 2005, with subsequent evaluations transmitted to the Committees every 3 years thereafter.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) NATIONAL SCIENCE FOUNDATION.—There are authorized to be appropriated to the Director of the National Science Foundation to carry out the Director's responsibilities under this Act—

(1) $385,000,000 for fiscal year 2005;
(2) $424,000,000 for fiscal year 2006;
(3) $449,000,000 for fiscal year 2007; and
(4) $476,000,000 for fiscal year 2008.

(b) DEPARTMENT OF ENERGY.—There are authorized to be appropriated to the Secretary of Energy to carry out the Secretary's responsibilities under this Act—

(1) $317,000,000 for fiscal year 2005;
(2) $347,000,000 for fiscal year 2006;
(3) $380,000,000 for fiscal year 2007; and
(4) $415,000,000 for fiscal year 2008.

(c) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.—There are authorized to be appropriated to the Administrator of the National Aeronautics and Space Administration to carry out the Administrator's responsibilities under this Act—

(1) $34,100,000 for fiscal year 2005;
(2) $37,500,000 for fiscal year 2006;
(3) $40,000,000 for fiscal year 2007; and
(4) $42,300,000 for fiscal year 2008.

(d) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—There are authorized to be appropriated to the Director of the National Institute of Standards and Technology to carry out the Director's responsibilities under this Act—

(1) $68,200,000 for fiscal year 2005;
(2) $75,000,000 for fiscal year 2006;
(3) $80,000,000 for fiscal year 2007; and
(4) $84,000,000 for fiscal year 2008.

(e) ENVIRONMENTAL PROTECTION AGENCY.—There are authorized to be appropriated to the Administrator of the Environmental Protection Agency to carry out the Administrator's responsibilities under this Act—

(1) $5,500,000 for fiscal year 2005;
(2) $6,050,000 for fiscal year 2006;
(3) $6,413,000 for fiscal year 2007; and
(4) $6,800,000 for fiscal year 2008.

SEC. 7. DEPARTMENT OF COMMERCE PROGRAMS.

(a) NIST PROGRAMS.—The Director of the National Institute of Standards and Technology shall—

(1) as part of the Program activities under section 2(b)(7), establish a program to conduct basic research on issues related to the development and manufacture of nanotechnology, including metrology; reliability and quality assurance; processes control; and manufacturing best practices; and

(2) utilize the Manufacturing Extension Partnership program to the extent possible to ensure that the research conducted under paragraph (1) reaches small- and medium-sized manufacturing companies.

(b) CLEARINGHOUSE.—The Secretary of Commerce or his designee, in consultation with the National Nanotechnology Coordination Office and, to the extent possible, utilizing resources at the National Technical Information Service, shall establish a clearinghouse of information related to commercialization of nanotechnology research, including information relating to activities by regional, State, and local commercial nanotechnology initiatives; transition of research, technologies, and concepts from Federal nanotechnology research and development programs into commercial and military products; best practices by government, universities and private sector laboratories transitioning technology to commercial use; examples of ways to overcome barriers and challenges to technology deployment; and use of manufacturing infrastructure and workforce.

SEC. 8. DEPARTMENT OF ENERGY PROGRAMS.

(a) RESEARCH CONSORTIA.—

(1) DEPARTMENT OF ENERGY PROGRAM.—The Secretary of Energy shall establish a program to support, on a merit-reviewed and competitive basis, consortia to conduct interdisciplinary nanotechnology research and development designed to integrate newly developed nanotechnology and microfluidic tools with systems biology and molecular imaging.

(2) AUTHORIZATION OF APPROPRIATIONS.—Of the sums authorized for the Department of Energy under section 6(b), $25,000,000 shall be used for each fiscal year 2005 through 2008 to carry out this section. Of these amounts, not less than $10,000,000 shall be provided to at least 1 consortium for each fiscal year.

(b) RESEARCH CENTERS AND MAJOR INSTRUMENTATION.—The Secretary of Energy shall carry out projects to develop, plan, construct, acquire, operate, or support special equipment, instrumentation, or facilities for investigators conducting research and development in nanotechnology.

SEC. 9. ADDITIONAL CENTERS.

(a) AMERICAN NANOTECHNOLOGY PREPAREDNESS CENTER.—The Program shall provide for the establishment, on a merit-reviewed and competitive basis, of an American Nanotechnology Preparedness Center which shall—

(1) conduct, coordinate, collect, and disseminate studies on the societal, ethical, environmental, educational, legal, and workforce implications of nanotechnology; and

(2) identify anticipated issues related to the responsible research, development, and application of nanotechnology, as well as provide recommendations for preventing or addressing such issues.

(b) CENTER FOR NANOMATERIALS MANUFACTURING.—The Program shall provide for the establishment, on a merit-reviewed and competitive basis, of a center to—

(1) encourage, conduct, coordinate, commission, collect, and disseminate research on new manufacturing technologies for materials, devices, and systems with new combinations of characteristics, such as, but not limited to, strength, toughness, density, conductivity, flame resistance, and membrane separation characteristics; and

(2) develop mechanisms to transfer such manufacturing technologies to United States industries.

(c) REPORTS.—The Council, through the Director of the National Nanotechnology Coordination Office, shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science—

(1) within 6 months after the date of enactment of this Act, a report identifying which agency shall be the lead agency and which other agencies, if any, will be responsible for establishing the Centers described in this section; and

(2) within 18 months after the date of enactment of this Act, a report describing how the Centers described in this section have been established.

SEC. 10. DEFINITIONS.

In this Act:

(1) ADVISORY PANEL.—The term "Advisory Panel" means the President's National Nanotechnology Advisory Panel established or designated under section 4.

(2) NANOTECHNOLOGY.—The term "nanotechnology" means the science and technology that will enable one to understand, measure, manipulate, and manufacture at the atomic, molecular, and supramolecular levels, aimed at creating materials, devices, and systems with fundamentally new molecular organization, properties, and functions.

(3) PROGRAM.—The term "Program" means the National Nanotechnology Program established under section 2.

(4) COUNCIL.—The term "Council" means the National Science and Technology Council or an appropriate subgroup designated by the Council under section 2(c).

(5) ADVANCED TECHNOLOGY USER FACILITY.—The term "advanced technology user facility" means a nanotechnology research and development facility supported, in whole or in part, by Federal funds that is open to all United States researchers on a competitive, merit-reviewed basis.

(6) PROGRAM COMPONENT AREA.—The term "program component area" means a major subject area established under section 2(c)(2) under which is grouped related individual projects and activities carried out under the Program.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, November 18, 2003, at 4 p.m., in open session, to consider the nomination of the Honorable Michael W. Wynne to be Under Secretary of Defense for Acquisition, Technology, and Logistics.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on November 18, 2003, at 10 a.m. to conduct a hearing on the "Review of Current Investigations and Regulatory Actions Regarding the Mutual Fund Industry."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, November 18, 2003, in the President's Room, immediately following the first vote, on pending committee business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on

Finance be authorized to meet during the session on Tuesday, November 18, 2003, at 10 a.m., to hear testimony on nomination of Arnold I. Havens, to be General Counsel for the Department of the Treasury.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, November 18, 2003, at 2:30 p.m. for a hearing to consider the nomination of James M. Loy to be Deputy Secretary of Homeland Security, Department of Homeland Security.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, November 18, 2003, at 9:30 a.m, on "America after 9/11: Freedom Preserved or Freedom Lost?," in the Dirksen Senate Office Building Room 226.

Panel I: Bob Barr, Former United States Representative, Atlanta, GA; Viet Dinh, Professor, Georgetown University Law Center, Washington, DC; James Zogby, Arab American Institute, Washington, DC; James Dempsey, Center for Democracy and Technology, Washington, DC; Robert Cleary, Proskauer Rose, LLP, New York, NY; Nadine Strossen, President, American Civil Liberties Union, New York, NY; and Muzaffar Chishti, Director, Migration Policy Institute at New York University School of Law; New York, NY.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. BOND. Mr. President, I ask unanimous consent that the subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, November 18, at 2:30 p.m.

The purpose of the hearings is to receive testimony on S. 1467, a bill to establish the Rio Grande outstanding natural area in the state of Colorado, and for other purposes, S. 1209, a bill to provide for the acquisition of property in Washington County, Utah, for implementation of a desert tortoise habitat conservation plan, and H.R. 708, a bill to require the conveyance of certain national forest system lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for national forest purposes, and for other purposes; S. 1167, which would resolve boundary conflicts in Barry and Stone counties in the State of Missouri, and S. 1848, which would amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administrative site in the State of Oregon.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON STRATEGIC FORCES

Mr. BOND. Mr. President, I ask unanimous consent that the subcommittee on strategic forces of the committee on armed services be authorized to meet during the session of the Senate on Tuesday, November 18, 2003, at 2:00 p.m., in open session to receive testimony on space acquisition policies and processes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. BOND. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Tuesday, November 18, 2003, at 9:30 a.m. for a hearing entitled "U.S. Tax Shelter Industry: The Role of Accountants, Lawyers and Financial Professionals."

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The majority leader.

HONORING OUR ARMED FORCES

Mr. FRIST. Mr. President, I rise to honor the 17 soldiers who lost their lives this past Saturday in Iraq when two Black Hawk helicopters collided.

This tragedy stands as the deadliest single incident since Operation Iraqi Freedom began in March. It is the largest single loss of life for the 101st Airborne in 15 years.

All 17 young soldiers served in the 101st Airborne Division based at Fort Campbell. All 17 died serving their country with valor and with courage.

I would like to read each of their names for the RECORD:

SGT Michael D. Acklin, II, age 25, of Louisville, KY; SPC Ryan T. Baker, age 24, of Browns Mills, NJ; SFC Kelly Bolor, age 37, of Whittier, CA; SPC Jeremy DiGiovanni, age 21, of Pricedale, MS; SPC William D. Dusenbery, age 30, of Fairview Heights, IL; PFC Rick Hafer, age 21, of Nitro, WV; SGT Warren S. Hansen, age 36, of Clintonville, WI; PFC Sheldon R. Hawk Eagle, age 21, of Grand Forks, ND; PFC Damian L. Heidelberg, age 21, of MS; CWO Erik C. Kesterson, age 29, of Independence, OR; 1LT Pierre Piche, age 28, of Starksboro, VT; SGT John W. Russell, age 26, of Portland, TX; CWO Scott A. Saboe, age 33, of Willow Lake, SD; SPC John R. Sullivan, age 26, of Countryside, IL; SPC Eugene A. Uhl, III, age 21, of Amherst, WI; PFC Joey Whitener, age 19, of McDowell County, NC; 2LT Jeremy L. Wolfe, age 27, of Menomonie, WI.

Mr. President, my heart goes out to the families of these brave young men. America mourns your loss and honors you for the profound sacrifice you must now bear.

My heart goes out to the community of Fort Campbell which grieves the loss of these 17 young men and the 36 other valiant soldiers of the 101st who have lost their lives since the war in Iraq began. Each and every one of these soldiers is a credit to our country.

The great American philosopher and poet Ralph Waldo Emerson wrote: "Peace has its victories, but it takes brave men and women to win them."

We will press forward in honor of those who have lost their lives fighting this just and honorable war. With their names emblazoned on our hearts, we will secure the victories of peace.

God bless them. God bless their families. And God bless America.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2004—CONFERENCE REPORT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the conference report to accompany H.R. 2754, the energy and water appropriations bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senate proceeded to consider the conference report.

(The text of the Conference Report is printed in the proceedings of the House in the RECORD of November 7, 2003.)

Mr. DOMENICI. Mr. President, today I bring to the floor the Energy and Water Development Appropriations conference report for fiscal year 2004, approved by the conference committee last week.

My ranking member, Senator REID, and I have worked very hard this year to put together a fair conference report under extremely difficult circumstances.

For fiscal year 2004, the allocation to the conference committee was $27.3 billion, an amount that is only $381.8 million over the President's request. This situation posed a daunting challenge to the conference, both in terms of funding and philosophy.

As many of my colleagues know, the President's request dramatically cut water projects well below the current year level. In fact, the President's request was $530 million below the current year level for water projects, and we received an increased allocation smaller than what we considered the total need of our conference report.

Thus, the increased allocation, along with other funding adjustments, was spread generally as follows: An additional $377 million to corps water projects; an additional $70 million to Bureau of Reclamation water projects; an additional $70 million to the independent regional commissions, which were badly cut in the request, like the Appalachian Regional Commission, Denali Regional Commission, and Delta Regional Commission; and we held the Department of Energy at basically the President's request level with adjustments to areas where the conference felt the program growth was too rapid, relative to other agencies under our jurisdiction.

I believe, and I think Senator REID would agree with me, that this was the fairest way to distribute the very limited resources available to the Committee.

I will now highlight a few of the key areas of the conference report.

The conference report provides $4.57 billion for the Army Corps of Engineers, that is $377 million above the President's request, but $120 million below the current year level. We have included limited new construction projects and have focused our resources on restoring the cuts to existing construction projects.

For the Bureau of Reclamation and related activities, the conference report provides $990 million, which is $70 million above the President's request, and $15 million above the current year level.

For nuclear weapons activities of the National Nuclear Security Administration, NNSA, the conference report provides $6.27 billion, which is $105 million over the President's request, and $360 million over the current year level. The budget increases are consistent with a major Defense Department initiative to restore our nuclear weapons complex.

For nuclear non proliferation activities, the conference report provides $1.37 billion, which is the same as the President's request and $12 million above the current year level. The conference continues its leadership role on countering nuclear terrorism. This budget request, coupled with the $148 million added in last year's supplemental, gives a strong boost to these highly important programs.

For environmental clean-up of Department of Energy sites, the conference report provides $7.6 billion, which is $62 million below the President's request and $238 million above the current year level. For the first time in many years, the conference was not required to add huge additional amounts to maintain clean-up budgets around the country.

For the Yucca Mountain project, the Senate conference report provides $580 million, which is $11 million below the President's request and funding for this project, as many of my colleagues know, it was a major point of contention in the conference with the House. This is a very important matter to many members of the Senate, each for various reasons.

For renewable energy R&D, the conference report provides $460 million, which is $40 million above the President's request and $40 million above the current year level. The conference report fully funds the President's new hydrogen technology initiative.

For nuclear energy R&D, the conference report provides $413 million, which is $136 million above the President's request and $147 million over the comparable current year level. The members know that this is a great priority of mine, as we continue to make investments that I believe will eventually result in the construction of new commercial power reactors in the United States.

For basic science research at DOE, the conference report provides $3.47 billion, which is $150 million above the President's request and $180 million above the current year level.

This conference report provides $55 million for the Denali Commission, $66 million for the Appalachian Regional Commission, and $5 million for the Delta Regional Authority, an increase of $3 million over the President's request.

This conference report also provides a total budget of $619 million for the Nuclear Regulatory Commission, the same as the budget request and an increase of $41 million over the current year level.

Given the overall constraints, we worked hard but were unfortunately limited to accommodating only the highest priority requests of Members wherever possible. This was a difficult conference, it I can honestly say, it was truly a conference of compromise, one which I can assure my colleagues was hard fought. In the end, I think what emerged was a conference report which reflected the priorities of both Houses.

Finally, my colleagues should be fully aware that the conference report I filed includes a provision regarding the Middle Rio Grande River in New Mexico. The provision does two things. First it prohibits the use of outer-basin water for endangered species purposes. Secondly, it establishes how the Endangered Species Act will be complied with for this river and the affected fish. This is a very important provision that has the bipartisan support in the New Mexico delegation and at the state level. Let me restate, so there is no confusion, both Governor Richardson and Senator BINGAMAN, my colleague, fully support the language on the silvery minnow that's contained in this conference report.

I thank my ranking member and good friend, Senator REID. This was one of the toughest conferences he and I have been in together, but through it all, I will tell my colleagues that Senator REID supported me every step of the way, and I thank him for that.

Also, I would like to thank his excellent staff, Drew Willison, Roger Cockrell and Nancy Olkewicz, for all the effort put forth in getting this conference report put together, without their close cooperation, this conference report would not have been possible.

I would also like to thank my former staff, Clay Sell, for all the work he did on this bill early in the year until his departure for the White House. I thank Erin McHale of my staff for all of her hard work.

Mr. REID. Mr. President, it takes just a few seconds to do this, but this is the culmination of weeks and weeks of work. I want to spread on the RECORD the affection I have for the chairman of the Energy and Water Subcommittee, Senator PETE DOMENICI. This has been a very tough process this year. But for his advocacy in protecting the Senate's position, this bill would not be in the position it is. I, again, want the RECORD spread with the partnership that he and I have on this legislation. This is legislation that is very good for the country.

By and large, I am pleased with the bill that the conferees have produced.

As conferees we are tasked with reconciling House and Senate bills that were written with very different visions and very different world views.

Reconciling them has not been easy, nor has it been accomplished without a great deal of pain on both sides.

As these things usually are, this final bill is a product of hard fought compromise and, often, splitting the difference between competing views. The result is a bill with much for both sides to like and much for both sides to dislike.

As Senate conferees, Chairman DOMENICI and I were faced with trying to work out the differences between our bill, a fairly typical Senate Energy and Water bill, and a House bill that was far different than the ones produced in recent years by the other body.

Chairman HOBSON placed a far higher priority on Yucca Mountain than his predecessors ever did and he added nearly $175 more than the President asked for to the project. At the same time, he placed a far lower emphasis on activities requested by the President within our Nation's nuclear weapons complex, cutting nearly $300 million from the program, including nearly $200 million from the nuclear weapons laboratories in New Mexico. As most of you know, Chairman DOMENICI has a passing interest in the health and well-being of those labs.

Obviously, none of this was done with any personal malice, but these honest differences of opinion sure made for a lively conference.

The final bill contains $27.3 billion in funding for the Department of Energy, the U.S. Army Corps of Engineers, the Bureau of Reclamation, and several other important agencies. The final bill exceeds the President's request by $381 million and the FY 03 total by $1.13 billion.

The engine that drives the Energy and Water bill is funding for the Corps of Engineers. Each year Chairman DOMENICI and I receive literally thousands of requests for water projects in all fifty States. We work hard to accommodate as many of them as possible each year.

I am pleased to report that total funding for the Corps of Engineers is nearly $4.6 billion—a total that is $375 million above an utterly insufficient request from the Administration. I wish we were able to do more, but, I feel we were able to keep many very important projects moving forward this year and have been able to begin some new ones.

Total funding for the Bureau of Reclamation is set at $986 million, a total that is $64 million above the President's request and $15 million above the current year. As a Western Senator I had hoped this would be the year that we got the Bureau up to $1 billion, but we came up just short. However, I am very pleased that we are pushing the Bureau's budget in the right direction.

The conferees were able to provide total funding of $22 billion for the Department of Energy. The Senate was able to convince the House to restore most of the nearly $300 million in cuts to DOE programs, but we are still nearly $120 million below the President's request. We are, however, $1.2 billion above the current year. The overall increase has allowed the conferees to provide solid funding for the Office of Science, renewable energy projects, and the very important environmental management clean-up projects nationwide.

As most of you know, Senator DOMENICI is a fierce defender of two nuclear weapons labs in his home State, two institutions that do world class research and have helped to keep our Nation safe and secure for over 50 years. The House cut nearly $200 million from the President's budget request for Los Alamos and Sandia, a move that would have had very negative ramifications for our Nation's science-based stockpile stewardship program. I am pleased to report that we were able to restore most of these ill-advised cuts. The people of New Mexico are very lucky to have a Senator as skilled and determined as PETE DOMENICI working for them.

Frankly, given the battle we were in with the House this year over our bill, I am glad he was also fighting for me and the other 98 Members of the Senate.

I am very grateful to Chairman DOMENICI and his new clerk, Tammy Perrin, for being so dogged in their defense of the Senate position on so many issues. I have worked with his previous clerks, Alex Flint and Clay Sell, and have found them both to be outstanding. In Tammy, he has found another terrific clerk.

As always, thanks to Drew Willison, Roger Cockrell, and Nancy Olkewicz of my subcommittee staff. I appreciate everything they do for me and all of the Members of the Senate.

Mr. FRIST. Mr. President, I ask unanimous consent that the conference report be adopted and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The conference report was agreed to.

MEASURE PLACED ON THE CALENDAR—S. 1875

Mr. FRIST. Mr. President, I understand there is a bill at the desk due its second reading.

The PRESIDING OFFICER. The clerk will report the title of the bill for the second time.

The legislative clerk read as follows:

A bill (S. 1875) to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to extend the mental health benefits parity provisions for an additional year.

Mr. FRIST. Mr. President, I object to further proceedings.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

MEASURES INDEFINITELY POSTPONED—S. 1415, S. 1671, AND S. 1746

Mr. FRIST. Mr. President, I ask unanimous consent that the following bills be indefinitely postponed: Calendar No. 326, S. 1415; Calendar No. 327, S. 1671, Calendar No. 328, S. 1746.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEATHS OF ITALIAN CITIZENS IN IRAQ

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 268 introduced earlier today by Senator GRAHAM.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 268) to express the sense of the Senate regarding the deaths of 19 citizens of Italy in Iraq.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table en bloc, and any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 268) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 268

Whereas the people of Italy are long-time and resolute allies of the United States;

Whereas the people of Italy sent 2,700 of their finest citizens in contribution to the international effort to stabilize Iraq; and

Whereas on Wednesday November 12, 2003, 19 Italians including 12 Carabinieri, 5 army soldiers, and 2 civilians were brutally murdered through cowardly acts of terrorism while on duty in Nassiriya, Iraq: Now, therefore, be it

Resolved, That the Senate—

(1) mourns with the people of Italy on their National Day of Mourning for these 19 brave souls;

(2) acknowledges the sacrifices of the Italian people; and

(3) recognizes the significant contributions that Italy continues to make towards stability and democracy around the world.

21ST CENTURY NANOTECHNOLOGY RESEARCH AND DEVELOPMENT ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 280, S. 189.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 189) to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 189

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "21st Century Nanotechnology Research and Development Act".

[SEC. 2. FINDINGS.

[The Congress makes the following findings:

[(1) The emerging fields of nanoscience and nanoengineering (collectively, "nanotechnology"), in which matter is manipulated at the atomic level (i.e., atom-by-atom or molecule-by-molecule) in order to build materials, machines, and devices with novel properties or functions, are leading to unprecedented scientific and technological opportunities that will benefit society by changing the way many things are designed and made.

[(2) Long-term nanoscale research and development leading to potential breakthroughs in areas such as materials and manufacturing, electronics, medicine and healthcare, environment, energy, chemicals, biotechnology, agriculture, information technology, and national security could be as significant as the combined influences of microelectronics, biotechnology, and information technology on the 20th century. Nanotechnology could lead to things such as—

[(A) new generations of electronics where the entire collection of the Library of Congress is stored on devices the size of a sugar cube;

[(B) manufacturing that requires less material, pollutes less, and is embedded with sophisticated sensors that will internally detect signs of weakness and automatically respond by releasing chemicals that will prevent damage;

[(C) prosthetic and medical implants whose surfaces are molecularly designed to interact with the cells of the body;

[(D) materials with an unprecedented combination of strength, toughness, and lightness that will enable land, sea, air, and space vehicles to become lighter and more fuel efficient;

[(E) selective membranes that can fish out specific toxic or valuable particles from industrial waste or that can inexpensively desalinate sea water; and

[(F) tiny robotic spacecraft that will cost less, consume very little power, adapt to unexpected environments, change its capabilities as needed, and be completely autonomous.

[(3) Long-term, high-risk research is necessary to create breakthroughs in technology. Such research requires government funding since the benefits are too distant or uncertain for industry alone to support. Current Federal investments in nanotechnology research and development are not grounded in any specifically authorized statutory foundation. As a result, there is a risk that future funding for long-term, innovative research will be tentative and subject to instability which could threaten to hinder future United States technological and economic growth.

[(4) The Federal government can play an important role in the development of nanotechnology, as this science is still in its infancy, and it will take many years of sustained investment for this field to achieve maturity.

[(5) Many foreign countries, companies and scientists believe that nanotechnology will be the leading technology of the 21st century and are investing heavily into its research. According to a study of international nanotechnology research efforts sponsored by the National Science and Technology Council, the United States is at risk of falling behind its international competitors, including Japan, South Korea, and Europe if it fails to sustain broad based funding in nanotechnology. The United States cannot afford to fall behind our competitors if we want to maintain our economic strength.

[(6) Advances in nanotechnology stemming from Federal investments in fundamental research and subsequent private sector development likely will create technologies that support the work and improve the efficiency of the Federal government, and contribute significantly to the efforts of the government's mission agencies.

[(7) According to various estimates, including those of the National Science Foundation, the market for nanotech products and services in the United States alone could reach over $1 trillion later this century.

[(8) Nanotechnology will evolve from modern advances in chemical, physical, biological, engineering, medical, and materials research, and will contribute to cross-disciplinary training of the 21st century science and technology workforce.

[(9) Mastering nanotechnology will require a unique skill set for scientists and engineers that combine chemistry, physics, material science, and information science. Funding in these critical areas has been flat for many years and as a result fewer young people are electing to go into these areas in graduate schools throughout the United States. This will have to reverse if we hope to develop the next generation of skilled workers with multi-disciplinary perspectives necessary for the development of nanotechnology.

[(10) Research on nanotechnology creates unprecedented capabilities to alter ourselves and our environment and will give rise to a host of novel social, ethical, philosophical, and legal issues. To appropriately address these issues will require wide reflection and guidance that are responsive to the realities of the science, as well as additional research to predict, understand, and alleviate anticipated problems.

[(11) Nanotechnology will provide structures to enable the revolutionary concept of quantum computing, which uses quantum mechanical properties to do calculation. Quantum computing permits a small number of atoms to potentially store and process enormous amounts of information. Just 300 interacting atoms in a quantum computer could store as much information as a classical electronic computer that uses all the particles in the universe, and today's complex encryption algorithms, which would take today's best super computer 20 billion years, could be cracked in 30 minutes.

[(12) The Executive Branch has previously established a National Nanotechnology Initiative to coordinate Federal nanotechnology research and development programs. This initiative has contributed significantly to the development of nanotechnology. Authorizing legislation can serve to establish new technology goals and research directions, improve agency coordination and oversight mechanisms, help ensure optimal returns to investment, and simplify reporting, budgeting, and planning processes for the Executive Branch and the Congress.

[(13) The private sector technology innovations that grow from fundamental nanotechnology research are dependent on a haphazard, expensive, and generally inefficient technology transition path. Strategies for accelerating the transition of fundamental knowledge and innovations in commercial products or to support mission agencies should be explored, developed, and when appropriate, executed.

[(14) Existing data on the societal, ethical, educational, legal, and workforce implications and issues related to nanotechnology are lacking. To help decision-makers and affected parties better anticipate issues likely to arise with the onset and maturation of nanotechnology, research and studies on these issues must be conducted and disseminated.

[(15) Many States and regions have begun nanotechnology programs. These programs have developed expertise, particularly with regard to providing infrastructure and preparing the nanotechnology workforce. The Federal nanotechnology program should leverage these existing State and local institutions to best provide a coordinated and comprehensive nanotechnology research portfolio.

[(16) In "Small Wonders, Endless Frontiers" the National Academy of Sciences' National Research Council recommends increased investment in nanotechnology, particularly at the intersection of nanotechnology and biology. Such investments will allow significant advancements in biotechnology and medicine.

[SEC. 3. PURPOSE.

[It is the purpose of this Act to authorize a coordinated inter-agency program that will support long-term nanoscale research and development leading to potential breakthroughs in areas such as materials and manufacturing, nanoelectronics, medicine and healthcare, environment, energy, chemicals, biotechnology, agriculture, information technology, and national and homeland security.

[SEC. 4. NATIONAL NANOTECHNOLOGY RESEARCH PROGRAM.

[(a) NATIONAL NANOTECHNOLOGY RESEARCH PROGRAM.—The President shall establish a National Nanotechnology Research Program. Through appropriate agencies, councils, and the National Coordination Office, the program shall—

[(1) establish the goals, priorities, grand challenges, and metrics for evaluation for Federal nanotechnology research, development, and other activities;

[(2) invest in Federal research and development programs in nanotechnology and related sciences to achieve those goals; and

[(3) provide for interagency coordination of Federal nanotechnology research, development, and other activities undertaken pursuant to the program.

[(b) GOALS OF THE NATIONAL NANOTECHNOLOGY RESEARCH PROGRAM.—The goals of the program are as follows:

[(1) The coordination of long-term fundamental nanoscience and engineering research to build a fundamental understanding of matter enabling control and manipulation at the nanoscale.

[(2) The assurance of continued United States global leadership in nanotechnology to meet national goals and to support national economic, health, national security, educational, and scientific interests.

[(3) The advancement of United States productivity and industrial competitiveness through stable, consistent, and coordinated investments in long-term scientific and engineering research in nanotechnology.

[(4) The development of a network of shared academic facilities and technology centers, including State supported centers, that will play a critical role in accomplishing the other goals of the program, foster partnerships, and develop and utilize next generation scientific tools.

[(5) The development of enabling infrastructural technologies that United States industry can use to commercialize new discoveries and innovations in nanoscience.

[(6) The acceleration of the deployment and transition of advanced and experimental nanotechnology and concepts into the private sector.

[(7) The establishment of a program designed to provide effective education and training for the next generation of researchers and professionals skilled in the multidisciplinary perspectives necessary for nanotechnology.

[(8) To ensure that philosophical, ethical, and other societal concerns will be considered alongside the development of nanotechnology.

[(c) RESEARCH AND DEVELOPMENT AREAS.—Through its participating agencies, the National Nanotechnology Research Program shall develop, fund, and manage Federal research programs in the following areas:

[(1) LONG-TERM FUNDAMENTAL RESEARCH.—The program shall undertake long-term basic nanoscience and engineering research that focuses on fundamental understanding and synthesis of nanometer-size building blocks with potential for breakthroughs in areas such as materials and manufacturing, nanoelectronics, medicine and healthcare, environment, energy, chemical and pharmaceuticals industries, biotechnology and agriculture, computation and information technology, and national security. Funds made available from the appropriate agencies under this paragraph shall be used—

[(A) to provide awards of less than $1,000,000 each to single investigators and small groups to provide sustained support to individual investigators and small groups conducting fundamental, innovative research; and

[(B) to fund fundamental research and the development of university-industry-laboratory and interagency (including State-led) partnerships.

[(2) GRAND CHALLENGES.—The program shall support grand challenges that are essential for the advancement of the field and interdisciplinary research and education teams, including multidisciplinary nanotechnology research centers, that work on major long-term objectives. This funding area will fund, through participating agencies, interdisciplinary research and education teams that aim to achieve major, long-term objectives, such as the following:

[(A) Nanomaterials by design which are stronger, lighter, harder, self-repairing, and safer.

[(B) Nanoelectronics, optoelectronics, and magnetics.

[(C) Healthcare applications.

[(D) Nanoscale processes and environment.

[(E) Energy and energy conservation.

[(F) Microspacecraft.

[(G) Bio-nanodevices for detection and mitigation of biothreats to humans.

[(H) Economical, efficient, and safe transportation.

[(I) National and homeland security.

[(J) Other appropriate challenges.

[(3) INTERDISCIPLINARY NANOTECHNOLOGY RESEARCH CENTERS.—The Program, through the appropriate agencies, shall fund, on a competitive merit reviewed basis, research centers in the range of $3,000,000 to $5,000,000 per year each for 5 years. A grant under this paragraph to a center may be renewed for 1 5-year term on the basis of that center's performance, determined after a review. The program, through its participating agencies, shall encourage research networking among centers and researchers and require access to facilities to both academia and industry. The centers shall assist in reaching other initiative priorities, including fundamental research, grand challenges, education, development and utilization of specific research tools, and promoting partnerships with industry. To the greatest extent possible, agencies participating in the program shall establish geographically diverse centers including at least one center in a State participating in the National Science Foundation's (NSF) Experimental Program, to Stimulate Competitive Research (EPSCoR), established under section 113 of the NSF Authorization Act of 1988 (42 U.S.C. 1862(g)) and shall encourage the participation of minority serving institutions at these centers.

[(4) RESEARCH INFRASTRUCTURE.—The program, through its participating agencies, shall ensure adequate research infrastructure and equipment for rapid progress on program goals, including the employment of underutilized manufacturing facilities in areas of high unemployment as production engineering and research testbeds for micron-scale technologies. Major research equipment and instrumentation shall be an eligible funding purpose under the program.

[(5) SOCIETAL, ETHICAL, EDUCATIONAL, LEGAL, AND WORKFORCE ISSUES RELATED TO NANOTECHNOLOGY.—The Director of the National Science Foundation shall establish a new Center for Societal, Ethical, Educational, Legal, and Workforce Issues Related to Nanotechnology at $5,000,000 per year to encourage, conduct, coordinate, commission, collect, and disseminate research on the societal, ethical, educational, legal, and workforce issues related to nanotechnology. The Center shall also conduct studies and provide input and assistance to the Director of the National Science Foundation in completing the annual report required under paragraph 7(b)(3) of this Act.

[(6) TRANSITION OF TECHNOLOGY.—The program, through its participating agencies, shall ensure cooperation and collaboration with United States industry in all relevant research efforts and develop mechanisms to assure prompt technology transition.

[(7) GAP FUNDING.—The program shall address research areas identified by the Council under section 5(a)(9) of this Act through a program of competitive grants to be awarded in such areas by the Director of the National Science Foundation using the Foundation's funds and any funds contributed to the Foundation by other participating agencies for this purpose. Such grants may be made to government or non-government awardees. Where appropriate, such grants may encourage interagency partnerships or leverage the expertise of State-supported nanotechnology programs.

[SEC. 5. PROGRAM COORDINATION AND MANAGEMENT.

[(a) IN GENERAL.—The National Science and Technology Council shall oversee the planning, management, and coordination of the Federal nanotechnology research and development program. The Council, itself or through an appropriate subgroup it designates or establishes, shall—

[(1) establish a set of broad applications of nanotechnology research and development, or grand challenges, to be met by the results and activities of the program, based on national needs;

[(2) submit to the Congress through the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Science, an annual report, along with the President's annual budget request, describing the implementation of the program under section 4;

[(3) provide for interagency coordination of the program, including with the Department of Defense;

[(4) coordinate the budget requests of each of the agencies involved in the program with the Office of Management and Budget to ensure that a balanced research portfolio is maintained in order to ensure the appropriate level of research effort;

[(5) provide guidance each year to the participating departments and agencies concerning the preparation of appropriations requests for activities related to the program;

[(6) consult with academic, industry, State and local government (including State and regional nanotechnology programs), and other appropriate groups conducting research on and using nanotechnology;

[(7) establish an Information Services and Applications Council to promote access to and early application of the technologies, innovations, and expertise derived from nanotechnology research and development program activities to agency missions and systems across the Federal government, and to United States industry;

[(8) in cooperation with the Advisory Panel established under subsection (b), develop and apply measurements using appropriate metrics for evaluating program performance and progress toward goals; and

[(9) identify research areas which are not being adequately addressed by the agencies' current research programs.

[(b) PRESIDENT'S NANOTECHNOLOGY ADVISORY PANEL.—

[(1) ESTABLISHMENT.—The President shall establish a National Nanotechnology Advisory Panel.

[(2) SELECTION PROCEDURES.—The President shall establish procedures for the selection of individuals not employed by the Federal government who are qualified in the science of nanotechnology and other appropriate fields and may, pursuant to such procedures, select up to 20 individuals, one of whom shall be designated Chairman, to serve on the Advisory Panel. Selection of individuals for the Advisory Panel shall be based solely on established records of distinguished fundamental and applied scientific service, and the panel shall contain a reasonable cross-section of views and expertise, including those regarding the societal, ethical, educational, legal, and workforce issues related to nanotechnology. In selecting individuals to serve on the Advisory Panel, the President shall seek and give due consideration to recommendations from the Congress, industry, the scientific community (including the National Academy of Sciences), scientific professional societies, academia, the defense community, the education community, State and local governments, and other appropriate organizations.

[(3) MEETINGS.—The Advisory Panel shall meet no less than twice annually, at such times and places as may be designated by the Chairman in consultation with the National Nanotechnology Coordination Office established under subsection 5(c) of this Act.

[(4) DUTIES.—The Advisory Panel shall advise the President and the National Science and Technology Council, and inform the Congress, on matters relating to the National Nanotechnology Program, including goals, roles, and objectives within the program, its capabilities and research needs, guidance on achieving major objectives, and establishing and measuring performance goals using appropriate metrics. The Advisory Panel shall issue an annual report, containing the information required by subsection (d) of this section, to the President, the Council, the heads of each agency involved in the program, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Science, on or before September 30 of each year.

[(c) NATIONAL NANOTECHNOLOGY COORDINATION OFFICE.—The President shall establish a National Nanotechnology Coordination Office, with full-time staff, to provide day-to-day technical and administrative support to the Council and the Advisory Panel, and to be the point of contact on Federal nanotechnology activities for government organizations, academia, industry, professional societies, State nanotechnology programs, and others to exchange technical and programmatic information. The Office shall promote full coordination of research efforts between agencies, scientific disciplines, and United States industry.

[(d) PROGRAM PLANS AND REPORTS.—

[(1) ANNUAL EVALUATION OF NANOTECHNOLOGY RESEARCH DEVELOPMENT PROGRAM.—The report by the Advisory Panel, required pursuant to subsection (b)(4), shall include—

[(A) a review of the program's technical success in achieving the stated goals and grand challenges according to the metrics established by the program and Advisory Panel;

[(B) a review of the program's management and coordination;

[(C) a review of the funding levels by each agency for the program's activities and their ability to achieve the program's stated goals and grand challenges;

[(D) a review of the balance in the program's portfolio and components across agencies and disciplines;

[(E) an assessment of the degree of participation in the program by minority serving institutions and institutions located in States participating in NSF's EPSCoR program;

[(F) a review of policy issues resulting from advancements in nanotechnology and its effects on the scientific enterprise, commerce, workforce, competitiveness, national security, medicine, and government operations;

[(G) recommendations for new program goals and grand challenges;

[(H) recommendations for new research areas, partnerships, coordination and management mechanisms, or programs to be established to achieve the program's stated goals and grand challenges;

[(I) recommendations for new investments by each participating agency in each program funding area for the 5-year period following the delivery of the report;

[(J) reviews and recommendations regarding other issues deemed pertinent or specified by the panel; and

[(K) a technology transition study which includes an evaluation of the Federal nanotechnology research and development program's success in transitioning its research, technologies, and concepts into commercial and military products, including—

[(i) examples of successful transition of research, technologies, and concepts from the Federal nanotechnology research and development program into commercial and military products;

[(ii) best practices of universities, government, and industry in promoting efficient and rapid technology transition in the nanotechnology sector;

[(iii) barriers to efficient technology transition in the nanotechnology sector, including, but not limited to, standards, pace of technological change, qualification and testing of research products, intellectual property issues, and Federal funding; and

[(iv) recommendations for government sponsored activities to promote rapid technology transition in the nanotechnology sector.

[(2) OFFICE OF MANAGEMENT AND BUDGET REVIEW.—

[(A) BUDGET REQUEST REVIEW.—Each Federal agency and department participating in the program shall, as part of its annual request for appropriations, submit information to the Office of Management and Budget including—

[(i) each element of its nanotechnology research and development activities that contributes directly to the program or benefits from the program;

[(ii) the portion of its request for appropriations that is allocated to each such element; and

[(iii) the portion of its request for appropriations that is allocated to each program funding area.

[(B) OMB REVIEW AND ALLOCATION STATEMENT.—The Office of Management and Budget shall review the information provided under subparagraph (A) in light of the goals, priorities, grand challenges, and agency and departmental responsibilities set forth in the annual report of the Council under paragraph (3), and shall include in the President's annual budget estimate, a statement delineating the amount and portion of each appropriate agency's or department's annual budget estimate relating to its activities undertaken pursuant to the program.

[(3) ANNUAL NSTC REPORT TO CONGRESS ON THE NANOTECHNOLOGY RESEARCH DEVELOPMENT PROGRAM.—The National Science and Technology Council shall submit an annual report to the Congress that—

[(A) includes a detailed description of the goals, grand challenges, and program funding areas established by the President for the program;

[(B) sets forth the relevant programs and activities, for the fiscal year with respect to which the budget submission applies, of each Federal agency and department, participating in the program, as well as such other agencies and departments as the President or the Director considers appropriate;

[(C) describes the levels of Federal funding for the fiscal year during which such report is submitted, and the levels proposed for the fiscal year with respect to which the budget submission applies, for each of the program funding areas of the program;

[(D) describes the levels of Federal funding for each agency and department participating in the program and each program funding area for the fiscal year during which such report is submitted, and the levels proposed for the fiscal year with respect to which the budget submission applies, and compare these levels to the most recent recommendations of the Advisory Panel and the external review of the program;

[(E) describes coordination and partnership activities with State, local, international, and private sector efforts in nanotechnology research and development, and how they support the goals of the program;

[(F) describes mechanisms and efforts used by the program to assist in the transition of innovative concepts and technologies from Federally funded programs into the commercial sector, and successes in these transition activities;

[(G) describes coordination between the military and civilian portions, as well as the life science and non-life science portions, of the program in technology development, supporting the goals of the program, and supporting the mission needs of the departments and agencies involved;

[(H) analyzes the progress made toward achieving the goals, priorities, and grand challenges designated for the program according to the metrics established by the program and the Advisory Panel; and

[(I) recommends new mechanisms of coordination, program funding areas, partnerships, or activities necessary to achieve the goals, priorities, and grand challenges established for the program.

[(4) TRIENNIAL EXTERNAL REVIEW OF NANOTECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.—

[(A) IN GENERAL.—The Director of the National Science Foundation shall enter into an arrangement with the National Research Council of the National Academy of Sciences to conduct a triennial evaluation of the Federal nanotechnology research and development program, including—

[(i) a review of the technical success of the program in achieving the stated goals and grand challenges under the metrics established by the program and the nanotechnology Advisory Panel, and under other appropriate measurements;

[(ii) a review of the program's management and coordination across agencies and disciplines;

[(iii) a review of the funding levels by each agency for the program's activities and their ability with such funding to achieve the program's stated goals and grand challenges;

[(iv) recommendations for new or revised program goals and grand challenges;

[(v) recommendations for new research areas, partnerships, coordination and management mechanisms, or programs to be established to achieve the program's stated goals and grand challenges;

[(vi) recommendations for investment levels in light of goals by each participating agency in each program funding area for the 5-year period following the delivery of the report;

[(vii) recommendations on policy, program, and budget changes with respect to nanotechnology research and development activities;

[(viii) recommendations for improved metrics to evaluate the success of the program in accomplishing its stated goals;

[(ix) a review of the performance of the Information Services and Applications Council and its efforts to promote access to and early application of the technologies, innovations, and expertise derived from program activities to agency missions and systems across the Federal government and to United States industry; and

[(x) an analysis of the relative position of the United States compared to other nations with respect to nanotechnology research and development, including the identification of any critical research areas where the United States should be the world leader to best achieve the goals of the program.

[(B) EVALUATION TO BE TRANSMITTED TO CONGRESS.—The Director of the National Science Foundation shall transmit the results of any evaluation for which it made arrangements under subparagraph (A) to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science upon receipt. The first such evaluation shall be transmitted no later than June 10, 2005, with subsequent evaluations transmitted to the Committees every 3 years thereafter.

[SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

[(a) NATIONAL SCIENCE FOUNDATION.—

[(1) GENERAL AUTHORIZATION.—There are authorized to be appropriated to the Director of the National Science Foundation to carry out the Director's responsibilities under this Act $346,150,000 for fiscal year 2004.

[(2) SPECIFIC ALLOCATIONS.—

[(A) INTERDISCIPLINARY NANOTECHNOLOGY RESEARCH CENTERS.—Of the amounts described in paragraph (1), $50,000,000 for fiscal year 2004, shall be available for grants of up to $5,000,000 each for multidisciplinary nanotechnology research centers.

[(B) CENTER FOR SOCIETAL, ETHICAL, EDUCATIONAL, LEGAL, AND WORKFORCE ISSUES RELATED TO NANOTECHNOLOGY.—Of the sums authorized for the National Science Foundation each fiscal year, $5,000,000 shall be used to establish a university-based Center for Societal, Ethical, Educational, Legal, and Workforce Issues Related to Nanotechnology.

[(C) NATIONAL NANOTECHNOLOGY COORDINATION OFFICE.—Of the sums authorized for the National Science Foundation each fiscal year, $5,000,000 shall be used for the activities of the Nanotechnology Coordination Office.

[(D) GAP FUNDING.—Of the sums authorized for the National Science Foundation each fiscal year, $5,000,000 shall be for use in competitive grants as described in section 4(c)(7) of this Act.

[(b) DEPARTMENT OF ENERGY.—There are authorized to be appropriated to the Secretary of Energy to carry out the Secretary's responsibilities under this Act $160,195,000 for fiscal year 2004.

[(c) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.—There are authorized to be appropriated to the Administrator of the National Aeronautics and Space Administration to carry out the Administrator's responsibilities under this Act $58,650,000 for fiscal year 2004.

[(d) NATIONAL INSTITUTES OF HEALTH.—There are authorized to be appropriated to the Director of the National Institutes to carry out the Director's responsibilities under this Act $49,680,000 for fiscal year 2004.

[(e) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—There are authorized to be appropriated to the Director of the National Institute of Standards and Technology to carry out the Director's responsibilities under this Act $50,600,000 for fiscal year 2004.

[(f) ENVIRONMENTAL PROTECTION AGENCY.—There are authorized to be appropriated to the Administrator of the Environmental Protection Agency to carry out the Administrator's responsibilities under this Act $5,750,000 for fiscal year 2004.

[(g) DEPARTMENT OF JUSTICE.—There are authorized to be appropriated to the Director of the National Institute of Justice to carry out the Director's responsibilities under this Act $1,610,000 for fiscal year 2004.

[(h) DEPARTMENT OF TRANSPORTATION.—There are authorized to be appropriated to the Secretary of Transportation to carry out the Secretary's responsibilities under this Act $2,300,000 for fiscal year 2004.

[(i) DEPARTMENT OF AGRICULTURE.—There are authorized to be appropriated to the Secretary of Agriculture to carry out the Secretary's responsibilities under this Act $2,870,000 for fiscal year 2004.

[SEC. 7. SOCIETAL, ETHICAL, EDUCATIONAL, LEGAL, AND WORKFORCE ISSUES RELATED TO NANOTECHNOLOGY.

[(a) STUDIES.—The Director of the National Science Foundation shall encourage, conduct, coordinate, commission, collect, and disseminate studies on the societal, ethical, educational, and workforce implications of nanotechnology through the Center for Societal, Ethical, Educational, Legal, and Workforce Issues established under section 4(c)(5). The studies shall identify anticipated issues and problems, as well as provide recommendations for preventing or addressing such issues and problems.

[(b) DATA COLLECTION.—The Director of the National Science Foundation shall collect data on the size of the anticipated nanotechnology workforce need by detailed occupation, industry, and firm characteristics, and assess the adequacy of the trained talent pool in the United States to fill such workforce needs.

[(c) ANNUAL REPORT.—The Director of the National Science Foundation shall compile the studies required by paragraph (2) and, with the assistance of the Center for Societal, Ethical, Educational, Legal, and Workforce Issues Related to Nanotechnology established under section 4(c)(5) of this Act, shall complete a report that includes a description of the Center's activities, which shall be submitted to the President, the Council, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Science not later than 18 months after the date of enactment of this Act.

[SEC. 8. DEFINITIONS.

[In this Act:

[(1) ADVISORY PANEL.—The term "Advisory Panel" means the President's National Nanotechnology Panel.

[(2) FUNDAMENTAL RESEARCH.—The term "fundamental research" means research that builds a fundamental understanding and leads to discoveries of the phenomena, processes, and tools necessary to control and manipulate matter at the nanoscale.

[(3) GRAND CHALLENGE.—The term "grand challenge" means a fundamental problem in science or engineering, with broad economic and scientific impact, whose solution will require the application of nanotechnology.

[(4) INTERDISCIPLINARY NANOTECHNOLOGY RESEARCH CENTER.—The term "interdisciplinary nanotechnology research center" means a group of 6 or more researchers collaborating across scientific and engineering disciplines on large-scale long-term research projects that will significantly advance the science supporting the development of nanotechnology or the use of nanotechnology in addressing scientific issues of national importance, consistent with the goals set forth in section 4(b).

[(5) NANOTECHNOLOGY.—The term "nanotechnology" means the ability to work at the molecular level, atom-by-atom, to create large structures with fundamentally new molecular organization.

[(6) PROGRAM.—The term "program" means the national nanotechnology research program established under section 4.

[(7) RESEARCH INFRASTRUCTURE.—The term "research infrastructure" means the measurement science, instrumentation, modeling and simulation, and user facilities needed to develop a flexible and enabling infrastructure so that United States industry can rapidly commercialize new discoveries in nanotechnology.]

SECTION 1. SHORT TITLE.

This Act may be cited as the "21st Century Nanotechnology Research and Development Act".

SEC. 2. NATIONAL NANOTECHNOLOGY PROGRAM.

(a) NATIONAL NANOTECHNOLOGY PROGRAM.—The President shall implement a National Nanotechnology Program. Through appropriate agencies, councils, and the National Nanotechnology Coordination Office established in subsection (d), the Program shall—

(1) Establish the goals, priorities, grand challenges, and metrics for evaluation for Federal nanotechnology research, development, and other activities;

(2) Invest in Federal research and development programs in nanotechnology and related sciences to achieve those goals; and

(3) Provide for interagency coordination of Federal nanotechnology research, development, and other activities undertaken pursuant to the Program.

(b) GOALS.—The goals of the National Nanotechnology Program shall include:

(1) Developing a fundamental understanding of matter that enables control and manipulation at the nanoscale.

(2) Ensuring United States global leadership in the development and application of nanotechnology.

(3) Advancing the United States productivity and industrial competitiveness through stable, consistent, and coordinated investments in long-term scientific and engineering research in nanotechnology.

(4) Developing a network of shared facilities and centers to foster partnerships among researchers in nanotechnology.

(5) Accelerating the deployment and application in the private sector, including startup companies, of nanoscale-related research and development.

(6) Providing effective education and training for researchers and professionals skilled in the multidisciplinary perspectives necessary for nanotechnology so that a true interdisciplinary research culture for nanoscale science, engineering, and technology can emerge.

(7) Ensuring that ethical, legal, environmental, and other appropriate societal concerns are considered during the development of nanotechnology, including safer sustainable nanoscience products and processing.

(c) PROGRAM MANAGEMENT.—The National Science and Technology Council shall oversee the planning, management, and coordination of the National Nanotechnology Program. The Council, itself or through an appropriate subgroup it designates or establishes, shall—

(1) establish a set of broad applications of nanotechnology research and development, or grand challenges, to be met by the results and activities of the Program, based on national needs;

(2) provide for interagency coordination of the Program, including with the activities of the Defense Nanotechnology Research and Development Program established under section 246 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314);

(3) develop, within 12 months after the date of enactment of this Act, and update every 4 years thereafter, a strategic plan to meet the goals and priorities established under subsection (b) and to guide the activities and anticipated outcomes of the participating agencies, including a description of how the Program will move results out of the laboratory and into application for the benefit of society, support for long-term funding for multidisciplinary research and development in technology, and dedication of funding for interagency nanotechnology projects;

(4) coordinate the budget requests of each of the agencies involved in the Program with the Office of Management and Budget to ensure that a balanced nanotechnology research portfolio is maintained in order to ensure the appropriate level of research effort;

(5) exchange information with academic, industry, State and local government (including State and regional nanotechnology programs), and other appropriate groups conducting research on and using nanotechnology;

(6) develop a plan to utilize Federal programs, such as the Small Business Innovation Research Program and the Small Business Technology Transfer Research Program, in support of the goal stated in subsection (b)(5);

(7) identify research areas that are not being adequately addressed by the agencies' current research programs;

(8) encourage progress on Program goals through the utilization of existing manufacturing facilities and industrial infrastructures such as, but not limited to, the employment of underutilized manufacturing facilities in areas of high unemployment as production engineering and research testbeds; and

(9) provide for, on a merit-reviewed, competitive basis, interdisciplinary nanotechnology research centers, which to the greatest extent possible, shall be established in geographically diverse centers including at least one center in a State participating in the National Science Foundation's (NSF) Experimental Program to Stimulate Competitive Research (EPSCoR), established under section 113 of the NSF Authorization Act of 1988 (42 U.S.C. 1862(g)) and shall encourage the participation of minority serving institutions at these centers.

(d) PROGRAM COORDINATION.—The President shall establish a National Nanotechnology Coordination Office, with full-time staff, which shall—

(1) provide technical and administrative support to the Council and the Advisory Panel;

(2) serve as the point of contact on Federal nanotechnology activities for government organizations, academia, industry, professional societies, State nanotechnology programs, interested citizen groups, and others to exchange technical and programmatic information;

(3) conduct public outreach, including dissemination of findings and recommendations of the Advisory Panel, as appropriate; and

(4) establish an office to promote access to and early application of the technologies, innovations, and expertise derived from Program activities to agency missions and systems across the Federal Government, and to United States industry, including startup companies.

(e) ANNUAL REPORT.—The Council shall prepare an annual report, to be submitted to the House of Representatives Committee on Science and the Senate Committee on Commerce, Science, and Transportation at the time of the President's budget request to Congress, that includes—

(1) the Program budget, for the current fiscal year, for each agency that participates in the Program, including a breakout of spending for the development and acquisition of research facilities and instrumentation, for each program component area, and for all activities pursuant to subsection (b)(7), which shall be submitted by December 31st of such year;

(2) the proposed Program budget for the next fiscal year, for each agency that participates in the Program, including a breakout of spending for the development and acquisition of research facilities and instrumentation, for each program component area, and for all activities pursuant to subsection (b)(7);

(3) an analysis of the progress made toward achieving the goals and priorities established for the Program;

(4) an analysis of the extent to which the Program has incorporated the recommendations of the Advisory Panel and the Center, established in section 7 of this Act; and

(5) an assessment of how Federal agencies are implementing the plan described in section (c)(7), and a description of the amount of Small Business Innovative Research and Small Business Technology Transfer Research funds supporting the plan.

SEC. 3. ADVISORY PANEL.

(a) IN GENERAL.—The President shall establish or designate a National Nanotechnology Advisory Panel.

(b) QUALIFICATIONS.—The Panel established or designated by the President under subsection (a) shall consist primarily of individuals who are non-Federal members and shall include representatives of academia and industry. Members of such Panel shall be qualified to provide advice and information on nanotechnology research, development, demonstrations, education, technology transfer, commercial application, or societal and ethical concerns. In selecting or designating an Advisory Panel, the President may also seek and give consideration to recommendations from the Congress, industry, the scientific community (including the National Academy of Sciences), scientific professional societies, academia, the defense community, State and local governments, regional nanotechnology programs, and other appropriate organizations.

(c) DUTIES.—The Panel shall advise the President and the Council on matters relating to the Program, including assessing—

(1) trends and developments in nanotechnology science and engineering;

(2) progress made in implementing the Program;

(3) the need to revise the Program;

(4) the balance among the components of the Program, including funding levels for the program component areas;

(5) whether the Program component areas, priorities, and technical goals developed by the Council are helping to maintain United States leadership in nanotechnology;

(6) the management, coordination, implementation, and activities of the Program; and

(7) whether societal, ethical, environmental, and workforce concerns are adequately addressed by the Program.

(d) REPORTS.—The Advisory Panel shall report, not less frequently than once every 2 fiscal years, to the President, the Senate Committee on Commerce, Science, and Technology, and the House of Representatives Committee on Science on its assessments under subsection (c) and its recommendations for ways to improve the Program. The first report under this subsection shall be submitted within 1 year after the date of enactment of this Act.

(e) TRAVEL EXPENSES OF NON-FEDERAL MEMBERS.—Non-Federal members of the Panel, while attending meetings of the Panel or while otherwise serving at the request of the head of the Panel away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay. Nothing in this subsection shall be construed to prohibit members of the Panel who are officers or employees of the United States from being allowed travel expenses, including per diem in lieu of subsistence, in accordance with existing law.

SEC. 4. TRIENNIAL EXTERNAL REVIEW OF NANOTECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Director of the National Science Foundation shall enter into an arrangement with the National Research Council of the National Academy of Sciences to conduct a triennial evaluation of the National Nanotechnology Program, including—

(1) a review of the technical success of the Program in achieving the stated goals under the metrics established by the Program and the Advisory Panel, and under other appropriate measurements;

(2) a review of the Program's management and coordination across agencies and disciplines;

(3) a review of the funding levels by each agency for the Program's activities and their ability with such funding to achieve the Program's stated goals;

(4) recommendations for new or revised Program goals;

(5) recommendations for new research areas, partnerships, coordination and management mechanisms, or programs to be established to achieve the Program's stated goals;

(6) recommendations for investment levels by each participating agency in each Program funding area for the 5-year period following the delivery of the report;

(7) recommendations on policy, program, and budget changes with respect to nanotechnology research and development activities;

(8) recommendations for improved metrics to evaluate the success of the Program in accomplishing its stated goals;

(9) a review of the performance of the National Nanotechnology Coordination Office and its efforts to promote access to and early application of the technologies, innovations, and expertise derived from program activities to agency missions and systems across the Federal Government and to United States industry; and

(10) an analysis of the relative position of the United States compared to other nations with respect to nanotechnology research and development, including the identification of any critical research areas where the United States should be the world leader to best achieve the goals of the Program.

(b) EVALUATION TO BE TRANSMITTED TO CONGRESS.—The Director of the National Science Foundation shall transmit the results of any evaluation for which it made arrangements under subsection (a) to the Advisory Panel, the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science upon receipt. The first such evaluation shall be transmitted no later than June 10, 2005, with subsequent evaluations transmitted to the Committees every 3 years thereafter.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) NATIONAL SCIENCE FOUNDATION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Director of the National Science Foundation to carry out the Director's responsibilities under this Act—

(A) $350,000,000 for fiscal year 2004;
(B) $385,000,000 for fiscal year 2005;
(C) $424,000,000 for fiscal year 2006;
(D) $449,000,000 for fiscal year 2007; and
(E) $476,000,000 for fiscal year 2008.

(2) SPECIFIC ALLOCATIONS.—

(A) INTERDISCIPLINARY NANOTECHNOLOGY RESEARCH CENTERS.—Of the amounts authorized by paragraph (1) for each fiscal year, $60,000,000 for each fiscal year shall be available for grants of up to $5,000,000 each for multidisciplinary nanotechnology research centers.

(B) AMERICAN NANOTECHNOLOGY PREPAREDNESS CENTER.—Of the amounts authorized by paragraph (1) for each fiscal year, $5,000,000 shall be used to establish and maintain a university-based American Nanotechnology Preparedness Center.

(C) NATIONAL NANOTECHNOLOGY COORDINATION OFFICE.— Of the sums authorized by paragraph (1) for each fiscal year, $5,000,000 shall be used for the activities of the Nanotechnology Coordination Office.

(D) MANUFACTURING TECHNOLOGIES FOR NANOMATERIALS.—Of the sums authorized by paragraph (1) for each fiscal year, $5,000,000 shall be used for the activities of the Center for Nanomaterials Manufacturing.

(b) DEPARTMENT OF ENERGY.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Energy to carry out the Secretary's responsibilities under this Act—

(A) $265,000,000 for fiscal year 2004;
(B) $292,000,000 for fiscal year 2005;
(C) $321,000,000 for fiscal year 2006;
(D) $340,000,000 for fiscal year 2007; and
(E) $360,000,000 for fiscal year 2008.

(2) ALLOCATION.—Of the sums authorized by paragraph (1) for each fiscal year, $25,000,000 shall be used on a merit-reviewed and competitive basis to support consortia that integrate newly developed nanotechnology and microfluidic tools with systems biology, immunology, and molecular imaging, of which at least 1 such consortium shall be provided with at least $10,000,000 for each fiscal year.

(c) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.—There are authorized to be appropriated to the Administrator of the National Aeronautics and Space Administration to carry out the Administrator's responsibilities under this Act—

(1) $31,000,000 for fiscal year 2004;
(2) $34,100,000 for fiscal year 2005;
(3) $37,500,000 for fiscal year 2006;
(4) $40,000,000 for fiscal year 2007; and
(5) $42,300,000 for fiscal year 2008.

(d) NATIONAL INSTITUTES OF HEALTH.—There are authorized to be appropriated to the Director of the National Institutes to carry out the Director's responsibilities under this Act—

(1) $70,000,000 for fiscal year 2004;
(2) $77,000,000 for fiscal year 2005;
(3) $85,000,000 for fiscal year 2006;
(4) $90,000,000 for fiscal year 2007; and

(5) $95,000,000 for fiscal year 2008.

(e) National Institute of Standards and Technology.—There are authorized to be appropriated to the Director of the National Institute of Standards and Technology to carry out the Director's responsibilities under this Act—

(1) $62,000,000 for fiscal year 2004;
(2) $68,200,000 for fiscal year 2005;
(3) $75,000,000 for fiscal year 2006;
(4) $80,000,000 for fiscal year 2007; and
(5) $84,000,000 for fiscal year 2008.

(f) Environmental Protection Agency.—There are authorized to be appropriated to the Administrator of the Environmental Protection Agency to carry out the Administrator's responsibilities under this Act—

(1) $5,000,000 for fiscal year 2004;
(2) $5,500,000 for fiscal year 2005;
(3) $6,050,000 for fiscal year 2006;
(4) $6,413,000 for fiscal year 2007; and
(5) $6,800,000 for fiscal year 2008.

(g) Department of Justice.—There are authorized to be appropriated to the Director of the National Institute of Justice to carry out the Director's responsibilities under this Act—

(1) $1,000,000 for fiscal year 2004;
(2) $1,100,000 for fiscal year 2005;
(3) $1,210,000 for fiscal year 2006;
(4) $1,283,000 for fiscal year 2007; and
(5) $1,360,000 for fiscal year 2008.

(h) Department of Homeland Security.—There are authorized to be appropriated to the Secretary of Homeland Security to carry out the Secretary's responsibilities under this Act—

(1) $2,000,000 for fiscal year 2004;
(2) $2,200,000 for fiscal year 2005;
(3) $2,420,000 for fiscal year 2006;
(4) $2,570,000 for fiscal year 2007; and
(5) $2,720,000 for fiscal year 2008.

(i) Department of Agriculture.—There are authorized to be appropriated to the Secretary of Agriculture to carry out the Secretary's responsibilities under this Act—

(1) $10,000,000 for fiscal year 2004;
(2) $11,000,000 for fiscal year 2005;
(3) $12,100,000 for fiscal year 2006;
(4) $12,830,000 for fiscal year 2007; and
(5) $13,600,000 for fiscal year 2008.

SEC. 6. AMERICAN NANOTECHNOLOGY PREPAREDNESS CENTER.

(a) In General.—The Director of the National Science Foundation shall, on a merit-reviewed and competitive basis, establish a new American Nanotechnology Preparedness Center to encourage, conduct, coordinate, commission, collect, and disseminate research on the educational, legal, workforce, societal, and ethical issues related to nanotechnology.

(b) Studies.—The Director of the National Science Foundation, through the Center, shall conduct, coordinate, commission, collect, and disseminate studies on the educational, legal, workforce, societal, and ethical implications of nanotechnology. The studies shall identify anticipated issues and problems, as well as provide recommendations for preventing or addressing such issues and problems.

(c) Workforce Data.—The Director of the National Science Foundation shall collect data on the size of the anticipated nanotechnology workforce need by detailed occupation, industry, and firm characteristics, and assess the adequacy of the trained talent pool in the United States to fill such workforce needs.

(d) Annual Report.—The Director of the National Science Foundation shall compile the studies required by paragraph (b) and, with the assistance of the Center, shall complete a report that includes a description of the Center's activities, which shall be submitted to the President, the Council, the Advisory Panel, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Science not later than 18 months after the date of enactment of this Act.

SEC. 7. COMMERCIALIZATION ISSUES RELATED TO NANOSCIENCE AND NANOTECHNOLOGY.

(a) In General.—The Director of the National Institute of Standards and Technology shall establish a center within NIST's Manufacturing Engineering Laboratory for issues relating to the commercialization of nanoscience and nanotechnology research. The program shall—

(1) conduct basic research on issues related to the development and manufacture of nanotechnology including—

(A) metrology;
(B) reliability and quality assurance;
(C) processes control; and
(D) manufacturing best practices; and

(2) in consultation with the National Technical Information Service and the National Nanotechnology Coordination Office, act as a clearinghouse for information related to commercialization of nanoscience and nanotechnology research, including—

(A) information relating activities by regional, state, and local commercial nanotechnology initiatives;

(B) transition of research, technologies, and concepts from Federal nanotechnology research and development programs into commercial and military products;

(C) best practices by government, university and private sector laboratories transitioning technology to commercial use;

(D) examples of ways to overcome barriers and challenges to technology deployment; and

(E) use of existing manufacturing infrastructure and workforce.

(b) Use of Manufacturing Extension Partnership Program.—The Director of the National Institute of Standards and Technology shall utilize the manufacturing extension partnership program to the extent possible to reach small and medium sized manufacturing companies.

(c) Manufacturing Technologies for Nanomaterials.—The Director of the National Science Foundation shall establish, on a merit-reviewed, competitive basis, a new Center for Nanomaterials Manufacturing to encourage the development and transfer of technologies for the manufacture of nanomaterials. The Center will encourage, conduct, coordinate, commission, collect, and disseminate research on new manufacturing technologies for materials with unprecedented combinations of strength, toughness, lightness, flame resistance, and membrane separation characteristics, and develop mechanisms to transfer such manufacturing technologies to United States industries.

SEC. 8. DEFINITIONS.

In this Act:

(1) Advisory panel.—The term "Advisory Panel" means the President's National Nanotechnology Panel established or designated under section 3.

(2) Fundamental research.—The term "fundamental research" means research that builds a fundamental understanding and leads to discoveries of the phenomena, processes, and tools necessary to control and manipulate matter at the nanoscale.

(3) Nanotechnology.—The term "nanotechnology" means the ability to work at the molecular level, atom-by-atom, to create large structures with fundamentally new molecular organization.

(4) Program.—The term "Program" means the National Nanotechnology Program established under section 2.

(5) Council.—The term "Council" means the National Science and Technology Council or an appropriate subgroup designated by the Council under section 2(c).

(6) Grand challenge.—The term "grand challenge" means a fundamental problem in science or engineering, with broad potential economic and scientific impact, the solution to which will require the application of nanotechnology research.

Mr. McCAIN. Mr. President, I am pleased to join my colleagues, Senators ALLEN, WYDEN, HOLLINGS, and STEVENS in sponsoring this substitute amendment to S. 189, the 21st Century Nanotechnology Research and Development Act. I commend Senators ALLEN and WYDEN for their leadership on this important legislation, and also thank Senators STEVENS, LOTT, and SUNUNU and Chairman BOEHLERT and Ranking Member HALL of the House Science Committee, for their work on this issue.

Nanotechnology is a truly revolutionary field of science. Scientists have been able to develop materials and systems with dramatic new properties by manipulating structures and systems at the scale of 10^{-9} meters, or 1/100,000 the width of a human hair. This basic research has the potential to benefit virtually every sector of our economy, including biotechnology, telecommunications, national security, manufacturing, and computers. Some experts have projected that sales of products based on nanotechnology will reach $1 trillion by 2015. Many of our international economic competitors have begun to focus on this field. For example, the European Union budgeted $1.2 billion for nanotechnology research in 2003 and 2004.

This bill is designated to highlight the United States' interest and efforts in this emerging technology. The bill would authorize a coordinated research program across the Federal Government through a National Nanotechnology Program. In addition, it would authorize funding for nanotechnology research at the National Science Foundation, the National Aeronautics and Space Administration, the National Institute of Standards and Technology (NIST), the Department of Energy, and the Environmental Protection Agency from fiscal year 2005 through fiscal year 2008. I think that this multiyear authorization is important, because it signals to the Federal agencies, the States, and private industry our commitment to this important cutting-edge research.

In addition, it is important to point out that the legislation deals with more than just basic research. The bill includes provisions that will ensure that social, ethical, environmental, educational, legal, and workforce issues will be analyzed, including the creation of a new center on a merit-reviewed, competitive basis to study these issues. The bill also would establish a program at NIST to conduct basic research on metrology and other issues relating to nanotechnology-based manufacturing. In addition, the bill would authorize the Secretary of Commerce, or his designee, to establish a clearinghouse of information for issues relating to nanotechnology commercialization. It is important that the private sector has access to this basic research in nanotechnology, so that United States can attain a competitive edge in this new field.

I thank my colleagues for their support of this important legislation.

Mr. HOLLINGS. Mr. President, I am proud to cosponsor S. 189, the 21st Century Nanotechnology Research and Development Act. With this legislation, the Senate recognizes the emerging field of nanotechnology and its importance to the United States economy. I thank my colleagues for their efforts. I particularly thank Senator WYDEN for his leadership and maturity in guiding this bill to the floor. There were several times when this bill was going to be derailed and each time Senator WYDEN stepped in to get us back on track.

Nanotechnology has been described as the next Industrial Revolution that will drastically alter the way products are manufactured. Yet we are not alone as other countries are competing to push the boundaries of this technical frontier. Countries such as Japan and the European Union are already spending hundreds of millions of dollars on nanotechnology research. The United States cannot afford to fall behind if we want to maintain our economic strength. This legislation is one step towards ensuring America's leadership and economic competitiveness in nanotechnology.

This legislation is an affirmation that the United States will continue to play a leading role in the development of nanotechnology. It authorizes $784 million for fiscal year 2005 for five Federal agencies involved in nanotechnology research. Although other agencies were not included in this bill, I am hopeful that they will contribute to the National Nanotechnology Program. The legislation provides interagency coordination to the Federal Government's nanotechnology research and development efforts. The establishment of a National Nanotechnology Coordination Office will infuse an organized, structured, and collaborative approach to this research. The legislation also calls for the development of a strategic plan that will provide a roadmap for the country's research and development future.

Nanotechnology is a new frontier and we want to ensure that it is developed responsibly. That is why I pushed for the creation of the American Nanotechnology Preparedness Center. This Center is charged with ensuring that societal, ethical, and environmental concerns surrounding nanotechnology are properly addressed as research progresses. This is vital as we see more and more of nanotechnology in everyday life, we need to assure citizens that this new technology is safe and non-threatening.

In addition to the American Nanotechnology Preparedness Center, this legislation also establishes a Nanotechnology Advisory Panel. The National Academies of Sciences recommended an Advisory Panel in its review of the National Nanotechnology Initiative. I am proud to support its creation in this legislation. I think that it is vital that the President receive advice from dedicated experts directly involved in this field, from the scientists and researchers who are at the forefront of this technology, rather than from advisors who are appointed to serve other technical advisory roles.

One of this country's main strengths is our ability to innovate. Nanotechnology will be the next test as to whether we can continue to move forward. There remains a tremendous amount of basic research that needs to be undertaken in order to fully understand the science behind it all. This is exactly the role that Federal Government should play: to promote scientific knowledge that will benefit our society and our economic competitiveness. This bill does exactly that and I am proud to support it.

I thank the House Science Committee for their cooperation. I also thank the other cosponsors, particularly Senators LIEBERMAN and CLINTON as well as Senators ALLEN, MCCAIN, STEVENS, MIKULSKI, LANDRIEU, LEVIN, BAYH, CANTWELL, CORZINE, HUTCHINSON, KERRY, LAUTENBERG, BAUCUS, ROCKEFELLER, ALEXANDER, and WARNER for their support. In particular, I would also like to thank the staff who put this bill together. In addition to my staff, we enjoyed the hard work of Ruchi Bhowmik with Senator WYDEN, Liz Connell with Senator STEVENS, Ken La Sala with the Senate Commerce Committee, Frank Cavaliere with Senator ALLEN, Mike O'Reilly with Senator SUNUNU, and Michael Yentzen with Senator LOTT.

Mr. WYDEN. Mr. President, I am pleased to introduce a substitute text for S. 189, the 21st Century Nanotechnology Research and Development Act. I thank Commerce Committee Chairman MCCAIN, Ranking Member HOLLINGS, and my colleagues Senators ALLEN, CLINTON and LIEBERMAN for their tremendous bipartisan assistance and cooperation. With this bill, we pave the way for greater discoveries and applications in an area that will soon become a major economic driver for this country.

The 21st Century Nanotechnology Research and Development Act will provide a smart, accelerated, and organized approach to nanotechnology research, development, and education. This legislation will marshal America's nanotechnology efforts that are spread out across the State and Federal levels into one driving force. This bill will develop much needed strategic interagency cooperation and coordination through a National Nanotechnology Program. A National Nanotechnology Advisory Panel will advise the President on nanotechnology matters and the American Nanotechnology Preparedness Center will evaluate important workforce and ethical issues to ensure that societal and citizen concerns about nanotechnology are addressed now—at the outset of this science—and will support, not hinder, the development of this important science.

As I have said before, nanotechnology has the potential to change America on a scale equal to, if not greater than, the computer revolution. Nanoparticles and nanodevices will become the building blocks of our health care, agriculture, manufacturing, environmental cleanup, and even national security. By getting behind nanotechnology now with organized, goal-oriented support, the Federal Government will play a pivotal role in keeping the United States at the forefront of this discipline.

It is estimated that nanotechnology will become a trillion-dollar industry over the next 10 years. With the Nation's unemployment still high and real economic recovery still out of reach, nanotechnology holds the promise of new trade and jobs needed to jump start the economy. As the nanotechnology industry grows, the ranks of skilled workers needed to discover and apply its capabilities must grow too. In the nanotechnology revolution, areas of high unemployment could become magnets for domestic production, engineering and research for nanotechnology applications. I am determined that the United States will mine the opportunities of nanotechnology and this legislation will ensure that the United States takes full advantage of the opportunities nanotechnology presents.

Our Nation's current National Nanotechnology Initiative is a step in the right direction. This nation has already committed substantial funds to nanotechnology research and development in the coming years. But funding is not enough. There must be careful planning to make sure that money is used for sound science over the long-term. That is the reason for the substitute amendment to S. 189 I introduce today. The strategic planning it prescribes will ensure that scientists get the support they need to realize nanotechnology's greatest potential.

With this bill, Congress is challenging the government to accept new responsibilities in promoting and developing nanotechnology. Again, I thank the House Science Committee and House Science Chairman BOEHLERT for their cooperation and I thank the other cosponsors, Senators ALEXANDER, WARNER, MIKULSKI, LANDRIEU, LEVIN, BAYH, CANTWELL, CORZINE, HUTCHISON, KERRY, LAUTENBERG, BAUCUS, and

ROCKEFELLER, for their valuable assistance. I am also pleased to report that this amendment has the support of nanotechnology industry members, such as the Nano Business Alliance. This amended version is the work of bipartisan and bi-cameral cooperation and I look forward to working with my colleagues to get this to the President's desk.

INCLUSION OF BIOTECHNOLOGY

Mr. WYDEN. Mr. President, I rise to clarify the legislative intent of S. 189, the 21st Century Nanotechnology Research and Development Act. In reviewing the section of the substitute text dealing with the purpose and definitions of fundamental research in nanotechnology that our bill references, I believe that they are not intended to limit research and development to the physical sciences and are intended to include a wide variety of research, including the biotechnology-nanotechnology interface. Senator STEVENS, is that your reading of this legislation?

Mr. STEVENS. I agree with the Senator from Oregon. It is our intention to include research into the biotechnology-nanotechnology interface. We did not mention specific areas or research because we did not intend to be overly restrictive.

Mr. WYDEN. I would just like to take a moment to clarify some of the types of nanotechnology applications that are possible through the research involving biotechnology at the nanolevel, which are encompassed by this legislation These examples include applications ranging from industrial manufacturing to advances in medicine to breakthroughs in defense against bioterrorism.

For instance, biotechnology is spurring the development of proteins that will be capable of manufacturing biological structures on the nano-scale. This technology will allow the development of nano-electronics such as micro-transistors and silicon chips. In the area of photonics there is potential for developing new micro-optical switches and optical micro-processing platforms.

Researchers recently discovered a first of its kind carbon-silicon compound in freshwater diatoms. This discovery promises to open the door to understanding the molecular process of biosilicification, or the ways plants and animals build natural structures. This understanding may lead to applications ranging from low cost synthesis of advanced biomaterials to new treatments for osteoporosis.

These are only a few examples of advances made through the interface between biotechnology and nanotechnology. I just want to confirm this legislation should help facilitate the synergy between the biological sciences and material sciences.

Mr. STEVENS. These examples are exactly the type of research that we have intended to cover in this legislation. Beyond industrial applications there are many health care applications of nano-biotechnology.

I am particularly excited about the potential for nanotechnology in the area of systems biology and molecular imaging. Systems biology analyzes all of the elements in a system, rather than an individual cell, gene or protein. By applying nanotechnology to systems biology and using molecular imaging, it will be possible to achieve ultra-rapid diagnostic results by analyzing on a molecular level the signatures of thousands of genes and proteins. Moreover, the systems approach in combination with nanotechnology will speed up and greatly reduce the cost of discovering new drugs. This will lead to the advancement of predictive medicine generating revolutions in the diagnosis, treatment and prevention of disease.

Given nanotechnology's tremendous potential in health care, I want to encourage the National Institutes of Health (NIH) to be proactive participants in the nanotechnology revolution. Although a specific authorization of appropriations for NIH is not included in this bill at the request of our House colleagues, it is expected that NIH will be an active participant in the National Nanotechnology Program.

Mr. WYDEN. I thank the distinguished Senator from Alaska for clarification of this matter and I wholeheartedly agree with him regarding the potential benefits of nanotechnology in the field of health care.

Mr. SUNUNU. Mr. President, this legislation is the product of many, many hours of debate and discussion. I appreciate the commitment of the Chairman of the Commerce Committee, Senator MCCAIN, and the sponsors of the bill, Senators WYDEN and ALLEN, to try to address my concerns and accommodate my views on this bill. I appreciate the indulgence of the Ranking Member, Senator HOLLINGS, for his understanding and assistance on this bill. Through persistence and thoughtful consideration by a handful of interested Members in both bodies, an agreement was reached on a legislative package that has brought us to this stage of the process. While I still have significant reservations, I am willing to allow the bill to proceed forward.

Nanotechnology is a burgeoning field of inquiry that has captured the interest of many of our nation's brightest scientific minds. While the concepts behind the study of nanotechnology are not necessarily new, recent successes have highlighted its enormous potential. If early experiences are an indication of things to come, nanotechnology has the capability to dramatically change our approach to a wide range of complex scientific problems. By understanding materials and compounds at the molecular or atomic level, scientists can develop techniques to improve the properties of everything from medicines to metals; machines to microchips.

S. 189 is meant to complement, rather than restrain, the work that the Bush administration is already doing on the issue of nanotechnology. This administration is deeply committed to expending the resources and conducting research on critical areas of nanotechnology and nanoscale science and engineering. The administration's "National Nanotechnology Initiative" is on track to commit almost $900 million in FY 2004 for nanotechnology research within appropriate Federal agencies. In addition, the administration has already established a National Nanotechnology Coordination Office to facilitate and coordinate the muli-agency effort. It is essential that S. 189 not infringe on the good work already being done by the administration on this issue or on the near- or mid-term plans for further work in this area.

Despite this progress, I have several concerns about the underlying text of the managers' amendment, and for that matter, the original version of S. 189. I firmly believe that oversight is an important function of the Senate, and an important part of that oversight is to ensure that Federal funds are spent appropriately. However the Managers' Amendment creates redundant reporting requirements for various agencies within the Administration. By my count, the bill includes annual, biennial and triennial reporting obligations by the National Science and Technology Council, the National Nanotechnology Advisory Panel, and the National Academy of Sciences, respectively. These reports have a number of overlapping components that will result in the checking and rechecking of similar questions and issues. It is important to note that Congressional studies and reporting requirements impose very significant costs on the reporting agencies, thereby draining funds from the very projects and research we are trying to fund.

S. 189 also authorizes the establishment of several interdisciplinary and specialized research centers on nanotechnology. The language of the bill requires that the process for establishing these centers be on a merit-reviewed and competitive basis. Let me serve notice to those involved in the establishment of these centers: I will work to ensure that any center established pursuant to this bill be placed at the most appropriate setting possible. I know this sentiment is shared by the Chairman of the Commerce Committee and other Members of the Senate, and I look forward to working with them to ensure that the principles of merit-review and competitive basis are upheld.

Finally, let me mention that there are concerns expressed by individuals within the academic and scientific communities and by general citizens that research and development of nanotechnology could possibly spiral out of control leading to the harmful impacts on humans. Some people have expressed concern that nanotechnology will lead to a super-race of humans or a situation where nano-machines attack or even dominate human beings. Others argue that there are uncertainties about the impact of nanotechnologies on important aspects of our daily lives, including our society, environment, ethics, educational systems, legal structure or workforce. While I do not dismiss the possible negative ramifications of the study and realization of nanotechnology, I believe those possible dangers are remote and avoidable. Almost all scientific research or new technology can be used for mischievous purposes. Moreover, there are potential implications by the use of nanotechnology that should be examined as part of research projects and development stages of nanotechnology. However, the emphasis that S. 189 provides to these issues is more than I would have considered necessary. We cannot and should not fear the technological future; we should pay it proper respect and plan for it accordingly.

In closing, it is my understanding that the product of today's Senate work on this bill will likely be taken up and passed by the House and sent to the President for his consideration. I look forward to the multiple advances that will occur from the statutory framework provided under this bill. Our action today will signal to the research community the importance and significance we place on this field of study, and this will spur further investment by the private sector and hopefully lead to the technological breakthrough that will ignite further innovation and economic growth.

Mr. LIEBERMAN. Mr. President, the emerging field of nanotechnology constitutes an opportunity for the U.S. to claim global leadership in a new frontier in science and technology that has the potential to transform every aspect of our lives. By manipulating matter at a molecular scale, nanotechnology will allow us to develop new materials and devices that have unique properties currently beyond the realm of conventional technology. Nanotechnology is what scientists and technologists often call an enabling technology—a tool that opens the door to new possibilities constrained only by physics and the limits of our imaginations. This field has the great potential to affect our economy and quality of life since it has such broad prospective applications in so many different areas including medicine, electronics, energy, telecommunications, computing, and manufacturing. It has been estimated that the impact of nanotechnology on existing and new manufacturing will be in the trillions of dollars. In addition to creating new job opportunities, this exciting new initiative has the potential to provide novel therapeutic treatments and a fundamental understanding of diseases including cancer. For example, research in building innovative tools to study biology at the nanometer scale will unlock mysteries and shed light on the vast number of biological processes. The new authorizing legislation the Senate is passing today, which I am pleased to have played a role in, should be an important step in this effort.

Yet, despite the enormous potential that nanotechnology offers, it is not an area in which we have assumed uncontested leadership. From an international perspective, the United States faces the danger of falling behind its Asian and European counterparts in supporting the pace of nanotechnological advancement. While our Nation certainly possesses the raw resources and talent to lead the world in developing this technology, it is also clear that a long-term focus and sustained commitment, as well as new collaboration between Government, academia, and industry, will be needed to ensure our place at the head of the next wave of innovation.

In recognition of the need to support ongoing nanotechnology efforts and to spur new ones, I was pleased to join Senator RON WYDEN in cosponsoring the original "21st Century Nanotechnology Research and Development Act" last year, which was reintroduced this year S. 189. My staff worked with the Commerce Committee on the initial drafting of this bill, and I was able to assist in including parallel legislation in last year's defense authorization P.L. 107–314, section 246 to help assure that Department of Defense research and development in nanotechnology works in concert with the civilian agencies covered by this bill. Much of the original Senate bill is retained in this final legislation. The revised S. 189 legislation we act on today, which we anticipate will also soon be approved by the House, will build on the efforts of the National Nanotechnology Initiative NNI, which was started under President Clinton and has received continued support under President Bush, to establish a comprehensive, intelligently coordinated program for addressing the full spectrum of challenges confronting a successful national science and technology effort, including those related to funding, coordination, infrastructure development, technology transition, and social issues.

The time is now ripe to elevate the U.S. nanotechnology effort beyond the level of an Executive Branch initiative. Funding for nanotechnology will soon reach $1 billion a year, and the NNI currently attempts to coordinate programs across a wide range of Federal agencies and departments. This level of funding and the major coordination challenges that arise with so many diverse participants require having a program that is based in statute, provided with greater support and coordination mechanisms, afforded a higher profile, and subjected to constructive Congressional oversight and support.

The final legislation closely tracks many of the recommendations of the National Research Council, NRC, which completed a thorough review of the NNI in 2002. The NRC report commended the leadership and multi-agency involvement of the NNI, and its recommendations included the establishment of an independent advisory panel. As the field of nanotechnology covers a wide variety of disciplines including engineering, physics, chemistry and life sciences, guidance is needed from a panel composed of experts from each of the disciplines. A comprehensive perspective is necessary for helping to set the directions and goals of the national program, including advice on the focus of research that should be conducted in the academia sector, as well as assistance in the transition of technology from academic into the private sector that will ensure the competitiveness of U.S. industry. Although members of the Presidents Council of Advisors on Science and Technology, PCAST, which the President is likely to select as the advisory body under section 4 in the final bill, are highly accomplished and esteemed, they are not necessarily steeped in the field of nanotechnology. Therefore, our expectation is that PCAST will set up its own nanotechnology panel composed of experts from both academia and industry representing the key nanotechnology disciplines. This independent panel should work in coordination with the National Science and Technology Council and the new Program Office, particularly across stove piped agency boundaries to better assure a fully integrated, crosscutting, interdisciplinary research effort. Otherwise, the promise of this research will not be realized.

To ensure that the United States takes the lead in this new and promising field of science and technology, we must provide for the organization and guidance necessary to foster interaction between Government, academia, and industry, so as to maximize the potential benefits of nanotechnology to our economy. This legislation provides a strong foundation and comprehensive framework that elicits contributions from all three sectors of our society in pushing nanotechnology research and development to the next level. I hope that we may all work together in a bipartisan fashion on implementing this bill to set the stage for U.S. economic growth over the next century.

Mrs. CLINTON. Mr. President, as an original co-sponsor of S. 189, the 21st

Century Nanotechnology Research and Development Act, I am delighted that the Senate is acting on this important legislation. I want to thank my Senate colleagues, particularly Senator HOLLINGS and Senator WYDEN. Senator HOLLINGS' leadership on the Senate Commerce, Science and Transportation Committee was essential in winning the passage of this legislation, which has so much promise for New Yorkers and Americans generally. Senator WYDEN has helped to shepherd this legislation through the Senate with his customary vision, determination and skill.

In ten or twenty years, we may well view this legislation as one of the most important bills passed by the 108th Congress. The bill provides multi-year authorization for increased Federal research and development investment in nanotechnology. Experts believe that nanotechnology could have an impact on our economy and society as significant as the impact of the steam engine, electricity, the Internet, and the computer chip. Researchers and high-tech start-ups have already identified many potential benefits and applications of nanotechnology in health, energy and the environment, information and communications technology, advanced materials, manufacturing, and national security. It is possible that nanotechnology could lead to solar energy that is competitive with fossil fuels. Medical researchers are already working on using nanotechnology to develop tools for the diagnosis and therapy of cancer.

In addition to funding research in nanoscale science and engineering, the legislation also supports exploration of the ethical and social dimensions of nanotechnology. I want to underline the importance of this component of the legislation. These provisions are intended to help ensure that we use this information to make intelligent decisions about the benefits and risks of this powerful new technology. We have a responsibility to ensure that appropriate safeguards are placed on the exploration of nanoscience and technology and that Congress exercises effective oversight of this process. I will work hard with my colleagues to ensure that Congress does its part.

I am proud to say that New York is playing a leading role in the development of nanotechnology, and is already seeing concrete benefits from the National Nanotechnology Initiative. Three of the six university-based centers of nanotechnology funded by the National Science Foundation in 2001 are located at New York's world-class research centers at Cornell University, Columbia University and Rennselaer Polytechnic Institute. Long Island's Brookhaven National Laboratory is the future home of the Center for Functional Nanomaterials, supported by the Department of Energy. The State of New York and International SEMATECH and its member companies are planning to provide approximately $400 million in support to create a next-generation computer chip research and development facility at the University at Albany-SUNY. All of these investments are creating the foundations for future economic growth and the creation of high-tech, high-wage jobs, including in upstate New York.

The 21st Century Nanotechnology Research and Development Act shows what this Nation is capable of when we come together and set aside partisan differences. The National Nanotechnology Initiative was launched by President Clinton in January 2000, and has continued to enjoy bipartisan support from President Bush and members of Congress.

I urge my colleagues to continue to pay attention to nanotechnology after this legislation is passed. In many respects, this legislation is only the first step. As President Clinton noted when unveiling the National Nanotechnology Initiative, realizing the full promise of this technology may take twenty years of sustained investment. America's lead in this critical technology is by no means assured. Moreover, this legislation will not result in an extra dime being devoted to nanotechnology research, unless the legislation is followed by steadfast support for federal research and development in the budget and appropriations process.

I hope that the Administration and the Congress look for ways to build on and strengthen the current initiative. I believe that there are many such opportunities. The National Institutes of Health have targeted a relatively modest amount of funding for the NNI, despite the broad range of nanotechnology applications for health and biology. In addition, I hope we can increase the Environmental Protection Agency's budget for nanotechnology because it has a role to play in a variety of settings, including pollution prevention. We should also explore ways to respond to calls for the development of clean sources of energy using nanotechnology.

This legislation is a bold step in the direction of creating a brighter and more prosperous future for all Americans. In the years ahead, I look forward to continue working with my colleagues on both sides of the aisle to ensure the full development of this important initiative.

Mr. BINGAMAN. Mr. President, I rise to support the passage of S. 189, the 21st Century Nanotechnology Research and Development Act. I appreciate Senator WYDEN's leadership on this issue and the cooperation of him and the other sponsors of this legislation in responding to a number of concerns I had with the original bill, and in particular with the provisions of the bill authorizing programs at the U.S. Department of Energy. In the last Congress, I introduced legislation on this topic, S. 90, which was referred to the Committee on Energy and Natural Resources. That bill provided authorizations for nanotechnology programs in the Department of Energy which are now incorporated, in a streamlined form, in this bill. This is a good bill for our country's high technology future, and I urge that it be passed.

Mr. REID. Mr. President, I make the following parliamentary inquiry: This bill, which deals with nanotechnology programs across the Federal Government, was referred to the Committee on Commerce, Science and Transportation. It is not true the Senate procedures provide for a case in which a future bill amending a particular public law might be referred to a different committee than the one originally assigned the public law, if that future bill consisted of amendments to parts of the public law that were in the jurisdiction of the different committee; is that true?

The PRESIDING OFFICER. That is correct.

Mr. REID. I thank the Chair.

Mr. FRIST. Mr. President, I ask unanimous consent that the Allen-Wyden amendment at the desk be agreed to, the committee-reported substitute amendment, as amended, be agreed to, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2202) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments".)

The committee amendment, as amended, was agreed to.

The bill (S. 189), as amended, was read the third time and passed, as follows:

S. 189

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "21st Century Nanotechnology Research and Development Act".

SEC. 2. NATIONAL NANOTECHNOLOGY PROGRAM.

(a) NATIONAL NANOTECHNOLOGY PROGRAM.—The President shall implement a National Nanotechnology Program. Through appropriate agencies, councils, and the National Nanotechnology Coordination Office established in section 3, the Program shall—

(1) establish the goals, priorities, and metrics for evaluation for Federal nanotechnology research, development, and other activities;

(2) invest in Federal research and development programs in nanotechnology and related sciences to achieve those goals; and

(3) provide for interagency coordination of Federal nanotechnology research, development, and other activities undertaken pursuant to the Program.

(b) Program Activities.—The activities of the Program shall include—

(1) developing a fundamental understanding of matter that enables control and manipulation at the nanoscale;

(2) providing grants to individual investigators and interdisciplinary teams of investigators;

(3) establishing a network of advanced technology user facilities and centers;

(4) establishing, on a merit-reviewed and competitive basis, interdisciplinary nanotechnology research centers, which shall—

(A) interact and collaborate to foster the exchange of technical information and best practices;

(B) involve academic institutions or national laboratories and other partners, which may include States and industry;

(C) make use of existing expertise in nanotechnology in their regions and nationally;

(D) make use of ongoing research and development at the micrometer scale to support their work in nanotechnology; and

(E) to the greatest extent possible, be established in geographically diverse locations, encourage the participation of Historically Black Colleges and Universities that are part B institutions as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)) and minority institutions (as defined in section 365(3) of that Act (20 U.S.C. 1067k(3))), and include institutions located in States participating in the Experimental Program to Stimulate Competitive Research (EPSCoR);

(5) ensuring United States global leadership in the development and application of nanotechnology;

(6) advancing the United States productivity and industrial competitiveness through stable, consistent, and coordinated investments in long-term scientific and engineering research in nanotechnology;

(7) accelerating the deployment and application of nanotechnology research and development in the private sector, including startup companies;

(8) encouraging interdisciplinary research, and ensuring that processes for solicitation and evaluation of proposals under the Program encourage interdisciplinary projects and collaborations;

(9) providing effective education and training for researchers and professionals skilled in the interdisciplinary perspectives necessary for nanotechnology so that a true interdisciplinary research culture for nanoscale science, engineering, and technology can emerge;

(10) ensuring that ethical, legal, environmental, and other appropriate societal concerns, including the potential use of nanotechnology in enhancing human intelligence and in developing artificial intelligence which exceeds human capacity, are considered during the development of nanotechnology by—

(A) establishing a research program to identify ethical, legal, environmental, and other appropriate societal concerns related to nanotechnology, and ensuring that the results of such research are widely disseminated;

(B) requiring that interdisciplinary nanotechnology research centers established under paragraph (4) include activities that address societal, ethical, and environmental concerns;

(C) insofar as possible, integrating research on societal, ethical, and environmental concerns with nanotechnology research and development, and ensuring that advances in nanotechnology bring about improvements in quality of life for all Americans; and

(D) providing, through the National Nanotechnology Coordination Office established in section 3, for public input and outreach to be integrated into the Program by the convening of regular and ongoing public discussions, through mechanisms such as citizens' panels, consensus conferences, and educational events, as appropriate; and

(11) encouraging research on nanotechnology advances that utilize existing processes and technologies.

(c) Program Management.—The National Science and Technology Council shall oversee the planning, management, and coordination of the Program. The Council, itself or through an appropriate subgroup it designates or establishes, shall—

(1) establish goals and priorities for the Program, based on national needs for a set of broad applications of nanotechnology;

(2) establish program component areas, with specific priorities and technical goals, that reflect the goals and priorities established for the Program;

(3) oversee interagency coordination of the Program, including with the activities of the Defense Nanotechnology Research and Development Program established under section 246 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314) and the National Institutes of Health;

(4) develop, within 12 months after the date of enactment of this Act, and update every 3 years thereafter, a strategic plan to guide the activities described under subsection (b), meet the goals, priorities, and anticipated outcomes of the participating agencies, and describe—

(A) how the Program will move results out of the laboratory and into application for the benefit of society;

(B) the Program's support for long-term funding for interdisciplinary research and development in nanotechnology; and

(C) the allocation of funding for interagency nanotechnology projects;

(5) propose a coordinated interagency budget for the Program to the Office of Management and Budget to ensure the maintenance of a balanced nanotechnology research portfolio and an appropriate level of research effort;

(6) exchange information with academic, industry, State and local government (including State and regional nanotechnology programs), and other appropriate groups conducting research on and using nanotechnology;

(7) develop a plan to utilize Federal programs, such as the Small Business Innovation Research Program and the Small Business Technology Transfer Research Program, in support of the activity stated in subsection (b)(7);

(8) identify research areas that are not being adequately addressed by the agencies' current research programs and address such research areas;

(9) encourage progress on Program activities through the utilization of existing manufacturing facilities and industrial infrastructures such as, but not limited to, the employment of underutilized manufacturing facilities in areas of high unemployment as production engineering and research testbeds; and

(10) in carrying out its responsibilities under paragraphs (1) through (9), take into consideration the recommendations of the Advisory Panel, suggestions or recommendations developed pursuant to subsection (b)(10)(D), and the views of academic, State, industry, and other appropriate groups conducting research on and using nanotechnology.

(d) Annual Report.—The Council shall prepare an annual report, to be submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science, and other appropriate committees, at the time of the President's budget request to Congress, that includes—

(1) the Program budget, for the current fiscal year, for each agency that participates in the Program, including a breakout of spending for the development and acquisition of research facilities and instrumentation, for each program component area, and for all activities pursuant to subsection (b)(10);

(2) the proposed Program budget for the next fiscal year, for each agency that participates in the Program, including a breakout of spending for the development and acquisition of research facilities and instrumentation, for each program component area, and for all activities pursuant to subsection (b)(10);

(3) an analysis of the progress made toward achieving the goals and priorities established for the Program;

(4) an analysis of the extent to which the Program has incorporated the recommendations of the Advisory Panel; and

(5) an assessment of how Federal agencies are implementing the plan described in subsection (c)(7), and a description of the amount of Small Business Innovative Research and Small Business Technology Transfer Research funds supporting the plan.

SEC. 3. PROGRAM COORDINATION.

(a) In General.—The President shall establish a National Nanotechnology Coordination Office, with a Director and full-time staff, which shall—

(1) provide technical and administrative support to the Council and the Advisory Panel;

(2) serve as the point of contact on Federal nanotechnology activities for government organizations, academia, industry, professional societies, State nanotechnology programs, interested citizen groups, and others to exchange technical and programmatic information;

(3) conduct public outreach, including dissemination of findings and recommendations of the Advisory Panel, as appropriate; and

(4) promote access to and early application of the technologies, innovations, and expertise derived from Program activities to agency missions and systems across the Federal Government, and to United States industry, including startup companies.

(b) Funding.—The National Nanotechnology Coordination Office shall be funded through interagency funding in accordance with section 631 of Public Law 108–7.

(c) Report.—Within 90 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall report to the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Science on the funding of the National Nanotechnology Coordination Office. The report shall include—

(1) the amount of funding required to adequately fund the Office;

(2) the adequacy of existing mechanisms to fund this Office; and

(3) the actions taken by the Director to ensure stable funding of this Office.

SEC. 4. ADVISORY PANEL.

(a) In General.—The President shall establish or designate a National Nanotechnology Advisory Panel.

(b) Qualifications.—The Advisory Panel established or designated by the President under subsection (a) shall consist primarily of members from academic institutions and industry. Members of the Advisory Panel shall be qualified to provide advice and information on nanotechnology research, development, demonstrations, education, technology transfer, commercial application, or societal and ethical concerns. In selecting or designating an Advisory Panel, the President may also seek and give consideration to recommendations from the Congress, industry, the scientific community (including the National Academy of Sciences, scientific professional societies, and academia), the defense community, State and local governments, regional nanotechnology programs, and other appropriate organizations.

(c) Duties.—The Advisory Panel shall advise the President and the Council on matters relating to the Program, including assessing—

(1) trends and developments in nanotechnology science and engineering;

(2) progress made in implementing the Program;

(3) the need to revise the Program;

(4) the balance among the components of the Program, including funding levels for the program component areas;

(5) whether the program component areas, priorities, and technical goals developed by the Council are helping to maintain United States leadership in nanotechnology;

(6) the management, coordination, implementation, and activities of the Program; and

(7) whether societal, ethical, legal, environmental, and workforce concerns are adequately addressed by the Program.

(d) Reports.—The Advisory Panel shall report, not less frequently than once every 2 fiscal years, to the President on its assessments under subsection (c) and its recommendations for ways to improve the Program. The first report under this subsection shall be submitted within 1 year after the date of enactment of this Act. The Director of the Office of Science and Technology Policy shall transmit a copy of each report under this subsection to the Senate Committee on Commerce, Science, and Technology, the House of Representatives Committee on Science, and other appropriate committees of the Congress.

(e) Travel Expenses of Non-Federal Members.—Non-Federal members of the Advisory Panel, while attending meetings of the Advisory Panel or while otherwise serving at the request of the head of the Advisory Panel away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the government serving without pay. Nothing in this subsection shall be construed to prohibit members of the Advisory Panel who are officers or employees of the United States from being allowed travel expenses, including per diem in lieu of subsistence, in accordance with existing law.

(f) Exemption From Sunset.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Panel.

SEC. 5. TRIENNIAL EXTERNAL REVIEW OF THE NATIONAL NANOTECHNOLOGY PROGRAM.

(a) In General.—The Director of the National Nanotechnology Coordination Office shall enter into an arrangement with the National Research Council of the National Academy of Sciences to conduct a triennial evaluation of the Program, including—

(1) an evaluation of the technical accomplishments of the Program, including a review of whether the Program has achieved the goals under the metrics established by the Council;

(2) a review of the Program's management and coordination across agencies and disciplines;

(3) a review of the funding levels at each agency for the Program's activities and the ability of each agency to achieve the Program's stated goals with that funding;

(4) an evaluation of the Program's success in transferring technology to the private sector;

(5) an evaluation of whether the Program has been successful in fostering interdisciplinary research and development;

(6) an evaluation of the extent to which the Program has adequately considered ethical, legal, environmental, and other appropriate societal concerns;

(7) recommendations for new or revised Program goals;

(8) recommendations for new research areas, partnerships, coordination and management mechanisms, or programs to be established to achieve the Program's stated goals;

(9) recommendations on policy, program, and budget changes with respect to nanotechnology research and development activities;

(10) recommendations for improved metrics to evaluate the success of the Program in accomplishing its stated goals;

(11) a review of the performance of the National Nanotechnology Coordination Office and its efforts to promote access to and early application of the technologies, innovations, and expertise derived from Program activities to agency missions and systems across the Federal Government and to United States industry;

(12) an analysis of the relative position of the United States compared to other nations with respect to nanotechnology research and development, including the identification of any critical research areas where the United States should be the world leader to best achieve the goals of the Program; and

(13) an analysis of the current impact of nanotechnology on the United States economy and recommendations for increasing its future impact.

(b) Study on Molecular Self-Assembly.—As part of the first triennial review conducted in accordance with subsection (a), the National Research Council shall conduct a one-time study to determine the technical feasibility of molecular self-assembly for the manufacture of materials and devices at the molecular scale.

(c) Study on the Responsible Development of Nanotechnology.—As part of the first triennial review conducted in accordance with subsection (a), the National Research Council shall conduct a one-time study to assess the need for standards, guidelines, or strategies for ensuring the responsible development of nanotechnolgy, including, but not limited to—

(1) self-replicating nanoscale machines or devices;

(2) the release of such machines in natural environments;

(3) encryption;

(4) the development of defensive technologies;

(5) the use of nanotechnology in the enhancement of human intelligence; and

(6) the use of nanotechnology in developing artificial intelligence.

(d) Evaluation to be Transmitted to Congress.—The Director of the National Nanotechnology Coordination Office shall transmit the results of any evaluation for which it made arrangements under subsection (a) to the Advisory Panel, the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science upon receipt. The first such evaluation shall be transmitted no later than June 10, 2005, with subsequent evaluations transmitted to the Committees every 3 years thereafter.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) National Science Foundation.—There are authorized to be appropriated to the Director of the National Science Foundation to carry out the Director's responsibilities under this Act—

(1) $385,000,000 for fiscal year 2005;

(2) $424,000,000 for fiscal year 2006;

(3) $449,000,000 for fiscal year 2007; and

(4) $476,000,000 for fiscal year 2008.

(b) Department of Energy.—There are authorized to be appropriated to the Secretary of Energy to carry out the Secretary's responsibilities under this Act—

(1) $317,000,000 for fiscal year 2005;

(2) $347,000,000 for fiscal year 2006;

(3) $380,000,000 for fiscal year 2007; and

(4) $415,000,000 for fiscal year 2008.

(c) National Aeronautics and Space Administration.—There are authorized to be appropriated to the Administrator of the National Aeronautics and Space Administration to carry out the Administrator's responsibilities under this Act—

(1) $34,100,000 for fiscal year 2005;

(2) $37,500,000 for fiscal year 2006;

(3) $40,000,000 for fiscal year 2007; and

(4) $42,300,000 for fiscal year 2008.

(d) National Institute of Standards and Technology.—There are authorized to be appropriated to the Director of the National Institute of Standards and Technology to carry out the Director's responsibilities under this Act—

(1) $68,200,000 for fiscal year 2005;

(2) $75,000,000 for fiscal year 2006;

(3) $80,000,000 for fiscal year 2007; and

(4) $84,000,000 for fiscal year 2008.

(e) Environmental Protection Agency.—There are authorized to be appropriated to the Administrator of the Environmental Protection Agency to carry out the Administrator's responsibilities under this Act—

(1) $5,500,000 for fiscal year 2005;

(2) $6,050,000 for fiscal year 2006;

(3) $6,413,000 for fiscal year 2007; and

(4) $6,800,000 for fiscal year 2008.

SEC. 7. DEPARTMENT OF COMMERCE PROGRAMS.

(a) NIST Programs.—The Director of the National Institute of Standards and Technology shall—

(1) as part of the Program activities under section 2(b)(7), establish a program to conduct basic research on issues related to the development and manufacture of nanotechnology, including metrology; reliability and quality assurance; processes control; and manufacturing best practices; and

(2) utilize the Manufacturing Extension Partnership program to the extent possible to ensure that the research conducted under paragraph (1) reaches small- and medium-sized manufacturing companies.

(b) Clearinghouse.—The Secretary of Commerce or his designee, in consultation with the National Nanotechnology Coordination Office and, to the extent possible, utilizing resources at the National Technical

Information Service, shall establish a clearinghouse of information related to commercialization of nanotechnology research, including information relating to activities by regional, State, and local commercial nanotechnology initiatives; transition of research, technologies, and concepts from Federal nanotechnology research and development programs into commercial and military products; best practices by government, universities and private sector laboratories transitioning technology to commercial use; examples of ways to overcome barriers and challenges to technology deployment; and use of manufacturing infrastructure and workforce.

SEC. 8. DEPARTMENT OF ENERGY PROGRAMS.

(a) RESEARCH CONSORTIA.—

(1) DEPARTMENT OF ENERGY PROGRAM.—The Secretary of Energy shall establish a program to support, on a merit-reviewed and competitive basis, consortia to conduct interdisciplinary nanotechnology research and development designed to integrate newly developed nanotechnology and microfluidic tools with systems biology and molecular imaging.

(2) AUTHORIZATION OF APPROPRIATIONS.—Of the sums authorized for the Department of Energy under section 6(b), $25,000,000 shall be used for each fiscal year 2005 through 2008 to carry out this section. Of these amounts, not less than $10,000,000 shall be provided to at least 1 consortium for each fiscal year.

(b) RESEARCH CENTERS AND MAJOR INSTRUMENTATION.—The Secretary of Energy shall carry out projects to develop, plan, construct, acquire, operate, or support special equipment, instrumentation, or facilities for investigators conducting research and development in nanotechnology.

SEC. 9. ADDITIONAL CENTERS.

(a) AMERICAN NANOTECHNOLOGY PREPAREDNESS CENTER.—The Program shall provide for the establishment, on a merit-reviewed and competitive basis, of an American Nanotechnology Preparedness Center which shall—

(1) conduct, coordinate, collect, and disseminate studies on the societal, ethical, environmental, educational, legal, and workforce implications of nanotechnology; and

(2) identify anticipated issues related to the responsible research, development, and application of nanotechnology, as well as provide recommendations for preventing or addressing such issues.

(b) CENTER FOR NANOMATERIALS MANUFACTURING.—The Program shall provide for the establishment, on a merit reviewed and competitive basis, of a center to—

(1) encourage, conduct, coordinate, commission, collect, and disseminate research on new manufacturing technologies for materials, devices, and systems with new combinations of characteristics, such as, but not limited to, strength, toughness, density, conductivity, flame resistance, and membrane separation characteristics; and

(2) develop mechanisms to transfer such manufacturing technologies to United States industries.

(c) REPORTS.—The Council, through the Director of the National Nanotechnology Coordination Office, shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science—

(1) within 6 months after the date of enactment of this Act, a report identifying which agency shall be the lead agency and which other agencies, if any, will be responsible for establishing the Centers described in this section; and

(2) within 18 months after the date of enactment of this Act, a report describing how the Centers described in this section have been established.

SEC. 10. DEFINITIONS.

In this Act:

(1) ADVISORY PANEL.—The term "Advisory Panel" means the President's National Nanotechnology Advisory Panel established or designated under section 4.

(2) NANOTECHNOLOGY.—The term "nanotechnology" means the science and technology that will enable one to understand, measure, manipulate, and manufacture at the atomic, molecular, and supramolecular levels, aimed at creating materials, devices, and systems with fundamentally new molecular organization, properties, and functions.

(3) PROGRAM.—The term "Program" means the National Nanotechnology Program established under section 2.

(4) COUNCIL.—The term "Council" means the National Science and Technology Council or an appropriate subgroup designated by the Council under section 2(c).

(5) ADVANCED TECHNOLOGY USER FACILITY.—The term "advanced technology user facility" means a nanotechnology research and development facility supported, in whole or in part, by Federal funds that is open to all United States researchers on a competitive, merit-reviewed basis.

(6) PROGRAM COMPONENT AREA.—The term "program component area" means a major subject area established under section 2(c)(2) under which is grouped related individual projects and activities carried out under the Program.

AMENDING THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Mr. FRIST. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 23, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 23) to amend the Housing and Community Development Act of 1974 to authorize communities to use community development block grant funds for construction of tornado-safe shelters in manufactured parks.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider laid upon table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 23) was read the third time and passed.

MEASURES DISCHARGED—H.R. 2744, H.R. 3379, AND H.R. 3175

Mr. FRIST. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of the following post office-naming bills, and the Senate proceed to their immediate consideration, en bloc: H.R. 2744, H.R. 3379, H.R. 3175.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I ask unanimous consent that the bills be read the third time and passed, the motions to reconsider be laid on the table en bloc, and that any statements relating to the bills be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

DAVID BYBEE POST OFFICE BUILDING

The bill (H.R. 2744) to designate the facility of the United States Postal Service located at 514 17th Street in Moline, Illinois, as the "David Bybee Post Office Building," was considered, ordered to a third reading, read the third time, and passed.

FRANCIS X. McCLOSKEY POST OFFICE BUILDING

The bill (H.R. 3379) to designate the facility of the United States Postal Service located at 3210 East 10th Street in Bloomington, Indiana, as the "Francis X. McCloskey Post Office Building," was considered, ordered to a third reading, read the third time, and passed.

RICHARD D. WATKINS POST OFFICE BUILDING

The bill (H.R. 3175) to designate the facility of the United States Postal Service located at 2650 Cleveland Avenue, NW in Canton, Ohio, as the "Richard D. Watkins Post Office Building," was considered, ordered to a third reading, read the third time, and passed.

ORDERS FOR WEDNESDAY, NOVEMBER 19, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Wednesday, November 19. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period for morning business for up to 60 minutes, with the first 30 minutes under the control of the minority leader or his designee, and the second 30 minutes under the control of Senator HUTCHISON or her designee.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. If I may say through the Chair to the distinguished majority leader, on our side we are ready to finish the session. We understand we will have to work Saturday, Sunday, and hopefully we will finish then; otherwise, we will go Monday and Tuesday. Everyone has been told that is what we are going to do. Even though there is a little grumbling, everyone has accepted the fact that is what we are going to have to do.

I hope everyone understands the decision made by the leadership—we need to make sure everyone has a chance to be heard—but we have to have cooperation to get this very difficult session completed. We have some very important issues—the Energy bill, Medicare—and I hope everyone understands the time is limited.

As I say, we have signed on to the program, and we are willing to work until we finish the business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I very much appreciate the statement made by the assistant Democratic leader. What he is referring to will be ambitious in the sense we are asking both sides of the aisle to work together to address a number of pieces of legislation that are very important to this body and very important to the American people.

We have agreed we will be here over the course of this week and, if necessary, into the weekend so that we can complete the bills before us. One of the reasons we are here at this hour of the evening is that I was hopeful we could proceed with the Energy bill. For a number of reasons, we will wait and start that early in the morning after morning business.

The leaders on both sides of the aisle have been in touch over the course of the day, and both are determined to proceed in an orderly way, a collaborative way to address the issues that will be coming before us over the next several days.

PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, tomorrow, following morning business, the Senate may begin consideration of the Energy Policy Act conference report. The official conference papers have now arrived and copies will be available to all Members. If we are unable to reach consent for a time limit on the Energy conference report, it may be necessary to file cloture during tomorrow's session.

The Senate may also take up other conference reports as they become available and nominations on the Executive Calendar during tomorrow's session. Therefore, rollcall votes should be expected tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:20 p.m., adjourned until Wednesday, November 19, 2003, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 18, 2003:

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ROBERT T. CLARK

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. VICTOR E. RENUART, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. RICHARD V. REYNOLDS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. CHARLES L. JOHNSON II

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10 U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. GARRY R. TREXLER

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. FRANKLIN L. HAGENBECK

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. JOSEPH L. YAKOVAC, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. DAVID W. BARNO

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. TONY L. CORWIN
BRIG. GEN. JON A. GALLINETTI
BRIG. GEN. THOMAS L. MOORE, JR.

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. JOHN R. ALLEN
COL. THOMAS L. CONANT
COL. JOSEPH V. MEDINA
COL. ROBERT E. SCHMIDLE, JR.
COL. THOMAS D. WALDHAUSER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. JAMES L. WILLIAMS

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) MICHAEL K. LOOSE
REAR ADM. (LH) ROBERT L. PHILLIPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral

REAR ADM. (LH) ROBERT RYLAND PERCY III

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. HENRY B. TOMLIN III

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. GARY A. ENGLE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. MARK A. HUGEL

AIR FORCE NOMINATIONS BEGINNING MARTIN ALEXIS AND ENDING JEROME E. WIZDA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 25, 2003.

AIR FORCE NOMINATION OF MICHAEL A. MANSUETO.

AIR FORCE NOMINATION OF RONALD C. DANIELSON.

AIR FORCE NOMINATION OF JEFFERSON L. SEVERS.

AIR FORCE NOMINATION OF LESA M. WAGNER.

AIR FORCE NOMINATION OF FRANCIS D. POMBAR.

AIR FORCE NOMINATION OF ALAN T. PARMATER.

ARMY NOMINATION OF MICHAEL P. VINLOVE.

ARMY NOMINATIONS BEGINNING DONALD A. BLACK AND ENDING DEBRA S. LONG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 14, 2003.

ARMY NOMINATIONS BEGINNING DOUGLAS B ASHBY AND ENDING TERRY C WASHAM, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 2003.

ARMY NOMINATIONS BEGINNING CURTIS J ALITZ AND ENDING MARSHALL F WILLIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 2003.

ARMY NOMINATIONS BEGINNING DEBRA E BURR AND ENDING JANICE B YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 2003.

ARMY NOMINATIONS BEGINNING LIONEL BAKER AND ENDING WARREN S WONG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 2003.

FOREIGN SERVICE NOMINATIONS BEGINNING ELENA L. BRINEMAN AND ENDING STEPHEN J. HADLEY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 3, 2003.

FOREIGN SERVICE NOMINATIONS BEGINNING KENNETH C. BRILL AND ENDING STEVEN C. TAYLOR, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 3, 2003.

NAVY NOMINATIONS BEGINNING JOHN A ADCOCK, JR. AND ENDING JOSEPH ZULIANI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 2003.

NAVY NOMINATIONS BEGINNING MICHAEL C BECKETTE AND ENDING ROBERT S THOMPSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 2003.

NAVY NOMINATIONS BEGINNING JAMES C TAYLOR AND ENDING JEFFERY S YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 2003.

NAVY NOMINATION OF JEFFREY D. DICKSON.

HOUSE OF REPRESENTATIVES—*Tuesday, November 18, 2003*

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. CHOCOLA).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

HOUSE OF REPRESENTATIVES,
Washington, DC, November 18, 2003.

I hereby appoint the Honorable CHRIS CHOCOLA to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, of one of its clerks, announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 1743. An act to permit reviews of criminal records of applicants for private security officer employment.

The message also announced that Mr. DOMENICI, Mr. SHELBY, Mr. GREGG, Mr. CAMPBELL, Mrs. HUTCHISON, Mr. DEWINE, Mr. INOUYE, Mr. HOLLINGS, Mr. LEAHY, Ms. MIKULSKI, Mr. REID, and Mrs. MURRAY be added as conferees, on the part of the Senate, on the bill (H.R. 2673) "An Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes."

The message also announced that pursuant to Public Law 96–14, as amended, the Chair, on behalf of the Majority Leader, announces the appointment of John M. Falk, of Washington, D.C. to be Chairman of the Congressional Award Board.

MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 25 minutes, and each Member, except the majority leader, the minority leader, or the minority whip, limited to not to exceed 5 minutes, but in no event shall debate continue beyond 10:50 a.m.

The Chair recognizes the gentleman from Arizona (Mr. GRIJALVA) for 5 minutes.

HEALTH CARE EQUALITY AND ACCOUNTABILITY ACT OF 2003

Mr. GRIJALVA. Mr. Speaker, I rise today in support of legislation to improve the health of racial and ethnic minorities in our Nation, the Healthcare Equality and Accountability Act of 2003.

This act will offer Congress the opportunity to begin to close the health care divide and disparity that exists between Americans, a divide that cannot be ignored nor should it be tolerated. The irrefutable facts will be presented today for all of us to see. This disparity is real and this divide exists.

To ignore these facts is tantamount to perpetuating the dual system of health care in our country, separate and unequal, a dual system that too often denies to communities of color, Latinos, Native Americans, African Americans, and Asian Pacific Islanders, the health care access and quality that most Americans enjoy. This pattern of exclusion of people from quality health care is morally wrong and is a significant deterrent to the overall progress of our Nation.

Mr. Speaker, this legislation to address racial and ethnic health disparities in this country would do the following: it would set the elimination of racial and ethnic health disparities as a goal. The elimination of racial and health disparities can and should be a goal for all Americans. The health of all our communities is enhanced when we work to close the health care divide.

It would expand the health care safety net. The lack of health insurance and access to health services result in significant decline of the health status within racial and ethnic minorities communities in this country. The availability, quality, and affordability of health care coverage options and to provide meaningful access to health services must be expanded in cooperation with health care providers and employers in order to successfully address the divide of racial and ethnic health communities and their delivery of health services.

The other point that is, I think, very important for us to consider is that ensuring health care access is in compliance with the civil rights law. Title VI of the 1964 Civil Rights Act and its subsequent amendments provide crucial rights to individuals with limited English proficiency to access federally conducted and supported programs and activities. Limited English proficiency persons should not be inhibited from accessing vital health care services paid by them and their families in their tax dollars.

Finally, Mr. Speaker, I urge my colleagues to join me in endorsing this important bill. An action by Congress long overdue, if we have the will and resources to pursue international adventures—then we should have the same resolve here at home.

CLEARING THE PLATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from Texas (Mr. DELAY) is recognized during morning hour debates.

Mr. DELAY. Mr. Speaker, all year the House has taken on major priorities with an eye towards policy, not politics. And all year we have delivered on our promises to the American people.

We have funded the liberation of Iraq, and now we are quickly turning the democratization of that nation over to its people.

We have reduced the income taxes for every American who pays them, and now the economy is growing and jobs are being created.

And now, after a long year of tireless work with colleagues on both sides of the aisle and both sides of Capitol Hill, the House is poised to meet the top two domestic challenges currently facing the American people: the need for improved health care for American seniors and the need for a comprehensive policy to reshape the consumption, delivery, and conservation of energy.

Now, in both cases we took the time to get the job done right. For instance, the Medicare bill does so much more than merely provide prescription drugs to American seniors, though that alone, frankly, is a monumental achievement. Instead, it strengthens and improves the underlying program, including competitive reforms that will preserve Medicare solvency and prepare it for the retirement of the baby boom generation. Rather than tacking on a new entitlement to an old one, as some advocated, we took on the fundamental problems of the 40-year-old Medicare system and made it a stronger and more flexible program for its diverse beneficiary base. In other words, we serve Medicare's customers, not its bureaucracies.

Mr. Speaker, we brought the same comprehensive approach to the energy mess the American people have been struggling through for over a decade.

☐This symbol represents the time of day during the House proceedings, e.g., ☐1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Our energy solution will increase production of energy and improve its delivery as befitting an Information Age economy.

Our energy solution will also reduce America's dependence on foreign oil, create jobs, spur economic growth, and protect against economic downturns. In both cases, Mr. Speaker, the time is right, the bill is good, the need is absolute, and the benefits are immense.

This week is why we were elected, to keep our promise and fulfill America's.

RACIAL AND ETHNIC HEALTH DISPARITIES

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentlewoman from California (Ms. SOLIS) is recognized during morning hour debates for 2½ minutes.

Ms. SOLIS. Mr. Speaker, today I rise to acknowledge a tremendous achievement in the efforts to address racial and ethnic health disparities in this country. With the dedication of the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN), the gentleman from California (Mr. HONDA), and the gentleman from New Jersey (Mr. PALLONE), and with the guiding leadership of our leadership, the gentlewoman from California (Ms. PELOSI), as well as our Senate leaders, Senator DASCHLE and Senator KENNEDY, we have introduced a comprehensive bill to improve minority health.

Currently in our country, minorities endure a disproportionate burden of illnesses. Unfortunately, our health care system is not meeting the needs of all of its people.

Latinos, African Americans, Asians and Native Americans statistically outweigh nonminority whites in almost every disease, diabetes, cardiovascular disease, asthma, you name it.

For instance, diabetes is a chronic illness estimated to affect 18.2 million people in this year alone. Latinos are twice as likely to have diabetes than non-Latino whites and American Indians are more than twice as likely to be diagnosed with this debilitating disease.

Mr. Speaker, these diabetes trends are not isolated. One in four obese Latino children have early signs of type II diabetes; and in California alone, 66 percent of Latinos are overweight, which is higher than the national average.

Compound these health problems with the recently released census data showing that the rate of Latinos with health insurance was 32.4 percent in 2002. Here on this graph, it shows actually who the nonelderly noninsured are, including the ethnic and racial groups in the year 2002. Hispanics represent 30 percent; non-Hispanics represent 47 percent; Asian Pacific Islanders, 5 percent; and blacks represent 16 percent. This is a picture of those people who are working-poor that are uninsured.

The need for prevention is loud and clear, and we have to actively stop these rising trends in poor health care status. The Healthcare Equality and Accountability Act that we introduced addresses these problem through inclusive and federally funded programs like Medicare and the State Children's Health Insurance Program, better known in California as Healthy Families.

Mr. Speaker, the bill will expand health insurance options through Medicaid to cover parents and pregnant women, young people up to the age of 20, which would help address the issues here outlined in the chart. It also gives the States the option to cover every resident living in poverty under Medicaid.

Another triumph in the bill is expansion of access to services by assisting health care professionals provide cultural and language services.

Mr. Speaker, I would ask for our colleagues on both sides of the aisle to adopt this legislation that we have put forward through the Tri-Caucus to help end the disparities and treatment of those that are still in our country that do not have any adequate health care.

Mr. Speaker, today I rise to acknowledge a tremendous achievement in the efforts to address racial and ethnic health disparities in this country.

With the dedication of my good friends Representative DONNA CHRISTENSEN, Representatives MIKE HONDA, Representatives FRANK PALLONE and the guiding leadership of Representatives NANCY PELOSI as well as our Senate leaders, especially Senators DASCHLE and KENNEDY, we have introduced a comprehensive bill to improve minority health.

Currently in our country, minorities endure a disproportionate burden of illness.

The community I represent is multicultural—about 60 percent of the residents are Latino and 20 percent are Asian American, and 40 percent of my constituents were born outside of the United States.

Unfortunately, our health care system is not meeting the needs of all people.

Latinos, African Americans, Asians, and Native Americans statistically outweigh non-minority whites in almost every disease—diabetes, cardiovascular disease, asthma, you name it!

For instance, diabetes is a chronic illness that is estimated to affect 18.2 million people in 2003.

However, Latinos are twice as likely to have diabetes than non-Latino whites and American Indians are more than twice as likely to be diagnosed with this debilitating disease.

But these diabetes trends are not isolated; over 1 in 4 obese Latino children have early signs of type II diabetes.

In California, 66 percent of Latinos are overweight, which is higher than the national average, and the highest percentage of any minority group.

Compound these health problems with the recently released Census data showing that the rate of Latinos without health insurance was 3.4 percent 2002.

Plus, over 87 percent of these uninsured are from working families.

That means one in three hard-working, taxpaying individuals in this country lack access to what is supposed to be the "best" health care system in the world.

The need for prevention is loud and clear—we have to actively stop these rising trends in poor health status, especially when our children are at risk.

The Healthcare Equality and Accountability Act addresses these problems through inclusive and guaranteed expansions in federally funded health programs, like Medicaid and the State Children's Health Insurance Program.

This bill will expand health insurance options through Medicaid to cover parents and pregnant women, and young people up to age 20.

It also gives states the option to cover every resident living in poverty under Medicaid. And it guarantees funding for the Indian Health Service, bringing much-needed health care to this overlooked population.

Another major triumph of this bill is the expansion of access to services by assisting health care professionals provide cultural and language services, and increasing federal reimbursement for these services.

There are over 47 million people, or 18 percent of the US population, that speak a language other than English at home.

Over one in three Latinos report difficulty in understanding a medical situation when it is not explained to them in their own language.

In places like my district that have such a high proportion of limited English proficient individuals, language barriers can mean the difference between health and illness, and even life and death.

Over the summer, the Minority Caucuses in the House convened a Tri-Caucus Health Forum in Los Angeles to discuss racial and ethnic health disparities.

It was expressed over and over again by community members, researchers and advocates that our public health infrastructure is failing our minority communities.

Without assuring access to culturally and linguistically appropriate public health programs, without monitoring and collecting data on racial and ethnic minorities, and without strengthening our health professional workforce and institutions, our minority families will continue to endure health disparities.

What we have on our hands is an American public health dilemma that requires a responsible public health approach.

At a time when public health reforms, like the revision of Medicare, are sweeping through Congress, our minority communities are at the mercy of an unpredictable and untrustworthy public health system that ignores their health needs.

Instead of creating a sound, guaranteed prescription drug benefit for our seniors, the current Medicare proposal does nothing to reduce the cost of health care.

The only thing the Republican Medicare bill will do is overwhelmingly burden our low-income seniors and minority communities.

We must enact responsible legislation that improves the health of minority communities, that recognizes specific minority health needs, and works to prevent disease rates from climbing in our minority communities.

Let's use our Minority Health bill as a model of how we can actively eliminate racial and ethnic health disparities in our communities nationwide.

A NEW ENERGY POLICY

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from Michigan (Mr. SMITH) is recognized during morning hour debates for 5 minutes.

Mr. SMITH of Michigan. Mr. Speaker, this week we are taking up the energy bill, finally. As a member of President Nixon's Oil Policy Commission during the Arab oil embargo, I have long felt that not only we should, but we must do more to ensure domestic energy supplies.

After more than 2 years of negotiation, the House and Senate are poised to finally pass an energy bill, much overdue. The legislation will help make transmission networks more reliable to prevent the type of blackout that paralyzed us last August. It is going to reduce our dependence on foreign petroleum. It is expected to pass this week and become law, I predict, by Thanksgiving.

Over the long term, the United States must move away from its heavy reliance on petroleum for energy. As long as we consume 25 percent of the world's oil, while only possessing in this country 3 percent of the world's proven reserves, it will be nearly impossible to eliminate our dependence without alternatives.

American production is not going to substantially increase because this bill will not permit the development of our most promising new source of oil and natural gas in the Arctic National Wildlife Refuge because of fierce opposition. With opposition also to most offshore drilling as well, U.S. production is going to continue to fall. For lack of a better word, hostility against expanding our production in this country has been a major factor in production falling from 12 million barrels a day in 1970 to 8 million barrels a day now, a substantial reduction.

Conservation can help reduce petroleum consumption to some degree, but it cannot eliminate the critical need for new energy sources.

Mr. Speaker, a little bit of the good news: since 1970 our GDP has risen 147 percent while our consumption has only increased by 42 percent. The energy bill is going to help us do even better with the focus on more efficient appliances, electricity generation, increased automotive efficient: but as long as the economy continues to grow, conservation is only going to meet part of the need. It is very unlikely that it is going to lead to any reduction in total consumption.

As a result, the only real solution I think to our dependence on foreign energy lies in shifting consumption patterns away from oil towards other energy sources, and this is what this energy bill helps us do.

Where this bill shines is in its support for alternative fuels such as clean coal, ethanol, biofuels, renewable energies to make a shift away from petroleum possible.

Mr. Speaker, there are many talented people working on solutions attracted not just by government tax breaks and subsidies, but also the huge potential profit in store for an inventor who provides practical solutions to our energy problems. For example, a week before last, the gentleman from California (Mr. ROHRABACHER), the gentleman from Maryland (Mr. BARTLETT) and I and some others met with a Russian physicist who had invented an engine that uses coal dust for fuel. It is more than 80 percent efficient, and that means it has almost zero pollution. These engines could allow us to make better use of our domestic coal reserves.

The energy bill conference report is over 1000 pages long, and I do not think most of us have had a chance to read it all yet, but I am excited about some of the potential it has. However, on the down side, it contains at least $20 billion in tax credits for energy development and production. This is about twice as much as was in the House-passed bill. We are going to have to look closely at these tax breaks and look for special interest "pork" provisions that should not be in the bill.

I hope to support the bill if it is along the lines of what we passed in the House. We need to reduce our reliance on hostile and politically unstable Middle East fuel. Achieving energy self-sufficiency is going to improve our country's security for decades to come. This national energy policy shows us a way out of dependence. I hope we will give it due consideration and hopefully pass a good bill as quickly as possible.

THE RELATIONSHIP BETWEEN AL QAEDA AND IRAQ

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from Florida (Mr. STEARNS) is recognized during morning hour debates for 5 minutes.

Mr. STEARNS. Mr. Speaker, with each passing day, the President's critics become more emboldened in their attacks on what they decry as a misleading impetus to go to war. According to the information they are able to ascertain from 24-hour news channels and the New York Times, they continue to condemn the President's claim that Saddam Hussein had links to al Qaeda.

We have all heard their diatribes accusing the President of invading Iraq with little or no evidence that Saddam Hussein worked along Osama bin Laden. I recommend the recent article in the Weekly Standard's current issue that details the memo written in response to the administration's prewar intelligence. It is clear evidence of the nexus of terrorism with terrorist-sponsoring states that many antiwar advocates deny exists at all.

According to this memo, dated October 27, 2003, bin Laden and Saddam Hussein had an operational relationship from the early 1990s to 2003 that involved training in explosives, weapons of mass destruction, logistical support for terrorist attacks, al Qaeda training camps, safe haven in Iraq, and Iraq financial support for al Qaeda.

Mr. Speaker, the findings put forth in the memo come from a variety of domestic and foreign agencies including the FBI, the Defense Intelligence Agency, the CIA, and the National Security Agency. Much of the evidence is detailed, conclusive, and corroborated by multiple sources.

Some of it is new information obtained in interviews with high-level Al Qaeda terrorists and Iraqi officials and some reaches back a decade. Not surprisingly, the picture that emerges is one of long-standing collaboration between two of America's most grave enemies. According to the memo which lays out the intelligence in 50 numbered points, Iraq-al Qaeda contacts began in 1990 and continued through mid-March 2003, days before the Iraq war began. So in effect, Mr. Speaker, this information has been accumulated over three administrations.

The relationship began shortly before the first Gulf War. According to the memo, bin Laden sent emissaries to Jordan in 1990 to meet with Iraqi government officials. At some unspecified point in 1991, according to CIA analysis, Iraq sought Saddam's assistance to establish links to al Qaeda. Both parties were equally interested in developing that relationship and according to the CIA reporting memo, bin Laden wanted to expand his organization's abilities through ties in Iraq.

The cumulative weight of the intelligence is compelling. Even The Washington Post recommends that its readers examine the evidence and decide for themselves. The notion that the pragmatic Saddam Hussein, who had grown closer and closer to extreme terrorists in the 1990s, would avoid any contact with al Qaeda and Osama bin Laden is not a reasonable conclusion to draw. The alliance is a natural one. With al Qaeda now claiming responsibility for the recent attacks on synagogues in Turkey, we are reminded of our duty to respond.

Were the President to have completely ignored this information, the world would have to face potentially horrifying consequences. Yet today's critics seem eager to claim even after

9/11 the administration should only have acted against Saddam if it has proven beyond any reasonable doubt that he, Saddam, was in league with al Qaeda.

Hopefully, this report provides the evidence that is needed to make this link. This information is reaffirming our need to topple Saddam. After so many years of complacency, weakness, and denial, the President made the decision to oust Saddam. He took the action, the action that was vital to protect our country.

HEALTH CARE EQUALITY AND ACCOUNTABILITY ACT OF 2003

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from Texas (Mr. RODRIGUEZ) is recognized during morning hour debates for 2½ minutes.

Mr. RODRIGUEZ. Mr. Speaker, I rise today on behalf of thousands of Americans, millions of Americans that suffer from lack of access to health care. Our Health Care Equality and Accountability Act of 2003 would expand health care coverage by providing States the option to increase eligibility and streamline enrollment in Medicare and the CHIP program.

This piece of legislation, this landmark legislation, addresses the significant gap in health care coverage and accessibility provided to Americans. This bill is endorsed by the African American Caucus, the Hispanic Caucus, as well as the Native American Caucus and the Asian Pacific Caucus and a lot of Democrats. But it is also not a Democrat or Republican; it should be a united effort in addressing the needs of our constituencies when it comes to health care.

Mr. Speaker, when it comes to health care we recognize the fact that there is a great gap that exists out there among our constituency. For example, in the Latino community, 19 percent of all Hispanics depend on Medicare for their health care. So it becomes important that Medicare continues to be there for us. And I am concerned that at this time we continue to look at dismantling Medicare as we know it now.

Minorities disproportionately suffer from high rates of life-threatening diseases and are less likely to have health insurance. We recognize that and that is why we need to be responsive, not just as Democrats but also as Republicans, working together to meet the needs of our constituencies that are out there.

Mr. Speaker, when it comes time for them to be fighting and defending our country in Iraq, we do not look to whether they are Hispanic or whether they are black. We work together and we ought to do the same here in making an effort to respond to their needs. As we look at the piece of legislation that we have drafted, it is a piece of legislation that looks at all the disparities. It looks at the number of uninsured and provides appropriate safeguards to protect privacy. This bill also helps in those areas.

The bill begins to look at those who are uninsured out there. And once again we have a large number of Latinos uninsured, as well as African Americans and other populations that are having a rough time getting access to health care.

Not to mention, Mr. Speaker, the fact that when it comes to prescription drug coverage, shame on us. We need to begin to look in terms of how do we meet that need. The bill that is before us this week on Medicare is a bill that begins to dismantle Medicare, two proposals, one in the Senate and one in the House, that are not worth the paper that it is written on.

So it becomes important for us to really solve the problems that confront us. I urge all Members, both Republicans and Democrats, to begin to look at addressing this issue.

MEDICARE CONFERENCE REPORT

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from Georgia (Mr. GINGREY) is recognized during morning hour debates for 1 minute.

Mr. GINGREY. Mr. Speaker, I rise today in support of the Medicare conference report. This is a historic step in the right direction for our Nation's senior citizens. We are positioned to pass legislation to help seniors pay for the rising costs of prescription medications. Low-income seniors will be able to obtain the help they need and every senior will have the peace of mind of knowing that out-of-pocket catastrophic costs will not bankrupt them.

This legislation will provide the largest comprehensive rural package ever considered and updates and sets hospital payments at appropriate levels for 2005. The conference report also blocks a proposed 4.5 percent Medicare reimbursement cut to physicians for the years 2004 and 2005, and instead provides a 1.5 percent positive update for these 2 years.

The Medicare conference report has received the strong support of our health care community and the AARP, representing 35 million seniors.

Mr. Speaker, I urge my colleagues to vote in favor of our senior citizens and pass this bill.

MINORITY HEALTH CARE DISPARITIES

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from California (Mr. HONDA) is recognized during morning hour debates for 2½ minutes.

Mr. HONDA. Mr. Speaker, I rise today to discuss the current health disparities as they relate to minority health care. More importantly, I want to talk about the solution, the Health Care Equality and Accountability Act.

My district, alone, of Santa Clara County, California, is extremely diverse. Mr. Speaker, 30 percent of my community are Asian Americans and Pacific Islanders, 17 percent are Latinos, and 34 percent are foreign born, 43 percent speak a language other than English.

Despite the increasing diversity of our Nation, our health care system is not meeting the needs of our community, and our racial and ethnic minorities are too often denied the high-quality health care that most Americans receive.

According to the 2000 census data, the number of individuals who speak a language other than English at home has reached almost 45 million, and 19.5 million speak English less than very well, an increase of 40 percent from 1990.

There are two important things about our communities: number one, this bill and the solution codifies existing standards for culturally and linguistically appropriate health care, authorizes a new center in the Office of Minority Health to assist in cultural and language services, and increases Federal reimbursements for these services.

Another area is data collection. Data is a crosscutting issue. Lack of data impacts our understanding of the health problems in our communities as well as the problems in access and quality. Adequate data collection continues to be a challenge for APAs. Though often mistaken to be a homogenous group, the Asian Pacific group encompasses 49 ethnicities speaking over 100 languages.

Aggregating such a large and diverse group makes it difficult to understand the unique problems faced by the individual ethnicity it encompasses.

So what do we need to do? We need to be able to provide health insurance coverage; increase workforce diversity; reduce disease complications; provide cultural and linguistic services; attain quality data; strengthen health institutions to all minorities, Asian and Pacific Islanders, African Americans, Hispanics, Native Americans, Alaskan Natives and Native Hawaiians.

Mr. Speaker, in solidarity with the Democratic leadership and minority caucuses, we call on our colleagues and the Chief Executive in the White House to help enact the solution for minority populations across this great Nation, the Health Care Equality and Accountability Act.

SUPPORT FOR THE ENERGY POLICY ACT OF 2003

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from Pennsylvania (Mr. SHUSTER) is recognized during morning hour debates for 1 minute.

Mr. SHUSTER. Mr. Speaker, I rise in support of the Energy Policy Act of 2003. In recent years, U.S. policy, or lack of it, has encouraged consumption and discouraged production. In response, Congress and the President have developed a national energy policy to promote dependable, affordable and environmentally sound production and distribution of energy for the future.

Most importantly, this bill will prevent the loss of jobs due to high energy prices and help create new ones. I am pleased with the provisions in this bill that affect rural America. Rural America has assisted the United States in its times of crisis and also in times of innovation. Our rural electric co-ops have been a huge part of that innovation.

I am pleased that this bill protects our rural cooperatives from unnecessary Federal costs and obligations and recognizes the unique role they play in our Nation's electric system.

Mr. Speaker, I am also pleased that there are significant provisions to promote the use of coal.

Both Houses of Congress have worked tirelessly toward a comprehensive national energy policy that promotes conservation, reduces our growing dependence on foreign oil, and improves our economy. It is time we passed this legislation for the good of this Nation.

ELIMINATION OF DISPARITIES IN HEALTH CARE FOR MINORITIES LONG OVERDUE

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentlewoman from California (Ms. WATSON) is recognized during morning hour debates for 2½ minutes.

Ms. WATSON. Mr. Speaker, as former chair of the California Senate Health Committee for 17 years, let me say how pleased I am with the comprehensive legislation that the Health Care Equality and Accountability Act of 2003 contains. The elimination of racial and ethnic disparities is an issue whose time is long overdue, and I commend the CBC Brain Trust, the Tri-Caucus, the Democratic leadership, the Senate Health Committee, the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN), Senator TED KENNEDY, and everyone else who remained vigilant in completing this project.

As Americans, we take pride in our diversity, and it is our greatest achievement that based upon that diversity, whether it is economic, political, or cultural diversity, we have built a Nation that is dedicated to providing equal opportunity for all. But, Mr. Speaker, much needs to be done before we can say that we have accomplished that goal, most notably in the field of health care.

Racial and ethnic minorities too often are denied the high quality health care that most Americans receive. The Federal Government has recognized this serious problem and has set the goal of eliminating health disparities by the end of the decade. House and Senate Democrats have introduced legislation, the Health Care Equality and Accountability Act of 2003, that takes an important step towards making this national goal a reality.

We may have the finest health care system in the world, but too many of our people receive too little health care and are denied the right to lead full lives.

The reality is that the health care needs of minority Americans are often greater than those of white Americans. Minority populations disproportionately suffer from many diseases. Minority groups have higher rates of acute conditions such as tuberculosis, HIV/AIDS, chronic diseases, diabetes, heart disease and stroke, and many forms of cancer. In addition, minority women are at greater risk than white women for pregnancy-related complications, and their babies are at higher risk of dying during their first year of life.

Despite a substantial need for health care, minority groups often encounter obstacles in obtaining health care. Minority groups are less likely to have health insurance and are less likely to receive appropriate health care services.

Mr. Speaker, I ask all of my colleagues to support our Health Care Equality and Accountability Act of 2003 so we can improve the health of all Americans.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today to address the need for racial equity in health care in our great Nation.

As a former nurse, I have spent much of my public career working to ensure that the nation's health care system is affordable and provides the best services possible to all Americans.

Disparities in the burden of death and illness experienced by African-Americans, as compared with the U.S. population as a whole, have existed since the government began tracking such statistics. These disparities persist, and in some areas continue to grow.

Cardiovascular disease is the leading cause of death for all racial and ethnic groups, with a disproportionate burden of death and disability from cardiovascular disease in minority and low-income populations.

The prevalence of diabetes in African Americans is approximately 70 percent higher than whites. Racial and ethnic minorities have higher rates of hypertension, tend to develop hypertension at an earlier age, and are less likely to undergo treatment to control their blood pressure.

Many minority groups suffer disproportionately from cancer and disparities exist in both mortality and incidence rates.

For men and women combined, African-Americans have a cancer death rate about 35 percent higher than that for whites. African-American women develop breast cancer less often than do white women, but have a higher mortality rate (27 per 100,000), due most likely to later diagnosis and late entry into treatment. African-American and Hispanic women have higher cervical cancer death rates.

The incidence rate for lung cancer in African-American men is about 50 percent higher than in white men and the death rate is about 27 percent higher.

The prostate cancer mortality rate for African-American men is more than twice that of white men.

African-American women are less likely to receive care, and when they do receive it, are more likely to have received it late. For example, one out of four African-American mothers did not receive prenatal care during the first trimester during 1999. Other risk factors, such as obesity, contributes to heart disease, diabetes, and stroke. Approximately 69 percent of African-American women between the ages of 20 and 74 were overweight during the period 1988 through 1994.

The prevalence of obesity in minority populations can be as much as three times higher than that of whites, and is higher among women than men. African Americans and Hispanics have a particularly high prevalence rate of obesity as do Pacific Islanders, Native Americans, Alaska Natives, and Native Hawaiians.

More than 75 percent of AIDS cases reported among women and children occur in minority women and children. While racial and ethnic groups account only for about 25 percent of the total United States population, they account for more than 50 percent of all AIDS cases.

Children from minority communities are disproportionately represented among those with incomplete immunizations. In addition, infant death rates among minority populations are above the national average, with the greatest disparity existing among African Americans. Minority populations are at the greatest risk for SIDS.

The rates for the uninsured minority are quite frightening. Blacks and Latinos are far more likely to be uninsured when compared to their Anglo or white counterparts.

Nationally, 11.6 percent of the Anglo population, 20.1 percent of the African American population and 34.8 percent of the Hispanic population are without health insurance. In Texas, while 12 percent of whites are uninsured, 21.2 percent of African Americans and 36.7 percent of Hispanics do not have medical coverage.

That is why I am an original cosponsor of The Healthcare Equality and Accountability Act of 2003. The Healthcare Equality and Accountability Act of 2003 would reduce health disparities and improve the quality of care for racial and ethnic minorities by:

First, expanding health coverage. To reduce the number of minorities without health insurance, the bill would give states the option to expand eligibility and streamline enrollment in Medicaid and the State Children's Health Insurance Program.

This bill also removes language and cultural barriers to good health care that plague many of our minority communities.

Because language and cultural differences create barriers to health care, the bill would help patients from diverse backgrounds, including those with limited English proficiency, with provisions such as codifying existing standards for culturally and linguistically appropriate health care, assisting health care professionals provide cultural and language services, and increasing federal reimbursement for these services.

Instruments in this bill have been put in place to encourage workforce diversity. Increasing the number of minority health care providers will improve access to care because these providers are more likely to serve low-income, uninsured, and minority patients.

Date collection would be improved to better identify sources of health disparities, implement effective solutions, and monitor improvement.

Under this bill, the Office of Civil Rights and the Office of Minority Health at the Department of Health and Human Services (DHHS) would be expanded to promoting accountability and reduce health disparities.

And finally, this bill strengthens health institutions that serve minority populations. By establishing loan and grant programs, health institutions that provide substantial care to minority populations will receive necessary funding to carry our their mandates.

Protecting the health care of citizens, no matter their ethnicity or race, should be the number one priority of any great nation. An investment in our health care system is one of the wisest investments we can make for the future of this country.

Now is the time for all Americans to have equal access to quality health care and meaningful patient protections. That is why I urge my colleagues to support this legislation. Our citizens deserve and expect nothing less.

Ms. LEE. Mr. Speaker, I am proud to stand here with the membership of the Congressional Black Caucus, the Hispanic Caucus, the Asian-Pacific American Caucus, and the caucus for all Americans, the Democratic Caucus, in support of inclusive, quality, affordable health care for all Americans. I want to thank the gentlelady from California for her consistent leadership on these many issues important to those with no voice.

Democrats are committed to the elimination of racial and ethnic disparities in health care access, health care quality, health outcomes and the diversity of the health care workforce because all Americans deserve equal treatment and care.

A proper investment in health care will improve both the health and economic well-being of all our country and that's why we came together and drafted the Healthcare Equality and Accountability Act of 2003, which our caucuses introduced on November 6, 2003.

Our goal is the complete elimination of racial and ethnic health disparities and I believe this bill provides a major first step toward that goal.

The goal of equity in health care must be met, particularly in a country that boasts about upholding and spreading democracy and human rights.

It is criminal that in the United States the color of your skin and the languages that you speak can make you more likely to die of HIV/AIDS, heart disease or diabetes, as a result of our negligent and culturally insensitive health care system.

We came together because we saw a need to offer solutions for the inclusion and the prioritizing of minorities in the health care system which today remains sorely inadequate.

In this bill, we have diagnosed the major health care shortfalls and provided sound and culturally-conscious solutions.

1. We ask for an expansion of the health care safety net, which will increase the availability, quality, and affordability of health coverage options that provide meaningful access to health services.

2. We ask for much needed diversification of the health care workforce, which will reflect the communities that have been neglected while incorporating a personal understanding of the backgrounds, experiences, languages, and perspectives of the minority people.

3. We ask that health care be declared not only a human right, but a basic civil right, and that every part of the 1964 Civil Rights Act is honored.

4. We ask for aggressive collection and dissemination of data on minorities to become a priority for the health care community.

The collection of this data keeps us on the pulse of our communities. We cannot help the minority community if we are blinded by Prop. 54's and other antiquated rules and regulations that negate the advances health care professionals have attempted.

5. We ask for a complete assault on HIV/AIDS and other diseases that are disproportionately killing the minority community.

Undiagnosed and uncared for, over 43 million Americans are uninsured—half of whom are minorities.

Further, those who have access to care are still dying of diseases that go undetected and undiagnosed because the quality of their care is sub par.

We cannot stand by while the pharmaceutical and private insurance industries profit off of our communities.

We cannot stand by while rates of prostate and breast cancer, diabetes, and high blood pressure disproportionately take the lives of people of color around this country.

We cannot stand by while this Republican led Congress privatizes Medicare and cushions the pockets of their industry donors with the prescription drug bill, H.R. 1.

And finally, we cannot allow the Congress to pass any more health related legislation that doesn't have at heart the interests of the African American, Latino, Native American, or our Asian and Pacific Islander communities.

We will win the battle against ethnic and racial health disparities, because we are united.

I thank the leadership of all the caucuses who worked so diligently on this bill and I thank the Congressional Hispanic Caucus for designating this hour to talk about this progressive and comprehensive bill.

SUPPORT A BIPARTISAN MEDICARE PRESCRIPTION DRUG PLAN

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentlewoman from West Virginia (Mrs. CAPITO) is recognized during morning hour debates for 1 minute.

Mrs. CAPITO. Mr. Speaker, I rise today to encourage my colleagues on both sides of the aisle to come together in support of the bipartisan Medicare prescription drug plan. The AARP, the American Association of Retired Persons, the largest senior organization in the Nation, has endorsed the plan which will bring relief to 40 million seniors.

Immediately, right away, seniors will be able to save up to 25 percent through a prescription discount card. This is a savings never seen before by America's seniors.

The plan goes a long way in assisting seniors with low incomes and those who pay a large amount of money for their prescription drugs.

Mr. Speaker, this bill has the support of Members of both parties. It has the support of the leading advocate for seniors in the Nation, and will have my support when it passes this body. I urge my colleagues to join me so that we can give our seniors the modern Medicare benefit they deserve.

GOLDEN HARVEST FOOD BANK OF AUGUSTA, GEORGIA

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from Georgia (Mr. BURNS) is recognized during morning hour debates for 1 minute.

Mr. BURNS. Mr. Speaker, we are quickly approaching a season known for giving thanks and goodwill. Next week is Thanksgiving. Far too often, we fail to recognize those who work year-round to improve the lives of the less fortunate.

This Friday, the Golden Harvest Food Bank in Augusta, Georgia, will celebrate the successful conclusion of its $2 million "Feed the People" capital campaign. Through business and community generosity, Golden Harvest Food Bank will be able to reach nearly 71,000 families every year in its 25-county service area in both Georgia and South Carolina.

In this Nation of abundance, some still go without the basics that others of us take for granted. I am thankful that we have individuals who give time, service, and donations to see that these basic needs are met.

Mr. Speaker, in this time of giving thanks, let us remember those who worked tirelessly throughout the year to help the less fortunate.

CONSIDERING THE WORDS OF EDMUND BURKE

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from Tennessee (Mr. DUNCAN) is recognized during morning hour debates for 1 minute.

Mr. DUNCAN. Mr. Speaker, the current issue of the American Conservative Magazine has an article by Owen

Harries that says, quote: "In the 1770s, when Britain had recently added North America and India to its Empire, when its economy was the strongest in the world, when it ruled the seas, it occupied a position not too different from the one occupied by the United States today."

Then the great statesman, Edmund Burke, godfather of conservatism, issued this warning: "Among precautions against ambition, it may not be amiss to take precautions against our own. I must fairly say, I dread our own power and our own ambition. I dread our being too much dreaded. We must say that we shall not abuse this astonishing and hitherto unheard of power." Edmund Burke continued, "But every other nation will think we shall abuse it. It is impossible but that sooner or later this state of things must produce a combination against us which may end in our ruin."

Mr. Speaker, we should consider these words of Edmund Burke today.

REPUBLICANS' MEDICARE PRESCRIPTION DRUG "HOAX"

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentlewoman from California (Ms. PELOSI) is recognized during morning hour debates.

Ms. PELOSI. Mr. Speaker, this should be a historic week in the life of our Nation. Instead, it is a tragic week. We should be celebrating Congress' keeping its promise to seniors and disabled Americans to provide a real guaranteed defined prescription drug benefit under Medicare. Instead, we are witnessing another Republican empty promise. Nothing short of a historic hoax on 40 million seniors and disabled Americans.

Mr. Speaker, America's seniors and disabled citizens have looked to Congress for help. Instead, Republicans have perpetrated, as I said, this cruel hoax on seniors, proposing an Alice in Wonderland bill in which logic is turned on its head and everything means the opposite.

A real, guaranteed, defined prescription drug benefit under Medicare could have been the product of bipartisan debate and discussion. Instead, this Republican hoax is a partisan scheme rammed through the Congress and negotiated in back rooms.

Republicans locked House Democrats out of negotiations, or better yet their "deal-making," and in so doing they locked out the 130 million Americans we represent. Seniors, veterans, disabled Americans, rural Americans, African Americans, Hispanic Americans, America's seniors deserve better.

A real guaranteed prescription drug benefit under Medicare would put seniors and the disabled first. Instead, this Republican hoax subverts the public interest for the special interests, putting seniors at the mercy of the HMOs, creating a giant slush fund for HMOs, and creating windfall profits for the big pharmaceutical companies.

Mr. Speaker, America's seniors deserve better. A real guaranteed defined prescription drug benefit under Medicare would reduce costs to seniors and taxpayers. Instead, this Republican hoax increases drug costs, actually prohibiting the government from negotiating lower costs. Imagine that, this bill prohibits the government from negotiating for lower costs.

Republicans have instituted means testing for the first time, forcing millions of seniors to pay more for benefits they already have. Make no mistake, under this scheme, millions of Medicare beneficiaries will pay more, not less.

America's seniors deserve better.

Mr. Speaker, a real guaranteed benefit under Medicare would include all seniors and disabled Americans. Instead, this Republican hoax leaves most seniors and disabled worse off than before. According to the Congressional Budget Office, millions of retirees who get their benefits from their employers will lose their coverage. Let me repeat that. According to the Congressional Budget Office, millions of retirees who get their benefits from their employers will lose their benefits.

Nearly half of all Medicare beneficiaries, almost 20 million seniors and disabled Americans, will fall into the coverage gap, meaning they will pay premiums every month but receive no benefits in the final months of every year, a monthly premium without monthly benefits.

America's seniors deserve better.

Finally, a real guaranteed prescription drug benefit under Medicare would be just that under Medicare, which seniors have known and trusted for 40 years. Instead, this Republican hoax tries to dismantle and unravel Medicare with a voucher program that pushes seniors into HMOs. This is no longer a debate just about including a prescription drug benefit in Medicare. Republicans are trying to dismantle the Medicare program that seniors have known and trusted, again, for 40 years. Mr. Speaker, this is completely unacceptable.

Republicans have been clear. They want to kill Medicare and privatize it. During the debate on the Republican bill this summer, the Republican chairman of the Committee on Ways and Means, the gentleman from California (Mr. THOMAS), said, and I quote: "To those who say that it would end Medicare as we know it, our answer is we certainly hope so." And as my colleagues know, the leadership of this body, the Republican leadership, has been on record as saying Republicans want to see Medicare "wither on the vine," to use their words.

Mr. Speaker, Democrats have been equally clear. We want to save Medicare and protect it. America's seniors see through the Republican rhetoric. This is not the beginning of a real prescription drug benefit under Medicare. This is the beginning of the end of Medicare as we know it.

America's seniors deserve better.

Mr. Speaker, our seniors are smart. They see through this Republican hoax for what it is and for what it is not. It does not put seniors and disabled Americans first. It does not reduce costs. It does not include all seniors and disabled Americans. And it is not under Medicare.

In short, this Republican hoax is not the real guaranteed defined prescription drug benefit under Medicare that our seniors want, that they need, and that they deserve.

Mr. Speaker, our seniors deserve better. They are the Greatest Generation. They have fought our wars. They came home and raised our families. They built a new America. The prosperity and quality of life that we enjoy today is owed to their lives of hard work and sacrifice. But today, seniors and disabled Americans are asking why, why is this, the wealthiest Nation in human history, not keeping its faith with its seniors, the citizens who built this country?

Mr. Speaker, the answer is simple: priorities. Republicans have different priorities, a few Republicans behind closed doors making deals that would rather give massive tax breaks to the wealthiest 1 percent of Americans than give a real prescription drug benefit to seniors who desperately need it. If I can paraphrase Winston Churchill: never in history have so few worked so hard to take away so much from so many. That is the Republican backdoor deal-making.

Mr. Speaker, I urge my colleagues to vote against the Republican hoax, and I urge them to demand that Congress keep working to keep its promise to seniors by providing a real guaranteed defined prescription drug benefit under Medicare that our seniors want, need, and deserve. I hope it is not too late for that. Democrats have been knocking on the door constantly saying, Let us in. Let the Democrats in. Let us work together in a bipartisan way to build a real defined guaranteed benefit under Medicare for our seniors that has bipartisan support and that will be sustainable over time. Instead, the Republicans did not allow House Democrats in the room.

Why is that important? That is important because we represent over 130 million Americans. That is important because within our caucus we have the benefit of the thinking of a large African American Black Caucus, our Hispanic Caucus, our Asian Pacific American Caucus, a large number of women in our caucus. We work hard on the issues here in the Congress. The thinking of this diverse group of people is very dynamic and quite different from the back-room deal makers that the Republicans wrote this bill with.

By excluding Democrats from the room, the Republicans excluded the strength of America, the benefit of the thinking of a very distinguished group of representatives of the American people. No wonder we ended up with a product that, do not take my word for it, read the Wall Street Journal today and see who wins in this bill. It is the pharmaceutical companies; it is the HMOs. The consumer comes in last.

This bill is not a defined real guaranteed benefit under Medicare. It does not meet that standard. It will not have my support, and I hope it does not have the support of a majority of the Members of this body.

GENERAL LEAVE

Ms. WATSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the subject of my morning hour speech.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

UNIVERSAL MEDICARE DRUG PLAN IS A PRESCRIPTION FOR DISASTER

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2003, the gentleman from Indiana (Mr. PENCE) is recognized during morning hour debates for 5 minutes.

Mr. PENCE. Mr. Speaker, despite the very best efforts of our House Republican leadership, I rise to oppose the prescription drug bill that will be considered before the Congress this week.

It would, in fact, represent the largest expansion of Medicare in 35 years. Nancy-Ann DeParle, President Clinton's Medicare administrator, actually called this legislation the biggest expansion of government health benefits since the Great Society. And so it will be.

I have consistently said that I would support the creation of a national prescription drug benefit in Medicare only if it is fiscally responsible and includes free market reform measures, which this legislation fails to do on both counts.

Only by significantly reforming Medicare along the lines that President Bush initially requested, can we act in a way that is responsible and meet the urgent and real needs of seniors for prescription coverage.

Of course there are seniors near the poverty level who need immediate help with the cost of prescription drugs. Nearly 24 percent of seniors have no access to prescription coverage, and about 5 percent have out-of-pocket costs of more than $4,000 per year. For those seniors, our national government should respond with a drug discount card or some form of direct subsidy, and I have supported these efforts.

Sadly, the prescription drug plan currently being advanced in the Congress lacks such specificity and focus and actually would create a universal drug benefit that provides a government entitlement for every American over the age of 65, a population of some 37 million today that will grow to some 70 million in the year 2030.

While the need for some type of benefit is real, the need for a universal drug benefit is not. At present, 76 percent of seniors have prescription drug coverage, and the average senior spends less than $999 per year in out-of-pocket expenses. And as always happens when Congress creates a massive new bureaucracy, there will likely be unintended consequences as well. Mr. Speaker, chief among them could be that millions of Americans with prescription drug coverage from a former employer could lose it. The Congressional Budget Office has estimated that this could happen in the tens of thousands.

But the most ominous consequence of a universal drug entitlement could be that it will usher in the beginning of socialized medicine in America. This type of system which is built on unrealistic fiscal projections and incorrect assumptions about human behavior would invariably lead to escalating costs for which price controls and outright government control would be seen as a last resort. In an America where abortion is legal and euthanasia is increasingly accepted, the American people would do well to ponder the implications of government-run health care in America.

Let us reform Medicare so it will be there for the future without placing an undue burden on our children and grandchildren. But beyond that, let us do no harm to the greatest and most diverse health care system in the history of the world. By agreeing to a prescription drug benefit for all seniors, rather than just those in need, Congress threatens our Nation's fiscal stability, the private prescription plans of millions of seniors, and the very survival of our free market health care system.

Mr. Speaker, Despite the very best efforts of House Republican leadership, I rise to oppose the prescription drug bill that will be considered before Congress this week. It would in fact represent the largest expansion of Medicare in 35 years.

As Nancy-Ann DeParle, President Clinton's Medicare administrator, said, this would be "the biggest expansion of government health benefits since the Great Society." With an annual federal deficit of more than $400 billion, I will support the creation of a national prescription drug plan only if it's fiscally responsible and includes free market Medicare reform measures.

Only by significantly reforming Medicare along the lines the President originally intended can we afford to meet future obligations, including a prescription drug benefit.

Of course, there are seniors near the poverty level who need immediate help with the cost of prescription drugs. As I have witnessed in more than 100 town hall meetings across eastern Indiana, the necessity of some prescription assistance for seniors near the poverty level is beyond dispute.

Statistics show that nearly 24 percent of seniors have no prescription drug coverage and approximately 5 percent of seniors have out-of-pocket prescription costs of more than $4,000 per year. For these seniors, our national government should respond with a drug discount card or some form of means-tested direct subsidy. I have and will continue to support efforts at the national level to focus prescription assistance on seniors struggling near the poverty level.

Sadly, the prescription drug plan currently being advanced in the House and Senate lacks such focus and actually would create a universal drug benefit that provides a government entitlement for every American over the age of 65, a population of some 37 million today that will grow to 70 million by the year 2030.

While the need for some type of benefit is real, the need for a universal benefit is not. At present, 76 percent of seniors have some form of prescription drug coverage, and the average senior spends less than $999 per year in out-of-pocket expenses on medications.

Not only is the need for a universal public subsidy questionable, adding a universal drug benefit to Medicare may have certain unintended consequences. Namely, seniors with private coverage from a former employer may actually lost their coverage. The Congressional Budget Office recently estimated that thousands of seniors could lose coverage they currently enjoy from a former employer if Congress creates this new entitlement.

The final, and most ominous, consequence of a universal drug benefit could be that it will usher in the beginning of socialized medicine in America. This type of system, which is built on unrealistic fiscal projections and incorrect assumptions about human behavior, will invariably lead to the kinds of escalating costs for which price controls and outright government management will be seen as the last resort. The consequences of such a government expansion are moral as well. In a society that sanctions the abortion of unborn human life and is increasingly open to euthanasia and physician-assisted suicide, our values and our freedoms would argue against turning the health of the American people over to the federal government.

Compassionate conservatism is about focusing solutions at the point of the need. Let's help our seniors near the poverty level with urgent and sufficient prescription coverage. Let's reform Medicare so it will be there for the future without placing an undue burden on our children and grandchildren. And let's otherwise "do no harm" to the private sector foundation of the greatest healthcare system in the history of the world.

For all these reasons, I oppose a universal drug benefit in Medicare. By agreeing to a prescription benefit for all seniors rather than those in need, Congress threatens our nation's fiscal stability, the private prescription plans millions of seniors and the survival of our free market healthcare system.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a), rule I, the House stands in recess until 11 a.m. today.

Accordingly (at 10 o'clock and 50 minutes a.m.) the House stood in recess until 11 a.m.

□ 1100

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mrs. BIGGERT) at 11 a.m.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God of heaven and Earth, the sacred scriptures tell us that You do not have favorites, but that anyone of any nationality who fears You and chooses what is right is acceptable to You.

Yet there is a patriotic sense surrounding this place today where we pray. Here patriotism has formulated affection and faithfulness in these United States. Here the American people claim an astounding history and build upon a constitutional foundation. The Capitol forms bonds of devotion and loyalty among Your people and proudly represents this land of the free and home of the brave.

Be with the Members of the House of Representatives today as they pass laws and determine public policy for this Nation. Guide them now as You have in the past because it is in You, O God, we place our trust, now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Ms. JACKSON-LEE of Texas. Madam Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER pro tempore. The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. JACKSON-LEE of Texas. Madam Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8, rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentlewoman from California (Ms. LORETTA SANCHEZ) come forward and lead the House in the Pledge of Allegiance.

Ms. LORETTA SANCHEZ led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

PRIVATE CALENDAR

The SPEAKER pro tempore. This is Private Calendar day. The Clerk will call the bill on the Private Calendar.

RAILROAD RIGHT-OF-WAY CONVEYANCE VALIDATION ACT OF 2003

The Clerk called the bill (H.R. 1658) to amend the Railroad Right-of-Way Conveyance Validation Act to validate additional conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to facilitate the construction of the transcontinental railway, and for other purposes.

There being no objection, the Clerk read the bill as follows:

H.R. 1658

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Railroad Right-of-Way Conveyance Validation Act of 2003".

SEC. 2. VALIDATION OF ADDITIONAL RAILROAD CONVEYANCES, SAN JOAQUIN COUNTY, CALIFORNIA.

Section 4 of the Railroad Right-of-Way Conveyance Validation Act (Private Law 103–2; 108 Stat. 5061) is amended by adding at the end the following new paragraphs:

"(9) The conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Transportation Company and the Bank of America, as trustee of the last will and testament of Aaron Herschel, recorded September 27, 1945, in volume 942 at page 104 of the official records of the county of San Joaquin.

"(10) The conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Transportation Company and the Tri-Valley Packing Association, recorded November 13, 1957, in volume 2016 at page 149 of the official records of the county of San Joaquin.".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

The SPEAKER pro tempore. This concludes the call of the Private Calendar.

HONORING GUS CASTELLANOS, HOST OF "THIS WEEK IN GARDEN GROVE"

(Ms. LORETTA SANCHEZ of California asked and was given permission to address the House for 1 minute.)

Ms. LORETTA SANCHEZ of California. Madam Speaker, I rise today to honor Gus Castellanos, creator, executive producer, and host of "This Week in Garden Grove," a TV news show that is in my district of Garden Grove, California.

In 1985, Gus began working at Channel 3, a local TV station, when city officials decided to start a local cable show. When no one volunteered for the project, Gus happily stepped up to the task. Learning the ins and outs of running a cable news show, Gus quickly crafted a program that would highlight the achievements of the people and city of Garden Grove. In the 10 years the show has been running, Gus has endeared himself to thousands in our community as nearly half the city tunes in each week to his show.

I want to congratulate everyone involved on the 10th anniversary of "This Week in Garden Grove." But I especially want to thank Gus, who has always been a friend and who has shown that one person can take the initiative to create something that makes an incredibly positive contribution to a community.

HOUSE TO CONSIDER ENERGY BILL

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute.)

Mr. DEFAZIO. Madam Speaker, here it is, the long-awaited, secretly negotiated energy bill, a bill carefully designed to perpetuate our dependence on foreign oil, brokered by national, international, multinational conglomerates which will be subsidized to the tune of $25 billion by United States taxpayers; the Enron provision to repeal the Public Utility Holding Company Act, guaranteeing a new round of mergers, speculation and rip-offs of electric consumers.

I can see only one benefit in this bill. It is huge, it is heavy, it is made of paper. If we take and send a copy to every American taxpayer and consumer, they can throw it in the wood stove or the fireplace and get a little bit of warmth, but that will be the only benefit they get out of this legislation.

WELCOMING TRADE MINISTERS TO MEETING OF FREE TRADE AREA OF THE AMERICAS

(Mr. SHAW asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHAW. Madam Speaker, as chairman of the Florida congressional delegation, I welcome trade ministers from

34 democratic countries to Miami, Florida, for the latest ministerial meeting of the Free Trade Area of the Americas currently under way. Scheduled for completion in 2005, the FTAA would represent the largest free trade area in the world, encompassing these 34 nations with a combined population of 800 million people. The FTAA will be a linchpin to economic growth, spurring trade and investment to the benefit of United States businesses, labor and consumers alike.

In addition, I urge the selection of Miami as the permanent home of the FTAA secretariat. The Florida delegation remains committed to ensuring an FTAA secretariat in Miami because of the city's rich cultural and business ties to Latin America. In fact, this House in April of 2000 voted unanimously in support of Miami's designation. With three international airports and three seaports, Miami is truly the gateway to the Americas. In fact, Enterprise Florida has estimated the creation of 90,000 new jobs and an increase of $13.6 billion annually to Florida's gross State product.

Again, I welcome the international community to south Florida, and remain mindful that trade alone is only part of the FTAA equation. The principles underlying a commitment to free trade are the same principles that foster free societies.

International trade is more than just the exchange of goods and services. It is the economic fabric that ties together like-minded Democratic governments and societies.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2754, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2004

Mr. REYNOLDS. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 444 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 444

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 2754) making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes. All points of order against the conference report and against its consideration are waived.

The SPEAKER pro tempore. The gentleman from New York (Mr. REYNOLDS) is recognized for 1 hour.

Mr. REYNOLDS. Madam Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Madam Speaker, House Resolution 444 is a standard rule that provides for consideration of the conference report to accompany H.R. 2754, the Energy and Water Development Appropriations Act for the fiscal year ending September 30, 2004. The rule waives all points of order against the conference report and against its consideration. The rule also provides that the conference report will be considered as read.

Madam Speaker, the underlying conference report is the result of hard work and compromise by the energy and water appropriations conference committee. The conference report suggests a strong civil works program with the Army Corps of Engineers. By concentrating $4.5 billion on the traditional tasks such as flood control, shoreline protection, and navigation, which yield the most economic benefit for the Nation, the bill ensures the highest possible return on taxpayer investment.

Within the agreement, the Department of Energy is provided with $22 billion. Included in that funding is nearly $350 million for renewable energy programs and $393 million for nuclear energy programs. Specific programs funded within the Department are the nuclear energy research initiative of $11.6 million, $6.5 million for the nuclear hydrogen initiative, and $68 million for the advanced fuel cycle initiative. Adequate and needed funding is provided for science programs within the Department, including high-energy physics, nuclear physics, biological and environmental research, fusion energy research, and advanced scientific computing research.

The nuclear waste program continues to be one of our highest environmental priorities and one that is of particular importance to my region. I am also pleased that the conference report provides a total of $580 million for nuclear waste disposal. Additionally, $7.6 billion is provided for environmental management cleanup activities, continuing the strong commitment to accelerate cleanup schedules at contaminated sites throughout the country.

□ 1115

This funding is vital in reducing public health and safety risks. The conference report also provides $8.7 billion for the National Nuclear Security Administration, which includes the nuclear weapons program, defense nuclear nonproliferation, and Naval reactors.

In closing, Madam Speaker, I would like to commend the gentleman from Ohio (Chairman HOBSON) and all of the distinguished conferees on both sides of the aisle for their hard work and dedication to our Nation's energy and water priorities. I urge my colleagues to support this rule and the underlying conference report.

Madam Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Madam Speaker, I yield myself such time as I may consume, and I thank the gentleman from New York (Mr. REYNOLDS) for yielding me the time.

Madam Speaker, as my colleague on the Committee on Rules already noted, this rule is typical for a conference report. It is closed and it allows for 1 hour of debate. I should note that I am pleased to rise today to debate the content of the energy and water appropriations bill and only the energy and water appropriations bill. Let us just hope that when Congress adjourns the first session of the 108th Congress, it will have considered 13 such appropriations conference reports.

To Republican leaders who say that considering 13 separate appropriations reports is not possible or just highly unlikely, I note that while the other body remained in session last week, the House took the week off. Where there is a will, Madam Speaker, there is always a way. The will of the majority is clear, and it is not on the side of the American people.

But I should not dwell on this body's work ethic nor shall I attempt to predict or foresee the prospects of this week, however dim they may be. Instead I rise in support of the underlying conference report.

As previously mentioned, the energy and water appropriations bill provides $27.3 billion in funding for the United States Department of Energy and many of our country's most important water-related projects. The bill appropriates about $4.5 billion for the Army Corps of Engineers, about $1 billion for the Bureau of Reclamation, $22 billion for the Department of Energy, and about $140 million for independent agencies including the Nuclear Regulatory Commission and the Defense Nuclear Facilities Safety Board.

The report also includes more than $15 million in funding for the restoration of Florida's Everglades, and I thank all of our colleagues in the House for continuing to support that vital project in the State of Florida. It further contains legislative language ensuring that the State of Florida fulfills its commitment to improve water quality in the Everglades, and I would urge the Florida legislature to undertake its responsibilities most immediately in that regard. Both of these are prime examples of Congress's continuing commitment to the largest environmental cleanup in the history of the world.

I am proud of the fact that several of our colleagues including the gentleman from Florida (Mr. FOLEY), the gentleman from Florida (Mr. GOSS), the gentleman from Florida (Mr. MARIO DIAZ-BALART), and myself are the immediate Representatives for the lake and Everglades area. There are other Congress persons, the gentleman from Florida (Mr. SHAW), the gentleman from Florida (Mr. DEUTSCH), the gentleman from Florida (Mr. MEEK), the gentlewoman from Florida (Ms. ROS-LEHTINEN) and the gentleman from Florida (Mr. WEXLER), all of whom have been directly involved in this historic undertaking. I am proud of the work that Florida's whole congressional delegation has done on a bipartisan basis, particularly the gentleman from Florida (Chairman YOUNG) and the gentleman from Wisconsin (Mr. OBEY), the ranking member who is not from Florida but has helped us with this to keep this project moving ahead. The subcommittee chairman and the ranking Democrat are to be thanked for their tireless work, and I look forward to working with each of them in the future.

In addition to funding Everglades restoration efforts, the underlying report provides more than $4.5 million for south Florida beach renourishment and protection projects, $500,000 for Florida Keys water quality improvements, and more than $17 million for improving south Florida's ports and waterways.

I am well aware that some of my colleagues on this side of the aisle have severe reservations regarding the report, particularly funding for the Yucca Mountain site, a Robust Nuclear Earth Penetrator study, and an anti-environmental rider that affects a fair process already underway in Alaska. Their concerns are real, and, frankly, I am disappointed that we have not better addressed them in the conference report.

Again, Madam Speaker, this is by and large a good report. I urge my colleagues to support it.

Madam Speaker, I reserve the balance of my time.

Mr. REYNOLDS. Madam Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Madam Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Madam Speaker, I think one of the obligations of those of us in the minority is to raise objection when we believe that the majority has not handled legislation correctly and to indicate support when we think it has handled things correctly. I want to stipulate that, in this instance, I think the gentleman from Ohio (Chairman HOBSON) has done a wonderful job in seeing to it that the Congress addresses its institutional responsibilities in the areas under the energy and water bill jurisdiction, and I think he has done an excellent job in involving the minority in reaching those decisions. In the process, it has been very apparent that the primary consideration of the chairman of the subcommittee has been the substance of the legislation, and he has tried to take the conference in a direction which defends the public interest irrespective of what either some people in the Congress or some people in the executive branch of government have felt about these issues. So I simply want to take this time to congratulate the gentleman from Ohio (Chairman HOBSON) and to congratulate the gentleman from Indiana (Mr. VISCLOSKY), the ranking minority member on the subcommittee, because they have handled this bill in a way which, in my view, all appropriations bills should be handled, all legislation should be handled, for that matter. And in the process, while I certainly do not agree with every provision in the bill, I think the process has been reasonable enough and the substance is reasonable enough that this bill merits support on both sides of the aisle, and I am pleased to report that to the House.

Mr. REYNOLDS. Madam Speaker, I yield myself such time as I may consume.

I take with good note the ranking member of the full Committee on Appropriations on the compliments to the gentleman from Ohio (Mr. HOBSON) as chair of the subcommittee, and I know that he works hard in those endeavors to achieve that, but it is not easy to get such a fine accolade on behalf of the ranking member, and on behalf of the chair of the subcommittee I will pass along his kind remarks.

Madam Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Madam Speaker, I yield 2½ minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Madam Speaker, I rise to support the underlying legislation as it relates to energy and water development, and I thank the chair and the ranking member.

Coming from Houston, Texas, having just experienced enormous flooding over the last 48 hours and the tragedy of tornadoes, I recognize the importance of a system of both energy and water that needs to work. I particularly want to note the importance in this legislation of the $3.45 billion for the Department of Energy science programs that will allow us to deal with climatic concerns that impact the quality of life of our constituents and $8.7 billion for the National Nuclear Security Administration because I would like to see the responsibility of cleanup be enhanced; $426 million for renewable energy programs, and as well $580 million for the nuclear waste program, and most of all, the $4.6 billion for the Army Corps of Engineers, drastically needed in a community like mine that is 50 feet under sea level. So I am publicly asking for assistance from the Army Corps of Engineers as I have to return to Houston today because of several of my community sites have been destroyed, and I am going to seek help for them.

As I mentioned, this is an important question in Houston. In fact, the recent mayoral campaign was based upon who can deal with flooding. So this strikes at the heart of our community and its survival. I also want to note that we will be bringing up H.R. 6, the Energy Policy Act of 2003. Let me note that I am grateful for the focus of doing energy research for both renewables, but also alternatives, and although it was a vigorous debate, I want to say to my energy friends, the deletion of ANWR does not mean that we cannot be domestically sufficient, that we cannot resources to invest in domestic energy resources, particularly in the Gulf where the gentleman from Texas (Mr. LAMPSON) and I offered an amendment to determine the amount of resources in the Gulf off the shores of Louisiana and Florida, in particular, and to do more reinvigorated drilling in that area where it is well assured that it can be done in a very scientific and environmentally safe area. Even though there are issues with the Energy Policy Act that I would be concerned about, as a Texan, I think it is vital that we become more independent as it relates to energy resources, that we begin to look at alternatives, begin to look at incentives for alternative motor vehicles and the $1.8 billion for the electric power industry. My colleagues can be assured, to my friends in Texas, that we will never be totally independent of oil and natural gas of which we have much in this area. So this Energy Policy Act, that is, H.R. 6, should at least be considered a first step where we have come together, although sometimes in controversy, to put on the table a real energy agenda and policy for the 21st century and for this country. It is long overdue, and as someone who has practiced oil and gas law since about 1976, I can tell the Members that we will be better off having a road map that we can follow and that we can work with environmentalists and work with independents, small energy companies, who can be the backbone of an energy policy in this Nation.

So, Madam Speaker, I rise to support H.R. 2754 and the rule, as well as H.R. 6.

Mr. REYNOLDS. Madam Speaker, I yield 2 minutes to the gentleman from Nevada (Mr. GIBBONS).

Mr. GIBBONS. Madam Speaker, I rise in strong support of the rule, yet with some strong reservations also regarding final passage of the Energy and Water Appropriations Conference Report. But before I explain my reservation, I would like to recognize the many efforts of the gentleman from Ohio (Chairman HOBSON), the gentleman from Indiana (Mr. VISCLOSKY), ranking member, and other hardworking Members and their staffs who have made, over the past year, an effort to work with the Nevada delegation to address our serious concerns with the Yucca Mountain project.

For example, during initial House floor consideration of the energy and water bill this past July, the gentleman from Ohio (Chairman HOBSON) was gracious enough to grant the gentleman from Nevada (Mr. PORTER) and

I a colloquy on the issue of early acceptance of spent nuclear fuel at Yucca Mountain. In response to our concern, the gentleman from Ohio (Chairman HOBSON) agreed not only to strip the early acceptance language from the bill, but also to dedicate $4 million in additional Federal spending to bolster security at our Nation's nuclear power stations. I am heartened by the gentleman from Ohio's (Chairman HOBSON) willingness to ensure that the early acceptance of spent nuclear language did not remain through the conference on this measure.

However, the conference report still dedicates $580 million in taxpayers' dollars to the Yucca Mountain project, in my opinion, a fatally flawed Federal boondoggle that a majority of Nevadans, millions of Americans, and the Nevada Congressional Delegation strongly opposes.

Madam Speaker, I will vote yes on this rule; however, I will remain opposed to frivolously spending taxpayers' dollars and will never give up the fight against wasteful Yucca Mountain project spending.

□ 1130

Mr. HASTINGS of Florida. Madam Speaker, I yield back the balance of my time.

Mr. REYNOLDS. Madam Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question is ordered.

The SPEAKER pro tempore (Mrs. BIGGERT). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HASTINGS of Florida. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

GENERAL LEAVE

Mr. BONILLA. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the motion to go to conference on H.R. 2673, and that I may include tabular and extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 2673, AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

Mr. BONILLA. Madam Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2673) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

MOTION TO INSTRUCT CONFEREES OFFERED BY MR. OBEY

Mr. OBEY. Madam Speaker, I offer a motion to instruct.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

> Mr. OBEY moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 2673, be instructed to insist on the House position on prescription drug importation in Section 749 of the House-passed bill.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. OBEY) and the gentleman from Texas (Mr. BONILLA) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Madam Speaker, I yield myself 8 minutes.

Madam Speaker, to the uninitiated, people might think that this is a motion that deals with the agriculture appropriations bill. But, in fact, what is happening today is that conferees are being appointed, ostensibly, to deal with the agriculture appropriations bill but, in fact, the agriculture appropriation will then become the vehicle into which all other appropriation bills that have not yet passed the Congress will be dumped, producing one of those glorious omnibus appropriation bills that the Congress deals with at the end of the session when it has not been able to get its work done. So Members can expect to see this conference come back containing not only the material that is appropriate to the agriculture bill, but if the majority has its way, they can expect that the conference report will also contain the State, Justice, and Commerce appropriation, the Labor, Health, and Human Services appropriation, perhaps the VA–HUD appropriation, the D.C. appropriation, and perhaps several others. On this side of the aisle, we do not believe that those bills should be considered together. We believe that each of them should stand on their own merits.

We have another complicating factor, because this legislation will be used by the majority to try and pave the way for passage of its ill-conceived and misbegotten Medicare, so-called Medicare Reform Act. Now, that bill started as an effort to provide a prescription drug benefit for our senior citizens under Medicare. Instead, what is being produced on that score is a very weak, badly-shredded, partial benefit that does not even begin until years down the road, and the enticement of that prescription drug bill or that prescription drug coverage, I should say, is being used as an effort to blackmail Congress into essentially vitiating Medicare as we know it today. There are not many people on this side of the aisle who think that that is a good idea either.

Now, one of the provisions in the Medicare conference report that will shortly be before this body is a provision which tries to create the impression that senior citizens will be allowed to reimport drugs from Canada as part of the passage of that bill. But, in fact, the FDA has made quite clear that that provision will not work. So what we are going to be faced with is a "let's pretend" game. The Congress will pretend in the Medicare bill that it is about to pass that there is a meaningful ability for seniors to reimport drugs at a lower cost from Canada when, in fact, because that provision requires the approval of the very agencies that are opposed to it, no such reimportation will ever take place.

So this Congress, in essence, intends on the Medicare reform bill to practice consumer fraud on the House Floor. This bill is part of that scheme, because this bill presently contains a requirement, in the form of the Northup amendment, that drug reimportation, meaningful drug reimportation be allowed to take place. But the intention of the conferees, at least on the majority side, is to deep-six that provision in conference so that the bill will come back stripped of that, and they will pretend that they have taken care of the need in the Medicare bill but, in fact, the Medicare bill will not have taken care of it at all. It sounds complicated; it is meant to be. Because that is the way that the public is deceived into thinking that there will be real action on reimportation of drugs from Canada when, in fact, the majority has no intention whatsoever of allowing that to occur.

So, therefore, I am offering this motion which says, in effect, that on this bill, if we are going to have a drug reimportation proposal, and I have some questions about the advisability of some of those proposals, but what this motion says is that if we are going to have a drug reimportation provision, it at least ought to be a real one, and that is what we believe the Northup amendment is, in contrast to the phony "let's pretend" proposition which will shortly be coming at us in the so-called Medicare reform bill.

So our position is very simple: this language gives people who want to have drugs reimported from Canada, lower-cost prescription drugs, this gives people who want to see that happen an opportunity to vote to require it. This is an effort to keep a real drug reimportation provision before the Congress rather than simply allowing the institution to engage in this widespread charade that somehow there is a meaningful reimportation provision in the Medicare bill which is about to come at us.

A lot of things will happen in this House over the last week, in the closing week of the session, or what is expected to be the closing week of the session. A lot of things will happen which will not bring credit to this House. What I would hope is that we could avoid having a broad-scale consumer fraud effort take place on this House floor and, in my view, without the Northup amendment, any pretense that there is a drug reimportation provision that is being made available to seniors will be just that, a blatant effort to defraud the public. I would hope that the membership of this House would recognize that, and I would hope that the members of the general public who have been waiting for years for a meaningful provision on drugs would remember it as well.

So for those of my colleagues who are interested in having reimportation actually occur, this motion is in support of the only real proposition that will be before the Congress between now and adjournment, and we will see whether Members, in fact, put their votes where their mouths are. Any Member who votes for the Medicare reform bill and claims that they have provided a drug reimportation plan that will provide lower-cost drugs from Canada will be committing consumer fraud, and I want to say that beforehand so that Members are put on notice as to what that provision really is. If my colleagues want to be real, vote for this motion. If they do not, do not. It is as simple as that.

Madam Speaker, I reserve the balance of my time.

Mr. BONILLA. Madam Speaker, I rise in opposition to the motion, and I reserve the balance of my time.

Mr. OBEY. Madam Speaker, how much time is remaining on both sides?

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. OBEY) has 22 minutes remaining; the gentleman from Texas (Mr. BONILLA) has 30 minutes remaining.

Mr. OBEY. And who has the right to close?

The SPEAKER pro tempore. The gentleman from Wisconsin has the right to close.

Mr. OBEY. Madam Speaker, I yield 8 minutes to the distinguished gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Madam Speaker, I thank the gentleman for yielding me this time, and, more importantly, I thank him for offering this motion that will be our only opportunity to provide a statement by the Members of Congress as to the real issue of importation, since that opportunity will now be denied us in the prescription drug bill that we are anticipating coming to this floor.

As many of our constituents know, millions of Americans have waited for the opportunity to be able to take advantage of the lower prices of pharmaceuticals that are available in Canada and in other countries, but specifically with respect to Canada, as we tried to address in the bill. We now see that that door is going to be slammed shut. The reimportation is going to be granted on one hand, but the certification by the Secretary of Health and Human Services will effectively close, as it has in the past, the opportunity for American citizens who are ill, who need these drugs, who are financially troubled and financially incapable of paying for some of these drugs; as a result of that, they take the prescription that their doctor has given them, they reduce the amount of pills they take per day, they reduce the dosage that they take in trying to get through the month in order to pay for, in many instances, lifesaving drugs that they need by order of their physician. Many of our constituents, hundreds of thousands, if not millions of Americans, have now taken to forming buying clubs, of taking trips by bus, riding long hours on buses, to go to Mexico, to go to Canada to buy these drugs in Canadian pharmacies where the prices are much, much lower than what they are having to pay through their health care plan if they have one or, if they do not have one at all, what they would pay on the market.

□ 1145

It has been suggested that this is forced upon Americans because this is the only way that they can recapture the research and development dollars that continue to flow these pharmaceutical drugs to the marketplace. Some of that is true. But the question millions of American citizens are asking is why is it that only the American ill, the American sick, the American infirm are the ones who have to pay for this? They say, well, the other countries have price controls, the other countries negotiate. We asked for the authority to have the Secretary of Health and Human Services negotiate the prices of drugs for Medicare recipients as we do in the Veterans Administration, as Wal-Mart does, as Costco does, as all big purchasers do with pharmaceuticals, and we were denied that opportunity in the House.

So the only outlet, the only outlet for these citizens where their financial situation does not meet their medical situation is to go to Canada, and now that opportunity is being slammed in terms of this reimportation provision within the Medicare prescription drug benefit that will be coming to the floor.

As a result of that, without the negotiation power of the Secretary of Health and Human Services on the cost of drugs, without the reimportation provision, America's senior citizens, and I must say all American families, are put at the mercy of the pharmaceutical industry that will now have no incentive to lower the cost of drugs.

The prescription drug bill coming to the floor does some wonderful things for hospitals, wonderful things for doctors, some wonderful things for the pharmaceutical companies, but it does nothing for the people who have to consume those pharmaceuticals. It makes no effort at trying to control the price of those pharmaceuticals, the cost of those to individuals.

And when we say that, we are saying simply have us negotiate as a large purchaser. That is what the business world does. People come to us and ask why do we not run the government more like a business. We try to run it like a business, and the businesses shut us down.

So now the question of reimportation will be shifted from a vote in this Congress to provide for reimportation, in the new bill it will now all go to the Secretary of Health and Human Services. And the entire political and financial clout of the pharmaceutical industry will be focused on the Secretary of Health and Human Services to never certify for the reimportation of pharmaceuticals to the United States, thereby depriving millions of Americans the opportunity to lower the cost of the drugs that are necessary to them on a monthly basis as prescribed by their doctors.

We are going to decide that those senior citizens, those people who are desperately in need of these pharmaceuticals are going to be the sole individuals that are somehow going to pay for the research and development of these drugs if, in fact, that argument is even accurate.

The fact of the matter is, the reason the prices are really high in the United States, as opposed to the other countries, is the power of the pharmaceutical industry to do just as they have done in the Medicare prescription drug bill and that is to take out all of the provisions that would have given a break to the sick and the elderly in this country, that would have given them an opportunity to lower the cost of the drugs that they have to buy every week and every month. That is why the prices are so high in the United States. It is not about research and development. It is about lobbying, it is about political contributions, it is about the force of this industry on this Congress and the House and the Senate and the Republican leadership to strip this bill of those provisions that were put in on a bipartisan basis, on a bipartisan basis in the House, on a bipartisan basis in the Senate, to strip them and remove them to the administration which has opposed these provisions from the very beginning.

So the fate of our senior citizens, the fate of the elderly in this country, the fate of the ill, the sick in this country, is now placed back into hands of the pharmaceutical companies, exactly where it was when we began this process. So the pharmaceutical companies, as this bill comes to the floor, get a great big victory and the consumers and the sick people in this country get nothing. They get a continuation of exorbitant costs of pharmaceuticals that are absolutely essential to their well-being and sustaining their health, maybe, in fact, in sustaining their life.

So this motion by the gentleman from Wisconsin (Mr. OBEY) is the most important vote in terms of our ability to express the desire to have reimportation as part of our medical policy in this country and also to tell the conferees that they are bringing to us an imperfect product, and they should to back to the conference committee and make sure that America's elderly and America's sick are protected and have the opportunity to take advantage of the reimportation of those pharmaceuticals that they need.

We should recognize that the bill as reported by the conferees is not a bill that protects the senior citizens of this country, it is not a bill that provides for those who are ill in this country; it protects the pharmaceutical companies and they should have to go back to conference.

Mr. OBEY. Madam Speaker, how much time is remaining?

The SPEAKER pro tempore (Mrs. BIGGERT). The gentleman from Wisconsin (Mr. OBEY) has 15 minutes remaining and the gentleman from Texas (Mr. BONILLA) has 30 minutes remaining.

Mr. OBEY. Could I ask the gentleman from Texas (Mr. BONILLA), is it his intention not to yield any time?

The SPEAKER pro tempore. There is a question to the gentleman from Texas. Does the gentleman continue to reserve his time?

Mr. OBEY. Madam Speaker, is it the intention of the gentleman not to yield any time?

Mr. BONILLA. Madam Speaker, at this time we reserve the balance of our time.

Mr. OBEY. Madam Speaker, we have the right to close, so I am wondering when the gentleman is intending to use his time.

Mr. BONILLA. Madam Speaker, I would suggest at this moment to the gentleman from Wisconsin if he has additional speakers to go ahead and proceed.

Mr. OBEY. Madam Speaker, is the gentleman going to be supporting or accepting the motion?

Mr. BONILLA. Madam Speaker, as I stated earlier, we are in opposition to the motion.

Mr. OBEY. Madam Speaker, I yield 3 minutes to the gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Madam Speaker, I rise in support of this motion. As high health care prices continue to erode the living standards of middle-class families across this country, the rising price of prescription drugs remains front and center in the eyes of seniors. A recent report by Families USA concluded that the prices of the 50 most frequently used prescription drugs by seniors rose by nearly 3½ times the rate of inflation. That is a problem for them, their children, and their children's children. We all have a stake in driving down prescription drug prices.

In July this body abrogated its responsibility to address the problem of soaring drug prices. It barred the government from negotiating lower prices for seniors. It did worse than nothing.

Since that time the call for prescription drug importation, giving ordinary Americans the choice that they are taking on their own, out of desperation, has reached a critical mass. Today the American people know that importation would save them billions of dollars, $600 billion in the next decade, savings passed directly onto the consumer.

They know it is a safe option, because they know that the U.S. drug companies themselves reimport brand name medications from their overseas plants, $14.7 billion worth in 2001. They know that the reimportation bill passed this body in late July. It guaranteed safety. I would repeat that our bill not only required drugs reimported from other countries be FDA approved, but also that the facilities they are manufactured in are FDA approved as well. Add to that requirement in this bill that all prescription drugs use counterfeit-resistant packaging, and there is little doubt that every drug purchased here in the United States, reimported or otherwise, would be safer than the drugs that are available today.

The FDA is so concerned about safety then they ought to take a look at food safety in the United States. They have jurisdiction over imported foods coming into the United States, and only less than 1 percent, 1 to 2 percent of all imported food is inspected coming into this country. And yet the FDA will certify that that food is the safest food supply in the world. And yet FDA-approved drugs from FDA-approved facilities will not be certified as being safe. Tell us, on whose side is the FDA? This is not an issue of safety, it is an issue of price.

This Congress needs to stop acting as the wholly-owned subsidiary of the pharmaceutical companies, and step up to its responsibilities to help consumers. We need to vote for this motion because it is the only opportunity for this body to vote for lower cost prescription drugs. The Medicare prescription drug policy that has come out of the conference in this body, decimates and destroys Medicare, does nothing about the high cost of prescription drugs. And unless we pass this motion to instruct, there will be no opportunity to do what is the right thing for America's families, for America's seniors, and that is to provide them with the opportunity to get their prescription medications at a price that they can afford in order to save their lives. That is what this issue is about today. It is about providing people in this country the wherewithal to afford prescription drugs.

Madam Speaker, let us vote for this motion to instruct. Let us do the right thing for seniors and for the families in this country.

Mr. BONILLA. Madam Speaker, at this time I yield back the balance of my time.

Mr. OBEY. Madam Speaker, I yield 1½ minutes to the gentleman from Wisconsin (Mr. KLECZKA).

Mr. KLECZKA. Madam Speaker, we are told by my colleague from Texas (Mr. BONILLA), the Republican who is opposing this motion, that he does not have any comments on it, does not have anything to say about it. And I think that is kind of funny because we know full well when the Medicare bill comes up here, it is going to be Thursday or Friday at 5 o'clock in the morning when America is sleeping and all the seniors do not know what is happening.

But why is this provision important about the drug importation? Because when this bill originally passed the House, it passed by one vote. And after the roll call was left open an hour with the Republican leadership beating their Members into submission, a deal was struck that, okay, we are going to pass this bill, if we get drug importation. And that is why the bill passed.

Then it went to a conference committee, and there was not a Democrat from the House sitting in there negotiating. But you know what was in there? The drug companies were in there. And now we are going to see the final product a few days from now, and lo and behold, drug importation is only permitted if the Secretary of Health and Human Services says it is okay. But we know that he has already said it is not okay. They oppose it.

The administration is in the pocket of the drug companies. And so your mothers and fathers and grandparents are going to be pay more for drugs. This bill is a bad bill. Not only does it provide no decent drug coverage for America's seniors, but it is an attempt to get them out of the Medicare program.

Madam Speaker, 90 percent of seniors today are in the Medicare fee-for-service program. This bill rewards or gives gifts to insurance companies to get them to move out and go into the private insurance companies where they are going to get a real bad deal on their health care.

Mr. OBEY. Madam Speaker, I yield 1½ minutes to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Madam Speaker, previous to today's debate the House has spoken definitively on what the American people want and today are only getting price relief on their prescription drugs by importing from Canada. Yet, through stealth maneuvers, the Republican majority, under pressure from the pharmaceutical industry and the White House, is going to close the border. They are about to say, to quote the FDA Commissioner, the FDA cannot guarantee the safety of Canadian drugs. Well, guess what? They cannot guarantee the safety of American drugs. In fact, it is well documented that the supply chain is more broken in the United States of America than it is in Canada where there is more government control.

That was totally a specious argument that they have drug out here to try and protect one thing: Not the safety of the American public and our seniors, not their health. I will tell you what jeopardizes their health: When they cannot afford the drugs they need for a chronic or an acute condition.

□ 1200

There are tens of thousands of seniors and others across America in that condition.

No, there is only one issue here. There is only one thing to protect, and it is not the safety of America's seniors; it is not the sanctity and the quality of our drug supply, because it is already compromised by phony closed-door pharmacies and hundreds of other loopholes that are getting counterfeit drugs, as is well documented, into the system in our country.

Not in Canada. Their system works a lot better. They are reimporting FDA-approved drugs through Canada, and we know they are probably really American drugs. Here there are a lot of counterfeit drugs being made available though phony wholesalers.

No, there is one thing that is being protected. Well, two things. One is the obscene prices and profits of the pharmaceutical industry; and two is political campaign contributions to the White House and Republicans. That is what is being protected.

Mr. OBEY. Madam Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Madam Speaker, I would like to thank the gentleman from Wisconsin (Mr. OBEY) for yielding me time.

People from around the world come to America for their medical care. Yet Americans are forced to go around the world for their medications. Why? Because we have the most expensive prices for prescription drugs anywhere in the world right here in the United States; and yet all the medications are developed with taxpayer-funded research. Now we are given the honor and distinction to pay the most expensive prices.

Now, there are two ways to address the issue of cost and affordability of prescription drugs. One was allowing Americans, like our European colleagues, to buy prescription drugs at 30, 40, 50 percent cheaper, same name-brands drugs in both Canada, Europe, France, Germany, Italy, and Ireland. Yet, twice the Republican Congress has denied the right to Americans to free trade, to competition and choice because through competition prices would reduce and come down for America. Americans would no longer subsidize the poor starving French and Germans. They pay competitive prices. We pay competitive prices. Prices will drop here at home.

Second is give the right to the Secretary of Health and Human Services what the Secretary of the Veterans Administration has and what the private insurers have, which is to negotiate bulk prices, that is, a Medicare Sam's Club. And rather than use the power of 41 million seniors, we take a powder here, twice denying the right to seniors to get cost-effective measures, to get the prescription drugs they need at the prices they can afford.

We deny that right. Why? Because we do not have faith in Tommy Thompson to negotiate good prices, but we have faith in him to deny the right of prescription drugs that come into this country at affordable prices. Our seniors are paying premium prices, and what are we about to do?

We are about to ask the taxpayers to pay $400 billion of their money for the most expensive drugs, prescription drugs, anywhere in the world. We owe the common decency and courtesy to the taxpayers to get the best price and not the most expensive price.

I support this motion so we would finally break the hammer lock the prescription drug companies have on this Congress and the Republican Congress and give the American people the type of relief they need so they can buy the drugs they need for their health at the prices they can afford.

Mr. OBEY. Madam Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mrs. BIGGERT). The gentleman from Wisconsin (Mr. OBEY) has 7 minutes remaining.

Mr. OBEY. Madam Speaker, I yield 1½ minutes to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Madam Speaker, I thank the gentleman for yielding me time.

Madam Speaker, we have got a strange situation here. When we think about this, the most profitable industry in the country, the most profitable industry in the country is charging the highest prices in the world to America's seniors and others without health insurance. And yet the head of the Food and Drug Administration is giving speeches saying the problem is not that prices are too high in this country; the problem is that they are too low in other countries. The rest of the world has it wrong. They should raise their prices.

This is ludicrous. In fact, the drug companies are happy to sell their drugs in Canada and Europe and around the world where on average they are selling their drugs for 40 percent less, and there is research going on in Canada. Look at this, just one example, there are 79 research-based drug companies in Canada. And since 1995, they have increased their research spending by 50 percent. The pharmaceutical industry is not hurting in Canada or around the world. The people who are hurting are our seniors trying to buy their medication here at home.

We need to be able to take drugs from other countries to bring them into this country. We know one thing, this administration is never going to approve the reimportation of low-price drugs from Canada. They will not do it. They are trying to stop it now. So any provision which depends on the authority of the Secretary of Health and Human Services and a Republican administration is not going to fly. That is why it is so important that this motion pass; it is so important that we have legislation that authorizes the reimportation of drugs. We do it for other products. We ought to do it for medication.

Mr. OBEY. Madam Speaker, I yield 2 minutes to the gentleman from Arkansas (Mr. ROSS).

Mr. ROSS. Madam Speaker, I thank the gentleman from Wisconsin (Mr. OBEY) for yielding me time.

I rise in support of the motion to instruct, to instruct the conferees that we accept in this agriculture appropriations bill the same language that has already been passed on the House floor as it deals with reimportation, and let me tell you why.

In June of last year, I did a study where we compared the price paid by seniors in Arkansas' Fourth Congressional District with the price paid by seniors in six other countries. And we found that the price paid by seniors in the Fourth Congressional District of Arkansas is 110 percent more on average than the price paid by seniors in places like Canada, France, Germany, Italy, Japan, and the U.K.

Let me give you a couple of examples. Prevacid, 30 milligrams. In our congressional district it costs $128 a month. The average foreign price, $55 a month. Celebrex, 200 milligrams. In my congressional district, $81 a month.

The average foreign price, $35 a month. Prilosec, in my district $129 a month. The average foreign price, $56 a month; and the list goes on and on and on.

The drug manufacturers wrote this so-called Medicare prescription drug bill, which is not for our seniors. It is a windfall for the big drug manufacturers, and now we see their fingerprints all over this bill today to go to conference on the ag appropriations bill.

Velma from my district writes and says she takes seven prescriptions a month. It costs her $560, and she is trying to get by and live on $604 a month.

Mary from my district says she takes four prescriptions a month that cost her $401.88, and she is trying to get by on $586 a month.

I rise in support of the motion to instruct on behalf of the seniors of America so we can take on the big drug manufacturers and the Republican leadership and finally bring down the high cost of prescription drugs for our seniors. This is America, and we can do better than this by our seniors.

Mr. OBEY. Madam Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. OBEY) has 3½ minutes remaining.

Mr. BONILLA. Madam Speaker, I yield back the balance of my time.

Mr. OBEY. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, this motion is an effort to prevent this Congress from giving to the drug companies two early Christmas presents.

Let me put it this way: this Congress is about to tell the drug companies that they will have carte blanche to do whatever they want on drug costs. And this Congress will accomplish that in two ways. The first step is by obliterating the efforts that we have tried to make to allow the Federal Government to negotiate with drug companies for a lower price for drugs by providing a drug benefit that goes to everyone under Medicare. The Medicare legislation, which this House will be asked to vote on this week, that Medicare legislation, at the instruction of the Republican leadership, has eliminated all possibility for the Federal Government to negotiate lower drug prices. That is gift number one to the drug companies.

That means the only remaining way that seniors can get some help on drug prices is by reimporting them from Canada. And the Medicare legislation which will shortly be before us will state that or will pretend that there is a Canadian drug reimport benefit but, in fact, has a benefit which the FDA itself says will not work. That means the only way left for Members to try to provide some degree of price protection for prescription drugs for seniors is to vote for this motion and to insist that this conference committee come back with the provision that was adopted in the original House legislation. That is why this motion is before us today. I would urge a "yes" vote on the motion.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Wisconsin (Mr. OBEY).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. OBEY. Madam Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

This vote will be followed by three 5-minute votes as follows:

House Resolution 444, by the yeas and nays;

approval of the Journal, de novo;

suspension of the rules on H.R. 3300, by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 237, nays 176, not voting 21, as follows:

[Roll No. 624]

YEAS—237

Abercrombie
Ackerman
Allen
Baca
Baird
Baldwin
Ballance
Bartlett (MD)
Bass
Becerra
Bell
Bereuter
Berkley
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Bono
Boozman
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown (SC)
Brown, Corrine
Burton (IN)
Capito
Capps
Capuano
Cardoza
Carson (IN)
Case
Castle
Clay
Conyers
Cooper
Costello
Cox
Cramer
Crowley
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
Davis, Jo Ann
DeFazio
Delahunt
DeLauro
Deutsch
Dicks
Doggett
Doyle
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
Evans
Everett
Fattah
Filner
Flake
Forbes
Ford
Frank (MA)
Frost
Gonzalez
Goode
Goodlatte
Gordon
Green (TX)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hinchey
Hinojosa
Hoeffel
Hoekstra
Holden
Hooley (OR)
Houghton
Hoyer
Hunter
Hyde
Inslee
Israel
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
Johnson (CT)
Jones (NC)
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kirk
Kleczka
Kolbe
Kucinich
LaHood
Lampson
Langevin
Larsen (WA)
Larson (CT)
LaTourette
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McInnis
McKeon
McNulty
Meehan
Meek (FL)
Mica
Michaud
Millender-McDonald
Miller (MI)
Miller (NC)
Miller, George
Mollohan
Moore
Moran (KS)
Murtha
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Oberstar
Obey
Olver
Osborne
Otter
Owens
Pallone
Pastor
Paul
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Pomeroy
Rahall
Ramstad
Rangel
Rehberg
Renzi
Reyes
Rodriguez
Rohrabacher
Ros-Lehtinen
Ross
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sandlin
Schakowsky
Schiff
Schrock
Scott (VA)
Serrano
Shaw
Shays
Sherwood
Shuster
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tancredo
Taylor (MS)
Taylor (NC)
Tierney
Towns
Turner (TX)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Vitter
Wamp
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Wolf
Woolsey
Wu
Wynn

NAYS—176

Aderholt
Akin
Alexander
Andrews
Bachus
Baker
Ballenger
Barrett (SC)
Barton (TX)
Beauprez
Berman
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bradley (NH)
Brady (TX)
Burgess
Burns
Burr
Buyer
Calvert
Camp
Cannon
Cantor
Cardin
Carter
Chabot
Chocola
Clyburn
Coble
Collins
Crane
Crenshaw
Culberson
Davis (FL)
Davis, Tom
Deal (GA)
DeGette
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Dreier
Dunn
English
Eshoo
Etheridge
Farr
Feeney
Ferguson
Foley
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Goss
Granger
Graves
Green (WI)
Greenwood
Harris
Hart
Hefley
Hensarling
Hill
Hobson
Holt
Honda
Hostettler
Hulshof
Isakson
Issa
John
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kline
Knollenberg
Latham
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lucas (OK)
Matheson
McCotter
McCrery
McIntyre
Meeks (NY)
Menendez
Miller (FL)
Miller, Gary
Moran (VA)
Murphy
Myrick
Nethercutt
Norwood
Nunes
Nussle
Ose
Oxley
Pascrell
Payne
Pearce
Pence
Pombo
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Regula
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rothman
Ryun (KS)
Saxton
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Sherman
Shimkus
Simmons
Simpson
Smith (TX)
Smith (WA)
Souder
Stearns
Sullivan
Sweeney
Tanner
Tauscher
Tauzin
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Turner (OH)
Udall (CO)
Upton
Walden (OR)
Walsh
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (SC)
Young (AK)
Young (FL)

NOT VOTING—21

Boyd
Brown-Waite, Ginny
Carson (OK)
Cole
Cubin
DeMint
Dingell
Fletcher
Gephardt
Gilchrest
Herger
Jenkins
Kaptur
Lantos
Musgrave
Ortiz
Pitts
Radanovich
Sanders
Toomey
Waters

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mrs. BIGGERT) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1235

Ms. DEGETTE and Messrs. ROTHMAN, FEENEY, WELDON of Florida, BACHUS, ALEXANDER, THOMPSON of Mississippi, CLYBURN, BOEHLERT, DAVIS of Florida, MORAN of Virginia, and SHERMAN changed their vote from "yea" to "nay."

Mrs. JO ANN DAVIS of Virginia, Mrs. BONO, Mrs. MILLER of Michigan, and Messrs. MCINNIS, GOODLATTE, FLAKE and CLAY changed their vote from "nay" to "yea."

So the motion to instruct was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. COX. Madam Speaker, on rollcall No. 624 I inadvertently voted "aye." The vote was closed before I could correct the mistake. Had I been able to do so, I would have voted "no."

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mrs. BIGGERT). Pursuant to clause 8 of rule XX, the remainder of the votes in this series will be conducted as 5-minute votes.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2754, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2004

The SPEAKER pro tempore. The pending business is the question of agreeing to the resolution, House Resolution 444, on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the resolution.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 409, nays 2, not voting 23, as follows:

[Roll No. 625]

YEAS—409

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—2

Berkley
Porter

NOT VOTING—23

Boyd
Carson (OK)
Carter
Cole
Cubin
DeMint
Dingell
Fletcher
Gephardt
Gilchrest
Jenkins
Kaptur
Lantos
Miller, George
Musgrave
Ortiz
Pence
Pitts
Radanovich
Sanders
Smith (MI)
Smith (NJ)
Toomey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are reminded there are 2 minutes remaining in this vote.

□ 1243

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the pending business is the question of the Speaker's approval of the Journal of the last day's proceedings.

The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MCNULTY. Madam Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 361, noes 48, answered "present" 2, not voting 23, as follows:

[Roll No. 626]

AYES—361

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Ballance
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Bradley (NH)
Brown (OH)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Collins
Conyers
Cooper
Cox
Cramer
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Emanuel
Emerson
Engel
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Flake
Foley
Forbes
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutierrez
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Larson (CT)
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Linder
Lipinski
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Mollohan
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Obey
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Paul
Payne
Pearce
Pelosi
Pence
Peterson (PA)
Petri
Pickering
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Rahall
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sánchez, Linda T.
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stearns
Stenholm
Sullivan
Tancredo
Tanner
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Upton
Van Hollen
Velázquez
Vitter
Walden (OR)
Walsh
Wamp
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOES—48

Baldwin
Berry
Brady (PA)
Brown, Corrine
Capuano
Costello
Crane
DeFazio
English
Filner
Ford
Fossella
Gillmor
Green (TX)
Grijalva
Gutknecht
Hastings (FL)
Hefley
Hulshof
Kennedy (MN)
Kucinich
Latham
LoBiondo
Matheson
McDermott
McGovern
McNulty
Miller, George
Moore
Oberstar
Olver
Pastor
Peterson (MN)
Ramstad
Sabo
Sanchez, Loretta
Schakowsky
Stark
Strickland
Stupak
Sweeney
Taylor (MS)
Thompson (MS)
Udall (CO)
Udall (NM)
Visclosky
Waters
Weller

ANSWERED "PRESENT"—2

Carson (IN)
Majette

NOT VOTING—23

Ballenger
Boyd
Brady (TX)
Carson (OK)
Cole
Cubin
DeMint
Dingell
Ehlers
Fletcher
Gephardt
Gilchrest
Jenkins
Kaptur
Lantos
Larsen (WA)
Lewis (KY)
Ortiz
Pitts
Radanovich
Royce
Sanders
Toomey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mrs. BIGGERT) (during the vote). Members are advised 2 minutes remain in this vote.

☐ 1251

Ms. WATERS changed her vote from "aye" to "no."

So the Journal was approved.

The result of the vote was announced as above recorded.

WALTER F. EHRNFELT, JR. POST OFFICE BUILDING

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 3300.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. DUNCAN) that the House suspend the rules and pass the bill, H.R. 3300, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 410, nays 0, not voting 24, as follows:

[Roll No. 627]

YEAS—410

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Bradley (NH)
Brady (PA)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)

Moran (VA)
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—24

Ballenger
Boyd
Brady (TX)
Cardoza
Carson (OK)
Cubin
DeMint
Dingell
Ehlers
Fletcher
Gephardt
Gilchrest
Jenkins
Kaptur
Lantos
Larsen (WA)
Murphy
Ortiz
Pelosi
Pitts
Radanovich
Royce
Sanders
Toomey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1300

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

1300

APPOINTMENT OF CONFEREES ON H.R. 2673, AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

The SPEAKER pro tempore (Mrs. Biggert). Without objection, the Chair appoints the following conferees:

Messrs. Young of Florida, Regula, Lewis of California, Wolf, Walsh, Hobson, Bonilla, Kingston, Frelinghuysen, Nethercutt, Latham, Goode, LaHood, Obey, Murtha, Mollohan, Ms. Kaptur, Mr. Serrano, Ms. DeLauro, and Messrs. Hinchey, Farr, Boyd and Fattah.

There was no objection.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 6, ENERGY POLICY ACT OF 2003

Mr. HASTINGS of Washington. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 443 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 443

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 6) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

The SPEAKER pro tempore. The gentleman from Washington (Mr. Hastings) is recognized for 1 hour.

Mr. HASTINGS of Washington. Madam Speaker, for the purpose of debate only, I yield the customary 30 minutes to the ranking minority member of the Committee on Rules, the gentleman from Texas (Mr. Frost), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Madam Speaker, House Resolution 443 is a rule providing for the consideration of the conference report to accompany H.R. 6, the Energy Policy Act of 2003. The rule waives all points of order against the conference report and its consideration and provides that the conference report shall be considered as read.

Over the past several months, more and more Americans have experienced firsthand the crippling effects of America's outdated energy systems. For example, natural gas supply shortages resulting from conflicting government policies have caused home heating bills to skyrocket and forced businesses to lay off thousands of workers. In addition, this summer's great blackout exposed the vulnerability of our Nation's deteriorating electricity grids. It is absolutely critical that Congress approve a comprehensive national energy bill this year so that all Americans will have access to more efficient, affordable, and environmentally responsible energy supplies. As a Nation, we simply cannot afford to wait any longer for this important legislation.

I am pleased, therefore, that later today the House will have an opportunity to pass a conference report on H.R. 6 that clearly meets these imperatives. The conference agreement improves our Nation's electricity transmission capacity and reliability. It promotes a cleaner environment by encouraging new innovation and the use of alternative power sources.

The bill also authorizes $200 million for the Clean Cities program, which will provide grants to State and local governments to acquire alternative fueled vehicles. The agreement promotes clean coal technology and provides incentives for renewable sources such as biomass, wind, solar, geothermal and hydroelectricity. It also provides leadership in energy conservation by establishing new mandatory efficiency requirements for Federal buildings and higher standards and stricter labeling for a variety of energy-consuming commercial products.

The conference report allows for stepped up natural gas exploration and development in the Gulf of Mexico and permits construction of a natural gas pipeline from Alaska's North Slope to the Lower 48. The bill also decreases America's dangerous dependence on foreign oil by increasing domestic oil and gas exploration and development on nonpark Federal lands and by expanding the Strategic Petroleum Reserve capacity to 1 billion barrels.

The bill encourages more nuclear and hydropower production by authorizing the Department of Energy to develop accelerated programs for the production and supply of energy and sets the stage for building badly needed nuclear power plants by reauthorizing the Price-Anderson Act.

Finally, Mr. Speaker, as a Member who represents a region heavily dependent on hydroelectric power, I am pleased that the conferees included bipartisan reforms of the lengthy and costly hydrorelicensing process. These reforms will maintain environmental standards while providing utilities the flexibility to reduce their costs in achieving those standards.

Mr. Speaker, the Nation needs this energy bill, and it needs it now. Accordingly, I urge my colleagues to support both the rule and the underlying conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we live in a dangerous world, a place where America's major oil supplies can be disrupted by Middle East dictators. And here at home, we have seen the economic disruption that resulted from the distortion of the domestic delivery of electricity by those eager to game the system. We all agree that a comprehensive energy policy could help move this country toward greater energy independence and could prevent the kind of high rates that victimized millions of people throughout the West several years ago.

So, Mr. Speaker, I share the disappointment that so many Members feel about the nearly 1,000-page energy conference report that Republicans released just before 3 a.m. this morning, only a few short hours ago. Make no mistake, it contains some good provisions, like tax incentives for small, independent oil and gas producers. It also gives the Federal Energy Regulatory Commission new authority to establish mandatory reliability standards for utilities, as well as the power to sanction utilities that do not comply with them. And I am glad that Democrats have beaten back the Republican plan to spoil the Arctic National Wildlife Refuge. But it represents a missed opportunity, and it demonstrates the dangerous arrogance of this all-Republican government.

Mr. Speaker, Democrats support a balanced, comprehensive energy policy. We have proposed a plan to increase America's energy independence, strengthen the economy, and protect the clean air and water that we all value. Over and over again, we have tried to work with Republicans to pass such a plan but, true to form, Republicans have repeatedly refused to work with us. For this conference, they retreated to the secrecy of the back room to hold their discussions. They hid their negotiations in little rooms not open to anyone but a very few and shut out Members who were legitimately part of the conference process.

In doing so, Republicans ignored Members who represent nearly half of America, Members with extensive expertise in energy policy. They brought in Vice President CHENEY to broker deals but refused to work with the dean of the House, the gentleman from Michigan (Mr. DINGELL), a man who has probably passed more energy legislation than anyone in American history. They even shut out those Democratic conferees who voted for the original legislation when it passed the House.

Ultimately, that is why this conference report is so disappointing in so many respects. For instance, Republicans refuse to pay for even the $23 billion that the tax provisions will cost U.S. taxpayers. Instead, they are simply increasing a Republican budget deficit that is already hovering around $500 billion, and that will raise the Republican debt tax on all Americans.

Mr. Speaker, it would be interesting to hear Republicans explain why they refuse to pay for energy tax breaks, especially since they have repeatedly blocked needed financing for veterans health care and homeland security by insisting that those priorities be paid for. But I am sure that that explanation will not be part of the Republican talking points today. Instead, we are going to see Republican Members march down here to the floor to blithely sing the praises of a nearly 1,000-page bill that almost none of them have read.

The truth is, almost no one knows what is really in this conference report. And almost no one knows which special interest got what special favor, and how much it will ultimately cost American taxpayers. That is because this bill ended as it started, in secrecy. It began in 2001 with Vice President CHENEY's infamous energy task force. And since the White House still refuses to come clean with the American people about its secret dealings with Big Energy executives, it should come as no surprise that this bill was finally pasted together last week in the back room of some Capitol hideaway, far removed from the scrutiny of the public.

Neither should it surprise anyone that one of the provisions buried in this massive bill would permanently establish Mr. CHENEY's energy task force in the White House, guaranteeing for it the secrecy the Bush administration so adamantly demands. Or that Republicans have violated the rules in order to sneak into the conference report numerous provisions that were not part of the original bills passed by either the House or the Senate.

Yesterday, Rules Committee Democrats wrote Chairman DREIER asking for a list of all the new provisions that violate the rules of the House, but Republicans refuse to publicize them. We do know that Republicans waived a Clean Air Act requirement aimed at cleaning up air pollution in metropolitan areas like my Dallas-Fort Worth home, despite my opposition and that of other area officials, like the gentlewoman from Dallas, Texas (Ms. EDDIE BERNICE JOHNSON) who led the fight against it in the House. And it will not surprise anyone when we discover, long after this bill has passed, that this conference report contains other hidden special favors for Republican special interests that had access to the final back-room negotiations that were closed to everyone else.

Mr. Speaker, that is the danger that some of my Republican colleagues on the Committee on Rules warned of a few years ago. In a 1993 report entitled, "The Decline of Deliberative Democracy in the People's House," Chairman DAVID DREIER and Representatives PORTER GOSS, DEBORAH PRYCE, and LINCOLN DIAZ-BALART wrote, "The House and Senate have been repeatedly embarrassed over the years by conference reports on voluminous pieces of legislation which have been voted on before even properly printed or distributed, let alone understood. Only after their enactment have some of the provisions come back to haunt the Congress."

Mr. Speaker, that is why Democrats on the Committee on Rules yesterday, and this morning, urged Republicans to allow Members, the public and the press 3 days to examine the final conference report in detail. That is what the rules of the House require, and it is the only way to allow Members to make an informed decision about this conference report. But, apparently, Republicans do not want anyone to read this massive bill. Because instead of giving Members more time to examine it, they are waiving the House rules to rush it through the House today. It was nearly 3 a.m. today, Mr. Speaker, before House Republicans made the final conference report available, leaving Members with just a few short hours to read all 1,000 pages before voting on it. This is not just an outrageous abuse of the process; it is an insulting attempt to pull the wool over the eyes of the American people.

Mr. Speaker, Members have only one way to defend the public against this abuse, by voting "no" on the important parliamentary vote known as the previous question. If it is defeated, I will amend the rule to ensure that all Members have 3 days to examine the nearly 1,000 pages of this conference report before voting on it, as the rules of the House require.

Make no mistake, a "no" vote on the previous question will not defeat this conference report. It will only give Members a chance to actually read it. But a "yes" vote will allow Republican leaders to circumvent the rules of the House for no reason except to keep Members, the public, and the press in the dark.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I want to engage in a colloquy with the chairman of the Committee on Energy and Commerce concerning provisions of the conference report of importance to the citizens of the Pacific Northwest who receive the majority of their electricity from hydroelectric dams.

Mr. Speaker, I commend the chairman and conferees for agreeing to section 231 of the conference report, a set of long overdue reforms to the process for the relicensing of non-Federal hydroelectric projects. However, I want to ensure that these provisions are intended to apply immediately. Can the chairman provide this assurance?

Mr. TAUZIN. Mr. Speaker, will the gentleman yield?

Mr. HASTINGS of Washington. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Yes, I can. The conferees intend that section 231 of the conference agreement shall go into effect immediately upon enactment and be available to license applicants in all ongoing and future hydroelectric licensing proceedings under the Federal Power Act. The conferees also note that section 231 is intended to complement, not undo, the reforms to the licensing process recently implemented by the Federal Energy Regulatory Commission.

Mr. HASTINGS of Washington. I thank the chairman for these clarifications and his leadership in the development of national energy legislation.

Mr. Speaker, I am pleased to yield 4 minutes to the gentlewoman from Ohio (Ms. PRYCE), a member of the Committee on Rules.

Ms. PRYCE of Ohio. Mr. Speaker, I would like at this point to engage the chairman in a colloquy as well.

Mr. Chairman, I seek clarification of section 704 which amends section 303(c) of the Energy Policy Act. I understand there are basically two ways vehicles are procured by Federal agencies. Either GSA acquires the vehicles and sells or leases them to agencies or in some cases agencies may acquire the vehicles directly.

☐ 1315

Is it the intent of this provision to require GSA to allocate the incremental cost of all alternative vehicles it procures for other agencies, either by lease or purchase, so that the costs are allocated on a Federal Government-wide basis and not just across the vehicles procured by an individual agency? In other words, under this amendment will GSA be required to allocate the incremental cost of all alternative fuel vehicles it procures each year across the entire fleet it is responsible for?

Mr. TAUZIN. Mr. Speaker, will the gentlewoman yield?

Ms. PRYCE of Ohio. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Speaker, that is indeed our intent. Our purpose in requiring GSA to spread this incremental cost across the entire Federal fleet is, in fact, to remove the cost disincentive for some Federal agencies, to improve EPACT compliance, and to minimize the overall cost to the Federal fleet.

Ms. PRYCE of Ohio. Mr. Speaker, I thank the chairman for that clarification, and I will proceed with my statement.

I thank the gentleman for yielding me this time. I rise today in support of this rule and the underlying bill that will make much needed improvements in the efficiency and security of our Nation's energy supply. Three months ago we experienced a blackout in the Midwest and Northeast unlike anything we have seen in almost 20 years. We never want to see a dark day like that again, a day where storefronts are dark, factories are shuttered, and the economy is brought to a halt. The repercussions of that day stretched far beyond the cities directly affected. They made every American feel vulnerable. They made every American wonder if their city was next. And after the lights came back on, everyone agreed on one thing, that the crisis could have been prevented if the system had not been neglected. If reliability had been fostered, and if the correct incentives for maintenance, modernization, and expansion of our electricity grid had been created by an energy policy, Americans would not have been left hunting for candles or stranded in subway cars. The lack of a modern and coherent energy policy to ensure a consistent supply of energy left us very vulnerable. Approving a comprehensive overhaul of our energy system will accomplish two very important objectives: It will enhance our national security, and it will strengthen our economy through job creation.

We are making incredible progress on a prescription drug bill that will pass in a few days, I believe, but before our seniors can worry about drugs, they have to be able to keep themselves warm at night. So the leadership of this House has worked tirelessly to ensure that we formulate an energy policy that keeps the lights on while lighting the fire of our economy. This bipartisan plan will create nearly 1 million jobs in the energy and manufacturing sectors, recovering some of the lost jobs that high energy prices have stripped from Americans. This plan will put construction workers back to work. It will put truck drivers back on the road transporting raw materials for our energy needs and engineers back on their jobs designing a modern energy system that will propel us into the 21st century. This is how it should be. This is how our economy and our energy sector should work together, strengthening, rather than weakening, each other.

And, lastly, this bill will increase our supply and use of renewable fuels and, very importantly to Ohio, ethanol. Ethanol makes our gas burn more cleanly and helps our skies become more clear. The bill contains important steps towards fixing the ethanol tax penalty on the Highway Trust Fund. This fix could mean more than $100 million for Ohio's transportation needs alone.

Now is the time when the rubber meets the road. Let us pass this bill without further ado and demonstrate our commitment to keeping the lights on in America's homes and businesses and our commitment to keeping Americans at work.

Mr. Speaker, I urge adoption of this fair rule and look forward to what I expect to be a very spirited debate today.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Ms. SLAUGHTER).

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman from Texas for yielding me this time.

Mr. Speaker, the health of the American public could be seriously threatened. All across the United States for the past 30 years, a cancer-causing chemical has contaminated our drinking water. In New York State alone, over 1,500 sites have been contaminated. This carcinogen, MTBE, has been added to gasoline as an octane enhancer since the 1970's, and over these past 30 years, the public has learned that MTBE can cause, among other things, lymphoma, liver, testicular and kidney tumors. Outrageously, the MTBE industry knew of the chemical's environmental dangers before putting it into widespread use, according to the United States Conference of Mayors.

Responding to the serious public health threat posed by MTBE, the New York legislature passed, and Governor Pataki signed, legislation to ban the use, sale, or importation of fuels containing MTBE. Upon signing the legislation, Governor Pataki said that "the use of MTBE in gasoline has significant environmental impacts on groundwater" and "New Yorkers deserve clean air and water."

Mr. Speaker all Americans deserve and expect clean water and clean air, but unfortunately while New York and other States like California and Connecticut are taking steps to protect our water, this energy bill conference report would take steps not to protect the public, but to protect the MTBE manufacturers at the expense of their health.

The 1,700-page conference report on the Energy Policy Act, finalized in the dark this morning, hands the MTBE manufacturers a lucrative gift of liability protection. Manufacturers are shielded from lawsuits for making a defective product, and they are handed a $2 billion check during a 10-year phase-out period. The legal immunity bestowed upon MTBE manufacturers protects these producers from any case filed in the future and all cases previously filed.

I could go ahead about this, but the fact is that there were about four champions here who have had MTBE made in their districts in Texas and Louisiana. I want to urge all New Yorkers who hear my voice to vote against this bill because there is a $29 billion unfunded mandate that goes to the people of the country to pay because we make sure the manufacturer does not.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of the rule and the conference report on H.R. 6, the Energy Policy Act. After a series of fits and starts over the past 3 years, Congress now stands ready to approve the first comprehensive national energy policy in more than a decade. As chairman of the Energy Subcommittee of the House Committee on Science, I am honored to have helped develop this legislation which addresses not only our immediate energy problems, but also makes a much-needed and sustained investment in basic science and applied energy research that will lead to future energy solutions.

The national energy policy proposed by President Bush 2 years ago, and this conference report, both emphasize the use of advanced technology to expand and diversify our energy supply, meet growing demand and reduce the environmental impact of energy production and use. Advanced energy technologies grow out of basic-science and applied-energy research like that supported by the Department of Energy at our universities and national laboratories. It is this kind of R and D that will be strengthened by the passage of this conference report.

America now has the motivation perhaps like no other time since the oil crisis of the 1970's to find newer and better ways to meet our energy needs. But America also has the ingenuity and the expertise to meet our future energy demands and promote energy conservation, and we can do so in environmentally responsible ways that set a standard for the world.

Mr. Speaker, I do not believe that affordable energy and a clean and safe environment are mutually exclusive. We can have both at the same time if we put technology to work and cut some of the 1970's-style government red tape that has stifled the development of new supplies and infrastructure.

I urge my colleagues to support this rule and the conference report which uses science and technology to put America on the path toward a more secure and independent energy future.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentleman from Michigan (Mr. DINGELL), the ranking member of the committee.

Mr. DINGELL. Mr. Speaker, as a ranking member of the House conferees on this energy bill, I would observe that like most of the other House conferees on the Democratic side, I was a conferee in name only. We had a ceremonial meeting to start it out, created no change in the bill. It was followed by a ceremonial meeting last night in which, again, no significant changes were made in the bill, which was written in the dark by, for, and with the assistance of the different special interests.

The conference on this bill does not reflect well on this body. Questions began early when the Senate decided to pass last year's energy bill and then to ignore its contents. Since the conference began, Democratic conferees were not invited to any substantive discussions. We have been forced to read the papers to find out what is in the bill.

The Record must be clear. Democrats were only provided drafts of certain titles of the bill at the same time they are made available to the public. Democratic staff made comments, but significant recommendations were diligently ignored. I suspect the comments of lobbyists were met with vastly more success.

With regard to the controversial provisions of the bill relating to electricity, ethanol, and taxes, Democrats were never allowed to see any drafts until Saturday. We had no input in these matters. The rule waives the 3-day layover rule for conference reports, yet one more attempt to prevent Members of this body from having adequate opportunity to review the bill.

My Republican colleagues have decided to totally ignore any rules on scope. For example, there are amendments to the Clean Air Act that are neither bill. They have salted the report with dozens of special interest provisions, many of which were put in the tax title. Speaking of the tax title, it has grown like Topsey to $23 billion, nearly three times the amount requested by the administration. So much for Republican fiscal discipline.

We held a conference meeting yesterday that helped shed some light on the bill, but little more. The Senate adopted seven amendments on a bipartisan basis. Within minutes, however, of the beginning of the debate on these recommendations on the House side, my Republican colleagues moved to reject all but two of the provisions they had previously worked out, and without debate the Senate then agreed.

I note the conference report includes a 139-page statement of the managers, nearly all of which relate to the tax portions. These pages on taxes were not made available to the conferees before the report was made available.

I am unable to support this bill for a number of substantive reasons, and I cannot recommend that the House should do so. I will discuss them during the debate on the conference report. The bill is an assault upon the Nation's environment. Rollbacks of the Clean Air Act and Clean Water Act, attacks on the Nation's rivers and the conservation provisions that protect fish and wildlife, abusive new provisions conferring special benefits on electrical utilities. The bill harms consumers and investors by repealing the Public Utility Holding Company Act and refuses to address the abuses of Enron and other companies that gouge consumers in California and other States west of the Rockies. Finally, the bill includes unattainable and massive subsidies to industry that are unlikely to affect the energy needs of the country.

I have worked on a lot of comprehensive energy and environmental bills during my time in this Chamber. All of them were the result of extensive bipartisan cooperation. This is the first energy bill I have had to oppose, and I regret that we were not permitted to develop a bipartisan bill that will bring real benefits to all Americans. Instead, we have before us a mishmash of controversial special interest proposals that were drafted in the dark of the night with little participation by anybody, including the American public and the Members of this body, especially on this side of the aisle. This is an outrageous rule. Vote no on the rule. Vote no on the previous question. And when the Members get a chance, vote no on this outrageous legislation.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Louisiana (Mr. TAUZIN), chairman of the Committee on Energy and Commerce.

Mr. TAUZIN. Mr. Speaker, I thank the gentleman for yielding me this time.

First of all, let me thank the Committee on Rules for the expeditious handling of this rule so that we can get to the final vote, we hope, on the energy conference report, which was approved last night in open conference on a voice vote on the House side and was approved on the Senate side by a ten to three bipartisan vote.

I wish to remind my colleagues that when this bill passed the House in April that it indeed was a bipartisan vote that sent it into the conference. And despite some of the rhetoric on the bill, let me give the House some actual facts.

The facts are that this is not at all a bill written in some dark room like conferees meeting in secret. There were nine public meetings to debate the comprehensive national energy bill since the year 2002.

□ 1330

That comprised about 24 hours and 47 minutes of meetings. In fact, since 2001, there have been 28 hearings, public meetings and hearings on this bill. In 2003, there was 7 hours and 22 amendments considered in the Committee on Energy and Commerce alone, not counting all the other committees of the House that have worked on this bill. The full committee markup took 15 hours, with 58 amendments considered. And again, last night in the conference, we considered another dozen or so amendments, several of which were adopted as we made our final offer to the Senate.

So, indeed, there have been a lot of public meetings and a lot of discussion. This process has gone on now for 3 years. Much of the conference committee report was worked out in conference with the Senate in last year's session in which about 60 or 70 percent of the conference work was done. In addition to which, in this year, in this conference, there were over 10 meetings between Republican and Democratic staff to work out details of the draft; and, in fact, there were 48 hours of discussion in those 10 meetings.

In short, there have been extensive public hearings and debate, and today I hope we will have the final debate on the most comprehensive energy policy perhaps this country has ever seen, certainly in the last 10 years, at a time when this country desperately needs energy security, affordability, and reliability. Never has there been a downturn in the U.S. economy that has not been related to some prices in energy; and the downturn we recently experienced has been associated with high prices, shortages, blackouts, and, in some cases, a loss of jobs and loss of personal security, because plants have shut down and begun to talk about moving out of this great country. This bill is critical to stopping that job loss, to building another 800,000 to 1 million new jobs in this economy, and to creating new initiatives in conservation and renewable fuels and vast new initiatives to make sure that we burn cleaner fuels and that, in fact, this country is better off as we move into an economic future that all of us want and desire for our country.

Mr. Speaker, I urge adoption of the rule, and later I will urge adoption of the bill.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. HALL).

Mr. HALL. Mr. Speaker, I thank the ranking member for yielding me this time.

I am pleased that the conference has included the Ultra-deepwater and Unconventional Onshore Natural Gas Research and Development program in the conference report to accompany H.R. 6. This important provision would establish a new research and development program for these technically challenged regions to help the U.S. to meet its midterm gas demand with domestic resources.

As the original author in the last Congress and as coauthor this year, I am also pleased that the language in the report generally follows the intent and substance of the provision as reported from the Committee on Science.

Mr. Speaker, natural gas prices have eased somewhat as we enter this fall, but we should not be complacent about the need to invest in securing future supplies of natural gas. The Energy Information Administration says demand for natural gas will rise by over 50 percent in the next 2 decades. Let us be clear about our options for supply. The United States is not running out of natural gas. We have nearly 1,500 trillion cubic feet of technically-recoverable reserves, more than a 50-year supply.

Let us also be clear about the nature of these remaining reserves. Many of them are on Federal lands and are off limits to production by virtúe of rules, regulations, and other things. These legal access restrictions are addressed elsewhere in H.R. 6, but almost all of these regions, with the exception of the shallow and deepwater regions under various moratoria, are subject to access restrictions; and without investment in research and development, physical access to these technically challenged regions will not produce a single cubic foot of natural gas.

We have this opportunity to address this problem through the ultra-deepwater program in H.R. 6. The program will establish a unique partnership between government and industry to help ensure its objectives to meet midterm gas demand through development of these two technically challenged, but potentially prolific, provinces. Further, the program would pay for itself.

Mr. Speaker, too often government research programs are limited by size and scope and vagaries of the budget cycle and lack of incentives, but this type of focus and deadline will encourage the kind of ruthless execution we will need to meet the U.S. gas demand over the next decade.

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Let's also be clear about the nature of these remaining reserves. Many of them are on Federal lands and are off limits to production by virtue of rules, regulations and outright moratoria. These legal access restrictions are addressed elsewhere in H.R. 6.

But almost all of these regions—with the exception of the shallow and deepwater regions under various moratoria—are subject to access restrictions of the "technological variety." Without investment in research and development, physical access to these technically challenged regions with not produce a single cubic foot of natural gas.

We have this opportunity to address this problem through the Ultra-deepwater and Unconventional Onshore Natural Gas Supply Research and Development program in H.R. 6. The program would establish a unique partnership between government and industry to help ensure its objectives—to meet midterm gas demand through development of these two technically challenged but potentially prolific provinces. Further, the program would pay for itself. The increased production as a result of this R&D will mean significant increases in royalties to the Federal Treasury. A healthy royalty stream is critical to the future of other programs that rely on royalty funding such as the Land and Water Conservation Fund.

Finally, this new program would address the inadequacy of current research models, particularly in the applied energy R&D area. Too often, government research programs are limited by size and scope, the vagaries of the budget cycle, and the lack of incentives for public/private partnerships. In the energy arena especially, industry leadership and input is critical to success. Further, the program is terminated after 10 years. This type of focus and deadline will encourage the kind of "ruthless execution" we will need to meet U.S. gas demand over the next decade.

Permit me to make several points on specific congressional intent relative to the program. The program has two large subparts: the Ultra-deepwater Program and the Unconventional Onshore Program.

It has always been the intent of the authors that the Ultra-deepwater Program would be managed through a program consortium of academia, industry and research institutions, selected through a competitive solicitation managed by the Department of Energy. The expertise in the ultra-deepwater resides with academia, researchers and industry, not with the government; this knowledge and experience is critical to the success of the program. We further intend that the program consortium should, to the maximum extent possible, manage this program through large research consortia that will drive toward high-level production and royalty revenue goals.

The Unconventional Onshore R&D program would be managed by the Department of Energy, which has previous experience in managing such programs. It is our clear intent however, that DOE manage this program through substantial research consortia that are resource-based—as opposed to regionally based—and that are large enough, in both funding and participation, to make a substantial difference in gas and other petroleum production. A historic example of successful research consortia is found in the industry/academia/Gas Research Institute effort on coalbed methane that after roughly 10 years and a $140 million investment, transformed coalbed methane from a hazard into approximately 8 percent of our domestic gas production.

It is our responsibility in Congress to do everything we can to ensure consumers and businesses that energy supplies will be abundant, affordable, and reliable, as well as produced and consumed in ways that minimize environmental impacts. It's also our responsibility to make certain that every Federal dollar is spent wisely as we provide for the public good.

The importance of natural gas was abundantly clear this year when the House Energy and Commerce Committee held a hearing to emphasize just how critical natural gas is to our economy and the Nation's energy supply. The Ultra-deepwater and Unconventional Gas Supply R&D provisions in H.R. 6 will add new natural gas supplies quickly to help ensure our

Nation's energy security. I thank my colleagues for working with us in the development of this program and urge their support in the adoption of the Conference Report.

Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield 3 minutes to the distinguished gentleman from Texas (Mr. BARTON), the subcommittee chairman handling this legislation.

Mr. BARTON of Texas. Mr. Speaker, if we look at the marble slab behind the Speaker's rostrum, it starts out with the quote, "Let us develop the resources of our great land," and it goes on in some detail. That is by Daniel Webster.

If there was ever a time that we were before this body fulfilling that wish of Daniel Webster, it is today. This energy bill that is before us touches every energy source in our country.

If my colleagues think that we need to do more to develop our conventional resources of oil, gas, nuclear, coal, and hydro, it is in this bill. If my colleagues think we need to do more to develop our renewable resources like solar and hydroelectric and biomass and wind power, it is in this bill. If my colleagues think we need to focus on the future and try to find new alternative sources of energy like hydrogen, it is in this bill. If my colleagues think that we need to do something to structure the reform, the basic energy systems of our country like the electricity grid, it is in this bill.

I could go on and on and on, but I will simply say that this is the most comprehensive energy bill that has ever been before a Congress of the United States of America, and it is long overdue.

I am very proud of this bill. I have been working on it in some shape, form, or fashion for 19 years that I have been in the Congress. As subcommittee chairman of the Subcommittee on Energy and Power, I have been working on it for almost 6 years. So I think it is an excellent bill. It passed the House in a bipartisan fashion back in April. As the chairman of the committee has pointed out, the Senate conferees voted for it in the conference report 10 to 3 last evening. When we get the bill to the floor later this evening, it will pass in a very bipartisan fashion with 50 to perhaps even as many as 100 Democrats voting for it.

Mr. Speaker, I want to thank our chairman for his excellent work, the gentleman from Louisiana (Chairman TAUZIN). We could not have had a better senior negotiator for the House position than him. I want to thank Senator DOMENICI in the other body for his excellent work. And I want to thank the committee staffs who have worked so hard on the bill: Dan Brouillette, Jim Barnette, Mark Menezes, Andy black, Jason Bentley, Dwight Cates, Bill Cooper, Sean Cunningham, Bob Meyers and, on my staff, Ryan Long and Joby Fortson.

This is a good bill. Vote for the rule, vote against the motion to recommit, and vote for final passage.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentleman from West Virginia (Mr. RAHALL).

Mr. RAHALL. Mr. Speaker, fool me once, shame on you. Fool me twice, shame on me. I say to the White House, wake up, because you just lost West Virginia. You got us once, but not again.

This bill contains nothing for the coal miner and coal field communities. It seeks to lull us into complacency with false promises of future spending for clean coal technology that maybe, perhaps, some day will translate into real money. This bill says to us in the coal fields, go trolling for dollars while we bust open the doors of the Treasury and shovel out loads of cash and tax breaks to Big Oil. Billions of dollars. This bill digs deep into the pockets of West Virginians, and we get nothing in return.

We sought to have provisions inserted into this bill to reclaim our abandoned coal mine lands so that we can rebuild our coal field economies. Just payment. Just payment for the coal that we produced that fired the industrial revolution, took us through a war, and sparked the technological revolution. And we sought to have provisions inserted for promised coal miner health care. They gave their all to produce the coal in back-breaking conditions that made this country the world power that it is that helps produce domestic energy security.

Yet, the pleading voices of coal miners and their widows hailing from southern West Virginia to the Powder River Basin met deaf ears in this conference. Why? I will tell my colleagues why. Because it does not involve handing out goodies to multinational energy corporations. Then it is not in this bill, if it does not involve that.

Believe you me, they are partying today in the corporate boardrooms of America, but in the hills and hollers of Appalachia, this is no laughing matter. You take us for a fool. You try to play the coal miner for a fool. You are going to get burned for that, I say to the White House. You are going to get burned if you continue to try to do that.

In the words of my senior Senator, fie on the White House, fie on the White House. Shame on you. Let us defeat this terrible piece of legislation.

Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Minnesota (Mr. GUTKNECHT).

Mr. GUTKNECHT. Mr. Speaker, I want to thank the gentleman for yielding me this time. I want to congratulate all of the people who have worked so hard on this bill. America has waited far too long for a comprehensive, coordinated energy policy. There are a lot of good things I could say about this bill, but I want to talk just specifically about the renewable fuel standard and what it will mean to rural America, what it will mean to energy independence and, ultimately, what it will mean for a cleaner environment.

Last week we in the House had a little hiatus and one of the things I did is I took a trip to the western part of my district. Out in the western part of my district we have what is called the Buffalo Ridge. Literally, from as far as the eye can see in one direction and the other direction, you see these wind farms going up, making clean, clean energy, using the wind. It is an amazing thing.

I also stopped at a little town called Brewster where we are now building the largest, I think perhaps in the world, biodiesel plant in Brewster, Minnesota. It is going to be farmer owned.

Let me just talk about some of the things this renewable fuel standard is going to do. With the requirements that are in here for 5 billion gallons of ethanol and biodiesel by 2012, let me just explain what it will mean to rural America. It will reduce our crude oil imports by 1.6 billion barrels. It will reduce the foreign trade deficit by $34 billion. It will create 214,000 good-paying jobs here in America. It will increase U.S. household income by $51.7 billion. It will create $5.3 billion in new investment, in renewable fuel production facilities; and it will increase the demand for grain, mostly corn, by an average of 1.4 billion bushels of corn and soybeans per year.

Mr. Speaker, this is a good bill. It is overdue, it is timely, it is time that we have a coordinated energy policy. I think I speak on behalf of those who breathe our air, those who are concerned about energy independence and saying that one of the best parts about this bill is the renewable fuel standard and what it will mean for rural America and what it will mean for our environment.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, what we are seeing with this energy bill is the result of a highly partisan, secretive process in which Republicans have been talking only to other Republicans and the oil and the gas and the nuclear and the coal and the electric utility industry. Well, they have treated the Democratic minority and the environmental and consumer groups with the maximum possible disregard and with political arrogance. It is the final stages of the implementation of the secret energy task force meetings that began in Vice President CHENEY's office.

This bill is the worst piece of legislation that has been brought before this legislative body in many decades. It is an appalling concoction of tax breaks, subsidies, and pork barrel spending for wealthy oil, natural gas, nuclear, coal, and utilities industries. It turns over control of the American people's lands to energy companies that will be free to ravage and rape the environment with little or no restraint.

It pays polluters, pays polluters to clean up the messes that they have created and subsidizes them to pollute some more. It will make our Nation's air dirtier. It will make our water dirtier, and it will make ordinary people pay higher energy bills for the privilege of having dirtier air and dirtier water, more asthmas, more cancers, and more deaths due to pollution. And all of this done with $138 billion in borrowed money from the Social Security and Medicare trust fund because our country is in deficit and it must borrow the money.

□ 1345

And worst of all, it dishonors the sacrifice made by 130,000 of our young men and women in Iraq today, guarding oil fields. We know we now import 60 percent of our oil from overseas. If we do not do something that deals with the amount of oil that we consume in our SUVs and our automobiles, if we do not do something about fuel economy for air conditioners, then in another 10 years we will be 80 percent dependent upon imported oil from overseas. That is where we are heading.

This bill does nothing to deal with where we put oil in our country. We put it into gasoline tanks. We ignore that fact. It deals not with the fact that 70 percent of peak demand in the summer goes for air conditioning. Are we kidding ourselves out here today? This bill is a disaster. And meanwhile, there is $138 billion worth of subsides in tax breaks, in new authorizations for which industries? Oil, gas, coal, nuclear, the wealthiest industries getting all of these tax breaks.

This is a terrible bill. Vote no on the rule and no on final passage.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 4 minutes to the gentleman from Georgia (Mr. NORWOOD).

Mr. NORWOOD. Mr. Speaker, I rise today to thank and commend the gentleman from Louisiana (Mr. TAUZIN) and the gentleman from Texas (Mr. BARTON) for what I think is excellent work in the House and in the conference. This is landmark legislation. I think it absolutely defines the word comprehensive.

It is going to decrease dependence on foreign oil. It enhances the electricity grid ensuring reliability and protecting native load. It is a boon for our consumers. After dozens, upon dozens, upon dozens of hearings over the last 3 years, and a few empty trips to the red zone, we are now on the goal line today.

Vote yes to score a victory, ladies and gentlemen, for the American consumers.

Mr. Speaker, with the balance of my time I would like to enter into a colloquy with the gentleman from Louisiana (Mr. TAUZIN).

I have a couple of questions regarding the native load provision of section 1236 that I was hoping that the distinguished chairman might be able to answer.

Mr. TAUZIN. Mr. Speaker, if the gentleman will yield, I will be happy to try.

Mr. NORWOOD. Mr. Speaker, it is my understanding that the provision requires FERC to allow utilities with service obligations to reserve sufficient transmission capacity to serve the power supply needs of existing native load customers as well as the future growth needs of those customers and that the commission regulations must conform to this intent. Is that correct, Mr. Speaker?

Mr. TAUZIN. Mr. Speaker, the gentleman from Georgia (Mr. NORWOOD) is absolutely correct.

Mr. NORWOOD. Mr. Speaker, how about section 217(c), does that allow FERC to compel load-serving entities to give up any transmission rights that are not covered by section 217(a)?

Mr. TAUZIN. Mr. Speaker, it does not. These entities can continue to use their transmission rights as now allowed under the Federal Power Act.

Mr. NORWOOD. And lastly, Mr. Speaker, I would like to inquire of the gentleman about the section 1242, the participant funding. Would this provision allow a transmission provider to charge all of his transmission customers, including the party requesting an upgrade, the same embedded cost transmission charges?

Mr. TAUZIN. Mr. Speaker, yes, it does. And it is a little complex, so let me try to explain. Briefly the requester would, in fact, pay the same transmission charge as any other transmission customer. The embedded cost language simply clarifies that in the up-front lump-sum payment to fund the upgrade, the requester is not required to pay both the cost of the physical upgrade and the entire future cost of any monetary credits or the compensation the requester will later receive.

The embedded cost of the physical upgrade is not rolled into the rate base because it is paid for up front by the requester. The cost of the upgrade in terms of the monetary credits used to compensate the requester, however, are rolled into the rate base. Thus, these costs are included in the imbedded cost transmission charges on a prorated base as the credits are provided to the requester. All transmission customers, of course, must pay this transmission charge.

Mr. NORWOOD. Mr. Speaker, I thank the gentleman for that clarification. Once again, let me not just thank the chairman, but the Committee on Energy and Commerce and the hard work of all our staffs. This is fine work. I encourage everybody to vote for this rule and the final bill.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I urge my colleagues to oppose this rule. As a Republican Member of the other body stated the other day, this bill should be called "Leave No Lobbyist Behind." This bill is an inappropriate vehicle for amending the Clean Air Act. It makes absolutely no sense to protect the MTBE manufacturers from civil liability while opposing a phase out of the dangerous carcinogenic chemical. This has been going on since the court order in 1996 getting one waiver after another.

The provisions in this bill will mean more asthma attacks, hospital visits, and premature deaths for residents of ozone nonattainment areas such as Dallas/Fort Worth.

Mr. Speaker, we have about 88,000 children with asthma in the Dallas/Fort Worth area. The bill will force my constituents and everyone else's constituents in the Dallas/Fort Worth area to breathe dirty air, unhealthy air until 2012.

In their desire to pass any comprehensive energy bill, some of my colleagues may be willing to overlook the massive damage this bill would do to existing clean air policies, but we must not pass a bill with great shortfalls simply because we need to pass a bill. We need a fair bill that protects us all. We should not, and we must not, endanger ourselves or our children.

I urge my colleagues that want clean air to oppose this rule and this porker of a bill. This bill is a waste of taxpayer's dollars. It is a first-class ticket to fossil fuel dependence. It is an invitation to destroy the lungs of 127 million Americans who already breathe in air that violates Federal standards.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee (Mr. DUNCAN).

Mr. DUNCAN. Mr. Speaker, I rise to enter into a colloquy with the gentleman from Louisiana (Mr. TAUZIN).

Mr. Speaker, since 1992 section 212(j) of the Federal Power Act has provided very important protections for the Tennessee Valley Authority and all the people and businesses of the TVA region from one-way competition from other suppliers as an equitable balance to those provisions of the TVA Act which greatly restrict TVA's ability to sell excess power outside the TVA region.

I wanted to verify that it was not the intention of the conference committee for any provision of the Energy Policy Act of 2003 to be construed to repeal the protections from such one-way competition provided by section 212(j).

Mr. TAUZIN. Mr. Speaker, the gentleman from Tennessee (Mr. DUNCAN) is correct. It was not the intention of the conference committee for any provision to repeal the protections provided by section 212(j).

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Speaker, I rise in opposition to this rule and to the bill. It is ludicrous to have only 1 hour of debate on the rule and 1 hour on such an important bill.

America faces real problems with its energy needs. We need to reduce our dependence on foreign oil. But instead of pursuing the program of energy efficiency, we have a bill that pursues a policy of political payback and corporate welfare. My Republican colleagues are constantly saying they do not like wealth distribution, but this bill will suck dollars out of the pockets of New Yorkers and others to pay for unnecessary ethanol subsides to huge Agra businesses.

The majority has talked to a good game against unfunded mandates. This bill was a case of "do as I say, not as I do." There is a liability shield for MTBE makers so that New York taxpayers could be forced to pay for cleanups, but this bill also provides $2 billion in subsides for the MTBE makers to transition to other work.

This bill takes us back in time by weakening the Clean Air Act and Clean Water Act. Why are we letting polluters make policy? Why we going to weaker standards? I think we know the answer: Because oil and gas companies find it cheaper to pollute and push off the true cost of their activities to the real people in this country. This bill is a disgrace. I am sick and tired of coddling polluters and sticking the average Joe with the cost of fixing polluters' problems. We should stand up for America and stand up for energy independence and future generations and vote down this rule and this bill.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 1 minute to the gentlemen from Florida (Mr. STEARNS).

Mr. STEARNS. Mr. Speaker, I rise in strong support for the rule and strong support for the conference report, H.R. 6, the Energy Policy Act of 2000.

I serve as a conferee between the Senate and House. We gave developed, in my opinion, a very balanced, sensible bill with production initiatives with conservation. The electricity portion of the bill, one of the most controversial items we have dealt with, sets the stage, I believe, for investment and reliable operations to bring our energy markets into the 21st century.

The bill also provides incentives for renewable energy production, clean coal technology, low-income energy assistance, provides for certainty and reliable operation of our energy markets, and increased domestic production.

As this graph shows, renewable energy, providing new solutions like hydrogen fuel cells, will provide economic and environmentally safe energy solutions and prevent blackouts.

This bill promotes investment in critical electric transmission capacity and efficiency. So I commend my colleagues the gentleman from Texas (Mr. BARTON) and the gentleman from Louisiana (Mr. TAUZIN) and their staff. They have done yeoman's service in bringing this bill to the floor. I urge my colleagues to support this legislation.

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentlewoman from Nevada (Ms. BERKLEY).

Ms. BERKLEY. Mr. Speaker, this is an energy bill that will do nothing to help the families living in southern Nevada with the cost of their power. Whatever good provisions may be in the bill are buried under billions of dollars in subsides for the nuclear industry.

I am appalled that this Nation would spend one cent more on nuclear energy when there is no safe way to ship and no safe way to store radioactive nuclear waste. There is also no provision in this legislation to address this Nation's dependence on foreign oil. We will be importing just as much oil if this bill passes as we are today. And we will continue our unholy alliance with Middle East countries that export terrorism and finance terrorists.

Finally, I am disappointed that the overwhelming majority of tax incentives in this bill are reserved for nuclear, coal, oil and natural gas. This subsides come at the expense of renewable energy sources such as wind, solar, and geothermal that must be a major component of any long-term energy policy for this Nation if this Nation is to ever be energy independent.

Mr. Speaker, I urge my colleagues to oppose this rule, oppose the legislation.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. WELLER).

Mr. WELLER. Mr. Speaker, I rise in strong support of the rule and strong support of final passage of this legislation which is so important to the economy of our country. I also wish to commend the gentleman from Louisiana (Chairman TAUZIN) of my committee for his leadership.

Mr. Speaker, for 3 years this work, this legislation has been in the making, which, of course, is too long. But I would like to point out that a key component of this legislation as we work towards energy independence is conservation. And we think about who consumes energy in America, 20 percent of the energy we consume in our Nation is consumed in our homes by residential consumption of energy.

I would note in this legislation, there is an important provision which provides an energy efficient homes tax credit rewarding homeowners and homebuilders for investing in better insulation and better windows and better doors and sealing their home, and encouraging homebuilders when they build a new house to use more energy efficient technologies in heating and cooling. This is important legislation.

This tax credit provides individuals and businesses up to $2,000 tax credit, which means the first 20 percent of the first $10,000 they invest they can recover by reducing their tax burden to the Federal Government. The bottom line is we need to provide incentives for our homeowners and those who build homes, provide for more energy-efficient house.

When I talk with those who build homes, they tell me that often a consumer will come in, if they are going to spend a little extra money, they want to invest that money in a nicer bathroom or nicer kitchen, something they can see, and that energy efficiency and energy conservation is a second thought.

What is monumental about this legislation that is before us today is we provide a real incentive for homebuilders and homeowners to invest in making their homes more energy efficient by providing for up to a $2,000 tax credit in energy-efficient homes. Bottom line, this is good legislation, deserves bipartisan support. I urge an aye on the rule and an aye on final passage.

□ 1400

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentleman yielding me time.

Whether it has been 3 years or 6 years, the fact is the Committee has produced a comprehensive bill. You do not have a comprehensive energy policy. $138 billion in total costs may buy support, but it is not going to buy energy independence. It avoids meaningful energy conservation that would have permanent savings for every American every year. It avoids meaningful investment in renewables. Simply defining nuclear energy as a "renewable energy source" is not an adequate alternative.

The $138 billion pales in comparison to the hidden cost to our environment, to our air, our water, and increased global warming. It will extend our dependence on fossil fuels for decades to come. Three years, 6 years, 12 years, and hidden Republican only conference meetings produced a huge, special interest driven bill. What you have lost is an opportunity to have a comprehensive energy policy that would make this country safer, cleaner and more economically secure.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. TOM DAVIS).

Mr. TOM DAVIS of Virginia. Mr. Speaker, I want to congratulate the gentleman from Louisiana (Mr. TAUZIN) on, I think, a very good bill, controversial but weaving a lot of disparate sections together. I thank him and the others for the hard work and determined effort that went into the completion of this conference report.

I want to point out two sections in particular under my committee's jurisdiction which demonstrate the value we have gotten in adding flexibility to government contracting. First, we have the energy savings performance contracts that we make permanent in this legislation. Energy savings performance contracts, ESPCs, allow agencies to contract with energy service companies to upgrade and retrofit existing Federal buildings with modern, energy-efficient equipment. The agencies pay for this upgrade using the energy savings generated by the upgrade themselves.

These contract mechanisms enable the Federal agencies to improve energy efficiency of their facilities without depending on annual congressional appropriations for capital improvements. From 1988 to 2000, agencies using ESPCs to leverage an estimated $795 million in private sector financing for energy improvements in Federal buildings, resulted in a 20-percent savings. This legislation makes ESPCs permanent.

I also want to describe a new acquisition authority granted in this legislation. This is the authority granted by the Department of Energy to engage in what are called Other Transactions in certain circumstances. Other Transactions, OTs, are contractual arrangements that support research and development without using standard procurement contract grants or cooperative agreements. They have been used successfully in the Department of Defense for a number of years.

Firms who are understandably hesitant to conduct research for the government because of government patent rules, accounting practices, and business requirements are willing to consider working with us under these arrangements. Some companies that have tried to work with the government under normal procurement rules have found it impossible to remain competitive in the private sector and contract under standard government restrictions and rules.

It is time to recognize the government needs the best, the most innovative research available. We need to become increasingly self-reliant in the energy field. We need to engage inventive firms that have until now refused to do business with the Federal Government because of arcane and inflexible standards.

This new flexibility is a major step toward harnessing the magic of America's research and development center in our quest for energy independence. I urge an "aye" on the rule and an "aye" on the bill.

The SPEAKER pro tempore (Mr. QUINN). The Chair would state that the gentleman from Washington (Mr. HASTINGS) has 2 minutes remaining. The gentleman from Texas (Mr. FROST) has 4 minutes remaining.

Mr. FROST. Mr. Speaker, does the gentleman have multiple speakers or only one speaker?

Mr. HASTINGS of Washington. Mr. Speaker, I will be closing, so I have one more speaker.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it seems to me that every Member of this House, whether or not they are supporting this bill, should be concerned that we are about to cast a vote on a major piece of legislation that only a small handful of House Members have read.

This conference report is over 1,000 pages long. I cannot understand why the Republican majority is insisting that this conference report be voted on today when its provisions could have such a direct impact on energy securities of the United States and Members have not been given an adequate opportunity to read and digest its contents.

Mr. Speaker, the rules of the House give Members 3 days to read a conference report after it is filed. Clause 8(a)(1)(a) of rule XXII states that "it shall not be in order to consider a conference report until the third calendar day on which the conference report and the accompanying joint explanatory statement have been made available to Members in the CONGRESSIONAL RECORD."

Those who are insisting that the House proceed with all due haste will argue that the text has been on the Web site of the Committee on Ways and Means since this weekend, late Saturday night to be exact.

Mr. Speaker, what was posted Saturday night was not the final version of the agreement and the statement of managers was not included. A fine point, perhaps, but an important one.

The wholesale denial of the rights of Members to know what they are voting on is something Republicans complained of bitterly when they were in the minority. Well, I would argue that the Republicans might have been crying wolf because now that they have controlled this Chamber for nearly 9 years, they seem to have completely forgotten what they once said.

So in an attempt to remedy the wrong they have complained of in the past and that they are now so eager to perpetrate, I am asking Members to vote "no" on the previous question so this rule can be amended to give each Member the opportunity to find out what is in a bill that is written in closed meetings and secret places. That is only fair, Mr. Speaker.

Mr. FROST. Mr. Speaker, I yield back the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, this is an important bill and it will be a historic step when we vote on the bill after we dispose with the rule.

Let me just go through the extensive hearings that the committees involved with this have had over this year. As was mentioned by the chairman, the Committee on Energy and Commerce Committee held 28 public hearings, four markups, 43 hours in total, and considered 159 amendments. The Committee on Resources held 32 hearings, three markups, over 100 hours, and considered 38 amendments. The Committee on Science held 16 public hearings, two markups. They have considered 21 amendments. The Committee on Ways and Means held six hearings, four markups, and they had six amendments offered to their part of the bill.

It is an important bill, Mr. Speaker. I urge the Members to support the rule, defeat the previous question; and support the underlying legislation.

Mr. FROST. Mr. Speaker, I ask unanimous consent to insert the text of the amendment at this point in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The material previously referred to by Mr. FROST is as follows:

PREVIOUS QUESTION ON H. RES. 443, RULE FOR H.R. 6, THE CONFERENCE REPORT ON THE ENERGY POLICY ACT

Strike all after the resolving clause and insert in lieu thereof the following:

"That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 6) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes. All points of order against the conference report and against its consideration (except those arising under clause 8(a)(1)(A) of rule XXII) are waived."

Mr. HASTINGS of Washington. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 225, nays 193, not voting 16, as follows:

[Roll No. 628]

YEAS—225

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—193

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sànchez, Linda T.
Sanchez, Loretta
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—16

Boyd
Carson (OK)
DeMint
Fattah
Fletcher
Gephardt
Gilchrest
Jackson-Lee (TX)
Jenkins
Kaptur
Lantos
Meeks (NY)
Pitts
Radanovich
Sanders
Toomey

☐ 1429

Messrs. LYNCH, BACA, THOMPSON of Mississippi, HINCHEY, ORTIZ and RUSH changed their vote from "yea" to "nay."

Mrs. JOHNSON of Connecticut, Ms. ROS-LEHTINEN, Ms. PRYCE of Ohio, and Messrs. CARTER, SESSIONS, JOHN and TERRY changed their vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. QUINN). The question is the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. FROST. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 248, noes 167, not voting 19, as follows:

[Roll No. 629]

AYES—248

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Gutierrez
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hinojosa
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jefferson
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Lampson
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matsui
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Ortiz
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner (OH)
Turner (TX)
Upton
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

NOES—167

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra

Bell
Berkley
Berman
Berry
Bishop (NY)
Blumenauer
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Clay
Clyburn
Conyers
Cooper
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Grijalva
Harman
Hastings (FL)
Hill
Hinchey
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Johnson, E. B.
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matheson
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Price (NC)
Rahall
Rangel
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu

NOT VOTING—19

Boyd
Burr
Carson (OK)
DeMint
Fattah
Fletcher
Gephardt
Gilchrest
Jackson-Lee (TX)
Jenkins
Johnson (CT)
Jones (OH)
Kaptur
Lantos
Meeks (NY)
Pitts
Radanovich
Sanders
Toomey

☐ 1437

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 1, MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003.

Ms. HOOLEY of Oregon. Mr. Speaker, under rule XXII, clause 7(c), I hereby announce my intention to offer a motion to instruct on H.R. 1, the prescription drug bill.

The form of the motion is as follows:

I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 1 be instructed as follows:

(1) To reject the provisions of subtitle C of title II of the House bill.

(2) To reject the provisions of section 231 of the Senate amendment.

(3) Within the scope of conference, to increase payments for physician services by an amount equal to the amount of savings attributable to the rejection of the aforementioned provisions.

(4) To insist upon section 601 of the House bill.

GENERAL LEAVE

Mr. HOBSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report to accompany H.R. 2754, Energy and Water Development Appropriations Act, 2004, and that I may include tabular and extraneous material.

The SPEAKER pro tempore (Mr. QUINN). Is there objection to the request of the gentleman from Ohio?

There was no objection.

CONFERENCE REPORT ON H.R. 2754, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2004

Mr. HOBSON. Mr. Speaker, pursuant to House Resolution 444, I call up the conference report on the bill (H.R. 2754) making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of November 7, 2003, at page 28191).

The SPEAKER pro tempore. The gentleman from Ohio (Mr. HOBSON) and the gentleman from Indiana (Mr. VISCLOSKY) each will control 30 minutes.

The Chair recognizes the gentleman from Ohio (Mr. HOBSON).

Mr. HOBSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a bill that has a conference agreement of $27.3 billion. This is a good bill. We worked very hard on it, and we have had a very tough conference; and I hope everybody will vote for the bill.

At this time I would like to make a few remarks concerning the committee staff on both sides. We worked together very diligently to prepare this bill and this conference report. I guess this is my second time to conference the bill, but my first time to be involved in the writing of the bill, which is a rather unusual circumstance.

During that period of time, and for the last number of years, our clerk has had different people being the chairman. And I do not know whether it is because I became the chairman that he is leaving or not. He has had a different chairman about the last five times, and so I said I was going to stay awhile, and then suddenly I heard he was going to retire. So I hope it is not because of the conference we have had that he is leaving, because he has done a great job. He has been 15 years here in this committee. He likes apparently the challenge of breaking in a new chairman, but I am not sure that he likes the continuation of that. But he will have to speak afterwards about that.

I really want to thank him because he has been a great help to me and a great help to the staff as we have worked on this bill. He was dubbed "Silent Bob" in one of the reports that was out, I think it was in one of what we call local political rags here around Washington. While most people might say he is silent, I can tell you when he is in the room and Silent Bob speaks, we all listen. He has done a great job for this committee. He has been a great resource to me and to the committee over these years.

So I want to thank him, and I hope he can go out and work on his golf game because he tells me his game is about as bad as mine, and that is really bad. So now he will have plenty of time to learn how to play golf better and also to probably earn a lot more money, as he can come back and lobby us about a lot of issues because he is a real authority, especially on the water part of this bill.

So, again, thanks to you, Bob, for being the clerk for all these years and for leading us during this period of time.

Mr. Speaker, I submit for the RECORD a document detailing the specifics of this appropriation bill.

Mr. Speaker, I am pleased to present to the House today the conference report on H.R. 2754, the Energy and Water Development Appropriations Act for fiscal year 2004.

We had a challenging conference with the Senate this year, but we were able to resolve our differences and reach a fair compromise. Most importantly, I believe we did the right thing for the Nation in this conference report in a number of important areas, from rebuilding our water infrastructure, to dealing with the disposal of spent nuclear fuel, to advancing the frontiers of our scientific knowledge.

The total amount of funding included in the conference agreement is $27.3 billion. This represents an increase of $1.1 billion over the current fiscal year and approximately $380 million over the budget request.

Title I of this conference report provides funding for the Civil Works program of the U.S. Army Corps of Engineers and for the Corps' Formerly Utilized Sites Remedial Action Program. The conference agreement provides the Corps with $4.6 billion, slightly below the current year but nearly $400 million over the inadequate budget request. The Administration does not seem to comprehend that underfunding the Corps of Engineers ultimately costs the country more in the long run, as projects that are strung out over multiple years always cost more than they would if constructed on an efficient schedule. I have already initiated a dialog with the Administration in an attempt to convince them of the need to increase funding to support the Civil Works program of the Corps of Engineers in future fiscal years.

In fiscal year 2004, we opted to focus our available resources on completing ongoing projects, and therefore limited the number of new starts in this conference agreement.

Funding for Title II of the bill, which includes the Central Utah Project Completion Account and the programs of the Bureau of Reclamation, is $986.5 million, $14 million above the amount appropriated last year and $64 million above the budget request. The Committee did not provide the $15 million requested by the Administration for the CALFED Bay-Delta program. The authorization for this program expired in fiscal year 2000 and it has not been reauthorized.

Total funding for Title III, the Department of Energy is $22 billion, $1.2 billion above fiscal year 2003 and $120 million below the budget request.

In many ways, I am most proud of our accomplishments in this part of the conference agreement. My top priority in the Energy and Water bill this year was to provide sufficient funding for the Yucca Mountain nuclear waste repository, and I believe we succeeded. This conference agreement provides a total of $580 million for Yucca Mountain, only $11 million below the request but an increase of $123 million compared to the current fiscal year. This project has been significantly underfunded in prior years, and we are finally starting to reverse that trend.

Mr. Speaker, it is essential that we keep the Department of Energy on schedule to submit the repository license application late next year and to begin repository operations in 2010. The Yucca Mountain repository is essential for both energy security and homeland security. We have provided the necessary funding in this conference agreement, and I have the commitment of the Secretary of Energy to move forward aggressively on the repository program during this coming fiscal year.

Another priority of mine, and of many other Members in this chamber, is the subject of advanced scientific computing. By a number of key measures of computing power, the United States is now in second place behind Japan. For the sake of our scientific leadership, of our national security, and for economic competitiveness, we cannot afford to stay in second place for very long. We have provided an additional $30 million for the Department of Energy to procure additional state-of-the-art computers in the near term and to begin an interagency effort to develop next-generation computer architectures.

Another area where there is significant Member interest in this conference agreement is the portion of DOE's budget that deals with several new nuclear weapons initiatives proposed by the Administration. I strongly believe that we need to take a hard look at our existing Cold War nuclear arsenal before we start down the path of designing new weapons and new weapons infrastructure. As President Bush said when he announced reductions to the nuclear stockpile on November 13, 2001, "The United States and Russia have overcome the legacy of the Cold War." At that time, he pledged that the United States would reduce our stockpile to 1,700 to 2,200 operationally deployed warheads over the next ten years. Unfortunately, we are still waiting for the Department to Defense, and the Department of energy, to deliver a revised nuclear stockpile plan that reflects the President's commitment of two years ago. It is time for DOD and DOE to take a hard look at our nuclear weapon stockpile and on the infrastructure we are maintaining to support that stockpile.

Mr. Speaker, the funding provided in this conference agreement maintains our strong support for DOE's nonproliferation programs in Russia and other countries. This agreement also makes a key change in DOE's contracting culture, as we require the competition of five laboratory contracts that we awarded without competition back in the 1940s and have never been competed since. Most Members are shocked to learn we have contracts that have never been competed in the past half century. We are fixing that situation.

Funding for Title IV, Independent Agencies, is $229.3 million, an increase of $22.6 million from last year and $81.4 million above the budget request. We have funded the Appalachian Regional Commission at $66 million, $33 million above the request, in recognition of the strong interest in this chamber and in the Senate in the work of the ARC.

I want to thank my Senate counterpart, Chairman PETE DOMENICI, and his Ranking Minority Member, Senator HARRY REID, for their hard work during this conference. They may view me as a relatively junior Member by Senate standards, but rest assured, Mr. Speaker, that I fought long and hard to defend the House priorities during this conference. My Ranking Member, the Honorable PETE VISCLOSKY, was at my side during this process, and I truly value his support and advice.

Mr. Speaker, before I conclude I would also like to thank the staff for their help in getting me up to speed on the complex issues we have in this bill. The Subcommittee staff includes Bob Schmidt, Kevin Cook, Dennis Kern, Scott Burnison, Tracy LaTurner, and our detailee from the Corps of Engineers, Robert Pace. I also want to thank Kenny Draft of my staff, and Dixon Butler and Peder Maarbjerg of the minority staff.

I urge the unanimous support of the house for adoption of this conference report. I would hope we could quickly conclude action on this conference report so that we can get this bill to the White House for signature.

I want to make special mention here today for "Silent Bob" Schmidt, the subcommittee clerk on my bill this year.

Bob is leaving the Hill at the end of this week, and is going on to greener pastures. I hate to say it, but his departure may be partly my fault. He has the remarkable record of having clerked for five different Chairmen, I believe, in the past five Congresses. He apparently likes the challenge of breaking in new Chairmen, and I told him I intend to be around for a while, so that may be why he's going. I hope not.

I would like to congratulate Bob on his many years of service on the Appropriations Committee, and for his former service for the Corps of Engineers. Bob's knowledge of the agency programs in our bill, and of the rules of the Committee and the house, have been invaluable during my first year as Chairman on this subcommittee. I will miss his experience and his company, and I know that the staff will, too.

I like to refer to Bob as "silent Bob" because he's not a real talkative guy, so I am not sure that we'll notice when he is out of the office, even when he is gone for good. He usually managed to speak up, though, when anybody was about to make a mistake, which is one hallmark of a very good Appropriations Clerk and I know we will all miss him when it's time to get the work done. On behalf of those of us who have worked closely with him, I want to wish him every success in his golf game and whatever else he takes on in the future.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS BILL - FY 2004 (H.R. 2754)
(Amounts in thousands)

	FY 2003 Enacted	FY 2004 Request	House	Senate	Conference	Conference vs. Enacted
TITLE I - DEPARTMENT OF DEFENSE - CIVIL						
DEPARTMENT OF THE ARMY						
Corps of Engineers - Civil						
General investigations	134,141	100,000	117,788	131,700	116,949	-17,192
Construction, general	1,744,598	1,350,000	1,642,911	1,538,000	1,722,319	-22,279
Flood control, Mississippi River and tributaries, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee	342,334	280,000	301,054	329,000	324,222	-18,112
Operation and maintenance, general	1,927,556	1,939,000	1,932,575	2,014,000	1,967,925	+40,369
Supplemental appropriations (P.L. 108-11)	39,000	---	---	---	---	-39,000
Regulatory program	138,096	144,000	144,000	139,000	140,000	+1,904
FUSRAP	144,057	140,000	140,000	140,000	140,000	-4,057
Flood control and coastal emergencies	14,902	70,000	40,000	40,000	---	-14,902
Supplemental appropriations (P.L. 108-83)	60,000	---	---	---	---	-60,000
General expenses	154,143	171,000	164,000	160,000	160,000	+5,857
Total, title I, Department of Defense - Civil	4,698,827	4,194,000	4,482,328	4,491,700	4,571,415	-127,412
TITLE II - DEPARTMENT OF THE INTERIOR						
Central Utah Project Completion Account						
Central Utah project construction	23,489	27,040	27,040	36,463	27,040	+3,551
Fish, wildlife, and recreation mitigation and conservation	11,186	15,423	9,423	---	9,423	-1,763
Subtotal	34,675	42,463	36,463	36,463	36,463	+1,788
Program oversight and administration	1,317	1,728	1,728	1,728	1,728	+411
Total, Central Utah project completion account	35,992	44,191	38,191	38,191	38,191	+2,199
Bureau of Reclamation						
Water and related resources	808,203	771,217	817,913	859,517	857,498	+49,295
Supplemental appropriations (P.L. 108-11)	25,000	---	---	---	---	-25,000
Loan program	---	200	200	200	200	+200
Central Valley project restoration fund	48,586	39,600	39,600	39,600	39,600	-8,986
California Bay-Delta restoration	---	15,000	---	---	---	---
Working capital fund (rescission)	---	-4,525	-4,525	-4,525	-4,525	-4,525
Policy and administration	54,513	56,525	56,525	54,425	55,525	+1,012
Total, Bureau of Reclamation	936,302	878,017	909,713	949,217	948,298	+11,996
Total, title II, Department of the Interior	972,294	922,208	947,904	987,408	986,489	+14,195
TITLE III - DEPARTMENT OF ENERGY						
Energy supply	696,858	748,329	691,534	920,357	737,537	+40,679
Non-defense site acceleration completion	---	170,875	170,875	171,875	163,375	+163,375
Non-defense environmental management	213,624	---	---	---	---	-213,624
Uranium enrichment decontamination and decommissioning fund	---	418,124	392,002	396,124	416,484	+416,484
Non-defense environmental services	---	292,121	320,468	302,121	339,468	+339,468
Uranium facilities maintenance and remediation	453,409	---	---	---	---	-453,409
Science	3,261,328	3,310,935	3,480,180	3,360,435	3,451,700	+190,372
Supplemental appropriations (P.L. 108-11)	11,000	---	---	---	---	-11,000
Nuclear Waste Disposal	144,058	161,000	335,000	140,000	190,000	+45,942
Departmental administration	205,280	326,306	224,329	309,564	216,533	+11,253
Miscellaneous revenues	-120,000	-146,668	-123,000	-146,668	-123,000	-3,000
Net appropriation	85,280	179,638	101,329	162,896	93,533	+8,253
Office of the Inspector General	37,426	39,462	39,462	39,462	39,462	+2,036

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS BILL - FY 2004 (H.R. 2754)
(Amounts in thousands)

	FY 2003 Enacted	FY 2004 Request	House	Senate	Conference	Conference vs. Enacted
Atomic Energy Defense Activities						
National Nuclear Security Administration:						
Weapons activities	5,914,409	6,378,000	6,117,609	6,473,814	6,272,511	+358,102
Supplemental appropriations (P.L. 108-11)	67,000	---	---	---	---	-67,000
Defense nuclear nonproliferation	1,020,860	1,340,195	1,280,195	1,340,195	1,327,612	+306,752
Supplemental appropriations (P.L. 108-11)	148,000	---	---	---	---	-148,000
Naval reactors	702,196	768,400	768,400	768,400	768,400	+64,204
Office of the Administrator	325,102	347,980	341,980	337,980	339,980	+14,878
Subtotal, National Nuclear Security Administration	8,177,567	8,834,575	8,508,184	8,920,389	8,706,503	+528,936
Defense environmental restoration and waste management	5,428,806	---	---	---	---	-5,428,806
Supplemental appropriations (P.L. 108-11)	6,000	---	---	---	---	-6,000
Defense facilities closure projects	1,130,915	---	---	---	---	-1,130,915
Defense site acceleration completion	---	5,814,635	5,758,278	5,770,695	5,651,062	+5,651,062
Defense environmental management privatization	157,369	---	---	---	---	-157,369
Defense environmental services	---	995,179	990,179	987,679	991,144	+991,144
Defense environmental management privatization (rescission)	---	---	---	-15,329	-15,329	-15,329
Subtotal, Defense environmental management	6,723,090	6,809,814	6,748,457	6,743,045	6,626,877	-96,213
Other defense activities	511,659	636,154	666,516	492,209	674,491	+162,832
Supplemental appropriations (P.L. 108-11)	4,000	---	---	---	---	-4,000
Defense nuclear waste disposal	312,952	430,000	430,000	285,000	390,000	+77,048
Cerro Grande fire activities (rescission)	---	-75,000	-75,000	---	---	---
Total, Atomic Energy Defense Activities	15,729,268	16,635,543	16,278,157	16,440,643	16,397,871	+668,603
Power Marketing Administrations						
Operation and maintenance, Southeastern Power Administration	4,505	5,100	5,100	5,100	5,100	+595
Operation and maintenance, Southwestern Power Administration	27,200	28,600	28,600	28,600	28,600	+1,400
Construction, rehabilitation, operation and maintenance, Western Area Power Administration	167,760	171,000	171,000	177,950	177,950	+10,190
Falcon and Amistad operating and maintenance fund	2,716	2,640	2,640	2,640	2,640	-76
Total, Power Marketing Administrations	202,181	207,340	207,340	214,290	214,290	+12,109
Federal Energy Regulatory Commission						
Salaries and expenses	192,000	199,400	192,000	199,400	204,400	+12,400
Revenues applied	-192,000	-199,400	-192,000	-199,400	-204,400	-12,400
Total, title III, Department of Energy	20,834,432	22,163,367	22,016,347	22,148,203	22,043,720	+1,209,288
TITLE IV - INDEPENDENT AGENCIES						
Appalachian Regional Commission	70,827	33,145	33,145	71,145	66,000	-4,827
Defense Nuclear Facilities Safety Board	18,876	19,559	19,559	19,559	19,559	+683
Delta Regional Authority	7,948	2,000	2,000	7,000	5,000	-2,948
Denali Commission	47,688	9,500	---	48,500	55,000	+7,312
Nuclear Regulatory Commission:						
Salaries and expenses	577,806	618,800	618,800	618,800	618,800	+40,994
Revenues	-520,087	-538,844	-538,844	-538,844	-538,844	-18,757
Subtotal	57,719	79,956	79,956	79,956	79,956	+22,237
Office of Inspector General	6,797	7,300	7,300	7,300	7,300	+503
Revenues	-6,392	-6,716	-6,716	-6,716	-6,716	-324
Subtotal	405	584	584	584	584	+179
Total, Nuclear Regulatory Commission	58,124	80,540	80,540	80,540	80,540	+22,416
Nuclear Waste Technical Review Board	3,179	3,177	3,177	3,177	3,177	-2
Total, title IV, Independent agencies	206,642	147,921	138,421	229,921	229,276	+22,634
Grand total:						
New budget (obligational) authority	26,712,195	27,427,496	27,585,000	27,857,232	27,830,900	+1,118,705
Appropriations	(26,712,195)	(27,507,021)	(27,664,525)	(27,877,086)	(27,850,754)	(+1,138,559)
Rescissions	---	(-79,525)	(-79,525)	(-19,854)	(-19,854)	(-19,854)

Mr. Speaker, I reserve the balance of my time.

□ 1445

Mr. VISCLOSKY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I first of all want to as, I always do on these occasions, thank the staff because in the end they are the ones who have done the very hard work. I want to thank Kevin Cook, I want to thank Scott Burnison, I want to thank Dennis Kern, Tracey La Turner, Rob Pace, Kenny Kraft, Rob Nabors, Dixon Butler, Peder Maarbjerg, Leslie Phillips, and I would also like to add my voice of thanks to Bob Schmidt. Bob has done an incredible job as a staff member of the Committee on Appropriations. As a former staffer myself, I truly appreciate the work everyone has done on this bill, and in this case particularly the work of Bob. It is no surprise to me the quality of work he has done since he is a graduate of the University of the Notre Dame.

The second set of thank you's goes to the gentleman from Ohio (Chairman HOBSON). The gentleman from Ohio (Mr. HOBSON) and I serve together on the Subcommittee on Defense. As mentioned, this is his first full round with the energy and water bill, and he has done an exceptional job. He has been completely bipartisan. He has been a gentleman. He has made decisions. Our Department of Energy and our energy policy in the United States of America is better off because of the work the gentleman has done on this bill.

I have now served with five chairmen; they have all been very able. They have all done very good work; this is the best bill which has been brought to the floor while I have been a ranking member.

Mr. Speaker, on the substance of the bill, I would want to simply say that I think the committee has done a very good job on the nuclear weapons program. On the issue of water infrastructure, we have done our very best. We have added $377 million, and put back into the process 80 programs that were eliminated by the administration under budget requests. Any failings here are not because of lack of effort by the committee.

Mr. Speaker, first of all, I would like to thank the staff that worked to put this bill together, Bob Schmidt, Kevin Cook, Scott Burnison, Dennis Kern, Tracey La Turner, Rob Pace, Kenny Kraft, Peder Maarbjerg, Leslie Phillips, Rob Nabors, and Dixon Butler, all put in countless hours to produce this fine product.

I would also like to thank my Chairman, Chairman HOBSON, who guided the House priorities through a very tough Conference, and led us to produce a very good bill. He has been one of the best Chairmen I have ever work with, and I look forward to working with him in future years.

Now, no bill is perfect Mr. Speaker, but this bill was a product of a truly bipartisan effort. Mark Twain once said that "Common Sense is not that Common" but this Conference Report advances some very common sense ideas, and though I don't want to take up much time, I would be remiss if I did not mention a few.

In the area of Nuclear Weapons, this Conference Report directs the Dept. of Energy to focus on management of our aging weapons stockpile before moving forward with new concepts and designs.

The Report fenced two-thirds of the money going to Advanced Concepts, or weapons research, until DOE produces a Nuclear Weapons Stockpile plan. This plan is needed to better deal with our aging war-heads and to dispose of many of those systems. Due to advances in technology many warheads are no longer practical or feasible with current Department of Defense technology and strategies.

In addition, the Conference Report, funds the Modern Pit Facility program and the Robust Nuclear Earth Penetrator (RNEP) or Bunker Buster at, $10M and $7.5M respectively, half of the President's and Senate's Requests in both cases. This is because we should not be looking forward to new weapons until we have a solid plan for the weapons and technology we already have.

Mr. Speaker, we should be especially wary of the nuclear waste stored in many sites across this country in this unfortunate time of terrorist threats. The compromise we came to with the other body, funded the Yucca Mountain Repository at it's highest level ever, $580M, and fully supports the submission of the December 2004 license application. I appreciate the Chairman's leadership on this issue.

Finally, Mr. Speaker our funding for the Corps of Engineers was the best that we could do within the money provided. Many important projects could not be fully funded, completed, or started. This under-funding was not the fault of the Chairman or this committee, which funded the Corps approximately $377 million over the President's Request and restored approximately 80 ongoing studies that the Administration did not include in their budget. Unfortunately, this Administration, and previous Administrations, in a bipartisan failure, have not made the infrastructure of this country a priority.

Currently, the Corps O&M program reflects a high priority backlog of $1 billion and an additional $1.9 billion in unfunded work. Though the conference report added $29 million to the President's request, we are still behind.

For on going construction, the backlog was $44 Billion for FY 2002 and $45 billion in FY 2003. The Conference Report added $372 million to the President's request of $1.35 billion to help this situation; this is just a drop in the bucket, and I suspect this backlog will continue to grow in FY 2004.

We need to invest in our future, by creating jobs, advancing the efficiency of commerce and transportation, while improving the environmental outlook and quality of life for people in this country. This can all be done through better investment in our domestic infrastructure.

Mr. Speaker, I reserve the balance of my time.

Mr. HOBSON. Mr. Speaker, I yield 2 minutes to the gentleman from Tennessee (Mr. WAMP).

Mr. WAMP. Mr. Speaker, I rise in support of this bill as well, and want to thank the gentleman from Ohio (Mr. HOBSON). During no time in my 9 years here have I seen anyone grow as fast on the job in 10 and a half months as the gentleman from Ohio (Mr. HOBSON). His first Subcommittee on Energy and Water Development meeting was coming in as chairman, and in the last 10 and a half months, he has been all across the country, studied these issues, consumed himself with it, and done an outstanding job, in large part because of the bipartisan cooperation. There is no doubt this is a bipartisan product, an excellent work product.

I want to thank again those staff members already mentioned on our side of the aisle, Bob Schmidt, Dennis Kern, Scott Burnison, Kevin Cook, Kenny Kraft, and Tracey LaTurner. They have done outstanding work.

A couple of points I want to make, first as a representative of the premier multipurpose laboratory in the United States, Oak Ridge National Laboratory, science is up. Our long-term investment in the future of our country, the seed corn for the next generation, is up above the President's request because the gentleman from Ohio (Chairman HOBSON) and the gentleman from Indiana (Mr. VISCLOSKY) believe we must invest for future generations, and this bill reflects that commitment long term. It is very important. Plus, energy security; everybody has talked for a long time about our need to solve the long-term waste issue relative to our nuclear waste storage and whether we can ever go back into the nuclear business. We are solving that problem by fully funding and adequately funding Yucca Mountain, which we need to do. This committee has moved on this.

We also have an accelerated cleanup program across the country now because this Department of Energy, under Secretary Abraham's leadership, rolled out an ambitious plan to clean these nuclear sites up sooner rather than later and invest more in the short run to save money in the long run. We are doing that at Oak Ridge, at Hanford, Savannah River, and across the country. It is important that we do that for the health and safety of our citizens, and this bill is an excellent work product. I agree with the gentleman from Indiana (Mr. VISCLOSKY) that this is the best energy and water bill that we have offered in a number of years.

Mr. VISCLOSKY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Nevada (Ms. BERKLEY).

Ms. BERKLEY. Mr. Speaker, I rise in strong opposition to funding for the Yucca Mountain project in the energy and water appropriations conference report which allocates $580 million for the Yucca Mountain project and nuclear waste disposal. This is an increase of almost 30 percent above current spending levels. Appropriating such a significant increase of funds for a project which is riddled with problems is unconscionable.

I would like to bring to our attention numerous developments that cloud the future of the Yucca Mountain project. These issues raise major concerns regarding the wisdom of continuing this dangerous folly. Proponents of Yucca Mountain claim that a central site would reduce security concerns at the Nation's 131 nuclear reactor sites. That is preposterous. Even if Yucca Mountain opens, every nuclear reactor in operation will continue to store nuclear waste on site. Instead of eliminating potential terrorist targets, we will be creating a new target, this time in the State of Nevada.

Nuclear waste shipped to Yucca Mountain will pass through 45 States and the District of Columbia, traveling on roads and railroad tracks located next to 50 million people over the course of the next 24 years. Residents of cities such as Chicago, Atlanta, St. Louis, and Salt Lake City could see multiple shipments of this deadly nuclear waste pass through their backyards daily.

The United States Air Force has stated that the Yucca Mountain repository will interfere with training at the Nellis Air Force Base. This would negatively impact military preparedness at one of the Nation's most important training facilities. It is almost unimaginable that we would consider a plan that would limit the ability to train America's combat pilots.

Just last month, the independent Nuclear Waste Technical Review Board found that the canisters that will store high-level waste at Yucca Mountain are likely to corrode and leak, resulting in the release of radioactive nuclear materials that will contaminate nearby water supplies.

Instead of dumping money into the ill-conceived Yucca Mountain project, we should invest in the development of clean energy sources, such as renewable energy. By boosting renewable energy, we are working to bring down energy costs, create a consistent and reliable source of energy, improve the environment and public health, and reduce our vulnerability to terrorists around the world.

We must look far ahead when considering the future of energy. That future is in reliable, renewable energy, not nuclear power. I urge my colleagues to consider the consequences of this project. This Congress will rue the day it got into bed with the nuclear industry. The people of the State of Nevada already do.

Mr. HOBSON. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PETERSON), a member of the Committee on Appropriations, Subcommittee on Energy and Water Development.

Mr. PETERSON of Pennsylvania. Mr. Speaker, I rise to support this conference report and want to commend the chairman and his staff on very, very fine work. I particularly thank them for their willingness to work with those of us from Appalachian districts for funding for the Appalachian Regional Commission. That is a part of America that is very rural, it is a part of America that is struggling economically, and with the tremendous loss of manufacturing jobs recently, it is an agency that we believe needed to be funded. We are also pleased that he helped us put language in the bill that said those who receive this funding will be accountable publicly. We want to make sure that these agencies serve us, and that they are open. The language requires that their budgets, their minutes, their audited statements and public meetings be open to the press and public. We thank them for that.

I also commend the committee on authorizing $2.15 billion for hydrogen fuel cells. It is a program I have supported for years. I commend the committee on authorizing $200 million for clean cities. I represent State College, Pennsylvania, which is the first bus system that will be all natural gas, and are now working toward becoming hydrogen, and are leading the way. I thank the committee for the $100 million for increased hydropower which is important. We have a lot of dams in this country which have not been harnessed and hydropower which has not been adequately utilized, and I want to particularly thank the committee for its dramatic increase for LIHEAP from $2 billion to $3.4 billion. With the high cost of natural gas and fuel oil this year, home heating is going to be a problem in cold parts of this country, and this program will be vital. I also was delighted at the $1.8 million clean coal power spending; and I want to thank the chairman and those who worked with him on Yucca Mountain. I know it is a controversial issue, but it needed legislative leadership and the gentleman from Ohio (Chairman HOBSON) provided that. I thank him for his work.

Mr. VISCLOSKY. Mr. Speaker, I yield 3 minutes to the gentleman from Utah (Mr. MATHESON).

Mr. MATHESON. Mr. Speaker, I rise today in opposition to two provisions in this energy and water conference report. First, this bill provides $7.5 million for study of a new-generation, earth-penetrating nuclear warhead and $6 million for research on advanced nuclear weapons concepts such as low-yield mini nukes. Supporters of these new nuclear weapons argue the current funding is limited to weapons research and development in DOE labs, but this argument ignores the obvious end results of these studies, and that is that they will have to be tested. These weapons will be tested most likely at the Nevada test site. That will once again expose Utah and the rest of this Nation to fallout from those tests.

High-yield weapons present an additional problem, unacceptable amounts of fallout would endanger U.S. troops approaching the target to confirm the weapons' success. No one is going to argue about pursuing new technologies to address the threats posed by terrorists hiding in hardened or deeply-buried sites, but we should ask and answer this question about whether nuclear weapons, regardless of yield, can even get the job done.

I oppose this bill that would once again move toward exposing Utahans to nuclear testing in Nevada. That brings me to a second point I also raise in opposition to the bill, and that is there is a provision that would reclassify radioactive waste from two Department of Energy sites as a type of waste that can be shipped to commercial facility. This language was included in the conference report without the knowledge of States like Utah that had commercial facilities where the DOE has suggested shipping such highly-concentrated radioactive waste. This waste has much higher radioactive levels than other radioactive waste that commercial facilities are currently regulated to accept under this classification.

This is unacceptable to Utah, and I am fundamentally opposed to language that makes Utah into a dumping ground not only for waste from Ohio and New York, but waste from other east coast States as well. Some Members argue this waste is not that bad. Mr. Speaker, if the waste is not that bad, then Ohio and New York should not be in such a rush to get rid of it.

Utah has a history on this issue, a history of being downwinders. My family comes from southern Utah. I would not put Utah into a back seat to anyone when it comes to their patriotism and commitment to this country, but we need to make sure when we move ahead and potentially expose our citizens to radiation, that we make sure we make these decisions in the clear light of day, and we look out for the health and safety of all Americans.

Mr. HOBSON. Mr. Speaker, I yield 2 minutes to the gentleman from Alaska (Mr. YOUNG).

Mr. YOUNG of Alaska. Mr. Speaker, this is a good bill, but I have some concerns. There are 60 separate authorizations in this bill; 10 were cleared through my committee. The remaining came from the other body. What bothers me is we have sent over to the other body a WRDA bill that they should be acting on. When we have that many projects in an appropriations bill without having to go through the due process, including my committee, I think it is inappropriate.

I have worked with the chairman and the chairman of the subcommittee. My staff has worked with them, and we worked through what the House projects should be and they were cleared. But now we see a small WRDA bill. When the conference report was filed, I was a little shocked. In fact, it has two projects in this bill which were not asked for by either the House or Senate. Two projects were inserted by the Corps itself. I think this is a bad way to legislate.

The bill overall is a good bill, but what we ought to be doing is passing a WRDA bill out of the other body and getting that done because this Nation needs a sound policy. This Nation needs restoration, it needs a sound project list to conclude.

The chairman and the ranking member did an outstanding job, but I hope this body keeps insisting to Members of the other body, two of them from each State, urge them to pass that piece of legislation that covers the whole Nation and not do it piecemeal, because it weakens the process and makes it difficult to do what we should be doing. I ask Members as we approach next year, we urge that body to act responsibly.

□ 1500

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. QUINN). The gentleman is reminded not to urge action in the other body.

Mr. HOBSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I do not disagree with the chairman at all. As a matter of fact, the chairman, I, and the ranking member tried when we passed this bill in the House to not put any authorizing language in this bill that was not approved by the chairman when it left here. In our discussions with the other body, they have a different procedure. We had certain things that we had to take the way the procedures works.

I would suggest that we do need to pass a water bill, and I think my ranking member agrees with me on that. We want to work with the gentleman from Alaska in every way we can. There are two large things that were approved over here that I think substantially hurt that, but they were requests from the Senate which I think the gentleman is aware of which we passed by the committee.

But again just generally I want to say, not only generally but specifically, I totally agree with the fact that we should pass a water bill as expeditiously as possible.

Mr. Speaker, I reserve the balance of my time.

Mr. VISCLOSKY. Mr. Speaker, I yield myself such time as I may consume.

I would just for a moment agree with both of my chairs and refer to my opening remarks where, despite our best efforts, we are also on the appropriations side underfunding these programs. I would agree with the chairman of the authorizing committee that I would hope the other body acts sooner rather than later.

Mr. Speaker, I yield back the balance of my time.

Mr. HOBSON. Mr. Speaker, I yield myself such time as I may consume.

Again, I want to thank the gentleman from Indiana (Mr. VISCLOSKY), my partner in this. This is the first time we have done this bill together. He and his staff have been absolutely marvelous to work with. We have tried to expose to each other all of our problems. If we would have had more money, we could have helped more people. That is our goal, with the very delicate infrastructure that we have in this country; but we just did not have enough money to do that.

In closing, I would like once again to say that I appreciate the clerkship of Bob Schmidt and all of the staff, but especially Bob. In the time I have worked with him, he has been an invaluable resource. We are going to miss him a lot.

Mr. NETHERCUTT. Mr. Speaker, I am pleased to support H.R. 2754, the Fiscal Year 2004 Energy and Water Appropriations Conference Report. However, I am concerned about one provision which was added to the statement of managers concerning the Bonneville Power Administration. Incorrect language was added stating "the conferees are aware of the Department of the Treasury's concerns relating to Bonneville Power Administration's financial accounting practices and expect Bonneville to rectify the situation as soon as is possible." The Department of the Treasury has not expressed concerns relating to BPA's accounting practices. In fact, a letter from Treasury Acting Under Secretary for Domestic Finance, Brian Roseboro, to Stephen Wright confirms that no concerns about BPA's accounting practices exist. The letter, dated November 18, 2003, states:

> Dear Mr. Wright: The Department of the Treasury received the Conference Report to accompany H.R. 2754 and reviewed the sentence on page 171 that reads, "The conferees are aware of the Department of the Treasury's concerns relating to Bonneville Power Administration's financial accounting practices and expects Bonneville to rectify the situation as soon as is possible." The Department of the Treasury has not expressed any concern about the financial accounting practices of Bonneville either privately or publicly. Please let me know if you have any questions. Sincerely, Brian C. Roseboro, Acting Under Secretary for Domestic Finance.

Mr. Speaker, I wish the RECORD to reflect the fact that this sentence added to the Conference Report is incorrect, and the letter from Under Secretary Roseboro corrects the RECORD.

Mrs. TAUSCHER. Mr. Speaker, I would like to thank Chairman HOBSON and Ranking Member VISCLOSKY for their hard work in producing an Energy and Water Appropriations bill that funds a number of important programs This legislation includes significant increases over the President's request for Basic Energy Research and for Energy Supply programs.

Sadly, this bill also marks a watershed in U.S. nuclear policy that will have dire consequences for us and for our children. Indeed, by funding research on adapting nuclear weapons for new uses against hard and deeply buried targets and funding work on new low yield nukes, Congress has given its stamp of approval to a persistent effort by this administration to put the United States back in the business of making nuclear weapons.

The funding of these two initiatives has been the culmination of the work of nuclear hawks in the administration who had produced a Nuclear Posture Review in December of 2001 that places a strong emphasis on the use of nuclear weapons for both offensive and defensive purposes and a misguided National Strategy to Combat Weapons of Mass Destruction in December 2002 that outlines new scenarios when the United States would consider using nuclear weapons.

The development not only marks a new chapter in American national security policy that directly invites a nuclear arms race with any power that wishes to compete, but also a shameful moment for Congress when elected officials have been too willing to embrace a new weapons program without challenging what have been very lightweight justifications.

Mr. Speaker, nuclear weapons will remain a crucial part of America's arsenal for the foreseeable future. They provide a hedge against potentially hostile nuclear powers and underpin security commitments to our allies. But today, the United States is addressing the threat of weapons of mass destruction from Iran, North Korea, India, Pakistan and a growing list of counties.

The Director of the CIA, George Tenet, warned last February that the "desire for nuclear weapons is on the upsurge "among small countries" and that "we have entered a new world of proliferation."

Even Russia, our former Cold War rival whom we fought in a conflict that almost brought the world to the brink of annihilation, on noting the administration's current intent to pursue a new generation of nuclear weapons, has responded by making plans to strengthen its nuclear deterrent by modernizing delivery vehicles and keeping a number of heavy ballistic missiles previously slated for dismantlement.

Instead of working to build an equitable global regime that actively devalues nuclear weapons and creates incentives for their elimination, the administration would rather develop new battlefield nuclear capabilities, leading us into a world where nuclear weapons are seen as legitimate alternatives for all nations and the taboo on their use is severely eroded.

The administration's intent to develop a new generation of nuclear weapons of any size makes a mockery of the President's claim that the Strategic Offensive Reductions Treaty (SORT) he signed with Russian President Putin marked the true end of the Cold War.

Indeed, if you combine the repeal of the ban on development of low yield nuclear weapons contained in the Defense Authorization Bill with the funding of these same weapons in this bill and the flexibility in the SORT which allows both Russia and the United States too keep all their weapons rather than dismantle them, we actually have the makings of a nuclear arms buildup in this country for the first time since the end of the Cold War.

While this bill cuts funds in half for the Robust Earth Penetrator and ties $4 million of the

$6 million requested for advanced concepts to an important reporting requirement, there is no such thing as opening Pandora's box part way.

With this bill, the United States has crossed a major threshold and entered a new nuclear era.

By approving the administration's request for plans to develop a new generation of nuclear weapons, Congress has failed the American people by adopting policies that potentially make the United States less secure.

The justifications the administration offered for its nuclear agenda—the need to maintain the knowledge of our nuclear designers and the need to strengthen our nulcear deterrent by developing more usable nuclear weapons—were paper thin.

The first justification deserves little comment. The argument that Congress needs to create a jobs program for scientists to help hone their skills doesn't hold water.

Second, the proposition that nuclear weapons can somehow be engineered to be smarter and cause less collateral damage is simply false.

Nuclear weapons will never surgically destroy hardened targets.

They offer no guarantee of destroying chemical and biological agents without releasing them into the atmosphere.

Detonated in an urban area, even a 1-kiloton nuclear bomb with a yield much lower than the nuclear warheads under consideration for an RNEP would kill tens of thousands of civilians and hinder friendly troops.

Our warfighters do not have a military requirement for new nuclear weapons, and we have not exhausted research on conventional alternatives.

I am deeply concerned that by preaching the rhetoric of disarmament and nonproliferation, and on the other hand, developing a new generation of weapons of mass destruction, we are making the world a more dangerous place. Perhaps the most alarming thing this Congress has done is to trivialize nuclear weapons and their destructive power.

The prohibition on low yield weapons not only was necessary, it reinforced the notion that nuclear weapons should always be considered the most destructive weapons known to man.

By lifting the ban on research and funding their development in this bill, it is much easier to believe that they are just like any other usable weapons system, rather than a horrific weapon of last resort.

The American people are poorly served when the executive branch does not engage them on policies that may have catastrophic consequences for them in the future and when their elected officials are reluctant to ask the hard questions or thoroughly review the administration's national security propositions.

I am going to vote for this bill because it contains a number of important provisions for our economy.

It will be up to this Congress and subsequent Congresses however, to ensure that the administration's quest for new and more usable nuclear capabilities does not take us closer to the day when we decide to use them again.

We did not heed the protests of the current mayor of the city of Hiroshima who wrote the President on the anniversary of the bombing of his city this summer that "this clear indication that the United States intends to develop small nuclear weapons raises the horrifying specter that nuclear weapons will actually be used" and represents a "frontal attack on the process of nuclear disarmament."

If today we are unwilling to listen to those who have the only experience of the consequences of nuclear war, I hope that in the very near future we can at least start giving proper attention to this development in future hearings and debates.

Mr. FILNER. Mr. Speaker, I rise today in support of the fiscal year 2004 energy and water appropriations conference report, which funds several projects of great interest to my constituents in Southern California.

The New River has been described as the "world's most polluted river." The river flows from Mexico, north across the U.S. border, and through my district in Imperial County, California. Due to grossly inadequate sewage treatment and solid waste facilities in Mexico, raw sewage, industrial waste, and garbage are constantly released into the New River.

The New River is extremely polluted, foamy, and foul-smelling. The river significantly violates water quality standards, and plants and animals cannot survive in much of it. The New River continues to threaten the health of residents of my district and of undocumented immigrants who use the waterway to cross the international border.

A coalition of citizen groups and government agencies in my district, including the Calexico New River Committee, has developed a feasible plan that will significantly improve the quality of water flowing through the community. The project involves building wastewater infrastructure to improve water quality in the vicinity of the city of Calexico on the southern portion of the New River in Imperial County by installing project headworks and encasing the New River, and constructing a disinfecting facility and wastewater polishing system as the river emerges from its encasement.

Mr. Speaker, this bill, which provides funding for the Nation's energy and water-related projects, would continue environmental restoration efforts on the New River. This is an extremely important first step in the process of enhancing the water quality of the southern portion of the New River, enriching life in the community, and making a healthier home for fish and wildlife.

Better quality water flowing along the New River would also mean improved water quality in the Salton Sea. The Salton Sea is the largest inland water body in California, and one of the largest salt lakes in the world. The Salton Sea is an important habitat for Federal and State listed endangered species, as well as other migrating and resident bird species, a reservoir for agricultural drainage, a center for recreation, and a wetland ecosystem.

But it is quickly becoming too saline to continue supporting wildlife, and a recent rural-to-urban water transfer may shrink the shoreline. This bill would provide funding for the Salton Sea Research project for efforts to continue study of the alternatives for restoration of the Sea.

Water that eventually drains into the Salton Sea comes from the Colorado River, and is delivered to farmers and residents in my community by the All American Canal. This bill provides funding to construct small regulating reservoirs on the canal, which will vastly improve operating efficiencies. The reservoirs would provide storage for water that is unavoidably delivered from the lower Colorado River in excess of what is immediately needed by users, thereby improving water conservation efforts.

Finally, water in the Colorado River is threatened by a uranium mine tailings pile sitting only 700 feet from the River near Moab, Utah. The tailings, which sit in an unlined pond and seep into the ground water, are radioactive and contain high concentrations of toxic metals left by the leaching process used to separate uranium from ore. The tailings are leaking radioactive material into the Colorado River at levels 1,300 times above the allowed limit. This bill provides funding to accelerate remediation of this site, and would ensure that residents of my community, other Colorado River water users, and the environment receive the long-term protection so desperately needed.

For the sake of my constituents at the U.S.-Mexico border, as well as residents of the West, I urge my colleagues to support the conference report.

Mr. BEREUTER. Mr. Speaker, this Member supports the FY2004 Energy and Water Development appropriations conference report and urges his colleagues to vote for it. This Member would like to commend the distinguished gentleman from Ohio (Mr. HOBSON), the Chairman of the Energy and Water Development Appropriations Subcommittee, and the distinguished gentleman from Indiana (Mr. VISCLOSKY), the Ranking Member of the subcommittee, for their exceptional work in bringing this conference report to the Floor.

This Member recognizes that extremely tight budgetary constraints made the job of the subcommittee much more difficult this year. Therefore, the subcommittee is to be commended for its diligence in creating such a fiscally responsible measure. In light of these budgetary pressures, this Member would like to express his appreciation to the subcommittee and formally recognize that the Energy and Water Development appropriations conference report for fiscal year 2004 includes funding for several water projects that are of great importance to Nebraska.

This Member greatly appreciates the $18 million funding level provided for the four-State Missouri River Mitigation Project. The funding is needed to restore fish and wildlife habitat lost due to the Federally sponsored channelization and stabilization projects of the Pick-Sloan era. The islands, wetlands, and flat floodplains needed to support the wildlife and waterfowl that once lived along the river are gone. An estimated 475,000 acres of habitat in Iowa, Nebraska, Missouri and Kansas have been lost. Today's fishery resources are estimated to be only one-fifth of those which existed in pre-development days.

In 1986, the Congress authorized over $50 million to fund the Missouri River Mitigation Project to restore fish and wildlife habitat lost due to the construction of structures to implement the Pick-Sloan plan.

Also, this measure provides additional funding for flood-related projects of tremendous importance to residents of Nebraska's First Congressional District. Mr. Speaker, flooding in 1993 temporarily closed Interstate 80 and seriously threatened the Lincoln municipal water system, which is located along the Platte River near Ashland, Nebraska. Therefore, this Member is extremely pleased that this conference report continues funding in the amount of $191,000 for the Lower Platte River and Tributaries Flood Control Study. This study should help formulate and develop feasible solutions which will alleviate future flood problems along the Lower Platte River and tributaries.

This Member recognizes that this bill includes $546,000 for the Sand Creek Watershed project in Saunders County, NE, and $318,000 for the Western Sarpy-Clear Creek project. This funding is to be used for pre-construction engineering and design work. This Member is also very pleased that the conference report includes construction funds for several Nebraska projects including $500,000 for Sand Creek, $500,000 for Western Sarpy-Clear Creek, $1.5 million for Antelope Creek, and $1 million for Missouri National Recreational River.

Funding for the Sand Creek project is particularly urgent. There is a cooperative effort in Nebraska between the State highway agency and water development agencies which makes this project more cost-effective and feasible. Specifically, the dam for this small reservoir is to be a structure that the Nebraska Department of Roads would construct instead of a bridge as part of the new State expressway in the immediate vicinity of Wahoo, NE. Immediate funding would help ensure that this coordinated effort could continue.

This Member appreciates the report language which directs "the Secretary of the Army to work closely with the local sponsor on the Sand Creek Environmental Restoration project, accepting advance funds offered by the sponsor, and agreeing to credits and reimbursements, as appropriate, for work done by the sponsor, including work performed in connection with the design and construction of seven upstream detention storage structures."

The Western-Sarpy-Clear Creek Flood Reduction Project is designed to provide protection to the City of Lincoln's water supply, Interstate 80 and U.S. Highway 6, the Burlington Northern Santa Fe railroad/Amtrak line, telecommunication lines and other public facilities. The project completes and strengthens a levee system, most of which is already in place, to channel water and ice downstream away from the confluence of the Elkhorn and Platte Rivers, which is where major flood problems begin.

The purpose of the Antelope Creek project is to implement solutions to multi-faceted problems involving the flood control and drainage problems in Antelope Creek as well as existing transportation and safety problems all within the context of broad land-use issues. This Member continues to have a strong interest in the project since he was responsible for stimulating the City of Lincoln, the Lower Platte South Natural Resources District, and the University of Nebraska-Lincoln to work jointly and cooperatively with the Army Corps of Engineers to identify an effective flood control system for downtown Lincoln. The Antelope Creek Flood Control Project is a large project and will have a number of phases of right-of-way acquisition and construction.

This Member appreciates the $500,000 included in the conference report for research in Nebraska on improved soybean oil for biodiesel fuel. Biodielsel use is growing rapidly, and an improved oil from soybeans developed for Nebraska growers can open new markets for soybean growers, while contributing to a cleaner environment and reducing our Nation's dependence on non-renewable energy sources. Replacing petroleum-based diesel fuel with biodiesel produced from soybean and other vegetable oils can help make the Nation more self-sufficient in energy and reduce air pollution, including emission of "greenhouse gases" contributing to global warming. Biodiesel holds significant potential for expanding markets for soybean growers and processors.

Finally, this Member also is pleased that the conference report includes $1 million in funds from the Drought Emergency Assistance Program for emergency assistance in Nebraska.

Again Mr. Speaker, this Member commends the distinguished gentleman from Ohio (Mr. HOBSON), the Chairman of the Energy and Water Development Appropriations Subcommittee, and the distinguished gentleman from Indiana (Mr. VISCLOSKY), the ranking member of the subcommittee, for their support of projects which are important to Nebraska and the First Congressional District, as well as to the people living in the Missouri River Basin.

Mr. GREEN of Texas. Mr. Speaker, I rise in strong support of the Fiscal Year 2004 Energy and Water Appropriations conference report, which brings the Houston Ship Channel project extremely close to completion and provides critical flood relief for residents of the 29th District of Texas.

It was flooding down in Texas yesterday, and this bill is urgently needed down in my hometown of Houston. This bill provides $35.5 million for the Houston Ship Channel deepening and widening project, which will allow our Nation's second largest port to continue to grow and handle the heavy energy and petrochemical traffic that is necessary for the smooth economic functioning of our Nation.

The Port of Houston is home to the single largest petrochemical complex in the country, with a combined capacity to produce nearly 49 percent of the Nation's petrochemical capacity. By increasing the capability of the ship channel to handle newer, larger tankers more safely, Congress will directly increase the energy security of our Nation at a time of tumultuous energy markets. We need to obtain an additional $12 million in reprogramming funding next year as the construction on the ship channel nears completion.

The ship channel is one of the primary economic engines in my district and throughout Texas, directly providing tens of thousands of jobs in the greater Houston area and many more thousands across the State.

For flood control, this legislation provides $750,000 for flood protection construction work along Hunting Bayou, an urban watershed in East-Central Harris County. During Tropical Storm Allison, the most expensive tropical storm in U.S. history, over 8.000 homes flooded in the Hunting Bayou watershed, which is heavily residential and low to moderate income.

The House Energy and Water Appropriations Act for FY 2004 also provides $774,000 to complete the General Re-evaluation Review for Greens Bayou, a highly populated, but economically disadvantaged watershed in North Harris County. The lack of flood control protections in this watershed leaves these residents and businesses unprotected and resulted in the flooding of over 15,000 structures during Tropical Storm Allison. The most major channel flooding during that event occurred in the Greens watershed, and we need to get moving and start moving dirt down there as soon as possible. This bayou came very close to topping its banks just yesterday.

I offer my deep appreciation to Chairman HOBSON and Ranking Member VISCLOSKY for their attention and dedication to these critical economic development and flood protection projects for my constituents down in Houston, TX. I hope to work with them as this legislation goes forward, and I urge my colleagues to support the bill.

Mr. FRELINGHUYSEN. Mr. Speaker, I rise today in support of H.R. 2754, the Energy and Water Appropriations conference report for fiscal year 2004. Let me first thank Chairman HOBSON for his strong leadership of our subcommittee's work and to Ranking Member PETE VISCLOSKY for his bipartisan approach to this conference report. And my thanks to the subcommittee staff for their tireless efforts to put this conference report together.

While public attention is rightly focused on the war on terrorism abroad, our committee continues to do its part to protect our nation's security at home. The issue of energy security is now clearly before us—our energy facilities and networks must be safe and secure. And we must also continue the critical work of the Department of Energy to do the research and development on domestic sources of energy, reducing the demand of foreign oil imports and to find better ways to protect our nuclear stockpile.

I applaud the chairman for providing $82 million for the new Office of Electric Transmission and Distribution (OETD), which is $5 million over the requested amount. The Office of Electric Transmission & Distribution is a new DOE program office formed to help ensure a robust and reliable U.S. transmission grid for the 21st century. I am pleased our subcommittee has provided DOE with the funding needed to lead a national effort to help modernize and expand America's electric delivery system to better ensure economic and national security.

Further, it is important to note the conferees added the $5 million over the requested amount to allow the Department of Energy to complete its investigation into the causes of the August 14th, 2003 blackout, which highly affected thousands of people in my region of the country. It is important DOE conduct an extensive investigation to get to the bottom of what caused or contributed to the outage so we can take proper steps to ensure such failures are never repeated in the future.

Chairman HOBSON has produced a conference report that continues the Federal commitment to work in partnership with our states and local communities to address such vital needs as flood control, shore protection, environmental restoration and improving our Nation's waterways. By doing so, we are helping to meet critical economic, environmental and public safety needs in virtually every state in the country.

I want to especially thank Chairman HOBSON for his support of top priorities in my home state of New Jersey. Keeping our port open for business is critical to our regional economy and the 229,000 thousand jobs related to port activity in New Jersey and New York. Protecting and restoring our 127 miles of shoreline is vital $30 billion dollar tourism industry. And, this bill continues to work to protect New Jersey's communities from natural disasters such as flooding and continues New Jersey's special role to provide for a future energy source that is clean and unlimited: that is the work of the Princeton Plasma Physics Laboratory.

Finally, I want to take a moment of my time to thank the Army Corps of Engineers for their efforts to improve the quality of life that the American people have at home as well as for the Iraqi people abroad. Today, well over 300 U.S. Army Corps of Engineers military and civilian employees are in Iraq assisting the people in many areas. The Corps also provides daily assistance to the reconstruction effort with technical advice for the International Aid Developments program of reconstructing water and sanitation facilities; public facilities, such as hospitals and schools; roads, bridges and railroads; and airport and seaport rehabilitation. Of vital importance is the Corp's work with the Coalition Provisional Authority, the U.S. State Department, and U.S. engineering societies that help Iraqi engineers gain knowledge lost during the last 30 years.

Mr. Speaker, I wholeheartedly support this conference report and urge my colleagues to do the same.

Mr. MATSUI. Mr. Speaker, I rise today in support of the Conference Report on H.R. 2754, the Energy and Water Development Appropriations Act for fiscal year 2004. As this Congress is well aware, my district of Sacramento, CA, is the most at-risk river city in the Nation. Situated at the confluence of the American and Sacramento Rivers, Sacramento has narrowly escaped certain disaster twice over the last two decades. My number one priority as a Member of this body has always been to put an end to this grave public safety risk and to provide my constituents with the flood protection they both need and deserve. I am happy to say this bill will do just that. In fact, in the eyes of Sacramento, the passage of this bill is an historic moment.

A major flood along the American River would cripple this economy, causing between $7 and $16 billion in direct property damages and likely result in significant loss of life. The Sacramento floodplain is home to half-a-million people, 5,000 businesses providing 200,000 jobs, 160,000 homes, 1,300 government facilities including the State Capital, over 100 schools, six major hospitals, 26 nursing homes, three major freeways systems, and a regional economy that supports over one million people.

For almost as long as Sacramento has been at risk of a catastrophic flood, there has been a dispute over how to resolve the issue. Earlier this year, my colleague JOHN DOOLITTLE and I reached an agreement that moves forward the two most pressing issues for Northern California: flood control and water supply. This bill contains that agreement and successfully addresses both of those issues for the indefinite future.

I would like to take a moment and recognize the tremendous efforts that have made this possible. Without the leadership of Chairman HOBSON and Ranking Member VISCLOSKY of the Energy and Water Appropriations Subcommittee and Chairman YOUNG and Ranking Member OBERSTAR of the Transportation and Infrastructure Committee Sacramento would still be fighting for incremental flood control projects. Their recognition of Sacramento's dire flood control situation advanced this solution. On behalf of my constituents, thank you.

More specifically, this bill provides for the construction of the Folsom Dam Mini-Raise. This is the crowning project in a series of vital flood control improvements and surpasses the region's long held goal of reaching 200-year level protection. By raising the existing Folsom Dam seven feet, Sacramento's flood control system will be able to weather a storm 50 percent larger than anything in the recorded history of the watershed. In addition, the project provides a new permanent bridge to replace the Folsom Dam Road, which was closed in February due to security concerns, and for ecosystem restoration on the lower American River. Congressional approval of the Mini-Raise benefits the entire Sacramento region, by addressing not only the area's flood control needs, but also ecosystem restoration, transportation issues and Homeland Security needs.

I am grateful for the continued Federal assistance that Sacramento has received throughout the years to bring us to this moment. That commitment is evident in this bill and will ensure that those living and working in the region will be kept out of harm's way.

Mr. HOBSON. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

Pursuant to clause 10 of rule XX, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

CONFERENCE REPORT ON H.R. 6, ENERGY POLICY ACT OF 2003

Mr. TAUZIN. Mr. Speaker, pursuant to House Resolution 443, I call up the conference report on the bill (H.R. 6) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to House Resolution 443, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of November 17, 2003, Book II.)

The SPEAKER pro tempore. The gentleman from Louisiana (Mr. TAUZIN) and the gentleman from Michigan (Mr. DINGELL) each will control 30 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. TAUZIN).

GENERAL LEAVE

Mr. TAUZIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and insert extraneous material into the RECORD on H.R. 6.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. TAUZIN. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, there may be no other bill the House considers this year or next that will benefit America more than H.R. 6, the Energy Policy Act of 2003. Let me tell my colleagues what this conference report is about. It is about America's energy security, America's energy reliability, and it is about American jobs.

First, Mr. Speaker, apart from homeland security and defense appropriations, this bill will do more for the security of our country than any legislation that we will consider in a long time. The Middle East remains one of the most dangerous corners of the world, and our heavy dependence upon oil from that region simply cannot continue. That is why H.R. 6 removes the artificial impediments to domestic oil and gas exploration and development. That is also why the bill takes a 21st-century approach to energy by investing literally billions of dollars into research and technology to promote nonconventional sources of power.

I am pleased, in particular, that we have followed through on President Bush's request to fund the FreedomCar initiative. If hydrogen cars are the wave of the future, and they may well be, then 20 or 30 years from now, people will look back on the investments we make in this conference report as the genesis for zero-emission, highly efficient vehicles. We also make enormous strides in the area of conservation and efficiency. Indeed, according to the American Council on an Energy Efficient Economy, the provisions of this bill in these areas will eliminate the need for 294 new 300-megawatt electricity plants by the year 2020. That is real conservation.

Next, Mr. Speaker, the conference report is about energy reliability. We can have all of the oil, natural gas, coal, and renewable energy in the world; but it does not do us any good if we cannot get the energy to America's families and businesses. Two years ago, we witnessed rolling blackouts in California. And, of course, just 3 months ago, we saw some 50 million Americans in much of the Northeast and Midwest crippled by power failures that could cost the economy billions and billions of dollars. These blackouts are intolerable in the year 2003. We simply cannot permit this. And so we have adopted consensus-based reliability standards that have been negotiated over the past several years.

We have included transmission incentives to build new transmission systems. We have new provisions on siting to make sure we can improve transmission facilities. And we have eliminated artificial barriers to new investment in the electricity grid by repealing the old Public Utility Holding Company Act. In short, when the provisions of H.R. 6 are fully deployed in the marketplace, the American people will be able to count on a stronger, more reliable electricity system.

Finally, H.R. 6 is about jobs. We estimate this conference report will create upwards of 800,000 new jobs, not to mention preserving valuable jobs in manufacturing, construction, agriculture, and technology that are frankly being lost today because of the high energy prices in our society. Here is how: the construction of the new Alaska natural gas pipeline will create some 400,000 direct and indirect jobs. Investment in clean coal technologies will create 40,000 new jobs and 10,000 white collar jobs in math, engineering, physics, and science. The new renewable fuel standard could create as many as 214,000 new jobs alone. Incentives for the solar industry will create 20,000 new jobs.

Mr. Speaker, the list goes on and on. The point is that through a combination of removing barriers to energy production and making sound, enlightened developments in America's energy future, we will do more for the American economy than virtually any other legislation we consider in the 108th Congress. Our economy is recovering. This bill makes it certain.

I urge my colleagues to vote in favor of this conference report, for America's security, for America's energy reliability, and for American jobs.

Mr. Speaker, I reserve the balance of my time.

Mr. DINGELL. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, we have before us a highly partisan project, written in secret and kept from the light of day just like the Cheney task force. The result speaks for itself. And when you lift the lid, like lifting the lid on a garbage can, you get a strong smell of special interest provisions.

There are some worthy titles and some worthy items, but they are much submerged in the special interest provisions of this legislation. The conference report does include consensus electric reliability provisions that the Democrats have supported, but the report will probably handcuff the Federal Energy Regulatory Commission's ability to prevent future blackouts. It repeals the Public Utility Holding Company Act of 1935 with its consumer and investor protections. It favors certain utilities and other special interests. It preempts State and local authorities on transmission line siting decisions.

The conference report shortchanges our rivers and conservationists as well. It tilts the relicensing process in favor of utilities by giving them special rights and procedures not afforded to other parties who have interests in these same uses of special public resources, such as the States, the Indian tribes, the sportsmen, or the conservationists.

One of the more troublesome aspects of this report is its direct assault on the Nation's safe drinking water supply. It weakens the Safe Drinking Water Act. It forces State and local taxpayers to pay billions of dollars to clean up the MTBE manufacturers' mess and requires taxpayers, not polluters, to pay for the cleanup of contamination caused by leaking underground storage tanks, even when the responsible party can afford to pay.

The bill contains a number of provisions which are not included in either bill and on which there is no legislative record at all, including significant Clean Air Act rollbacks. The conference agreement includes even worse provisions outside the jurisdiction of the Committee on Energy and Commerce. For example, the tax subsidies alone will cost about $23 billion compared with the President's request of $8 billion, but I note there are no complaints from the administration which regularly objects to smaller amounts being spent for education, health care, or for our Nation's veterans.

The bill was conceived in a secret, one-sided process; and, as a result, flawed provisions are obvious to all who would observe. I must oppose this legislation and urge my colleagues to do likewise. This is a bad bill. It is a special interest bill. It does not help the people. It takes care of the special interests, and it is not going to save or emancipate this country with regard to the energy demands that we confront.

I urge a "no" vote on the legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. TAUZIN. Mr. Speaker, I am honored to yield 1½ minutes to the distinguished gentleman from North Carolina (Mr. BURR), vice chairman of the Committee on Energy and Commerce.

Mr. BURR. I thank the gentleman for yielding me this time.

Mr. Speaker, I want to briefly address the electricity transmission and reliability provision that is included in this conference report. Both the Clinton and the Bush administrations cited the need to attract new investment in the transmission sector as an integral component for modernizing our electricity delivery system. The evolution of our system demands an electricity grid that is reliable, secure and robust, all qualities that are essential in a 21st-century economy. However, our electricity transmission system today remains overburdened, outdated, and underfunded.

According to industry observer Eric Hurst, transmission investment over the past 25 years has declined at a rate of $115 million per year. Hurst further indicates that there needs to be an investment of at least $56 billion in the transmission sector to upgrade existing lines and add additional capacity in order to meet existing peak electricity demands. In its current projection, however, the industry will only spend $3 billion each year during the next decade on upgrades.

Working with my good friend, the gentleman from Maryland (Mr. WYNN), we drafted the Interstate Transmission Act of 2003, which would require FERC to adopt transmission rules to promote capital investment in the system, improve the operating system, and allow for returns to investors reflecting financial, operational, and other risks inherent in transmission investments.

I am pleased to say that this final conference report incorporates a tremendous move forward on our transmission infrastructure. I urge my colleagues to support this legislation.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, the United States needs an energy policy for the 21st century. We need to reduce our reliance on Middle East oil and increase our energy independence. Unfortunately, this Republican conference report completely fails to do any of this.

We need an energy policy for 2003, but the plan we have before us was designed for 1973. The authors of this plan act as if reliance on foreign oil, climate change, and the need for energy conservation are of no consequence. The plan gives billions of dollars to the oil and gas industries so that our Nation will continue to rely on the Middle East for petroleum.

It does nothing to encourage energy conservation. It does nothing to reduce greenhouse gas emissions. It does nothing to encourage investment in renewable energy, a technology that was new and exciting in the 1970s and, with proper congressional support, could finally be part of our energy infrastructure in the future.

It is our duty as Congresspeople to lead and not follow. Sadly, this conference report is not forward-looking. I must vote "no" on this energy bill because it is nothing more than a whole lot of yesterday.

Mr. TAUZIN. Mr. Speaker, I am pleased to yield 1 minute to the distinguished gentleman from Illinois (Mr. SHIMKUS), a member of the committee.

□ 1515

Mr. SHIMKUS. Mr. Speaker, I would like to thank the chairman of the committee for giving me a once-in-a-lifetime opportunity, and that is to serve on this conference committee that is now reporting this bill. This is a bill that has been debated since I have been a Member of Congress going on my 7th year, numerous hearings, numerous markups, and now we have a chance to do what we need to do. Diversify our electric energy portfolio, making sure that nuclear power, coal power, and hydroelectric power are all part of the mix, along with renewables. We also get a chance to adjust the crisis of importation of foreign oil with a 5 billion gallon renewal requirement primarily using ethanol. Soy beans also has a big seat at the table with improvements there that will help use homegrown fuels to help decrease our reliance on foreign oil.

This is a bill that I am proud to have a chance to serve on the committee and the conference report. I think it is something that I will be able to tell my kids in many years to come that I was proud to serve in the House of Representatives and be a part of this conference report that addresses the first energy bill legislation in decades on the floor of the House.

Mr. DINGELL. Mr. Speaker, I yield for the purpose of making a unanimous consent request to the distinguished gentleman from Massachusetts (Mr. OLVER).

Mr. OLVER. Mr. Speaker, I rise in opposition to the conference report on this bill before us.

The energy bill before us today fails to provide a realistic sustainable energy plan for Americas future. Instead, the bill includes environmental rollbacks, threatens public health, weakens key consumer protections against electricity market manipulation, and gives out billions of dollars in subsidies to the fossil fuel and nuclear industries. In addition, this bill missed nearly every opportunity to increase renewable energy development and energy efficiency.

The rollbacks of two of our most fundamental environmental laws—the Clean Air Act and the Clean Water Act are terrible environmental policy.

This bill would allow more smog pollution for longer than the current Clean Air Act authorizes by allowing areas with the worst air pollution to have more time to cleanup without having to implement stronger air pollution controls.

This bill exempts all oil and gas construction activities, including roads, drill pads, pipeline corridors, refineries and compressor stations from having to control storm-water runoff, as is currently required under the Clean Air Act.

Early estimates on this bill show at least $25 billion in subsidies to the oil, coal, gas, and nuclear industries. Some estimates tally over $100 billion in giveaways to the "dirty fuel industry" including over $6 billion in tax credits for nuclear power companies, and $1.1 billion to build a new nuclear reactor in Idaho. It is reckless and irresponsible policy to promote new nuclear power production when we have yet to develop a safe way and place to dispose of the high-level nuclear waste we have already created.

By comparison, the renewable energy industry received only crumbs—a piddling $3–6 billion for solar, wind, geothermal, and biomass development. The Renewable Portfolio Standard included by the Senate, which would have required utilities to generate 10 percent of their power from renewable sources by 2020, was struck from the bill.

Tragically, this bill is a missed opportunity for job creation. The Tellus Institute estimates 1.3 million jobs could be created in the renewable energy sector. Instead, this bill only ensures we will continue to lose our technological edge in the global renewable market to countries like Denmark and Japan.

What we needed was a bill to decrease our dependence on foreign oil and strengthen our national security, but this bill won't conserve a drop of oil. We need to protect our consumers, our public lands and our public health, but instead this bill weakens protections. We needed to give a boost to the renewable energy sector, but instead this bill is a kickback to the fossil fuel indistry.

I urge a "no" vote on this irresponsible legislation.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Speaker, I thank my colleague, the ranking member, for yielding me this time.

Mr. Speaker, it must be close to Thanksgiving because this bill has the energy industry doing a lot of thanking and taxpayers doing a lot of giving.

Odd couple Jerry Taylor of the Cato Institute and Dan Becker of the Sierra Club together call this energy bill "three parts corporate welfare and one part cynical politics." They are absolutely right.

For our colleagues to consider themselves friends of the environment, I note the following: This bill drills holes in the Clean Water Act, the Safe Drinking Water Act, NEPA, and the Coastal Zone Management Act. It reverses a long-standing polluter pays principle by forcing taxpayers to clean up leaking underground storage tanks. It is clearly the most anti-environmental bill in a long time.

As for my colleagues who say they are concerned with wasteful government spending and heavy-handed government mandates, this bill's $23 billion of tax provisions are triple the administration's proposal. They shovel billions in taxpayer-funded subsidies to wealthy corporations. The cost of the bill could be as high as $135 billion in new government spending, industry subsidies, and mandates increasing consumer prices for gas and electricity. So much for fiscal discipline.

May I cite, Mr. Speaker, one set of provisions which epitomizes the bill's failures. This bill grants liability protection for MTBE producers responsible for polluting groundwater in virtually every State, leaving harmed communities saddled with billions in cleanup costs. Supporters claim it is fair to protect producers from liability since Congress mandated its use in the Clean Air Act, but there is no mandate for MTBE. And, in fact, nearly 100,000 barrels were added to gasoline a year before the Clean Air Act regs were issued.

It is also a fact that manufacturers knew MTBE would get into groundwater and that it would render groundwater unusable. Adding insult to injury, the bill provides these same companies with $2 billion, that is $2 billion worth, to help them get out of the MTBE business. What a ripoff. And this is just one example.

I urge my colleagues to give their constituents something to be thankful for this holiday season. Vote no on this turkey.

Mr. Speaker, it must be close to Thanksgiving because the energy industry is doing a lot of thanking and taxpayers are doing a lot of giving in this bill.

Odd couple Jerry Taylor of the Cato Institute and Dan Becker of the Sierra Club call the energy bill ". . . three parts corporate welfare and one part cynical politics." They call it "a complete waste of energy" and say the "1700 page bill fails to address the fuel and power needs of the average American."

They are absolutely right!

For my colleagues who fashion themselves as friends of the environment I would note the following extremely troubling provisions:

The bill seriously weakens the Coastal Zone Management Act, the Federal law that States use to manage development and preservation of coastal resources. The bill limits States' roles in weighing in on oil and gas proposals and fasttracks the decisionmaking process. I would note that it was CZMA that California successfully used in forcing the termination of 36 undeveloped leases off the coast.

The bill provides major incentives for energy development in sensitive coastal areas. It also permits coastal States to spend so-called "impact assistance" funding, which is supposed to be designed to promote environmental protection, on activities that could further damage sensitive coastal areas. There is nothing in the bill to prevent a coastal State from spending most of all of their allocation on environmentally damaging infrastructure construction projects, including roads, ports, or jetties. The money made available under this section for areas impacted by offshore oil and gas development should be used to prevent and mitigate environmental damage; not create more.

The bill also contains a provision to assign unilateral permitting and regulatory authority to the Secretary of Interior for all energy-related industrial facilities within the Outer Continental Shelf, including those under areas long protected by executive and Congressional moratoria. Under the bill, all leasing, permitting, and regulation for a broad range of unidentified "oil and gas related" projects, including offshore Liquefied Natural gas (LNG) facilities, would be expedited through the use of one-stop permitting under the sole authority of the Secretary of Interior. California is presently facing two proposed offshore LNG terminals and gasification facilities off the coast of Malibu and Oxnard, and several other LNG proposals elsewhere along its coastline. California's local communities and the State of California would be stripped of important jurisdictional oversight over such projects if this bill were approved. Industrial projects in our coastal waters must not be allowed to circumvent existing laws that ensure protection of environmentally and economically sensitive coastal and marine areas.

The Leaking Underground Storage Tank program ensures that polluters clean up the damage caused by leaking tanks. But the energy bill violates this longstanding "polluter pays" principle by forcing taxpayers, rather than polluters, to pay for cleanup of contamination from these leaking tanks. This provision wasn't included in either the House or Senate bill.

The bill excludes deals between energy companies and tribes from National Environmental Protection Act, the Federal law that insures energy projects meet environmental and public health standards. It also requires the Department of Interior (DOI) to act as an enforcer for energy companies in their deals with tribes to make sure the tribes live up to the agreements. Unfortunately, there is no similar DOI oversight of energy company obligations to the tribes.

The Clean Air Act classified cities by their level of pollution, with dirtier cities given longer time to clean up their air, but also being required to adopt tougher anti-pollution standards. If an area fails to clean its air up by the statutory deadline, the area is "bumped up" to a higher classification, meaning it gets more time to meet their standards, but it has to institute stronger pollution controls. The energy bill will allow these polluted cities extended deadlines for achieving healthy air, but without "bumping up" the city. This means cities with dirty air won't have to clean up for a long time. And people living in these cities—and people living downwind—will suffer longer from dirty air and its damaging health effects.

The bill undermines the Clean Water Act by giving oil and gas companies a permanent exemption from pollution control requirements, like obtaining a permit to control polluted stormwater runoff caused by construction activities at drilling sites. But the industry already has a temporary exemption for small sites and EPA is now studying this issue. There is no reason to shortcut this process.

Hydraulic fracturing is a drilling technique that injects chemicals into the ground during oil and gas development. But the bill exempts hydraulic fracturing practices from the Safe Drinking Water Act, threatening drinking water sources, public health and the environment.

The energy bill does nothing to decrease our dependence on oil. There is no increase in the Corporate Average Fuel Economy Standards (CAFE), even though 70 percent of imported oil is used in our cars. Clearly, one of the most important steps we could take to increase our energy security would be to reduce our dependence on foreign oil. Instead, we are going in the opposite direction with average fuel economy on the decline and Congress even giving tax breaks for businesses that want to buy luxury SUVs. At a minimum, the bill should encourage us to stop wasting oil. The Senate adopted a provision to reduce U.S. demand for oil by 1 million barrels per day. Yet, the conference report even leaves this minimal step out.

The bill drops provisions establishing a Renewable Fuels Standard, which would require utilities to get increasing amounts of their energy from renewable sources. Increasing utilities' use of renewables is a key step in achieving energy security for the Nation; that is why thirteen States already have or are considering setting similar goals. My own State of California has such a requirement and the utilities there tell me they have no problem complying with its provisions. The Senate supported such a provision but the House was never even given an opportunity to vote on the matter.

The bill does not contain any provisions to address global climate change, even though many have previously passed the House, or even unanimously passed the Senate. The provisions that were included in the Senate energy bill are modest steps on this important issue. They include: ensuring public disclosure of greenhouse gas emissions from large factories and power plants, creating a White House Office on Climate Policy, encouraging U.S. participation in global talks on climate change, and expanding research and innovative technology. These provisions do not create any mandatory programs to cap greenhouse gas emissions, but would lay the groundwork so we can understand the nature of this problem and begin to work on solutions.

Mr. Speaker, this is clearly the most anti-environment bill in a long time.

And for my colleagues who say they are concerned with wasteful government spending and heavy-handed government mandates, I bring the following to their attention:

The bill's $23 billion tax provisions are triple the Administration's proposal, shoveling billions in taxpayer-funded subsidies to corporations.

The overall cost of the bill could be as high as $135 billion in new government spending, industry subsidies, and mandates increasing consumer prices for gas and electricity.

Right now, oil and gas companies pay royalties to taxpayers for the privilege of drilling on public lands. The bill grants these wealthy industries royalty "holidays," so they pay nothing for extracting billions of dollars worth of oil and gas from public lands. The bill also changes the royalty payment programs, modeling them on pilot projects GAO says have cost taxpayers up to $367 million annually.

The bill mandates a tripling in the use of ethanol, effectively forcing consumers on both coasts to subsidize giant Midwest agribusiness. The Energy Information Agency has indicated that gas prices could rise by 10 cents and it is likely to be even higher as the ethanol mandate will also make gas prices subject to even more variables—such as drought or other factors affecting the price of corn. In addition, a Cornell University study indicates, it takes about 70 percent more energy to produce ethanol, than the energy ethanol creates." Because much of the energy that goes into making and transporting ethanol (by truck, since it can't be sent in pipelines) comes from fossil fuel sources, this provision will do little to reduce foreign oil dependence.

While the 1700 page bill was drafted in secret, some of the pork barrel spending has begun to leak out. For example, there is one $1 billion in subsidies for a nuclear power plant and millions in subsidies for an Alaska pipeline. But the list of pork barrel projects is certain to be long and embarrassing when it finally becomes public. Senator MCCAIN said the bidding process reminded him of a "bazaar." So much for fiscal discipline.

Mr. Speaker, one set of provisions epitomizes the bill's failures.

The bill grants liability protection for MTBE producers responsible for polluting groundwater in virtually every State. This liability is granted even though documents unearthed in recent court cases show that manufacturers knew as early as the mid-1980's that their product would contaminate groundwater, but continued to push it.

Even when present in extremely small amounts MTBE makes water taste and smell like kerosene, rendering it unusable. This contaminated groundwater is difficult and extremely expensive to clean up, and a growing problem in hundreds of communities across the country. MTBE may also be a suspected carcinogen.

Supporters claim it is fair to protect MTBE producers from liability since Congress mandated its use in the Clean Air Act. But there is no mandate for MTBE in the Clean Air Act. In fact, nearly 100,000 barrels of MTBE were being put in gasoline a year before the Clean Air regulations were issued.

This provision leaves communities with MTBE polluted groundwater saddled with billions of dollars in cleanup costs. For example, in my district the town of Cambria recently reached a $10 million settlement with Chevron to clean up the MTBE contamination that has ruined a good part of the town's drinking water supply. Under this bill, there will be no incentive for MTBE producers to be responsible for the damage they have caused and towns like Cambria will be left to fend for themselves.

Finally, adding insult to injury, the bill provides these same companies with $2 billion in taxpayer funds to help these wealthy oil and gas companies get out of the MTBE business. There is absolutely no justification for this blatant waste of money.

I urge my colleagues to give our constituents something to be thankful for here on the eve of Thanksgiving. Vote "no" on this turkey.

Mr. TAUZIN. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. THOMAS), the distinguished chairman of the Committee on Ways and Means.

Mr. THOMAS. Mr. Speaker, first of all, I want to thank the chairman and I want to thank the Senate. Knowing the difficulty of putting a package together and being a part of it, I am very pleased that we are here on the floor today.

Mr. Speaker, despite protestations to the contrary, this country has remained dependent on foreign energy sources, leaving our Nation vulnerable to rogue nations. Mr. Speaker, Americans have faced price spikes at the gas pump and high monthly energy bills. High energy costs have closed U.S.

plants and factories and laid off U.S. workers. And as recently as last summer, U.S. cities experienced blackouts resulting from problems with the energy grid. Lacking a comprehensive energy plan has left the United States susceptible to energy shortcomings and downfalls.

However, we have the opportunity today to reverse this course. Congress is poised, and I believe we are poised, to send legislation to the President that will put a balanced comprehensive energy plan in front of America's long-suffering consumers. The tax incentives included in this agreement are the most sweeping changes in energy policy in over a decade.

The plan before us today encourages the use of nontraditional energy sources, wind, geothermal, solar, and other renewable sources. This diversification will foster self-reliance and lessen dependence on foreign energy supplies. We devoted nearly 40 percent of the resources in this tax package to that effort. Additionally, today's agreement promotes the use of traditional energy sources like our abundant coal supplies but focusing them in cleaner forms.

To protect our country from experiencing further blackouts, we have devoted nearly one-fifth of the tax incentives to bettering the distribution of the United States electric and gas distribution and transmission systems.

The production incentives in this agreement will encourage the development and use of alternative fuels like biodiesel and ethanol.

Working with the Senate, we have compiled a package that promotes conservation, better reliability, and more production. This comprehensive agreement combines the best elements of the House and the best elements of the Senate bill, and it deserves and, I believe, will receive strong support. My compliments to the chairman.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of the conference agreement and urge its approval by the House. As the gentleman from Michigan (Mr. DINGELL) has said, there is much in this measure not to like. I am particularly troubled by the repeal of the Public Utility Holding Company Act and the investor and consumer protections that it contains.

My support for the bill is based on its provisions that will encourage the use of coal in many of the 1,600 new electricity-generating plants that will be built around the United States during the coming 20 years. Under current estimates, more than 80 percent of these 1,600 new units will be fueled with natural gas.

With today's natural gas prices in the range of $5 per million Btus, homeowners who heat with gas and the broad swath of the American industry that is gas dependent are already feeling the effects. The problem will grow much worse and even threaten the health of the Nation's economy if 80 percent of all of the new electricity generators are fueled with gas as well.

To this problem there is an obvious answer. Coal is the Nation's most abundant fuel with reserves sufficient for the next 250 years. Coal generates electricity at less than one-half the cost of the fuel alternatives, and consumers get the best prices when they purchase electricity that comes from coal-fired facilities. But utilities are reluctant to use coal in new generating plants because of the high cost of installing clean coal technologies.

The bill before us contains tax provisions that will make a new generation of clean coal technology more affordable. It will encourage electric utilities to use coal instead of natural gas in many of the new electricity-generating units that will be constructed. That is a major contribution to the Nation's energy policy, and I applaud the inclusion of these provisions in the bill. And I want to commend the gentleman from Louisiana, the gentleman from Texas, and the gentleman from Michigan for their work on in measure.

Mr. Speaker, I urge approval of the conference report.

Mr. TAUZIN. Mr. Speaker, I thank the gentleman from Virginia for his comments.

Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Ohio (Mr. GILLMOR), chairman of the Environment and Hazardous Materials Subcommittee of the Committee on Energy and Commerce.

Mr. GILLMOR. Mr. Speaker, I thank the gentleman for yielding me this time, and I also thank him for his leadership on this issue.

I am pleased to rise in support of this energy bill conference report which will help ensure an adequate supply of energy. It has significant measures for conservation, to encourage renewable fuels, and to provide for the reliability of our electricity delivery system.

While there are a number of good things in this report, because of time I want to mention only two.

I was happy to see that two bills which I introduced earlier this session have been incorporated in the report. The first permits States to provide tax credits for the use of clean coal and renewable fuels, and those provisions will save the consumers of Ohio $36 million.

The second is the first comprehensive rewriting of the leaking underground storage tank program since it was created. There are approximately 700,000 underground storage tanks, and as of March of this year, there have been over 430,000 confirmed releases. A strong underground storage tank program is essential to protecting our environment and our groundwater supply.

It requires that 80 percent of the money of the funds go to the States. It would require an on-site inspection of tanks every year. It requires operator training, permits red tagging of noncompliant tanks, a process that stops delivery to noncompliant tanks.

These improvements have a cost, and I am happy that the current underground storage tank program has adequate resources in it that we can provide a significant increase of funds to States to administer this program, and this bill does it.

This bill is a win-win for the environment and for those people who use our water supply, and for these two reasons and a number of others, I encourage the Members to support the conference committee report.

Mr. Speaker, I am pleased to rise in support of this energy bill conference report which will do a great deal to assure an adequate supply of energy, has significant measures for conservation, and to encourage renewable fuels, and to provide for the reliability of our electricity delivery system.

While there are many good things in this conference report, because of time, I will mention only two of those.

I was happy to see that 2 bills which I introduced earlier this session have been incorporated in this conference report. The first, H.R. 3336, permits States to provide tax credits for the use of clean coal and for the use of renewable fuels. These provisions, for example, will save the electricity consumers of the State of Ohio $36 million.

The second, H.R. 3335, is the first comprehensive rewriting of the Leaking Underground Storage Tank Program since it was created. There are approximately 700,000 underground storage tanks in the United States containing gasoline, diesel fuel, and toxic chemicals. As of March of this year, there have been, over the years, approximately 430,000 confirmed releases from such tanks. A strong underground storage tank program is essential to protecting our environment and our ground water supply.

First it would require that a least 80 percent of all the funds collected for the Federal tank fund go directly to the States to help them with their inspection and clean up programs.

Next it would require an onsite inspection of tanks every 3 years. At the current time there is no inspection requirement, and some tanks can go as long as 10 years or more without being inspected.

It requires operator training. Most of the spills have come from improper operation of tanks.

It also permits red-tagging of non-compliant tanks. This is a process which gives the States authority to effectively prohibit delivery to non-compliant tanks.

It stops Federal facilities from exempting themselves for all Federal, State and local underground tank laws. These improvements do have a cost, and I am happy that the current underground storage tank fund has adequate resources in it so that we can provide a significant increase of funds to the States to administer this program, and this bill does that.

This bill is a win-win for the environment, for those people who use our water supply, and for those in the industry who want the support. It is a responsible program to protect our environment.

For these reasons and many more, I would urge my colleagues in the House to support this conference committee report.

Mr. DINGELL. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Illinois (Mr. RUSH).

Mr. RUSH. Mr. Speaker, I thank the gentleman from Michigan (Mr. DINGELL) for yielding me this time, and I want to thank him for his leadership on this issue as our ranking member on the Committee on Energy and Commerce, the committee on which I am proud to serve.

Mr. Speaker, I rise in strong opposition to this conference report. There are some provisions of the bill I do support. I support the ethanol provisions, and I support the very modest, yet unsatisfactory, provisions dealing with LIHEAP. However, Mr. Speaker, there is much more in this bill that I do not like, and I want to associate myself with the comments of my colleagues who argue that this bill will do irreparable harm to the environment, put consumer protections at risk, and give away billions of taxpayer dollars to large corporate interests. It continues to amaze me that the Republicans love to lecture us Democrats on the need for fiscal austerity and spending restraint; yet, they lavishly spend billions of dollars on needless subsidies and tax breaks for wealthy energy companies.

What is worse, Mr. Speaker, is that this generosity does not extend to the neediest and most vulnerable in our society. Last night during our only substantive conference committee meeting, the Republican conferees rejected my amendment that would have significantly increased funding for the LIHEAP and the Weatherization Assistance programs. Both of these Federal programs provide valuable aid to low-income homes to help them pay for and efficiently manage their energy costs. However, Republican generosity towards energy companies did not extend to the poor, and my amendment was rejected on pure partisan party lines.

Lastly, Mr. Speaker, I want to comment on the process, the unfair process, of this entire energy bill. Last night at 8 p.m. marked the first and only time that my Democratic colleagues and I had the formal opportunity to work on this bill. My staff and I had 48 hours to read 816 pages and to dissect it, and this certainly was not time enough. This conference report was been largely drafted in secret, behind closed doors, with no input or participation from well-meaning Democrats.

□ 1530

Mr. Speaker, I take seriously the fact that I am the sole African American conferee with full jurisdiction over this bill, and I would have hoped that the majority would have been interested in my unique perspective and the perspectives of the constituents that I represent. Instead, I and others like the gentleman from Michigan (Mr. DINGELL) were completely shut out of the process. I do not take this very lightly. Furthermore, I do not think that this is how we craft a thoughtful, bipartisan energy bill.

For this reason alone, Mr. Speaker, I would urge my colleagues to reject this very one-sided, unthoughtful conference report.

Mr. TAUZIN. Mr. Speaker, I am pleased to yield 2 minutes to the distinguished gentleman from Texas (Mr. GREEN), a member of the Committee on Energy and Commerce.

Mr. GREEN of Texas. Mr. Speaker, I thank the chairman of the committee for yielding me this time.

Mr. Speaker, this conference report before us is the first comprehensive energy bill in over 10 years, and it improves our energy security for the entire country. There is a lot of room for disagreement on energy policy, and I would have drafted the bill differently, but I strongly urge my colleagues to support this bill because it increases our energy security.

It is interesting, because we hear that people do not like energy companies. Well, they do not want to produce, they do not want to transport, they do not want to refine, whether it is electricity, gas, or oil; and what they do not want, they do not want to produce computers. What if we heard we did not want to produce computers or steel or autos? We still have to in a vibrant economy. Congress is always willing to help the steel industry that I vote for, the high-tech industry that I vote for, the aviation industry that I vote for, the agriculture industry. Yet when we hear about the energy industry, all we can say is, oh, they are just those rich companies. Well, let us look at our agriculture policy and some of our other policies.

A strong economy is not going to continue to be strong without a strong domestic energy production. This bill has a number of important incentives to improve our domestic supply of conventional energy sources. It allows for expensing of geological seismic work so we can look better for the industry. Faster depreciation for natural gas pipelines, deductions for independent oil and gas drilling activity. Royalty relief for marginal wells and deepwater wells in the Gulf of Mexico, which is where we are producing most of the energy offshore, since my colleagues in California and whoever else does not want it produced off their coast; but they do not mind driving their cars with it.

The bill makes a number of improvements in our electricity market. We are moving the national electricity market towards more what I consider a Texas model, meaning more open access to transmission systems for all power producers, leading to a competitive wholesale market for electricity. More choices and no blackouts. People wonder why MTBE producers are granted a safe harbor and grants to assist conversions. The Clean Air Act that everyone defends provided for oxygenates that included MTBE. That is why we need to deal with that, because it was required by law 10 years ago.

People wonder why MTBE producers are granted safe harbor and grants to assist in conversion of eligible facilities to new products. The reason is that oxygenates were required by the Clean Air Act because they clean our air, but the properties of oxygenates make them vulnerable in leaking tanks.

The public policy problem here is the leaking tanks and the unused tank repair money in the LUST (Leaking Tank) Trust Fund.

I also want to note H.R. 6's provision to study the Low Income Home Energy Assistance Program. Frankly, I've long-urged this, and look forward to its enactment.

It's a fact: extreme weather kills. Heat's particularly deadly. In 1999 alone, nearly 500 deaths resulted from extreme heat, while seven were attributed to cold.

The Centers for Disease Control advises that home cooling effectively protects against heat-related death and injuries. CDC suggests "exposure to air conditioning for even a few hours a day will reduce the risk of heat-related illness."

As more Americans live within urban heat domes, and move to warmer climates, LIHEAP must respect our population and health science alike.

LIHEAP now fails to reach most qualified Americans wherever they live. This stems both from inadequate funds and their apportionment.

As the Secretary undertakes this analysis, it is important that the study identified and assesses:

Biases within formula toward heating or cooling, and resulting regional effects; LIHEAP's ability to adjust as Americans move about the country; the New or Old formulas' ability to accommodate changes in energy costs; "home energy burden" as an alternative means to guide distributions; extreme temperatures' effect upon human mortality and health, and LIHEAP's ability to protect at-risk Americans from these effects.

The Secretary's study offers a step toward reform. While woefully long in coming, it's an important opportunity to improve this essential program—which I welcome.

I urge my colleagues to unite in the support of energy security for our country. Millions of jobs, including manufacturing jobs are very much at stake here today.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. Mr. Speaker, I thank the gentleman from Massachusetts for yielding me this time.

Mr. Speaker, America does need an energy policy, but not this one. This policy started with bad process as Vice President CHENEY himself, a former oil man, actually still on the payroll at $3,000 a week of an oil company, Halliburton, when Vice President CHENEY convened a secret group of energy lobbyists to draft the administration's energy plan. It ended with bad process as the conference committee met last night for only the second time, and then only to take a series of party line votes and rubber stamp this bill. When we use bad process, we usually get bad product. That is why our colleague in the other body, JOHN MCCAIN, a Republican, called this conference report a "no lobbyist left behind bill."

This was a great week for lobbyists. Like the Medicare bill we will debate later this week, which throws uncounted taxpayer dollars at prescription drug companies and insurance companies, this energy bill is an early present, an early Christmas present for the oil, gas, and utility lobbyists. Mr. Speaker, $100 billion in all, according to some estimates.

These special interest giveaways line the pockets of this Chamber's most influential lobbyists. They do so at the expense of clean air, at the expense of safe drinking water, at the expense of public health and public safety. One small, but telling, example is a last-minute addition by the other body that benefits a single New Mexico company. That company wants to build a uranium enrichment plant, and this bill exempts that plant from the customary review of the National Environmental Policy Act. Special interests favors, Mr. Speaker, and environmental rollbacks are not the way to make energy policy.

I urge my colleagues to oppose this bill. America needs an energy policy, but not this one.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). The Chair would remind Members it is not in order in debate to quote a Senator, except as provided in clause 1 of rule XVII.

Mr. TAUZIN. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Speaker, I rise in support of the conference report, and I congratulate the gentleman from Louisiana (Chairman TAUZIN) and the gentleman from Texas (Chairman BARTON).

Mr. TAUZIN. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. UPTON).

Mr. UPTON. Mr. Speaker, I rise to engage in a colloquy with the distinguished chairman of our committee today and also with my colleague, the gentleman from Michigan from my neighboring district (Mr. HOEKSTRA).

Mr. Speaker, section 970 of title IX of the conference report includes a demonstration project that is designed to address the effect of ozone transport in southwest Michigan where projected nonattainment is the result of transported ozone across Lake Michigan. This project will assess the difficulties due to transported ozone across the lake to determine the extent of ozone transport and develop alternatives to achieve compliance apart from local controls.

I just want to be sure that the purpose and intent of the committee in this legislation is clear. Am I correct in saying that the counties in particularly our two districts in southwest Michigan, Cass County, Berrien, Van Buren, Kalamazoo, Allegan, that are not in attainment for the ozone standards due to ozone transport are included in the provision and will be eligible for the demonstration project?

Mr. TAUZIN. Mr. Speaker, will the gentleman yield?

Mr. UPTON. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Speaker, the gentleman's statement is correct. That is the purpose and intent of section 970 of title IX.

Mr. UPTON. Mr. Speaker, I yield to the gentleman from Michigan (Mr. HOEKSTRA).

Mr. HOEKSTRA. Mr. Speaker, as a Member of Congress whose congressional district is adjacent to the gentleman from Michigan's (Mr. UPTON) and is also part of southwest Michigan, I am assuming that this also includes Ottawa, Muskegon, Oceana, Newaygo, Mason, Manistee, and also Kent counties; is that correct?

Mr. TAUZIN. Mr. Speaker, if they meet the terms of the section, that is correct.

Mr. HOEKSTRA. Great. I thank the chairman for this clarification of the recognition of the unique problem of the ozone transport into southwest Michigan.

Mr. UPTON. Mr. Speaker, reclaiming my time, I just want to say that our two districts in southwest Michigan share a boundary. We are a victim of transient air coming from Milwaukee, from Chicago, and Gary, Indiana. Our problem is not with the clean air. We want those communities to have clean air and to have transient clean air so that we do not have a problem on our side of the State. We are a victim. We would have to impose literally a fan to send this air someplace else without this legislation to avoid some type of sanction that will cost tens of millions of dollars.

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I thank the gentleman for yielding me this time.

I was amused at the comment of our colleague who said that this bill can be characterized as "leave no lobbyist behind." This is the worst special interest piece of legislation I think I have seen in almost 30 years in the House of Representatives. Do we know how much this bill is going to cost? Over $140 billion. We give the oil, gas, coal, and nuclear industries direct grants and tax breaks; and in many cases, we give them money because we forgive them from liability for their own wrongdoing. It used to be if a polluter caused pollution, we said the polluter had to pay to clean it up. This legislation turns that on its head.

For example, with MTBE, which is an additive in gasoline that gets into our ground water, the companies are going to be forgiven for any liability, which means it shifts the costs on to the victims, the communities, to have to pay for it.

This bill might be justified if it really were a good energy policy, and it would get us away from dependence on oil and importing oil. I mean, after all, we are fighting against weapons that were paid for by Saddam Hussein from the money we paid him to bring in oil from Iraq. But it does not do that. This bill makes us more dependent on importing foreign oil.

One could say, well, if we are going to have an energy policy, we ought to be more efficient in our use of energy resources. We ought to look for alternative fuels. This bill does not do that.

What this bill does is roll back environmental protections; it rolls back the Clean Air Act, the drinking water law, the Clean Water Act. It allows our coasts to be attacked by the oil and gas companies for exploitation. This is a bill that is really a giveaway. And I think it is a sad result of a process that was tainted, because the process was Republicans meeting with other Republicans behind closed doors figuring out what the policy ought to be. It is the same thing that happened with the origin of the bill when Vice President CHENEY had a task force where he only met with the energy producers, would not even meet with the environmentalists, and then came out with recommendations that really favored Enron and some of these other energy corporations.

So I think that we ought to reject this legislation. I urge my colleagues to defeat it. I will certainly vote against it. From California's perspective, it is particularly harmful, because we were gouged by the energy wholesalers and with electricity rates, and we get no relief from this legislation. In fact, I think a lot of the energy electricity provisions are going to cause the problem we had in California to be a problem that will be experienced elsewhere around the country while some of these oil companies get richer.

Mr. TAUZIN. Mr. Speaker, I am pleased to yield 1 minute to the distinguished member of our committee from the great State of Nebraska (Mr. TERRY).

Mr. TERRY. Mr. Speaker, I want to thank the chairman for his persistence on this bill. There was a time in conference when passage of this bill looked bleak, but he made sure that it passed. I want to thank the last speaker too, because I too care about energy dependence and our dependence on foreign oil, and I wish that we would have had provisions that allowed us to use more of our own domestic resources. But the people I hear from the other side that talk about energy dependence are the ones that barred us from using public lands.

But let us talk about some of the good things in here that do allow us to be more independent: more use of ethanol; fuel cell for auto technology, $2.1 billion authorized for this new innovative technology; distributive power of fuel cells where we help offset the incredibly high cost of using this new technology; Energy Star program expanded, with a $2,000 tax credit to homeowners that upgrade their windows and doors and other things for their house to become more energy efficient; electrical transmission high capacity wires are used. There is so much in here to reduce our dependence on foreign oil. It is a great bill.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. ESHOO).

Ms. ESHOO. Mr. Speaker, I thank the distinguished ranking member for yielding me this time.

Mr. Speaker, I rise in opposition to this conference report. It rewards a huge group of energy interests but, for most Americans and my constituents, it offers nothing but higher prices, higher deficits, dirty air, and increased national security risks.

There are $23 billion in tax benefits for the energy sector. These costs will be directly added to the national credit card. So hold on, Americans. You are getting a big bill.

The costs of the tax provisions, plus other mandates, siphon $137 billion from American consumers and our economy. The bill forces consumers to buy high-priced ethanol, regardless of whether it is needed to improve air quality. California is a good example for this.

The bill provides liability protection for MTBE producers whose product contaminates water supplies. I know that; I am a Californian. We found that out directly. It gives MTBE producers a $2 billion transition fund to help them find a new line of work.

The bill also fails to increase fuel economy standards for cars and SUVs, and refuses to close the $100,000 loophole that you can drive a' Peterbilt truck through. It was on the front page of The Washington Post about 10 days ago.

This bill fails to address malfeasance in the electricity industry and, in fact, scraps decades-old consumer protection laws. It promotes deregulation in some areas of the country, and it overrides the role of State public utility commissions, while giving some States, particularly the State of Texas, surprise, surprise, special treatment under the law.

This bill is all about the past, and it embraces the mistakes of the past. It is a yesterday bill instead of a tomorrow policy. I cannot support it, and I urge my colleagues to vote against the conference report. It is a jewel in the crown of those of this administration, particularly the President and the Vice President, whose former profession is celebrated in this bill.

Mr. TAUZIN. Mr. Speaker, I am pleased to yield 1½ minutes to the distinguished gentleman from the great State of Louisiana (Mr. MCCRERY), a member of the Committee on Ways and Means.

Mr. MCCRERY. Mr. Speaker, I rise in strong support of the conference agreement on H.R. 6, particularly title XIII, the Energy Tax Policy Act of 2003.

□ 1545

Since beginning work on this bill in the Committee on Ways and Means more than 30 months ago, my goal has been to create legislation which, in fact, looks forward to the promise and potential of conservation and renewable fuels but recognizes that for the foreseeable future traditional fossil fuels will continue to provide the vast majority of our energy supplies. Our tax policy must also address bottlenecks in the distribution chain, which gets energy to where it is needed, when it is needed.

The tax title of this agreement is a success on all accounts. It extends the current law incentives for the production of electricity from wind and adds several new renewable energy sources, including production from open-loop biomass.

It will encourage automakers to develop more fuel-efficient cars and trucks. It will help promote the use of fuel cells, by both businesses and individuals, as a clean source of power which reduces the load being carried on our already strained transmission grids.

It repeals the 4.3 cent surtax currently charged on rail and barge fuel taxes. It improves the reliability of the energy system by encouraging investment in electric transmission lines, something we hope will prevent another blackout like the one which hit the Northeast in August.

It will extend and expand proven tax incentives for producing oil and gas from nonconventional sources. It encourages investment in technologies which turn coal into electricity more efficiently and with lower emissions.

Finally, it contains incentives which will be of particular benefit to the construction of a pipeline to bring natural gas from Alaska to the lower 48 States.

Mr. Speaker, I urge all the Members to support this very good, comprehensive energy bill.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Speaker, I thank my colleague from Massachusetts (Mr. MARKEY), and I rise in disapproval of the bill. I am very disappointed in this bill. America faces real problems with its energy needs. We need to reduce our dependence on foreign oil. But instead of pursuing the program of energy efficiency, we here have a bill that pursues the policy of political payback to Republican friends and corporate welfare.

The bill takes us back in time by weakening the Clean Air Act and the Clean Water Act. Why would we do this? Why are we letting polluters make policy? Why, when we have made so much progress, would we go back to weaker standards? I think we all know the answer: Because oil and gas companies find it cheaper to pollute and push off the real cost of their activities to the real people of this country. The citizens will pay more for cleanups and, even more disturbing, will pay more for health care costs, for more asthma treatment, and more for cancer treatment, more for everything.

I must also say that the ethanol special interest subsides in this bill are shameful and talk about special interests subsidies, special interest industry tax breaks. This bill has ballooned from the President's $8 billion tax cut proposal, up from the House's $16 billion tax cut proposal, to a whopping $23.5 billion tax cut proposal of subsidies to the industry. Have we all forgotten the $400 billion deficit we have right now?

I am afraid my Republican colleagues can no longer call themselves fiscal conservatives. Let us increase the debt and push it off so our children and grandchildren can pay it because we are not going to.

I, for one, am sick and tired of coddling polluters. I am sick and tired of sticking the average Joe with the cost of fixing polluters' problems. We should be concerned with conservation, with the environment, with alternate sources of energy. We should try to lessen our dependence on Middle East oil. This bill does none of that and it should be defeated.

Mr. TAUZIN. Mr. Speaker, I yield 1 minute to the gentleman from the state of New Jersey (Mr. FERGUSON).

Mr. FERGUSON. Mr. Speaker, I want to congratulate the gentleman from Louisiana (Mr. TAUZIN) and the gentleman from Texas (Mr. BARTON) on the great work that they have done on this bill, not only for the energy needs of our country, but, indeed, for the economic needs. As our economy is coming out of recession and growing, a comprehensive energy policy is vital to continue the growth and job creation.

Mr. Speaker, I rise today to ask for a clarification regarding one technical issue of the energy bill conference report. That is an issue related to the definition of a small refiner as it appears in title XV, on Ethanol and Motor Fuels.

Under section 1501 of title XV of the conference report on the energy bill, small refineries are defined as, quote, "a refinery for which average aggregate daily crude oil throughput," unquote, is 75,000 barrels a year or less. Mr. Speaker, is it intended that this definition include refineries which refine crude oil intermediates by cracking or distillation and that have a throughput of below this amount?

Mr. TAUZIN. Mr. Speaker, if the gentleman will yield, it is my understanding that this definition is intended to include crude oil intermediate refiners, as well under the definition included in section 1501 of the conference report.

Mr. FERGUSON. Mr. Speaker, I congratulate my colleagues on a great piece of legislation.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. FARR).

Mr. FARR. Mr. Speaker, our Nation's hope to be the world leader in clean energy is flushed down the drain with this bill. This bill is about old politics, old oil, old coal. It is about making us more dependent, not less dependent on fossil fuels. It is about tax breaks to the polluting companies. It is about power lines through national forests and offshore oil drilling. It is about removing State and local governments from the planning and conditioning of energy projects in their backyards. It is about opening up the coast of California for oil drilling.

The bill is a slap in the face to innovation and creativity and to alternatives. Wake up, Japan and Europe, this bill hands you the world's future for clean energy technology development. It is a sad day when the United States Congress looks at our energy future by looking in the rear view mirror.

HUNTERS AND ANGLERS AGREE: PUBLIC LANDS PROVISIONS OF THE ENERGY BILL ARE UNWISE

DEAR SENATOR DOMENICI AND REPRESENTATIVE TAUZIN: We, the undersigned organizations, represent millions of hunters, anglers, wildlife and fish professionals and commercial interests, and others concerned about fish and wildlife habitat. The Energy Bill presently in conference between the Senate and the House of Representatives contains numerous oil and gas leasing provisions that could diminish conservation measures on public lands for water resources, wildlife and fish habitats, and scenic landscapes. As you know, informed energy development does not have to impact fish and wildlife and their habitats on public land.

Public lands are home to some of the most important fish and wildlife habitat and outdoor recreation opportunities in the nation. We urge you to resist reducing protection of the lands and waters that sustain these resources. Specifically, we are concerned about certain provisions within the Oil and Gas title of the bill that may have the effect of elevating energy development on public lands to a dominant use over fish and wildlife, water, recreation, and other multiple-use values. We believe this is both unwise and unnecessary.

Fish, wildlife, and water resources found on our public lands are extremely valuable, and are growing more so each day as private lands become developed. We urge you to ensure that these resources receive the high level of stewardship they deserve, and conservation efforts for them are enhanced, not undermined, by the Energy Bill on which you are working. Thank you for considering our recommendations.

American Fisheries Society.
American Fly Fishing Trade Association.
Campfire Club of America.
Izaak Walton League of America.
North American Grouse Partnership.
Pure Fishing.
Trout Unlimited.
Wildlife Management Institute.
American Sportfishing Association.
International Association of Fish and Wildlife Agencies.
Mule Deer Foundation.
Orion the Hunters Institute.
The Wildlife Society.
Wildlife Forever.

WHY CALIFORNIANS SHOULD OPPOSE THE ENERGY BILL

The Energy bill provides plenty of reasons for opposition. It tramples states rights, punches holes in the Clean Water Act and Safe Drinking Water Act, gives away billions of dollars in special interest pork, and establishes massive pro-pollution subsidies and incentives. It does all this while doing nothing to address the nation's dependence on oil or the threat of climate change.

Californians, in particular, appear to be targeted by this bill. The energy bill lays the groundwork for drilling off the California coast. In fact, one provision would authorize the federal government to issue easements for activities supporting oil exploration and development off the California coast. The bill tilts management of public lands in California toward energy production. The bill requires Californians to provide hundreds of millions of dollars in subsidies to ethanol producers in the Midwest each year. It shields oil companies from liability for having to clean up California groundwater that they are responsible for contaminating. It slants the relicensing of hydroelectric projects in California towards the energy industry by excluding the state, cities, businesses, and Indian tribes from participation in the new relicensing process. And the bill fails to address any of the Enron-style market manipulations that cost California consumers billions of dollars.

The following is a more detailed explanation of some of the reasons Californians should oppose this energy bill.

The Energy Bill Protects MTBE Producers from Liability for Groundwater Contamination.—House Energy and Commerce Committee Chairman BILLY TAUZIN has vowed that the final energy bill will contain a provision that provides liability protection for the producers of the gasoline additive methyl tertiary butyl ether (MTBE). MTBE has been linked to contaminated groundwater supplies throughout the country, and it will cost billions of dollars to clean it up. California has been affected more than any other state. For example, in Santa Monica, 75% of the drinking-water wells are now unusable because of MTBE contamination; in South Lake Tahoe, one-third of the city's 34 drinking water wells have been shut down because of MTBE contamination; and in Los Angeles, San Francisco, Santa Clara Valley, and Sacramento, numerous wells are affected by MTBE.

The form of liability that the bill would remove is precisely the form of liability that has successfully triggered a cleanup of the contamination in South Lake Tahoe. The MTBE liability waiver gives MTBE producers an escape from their financial and cleanup responsibilities, and instead imposes these burdens on taxpayers and local communities. For these reasons it is opposed by the National League of Cities, the U.S. Conference of Mayors, and other state and local officials throughout the country.

The Energy Bill Requires California Motorists to Provide Hundreds of Millions of Dollars in Subsidies to Midwest Ethanol Producers.—The energy bill will contain a requirement that a portion of the price of every gallon of gasoline sold in California will go to ethanol producers, which are located overwhelmingly in the Midwest. California motorists will pay for this ethanol even though in most cases the ethanol will not actually be in the gasoline they purchase. According to the American Petroleum Institute, at full implementation of the program, California would be required to purchase 556 million gallons of ethanol each year, at a cost of hundreds of millions of dollars, even if the state only used a fraction of that amount. The ethanol that California purchased but did not use would likely be used in the Midwest states.

The Energy Bill Tilts Management of 15.1 Million Acres of BLM Land in California toward Energy Production.—Sec. 349 removes the discretion of the Secretary of Interior to deny applications to drill on public lands. While the text is ambiguous, this provision may also apply to national forests. Since the establishment of the BLM, the Department of the Interior has managed BLM land for many uses, including recreation and wildlife protection. Upon receiving an application for a permit to drill, sec. 349 allows the Secretary just 30 days to determine if any additional information is necessary in order to grant the permit to drill. The Secretary is required to approve the application regardless of whether or not the application is inherently flawed. For example, a well may be sited near sensitive areas like streams or steep slopes, where drilling would have impacts that could not be mitigated. This section was in neither the House—nor the Senate—passed energy bills.

The Energy Bill Exempts the Construction of Facilities for Oil and Gas Exploration and Production from the Clean Water Act.—Sec. 328 exempts the construction of facilities for oil and gas exploration and production from the Clean Water Act. The effects in California could be significant. There were over 100 applications for permits to drill and almost 100 new wells in California in 2002. Over 70,000 acres of BLM land alone in California is in producing status. Oil and gas development also occurs on other federal lands, such as National Forests, state lands, and private lands.

The Energy Bill Opens the Outer Continental Shelf to Development Without Even Providing for Consultation with California.—Section 321 would grant very broad authority to the Interior Department to allow activities on the Outer Continental Shelf (OCS) that support energy exploration, production, transportation, or storage. These activities could be authorized even within areas currently protected by congressional oil and gas leasing and development moratoria. This section contains no standards for issuing or revoking easements; does not require consultation with or concurrence of the Secretary of Commerce, which has jurisdiction over the living marine resources of the OCS that could be affected by these activities; and would permit industrial energy facility construction virtually anywhere on the OCS, with few exceptions. This provision does not require Interior to consult with California prior to issuing an easement, let alone involve California in the decision making process.

The Energy Bill Undercuts California's Role in Decisions That Affect Its Coast.—Section 325 undercuts the central tenet of the Coastal Zone Management Act (CZMA)—that states have a right to object to federal activities that adversely affect their coastal zones. The bill would impose unreasonable deadlines on the Secretary of Commerce in ruling on appeals filed against a coastal state's determination that a particular OCS activity is not consistent with that state's coastal zone management program. Such appeals often pose difficult and challenging issues of fact, law, and policy, and the time required to review and analyze them carefully should not be subject to arbitrary and inflexible deadlines. Although there was a bipartisan agreement that addressed this issue in the House, the agreement was discarded in favor of this new provision, which was not passed by either house of Congress. According the California Coastal Commission: "This provision would severely restrict the ability of coastal states to exercise their right to protect coastal resources pursuant to the federal consistency review provisions of the CZMA that have been in law for more than thirty years. Section 325 would eliminate meaningful state participation in the appeal to the Secretary of Commerce of consistency decisions relative to OCS oil drilling and other federal activities by imposing unreasonable and unworkable time limitations for the processing of the appeal."

The Energy Bill Designates Rights-of-Way for Pipelines and Transmission Lines across National Forests and Other Public Lands.—Section 351 requires the Secretaries of Interior and Agriculture and other federal agencies to designate new rights-of-way across federal lands in a process that would trump traditional land management planning and environmental reviews. While the federal officials must consult with utility industries, they are not directed to involve the state government, local governments, nearby communities, or the public in this process. Once the corridors are established, the federal agencies, in consultation with utility industries, must establish procedures to expedite applications to construct oil and gas pipelines and electricity transmission lines in these corridors. As there are almost 45 million acres of federal lands in California, this provision could have effects throughout the state.

The Energy Bill Excludes California Citizens, Farmers, Small Businesses, the State, and Indian Tribes from a New Process for Hydroelectric Relicensing.—California has the largest number of FERC-regulated hydroelectric projects in the country. Over 300 dams in California are regulated by FERC. The hydroelectric title of the energy bill will exclude all stakeholders from a new relicensing process except the energy companies that own the hydroelectric projects. In this new process, the energy companies will be allowed to suggest alternatives to relicensing requirements and will be able to pursue them through a "trial-type" process that only they can use. The potential losers are anyone that uses the water, such as municipalities or farmers, the recreation industry (fishing, whitewater), Indian tribes, and the environment. The effects to California of this provision could be substantial. Approximately 70 dams are currently being relicensed and an additional 150 dams will undergo relicensing in the next 10 to 15 years.

The Energy Bill Mandates Approval of a Transmission Line That Is Neither Necessary Nor Cost-Effective in the Cleveland National Forest.—Section 354 requires the Department of Interior and Department of Agriculture to issue all "grants, easements, permits, plan amendments, and other approvals" to allow for the siting and construction of a transmission line through the Trabuco Ranger District of the Cleveland National Forest in Southern California. This congressional approval is not contingent on any reviews regarding the need for the project or the environmental impacts of the project. San Diego Gas and Electric has already attempted to get this project approved by the California Public Utilities Commission (CPUC). The CPUC denied the project because it was unnecessary and not cost-effective to ratepayers. In its decision, the CPUC stated:

"The evidence shows that SDG&E will continue to meet their liability criteria until at least 2008, even under the conservative planning assumptions utilized in today's analysis. Therefore, the proposed project is not needed for reliability purposes.

"Because the proposed project cannot be justified on the basis of reliability, the Commission evaluated whether the proposed Valley-Rainbow Project would provide positive economic benefits to SDG&E ratepayers and California generally. The evidence shows that the proposed project is not cost-effective to ratepayers except under the extreme assumptions that six consecutive years of 1-in-35 year drought conditions occur, all new generation available to serve California is located in San Diego or northern Baja California, Mexico, and a major transmission project (Path 15) is constructed in Northern California. Under all other assumptions, the projected costs exceed the projected benefits, thus the proposed project cannot be justified on economic grounds."

San Diego Gas and Electric appealed this decision, but its appeal was denied.

The Energy Bill Fails to Address the Market Manipulation That Occurred in Western Energy Market.—Republican energy staff have repeatedly made it clear that there is no interest in strengthening the law to prevent the kinds of rampant market manipulation that occurred in 2000 and 2001 in California and other Western states. Although Enron's manipulations are the most well-publicized, FERC and California have documented that other companies, such as Reliant, also blatantly worked to price-gouge consumers. By conservative estimates, California lost over $9 billions to market manipulation. Although 193 members supported the Dingell electricity amendment, which would have prohibited Enron-style market manipulation, the Republicans have been unwilling to include any meaningful protections.

The Energy Bill Limits Competitive Liquefied Natural Gas (LNG) Imports into California.—Due in part to illegal activities by El Paso Natural Gas, which limited competition in California's natural gas market, California endured record-high natural gas prices in 2000 and 2001. These prices in turn drove up the price of electricity from natural gas-fired electricity generation plants, costing California billions. Several LNG facilities are currently in the permitting process in California to allow LNG to be imported from broad. These facilities should help meet natural gas demands in the state while preventing California from being so dependent on one source of gas and avoiding price gouging in the future. Sec. 320 restrains the authority of FERC to require these facilities to be "common carriers," thus allowing the builder of the facility to have a monopoly on any LNG supplies imported.

The Energy Bill Guts California's Ability to Review Natural Gas and LNG Pipeline Proposals Approved by Federal Regulators.—Under the Coastal Zone Management Act, California has the right to review natural gas and LNG pipeline proposals. If the state finds that the proposal is not in the best overall interest of the state, it can reject it. This decision can then be appealed to the Secretary of Commerce, who reviews the entire record—both the federal approval and the state's rejection—in deciding the appeal. However, if Sec. 330 is enacted, the only information that would go to the Secretary would be that compiled by federal regulators, which is essentially the information supporting their approval of the project. Information supporting California's rejection will not be part of the appeal record. The Secretary's decision would be made from a limited record, skewed toward development and away from coastal protection.

This provision is completely unnecessary. Since enactment of the CZMA, thousands of these types of projects have been reviewed. Yet only 15 projects have resulted in appeals to the Secretary. Seven appeals decisions supported the states' position, seven supported industry, and one was worked out to the satisfaction of all parties.

The Energy Bill Requires the Department of Energy to Examine the Feasibility of Building New Nuclear Reactors at DOE Site in California—Section 630 requires the Department of Energy to examine the "feasibility of developing commercial nuclear energy generation facilities at Department of Energy sites in existence on the date of enactment of this Act." The term "Department of Energy sites" is undefined in the legislation, but DOE has a number of presences in California. For example, Lawrence Berkeley National Lab (Berkeley, CA) and Lawrence Livermore National Lab (Livermore, CA) are both DOE labs. The Western Area Power Administration (Folsom, CA) is a self-contained entity within the Department of Energy, much like a wholly owned subsidiary of a corporation. The Western Area Power Administration also owns shares of major transmission lines in California.

Requires an Inventory of Oil and Gas Resources off the California Coast.—Section 334 includes a provision that was unanimously repudiated by the House and not included in the Senate bill. It requires the Interior Department to inventory the oil and gas resources of the entire Outer Continental Shelf (OCS), including the protected moratorium areas, and requires that the Secretary report to Congress on impediments to the development of OCS oil and gas, including moratoria, lease terms and conditions, operational stipulations, approval delays by the federal government and coastal states, and local zoning restrictions for onshore processing facilities and pipeline landings. This section provides a foundation for an attack on the moratoria, as well as on the rights of coastal states and local governments to have a say in offshore development and related onshore industrial development. This section conflicts with the OCS protections initiated by President George H.W. Bush in 1991 and extended by President Clinton, as well as with the bipartisan congressional moratorium that has been in place for more than two decades. This section was eliminated from the House bill by the adoption of the Capps amendment on the House floor. At the time, both Chairman Pombo and Chairman Tauzin committed not to reinsert the language in conference. This provision was not in the final Senate bill either. It is unclear whether it will be in the final bill.

In opposing the provision the California Coastal Commission has stated: "The provision seriously undermines the longstanding bipartisan legislative moratorium on new mineral leasing activity on submerged lands of the OCS that has been included in every Appropriations bill for more than 20 years. Moreover, the Section 334 would allow for use of 3–D seismic technology that has been found to have adverse affects on marine mammals, as well as threaten the viability of commercial fishing. The effect of Section 334 is to weaken the prohibitions on development off the California coast that were first put in place in 1990 through executive order by President George H.W. Bush and then extended to the year 2012 by President Bill Clinton."

Mr. TAUZIN. Mr. Speaker, I am honored to yield such time as he may consume to the gentleman from Texas (Mr. DeLay), the distinguished majority leader of the House, for whom this conference owes a debt great of gratitude for his help and support.

Mr. DELAY. Mr. Speaker, after a very long and important debate, the American people will finally, finally get a comprehensive energy policy worthy of the challenges that they face. Everyone on both sides of the aisle and both sides of the Capitol deserves to be commended for the tireless work that they have put into these last several weeks and, actually, the last 2 years.

The gentleman from Louisiana (Mr. Tauzin) has done an outstanding job. We owe an incredible debt to the gentleman from Louisiana and the gentleman from Texas (Mr. Barton), my friend from Texas, who has worked extremely hard. We appreciate the Senators that have worked on this too.

And certainly the staff, all these people have worked to finish this bill, and they have worked to give rise to the occasion and produce a creative, intelligent and comprehensive policy for the American people.

The bill addresses a host of issues without losing sight of America's basic need for new, independent, and reliable sources of energy to support our information age economy. Today our economy is poised for a tremendous recovery with incomes rising, companies hiring, and new businesses and jobs being created. But without the energy production and distribution and security provisions outlined in this bill, the growth that we need and deserve will falter.

America needs this energy bill. Today we are too dependent on foreign oil. This bill will generate new production of energy within the United States sufficient to reduce that dependence and thereby reduce unsavory regimes' influence over America's economic health.

Today we are using an outdated electricity grid whose reliability has been seriously undermined by the major blackout this summer. This bill will establish new reliability standards for that grid and improve the system by which energy can be transported from one part of the country to another. The bill makes unprecedented investments in renewable energies and alternative power sources.

So, all told, these reforms will create jobs, spur investment and competition, improve homeland security, and address the long-term energy needs of the American people.

Mr. Speaker, America is the greatest engine of freedom, security, and prosperity in the world today. And this bill will provide that engine with the fuel that it needs to lead our Nation and the world into the future. I urge all our Members to support it.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. Davis).

Mr. DAVIS of Florida. Mr. Speaker, I agree with the previous speaker that the citizens of this country need and deserve a forward-thinking energy policy, although the bill before us fails miserably in that regard.

This bill is ultimately a waste of taxpayer's money and a waste of the consumer's dollar. The bill was tainted by the fact that it was developed by a small group of people under private circumstances, and ultimately the bill was finished in that fashion.

This was not just about Democrats and Republicans, it was ultimately about shutting out the public and, as a result, giving the private interests here in Washington a greater hand in the writing of this bill. As a result, we as a country will suffer.

There are legitimate aspects of this bill that the chairman worked hard to put in there. I support the tax incentives for more deep water drilling in the central and western Gulf of Mexico. I commend the chairman in ultimately keeping his word and not pursuing the moratorium in the eastern Gulf of Mexico. But the sum result of this bill is that we, as taxpayers, we as consumers, are by way of subsidies and by way of tax breaks in excess of $23 billion, simply paying industries to do what they were already doing, what they already would have to do to earn a profit.

Let me just cite to you one example. This bill includes a massive, unprecedented mandate of the use of ethanol strictly to enrich certain companies, certain parts of the country at the expense of consumers throughout the Nation. The EPA and a staff white paper study some time ago estimated that this mandate could increase by as much as 15 cents per gallon today's ethanol prices.

This is simply one example of the painful price we, as consumers, will pay at the pump as a result of a reckless bill that is a waste of money and a missed opportunity to develop a forward-thinking energy policy that could have moved this country forward.

Mr. TAUZIN. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. Barton), the distinguished chairman of the Committee on Energy and Commerce Energy Subcommittee to whom so much of this bill holds its origin and support.

Mr. BARTON of Texas. Mr. Speaker, I want to thank the gentleman from Louisiana (Mr. Tauzin) for his strong leadership and excellent work in this. He is to be commended for one of the most important bills that is going to pass this Congress.

Mr. Speaker, I would like to engage the chairman in a colloquy regarding two important elements of the conference agreement subtitle A of title XV regarding ethanol and motor fuels. I note that the conference report includes authority to prohibit use of methyl tertiary-butyl ether in gasoline, or MTBE.

Mr. TAUZIN. Mr. Speaker, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Speaker, the gentleman from Texas (Mr. Barton) is correct. That authority is in section 1504. It is intended that the Administrator of the Environmental Protection Agency have the authority to prohibit the use of MTBE in gasoline after December 31, 2014. Prior to this time, under section 1505 the National Academy of Sciences shall conduct a review of the use of MTBE in 2013 and 2014. This study is to inform regulations to enact the allowed prohibition on MTBE as well as to inform the President who retains power, under section 1505, to not ban MTBE.

Mr. BARTON of Texas. Mr. Speaker, I also understand that the renewable fuels definition under section 1501 of the conference report includes ethanol tertiary-butyl ether, or ETBE.

Mr. TAUZIN. Mr. Speaker, the gentleman is correct again. ETBE is included within the definition of a renewable fuel. The conference report attempts to provide maximum flexibility to the refining marketplace to achieve the goals of both the new renewable fuels requirement and, therefore, ETBE is both defined and afforded all the advantages of a renewable fuel under Title XV.

Mr. BARTON of Texas. Mr. Speaker, there are some bills that come before this body that are showhorse bills.

They are full of glitz and glamour and lots of slogans and sloganeering. Some bills that come before this body are workhorse bills. They are full of common sense and solutions. This is a workhorse bill. It is full of solutions, not a lot of glitz and glamour in the bill.

If we look at our energy sources, we see that in the conventional sources, whether it is oil, gas, coal, nuclear or hydro, we have real solutions. We increase the strategic petroleum reserve for oil to 1 billion barrels. We authorize up to $18 billion in loan guarantees to build the Alaska natural gas pipeline for the natural gas industry. We have the most extensive set of clean coal technology credits for coal that we have ever put before this body in terms of a tax package for clean coal. We have the most fundamental reform of our hydro relicensing procedure in over 30 years. And over half of our hydroelectric dams are up for renewal in the next 5 years.

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Those are solutions. They are not slogans.

If you look at renewables, we have unlimited authorization for credits for wind and solar power. That is a solution, not a slogan.

If you look at the new alternative fuel, hydrogen, we have the President's hydrogen fuel initiative in this bill. We have the goal of having a hydrogen-fueled car available in the marketplace by 2015. That is a solution, not a slogan.

If you look at structural reforms, turn to the electricity section of our bill; we have the most fundamental transforms in transmission we have ever had in any before this Congress in terms of electricity. We have incentives for transmission pricing. We have the creation of regional transmission organizations. We have a good compromise on participant funding, a good compromise on protective native low. Those are solutions, not slogans.

We have mandatory reliability for electricity. That is a solution, not a slogan. For the first time ever we have Federal backstop authority for siting of new transmission lines. That is a solution, not a slogan.

We turn to the environmental section of the bill. As the gentleman from Ohio (Mr. GILLMOR) has already pointed out, we have the first comprehensive form of the LUST bill, the Leaking Underground Storage Tank bill. We are actually going to require the States to go out and inspect these underground storage tanks every 3 years. That is a solution, not a slogan.

I could go on and on, Mr.' Speaker; but I will simply say this: if you want a slogan, vote "no." If you want a solution, vote "yes." This is a good bill.

Mr. MARKEY. Mr. Speaker, I yield 30 seconds to the gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Mr. Speaker, I thank the gentleman for yielding me time.

President Kennedy once said, To govern is to choose. And we are now about to spend $23 billion on tax credits for the energy industry. With $1.8 billion we are spending on clean coal, we could raise the maximum Pell grant benefit to $4,500, making college affordable for an additional 200,000 families. In fact, with the $11.9 billion subsidy for oil and gas companies for production, we could even double our Nation's total investment in Pell grants. For the $2.2 billion we are spending to develop hydrogen technologies, we could extend the $4,000 tuition deduction for higher education for an additional year.

I oppose this bill because it is a giveaway to the energy industry.

Mr. TAUZIN. Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. FOSSELLA), a member of the committee.

Mr. FOSSELLA. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I want to engage in a colloquy with the chairman of the House Committee on Energy and Commerce regarding section 1211 of the conference report, which adds a new section to the Federal Power Act, entitled, "Electric Reliability Standards."

Section 1211 provides for the establishment of mandatory reliability rules for transmitting electricity. The blackout of August 14 of this year clearly demonstrates the need for such rules. Following the blackouts of 1965 and 1977, New York implemented its own reliability standards for New York City.

Any disruption in electricity in New York City can have devastating effects, as we saw, not just on the daily lives of city residents, but for the economy of the entire Nation.

It is my understanding of the new section 215, subsection (i)(3) of the Federal Power Act is not meant to prohibit State or regional entities from adopting more stringent reliability standards, such as those in effect for New York City, as long as such action does not result in lesser reliability outside the State or region than that provided by the Electric Reliability Organization reliability standards. Is that correct?

Mr. TAUZIN. Mr. Speaker, will the gentleman yield?

Mr. FOSSELLA. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Speaker, the gentleman's understanding is perfectly correct.

Mr. FOSSELLA. Mr. Speaker, I thank the chairman for the clarification and his leadership in developing this important piece of legislation.

Mr. MARKEY. Mr. Speaker, how much time remains?

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Massachusetts (Mr. MARKEY) has 6½ minutes remaining. The gentleman from Louisiana (Mr. TAUZIN) has 5½ minutes remaining.

Mr. MARKEY. Mr. Speaker, I yield myself 5½ minutes.

Mr. Speaker, this bill is a historic failure. Our country has 3 percent of the oil reserves in the world; 75 percent of the oil reserves in the world are in the Middle East. We put 70 percent of all the oil we consume in our country into gasoline tanks. This bill does nothing about the ever-increasing percentage of the oil which we consume that goes into gasoline tanks.

It is a disservice to those 130,000 young men and women who are in the Middle East right now fighting to protect the flow of oil into the Western industrialized countries. This bill does nothing to protect against that.

This bill harms the environment. This bill will weaken the Clean Air Act, weaken the Clean Water Act, increase the number of children with asthma. Eight million have asthma today. It increases as each year goes by. Twenty-four million Americans have asthma. Other respiratory illnesses increase as each year goes by.

This bill will increase pollution. It will increase the amount of damage to the environment. It does nothing to help on the global warming issue. It is without question the single worst environmental bill of all time. And in addition to that, it gives enormous subsidies to industries across America. It gives subsidies to the oil industry, the gas industry, the coal industry, the nuclear industry. It at the same time underfunds conservation, renewables. It is a complete distortion of what the agenda for our country should be as the years move along.

With regard to fuel economy standards, this bill includes a $100,000 subsidy for Hummers. The Senate took it out last night. But the Republicans in the House insisted that a $100,000 subsidy for the purchase of Hummers remain in the bill. That is all you have to know about this bill, because we put 70 percent of all the oil we consume into gasoline tanks. They could not repeal it last night. They did not think there was time. Maybe we will do it next year, they said.

Well, in addition, they did not think it was the right time to do anything about air conditioning standards. We use about 70 percent of all peak electricity in the summer to put into air conditioners. Nothing in the bill on that. On computers, we have about 200 million of them in America. We could have mandated the improvement of efficiency and electricity consumption in computers. That would have saved about 30 new large coal or natural gas plants from being built. Air conditioning would have saved about 40 new plants.

There was a renewable portfolio standard mandating that utilities have to use renewable energy for about 10 percent of their electricity generation. That would have saved 156 new power plants from being built, large power plants. But the Republican majority in the House stripped that out yesterday as well. Air conditioners, Hummers, computers, renewables, all of it out that could have made a huge difference in reducing our dependence on import oil.

We import about 60 percent of all the oil we consume today. This bill does nothing about that problem. In another 10 years we will be up to 80 percent of the oil that we consume being imported. There will be irresistible pressure as generation after generation of American young men and women are sent to the Middle East to protect those oil supplies.

It is an environmental disaster. It is a public health disaster. It is an energy policy disaster. This bill on all fronts is the worst bill to come before Congress in a generation given the challenge from Iraq in the Middle East that we are confronted with.

And on electricity, there are sensible justifications for moving at this time. There is no antifraud protection built into this bill. It actually directs the Federal Energy Regulatory Commission to raise electricity rates. And it repeals PUHCA, the Public Utility Holding Company Act, which is an invitation to Enron-like scandals, making that scandal look like child's play in the years ahead. This bill is a historic failure.

Mr. TAUZIN. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Louisiana (Mr. JOHN) who understands this is a great energy bill for America's future.

Mr. JOHN. Mr. Speaker, I rise in support of this very balanced bill, and I think that is a very important point, that this bill is about balance. I just wish that maybe this process would have been a little more balanced. But notwithstanding any of that partisanship, this bill is important.

This bill to me and to America is about jobs. This is a jobs bill. Is it a silver bullet that will help our economy? No. But this is a shot in the arm for an economy that today is in desperate need of jobs. And it will go a long way into something that we are most vulnerable to and that is energy security.

This bill is very balanced from conservation measures that deal with the demand side to the production side and from the supply.

Two items in the bill that are very important to me. I am very pleased that we have the Shallow Shelf Deep Gas legislation that I worked on with the gentleman from Louisiana (Mr. TAUZIN) to start dealing with the price of natural gas. That is about jobs.

We are losing jobs in America every day because of the cost of natural gas.

Finally, the coastal impact assistance. Louisiana and other coastal States deserve their break and their fair share. I support this legislation.

Mr. TAUZIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, like any conference report of this magnitude, as a committee chairman you cannot ever do it alone. There are far too many people to thank, and I apologize for that; but let me single out a few people.

The subcommittee chairman, the gentleman from Texas (Mr. BARTON). He has done an amazing job for this House and for this country and deserves a great deal of thanks. I want to thank my good friend, the gentleman from Michigan (Mr. DINGELL). I suspect we will not be voting the same way today, but in every step of the process he has been a gentleman. He has earned, as he always does, my great respect and admiration.

I want to thank the gentleman from Virginia (Mr. BOUCHER), a member of our committee, the ranking member on the Subcommittee on Energy whose keen intellect is only exceeded by his desire to work for bipartisan solutions. He spoke today in favor of this bill.

I want to thank my fellow committee chairmen. We had a remarkable 10 committees of outside jurisdiction in this conference. That is without precedent. And without their cooperation we would not be here today.

Let me thank the staff. For 3 years now we have lived and breathed energy, and they have lived and breathed it with us. First of all, staff director Dan Brouillette; chief energy counsel, Mark Menezes; my own staffer, Garret Graves; Bob Meyers, Bill Cooper, Andy Black, Jason Bentley, Sean Cunningham, Jerry Couri, Kelly Zerzan, Dwight Cates, Jim Barnette, our counsel, Kathleen Weldon, Jennifer Robertson, Jackie Lissau, Mary Ellen Grant and Peter Kielty.

These staffs burn more midnight oil than you can imagine. They deserve the great gratitude of this House and this Nation.

Mr. Speaker, I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield the balance of my time to the gentlewoman from California (Ms. PELOSI), the leader of the Democratic Party.

Ms. PELOSI. Mr. Speaker, I thank the distinguished gentleman from Massachusetts (Mr. MARKEY) for yielding me time. I commend him for his exceptional service to this Congress and this country on issues that relate to energy and the environment. He has been a champion for clean air, clean water, and reducing our dependence on foreign oil. The list goes on and on. We are all deeply in his debt. Indeed, everyone who breathes air and drinks water in this country is deeply in his debt.

Mr. Speaker, I came to the floor earlier today and told the story about the disgraceful Medicare bill that we will be doing later this week in which House Democrats were shut out in favor of a back-room deal.

Sadly, this energy bill is more of the same. While House Democrats were excluded from the deliberations on this bill, they were not allowed to participate in the conference. The Vice President of the United States and the Halliburton crowd had a seat at the table.

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Republicans met behind closed doors to write this bill, shutting out House Democrats and the 130 million Americans we represent, while the special interests had special access. It is just not about the quantity, the number of Americans shut out. It also is about the diversity and the quality of the people who were shut out.

When House Democrats do not have a seat at the table, a seat is excluded to the members of our Congressional Black Caucus, our Congressional Hispanic Caucus, our Congressional Asian Pacific Caucus, our large Women's Caucus. The list goes on and on of the diversity that we have in our thinking. The benefit of the thinking of a caucus of that diversity should not be lost in any legislation that we put forth.

Whether my Republican colleagues like it or not, that diversity represents the future, and you shut out the future from the table. That is why you have a bill that looks back. You have a bill that could have been written in the 1950s, and it is a missed opportunity.

The energy bill is almost 1,200 pages long, but Democrats were not allowed to see the text until Saturday, and here we are, 3 days later, voting on the most comprehensive overhaul of energy policy since 1992. Now that we can see the bill, we know why the Republicans wanted to hide it. It is loaded to the brim with special interest giveaways. It puts the special interest before the public interest.

Yes, there are a few table scraps thrown toward clean energy resources and technologies, but for the most part, the bill will allow big energy companies to feast on a buffet of new tax breaks. It will cost Americans more than $142 billion over the next 10 years.

How bad is this bill? So bad that the CATO Institute, not known as a Democratic institution, so bad that the CATO Institute joined the Sierra Club in saying, in a rare moment of agreement, this bill is three parts corporate welfare and one part cynical politics.

Meanwhile, this bill does not provide the sound energy policy we need. The American people deserve an energy policy that is worthy of the 21st century, not one mired in the policies of the past, but this bill looks backward, not forward.

This bill will not reduce our dependence on foreign oil. It will make it harder to increase fuel efficiency standards. It does not adequately invest in new technologies and promote energy efficiencies. It will not protect average Americans from price gouging and fraud, and it throws environmental concerns overboard.

Just look at what this bill does to the environment. It waives the Clean Water Act for construction of oil and gas facilities. It waives the Clean Air Act in communities that are blanketed with smog, hurting millions of children. It waives the Safe Drinking Water Act to allow injection of diesel fuel into the water table, and it allows the gasoline additive MTBE to remain in use for years to come, even though it pollutes drinking water and is a suspected carcinogen. The bill even makes sure that the MTBE industry will not have to pay to clean up water it has contaminated. It has held them harmless for the damage that they do. That burden will fall on the people already suffering its effects.

Mr. Speaker, it is no accident that we are voting on this energy bill in the final days before we adjourn. The Republicans did not really want the American people nor the Members of Congress to see what was in this bill. When Americans learn what is in this bill, they will be offended, and they will be disappointed.

This Congress had the opportunity to craft an energy policy that would boost the economy, reduce our dependence on foreign oil, clean up the environment and protect public health, but instead, we have before us an energy policy that looks to the past, not the future, and gives away huge, unnecessary tax breaks to the Republicans' special interest friends.

A vote "no" on this bill is a vote in the public interest. A vote "yes" is a vote for the special interest. I urge my colleagues to support the public interest and vote no.

Mr. TAUZIN. Mr. Speaker, I am honored to yield the balance of the time to the gentleman from Illinois (Mr. HASTERT), the distinguished Speaker of the House, a gentleman who has led our House with fairness, dignity and civility for many years now.

Mr. HASTERT. Mr. Speaker, I thank all the folks who have worked for months and years to bring this bill to fruition. During that period of time, we have seen oil prices go up and down in this country. We have seen a dependence on foreign oil of almost 72 percent of all the petroleum that comes in this country from overseas. Twenty-seven percent of that oil comes from a country called Saudi Arabia.

We have seen blackouts in this country, in California and New York. We have seen natural gas prices go up and down, but on the way up because we do not have the infrastructure, the pipelines and the grids to be able to move our natural resources and our commodities across this country.

We have the wherewithal to solve these problems. We have the ability to move our energy across this country. We have the engineering potentials. We have the engineers. We have the ability to build and solve problems, but we need the legislation to make it happen, and this legislation helps that come to a reality.

I want to rise in support today of this conference report on the Energy Policy Act of 2003. First of all, I want to thank the gentleman from Louisiana (Chairman TAUZIN) and all the House conferees for their work in producing this much-needed legislation.

I think of the problems that we have before us, and I have listened to some of the debate before about what this bill does not include. There are some things that this bill does not include. Probably some of the richest oil reserves that we have in this Nation are not included in this bill, maybe for good environmental reasons, maybe for fear that we do not have a reason to fear, but it is not in it. Maybe that is a good thing, maybe it is a bad thing, I do not know, but it is not here.

So we have to find ways to make up for it. We have to find new ingenuity, new ways, new engineering ways to find the great willpower and the science and the American people that we can find new ways to bring energy into our homes and into the vehicles that we use to create the transportation, to move people from place to place, to move the products that creates our commerce.

America does need a fair, a balanced, and a comprehensive energy policy now and not later. It is about our peace of mind. It is about our daily security and our energy security, our economic security and even our national security.

Over the past years, Americans have experienced the effects of overburdened and out-of-date energy systems. We have seen high prices at the gas pump, staggering home energy bills, and many of our citizens have been victims of no power at all, and this has cost our Nation billions of dollars and our economy thousands of jobs.

Congress needs to act to meet this need. America must have a comprehensive energy policy that will provide access to more efficient, affordable and environmentally friendly energy. Just as important, this bill will deliver nearly a million new jobs as we update and upgrade our energy infrastructure.

The Energy Policy Act helps meet America's energy needs by improving our electricity system. Everybody here can remember the blackouts just this last year of August 14. This bill helps ensure that that does not happen again. It mandates enforceable, reliable standards that provides incentives for transmission grid improvements, and it makes it easier to site new transmission lines. These reforms, coupled with additional investment in our aging transmission system, will increase the reliability of our Nation's power grid to help future blackouts.

This bill also goes a long way toward reducing our dependence on foreign oil and increasing our dependence on homegrown, renewable fuel sources.

I am pleased that the energy policy conference report includes a renewable fuel standard. It increases the use of renewable fuels such as ethanol. This helps certainly the potential that this Nation has to find new sources and renewable sources, and one other thing that would be a great remiss if I did not mention.

The gentleman from Texas (Mr. BARTON), the chairman of the subcommittee who worked diligently, who had nothing to gain in these bills, worked hard to make sure that these provisions were in the bill. I appreciate that. He did a great job and made sure that all of the interests of this country and all of the interests of people who had the ability to do great things were included in this bill, and I thank him for that effort.

This bill also provides significant incentives for clean coal technology. Coal is vital to our Nation's economy. Fully one-half of our electricity comes from coal, and we have 250 years worth of reserves. This bill makes important investments in coal-based research and development that focuses on new technologies to significantly reduce emissions. It offers incentives for existing coal plants to purchase advanced air pollution control equipment, and it also ensures that clean coal will continue to play a major role in America's future energy needs but will do so with vastly-reduced air emissions.

This fair and balanced bill also helps provide our future energy needs while protecting the environment. The Energy Policy Act launches the state-of-the-art programs that have emission-free hydrogen cell fuel vehicles on the road by 2020. It improves the regulations governing hydroelectric dams to allow more hydroelectric generation. It provides grants to State and local governments to acquire alternative-fueled vehicles, hybrids, and ultra-low sulfur vehicles.

Finally, it takes steps to reduce greenhouse emissions by offering financial incentives for the production of electricity from renewable and alternative fuel sources such as wind, solar, biomass and geothermal.

We certainly cannot overlook that the Energy Policy Act is also about jobs, specifically securing the future of current workers and creating new jobs for the next generation. Investment in our Nation's energy infrastructure means putting Americans to work. While this bill will create nearly 1 million jobs nationally in our manufacturing, construction, agriculture and technological sectors, in my own home State it means 146,000 new jobs will be added to farm fields, factory floors and laboratories.

This bill is fair and it is balanced and it is comprehensive, and it is good energy policy, and I hear the complaints on the other side of the aisle, it is huge investments. To have good energy policy, we have to have investment. We have to put capital where capital can be an investment and we can make change.

This bill does exactly that. This bill will make a difference. This bill is bold. It is the right thing to do, and I would congratulate the sponsors. It is time to move it. It is time to make a difference in this country. Let us pass it.

Mr. BUYER. Mr. Speaker, I rise in support of the Energy Policy Act of 2003. Overall, this bill is the blueprint our Nation needs to get us on the road toward greater energy security. It addresses the energy issues in a broad based and strategic manner to build the necessary diversified portfolio of energy resources for our country. For the first time in over a decade it sets a course for a national energy policy.

I commend President Bush for his leadership on this issue as well as the efforts of Chairmen TAUZIN and BARTON and the conferees for their hard work. This bill addresses many of the most serious energy challenges facing our country.

It balances our need to increase supplies with the need to promote conservation.

It improves our production and distribution infrastructure, while stimulating the development of alternative an renewable sources.

It strengthens our national security by reducing our dependence on foreign sources.

And it helps those having trouble paying ever-higher energy bills.

But Mr. Speaker, I'm also disappointed. There is more that could have been done to increase domestic production by tapping into sources such as those in Alaska's northern slope, western lands, and rich gas fields sitting off our shores. There are still more issues to be addressed such as the need to increase the use of other sources of energy, in particular nuclear power, the upgrading of the electric lines of the grid, and to improve our pipeline infrastructure and increased our refinery capacity. While I am relieved to finally pass an energy bill in the 108th Congress, we should not lose sight of the fact this legislation is only the beginning.

I look forward to building on the work done today. I urge the adoption of the conference report.

Mr. SHAYS. Mr. Speaker, protecting our environment and promoting energy independence are two of the most important jobs I have as a Member of Congress. Unfortunately, the conference report before us today represents a real missed opportunity to reduce our dependence on foreign oil, promote energy efficiency and conservation, and improve our air, land and water quality.

For decades, our country has lacked a national energy policy. While I did not agree with the Administration's energy plan, I was grateful President Bush put forward a comprehensive proposal. The President's energy plan was superior to the severely flawed bill before us today.

We had a chance to devise a forward-looking energy policy that would have increased fuel efficiency, made polluters, including MTBE producers, pay for harming our environment, and advanced a renewable portfolio standard. Instead what we have is quite a bad bill.

Instead of creating a balanced energy policy that provides incentives to make renewable energy more affordable and widely available, we are making fiscally irresponsible and environmentally-reckless decisions for the benefit of a few profitable industries that don't need this kind of help from taxpayers.

I fail to understand why the major thrust of the bill's tax provisions involve further subsidizing the fossil fuel industry, rather than providing incentives for conservation and renewable sources of energy. These are enormously profitable industries operating in a time of record energy prices. Clearly, these profits demonstrate the market has already provided the fossil fuel industries with sufficient incentive to increase production.

I strongly oppose a provision in the bill that allows for the permanent activation of the Cross Sound Cable. In doing so, the bill subverts the regulatory process and ignores sound environmental policy regarding the depth at which the Cable should be buried.

In addition to its environmental shortsightedness, I also oppose provisions in this bill related to the transmission of electricity. For instance, the Energy Policy Act allows the Federal Electric Regulatory Commission [FERC] to preempt state siting authority when it is determined that a high-voltage power line is of "national significance." The fact is FERC arbitrarily gets to make that determination.

I look forward to the day when we will have an opportunity to vote for a fiscally-prudent, environmentally-responsible national energy policy. Today is not that day.

Ms. KILPATRICK. Mr. Speaker, one Republican more accurately characterized H.R. 6, the Energy Policy Act, as the "No Lobbyist Left Behind bill." This bill gives $20 billion in tax breaks and subsidies to the oil, gas, coal and nuclear industries. No one has had a chance to look over this bill. I read from the papers that the bill is more than 1,700 pages in length. You can believe that there are many provisions contained in this bill that the other side does not want the public to know. So what better way to disguise this bad legislation than by burying it inside of 1,700 pages.

This bill is bad for our national security—it facilitates the proliferation of nuclear fuel. It reverses a long-standing prohibition on the reprocessing of spent fuel from commercial reactors. It promotes, through the Department of Energy's Advanced Fuel Cycle Initiative, joint nuclear research efforts with non-weapon states, and encourages the advancement of advanced nuclear weapons systems.

This bill encourages production over conservation. The conservation provisions are estimated to amount to only 3 months of U.S. energy consumption between now and 2020.

This bill is bad for consumers as it repeals the Public Utility Holding Company Act (PUHCA). The PUHCA protects consumers by limiting the size and scope of utility companies and subjecting utility holding companies to Securities and Exchange Commission (SEC) regulation. PUHCA also required revenues from utility ratepayers to go into electric infrastructure maintenance, instead of risky financial investments like we saw in the Enron case. In fact, it was PUHCA that kept Enron from owning more than one electric utility and prevented their bankruptcy from affecting more utility customers. Repeal of PUHCA would allow venture capitalists to put utility ratepayers into almost anything they wanted.

The conference agreement is also bad for the environment. The bill exempts the construction activities at oil and gas drilling sites from compliance with the Clean Water Act. Clean air requirements are relaxed in order to delay reductions in smog pollution. A process to extract oil and gas trapped underground by injecting chemical solutions is exempted from the Clean Water Act. The ability of States to protect their coasts and beaches from energy development projects is weakened.

A provision inserted by the Republican Leadership exempts manufacturers of MTBE, Methyl Tertiary-Butyl Ether, from liability resulting from ground water contamination. Not only does the bill release MTBE manufacturers from limited liability but also rewards those companies with $2 billion in federal aid. So the bill shifts a potential $29 billion clean up cost from MTBE manufacturers to taxpayers and water customers. This bill turns the concept of "the polluter pays" on its head.

Finally, H.R. 6 does little to enhance our domestic energy security and lessen our dependence on foreign oil supplies. America has only 3 percent of the world's oil reserves; whereas, countries affiliated with the Organization of Petroleum Exporting Countries [OPEC] control more than 70 percent of the world's reserves. As was previously cited in today's debate, America is a technological giant. But instead of investing in our ingenuity to make us a country that is more efficient in its usage of energy resources, this bill assumes we can fulfill our energy needs by drilling for more oil and natural gas supplies and excavating our way to energy independence.

The bill represents a failed promise for energy consumers. They will be asked to pay more in energy costs as well as provide subsidies to the energy industry. At the same time, Americans are asked to sacrifice their environmental responsibilities and surrender their rights as energy consumers. This is a bad deal for my constituents in Detroit and southeast Michigan. It is a bad deal for America, and I urge my colleagues to vote down the conference agreement that has been handed to us.

Mr. TOWNS. Mr. Speaker, while I intend to support the Energy Conference Report, I want to emphasize the importance of flexibility in the new section, to the Federal Power Act, section 16031 on Electric Reliability Standards. Given the recent "blackouts" in areas like my home State of New York, it is critical that State or regional entities not be prohibited from adopting more stringent reliability standards as long as this action does not result in lesser reliability outside the State or region than what is provided by the Electric Reliability Organization's reliability standards. I recognize that compromise was needed to bring this bill to the floor today but I do not believe that reliability is an area where our standards can or should be reduced, particularly in areas like

New York where reliability is so critical to preventing future blackouts.

Mr. STARK. Mr. Speaker, I rise in strong opposition to this final Energy bill. It's fiscally irresponsible, unfair to consumers and a threat to our health and environment. It provides too little for conservation and clean, renewable energy sources. And it won't reduce our dependence on foreign oil or lower energy costs for consumers as Republicans have claimed.

No matter the Republican rhetoric, this isn't smart energy policy. It doesn't reflect forward thinking. It isn't the result of thoughtful debate or bipartisan cooperation. Democrats were shut out as this backroom deal was cut by special interests on the backs of American taxpayers. And as they say, to the winner go the spoils.

This bill is nothing less than a special interest giveaway piled high with huge corporate tax breaks totaling $23.5 billion. Half of these go to the oil and gas industry alone despite huge profit margins and a robust energy market where crude oil prices have risen over $30 a barrel. But, there are also tax breaks for renewed development of nuclear power and subsidies for the production of so-called "clean coal"—an oxymoron if I ever heard one.

With all this money for pumped up fossil fuel production, what about conservation? After all, that is a critical piece of reducing energy costs and ending dependence of foreign oil. Well, this conference agreement falsely claims to provide $9 billion in tax incentives for energy conservation. But, consider what this is for: the repeal of the excise tax on diesel fuel used for railroads and inland waterway barges; a tax credit for nuclear power production; and an extension of energy production credits. I'd call that conserving corporate profits, not energy.

So what about clean renewable technologies such as wind and solar power? Well, to use the words of the lead Senate conferee in opposing subsidies for renewable energy, "You will be sick of seeing windmills in about 10 years." Well, most Americans are sick of the kind of pollution big oil companies put into our air and water or the way drilling can destroy our oceans and wilderness.

Make no mistake, it is the oil industry that makes out big under this bill. And don't think these Republicans hold these big energy corporations any more accountable with all these subsidies. They expect less—not more—from industry when it comes to protecting our air and water. Consider the byproducts this Republican Energy bill is dumping on the American people:

Under one special interest provision, the EPA is barred from taking enforcement actions under the Clean Water Act against Halliburton and other oil companies for using a drilling technique known as hydraulic fracturing. This process speeds up oil extraction by shooting diesel fuel into the ground, allowing this fuel and its cancer causing agents to leak into underground aquifers and contaminating drinking water supplies.

Oil companies are exempted from the Clean Water Act's so-called waste-water runoff rules allowing them to pollute our Nation's waterways with industrial byproducts. Another provision allows these and other energy producers to flaunt the Clean Air Act by delaying deadlines for compliance with air quality standards in certain, select areas in which they operate. This means that clean air standards will be weakest in the areas in which air pollution is the worst.

But, that's not all.

Local taxpayers get stuck with the bill for cleaning up pollution caused by the fuel additive MTBE, which the National League of Cities estimates will cost $30 billion. This is a serious problem in my State of California. But, in a recent study, the U.S. Geological Survey found that nearly 55 percent of all urban water systems have been polluted by MTBE. Yet, Republicans are exempting oil and gas companies from any liability for the drinking water contamination caused by their fuel additive.

That simply isn't fair to the cash-strapped local communities that will have to bear this burden. Nor is it responsible to threaten the health of every American as expensive cleanups are further delayed without the resources to carry them out. I believe we ought to hold these corporate polluters accountable, especially as Republicans dole out huge subsidies to the oil and gas industry that is responsible for this mess.

Now, you may be asking yourselves then, what exactly do Americans get in return for all this pork and swindle? Cheaper gas prices? Cheaper electricity? Hardly.

The Republicans fail to take a stand to protect consumers against exorbitant energy prices or fraudulent pricing schemes. Given the billions Enron swindled from consumers in California, this ought to be a top priority. But lo and behold, the Republicans have barred the Federal Energy Regulatory Commission from instituting new rules to protect consumers from price gouging. Their bill fails to include strict anti-fraud provisions to crack down on shady business schemes such those employed by Enron—those that sparked the Energy Crisis. Republicans even repeal the Public Utility Holding Company Act that insulates ratepayers from bearing the cost of risky energy ventures while protecting investors from tricky corporate accounting maneuvers.

I urge my colleagues to say no to this shameful bill. Americans deserve better than this special interest giveaway. Let's stand up for an innovative, clean and responsible energy policy that conserves our resources and preserves our environment. Vote down this bill.

Ms. SOLIS. Mr. Speaker, I rise in opposition to the conference report on H.R. 6, the National Energy Policy Act, on behalf of America's taxpayers who will now have to shoulder the financial burden of cleaning up corporate pollution.

In the past, our nation's environmental laws have been based on the principle that polluters would pay to clean up their messes. Today, that principle changes from "polluters pay" to "polluters get paid".

Mr. Speaker, under this bill, over the next 10 years, the American taxpayers will dole out $23.5 billion in tax breaks for the oil and gas industry. In addition, taxpayers will pay $6.9 billion in higher gas prices because this bill mandates that we put ethanol in our gasoline. Polluters will be able to access federal funds to clean up their leaking underground storage tanks—money that they don't have to pay back. And consumers will pay higher electricity prices because basic consumer protections have been repealed with the end of the Public Utilities Holding Company Act (PUHCA).

The people who will suffer the greatest consequences of these blatantly irresponsible regulations will be the poorest of our society. These families will be forced to pay more at the gas pump and higher utility bills. As people who are more likely to live and work near a polluting industry, they will breathe dirtier air and drink unsafe water.

This bill will perpetuate poverty as we reward industries that are environmental failures while neglecting to prepare an energy policy that will help future generations. What do we get in return for this egregious bill? Unfortunately, at the end of the day there is little that will alleviate the problems that are so obvious in this bill. It will not reduce our dependence on foreign oil. It will not create jobs. It will not invest in science that will give us energy technologies for the future.

The Energy Policy Act before us is anti-environmental, anti-health, anti-consumer, anti-science and anti-jobs. An energy policy needs to make sure that our original principles are in place and make sure that polluters are paying, not getting paid.

If we start with this principle, we can create an energy policy that not only is good for our country's future, but also for the future of working families.

Ms. McCARTHY of Missouri. Mr. Speaker, I rise in opposition to the Conference Report on H.R. 6, the Energy Policy Act of 2003. I strongly support a comprehensive national solution to our energy needs. In developing a national energy policy, it is imperative that we address electricity reliability issues, environmental impacts, and consumer protection. We must consider ways to invest in alternative energy technologies that reduce our dependence on foreign oil, address global warming and bolster our nation's energy security. I supported the original Energy and Commerce Committee version of this legislation which accomplished these goals. Instead, we are considering legislation that reinforces our dependency on foreign sources of energy and leaves our national security at risk.

Our economy is dependent upon reliable and affordable electricity, and any break in our electric supply threatens the security of our nation. The Conference Report fails to resolve reliability issues. Months after the largest blackout in our nation's history, this legislation fails to clarify who is responsible for preventing future blackouts. The legislation also fails to offer any meaningful assistance in the effort to update and modernize our nation's transmission system. Although Missouri was not effected by the recent blackouts, much of our transmission system suffers from the same outdated equipment that left our neighbors to the north and east in the dark.

Mr. Speaker, this legislation does include a few commendable items. One such provision is the establishment of a biodiesel fuel tax credit. The credit, which will be available through 2005, will offer those who use biodiesel as fuel a 50 cent per gallon tax credit. In my district, the Kansas City Area Transportation Authority has been a leader among public transit agencies using biodiesel to fuel city buses. The biodiesel provisions on today's bill will help build on my past efforts to recognize this clean burning fuel as a solution to our efforts mandated in the Clean Air Act. I am also pleased to learn that the bill dramatically expands the requirements for the use of ethanol. My home state of Missouri has two ethanol plants, and we are working to build three more facilities to meet the growing demand for this renewable fuel.

Despite this legislation's positive ethanol and biodiesel provisions, the bill otherwise fails to encourage the transition from fossil fuels to indigenous, renewable energy. The conferees chose to reject Senate approved provisions to establish a Renewable Portfolio Standard (RPS). The RPS provision would have required power plants to use minimum amounts of renewable fuels. Energy experts have argued that RPS will save us from building 156 new power plants. The result of this effort would be lower prices for consumers and cleaner air. Those are the long term gains a strategic energy plan could generate.

Rather than providing the American people with a more secure system, H.R. 6 provides subsidies to oil and gas companies and exempts them from vital environmental regulations. Further, it repeals the Public Utility Holding Company Act—legislation specifically designed to protect ratepayers from risky investments. Instead of preventing another California energy crisis or Enron scam, this legislation enables more fraud, more price gauging, and more corporate abuse at the expense of consumers.

This legislation also fails to secure our nation's drinking water. Despite the fervent objections of communities who experienced the devastating effects of the dangerous fuel additive MTBE, this legislation includes a waiver of all liability for MTBE manufacturers. MTBE has contaminated the drinking water of hundreds of towns and cities across the nation and this legislation forces taxpayers instead of polluters to pay the bill.

The legislation we are considering today fails to address the most pressing needs of the American people. Of particular concern are provisions that endanger the environment and could lead to further global warming. The report contains an amendment to the Clean Air Act that allows certain areas to ignore ozone attainment deadlines and exemptions for oil and gas exploration companies from waste water runoff rules designed to protect our lakes, rivers and streams.

Mr. Speaker, Americans deserve an energy policy that protects our consumers, our environment, and our national security. The Conference Report fails that test. I urge my colleagues to reject the conference report and instruct the conferees to craft real, long-term, comprehensive energy legislation similar to that approved by the House Energy and Commerce Committee and the United States Senate.

Mrs. WILSON of New Mexico. Mr. Speaker, we need a balanced, long term energy policy to reduce our dependence on foreign oil, keep the lights on and preserve the beauty of the land we love and I think this bill promotes this aim. This legislation is good for our environment and will create nearly 1 million new jobs. I commend Chairman TAUZIN and Chairman DOMENICI for putting this important piece of legislation together.

I want to highlight three provisions in this bill that I think are important. first, section 602 of this bill extends Price-Anderson indemnification for 20 years to 2023. Price-Anderson is a critical component of our national energy policy. Nuclear energy is a viable energy source that helps us keep our air clean and reduces our reliance on foreign sources of energy. Without extending Price-Anderson indemnification, there would be a severe negative impact on private investment in nuclear energy and nuclear related research at Sandia and Los Alamos National Laboratories.

The Price-Anderson Act, first passed in 1957 as part of the Atomic Energy Act, has encouraged the development of the nuclear industry, while protecting the public by allowing DOE to fine its contractors for safety violations. It subjects contractor employees and directors to criminal penalties for violating nuclear safety rules, and provides immediate insurance compensation to the public in the highly unlikely event of a nuclear accident at a commercial power plant or a DOE facility.

The Act also consolidates in a single federal court all lawsuits arising from an accident and reduces delays often associated with such cases. The federal payout provisions in the Act have never been used, but its existence has allowed private investment in nuclear energy to go forward.

Price-Anderson is a critical component of our national energy policy. Nuclear energy is a viable energy source that helps us keep our air clean and reduces our reliance on foreign sources of energy. Additionally, extending Price-Anderson indemnification would protect 61,800 jobs at 103 plants nationwide.

Second, I strongly support Section 1285, the FERC refund authority provisions. These provisions ensure that prices charged for wholesale power sales, regardless of seller, must meet FERC's "just and reasonable" standard and allows FERC to recover proceeds from the largest public power utilities in the event that they gouge consumers.

FERC is pursuing multiple investigations into allegations of overcharging and manipulation in western electricity markets by sellers. However, some of these entities have filed lawsuits challenging FERC's legal authority to order them to pay refunds. This provision clarifies FERC's authority to order refunds from wholesale power sellers if they charge prices that are not "just and reasonable.'

Third, I also strongly support Section 1522, the underground storage tank compliance provisions. In the mid-1980's Congress mandated that all petroleum underground storage tanks ("USTs") be upgraded, replaced, or closed by December 22, 1998. To assist the EPA and the states to implement the 1998 deadline, Congress in 1996 established the Leaking Underground Storage Tank ("LUST") Trust Fund and enacted a 0.1 cent per gallon federal tax on petroleum products—the proceeds from which are directed to the LUST Trust Fund.

According to the Administration's FY 2004 budget, the LUST Trust Fund balance at the end of 2030 will be $2.0 billion; Trust Fund tax collections in 2003 will be $183 million; and, the Trust Fund will earn $85 million in interest in 2003. Despite this huge fund balance, the Bush Administration has requested only $72 million be appropriated from the Trust Fund for FY 2004—below the amount of interest the Trust Fund will earn during the year.

This legislation will ensure that an adequate percentage of funds appropriated from the LUST Trust Fund is delivered to state UST programs for proper regulatory enforcement and remediation assistance and that all UST owners and operators—including government agencies, commercial operators, and native American tribes—are held to the same standards and comply with existing regulations. It also will provide funds to the states to develop a UST operator training programs based on EPA guidelines.

Mr. BOEHNER. Mr. Speaker, I rise in support of H.R. 6, the Energy Policy Act of 2003 and in particular Title VX, which sets forth a Renewable Fuels Standard to advance renewable fuel development in this country.

As a representative of the nation's third-largest ethanol consuming state, I congratulate my colleagues on incorporating this standard into a national energy policy. In my view, a renewable fuels standard achieves two policy objectives simultaneously—it begins to break out nation's dependence on volatile sources of foreign oil, and it creates new market opportunities—with a tremendous upside for America's farmers.

This provision has been criticized because of its costs. But let me remind those critics of another cost—the cost of farm program payments. By reaching 5 billion gallons of ethanol in 2012, the RFS will provide a tremendous boost to annual farm income and add substantial value to the corn market—value that will reduce the amount of money going out of the federal Treasury in the form of price support payments. The RFS and expanded ethanol production will add value to agriculture and provide price and income support to our nation's ailing farm sector in the most sustainable way possible—through the marketplace.

In addition, this bill sets the foundation for a correction to a flawed highway funding formula that penalizes ethanol consuming states to the tune of $2 billion a year, including my home state of Ohio, which loses nearly $160 million per year in valuable transportation infrastructure dollars.

I congratulate the Chairman on his hard work to make comprehensive energy policy a reality, and I urge my colleagues to support this bill.

Ms. WOOLSEY. Mr. Speaker, I rise in opposition to this conference report. While my colleagues on the other side of the aisle are calling this a jobs bill, let's call this what it really is—billions of dollars in pay-offs to republican campaign contributors. . . . Today, we have given up an opportunity to do the right thing for our energy future; for our environmental future and for true national security.

We have missed an important opportunity to make our Nation more secure. This could have been an opportunity to decrease our reliance on foreign oil and to relieve the burden on our power grid by investing in efficient and renewable energy sources.

Instead the republican conferees, excluding democrats from the conference, have delivered a conference report that will allow large companies to pollute our air, contaminate our water, and all the while giving pork to big business.

The majority party has only paid lip service to renewable energy. Instead of focusing on the benefits of solar, wind, and other renewable energy sources, this bill contains billions of dollars of pork for ethanol producers.

And, apparently they ran out of pork because they have even included some turkey because I guess they really got into Thanksgiving because they included a $95 million tax credit is in the bill that will help a single plant dispose of turkey carcasses.

Mr. Speaker, I urge my colleagues to join me in opposing this conference report and asking the conferees to send us back something that will really help our national security.

Mr. SAM JOHNSON of Texas. I want to congratulate and thank both Chairman DOMENICI and Chairman TAUZIN for taking on the enormous task of crafting comprehensive energy legislation, and doing so in a manner that was fair, effective, and successful. In years past we have allowed energy legislation to die in Conference. This year we have made good on our promises, and are closer to enacting much-needed energy reforms.

It has been almost a decade since this country has had any type of sound energy policy. I commend President Bush for his courage in advocating a balanced energy plan, and both of our Chairmen for taking these measures up as quickly and decisively as possible. I am pleased to have been part of the Conference on this legislation, and to support everyone's hard work here today.

This Conference Report conserves energy, increases energy production, and will help end our dependence on foreign oil. As I noted when we started Conference on this legislation, today over fifty percent of our oil comes from other countries—that is not only a threat to national security, but it affects the energy prices of every American.

The legislation we consider today is an improvement over both the House and Senate bills passed earlier this year. Indeed, in many instances, we have taken "the best of both worlds."

The Conference Report adopts the House language regarding Alaskan pipeline construction training. This provision ensures that training will be delivered through our existing one-stop WIA delivery systems, and that the program will be available to a broad range of participants.

Natural gas gathering lines is an issue that I have worked closely on for years. This is an important provision that settles a long-running dispute between the IRS and natural gas producers. There have been differing opinions in various circuit courts on the proper depreciable life of these gas lines. I am glad that this issue is finally being resolved.

The Conference Report's provisions regarding workplace protections for so-called "whistleblowers" has been much improved. House language in last year's energy bill has been strengthened to ensure that employees have the necessary protections they deserve, while also balancing the ability of the Department of Labor to investigate these complaints. This ensures that while all workers are protected, we are not allowing for frivolous actions.

The Conference Report also supports the President's proposal by including House language to ensure that we maintain a viable weatherization assistance program.

Language in the conference report regarding energy-related scientific and technical careers has been tailored to target those truly in need of help, and to eliminate outdated models of "assistance."

Finally, the Conference Report deletes several unnecessary provisions, including Senate language expanding the federal government's role in school construction, and language that would micro-manage personnel decisions at the Department of Labor.

I would express my disappointment in the final product before us in just one regard. I am disappointed that the Conference Report before us does not include the House language providing for an oil and gas leasing program for the exploration, development, and production of the oil and gas resources in the Arctic National Wildlife Reserve. I strongly supported this provision, which would have expanded our natural energy supply, which now more than ever is critical to our national energy security policy.

I would hope that as we pass this bill today, we do not lose sight of the importance of this provision. I would urge our Republican leadership to revisit this critically important issue when we return next year.

In closing, I reiterate my support for the President in proposing a comprehensive plan, and both houses of Congress, and in particular our Chairmen, for taking quick action to make this plan law. The legislation before us goes a long way toward addressing our nation's near- and long-term energy needs, as well as our national energy security policy.

I urge my colleagues to support this important and much-needed legislation.

Mr. SKELTON. Mr. Speaker, throughout the time I have been privileged to serve in the House of Representatives, I have been honored to work with my colleagues on both sides of the aisle to do what is right for rural America. Today, the House is considering H.R. 6, its first comprehensive energy policy legislation in more than a decade. This measure will provide farm families and rural areas with an important economic boost and will recognize the unique role rural electric cooperatives play in delivering power to rural Americans. I am pleased to support this bill.

H.R. 6 is good for rural Missouri. The conference report includes a long sought after Renewable Fuels Standard (RFS) that will gradually increase the contribution of ethanol (made from corn) and biodiesel (made from soybeans) to America's fuel supply to 5 billion gallons in 2012. The bill also includes a federal phase down and ban of the gasoline additive known as MTBE. Although I am disappointed that liability protections were included in the bill for this cancer-causing additive, I am pleased that the conference report phases MTBE out of existence over a period of time.

H.R. 6 provides important renewable fuel tax provisions for ethanol and biodiesel. The conference report modifies the small ethanol producer tax credit to enable farmer-owned cooperatives, like Mid Missouri Energy, Inc., an ethanol production facility under construction near Malta Bend, Missouri, to pass along the credit to their farmer owners. The bill contains the Volumetric Ethanol Excise Tax Credit (VEETC) provision, which will continue the tax credit for ethanol, create a tax credit for biodiesel, and will keep the Highway Trust Fund whole. Importantly, the measure creates a new tax incentive for biodiesel that will stimulate production of both soybeans and other agricultural products. No longer will biodiesel be treated as a luxury product, but one that vehicle owners throughout America will embrace as a clean-burning renewable fuel.

For corn and soybean farmers, H.R. 6 could well be the best piece of legislation in decades. The renewable fuels embraced by this legislation are produced from crops that rise out of Show-Me State fields, and Congress' commitment to the production of more renewable fuels will act as a significant economic stimulus for rural Missouri. This comprehensive bill will also decrease U.S. reliance on foreign energy sources and create jobs.

I am also pleased that H.R. 6 recognizes the unique role rural electric cooperatives play in providing power to those who live throughout the countryside. Electric cooperatives have a long and distinguished history in our country. They provide private ownership to consumers of their electric utility and operate at-cost. This type of ownership has been very successful in rural Missouri where population densities and revenues are low. It has also immunized electric cooperatives from the price gouging, market manipulation, and corporate malfeasance activities that have emerged in the energy industry over the past few years.

Mr. Speaker, the comprehensive energy bill before us today is good for rural America, and I urge my colleagues to support it.

Mr. MCKEON. Mr. Speaker, I rise today in support of H.R. 6, the Energy Policy Act of 2003. I want to commend and thank Chairman TAUZIN for his work with his Senate counterpart, Chairman DOMENICI, for working with many Members and Senators to reach agreement on this historic legislation. For the first time in over a decade we will have comprehensive national energy policy. Both chairmen deserve credit for completing this process and getting the job done for the American people.

In addition, I commend President Bush for putting forth a responsible national energy plan, much of which is reflected in the legislation before us today.

This bill makes significant improvements in both energy conservation and generation. The legislation before us today contains new energy efficiency and conservation provisions, expands the use of renewable energy sources, encourages diverse energy technologies, increases our federal commitment to research and development, and will reduce America's dependence on foreign oil and gas by developing domestic sources of fuels. In addition, the bill improves reliability standards for electricity transmission, which we know is critical given the recent blackouts in the Northeast and Midwest and ongoing challenges regarding electricity supply in my own state of California.

I am pleased to have been part of this conference as a member of the Committee on Education and the Workforce. The conference report before us today contains several important provisions under the Education and the

Workforce Committee's purview that I would like to highlight.

H.R. 6 reauthorizes the Low-Income Home Energy Assistance Program, or LIHEAP, for two years. This critical program helps many low-income families, particularly some elderly individuals, survive extreme temperatures by covering the cost of heating and cooling. In addition, the legislation increases the funding authorized for the Weatherization Assistance Program, through which funds are provided to low-income households for weatherization efforts. This increase puts Congress on track to increase funding for the program by over $1 billion over the next ten years as proposed by President Bush.

The conference agreement includes an Alaskan Pipeline Construction Training program to ensure enough skilled workers are available to design, construct, and operate an Alaska gas pipeline system, should one be constructed. While it is appropriate to create a new program to address this significant employment need, the conference agreement ensures that the training program would operate through the State of Alaska's existing workforce development system created under the Workforce Investment Act of 1998 (WIA). This will prevent duplication and ensure the new training program is connected to the wider package of services available through the one-stop delivery system created under WIA.

The conference agreement includes a provision requiring the Secretary of Energy to provide a preference in making grants under the Science Education programs to institutions that encourage underrepresented populations to pursue scientific and technical careers. In addition, the bill before us today requires the national laboratories that participate in the Department's Science Education programs to increase the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges in activities that increase their capacity to train personnel in science or engineering. This is consistent with Congress's efforts to reach out to minority serving institutions to help build their capacity. The provision should result in increased access to energy-related scientific careers.

I must, however, raise strong concerns with two provisions in the bill, one dealing with the denial of tax benefits for solar energy and the other dealing with providing liability protection for manufactures of Methyl Tertiary Butyl Ether, or MTBE.

The first provision, if removed, would have opened the doors in my and adjacent congressional districts in California for increased production of concentrated solar power and would have provided as many as 7,000 jobs in the Antelope Valley region of my district. Our nation's electricity grid does not have the capacity to move electricity freely from east to west without encountering significant congestion and financial disincentives. Until these hurdles are overcome, we must work towards becoming more self-sufficient when it comes to energy production. Financial incentives, such as the Investment Tax Credit and the Production Tax Credit, further encourage the production of solar energy to provide an efficient, clean energy source that has not yet been tapped to its full potential for conventional use. A recent Department of Energy-supported study demonstrates that concentrated solar power could produce electricity at a cost of 3.5 to 7 cents per kilowatt/hour within 10 years, which is very competitive with traditional electric peaking power. Unfortunately, the conference report stipulates that solar companies cannot have access to both credits, which completely defeats their purpose.

The second provision in the conference report would have a detrimental impact on many areas in my state of California by giving a product liability waiver for MTBE and nullifying many of the recent lawsuits that were filed to aid in the cleanup of the problem. Recently, it has come to my attention that a MTBE spill is located in my congressional district near the Marine Corps Logistics Base in Barstow, California. This additive has been found to pollute drinking water supplies in at least 28 states, including my own, when gasoline containing MTBE leaks or is spilled into surface or groundwater. While I certainly understand the argument that the federal government was responsible for promoting the use of MTBE and should provide some protections to companies, I remain concerned that exempting MBTE manufacturers from groundwater contamination by giving them such a blanket protection will devastate the drinking water supply for area residents.

Not withstanding these provisions, I believe the conference report before us today represents an enormous step forward in addressing short-term energy needs and stabilizing our long-term energy supply. I applaud my colleagues and the Bush Administration for working to ensure this comprehensive legislation is completed this year. I urge Members to support H.R. 6, the Energy Policy Act of 2003.

Mr. BURR. Mr. Speaker, I rise today in support of the Energy Conference Report. This Report now cements a blueprint for our nation's domestic energy policy for the first quarter of the 21st century.

The need for a long-term energy policy is simple. We are experiencing a fundamental imbalance between energy supply and consumer demand that poses a tremendous risk to our nation's economic well-being, our standard of living and, to a great extent, our national security. If we continue energy production and consumption at a rate equal to the one set in the 1990s, by 2020 we will be experiencing a shortfall of supply and demand of nearly 50 percent. That shortfall can be made up in only three ways: import more energy; improve energy efficiency even more than expected; and increase domestic energy supply.

This bill moves us away from our dependence on foreign sources of fuel and moves us in the positive direction of promoting a diverse mix of domestic sources of energy that will increasingly come from solar, wind, biomass, and geothermal sources.

An extension of the wind energy production tax credit will breathe new life into wind farm projects throughout the country. Appalachian State University, located in my District, has identified areas in western North Carolina that might be the most suitable locations in the Southeast for developing wind farms. A production tax credit for energy generated from animal waste opens new opportunities for energy production, innovative and useful methods of waste disposal and increased farm income for North Carolina hog and poultry farmers.

Our soybean farmers will also benefit from tax credits that encourage the production of biodiesel fuels from soybean oil. Corn, sweet potato and even tobacco farmers will benefit from the ethanol provisions in this bill, as demand for products that can be converted into ethanol-blended fuels will increase.

Improvements in energy efficiency and conservation are prevalent throughout this bill. It expands the scope of the Energy Star program and establishes new energy efficiency standards for many new commercial and consumer products that use large amounts of energy. It authorizes $2.15B for hydrogen fuel cell program with a goal of launching hydrogen fuel cell cars by 2020. Finally, Congress will lead by example by requiring a 20 percent reduction in federal building energy use in the next 10 years as well as provide funding for energy efficiency programs for public buildings. All in all, the conservation and energy efficiency provisions of H.R. 6 will eliminate the need for at least 130 new 300 megawatt power plants by 2020.

The bill helps modernize our aging electric generating facilities as well as promote the increased use of nuclear energy. Nuclear energy is essentially emission free and allowed us to avoid the emission of 167 million tons of carbon last year and more than 2 billion tons since the 1970's. In 1999, nuclear power plants provided about half of the total carbon reductions achieved by U.S. industry under the federal voluntary reporting program.

The bill will go a long way to retain jobs in our country as well as create new jobs throughout the country. By allowing the Southeast, which enjoys cheap and reliable power, to develop our electric marketplaces as we see fit, we will see jobs retained in North Carolina and throughout the South. Knowing that the cost of electricity is one of the highest overhead costs manufacturers and factories assume, keeping costs low and reliability high will lead to the return of more manufacturing jobs to our region of the country.

The bill will create the certainty in the investment markets that will allow Wall Street to finally attract the necessary capital to build and upgrade our electric transmission system. Long before the northeastern blackouts of this past August, my colleague from Maryland, Mr. Wynn, and I have been warning of a pending electricity outage if we didn't mandate reliability standards and give the marketplace the tools it needs to attract the capital to invest the reported $53 billion necessary to meet the electricity demand of the coming decade. I am pleased to see that the principles of our bill, the Interstate Transmission Act have been incorporated into the final Conference Report. Through the strength of our combined efforts and commitment to improving our nation's energy grid, I am pleased that the Wynn-Burr language for mandatory reliability provisions and new incentives for investment in transmission was included in this legislation.

The bill also increases the authorized funding from the Leaking Underground Storage Trust Fund. Earlier this year Representative FOSSELLA and I introduced H.R. 2733 and working with Subcommittee Chairman GILLMOR, we were able to incorporate this bill into the final conference report. H.R. 6 will allow states to use Federal funds to enforce the law. It will direct EPA and the States to implement operator-training programs and require all tanks be inspected on a regular basis.

Mr. Speaker, the 1000-plus pages this bill encompasses will be a much-needed shot in the arm of our recovering economy. It will begin our march towards energy independence and will best utilize all resources at our disposal to make sure that the lights stay on and the factories and small businesses stay open. I urge its passage and implementation into law.

Mr. NUSSLE. Mr. Speaker, as I communicate with Iowans, they often share their concern about our country's economic vulnerability in regard to its energy supply. Spikes in oil and gas prices, high utility costs and the dangers of a heavy reliance on foreign suppliers have a very real impact on our rural economy and Iowans' family budgets.

I rise today to express my support for the long-awaited, comprehensive energy policy legislation.

America's long-term national energy policies must include a focus on developing the renewable sources of energy that can be produced in this country. This energy bill makes farmers in Iowa and other states part of the solution by moving the nation toward a common-sense future that is less dependent on fossil-based sources of energy. With the establishment of an overall Renewable Fuels Standard for motor fuels, significant portions of all U.S. gasoline will be required to contain renewable fuel content, including ethanol and biodiesel. This provision alone will create more than 200,000 jobs over the next decade.

The bill goes well beyond previous efforts to promote value-added agriculture by streamlining and making new incentives for ethanol production as well as creating a new tax credit for biodiesel production. This legislation simplifies a very complicated tax system for Iowa's ethanol producers and taxpayers while ensuring these payments are properly credited toward vital transportation priorities. These tax reforms are significant developments for Iowa's future because they promote the development of small ethanol cooperatives, create value-added business opportunities, and ensure the long-term future of Iowa's transportation needs.

The bill also supports enhanced energy efficiency and conservation, environmental protection measures and domestic production. Consumers will be encouraged to purchase more fuel-efficient automobiles and make sensible home improvements. New, advanced environmental friendly technologies will be promoted. In addition, electricity generation and transmission will be strengthened to help rural electric cooperatives and public and private utilities provide affordable electricity to their customers.

My support for the bill is somewhat tempered by the recognition that it exceeds the spending limits established by the FY 2004 budget resolution. I believe that many of the key objectives of this bill could have been realized within the confines of the budget resolution. By contrast, the tax provisions, while significant in cost are fully consistent with the revenue levels established by this year's budget.

Mr. Speaker, I believe that the Energy Policy Act represents impressive progress toward a balanced, long-term energy policy to reduce our reliance on foreign oil, stabilize prices for consumers and stimulate our economy. I am particularly proud of the renewable energy provision in this bill and urge my colleagues to join me in approving this significant legislation.

Mr. BOEHLERT. Mr. Speaker, sadly, I rise in opposition to H.R. 6. I say sadly because the Nation needs a balanced, forward-looking energy policy. Our economic and national security depend on our energy security. That's why I was so pleased when President Bush and Vice President CHENEY took a step that their predecessors hadn't and challenged the Congress to come up with a sensible energy plan.

Unfortunately, we have failed to live up to that challenge. What we have instead is a bill that purports to be what it is not. We hear that H.R. 6 is forward-looking, but in reality it just protects the status quo. We hear that H.R. 6 is balanced, but in reality it is weighted heavily toward fossil fuels. We hear that H.R. 6 is fair, but in reality it is replete with targeted subsidies and tax breaks and projects. We hear that the process of writing H.R. 6 was open, but in reality that was not the case.

I don't have time to list all the provisions that could prove my point. In fact, I'm sure Members will be finding provisions for years as their constituents call about problems that will be traced back to this bill. All I will point out now is that what is missing from this bill is as problematic as what it contains. This bill has no fuel economy standards for cars; it has no renewable energy goals for utilities. Indeed, it has nothing much at all that will make us more energy independent and secure.

We've missed an opportunity with this bill. This bill will not give our Nation more energy, but only more regrets.

Ms. LEE. Mr. Speaker, I rise in strong opposition to this rule and the underlying bill.

This bill is a failure in process and policy. The Republican majority has steamrolled concerns, facts, and opposition, all to benefit powerful energy industries at the expense of American people.

This bill not only fails to promote a healthy energy policy, it will also cost the American people over $115 billion over the next decade.

It was written for big energy companies by big energy companies to benefit big energy companies, with a $416 billion package of tax breaks and production subsidies for the oil, coal, and nuclear industries.

Mr. Speaker, this bill threatens more than the pocketbooks of the American people, it also poses an imminent threat to our Nation's air quality, drinking water, and public land.

We see this threat to our public health most clearly in my home State of California.

MTBE, a known cause of cancer, is leaking out of storage tanks, but this bill shields MTBE producers and oil companies from product liability lawsuits and pays them $2 billion.

The gasoline additive, intended to reduce air pollution, has contaminated groundwater supplies in numerous California communities.

This bill will cause catastrophic harm to the public health and the public interest.

I strongly oppose this rule and this bill and I urge you to protect America's environment, protect America's health, and protect American taxpayers and to vote against this bill.

Mr. FRELINGHUYSEN. Mr. Speaker, I rise in support of this comprehensive energy package, the Conference Report on H.R. 6.

Three months ago the lights went out in the Northeast, Midwest and throughout parts of my congressional district in northern New Jersey, leaving millions of New Jerseyans sitting in the dark.

More than anything else this event taught us that we cannot lurch from energy crisis to energy crisis. It's an economic risk we cannot afford to take or ever let happen again.

While Americans are beginning to find jobs, our economy is still volatile to domestic and international events. Too many New Jerseyans are still looking for work.

That is why I believe it is important that we continue to advance more aggressive pro-growth, pro-job policies including this first step toward a long-term comprehensive, national energy plan that is before us today.

This package will further strengthen our economy and ensure the stability of our energy supply by preventing the loss of jobs while creating hundreds of thousands of new jobs in all sectors including manufacturing, construction, agriculture and technology.

While prices at the gas pump are going down and more jobs are being created—make no mistake about it—may families face natural gas, oil and electric bills two or three times higher than they did just a few years ago and some employers are still hiring fewer workers to absorb the rising cost of energy.

Mr. Speaker, we need this legislation to promote more energy conservation, research, and development, and to provide for security and diversity in the energy supply for the American people.

While I am pleased that this legislation is good for our economy, I am also happy to know that it is working to promote conservation. This legislation takes great strides to promote energy efficient products, renewable energy and alternative fuels—all of which are environmentally responsible energy policies.

We live and work in a nation that demands more energy than we can adequately supply. Every American, whether they realize it not, depends upon reliable, affordable energy. To drive a car, run a small business, or own a home—we need energy.

We are also a nation that relies on fossil fuels, and whether we think that's good or bad, it's a fact that is not going to change anytime soon. Oil, gas, coal and nuclear energy fuel our Nation. In fact, half of our of our Nation's electricity is generated in powerplants that burn coal, 20 percent of our Nation's electricity is nuclear powered, and 18 percent of America's lights are turned on by natural gas.

Specifically, New Jersey generates 37 percent of its energy from coal, 17 percent from nuclear energy, another 17 percent from natural gas, 15 percent from oil, 5 percent from hydroelectric energy and 1 percent from other sources.

In recent weeks, New Jersey was reported to have one of the highest heating oil prices at $1.45 a gallon, while at the same time homeowners are expected to pay an average of $841 to heat their homes with natural gas this winter.

Clearly, we must all share the goal of energy conservation. To keep our prices down, we must be smarter and more efficient about the way we produce and consume energy.

Mr. Speaker, we need to pass this energy package to strengthen our national security by reducing dependence on foreign energy sources. Our Nation has become dangerously dependent on foreign sources of oil, especially since America imports 60 percent of the oil we use from other countries including nearly 20 percent from Persian Gulf countries and 40 percent from OPEC countries as well as Canada and Venezuela.

We need to pass this package so that we can increase funding for programs to help low-income residents over their high energy costs. At the present time, it is estimated that the Northeast Heating Oil Reserve's maximum inventory of heating oil is 2 million barrels. The Department of Energy believes that this reserve will provide relief from weather-related shortages from approximately 10 days, which is just enough time for ships to bring heating oil from the Gulf of Mexico to our New Jersey/New York Harbor. To protect against the risk of empty oil barrels, especially as we approach the winter season, we need to pass this legislation so that New Jersey's low-income families do not have to choose between heating their homes and putting food on the table. They need immediate assistance to overcome the burden of rising energy costs.

In direct response to August's blackout, we also need to modernize our electrical infrastructure. This legislation contains important measures to help attract new investment into the industry and ensure the reliability of our Nation's electricity grid. It provides for enforceable mandatory reliability standards, incentives for transmission grid improvement and reforms of transmission rules.

Mr. Speaker, there is no doubt about it that we need a stronger and more stable supply of energy. By passing this energy plan we can upgrade our electrical grids, develop new techniques for energy efficiency, increase domestic production and ultimately create hundreds of thousands new jobs.

But more than anything else, we can provide Americans with a more steady and reliable stream of power and help them pay less in their electric bills.

It has been 11 years since Congress has sent an energy bill to the White House. That's 11 years too long. And now the August blackout has only crystallized the urgent need for action.

We cannot afford to wait any longer. The stakes are too high.

I strongly urge the passage of this energy package.

Mr. COOPER. Mr. Speaker, I have a particular interest in the provisions of the Energy Bill Conference Report regarding modernizing the management structure of the Tennessee Valley Authority, in Title XIV Miscellaneous, Subtitle C, of H.R. 6.

Senator FRIST introduced a version of these changes earlier this year (S. 1351), and I introduced my own version (H.R. 3044) several months later. The two bills were substantially similar.

I was very disturbed to discover that two key provisions that had been in both Senator FRIST's and my bills have been omitted in the Energy Bill Conference Report. These provisions concern the intended bipartisan nature of the new nine-member board—no more than five members of one party, and four of the other, and the requirement that prospective board members believe in the mission of TVA, as described in the TVA Act. Without these key provisions, modernizing the TVA board could become, at worst, and entirely partisan enterprise and/or an effort to privatize TVA or disrupt TVA's historic mission.

Due to the last minute drafting of this legislation, and the waiving of the customary 3-day layover rule for such bills to be studied carefully by members, which I just voted against an hour ago, mistakes like this have been made. I was not a member of the Conference Committee and had no access to the drafting of the language, and was only given a copy of the language less than an hour ago. This hurried legislative process is an outrage and deprives both parties the ability to have properly drafted legislation. I intend to work with my colleagues to remedy these errors of omission so that the original language and intent of Senator FRIST's and my legislation can be restored to the bill.

In the meantime, it is important for all participants in the board modernizing process to honor the omitted provisions so that there is no danger of partisanship on the board, or of damage to TVA's historic mission. I will be watching very carefully in order to protect the interest of TVA ratepayers.

Mr. VAN HOLLEN. Mr. Speaker, I rise in strong opposition to the energy bill now before us. It has been said that the end depends upon the beginning—and that has never been more true than it is with this final conference report.

It is worth remembering that this initiative began with the now infamous series of secret meetings between Vice President CHENEY and his well-connected energy industry lobbyist friends. As a result of those meetings, the Bush administration's initial proposal called for $10 billion of taxpayer giveaways to the fossil fuel and nuclear industries. Now, after shutting duly appointed Democratic conferees out of the negotiating room, that number has apparently ballooned to over $20 billion.

So much for fiscal discipline.

The proponents of this legislation like to use words like balanced. For most Americans, the word balanced means roughly equally divided. Between, say, production and conservation. Or fossil fuels and renewables. Or where we are, and where we want to be.

By any reasonable measure, this bill fails that test. In fact, this conference report provides an estimated $3 in tax credits to the fossil fuel and nuclear industries for every $1 it allocates to renewables and energy efficiency.

So much for balance.

Another claim being made by proponents of this bill is that it will create jobs. We do need to create new jobs—especially after this administration's economic performance. But throwing a hodge-podge of special interest tax breaks together and calling it a jobs package is simply not a substitute for sound economic policy—and it won't retrieve the 1.7 million jobs that have been lost since President Bush took office.

Which is a shame. Because the right energy bill—one that gives the United States the competitive advantage we really ought to have in the renewable energy and green technologies of the 21st century—would provided a massive boost to the economy, creating up to two million good, high-skilled, high-wage manufacturing, installation and servicing jobs. And these are the kind of jobs that won't go overseas.

There's just no reason we should be losing to the Japanese on hybrid cars, or to the Danes on wind turbines, or to the Germans on solar PV. We should be the dominant leader in the world on all these technologies. And if we were, we'd be cleaning up the environment, enhancing our national security, gaining our energy independence and revitalizing our economy—instead of debating this 1,200 page missed opportunity.

The truth is, Mr. Speaker, the legislation before us is long on unwarranted, special interest goodies for the oil and gas industries. And it falls woefully short on needed investments in the renewable, nonpolluting energy technologies of the future.

Instead of a national Renewable Portfolio Standard, we have increased reliance on fossil fuels. Instead of improved automobile efficiency, we have a weakening of the Clean Air Act. Instead of aggressive action to curb energy-associated pollution, we have a liability shield for the polluters.

The American people deserve an energy policy worthy of the promise and challenges of the 21st century. We need to reduce our reliance on foreign oil and develop clean, less polluting energy sources. This is not that policy. Let's go back to the drawing board and develop an energy policy that reflects the public interest, rather than the special interests.

Mr. NUSSLE. Mr. Speaker, as I communicate with Iowans, they often share their concern about our country's economic vulnerability in regard to its energy supply. Spikes in oil and gas prices, high utility costs and the dangers of a heavy reliance on foreign suppliers have a very real impact on our rural economy and Iowans' family budgets.

I rise today to express my support for the long-awaited, comprehensive energy policy legislation.

America's long-term national energy policies must include a focus on developing the renewable sources of energy that can be produced in this country. This energy bill makes farmers in Iowa and other States part of the solution by moving the Nation toward a common-sense future that is less dependent on fossil-based sources of energy. With the establishment of an overall Renewable Fuels Standard for motor fuels, significant portions of all U.S. gasoline will be required to contain renewable fuel content, including ethanol and biodiesel. This provision alone will create more than 200,000 jobs over the next decade.

The bill goes well beyond previous efforts to promote value-added agriculture by streamlining and making new incentives for ethanol production as well as creating a new tax credit for biodiesel production. This legislation simplifies a very complicated tax system for Iowa's ethanol producers and taxpayers while ensuring these payments are properly credited toward vital transportation priorities. These tax reforms are significant developments for Iowa's future because they promote the development of small ethanol cooperatives, create value-added business opportunities, and ensure the long-term future of Iowa's transportation needs.

The bill also supports enhanced energy efficiency and conservation, environmental protection measures and domestic production. Consumers will be encouraged to purchase more fuel-efficient automobiles and make sensible home improvements. New, advanced environmentally friendly technologies will be promoted. In addition, electricity generation and transmission will be strengthened to help rural electric cooperatives and public and private utilities provide affordable electricity to their customers.

My support for the bill is somewhat tempered by the recognition that it exceeds the spending limits established by the fiscal year 2004 budget resolution. I believe that many of the key objectives of this bill could have been realized within the confines of the budget resolution. By contrast, the tax provisions, while significant in cost, are fully consistent with the revenue levels established by this year's budget.

Mr. Speaker, I believe that the Energy Policy Act represents impressive progress toward a balanced, long-term energy policy to reduce our reliance on foreign oil, stabilize prices for consumers and stimulate our economy. I am particularly proud of the renewable energy provisions in this bill and urge my colleagues to join me in approving this significant legislation.

Mr. STENHOLM. Mr. Speaker, today, I rise in support of H.R. 6; the energy bill that America has waited so long for. Like the original House version of this legislation, I intend to support the conference report on the floor today.

I truly believe this legislation provides the proper framework to diversify America's fuel sources. As Ranking Member on the House Agriculture Committee, I'm glad that there are greater incentives for increased production of ethanol. I'm glad to see production tax credits for wind energy, solar, biomass and nuclear electricity generation. Diversification of our nation's energy sources will help us meet our goal of reducing our dependence on foreign sources of fuel.

More importantly, this energy bill provides the right tools for independent oil and gas producers to continue producing from our own fields. I've been fighting for these measures for years, and I'm glad Congress is finally going to implement them. The time is long overdue for Congress to recognize the importance for America to decrease our use of oil and gas from foreign countries and to capitalize on the resources beneath our own soil. And, contrary to what many groups will lead us to conclude, we can drill for oil and gas without doing damage to our environment. Former Texas Senator Lloyd Bentsen once said that when America imported more than half of its crude and petroleum products, it would have reached a point of peril. Friends and colleagues, we have reached that point.

Although I intend to support this legislation, I must express my extreme disappointment of the process in which this bill was considered. I have worked for years in Congress to promote equality and bipartisanship in this great institution. However, this bill was written behind closed doors with no input from the public. Unfortunately, my Democratic colleagues were not given the opportunity to offer significant amendments to the legislation. This legislation isn't perfect, and it could have been improved significantly if my colleagues were allowed to bring their ideas to the negotiating table.

Mr. KIND. Mr. Speaker, as ranking member of the Subcommittee on Energy and Minerals Resources of the Committee on Resources, I rise in disappointed opposition to H.R. 6.

Like my friend and colleague, Mr. DINGELL, I too was a conferee "in name only" on a bill that should have been—and could have been—a comprehensive and balanced plan for our Nation to meet its short and long term energy needs.

The centerpiece of this atrocious energy bill is a multi-billion dollar package of tax breaks and incentives designed to slant the market in favor of fossil fuel industries, and away from meaningful reform through the development of safe, clean and renewable alternatives. Should this bill pass, the Republican leadership will have locked the American economy into the old energy regime for most of the 21st century, with dire environmental and global security consequences.

Current provisions of the bill offer an inexcusably watered down version of the renewable energy production incentives program for solar, wind and geothermal energy, with meager and uncertain monetary incentives, barely reaching $5 million per year, providing little impetus for installing new capacity and unlikely to affect investments in renewable energy in any meaningful way. In addition, conservation efforts, such as mandating the reduction of one million barrels of oil per day by the year 2013, as the other body had approved on a vote of 99–1, was simply left out of the Republican planning.

The few good provisions of the bill, like the renewable fuel standards provision and its potential to aid our Nation's struggling family farmers, have been suffocated by the bloated excess and taxpayer-funded subsidies for some of our Nation's largest oil and gas companies.

Mr. Speaker, when the House considered the energy bill this past spring, I led an effort to stop the Federal Government from providing "royalty relief" for multi-billion dollar oil companies such as Exxon Mobil and Chevron Texaco operating on public lands and in coastal waters. This "royalty holiday" was once characterized as "giving major oil companies a huge tax break" by a candidate for the 2000 presidential election . . . No, not Al Gore but George W. Bush.

So what happened to that assessment? How can President Bush now support a bill that not only contains this very same taxpayer funded giveaway to some of the biggest oil companies in the world—already swimming in huge profits—but a bill that actually expands them?

Unfortunately, the House-passed oil and gas incentive provisions were scored by CBO and projected to reduce the Federal revenues by $20 billion over ten years. The total cost of this bill is $141 billion and it is not paid for. It will be added to historically larger budget deficits for many years.

Mr. Speaker, our Nation is facing huge structural budget deficits, escalating war costs and a sluggish economy. We simply cannot afford to open our checkbook and spend the American taxpayers' money to subsidize industries to do what their business plan would have them do anyway—explore and produce domestic energy sources if it is cost effective to do so.

Mr. PAUL. Mr. Speaker, today we are once again voting to take our Nation further down the path toward a system of centralized Federal planning of our energy supply. The very notion of a national energy policy is collectivist; it assumes that an energy supply would not exist without a government plan. Yet basic economics teaches us that nothing could be further from the truth.

The best energy policy is the free market! Energy is no different than any other commodity—free market, competition produces the most efficient allocation of resources. In a true free market, conservation of scarce energy resources occurs naturally. When coal, natural gas, or other nonrenewable sources are depleted, the price goes up. When alternative energy sources like wind and solar become economically feasible, demand for such sources arises naturally. There is always a natural market for clean and cheap energy. Only an unregulated free market creates the environment that allows critical technological innovation to flourish, innovation that holds the key to cheaper and cleaner energy.

The approach we take today, however, distorts the market and favors certain industries and companies at the expense of American taxpayers.

It's always the same old story in Washington: instead of allowing the free market to work, Congress regulates, subsidizes, and taxes an industry, and when inevitable problems arise, the free market is blamed! The solution is always more Federal intervention; no one suggests that too much Federal involvement created the problems in the first place.

Let me provide just a few examples of the most egregious, wasteful spending measures and corporate subsidies contained in this legislation: It spends even more than the President requested; it provides $90 million in subsidies for hydroelectric power plants; it provides $500 million for research and development of Biomass; it authorizes almost $2 billion for the Energy Department to do what the private sector would if it was profitable—develop hydrogen cars; it allows FERC to use eminent domain to ride roughshod over State and local governments; it increases failed ethanol subsidies to favored agribusiness companies, while providing liability protection for those companies; it requires States to reduce energy consumption by 25 percent in 2010, including States with growing populations like Texas; it forces taxpayers to guarantee loans for pipeline projects, despite the easy availability of cheap credit; it spends $20 million for the Labor Department to recruit and train Alaskan employees to build a new pipeline; and it authorizes the Energy Department to create efficiency standards for vending machines!

Mr. Speaker, this conference report represents the usual pork, subsidies, protectionism, and regulations that already distort our energy markets. I strongly urge my colleagues to vote "no" on this terrible bill.

Ms. DELAURO. Mr. Speaker, in the more than thirteen years that I have been honored to serve in this distinguished institution, I have never seen a piece of legislation less crafted with the public interest in mind than the one we discuss today—the Energy Policy Conference Report (H.R. 6). It consists entirely of subsidies to corporations and rollbacks of environmental protection laws. it is a virtual grab-bag of giveaways to corporate interests.

To say nothing of the severe public health threat posed as a result of the environmental exemptions included in the bill affecting the air we breathe and the water we drink, I would specifically like to raise my strong opposition to two provisions that exemplify the special interest giveaways in this twelve hundred-plus page bill. The first permits a controversial Long Island Sound energy cable, entitled the Cross Sound Cable, to stay activated despite being found in violation of both state and federal permits. The language, listed under Title XIV, Sec. 1441 of Subtitle D, was slipped into the bill by the energy company's newly hired lobbyist, former New York Senator Alfonse D'Amato, and would allow the Cross Sound Cable to remain activated unless rescinded by an act of Congress. It disregards pending litigation by the Connecticut Attorney General pertaining to the safety of the cable and trumping the regulatory authority of Connecticut and the Army Corps of Engineers, which together govern the installation of such transmission cables.

Also included in this bill, under Title XIV, Sec. 1442 of Subtitle D, is a provision, which subordinates all state and federal agencies to the authority of the Federal Energy Regulatory Commission when it comes to the laying of natural gas pipelines. The language would pave the way for the construction of the Islander East gas pipeline across Long Island Sound, stretching from Branford, Connecticut and Shoreham, New York. As a result of this controversial provision that will have wide implications on the construction and appeals of all natural gas pipelines, the Islander East pipeline will be installed over and above the objections of the Army Corps of Engineers and the Connecticut Department of Environmental Protection.

These provisions disregard the needs of our state's economy, our environment and the voices of millions of Connecticut citizens who are directly affected by these provisions. The Republican leadership and high-priced corporate lobbyists have determined that they—and not Connecticut's citizens or elected officials—know what is best for our state.

This is a disgraceful giveaway to special interests at the expense of citizens in my state, and I urge my colleagues to oppose this bill.

Mr. OBERSTAR. Mr. Speaker, I rise in opposition to the Energy Conference Report. As a Member of the Energy Conference, I am exceedingly disappointed that the Conference was not conducted in a bipartisan fashion. Instead, conference meetings were held behind closed doors with only a select group of Republican House and Senate Members in attendance. As a result of this secretiveness, the Conference squandered an opportunity to craft meaningful, forward-looking energy legislation that could be supported by both sides of the aisle.

House and Senate conferees at long last met yesterday evening, although it was more for show and tell than for a substantive debate on the conference report. Amendments to the report were offered by Democrats and were defeated strictly on party-line votes. The conference meeting was an event patently designed for Republicans to be able to say that they held a meeting of conferees and that they made an attempt—no matter how hollow—at bipartisanship. While the argument that conferees did meet might be persuasive to those unfamiliar with the legislative process, I have served on many conference committees and I know how a true conference is conducted.

A conference of real inclusiveness is one in which Members from both bodies and from both sides of the aisle meet to discuss ideas, exchange views, and make adjustments to their respective positions. Proceeding title-by-title, section-by-section, and line-by-line, conferees adapt the legislation to reflect a broad consensus of views that serve the entire country in ways that neither the House nor Senate bill standing alone would have done. The Energy Bill was never subjected to that test of a true conference. Instead, the bill was crafted by a very small number of partisans in both the House and Senate who, it seems, did not even include a majority of conferees from their own side of the aisle. The result is a bill that tilts egregiously on the side of corporate America and the already privileged.

The number of offensive provisions littered throughout the bill are simply too many to enumerate, so I will highlight just a few examples.

Section 328 of the Conference Report exempts the oil and gas industry from complying with the Clean Water Act's stormwater permitting requirements for construction activities. This provision makes oil and gas exploration the only construction activity not subject to Clean Water Act requirements. It is a complete, unprecedented end-run around one of our Nation's most successful environmental laws, and was written into this legislation without the benefit of public hearings or testimony on the provision.

Section 756(c) of the conference report allows a 250-pound increase in the weight of some heavy trucks, purportedly to provide incentives for trucking companies to utilize a certain type of idle reduction technology. While I support the environmental benefits of reducing truck idling, I cannot support an increase in truck weights that will inflict further damage upon the highway infrastructure and threaten the safety of the driving public. At a time when states are searching for the funds necessary to fix roads that are worn to the point of being unsafe, this provision will increase the stress on our Nation's highway infrastructure, costing taxpayers approximately $300 million each year in increased highway damage. Further, this exemption is unnecessary. The industry's own figures show that idling reduction technologies pay for themselves in reduced fuel costs in approximately two years.

Section 1502 provides special protection for MTBE (Methyl Tertiary Butyl Ether) producers from liability associated with clean up costs and damages caused by MTBE contamination of groundwater. MTBE is a gasoline additive that helps make gas burn cleaner and reduces air pollution, but it also becomes a suspected carcinogen that can contaminate groundwater and surface water. As a result of this special interest provision, taxpayers will be forced to pay the estimated $29 billion cost of cleaning MTBE-contaminated water across the country.

Section 326 establishes a dangerous precedent under the National Environmental Policy Act (NEPA) by authorizing the federal government to reimburse oil and gas companies for the costs of undertaking environmental impact analyses relating to oil and gas leasing. This provision, in combination with a similar provision for geothermal energy, is estimated to cost taxpayers $165 million over the next ten years.

The Conference Report does nothing to increase the average fuel economy standards. One way to ensure that we decrease our dependence on foreign oil it to increase the number of miles per gallon achieved by our cars, trucks, and sport utility vehicles. However, this massive legislation does nothing to address this issue and simply leaves in place the status quo.

The Conference Report contains tax subsidies of approximately $23.5 billion to energy industries—over half of that amount ($119 billion) goes to oil and gas companies. At a time when our country is facing debilitating deficits, there are no offsets to pay for the cost of these enormous tax breaks for energy industries.

These provisions demonstrate the dangers of writing such an expansive bill without allowing participation by all parties. But as we know, not all conferees were allowed to participate in conference meetings. It is a shame that the Republican majority chose to proceed in this manner because there are some promising provisions in this bill that could begin to move this country in the right direction, such as a provision to equip public buildings with photovoltaic solar energy systems and a provision to promote fuel conservation by encouraging bicycling instead of driving. Not surprisingly, these provisions were adopted from Democratic amendments that my colleagues and I offered on the floor of the House during consideration of H.R. 6 last April. If the conference process had been open to Democrats, I am confident that we could have seen more of these forward-looking provisions in the bill.

But the few positive provisions in the conference report are overwhelmingly outweighed by the many special interest provisions in the bill designed to benefit some large energy corporations at the expense of the American public. When the voice of the Minority is silenced, as it has been these past few months, the result is a misguided policy that benefits the few, not the broad national energy policy that this country needs and which the American people deserve.

Mr. DAVIS of Illinois. Mr. Speaker, I rise today in opposition to H.R. 6, the Energy bill that is before us today. I am against this bill due to repealing of provisions that will continue and empower the Enron's of tomorrow and will make our drinking water and air over time unsafe. However, with every bad, I believe there is some good.

Although I realize LIHEAP will be funded under the Labor-HHS Appropriations, I wanted to take a minute to mention section 121 under subtitle B in this bill. I am particularly happy with the amount of $3.4 Billion for each of fiscal years 2004 through 2006 considering that the Appropriations Committee proposed funding LIHEAP at $1.8 billion, which was $200 million less than the President's budget request. We can not let LIHEAP sustain any cuts at a time when projections predict that natural gas prices will be at least 50 percent higher in the coming winter as more than half of LIHEAP recipients rely on natural gas. Last year in Chicago, LIHEAP provided grants averaging $430 per household. No one should have to suffer from the cold this winter.

I am committed to ensuring that our low-income families do not have to rely on their oven or stove or a space heater to stay warm during the winter months.

Unfortunately, Mr. Speaker, this bill does more damage than good for our energy resources, energy usage, and to our environment.

Ms. SLAUGHTER. Mr. Speaker, I ask unanimous consent to revise and extend my remarks. I rise to express my opposition to this energy bill, which backfires on our responsibility to pass a balanced energy bill.

Let me be clear, you should support this bill only if you thought the Cheney Energy Task Force report was a balanced solution to our nation's energy problems, because this bill is more of the same. Since we got a copy of this bill at 3:30 a.m. this morning, I cannot be sure of all the special interest provisions in this 1,700 page bill. However, I do know that it is harmful for national security, harmful for consumers, and harmful for the environment. Here are just some of the highlights:

The bill seems to be a throw back to the nation's 1950s energy policy. It fails to include standards for providing clean, renewable energy sources that would save consumers money on their utility bills, create jobs, reduce air pollution, and global warming emissions. Instead, this energy bill relies on tax breaks and subsidies for big energy companies. According to the Congressional Budget Office, the bill's price tag exceeds $50 billion over the next decade, adding $18 billion to the deficit. It would give away $3.7 billion to coal-based technology and $6 billion to new nuclear power companies to name a few.

We are missing an opportunity to craft an energy bill that relies on energy efficiency and renewable energy sources instead of fossil fuels. Unlike this bill on the floor today, a bill that supported renewable energy would create four times as many jobs without adding to the deficit, not to mention improving our air and water.

Unfortunately, instead of reducing our dependence on foreign oil, this legislation would actually increase our dependence by creating more hurdles to raising the fuel economy standards for cars and trucks. On top of not addressing the biggest source of air pollution, the bill preserves the $100,000 tax write-off, which professionals can use to purchase Hummers. The Hummer H2 has the unbelievably low fuel efficiency of 10 miles per gallon. While this vehicle does comply with 1950s fuel standards, that is not good enough given the latest research with global warming and technological advances.

Beyond the pollution created by vehicle emissions, my district in Upstate New York, like many communities, has been the unfortunate beneficiary of bad air quality that has been transported from other parts of the country. This bill will not help. In fact, it would greatly compromise the quality of air we breathe by loosening the ozone standards. The bill would allow communities not in compliance with the ozone standards to get more time to clean up without having to implement strong air pollution controls, placing a significant burden on states and communities downwind of these urban areas. However, this bill does not stop at creating loopholes for clean air.

As I discussed in an earlier floor statement today, I am particularly troubled that this bill lets producers off the hook for contaminating groundwater with the gasoline additive, MTBE, a probable human carcinogen. In addition to forcing taxpayers to assume an estimated $29 billion in cleanup costs, it also contains language preventing lawsuits against the industry. As if that was not enough of a break, the bill would also give the industry nearly $2 billion for transition costs, and allow the President or any state to opt out of the MTBE phase out. As a Member representing a state that has found drinking water contaminated with MTBE, this is unconscionable.

So from the details in the bill that I know, we are voting today on an expensive bill with $115 billion in industry givebacks, including $20 billion in direct tax incentives, with only 20 percent of that money going to renewable energy sources, and a bill that roll backs environmental protections. The bill does not save one drop of oil, or value public health and fiscal responsibility. For these reasons, I am forced to vote against H.R. 6.

Mr. SIMMONS. Mr. Speaker, I rise today in support of H.R. 6, the "Energy Policy Act of 2003." H.R. 6 is a critically important piece of legislation that will provide a strong, comprehensive national energy policy that promotes conservation, alternative fuels and technologies, in conjunction with maintaining sound environmental practices.

My constituents in eastern Connecticut support an energy policy that reflects America's 21st century values, its technology and certainly our homeland security needs. My constituents expect Congress to put forth an energy bill that advances a balanced approach to energy production and use by encouraging a responsible, diverse mix of energy sources and options along with a significant investment in conservation and increased efficiency. The Energy Policy Act before this body today does all this by charting a path toward increased energy security and a cleaner environment—in short: secure, reliable, affordable energy for all Americans in a growing economy.

This conference report provides $3.4 billion in LIHEAP funding, including $70 million for Connecticut. These dollars will keep our elderly and poor warm this winter and they need our help.

My home State is known as the "fuel cell Capital of the World." H.R. 6 provides $1.8 billion in R&D funds for fuel cell research, allowing Connecticut to continue to be on the cutting edge of alternative fuel development. The measure puts forth $325 million for the next 3 years for State energy conservation programs; $2.9 billion over the next 5 years for renewable energy research and development; and $2.5 billion over the next 10 years to develop "clean coal" technology.

For our Nation's security, H.R. 6 provides $1.5 billion for the Strategic Petroleum Reserve, expanding the Reserve from 700 million to 1 million barrels. Given the instability of the Middle East, this is a prudent energy security move.

Today's bill also includes bipartisan reauthorization of the Price-Anderson Act, which provides insurance in the case of a nuclear accident. The measure contains a number of provisions aimed at enhancing the security of commercial nuclear reactors, including a directive that the president prepare a study of potential threats, authorization to perform background checks on employees, a requirement that the Nuclear Regulatory Commission consult with the Homeland Security Department before issuing a license, and authorization for the commission to allow its employees and the employees of certain contractors and subcontractors engaged in the protection of nuclear facilities to carry firearms. These provisions are particularly important to my district, which relies heavily on nuclear power and is home to all of Connecticut's nuclear power plants; two fully operational and two decommissioned.

Legislation before the House today places our Nation on a forward path toward stronger and more reliable electricity markets. H.R. 6 is a far-reaching, long-term energy policy that will improve the security and reliability of our nation's energy supply in the following ways: it will increase transmission capacity; it will improve the operation of existing transmission and it will make wholesale competition even more successful than it currently is today.

Finally, the bill prohibits opening the Arctic National Wildlife Refuge to drilling and prohibits oil and gas exploration in the Great Lakes. As a life member of the Sierra Club, I am pleased with these prohibitions.

This being said, however, there is one provision I am extremely disappointed was included in the final product. It concerns a 24-mile cable that runs between new Haven, Connecticut and the former Shoreham nuclear power plant on eastern Long Island, New York. The state of Connecticut and its congressional delegation has adamantly opposed this provision and objects to its inclusion in the final energy bill. This provision will not preclude me from voting for this bill, but I am upset with its inclusion. Where I come from, we call this "swallowing a rat," which means taking the bad with the good. I will "swallow the rat" on this provision but I am not happy about it.

Overall, I believe Congress put forth a comprehensive national energy bill. I have long supported finding solutions to the energy crisis that strike a proper balance between conservation and production. I believe that the conference report to The Energy Policy Act of 2003 represents a long-term energy policy that will improve the security, reliability and affordability of our nation's energy supply.

I urge my colleagues to support its passage.

Mr. McDERMOTT. Mr. Speaker, in the midst of a record Federal budget deficit during a time of war, the House today is considering a $23.5 billion tax cut, the overwhelming bulk of which will be enjoyed by oil, gas, and other traditional energy companies.

Sometimes tax incentives can be a valuable tool to help spur innovations in the energy sector. This bill, however, merely provides expensive incentives for the status quo that has only increased our reliance on oil that comes from Middle East monarchies that control the price of our oil through a global cartel.

Even though Republicans argue about the merits of free market competition, the Republicans-controlled House is about to pass a 1000 page measure created behind closed doors with energy industry executives that would provide billions of dollars in Federal subsidies to oil, coal, and nuclear energy companies. These benefits are provided at a time when the price of oil per barrel is over $30, a price that yields generous profits for oil companies.

Never before has our nation cut taxes in a time of war. We didn't cut taxes during the Civil War, either of the World Wars, Korea or Vietnam. Despite our deteriorating fiscal situation, the burgeoning budget deficit, and escalated costs and casualties in Iraq, the Bush Administration and the Bush Congress is intent on sacking our children and grandchildren with an additional $23.5 billion in government debt.

In addition to my budget concerns, this bill erodes laws that protect our environment. The quality of the air that we breathe and the water we drink will be worse tomorrow than it is today, if the Congress adopts this Republican-authored bill.

This bill would roll back portions of the Clean Air Act to allow certain cities to ignore air quality standards.

It would exempt construction at oil and gas company sites from rules on wastewater runoff designed to protect our lakes, rivers, and streams.

It provides a waiver of liability for producers of MTBE, a gasoline additive that has contaminated the drinking water of countless American communities. This waiver, which is sought by Republican Majority Leader, TOM DELAY, would shift the cost of MTBE cleanup from its producers to its taxpayers.

Mr. Speaker, I can create a list as long as my arm detailing the poor policy choices embodies in this energy measure. I urge my colleagues to vote against it.

Mr. UDALL of New Mexico. Mr. Speaker, I rise today in strong opposition to this conference report. In this bill, the most significant energy legislation in 10 years, we had the chance to craft a smart, forward-looking, efficient energy policy. Unfortunately, the 1700-page bill, which costs $140 billion and includes over $23 billion in giveaways, repeals crucial consumer protections, and fails to address global warming and our nation's dependence on foreign oil, is not what I envision as twenty-first century energy policy.

I regret that Senator BINGAMAN's renewable portfolio standard provision was deleted by the conferees. Everyone in my state of New Mexico knows that expanding clean, renewable energy has amazing economic potential for our State, and the country. 1.4 million jobs could be created with a sound renewable energy plan, according to the Economic Policy Institute. Moreover, the lack of a renewable energy plan does nothing to address our dependence on foreign sources of oil, and the national security implications are astounding. I will continue to push my renewable portfolio standard legislation as a stand-alone bill next year.

I am also disappointed that the dangerous uranium provision that may be harmful to my constituents in northwest New Mexico, including many members of the Navajo Nation, stayed in the final bill. Don't let the red herring exemption for New Mexico fool you—since corporate funds are fungible, any monies a corporation may receive to conduct this type of mining will release other funds to conduct this dangerous technique anywhere. I will work with others to minimize the harm caused by this needless subsidy.

Adding to the list of bad provisions, this bill lets polluters off the hook for contaminating groundwater with MTBE, and allows other companies to produce more smog pollution that the Clean Air Act authorizes. It also dramatically increases the potential for global warming by offering huge incentives for burning coal, oil, and gas. In essence the bill reverses "polluter pays."

I am thankful for the few provisions in this bill that will be beneficial to my constituents and for our environment and economy. The electricity title does contain some provisions that are beneficial to the rural electric cooperatives in my district. In addition, I am pleased with efforts in the bill to advance the Federal government toward increased energy efficiency, such as the goal of a 20 percent reduction in Federal building energy use by 2013, and funds directed to solar programs with the goal of installing 20,000 solar roof-top systems in federal buildings by 2010. However, weighing the few good provisions with the many bad provisions, I am unable to support the final bill.

Most of all, I am disappointed by the process by which this bill was negotiated. The saying is that no one wants to see the process of making laws or sausage. Unfortunately, Democrats weren't even given the choice. We were repeatedly ignored as Republicans met behind closed doors. The expertise and input of Democrats could have made this a better bill. I hope as we move forward on other conference reports the majority will allow other voices to be heard.

I oppose this conference report and I urge my colleagues to do the same.

Thank you, Mr. Speaker.

Mr. LANTOS. Mr. Speaker, although I am unable to be present for the final vote on the Conference Report on H.R. 6 because of a long-standing commitment, I want to voice my very strong opposition to H.R. 6, the Energy Policy Act of 2003.

Mr. Speaker, only in a one-party process is such a one-sided and ill-conceived bill possible. By excluding Democrats from meaningful participation in the conference committee, the Republican majority has failed to achieve the bipartisan consensus that is necessary to deal with America's real energy security needs.

This bill does little or nothing to help the most populous state in our Nation—my home state of California. I am seriously concerned about the environmental impact of this ill-conceived and one-sided legislation. The bill protects manufacturers of the gasoline additive MTBE that has contaminated water supplies in California. It doubles the subsidy for ethanol, the corn-based anti-pollution gasoline additive that is not particularly helpful in our state. It does little or nothing to protect against an energy crisis such as the one California faced 2 years ago. I am seriously concerned that it opens the door to off-shore drilling in California.

Mr. Speaker, this bill fails to reduce our dependence on foreign oil, and it fails to provide sufficient help for conservation or alternative energy development. In the end, I believe that the only beneficiaries are the oil and gas interests which are slated to receive increased subsidies, not the American consumer that needs help the most. Once again the Republicans in this House are selling out the American consumer in order to benefit their friends in Big Oil and the gas industry.

Ms. WATSON. Mr. Speaker, I rise today to strongly urge my colleagues to vote against the final conference report for H.R. 6.—The Energy Policy Act of 2003.

Just like the medicare prescription drug bill that we will be considering later this week, the latest energy plan is nothing but a big giveaway for this Administration's special-interest friends and will cost our taxpayers over $137 billion.

In fact, the $100 billion tax breaks contained in the energy bill do very little to strengthen our Nation's energy policy. More than a quarter of the tax breaks and incentives in this bill go directly to the oil and gas industry, many of which are the biggest contributors to this President's re-election campaign. These tax breaks will cause our consumers over $6.9 billion due to increases in fuel prices.

What is left are few incentives to encourage energy conservation and very little support for exploring alternative sources of fuel. Even worse, MTBE manufacturers that have caused major water contamination problems throughout my state of California are shielded from product liability lawsuits.

When the bill was first on the floor in April, I protested that the electricity provisions would do little to provide significant new oversight protections to prevent the type of market manipulation that contributed to California's energy crisis 2 years ago. To my astonishment, the final electricity provision in the conference report is even worse. There are nothing but confusing and contradicting provisions on the development of the electricity grid. Moreover, states are allowed to play only a minimal role in determining the location of new pipelines and transmission lines.

The new energy plan is a disastrous special-interest reward to this Administration's polluter friends and does nothing to stimulate our stagnant economy and create jobs.

It lays out no vision for the future of our energy policy and provides no relief for my home state of California as well as the rest of the nation. I strongly urge my colleagues to defeat this conference report and allow both minority and majority sides the opportunity to formulate a better Energy bill for our citizens.

Mr. HOLT. Mr. Speaker, I rise in opposition to the energy conference agreement that has been brought to the House floor today.

As an energy scientist who spent nearly a decade working at one of the nation's premiere alternative energy research labs, I have worked in Congress to help craft a strategy that will provide real energy security for central New Jersey residents and the United States. That's why Congress should focus on the development of better ways to produce and use energy, including fuel cells, wind power, and fusion. We can fulfill the energy needs of a growing economy without compromising our national security interests or devastating our environment.

Unfortunately, rather than leading us into a secure energy future with a lower dependence on foreign oil, this bill merely subsidizes oil and gas companies to do more drilling—a short-term, ineffective solution.

Before I go into greater detail about my reasons for opposing this bill, I want to mention that I am pleased to see that provisions opening the Arctic National Wildlife Refuge to harmful oil and gas drilling have been removed. This misguided policy would have sacrificed one of our most precious public lands for a minimal amount of resources.

What most concerns me about this bill, however, are provisions that will cause unnecessary harm to our environment while doing little to move this country towards a sustainable energy future. This is not an energy blueprint; it is a clumsy collection of special interest goodies.

I am most concerned about provisions that will affect the Jersey Shore, where the environment means a great deal to the local economy. While I am pleased to see that the conferees rejected a provision what would undo the moratorium on outer continental shelf oil and gas exploration, it seems they are still trying to do the same thing in a much more nefarious fashion. By mandating a "study" of ways to prevent natural gas shortages by estimating holdings in areas currently off-limits, this bill could in effect open OCS areas to damaging seismic exploration.

Other provisions affecting the Jersey shore include giving the Secretary of Interior Czar-like authority to permit energy projects in the OCS, weakening the Coastal Zone Management Act to undermine states' abilities to protect their own coastal environments, and exempting oil and gas construction from stormwater provisions of the Clean Water Act.

New Jersey also has the dubious distinction of having some of the worst air quality in the nation. but it's not completely our fault—prevailing winds carry pollution from the Midwest to our state, causing more asthma, emphysema, and premature death. That's why I am alarmed to see that right after the Bush administration relaxed Clean Air rules, the conferees have given certain cities a free pass to continue to avoid meeting other clean air requirements enforced by the EPA. This hurts residents of the affected cities and of my central New Jersey district—and certainly doesn't help address our energy problems.

This conference agreement also sets a dangerous precedent—that the primary use of our public lands should be oil and gas drilling or coal mining. Mr. Speaker, my constituents own these public lands just as much as any other American, and I'm quite sure most of them believe that we need a much more balanced approach to the use of our public lands.

Finally, this bill is notable for a few glaring omissions. First, it contains no renewable portfolio standard, a provision that would actually move our country towards a sustainable energy future by increasing our reliance on renewable energy. It contains pitiful levels of incentives for creating new renewable energy sources. It also fails to close the SUV loophole, a shameful part of our tax code that gives the wealthy tremendous incentives to continue buying the largest and most inefficient vehicles on the road.

What's worse, the bill does virtually nothing to reduce our prodigious dependence on oil. At a time when it is clear that our dependence on foreign oil affects national security and it is apparent we will never drill our way to independence domestically, we have an energy bill that refuses to mandate greater efficiency. Not only are there no provisions to increase automobile efficiency, this bill could actually undermine current fuel economy standards.

The real failure of the authors of this bill—in their closed, partisan sessions—is that they have not produced an energy bill. We need an energy bill. The country needs an energy bill, one that lays out a rational, coherent energy plan. The world needs us to do this, so that we not foul our earth by the way we produce and use energy. Instead, we get a grab bag of special interest goodies.

Mr. Speaker, I am voting against this conference agreement today because it is the wrong policy for America's future. Rather than leading us into a secure energy future with a lower dependence on foreign oil, this bill merely subsidizes oil and gas companies to do more drilling—a short-term short-sighted solution.

We need a responsible and sustainable approach to addressing our nation's energy needs. On behalf of the residents of the 12th District, I pledge to continue to work towards the development of a balanced, comprehensive energy plan—one that finds environmentally friendly, sustainable ways to decrease our dependence on foreign oil and slow the degradation of our planet.

Mr. WILSON of South Carolina. Mr. Speaker, I rise today to call attention to an issue debated during the Energy Conference, whose time for reform and resolution has come. I am speaking of the Reachback issue, established as part of the Coal Act in the 1992 Energy bill. This insidious tax has caused numerous businesses to fail over the past ten years as a result of its inequitable taking from those that should not have been included in this effort in the first place.

The 1992 Coal Act, as part of the 1992 Energy Policy Act, established the United Mine Workers of America (UMWA) retiree health benefit fund—the Combined Benefit Fund (CBF)—to replace the health care programs that had been created through the collective bargaining process. Not only did the Coal Act require companies who were signatories to the 1988 collective bargaining agreement to pay, but it also retroactively went after companies—referred to as "Reachback" companies—that were no longer in the bituminous coal mining business, and assessed them liability for the CBF. These Reachback Companies did not sign the 1988 or later agreements, which were the contracts that guaranteed lifetime healthcare benefits for retired coal miners. Needless to say, the provisions of the Coal Act that created the Combined Benefit Fund were hastily crafted and rushed into law.

This retroactive "Reachback tax" has been so crippling for a number of these companies that many have ceased to exist, and the very existence of others continues to be threatened. In order to pay this unfair tax, Reachback companies have had to significantly scale back spending on Research and Development, business expansion (jobs), and economic security.

Many of us in the House, during both the 106th and 107th Congress, pursued legislation aimed at solving the Reachback issue in a comprehensive fashion. We took on these efforts in order to create stability and fairness in the Combined Benefit Fund, and to thereby provide a solution that would address the needs of all interested parties.

I urge the Congress to act expeditiously to provide a solution that will permanently resolve this issue.

Ms. KILPATRICK. Mr. Speaker, one Republican more accurately characterized H.R. 6, the Energy Policy Act, as the "No Lobbyist Left Behind bill." This bill gives $20 billion in tax breaks and subsidies to the oil, gas, coal and nuclear industries. No one has had a chance to look over this bill. I read from the papers that the bill is more than 1,700 pages in length. You can believe that there are many provisions contained in this bill that the other side does not want the public to know. So what better way to disguise this bad legislation than by burying it inside of 1700 pages.

This bill is bad for our national security—it facilitates the proliferation of nuclear fuel. It reverses a long-standing prohibition on the reprocessing of spent fuel from commercial reactors. It promotes, through the Department of Energy's Advanced Fuel Cycle Initiative, joint nuclear research efforts with non-weapon states, and encourages the advancement of advanced nuclear weapons systems.

This bill encourages production over conservation. The conservation provisions are estimated to amount to only three months of U.S. energy consumption between now and 2020.

This bill is bad for consumers as it repeals the Public Utility Holding Company Act (PUHCA). The PUHCA protects consumers by limiting the size and scope of utility companies and subjecting utility holding companies to Securities and Exchange Commission (SEC) regulation. PUHCA also required revenues from utility ratepayers to go into electric infrastructure maintenance, instead of risky financial investments like we saw in the Enron case. In fact, it was PUHCA that kept Enron from owning more than one electric utility and prevented their bankruptcy from affecting more utility customers. Repeal of PUHCA would allow venture capitalists to put utility ratepayers into almost anything they wanted.

The conference agreement is also bad for the environment. The bill exempts the construction activities at oil and gas drilling sites from compliance with the Clean Water Act. Clean air requirements are relaxed in order to delay reductions in smog pollution. A process to extract oil and gas trapped underground by injecting chemical solutions is exempted from the Clean Water Act. The ability of States to protect their coasts and beaches from energy development projects is weakened.

A provision inserted by the Republican Leadership exempts manufacturers of MTBE (Methyl Tertiary-Butyl Ether) from liability resulting from ground water contamination. Not only does the bill limit MTBE manufacturers from limited liability but also rewards those companies with $2 billion in Federal aid. So the bill shifts a potential $29 billion clean up cost from MTBE manufacturers to taxpayers and water customers. This bill turns the concept of "the polluter pays" on its head.

Finally, H.R. 6 does little to enhance our domestic energy security and lessen our dependence on foreign oil supplies. America has only 3 percent of the world's oil reserves; whereas, countries affiliated with the Organization of Petroleum Exporting Countries (OPEC) controls more than 70 percent of the world's reserves. As was previously cited in today's debate, America is a technological giant. But instead of investing in our ingenuity to make us a country that is more efficient in its usage of energy resources, this bill assumes we can fulfill our energy needs by drilling for more oil and natural gas supplies and excavating our way to energy independence.

This represents a failed promise for energy consumers. They will be asked to pay more in energy costs as well as provide subsidies to the energy industry. At the same time, Americans are asked to sacrifice their environmental responsibilities and surrender their rights as energy consumers. This is a bad deal for my constituents in Detroit and Southeast Michigan. It is a bad deal for America, and I urge my colleagues to vote down the conference agreement that has been handed to us.

Mr. MATHESON. Mr. Speaker, I rise to support H.R. 6, the Energy Policy Act. I believe that our country needs a balanced, comprehensive national energy policy that promotes short-term and long-term solutions. We need to increase our energy supplies in an environmentally responsible manner, improve energy infrastructure, and invest in research and development. In the short term, we need more supply, more conservation and energy efficiency, and additional transmission lines and pipelines. But equally as important, a forward-thinking, long-term energy strategy requires a strong commitment to the research and development of current and future energy sources and energy-efficient technologies.

My support for this bill is based on these principles; however, I am extremely disappointed that a provision was inserted in conference that would reclassify radioactive waste from Ohio and allow it to be shipped to Utah. I strongly oppose this provision and I will do everything in my power to ensure that this waste is not dumped on Utah.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of this conference report for the Energy Act of 2003. The bill is not perfect but it will make a great stride toward ensuring that the Energy needs of America continue to be met in a changing world. Energy and energy policy are inextricably linked to the U.S. economy, and to the lifestyles of the American people. The business of energy is of critical importance to my constituents.

I wish this bill had more conservation measures in it and had more job creation; however, I believe that it is time to move forward in the Energy debate. We cannot risk going through another Congress without a comprehensive energy policy. There is much good in this bill, much of which came from some creative ideas and hard work in the Science Committee on which I serve. So, I will support this bill.

I come from Houston, Texas, what has been called the energy capital of the world, and I appreciate that oil and fossil fuels deserve much credit for driving our economy and prosperity over the past centuries. I know that coal, oil, and natural gas will continue to play a large role over the next century at meeting our energy needs. However, we all know that fossil fuels are not the wave of the new millennium. Our children, especially in the inner cities like in my District of Houston, have an epidemic of asthma from breathing smog and polluted air. We are overly dependent on foreign sources of oil, bought from people that we would prefer not to be reliant on. No matter how safe we try to be, shipping and pumping oil will occasionally lead to spill and leaks that have tremendous detrimental effects on the environment.

As we craft our national energy strategy, we must balance the need to power our economy and our lives, with our responsibilities as stewards of the environment. As we have worked in Committee, and as I cast my vote today, I will strive to achieve that balance.

I am pleased to see that four amendments that I offered in Science Committee in this and last Congress have been incorporated into today's bill. Ensuring that our nation's Historically Black Colleges and Universities receive their fair share of research funding, will allow us to harvest their great expertise and skills. It will also ensure that the next generation of leaders in the critical field of energy production and utilization will reflect the diversity of our great nation.

Second, my provision for the secondary use of batteries will also help keep our environment clean and improve the efficiency of energy use in the future.

Third, I am gratified to see that language offered by my colleague from Houston NICK LAMPSON and me has been preserved, requiring the Secretary of the Interior to report to the Congress as to the oil and natural gas reserves in waters off the coast of Louisiana and Texas. That provision will lead to a much more comprehensive understanding of our nation's oil production capabilities. No matter how we decide to manage our resources in the future, it is important that we take stock and are informed about our options.

One reason I felt it important to study the production potential in the waters off of Louisiana and Texas, was that Gulf of Mexico oil has been successfully pumped and shipped for years. Thus, little additional impact on the environment would be expected if oil exploration were to be expanded in the future. Tapping such reserves will help satisfy our domestic needs, and will enable us not to pump oil of previously untouched areas—national treasures like the Arctic National Wildlife Refuge. ANWR belongs to all of the American people, and to future generations of Americans. It only contains about a 6-month supply of oil. I do not feel that it is worth the risk to the environment to go take that oil, especially when so many alternatives exist for sources of oil, and options to oil.

New technologies are emerging rapidly to harvest the power of the sun, the wind, and of water to drive progress in the new millennium. Hydrogen holds great promise for becoming a fuel of the future to power our cars and trucks and even household devices with fuel cells. If we know that such technologies will be the way of the future—it is just smart policy to do all we can to stimulate the transition to go as efficiently and expeditiously as possible. We must also ensure that once the transition occurs, that it is American companies that are on the cutting edge of technology—leading and enjoying a good proportion of market share.

Another amendment that I offered in the Science Committee markup, and is in this conference report, will help that transition occur. The provision will require the Department of Energy to enter into discussions with the NASA Administrator, which will enable DOE to tap into the vast expertise in energy gained from past and future research—in order to find technologies that could bolster the existing commercial applications programs at the DOE.

Recently, six agencies, including NIST, DOE, NASA, and the Office of Energy Efficiency and Renewable Energy, launched an effort to improve the exchange of information about their technical programs and to collaborate, in order to "enhance payoffs from federal investments." I applaud that effort. Unfortunately, they have limited their initial priority areas of focus to intelligence in manufacturing and nanotechnology.

Energy security is absolutely vital to our nation's long-term survival, and the well-being of our environment. My provision will build on the existing agreement between the six agencies, by broadening their focus to include DOE/NASA interactions meant to stimulate progress in development of alternative and renewable energy sources. It will have minimal cost, but could yield great benefits.

Our energy needs are complex. We need to be approaching energy policy from multiple directions, with diverse input, in a bipartisan fashion, in order to develop creative strategies for fueling the economy of the future in the sensitive global environment. I am troubled by the fashion in which this conference report was rushed to a vote. We need an Energy policy, but three-days to let us all read the bill would have been better.

Regardless, this battle is over, and we need to move forward. I will vote for this conference report, but will continue fighting to improve conservation measures, and research into the technologies that will provide for the energy demands of the future.

Mr. LARSON of Connecticut. Mr. Speaker, I rise today in unfortunate opposition to the Conference Report on H.R. 6, the Energy Policy Act of 2003.

After months of closed door deliberations between Majority Republicans in both chambers, the Conference Report is being rushed to the floor after being filed at 3 a.m. this morning. Additionally, in order to ensure that no one has an opportunity to actually read and examine the text of the Conference Report, the rule they are bringing it to the floor under waives the normal three-day layover requirement in the House Rules established to ensure Members and the public have the opportunity to review what should be the public business of any operating democracy.

I remain concerned about many provisions that I understand are in the bill, some of which are provisions that were never considered by either legislative body in the House, and by the many provisions that were approved by both chambers and have mysteriously disappeared from the Conference Report. For example, the last minute inclusion of provisions that would give the Federal Energy Regulatory Commission (FERC) the sole authority over natural gas pipelines, would leave my home state of Connecticut powerless to stop construction of natural gas pipelines through Long Island Sound. These provisions are opposed by Governor Rowland and many other Connecticut State officials. The bill waives Clean Air Act requirements, it bars the EPA from taking actions to protect drinking water, it promotes nuclear proliferation by reversing longstanding nuclear policies to not reprocess nuclear waste, it provides more than $23.5 billion in taxpayer subsidies to big energy companies and more than $11 billion to oil and gas companies, just for starters. That's from just a few minutes opportunity to actually look at the text of the bill, let alone determine what the longterm consequences of these actions might be.

Despite these problems, I do want to extend thanks to Science Committee Chairman BOEHLERT and his staff, who were able to stay above the bitter partisan fray the encompassed so much of the drafting. His leadership on the Science Committee, his willingness to discuss ideas and work with each individual member on his committee to craft a truly bipartisan bill that reflects the makeup of his Committee and the constituencies its members represent should be the model for legislative deliberations in this body rather than the exception. In particular, I have enjoyed working with the Chairman on the important fuel cell and hydrogen research provisions in the bill, including the establishment of a $25 million five-year fuel cell transit bus demonstration program and language addressing key fuel cell vehicle and research programs.

It is a shame that so many good efforts and intentions have been swallowed in what has become a haphazard collection of secret back room negotiations and special interest paybacks. The American people deserve an energy policy drafted by the legislative leaders they elected to Congress, not one written by lobbyists in downtown Washington, DC.

Mr. TAUZIN. Paul Gillmor and I make the following joint statement.

The Committee on Energy and Commerce exercises exclusive jurisdiction over the protection of drinking water and groundwater sources. As a result, we believe it's essential that certain provisions in this bill be clarified.

The first area in the conference report to H.R. 6 that we wish to provide further guidance on is section 327, relating to hydraulic fracturing. Section 327 is meant to set the record straight on and clarify any lingering questions regarding the proper role of the states in overseeing the use of this technology. Of course, nothing in the language should be construed as affecting the U.S. Environmental Protection Agency's emergency authority under section 1431 of the Safe Drinking Water Act, 42 U.S.C. 300i.

On another topic, we feel strongly that sound, quality research on groundwater is the best way to contain existing problems and prevent future ones. There are many sections in the conference report to H.R. 6 that call upon the scientific expertise of our nation to understand and aid our national effort to safeguard our natural resources. For instance, section 961 relates to arsenic in groundwater, and there are projects authorized in Subtitle E of Title IX. When evaluating institutions and resources outside of the Federal community to aid in this work, we strongly encourage the use of the Water Quality Laboratory at Heidelberg College in Tiffin, Ohio. Heidelberg College has operated this lab for 33 years and has upgraded monitoring, research, and educational activities. In fact, the work done there is nationally and internationally recognized for the quality of its research and the great detail of its databases on water quality. The Water Quality Laboratory's well water program has a specific specialty in focusing on private rural well conditions. On several occasions, the lab has provided the majority of the data available to examine regional or national water quality issues and implications for environmental and human health concerns. Both government and industry frequently consult this facility for its expertise in the interpretation of water quality data, and we recommend its use for these purposes as well.

Mr. POMBO. Mr. Speaker, the conference report accompanying the comprehensive energy bill (H.R. 6) contains numerous provisions to assist communities around the country with forward thinking new technologies that will provide transportation solutions that are environmentally preferable and more energy efficient. Allow me to highlight one such project in my area that stands to benefit from the programs authorized in this important bill.

To comply with State regulations, Santa Clara County's Valley Transportation Authority (VTA) and San Mateo County's Transportation Authority (SamTrans) are working in partnership on a zero-emission bus (ZEB) demonstration program. Under this partnership, VTA and SamTrans are planning to purchase three hydrogen fuel-cell buses initially and three more at a later date, for a total of six buses. A fuel cell is an electrochemical device that combines hydrogen fuel and oxygen to produce electricity, heat and water. The electricity produced powers the buses. The bus manufacturer is Gillig Corporation, which is based in Hayward, California. The fuel-cell engine manufacturer is Ballard Power Systems, Inc. The buses will be equipped with standard equipment, including air conditioning, ramps for ADA accessibility, destination signs, and audio annunciation systems.

Currently, three hydrogen fuel-cell buses are on order, with delivery expected to begin in April 2004. The contract has an option for the purchase of the three remaining buses when funding becomes available. VTA is taking the lead in demonstrating the operation of these buses, with SamTrans sharing in the operating costs. In addition to the buses, this demonstration program consists of: (a) the installation of a hydrogen fueling station at VTA's Cerone Operating Division that would allow the fuel to be stored in liquid form; (b) the completion of several modifications to the facilities at Cerone, including the installation of two bus maintenance bays with hydrogen detection and safety systems, to allow for the proper maintenance of the new technology and to ensure the safe handling of the hydrogen gas; (c) the training of VTA and SamTrans personnel on the use of the new technology; and (d) the evaluation of the demonstration program.

In addition to being an important element of VTA's and SamTrans' efforts to comply with State regulations, the zero-emission bus demonstration program is intended to test the viability of emerging clean-fuels technology. If successful, the program will help move this technology closer to becoming commercialized and available to public transit across the country.

The conference report accompanying H.R. 6 will authorize new programs that will assist communities like Santa Clara and San Mateo Counties with exciting projects like the ZEB. Specifically, I want to mention three specific provisions that may help in that regard.

Part 2 of Title VII, authorizes a $200 million competitive grant program under the Department of Energy's (DOE's) Clean Cities Program for up to 15 dispersed grants to State or local governments or metropolitan transportation authorities for acquisition of certain alternative fueled, hybrid or fuel cell vehicles, including buses for public transportation. The original committee report accompanying the House bill from which the language in Part 2 was taken (H.R. 238) directs DOE to give special consideration to "proposals that address environmental needs. . . . in communities seeking to meet zero air emission goals, like Santa Clara County, California" in carrying out the program.

Part 3 of Title VII, authorizes $10 million per year for the next five fiscal years for DOE for a fuel cell bus program to assist with the purchase of up to 25 buses in 5 locations. The language requires that DOE give preference to projects most likely to mitigate congestions and improve air quality, as would be the case with the ZEB project.

Finally, Title VIII, of the conference report enacts the President's visionary program for hydrogen research. The provisions specifically authorize over $2.1 billion over the next five years for hydrogen-related R&D, as well as for the demonstration of fuel cell and related technologies that advance our understanding and acceptance of these innovative systems. Section 803(c) calls for demonstration projects consistent with a determination of the maturity, cost effectiveness, and environmental impacts of technologies supporting each project. The ZEB project represents an excellent example of the kind of project DOE should be looking at in carrying out the new hydrogen program.

Mr. Speaker, I commend the conferees for crafting such a comprehensive bill and the Administration for having the vision to put forward these innovative new energy solutions. I intend to work with the Administration to improve opportunities for cooperation between

DOE and communities like Santa Clara and San Mateo Counties in carrying out the ZEB project.

The SPEAKER pro tempore (Mr. LAHOOD). All time has expired.

Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MARKEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 15-minute vote on adoption of the conference report will be followed by 5-minute votes on the conference report to accompany H.R. 2754, by the yeas and nays; and the motion to suspend the rules on H.R. 1274, by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 246, nays 180, not voting 9, as follows:

[Roll No. 630]

YEAS—246

Aderholt
Akin
Alexander
Baca
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Bell
Bereuter
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carson (OK)
Carter
Chabot
Chocola
Coble
Cole
Collins
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (AL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Emerson
English
Evans
Everett
Feeney
Ferguson
Foley
Forbes
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hinojosa
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kennedy (MN)
King (IA)
Kingston
Kline
Knollenberg
Kolbe
LaHood
Lampson
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Meek (FL)
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moore
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Ortiz
Osborne
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Pickering
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Ryun (KS)
Sandlin
Schrock
Scott (GA)
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Towns
Turner (OH)
Turner (TX)
Upton
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wynn
Young (AK)
Young (FL)

NAYS—180

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldwin
Ballance
Bass
Becerra
Berkley
Berman
Bishop (NY)
Blumenauer
Boehlert
Bradley (NH)
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Carson (IN)
Case
Castle
Clay
Clyburn
Conyers
Cooper
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Ehlers
Emanuel
Engel
Eshoo
Etheridge
Farr
Filner
Flake
Ford
Fossella
Frank (MA)
Frost
Gilchrest
Gonzalez
Green (WI)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (NY)
Kirk
Kleczka
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
LoBiondo
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ose
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Petri
Price (NC)
Rahall
Rangel
Rohrabacher
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Scott (VA)
Sensenbrenner
Serrano
Shays
Sherman
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Sweeney
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Tierney
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wolf
Woolsey
Wu

NOT VOTING—9

Boyd
DeMint
Fattah
Fletcher
Gephardt
Jackson-Lee (TX)
Jenkins
Lantos
Pitts

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD) (during the vote). Members are advised 2 minutes remain in this vote.

□ 1651

Messrs. LANGEVIN, PASTOR, FORD, OWENS and WATT changed their vote from "yea" to "nay."

Messrs. TURNER of Ohio, SMITH of Texas, PEARCE and BONNER changed their vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 2754, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2004

The SPEAKER pro tempore. The pending business is the question on agreeing to the conference report on the bill, H.R. 2754, on which the yeas and nays are ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the conference report.

Pursuant to clause 10 of rule XX, the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 387, nays 36, not voting 11, as follows:

[Roll No. 631]

YEAS—387

Abercrombie
Ackerman
Aderholt
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Collins
Cooper
Costello
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers

Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Everett
Farr
Feeney
Ferguson
Filner
Foley
Forbes
Ford
Fossella
Frank (MA)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Janklow
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (RI)
Kildee
Kilpatrick
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Pickering
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Regula
Rehberg
Renzi
Reyes
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Serrano
Sessions
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—36

Akin
Andrews
Berkley
Conyers
Doggett
Evans
Flake
Franks (AZ)
Gibbons
Green (WI)
Hefley
Hensarling
Hostettler
Johnson, Sam
Kennedy (MN)
Kind
Kleczka
Kucinich
Matheson
McDermott
Miller (FL)
Musgrave
Nussle
Paul
Petri
Porter
Ramstad
Rangel
Royce
Sensenbrenner
Shadegg
Stearns
Tancredo
Terry
Toomey
Wexler

NOT VOTING—11

Boyd
Cox
DeMint
Fattah
Fletcher
Gephardt
Jackson-Lee (TX)
Jenkins
Lantos
Pitts
Reynolds

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. ISAKSON) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1659

Mr. TANCREDO and Mr. ROYCE changed their vote from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONVEYANCE TO FRESNO COUNTY, CALIFORNIA, EXISTING FEDERAL COURTHOUSE

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 1274, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. PORTER) that the House suspend the rules and pass the bill, H.R. 1274, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 421, nays 0, not voting 13, as follows:

[Roll No. 632]

YEAS—421

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Janklow
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson

Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—13

Baker
Boswell
Boyd
Cubin
DeMint
Fattah
Fletcher
Gephardt
Jackson-Lee (TX)
Jenkins
Lantos
Miller (MI)
Pitts

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised that 2 minutes remain in this vote.

☐ 1708

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 2660, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

Mr. KILDEE. Mr. Speaker, pursuant to clause 7(c) of House rule XXII, I hereby notify the House of my intention tomorrow to offer the following motion to instruct House conferees on H.R. 2660, the fiscal year 2004 Labor, Health and Human Services, Education and Related Agencies Appropriations Act.

The form of the motion is as follows:

I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 2660, be instructed to insist on no less than $14,247,432,000 for student financial assistance and the highest funding level possible for subpart 1 of part A of title IV of the Higher Education Act of 1965 (the Pell Grant Program).

APPOINTMENT OF CONFEREES ON H.R. 2417, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2004

Mr. GOSS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2417) to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MS. HARMAN

Ms. HARMAN. Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Ms. HARMAN moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 2417 be instructed to insist upon section 344 of the House passed bill (relating to the report on lessons learned from military operations in Iraq) and to include in the conference report a requirement that the report be submitted as soon as possible within the scope of conference.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from California (Ms. HARMAN) and the gentleman from Florida (Mr. GOSS) each will control 30 minutes.

The Chair recognizes the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I offer a motion to instruct this bill's conferees to insist upon section 344 of the House-passed bill requesting an intelligence "lessons learned" report and to include a requirement that this report be submitted as soon as possible.

Section 344 of the House bill requests within 1 year of enactment a report from the Director of Central Intelligence on intelligence lessons learned as a result of military operations in Iraq. But as we know all too well, the lives of American soldiers, sailors, airmen and -women, Marines and civilians are on the line in Iraq and Afghanistan today. There is an urgent need to identify what policymakers, military forces, and the intelligence community can be doing better today rather than months or years from now.

As we all know, Mr. Speaker, the war in Iraq is not over, and daily reports from Baghdad continue to be grave and disheartening. In the last several weeks, we have seen suicide bombings of the International Red Cross headquarters and several Baghdad police stations, a rocket attack on the al-Rashid Hotel where Deputy Secretary of Defense Wolfowitz was staying at the time, mortar attacks inside the U.S.-controlled Green Zone in central Baghdad, the downing of five U.S. Army helicopters, a suicide bombing of Italian military police in An Nasariyah, and a steady stream of improvised road-side explosive devices directed against U.S. and coalition soldiers.

Coalition forces are being attacked up to 35 times a day. As of today, Mr. Speaker, 181 U.S. soldiers have been killed in Iraq by hostile fire since the President announced the end of major combat operations on May 1. Clearly, our intelligence efforts on the ground are not where they should be. We are only now setting up information sharing fusion centers. We have just recently begun to increase the number of analysts and intelligence experts. The bottom line is that we still know very little about the nature of the insurgency.

Accurate and actionable intelligence is vital if we are to prevail in this continuing conflict, and I and other members of the Committee intend to do everything possible to provide our forces with the very best intelligence. Lessons learned with respect to both prewar intelligence and intelligence support to the war fighters during combat operations are a key ingredient in that effort. The intelligence community must understand what worked well and what did not work so well so that improvements in intelligence support to U.S. and coalition forces in Iraq today can be made as quickly as possible. Lessons learned are also important if future intelligence assessments of Iran, North Korea, and the war on terrorism in general are to be credible.

The gentleman from Florida (Chairman GOSS) has said, and I agree, that intelligence community reform, or transformation, must be on the Permanent Select Committee on Intelligence's agenda next year. That effort should be informed by an understanding of where U.S. intelligence in Iraq needs to be better.

☐ 1715

In the course of a 5-month investigation, the House Permanent Select Committee on Intelligence on a bipartisan basis has identified serious shortcomings in the prewar intelligence on Iraq's weapons of mass destruction and ties to terrorism. We found that sketchy and often circumstantial evidence produced estimates that likely were substantially wrong. At a minimum, the intelligence community overstated the strength of the underlying data supporting its conclusions.

Our Senate counterparts are engaged in a similar effort to identify intelligence shortcomings and recommend changes. The Joint Chiefs of Staff have prepared their own assessment of strategic lessons learned from the Iraq war, and I strongly supported the Defense Authorization bill's requirement of a "lessons learned" report from the Department of Defense by March of next year.

Unfortunately, the intelligence community has yet to acknowledge any flaws in prewar intelligence. With American lives on the line, the problems with prewar intelligence must be addressed and analyzed now. An intelligence "lessons learned" study cannot await the conclusion of David Kay's ongoing WMD search in 9 months or a year from now. Regardless of what he finds, we already know there were problems with collection, analysis, and the way policymakers used the information.

Mr. Speaker, I offer this motion to instruct because the best intelligence is key to stopping the insurgency in Iraq and Afghanistan, which will then permit reconstruction and implementation of true self-government.

I am hopeful that the gentleman from Florida (Chairman GOSS) will accept my motion and that we will continue to work on a bipartisan basis to expedite the report and to implement its findings.

Mr. Speaker, I reserve the balance of my time.

Mr. GOSS. Mr. Speaker, I yield myself such time as I may consume.

I appreciate the gentlewoman's comments and, of course, all the extraordinary hard work that she has put in on her side with her staff and her members. It clearly has been a good exercise in bipartisanship which I think distinguishes this House very well on an extremely important subject.

The subject that the gentlewoman has brought up is one of great concern to us. A report on lessons learned from the military operations in Iraq has a place in the bill, much deserved because it is important, and the language that is in there that her proposed instruction goes to in terms of the scope of the conference, for Members' benefit, says a report not later than 1 year after the date of the enactment of this act shall be made on lessons learned, and we put that kind of a time requirement in, I think, because this is an issue we wanted to keep the pressure up on.

I think that it is pretty obvious that the type of combat that we have in Iraq is not what one would call conventional warfare. I do not know whether the words low-intensity conflict, low-intensity lethal conflict, what the right designation of words are, but it is something different, and there is no question that we are making adjustments as we go along not only with our military, but in our intelligence. Adjustments have, in fact, been made because of lessons learned, some of which have been very painful, some of which have not been so painful. Adjustments are going to continue to be made, and I know that our people are going to do that there because they are very interested in making sure that we minimize our casualties, that we enhance our advantages in every way possible in this lower-intensity type of conflict we are dealing with on a global basis with terrorism, not only in Iraq but elsewhere as well.

I think that it is, as I have said, an important part of the bill to learn and adjust and respond under lessons learned or whatever designation we wish to make. The gentlewoman has suggested that Defense people are talking about March of next year. I am a little wary of assigning any arbitrary dates. I do not think that serves us well because I have a very strong conviction that lessons learned are not going to end on an arbitrary date. I think that they are things that we are going to have to deal with as long as we are in Iraq, and I am not even so sure that we have it right in our report that 1 year from now, we are still not going to be in a position to having lessons learned and made adjustments accordingly.

So I find myself in a position of very much supporting the gentlewoman's idea of making sure that we keep the pressure on, and within the scope of the conference, I think that saying that within this year, hopefully as soon as possible, is a good idea. But I do not wish to suggest in any way, shape, or form by that formulation I have made that this is a one-time deal. I believe that we will be doing lessons learned forever.

I note that we are about to have an anniversary of a great tragic event in our country which was the assassination of President John F. Kennedy. I also note that there is new evidence coming out that says perhaps we have not learned all we should have learned from that tragic event even 40 years later. So in the spirit of the authorization bill, which is for a year, and for the spirit of keeping the pressure on lessons learned and doing the right thing, I am prepared to accept the gentlewoman's amendment in the context of the comments I have made.

Mr. Speaker, I reserve the balance of my time.

Ms. HARMAN. Mr. Speaker, I thank the gentleman for those remarks and agree that this is not a one-time deal.

Mr. Speaker, I yield 2 minutes to the gentleman from Iowa (Mr. BOSWELL), ranking member of the Human Intelligence, Analysis and Counterintelligence Subcommittee.

Mr. BOSWELL. Mr. Speaker, I appreciate the ranking member for her hard work and for her leadership on our committee and our chairman in their working together. I appreciate those remarks, and we might call it the interim report, but it will be continuing.

Mr. Speaker, I rise in support of the motion to instruct conferees to insist upon section 344 of the House-passed bill requesting an intelligence "lessons learned" report on Iraq and strongly support asking for this report to be submitted to Congress as soon as possible.

Congress does its best work when it asks tough questions. The Permanent Select Committee on Intelligence has asked a lot of tough questions over the past 7 months about our intelligence on Iraq. In our hearings and our briefings, committee members' oversight trips to Baghdad, a lot of talk with dozens of the intelligence officers who fought the war and continue to fight has taken place. I admire their bravery, their patriotism, and their selfless dedication to duty as they prepared this country for what was to take place.

Even as I applaud their efforts, I feel it is my own duty to ask them tough questions, questions like, "What did you do well?" Questions like, "What did you get wrong? What can be done better in the future?"

It is important to ask these questions because the answers are important. The answers are important because we thought we would be tripping over chemical and biological weapons all over Iraq, and so far we have not found any stockpiles of weapons. We need to know why.

These answers are also important for the future credibility of the U.S. foreign policy on Iran, North Korea, and other challenges around the world. And the answers are important for improving intelligence now, today, in Iraq, where our fine men and women face a dangerous insurgency.

For these reasons I believe time is of the essence. The time to ask and to answer these tough questions must begin now. I believe that instructing the conferees to insist on a timely "lessons learned" study is the right step forward to answering those tough questions and to making our country and our troops more secure and to be prepared and willing to do better as we go forward from this time on.

Mr. GOSS. Mr. Speaker, I reserve the balance of my time.

Ms. HARMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. REYES), an excellent committee member.

Mr. REYES. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I rise in strong support of the motion to instruct offered by the gentlewoman from California (Ms. HARMAN).

I traveled in Iraq in May of this year to observe the situation firsthand and to see how our soldiers were fairing in the aftermath of major combat operations. The situation was still tense back then, and today I think it is even worse.

I served in Vietnam, as the Members know, and it is an eerie feeling to see how similar the situation in Iraq today is to the situation back then in Vietnam, insurgents who blend into the local population, the constant danger our soldiers face every day, and the steady stream of American casualties. The Secretary of Defense has said that Iraq will be a "long, hard slog." Our soldiers deserve much better than that. We cannot let Iraq become another Vietnam.

To me that means that we must all be learning lessons as we go along, the military, the intelligence community, policymakers, and Congress. The Defense Authorization bill asks for a "lessons learned" report from the Department of Defense by March 31 of next year on military operations in Iraq. However, the intelligence community should be preparing, I think, its own report, not a year from now, but as soon as possible.

In that vein, let me also reiterate a point that was made by our ranking member. The Permanent Select Committee on Intelligence, on a bipartisan basis, already knows that there were serious deficiencies in prewar intelligence on Iraq. In fact, I had such concerns about prewar intelligence even before we went to war with Iraq, which prompted me to write a letter to the gentleman from Florida (Chairman GOSS) and our ranking member (Ms. HARMAN) prior to the initiation of that war. Specifically, my concern was about the connections between Iraq and al Qaeda the intelligence community wrote about just as the administration was trying to build its case for war in the fall of 2002. The intelligence community had not yet previously brought these connections to the committee's attention, even though I had been asking questions along these lines for some time. The intelligence community must review the analysis that it produced in this regard and determine whether there are lessons that need to be learned. Our soldiers deserve nothing less. Our country deserves nothing less.

Mr. GOSS. Mr. Speaker, I reserve the balance of my time.

Ms. HARMAN. Mr. Speaker, I yield 2 minutes and 10 seconds to the gentlewoman from California (Ms. ESHOO), another committee member, the ranking member on the Intelligence Policy and National Security Subcommittee.

Ms. ESHOO. Mr. Speaker, I thank the gentlewoman from California (Ms. HARMAN), our very distinguished ranking member, for yielding me this time.

The House Permanent Select Committee on Intelligence, under the leadership of the gentleman from Florida (Chairman GOSS) and the gentlewoman from California (Ms. HARMAN), our distinguished ranking member, has been carefully evaluating the prewar intelligence assessments of Iraq's weapons of mass destruction and Iraq's purported ties to al Qaeda. This bipartisan investigation has already established that the intelligence community significantly overstated the strength of its evidence that Iraq possessed weapons of mass destruction, failed to convey where hard intelligence left off and assumptions began, and dropped caveats from crucial judgments.

In my view, it is also clear that policymakers went even further beyond the intelligence assessments in categorically stating that Iraq possessed chemical weapons and had restarted a nuclear program.

Regarding ties between Iraq and al Qaeda, the intelligence community, in my judgment, curiously made the opposite error. Instead of coming to an overall conclusion, as it did in the case of Iraq's WMD programs, the community simply arrayed everything it had and let policymakers come to their own conclusions, which they were only too happy to do. No one should expect perfection when trying to unearth secrets from a ruthless dictatorship, although a strategy of preempting WMD threats appears to impose that very standard. But we must be honest and forthcoming about the limits of our knowledge and of our ability to penetrate tough targets.

If Iraq had been littered with WMD as predicted, the substantive and methodological shortcomings of our intelligence on Iraq might not have even been noticed. But the attention of the world is instead riveted on the gulf between our estimates and reality. The credibility of our foreign policy requires an explanation. If the world does not witness an appraisal and corrective actions, who will have faith in our future declarations?

It is therefore doubly galling and deeply troubling that the intelligence community leadership rejects the very notion that its estimates were flawed. In this time of peril, it would be dangerously irresponsible to indulge this stubbornness and delay the time of reckoning.

□ 1730

Our security requires action now. That is why I support this motion to instruct.

I appreciate what the ranking member has brought forward. It is thoughtful, it is responsible, and I thank the chairman for supporting the language as well.

Mr. GOSS. Mr. Speaker, I reserve the balance of my time.

Ms. HARMAN. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. HOLT), another member of our committee.

Mr. HOLT. Mr. Speaker, I thank the ranking member, the gentlewoman from California, for yielding me this time; and I rise in support of the motion to instruct conferees to insist on section 344 of the House-passed bill requesting an intelligence lessons learned report.

The data we have received so far, and that is thousands of pages of raw reports, finished intelligence products, statements by administration officials, hearings with key officials, trips by staff and members to Iraq, leads me to judge that there have been serious deficiencies in collection, in analysis, in reporting, and in use of intelligence.

The chairman mentioned that we are always learning lessons, but the case of Iraq presents a particularly good case study that tells us and will tell us how our intelligence operation is functioning. I am struck so far that the leadership of the intelligence community and senior administration officials have seemed unwilling to learn these lessons. They have refused to acknowledge any deficiencies in pre-war intelligence, and I fear that this stubbornness in spite of the facts is harming our intelligence efforts, even today, as our troops fight an insurgency in Iraq.

So in the face of this denial by the administration, I feel that Congress must insist in law on a thorough and substantive lessons learned report.

But that is not the end of it. We have a responsibility in our committee as well to exert oversight, and I hope we will do that. As the committee goes to conference, I also hope that we can make certain that we have foreign language programs that will increase the pool of linguists in critical languages. Our search for the still-missing Osama bin Laden is hampered by language deficiencies of those looking. Dr. Kay's search for weapons of mass destruction in Iraq is hampered by our shortage of people who understand the technical terms of chemical, nuclear, and biological weapons and a flexibility in local language. So there are a number of things that we should be doing in conference, but certainly one of them is insisting on a lessons learned record.

Ms. HARMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. RUPPERSBERGER), our rookie member of the committee.

Mr. RUPPERSBERGER. A rookie with a bad wing, Mr. Speaker. First, I thank the chairman for accepting this report, and I thank the ranking member also for yielding me this time.

I rise in support of the motion to instruct conferees to insist upon section 344 of the House-passed bill requesting an intelligence lessons learned report on Iraq and strongly support asking for this report to be submitted to Congress as soon as possible.

I was a former Baltimore County executive of one of the larger counties in the country, and I know well the challenges, the exhilarations, and the pains of leading large organizations. Usually, one does not have time to get beyond the crisis that is filling one's inbox. But every so often, especially after a major milestone, a critical part of leadership of an organization is making sure you are asking your people to look back at their failures and successes with the benefit of hindsight to see what has worked well and what can be done better. It is all part of this experience of improving what you do for the next time around so that you are doing the best you possibly can for your constituents and taxpayers. It is even more important to do so when the lessons you learn about the past can directly help your work today.

This is absolutely the case in our work to win the peace in Iraq. I know that our intelligence community had some great successes in Operation Iraqi Freedom. I have no doubt that there were some serious problems. Leadership is about taking on the responsibility to examine what has worked well and what can be done better and making sure those lessons are learned and implemented.

The message here is a bipartisan one, and it is a simple one. Let us not waste any more time. Let us turn talk into action. Let us turn yesterday's problems into tomorrow's solutions. The purpose of this motion is to put behind us debates about who is right and who is wrong and move on to the next step of fixing problems. It is too important for the national security of this country and for our troops protecting this Nation in Iraq and around the world.

Ms. HARMAN. Mr. Speaker, how much time is remaining on both sides?

The SPEAKER pro tempore (Mr. SIMPSON). The gentlewoman from California (Ms. HARMAN) has 14¾ minutes remaining.

Ms. HARMAN. May I inquire whether the chairman is going to have speakers? I am curious how we are going to proceed here.

Mr. GOSS. Mr. Speaker, I am very happy to respond to the gentlewoman. The number of requests I have had has been very minimal at this point. I do not know whether that will continue or not.

Ms. HARMAN. Mr. Speaker, I am happy to yield 2 minutes to the gentleman from Washington (Mr. MCDERMOTT).

Mr. MCDERMOTT. Mr. Speaker, more Americans have died in Iraq in the last 8 months than died during the first 3 years of Vietnam. There are three Members of Congress who have not put themselves in the secrecy bag in this place, so I represent the 280-some million people in this country who do not know what is going on in the secret world. But it is very obvious from reading the newspapers, whether one reads the American newspapers or the European newspapers, there is an enormous fight going on between the intelligence agencies and the White House.

The Secretary of the Army, or the Secretary of War, or whatever we want to call Mr. Rumsfeld, saw fit to establish his own agency which gave information to the President, and the President stood in this very well and told us things which apparently he believed, but have turned out to be absolutely fallacious. Nobody, even the President, has come back and said it is not true.

Now, this report, this motion is the minimum that we can do for the American people. We want to know why those kids are dying, why the intelligence was so bad, and why the President took us over there into something that he is now saying, we are not going to cut and run, but what he is doing is calling Mr. Bremer over and saying, how can we get out of here before the election? Now, we have to hurry. We have to get out of here by next June. We were going to have a constitution, and then we were going to have an election; but never mind the Constitution. Let us have the election, and then we will sort of give it to them and run away.

Now, the kids that have died, and if you go up to Walter Reed Hospital and you meet those kids who have lost arms and legs, and you say to them, what was the point of what we were doing? If we run out of Iraq, leaving chaos behind us, we will have diminished what they did. They bravely fought for us. I spent 2 years during Vietnam taking care of kids who went through that, and we cannot put these kids through that same thing.

I urge everyone to adopt this resolution, or this motion to instruct. It is the minimum.

Ms. HARMAN. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, what did George Tenet know? What did Colin Powell know? What did Donald Rumsfeld know? We need to know why it was that the intelligence information relating to the presence of nuclear weapons, chemical weapons, and biological weapons in Iraq was so flawed. Either our intelligence agencies did not know the truth, or they knew the truth, but deliberately exaggerated or distorted the truth to advance a decision to go to war that had already been predetermined; or the intelligence community allowed itself to be bullied or intimidated or cajoled into providing senior Bush administration officials with the answers they wanted to get so that they could begin a war. Any of these options raise very disturbing issues, but we have an obligation to get to the bottom of the situation.

Young men and women are dying in Iraq, and they were supposedly sent to Iraq to prevent Saddam from using weapons of mass destruction that we now know they did not have. We need to learn the lessons of this massive intelligence failure now so that we never have such a situation occur in the future. Our brave young men and women should never be asked to sacrifice their lives for a war whose justification was largely based on faulty or misleading intelligence.

What did George Tenet know? What did Colin Powell know? What did Donald Rumsfeld know? The American people have a right to know.

Ms. HARMAN. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Washington State (Mr. DICKS), the former chairman of this committee and a great expert on intelligence matters.

Mr. DICKS. Mr. Speaker, I want to correct the gentlewoman from California. I wanted to be chairman, but never quite made it. I was the ranking Democratic member and did serve for 8 years, and it was the gentleman from Florida (Mr. GOSS), our distinguished chairman, who I miss seeing almost every day for hours, as we did for a few years. I want to compliment him for accepting the motion and compliment the gentlewoman from California (Ms. HARMAN) for offering this instruction.

I would say, based on my experience, the sooner we get lessons learned to the Congress, the better off we are going to be in terms of getting the fixes that we need in terms of our equipment. I can remember General Schwarzkopf coming to the committee and laying out the problems we had in Desert Storm, Desert Shield, in the intelligence area. He said, I want to be able to look over that battlefield and know what the enemy is doing. That led us to push forward UAVs like Predator, like Global Hawk. We also had problems with denial and deception. This time we did so much better out in the West controlling any opportunity they had to bring up Scud missiles, et cetera, et cetera.

But those were because there was a lessons learned process where the Congress got information and we could help get the resources and the programs necessary to help improve our overall military capability. And intelligence lessons learned are also critical.

And my colleagues, many of them here have already spoken, and there is a question of the credibility of the intelligence that was presented to the American people, presented to the Congress, presented to members at the White House.

So I think the sooner we clear this up, the sooner we get this information out in the open, and the sooner we can work together on a bipartisan basis to make the fixes necessary.

There is a lot of talk about the necessity for additional human intelligence. The chairman has been a leader. I can remember the chairman's efforts to add additional HUMINT resources to our intelligence capability, to build back the HUMINT capability. We are finding out that right now we may not have as much of that capability as necessary to deal with the problem that we are facing in this country. Languages was mentioned by the gentleman from New Jersey (Mr. HOLT). That is still a problem. We do not have enough people who speak the various languages that are necessary here.

So again, I want to compliment the chairman for accepting the instruction, and I think we will all be better off getting this information up here as soon as possible to help the Congress next year in the authorization and appropriations process, both the Committee on Armed Services, the Permanent Select Committee on Intelligence, to make some of these fixes that are necessary to improve our overall intelligence capability.

Mr. GOSS. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska (Mr. BEREUTER), the distinguished vice chairman of the committee.

Mr. BEREUTER. Mr. Speaker, I very much appreciate the way that the chairman started the discussion about our bipartisan cooperation in the House Permanent Select Committee on Intelligence, and actually being referred to by Members on both sides of the aisle today. I think that is one of our strong points that we need to work hard at preserving. My colleague from Iowa, my neighbor, said it is important to ask the tough questions in the Permanent Select Committee on Intelligence, and I absolutely agree and I think all of us would. I do not believe we have been timid about doing that, not just recently, but throughout.

□ 1745

And I believe that the administration and the intelligence community, regardless of the administration in the office at the moment, is likely to have more confidence that they can speak candidly, forthrightly, that we do not have to pull things out of them begrudgingly if they understand that we use that work well and that we keep the matters that are classified very carefully, close to the chest, and use it well.

I would say that I think I would certainly disagree, and I have not heard it here, but I would certainly disagree with any broad-brush, sweeping indictment that there were severe problems with intelligence collection analysis or the way the policy makers used the information. We will be looking at that. We do know that there were gaps in intelligence collection, and all of us, I think, have spoken frequently about the problems we have with adequate language and cultural affinity and certainly about the lack of HUMINT.

Now, if there is one area of the world, about three or four where we had a real gap in HUMINT, it was, of course, in Iraq. And gaps equate to information that does not flow to the intelligence community which they cannot use, which they cannot respond to us on. So I would say that a collection problem would exist if senior managers in the ISC were not taking active steps to address the known gaps in collection.

We have heard something just a few minutes ago about lessons learned. And, of course, those lessons to be learned do not suddenly appear at some point in time in the future. I believe we have been learning lessons throughout this last several weeks and months. And I believe that the intelligence authorization bill, which we are prepared to bring a conference report to this floor soon, does, in fact, reflect some of the lessons we have learned in the conflict in Afghanistan and in Iraq and the intelligence operations that preceded and continue to be conducted in those countries. So lessons learned are being acted on, and there is more that we can learn.

And I think there is no hesitation on having the kind of review that will make Members comfortable that we are taking the right steps to support the community and, in fact, to demand responses and demand actions where changes need to be made.

So with those comments, Mr. Speaker, I heard the acceptance of the gentleman from Florida (Mr. GOSS) of the language of the gentlewoman from California (Ms. HARMAN), and I think we can move forward in a bipartisan way. I hope, therefore, that our colleagues in the House will continue to have confidence in this Permanent Select Committee on Intelligence and that in this House, we are operating to the maximum extent possible with bipartisan support of the Members and the bipartisan activities involving all Members actively involved in the process.

Ms. HARMAN. Mr. Speaker, we have no additional speakers. I plan to close.

Mr. GOSS. Mr. Speaker, I yield such time as he may consume to the gentleman from Nevada (Mr. GIBBONS), distinguished subcommittee chairman of a critical part of the Permanent Select Committee on Intelligence which does bring out the point of question of human assets and what most people understand about intelligence, and it is a people business. He is our subcommittee chairman of the committee that is responsible for worrying about those areas of intelligence, and has obviously got a critical role to play.

In addition, the gentleman from Nevada (Mr. GIBBONS) has led the charge on some of the programs and projects that have been particularly difficult. And I am much indebted for the work he has done on this bill.

Mr. GIBBONS. Mr. Speaker, first of all, I would like to thank the gentleman from Florida (Mr. GOSS), the chairman of the committee, for the way he has handled this committee. I think it goes above and beyond what we would have expected. Chairman GOSS has led this committee through some rather difficult times in this war on terrorism and, indeed, our war in Iraq.

There is no question in my mind that a lot of statements have been made this evening about the substance of the intelligence, the quality of the intelligence. Let me say that our committee has undertaken to review the intelligence. We have not made any conclusions at this point. We have not reached any determinations. I may have my own personal opinions about the quality of the intelligence, as I am sure we all do. However, the committee has not done so in a formal basis. I wanted to make sure that that was clear.

But there is sufficient intelligence out there, and I think we all have agreed over the time that I have been there and listened to the cases being made why Saddam Hussein and this war in Iraq was essential to the people, to the efforts of the people of America to go forward. But I just wanted to take the time to stand here and sort of challenge the idea that there was a flawed intelligence process.

I think intelligence is a form of art, and it is not something that is in concrete. It is an evolving process. We have not yet determined all of the facts. We will look into that. Our committee is doing so. And I certainly hope that we can continue to do this in the fair and bipartisan fashion that this committee has been known for, and especially our chairman has been known for over the past 8 years that he has been in charge, or 7 years that he has been in charge of this committee that I have served on. This is an important time for all of us.

I think we have an opportunity here to do what many of us want and that is to learn what it is that we can do to help the intelligence community around the world. And by doing our job, and our job is to ask the tough questions, we will be better prepared to do just that. And I think under the leadership and the guidance of the chairman, we will be able to bring to this House a very sound conclusion, a very reasoned approach on what it is our Permanent Select Committee on Intelligence should be doing, what it is our intelligence community should be doing, and how we can best support them.

Ms. HARMAN. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Speaker, I want to join those who have congratulated the Members of the Permanent Select Committee on Intelligence, particularly the chairman of the committee, the gentleman from Florida (Mr. GOSS), as well as the gentlewoman from California (Ms. HARMAN), our ranking member, for the job that they have done under some very difficult circumstances. This is an issue that really needs the kind of attention that it seems to be getting under their leadership.

I think that this motion to instruct is very appropriate, particularly at this moment. There has been some recent criticism from a variety of sources with regard to the quality of intelligence that was available to the administration prior to their advocacy of war in Iraq, and prior to the resolution passing this Congress a year ago October. It is very important that we understand every aspect of that intelligence.

Now, what we have heard is that the administration has not gotten very good intelligence, that they were misled, perhaps, by poor intelligence with regard to the connection of Saddam Hussein and al Qaeda, and also on the issue of weapons of mass destruction. But there is another aspect of that that ought to be looked at very, very carefully and that is essentially this: The administration, many of the important people of the administration, Mr. Rumsfeld, Mr. CHENEY, particularly, were given intelligence, but there is a substantial amount of evidence to indicate that when they were given the intelligence that there was little or no connection between Saddam Hussein and Usama bin Laden and that there was little or no evidence of weapons of mass destruction in Iraq, their instructions back to the providers of that intelligence, to Mr. Tenet and others, was this: We do not like that intelligence, will you go back and get other information. And they got that instruction a number of times. That is an issue that needs to be looked at very, very carefully.

The quality of intelligence, yes, but what about the way in which that intelligence was received by policymakers within the administration. I believe that those policymakers corrupted that intelligence, and that is a question that needs to be examined in great detail and with complete accuracy.

Mr. GOSS. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. LAHOOD) who is the chairman of the Subcommittee on Terrorism and Homeland Security, which is rather relevant to this subject.

Mr. LAHOOD. Mr. Speaker, I appreciate all the words about bipartisan. I wish that the bipartisanship that has been talked about would have been manifested in the vote that we all cast around here to send our troops the money that they need to do the job that they are doing.

It is great to talk about bipartisanship, and it is great to say that we all have it, but the truth is when it came time to give the resources that are needed in Iraq, some people were not there. Some people in the Permanent Select Committee on Intelligence were not there. So I think we need to examine the idea of bipartisan and what it really means.

The other comment I want to make is this: I think the instruction is fine. We all know it is probably a little bit meaningless because most instructions are, but the kind of words that have been used around here in a way, the way that I see it, in a way to degrade people who work in the intelligence community, I think is a little bit despicable. And I want to say a word about people who work in the intelligence community, people who work in dark places in this world, people who collect information, people who we do not know, who most of us do not know, who do the hard work, we get paid for our jobs and they get paid too, but we do not get paid to put our life on the line in the way that they do.

We have a wonderful group of people who work very, very hard and are very experienced and do a great job collecting information in dark places in the world, and they deserve a lot of credit. They do not need to have people come on the floor and tell them they are not doing their job the right way. What they need to do is have the kind of encouragement that those of us who have the oversight responsibility and work with people who have the oversight responsibility to say to them thank you for a job well done, and thank you for putting your lives on the line.

And this idea that we are not getting right information or it is not perfect or it is not what we want or it is not being used the right way, in my opinion, is nonsense. And, hopefully, that is what the report will bring out a year from now. But we ought to be paying kudos and compliments to people in the intelligence community, including, in my opinion, from the Director George Tenet all the way up and down the line, people who work in places that none of us have ever been. They deserve our compliments, our credit, our applause, and anything else we can give them. They do a great job.

Mr. GOSS. Mr. Speaker, I wanted to thank the gentlewoman from California (Ms. HARMAN) again for bringing this forward. I think we focused on an important part of what we are about and finding out what went wrong to make sure that it is fixed, helping those involved in the executive branch to do the best job they can and reduce the risk to the greatest degree possible in what is a very dangerous business. That is a worthy effort.

I want to point out I certainly agree with the motion. Obviously, I did not agree with all of the statements that were made in support of the motion. That would not be my job, or relevant, any way.

☐ 1800

I think that Members have heard today that the themes of the bill that we have passed, the intelligence authorization bill that the House passed, have come out a number of times. Yes, there were gaps in the information that we were able through our intelligence community to provide with specificity to our decisionmakers.

I think that is called the fog of war. It is also called intelligence. If we knew everything, we probably would not need to have an intelligence organization. We certainly would not need to have analysts.

The fact is we do not know everything. We try to get as much as we can. We try and analyze it as well as we can. We try to get the value added to it. As the gentleman from Illinois (Mr. LAHOOD) has so eloquently said, there are a lot of people taking a lot of risk out there in very unpleasant circumstances, as we stand here this evening, who deserve an awful lot of credit to get the best we can.

If there are gaps in it, we will try to provide more resources and a different mix of capabilities to reduce those gaps. We have had some very good commentary by the gentleman from New York (Mr. BOEHLERT) in the committee, the gentleman from New Jersey (Mr. HOLT) echoing it here today about language problems. We have had public hearings about lack of necessary capabilities, whether we call them insufficiencies, or whatever word. No question, we have got to do some different things and more of them so our decision-makers have an easier time of it and can be more convinced that what they are doing is on hard fact to the greatest degree possible.

I think that it is important that Members know that our inquiry is ongoing. We have not reached conclusions as was stated. We are in the process of reaching conclusions. Our oversight will continue, and we will be going about our business. We will get the authorization bill conference back as quickly as we can, I hope, and get that matter under way. And then we will be right back to business doing our oversight and advocacy on the Permanent Select Committee on Intelligence as we do every day, working all together.

I thank all the members of the committee and all the staff, both sides of the aisle and those in the middle as well.

Mr. Speaker, I yield back the balance of my time.

Ms. HARMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me first thank the chairman for accepting this motion to instruct and for years of partnership on the committee trying to do the Nation's business in the right way. These are very hard issues; and they require sober thought, careful articulation and collaboration with the intelligence community. We intend to offer criticism where we can offer it constructively and to engage in an ongoing dialogue with the intelligence community.

It is an honor to serve as ranking member of this committee. I respect its traditions and all the members, and staff who work so hard. Let me say to our friend, the gentleman from Illinois (Mr. LAHOOD), that I agree with him. There are very good people in the intelligence community.

When the chairman and I recently sent some constructive criticism to the Director of Central Intelligence, our letter started with a long paragraph about how good the people are who do our work for the intelligence community. But it is my view that these good people can do better and they can do better if we ask tough questions in a constructive fashion and if we can help them learn from things they have not done as well as they possibly could. So that is what we are talking about here.

We are talking about requesting a lessons learned report as soon as possible so that by looking backward on some things that were done not as well as possible, we can look forward where we have ongoing force protection issues in Iraq and huge intelligence challenges in Iran, North Korea and elsewhere, and do things better. Good people with better tools performing better.

In conclusion, Mr. Speaker, I think maybe we should freeze-dry this debate. It was substantive. It was serious. Like the chairman, I did not agree with every single word that was said, but I think every single word that was said was said with seriousness and with substance, and that is the kind of debate that we should have around here. And, oh, by the way, we also should have outcomes like this because the chairman has accepted this motion to instruct. I hope that should we end up voting on it, the vote will be unanimous or near-unanimous and that will, by my lights, be a very big victory for this body.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentlewoman from California (Ms. HARMAN).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. McDERMOTT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 404, nays 12, not voting 18, as follows:

[Roll No. 633]

YEAS—404

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonner
Bono
Boozman
Boswell
Boucher
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Farr
Feeney
Ferguson
Filner
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Israel
Issa
Istook
Jackson (IL)
Janklow
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Lampson
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)

NAYS—12

Barton (TX)
Biggert
Bonilla
Burgess
Everett
Flake
Johnson, Sam
LaHood
Sessions
Tiahrt
Tiberi
Young (FL)

NOT VOTING—18

Boyd
Cubin
Cunningham
DeMint
Dooley (CA)
Fattah
Fletcher
Gephardt
Isakson
Jackson-Lee (TX)
Kleczka
Lantos
Murtha
Pitts
Stark
Sullivan
Weiner
Wexler

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1825

Mr. SESSIONS changed his vote from "yea" to "nay."

Mrs. BLACKBURN, Mr. WELLER and Mr. TURNER of Ohio changed their vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees:

From the Permanent Select Committee on Intelligence, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

Messrs. GOSS, BEREUTER, BOEHLERT, GIBBONS, LAHOOD, CUNNINGHAM, HOEKSTRA, BURR, EVERETT, GALLEGLY, COLLINS, Ms. HARMAN, Messrs. HASTINGS of Florida, REYES, BOSWELL, PETERSON of Minnesota, CRAMER, Ms. ESHOO, Mr. HOLT and Mr. RUPPERSBERGER.

From the Committee on Armed Services, for consideration of defense tactical intelligence and related activities:

Messrs. HUNTER, WELDON of Pennsylvania and SKELTON.

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken tomorrow.

EXPRESSING SENSE OF HOUSE THAT JOHN WOODEN SHOULD BE HONORED FOR HIS CONTRIBUTIONS TO SPORTS AND EDUCATION

Mr. McKEON. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 411) expressing the sense of the House that John Wooden should be honored for his contributions to sports and education, as amended.

The Clerk read as follows:

H. Res. 411

Whereas John Wooden has been honored with the Presidential Medal of Freedom, the Nation's highest civilian award;

Whereas John Wooden was a successful amateur basketball player who led Martinsville High School of Martinsville, Indiana, to the 1927 Indiana State Championship and led Purdue University to the 1932 NCAA Men's Basketball Championship;

Whereas John Wooden, during 40 years of coaching, compiled an 905–205 (.815) record;

Whereas John Wooden coached the UCLA Bruins to 88 consecutive victories;

Whereas John Wooden coached the UCLA Bruins to 10 NCAA Men's Basketball Championships in 12 years;

Whereas since 1976 the Wooden Award has been presented annually to the most outstanding collegiate basketball player of the year and the nine All-American team members, as well as selected most valuable high school players;

Whereas John Wooden nurtured and inspired many of the greatest basketball players of all time who would be examples of sportsmanship, courtesy, and commitment and would go on to fame in their own right;

Whereas John Wooden is one of only two men enshrined in the Basketball Hall of Fame as both a player and a coach;

Whereas on December 20, 2003, the basketball court in Pauley Pavilion at UCLA will be named "The Nell and John Wooden Court";

Whereas John Wooden is a respected author whose books on achieving success have inspired many to reach their goals and climb to the top of their professions; and

Whereas John Wooden developed the "Pyramid of Success", a graphic representation of the ideals that form the basis of Wooden's outlook on life and explain much of his success on and off the court: Now, therefore, be it

Resolved, That the House of Representatives—

(1) congratulates John Wooden for receiving well-deserved recognition through the Presidential Medal of Freedom, the Nation's highest civilian award, and the naming of the Pauley Pavilion basketball floor in his honor; and

(2) commends the unparalleled achievements and contributions of John Wooden in the fields of sports and education.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. McKEON) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from California (Mr. McKEON).

GENERAL LEAVE

Mr. McKEON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H. Res. 411.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. McKEON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Res. 411 which honors the contributions to sports and education by UCLA basketball coach John Wooden. I want to thank my good friend, neighbor and Bruin, the gentleman from California (Mr. LEWIS), for introducing this resolution to recognize a man who is nothing short of a legend in our part of the State.

Coach Wooden concluded his 40 years as a head coach in 1974–75 and his 885–203 overall career win-loss record is unequaled. In 27 years as coach of the UCLA Bruins, his teams registered 620 wins and only 147 losses while earning far more national honors than any other university. Under Wooden, UCLA won an unprecedented 10 NCAA championships, including seven consecutive championships from 1966 to 1973.

□ 1830

Included in this string is one of the most amazing win streaks in all of sports, 38 straight NCAA tournament victories. That feat is truly unbelievable.

Additionally, John Wooden is the only coach to compile four undefeated seasons of 30–0 and his Bruins teams captured 19 conference championships. His talent on the court earned him induction into the National Basketball Hall of Fame as both a player and a coach. Coach wooden is only one of two people to receive this dual honor.

Early in his career, John Wooden committed himself to sports and academics. As an English major, his name is inscribed on Purdue's academic honor roll, and he was awarded the Big Ten Conference medal for scholarship and athletics in 1932. His commitment to scholarship and sportsmanship have inspired and nurtured countless student athletes, and we owe him our thanks and admiration.

I want to, once again, thank my colleague from California for introducing this resolution and extend my congratulations to Coach John Wooden for his achievements and contributions to collegiate athletics. I ask all of my colleagues to support this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Res. 411. This resolution honors the contributions which former UCLA coach John Wooden made to college sports and to education.

Coach Wooden is recognized as one of the most successful players and coaches in basketball history. He is one of only two individuals who have been enshrined in the Basketball Hall of Fame as both a player and coach.

Coach Wooden finished his coaching career with an 885–203 record. He coached the UCLA Bruins to 88 straight victories. He coached the Bruins to championship wins in 10 out of 12 seasons. This record of athletic championship is legendary.

While Coach Wooden has been honored for his accomplishments on the court, he has also been recognized for his leadership and personal qualities. Coach Wooden was awarded the Presidential Medal of Freedom, the Nation's highest civilian honor. In addition, he inspired his players to achieve success in their own right. He also is an accomplished author.

Coach Wooden has inspired us with his legendary ability to win on the court. But he has also inspired us with his ability to help young people develop into leaders in their own right. For that, this House and this country owe him our thanks.

In closing, Mr. Speaker, I would urge Members to support this resolution.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. McKEON. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. LEWIS), the author of this resolution.

Mr. LEWIS of California. Mr. Speaker, I very much appreciate the gentleman from California (Mr. McKEON), my colleague, for yielding me this time. And it is a very proud moment for me to rise on behalf of literally thousands of UCLA alumni who are proud, and in just a small way, not just to be associated with this great university but to be associated with the name of John Wooden who has been our great basketball coach all of the time I have followed UCLA, but will remain our preeminent basketball coach for all time.

I must say it is very appropriate that we do this today, in view of the fact that on December 20, the basketball floor at Pauley Pavilion will be dedicated the Nell and John Wooden Court. The Edwin W. Pauley Pavilion sits right across the way from the John

Wooden Center on the UCLA campus. The Pauley's donors are listed across the bottom of a plaque outside the building. Fifth from those on the bottom is John Wooden himself.

This incredible individual, whose background and record of success has been discussed by both of my colleagues already, has demonstrated for all time to all of us who are fans of UCLA that here is an example that we would all hope to begin to be able to follow. For those who do not know just how strongly I feel about UCLA, and I would certainly want John Wooden to know this, my dog happens to be named Bruin.

Having said that, over the years it has been my privilege to talk to a number of UCLA alumni who have participated or worked with or been around John Wooden. He, indeed, has been an inspiration to literally thousands. His dedication to our college and to the sport of basketball is a reflection of the fact that his whole lifetime has been one of excellence. He and his wife symbolize the most fantastic of that which should be family life.

John Wooden demonstrated early his capability as a leader, becoming a college All-American basketball player. As a basketball coach at UCLA, no one, but no one will ever attain his record again. He is an inspiration to all of us.

I might mention that in the 10 championships during his seasons at UCLA, Wooden won 291 of those games and lost only 10. During those years, my own children were youngsters, thinking about going away to college, and I was interested in having them take a look at UCLA. I will never forget my twin sons going with me on the very evening in Pauley Pavilion when they raised that 10th banner symbolizing the 10 seasons of excellence for Coach Wooden's career.

It is a great privilege for me to be a small part of this resolution this evening, and I wish John Wooden all the best. Indeed the contribution he has made is an example for all of us to follow.

Mr. McKEON. Mr. Speaker, I yield 4 minutes to the gentleman from Nebraska (Mr. OSBORNE), another former coach, another great coach, now a Member of Congress and who serves on our Committee on Education and the Workforce.

Mr. OSBORNE. Mr. Speaker, I thank the gentleman from California (Mr. LEWIS) for introducing this resolution. John Wooden's coaching accomplishments have already been mentioned, and I do not need to go over those a whole lot; but I would just like to have people think for a minute how difficult it would be when there are over 200 Division I teams to be the top team, the one that came out on top in the national tournament 10 times, seven times in a row. Mathematically, that is almost impossible. So his win-loss record was amazing, 88 wins in a row. When you think of the home court advantage in basketball, to have won half of those away from home is remarkable.

But that is really not why I wanted to speak about John. As far as I am concerned, John Wooden is the greatest coach that I have known in any sport, in any era. And the reason I say this is not based on his wins and losses, but rather it is based on his philosophy of coaching, the way he did it and the fact that he was a consummate teacher.

His attention to detail was amazing. And it ranged from showing his players how to put their socks on. Now, that seems like a strange thing to do, but every year he would show them personally how to put on two pairs of socks so they would not get blisters and would not get wrinkles. That is where it started, and then it went on to how to dribble, how to pass, how to shoot, how to bend your knees on a free-throw. So tremendous attention to detail. And then, of course, he went on to his pyramid for success, which was essentially the building blocks for success, which so many corporations and businesses have incorporated at the present time.

So, essentially, it was the base: the loyalty, perseverance, teamwork, integrity, and on up the line to what led to success. But one principle that influenced me more than any other issue in coaching was simply this: he said that he never talked about winning to his players. Now, that is amazing, a coach who had coached that long never mentioned the word winning, never talked about it. He quoted Cerventes, and Cerventes said this: "The journey is more important than the end." And what he meant here was that the process, the thing that you do every day, is the important thing. Not the end result.

So how to dribble, shoot, pass. In coaching football, to block and tackle, maximum effort, unselfishness, teamwork, discipline. And doing it every day at every moment was the key to what he was all about. So his commitment to fundamentals and daily discipline and team chemistry and his caring for his players led to the wins, but that was not the important thing to him.

I guess now that I am out of coaching, I understand even better what he was talking about. Because it really is not the rings, it is not the trophies, it is not the championships that you remember. The thing that you really remember is the relationships, the personal growth of your players, their character development, their shared struggles, and sometimes the spiritual growth you see in those players.

Just a couple of weeks ago I pulled out one of John Wooden's tapes that he had made at age 92, and it was amazing the clarity and the attention to detail that he had at age 92. Certainly every bit as sharp as he was when he was 40 or 45. So this man has had a tremendous impact on a whole generation of coaches and players that has gone beyond what anybody else has ever done.

So I am pleased to just have a chance to say a word or two about him and certainly support the resolution.

Mr. McKEON. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. SOUDER), a former member of the committee, a Hoosier, who wants to claim Mr. Wooden for his own.

Mr. SOUDER. Mr. Speaker, I want to thank the gentleman from California for this resolution. There are many great basketball coaches, Mr. Speaker; but John Wooden was certainly the greatest basketball coach of all time. His 88-game winning streak has never been matched. Notre Dame beat him at the beginning and the end, I have to point out, but it was nevertheless a tremendous winning streak.

But given the debate here, you would think he was a Californian. In fact, I think it is the same John Wooden who was a Purdue All-American and who led them to the national championship. When he was at South Bend Washington High School, where he started out in coaching, he used to go to my father-in-law's Zimmer Food Shoppes for breakfast before he went over there, which is in South Bend, Indiana. And then he coached at Martinsville and a number of small colleges in Indiana.

Much like Illinois trying to claim Lincoln, we say Indiana made Lincoln, Lincoln made Illinois; and so Indiana made Wooden, Wooden made UCLA.

Mr. McKEON. Mr. Speaker, I just comment that we are certainly glad Coach Wooden came to California.

Mr. WAXMAN. Mr. Speaker, it is a privilege to honor today a distinguished constituent of Los Angeles, the "Wizard of Westwood" himself, Coach John Wooden. His incredible achievements on the basketball court have shattered the record books and set the bar to which all college basketball teams and coaches are compared today.

Coach Wooden is without question the most successful college basketball coach in history. In his first year coaching at UCLA in 1948, Coach Wooden took a team that was picked to finish last in its conference and took them, through sheer perspiration and hustle, along to first place in their division, setting a school record for wins in a single season. The next season, Coach Wooden led the Bruins to their first ever NCAA tournament appearance.

Under his masterful guidance over his twenty-seven year coaching career at UCLA, the Bruins set all-time college records with four perfect seasons, 88 consecutive victories, 38 straight NCAA tournament victories, 20 PAC–10 conference championships, and ten national championships, including seven in a row. Coach Wooden and his Bruins teams were synonymous with being #1, and it is likely that these records will never be surpassed. Coach Wooden was deservedly recognized as Coach of the Year six times, and is enshrined in the Basketball Hall of Fame as both a player and coach.

Yet, it is his successes off the court as a mentor and gentle teacher which make Coach Wooden's legacy far greater than statistics could ever measure. While at UCLA, Coach Wooden developed his "Pyramid of Success" principles which formed his philosophy of winning basketball and outlook on success in life. Embodied in maxims such as "be quick, but don't hurry" and "it is not important who starts the game but who finishes it," Coach Wooden instilled in his players the qualities of leadership, teamwork, hard work, and attention to detail, hallmarks of his great teams, which the players applied to their personal lives as well.

"Things turn out best for those who make the best of the way things turn out," Coach Wooden likes to say. It was Coach Wooden's guidance that enabled these students to become humble, accomplished persons as well as athletes, long after their basketball careers ended.

With his loving and devoted wife Nell by his side, John Wooden's incredible impact on his players, on the UCLA community, and the sports world in general will always be remembered. A man of the highest integrity, Coach Wooden demanded only the best from a person and from his talents.

I am also submitting for the RECORD a piece about Coach Wooden by Rick Reilly that appeared in *Sports Illustrated* in March 2000. It is further testament to this great man's character and contribution to sport.

It is a distinct honor to pay tribute to this legendary teacher and coach today, a role model for all of us, both athletes and fans alike, to follow.

A PARAGON RISING ABOVE THE MADNESS

(By Rick Reilly)

On Tuesday the best man I know will do what he always does on the 21st of the month. He'll sit down and pen a love letter to his best girl. He'll say how much he misses her and loves her and can't wait to see her again. Then he'll fold it once, slide it in a little envelope and walk into his bedroom. He'll go to the stack of love letters sitting there on her pillow, untie the yellow ribbon, place the new one on top and tie the ribbon again.

The stack will be 180 letters high then, because Tuesday is 15 years to the day since Nellie, his beloved wife of 53 years, died. In her memory, he sleeps only on his half of the bed, only on his pillow, only on top of the sheets, never between, with just the old bedspread they shared to keep him warm.

There's never been a finer man in American sports than John Wooden, or a finer coach. He won 10 NCAA basketball championships at UCLA, the last in 1975. Nobody has ever come within six of him. He won 88 straight games between Jan. 30, 1971, and Jan. 17, 1974. Nobody has come within 42 since.

So, sometimes, when the Madness of March gets to be too much—too many players trying to make SportsCenter, too few players trying to make assists, too many coaches trying to be homeys, too few coaches willing to be mentors, too many freshmen with out-of-wedlock kids, too few freshmen who will stay in school long enough to become men—I like to go see Coach Wooden. I visit him in his little condo in Encino, 20 minutes northwest of L.A., and hear him say things like "Gracious sakes alive!" and tell stories about teaching "Lewis" the hook shot. Lewis Alcindor, that is, Kareem Abdul-Jabbar.

There has never been another coach like Wooden, quiet as an April snow and square as a game of checkers; loyal to one woman, one school, one way; walking around campus in his sensible shoes and Jimmy Stewart morals. He'd spend a half hour the first day of practice teaching his men how to put on a sock. "Wrinkles can lead to blisters," he'd warn. These huge players would sneak looks at one another and roll their eyes. Eventually, they'd do it right. "Good," he'd say. "And now for the other foot."

Of the 180 players who played for him, Wooden knows the whereabouts of 172. Of course, it's not hard when most of them call, checking on his health, secretly hoping to hear some of his simple life lessons so that they can write them on the lunch bags of their kids, who will roll their eyes. "Discipline yourself, and others won't need to," Coach would say. "Never lie, never cheat, never steal," Coach would say. "Earn the right to be proud and confident."

You played for him, you played by his rules: Never score without acknowledging a teammate. One word of profanity, and you're done for the day. Treat your opponent with respect.

He believed in hopelessly out-of-date stuff that never did anything but win championships. No dribbling behind the back or through the legs. "There's no need," he'd say. No UCLA basketball number was retired under his watch. "What about the fellows who wore that number before? Didn't they contribute to the team?" he'd say. No long hair, no facial hair. "They take too long to dry, and you could catch cold leaving the gym," he'd say.

That one drove his players bonkers. One day, All-America center Bill Walton showed up with a full beard. "It's my right," he insisted. Wooden asked if he believed that strongly. Walton said he did. "That's good, Bill," Coach said. "I admire people who have strong beliefs and stick by them, I really do. We're going to miss you." Walton shaved it right then and there. Now Walton calls once a week to tell Coach he loves him.

It's always too soon when you have to leave the condo and go back out into the real world, where the rules are so much grayer and the teams so much worse. As Wooden shows you to the door, you take one last look around. The framed report cards of the great-grandkids. The boxes of jelly beans peeking out from under the favorite wooden chair. The dozens of pictures of Nellie.

He's almost 90 now, you think. A little more hunched over than last time. Steps a little smaller. You hope it's not the last time you see him. He smiles. "I'm not afraid to die," he says. "Death is my only chance to be with her again."

Problem is, we still need him here.

Mr. McKEON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the motion offered by the gentleman from California (Mr. McKEON) that the House suspend the rules and agree to the resolution, H. Res. 411, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. MAJETTE. Mr. Speaker, due to a death in my family, I was unable to cast votes on Friday, November 7, 2003. Had I been present on rollcall 616, I would have voted "yea," on rollcall 617 I would have voted "yea," on rollcall 618 I would have voted "yea," and on rollcall 619 I would have voted "yea."

I was away on official business yesterday, Monday, November 17, 2003, in my district; and I was unable to cast votes on rollcalls 620 and 621. Had I been present on rollcall 620, I would have voted "yea," on rollcall 621 I would have voted "yea," on rollcall 622 I would have voted "yea," and on rollcall 623 I would have voted "yea."

CONGRATULATING THE UNIVERSITY OF ILLINOIS FIGHTING ILLINI MEN'S TENNIS TEAM FOR ITS SUCCESSFUL SEASON

Mr. McKEON. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 391) congratulating the University of Illinois Fighting Illini men's tennis team for its successful season.

The Clerk read as follows:

H. RES. 391

Whereas the University of Illinois Fighting Illini men's tennis team concluded its season with a rare Triple Crown, including national championships in the team tournament, singles tournament, and doubles tournament, which were held at the University of Georgia in Athens;

Whereas the Fighting Illini became the first team that used three different players in the singles and doubles tournaments to capture the Triple Crown of college tennis since the current NCAA tennis team championship format began in 1977;

Whereas the Fighting Illini won the first NCAA team championship in the history of the University of Illinois tennis program as well as the first national team title for the university in any sport since 1989;

Whereas the Fighting Illini became the first team, other than the teams of the University of Southern California, Stanford University, the University of California, Los Angeles, and the University of Georgia, to win the national title since the NCAA adopted the current team championship format in 1977;

Whereas the Fighting Illini earned the team's first Intercollegiate Tennis Association National Indoor Championship in February 2003, which propelled the team to the number one ranking where it remained for the entire season;

Whereas the Fighting Illini won their seventh consecutive Big Ten Conference regular-season championship, as well as their sixth Big Ten Tournament crown in the last seven years;

Whereas the Fighting Illini have become the team with the all-time most wins, and the fourth undefeated and untied team in the 84-year history of the University of Illinois men's tennis program; and

Whereas the Fighting Illini team member, Amer Delic, won the first national singles title of the University of Illinois and team members Rajeev Ram and Brian Wilson won the university's second NCAA doubles crown: Now, therefore, be it

Resolved, That the House of Representatives—

(1) congratulates and recognizes the University of Illinois Fighting Illini men's tennis team, coach Craig Tiley, and associate head coach Bruce Berque for the team's historic, successful, and monumental season; and

(2) directs the Clerk of the House of Representatives to send, upon passage, an official copy of this Resolution to coach Craig Tiley, assistant coach Bruce Berque, and all other members of the 2003 National Championship men's tennis team.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. McKEON) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from California (Mr. McKEON).

GENERAL LEAVE

Mr. McKEON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H. Res. 391.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

□ 1845

Mr. McKEON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 391, a resolution congratulating the University of Illinois Fighting Illini men's tennis team for its successful season; and particularly its rare Triple Crown win.

The mission statement for the University of Illinois Division of Intercollegiate Athletics states that its aim is to "have the highest quality athletics program in all sports that allows the University of Illinois teams to compete for championships in the Big Ten Conference and the National Collegiate Athletic Association."

The men's tennis team accomplished this ambitious and worthwhile goal when, earlier this year, the fighting Illini concluded its season with a national championship win in the team tournament, the singles tournament and the doubles tournament. Since the tennis team championship format began in 1977, no other team has captured the Triple Crown of college tennis by using three different players in the singles and doubles tournaments.

Additionally, deserving of commendation is the Fighting Illini's seventh consecutive Big Ten Conference regular season championship and their sixth Big Ten Tournament crown in the last 7 years.

The Fighting Illini has become the team with the most all-time wins and the fourth undefeated and untied team in the 84-year history of the University of Illinois men's tennis program. The distinction earned by these players and their remarkable repeat victories of the team reflect the dedication of each player, the leadership of Coach Craig Tiley, and the support of family, friends and fans. I thank the gentleman from Illinois (Mr. JOHNSON) for introducing this resolution and extend my congratulations to each of the hardworking players on each of the Fighting Illini teams, to Coach Tiley, and to the University of Illinois, I am happy to join my colleagues in honoring the success of this team and wish them continued success. I ask my colleagues to support this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Res. 391 and commend the gentleman from Illinois (Mr. JOHNSON) for introducing this resolution.

This resolution recognizes the success of the University of Illinois men's tennis team. The Fighting Illini finished off its season with a rare Triple Crown, including national championships in the team tournament, singles tournament and doubles tournament. This marked the first team championship for the tennis team at the University of Illinois. In fact, this is the first national championship for the Fighting Illini in any sport since 1989. I congratulate Coach Craig Tiley and all of the student athletes on the tennis team.

Winning a national championship is something to be proud of, not only for the university but for its students, faculty, and the surrounding community. The achievement that marks a national championship brings out the best athletic performance our collegiate sports have to offer. Everyone involved in this should be congratulated for their performances.

In closing, I would urge Members to support this resolution, and again I commend the University of Illinois men's tennis team, extend to them my commendations and extend to the President, President Stukel and all of the faculty, this is a rare occurrence for the University of Illinois. I know everybody in Illinois is indeed delighted that the university has reached this milestone.

Mr. JOHNSON of Illinois. Mr. Speaker, I rise today to honor a truly remarkable group of young athletes. The University of Illinois fighting Illini Men's Tennis Team had a memorable and historic 2002–2003 season. Beside winning their seventh consecutive Big Ten Conference regular-season championship, as well as their sixth Big Ten Tournament crown in the last 7 years, the undefeated Fighting Illini won the first NCA team championship in the history of the University of Illinois tennis program.

Using three different players in the singles and doubles tournaments, the Illini captured the rare triple crown of college tennis by winning the national championships in the team tournament, the singles tournament, and the doubles tournament and were the first team in the Nation to do so with three different players since the current NCAA tennis team championship format began in 1977.

Coach Craig Tiley, Assistant Coach Bruce Berque and the entire University of Illinois men's tennis team are a great source of pride for their university, the Champaign-Urbana community and the 15th District of Illinois. I thank Chairman BOEHNER and Alison Ream of the Education and Workforce Committee for their help with bringing H. Res. 391 to the floor and I ask my colleagues to support the bill.

Mr. DAVIS of Illinois. Mr. Speaker, I yield back the balance of my time.

Mr. McKEON. Mr. Speaker, I thank the gentleman from Illinois (Mr. JOHNSON) for bringing forth this resolution honoring the Fighting Illini athletes, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the motion offered by the gentleman from California (Mr. McKEON) that the House suspend the rules and agree to the resolution, H. Res. 391.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

CAPTIVE WILDLIFE SAFETY ACT

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1006) to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species, as amended.

The Clerk read as follows:

H.R. 1006

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Captive Wildlife Safety Act".

SEC. 2. DEFINITION OF PROHIBITED WILDLIFE SPECIES.

Section 2 of the Lacey Act Amendments of 1981 (16 U.S.C. 3371) is amended—

(1) by redesignating subsections (g) through (j) as subsections (h) through (k), respectively; and

(2) by inserting after subsection (f) the following:

"(g) PROHIBITED WILDLIFE SPECIES.—The term 'prohibited wildlife species' means any lion, tiger, leopard, cheetah, jaguar, or cougar species, or any hybrid of such a species.".

SEC. 3. PROHIBITED ACTS.

(a) IN GENERAL.—Section 3 of the Lacey Act Amendments of 1981 (16 U.S.C. 3372) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking ", or" at the end and inserting a semicolon;

(ii) in subparagraph (B), by inserting "or" after the semicolon at the end; and

(iii) by adding at the end the following:

"(C) any live animal of a prohibited wildlife species (subject to subsection (e));";

(B) in paragraph (3)(B), by inserting "or" after the semicolon at the end; and

(C) in paragraph (4), by striking "paragraphs (1) through (4)" and inserting "paragraphs (1) through (3)"; and

(2) by adding at the end the following:

"(e) NONAPPLICABILITY OF PROHIBITED WILDLIFE SPECIES OFFENSE.—

"(1) IN GENERAL.—Subsection (a)(2)(C) does not apply to importation, exportation, transportation, sale, receipt, acquisition, or purchase of an animal of a prohibited wildlife species, by a person that, under regulations prescribed under paragraph (3), is described in paragraph (2) with respect to that species.

"(2) PERSONS DESCRIBED.—A person is described in this paragraph, if the person—

"(A) is licensed and inspected by the Animal and Plant Health Inspection Service with respect to that species;

"(B) is a State college, university, or agency, State-licensed wildlife rehabilitator, or State-licensed veterinarian;

"(C) is an accredited wildlife sanctuary that cares for prohibited wildlife species and—

"(i) is a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code 1986 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of such Code;

"(ii) does not commercially trade in animals listed in section 2(g), including offspring, parts, and byproducts of such animals;

"(iii) does not propagate animals; and

"(iv) does not allow direct contact between the public and animals; or

"(D) has custody of the animal solely for the purpose of expeditiously transporting the animal to a person described in this paragraph with respect to the species.

"(3) REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in cooperation with the Director of the Animal and Plant Health Inspection Service, shall promulgate regulations describing the persons described in paragraph (2).

"(4) STATE AUTHORITY.—Nothing in this subsection preempts or supersedes the authority of a State to regulate wildlife species within that State.".

(b) APPLICATION.—Section 3(a)(2)(C) of the Lacey Act Amendments of 1981 (as added by subsection (a)(1)(A)(iii)) shall apply beginning on the effective date of regulations promulgated under section 3(e)(3) of that Act (as added by subsection (a)(2)).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland (Mr. GILCHREST) and the gentleman from New Jersey (Mr. PALLONE) each will control 20 minutes.

The Chair recognizes the gentleman from Maryland (Mr. GILCHREST).

GENERAL LEAVE

Mr. GILCHREST. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1006.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as a cosponsor of this legislation, I am pleased to rise in strong support of the Captive Wildlife Safety Act. This measure addresses the growing problem of unqualified and inexperienced individuals who are purchasing an increasing number of large exotic cats. There are dozens of Web sites that offer lion or tiger cubs for as little as $300. Sadly, we know that one of those Internet tigers ended up living in deplorable conditions in an apartment complex in Bronx, New York.

While these species are extremely attractive when they are young, they quickly become 400-pound unwanted pets. Those buying these cats simply do not have the knowledge or resources to provide the specific nutritional, physical and environmental requirements of these animals. In many cases, they are unaware of the animals' growth patterns and the enormous cost of caring for them over their lifetime. In addition, escaped exotic animals have seriously injured or killed a number of our citizens.

In far too many cases, these pets are abandoned, locked away in tiny cages, or sold for their hide, meat and bones because, sadly, they are worth more dead than alive. H.R. 1006 will help to solve the problem by making it illegal to buy, sell, or trade certain large exotic cats in interstate or foreign commerce.

Under the terms of the bill, the term "prohibited wildlife species" is defined to include lions, tigers, leopards, cheetahs, jaguars and cougars and the hybrids of those species. The measure does not ban the private ownership of these cats and specific exemptions have been provided by qualified aquariums, circuses, sanctuaries and zoos.

During our subcommittee hearing, there was a great deal of support for H.R. 1006. One of our witnesses was Ms. Tippi Hedren who is not only a famous actress, but also someone who has dedicated her life to saving hundreds of wildlife species by operating the Shambala Sanctuary in southern California. In her remarks, Ms. Hedren noted that the Captive Wildlife Safety Act is a bipartisan, commonsense measure to safeguard the public and prevent harm to animals. It will help to stop a largely underground, and in many cases criminal, economy that breeds, trades, and butchers wild, exotic and often endangered species.

Mr. Speaker, this is a timely solution to a growing problem, and I compliment the gentleman from California (Mr. MCKEON) and his constituent, Tippi Hedren, for their tireless leadership on this legislation. I urge an aye vote on H.R. 1006.

Mr. Speaker, I reserve the balance of my time.

Mr. PALLONE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the gentleman from Maryland (Mr. GILCHREST) said, H.R. 1006 is a noncontroversial bill that was passed and reported by voice vote by the Committee on Resources on September 11.

The final language incorporates some minor, noncontroversial changes that were made by the other body to further refine the bill passed by the House.

Recent news reports have repeatedly demonstrated that the holding and unsupervised breeding of large cats, such as lions and tigers, is not only dangerous to the handlers and the general public, but this growing trend is also extremely harmful to the welfare of these magnificent predatory animals.

The limited provisions in this legislation will finally provide a straightforward strategy to address this problem by prohibiting the interstate trade in these animals or hybrids derived from these animals. Moreover, this legislation will ensure that in the future, only those facilities that are Federally or State licensed or have the requisite capabilities to care for these animals are allowed to do so. We can only hope this transition will be short.

I commend the bill's sponsors, the gentleman from California (Mr. MCKEON) and the gentleman from California (Mr. GEORGE MILLER) for their tireless leadership in bringing forward this sensible animal welfare legislation, and I urge Members to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. GILCHREST. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. MCKEON).

Mr. MCKEON. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in strong support for H.R. 1006, the Captive Wildlife Safety Act. I thank the gentleman from Maryland for his support and for his leadership in bringing this bill to the floor.

This act will take a large stride in preventing future acts by lions, tigers, and other exotic cats to people in our towns and cities across the country. In early October, a tiger found in a New York City apartment generated wide media attention to the issue of private ownership of wild animals such as lions and tigers. While this seems like an isolated incident, it represents one of the many attacks that have occurred over the last several years. Before we saw footage of the 400-pound tiger on the national news, we saw reports that people of all ages, including children, have fallen victim to injury or death by such animals. This problem has persisted over time as trade of lions, tigers and other big cats have continued to flourish.

Some estimates state that there are more than 15,000 exotic cats living in captivity in the United States. While some are held in zoological institutions and preserves, most of these animals are maintained as pets, caged in back yards, basements or closets. These animals can be purchased at auctions or on Web sites that advertise and sell these animals.

Lions and tigers are inherently hardwired to hunt, attack and defend themselves with brutal force when feeling threatened. It is for this reason that the U.S. Department of Agriculture, the American Veterinary Medical Association and the American Zoo and Aquarium Association have taken public stands against keeping these dangerous carnivores as pets.

The dangers these big cats pose to people are self-evident and well documented. In Loxahatchee, Florida, last February, a 58-year-old woman was bitten in the head by a 750-pound pet Siberian-Bengal tiger mix. In Lexington, Texas, in October 2001, a 3-year-old boy was killed by his stepfather's pet tiger. This past April, two people fell victim to tiger attacks, a 35-year-old woman in Adair, Oklahoma, and a 32-year-old man in Hennepin, Illinois. Both these tigers were being held at unaccredited animal parks, and the results are all too clear.

These animals require trained personnel equipped with the proper tools and facilities to ensure they are kept in an environment where the probability of an attack is lowered to the safest possible level. How can we expect a person with no experience in caring for a tiger or lion to have the knowledge and education to take necessary safeguards to prevent an attack? People in neighborhoods and communities across the country should no longer have to take that risk.

This legislation would add lions, tigers, cheetahs, leopards, jaguars, and cougars to the Lacey Act to prohibit these animals from being sold or purchased in interstate or foreign commerce. This will greatly decrease the possibility of one of these animals escaping from captivity, bringing further harm and injury to innocent people around the Nation.

I thank the gentleman from California (Mr. GEORGE MILLER) for helping me on this bipartisan effort. I also extend special thanks to the Committee on Resources chairman, the gentleman from California (Mr. POMBO), and once again the subcommittee chairman, the gentleman from Maryland (Mr. GILCHREST), whose leadership was essential in this endeavor.

I also want to send my gratitude to a dear friend and constituent of mine, Tippi Hedren, whose expertise and knowledge helped in the introduction of this bill, and who, for more than 30 years, has worked tirelessly in the defense, protection and care for animals.

In conclusion, I urge my colleagues to support H.R. 1006 which will help stop the spread of big cats and provide an essential safety mechanism to further decrease the number of attacks on people by these ferocious animals.

Mr. PALLONE. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. GEORGE MILLER), a sponsor of the bill.

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentleman for yielding me this time and his efforts for helping to bring this bill to the floor. And I also thank the gentleman from California (Mr. MCKEON) for his steadfast efforts to get this bill before the committee. I also want to take a moment to thank Loren Bausell and Jean Flemma, both former staff of mine, who helped initially craft this legislation when I introduced this bill has year, and worked with the gentleman from California (Mr. MCKEON) on this year's proposal.

□ 1900

I also want to thank the gentleman from California (Mr. POMBO), chairman of the Committee on Resources; and the gentleman from Maryland (Mr. GILCHREST), the subcommittee chair, for their efforts. I would like to join the gentleman from California (Mr. MCKEON) in also thanking Tippi Hedren, who has been involved in this issue for so many years and whom I have had an opportunity to meet with numerous times on this subject matter. To see this bill now come to the floor I think is an important milestone in her effort for the safety of the public and for the welfare of these large animals.

I hope we can quickly reconcile the differences between the House and Senate legislation and get this enacted into law this year. This bipartisan bill represents a firm commitment to protect the safety of the American public and the welfare of wild animals that are increasingly kept as pets.

Our bill provides a first step in addressing a growing national problem. According to best estimates, there are more than 5,000 tigers in captivity in the United States. There are perhaps more tigers in captivity than there are tigers in their native habitats throughout the range in Asia. I have got a stack of news articles over an inch thick describing instances in almost every State where some exotic pet escaped and was roaming around a suburban neighborhood. There are also more disturbing articles about well-intentioned pet owners who have run out of money because the feeding of a 200-pound tiger is very expensive. Then there are the cases where the animals, which are far from domesticated, harm their owners or others.

Owning an exotic cat is not like owning Morris the house cat. These animals are big, they cost a lot to feed, and they are one degree away from their wild instincts at any moment. The Captive Wildlife Safety Act bars the interstate sale or transportation of lions, tigers, leopards, cheetahs and cougars, or their hybrids, in an attempt to exercise some control over the burgeoning interstate commerce of these animals. The legislation would not ban all private ownership of these prohibited species; rather, it would outlaw the commerce of these animals for use as pets.

The bill is specifically aimed at the unregulated and untrained individuals who are maintaining these wild animals as exotic pets. Zoos, circuses, and sanctuaries are better equipped with both the physical and financial resources to care for these animals and are not affected by this legislation.

At a time when almost anything can be bought on the Internet, it is not surprising that the animals can all be purchased through the more than 1,000 Web sites that promote private ownership of these wild animals. The Captive Wildlife Safety Act represents an emerging consensus on the need for comprehensive Federal legislation to regulate what type of animals can be kept as pets.

We simply have got to understand that we have got to do this both for the safety of our neighborhoods which now has occurred both in suburban areas and rural areas and even now in urban areas with the captive keeping of these animals. We have got to do it for the safety of the neighborhoods, and we have got to do it for the welfare of these animals. We cannot let the care of these animals, the welfare of these animals be kept in a haphazard fashion based upon the whims of an individual at any given time simply to grab the ownership of one of these animals only later to find out that they are not trained or capable in other ways to take care of these cats or financially cannot take care of them and they either turn them over to the public or they set them loose or these cats escape and cause danger in the neighborhoods. It is not fair to the animals, and it is certainly not in the best interest of our communities. I would hope that we would be able to pass this legislation right away.

Mr. PALLONE. Mr. Speaker, I yield back the balance of my time.

Mr. GILCHREST. Mr. Speaker, I yield myself the balance of my time.

I just want to make a closing comment. I would like to thank the gentleman from California (Mr. MCKEON) and the gentleman from California (Mr. GEORGE MILLER) for their effort to stay steadfast with this legislation to get it passed. I want to thank the gentleman from New Jersey (Mr. PALLONE) for assisting us in this. I also want to thank the committee staff on both sides of the aisle for their knowledge and information and help with the passing of this bill. I urge my colleagues to vote "aye."

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the motion offered by the gentleman from Maryland (Mr. GILCHREST) that the House suspend the rules and pass the bill, H.R. 1006, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. GEORGE MILLER of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

ESTABLISHING REQUIREMENTS FOR AWARD OF CONCESSIONS IN NATIONAL WILDLIFE REFUGE SYSTEM

Mr. SOUDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1204) to amend the National Wildlife Refuge System Administration Act of 1966 to establish requirements for the award of concessions in the National Wildlife Refuge System, to provide for maintenance and repair of properties located in the System by concessionaires authorized to use such properties, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1204

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEASES, PERMITS, AND CONTRACTS FOR BUILDINGS, FACILITIES, AND PROPERTIES IN THE NATIONAL WILDLIFE REFUGE SYSTEM.

(a) IN GENERAL.—The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) is amended by—

(1) striking section 6 (relating to amendments to other laws, which have executed);

(2) redesignating section 5 (16 U.S.C. 668ee) as section 6; and

(3) inserting after section 4 the following:

“SEC. 5. CONCESSION CONTRACTS.

“(a) CONTRACT REQUIREMENT.—(1) The Secretary shall not authorize a person to use any land or water in the System for any activity described in subsection (b), except under a contract that complies with the requirements established under subsection (c).

“(2) The Secretary may not award a contract required under this subsection except under a competitive bidding process.

“(3) This subsection does not apply with respect to any administrative site, visitors facility, or revenue producing visitor service mandated or authorized pursuant to section 1306 or 1307 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3196, 3197).

“(b) COVERED CONCESSION ACTIVITIES.—(1) The activity referred to in subsection (a) is any commercial activity conducted to provide accommodations, facilities, or services to members of the public who are visiting lands or waters in the System, for the purpose of providing such visitors recreational, educational, or interpretive enjoyment of lands or waters in the System.

“(2) Such activity does not include—

“(A) any activity carried out under a procurement contract, grant agreement, memorandum of understanding, or cooperative agreements;

“(B) the performance of volunteer services;

“(C) any activity by a governmental entity;

“(D) the operation of a bookstore in a refuge facility by a national wildlife refuge Friends organization; and

“(E) the performance of any guide or outfitter services authorized by any permit or other authorization issued by the Secretary, including services related to fishing, hunting, boating, sightseeing, hiking, or camping, except that this subparagraph does not include the construction, maintenance, or occupancy of significant structures or facilities.

“(c) STANDARDIZED CONTRACT.—(1) The Secretary, acting through the Director, shall issue regulations that implement this section.

“(2) Regulations under this subsection shall authorize a contract to use a provision other than those specified, by the Secretary as part of a standardized contract only if—

“(A) the provision addresses extenuating circumstances that are specific to a refuge or the contract; and

“(B) the provision is approved by the Secretary in writing.

“(3) The Secretary shall require in each contract provisions that require that any activity conducted in the System under the contract—

“(A) must be a compatible use; and

“(B) must be designed to—

“(i) conserve the natural and cultural resources of the System;

“(ii) facilitate the enjoyment of the lands and waters of the System by visitors to the System; and

“(iii) enhance such visitors' knowledge of the natural resources of the System.

“(d) MAINTENANCE AND REPAIR.—(1) Notwithstanding any other provision of law, the Secretary shall include, in each contract that authorizes a person to use any land or water in the System for any activity described in subsection (b), provisions that—

“(A) authorize the person to maintain or repair any improvement on or in such land or water that the person is authorized to use for such activity; and

“(B) treat costs incurred by the person for such maintenance or repair as consideration otherwise required to be paid to the United States for such use.

“(2) This subsection does not authorize any maintenance or repair that is not directly related to an activity described in subsection (b) that is authorized by the contract.

“(3) The United States shall retain title to all real property that is maintained or repaired under this subsection.

“(e) NO COMPENSABLE INTEREST.—Nothing in this Act shall be considered to convey to any person any right to compensation for—

“(1) the value of any maintenance activities, repairs, construction, or improvements on or in land or water in the System; or

“(2) buildings, facilities, fixtures, and nonmovable equipment that the person is authorized to use under this Act.

“(f) EXPENDITURE OF FEES AND OTHER PAYMENTS.—(1) Amounts received by the United States as fees or other payments required under any agreement, lease, permit, or contract for use of real property located in an area in the System, other than lands withdrawn for Native selection pusuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) shall be available to the Secretary for expenditure in accordance with this subsection, without further appropriation.

“(2) Amounts available for expenditure under this subsection may only be used—

“(A) at the refuge or refuge complex with respect to which the amounts were received as fees or other payments;

“(B) to increase the quality of the visitor experience; and

“(C) for purposes of—

“(i) backlogged repair and maintenance projects (including projects relating to health and safety);

“(ii) interpretation, signage, habitat, or facility enhancement; or

“(iii) administration of agreements, leases, permits, and contracts from which such amounts are derived.

“(3) Paragraph (1) shall not affect the application of the Act of June 15, 1935 (chapter 261; 16 U.S.C. 715s), commonly referred to as the Refuge Revenue Sharing Act, to amounts referred to in paragraph (1) that are not expended by the Secretary under paragraph (1).”.

(b) APPLICATION.—Section 5(a) of the National Wildlife Refuge System Administration Act of 1966, as amended by this section, shall apply only with respect to a concession that is—

(1) first awarded after the date of the publication of regulations under section 5(c) of the National Wildlife Refuge System Administration Act of 1966, as amended by this section; or

(2) renewed after the end of the 3-year period beginning on the date of the enactment of this Act.

(c) DEADLINE FOR REGULATIONS ESTABLISHING PROGRAM REQUIREMENTS.—The Secretary of the Interior shall issue regulations under section 5(c) of the National Wildlife Refuge System Administration Act of 1966, as amended by this section, by not later than 18 months after the date of the enactment of this Act.

(d) COMPREHENSIVE CONSERVATION PLAN REQUIREMENT.—Section 4(e) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd) is amended by adding at the end the following:

“(5) The Secretary shall include, in the comprehensive conservation plan for each refuge under this subsection, a description of the activities that may be conducted in the refuge, and the lands, waters, and facilities of the refuge that may be used, under concession contracts awarded under section 5(a).”.

(e) PRIOR AMENDMENTS NOT AFFECTED.—Nothing in this section shall be construed to affect any amendment made by section 6 of the National Wildlife Refuge System Administration Act of 1966, as in effect before the enactment of this Act, or any provision of law amended by such section.

SEC. 2. ANNUAL REPORT ON NATIONAL WILDLIFE REFUGE CONCESSIONS.

(a) REPORTING REQUIREMENT.—The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) is further amended by amending section 7 (relating to amendments to another law, which have executed) to read as follows:

“SEC. 7. ANNUAL REPORT ON CONCESSION ACTIVITIES IN THE SYSTEM.

“(a) IN GENERAL.—The Secretary shall submit by December 31 each year, to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report on concessions activities conducted in the System.

“(b) CONTENTS.—Each report under this section shall describe the following with respect to the period covered by the report:

“(1) The number of refuge units in which concessions activities were conducted.

“(2) The names and descriptions of services offered in the System by each concessionaire.

"(3) A listing of the different types of legal arrangements under which concessionaires operated in the System, including contracts, memoranda of understanding, permits, letters of agreement, and other arrangements.

"(4) Amounts of fees or other payments received by the United States with respect to such activities from each concessionaire, and the portion of such funds expended for purposes under this Act.

"(5) An accounting of the amount of monies deposited into the fund established by section 401 of the Act of June 15, 1935 (chapter 261; 16 U.S.C. 715s), popularly known as the refuge revenue sharing fund, and of the balance remaining in the fund at the end of the reporting period.

"(6) A listing of all concession contracts and other arrangements that were terminated or not renewed within the reporting period.

"(7) A summary of all improvements in visitor services in the System that were completed by concessionaires and volunteers during the reporting period.

"(8) A summary of all backlogged repair and maintenance, facility enhancement, and resource preservation projects completed by concessionaires and volunteers during the reporting period.".

(b) DEADLINE FOR FIRST REPORT.—The Secretary of the Interior shall submit the first report under the amendment made by subsection (a) by not later than 1 year after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana (Mr. SOUDER) and the gentleman from New Jersey (Mr. PALLONE) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana (Mr. SOUDER).

GENERAL LEAVE

Mr. SOUDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. SOUDER. Mr. Speaker, I yield myself such time as I may consume.

My bill, H.R. 1204, would reform the concessions process within the National Wildlife Refuge System. Under current law, U.S. Fish and Wildlife Service structures such as restrooms, boat docks and other buildings have fallen into disrepair because the service does not have the resources necessary to adequately maintain its facilities.

Over the past three Congresses, over 5 years, I have worked with the Fish and Wildlife Service, wildlife refuge managers, and outside groups to write a bill that helps the Fish and Wildlife Service to address this problem. H.R. 1204 is historic legislation that establishes a consistent facility maintenance policy for facilities that are leased by concessionaires in National Wildlife Refuge System areas. This bill would allow the Fish and Wildlife Service to credit a concessionaire for any fees they pay in the future. This money would be retained at the local refuge and used to build, maintain and repair structural problems, to restore habitat, and to protect refuge resources. Furthermore, in an effort to address the concerns of groups such as guides and outfitters that use wildlife refuges but do not maintain significant structures, I have added provisions to the bill that exempt these groups from the new policy.

During the 107th Congress, this legislation passed the House by voice vote. There is no reason why it should not pass the House again in the same way. I want to thank the gentleman from California (Mr. POMBO), chairman of the full committee, and the gentleman from Maryland (Mr. GILCHREST), chairman of the subcommittee, for again moving this bill forward. I also want to personally thank Lou Hinds, who, while he was wildlife refuge manager of the Ding Darling National Wildlife Refuge on Sanibel Island, I visited with him and his kind encouraging me, helping me understand the problems, led to the drafting of this bill. Without his advice, we would not be at this historic point where we may finally have a concessions policy for the Fish and Wildlife Service.

Mr. Speaker, I reserve the balance of my time.

Mr. PALLONE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as stated by the previous speaker, the overall purpose of this valuable legislation is to improve visitor services within our National Wildlife Refuge System. Annual public visitation to the refuge system is expected soon to surpass 40 million people. It is critical that we address the growing public use of refuge lands by ensuring that our refuges have facilities that are safe, well maintained, and inviting to the visiting public. But we should not forget that our refuge lands are set aside by statute exclusively for the benefit of fish and wildlife.

I want to compliment the bill's sponsor, the gentleman from Indiana (Mr. SOUDER), and the gentleman from Maryland (Mr. GILCHREST), chairman of the Subcommittee on Fisheries Conservation, Wildlife and Oceans, for their respectful consultation throughout the process. I commend them for a final product that strikes an appropriate balance between public use and resource protection.

The bill before the House will finally provide a comprehensive concession policy for our national wildlife refuges that will not detract from the "wildlife first" mission of the system and which will provide new standards and incentives for concessionaires to enhance the visitor's experience.

I would also note that while the legislation grants an exemption from these contract requirements to all permitted outfitters and guides operating on refuge lands and waters, these operators will still be required to secure a Federal permit to access refuge lands. I am hopeful that the Fish and Wildlife Service will be able to clarify through its rulemaking process precisely what types of operations and what kinds of structures will be permissible for guides and outfitters to qualify for the exemption.

Mr. Speaker, I include for the RECORD a November 17, 2003 letter from Mr. Steve Williams, director of the Fish and Wildlife Service. The letter addresses the director's concerns regarding some details of the exemption for permitted guides and outfitters included in this legislation.

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
Washington, DC.

Hon. RICHARD POMBO,
U.S. House of Representatives,
Washington, DC.

DEAR CHAIRMAN POMBO: The U.S. Fish and Wildlife Service (Service) would like to provide comments on H.R. 1204, which would establish a National Wildlife Refuge System concessions policy. Although the Service supports this legislation as reported by the Committee on September 24, 2003, and testified to that effect at a June 26, 2003, hearing before the Resources Subcommittee on Fisheries Conservation, Oceans and Wildlife, we have serious concerns with the amended legislation that will be brought to the House floor.

Generally, H.R. 1204 would amend the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) to authorize the Secretary of Interior to provide for maintenance and repair of buildings and properties located on lands in the Refuge System. We support the goals of this legislation; however, we have strong concerns about the overly broad exemption given to outfitters and guides in the amended version of H.R. 1204 that will be brought to the floor. The new language under Section 5(b)(2)(E) could jeopardize the Service's goal of a consistent policy for management of recreational activities on National Wildlife Refuges.

The Service supports the goals of H.R. 1204 and looks forward to working with Congress to develop a workable concessions policy for the National Wildlife Refuge System. As the NWRS celebrates its Centennial anniversary this year, the Fish and Wildlife Service is working hard to ensure that visitors find National Wildlife Refugees welcoming, safe, and accessible, with a variety of opportunities to enjoy and appreciate America's fish, wildlife, and plants. Providing quality wildlife-dependent recreational opportunities is part of the Fish and Wildlife Service's vision for the NWRS, and concession operations can provide the visiting public with a means to access and interpret our refuges.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

STEVE WILLIAMS,
Director.

In closing, Mr. Speaker, this is good legislation. I urge its adoption on a bipartisan basis by the House.

Mr. Speaker, I yield back the balance of my time.

Mr. SOUDER. Mr. Speaker, I yield myself such time as I may consume.

I share the gentleman from New Jersey's concerns about the permitting process with guides and outfitters. I think we have reached a compromise that will enable this bill to move forward, but I do trust that the Fish and Wildlife Service will do further clarification and work with this process.

Mr. POMBO. Mr. Speaker, this legislation establishes for the first time a comprehensive concession policy for our National Wildlife Refuge System.

Unlike our National Park System, There is no standardized refuge concession contract, concessionaires are statutorily prohibited from repairing the federal facilities they lease and consequently there are only a handful of refuges that offer concession services to the visiting public. In fact, there are only seven refuges where concessionaires have a signed contract with the U.S. Fish and Wildlife Service. These concessionaires offer a variety of services including canoe rentals, interpretive tours and tour boat operators.

H.R. 1204 is a long overdue and important measure. It will authorize the establishment of a standardized refuge contract for all commercial concessionaires, it will allow a concessionaire to use some of their franchise fees to maintain or repair leased property and it allows the service to keep these franchise fees onsite to be spent on a specific list of items designed to improve the quality of the visitors experience. The legislation exempts bookstores operated by refuge friends groups from the contract requirements.

In addition, the bill is not intended to include activities by guides and outfitters. These operators traditionally bring their clients onto refuge units to engage in activities such as fishing and hunting and depart when the activity is completed. Guides and outfitters do not occupy, operate or maintain within the units significant facilities or structures such as marinas, boathouses, dwellings or visitor centers. Operators authorized to operate and use such facilities and structures are covered by this measure. It is important to note that we do not consider minor "structures" such as duck blinds, tent platforms, game racks, food caches, and hitching rails to be structures or facilities for the purpose of this act.

The fundamental goal of this legislation is to improve the quality of the experience for the 38 million people who visit a refuge each year. H.R. 1204 will accomplish this goal and it will hopefully serve as a incentive for other concessionaires to offer services to refuges throughout this country.

I compliment the gentleman from Indiana, Congressman MARK SOUDER, for introducing this legislation and for his tireless leadership in promoting this innovative idea.

I urge an "aye" vote on H.R. 1204.

Mr. SOUDER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana (Mr. SOUDER) that the House suspend the rules and pass the bill, H.R. 1204, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

ESTABLISHING NATIONAL AVIATION HERITAGE AREA

Mr. SOUDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 280) to establish the National Aviation Heritage Area, and for other purposes, as amended.

The Clerk read as follows:

H.R. 280

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—NATIONAL AVIATION HERITAGE AREA

SEC. 101. SHORT TITLE.

This title may be cited as the "National Aviation Heritage Area Act".

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Few technological advances have transformed the world or our Nation's economy, society, culture, and national character as the development of powered flight.

(2) The industrial, cultural, and natural heritage legacies of the aviation and aerospace industry in the State of Ohio are nationally significant.

(3) Dayton, Ohio, and other defined areas where the development of the airplane and aerospace technology established our Nation's leadership in both civil and military aeronautics and astronautics set the foundation for the 20th Century to be an American Century.

(4) Wright-Patterson Air Force Base in Dayton, Ohio, is the birthplace, the home, and an integral part of the future of aerospace.

(5) The economic strength of our Nation is connected integrally to the vitality of the aviation and aerospace industry, which is responsible for an estimated 11,200,000 American jobs.

(6) The industrial and cultural heritage of the aviation and aerospace industry in the State of Ohio includes the social history and living cultural traditions of several generations.

(7) The Department of the Interior is responsible for protecting and interpreting the Nation's cultural and historic resources, and there are significant examples of these resources within Ohio to merit the involvement of the Federal Government to develop programs and projects in cooperation with the Aviation Heritage Foundation, Incorporated, the State of Ohio, and other local and governmental entities to adequately conserve, protect, and interpret this heritage for the educational and recreational benefit of this and future generations of Americans, while providing opportunities for education and revitalization.

(8) Since the enactment of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), partnerships among the Federal, State, and local governments and the private sector have greatly assisted the development and preservation of the historic aviation resources in the Miami Valley.

(9) An aviation heritage area centered in Southwest Ohio is a suitable and feasible management option to increase collaboration, promote heritage tourism, and build on the established partnerships among Ohio's historic aviation resources and related sites.

(10) A critical level of collaboration among the historic aviation resources in Southwest Ohio cannot be achieved without a congressionally established national heritage area and the support of the National Park Service and other Federal agencies which own significant historic aviation-related sites in Ohio.

(11) The Aviation Heritage Foundation, Incorporated, would be an appropriate management entity to oversee the development of the National Aviation Heritage Area.

(12) Five National Park Service and Dayton Aviation Heritage Commission studies and planning documents: "Study of Alternatives: Dayton's Aviation Heritage", "Dayton Aviation Heritage National Historical Park Suitability/Feasibility Study", "Dayton Aviation Heritage General Management Plan", "Dayton Historic Resources Preservation and Development Plan", and Heritage Area Concept Study, demonstrated that sufficient historical resources exist to establish the National Aviation Heritage Area.

(13) With the advent of the 100th anniversary of the first powered flight in 2003, it is recognized that the preservation of properties nationally significant in the history of aviation is an important goal for the future education of Americans.

(14) Local governments, the State of Ohio, and private sector interests have embraced the heritage area concept and desire to enter into a partnership with the Federal government to preserve, protect, and develop the Heritage Area for public benefit.

(15) The National Aviation Heritage Area would complement and enhance the aviation-related resources within the National Park Service, especially the Dayton Aviation Heritage National Historical Park, Ohio.

(b) PURPOSE.—The purpose of this title is to establish the Heritage Area to—

(1) encourage and facilitate collaboration among the facilities, sites, organizations, governmental entities, and educational institutions within the Heritage Area to promote heritage tourism and to develop educational and cultural programs for the public;

(2) preserve and interpret for the educational and inspirational benefit of present and future generations the unique and significant contributions to our national heritage of certain historic and cultural lands, structures, facilities, and sites within the National Aviation Heritage Area;

(3) encourage within the National Aviation Heritage Area a broad range of economic opportunities enhancing the quality of life for present and future generations;

(4) provide a management framework to assist the State of Ohio, its political subdivisions, other areas, and private organizations, or combinations thereof, in preparing and implementing an integrated Management Plan to conserve their aviation heritage and in developing policies and programs that will preserve, enhance, and interpret the cultural, historical, natural, recreation, and scenic resources of the Heritage Area; and

(5) authorize the Secretary to provide financial and technical assistance to the State of Ohio, its political subdivisions, and private organizations, or combinations thereof, in preparing and implementing the private Management Plan.

SEC. 103. DEFINITIONS.

For purposes of this title:

(1) BOARD.—The term "Board" means the Board of Directors of the Foundation.

(2) FINANCIAL ASSISTANCE.—The term "financial assistance" means funds appropriated by Congress and made available to

the management entity for the purpose of preparing and implementing the Management Plan.

(3) HERITAGE AREA.—The term "Heritage Area" means the National Aviation Heritage Area established by section 104 to receive, distribute, and account for Federal funds appropriated for the purpose of this title.

(4) MANAGEMENT PLAN.—The term "Management Plan" means the management plan for the Heritage Area developed under section 106.

(5) MANAGEMENT ENTITY.—The term "management entity" means the Aviation Heritage Foundation, Incorporated (a nonprofit corporation established under the laws of the State of Ohio).

(6) PARTNER.—The term "partner" means a Federal, State, or local governmental entity, organization, private industry, educational institution, or individual involved in promoting the conservation and preservation of the cultural and natural resources of the Heritage Area.

(7) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(8) TECHNICAL ASSISTANCE.—The term "technical assistance" means any guidance, advice, help, or aid, other than financial assistance, provided by the Secretary.

SEC. 104. NATIONAL AVIATION HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the States of Ohio and Indiana, the National Aviation Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall include the following:

(1) A core area consisting of resources in Montgomery, Greene, Warren, Miami, Clark, Champaign, Shelby, and Auglaize Counties in Ohio.

(2) The Neil Armstrong Air & Space Museum, Wapakoneta, Ohio.

(3) Sites, buildings, and districts within the core area recommended by the Management Plan.

(c) MAP.—A map of the Heritage Area shall be included in the Management Plan. The map shall be on file in the appropriate offices of the National Park Service, Department of the Interior.

(d) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Aviation Heritage Foundation.

SEC. 105. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—For purposes of implementing the Management Plan, the management entity may use Federal funds made available through this title to—

(1) make grants to, and enter into cooperative agreements with, the State of Ohio and political subdivisions of that State, private organizations, or any person;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—The management entity shall—

(1) develop and submit to the Secretary for approval the proposed Management Plan in accordance with section 106;

(2) give priority to implementing actions set forth in the Management Plan, including taking steps to assist units of government and nonprofit organizations in preserving resources within the Heritage Area;

(3) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area in developing and implementing the Management Plan;

(4) maintain a collaboration among the partners to promote heritage tourism and to assist partners to develop educational and cultural programs for the public;

(5) encourage economic viability in the Heritage Area consistent with the goals of the Management Plan;

(6) assist units of government and nonprofit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the historical, natural, and architectural resources and sites in the Heritage Area; and

(D) restoring historic buildings that relate to the purposes of the Heritage Area;

(7) conduct public meetings at least quarterly regarding the implementation of the Management Plan;

(8) submit substantial amendments to the Management Plan to the Secretary for the approval of the Secretary; and

(9) for any year in which Federal funds have been received under this title—

(A) submit an annual report to the Secretary that sets forth the accomplishments of the management entity and its expenses and income;

(B) make available to the Secretary for audit all records relating to the expenditure of such funds and any matching funds; and

(C) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organizations make available to the Secretary for audit all records concerning the expenditure of such funds.

(c) USE OF FEDERAL FUNDS.—

(1) IN GENERAL.—The management entity shall not use Federal funds received under this title to acquire real property or an interest in real property.

(2) OTHER SOURCES.—Nothing in this title precludes the management entity from using Federal funds from other sources for authorized purposes.

SEC. 106. MANAGEMENT PLAN.

(a) PREPARATION OF PLAN.—Not later than 3 years after the date of the enactment of this title, the management entity shall submit to the Secretary for approval a proposed Management Plan that shall take into consideration State and local plans and involve residents, public agencies, and private organizations in the Heritage Area.

(b) CONTENTS.—The Management Plan shall incorporate an integrated and cooperative approach for the protection, enhancement, and interpretation of the natural, cultural, historic, scenic, and recreational resources of the Heritage Area and shall include the following:

(1) An inventory of the resources contained in the core area of the Heritage Area, including the Dayton Aviation Heritage Historical Park, the sites, buildings, and districts listed in section 202 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), and any other property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, or maintained because of its significance.

(2) An assessment of cultural landscapes within the Heritage Area.

(3) Provisions for the protection, interpretation, and enjoyment of the resources of the Heritage Area consistent with the purposes of this title.

(4) An interpretation plan for the Heritage Area.

(5) A program for implementation of the Management Plan by the management entity, including the following:

(A) Facilitating ongoing collaboration among the partners to promote heritage tourism and to develop educational and cultural programs for the public.

(B) Assisting partners planning for restoration and construction.

(C) Specific commitments of the partners for the first 5 years of operation.

(6) The identification of sources of funding for implementing the plan.

(7) A description and evaluation of the management entity, including its membership and organizational structure.

(c) DISQUALIFICATION FROM FUNDING.—If a proposed Management Plan is not submitted to the Secretary within 3 years of the date of the enactment of this title, the management entity shall be ineligible to receive additional funding under this title until the date on which the Secretary receives the proposed Management Plan.

(d) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—The Secretary, in consultation with the State of Ohio, shall approve or disapprove the proposed Management Plan submitted under this title not later than 90 days after receiving such proposed Management Plan.

(e) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a proposed Management Plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions to the proposed Management Plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

(f) APPROVAL OF AMENDMENTS.—The Secretary shall review and approve substantial amendments to the Management Plan. Funds appropriated under this title may not be expended to implement any changes made by such amendment until the Secretary approves the amendment.

SEC. 107. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—Upon the request of the management entity, the Secretary may provide technical assistance, on a reimbursable or nonreimbursable basis, and financial assistance to the Heritage Area to develop and implement the management plan. The Secretary is authorized to enter into cooperative agreements with the management entity and other public or private entities for this purpose. In assisting the Heritage Area, the Secretary shall give priority to actions that in general assist in—

(1) conserving the significant natural, historic, cultural, and scenic resources of the Heritage Area; and

(2) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(b) DUTIES OF OTHER FEDERAL AGENCIES.—Any Federal agency conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title;

(3) to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(4) to the maximum extent practicable, conduct or support such activities in a manner which the management entity determines will not have an adverse effect on the Heritage Area.

SEC. 108. COORDINATION BETWEEN THE SECRETARY AND THE SECRETARY OF DEFENSE AND THE ADMINISTRATOR OF NASA.

The decisions concerning the execution of this title as it applies to properties under the control of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration shall be made by such Secretary or such Administrator, in consultation with the Secretary of the Interior.

SEC. 109. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.

(a) NOTIFICATION AND CONSENT OF PROPERTY OWNERS REQUIRED.—No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(b) LANDOWNER WITHDRAW.—Any owner of private property included within the boundary of the Heritage Area shall have their property immediately removed from the boundary by submitting a written request to the management entity.

SEC. 110. PRIVATE PROPERTY PROTECTION.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this title shall be construed to—

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(b) LIABILITY.—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this title shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN HERITAGE AREA.—Nothing in this title shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) EFFECT OF ESTABLISHMENT.—The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this title may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexisting regulatory authority on land use within the Heritage Area or its viewshed by the Secretary, the National Park Service, or the management entity.

SEC. 111. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—To carry out this title there is authorized to be appropriated $10,000,000, except that not more than $1,000,000 may be appropriated to carry out this title for any fiscal year.

(b) FIFTY PERCENT MATCH.—The Federal share of the cost of activities carried out using any assistance or grant under this title shall not exceed 50 percent.

SEC. 112. SUNSET PROVISION.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date that funds are first made available for this title.

TITLE II—WRIGHT COMPANY FACTORY STUDY

SEC. 201. STUDY AND REPORT.

(a) STUDY.—

(1) IN GENERAL.—The Secretary shall conduct a special resource study updating the study required under section 104 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419) and detailing alternatives for incorporating the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park.

(2) CONTENTS.—The study shall include an analysis of alternatives for including the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park that detail management and development options and costs.

(3) CONSULTATION.—In conducting the study, the Secretary shall consult with the Delphi Corporation, the Aviation Heritage Foundation, State and local agencies, and other interested parties in the area.

(b) REPORT.—Not later than 3 years after funds are first made available for this section, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the results of the study conducted under this section.

TITLE III—STEEL INDUSTRY NATIONAL HISTORIC SITE

SEC. 301. SHORT TITLE.

This title may be cited as the "Steel Industry National Historic Site Act".

SEC. 302. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Certain sites and structures in the Commonwealth of Pennsylvania symbolize in physical form the heritage of the steel industry of the United States.

(2) Certain buildings and other structures in the Commonwealth of Pennsylvania are nationally significant historical resources, including the United States Steel Homestead Works, the Carrie Furnace complex, and the Hot Metal Bridge.

(3) Despite substantial efforts for cultural preservation and historical interpretation by the Commonwealth of Pennsylvania and by individuals and public and private entities in the Commonwealth, these buildings and other structures may be lost without the assistance of the Federal Government.

(b) PURPOSES.—The purposes of this title are to ensure the preservation, interpretation, visitor enjoyment, and maintenance of the nationally significant historical and cultural sites and structures described in subsection (a) for the benefit and inspiration of present and future generations.

SEC. 303. STEEL INDUSTRY NATIONAL HISTORIC SITE, PENNSYLVANIA.

(a) ESTABLISHMENT.—The Steel Industry National Historic Site is hereby established as a unit of the National Park System in the Commonwealth of Pennsylvania.

(b) DESCRIPTION.—

(1) INCLUSION OF CERTAIN PROPERTY.—Subject to paragraph (2), the historic site shall consist of the following properties, each of which relate to the former United States Steel Homestead Works, as depicted on the map entitled "Steel Industry National Historic Site", dated November 2003, and numbered 80,000:

(A) The historic location of the Battle of Homestead site in the borough of Munhall, Pennsylvania, consisting of approximately 3 acres of land, including the pumphouse and water tower and related structures, within the property bounded by the Monongahela River, the CSX railroad, Waterfront Drive, and the Damascus-Marcegaglia Steel Mill.

(B) The historic location of the Carrie Furnace complex in the boroughs of Swissvale and Rankin, Pennsylvania, consisting of approximately 35 acres of land, including blast furnaces 6 and 7, the ore yard, the cast house, the blowing engine house, the AC power house, and related structures, within the property bounded by the proposed southwesterly right-of-way line needed to accommodate the Mon/Fayette Expressway and the relocated CSX railroad right-of-way, the Monongahela River, and a property line drawn northeast to southwest approximately 100 yards east of the AC power house.

(C) The historic location of the Hot Metal Bridge, consisting of the Union railroad bridge and its approaches, spanning the Monongahela River and connecting the mill sites in the boroughs of Rankin and Munhall, Pennsylvania.

(2) AVAILABILITY OF MAP.—The map referred to in paragraph (1) shall be available for public inspection in an appropriate office of the National Park Service.

(c) ACQUISITION OF PROPERTY.— To further the purposes of this section, the Secretary of the Interior may acquire, only by donation, property for inclusion in the historic site as follows:

(1) Any land or interest in land with respect to the property identified in subsection (b)(1).

(2) Up to 10 acres of land adjacent to or in the general proximity of the property identified in such subsection, for the development of visitor, administrative, museum, curatorial, and maintenance facilities.

(3) Personal property associated with, and appropriate for, the interpretation of the historic site.

(d) PRIVATE PROPERTY PROTECTIONS.—Nothing in this title shall be construed—

(1) to require any private property owner to permit public access (including Federal, State, or local government access) to the private property; or

(2) to modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(e) ADMINISTRATION.—The Secretary of the Interior shall administer the historic site in accordance with this title and the provisions of law generally applicable to units of the National Park System, including the Act of August 25, 1916 (16 U.S.C. 1 et seq.), and the Act of August 21, 1935 (16 U.S.C. 461 et seq.).

(f) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—Until such time as the Secretary of the Interior has acquired the property identified in subsection (b)(1), as depicted on the map referred to in such subsection, the Secretary may enter into a cooperative agreement with any interested individual, public or private agency, organization, or institution to further the purposes of the historic site.

(2) CONTRARY PURPOSES.—Any payment made by the Secretary pursuant to a cooperative agreement under this subsection shall be subject to an agreement that conversion, use, or disposal of the project so assisted for purposes contrary to the purpose of the historic site, as determined by the Secretary, shall result in a right of the United States to reimbursement of all funds made available to such a project or the proportion of the increased value of the project attributable to such funds as determined at the time of such conversion, use, or disposal, whichever is greater.

(g) TECHNICAL ASSISTANCE.—The Secretary of the Interior may provide technical assistance to any person for—

(1) the preservation of historic structures within the historic site; and

(2) the maintenance of the natural and cultural landscape of the historic site.

(h) GENERAL MANAGEMENT PLAN.—

(1) PREPARATION.—Not later than three years after the date on which funds are first made available to carry out this title, the Secretary of the Interior shall prepare a general management plan for the historic site that will incorporate or otherwise address substantive comments made during the consultation required by paragraph (2).

(2) CONSULTATION.—The Secretary shall prepare the general management plan in consultation with—

(A) an appropriate official of each appropriate political subdivision of the Commonwealth of Pennsylvania that has jurisdiction over all or a portion of the lands included in the historic site;

(B) an appropriate official of the Steel Industry Heritage Corporation; and

(C) private property owners in the vicinity of the historic site.

(3) SUBMISSION OF PLAN TO CONGRESS.—Upon the completion of the general management plan, the Secretary shall submit a copy of the plan to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the purposes of this title not more than $40,000,000.

TITLE IV—ST. CROIX NATIONAL HERITAGE AREA STUDY

SEC. 401. ST. CROIX NATIONAL HERITAGE AREA STUDY.

(a) SHORT TITLE.—This section may be cited as the "St. Croix National Heritage Area Study Act".

(b) STUDY.—The Secretary of the Interior, in consultation with appropriate State historic preservation officers, States historical societies, and other appropriate organizations, shall conduct a study regarding the suitability and feasibility of designating the island of St. Croix as the St. Croix National Heritage Area. The study shall include analysis, documentation, and determination regarding whether the island of St. Croix—

(1) has an assemblage of natural, historic, and cultural resources that together represent distinctive aspects of American heritage worthy of recognition, conservation, interpretation, and continuing use, and are best managed through partnerships among public and private entities and by combining diverse and sometimes noncontiguous resources and active communities;

(2) provides outstanding opportunities to conserve natural, historic, cultural, or scenic features;

(3) provides outstanding recreational and educational opportunities;

(4) contains resources important to the identified theme or themes of the island of St. Croix that retain a degree of integrity capable of supporting interpretation;

(5) includes residents, business interests, nonprofit organizations, and local and State governments that are involved in the planning, have developed a conceptual financial plan that outlines the roles of all participants (including the Federal Government), and have demonstrated support for the concept of a national heritage area;

(6) has a potential management entity to work in partnership with residents, business interests, nonprofit organizations, and local and State governments to develop a national heritage area consistent with continued local and State economic activity; and

(7) has a conceptual boundary map that is supported by the public.

(c) PRIVATE PROPERTY.—In conducting the study required by this section, the Secretary of the Interior shall analyze the potential impact that designation of the area as a national heritage area is likely to have on land within the proposed area or bordering the proposed area that is privately owned at the time that the study is conducted.

(d) REPORT.—Not later than 3 fiscal years after the date on which funds are first made available for this section, the Secretary of the Interior shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the findings, conclusions, and recommendations as the Secretary deems appropriate.

TITLE V—ARABIA MOUNTAIN NATIONAL HERITAGE AREA

SEC. 501. SHORT TITLE.

This title may be cited as the "Arabia Mountain National Heritage Area Act".

SEC. 502. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Arabia Mountain area contains a variety of natural, cultural, historical, scenic, and recreational resources that together represent distinctive aspects of the heritage of the United States that are worthy of recognition, conservation, interpretation, and continuing use.

(2) The best methods for managing the resources of the Arabia Mountain area would be through partnerships between public and private entities that combine diverse resources and active communities.

(3) Davidson-Arabia Mountain Nature Preserve, a 535-acre park in DeKalb County, Georgia—

(A) protects granite outcrop ecosystems, wetland, and pine and oak forests; and

(B) includes federally-protected plant species.

(4) Panola Mountain, a national natural landmark, located in the 860-acre Panola Mountain State Conservation Park, is a rare example of a pristine granite outcrop.

(5) The archaeological site at Miners Creek Preserve along the South River contains documented evidence of early human activity.

(6) The city of Lithonia, Georgia, and related sites of Arabia Mountain and Stone Mountain possess sites that display the history of granite mining as an industry and culture in Georgia, and the impact of that industry on the United States.

(7) The community of Klondike is eligible for designation as a National Historic District.

(8) The city of Lithonia has 2 structures listed on the National Register of Historic Places.

(b) PURPOSES.—The purposes of this title are as follows:

(1) To recognize, preserve, promote, interpret, and make available for the benefit of the public the natural, cultural, historical, scenic, and recreational resources in the area that includes Arabia Mountain, Panola Mountain, Miners Creek, and other significant sites and communities.

(2) To assist the State of Georgia and the counties of DeKalb, Rockdale, and Henry in the State in developing and implementing an integrated cultural, historical, and land resource management program to protect, enhance, and interpret the significant resources within the heritage area.

SEC. 503. DEFINITIONS.

For the purposes of this title, the following definitions apply:

(1) HERITAGE AREA.—The term "heritage area" means the Arabia Mountain National Heritage Area established by section 504.

(2) MANAGEMENT ENTITY.—The term "management entity" means the Arabia Mountain Heritage Area Alliance or a successor of the Arabia Mountain Heritage Area Alliance.

(3) MANAGEMENT PLAN.—The term "management plan" means the management plan for the heritage area developed under section 506.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) STATE.—The term "State" means the State of Georgia.

SEC. 504. ARABIA MOUNTAIN NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the Arabia Mountain National Heritage Area in the State.

(b) BOUNDARIES.—The heritage area shall consist of certain parcels of land in the counties of DeKalb, Rockdale, and Henry in the State, as generally depicted on the map entitled "Arabia Mountain National Heritage Area", numbered AMNHA/80,000, and dated October, 2003.

(c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(d) MANAGEMENT ENTITY.—The Arabia Mountain Heritage Area Alliance shall be the management entity for the heritage area.

SEC. 505. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—For purposes of developing and implementing the management plan, the management entity may—

(1) make grants to, and enter into cooperative agreements with, the State, political subdivisions of the State, and private organizations;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—

(1) MANAGEMENT PLAN.—

(A) IN GENERAL.—The management entity shall develop and submit to the Secretary the management plan.

(B) CONSIDERATIONS.—In developing and implementing the management plan, the management entity shall consider the interests of diverse governmental, business, and nonprofit groups within the heritage area.

(2) PRIORITIES.—The management entity shall give priority to implementing actions described in the management plan, including assisting units of government and nonprofit organizations in preserving resources within the heritage area.

(3) PUBLIC MEETINGS.—The management entity shall conduct public meetings at least quarterly on the implementation of the management plan.

(4) ANNUAL REPORT.—For any year in which Federal funds have been made available under this title, the management entity shall submit to the Secretary an annual report that describes the following:

(A) The accomplishments of the management entity.

(B) The expenses and income of the management entity.

(5) AUDIT.—The management entity shall—

(A) make available to the Secretary for audit all records relating to the expenditure of Federal funds and any matching funds; and

(B) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organizations make available to the Secretary for audit all records concerning the expenditure of those funds.

(c) Use of Federal Funds.—

(1) In general.—The management entity shall not use Federal funds made available under this title to acquire real property or an interest in real property.

(2) Other sources.—Nothing in this title precludes the management entity from using Federal funds made available under other Federal laws for any purpose for which the funds are authorized to be used.

SEC. 506. MANAGEMENT PLAN.

(a) In General.—The management entity shall develop a management plan for the heritage area that incorporates an integrated and cooperative approach to protect, interpret, and enhance the natural, cultural, historical, scenic, and recreational resources of the heritage area.

(b) Basis.—The management plan shall be based on the preferred concept in the document entitled "Arabia Mountain National Heritage Area Feasibility Study", dated February 28, 2001.

(c) Consideration of Other Plans and Actions.—The management plan shall—

(1) take into consideration State and local plans; and

(2) involve residents, public agencies, and private organizations in the heritage area.

(d) Requirements.—The management plan shall include the following:

(1) An inventory of the resources in the heritage area, including—

(A) a list of property in the heritage area that—

(i) relates to the purposes of the heritage area; and

(ii) should be preserved, restored, managed, or maintained because of the significance of the property; and

(B) an assessment of cultural landscapes within the heritage area.

(2) Provisions for the protection, interpretation, and enjoyment of the resources of the heritage area consistent with the purposes of this title.

(3) An interpretation plan for the heritage area.

(4) A program for implementation of the management plan that includes—

(A) actions to be carried out by units of government, private organizations, and public-private partnerships to protect the resources of the heritage area; and

(B) the identification of existing and potential sources of funding for implementing the plan.

(5) A description and evaluation of the management entity, including the membership and organizational structure of the management entity.

(e) Submission to Secretary for Approval.—

(1) In general.—Not later than 3 years after the date of the enactment of this Act, the management entity shall submit the management plan to the Secretary for approval.

(2) Effect of failure to submit.—If a management plan is not submitted to the Secretary by the date specified in paragraph (1), the Secretary shall not provide any additional funding under this title until such date as a management plan for the heritage area is submitted to the Secretary.

(f) Approval and Disapproval of Management Plan.—

(1) In general.—Not later than 90 days after receiving the management plan submitted under subsection (e), the Secretary, in consultation with the State, shall approve or disapprove the management plan.

(2) Action following disapproval.—

(A) Revision.—If the Secretary disapproves a management plan submitted under paragraph (1), the Secretary shall—

(i) advise the management entity in writing of the reasons for the disapproval;

(ii) make recommendations for revisions to the management plan; and

(iii) allow the management entity to submit to the Secretary revisions to the management plan.

(B) Deadline for approval of revision.—Not later than 90 days after the date on which a revision is submitted under subparagraph (A)(iii), the Secretary shall approve or disapprove the revision.

(g) Revision of Management Plan.—

(1) In general.—After approval by the Secretary of a management plan, the management entity shall periodically—

(A) review the management plan; and

(B) submit to the Secretary, for review and approval by the Secretary, the recommendations of the management entity for any revisions to the management plan that the management entity considers to be appropriate.

(2) Expenditure of funds.—No funds made available under this title shall be used to implement any revision proposed by the management entity under paragraph (1)(B) until the Secretary approves the revision.

SEC. 507. TECHNICAL AND FINANCIAL ASSISTANCE.

(a) In General.—At the request of the management entity, the Secretary may provide technical and financial assistance to the heritage area to develop and implement the management plan.

(b) Priority.—In providing assistance under subsection (a), the Secretary shall give priority to actions that facilitate—

(1) the conservation of the significant natural, cultural, historical, scenic, and recreational resources that support the purposes of the heritage area; and

(2) the provision of educational, interpretive, and recreational opportunities that are consistent with the resources and associated values of the heritage area.

SEC. 508. EFFECT ON CERTAIN AUTHORITY.

(a) Occupational, Safety, Conservation, and Environmental Regulation.—Nothing in this title—

(1) imposes an occupational, safety, conservation, or environmental regulation on the heritage area that is more stringent than the regulations that would be applicable to the land described in section 504(b) but for the establishment of the heritage area by section 504; or

(2) authorizes a Federal agency to promulgate an occupational, safety, conservation, or environmental regulation for the heritage area that is more stringent than the regulations applicable to the land described in section 504(b) as of the date of enactment of this Act, solely as a result of the establishment of the heritage area by section 504.

(b) Land Use Regulation.—Nothing in this title—

(1) modifies, enlarges, or diminishes any authority of the Federal Government or a State or local government to regulate any use of land as provided for by law (including regulations) in existence on the date of enactment of this Act; or

(2) grants powers of zoning or land use to the management entity.

SEC. 509. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.

(a) Notification and Consent of Property Owners Required.—No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(b) Landowner Withdraw.—Any owner of private property included within the boundary of the Heritage Area shall have their property immediately removed from the boundary by submitting a written request to the management entity.

SEC. 510. PRIVATE PROPERTY PROTECTION.

(a) Access to Private Property.—Nothing in this title shall be construed to—

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(b) Liability.—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) Recognition of Authority To Control Land Use.—Nothing in this title shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) Participation of Private Property Owners in Heritage Area.—Nothing in this title shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) Effect of Establishment.—The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this title may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexisting regulatory authority on land use within the Heritage Area or its viewshed by the Secretary, the National Park Service, or the management entity.

SEC. 511. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There is authorized to be appropriated to carry out this title $10,000,000, to remain available until expended, of which not more than $1,000,000 may be used in any fiscal year.

(b) Federal Share.—The Federal share of the cost of any project or activity carried out using funds made available under this title shall not exceed 50 percent.

SEC. 512. TERMINATION OF AUTHORITY.

The authority of the Secretary to make any grant or provide any assistance under this title shall terminate on September 30, 2016.

TITLE VI—UPPER HOUSATONIC VALLEY NATIONAL HERITAGE AREA

SEC. 601. SHORT TITLE.

This title may be cited as the "Upper Housatonic Valley National Heritage Area Act".

SEC. 602. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds the following:

(1) The upper Housatonic Valley, encompassing 29 towns in the hilly terrain of western Massachusetts and northwestern Connecticut, is a singular geographical and cultural region that has made significant national contributions through its literary, artistic, musical, and architectural achievements, its iron, paper, and electrical equipment industries, and its scenic beautification and environmental conservation efforts.

(2) The upper Housatonic Valley has 139 properties and historic districts listed on the National Register of Historic Places including—

(A) five National Historic Landmarks—

(i) Edith Wharton's home, The Mount, Lenox, Massachusetts;

(ii) Herman Melville's home, Arrowhead, Pittsfield, Massachusetts;

(iii) W.E.B. DuBois' Boyhood Homesite, Great Barrington, Massachusetts;

(iv) Mission House, Stockbridge, Massachusetts; and

(v) Crane and Company Old Stone Mill Rag Room, Dalton, Massachusetts; and

(B) four National Natural Landmarks—

(i) Bartholomew's Cobble, Sheffield, Massachusetts, and Salisbury, Connecticut;

(ii) Beckley Bog, Norfolk, Connecticut;

(iii) Bingham Bog, Salisbury, Connecticut; and

(iv) Cathedral Pines, Cornwall, Connecticut.

(3) Writers, artists, musicians, and vacationers have visited the region for more than 150 years to enjoy its scenic wonders, making it one of the country's leading cultural resorts.

(4) The upper Housatonic Valley has made significant national cultural contributions through such writers as Herman Melville, Nathaniel Hawthorne, Edith Wharton, and W.E.B. DuBois, artists Daniel Chester French and Norman Rockwell, and the performing arts centers of Tanglewood, Music Mountain, Norfolk (Connecticut) Chamber Music Festival, Jacob's Pillow, and Shakespeare & Company.

(5) The upper Housatonic Valley is noted for its pioneering achievements in the iron, paper, and electrical generation industries and has cultural resources to interpret those industries.

(6) The region became a national leader in scenic beautification and environmental conservation efforts following the era of industrialization and deforestation and maintains a fabric of significant conservation areas including the meandering Housatonic River.

(7) Important historical events related to the American Revolution, Shays' Rebellion, and early civil rights took place in the upper Housatonic Valley.

(8) The region had an American Indian presence going back 10,000 years and Mohicans had a formative role in contact with Europeans during the seventeenth and eighteenth centuries.

(9) The Upper Housatonic Valley National Heritage Area has been proposed in order to heighten appreciation of the region, preserve its natural and historical resources, and improve the quality of life and economy of the area.

(b) Purposes.—The purposes of this title are as follows:

(1) To establish the Upper Housatonic Valley National Heritage Area in the State of Connecticut and the Commonwealth of Massachusetts.

(2) To implement the national heritage area alternative as described in the document entitled "Upper Housatonic Valley National Heritage Area Feasibility Study, 2003".

(3) To provide a management framework to foster a close working relationship with all levels of government, the private sector, and the local communities in the upper Housatonic Valley region to conserve the region's heritage while continuing to pursue compatible economic opportunities.

(4) To assist communities, organizations, and citizens in the State of Connecticut and the Commonwealth of Massachusetts in identifying, preserving, interpreting, and developing the historical, cultural, scenic, and natural resources of the region for the educational and inspirational benefit of current and future generations.

SEC. 603. DEFINITIONS.

In this title:

(1) Heritage area.—The term "Heritage Area" means the Upper Housatonic Valley National Heritage Area, established in section 604.

(2) Management entity.—The term "Management Entity" means the management entity for the Heritage Area designated by section 604(d).

(3) Management plan.—The term "Management Plan" means the management plan for the Heritage Area specified in section 606.

(4) Map.—The term "map" means the map entitled "Boundary Map Upper Housatonic Valley National Heritage Area", numbered P17/80,000, and dated February 2003.

(5) Secretary.—The term "Secretary" means the Secretary of the Interior.

(6) State.—The term "State" means the State of Connecticut and the Commonwealth of Massachusetts.

SEC. 604. UPPER HOUSATONIC VALLEY NATIONAL HERITAGE AREA.

(a) Establishment.—There is established the Upper Housatonic Valley National Heritage Area.

(b) Boundaries.—The Heritage Area shall be comprised of—

(1) part of the Housatonic River's watershed, which extends 60 miles from Lanesboro, Massachusetts to Kent, Connecticut;

(2) the towns of Canaan, Colebrook, Cornwall, Kent, Norfolk, North Canaan, Salisbury, Sharon, and Warren in Connecticut; and

(3) the towns of Alford, Becket, Dalton, Egremont, Great Barrington, Hancock, Hinsdale, Lanesboro, Lee, Lenox, Monterey, Mount Washington, New Marlboro, Pittsfield, Richmond, Sheffield, Stockbridge, Tyringham, Washington, and West Stockbridge in Massachusetts.

(c) Availability of Map.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

(d) Management Entity.—The Upper Housatonic Valley National Heritage Area, Inc. shall be the management entity for the Heritage Area.

SEC. 605. AUTHORITIES, PROHIBITIONS AND DUTIES OF THE MANAGEMENT ENTITY.

(a) Duties of the Management Entity.—To further the purposes of the Heritage Area, the management entity shall—

(1) prepare and submit a management plan for the Heritage Area to the Secretary in accordance with section 606;

(2) assist units of local government, regional planning organizations, and nonprofit organizations in implementing the approved management plan by—

(A) carrying out programs and projects that recognize, protect and enhance important resource values within the Heritage Area;

(B) establishing and maintaining interpretive exhibits and programs within the Heritage Area;

(C) developing recreational and educational opportunities in the Heritage Area;

(D) increasing public awareness of and appreciation for natural, historical, scenic, and cultural resources of the Heritage Area;

(E) protecting and restoring historic sites and buildings in the Heritage Area that are consistent with heritage area themes;

(F) ensuring that signs identifying points of public access and sites of interest are posted throughout the Heritage Area; and

(G) promoting a wide range of partnerships among governments, organizations and individuals to further the purposes of the Heritage Area;

(3) consider the interests of diverse units of government, businesses, organizations and individuals in the Heritage Area in the preparation and implementation of the management plan;

(4) conduct meetings open to the public at least semi-annually regarding the development and implementation of the management plan;

(5) submit an annual report to the Secretary for any fiscal year in which the management entity receives Federal funds under this title, setting forth its accomplishments, expenses, and income, including grants to any other entities during the year for which the report is made;

(6) make available for audit for any fiscal year in which it receives Federal funds under this title, all information pertaining to the expenditure of such funds and any matching funds, and require in all agreements authorizing expenditures of Federal funds by other organizations, that the receiving organizations make available for such audit all records and other information pertaining to the expenditure of such funds; and

(7) encourage by appropriate means economic development that is consistent with the purposes of the Heritage Area.

(b) Authorities.—The management entity may, for the purposes of preparing and implementing the management plan for the Heritage Area, use Federal funds made available through this title to—

(1) make grants to the State of Connecticut and the Commonwealth of Massachusetts, their political subdivisions, nonprofit organizations and other persons;

(2) enter into cooperative agreements with or provide technical assistance to the State of Connecticut and the Commonwealth of Massachusetts, their subdivisions, nonprofit organizations, and other interested parties;

(3) hire and compensate staff, which shall include individuals with expertise in natural, cultural, and historical resources protection, and heritage programming;

(4) obtain money or services from any source including any that are provided under any other Federal law or program;

(5) contract for goods or services; and

(6) undertake to be a catalyst for any other activity that furthers the purposes of the Heritage Area and is consistent with the approved management plan.

(c) Prohibitions on the Acquisition of Real Property.—The management entity may not use Federal funds received under this title to acquire real property, but may use any other source of funding, including other Federal funding outside this authority, intended for the acquisition of real property.

SEC. 606. MANAGEMENT PLAN.

(a) In General.—The management plan for the Heritage Area shall—

(1) include comprehensive policies, strategies and recommendations for conservation,

funding, management and development of the Heritage Area;

(2) take into consideration existing State, county, and local plans in the development of the management plan and its implementation;

(3) include a description of actions that governments, private organizations, and individuals have agreed to take to protect the natural, historical and cultural resources of the Heritage Area;

(4) specify the existing and potential sources of funding to protect, manage, and develop the Heritage Area in the first 5 years of implementation;

(5) include an inventory of the natural, historical, cultural, educational, scenic, and recreational resources of the Heritage Area related to the themes of the Heritage Area that should be preserved, restored, managed, developed, or maintained;

(6) describe a program of implementation for the management plan including plans for resource protection, restoration, construction, and specific commitments for implementation that have been made by the management entity or any government, organization, or individual for the first 5 years of implementation; and

(7) include an interpretive plan for the Heritage Area.

(b) DEADLINE AND TERMINATION OF FUNDING.—

(1) DEADLINE.—The management entity shall submit the management plan to the Secretary for approval within 3 years after funds are made available for this title.

(2) TERMINATION OF FUNDING.—If the management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall not qualify for Federal funding under this title until such time as the management plan is submitted to the Secretary.

SEC. 607. DUTIES AND AUTHORITIES OF THE SECRETARY.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—The Secretary may, upon the request of the management entity, provide technical assistance on a reimbursable or non-reimbursable basis and financial assistance to the Heritage Area to develop and implement the approved management plan. The Secretary is authorized to enter into cooperative agreements with the management entity and other public or private entities for this purpose. In assisting the Heritage Area, the Secretary shall give priority to actions that in general assist in—

(1) conserving the significant natural, historical, cultural, and scenic resources of the Heritage Area; and

(2) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(b) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—The Secretary shall approve or disapprove the management plan not later than 90 days after receiving the management plan.

(2) CRITERIA FOR APPROVAL.—In determining the approval of the management plan, the Secretary shall consider whether—

(A) the management entity is representative of the diverse interests of the Heritage Area including governments, natural and historic resource protection organizations, educational institutions, businesses, and recreational organizations;

(B) the management entity has afforded adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the management plan;

(C) the resource protection and interpretation strategies contained in the management plan, if implemented, would adequately protect the natural, historical, and cultural resources of the Heritage Area; and

(D) the management plan is supported by the appropriate State and local officials whose cooperation is needed to ensure the effective implementation of the State and local aspects of the management plan.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves the management plan, the Secretary shall advise the management entity in writing of the reasons therefore and shall make recommendations for revisions to the management plan. The Secretary shall approve or disapprove a proposed revision within 60 days after the date it is submitted.

(4) APPROVAL OF AMENDMENTS.—Substantial amendments to the management plan shall be reviewed by the Secretary and approved in the same manner as provided for the original management plan. The management entity shall not use Federal funds authorized by this title to implement any amendments until the Secretary has approved the amendments.

SEC. 608. DUTIES OF OTHER FEDERAL AGENCIES.

Any Federal agency conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and,

(3) to the maximum extent practicable, conduct or support such activities in a manner which the management entity determines will not have an adverse effect on the Heritage Area.

SEC. 609. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.

(a) NOTIFICATION AND CONSENT OF PROPERTY OWNERS REQUIRED.—No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(b) LANDOWNER WITHDRAW.—Any owner of private property included within the boundary of the Heritage Area shall have their property immediately removed from the boundary by submitting a written request to the management entity.

SEC. 610. PRIVATE PROPERTY PROTECTION.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this title shall be construed to—

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(b) LIABILITY.—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this title shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN HERITAGE AREA.—Nothing in this title shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) EFFECT OF ESTABLISHMENT.—The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this title may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexisting regulatory authority on land use within the Heritage Area or its viewshed by the Secretary, the National Park Service, or the management entity.

SEC. 611. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated for the purposes of this title not more than $1,000,000 for any fiscal year. Not more than a total of $10,000,000 may be appropriated for the Heritage Area under this title.

(b) MATCHING FUNDS.—Federal funding provided under this title may not exceed 50 percent of the total cost of any assistance or grant provided or authorized under this title.

SEC. 612. SUNSET.

The authority of the Secretary to provide assistance under this title shall terminate on the day occurring 15 years after funds are first made available for this title.

TITLE VII—OIL REGION NATIONAL HERITAGE AREA

SEC. 701. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the "Oil Region National Heritage Area Act".

(b) DEFINITIONS.—For the purposes of this title, the following definitions shall apply:

(1) HERITAGE AREA.—The term "Heritage Area" means the Oil Region National Heritage Area established in section 703(a).

(2) MANAGEMENT ENTITY.—The term "management entity" means the Oil Heritage Region, Inc., or its successor entity.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 702. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The Oil Region of Northwestern Pennsylvania, with numerous sites and districts listed on the National Register of Historic Places, and designated by the Governor of Pennsylvania as one of the State Heritage Park Areas, is a region with tremendous physical and natural resources and possesses a story of State, national, and international significance.

(2) The single event of Colonel Edwin Drake's drilling of the world's first successful oil well in 1859 has affected the industrial, natural, social, and political structures of the modern world.

(3) Six national historic districts are located within the State Heritage Park boundary, in Emlenton, Franklin, Oil City, and Titusville, as well as 17 separate National Register sites.

(4) The Allegheny River, which was designated as a component of the national wild and scenic rivers system in 1992 by Public Law 102–271, traverses the Oil Region and connects several of its major sites, as do some of the river's tributaries such as Oil Creek, French Creek, and Sandy Creek.

(5) The unspoiled rural character of the Oil Region provides many natural and recreational resources, scenic vistas, and excellent water quality for people throughout the United States to enjoy.

(6) Remnants of the oil industry, visible on the landscape to this day, provide a direct link to the past for visitors, as do the historic valley settlements, riverbed settlements, plateau developments, farmlands, and industrial landscapes.

(7) The Oil Region also represents a cross section of American history associated with Native Americans, frontier settlements, the French and Indian War, African Americans and the Underground Railroad, and immigration of Swedish and Polish individuals, among others.

(8) Involvement by the Federal Government shall serve to enhance the efforts of the Commonwealth of Pennsylvania, local subdivisions of the Commonwealth of Pennsylvania, volunteer organizations, and private businesses, to promote the cultural, national, and recreational resources of the region in order to fulfill their full potential.

(b) PURPOSE.—The purpose of this title is to enhance a cooperative management framework to assist the Commonwealth of Pennsylvania, its units of local government, and area citizens in conserving, enhancing, and interpreting the significant features of the lands, water, and structures of the Oil Region, in a manner consistent with compatible economic development for the benefit and inspiration of present and future generations in the Commonwealth of Pennsylvania and the United States.

SEC. 703. OIL REGION NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is hereby established the Oil Region National Heritage Area.

(b) BOUNDARIES.—The boundaries of the Heritage Area shall include all of those lands depicted on a map entitled "Oil Region National Heritage Area", numbered OIRE/20,000 and dated October, 2000. The map shall be on file in the appropriate offices of the National Park Service. The Secretary of the Interior shall publish in the Federal Register, as soon as practical after the date of the enactment of this Act, a detailed description and map of the boundaries established under this subsection.

(c) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Oil Heritage Region, Inc., the locally based private, nonprofit management corporation which shall oversee the development of a management plan in accordance with section 705(b).

SEC. 704. COMPACT.

To carry out the purposes of this title, the Secretary shall enter into a compact with the management entity. The compact shall include information relating to the objectives and management of the area, including a discussion of the goals and objectives of the Heritage Area, including an explanation of the proposed approach to conservation and interpretation and a general outline of the protection measures committed to by the Secretary and management entity.

SEC. 705. AUTHORITIES AND DUTIES OF MANAGEMENT ENTITY.

(a) AUTHORITIES OF THE MANAGEMENT ENTITY.—The management entity may use funds made available under this title for purposes of preparing, updating, and implementing the management plan developed under subsection (b). Such purposes may include—

(1) making grants to, and entering into cooperative agreements with, States and their political subdivisions, private organizations, or any other person;

(2) hiring and compensating staff; and

(3) undertaking initiatives that advance the purposes of the Heritage Area.

(b) MANAGEMENT PLAN.—The management entity shall develop a management plan for the Heritage Area that—

(1) presents comprehensive strategies and recommendations for conservation, funding, management, and development of the Heritage Area;

(2) takes into consideration existing State, county, and local plans and involves residents, public agencies, and private organizations working in the Heritage Area;

(3) includes a description of actions that units of government and private organizations have agreed to take to protect the resources of the Heritage Area;

(4) specifies the existing and potential sources of funding to protect, manage, and develop the Heritage Area;

(5) includes an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historic, recreational, or scenic significance;

(6) describes a program for implementation of the management plan by the management entity, including plans for restoration and construction, and specific commitments for that implementation that have been made by the management entity and any other persons for the first 5 years of implementation;

(7) lists any revisions to the boundaries of the Heritage Area proposed by the management entity and requested by the affected local government; and

(8) includes an interpretation plan for the Heritage Area.

(c) DEADLINE; TERMINATION OF FUNDING.—

(1) DEADLINE.—The management entity shall submit the management plan to the Secretary within 2 years after the funds are made available for this title.

(2) TERMINATION OF FUNDING.—If a management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall not qualify for Federal assistance under this title.

(d) DUTIES OF MANAGEMENT ENTITY.—The management entity shall—

(1) give priority to implementing actions set forth in the compact and management plan;

(2) assist units of government, regional planning organizations, and nonprofit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the natural, historical, and architectural resources and sites in the Heritage Area;

(D) the restoration of any historic building relating to the themes of the Heritage Area;

(E) ensuring that clear signs identifying access points and sites of interest are put in place throughout the Heritage Area; and

(F) carrying out other actions that the management entity determines to be advisable to fulfill the purposes of this title;

(3) encourage by appropriate means economic viability in the Heritage Area consistent with the goals of the management plan;

(4) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area; and

(5) for any year in which Federal funds have been provided to implement the management plan under subsection (b)—

(A) conduct public meetings at least annually regarding the implementation of the management plan;

(B) submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each person to which any grant was made by the management entity in the year for which the report is made; and

(C) require, for all agreements entered into by the management entity authorizing expenditure of Federal funds by any other person, that the person making the expenditure make available to the management entity for audit all records pertaining to the expenditure of such funds.

(e) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity may not use Federal funds received under this title to acquire real property or an interest in real property.

SEC. 706. DUTIES AND AUTHORITIES OF THE SECRETARY.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—

(A) OVERALL ASSISTANCE.—The Secretary may, upon the request of the management entity, and subject to the availability of appropriations, provide technical and financial assistance to the management entity to carry out its duties under this title, including updating and implementing a management plan that is submitted under section 705(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives.

(B) OTHER ASSISTANCE.—If the Secretary has the resources available to provide technical assistance to the management entity to carry out its duties under this title (including updating and implementing a management plan that is submitted under section 705(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives), upon the request of the management entity the Secretary shall provide such assistance on a reimbursable basis. This subparagraph does not preclude the Secretary from providing nonreimbursable assistance under subparagraph (A).

(2) PRIORITY.—In assisting the management entity, the Secretary shall give priority to actions that assist in the—

(A) implementation of the management plan;

(B) provision of educational assistance and advice regarding land and water management techniques to conserve the significant natural resources of the region;

(C) development and application of techniques promoting the preservation of cultural and historic properties;

(D) preservation, restoration, and reuse of publicly and privately owned historic buildings;

(E) design and fabrication of a wide range of interpretive materials based on the management plan, including guide brochures, visitor displays, audio-visual and interactive exhibits, and educational curriculum materials for public education; and

(F) implementation of initiatives prior to approval of the management plan.

(3) DOCUMENTATION OF STRUCTURES.—The Secretary, acting through the Historic American Building Survey and the Historic American Engineering Record, shall conduct studies necessary to document the industrial, engineering, building, and architectural history of the Heritage Area.

(b) Approval and Disapproval of Management Plans.—The Secretary, in consultation with the Governor of Pennsylvania, shall approve or disapprove a management plan submitted under this title not later than 90 days after receiving such plan. In approving the plan, the Secretary shall take into consideration the following criteria:

(1) The extent to which the management plan adequately preserves and protects the natural, cultural, and historical resources of the Heritage Area.

(2) The level of public participation in the development of the management plan.

(3) The extent to which the board of directors of the management entity is representative of the local government and a wide range of interested organizations and citizens.

(c) Action Following Disapproval.—If the Secretary disapproves a management plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions in the management plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

(d) Approving Changes.—The Secretary shall review and approve amendments to the management plan under section 705(b) that make substantial changes. Funds appropriated under this title may not be expended to implement such changes until the Secretary approves the amendments.

(e) Effect of Inaction.—If the Secretary does not approve or disapprove a management plan, revision, or change within 90 days after it is submitted to the Secretary, then such management plan, revision, or change shall be deemed to have been approved by the Secretary.

SEC. 707. DUTIES OF OTHER FEDERAL ENTITIES.

Any Federal entity conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(3) to the maximum extent practicable, conduct or support such activities in a manner that the management entity determines shall not have an adverse effect on the Heritage Area.

SEC. 708. SUNSET.

The Secretary may not make any grant or provide any assistance under this title after the expiration of the 15-year period beginning on the date that funds are first made available for this title.

SEC. 709. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.

(a) Notification and Consent of Property Owners Required.—No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(b) Landowner Withdraw.—Any owner of private property included within the boundary of the Heritage Area shall have their property immediately removed from the boundary by submitting a written request to the management entity.

SEC. 710. PRIVATE PROPERTY PROTECTION.

(a) Access to Private Property.—Nothing in this title shall be construed to—

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(b) Liability.—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) Recognition of Authority To Control Land Use.—Nothing in this title shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) Participation of Private Property Owners in Heritage Area.—Nothing in this title shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) Effect of Establishment.—The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this title may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexisting regulatory authority on land use within the Heritage Area or its viewshed by the Secretary, the National Park Service, or the management entity.

SEC. 711. USE OF FEDERAL FUNDS FROM OTHER SOURCES.

Nothing in this title shall preclude the management entity from using Federal funds available under Acts other than this title for the purposes for which those funds were authorized.

SEC. 712. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There are authorized to be appropriated to carry out this title—

(1) not more than $1,000,000 for any fiscal year; and

(2) not more than a total of $10,000,000.

(b) 50 Percent Match.—Financial assistance provided under this title may not be used to pay more than 50 percent of the total cost of any activity carried out with that assistance.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana (Mr. Souder) and the gentleman from American Samoa (Mr. Faleomavaega) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana (Mr. Souder).

GENERAL LEAVE

Mr. SOUDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. SOUDER. Mr. Speaker, I yield myself such time as I may consume.

H.R. 280, as amended by the Committee on Resources, contains seven titles, a sort of national heritage area omnibus bill.

Title I of the bill would establish the National Aviation Heritage Area across eight counties in Ohio consisting of historically significant sites, buildings and districts associated with the development of the aviation and aerospace industry in America.

Title II would authorize a special resource study that would update the study required under section 104 of the Dayton Aviation Heritage Preservation Act of 1992 and detail alternatives for incorporating the Wright Company factory as a unit of the Dayton Aviation Heritage National Historical Park.

Title III would establish the Steel Industry National Historic Park in southwestern Pennsylvania encompassing the United States Steel Homestead Works, site of the 1862 bloody Homestead Steel strike, the Carrie Furnace complex from the Homestead Works, and the famous Hot Metal Bridge.

Title IV would authorize the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the St. Croix National Heritage Area in St. Croix, U.S. Virgin Islands.

The fifth title would establish the Arabia Mountain National Heritage Area in the State of Georgia, highlighting the archaeological settlement of the Lithonia region and the unique granite outcroppings that characterize the region's topography.

Title VI would establish the Upper Housatonic Valley National Heritage Area in the State of Connecticut and the Commonwealth of Massachusetts, preserving its national contributions in literature, art, music, architecture, iron and paper, and its electrical equipment industries.

Finally, title VII of the bill would establish the Oil Region National Heritage Area in northwestern Pennsylvania, home of the first oil drilling site in North America.

Mr. Speaker, H.R. 280, as amended, is supported by the majority and the minority of the committee. I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. FALEOMAVAEGA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to offer my commendation to the gentleman from Ohio for his sponsorship of this legislation, which passed the committee on a bipartisan basis.

Mr. Speaker, H.R. 280 as brought to the House today is a bipartisan package of legislation dealing with several heritage areas and historic sites. All of the components of the amended H.R. 280 have been considered and approved by the Committee on Resources as stand-alone legislation, but have been combined into one bill to simplify its consideration.

The various provisions of the amended H.R. 280 dealing with private property represent a compromise between the majority and the minority. As with most good compromises, there are elements that we do not wholly agree with, but which overall are acceptable as a means to advance the legislation that is now before us.

Mr. Speaker, H.R. 280, as amended, represents the efforts of many Members and organizations to advance the preservation and interpretation of certain historic resources. I congratulate the sponsors for their work and support the adoption of H.R. 280, as amended, by the House this evening.

Mr. Speaker, I reserve the balance of my time.

Mr. SOUDER. Mr. Speaker, I yield 3 minutes to my friend and near neighbor, the gentleman from Ohio (Mr. HOBSON).

Mr. HOBSON. Mr. Speaker, I want to thank the chairman, the ranking member, and those gentlemen carrying the bill on the floor today for their great work on this piece of legislation. This is, as they said, a combination of a number of pieces of legislation that they have worked very hard to bring together. This is not an easy task to do. The staff did a great job of working this out with everybody involved to where we have a piece of legislation today that I think on a bipartisan fashion works for everybody. That is when I think this legislature is at its best, when we come together and work together to get bills such as this done.

I certainly am strong for the part of the bill that relates to the National Aviation Heritage Area, but I also am supportive of all the rest of the bill. I thank all the Members and would urge the passage of the bill.

Mr. Speaker, I rise today in strong support of H.R. 280, the National Aviation Heritage Area Act of 2003. I would first like to thank Chairman POMBO, and the Members of the Resources Committee, as well as the Chairman of the National Parks, Recreation and Public Lands Subcommittee, GEORGE RADANOVICH, for their leadership and cooperation in advancing this bill.

I have introduced this legislation with Representatives MIKE TURNER, JOHN BOEHNER, and virtually all of the Ohio Delegation to create a National Aviation Heritage Area to enhance significant historical resources of interest to all Americans and to further national awareness of Ohio's key role in the history of aviation. I can think of no better way to preserve and carry on the years of hard work and preparation leading up to this year's 100th anniversary of the first powered flight, than to establish this heritage area.

Few technological advances have transformed the world or our Nation's economy, society, culture, and national character as the development of powered flight. Ohioans such as the Wright Brothers, John Glenn, and Neil Armstrong have been at the forefront of every major development associated with flight. But just as important are the inventors, scientists and engineers that have made it possible in less than 100 years to not only fly between continents, but also to fly to the moon and maintain a presence in space.

This legislation is fully in the spirit of President Bush's recent "Preserve America" executive order which declared, "It is the policy of the Federal Government to provide leadership in preserving America's heritage . . . by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties."

The Members of Congress from Ohio have a long record of promoting the preservation of aviation sites in Central Ohio. We have previously worked together to secure funding for the U.S. Air Force Museum, the Dayton Aviation Heritage National Historical Park, and the National Aviation Hall of Fame. We have worked closely with the community to make sure that this year's Centennial of Flight celebration was a huge success.

For these reasons, it is vitally important that we move forward with this legislation and I urge a "yes" vote on the National Aviation Heritage Area Act of 2003.

Mr. FALEOMAVAEGA. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Massachusetts (Mr. OLVER).

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Mr. OLVER. Mr. Speaker, I rise today in support of H.R. 280, which includes as title VI the establishment of the Upper Housatonic Valley National Heritage area in Connecticut and Massachusetts.

Let me start by thanking the gentlewoman from Connecticut (Mrs. JOHNSON) for her hard work on this initiative. It has been a pleasure working with her.

During the 106th Congress, H.R. 4312 authorized the Secretary of the Interior to conduct a feasibility study of the Upper Housatonic as a potential national heritage area. That study documents that the Upper Housatonic Valley meets the Interior Department's criteria for such a designation. The Park Service recognizes the valley as "distinctive for having a landscape that includes a blend of industrial innovations, environmental conservation initiatives, and cultural achievements of national significance."

The Upper Housatonic Valley includes 29 communities in western Massachusetts and northwestern Connecticut. And I would like to highlight a few of the many contributions this region of New England brings to our national heritage.

Herman Melville, Nathaniel Hawthorne, Edith Wharton, Oliver Wendell Holmes, Jr.; Norman Rockwell; Suzy Frelinghuesen are just a few of the prominent artists and writers who have made the Housatonic Valley their home and the subject of their work. Today visitors can see these artists' work on display as local museums before taking in a classical music concert at Tanglewood or visiting the magnificently restored Shaker Village in Hancock. The Upper Housatonic has a rich cultural heritage and thriving artistic community to this day.

The Members may not be familiar with the name Elizabeth "Mumbet" Freeman today, but her role in our national history is rightfully recognized in the newly reopened National Archives "Charters of Freedom" exhibit. A slave from Sheffield, Massachusetts, Mumbet sued in Massachusetts's court for her freedom, leading to the abolition of slavery in Massachusetts in 1793. Many years later the great civil rights leader W.E.B. Dubois made his home in Great Barrington, Massachusetts. His papers are archived and open to the public today at the University of Massachusetts in Amherst.

As I hoped to highlight today, the Upper Housatonic Valley is an area rich in culture, history, and innovation against the backdrop of scenic landscapes. Its designation as a National Heritage Area will help preserve this treasure for years to come. I urge an aye vote in support of this legislation.

Mr. SOUDER. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. PETERSON), committee member and also another appropriator.

Mr. PETERSON of Pennsylvania. Mr. Speaker, I thank the gentleman from Indiana for yielding me this time, and I would like to thank committee and all those involved in bringing forward this heritage region omnibus bill which includes the Oil Heritage Region bill. I come from the Oil Valley where oil was discovered. In fact, I live 5 miles from Drake's Well where the first oil well that produced oil, ever, in the world was dug. Colonel Drake, in the middle of the 19th Century, came to Titusville, and it was sort of Drake's folly. He was going to drill for oil. They could not get the drilling rigs, and so they actually dug a well 68 feet deep. And one would wonder why they chose that valley. Because that creek was already Oil Creek that ran between Oil City and Titusville, Titusville to Oil City, because that stream always had oil on it. The gas pressure, the oil sand being only 68 feet below the surface, oil was always oozing up into springs and small streams and into Oil Creek; so it was always named Oil Creek because there was always a scum of oil on Oil Creek. That valley changed the world. It changed our whole transportation system. And here 150 years later, we still use for vehicle oil, the same kind of oil that was discovered back when Drake's oil was dug. It was the home base of all the major oil companies. Every major oil company in this country has its roots in Titusville and Oil City. Cities Service and Sunoco, all of those started there. In my lifetime, the companies that used to be there, Quaker State, Pennzoil, and Kendall, were the Penn-grade crude refineries that remained because Pennsylvania-grade crude is a paraffin-based crude, not an asphalt-based crude as in other parts of the world.

I want to make sure that everyone realizes that the Oil Heritage Area in no way threatens private property rights. There are those who believe that a heritage area somehow is going to take away personal private property rights. This legislation speaks clearly to that issue, that those with private property will only be involved in the heritage area if they so choose to. In our area, we have a lot of State land, local land, and Federal properties that are a part of the area, and in 1994 the State started the State Oil Heritage Area, and we are now in the process of making that the National Oil Heritage Area. Why do we want to do that? It is about preserving the history of oil. The one item that I say changed the world more than any other discovery, except, maybe today, the computer, as we look at how the computer has changed the world. Oil changed the whole world in how we travel, how we manufacture. The industrial revolution came from it, and it all started by Colonel Drake's digging a well in Titusville, Pennsylvania, Colonel Drake's Well.

Drake Well Park is there. Oil Creek State Park is there. And Oil Creek today is one of the finest fishing streams in Pennsylvania. Trout and bass propagate there naturally. That is a sign of a pretty good stream. And 150 years ago, that whole area was drilled, oil wells were beside each other, and today it is a pristine State park and a beautiful area, and we just want to tell the story of oil which we think should be told and the whole world should be able to hear it.

Mr. FALEOMAVAEGA. Mr. Speaker, again, I urge my colleagues to support this bill. I have no further requests for time, and I yield back the balance of my time.

Mr. SOUDER. Mr. Speaker, I yield myself such time as I may consume.

I thank all the sponsors of the bill that went into this historic omnibus. It is very important that we preserve the natural sites but also the tremendous history of our country, the oil, the National Aviation Heritage out of Dayton. Alexander Hamilton's home and business are still there in the Virgin Islands Heritage Area that we are looking at. This is an important bill. I hope it receives unanimous support.

Ms. MAJETTE. Mr. Speaker, I am delighted to be here today to discuss Title five of H.R. 280, to establish The Arabia Mountain National Heritage Area. Title five is the bill I previously introduced as H.R. 1618, which the committee agreed to incorporate into this larger bill.

I thank Chairman POMBO and Ranking Member RAHALL and their staffs for their hard work in bringing this bill to the floor today.

I also thank each of the cosponsors of the Arabia Mountain National Heritage Area Act from Georgia for their hard work in this effort. This has been a truly bipartisan endeavor, with 5 Democrat and 5 Republican cosponsors from Georgia. I'd like to particularly recognize JOHN LINDER for his leadership.

The Arabia Mountain legislation will conserve and protect the natural, cultural, and historical resources of Georgia's granite outcroppings. In addition, this legislation will provide residents and visitors with the opportunity to preserve the wonders that Arabia Mountain has to offer, and we look forward to sharing its history and beauty with all Americans.

The Arabia Mountain Heritage Area is a living history lesson, illustrating the long-standing interaction of human activity with a unique landscape. Incredibly, there has been human settlement in this location for close to 7,000 years. In that time, our relationship with the land has grown and evolved in various ways.

The region encompassed within this Heritage Area is a suburb of Atlanta—one of the fastest growing communities in the world.

Despite its proximity to Atlanta, one portion of the Heritage Area, Panola Mountain, is pristine land untouched by development. And Panola Mountain Conservation Park is a recognized National Landmark. The area features unique granite outcroppings that are more than 400 million years old. And Arabia Mountain itself is topped by endangered mosses and lichens.

Beyond the natural beauty of the area is a rich cultural history that began when Native Americans lived on these lands, and one that continues today. Archaeological evidence indicates that Native Americans quarried these soapstone and granite outcroppings more than 5,000 years ago.

The Heritage Area also includes a nature preserve, the last farm left in what was once the biggest dairy farming area in the state, and remnants of early American developments from the days of European settlement.

By connection the proposed Heritage Area's natural, cultural and historical resources through rivers, greenways and parks, this region will rapidly become a popular recreation area for residents of the fast growing metropolitan Atlanta area, as well as visitors from all over America. This unique cultural and historical haven is a place Georgians want to protect and will continue to enjoy.

I hope my colleagues will join me in recognizing the important combination of natural, cultural and historical resources in the Arabia Mountain Heritage Area. I urge all of my colleagues to support H.R. 280.

Mr. TURNER. Mr. Speaker, I appreciate the opportunity to support H.R. 280, the National Aviation Heritage Area Act.

From the very earliest times, mankind fantasized about flying. Many ancient cultures had their interpretation of this impossible dream, including the Aztecs, the Mayans, and the Native American Indians. In Ancient Greece, there was the story of Icarus, a man who fashioned wings of wax and feathers and thus could fly. During the Renaissance Leonardo da Vinci created highly detailed plans for flying machines.

Although mankind remained flightless for several thousands of years, the dream never weakened. Finally, 100 years ago, next month, brothers, Orville and Wilbur Wright, who owned a bicycle repair shop in Dayton, Ohio built a flying machine they optimistically named the "Flyer" and Dayton became the birthplace of modern aviation.

John Glenn and Neil Armstrong are two more fellow Ohioans, in the tradition of Wright Brothers, that awed and inspired us as they changed the world with their historic space flights—Glenn, the first American to orbit the Earth and Armstrong, the first to walk on another celestial body.

H.R. 280 will establish a National Heritage Area within the States of Ohio and Indiana that will preserve our nation's aviation heritage by providing the means necessary to protect historic aviation sites and resources.

The Dayton Aviation Heritage Commission has raised awareness and community support for H.R. 280. This legislation has the strong support of local governments and communities throughout southwest Ohio, who have an unwavering commitments to promoting and preserving the history of aviation and its Ohio roots. This bill provides us with a unique opportunity to expand historic aviation sites and protect an extraordinary piece of the world's history.

The Members of Ohio's Congressional delegation have worked diligently over the years to preserve and promote Dayton's aviation history, and H.R. 280 is another important step. As an original co-sponsor of H.R. 280, I am proud to offer my support of this important legislation. I would also like to thank Chairmen DAVE HOBSON and JOHN BOEHNER for their commitment and hard worked on this issue.

Along with the U.S. Air Force at Wright-Patterson, the Dayton Aviation Heritage National Historical Park, NASA Glen Research Center and the National Aviation Hall of Fame, we have worked to preserve many of aviations historical landmarks.

As a native of Dayton, Ohio I grew up surrounded by the history of aviation. As we celebrate 100 years of powered flight, it is my great privilege to offer my support to this important legislation to preserve America's aviation heritage.

Mr. BOEHNER. Mr. Speaker, I rise today in strong support of H.R. 280, the National Aviation Heritage Area Act.

One hundred years ago, the Wright Brothers made Ohio the "Birthplace of Aviation." It was in their bicycle shop in Dayton that the Wright Brothers researched and designed the first successful, heavier-than-air, manned, powered aircraft. It was there in Dayton, on the Huffman Flying Prairie, where the brothers learned to fly—where they learned to control and maneuver their aircraft.

Today, the tradition of the Wright Brothers lives on in the Miami Valley community. Engineers, scientists, and inventors continue to research, develop, and test the latest advances in air power at the Wright Patterson Air Force laboratories. At the Air Force Institute of Technology, they learn the technical skills to build the aircraft of the future. And at the United States Air Force Museum, three hangars attest to the commitment the community has to preserve the history of the Air Force and its contributions to the advancement of powered flight.

In addition to the public sector efforts, the Miami Valley has been fortunate to have numerous dedicated individuals and private organizations who work to provide an educational and recreational preservation of the area's aviation heritage.

In 2003, the 100th anniversary of Powered Flight, Ohioans have come together in unprecedented ways to celebrate, preserve, and promote the dream of Wilbur and Orville Wright.

I can think of no better tribute to their efforts than to establish this heritage area, and I am proud to be an original co-sponsor of this bill.

In the Miami Valley, the legacy of aviation is celebrated for its critical contributions to the economy, to business and personal travel, and to our military. I join my Miami Valley colleagues, Mr. HOBSON and Mr. TURNER, and other Ohio Members in saluting our constituents' hard work in preserving a nationally important story, a story which captures the dreams and imagination of the young and old alike—the dream and the reality of powered flight.

Mr. DOYLE. Mr. Speaker, I rise today to urge my colleagues to support H.R. 280. This bill would establish a National Historic Site in southwestern Pennsylvania to preserve parts of the former U.S. Steel Homestead Works and educate the public about its importance.

The Homestead Works played an important role in America's economic and industrial history. It was one of the largest and most productive steel mills in the world 100 years ago. Assessing the historical significance of the Homestead Works, New York Times writer William Serrin observed:

> Its products helped the nation move west, shaped its skyline, bridged and dammed its waters, helped make it a world naval power, and helped it enter the Space Age. When the mill began, the nation's population was 51.5 million, the Industrial Revolution was in its infancy, and America was innocent and isolated; when the mill went down, the nation's population was 250 million, the Industrial Revolution—based on steel—had changed America and the rest of the world irrevocably, and America was the world's dominant nation in every imaginable way.

The Homestead Works and other steel mills nearby made the United States the economic and military superpower it is today. As a result, Pittsburgh is known for its steel industry around the world. I want to make sure this nation and the world always remember the sacrifices made by the workers who labored in the mills to give Pittsburgh this distinction.

The history of the Homestead Works is much bigger than that of Pittsburgh or even southwestern Pennsylvania—it reflects national trends in industrial development, scientific innovation and technological advancement, our labor and social history, our country's diverse ethnic heritage, and the work ethic that characterizes this nation.

The story of Homestead, its industrial and labor history, continues to attract worldwide interest. The most well-known incident in Homestead's history is the Battle of Homestead, where in 1982 steel workers repulsed a force of Pinkerton detectives sent in to break their strike. More than a hundred years later, the Battle of Homestead still stands as one of the most compelling stories in the long history of the labor movement in the United States.

The Homestead Works' Carrie Furnaces 6 and 7 are also sites of national historical significance. They are rare examples of early production techniques and turn-of-the-century technological advances. These relics are the only remaining pre-World War II era blast furnaces left in the Pittsburgh area, and they represent some of the most important technological accomplishments of the American steel industry. I believe that our nation has an obligation to preserve these unique historical assets.

For nearly a decade I have been working with the Steel Industry Heritage Corporation to preserve the Battle of Homestead site, Carrie Furnaces 6 and 7, and the history of those who toiled there. The Steel Industry Heritage Corporation has been successful in convincing the property owner, the community, and the National Park Service to support this initiative. The National Park Service recognizes the historical significance of these sites and recently recommended that they be preserved, in a National Historic Site, for future generations.

The legislation before us today would create a new National Historic Site that would include Carrie Furnaces 6 and 7, the Hot Metal Bridge, the Battle of Homestead site, and other historic parts of the Borough of Homestead.

Mr. Speaker, approval of this legislation today will bring us one step closer to the certainty that the remarkable history of the Homestead Works will be remembered for generations to come. I want to thank the Park Service for its work on this initiative, and I want to commend Augie Carlino, President and CEO of the Steel Industry Heritage Corporation, for working with me for many years to move this initiative forward. Finally, I want to thank Chairman POMBO and Ranking Member RAHALL of the Resources Committee for working to bring this bill to the House Floor today.

I urge my colleagues to support this very worthwhile legislation.

Mr. SOUDER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the motion offered by the gentleman from Indiana (Mr. SOUDER) that the House suspend the rules and pass the bill, H.R. 280, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to establish certain National Heritage Areas, and for other purposes.".

A motion to reconsider was laid on the table.

SIERRA NATIONAL FOREST LAND EXCHANGE ACT OF 2003

Mr. SOUDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1651) to provide for the exchange of land within the Sierra National Forest, California, and for other purposes, as amended.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sierra National Forest Land Exchange Act of 2003".

SEC. 2. DEFINITIONS.

In this Act:

(1) FEDERAL LAND.—The term "Federal land" means the parcels of land and improvements thereon comprising approximately 160 acres and located in township 9 south, range 25 east, section 30, E½SW¼ and W½ SE¼, Mt. Diablo Meridian, California.

(2) NON-FEDERAL LAND.—The term "non-Federal land" means a parcel of land comprising approximately 80 acres and located in township 8 south, range 26 east, section 29, N½NW¼, Mt. Diablo Meridian, California.

(3) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

SEC. 3. LAND EXCHANGE, SIERRA NATIONAL FOREST, CALIFORNIA.

(a) EXCHANGE AUTHORIZED.—

(1) IN GENERAL.—If, during the one-year period beginning on the date of enactment of this Act, the owner of the non-Federal land offers the United States the exchange of the non-Federal land and a cash equalization payment of $50,000, the Secretary shall convey, by quit claim deed, all right, title, and interest of the United States in and to the Federal land. The conveyance of the Federal land shall be subject to valid existing rights and under such terms and conditions as the Secretary may prescribe.

(2) ACCEPTABLE TITLE.—Title to the non-Federal land shall conform with the title approval standards of the Attorney General applicable to Federal land acquisitions and shall be acceptable to the Secretary.

(3) CORRECTION AND MODIFICATION OF LEGAL DESCRIPTIONS.—The Secretary, in consultation with the owner of the non-Federal land, may make corrections to the legal descriptions of the Federal land and non-Federal land. The Secretary and the owner of the non-Federal land may make minor modifications to such descriptions insofar as such modifications do not affect the overall value of the exchange by more than five percent.

(b) VALUATION OF LAND TO BE CONVEYED.—For purposes of this section, during the period referred to in subsection (a)(1), the value of the non-Federal land shall be deemed to be $200,000 and the value of the Federal land shall be deemed to be $250,000.

(c) ADMINISTRATION OF LAND ACQUIRED BY UNITED STATES.—Once acquired, the Secretary shall manage the non-Federal land in accordance with the Act of March 1, 1911 (commonly known as the Weeks Act; 16 U.S.C. 480 et seq.), and in accordance with the other laws and regulations pertaining to National Forest System lands.

(d) CONDITIONS ON CONVEYANCE OF FEDERAL LAND.—The conveyance by the Secretary under subsection (a) shall be subject to the following conditions:

(1) That the recipient of the Federal land convey all 160 acres of the Federal land to the Sequoia Council of the Boy Scouts of America not later than four months after the date on which the recipient receives the Federal land from the Secretary under subsection (a).

(2) That, as described in section 5, the owner of the easement granted in section 4 have the right of first offer regarding any reconveyance of the Federal land by the Sequoia Council of the Boy Scouts of America.

(e) DISPOSITION AND USE OF CASH EQUALIZATION FUNDS.—The Secretary shall deposit the cash equalization payment received under subsection (a) in the fund established by Public Law 90–171 (commonly known as the Sisk Act; 16 U.S.C. 484a). The cash equalization payment shall be available to the Secretary until expended, without further appropriation, for the acquisition of lands and interests in lands for the National Forest System in the State of California.

(f) COST COLLECTION FUNDS.—The owner of the non-Federal land shall be responsible for all direct costs associated with processing the land exchange under this section and shall pay the Secretary the necessary funds, which shall be deposited in a cost collection account. Funds so deposited shall be available to the Secretary until expended, without further appropriation, for the cost associated with the land exchange. Any funds remaining after completion of the land exchange, which are not needed to cover expenses, shall be refunded to the owner of the non-Federal land.

SEC. 4. GRANT OF EASEMENT IN CONNECTION WITH HYDROELECTRIC PROJECT NO. 67.

(a) PURPOSE.—A hydroelectric project, licensed pursuant to the Federal Power Act (16 U.S.C. 791a et seq.) as Project No. 67, is located on a majority of the Federal land authorized for exchange under section 3. To protect the ability of the owner of Project No. 67 to continue to operate and maintain that hydroelectric project under the current and all future licenses or authorizations issued pursuant to the Federal Power Act or any other applicable law, this section is necessary.

(b) EASEMENT REQUIRED.—Before conveying the Federal land under section 3, the Secretary shall grant an easement, without consideration, to the owner of Project No. 67 for the right to enter, occupy, and use for hydroelectric power purposes the Federal land currently within the licensed boundary for Project No. 67. The Project No. 67 owner shall hold harmless the Secretary for any claims against the owner due to the grant of easement.

(c) REQUIRED TERMS AND CONDITIONS.—The easement granted under this section shall provide the following: "The United States of America, hereinafter called 'Grantor,' pursuant to a congressional authorization, hereby grants, transfers, and conveys unto the [insert name of Project No. 67 owner], its successors and assigns, hereinafter called 'Grantee,' all those certain exclusive easements and rights in, on, under, over, along, and across certain real property described in Exhibit A, attached hereto [attach description of real property subject to the easement] and incorporated herein (the 'Property'), for any purpose or activity that Grantee deems convenient or necessary to the creation, generation, transmission, or distribution of hydropower on and off the Property, including, but not limited to, the right to inundate the Property with water, reservoir management, and compliance with legal obligations in accordance with the applicable Federal Energy Regulatory Commission license and those non-exclusive easements and rights to use, occupy, and enter the Property, and to allow others to use, occupy, and enter the Property, for other purposes related to hydropower and reservoir management and use, such as recreation by Grantee or the public, and regulation of any activities on the Property that may impact such purposes, at any time and from time to time. Grantor further grants, transfers, and conveys unto the Grantee the right of assignment, in whole or in part, to others, without limitation. Grantee shall have the right to take such actions on the Property as may be necessary to comply with all applicable laws, rules, regulations, ordinances, orders and other governmental, regulatory, and administrative authorities and requirements, or that may be necessary for the economical entry, occupancy, and use of the Property for hydropower purposes. Grantor, its successors and assigns, shall not deposit or permit or allow to be deposited, earth, rubbish, debris or any other substance or material on the Property, or so near thereto as to constitute, in the opinion of Grantee, an interference or obstruction to the hydropower and reservoir purposes. No other easements, leases, or licenses shall be granted on, under or over the Property by Grantor to any person, firm or corporation without the previous written consent of Grantee, which consent shall not be unreasonably withheld. The terms, covenants and conditions of this Grant of Easement shall bind and inure to the benefit of the successors and assigns of Grantor and the successors and assigns of Grantee.".

SEC. 5. RIGHT OF FIRST OFFER FOR SUBSEQUENT CONVEYANCE OF FEDERAL LAND.

(a) RIGHT OF FIRST OFFER.—As a condition on the conveyance of the Federal land under section 3 and its reconveyance to the Sequoia Council of the Boy Scouts of America, as required by section 3(d)(1), the Secretary shall require that the Council agree to provide the owner of the easement granted under section 4 the right of first offer to obtain the Federal land, or any portion thereof, that the Council ever proposes to sell, transfer, or otherwise convey.

(b) NOTICE AND OFFER.—If the Council proposes to sell, transfer, or otherwise convey the Federal land or a portion thereof, the Council shall give the easement owner written notice specifying the terms and conditions on which the conveyance is proposed and offering to convey to the easement owner, on the same terms and conditions, the Federal land or the portion thereof proposed for conveyance.

(c) ACCEPTANCE OR REJECTION OF OFFER.—Within 90 days after the easement owner receives the notice required by subsection (b) and all available documents necessary to perform reasonable due diligence on the proposed conveyance, the easement owner shall either accept or reject the offer. If the easement owner accepts the offer, the closing of the sale shall be governed by the terms of the offer in the notice.

(d) EFFECT OF REJECTION.—If the hydropower easement owner rejects an offer under subsection (b) or fails to respond to the offer before the expiration of the 90-day period provided in subsection (c), the Council may convey the property covered by the notice to any other person on the same terms and conditions specified in the notice. If those terms and conditions are subsequently altered in any way, then the notice and offer shall again be made to the easement owner under subsection (b). The rejection by the easement owner of one or more of such offers shall not affect its right of first offer as to any other proposed conveyance by the Council.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana (Mr. SOUDER) and the gentleman from American Samoa (Mr. FALEOMAVAEGA) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana (Mr. SOUDER).

GENERAL LEAVE

Mr. SOUDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material in the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. SOUDER. Mr. Speaker, I yield myself such time as I may consume.

H.R. 1651, introduced by the gentleman from California (Mr. RADANOVICH), provides for the exchange of lands within the Sierra National Forest, California, and for other purposes. The bill would exchange 160 acres of Forest Service property, of which only 15 acres is above water, for 80 acres of private land surrounded by National Forest. The landowner has agreed to pay the difference of $50,000 to the Forest Service to finalize the land transfer. After the completion of the exchange, the landowner will then convey the property to the Sequoia Council Boy Scouts, who have run a camp on the land through a special use permit for the last 30 years.

This bill will benefit both the Forest Service and the Sequoia Council Boy Scouts. I urge adoption of the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. FALEOMAVAEGA. Mr. Speaker, I yield such time as I may consume.

Mr. Speaker, I want to commend the gentleman from California (Mr. RADANOVICH), who authored this proposed bill.

Mr. Speaker, H.R. 1651 would direct the Secretary of Agriculture to consummate a land exchange on the Sierra National Forest in California. In exchange for the United States Forest Service receiving approximately 80 acres and a payment of $50,000 from a private party, the Secretary of Agriculture would convey to the private party 160 acres, including two lakefront parcels. The private party plans to reconvey the 160 acres to the Sequoia Council of the Boy Scouts of America for use as a summer camp.

Mr. Speaker, we do not object to this legislation. I urge my colleagues to support this bill.

Mr. SOUDER. Mr. Speaker, I have no further requests for time, and I yield back balance of my time.

Mr. FALEOMAVAEGA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana (Mr. SOUDER) that the House suspend the rules and pass the bill, H.R. 1651, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

NORTHERN ARIZONA NATIONAL FOREST LAND EXCHANGE ACT OF 2003

Mr. SOUDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2907) to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership, as amended.

The Clerk read as follows:

H.R. 2907

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Northern Arizona National Forest Land Exchange Act of 2003".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) certain parcels of private land in the approximately 170 square miles of land commonly known as the "Yavapai Ranch" and located in Yavapai County, Arizona, are intermingled with National Forest System land owned by the United States and administered by the Secretary of Agriculture as part of Prescott National Forest;

(2) the private land is owned by the Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C., in an intermingled checkerboard pattern, with the United States or Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C., owning alternate square mile sections of land or fractions of square mile sections;

(3) a significant portion of the private land within the checkerboard area (including the land located in or near the Pine Creek watershed, Juniper Mesa Wilderness Area, Haystack Peak, and the Luis Maria Baca Float No. 5) is located in environmentally valuable areas that possess attributes for public management, use, and enjoyment, including—

(A) outdoor recreation;

(B) preservation of stands of old growth forest;

(C) largely unfragmented habitat for antelope, deer, elk, mountain lion, wild turkey, and other wildlife species;

(D) scientific research;

(E) rangeland;

(F) cultural and archaeological resources; and

(G) scenic vistas;

(4) the checkerboard ownership pattern of private and public land within Prescott National Forest impedes sound and efficient management of the intermingled National Forest System land;

(5) if the private land in the checkerboard area is subdivided or developed, the intermingled National Forest System land will become highly fragmented and lose much of the value of the land for wildlife habitat and future public access, use, and enjoyment;

(6) acquisition by the United States of certain parcels of land that have been offered by Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C., for addition to Prescott National Forest will serve important public objectives, including—

(A) acquiring private land that meets the criteria for inclusion in the National Forest System in exchange for land with lower public, environmental, and ecological values;

(B) consolidating a large area of National Forest System land to preserve—

(i) permanent public access, use, and enjoyment of the land; and

(ii) efficient management of the land;

(C) minimizing cash outlays by the United States to achieve the objectives described in subparagraphs (A) and (B); and

(D) reducing administrative costs to the United States through—

(i) consolidation of Federal land holdings for more efficient land management and planning;

(ii) elimination of approximately 350 miles of boundary between private land and the Federal parcels; and

(iii) reduction of right-of-way, special use, and other permit processing and issuance for roads and other facilities on National Forest System land;

(7) parcels of National Forest System land have been identified for conveyance to Yavapai Ranch Limited Partnership or the Northern Yavapai, L.L.C., through a land exchange because the parcels—

(A) have significantly lower recreational, wildlife, ecological, and other public purpose values than the land to be acquired by the United States; and

(B) are encumbered by special use permits and rights-of-way for a variety of purposes (including summer youth camps, municipal water treatment facilities, sewage treatment facilities, city parks, and airport-related facilities) that—

(i) limit the usefulness of the parcels for general National Forest System purposes; but

(ii) are logical for pass-through conveyances from Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C., to the permit or right-of-way holders; and

(8) it is in the public interest of all water users in the Verde Valley, Arizona, that water conservation easements be established that limit future water use on the Federal land that—

(A) is located near the communities of Camp Verde, Cottonwood, and Clarkdale; and

(B) is to be conveyed by the United States to Yavapai Ranch Limited Partnership or the Northern Yavapai, L.L.C.

(b) PURPOSE.—The purpose of this Act is to authorize, direct, and facilitate the exchange of Federal land and non-Federal land between the United States, Yavapai Ranch Limited Partnership, and the Northern Yavapai, L.L.C.

SEC. 3. DEFINITIONS.

In this Act:

(1) CAMP.—The term "camp" means Camp Pearlstein, Friendly Pines, Patterdale Pines, Pine Summit, Sky Y, and YoungLife Lost Canyon camps in the State of Arizona.

(2) FEDERAL LAND.—The term "Federal land" means the land described in section 4(a)(2).

(3) MANAGEMENT PLAN.—The term "Management Plan" means the land and resource management plan for Prescott National Forest.

(4) NON-FEDERAL LAND.—The term "non-Federal land" means the approximately 35,000 acres of non-Federal land located within the boundaries of Prescott National Forest, as generally depicted on the map entitled "Yavapai Ranch Land Exchange Non-Federal Lands", dated April 2002.

(5) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(6) YAVAPAI RANCH.—The term "Yavapai Ranch" means—

(A) the Yavapai Ranch Limited Partnership, an Arizona Limited Partnership; and

(B) the Northern Yavapai, L.L.C., an Arizona Limited Liability Company.

SEC. 4. LAND EXCHANGE.

(a) CONVEYANCE OF FEDERAL LAND BY THE UNITED STATES.—

(1) IN GENERAL.—On receipt of an offer from Yavapai Ranch to convey the non-Federal land, the Secretary shall convey to Yavapai Ranch by patent or quitclaim deed, subject to easements, rights-of-way, utility lines, and any other valid encumbrances on the Federal land in existence on the date of enactment of this Act and any other reservations that may be agreed to by the Secretary and Yavapai Ranch, all right, title, and interest of the United States in and to the Federal land described in paragraph (2).

(2) DESCRIPTION OF FEDERAL LAND.—The Federal land referred to in paragraph (1) shall consist of the following:

(A) Certain land comprising approximately 15,300 acres located in Yavapai County, Arizona, as generally depicted on the map entitled "Yavapai Ranch Land Exchange Yavapai Ranch Area Federal Lands", dated April 2002.

(B) Certain land in the Coconino National Forest, Coconino County Arizona—

(i) comprising approximately 1,500 acres located in Coconino National Forest, Coconino County, Arizona, as generally depicted on the map entitled "Yavapai Ranch Land Exchange Flagstaff Federal Lands-Airport Parcel", dated April 2002; and

(ii) comprising approximately 28.26 acres in 2 separate parcels, as generally depicted on the map entitled "Yavapai Ranch Land Exchange Flagstaff Federal Lands—Wetzel School and Mt. Elden Parcels", dated September 2002.

(C) Certain land referred to as Williams Airport, Williams golf course, Williams Sewer, Buckskinner Park, Williams Railroad, and Well parcels numbers 2, 3, and 4, comprising approximately 950 acres, located in Kaibab National Forest, Coconino County, Arizona, as generally depicted on the map entitled "Yavapai Ranch Land Exchange Williams Federal Lands", dated April 2002.

(D) Certain land comprising approximately 2,200 acres located in Prescott National Forest, Yavapai County, Arizona, as generally depicted on the map entitled "Yavapai Ranch Land Exchange Camp Verde Federal Land—General Crook Parcel", dated April 2002.

(E) Certain land comprising approximately 820 acres located in Prescott National Forest in Yavapai County, Arizona, as generally depicted on the map entitled "Yavapai Ranch Land Exchange Camp Verde Federal Lands—Cottonwood/Clarkdale Parcel", dated April 2002.

(F) Certain land comprising approximately 237.5 acres located in Kaibab National Forest, Coconino County, Arizona, as generally depicted on the map entitled "Yavapai Ranch Land Exchange Younglife/Lost Canyon", dated April 2002.

(G) Certain land comprising approximately 200 acres located in Prescott National Forest, Yavapai County, Arizona, and including Friendly Pines, Patterdale Pines, Camp Pearlstein, Pine Summit, and Sky Y, as generally depicted on the map entitled "Yavapai Ranch Land Exchange Prescott Federal Lands—Summer Youth Camp Parcels", dated April 2002.

(H) Perpetual and nonexclusive easements that—

(i) run with and benefit land owned by or conveyed to Yavapai Ranch across certain land of the United States;

(ii) are for the purposes of—

(I) operating, maintaining, repairing, improving, and replacing electric power lines or water pipelines (including related storage tanks, valves, pumps, and hardware); and

(II) providing rights of reasonable ingress and egress necessary for the activities described in subclause (I);

(iii) are 20 feet in width; and

(iv) are located 10 feet on either side of each line depicted on the map entitled "Yavapai Ranch Land Exchange YRLP Acquired Easements for Water Lines", dated April 2002.

(3) CONDITIONS.—

(A) PERMITS.—Permits or other legal occupancies of the Federal land by third parties in existence on the date of transfer of the Federal land to Yavapai Ranch shall be addressed in accordance with—

(i) part 254.15 of title 36, Code of Federal Regulations (or any successor regulation); and

(ii) other applicable laws (including regulations).

(B) ESTABLISHMENT OF CONSERVATION EASEMENTS ON CERTAIN PARCELS.—

(i) IN GENERAL.—To conserve water in the Verde Valley, Arizona, and to minimize the adverse impacts from future development of the parcels described in subparagraphs (D) and (E) of paragraph (2) on current and future users of water and holders of water rights in existence on the date of enactment of this Act and the Verde River and National Forest System land retained by the United States, the United States shall limit in perpetuity the use of water on the parcels by reserving conservation easements that—

(I) prohibit golf course development on the parcels;

(II) require that public parks and greenbelts on the parcels be watered with treated effluent;

(III)(aa) with respect to the parcel described in paragraph (2)(D), limit total post-exchange water use to not more than 700 acre-feet of water per year; and

(bb) with respect to the parcel described in paragraph (2)(E), limit total post-exchange water use to not more than 150 acre-feet of water per year; and

(IV) require that any water used for the parcels not be withdrawn from wells perforated in the Holocene alluvium of the Verde River unless supplied by municipalities or private water companies; however any water supplied by municipalities or private water companies shall count toward the water use limitations set out in the preceding subclauses (III)(aa) and (III)(bb).

(ii) RECORDATION.—The conservation easements described in clause (i) shall be recorded to encumber the title to parcels described in subparagraphs (D) and (E) of paragraph (2) that are conveyed by the Secretary to Yavapai Ranch.

(iii) SUBSEQUENT CONVEYANCE.—

(I) IN GENERAL.—On acquisition of title to the parcels described in subparagraphs (D) and (E) of paragraph (2), Yavapai Ranch may convey all or a portion of the parcels to 1 or more successors-in-interest.

(II) WATER USE APPORTIONMENT.—A conveyance under subclause (I) shall, in accordance with the terms described in clause (i), include a recorded and binding agreement on the amount of water available for use on the parcel or portion of the parcel conveyed, as determined by the Yavapai Ranch.

(iv) ENFORCEMENT.—The Secretary shall enter into one or more assignments with a political subdivision of the State of Arizona authorizing the political subdivision to enforce the terms described in clause (i) in any manner provided by law. Until such time as the Secretary executes the assignments, the Secretary shall hold and enforce the conservation easements.

(v) LIABILITY.—

(I) IN GENERAL.—Any action for a breach of the terms of the conservation easements described in clause (i) shall be against the owner or owners of the parcel or portion of the parcel, at the time of the breach, whose action or failure to act has resulted in the breach.

(II) HOLD HARMLESS.—To the extent that the United States or a successor-in-interest to the United States no longer holds title to the parcels or any portion of the parcels described in subparagraph (D) or (E) of paragraph (2), the United States or such successor-in-interest shall be held harmless from damages or injuries attributable to any breach of the terms of the conservation easements described in clause (i) by a subsequent successor-in-interest.

(b) CONVEYANCE OF NON-FEDERAL LAND BY YAVAPAI RANCH.—

(1) IN GENERAL.—On receipt of title to the Federal land, Yavapai Ranch shall simultaneously convey to the United States, by deed acceptable to Secretary and subject to any encumbrances acceptable to the Secretary, all right, title, and interest of Yavapai Ranch in and to the non-Federal land.

(2) EASEMENTS.—

(A) IN GENERAL.—The conveyance of non-Federal land to the United States under paragraph (1) shall be subject to the reservation of—

(i) perpetual easements and water rights that run with and benefit the land retained by Yavapai Ranch for—

(I) the operation, maintenance, repair, improvement, development, and replacement of not more than 3 wells in existence on the date of enactment of this Act;

(II) related storage tanks, valves, pumps, and hardware; and

(III) pipelines to points of use; and

(ii) easements for reasonable ingress and egress to accomplish the purposes of the easements described in clause (i).

(B) EXISTING WELLS.—

(i) IN GENERAL.—Each easement for an existing well shall be—

(I) 40 acres in area; and

(II) to the maximum extent practicable—

(aa) centered on the existing well; and

(bb) located in the same square mile section of land.

(ii) LIMITATION.—Within a 40-acre easement described in clause (i), the United States and any permitees or licensees of the United States shall be prohibited from undertaking any activity that materially interferes with the use of the wells by Yavapai Ranch, without the written consent of Yavapai Ranch.

(iii) RESERVATION OF WATER FOR THE UNITED STATES.—The United States shall be entitled to ½ the production of each existing or replacement well, not to exceed a total of 3,100,000 gallons of water annually, for watering wildlife and stock and for other National Forest System purposes from the 3 wells.

(C) REASONABLE ACCESS.—Each easement for ingress and egress shall be at least 20 feet in width.

(D) LOCATION.—The locations of the easements and wells shall be the locations generally depicted on a map entitled "Yavapai Ranch Land Exchange YRLP Reserved Easements for Waterlines and Wells", dated April 2002.

(c) LAND TRANSFER PROBLEMS.—

(1) FEDERAL LAND.—If a parcel of Federal land (or a portion of the parcel) cannot be conveyed to Yavapai Ranch because of the presence of hazardous materials or if the proposed title to a parcel of Federal land (or a portion of the parcel) is unacceptable to Yavapai Ranch because of the presence of threatened or endangered species, cultural or historic resources, unpatented mining claims, or other third party rights under public land laws—

(A) the parcel of Federal land or portion of the parcel shall be excluded from the exchange; and

(B) the non-Federal land shall be adjusted in accordance with section 5(c).

(2) NON-FEDERAL LAND.—If 1 or more of the parcels of non-Federal land or a portion of such a parcel cannot be conveyed to the United States because of the presence of hazardous materials or if the proposed title to a parcel or a portion of the parcel is unacceptable to the Secretary—

(A) the parcel of non-Federal land or portion of the parcel shall be excluded from the exchange; and

(B) the Federal land shall be adjusted in accordance with section 5(c).

(d) CONVEYANCE OF FEDERAL LAND TO CITIES AND CAMPS.—

(1) IN GENERAL.—Following the acquisition of the Federal land, Yavapai Ranch shall convey to the cities of Flagstaff, Williams, and Camp Verde and the camps the parcels of Federal land or portions of parcels located in or near the cities or camps under any terms agreed to by Yavapai Ranch, the cities, and camps before the date on which the exchange is completed.

(2) DELETION FROM EXCHANGE.—If Yavapai Ranch and the cities or camps referred to in paragraph (1) have not agreed to the terms and conditions of a subsequent conveyance of a parcel or portion of a parcel of Federal land before the completion of the exchange, the Secretary, on notification by Yavapai Ranch, the cities, or camps, shall delete the parcel or any portion of the parcel from the exchange. Any parcel or portion of a parcel to be deleted may be configured by the Secretary to leave the United States with manageable post-exchange land and boundaries.

(3) EASEMENTS.—In accordance with section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the United States shall reserve easements in any land transferred to Yavapai Ranch.

SEC. 5. EXCHANGE VALUATION, APPRAISALS, AND EQUALIZATION.

(a) EQUAL VALUE EXCHANGE.—The values of the non-Federal and Federal land to be exchanged under this Act—

(1) shall be equal, as determined by the Secretary; or

(2) if the values are not equal, shall be equalized in accordance with subsection (c).

(b) APPRAISALS.—

(1) IN GENERAL.—The values of the Federal land and non-Federal land shall be determined by appraisals using the appraisal standards in—

(A) the Uniform Appraisal Standards for Federal Land Acquisitions, fifth edition (December 20, 2000); and

(B) the Uniform Standards of Professional Appraisal Practice.

(2) APPROVAL.—In accordance with part 254.9(a)(1) of title 36, Code of Federal Regulations (or any successor regulation), the appraiser shall be—

(A) acceptable to the Secretary and Yavapai Ranch; and

(B) a contractor, the clients of which shall be the Secretary and Yavapai Ranch.

(3) REQUIREMENTS.—During the appraisal process the appraiser shall—

(A) consider the effect on value of the Federal land or non-Federal land because of the existence of encumbrances on each parcel, including—

(i) permitted uses on Federal land that cannot be reasonably terminated before the appraisal; and

(ii) facilities on Federal land that cannot be reasonably removed before the appraisal; and

(B) determine the value of each parcel of Federal land and non-Federal land (including the value of each individual section of the intermingled Federal and non-Federal land of the Yavapai Ranch) as an assembled transaction consistent with the applicable provisions of parts 254.5 and 254.9(b)(1)(v) of title 36, Code of Federal Regulations (or any successor regulation).

(4) DISPUTE RESOLUTION.—A dispute relating to the appraised values of the Federal land or non-Federal land following completion of the appraisal shall be processed in accordance with—

(A) section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)); and

(B) part 254.10 of title 36, Code of Federal Regulations (or any successor regulation).

(5) APPRAISAL PERIOD.—After the final appraised values of the Federal land and non-Federal land have been reviewed and approved by the Secretary or otherwise determined in accordance with the requirements of paragraph (4), the final appraised values—

(A) shall not be reappraised or updated by the Secretary before the completion of the land exchange; and

(B) shall be considered to be the values of the Federal land and non-Federal land on the date of the transfer of title.

(6) AVAILABILITY.—In accordance with the policy of the Forest Service, and to ensure the timely and full disclosure of the appraisals to the public, the appraisals approved by the Secretary shall be made available for public inspection in the Offices of the Supervisors for Prescott, Coconino, and Kaibab National Forests.

(c) EQUALIZATION OF VALUES.—

(1) SURPLUS OF NON-FEDERAL LAND.—

(A) IN GENERAL.—If, after any adjustments are made to the non-Federal land or Federal land under subsection (c) or (d) of section 4, the final appraised value of the non-Federal land exceeds the final appraised value of the Federal land, the Federal land and non-Federal land shall be adjusted in accordance with subparagraph (B) until the values are approximately equal.

(B) ADJUSTMENTS.—An adjustment referred to in subparagraph (A) shall be accomplished by beginning at the east boundary of section 30, T. 20 N., R. 6 W., Gila and Salt River Base and Meridian, Yavapai County, Arizona, and adding to the Federal land in ⅛ section increments (N–S 64th line) and lot lines across the section, while deleting in the same increments portions of sections 19 and 31, T. 20 N., R. 6 W., Gila and Salt River Base and Meridian, Yavapai County, Arizona, to establish a linear and continuous boundary that runs north to south across the sections.

(2) SURPLUS OF FEDERAL LAND.—

(A) IN GENERAL.—If, after any adjustments are made to the non-Federal land or Federal land under subsection (c) or (d) of section 4, the final appraised value of the Federal land exceeds the final appraised value of the non-Federal land, the Federal land and non-Federal land shall be adjusted in accordance with subparagraph (B) until the values are approximately equal.

(B) ADJUSTMENTS.—Adjustments under subparagraph (A) shall be made in the following order:

(i) Beginning at the south boundary of section 31, T. 20 N., R. 5 W., Gila and Salt River Base and Meridian, Yavapai County, Arizona, and sections 33 and 35, T. 20 N., R. 6 W., Gila and Salt River Base and Meridian, Yavapai County, by adding to the non-Federal land to be conveyed to the United States in ⅛ section increments (E–W 64th line) while deleting from the conveyance to Yavapai Ranch Federal land in the same incremental portions of section 32, T. 20 N., R. 5 W., Gila and Salt River Base and Meridian, Yavapai County, Arizona, and sections 32, 34, and 36, in T. 20 N., R. 6 W., Gila and Salt River Base and Meridian, Yavapai County, Arizona, to establish a linear and continuous boundary that runs east to west across the sections.

(ii) By deleting the following parcels:

(I) The Wetzel School parcel identified on the map described in section 4(a)(2)(B)(ii).

(II) The Williams Sewer parcel identified on the map described in section 4(a)(2)(C).

(III) That part of the Williams Railroad parcel identified on the map described in section 4(a)(2)(C) that lies south of Business I-40.

(IV) A portion of the Cottonwood/Clarkdale Federal Lands identified on the map described in Section 4(a)(2)(E) and further described as the S½S½ of Section 8, Township 15 North, Range 3 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(V) The Buckskinner Park parcel identified on the map described in section 4(a)(2)(C).

(VI) Approximately 316 acres of the Camp Verde Federal Land-General Crook Parcel identified on the map described in Section 4(a)(2)(D) and further described as Lots 1, 5, and 6 and the NE¼NE¼ of Section 26, and the N½N½ of Section 27, Township 14 North, Range 4 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(VII) A portion of the Cottonwood/Clarkdale Federal Lands identified on the map described in section 4(a)(2)(E) and further described as the N½S½ of Section 8, Township 15 North, Range 3 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(VIII) Approximately 314 acres of the Camp Verde Federal Land-General Crook Parcel identified on the map described in section 4(a)(2)(D) and further described as Lots 2, 7, 8 and 9 and the SE¼NE¼ of Section 26, and the S½N½ of Section 27, Township 14 North, Range 4 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(IX) The Mt. Elden parcel identified on the map described in section 4(a)(2)(B)(ii).

(C) MODIFICATIONS.—By mutual agreement by the Secretary and the Yavapai Ranch, the land and acreage in subclauses (I) through (IX) may be modified to conform with a survey approved by the Bureau of Land Management or to leave the United States with manageable post-exchange land and boundaries.

(3) ADDITIONAL EQUALIZATION OF VALUES.—If, after the values are adjusted in accordance with paragraph (1) or (2), the values of the Federal land and non-Federal land are not equal, then the Secretary and Yavapai Ranch may by agreement adjust the acreage of the Federal land and non-Federal land until the values of that land are equal.

(d) CASH EQUALIZATION.—

(1) IN GENERAL.—After the values of the non-Federal and Federal land are equalized to the maximum extent practicable under subsection (c), any balance due the Secretary or Yavapai Ranch shall be paid—

(A) through cash equalization payments under section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)); or

(B) in accordance with standards established by the Secretary and Yavapai Ranch.

(2) LIMITATION.—

(A) ADJUSTMENTS.—If the value of the Federal land exceeds the value of the non-Federal land by more than $50,000, the Secretary and Yavapai Ranch shall, by agreement, delete additional Federal land from the exchange until the values of the Federal land and non-Federal land are equal.

(B) DEPOSIT.—Any amounts received by the United States under this Act—

(i) shall be deposited in a fund established under Public Law 90–171 (16 U.S.C. 484a) (commonly known as the "Sisk Act"); and

(ii) shall be available, without further appropriation, for the acquisition of land or interests in land for National Forest System purposes in the State of Arizona.

SEC. 6. MISCELLANEOUS PROVISIONS.

(a) REVOCATION OF ORDERS.—Any public orders withdrawing any of the Federal land from appropriation or disposal under the public land laws are revoked to the extent necessary to permit disposal of the Federal land.

(b) WITHDRAWAL OF FEDERAL LAND.—The Federal land is withdrawn from all forms of entry and appropriation under the public land laws, including the mining and mineral leasing laws and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), until the date on which the exchange of Federal land and non-Federal land is completed.

(c) SURVEYS, INVENTORIES, AND CLEARANCES.—Before completing the exchange of Federal land and non-Federal land under this Act, the Secretary shall carry out land surveys and preexchange inventories, clearances, reviews, and approvals relating to hazardous materials, threatened and endangered species, cultural and historic resources, and wetlands and floodplains.

(d) COSTS OF IMPLEMENTING THE EXCHANGE.—

(1) IN GENERAL.—

(A) The United States shall bear the costs or other responsibilities or requirements associated with land surveys, title searches, archeological and cultural surveys and salvage, removal of encumbrances and curing title deficiencies necessary to bring the Federal land into a condition where it is acceptable for exchange purposes.

(B) Yavapai Ranch shall bear the costs or other responsibilities or requirements associated with land surveys, title searches, archeological and cultural surveys and salvage, removal of encumbrances and curing title deficiencies necessary to bring the non-Federal land into a condition where it is acceptable for exchange purposes.

(2) INELIGIBLE REIMBURSEMENTS.—No amount paid by Yavapai Ranch under this subsection shall be eligible for reimbursement under section 206(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(f)).

(e) TIMING.—It is the intent of Congress that the exchange of Federal land and non-Federal land directed by this Act be completed not later than 18 months after the date of enactment of this Act.

(f) CONTRACTORS.—

(1) IN GENERAL.—If the Secretary lacks adequate staff or resources to complete the exchange by the date specified in subsection (e), the Yavapai Ranch may contract with independent third-party contractors to carry out any work necessary to complete the exchange by that date, subject to the mutual agreement of the Secretary and the Yavapai Ranch on the contractor or contractors, scope of work, estimated cost of work, and approval of any such work by the Secretary.

(2) REIMBURSEMENT.—In the event that Yavapai Ranch contracts with independent third party contractors to carry out or complete any responsibilities or requirements that would be performed by the Secretary but for the lack of adequate staff or resources, then the Secretary shall reimburse

Yavapai Ranch for Yavapai Ranch's costs or expenses for such contractors in accordance with section 206(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(f)).

SEC. 7. STATUS AND MANAGEMENT OF LAND AFTER EXCHANGE.

(a) IN GENERAL.—Non-Federal land acquired by the United States under this Act—

(1) shall become part of the Prescott National Forest; and

(2) shall be administered by the Secretary in accordance with—

(A) this Act;

(B) the laws (including regulations) applicable to the National Forest System; and

(C) other authorized uses of the National Forest System.

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—Acquisition of the non-Federal land under this Act shall not require a revision or amendment to the Management Plan.

(2) AMENDMENT OR REVISION.—If the Management Plan is amended or revised after the date of acquisition of non-Federal land under this Act, the Management Plan shall be amended to reflect the acquisition of the non-Federal land.

(c) POST-EXCHANGE MANAGEMENT OF CERTAIN LAND.—

(1) IN GENERAL.—On acquisition by the United States, the non-Federal land acquired by the United States and any National Forest System land outside the Juniper Mesa Wilderness Area but formerly intermingled with the acquired non-Federal land shall be managed in accordance with—

(A) paragraphs (2) through (6); and

(B) the laws (including regulations) generally applicable to National Forest System land.

(2) PROTECTION OF NATURAL RESOURCES.—The non-Federal land shall be managed in a manner that maintains the species, character, and natural values of the land, including—

(A) deer, pronghorn antelope, wild turkey, mountain lion, and other resident wildlife and native plant species;

(B) suitability for livestock grazing; and

(C) aesthetic values.

(3) GRAZING.—Each area located in the Yavapai Ranch grazing allotment as of the date of enactment of this Act shall—

(A) remain in the Yavapai Ranch grazing allotment; and

(B) continue to be subject to grazing in accordance with the laws (including regulations) generally applicable to domestic livestock grazing on National Forest System land.

(4) ROADS.—

(A) IMPROVEMENT AND MAINTENANCE.—The Secretary shall maintain or improve a system of roads and trails on the non-Federal land to provide opportunities for hunting, motorized and nonmotorized recreation, and other uses of the land by the public.

(B) PUBLIC ACCESS ROAD.—

(i) CONSTRUCTION.—The Secretary shall improve or construct a public access road linking Forest Road 7 (Pine Creek Road) to Forest Road 1 (Turkey Canyon Road) through portions of sections 33, 32, 31, and 30, T. 19 N., R. 6 W., Gila and Salt River Base and Meridian.

(ii) EXISTING ROAD.—The existing road linking Pine Creek and Gobbler Knob shall—

(I) until the date on which the new public access road is completed, remain open; and

(II) after the date on which the new public access road is completed, be obliterated.

(C) EASEMENTS.—

(i) IN GENERAL.—On completion of the land exchange under this Act, the Secretary and Yavapai Ranch shall grant each other at no charge reciprocal easements for ingress, egress, and utilities across, over, and through—

(I)(aa) the routes depicted on the map entitled "Yavapai Ranch Land Exchange Road and Trail Easements—Yavapai Ranch Area" dated April 2002; and

(bb) any other inholdings retained by the United States or Yavapai Ranch; or

(II) any relocated routes that are agreed to by the Secretary and Yavapai Ranch.

(ii) REQUIREMENTS.—An easement described in clause (i)—

(I) shall be unlimited, perpetual, and nonexclusive in nature; and

(II) shall run with and benefit the land of the grantee.

(iii) RIGHTS OF GRANTEE.—The rights of the grantee shall extend to—

(I) any successors-in-interest, assigns, and transferees of Yavapai Ranch; and

(II) in the case of the Secretary, members of the general public, as determined to be appropriate by the Secretary.

(5) TIMBER HARVESTING.—

(A) IN GENERAL.—Except as provided in subparagraph (B), timber harvesting for commodity production shall be prohibited on the non-Federal land.

(B) EXCEPTIONS.—Timber harvesting may be conducted on the non-Federal land if the Secretary determines that timber harvesting is necessary—

(i) to prevent or control fires, insects, and disease through forest thinning or other forest management techniques;

(ii) to protect or enhance grassland habitat, watershed values, native plants, trees, and wildlife species; or

(iii) to improve forest health.

(6) WATER IMPROVEMENTS.—Nothing in this Act prohibits the Secretary from authorizing or constructing new water improvements in accordance with the laws (including regulations) applicable to water improvements on National Forest System land for—

(A) the benefit of domestic livestock or wildlife management;

(B) the improvement of forest health or forest restoration; or

(C) other National Forest purposes.

(d) MAPS.—

(1) IN GENERAL.—The Secretary and Yavapai Ranch may correct any minor errors in the maps of, legal descriptions of, or encumbrances on the Federal land or non-Federal land.

(2) DISCREPANCY.—In the event of any discrepancy between a map and legal description, the map shall prevail unless the Secretary and Yavapai Ranch agree otherwise.

(3) AVAILABILITY.—All maps referred to in this Act shall be on file and available for inspection in the Office of the Supervisor, Prescott National Forest, Prescott, Arizona.

(e) EFFECT.—Nothing in this Act precludes, prohibits, or otherwise restricts Yavapai Ranch from subsequently granting, conveying, or otherwise transferring title to the Federal land after its acquisition of the Federal land.

SEC. 8. CONVEYANCE OF ADDITIONAL LAND.

(a) IN GENERAL.—The Secretary shall convey to an individual or entity that represents the majority of landowners with encroachments on the lot by quitclaim deed the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is lot 8 in section 11, T. 21 N., R. 7 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.

(c) AMOUNT OF CONSIDERATION.—In exchange for the land described in subsection (b), the individual or entity acquiring the land shall pay to the Secretary consideration in the amount of—

(1) $2500; plus

(2) any costs of re-monumenting the boundary of land.

(d) TIMING.—

(1) IN GENERAL.—Not later than 90 days after the date on which the Secretary receives a power of attorney executed by the individual or entity acquiring the land, the Secretary shall convey to the individual or entity the land described in subsection (b).

(2) LIMITATION.—If, by the date that is 270 days after the date of enactment of this Act, the Secretary does not receive the power of attorney described in paragraph (1)—

(A) the authority provided under this subsection shall terminate; and

(B) any conveyance of the land shall be made under Public Law 97-465 (16 U.S.C. 521c et seq.).

SEC. 9. COMPENSATION FOR PERSONS HOLDING GRAZING PERMITS.

Persons holding grazing permits for land transferred into private ownership under this Act shall be compensated in accordance with section 402(g) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752(g)).

SEC. 10. CONVEYANCE OF LEASED LAND.

(a) IN GENERAL.—The Secretary shall convey to an individual or entity that represents the majority of landowners with a lease on the lot by quitclaim deed the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is approximately 4.87 acres located in section 27, T. 22 N., R. 2 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.

(c) MAPS.—

(1) IN GENERAL.—The Secretary may make minor modifications to the descriptions or reconfigure the descriptions of the properties referenced in subsection (b) in order to facilitate a conveyance, to address management, or boundary considerations or correct errors. If any land adjacent to the 4.87 acre parcel described in subsection (b) is conveyed to the Yavapai Ranch, any such minor modifications shall be by mutual agreement between the Secretary and the Yavapai Ranch.

(2) DISCREPANCY.—In the event of any discrepancy between a map and legal description, the map shall prevail.

(3) AVAILABILITY.—All maps referred to in this Act shall be on file and available for inspection in the Office of the Supervisor, Kaibab National Forest, Williams, Arizona.

(d) AMOUNT OF CONSIDERATION.—In exchange for the land described in subsection (b), the individual or entity acquiring the land shall pay to the Secretary consideration in the amount of—

(1) market value; plus

(2) any costs of re-monumenting the boundary of land.

(e) APPRAISAL.—

(1) IN GENERAL.—The values of the Federal land shall be determined by appraisal using the appraisal standards in—

(A) the Uniform Appraisal Standards for Federal Land Acquisitions, fifth edition (December 20, 2000); and

(B) the Uniform Standards of Professional Appraisal Practice.

(2) APPROVAL.—In accordance with part 254.9(a)(1) of title 36, Code of Federal Regulations (or any successor regulation), the appraiser shall be—

(A) acceptable to the Secretary

(B) a third party contractor.

(f) TIMING.—

(1) IN GENERAL.—Not later than 180 days after the date on which the Secretary receives a power of attorney executed by the individual or entity acquiring the land, the Secretary shall convey to the individual or entity the land described in subsection (b).

(2) LIMITATION.—If, by the date that is 270 days after the date of enactment of this Act, the Secretary does not receive the power of attorney described in paragraph (1)—

(A) the authority provided under this subsection shall terminate; and

(B) any conveyance of the land shall be made under Public Law 97-465 (16 U.S.C. 521c et seq).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana (Mr. SOUDER) and the gentleman from American Samoa (Mr. FALEOMAVAEGA) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana (Mr. SOUDER).

GENERAL LEAVE

Mr. SOUDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. SOUDER. Mr. Speaker, I yield myself such time as I may consume.

H.R. 2907, introduced by the gentleman from Arizona (Mr. RENZI), provides for a land exchange in the State of Arizona between the Secretary of Agriculture and the Yavapai Ranch Limited Partnership. The bill would consolidate the largest remaining checkerboard ownership in Arizona. The Forest Service will receive 35,000 acres of land adjacent to an existing wilderness area which includes old growth ponderosa pine, oak, and alligator juniper forest lands and grasslands known to be a prime antelope habitat. The Yavapai Ranch Limited Partnership would receive approximately 21,000 acres of land.

H.R. 2907 is supported by a wide variety of vested interests including the administration, many of the local city councils, local chapters of the Chamber of Commerce, as well as the Grand Canyon Trust and the Central Arizona Land Trust. I urge adoption of the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. FALEOMAVAEGA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, again on a bipartisan basis, I want to commend the gentleman from Arizona for his sponsorship of this proposed bill.

Mr. Speaker, H.R. 2907 would direct the Secretary of Agriculture to consummate a complicated land exchange in northern Arizona. The United States would receive approximately 35,000 acres of inholdings on the Prescott National Forest. In exchange, the United States would transfer title to the Yavapai Ranch Limited Partnership various parcels on the Coconino, Prescott, and the Kaibab National Forests. All lands would be appraised in accordance with Federal appraisal standards. Their values would be equalized as required in the Federal Land Policy and Management Act. This bill was also passed in the House last year, and we certainly have no objection to this.

Mr. Speaker, I reserve the balance of my time.

Mr. SOUDER. Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona (Mr. RENZI), our committee's colleague and the author of the bill.

Mr. RENZI. Mr. Speaker, I thank the gentleman for yielding me this time and also my colleague from American Samoa for his kind remarks.

Mr. Speaker, I rise in support of H.R. 2907, the Northern Arizona National Forest Land Exchange Act of 2003. H.R. 2907 facilitates a land exchange in northern Arizona of private land within the Yavapai Ranch for the Forest Service land in the northern portion of the State.

H.R. 2907 accomplishes several goals in northern Arizona. First, it will preserve the pristine areas within Yavapai Ranch for the wildlife and recreation by consolidating more than 40,000 acres of Forest Service land. This area is adjacent to the Juniper Mesa Wilderness Area, preserving precious habitat for ponderosa pine, alligator juniper, and pronghorn antelope.

Second, H.R. 2907 provides the City of Flagstaff, Arizona, with the opportunity to acquire land to expand and improve Pulliam Airport. H.R. 2907 will allow the City of Flagstaff to develop a new city park and recreational areas and obtain ownership of land near their water treatment plant. This is critical to the City of Flagstaff's future, providing economic development and affordable housing.

The Northern Arizona National Forest Land Exchange Act will also allow the city of Williams to acquire land for its well sites, water storage tanks, and wastewater facility and drinking water treatment plants. Until recently, the city of Williams relied completely on surface water supplies to service the community. However, surface water reservoirs in Williams are almost dry and currently stand at a minimal 8 percent of capacity. H.R. 2907 will assist Williams in meeting their water challenges in the future by providing new land for well drilling sites.

In the Verde Valley, this bill provides the town of Camp Verde with unique opportunities to acquire land for open space to protect their view shed. The Camp Verde Fire District will be provided with land adjacent to Interstate 17 for an emergency response and urgent care facility for faster response and care. A planned development along Interstate 17 will provide Camp Verde with additional tax base and job opportunities.

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A residential development in Clarkdale and Cottonwood will diversify the housing market and provide new lands and an additional tax base for those communities.

Working with members of the Arizona delegation, including the gentleman from Arizona (Mr. HAYWORTH), we have ensured that the language in H.R. 2907 establishes water conservation and water use restrictions for any future development. In addition, any development would also comply with the State of Arizona surface and ground water laws, as well as local community planning standards.

Finally, this legislation assures that six summer youth camps serving 10,000 to 12,000 children from all over the region have the opportunity to acquire the land and benefit from full ownership. These camps include Young Life Lost Canyon Camp, Friendly Pines Camp, the YMCA camps, and a host of other camps. Young Life Lost Canyon alone serves approximately 4,500 children. Approximately 450 of these children have special needs.

In the past year, I have received many letters and phone calls providing input on the exchange. One such letter came from the chairman of the Yavapai-Apache Nation, Mr. Jamie Fullmer, the tribe that is most affected by this land exchange. Chairman Fullmer makes a statement of endorsement of this land exchange when he says in his letter, "We also recognize that exchanging these already impacted lands for the unspoiled lands at the headwaters of the Verde River offers permanent protection for wildlife, the forest and the watershed that protects the Yavapai-Apache Nation's water rights."

Mr. Speaker, I have held several town halls and town meetings on this issue. We have discussed these many complex issues with the surrounding communities, with individuals, and have public input on this exchange. I have visited and toured the Yavapai Ranch on three occasions. I have witnessed firsthand the great value of this land exchange. Bringing the Yavapai Ranch into Federal ownership is in the best interests of the greater good and of the general public. I urge my colleagues to support the Northern Arizona National Forest Land Exchange Act of 2003.

Mr. FALEOMAVAEGA. Mr. Speaker, I reserve the balance of my time.

Mr. SOUDER. Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona (Mr. HAYWORTH), another colleague from the committee and another advocate of Arizona.

Mr. HAYWORTH. Mr. Speaker, I thank the gentleman for yielding me this time.

I would be remiss if I did not take time to commend my colleague from the First Congressional District of Arizona (Mr. RENZI) for his hard work in shepherding this legislation through the committee process and for working tirelessly with the Forest Service and all affected parties to achieve consensus on this very important piece of legislation. I would likewise be remiss if I did not recognize my good friend and colleague from the other side of the aisle, the gentleman from American Samoa, who was nice enough to come and visit us in Arizona on many different issues and maintains a great interest in public lands throughout our country and beyond its immediate shores to the place where he calls home.

The Northern Arizona National Forest Land Exchange Act of 2003 provides for a Federal land exchange that places roughly 35,000 acres of pristine ponderosa pine forestland and biologically diverse land, much of which borders an existing wilderness area, into the hands of the United States Forest Service. This bill has been carefully crafted to ensure that the environment, ecosystems, watershed, and forestlands of northern Arizona are protected and preserved.

Mr. Speaker, harbor no delusions. This was an incredibly ambitious piece of work to get done. That is why kudos go to my friend from the first district for working so hard, because the gentleman from Arizona (Mr. RENZI), with this legislation, really refined a concept very similar to what I was pleased and honored to sponsor in the last Congress, together with our late friend, Bob Stump. The concept of this type of land exchange to consolidate the Yavapai Ranch lands just makes sense. Through this land exchange, our Federal Government will receive pristine forestlands that truly belong under the stewardship of the Forest Service to be preserved for future generations.

This exchange was originally initiated by the Forest Service to consolidate the largest remaining "checkerboard" parcel of land in Arizona and to protect the Juniper Mountains forest area from future development. Watershed management, wildlife habitat, and outdoor recreation in the consolidated land parcel will be preserved through this action.

Additionally, many of the land parcels the Forest Service will trade to accomplish these goals are eagerly sought by the local communities for a variety of worthwhile civic purposes, including expansion of airports, parks, and other municipal facilities. And, as my colleague from the first district mentioned, six summer camps that currently lease lands from the Forest Service will acquire their leased areas. So there will be no uncertainty about this. We will be moving proactively, positively to preserve these youth camps that are so vital for so many children in the West and especially in our great State of Arizona.

Importantly, the land exchange embodied in this bill follows all Federal regulations, especially as they relate to land appraisal methods, public input and involvement, compensation for individuals holding grazing permits, and a requirement for an equal value exchange to ensure that the public is not short-changed in any way, shape, fashion, or form.

As an involved cosponsor of this bill, I can attest to the fact that there has been considerable participation of local elected officials, Forest Service personnel, private citizens, and various citizen groups from northern Arizona and Arizona's Verde Valley in drafting this legislation. Their input, Mr. Speaker, has been invaluable, and I am confident that the bill now put forth by my colleague addresses every major concern that has been brought to light.

Mr. Speaker, as a result of the efforts of the gentleman from Arizona (Mr. RENZI), this bill has been endorsed by the city councils of Flagstaff, Williams, Camp Verde, Cottonwood, Clarkdale, as well as the Yavapai County Board of Supervisors, the Salt River Project, the Arizona Game and Fish Department, the Flagstaff Chamber of Commerce, the Greater Flagstaff Economic Council, the Williams Chamber of Commerce, the Camp Verde Chamber of Commerce, the Cottonwood Chamber of Commerce, the Grand Canyon Trust, the Sedona-Verde Valley Realtors, the Wildlife Conservation Council, the Arizona Antelope Foundation, the Arizona Mule Deer Association, the Central Arizona Land Trust, and the Arizona Republic newspaper; and that is just a partial listing of folks supporting this legislation.

Again, Mr. Speaker, this legislation makes good common sense for our forests and for the people of Arizona. The cost savings for the Federal Government and, therefore, for American taxpayers associated with this land exchange are significant. The savings are accomplished through consolidation of Federal lands that allows for much greater ease in forest management. But much more important, this exchange will ensure that one of the last largest pristine forested parcels in Arizona will pass out of private hands and be protected from potentially harmful development indefinitely.

Again, Mr. Speaker, let me take time to commend my friend and colleague, the gentleman from Arizona (Mr. RENZI), for his hard work on this important legislation. I am grateful for the opportunity to partner with him on this bill. I am pleased to see my good friend, again, from American Samoa playing a vital role on the other side of the aisle, and I would urge passage of this important piece of legislation.

Mr. FALEOMAVAEGA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to commend my good friend, the gentleman from Arizona (Mr. HAYWORTH), for his kind words. It is true it was my privilege very recently, in fact, about a week and a half ago, that I had the privilege of visiting the great State of Arizona, finding out that several thousand of my people live in Arizona. I guess they missed the 200 inches of rainfall that we have every year, and they thought maybe by going to Arizona would give them tremendous experience in learning how to live with 3 inches of rainfall every year in that great State.

I do want to commend him for his words and, as the cochairman of the Native American Caucus, I do commend him also for the tremendous work that he does with our Native American community. Again, I thank the gentleman from Indiana (Mr. SOUDER), my good friend, for his leadership in managing this proposed bill; and I urge my colleagues to support this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. SOUDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, I would like to again thank my colleagues from Arizona. For those in the Chamber and those who watch our proceedings here in Congress, this has been very instructive, because what we see most of the time is us debating, very heatedly, very few bills. Most bills, in fact, that move through Congress move this way. The discussions work out between the two sides.

This bill that we have discussed here for Arizona are huge in the number of the heritage areas, and there are very big tourist questions there. We have revamped the Fish and Wildlife Service, we have protected animals that are endangered from around the world, and we have done it in a bipartisan way. That is the way most legislation moves, and tonight we are seeing how the system works when we can compromise. But most of what people see on TV are the few times it breaks down. Those are big issues. They are important. But it is important to know that we do both things here in Washington. We do not just do the arguing; we also do the working together.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PEARCE). The question is on the motion offered by the gentleman from Indiana (Mr. SOUDER) that the House suspend the rules and pass the bill, H.R. 2907, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

KALOKO-HONOKOHAU NATIONAL HISTORIC PARK ADDITION ACT OF 2003

Mr. SOUDER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 254) to revise the boundary of the Kaloko-Honokohau National Historical Park in the State of Hawaii, and for other purposes.

The Clerk read as follows:

S. 254

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Kaloko-Honokōhau National Historical Park Addition Act of 2003".

SEC. 2. ADDITIONS TO KALOKO-HONOKŌHAU NATIONAL HISTORICAL PARK.

Section 505(a) of Public Law 95-625 (16 U.S.C. 396d(a)) is amended—

(1) by striking "(a) In order" and inserting "(a)(1) In order";

(2) by striking "1978," and all that follows and inserting "1978."; and

(3) by adding at the end the following new paragraphs:

"(2) The boundaries of the park are modified to include lands and interests therein comprised of Parcels 1 and 2 totaling 2.14 acres, identified as 'Tract A' on the map entitled 'Kaloko-Honokōhau National Historical Park Proposed Boundary Adjustment', numbered PWR (PISO) 466/82,043 and dated April 2002.

"(3) The maps referred to in this subsection shall be on file and available for public inspection in the appropriate offices of the National Park Service.".

SEC. 3. AUTHORIZATIONS OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana (Mr. SOUDER) and the gentleman from American Samoa (Mr. FALEOMAVAEGA) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana (Mr. SOUDER).

GENERAL LEAVE

Mr. SOUDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. SOUDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 254, introduced by Senator DANIEL AKAKA, would adjust the boundary of the Kaloko-Honokohau National Park to include two adjacent parcels of land totaling 2.14 acres to be used as the park headquarters to house the administrative, interpretive, resource management, and maintenance functions. Over the long term, this acquisition would prove to be more cost effective than continuing its current lease.

Mr. Speaker, S. 254 is supported by the majority and the minority of the committee and the administration. I would urge adoption of the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. FALEOMAVAEGA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of this proposed legislation.

Mr. Speaker, Senate bill 254 would expand the boundary of the Kaloko-Honokohau National Historic Park on the eastern shore of the island of Hawaii. It is our understanding that the National Park Service currently rents space in a building near the park for use as a visitors center and administrative offices. Apparently, there is a much larger space for sale in another part of the same structure. This proposed legislation will alter the boundary of the park to include this building so that the Park Service might acquire the new space for park use. This will improve park operations as well as the visitor experience, while also resulting in a long-term cost savings for the National Park Service.

Our colleague and my good friend, the gentleman from Hawaii (Mr. CASE), introduced companion legislation here in the House, and he is to be commended for his very diligent work in moving that legislation through the Committee on Resources and for his efforts to get this legislation to the House floor. I also want to commend at this time the good Senator from the State of Hawaii, Senator Daniel Akaka, for his sponsorship of this bill in the other body.

Mr. Speaker, I reserve the balance of my time.

Mr. SOUDER. Mr. Speaker, I reserve the balance of my time.

Mr. FALEOMAVAEGA. Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii (Mr. CASE), my good friend and colleague.

Mr. CASE. Mr. Speaker, to my colleagues in the Chamber, a fond aloha. I see that I have arrived in the nick of time to provide some illustration of the nuances of the Hawaiian language as it is spoken, although I must say that the Clerk of our great House and my colleague from Indiana did an admirable job under a lot of pressure. Of course, my colleague from American Samoa is an old expert at this, and I appreciate his pronunciation.

I am very pleased to speak today in strong support of S. 254, a bill introduced by my senior colleague, Senator AKAKA, to authorize expansion of the Kaloko-Honokohau National Historic Park located on the Kona Coast on the island of Hawaii, which I am very proud to represent and which is my home, my home island. This legislation is the Senate version of my bill, H.R. 546, which was previously passed out of the House Committee on Resources' Subcommittee on National Parks, Recreation and Public Lands. Passage of S. 254 in its stead today will allow this vital initiative to proceed directly to the President's desk.

Mr. Speaker, S. 254 authorizes expansion of the park boundaries to allow the National Park Service to purchase a 2.14-acre parcel with an existing building to serve as the park's headquarters. The park has been without a permanent headquarters since its establishment in 1978 and is now renting space some distance from the park itself.

Kaloko-Honokohau National Historic Park, an initiative of my former boss and mentor, U.S. Senator Spark Matsunaga, was created for the national preservation, protection, and interpretation of native Hawaiian activities and culture. This 1,160-acre park located along the Pacific Ocean in Kona is remarkable not only for its cultural and historical attributes, but as an incredibly beautiful, unspoiled natural treasure.

☐ 1945

The park is the site of an ancient Hawaiian settlement, which encompasses portions of four different ahupua'a, or traditional sea-to-mountain land divisions. Its resources include ancient fishponds, kahua, house site platforms, ki'i pohaku, petroglyphs, a holua, stone slide, and heiau, religious sites. The park is of tremendous significance to the people of Hawaii and especially to indigenous native Hawaiians.

The National Park Service is currently renting space for its headquarters at a cost of $150,000 a year. The current headquarters only has parking for three to four visitors at a time, which is woefully inadequate to accommodate the growing number of visitors to this special park. Visitors increased from 54,000 in 2001 to 70,000 in 2002 and are well on track to increase even more in the current year. The proposed acquisition has plenty of parking for visitors and park vehicles. And the existing building has more than adequate space for the National Park Service's administrative needs not only for Kaloko-Honokohau, but for the other fantastic national and historic treasures under the Service's direction along the Kona Coast ranging from Pu'ukohola Heiau National Historic Site to the north, to Pu'uhonua, National Historic Park to the south. The already-developed parcel has the additional benefit of being right next to the park so that the fragile resources within the park proper will not be adversely affected.

For the people of Hawaii and for the indigenous native Hawaiians who hold this park in special esteem, I am deeply grateful to the gentleman from California (Mr. POMBO) and the gentleman from West Virginia (Mr. RAHALL) of the Committee on Resources and to my colleagues from Indiana and from American Samoa for facilitating the prompt passage of this measure. I urge its prompt passage. Mahalo.

Mr. SOUDER. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

Mr. FALEOMAVAEGA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, my good friend, the gentleman from Indiana (Mr. SOUDER), had alluded earlier in his observations about the nature of the way we have been passing legislation. And I just want to second, and certainly support, his comments to the fact that this is probably one of the things that as Members of the sense of comity among our colleagues in the House, especially when the bill is proposed by a Member whose district is directly affected, that by and large whether you are a Republican or Democrat, but at least give the courtesy to that Member, the benefit of doubt that he knows what he is talking about.

For passage of this proposed legislation affecting each Member's district, just as my good friend, the gentleman from Hawaii (Mr. CASE), has just done here, I think speaks well of the spirit of comity that should exist. And I would think that my good friend, the gentleman from Indiana (Mr. SOUDER), had mentioned earlier about how we should go about passing legislation.

The gentleman from Hawaii (Mr. CASE) had made a comment about this Big Island of Hawaii. The Volcano National Park of Hawaii is the most visited national park in the State of Hawaii with over 4 million visitors just last year. And also by way of information to my colleagues of the House, if you visit Statutory Hall, that huge Hawaiian king who was about six foot eight when he was at the height of his power as a warrior king named Kamehameha, with warriors amounting to about 16,000 warriors and with about 900 war canoes came from that Big Island and managed to conquer all of the islands coming under his rulership. Something that is tremendous history.

Some times there is tremendous misunderstanding of my colleagues when you say a Hawaiian, you think that it is the same as being called a Californian or a Texan. I think we need to understand there is a sense of culture in the State of Hawaii. When you are a Hawaiian, there are people who are called native Hawaiians, indigenous people of the State of Hawaii, which I am so proud to be a part of. And as a fellow Polynesian, I commend my good friend, the gentleman from Hawaii (Mr. CASE), for bringing out some of these pronunciations that I realize sometimes it sounds like Greek to some of the Members here in the Chamber. A tremendous opportunity for education of my colleagues, I must say, Mr. Speaker.

Again, I thank my good friend, the gentleman from Indiana (Mr. SOUDER) for his leadership and management of these proposed bills.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PEARCE). The question is on the motion offered by the gentleman from Indiana (Mr. SOUDER) that the House suspend the rules and pass the Senate bill, S. 254.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

INCREASING THE WAIVER REQUIREMENT FOR CERTAIN LOCAL MATCHING REQUIREMENTS TO AMERICAN SAMOA, GUAM, THE VIRGIN ISLANDS, OR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Mr. SOUDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1189) to increase the waiver requirement for certain local matching requirements for grants provided to American Samoa, Guam, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, and for other purposes.

The Clerk read as follows:

H.R. 1189

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WAIVER OF LOCAL MATCHING REQUIREMENTS.

(a) WAIVER OF CERTAIN MATCHING REQUIREMENTS.—Section 501 of the Act entitled "An Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes", approved October 15, 1977 (48 U.S.C. 1469a; 91 Stat. 1164) is amended—

(1) in the last sentence of subsection (d), by striking "by law"; and

(2) by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of law, in the case of American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands, each department or agency of the United States shall waive any requirement for local matching funds (including in-kind contributions) that the insular area would otherwise be required to provide for any grant as follows:

"(1) For a grant requiring matching funds (including in-kind contributions) of $500,000 or less, the entire matching requirement shall be waived.

"(2) For a grant requiring matching funds (including in-kind contributions) of more than $500,000, $500,000 of the matching requirement shall be waived.".

(b) CONFORMING AMENDMENT.—Section 601 of the Act entitled "An Act to authorize appropriations for certain insular areas of the United States, and for other purposes", approved March 12, 1980 (48 U.S.C. 1469a note; 94 Stat. 90), is amended by striking ", and adding the following sentence" and all that follows through "Islands.'".

(c) STUDY.—Not later than 2 years after the date of the enactment of this Act, the Secretary of the Interior shall complete and submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate the results of a study of the implementation of the amendments made by subsection (a).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana (Mr. SOUDER) and the gentleman from American Samoa (Mr. FALEOMAVAEGA) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana (Mr. SOUDER).

GENERAL LEAVE

Mr. SOUDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore, Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. SOUDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1189 which was introduced by my friend and colleague, the gentleman from American Samoa (Mr. FALEOMAVAEGA), is important as a component of the larger interest in encouraging economic development in the territories.

I would like to add, earlier the gentleman from American Samoa (Mr. FALEOMAVAEGA) talked about his many friends in Arizona. A few years ago I was fortunate to travel with the gentleman and Speaker HASTERT around the Middle East and other countries. Everywhere we went we met Samoans. They all knew who he was. He has friends around the world in multiple continents. I can verify to that, as can the Speaker, not just in Arizona and his home area. Samoans were everywhere. I very much appreciate that.

Many Americans do not realize the role that our committee plays with this. This is a very important bill to the territories. H.R. 1189 increases the waiver for certain local matching requirements for all United States territories. Currently, Federal law allows Federal agencies or departments to waive the first $200,000 in matching requirements to the U.S. territories of American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. This legislation will increase that amount to $500,000. Further, for a grant requiring matching funds of more than $500,000 the legislation waives the first $500,000 of the matching requirement.

It is important to note that H.R. 1189 will also end the inconsistent manner in which current law is applied to the matching waiver. With this bill, the waiver will apply to all Federal agencies and departments making grants to the U.S. territories, not just the Department of Interior.

The bill of the gentleman from American Samoa (Mr. FALEOMAVAEGA) closely resembles legislation introduced by Delegate Underwood in the 107th Congress which was also reported with strong bipartisan support by the Committee on Resources. It is clear that while territorial economies, in general, have improved over the last several years, each government continues to be challenged with rising unemployment, decreased government revenues, and limited new capital for diversification. Passage of this legislation today and its eventual enactment will truly broaden the U.S. Territories' access to Federal grants which should help to grow their unique economies.

I commend the gentleman from American Samoa (Mr. FALEOMAVAEGA) for working with this committee and others to ensure this legislation moves forward. I urge my colleagues to support H.R. 1189.

Mr. Speaker, I reserve the balance of my time.

Mr. FALEOMAVAEGA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to support H.R. 1189, a bill to assist our insular territories by waiving matching requirements at a certain Federal level for Federal grant programs. I would like to thank the gentleman from California (Chairman POMBO) and the gentleman from West Virginia (Mr. RAHALL) of the Committee on Resources for their continued support regarding the needs of our island territories and for their help in bringing this legislation to the floor today.

I would also be mindful in expressing my appreciation to the support and cosponsorship of the gentlewoman from Guam (Ms. BORDALLO) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) and my good friend, the Resident Commissioner, the gentleman from Puerto Rico (Mr. ACEVEDO-VILÁ) for their support.

H.R. 1189 is a bill that would increase the waiver requirement for certain local matching requirements for grants provided for the territories of American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Mr. Speaker, Congress first enacted a matching waiver requirement for the territories in 1980, recognizing the difficulty of territorial governments to access Federal grant money that required matching as the basis of a funding. At that time the waiver was set at $100,000 for American Samoa and the CNMI. And later in 1983 and 1984 the law was amended to increase the requirements to $200,000 and was simultaneously added to the territories of the Guam and Virgin Islands for eligibility. It has now been 20 years since the law has been revisited, and the current waiver of $200,000 has been proven to be inadequate to meet the needs of these insular areas.

Mr. Speaker, our territorial governments continue to be challenged with rising unemployment, decreased government revenues, and impediments to attracting new capital for diversification. The insular areas simply do not have the financial resources to meet the matching fund requirements required by Federal law. Consequently, we are often unable to apply for the Federal grants that we need to address critical issues like health, education, and economic development. H.R. 1189 would alleviate these difficulties by increasing the waiver requirement to $500,000.

Mr. Speaker, H.R. 1189 the would also direct the Secretary of the Interior to complete and to submit to the House Committee on Resources and the Senate Committee on Energy and Natural Resources the results of a study of the implementation to the changes to the matching requirement made through this legislation. While it is clear that more comprehensive legislation is needed to bring about sustainable economic growth and relief for the insular areas, I believe this legislation will alleviate some of the economic difficulties we are facing.

Again, Mr. Speaker, I would also like to take this opportunity to thank my colleagues, the gentlewoman from Guam (Ms. BORDALLO), the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN), the gentleman from Puerto Rico (Mr. ACEVEDO-VILÁ) for expressing their support. Again, I express my appreciation to the gentleman from California (Mr. POMBO) and the gentleman from West Virginia (Mr. RAHALL) and the gentleman from Indiana (Mr. SOUDER). I want to let the gentleman from Indiana know that I did not forget that trip that we took to the Middle East. Yes, in fact, just about every military installation that we visited with the then chairman of the International Security Subcommittee of the Committee on Government Reform, the gentleman from Illinois, whose name was Mr. HASTERT, who is now the Honorable Speaker of the House, from which I really enjoyed meeting not only with our soldiers and our troops in that opportunity that we had.

Again, Mr. Speaker, I thank my good friend, the gentleman from Indiana (Mr. SOUDER) for his assistance in managing this proposed bill. I urge my colleagues to support this proposed legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. SOUDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wanted to close, as someone who comes from the heartland of the United States, I know many of my constituents and others say, "We still have territories?" And then, "Why are we doing grants to these territories?" As my friend, the gentleman from American Samoa (Mr. FALEOMAVAEGA) has just pointed out, when you go through our Armed Services anywhere around the world, they are among the most active and volunteering for our militaries in these different territories, the bases that we have in these places, the beautiful natural resources, are very important to our survival as a country. They pay taxes. They support our Nation. This brings equity to them in the grant structure. And we can, in this time of international pressure, all of a sudden appreciate more American Samoa, Hawaii, Mariana Islands, Guam, are right out there where we need them to be. And we are very supportive of these territories. This bill goes a long way towards saying thank you.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana (Mr. SOUDER) that the House suspend the rules and pass the bill, H.R. 1189.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

URGING THE PRESIDENT TO PRESENT THE PRESIDENTIAL MEDAL OF FREEDOM TO HIS HOLINESS, POPE JOHN PAUL II

Ms. ROS-LEHTINEN. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res 313) to urge the President, on behalf of the United States, to present the Presidential Medal of Freedom to His Holiness, Pope John Paul II, in recognition of his significant, enduring, and historic contributions to the causes of freedom, human dignity, and peace and to commemorate the Silver Jubilee of His Holiness' inauguration of his ministry as Bishop of Rome and Supreme Pastor of the Catholic Church.

The Clerk read as follows:

H. CON. RES. 313

Whereas His Holiness, Pope John Paul II, was born Karol Jozef Wojtyla in Wadowice, Poland, on May 18, 1920, the youngest of 3 children, born to Karol Wojtyla and Emilia Kaczorowska;

Whereas Pope John Paul II personally suffered and experienced deprivation from an early age, losing his mother, eldest brother, and father before turning age 21;

Whereas Pope John Paul II found comfort and strength in the example of his father's faith, who he observed "after my mother's death, his life became one of constant prayer. Sometimes I would wake up during the night and find my father on his knees . . . his example was in a way my first seminary";

Whereas Pope John Paul II was enrolled in Jagiellonian University in Cracow in 1939, which was closed by the Nazis during their occupation of Poland;

Whereas Pope John Paul II experienced the brutishness of a godless totalitarian regime, which sought to eradicate the history and culture of a proud people and sent many of his professors, friends, and millions of Polish Jews to camps where they were systematically murdered;

Whereas Pope John Paul II was himself arrested by Nazi occupation forces in 1942, but his life was spared because of his employment at a limestone quarry, work deemed essential to the war effort;

Whereas Pope John Paul II courageously defied the Nazi occupation forces, risking his own life to protect Polish Jews from persecution, helping to organize the underground "Rhapsodic Theatre", which he intended to be "a theatre . . . where the national spirit will burn", writing two religious plays considered subversive to the Nazi regime, and enrolling in the clandestine seminary of Archbishop Sapieha of Cracow, where he studied religion, theology, and philosophy;

Whereas the Nazi occupation of Poland was ended only by the imposition of a communist era of occupation that sought to subjugate Polish citizens, extinguish Polish nationalism, and subjected the exercise of individual religious liberty to the control of godless Stalinist rulers;

Whereas Pope John Paul II was ordained in 1946, later becoming a Professor of Ethics and Chaplain at the Catholic University of Lublin, the only Catholic university behind the Iron Curtain, where he, again at great personal risk, initiated activities that helped to preserve the intellectual, cultural, and historical richness of his homeland and protected the integrity and independence of the Catholic Church in Poland;

Whereas Pope John Paul II was an articulate and outspoken advocate for religious freedom and Christian humanism at Vatican Council II, asserting that the Church could not claim religious liberty for itself unless it was willing to concede it to others;

Whereas Pope John Paul II, upon returning to his homeland, frequently cited the Council's declaration that religious freedom was "the first of human rights", a phrase embraced by Polish Catholics in their struggle against the hegemony of the communist regime;

Whereas Pope John Paul II, on October 16, 1978, was elected the 264th Pope, making history by becoming the first-ever Slavic Pope and the first non-Italian Pope in more than 400 years;

Whereas October 22, 2003, marked the Silver Jubilee of His Holiness' inauguration of his ministry as Bishop of Rome and Supreme Pastor of the Catholic Church, signifying Pope John Paul II's completion of 25 years as the spiritual leader of more than 1,000,000,000 Catholic Christians around the world, including more than 66,000,000 Catholic Christians in the United States;

Whereas Pope John Paul II was a unique, substantial, and historic catalyst in the demise of Soviet communism and the emancipation of hundreds of millions of people from totalitarian rule;

Whereas Pope John Paul II, in his inaugural sermon, boldly offered hope to oppressed peoples around the world while causing authoritarian rulers to brace by proclaiming "open the boundaries of states, economic and political systems, the vast fields of culture, civilization and development. Do not be afraid.";

Whereas Pope John Paul II returned to his native Poland for 9 days in June 1979, unleashing patriotic and religious forces that would ultimately lead to the peaceful toppling of the communist regime in Poland and the dramatic demise of the Warsaw Pact and the Soviet Union;

Whereas Pope John Paul II, before visiting his native Poland in 1987, met with President Ronald Reagan, who recognized the fruits of His Holiness' labors by stating "be assured that the hearts of the American people are with you. Our prayers will go with you in profound hope that the terrible burden of brave people everywhere who yearn for freedom, even as all men and women yearn for the freedom that God gave us all. . . . We see the power of the spiritual force in that troubled land, uniting a people in hope, just as we see the powerful stirrings in the East of a belief that will not die despite generations of oppression. . . . For despite all the attempts to extinguish it, the people's faith burns with a passionate heat: once allowed to breathe free, that faith will burn so brightly it will light the world.";

Whereas Pope John Paul II was recognized by Lady Margaret Thatcher to have "provided the main impetus for the revival of Solidarity and the pressure for reform [in his native Poland]";

Whereas Pope John Paul II was acknowledged by Mikhail Gorbachev to have played an essential role in the liberation of those who lived under European communism when he stated "everything that happened in Eastern Europe . . . would have been impossible without this pope";

Whereas Pope John Paul II carried on an active correspondence with world leaders during the 1980's, involving the Church in efforts to promote peace by reducing tensions, and exerting his moral authority to persuade the superpowers to engage in a "dialogue" that succeeded in reducing conventional and nuclear weapons and helped to avert a nuclear war;

Whereas Pope John Paul II has used public and private diplomacy and the power of moral suasion to encourage world leaders to respect the inalienable rights of the human person;

Whereas Pope John Paul II, on May 13, 1981, was shot by a would-be assassin, and nevertheless provided a remarkable example of the power of grace, later visiting his attacker in prison, and stating afterwards "I spoke to him as I would speak to a brother whom I have forgiven and who enjoys my confidence";

Whereas Pope John Paul II has ministered to Catholic and non-Catholic alike, providing a personal example of grace, endurance, compassion, courage, sacrifice, and foresight;

Whereas Pope John Paul II has sought to heal divisions between the Catholic Church and other Christian faiths, the Jewish faith, and Islam, expressing sadness and regret for the individual acts of present and former Catholics who persecuted members of other faiths, and promoting reconciliation and dialogue through the first-ever Papal visits to synagogues and mosques, as well as visits to areas of historic conflict, including Ireland and the Holy Land;

Whereas Pope John Paul II visited Cuba to speak directly to the Cuban people and their communist rulers in 1998, calling for political and religious freedom, the release of political prisoners, a recognition of the right to express one's faith "in the context of public life", and the importance of fundamental human dignities, including that "each person enjoying freedom of expression, being free to undertake initiatives and make proposals within civil society, and enjoying appropriate freedom of association" is a necessity;

Whereas Pope John Paul II has traveled farther than any other Pope in history, traversing nearly three quarters of a million miles, visiting more than 125 countries, including African nations never before visited by a Pope, being seen by more people than anyone in human history, and evangelizing to more than 6,000,000 people in the closing mass of World Youth Day '95 in the Philippines;

Whereas Pope John Paul II has changed the course of history, leading the Catholic Church through a dramatic and remarkable period, and into Christianity's third millennium;

Whereas Pope John Paul II has devoted his life to the amelioration of the human cost of terror and oppression through his dedication to truth, forgiveness, and the development of a vibrant public moral culture;

Whereas Pope John Paul II has articulated the importance of individual liberty being undergirded by a "moral order", has embraced the poor and oppressed masses of the world, and encouraged governments and the faithful to attend to the needs of those who are less fortunate;

Whereas Pope John Paul II has brought hope and inspiration to hundreds of millions of people around the world oppressed by tyranny, hunger, disease, and despair;

Whereas Pope John Paul II has worked tirelessly to bring peace to regions of the world that have been driven by strife, intolerance, hatred, and violence for far too long; and

Whereas the Presidential Medal of Freedom is considered the highest civilian award of the United States Government: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress urges the President, on behalf of the United States, to present the Presidential Medal of Freedom to His Holiness, Pope John Paul II, in recognition of his significant, enduring, and historic contributions to the causes of freedom, human dignity, and peace and to commemorate the Silver Jubilee of His Holiness' inauguration of his ministry as Bishop of Rome and Supreme Pastor of the Catholic Church.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Florida (Ms. ROS-LEHTINEN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Florida (Ms. ROS-LEHTINEN).

□ 2000

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Concurrent Resolution 313, a resolution that urges the President on behalf of the United States to present the Presidential Medal of Honor to his Holiness, Pope John Paul II.

Pope John Paul II has been the Supreme Pastor of the Catholic Church for 25 years and the spiritual leader to over one billion Catholic Christians all over the world including 66 million Catholic Christians in the United States alone. During this time he has been to more than 125 countries and traveled farther than any other Pope in history to advance the cause of the oppressed and the poor masses of the world, as well as to bring peace to all regions of the world. It is with great humility and great pride that I speak tonight in favor of this resolution that honors one of the greatest human rights advocates of our time.

Today my colleagues and I will be voting on a bill that will present this honor to Pope John Paul II in recognition of his profound contributions to the causes of human dignity, unity, peace and freedom. Since his historic election to his position in October of 1978 as the first Polish Pope, he has been a model of courage in the defense of the downtrodden, the oppressed, and the most persecuted and defenseless.

Pope John Paul II has stated throughout his life that it is possible to change the course of events once good will, trust in others, and cooperation between responsible partners are allowed to prevail.

Throughout his tenure, he has empowered many under communist rule by strengthening them spiritually and implanting his message to not be afraid. He has seen the unification of a once-divided Europe. He has called world leaders onto a higher level of accountability as he worked to provide solutions to the various problems which they faced. It is the Holy Father's belief that all people together, Jews, Christians, Muslim, Israelis, Arabs, believers and nonbelievers, must create and reinforce peace; and he has worked to make this ideal a reality.

As an ardent advocate of human rights for all, especially those suffering political and religious persecution, I join our Holy Father in his desire to see a world where all may live and work together in a spirit of peace, mutual respect, and solidarity and where the sanctity of human life is preserved on all levels.

I ask my colleagues to join me in thanking Pope John Paul II for his love and dedication to all people of the world and urge my colleagues to vote in favor of House Concurrent Resolution 313.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, despite failing health, Pope John Paul II has continued to travel around the world promoting the cause of peace. He has made over 102 journeys outside Italy to 123 countries and territories to spread peace and God's word. He has used his moral authority to challenge dictators in his fight for human rights and dignity.

Pope John Paul II has been one of the most significant figures of the 20th century. Until John Paul II, most Popes confined themselves to Rome and the surrounding area. They were often distant and unapproachable. But John Paul has revolutionized the papacy. The Pope is conservative and is a champion of long-standing Church traditions. He is also the most traveled Pope in history and a man of the world. He has brought much attention to his role of helping and encouraging the Church around the world.

John Paul was instrumental in the fall of communism in Eastern Europe for support for the Solidarity movement in Poland where he is a national hero. With the collapse of the Soviet Empire and the subsequent visit of former Soviet leader Mikhail Gorbachev to Rome, the papacy reached a height of moral and political influence in the world. He has used that influence to further the cause of human rights so that people have the right not to be fearful, the right to be able to work and to practice their faith.

This resolution urges the President to present the Presidential Medal of Freedom to Pope John Paul II for his contributions to the cause of freedom, human dignity and peace. He is certainly deserving of such an honor, and I urge my colleagues to support this resolution.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield such time as he may consume to the gentleman from the State of Wisconsin (Mr. SENSENBRENNER), the sponsor of this important resolution.

Mr. SENSENBRENNER. Mr. Speaker, I thank the gentlewoman from Florida (Ms. ROS-LEHTINEN) for yielding me time.

I rise to pay tribute to His Holiness, Pope John Paul II, who in October marked his 25th year as bishop of Rome and Supreme Pastor of the Catholic Church.

I also wish to offer my sincere appreciation to all my friends and colleagues in the House who have joined together to urge the President to present the Medal of Freedom to Pope John Paul II.

The celebration of the Silver Jubilee of Pope John Paul II pontificate is but the latest in the series of remarkable milestones that have characterized his life and his ministry.

From his birth on May 18, 1920, Karol Jozef Wojtyla's life has been intertwined with the fate of his native Poland and synonymous with the struggle for his individual freedom and dignity.

In 1978 when then-Cardinal Wojtyla, the Archbishop of Krakow, was elected Pope, the world was such a different place. For more than 3 decades since Winston Churchill delivered his famous "Iron Curtain" speech, people around the world prepared for what many regarded as the inevitable new war that would someday engulf the East and the West. To win the Cold War, geopolitical strategists honed and implemented various policies including the doctrines of attainment and mutual-assured destruction.

At this pivotal moment in history when the status quo included the subjugation of half the populations of Europe and the omnipresent threat of nuclear annihilation, a remarkable and energetic new Pope set foot on the world stage. To many in the West, this new Polish Pope was an unknown entity. While we recognized immediately his energy, courage and leadership, these same qualities were reviewed with suspicion by some in the East, particularly the communist rulers in Poland.

Pope John Paul II's commitment to freedom, his affection for his native Poland, and the devotion of his countrymen to him were never more evident than the summer of 1980. That August, the Solidarity Workers Union, which Cardinal Wojtyla had nurtured and protected, organized a peaceful strike at the Lenin Shipyard in Gdansk.

With the Pope's portrait suddenly appearing everywhere and the admonition from his inaugural sermon, "Do not be afraid," on the lips of the workers, his support and reassurance provided vital sustenance for the strikers and ignited a spiritual spark in their struggle to secure dignity and freedom. Ultimately, that spark would lead to the demise of Soviet communism and the liberation of hundreds of millions in Eastern and Central Europe. History has recorded the remarkable achievement of Pope John Paul II and his relentless advocacy in pursuit of individual dignity, freedom, and peace.

The Pope has not confined his efforts solely to the struggle against totalitarianism. He has engaged wherever people are downtrodden and oppressed.

Mr. Speaker, the Congress should pass House Concurrent Resolution 313 and urge the President to present the Medal of Freedom, our Nation's highest civilian award, to His Holiness.

In authorizing the first Medals of Freedom in 1963, President Kennedy proclaimed that persons who have made especially meritorious contributions to the security or national interests of the United States, world peace or cultural or other significant public or private endeavors should be so recognized. By any measure it is apparent that there is no individual more deserving of this recognition than Pope John Paul II.

Two other recipients of the Medal of Freedom, President Ronald Reagan and Lady Margaret Thatcher, shared the Pope's commitment to Solidarity in the 1980s. In my estimation, their leadership changed the course of human history. In 1984, while welcoming the Pope to the United States, President Reagan spoke of the connection between freedom, the founding of our own Nation, and America's debt to His Holiness.

President Reagan stated, "I can assure you, Your Holiness, that the American people seek to act as a force for peace in the world and to further the cause of human freedom and dignity. Indeed, in appreciation for the unalienable rights of every human being is the very concept that gave birth to this Nation. Few have understood better than our Nation's founding fathers that claims of human dignity transcend the claims of any government, and this transcendent right itself has a transcendent source."

The President went on to state, "To us, Your Holiness, the Holy See and your pastorate represent one of humanity's greatest moral and spiritual forces," and "your words, your prayers and your example have made you, for those who suffer oppression or the violence of war, a source of solace, inspiration and hope."

It is no exaggeration to recognize that this remarkable man has brought hope, comfort and faith to literally billions of people around the world during the course of his ministry.

Three weeks ago today I was honored to be joined by 30 Members of the House in introducing this resolution. Since that time we have gained additional support for which I am grateful, and I particularly appreciate the work of the gentleman from Virginia (Mr. TOM DAVIS) and the Committee on Government Reform who reported our resolution to the floor in such a timely manner.

As stated previously, our bipartisan resolution calls upon the President on behalf of all the people of the United States to present the Medal of Freedom to Pope John Paul II as a sign of our gratitude for his significant, enduring, and historic contributions to the causes of freedom, human dignity, and peace. We urge the President to do so without delay.

Finally, I include an article by Carl Bernstein entitled "The Holy Alliance," which appeared in the February 24, 1992, edition of Time, as well as an article by Father Robert A. Sirico entitled "The Cold War's Magnificent Seven; Pope John Paul II; Awakener of the East," which was published in the winter 1992 edition of Policy Review.

In closing, Mr. Speaker, I would invoke President Reagan once more. When asked his assessment of the Pope before meeting him the first time, the President replied, "He is an example of what so many people have always said about Christian and Judaic tradition, and that is, when really needed, God provides a man. And I think in Pope John Paul he did just that."

Billions around the world are thankful that God has provided such a man.

The articles referred to are as follows:

[From Time Magazine, Feb. 24, 1992]

THE HOLY ALLIANCE

(By Carl Bernstein)

Only President Ronald Reagan and Pope John Paul II were present in the Vatican Library on Monday, June 7, 1982. It was the first time the two had met, and they talked for 50 minutes. In the same wing of the papal apartments, Agostino Cardinal Casaroli and Archbishop Achille Silvestrini met with Secretary of State Alexander Haig and Judge William Clark, Reagan's National Security Adviser. Most of their discussion focused on Israel's invasion of Lebanon, then in its second day; Haig told them Prime Minister Menachem Begin had assured him that the invasion would not go farther than 25 miles inside Lebanon.

But Reagan and the Pope spent only a few minutes reviewing events in the Middle East. Instead they remained focused on a subject much closer to their heart: Poland and the Soviet dominance of Eastern Europe. In that meeting, Reagan and the Pope agreed to undertake a clandestine campaign to hasten the dissolution of the communist empire. Declares Richard Allen, Reagan's first National Security Adviser: "This was one of the great secret alliances of all time."

The operation was focused on Poland, the most populous of the Soviet satellites in Eastern Europe and the birthplace of John Paul II. Both the Pope and the President were convinced that Poland could be broken out of the Soviet orbit if the Vatican and the U.S. committed their resources to destabilizing the Polish government and keeping the outlawed Solidarity movement alive after the declaration of martial law in 1981.

Until Solidarity's legal status was restored in 1989 it flourished underground, supplied, nurtured and advised largely by the network established under the auspices of Reagan and John Paul II. Tons of equipment—fax machines (the first in Poland), printing presses, transmitters, telephones, shortwave radios, video cameras, photocopiers, telex machines, computers, word processors—were smuggled into Poland via channels established by priests and American agents and representatives of the AFL–CIO and European labor movements. Money for the banned union came from CIA funds, the National Endowment for Democracy, secret accounts in the Vatican and Western trade unions.

Lech Walesa and other leaders of Solidarity received strategic advice—often conveyed by priests or American and European labor experts working undercover in Poland—that reflected the thinking of the Vatican and the Reagan Administration. As the effectiveness of the resistance grew, the stream of information to the West about the internal decisions of the Polish government and the contents of Warsaw's communications with Moscow became a flood. The details came not only from priests but also from spies within the Polish government.

DOWN WITH YALTA

According to aides who shared their leaders' view of the world, Reagan and John Paul II refused to accept a fundamental political fact of their lifetimes: the division of Europe as mandated at Yalta and the communist dominance of Eastern Europe. A free, noncommunist Poland, they were convinced, would be a dagger to the heart of the Soviet empire; and if Poland became democratic, other East European states would follow.

"We both felt that a great mistake had been made at Yalta and something should be done," Reagan says today. "Solidarity was the very weapon for bringing this about, because it was an organization of the laborers of Poland." Nothing quite like Solidarity had ever existed in Eastern Europe, Reagan notes, adding that the workers' union "was contrary to anything the Soviets would want or the communists [in Poland] would want."

According to Solidarity leaders, Walesa and his lieutenants were aware that both Reagan and John Paul II were committed to Solidarity's survival, but they could only guess at the extent of the collaboration. "Officially I didn't know the church was working with the U.S.," says Wojciech Adamiecki, the organizer and editor of underground Solidarity newspapers and now a counselor at the Polish embassy in Washington. "We were told the Pope had warned the Soviets that if they entered Poland he would fly to Poland and stay with the Polish people. The church was of primary assistance. It was half open, half secret. Open as far as humanitarian aid—food, money, medicine, doctors' consultations held in churches, for instance—and secret as far as supporting political activities: distributing printing machines of all kinds, giving us a place for underground meetings, organizing special demonstrations."

At their first meeting, Reagan and John Paul II discussed something else they had in common: both had survived assassination attempts only six weeks apart in 1981, and both believed God had saved them for a special mission. "A close friend of Ronald Reagan's told me the President said, 'Look how the evil forces were put in our way and how Providence intervened,'" says Pio Cardinal Laghi, the former apostolic delegate to Washington. According to National Security Adviser Clark, the Pope and Reagan referred to the "miraculous" fact that they had survived. Clark said the men shared "a unity of spiritual view and a unity of vision on the Soviet empire: that right or correctness would ultimately prevail in the divine plan."

"Reagan came in with very simple and strongly held views," says Admiral Bobby Inman, former deputy director of the CIA. "It is a valid point of view that he saw the collapse [of communism] coming and he pushed it—hard." During the first half of 1982, a five-part strategy emerged that was aimed at bringing about the collapse of the Soviet economy, fraying the ties that bound the U.S.S.R. to its client states in the Warsaw Pact and forcing reform inside the Soviet empire. Elements of that strategy included:

The U.S. defense buildup already under way, aimed at making it too costly for the Soviets to compete militarily with the U.S. Reagan's Strategic Defense Initiative—Star Wars—became a centerpiece of the strategy.

Covert operations aimed at encouraging reform movements in Hungary, Czechoslovakia and Poland.

Financial aid to Warsaw Pact nations calibrated to their willingness to protect human rights and undertake political and free-market reforms.

Economic isolation of the Soviet Union and the withholding of Western and Japanese technology from Moscow. The Administration focused on denying the U.S.S.R. what it had hoped would be its principal source of hard currency in the 21st century: profits from a transcontinental pipeline to supply natural gas to Western Europe. The 3,600-mile-long pipeline, stretching from Siberia to France, opened on time on Jan. 1, 1984, but on a far smaller scale than the Soviets had hoped.

Increased use of Radio Liberty, Voice of America and Radio Free Europe to transmit the Administration's messages to the people of Eastern Europe.

Yet in 1982 neither Reagan nor the Pope could anticipate the accession of a Soviet leader like Mikhail Gorbachev, the father of glasnost and perestroika; his efforts at reform unleashed powerful forces that spun out of his control and led to the breakup of the

Soviet Union. The Washington-Vatican alliance "didn't cause the fall of communism," observes a U.S. official familiar with the details of the plot to keep Solidarity alive. "Like all great and lucky leaders, the Pope and the President exploited the forces of history to their own ends."

THE CRACKDOWN

The campaign by Washington and the Vatican to keep Solidarity alive began immediately after General Wojciech Jaruzelski declared martial law on Dec. 13, 1981. In those dark hours, Poland's communications with the noncommunist world were cut; 6,000 leaders of Solidarity were detained; hundreds were charged with treason, subversion and counterrevolution; nine were killed; and the union was banned. But thousands of others went into hiding, many seeking protection in churches, rectories and with priests. Authorities took Walesa into custody and interned him in a remote hunting lodge.

Shortly after Polish security forces moved into the streets, Reagan called the Pope for his advice. At a service of meetings over the next few days, Reagan discussed his options. "We had a massive row in the Cabinet and the National Security Council about putting together a menu of counteractions," former Secretary of State Haig recalls. "They ranged from sanctions that would have been crushing in their impact on Poland to talking so tough that we would have risked creating another situation like Hungary in '56 or Czechoslovakia in '68."

Haig dispatched Ambassador at Large Vernon Walters, a devout Roman Catholic, to meet with John Paul II. Walters arrived in Rome soon after, and met separately with the Pope and with Cardinal Casaroli, the Vatican secretary of state. Both sides agreed that Solidarity's flame must not be extinguished, that the Soviets must become the focus of an international campaign of isolation, and that the Polish government must be subjected to moral and limited economic pressure.

According to U.S. intelligence sources, the Pope had already advised Walcsa through church channels to keep his movement operating underground, and to pass the word to Solidarity's 10 million members not to go into the streets and risk provoking Warsaw Pact intervention or civil war with Polish security forces. Because the communists had cut the direct phone lines between Poland and the Vatican, John Paul II communicated with Jozef Cardinal Glemp in Warsaw via radio. He also dispatched his envoys to Poland to report on the situation. "The Vatican's information was absolutely better and quicker than ours in every respect," says Haig. "Though we had some excellent sources of our own, our information was taking too long to filter through the intelligence bureaucracy."

In the first hours of the crisis, Reagan ordered that the Pope receive as quickly as possible relevant American intelligence, including information from a Polish Deputy Minister of Defense who was secretly reporting to the CIA. Washington also handed over to the Vatican reports and analysis from Colonel Ryszard Kuklinski, a senior member of the Polish general staff, who was a CIA informant until November 1981, when he had to be smuggled out of Poland after he warned that the Soviets were prepared to invade if the Polish government did not impose martial law. Kuklinski had issued a similar warning about a Soviet military action in late 1980, which led the outgoing Carter Administration to send secret messages to Leonid Brezhnev informing him that among the costs of an invasion would be the sale of sophisticated U.S. weapons to China. This time, Kuklinski reported to Washington, Brezhnev had grown more impatient, and a disastrous harvest at home meant that the Kremlin did not need mechanized army units to help bring in the crops and instead could spare them for an invasion. "Anything that we knew that we thought the Pope would not be aware of, we certainly brought it to his attention," says Reagan. "Immediately."

THE CATHOLIC TEAM

The key Administration players were all devout Roman Catholics—CIA chief William Casey, Allen, Clark, Haig, Walters and William Wilson, Reagan's first ambassador to the Vatican. They regarded the U.S.-Vatican relationship as a holy alliance: the moral force of the Pope and the teachings of their church combined with their fierce anticommunism and their notion of American democracy. Yet the mission would have been impossible without the full support of Reagan, who believed fervently in both the benefits and the practical applications of Washington's relationship with the Vatican. One of his earliest goals as President, Reagan says, was to recognize the Vatican as a state "and make them an ally."

According to Admiral John Poindexter, the military assistant to the National Security Adviser when martial law was declared in Poland, Reagan was convinced that the communists had made a huge miscalculation: after allowing Solidarity to operate openly for 16 months before the crackdown, the Polish government would only alienate its countrymen by attempting to cripple the labor movement and, most important, would bring the powerful church into direct conflict with the Polish regime. "I didn't think that this [the decision to impose martial law and crush Solidarity] could stand, because of the history of Poland and the religious aspect and all," Reagan says. Says Cardinal Casaroli: "There was a real coincidence of interests between the U.S. and the Vatican."

The major decisions on funneling aid to Solidarity and responding to the Polish and Soviet governments were made by Reagan, Casey and Clark, in consultation with John Paul II. "Reagan understood these things quite well, including the covert side," says Richard Pipes, the conservative Polish-born scholar who headed the NSC's Soviet and East-European desks. "The President talked about the evil of the Soviet system—not its people—and how we had to do everything possible to help these people in Solidarity who were struggling for freedom. People like Haig and Commerce Secretary Malcolm Baldrige and James Baker [White House chief of staff at the time] thought it wasn't realistic. George Bush never said a word. I used to sit behind him, and I never knew what his opinions were. But Reagan really understood what was at stake."

By most accounts, Casey stepped into the vacuum in the first days after the declaration of martial law in Poland and—as he did in Central America—became the principal policy architect. Meanwhile Pipes and the NSC staff began drafting proposals for sanctions. "The object was to drain the Soviets and to lay blame for martial law at their doorstep," says Pipes. "The sanctions were coordinated with Special Operations [the CIA division in charge of covert task forces], and the first objective was to keep Solidarity alive by supplying money, communications and equipment."

"The church was trying to modulate the whole situation," explains one of the NSC officials who directed the effort to curtail the pipeline. "They [church leaders] were in effect trying to create circumstances that would head off the serious threat of Soviet intervention while allowing us to get tougher and tougher; they were part and parcel of virtually all of our deliberations in terms of how we viewed the evolution of government-sponsored repression in Poland—whether it was lessening or getting worse, and how we should proceed."

As for his conversations with Reagan about Poland, Clark says they were usually short. "I don't think I ever had an in-depth, one-on-one, private conversation that existed for more than three minutes with him—on any subject. That might shock you. We had our own code of communication. I knew where he wanted to go on Poland. And that was to take it to its nth possibilities. The President and Casey and I discussed the situation on the ground in Poland constantly: covert operations; who was doing what, where, why and how; and the chances of success." According to Clark, he and Casey directed that the President's daily brief—the PDB, an intelligence summary prepared by the CIA—include a special supplement on secret operations and analysis in Poland.

The Pope himself, not only his deputies, met with American officials to assess events in Poland and the effectiveness of American actions and sent back messages—sometimes by letter, sometimes orally—to Reagan. On almost all his trips to Europe and the Middle East, Casey flew first to Rome, so that he could meet with John Paul II and exchange information. But the principal emissary between Washington and Rome remained Walters, a former deputy director of the CIA who worked easily with Casey. Walters met with the Pope perhaps a dozen times, according to Vatican sources. "Walters was sent to and from the Vatican for the specific purpose of carrying messages between the Pope and the President," says former U.S. Ambassador to the Vatican Wilson. "It wasn't supposed to be known that Walters was there. It wasn't all specifically geared to Poland; sometimes there were also discussions about Central America or the hostages in Lebanon."

Often in the Reagan years, American covert operations (including those in Afghanistan, Nicaragua and Angola) involved "lethal assistance" to insurgent forces: arms, mercenaries, military advisers and explosives. In Poland the Pope, the President and Casey embarked on the opposite path: "What they had to do was let the natural forces already in place play this out and not get their fingerprints on it," explains a analyst. What emerges from the Reagan-Casey collaboration is a carefully calibrated operation whose scope was modest compared with other CIA activities. "If Casey were around now, he'd be having some smiles," observes one of his reluctant admirers. "In 1991 Reagan and Casey got the reordering of the world that they wanted."

THE SECRET DIRECTIVE

Less than three weeks before his meeting with the Pope in 1982, the President signed a secret national-security-decision directive (NSDD 32) that authorized a range of economic, diplomatic and covert measures to "neutralize efforts of the U.S.S.R." to maintain its hold on Eastern Europe. In practical terms, the most important covert operations undertaken were those inside Poland. The primary purposes of NSDD 32 were to destabilize the Polish government through covert operations involving propaganda and organizational aid to Solidarity; the promotion of human rights, particularly those related to the right of worship and the Catholic

Church; economic pressure; and diplomatic isolation of the communist regime. The document, citing the need to defend democratic reform efforts throughout the Soviet empire, also called for increasing propaganda and underground broadcasting operations in Eastern Europe, actions that Reagan's aides and dissidents in Eastern Europe believe were particularly helpful in chipping away at the notion of Soviet invincibility.

As Republican Congressman Henry Hyde, a member of the House Intelligence Committee from 1985 to 1990, who was apprised of some of the Administration's covert actions, observes, "In Poland we did all of the things that are done in countries where you want to destabilize a communist government and strengthen resistance to that. We provided the supplies and technical assistance in terms of clandestine newspapers, broadcasting, propaganda, money, organizational help and advice. And working outward from Poland, the same kind of resistance was organized in the other communist countries of Europe."

Among those who played a consulting role was Zbigniew Brzezinski, a native of Poland and President Jimmy Carter's National Security Adviser. "I got along very well with Casey," recalls Brzezinski. "He was very flexible and very imaginative and not very bureaucratic; if something needed to be done, it was done. To sustain an underground effort takes a lot in terms of supplies, networks, etc., and this is why Solidarity wasn't crushed."

On military questions, American intelligence was better than the Vatican's, but the church excelled in its evaluations of the political situation. And in understanding the mood of the people and communicating with the Solidarity leadership, the church was in an incomparable position. "Our information about Poland was very well founded because the bishops were in continual contact with the Holy See and Solidarnosc," explains Cardinal Silvestrini, the Vatican's deputy secretary of state at that time. "They informed us about prisoners, about the activities and needs of Solidarity groups and about the attitude and schisms in the government." All this information was communicated to the President or Casey.

"If you study the situation of Solidarity, you see they acted very cleverly, without pressing too much at the crucial moments, because they had guidance from the church," says one of the Pope's closest aides. "Yes, there were times we restrained Solidarnosc. But Poland was a bomb that could explode—in the heart of communism, bordered by the Soviet Union, Czechoslovakia and East Germany. Too much pressure, and the bomb would go off."

CASEY'S CAPPUCCINO

Meanwhile, in Washington a close relationship developed between Casey, Clark and Archbishop Laghi. "Casey and I dropped into his [Laghi's] residence early mornings during critical times to gather his comments and counsel," says Clark. "We'd have breakfast and coffee and discuss what was being done in Poland. I'd speak to him frequently on the phone, and he would be in touch with the Pope." Says Laghi: "They liked good cappuccino. Occasionally we might talk about Central America or the church position on birth control. But usually the subject was Poland."

"Almost everything having to do with Poland was handled outside of normal State Department channels and would go through Casey and Clark," says Robert McFarlane, who served as a deputy to both Clark and Haig and later as National Security Adviser to the President. "I knew that they were meeting with Pio Laghi, and that Pio Laghi had been to see the President, but Clark would never tell me what the substance of the discussions was."

On at least six occasions Laghi came to the White House and met with Clark or the President; each time, he entered the White House through the southwest gate in order to avoid reports. "By keeping in such close touch, we did not cross lines," says Laghi. "My role was primarily to facilitate meetings between Walters and the Holy Father. The Holy Father knew his people. It was a very complex situation—how to insist on human rights, on religious freedom, and keep Solidarity alive without provoking the communist authorities further. But I told Vernon, 'Listen to the Holy Father. We have 2,000 years' experience at this.'"

Though William Casey has been vilified for aspects of his tenure as CIA chief, there is no criticism of his instincts on Poland. "Basically, he had a quiet confidence that the communists couldn't hold on, especially in Poland," says former Congressman Edward Derwinski, a Polish-speaking expert on Eastern Europe who counseled the Administration and met with Casey frequently. "He was convinced the system was falling and doomed to collapse one way or another—and Poland was the force that would lead to the dam breaking. He demanded a constant [CIA] focus on Eastern Europe. It wasn't noticed, because other stories were more controversial and were perking at the moment—Nicaragua and Salvador."

In Poland, Casey conducted the kind of old-style operation that he relished, something he might have done in his days at the Office of Strategic Services during World War II or in the early years of the CIA, when the democracies of Western Europe rose from the ashes of World War II. It was through Casey's contacts, his associates say, that elements of the Socialist International were organized on behalf of Solidarity—just as the Social Democratic parties of Western Europe had been used as an instrument of American policy by the CIA in helping to create anticommunist governments after the war. And this time the objective was akin to creating a Christian Democratic majority in Poland—with the church and the overwhelmingly Catholic membership of Solidarity as the dominant political force in a post communist Poland. Through his contacts with leaders of the Socialist International, including officials of socialist governments in France and Sweden, Casey ensured that tactical assistance was available on the continent and at sea to move goods into Poland. "This wasn't about spending huge amounts of money," says Brzezinski. "It was about getting the message out and resisting: books, communications equipment, propaganda, ink and printing presses."

LOOK FOR THE UNION LABEL

In almost every city and town, underground newspapers and mimeographed bulletins appeared, challenging the state-controlled media. The church published its own newspapers. Solidarity missives, photocopied and mimeographed on American-supplied equipment, were tacked to church bulletin boards. Stenciled posters were boldly posted on police stations and government buildings and even on entrances to the state-controlled television center, where army officers broadcast the news.

The American embassy in Warsaw became the pivotal CIA station in the communist world and, by all accounts, the most effective. Meanwhile, the AFL–CIO, which had been the largest source of American support for Solidarity before martial law, regarded the Reagan Administration's approach as too slow and insufficiently confrontational with the Polish authorities. Nonetheless, according to intelligence sources, AFL–CIO president Lane Kirkland and his aide Tom Kahn consulted frequently with Poindexter, Clark and other officials at the State Department and the NSC on such matters as how and when to move goods and supplies into Poland, identifying cities where Solidarity was in particular need of organizing assistance, and examining how Solidarity and the AFL–CIO might collaborate in the preparation of propaganda materials.

"Lane Kirkland deserves special credit," observes Derwinski. "They don't like to admit [it], but they literally were in lockstep [with the Administration]. Also never forget that Bill Clark's wife is Czechoslovak, as is Lane Kirkland's wife. This is one issue where everybody was aboard; there were no turf fights or mavericks or naysayers."

But AFL–CIO officials were never aware of the extent of clandestine U.S. assistance, or the Administration's reliance on the church for guidance regarding how hard to push Polish and Soviet authorities. Casey was wary of "contaminating" the American and European labor movements by giving them too many details of the Administration's efforts. And indeed this was not strictly a CIA operation. Rather, it was a blend of covert and overt, public policy and secret alliances. Casey recognized that in many instances the AFL–CIO was more imaginative than his own operatives in providing organizational assistance to Solidarity and smuggling equipment into the country. According to former deputy CIA director Inman, Casey decided that the American labor movement's relationship with Solidarity was so good that much of what the CIA needed could be financed and obtained through AFL–CIO channels. "Financial support wasn't what they needed," says Inman. "It was organization, and that was an infinitely better way to help them than through classic covert operations."

The Solidarity office in Brussels became an international clearinghouse: for representatives of the Vatican, for CIA operatives, for the AFL–CIO, for representatives of the Socialist International, for the congressionally funded National Endowment for Democracy, which also worked closely with Casey. It was the place where Solidarity told its backers—some of whose real identities were unknown to Solidarity itself—what it needed, where goods and supplies and organizers could be most useful. Priests, couriers, labor organizers and intelligence operatives moved in and out of Poland with requests for aid and with detailed information on the situation inside the government and the underground. Food and clothing and money to pay fines of Solidarity leaders who were brought before Polish courts poured into the country. Inside Poland, a network of priests carried messages back and forth between the churches where many of Solidarity's leaders were in hiding.

In the summer of 1984, when the sanctions against Poland seemed to be hurting ordinary Poles and not the communists, Laghi traveled to Santa Barbara to meet with Reagan at the Western White House and urge that some of the sanctions be lifted. The Administration complied. At the same time, the White House, in close consultation with the Vatican, refused to ease its economic pressures on Moscow—denying technology, food and cultural exchanges as the price for continuing oppression in Poland.

Much of the equipment destined for Solidarity arrived in Poland by ship—often packed in mismarked containers sent from Denmark and Sweden, then unloaded at Gdansk and other ports by dockers secretly working with Solidarity. According to Administration officials, the socialist government of Sweden—and Swedish labor unions—played a crucial role in arranging the transshipment of goods to Poland. From the Polish docks, equipment moved to its destination in trucks and private cars driven by Solidarity sympathizers who often used churches and priests as their point of contact for deliveries and pickups.

"SOLIDARITY LIVES!"

"The Administration plugged into the church across the board," observes Derwinski, now Secretary of Veterans Affairs. "Not just through the church hierarchy but through individual churches and bishops. Monsignor Bronislaw Dabrowski, a deputy to Cardinal Glemp, came to use often to tell us what was needed: he would meet with me, with Casey, the NSC and sometimes with Walters." John Cardinal Krol of Philadelphia, whose father was born in Poland, was the American churchman closest to the Pope. He frequently met with Casey to discuss support for Solidarity and covert operations, according to CIA sources and Derwinski. "Krol hit it off very well with President Reagan and was a source of constant advice and contact," says Derwinski. "Often he was the one Casey or Clark went to, the one who really understood the situation."

By 1985 it was apparent that the Polish government's campaign to suppress Solidarity had failed. According to a report by Adrian Karatnycky, who helped organize the AFL–CIO's assistance to Solidarity, there were more than 400 underground periodicals appearing in Poland, some with a circulation that exceeded 30,000. Books and pamphlets challenging the authority of the communist government were printed by the thousands. Comic books for children recast Polish fables and legends, with Jaruzelski pictured as the villain, communism as the red dragon and Walesa as the heroic knight. In church basements and homes, millions of viewers watched documentary videos produced and screened on the equipment smuggled into the country.

With clandestine broadcasting equipment supplied by the CIA and the AFL–CIO, Solidarity regularly broke into the government's radio programming, often with the message "Solidarity lives!" or "Resist!" Armed with a transmitter supplied by the CIA through church channels, Solidarity interrupted television programming with both audio and visual messages, including calls for strikes and demonstrations. "There was a great moment at the half time of the national soccer championship," says a Vatican official. "Just as the whistle sounded for the half, a Solidarity Lives! banner went up on the screen and a tape came on calling for resistance. What was particularly ingenious was waiting for the half-time break; had the interruption come during actual soccer play, it could have alienated people." As Brzezinski sums it up, "This was the first time that communist police suppression didn't succeed."

"Nobody believed the collapse of communism would happen this fast or on this timetable," says a cardinal who is one of the Pope's closest aides. "But in their first meeting, the holy Father and the President committed themselves and the institutions of the church and America to such a goal. And from that day, the focus was to bring it about in Poland."

Step by reluctant step, the Soviets and the communist government of Poland bowed to the moral, economic and political pressure imposed by the Pope and the President. Jails were emptied, Walesa's trial on charges of slandering state officials was abandoned, the Polish communist party turned fratricidal, and the country's economy collapsed in a haze of strikes and demonstrations and sanctions.

On Feb. 19, 1987, after Warsaw had pledged to open a dialogue with the church, Reagan lifted U.S. sanctions. Four months later, Pope John Paul II was cheered by millions of his countrymen as he traveled across Poland demanding human rights and praising Solidarity. In July 1988, Gorbachev visited Warsaw and signaled Moscow's recognition that the government could not rule without Solidarity's cooperation. On April 5, 1989, the two sides signed agreements legalizing Solidarity and calling for open parliamentary elections in June. In December 1990, nine years after he was arrested and his labor union banned, Lech Walesa became President of Poland.

[Correction (Apr. 27, 1992): A short article accompanying our report on the cooperative effort of President Reagan and Pope John Paul II to assist Poland's Solidarity movement [Cover, Feb. 24] incorrectly stated the U.S. position on financial aid for family planning in foreign countries. The U.S. announced in 1984 that it would withhold funds for abortion or coerced birth control—but not for all family planning.]

[From the Policy Review, 1992 Winter]

THE COLD WAR'S MAGNIFICENT SEVEN; POPE JOHN PAUL II; AWAKENER OF THE EAST

(By Fr. Robert A. Sirico)

The victory of the Free World in the Cold War ranks with the victory of the Allies in World War II, the landing on the moon, and the spectacular advances in health and prosperity around most of the world as the most important achievement of mankind in this century. There were countless heroes in the defeat of Communism—among them the people of the former Soviet empire whose indomitable spirit ultimately triumphed over their enslavers, and the taxpayers of the Western alliance who spent trillions of dollars over more than 40 years to protect their countries and civilization from the Soviet threat. The West was also blessed by extraordinary leaders and moral voices who defined the nature of the conflict, galvanized the popular will to resist Communism, and created the institutions that led to eventual victory. Policy Review pays tribute here to seven of those leaders whose words and deeds were essential for the wonderful events of the last few years.

It was a nervous clique of geriatric Stalinists who watched from Moscow in 1979 as millions of Poles poured into the streets of Krakow to greet their native son Karol Wojtyla when he returned to them as Pope John Paul II. A political awareness dawned among these teeming masses when they saw in one another's boldness the impotence of the dictatorship that claimed dominance over their lives.

Nor were the only witnesses to these events Politburo members and Poles. Lithuanians and Ukrainians, Hungarians and Czechoslovakians also witnessed with astonishment the unfurling of Solidarity banners in a Communist nation.

Perhaps it was not so astonishing to the new pope. As a young boy Wojtyla used to pause for a few moments following Mass to offer a series of prayers "for the conversion of Russia."

From the outset, Wojtyla was a robust, intense, strong, and disciplined young man. His charismatic personality was augmented by his facility with languages and further honed by theatrical training. His combination of fervent piety and firm anti-Communism would serve him well in his future as priest, bishop, and cardinal in Poland. In a country that is itself 93 percent Roman Catholic, such a profession would necessitate dealing with Russia's surrogates, sometimes making strategic accommodations, without yielding the moral ground to Communism.

John Paul comprehended the dynamics of Marxism both intellectually and personally. He knew Communism well, so well that some left-wing theologians initially mistook his familiarity with Marxism for sympathy. They hoped he would lead a new and enriched dialogue between Christianity and Marxism. Instead, by virtue of his philosophical and theological training, he was equipped both to refute Marxism's logical errors, and also to offer a more compelling alternative in its place.

As leader of the largest Christian religion, John Paul is also the leader of a vast enterprise, joined by thousands of subsidiary organizations. These are linked by a common set of beliefs and symbols, enabling the transcendence of the usual barriers of language, culture, and geographic border. This expansive umbrella enabled him, through gesture, encyclical, and homily, to inspire millions of people living under regimes that violated their ability to work for authentic liberty.

MORAL CONFLICT

During his pontificate, two other figures stepped onto the world stage and occupied with him critical roles in the momentous events that would unfold. A year after John Paul assumed his place at the Vatican in 1978, Margaret Thatcher came to occupy 10 Downing Street. About a year and a half later, Ronald Reagan took up residency in the White House.

The common thread between John Paul, Thatcher, and Reagan is that while they appreciated the art of politics, they understood the global situation in fundamentally moral categories. They understood, as few world leaders have understood, that the argument in favor of freedom is a moral argument as well as a political and economic one. Without the moral dimension, the battles that these cold warriors waged would have been meaningless and uninspiring.

The compelling dignity and moral depth of John Paul is especially highlighted when he contrasted with the leaders of another international religious body, and their posture toward the dictatorships of Eastern Europe. I speak here, of course, of the World Council of Churches. Almost from its inception, and throughout the past 40 years, the socialist penchants of the WCC prevented it from offering any kind of principled opposition to the immorality of Communism.

"Liberation" was the central theme of the WCC's Nairobi Assembly in 1975. South Africa was denounced alongside "white Atlantic nations"; the rights of aborigines in Australia were defended even as the plight of migrant workers in Europe was decried.

Yet a motion to include in this litany of injustice a mention of religious repression in Russia was turned back. Instead, the assembly would only acknowledge that it "devoted a substantial period of discussion to the alleged denials of religious liberty in the USSR" [emphasis added].

While the officers of the WCC were funding Marxist guerrillas in Africa in the name of "liberation," John Paul was teaching the polish under ground in the effective use of nonviolent resistance to totalitarianism. He did this in his writings, as well as in the numerous meetings and audiences he held with leaders of the underground.

No doubt historians who write on this period in years to come will not only see the moral dimension, but also the superb tactical insight of the use of nonviolence. Too aggressive a stance on the part of the Polish underground and the Soviet Union might have cracked down at a much earlier and more vulnerable stage. Drawing on a tradition accustomed to martyrs, whose blood, it is said, is the seed of the Roman Catholic Church, prayer and determination in the face of persecution resulted in one of the most radical yet bloodless revolutions in world history.

SPIRIT OF LIBERTY

If there is one word to characterize the legacy John Paul will leave to history, perhaps that word is liberty.

Historians will undoubtedly note the amazing move in the Catholic world toward democratic political processes and free economies in the period of this pope's reign. This is clearly evident in Latin America where the Pope has confronted unjust regimes of every stripe.

How fitting, then, that John Paul, this priest from Poland who lived under what is arguably history's most immoral and destructive political system, should have been the one to write the epitaph for collectivism in its Communist, socialist, and welfare statist incarnations. This he has done in the form of his most recent social encyclical, Centesimus Annus ("The Hundredth Year").

Celebrating the centenary of Pope Leo XIII's pastoral letter Rerum Navarum, Centesimus Annus looks at the events of this age and envisions a world where government is strictly limited and based on the rule of law; where free people trade in free markets to produce a more prosperous economy for all the world's needy; and where the social system is rooted in moral and religious tradition.

It will be interesting to see whether this moral vision will have greater impact on the West or on the former republics of the Soviet empire that John Paul did so much to free.

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. SMITH), the distinguished Chairman of the Committee on Veterans' Affairs.

Mr. SMITH of New Jersey. Mr. Speaker, I thank the gentlewoman for yielding me time. I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for sponsoring this very important resolution and for his eloquent remarks just made on behalf of the Pope.

Mr. Speaker, I rise in strong support of the Sensenbrenner resolution urging the President on behalf of people of the United States to present the Presidential Medal of Freedom to Pope John Paul II, who in his 25 years as leader of the Catholic Church, has become pastor to the world, boldly proclaiming the gospel, the good news of Jesus Christ, and its message of love, hope and reconciliation.

The Holy Father walks the path to peace that surpasses understanding, the road that leads to heaven. Even at age 83 and struggling with various health ailments, including Parkinsons disease, the Pope's charisma and steadfast faith shine brightly, giving hope to millions of people of all faiths.

Mr. Speaker, as we know, during his pontificate the Holy Father has visited over 125 different countries, several more than once, proclaiming the good news to millions and has been seen by more people than anyone in human history.

In what is believed to be the largest gathering ever, he spoke before an estimated 6 million people at a mass at World Youth Day in the Philippines in 1995.

Pope John Paul II is truly a world leader and has been an unparalleled champion of those who cannot speak for themselves, the poor, the disenfranchised, unborn children, the disabled, even those condemned to death and those whose basic rights as children of God are trampled upon by oppressive regimes.

Mr. Speaker, it has been noted that years before he was Pope when he was teaching at a university in Poland as a young priest, a communist student launched an aggressive attack against religion during class. The student, an avowed atheist, was so filled with rage, his fellow students feared that the young priest, then known as Karol Wojtyla, would lose his temper and kick the student out of class. Instead, Father Wojtyla had listened to the student before calmly and thoroughly refuting his argument point by point. After class the two had a conversation that began a dialogue. The student would later say that helped him greatly when confronting atheist communists after he converted to Catholicism and after he himself became a priest.

Mr. Speaker, it is worth recalling that Pope John Paul II's first words as Pope to the world included the message, "Do not be afraid."

□ 2015

This message was part of an unrelenting crusade against the forces of atheistic communism that was instrumental in its collapse. No one, Mr. Speaker, can dispute that John Paul II's historic visit to Poland in 1979 inspired the creation of the solidarity movement with its great leader Lech Walesa in the midst of unspeakable turmoil and personal risk. Remember, this Pope was shot, and he actually, after he was shot, and he was actually we believe saved miraculously, went to the jail cell of his would-be assassin to forgive that man for the crime he attempted and for the pain and suffering that he visited upon the Pope. Despite all of those personal risks, Pope John Paul II was, during those terrible years, and is the brave voice of reason, candor and hope. Even Mikhail Gorbachev admitted that the sweeping changes in Eastern Europe and in the Soviet Union itself would not have occurred had it not been for this Pope.

Today, the Pope continues to preach, Mr. Speaker, the message of life, hope and love amid the oppressive tide of the culture of death. His teachings not only inspire the faithful today but will continue to have an impact long after his work on earth is complete.

Many of his most profound messages are contained in 13 incisive encyclicals, including Evangelium Vitae, "The Gospel of Life," which reminds all of us, especially those in public service, that the gift of human life is so precious, so full of dignity, that it must remain inviolable and be defended against all means of violence.

The Pope writes in that very important document that, "This is what is happening at the level of politics and government," and I quote him, "the original and inalienable right to life is questioned or denied on the basis of a parliamentary vote or the will of one part of the people, even if it is the majority. This is the sinister result of relativism which reigns unopposed, the right ceases to be such, because it is no longer firmly founded on the inviolable dignity of the person, but is made subject to the will of the stronger part."

Elsewhere, Mr. Speaker, in Evangelium Vitae, Pope John Paul II states in unambiguous terms that, "Abortion and euthanasia are crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws," he writes and said, "There is a grave and clear obligation to oppose them by conscientious objection. In the case of intrinsically unjust law," he continues, "such as a law permitting abortion or euthanasia, it is therefore never licit to obey it or to take part in a propaganda campaign in favor of such a law, or to vote for it."

Finally, Mr. Speaker, just let me say this. My dear wife Marie and I have had the awesome privilege of meeting the Holy Father on two occasions, and we were awed. We were deeply struck by his innate goodness, the clarity that we see in his eyes, the love that he emanates and by his gentleness. When we were in Newark, New Jersey, at the cathedral there when he came during one of his visits to the U.S., and we happened to be there as a family. He walked over to my youngest daughter Elyse, gave her a big nice kiss on the top of the head, and we could just see the compassion of this man in his eyes and in his gestures and in his heart. We were also even faces in the crowd in 1979 at New York's Shea Stadium when he came in on his first trip and again were inspired by this good man.

Mr. Speaker, we have been on numerous occasions and I think many Members, House and Senate, Democrats, Republicans, it does not matter, have all been touched by his care and his compassion for others, a man that is so completely rooted in God. We have been touched by his devotion to the Blessed Mother. He is a man who in word and deed unselfishly cares for the least of our brethren.

John Paul II is truly the vicar of Christ on earth, a man who has and continues to be faithfully and courageously walking in the shoes of the fisherman, Saint Peter.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

I have no other speakers. I commend the distinguished chairman of the Committee on the Judiciary for introducing this significant resolution. I urge all Members to support the adoption of H. Con. Res. 313.

Mr. DINGELL. Mr. Speaker, I rise in full support of this resolution, H. Con. Res. 313, urging President Bush to present the Presidential medal of Freedom to Pope John Paul II.

Mr. Speaker, Pope John Paul II is a leader who has truly made this world a better place to live. His dedication and devotion to religious freedom for all people aided in bringing about a peaceful end to communism in Eastern Europe. His courage to defy the Nazis during World War II not only helped preserve Poland, but kept the flame of hope alive to all free people during those dark years.

He stood up when the tyranny of Soviet Communism darkened Eastern Europe, and helped ignite the spark of revolution by his visit to Poland in June 1979. His insistence on the dignity of the human spirit, and the call for religious freedom as the first of human rights, aided all Poles in their crusade against their Communist oppressors.

Mr. Speaker, he not only inspired millions suffering under communism, but he also inspired millions more when, just four days after an assassination attempt he said, "Pray for the brother who shot me, whom I have sincerely forgiven."

He is a rare individual. He is someone who has truly changed the world. His papacy has affected not only Catholics, but also Jews, Muslims, Hindus, Buddhists, and all others who value freedom over oppression. Citizens of the world owe a debt of gratitude to Pope John Paul II.

Mr. Speaker, I rise to congratulate him in celebration of his Silver Jubilee. I call upon my colleagues to vote for this resolution and call on the President to honor Pope John Paul II with the Presidential Medal of Freedom.

Ms. BORDALLO. Mr. Speaker, I rise today in support of House Concurrent Resolution 313, urging the President to present the Presidential Medal of Freedom to His Holiness, Pope John Paul II, in recognition of his significant, enduring and historic contributions to the causes of freedom, human dignity, and peace and to commemorate the Silver Jubilee of His Holiness' inauguration of his ministry as Bishop of Rome and Supreme Pastor of the Catholic Church. I want to thank Mr. SENSENBRENNER for his leadership on this bill.

The Presidential Medal of Freedom is our nation's highest civilian award, recognizing exceptional meritorious contribution to world peace. His Holiness, Pope John Paul II is more than deserving of this award.

Throughout his life and his ministry, he has stood firm in his belief of the inalienable right and dignity of the human person and has been unafraid to shape world events, speak for peace and advocate for human rights.

From his early years during the Nazi occupation of Poland where he risked his life to protect Polish Jews from persecution to his forgiveness of his would-be assassin, he has led by example.

His steadfast support of the Solidarity movement in his homeland of Poland provided hope and encouragement to the Polish people and led to peaceful government reforms that precipitated the collapse of communism in Poland and the eventual fall of the Soviet Union bringing freedom to millions of people.

As these events were unfolding in Eastern Europe, Pope John Paul II was also reaching out to other parts of the world, proclaiming belief in the inalienable right and dignity of the human person and using his influence to bring about change.

Through his efforts, he has helped to reduce tensions between world leaders, reducing conventional and nuclear weapons and averting a nuclear war.

He has sought to heal divisions across the different faith traditions, promoting reconciliation and dialogue between members to further understanding and respect for all people.

He has traveled over the world bringing hope and encouragement to the millions still oppressed by tyranny, hunger, disease and despair.

Despite his ailing health, he continues to lead with strength of conviction as a champion of freedom and peace. Through the many challenges that has faced the Catholic Church and the world, Pope John Paul II has been the rock of the Catholic Church, a model for all people.

On behalf of the people of Guam, I fully support House Concurrent Resolution 313 and urge its unanimous passage.

Mr. VISCLOSKY. Mr. Speaker, I rise today in support of H. Con. Res. 313, a measure urging the President to present the Presidential Medal of Freedom to His Holiness, Pope John Paul II, in recognition of his contributions to the causes of freedom, human dignity, and peace, and to commemorate the Silver Jubilee of his inauguration as Bishop of Rome and Supreme Pastor of the Catholic Church. It is with great honor and esteem that I stand here today to pay tribute to Pope John Paul II. The leadership he has displayed during his 25-year tenure as Supreme Pastor of the Roman Catholic Church has helped to shape our moral conscience. His fight to end human rights abuses and his opposition to communism not only influenced the Catholic community, but the world community.

Born Karol Jozef Wojtyla, Jr. in 1920, Pope John Paul II was the second son of Karol Wojtyla, Sr. and Emilia Kaczorwoska Wojtyla. Karol, Sr. was a retired officer for the Polish Army as well as a tailor, and Emilia was a schoolteacher. Pope John Paul II repeatedly demonstrated his unique ability to form friendships that crossed the social norms of the time. Although his hometown of Wadowice, Poland was wrought with anti-Semitism, Pope John Paul II and his family did not share in that hatred. At an early age, His Holiness befriended several members of the Jewish community and learned the importance of compassion and understanding. He later became the first Pope to visit a synagogue and the first to visit a memorial in nearby Auschwitz honoring victims of the Holocaust.

Shortly after his father's death in 1941, Pope John Paul II attended an underground seminary in Krakow, where he was eventually ordained in 1946. He served as a chaplain to university students at St. Florian's Church in Krakow until the communist government abolished the theology department in 1954. He continued his studies at the Seminary of Krakow and was hired as a professor at the Catholic University of Lublin, where he founded and operated a facility to assist families with marital problems, ranging from family planning to alcoholism and physical abuse. In 1956, Pope John Paul II was appointed to the Chair of Ethics at Catholic University, and in 1958 he was named the auxiliary bishop of Krakow. He was instrumental to the Vatican Council II deliberations in 1962, which encouraged diversity in language and practice of the Catholic faith in order to facilitate the inclusion of laymen in worship while also condemning anti-Semitism around the world. His respect throughout the Catholic community led to his election as Pope after the death of Pope John Paul I in September 1978, making him the first Slavic Pope in history.

Less than a year after being named Pope, John Paul II returned to his native Poland and spoke out in favor of the Polish Solidarity movement and against communism. His insistence that no system of government override religious beliefs gave hope to people of faith throughout the former Soviet Union that reforms would take place. The courage and determination that he displayed in opposition to a world power reflected the strength of his convictions and his willingness to stand up to an institutional force that challenged the beliefs of the church. Pope John Paul II repeated this theme when he visited Cuba in January 2003, stating that a government does not the authority to legislate religious beliefs.

Mr. Speaker, during his 25 years as pontiff, Pope John Paul II has spread the Catholic faith with visits to over 115 countries. His gift for uniting those of different beliefs earned him Man of the Year honors from Time Magazine in 1994, and his popularity among both Catholics and non-Catholics around the world is a testament to his genuine love for humanity. As a graduate of St. Mark's Catholic School in Gary, Indiana, I am well aware of the significant role that he has played in leading the Catholic Church into the 21st century. His teaching of tolerance and love for thy neighbor has made him worthy of the Presidential Medal of Freedom, and that is why I intend to support H. Con. Res. 313.

Mr. HYDE. Mr. Speaker, I am honored to join my friend from Wisconsin in urging the President to present the Presidential Medal of

Freedom to Pope John Paul II, who has marked his Silver Jubilee as the spiritual leader of more than one billion Catholics around the world.

The Presidential Medal of Freedom is considered the highest civilian award of the United States Government. It was established to recognize persons who have made especially meritorious contributions to the security or national interests of the United States; to world peace; or to cultural or other significant public or private endeavors. Recipients have included educators, diplomats, authors, scientists and religious leaders.

By bestowing this great honor upon Pope John Paul II, we recognize His Holiness' lifetime dedication to peace, hope, freedom, unity and dignity. No one is more deserving of this award of special distinction which symbolizes the lasting admiration of the American people for the Pope's many efforts.

This man was formed at a remarkable time in human history. He knew the persecution of oppression and witnessed the false ideologies of the 20th Century. He studied for the priesthood in secrecy and lived through the Nazi occupation and Communist subjugation of his native Poland. He was a philosopher, theologian and pastor. He was instrumental in the demise of the Communist regime in Poland, and he played an important role in the collapse of Communism throughout central and eastern Europe, which ended the Cold War.

The Holy Father has continued to promote freedom and peace throughout the world during his pontificate. He has truly internationalized the Catholic Church, and yet he has also reached out in an unprecedented way to peoples of other beliefs and religions all over the world through his promotion of greater understanding, healing, and harmony between religions. His Holiness has particularly promoted unity among Christian churches, reconciliation with the Jewish people, and dialogue with Islam. The Holy Father was the first Pope to visit a synagogue, as well as the first to visit a mosque.

I consider it an honor to be able to ask my Congressional colleagues to join me in paying tribute to this devoted spiritual leader and to celebrate with the Holy Father this Jubilee by urging the President to bestow the Medal of Freedom upon His Holiness, Pope John Paul II.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PEARCE). The question is on the motion offered by the gentlewoman from Florida (Ms. ROS-LEHTINEN) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 313.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

NEW BRIDGE LANDING POST OFFICE

Ms. ROS-LEHTINEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2130) to redesignate the facility of the United States Postal Service located at 650 Kinderkamack Road in River Edge, New Jersey, as the "New Bridge Landing Post Office," as amended.

The Clerk read as follows:

H.R. 2130

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NEW BRIDGE LANDING POST OFFICE.

(a) REDESIGNATION.—The facility of the United States Postal Service located at 121 Kinderkamack Road in River Edge, New Jersey, and known as the North Hackensack Station Post Office, shall be known and designated as the "New Bridge Landing Post Office".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the New Bridge Landing Post Office.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Florida (Ms. ROS-LEHTINEN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Florida (Ms. ROS-LEHTINEN).

GENERAL LEAVE

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

"These are the times that try men's souls." Mr. Speaker, political theorist Thomas Paine uttered these famous words during the cold of November 1776. When the American Revolution commenced, the colonial freedom fighters battled the mighty British forces while barefoot and often wearing little more than blankets and torn clothing. The early days of the war featured humiliating, devastating losses for the overwhelmed Colonial Army.

On November 20, 1776, General George Washington led his troops in a retreat over the Hackensack River across the New Bridge Landing. Once they reached safety, General Washington and his men set up the first headquarters of the new Continental Army at New Bridge. Thomas Paine was inspired to write the first essays of the American Crisis near the New Bridge landing site, intended to rally Americans during the first days of our Nation. The New Bridge landing provided General Washington's troops with an important chance to regroup. This gave Americans a small boost that led to the unlikely defeat of the Royal British Army and the independence for the brand new United States of America.

Mr. Speaker, this legislation, H.R. 2130, introduced by the gentleman from New Jersey (Mr. GARRETT) renames a post office in River Edge, New Jersey, as the New Bridge Landing Post Office Building. This designation, on this historic site, will serve as an appropriate reminder of the struggle that Americans endured during the Revolutionary War.

Mr. Speaker, I applaud the gentleman from New Jersey for this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, as a member of the House Committee on Government Reform, I am pleased to join my colleague in consideration of H.R. 2130, legislation naming a postal facility as the New Bridge Landing. H.R. 2130, which was introduced by the gentleman from New Jersey (Mr. GARRETT) on May 15, 2003, was unanimously approved by the Committee on Government Reform on November 6, 2003. This measure has the support and cosponsorship of the entire New Jersey congressional delegation.

According to preservation New Jersey, New Bridge Landing has great historical significance. The Landing, an inland port situated on a strategic site, was an important shipping point for hundreds of years and was the scene of many fights during the Revolutionary War. Other historic structures that helped make up New Bridge Landing are the Steuben House, a stone Dutch mansion built in 1750; a 19th century swinging bridge; a tidal mill site; and the site of New Bridge Landing, a river embarkation point. Three other buildings were moved to the site to save them from demolition: The Demerest House, the Westervelt Barn and the Campbell-Christie House.

According to the Bergen County Historical Society, throughout the war the New Bridge was considered an important, strategic route, guarded by troops from both sides at different times. George Washington's retreat across this bridge on November 20, 1776, saved his troops from entrapment by advancing troops.

Mr. Speaker, given the historic nature of New Bridge Landing, it seems quite appropriate to redesignate this postal facility in River Edge, New Jersey. I urge swift passage of this bill.

Mr. ROTHMAN. Mr. Speaker, I rise today in strong support of H.R. 2130, a bill to redesignate the United States Postal Service facility at 121 Kinderkamack Road in River Edge, NJ, as the New Bridge Landing Post Office.

As a life-long resident of New Jersey, a history buff, and the Congressman who formerly represented the Borough of River Edge for my first 6 years in Congress, I am delighted to be a cosponsor of legislation that will highlight the unique, strategic role that New Jersey, and specifically River Edge, played in the birth of our Nation and the Continental Army's success in the Revolutionary War. Renaming the River Edge postal facility—located just two blocks away from Historic New Bridge Landing—will help ensure that future generations will have a window into New Jersey's colonial life that was home to more Revolutionary War engagements than any other of the 13 original colonies.

New Bridge Landing has played a pivotal role in the development of River Edge since Native Americans first inhabited the area. During the Revolutionary War, GEN George Washington retreated from historic Fort Lee across New Bridge Landing, leading the unprecedented march of a ragtag band of volunteer soldiers and a committed people in pursuit of the timeless ideals of liberty, freedom, and equality that our Nation enjoys today. Its proximity to the Hackensack River later made it a hub for industrial development; it was used as both a tidal mill and bustling shipping point for iron.

Mr. Speaker, it is with great pride and gratitude for those revolutionary fighters that I ask all my colleagues to join me in support of H.R. 2130, so that future generations of New Jerseyans will remember what those heroic patriots accomplished at New Bridge Landing so long ago.

Mr. DAVIS of Illinois. Mr. Speaker, I do not believe I am going to have any additional requests for time, and I yield back the balance of my time.

Ms. ROS-LEHTINEN. Mr. Speaker, I have no other speakers and I support H.R. 2130. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Florida (Ms. ROS-LEHTINEN) that the House suspend the rules and pass the bill, H.R. 2130, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to redesignate the facility of the United States Postal Service located at 121 Kinderkamack Road in River Edge, New Jersey, as the 'New Bridge Landing Post Office'.".

A motion to reconsider was laid on the table.

SENATOR JAMES B. PEARSON POST OFFICE

Ms. ROS-LEHTINEN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1718) to designate the facility of the United States Postal Service located at 3710 West 73rd Terrace in Prairie Village, Kansas, as the "Senator James B. Pearson Post Office".

The Clerk read as follows:

S. 1718

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SENATOR JAMES B. PEARSON POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 3710 West 73rd Terrace in Prairie Village, Kansas, shall be known and designated as the "Senator James B. Pearson Post Office".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Senator James B. Pearson Post Office.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Florida (Ms. ROS-LEHTINEN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Florida (Ms. ROS-LEHTINEN).

GENERAL LEAVE

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us today offered by the distinguished Senator from Kansas, Senator PAT ROBERTS, names this Prairie Village, Kansas, postal facility as the Senator James B. Pearson Post Office.

Senator James Pearson was born in Nashville, Tennessee, on May 7, 1920. At a young age, he moved with his family to Virginia and went on to attend Duke University. He bravely served as a pilot in the Naval Air Transport in 1943 during World War II. He was honorably discharged as a Lieutenant and returned home to graduate from the University of Virginia Law School in 1950.

Pearson moved back to Kansas and became a practicing lawyer in the town of Mission in 1950. Two years later, he became the assistant county attorney of Johnson County, and in two more years, in 1954, the county probate judge.

Pearson threw his hat into the political ring for the first time in 1956 when he earned a seat in the Kansas State Senate. On January 31, 1962, he was appointed to the United States Senate to fill the vacancy caused by the death of Senator Andrew Schoeppel. He was elected for the first time in a special election in November of that year and earned reelection in both 1966 and 1972, retiring in 1978. Senator James Pearson served his home State of Kansas and indeed the entire Nation with distinction, and he highly deserves the commemoration provided by this legislation.

Mr. Speaker, Senator James B. Pearson continues to live here in Washington, D.C., and outside Baldwin City, Kansas, and we wish him well.

In addition to the Senator from Kansas, I want to recognize the gentleman from Kansas (Mr. MOORE) who introduced the companion legislation here in the House, H.R. 3255, and I know both gentlemen worked together to ensure that James B. Pearson would be honored with this post office.

I am pleased that Senate bill 1718 will soon be on the President's desk for his signature.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I might consume.

As a member of the House Committee on Government Reform, I am pleased to join my colleague in consideration of S. 1718, legislation naming a postal facility after Senator James B. Pearson.

S. 1718, which was introduced by Senator PAT ROBERTS on October 14, 2003, was unanimously approved by the Committee on Government Reform on November 6, 2003. The gentleman from Kansas (Mr. MOORE) is the sponsor of H.R. 3255, an identical version of S. 1718. H.R. 3255 has been cosponsored by the entire Kansas congressional delegation.

James Pearson was born in Nashville, Tennessee, and attended public schools in Virginia. He served as a pilot in the Navy during World War II, and after being discharged, he became an attorney and began practicing law in Mission, Kansas. He served in various legal positions before being appointed in 1962 as a Republican to the United States Senate to fill a vacancy caused by the death of Andrew Schoeppel.

Senator Pearson served in the Senate until 1978, working diligently as a senior member of the Foreign Relations Committee and ranking member of the Commerce, Science and Transportation Committee.

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Mr. Speaker, this is indeed an honorable act that we take in naming this postal facility. I would urge swift passage.

Mr. MOORE. Mr. Speaker, I am very pleased to rise today in support of S. 1718, legislation introduced by Senator PAT ROBERTS and cosponsored by Senator SAM BROWNBACK, that will designate the facility of the United States Postal Service located at 3710 West 73rd Terrace in Prairie Village, KS, as the Senator James B. Pearson Post Office Building.

Senator ROBERTS introduced this legislation following my introduction of an identical bill, H.R. 3255, with the cosponsorship of the entire Kansas House delegation Representatives JIM RYUN, TODD TIAHRT and JERRY MORAN. I commend them for joining in this bipartisan, all-Kansas effort.

Born in Nashville, Tennessee, Senator Pearson was the son of a Presbyterian minister. Raised in Virginia and educated in North Carolina, where he received a B.A. from Duke University in 1940, he fulfilled his military service requirement in Kansas, where he was a naval transport pilot during World War II, discharged with the rank of lieutenant. At the conclusion of this military service, he married a Kansan from Johnson County, to where they returned after he earned a law degree from the University of Virginia in 1950.

Following 2 years of private law practice in Mission, KS, Pearson served successively as assistant Johnson County attorney, Johnson County probate judge, and State senator. In 1960, he did not seek re-election to the State senate, serving instead as campaign manager for State Attorney General John Anderson's successful campaign for governor.

Appointed to the U.S. Senate in 1962 by Governor Anderson, upon the death of Andrew Schoeppel, James B. Pearson served our State with distinction from 1962 through 1978. Elected in 1962, and re-elected in 1966 and 1972, Senator Pearson was a workhorse, not a showhorse. A senior member of the Foreign Relations Committee, he also rose to become ranking Republican member of the Commerce, Science and Transportation Committee. Senator Pearson represented our State during an important and turbulent era, addressing issues that included the Vietnam War, the civil rights revolution, enactment of the Medicare and Medicaid programs, America's space exploration program and deregulation of the trucking and airline industries. Senator Pearson was a leader in these and other areas, offering legislation on farm credit, aviation development, and campaign finance reform.

Most importantly, though, Senator Pearson was a quiet voice of thoughtful analysis—something we could use more of in both the House and the Senate today. As he said of the Vietnam War in 1966: "On large issues and small, we cannot hold to irrevocable and unchanging positions. There is a constant need to look at every side of every issue."

Senator Pearson was a voice of reason and common sense during these difficult times and I am proud that his home during this Senate career was Prairie Village, which is located in the Third Congressional District of Kansas. Naming the Prairie Village Post Office after Senator James B. Pearson recognizes, in a small way, the important service he provided to Kansans for 16 years in the U.S. Senate.

Mr. DAVIS of Illinois. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. ROS-LEHTINEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PEARCE). The question is on the motion offered by the gentlewoman from Florida (Ms. ROS-LEHTINEN) that the House suspend the rules and pass the Senate bill, S. 1718.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

RONALD REAGAN POST OFFICE BUILDING

Ms. ROS-LEHTINEN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 867) to designate the facility of the United States Postal Service located at 710 Wicks Lane in Billings, Montana, as the "Ronald Reagan Post Office Building".

The Clerk read as follows:

S. 867

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF RONALD REAGAN POST OFFICE BUILDING.

(a) IN GENERAL.—The facility of the United States Postal Service located at 710 Wicks Lane in Billings, Montana, shall be known and designated as the "Ronald Reagan Post Office Building".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Ronald Reagan Post Office Building.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Florida (Ms. ROS-LEHTINEN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Florida (Ms. ROS-LEHTINEN).

GENERAL LEAVE

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 867, the Senate bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us was introduced in the other body by Senator CONRAD BURNS of Montana. It names the post office in Billings, Montana, after our former President, Ronald Reagan.

What could be said of our 40th President that has not already been said? President Ronald Reagan led America through its longest recorded period of peacetime prosperity. Through his tax-cutting initiative, President Reagan was able to stimulate the economy and create jobs all while curbing inflation. He also secured an unthinkable comprehensive reform of the Tax Code, one that relieved millions of low-income Americans from paying income taxes and eliminated many exemptions for massive corporations.

Internationally, President Reagan strengthened our national defense during a tenuous time in world history. Largely due to his leadership and commitment to building up America's Armed Forces and defense technology, democracy defeated communism as the Cold War ended shortly after he left the White House. President Reagan succeeded because he viewed the Soviets not as people to be simply contained but people who executed a cruel system of government that needed to be crushed. America's success in the Cold War made the world a much safer place.

And who could forget the sad day when he was shot outside the Washington Hilton Hotel just months after being inaugurated in 1981. It reminded many of the 1960s, when our Nation tragically lost so many of our leaders to assassins' bullets. Gracefully, President Reagan pulled through, and the entire Nation rallied around the recovering President's wit and charm in the wake of this life-threatening attack.

Mr. Speaker, President Reagan is the only President ever to reach the age of 92 years. He continues to live in California today with his wife, the former First Lady, Nancy. On behalf of a grateful House of Representatives, I wish President and Mrs. Reagan the very best.

Ronald Reagan is one of those figures in American history about whom it is very difficult to talk for only a short time. I will simply close by commending the distinguished Senator from Montana for his bill and giving this House the opportunity to remember the national leadership of President Ronald Reagan.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as a member of the House Committee on Government Reform, I am pleased to join my colleague in consideration of S. 867, legislation naming a postal facility after Ronald Reagan. S. 867, which was introduced by Senator CONRAD BURNS on April 10, 2003, was approved by voice vote in the Committee on Government Reform on July 10, 2003.

Ronald Reagan was the 40th President of the United States. He served as President from January 1981 to January 1989. At 73, he was the oldest man ever elected President. He was well-known as Dutch, the Gipper, and the Great Communicator. An actor by profession, President Reagan served as Governor of California from 1966 to 1974. During his Presidency, his economic policies came to be known as "Reaganomics."

In 1994, former President Reagan announced that he was afflicted with Alzheimer's. And although a number of facilities have been named after him, schools, streets, highways, a postal facility in West Melbourne, Florida, and even the Washington, D.C. National Airport, a crowning achievement was when President William Clinton dedicated the Ronald Reagan Building in 1998. That building, located in the District of Columbia, houses an international trade center, international cultural activities, the Agency for International Development, and many other entities.

Mr. Speaker, it is indeed appropriate that we remember those who have led our country, and naming this postal facility after former President Ronald Reagan fits that description. I would urge swift passage of this bill.

Mr. Speaker, I yield back the balance of my time.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume and state again my strong support of Senate bill 867, which names a post office in Billings, Montana, after our illustrious President Ronald Reagan.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Florida (Ms. ROS-LEHTINEN) that the House suspend the rules and pass the Senate bill, S. 867.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

EXPRESSING SENSE OF CONGRESS THAT ALTHEA GIBSON BE RECOGNIZED FOR HER GROUNDBREAKING ACHIEVEMENTS IN ATHLETICS AND HER COMMITMENT TO ENDING RACIAL DISCRIMINATION AND PREJUDICE WITHIN THE WORLD OF SPORTS

Ms. ROS-LEHTINEN. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 69) expressing the sense of Congress that Althea Gibson should be recognized for her ground breaking achievements in athletics and her commitment to ending racial discrimination and prejudice within the world of sports.

The Clerk read as follows:

H. CON. RES. 69

Whereas Althea Gibson was born on August 25, 1927, and lived with her family in Harlem during the 1930's and 1940's;

Whereas Althea Gibson was first introduced to tennis on the Harlem River Tennis Courts and went on to dominate the all-black American Tennis Association tournaments throughout the early 1940's, when racism and segregation prevented her from participating in tournaments sponsored by the American Lawn Tennis Association;

Whereas Althea Gibson graduated from Florida A&M University in 1953, and was an athletic instructor at the Lincoln University in Jefferson City, Missouri;

Whereas Althea Gibson was the first African-American player, either male or female, to be allowed to enter the Forrest Hills, New York, Championship in 1950, after her talents and celebrity forced the American Lawn Tennis Association to reevaluate its policy;

Whereas Althea Gibson was the first African-American invited to Wimbledon in 1951, eventually winning both the women's singles and doubles in 1957, after which she was greeted by New York City with a ticker tape parade;

Whereas Althea Gibson was the first African-American woman to win the championship at the French Open, in 1956;

Whereas Althea Gibson after finishing her amateur tennis career became a professional golfer in 1959 and won the women's tennis professional singles in 1960;

Whereas Althea Gibson was Athletic Commissioner for the State of New Jersey from 1975 to 1977; and

Whereas Althea Gibson was inducted into the International Tennis Hall of Fame in 1971, and to the International Women's Sports Hall of Fame in 1980: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress that Althea Gibson should be recognized for her ground breaking athletic achievements and for continuing to serve as a role model for the Nation's youth.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Florida (Ms. ROS-LEHTINEN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Florida (Ms. ROS-LEHTINEN).

GENERAL LEAVE

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H. Con. Res. 69, the concurrent resolution now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Concurrent Resolution 69 celebrates the remarkable life of Althea Gibson. She was the first African American player to compete at Wimbledon and the U.S. championships. She ultimately won both titles in 1957 and 1958, becoming the first African American to win both tournaments.

Mr. Speaker, more important than her victories has been her presence at these tournaments at which black players had never before competed. She is rightfully known as the "Jackie Robinson of women's tennis," and her courage has had the same incredible impact on her sport that Jackie Robinson had on baseball.

As a young woman, she won 10 straight of the all-black American Tennis Association tournaments beginning in 1948. Her success led her to become quite a celebrity, and the public pressure finally forced the all-white American Lawn Tennis Association to invite her to compete at the U.S. championships in 1950. By the next year, in 1951, Wimbledon invited her to play. Well, not only did she play, Mr. Speaker, but she won both tournaments in 1957, and she won both again the next year. Her skill on the court and her class off the court during this difficult period in American history paved the way for future stars like Serena Williams, Venus Williams, James Blake, Zina Garrison, Arthur Ashe, and others to excel playing the game they love.

Mr. Speaker, this is truly a worthwhile resolution, and I commend the gentleman from New York for working with the Committee on Government Reform for bringing this resolution to the floor. I hope this resolution serves to honor Althea Gibson, for, as the resolution states, her groundbreaking athletic achievements, and for continuing to serve as a role model for the Nation's youth. Althea Gibson's athletic career and her courageous personality are vital threads in the fabric of our Nation's history, and I am pleased that the House is acting on this resolution that pays tribute to her tonight.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Althea Gibson overcame unbelievable odds to achieve international acclaim and success. Her journey from Harlem to Wimbledon reveals her strength of character and her remarkable composure in the face of racial prejudice. She built the foundation on which Venus and Serena Williams and Tiger Woods now stand.

The life of Althea Gibson is much more than a story about a successful tennis champion. It is a story about education, opportunity, hope, perseverance, and the responsibility we all have for helping those who are less fortunate than ourselves.

Althea Gibson was born on August 25, 1927, in the small town of Silver, South Carolina. Her family moved to Harlem in New York City when she was 3. Her family was on welfare. She was a client of the Society for the Prevention of Cruelty to Children. She had trouble in school and was often truant. She ran away from home frequently.

Tennis, which first came to the United States in the late 19th century, by the middle of the 20th Century had become part of a culture of health and fitness. Public programs brought tennis to children in poor neighborhoods, though those children could not dream of playing in the elite tennis clubs.

Althea played paddle tennis in public recreation programs and became quite proficient. Musician Buddy Walker noticed her playing table tennis and took her to the Harlem River Tennis Courts, where she learned the game and excelled. By 1942, Gibson had won the girls' singles event at the American Tennis Association's New York State tournament, an all-black organization. She won again in 1944 and 1945.

In 1946, two tennis-playing doctors who were active in the black tennis community, Hubert Eaton of North Carolina and Robert Johnson of Virginia, took in Althea Gibson. Eaton during the school year and Johnson during the summer. Gibson, who had dropped out of high school, was made to finish high school and eventually graduated from Florida A&M University in 1953.

In 1950, when Gibson was 23 years old, she was permitted to play at the U.S. Nationals, becoming the first black to compete in the tournament. In 1956, Althea Gibson made history by becoming the first black person to win the French championships. The next year she made history by winning Wimbledon and the U.S. Nationals, the first black to win either. Althea won six out of a total of 11 Grand Slam events, including six doubles titles, on her way to the International Tennis Hall of Fame and the International Women's Sports Hall of Fame.

Althea Gibson is quoted as saying, "I always wanted to be somebody. If I made it, it's half because I was game enough to take a lot of punishment along the way and half because there were a lot of people who cared enough to help me."

Though Arthur Ashe and the Williams sisters have met their own challenges, Althea Gibson was the first black person of either sex to break the color barrier in national and international tournament tennis at a time when prejudice and racism were far more pervasive in society and in sports. Althea Gibson was not only somebody, she was someone special.

So we celebrate the life of Althea Gibson by ensuring that our policies and laws lift up and assist the less fortunate among us so that they too may fulfill their dreams and their potential as Althea Gibson did. I commend the gentleman from New York for introducing this legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. ROS-LEHTINEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Florida (Ms. ROS-LEHTINEN) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 69.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

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EXPRESSING THE SENSE OF CONGRESS REGARDING THE IMPORTANCE OF MOTORSPORTS

Ms. ROS-LEHTINEN. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 320) expressing the sense of the Congress regarding the importance of motorsports.

The Clerk read as follows:

H. CON. RES. 320

Whereas on March 26, 1903, a century of motorsports was inaugurated at an automobile race held on a beach in Volusia County, Florida;

Whereas motorsports are now the fastest growing sports in the United States;

Whereas races are conducted at numerous motorsports facilities located in every State;

Whereas racing fans are able to enjoy a wide variety of motorsports sanctioned by organizations that include Championship Auto Racing Teams (CART), Grand American Road Racing (Grand Am), Indy Racing League (IRL), International Motor Sports Association (IMSA), National Association for Stock Car Automobile Racing (NASCAR), National Hot Rod Association (NHRA), Sports Car Club of America (SCCA), and United States Auto Club (USAC);

Whereas the research and development of vehicles used in motorsports competition directly contributes to improvements of safety and technology in automobiles and other motor vehicles used by millions of Americans;

Whereas 13,000,000 fans will attend NASCAR races alone in 2003;

Whereas fans of all ages spend a substantial amount of time at motorsports facilities participating in a variety of interactive theme and amusement activities surrounding the races;

Whereas motorsports facilities that provide these theme and amusement activities contribute millions of dollars to local and State economies as well as the national economy; and

Whereas tens of millions of Americans enjoy the excitement and speed of motorsports every week: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress recognizes the importance of motorsports and its evolution over the past century and honors those who have helped create and build this great American pastime.

The SPEAKER pro tempore (Mr. PEARCE). Pursuant to the rule, the gentlewoman from Florida (Ms. ROS-LEHTINEN) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Florida (Ms. ROS-LEHTINEN).

GENERAL LEAVE

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the concurrent resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Americans have loved speed since anyone can remember, and that is why I commend the gentleman from Florida (Mr. FEENEY) for introducing House Concurrent Resolution 320 that expresses the sense of the Congress regarding the importance of motorsports.

Mr. Speaker, I yield such time as he may consume to the gentleman from Florida (Mr. FEENEY).

Mr. FEENEY. Mr. Speaker, I thank the gentlewoman from Florida (Ms. ROS-LEHTINEN), who is a great friend of mine, for yielding me this time.

House Concurrent Resolution 320 expresses the sense of Congress regarding the importance of motorsports in America. If we think about this, it is going to be a great 100-year centennial celebration. I also thank the gentleman from Florida (Mr. BOYD), who is my cosponsor on this resolution and also helped me to introduce this resolution to honor the 100-year anniversary, which is very important to Americans.

Mr. Speaker, 100 years ago the first sanctioned automobile race was held in Ormond Beach, Florida, on the beach, just slightly north of my district, in the district currently represented by the gentleman from Florida (Mr. MICA). We have come a long way in automobile racing and automobiles in the United States of America since then.

In 1903, automobiles were mostly for the well-off, the rich. These races were sponsored by the Ormond Hotel Association. It was a seasonal gathering place for wealthy northerns down on the beach in Florida, which is a great place to vacation no matter what decade or year or century it happens to be.

The 3-day tournament of time trials was held in March 1903 for the first time and set seven American records and two world records. The Ormond Challenge Cup, one of the first times an American speed race took place, Bullet Number 1 was owned by Alexander Winton and car Number 2 was Pirate owned by Ransom Olds of Oldsmobile fame; and they dueled each other in what is now known as drag racing. Bullet Number 1 won by two-tenths of a second.

For 8 years, Ormond Beach was the place to go, but ultimately beach racing migrated south to Daytona Beach, which is now a district shared by the gentleman from Florida (Mr. MICA) and myself. In 1936, stock car racing began on a 3.2 mile beach course. Cars ran 1.5 miles north on the beach, took a banked sand turn, and ran 1.5 miles back on a paved raceway and returned to the beach.

World War II stopped automobile racing; but at the end of World War II, a famous American racer, a hero to race fans, William "Big Bill" France, one of the first racers back in the 1930s, along with 18 other members, started NASCAR. NASCAR took root on the beach of Ponce Inlet, a beautiful place to visit whether a race fan or not. In 1948, NASCAR began racing there on a 2.2 mile track, one-half mile on the beach's hard-paved sands, and the other one-half mile on the paved South Atlantic Boulevard back.

Ultimately, we decided to get off the beach because there were too many fans gathering around the beach races on an annual basis in the Daytona Beach area. It was Bill France and his family that led the way. They wanted to move racing from the beach to a specially designed, challenging race course.

Starting in 1953, Mr. France started to build an inland race facility. The speedway opened in February 1959 with the first Daytona 500, a race that is famous to this very day. There were 41,000 fans that witnessed that first race, and today we still watch and enjoy that race on an annual basis. This year there are some 13 million fans who will attend NASCAR events in the United States of America.

But it is not just Daytona Beach and Ormond Beach; I am proud of my district's record in terms of establishing the first creative, exciting races for America, but the truth of the matter is now we have the Indianapolis 500. The first Indianapolis 500 was held in 1911, and the race was won with a top speed of 74.6 miles per hour. I note on a collateral basis, that is not enough to get a driver ahead of the next car on the Florida Turnpike today; but the truth is, we have come a long way.

Today's auto racing facilities have come an awful long way from the early races on the beach. Motorsports entertainment complexes nowadays accommodate tens of thousands of fans on tracks that are safer for drivers and spectators alike. Facilities like Daytona Beach International Speedway and other facilities across the country have evolved into what we would have to consider full-fledged theme parks for constant year-around entertainment for families and racing enthusiasts alike.

Mr. Speaker, I want to say that research and development of the vehicles that Americans use every day on the streets have been facilitated by the challenges that we have on NASCAR fast-track speedways around the country. What started as amusement for wealthy individuals in the Florida sunshine in the winter now provides not just entertainment for millions of Americans, but also helps us beef up our technological, our safety, and our capabilities across the board.

I think it is fitting that we recognize a sport that on a daily basis gets TV ratings the same as any of the major football or basketball sports; and if we look at attendance at the parks where these NASCAR events are run, they are three times what we will get for the Super Bowl last year, this year, and every year; and they do that in some 31 States that have these events.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would say to the gentleman from Florida (Mr. FEENEY) that he confirmed what I heard from Danielle from the office of the gentleman from Texas (Mr. DELAY), and the soccer moms of the 1990s have been replaced by the NASCAR dads of this century, or the NASCAR families of this century.

Mr. FEENEY. Mr. Speaker, will the gentlewoman yield?

Ms. ROS-LEHTINEN. I yield to the gentleman from Florida.

Mr. FEENEY. Mr. Speaker, I would tell the gentlewoman from Florida that there is a November 10 article in National Review magazine that on the front cover refers to America now as "NASCAR Nation," and I include a copy of that article for the RECORD.

NASCAR NATION

ONE JOURNALIST'S JOURNEY OF DISCOVERY

(By John Derbyshire)

Forget about the Soccer Mom, object of obsessive interest to political strategists in the last two presidential elections. Two election cycles is as much concentrated attention as a voter bloc can expect to get in these fast-changing times. The candidates of 2004 have fixed their sights on a new quarry: the NASCAR Dad. So, at any rate, we are told by Democratic pollster Celinda Lake, who coined the term. A NASCAR Dad is a rural or small-town voter, most likely white and living in the South. Once upon a time he was a reliable Democrat, but he has been voting steadily Republican in recent elections for "cultural" reasons—reasons having to do with guns, religion, patriotism, and lifestyle. What, exactly, is his connection with NASCAR—the National Association for Stock Car Auto Racing? In the hope of finding out, I recently attended a major NASCAR event at the Talladega track in Alabama. Before I report on what I found, here is some background on the sport NASCAR represents.

The term "stock car" refers to a street automobile from a dealer's stock, the kind you and I drive, as opposed to the custom-built pod-and-strut mutants you see in Formula One racing. When ordinary citizens began to purchase automobiles in large numbers in the 1930s and 1940s, some of them were taken with the urge to race against other drivers on unpaved local dirt tracks. Spectators assembled to watch. Drivers tinkered with their engines to give them more speed. This was happening all over the country by the late 1940s, when NASCAR was founded, but it was happening much more in the South than elsewhere. Wherever it happened, though, it was from the beginning mainly a working-class interest, taken up by young men who liked fiddling with automobiles and exhibiting physical courage among their peers.

A notable early attempt to bring stock-car racing to wider attention was Tom Wolfe's long article "The Last American Hero" in the March 1965 issue of Esquire. Wolfe's subject was Junior Johnson, who raced from 1953 to 1966, and was thereafter involved in the sport as an owner until 1995. One of stock-car racing's early superstars, Johnson had perfected his skills by working as a driver for his father's moonshine business in the Appalachian foothills, racing along remote country roads by night to outwit the "revenuers"—agents of the federal Bureau of Alcohol, Tobacco, and Firearms. Johnson Senior was one of the biggest operators of illegal whiskey stills in the South.

Tom Wolfe had no difficulty getting some color out of Junior Johnson and his neighbors in Wilkes County, N.C. While insisting that "very few grits, Iron Boy overalls, clodhoppers or hats with ventilation holes up near the crown enter into this story," Wolfe nonetheless managed to leave his readers with the impression that stock-car racing was a sport favored pretty exclusively by white Southern rustics—the kind of people who keep coon dogs and, in common with the late Hank Williams, believe that "hill" rhymes with "real." Junior Johnson's own take on the episode was of course from the other side of the cultural divide: "That Wolfe guy was something else. He showed up down here in Wilkes County talkin' funny with a New York accent [Wolfe is from Virginia], and wearin' fancy clothes."

Officials of NASCAR nowadays wince at this Southern-rustic image. Stock-car racing is, they insist, a sport for everyone, an inclusive sport, a family sport. For 30 years they have been trying to shake off those connotations of liquor-running good ol' boys and big-haired women. They have had some success in spreading interest around the country, but they have not yet persuaded America's cognitive elites to take stock-car racing seriously. This was apparent in February 2001, when NASCAR superstar Dale Earnhardt was killed in a crash at the Daytona 500. Earnhardt was mourned extravagantly by millions of racing fans. Meanwhile, from executive suites and faculty common rooms, from the wood-paneled corridors of prestigious law firms, from the bustling, "diversity"-obsessed editorial offices of broadsheet newspapers and network-TV newsrooms, rose the plaintive cry: "Dale who?"

Yet if you look at the numbers, this is not a minor sport. NASCAR's Winston Cup, the biggest of the three "major league" series in the stock-car-racing calendar, drew 6.7 million ticketed spectators for 36 events last year, an average of 186,000 per event. By way of comparison, paid attendance for the NFL in 2002 averaged 66,000 per event, for major league base 28,000, for NBA basketball 17,000. TV viewership for a NASCAR race runs around 15 to 20 million, the same as for many major-league baseball playoff games.

What is that all these people are watching? What's the appeal? There must be some deep desire in the human psyche to watch human beings race vehicles round a circuit. Chariot races were, after all, an obsession of both the Romans and the Byzantines. I went to Alabama seeking enlightenment.

FAR FROM DISNEY

Your first impression of Talladega speedway is of sheer size. The track is an approximate oval, with grandstands at both the long sides. Seen from one grandstand, the opposite one seems to shimmer in the misty distance. It is in fact only three-fifths of a mile away, but appears farther because of the haze generated by huge quantities of traffic all around, and by barbecue grills on the infield. Oh, the infield—I had better explain about the Talladega infield.

The infield—212 acres at Talladega—is the interior of the oval. You get to it by driving through one of three tunnels under the track. Much of the infield is taken up with maintenance areas, garages, administrative buildings, and access roads, but the remainder—around 120 acres—is available to fans. And here they are, the hard core of stock-car-racing fandom. And here are their vehicles: Your second impression of the speedways is that you have never in your life seen so many RVs (that is, recreational vehicles, campers) all in one place. The infield fan areas are filled with folk who arrive typically a day or two before the big race and just camp out there in the infield. Some of the RVs are improvised. One popular model consists of an old school bus painted some improbable color, with metal railings welded around the roof so the occupants can stand up there to watch the race.

NASCAR's attempts to Disneyfy their sport have made little headway in the Talladega infield. The crowd is noisy and beery. They wear denim shorts and T-shirts, baseball caps or bandannas. I see a lot of tattoos and a lot of Confederate flags. The track's security people inspect the interior of each vehicle before allowing it to park, and I was told it has been "some years" since there was a shooting on the infield, but things still get rowdy, particularly the night before a big race. (Among the track's other administrative facilities is a small jail.) Rowdy, and raunchy too: The Mardi Gras custom of beads for skin (you give the lady a string of beads, she briefly exposes her chest) has come up to Talladega, and it is common to see girls with several strings of beads round their necks—although, as one of my NASCAR minders noted wistfully, "The girls you'd like to see doing it aren't the ones doing it."

I watched the first few minutes of the race from the infield, near the starting line. The 43 competing vehicles circle the track slowly, two by two, behind a pace car. Each car's position in line has been determined by pre-race qualifying laps. As they come to the starting line, the pace car pulls off the track, a green flag is waved and the drivers throttle up to full power. Everyone had told me that this is the most thrilling moment of a race, and they did not lie. That mighty surge of engines, the even mightier roar of the crowd, the smell of gasoline and rubber, all combine into an extraordinary sensory experience. What follows is necessarily something of anticlimax, especially as it goes on for three hours or more. The lead cars tend to form a large "pack," so you get a small reprise of that starting thrill each time the pack passes your viewing point, but after half of an hour or so, as the faster cars lapped the slower ones. I lost track of who was leading.

I wandered down to the pit area. Cars need to be refueled as several points in a 500-mile race, and wheels need to be changed. A driver loses position when he makes a pit stop, of course, and part of the strategy of racing—there is a great deal of strategy in this sport—is judging the best time to make your stops. The pit work is done with terrific dispatch, by teams who practice endlessly at shaving tenths of a second off their turnaround time. The team I watched—it was driver Bill Elliott's—changed four wheels and refueled the car all in less than 15 seconds. They have a trick of pre-fixing the lugs in place on the replacement wheels with an elastic cement. Then, when the old wheel is off, on goes the new one, bang!, and the power wrench secures the lugs, DZ!-DZ!-DZ!-DZ!-DZ! "Slicker 'n snot on a doorknob," pronounced the team leader with satisfaction as Elliott vroomed away.

Up close the cars look surprisingly small and flimsy. Their "stock" nature is, at this point in the evolution of the sport, highly theoretical. Eligible models in the Winston Cup series are the Chevy Monte Carlo, Pontiac Grand Prix, Ford Taurus, and Dodge Intrepid, but none of the cars I saw bore much resemblance to the street models of those marques. None of their side bodywork panels paused to include a door, for instance; the driver climbs in and out through his side window (which has no glass). An owner I spoke with, who had a Monte Carlo entered in the race, described to me in loving detail how his mechanics hand-tool all the care parts in his 75,000-square-foot machine shop. I interrupted him to ask: "You hand-make everything? So where, exactly, does Chevrolet come in?" He looked a little flustered. "Oh, you know, they supply some parts . . . the chassis design . . ."

It is commonly said that car-racing fans go to the track in the hope of seeing a grisly crash. From my own encounters with fans on the infield and in the stands, I don't believe this. Aside from the sensory thrills of speed and noise, and the rude social pleasures of the infield, the main appeal of the sport, for most fans, lies in rooting for their favorite drivers. Each one has some points of character, personal history, or driving style that endear him to, or repel, some section of the fan base. A few are wildly popular with practically everyone: Dale Earnhardt Sr. was, and his son, Dale Jr., now is. ("On account of his daddy," a lady fan in the stands said fondly when I asked why.) A few are widely disliked. Kurt Busch, a fast-rising young star known for . . . unorthodox driving tactics, is a villain to traditionalists, and to the kind of Southerner who believes in maintaining the exquisite manners of the region even when you are trying to kill someone. When the drivers were individually announced during the pre-race proceedings at Talladega, his name was greeted with a great outbreak of booing from the fans.

What then of those stereotypes the NASCAR suits so strenuously try to distance themselves from? The Southern bias, for example? Since Talladega, smack plumb in the heart of the Heart of Dixie, is the only track I have ever been to, my personal experience of the sport has not been well balanced, and I shall dutifully report that you can attend a stock-car race in any part of the country. There are major tracks in California, Kansas, and New Hampshire. The mathematician in me wants to check the numbers, though, and the numbers suggest the following broad truth: Half of this sport belongs to the South, while the other half is spread out among all the rest of us.

Take the location of tracks, for example. Defining the South to be the old Confederacy plus Kentucky, of the 21 major tracks (not counting road courses) in the U.S., 11 are in the South. These Southern tracks have 15.4 of the available 32 miles of roadway and 1.31 million of the total 2.46 million grandstand sets. Over a half, nearly a half, and over a half. It is the same with the 43 drivers at Talladega: I tallied 21 drivers from the South; the next biggest regional group was from the Midwest, with 11 drivers.

Every one of these 43 drivers, by the way, was a white male. None had a Hispanic surname, though Christian Fittipaldi is from Sao Paulo, Brazil. The median age of the drivers was over 39—older than I would have expected. Every one older than 34 was married, with a median 3.5 children.

The Southernness, whiteness, maleness, and (though I am going out on a limb here) heterosexuality of the sport offer obvious openings to PC inquisitors. Last June, for example, a board member of Jesse Jackson's Rainbow/PUSH operation told reporters that stock-car racing is "the last bastion of white supremacy." This was a counterstrike in a campaign by Jackson's critics to get NASCAR to stop contributing to Rainbow/PUSH, on the grounds that the funds end up mostly in the pockets of Jackson, his relatives, and his mistresses. The campaign was eventually successful and NASCAR stopped their contributions. In the conversations I had at Talladega, fan approval was unanimous.

There was nothing racist about that approval, though. Among the celebrities introduced onstage during the pre-game show at Talladega were the current Miss America and football great Reggie White, both black. They were cheered as loudly as anyone—Reggie White especially so, for having taken a strong anti-Jackson line in the summer's controversy. It is true that NASCAR fans are overwhelmingly white, but they have nothing against black people. It is only that, like much of the rest of the country, they are sick of the racial-guilt industry, and most particularly of Jesse Jackson and his self-enriching shakedown schemes. And although NASCAR has cut the tie with Jackson, it maintains a busy program of "diversity internships" for minority college students.

The reason for the paucity of black drivers and owners—there are a handful—is captured by Adam Bellow in his book In Praise of Nepotism: "In auto racing, an equipment-intensive sport with a high financial barrier to entry, it pays to have family connections." In fact, the NASCAR personnel database reads like the First Book of Chronicles, with drivers begetting drivers and owners in apparently endless succession.

The social appeal of stock-car racing is wider than it used to be, and getting still wider, with college logos now featuring among the ads that festoon race-car bodywork. A sport built around such a strong network of family connections is, however, going to grow away from its roots only very gradually. This remains a conservative sport. That does not mean, of course, that its fan base can be guaranteed to vote for conservatives. The folk I mingled with at Talladega the other day were still largely working- and lower-middle-class. If they were to lose their jobs in a major recession, they would not stop to ask whether the President in charge at the time called himself a conservative or a liberal. Likewise, while they will cheer on their commander in chief if he pursues a determined war against our nation's enemies, they will not long tolerate U.S. fatalities in a drawn-out politicized conflict .where vigorous action is restrained by deference to the opinions of foreigner hecklers or self-anointed domestic elites.

I am going to leave it to professional analysts to decide whether NASCAR Dads will be decisive in the 2004 elections, and just register the following impression that I brought away from Talladega with me: Whoever comes into stock-car racing, whether as driver, or owner, or fan, or political pollster, or just inquisitive outsider, will find a sport in which physical courage is admired, family bonds are treasured, the nation's flag is honored, and the proper point of balance between courteous restraint and necessary aggression is constantly debated. I greatly enjoyed my day at the races. If NASCAR fans really do form a voting bloc, I would much rather they were on my side than the other. I am glad to have made the acquaintance of a thrilling, noisy, colorful, commercial, very American sport.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Con. Res. 320 and commend the gentleman from Florida (Mr. FEENEY) for introducing this legislation.

Since March 26, 1903, when the first automobile race was held on a beach in Volusia County, Florida, motorsports races have been held in every American State. Millions of Americans enjoy the excitement and speed of motorsports brought to them by such organizations as the Championship Auto Racing Teams, Grand American Road Racing, Indy Racing League, the Sports Club of America, the National Association of Stock Car Automobile Racing, and others.

The research and development of vehicles used in motorsports competition contribute to the improvement of safety and technology of motor vehicles used by the general public. Additionally, motorsports activities contribute millions of dollars to local and State economies as well as to the national economy.

As America continues to grow and develop and as we continue to exercise our creativity and ingenuity, and as we find additional ways for recreation, many people are beginning to view this as not only a spectator sport but also something that they would learn to participate in themselves.

Again I commend the gentleman from Florida (Mr. FEENEY) for introducing this resolution and urge its swift passage.

Mr. Speaker, I yield back the balance of my time.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Florida (Ms. ROS-LEHTINEN) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 320.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Ms. ROS-LEHTINEN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

AWARDING CONGRESSIONAL GOLD MEDALS POSTHUMOUSLY ON BEHALF OF REVEREND JOSEPH A. DELAINE, HARRY AND ELIZA BRIGGS, AND LEVI PEARSON IN RECOGNITION OF THEIR CONTRIBUTIONS TO BROWN V. BOARD OF EDUCATION

Mrs. BIGGERT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3287) to award congressional gold medals posthumously on behalf of Reverend Joseph A. DeLaine, Harry and Eliza Briggs, and Levi Pearson in recognition of their contributions to the Nation as pioneers in the effort to desegregate public schools that led directly to the landmark desegregation case of Brown et al. v. the Board of Education of Topeka et al.

The Clerk read as follows:

H.R. 3287

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds as follows:

(1) The Reverend Joseph Armstrong DeLaine, one of the true heroes of the civil rights struggle, led a crusade to break down barriers in education in South Carolina.

(2) The efforts of Reverend DeLaine led to the desegregation of public schools in the United States, but forever scarred his own life.

(3) In 1949, Joseph DeLaine, a minister and school principal, organized African-American parents in Summerton, South Carolina, to petition the school board for a bus for black students, who had to walk up to 10 miles through corn and cotton fields to attend a segregated school, while the white children in the school district rode to and from school in nice clean buses.

(4) In 1950, these same parents, including Harry and Eliza Briggs, sued to end public school segregation in Briggs et al. v. Elliott et al., one of 5 cases that collectively led to the landmark 1954 Supreme Court decision of Brown et al. v. Board of Education of Topeka et al.

(5) Because of his participation in the desegregation movement, Reverend DeLaine was subjected to repeated acts of domestic terror in which—

(A) he, along with 2 sisters and a niece, lost their jobs;

(B) he fought off an angry mob;

(C) he received frequent death threats; and

(D) his church and his home were burned to the ground.

(6) In October 1955, after Reverend DeLaine relocated to Florence County in South Carolina, shots were fired at the DeLaine home, and because Reverend DeLaine fired back to mark the car, he was charged with assault and battery with intent to kill.

(7) The shooting incident drove him from South Carolina to Buffalo, New York, where he organized an African Methodist Episcopal Church.

(8) Believing that he would not be treated fairly by the South Carolina judicial system if he returned to South Carolina, Reverend DeLaine told the Federal Bureau of Investigation, "I am not running from justice but injustice", and it was not until 2000 (26 years after his death and 45 years after the incident) that Reverend DeLaine was cleared of all charges relating to the October 1955 incident.

(9) Reverend DeLaine was a humble and fearless man who showed the Nation that all people, regardless of the color of their skin, deserve a first-rate education, a lesson from which the Nation has benefited immeasurably.

(10) Reverend DeLaine deserves rightful recognition for the suffering that he and his family endured to teach the Nation one of the great civil rights lessons of the last century.

(11) Like the Reverend DeLaine and Harry and Eliza Briggs, Levi Pearson was an integral participant in the struggle to equalize the educational experiences of white and black students in South Carolina.

(12) Levi Pearson, with the assistance of Reverend Joseph DeLaine, filed a lawsuit against the Clarendon County School District to protest the inequitable treatment of black children.

(13) As a result of his lawsuit, Levi Pearson also suffered from acts of domestic terror, such as the time gun shots were fired into his home, as well as economic consequences: local banks refused to provide him with credit to purchase farming materials and area farmers refused to lend him equipment.

(14) Although his case was ultimately dismissed on a technicality, Levi Pearson's courage to stand up for equalized treatment and funding for black students served as the catalyst for further attempts to desegregate South Carolina schools, as he continued to fight against segregation practices and became President of Clarendon County Chapter of the NAACP.

(15) When Levi Pearson's litigation efforts to obtain equalized treatment and funding for black students were stymied, Harry and Eliza Briggs, a service station attendant and a maid, continued to fight for not only equalized treatment of all children but desegregated schools as well.

(16) As with Reverend DeLaine and Levi Pearson, the family of Harry and Eliza Briggs suffered consequences for their efforts: Harry and Eliza both were fired from their jobs and forced to move their family to Florida.

(17) Although they and their family suffered tremendously, Harry and Eliza Briggs were also pioneers leading the effort to desegregate America's public schools.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—In recognition of the contributions of Reverend Joseph A. DeLaine, Harry and Eliza Briggs, and Levi Pearson to the Nation as pioneers in the effort to desegregate public schools that led directly to the landmark desegregation case of Brown et al. v. the Board of Education of Topeka et al., the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall make appropriate arrangements for the presentation, on behalf of the Congress, of a gold medal of appropriate design, to Joseph De Laine, Jr., as next of kin of Reverend Joseph A. DeLaine, and to the next of kin or other personal representative of Harry and Eliza Briggs and of Levi Pearson.

(b) DESIGN AND STRIKING.—For the purposes of the awards referred to in subsection (a), the Secretary of the Treasury (hereafter in this Act referred to as the "Secretary") shall strike 3 gold medals with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 3. DUPLICATE MEDALS.

The Secretary may strike and sell duplicates in bronze of the gold medals struck pursuant to section 2, under such regulations as the Secretary may prescribe, and at a price sufficient to cover the costs thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medals.

SEC. 4. STATUS AS NATIONAL MEDALS.

(a) NATIONAL MEDALS.—The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

(b) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all medals struck under this Act shall be considered to be numismatic items.

SEC. 5. FUNDING.

(a) AUTHORITY TO USE FUND AMOUNTS.—There is authorized to be charged against the United States Mint Public Enterprise Fund such amounts as may be necessary to pay for the cost of the medals authorized by this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Illinois (Mrs. BIGGERT) and the gentlewoman from Indiana (Ms. CARSON) each will control 20 minutes.

The Chair recognizes the gentlewoman from Illinois (Mrs. BIGGERT).

GENERAL LEAVE

Mrs. BIGGERT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to insert extraneous material on this legislation.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Illinois?

There was no objection.

Mrs. BIGGERT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to express strong support for H.R. 3287, which seeks to award the Congressional Gold Medal to each of four Americans closely associated with the landmark Brown v. Board of Education of Topeka Supreme Court ruling that led to desegregation of our Nation's schools. I commend the gentleman from South Carolina (Mr. CLYBURN) for introducing this legislation.

This bill seeks to award this body's highest civilian honor posthumously to four courageous Americans. They are the Reverend Joseph A. DeLaine, Levi Pearson, and Henry and Elizabeth Briggs. Given the time required to design and strike the medals, these medals should be ready for an awards ceremony next year, which is fitting as next year is the 50th anniversary of the Brown v. Board of Education decision.

Mr. Speaker, we all know the names of many of the civil rights movement's greatest leaders, and we know their stories well; but not everyone knows well the names of those whose courageous actions led to the Brown v. Board of Education decision and precipitated the desegregation of our schools throughout America. The legislation we consider here today would rectify that situation. Through this Congressional Gold Medal, we honor the stories, the bravery and the memories of these fine Americans.

Reverend DeLaine was a minister and a school principal. In 1947, he organized a petition drive for African American parents to get a school bus so their children would not have to walk up to 10 miles to and from school while white children were driven to their schools in buses. The request was denied.

The next year, 1948, Levi Pearson, a farmer whose three children had to walk 9 miles to school each day, filed a lawsuit against the Clarendon County, South Carolina School District that protested unequal treatment of and funding for black and white students. While the suit was dismissed on a technicality, it served as a catalyst to further efforts to desegregate South Carolina schools.

And in 1949, Henry and Elizabeth Briggs, along with many of the same parents who joined in the original petition for a bus, sued to end public school segregation in Briggs v. Elliott.

□ 2100

This was the first of the five cases to be filed, and all were eventually merged together to become the Supreme Court's 1954 Brown v. Board of Education of Topeka decision. Taken separately, each of these individuals contributed considerably to the civil rights movement and to the breakdown of racial barriers in education. Taken together, their accomplishments are enormous. These individuals were pioneers in desegregation. They suffered and made great personal sacrifices, risking their lives, jobs, and homes to ensure that all children are educated equally and together, regardless of the color of their skin.

Mr. Speaker, these individuals deserve our recognition for their courage, and I urge immediate passage of this legislation.

Mr. Speaker, I reserve the balance of my time.

Ms. CARSON of Indiana. Mr. Speaker, I yield myself such time as I may consume.

I would like to thank the gentleman from South Carolina (Mr. CLYBURN) for sponsoring the bill. I also would like to thank the gentleman from Ohio (Mr. OXLEY) and the gentleman from Massachusetts (Mr. FRANK) for allowing this bill to come to the floor today.

Mr. Speaker, H.R. 3287 gives honor to whom honor is due. It provides Congressional Gold Medals to the Reverend Joseph DeLaine, Levi Pearson, and Harry and Eliza Briggs.

Mr. Speaker, I yield such time as he may consume to the gentleman from South Carolina (Mr. CLYBURN), the creator and inspirator of this legislation.

Mr. CLYBURN. Mr. Speaker, I thank the gentlewoman from Indiana for yielding me this time and the gentlewoman from Illinois for her assistance with this effort. I also want to thank Speaker HASTERT and Leader PELOSI for their assistance in expediting this very important piece of legislation. I am also thankful to Chairman OXLEY and Ranking Member FRANK for their leadership in this matter. It is very difficult to find proper words to convey to the 298 cosponsors of this bill my appreciation of the bipartisan support and genuine courtesies extended to me throughout this effort.

Mr. Speaker, I am also grateful to Senator FRITZ HOLLINGS for his sponsorship of similar legislation in the other body and his 99 colleagues who gave his bill a unanimous vote. I am hopeful this body will do likewise.

Mr. Speaker, as we approach the 50th anniversary of Brown v. Board of Education of Topeka, Kansas, it is indeed an honor to stand in the Halls of the United States House of Representatives to commemorate the dedication and courage of four South Carolinians who initiated the effort to desegregate public school education in South Carolina and the Nation.

Reverend Joseph Armstrong DeLaine organized the original 106 petitioners, 18 of whom and two others made up the original 20 plaintiffs in Briggs v. Elliott, the first of the five cases that were merged and became Brown v. Board of Education of Topeka, Kansas. I now submit the names of all of those petitioners into the RECORD of these proceedings this evening.

BRIGGS V. ELLIOT

South Carolinians who signed a petition to the Board of Trustees for Clarendon County School District #22 demanding equal educational opportunities for African-Americans. The petition was submitted on November 11, 1949.

1. Harry Briggs*
2. Eliza Briggs
3. Harry Briggs, Jr.
4. Thomas Lee Briggs
5. Katherine Briggs
6. Thomas Gamble
7. Henry Brown
8. Thelma Brown
9. Vera Brown
10. Beatrice Brown
11. Willie Brown
12. Marian Brown
13. Ethel Mae Brown
14. Howard Brown
15. James Brown
16. Theola Brown
17. Thomas Brown
18. Euralia Brown
19. Joe Morris Brown
20. Onetha Bennett*
21. Hercules Bennett
22. Hilton Bennett
23. William Gibson
24. Annie Gibson*
25. William Gibson Jr.
26. Maxine Gibson
27. Harold Gibson
28. Robert Georgia*
29. Carrie Georgia
30. Charlie Georgia
31. Jervine Georgia
32. Gladys Hilton
33. Joseph Hilton
34. Lila Mae Huggins
35. Celestine Huggins
36. Juanita Huggins
37. Gussie Hilton
38. Roosevelt Hilton
39. Thomas Johnson
40. Blanche E. Johnson
41. Lillie Eva Johnson
42. Rubie Lee Johnson
43. Betty J. Johnson
44. Bobby M. Johnson
45. Preston Johnson Jr.
46. Susan Lawson*
47. Raymond Lawson
48. Eddie Lee Lawson
49. Susan Ann Lawson
50. Frederick Oliver*
51. Willie Oliver

52. Mary Oliver*
53. Mose Oliver*
54. Leroy Oliver
55. Mitchel Oliver
56. Bennie Parson Jr.*
57. Plummie Parson
58. Celestine Parson
59. Edward Ragin*
60. Sarah Ragin
61. Shirley Ragin
62. Deloris Ragin
63. Hazel Ragin*
64. Zelia Ragin
65. Sarah Ellen Ragin
66. Rebecca Ragin
67. Mable Ragin
68. William Ragin*
69. Glen Ragin
70. Luchrisher Richardson*
71. Elane Richardson
72. Emanuel Richardson
73. Rebecca Richburg*
74. Rebecca I. Richburg
75. E.E. Richburg
76. Albert Richburg
77. Lee Johnson
78. Bessie Johnson
79. Morgan Johnson
80. Samuel Gary Johnson
81. Lee Richardson*
82. James Richardson
83. Charles Richardson
84. Annie L. Richardson
85. Dorothy Richardson
86. Jackson Richardson
87. Mary O. Lawson
88. Francis Lawson
89. Bennie Lee Lawson
90. Mary Oliver
91. Daisy Oliver
92. Louis Oliver Jr.
93. Esther F. Singleton
94. Janie Fludde
95. Henry Scott*
96. Mary Scott
97. Irene Scott
98. Willie M. Stukes*
99. Gardenia Stukes
100. Willie M. Stukes Jr.
101. Gardenia Stukes
102. Louis W. Stukes
103. Gabriel Tyndal*
104. Annie Tyndal
105. Mary L. Bennett
106. Lillian Bennett

*Indicates those who served as named plaintiffs in the case of Briggs v. Elliott. Plaintiffs also included James H. Bennett and G. H. Henry.

At the time of their petition, black children in Clarendon County were walking 9 miles each way to school, and all they petitioned for was a school bus. When their request for a bus was denied, they sought relief in the courts. Reverend DeLaine was harassed by the Ku Klux Klan and several attempts were made on his life. His church was burned and when he responded in kind to gunshots that were fired into his home in 1955, law enforcement officials issued a warrant for Reverend DeLaine's arrest. Fearing the consequences, he and his family fled the State.

In 1971, Governor John C. West received a letter from Reverend DeLaine advising that his health was failing and requesting that he be allowed to return to South Carolina where he wished to be buried. Governor West tasked me with the responsibility of getting it done. We failed, because one of the men who signed the arrest warrant refused the Governor's and law enforcement officials' requests that he drop the charges. In 2000, the South Carolina legislature cleared Reverend DeLaine's record, but much too late to honor his request. Reverend DeLaine died in 1974 and is buried in Charlotte, North Carolina.

Levi Pearson was a small Clarendon County farmer. He responded to Reverend DeLaine's request and sued the school district on behalf of his three children who were walking those 9 miles to school each day. His decision was met with dire consequences. The local bank refused to provide him credit to purchase farming equipment and other farmers refused to lend him any equipment. Shots were fired into his home and he was ostracized by his neighbors. Despite these actions, Pearson continued with his suit. But in 1948, the United States District Court dismissed Pearson's suit, finding that although his farm was partially in Clarendon School District 1, his house was situated in Clarendon School District 2; and therefore he had no standing. Although his legal case was dismissed, Pearson continued to fight against segregation and later became president of the local NAACP chapter. In spite of extreme hardships, he never left his land.

Harry Briggs, a service station attendant, and his wife, Eliza, a maid at a local motel, took up the cause. As did Levi Pearson and Reverend DeLaine, they suffered inhumane consequences for their actions. They were fired from their jobs but they persevered, and as is often said, the rest is history. Because he was blackballed in South Carolina and could not find employment, Harry moved to Florida where he lived out his productive life. Unlike Reverend DeLaine, he returned to South Carolina and is buried in his native soil.

Every year on the Friday evening nearest May 17, the South Carolina conference of branches of the NAACP holds its annual Freedom Fund dinner in honor of the Briggs petitioners. And ever since I have been a Member of this body, pictures of Mrs. DeLaine and other principals in the case have been prominently displayed on a wall of my office.

Mr. Speaker, if not for the personal sacrifices of those like Reverend DeLaine, Mr. Pearson, the Briggses and many others known and unknown, I and others like me may have never experienced membership in this body. This bill reminds us that it is the actions of a preacher and educator, a farmer, a gas station attendant, and a motel maid that initiated the efforts that changed American society forever. I hope that our actions here tonight remind all Americans that it is not our station in life that makes us worthy of honor and recognition, but our commitment to the principles and pursuit of the promise that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.

Mrs. BIGGERT. Mr. Speaker, I reserve the balance of my time.

Ms. CARSON of Indiana. Mr. Speaker, I yield 4 minutes to the gentleman from South Carolina (Mr. SPRATT), the very bright and energetic ranking member of the Committee on the Budget.

Mr. SPRATT. I thank the gentlewoman for yielding me this time.

Mr. Speaker, I rise in proud support of H.R. 3287, which honors four South Carolina heroes. Because of the courage of Joseph A. DeLaine, Harry Briggs, Eliza Briggs and Levi Pearson, South Carolinians live in a better State; but more important, Americans live in a better country. I can think of no tribute to these brave South Carolinians more deserving or appropriate than a Congressional Gold Medal.

I have the same story to tell that the gentleman from South Carolina (Mr. CLYBURN) just told, but I cannot possibly tell it with the same empathy that he related it, so I will not rehearse the facts that we have just heard, which are stirring. I will enter those for the RECORD.

Let me simply say that, Mr. Speaker, I have lived all my life in South Carolina. I can imagine the resistance and intimidation that Joseph DeLaine and Levi Pearson and Harry and Eliza Briggs faced. These brave Americans stood up for justice, and for their courage they paid a heavy price. Today we remember Dr. Martin Luther King and Thurgood Marshall, and we should. They were the giants of the civil rights movement. But without brave pioneers, foot soldiers like Joseph A. DeLaine, Levi Pearson, and Harry and Eliza Briggs, our schools would not have been desegregated in 1954. The Civil Rights Act of 1964 and 1965 may have been passed but not in those years. They sparked those events.

I commend the gentleman from South Carolina (Mr. CLYBURN) for conceiving and spearheading this resolution. I ask that all Members of the House join us in voting to award Congressional Gold Medals posthumously to the Reverend DeLaine, to Mr. and Mrs. Harry Briggs, and to Mr. Levi Pearson. In the words of Dr. King, they made this country rise up and live out the true meaning of its creed, that all men are created equal.

Mr. Speaker, I rise in proud support of H.R. 3287, honoring four South Carolina heroes. Because of the courage of Joseph DeLaine, Harry Briggs, Eliza Briggs, and Levi Pearson, South Carolinians live in a better state and Americans live in a better country. I can think of no tribute to these brave South Carolinians more deserving or appropriate than a Congressional Gold Medal.

In 1949–50, there were 6,531 black students enrolled in the Clarendon County public schools and 2,375 whites. The schools were separate and unequal. Clarendon County that year spent $179 per white student and $43 per black student. Reverend Joseph DeLaine was a teacher in Clarendon County. He attended a statewide meeting of the NAACP and heard the president decry segregation and lay down a challenge saying, "No teacher or preacher in South Carolina has the courage to find a plaintiff who will test the legality of discriminatory bus transportation." The Reverend DeLaine was moved to action. He went to the Clarendon County School Board to ask for a bus to carry children to and from Scotts Branch High School. He pointed out that bus service was available to white students at other county schools, and asked simply for the same bus service for black students attending Scotts Branch. When he was turned down, he appealed to the State Superintendent of Education in Columbia and the U.S. Attorney General, all to no avail. Reverend DeLaine then enlisted Levi Pearson, a farmer with children at Scotts Branch, to be plaintiff in a lawsuit against the Clarendon County Board of Education. Levi Pearson v. County Board of Education was brought but dismissed in 1948 on a technicality. Levi Pearson's farm straddled the school district boundary, and his home was held to be outside the school district's boundary. The court ruled that Pearson had no standing, and dismissed his suit.

Undaunted, Reverend DeLaine, worked with the NAACP to draft a new petition to the State Board of Education seeking not just school buses, but educational equality across the board for all black students in Clarendon County. A petition with the necessary signatures was presented to the board. The first name listed was Harry Briggs, a service station attendant in Summerton, South Carolina. In retribution, Reverend DeLaine was fired from his job at Scotts Branch, and Harry Briggs lost his service station job. The state school board refused to act.

Reverend DeLaine then sought the assistance of the NAACP Legal Defense Fund, and in particular a lawyer by the name of Harold Boulware in Columbia. Boulware, with the assistance of Thurgood Marshall, took the case and filed a new suit, Briggs v. Elliott, seeking equal educational opportunities for all black students in Clarendon County. By a 2–1 vote, a three-judge panel denied the plaintiffs in Briggs v. Elliott the relief they were seeking. Judge Waties Waring, another unsung hero, wrote a dissenting opinion in favor of the plaintiffs. Briggs v. Elliott was appealed to the Supreme Court, and eventually consolidated with four other cases, the first of which was Brown v. Board of Education of Topeka, Kansas.

Reverend DeLaine was in the Supreme Court's courtroom for the argument of Brown v. Board of Education. A reporter quoted him as saying: "There were times when I thought I would go out of my mind because of this case, but if I had to do it again, I would. I feel it was worth it. I have a feeling that the Supreme Court is going to end segregation."

He was not only brave but prescient. In 1954, a unanimous Supreme Court vindicated the efforts of the Reverend Joseph A. DeLaine with its unanimous decision in Brown v. Board of Education. It was a bittersweet victory for Reverend DeLaine. Forced out of Clarendon County on charges arising out of a confrontation with whites who threatened his home at night, he moved to Charlotte, North Carolina where he founded a church. Because of the outstanding warrant, he was effectively exiled from South Carolina and never able to return to Clarendon County.

Mr. Speaker, I have lived all my life in South Carolina and I can imagine the resistance and intimidation that Joseph DeLaine, Levi Pearson, and Harry and Eliza Briggs faced. These brave Americans stood up for justice and for their courage, they paid a heavy price. Today we remember Dr. Martin Luther King and Thurgood Marshall, as we should; they were the giants of the civil rights movement. But without brave pioneers like Joseph DeLaine, Levi Pearson, Harry and Eliza Briggs, our schools would not have been desegregated and the Civil Rights Acts of 1964 and 1965 would not have been passed.

I commend Congressman CLYBURN for conceiving and spearheading this resolution, and I ask that all members of this House join us in voting to award Congressional gold medals posthumously to the Reverend DeLaine, to Mr. and Mrs. Harry Briggs, and to Mr. Levi Pearson. In the words of Dr. King, they made this country "rise up and live out the true meaning of its creed, that all men are created equal."

Mrs. BIGGERT. Mr. Speaker, I reserve the balance of my time.

Ms. CARSON of Indiana. Mr. Speaker, I yield myself such time as I may consume.

Eleanor Roosevelt said, "When will our consciences grow so tender that we will act to prevent human misery rather than avenge it?" I recall the words of Chief Justice Earl Warren who said, "It is the spirit and not the form of law that keeps justice alive." I want to commend the sponsors of this legislation for their foresight and insight.

The court action of Briggs v. Elliott in South Carolina to end public school segregation was a major component in the successful Brown v. Board of Education Supreme Court ruling which effectively struck down the so-called separate but equal. It is this "spirit of the law" that preceded Brown v. Board of Education in the form of Briggs v. Elliott. Before Briggs v. Elliott was Plessy v. Ferguson. Before Plessy were the 13th and the 14th amendments.

And so, Mr. Speaker, I would encourage each Member of this body to give proper honor to whom honor is due by supporting unanimously this legislation that will authorize the Congressional Gold Medal to these deserving citizens of the United States.

Mr. Speaker, I yield back the balance of my time.

Mrs. BIGGERT. Mr. Speaker, I yield myself such time as I may consume.

Let me again commend the gentleman from South Carolina (Mr. CLYBURN) for sponsoring H.R. 3287 and Chairman OXLEY and Ranking Member FRANK of the Committee on Financial Services for their support of this legislation.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PEARCE). The question is on the motion offered by the gentlewoman from Illinois (Mrs. BIGGERT) that the House suspend the rules and pass the bill, H.R. 3287.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

☐ 2115

NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY AND CULTURE ACT

Mr. NEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3491) to establish within the Smithsonian Institution the National Museum of African American History and Culture, and for other purposes.

The Clerk read as follows:

H.R. 3491

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Museum of African American History and Culture Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) since its founding, the United States has grown into a symbol of democracy and freedom around the world, and the legacy of African Americans is rooted in the very fabric of the democracy and freedom of the United States;

(2) there exists no national museum within the Smithsonian Institution that—

(A) is devoted to the documentation of African American life, art, history, and culture; and

(B) encompasses, on a national level—

(i) the period of slavery;

(ii) the era of Reconstruction;

(iii) the Harlem renaissance;

(iv) the civil rights movement; and

(v) other periods associated with African American life, art, history, and culture; and

(3) a National Museum of African American History and Culture would be dedicated to the collection, preservation, research, and exhibition of African American historical and cultural material reflecting the breadth and depth of the experiences of individuals of African descent living in the United States.

SEC. 3. DEFINITIONS.

In this Act:

(1) BOARD OF REGENTS.—The term "Board of Regents" means the Board of Regents of the Smithsonian Institution.

(2) COUNCIL.—The term "Council" means the National Museum of African American History and Culture Council established by section 5.

(3) MUSEUM.—The term "Museum" means the National Museum of African American History and Culture established by section 4.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Smithsonian Institution.

SEC. 4. ESTABLISHMENT OF MUSEUM.

(a) Establishment.—There is established within the Smithsonian Institution a museum to be known as the "National Museum of African American History and Culture".

(b) Purpose.—The purpose of the Museum shall be to provide for—

(1) the collection, study, and establishment of programs relating to African American life, art, history, and culture that encompass—

(A) the period of slavery;

(B) the era of Reconstruction;

(C) the Harlem renaissance;

(D) the civil rights movement; and

(E) other periods of the African American diaspora;

(2) the creation and maintenance of permanent and temporary exhibits documenting the history of slavery in America and African American life, art, history, and culture during the periods referred to in paragraph (1);

(3) the collection and study of artifacts and documents relating to African American life, art, history, and culture; and

(4) collaboration between the Museum and other museums, historically black colleges and universities, historical societies, educational institutions, and other organizations that promote the study or appreciation of African American life, art, history, or culture, including collaboration concerning—

(A) development of cooperative programs and exhibitions;

(B) identification, management, and care of collections; and

(C) training of museum professionals.

SEC. 5. COUNCIL.

(a) Establishment.—There is established within the Smithsonian Institution a council to be known as the "National Museum of African American History and Culture Council".

(b) Duties.—

(1) In general.—The Council shall—

(A) make recommendations to the Board of Regents concerning the planning, design, and construction of the Museum;

(B) advise and assist the Board of Regents on all matters relating to the administration, operation, maintenance, and preservation of the Museum;

(C) recommend annual operating budgets for the Museum to the Board of Regents;

(D) report annually to the Board of Regents on the acquisition, disposition, and display of objects relating to African American life, art, history, and culture; and

(E) adopt bylaws for the operation of the Council.

(2) Principal responsibilities.—The Council, subject to the general policies of the Board of Regents, shall have sole authority to—

(A) purchase, accept, borrow, and otherwise acquire artifacts for addition to the collections of the Museum;

(B) loan, exchange, sell, and otherwise dispose of any part of the collections of the Museum, but only if the funds generated by that disposition are used for additions to the collections of the Museum; or

(C) specify criteria with respect to the use of the collections and resources of the Museum, including policies on programming, education, exhibitions, and research with respect to—

(i) the life, art, history, and culture of African Americans;

(ii) the role of African Americans in the history of the United States from the period of slavery to the present; and

(iii) the contributions of African Americans to society.

(3) Other responsibilities.—The Council, subject to the general policies of the Board of Regents, shall have authority—

(A) to provide for preservation, restoration, and maintenance of the collections of the Museum; and

(B) to solicit, accept, use, and dispose of gifts, bequests, and devises of personal property for the purpose of aiding and facilitating the work of the Museum.

(c) Composition and Appointment.—

(1) In general.—The Council shall be composed of 19 voting members as provided under paragraph (2).

(2) Voting members.—The Council shall include the following voting members:

(A) The Secretary of the Smithsonian Institution.

(B) 1 member of the Board of Regents, appointed by the Board of Regents.

(C) 17 individuals appointed by the Board of Regents—

(i) taking into consideration individuals recommended by organizations and entities that are committed to the advancement of knowledge of African American life, art, history, and culture; and

(ii) taking into consideration individuals recommended by the members of the Council.

(3) Initial appointments.—The Board of Regents shall make initial appointments to the Council under paragraph (2) not later than 180 days after the date of enactment of this Act.

(d) Terms.—

(1) In general.—Except as provided in this subsection, each appointed member of the Council shall be appointed for a term of 3 years.

(2) Initial appointees.—As designated by the Board of Regents at the time of appointment, of the voting members first appointed under subparagraph (C) of subsection (c)(2)—

(A) 6 members shall be appointed for a term of 1 year;

(B) 6 members shall be appointed for a term of 2 years; and

(C) 5 members shall be appointed for a term of 3 years.

(3) Reappointment.—A member of the Council may be reappointed, except that no individual may serve on the Council for a total of more than 2 terms. For purposes of this paragraph, the number of terms an individual serves on the Council shall not include any portion of a term for which an individual is appointed to fill a vacancy under paragraph (4)(B).

(4) Vacancies.—

(A) In general.—A vacancy on the Council—

(i) shall not affect the powers of the Council; and

(ii) shall be filled in the same manner as the original appointment was made.

(B) Term.—Any member of the Council appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

(e) Compensation.—

(1) In general.—Except as provided in paragraph (2), a member of the Council shall serve without pay.

(2) Travel expenses.—A member of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Council.

(f) Chairperson.—By a majority vote of its voting members, the Council shall elect a chairperson from its members.

(g) Meetings.—

(1) In general.—The Council shall meet at the call of the chairperson or on the written request of a majority of the voting members of the Council, but not fewer than twice each year.

(2) Initial meetings.—During the 1-year period beginning on the date of the first meeting of the Council, the Council shall meet not fewer than 4 times for the purpose of carrying out the duties of the Council under this Act.

(h) Quorum.—A majority of the voting members of the Council holding office shall constitute a quorum for the purpose of conducting business, but a lesser number may receive information on behalf of the Council.

SEC. 6. DIRECTOR AND STAFF OF THE MUSEUM.

(a) Director.—

(1) In general.—The Museum shall have a Director who shall be appointed by the Secretary, taking into consideration individuals recommended by the Council.

(2) Duties.—The Director shall manage the Museum subject to the policies of the Board of Regents.

(b) Staff.—The Secretary may appoint 2 additional employees to serve under the Director, except that such additional employees may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(c) Pay.—The employees appointed by the Secretary under subsection (b) may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

SEC. 7. EDUCATIONAL AND LIAISON PROGRAMS.

(a) In General.—

(1) Programs authorized.—The Director of the Museum may carry out educational and liaison programs in support of the goals of the Museum.

(2) Specific activities described.—In carrying out this section, the Director shall—

(A) carry out educational programs relating to African American life, art, history, and culture, including—

(i) programs using digital, electronic, and interactive technologies; and

(ii) programs carried out in collaboration with elementary schools, secondary schools, and postsecondary schools; and

(B) consult with the Director of the Institute of Museum and Library Services concerning the grant and scholarship programs carried out under subsection (b).

(b) Grant and Scholarship Programs.—

(1) In general.—In consultation with the Council and the Director of the Museum, the Director of the Institute of Museum and Library Services shall establish—

(A) a grant program with the purpose of improving operations, care of collections, and development of professional management at African American museums;

(B) a grant program with the purpose of providing internship and fellowship opportunities at African American museums;

(C) a scholarship program with the purpose of assisting individuals who are pursuing careers or carrying out studies in the arts, humanities, and sciences in the study of African American life, art, history, and culture;

(D) in cooperation with other museums, historical societies, and educational institutions, a grant program with the purpose of promoting the understanding of modern-day practices of slavery throughout the world; and

(E) a grant program under which an African-American museum (including a nonprofit education organization the primary mission of which is to promote the study of African-American diaspora) may use the funds provided under the grant to increase an endowment fund established by the museum (or organization) as of May 1, 2003, for the purposes of—

(i) enhancing educational programming; and

(ii) maintaining and operating traveling educational exhibits.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director of the Institute of Museum and Library Services to carry out this subsection—

(A) $15,000,000 for fiscal year 2004; and

(B) such sums as are necessary for each fiscal year thereafter.

SEC. 8. BUILDING FOR THE NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY AND CULTURE.

(a) IN GENERAL.—

(1) LOCATION.—

(A) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Board of Regents shall designate a site for the Museum.

(B) SITES FOR CONSIDERATION.—In designating a site under subparagraph (A), the Board of Regents shall select from among the following sites in the District of Columbia:

(i) The Arts and Industries Building of the Smithsonian Institution, located on the National Mall at 900 Jefferson Drive, Southwest, Washington, District of Columbia.

(ii) The area bounded by Constitution Avenue, Madison Drive, and 14th and 15th Streets, Northwest.

(iii) The site known as the "Liberty Loan site", located on 14th Street Southwest at the foot of the 14th Street Bridge.

(iv) The site known as the "Banneker Overlook site", located on 10th Street Southwest at the foot of the L'Enfant Plaza Promenade.

(C) AVAILABILITY OF SITE.—

(i) IN GENERAL.—A site described in subparagraph (B) shall remain available until the date on which the Board of Regents designates a site for the Museum under subparagraph (A).

(ii) TRANSFER TO SMITHSONIAN INSTITUTION.—Except with respect to a site described in clause (i) of subparagraph (B), if the site designated for the Museum is in an area that is under the administrative jurisdiction of a Federal agency, as soon as practicable after the date on which the designation is made, the head of the Federal agency shall transfer to the Smithsonian Institution administrative jurisdiction over the area.

(D) CONSULTATION.—The Board of Regents shall carry out its duties under this paragraph in consultation with the following:

(i) The Chair of the National Capital Planning Commission.

(ii) The Chair of the Commission on Fine Arts.

(iii) The Chair and Vice Chair of the Presidential Commission referred to in section 10.

(iv) The Chair of the Building and Site Subcommittee of the Presidential Commission referred to in section 10.

(v) The Chair and ranking minority member of each of the following Committees:

(I) The Committee on Rules and Administration of the Senate.

(II) The Committee on House Administration of the House of Representatives.

(III) The Committee on Transportation and Infrastructure of the House of Representatives.

(IV) The Committee on Appropriations of the House of Representatives.

(V) The Committee on Appropriations of the Senate.

(2) CONSTRUCTION OF BUILDING.—The Board of Regents, in consultation with the Council, may plan, design, and construct a building for the Museum, which shall be located at the site designated by the Board of Regents under this paragraph.

(3) NONAPPLICABILITY OF PROVISIONS RELATING TO MONUMENTS AND COMMEMORATIVE WORKS.—Chapter 89 of title 40, United States Code, shall not apply with respect to the Museum.

(b) COST SHARING.—The Board of Regents shall pay—

(1) 50 percent of the costs of carrying out this section from Federal funds; and

(2) 50 percent of the costs of carrying out this section from non-Federal sources.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 9. CONGRESSIONAL BUDGET ACT COMPLIANCE.

Authority under this Act to enter into contracts or to make payments shall be effective in any fiscal year only to the extent provided in advance in an appropriations Act, except as provided under section 11(b).

SEC. 10. CONSIDERATION OF RECOMMENDATIONS OF PRESIDENTIAL COMMISSION.

In carrying out their duties under this Act, the Council and the Board of Regents shall take into consideration the reports and plans submitted by the National Museum of African American History and Culture Plan for Action Presidential Commission under the National Museum of African American History and Culture Plan for Action Presidential Commission Act of 2001 (Public Law 107–106).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Smithsonian Institution to carry out this Act, other than sections 7(b) and 8—

(1) $17,000,000 for fiscal year 2004; and

(2) such sums as are necessary for each fiscal year thereafter.

(b) AVAILABILITY.—Amounts made available under subsection (a) shall remain available until expended.

(c) USE OF FUNDS FOR FUNDRAISING.—Amounts appropriated pursuant to the authorization under this section may be used to conduct fundraising in support of the Museum from private sources.

The SPEAKER pro tempore (Mr. PEARCE). Pursuant to the rule, the gentleman from Ohio (Mr. NEY) and the gentleman from Connecticut (Mr. LARSON) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. NEY).

Mr. NEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3491 establishes the National Museum of African American History and Culture within the Smithsonian Institution. This is a long, long overdue bill. This is a proud night for the House and a proud night for all in the United States, for citizens of all races, all ethnic backgrounds, and people of all income levels and all walks of life here in our great country. I am very proud that this Congress, the 108th Congress, has stepped up to the plate to pass this bill. This concept for such a museum has been around for quite some time, but it has never been this close to reality as tonight. The credit for bringing us to where we are tonight rests with the gentleman from Georgia (Mr. LEWIS), who has worked tirelessly, endlessly on this legislation since 1988. The gentleman from Georgia (Mr. LEWIS) has paired up with the gentleman from Georgia (Mr. KINGSTON), another fellow Georgian in this Congress, and together they have worked in a bipartisan manner with many of our colleagues to address any concerns and surmount any barriers in the way of this bill. I also want to thank the gentleman from Connecticut (Mr. LARSON), our ranking member, and the members of the Committee on House Administration who have worked, I believe, in a very quick and diligent manner to have this bill again come to a vote on the floor of the U.S. House.

Credit also should be given to the gentleman from Ohio (Mr. LATOURETTE) and the gentlewoman from the District of Columbia (Ms. NORTON) whose subcommittee has jurisdiction over the construction portion of the museum. Without the help of these Members, Mr. Speaker, and their staff, reaching a consensus would not have been possible within the time frame in which it was achieved.

The establishment of this museum will go a long way in educating our future generations and recognizing the many contributions of African Americans throughout our Nation's history. The proposed museum would take a step in acknowledging many, and I repeat, many of the sacrifices that have been made and provide a comprehensive history about significant events and individuals.

Several years ago Congress agreed that in order to take the next step towards this museum, any remaining questions or issues had to be resolved. In December of 2001, President Bush signed Public Law 107–106, which created a Presidential Commission to research and evaluate issues related to the establishment of the proposed African American Museum and to develop a plan for action to bring this vision to reality.

This Presidential Commission should also be applauded for their diligent work and research on the proposed museum. Their hard work provided us with many answers to questions related to site location, potential costs for museum, the fund-raising ability of the private sector, and the potential for exhibits and artifacts for this museum.

The proposed museum will reside within the structure of the Smithsonian Institution. As the Nation's keeper of history and culture, the Smithsonian is an ideal body of inclusion for just such a museum. This bill authorizes the Smithsonian to identify a site for the museum from a list of recommended sites provided to Congress from the Presidential Commission. Once a site has been selected, the legislation authorizes the Smithsonian's governing Board of Regents to plan, design, and construct a building for the museum that will be paid for through a public/private partnership which would be split 50 percent Federal funds and 50 percent private funding, and I have no doubt tonight, and I talked with the gentleman from Georgia (Mr. LEWIS) about this and our ranking member and other Members, and I have no doubt, again I want to stress, that the private funding will be there. Support for this will come from not only the United States, but I believe from around the world of citizens realizing this great museum and its tremendous worth to all people in the United States.

This legislation authorizes an initial amount of $17 million for fiscal year 2004 for carrying out this act, and it further authorizes an initial amount of $15 million for fiscal year 2004 that will be used for education and liaison programs that will be used to carry out the goals of this museum.

Langston Hughes, a great African American author and poet, said "Dream your dreams but be willing to pay the sacrifice to make them come true." African Americans have paid many sacrifices in this country, and tonight the gentleman from Georgia (Mr. LEWIS) and the other Members that are supporting this have had a dream and they have surely paid the sacrifice of their time, their efforts, and all the promotion of this museum, which is going to be such a positive force for our country.

This proposed museum has broad bipartisan support from both Houses of Congress, the administration, and the Smithsonian Institution. It is a worthwhile project that will have a very positive and lasting influence on our country for today and also tomorrow's generations. And I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. LARSON of Connecticut. Mr. Speaker, I yield myself such time as I may consume.

I rise in strong support of H.R. 3491 on this historic day and to congratulate the gentleman from Georgia (Mr. LEWIS), a living legacy on the culmination of 17 years of work in this House to create this national museum within the Smithsonian. His effort has been part of a broader campaign spanning nearly 90 years to obtain recognition for the contributions of African Americans to our Nation's history and culture. The chairman has said it well. This is a proud day for all Americans and indeed for our country and for this great Chamber. This gentleman of vision will rise later and address this issue.

I also want to congratulate the gentlewoman from the District of Columbia (Ms. NORTON), member of the Committee on Transportation and Infrastructure, as the chairman mentioned, along with the gentleman from Ohio (Mr. LaTOURETTE), who has jurisdiction over the project. She vigorously presented the views of the citizens of our Nation's capital who live in the shadow of many museums, monuments, and other historic structures representing America's living history. She is, as we all know, the First Lady of Washington, D.C.

I would especially like to thank the gentleman from Ohio (Chairman NEY) and especially for the sensitivity and his deep appreciation for the historic significance and importance of this issue to his fellow colleagues and to this Nation we are all pledged to serve. He not only expedited the hearings, but he also brought this bill to the floor in a timely manner, so that to paraphrase Martin Luther King, we might be able to say here at last, here at last, thank God Almighty, this bill is here at last.

In addition, I want to thank the majority staff members, Paul Vinovich, who is here today, and George Hadijski. Their efforts, as people on this committee know, in order to move this bill forward were so critical, and again their great sensitivity and concern and outreach to all parties, I think, is testimony to how this committee works and certainly a tribute to the chairman of this committee, and I cannot thank them enough for what they have done this evening. It brings great pride to African Americans, Americans in general, and it makes it an honor for all of us to be a part of it.

I would be remiss if I did not commend the minority committee staff as well, Susan Brita of the Committee on Transportation and Infrastructure, and of course the irrepressible and irresistible Matt Pinkus for his great contribution to the Committee on House Administration and for their work on this bill and previous Congresses on behalf of the two House committees of primary jurisdiction.

We are also here today due to the work of the National Museum of African American History and Culture Plan for Action Presidential Commission, created by Public Law 107–106, which presented this report and recommendations to us on April 2, 2003. In addition to the Commission, the Board of Regents of the Smithsonian has consistently supported the museum while helping us create a new entity that can be appropriately managed within the traditional Smithsonian framework of governance.

I am equally proud of the fact that the AMISTAD America not only supports this, but will be a key part of this museum. I had the great honor to bring many of the members of the Congressional Black Caucus to Connecticut when we christened the *Amistad*, and indeed that was a highlight for me and so many of my colleagues to come to Connecticut and see the christening of this historic boat, and what a historic journey that has been as well.

Mr. Speaker, I yield 7 minutes to the distinguished gentleman from Georgia (Mr. LEWIS), who was responsible for this bill being on the floor.

Mr. LEWIS of Georgia. Mr. Speaker, I want to thank the gentleman from Connecticut (Mr. LARSON), the ranking member, for yielding me this time.

Mr. Speaker, I rise tonight in support of H.R. 3491, the National African American Museum History and Culture Act. First I would like to thank all of my colleagues who have labored long days, weeks, months, and even years to help realize a dream deferred for nearly 100 years, the establishment of a national museum that documents the significant contributions of African Americans.

It has been my honor and pleasure to work with the gentleman from the State of Georgia (Mr. KINGSTON), my dear friend, but tonight in addition to thanking the gentleman from Georgia (Mr. KINGSTON), I also want to thank the gentleman from Ohio (Chairman NEY) for not giving up, for not giving in, for not giving out. And I thank the gentleman from Connecticut (Mr. LARSON), ranking member, for his commitment to making the National African American Museum a reality. I want to commend the gentleman from Ohio (Chairman LaTOURETTE) and the gentlewoman from the District of Columbia (Ms. NORTON), ranking member, for all of their help. It is important to thank Senator BROWNBACK and Senator DODD for championing this legislation in the other body. Tonight I also want to thank our former colleague, Congressman J.C. Watts for his effort on this bill.

The effort to create a National African American Museum has not been easy. It has been a long, hard, and tedious journey. We are here today because Members, staff, and many supporters really never gave up. They did not give out. They did not give in. I want to thank my staff, Tammy Boyd and others, who worked so hard.

When we began this journey, we often said that we must pace ourselves for the long haul and we must keep the faith. We paced ourselves for the journey. We diligently planted our seeds and tilled a sometimes hardened soil. And now the many supporters of the African American Museum can and will finally see the fruit of their labor.

The passage of this legislation will send a powerful message to supporters of the museum that we must organize and mobilize our effort to raise the necessary money to build a National African American Museum.

During every session of the Congress for the past 15 years, I have introduced legislation to establish a National African American Museum. This bill was passed in the Senate but not in the House in 1992, and another bill was passed in the House but not in the Senate in 1994. Today the bill will pass both Houses of Congress. This bill will be signed by the President of the United States into law, and we will build the National African American Museum.

The African American story must be told, and a National African American Museum in Washington, D.C. is critical to telling that story. African American history is the story of hundreds, thousands, and millions of ordinary men, women, and children struggling to survive in a land where they were denied the fundamental rights, dignity, and respect that belong to all human beings. This is the story that we must tell.

We have come a long way in our quest to become one Nation and one people. We have made such tremendous strides that the young people today cannot imagine living in a country where they could not eat where they wanted to eat or sit where they wanted to sit.

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They cannot imagine a country where they could be beaten, shot, or even lynched because of the color of their skin. Yet, this was the country that I grew up in, and this is the history that we must tell.

The time is long overdue to recognize the contribution of one of the members of our American family. Mr. Speaker, the time is always right to reright, the cause is just, and the time is now. Let it be done on our watch. Let us create a National Museum of African American history and Culture. Again, I thank the gentleman from Ohio (Mr. NEY), the chairman, the gentleman from Connecticut (Mr. LARSON), the ranking member, and all of the staff for bringing us to this point.

I urge all of my colleagues to support H.R. 3491, a National African American Museum.

Mr. NEY. Mr. Speaker, I reserve the balance of my time.

Mr. LARSON of Connecticut. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from California (Ms. MILLENDER-MCDONALD), who is an outstanding member of our committee.

Ms. MILLENDER-McDONALD. Mr. Speaker, let me first thank my chairman and ranking member, the gentleman from Ohio (Mr. NEY), and the gentleman from Connecticut (Mr. LARSON) for their constant sensitivity on issues that are critical to many members and all Members of this House. I am so happy and honored to serve on the committee with both of these giants who share so much of their leadership and reflect their leadership in the work that they do.

Mr. Speaker, I would also like to thank the gentleman from Georgia (Mr. LEWIS) and the former Congressman J.C. Watts for their initiation of this well-deserved project and for their great leadership and sensitivity in bringing this to the House.

Throughout United States history, African Americans have made significant contributions in terms of building up the cultural, business, academic, and civic institutions of this Nation. Without the input of African Americans into the moral, spiritual and political aspects of American life, this country would be a much different place.

In that spirit, I am here to offer my wholehearted support as a cosponsor of H.R. 3491, calling for the creation of a museum devoted to celebrating the history of African Americans in this Nation. The intent of this museum will be to feature the many highlights of African American life in this country from the time of slavery through the era of Reconstruction, the Harlem Renaissance, the Civil Rights Movement, to present-day events.

Our young people of all backgrounds, as well as those most recently arrived in the United States from other parts of the world, must be made aware of the rich traditions added by African Americans to all facets of American life. There are multitalented individuals of African American and other ancestries waiting for approval of this museum's construction to start so that they can begin to shape the content of the museum's offering for the public to enjoy.

There has been much discussion regarding the potential location of the museum. I have the utmost faith that we as a Congress can pass this long-overdue legislation and agree upon a site that will most ably honor the legacy of African Americans while providing the best possible option in terms of a location.

For 15 years, the gentleman from Georgia (Mr. LEWIS) has continuously pushed for the construction of a museum recognizing the extraordinary history and achievements of African Americans. Let us reward his perseverance by passing this bill, H.R. 3491, so the business of building this museum can get underway.

I also want to commend the gentlewoman from the District of Columbia (Ms. NORTON), the gentleman from Georgia (Mr. KINGSTON), the gentleman from Mississippi (Mr. WICKER), and the gentleman from Ohio (Mr. LATOURETTE), along with Senators BROWNBACK and DODD, as well as many others for the leadership and vision they have shown in working to make this African American museum a reality.

It is time now, Mr. Speaker, that we move forward with the approval of this legislation and allow the African American museum to be witness in the honor of all African Americans past, present, and those generations yet unborn.

Mr. NEY. Mr. Speaker, I reserve the balance of my time.

Mr. LARSON of Connecticut. Mr. Speaker, I yield 5 minutes to the gentlewoman from the District of Columbia (Ms. NORTON), the first lady of the District, who is the ranking member on the Committee on Transportation and Infrastructure that the chairman duly noted in his remarks who was so instrumental in bringing this legislation before us.

Ms. NORTON. Mr. Speaker, I thank the gentleman from Connecticut (Mr. LARSON) for his graciousness and for yielding to me. I want to first offer my gratitude to the gentleman from Ohio (Mr. NEY) and the gentleman from Connecticut (Mr. LARSON) who had to get us all together and work very closely with us so that we could achieve agreement on this bill, agreement that would be accepted by the other body as well. That took some skill.

I need to compliment and thank my good friend, the gentleman from Ohio (Mr. LATOURETTE), the chair of the Transportation subcommittee which has jurisdiction over this bill, the Subcommittee on Economic Development, Public Buildings and Emergency Management, because his patience and graciousness were important here, as well as in not insisting that we have yet another hearing on the bill but move forward rapidly so that the bill could be approved during this session.

But, of course, no one deserves more credit for what we do tonight than my good friend and colleague, the gentleman from Georgia (Mr. LEWIS), whom I knew as a colleague in another life, a colleague in a life in which he was held in just the high esteem that he is held in this body, and that says something. So it is perfectly fitting that the major sponsor of this bill would be the gentleman from Georgia (Mr. LEWIS). Who would have thought 40 years ago that he or I would be here or that there would ever be such a bill.

It is a great tribute to the gentleman from Georgia (Mr. LEWIS) that when he first came to the Congress and was a part of the Committee on Transportation and the subcommittee that has jurisdiction that this is one of the first bills that he authored. So for him, this is a stellar moment. In a real sense what we do tonight is to pick up the baton. It has been dropped over and over again for 100 years. There have been many tries in both Houses. And what is important about what we do tonight is that we brought both Houses together.

I remember being on the committee when we passed the bill, guided it to the floor, thought we had the work done. Tonight, we know we have the work done because we know both Houses approved this bill.

Why an African American museum? I do want to say a word about that. Because there might be museums, perhaps should be museums for many, many kinds of people who have come to our shores. And I take nothing from them when I say that I hope that they attain some such recognition in our city. But no one can doubt that there is no American story without telling the story of African Americans in this country who came to this country as it was being founded, as it was being born, before it was a Nation.

We cannot understand the greatness of our Nation without understanding what our country has overcome. We can know that we can do anything if we come to grips with where we were, understand it, and see where we have come to. We are a Nation who started with original sin, with slavery, and then progressed only to discrimination under law.

And what makes this story so important for us, and for Americans of every background, is to look at the history and where it has brought us. If we start even in this city, the city of my birth, and see the end of slavery, the establishment of the Freeman's Bureau and Howard University named for a Civil War general, but then look at the sad history of this city, the Capital of the United States, where I went to segregated schools and had public accommodations that were segregated. But then look to the poor people's campaign and the march on Washington and the triumph of true Americanism, this story needs to be told. Because when we get discouraged about not being all we want to be, we need to go to an African American museum and see from whence we came.

Finally, let me say that my own constituents, the people of the District of Columbia, this majority African American city have been in true Thanksgiving that we would get to this day. I commend the Presidential commission consisting of many citizens from across the Nation, including citizens of this town that have worked single-handedly for this bill. But for the people who live here, who consider themselves the guardians of the city's museums and monuments, this is a very special day. We promise to indeed be a guardian of this museum, to work closely with my good friends the gentleman from Ohio (Mr. NEY) and the gentleman from Connecticut (Mr. LARSON), with all of those who have supported us on this bill, so we can raise the funds now that we have an obligation in writing, in this bill, from our country to, in fact, realize this bill so that we can all be at the groundbreaking. I thank both gentlemen again for their leadership on this bill.

Mr. Speaker, I am proud to be cosponsor of H.R. 3491, a bill to establish within the Smithsonian complex the National Museum of African American History and Culture. The most important new national museum in decades as we take this giant step to making the museum a reality, praise and thanks must be extended to Congressman JOHN LEWIS, my friend who introduced this bill when he was first elected to Congress and before I was elected to Congress.

My strong support for this bill has several sources. I have been a cosponsor of the museum bill since my first term in Congress in 1991. I have been a member of the Transportation Subcommittee that often considered the museum bill during the several years when the museum was repeatedly debated and voted. The House passed the museum bill during the 103rd Congress only to have Senator Jesse Helms stop it in the Senate. I represent the District of Columbia whose residents consider themselves the guardians of our memorials, a city with a majority African-American population that has watched and waited from the front row for the promised museum. I am a fourth generation Washingtonian with what I must admit is a personal stake that I trace to my great grandfather, Richard Holmes, who walked away from slavery in Virginia long before the Civil War to start a new life and a family in the District, where my family has long awaited the museum. Finally, I am an African-American who joins millions of blacks and people of every color and background that have asked for the promise of an African American museum to be kept.

This bill is a good bill. It lists four sites for the location of the museum. I am pleased to see the working relationships between the Smithsonian and the National Capitol Planning Commission (NCPC) are preserved. The bill provides that the Board of Regents will consult with not only the NCPC and the Commission on Fine Arts, but also the Chair and Vice Chair of the Presidential Commission, and further the Chair of the Commission's Site Subcommittee. The appropriate Congressional Committees will also be consulted regarding the final site selection. The bill also provides for a 50/50 split in cost sharing for the museum, 50% of the cost to be paid by the federal government and 50% to come from the private sector. Finally, the bill authorizes $17m in FY04 for the Smithsonian to carry out its duties under the Act and such sums as are necessary for each fiscal year thereafter.

This bill is especially appreciated, considering that in one form or another this subject has been before Congress for nearly 100 years. Civil War veterans first raised the idea of a memorial as they sought recognition for their service to their country in all its wars and for their ancestors because the country's large population of slaves, free blacks and their descendants were instrumental in building our nation. Colonel Charles Young, the highest ranking African American officer and the third black graduate of West Point asked Congress in 1919 for "a memorial to the Negro dead and that that memorial be the thing for which these Negroes gave their lives—liberty, justice, equal opportunities and educational facilities, the suppression of lynching by making it a federal crime [and] the abolition of jimcrow [sic] cars." No one can doubt that the case for the museum has long ago been made. It was accepted and recognized by Congress as a worthy project, including a $50,000 appropriation even in 1929, at a time when racial segregation was the law of the land.

Much work has been done, and much work lies ahead of us, but passage of this bill will be a giant step forward to placing African American history in its appropriate place in our Nation's story. Mr. Speaker I would like to quote from the museum's mission statement:

"The National Museum of African American History and Culture will give voice to the centrality of the African American experience and will make it possible for all people to understand the depth, complexity, and promise of the American experience. The museum will serve as a national forum for collaboration with educational and cultural institutions in the continuing quest for freedom, truth, and human dignity."

H.R. 3491 is a historic bill. I urge my colleagues to join me in supporting this bill.

Mr. NEY. Mr. Speaker, at this time I yield 2 minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank the chairman, the gentleman from Ohio (Mr. NEY) for yielding. I stand tonight to support the gentleman from Georgia (Mr. LEWIS), my colleague, the honorable and distinguished Representative from the 5th District. I want to say how proud I am to, as a freshman Member, to be able to support what he has been working on for these past 15 years and supporting H.R. 3491, the creation of a National Museum of African Culture and History. And I thank the gentleman from Ohio (Mr. NEY) and the gentleman from Connecticut (Ranking Member LARSON), and the gentlewoman from the District of Columbia (Ms. NORTON) for their support in trying to bring this long-term effort of this great Member of Congress to fruition.

And I just want to tell the gentleman how much I appreciate what he has done and how much respect I have for him. When we go back and talk to our spouses sometimes at the end of the week about what the experience was up here, I have said often to her that the gentleman from Georgia (Mr. LEWIS) has been one of the nicest and kindest Members of this body to me, a freshman, reaching out on many occasions to make me feel warm and accepted. So I do take great pleasure in standing here tonight and supporting this.

I hope some day that I will be able to bring my grandchildren through that museum, and I hope he is there to explain to them some of the history that he knows so well, better than so many people, because he has experienced it, and he has brought more to racial healing than hardly anybody I can think of in this country. I commend him for it. I wholeheartedly support this bill.

Mr. LARSON of Connecticut. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me close by saying what great pride I have this evening, especially to stand with two colleagues who will definitely be in that museum, to be here with two outstanding Members of Congress who are a living legacy, the gentleman from Georgia (Mr. LEWIS) and the gentlewoman from the District of Columbia (Ms. NORTON). Their deeds speak so highly of their commitment.

This week we will celebrate or look back on the passing of President Kennedy. President Kennedy was fond of saying that communities reveal an awful lot about themselves in memorials, monuments that they create. What a great and lasting tribute my colleagues are leaving through their great efforts with the establishment and creation of this museum.

Mr. Speaker, I look forward to seeing this project through to its fruition.

Mr. Speaker, I yield back the balance of my time.

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Mr. NEY. Mr. Speaker, I yield myself such time as I may consume. Let me close by thanking the gentleman from Georgia (Mr. LEWIS), the gentleman from Georgia (Mr. KINGSTON), the primary authors of this bill, our colleagues Senator DODD and Senator BROWNBACK, our ranking member, members of House Administration.

I noted earlier that this was going to be for future generations. I need to note also that this is for the memory of all past generations. I urge all Members to support the bill.

Mr. CUMMINGS. Mr. Speaker, I rise today in support of the National Museum of African-American History and Culture Act of 2003, H.R. 3491. This important piece of legislation will establish a national African-American museum within the Smithsonian Institution, a preeminent position on our national mall.

Since the arrival of the first Africans at Jamestown, Virginia in 1619, African-Americans have played an integral role in the overall development of this great nation. We have endured the cruelties and degradation of the Middle Passage, slavery, lynchings, Jim-Crowism, social injustice, segregation, and discrimination. However, our strong faith and belief in the promise of America has enabled us to persevere in the face of adversity.

In all areas of life, African Americans have made an important contribution. In music, from jazz to hip-hop, African Americans continue to have a strong influence upon our nation's musical heritage. From Langston Hughes and Richard Wright, to Maya Angelou and Toni Morrison, African Americans have enriched this country's literary heritage. We have excelled in film, sports, and business and continue to sow into the life of this nation.

African American scientists, inventors, educators, and physicians, such as Dr. Charles Drew and Dr. Ben Carson to name a few, have and continue to enrich the daily lives of all Americans—from developing blood transfusion and blood bank procedures to learning the path of the mind to perform delicate brain surgery. Inventors, such as Garrett Morris and Granville T. Woods to name just a few, have developed everything from the stoplight and gas mask to critical railway switching technology.

Additionally, we have proudly served our nation with distinction in every war—from the Revolutionary War to today in Operation Iraqi Freedom. The struggle for freedom, equality, and civil rights has always been a struggle for the full realization of true democracy in America. Our legacy is firmly ingrained in the very fabric of this democracy. However, in spite of our triumphs and accomplishments, there does not exist a national museum located in Washington D.C. on or near the National Mall dedicated to the documentation of African American history. This bill creates such a museum.

The National Museum of African American History and Culture would properly collect, preserve, exhibit, and honor, on a national level, the period of slavery, Reconstruction, the Harlem Renaissance, and other periods associated with African American life, art, history, and culture. Not only will this national repository of the Black experience in America be viewed by millions of tourists who flock to the nation's capital each year, but will be accessible to students and scholars alike. It will also demonstrate to our youth that they can take pride in their rich cultural heritage.

Mr. Speaker, I urge my colleagues to lend their support to this important piece of legislation. I would just like to take this opportunity to thank my distinguished colleague, Representative JOHN LEWIS, for his tireless dedication and leadership. Mr. LEWIS has committed more than 10 years of his life to the vision of a national monument celebrating the legacy of African Americans on the national mall. We are now on the verge of making that dream a reality. Please support this bipartisan bill.

I also extend my sincere appreciation to Representatives JACK KINGSTON and ROGER WICKER, and Senators SAM BROWNBACK and CHRISTOPHER DODD for their leadership.

Mr. NEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PEARCE). The question is on the motion offered by the gentleman from Ohio (Mr. NEY) that the House suspend the rules and pass the bill, H.R. 3491.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. LEWIS of Georgia. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. NEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3491.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

MOTION TO INSTRUCT CONFEREES ON H.R. 1, MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003

Ms. BERKLEY. Mr. Speaker, I offer a motion to instruct.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Ms. BERKLEY moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 1 be instructed as follows:

(1) To reject the provisions of subtitle C of title II of the House bill.

(2) To reject the provisions of section 231 of the Senate amendment.

(3) Within the scope of conference, to increase payments for physician services by an amount equal to the amount of savings attributable to the rejection of the aforementioned provisions.

(4) To insist upon section 601 of the House bill.

Ms. BERKLEY (during the reading). Mr. Speaker, I ask unanimous consent that the motion to instruct be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Nevada?

There was no objection.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentlewoman from Nevada (Ms. BERKLEY) and the gentlewoman from New Mexico (Mrs. WILSON) each will control 30 minutes.

The Chair recognizes the gentlewoman from Nevada (Ms. BERKLEY).

GENERAL LEAVE

Ms. BERKLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on this motion to instruct.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Nevada?

There was no objection.

Ms. BERKLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to offer a motion to instruct the conferees on the Medicare Prescription Drug Bill to provide a much needed payment update to physicians for the next 2 years.

I represent Las Vegas, which is home to the fastest growing seniors population in the United States. In my community, we are facing a health care crisis. The rapid growth of southern Nevada has put a strain on the health care system, and many doctors face a tough choice when it comes to treating Medicare patients because reimbursements are not keeping up with the costs of practicing medicine. In addition to staffing costs and utilities and rent, malpractice insurance for doctors in my community has skyrocketed anywhere from 150 to 400 percent.

We rely on our doctors to treat more than 150,000 seniors under the local Medicare system; but with the cost of doing business so high and the demands for their services at a premium, in many instances our doctors cannot afford to see new Medicare patients. We used to talk about the quality of health care, but the situation is becoming so bad that we are no longer talking about the level of treatment the patient receives, but whether or not they will receive any treatment at all.

My community is struggling to attract enough medical professionals to address the health care needs of our ever-expanding population. But how can we expect more doctors to see more Medicare patients if we continue to cut payments to doctors under Medicare? If we do not act soon, there will be another 4.5 percent reduction in reimbursements to physicians who are treating those who depend on their physicians' care the most, our seniors.

If we allow this to happen, the result will be a loss of $17 million in payments to physicians in my State of Nevada alone. The time is long past due that we increase these payments which have limited medical providers from expanding the number of patients receiving care. I have heard from doctors in Las Vegas who say they want to treat Medicare patients, but they are being forced to choose between taking on new Medicare patients or keeping the lights on in their offices and their practices solvent.

According to the AMA, since 1991 the cost of practicing medicine has gone up by more than 33 percent, but payments have grown less than 10 percent. For years doctors have provided important tests for seniors for cholesterol, depression, blood pressure, vision, and hearing impairment without any reimbursements from Medicare.

Medicare reimbursements for primary care are inadequate, and in January they will be too low for many doctors to continue to serve Medicare patients. Just last year, doctors' payments were cut by 5.4 percent; and if we allow them to be cut once again, this will be the fifth reduction since 1991 and would place doctors' reimbursements 8 percent below 2001 levels. It does not make any sense to be cutting payments to doctors when the costs of practicing medicine are on the rise.

Our doctors simply cannot afford to take any more cuts. Already one-quarter of the family physicians across the Nation are saying they can not accept any new Medicare patients. Who knows how many more will choose to do the same in January when they are told their reimbursements have been slashed once again?

As a Nation we must provide our doctors with the means to treat and provide health care to our citizens. This motion would instruct the conferees to protect the language in the House version of the Prescription Drug Bill that would reverse the cut to our physicians while providing a 1.5 percent increase in payments for the next 2 years. To fund the increase in payments to our doctors, this motion strikes funding for privatization provisions in the Prescription Drug Bill.

The Centers for Medicare and Medicaid Services estimated that under a privatized Medicare, premiums would skyrocket for the seniors who choose to stay in traditional Medicare. I am concerned that by increasing the premiums of traditional Medicare, many patients would be forced into HMOs and other private plans. This 1.5 percent increase will give doctors nationwide enough to continue to treat seniors on Medicare, and it will give Congress time to develop and permanently fix this flawed system that shortchanges doctors and continues to restrict the ability of seniors to access health care services.

I ask my colleagues to work with me to fix the Medicare physician reimbursements formula which currently threatens to destabilize the Medicare program. Seniors rely on their doctors and the medicines they need to stay healthy. Seniors have waited too long for a prescription drug benefit in Medicare and relief from high prescription drug costs. We must work together for a drug benefit that prevents seniors from risking their health by cutting pills in half or having to choose between paying for medicine and paying for their rent, their electricity or even the purchase of their food.

For 4 decades this Nation promised that Medicare would provide health care for all seniors. It is a program that ensures these hardworking older Americans who have paid taxes and have paid into the system will have health care coverage.

I urge my colleagues to vote for this motion to allow our constituents to continue to choose what doctors they see, what hospitals they are treated in, and to continue to access the highest quality of care.

Mr. Speaker, I reserve the balance of my time.

Mrs. WILSON of New Mexico. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is a little bit hard for me to understand why we are going to vote on this motion to instruct or why my colleague from Nevada has offered it, because the conference committee on the Medicare bill has already agreed that we are not going to have the provisions in there that she is worried about that we are going to adjust the physician payments.

In fact, the American Medical Association has written to us asking us to strongly oppose the Berkley motion to instruct and urges the conference to pass the pending Medicare conference report. So, in fact, I think the problem that the gentlewoman has addressed or has identified here has already been addressed in the conference report to the satisfaction of physicians nationwide. Perhaps to explain this a little bit more fully we will turn to a physician.

Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. BURGESS), who is an OB-GYN and he has worked very hard on issues related to health care.

Mr. BURGESS. Mr. Speaker, I thank the gentlewoman from New Mexico (Mrs. WILSON) for yielding me time.

Mr. Speaker, I confess to being a little bit mystified as to why we are here tonight with a motion to instruct conferees when the conference report appears to have been decided; but I am just a simple country doctor, and I do not always understand the ways of Congress.

But the motion to instruct as I understand it would strip out important competitive provisions in the Medicare conference report and redirect funds allegedly towards reimbursement of physicians. The conference committee has reportedly included a provision that will provide physicians with positive updates in 2004 and 2005. That is not a permanent solution. It does provide Congress with the time it needs to make long-term substantive changes to the Medicare physician payment formula. It will also ensure that Medicare beneficiaries continue to access high-quality health care.

That is why the American Medical Association, the American Osteopathic Association, and the Alliance of Specialty Medicine all strongly support the House Medicare bill.

I am aware the supporters of the motion are attempting to portray this as a choice between HMOs or doctors; and this is false and the authors know it is false. However, do not take my word for it. Listen to what the AMA has to say about this motion: "Simply attempting to transfer dollars from patients to physicians through some ambiguous, unspecified mechanism, as is intended under the motion to instruct, would not change the flawed Medicare payment formula and thus would not ensure long-term access for Medicare patients."

As mentioned before, the House bill increased reimbursements for physicians and is supported by the physician community. It also provides seniors with more choices under Medicare and attempts to make some long-term competitive reforms so that Medicare is available and on sound financial footing for generations to come.

Mr. Speaker, Medicare spends $247 billion a year as it stands. The gentlewoman that offered the motion to instruct is from Nevada and, of course, Nevada has had a serious problem with liability in recent years. In fact, a study by Kessler in 1996 showed that with two diagnostic codes, $50 billion a year could be saved in Medicare if we did not have to bear the costs of defensive medicine in this country. That $50 billion would more than fund the $40 billion a year with which we are seeking to add a prescription drug benefit.

The House-passed Medicare bill does not ever require that Medicare beneficiaries leave traditional Medicare. I might add that we will have a new outpatient drug prescription drug benefit available to beneficiaries. Anyone who says otherwise either does not understand the legislation or does not care to talk about the facts.

This is an irrelevant motion introduced only to score political points. I urge Members to recognize it for what it is and to vote against the motion.

Ms. BERKLEY. Mr. Speaker, I yield 10 minutes to the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. Mr. Speaker, I thank the gentlewoman from Nevada (Ms. BERKLEY) for her leadership on health care issues and for her advocacy on behalf of seniors, especially in Nevada, and around the country.

Mr. Speaker, I normally when speaking on the House floor do not quote from a television show, but I would like to start this evening with several of my colleagues. The gentlewoman from Ohio (Mrs. CAPPS), the gentleman from Rhode Island (Mr. KENNEDY) and maybe some others, maybe the gentleman from New Jersey (Mr. PALLONE) and the gentleman from Massachusetts (Mr. DELAHUNT) are going to speak on this too.

I am quoting from Al Hunt on "Capital Gang." If you have seen that show, those people watching, you know he does something called the "Outrage of the Week." He says: "Now for the outrages of the week. The American Association of Retired Persons, the largest lobby for the elderly, is on the verge of selling out many seniors on the Medicare bill." This is a commentator saying this, not me. "The legislation as it now stands would deny 4 million retirees coverage they currently get, would give sweeping new powers to HMOs over the traditional one for Medicare," basically a $12 billion pay-off to the insurance companies, "and would gut a measure approved by both Houses to facilitate importation of cheaper prescription drugs from Canada," from countries that charge two and three and four times what the drug companies do in this country.

"The AARP Washington lobbyists apparently care more about their own influence than what they can do for struggling seniors."

Mr. Speaker, we should not be surprised by this. Let me share some comments, some articles written about AARP which most of us in Washington know is one of the largest insurance companies in the country.

In Newsday 3 years ago, "Critics say AARP, which formally unveiled its new headquarters building in downtown Washington last month, has softened its earlier militancy because it is preoccupied with its profit-making enterprise, including $100 million in earnings from the sale of insurance."

□ 2200

The Denver Post wrote not too long ago, "AARP receives more than $100 million in revenue from health insurers."

Newsday wrote, "Critics suggest that AARP's substantial profits from the sales of insurance policies, drug company advertising,"—no surprise there either considering they sold out to the drug industry on this one,—"drug company advertising in its magazines, and investment schemes conflict with its interests on behalf of seniors. AARP President William Novelli acknowledged complaints from members that AARP has been too timid in the political battles to defend Medicare and Social Security. He conceded that AARP has pulled its punches since right-wing groups and Members of Congress criticized it."

Capital News Service wrote, "AARP's pharmacy service,"—its connection to the drug industry, think about that,—"is part of its insurance sales operation which generated $101 million in revenue last year, 17 percent of the organization's total budget." No wonder they are there for this bill that enhances the profits of the drug industry, $150 billion it enhances their profits and gives a $12 billion blank check to the HMOs in this country.

Milwaukee Journal says, "AARP receives millions of dollars from UnitedHealthcare, a national health insurance firm based in Minnesota."

Now, Mr. Speaker, in the last minute or two before yielding to my friends, I want to mention that Mr. Novelli, who is the head of AARP, who did the negotiations, these tough-minded negotiations with the drug companies and the insurance companies, Mr. Novelli wrote the preface to Newt Gingrich's book on how to reform Medicare.

Newt Gingrich is the guy that first thing after Medicare passed in 1965, only 12 Republicans voted for it. Bob Dole voted no. Donald Rumsfeld voted no. Strom Thurmond voted no. All kinds of Republicans voted no. In those days, Republicans did not like Medicare. They say they do now, but then Newt Gingrich, when the Republicans finally took control of the House in 1995, the first thing Newt Gingrich did was cut $250 billion from Medicare to do what? Guess. To pay for a tax cut for the richest people in the country. Same old story.

Mr. Novelli has decided he is buying in. The head of AARP writes the preface to Newt Gingrich's book on how to privatize Medicare, the same Newt Gingrich that said: If I have my way, Medicare's going to wither on the vine. The same Newt Gingrich that said that.

Mr. Novelli writes, "Newt's ideas," and they are on a first-name basis obviously as much time as they spent together trying to dismantle Medicare, "Newt's ideas are influencing how we at AARP are thinking about our national role in health promotion and disease prevention and in our advocating for system change." If only his 40 million members knew that he was in league with Newt Gingrich to try to privatize Medicare; that he, Mr. Novelli, was in league with the drug industry which will gain $150 billion, billion with a B, that is twice what we are spending in Iraq, $150 billion to the drug industry and a $12 billion insurance payout to the insurance companies. That is like 1,000 times more than Halliburton is still paying DICK CHENEY, the Vice President of the United States.

These things are pretty incredible, Mr. Speaker, when we think about the money that AARP is going to make from this bill. They are going to get in line behind the drug companies and the insurance companies with their hand out.

Mrs. CAPPS. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentlewoman from California.

Mrs. CAPPS. Mr. Speaker, I thank my friend the gentleman from Ohio (Mr. BROWN) for yielding to me.

I want, first of all, to acknowledge this motion to instruct conferees and thank my colleague from Nevada. It is very appropriate that this motion be submitted at this time as we are aware that the conferees on the Medicare modernization bill are meeting, but some news has been trickling out, even though to my knowledge there are Members only on one side of the aisle attending that conference report from the House of Representatives, and so it is just bits and pieces of news that come.

I am thankful that my colleague from Ohio mentioned the fact that AARP has endorsed this legislation which we really have not seen yet, but they must know some things about it, and I just want to say to my colleague that I sent Mr. Novelli a letter today resigning my membership, withdrawing my membership from AARP. I remember so clearly members from the organization from the Washington office coming to my office to tell me in very strong language this summer about the four principles that they were high bound must be in a prescription medication bill, a Medicare modernization bill, including defined benefits, including no means testing, including other standards, all of which are fast disappearing from the legislation as it is being prepared to bring to the floor for a conference vote before we adjourn here.

As this discussion goes on, I cannot get out of my mind the faces of the seniors in my district, several meetings over the past several weeks that I have had with them, seniors who signed up for Medicare+Choice, that partnership between the private sector, the HMOs, the insurance companies and Medicare, a volunteer program, voluntary program that they signed up for to help pay their prescription medications. In my congressional district which is, a lot of parts of it are rural, one after another of these HMOs after raising their premiums, after raising their copays, have left. In parts of my district, there is no choice for seniors but straight Medicare or medigap programs, and in other areas, there is one program just hanging on by a thread.

So the high cap program, the part of Medicare that provides a voluntary counseling service, had gathered seniors together to explain to them why they got this letter from the HMOs saying that they were going to withdraw from the area, not serve them any longer, confuse seniors in their eighties, many of them with health conditions. They were frightened. They were frustrated, and they do not want this legislation. They know very well what happens when we begin the process, which this bill most certainly will do, to take us into privatizing of Medicare, exactly what the former speaker, Mr. Gingrich, had in mind when he became Speaker of the House in the last decade.

This bill, the House bill and the Senate bill which are now being reconciled, are trying to impose an untried and really unnecessary privatization scheme. Medicare works. The piece that needs to be modernized is the prescription benefit. Privatizing Medicare will, contrary to what someone from the other side of the aisle said, will not give seniors that backup, because it will force and by bribing the HMOs, by putting money up front to the HMOs, which this motion to instruct seeks to remove, by bribing the HMOs to come into an area, the folks who are left with Medicare, straight Medicare will be the older and the sicker seniors, because those HMOs will raise their rates. They will raise their premiums, they will cherry pick, and only the sick seniors, the old seniors who have the highest costs will be left with straight Medicare. That is not a choice and that is going to happen. It will be happening before the end of this decade if this bill is passed and goes into effect.

This is something our seniors know very well, and the seniors who have contacted my office today in response to my removing myself from AARP are thankful that we are speaking up because they know that this is something that will not benefit them.

Mrs. WILSON of New Mexico. Mr. Speaker, I yield myself such time as I may consume.

I think all of us agree that Medicare is one of the most successful health care programs in the history of this country, and I think all of us have a right to be proud of what we are about to accomplish here because we have been elected to make a difference. All of us come here to make a difference on things that matter to the people that we serve, and a large number of national organizations, including the AARP and the American Medical Association, the hospital association, have all endorsed what we are about to accomplish.

I am very pleased to welcome this evening the other doctor from the State of Georgia (Mr. GINGREY) to explain further what this bill is going to do for Americans.

Mr. Speaker, I yield 3½ minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank the gentlewoman from New Mexico for yielding time to me.

Mr. Speaker, there they go again. They do not like the message so they start trashing, trashing the messenger, and in this case, the messenger just happens to be 35 million seniors who are members of the AARP. Excuse me, 35 million less one. The gentlewoman from California just told us that she resigned.

This is a solution, Mr. Speaker, in desperate need of a problem. The motion to instruct conferees, like so many that the minority has offered before, serves no useful purpose in this debate. They are simply political tools used in a desperate attempt to divert attention away from the fact that the Republican House will in a matter of days deliver, it will deliver on its commitment to providing seniors with access to meaningful, affordable and comprehensive prescription drug coverage.

Mr. Speaker, I support properly reimbursing physicians. The House bill did that and so does the bipartisan Medicare conference agreement which is why it is supported by a number of medical societies, including the American Medical Association.

Listen to what they say: "The American Medical Association strongly supports passage of the Medicare prescription drug conference report, which currently includes historic and critical provisions for improving choice and access for Medicare seniors and disabled patients. In addition," Mr. Speaker, "in addition, the conference report would halt 2 years of impending Medicare payment cuts to physicians and other health professionals and replace them with payment increases of at least 1.5 percent per year. Because the Medicare conference report includes these critical provisions for improving choice and access, the AMA strongly opposes the Berkley motion to instruct and urges Congress to pass the pending Medicare conference report before they adjourn."

If the gentlewoman from Nevada is serious about wanting to help our Nation's providers, our physician providers, and I trust that she is, I would urge her to reconsider her opposition to medical liability reform legislation such as H.R. 5, the HEALTH Act, the tort reform bill, a bill that was strongly supported by both the AMA and the Nevada Medical Association. The other body has not acted yet, so the gentlewoman will have yet another chance to truly support physician providers.

Mr. Speaker, I strongly support the bipartisan Medicare conference agreement, and we will soon consider this on the House floor. This motion to instruct no longer serves any purpose. Indeed, the provisions related to Medicare competition that the gentlewoman references in her motion are not even part of the final conference committee agreement.

I urge my colleagues to join me in rejecting this motion to instruct and supporting the final Medicare conference agreement.

Ms. BERKLEY. Mr. Speaker, I yield 5 minutes to the gentleman from Rhode Island (Mr. KENNEDY).

Mr. KENNEDY of Rhode Island. Mr. Speaker, I want to thank the gentlewoman from Nevada for offering this motion, and I reject those who would call it political.

Yes, believe it or not, we are in a political body, and yes, believe it or not, we live in a democracy where we are Representatives of the people, and we represent those folks the best we can. The gentlewoman from Nevada is doing her job in highlighting the fact that the Republican conference report on the Medicare bill is a sham.

If this was about prescription drug coverage, we would have it all done. There is no disagreement from anyone about the fact that prescription drug coverage ought to be passed. We are talking about $400 of prescription drug coverage for seniors. It would be done tonight. We could have it on the President's desk. There would not be one person against it other than those who are dead set against any kind of Medicare improvement whatsoever.

The problem the gentlewoman has accurately identified is that this premium support plan that is essentially part of their reform is untenable. It is untenable because the nature of senior citizens, their high risk of needing health care, is such that, guess what, we needed the Medicare program because when we relied on the private sector, the private sector was not there.

□ 2215

That is why we have the Medicare program, for those who do not understand what we are talking about tonight. We have the Medicare program because when left to the private sector, they did not cover seniors because they were too high risk.

So what do the Republicans propose? They propose going back to the days before we passed Medicare, where we left the seniors' health care to private insurers. Now, what are private insurers going to do? Guess what, they are going to have to figure out a way to make a profit. How do you make a profit with risk insurance when you have someone as high risk as a senior citizen? Well, if you are smart about your insurance practices, you try to avoid the risk. That is the whole nature of insurance, to avoid risk.

I hope I am not telling anyone anything new, but that is the nature of insurance. So you avoid risk, and that means avoid the sickest seniors. Avoid the seniors who will cost the most. And there will be no argument from the other side on this because it flies in the face of the for-profit nature of the HMO companies that they are about to turn our Medicare system over to.

So you avoid all the seniors that are costing you, you take the seniors that do not require much health care and you want to sign them up. And then what do you do? What happens to all those seniors that are not signed up? Oh, you propose to leave them in the traditional Medicare program, but will increase the premiums of part B on the traditional Medicare program to cover the increased cost that the Medicare program will incur. And the Republicans put a provision in the Medicare program saying that if it should exceed certain cost guidelines, then we will have to come back to Congress to figure out what to do.

Well, guess what is going to happen then? At that point you will say, well, we are going to have to dismantle Medicare because, guess what, it just is not working. Well, you are setting it up not to work. You are underfunding it. And if my colleagues do not believe anything I am saying, just understand this. Who is in favor of this bill? The pharmaceutical industry. Why are they in favor of this bill? Because it does not do what needs to be done to take on the pharmaceutical industry and say you need to give in this matter.

Thirty percent profit rates for the pharmaceutical industries are too much when our seniors are barely able to make it buying the prescription drugs they need and affording them the health and other things they might need in terms of housing and food and the like. The pharmaceutical companies like the Republican bill.

Who else likes the Republican bill? Guess what, the insurance companies like the Republican bill. And as the gentleman from Texas (Mr. DELAY) has said before, and the gentleman from California (Mr. THOMAS), the chairman of the committee, and so we do not misunderstand their intentions, because they said it very clearly, and here is the chairman of the committee: "To those who say that the House bill ends Medicare as we know it, our answer is: we certainly hope so."

Well, my friends, if senior citizens are comfortable with the fact that the future of Medicare is in the hands of those who believe in the private sector, then so be it.

Mrs. WILSON of New Mexico. Mr. Speaker, I yield myself such time as I may consume.

Sometimes I feel here like we are looking through the looking glass, like in the Alice in Wonderland book. Sometimes things people say do not make any sense to me at all. I do not understand how can people say we have underfunded, when we are just about to add $400 billion in new benefits to Medicare.

When Medicare was started back in 1965, medicine was only 1 percent of the cost of health care. We did not have the miracle medicines that we have today. Cancer, the diagnosis of cancer in 1965, was a death sentence. Today, people survive it because of medicine. And yet we have a system under Medicare that will pay for a diabetic to go into the hospital and have their foot amputated but will not pay $29.95 a month for the Glucophage to control blood sugar.

That is why so many seniors in New Mexico have opted for something called Medicare+Choice, because that is the only thing in Medicare that has given them something of a prescription drug benefit. Now, this is my card as a Member of Congress. I am actually a member of an HMO, like a whole lot of New Mexicans. It is very common in New Mexico. Forty percent of seniors in New Mexico take advantage of these kinds of plans because it has given them some choice and some options, when Medicare has not given them that choice before.

What we are adding to Medicare this week is a guaranteed benefit not just for people who are fortunate enough to live in Albuquerque, New Mexico, but for everybody else who has not had that opportunity: a guaranteed benefit under Medicare to add prescription drugs. That reduces the cost of medicine for everybody, and that gives people choices and options.

I think people want choices. If you are in Santa Rosa, New Mexico, maybe you want to get your prescription drugs by mail order. My family, we like to get it at the pharmacy, at the Journal Center at Loveless, just because that is convenient for us; but seniors should have those choices.

The other thing I think is important to seniors is that this is voluntary. If there is a senior, and I know a lot of veterans who are already covered by the VA or folks who have earned their health benefits through employment and they have great retiree plans, they do not have to sign up for this if they do not want to. But for those who do not have that coverage now, they will have the opportunity to get prescription drugs through Medicare.

Now, why does all this matter? I mean, we talk here about deductibles and donuts and all these kind of things; but I had somebody call my office recently, her name is Bertha Griego, and she is a wonderful lady who is 74 years old. She has lived all her life in New Mexico, and she talks with affection about the 1929 Model T her dad had driving around the dirt roads of New Mexico. She is a wonderful lady. And like most of our parents and grandparents, she has a growing list of ailments. Some of them are serious; some of them are just annoying. But prescription drugs have allowed her to live a relatively healthy life in her senior years.

Last year, she paid $1,700 for the whole year just in copayments for her medicine. She is on a fixed income. Her husband, Robert, also has medical bills; and he gets Social Security. He has a small pension. All together they earn about $16,000 a year. Well, when you pay the groceries and the light bill and the heating bill, the checking account gets a little short by the end of the month. And that happened recently.

Mrs. Griego ran out of money in the checking account 7 days before the next check came in. She also ran out of Lovexil, which is a medicine she takes for her thyroid problem. The pharmacist told her if she did not buy her medicine in the next 7 days, she would get a little groggy and tired in the meantime. And that is what happened. But Mrs. Griego could not get her pills until she had her check.

In New Mexico, 52 percent of seniors are low income, including Bertha and Robert. When we pass this legislation, and we get this program in place, Bertha and Robert will not have to wait for the next Social Security check to come in to buy their medicine. And that is why this matters. That is why we have a responsibility to do what we can with what we have from where we are and start making a difference for the problems that affect the people we care so much about.

Mr. Speaker, I reserve the balance of my time.

Ms. BERKLEY. Mr. Speaker, I yield 30 seconds to the gentleman from Rhode Island (Mr. KENNEDY).

Mr. KENNEDY of Rhode Island. Mr. Speaker, I thank the gentlewoman for yielding me this time, just a couple of seconds to respond to the gentlewoman from New Mexico.

The fact of her being so passionate about seniors I do not question whatsoever, but if she was truly interested in helping those low-income people, then how come her votes and those of her colleagues repeatedly have cut the very programs on behalf of the people that she says she is trying to help? Instead, her party votes to cut taxes for the richest 1 percent of our population, those with incomes over $350,000, by nearly $2 trillion. And two-thirds of that goes to the wealthiest 1 percent.

And I might add that when they are done with this Medicare bill, they are going to give all the money they cut; they are going to add to special interest money for those with HMOs and those with pharmaceutical interests. And do not take my word for it; just look at the Wall Street Journal. The HMOs and the pharmaceutical companies are jumping up and down thanking the gentlewoman from New Mexico for giving them a gift.

Ms. BERKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Mr. Speaker, I have a great deal of respect for the gentlewoman from New Mexico, and also the gentleman from Georgia, but I have to say I feel like I am listening to Alice in Wonderland when I listen to what the two of them are saying about this Medicare conference report that we are about to vote on in a few days.

The gentlewoman said that Medicare is very successful, and she pointed out that we are adding $400 billion to the program. But I would ask a very simple question: If it is so successful, why do we not just add it as a drug benefit and give the seniors the $400 billion for their prescription drugs?

That is what the Democrats proposed. We said, right now you have part B where you pay so much, I think it is about $50 a month for your doctor's care, a $100 deductible, 80 percent of the cost paid for by the Federal Government, and 20 percent copay. That is what the Democrats proposed. We said, do the same thing with prescription drugs: have the seniors pay $25 for a premium, a $100 deductible, 80 percent of the cost paid for by the Federal Government, 20 percent copay up to a certain amount, and then it becomes catastrophic. But that is not what the Republicans did.

The reason that the gentlewoman from Las Vegas is proposing this motion is because she does not want to give money to the HMOs. She does not want to force seniors to have to go to an HMO to get their prescription drugs. She says, let us give this money in this case to the doctors or let us give it to the seniors in some way so they benefit from it.

I totally agree with the gentlewoman that we need to provide prescription drug coverage and preventive care for seniors, but then why are the Republicans giving away money to the HMOs? Why are they forcing seniors to go to an HMO to get their prescription drug coverage? Sure, if someone wants to join an HMO, like in my State, some people do get their drug coverage, I have no problem with that; and I know the gentlewoman does not. But this forces the seniors into the HMO. My colleagues are saying they have to join an HMO in order to get the prescription drug coverage. And that is not fair. That is not choice. That is not voluntary.

Now, the gentleman from Georgia, said, well, we are providing with this Medicare agreement meaningful, affordable, and comprehensive coverage. That is simply not the case. First of all, seniors are being forced into an HMO. The Republicans are privatizing Medicare in the long run. But think about this benefit that you are giving the senior citizens. First of all, we do not even know what the premium is, so it may not be affordable at all. There is no set premium. We know that the deductible is $275, not $100, like it is for part B. And then there is, in fact, as the gentlewoman mentioned, this huge donut hole when you do not get any coverage at all. So the seniors in the long run are going to be paying more out, in my opinion, than they are going to get back.

Now, yes, this is a voluntary program. But what good is it if nobody sees fit to sign up for it because they will be forced into an HMO or they will have to pay so much money out of pocket that they do not get a meaningful, affordable, or comprehensive benefit the way the gentleman from Georgia described? None of that is the case here.

Finally, why can we not have real competition? Let us have the Medicare administrator negotiate price reduction. That is not in this bill either.

□ 2230

Mrs. WILSON of New Mexico. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill does not force anybody to join an HMO, but seniors have the right to choose to get their medicine from managed care if they want to. Or if they want to, they can choose a stand-alone prescription drug plan or they can have it integrated with a fee-for-service plan that works for them.

People choose different ways to get their health care. My family has made our choice, and we are comfortable with why we make those choices for a lot of reasons, but we should have enough variety in this new system so we do not have a one-size-fits-all system, and that seniors have the right to choose, whether it is a stand-alone prescription drug program, a mail order program, added to fee-for-service, or rolled into a managed care plan, if that is what citizens want, that is what we have tried to do.

I have to say, in the end, this program is being supported by a pretty broad array of organizations who see it for what it is, a very good step towards providing prescription drugs to seniors in this country.

Mr. Speaker, I reserve the balance of my time.

Ms. BERKLEY. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I would like the gentleman from Georgia to know he is going to have to continue doing the math and subtraction because the gentlewoman from California (Mrs. CAPPS) is not alone in resigning her membership today. I resigned mine, and I also circulated a letter here on the House floor, and within 30 minutes I had over 50 Members sign a letter to Mr. Novelli saying they were resigning their membership because of his change in his positions with AARP determining that it is more important to protect their insurance industry and their own insurance company than protecting the membership of AARP.

I want Members to know each time one of us announces that we have resigned and our constituents hear of it, we get calls back saying oh, I am resigning, too. I want to tell Members when the seniors in this country catch on to what the other side of the aisle are doing to them, they are going to want to resign.

Mrs. WILSON of New Mexico. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am not old enough to join AARP, but since they have become such a big part of this debate, I want to read what they have said. It is not an unqualified endorsement. I have never seen the perfect bill yet in this job, but it is a pretty good bill. I think the AARP came to that conclusion. I would like to enter their statement into the RECORD, but maybe reading some parts will explain where they are coming from. It is dated November 17, 2003, AARP endorses Medicare prescription drug bill, and this is directly from them.

"AARP today announced its strong endorsement of the prescription drug bill offered by the conference committee and will work vigorously for its passage.

"AARP believes that millions of older Americans and their families will be helped by this legislation. Though far from perfect, the bill represents an historic breakthrough, an important milestone in the Nation's commitment to strengthen and expand health security for its citizens at a time when it is sorely needed.

"The bill will provide prescription drug coverage at little cost to those who need it most: People with low incomes, including those who depend on Social Security for all or most of their income. It will provide substantial relief for those with very high drug costs, and will provide modest relief for millions more. It also provides a substantial increase in protections for retiree benefits and maintains fairness by upholding the health benefit protections of the Age Discrimination and Employment Act.

"AARP is pleased by the improvements made to the conference report in recent days. A new structure called "premium support" which required competition between traditional Medicare and private plans was downsized to a limited test starting in 2010, which has significant protections for those in traditional Medicare. The government will provide coverage in areas where private plans fail to offer coverage. The integrity of Medicare will be protected.

"An unprecedented $88 billion will encourage employers to maintain existing health retiree benefits. The legislation will help speed generic drugs to market and add important new preventive and chronic care management services. Finally, this legislation protects poor seniors from future soaring prescription drug costs.

"AARP is launching a national grassroots, advertising and information campaign this week to explain the legislation and urge bipartisan support for its passage."

Sometimes we get the kind of lukewarm endorsement around here that Members just pull a sentence or two of. This is not one of them. This is unqualified support from an organization that is not known for supporting Republican provisions in bills, frankly. And I think we got to this point because we put aside partisanship and politics and focused on making a difference for the people that we came here to serve.

I think we have a right to be proud of what this body and this Congress as a whole is about to achieve this week. I welcome and commend the AARP for setting aside its traditional focus on sometimes which party Members are in and focusing on policy and not on politics.

AARP ENDORSES MEDICARE PRESCRIPTION DRUG BILL

AARP today announced its strong endorsement of the prescription drug bill offered by the conference committee and will work vigorously for its passage.

AARP believes that millions of older Americans and their families will be helped by this legislation. Though far from perfect, the bill represents a historic breakthrough and important milestone in the nation's commitment to strengthen and expand health security for its citizens at a time when it is sorely needed.

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AARP is launching a national grassroots, advertising and information campaign this week to explain the legislation and urge bipartisan support for its passage.

Mr. Speaker, I reserve the balance of my time.

Ms. BERKLEY. Mr. Speaker, I yield myself such time as I may consume.

I am absolutely astounded by the continued nonsensical talk about bipartisanship when the Democrats were not even allowed in the room when the decisions were made, when consumer groups were excluded, when there was absolutely no interaction of bipartisanship on this bill, and I dare say that we have not even seen the legislation yet in its completed form because it has yet to come from the House leadership so all of us can review this. So this bipartisan discussion is nonsense.

Mr. Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. DEFAZIO) to enlighten all of us.

Mr. DEFAZIO. Mr. Speaker, the gentlewoman from New Mexico (Mrs. WILSON) mentioned the VA. I assume she is aware as a veteran that the VA negotiates on behalf of all of America's veterans, and they have negotiated prices and the extortionate cost of pharmaceuticals of about 60 percent. That is how we can afford to give them very inexpensive medications with a very small copayment.

Those are similar to the reductions in Canada, about 50–60 percent, but the Republicans have prohibited in this legislation that the government should negotiate on behalf of the 40 million people in Medicare any reduction in the price of pharmaceuticals at the behest of the pharmaceutical industry. This bill also prohibits the importation of drugs from Canada. They say, no, it does not do that, we are going to give the authority of the Secretary of HHS to reimport the drugs, but guess what he has already said, he will not do it because they are not safe. But, in fact, arguably drugs, U.S. manufactured, FDA-approved drugs are safer when they come back from Canada because their supply chain is left corrupt in Canada because it is controlled by the government and because they negotiate 50–60 percent reductions in the price.

The gentlewoman talks about competition. Guess what, the insurance industry who the gentlewoman wants to subsidize with $20 billion is exempt from antitrust law. They can throw out any senior at any time. We may get a 1-year plan from a company, but it is like every other form of insurance in America today, file one claim, next year you are back in the Medicare fee-for-service plan where the premiums have gone up because the industry has cherry picked people out until they need the service. They will give them a service grudgingly until the end of year until they can cut them off.

The people in my district know HMOs, they know them really well. The HMOs pulled out. They said we are not making enough money in southern Oregon, we are pulling out of southern Oregon, and they did. Now, there are no options. So we are going to put people back into the plans and the graces of the private insurance industry, after giving them a $20 billion subsidy without subjecting them to antitrust law and exempting them from any negotiation by the government to reduce the price of pharmaceuticals. This is a giveaway to the pharmaceutical industry, plain and simple.

Mrs. WILSON of New Mexico. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is true the VA does negotiate very hard to get low costs for veterans in their system; and the reason and the way they do that is the same way we are going to see under these new plans because it is kind of like when Americans go down to Costco or Price Club, when buying in bulk, consumers are going to get a better price.

Mr. DEFAZIO. Mr. Speaker, will the gentlewoman yield?

Mrs. WILSON of New Mexico. I yield to the gentleman from Oregon.

Mr. DEFAZIO. Mr. Speaker, I would ask the gentlewoman just to clarify, is the VA part of the government and are we prohibiting the rest of the government from negotiating on behalf of seniors?

Mrs. WILSON of New Mexico. Mr. Speaker, reclaiming my time, I would be happy to answer the gentleman's question in my own way here.

The VA does negotiate low prices because they have the leverage of having a lot of people who use the medicine. That is the same concept we are applying here, that there are large groups of people who can get a better price and get lower costs because they do it together. There is a group rate, just like we do if we go into Denny's with a large party, diners get a group rate and a lower cost.

The estimates are that the cost of medicine will go down between 15–25 percent, and we do not say that there has to be a Medicaid price. The companies can negotiate a low price, as low as they can get, and we give them leverage to do so. I think that is the way to go. And I think that guaranteed benefit is the way to go in this program.

Mr. Speaker, in closing, we are about this week to pass historic legislation that has been a long time in coming. This House has passed Medicare prescription drug bills twice before, but this is the first time that the Senate has also passed something and we can meet together in the middle. Contrary to the protestations by some of my colleagues, there actually were Democrats in the room, Senator BAUCUS and Senator BREAUX have both signed onto this approach, and without their support, we would not be passing this bill. I think that is important.

I think it is important to set some of those partisan things aside and try to get things done, recognizing that it is not perfect, but we are getting something done for the people who need it. It is voluntary. It gives people choices. It gives the most help to those who are low income and those who have high medicine costs because they are very sick. For the first time in Medicare, we are going to really focus on chronic disease management so that we improve the quality of life of seniors in addition to extending the length of life.

The biggest problem in Medicare today is that not enough seniors can afford life-saving medicine. We need to add this prescription drug benefit to Medicare.

I told Members about a lady in my district and there is another one I met who is a great grandmother. Her name is Ella May Naser. She is older than Medicare. She is about to be 98 years old, and she is still sharp as a tack. She is on her own now, but in August of every year she has to change her health care plan from one Medicare+Choice system to another because she only gets about $685 a month, and at some point the prescription drug benefit runs out in her plans. She has one medicine to control her high blood pressure, another to prevent degenerative bone disease, and another one for glaucoma. She has family that helps her sort all of these things out and try to make sure that her plans cover what she needs because they know she will stop taking her medicine if she does not have the money to pay for it.

This plan will help people like her. That is why we are doing this. That is why we have to set aside the little differences in order to accomplish the big things that people send us here to do.

Mr. Speaker, I yield back the balance of my time.

Ms. BERKLEY. Mr. Speaker, I yield 45 seconds to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Speaker, I think it is important that we note as a matter of record that where the gentlewoman from New Mexico (Mrs. WILSON) indicated there were two Democrats that were present at the conference, and the gentlewoman I understand served on that conference. The gentlewoman is aware that the gentleman from New York (Mr. RANGEL), the gentleman from Michigan (Mr. DINGELL), and the gentleman from Arkansas (Mr. BERRY) were appointed by the leadership to serve in that conference and were denied access.

□ 2245

There was no input from the Democratic Party in this House into this particular conference.

Ms. BERKLEY. Mr. Speaker, I yield myself the balance of my time.

I have always believed in providing a prescription medication benefit under the Medicare system. It makes no sense to me that we have a Medicare system that allows seniors to see a doctor, the doctor prescribes the least expensive, most cost-effective way of dealing with illness, which is prescription medication. Many of the seniors in my district and throughout the United States cannot afford the prescription medication that the doctor prescribes. Being a doctor's wife and having a stepdaughter who is a third-year medical student, I do not need to be lectured by the other side of how the effect of these Medicare reimbursements are affecting doctors because I know firsthand and personal what it is doing. I know that the doctors are suffering and that there is a real crisis in health care and that our doctors need to be appropriately reimbursed for the Medicare patients that they see.

But what I am opposed to is privatizing the Medicare system, and that is what this legislation does. Make no mistake about it, this legislation, rather than being a prescription drug plan, rather than being a Medicare reimbursement plan for doctors, what this is is the first step in privatizing Medicare, and that would be a disaster for our seniors.

I urge my colleagues to vote for this motion. My motion addresses the concern of the doctors across the country and ensures that Medicare patients can have access to their doctors by providing these doctors with a 1.5 percent increase in physician payments over the next 2 years. I ask my colleagues to protect our citizens and not have them investing in risky and untested privatization schemes and to put the necessary funding in the prescription drug bill to fairly reimburse our doctors who administer the necessary care to Medicare patients. Instead of putting the Medicare system in jeopardy, we should protect our constituents' access to care. This motion fixes this problem for another 2 years, but I implore my colleagues that in the future we must work together to address a permanent fix for the formula.

I urge my colleagues to support our doctors and their patients and vote "yes" on this motion to instruct.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ROGERS of Alabama). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentlewoman from Nevada (Ms. BERKLEY).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. BERKLEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

MOTION TO INSTRUCT CONFEREES ON H.R. 2660, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

Mr. KENNEDY of Rhode Island. Mr. Speaker, I offer a motion to instruct.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

> Mr. KENNEDY of Rhode Island moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 2660, be instructed to insist on the highest funding levels possible for nutrition programs for our nation's seniors as authorized by the Older Americans Act.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from Rhode Island (Mr. KENNEDY) and the gentleman from Ohio (Mr. REGULA) each will control 30 minutes.

The Chair recognizes the gentleman from Rhode Island (Mr. KENNEDY).

Mr. KENNEDY of Rhode Island. Mr. Speaker, I yield myself such time as I may consume.

Today I rise to offer a motion to instruct the House conferees on the 2004 Labor, HHS and Education appropriations bill to insist on the highest level of funding possible for nutrition programs for seniors, programs such as Meals on Wheels and congregated meal sites.

As I rise this evening, I want to thank the gentleman from Ohio (Mr. REGULA) and the gentleman from Wisconsin (Mr. OBEY), who are both leaders on the Labor-HHS-Education subcommittee and who both know how important these programs are. I want to thank them for their hard work year in and year out to protect these programs so vital to our senior citizens.

This week we are debating controversial legislation, as Members have just no doubt heard, on the floor about the future of the Medicare system and the importance of providing a drug benefit without forcing seniors into HMOs. But the importance of that debate will be left to another time. Tonight we are in agreement when it comes to the importance of senior nutrition programs, and this truly is a bipartisan issue.

I know that most Members of this Chamber have often visited their senior centers and know, having spoken to them, how important it is that they receive these congregated meals. Tonight, this is an opportunity to put our money where our mouth is, and it is an actual opportunity to encourage our conferees to spend the money on senior nutrition. Even in spite of the fact that we have tight budgets, we cannot give senior citizens short shrift.

As I said, Members know about these programs, but I do not know how many of them truly appreciate their magnitude and reach. I would encourage those colleagues of mine who have not been out on a Meals on Wheels visit to go out with a volunteer and visit the people for whom these programs help make a difference. Nearly 2 million people receive meals through the congregated meal site program and 1 million through the Meals on Wheels program. This adds up to a total of 250 million actual meals served. That is a compelling statistic that reflects the nature of these programs.

My father, Senator EDWARD KENNEDY, was the author of the legislation that made the seniors' nutrition programs part of the Older Americans Act. I am proud that my father, Senator EDWARD KENNEDY, was responsible for the founding of Meals on Wheels. What he and others of his colleagues have recognized over 30 years is that Meals on Wheels is an important program not only for the nutrition that it brings but also because of the companionship and the neighbor-to-neighbor relationship that it fosters. For many seniors, not only at the home is delivered a meal but a face with that meal, a person, someone who can offer companionship and friendship and know what is going on in the home when they arrive and deliver the meal. The value of these meals pays itself back in both the importance of good nutrition and also through the companionship and care that these meal volunteers provide.

We talk in Congress about how an ounce of prevention is worth a pound of cure. That is nowhere more true than the Meals on Wheels and the congregated meal site programs. In the congregated meal site programs, seniors get together at the senior centers to join in lunch; but in the process of doing that, they are exposed to an array of social services that may also be of assistance to them. Unfortunately, as many of us know in our Nation, one in 10 seniors lives in poverty. At the same time, there is expected to be a 30 percent increase in the number of Americans eligible for the Older Americans Act now that the baby boom generation is becoming the senior boom generation. Already in my State of Rhode Island, 14.5 percent of our population is 65 or older. We need to be ready for this population as it retires. We need to be ready for them as we take care of the seniors of today.

Finally, Mr. Speaker, before I turn it over to my colleagues, let me say, I have met Edna Bateman in one of my tours on a senior meal site. Edna Bateman is from East Providence, Rhode Island, and she knows what a difference it has made to her in her life not only to get that hot meal but also to have that companionship, that visitor every day that she is looking forward to seeing, who she wakes up every morning looking forward to talking to, who she unlocks her door and leaves it open so that she looks forward to hearing that Meals on Wheels volunteer coming to her door.

That is why I rise tonight to make sure more people like Edna Bateman get the services like this Meals on Wheels program. I want to pay tribute to her and the many others who receive this program. Tonight I know we all rise in support of those folks.

Mr. Speaker, I reserve the balance of my time.

Mr. REGULA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Rhode Island has described many of the values of this program. He is a very valued member of our subcommittee. As he well knows, we have done all we could for this program within the constraints of the Budget Act. It is a great program. I think one of the benefits that probably was not mentioned is it gives a lot of people in communities a sense of participation because these meals are delivered by volunteers in most cases if not all. That means that those in the community who are doing this service realize that they are helping the seniors. It gives them an understanding, but most importantly, of course, as the gentleman from Rhode Island (Mr. KENNEDY) described, it is very important to the beneficiaries of the program.

As has been mentioned, it is not only the nutrition and that is important. Seventy-nine percent of the individuals that are recipients have a high nutritional risk and the Meals on Wheels ensures that they will get, at least as much as possible, a balanced diet which obviously will contribute to their health.

We were earlier debating some aspects of the Medicare reform bill and the prescription drug change. I think that bill does more on preventive medicine than has been the case in the past. An item such as requiring that those who go on Medicare must first have a medical examination to see if they have any problems, that will now be covered by Medicare. I think that is a great provision. But part of preventive medicine is having a nutritious diet. The Older Americans Act nutrition programs serve that purpose. As was mentioned, over 270 million meals to almost 3 million people that benefit. They benefit in a congregate setting and also as individuals in their homes.

What it does is allow people to stay in their homes for a longer period of time. In my discussion with seniors, they want to stay at home as long as possible. They do not want to be institutionalized. Meals on Wheels affords them that privilege. I wish we could do more. I wish the budget numbers that were provided to our subcommittee were larger, but we have a lot of challenges in the Labor-H subcommittee. We have the challenges of funding the research at the National Institutes of Health. We have the challenges of funding the Centers for Disease Control; that has a new dimension because of 9/11. We have the challenge of providing good education to ensure that no child is left behind. We have the challenge in the Labor Department of providing services to those that are unemployed so that they can get back into employment. We have some tough policy decisions that we have to make.

We do put a lot of money into the Older Americans Act. I and all of us wish it could be more, but we have to balance out the needs of the seniors and the Meals on Wheels programs with education, health research and so on. But on balance this is good preventive medicine, to provide for nutritious meals. It also, as was mentioned, is very important for their social wellbeing. The fact that somebody is going to come to their home once a day for 5 days a week, it gives them a sense of being a part of the community. Because these people that are delivering these Meals on Wheels are volunteers, most of them have some time that they can stop and visit a little bit with the clients. I think that adds to their wellbeing and adds to their ability to be comfortable in their home setting.

Another feature of this that we do not fully appreciate is that the Meals on Wheels leverages a lot of other sources. It leverages the State funds. In the case of the Native Americans, it leverages tribal funds. It leverages local funds and Federal moneys and other subcommittees of appropriations. These total contributions of matching funds more than exceed what we put into the program in our bill. That is a very positive thing that we do—leverage these funds.

I think for this reason I have no objection to this motion to instruct. I wish we could do more, but we are limited in the total resources that are available as we make the priority choices among many very fine programs. We have in constructing this bill held the numbers that can be available for the Meals on Wheels, the Older Americans Act at the highest level possible within the constraints of the resources that are provided to our subcommittee.

Mr. Speaker, I reserve the balance of my time.

Mr. KENNEDY of Rhode Island. Mr. Speaker, it is my pleasure to yield 6 minutes to the gentleman from Massachusetts (Mr. DELAHUNT) who represents Cape Cod and the islands.

□ 2300

Mr. DELAHUNT. Mr. Speaker, I would like to thank my colleague from New England for his leadership in this very important issue. He certainly has inherited a legacy from his father, and those of us from Massachusetts are proud not only of our senior Senator but his son, his youngest son.

As cochair of the House Older Americans Caucus, along with, of course, the chairman of the committee who has established a reputation for compassion and for concern for the elderly in this country, I too rise in strong support of this motion because I share their belief that Congress must fund senior nutrition programs at the highest levels authorized by the Older Americans Act. The conferees should support the funding levels set forth in the House conference report.

First, the health of our seniors depends on full funding of nutrition programs. It has been clearly established in study after study that poor eating habits can lead to serious medical problems for aging adults, including the early onset of chronic diseases that inevitably escalate the cost of health care here in this country. Frail and homebound adults benefit enormously from the prepared meals supplied by organizations such as Meals on Wheels. Indeed, that one meal can provide half of their total nutritional requirements for the day. That fact is truly significant when one considers that nearly 3 million seniors benefitted from nutritional programs and services last year.

In my home State of Massachusetts, over 50,000 seniors rely on congregate and home-delivered meals each year, as well as the nutritional screenings and counseling authorized by the legislation. Accordingly, the programs that we are talking about deliver, literally, on our goal to meet the nutritional needs of older Americans.

Secondly, our commitment to provide the highest level of funding for these activities makes sense economically and produces substantial savings to the American taxpayer. Through these investments we are saving costs in the long term, as I alluded to earlier, along with the references by those who spoke previously. With home meal delivery, seniors can live independently for longer periods. Furthermore, studies show that these services also prevent costly hospitalizations resulting from nutritional deficiencies and social isolation. That translates into a substantial savings to the American taxpayer.

Third, I believe, as others have suggested, that the intangible aspects of these programs provide an incredible benefit to our communities and enhance a sense of community, not only to those that receive directly these benefits, but to those who provide them. For some individuals, the volunteer knocking at their door may be the only visitor of the day. So in simple human terms, we cannot underestimate the value that this single interaction may have for an elderly person, many of whom are female, many of whom are widowed, many of whom live alone. And it should not go unstated that tragically in this country, many of our seniors, a disproportionate share of our seniors when compared to the rest of the population, suffer from chronic depression. So let me suggest that this is a point where government and compassionate conservatism should intercept.

Finally, I would like to commend all those who volunteer to keep these programs running. In my district, many of these individuals are themselves active seniors. For all these reasons, I strongly support these neighborhood organizations working to strengthen the connection between seniors and their communities. So in recognition of their hard work, as well as the needs of elderly Americans, I urge the conferees to adopt the House language that was crafted by the gentleman from Ohio and fund senior nutrition programs at the highest level. And, again, let me applaud the great work of the gentleman from Rhode Island (Mr. KENNEDY), Massachusetts and Rhode Island's native son.

Mr. KENNEDY of Rhode Island. Mr. Speaker, I thank the gentleman from Massachusetts (Mr. DELAHUNT) for his comments.

Mr. Speaker, I yield 4 minutes to the gentlewoman from Nevada (Ms. BERKLEY).

Ms. BERKLEY. Mr. Speaker, as a cochairman of the Older Americans Caucus, I rise tonight in support of the gentleman from Rhode Island's (Mr. KENNEDY) motion to instruct the conferees of the Labor, Health and Human Services, and Education Appropriations bill to provide full funding for vital seniors' nutrition programs.

Over the next 5 years, the number of Americans eligible to take part in programs under the Older Americans Act will rise by 25 percent as the Baby Boom generation reaches retirement age. As the number of seniors in the United States grows, it is vitally important that nutrition programs are fully funded.

In my home State of Nevada, over 20,000 seniors are served millions of meals annually at the senior centers, schools, and in their own homes. In just the past 5 years, the Meals on Wheels program in southern Nevada, which has the Nation's fastest growing seniors population, has grown from serving 350 homebound clients to over 1,000 today.

As the senior population rapidly grows, the senior services in Las Vegas are striving to keep up with the expanding demand. The Meals on Wheels program in southern Nevada continues to develop innovative ways to handle the growth and widen their service base to more seniors. For instance, one driver delivers a week's worth of frozen meals once a week to a seniors' home in Las Vegas instead of one hot meal a day.

For a senior who is disabled or lives alone, a hot meal delivered to their home or served in a local senior center is invaluable to their well-being and may be the only way that the older Americans are assured that they receive the nutrition that they need to stay healthy. This is especially true for those seniors living under the poverty level. In 2002 the national average of seniors living in poverty was 10 percent. I am sorry to say that in my district 14.6 percent of the seniors are living below the poverty level. For these seniors, assistance in getting healthy meals is critical to their health and their well-being.

Not only are seniors grateful for the comfort of a hot meal, but a study of the Elderly Nutrition Program found that senior participants have a higher daily intake of key nutrients that seniors who do not participate in the nutrition programs have. Funding Meals on Wheels and other programs not only ensures adequate nutrition but also provides an important link to supportive in-home and community-based services and empowers seniors to remain self-sufficient in their own homes. The drivers for Meals on Wheels in southern Nevada, all of whom are retired seniors themselves, not only provide meals but are a critical link to the community for many of the seniors that they serve.

I want to thank the gentleman from Rhode Island (Mr. KENNEDY) for his leadership in offering this motion and the gentleman from Ohio (Mr. REGULA) for his support. I urge my colleagues to support full funding for the Nation's senior nutrition programs as a way to ensure the good health and a better quality of life for seniors in Nevada and nationwide.

Mr. REGULA. Mr. Speaker, I reserve the balance of my time.

Mr. KENNEDY of Rhode Island. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Mrs. CAPPS).

□ 2310

Mrs. CAPPS. Mr. Speaker, I thank my colleague, the gentleman from Rhode Island (Mr. KENNEDY) for his leadership on this motion to instruct conferees for full funding for senior nutrition programs and to note that it is a second generation to take leadership in this area. I commend, also, the chairman of the committee, the gentleman from Ohio (Mr. REGULA), for his leadership in senior issues and the Older Americans Act.

Mr. Speaker, I rise in support of this motion because it is just at the bottom of our priorities that we pay attention to senior nutrition. Very few images are more upsetting and unsettling to any of us to think of our parents and our grandparents, our neighbors, and the elderly going without proper nutrition. Unfortunately, too many seniors live in poverty in our communities and must struggle daily to get the food they need. This is unacceptable and that is the reason for the passage of the Older Americans Act and its reauthorization.

And here we are struggling with the fact that our Federal budget and our appropriation process in this hallowed body is really a reflection of our values as Americans as people, with mothers and fathers, and children and neighbors, and a responsibility to care for those who have cared for us. That is the way this world runs when it is run according to the highest values which we espouse.

Yes, budgets are tight, but we do make priorities. And I am here to agree with my colleague, the gentleman from Rhode Island (Mr. KENNEDY) that our older Americans ought to be a priority. It is such an honor to represent a community and communities in my district, as we all do, to visit among the people who make this program come to life. We fund the Older Americans Act. We fund programs that allow Meals on Wheels to exist. And when we see them at work in the communities, these programs that are run by volunteers, that leverage our precious few dollars and make those dollars stretch, I cannot believe the quality food that is prepared on the budgets that we give them, that they get volunteer donations, the drivers are so committed, their routes mean so much to them, that knock on the door is life-giving to the person who resides on the other side. For some it is their single connection to the outside world. It is food but it is so much more than food.

Now, I just implore all of us here in this body to take seriously our responsibility to fund this legislation at the proper amount that will do justice to our reasons for being here.

Mr. KENNEDY. Mr. Speaker, I would like to take a second and just acknowledge the wonderful comments of my colleague, the gentlewoman from California (Mrs. CAPPS) who so beautifully encapsulated the reason we are here tonight speaking on behalf of this knowledge.

Mr. Speaker, I yield 3 minutes to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Speaker, I am perhaps the only Member of the House of Representatives who has trained in the field of gerontology, run a senior citizen program, perhaps someone else has, and actually gone with volunteers, delivered meals in homes, supervised volunteers who delivered meals in homes, and spent a lot of time at congregate meal sites.

Let me tell my colleagues this: If any motion to instruct should be nonpolitical and should receive the unanimous support of this body, that should actually be respected by the group negotiating the compromise here, it is this one, to provide the highest possible levels.

Now, the President, unfortunately, proposed to actually cut funding for Meals on Wheels. Now, he has a lot of ideas about people replacing government programs and that. This is essentially a nongovernmental program. It depends tremendously upon volunteers and community assistance and a lot of locally generated contributions matched with a little bit of Federal funds to leaven the mix. And the President's cut would have eliminated this program for many.

A lot of seniors, this is the only person they are going to see in a day. They are shut in. The only person they are going to see is the person that brings them that hot meal. It helps them stay connected to the community. It gives them a little bit of socialization. It allows people to know that they are doing okay in their homes. There are not a lot of other systems or places to do that. Many of them who I visited with on Friday get very nervous and they cry on Mondays when they see the people coming again. Over the weekend, they have the frozen meals and they had something to eat, but they did not see anybody. They were shut in.

Mr. Speaker, to cut this program as the President has proposed would be a tremendous disservice to those who have given so much to our country over so many productive years and now just need a little bit of help to stay in their homes in their later years, the congregate meal sites, to visit those, and the vitality of our senior citizens in later years. It is inspiring to me many times when I go and I hear and I see as I visit the congregate meal sites. But, again, it is also a tremendous socialization experience.

So this House could do no better than to unanimously adopt this, but not only unanimously adopt this. We vote on an awful lot of motions to instruct here that are immediately tossed in the trash can by the negotiators. I would hope that this would be one motion that is respected, where we deliver and where we give back a little bit to our seniors who gave so much to us, our grandparents, our great grandparents and others. The greatest generation deserves better than a cut in the programs that are helping the most fragile and vulnerable of them.

Mr. REGULA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, just briefly, I think for those that have listened to this debate tonight, as a society we can take pride in this program of the Older Americans Act. And I might add one that has not been discussed yet is the Caregivers Program which is also in our subcommittee to help people gain the knowledge of how to provide care to their elderly relatives, family, and so on in the home setting. All of this adds up to a real effort to allow those who want to stay in their homes to do so. And in the House bill, we can increase the amount over last year. And we will be very mindful of the thrust of this instruction as we negotiate with the other body in a final number.

But, again, I would say that as Americans we can take pride in what we have done, I think in the Older Americans Act, to allow people to stay in their home, to allow people to have some social contact with the other members of their community, to allow the volunteers who want to help others to have this opportunity. So we certainly support the motion to instruct. And as a conferee, I will do all that I can to urge that we do get the highest possible number within the constraints of priorities that we have in the bill and the constraints of the allocation that we started with originally.

Mr. Speaker, I yield back the balance of my time.

Mr. KENNEDY of Rhode Island. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to thank the chairman of the committee, the gentleman from Ohio (Mr. REGULA) who is chairman of the Labor Health and Human Services and Education Subcommittee of the Committee on appropriations on which I serve. I want to join him in saying that I think we need to do a lot more within the Older Americans Act, not only in the congregate meal site and the Meals on Wheels, but, as you pointed out, the support for family members, many of them I know that you understand are burning out because they do not have the support that they need to care for their loved ones.

As the chairman has said so well, often the greatest number of caregivers in this country are seniors themselves. And they are caring for their loved ones, and they need to have all the support they can get too. So I thank the chairman for acknowledging that. We need to look out for the caregivers, as well, if we care about those that they are caring for. I appreciate the fact that he made that observation.

With that, Mr. Speaker, let me just, once again, say that I rise in support of this motion to instruct conferees, to see it to the highest possible level when it comes to nutrition programs, Meals on Wheels, and congregate meal site programs within the conference report.

Ms. ROYBAL-ALLARD. Mr. Speaker, I rise in support of the Kennedy motion to instruct conferees to the Labor-HHS-Education Appropriations bill to insist on the highest funding levels for senior nutrition programs.

All of us know that the Labor-HHS-Education Appropriations bill contains many of the most worthwhile programs administered by the federal government, and nutrition programs for seniors are just one example.

As a new member of this subcommittee, I was impressed by the testimony from the Administration on Aging outlining the enormous good that these programs accomplish each year. Although Chairman REGULA has often reminded us of the need to comply with budget restrictions, I believe he and the Republican members of the subcommittee know the importance of increasing funding for these programs each year in order to keep pace with inflation and to make progress in providing meals to additional seniors.

In California, with an estimated population of over 35 million people, over 4 million people are 65 years or over. These seniors are served over 11 million home-based meals through Older Americans Act programs, and another 9 million congregate meals are served.

These statistics are testament to the enormous leveraging effect that federal nutrition programs accomplish. As testimony by the Administration on Aging reveals, 44 percent of the cost of a congregate meal and 29 percent of the cost of a home-delivered meal comes from Older Americans Act funds—the balance comes from state, community and private contributions.

Unfortunately, the demand still exceeds these combined federal and local community efforts. The need for these programs is undisputed. In fact, testimony from the Administration on Aging reveals that 41 percent of home-delivered nutrition programs and 9 percent of congregate nutrition programs have waiting lists for services. On average, local programs had 85 seniors on a home-delivered meals waiting list with a wait time of nearly 3 months. On average, local programs had 52 seniors on a congregate meals waiting list with a wait time of about 2 months.

As the evidence indicates, I believe it is important that we strive to make incremental progress every year to support the goal of adequate nutrition for seniors by eliminating the waiting lists and providing meals to all seniors who need then.

The differences between the House and Senate bills with regard to senior meals may appear small—about 4 million dollars out of a total of over $700 million for senior nutrition services. But we know these dollars make an enormous difference in the lives of so many seniors.

I urge my colleagues to support the Kennedy motion so we can make progress again this year.

Mr. KENNEDY of Rhode Island. Mr. Speaker, I yield back the balance of my time.

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The SPEAKER pro tempore (Mr. BISHOP of Utah). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Rhode Island (Mr. KENNEDY).

The motion to instruct was agreed to.

A motion to reconsider was laid on the table.

2003 NATIONAL MONEY LAUNDERING STRATEGY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on the Judiciary and the Committee on Financial Services:

To the Congress of the United States:

Consistent with section 2(a) of the Money Laundering and Financial Crimes Strategy Act of 1998 (Public Law 105–310; 31 U.S.C. 5341(a)(2)), enclosed is the 2003 National Money Laundering Strategy, prepared by my Administration.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 18, 2003.*

ACKNOWLEDGING AN OUTSTANDING INDIVIDUAL SUPPORTING PEACE IN OUR WORLD NAMED REVEREND DR. MICHAEL BECKWITH

(Ms. WATSON asked and was given permission to address the House for 1 minute.)

Ms. WATSON. Mr. Speaker, I rise today to acknowledge an extraordinary human being. Reverend Dr. Michael Beckwith, an outstanding man, an emissary of peace and a humanitarian for all people, has made a profound and lasting impact on our world through his distinctive stand for peace and harmony in our community.

Having known Reverend Michael, as his community affectionately refers to him, since he was a child, I can unequivocally say that his life is a testament to building community. In the 1970s, he began a journey that to this day embraces the major religions, philosophies and cultures of East and West. One significant manifestation of his vision began in 1986 when Dr. Beckwith founded Agape, a transdenominational community with over 9,000 members currently devoted to the study and practice of the New Thought-Ancient Wisdom tradition of spirituality.

If it is so, as Emerson has stated, that every institution is but the lengthened shadow of one person, then the Agape International Spiritual Center, the Association for Global New Thought, and the Season for Nonviolence are all indeed extensions of Dr. Beckwith. Furthermore, they are distinctly an emblem of his vision of one human family united on a foundation of peace based on the spiritual origin of every man, woman and child.

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Having known "Reverend Michael," as his community affectionately refers to him, since he was a child, I can unequivocally say that his life is a testament to building community. In the 1970's he began a journey that to this day embraces the major religions, philosophies and cultures of East and West. One significant manifestation of this vision began in 1986 when Dr. Beckwith founded Agape, a trans-denominational community with over 9,000 members currently devoted to the study and practice of the New Thought—Ancient Wisdom tradition of spirituality.

If it is so, as Emerson has stated, that, "every institution is but the lengthened shadow of one person," then the Agape International Spiritual Center, the Association for Global New Thought and the Season for Nonviolence are all indeed extensions of Dr. Beckwith. Furthermore, they are distinctly emblematic of his vision of one human family united on a foundation of peace based on the spiritual origin of every man, woman and child.

One of the largest churches of its kind, the Agape church is a portrait of multiculturalism. The diversity you will find attending service on Sunday can be compared to the diversity that would be found by walking into the United Nations. Further, Agape's unique outreach ministry reaches deep into the heart of the community to care for city, country and world citizens who need it most.

But Dr. Beckwith's impact is even greater. His entire life, being dedicated to serving his community and creating harmony in our world, has attracted the movement's most influential visionaries, leaders and teachers including Arun Gandhi and his Holiness the Dalai Lama of Tibet. Coretta Scott King wrote in a personal letter to Reverend Michael upon his election as an assembly member of the Parliament of the World's Religions, "I greatly admire what you are doing to bring about the Beloved Community, which is certainly what my dear husband worked for an ultimately gave his life."

Whether it's through his leadership as president of the Association of Global New Thought where he stands with co-creative leaders on the threshold of an evolutionary leap that dares to call an end to human suffering, as the author of Forty Day Mind Fast-Soul Feast and A Manifesto of Peace, or as co-founder of the Season for Nonviolence, a grassroots effort expanding the power and truth of non-violence, Reverend Michael stands before us as an exemplary guide to living in a world united by humankind's highest spiritual, philosophical, educational and scientific expression.

ON THE HEALTH CARE EQUALITY AND ACCOUNTABILITY ACT OF 2003

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, in the backdrop of just returning from Iraq and seeing the challenges of our soldiers, might I offer to their families and those who lost their lives in the Black Hawk incident of just about 3 days ago my deepest sympathy.

I rise today because I am very proud to be joining with my colleagues in the offering of the Health Care Equality and Accountability Act of 2003, I believe one of the singular legislative initiatives of this century. I congratulate the gentleman from Maryland (Mr. CUMMINGS), chair of the Congressional Black Caucus; the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN), chair of the Congressional Black Caucus Health Brain Trust; House Democratic leader NANCY PELOSI; Senate Democratic leader TOM DASCHLE; Senator EDWARD KENNEDY; as well as leaders of the Congressional Hispanic Caucus, the gentleman from Texas (Mr. RODRIGUEZ); Congressional Asian Pacific American Caucus; and the Native American Caucus. This has been a tremendous coming together recognizing the need for curing disparity in health care in America.

I am very proud that this bill improves the diversity of our health workforce, improves data collection on health disparities, and helps to reduce the disparities by promoting accountability and strengthening the institutions that serve minority communities.

I am glad to have been the author of two particular pieces of this legislation, one that will create the Center for Cultural and Linguistic Competence in Health Care so that individuals who speak a different language, who have a different culture will be able to be treated by those health professionals who understand; and a piece to be able to give visas to those who will come and to treat those in the inner city areas and rural communities.

Mr. Speaker, this is a great bill. I hope my colleagues on both sides of the aisle will help to see this bill passed immediately to save lives here and abroad.

Mr. Speaker, across this great Nation the health disparities between minority and majority populations are staggering. As the economy continues to falter and as the unemployment rate spikes, millions of Americans are losing their health insurance. That state of affairs will only make the health disparities worse. Therefore, the introduction and movement of this legislation is imperative.

I commend my colleagues: Representatives ELIJAH E. CUMMINGS, chair of the Congressional Black Caucus (CBC), Delegate DONNA CHRISTENSEN, chair of the CBC Health Braintrust, House Democratic Leader NANCY PELOSI, Senate Democratic Leader TOM DASCHLE, and Senator EDWARD KENNEDY, as well as Leaders from the Congressional Hispanic Caucus, the Congressional Asian Pacific American Caucus, and the Native American Caucus. This has been a tremendous effort, and has truly resulted in a landmark piece of legislation.

This bill will expand health coverage, improve the diversity of our health workforce, improve data collection on health disparities and then help reduce those disparities by promoting accountability and strengthening the institutions that serve minority communities. Truly, this bill represents years of intense thought and discussion, and 9 months of hard work on both the House and Senate sides. It is the comprehensive approach that this important issue deserves. The Healthcare Equality and Accountability Act is a solid foundation upon which we can build a strong healthcare system that will bring quality affordable healthcare to all Americans.

I am also pleased to be the author of two pieces in this landmark legislation. First, this act will create the Center for Cultural and Linguistic Competence in Health Care. Too often, even people who can afford to pay for quality care receive second-rate services because healthcare providers cannot speak their language or relate to their cultural health backgrounds. Good medicine is more than dispensing pills; it is about communication and an understanding relationship between doctor and patient. The center will help foster that kind of relationship.

Also, drawing on my expertise as ranking member on the House Subcommittee on Immigration and Claims, I was gratified to contribute a piece that will provide appropriate visas for healthcare providers to come to the U.S. to work in underserved areas as needed.

It is a misconception that minority health care is just about helping minorities. Keeping Americans healthy ensures that children can stay in school and that their parents can go to work. It ensures that our emergency rooms are not glutted. It ensures that our hospitals are not wasting time and money chasing the uninsured with massive bills they cannot afford to pay anyway. Keeping Americans healthy ensures that all of our friends, neighbors, and loved ones can have longer, more productive lives to contribute to our communities and to our economy.

We all pay the cost of leaving people in America without health coverage. We cannot afford to pay that high cost any longer. The time for health equality is now.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

BAD DEAL FOR AMERICA'S SENIORS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

Mr. DEFAZIO. Mr. Speaker, there is a lot of confusion from the debate earlier tonight about what the so-called pharmaceutical benefit for seniors is or is not. Let us just clarify things a little bit.

First off, there are two bedrock principles in this provision of law. It prohibits the Federal Government of the United States from negotiating lower drug prices on behalf of Medicare beneficiaries. It prohibits the government from doing that.

We heard a discussion from the gentlewoman from New Mexico (Mrs. WILSON) about people who will be put together in groups and they will negotiate lower prices as much as 15 or 20 percent. Well, the government has done that with our veterans and they have lowered prices up to 60 percent for those drugs and the veterans group is much smaller than the Medicare group. So if we were to aggregate all of seniors voluntarily into a group without them paying a penny or premium of any sorts and have the government negotiate on their behalf for price reductions, one could expect that they might even exceed those of Veterans Administration. Maybe we would see prices even lower than in Canada.

That is the second bedrock principle of this legislation. Not only does this legislation at the behest of the pharmaceutical industry prohibit the government from negotiating lower prices in the extortionate cost of prescription drugs, the highest in the world here in the United States, secondly, it actually would say that not only can you not do that but it is going to stop the importation or really restrain the importation of less expensive drugs from Canada and other countries because it has a provision that says the Secretary of Health and Human Services will have to say that those drugs are safe, in his opinion.

Well, he has already rendered an opinion. He has already said they are not safe in his opinion. Now, there is a little problem with that. Actually, the supply chain in Canada has more integrity than the supply chain in the United States. In the United States we have a whole host of people who are out there. We have these closed-door pharmacies. We have unregulated middle men and wholesalers. The drugs really are not tracked and a whole lot of counterfeit drugs are getting injected into the system in the United States. But in Canada the Government of Canada negotiates on the behalf of the Canadian people very substantial price cuts from U.S. manufacturers of FDA-approved drugs; and when the drugs go to Canada, they are always within the purview of the government there. They track them much more carefully than in the United States.

So arguably you could say that FDA-approved, U.S.-manufactured pharmaceuticals returning to the United States from Canada directly to a consumer would be less likely to be adulterated or counterfeit than many of those in the supply chain in the United States of America. That is very well documented. It was particularly well documented in a recent series in The Washington Post.

So what is really at risk here? If it is not the health of seniors, which is suddenly of tremendous concern to the majority party here at the behest of the pharmaceutical and insurance industries, what is really at risk? Well, what is really at risk is the extortionate price they are able to extract from the American people for pharmaceuticals. Americans pay far more than any other developed nation in the world for pharmaceuticals. This bill will do nothing to help that. In fact, this bill will guarantee that price gouging will be continued.

The other big benefit is that seniors would be allowed under this bill to go and buy private insurance at a price that is not yet totally determined but with substantial deductibles. And under the optimistic estimates, and these are only estimates because God forbid the government even after giving a $20 billion subsidy under this bill to the private insurance industry should mandate they do anything, we are hoping that they would offer an affordable benefit; and the estimates, optimistic, are that a person who has a drug bill of $1,000 a year would get a benefit of $109 a year after they pay their premiums, copayments, and deductibles. A person with a drug bill of $5,000 a year would get a benefit of $1,024. They would pay 80 percent of the cost. The person at $1,000 a year would pay 77 percent of the cost.

If those same people were just allowed to purchase their drugs from Canada, the price would be 50 percent or less. If the government negotiated on their behalf using the market power of the people in Medicare to reduce the price, it would likely be 50 or 45 percent. So what we are really doing here is providing a huge subsidy to the private insurance industry setting up the pharmaceutical industry to continue price gouging and setting up seniors for a very big fall; and this is such a great benefit, it will not even begin until year 2007.

This is really not a good deal for America's seniors, and AARP should be ashamed that they have lent their endorsement to this. I do not know what they got in return. I know what that side got and that was huge contributions from the pharmaceutical and insurance industries.

STATUS REPORT ON CURRENT SPENDING LEVELS OF ON-BUDGET SPENDING AND REVENUES FOR FY 2004 AND THE 5-YEAR PERIOD FY 2004 THROUGH FY 2008

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. NUSSLE) is recognized for 5 minutes.

Mr. NUSSLE. Mr. Speaker, I am transmitting a status report on the current levels of on-budget spending and revenues for fiscal year 2004 and for the 5-year period of fiscal years 2004 through 2008. This report is necessary to facilitate the application of sections 302 and 311 of the Congressional Budget Act and section 501 of the conference report on the concurrent resolution on the budget for fiscal year 2004 (H. Con. Res. 95). This status report is current through November 14, 2003.

The term "current level" refers to the amounts of spending and revenues estimated for each fiscal year based on laws enacted or awaiting the President's signature.

The first table compares the current levels of total budget authority, outlays, and revenues with the aggregate levels set forth by H. Con. Res. 95. This comparison is needed to enforce section 311(a) of the Budget Act, which creates a point of order against measures that would breach the budget resolution's aggregate levels. The table does not show budget authority and outlays for fiscal years 2004 through 2008, because appropriations for those years have not yet been considered.

The second table compares the current levels of budget authority and outlays for discretionary action by each authorizing committee with the "section 302(a)" allocations made under H. Con. Res. 95 for fiscal year 2004 and fiscal years 2004 through 2008. "Discretionary action" refers to legislation enacted after the adoption of the budget resolution. A separate allocation for the Medicare program, as established under section 401(a)(3) of the budget resolution, is shown for fiscal year 2004 and fiscal years 2004 through 2013. This comparison is needed to enforce section 302(f) of the Budget Act, which creates a point of order against measures that would breach the section 302(a) discretionary action allocation of new budget authority for the committee that reported the measure. It is also needed to implement section 311(b), which exempts committees that comply with their allocations from the point of order under section 311(a).

The third table compares the current levels of discretionary appropriations for fiscal year 2004 with the "section 302(b)" suballocations of discretionary budget authority and outlays among Appropriations subcommittees. This table also compares the current level of total discretionary appropriations with the section 302(a) allocation for the Appropriations Committee. These comparisons are needed to enforce section 302(f) of the Budget Act because the point of order under that section equally applies to measures that would breach either the section 302(a) allocation or the applicable section 302(b) suballocation.

The last table gives the current level for 2005 of accounts identified for advance appropriations under section 501 of H. Con. Res. 95. This list is needed to enforce section 501 of the budget resolution, which creates a point of order against appropriation bills that contain advance appropriations that are: (i) not identified in the statement of managers or (ii) would cause the aggregate amount of such appropriations to exceed the level specified in the resolution.

REPORT TO THE SPEAKER FROM THE COMMITTEE ON THE BUDGET—STATUS OF THE FISCAL YEAR 2004 CONGRESSIONAL BUDGET ADOPTED IN H. CON. RES. 95, REFLECTING ACTION COMPLETED AS OF NOVEMBER 14, 2003

[On-budget amounts, in millions of dollars]

	Fiscal year 2004	Fiscal years 2004–2008
Appropriate Level:		
Budget Authority	1,880,555	(1)
Outlays	1,903,502	(1)
Revenues	1,325,452	8,168,933
Current Level:		
Budget Authority	1,861,384	(1)
Outlays	1,883,370	(1)
Revenues	1,330,943	8,376,570
Current Level over (+)/under (−) Appropriate Level:		
Budget Authority	−19,171	(1)
Outlays	−20,132	(1)
Revenues	5,491	207,637

[1] Not applicable because annual appropriations Acts for fiscal years 2005 through 2008 will not be considered until future sessions of Congress.

BUDGET AUTHORITY

Enactment of measurers providing new budget authority for FY 2004 in excess of $19,171,000,000 (if not already included in the current level estimate) would cause FY 2004 budget authority to exceed the appropriate level set by H. Con. Res. 95.

OUTLAYS

Enactment of measures providing new outlays for FY 2004 in excess of $20,132,000,000 (if not already included in the current level estimate) would cause FY 2004 outlays to exceed the appropriate level set by H. Con. Res. 95.

REVENUES

Enactment of measures that would result in revenue reduction for FY 2004 in excess of $5,491,000,000 (if not already included in the current level estimate) would cause revenues to fall below the appropriate level set by H. Con. Res. 95.

Enactment of measures resulting in revenue reduction for the period FY 2004 through 2008 in excess of $207,637,000,000 (if not already included in the current level estimate) would cause revenues to fall below the appropriate levels set by H. Con. Res. 95.

DIRECT SPENDING LEGISLATION—COMPARISON OF CURRENT LEVEL WITH AUTHORIZING COMMITTEE 302(a) ALLOCATIONS FOR DISCRETIONARY ACTION, REFLECTING ACTION COMPLETED AS OF NOVEMBER 14, 2003

[Fiscal years, in millions of dollars]

House Committee	2004		2004–2008 total		2004–2013 total	
	BA	Outlays	BA	Outlays	BA	Outlays
Agriculture:						
Allocation	0	0	0	0	(1)	(1)
Current Level	0	0	0	0	(1)	(1)

DIRECT SPENDING LEGISLATION—COMPARISON OF CURRENT LEVEL WITH AUTHORIZING COMMITTEE 302(a) ALLOCATIONS FOR DISCRETIONARY ACTION, REFLECTING ACTION COMPLETED AS OF NOVEMBER 14, 2003—Continued

[Fiscal years, in millions of dollars]

House Committee	2004		2004–2008 total		2004–2013 total	
	BA	Outlays	BA	Outlays	BA	Outlays
Difference	0	0	0	0	(1)	(1)
Armed Services:						
Allocation	70	34	70	70	(1)	(1)
Current Level	3,823	365	15,173	12,760	(1)	(1)
Difference	3,753	331	15,103	12,690	(1)	(1)
Education and the Workforce:						
Allocation	39	47	201	245	(1)	(1)
Current Level	9	8	9	9	(1)	(1)
Difference	-30	-39	-192	-236	(1)	(1)
Energy and Commerce:						
Allocation	-170	-170	439	439	(1)	(1)
Current Level	1,502	263	951	1,067	(1)	(1)
Difference	1,672	433	512	628	(1)	(1)
Financial Services:						
Allocation	0	375	0	1,250	(1)	(1)
Current Level	-1	-1	-2	-2	(1)	(1)
Difference	-1	-376	-2	-1,252	(1)	(1)
Government Reform:						
Allocation	-1	0	-3	-1	(1)	(1)
Current Level	2	2	24	24	(1)	(1)
Difference	3	2	27	25	(1)	(1)
House Administration:						
Allocation	0	0	0	0	(1)	(1)
Current Level	1	1	3	3	(1)	(1)
Difference	1	1	3	3	(1)	(1)
International Relations:						
Allocation	0	0	0	0	(1)	(1)
Current Level	0	0	0	0	(1)	(1)
Difference	0	0	0	0	(1)	(1)
Judiciary:						
Allocation	19	19	95	95	(1)	(1)
Current Level	0	0	0	0	(1)	(1)
Difference	-19	-19	-95	-95	(1)	(1)
Resources:						
Allocation	24	24	522	342	(1)	(1)
Current Level	0	0	0	0	(1)	(1)
Difference	-24	-24	-522	-342	(1)	(1)
Science:						
Allocation	0	0	0	0	(1)	(1)
Current Level	0	0	0	0	(1)	(1)
Difference	0	0	0	0	(1)	(1)
Small Business:						
Allocation	0	0	0	0	(1)	(1)
Current Level	0	0	0	0	(1)	(1)
Difference	0	0	0	0	(1)	(1)
Transportation and Infrastructure:						
Allocation	9,256	0	41,134	0	(1)	(1)
Current Level	6,406	0	6,406	0	(1)	(1)
Difference	-2,850	0	-34,728	0	(1)	(1)
Veterans' Affairs:						
Allocation.						
Current Level	0	0	(1)	(1)	0	0
Difference	0	0	(1)	(1)	0	0
Current Level	0	0	0	0	(1)	(1)
Difference	0	0	0	0	(1)	(1)
Ways and Means:						
Allocation	20,626	20,054	24,079	23,876	(1)	(1)
Current Level	17,979	17,960	22,810	22,850	(1)	(1)
Difference	-2,647	-2,094	-1,269	-1,026	(1)	(1)
Medicare:						
Allocation	0	0	(1)	(1)	0	0
Current Level	0	0	(1)	(1)	0	0
Difference	0	0	(1)	(1)	0	0

[1] Not applicable.

DISCRETIONARY APPROPRIATIONS FOR FISCAL YEAR 2004—COMPARISON OF CURRENT LEVEL WITH APPROPRIATIONS COMMITTEE 302(a) ALLOCATION AND APPROPRIATIONS SUBCOMMITTEE 302(b) SUBALLOCATIONS

[In millions of dollars]

Appropriations Subcommittee	302(b) suballocations as of July 22, 2003 (H. Rpt. 108–228)		Current level reflecting action completed as of November 14, 2003		Current level minus suballocations	
	BA	OT	BA	OT	BA	OT
Agriculture, Rural Development	17,005	17,686	17,990	18,045	985	359
Commerce, Justice, State	37,914	41,009	37,490	40,070	-424	-939
National Defense	368,662	389,221	368,183	388,642	-479	-579
District of Columbia	466	464	509	514	43	50
Energy & Water Development	27,080	27,211	25,846	26,086	-1,234	-1,125
Foreign Operations	17,120	20,185	16,227	19,980	-893	-205
Homeland Security	29,411	30,506	29,411	30,110	0	-396
Interior	19,627	19,400	19,657	19,424	30	24
Labor, HHS & Education	138,036	134,766	134,313	133,893	-3,723	-873
Legislative Branch	3,512	3,662	3,548	3,620	36	-42
Military Construction	9,196	10,282	9,316	10,247	120	-35
Transportation-Treasury	27,502	71,360	28,230	70,337	728	-1,023
VA–HUD–Independent Agencies	90,034	95,590	87,163	92,502	-2,871	-3,088
Total (Section 302(a) Allocation)	785,565	861,342	777,883	853,470	-7,682	-7,872

Statement of FY2005 advance appropriations under section 501 of H. Con. Res. 95 reflecting action completed as of November 14, 2003

[In millions of dollars]

	Budget authority
Appropriate Level	23,158
Current Level:	
Homeland Security Subcommittee: Bioshield[1]	2,528
Interior Subcommittee: Elk Hills	36
Labor, Health and Human Services, Education Subcommittee:	
Employment and Training Administration	0
Education for the Disadvantaged	0
School Improvement	0
Safe Schools	0
Children and Family Services (head start)	0
Special Education	0
Vocational and Adult Education	0
Treasury, General Government Subcommittee: Payment to Postal Service	0
Veterans, Housing and Urban Development Subcommittee: Section 8 Renewals	0
Total	2,564
Current Level over (+)/under (−) Appropriate Level	−20,594

[1] This advance appropriation was not on the list of accounts identified for advance appropriations included in the joint explanatory statement of the committee of conference in the conference report to accompany H. Con. Res. 95. Still, since the provision has been enacted, it is included as part of the current level for advance appropriations.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 18, 2003.

Hon. JIM NUSSLE,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed report shows the effects of Congressional action on the fiscal year 2004 budget and is current through November 14, 2003. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2004. The budget resolution figures incorporate revisions submitted by the Committee on the Budget to the House to reflect funding for the Emergency Wartime Supplemental Appropriations Act, 2003, and the Jobs and Growth Tax Relief Reconciliation Act of 2003. These revisions are authorized by sections 421 and 507 of H. Con. Res. 95, respectively.

Since my last letter, dated October 16, 2003, the Congress has cleared and the President has signed the following acts that changed budget authority, outlays, or revenues for 2004:

The Second Continuing Resolution, 2004 (Public Law 108-104);

The Third Continuing Resolution, 2004 (Public Law 108-107);

The Interior Appropriations Act, 2004 (Public Law 108-108); and

The Military Family Tax Relief Act of 2003 (Public Law 108-121).

In addition, the Congress has cleared the following legislation for the President's signature:

The National Defense Authorization Act for Fiscal Year 2004 (H.R. 1588);

The Military Construction Appropriations Act, 2004 (H.R. 2559);

The District of Columbia Military Retirement Equity Act of 2003 (H.R. 3054);

An act to re-authorize certain school lunch and child nutrition programs (H.R. 3232); and

An act to amend Title XXI of the Social Security Act (H.R. 3288).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

FISCAL YEAR 2004 HOUSE CURRENT LEVEL REPORT AS OF NOVEMBER 14, 2003

[In millions of dollars]

	Budget authority	Outlays	Revenues
Enacted in previous sessions:			
Revenues	0	0	1,466,370
Permanents and other spending legislation	1,085,217	1,058,045	0
Appropriation legislation	0	345,754	0
Offsetting receipts	−366,436	−366,436	0
Total, enacted in previous sessions:	718,781	1,037,363	1,466,370
Enacted this session (excluding emergencies [1]):			
Authorizing Legislation:			
American 5-Cent Coin Design Continuity Act of 2003 (P.L. 108–15)	−1	−1	0
Unemployment Compensation Amendments of 2003 (P.L. 108–26)	4,730	4,730	145
Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108–27)	13,312	13,312	−135,370
Welfare Reform Extension Act of 2003 (P.L. 108–40)	99	108	0
Burmese Freedom and Democracy Act ((P.L. 108–61)	0	0	−10
Smithsonian Facilities Authorization Act (P.L. 108–72)	1	1	0
An act to amend Title XXI of the Social Security Act (P.L. 108–74)	1,325	100	0
Chile Free Trade Agreement Implementation Act (P.L. 108–77)	0	0	−5
Singapore Free Trade Agreement Implementation Act (P.L. 108–78)	0	0	−55
First Continuing Resolution, 2004 (P.L. 108–84)	−2,222	1	−2
Surface Transportation Extension Act of 2003 (P.L. 108–88)	6,405	0	0
An act to extend the Temporary Assistance for Needy Families block grant program (P.L. 108–89)	15	−36	−33
An act to amend chapter 84 of title 5 of the United States Code (P.L. 108–92)	1	1	0
An act to amend the Immigration and Nationality Act (P.L. 108–99)	0	0	2
Second Continuing Resolution, 2004 (P.L. 108–104)	1	0	0
Military Family Tax Relief Act of 2003 (P.L. 108–121)	−595	−595	−169
Total, authorizing legislation:	23,071	17,621	−135,431
Appropriations Acts:			
Emergency Wartime Supplemental Appropriations Act, 2003 (P.L. 108–11)	215	27,349	0
Legislative Branch Appropriations Act, 2004 (P.L. 108–83)	3,548	2,949	0
Defense Appropriations Act (P.L. 108–87)	368,694	251,486	0
Homeland Security Appropriations Act, 2004 (P.L. 108–90)	30,216	18,192	0
Interior Appropriations Act, 2004 (P.L. 108–108)	19,673	13,202	0
Total, appropriations acts:	422,346	313,178	0
Continuing Resolution Authority: Third Continuing Resolution, 2004 (P.L. 108–107)	325,871	174,311	−1
Total, enacted this session	771,288	505,110	−135,432
Cleared, pending signature:			
National Defense Authorization Act for Fiscal Year 2004 (H.R. 1588)	4,418	960	4
Military Construction Appropriations Act, 2004 (H.R. 2559)	9,316	2,567	0
District of Columbia Military Retirement Equity Act of 2003 (H.R. 3054)	1	1	1
An act to re-authorize certain school lunch and child nutrition programs (H.R. 3232)	7	7	0
An act to amend Title XXI of the Social Security Act (H.R. 3288)	0	9	0
Total, cleared, pending signature:	13,742	3,544	5
Entitlements and mandatories: Difference between enacted levels and budget resolution estimates for appropriated entitlements and other mandatory programs	357,573	337,353	0
Total Current Level [1], [2]	1,861,384	1,883,370	1,330,943
Total Budget Resolution	1,880,555	1,903,502	1,325,452
Current Level Over Budget Resolution	0	0	5,491
Current Level Under Budget Resolution	19,171	20,132	0
Memorandum:			
Revenues, 2004–2008:			
House Current Level	0	0	8,376,570

FISCAL YEAR 2004 HOUSE CURRENT LEVEL REPORT AS OF NOVEMBER 14, 2003—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
House Budget Resolution	0	0	8,168,933
Current Level Over Budget Resolution	0	0	207,637

[1] Per section 502 of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2004, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the current level excludes the following items: outlays of $262 million from funds provided in the Emergency Supplemental Appropriations for Disaster Relief Act of 2003 (P.L. 108–69); budget authority of −$9 million and outlays of $573 million from funds provided in the Legislative Branch Appropriations Act, 2004 (P.L. 108–83); budget authority of $87,547 million and outlays of $37,103 million provided in the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (P.L. 108–106); and budget authority of $400 million and outlays of $67 million provided in the Interior Appropriations Act, 2004 (P.L. 108–108).

[2] For purposes of enforcing section 311 of the Congressional Budget Act in the House, the budget resolution does not include Social Security administrative expenses. As a result, the current level excludes budget authority of $3,812 million and outlays of $3,819 million for these items.

Notes.—P.L.=Public Law.

Source: Congressional Budget Office.

THE INTRODUCTION OF THE GOODS MOVEMENT PROJECTS OF NATIONAL ECONOMIC SIGNIFICANCE (H.R. 3398)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. MILLENDER-MCDONALD) is recognized for 5 minutes.

Ms. MILLENDER-MCDONALD. Mr. Speaker, I want to bring to the attention of this Congress, legislation that I recently introduced.

The Goods Movement Projects of National Economic Significance is legislation that addresses some of our nation's most pressing transportation and economic needs.

THIS IS THE PROBLEM

How freight moves through our communities is an important issue with far reaching implications. Goods movement is the driving force of our nation's economy. This is a state issue, a Federal issue and it is an issue that directly affects the communities in which we live.

According to the Federal Highway Administration, $7.4 trillion in goods were moved on the nation's highway system in 1998, directly employing 10 million people.

In 2000, $706 billion in international merchandise trade flowed through U.S. Seaports and $646 billion was handled by our Railroads.

The volume of goods is projected to grow nationally by 67 percent over the next two decades.

This tremendous growth in international trade will continue to place an increasingly heavy burden on our nation's seaports, trade corridors, highways and rail lines.

Traffic congestion, delays, accidents, and freight transportation costs have increased as a result.

On a human level—our citizens are spending more and more time stuck in traffic instead of at home with their families.

THIS IS THE HISTORY

Over the past 30 years our population has grown, our international trade has increased and our congestion has worsened.

For example, in 1970, trade was 12 percent of U.S. gross domestic product (GDP). Today, it is over 25 percent.

Since 1970 the population of the U.S. has grown by 40 percent. At the same time, the number of registered vehicles has increased by 100 percent while our road capacity has increased by only 6 percent.

By the year 2020, shipment of containerized cargo moving in and out of the United States will increase by more than 350 percent.

By the year 2020, total domestic tonnage of freight carried by all U.S. freight systems will increase by at least 67 percent and international trade will increase by nearly 100 percent.

The transportation reauthorization bill is the perfect opportunity for us to address these pressing transportation infrastructure needs.

TEA–21 began to address Goods Movement issues with the creation of the Borders and Corridors Program.

But we need to take it further during this reauthorization bill.

Back in 1998 when the Borders and Corridors program was created in TEA–21, the intent was to create a discretionary program that provided federal funding for transportation projects and initiatives that supported, enhanced and helped the movement of goods and economic development through the gateway and trade corridors in this country.

The program provided $140 million a year. During the first 3 years the Federal Highway Administration (FHWA) received over $2 billion in grant requests per year.

After the third year, the entire Borders and Corridors program had been earmarked.

Aside from the fact that the authorized amount of $140 million per year was far too low to meet our Nation's infrastructure needs, the earmarking of this program has proved problematic.

It has prevented communities and regions from developing comprehensive programs and plans that addresses goods movement issues of our transportation infrastructure.

We must have a dedicated source of funding to ensure that goods movement and projects of economic significance can be built and that these projects contribute to the overall efficiency of the national transportation infrastructure.

As we continue the dialog of reauthorizing the transportation bill, the Goods Movement Projects of National Economic Significance needs to be a part of that conversation.

THIS IS WHAT WE MUST DO

Goods Movement Projects of National Economic Significance will do the following:

It will provide $3 billion per year to a Goods Movement Program.

Given the history of the Borders and Corridors Program we can safely assume that our transportation infrastructure can use at a minimum, $3 billion a year, or $18 billion for the life of the 6-year reauthorization bill.

This legislation separates the Borders and Corridors Program and creates one strong Corridor and Gateway Program.

Corridor projects represented 95 percent of the project requests for the Borders and Corridors program.

My legislation focuses our resources on projects and initiatives that promote the safe, secure and efficient mobility of goods and on the immediate and long-term needs of our transportation infrastructure.

This legislation combines and enhances elements of two highly successful transportation programs. This program uses the criteria from the Corridors program and combines it with the fiscal responsibility of the full funding grant agreement of the transit New Start Program.

Specifically, this program provides $1½ billion a year, $9 billion over the life of the reauthorization bill for local communities, states and the Federal Government to plan and build Goods Movement projects.

These projects will ultimately enhance local, regional, and state economies, and ultimately the national economy.

Finally, $1½ billion a year or $9 billion over the life of the reauthorization bill will be dedicated to funding projects of National Economic Significance.

Throughout the country there are national bottlenecks that congest our communities and slow our national economy down.

As we all know from experience—if there is a bottleneck on the highway, traffic several miles away can be affected.

If the type of gridlock that I just described happens and goes unchecked, it will affect an entire region, and the entire country, and ultimately our economy and the livability of our communities.

These are projects located throughout the country that are ready to go major investments in the national transportation infrastructure.

By funding these projects we will be stimulating the national economy while investing in the long-term health of our national transportation infrastructure.

This legislation, like the entire transportation reauthorization bill is an economic stimulus package. For every billion dollars invested in public transportation infrastructure 47,000 jobs are created.

I ask my colleagues to strongly support this legislation as part of the transportation reauthorization bill.

Join me and support The Goods Movement Projects of National Economic Significance.

A FREE PRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, the Bush administration has openly demonstrated its dissatisfaction with the stories that the major media has chosen to broadcast about Iraq, saying that the news media too often covers the negative events that occur in Iraq but rarely reports the positive happenings there. In fact, in their peak in order to achieve its desired results, the administration has regularly pressured reporters to find the so-called good news in Iraq or lose access.

Perhaps the reason reporters have been focusing on the so-called negative stories about Iraq has something to do with the fact that since the start of the war in March, over 412 soldiers have been killed in action, in fact, two more today. Over 2,000 have been wounded and at least 7,000 have been evacuated to hospitals for noncombat medical conditions, not to mention that approximately 4,000 unarmed Iraqis have perished since the war began.

□ 2330

You have to agree, it is a bit easier to understand the media's decision about which stories to report when those tragic numbers are considered.

Still, the White House wants reporters to focus on the supposedly good news, but intimidating reporters into writing stories that make President Bush look good is not enough for the White House. Instead of just spinning the news, Bush's people want nothing short of controlling the information that comes back to the United States from Iraq. They want to have final say as to what gets reported and what does not, what the American public actually knows and what is spoken only in faded whispers halfway around the world.

So they decided to do what any autocratic, propaganda-loving dictator like Saddam Hussein himself would have done, bypass the media entirely.

The Coalition Provisional Authority, which runs Iraq and was created by the Bush administration, plans to create its own broadcast operation which will broadcast live to the United States 24 hours a day from Iraq, and one of the worst parts about this project is that the money to pay for it comes from the $87 billion in emergency supplemental funds that Congress recently approved to continue military operations in Iraq. That means that the U.S. taxpayers are paying for Bush's propaganda campaign that attempts to falsify and falsely mold their perceptions about the increasingly unsustainable situation in Iraq.

Mr. Speaker, this is not the first time the Bush administration has dared to control the media. Fearing that support for his Iraq policy would fade if Americans caught sight of U.S. soldiers returning home in flag-draped caskets, the Bush administration banned all news coverage and photography of dead soldiers' homecomings on all military bases. This new, government-run propaganda operation, which is informally referred to within the administration as C–SPAN Baghdad, represents a new low even for the Bush administration. Influencing the media is one thing; controlling it is something entirely different.

Mr. Speaker, we must stay on top of this.

HISTORY OF MEDICAID

The SPEAKER pro tempore (Mr. BISHOP of Utah). Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

Mr. BURTON of Indiana. Mr. Speaker, I want to give my colleagues a little bit of history about the entitlement programs.

When I was in the Indiana State Senate in 1969, the Federal Government came to Indiana and said if we did not take the Medicaid program, they would withdraw $2.5 million in Federal highway funds from Indiana. They were, in effect, blackjacking our State, and I went to the floor of the State Senate and said we ought to tell them to keep their $2.5 million because it will cost us 10 times that much if we take the Medicaid program. Boy, was I off.

The Medicaid program that we thought would end up around $20, $25 million is now $1.4 billion or 70 times, 70 times what we anticipated, and then the Medicare program, which was passed in 1965 I believe, it was supposed to cost $3 billion the first year. In fact, it was $3 billion. In 2001, it was $241 billion. That is 80 times more, 80 times more than it was initially.

The prescription drugs that are in the bill that we are talking about right now they said was going to cost $400 billion, that provision. The bill has not even gotten out of the conference committee yet, and it is already up to $432 billion according to CBO. If we look at the way the Medicaid program has progressed over the past 25 to 30 years and we look at how the Medicare program has progressed over the past 25 to 30 to 40 years, we can assume that the prescription drug benefit is going to go out of sight as well, and if that happens, if it goes up say 70 times, like Medicare and Medicaid did, we could see an annual expenditure for prescription drugs of $2- or $3 trillion. This thing could bankrupt America.

So we should be looking at another approach, which is the reimportation that we talked about, putting competition and market prices into effect and competition to keep the prescription drug prices down. Seventy-six percent of the seniors in this country already have prescription drug coverage. So we are only talking about the other 24 or 25 percent, and yet we are going to have an all-encompassing program when we should only be helping those who truly need the help, but for those who really are looking forward to the program, let me just give my colleagues some facts, and I hope that there may be some seniors and my colleagues who are paying attention to this.

The premium per year is $420. Then there is an additional $275 deductible. That is a total of $695 the seniors will have to pay before they get a dime, and then they pay 25 percent of the first $2,200 of prescription drugs that they buy. That is another $550. So they are going to pay $1,245 before they get a dime, $1,245, and then for that $1,245, they are going to get $1,650 in coverage.

That is not the end of it because between $2,200 and $3,600 there is no coverage whatsoever. So that is another $1,400 that they will be out of pocket. If we add that together, that means if a senior citizen has to spend $3,000 on prescription drugs or if that is what the cost is, they are going to get $1,650 of that $3,000, and for that $1,650, they are going to pay $2,645. That is not a good deal for them. It is a very bad deal.

Granted, some of the impoverished people who are a little bit below the poverty line are going to get a better deal than that, but the average senior is going to pay more than they are going to get if their bill is say a $3,000 prescription drug bill because they are going to pay $2,645 for the coverage that they are going to get, and that is $1,650 of the $3,000.

I think that the AARP people and everybody else ought to take a hard look at that because I think the American seniors are being misled about this. We need to provide prescription drug coverage for those who truly need it, who cannot get it because of health reasons or cannot afford it, but we should have not a program that covers everybody when we cannot afford that. The cost is going to be extraordinarily high.

What we should be doing instead is working on reimportation, market prices and competition, as the gentleman from Minnesota (Mr. GUTKNECHT) has been advocating for a long, long time. If we did that, we could solve the problem, and we would not have to spend hundreds of billions of dollars of taxpayers' money to do it.

Mr. DELAHUNT. Mr. Speaker, will the gentleman yield?

Mr. BURTON of Indiana. I yield to the gentleman from Massachusetts.

Mr. DELAHUNT. Mr. Speaker, I really want to applaud the gentleman for his work, along with the gentleman from Minnesota (Mr. GUTKNECHT), on the reimportation of drugs.

MEDICARE CONFERENCE REPORT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from New Jersey (Mr. PALLONE) is recognized for half the time until midnight as the designee of the minority leader, which is approximately 10 minutes.

Mr. PALLONE. Mr. Speaker, I just tell my colleague from Massachusetts that I will be glad to have him join in and make some comments during the course of my 10 minutes if he likes.

I just wanted to follow up on some of the debate that was held this evening on the motion to instruct from the gentlewoman from Nevada and particularly pay attention to some of the comments that were made by some of my Republican colleagues who I know are well-intentioned but I think were very wrong in what they said about this Medicare conference report that we are going to be voting on in a few days.

First of all, I mentioned earlier when the gentlewoman from New Mexico said that Medicare is very successful, and I said to her at the time, well, if it is very successful, then why are the Republicans in this Medicare conference report trying to essentially change and gut and I think destroy Medicare the way we know it?

□ 2340

Now, what the Democrats have been saying all along is, if you have a pot of money and you want to provide prescription drugs to senior citizens pursuant to the Medicare program, which you admit is a successful program, then why not just add the prescription drug benefit to the existing Medicare program?

We know right now that all seniors are entitled to Medicare, because if they are over a certain age, they are entitled to Medicare. It is an entitlement. We have a program for hospital care; we have a part B program for doctor care. And what the Democrats have been saying is we can simply do for prescription drugs the same thing we do with the physician care, the physician payment. Like part B, which right now says if you pay $50 a month, and after the first $100 deductible, 80 percent of your doctor bills are paid for by the Federal Government, up to a certain amount, at which time 100 percent of your bills are paid for by the Federal Government. Democrats have been saying we can add a prescription drug benefit to Medicare in the same way.

And what we actually proposed and voted on here in the House of Representatives during the summer was exactly that, a program that would say you pay $25 a month premium, after the first $100 deductible on your drug bills, 80 percent of the cost is paid for by the Federal Government. You have a 20 percent copay. And at a certain point, after you have paid a certain amount out of pocket, 100 percent of the costs are paid for by the Federal Government. Very simple. It builds on the existing Medicare program.

That is not what the Republicans are doing here. This is not even about a prescription drug benefit any more, because they are not providing a meaningful benefit. And I want to associate myself with the remarks made by the gentleman from Indiana (Mr. BURTON) when he said this is not even a benefit you will want to sign up for because you will end up paying more out of pocket than you will get back in actual benefit. So it is not a real benefit. It is not a meaningful benefit. It is not an affordable benefit. It is not a comprehensive benefit.

Most importantly, the only way you get this prescription drug benefit under the Republican proposal is if you join an HMO. You are forced, contrary to what some of my colleagues said on the other side of the aisle, you are forced under this Republican plan to join an HMO. Because the only way you could get any kind of prescription drugs without the HMO or the private plan is if it is not available in your area.

What the Republicans have done is they are putting so much money, they are giving $12 million, $1 billion, they are adding all this money to the private plans, to the HMOs, giving them all this extra money so that certainly there is going to be someone who is going to offer this managed care HMO plan, this private plan in your particular State or your particular jurisdiction, so you will be shut out. You will not be able to have traditional Medicare and get any kind of prescription drug benefit.

Now, I know that some of the discussion here tonight is, well, why does the AMA, the doctors support this? Well, why does the AARP support this? Why do the drug companies support this? There is a very simple answer to that, and it is that they are all getting a piece of the action. The AARP is essentially an insurance company, so they want to sell insurance. They think it is great. The insurance companies are all getting extra money, HMOs, private insurance companies, all getting big windfall profits from the Federal Government under this bill.

And the doctors? Well, they have been suffering. They face a 4.5 percent cut in their reimbursement rate. So what the Republican bill does is wipe out that cut and give them a 1.5 percent increase, I think. So, naturally, they feel well it is better to have a 1.5 percent increase than a 4 percent cut, so they get a piece of the pie. They think it is great.

Then what about the drug companies? Well, it is a windfall for them because there is no competition. There is no price controls. There is a specific provision in the bill that says that the Secretary of Health and Human Services and the Medicare administrator cannot negotiate price reductions. We do it for the Veterans' Administration. We do it for the Department of Defense for our military. But we are not allowed to do it under this bill because the drug companies want a windfall.

Well, all that I have been saying and all the Democrats have been saying is if you really believe that HMOs and private plans can compete with the traditional Medicare, then why not just have pure competition? Do not give them all this money. Do not give the HMOs all this money, the insurance companies all this money. Do not give the windfall and prohibit the Secretary of Health and Human Services from negotiating prices. Have real competition. Say that the private plans have to really compete with the private plans and do not get any additional money. Or, in the case of the drug companies, have the Medicare administrator essentially negotiate through competition price reductions. That is what negotiation is all about. It is a form of competition. Do not say that they do not have the power to negotiate.

The one thing I want to say, and then I will yield to my colleague from Massachusetts, I listened to what the gentleman from Indiana (Mr. BURTON) said and he talked about reimportation. Reimportation is a form of competition. If you say that Canadian drugs can come in here, you are creating a form of free-market competition with the companies here that want to charge the higher prices.

But, no, we cannot have competition, we cannot have free market, we have to prohibit the Canadian drugs from coming in here. This bill is not competition. This is a windfall for the HMOs. This is a giveaway to the drug companies and the insurance companies.

And I want to yield to my colleague from Massachusetts because he wants to talk about the date.

Mr. DELAHUNT. Mr. Speaker, I want to pose a question to the gentleman from New Jersey (Mr. PALLONE) and then restate the question that I was going to ask to the gentleman from Indiana (Mr. BURTON).

I think it is important that the seniors in this country who happen to be viewing us tonight understand that next year, when they go to their local pharmacist and present their Medicare card, will they get a drug benefit under this particular proposal?

Mr. PALLONE. Reclaiming my time, Mr. Speaker, they will get nothing. They will get nothing, because under the Republican proposal, and I think it is very important that you mentioned it, this plan does not go into effect until the year 2006.

Mr. DELAHUNT. Mr. Speaker, if the gentleman will continue to yield to me, seniors better live to 2006. They do not want to get sick in 2003 or 2004 or 2005.

Now, I look at my two colleagues from the other side of the aisle, and I think we can all agree that next year, 2004, happens to be an election year. Is that an accurate statement?

Mr. PALLONE. Absolutely, for President, Senate, and House.

Mr. DELAHUNT. If the gentleman will continue to yield, the gentleman from Minnesota (Mr. GUTKNECHT) and the gentleman from Indiana (Mr. BURTON) are both here, so let me just emphasize this. One of the great bipartisan efforts that this House has witnessed since I have served in this Congress is under the leadership of both of those gentlemen, along with yourself, the gentleman from Illinois (Mr. EMANUEL), and other Democrats when we got through this Chamber against the forces of the pharmaceutical industry. And it was a shock for everyone, the right of Americans to reimport drugs from Canada. And so they deserve credit along with those who worked very hard to get it accomplished.

But can the gentleman from Indiana (Mr. BURTON) tell me, is there anything in this bill that will be coming to the floor this week that allows for reimportation? And if it does, is it real and tangible, something, as the gentleman from New Jersey indicates, which will allow for real competition? Because you know and the gentleman from Minnesota (Mr. GUTKNECHT) knows and the gentleman from New Jersey (Mr. PALLONE) knows, they purchase their drugs significantly cheaper in Canada than our folks do here.

Mr. BURTON of Indiana. Mr. Speaker, if the gentleman from New Jersey will yield, the language in the bill is essentially the same as it is right now, and that is that the head of the health agency, HHS, all he has to do is say there is a safety issue, which he has already said, and there will be no reimportation.

Mr. DELAHUNT. So there is no reimportation under this bill. That is important.

Mr. PALLONE. Mr. Speaker, I think the gentleman from Massachusetts is making a very good point, which is essentially this bill is nothing but an election-year gimmick. The bottom line is if they are really serious about providing a prescription drug benefit, and I will grant I do not like what they are suggesting, because I do not think it is a real benefit, why are they not doing it now? Why are they not doing it in 6 months? Why are they not doing it in a year? They wait until 2006 because they do not have any intention of doing anything, and they are hoping people do not find out until 2006 what a terrible bill this is.

As the gentleman from Indiana (Mr. BURTON) said, even if you bought into the idea we could wait until 2006, and I do not, why not let reimportation take place in the meantime, so at least people can get the cheaper drugs from Canada? But they are not going to do that because they want the drug companies to have the windfall, and the drug companies are against reimportation.

Mr. DELAHUNT. Mr. Speaker, if the gentleman will yield for a moment, what is happening here is competition is being precluded by this bill and huge amounts of dollars, tens of billions of dollars, are being given to the pharmaceutical industry. That is what this bill is about.

☐ 2350

FAIR DRUG PRICES IN AMERICA

The SPEAKER pro tempore (Mr. BISHOP of Utah). Under the Speaker's announced policy of January 7, 2003, the gentleman from Minnesota (Mr. GUTKNECHT) is recognized until midnight as the designee of the majority leader.

Mr. GUTKNECHT. Mr. Speaker, I want to respond to something that the gentleman from Massachusetts (Mr. DELAHUNT) just spoke about. He asked if there would be any chance for market competition or bringing access to markets into this bill. The truth of the matter is, and I think the gentleman from Indiana answered the question almost correctly, the answer is this bill actually makes the situation worse.

Currently, under current law, and this is not part of my bill, but this is current law, Americans have access to drugs from 26 different countries subject to the approval of the Secretary of HHS. Under the present Republican and under the previous Democratic administrations, we have two administrations who have refused to allow Americans to really have that access. I would like to talk about this issue because I think Members need to know that some time later this week we are probably going to have a vote on this very important issue.

The gentleman from Massachusetts (Mr. DELAHUNT) also said the pharmaceutical companies might make tens of billions of dollars more in profits. I think that is probably being conservative. There is an estimate done by the University of Boston or Boston College as it used to be known, who has done a study who estimates that the pharmaceutical companies under this legislation stand to make an additional $139 billion in profit.

Now, I am a Republican, I believe in profit. There is nothing wrong with the word "profit," but there is something wrong with the word "profiteer." I think it is a little like what the Supreme Court said a number of years ago about whether or not something was too graphic or whether or not it was pornography; we do not necessarily have to be able to define it to know it when you see it.

I want to talk about the differences between what Americans actually pay for prescription drugs. People may argue about the source of this chart, but the more one looks at this chart, the more other people have actually done their own analysis, they have come to the same conclusion. These numbers are about a year and a half old and the numbers have changed slightly, but the percentages are still the same.

Augmentin, the average price in the United States for a 30-day supply is $55.50. In Europe that drug can be bought for $8.75, and in Canada the price is $12.

Cipro, a very effective antibiotic, and probably when we had the scare with the anthrax, one of the most effective antibiotics ever developed, developed by a German company called Bayer. They sell the drug here in the United States for about $88. They sell it in Canada for $53, but in Europe you can buy the same drug for $46.

Glucophage, one of the most effective antidiabetic drugs, developed here in the United States. Somehow it is hard to explain to our constituents that here in the United States that drug will sell for $124.65. One can buy it in Canada for $26.47, but it is available in Europe for $22.

Why is it so much cheaper in Canada and Europe and some people say they have price controls, and we do not believe in price controls. In some respects that is true, but in Europe they make the drugs less expensive because they allow parallel trading. So a pharmacist in Germany if he can buy that Glucophage cheaper in Spain or Norway, he can buy it in Spain or Norway. That is called parallel trading, and that is allowed in most of the European Union.

Let me tell Members something about the Europeans. They are not intrinsically smarter than Americans, and they do not have all of these safety concerns that our FDA does. They do keep records, and they know that almost nobody dies in Europe or Canada. I can go through this list, and the numbers, as I say, they are slightly different, but the percentages are almost always the same. The bottom line is this: The world's best customers, the American consumers, pay the world's highest prices in virtually every single category, and not just a little bit more, we pay a lot more. In fact, in almost every category, it is almost 30 percent more, and in some categories it is almost 300 percent more.

For example, Tamoxifen is probably the most effective antibreast cancer drug ever developed. It was developed here in the United States, and it was developed by the American taxpayer. It was developed with funds from taxpayers. Taxpayer money through the CDC, through the NIH, we took that drug all of the way through phase two trials. Once we had it almost ready for market, we licensed it to a pharmaceutical company. Our reward, the taxpayers' reward, was they sell it to American consumers for $360 a month on average. They sell it in Canada for $60. They sell in Europe for $50.

I think we ought to pay our fair share for the research costs, and I think we ought to subsidize the people in sub-Saharan Africa, but we do not need to subsidize the starving Swiss. It is time to open the markets. We have open markets when it comes to oranges and raspberries and almost every other product except prescription drugs.

Mr. Speaker, I yield to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Speaker, I want to acknowledge the gentleman's expertise. There is no one in this institution that has the depth of knowledge on the subject than the gentleman, and is certainly someone who is highly respected and regarded on this side of the aisle.

During the course of the debate, there has been much attention given to the so-called safety issue. I do not know whether you have this, but can you inform me and my other colleagues and those that might be watching in terms of those in Canada or those Americans who have purchased pharmaceuticals from Canada, what are the numbers, how many fatalities are there, how many reported problems attendant to safety have actually occurred?

Mr. GUTKNECHT. Mr. Speaker, I thank the gentleman for asking that important question because we hear the FDA and the pharmaceutical reps and other people saying it is safety, and this Henny Penny the sky is falling, but we keep records on this. The CDC keeps amazing records on how many people have died from taking drugs from other countries. The CDC is the official recordkeeper of all health statistics here in the United States. They keep very good records. We have had them testify in front of the subcommittee of the gentleman from Indiana (Mr. BURTON), and we have asked how many have died, and it is an easy, round number, and the number is zero.

We also know if we go to the CDC files, we will find 264 Americans have become seriously ill from eating raspberries from Guatemala. So in effect, we are 264 times more likely to become seriously ill eating vegetables or fruits from other countries than from prescription drugs.

Tomorrow night we are going to have another Special Order, and I invite people from the entire political spectrum, let us come down and talk about this because this is not a Republican issue, this is not a Democratic issue or right versus left, its right versus wrong. And what this House decided a few months ago on an overwhelming majority, it is wrong to hold American consumers captive. That is what is happening today. If this bill passes later this week, that is exactly what will continue to happen. I warn my colleagues that they will have to go home to their constituents and they are going to get asked a couple of very tough questions. And the first question is: Why is it Americans pay so much more for Tamoxifen or Glucophage or Coumadin or any of these other drugs, why is it we pay so much more?

That is a tough question, but here is an even tougher question that they are going to have to answer: Congressman, what did you do about it? Ultimately, we are all going to have those kinds of questions. Republicans will have to answer them, and Democrats will have to answer them. That is why I think we ought to come together on a bipartisan basis and pass a bill that makes sense, that opens markets, allows competition. I am one who happens to believe in free markets and in competitive markets. I know this, when we have competitive markets, ultimately, the prices will level. The prices in Canada may go up a little bit, and the prices in Germany may go up a little bit, but the prices here in the United States will go down.

I do not want American consumers going to Canada to buy their drugs. I do not want them to buy their drugs from Germany. I want to force the pharmaceutical companies to adjust their pricing strategies so we get fair prices here in the United States.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. FATTAH (at the request of Ms. PELOSI) for today after 1:30 p.m. on account of personal reasons.

Ms. JACKSON-LEE of Texas (at the request of Ms. PELOSI) for today after 2:00 p.m. on account of official business in the district.

Mr. ORTIZ (at the request of Ms. PELOSI) for today before 1:30 p.m. on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. PALLONE) to revise and extend their remarks and include extraneous material:)

Mr. DEFAZIO, for 5 minutes, today.

Mr. BROWN of Ohio, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

Ms. MILLENDER-MCDONALD, for 5 minutes, today.

Mr. EMANUEL, for 5 minutes, today.

Mr. RYAN of Ohio, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. CUMMINGS, for 5 minutes, today.

Mr. HINCHEY, for 5 minutes, today.

Mr. INSLEE, for 5 minutes, today.

Mr. MCDERMOTT, for 5 minutes, today.

Mr. LANGEVIN, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

(The following Members (at the request of Mr. BURTON of Indiana) to revise and extend their remarks and include extraneous material:)

Mr. PAUL, for 5 minutes, November 19, 20, 21.

Mr. NUSSLE, for 5 minutes, today.

Mr. SMITH of Michigan, for 5 minutes, today.

Mr. OSBORNE, for 5 minutes, November 19.

SENATE BILLS REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1743. An act to permit reviews of criminal records of applicants for private security office employment; to the Committee on Education and the Workforce; in addition to the Committee on the Judiciary for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

ADJOURNMENT

Mr. BURTON. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at midnight), the House adjourned until tomorrow, Wednesday, November 19, 2003, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

5421. A letter from the Secretary, Department of Agriculture, transmitting the Department's draft bill entitled, "To make technical ammendments to the Commodity Promotion, Research, and Information Act of 1996"; to the Committee on Agriculture.

5422. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Tebufenozide; Extension of Tolerance for Emergency Exemptions [OPP-2003-0329; FRL-7330-2] received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5423. A letter from the Comptroller, Department of Defense, transmitting a report of a violation of the Antideficiency Act by the Department of the Air Force, Case Number 99-01, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

5424. A letter from the Acting, Under Secretary, Acquisition, Technology and Logistics, Department of Defense, transmitting four quarterly Selected Acquisition Reports (SARs) for the quarter ending September 30, 2003, pursuant to 10 U.S.C. 2432; to the Committee on Armed Services.

5425. A letter from the Director, Office of Management and Budget, transmitting appropriations reports containing OMB cost estimates for P.L. 108-26 and P.L. 108-27, which became law on May 28, 2003, P.L. 108-40, which became law on June 30, 2003, and P.L. 108-74, which became law on August 15, 2003; to the Committee on the Budget.

5426. A letter from the Chairperson, National Council on Disability, transmitting the Council's report entitled "Olmstead: Reclaiming Institutionalized Lives," pursuant to 29 U.S.C. 781(a)(8); to the Committee on Education and the Workforce.

5427. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule

— Revisions to the Regional Haze Rules to Correct Mobile Source Provisions in Optional Program for Nine Western States and Eligible Indian Tribes Within that Gegraphical Area; Direct Final Rule, Removal of Amendments. [FRL-7579-6] received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5428. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to Stage I and Stage II Vapor Recovery at Gasoline Dispensing Facilities [DE067-1041a; FRL-7586-2] received November 10, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5429. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Kansas Update to Materials Incorporated by Reference [KS-192-1192; FRL-7580-6] received November 10, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5430. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval And Promulgation of Implementation Plans; Texas; Revisions to Regulations for Permits by Rule, Control of Air Pollution by Permits for New Construction or Modification, and Federal Operating Permits [TX-154-1-7590; FRL-7585-8] received November 10, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5431. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District [CA261-0420a; FRL-7582-2] received November 10, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5432. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Clean Air Act Final Approval Of Operating Permit Program Revision; Michigan [MI 82-02; FRL-7585-3] received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5433. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NSR): Reconsideration [FRL-7583-7, E-Docket ID No. A-2001-0004 (Legacy Docket ID No. A-90-37)] received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5434. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals; Amendment [SFUND-1988-0002; FRL-7584-8] received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5435. A letter from the Deputy Secretary, Department of State, transmitting the annual report of the activities of the United Nations and of the participation of the United States therein during the calendar year 2002, pursuant to 22 U.S.C. 287b; to the Committee on International Relations.

5436. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of major defense equipment and defense articles to Japan (Transmittal No. DDTC 120-03), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

5437. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of major defense equipment and defense articles to the United Kingdom (Transmittal No. DTC 112-03), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

5438. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 2004-08 on Waiver of Restrictions on Assistance to Russia under the Cooperative Threat Reduction Act of 1993, as amended, and the Section 502 of the FREEDOM Support Act, pursuant to 22 U.S.C. 5952 note; to the Committee on International Relations.

5439. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification that effective October 5, 2003, the 15% Danger Pay Allowance for Saudi Arabia was terminated due to the ending of authorized departure status, pursuant to 5 U.S.C. 5928; to the Committee on International Relations.

5440. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report entitled "Report of U.S. Citizen Expropriation Claims and Certain Other Commercial and Investment Disputes," pursuant to Public Law 103—236, section 527(f); to the Committee on International Relations.

5441. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification that the Ukraine is committed to the courses of action described in section 1203 (d) of the Cooperative Threat Reduction Act of 1993 (Title XII of Public Law 103-160) as amended, and Section 502 of the FREEDOM Support Act (Public Law 102-511); to the Committee on International Relations.

5442. A letter from the Chairman, Consumer Product Safety Commission, transmitting the Commission's new Strategic Plan, prepared in response to the Government Performance and Results Act of 1993 (Results Act); to the Committee on Government Reform.

5443. A letter from the Director, Office of Management and Budget, transmitting the Office of Management and Budget's Fiscal Year 2003 Inventory of Commercial Activities, pursuant to Public Law 105—270; to the Committee on Government Reform.

5444. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's draft bill entitled, "To adjust the boundary of John Muir National Historic Site, and for other purposes"; to the Committee on Resources.

5445. A letter from the Clerk, United States Court of Appeals for the District of Columbia, transmitting an opinion of the United States Court of Appeals for the District of Columbia Circuit (02-5056--The Williams Companies and Dynegy Midstream Services, Limited Partnership v. Federal Energy Regulatory Commission (October 10, 2003)); to the Committee on Resources.

5446. A letter from the Assisatnt Secretary of the Army for Civil Works, Department of Defense, transmitting A report on Aquifer Storage and Recovery Project, Miami-Dade County, Florida, pursuant to Public Law 106—541, section 601 (m) (114 Stat. 2692); to the Committee on Transportation and Infrastructure.

5447. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Hameland Security, transmitting the Department's final rule — Security Zone; Tampa, Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa and Crystal River, Florida [COTP Tampa 03-006] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5448. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Hatteras Island, NC [CGD05-03-166] (RIN: 1625-AA00) received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5449. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois [CGD08-03-035] (RIN: 1625-AA09) received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5450. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulations; Mianus River, CT. [CGD01-03-101] received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5451. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Sacramento River, Sacramento, CA [COTP San Francisco Bay 02-018] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5452. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Brunswick River, Brunswick, GA [COTP Savannah-03-111] (RIN: 1625-AA00) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5453. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Savannah River, International Trade and Convention Center, Savannah, GA [COTP Savannah 02-110] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5454. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Savannah River, Savannah, GA [COTP Savannah 02-090] (RIN: 2115-AA97) received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5455. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures; Miscellaneous Amendments [Docket No. 30390 ; Amdt. No. 3077] received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5456. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 747SP and 747SR; 747-100B, -200B, -200C, -200F, -300, -400,and -400D; and 767-200 and -300 Series Airplanes [Docket No. 2002-NM-106-AD; Amendment 39-13326; AD 2003-20-08] (RIN: 2120-AA64) received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5457. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airwothiness Directives; McDonnell Douglas Model DC-9-31 and DC-9-32 Airplanes [Docket No. 2003-NM-61-AD; Amendment 39-13324; AD 2003-20-06] (RIN: 2120-AA64) received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5458. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures; Miscellaneous Amendments [Docket No. 30391 ; Amdt. No. 3078] received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5459. A letter from the Assistant Chief Counsel, FHA, Department of Transportation, transmitting the Department's final rule — Advance Construction of Federal-aid Projects [FWHA Docket No. FHWA-1997-2262; Formerly FHWA 95-10] (RIN: 2125-AD59) received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5460. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Nonpoint Source Program and Grants Guidelines for States and Territories — received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5461. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Water Quality Standards; Withdrawal of Federal Aquatic Life Water Quality Criteria for Copper and Nickel Applicable to South San Francisco Bay, California [FRL-7583-9] received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5462. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Water Quality Standards; Withdrawal of Federal Nutrient Standards for the State of Arizona [FRL-7584-1] received November 5, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5463. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a Determination pursuant to Section 344(b) of the Trade Act of 2002; to the Committee on Ways and Means.

5464. A letter from the Secretary, Department of Homeland Security, transmitting a letter correcting the legal citation of a letter dated May 23, 2003; to the Committee on Homeland Security (Select).

5465. A letter from the Secretary, Department of Homeland Security, transmitting notification of the establisment of an organizational unit within the Department of Homeland Security and the reallocation of functions among officers at the Department, pursuant to Public Law 107—296, section 874; to the Committee on Homeland Security (Select).

5466. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 2004-04 on Waiving and Certification of Statutory Provisions Regarding the Palestine Liberation Organization; jointly to the Committees on International Relations and Appropriations.

5467. A letter from the Secretary, Department of Homeland Security, transmitting notification of the transfer of a function within the Department of Homeland Security, pursuant to Public Law 107—296, section 872; jointly to the Committees on Transportation and Infrastructure and Homeland Security (Select).

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. POMBO: Committee on Resources. H.R. 2584. A bill to provide for the conveyance to the Utrok Atoll local government of a decommissioned National Oceanic and Atmospheric Administration ship (Rept. 108–378). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 2907. A bill to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership; with an amendment (Rept. 108–379). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. FILNER:

H.R. 3506. A bill to amend the Federal Power Act to authorize a State to regulate the sale at wholesale of electric energy generated, transmitted, and distributed solely within that State, and for other purposes; to the Committee on Energy and Commerce.

By Mr. SHERMAN (for himself, Mr. ISRAEL, Mr. CROWLEY, Mrs. MCCARTHY of New York, Mr. WEINER, Mr. LYNCH, Mr. GEORGE MILLER of California, Mr. FARR, Ms. MILLENDER-MCDONALD, Ms. WOOLSEY, Mrs. CAPPS, Mrs. DAVIS of California, Ms. LOFGREN, Ms. PELOSI, Mr. MATSUI, Mr. SCHIFF, Ms. LEE, Mr. BERMAN, Mr. HONDA, Mr. LANTOS, and Ms. HARMAN):

H.R. 3507. A bill to expand homeownership opportunities in States having high housing costs; to the Committee on Financial Services.

By Mr. HOUGHTON (for himself and Mr. RANGEL):

H.R. 3508. A bill to amend the Internal Revenue Code of 1986 to expand the tax benefits for the New York Liberty Zone; to the Committee on Ways and Means.

By Mr. INSLEE (for himself, Mr. BARTLETT of Maryland, Mr. EHLERS, Mr. FROST, Mr. BOEHLERT, Mr. VAN HOLLEN, Mr. LEACH, Mr. LARSEN of Washington, Mr. UDALL of Colorado, Ms. BALDWIN, Mr. BLUMENAUER, Mrs. DAVIS of California, Mr. GUTIERREZ, Mr. HASTINGS of Washington, Mr. HINCHEY, Mrs. JONES of Ohio, Ms. KAPTUR, Ms. LEE, Mr. MCDERMOTT, Mr. SMITH of Washington, and Ms. WOOLSEY):

H.R. 3509. A bill to amend the Public Utility Regulatory Policies Act of 1978 to promote energy independence and self-sufficiency by providing for the use of net metering by certain small electric energy generation systems, and for other purposes; to the Committee on Energy and Commerce.

By Mr. LYNCH:

H.R. 3510. A bill to designate Angola under section 244 of the Immigration and Nationality Act in order to make nationals of Angola eligible for temporary protected status under such section; to the Committee on the Judiciary.

By Mr. MARKEY:

H.R. 3511. A bill to amend the Communications Act of 1934 to require vendors of multichannel services to protect the privacy of their customers, and for other purposes; to the Committee on Energy and Commerce.

By Mr. OTTER (for himself, Mr. MCDERMOTT, Mr. DICKS, Mr. SMITH of Washington, Ms. DUNN, Mr. HASTINGS of Washington, Mr. SIMPSON, Mr. LARSEN of Washington, Mr. NETHERCUTT, Mr. BAIRD, Mr. INSLEE, Mr. REHBERG, Mr. YOUNG of Alaska, and Mrs. CUBIN):

H.R. 3512. A bill to provide for the establishment of demonstration programs to address the shortages of health care professionals in rural areas, and for other purposes; to the Committee on Energy and Commerce.

By Mr. PALLONE:

H.R. 3513. A bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to expand and intensify programs with respect to research and related activities concerning elder falls, and for other purposes; to the Committee on Energy and Commerce.

By Mr. PETERSON of Pennsylvania:

H.R. 3514. A bill to authorize the Secretary of Agriculture to convey certain lands and improvements associated with the National Forest System in the State of Pennsylvania, and for other purposes; to the Committee on Agriculture.

By Mr. THORNBERRY (for himself and Mr. SNYDER):

H.R. 3515. A bill to establish an independent nonpartisan review panel to assess how the Department of State can best fulfill its mission in the 21st century and meet the challenges of a rapidly changing world; to the Committee on International Relations.

By Mr. WAXMAN:

H.R. 3516. A bill to suspend temporarily the duty on 586 intermediate blended colorants in acqueous solution; to the Committee on Ways and Means.

By Mr. WAXMAN:

H.R. 3517. A bill to suspend temporarily the duty on 786 neutral vinyl acetate polymer in acqueous solution; to the Committee on Ways and Means.

By Mr. WAXMAN:

H.R. 3518. A bill to suspend temporarily the duty on 486 paint based on aqueous vinyl polymer; to the Committee on Ways and Means.

By Mr. KIND (for himself, Mr. TAYLOR of Mississippi, Mr. UPTON, Mr. DAVIS of Florida, Mr. CASTLE, Mr. MEEKS of New York, and Mr. HOUGHTON):

H. Con. Res. 325. Concurrent resolution honoring the members of the National Guard and Reserve components of the Armed Forces; to the Committee on Armed Services.

By Mrs. NAPOLITANO (for herself, Mr. FARR, Mr. GRIJALVA, Mr. MCNULTY, Ms. ROS-LEHTINEN, Mrs. TAUSCHER, and Mr. WOLF):

H. Con. Res. 326. Concurrent resolution expressing the sense of Congress regarding the arbitrary detention of Dr. Wang Bingzhang by the Government of the People's Republic of China and urging his immediate release; to the Committee on International Relations.

By Mr. CROWLEY (for himself, Mr. SMITH of New Jersey, Mr. EVANS, and Mr. ENGLISH):

H. Con. Res. 327. Concurrent resolution calling on the Government of Indonesia and the Free Aceh Movement to immediately declare a ceasefire and halt hostilities in the Indonesian province of Aceh, end all human rights violations, and return to negotiations with significant Acehnese civil society and international involvement, and for other purposes; to the Committee on International Relations.

By Mr. TOM DAVIS of Virginia:

H. Con. Res. 328. Concurrent resolution recognizing and honoring the United States Armed Forces and supporting the designation of a National Military Appreciation Month; to the Committee on Government Reform.

By Mr. CARDIN (for himself, Mr. VISCLOSKY, and Mr. LEVIN):

H. Res. 445. A resolution expressing the disapproval of the House of Representatives with respect to the report issued on November 10, 2003, by the World Trade Organization (WTO) Appellate Body which concluded that United States safeguard measures applied to the importation of certain steel products were in violation of certain WTO agreements, calling for reforms in the WTO dispute settlement system, and for other purposes; to the Committee on Ways and Means.

By Mr. RYUN of Kansas (for himself, Mr. OTTER, Mr. SAM JOHNSON of Texas, Mrs. MUSGRAVE, Mr. ISTOOK, Mr. BARRETT of South Carolina, Mr. WILSON of South Carolina, Mr. TOOMEY, and Mr. HOSTETTLER):

H. Res. 446. A resolution expressing the sense of the House of Representatives that the Supreme Court should base its decisions on the Constitution and the Laws of the United States, and not on the law of any foreign country or any international law or agreement not made under the authority of the United States; to the Committee on the Judiciary.

By Mr. TOWNS (for himself, Ms. NORTON, Mrs. CHRISTENSEN, Ms. LEE, Ms. JACKSON-LEE of Texas, Mr. LANTOS, Mr. WAXMAN, Ms. SCHAKOWSKY, Mr. OWENS, Mr. BISHOP of Georgia, and Mr. SCOTT of Georgia):

H. Res. 447. A resolution recognizing the horrific effects of obstetric fistulas and urging that programs be initiated to prevent and treat obstetric fistulas; to the Committee on Energy and Commerce, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WILSON of South Carolina:

H. Res. 448. A resolution recognizing the establishment of the Rotary Club of Capitol Hill and the important contributions of Rotary Clubs to society; to the Committee on Government Reform.

MEMORIALS

Under clause 3 of rule XII, memorials were presented and referred as follows:

215. The SPEAKER presented a memorial of the Legislature of the State of Michigan, relative to Senate Concurrent Resolution No. 20 memorializing the United States Department of Homeland Security to locate its Midwestern headquarters at the Selfridge Air National Guard Base in Macomb County; to the Committee on Homeland Security (Select).

216. Also, a memorial of the House of Representatives of the State of Michigan, relative to House Resolution No. 47 memorializing the United States Department of Homeland Security to locate its Midwestern headquarters at the Selfridge Air National Guard Base in Macomb County; to the Committee on Homeland Security (Select).

217. Also, a memorial of the House of Representatives of the State of Hawaii, relative to House Concurrent Resolution No. 51 memorializing the Secretary of the Department of Homeland Security to establish a Pacific Oceanic Administrative Region within the Department of Homeland Security to be headquartered in Honolulu; to the Committee on Homeland Security (Select).

218. Also, a memorial of the General Assembly of the State of New Jersey, relative to Assembly Resolution No. 307 expressing opposition to the move of Head Start funding by the federal government from the Department of Health and Human Services to the Department of Education and also expressing opposition to provide Head Start funding on a block grant basis; to the Committee on Education and the Workforce.

219. Also, a memorial of the Senate of the State of Michigan, relative to Senate Resolution No. 4 memorializing the United States Congress to enact legislation to give states the authority to ban out-of-state solid waste; to the Committee on Energy and Commerce.

220. Also, a memorial of the Senate of the State of Michigan, relative to Senate Resolution No. 12 memorializing the United States Congress to enact legislation to authorize states to prohibit or restrict foreign municipal solid waste and to urge the Environmental Protection Agency to ensure full compliance with the Agreement Between the Governemnt of Canada and the Government of the United States Concerning the Transboundary Movement of Hazardous Waste; to the Committee on Energy and Commerce.

221. Also, a memorial of the Senate of the State of Michigan, relative to Senate Resolution No. 167 memorializing the United States Congress to enact legislation to extend to the states more authority for the management of solid waste; to the Committee on Energy and Commerce.

222. Also, a memorial of the Senate of the State of Michigan, relative to Senate Resolution No. 52 memorializing the United States Congress to enact legislation to include the services of licensed professional conselors and marriage and family therapists among services covered under Medicare; jointly to the Committees on Ways and Means and Energy and Commerce.

223. Also, a memorial of the General Assembly of the State of New Jersey, relative to Assembly Resolution No. 318 memorializing Congress to enact, and the President of the United States to sign into law, a prescription drug benefit in the Medicare program; jointly to the Committees on Ways and Means and Energy and Commerce.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 25: Mr. BILIRAKIS.

H.R. 162: Mr. MCCOTTER.

H.R. 218: Mr. NUNES.

H.R. 290: Mr. DAVIS of Illinois, Mr. GREENWOOD, and Ms. MCCARTHY of Missouri.

H.R. 339: Mr. BURGESS.

H.R. 358: Mr. PAUL.

H.R. 369: Mr. GEPHARDT.

H.R. 375: Mr. ROGERS of Alabama.

H.R. 463: Ms. GRANGER and Mrs. BIGGERT.

H.R. 570: Mr. Baird.

H.R. 571: Mr. VISCLOSKY and Mr. BURGESS.

H.R. 738: Ms. LEE.

H.R. 745: Mr. KENNEDY of Rhode Island.

H.R. 785: Mr. BEAUPREZ, Mr. DELAHUNT, and Mr. LANGEVIN.

H.R. 798: Mr. GERLACH.

H.R. 811: Ms. LEE.

H.R. 814: Mr. MICHAUD, Mr. SNYDER, and Mr. SAXTON.

H.R. 857: Mr. LARSON of Connecticut and Mr. GRIJALVA.

H.R. 876: Mr. SANDLIN, Mr. NEY, Mrs. EMERSON, Mr. PEARCE, Mr. HINCHEY, Mr. GILCHREST, and Mr. MCDERMOTT.

H.R. 898: Mr. JANKLOW and Mr. HOSTETTLER.

H.R. 919: Mr. REHBERG and Mr. MCCOTTER.

H.R. 935: Mr. OLVER.

H.R. 956: Mr. GREEN of Texas, Mr. MCGOVERN, Mr. JACKSON of Illinois, Mr. CUMMINGS, Mrs. MCCARTHY of New York, Mr. GUTIERREZ, and Mr. MEEKS of New York.

H.R. 970: Mr. STARK.

H.R. 973: Mr. CRANE.

H.R. 1032: Mr. GOODE.

H.R. 1034: Mr. FROST, Mr. JACKSON of Illinois, and Mr. HONDA.

H.R. 1049: Mr. ANDREWS.

H.R. 1056: Mr. CARDIN.

H.R. 1057: Mr. TOOMEY and Mr. BEAUPREZ.

H.R. 1117: Mr. CUNNINGHAM, Mr. BEAUPREZ, Mr. PEARCE, and Mr. RADANOVICH.

H.R. 1125: Mr. HOLDEN.

H.R. 1155: Mr. TIBERI and Mr. ROTHMAN.

H.R. 1179: Mr. SAXTON.

H. R. 1205: Mr. KENNEDY of Rhode Island.

H.R. 1212: Ms. KILPATRICK.

H.R. 1220: Mrs. MILLER of Michigan and Mr. TERRY.

H.R. 1258: Mr. VAN HOLLEN and Mr. ROTHMAN.

H.R. 1295: Ms. MCCARTHY of Missouri, Mr. JACKSON of Illinois, and Mr. COOPER.

H.R. 1310: Mr. BURNS.

H.R. 1345: Mr. OLVER.

H.R. 1372: Ms. PRYCE of Ohio and Mr. CUNNINGHAM.

H.R. 1406: Mr. DEAL of Georgia.

H.R. 1414: Mr. TAUSCHER and Ms. SCHAKOWSKY.

H.R. 1430: Mr. GREEN of Texas, Mr. ACKERMAN, Mr. JACKSON of Illinois, Mr. CUMMINGS, Mrs. MCCARTHY of New York, Mr. PRICE of North Carolina, Mr. GUTIERREZ, and Mr. MEEKS of New York.

H.R. 1483: Mrs. CAPPS.

H.R. 1499: Mr. MCDERMOTT and Mr. MORAN of Virginia.

H.R. 1592: Mr. PAUL.

H.R. 1622: Mr. PICKERING.

H.R. 1634: Mr. POMEROY.

H.R. 1657: Mr. PASTOR and Mr. HINCHEY.

H.R. 1699: Mr. NEY.

H.R. 1749: Ms. BORDALLO.

H.R. 1752: Mr. GUTIERREZ.

H.R. 1783: Mrs. MYRICK.

H.R. 1784: Mr. MORAN of Virginia.

H.R. 1793: Mr. KING of Iowa.

H.R. 1819: Mr. DOYLE and Mr. KING of Iowa.

H.R. 1863: Mr. PAYNE, Mr. GRIJALVA, and Mr. DOYLE.

H.R. 1865: Ms. NORTON.

H.R. 1914: Mr. BLUMENAUER, Mr. CARTER, Mr. MCCRERY, Mr. BISHOP of Utah, Mr. BONILLA, Mr. CULBERSON, Mr. DELAHUNT, Mr. LINCOLN DIAZ-BALART of Florida, Mr. MARIO DIAZ-BALART of Florida, Mr. DREIER, Mr. HOSTETTLER, Mr. HUNTER, Mr. KELLER, Mr. KNOLLENBERG, Mr. PICKERING, Mr. RENZI, Mr. RYUN of Kansas, Mr. STEARNS, Mr. TERRY, Mr. WELLER Mr. BRADY of Texas, Mr. CUMMINGS, Mr. DICKS, Mrs. EMERSON, Mr. FRELINGHUYSEN, Mr. FLAKE, Mr. GREEN of Wisconsin, Mr. GREENWOOD, Mr. HASTINGS of Washington, Mr. KENNEDY of Rhode Island, Mr. LEWIS of Kentucky, Mr. MCINNIS, Mr. MICA, Mr. NORWOOD, Mr. POMBO, Mr. PORTMAN, Mr. RYAN of Wisconsin, Mr. SHADEGG, Mr. WAMP, Mr. YOUNG of Florida, Mrs. CAPPS, Mr. CLAY, Mr. DUNCAN, Mr. FOLEY, Mr. HASTINGS of Florida, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KIRK, Mr. LATHAM, Ms. MCCOLLUM, Mr. MCHUGH, Mrs. NAPOLITANO, Mrs. NORTHUP, Mr. REYES, Mr. REYNOLDS, Ms. SCHAKOWSKY, Mr. SHAW, Mr. SWEENEY, Mr. VITTER, Ms. WATSON, Mr. WEXLER, Mr. WHITFIELD, and Mr. SERRANO.

H.R. 1918: Ms. CARSON of Indiana.

H.R. 1919: Ms. NORTON, Mr. SANDERS, and Mr. CARDOZA.

H.R. 1993: Mr. WEXLER.

H.R. 2011: Mr. WATT.

H.R. 2038: Mr. PALLONE.

H.R. 2060: Ms. WOOLSEY.

H.R. 2094: Mr. GORDON, Ms. BERKLEY, and Mr. FARR.

H.R. 2157: Mr. CROWLEY and Mr. PAYNE.

H.R. 2214: Mr. WILSON of South Carolina.

H.R. 2216: Mr. MEEKS of New York.

H.R. 2217: Mr. MILLENDER-MCDONALD, Mr. HASTINGS of Florida, and Mr. MEEKS of New York.

H.R. 2238: Mr. HOEKSTRA.

H.R. 2239: Mr. SHAYS, Mr. TOM DAVIS of Virginia, Mr. BASS, Mr. ALLEN, and Mr. CLAY.

H.R. 2323: Mr. MENENDEZ.

H.R. 2353: Mr. JACKSON of Illinois.

H.R. 2371: Mr. HOEFFEL and Mr. SHERMAN.

H.R. 2394: Mr. KIND and Mr. SCHIFF.

H.R. 2404: Mr. WEINER, Mr. MURTHA, Mr. DINGELL, Mr. HUNTER, Mr. HOUGHTON, and Mr. HOLDEN.

H.R. 2444: Mr. ROGERS of Kentucky.

H.R. 2492: Mr. BOYD.

H.R. 2505: Mr. GUTIERREZ.

H.R. 2510: Mr. CALVERT.

H.R. 2511: Mr. CARDOZA and Mrs. WILSON of New Mexico.

H.R. 2515: Mr. SHAYS, Ms. ROYBAL-ALLARD, and Ms. CARSON of Indiana.

H.R. 2516: Mr. WU.

H.R. 2579: Mr. TURNER of Ohio.

H.R. 2584: Mr. FLAKE.

H.R. 2626: Mr. MEEKS of New York.

H.R. 2699: Mr. CAMP.

H.R. 2700: Mr. GRIJALVA.

H.R. 2702: Mr. LEVIN and Mr. ROHRABACHER.

H.R. 2705: Mr. MEEHAN.

H.R. 2719: Mr. KING of New York and Mr. FILNER.

H.R. 2735: Mr. SKELTON, Mr. ISAKSON, and Mr. GRIJALVA.

H.R. 2768: Mr. STUPAK, Mr. MCHUGH, and Mr. KENNEDY of Minnesota.

H.R. 2809: Mr. SHAYS.

H.R. 2810: Mr. SHAYS.

H.R. 2816: Mr. SCHIFF and Mr. UDALL of Colorado.

H.R. 2818: Mr. GREEN of Texas and Mrs. CHRISTENSEN.

H.R. 2839: Mr. STRICKLAND, Mr. GREEN of Wisconsin, and Mr. PUTNAM.

H.R. 2853: Mr. WATT.

H.R. 2929: Mr. PICKERING, Mr. WYNN, Mr. ENGEL, Mr. RUSH, Mr. BOUCHER, and Mr. STUPAK.

H.R. 2963: Ms. LOFGREN, Ms. BORDALLO, and Mr. BLUMENAUER.

H.R. 2968: Mr. PORTER.

H.R. 2983: Mrs. CHRISTENSEN, Mr. WYNN, and Mr. RENZI.

H.R. 2986: Mr. OBERSTAR, Ms. PRYCE of Ohio, Mr. FORD, Mr. SULLIVAN, Mr. WELLER, Mr. LEWIS of Kentucky, Mr. BRADY of Pennsylvania, Mr. MURTHA, Mr. SABO, Mr. KANJORSKI, Ms. ESHOO, Mr. HASTINGS of Florida, Mr. DICKS, Mr. JANKLOW, Mr. SIMMONS, Mr. ADERHOLT, Mr. HOBSON, Mr. COBLE, Mr. SCHROCK, Mr. ROGERS of Michigan, and Ms. HART.

H.R. 3002: Mr. DEAL of Georgia.

H.R. 3009: Mr. OWENS and Mr. VITTER.

H.R. 3024: Mr. GOODE.

H.R. 3045: Mr. SCHIFF.

H.R. 3051: Mr. STRICKLAND, Ms. WOOLSEY, Mr. GUTIERREZ, and Mr. RAHALL.

H.R. 3058: Mr. MILLER of Florida.

H.R. 3085: Mr. KUCINICH.

H.R. 3092: Mr. BERRY, Mr. BERMAN, and Mr. HASTINGS of Washington.

H.R. 3103: Ms. LOFGREN, Mr. SNYDER, and Mr. TIBERI.

H.R. 3104: Mr. MCCOTTER, Mr. JONES of North Carolina, Mr. GREEN of Wisconsin, and Mr. SPRATT.

H.R. 3111: Mr. POMEROY.

H.R. 3125: Mr. HERGER and Mr. BILIRAKIS.

H.R. 3133: Mr. SANDERS and Ms. NORTON.

H.R. 3184: Ms. MCCARTHY of Missouri.

H.R. 3191: Mr. SMITH of Texas, Mr. MARSHALL, Mr. SHAW, Mr. CALVERT, Mr. MANZULLO, Mr. GIBBONS, and Mr. GOODLATTE.

H.R. 3205: Mr. VAN HOLLEN.

H.R. 3242: Mr. PUTNAM.

H.R. 3244: Mr. MORAN of Virginia, Mr. SMITH of Washington, Ms. KAPTUR, Mr. RAHALL, Mr. GUTIERREZ, Mr. KILDEE, Mr. RODRIGUEZ, and Ms. CORRINE BROWN of Florida.

H.R. 3263: Ms. PRYCE of Ohio.

H.R. 3266: Mr. FROST, Mr. TURNER of Ohio, Mr. RANGEL, and Mr. GARRETT of New Jersey.

H.R. 3272: Mr. JONES of North Carolina.

H.R. 3277: Mr. CUNNINGHAM, Mr. HOEKSTRA, Mr. SWEENEY, Mr. NORWOOD, Mr. COLLINS, Mr. CHOCOLA, Mr. BURTON, of Indiana, Mr. DEMINT, Mr. PORTER, Mr. HYDE, Mr. WICKER, Mr. SENSENBRENNER, Mr. PETRI, Mr. POMBO, Ms. HARRIS, Mr. OSBORNE, Mr. LAHOOD, Mr. THOMPSON of California, Mr. FEENEY, Mr. COX, Mr. ROHRABACHER, Mr. STEARNS, Mr. BLUNT, Mr. SAXTON, Mr. ISSA, Mr. LINDER, Mr. TIAHRT, Mr. LOBIONDO, Mr. NEY, Mrs. CUBIN, Mr. JONES of North Carolina, Mr. WELDON of Pennsylvania, Mr. BARRETT of South Carolina, Mr. WAMP, Mr. BONNER, Mr. SHAYS, Mr. SHUSTER, Mr. RYUN of Kansas, Mr. MEEHAN, Mr. KIND, Mrs. WILSON of New Mexico, Mr. SHAW, Mrs. KELLY, Mr. CRANE, Mr. DOYLE, Mrs. MCCARTHY of New York, Mr. FATTAH, Mr. LARSON of Connecticut, Ms. PRYCE of Ohio, Mr. ENGLISH, Mr. WOLF, Mr. TURNER of Ohio, Mr. SIMPSON, Mr. EVERETT, Mr. KILDEE, Mr. BRADY of Pennsylvania, Mr. WELLER, Mr. LATOURETTE, and Mrs. NAPOLITANO.

H.R. 3294: Mr. EMANUEL.

H.R. 3307: Mr. PETERSON of Pennsylvania.

H.R. 3313: Mr. MILLER of Florida.

H.R. 3325: Mr. WAXMAN.

H.R. 3329: Mr. JONES of North Carolina.

H.R. 3338: Mr. SCOTT of Virginia, Mr. FROST, and Ms. MILLENDER-MCDONALD.

H.R. 3344: Mr. NETHERCUTT, Mr. PETERSON of Minnesota, Ms. HOOLEY of Oregon, Mr. RYAN of Ohio, and Ms. BERKLEY.

H.R. 3350: Mr. SANDERS and Mr. FROST.

H.R. 3367: Mr. ANDREWS.

H.R. 3370: Mr. TOWNS, Mr. FROST, and Mr. GORDON.

H.R. 3380: Mr. ETHERIDGE and Mr. BALLANCE.

H.R. 3394: Mr. SHAYS.

H.R. 3403: Ms. HARRIS, Mr. HALL, and Mr. WELDON of Florida.

H.R. 3412: Mrs. JONES of Ohio, Mr. PAUL, and Mr. GERLACH.

H.R. 3416: Mr. KLECZKA.

H.R. 3422: Ms. CARSON of Indiana.

H.R. 3438: Mr. KNOLLENBERG, Mr. LOBIONDO, Mr. MOORE, Mr. LYNCH, and Mr. MEEHAN.

H.R. 3441: Mr. KLECZKA, Mr. MEEKS of New York, and Mr. MCDERMOTT.

H.R. 3452: Mr. VITTER.

H.R. 3453: Mr. BACHUS, Mrs. BLACKBURN, Mrs. EMERSON, Mr. GOODE, Mr. HENSARLING, and Mr. WELDON of Florida.

H.R. 3458: Mr. DAVIS of Tennessee and Mr. TANNER.

H.R. 3459: Mr. ACEVEDO-VILÁ, Mr. BACA, Mr. BECERRA, Mr. CARDOZA, Mr. GONZALEZ, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. FROST, Mrs. NAPOLITANO, Mr. PASTOR, Mr. ORTIZ, Mr. ORTIZ, Mr. REYES, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, and Ms. VELÁZQUEZ.

H.R. 3463: Mr. ENGLISH and Mr. SAM JOHNSON of Texas.

H.R. 3492: Mr. MILLER of Florida.

H.R. 3500: Mr. BURR and Mr. MCINTYRE.

H. Con. Res. 83: Ms. NORTON.

H. Con. Res. 247: Mr. TAYLOR of North Carolina.

H. Con. Res. 276: Mr. HOEFFEL, Ms. JACKSON-LEE of Texas, Mrs. JONES of Ohio, and Mr. GUTIERREZ.

H. Con. Res. 298: Mr. ROGERS of Michigan.

H. Con. Res. 308: Ms. MCCOLLUM, Mr. MENENDEZ, Mr. BILIRAKIS, Mr. CHABOT, and Mr. MILLER of Florida.

H. Con. Res. 310: Mr. BARTLETT of Maryland and Mr. MILLER of Florida.

H. Con. Res. 313: Mr. RANGEL, Mr. WILSON of South Carolina, Mr. PITTS, MR. KING of New York, Mr. EMANUEL, Mr. CAMP, Mr. DUNCAN, Mr. COBLE, Mr. UPTON, Mr. HOLDEN, Mr. JOHN, and Mr. MENENDEZ.

H. Con. Res. 320: Mr. MARSHALL, Mr. MCNULTY, and Mr. MCHUGH.

H. Res. 45: Mr. PENCE.

H. Res. 157: Mrs. MALONEY and Mr. BROWN of Ohio.

H. Res. 371: Mr. SMITH of New Jersey and Mr. RAHALL.

H. Res. 393: Ms. SOLIS.

H. Res. 411: Mrs. CAPPS and Mr. CHOCOLA.

H. Res. 423: Mr. UDALL of Colorado and Mr. MILLER of Florida.

H. Res. 427: Mr. CULBERSON, Mr. BELL, and Ms. SOLIS.

PETITIONS, ETC.

Under clause 3 of rule XII,

43. The SPEAKER presented a petition of the City of Independence, OH, relative to Resolution 2003–108 petitioning the support of the Breast Cancer Patient Protection Act of 2003; which was referred jointly to the Committees on Energy and Commerce and Education and the Workforce.

SENATE—*Wednesday, November 19, 2003*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty and ever-living God, who is our light and our salvation, because of You we have a future and a hope. Your loving kindness is from everlasting to everlasting. Thank You for our opportunities to make this world better and to be instruments of Your love. Make us fit ambassadors of Your kingdom, as we invest in eternity.

Today, teach our Senators what You want them to do. Help them to trust Your wisdom and depend upon Your guidance. May they prosper and be in health even as their souls prosper.

In this Thanksgiving season, we praise You because You are our rock, our fortress, our strength, our salvation, our savior, and our shield. We pray in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. This morning the Senate will conduct a period for morning business until 10:30 a.m. Following morning business, we expect to begin the Energy Policy Act conference report. If we are unable to reach consent for a time limit on the Energy conference report, it may be necessary to file cloture during today's session. In all likelihood, the Senate also will be taking up other conference reports as they become available, as well as nominations on the Executive Calendar during tomorrow's session. Therefore, rollcall votes should be expected throughout the day. Leadership on both sides of the aisle has notified Senators that in all likelihood it will be necessary for us to work through the weekend. We are on target to complete our work this week, but it looks as though we will be in session working on Saturday and perhaps Sunday to complete action on the Energy and Medicare conference reports, as well as the appropriations measures.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The assistant minority leader.

Mr. REID. Mr. President, it is my understanding on the conference report it is privileged, but it could require a vote. On our side, we have no request for a vote to get the conference report on the floor. So on our side we do not need a vote, and I want the leader to know that. We worked last night with a couple of people who thought a vote would be necessary, but they no longer believe it is necessary, so we are ready to move to that as soon as it is here.

Mr. FRIST. Mr. President, responding through the Chair, we very much appreciate that because we are very eager to get to this Energy conference report and want to do it as soon as possible this morning. I have a couple of colleagues to talk to. A final decision will be made whether or not a vote will be required. If so, I would expect to have that vote very shortly after morning business.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes, with the first 30 minutes of the time under the control of the Democratic leader or his designee, and the second 30 minutes of the time under the control of the Senator from Texas, Mrs. HUTCHISON, or her designee.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

HAPPY 80TH BIRTHDAY

Mr. SCHUMER. First, I want to wish the President of the Senate a happy 80th birthday. I come from New York. We pride ourselves on good salmon. At his little gathering last night, the Alaska salmon looked beautiful and tasted as good as any salmon I ever tasted. I want to wish him a happy birthday and thank him for celebrating it with all of us.

ENERGY POLICY ACT AND MTBE

Mr. SCHUMER. Mr. President, what I would like to talk about today is the Energy bill that is coming upon us. I want to talk about one provision in there which I find to be one of the most abusive provisions that I have ever seen come down the pike, and that is the provision of a safe harbor for the MTBE producers.

As everyone knows, we have found that while MTBEs did work at cleaning air, they also worked at polluting the groundwater. What has happened in my State and in 38, I believe it is, of the 50 States is that when the MTBEs were spilled, they went into well water, into aquifers, and basically made the water undrinkable and unusable. This has left thousands and thousands of families in terrible shape, probably tens of thousands, and it is going to grow. It is going to be millions of families down the road because we are just learning of the extent of the MTBE spills.

We are being very generous, even without this safe harbor, to the MTBE producers. We are giving them $2 billion to shut down. How many small business men and women in America, when they shut down, get a Government subsidy? I think very few. But we are giving it to them and I am not arguing against that right now, as much as I oppose it.

We have also given them a safe harbor. We have said to them that you cannot be sued, and we have set a retroactive date of September 5 in this Energy bill. I should not say "we." Two people who crafted the Energy bill did it. Nobody else had much say.

What will this mean? Let me tell you the situations I have found on Long Island and the Hudson Valley, in Orange County and Dutchess County, throughout my State.

MTBEs were spilled and have leaked into either individual wells of family homes or into aquifers upon which towns and villages depend. The water supply is gone. The people cannot use the water or drink the water. What does that mean? The least of it is they need bottled water to do everything—to drink, to brush their teeth, et cetera. They have to go out and buy bottled water. That is a significant expense to these families.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

In most of the places I visited, the homes are modest. They are small homes. They are typical American families who have worked their lives and their little piece of the rock is their home.

Worse, however, is that you can't even take a shower because the MTBEs, it is said, give off some kind of vapor that could be very harmful if you shower regularly. So the families have to go to neighbors. Since often the spills are in whole tracts of land, it is not just walking across the street and knocking on the door. In some cases that is possible because some houses are not polluted and some are, that are next to each other. But usually they have to get in the car and drive the kids, drive themselves to take a shower. That renders their home—if not valueless, it knocks out their investment.

We have lots of people struggling with these MTBEs. What they have done, of course, is gone to the people who have created the problem. They have gone to the service station owner who might have spilled the gasoline, or the pipeline that ruptured. But the bottom line is, in most cases those people are out of business or not able to help.

So what happened was, because of lawsuits—and I am not one of the Democrats who is the leading advocate for the trial lawyers, but I do believe there are instances where lawsuits are the only solution. They went to oil companies with lawsuits, one in California, several in other parts of the country, and showed not only that the companies knew MTBEs were harmful but, worse, they didn't tell anybody.

If in the mid-1980s we found that MTBEs were polluting the groundwater and permanently doing such severe damage, wouldn't it have made sense for the oil companies and the producers to send notifications to the service stations, to the pipelines, to the trucking companies, and say: If this stuff spills, it could be dangerous. Be very careful. Here is what you do in the immediate case that there is a spill.

None of that happened. It is reminiscent of the cigarette industry. We knew cigarettes were harmful. Most people sort of had an inkling after 1965. I, for one, believe that just to do a lawsuit because you later find a product is harmful is not the strongest case. But in the cigarette industry, and now with the MTBEs, when the producer knew it and not only continued to produce it but didn't let the information out, that to me is egregious because you could have prevented a whole lot of harm.

So what we had throughout New York was the following. We had lawsuits, and even in many of the cases when it wasn't lawsuits, the oil companies were beginning to come forward. In Fort Montgomery, right near West Point, Orange County, are a lot of retirees from the military, in lovely homes near the banks of the Hudson River. The oil companies paid to put on these filters that would prevent the MTBEs from going into the drinking water, the bathing water, et cetera. In some places, up in Dutchess County, they were beginning to negotiate with the law firm. The town would pay some money, the oil companies would pay some money, and they would put in a water system of piped-in water because the entire drinking water, under a large number of homes, was gone.

Many of these cases didn't reach lawsuits because they were trying to sit down and work out a negotiation. But we all know that the threat of a lawsuit is the only thing that brought the oil companies to the table. But progress was being made dealing with this bad problem. I don't want to cast blame here; it is just a serious problem.

I ask my colleagues, if you are a homeowner and you bought your home and this stuff leaked half a mile away and leached into your aquifer and your home is worth half the value it was, and it could be made whole again by simply putting in a water supply, should we just say to the homeowner: Tough luck? Or should we try to figure out a way to have those who knew this horrible thing was happening help pay?

I would have felt better—maybe some of my colleagues don't like the idea of lawsuits; in this Energy bill we have $30 billion to fund everything under the Sun—had there been a fund to help the homeowners. If you don't like the way of lawsuits, that is fine, and if you believe the Government has some responsibility—which it probably does because the Government sanctioned MTBEs—fine. But what we are saying is, with this safe harbor, to the tens of thousands, soon to be hundreds of thousands, and probably into the millions of homeowners whose whole life savings are destroyed: Tough luck. You can't sue. You can't negotiate.

This is a classic case of what is wrong, sometimes, with the things we do here. We have sided with the oil companies that, at least, have as much blame as the innocent homeowner—more blame. And we have told the homeowners: Tough luck.

It is not fair. As I say, these are hard-working people. There is no fault of their own. No one thinks there is any culpability on the part of the homeowners.

We had things beginning to move in the proper direction, and because of the power of a limited few, and, frankly, because of the way this bill was created, with no debate, no chance for amendment—what we did here on the floor I think many on our side regret because we passed last year's Democratic bill which modified the safe harbor provision, due to the work of the Senator from California and some of the others, and then it was totally ignored and basically two people—both of whom I have a lot of respect for but they have a point of view quite different than many of us here on energy issues—negotiated the entire proposal.

The PRESIDENT pro tempore. The time of the Senator has expired.

Mr. SCHUMER. I ask that I be given another 5 minutes since none of my colleagues is here.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, many of us believe this whole Energy bill is a travesty. Many of us believe there are three major energy issues that have occurred in the last 3 years. One was 9/11. It showed us the need to be independent of Middle Eastern oil. And China, of all places, because they are worried about dependence on Middle Eastern oil, is now instituting CAFE standards in their automobiles that are higher than ours. That should make every American think. If our country cannot take the necessary preparations to deal with a problem that is going to be nipping at our heels and then create real problems in America a few years from now, that is a sign of weakness of our country, and I love this country and I don't like to see us be weak. But we have done nothing on oil conservation.

I am not one of those who says we shouldn't produce new oil. I was one of six Democrats who voted to look in the east gulf, much to the chagrin of my friends from Florida. I think on Federal lands—certainly not in parks or monuments but on the huge forest land—we should not be so doctrinaire. If there is a good amount of oil and gas that can be recovered in an environmentally sound way, I think we should do so. We need to increase supply and decrease demand. But we are doing nothing to decrease demand. On that issue, we have done nothing.

The second issue that occurred with California and the way electricity flows in this country—again, talk to my colleagues from Washington and talk to my colleagues from California; they will tell you; they know this issue better than I—we are doing nothing in this bill to prevent another fiasco like the one which occurred in California, and the one I find most amazing is the recent blackout that many of us in the Northeast and Midwest suffered. We all know the reason is that no one is in charge of the grid. In some places, it is power companies; in some places, it is a conglomeration; in some places, it is ISOs.

There was consensus immediately after the blackout that we ought to have one national grid governed by someone who will look out for the transmission of electricity.

The analogy ought to be the highway system. We have one national highway system. Even though people drive within the States, commerce flows across State lines. So does electricity.

The idea of not creating a strong national unit that can determine how our power flows because we are going to need more power—again, I don't like those who say we shouldn't grow. We should grow, but we are going to need more power to grow. To not have a national grid after what we saw on August 14, I believe the date was, and to just sort of ignore history because a few special interests or a few power companies didn't like it—I try to read a little bit of history. When the special interests, whether they be left, right, or center, whether they be rich or poor, overcome the national interests, that is a sign of weakness. It is a sign of failure. And energy and power are two issues that demand some kind of national solution and some kind of long-term solution.

This bill, aside from the MTBE provision, is a hodgepodge of little special interest things. I know what it does. I ought to vote for it. I am getting a few things for New York State. If each one of us is going to say we got our little thing for our States and we are not dealing with the national problem—and the two are not mutually exclusive in most cases—then we are not serving America.

I predict that within 5 years we are going to need to do another Energy bill. I think the last one we did was in 1992. We are going to need to do another Energy bill because the best that can be said about this bill is it sidesteps the major problems. The worst that can be said about it, or one of the harshest things that can be said about it, is if you hired the right lobbyist and had the right connections, you got something in this bill.

But the thing I most object to is not all those little things in there but, rather, that they have taken the place of a national policy on energy which we do not have. If there was ever a time to have it, after 9/11, blackouts, and Enron in California, now is the time we should have created it. If we can't create it now, when?

I yield the floor. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Without objection, it is so ordered.

ENERGY AND MEDICARE

Mrs. HUTCHISON. Mr. President, I rise today to talk about two monumental pieces of legislation that are coming this way and, hopefully, will be passed in the next 48 hours. I am hopeful that we will pass the Energy bill. The House has passed this Energy bill. I have heard a lot of discussion about it. It was a very hard-fought bill.

Since coming to the Senate 10 years ago, I have tried to have a part in passing energy legislation that would make our country self-sufficient. Ten years ago, I said we were too dependent on foreign oil. We were dependent upon foreign oil for about 50 percent of our energy needs. Today, 10 years later, it is 10 percent more. We are 60 percent more dependent on foreign oil for our energy needs.

It is a very important issue for our economy. Our economy is not the most stable right now, but it is in a recovery. We are dependent on energy for our factories, for our businesses, for our economy to remain stable, and for us to be able to continue to increase the number of jobs in our country. Having more energy self-sufficiency will be very important for our country to be able to strengthen our economy, put people back to work, and go into a full recovery.

The bill we will have before the Senate in the next 48 hours is not a perfect bill, but it is a bill that I am very hopeful will pass so that we can start the process of having an energy policy that includes conservation, incentives for production, incentives for nuclear power. We have not had a nuclear powerplant built in America since 1978. It is our cleanest source of energy and it is energy that has the capacity to meet our needs. I am very hopeful we will pass this bill and we will work to fix some of the things not fixed in the bill.

I am hopeful also that we will pass Medicare prescription drug benefits. That is a bill in progress. We are going to have an incredible ending to this legislative session if we are able to work those bills out and pass them, including the jobs created in the Energy bill and to begin the process of providing our seniors a prescription drug benefit.

I see the Senator from the State of Oregon is on the Senate floor, and I yield to him up to 8 minutes.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. I thank the Senator from Texas for yielding to me.

ENERGY

Mr. SMITH. Mr. President, in thinking about my remarks today, I was reflecting back upon the investments made during the Great Depression in the Pacific Northwest by President Franklin Roosevelt, by his congressional friends. They were at the time expensive, but they were done at a time in America, particularly the Pacific Northwest, when only 30 percent of the American people had electricity. One had to live in the city to have electricity.

President Roosevelt went to Oregon and Washington and dedicated the Bonneville Dam. At the time, in 1937, it was an enormous undertaking. He was a visionary when he dedicated that dam. He foresaw the benefits of universal electrification of our Nation from an economic and from an environmental point of view.

There were those who expressed concern about the cost of this Energy bill. In preparing for these remarks, I read the address of Franklin Roosevelt those many years ago because it is applicable even today. He ends his address with this adage, which is as true today as it was then:

> We in America are wiser in using our wealth on projects like this which will give us more wealth, better living, and greater happiness for our children.

It seems to me the difference between those for the bill and those against it has to do with money and the picking of winners and losers supposedly in this bill, and the difference of approach.

The American people want affordable energy. The American people want a clean environment. It does seem to me there are those on the other side who believe the best approach to get energy and to get more green policies in place is through regulation. Indeed, I saw with some interest an article in the Washington Post this morning in which the probable Democratic nominee, Howard Dean, calls for: An age of reregulation. There is the headline. He was apparently a born-again reregulator. He wants to reregulate American industry, and specifically energy.

It seems to me you can get different outcomes at the heavy hand, the club, of government. But I think what this legislation does is try to get to green results with affordable energy by incentivizing it with carrots. So you really have a choice between carrots and clubs, depending on which side you want to support in this debate and how you vote.

But, Mr. President, I rise today to speak in support of the conference report on H. 6, the Energy Policy Act of 2003. All of the conferees are to be congratulated for their tireless efforts to craft a bill that provides for real progress in securing our Nation's energy future. It is a positive step toward ensuring our farms, factories, and homes have energy they need at affordable prices.

The bill provides significant incentives for diversification of our energy sources and for investment in needed energy infrastructure.

I am pleased the bill authorizes $550 million in grants for biomass programs, which will help Oregon's communities and small businesses treat forested lands at high risk of catastrophic fires. This bill will promote the generation of electricity with the wood and brush removed from lands when lands are treated to reduce wildfire dangers.

The extension and expansion of tax credits for the generation of electricity from renewable resources will also benefit Oregon, which has been a leader in renewable energy production, particularly in wind energy.

There are tremendous amounts of incentive here for windmills. In fact, I heard Pete Domenici say: In 10 years, you are going to be tired of seeing all the windmills that will be produced from this.

Now, the Federal Government can mandate it and impose it on electrical utility companies, or it can incentivize it by helping these renewable types of energy to be more affordable and more marketable in the marketplace of today. Again, it is the carrot approach, not the stick approach.

We will further improve the environment by establishing tax credits for energy-efficient homes and appliances, and for energy efficiency improvements to existing homes. Expansion of the Energy Star program builds on the success of the collaborative effort between Government and industry to inform consumers about energy-efficient appliances.

Mr. President, hydroelectric facilities in the Pacific Northwest provide almost 60 percent of the region's electricity. That is why I am so supportive of the provisions in this bill that authorize $100 million for increased hydropower production through increased efficiency at existing dams. People worried about global warming ought to be very interested in this provision because hydroelectric power produces abundant electricity without global warming.

The bill also contains important reforms to hydroelectric relicensing laws, allowing for increased production while maintaining existing environmental safeguards.

Our Native-American tribes in Oregon will benefit economically from provisions that promote the development of energy resources on tribal lands and extend the accelerated depreciation benefit for energy-related businesses on Indian reservations. I thank Senator CAMPBELL for his leadership on this important Indian energy title.

The bill also recognizes that not everyone is sharing in the Nation's economic recovery. It is very important that we approve the authorization in this bill of $3.4 billion a year from 2004 to 2006 for the Low Income Housing Assistance Program, known as LIHEAP. It is an important addition to this bill.

Nationally, we have finally established mandatory reliability standards for the electric transmission system, including enforcement mechanisms. This is something the Senate has attempted to do for the past three Congresses. These standards will help avoid future blackouts like those that plunged the east coast into darkness last August 14 or the August 1996 event which paralyzed the Western United States.

Finally, let me turn to the electricity title. This has been an issue of particular importance to my constituents in Oregon and to the West in general. In recent years, Oregon ratepayers have been harmed as a result of market problems that spread from California throughout the West. Most Oregonians have seen their electricity rates increase by around 50 percent in the past 3 years.

FERC's proposal on standard market design, SMD, threatened to raise Oregon's rates even further. As originally proposed, it simply would not have worked in the Northwest, where hydroelectricity is the dominant resource.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SMITH. Might I have another 2 minutes?

Mrs. HUTCHISON. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. Eighteen minutes 50 seconds.

Mrs. HUTCHISON. I yield 1 more minute to the Senator from Oregon, and then I will yield up to 8 minutes to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. In short, SMD was bad for the consumers of Oregon, particularly those in rural areas.

Led by the Senate, this Congress has taken the extraordinary step in this bill of blocking FERC from continuing with this rulemaking that would have been so harmful to so many areas of the country.

Unfortunately, the SMD is only part of a FERC vision for restructuring the wholesale electricity industry in a way that puts consumers at risk. FERC appears bent on "competition at all costs," regardless of the costs to consumers, and without justifying the need for its draconian proposals.

We have stopped SMD in this legislation, but other proposals are out there. Even now, utilities in the Northwest are concerned that they will once again be harmed by California's efforts to get FERC approval for new market structures under what is commonly known as MDO2.

We cannot continue to legislate against specific FERC proposals for market design.

I do hope that FERC gets the message we are sending them, however. The goal of Federal policy, which I believe is furthered by this electricity title, is to promote universal access to electricity at affordable prices.

Electricity is too fundamental to our lives, and to this Nation's economic well-being to be subjected to radical experiments, such as the one proposed by SMD.

In closing, Mr. President, I congratulate Senator DOMENICI and Senator GRASSLEY for their leadership in crafting this important legislation.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Mississippi is recognized for 8 minutes.

Mr. LOTT. Mr. President, I appreciate the remarks of the Senator from Oregon and his thoughtful comments about the electricity section. I do think this legislation includes good language in that area that will be fair to all sides of electricity production.

I do believe, as a result of this legislation, we are going to have a better grid. There are incentives to expand the grid where it is needed. In my part of the country, there have been significant investments in the grid already. We have a surplus of power. We are delighted to have more competition. We are delighted to work to have interconnectibility.

But my concern had been that this language, this section, was not written properly, that the Federal Energy Regulatory Commission would have come up with a plan that would have forced ratepayers in my State to pay for additional transmission lines which would not benefit them. So it is a delicate balance.

It has been very hard to work through this with regional differences, with Senators on both sides of the aisle coming at it from a different viewpoint. But through the efforts of Senator DOMENICI and Senator CRAIG THOMAS, and the interest of Senators such as GORDON SMITH and LARRY CRAIG, and the chairman in the House, BILLY TAUZIN, we came up with a good package. I appreciate the efforts of all concerned.

We will hear from the chairman and ranking member about details of this legislation. I am sure they will go into some of the specifics about policy decisions that were made in the electricity section and also give us detailed information about some of the tax policy, the tax incentives that were included in this bill.

I guess there is some sticker shock when we learn that the tax section would actually wind up being some $23.5 billion. But it is a diverse package and one that I do believe will produce more energy in this country.

It has a lot of incentives. Some of them will not produce that much, and I acknowledge that. Some of it I would not have included. Probably two-thirds of it I would not have included. But this is the art of legislating.

So I want to speak to the broader perspective of what we are doing.

We have not passed major energy legislation in the Congress for 10 years. The truth is, we have done very little since 1979, when we were dealing with lines at gas stations and unreliability of supply. Frankly, it has not been getting better over the years. It is getting worse. We are becoming more and more and more reliant on foreign oil for our energy needs—now well over 50 percent, probably headed for 60 percent.

This is dangerous. We are relying on Saudi Arabia, Iraq, Venezuela, Nigeria, and other countries such as Canada and Mexico, countries on which it makes me very nervous that we are dependent for their oil to power this country.

This issue is about the future of America. Are we going to continue to be dependent on this foreign oil and, if we are, what will that mean for our economy if they decide to jack up the prices or cut off the supply, or if there is a change of government that produces uncertainty as we have seen to a degree in Venezuela, not to mention Iraq, of course.

That leads to the national security aspects. If we don't have a reliable energy supply, it will affect our ability to power our ships, our planes. I thought it was so ironic last year that we were involved in a direct conflict with Iraq and yet we were winding up relying on Iraqi oil which we brought to the United States, refined, and put in airplanes to bomb Baghdad. This is a dangerous situation.

What is the solution? Produce more energy supply of our own. The whole package, not just oil but, yes, oil. We have a lot of oil in America that is captured in these stripper wells, these small wells. We have natural gas that we could produce more of. What we have done in America is there is no incentive to produce it, and by the way, we have locked up lots of it. You can't drill in most of the Gulf of Mexico, not on the Atlantic or Pacific coasts, not in certain areas in the west. So slowly but surely we have stopped production in America.

This bill will produce some more oil and natural gas. We will be able to have greater use of coal because we are going to put an investment in clean coal technology. We are going to have more hydropower and, yes, more nuclear power. The cleanest power producers are natural gas and nuclear power. Why don't we encourage more of that?

And we have lots of incentives in here for alternative fuels: ethanol, biodiesel, whatever that is. We are going to use biomass, and some of that will be done in my State. I don't think it is going to produce a whole lot. I think it is going to eat up a lot of money. But we will look for alternative fuels, and that is good. So that is part 1: more production.

Some people say we don't need more production; we can conserve ourselves into an energy policy. How ridiculous can you get. What are we going to do, go back to just burning coal in the fireplaces? I used to have to bring in a scuttle of coal every morning before I went to school, and I didn't like it. It was cold to bring in the coal, and it was dirty burning. I never liked it. Well, what are we going to do? Just produce more blankets. They would probably be sent to us from China.

Let's get real. In conservation, yes, give incentives to people to better insulate their homes and to maybe buy more fuel-efficient and better appliances that don't create pollution. Let's include that. More production: let's go after alternative fuels. Let's have conservation. Let's have the whole package.

What will be the result? America will be more secure. Our economy will be stronger because this bill will produce jobs. You may say, well, they are not real jobs or maybe they are temporary jobs. A job is a job where I come from. Where I come from, if you want to eat and live and do well, you have to find a job. You take what you can get. This will produce over 800,000 jobs. This is a jobs bill.

It is about the future reliability of our economy, about the future of our national security, and it is about jobs, which will help our economy.

It is also about ensuring clean, affordable, and reliable energy—the whole package. I think we have good legislation here. We do have incentives in it for ventures such as geothermal energy. That will bring a renewable energy online, could create a few hundred jobs. We also are going to put a real emphasis on clean coal technology. We have an abundant supply of coal, and we are developing the technology to be able to use it, burn it, and in a clean way.

I commend my colleagues for producing this bill. It is like every legislative piece. It has a few warts on it. If you are expecting the perfect, this is not it. But we need to do this. We have been arguing about it for 3 or 4 years. The things that held us back in the past we did set aside. Now we are going to be able to get this legislation.

When you look back on this year, there is going to be a lot the Senate can take credit for having made a difference in the country—the tax bill, the partial-birth abortion legislation, energy legislation, and transportation bills.

I am glad we have this legislation. I urge my colleagues to support it. It will make a difference for the future.

I thank Senator HUTCHISON of Texas for putting together this opportunity for us to speak.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I appreciate the remarks of the Senator from Mississippi. He was on the conference committee. He worked hard, knows how hard the compromises were. I appreciate his leadership because we can't depend on foreign countries for 60 percent of our energy needs and have a stable economy and keep the jobs we have and create more jobs for our recovery. I thank the Senator from Mississippi and the Senator from Oregon. The Senator from Oregon also has been a leader in this field. I appreciate so much his remarks and his leadership in this area.

I ask how much time remains in morning business?

The PRESIDING OFFICER. Eight minutes ten seconds.

Mrs. HUTCHISON. I yield the remainder of our time to the Senator from Pennsylvania, Mr. SANTORUM.

MEDICARE REFORM

Mr. SANTORUM. Mr. President, I thank the Senator from Texas and thank colleagues for their remarks this morning. I rise to talk about the Medicare prescription drug bill that is still being worked out. I think it needs to be stated that this is still a process. We have an agreement in principle, but there are still issues having to do with how much the bill will cost and whether it is going to be within the $400 billion framework that has been laid out by both Houses of Congress and by the President. They are still working through that.

As a result, there will be some changes, probably, over the next 24 to 48 hours as to what this bill is going to look like in particular. But we do have a sense of what the broad outlines are. I have to tell you in all honesty, it is like any piece of legislation. There are some things that I really like, and there are some things that are good and I am in favor of. There are some things I don't like, and there are some things that I just darn well wish were not in the bill.

The question is, How do you come out? That is a decision that every one of us is going to have to make on both sides of the aisle, because there are things I am sure every Member in this Chamber can look at and say: This is a good thing. The problem is, for about half of us who say it is a good thing, the other half will say it is a bad thing. But that is the nature of compromise. You try to come together to work out an overall package that is going to be beneficial to seniors, beneficial to taxpayers, and beneficial to the Medicare system over the long haul.

That is what I want to talk about today. I think on balance this is a bill that achieves that.

Let me lay out sort of my thoughts. No. 1, I am concerned with the overall Medicare system, the long-term health of that system. I think in part that is dependent upon the private sector system of this country upon which Medicare was built.

You have to remember, Medicare was built on a 1965 Blue Cross plan. That was a private sector plan. The reason we are doing Medicare prescription drugs is because the private sector has been offering that for some time. So Medicare tends to follow what the private sector does.

The question is, What is the private sector doing now? They are doing a lot of managed care, HMOs, PPOs, and other things insurance companies are trying to do to try to get costs under control, to increase quality and efficiency.

Well, what are we trying to do with reforming the Medicare system? We are trying to put PPOs into Medicare. We already have some HMOs there. We are trying to expand that. What we are trying to do here is to conform Medicare to sort of a current state of play, as it was in 1965, and we are trying to conform it to what is working best in the private sector today. So that is one of the objectives we are trying to accomplish.

This is my problem. I don't think, necessarily, that the current private sector—just as in 1965—is necessarily the most efficient way to run a health care system. I think there are fundamental underlying problems in the health care system that we are paying the costs for today. That is why our health care costs continue to go up. I think the fundamental problem is that people are not paying for their health care. When I say that, it is not that people are not paying for it through insurance. They are, and their premiums and copayments are going up to some degree.

The overall cost for employers is going up, no question. One of the reasons the cost is going up is that utilization is going up, is that people's out-of-pocket expenditures don't conform to the benefit they are getting. In other words, they are paying $2 for $10 worth of service. As long as you are paying $2 out of pocket for a $10 benefit, you are probably going to continue to consume that benefit, disproportionate to other activities where you put $2 out of pocket and get $2 of benefit. We have to change that dynamic in health care, while maintaining insurance for people who need that coverage.

The way this bill does that is just crucial. One of the reasons I am very excited about the bill is it puts in a provision called health savings accounts, which sets up a system in the private sector—it is not a Medicare provision but it is in the Medicare bill—it sets up a private sector reform to allow people to set up accounts so they can take more responsibility and more control over their health care expenditures. In a sense, by living healthier lives, by doing preventive care, doing all the things to maintain good health, they can actually save money and—this is the kicker—keep it. The insurance company doesn't benefit if you stay well and do the good things and you don't end up in hospitals or having surgeries. You benefit.

So we are fundamentally changing the dynamic at the private sector, pre-Medicare level. Why is that important? If this is successful—and I believe it will be—it becomes a building block for future reform of Medicare, because once the employee population with private sector insurance, pre-Medicare, becomes used to and comfortable with this kind of program, they will be demanding it when we get to Medicare.

It will infuse in Medicare what I believe is ultimately necessary, which is more individual control and responsibility for their health expenditures. So I argue that of all the things done, interestingly enough, in this Medicare bill, the most important thing I think we do, as a conservative, as somebody who believes in giving people more power and giving individuals more control, more choices, the most important thing we do in the Medicare bill isn't in Medicare but it is going to be a dramatic impact on it when the baby boomers retire and the costs go out of control.

I make the argument—and we can get into the details of the Medicare bill—from the standpoint of a Republican conservative and to conservatives across this country, what we are doing with the reform in health savings accounts—they used to be referred to as medical savings accounts—is probably the most important, I argue, for the long-term future of Medicare because, as I said before, Medicare reform follows private sector reform. When the private sector changes, eventually Medicare will change to reflect that because that is what the public will want and demand.

Within the Medicare system, we do put some reforms into place that are important. We have the reforms to Medicare Part B. We do put a Medicare drug bill in. Some people are saying: Well, as a conservative Republican, why do you want to put in a $400 billion new entitlement?

The fact is, we have a health care system that doesn't cover health care expenses. If we have a health insurance system that doesn't cover 50 percent or, in some cases, more than 50 percent of the actual costs most people consume in health care expenditures, what kind of health care system is it, as far as insurance is concerned? It is not a very good one.

Again, some Republicans are saying, well, we should be doing what the market is doing. Well, what the market did was cover drug costs. For us not to do that—I think it is a little disingenuous to make the argument that we should not take on this liability. I agree we need to have reforms and control costs, but we need to take on this responsibility because it is part and parcel of good quality health care in America today.

The PRESIDING OFFICER. All time has expired.

Mr. SANTORUM. I thank the Chair.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

The majority leader is recognized.

Mr. FRIST. Mr. President, first, I very much appreciate our colleagues talking on two very important issues this morning in morning business. In a very productive way, it highlights the issues that we will continue to debate and discuss over the next several days.

As I mentioned earlier this morning, the plans are to address the issues of the Energy bill, as well as the Medicare bill, as well as the appropriations bills, over the next several days and bring them to the floor as soon as possible, as soon as they are ready, so we can proceed with this debate in an orderly fashion.

As I mentioned earlier this morning, the plans will be to work through this week and through the weekend and, hopefully, that will be it. Possibly, we might go into the early part of next week.

ENERGY POLICY ACT OF 2003—CONFERENCE REPORT

Mr. FRIST. Mr. President, at this point, I move to proceed to the conference report to accompany H.R. 6, the Energy Policy Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6), to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same, with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

(The text of the conference report is printed in the proceedings of the House in the RECORD of November 17, 2003.)

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I want to first say to the Senate, a little over a year ago the Senate changed committees and I had the luxury of moving from the Budget Committee to the Energy Committee—perhaps not a luxury in everyone's sense but from my standpoint it was, indeed, a great opportunity and a tremendous change for me. I took that opportunity with a great deal of relish and enthusiasm and decided I would do the very best I could to produce an energy policy, broad based, for this country.

The House agreed on that conference report yesterday by an overwhelming vote. That means that one body has looked at that conference report and, with bipartisan support, said this is a good policy for the United States to follow in the future, and it will do good things for our people and for our growth and development.

The United States of America spends annually $440 billion, roughly—and that is on the low side—on energy. That energy is the underpinning of our economy and is a principal component of our quality of life. For most Americans, the complex system of energy production and distribution is something they take for granted. When they turn on the lights every morning, they give absolutely no thought to the turbines powered by coal, gas, oil, hydropower, or nuclear power spinning around to produce that electricity. Only during hurricanes or blackouts are they reminded of how complex the system of transmission lines is that brings that power to their homes and to their businesses sometimes across many States.

Americans almost never give a thought to the fact that beyond the complex physical system that produces and generates our energy is a massively complex system of rules and regulations. These rules and regulations govern, one, who pays for power and who pays for the powerplants and transmission lines; two, how the emission from the plants is regulated; three, who can own them; four, how the fuels can be shipped; and five, what costs can be charged and to whom.

Some of my colleagues are critical of this legislation. Who would not expect that to be? This bill is put together by the House and the Senate, each with different ideas about what they think is the best way to solve our problems, if we can. Clearly, each body has strong feelings about certain issues that they match up when we attempt to move ahead in some positive direction.

Some will get up here in the next couple of days and argue about some of the provisions in this bill. I say right now to the Senate and to the American people, some of the provisions that will be argued I agree with. Some of the provisions I don't agree with; that is, some that people suggest should be changed in this bill. But I remind everyone that we didn't get to this point without giving and taking, without putting and taking back, without arguing one way and then not winning it and having to go the other way. I suggest that everybody in this body knows—and if they don't right now, they will soon—that across this land there are millions of farmers, who farm all kinds of products, who are either up here on the Hill or on the telephones talking about passing this bill because it has a giant provision to convert corn and related products of our country over time to ethanol which will, in turn, be used in our automobiles in lieu of gasoline that comes from crude oil.

We in the Senate, I say to my good friend, were led in those negotiations for ethanol by the distinguished Senator from Iowa, Mr. GRASSLEY. He has been a staunch advocate, along with the minority leader, Senator DASCHLE, for a major American ethanol program. I can tell my colleagues that in negotiating with the House, they weren't as excited about the program, the project, or the size as we were under the leadership of Senator GRASSLEY. So to get what we wanted, we had to ask them what they wanted. They didn't wait around for us to ask. That is sort of a way of saying it. They told us what they needed. In other words, they said: You want that, we want something.

I will tell my colleagues shortly of the numerous provisions they wanted that are in this bill that brought us forth today with the most significant program for farmers and the production of ethanol to take the place of crude oil that we have ever had in this country.

Let me proceed with my original thoughts and then move over to the subject matter which has brought a number of people into a state of opposition to this bill. Let me complete a few thoughts.

The Congressional Budget Office estimates that this bill will cost $26 billion over 10 years. Some people have much bigger numbers, but what they are talking about in those numbers is not where we have obligated the expenditure of funds. They are authorized. They are to be funded, if ever, later. They are statements of policy, but not statements of policy accompanied by programs that must be paid for.

What I am talking about is $26 billion that has to do with the taxes that are included in this bill. That averages $2.6 billion a year. People can talk about how much we are spending and who we are giving it to, and I remind them one more time, America at work, day by day, spends about $440 billion annually on electricity. We, who were charged in our committee with making things better for the future, said let's have some production tax credits and the like to bring on more energy and cause more alternatives. If we took that number of $2.6 billion per year on average, and then figure that up against $440 billion a year, it would seem to me that some might say: You didn't do enough; you can't move this system with that little tiny bit of money.

I will, before we are finished, calculate this over 10 years. I will take $440 billion times 10 and then the little bit we are spending, and the number will then be such a tiny number that people will wonder whether we can really get much done. I think we can.

In exchange for that investment of about one-half of 1 percent, in summary, for there is time to go into detail, we will diversify our resources of electricity to build new, clean coal-burning powerplants, solar facilities, relicense our hydropower, and build new geothermal plants and, yes, perhaps build some nuclear powerplants.

For the same one-half of 1 percent, we will impose mandatory reliability standards on our transmission systems to ensure that blackouts, such as the one in August, will not occur again.

This legislation will also streamline the permitting process for oil and gas production on Federal lands. I want to be clear that this legislation does not change the standards. We are not reducing the requirements to produce energy on Federal properties, but we require Federal agencies to coordinate so that the regulatory process is more straightforward. I would think anybody would expect that of us in these days when we have shortages and when we have resources of our own.

This bill did not shy away from controversy. Some of the most difficult issues we faced were the regional differences on how to regulate electricity generation and transmission. This Nation is divided on the issue. If they are not divided, it is because they don't know the issue. But if they knew the issue, they would be divided, and that is unavoidable.

As I have said before, if I could have written four different laws, cutting our country into four pieces, we could have provided each region of the country its own set of laws. But we cannot do that.

There is one America, not four. We were asked to write a reform of the Federal Power Act for the whole country. So without the luxury of doing it in pieces, we think we have achieved a fair middle ground.

In exchange for compromise, all market participants can now conduct their business understanding what rules and regulations will be applicable. I believe that certainty will allow new capital to enter the electricity transmission business and encourage new construction and thereby create a more reliable transmission grid.

In some cases, I wish we could have done more. I think it is known that I support the opening of ANWR. I wish we could have had it in here, but we know the bill could not have passed with it. In addition, I wish we could have inventoried the resources of the Outer Continental Shelf, just to know what we own, but the House would not hear of that either. However, to the extent possible, the conference report avoids those two issues and issues of that type.

There are some issues this conference report contains that concern my colleagues, and I have heard much about them already. I want to take a visit to one of those.

First, there is an issue that is called MTBE. Those provisions were not in the Senate bill but the House was adamant about the provision. Similarly, the House insisted on an amendment called the bump-up provision. They made a case and then they voted again on that case on the floor of the House and repeated their support of it overwhelmingly. In due course, if we want a discussion of it, we can have it.

While these provisions are controversial, I am convinced the policy behind them is sound, and I will discuss them in detail as we debate each provision.

This bill is not just about producing energy. To the extent we can, we try to save energy. Some wish we could have done something more radical, such as imposing very high CAFE standards for automobiles. That continues to come up when we are asked how much gasoline are we going to save and how much oil will we import, how much will that be reduced.

I say, we will do whatever the Senate and/or the House would vote for, and everybody knows they will not vote for changes in the existing law with reference to automobiles. That is not a question of copping out, it is a question of taking the vote and finding there are not the votes.

So for those who would like to say we should have done something in that area, I think it is fair to say they either know something none of us knows about—they have a secret weapon to get the votes—or they are just making a statement to make this effort look less effective.

We know neither the House nor the Senate has the will to modify the CAFE standards to any significant degree. We have done everything else we could do short of that. I am a pragmatist, but I believe this bill will indicate we will go only so far and then we have to draw a line and say that is as far as we will go.

We did what was politically feasible. We increase efficiency standards for appliances, Federal buildings, and we provide tax incentives to use fuel-efficient cars and to build energy-efficient buildings. Many of these are not new and have been espoused by others before me as part of an energy program, including many of them by Senator BINGAMAN heretofore.

This bill is an investment. It will pay off in affordable, reliable energy that will underpin our economy. It will pay through savings we are going to enjoy from increased energy efficiency, and this bill is one-half of 1 percent investment in our economy and our future. I think it is worth it. There is no doubt in my mind that if we do this, the country will be much safer, much better off in the years to come. After all, if one takes on a job such as this, they can end up saying they at least have done that. Much more cannot be asked for.

I wish to comment on MTBE. MTBE was a product authorized by the United States of America years ago to be used in the process of oxidation in this country. It was an acceptable product to be used in a regulated manner. Many companies did that. Some companies did not use it correctly and may have violated rules, may have been negligent, may have thrown it around, may have spilled it where it should not be, but the House had in mind—and we had no alternative but to agree in order to get the rest of this bill—that for those companies that produced a valid, legal product and used it validly and legally, they should not be liable if there are damages that are forthcoming.

I might say to the Chair and all Senators, the same thing is going to apply to ethanol.

Now, going back to MTBE, it is a prescribed product. The U.S. Government prescribed it and authorized it. This bill says if it is used improperly, the companies are liable. If it is used properly, this says lawsuits do not lie for damages.

I have heard many Senators come to the floor and abhor lawsuits that seek damages from companies for products they produced that were legal and valid but some damage occurred to somebody through no fault of the product, of the production of the product or its proper use. I have heard Senators on my side of the aisle say it is time we stop those kinds of suits; those are lawyers just trying to attack, sue, and gain big settlements. In this case, we decided that for using the product improperly, lawsuits can maintain; for using it properly, lawsuits cannot be maintained.

I am very sorry there are Senators in this room whose States either were or are ready to file lawsuits claiming damages. There is surely nothing new about that, for I am sure, just as sure as I am standing here, that if this does not become law, there will be hundreds of them filed across this land. I do not think they are justified under the theory I have expressed and the theory the House expressed to us. Nonetheless, it is probably one of the most contentious issues in this bill.

I suggest that it seems to this Senator we ought to look at the overall bill. The overall bill—I cannot do justice to it in 8 minutes, but I can tell you one more time, in summary—will make America stronger, will minimize our dependence upon foreign products, in particular should make us less and less dependent upon the potential of foreign natural gas being needed in this great economy. We are moving rapidly in that direction.

The last 15 powerplants in America were built with natural gas. If we build 15 or 20 more, just as certain as I am standing here, we will be importing gas from overseas. So we will just get out of the muddle of importing crude oil and we will have sat by and watched ourselves get back into the middle of importing natural gas.

We have done everything we can, that we could come up with, that we could understand, that we could be informed on, that says America is going to produce as much natural gas as possible. As a matter of fact, things indeed could work out under this bill where Alaska—not ANWR but Alaska—could be selling natural gas to the lower 48 in large quantities.

We have given some tax credits to companies that would do that. We are all hopeful that before too much time passes they will agree to get started.

In addition, we have said there is a great deal of natural gas that lies off the shores of America in valid, not prohibited areas, very deep. We have said: Why isn't it getting produced? It is gas; we can use it; it is ours.

The issue was it was too expensive. We chose in this bill to do what everybody on this conference overwhelmingly supported and that was to substantially reduce the royalty payments so as to make that abundant natural gas available. We believe with the passage of this bill they will be out there drilling for that, adding it to America's reserves, quickly.

There are many more issues like that. I regret we could not produce a bill that would alter the current makeup of the use of fuel in America to produce energy and electricity without some stimulating and some production tax credits that would go to the industries that were not currently involved in producing energy for the American mix.

Incidentally, in that regard, we produced a tax credit for wind and solar energy the likes of which will yield wind energy for America in abundance. I ran into a gentleman yesterday whose company produces windmills and wind energy for America. He thanked me for this bill. I don't know him. I didn't know him. I met him right there. He said he was visiting with a few Senators just to make sure they understood that with this bill wind and solar energy will continue as they are but will strive to move ahead exponentially.

He said: I currently produce more wind energy than anyone, and we will be able to double and triple it with this bill because there is a good credit that is going to continue under this bill.

Incidentally, for those who want that, you should know if this bill doesn't pass, that tax credit is gone. You can wish all you want about wind energy, if that is what you like, but by not passing this bill you will have wished that away. It will not be part of any mix for the future.

In my judgment, when you add up all those pluses and you take all the negatives that are going to be spoken of here, you have a bill that deserves the U.S. Senate follow suit with the House and approve this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Parliamentary inquiry: I have not been able to locate this bill. I understand under rule XI the bill should be printed. I understand it may be printed in the House calendar, but I am interested to know whether or not printing in the House Journal represents having the bill before the Senate.

The PRESIDING OFFICER. I have been informed that the bill is printed in the CONGRESSIONAL RECORD.

Mr. GREGG. Does that qualify as having the bill before the Senate for purposes of debate?

The PRESIDING OFFICER. Yes, it does.

Mr. GREGG. I thank the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I thank Senator BINGAMAN for a chance to talk for a few minutes now. He has done a tremendous job in terms of advocating so many issues vital to the public, and I thank him for his thoughtfulness letting me begin this debate.

Throughout this discussion, we have been told this legislation should not be looked at in terms of any particular provision, but it should be evaluated on its overall merit. We heard that yesterday. We heard that again today.

We have been told that a conference report, particularly, is part of a give-and-take kind of discussion among various legislators and the various parties. Let me be real clear on that. If we are using the give-and-take measure as a barometer of evaluating an Energy bill, it ought to be clear that on this one, it is the public that is giving, and the powerful and the influential are taking a whole package of goodies.

In my view, if you look at this legislation and its provisions that in effect begin with the "get out of jail free" card that is given to the MTBE producers, and you go on to this grab bag of tax goodies that are given to powerful interests, on every measure this overall legislation breaches the fundamental principles of good energy policy.

Let me begin by talking about how it would affect our dependence on foreign oil. I believe reducing America's dependence on foreign oil is the dipstick for measuring an Energy bill. By that measure, this legislation is more than several quarts low. Thirty years ago the people of this country waited in long lines to fill up their tanks. They dreamed then of the day when the United States would no longer be dependent on foreign oil. Our citizens were asked to hold their thermostats down, and they said: What is going to be done to make this country and our electric supply less dependent on fossil fuels?

We all understand our dependence on foreign oil has increased. Fossil fuels still provide more than 85 percent of all the energy produced in the United States. If you look at this legislation, what it does is it gives, on a virtual 5 to 1 ratio, most of the tax relief to those powerful interests that, in my view, have contributed mightily to the mess that our country is in.

What is needed, of course, is a bold and aggressive approach in terms of clean and renewable energy. That is regrettably sorely lacking in this legislation.

So the Senate is aware exactly of the numbers: Renewable energy in this legislation gets about $3.4 billion over the next 10 years. The combined credits for those involved in fossil fuels comes to well over $15 billion.

I am of the view that when you look at this legislation and the fact that it does virtually nothing in terms of the key areas like transportation to promote conservation and help us find a way to a different energy future. This legislation simply does not meet the need at this time for a fresh approach in energy.

What is so unfortunate about it is, I believe, a new approach on energy is just about the most patriotic thing our country could do. We all understand the role of oil and energy dependence with respect to global security. Yet this legislation is basically a tribute to yesteryear, a hodgepodge of subsidies for the well connected, and these huge energy conglomerates basically would get additional funds for what they are already doing.

We tried over the last couple of days to amend the legislation. On all of the pro-consumer amendments, they were just gunned down almost in a perfunctory manner. The American people were given 2 days to scan 1,100 pages, more than 40 percent of which by some estimates was brand new text that was not in either the House or the Senate bill. Essentially, we have 500 pages of brand new text that had not been seen by either the Senate or the House.

For purposes of this opening discussion, let me talk about some of the areas about which I am particularly concerned.

The people of my part of the country were shellacked by the Enron scams. One of our major utilities used up hundreds of thousands of dollars of scores of workers' retirement accounts. Now these workers have virtually nothing as a result of Enron. The conference report did virtually nothing to deal with the market manipulation that went on in the Enron case—all of the smoking gun memos we read about in the papers for days involving Death Star, the Ricochet tactics that were used to drive up market prices, the energy traders who used schemes such as Get Shorty or use a Fat Boy to manipulate energy markets with impunity.

What this legislation does, in effect, is say we will ban just one of the manipulative practices used in Enron but for everything else you have free rein to manipulate the American consumer. It is sort of like building a 4-inch dam across our mighty Columbia; you stop one relatively small practice, but it is going to be drowned out by all the other manipulative schemes.

In my view, this legislation is an open invitation to future Enrons.

With respect to other priorities about which we felt strongly, I tried, for example, to prevent the weakening of current export controls on highly enriched uranium. It seems astounding that at a time when President Bush correctly talked about how important it is to fight terrorism—and we have all been concerned about yellowcake.

I sit on the Intelligence Committee. Of course, I can't get into what is discussed there. But I don't think anybody in the United States doubts the seriousness of the terrorist threat around the world. Controls in current law are intended to end the dependence of foreign companies on nuclear-bomb-grade materials, but the conference report, incredible as it may seem, goes in just the opposite direction and is going to make it easier for terrorists to traffic in these nuclear-bomb-grade materials.

The conference report would give foreign producers a fresh 9-year holiday on converting highly enriched uranium into the much safer low-enriched uranium, a conversion, in my view, that should have happened years ago. I fought in the conference to keep in place the current export controls on highly enriched uranium. I believe had my amendment passed, it would have empowered President Bush to be able to fulfill his goal of keeping nuclear materials out of the hands of terrorists. Unfortunately, this too went down on strictly party lines.

There are other areas with respect to pro-consumer amendments I thought were important which I will discuss briefly.

Many of our parts of the country have been subjected to price spikes in the gasoline market. We saw last summer that many consumers were spending more than $2 a gallon for gas. In parts of the Southwest, it was up to $4 per gallon for gas.

I sought to give the Federal Trade Commission authority to go after documented anti-consumer practices such as redlining and zone pricing. At present, every time there is a price spike, Secretary of Energy Spencer Abraham most recently put out various kinds of press releases saying they are doing an inquiry into why gasoline prices have spiked up. Just as sure as the night follows the day, the next time there is a price spike we will hear the very same thing from the Secretary of Energy.

The fact is when you look at the statutes on the books, you will find that the Secretary of Energy has absolutely no authority to do anything with respect to skyrocketing gasoline prices.

What I have sought to do in the conference and over the last few months is give the Federal Trade Commission the authority to go after documented anticompetitive practices in markets where you basically have three or possibly four of the oil companies controlling more than 60 percent of the gas that is sold in this area.

Many Members of the Senate represent just those communities—communities where in effect you have seen the competitive marketplace forces sucked right out of the gasoline markets in their communities. Unfortunately, that too was rejected on a straight party line vote.

In addition, I offered an amendment to create an advocate for the energy consumer. I believed that if you were going to have a whole passel of deregulation and regulatory changes, somebody ought to have the authority to stand up for the consumer. The great majority of our States do exactly that. We all understand that the energy markets have changed. Now there is much more being done in terms of interstate trading of energy, and there is nothing the States could do to go after abuses in the interstate trading of wholesale power.

In the conference, I offered an amendment. I made it clear I was willing to work with both Republican chairs, Senator DOMENICI and Congressman TAUZIN, on it. Yet that went nowhere as well despite bipartisan support.

Pat Wood, head of the Federal Energy Regulatory Commission, thought it was "a great idea" to have an advocate—those are his words, not mine—for the consumer. Regrettably, that idea went nowhere as well.

I have talked about what the conference report doesn't do. I want to talk for a few minutes about what it does do. It gives, for example, oil and gas extractors a blanket exemption under the Safe Drinking Water Act from pumping noxious and carcinogenic fluids underground. It gives energy producers immunity from Clean Water Act protection to present contaminated storm water runoff from polluting our lakes, streams, and marshes. It gives $30 million to a whole host of mining interests to pursue direct leaching of radioactive mine tailings into the ground.

In other words, the conference report either explicitly allows or it pays to create America's future Superfund sites.

I have talked about the get-out-of-jail-free card for the MTBE producers. This in effect would allow these producers protection from lawsuits that forced them to clean up the problem they created.

In our State, even Republicans in the State legislature are concerned about not only losing the ability to fund MTBE cleanup in Oregon but they are concerned about the precedent it sets for future cleanup of various other dangerous materials such as perchlorate and TCE.

I think this is part of what concerns me the most. I have always believed that anything important in this town has to be done on a bipartisan basis. It is probably the concern I have that has dominated my career in public service. I think we had an opportunity for a bipartisan bill in this area. As I have been able to do in my home State with our colleague, Senator SMITH, I think there was an opportunity for common ground on a whole host of key kinds of cases that would have laid out a vision for a very different energy future. But essentially what you had for weeks and weeks was a blackout. You had energy blackouts last summer with respect to this legislation. Senator BINGAMAN and I and others who were in the conference faced an information blackout. Any time you go behind closed doors, any time you do something along the lines of a conference in secret, it is an invitation to special interests to exploit their clout and their influence. That is exactly what has happened here.

I will outline one other provision. I know colleagues are waiting, and I am particularly grateful to Senator BINGAMAN for this chance to take a few minutes at the outset of the debate and touch on the proposal with respect to standard market design.

In our part of the world, in my home state, we have the highest unemployment rate in the country. Reasonable energy prices have been a key to our well-being. What we have now in this legislation is a glidepath to set up something called standard market design, a one-size-fits-all approach with respect to energy regulation.

I come to that view because there are two provisions in the report and they are essentially contradictory in nature. The first part of the conference report says you cannot engage in a standard market design regulatory regime in effect until 2007. The second part says it is basically OK for FERC to do anything they want. At a minimum, we have a lawyer's full employment program as a result of this regulatory limbo. But what is more likely to happen, because of the power of the interests that want the standard market design, they are going to exploit the regulatory confusion in this legislation to work their will.

On September 30th I received a letter from a Republican FERC commissioner, Joseph Kelliher, in which he explicitly told me that standard market design is a bad idea for Oregon, a bad idea for the Pacific Northwest, and should not be implemented in our region.

I say to the people of my State and my region, I am still going to fight this with everything I have.

Finally, at a time when our country can be held hostage by oil-producing nations, we had a chance to go forward with legislation that would make us truly energy independent. At a time when cutting-edge renewable resources are at our fingertips, what this conference report does is it lets these exciting technologies slip through our fingers. At a time when the people of our country have been clamoring for a fresh approach, a different energy future, this conference report looks at energy policy through the rearview mirror. I hope my colleagues will reject this conference report and look forward over the rest of this day and perhaps others to talk about it at some length.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I rise to raise my serious concerns with this piece of legislation. I appreciate the excellent statement of the Senator from Oregon which touched on a number of the issues this legislation raises.

The purpose of an energy policy should be, obviously, to make our Nation more independent of international fuels, to allow energy to be more readily available, and allow more productivity in our society as a result of having energy at a reasonable cost.

There are a number of ways to approach this. Any energy policy should be balanced. First, it forces conservation. Any energy policy should significantly encourage Americans, and Americans in business especially, to use appropriate conservation which does not undermine lifestyle dramatically and does not undermine efficiency but, rather, improves efficiency in order to reduce the amount of energy used.

Second, after conservation, we should use energy products which are renewable, things we can use over and over or at least produce over and over and as a result not be so dependent on international sources of oil.

Third, of course, is production. We should increase production, especially production within the United States or within regions which the United States has a relationship which is more positive and constructive than the Middle East and other areas of significant international attention.

Good energy policy requires those three elements. However, the bill before the Senate does not accomplish that. It does have some conservation. It does have some renewable language and it does, obviously, have some production language but on balance it does not have any of those at a level of intensity or effort, at least in a constructive way, that outweighs what is basically a grab bag of special interest projects directed at benefiting one segment of the economy or one segment of the population at the expense of other segments of the population.

There are a lot of examples of this. The most significant is the overall cost of the bill. This bill was suppose to have $8 billion of tax credits in it and it is up to $25 billion. That difference between $8 billion and $25 billion is almost entirely filled not by a broad approach to energy policy but by very targeted, very specific programmatic initiatives directed at certain interest groups in order to give them benefits to pervert the marketplace, to basically say: Here is a winner; everyone else is a loser.

The most classic example is the ethanol package which makes up one of the biggest initiatives in this bill. It is hard to figure out how much subsidy is in this bill for ethanol but it is huge. We know there is at least $5.9 billion, which is double the present subsidy, and we know on top of that there is probably $2.5 billion of tax credit. That is probably not all, and as people review this bill, we will find it is even more obscene than that. This is more a product which cannot stand on its own, a product which essentially has been brought to the marketplace because it has been subsidized at such a high level and because it is now, by law, required to be used, it therefore becomes viable. It does not become viable because it can compete in the marketplace—even with lower subsidies.

Some modicum of subsidy might make sense but to basically take a product and say, we essentially are going to pay more for it than it probably costs to produce and we are going to require that it then be used, is hardly a subsidy. It is basically, to be honest, a socialistic approach to managing an economy. The "pick a winner" and decide that winner, whether it works or not, will be paid for, and then you subsidize it at an extraordinary level.

There are, of course, a variety of different projects in here which are essentially projects in home States, projects of people who are friends of somebody, projects of people who happen to be able to get into that room that the Senator from Oregon mentioned was closed to most Members.

We have the advance reactor hydrogen cogeneration project for $1.1 billion. This appears to be not only for building of the plant but for the operating of the plant, which is an incredible concept. First, the taxpayers will pay to build this plant and then the taxpayers are going to pay to operate the plant. I am wondering what the purpose of the plant could be that has any commercial interests at all and the taxpayers are picking up $1.1 billion for construction and building costs.

We have $2 billion to pay for companies to assist them in phasing out MTBE, which is something I will get back to, but there is an irony in that because, of course, the bill limits the liability of those customers and then it pays out the program.

We have authorized loan guarantees for using certain types of coal that come from the Midwest and to build a plant in the Midwest which does not even exist. Basically, we are going to say, there will be a plant out there somewhere and we will put this money into it to build it. We do not know where the plant will be. We suspect it will be in North Dakota. It is a new concept in taking care of one's constituency to essentially create a plant somewhere in theory. It is a virtual plant that we are going to spend all this money on, and I guess in today's world of virtual reality it is probably appropriate that this bill have some virtual things in it because it does not have much else because the rest of the bill is equally unsubstantive.

As to the abandoned mines provision in this bill, we are essentially going to take an account which was supposed to help in cleaning up the mines which were used in the West, and we are going to take the money out of that account and we will redirect it so, basically, none of those dollars will flow into the cleanup which they are allegedly being raised for.

We have a proposal to build some sort of green shopping centers, whatever those are. That is a great concept. I always wanted to build a green shopping center. I like blue, purple, yellow. Why did we leave those colors out? We are gone to build a green shopping mall in Shreveport, LA. We are going to build a green shopping center in Atlanta. We are going to build a green shopping mall in Syracuse. And the taxpayers are going to pay for that.

Building shopping centers is a new concept for energy, for having a national energy policy.

We will spend a lot of time on this over the next week as we debate this bill, because it will take at least a week to do this bill. The most significant detriment in this bill is the fact that it is essentially structured to benefit one region of the country significantly over another region of the country.

It is almost a gratuitous attack on the Northeast from the standpoint of the way it has been put together. The most glaring example of that is the way this MTBE issue is handled.

MTBE is an additive put in gasoline. It was decided by the EPA, in the early 1990s, that this additive should be put in gasoline to make it oxidate faster, thus getting cleaner burning gasoline and reducing air pollution.

It turns out one of the unintended consequences of this legitimate desire to make gasoline burn faster is it is an incredible pollutant, an extremely difficult pollutant to deal with if it gets in the groundwater.

So States which were put under the authority of the EPA to clean their air, and which were then required, in order to accomplish this, to essentially use this additive, now find that although their air may be marginally cleaner, their groundwater is dramatically more polluted.

If you have ever been in a house—and I have been in a number of them—that has an MTBE pollution issue, it is essentially unlivable. You cannot use the shower, you cannot use the sinks, the smell is just overwhelming, and the water cannot be drunk. It cannot be put on your body to clean. It is a horrific situation.

People in community after community in my State—small communities, cul-de-sacs, groups of homes—have found they are basically unable to live in those houses until the water system has been fundamentally repaired. Sometimes you have to bring in new water because they are on wells in order to address the pollution coming from MTBE.

Thirty-three percent of one of my counties has a serious problem of MTBE pollution, and the percentages are in the midteens and higher in other towns, counties. So it is a serious environmental hazard.

Yet this bill says we will continue to use it and States that are under these orders will have to continue to use it for another period of years, increasing the amount of pollution.

Then this bill does one more thing that is really—I already used this term once, so I hate to use it again, but really is a gratuitous shot. It says States which have pursued a legal remedy for the damage caused by MTBE will no longer be able to pursue those lawsuits.

This bill—because somebody got in that room the Senator from Oregon was talking about got somebody's ear—has language in it which specifically goes back before the lawsuits were brought by some of the New England States and eliminates the ability of those suits to go forward.

Now, when I was in law school that would be called an ex post facto law and would be subject to some significant debate. However, obviously, the people who drafted this have figured out a way around that ex post facto attack, and they figure they are going to survive this attack and, therefore, they are going to eliminate the capacity of States such as New Hampshire to try to get redress on the issue of the fact that in some counties, up to 33 percent of the water is not usable because of the MTBE pollution.

It is a truly ironic situation that this has happened, that a bill proposed to reduce our reliance on energy would have innumerable special initiatives in it that have no relationship to actually increasing energy production but actually perverts the marketplace, and, on top of that, would take a policy which is being debated in the court system between the States and the producers and essentially wipes that policy, which is in an environmental fight, off the books in an attempt to protect those industries which produce this product.

We heard the Senator from New Mexico defend the position on the grounds that—I believe he used the term—I have it right here; I wrote it down because it is a unique term.

Well, I guess I can't find it right now. Anyway, it was a term that I found interesting because it basically implied that well, really, States should not be able to bring these lawsuits. These people should just have to have this groundwater pollution. And, what the heck, why not do it? Why not protect these companies from that sort of pollution forever?

Well, I think you do not protect them because, as a practical matter, you let the court decide whether the liability exists in this instance. This is not a question that is appropriate to this Energy bill, to say the least. It is, in fact, a question which should have been allowed to be resolved by the New England States as they dealt with this question of MTBE pollution in groundwater.

So this bill has some very serious problems independent of the fact that it is philosophically wrong, that it takes a marketplace, and does so much tweaking of the marketplace that you have no longer any semblance of market force in the issue of the production of energy. You simply have a grab bag of winners and losers.

The grab bag is unique. It really is unique. I would have loved to have had a fly on the wall in that room because there must have been just a parade of people coming in and out who had their special projects.

I remember this happened once before back in 1979 or 1980 when we were just coming out of the energy crisis of the 1970s, and we had the Arab oil embargo, and we decided to put money into trying to pick winners and losers in oil production. We put money into shale oil and we put money into wind and we put money into solar. At the time, I supported a lot of that exercise and said, well, that is something we ought to try.

Unfortunately, what we failed to recognize was unless the market makes the product viable, it usually never works. That has been proven because all those initiatives—synthetic fuels, shale oil, things like that—have fallen by the wayside simply because they were not competitive in the marketplace.

So to abandon the market and to pick winners and losers is not that great a policy approach to the issue of energy. It is better to level the playing field and give the producers the opportunity to choose those products which are going to make sense. That happens to be why I was for opening ANWR, for example.

But if you had been in this room, it would have been an interesting experience because as you go through this bill you find it is replete with these little special, targeted items.

Here is one. I just opened the bill because I finally got a copy of it. I just opened it. I arbitrarily opened it to a page. This is so amusing—it is not amusing; it is horrible. But the interest is so apparent and so outrageous you have to smile about it. It is so obscene in its attack on the American taxpayers. This section is called the Geothermal Steam Act. Basically, what it says—and I am almost tempted to read the whole thing—is anybody who wants is now going to be able to apply to go on to Federal lands and produce geothermal energy.

Well, geothermal energy probably has some productive capability that makes sense. I am not sure it does because no one, other than icelandic countries, has been able to make it efficient. They have an efficiency with it because they have so much of it, and they are so small.

But basically what this bill says is, all right, you can go on public lands—let's say Yellowstone Park—where there is a lot of geothermal, and you can have the Federal Government evaluate whether or not geothermal energy should be produced there. Obviously, they are not going to do it in Yellowstone Park. That was an excessive statement, but that is where we know there is geothermal power.

Then, if you, the person getting a fairly significant subsidy in this bill for geothermal production, want to, you can then decide you are going to pursue energy there. The Department is under some significant direction to actually give you a permit, at which time you have to go through something called a NEPA process, which means you have to go out and prove there is an environmentally sound way to produce this geothermal power.

All that is outrageous in and of itself because it is basically putting a put to our national lands for geothermal power that is independent of just determining whether or not that is the appropriate use for those natural lands. This is where it gets very entertaining. Then they say, you—us, the taxpayers—have to pay for the NEPA study. We have to pay to reimburse the company that wants to do the drilling or use the geothermal power for the environmental study which they are required to produce in order to prove that the power can be produced in that area. That is a very interesting concept. That is like saying to a drug company, we, the Federal Government, must pay to produce the research to produce your drug, even though you are going to get the profits from selling the drug, or any other business that has to make a basic investment to get the asset which they are going to then sell and make money on because the only significant cost for determining whether or not they are going to get their geothermal power will be the environmental impact study. So to ask the taxpayers to pay for it is, to say the least, an unusual approach.

In the context of this bill, it is very mainstream. It is very much consistent with the rest of the bill, the fact that you are going to have $1 billion worth of land or purchases made in order to protect the shoreline. But where is it all going to be purchased? Louisiana. Ninety percent of the $1 billion is going to be spent in Louisiana; or the fact that you are going to have these shopping centers in various locations; or the fact that you are going to have an ethanol program which will probably cost more in tax subsidy than what it cost to produce the product, certainly more than what the net income is going to be of that product, no question about that; or that you are going to have a subsidy for a variety of initiatives which are now allegedly commercially competitive—the list goes on interminably of tax credits which are now going to be put in place for different industries which already are, theoretically, producing a competitive product. But we have to expand that tax credit.

I won't read them all, but a few of them: There is a credit for production for advanced nuclear power; to repeal the 4.3-cents motor fuel excise tax on railroad and inland waterways; a credit for natural gas distribution; a credit for electric transmission properties—that this is an expensing item—an expensing for capital costs incurred in complying with EPA sulfur regulations; modifications to special rules for nuclear decommissioning costs; treatment of certain income as expenses; arbitration rules not to apply to prepayments for natural gas; a temporary suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income limit with respect to marginal production—that is stripper wells, I presume—amortization of delayed rental payments—that, I presume again, is a stripper well type of thing—amortization of geological and geophysical expenditures—these are all significant tax benefits—temporary repeal of the alternative minimum tax preference for intangible drilling costs—again, a significant tax benefit—credit for clean coal technology units—that is a tax credit.

Then, of course, relative to the natural gas business, there is a dramatic change in the way they account for their taxes. There is even a credit in here for ceiling fans, for certain steam generators and certain reactors and vessels used for nuclear technology. The list goes on and on: Energy production incentives; there is a special tax credit for granular mine tailings. Maybe that is not tax. I just noted that because it seems as if that may be a misapplication of that or the use of that.

The tax credit section, which makes up the difference between the $8 billion requested and the $25 billion that is actually being incurred here in tax credits, is just replete with special interest efforts to try to pervert the marketplace for the purposes of picking winners and losers in the energy production business. That might work at some level. There is no question there may be a legitimate need to do some of that. But this bill is excessive.

It is also clearly not being driven by energy policy but, rather, by parochial interests and by interests who see the opportunity to have significant gain at the expense of others—specifically, the general taxpayer.

We will spend a lot of time talking about these various issues. I think the more light shown on this bill, the better. I think we do need to spend a few days discussing the issues within the bill. Most specifically, we want to spend more time on this issue of MTBEs and the fact that this bill has essentially been structured to target one region of the country in a manner which seems highly inappropriate and punitive and which is clearly inconsistent with what historically has been the case, which is that you don't pass a law which says the legitimate activity of a State or group of States, in trying to defend the quality of their environment, will be wiped off the books. That is something the Federal Government should not be doing. It should certainly not be being done by a Republican-dominated Congress which theoretically still believes there are States out there that have some rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, if the Senator from New Hampshire would stay on the Senate floor for a moment, I don't blame him for being frustrated about the MTBE.

Mr. BINGAMAN. Mr. President, parliamentary inquiry: I would ask my colleague to yield for a question.

The PRESIDING OFFICER. Will the Senator yield?

Mr. BINGAMAN. I was just wondering if those of us who are on the Senate floor could agree on an order so my colleague from Illinois would know when he should be planning to come to speak. I know the Senator from Idaho plans to speak and Senator THOMAS would then want to speak. Would that be the order? And then I would speak and Senator DURBIN after that.

Mr. CRAIG. Certainly. I have no problem with an order.

Mr. THOMAS. Well, you have also been here. If you care to speak after Senator CRAIG, perhaps I could be after you, and Senator DURBIN after that.

Mr. BINGAMAN. I ask unanimous consent that following Senator CRAIG's statement, I be recognized to speak, then Senator THOMAS, and then Senator DURBIN in that order.

Mr. THOMAS. Fifteen minutes apiece?

Mr. BINGAMAN. Whatever period of time the Senator would want.

Mr. CRAIG. No more than 15 minutes for me.

Mr. BINGAMAN. Fifteen minutes for each of us, and a half hour for the Senator from Illinois. I think my statement will probably be closer to a half hour as well.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Idaho.

Mr. CRAIG. Mr. President, the Senator from New Hampshire has left. I don't blame him for his frustration over MTBEs. What he didn't say was that it was a Federal program and a Federal mandate. If there is a liability, maybe it ought to be the Federal Government. It was the Clean Air Act that drove States in meeting their air shed requirements to address additives to gasoline that would result in some improvement in that pollution. I don't blame him for his frustration in all of that.

I hope we can sit down and resolve this issue apart from the bill that is currently on the Senate floor as it relates to the concern of the Northeast or any State that has experienced pollution and now has a groundwater problem as a result of a Federal program and a Federal mandate passed by this Congress in a Clean Air Act. The product, yes, produced independently by a private company to meet a Federal mandate and now, of course, years later, after the application of that product, we find that there were environmental consequences.

For a few moments this morning I want to talk about the energy bill we have before us, the Energy Policy Act of 2003, and to bring some context to it, on where I believe we are and how I believe we ought to approach this particular piece of legislation.

I came to the Senate in 1990. I went on the Energy and Natural Resources Committee in 1990. In 1990, we began to talk about the need for a national energy policy because we were growing increasingly dependent upon foreign sources for our energy—primarily hydrocarbons—but we had a myriad of Federal regulations that were in large part driving energy policy into a nonproductive approach.

We were basically saying to the energy companies of our country, whether electrical, hydro-based, or nuclear-based, or whether they were coal-based—we were saying to the hydrocarbon companies: You really ought not do business here because it is going to be so expensive to meet all of these Federal rules and regulations.

We had the Clean Air Act and the Clean Water Act. National environmental policy has been talked about by the Senator from New Hampshire. That was in play, and it was beginning to have very real consequences in the ability to produce an abundance of energy for our country at a reasonable cost to the consumer.

Our economy has been based on—historically and even today—an abundant supply of low-cost energy. Every American is the beneficiary of that. From the car you drive to the toys you play with out there in recreational ways, to the home you heat, to the products you use—all of them have been tied to an abundant supply of energy at a relatively low cost. But that was because we had always been producing a lot of energy.

In the 1990s, all of the environmental regulations came into play. Attitudes shifted there. There seemed to be an attitude on the part of policymakers that energy was always going to be in abundance, always going to be there; therefore, you could begin to regulate and control it for a variety of different reasons and it would just keep coming.

That is not so. The decade of the nineties proved it. In the decade of the nineties, we experienced unprecedented economic growth, but we also became increasingly huge consumers of energy at a time when we were no longer producing much energy. We were living off the surpluses that had been built into the capacity of the energy development and producing system in our country and a delivery system that was produced in the sixties and the seventies and the 1980s.

Guess what began to happen in the latter part of the nineties. The lights went out. The lights dimmed and, of course, energy costs began to go up. That once 75 cents or 80 cents a gallon for gas all of a sudden went to $1.25, $1.60, and not long ago, in some areas, it spiked at $4 in one instance. We saw what happened to electrical energy. No longer was that switch that you woke up to every morning and flipped expecting your home and bedroom and bathroom to be filled with light—no longer was that switch something you considered automatic, that you just flipped and it was always going to be there. The generation at hand always accepted that energy was always there and relatively inexpensive, but, more importantly, they believed it was always going to be there: Just throw the switch and on came the lights.

In the late part of the nineties, they threw the switch in California and the lights didn't come on. What happened this summer in the Northeast? They threw the switch and the lights didn't come on. Somebody has to be to blame; the lights are not coming on. We went to the gas pumps, and all of a sudden it was costing us an arm and a leg to fill up our cars or SUVs; any form of transportation was beginning to cost more.

What happened? Why are we here? This President, George W. Bush, before he came to office as President elect, met here with the majority leader and leaders in the Senate and said: We have to get this country back into the business of producing energy—all forms of energy, including hydrocarbon, electrical, green energy, black energy, but environmentally sound in all respects. We have to get back into the business of production.

No longer were we 35, 40, 45, 50 percent dependent; now we were 55 percent dependent upon some other country to supply our hydrocarbon base. We had to begin to extend our politics around the world to secure the stability of that market and that supply because we decided here at home that we were no longer going to be producing it because there was an environmental cost to that production.

If you were witnessing the Senate floor a couple of years ago, the debate was on producing oil in Alaska. This Senate basically said: No, we are not going to do that anymore; the environmental consequences are too great. So we will let somebody else produce it in Saudi Arabia or in Iraq or Russia, and we will pay them and we will ship it over here. They will profit by it and we will spend it, we will use it.

That is really what our policy said—not in a spoken way but in an unspoken way.

That is why this President and it is why others—I and others who work on the Energy Committee and studied the market and watched the trends over the past decade—realized something had to be done. We began to try, as Republicans and then as Democrats.

The Senator from New Mexico is in the Chamber. He chaired that committee. He worked mightily hard to produce an energy bill a couple of years ago, and we got it to the floor and we passed it out of the Senate. I voted for it. Why? Because it was a major step in the right direction. In fact, it was the bill of the Senator from New Mexico that passed out of the Senate this year because we could not get our bill out. We could get enough votes for that bill.

What was happening out there was a growing consensus in the Congress, the House and the Senate, that something had better get done.

Now, let's take the Clean Air Act. To maintain clean air quality, you heard about the problems we created in the Northeast with MTBEs—that additive to fuels. We have another problem as it relates to all of that. The lights went out up there this summer because we had not created an environment in which investment in a profitable way could be put back into the electrical grids and electrical systems, that could be returned to the investor so that these kinds of problems would not exist. There were a lot of other things we tried to do.

Out of all of that, there clearly came a consensus that something ought to be done. What you have before you now—and my guess is we ought to debate it for a good long while—is the Energy Policy Act of 2003. It just passed the House. It is a mighty big piece of legislation, no question about it. What does it do? It puts the United States back into the business of producing energy. That is what it does. It didn't pick winners or losers. It largely said, pick it all, get it all, advance solar power, advance wind power, advance conservation, take the old technologies of gas, coal, and oil and put new technology to them so that we can use those abundant resources in a way that they will be environmentally cleaner.

That is what we are saying here. We are not subsidizing. We are saying that if you invest your dollars into the market, you are going to get a tax credit in return. That is called incentivizing investment. That is why those who look at our work product say that over the course of the decade this bill could produce over 800,000 new jobs in the lower 48 States and Alaska and Hawaii. Why? Because we are asking the marketplace to invest, and we are incentivizing all of the bits and pieces of the marketplace.

I used to be a bit selective—solar is only a percent; wind may be a couple to 3 percent. Was it worth doing? Yes, it is worth doing. It is clean. So we add it up and it is 4, or 5, or 6 percent in the total marketplace over the next decade, and it is clean energy. Americans want clean energy, and we ought to be doing that. So we are doing it in this bill.

We are also saying, without question, that coal is a huge producer of electricity today and it has caused problems in the past. We have a Clean Air Act, and we want to drive ourselves toward ever cleaner air. Here we are continuing to incentivize the substantial investment in clean coal technology.

What is also transpiring here—and we heard it debated on the floor a good number of times—is the issue of greenhouse gases and climate change, a product of burning of hydrocarbons. This bill goes more toward climate change and improving our environment than any climate change bill we ever had on the floor of the Senate, and here is the reason: Every new technology, every new dollar invested in the marketplace puts down a cleaner form of energy and brings down the overall emission of greenhouse gases. That is what happens when you create new technologies and you bring on line new approaches. It was the old approaches that were producing the greenhouse gases using hydrocarbons. The new approaches are producing substantially less greenhouse gases.

As this economy comes back under new technologies, already per unit of production in our economy we are using less carbon, and that has already been shown. We are leading the world as it relates to unit of production as to the amount of energy or carbon produced by that production. This bill drives us even further toward a cleaner environment because we are investing in the environment, and we are incentivizing that investment.

Madam President, how much time do I have?

The PRESIDING OFFICER (Ms. MURKOWSKI). Two minutes remaining.

Mr. CRAIG. Madam President, another area that is significant in this bill—and I will be talking later about a variety of the approaches we have taken—is the area of nuclear energy, without question one of the cleanest forms of energy out there. There are no emissions. There has always been a concern about waste management and the waste stream that comes from nuclear plants, but we also have recognized our ability to manage it and other nations' ability to manage that waste stream in a responsible fashion.

In this bill, we clearly incentivize the marketplace to get back into the business of electrical production through nuclear generation. We have even proposed a new reactor concept called a passive generation 4 reactor, and also we will tie to that an electrolysis process to produce hydrogen, to begin to fuel this new exciting initiative which our President led in saying the transportation fuel of the future ought to be hydrogen. Why? We can produce it, and we can produce a lot of it. We ought not be producing it from natural gas; we ought to be producing it from water. Let natural gas heat space. Don't ask natural gas to generate electricity or create hydrogen. That is not the way to use natural gas. That is part of what has driven the cost of it up. So another new initiative.

While anyone can stand on the floor and pick at the pieces, look at the whole. It is a market basket full of energy for the future of this country to ensure reliability so that when you wake up in the morning and you turn on the light switch, the light comes on; when you plug in your computer, the screen lights up; when you go to the Internet, you can communicate across the world instantly, and it is all driven by energy.

Every single minuscule thought is driven by energy, and this country hasn't been producing energy for over a decade. We have been only the consumer of that energy basket. I think we ought to be proud of this work. I think we ought to be energized to pass it for the future of our country, for the future of our economy. We incentivize the marketplace to go back to work and produce all forms of energy from every concept and every idea.

Let's not pick winners and losers. I am sorry, we don't pick winners and losers. The Senator from New Hampshire is wrong. We say do it all and do it well. Out of it may come new sources that 30 or 40 years out dominate the energy supply of this great country.

I am proud of the work we have done. I hope the Senate will join collectively in adopting the conference report. The House has already seen the merit. The President strongly supports it. Let me tell you, the American people support this package because they don't want $4-a-gallon gas, and they want the light to come on in the bathroom when they wake up.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. I thank the Chair.

Madam President, I will speak for a few minutes about the Energy bill. I know we will have additional opportunities to speak as the day wears on, but I wish to give a few comments before my colleague, Senator THOMAS, speaks.

We are beginning today the debate on H.R. 6, which is entitled the Energy Policy Act. We have had many hours of debate on this subject in the Senate over the last few years. The debates we have had before in the previous Congress and then this year in this Congress have resulted in our passing an Energy bill with an overwhelming vote.

I am very gratified to recount that the Senate did vote with a large majority, a bipartisan majority, in favor of an Energy bill in 2002. In the 107th Congress, we passed an Energy bill by a vote of 88 for the bill and 11 against and 1 not voting. Earlier this year, we passed the same bill we had passed in the previous Congress again with a large bipartisan majority: 84 Members voted for it, 14 against, and 2 did not vote.

Of those who opposed the bill, I would say there is fairly good representation from both parties. So this has not been a bill that has gone through the Senate, as previous energy bills, on a partisan basis. I think we can all take some gratification in that.

It is important, in my view, that we deal with these issues—the issue of energy supply, the issue of energy sufficiency, concern about the important connections between energy policy and environmental policy, including global warming, to which my colleague, Senator CRAIG, was just referring. Those are all issues that I think deserve substantial attention as, I have said, we have devoted substantial time to them.

It is not easy to bring together all the competing views and points of view that come together in this legislative body and come out with an end product. I congratulated my colleague, Senator DOMENICI, the other day when we concluded the conference on the fact that he had been able to produce a conference report. I did not congratulate him on the content of that report because I had serious disagreements with it, and I expressed those views. There is a substantial amount involved in producing a conference report, and he deserves credit for doing that.

The chairman of our committee said—and the chairman of the conference said—he did not consider this report to be perfect. I could not agree with him more. I recognize that it is not fair to expect perfection in this process, but we could have done much better had the process been a better process. We could have done much better in terms of the product that was produced.

I believe we find ourselves now with a bill that does not command the broad support and staying power we should have in a national energy policy.

I think the entire country should be brought into a national energy policy and support a comprehensive approach to dealing with our energy problems.

Our difficulty, of course, is we now are presented with a bill that we either vote for or against. I have been one who has advocated adopting an Energy bill. I have advocated for essentially the basic premise that President Bush campaigned on when he ran for office. He said that we needed to try to put in place something that was a coherent national energy policy, and I essentially agreed with that idea.

I remember former Chairman Bob Galvin of Motorola saying at one point there are certain things that the country should set out to do on purpose. To me, establishing a national energy policy seems to be one of those things that we should set out to do on purpose, because if we allow the issue to go unaddressed and the subject to go unaddressed, we can find ourselves substantially disadvantaged economically and in many other ways by virtue of not having an energy policy. I fear that is where we find ourselves today in many respects.

So while I compliment the President for recognizing the importance of an energy policy, I do not think he got us off on the right foot once he became President in trying to develop that comprehensive, coherent energy policy. By that I am referring, of course, to the process that the Vice President was tasked to perform and did perform of trying to come up with a blueprint. That was a closed process. There have been efforts through the courts and otherwise to try to find out precisely who was talking to whom and which groups and individuals were consulted, but clearly that was a closed process. There was no reaching out to Democrats in the Congress. To my knowledge, there was no reaching out to many of the groups that have a vital interest in this issue. That was a mistake. At the time, I said it was a mistake. It prevented policymakers from hearing the broad range of views that would have been offered, I believe, in a constructive manner.

In addition, the conduct of that exercise, in that closed process, failed to generate the public trust and confidence that we ought to have behind the energy policy we adopt. So I think the President made a mistake in the way he got us started on developing an energy policy. Unfortunately, that mistake has been repeated in the process that we have seen leading to this final conference report.

My colleagues and I on the Democratic side of the aisle in the Senate have voiced our concerns about this many times. The conference was a closed process. In my view, clearly that was not designed to get us a product that would enjoy broad support, and it has not. We did have a meeting. We had, of course, one early meeting where conferees were permitted to come forward and make opening statements. Then some 71 or 72 days later, we had a final meeting, which lasted approximately 3½ hours, where Democratic conferees in the Senate offered 20 substantive amendments on a wide variety of topics. None of those amendments can be found in the conference report today. That leads me to conclude the exercise was cosmetic and that there was no real intent, as we went into that final conference meeting, of seriously considering any of those Democratic amendments since none of them were agreed to.

In fact, one that was agreed to by the Chair when it was offered was, of course, rejected by the House, as were all the others.

Of the 4 that slipped through the process—16 of the 20 that we offered were rejected out of hand. Four of them did get through the process, but they were all rejected on a party-line basis by the House Republicans as the first order of business when they convened later that same evening.

We went to conference on this bill expecting we would be able to participate in a meaningful way. That was not permitted. I regret that it has gotten to the point we are at now.

The common ground that was reflected in the Senate-passed bill was based on a few basic principles, and I will allude to those. First, perhaps most importantly, was the basic agreement that we needed to have an energy policy that struck a balance between increasing energy supplies and encouraging additional energy efficiency or conservation. I think all of us can agree, at least at some level, of a conceptualization that both have to be done in order to deal with energy problems. Supplies have to be increased.

Usage has to be decreased. That is the only way to begin to make up the enormous deficit which we are currently operating under with regard to energy, where we are importing a tremendous amount of energy.

The reality is that our country does need new policies in both areas, and that was what we set out to do. On the energy supply side, one of the most important national needs is to meet the need for natural gas. Natural gas is the fuel of choice for most electric generation that is now being planned. We know there have been plans to construct substantial additional electric generation that uses natural gas.

Natural gas will play an important role in any new distributed generation that is planned in the future. It is favored by alternative fuel vehicle programs in both the Government and in the private sector. It is the most likely feedstock to produce hydrogen.

The President has indicated his strong support for moving to a hydrogen-based economy. The point which I think often gets lost is that the most logical and ready source for that hydrogen is natural gas. So it is not possible to just say, OK, let's not use oil and gas, let's use hydrogen. Natural gas has to be used, or at least that is what most people think is the most economic course to follow.

Apart from its energy uses, of course, natural gas is also a critical feedstock for the petrochemical industry and the fertilizer industry.

Over the long haul, natural gas consumption in this country is outstripping the amounts we are able to produce in the lower 48 States. We as a nation are in the early stages of developing a substantial dependence on foreign sources of natural gas. Just as we find ourselves today dependent upon foreign sources of oil, in the near future, the next decade or so, we are going to find ourselves substantially dependent upon foreign sources of natural gas. That is not a good result, and it is not one that we should sit by and idly allow to occur.

We all know, and the Presiding Officer today knows better than any of us, that there are at least 35 trillion cubic feet of natural gas that are stranded on the northern slope of Alaska, Prudhoe Bay. That gas has been produced and is being produced every day, along with the oil that we now produce at that location. The gas is currently being pumped right back into the ground because there is no way to transport it to the lower 48 where it is needed.

As we see the price of natural gas go up in the lower 48, as we may well this winter—we do not know—we need to remember there is a substantial supply of natural gas that we are not accessing. We need to provide financial incentives to the private sector to help in the construction of a pipeline to bring that gas to the lower 48. Such a project would not only help with our national energy needs, national energy security, it would also, of course, be a great boon to construction in this country, and to the domestic steel industry.

We hear a lot of talk about how this bill before us is now a jobs bill. To the extent that one cannot argue the virtues of it from an energy perspective, they have to talk about it as a jobs bill. There are jobs that will be created from this bill. There are a great many more jobs that would be created if we provided an adequate incentive for the construction of the pipeline in Alaska. On this topic, the conference report does not measure up. It does not do what we did in the bills that we passed through the Senate, in the bills that we passed through the Senate both last year and this year.

It does contain regulatory streamlining procedures for the pipeline that former Senator Murkowski and I worked hard on in the previous Congress. That is a critical part of the problem. But in order to get the pipeline constructed, we also need to have fiscal incentives. The Senate voted for those. The administration opposed them.

Once Chairman DOMENICI announced publicly that they would not be part of the conference report, all of us who were officially conferees received a letter from the CEO of the gas company that has been most active in promoting going forward with the design and construction of such a pipeline, and that corporate executive stated that based on his understanding of the conference report, his company could not proceed with the project in face of the extraordinary financial risk that it would have to bear if gas prices were to drop below what the Energy Information Administration agrees is the likely level.

So the lack of a risk mitigation mechanism, that probably would never have cost the taxpayers a dime, and even if it had cost taxpayers, there was a provision to ensure that those funds would be repaid when the price went back up again—but because of the lack of that risk mitigation mechanism, the likelihood is that our Nation will forego the possibility of using that Alaskan natural gas for future supply needs.

We will, instead, depend on imports of liquefied natural gas. We will bring our natural gas from places like Nigeria and Trinidad. Those are places, of course—some of those places, at least—that have their own problems with regard to political stability and the security of that supply.

Building the necessary transportation system for LNG, liquefied natural gas, will create jobs for shipyard workers in Korea, but we will not have the jobs for pipeline construction for Americans on this continent.

I believe this is an unfortunate policy mistake that our country will come to regret. I am disappointed we were not able to maintain in the bill the financial incentives that we put in the bill when the Senate acted previously, both in the last Congress and this Congress.

Along with providing for more robust domestic supplies of natural gas, we need to look for ways to diversify our energy generation away from such reliance, such strong reliance on gas. One important arena in which we can do this is in electricity generation.

The bill the Senate passed earlier this year focuses this diversification strongly on new technology, including ultraclean ways of burning coal. Ultraclean coal is the most sustainable way over the long term to ensure that coal maintains its key position in our national energy mix. This is because concerns about the levels of pollution emitted from coal-fired plants are only increasing. It increases, of course, as the concern about the contribution of coal-fired generation to global warming increases.

This conference report unfortunately takes a step backwards from what we passed through the Senate in its commitment to ultraclean coal. The percentage of funding dedicated to these purposes is cut by 20 percent. A new competing program of direct grants to companies to pay for half of the cost of current technology pollution equipment, and current technology coal-fired generation is also put in place.

In my view, we have limited Federal funds. Focusing those Government subsidies to buy today's technology instead of investing to create tomorrow's coal technology, risks coal's ultimate ability to maintain its position in our energy mix. I think that is unfortunate and a policy mistake as well.

Another key part of the strategy of diversifying away from natural gas would be to tap into opportunities for distributed generation, such as combined heat and power at industrial facilities. Here again, the conference report falls short as it does not address the barriers that have been erected to uniform interconnection of distributed generation to the grid. It is not enough to have the technology. We need to rid ourselves of the redtape that is keeping that technology from being used. Again, I believe our previous bill facilitated that. I don't believe this bill does.

Along with these steps, we also need to make a greater push to introduce renewable energy technologies for electricity generation. Some of these renewable technologies are already cost competitive. Wind is the prime example. But in order to see widespread use of these technologies, both financial and regulatory incentives should be put in place. That means both a meaningful production tax credit—and there is a meaningful production tax credit in this conference report. I commend the drafters for that. We would need that, but we also need a flexible renewable portfolio standard for electric utilities.

For those who have not been studying this area, a renewable portfolio standard essentially means a requirement on utilities to produce a certain portion—in the case of our bill, 10 percent—of the power they produce or that they sell, 10 percent of that power should come from renewable sources. That is what our Senate bill provided. That provision, of course, has been deleted from the bill that is now before us. I think that, again, is a mistake in policy.

The lack of an effective renewable portfolio standard is a major missed opportunity for our country. There are those who argue that we should leave this to the free market. But the reality is that a majority in the Senate, a majority of Senate conferees have disagreed with that. In spite of that, we have deferred to the House, and the House says they don't like it. We say fine; if you don't like it, we will drop it.

The conference report is pretty much status quo on the future of renewables and the future role of renewables in our energy mix. Tax credits are extended for a few more years and slightly broadened, but renewables do not get anywhere near the attention lavished on them in this legislation that the coal industry gets or that the nuclear power industry gets.

Coal and nuclear power have problems with regard to social acceptance. So in the absence of a stronger push forward on increasing renewables I think the conference report is basically making a choice in favor of the existing trends toward an overreliance on natural gas for future electric generation. That choice leaves our citizens' future natural gas and electricity prices that are more volatile than they should be, resulting in more frequent price spikes than we would like to see. People will come back and say: Why did you in the Congress not try to deal with this problem and anticipate this problem and head it off in a more meaningful way?

Renewable energy technologies can help with another energy supply issue that we face and that is of transportation fuels. The conference report mandates a phase-in, an introduction of up to 5 billion gallons of ethanol in our gasoline supply by 2012. This has been coupled in the conference report with the issue that has already been discussed fairly broadly here in the Senate this morning, and that is the issue of how to treat the gasoline additive MTBE, methyl tertiary-butyl ether. One provision in the ethanol title purports to ban MTBE by the year 2014, but when you look at the rest of the language, it is clear the ban is full of loopholes.

For one thing, each State Governor can opt his or her State out of that ban, if the Governor determines. This language is sufficiently vague that it appears that States can opt out, even after the purported national ban goes into effect.

I do not know if that was intended, but that certainly is the way it appears.

One other problem with the language is that the President is given extraordinary powers to make the statutory ban null and void by a stroke of the pen in the year 2014 before it takes effect. With these kinds of loopholes, it is not likely MTBE will actually be banned nationwide in 2014.

In addition, the conference report provides product liability protection for MTBE and does so retroactively as to September 5 for any lawsuit filed after that date. The Senator from New Hampshire spoke about his objection to this as it affects his State. I can certainly understand that objection. I think it is one other provision that undermines the broad bipartisan support we really ought to be able to enjoy for this bill.

Even with the greater use of renewable fuels in cars, we still will be very dependent on oil for the transportation sector. It is in our national interest to support domestic production of oil. But many of us know our domestic production of oil is not adequate. We are more and more dependent on foreign sources of oil, and most of that growing dependence on foreign sources of oil is occurring in the transportation sector as we are using more and more gasoline for larger and larger cars every year.

I notice, as everyone else does, all of the advertisements for Hummers. I am sure that is a great vehicle, but the reality is that when you have such a focus on larger and larger vehicles and less and less efficient vehicles, as we have and have had for some time in this country, it is clear that our dependence on foreign oil will grow, as it has been growing.

I understand that the answer to our doing nothing there—we did not do a great deal in the Senate bill on this subject, and we did much less than I wanted to do. But we did adopt an amendment by the Senator from Louisiana, Ms. LANDRIEU, that set a goal for reducing the amount of oil consumed in our transportation sector, and we gave broad discretion to the President and the Secretary of Transportation as to how they achieve that goal. That provision, modest as it was, has been deleted from this bill. That, in my view, was an unfortunate deletion and, again, a wrong direction for us to be going in our national energy policy.

I have various other points I wish to make. I know my colleagues are here ready to speak. I will have opportunities to speak later and conclude my remarks on a whole range of issues since this is such a comprehensive subject. It is a comprehensive set of provisions with which we are being presented.

At this time, in deference to my friend, Senator THOMAS, let me yield the floor so he can speak. Of course, the Senator from Illinois is also here ready to speak. I will defer to him as well.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Madam President, I thank my friend from New Mexico and the ranking member on our committee. I thank him for the work he has done.

I think it is interesting, as we hear people begin to talk about this bill and talk about the need for an energy policy, to say how important it is for us to have one and then spend the rest of the time opposing the things that are there.

The fact is we do need an energy policy. We haven't had one for a very long time. It has been something we have been working on now for 3 years. The other side of the aisle was unable to get one for the last year, and we worked right up to the end and it didn't get through. Now we have worked on it another 2 years, and we ought to be able to get it finished. I am disappointed that everyone talks about the need and then begins to talk about why they don't like this bill and this little piece and that little piece. I understand. It is a broad bill. But it is an important issue.

We need an energy policy. We need the kind of energy policy that gives us some direction for where we are going to be in the future. It is not designed to deal with all the problems that may exist today, although some of those are there of course. We ought to be looking to where we need to be in 10 years or 15 years down the road. That is what policies are for—to talk about the future.

It obviously has to be a balanced policy. Unfortunately, I am afraid very many of our friends here and very many of the folks in the country are just accustomed to turning on the lights, going to the gas station, and not thinking about how it happens to be there.

It is kind of interesting that for States that are dependent on all other sources, their representatives are more opposed to doing something than the people who are producing the product. I think it is time they begin to take a look at the fact that energy just isn't there naturally. There has to be a policy to do that. It has to be a balanced policy.

We are looking at conservation. We are looking at alternatives. We are looking at renewables. Of course, in the short term, in reaching those goals, the most important thing we have to talk about is domestic production so that we aren't becoming more and more dependent on foreign countries to provide what we are using.

One of the reasons is that much of the opposition comes from environmentalists who only look at things from one side. This needs to be balanced. In my State of Wyoming, we are very concerned about the environment. We also know that you can have multiple use, you can have production, and you can also take care of the environment. You don't just have to say you can't touch these areas. These are the kinds of balances we have to find to really be able to move forward the way we would like to do.

I thank Senator DOMENICI and Representative TAUZIN and their staffs. They worked very hard. We worked on it very hard as well, prior to putting it together for the Senate and certainly from the House side, with a mix of domestic production, research and development, incentives to cause these things to happen, and conservation. We will be better off certainly with the passage of this bill and this legislation. It has been over a decade in coming.

It has been over 2 years—almost 3 years—since the President's office and the Vice President particularly set about to come up with an energy policy so we will have some direction on where we are going as the demands increase, which they are. There has to be some way to meet those demands.

The idea that you can suddenly go to alternatives and renewables—they produce now about 3 percent of the total we utilize, notwithstanding the dams and that sort of thing. But air, wind, solar are a very small percentage. They have great possibilities for the future, but that isn't going to happen next year, or the next year, or even 5 years from now. That is what this thing is all about—to make some movement.

We have experienced blackouts. We have experienced natural gas price hikes and all of those kinds of things. When that happens, suddenly everybody talks about energy. When that moves away from us, we forget about it again. We really ought to stay on the issue. I don't think we should, nor can we, wait for another crisis to be able to do something of this kind.

If there is anything we should have learned in the 21st century and the quality of life that we seek, the idea of creating jobs, the idea of having a vibrant economy is very closely enhanced and tied to reliable energy and a clean environment. Those are the goals that we have. We have to modernize conservation to be able to do that job more effectively.

Everyone is in favor of conservation. But how much have you done in your home in terms of having incentives to change the equipment you use to make it more conservation-like? Very little. We just want more power at a cheaper price.

What have we done to modernize our infrastructure? We see things changing. With more and more market generators who do not make the distribution and have to move it to a market, then you have to change the system, you have to change the system of moving power. Those things change. Indeed, they are changing.

We have to increase our energy supplies, including renewables and alternatives.

We can do a better job of protecting the environment. I am persuaded. Obviously, there are some places in our States that should be set aside—and they are set aside—national parks, wilderness areas, parts of the forests, and this and that. Half of our State land belongs to the Federal Government. It is public land. We have to find a way to have alternative uses and to have multiple use. We intend to do that.

Finally, one of our goals ought to be increased national security. What could be a more important goal than that? Are we going to be dependent on Iraq and Saudi Arabia for our energy? We need to change that. After years of talking about it, this is a good opportunity to do something.

In any bill as complex and as large as this, there will be items of disagreement, such as MTBE liability. Of course, we can talk about that the rest of the month. But we ought to give a little thought to where we need to be with energy and whether that is the tradeoff necessary to defeat a bill. I cannot imagine that tradeoff. We need to have a balanced approach. That is what we seek.

There has been a lot of talk about the tax credits. Let me state what they are for: tax credits for residential energy efficiencies; tax credits for producing electricity from certain renewable sources; tax incentives for fuel-efficient vehicles; tax credits for efficient appliances. All the talk of tax credits, and that is what they are for. That is how a private sector system gives incentives.

For reliability, accelerated depreciation of natural gaslines so we can have accelerated depreciation for distribution, electric transmission lines. We need reliability to move the energy; open transmission, to be able to deal with the changes taking place in the development of the energy we have now.

Production: How to get more production of gas and oil? Through incentives. Marginal wells, low-production wells, do not produce. There has to be an incentive to continue to produce, to continue to reintroduce CO_2 into the ground. These are not to make someone wealthy. These are designed to cause things to happen.

Suspended income in the percentage of depreciation for small producers, provide amortization for geophysical expenses to determine where we have production opportunities for oil and gas—these are the items we mean when we talk about tax credits.

Yes, there are substantial credits but that is how we move toward domestic production. We can do it in an economically and environmentally sound manner.

Oil and other fossil fuels provide 85 percent of all energy use in the United States. The fact is, we still depend on coal largely for the development of electricity. Quite frankly, we ought to depend on it even more because gas is so much more flexible for other uses. We are working on ways, with some of the dollars in the bill, to provide cleaner plants for the production of electricity with coal. That is part of the overall plan to move forward.

Renewables, including hydrogen, currently provide about 7 percent. Absent hydro, it is only about 3 percent. We built a building for a company I worked with in Caspar and we used solar. This was about 15 years ago. Quite frankly, it did not work. We had to remove the solar panels and do something else. We had to find another way. Now I think it probably would work. We have to move forward.

There is a difference in views depending on where you are from. The New Englanders have one point of view; of course, they use the energy. Some of the rest of the country produces as well as uses energy. My State produces about 35 percent of the Nation's coal and has the greatest coal reserves of any place in the United States. We are sixth or seventh in the production of oil. In gas, we are about fifth. We have come up with a methane production opportunity recently. There has to be a policy that encourages production so we can move forward.

We have to have investment in the transmission. We find increasingly the market is here and the energy use is over here. That is a problem in California. California is the biggest user of energy but that is not the energy development area. We have to move that energy, whether it is through pipelines or transmission.

In the bill we are trying to put together regional transmission organizations for electric transmissions so the States can collectively make some decisions with respect to interstate movement. No Member wants to leave it all in the hands of FERC, although there has to be some opportunity for FERC. We have to leave some responsibility there.

We have had a big hassle over standard market design. This bill puts in a standard market design as it was designed a couple of years ago. But it does recognize that FERC still has to ensure reliability so we do not have blackouts, to assure the opportunities for movement of energy among States, which is not always an easy thing to do. These are realistic issues.

I am surprised sometimes we find so much opposition to ideas. Ideas have to be here to accomplish our goals. That is what a policy is, to have a goal and decide how to get there. I cannot help but continue to be a little surprised at the difficulty in getting an energy policy on the ground. In any bill as complicated as this, everyone has a different view and everyone can change things a bit. This has become a collective bill, put together by the House, the Senate, Democrats, Republicans, people from New England, people from all over. We have a mixture of ideas. I would not have done it exactly this way had I been doing it by myself, but I think it is important to have a policy to move on, dealing with our demand for energy, and moving in the direction we want.

In general, this is a good bill. This is a bill that moves us forward for energy in the future, the kind of future in which we can work on our conservation methods and, hopefully, reduce the demands we have—at least the growth level we have had in the past—and that we can find alternative fuels.

As we move forward, we are looking now at coal as the basis for hydrogen. That can be very important. Imagine if we developed hydrogen cars next year and were ready to go with them as a clean and available source. How long would it take to get the delivery system in place, to get hydrogen stations instead of gas stations all over the country?

When we think about potential changes out there, we have to think about reaching that point. We must continue to provide energy as we now know it, as we move toward something different. All this talk of more oil and gas, we will have renewables. Good luck. What are we going to do in the 15-year-period of transition?

I hope we continue to look at a balanced policy with conservation, alternatives, domestic production, research, more cleanliness in production, and so on.

We will continue, I suppose, to talk about this matter for a while. I am disappointed that apparently there is going to be a reluctance to let us move forward with it as quickly as we should. We are trying to complete some business this week, and yet it is going to be very difficult to do that.

VETERANS HEALTH CARE AUTHORITIES EXTENSION AND IMPROVEMENT ACT OF 2003

Mr. THOMAS. Madam President, I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar No. 383, S. 1156.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1156) to amend title 38, United States Code, to improve and enhance the provision of long-term health care for veterans by the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Veterans' Affairs, with an amendment to the title and an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 1156

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Department of Veterans Affairs Long-Term Care and Personnel Authorities Enhancement Act of 2003".

[TITLE I—EXTENSION AND ENHANCEMENT OF AUTHORITIES

[SEC. 101. EXTENSION AND MODIFICATION OF CERTAIN HEALTH CARE AUTHORITIES.

[(a) Treatment of Noninstitutional Extended Care Services as Medical Services.—Section 1701(a)(10)(A) of title 38, United States Code, is amended by striking "December 31, 2003" and inserting "December 31, 2008".

[(b) Required Nursing Home Care.—(1) Subsection (a) of section 1710A of such title is amended by striking "70 percent" and inserting "50 percent".

[(2) Subsection (c) of such section is amended by striking "December 31, 2003" and inserting "December 31, 2008".

[SEC. 102. ENHANCED AGREEMENT AUTHORITY FOR PROVISION OF NURSING HOME CARE AND ADULT DAY HEALTH CARE IN NON-DEPARTMENT OF VETERANS AFFAIRS FACILITIES.

[Section 1720 of title 38, United States Code, is amended—

[(1) in subsection (c)—

[(A) by designating the existing text as paragraph (2); and

[(B) by inserting before paragraph (2), as so designated, the following new paragraph (1):

["(1) In furnishing nursing home care or adult day health care under this section, the Secretary may enter into agreements for furnishing such care utilizing such authorities relating to agreements for the provision of services under section 1866 of the Social Security Act (42 U.S.C. 1395cc) that the Secretary considers appropriate."; and

[(2) in subsection (f)(1)(B), by inserting "or agreement" after "contract" each place it appears.

[TITLE II—CONSTRUCTION AUTHORIZATION

[SEC. 201. AUTHORIZATION OF MAJOR MEDICAL FACILITY PROJECTS.

[The Secretary of Veterans Affairs may carry out the following major medical facility projects, with each project to be carried out in an amount not to exceed the amount specified for that project:

[(1) Construction of a long-term care facility in Lebanon, Pennsylvania, $14,500,000.

[(2) Construction of a long-term care facility in Beckley, West Virginia, $20,000,000.

[SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

[(a) In General.—There are authorized to be appropriated for the Secretary of Veterans Affairs for fiscal year 2004 for the Construction, Major Projects, account, a total of $34,500,000 for the projects authorized in paragraphs (1) and (2) of section 201.

[(b) Limitation.—The projects authorized in section 201 may only be carried out using—

[(1) funds appropriated for fiscal year 2004 pursuant to the authorization of appropriations in subsection (a);

[(2) funds appropriated for Construction, Major Projects, for a fiscal year before fiscal year 2004 that remain available for obligation; and

[(3) funds appropriated for Construction, Major Projects, for fiscal year 2004 for a category of activity not specific to a project.

[TITLE III—PERSONNEL

[SEC. 301. MODIFICATION OF AUTHORITIES ON APPOINTMENTS OF PERSONNEL IN THE VETERANS HEALTH ADMINISTRATION.

[(a) Positions Treatable as Hybrid Status Positions.—Section 7401 of title 38, United States Code, is amended—

[(1) in paragraph (2), by striking "Psychologists" and all that follows through "other scientific" and inserting "Other scientific"; and

[(2) by striking paragraph (3) and inserting the following new paragraph (3):

["(3) Audiologists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, nuclear medicine technologists, occupational therapists, occupational therapy assistants, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technicians, therapeutic radiologic technicians, social workers, and personnel in such other positions as the Secretary designates (subject to section 7403(f)(4) of this title) for purposes of this paragraph as necessary for the medical care of veterans.".

[(b) Report on Proposal To Designate Additional Positions as Hybrid Status Positions.—Section 7403(f) of such title is amended by adding at the end the following new paragraph:

["(4) Not later than 45 days before the date on which the Secretary proposes to designate a position as a position necessary for the medical care of veterans for which appointment may be made under section 7401(3) of this title, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the proposed designation.".

[(c) Temporary, Part-Time, and Without Compensation Appointments.—Section 7405 of such title is amended—

[(1) in subsection (a)—

[(A) in paragraph (1), by striking subparagraphs (B) and (C) and inserting the following new subparagraphs:

["(B) Positions listed in section 7401(3) of this title.

["(C) Librarians."; and

[(B) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraph (B):

["(B) Positions listed in section 7401(3) of this title."; and

[(2) in subsection (c)(1), by striking "section 7401(1)" and inserting "paragraphs (1) and (3) of section 7401".

[(d) Authority for Additional Pay for Certain Health Care Professionals.—Section 7454(b)(1) of such title is amended by striking "certified or registered" and all that follows through "occupational therapists," and inserting "individuals in positions listed in section 7401(3) of this title,".

[SEC. 302. COVERAGE OF EMPLOYEES OF VETERANS' CANTEEN SERVICE UNDER ADDITIONAL EMPLOYMENT LAWS.

[Section 7802(5) is amended by inserting before the semicolon the following: ". Employees and personnel under this clause may be considered for appointment in Department positions in the competitive service in the same manner that Department employees in the competitive service are considered for transfer to such positions. An employee or individual appointed as personnel under this clause who is appointed to a Department position under the authority of the preceding sentence shall be treated as having a career appointment in such position once such employee or individual meets the three-year requirement for career tenure (with any previous period of employment or appoint- ment in the Service being counted toward satisfaction of such requirement)".

[SEC. 303. EFFECTIVE DATE OF MODIFICATION OF TREATMENT FOR RETIREMENT ANNUITY PURPOSES OF CERTAIN PART-TIME SERVICE OF CERTAIN DEPARTMENT OF VETERANS AFFAIRS HEALTH-CARE PROFESSIONALS.

[(a) EFFECTIVE DATE.—The effective date of the amendment made by section 132 of the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 (Public Law 107–135; 115 Stat. 2454) shall be as follows:

[(1) January 23, 2002, in the case of health care professionals referred to in subsection (c) of section 7426 of title 38, United States Code (as so amended), who retire on or after that date.

[(2) The date of the enactment of this Act, in the case of health care professionals referred to in such subsection (c) who retired before January 23, 2002, but after April 7, 1986.

[(b) RECOMPUTATION OF ANNUITY.—The Office of Personnel Management shall recompute the annuity of each health-care professional described in the first sentence of subsection (c) of section 7426 of title 38, United States Code (as so amended), who retired before January 23, 2002, but after April 7, 1986, in order to take into account the amendment made by section 132 of the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001. Such recomputation shall be effective only with respect to annuities paid after the date of the enactment of this Act, and shall apply beginning the first day of the first month beginning after the date of the enactment of this Act.

[SEC. 304. PERMANENT AUTHORITY FOR USE OF CONTRACT PHYSICIANS FOR DISABILITY EXAMINATIONS.

[(a) PERMANENT AUTHORITY.—Section 504 of the Veterans' Benefits Improvements Act of 1996 (Public Law 104–275; 110 Stat. 3341; 38 U.S.C. 5101 note) is amended—

[(1) in subsection (a), by striking "may conduct a pilot program" and all that follows through "may be made by" and inserting "may carry out examinations with respect to the medical disability of applicants for benefits under the laws administered by the Secretary through"; and

[(2) in subsection (c), by striking "the pilot program under".

[(b) REPEAL OF LIMITATION AND OBSOLETE AUTHORITY.—That section is further amended—

[(1) by striking subsections (b) and (d); and

[(2) by redesignating subsection (c), as amended by subsection (a) of this section, as subsection (b).

[(c) CONFORMING AMENDMENT.—The heading for that section is amended to read as follows:

["SEC. 504. AUTHORITY FOR USE OF CONTRACT PHYSICIANS FOR DISABILITY EXAMINATIONS.".]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans Health Care Authorities Extension and Improvement Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—EXTENSION AND MODIFICATION OF CERTAIN HEALTH CARE AUTHORITIES

Sec. 101. Extension and modification of certain health care authorities.
Sec. 102. Enhanced agreement authority for provision of nursing home care and adult day health care in non-Department of Veterans Affairs facilities.
Sec. 103. Expansion of pilot program of Department of Veterans Affairs on assisted living for veterans.
Sec. 104. Improvement of program for provision of specialized mental health services to veterans.

TITLE II—CONSTRUCTION AND FACILITIES MATTERS

Subtitle A—Construction Authorities

Sec. 201. Increase in threshold for major medical facility construction projects.
Sec. 202. Demolition of obsolete, dilapidated, and hazardous structures on Department of Veterans Affairs property.

Subtitle B—Construction Authorizations

Sec. 211. Authorization of major medical facility projects.
Sec. 212. Authorization of major medical facility leases.
Sec. 213. Authorization of appropriations.

Subtitle C—Designation of Facilities

Sec. 221. Designation of Department of Veterans Affairs outpatient clinic, Horsham, Pennsylvania.
Sec. 222. Designation of Department of Veterans Affairs health care facility, Chicago, Illinois.
Sec. 223. Designation of Department of Veterans Affairs Medical Center, Houston, Texas.
Sec. 224. Designation of Department of Veterans Affairs Medical Center, Minneapolis, Minnesota.

TITLE III—PERSONNEL MATTERS

Sec. 301. Modification of authority on appointments of personnel in the Veterans Health Administration.
Sec. 302. Coverage of employees of Veterans' Canteen Service under additional employment laws.
Sec. 303. Effective date of modification of treatment for retirement annuity purposes of certain part-time service of certain Department of Veterans Affairs health-care professionals.

TITLE IV—OTHER MATTERS

Subtitle A—Capital Asset Realignment for Enhanced Services Initiative

Sec. 401. Advance notification of capital asset realignment initiative.
Sec. 402. Authorization of major construction projects in connection with capital asset realignment initiative.

Subtitle B—Extension of Other Authorities

Sec. 411. Three-year extension of housing assistance for homeless veterans.
Sec. 412. Four-year extension of evaluation of health status of spouses and children of Persian Gulf War veterans.

Subtitle C—Other Matters

Sec. 421. Modification of eligibility of Filipino veterans for health care in the United States.
Sec. 422. Repeal of limits on terms of certain officials in Office of Under Secretary for Health.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—EXTENSION AND MODIFICATION OF CERTAIN HEALTH CARE AUTHORITIES

SEC. 101. EXTENSION AND MODIFICATION OF CERTAIN HEALTH CARE AUTHORITIES.

(a) TREATMENT OF NONINSTITUTIONAL EXTENDED CARE SERVICES AS MEDICAL SERVICES.—Section 1701(10)(A) is amended by striking "December 31, 2003" and inserting "December 31, 2008".

(b) REQUIRED NURSING HOME CARE.—Section 1710A(c) is amended by striking "December 31, 2003" and inserting "December 31, 2008".

SEC. 102. ENHANCED AGREEMENT AUTHORITY FOR PROVISION OF NURSING HOME CARE AND ADULT DAY HEALTH CARE IN NON-DEPARTMENT OF VETERANS AFFAIRS FACILITIES.

Section 1720 is amended—

(1) in subsection (c)—

(A) by designating the existing text as paragraph (2); and

(B) by inserting before paragraph (2), as so designated, the following new paragraph (1):

"(1) In furnishing nursing home care, adult day health care, or other extended care services under this section, the Secretary may enter into agreements for furnishing such care or services utilizing such authorities relating to agreements for the provision of services under section 1866 of the Social Security Act (42 U.S.C. 1395cc) as the Secretary considers appropriate."; and

(2) in subsection (f)(1)(B), by inserting "or agreement" after "contract" each place it appears.

SEC. 103. EXPANSION OF PILOT PROGRAM OF DEPARTMENT OF VETERANS AFFAIRS ON ASSISTED LIVING FOR VETERANS.

Section 103(b) of the Veterans Millennium Health Care and Benefits Act (Public Law 106–117; 113 Stat. 1552; 38 U.S.C. 1710B note) is amended—

(1) by striking "LOCATION OF PILOT PROGRAM.—" and inserting "LOCATIONS OF PILOT PROGRAM.—(1)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) In the addition to the health care region of the Department selected for the pilot program under paragraph (1), the Secretary may also carry out the pilot program in not more than one additional designated health care region of the Department selected by the Secretary for purposes of this section.

"(B) Notwithstanding subsection (f), the authority of the Secretary to provide services under the pilot program in a health care region of the Department selected under subparagraph (A) shall cease on the date that is three years after the commencement of the provision of services under the pilot program in the health care region.".

SEC. 104. IMPROVEMENT OF PROGRAM FOR PROVISION OF SPECIALIZED MENTAL HEALTH SERVICES TO VETERANS.

(a) Increase in Funding.—Subsection (c) of section 116 of the Veterans Millennium Health Care and Benefits Act (Public Law 106–117; 113 Stat. 1559; 38 U.S.C. 1712A note) is amended—

(1) in paragraph (1), by striking "$15,000,000" and inserting "$25,000,000 in each of fiscal years 2004, 2005, and 2006";

(2) in paragraph (2), by striking "$15,000,000" and inserting "$25,000,000"; and

(3) in paragraph (3)—

(A) by inserting "(A)" after "(3)"; and

(B) by adding at the end the following new subparagraph:

"(B) For purposes of this paragraph, in fiscal years 2004, 2005, and 2006, the fiscal year utilized to determine the baseline amount shall be fiscal year 2003.".

(b) Allocation of Funds.—Subsection (d) of that section is amended—

(1) by striking "The Secretary" and inserting "(1) In each of fiscal years 2004, 2005, and 2006, the Secretary"; and

(2) by adding at the end the following new paragraphs:

"(2) In allocating funds to facilities in a fiscal year under paragraph (1), the Secretary shall ensure that—

"(A) not less than $10,000,000 is allocated by direct grants to programs that are identified by the Mental Health Strategic Health Care Group and the Committee on Care of Severely Chronically Mentally Ill Veterans;

"(B) not less than $5,000,000 is allocated for programs on post-traumatic stress disorder; and

"(C) not less than $5,000,000 is allocated for programs on substance abuse disorder.

"(3) The Secretary shall provide that the funds to be allocated under this section during each of fiscal years 2004, 2005, and 2006 are funds for a special purpose program for which funds are not allocated through the Veterans Equitable Resource Allocation system.".

TITLE II—CONSTRUCTION AND FACILITIES MATTERS

Subtitle A—Construction Authorities

SEC. 201. INCREASE IN THRESHOLD FOR MAJOR MEDICAL FACILITY CONSTRUCTION PROJECTS.

Section 8104(a)(3)(A) is amended by striking "$4,000,000" and inserting "$9,000,000".

SEC. 202. DEMOLITION OF OBSOLETE, DILAPIDATED, AND HAZARDOUS STRUCTURES ON DEPARTMENT OF VETERANS AFFAIRS PROPERTY.

(a) In General.—Chapter 81 is amended by adding at the end the following new subchapter:

"SUBCHAPTER VI—OTHER MATTERS

"§8171. Demolition of obsolete, dilapidated, and hazardous structures

"(a) Establishment of Fund.—There is established in the Treasury a fund to be known as the Department of Veterans Affairs Facilities Demolition Fund.

"(b) Elements of Fund.—The fund shall consist of the following:

"(1) Amounts authorized to be appropriated to the fund.

"(2) Any other amounts deposited or transferred to the fund by law.

"(c) Availability of Amounts in Fund.—Subject to the provisions of appropriations Acts, amounts in the fund shall be available to the Secretary for the purpose of the demolition and removal, whether in whole or in part, of obsolete, dilapidated, or hazardous structures on Department property.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 81 is amended by adding at the end the following:

"SUBCHAPTER VI—OTHER MATTERS

"8171. Demolition of obsolete, dilapidated, and hazardous structures.".

(c) Authorization of Appropriations.—There is authorized to be appropriated for the Department of Veterans Affairs for fiscal year 2004, $25,000,000 for deposit in the Department of Veterans Affairs Facilities Demolition Fund established by section 8171 of title 38, United States Code, as added by this section.

Subtitle B—Construction Authorizations

SEC. 211. AUTHORIZATION OF MAJOR MEDICAL FACILITY PROJECTS.

The Secretary of Veterans Affairs may carry out the following major medical facility projects, with each project to be carried out in an amount not to exceed the amount specified for that project:

(1) Construction of a long-term care facility in Lebanon, Pennsylvania, $14,500,000.

(2) Construction of a long-term care facility in Beckley, West Virginia, $20,000,000.

SEC. 212. AUTHORIZATION OF MAJOR MEDICAL FACILITY LEASES.

The Secretary of Veterans Affairs may enter into leases for medical facilities as follows:

(1) Lease for the relocation and expansion of a health administration center, Denver, Colorado, in an amount not to exceed $4,080,000.

(2) Lease for an outpatient clinic extension or for sharing of Department of Veterans Affairs and Department of Defense resources, Pensacola, Florida, in an amount not to exceed $3,800,000.

(3) Lease of an outpatient clinic extension, Boston, Massachusetts, in an amount not to exceed $2,879,000.

(4) Lease of a satellite outpatient clinic, Charlotte, North Carolina, in an amount not to exceed $2,626,000.

SEC. 213. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There are authorized to be appropriated for the Secretary of Veterans Affairs for fiscal year 2004—

(1) for the Construction, Major Projects, account, a total of $34,500,000 for the projects authorized in section 211; and

(2) for the Medical Care account, a total of $13,385,000 for the leases authorized in section 212.

(b) Limitation.—The projects authorized in section 211 may only be carried out using—

(1) funds appropriated for fiscal year 2004 pursuant to the authorization of appropriations in subsection (a);

(2) funds appropriated for Construction, Major Projects, for a fiscal year before fiscal year 2004 that remain available for obligation; and

(3) funds appropriated for Construction, Major Projects, for fiscal year 2004 for a category of activity not specific to a project.

Subtitle C—Designation of Facilities

SEC. 221. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC, HORSHAM, PENNSYLVANIA.

The Department of Veterans Affairs outpatient clinic located in Horsham, Pennsylvania, shall after the date of the enactment of this Act be known and designated as the "Victor J. Saracini Department of Veterans Affairs Outpatient Clinic". Any reference to such outpatient clinic in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Victor J. Saracini Department of Veterans Affairs Outpatient Clinic.

SEC. 222. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITY, CHICAGO, ILLINOIS.

The Department of Veterans Affairs health care facility located at 820 South Damen Avenue in Chicago, Illinois, shall after the date of the enactment of this Act be known and designated as the "Jesse Brown Department of Veterans Affairs Medical Center". Any reference to such facility in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Jesse Brown Department of Veterans Affairs Medical Center.

SEC. 223. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, HOUSTON, TEXAS.

The Department of Veterans Affairs Medical Center in Houston, Texas, shall after the date of the enactment of this Act be known and designated as the "Michael E. DeBakey Department of Veterans Affairs Medical Center". Any reference to such facility in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Michael E. DeBakey Department of Veterans Affairs Medical Center.

SEC. 224. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, MINNEAPOLIS, MINNESOTA.

The Department of Veterans Affairs Medical Center in Minneapolis, Minnesota, shall after the date of the enactment of this Act be known and designated as the "Paul Wellstone Department of Veterans Affairs Medical Center". Any reference to such medical center in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Paul Wellstone Department of Veterans Affairs Medical Center.

TITLE III—PERSONNEL MATTERS

SEC. 301. MODIFICATION OF AUTHORITY ON APPOINTMENTS OF PERSONNEL IN THE VETERANS HEALTH ADMINISTRATION.

Section 7401 is amended—

(1) in paragraph (2), by striking "Psychologists" and all that follows through "dietitians," and inserting "Dietitians,"; and

(2) in paragraph (3)—

(A) by inserting "other psychologists," after "approved by the Secretary,"; and

(B) by striking "and occupational therapists" and inserting "occupational therapists, kinesiologists, and social workers".

SEC. 302. COVERAGE OF EMPLOYEES OF VETERANS' CANTEEN SERVICE UNDER ADDITIONAL EMPLOYMENT LAWS.

Section 7802(5) is amended by inserting before the semicolon the following: ". Employees and personnel under this clause may be considered for appointment in Department positions in the competitive service in the same manner that Department employees in the competitive service are considered for transfer to such positions. An employee or individual appointed as personnel under this clause who is appointed to a Department position under the authority of the preceding sentence shall be treated as having a career appointment in such position once such employee or individual meets the three-year requirement for career tenure (with any previous period of employment or appointment in the Service being counted toward satisfaction of such requirement)".

SEC. 303. EFFECTIVE DATE OF MODIFICATION OF TREATMENT FOR RETIREMENT ANNUITY PURPOSES OF CERTAIN PART-TIME SERVICE OF CERTAIN DEPARTMENT OF VETERANS AFFAIRS HEALTH-CARE PROFESSIONALS.

(a) Effective Date.—The effective date of the amendment made by section 132 of the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 (Public Law 107–135; 115 Stat. 2454) shall be as follows:

(1) January 23, 2002, in the case of health care professionals referred to in subsection (c) of section 7426 of title 38, United States Code (as so amended), who retire on or after that date.

(2) The date of the enactment of this Act, in the case of health care professionals referred to in such subsection (c) who retired before January 23, 2002, but after April 7, 1986.

(b) RECOMPUTATION OF ANNUITY.—The Office of Personnel Management shall recompute the annuity of each health-care professional described in the first sentence of subsection (c) of section 7426 of title 38, United States Code (as so amended), who retired before January 23, 2002, but after April 7, 1986, in order to take into account the amendment made by section 132 of the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001. Such recomputation shall be effective only with respect to annuities paid after the date of the enactment of this Act, and shall apply beginning the first day of the first month beginning after the date of the enactment of this Act.

TITLE IV—OTHER MATTERS

Subtitle A—Capital Asset Realignment for Enhanced Services Initiative

SEC. 401. ADVANCE NOTIFICATION OF CAPITAL ASSET REALIGNMENT INITIATIVE.

(a) REQUIREMENT FOR ADVANCE NOTIFICATION.—Before taking any action proposed under the Capital Asset Realignment for Enhanced Services initiative of the Department of Veterans Affairs, the Secretary of Veterans Affairs shall submit to Congress a written notification of the intent to take such action.

(b) LIMITATION.—The Secretary may not take any proposed action described in subsection (a) until the later of—

(1) the expiration of the 60-day period beginning on the date on which the Secretary submits to Congress the notification of the proposed action required under subsection (a); or

(2) the expiration of a period of 30 days of continuous session of Congress beginning on such date of notification or, if either House of Congress is not in session on such date, the first day after such date that both Houses of Congress are in session.

(c) CONTINUOUS SESSION OF CONGRESS.—For the purposes of subsection (b)—

(1) the continuity of session of Congress is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

SEC. 402. AUTHORIZATION OF MAJOR CONSTRUCTION PROJECTS IN CONNECTION WITH CAPITAL ASSET REALIGNMENT INITIATIVE.

(a) AUTHORITY TO CARRY OUT MAJOR CONSTRUCTION PROJECTS.—Subject to subsection (b), the Secretary of Veterans Affairs may carry out major construction projects, and plan for such projects, as outlined in the final report of the Capital Asset Realignment for Enhanced Services Commission and approved by the Secretary.

(b) LIMITATION.—The Secretary may not exercise the authority in subsection (a) until 60 days after the date of the submittal of the report required by subsection (c).

(c) REPORT ON PROPOSED MAJOR CONSTRUCTION PROJECTS.—(1) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report describing the major construction projects the Secretary proposes to carry out in connection with the Capital Asset Realignment for Enhanced Services initiative.

(2) The report shall list each proposed major construction project in order of priority, with such priority determined in the order as follows:

(A) The use of the facility to be constructed or altered as a replacement or enhancement facility necessitated by the loss, closure, or other divestment of major infrastructure or clinical space at a Department of Veterans Affairs medical facility currently in operation, as determined by the Secretary.

(B) The use of such facility to provide tertiary and acute care services to a population that is determined under the Capital Asset Realignment for Enhanced Services initiative to be in need of such facility and not currently served by such facility.

(C) The use of such facility as an outpatient clinic to provide basic care services to a population of veterans in need of such services, as determined by the Secretary.

(D) The need for such facility to further an enhanced-use lease or sharing agreement.

(E) Any other factors that the Secretary considers to be of importance in providing care to eligible veterans.

(3) In developing the list of projects and according a priority to each project, the Secretary should consider the importance of allocating available resources equitably among the regional health care networks of the Department and take into account recent shifts in populations of veterans among such regional health care networks.

(d) MULTIYEAR CONTRACT AUTHORITY.—To the extent that funds are otherwise available for obligation, the Secretary may enter into a multiyear contract for a major construction project under this section. The period of such a multiyear contract may not exceed five program years. If a multiyear contract under this subsection is not fully funded when entered into, the contract shall provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(e) FUNDING.—To carry out major construction projects under the Capital Asset Realignment for Enhanced Services initiative, the Secretary may use any combination of funds appropriated for such initiative and funds available to the Secretary for major construction.

(f) MAJOR CONSTRUCTION PROJECT DEFINED.—In this section, the term "major construction project" means a major medical facility project, as that term is defined in section 8104(a)(3)(A) of title 38, United States Code, as amended by section 201 of this Act.

Subtitle B—Extension of Other Authorities

SEC. 411. THREE-YEAR EXTENSION OF HOUSING ASSISTANCE FOR HOMELESS VETERANS.

Section 2041(c) is amended by striking "December 31, 2003" and inserting "December 31, 2006".

SEC. 412. FOUR-YEAR EXTENSION OF EVALUATION OF HEALTH STATUS OF SPOUSES AND CHILDREN OF PERSIAN GULF WAR VETERANS.

Section 107(b) of the Persian Gulf War Veterans' Benefits Act (title I of Public Law 103–446; 38 U.S.C. 1117 note) is amended by striking "December 31, 2003" and inserting "December 31, 2007".

Subtitle C—Other Matters

SEC. 421. MODIFICATION OF ELIGIBILITY OF FILIPINO VETERANS FOR HEALTH CARE IN THE UNITED STATES.

The text of section 1734 is amended to read as follows:

"(a) The Secretary shall, within the limits of Department facilities, furnish hospital and nursing home care and medical services to an individual described in subsection (b) in the same manner as provided for under section 1710 of this title.

"(b) An individual described in this subsection is any individual who is residing in the United States and is a citizen of, or an alien lawfully admitted for permanent residence in, the United States as follows:

"(1) A Commonwealth Army veteran.

"(2) A new Philippine Scout.".

SEC. 422. REPEAL OF LIMITS ON TERMS OF CERTAIN OFFICIALS IN OFFICE OF UNDER SECRETARY FOR HEALTH.

Section 7306 is amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

Amend the title to read as follows: "A bill to amend title 38, United States Code, to improve and enhance the provision of long-term health care for veterans by the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, to authorize major construction projects for the Department of Veterans Affairs, and for other purposes.".

Mr. SPECTER. Madam President, I have sought recognition today to explain briefly the provisions of S. 1156, the proposed Veterans Health Care, Capital Asset, and Business Improvement Act of 2003, as the ranking member of the Committee on Veterans Affairs, Senator GRAHAM of Florida, and I propose be amended to incorporate provisions contained in S. 1156 as reported by the Committee on Veterans Affairs on November 10, 2003, and also to contain provisions derived from H.R. 1720, passed by the House on October 29, 2003, H.R. 2357, passed by the House on July 21, 2003, H.R. 2433, passed by the House on September 10, 2003, H.R. 3260, passed by the House on October 8, 2003, and H.R. 3387, passed by the House October 29, 2003.

This bill, as so amended, incorporates agreements reached between the Senate Committee on Veterans' Affairs, which I am privileged to chair, and our counterpart committee in the House of Representatives, on legislation relating to the provision of health care services by the Department of Veterans Affairs. I thank the Ranking Member, Senator GRAHAM of Florida, and the Chairman and Ranking Member of the House Committee on Veterans Affairs, Representative CHRIS SMITH of New Jersey and Representative LANE EVANS of Illinois, for their advocacy for veterans and for their cooperation in resolving issues raised by the bills considered in our respective bodies. Inasmuch as S. 1156, as reported by the Committee on Veterans' Affairs, itself incorporated provisions drawn from nine separate Senate bills, S. 1156 as presented to the Senate today is properly viewed as a bill that incorporates provisions from 14 separate pieces of legislation. A bill containing such a range of material would not have been knitted together, as this one has been, without a spirit of cooperation and bipartisanship from the other body. The Ranking Member, Senator GRAHAM of Florida, and I appreciate the leadership of the House Committee on Veterans Affairs.

Since this is a lengthy bill—over 50 pages—I will not endeavor in this statement to explain in detail each and every provision. Rather, I will discuss the highlights briefly in this statement, and refer my colleagues to a Joint Explanatory Statement, which I ask be incorporated into the RECORD as if read, for a detailed explanation of the bill as amended.

The starting point for S. 1156, as presented to the Senate today, was S. 1156, the proposed Veterans' Health Care Authorities Extension and Improvement Act of 2003. That bill was marked up by the Senate Committee on Veterans' Affairs on September 30, 2003, and reported on November 10, 2003. S. 1156, as reported, contained a number of elements; its key provisions would have extended mandates that VA provide nursing home care and outpatient-based long term care services to our senior veterans; improved VA assisted living and mental health programs; modified VA personnel provisions relating to non-physician providers of healthcare services and employees of VA's Veterans Canteen Service; and authorized major medical facility projects and projects related to VA's Capital Assets Realignment for Enhanced Services, CARES, initiative. Each and all of these provisions, with some modifications as appropriate, are contained in S. 1156 as presented to the Senate today.

The major change between the bill, as reported, and the current bill is the addition of provisions contained in House-passed legislation. House-approved provisions incorporated into the bill would allow radiation-exposed veterans higher priority access to VA health care; exempt former prisoners-of-war from pharmaceutical copayments; create in VA an Office of Research Oversight; authorize VA to allow "Saturday premium pay" to licensed practical nurses and nursing assistants; and authorize additional needed VA construction projects. All of these added provisions are constructive and useful.

I ask that my colleagues in the Senate approve this legislation. It is good bipartisan legislation that is supported by VA's extraordinary Secretary, the Honorable Anthony J. Principi, and by the major veterans service organizations.

I ask unanimous consent that the Joint Explanatory Statement that accompanies my statement today be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATORY STATEMENT ON S. 1156, AS AMENDED—VETERANS HEALTH CARE, CAPITAL ASSET, AND BUSINESS IMPROVEMENT ACT OF 2003

S. 1156, as amended, the Veterans Health Care, Capital Asset, and Business Improvement Act of 2003, (hereinafter, "Compromise Agreement") reflects a negotiated agreement reached by the Senate and House of Representatives Committees on Veterans' Affairs concerning provisions in a number of bills considered by the House and Senate during the 1st session of the 108th Congress. The measures considered in this compromise are: S. 1156, as amended, as reported by the Senate Committee on Veterans' Affairs on November 10, 2003 (hereinafter, "Senate bill"); S. 1815 introduced on November 4, 2003; H.R. 2357, as amended, passed the House on July 21, 2003; H.R. 2433, as amended, passed the House on September 10, 2003; H.R. 1720, as amended, passed the House on October 29, 2003; H.R. 3260, as introduced in the House on October 8, 2003; and H.R. 3387, as introduced in the House on October 29, 2003 (hereinafter, "House bills").

The House and Senate Committees on Veterans' Affairs have prepared the following explanation of the Compromise Agreement. Differences between the provisions contained in the Compromise Agreement and the related provisions of the Senate bill and the House bills are noted, except for clerical corrections, conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I—HEALTH CARE AUTHORITIES AND RELATED MATTERS

IMPROVED BENEFITS FOR FORMER PRISONERS OF WAR

Current Law

Section 1712 of title 38, United States Code, authorizes outpatient dental services and related dental appliances to veterans who are former prisoners of war (POWs) if they were detained or interned for a period of at least 90 days.

Section 1722A of title 38, United States Code, requires veterans who are not service-connected with a disability rated at more than 50 percent or eligible for pensions under section 1521 of title 38, United States Code, to make copayments for medications.

Senate Bill

The Senate bill contains no comparable provisions.

House Bill

Section 3 of H.R. 3260 would authorize veterans who are former POWs to receive outpatient dental care, irrespective of the number of days held captive, and would exempt former POWs from the requirement to make copayments on outpatient prescription medications.

Compromise Agreement

Section 101 of the Compromise Agreement follows the House language.

PROVISION OF HEALTH CARE TO VETERANS WHO PARTICIPATED IN CERTAIN DEPARTMENT OF DEFENSE CHEMICAL AND BIOLOGICAL WARFARE TESTING

Current Law

There is no comparable provision in current law.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 2 of H.R. 2433, as amended, would authorize the Department of Veterans Affairs (hereinafter "VA" or "Department") to provide higher priority health care to veterans who participated in Project Shipboard Hazard and Defense (SHAD), Project 112 or related land-based tests conducted by the Department of Defense Desert Test Center, from 1962 through 1973, without those veterans needing an adjudicated service-connected disability to establish their priority for care.

Compromise Agreement

Section 102 of the Compromise Agreement follows the House language.

ELIGIBILITY FOR DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FOR CERTAIN FILIPINO WORLD WAR II VETERANS RESIDING IN THE UNITED STATES

Current Law

Section 1734 of title 38, United States Code, establishes that veterans of the Commonwealth Army and New Philippine Scouts residing legally in the United States are eligible for VA health care services for the treatment of service-connected disabilities and, in the case of Commonwealth Army veterans, for non service-connected conditions if they are in receipt of disability compensation.

Senate Bill

Section 421 of the Senate bill contains a similar provision.

House Bill

Section 3 of H.R. 2357, as amended, would authorize VA health care for additional World War II Filipino veterans who reside legally in the United States. These veterans of the Commonwealth Army and New Philippine Scouts, would be subject to the same eligibility and means test requirements as U.S. veterans. The House bill would require the Secretary of Veterans Affairs (hereinafter, "Secretary") to certify each fiscal year that sufficient resources are available at the VA health care facilities where the majority of these veterans would seek care.

Compromise Agreement

Section 103 of the Compromise Agreement follows the House language, except the Compromise Agreement does not include the resource availability certification requirement.

ENHANCEMENT OF REHABILITATIVE SERVICES

Current Law

Chapter 31 of title 38 authorizes VA to provide vocational rehabilitation services. VA is authorized under chapter 17 of title 38 to offer medical care and compensated work therapy to certain veterans.

Senate Bill

The Senate bill contains no comparable provisions.

House Bill

Section 3 of H.R. 3387 would authorize the Secretary to provide therapeutic employment support services (i.e., skills training and development services, employment support services, and job development and placement services) to patients in need of rehabilitation for mental health disorders, including serious mental illness and substance use disorders.

Section 3 of H.R. 3387 would also authorize VA to use funds in the Special Therapeutic and Rehabilitation Activities Fund (STRAF) authorized under section 1718(c) of title 38, United States Code, to furnish such therapeutic employment support services.

Compromise Agreement

Section 104 of the Compromise Agreement follows the House language.

ENHANCED AGREEMENT AUTHORITY FOR PROVISION OF NURSING HOME CARE AND ADULT DAY HEALTH CARE IN CONTRACT FACILITIES

Current Law

Section 1720 of title 38, United States Code, authorizes VA to contract for the provision of nursing home care and adult day health care for certain veterans and members of the Armed Forces.

Senate Bill

Section 102 of the Senate bill would expand VA's authority to enter into relationships based upon "provider agreements" with Centers for Medicare and Medicaid Services (CMS)-certified, small, community-based nursing homes and non-institutional extended care providers, by permitting VA to use provider agreements similar to those used by CMS.

House Bill

The House bills contain no comparable provision.

Compromise Agreement

Section 105 of the Compromise Agreement generally follows the Senate language.

FIVE-YEAR EXTENSION OF PERIOD FOR PROVISION OF NONINSTITUTIONAL EXTENDED-CARE SERVICES AND REQUIRED NURSING HOME CARE

Current Law

Section 1701(10)(A) of title 38, United States Code, requires VA to provide noninstitutional extended care services to enrolled veterans. In addition, section 1710A(c) of title 38, United States Code, requires VA to provide nursing home care to high-priority veterans in need of care.

Senate Bill

Section 101 of the Senate bill would extend the authorities for noninstitutional extended care and required nursing home care through December 31, 2008.

House Bill

Section 2 of H.R. 3260 would extend the authorities for the noninstitutional extended care services and required nursing home care to December 31, 2008. The report required under section 101 of Public Law 106–117 would be extended until January 1, 2008.

Compromise Agreement

Section 106 of the Compromise Agreement follows the House language from subsection 2(a) and (b) of H.R. 3260.

EXPANSION OF DEPARTMENT OF VETERANS AFFAIRS PILOT PROGRAM ON ASSISTED LIVING FOR VETERANS

Current Law

Section 103(b) of Public Law 106–117 authorizes the establishment of a pilot program in one VA geographic health care region to provide assisted living services to veterans.

Senate Bill

Section 103 of the Senate bill would authorize the establishment of one additional assisted living pilot program for three years from the commencement of the provision of assisted living services under the program.

House Bill

The House bills contain no comparable provision.

Compromise Agreement

Section 107 of the Compromise Agreement follows the Senate language.

IMPROVEMENT OF PROGRAM FOR PROVISION OF SPECIALIZED MENTAL HEALTH SERVICES TO VETERANS

Current Law

Section 116(c) of Public Law 106–117 provides funding in the amount of $15,000,000 for specialized mental health services in fiscal years 2004, 2005 and 2006.

Senate Bill

Section 104 of the Senate bill would increase the funding authorization for these specialized mental health services from $15,000,000 to $25,000,000, and would specify allocation of these funds outside the Veterans Equitable Resource Allocation system.

House Bill

The House bills contain no comparable provisions.

Compromise Agreement

Section 108 of the Compromise Agreement follows the Senate language.

TITLE II—CONSTRUCTION AND FACILITIES MATTERS

Subtitle A—Program Authorities

INCREASE IN THRESHOLD FOR MAJOR MEDICAL FACILITY CONSTRUCTION PROJECTS

Current Law

Section 8104(a)(3) of title 38, United States Code, defines a major medical facility project as a project for construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $4,000,000.

Senate Bill

Section 201 of the Senate bill would raise the threshold for major medical facility projects from $4,000,000 to $9,000,000.

House Bill

Section 7 of H.R. 1720, as amended, would raise the threshold for major medical facility projects from $4,000,000 to $6,000,000.

Compromise Agreement

Section 201 of the Compromise Agreement would raise the threshold for major medical facility projects from $4,000,000 to $7,000,000.

ENHANCEMENTS TO ENHANCED-USE LEASE AUTHORITY

Current Law

Section 8162 of title 38, United States Code, authorizes the Secretary to enter into enhanced-use leases of Veterans Health Administration (VHA) real property under the jurisdiction of the Secretary.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 4 of H.R. 3260 would extend the jurisdiction of this authority to the Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA), for properties of these Administrations under the control of the Secretary. Further, the bill would streamline the process and notification requirements and allow proceeds from an enhanced-use lease to be credited to accounts for use by VHA, VBA or NCA as appropriate. The bill would allow individual VA facilities to be reimbursed for the expenses incurred by the development and execution of enhanced-use leases.

Compromise Agreement

Section 202 of the Compromise Agreement adopts the provisions of the House bill which streamline the approval process for enhanced use leases in VHA. The provisions concerning the expansion of this authority to properties of NCA and VBA have been omitted due to mandatory spending concerns.

SIMPLIFICATION OF ANNUAL REPORT ON LONG-RANGE HEALTH PLANNING

Current Law

Section 8107 of title 38, United States Code, requires VA to submit annually a report regarding the long-range health planning of the Department. Included in that report is a five-year strategic plan for the provision of health care services to veterans, a plan for the coordination of care among the geographic health care regions of the Department, a profile of each such region, any planned changes to the mission of any medical facility of the Department, and a listing of the 20 VA major medical facility projects with the highest priority.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 7(d) of H.R. 3260 would change the report date on the Annual Report on Long-Range Health Planning to June 1 of each year.

Compromise Agreement

Section 203 of the Compromise Agreement rescinds section 8107(b)(3) and (4) of title 38, United States Code, to simplify the required report by removing the detailed prescription of its content.

Subtitle B—Project Authorizations

AUTHORIZATION OF MAJOR MEDICAL FACILITY PROJECTS

Current Law

Section 8104(2) of title 38, United States Code, requires Congressional authorization of any VA major medical facility construction project.

Senate Bill

Section 211 of the Senate bill, as reported, would authorize the following major construction projects:

Location	Purpose	Cost
Lebanon, PA	New Long-Term Care Facility	$14,500,000
Beckley, WV	New Long-Term Care Facility	20,000,000

House Bill

Section 3 of H.R. 1720, as amended, would authorize the following major construction projects:

Location	Purpose	Cost
Chicago, IL	New Inpatient Bed Tower	$98,500,000
San Diego, CA	Seismic Corrections, Building 1.	48,600,000
West Haven, CT	Renovate Inpatient Wards & Consolidate Medical Research Facilities.	50,000,000
Columbus, OH	New Medical Facility	90,000,000
Pensacola, FL	New VA-Navy Joint Venture Outpatient Clinic.	45,000,000

Compromise Agreement

Section 211 of the Compromise Agreement authorizes the major construction projects for Lebanon, Pennsylvania; Beckley, West Virginia; Chicago, Illinois; San Diego, California; West Haven, Connecticut; and Pensacola, Florida.

AUTHORIZATION OF MAJOR MEDICAL FACILITY LEASES

Current Law

Section 8104 of title 38, United States Code, requires Congressional authorization of any VA medical facility lease with an annual lease payment of more than $600,000.

Senate Bill

Section 212 of the Senate bill, as reported, would authorize the following leases:

Location	Purpose	Cost
Denver, CO	Relocate Health Administration Center.	$4,080,000
Pensacola, FL	Relocate Outpatient Clinic	3,800,000
Boston, MA	Extend Outpatient Clinic	2,879,000
Charlotte, NC	Relocate Outpatient Clinic	2,626,000

House Bill

Section 3 of H.R. 1720, as amended, would authorize the following leases:

Location	Purpose	Cost
Charlotte, NC	Outpatient Clinic	$3,000,000
Clark County, NV	Multi-specialty Outpatient Clinic.	6,500,000
Aurora, CO	Regional Federal Medical Center.	30,000,000

Compromise Agreement

Section 212 of the Compromise Agreement authorizes the leases for Charlotte, North Carolina, and Boston, Massachusetts.

The Compromise Agreement contains the provision of Section 211 of H.R. 1720, as amended, to authorize a major construction project for Pensacola, Florida. It was determined that no lease authority for the Pensacola site was necessary. Further, the Compromise Agreement would not authorize a lease supporting relocation and expansion of the Health Administration Center (HAC) in

Denver, Colorado. The Committees believe the Department has not justified the continuing expansion of activities at the HAC. The Committees are concerned that this administrative function, originally authorized to process reimbursement claims for the Civilian Health and Medical Program for the VA (CHAMPVA), has inflated its activities well beyond its original responsibilities. The Committees urge VA to reconsider whether the long-term obligation of leased space and the significant growth of staff at the HAC, as opposed to other methods of accomplishing these various tasks, are warranted.

The Compromise Agreement generally follows the Senate language on the Regional Federal Medical Center lease at the former Fitzsimons Army Medical Center in Aurora, Colorado, pending a decision by the Secretaries of Veterans Affairs and Defense on the nature of any joint venture undertaking at the site. However, advance planning is authorized for this project under section 213 of the Compromise Agreement.

ADVANCE PLANNING AUTHORIZATIONS

Current Law

Section 8104(2) of title 38, United States Code, requires Congressional authorization of all VA major medical facility construction project.

Senate Bill

The Senate bill contains no similar provisions.

House Bill

Section 3 of H.R. 1720, as amended, would authorize major construction projects in Columbus, Ohio; Denver (Aurora), Colorado; and the lease of a Multi-specialty Outpatient Clinic in Clark County (Las Vegas), Nevada.

Compromise Agreement

Section 213 of the Compromise Agreement authorizes advance planning funds for fiscal year 2004 for purposes of developing new medical facilities at the following locations:

Location	Purpose	Cost
Columbus, OH	Advance Planning	$9,000,000
Las Vegas, NV	Advance Planning	25,000,000
Pittsburgh, PA	Advance Planning	9,000,000
Denver (Aurora), CO	Advance Planning	26,000,000
East Central Florida	Advance Planning	17,500,000

The Committees concluded these projects, while warranted, require further development. The Committees believe these projects should be considered high priorities from VA's ongoing review of future health care infrastructure needs, the Capital Asset Realignment for Enhanced Services (CARES) initiative.

Given VA's documented plan to pursue significant capital investments and improvements in health care infrastructure and the Committees' understanding that the Appropriations Committees of the House and Senate are hesitant to provide funds for new VA medical facility construction prior to the completion of the CARES process, the Compromise agreement authorizes $86,500,000 to allow for planning of projects at these sites.

AUTHORIZATION OF APPROPRIATIONS

Current Law

Section 8104(2) of title 38, United States Code, requires Congressional authorization of appropriations for VA major medical facility projects.

Senate Bill

Section 213 of the Senate bill would authorize $34,500,000 for fiscal year 2004 for projects authorized and $4,984,000 for the leases authorized by this bill.

House Bill

Section 3 of H.R. 1720, as amended, would authorize $332,100,000 to be appropriated in fiscal year 2004 for the projects authorized by this bill.

Compromise Agreement

Section 214 of the Compromise Agreement authorizes $276,600,000 for fiscal year 2004 for the major construction projects authorized in section 211 of the Compromise Agreement. In addition, section 214 of the Compromise Agreement authorizes the appropriation of $86,500,000 for advanced planning projects identified in section 213 of the Compromise Agreement.

Subtitle C—Capital Asset Realignment for Enhanced Services Initiative

AUTHORIZATION OF MAJOR CONSTRUCTION PROJECTS IN CONNECTION WITH CAPITAL ASSET REALIGNMENT INITIATIVE

Current Law

Section 8104(2) of title 38, United States Code, requires Congressional authorization of all VA major medical facility projects.

Senate Bill

Section 402 of the Senate bill would authorize the Secretary to carry out major construction projects outlined in the final report on the CARES initiative. This authority would be subject to a 60-day advance notification to Congress. The Secretary would be required to submit a list containing each major project in order of priority, based on the criteria specified in the bill. The bill also would add a provision authorizing multi-year contract authority for major construction projects.

House Bill

The House bills contain no comparable provisions.

Compromise Agreement

Section 221 of the Compromise Agreement follows the Senate language with modifications. The Compromise Agreement would require a 45-day advance notification to Congress prior to carrying out major medical facility construction projects selected by the Secretary. The Secretary would be required to submit a one-time report to Congress by February 1, 2004, that lists each proposed major construction project in order of priority. The Compromise Agreement establishes these priorities as follows: (a) to replace or enhance a facility necessitated by the loss, closure or other divestment of a VA medical facility currently in operation; (b) to remedy life-safety deficiencies, including seismic, egress, and fire deficiencies; (c) to provide health care services to an underserved population; (d) to renovate or modernize facilities, including providing barrier free design, improving building systems and utilities, or enhancing clinical support services; (e) to further an enhanced-use lease or sharing agreement; and (f) to give the Secretary discretion to select other projects of importance in providing care to veterans.

The authority to enter into any major medical facility construction contracts for projects selected under the authority of section 221 of the Compromise Agreement would expire on September 30, 2006.

ADVANCE NOTIFICATION OF CAPITAL ASSET REALIGNMENT ACTIONS

Current Law

There is no comparable provision in current law.

Senate Bill

Section 401 of the Senate bill would require the Secretary to provide Congress a 60-day advance notification of any actions proposed by the Department under the CARES initiative.

House Bill

The House bills contain no comparable provisions.

Compromise Agreement

Section 222 of the Compromise Agreement follows the Senate language with modifications. VA would be required to notify Congress in writing of actions under the CARES initiative that would result in medical facility closures, significant staff realignments or medical facility consolidations. The Compromise Agreement would prohibit such actions for 60 days (or 30 days of continuous session of Congress) after such notifications are made.

SENSE OF CONGRESS AND REPORT ON ACCESS TO HEALTH CARE FOR VETERANS IN RURAL AREAS.

Current Law

There is no comparable provision in current law.

Compromise Agreement

Section 223 of the Compromise Agreement would express the sense of Congress recognizing the difficulties in access to VA health care faced by veterans residing in rural areas and require VA to report to the Committees on Veterans' Affairs with a plan of action to improve access to health care for veterans residing in rural areas. A report of VA's plan to improve access to health care for these veterans would be due not later than 120 days after the date of enactment of this Act.

Subtitle D—Plans for New Facilities

PLANS FOR HOSPITAL CARE FACILITIES IN SPECIFIED AREAS

Current Law

There is no comparable provision in current law.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 6 of H.R. 1720, as amended, would require the Secretary to develop plans for meeting the future hospital care needs of veterans who reside in a number of counties of southern New Jersey and far southern counties of Texas, with a report to the Committees by January 31, 2004.

Compromise Agreement

Section 231 of the Compromise Agreement follows the House language and would add a requirement for plans for the Florida Panhandle and North Central Washington. The due date of the report required would be adjusted in section 231 of the Compromise Agreement to April 15, 2004.

STUDY AND REPORT ON FEASIBILITY OF COORDINATION OF VETERANS HEALTH CARE SERVICES IN SOUTH CAROLINA WITH NEW UNIVERSITY MEDICAL CENTER

Current Law

There is no comparable provision in current law.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 8 of H.R. 1720, as amended, would require the Secretary to conduct a feasibility study in coordination with the Medical University of South Carolina and in consultation with the Secretary of Defense, to consider establishing a joint health-care venture to deliver inpatient, outpatient and/or long-term care to veterans, military personnel, and other beneficiaries who reside in Charleston, South Carolina, with a report to the Committees by March 31, 2004.

Compromise Agreement

Section 232 of the Compromise Agreement follows the House language and adjusts the due date of the report to April 15, 2004.

Subtitle E—Designation of Facilities

DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, PRESCOTT, ARIZONA, AS THE BOB STUMP DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Current Law

Section 531 of title 38, United States Code, requires a Department facility, structure or real property to be named after the geographic area in which the facility, structure or real property is located, except as expressly provided by law.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 8 of H.R. 3260 would name the VA Medical Center in Prescott, Arizona, the "Bob Stump Department of Veterans Affairs Medical Center."

Compromise Agreement

Section 241 of the Compromise Agreement follows the House language.

DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITY, CHICAGO, ILLINOIS, AS THE JESSE BROWN DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Current Law

Section 531 of title 38, United States Code, requires a Department facility, structure or real property to be named after the geographic area in which the facility, structure or real property is located, except as expressly provided by law.

Senate Bill

Section 222 of the Senate bill contains a similar provision.

House Bill

Section 9 of H.R. 1720, as amended, would name the VA Chicago Health Care System, West Side Division, the "Jesse Brown Department of Veterans Affairs Medical Center."

Compromise Agreement

Section 242 of the Compromise Agreement contains this provision.

DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, HOUSTON, TEXAS, AS THE MICHAEL E. DEBAKEY DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Current Law

Section 531 of title 38, United States Code, requires a Department facility, structure or real property to be named after the geographic area in which the facility, structure or real property is located, except as expressly provided by law.

Senate Bill

Section 223 of the Senate bill would name the VA Medical Center located in Houston, Texas, the "Michael E. DeBakey Department of Veterans Affairs Medical Center."

House Bill

The House bills contain no comparable provision.

Compromise Agreement

Section 243 of the Compromise Agreement follows the Senate language.

DESIGNATION OF THE DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, SALT LAKE CITY, UTAH, AS THE GEORGE E. WAHLEN DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Current Law

Section 531 of title 38, United States Code, requires a Department facility, structure or real property to be named after the geographic area in which the facility, structure or real property is located, except as expressly provided by law.

Senate Bill

S. 1815 would name the VA Medical Center located in Salt Lake City, Utah, the "George E. Wahlen Department of Veterans Affairs Medical Center."

House Bill

The House bills contain no comparable provision.

Compromise Agreement

Section 244 of the Compromise Agreement follows the Senate language.

DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC, NEW LONDON, CONNECTICUT

Current Law

Section 531 of title 38, United States Code, requires a Department facility, structure or real property to be named after the geographic area in which the facility, structure or real property is located, except as expressly provided by law.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 10 of H.R. 1720, as amended, would name the outpatient clinic located in New London, Connecticut, the "John J. McGuirk Department of Veterans Affairs Outpatient Clinic."

Compromise Agreement

Section 245 of the Compromise Agreement follows the House language.

DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC, HORSHAM, PENNSYLVANIA

Current Law

Section 531 of title 38, United States Code, requires a Department facility, structure or real property to be named after the geographic area in which the facility, structure or real property is located, except as expressly provided by law.

Senate Bill

Section 221 of the Senate bill, as reported, would name the VA Outpatient Clinic located in Horsham, Pennsylvania, the "Victor J. Saracini Department of Veterans Affairs Outpatient Clinic."

House Bill

The House bills contain no comparable provision.

Compromise Agreement

Section 246 of the Compromise Agreement follows the Senate language.

TITLE III—PERSONNEL MATTERS

MODIFICATION OF CERTAIN AUTHORITIES ON APPOINTMENT AND PROMOTION OF PERSONNEL IN THE VETERANS HEALTH ADMINISTRATION

Current Law

Section 7401 of title 38, United States Code, authorizes VA to appoint medical care personnel, under title 5, United States Code, or title 38, United States Code, depending on the duties of such personnel.

Senate Bill

Section 301 of the Senate bill would modify title 38 to authorize the appointment of psychologists, kinesiologists and social workers, under title 38 provisions as opposed to title 5 provisions.

House Bill

The House bills contain no comparable provisions.

Compromise Agreement

Section 301 of the Compromise Agreement follows the Senate language with modifications.

The Compromise agreement reflects two important policy goals. First, VA will be permitted to hire clinical staff in a timely fashion through use of the direct appointment authority provided in title 38, United States Code. Second, employee representatives will be afforded an opportunity to participate in a dialogue and process with VA management to determine the best system under which to promote the clinicians appointed under this section.

The Committees believe that VA management and the promotion policy for clinical staff can benefit from interactions with employee representatives. The Committees would allow the Secretary the discretion to develop a system for judging the merits of an individual's advancement in VA, provided that the Secretary reports to the Committees the actions taken under this authority.

APPOINTMENT OF CHIROPRACTORS IN THE VETERANS HEALTH ADMINISTRATION

Current Law

Public Law 107-135 requires VA to establish a Veterans Health Administration-wide program for chiropractic care.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 2 of H.R. 2357, as amended, would authorize VA appointment of chiropractors under title 38, United States Code. The House bill would establish the qualifications of appointees, the period of appointments and promotions, set grades and pay scales, provide temporary and part-time appointments, authorize residencies and internships, extend malpractice and negligence protection coverage, define chiropractors as scarce medical specialists for contracting purposes, authorize reimbursement of continuing professional education expenses, and exempt chiropractors from collective bargaining, consistent with the provisions in chapter 74 of title 38, the United States Code. The bill would provide for an effective date of 180 days from enactment.

Compromise Agreement

Section 302 of the Compromise Agreement follows the House language with modifications that would redefine "medical care" occupations as "health care" occupations and eliminate provisions that would provide for residencies and internships and reimbursement of continuing professional education expenses.

ADDITIONAL PAY FOR SATURDAY TOURS OF DUTY FOR ADDITIONAL HEALTH CARE WORKERS IN THE VETERANS HEALTH ADMINISTRATION

Current Law

Title 38, United States Code, specifies in sections 7453 and 7454 that nurses, physician assistants, and expanded-function dental auxiliaries are entitled to additional pay for working regular tours of duty of Saturdays. Under this authority, respiratory therapists, physical therapists, practical or vocational nurses, pharmacists and occupational therapists are also entitled to additional pay for Saturday tours, if the Secretary determines it is necessary in order to hire and retain these health care professionals.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 4 of H.R. 2433, as amended, would amend section 7454 (b) of title 38, United

States Code, to authorize premium pay for Saturday tours of duty for additional VHA health care workers.

Compromise Agreement

Section 303 of the Compromise Agreement follows the House language.

COVERAGE OF EMPLOYEES OF VETERANS' CANTEEN SERVICE UNDER ADDITIONAL EMPLOYMENT LAWS

Current Law

Section 7802 of title 38, United States Code, authorizes appointment of Veterans' Canteen Service (VCS) employees.

Senate Bill

Section 302 of the Senate bill contains a similar provision.

House Bill

Section 5 of H.R. 2433, as amended, would authorize hourly workers of VCS to be qualified for competitive title 5, United States Code, appointments in VA in recognition of time-in service obtained in the VCS.

Compromise Agreement

Section 304 of the Compromise Agreement contains this provision.

TITLE IV—OTHER MATTERS

OFFICE OF RESEARCH OVERSIGHT IN VETERANS HEALTH ADMINISTRATION

Current Law

There is no similar provision in current law.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 11 of H.R. 1720, as amended, would add a new section 7307 to title 38, United States Code, to establish an Office of Research Oversight within the Veterans Health Administration to monitor, review and investigate matters of medical research compliance and assurance in VA, including matters relating to the protection and safety of human subjects, research animals and VA employees participating in VA medical research programs. The bill would require an annual report to the Committees on Veterans' Affairs of the Senate and House of Representatives on the activities of the Office of Research Oversight during the preceding calendar year and require that the activities of the Office of Research Oversight be funded from amounts appropriated for VA medical care.

Further, under the bill, the General Accounting Office (GAO) would be required to submit a report to Congress not later than January 1, 2006, on the results of the establishment of the Office of Research Oversight and any recommendations for other legislative and administrative actions. Finally, the Secretary would be required to submit a report to Congress setting forth the Department's implementation of the requirement to establish an Office of Research Oversight, and related provisions, not later than 180 days after the date of enactment.

Compromise Agreement

Section 401 of the Compromise Agreement follows the House language with modifications that would not include references to animal welfare, research animals and laboratory animals. Section 7307(c)(2)(A) of title 38, United States Code, referencing peer review responsibilities would also not be included in the Compromise Agreement, along with the required reports from GAO and the Secretary.

ENHANCEMENT OF AUTHORITIES RELATING TO NONPROFIT RESEARCH CORPORATIONS

Current Law

Sections 7361 through 7366 of title 38, United States Code, establish the authority for VA's Nonprofit Research Corporations. Section 7368 of title 38, United States Code, provides that no such corporations may be established after December 31, 2003.

Senate Bill

The Senate bill contains no comparable provisions.

House Bill

Section 6 of H.R. 3260 would cover employees of Nonprofit Research Corporations under the Federal Tort Claims Act and would extend the authority to create new Nonprofit Research Corporations through December 31, 2008.

Compromise Agreement

Section 402 of the Compromise Agreement follows the House language.

DEPARTMENT OF DEFENSE PARTICIPATION IN REVOLVING SUPPLY FUND PURCHASES

Current Law

Section 8121 of title 38, United States Code, establishes authority for VA to use a revolving supply fund to operate and maintain its supply system.

Senate Bill

The Senate bill contains no comparable provision.

House Bill

Section 5 of H.R. 3260 would extend authority to the Secretary of Defense to purchase medical equipment, services and supplies through VA's revolving supply fund beginning in fiscal year 2004. The Department of Defense (DoD) would be required to reimburse VA's revolving supply fund using DoD appropriations.

Compromise Agreement

Section 403 of the Compromise Agreement follows the House language.

FIVE-YEAR EXTENSION OF HOUSING ASSISTANCE FOR HOMELESS VETERANS

Current Law

Section 2041(c) of title 38, United States Code, authorizes the Secretary to enter into housing assistance agreements for homeless veterans until December 31, 2003.

Senate Bill

Section 411 of the Senate bill would extend the authority of the Secretary to enter into housing assistance agreements through December 31, 2006.

House Bill

Section 6 of H.R. 3387 would extend the authority of the Secretary to enter into housing assistance agreements until December 31, 2008.

Compromise Agreement

Section 404 of the Compromise Agreement follows the House language.

REPORT DATE CHANGES

Current Law

Title 38, United States Code, requires:

(a) in section 516(e)(1)(A), a quarterly report summarizing the employment discrimination complaints filed against senior managers; the report is due no later than 30 days after the end of each quarter;

(b) in section 2065(a), an annual report on assistance to homeless veterans; the report is due no later than April 15 each year;

(c) in section 7321(d)(2), an annual report of the Committee on Care of Severely Chronically Mentally Ill Veterans; the report is due no later than February 1 each year through 2004;

(d) in section 8107, an annual report on long-range health planning; due June 1 of each year;

(e) in section 8153(g), an annual report on sharing of health care resources; the report is due no later than 60 days after the end of each fiscal year; and

(f) in section 1712A note and enacted in section 110(e)(2) of Public Law 106–117, an annual report of the Special Committee on PTSD; the report is due February 1 of each of the three following years.

Senate Bill

The Senate bill contains no comparable provisions.

House Bill

Section 7 of H.R. 3260, subsection (a) would extend the Senior Managers Quarterly Report from 30 days to 45 days following each quarter; subsection (b) would change the report due date from April 15 to June 15 of each year for the annual report on Assistance to Homeless Veterans; subsection (c) would change the report due date from February 1 to June 1 of each year for the annual report of the Committee on Care of Severely Chronically Mentally Ill Veterans through 2004; subsection (d) would change the report date on the Annual Reports on Long-Range Health Planning to June 1 of each year; subsection (e) would change the report due dates on the Annual Report on Sharing of Health Care Resources to February 1 of each year; and subsection (f) would change the report due date on the Annual Report of the Special Committee on PTSD to May 1 of each year through 2004.

Section 7(a) of H.R. 3387 would extend the annual reporting requirement for the Committee on Care of Severely Chronically Mentally Ill Veterans in Section 7321(d)(2) to February 1, 2009. Section 7(b) of H.R. 3387 would extend the annual report of the Special Committee on PTSD to February 1, 2009.

Compromise Agreement

Section 405 of the Compromise Agreement follows the House language on the provisions in subsections (a), (b), and (e) of the House bill and would extend the reports in subsections (c) and (f) of the House bill through 2008. Section 405 of the Compromise Agreement would simplify the reporting requirements in subsection (d) of the House bill without altering the report due date.

LEGISLATIVE PROVISIONS NOT ADOPTED

DEMOLITION OF OBSOLETE, DILAPATED, AND HAZARDOUS STRUCTURES ON DEPARTMENT OF VETERANS AFFAIRS PROPERTY

Current Law

There is no similar provision in current law.

Senate Bill

Section 202 of the Senate bill would add section 8171 to title 38, United States Code, to authorize the demolition of obsolete, dilapidated, and hazardous structures; would establish a specific fund in the Treasury designated as the Department of Veterans Affairs Facilities Demolition Fund; and would authorize an appropriation of $25,000,000 for fiscal year 2004 for this Demolition Fund.

House Bill

The House bills contain no comparable provision.

Compromise Agreement

The Compromise Agreement does not contain this provision.

SUPPLEMENTARY MATTERS

SAN JUAN, PUERTO RICO VA MEDICAL CENTER

In 1999, Congress provided $50,000,000 to the VA Medical Center in San Juan, Puerto Rico, to assist that facility in correcting numerous structural safety issues. Since then, VA has spent $4,000,000 of those funds on the design and planning of a bed tower that will alleviate the strain on the older bed tower currently in use. The remaining $46,000,000 will be used for the tower's construction, with a projected Spring 2004 groundbreaking. The Committees understand that the Secretary has pledged at least an additional $25,000,000 to enhance this project and minimize any reduction of total beds at this facility. Even with the completion of this construction, the Committees are advised that additional seismic and utility upgrades are needed at the San Juan VA. The Committees encourage the Secretary to honor this pledge and continue the practice of providing high quality services to the veterans of Puerto Rico.

Mr. GRAHAM of Florida. Madam President, I rise today to urge swift passage of S. 1156, which is essentially a conference report on various veterans' health care measures. This bill will dramatically assist the Department of Veterans Affairs in providing quality health care to our Nation's veterans. I would like to highlight some of the key provisions.

The compromise agreement would authorize $17.5 million in advanced planning funds for a new medical facility in East-Central Florida. While this is only an authorization, I note that the VA-HUD appropriations bill will likely contain an unspecified pot of construction funding—up to $600 million total. These funds will likely be used for East-Central Florida and other worthy projects stemming from VA's realignment effort.

Veterans living in East-Central Florida are in dire need of a full-fledged VA hospital. One VA report found that since 1996, "the Central Florida market sustained the greatest workload expansion of the entire VA system—105 percent." Other VA studies have deemed the region as "the logical choice for infrastructure investment for all major Inpatient and Outpatient categories." The decision about where to place a new VA hospital in this region falls to VA, but I encourage Secretary Principi to carefully study all the options to ensure that the most appropriate location is chosen.

The demand for care in East-Central Florida heretofore has also been validated by the Capital Asset Realignment for Enhanced Services (CARES) process. CARES is a multi-stage analysis that VA has undertaken of its assets and infrastructure nationwide, for the purposes of making according adjustments to meet the projected health care needs of veterans over the next 20 years. The process has reached its final stages, with the release of a Draft National Plan currently under review by a commission.

The CARES initiative will have profound ramifications for hospitals all across the country. As such, the compromise agreement includes a provision that I fought for, granting Congress a 60-day notice and wait period before commencing any closures or consolidations that result from CARES recommendations. It is imperative that Congress have a role in this process, as the delivery of health care to our nation's veterans will be greatly affected by its outcome. This became particularly apparent when the Draft National Plan was unveiled, revealing the targeting for closure of up to 6,000 beds nationwide—including some 1,500 long-term care and 800 psychiatry beds. As long-term care and mental health were not factored into the original CARES model, many questions were raised about the validity of the process.

The Veterans Health Care, Capital Asset, and Business Improvement Act of 2003 would also authorize the construction of a comprehensive outpatient medical care facility at the Pensacola Naval Air Station, in Pensacola, FL. The clinic, as envisioned, would be a joint venture between VA and the Department of the Navy. This area of my home state is greatly underserved in terms of medical facilities for servicemembers and veterans, and I am pleased to be a part of bringing vital health care services to the region.

Because of the need for quality, accessible hospital services for veterans in the Pensacola area and surrounding counties, this bill would require VA to develop a plan to meet their inpatient needs. While there is no doubt that the VA-Navy clinic would provide vital outpatient services, inpatient care will still be lacking. This provision seeks to address that facet of the health care continuum for veterans in the Panhandle.

Another important provision of the compromise agreement would expand VA's assisted living pilot program to one additional site. The assisted living pilot program is designed to help the large numbers of men and women in the VA system over the age of 65, who either need long-term care now or potentially will need it in the future. The pilot program was first established through The Veterans Millennium Health Care and Benefits Act, which gave VA clear authority to furnish an assisted living service, including to the spouses of veterans.

The CARES Draft National Plan also puts emphasis on assisted living programs. No fewer than 19 sites are proposed to be converted into assisted living facilities. The assisted living pilot program seeks to help VA address inequities in availability of noninstitutional services by developing models for proliferating the program nationwide. I am hopeful that Network 8 will apply to be the next pilot program. There is a great need for long-term care services in my home state of Florida.

I am proud to have worked on this valuable piece of legislation for our Nation's veterans, and I urge my colleagues to support it.

Mr. INOUYE. Madam President, I commend Senator ARLEN SPECTER and the Committee on Veterans Affairs for their efforts in support of S. 1156, the Veterans Health Care Authorities Extension and Improvement Act of 2003, which would improve the provision of long-term health care for veterans by the Department of Veterans Affairs.

I would like to take this opportunity to comment on the section of S. 1156 that authorizes the VA to provide Filipino veterans residing in the United States the same medical benefits that are currently provided to veterans of the Armed Forces of the United States. Approximately 9,500 Filipino veterans residing in the United States would be eligible for these benefits.

Many of you are aware of my continued support and advocacy on behalf of the Filipino World War II veterans, and the importance of addressing their plight. As an American, I believe the treatment of Filipino World War II veterans is bleak and shameful. Throughout the years, I have sponsored several measures to rectify the wrongs committed against these World War II veterans, and I am grateful to the committee for the assistance and consideration given to my past initiatives. While some strides have been made, I believe more needs to be done to assist these veterans who are in their twilight years. Of the 120,000 who originally served in the Commonwealth Army during World War II, approximately 59,899 Filipino veterans currently reside in the United States and the Philippines. According to the Department of Veterans Affairs, the Filipino veteran population is expected to decrease to approximately 20,000, or roughly one-third of the current population, by 2010.

I support the provision in S. 1156 that authorizes the VA to provide Filipino veterans residing in the United States the same medical benefits that are currently provided to veterans of the Armed Forces of the United States. However, I remain concerned that these benefits are restricted to only those veterans residing in the United States. In my view, a distinction should not be made between veterans residing in the United States and those residing in the Philippines.

As a result of a citizenship statute enacted by the Congress in 1990, some Filipino veterans who were able to travel came to the United States to become United States citizens. At the same time, many other Filipino World War II veterans were unable to travel to the United States and take advantage of the naturalization benefit because of their advanced age. The law was subsequently amended in the Fiscal Year 1993 Departments of State, Justice, Commerce and the Judiciary Appropriations Act, Public Law 102–395, to allow the naturalization process for these veterans to occur in the Philippines. Since then, a distinction has been made, and benefits have been provided to only those Filipino veterans residing in the United States.

I believe it is unfair to make this distinction. The Commonwealth Army of the Philippines was called to serve with the United States Armed Forces in the Far East during World War II under President Roosevelt's July 26, 1941, military order. Together, these gallant men and women stood in harm's way with our American soldiers to fight our common enemies during World War II. Because all Filipino veterans stood in equal jeopardy during World War II, I do not believe we should draw a distinction based on their current residency in the U.S. or in the Philippines. All of them were at equal risk,. and so all should receive equal benefits.

Accordingly, I introduced S. 68, the Filipino Veterans' Benefits Improvements Act of 2003, which provides health and disability compensation benefits that are similar to the provision included in S. 1156, but without limitations based on the residency of the veterans. I strongly urge Chairman SPECTER and members of the Committee to give consideration to S. 68, and to work with me in the coming year to provide health benefits to veterans residing in the Philippines.

Heroes should never be forgotten or ignored, so let us not turn our backs on those who sacrificed so much. Many of the Filipinos who fought so hard for our nation have been honored with American citizenship. Let us now work to repay all of these brave men and women for their sacrifices by providing them the veterans' benefits they deserve.

Mr. THOMAS. Madam President, I ask unanimous consent that the substitute amendment which is at the desk be agreed to, the committee substitute, as amended, be agreed to, the bill, as amended, be read a third time and passed, the amendment to the title as reported be amended with the amendment at the desk, the title amendment, as amended, be agreed to, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2203) in the nature of a substitute was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended, was agreed to.

The amendment (No. 2204) was agreed to, as follows:

AMENDMENT NO. 2204

Amend the title to read as follows: "A bill to amend title 38, United States Code, to improve and enhance provision of health care for veterans, to authorize major construction projects and other facilities matters for the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.".

The bill (S. 1156), as amended, was read the third time and passed.

The title amendment, as amended, was agreed to.

IMPROVING BENEFITS UNDER LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS

Mr. THOMAS. Madam President, I ask unanimous consent that the Veterans' Affairs Committee be discharged from further consideration of H.R. 2297 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The committee is discharged.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2297) to amend title 38, United States Code, to improve benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. SPECTER. Madam President, I have sought recognition today to explain briefly the provisions of H.R. 2297, the proposed Veterans Benefits Act of 2003, that the Ranking Member of the Committee on Veterans Affairs, Senator GRAHAM of Florida, and I propose be approved, as amended, by the Senate. H.R. 2297, as so amended and as presented to the Senate today, incorporates agreements reached between the Senate Committee of Veterans Affairs, which I am privileged to chair, and our counterpart Committee in the House of Representatives, on legislation relating to the provision of non-healthcare-related benefits by the Department of Veterans Affairs.

H.R. 2297, as amended, contains provisions derived from S. 1132, the proposed Veterans Benefits Enhancements Act of 2003, as approved by the Senate on October 31, 2003, and S. 1156, as reported by the Committee on Veterans' Affairs on November 10, 2003. It also contains provisions derived from H.R. 2297, as approved by the House on October 8, 2003; H.R. 1257, as approved by the House on May 22, 2003; and H.R. 1460, as amended from the bill approved by the House on June 24, 2003. Inasmuch as S. 1132, as approved by the Senate earlier this year, had itself incorporated provisions derived from 11 Senate bills—meaning that H.R. 2297 contains provisions derived from 15 separate bills—it is apparent that this bill represents the work and ideas of many sponsors with many differing interests. I thank the Ranking Member, Senator GRAHAM of Florida, and the Chairman and Ranking Member of the House Committee on Veterans Affairs, Representative CHRIS SMITH of New Jersey and Representative LANE EVANS of Illinois, for the spirit of cooperation and bipartisanship that they showed in addressing the sometimes-competing interests in play as 15 pieces of legislation were knitted into a single, coherent whole.

Since this is a lengthy bill—over 50 pages—I will not endeavor in this statement to explain in detail each and every provision. Rather, I will discuss the highlights briefly in this statement, and refer my colleagues to a Joint Explanatory Statement. I ask unanimous consent to print in the RECORD a detailed explanation of the bill as amended.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATORY STATEMENT ON SENATE AMENDMENT TO HOUSE BILL, H.R. 2297, AS AMENDED

H.R. 2297, as amended, the Veterans Benefits Act of 2003, reflects a Compromise Agreement reached by the House and Senate Committees on Veterans' Affairs ("the Committees") on the following bills considered in the House and Senate during the 108th Congress: H.R. 1257; H.R. 1460, as amended; H.R. 2297, as amended ("House Bill"); and S. 1132, as amended ("Senate Bill"). H.R. 1257 passed the House on May 22, 2003; H.R. 1460, as amended, passed the House on June 24, 2003; H.R. 2297, as amended, passed the House on October 8, 2003; S. 1132, as amended, passed the Senate on October 31, 2003.

The House and Senate Committees on Veterans' Affairs have prepared the following explanation of H.R. 2297, as amended ("Compromise Agreement"). Differences between the provisions contained in the Compromise Agreement and the related provisions of H.R. 1257, H.R. 1460, as amended, H.R. 2297, as amended, and S. 1132, as amended, are noted in this document, except for clerical corrections, conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I: SURVIVOR BENEFITS

RETENTION OF CERTAIN VETERANS SURVIVOR BENEFITS FOR SURVIVING SPOUSES REMARRYING AFTER AGE 57

Current Law

Section 103(d) of title 38, United States Code, prohibits a surviving spouse who has remarried from receiving dependency and indemnity compensation ("DIC") and related housing and education benefits during the course of the remarriage. This benefit may be reinstated in the event the subsequent marriage is terminated. Public Law 107–330 extended to surviving spouses who remarry after age 55 continuing eligibility under the Civilian Health and Medical Program of the Department of Veterans Affairs ("CHAMPVA").

House Bill

Section 6 of H.R. 2297, as amended, would allow a surviving spouse who remarries after attaining age 55 to retain the DIC benefit. Spouses who remarry at age 55 or older prior to enactment of the bill would have one year from the date of enactment to apply for reinstatement of DIC benefits. The amount of DIC would be paid with no reduction of certain other Federal benefits to which the surviving spouse might be entitled.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 101 of the Compromise Agreement would provide that a surviving spouse upon remarriage after attaining age 57 would retain DIC, home loan, and educational benefits eligibility. Surviving spouses who remarried after attaining age 57 prior to enactment of the Compromise Agreement would have one year to apply for reinstatement of these benefits.

BENEFITS FOR CHILDREN WITH SPINA BIFIDA OF VETERANS OF CERTAIN SERVICE IN KOREA

Current Law

Chapter 18 of title 38, United States Code, authorizes the Department of Veterans Affairs ("VA") to provide benefits and services to those children born with spina bifida whose natural parent (before the child was conceived) served in the Republic of Vietnam between January 9, 1962 and May 7, 1975. Benefits and services are authorized due to the association between exposure to dioxin and the incidence of spina bifida in the children of those exposed. Children born with spina bifida whose parent was exposed to dioxin and other herbicides during military service in locations other than the Republic of Vietnam do not qualify for VA benefits and services.

House Bill

Section 12 of H.R. 2297, as amended, would permit children born with spina bifida whose parent (before the child was conceived) served in an area of Korea near the demilitarized zone ("DMZ") between October 1, 1967 and May 7, 1975, to qualify for benefits in the same manner as children whose parent served in the Republic of Vietnam.

Senate Bill

Section 101 of S. 1132, as amended, would permit children with spina bifida whose parent (before the child was conceived) served in or near the DMZ in Korea during the period beginning on January 1, 1967, and ending on December 31, 1969, to qualify for benefits in the same manner as children whose parent served in the Republic of Vietnam. The Senate Bill would require the Secretary of Veterans Affairs to make determinations of exposure to herbicides in Korea in consultation with the Secretary of Defense.

Compromise Agreement

Section 102 of the Compromise Agreement would generally follow the Senate language. However, under the Compromise Agreement, the time period for qualifying service in or near the DMZ is changed to service which occurred during the period beginning on September 1, 1967, and ending on August 31, 1971. The Committees note that although use of herbicides in Vietnam ceased in 1971, Vietnam-era veterans who served until May 7, 1975, are presumed to have been exposed to residuals. Similarly, even though herbicide use in or near the Korean DMZ ended in 1969, the Committees believe it is appropriate to extend the qualifying service period beyond 1969 to account for residual exposure.

The Committees also note that the Secretary of Defense has identified the following units as those assigned or rotated to areas near the DMZ where herbicides were used between 1968 and 1969: combat brigades of the 2nd Infantry Division (1–38 Infantry, 2–38 Infantry, 1–23 Infantry, 2–23 Infantry, 3–23 Infantry, 3–32 Infantry, 1–9 Infantry, 2–9 Infantry, 1–72 Armor, and 2–72 Armor); Division Reaction Force (4–7th Cavalry, Counter Agent Company); 3rd Brigade of the 7th Infantry Division (1–17th Infantry, 2–17 Infantry, 1–73 Armor and 2–10th Cavalry); and Field Artillery, Signal and Engineer support personnel.

ALTERNATE BENEFICIARIES FOR NATIONAL SERVICE LIFE INSURANCE AND UNITED STATES GOVERNMENT LIFE INSURANCE

Current Law

Section 1917 of title 38, United States Code, gives veterans insured under the VA's National Service Life Insurance ("NSLI") program the right to designate the beneficiary or beneficiaries of insurance policies maturing on or after August 1, 1946. It also specifies the modes of payment to beneficiaries when an insured dies, and sets forth the procedure to be followed when a beneficiary has not been designated or dies before the insured.

Section 1949 of title 38, United States Code, gives veterans insured under the United States Government Life Insurance ("USGLI") program the right to change beneficiaries, and sections 1950 through 1952 of title 38 set out the modes of payment to designated beneficiaries and sets forth the procedure to be followed when a beneficiary either has not been designated or dies before the insured. For the NSLI and USGLI programs, the law does not specify the course of action VA is to take when no beneficiary can be found.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 102 of S. 1132, as amended, would authorize the payment of NSLI and USGLI to alternate beneficiaries, in order of precedence and as designated by the insured veteran, if no claim is made by the primary beneficiary within two years of the insured veteran's death. If four years have elapsed since the death of the insured and no claim has been filed by a person designated by the insured as a beneficiary, section 102 would authorize VA to make payment to a person VA determines to be equitably entitled to such payment.

Compromise Agreement

Section 103 of the Compromise Agreement follows the Senate language.

PAYMENT OF BENEFITS ACCRUED AND UNPAID AT TIME OF DEATH

Current Law

Section 5121 of title 38, United States Code, restricts specified classes of survivors to receiving no more than two years of accrued benefits if a veteran dies while a claim for VA periodic monetary benefits (other than insurance and servicemen's indemnity) is being adjudicated. Public Law 104–275 extended the retroactive payment from one year to two years.

House Bill

Section 6 of H.R. 1460, as amended, would repeal the two-year limitation on accrued benefits so that a veteran's survivor may receive the full amount of award for accrued benefits.

Senate Bill

Section 105 of S. 1132, as amended, contains an identical provision.

Compromise Agreement

Section 104 of the Compromise Agreement contains this provision.

TITLE II: BENEFITS FOR FORMER PRISONERS OF WAR AND FOR FILIPINO VETERANS

Subtitle A—Former Prisoners of War

PRESUMPTIONS OF SERVICE-CONNECTION RELATING TO DISEASES AND DISABILITIES OF FORMER PRISONERS OF WAR

Current Law

Section 1112(b) of title 38, United States Code, specifies a list of 15 disabilities that VA presumes are related to military service for former prisoners of war ("POWs") who were held captive for not less than 30 days. If a former POW was interned for less than 30 days, he or she must establish that the disability was incurred or aggravated during military service in order for service connection to be granted.

The list in section 1112(b) of title 38, United States Code, does not include cirrhosis of the liver; however, on July 18, 2003, VA published a regulation adding cirrhosis of the liver to the list of conditions presumptively service-connected for former POWs. (68 Fed. Reg. 42,602).

House Bill

Section 11 of H.R. 2297, as amended, would eliminate the 30-day requirement for psychosis, any anxiety states, dysthymic disorders, organic residuals of frostbite and post-traumatic arthritis. Section 11 would also codify cirrhosis of the liver as a disability which is presumptively service-connected for a former POW who was interned for at least 30 days.

Senate Bill

Section 302 of S. 1132, as amended, contains an identical provision.

Compromise Agreement

Section 201 of the Compromise Agreement contains this provision.

Subtitle B—Filipino Veterans

RATE OF PAYMENT OF BENEFITS FOR CERTAIN FILIPINO VETERANS AND THEIR SURVIVORS RESIDING IN THE UNITED STATES

Current Law

Section 107(a) of title 38, United States Code, generally provides that service before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, including organized guerilla units ("Commonwealth Army veterans"), may in some circumstances be a basis for entitlement to disability compensation, dependency and indemnity compensation, monetary burial benefits, and certain other benefits under title 38, United States Code, and that payment of such benefits will be at the rate of $0.50 for each dollar authorized. Section 107(b) of title 38, United States Code, generally provides that service in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945 (i.e., service in the "new Philippine Scouts"), may be a basis for entitlement to disability compensation, DIC, and certain other benefits under title 38, United States Code, but payment of such benefits will be at the rate of $0.50 for each dollar authorized.

House Bill

Section 16 of H.R. 2297, as amended, would provide the full amount of compensation and DIC to eligible members of the new Philippine Scouts, as well as the full amount of DIC paid by reason of service in the organized military forces of the Commonwealth of the Philippines, including organized guerilla units, if the individual to whom the benefit is payable resides in the United States and is either a citizen of the U.S. or an alien lawfully admitted for permanent residence.

Senate Bill

Section 321 of S. 1132, as amended, contains an identical provision.

Compromise Agreement

Section 211 of the Compromise Agreement contains this provision.

BURIAL BENEFITS FOR NEW PHILIPPINE SCOUTS RESIDING IN THE UNITED STATES

Current Law

Section 107 of title 38, United States Code, provides that persons who served in the organized military forces of the Government of the Commonwealth of the Philippines, including organized guerilla units ("Commonwealth Army veterans"), who lawfully reside in the United States are eligible for burial in a VA national cemetery and VA monetary burial benefits at the full-dollar rate if, at the time of death, they are receiving VA disability compensation or would have been receiving VA pension but for their lack of qualifying service.

House Bill

Section 17 of H.R. 2297, as amended, would extend eligibility for burial in a national cemetery to new Philippine Scouts, as well as eligibility for VA burial benefits, to those who lawfully reside in the United States.

Senate Bill

Section 322 of S. 1132, as amended, contains an identical provision.

Compromise Agreement

Section 212 of the Compromise Agreement contains this provision.

EXTENSION OF AUTHORITY TO MAINTAIN REGIONAL OFFICE IN THE REPUBLIC OF THE PHILIPPINES

Current Law

Section 315(b) of title 38, United States Code, authorizes the Secretary of Veterans Affairs to operate a regional office in the Republic of the Philippines until December 31, 2003. Congress last extended this authority in Public Law 106–117.

House Bill

Section 18 of H.R. 2297, as amended, would extend the Secretary's authority to operate a regional office in the Republic of the Philippines through December 31, 2009.

Senate Bill

Section 323 of S. 1132, as amended, would extend the Secretary's authority to operate a regional office in the Republic of the Philippines through December 31, 2008.

Compromise Agreement

Section 213 of the Compromise Agreement follows the House language.

TITLE III—EDUCATION BENEFITS, EMPLOYMENT PROVISIONS, AND RELATED MATTERS

EXPANSION OF MONTGOMERY GI BILL EDUCATION BENEFITS FOR CERTAIN SELF-EMPLOYMENT TRAINING

Current Law

Section 3452(e) of title 38, United States Code, furnishes various legal definitions used in the administration of VA's educational assistance programs. Self-employment training is not included among the current definitions.

House Bill

Section 2 of H.R. 2297, as amended, would expand the Montgomery GI Bill program by authorizing educational assistance benefits for on-job training of less than six months in certain self-employment training programs, to include: (1) an establishment providing apprentice or other on-job training, including programs under the supervision of a college or university or any State department of education; (2) an establishment providing self-employment training consisting of full-time training for less than six months that is needed for obtaining licensure to engage in a self-employment occupation or required for ownership and operation of a franchise; (3) a State board of vocational education; (4) a Federal or State apprenticeship registration agency; (5) a joint apprenticeship committee established pursuant to the National Apprenticeship Act, title 29, United States Code; or (6) an agency of the Federal Government authorized to supervise such training.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 301 of the Compromise Agreement follows the House language.

INCREASE IN RATES OF SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

Current Law

Chapter 35 of title 38, United States Code, specifies the eligibility criteria, programs of education and training, and payment amounts applicable under VA's Survivors' and Dependents' Educational Assistance ("DEA") benefits program. Generally, those eligible for DEA benefits are the spouses and dependents of: veterans with total and permanent service-connected ratings; veterans who died as a result of service-related injuries; or servicemembers who died while on active duty. Currently, monthly benefit rates for eligible DEA beneficiaries are $695 for full-time study, $522 for three-quarter-time study, and $347 for half-time study. Monthly DEA benefits are also available for beneficiaries pursuing programs of education on a less-than-half-time basis, through farm cooperative programs, correspondence courses, special restorative training programs, or programs of apprenticeship or other approved on-job training programs.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 104 of S. 1132, as amended, would raise monthly DEA benefits by 13.4 percent over current levels. The new rates would be set at $788 for full-time study, $592 for three-quarter time study, and $394 for half-time study. A 13.4 percent increase would also be made to benefits paid to eligible persons pursuing a program of education on a less than half-time basis, through institutional courses, farm cooperative programs, correspondence courses, special restorative training programs, or programs of apprenticeship or other approved on-job training programs. The increases would take effect on July 1, 2004.

Compromise Agreement

Section 302 of the Compromise Agreement follows the Senate language.

RESTORATION OF SURVIVORS' AND DEPENDENTS' EDUCATION BENEFITS OF INDIVIDUALS BEING ORDERED TO FULL-TIME NATIONAL GUARD DUTY

Current Law

Section 3512(h) of title 38, United States Code, provides for an extension of Survivors' and Dependents' Educational Assistance only to reservists called to active duty after September 11, 2001, for an amount of time equal to that period of full-time duty, plus 4 months.

House Bill

Section 3 of H.R. 2297, as amended, would provide that National Guard members who qualify for survivors' and dependents' education benefits under chapter 35 of title 38, United States Code, and are involuntarily ordered to full-time duty under title 32, United States Code, after September 11, 2001, would have their eligibility extended by an amount of time equal to that period of full-time duty, plus 4 months.

Senate Bill

Section 103 of S. 1132, as amended, contains an identical provision.

Compromise Agreement

Section 303 of the Compromise Agreement contains this provision.

ROUNDING DOWN OF CERTAIN COST-OF-LIVING ADJUSTMENTS ON EDUCATIONAL ASSISTANCE

Current Law

Sections 3015(h) and 3564 of title 38, United States Code, provide for annual cost-of-living adjustments to both the Montgomery GI Bill and Survivors' and Dependents' Educational Assistance programs. Each section specifies that percentage increases be "rounded to the nearest dollar."

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 304 of S. 1132, as amended, would require annual percentage adjustments under sections 3015(h) and 3564 to be rounded down to the nearest dollar. This section would first apply to adjustments made at the start of fiscal year 2005.

Compromise Agreement

Section 304 of the Compromise Agreement follows the Senate language. However, the Compromise Agreement specifies that the changes made by the Senate language shall be effective only through September 30, 2013.

AUTHORIZATION FOR STATE APPROVING AGENCIES TO APPROVE CERTAIN ENTREPRENEURSHIP COURSES

Current Law

Section 3675 of title 38, United States Code, establishes requirements for approval of accredited courses offered by educational institutions. Section 3452 of title 38, United States Code, furnishes various legal definitions used in the administration of VA educational assistance programs. Section 3471 of title 38, United States Code, establishes general requirements which must be met by educational institutions before VA may approve applications for educational assistance from veterans or eligible persons. There is no provision in current law authorizing the approval of entrepreneurship courses.

House Bill

Section 2 of H.R 1460, as amended, would allow State approving agencies to approve non-degree, non-credit entrepreneurship courses offered by a Small Business Development Center ("SBDC") or the National Veterans Business Development Corporation for the training of veterans, disabled veterans, dependent spouses and children of certain disabled or deceased veterans, and members of the National Guard and Selected Reserve. VA would also be prohibited from considering a beneficiary as already qualified for the objective of a program of education offered by a qualified provider of an entrepreneurship course solely because he or she is the owner or operator of a small business.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 305 of the Compromise Agreement follows the House language.

REPEAL OF PROVISIONS RELATING TO OBSOLETE EDUCATION LOAN PROGRAM

Current Law

Subchapter III of chapter 36 of title 38, United States Code, establishes VA's education loan program, states policy regarding eligibility, amount, condition, and interest rates of loans, and establishes a revolving fund and insurance against defaults as part of its administration. This program has been in effect since January 1, 1975.

House Bill

Section 5 of H.R. 2297, as amended, would, effective on the date of enactment, repeal the VA education loan program and waive any existing repayment obligations of a veteran, including overpayments due to default on these loans.

Senate Bill

Section 305 of S. 1132, as amended, contains a comparable provision, but terminates the program 90 days after date of enactment.

Compromise Agreement

Section 306 of the Compromise Agreement follows the Senate language.

SIX-YEAR EXTENSION OF VETERANS' ADVISORY COMMITTEE ON EDUCATION

Current Law

Section 3692 of title 38, United States Code, requires the Secretary of Veterans Affairs to administer a Veterans' Advisory Committee on Education. It requires the Secretary to consult with and seek the advice of the Advisory Committee from time to time with respect to the administration of chapters 30, 32, and 35 of title 38, United States Code, and chapter 1606 of title 10, United States Code. The Advisory Committee's authorization expires on December 31, 2003.

House Bill

Section 4 of H.R. 2297, as amended, would extend, through December 31, 2009, the Veterans' Advisory Committee on Education, as well as amend the language to eliminate the requirement that veterans from certain periods—World War II, Korean conflict era, or post-Korean conflict era—be required to participate as members of the Advisory Committee.

Senate Bill

Section 342 of S. 1132, as amended, would extend the Veterans' Advisory Committee on Education through December 31, 2013, and maintain the existing membership requirements, as practicable.

Compromise Agreement

Section 307 of the Compromise Agreement follows the Senate language with regard to membership, and the House language with regard to extending the Advisory Committee's authorization date through December 31, 2009.

PROCUREMENT PROGRAM FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY QUALIFIED SERVICE-DISABLED VETERANS

Current Law

Sections 631 through 657 of title 15, United States Code, establish policies with respect to aid to small businesses. Section 637 specifies Small Business Administration ("SBA") authorities regarding procurement matters. Section 637(a) specifies SBA authorities with respect to procurement contracts and subcontracts to disadvantaged small business concerns. Section 637(d) establishes policies regarding performance of contracts by small business concerns ("SBC"), as described in title 15, United States Code. Section 637(h) establishes policies regarding award of contracts, procedures other than competitive ones, and exceptions.

House Bill

Section 3 of H.R. 1460, as amended, would provide Federal agencies discretionary authority to create "sole-source" contracts for service-disabled veteran-owned and controlled small businesses, up to $5 million for manufacturing contract awards and up to $3 million for non-manufacturing contract awards.

This section would provide Federal agencies discretionary authority to restrict certain contracts to service-disabled veteran-owned and controlled small businesses if at least two such concerns are qualified to bid on the contract.

Section 3 would establish a contracting priority that places restricted and "sole source" contracts for service-disabled veteran-owned and controlled small businesses immediately below the priority for socially and economically disadvantaged firms (known as "8(a)" program contracts) for all Federal departments and agencies except VA. Such priorities for service-disabled veteran-owned and controlled small businesses would rank above priorities for HUBZone and women-owned businesses. HUBZones are SBCs located in historically underutilized business zones. However, a contracting officer would procure from a source on the basis of a preference provided under any provision of this legislation unless the contracting officer had determined the procurement could be made by a contracting authority having a higher priority. Lastly, procurement could not be made from a source on the basis of preference provided under this legislation if the procurement could otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act.

Section 3 would establish a four-year pilot program in the Department of Veterans Affairs in which service-disabled veteran-owned and controlled small businesses would have the same contracting priority as the 8(a) program.

This section would define "qualified service-disabled veteran" as any veteran who (1) has one or more disabilities that are service-connected as defined in section 101(16) of title 38, United States Code, and are rated at 10 percent or more by the Secretary of Veterans Affairs, or (2) is entitled to benefits under section 1151 of title 38, United States Code.

Section 3 would define "small business concerns owned and controlled by qualified service-disabled veterans" as (1) one in which not less than 51 percent of which is owned by one or more qualified service-disabled veterans or, in the case of any publicly-owned businesses, not less than 51 percent of the stock of which is owned by one or more qualified service-disabled veterans, and (2) the management and daily business operations of which are controlled by one or more qualified service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent care giver of the veteran.

Section 3 would define the term "certified small business concerns owned and controlled any qualified service-disabled veterans" as any small business concern owned and controlled by qualified service-disabled veterans that is certified by the Administrator of the Small Business Administration as being such a concern.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 308 of the Compromise Agreement would provide Federal contracting officials the discretionary authority to award sole source contracts (limited to contracts of up to $5 million for manufacturing and $3 million for non-manufacturing) to SBCs owned and controlled by service-disabled veterans. This section would also provide Federal contracting officials, in certain circumstances, the discretionary authority to award contracts on a restricted competition basis to SBCs owned and controlled by service-disabled veterans. This provision would not supercede any existing procurement preference established under law. Specifically, it would not accord service-disabled veteran small business owners priority over procurement preferences under the Federal Prison Industries, Javits-Wagner-O'Day, SBA 8(a), Women's, or HubZone programs. Rather, the Committees intend the provision to provide Federal contracting officials a means to improve their results with respect to contracting with service-disabled veterans. The Committees note that in 1999, Public Law 106–50 established a 3 percent governmentwide goal for procurement from service-disabled veteran-owned small businesses. To date, all Federal agencies fall far short of reaching this procurement goal. The Committees intend that a determination of service-connection by the Secretary of Veterans Affairs would be binding on the SBA for purposes of participation in this program. The Committees also urge the SBA and the Office of Federal Procurement Policy to expeditiously and transparently implement this program, perform outreach, and provide the necessary resources to improve results with respect to SBCs' owned and operated by service-disabled veterans.

OUTSTATIONING OF TRANSITION ASSISTANCE PROGRAM PERSONNEL

Current Law

Section 1144 of title 10, United States Code, authorizes the Secretary of Labor to place staff in veterans' assistance offices on military installations, both foreign and domestic, to help transitioning servicemembers obtain civilian jobs.

House Bill

Section 19 of H.R. 2297, as amended, would require the Department of Labor to place staff in veterans' assistance offices where VA staff are located at overseas military installations 90 days after enactment. It would also authorize the Department of Labor to exceed the number of VA locations and place staff in additional locations abroad.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 309 of the Compromise Agreement follows the House language with a technical modification.

TITLE IV: HOUSING BENEFITS AND RELATED MATTERS

AUTHORIZATION TO PROVIDE ADAPTED HOUSING ASSISTANCE TO CERTAIN DISABLED MEMBERS OF THE ARMED FORCES WHO REMAIN ON ACTIVE DUTY

Current Law

Section 2101 of title 38, United States Code, provides for grants to adapt or acquire suitable housing for certain severely disabled veterans, including veterans who are unable to ambulate without assistance. Severely disabled servicemembers who have not yet been processed for discharge from military service, but who will qualify for the benefit upon discharge due to the severity of their disabilities, are not allowed to apply for or receive the grant until they are actually discharged from military service.

House Bill

Section 4 of H.R. 1460, as amended, would permit a member of the Armed Forces to apply for and receive a grant prior to actually being discharged from military service.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 401 of the Compromise Agreement follows the House language.

INCREASE IN AMOUNTS FOR CERTAIN ADAPTIVE BENEFITS FOR DISABLED VETERANS

Current Law

The Secretary of Veterans Affairs is authorized in chapter 21 of title 38, United States Code, to assist eligible veterans in acquiring suitable housing and adaptations with special fixtures made necessary by the nature of the veteran's service-connected disability, and with the necessary land. The maximum amount authorized for a severely disabled veteran is $48,000. The maximum amount authorized for less severely disabled veterans is $9,250.

Section 3902(a) of title 38, United States Code, authorizes the Secretary to pay up to $9,000 to an eligible disabled servicemember or veteran to purchase an automobile (including all state, local, and other taxes).

House Bill

Section 10(a) of H.R. 2297, as amended, would increase the specially adapted housing grants for the most severely disabled veterans from $48,000 to $50,000, and from $9,250 to $10,000 for less severely disabled veterans.

Section 10(b) would increase the specially adapted automobile grant from $9,000 to $11,000.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 402 of the Compromise Agreement follows the House language.

PERMANENT AUTHORITY FOR HOUSING LOANS FOR MEMBERS OF THE SELECTED RESERVE

Current Law

Under section 3702(a)(2)(E) of title 38, United States Code, members of the Selected Reserve qualify for a VA home loan if the reservist has served for a minimum of six years. Eligibility for reservists under this program is scheduled to expire on September 30, 2009.

House Bill

Section 13 of H.R. 2297, as amended, would make the Selected Reserve home loan program permanent.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 403 of the Compromise Agreement follows the House language.

REINSTATEMENT OF MINIMUM REQUIREMENTS FOR SALE OF VENDEE LOANS

Current Law

Section 3733 of title 38, United States Code, generally establishes property management policies for real property acquired by the Department of Veterans Affairs as a result of a default on a loan that VA has guaranteed.

House Bill

Section 15 of H.R. 2297, as amended, would reinstate the vendee loan program which VA administratively terminated on January 31, 2003. It would increase from 65 percent to 85 percent the maximum number of purchases of real property the Secretary may finance in a fiscal year. It would change the vendee loan program from a discretionary to a mandatory one.

Senate Bill

Section 308 of S. 1132, as amended, contains an identical provision.

Compromise Agreement

Section 404 of the Compromise Agreement contains this provision. However, the Compromise Agreement specifies that the changes made under this provision shall expire after September 30, 2013.

ADJUSTMENT TO HOME LOAN FEES AND UNIFORMITY OF FEES FOR QUALIFYING RESERVE MEMBERS WITH FEES FOR ACTIVE DUTY VETERANS

Current Law

Section 3729(a) of title 38, United States Code, requires that a fee shall be collected from each person (1) obtaining a housing loan guaranteed, insured, or made under chapter 37; and (2) assuming a loan to which section 3714 (concerning loan assumptions) applies. The fee may be included in the loan.

Section 3729(b) of title 38, United States Code, determines the amount of the home loan fees expressed as a percentage of the total amount of the loan guaranteed, insured, or made, or, in the case of a loan assumption, the unpaid principal balance of the loan on the date of the transfer of the property.

Section 3729(b)(2) requires that veterans who served in the Selected Reserve pay 75 basis points more than veterans with active duty service.

House Bill

Section 14 of H.R. 2297, as amended, would make four revisions to the Loan Fee Table. First, it would provide uniformity in the funding fees for VA-guaranteed home loans charged to those who served in the Selected Reserve and veterans with active duty service. Second, beginning in fiscal year 2004, it would increase the fee charged for loans made with no down payment by 15 basis points. Third, it would increase the fee charged for repeated use of the home loan benefit, i.e., for a second or subsequent loan, by 30 basis points for the fiscal year 2004–2011 period and by 90 basis points in fiscal years 2012 and 2013. Fourth, it would replace the existing range of fees for hybrid adjustable rate mortgages under the current pilot program with a flat fee of 1.25 percent.

Senate Bill

Section 307 of S. 1132, as amended, would increase the funding fees for subsequent use of a guaranty by 50 basis points, but only between fiscal years 2005 and 2011.

Compromise Agreement

Section 405 of the Compromise Agreement would follow the House language, except that a funding fee for members of the Selected Reserve would, for initial use of a guaranty, be set 25 basis points higher than applicable funding fees set for veterans with active duty service. Further, for the period January 1, 2004 through September 30, 2004 only, in the case of active-duty veterans making initial loans with zero dollars down, the fee would be increased from 2.15 percent to 2.20 percent. In addition, the Compromise Agreement would not effect a 1.25 percent flat fee for hybrid adjustable rate mortgage loans.

ONE-YEAR EXTENSION OF PROCEDURES ON LIQUIDATION SALES OF DEFAULTED HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS

Current Law

Section 3732 of title 38, United States Code, defines the procedures for a liquidation sale of a property acquired by VA in the event of a default on a VA-guaranteed home loan. The procedures direct VA to follow a formula, defined in statute, which mandates VA consider losses it might incur when selling properties acquired through foreclosure. Ultimately, after considering the loss VA can make a determination whether to, in fact, acquire the property or simply pay the guaranty on the loan used to purchase the property. The authority for these procedures is currently set to expire on October 1, 2011.

House Bill

The House Bill contains no comparable provision.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 406 of the Compromise Agreement would extend the application of the liquidation sale procedures through October 1, 2012.

TITLE V: BURIAL BENEFITS

BURIAL PLOT ALLOWANCE

Current Law

Veterans who are discharged from active duty service as a result of a service-connected disability, veterans who are entitled to disability compensation or VA pension, and veterans who die in a VA facility are eligible for a $300 VA "plot allowance" if they are not buried in a national cemetery. Section 2303(b)(1) of title 38, United States Code, allows state cemeteries to receive the $300 plot allowance payment for the interment of such veterans, and the interment of veterans of any war, if the cemeteries are used solely for the burial of veterans. However, states may not receive a plot allowance for burial of veterans who die as a result of a service-connected disability and whose survivors seek reimbursement of funeral expenses under section 2307 of title 38, United States Code (which currently authorizes a $2,000 funeral expense benefit).

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 201 of S. 1132, as amended, would expand existing law to allow states to receive the $300 plot allowance for the interment of veterans who did not serve during a wartime period and for the interment of veterans who died as a result of service-connected disabilities and whose survivors sought reimbursement of funeral expenses under section 2307 of title 38, United States Code.

Compromise Agreement

Section 501 of the Compromise Agreement follows the Senate language.

ELIGIBILITY OF SURVIVING SPOUSES WHO REMARRY FOR BURIAL IN NATIONAL CEMETERIES

Current Law

Section 2402(5) of title 38, United States Code, prohibits a surviving spouse of a veteran who has remarried from being buried with the veteran spouse in a national cemetery if the remarriage is in effect when the veteran's surviving spouse dies. Public Law 103-466 revised eligibility criteria for burial in a national cemetery to reinstate burial eligibility for a surviving spouse of an eligible veteran whose subsequent remarriage was terminated by death or divorce.

House Bill

Section 7 of H.R. 2297, as amended, would allow the surviving spouse of a veteran to be eligible for burial in a VA national cemetery based on his or her marriage to the veteran, regardless of the status of the subsequent marriage. This eligibility revision would be effective January 1, 2000.

Senate Bill

Section 202 of S. 1132, as amended, contains a similar provision, with the eligibility revision being effective on date of enactment.

Compromise Agreement

Section 502 of the Compromise Agreement follows the House language. Despite the inclusion of an additional group of persons (i.e., remarried spouses) eligible for national cemetery burial under the Compromise Agreement, the Secretary retains the authority under section 2402(6) of title 38, United States Code, to grant or deny national cemetery burial for other persons, or classes of persons, not explicitly granted eligibility in statute. It has come to the Committees' attention that VA's record-keeping system concerning which persons are granted or denied waivers for burial in national cemeteries is, at best, incomplete. Adequate records on burial waivers are necessary to ensure that the Secretary's judgment on waiver cases is being applied uniformly to all applicants. The Committees direct VA to rectify gaps in its waiver-accounting system so that basic information, such as which persons are denied burial waivers and the reasons for the denial, will be available.

PERMANENT AUTHORITY FOR STATE CEMETERY GRANTS PROGRAM

Current Law

Section 2408(a)(2) of title 38, United States Code, authorizes appropriations, through fiscal year 2004, for VA to make grants to States to assist them in establishing, expanding, or improving state veterans' cemeteries.

House Bill

Section 8 of H.R. 2297, as amended, would make the State Cemetery Grants Program permanent.

Senate Bill

Section 203 of S. 1132, as amended, contains a similar provision with an additional technical change.

Compromise Agreement

Section 503 of the Compromise Agreement follows the Senate language.

TITLE VI: EXPOSURE TO HAZARDOUS SUBSTANCES

RADIATION DOSE RECONSTRUCTION PROGRAM OF DEPARTMENT OF DEFENSE

Current Law

Section 3.311 of title 38, Code of Federal Regulations, sets out procedures for the adjudication of claims by VA for benefits premised on a veteran's exposure to ionizing radiation in service. For veterans who claim radiation exposure due to participation in nuclear atmospheric testing from 1945 through 1962, or due to occupation duty in Hiroshima and Nagasaki prior to July 1, 1946, dose data are requested from the Department of Defense ("DOD"). DOD's Defense Threat Reduction Agency ("DTRA") pays a private contractor to estimate radiation exposure through a process called radiation dose reconstruction.

There is no entity under existing law which provides independent oversight of DTRA's radiation dose reconstruction process.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 331 of S. 1132, as amended, would require VA and DOD to review, and report on the mission, procedures, and administration of the radiation dose reconstruction program. It would also require VA and DOD to establish an advisory board to oversee the program.

Compromise Agreement

Section 601 of the Compromise Agreement follows the Senate language.

STUDY ON DISPOSITION OF AIR FORCE HEALTH STUDY

Current Law

The Air Force Health Study ("AFHS") was initiated by DOD in 1982 to examine the effects of herbicide exposure and health, mortality, and reproductive outcomes in veterans of Operation Ranch Hand, the activity responsible for aerial spraying of herbicides during the Vietnam Conflict. The study will conclude in 2006.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 332 of S. 1132, as amended, would direct VA to enter into an agreement with the National Academy of Sciences ("NAS") under which NAS would report on the following: (1) the scientific merit of retaining AFHS data after the Ranch Hand study is terminated; (2) obstacles to retaining the AFHS data which may exist; (3) the advisability of providing independent oversight of the data; (4) the advisability and prospective costs of extending the study and the identity of an entity which would be suited to continue the study; and (5) the advisability of making laboratory specimens from the study available for independent research.

Compromise Agreement

Section 602 of the Compromise Agreement follows the Senate language, but the reporting deadline is extended to 120 days.

FUNDING OF MEDICAL FOLLOW-UP AGENCY OF INSTITUTE OF MEDICINE OF NATIONAL ACADEMY OF SCIENCES FOR EPIDEMIOLOGICAL RESEARCH ON MEMBERS OF THE ARMED FORCES AND VETERANS

Current Law

Public Law 102-585 requires that VA and DOD each contribute $250,000 in annual core funding to the Medical Follow-Up Agency ("MFUA") for a period of 10 years. MFUA is a panel of the Institute of Medicine which researches military health issues.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 333 of S. 1132, as amended, would mandate VA and DOD funding for MFUA, at current levels, from fiscal year 2004 through 2013.

Compromise Agreement

Section 603 of the Compromise Agreement follows the Senate language.

TITLE VII: OTHER MATTERS

TIME LIMITATIONS ON RECEIPT OF CLAIM INFORMATION PURSUANT TO REQUESTS OF DEPARTMENT OF VETERANS AFFAIRS

Current Law

Section 5102(b) of title 38, United States Code, requires that VA, in cases where it receives an application for benefits that is not complete, notify the applicant of the information that is necessary to complete the application for benefits. Similarly, section 5103(a) of title 38, United States Code, requires that VA, when it receives a complete or a substantially complete application for benefits, notify the applicant of any information or evidence necessary to substantiate the claim. Section 5103(b) of title 38, United States Code, states that if information or evidence requested under section 5103(a) is not received within one year of the date of such notification, no benefit may be paid by reason of that application for benefits.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 310 of S. 1132, as amended, would require that claimants who have submitted an incomplete application under section 5102(b) of title 38, United States Code, and who have been notified that information is required to complete the application, submit the information within one year of the date of notification or else no benefit would be paid by reason of the application. It would also clarify section 5103(b) by stating that that subsection would not be construed to prohibit VA from making a decision on a claim before the expiration of the one-year period. Section 310 would be effective as if enacted on November 9, 2000, immediately after the enactment of the Veterans Claims Assistance Act of 2000.

Compromise Agreement

Section 701 of the Compromise Agreement would follow the Senate language, but would make a further amendment to section 5103(b) of title 38, United States Code, to remove the statutory bar to payment of benefits when information or evidence, requested of the claimant by VA, is not submitted within one year of the notification requesting such information or evidence. If a matter is on appeal and evidence is received beyond the one-year period relating to the original claim, it should be considered.

Section 701(d)(1) of the Compromise Agreement would require VA to readjudicate the original claim when a claimant adequately asserts he or she was misled upon receiving notification from VA of the information or evidence needed to substantiate the claim. However, section 701(d)(4) specifies that the Secretary is not required to identify or readjudicate any claim based upon the authority given to the Secretary under this section when information or evidence was submitted during the one-year period following the notification or when the claim has been the subject of a timely appeal to the Board of Veterans' Appeals or the United States Court of Appeals for Veterans Claims.

CLARIFICATION OF APPLICABILITY OF PROHIBITION ON ASSIGNMENT OF VETERANS BENEFITS TO AGREEMENTS ON FUTURE RECEIPT OF CERTAIN BENEFITS

Current Law

Section 5301 of title 38, United States Code, prohibits the assignment of VA benefits and exempts such benefits from taxation and from the claims of creditors.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 311 of S. 1132, as amended, would clarify current statutory language prohibiting the assignment of benefits and specify that any agreement under which a VA beneficiary might purport to transfer to another person or entity the right to receive direct or indirect payments of compensation, pension, or DIC benefits shall be deemed to be a prohibited assignment. Section 311 would also make it clear that such prohibitory language would not bar loans to VA beneficiaries which might be repaid with funds derived from VA, so long as each periodic payment made under the loan is separately and voluntarily executed by the beneficiary at the time the payment is made.

Compromise Agreement

Section 702 of the Compromise Agreement would follow the Senate language but would modify it to state that payments on loans are explicitly allowed when made by preauthorized electronic funds transfers pursuant to the Electronic Funds Transfers Act ("EFTA"). The EFTA defines a characteristic of these transfers as allowing the beneficiary to direct his or her financial institution to cease payments upon the beneficiary's notice. It is the Committees' intent to ensure that methods of loan repayment would not be limited for disabled veterans. The Compromise Agreement would also eliminate the section that specifies the effective date of the provision. It is the Committees' intent that prohibition against assignment shall be enforced through coordination with appropriate authorities.

SIX-YEAR EXTENSION OF ADVISORY COMMITTEE ON MINORITY VETERANS

Current Law

Section 544 of title 38, United States Code, mandates that VA establish an Advisory Committee on Minority Veterans. The Secretary of Veterans Affairs must, on a regular basis, consult with and seek the advice of the Advisory Committee with respect to issues relating to the administration of benefits for minority group veterans. The Secretary must also consult with and seek the advice of the Committee with respect to reports and studies pertaining to such veterans, and the needs of such veterans for compensation, health care, rehabilitation, outreach, and other benefits and programs administered by VA. The Advisory Committee is required to submit an annual report providing its assessment of the needs of minority veterans, VA programs designed to meet those needs, and any recommendations the Advisory Committee considers appropriate. The authorization for the Advisory Committee expires on December 31, 2003.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 341 of S. 1132, as amended, would extend the authorization of the Advisory Committee on Minority Veterans until December 31, 2007.

Compromise Agreement

Section 703 of the Compromise Agreement would extend the authorization of the Advisory Committee until December 31, 2009.

TEMPORARY AUTHORITY FOR PERFORMANCE OF MEDICAL DISABILITIES EXAMINATIONS BY CONTRACT PHYSICIANS

Current Law

Section 504 of Public Law 104–275 authorized VA to carry out a contract disability examination pilot program at 10 VA regional offices. The law specifies that VA draw funds for the program from amounts available to the Secretary of Veterans Affairs for compensation and pensions.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 343 of S. 1132, as amended, would authorize VA, using funds subject to appropriation, to contract for disability examinations from non-VA providers at all VA regional offices. Such examinations would be conducted pursuant to contracts entered into and administered by the Under Secretary for Benefits. The Secretary's authority under this section would expire on December 31, 2009. No later than four years after the section's enactment, the Secretary would be required to submit a report assessing the cost, timeliness, and thoroughness of disability examinations performed under this section.

Compromise Agreement

Section 704 of the Compromise Agreement follows the Senate language, but adds a technical modification that would clarify that the authority granted the Secretary under section 704 of the Compromise Agreement is in addition to the authority already granted the Secretary under Section 504 of Public Law 104–275. Thus, it is the Committees' intent that VA's existing contract for disability examinations under the authority of Public Law 104–275 remain in force. It is also the Committees' intent that the Secretary's ability to enter into contracts in the future under the strictures of Section 504 of Public Law 104–275 remain in force as well.

FORFEITURE OF BENEFITS FOR SUBVERSIVE ACTIVITIES

Current Law

Section 6105 of title 38, United States Code, provides that an individual convicted after September 1, 1959, of any of several specified offenses involving subversive activities shall have no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Secretary of Veterans Affairs. No other person shall be entitled to such benefits on account of such individual.

House Bill

Section 20 of H.R. 2297, as amended, would amend current law to supplement the list of serious Federal criminal offenses for which a veteran's conviction results in a bar to VA benefits, including burial in a national cemetery. The following criminal offenses from title 18, United States Code, would be added: section 175, prohibited activities with respect to biological weapons; section 229, prohibited activities with respect to chemical weapons; section 831, prohibited transactions involving nuclear materials; section 1091, genocide; section 2332a, use of certain weapons of mass destruction; and section 2332b, acts of terrorism transcending national boundaries. All of these offenses, which involve serious threats to national security, were added to title 18, United States Code, after the enactment of the provisions in section 6105 of title 38, United States Code.

Senate Bill

Section 313 of S. 1132, as amended, contains an identical provision.

Compromise Agreement

Section 705 of the Compromise Agreement contains this provision.

TWO-YEAR EXTENSION OF ROUND-DOWN REQUIREMENT FOR COMPENSATION COST-OF-LIVING ADJUSTMENTS

Current Law

Sections 1104(a) and 1303(a) of title 38, United States Code, mandate that yearly cost-of-living adjustments made to rates of compensation and dependency and indemnity compensation be rounded down to the nearest whole dollar amount. This authority expires on September 30, 2011.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 301 of S. 1132, as amended, would extend the round-down authority under sections 1104(a) and 1303(a) through fiscal year 2013.

Compromise Agreement

Section 706 of the Compromise Agreement follows the Senate language.

CODIFICATION OF REQUIREMENT FOR EXPEDITIOUS TREATMENT OF CASES ON REMAND

Current Law

Section 302 of Public Law 103–446 requires the Secretary of Veterans Affairs to provide for the expeditious treatment by the Board of Veterans' Appeals and by regional offices of the Veterans Benefits Administration of claims remanded by the Board of Veterans' Appeals or the United States Court of Appeals for Veterans Claims.

House Bill

The House Bill contains no comparable provision.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 707 of the Compromise Agreement would codify the provisions of section 302 of Public Law 103–446. Expedited treatment of decisions of the Board of Veterans' Appeals would be codified in chapter 51 of title 38, United States Code. Expedited treatment of decisions of the United States Court of Appeals for Veterans Claims would be codified in chapter 71 of title 38, United States Code.

LEGISLATIVE PROVISIONS NOT ADOPTED

CLARIFICATION OF NOTICE OF DISAGREEMENT FOR APPELLATE REVIEW OF DEPARTMENT OF VETERANS AFFAIRS ACTIVITIES

Current Law

Claimants for VA benefits who disagree with an initial decision rendered by VA may initiate an appeals process by submitting a written notice of disagreement ("NOD") within one year after the claimant was notified of the initial decision. Section 7105(b) of title 38, United States Code, states that an NOD "must be in writing and filed with the activity which entered the determination with which disagreement is expressed." Upon the timely filing of an NOD, VA is required to provide appellate review of its initial benefits rating decision.

VA has promulgated regulations to implement section 7105 of title 38, United States

Code, which state that "while special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with the determination and [expressing a] desire for appellate review." 38 CFR §20.201 (2002).

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 314 of S. 1132, as amended, would clarify section 7105(b) of title 38, United States Code, by requiring that VA deem any written document which expresses disagreement with a VA decision to be an NOD unless VA finds that the claimant has disavowed a desire for appellate review. This section would be effective with respect to documents filed on or after the date of enactment, and with respect to documents filed before the date of enactment and not treated by VA as an NOD pursuant to part 20.201 of title 38, Code of Federal Regulations. Furthermore, a document filed as an NOD after March 15, 2002, and rejected by the Secretary as insufficient would, at VA motion or at the request of a claimant within one year of enactment, be deemed to be an NOD if the document expresses disagreement with a decision and VA finds that the claimant has not disavowed a desire for appellate review.

PROVISION OF MARKERS FOR PRIVATELY MARKED GRAVES

Current Law

Section 502 of Public Law 107–103, the Veterans Education and Benefits Expansion Act of 2001, authorizes VA to furnish a government headstone or marker for the grave of an eligible veteran buried in a non-veterans' cemetery irrespective of whether the grave was already marked with a private marker. The law applies to veterans whose deaths occurred on or after December 27, 2001. Public Law 107–330 extended this authority to include deaths occurring on or after September 11, 2001.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 204 of S. 1132, as amended, would amend the Veterans Education and Benefits Expansion Act of 2001 to authorize VA to furnish a government headstone or marker for the grave of an eligible veteran buried in a private cemetery, irrespective of whether the grave was already marked with a private marker, for deaths occurring on or after November 1, 1990.

TERMINATION OF AUTHORITY TO GUARANTEE LOANS TO PURCHASE MANUFACTURED HOMES AND LOTS

Current Law

Section 3712 of title 38, United States Code, authorizes VA to guarantee loans for the purchase of a manufactured home and a lot on which it is sited.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 306 of S. 1132, as amended, would eliminate VA's authority to guarantee loans to purchase a manufactured home and the lot on which it is sited.

REINSTATEMENT OF VETERANS VOCATIONAL TRAINING PROGRAM FOR CERTAIN PENSION RECIPIENTS

Current Law

Section 1524 of title 38, United States Code, authorized a pilot program of vocational training to certain nonservice-connected pension recipients. The initial pilot program was in place from February 1, 1985, through January 31, 1992. Public Law 102–562 extended the program through December 31, 1995.

House Bill

Section 9 of H.R. 2297, as amended, would reinstate the VA pilot program for five years beginning on the date of enactment to provide vocational training to newly eligible VA nonservice-connected pension recipients. The program would be open to those veterans age 45 years or younger. The Department of Veterans Affairs would be required to ensure that the availability of vocational training is made known through various outreach methods. Not later than two years after the date of enactment, and each year thereafter, the Secretary would be required to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the operation of the pilot program. The report would include an evaluation of the vocational training provided, an analysis of the cost-effectiveness of the training provided, and data on the entered-employment rate of veterans participating in the program.

Senate Bill

The Senate Bill contains no comparable provision.

THREE-YEAR EXTENSION OF INCOME VERIFICATION AUTHORITY

Current Law

Section 5317 of title 38, United States Code, directs VA to notify applicants for needs-based VA benefits that information collected from the applicants may be compared with income-related information obtained by VA from the Internal Revenue Service and the Department of Health and Human Services. The authority of the Secretary of Veterans Affairs to obtain such information expires on September 30, 2008.

Section 6103(l)(7)(D)(viii) of the Internal Revenue Code authorizes the release of income information by the Internal Revenue Service to VA. This authority expires on September 30, 2008.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 312 of S. 1132, as amended, would extend until September 30, 2011, the authority of the Secretary to obtain income information under section 5317 of title 38, United States Code, and the authority of the Internal Revenue Service to share income information under section 6103(l)(7)(D)(viii) of the Internal Revenue Code.

Mr. GRAHAM of Florida. Madam President, as Ranking Member of the Committee on Veterans' Affairs, I urge the Senate to pass H.R. 2297, the proposed Veterans Benefits Act of 2003.

The pending measure, which I will refer to as the "Compromise Agreement," is the final version of an omnibus bill. This Compromise Agreement would improve a variety of veterans' benefits, most significantly for the survivors of those who lose their lives on active duty, or who die of their service-connected conditions. It is entirely appropriate that, at a time when we have called our servicemembers into harm's way, we should extend not only our sympathies but critical assistance to the families left behind by those who have made the ultimate sacrifice.

I will briefly highlight some of the most important provisions, and refer my colleagues seeking more detail to the Joint Explanatory Statement accompanying the bill. I thank Chairman ARLEN SPECTER and his staff for their efforts on behalf of our nation's veterans, and my colleagues in the House for working with our committee staffs to craft this agreement.

While this Compromise Agreement enhances many veterans' benefits, it focuses particularly on meeting the needs of survivors. I am gratified that Congress plans to increase the rate of educational benefits for survivors and dependents of veterans. This bill would raise education benefits by 13.4 percent over current levels—to $788 per month from $695 for full-time study—creating parity with the benefits that the Nation provides to active-duty servicemembers. Family members who have already faced the loss of a father, mother, husband, or wife in service, or who have helped a servicemember endure total disability, should not have to face limited educational opportunities and fragile futures due to resulting financial hardships.

I am very pleased that we have continued to build upon legislation of the past two years to assist the surviving spouses of servicemembers. In 2001, Congress passed legislation to allow survivors of severely disabled veterans to continue receiving VA healthcare coverage through the program called CHAMPVA after age 65. Congress extended this coverage last year, allowing eligible surviving spouses of veterans who died from service-connected disabilities or in the line of duty to retain their eligibility for CHAMPVA benefits even if they remarried after age 55. This year, the committees have agreed to allow the surviving spouses to retain survivors' benefits—Dependency and Indemnity Compensation, education allowance and home loan—if they remarry after the age of 57, placing these spouses on the same footing as those in other Federal survivorship programs.

The committees were also mindful of those who must live with the possible health consequences of a parent's service. Recent scientific evidence has suggested an association between exposure to dioxin, a toxic chemical found in the herbicide Agent Orange, and an increased risk of the birth defect spina bifida in children born to those exposed. In 1996, Congress authorized VA to provide benefits to children with spina bifida whose fathers or mothers served in the Republic of Vietnam and might have been exposed to Agent Orange. The Compromise Agreement would extend theses same benefits to affected children whose parents served in or near the Korean Demilitarized Zone during the Vietnam era, where

Agent Orange was also used a defoliant.

I am pleased that the Compromise Agreement also addresses the enduring, and sometimes invisible, scars of war. Recognizing the long-term effects of prolonged malnutrition and confinement, current law specifies a list of 15 disabilities that VA presumes are related to military service of former prisoners of war who were held captive 30 days or more. This legislation would eliminate the 30-day requirement for certain physical and mental disorders that could result from as little as a day of captivity. It would also add cirrhosis of the liver to the list of presumptively service-connected disabilities for those former POWs who were held captive for at least 30 days, as peer-reviewed studies have shown that former POWs have a higher incidence of this debilitating disease.

Another group of veterans who struggle with potential long-term health consequences are those who were exposed to significant doses of ionizing radiation, particularly in post-war Japan and during subsequent nuclear testing. Nearly 20 years ago, Congress mandated that veterans who suffered from illnesses they believed were caused by such radiation could request that VA "reconstruct" the actual dose of radiation that they received during service. A panel of experts convened by the National Academy of Sciences reported that the contractor-operated program established by the VA to produce this data for veterans suffered from a shockingly cavalier approach to quality assurance, resulting in data that failed to meet the standards assumed by both VA and veterans. The Compromise Agreement would require VA and DOD to establish an advisory board to oversee this dose reconstruction program's mission, procedures, and administration to ensure that it collects and interprets data adequately and fairly.

Congress required the Air Force to conduct a long-term epidemiological study of the veterans of Operation Ranch Hand, the unit responsible for aerial spraying of herbicides during the Vietnam War. This study is about to conclude, and experts agree that both samples and data could still provide key data for many unanswered questions. The Compromise Agreement would direct VA to enter into an agreement with the National Academy of Sciences to advise whether the study should be continued, describe the steps that would be involved in doing so, and evaluate the advisability of making laboratory specimens from the study available for independent research.

Finally, the Compromise Agreement would ensure that the core funding for the Medical Follow-Up Agency (MFUA) would be extended for 10 more years. MFUA uses this funding to update, maintain, and improve long-term epidemiological studies of military and veterans' populations. Congress, VA, military, and independent scientists have relied on MFUA data since World War II to evaluate whether specific exposures might have long-term health effects that suggest a need for benefits, new treatments, or further research.

Together, all of these provisions demonstrate that our nation will continue its commitment to those veterans who carry the burdens of the battlefield—whether obvious or invisible—long after the end of the fight.

In conclusion, I want to thank Senator SPECTER and his benefits staff for their work on this comprehensive bill, specifically Bill Tuerk, Jon Towers and Chris McNamee, as well as my benefits staff—Mary Schoelen, Tandy Barrett, Ted Pusey, Amanda Krohn, and Faiz Shakir, along with Julie Fischer, who recently left the committee, and Patrick Stone, who has recently joined it. I urge my colleagues to support this important piece of legislation for our Nation's veterans and their families.

Mr. THOMAS. Madam President, I ask unanimous consent that the substitute amendment which is at the desk be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2205) in the nature of a substitute was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The bill (H.R. 2297), as amended, was read the third time and passed.

Mr. THOMAS. I yield the floor.

ENERGY POLICY ACT OF 2003—CONFERENCE REPORT—Continued

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Illinois.

Mr. DURBIN. Mr. President, what is the order of the business before the Senate?

The PRESIDING OFFICER. The Senator is recognized for 30 minutes on the conference report.

Mr. DURBIN. Mr. President, I ask unanimous consent that period of time be extended to 45 minutes, if there is no objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DURBIN. Thank you, Mr. President.

This is a bill that has been before Congress for quite some time. It is a bill that relates to America's energy needs. It certainly is one that is timely. Our energy supplies and use of energy are critical to the state of our economy and its growth.

This bill was first proposed by the Bush administration under the leadership of Vice President CHENEY. Most people followed it in the news because Vice President CHENEY called together a task force to write the administration's energy policy. When he was asked to identify who was in the room, the people who were involved in the task force, he refused. Despite the pleas of Members of Congress and requests for that information about the origin and creation of this energy policy, the Vice President basically said he was not going to disclose the identity of those who were part of the energy task force.

The General Accounting Office took the Vice President to court and the Vice President prevailed. He was allowed to conceal the names and identities of those who were on the energy task force. So this idea of an energy policy was conceived in secret.

Then there were lengthy debates on the floor of the Senate and House about Energy bills, both during the period when the Democrats were in control of the Senate and the period with Republicans in control. We spent many, many days going through Energy bill options and amendments, voting on them, and moving forward. The net result of it was we produced a Senate Energy bill which was sent to conference.

Conference committees, as defined under our Constitution, and by the practice and precedent of the Senate, usually involve both political parties sitting down, and the House and Senate conferees trying to work out some agreement or some compromise.

As has been the case more recently than not, this conference committee did not follow that standard. The conference committee met primarily with Republican Members only, and primarily in secret.

So ultimately the work product of this energy conversation or energy analysis that we have before us today was not only conceived in secrecy, it was produced in secrecy.

So today we have a great epiphany, a great opening, a great revelation. The bill is finally before us, and we have a chance to look at this bill, which was brought together with special interest groups and the Vice President at the outset, and which was hammered out in a conference committee with those same special interest groups.

Having considered the origin of this bill, and its maturation process, it is no surprise that this bill is heavily larded with giveaways to the energy industry. In fact, if you go through this bill you will find two things that stand out. The first relates to a question which we have to face as a nation: Is it possible for us to have a sound energy policy which allows for economic growth and sustains our standard of living without endangering our environment?

I think the answer to that is yes, and I think we have proven that it can happen. We have seen an expansion of the

American economy over the past several decades while we have reduced pollution in our air and water. That is a positive. It shows we are thinking ahead, that we are not trying to enjoy the benefit of the moment with energy as an expense which our children will pay for.

But, sadly, this bill, by its contents, comes to an opposite conclusion. Because this bill finds, first and foremost, that in order to pursue the administration's energy policy, and the energy policy of a Republican majority in Congress, we have to basically sacrifice our environment. I think that is a horrible conclusion. I find it totally unacceptable, and it is the reason I stand today in opposition to this bill.

Secondly, aside from the question of whether we can have a sound energy policy and a safe environment, we are challenged with this question: Can you promote in America the energy we need for this generation and future generations without providing generous, lavish subsidies to private corporations?

Now, this morning, one of my colleagues from Oregon, on the Republican side, came to the floor and was critical of Governor Dean of Vermont for saying yesterday that we had to consider reregulation in America. This Senate critic said that is exactly what we do not need. We do not need Government regulation in America.

His argument was—and the traditional Republican argument is—let the free market work its will. Well, that, in the abstract, sounds like good medicine, but in reality it is far from the truth.

The market worked its will with Enron. The market has worked its will with the scandals involving mutual funds. The market is working its will every day when it comes to the cost of health insurance to businesses and families across America.

As we look at how the market has worked its will, it is clear the results are unacceptable. So the question before us in the Energy bill is, Can we rely on a free market, then, to develop sources of energy in America?

The answer from this bill is no. The answer from this bill is that the Government must inject itself into the energy sector of our economy and make substantial subsidies to certain elements in the economy in order for America to meet its energy needs. I will outline some of those subsidies in a moment.

So the two conclusions from this Energy bill are that America's energy supply and its growth are inconsistent with a safe environment; and, secondly, that giving the free market its rein, it will not produce the energy that we need in the future. Instead, we have to generously subsidize energy markets.

Now, that is a lot different than what you have heard from the administration. They have talked about balance and they have talked about a forward-looking energy policy. But I will tell you, when you look at the specifics in this bill, it is clear that it is not balanced.

It is sad to report that this bill, as it is written, has turned out to be a piece of legislation which I believe this Congress should reject. This energy policy that is being promoted in this bill is a gush of giveaways to corporate special interests that is masquerading as an energy policy.

There is a way out of this embarrassment for the Senate. There is a way to come up with an energy policy that works. That way, of course, is to stop this bill and to ask our friends on the important committees dealing with energy to go back to work, go back to work to deliver a bill which, frankly, will be bipartisan, a bill which will be balanced, a bill that will not sacrifice the environment for energy, and a bill which would not be the gush of giveaways this bill has turned out to be.

Let me tell you some of the specifics included in this Energy bill when it comes to the environment, specifics that tell the story about how what was conceived as an Energy bill turned out to be the worst piece of environmental legislation that I have seen in the Senate.

Among the provisions in this bill are the following: It allows more smog pollution for longer than the current Clean Air Act authorizes. Under the existing act, areas that have unhealthy air are required to reduce ozone-forming smog pollution by a strict statutory deadline. If these areas fail to meet the deadline, they are given more time to clean up, but must adopt more rigorous air pollution control measures. The bill attempts to allow more polluted areas more time to clean up without having to implement stronger air pollution controls, placing a significant burden on States and communities downwind from the urban areas.

This bill exempts all oil and gas construction activities including roads, drill pads, pipeline corridors, refineries, and compressor stations from having to obtain a permit controlling polluted storm water runoff as currently required under the Clean Water Act. So in these first two provisions, this bill violates the Clean Air Act and the Clean Water Act. It delays pollution cleanup in southwestern Michigan for 2 years while the EPA conducts a study, dramatically increases air pollution and global warming with huge new incentives, claims to promote clean coal, which I support, but inhibits its development by disqualifying federally funded clean coal projects as best available control technologies; threatens drinking water sources by exempting from the Safe Drinking Water Act regulation the underground injection of chemicals during oil and gas development.

Do you remember the squabble we had here in the Senate about arsenic in drinking water and whether or not it was safe, and how the Bush administration finally backed off of weakening regulations that would protect us from arsenic in drinking water? This so-called Energy bill is going to increase the danger in our drinking water by exempting from coverage by that act the underground injection of chemicals during oil and gas development. There is a whole section on MTBE, which I will speak to specifically. It encourages the mixture of hazardous waste in cement and concrete products as an alternative to safe disposal in permitted hazardous waste landfills. The list goes on and on and on.

When it comes to our public lands, this bill allows the Interior Secretary, by Secretarial order, to designate utility and pipeline corridors across public lands owned by Americans without any seeking public input through a land use planning process. It authorizes the leasing of the national petroleum reserve in Alaska for oil and gas production without protection for wildlife. It allows the Secretary to waive royalties, which means payments to taxpayers for those who are drilling for oil and gas on the lands that we own as Americans. It allows the Secretary to waive royalties so these companies can drill on our public lands for free.

The list continues. The list is overwhelming. In each and every page—and there are five of them—you will find 10 or 20 examples of environmental degradation, abandonment of environmental standards, endangerment of the air that we breathe and the water we drink. For what? So that someone can make a dollar. That is what it is all about. It is about profit taking at the expense of public health. That is what this Energy bill does.

Did anyone ever announce at the outset that was our goal? Did anyone ever conceive during the debate that what we were trying to do was to provide some more energy at the expense of the environment and at the expense of public health? That is exactly what this bill does.

Before I get into the MTBE issue, which I think is possibly one of the worst I have seen in the time I have served in Congress, let me tell you what this bill fails to do. What is the No. 1 use of oil that we import into the United States today? We use it to fuel our cars and trucks, of course. Of course, a lot of us own quite a few of them. And we know as well that if these cars and trucks are not fuel efficient, they will burn more gas and require us to import more oil. So if you want to have an honest discussion about energy security in America, would you not be pursuing goals which would reduce our dependence on foreign oil? Would you not want to find ways that America can ween itself away from its dependence on Saudi Arabia and its oil sources? Shouldn't that be front and center the main topic in our energy policy? Well, everybody I have spoken to in my State agrees, of course, that is where you should start the energy discussion.

You can search this bill, 1,400 pages or more, and not find a word that gives you comfort that we as a nation will even seriously consider improving the fuel efficiency of the cars and trucks we drive. Why? Because the big three in Detroit—General Motors, Ford, and Chrysler—have said they are not capable of producing more fuel-efficient cars to compete with those that are being imported from Japan. They have convinced the majority in the Senate—I know because I offered an amendment to improve fuel efficiency—that America is technically incapable of competing when it comes to fuel-efficient cars. That is such a sad commentary. It is one which I reject.

Let me tell you what fuel efficiency means for us. First, a little history: The year was 1975. Gas lines were long. People were concerned about the availability of energy in America. An argument was made that we had to do something about the efficiency of the cars and trucks we drive. Of course, there are two ways to achieve it: One is to raise the price of gasoline. If the price of gasoline at the pump doubled tomorrow, every American family would start asking how many miles a gallon do I get from this hog? Well, I don't want to see that happen, nor do most Americans. That imposes new financial burdens on families and small businesses and, frankly, is inflationary.

But there is another one. In 1975 Congress said: We are going to mandate doubling the fuel efficiency of cars and trucks. It is going to be a Federal mandate. It has to happen.

The automobile manufacturers in Detroit said: It can't be done. It is technically not feasible for us to double over 10 years the fuel efficiency of our cars. Secondly, those cars are going to be so small, they are going to be unsafe. Third, you are just playing into the hands of foreign automobile producers who will beat us to the punch.

Thankfully, Congress ignored them and passed a law. In a matter of 10 years, fuel efficiency went from about 14 miles a gallon fleet average to 27.5 miles a gallon. In a 10-year period of time, we virtually doubled the fuel efficiency of our cars, reducing our dependence on foreign oil.

What have we done since 1985, since we reached 27.5 miles a gallon? Nothing, except drive larger, less fuel-efficient vehicles, import more oil from overseas, and pollute our air even more in America.

What has Congress done? Absolutely nothing. This bill is silent on the issue of fuel efficiency. The Energy bill for America's energy policy is silent when it comes to fuel efficiency.

Let me correct myself. It isn't silent. It creates a new loophole that will be added to the process which will make it even more difficult in the future for us to even consider increasing fuel efficiency.

I offered an amendment which said, what if we went to 40 miles a gallon from 27.5 miles a gallon by 2015. Let's have 12 years. Look at the dramatic savings we would have in the barrels of oil that are consumed.

This is what drilling in the Arctic National Wildlife Refuge is worth, this tiny little line down here. But just by increasing the fuel efficiency of our cars and trucks, we could answer a major part of the challenge of America's energy future. This bill sadly does nothing.

In addition, this bill excludes a renewable portfolio standard. It does not in any way encourage new ways to use energy from renewable fuels in a way that could make a sizable difference. I think we ought to be embarrassed by this. What an embarrassment it was to read in the Washington Post yesterday that China, a developing nation, now has higher fuel efficiency standards and fuel economy standards than the United States. Can you believe it? Can you believe that this growing economy, just developing, has decided they see the future, and the future is in more fuel-efficient cars and less dependence on foreign oil; and the United States, this great economic engine that we run, doesn't see the same? As a consequence, we find ourselves in a position where this bill is silent when it comes to fuel efficiency.

I think that is a terrible deficiency in this legislation. I cannot imagine it can be taken seriously in a conversation about America's energy policy. We know full well that we use a lot of oil. According to this chart, the global consumption of oil per capita in 1999, in gallons per day, the United States is 3; other industrialized countries, 1½; and the rest of the world less than ½. The U.S. continues to consume more oil than other countries.

The gasoline savings we realized going from 14 miles a gallon in 1970 to 28 miles a gallon in 1999 reduced, by 3.7 billion gallons, the gasoline we consumed in a given year. Less gasoline, less polluted oil, less pollution. This bill is silent on that issue, and that is unfortunate.

Let me speak for a minute to what I consider the single most outrageous part of this legislation.

Mr. President, I have been in Congress a few years. I have noticed that at the end of a session strange things happen. Some of these strange things involve massive giveaways to individual companies or interest groups. Over the years I have paraded out my personal award for this activity. I call it the moonlight mackerel award. It is given to that effort or amendment or bill in the closing days of the session which is the most outrageous. It goes back to a quote where someone said that a certain thing would shine and stink like a mackerel in the moonlight.

The one I am about to describe, I believe, may retire the trophy, the moonlight mackerel trophy, which has been coveted by special interest groups forever. Frankly, it is now being challenged by what may be the worst provision in this Energy bill. It is a provision that led me to oppose the bill. Even though I have had people from Illinois call me who support this bill and genuinely want to see it pass, I have told them that as long as this provision is in the bill, there is no way I will support it. I think it is that bad and that embarrassing.

The provision is on methyl tertiary-butyl ether, or MTBE. MTBE was an additive to gasoline so that engines ran a little smoother, called an oxygenate. Oil companies started adding that to our fuel and selling it across America. There are alternatives. They could have used ethanol, for example; but they said, no, we will use MTBE. So they used this MTBE additive, this compound, in gasoline and then discovered something. They discovered it a long time ago. This MTBE compound is dangerous. MTBE, when it leeched out of underground storage tanks, could get into the groundwater and into the public water supply.

If you took out a boat on a lake with MTBE mixed with gasoline and it discharged into the lake, it could contaminate the lake.

The contamination went beyond the foul-smelling additive itself to raise serious public health questions. According to the GAO, it has been detected in groundwater and drinking water all across the U.S. It is classified as a potential human carcinogen, a cause of cancer. At a level of 2 parts per billion, MTBE produces a harsh chemical odor that renders tap water undrinkable. Removing MTBE is difficult and costly. Water utilities must either blend contaminated water with clean sources to dilute the MTBE to acceptable levels, install systems to remove chemicals, or abandon certain water sources altogether.

The most effective argument of those who have been harmed and seek a day in court is a defective product argument. The fact is that the oil industry knew MTBE was, in fact, dangerous and they continued to use it and sell it, despite the danger it posed to public health. That was the basis for a lawsuit filed in California near Lake Tahoe, where the oil companies eventually paid $60 million, conceding their guilt.

The producers of MTBE knew the problems they had. I believe the producers of the MTBE should be held responsible. In fact, in one powerpoint presentation, the producers cynically dubbed MTBE as "most things biodegrade easier." They were making a joke of the fact that MTBE would stand for those initials, realizing that it did not biodegrade easily. It was a persistent, troublesome, and dangerous element, which stayed for a long time.

Who should pay for the cleanup for MTBE? According to this bill, not the polluters, not the producers, but the taxpayers of America. That is the conclusion in this bill. This bill provides the single most expensive immunity to litigation of any bill that I have ever seen before Congress. It says the producers of MTBE cannot be held accountable in product liability legislation for what they knew to be a dangerous product, and it doesn't stop there. It is retroactive, saying that lawsuits already being prosecuted in States across America cannot be pursued to verdict or settlement.

Think about that for a minute. This is the single biggest giveaway to a special interest group that I have ever seen in the time I have served in Congress. This jury in Tahoe, considering the contamination near the Lake Tahoe area, found that gasoline with MTBE is a defective product because of the risk of this additive, and because the oil companies failed to warn consumers of the risk to the environment and drinking water. The jury found "clear and convincing evidence" that the producer of MTBE acted with malice, and they are going to have a field day and a holiday with this Energy bill. They were found to have acted with malice in selling this product that endangered the lives of the people in the community.

MTBE producers know they are vulnerable to these lawsuits. If you are vulnerable for wrongdoing, if you created a product that endangers thousands of Americans, where should you turn? Come to Congress. Come to Capitol Hill. Come to mama.

That is what happened with this conference committee. They came to this conference committee and the conference committee delivered. This conference committee let the MTBE producers and oil companies off the hook. About three-fourths of the producers are located in Texas and Louisiana, and it has been the Congressmen from these States who have pushed this provision.

Let me tell you what it means to Illinois. We are hit, but not as hard as some. Only 26 to 29 communities in my State of Illinois have drinking water currently contaminated with MTBE, affecting over 200,000 people where I live.

Currently, there are four lawsuits in Illinois that this waiver in this bill would eliminate—in the communities of Crystal Lake, Island Lake, Village of Alton, and Woodstock. The lawsuits currently underway will be eliminated by the language in this bill. So where does that leave the community with the contaminated water supply? Where does it leave the families who cannot live in their homes because of this MTBE contamination? It leaves them, frankly, at the mercy of those who would turn and give them money. Should you not hold the polluters accountable? Not according to this bill. This lets the polluters off the hook.

The community of East Alton, with a population of 6,500 people, was faced with a MTBE plume that threatened its drinking water supply. A million dollars was spent to clean it up, and the community went to court to recover the cost of that million-dollar expenditure.

In the town of Island Lake, individual wells were affected.

In Kankakee County, Oakdale Acres subdivision and two other small subdivisions were forced to shut down their groundwater systems and connect to a nearby community's public water supply, after a pipeline rupture contaminated the subdivision's aquifer.

Roanoke, with a 2,000 population—like you might find in Nebraska, New Hampshire, and all across America—has had to use one of their wells as a hydraulic containment area with treatment and discharge to surface water in order to protect their well field from an MTBE plume with a concentration exceeding 1,000 parts per billion.

These communities and others deserve a fair and reasonable hearing. They deserve a judge and jury. They deserve their day in court. This Energy bill locks the courthouse door and says to these communities that they will not have their day in court.

With the defective product liability waiver which reaches back to September 5, 2003, this conference report meddles with the courts at the request of the oil companies. At least 35 States have problems such as I have just described in Illinois.

By 1986, the oil industry was adding 54,000 barrels of MTBE to gasoline every single day. By 1991, the number was up to 100,000 barrels of MTBE per day. Yet oil company studies conducted as early as 1980 showed that the oil industry knew that MTBE contaminated ground water virtually everywhere it was used. There was a $60 million settlement in Lake Tahoe.

Some have analyzed this and said the reason this provision is in here is if the oil companies were going to accept the expansion of ethanol, they had to be given something.

I have been a strong supporter of ethanol for over 20 years, and I will continue to be, but if that is what it is all about, if the only way to increase ethanol is to provide this kind of immunity from liability for the producers of MTBE, it is too high a price to pay, as far as this Senator is concerned.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 16½ minutes.

Mr. DURBIN. I thank the Chair.

Let me say another word about this MTBE. In these lawsuits that have been filed, it has been shown that these oil companies knew what they were getting into. You would think at some point in time they would have at the Federal level banned MTBE perhaps long ago. It took State leadership for this to happen. In California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, South Dakota, and the State of Washington, they took the initiative, when the Federal Government didn't move quickly, to ban MTBE. They know what it is all about, and they understand the damage that has been done to their communities.

In the State of New York, in Liberty, after fighting for 11 years because they found MTBE in their local well water, they finally got the State to move forward to establish new standards for public water supplies after a lot of families there had serious health problems. That is just a story that is going to be repeated all over, not just in New York.

In New Hampshire last spring, they filed a string of lawsuits against 22 oil companies. If these lawsuits are being brought on product liability theories—the ones that are the most successful—they will be thrown out by this legislation. These lawsuits will be eliminated. The businesses, the families, the individuals who have been damaged by this deadly additive are going to lose their day in court because we are going to mandate it in this legislation.

How does this enhance the energy security of America? It certainly adds to the bottom line of profitability of the oil companies which would be held responsible for their misconduct, I will agree with that. But is it just? Is it fair? Is it something we should be doing, giving blanket immunity to companies that, by their wrongdoing, endanger the health of families and individuals across America?

In the State of New Hampshire, the State sued 22 major oil companies on October 6 because of MTBE. According to Governor Craig Benson, they claim the oil companies have added increasing amounts of MTBE to the gasoline, even though they knew years ago it would contaminate water supplies.

The General Accounting Office told Congress what this was all about. In the year 2002, John Stevenson, Director of GAO's Natural Resources and Environmental Division, testified before a House subcommittee and said that MTBE created health risks which he described as follows:

> Such health risks can range from nausea to kidney or liver damage or even cancer.

He pointed out that a school in Roselawn, IN, discovered students had been drinking water with nearly 10 times the Federal recommended level of MTBE. Officials are trying to determine if the additive came from a nearby tank and whether it is causing the students to have an inordinate number of nosebleeds. These are real health issues, real health problems.

Mr. President, "60 Minutes" on January 16, 2000, brought the MTBE issue to the attention of America. They noted at the time there was contamination in some 49 States—as I said earlier, about 35 that we can directly link MTBE to contamination of water supplies. They estimate that MTBE is a contaminate in 35 percent of the Nation's urban wells. A single cupful of MTBE in a 5 million gallon reservoir is sufficient to render the water in that reservoir undrinkable.

In 1995, an Italian study on the effects of MTBE showed high doses of this chemical caused three types of cancer: lymphoma, leukemia, and testicular cancer. We are saying to those hapless innocent victims of MTBE contamination of their water supply that we are closing the courthouse door for their recovery in product liability suits. How in the world can we do this in good conscience? How can we turn our back on these innocent victims across America, these communities forced to pay millions of dollars for the wrongdoing of oil companies, and give them this sort of special giveaway and special break?

I, frankly, don't understand how we can. I don't understand how what started out to be an Energy bill has become something much different. I don't know how a bill which was supposed to give us energy security could be so damaging to our environment in so many specific ways. I don't know how a bill that was supposed to be giving Americans peace of mind about their energy future instead in community after community and in State after State is going to close the courthouse doors to holding oil companies accountable for their misconduct.

This is the worst. This retires the trophy in the Moonlight Mackerel Award. I cannot recall a time when we have gone this far, and that is saying something. There is a way out of our embarrassment, and it is a way I would encourage colleagues on both sides of the aisle to take very seriously. We will have an opportunity on a cloture motion soon to decide whether this bill goes forward. If we can gather 41 Senators to oppose it from going forward, then the bill will stop and be returned to conference or perhaps back to committee for further consideration.

I think that is the way it should be, and the sooner we do that the better. If enough of my Republican colleagues will step forward with Democratic colleagues, we can make that difference.

In case you think this is a partisan issue, the Wall Street Journal, which is not known to be friendly to many Democrats, including this one, went after this bill and criticized it on Tuesday, November 18, calling this Energy bill one of the great logrolling exercises in recent congressional history. In the words of the Wall Street Journal:

> The Republican leadership has greased more wheels than a NASCAR pit crew.

They go on to say:

> The bill's total price tag of new outlays is a tidy $72 billion according to Taxpayers for Common Sense. That's not counting $23 billion in tax giveaways to nuclear, oil, gas, and coal concerns all over the country, 3 times more than the President said he would accept.

The Washington Post, November 18:

> . . . producers of MTBE, another gasoline additive that is believed to pollute drinking water, have not only been exempted from product liability, they also have been retroactively exempted, a change that cancels out lawsuits . . .

Across America.

They go on to say:

> This bill does not, for example, provide a clear direction for the development of the electricity grid . . . it does not encourage the U.S. car industry to manufacture vehicles that consume less fuel . . . and it does not significantly encourage energy conservation.

The New York Times says this bill is:

> . . . hardly surprising in a bill that had its genesis partly in Vice President Dick Cheney's secret task force.

It creates:

> . . . exemptions for the Clean Water Act, protection against lawsuits for fouling underground water and an accelerated process for leasing and drilling in sensitive areas at the expense of environmental reviews and public participation.

The list goes on. The Anchorage Alaska newspaper calls the Energy bill a setback.

The Atlanta Journal Constitution, quoting Keith Ashdown of Taxpayers for Common Sense, says:

> [T]he legislation is "a smorgasbord of subsidies to big companies masquerading as energy policy."

The Atlanta Journal Constitution concludes in its editorial:

> This bill is about as bad as it gets. When it comes up for a vote, members of Congress who remain committed to more rational energy policy for America and still believe in the dignity of the legislative body in which they serve shouldn't hesitate to reject it.

The Chicago Tribune, from my home State, said the Democrats were virtually locked out of the final negotiations and we were given some 48 hours to digest and evaluate this lengthy bill.

The Patriot News in Harrisburg, PA, says:

> The energy issue is an upside-down world for sure when they look at this bill.

They say there is no more blatant example than the 100-percent tax credit available to business owners who purchase gas guzzling Hummers and more than 30 other models of large SUVs. The tax credit was enacted as part of the President's economic stimulus package and was intended to help farmers and other small business, but the tax break is so attractive it has caused a run on vehicles that average 9 to 15 miles per gallon.

We are going to have energy security and energy independence with a tax policy that encourages the purchase of these gas guzzlers?

They go on to say that hybrid cars which offer 50 to 60 miles a gallon are subject to a $2,000 tax deduction, and that is in the process of being phased out. The list goes on and on of editorial comments across America.

I hope we can return to this bill and do it in a sensible fashion. I hope we can put conservation and energy efficiency at the forefront as we discuss energy security. Though there are many good things in this bill, the good things are outweighed by the negatives.

This exemption from MTBE liability is the absolute worst. To say to these families, these individuals, and these communities that we are going to lock the courthouse door to them no matter what damage they have sustained is a new low.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I am very glad I was present today to hear the speech of the distinguished Senator from Illinois so that immediately after it I might speak a few words.

First, for everybody in this Chamber who wants ethanol—now, I am making the point very clear that I am not talking about whether ethanol is the greatest, whether ethanol is the least, or whether ethanol is the best thing in the world. I am just addressing the millions of people in this country, most of them farmers, many thousands in the State of the occupant of the chair, who would like to see ethanol, since it would do great things for them and at the same time diminish our demands on gasoline from crude oil. Now I am speaking to them.

Whatever has been said by the good Senator from Illinois, all the farmers in his State who produce corn and the other products should know there is no way to get an ethanol bill of any consequence without addressing the issue of MTBE. The way the issue has been addressed by the Senator from Illinois on MTBE is wrong, but nonetheless let us just talk about the reality of it. Do my colleagues want a major ethanol program for America? The answer is overwhelmingly yes. Then go to conference with the House like we did and say to them: We want an ethanol bill like the one that passed the Senate.

They will say: Not on your life, unless you decide to treat those who produce MTBE, a forerunner to ethanol, fairly.

We said: What does that mean?

They said: For those who have used MTBE properly, they shall not be liable for any damages that result from MTBE.

I am reminded in my home State, there was a product liability case against a company that delivers more coffee and hamburgers than any other company in the world, McDonald's. The suit was against McDonald's for delivering coffee to the front window of a car and then spilling the coffee on the lap of the purchaser. The purchaser sued McDonald's because the coffee was too hot.

They did not sue Folgers Coffee for making the coffee. They sued McDonald's for delivering the coffee that was too hot. I think that most people would say that is about right. If the coffee was too hot, then let a jury decide whether they ought to be delivering coffee that is so hot. But what if they would have gone off and sued Folgers Coffee because they made the coffee that somebody used wrongly, to wit, made it too hot and burned the legs of a purchaser of hot coffee? That is exactly what is going on with MTBE.

I am not a proponent of it. I did not know anything about it until I got intimately involved in this legislation and then I found that MTBE is a product that has been authorized and prescribed by the Federal Government. It is something that is supposed to be used because the Government says you can use it and it is all right.

In response to the U.S. House insistence, all we have done is say if someone uses MTBE, as prescribed by the Federal Government, they are not liable in damages. We are very narrow. As a matter of fact, we have unquestionably said if one uses it wrong, if they negligently use it, if they spill it, if they throw it around, if they do not handle it properly and damages result, they can be sued.

I do not think that is exactly what my friend from Illinois said, but I believe that is what this legislation says. I believe that is what we did, and I believe there is no other way to do it.

Then we said in the meantime, it is going to be phased out. That is in the legislation, too, that in a certain number of years it cannot be used anymore. Even if it is used right, it is not going to be used anymore. There is something that takes its place.

Across this land, people file lawsuits in product liability cases and otherwise about many things, and we all know about it. Sometimes we look at a lawsuit and we are abhorred to think they could take such a case to court. Sometimes we think, right on, somebody really messed up and they ought to pay for it. But when the House said to us, if you want an ethanol bill, you have to look at litigation that is ensuing out there in America where MTBE producers are getting sued for a valid, appropriate product, okayed by the Federal Government, used properly, and they are getting sued for damages.

They said: We want to limit that. If it is used improperly and causes damages, the suits can go on. Then we argued and said let's get rid of it in due course, and we have language that says what date it will expire in terms of being a product that can be used.

I want to say again, so that everybody understands, the last speaker has suggested that this bill should be killed by cloture, and that is the right of the Senate on any bill. But I suggest to them if they kill this bill by cloture, which I urge that they not do, they have killed ethanol, and I do not know when it ever comes back.

As a matter of fact, if they think it is coming back without some restraint on MTBE legislation that is going rampant in this country, of the type I have described, suing Folgers Coffee because somebody spilled hot coffee on them, that kind of analogy, for those who think that is going to continue on, then they have given up and abandoned forever ethanol. If that is what they would like, then follow the directions and the wishes of the Senator from Illinois who has plenty of farmers who are waiting and wondering what is going to happen to this bill because of what they think is going to be fair treatment, creating a new market over the next decade and the next decade after that for a product that has been on a roller coaster for farmers who have been on a roller coaster.

Having said that, I want to talk to another group of people. Throughout the deliberation on this bill, I have not heard more from any group of Americans and any group of Senators than the group concerned about the issues of wind energy, solar energy, biomass, and related energies. Everybody came to us, day by day, as we put this bill together and said: Senator, you know wind energy is working. You are not going to kill it in this bill, are you? Senator, bioenergy is right on the edge, ready to go. All these different energies are ready to go. In the case of wind energy, it is not only ready to go, it is going. It is beginning to show up because it is working so well.

Let me say to my friend, it is gone; wind energy is finished when you kill this bill. It is gone.

You might say: How can that be? It is moving along right now. In fact, over in Massachusetts they wanted to build some out there and some people didn't want them building them out there in the ocean. I don't know which people around but some. How come? It was being built.

Yes, but existing today is a great big credit, tax credit for solar and for wind. Guess what. It expires very shortly. It is gone, out the window. The people who are building wind in America are up here in the halls, knocking on our doors, and saying: Do you really want to kill wind energy in America?

The answer is: Oh, no, I just don't like the MTBE portion of this bill. But I don't want to kill wind. I want to carve it out and save it.

But you know what, people who want wind, you can't do it that way. Do you think we are going to start over next month writing another bill of this nature because this one was dead on a side issue of the type I have been describing, and we don't have any credit for wind, we don't have any credit for solar? Not on your life. In fact, I don't know when we would get around to it.

We can look back to the day after tomorrow or the day after that and say: There it went. There she blew, like they say out in the ocean. There she blew, right out the window with those who decided they wanted to talk this bill to death.

Then you look around and there are people saying, another group around here, a lot of eastern Senators walking up and saying: What is going to happen to coal? We have a lot of coal and nobody uses it. Can't you do something about that in the Energy bill?

We say we have. We have given as good a credit for research and production of clean coal technology in America as has ever existed. It is in this bill.

In fact, I had one Senator yesterday from the East, somebody trying to make this an East versus West bill. I don't know how they did that, either. This Senator said: I was wondering what was in this bill for my State—being an Eastern State, a big coal State. He said: I found out that it has the finest set of credits for companies to try to use this great asset called coal that could ever be put in a bill. All of that within this total cost of $2.6 billion a year, on average, over 10 years.

That Senator said: I am voting for it. We have to give coal a shot in my State, said that Senator.

We can go on and on and talk about this. But it is much easier to pick a piece of the bill such as MTBE and state the facts wrong and tell everybody they should not vote for this because of MTBE. But I follow by saying the MTBE situation is not what has been said, and before you decide to kill the bill on MTBE, you ought to remember you don't kill this bill in pieces.

So everybody out there will know who has an interest: You don't kill this bill in pieces. You adopt it all or none.

For those who think MTBE is of that importance as I have explained it here today—and we will be glad to meet privately with any experts around who want to look at it—but if anybody thinks MTBE is of such a proportionate disadvantage to America that we ought to kill the future of windmills and solar energy and we ought to decide we are not going to do any of these other technologies that will develop America's energy base, they are all going out the window.

This Senator thinks in the end the Senators who are looking at the pluses and minuses of this bill may sit back in their chair and say, you know, I might have done it differently. No, Senator BINGAMAN said, maybe he could have done better if he had more time. Yes, maybe they should have given the Democrats more time in the committee. But that same Senator may say: Didn't we do that last year? Didn't we give them all the time in the world and what did they do? Nothing. So we produced something this year.

I will take full credit and full blame that I couldn't figure out how to do this with a regular, day-by-day markup of a bill of this magnitude with input from all sides, and I thought we should have input in a different way. We have established input from the minority party in a different way, there is no question. They got e-mails and portions of this bill as it was produced. They had meetings when they offered amendments. Some were adopted. The last 30 percent of the bill was delivered to them at the end, for them to look at, and they got the message for almost all the amendments were on those things that had to do with electricity and the like. They just didn't win any of them, which usually happens in a conference.

Conferences are usually dominated by the majority party. That is history. That is tradition or whatever you want to call it around here. Many of the early provisions of this bill are provisions that were adopted last year as part of the bill when Senator BINGAMAN was chairman. But we didn't get a bill.

I decided we were going to get a bill. We worked, and worked as hard as people can work, to put one together, and, frankly, you can go through it and find provisions taken all by themselves and say it doesn't have much to do with energy. But I tell you, you can't go through the whole bill and say it doesn't have a lot to do with America's energy future. In fact, I believe we will see the biggest change in agricultural America in modern history with this bill.

Some will say that is not what the bill is for. The bill is for that if, in fact, in doing that we are producing gasoline for automobiles. It is not bad to get the two for one.

Second, this bill is going to produce alternate activities to get natural gas in abundance, and it is also going to produce just about every stitch of natural gas we can produce as a nation without doing damage to our environment, and that will be used by America for American purposes.

I wish we could do more. I wish we could have done more with Alaskan resources. But you know what, everybody knows, you get one thing and you lose something. You move ahead on one and somebody thinks it is the wrong thing and you take two steps backwards.

To get this bill, well over 1,200 pages, on all the subjects we have done, and get it together and get it here this far and get it through the House yesterday by a majority vote of more than 60, a 60-vote plurality or thereabouts, is pretty good.

I am very sorry it is hung up here in the Senate. I will repeat, I have heard quietly—not openly—that some say this is a bill that is for regions of the country. I can't find it. If they would stand up here and say this bill favors the East or the West and show me how, I would be more than glad to go out and look, listen, and try to explain why it isn't. If MTBE, as I have explained, is an East versus the West issue, then I would assume there is no litigation or potential litigation on product liability in nature from the West. I don't think that is the case. If it has to do with resources, we have tried to produce the basic resource that is good for America's future, wherever it lies—whether it is the coal of Pennsylvania or the coal of Wyoming. We have tried to build under it incentives that will make it used more rather than less. We have done that.

In the next few days, we will hear a lot more. Most of it will be about the issues of which I am speaking.

I want to repeat, for those who want ethanol and want it bad and have been waiting 6 or 7 years for it and want a real bill for it, we have exactly what is necessary. That took 4 weeks of debate and frustration galore, but we got what the Senate said we should get. Yes, you can throw it all away because we had to take MTBE, as I have explained, with it. Those lawyers who like MTBE like to tell it one way. I tell it my way because I think my way is right. The lawyers' way probably would be if you were using Folgers Coffee at MacDonald's and coffee was spilled on someone's lap, you ought to be able to sue Folgers Coffee. But if you put in legislation you can't sue Folgers, then I don't think they can come to the Senate floor and argue the way they are arguing about MTBE because Folgers didn't make it hot and spill it. Neither did MTBE get spilled around where it shouldn't be, or used unpropitiously or contrary to the Federal Government standards.

Everywhere you look, there is a smattering of Senators for whom I have great respect who would like to see a nuclear powerplant built one of these days. You can throw them away if you kill this bill. They won't be built. If you pass the bill, there will be a chance there will be one following every law and every rule in the books. We might get one or two. I think that is pretty good.

I am prepared, as are a number of Senators who worked with me, to return to answer as other Senators bring this issue up.

I thank the group that helped work on this bill. They were a mighty group of seven who worked as Senators on our side of the aisle. I thank each and every one of them. They had to learn an awful lot, make a whole bunch of hard votes, and make some very close decisions. Now we are here. I hope we go beyond it and get the bill passed.

I yield the floor.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Nevada.

Mr. REID. Mr. President, on the minority side, we have a number of Senators who are going to speak. I will ask unanimous consent that they speak. I have three who wish to speak now, and we have a time at which they want to speak. If there are Senators from the majority who want to come in between those, that would also be part of the order. I think that would be fair.

I ask unanimous consent that on our side Senator KENNEDY be recognized for ½ hour, Senator CANTWELL be recognized for ½ hour, and Senator DORGAN be recognized for 30 minutes. As I indicated, if there are Senators from the majority who wish to speak following Senator KENNEDY, Senator CANTWELL, and Senator DORGAN, that would be appropriate. If not, we have other Senators who have indicated a desire to speak. This is not in the order which they will appear.

So that everyone knows, there are a number of speakers who want to talk: Senators AKAKA, REED of Rhode Island, FEINSTEIN, STABENOW, FEINGOLD, LANDRIEU, SARBANES, and CLINTON.

I ask unanimous consent that Senator KENNEDY be recognized for ½ hour, Senator CANTWELL for ½ hour, and Senator DORGAN for 30 minutes. If there are Republicans who wish to speak in between, those Senators will be part of the order.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Mr. President, reserving the right to object—I will not—I ask how you might work this in your schedule. We have been told for some time that Senator MCCAIN would like to speak.

Mr. REID. Senator MCCAIN can come at any time he wants, either after Senator KENNEDY or Senator CANTWELL or Senator DORGAN. Whenever the distinguished senior Senator from Arizona shows up, we always give him the floor anyway.

Mr. DOMENICI. He may be around at 2:30 or 2:45. That might work it out perfectly.

Mr. REID. That would be perfect.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. Mr. President, the other statement I made was just to inform both the minority and the majority that the Members who desire may speak sometime this evening without any specified time or in any necessary order.

The PRESIDING OFFICER. The Senator from Massachusetts.

PRESCRIPTION DRUG BENEFIT

Mr. KENNEDY. Mr. President, the Medicare system is the system which is relied on, trusted, and a beloved health care system which our seniors use just about every day. They know it is always there for many of them. It gives them an enormous sense of security as they are looking down the road towards the future. I was here in the Senate in 1965 when the Medicare bill was passed. It failed in 1964. It passed in 1965. It is generally recognized today across the country that even though the Medicare bill provided for hospitalization and physicians' fees, the one thing that it did not provide for was the prescription drugs.

In 1965, only 3 percent of all of the private health care bills provided for prescription drugs. But now it would be inconceivable that this institution would pass a health care program for our seniors and give our seniors who have paid into the Medicare system the assurance that their health care needs would be attended to because we know that prescription drugs is of such extraordinary importance to all of them.

It will become increasingly clear. We are in the period of the life sciences century. We are seeing these extraordinary breakthroughs in DNA and genes. The Congress has doubled the NIH budget, and the prospects for breakthroughs are just enormous. If we were to see a breakthrough, for example, in Alzheimer's, we would empty three-quarters of the nursing home beds in my State of Massachusetts. The prospects in terms of what these prescription drugs can do and what they are doing today is enormous. Therefore, we have a very important responsibility to get a prescription drug program.

I believe the bill which passed the Senate was a good bill. Seventy-six Members supported it. It was a prescription drug bill.

But the proposal that is coming out of the conference committee failed to meet the basic and fundamental test; that is, to do no harm because the particular proposal that is being recommended by the conferees will do harm to the Medicare system. The House of Representatives adopted important changes in the Medicare system under the guise of a prescription drug program, and they have been accepted in that conference committee. Now, for the first time since 1965, the Medicare system itself is threatened. Many of us are going to do everything we can to make sure that is not the case.

An editorial in the Des Moines Register today gets it exactly right. It says:

> Once upon a time, lawmakers wanted to add a prescription-drug benefit to Medicare. In year one, they failed. In year two, they failed. Now, in year three, the quest for a drug benefit has ballooned into a plan to change the entire health-care program for 40 million seniors.
>
> As a few details about the 1,100-page bill crafted in conference committee trickle out, it's clear another failure this year would be best for Americans.

The editorial concludes:

> Lawmakers need, once again, to go back to the drawing board.

Effectively, what they are saying is that no bill is better than a bad bill. This is Des Moines Register. They get it right.

The editorial continues:

> This time they should try a new approach: Focus on holding drug prices down, keep 40 million seniors in one buying group to leverage lower prices, open up the global market on drugs to Americans, and remind themselves their job is to serve the interests of the people, not industry lobbyists.

There it is, Mr. President, the Des Moines Register gets it. This proposal will do virtually nothing for keeping prices down.

Access to prescription drugs and costs to senior citizens are the two elements with which our seniors are concerned. This bill does virtually nothing regarding costs. It is flawed in its effort to provide prescription drugs by undermining Medicare.

This conference report represents a right-wing agenda to privatize Medicare and force senior citizens into HMOs and private insurance plans. I guess seniors should not get to choose their doctor and hospital, they just do not know enough. That choice should be made for them by the insurance company bureaucrats. The conference report includes no serious program to reduce the double-digit drug price increase. The attitude of the special interests who hijacked this process is clear: Control senior citizens, not drug costs.

The day this program is implemented, it will make millions of seniors worse off than they are today. It is an attempt to use the elderly and disabled's need for affordable prescription drugs as a Trojan horse to destroy the program they have relied on now for 40 years. It is an enormous giveaway to the insurance industry and an enormous take-away from the senior citizens.

The new study that has just been released today indicates, when this program goes into effect, the HMOs and private insurance industry will increase by more than $100 billion if this bill passes. That is more for the private insurance companies and for the HMOs. No wonder our Republican friends and the insurance companies are for this bill. No wonder senior citizens are against it.

The more senior citizens learn of these problems, the more they oppose the legislation. In a poll released this morning, only one in five older voters, 18 percent, say this bill should be allowed to pass in its current form. In fact, 59 percent of the AARP members agree with Democrats that this bill does more harm than good.

Regarding the drug plan itself, even before getting to the problems of privatization and the subsidies for HMOs that are in this bill, older voters oppose the drug plan by 65 to 26 percent. In fact, only 27 percent of all seniors say they would bother to enroll in this plan at all.

Seniors are deeply concerned about the way Republicans have hijacked the drug plan to undermine Medicare. They oppose the subsidies for private plans, 65 to 23 percent. In fact, among the AARP members, opposition to the subsidies is even stronger—68 percent to 19 percent. Older voters oppose the cost caps on Medicare services, 60 percent to 26 percent. And they are deeply concerned, 64 to 26 percent, about the failure of this bill to control drug costs to allow drugs to be reimported from Canada.

As elected representatives of the people, we pass this bill at our peril. In fact, by a margin of 3 to 1, older voters are saying they are less likely to support politicians who support this bill.

It is important to understand how we got to this point. We started in the Senate with a bipartisan bill to expand the prescription drug coverage. A bill passed with 76 votes. The Senate solidly rejected the President's plan to privatize Medicare by telling senior citizens they could only get the prescription drugs they needed by joining HMO and other private insurance plans. That was the position of the President in the spring of this year: You are only going to get prescription drugs if you join an HMO or private insurance plan. You will not be able to under the Medicare system. Then the administration shifted.

But the House took a different course. They realized the President's plan would not be accepted by the American people, so they passed a more subtle proposal, one that tries to privatize Medicare by stealth. Their only problem was it was not stealthy enough. That is why it passed by a slim partisan majority of one vote in the House of Representatives—one Republican vote.

Now the conference has been hijacked by those who want to radically alter Medicare and to privatize it, to voucherize it, to force seniors into HMOs and private insurance plans. The bill the Senate will consider shortly is not a bill to provide a prescription drug benefit. It is a bill to carry out the right-wing agenda. It allows the elderly to swallow unprecedented and destructive changes to the Medicare Program in return for a limited, inadequate, small prescription drug benefit. This conference report is so ill conceived that not only does it put the whole Medicare Program at risk, it makes 9 million seniors, almost a quarter of the Medicare population, worse off than they are today. I will illustrate that in one moment.

On issue after issue, this report abandons the bipartisan Senate bill and capitulates to the partisan House bill. On some issues it is even to the right of what the House passed. One of the most important of these destructive changes is a concept called premium support. It should really be called "insurance company profit support" or "senior citizen coercion support." It replaces the stable, reliable premium senior citizens pay for Medicare today with an unaffordable premium for the future. Here is how it works.

Today, the Medicare premiums are set at 75 percent of the cost of Part B of the Medicare Program, the part that pays for doctors' care. Beneficiaries pay the remaining 25 percent. The premium is the same no matter where you live. It is universal whether you live in Key West or Portland, ME, whether you live in Takoma, WA, or whether you live in San Diego. You pay the same premium. You pay into the system and you pay the same premium. It increases from year to year at the same rate as the Medicare increases. It is stable. It is reliable. It is now $58.70 a month Part B premium and $704 for the year.

Premium support would change all that. The senior citizens can choose, if they want to, get their Medicare benefits through HMOs and other private insurance plans. The Government pays these plans approximately the same amount it costs Medicare to provide the services. The senior citizens pay at least the same Part B premium to enroll in the plans they pay for the regular Medicare, but the plans can charge more if they offer additional services or lower copayments. If the plans can provide services more cheaply than Medicare, they give the difference back to the beneficiaries in the form of better services or lower copay without additional charge.

Senior citizens who choose the private plans may get some additional benefits, but the senior citizens who prefer to keep the freedom to choose their own doctor are not penalized. And 9 out of 10 seniors have chosen Medicare over Medicare HMOs.

What happens, as everyone knows, is the insurance companies cherry-pick and get the healthier and younger seniors. Therefore, it costs them less, although they get the payment that would otherwise be going into Medicare. So we have the healthier ones leave and the sicker ones remain in the Medicare system. That is what has happened today. There is no reason it will not happen in the future. As a result, we will get increases in the cost of premiums under the Medicare system.

This chart reflects what the Medicare actuaries—not what I estimate but what the Medicare actuaries—estimate would be the national average for seniors. It would be $1,205. And their estimate national average for premium support, the current estimate, would be $1,501. And 2 years ago they estimated the national average was $1,771.

The fact is, no one knows what the premiums will be. You are playing roulette with premium support. Here we have a swing of $300 in estimates, estimates made by the Medicare actuaries. It could be $1,205, but under this bill for those who fall into the trial category, they will be paying at least $1,500 or the $1,771.

Look at this chart. Let me give you a few examples of the disparity. Again, this is from the Medicare actuaries. If you live in Massachusetts, and in Barnstable—that is primarily Cape Code—the premium for Medicare will be $1,400. If you live in Hampden, it will be $900. That is a $500 difference.

Today, everyone pays in the same amount and they get the same premium on it. Under this legislation, everyone is going to be paying in, and if you live 100 miles apart, you are going to get a $500 disparity in the payments under the premium support system. This information is from the Medicare actuaries. This is the kind of roulette our seniors do not want.

Here is another example in Florida. In Dade County, the best estimate from the Medicare actuaries is you will pay $2,050; and in Osceola County, you will pay $1,000; you will be paying twice as much.

How do you explain that to the seniors? How do you explain that they pay in and their premiums are going to have this amount of swing to them? No one can accurately predict with any certainty, but we are buying this program? It is untested, untried. It is the greatest social experiment with whom? With our senior citizens. Why? Because there is going to be all kinds of money in there for those private insurance companies and those HMOs. That is what it is about—risking the Medicare system.

Here we have the example in Los Angeles, $1,700; in Yolo, CA, $775. And in New York City, $2,000 if you live in the Queens area; $975 in Erie. This is the Medicare actuaries' data, these premiums and estimates. And that is the element that is written in this bill.

Now you hear our colleagues who defend their proposal say: Well, Senator, this is really just a trial program. It is not going to be anything more than a trial program.

Well, they are going to have five what they call MSAs, metropolitan statistical areas. If you take five metropolitan statistical areas and then you take one small one—here they are—if you take the States of New York, New Jersey, and Pennsylvania, that is 2.6 million people who are affected. For California—Los Angeles, Long Beach, Santa Ana—that is 1.4 million. For Illinois, Indiana, Wisconsin, that is 1.1 million. For Florida it is 833,000; that is Miami, Fort Lauderdale. For Pennsylvania, Delaware, Maryland, New Jersey, that is 866,000. And then take a small one, Nevada—Reno and Sparks—47,000. So 6.8 million of the 40 million; you are almost up to a quarter who are going to be included in their program, who are going to be subject to these kinds of swings.

They call this a demonstration? This is a Mack truck. This is not just a small Volkswagen, it is a Mack truck, and they are calling it a Volkswagen. And seniors ought to understand it. So that is one threat.

Now, listen to the second threat. We say, well, what about the risk?

Mr. President, how much time have I used?

The PRESIDING OFFICER. The Senator has used 18 minutes.

Mr. KENNEDY. Fine. Let me know when I have 3 minutes left.

The PRESIDING OFFICER. I shall.

Mr. KENNEDY. Now, on the second situation, our Republican friends say: Well, we believe in competition. With competition we will get the best health care for the best price and the best cost. Oh, we say, well, how are you going to do that?

Let's see what is in the bill now that you say that is what you want to do. You think you have competition in this proposal? Let me show you and explain to you how this is a rigged proposal.

First of all, in this legislation they give to all of the HMOs and the PPOs a 9 percent increase in the cost of living over what they give in the Medicare—9 percent. Nine percent? Nine percent? Why are they doing that? Because: They think they ought to get it. They want competition.

The second point that is in this bill is that those who are in HMOs today and in the private insurance companies are 16 percent healthier than those in traditional Medicare. That is not my estimate, that is CMS's estimate, the agency which provide the reimbursement. That is their estimate.

You add these two together and you get a 25 percent subsidy for every private plan and every HMO. They call it competition. I thought competition was an even playing field. This is not an even playing field. And who is paying this additional 25 percent? Our seniors are. It is coming out of their payments. It is coming out of the Medicare trust fund. It is cutting out the benefits they ought to have. That is ridiculous. That 25 percent should be reinvested in the drug program, not used as a subsidy for the private sector.

Now, we say: Well, you have that 25 percent on that. If you looked through, you would say: Well, that is a pretty big chunk of change for it. You think they would be happy with that, wouldn't you? No, no, no, no, Senator KENNEDY, we are not even happy enough with that. We are going to include, on top of the 25 percent subsidy, a $12 billion slush fund in this bill—$12 billion. So 25 percent is not enough. We will be able to provide hundreds of millions—hundreds of millions—billions of dollars to those HMOs, some of which made more than $1 billion last year. Some of those CEOs are getting paid more than $22 million a year. And we are going to take $12 billion more on top of the 25 percent and use that as a slush fund.

Talk about an even playing ground. What could that $12 billion provide for? These are the leading diseases about which our elderly are concerned: Arthritis, osteoporosis, diabetes, cholesterol, acid reflux, thyroid deficiency, and depression. That $12 billion could provide for 11 million of our senior citizens who suffer from arthritis a year, or 12 million who suffer from osteoporosis, or 11 million who suffer from depression, or it could be used for those who suffer from high cholesterol, right on down the line. That is what it could mean for our senor citizens. But, oh, no, this conference said no, we are going to take that and add that in. Not only are we going to threaten you with this premium support program, you will never really know what your premiums are, except that they are going up.

I want to take just a few more minutes about this proposition. I had mentioned earlier that the day this bill passes, you are going to have 9 million of our 40 million Americans who are going to be worse off and pay more. Do we understand that?

On top of what I have already explained—the completely unfair playing ground that is so tilted towards those who do not support Medicare—now we are saying to our elderly that between 2 million and 3 million—and closer to 3 million.

Low-income seniors pay more. Six million of them will be receiving Medicare but also receive Medicaid. The conference proposal denies States the ability to provide wraparound coverage to those low-income seniors. Instead, a uniform Federal co-payment is imposed, and it is indexed, so that it goes up every year. Their out-of-pocket payments for drugs will be raised, and they may not even have coverage for the drugs they need the most. If they need a drug that is not on the insurance company formulary, they will have to go through a burdensome appeals process. Most will simply go without.

Every one of these 6 million will be paying more. Maybe it is $2 a prescription, but if you have three prescriptions, that is $6. You may have to get a refill every other week, and it begins to go up, $24, $25. Nine million lose the day this passes. Let's keep our eye on these 6 million low-income seniors.

Prescription copays hurt the very poor. You will have almost double the amount of serious adverse events when seniors don't take those medicines. Emergency visits go up as well, double the amount. For those 6 million, these are the statistics from all the health care studies. Not only will they be paying more, but their health condition will be threatened. It makes absolutely no sense from a health policy point of view.

One of the most important aspects of the legislation passed in the Senate was to say we were going to make sure that the asset test, which has been around for many years, the asset test for the very poor would no longer be in effect. As a result, we took steps with regard to prescription drugs that we haven't even done with regard to Medicaid. The Senate bill really reached down for the poorest of the poor elderly.

We said: OK, maybe you can have the car, $4,200; you can have the personal savings, $2,300; you can have even a $1,500 insurance policy and a burial plot for $1,500, and we were not going to hold that against you. People who had worked all their lives perhaps had those.

What do our good Republican friends do? They reimpose the assets test and say, if you have that, you are not eligible. Three million of the poorest of the poor are dropped out of coverage under this proposal. That is enormously unworthy of the proposal.

I want to mention an aspect of this because I am running out of time. I have mentioned that we have the premium support which is going to threaten the Medicare system. We have the subsidy programs which are going to threaten the whole Medicare system by enticing, coercing, bribing seniors out of that, and then letting the Medicare system collapse right in front of them.

Then they have added another program which they call health savings accounts—what used to be called medical savings accounts—which provides billions of new tax breaks for the healthy and the wealthy. The money that should have been used in this bill to provide additional prescription drugs, they have taken billions out to provide for this new program. They encourage the healthy and the wealthy to take high-deductible policies, policies that require you to pay thousands of dollars before you get benefits. That is fine for people who can afford to put money into tax-free savings accounts but it is not good for ordinary working Americans.

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. KENNEDY. The Urban Institute and the American Academy of Actuaries have estimated that the healthiest people are pulled out of the risk pool for regular comprehensive policies by these accounts. Premiums skyrocket, if this policy becomes law. If you want to keep your insurance policies, you can see your premiums increase as much as 60 percent.

The Urban Institute estimates that premiums, and this will be for all those who are employees working in small companies all across the country, once this program gets started, could increase by over 60 percent and the American Academy of Actuaries have estimated that premiums would jump $1,600.

Why are we doing this? Why are we taking a chance with the Medicare system? The American people and our seniors have confidence in Medicare. Why not just do what we did in the Senate in a bipartisan way and have a good downpayment rather than threaten the Medicare system?

This was the wrong way to go. This bill does not deserve the support of the Senate. I hope it will be defeated.

The PRESIDING OFFICER. The assistant minority leader.

Mr. REID. Mr. President, the distinguished senior Senator from Arizona has called and wishes to speak following Senator CANTWELL. I ask unanimous consent that that be a part of the order, following her statement, the Senator from Arizona, Mr. MCCAIN, be recognized for whatever time he may consume.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington.

Ms. CANTWELL. Mr. President, how much time do I have allocated to me?

The PRESIDING OFFICER. One hour.

Ms. CANTWELL. If the Chair will notify me after 40 minutes.

The PRESIDING OFFICER. Yes.

Ms. CANTWELL. We are now going to go back to the Energy bill. I know many of my colleagues have already been on the floor today discussing the conference report that is before us. While I think my colleagues have done a good job of outlining some of the most egregious parts of this legislation, because it certainly is shocking legislation, the point I would like to make in the next few minutes is about how we got to this process and how America is very disappointed in what we have come up with as far as a conference report.

It should be no surprise to people here when they find out that this bill has basically been drafted in secret without a bipartisan effort, without a lot of daylight shown on the details of the legislation until just this weekend. Now many people are curiously reading through various aspects of the legislation trying to understand all the giveaways, all the subsidies, and whether it could possibly mesh into any kind of comprehensive energy policy. I think the bill is a disaster as it relates to moving us off our foreign dependence and coming up with a concrete energy policy. It should be no surprise, when this energy policy legislation started with a task force meeting with the Vice President in which no input was given, no open session as to what was being discussed.

That a bill is brought here to the House and Senate that ultimately included a conference report drafted in secret makes it very difficult for us to have good legislation. But don't take my word for that because I do want to discuss the policy ramifications. Let's talk about what America is saying.

In the last 24 hours, we have had a variety of people around the country, particularly in the press, look at this legislation and actually make editorial comment on it. When I woke up this morning and saw the stack of editorials that are before us on each Member's desk, I was shocked to read the detail and comments from newspapers all over the country. That is good news because it means America is watching this energy policy, that those of us in the Northwest who have suffered from Enron market manipulation are not the only ones watching, that those in New York who have suffered through blackouts are not the only ones watching, that people all across America are.

In fact, the question is, Are we better off having to pass this Energy bill or are we better off without it?

I will take from what the Great Falls Tribune said:

> Once again, let this energy bill die.

Why would somebody say that? Some of my colleagues are trying to say this Energy bill actually has a concrete policy. According to the Great Falls Tribune: We are as certain today as we have been for a of couple years that no Energy bill is a better option than the bills being hashed around in the marble halls of Washington, DC.

Other newspapers have said this bill should be a "do not pass go."

The Minneapolis Star Tribune, again an independent newspaper organization, that probably, if it took a close look at this bill, saw there were some projects that the State of Minnesota could benefit from. Yet they say the Energy bill is a fine target for filibuster. A newspaper organization in a State that actually has energy projects in this bill thinks we should filibuster this bill:

> The energy bill unveiled over the weekend is wrong headed policy prepared in a high handed way, fitted with perhaps enough gifts to selected opponents to buy its passage. It's an abusive approach to lawmaking, egregious enough to deserve—indeed, to invite—a filibuster.

That is from a State that has energy projects in it. So this is a national energy policy, which some, such as colleagues on the other side, like to talk about. According to the Houston Chronicle, in a State that would benefit in the millions of dollars from different subsidies and sweetheart deals in this legislation, they say:

> Fix the Flaws.
>
> A bill setting out a national energy policy should encourage conservation, investment and new technology; increase available energy; make the distribution system more reliable; and reduce pollution from burning fuel. The energy bill unshrouded Monday by congressional Republicans is, at best, half of a loaf that has been dropped repeatedly in the dirt.

Some people say this was a process, it went through committee hearings and through all sorts of hearings, and we had discussions on the floor. I remind my colleagues that we got to this point on July 31 of this year where we could not agree on an energy bill. I personally thought we should hold the bill up at that time and send it back and basically make the point that it wasn't going to be a successful product, hoping my colleagues would go back to the drawing board and get more bipartisan legislation.

What happened was, we got so desperate, we passed last year's Senate bill and many of us said: We know what will happen. They are going to take last year's Senate bill and dump it and overreach in the conference because it will be controlled by the Republicans, not in a bipartisan policymaking fashion, but they are going to overreach. A lot of people say this has been written by the energy lobbyists.

The Philadelphia Inquirer said:

> The Energy Bill: Lobbyists Gone Wild.

They say:

> After all, there's something for everyone here. Everyone, that is, with enough dough to finance a lobbyist's next pair of Gucci [shoes].

It is amazing that so many newspapers have so much on the ball and took time in their editorial pages in the last couple of days to shine the bright light on this policy that has been drafted in the dark and not in a bipartisan fashion.

The Chicago Tribune said:

> Energy Legislation on the Fly.
>
> If those problems don't sink the bill, the process by which the Republican majority cobbled it together certainly ought to. Democrats literally were locked out of the final negotiations, and now Congress—and the public—have about 48 hours to digest and evaluate the contents of this mammoth document. This is no way to craft sensible national energy policy.

That was the Chicago Tribune.

My colleague, Senator DURBIN from Illinois, has been out here talking about the MTBE provisions and how those who might be affected by that and the public might become deep pockets on what really is the responsibility of individual businesses. But I think he should be very proud that his hometown newspaper is trying to educate people all over Illinois who might think, gee, what is wrong with this bill? Probably ethanol provisions are in it, and it ought to be a good bill. They are actually doing the work to show that this is quite controversial.

Another newspaper, the Milwaukee Journal Sentinel, wrote something pretty humorous:

> Indigestion Before the Holidays.
>
> The Old Testament is only slightly longer and is a lot more readable. . . .

We should take our time with this bill.

The St. Paul Pioneer Press is obviously pointing to what Members would refer to as pork-lined elements:

> Energy Bill Lavishes Billions to Drill . . .

I don't think that is what we thought the future energy policy of America would be—lavishing billions to drill. We thought we were going to have an energy policy that was about innovation, technology, about moving forward on conservation, and about alternative fuels. Not that we didn't think we were going to continue to use some fossil fuels, but we didn't think we would lavish billions on them.

We also heard from USA Today. At a time when we have ballooning deficits, what is this bill doing to help us get on the right track? They said:

> Costly Local Giveaways Overload Energy Plan.
>
> The Nation can't afford an energy program that drives up the Federal deficit without addressing critical problems.

Part of this is not addressing critical problems. There are many aspects of this earlier legislation draft that I think could have gone a long way toward getting us on track with jobs, along with the Alaskan natural gas pipeline, that probably are not going to come about now, which could have gotten us further ahead on a hydrogen fuel economy and would have established U.S. leadership in that new technology. Yet that was left out of the bill.

The Wall Street Journal, which I think has followed the energy debate very closely, was shocked to find out in the last couple of days:

> The fact that it's being midwifed by Republicans, who claim to be free marketers, arguably makes it worse. By claiming credit for passing this "comprehensive" energy reform, Republicans are now taking political ownership of whatever blackouts and energy shortages ensue. Good luck.

Why is that? That is the Wall Street Journal, and it is basically putting these issues that have happened in America already—energy blackouts and shortages—on the other side of the aisle, on their lap, and saying this policy isn't going to work.

I have to say, as a former businessperson, we have had a lot of debate about standard market design and regional transmission organizations. I want to see free markets work. But free markets work when there is transparency and when there are rules in place. This legislation does very little to provide for transparency in the market. I think that, along with many of the other items of oversubsidization and special interest initiatives in this legislation, is what drew the Wall Street Journal to say it is not a good piece of legislation.

What else do people say?

The Concord Monitor basically said this is:

> Abuse of Power: The Federal Energy Bill is Ultimately Worse Than No Bill At All.

That is what America is starting to understand—that this policy is worse than no bill at all. It is a disappointment that we are at this stage of the ball game, and I have to say as a member of the Energy Committee for the last almost 3 years, before joining the committee, I talked to colleagues and former members about joining that committee. People pointed out to me that it had been almost 10 years since the last time we had an energy bill pass out of that committee. Who knew whether we would have an energy policy in the future? I think it is safe to say, with this product in front of us, we bit off more than we could chew by cobbling together a bill that is not really centered around the future energy policy but is specific giveaways to individuals so that they will buy in on support of this legislation. But it is worse than I could have imagined, and certainly doing nothing is better than this legislation.

What about the blackouts? I know some of my colleagues would like to say this is legislation that is going to move us forward in this area. I can tell you what the Providence Journal said:

> Energy Gridlock.
>
> Unfortunately, Congress seems intent on passing a bill that does nothing to make our energy supply cleaner, safer, or more affordable, and certainly does nothing to prevent a major failure. We hope that it won't take another huge blackout for Congress to see the light.

That was written in the last week or so.

I have a lot to complain about here because my predecessor—we had a blackout in the Northwest prior to New York's, and my predecessor, former Senator Slade Gorton, actually proposed reliability standards and a process for moving forward so that the industry was accountable for energy supply and standards that would prevent us from having blackouts.

What happened? His legislation actually passed out of the Senate and got held hostage in the House because the industry wanted more deregulation before they were going to put reliability standards in place. How is that responsible?

Now we are moving forward on an energy bill that basically, at best, as it relates to FERC and its jurisdiction and responsibility, is confusing and muddling. We do nothing about the market manipulation issue of Enron in this legislation.

While I would like to believe the reliability standards will help in some ways, I don't know, given the overall aspects of the bill, that they are going to be as helpful as we need them to be. Why should we have to be told that you have to swallow the whole energy policy that is bad for America just to get reliability standards so people in New York or Ohio or Michigan can be sure their lights will turn on at night? That is a ridiculous policy. This body should have passed reliability standards as a stand-alone bill when Slade Gorton proposed it, and it should have passed it as soon as we came back after the August recess.

I am amazed again at how many newspapers across the country are writing about this bill. We talk about, obviously, some of the Clean Air Act and Clean Water Act issues, and I will get to those in a minute.

The Fresno Bee calls this legislation "political wheezing."

They say:

> The valley representatives in Congress have put a particular stake in this fight. The problems of air pollution, especially diesel particulate matter, are worse here than anywhere else, and we must do everything we can to address this.

What about the Ventura County Star newspaper talking about the obviously bad coastal oil and gas language? Every year on the west coast there is a battle that goes on. Basically, we have had for 20-some years now a moratorium on drilling off the coast of Washington, Oregon, and California. While that is an Executive order moratorium, we always have to worry that some interest or some group is going to try to lift that moratorium. It happens every year, and every year in an appropriations bill Congress continues to say: We want a moratorium on drilling off our coast of Washington, Oregon, and California.

Why do we have to drill there? We have marine sanctuaries. We have terrific problems with tanker traffic and a variety of other issues. We have had spills off the coast of Washington that have caused incredible damage. Why do we have to worry now about legislation that makes that issue more cloudy by saying you could give the Secretary the power to expedite and approve a process on this? What did the Ventura County Star say?

They said:

> Instead of trying to continually slip in language that harms the Nation's coast lines, puts thousands of communities at risk of an economic and environmental disaster, Congress should be focused on the public's welfare, the environment, and the rights of States to protect their residents.

This bill undermines those rights. It undermines States rights, it undermines the rights of individuals, and it will leave our shorelines less protected.

What did the Nashville Tennessean say? It said:

> An energy bill without savings has no steam. The President and his allies have built an energy policy on their convenience—

On their convenience.

> When they are willing to build on conservation, then they'll have an energy policy that will work for all Americans.

Makes sense, doesn't it? The bottom line is, this bill is what some people are saying. It is about Hooters and polluters. It is about special interests. It is not about a conservation policy that is good for America, and it does very little to get us off our dependence on foreign oil. America deserves better.

If our generation has been smart enough to put a man on the Moon, our generation can be smart enough to get off our dependence on foreign oil, but we in this body have to do our job. We have to draft an energy policy that has a vision, that has a focus, that has the right incentives and ask America to step up and help with this process.

I wish to continue with a few other charts. The Orlando Sentinel agrees with what I have just articulated and that is a concern about this Energy bill and where the focus is for tax breaks.

The Orlando Sentinel said:

> Start over: The energy bill before Congress is worse than what exists.

Why do they say that? They articulate:

> Two-thirds of the tax breaks will go to the oil and natural gas and coal industries, helping to perpetuate this country's dependence on fossil fuels.

A lot of people hear about these tax breaks and think we are talking about new technology, either smart metering, wind energy, or something—even clean coal. But the clean coal percentages of the dollars spent on tax incentives in this bill are very minor as well. So we are spending money on subsidies, but we are spending them in the wrong direction.

What does America say when you ask them about this? What do they say when you say: Gee, here's the choice. The question to them is, Do you support giving subsidies to oil and natural gas companies and giving tax incentives. Basically, when you read a description of this, the majority of voters in this country, 55 percent of them, think Congress would be better off if we didn't pass this legislation. A majority of Americans are already saying they are not interested in this legislation.

This bill is about as bad as it gets. Obviously, I am encouraging my colleagues to vote no. As the Atlanta Journal-Constitution said:

> Put backroom energy bill out of country's misery.

It goes on to urge, when Members of Congress have the chance, "Members of Congress who remain committed to a more rational energy policy . . . shouldn't hesitate to reject it.

I have just read for my colleagues, not my thoughts, but the thoughts of newspapers around the country. Why did I do that? I am sure my colleagues can read. I know they have busy schedules today. I know they have these editorials on their desks. I spent time to do that because I want them to know that America is watching, and America expects us to stand up and do the right thing. This bill that we have had very little time to really understand, and basically on this side of the aisle have been shut out of the process as it relates to the conference report, are trying to respond in very short order to say that this bill is a mistake. I want my colleagues to know that the rest of America is watching.

Some of these issues my colleagues have gone over before, but I want to articulate a few of my objections to this legislation because I think it is important for America to understand the various aspects of this legislation.

First, there are a variety of environmental laws that are basically undermined by this legislation: the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the Outer Continental Shelf public lands issues. I ask myself: Why is it that we have to undermine current environmental law to have a national energy policy? I have sat on the Energy Committee in various hearings about public lands, about energy companies, about getting more supply. I have not heard an industry show up and testify that they have to do something about the Clean Water Act, but this legislation does undermine the Clean Water Act. It exempts all construction activities at oil and gas drilling sites from the coverage of runoff requirements under the Clean Water Act.

Is that what America wants? Is America so desperate for new oil and gas drilling sites that they say the runoff at those sites are something from which those particular industries should get an exemption? Everybody else who is a developer in America has to deal with runoff. It is not an easy problem.

We set a priority. We said we wanted clean water in America and so we set standards. So why would we let new oil and gas construction out of that?

We, obviously, care about clean air. Why do we have to have an energy policy that basically changes clean air attainment levels that we have already set in policy just to get new energy construction? Is that what the Congress thinks the message ought to be? Obviously, this legislation is a rewrite of existing law and it postpones ozone attainment standards across the country. This is a matter that was never considered in the House and Senate bill and that has now been inserted into the conference report. That is what one gets out of a secret process. They get bad legislation as it relates to some of our strongest environmental laws.

Now, why does a national energy policy have to step on safe drinking water? Are we in such desperate straits to get energy supply that we are willing to say there can be an exemption from safe drinking water? The provisions in this act basically remove an oil and gas extraction technique from regulation of the Safe Drinking Water Act.

Hydraulic fractioning is a process by which water, sand, and toxic chemicals are injected into rock so the oil and natural gas that they contain can be extracted. So if we do that in some large body of water within my State of Washington, somehow that company that is involved in that technique does not have to meet the regulations under the Safe Drinking Water Act?

Somebody who is going to explore for that kind of oil and gas, is it so important for us to have that that somehow we are going to say they do not have to meet safe drinking water standards? I do not understand that.

I already articulated a little bit our concerns about public lands. Since when does an energy policy for America, that ought to be focused on a hydrogen fuel economy, about energy efficiency, about fuel efficiency, a whole variety of things, have to have an assault on public lands?

When drilling on those public lands, one has to pay a royalty. Oh, but under this bill now less is paid because we are forgiving some of those royalties. Why? Because we want to incentivize more oil and gas drilling on public land.

Why? If we look at the research that shows where the availability of oil and gas is, it basically shows on most public lands it is uneconomical; it is hard to reach. One cannot get that far on the access to public lands to make it even efficient. So why now further incentivize it by saying we are going to make them pay less in royalties?

The other thing is it creates this new entity—I do not know what one would want to call it. I do not know if it is the Cheney committee. I do not know what it is, but somewhere in the White House this legislation says now there will be an organization that plays a policy role on expediting oil and gas drilling and making sure that if it is about waiving access to public lands, this group will help get the job done. I do not understand why we have to go through that process of dealing with our public lands to make energy policy work in America.

I think there are many other things we should be doing. Let's talk about a few other things, because I know that I have colleagues who want to chime in on this, but I have to mention a few other things that I was shocked to find in this legislation.

As a Member who spent many hours on the electricity title, I do not understand why this bill has to have an exemption for Texas. Why does the State of Texas get out of compliance with the electricity title as it relates to electricity market rules, market transparency rules that are so important to making markets work, basically protecting the consumer? Texas gets protected from the cost shifting that happens in transmission construction, but the rest of us in the country do not get to be protected.

Now, I wanted to bring this issue up when we were debating this bill in July but we decided, because there was so much turmoil, to take this out and to basically go back to the Senate Democratic bill passed from the previous year just to try to get something going. As I said earlier, now we know what the end result was: A bill in secret in conference that has all sorts of things in it, including this exemption for Texas.

In the electricity title, after what we have seen in California with deregulation, as we have seen with various market manipulation activities, we want better rules. We want transparency. We want things to work and to have individual utilities held accountable, but we are going to exempt Texas. Some of the people have said, well, Texas is not tied to the rest of the country so for some reason Texas should be exempt from this.

Here is the facility right here. This facility does interstate and intrastate commerce and is connected, and if this electricity title is good enough for Washington, good enough for New York, and good enough for Ohio, it ought to be good enough for Texas, too. They should not have an exemption in this bill.

What about the sweetheart deals in this legislation? I could go on actually forever about the sweetheart deals in this legislation. My favorites are the $1.1 billion for a new nuclear facility in Idaho. Not that this Senator has an out and out opposition to nuclear facilities. We have some in Washington State. I spend a good deal of my time talking about Hanford cleanup and the billions of dollars taxpayers have spent on trying to clean up nuclear waste. But why are we going to spend $1.1 billion for a new nuclear facility in Idaho to see if nuclear power can produce hydrogen? There are thousands of ways to produce hydrogen. You do not have to have a new nuclear facility to do it.

My other favorite little part of the sweetheart deal is basically a process in the bill in which DOE can help pay for and finance the transmission hookups that might end up being used for a coal company in Texas.

My colleagues might say, well, geez, if someone has new power and they want to put it on the transmission grid in my State they get in line. If they have capacity and they want to be added to the grid, they come to the Bonneville Power Administration and work with them about how they are going to add capacity to the grid, but they do not have DOE coming in and basically saying they will help them get connected and get capacity to the grid.

That is just part of the aspects of this legislation, the many sweetheart deals. I am sure many of my colleagues are going to go through this and talk in more detail about some of this legislation, but this energy policy, more than anything else, is a missed opportunity. Instead of incentivizing the right programs, we are spending $23.5 billion in tax incentives where only a small percentage of them go to the renewables, conservation, and energy efficiency that America thought it was investing in when it heard about this energy policy.

The whole provision that we talked about dealing with hydrogen fuel, which was an investment in goals and basically a process for us to get to a hydrogen economy, have been thrown out of the legislation. The only thing that remains is sort of a small incentive for that.

What about creating the clean energy economy of the future in which we thought we could estimate a creation of 750,000 jobs in America over the next 10 years by focusing on these energy efficiencies? Well, if they are spending $23.5 billion and only have 32 percent going to that, those 750,000 jobs are never going to be created in America.

I know my colleague from New York wants to speak, and I know I have other colleagues who want to speak, so I will try to wrap up, but I feel disappointed for the policy opportunity that is being missed. America wants to know what this legislation is about. They want to know where we are going with energy policy. This policy could be far more reaching in response, not just to the crises that we have had in Washington, California, and Oregon, and not just to the policies of blackouts or the fact that these institutions, the House and the Senate, have not passed a reliability standard that would give people in New York and other places in the country the kind of security they need. We are missing a big opportunity to be leaders in energy policy in the world. You might hear some people say we are going to get this national grid. It is not about a national grid. I guarantee we are not going to build a national grid and ship power from Seattle to Miami Beach, and anybody who tells you that they are going to does not understand energy policy. A national grid is not about shipping power all the way across the country. We are entering an era of distributed power. That means you produce power closer to the source and to the individuals who want to have it.

What do you do now that you have hydrogen fuel cells? You have new forms of energy that can connect to the grid. What do you do to make that a reality? First of all, you obviously provide the right transparency and stabilization of the system and give oversight to an entity that hopefully does its job. Obviously FERC, in a lot of instances, has failed to do its job. But you create these decentralized energy plans in which individuals can connect their power source and their generation to the grid and have it delivered in that region. That is the most economical delivery of energy. That is the future.

This bill does not invest in that. It does not invest in net metering, which would basically have a framework for people to understand how to get their power source onto the grid. It doesn't invest in an interconnecting standard by which everybody could start understanding how they could connect to the grid. It doesn't even set standards for some of these new technologies that everybody wants to be part of developing. There should not only be a national standard for the United States on how to build a hydrogen economy, it ought to be an international standard so the United States can be a leader in job creation in that new economy. But that is not in this bill.

As bad as this legislation is, and it is bad, my colleagues should make no mistake: this bill should not pass. But the tragedy is that America is not grabbing its future opportunity to both get off of its dependence on foreign oil and also to invest in an energy economy that will produce jobs and have America lead the way in new energy technology. Let's not embarrass America by passing this bad legislation that undermines environmental laws, that puts the tax incentives in the wrong way, runs the deficit up without giving us a return on jobs, that basically does little to address the market manipulation and blackout situations that happened in the past and, as I am sure my colleague from New York will talk about, really sticks some Americans with the deep pocket expenses of cleaning up waste.

Let's not pass this legislation. Let's listen to America. Let's listen to what those newspapers are saying because they are the first shot at this legislation and they understand. Let's go back to work, even if it means next year. Let's go back to work and let's put an Energy bill together that America can be proud of. Let's make it a goal of our generation that we are going to get off our foreign dependence, but we are going to do it the right way—the Members of this body will work together to get that legislation done.

I yield the floor to my colleague.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from New York.

Mr. SCHUMER. I only need 5 minutes of time, and I can yield back the rest of my time to my colleague from Washington to finish. I know she had an hour.

How much time remains?

The PRESIDING OFFICER. There remains 21 minutes.

Mr. SCHUMER. I ask unanimous consent I be given 5 minutes, and the remainder of that 21 minutes goes back to my colleague from Washington State.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I thank my colleague from Washington for her stellar leadership on this issue. She has been just a beacon on this bill, on which it is appropriate to have a beacon. She is the beacon from Washington State, and I thank her for the good work she has done.

I thank my colleague from New Mexico. We are good friends. I regret I feel so strongly about this legislation in opposition to him. But I believe this is the worst legislation that I have seen in my over 20 years in the Congress. It is bad for what is in it, and it is bad for what is not in it. I will speak at much greater length on those issues when I have more time, but I would just like to mention a few things.

It is laden with special interest provisions. There is no question about it. So many people got little things for their States. Some of them are good, some of them are not good. When you add them up they are extremely expensive. It is hard to believe in an administration that is watching costs so much that a bill that was originally $8 billion should balloon to $23 billion. This includes $1 billion to build a nuclear reactor in Idaho. I understand we need projects in people's States to sort of grease the wheels of legislation, but at $1 billion a shot?

There is so much bad in this bill. To me, the two worst provisions are the MTBE and the ethanol provision: MTBE, taking people's livelihood they put into their home; their homes are ruined. Their only hope is for the oil companies, which knew how bad MTBEs were and didn't tell anybody, to help pay. We pulled the rug out from under tens of thousands of present homeowners, and millions of future homeowners who cannot even live in their homes anymore. They can't take a shower. They can't drink the water. And we are saying: Tough luck. We are giving the MTBE industry $2 billion to close. We don't give a small store owner any money when they close. In addition, we say you are absolved from your mistakes and the taxpayers, the homeowners, pick up the bill.

The ethanol provision, I have such disagreement with so many on my side of the aisle I am not going to get into it. Suffice it to say, if you want to subsidize corn, good. Don't make the drivers of New York State or Washington State or some of the other States on the coasts pay for it. I believe this can raise our gasoline prices 4 cents to 10 cents a gallon in my State, and in many others. That is not how we do things around here. It is not how we should do things around here.

How can we be asked to support a bill that does that?

But the worst thing about this bill is what my colleague from Washington mentioned, which is the missed opportunities. If there was ever a time, if there was ever a perfect storm to create a real energy policy in this country, one that we don't have, it is now. We have 9/11, and everyone realizes how we have to become independent of Middle Eastern oil. We had Enron, and everyone realizes the problems in trafficking in electricity and in the grid and that things have to be changed. We had the blackouts this summer, and everyone realizes the grid that we have can't be piecemeal anymore.

These are perfect opportunities to get our hands around the policy that will serve us well for the future. Nothing is in there. It is not simply that there are special interests and a policy, but there are special interest provisions and they take the place of any real energy policy. That is what so bothers me about this bill.

China is adopting more stringent CAFE standards than we are. Should that make us wonder what we are doing?

I read history. Great empires, great countries—and I love this country. It has been the most wonderful thing for my family that has ever happened—begin to lose it when they fail to come to grips with reality. We have a reality here. We have three realities. We are just fiddling while Rome burns. We are dancing on our merry way and giving out a little bit of pork here and a little bit there and a little bit here and not dealing with the fundamental energy problems we face.

I will have more to say later. I thank the Chair. I thank my colleague from Washington for her courtesy. I yield the remainder back to her.

Ms. CANTWELL. Mr. President, does the Senator from Illinois wish to speak? I yield to the Senator from Illinois 5 minutes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Washington.

Mr. DOMENICI. Mr. President, I have been waiting to speak. I didn't understand what happened.

Mr. DURBIN. I believe the Senator from Washington has time remaining and yielded 5 minutes to me.

Mr. DOMENICI. After that, are we finished?

Ms. CANTWELL. I will probably have about 10 minutes left and we will wrap up.

Mr. DURBIN. Mr. President, I thank the Senator from Washington for yielding.

Consider this: You buy a home in a neighborhood and you start hearing about people around your neighborhood who are getting sick. It turns out it is not just a common, ordinary sickness. It is serious; it is cancer. Then you are puzzled and start wondering: Is there something in the water. Isn't that the first thing you ask? Then you find out there is something in the water. It turns out it is something called MTBE. You never heard of it before. They explain to you, it is in the gasoline in your car. Incidentally, at that service station on the corner—the one where they dug up the tank—that tank was leaking. The leaking gasoline from that tank contained MTBE, and it got down so low that it got into the water supply of the village in which you live. The water you have been drinking and giving to your kids contains MTBE.

Studies have shown that MTBE can be cancer causing. Think about that. Totally innocent and unsuspecting, you have now learned that a public health hazard that threatens your family, the value of your home, and your community is linked to something you had never seen before and never heard about.

So what do you do? You are concerned about the health of your family. But you turn around and say: Whoever is responsible for that additive that threatens my family and my home and my community needs to be held accountable.

That is what America is all about. Nobody gets off the hook. So people go to court. They say to the oil company: Did you know that MTBE in your gasoline could threaten public health? Well, it turns out they did. They knew for a long time.

They also knew that if that MTBE got in the environment, that didn't disappear, it stuck around forever. A tiny amount of it could be dangerous to thousands, if not millions, of people. They knew it. They continued to make it. They continued to sell it. They knew all along that people would get sick and some would die as a result of that product.

Should they be held accountable or should they be let off the hook?

Turn to our Energy bill and look at section 1502 which answered that question for America. The makers of MTBE are given safe harbor. It sounds great, doesn't it. Here is what it means. You cannot sue to hold that oil company or maker of MTBE accountable for that deadly additive that is poisoning people and causing cancer if it is a product liability lawsuit—can't do it. But we have decided that in order to strike a political bargain here, we are going to let the oil companies off the hook.

What does the family do? What are they supposed to do about water they can't drink, where people are sick in their neighborhood and where houses are losing value in a community that is scared to death? We tell them to read the Energy bill we are producing here. That is the best we can do for you. We can't answer your problems. We can tell you that we passed a good bill and the oil companies love it.

The Senator from New Mexico came to the floor earlier and very candidly—I salute him for this—said you had better understand the deal. If you want to help ethanol, you had better let the MTBE polluters off the hook. Otherwise, there is no deal.

We have spent 20 years producing ethanol. My State produces more than any State in the Union. I have proudly stood behind this product because I believe it is good, it is healthy for the environment, and it reduces our dependence on foreign oil. But I have said to my friends back home who support ethanol and I will say it on the floor: If the bargain I have to strike for ethanol is to turn my back on families who are dying from disease because of MTBE, the deal is off. The deal is off. That is unjust. It is immoral. It is wrong. If that is what it takes to promote ethanol in America, I will not be part of it; absolutely not. Count me out.

That is a basic injustice, to say those oil companies would not be held accountable for their wrongdoing in order to promote the ethanol industry. It is a deal with the Devil. It is a Faustian bargain, and I don't want to be a part of it, and no Member of the Senate should either.

If this is as good as it gets on the floor of the Senate, shame on all of us. This bill should be stopped in its tracks. We ought to send the people back to the committee and say start over and get the work done. America's energy future depends on thoughtful, visionary policies. It doesn't include this kind of a deal with oil companies to let them off the hook.

How in the world can you turn your back on these families who, through no fault of their own, are facing these terrible health problems? These families can't go to court now to hold the oil companies that knew better accountable. That is what this bill does.

The Senator from New Mexico has been very candid. I admire his candor. But his candor tells the story. We can do a lot better.

I thank the Senator from Washington for her leadership on electricity and protecting our public lands, and other areas.

I yield the floor.

Ms. CANTWELL. Mr. President, I will not take all 10 minutes. I know we have other colleagues in the Chamber. I wish to make one final point.

I thank the Senator from Illinois for continuing his talk about this issue as it impacts his State and national policy which we are all trying to fight. But many of my colleagues know that on one provision in the Energy bill relating to Enron, we really tried to make a point. In fact, 57 Members of this body passed an amendment, albeit on the Agriculture appropriations bill because we couldn't get it on the Energy bill when we recessed in August, which basically said we think market manipulation has taken place and something needs to be done about it.

In fact, at that time I argued that in this legislation we ought to have a prohibition on the types of market manipulation that actually happened with

Enron and include that in the Energy bill. My colleagues on the other side of the aisle drafted language that basically prohibited one of the Enron abuses but not all of the Enron abuses. But in a separate piece of legislation, we got 57 of my colleagues—a majority of Senators—to say, Let's say that market manipulation on contracts was wrong.

That language still exists in a conference committee on Agriculture appropriations. That language is sitting there hoping we will get it out of conference, even though the industry is lobbying against it. Yes, that is right. The remnants of Enron are lobbying against it.

What do we do? In this conference report, we basically change current Federal law and say those contracts shouldn't stand. We go one step further in the Federal Power Act and say manipulated contracts are not in the public's interest.

This legislation should be defeated alone on the fact that it continues the Enron price gouging. We as a body failed to stand up to that kind of activity. We can say all we want about the reforms we have with the SEC, all the reforms we had on auditing, but in our energy policy we have done nothing to be the policemen on the street. These energy companies, under this legislation, are still going to run free to continue to manipulate market. Not only that, we are putting in this bill that it is OK to do so.

I urge my colleagues: Please, in the next 24 hours review this legislation carefully. It has so many issues that are the wrong direction for our country.

I urge my colleagues to stand up to the special interests that have promulgated this bill and say no to the conference report.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, Senator MCCAIN is on the list we made as the next speaker.

I ask if I could speak for about 2 minutes before Senator MCCAIN. He has indicated yes.

Mr. REID. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, fellow Senators, my good friend from the State of Washington went through a series of newspapers and read what newspapers had to say. I will not do that. But I suggest that she and other Senators, instead of reading what the newspapers have to say, read what their constituents have to say.

I want to cite some constituents of hers and of everyone else in the Senate and what they have had to say. The Solar Industry of America applauds this. They are the largest group of American businessmen involved in development of solar energy. They sent a letter in full support, along with the National Hydropower, American Coalition for Ethanol, Renewable Fuels, National Biodiesel Board, American Soybean Board, North American Electric Reliability Council. While we are on that one, let me suggest that the board that looked at the blackout we had in the Northeast and just issued a report. I will talk about it later.

Most interestingly, the biggest thing they found that caused that blackout was the violation of reliability standards. Those standards are in this legislation. That will not happen again. The study group says we have taken care of them in this legislation. Do not forget, if we do not pass this, they are out the window. Who knows when we will get back to them.

The National Rural Electric Coops of America, a letter of full support; the Large Public Power Council; the APPA, the American Public Power Association; Coalition for Renewable Fuel Standards—totally in support. I have a multi-industry letter in support of this bill from Interstate Natural Gas, National Association of Manufacturers, Ocean Industries, National Corn Growers, North American Manufacturers Association, Edison Electric Institute, and Domestic Petroleum Council.

Some day before the debate is over I will finish reading the names of groups supporting the bill. The point I make, it is one thing for the editors of our newspapers to write about a bill, it is another for the thousands and thousands of businessmen, large and small, who are going to benefit from this, to be writing what they think about the bill. Remember, most of the things they are talking about are not in the law now. Throw away this bill and we have thrown away the things they say are necessary for their continued operation in the United States.

The biggest and most important is the wind industry in America, large and small, that produces wind energy for the United States. It is a growing new industry. Listen clearly: It is growing because it has a subsidy. For those who do not like subsidies, we can cut it off and there will be no more wind energy produced for who knows how long, maybe 10 years. Maybe that is what some would like. Without this bill, the current production credit for wind energy is gone. This bill starts it and continues it. It will be gone. It will not be there.

We can talk a lot about special interests, about where the money is going, where the $2.6 billion a year is going over the next 10 years. We have an American energy use of $450 billion a year. We are trying to move it around the edges. It does not seem to this Senator to be an exorbitant amount of money or an exorbitant effort to produce a variety of energies, diversity of source, and diversity of base so we are not totally dependent again on a source such as natural gas, soon dependent on it from overseas.

Overall, there are problems with the bill, yes; problems we had to concede, yes. But overall, it is a bill that will work.

I will answer MTBE concerns at least once a day, but I don't think two or three times a day. I have done it once. I will ask other Senators who are familiar with the subject, including the Senator in the chair, to answer these concerns. Suffice it to say, some of the descriptions about MTBE in this bill are wrong.

I have given my best shot at it, but I will close with a very simple example. If you use Folgers Coffee and produce hot water that is too hot, you sell it and burn somebody with the coffee, I doubt very much if you will sue Folgers Coffee. That is the issue of MTBE. It is a legitimate, valid product, certified by the United States of America to be used. For those who use it right, we have said they will not be liable. For those who use it wrong, and there are many who have, they will remain liable. In 15 years there will no longer be any more of that.

I say to the corn growers, we have the same issue looming over us on alcohol and ethanol. We have said there, too, the product is not liable; using it improperly does create liability.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I think this legislation is very timely because if we pass it, Thanksgiving will come early for the Washington special interests. The American public will be presented with an enormous turkey stuffed with their tax dollars. Tell your constituents to save their holiday Turkey carcasses because this farsighted bill even provides subsidies for carcasses used as biomass to generate energy.

We cannot discuss the bill without looking at the fiscal condition of the United States of America today. According to recent reports, Government spending, thanks to the Congress, grew at 12 percent. We are looking at a half a trillion budget deficit next year. We have gone from a $5 trillion surplus over the last few years to a multitrillion-dollar deficit. So what do we do? We are passing a bill that will increase the deficit by at least somewhere around $24 billion.

By the way, I am really sorry we have not gotten the bill. I understand it is 1,200 to 1,600 pages long. Of course, we are considering it without even having a chance to observe it, but it is printed in the RECORD. I imagine the RECORD is pretty big.

Adding to this feast, this bill also contains the other white meat. Of course, I am referring to pork. I fear for the passage of a 1,200-page, pork-laden bill. The outbreak of Washington trichinosis will be so severe we will be forced to have a field office for the Centers for Disease Control right next to the Capitol. I am not saying this will not generate some energy, not at all. It will fill the coffers of oil and gas corporations, propel corporate interests, and boost the deficit into the stratosphere.

Indeed, I have stated on several occasions the name of this bill should be the "Leave No Lobbyist Behind Act of 2003." Given the magnitude of the largess offered in this bill, I hardly know where to begin. I feel somewhat like a mosquito in a nudist colony. I hardly know where to begin.

At a time when it is crucial for our national security and economic welfare that we pursue a new course toward energy independence and global environmental protection, the provisions in this bill take exactly the wrong direction: increasing our dependence on conventional fuels; increasing environmental degradation; increasing our energy use; increasing our national debt; and diminishing protection for consumers and public health.

Let's start at the top of the corporate subsidy heap. We have the biggest increase in corn and cash this Congress has ever seen, doubling the national ethanol mandate. A doubling. Gasohol production is the worst subsidy-laden energy use ever perpetrated on the American public, and it starts with sweet corn. Ten percent of the corn grown in this country is used to produce ethanol. Corn producers, like producers of other major crops, receive farm income and price supports.

Let me remind my colleagues in the 107th Congress this body passed a farm bill which appropriated more than $26 billion in direct assistance to corn growers over 6 years. That is an average of $4.3 billion in direct subsidies each year just to corn growers. But obviously, they have not gotten enough. But add it up, and we are over $3 per gallon of ethanol.

The cost to consumers does not stop with the production of energy. Environmental costs of subsidized corn results in higher prices for meat, milk, and eggs because about 70 percent of corn grain is fed to livestock. A GAO report concluded, "ethanol tax incentives have not significantly enhanced United States energy security since it reduced United States gasoline consumption by less than 1 percent." So if we double it, maybe we will have less than 2 percent. It takes more energy to make ethanol from grain than the combustion ethanol produces. Seventy percent more energy is required to produce ethanol than the energy actually in ethanol. Every time you make 1 gallon of ethanol there is a net energy loss.

The National Academy of Sciences concluded in 2000 that "the use of commonly available oxygenates in Reformulated Gasoline (RFG) has little impact on improving ozone air quality and has some disadvantages." They found that oxygenates can lead to higher nitrous oxide emissions, "which are more important in determining—ozone levels in some areas."

Reformulated gasoline, without oxygenates like ethanol, are widely available and are superior to gasohol. California has started a program called the "Cleaner Burning Gasoline," which has better fuel economy and overall efficiency than gasohol.

I believe it was in recognition of this fact that the House and Senate both passed Energy bills that would remove the Clean Air Act requirement to include an oxygenate in reformulated gasoline. But, the overall economic and environmental benefits of no longer requiring an oxygenate is wiped out by the $2 billion ethanol mandate doubling ethanol production in this bill.

Another subsidy for ethanol producers is a partial exemption for the motor fuels excise tax, which is paid to the Highway Trust Fund. Presently, corn-to-gasohol producers take a $.052 per gallon exemption from the $.18 per gallon excise tax fuel producers are required to pay into the Highway Trust Fund.

According to a recent General Accounting Office study, between 1979–2000, this exemption has cost the Highway Trust Fund between $7.5 and $11.2 billion.

While a tax credit in this bill, called the Volumetric Ethanol Excise Tax Credit Act of 2003, attempts to change this trend, it merely provides the option for gasohol producers to pay the entire $.18 per gallon excise tax to the Highway Trust Fund, and claim a $.052 per gallon credit on their income tax. The credit would come from general treasury funds, and leave the Highway Trust Fund income in place, most blenders will continue to take the exemption, which is an immediate discount, rather than switching to the credit. This is a useless provision which won't actually bolster the Highway Trust Fund, or the U.S. Treasury. In fact, with doubled ethanol usage, the Federal government stands to lose even more in fuel tax revenue in the upcoming years.

The national ethanol consumption in 2002 was 2.1 billion gallons. Multiply that by 52 cents per gallon, and you see how much revenue the highway trust fund has lost in excise tax in this past year alone. About $1.1 billion. How much more, then, of taxpayer funds, will be given back to the ethanol producers, as ethanol production and consumption doubles? The Joint Committee on Taxation estimates that the ethanol mandate will cost $2 billion over the next 5 years.

For decades the largest ethanol producer has been Archer Daniels Midland, producer of more than one-third of all ethanol in 2002, and whose nearest competitor has the capacity to produce one-tenth of ADM's capacity.

The excise tax exemption from ethanol has been estimated to account for more than $10 billion in subsidies to ADM—one corporation with $10 billion in subsidies—from 1980 to the late 1990s. In fact, it has been estimated that every dollar in profits earned by Archer Daniels Midland costs the taxpayers $30.

Speaking of highly objectionable fuel additives, I must join my colleagues who have spoken against the MTBE liability waiver.

Mr. President, it is an outrage to see a product liability waiver for producers of MTBE retroactive to September 5, 2003. This nullifies the lawsuits against MTBE producers that were filed after September 5, such as the case last year in the Superior Court in California, where a jury found that MTBE was a defective product and resulted in a settlement in which MTBE producers agreed to pay more than $50 million to clean up MTBE-contaminated water supplies.

Who is going to pay to clean it up now? This provision to shield MTBE producers from product liability could, according to the U.S. Conference of Mayors, cost taxpayers—taxpayers, not industry—$29 billion to clean up contaminated ground and surface water.

In 1998, the U.S. Geological Survey conducted an MTBE survey of water wells in industrial areas, commercial areas, residential areas, and mixed urban areas nationwide, and also estimated that cleaning up the MTBE-contaminated sites in soil and water nationwide is approximately $29 billion.

Just when you believe this bill cannot get any worse, it does.

Mr. President, $800 million—I usually go through these bills, and we find pork in the hundreds of millions, sometimes billions. This exceeds all of my past experiences. Mr. President, $800 million for a loan guarantee to subsidize the creation of a brand new polluting, coal gasification plant in an economically depressed area of Minnesota. This new company, Excelsior Energy, was formed by lobbyists and executives with ties to a company that filed for bankruptcy after amassing a $9.2 billion debt and being fined $25 million for market manipulation.

This brand new giveaway, which was in neither the House nor Senate-passed Energy bills, is estimated to cost between $2 billion to $3 billion. While this technology turns coal into a synthetic gas that can be combusted more efficiently, coal plants continue to be a leading source of global warming and should not be subsidized with scarce taxpayer dollars. Further, this $800 million loan guarantee does not require Excelsior Energy to meet any concrete job creation goals or standards. In a time of $400 billion annual budget deficits, why should U.S. taxpayers cover the cost of a new plant that will not even guarantee jobs? Minnesota already has a powerplant owned by Exel Energy. Now they need Excelsior Energy, a new plant burning more carbon?

Mr. President, $95 million for a subsidy for a process known as "thermal depolymerization." This is a good one. Now you can get a tax credit if you compress turkey carcasses into energy. ConAgra Foods and Changing World Technologies, the two companies that would benefit from this giveaway, have built the only commercial "thermal technology" plant, which is located in Carthage, MO. The plant would convert poultry waste products from ConAgra's Butterball Turkey plant into energy.

After including their cash cows and all the polluter pork they could find, energy conferees have now moved on to tax breaks for turkey. I encourage my colleagues to save their leftover turkey this year after Thanksgiving dinner. Instead of making sandwiches the next day, how about turning in your poultry for a tax credit?

An amendment was added Monday night—Monday night—to authorize the lignite coal-fired electrical generating plant, which would employ clean coal technology to provide energy for a rapidly growing region. This amendment was not included in either the House or Senate passed energy bills.

Another provision that we understand was inserted at the eleventh hour, and was never reviewed by either the House or the Senate, would suspend important environmental reviews to facilitate the construction of uranium processing facilities in New Mexico by the consortium, Louisiana Energy Services. A Time magazine article that appeared earlier this year raised serious questions about one of the consortium members, which it characterized as "a European consortium linked to leaks of enrichment technology to, yes, Iran, Iraq, and North Korea—as well as to Pakistan." The article in Time magazine quotes a high-level U.S. nuclear security administrator as saying "to have this company operating in the U.S. after it was the source of sensitive technology reaching foreign powers does raise serious concerns."

I want to add, I do not know if that is true or not. I do not know if the Time magazine story is true or not. We do not know because we never had any scrutiny of the amendment. But I think it is a serious issue. I do not know.

In addition to possible security concerns suggested by the time article, this extraordinary rider raises critical environmental concerns.

Even though I understand that both Tennessee and Louisiana have rejected this facility, the Energy bill rider shortcuts the NEPA process and meaningful judicial review of the Environmental Impact Statement, for the construction of this facility in New Mexico. To add insult to injury, the provision further requires the Government to acquire the waste and dispose of it for a price that is possibly significantly less than the cost.

I ask unanimous consent the Time magazine article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Time Magazine, Jan. 21, 2003]

NUKES: TO PYONGYANG FROM NASHVILLE?

BACKERS OF A PROPOSED URANIUM ENRICHMENT PLANT HAVE A BAD HISTORY WITH KEEPING SECRETS

(By Adam Zagorin)

Is President Bush's "axis of evil" campaign about to be undermined in his own backyard? A proposed uranium enrichment facility planned in Hartsville, Tenn. (pop. 2,395) raises just that question. One of the plant's principle backers is URENCO, a European consortium linked to leaks of enrichment technology to, yes, Iran, Iraq, and North Korea—as well as to Pakistan.

Sources tell TIME that senior Bush appointees, upset by the ongoing crisis with North Korea, have held detailed discussions in recent days on the need to stop leaks of nuclear technology to rogue states. "To have this company operate in the U.S. after it was the source of sensitive technology reaching foreign powers does raise serious concerns," a high-level U.S. nuclear security administrator told TIME, the first public comment by a Federal official on the proposed plant's ownership. "The national security community or the new Homeland Security Department will need to look at this."

Concerns about URENCO first emerged more than 10 years ago when thousands of centrifuge parts, based on URENCO designs, were discovered by U.N. inspectors in Iraq after the Gulf War. A one-time URENCO scientist, known as the "father" of Pakistan's nuclear bomb, is said to have taken URENCO centrifuge blueprints and information on the company's suppliers to his homeland, later passing similar sensitive material to North Korea and Iran.

The company that wants to build the new Tennessee enrichment plant is called Louisiana Energy Services. A consortium of U.S. and foreign companies in which URENCO has a major financial role, LES insists that the link between URENCO and nuclear proliferation is "long ago and far-fetched at this point." URENCO itself has denied authorizing leaks of technology to rogue states.

The only previous attempt by LES to build an enrichment plant involved a multi-year effort in the 1990's targeting a small town in Louisiana. Closed Congressional hearings on Iraqi attempts to acquire nuclear weapons were held not long before, and delved into URENCO's record. Subsequently, powerful Michigan Democrat John Dingell raised concerns that the LES plant in Louisiana might violate provisions governing the movement of classified technology from foreign countries under the Federal Atomic Energy Act. That issue was never resolved, but LES gave up attempts to build the Louisiana facility amid controversy over its impact on nearby African-American residents.

With its latest effort in Tennessee, LES seems especially anxious to avoid a reprise of those controversies. In an unusual move, LES has asked for a greenlight from the Nuclear Regulatory Commission without the usual public comment on various environmental, safety and security issues. But groups like the Sierra Club and the National Resources Defense Council contend that this will simply, "reduce the . . . licensing procedure to a flimsy rubber stamp." LES plans to file its 3,000 page license application with the Federal government by January 30, to be followed by a review process that could take at least a year.

Also controversial are unanswered questions about the disposal of the Tennessee plant's radioactive waste. Officials in Tennessee have reached a tentative agreement with LES to cap the amount of waste and, last week, the company announced that the material would not stay in Tennessee permanently. But it offered no details as to where the waste might be transferred, a process that can be subject to complex federal licensing procedures.

So far few Tennessee politicians have taken a position on the new enrichment plant. That includes Sen. Bill Frist, the new Senate Majority Leader, who has remained neutral on the proposed plant in his home state. But he plans to follow the debate "very closely," says an aide.

Mr. McCAIN. There are also four proposals known as green bonds that will cost taxpayers $227 million to finance approximately $2 billion in private bonds. One of my favorite green bond proposals is a $150 million riverfront area in Shreveport, LA. This riverwalk has about 50 stores, a movie theater, and a bowling alley. One of the new tenants in this Louisiana riverwalk is a Hooters restaurant. Yes, my friends, an Energy bill subsidizing Hooters and polluters, probably giving new meaning to the phrase "budget busters." Although I am sure there is a great deal of energy expended at Hooters, I have never been present. Perhaps something has been missing in my life.

This bill was developed in a secret, exclusive, partisan process, but it is no secret anymore. In the last few days, editorials have appeared in papers throughout the country. Here are a few choice words from various papers.

One thing that is worthy of note, Mr. President, is that for the first time in my memory, the New York Times and the Wall Street Journal both editorialize strongly against this bill. It is on the rarest of occasions that the Wall Street Journal and the New York Times—the Wall Street Journal: "The Grassley Rain Forest Act," which refers to: "Special applause goes to Senator Chuck Grassley for grabbing millions to build an indoor rain forest and a million-gallon aquarium in lush, tropical Iowa. "

Of course, the New York Times editorial, titled "A Shortage of Energy," describes how the bill is a very serious one. Today China's message on energy—where it goes into a report from China—is that the Chinese are worried about their increasing reliance on foreign oil. The difference is, the Chinese are ready to do something about it, where Congress is not. Indeed, loopholes in the Energy bill could make American cars less efficient than they are. While the Chinese say their main concern is oil dependency, not global warming, more efficient cars should help on that, too. And where are our American leaders? Feathering nests rather than imposing discipline on the Nation's fuel use.

I will not go through all of the editorials that I have seen, but it is overwhelming. Everybody who has looked at this bill realizes that it is a terrible mistake. It seems to me that this is the result of a broken process, a process that is conducted behind closed doors.

I still do not have the bill in front of me. None of us do. I guess it is printed in the RECORD. I understand, because it is 1,200 pages long, the RECORD might be long.

There was very little, if any, consultation with other Members of the Senate. My understanding is the Democratic side was cut out of it completely. And we are given a few short hours to examine a 1,200-page "Energy bill."

I want to return to my initial comments. It is serious when we are looking at a $½ trillion debt next year, when we have growth in the size of Government of 12 percent. What has happened to the Republican Party? What has happened to the balanced budget amendment to the Constitution? What has happened to the lockbox where we were going to take your Social Security money and put it into an account with your name on it? Instead, we have a $20 billion and some energy bill loaded with wasteful porkbarrel projects most of us had not either seen or heard of until the last few hours.

I hope we can muster 40 votes—I hope so—because I think we have to restore some kind of fiscal sanity, some kind of environmental sanity to this Nation. This legislative process needs to be fixed.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I see the manager of the bill. Senator DORGAN is going to speak. It is my understanding that Senator COLLINS wishes to speak following Senator DORGAN. Does Senator DOMENICI wish to speak in between?

Mr. DOMENICI. No, I think I will wait.

Mr. REID. Does the Senator from Maine have an idea how long she is going to speak?

Ms. COLLINS. I say to the Senator from Nevada, about 12 minutes.

Mr. REID. Mr. President, I ask unanimous consent that she be given 15 minutes.

On our side, the next speaker would be Senator AKAKA. As we have done during this day, we have gone back and forth on speakers, so after Senator COLLINS, Senator AKAKA would be recognized.

Would you like to be recognized after Senator COLLINS?

Mr. DOMENICI. That is what I thought I said.

Mr. REID. And do you have any idea how long you wish to speak?

Mr. DOMENICI. Ten minutes.

Mr. REID. So Senator DOMENICI for 15 minutes and then Senator AKAKA. How long would he like?

Mr. DOMENICI. Could we substitute Senator INHOFE for me and my 10 minutes and I will come later?

Mr. INHOFE. Let's say 15. It probably will be 10.

Mr. REID. Just so we don't get the time out of balance, Senator AKAKA wants 30 minutes. So Senator DOMENICI would follow Senator INHOFE. Because we are taking a little extra time here, we would have two Republican speakers, INHOFE for 15 minutes and DOMENICI for 15 minutes following Senator AKAKA.

Mr. INHOFE. Let me make a request of the assistant minority leader. Since Senator AKAKA is going to take 30 minutes, would it be possible, after the conclusion of the remarks by Senator DORGAN and Senator COLLINS, to have me go so we would have two at this point and then go to Senator AKAKA for 30 minutes?

Mr. REID. That would be fine. He would be followed by Senator DOMENICI, and then we would have Senator JACK REED go after that for 20 minutes. Senator AKAKA for 30 and Senator REED for 20. I so ask the Chair to approve our unanimous consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have had the opportunity to listen to some of the presentations today. I especially listened to my colleague from Arizona and found it interesting. This is a serious discussion for the Congress. I find much with which to agree with virtually all of my colleagues.

My friend from Arizona just described the serious fiscal policy problem. He says we are spending more money. He mentioned the Congress. It is true that spending is up substantially. The President has recommended very large spending increases for the military budget, very large spending increases for homeland security, very substantial cuts in revenue. We have a fiscal policy that does not add up. There is no question about that. It starts with the President's fiscal policy and begins and ends as well with the Congress. But we have to have a fiscal policy that adds up.

Our economy is dependent on energy. If we don't put in place an energy policy that addresses our concerns about energy and the need for this economy to be satisfied with the energy that is required, we won't have an economy that produces revenue and jobs. If, God forbid, tomorrow night a terrorist interrupted the supply of foreign oil, our economy would be flat on its back. Fifty-five percent of that which we use, in terms of oil resources, comes from outside our borders. Much of it from troubled regions of the world.

I have said for a long while that we need to do four things in an Energy bill. We need to incentivize additional production. The fact is, I want to see us move towards a different energy construct and a different energy future.

But we are going to use fossil fuels in our future. We are going to use coal, oil, and natural gas. So the question is, how do we incentivize additional production of those fossil fuels while at the same time protecting our country's environment, and then, importantly, how do we conserve? A barrel of oil saved is equal to a barrel of oil produced. Conservation is a very important part of an Energy bill. So you have production and conservation. Third, you have efficiency. The efficiency of all the appliances and the things we use in our daily lives is a very important area of conservation.

And fourth, and very important, the issue of renewable and limitless sources and supplies of energy. Those four things need to be in energy legislation.

I will describe what is wrong with this bill, and there is plenty. This bill was, in my judgment, constructed behind closed doors in a manner that was arrogant. It is not going to happen again. Never again are we going to allow conferees to be appointed here in the Senate and then have a conference in which Democrats are told they can't participate. That is what happened in this conference. That is not going to happen again. The next time someone asks consent to appoint conferees, we are going to ask the prospective chairman of that conference, Is this going to be a conference in which you close the doors and do it in secret with no Democrats included? Because, if so, you don't get consent. We are sorry. We are not going to proceed. This will not happen again because it is arrogant. It should not have happened this time. The process was wrong.

Let me talk about what that process has wrought. Some good things and some not so good. My colleagues have raised a series of concerns and objections about this bill. I agree with many of them.

I offered an amendment in the conference committee to deal with MTBE and strip the provision out of this bill that provides protection for those oil companies that produce MTBE, the fuel additive. That amendment was defeated. But I offered that amendment because I feel strongly that this protection should not be in this bill. I strongly supported the amendment to put the Renewable Portfolio Standard in this bill. It ought to be in the bill.

The failure to include the 10-percent requirement for electric utilities to produce electricity, 10 percent of their electricity from renewable sources, that requirement needs to be in energy legislation. It is not here. That is a serious deficiency. There are others.

Let me also say that this bill has some elements that are important. In the area of production, providing incentives for production in certain areas is very important. Let me take coal as an example. Coal can cause some very serious consequences for our environment. But we are going to continue to use coal. So we need an aggressive provision in the legislation dealing with clean coal technology so that we can use coal in a manner that is not degrading to our environment. There is a very serious attempt in this bill to address clean coal technology.

This piece of legislation deals perhaps more aggressively than we have ever contemplated with respect to renewable and limitless sources of energy.

Wind energy. This extends the production tax credit for 3 years. We will see the unleashing, I believe, of substantial new projects to build wind farms in which you take energy from the wind and you extend America's energy supply. That will happen as a result of this bill.

Biodiesel, biofuels, a range of areas dealing with renewable sources of energy, are incentivized in a significant way in this piece of legislation.

My colleague spoke about ethanol. One of the strongest provisions in the bill, in my judgment, is doubling the requirement for ethanol in this country. We are banning MTBE, and for good reason. We are going to replace it with ethanol and double, to 5 billion gallons, the production of ethanol. Don't tell me that isn't good for this country. It is good to extend our energy supply by growing energy in the fields, and it is renewable. You can do it year after year. It produces new markets for family farmers, extends our energy supply, and is good for this country's environment.

Those who call ethanol a boondoggle, in my judgment, don't understand it. It is far preferable to extend our energy supply by growing energy in our fields, producing the agricultural commodity from which you extract the alcohol to make ethanol, have the protein feedstock for animals, extend our energy supply, clean our air, and relieve our dependence on foreign oil. That is a huge step forward for this country. It is not a boondoggle, it is good public policy.

Now let me talk about conservation just a bit. One of the things I have been very concerned about is something called efficiency. This deals with all the things we use every day—stoves, refrigerators, toasters, air-conditioners—these appliances all use electricity. What are the efficiency standards by which we should aspire to conserve electricity and energy?

This bill includes nearly the identical efficiency standards that we wrote as Democrats when we controlled the Senate. That title, in this bill, is a good one. I support that title. It promotes conservation in a strong and positive way.

I believe my colleagues who talk about deficiencies in this bill with respect to the areas dealing with consumer protections are right. I am very concerned about that. But with respect to electricity reliability, the standards in this bill are good ones. They address the issues, not all, but most of the issues that are related to the recent blackouts, which caused electricity outages for 50 million people in this country.

As I mentioned before, there are several things in this bill I don't like. As I reviewed this measure last weekend, I asked myself whether or not we would advance this country's interest if we passed this legislation? I concluded that, yes, we would. But, we leave a lot behind. There will be a lot left to do and to correct if we pass this legislation, but, nevertheless, I concluded that deciding not to embrace the advancements in renewable and limitless supplies of energy would be a mistake. Deciding not to embrace those reliability portions in the bill would be a mistake because we need them. Deciding not to have the clean coal technology that will allow us to continue to use coal without degrading our environment—it would be a mistake not to embrace that.

To decide not to embrace the efficiency standards in this bill for virtually all of the appliances we use would be a mistake.

MTBE should not have been included and I tried hard to take it out. There are other provisions in this legislation that I don't like and they ought to be taken out as well. There are provisions that should be in the bill that are not there. The protections for consumers should have been stronger. If we are going to repeal PUHCA, then we need strong provisions protecting consumers. This falls short, in my judgment.

However, I believe, on balance, this legislation will advance our country's interests in energy production, and we need to produce more. Additionally, I believe this legislation charts a new course that looks at a different kind of energy future, a future I strongly support. That future is hydrogen and hydrogen fuel cells. I have been working on this initiative for a number of years, believing we cannot continue to run gasoline through carburetors. We cannot continue, as we have for a century, to just stick liquid gasoline through the carburetors and decide that is what our future is going to be. That is our past and we should realize if we keep doing that, we lose.

When we began producing automobiles in this country a century ago, we put gasoline through the carburetor. Do you know what we do with a 2003 car? We put gasoline through the carburetor.

The power from that gasoline is much less efficient than going to a different kind of energy future, using hydrogen and fuel cells, which would double the efficiency of getting power to the wheel. Hydrogen is everywhere. We can produce it, we can transport it, we can store it, and we can move toward a different future that will relieve us of our dependence on foreign oil.

I believe strongly that the $2.15 billion in this bill for the hydrogen initiative should have been doubled. I fought like the dickens on the floor of the Senate and elsewhere for an increase in this funding. It did not happen. The fact is, a $2 billion start is not insignificant.

The President proposed in his State of the Union Address something I had already introduced in the Congress as legislation, which is that we move toward hydrogen and fuel cells, as a new energy future. The reason it is important and the reason I support it is because the fastest rising part of our energy consumption is transportation. Why? Because we have decided our automobile fleet has, is, and perhaps always will be a fleet that has a carburetor through which you run gasoline. That doesn't make any sense to me.

We need to make a decision at this point. Let's pole-vault over some of these issues and create a new type of energy future. Some environmental organizations said that when the President proposed this initiative in his State of the Union he was just making an excuse not to deal with CAFE standards, and so forth.

I don't know what the motives are at the White House. I disagree with the President on a lot of things. But I do know this: If we just keep thinking that 25 years from now, and 50 years from now, our kids, their kids, and their grandkids ought to be running gasoline through carburetors, we lose. That is a philosophy of yesterday forever. I don't believe it satisfies the interests and the needs of this country.

You cannot be a world economic power without addressing the issue of energy. We use an enormous amount of energy. We need strong conservation standards, and, frankly, I looked at this bill skeptically last Saturday morning because I worried that the efficiency standards would not be there. But they were—almost the same standards we produced as a Democratic committee when we controlled the Senate.

We need conservation and incentives for new production of fossil fuels in a way that protects our environment. We need strong incentives for the use of renewables. But as important as those measures are, we also need to think differently about the future. That is why the hydrogen title in this piece of legislation is a step in the right direction.

My colleague from New Mexico is in the Chamber. He will not like the fact that when I started I said this process was an arrogant one. I told him during the process, at a time when I was a conferee and was locked out of the meetings, on the floor—and I don't care whether he likes my saying this or not—"You would not accept that in a million years. You would be shouting from the rooftops."

Again, because my colleague wasn't in the Chamber, this process was awful. This process will not happen again because we will not allow conferees to be appointed—we simply won't allow that—until the prospective chairpersons from the House and Senate agree to have real conferences, where both parties are allowed to have substantive discussions on the pending legislation.

Having said all that, and being upset about the way this conference process worked, my main interest today is what is in this legislation for the country. Does it advance this country's interests or does it retard them? Is this a huge giveaway that does nothing to address the country's energy interests? Is it just laden with pork? Is it worthless? Should we start over?

As I look at this bill in the four areas I talked about a year ago—production—production that is sensitive to the environment; conservation—conservation that is real; efficiency—efficiency that really does address those products that we use every day in our lives and the standards by which we improve them and make them more efficient; and finally, limitless and renewable sources of energy—in every one of those four categories, I think this legislation has provisions that commend it for the future of this country.

I can think of probably a dozen areas that I want to strip out of this bill, and I can think of a dozen provisions I want to put in this bill. I can't do that because this is a conference report, and also because I had limited opportunity to do it the other evening when we had a bifurcated, abbreviated conference.

Having said all that, I don't think in this Chamber you ever give up. The Renewable Portfolio Standard, that is coming. It was kept out of this legislation in conference because some people had the clout to do that, but it is going to happen. As sure as I stand at this desk in the Senate, I will demand and enough of my colleagues will demand, a renewable portfolio standard by which we say to the electric utilities in this country that 10 percent of what you produce must come from renewable energy. As sure as I am standing here, it is going to happen because we will make it happen. Not in this bill because it is a conference report and we cannot amend it.

The question is not what is left out or what is in. The question is, Does this product in the aggregate promote this Nation's energy interest as we move forward? Does it advance us or retard us in terms of our desire to do something about energy? Although it is a tough choice, I conclude the right choice is to adopt this conference report.

I regret that I disagree with some of my colleagues. I am usually on the floor fighting for the same interests for which they fight for. I don't come to the floor to challenge their assertion that the MTBE provisions shouldn't be in here. I happen to agree with them. I don't challenge their assertion that there should be better consumer protections. I agree with them. But I also hope they understand that when you take a look at a bill which has something that is historic in renewable fuels and limitless fuels, limitless sources of energy—yes, ethanol especially, but wind energy, solar, and so many other areas of renewable energy—and when you have legislation that has real and significant standards of efficiency that represent significant conservation, and when you have legislation that incentivizes the current production of fossil fuels in a way that allows us to continue to use them in a manner that is safe for our environment, such as the aggressive use of clean coal technology, in my judgment—speaking only for myself—that meets the standard of deciding whether or not this legislation advances our country's interests.

Let us pass what is good and fix what is wrong. We have time to do that as we move ahead in the coming years.

For all of those reasons, I choose to advance this legislation.

Mr. President, I yield the floor.

Mr. DOMENICI. Will the Senator yield before he yields the floor?

Mr. DORGAN. I will be happy to yield.

Mr. DOMENICI. Mr. President, I have on my right a diagram. I wish it were bigger, but I think the Senator from North Dakota can see it.

The Senator spoke about midway through his speech about our growing dependence, and one of the dependencies he spoke of was natural gas. It is almost incredible—we should show the American people this diagram for them to see what has been happening to their country—the red or pink is the annual use of natural gas in our generating capacity for electricity. If we look back to 1990, the pink is hardly a little sliver, and go out to 2003 and we see that almost the entire generating capacity of the country is natural gas.

As the Senator from North Dakota has so eloquently stated this afternoon, it is clear we can't continue down that path. We have to do something about it.

First, I will take whatever criticism he has lodged today with reference to how the bill evolved. I guess it is pretty fair to say that very few people get the luxury, privilege—or whatever it is—of having to write one from beginning to end and get it to the floor. I was given that privilege this year. It could have been done a different way, some of which the Senator from North Dakota has suggested. For that I thank him, and I hope we will do better if we have a chance again.

I also think that his genuine interest in hydrogen as a fuel is not going to go unnoticed. He is right out there ahead of everybody, and he is right.

Some people stand up and tell us: Why don't you change the CAFE standards and reduce dramatically the fuel use of each car that Americans drive? I don't know how the Senator from North Dakota feels about it, but I have been at it long enough to know that the Senate will not do it and the House will not do it. The question is to find another way to do it.

I think Senator DORGAN's notion of having to use another fuel is the appropriate one to be putting our resources, our energy, and our enthusiasm behind with our major researchers and our major companies. If what we got in here is not sufficient, I will join Senator DORGAN as soon as we can and try to put in more.

I would like to see what they do with some of the agreements that are advocated for the use of this money and how we use our technology to heat up that hydrogen so it is usable. I am sure Senator DORGAN would like to see that happen soon, too.

I thank the Senator from North Dakota for his words. Whether they be words that agree with me or words that disagree, I think his conclusion is the one that a vast majority of Senators should make, that we should not throw this package away. We should do it. I know one of his interests is ethanol, and I don't say this just because it happens to be a big interest of his, but there is no question that part of the bill that was hardest to get, and it took the longest and it made most of us frustrated was how do we get that maximum ethanol issue quantity that he described today. It was nigh unto impossible to get the numbers out of the House and out of their writing committees, but we did. We do not get any of these provisions, I regret to say, unilaterally, unscathed, with no commitments of any kind extracted. I am just hopeful that the good outweighs the bad in terms of the compromises we made to get us there.

In my State and Senator DORGAN's State and adjoining States, there are thousands of people who see this bill a little differently than some of those who don't care about ethanol. I heard a Senator say that wouldn't be part of a bill because he didn't think we even should do it, but I don't think that is the Senator's people. I don't think it is the thousands of people represented by these letters of support.

Second, the Senator from North Dakota is absolutely right on renewable resources. We are beginning to make a big show as Americans—solar, wind is beginning to kick up its heels. We have a very powerful tax incentive in this bill. If this bill doesn't pass, it doesn't exist. If it doesn't exist, I don't know what happens to the fast start and the moving along of these technologies. I am not sure.

I have been told by the biggest manufacturers and those who sell this energy that it will stop. Windmills will stop turning within 3 or 4 months because the tax credit will disappear. I don't want that to happen, especially since we are making some very big headway.

I thank the Senator. I yield the floor.

Mr. DORGAN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. GREGG). The Senator has 6 minutes.

Mr. DORGAN. Mr. President, let me say with respect to wind energy, if the production tax credit isn't extended, the windmills will not stop turning. We have very efficient turbines, but the projects that are already planned and ready to go simply will not happen. We won't have the initial capacity for wind energy because without the production tax credit, it will not exist.

Let me make this point. If energy policy is analogous to a novel, then this is a chapter, and we might well decide this chapter ought to be rejected. I come to the conclusion that it is a chapter that is probably worthwhile and is a starting point. I want to at some point in the future amend it, change it, and improve it, but the choice for us is: Do we do nothing and pray that we don't have further blackouts or further price spikes, or, God forbid, a terrorist interrupting the supply of energy?

Or do we enact the proposed legislation and consider it the first brick of a foundation by which we start to construct an energy policy that provides the best of what both political parties has to offer? I come down on the side of believing this ought to be advanced.

There are a series of things I have explained that I believe are important in this legislation, so I will make one final point. Earlier, my colleague from Arizona talked about the cost of this bill. We have a $10 trillion to $11 trillion economy. This economy will only grow if it has a supply of energy. If tomorrow, for some reason, our supply of foreign oil were shut off, this American economy would be lying flat on its back. Talk about consequences for jobs and devastating consequences to opportunities in this country. We have to think through all of this and plan ahead.

This legislation is not as comprehensive, as wise, or as bold as I hoped it would be, but it is a start. I go back to the issue of hydrogen. My colleague talked about natural gas. We are going to face natural gas price spikes again this winter. We have serious supply problems. We have significant problems in a range of energy sectors, in the short and intermediary term with respect to supply and demand. I think we should offer no apology for supporting increased efforts to produce additional fossil fuels. We have to do that.

This legislation has something very important in it dealing with clean coal technology, which I strongly support. So I again regret that I come to a different conclusion than some of my colleagues. I hope my conclusion is right. At this point, as I look at this country's needs and as I balance legislation that has some good features to it, some good titles in it, with some things that should never have been put in it, as I balance all of that, I ask the question: Does this advance the country's energy interest? Do I believe on balance that it makes sense to proceed? The answer for me is yes, and that is why I intend to vote to support this conference report.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine is recognized for 15 minutes.

Ms. COLLINS. Mr. President, I rise to express my strong opposition to the conference agreement on the Energy bill we are debating today.

Our Nation needs a balanced energy policy that will increase supply, decrease demand, reduce our reliance on foreign oil, and protect our environment. Unfortunately, the Energy legislation before us fails to strike this necessary balance. In fact, it would be poor energy policy, poor environmental policy, and poor fiscal policy. It favors special interests, it contains billions of dollars in wasteful subsidies, and it fails to promote energy conservation. It would be bad for Maine's electricity consumers, it would be bad for Maine's manufacturers, and it would be bad for Maine's environment.

I am very disappointed that the renewable energy provision that I coauthored with Senator BINGAMAN was not included in the final version of this legislation. This provision would have required that 10 percent of our electricity come from clean, renewable energy sources by the year 2020. A majority of the Senate conferees voted in favor of this proposal, but unfortunately the House voted to remove it, thus passing up an important opportunity to increase fuel diversity, decrease natural gas prices, and reduce greenhouse gases.

This legislation would do very little to reduce our dangerous and increasing reliance on foreign fuels. The United States is nearly 60 percent reliant on foreign oil, and this number is projected to increase in the coming years, reaching as high as 70 or even 75 percent in the next decade to 15 years.

Senators LANDRIEU and SPECTER and I joined to offer an amendment to the Senate Energy version that directed the President to devise a plan to save 1 million barrels of oil per day by the year 2013. We did not dictate how that should be done. It could be done by increasing fuel efficiency standards for our trucks and cars. It could be done by moving toward more energy-efficient appliances. There are many ways that goal could be accomplished.

Not surprisingly, our amendment enjoyed widespread support in the Senate. In fact, it passed by a vote of 99 to 1. Inexplicably, the conferees voted to drop that provision from the final bill.

This legislation also contains numerous wasteful and very expensive subsidies, including a 5-billion-gallon ethanol mandate that will subsidize corn production in the Midwest at the expense of higher gas prices in New England. Ethanol is more expensive than gasoline. It is difficult to transport, it is of dubious value to the environment, and it does little to reduce our reliance on foreign fuels. In fact, studies show that it takes about 4 gallons of oil to produce 5 gallons of ethanol. If the goal were to reduce reliance on foreign fuels, we would be much better off increasing automobile fuel economy standards or mandating other achievable efficiency improvements.

The liability waiver for MTBE manufacturers also does not belong in this bill. The gasoline additive MTBE is a suspected carcinogen and has contaminated a number of ground water supplies in my home State of Maine, and I know it is also a problem in the home State of the Presiding Officer.

In 1998, for example, a ground water system serving 5,000 people and operated by the Portland Water District was contaminated by MTBE. This incident cost the Portland water district $1.5 million. The liability provisions in this legislation will leave MTBE manufacturers with little incentive to help clean up contaminated water supplies. The likely result will be that municipal ratepayers will have to shoulder a majority of the cleanup costs.

The electricity title of this bill is particularly troubling to me because it is biased against the Northeast. Three months ago, the largest blackout in our Nation's history illustrated the fundamental flaws in a haphazard and poorly regulated electricity market.

Just today, the General Accounting Office, at my request, released a new report on electricity restructuring that analyzed the blackout and identified what steps should be taken to ensure greater reliability of the electric grid. Unfortunately, the recommendations that are in the GAO report fly in the face of what has been done in the legislation we are debating today.

Electricity regulators in the areas most affected by the blackout in the Northeast and the Midwest have stated that the Federal Energy Regulatory Commission, known as FERC, needs to move ahead with standardized electricity markets in order to improve the reliability of our markets. Since electricity flows across power lines without regard to State boundaries, we need clear and consistent electricity rules that apply to the entire Nation. Unfortunately, this legislation would actually prohibit FERC from moving ahead with standardized markets for another 3 years. I am astounded by that.

Earlier this year, many of us representing States in both the Northeast and the Midwest wrote to the conferees to share our views on the electricity issues that were being debated in the conference. We quoted our regulators on the impact of delaying these FERC rules. Specifically, we stated:

> Our States feel strongly that any delay of SMD [the standard market design] hurts efforts to provide reasonably priced and reliable electricity to consumers and businesses.

In fact, Ohio Governor Bob Taft, in testimony before the House Energy and Commerce Committee, stated that he believes that any delay would "impose an intolerable risk on the nation."

He went on to say:

> We urge you to reject proposals to further delay FERC's ability to address issues which have a direct effect on the cost and reliability of electricity, for millions of our constituents.

Mr. President, I ask unanimous consent the letters we sent to the conferees be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Ms. COLLINS. Mr. President, in view of our urging the conferees to not interfere with FERC going ahead with these commonsense and necessary regulations, you can imagine my disappointment to discover that this bill, in fact, delays these regulations by FERC for 3 years.

I am also very troubled by the subsidies for pollution control equipment for some of our Nation's dirtiest powerplants. Why should taxpayers pay for pollution control technologies for 40-year-old coal-fired powerplants that were grandfathered under the Clean Air Act? Recently, when three advanced natural gas plants were built in Maine, these plants installed state-of-the-art, advanced pollution control technologies without any subsidies, without being subsidized by the American taxpayers. The cost of this technology was borne by electricity consumers in the State of Maine and other States in the Northeast. The cost of electricity from the oldest coal-fired powerplants has long been subsidized through exemptions from the pollution controls mandated by the Clean Air Act. To further this subsidy by authorizing billions—billions—of taxpayer subsidies for the dirtiest plants makes no sense at all, and it will have the effect of continuing to ensure a disparity in the price of electricity between regions in which pollution and other costs are subsidized and regions such as ours, in New England, which are not the beneficiary of these subsidies. That is not fair. It is not fair to our taxpayers, and it is not fair to our electricity consumers.

I am further disappointed by the inclusion of language in the electricity title which will undercut the nationwide development of clean power generation. This language, which is known as the participant funding language, effectively negates the benefits of the combined heat and power provisions that Senator CARPER and I worked so hard to include in this bill. The participant funding language actually creates a disincentive for clean energy generation by allowing monopoly utilities to shift the costs of transmission upgrades onto clean power generation, such as combined heat and power—the cogeneration plants.

This provision is particularly harmful to our manufacturers, many of whom use combined heat and power to generate products and jobs.

The last thing we need in this country is another disincentive for our manufacturers. In the Northeast in particular, manufacturers are already struggling to cope with high electric rates. The last thing we should be doing is shifting more of the costs on to them.

The legislation would also increase greenhouse gas emissions, waste natural gas and other already scarce fuels, and harm air quality.

The bill's failure to address climate change is yet another disappointment. It seems a near certainty that greenhouse gas emissions will increase by hundreds of millions of tons under this legislation. Yet the entire climate change title has been stripped from this bill. If we are going to spend billions of dollars on oil and gas and coal projects that will increase greenhouse gas emissions, then at least we should determine whether such an increase in emissions could cause an abrupt and potentially dangerous change in our climate.

Unfortunately, the abrupt climate change provisions that I authored were also omitted from the final version of the bill.

In summary, this bill does not offer the balanced energy policy that America needs. It does not do enough to increase energy efficiency or renewable energy. It does not promote conservation. It does not protect our environment. It does not give FERC adequate authority to provide reliable electricity markets. And it will not reduce our reliance on foreign oil.

I cannot in good conscience vote in favor of ending the debate on this legislation, and I call on my colleagues to take a close look at the provisions of this bill. I believe as they delve into this bill they will realize that it is fundamentally flawed and should be rejected.

In doing so, we would save the taxpayers some $80 billion, and we would signal our support for a more balanced energy policy for this Nation.

I yield the remainder of my time.

EXHIBIT 1

U.S. SENATE,
Washington, DC, July 25, 2003.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.
Hon. JEFF BINGAMAN,
Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DOMENICI AND RANKING MEMBER BINGAMAN: We are writing to urge you to continue our nation's efforts to move toward competitive wholesale electricity markets that will benefit consumers and businesses. National competitive markets, where multiple buyers and sellers can negotiate bargains and pass cost savings along to consumers, are the best approach to the challenges facing the electricity industry.

We would like to bring to your attention a number of issues addressed in the electricity title of the Senate Energy Bill (S. 14) that have implications for residents and businesses in the Northeast-Midwest region.

Delay of Standard Market Design—S. 14 and the proposed substitute amendment delays the implementation of the Federal Energy Regulatory Commission's (FERC) standard market design until July 2005. Electricity markets have outgrown state boundaries. We are writing to express our concern with the proposed delay of standard market design and the provision to make participation in regional transmission organizations voluntary. The delay has serious implications for residents and businesses in the Northeast-Midwest region and throughout the nation.

A standard market design would streamline the wholesale electricity industry, encourage transmission investments and move the lower 48 states toward a more competitive electricity market. Congested power lines, which are the result of the current electricity system, cost customers and businesses throughout the United States billions of dollars each year, whereas competitive wholesale power markets could deliver billions of dollars in economic benefits.

Schwab Capital Markets detailed the importance of standardized markets to increasing investment in our nation's transmission grid and electricity generation.

Testifying before the House Subcommittee on Energy and Air Quality, Christine Tezak with Schwab states: "We believe that capital will be less expensive for all market participants if FERC continues (and is permitted to continue) its efforts to provide reasonably clear and consistent rules for this business . . . Schwab WRG continues to view continued efforts to move forward with the restructuring of the electricity industry to be the best investment environment for the widest variety of participants in the electricity marketplace—whether they provide generation, transmission, distribution or a combination of these services—and most importantly, the most likely to provide sustained long-term benefits to consumers." Further, Ms. Tezak stated: "Congress needs to decide whether or not it still believes in the 1992 Energy Policy Act. Today, Congress is becoming an increasing part of the reason capital is hard to attract to this business. Congress is calling for FERC to slow down, Wall Street is frustrated FERC won't move faster."

S. 14 makes participation of federal utilities in Regional Transmission Organizations voluntary. Federal taxpayer dollars were used to develop and maintain Federal power marketing agencies such as the Tennessee Valley Authority and Bonneville Power. The energy generated by these facilities should benefit all Americans. TVA and Bonneville should be required to participate in RTOs so communities throughout the United States have access to the power generated at these Federal facilities.

The Energy Bill must put national interest above the interest of a few vertically-integrated utilities that want to maintain regional monopolies. We encourage you to support standardizing electricity markets and prevent further delay of these efforts.

Participant Funding—S. 14 and the proposed substitute amendment directs FERC to establish rules to "ensure that the costs of any transmission expansion interconnection be allocated in such a way that all users of the affected transmission system bear the appropriate share of costs." The language requires FERC to fairly align the costs and benefits of transmission upgrades, a judgment that can include a consideration of relevant local factors. This is not only the most equitable approach but also the one most likely to ensure that transmission development will keep pace with growing electricity demand.

Combined Heat and Power—S. 14 currently contains the "Carper-Collins" language which keeps in place incentives to operate combined heat and power facilities until true competition exists in electricity markets. This language retains, for a limited time, the provisions of the Public Utility Regulatory Policy Act (PURPA) which require utilities to provide back-up power and buy electricity from qualifying combined heat and power facilities. As soon as competitive electricity markets are established, these requirements are repealed. Since combined heat and power saves energy, reduces greenhouse gas emissions, increases energy independence, and is good for the competitiveness of American manufacturing, we urge you to retain such provisions.

We urge you to complete the work Congress started with the Energy Policy Act of 1992 to provide reliable, low-cost electricity to customers. Please stand strong against pressure to reverse court on Congress' efforts to establish better working, competitive markets, and to continue working towards competitive electricity markets.

Sincerely,

Jack Reed, Olympia J. Snowe, Edward M. Kennedy, Arlen Specter, Susan M. Collins, Debbie Stabenow, Frank Lautenberg, Carl Levin.

U.S. SENATE,
Washington, DC, September 22, 2003.

Hon. PETE DOMENICI,
Chairman, Senate Energy Committee,
Washington, DC.
Hon. JEFF BINGAMAN,
Ranking Member, Senate Energy Committee,
Washington, DC.

DEAR CHAIRMAN DOMENICI AND RANKING MEMBER: As the Conference Committee on the Energy Policy Act of 2003 continues its deliberations, we would like to bring to your attention an issue of great concern to us.

We believe the Energy Bill must set forth a policy that will complete the work that Congress started with the Energy Policy Act of 1992. The vision of Congress and President George H.W. Bush in 1992 was to transition our nation's electricity industry to competitive wholesale power markets. The vision of today's Congress should be to complete the transition to competitive markets by allowing the Wholesale Power Market Platform (WMP) of the Federal Energy Regulatory Commission (FERC) to move forward.

Wholesale power markets remain the best approach to optimizing our country's energy resources by increasing generation efficiencies, stimulating investment in new technologies and infrastructure, providing greater choice in energy sources, especially in renewable power, and passing cost savings onto consumers. Wholesale power markets have naturally grown into regional bodies, spanning multiple state boundaries. The recent blackouts that impacted many of our states clearly illustrate the regional nature of our electricity grid. Events that occur in one state have impacts in other states.

Moreover, while we respect the need for certain regional variations among power market structures, we firmly believe that any Energy Bill should not harm those regions of the country that want to move forward with efforts to bring the benefits of competitive power markets to consumers. Accordingly, we urge the passing of an Energy bill that will appropriately reflect the physical and business realities of the electricity business by allowing the FERC to implement its WMP.

The FERC's Standard Market Design proposal and subsequent Wholesale Power Market Platform are the logical and necessary responses to the problems experienced by nascent regional wholesale power markets. WMP seeks to standardize market rules while adhering to regional variations and allows FERC to oversee the process of Regional Transmission Organization (RTO) formation and participation. The timely implementation of WMP is critical in achieving the efficient, seamless, and non-discriminatory wholesale power markets that will optimize our nation's energy resources. Delay will only serve to further injure much needed investment in generation, transmission and demand response facilities that are the foundation of our nation's economic well-being.

The health of our state economies depends upon the free flow of interstate commerce governed at the federal level to ensure consistent, clear and fair laws over state lines. Similarly, vibrant competitive power markets rely on the free flow of electrons through state and regional boundaries. To the extent there is a standard set of rules, states with either competitive retail markets or vertically-integrated utility service will benefit in terms of greater efficiencies, greater reliability and reasonably priced electricity that our homes and businesses need.

Furthermore, a delay in the implementation of the SMD rulemaking will only serve to add uncertainty to potential investments in our energy infrastructure and negate years of progress made in the rulemaking process by the FERC, state commissions and market participants alike. Consider the testimony of Christine Tezak of Schwab Capital Markets before the House Subcommittee on Energy and Air Quality: "Congress needs to decide whether or not it still believes in the 1992 Energy Policy Act. Today, Congress is becoming an increasing part of the reason capital is hard to attract to this business. Congress is calling FERC to slow down, Wall Street is frustrated FERC won't move faster."

Specifically, we believe that an energy conference report should:

Support FERC's Efforts to Promote Competitive Wholesale Markets—Our states feel strongly that any delay of SMD hurts efforts to provide reasonably priced and reliable electricity to consumers and businesses. In fact, Ohio Governor Bob Taft in testimony before the House Energy and Commerce Committee stated that he believes that any delay would "impose an intolerable risk on the nation". We urge you to reject proposals to further delay FERC's ability to address issues which have a direct effect on the cost and reliability of electricity for millions of our constituents.

Promote Regional Transmission Organization (RTOs)—Effective, well-functioning regional transmission organizations and independent system operators are necessary for the creation of well-designed, competitive regional markets. The Electricity Title should not disrupt existing regional markets nor stall their development in regions that want to develop them. RTOs and ISOs are a key to effectively managing the increasingly interstate flow of electricity and are critical to the success of electricity restructuring. Increased participation in RTOs will help address the structural problems in our grid that created conditions for the recent blackout. RTOs will help our nation improve our ability to respond to problems in the grid by having an effective regional "traffic cop" with a reliability mission to manage any future incidents. They will also help improve the climate for investment in transmission infrastructure to enhance the reliability of the grid in the first place.

We urge you to complete the work Congress started with the Energy Policy Act of 1992 to provide reliable, low-cost electricity to consumers. Please stand strong to continue the efforts of Congress to establish well-functioning, robustly competitive wholesale power markets while creating a federal policy that would bring much needed certainty to our nation's energy sector.

Thank you for your consideration of these comments and we look forward to working with you to ensure the Electricity Title respects the difference among regions while moving forward with efforts to bring the benefits of competitive power markets to all American consumers.

Sincerely,

Rick Santorum, Jack Reed, Olympia J. Snowe, Edward M. Kennedy, Lincoln D. Chafee, Thomas R. Carper, John Cornyn, Jon S. Corzine, Arlen Specter, Frank Lautenberg, Barbara A. Mikulski, Mike DeWine, Joseph R. Biden, Jr., Carl Levin, Susan M. Collins, Paul S. Sarbanes, Peter G. Fitzgerald, Debbie Stabenow, Evan Bayh, Richard G. Lugar.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I have been listening to the debate. I have come to some conclusions. First of all, one of the things the Senator from Maine said that I agree with is this bill does little to reduce our reliance upon foreign countries for our ability to run this great machine called America. I would like to have had more provisions in there. I would have liked to have had some more generous nuclear generation provisions, maybe ANWR, and a few things that would more directly address this. I am hoping we will be able to do this in the future.

The Senator from North Dakota, when he was talking about the bill, said there were several things in here that he didn't like, and many things in here that he would have liked to have had in here. I feel the same way. That is almost by definition the sign of a good bill because neither one of us is real happy with it. However, we both are going to support this bill.

I think we could have gone further. I have been concerned for many years about our dependency, going all the way back to the Reagan administration when Don Hodel, who was the Energy Secretary at that time, and I used to go around the country to explain to people in consumption States that our reliance upon foreign countries for our ability to fight a war is not an energy issue but a national security issue.

Finally, this is the first approach. I have to say President Reagan didn't really address this, the first President Bush didn't address it, President Clinton didn't address it. This President is addressing it. This may not be perfect, certainly it is far from perfect, but it is the first major step since 1980 to correct a problem we all agree is there.

In deference to the time that we have here I am going to concentrate on one thing. There are a lot of things I would like to talk about because I chair the Environment and Public Works Committee. There are a number of issues that are within my jurisdiction. I thank the manager of this bill, Senator DOMENICI, for his willingness to let me have input even though I am not on the conference over some of these issues that would have been in my committee.

My concern right now, and what I want to address, is the whole idea of the ethanol and MTBE safe harbor provisions. It has been treated as a red herring. I would like to go over what it really is and what it is not. What we have heard on the floor is good rhetoric from the trial lawyers, but it is not factual.

The premise of the ethanol and MTBE safe harbor is simple: If the Federal Government approves and mandates a product, such as it did with ethanol and MTBE, that product should not be considered "a defective product by virtue of the fact that it is, or contains, such a renewable fuel or MTBE." So let's walk through this and see what the safe harbor provision does.

The ethanol and MTBE safe harbor states:

> Notwithstanding any other provision of Federal or State law, no renewable fuel, as defined by section 211(o)(1) of the Clean Air Act . . . used or intended to be used as a motor vehicle fuel containing such renewable fuel or MTBE, shall be deemed a defective product by virtue of the fact that it is, or contains, such renewable fuel or MTBE.

That stands to reason. That is perfectly legal. Yet that is the provision to which most of these people are objecting. How can it be reasonable if we mandate something by law and then turn around and say it is defective by definition? It is just not reasonable.

We know that Congress is mandating renewable fuels in this conference report. The energy bill states:

> Not later than one year after the enactment of this subsection, the Administrator [of the EPA] shall promulgate regulations ensuring that motor vehicle fuel sold or dispensed in the United States . . . contains the applicable volume of renewable fuel. . . .

That is in essence the language of the legislation that we are considering today.

MTBE was also similarly mandated. The Clean Air Act Amendments of 1990 signed into law by the first President Bush clearly states:

> [t]he oxygen content of gasoline shall equal or exceed 2.0 percent by weight. . . .

At that time, Congress knew the only two additives that could be used were MTBE and ethanol. And the Record shows that.

For example, on March 29, 1990, Senator TOM DASCHLE, the author of the floor amendment that established this 2-percent standard, stated during debate:

> The ethers, especially MTBE and ETBE, are expected to be major components of meeting a clean octane program.

Under certain forms of an oxygenate mandate, Senator DASCHLE went as far as to note that:

> EPA predicts that the amendment will be met almost exclusively by MTBE, a methanol derivative.

Senator DASCHLE recognized what we all know: There are substantial benefits to using MTBE as far as environmental protection is concerned. In the floor debate on the 2-percent standard, Senator DASCHLE cited evidence that:

> NO_X, hydrocarbons, and carbon monoxide are dramatically reduced by adding the oxygenate MTBE to gasoline.

So it is clear that Congress mandated ethanol and MTBE in 1990, and, in this conference report, is increasing the mandate on ethanol.

Let me go on reading the ethanol and MTBE safe harbor. The safe harbor applies only:

> If it [ethanol or MTBE] does not violate a control or prohibition imposed by the Administrator of the Environmental Protection Agency under section 211 of such Act, and the manufacturer is in compliance with all requests for information under subsection (b) of such section 211 of such Act.

So the safe harbor in this conference report applies only if you are in compliance with all the tough fuel requirements of the Clean Air Act.

So to review so far, if ethanol or MTBE is used as required by the Federal Government and is in full compliance of the Clean Air Act, it should not be found defective. Alternatively, if a party does not meet the requirements of the Clean Air Act, the safe harbor does not apply, stating that:

> the existence of a claim of defective product shall be determined under otherwise applicable law.

It can still be exercised if they don't comply.

Most importantly, the safe harbor does not impact numerous legal mechanisms available for cleanup and damages. Specifically, the safe harbor states that:

> Nothing in this subsection shall be construed to affect the liability of any person for environmental remediation costs, drinking water contamination, negligence for spills or other reasonably foreseeable events, public or private nuisance, trespass, breach of warranty, breach of contract, or any other liability other than liability based upon a claim of defective product.

In all those other cases, it remains unchanged. The safe harbor does not apply to anything except liability based upon a claim of defective product, assuming they have complied with the Clean Air Act. It is as simple as that.

As the energy conference report clearly states, the safe harbor does not affect liability under other tort theories. Tort law provides a remedy when there is a breach of a duty resulting in harm to a person, property, or intangible personal interests. The following types of actions have been used in environmental cases. These are actions where recovery took place:

Trespass—interference with the plaintiff's possessory interest in his land. Is that affected by safe harbor? No.

Nuisance—intereference with the plaintiff's use and enjoyment of his property—that is not affected by safe harbor.

Negligence—may be a basis for product liability actions, as well as actions involving the release of allegedly toxic materials. negligence could be based on the design of manufacture of the product, or failure to give warnings necessary to make the product safe. Is this affected by safe harbor? No. It is not affected.

Breach of implied warranty—similar to strict products-liability—is not affected by safe harbor.

Under breach of express warranty—if a manufacturer, distributor, or retailer makes express promises regarding a product, the party is liable if the product fails to perform as promised and that failure leads to injury. It is not affected by safe harbor.

The only thing that is affected is in the areas we have been discussing.

Moreover, this safe harbor in no way shape or form impacts any environmental law. The safe harbor provision would not affect liability, and therefore response, remediation and cleanup, under Federal and State laws. The facts of a given situation would dictate which of the following statutes would be most appropriate for an action. Here are examples of environmental laws that could apply. The following are not impacted: The Resource Conservation and Recovery Act, RCRA; Clean Water Act; Oil Pollution Act—OPA; Comprehensive Environmental, Response, Compensation, and Liability Act—CERCLA or Superfund; not to mention natural resource damages available under OPA, CERCLA, and the Clean Water Act. They are not impacted.

Furthermore, the leaking underground storage tanks provision in this energy conference report greatly enhances the amount of resources available to states and localities through the underground storage funds.

If the language and the impact are so clear, why is the debate so muddy? The answer is because trial lawyers stand to lose billions.

What is the positive affect of this safe harbor?

Liability protection is consistent with environmental protection. Without some stability in liability risk, powerful disincentives will be created to continued manufacturing of clean-fuel additives. Why should we manufacture clean fuel additives if there is no protection? Clean fuel programs have saved thousands of lives across the country. Opposition to commonsense legislation may endanger those most susceptible to air pollution impacts by reducing the ready supply of clean fuel additives.

Failure to limit liability endangers future energy security and clean air. Simply put, additive manufacturers will be extremely reluctant to invest in MTBE replacement additives without some sense of certainty that the Federal Government will not allow those investments to become the basis of undue liability. In other words, as additive manufacturers seek access to capital, demonstrating a responsible Federal role in liability limitation may be crucial to justify future investments in clean additive manufacturing. It is simply a supply and demand argument.

In conclusion, I ask my colleagues to look at the facts. The fact is that the safe harbor is a fair and important provision in an important piece of legislation, which is critical to our national and economic security.

The safe harbor only applies to defective products claims.

I believe very strongly we need to have that clarification.

I repeat one more time what is actually written into the law. It says if the Federal Government approves and mandates a product such as ethanol or MTBE, that product should not be considered a defective product by virtue of the fact that it is or contains such renewable fuel or MTBE which is mandated by law. I appreciate the opportunity to clarify that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I rise today to express a profound sense of disappointment. The Nation needs an energy bill. We need a comprehensive blueprint for an energy policy that will take us in new directions, away from dependence on declining reserves of fossil fuel and foreign sources of oil. We need a policy which will reconcile growth and energy conservation in our transportation, manufacturing, utility, and consumer sectors across the nation. We need to bring down the high costs of electricity and gasoline for the country, particularly in my state of Hawaii, and pursue greater energy independence from petroleum products. The conference report does not make these goals achievable.

I believe a comprehensive energy bill is possible. As a senior member of the Senate Energy and Natural Resources Committee, I am familiar with cutting-edge technologies and approaches to generating energy. I was closely involved in crafting the energy bill that we considered earlier this year under Senator DOMENICI's leadership. I also contributed heavily to the energy bill that passed the Senate under Democratic leadership last year.

I wish to thank the senior Senator from New Mexico for his persistence in drafting this energy bill under extremely difficult circumstances. The energy policies that we are addressing in this legislation cover a vast range of authorities and a patchwork of unruly regional alliances. This translates to an enormous challenge, and I appreciate Senator DOMENICI's hard work in the face of this intractable situation. I want to make it clear that I have not given up on the opportunity to have an energy bill and I will continue to work with my colleagues to shape an energy bill for the continental United States as well as for Hawaii and Alaska, which often have special energy needs.

Unfortunately, the report that has emerged from the conference committee does not bear much resemblance to either of the two earlier bills, this year or last year, that had bipartisan support. I rise today to express my disappointment with the outcome of the conference report for several reasons.

I am particularly concerned about Title VIII, the hydrogen title. During the Committee's consideration of S. 14 earlier this year, the hydrogen title authorizing research and development, demonstration projects, and buy-back and fleet provisions was carefully worked out by a bipartisan group of Senators on the Committee. Even though my colleague from Iowa, Senator HARKIN, is not on the Committee, he contributed mightily. The hydrogen title was based on the Spark Matsunaga Hydrogen R&D Act, which has been the basic authority for federal hydrogen programs for the last 20 years. I introduced a bill to reauthorize the Matsunaga Act earlier this year, along with Senators DOMENICI, BINGAMAN, BAYH, LIEBERMAN, KYL, REID, and INOUYE. I continue to believe that the Matsunaga Act's basic focus on renewable R&D for the production of hydrogen is a critical component of a national hydrogen R&D program. I greatly appreciate the vision of Senator DOMENICI, who led the effort earlier this year to craft the hydrogen title in S. 14, along with myself and Senators BINGAMAN, DORGAN, ALEXANDER, WYDEN, SCHUMER, and HARKIN who dedicated time and energy to the bipartisan compromise. Title VIII was agreed to unanimously in the Committee in markup.

Title VIII, as it was crafted earlier this year, contained a robust authorization of hydrogen research, development, and demonstration projects to lead us into the hydrogen future. The title was later successfully amended on the floor during debate on S. 14, led by my good friend and colleague from North Dakota, Senator DORGAN. Senator DORGAN offered an amendment, which I cosponsored, to include important measurable goals and timelines for the commercial introduction of hydrogen fuel cell vehicles.

The federal government should be a leader in introducing hydrogen to the federal fleet of cars, trucks, and vans that are used to accomplish our government's business. Not many people realize it, but the federal government has a fleet of about half a million transportation units that, as a by-product of using fossil fuels, emit nitrogen oxides, ozone, and other pollutants. The original hydrogen title sought to usher in a transition to a fuel cell fleet.

The revised hydrogen title in the conference report eliminates key federal purchase requirements for vehicle fleets, stationary power, and hydrogen fueling infrastructure. It provides only the vaguest guidance to the Secretary of Energy of voluntary projects to shape demonstration programs.

Why are we going to spend $1.4 billion over six years on the production of hydrogen energy by way of a demonstration project using nuclear energy to produce hydrogen? We cannot decide what to do with our nuclear waste as it is now. Why are we going to produce waste by using nuclear material to produce hydrogen? We need to explore the production of hydrogen using renewable resources, and we need to spend a great deal more on it than this conference report provides. Hydrogen may fuel the economy of the future, but we must take action now to ensure that it comes from renewable sources for those parts of the country that will not or cannot host nuclear facilities.

The new hydrogen title authorizes less funding through 2008 than we agreed on in the Senate earlier this year. It eliminates key demonstration programs and federal purchase requirements that I believe are critical to ensuring a hydrogen future. Mr. President, the hydrogen title is a pale ghost of what it was when it left the Senate on July 31st of this year.

This bill has some hopeful features. It provides tax incentives for wind, solar, and geothermal energy—but not enough. It encourages energy efficiency in household appliances and homebuilding. I am pleased that the report contains provisions that I specifically requested for energy studies in Hawaii and insular areas, and for noncontiguous areas to opt-in to the ethanol trading system. I thank Senator DOMENICI and Senator BINGAMAN for their assistance on these provisions, which take into account the unique energy situation faced by more remote states and territories. I also am pleased that Senator DOMENICI has included provisions of a bill I introduced earlier this year, S. 1045, to designate an office in the Department of Energy and a process within the Department for safely disposing of Greater-Than-Class C, GTCC, radioactive waste. According to a General Accounting Office study that I requested on this topic, we need a stronger plan for continued recovery and storage of GTCC waste until a permanent disposal facility is available.

The conference report has some objectionable features. It provides waivers for manufacturers of MTBE, thus leaving it to counties and cities to pay for the cleanup of groundwater contamination. There must be a better solution than that. We cannot leave the burden of cleaning up drinking water contaminated by gasoline additives to local communities.

The conference report also has objectional omissions. It does not include fuel economy standards which significantly increase the fuel efficiency of automobiles—a vital component of a comprehensive energy policy. The American people want to spend less money on gasoline, be less dependent on foreign supplies of oil, seriously address the issue of climate change, and breathe cleaner air. Strong fuel economy standards address these needs. The conference report fails to address the accumulation of greenhouse gases, which I have spoken about several times on the floor of the Senate.

Mr. President, I am disappointed in the conference report. It will not open the door for radically new energy futures such as hydrogen or even liquefied natural gas. It will not alleviate the high prices of energy in the Nation. And it will not reduce our dependency on foreign oil.

I yield back the remainder of my time.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, the Senator from Louisiana is recognized.

Mr. REID. Madam President, if the Senator will yield for a question, through the Chair, how long does the Senator wish to speak? There are other Senators who wish to speak. There is no rush. I want to know when they should come over.

Ms. LANDRIEU. Approximately 15 minutes.

Madam President, I join my colleagues on the floor to make relatively brief remarks about this very important energy bill.

As a member of the Energy Committee that has worked very hard to produce this bill, and as confident as I am that a majority of the people in Louisiana want us to produce a good and balanced bill, I want to stand to support the bill that is before us and to urge our colleagues to vote yes on this measure. I commend the chairman from New Mexico and the ranking member from New Mexico on the Senate side and the chairman and the ranking member on the House side for producing a bill that is truly the best bill this Congress can produce.

Is it a perfect bill? Absolutely not. Does it leave some very important sections out that many of us would like to see? Absolutely yes. Does it address every regional concern? No. And no national bill, no bill that comes out of this Congress, would ever be able to make each region perfectly happy because energy, of all issues, is not really a Democrat or Republican issue. It really is based on the regions of the country from which we all come.

Some regions consume a great deal more energy than they produce. Some regions and states, like Louisiana, are a net exporters of energy. We are proud of that fact. We get beat up a lot about it from people who do not necessarily understand the oil and gas industry, but we are proud to drill in environmentally sensitive ways for oil and gas and proud that we contribute so much to nations energy supply.

So we will never have a bill that is going to satisfy the regional and parochial interests of every Member. I am convinced, having worked on this Energy bill, or something like it, for the 7 years I have been in the Senate, that this is the best bill this Congress can put forward.

The second point is, after we pass this bill—and I am confident we will pass and the President will sign it, there is nothing that prevents us, either individually or as a Congress, from stepping forward in the next few months or years to make improvements and adjustments to the bill. We can continue to push for policies that increase our supply, increase new and renewable fuels, improve our conservation, and make this Nation more energy self-sufficient.

But we have not had an Energy bill since 1992. In that bill, Congress revolutionized wholesale electricity markets, encouraged renewable energy production through tax incentives and streamlined and reformed the licensing for nuclear facilities.

In this bill, one of the things I am proudest of, working with Senator DOMENICI, is to improve, increase and facilitate the construction and licensing of new nuclear facilities because I believe it is time for the United States to have a renaissance in its nuclear industry, so we can increase the supply of energy and drive down prices for all of our consumers, whether they be residential, industrial, or commercial.

For the life of me, I cannot understand why the United States cannot recognize the importance of nuclear energy as a component of our energy policy. Many developed countries, such as France, have realized the new and exciting technologies in this area that make nuclear safe, clean, and reliable. In France, approximately 80 percent of all their electricity consumption is produced by nuclear power.

I am also very proud of the fact that we have, for the first time, recognized the tremendous contribution that Louisiana and Texas and, to a certain degree, Mississippi and Alabama make in producing oil and gas off of our shores.

We have sent to the Federal Government billions and billions of dollars of tax revenues. We have produced many jobs. We are doing our part in Louisiana to make our Nation energy self-sufficient, and we are proud of it because we think for every hour we work, every month we contribute, every year we send money, we put our troops less at risk having to defend America's interests for oil and gas and energy supplies around the world. It is something that people in Louisiana are very proud of.

The fact is, there is something for all of us to gain from this compromise bill. We need to move forward on this bill, in my opinion.

No. 1, it increases our domestic production of energy and, therefore, lowers the prices for everyone. It is hard to estimate what the lowering of the prices will be, but this bill addresses that concern and make steps towards providing a variety of energy sources.

Second, it creates new jobs. So for everyone who is concerned, it lowers unemployment. There is not a Senator in this Chamber who is not concerned about increasing employment rolls and lowering unemployment rolls. This bill, by creating hundreds of thousands of jobs, will, in essence, do that.

We also take steps to conserve, not as many steps as this Senator would have liked to take. I appreciate the comments of the Senator from Hawaii and others, including Senator DORGAN, who spoke about the missed opportunities in this bill. They encouraged us to really step up for conservation measures and I agree. The Presiding Officer made some very appropriate and, I thought, discerning remarks about our missed opportunities for conservation. We have missed some opportunities, but there are still, in this bill, some very excellent conservation and research and development initiatives to be proud of.

I might remind the Democratic caucus, our No. 1 objective—not my No. 1 objective but the No. 1 objective of our Democratic caucus—was not to drill in ANWR. There is no drilling of ANWR in this bill. Other Democrats objected to more drilling off the coast of Florida. There is no more drilling off the coast of Florida in this bill. There were Democrats who objected to drilling in the Great Lakes. There is no drilling in the Great Lakes. So for those who wanted not only energy conservation but, in their view, environmental protections, this bill represents that compromise.

Let me say a word about natural gas because it is very important to Louisiana. Demand is exceeding supply and prices have been abnormally high for the better part of this year. The growing gap between demand and supply has been apparent for some time. Presently our demand is 22 trillion cubic feet annually. The Energy Information Administration projects that the demand will increase by over 50 percent by the year 2025. There is a naturally occurring abundance of natural gas. If we don't do something about producing more of this precious resource the gap between what we need and what we consume is only going to grow. We must act now. If we don't, the problem will continue to drive up prices and make our industries noncompetitive with industries in Europe and Asia, Africa, and other parts of the world. Natural gas is at the heart of helping this Nation to secure and stabilize its employment sector.

In the short term, we provide royalty relief for ultra deep gas wells, something I worked on. I am proud that is in this bill. In the long term, the bill provides for the construction of a natural gas pipeline—a great deal of controversy. The bottom line is this pipeline could bring 65 trillion cubic feet into the market over the next 10 or 20 years. It is gas we need, gas we are going to use, and gas that will lower prices.

In addition to all of that, it is going to put several hundred thousand people to work. Whether you are in Alaska or other States, a lot of people could use jobs right now. This is a jobs bill.

Let me say a word about coal. We don't produce a lot of coal in Louisiana, but there are some States that do. I guess I have a great deal of sympathy for States that, like Louisiana, utilize their natural resources. West Virginia and Pennsylvania are natural resource-based States. Why shouldn't the people of those States get to use the natural resources they have to create jobs and to do it in a way that helps keep the environment clean?

We have some clean coal technology in this bill. It might not be perfect, but what is the alternative? Shut down all the coal mining in the country, put thousands of people out of work, and drive up energy prices? Let's use the technology and encourage the development of even better technology. We have over 250 years of coal reserves in this Nation. The people of our Nation deserve to use those reserves responsibly to their benefit.

I am proud that this bill includes some important renewable fuel standards. In addition to some of the other issues that have been discussed in this bill, we promote wind power. That is very exciting. You wouldn't imagine, though, that we are going to have some of the same interesting debates we have had over oil and gas production; that is, "not in my backyard." I want the energy, but I don't want to see the rigs.

I was quite amused by the fight that went on in Massachusetts or off the east coast about where we are going to put the windmills. People want wind power, but they don't want the windmills that produce the power. Unless our technology can put windmills underground and have the wind go underground, I don't know how we can avoid the aesthetics issue.

Since I am used to seeing oil rigs, I kind of like the way they look and most certainly enjoy fishing around them because they make excellent places to fish that we in Louisiana have understood now for quite some time. I am encouraging wind power and hope we won't have the same "not in my backyard" attitude that we have had about other ways to produce energy. Certainly, wind is a very interesting source of power and evidently something that we will never run out of. It is an endless supply.

We are encouraging wind power in this bill and solar energy which is quite exciting. I happened to visit some of the most outstanding solar institutes in the world, one of my last visits to Israel several years ago. I was very encouraged by the technology that is ready to come on the market with the right kind of encouragement and incentives. Many of these are in this bill. We can create new building materials that can lead the way to the 21st century.

This bill includes $300 hundred million for solar programs, several hundreds of millions of dollars for wind and energy production, and $500 million in grants for biomass programs. Biomass is another example of a new and exciting technology which takes other materials to create energy. It serves to move us to a more diverse portfolio of supply to produce the energy we need for our Nation.

Another important part of this bill is the increased authorization for the Low Income Heating Assistance Program. Being from Louisiana, a State that is hot most of the year, and that we have had a hard time explaining to people that you can die from heat as well as die from cold, we have not been able to get the low-income housing assistance program directed to Southern States. This bill accomplishes that. For Southern States, this is very important to help our people who pay high energy bills and need the air-conditioning, not for comfort but literally to keep them from dying or expiring in some of the hottest and most humid weather. We are very happy that this increased authorization is in this bill.

Finally, I know the chairman from New Mexico and the ranking member will work with us to put some real teeth in the freedom car proposal that the President has launched and I support. It is not strong enough in this bill, but, as I said, nothing will stop us from coming back and putting real time frames and real measures of success.

Mandates for hydrogen fuel cells in our Federal fleet could be added to this bill. But our clean schoolbus technology, some other things that are in this bill, make it, on balance, a very fine bill and one that this country needs.

Again, this is not a Democrat or a Republican bill. It is really a bill in which regional interests are at stake. But from the perspective of Louisiana and particularly in the South, places that produce a lot of energy, this bill gives us relief. It gives us hope that natural gas prices can be reduced. It produces jobs, and it helps us lower the unemployment rate as well as makes our country more energy self-sufficient.

For all of those reasons, I will give my vote and support to the bill.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Rhode Island is recognized for 20 minutes.

MEDICARE

Mr. REED. Madam President, we are debating at the moment the Energy bill, but there is another major initiative that we are all considering. That is the Medicare bill. I would like for a moment to speak about the Medicare bill.

We have a history. For 38 years, Medicare has been a central part of the life of America, not just seniors in America but every American family. Now we are being asked to consider, in the waning days of this session, fundamental changes not just to the addition of a pharmacy benefit for seniors but fundamental changes to the structure of the Medicare Program. We are being asked to do so in the waning hours of this session of Congress.

What we have seen from the situation in the committee is that it was a period of negotiation between very few people, producing fundamental changes for our Medicare system. It is important, I believe, to look at some of the changes today.

Much of the discussion that has taken place in the conference with respect to this proposal has not really been how best to use the $400 billion for pharmacy benefits for seniors but, rather, to make profound changes in Medicare, which I believe undermine, in the long run, the Medicare Program.

One could suggest that the original $400 billion budget allocation for pharmaceutical benefits for seniors was too meager. But we could have addressed at least how to make that money go as far as we could rather than simply using it as, I believe, a subterfuge in some respects to make changes to Medicare that have been promoted by many—particularly conservatives—for years previously.

The purpose of S. 1 and H.R. 1 was supposedly to craft a pharmaceutical benefit. Indeed, what happened is much more profound and more pervasive and indeed will go to undermine our Medicare Program, not strengthen it. I have serious reservations.

We all recognize that seniors need relief. Again, the $400 billion was a small part of the relief they need. It has been estimated by CBO that seniors will spend a total of $1.8 trillion on pharmaceuticals from 2003 to 2012, the 10-year period this bill will likely cover. The $400 billion, in context, is just a fraction of what seniors will pay. Nevertheless, we could have provided, I believe, much more focused, targeted, and beneficial relief to seniors than has been accomplished by this bill. More than that, we could have avoided these very serious and deleterious changes being proposed for Medicare.

Let me address a few issues. There is an issue in the bill that has been discussed, which is cost containment. It represents sort of a doublespeak, if you will. I believe if you asked most of my seniors about cost containment, they would say, hallelujah, finally, you are going to bring down the cost of the pharmaceutical drugs.

Wrong. In the language of this bill, cost containment is limiting the amount of money the Federal Government will contribute to the Medicare Program—not just pharmaceuticals but to the Medicare Program. In fact, if you look at what they have done with respect to the cost of pharmaceuticals they have made it very difficult for the Federal Government, through the Medicare Program, to negotiate lower prices.

Once again, if you asked any senior in this country, or any American, about cost containment, in the context of pharmaceutical drugs, they would say it has to be the reduction in the costs charged to seniors, not a reduction of the contribution this Government will make for seniors. It has turned the whole notion of containment upside down, topsy-turvy. Again, it will go a long way not to help seniors but to continue the unchecked increases in pharmaceutical costs we have seen.

There are reasons for this. Frankly, everyone has to recognize that revolutions in pharmaceuticals have provided a higher quality of health care in the United States. But my expectation, and my hope, was that if we were talking seriously about a Medicare benefit for seniors with respect to pharmaceuticals, we would have been able to use the market power of a nationwide Medicare Program to control prices—not set them but control them through the marketplace.

A large number of beneficiaries, purchasers, could go to pharmaceutical companies, through the Medicare system, and negotiate prices, which represents the buying power of millions of seniors. That is not going to happen because, quite deliberately and consciously, this program fragments seniors; it creates regions where certain programs will vie for the business of seniors through the Medicare system. That is not going to control costs. Yet we are talking about cost containment, not in that context at all but in the notion of just limiting the contribution we will make.

Again, I think what we have to recognize is that this is not going to be the way to deal with the crisis we face today and the crisis of the years ahead.

There is a provision in the legislation which essentially says that as the Medicaid Program exceeds 45 percent of the general fund contribution—our contribution to Medicare exceeds 45 percent of total program expenditures, and then the President must submit a plan to Congress, and there is pressure for Congress to move. But that is a rather arbitrary and artificial way to approach the cost of Medicare.

First of all, it doesn't consider the number of beneficiaries. It doesn't consider other factors, such as quality issues. It is an arbitrary device which I think will not control the real costs, which is the cost of drugs, but it will really inhibit and hamper our ability to serve our seniors. Again, this is one aspect of the legislation that I find particularly troublesome.

There is another doublespeak, and that doublespeak is premium support. Again, if you asked any senior in Rhode Island, Michigan, or Maine about premium support, they would say: Hallelujah, you are going to help me pay my premium; I have been waiting for that. That is not the case. It is helping the private insurance companies by assisting them not only in their operating expenses but with their bottom line in the process. That is not what most people thought about when we talked about premium support.

It will provide wide variations of premiums throughout the country, State by State, and even within States, region by region. Essentially, it will also encourage cherry-picking, a term we are all familiar with, in which these private companies that are being encouraged to now go after the seniors' business will be able to structure their marketing and their appeals to take the healthiest, younger seniors, leaving the older seniors—the most vulnerable and most expensive—to be covered in the Federal program. This will be great for their bottom line, but it will drive the cost of traditional Medicare up and up, and it will run right back into the cost containment trap we set up.

Medicare will be less "efficient" than private plans. Therefore, it will be subject to increased Federal pressure to lower the cost. All of this violates a fundamental principle of insurance, which is that you pool risk by aggregating a range of risk. You don't segregate the healthiest people and say we will ensure just those—well, if you are a profitable private insurance company, you do. But if you are trying to plan for a national program to assist seniors, you certainly don't do that.

It also defies the fundamental facts of history. In 1965, when the Medicare Program was created, seniors could not get health insurance because they were expensive to insure. They were a bad risk. No private insurance company would step up in any systematic way to insure them—unless you were phenomenally wealthy and you could probably pay for all of your medical care out of your wealth. For the average senior, in 1961, 1962 and 1963, you were not getting private insurance. That is why we stepped in. That hasn't changed.

Seniors today are still, on average, much more expensive to insure than younger people because of the nature of life and nature of disease and morbidity—all of this. This legislative proposal totally ignores that 35 years of history and the experience we all have.

Again, going back to our experience, it was not uncommon when I was a youngster, teenager or younger, to visit homes of my friends and there was at least one grandparent there—a grandmother or grandfather. Why? Because their health needs required somebody to care for them. It was the families, the 40-year-olds, 35-year-olds. Much of that changed in 1965 because now seniors had the ability to obtain health care coverage.

This whole system is being threatened by premium support, which will incentivize private insurers to come in and attract and subscribe the youngest healthiest seniors, leaving the traditional Medicare Program with the older, most expensive population to cover; and, again, all of this is leading into that trap in which cost containment will tell the Federal Government, oh, stop, we are paying too much money for seniors.

I believe this is, again, a profoundly poor concept, and it is further complicated and exacerbated by another aspect. We are creating a $12 billion stabilization fund, again, for private insurers. We are taking Medicare money, the money which our seniors—in fact, all Americans believe we are earmarking for senior health care and setting up a fund—a slush fund—that will provide further incentives to private health care purveyors and further unbalance the playing field between traditional Medicare and these new private plans.

We could have done much with this stabilization fund. We could have lowered the so-called donut hole when benefits expire for some seniors and then renew themselves after several thousand dollars of additional expenses. We could have closed that gap. We could have done a lot of creative, innovative things that not only would have assisted seniors but would also make a real concerted effort to control the cost of the program in a principled way. Yet we didn't do that.

We have created a situation in which, again, the deck has been stacked against traditional Medicare and against, I believe, the logic of insurance of aggregating as many risks as possible across regions, across the country, across ages from the youngest seniors to the oldest seniors, the healthiest seniors to the ones who are sick and frail.

We are also going to hit and create a situation where we will give incentives to these companies to fragment the Medicare system. Frankly, if insuring seniors was a profitable area of endeavor, 35 years ago we wouldn't have had to step in and create Medicare. If it was a profitable endeavor today, we wouldn't have to have a $12 billion stabilization fund, and we wouldn't have to have premium support.

We will spend more money than we have to and we will get less for our money and seniors will get less in terms of the benefits, not just pharmaceutical benefits but the overall Medicare Program. I emphasize again, this is not just trying to tailor and contain the cost of pharmaceuticals. This applies across the board.

Ms. STABENOW. Madam President, will my friend yield for a question?

Mr. REED. Yes.

Ms. STABENOW. I thank my friend from Rhode Island for laying out in a clear and concise way what our concerns are about this bill.

Madam President, wouldn't the Senator agree that our first goal should be to do no harm, rather than the items he is talking about? That the first goal of any plan to provide Medicare prescription drug coverage should be to make sure people are paying less and getting more coverage and getting more help? This bill doesn't do that, does it?

Mr. REED. I concur with my colleague from Michigan. Our first goal should have been to do what we told seniors for years we were going to do: help them buy pharmaceuticals, not change, undermine Medicare but to help them buy pharmaceuticals.

We could have applied all that $400 billion to do that. We didn't. We have stabilization funds to encourage private health concerns to compete with the traditional Medicare Program; we have health savings accounts, with billions of dollars there to encourage the insurance industry to sell health care plans to individuals. All of that very scarce money could have been used simply to say how much can we help the seniors to buy drugs and maintain our program. I agree with the Senator.

Ms. STABENOW. If I may ask another question, what the Senator is saying is there are billions of dollars being used in this plan on items that have nothing to do with helping pay for medicine, helping people get their care; is that right? The Senator is talking about billions of dollars going to HMOs, to insurance companies to help them compete against Medicare, which costs less, and that money could be used to buy medicine for people?

Mr. REED. The Senator from Michigan is absolutely right. I said this before. This represents, in some respects, the greatest bait and switch in the history of the Republic. Seniors think they are getting pharmaceutical protections, and they will wake up and discover the Medicare Program they thought was there forever has been changed irrevocably.

Indeed, even the pharmaceutical protection is not that extensive, comprehensive, or effective. The Senator's point about the cost of traditional Medicare is well taken. We already have experience with this. We have had the Medicare+Choice plans. These are private plans that are not able to provide a benefit as cheaply as traditional Medicare.

The 2003 Medicare trustees report estimated that reimbursement from managed care enrollees would exceed traditional Medicare costs. We are reimbursing HMOs more to care for their Medicare beneficiaries than we are through the traditional Medicare Program. We know that. That is 2003. That is the report of the trustees of the Medicare system. Yet we are still under this illusion that if we pour more money into the private HMOs through slush funds, through premium support—through all sorts of mechanisms—somehow we will change the reality.

We are not going to change the reality. The reality is that this general Medicare Program is efficient, is effective, it has stood the test of almost 40 years, and it is a system that I think every American sees as being effective, efficient, and, indeed, an important part of their family's well-being in the future as it has been in the past.

Ms. STABENOW. If I may continue with questions, when the Senator is saying this shifts money to HMOs and to insurance companies, I assume—at least my understanding of HMOs is—you don't choose your own doctor. We are talking about seniors who now can go anywhere. I know in Michigan, they can go from the Upper Peninsula over to Detroit over to the west coast and the cost is the same. They can choose their doctor and go to the hospital they want.

Madam President, is it true that what Senator REED is talking about will take away people's ability to choose their own doctor and hospital?

Mr. REED. The Senator from Michigan is right again. Not only do you not have the ability to choose your own doctor, but sometimes it is the HMO that chooses you. We had the experience in Rhode Island of seniors signed up for HMO programs and the HMO said: We are not making enough money; we are leaving. They left the seniors high and dry. They found care by going back to the general Medicare system or another HMO. They found coverage, of course.

This is a one-way street. It is not a two-way street. You get to do what they tell you you can do. That is the way they make money. It is a profit-making enterprise. Frankly, there is nothing wrong with that, and if we were the managers of these companies, we might be pursuing the same techniques of carefully selecting our beneficiaries and questioning the doctors in every instance about whether this procedure is right or wrong. In fact, the greatest criticism of HMOs comes not from seniors but doctors. They can't abide working with them. It is accountants, not health care people, who are making the decisions.

We are setting this system up again. It is unbelievable, in some respects, that having had the experience of Medicare+Choice, having had the experience of a private insurance system that wouldn't touch a senior in 1965, and having the success of Medicare, we are entertaining these notions as if this is a good change, this is a good thing. We haven't learned.

This represents a triumph of aspirations or hope over the facts and reality of 30-plus years of experience and of the dynamics of the marketplace.

I thank the Senator from Michigan for her intervention because it has been useful in clarifying the discussion.

There is one other area that concerns me, and that is the notion of means testing. In the doublespeak of this bill, it is not means testing, it is income relating. It is like cost containment and premium support. It is income relating. It is really means testing.

What it does is it begins to lower the effective subsidy that the Federal Government provides the seniors based on their income. Frankly, starting off at a level of $80,000—you may say, well, maybe it is not too bad; maybe people that comfortable should be able to pay.

The point is, it begins to add another way in which we will segregate participants in the Medicare system because if your subsidy falls from 75 percent, which is what it is roughly today, down to 20 percent, that will be wealthy Americans, if this plan goes through, what it does is start raising questions: Why should I be in Medicare?

If I have to pay copays and I have to do this and I only get small support, why should I be in Medicare? A multiple class of health care is being created in this country. For all these reasons, I hope we have time to debate. I hope we have time to look at the legislation very carefully and not in the last few moments vote because time ran out.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I ask unanimous consent that Senator CLINTON be allowed to speak following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. STABENOW. I first want to again commend my friend from Rhode Island for his comments in laying out the concerns that many of us have. In thinking about this and thinking about my coming to the Senate, I came with a very important goal. One of my top priorities has been to help create a real comprehensive Medicare prescription drug benefit. Part 2 of that is to lower prices for everyone, for our seniors, so that the Medicare dollars, those precious dollars, can be stretched farther, but also for our businesses who are paying for very high health care costs.

We know about half of that is due to the explosion of prescription drug prices. So for businesses, for workers, for families, we have, I believe, an obligation to do everything we can to create more competition and more accountability to bring prices down. I came to the Senate with those two goals for health care for our seniors, as well as lowering prices for everyone.

Even though the bill that passed the Senate was not at all what I would personally have written, it had good bipartisan give-and-take. We passed a bill that I was willing to support in the Senate. Even though I believed it was just a first step, there was much more that could be done. We did include a strong bill to close patent loopholes and allow unadvertised brands, called generic brands, on the marketplace for better competition. We did create a low-income benefit that I believe was very good for seniors and a number of other provisions, helping our rural health providers, as well as all of our doctors and hospitals and other providers.

Now we are in a situation where, unfortunately, instead of the bipartisan effort that we came forward with in the Senate, we have seen a plan put forward primarily by only one side, and, unfortunately, one that goes way beyond the scope of any bill dealing with prescription drugs.

On the positive side, it does have positive provisions that can be pulled out if we choose not to move forward with this bill. I would hope in a bipartisan way we could pull out providing for rural health, pull out provisions for our physicians who continue to be cut and threatened with cuts as they are providing care for our hospitals and home health and nursing homes. We can do that if we want to. We can pull that out and pass that. It is very positive.

When we look more broadly at this bill, it is not a comprehensive prescription benefit under Medicare. It is not even a good first step. As my colleague from Rhode Island said, it feels like bait and switch. We are talking about prescription drug coverage, and we are going to end up dismantling Medicare. We started out talking about: How do we help seniors pay for their medicine? How do we make sure folks are not choosing between food and medicine and paying the utility bill? How do we make sure we do not continue to have the explosion in prescription drug pricing that is affecting every part of our economy and every family in this country? That is what we started out to do.

Now we find ourselves in a situation where the fight that started to add a drug benefit to Medicare is turning into a fight to save Medicare as we know it, to save it as a universal health care benefit, the only one we have in this country.

I view this as a matter of values and priorities. I am very proud of the fact that in 1965, this Congress and the President of the United States came together and decided that we, as Americans, were going to say to those 65 and older and the disabled in this country that health care would be there for them; regardless of where they live, regardless of their situation, health care would be for them.

Now, what has happened? Well, we have seen the quality of life improve for older Americans. We have seen people live longer as a result of the benefits of Medicare. Those over the age of 85 are the fastest growing part of the older generation. Why? Because Medicare has made sure that health care is available, the doctor is available, the hospital is available, and so on. This is not a bad thing. This is a good thing. This is a great American success story that we should be celebrating together, not beginning the process of unraveling the promise of Medicare.

When I explain to folks what is before us, they look at me, frankly, like I am crazy. When we say, well, we have a deal for you; a quarter of Medicare beneficiaries would pay more for their prescription drugs under this plan, not less, not even the same but more. That is because 6 million seniors who are the poorest of the poor, who are on Medicaid, 6 million seniors who really are choosing between their food and their medicine would end up paying more under this plan than they would staying under Medicaid.

Another issue of particular concern to my State, up to 3 million seniors could lose their current coverage. In Michigan, I have a whole lot of folks who have worked hard their whole life, sometimes giving up a pay raise to get good health care and to get a good pension. In fact, in my State of Michigan, it is estimated that 138,810 Medicare beneficiaries would lose their retiree health benefits under this plan. How in the world can that be a good idea? How in the world can we say to people, "We have a deal for you; you are going to lose your coverage as a result of this plan"? We started out saying we are going to put together a voluntary prescription drug benefit under Medicare, and now we are seeing a situation where people would actually lose benefits.

In Michigan, 183,200 Medicaid beneficiaries, the poorest of the poor seniors, will pay more for their prescription drugs that they need, and 90,000 fewer seniors in Michigan will qualify for low-income protections—90,000 fewer than in the Senate bill that we worked on, on a bipartisan basis, because of the assets test and the lower qualifying income levels.

I see my friend from Iowa, who I know has worked very hard on this legislation and who led the effort in the Senate that resulted in a bill that many of us embraced because it was a true, honest, bipartisan effort. I thank him again for that. This bill does not reflect what we did in the Senate. It does not reflect what we did on a bipartisan basis.

Unfortunately, even though hours and hours have been spent on this issue, we find ourselves in a situation where too many of the folks we represent will be worse off than they are now. That is of deep concern to me.

I am also very concerned that we are not seeing the competition put into this bill that would lower prices. When we talk about bringing prescription drugs back from Canada in particular, which is right next to my State of Michigan, that is something near and dear to me and the people I represent. It takes only 5 minutes to cross a bridge or a tunnel to go to Canada to bring back prescription drugs. Many of them are made in the United States. In fact, most of them are made in the United States, sold in Canada for 50, 60, 70 percent less, and then brought back.

In some cases they are prescription drugs that are made by American companies but actually manufactured in other countries—Lipitor, manufactured in Ireland; Viagra, manufactured in Ireland. They have a way to safely bring those back to the United States, working with the FDA and the companies. With a closed supply chain, they can do that.

There is absolutely no reason we cannot do that through our licensed pharmacists in the local drugstore or the licensed pharmacists in the hospital. There is no reason we cannot do that if we want to do that. It is just as safe. It can be crafted to be exactly the same, and just as safe, by allowing our local pharmacists to bring back these lower priced drugs to the local pharmacy rather than doing what is happening today, which is too many folks getting in a car or a bus and going to Canada.

I do have concerns about folks going through the Internet more and more, or mail order where they are not working with a physician, not working with a pharmacist, and don't know the interactions of their drugs and may not know, in fact, where those drugs are coming from. That is something we ought to be tackling as well from a safety standpoint, but that is different from reimportation. That is different than giving licensed pharmacists the ability to do business with a licensed pharmacist in other countries and, in particular, Canada where their system is so much like ours in terms of safety.

I am very concerned that that provision is not in this bill, despite a heroic effort among House Members, a bipartisan effort to pass a bill that would do what needed to be done to create that competition.

Also, I am very concerned that we have a lessened provision in here relating to closing patents and allowing more generic drugs to compete on the market because those things would really bring prices down.

Although we have yet to see everything in final form, it is my understanding there is actually language that doesn't allow Medicare to bulk purchase, to negotiate on behalf of all of our 39 million seniors to get a big group discount to lower prices.

Essentially, on top of our poorest seniors paying more, those with coverage possibly losing their coverage, we are being told that our precious tax dollars and Medicare dollars are going to be forced to pay the highest prices for prescription drugs. In fact, because our uninsured pay the highest prices in the world, I think it is fair to say we would be paying the highest prices in the world for Medicare prescription drugs. That means the dollars are spread even thinner than they would be. In order for us to really spread these precious dollars as far as they can be spread, we need to bring prices down. This bill not only does not allow competition, it stops Medicare from group purchasing in order to bring the price down.

Thank goodness we don't include that language for the VA and our veterans. In the VA, we negotiate for our veterans for prescription drug coverage. We don't pay retail as the Federal Government. We don't pay retail. We get somewhere between a 30 percent and a 40 percent discount.

That is exactly what the pharmaceutical industry doesn't want to happen under Medicare, which is exactly why there is no competition in here. There is no ability to group purchase in terms of overall Medicare leverage.

This is a bill celebrated by the large pharmaceutical companies, because they know they are going to get a whole new group of folks, their customers, who will be locked into the highest possible prices.

I know they have a reason to celebrate. I understand. There are six drug company lobbyists—probably more with this bill but at least six—to every one Senator. They must be celebrating. But I know the seniors of this country and the disabled, when they see what is really happening—unfortunately, it doesn't take effect until 2006 so they won't really be able to see what is happening until then—but once they see it, they are not going to be celebrating. They are, in fact, going to be very angry.

We can do better than this. We have to do better than this. There is no reason we can't come together, as we did when this bill was before the Senate, and work out something that makes sense. People are counting on us to do that. They are trusting us to do that.

Unfortunately, what is in front of us is much more about making sure we are protecting special interests than the people's interests. This is much more about HMOs and insurance companies and pharmaceutical companies than what seniors are going to be doing tonight when they decide if they are going to be able to have dinner or they are going to have to wait because they have to buy the medicine tomorrow.

We can do better. I hope we will. If what comes before us is what we have heard and what I have described tonight, I will strongly oppose it and do everything I possibly can to join others to oppose this and send this back to the drawing board.

I saw some numbers this morning of a poll done in the last couple of days of those 55 and older, describing this plan. It was interesting to me, of those polled, 65 percent who were members of AARP said: Go back and go to work and get it right. Don't pass this.

I agree with those 65 percent of the people. I know they reflect the people I represent in Michigan. I urge we go back to work and get it right.

The PRESIDING OFFICER (Mr. ALEXANDER). Under the previous order, the Senator from New York is recognized.

Mrs. CLINTON. Mr. President, this is a day of considerable activity around the Senate because we have two significant pieces of legislation that are drawing the attention of Members who come to this floor to express their opinions. It is hard to know where to start. There are significant problems and issues with both the Energy bill and the proposed Medicare bill. But because they have only recently been provided—with the Energy bill only in the last 24 to 48 hours finally being made available; with the Medicare bill still not being available in its full form—it is difficult to know what to say because, although we have the outlines of legislation, we don't have the full details, and we certainly don't have adequate time to digest and analyze these important matters.

So, I am sure that, like others, I am somewhat bewildered by the rush to deal with these two bills, to force action before the Thanksgiving holiday on such grave matters before our country.

I want to say just a few words about the Energy bill, and then I want to say a few words about the Medicare bill, because I think it is important that the country understand what is at stake with both of these significant changes.

With respect to the Energy bill, I am strongly opposed to it. I think it is bad for my State of New York and I think it is bad for our entire Nation. Yet I am very disappointed to find myself in this position where I feel compelled to oppose something called an Energy bill. There are provisions in this bill that are good, ones that I have worked on and have supported and am very pleased that they made their way into the final product.

Of course, after the August blackout, I wanted to do everything I could in my power to ensure that New Yorkers never had to go through anything like that again. I thought certainly in the face of a massive blackout that this body and our friends on the other side of Capitol Hill would rally together to take appropriate steps to increase the reliability of our electricity transmission and distribution system. What could be more obvious? The lights went out, and they went out because of failures and problems within that system.

Unfortunately, the Energy conference report did not get that job done, which to me is job one. I know the bill's proponents point to the fact that it includes mandatory enforceable reliability standards. I agree. Reliability rules are important. There should be mandatory rules with penalties, but those rules are not terribly meaningful if the entities that operate and manage the transmission system are unable to plan for and respond to crises. For that, you need a transmission system to be operated on a regional basis so responses can be coordinated on a regional basis and connected up to a national grid. At the very least, you need regional transmission organization.

What have we found out today? There has been a report issued about what happened to cause the blackout. Although details are not yet fully available, we know there were a number of causes for what happened to us on August 14. The fact is, no one appears in charge of the sprawling, heavily loaded, and troubled part of the transmission grid running around Lake Erie. A portion of the Midwestern grid centered in Ohio has long worried industry regulators.

The Energy bill that passed the House yesterday and which is now before us would create operating rules to lessen the risk of blackouts, but it does not overcome that region's fragmented line of authority where control is shared by 23 different power and transmission companies. The bill before us prevents the Federal Energy Regulatory Commission from setting up regional transmission organizations—so-called RTOs—that can effectively coordinate transmission on a regional basis.

If you are supporting this bill because you think it will prevent future blackouts, you had better take another look at the bill.

I start with this point because it is absolutely critical to my constituents and because there has been a lot of talk about how we had to move this bill because of the blackout. But how ironic it is that we move a bill which does very little to solve the problems that have now been analyzed and pinpointed as being at the root of what happened to us in August.

That is just one of many problems with the bill. I join many of my colleagues in expressing dismay about the MTBE provision in the legislation.

First, the bill provides a retroactive liability waiver for MTBE producers. This provision turns the so-called polluter-pay principle on its head. It basically says to communities from New York to California: Guess what; we may have contaminated your groundwater, we may have contaminated your wells, and we are not going to help you clean it up.

I heard some of my friends on the other side say: Wait a minute; it doesn't remove liability from people who negligently used MTBE. The fact is, there is no good use for MTBE. It is a contaminant. It pollutes water. Whether somebody poured it in fast or poured it in slow, the result is the same.

We don't know the full cost of these cleanups. I have read estimates that it could be on the order of $29 billion nationwide. In New York, we are coming to grips with that kind of extraordinary cost, especially in light of the budget problems that we face.

Paul Granger, superintendent of the Plainview, NY, Water District, has provided estimates to my office about contamination on Long Island, one part of our State. But it is a beautiful part that has an underground water aquifer from which we draw water for Long Island. Mr. Granger estimates that testing the 130 supply wells known to be contaminated by MTBE will cost between $990 million to $1.4 billion. If you divide the 3.3 million Long Island population into that cost range, the MTBE drinking water cleanup costs will range from $118 to $315 per person. The cost impact for a typical family of four trying to make ends meet would be from $472 to $1,206 per family.

With respect to the Plainview Water District, Mr. Granger informs me that in the event that MTBE wellhead treatment is required at all of its facilities, the average monthly cost for water will jump by 49 percent.

As far as I can tell, this is another one of these unfunded mandates we like to pass around here. You have problems with water contamination directly caused by a contaminant that was manufactured by large conglomerates. They have deep pockets, and they could at least participate or contribute to helping to clean up water systems on Long Island, across New York, and across our country.

Well, you are out of luck. Is that fair? I don't think it is fair. I don't think it is fair to the people of Plainview, NY. But it is fair if you consider it along those terms for the MTBE producers.

Apparently, that is all that matters to the people who put this bill together. Maybe they don't have this problem in their States, although I have looked at the numbers. It looks as if all but 8 or 10 States are affected by MTBE. The costs associated with cleanup—where is money going to come from? Is this body going to pass on the billions and billions of dollars that are going to be needed to clean up our water systems across our country?

I can't imagine under our current budget situation that is a likely possibility. Therefore, what are we going to have happen? Once again, the taxes on local people will rise—again, another unfunded mandate just like special education, just like No Child Left Behind, and so much else that we passed in this body and then let somebody else pay for it.

New York City, which obviously has a very significant water issue, had been taking action to try to get some help in paying the bills and had sued the MTBE producers. Under this bill, their lawsuits are going to be thrown out of court.

I find it hard to understand why local governments aren't going to be permitted to protect themselves and to get the resources from the people who profited from producing and selling MTBE. I thought that is the way the system worked. Somebody said it is the trial lawyers. I don't think so. Mr. Granger in Plainview, NY, and the city of New York are trying to protect their water supply. Yes, they may have to go to court to do that. Why should they be prohibited in this bill from doing so?

As bad as the MTBE liability waiver is, the bill doesn't stop there when it comes to the MTBE producers. Unbelievably, the bill provides $2 billion in grants to MTBE producers. What about grants for the water systems of our country? What about lending a helping hand to Plainview, NY, and all the other places in my State that are looking at tens of millions of dollars to clean up their water supply?

I can't understand how anybody can go home from this body and go back to wherever they represent and look into the eyes of their fellow citizens and say: Not only did we tell your mayor and your city council and your county leaders they couldn't sue, we are going to give $2 billion to the folks who polluted your water but not a penny for you.

I wasn't on that side of this argument. Nevertheless, that is what is in this bill.

There are many other problems in this bill. The numerous rollbacks of environmental and health protections deeply concern me.

I hope we will be able to revisit those and try to figure out ways to avoid turning the clock back on making our air cleaner, on helping people avoid the ill effects of pollution and contaminants in their emissions.

But there is so much else in this bill that, unfortunately, I believe will set us back. It is a shame because there are many ways this could have turned out differently, that we could have had the good provisions without so many of the egregious ones being put into this legislation.

I will now turn to the other issue we are confronting in the Senate. I don't see how we can deal with a Medicare bill of this significance at this time when, so far as my office knows, we still do not have the final bill as I came to the floor. We will have a lot of explaining to do to our constituents.

Every Member hoped we could get a bill to provide a prescription drug benefit for our seniors. They need it and they deserve it. I wish I could support this bill. Analyzing what we are able to find out and what the likely impacts will be leads me to conclude that not only will this bill not deliver on the promise of a drug benefit for our seniors but it will mean the slow, but steady unraveling of the Medicare system.

Let's look at some of the people who will be directly affected by this 1,100-

page bill. I cannot avoid mentioning this is a long bill. I am not sure anyone has read it yet—maybe some staff person in the basement has read it all—but it is 1,100 pages. I remember another long bill 10 years ago, a bill to change the whole health care system, not just tinkering with Medicare and trying to provide a benefit.

A lot of our seniors are asking: What does this mean? Who can tell me what is in it? How will it affect me? On an individual level, that is an impossible question to answer. We do not know who is a winner or loser. My office is being inundated with calls from constituents, asking: I am a senior in New York City living on a small pension; what does this do for me? Or a widow in Buffalo, with high drug benefits: What does this do for me? We do not know yet.

Here is what we do know. At first glance, there are a number of groups who definitely lose under this legislation. The numbers in the groups add up to about 25 percent of all Medicare recipients, 10 million or so. This bill causes retirees to lose benefits they currently have. At least 2.2 million retirees will lose under this deal and over half of them have incomes below $30,000. In New York, over 200,000 Medicare beneficiaries are likely to lose their retirement benefits.

As a result, my phones are ringing off the hook over this. People are saying: I have good benefits; I do not want this if it will take away the good benefits.

I have to say, honestly, based on my reading, the assessment on the numbers who will lose, I may even be a little conservative. Nevertheless, there will be a loss.

We could have done more to avoid having 2.2 million lose, but the conferees chose instead to spend $12 billion on a slush fund for private insurers and $6.8 billion on tax breaks that will undermine insurance coverage even beyond Medicare.

It is fair to say this bill threatens benefits that people already receive from their employers. There is no argument it is going to take that reality and turn it into something other than what it is. It is a bitter pill to swallow.

This bill also threatens to reduce drug coverage for the 6 million people who are eligible for both Medicare and Medicaid. I have spoken about the so-called dual eligibles before because they are the people about whom I am most concerned. They are the lowest-income, sickest Medicare beneficiaries. Many rely on Medicaid right now for drugs because Medicare does not cover drugs. This bill bars Medicaid from providing drugs not covered by the new Medicare plan. That is a departure from the practice for all other Medicare benefit gaps. This will affect nursing home residents, people with disabilities, and the truly indigent nationwide. We estimate it will affect 440,000 in New York alone.

If we look at the New Yorkers who are eligible for both Medicaid and Medicare, right now they can get access to any drug they need and they can access most any pharmacy. This bill will increase their copays, limit their choice of drugs, and restrict the pharmacy network.

HIV/AIDS patients are particularly affected since this bill only requires coverage of two drugs in any class. HIV/AIDS patients need multidrug cocktails that may require more than two such drugs and often require very specific medicines that are prescribed for their condition. Some drugs they might take or have taken for a period of time could eventually encounter resistance within their bodies. For those patients, this provision on dual eligibles does a grave injustice.

The millions who currently receive coverage through State prescription drug assistance programs, such as the one we have in New York called EPIC, are also at risk. In New York, over 400,000 seniors, nearly a quarter of our Medicare beneficiaries, rely on EPIC, which does not have a formulary and often offers better coverage than what a senior will be able to get under this bill. The compromise in the bill puts seniors in EPIC at risk of a new formulary, higher copays than they have now, and places limitations on the pharmacies they can use. It will force the New York Legislature to change the law and the design of EPIC, assuming they even want to continue it.

I have also asked that seniors who will either have to disenroll from the current EPIC plan or will have to enroll in two plans to continue to qualify for drug coverage be given a grace period so they are not penalized if, in the confusion and disruption of this transition, they do not understand what they have to do to continue to get whatever State program is available because they have to sign up for a new Medicare benefit program to continue with EPIC.

I recently heard from the people who are finalizing the bill that the new formularies, limitations on pharmacies, and higher copays will not only affect seniors in State prescription programs but also veterans who depend on the VA and members of the military in TRICARE, many of whom currently pay very low and in some cases zero copays. Again, the millions who have coverage throughout these programs will be worse off than they are now.

What about the issue of premium support? For those 6 million seniors affected by the premium support experimental demonstration, overall Medicare premiums will increase yet again: this time, as the price of privatization.

MedPAC has studied this issue and found that private plans cherry-pick. That means they pick the healthiest seniors to be in their plans. That is how they make a profit. If you are insuring the healthiest people, you do not have to pay as much money as if you insure people who are not so healthy. Therefore, they try to attract the healthiest beneficiaries. That way, they get a big payment for those healthy beneficiaries and they, frankly, do not have to pay much out when it comes to beneficiaries needs.

The GAO has said the population is so much healthier that the Medicare+Choice plans are now overpaid by 19 percent when one considers the health condition of their beneficiaries.

If fee-for-service has to compete and it is the only plan willing to continue to serve the sickest and costliest patients, anyone who wishes to keep their regular fee-for-service Medicare will see their cost rise, probably up 5 percent each year. But who knows how high that percentage will go in the future? Ultimately, the 6 million seniors across the country who are going to be put in the demonstration experiment will pay more just to maintain their Medicare benefit.

This is not just an academic exercise for me because New York is likely to be one of the States with residents chosen for this experiment. Our seniors will be used as guinea pigs, so to speak, in the rush to try to in some way prove that Medicare, which has the most cost-effective delivery system, which has provided a guaranteed benefit that is the same across the country now for nearly 40 years, is somehow inadequate and unable to really deliver the goods. So we are going to see what happens when over 500,000 New York seniors who reside in areas that could be chosen for premium support are thrown into that mix, and told that you are just going to have to pay those higher prices, and just shovel that money out the door to the HMOs and other health insurers that are going to be standing there with their hands out.

But the bill does not just create a radical scheme for Medicare; it really does take aim at our whole system of insurance by the inclusion of these so-called HSAs. They used to be called MSAs, medical savings accounts; so now I guess they are health savings accounts. The new name does not change the fundamental problems with these proposals.

By promoting these accounts, these provisions will allow wealthy and healthy seniors to get tax benefits. But it would also mean increased premiums of as much as 60 percent for those who wish to keep their current private insurance.

To arm the enemies of Medicare, there is a so-called cost containment provision which designates an arbitrary cap on Medicare. We are bound to hit that cap as the baby boomers age. Once we hit it, that guarantees that current Medicare benefits will be on the chopping block year after year. So

I have to send out a big warning to everybody on Medicare, but also to those like me who are not that far away from Medicare, that we are looking at the dismantling of this program, and we are moving back toward a survival of the richest and the fittest.

Now, considering all those harmed by the bill, you would think we would be getting a generous drug benefit out of all of this. Well, in fact, we do not. Many seniors will be paying more out of pocket for drugs under the skimpy benefit in this proposal than they are now without any so-called drug benefit at all.

Every single senior in this country will pay more out of pocket than they do now for doctor services in 2005. That means that before the drug benefit even starts, seniors will be hit with increased cost-sharing. Seniors can expect a 10- increase in their Part B deductible right away, and yearly increases after that for the first time in history. Those increases are pegged to grow at a rate faster than seniors' Social Security checks.

In addition, the drug premium may be $35 a month, on average, but it increases so quickly that seniors will be left paying more and more for little additional benefit.

As we know, this bill creates a new insurance structure where seniors will continue to pay premiums for part of the year even though they are receiving zero benefit at the same time. Now, I don't know. I don't think we have ever passed an insurance plan in this country where you are told you have to pay all year but there are going to be a few months in the year that you don't get sick, don't get hurt, don't have an accident because you will be out of luck.

There is not an insurance commissioner in this country who would gladly allow such an insurance policy to be marketed in their State. Yet here we are. Seniors will pay premiums, even in the so-called gap months, when they have no benefits.

Then the $35 premium goes up to $40, and then nearly doubles, reaching $60 by 2013. I think that is a burden for seniors if the benefit they return is not guaranteed all year, every year, and if it, in and of itself, may not even meet the cost they put into the system.

I have heard from some analysts that the break-even point for seniors in this bill is $835. Now, 40 percent of seniors spend less than that on drugs each year. According to the analysis I was given, this bill will actually represent a net loss to 40 percent of our seniors if they join. That is a lot of seniors. We are talking about 16 million or so. They will end up paying more in costs in premiums than they receive in returns. So when all is said and done, this is a bill that decreases some people's benefits, eliminates other people's benefits, and costs more to many.

I think history has demonstrated the political repercussions of such experiments that go right to the heart of what people value the most; namely, their health.

But now, even though there are many losers in this bill, I want to be fair. There are also some winners. They are many industries and some individuals. But there are winners. A recent study found this bill will give drug companies a $139 billion windfall. Because there is no cost containment in the bill, the drug companies are assured of their profits.

Furthermore, the health plans—already overpaid 19 percent compared to what Medicare is paying for seniors in traditional Medicare—will receive another 7 percent on top of that in addition to the $12 billion slush fund in this bill.

Now, there may be some help in this bill for some of the 12 million or so Medicare beneficiaries without any kind of drug coverage—not through Medicaid, not through Medicare+Choice, not through the VA, not through TRICARE. They simply do not have it. Maybe some among those 12 million might be winners but only if they make it through a thicket of confusion and hit a moving target.

Because, let's face it, this is a very complicated bill. It is going to be very complicated to implement. I remember hearing a lot of complaints about that bill of 1,300 pages, the Health Security Act back in 1994, and that dealt with the entire health care system, not just with seniors.

Now, all signs show this bill is not seeking to add prescription drugs; it is seeking to change the whole health care system. I have to give them credit, they got it to 200 pages less, so that is some accomplishment.

I think we ought to look at what is going to be facing seniors as they try to make decisions about their health care.

What I have done is to take the tales of two seniors, to look at what the differences would be, and what a typical senior would face when trying to determine what they could have under this bill.

The first tale concerns a retired small business owner in New York City, an urban senior. Now, this senior has many choices in the first year, 2006. He looks at his choices. He has PPOs and HMOs and private drug plans and Medicare. He has choices. So he takes a look at his choices and decides to stay in traditional Medicare. He picks the private, stand-alone drug plan with the lowest premium of $35 a month.

He gets into that plan.

Then he discovers, too late, that his drug that he has been taking for a few years is not on the private insurer's formulary. So even though he has had bad side effects from the drug that is listed, he has to go through a lengthy appeals process. Although he eventually wins his battle with the private insurer, he has had to pay out of pocket for the drug in the interim.

So suppose what he is suffering from is, let's say, diabetes—a very common disease among our seniors. In the process of trying to get on the right drug, trying to pay for the drug he has been on, he is locked into this plan and he cannot change until the next year.

Now, let's go to year 2, 2007. So let's say the private drug insurer plan the senior was in has dropped out of Medicare, which happens all the time because its low premium, the $35 a month premium, could not sustain enough profit. But our elderly gentleman does not mind because he wanted to switch anyway. He did not want to stay in that drug plan because they did not treat him well.

So he chooses another private drug insurer and he pays a higher premium. This time he decides to go with a more expensive premium, thinking he is going to get more of what he needs. He pays $50 for drug coverage on top of his now $79 Part B premium. But he makes absolutely sure his drug for diabetes is on the plan's preferred drug list and he can continue to see his doctor.

During the year, however, the private insurer changes its formulary—there is no rule that says it cannot—so that his drug gets assigned a higher coinsurance amount. Although the plans can change what they cover during the year—it can be the old bait and switch: Sign up with us. Your drug is on the formulary; and 6 months later, no, it is not—the senior cannot get out of the plan until the year is up.

So year 3, our senior does the math. This is a man who has really been working on this. He has spent a lot of his waking hours trying to figure out this maze of so-called benefits.

To stay in traditional Medicare, he will pay the monthly premium of $83 in 2008, plus at least $50 for prescription drugs, in addition to relatively high copayments. The private insurer he was with has dropped out. If he joins an HMO, he can pay $75 for base Medicare coverage, plus $42 for prescription drug coverage. Now he is up to $192 a year extra to stay in regular Medicare, and he has to worry about whether or not the private drug plans are going to change on him again as they have in the past.

You could make this even worse because suppose that the HMO plan no longer recognizes his doctor, and if he joined he would be stuck again for another year. It just goes on and on. I am not looking forward to explaining this to my 84-year-old mother. We are going to have to set up a whole gigantic bureaucracy of individual case counselors to try to explain to seniors what this all adds up to. And this maze, this totally confused picture, is what is available in an urban area where at least there are choices for seniors. Let's look at what happens to a woman who lives in upstate New York.

Let's pick an 85-year-old widow who has had a stroke. She hasn't had drug coverage before. She has lived on a Social Security payment and a small pension from her late husband. She took regular trips across the border to Canada, though, because we are lucky in upstate New York. We can just go right across that border, or we used to be able to go right across that border. She could afford those drugs because they were a lot cheaper, and they were absolutely the same drugs. She takes five different drugs on a daily basis.

In the first year, 2006, no private HMOs or PPOs plan to come to her town. She is up in the north country, up near the Adirondack Park. For anybody who has been up there, it is really beautiful. It is isolated, and it is really rural. She loves living there, and she wouldn't live anywhere else.

Well, she has never had any of these private plans in her community before, and she doesn't know what is going to be available to her. So two of the new private drug-only plans are offered. One has monthly premiums of $60; the other has monthly premiums of $50. The lower premium plan has a complicated set of copayments that tends to be higher, when you add it all up—assuming somebody helps you figure out how to add it all up—than the higher premium plan. But she goes ahead and chooses the $50 plan, and she sees some relief. But she calculates that with annual drug costs below the catastrophic benefit, she is still not getting a very good deal because for her, she is still paying about 70 to 80 percent of what she had before.

Now year 2—and this happens all the time in rural areas, as we know—the private plan drops out of Medicare. That is a common experience for rural residents. So Medicare must provide a fallback plan. This plan seems quite good to our widow. She pays $5 less than what she paid in the private plan the previous year, and her prescription drug benefits are covered. But year 3 the local papers announce that the payment rates for HMOs, which are 30 percent above the local cost of traditional Medicare, have finally attracted an HMO to the area. Remember, we are pumping all this premium subsidy out there. We have billions and billions of dollars to entice folks to come to the North Country and other areas.

Well, this creates a dilemma for our senior because she now has to determine with whom she can go and who is going to take best care of her because if the HMO comes, maybe it will attract some competition. And let's say that another private drug-only insurer shows up. Medicare is providing bonuses to private plans who come to the area. So as a result, remember, even if it only lasts for just a year, even if it doesn't have your drug on the formulary, even if it no longer is affordable for you, once you have two competing private insurers, there is no fallback plan as an option. So the senior faces the so-called choice of monthly premium increases of $24 to stay in traditional Medicare or just $1 more per month to join the HMO. Given that this difference is $288 a year, it is not even a choice. That would wipe out her annual increase in Social Security benefits.

She feels forced to go into the HMO. She loses her doctor, she loses the drug that she needs, and she has to go through an appeal. I can guarantee you, there is not going to be a lot of appeals courts in isolated areas like the North Country. So it is going to take a while even to go through this. Now this 87-year-old woman is having to fight for, litigate for, argue for the drug her doctor says she needs, or her former doctor, because she can't go to him anymore because there is no affordable regular Medicare fallback. So she is stuck with one of these two private plans. Here today; gone tomorrow.

The lesson I draw from this is whether you live in a rural or an urban area, your choices are tilted toward enrolling in HMOs and PPOs. I think that is a shame.

Medicare's strength, a reliable system of coverage and predictability, will have been replaced by a complex, insured-driven, cherry-picking system. There may be some seniors who will be helped under this bill. I hope I am healthy enough when I reach that age that I am not going to be disadvantaged by whatever we have in place, but I find it hard to explain how we could end up with a bill that is so much narrower, so much more uncertain than the bill that received a majority of votes in the Senate last year, the Graham-Miller-Kennedy bill.

Among those who might gain under this bill, they are not only small in number, they don't even know who they are. I asked seniors this morning at a big meeting: Who among you knows for sure that you won't get hit by the fine print in the bill? How many of you really believe you are winners under this bill? Don't you wonder why nobody is really telling you everything you need to know to be an informed citizen, to make a decision in your own mind that you can then tell your elected officials what you think should be done?

We are on a course to passing a bill where no senior watching or listening to this debate is going to be sure that he or she will be helped. We have pushed it past the next election so the full burden of trying to figure it out won't really fall on anybody until 2006. And if you look at this chart, it is kind of hard to draw any other conclusion. If you are a retiree, you would have no idea of knowing whether your former employer will keep you or drop you. If you are poor, you be poor enough to get coverage under Medicaid. And if you are, you may no longer get all the coverage you need for your needs. If you are sick, will you be sick enough to be covered under Medicaid, and under this bill will Medicaid really cover your particular health care needs? If you are in a nursing home, are you going to be really left to fend for yourself in a nursing home in a State prohibited from providing Medicaid wraparound funding? And your health needs will compete with those of children and other needy people. If you are in a State prescription drug program, you will pretty likely be a loser as well. If you are in the premium support guinea pig category, good luck, because I think you will see that you are going to have an amazing obstacle course to try to run.

I must say many of the obstacles confronting our seniors are triggered by decisions we have had made for us in this conference that was quite small in number and exclusive in membership and came out with a product that is going to be very hard to defend. It will be particularly hard to defend if we look down the road and we see the threats to Medicare on the horizon.

I have heard colleagues say—and I respect this—that this bill is not perfect, but it is all we could get. I understand that perspective. There is good and bad in every bill. I don't think since I have been here I have voted for a perfect bill or voted against a totally bad bill. I understand that perspective. I am grateful this bill does take steps to help our rural and small community hospitals to resolve some of our teaching hospital issues and to address the absolutely compelling physician payment issues. We should be addressing those important matters, but not in the context of a bill which will further undermine the program providing the capacity for hospitals and doctors to provide decent care at an affordable cost.

This bill has too many flaws for us to go forward. The privatization scheme that is tied into this bill, in a box with a big bow saying prescription drugs, is one that will make structural changes to this program which has been the bedrock of protecting our seniors and guaranteeing them the health care they have needed.

So I hope we can still salvage this bill. I hope we can still try to keep faith with our seniors. I think we should postpone dealing with it beyond the forced deadline of right before Thanksgiving, so that everybody has a chance to read and evaluate it.

But if we are required to go forward, then I certainly cannot be a party to a bill that I think will undermine health care for our seniors, fail to provide the benefit that is advertised, and lead to the slow and steady unraveling of

Medicare, which I consider to be one of the great achievements of our country in the 20th century.

On behalf of the hundreds of thousands of seniors I represent, who are definitely losers under this bill, I have to respectfully request that we go back to the drawing board, that we try once again to do a job on a bill that will really help our seniors, and that we not take steps that will undermine the guarantee of health care under Medicare.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, is there a time agreement?

The PRESIDING OFFICER. There is not.

Mr. SESSIONS. Mr. President, I don't think we are rushing into the prescription drug bill, nor are we rushing into the Energy bill. We have been wrestling with those bills for an interminable period of time—years. They have been up and down and debated and discussed, and conferees have worked their hearts out on these bills.

We are spending, on prescription drugs, an additional $400 billion. I don't believe anyone is going to be hurt by this effort. AARP has reviewed this bill and they support it. They would like it to spend even more, but they are supportive of this bill as a historic effort.

There is no doubt, with regard to prescription drugs, that there is the potential to provide the poor in this country, many of whom this very day are choosing between food and drugs that they need for their health, with prescription drugs essentially for free, up to 150 percent of the federal poverty level. A huge percentage of the seniors in this country are going to have access to necessary prescription drugs, virtually free, under this bill.

If there is any problem with it, I suggest that maybe we have done a bit too much, that we could have been somewhat more restrained and focused less universally on this bill. But conferees debated it and it is a bipartisan effort by Democrats and Republicans in both the House and the Senate. Now we have a bill and we will have to see how it goes.

I hope to be able to support it because I told my people in Alabama that I wanted the people who could not afford drugs to have them paid for. This change does, fundamentally, make sense. At the present time, we pay for your surgery, we pay for your heart operations, but we will not pay for the drugs that we know will help prevent a heart operation. We will not pay for the drugs that could avert the need for a kidney transplant, but we will pay for the kidney transplant. It is an odd thing.

I will take a few moments to talk about the MTBE question. It is a matter that has become a big point in the debate on the Energy bill. Frankly, I think it is a bit overdone. Some senators have said that if a company makes a product, the company ought to pay for it if their product causes damage. But that is not true. That is not the law in America.

That is not classical American liability law, tort law. As a matter of fact, it is an indication that this Congress and this country is losing its discipline on what is a legitimate basis for a lawsuit.

You can say, well, they made MTBE and it got into the water system in this community; therefore, the maker of MTBE ought to pay for it. They say that is what the law ought to be and they ought to pay.

Would somebody say Folgers should be responsible if a Folgers brand of hot coffee burned somebody in a McDonald's restaurant, or that McDonald's should be liable? If somebody takes a can of Campbell's soup and smashes a guy on the head with it, is the maker of the can of soup liable? Certainly not.

Let me share a couple of things. After 9/11, we realized we were facing a situation in which airlines had suffered a dramatic loss of ridership. Somebody woke up and said: Wait a minute, they are going to sue the airlines for 9/11. Why? Well, maybe somebody was asleep at the switch when a terrorist got by, so we can sue them. They think the airlines have a lot of money and they can pay for everybody and everybody will make lots of money. We can attach liability to them.

Congress, in considering that, passed legislation that would compensate the victims in New Jersey and their families for $1 million or $2 million each. As a consequence of that, they would waive liability claims against the company. The airlines' planes were seized, commandeered by terrorists. In truth, in the history of America, under classical law, the airlines are victims just as much as the owner of the Trade Center towers is a victim. We are in a situation in which the lawsuits in America, having eroded classical constraints on them, too often are successful in suing whoever is standing around—whether they have any real liability or not.

I think about the gun liability question. There are over 60 Senators, including Democratic Leader TOM DASCHLE, who support legislation to protect gun manufacturers, under certain circumstances, from liability. Why? Because cities and other groups, for political reasons, are suing the gun manufacturers because someone used their gun and committed a crime with it.

Well, under the classical rule of law—and I used this defense in one case—a person is not responsible for an intervening criminal act. The gun manufacturers make a gun that does what it is supposed to do. You aim it and point it and a bullet hits something or somebody. That is what the gun is supposed to do. The Federal Government passes legislation about how and to whom you can sell a gun, under what circumstances. They have to sign a statement, and there is a waiting period. They have to certify that they are not a drug addict or they have not been convicted of a felony. Then they can buy the gun, under certain circumstances. States have even more rules, and they comply with that. But they want to go further. They want to sue the gun manufacturer because somebody took a legal product, sold according to Federal law, and used it for a crime. They want to sue the gun manufacturer because I guess they think the gun manufacturers have a deep pocket of money. That is not what we ought to be about.

The MTBE was essentially a Government requirement over a decade ago. It is an oxygenate. It was produced and it did what we required to be done in order to improve air quality in America. The EPA could have stopped it if they had wanted to, but they never stopped utilization of it. It was encouraged. It was passed by Senator DASCHLE, who introduced an amendment that required it to happen. Everybody knew MTBE would be the product utilized more than any other product as an oxygenate to meet the environmental regulations.

So you say, well, if they put it in the water system, they ought to be liable. Right, if they put it into the water system, they ought to be liable. But if they didn't put it in the water system, they ought not to be liable. It is getting into water, but not because it is burned in the engines and goes through the environment and settles into the water. The argument is that some water aquifers are being polluted with MTBE as a result of leaking from tanks and from pipelines and matters of that kind.

It is legitimate, fair, legal theory that if a manufacturer of MTBE allowed its pipeline to leak or allowed the storage tanks to leak and the chemical got into the water system, then you can sue him. That is what we ought to be doing.

As I understand the language in this bill, it does not prohibit that kind of lawsuit. If you allow it to escape negligently into the system, then you are liable. That is what classical American law is all about. That is what it has always been about. However, it has never been about the producer of a substance being liable for pollution if somebody else takes it and dumps it into the water system of America. How ridiculous can that be? The person who dumped it in the water system is the one who ought to be liable and ought to pay.

As I understand the language in the bill, that is all that it says. You have to be the one who was responsible for letting it get into the water system. Maybe it is a local gasoline distributor who has a bunch of old tanks that leak and that person allowed it to get into the water. Is a manufacturer somewhere that didn't have any contact with this company liable for the leak? Certainly not. If we have any legal discipline left in this country, certainly not. But that is where we are heading.

I also know there have been a good many problems with leaking tanks in this country. There is a big trust fund—I believe there is $2 billion in that fund—in case the gas station or the small gasoline distributor has gone bankrupt, doesn't have insurance, or doesn't have any money. What happens then if some of these even more dangerous chemicals, certainly more dangerous chemicals than MTBE, leak? Who would pay? This fund will pay.

The point is, Shouldn't we make sure we are thinking clearly about this issue? What is wrong with having within this legislation language that affirms a classical understanding of liability? That is what it is all about.

Companies get nervous. You get a water system that has some MTBE in it, which is not a cancer-causing substance, it is not a disease-causing substance, according to every report I have seen. If enough of the substance gets into the water, it will have a bad taste and unpleasant smell, and it is bad—we don't want it in our water system—but it has not proven to be any kind of significant health hazard, to my understanding——

Mr. GREGG. Will the Senator yield at that point?

Mr. SESSIONS. Yes.

Mr. GREGG. Has the Senator been in a home that has MTBE pollution?

Mr. SESSIONS. No, I have not.

Mr. GREGG. I suggest the Senator—Mr. President, I ask the Senator a question—I suggest the Senator might want to go to a home with MTBE pollution before the Senator makes the representation the home is livable.

Mr. SESSIONS. I didn't say the home. I understand the water smells. Is the Senator aware of any report that says MTBE is a cancer-causing substance?

Mr. GREGG. I didn't suggest that MTBE was cancer causing. The Senator suggested it is not a health hazard. I ask the Senator, if a person cannot live in their home, is that not a health hazard? If a person cannot take a shower, is that not a health hazard? If a person cannot drink the water, is that not a health hazard?

Is that the Senator's position, that if you cannot live in your home, if you cannot shower, if you cannot drink the water you, therefore, do not have a health hazard? Is that the Senator's position?

Mr. SESSIONS. The Senator's position is this—if someone polluted your water so you can't drink it, and did so to the required degree of negligence and liability, they are responsible for it and should pay.

The question is, What if you didn't do anything that justifies a lawsuit? What if you had no connection whatsoever? You made MTBE and somebody takes it and pollutes your house with it. Who is responsible? I can tell you what the law has been historically in America.

Mr. GREGG. Will the Senator yield for a further question?

Mr. SESSIONS. The person who caused the action, made the house uninhabitable, that is who should pay; not the person who made the substance.

Mr. GREGG. Will the Senator yield for a further question?

Mr. SESSIONS. Yes.

Mr. GREGG. Is it the Senator's position that if a person cannot use their house, cannot use the water, cannot take a shower, that person should be barred from suing the potential people who are responsible for that and that a State that has brought an action on that issue should have a law passed by the Congress which says that action brought by that State will no longer be in existence?

Mr. SESSIONS. Two questions there. One is the existing lawsuit question. The Senator makes a legitimate point and expresses a legitimate concern. Frankly, I am not sure it is fully meritorious, but he certainly raises a legitimate concern.

The second point is, Who should be responsible? That is the question. That is all, as I understand it, this legislation deals with.

If this legislation were to say that the person who is responsible for putting the MTBE in a New Hampshire citizen's home was not liable, I would oppose it. But if they took asphalt and dumped it in somebody's home, should the asphalt maker be liable if they were not responsible for putting it in that home? That is the legal question with which we are dealing.

Mr. GREGG. Will the Senator yield further?

Mr. SESSIONS. I yield.

Mr. GREGG. Is it, therefore, the Senator's position that the determination of whether or not the person who polluted the water in that home which is no longer livable, can't take a shower and can't drink the water, that the person who seeks redress on that should have the Congress unilaterally decide that a product which appears to have a fairly significant proximity to the problem should no longer be subject to liability simply because the product has been designed in a certain way, and that it should be the Congress—many Members of Congress never having even been in that home or a home of a similar nature—that should eliminate the capacity of that individual to have redress in a lawsuit? Would it not be a court's decision or jury's decision to make the determination if the product was produced without defect, that product should not be liable rather than the Congress unilaterally deciding that product should not be liable?

Mr. SESSIONS. I thank the Senator for the question. I think it is a good one. I just hosted and chaired a hearing on the question of restaurants that sell food that might cause obesity. The question is, Is a restaurant that makes a good cake responsible for somebody's obesity? They made the product that perhaps made the person overweight and obese, but they are not responsible for it. Should Congress act?

I think it is perfectly appropriate and fair that the Congress set the rules for litigation in America. We established when the statute of limitations runs. We established a lot of rules. In fact, we established basically that MTBE should be used. It was a congressional action that required this to be done before I arrived in the Senate.

I don't know how the Senator from New Hampshire voted on that legislation. It was a good government environment bill at the time. Senator DASCHLE, I believe, was the prime sponsor of it.

The question is this. Companies make a substance. Somebody else spills it in the environment. Now we are going to have the person who made it, because maybe they have good insurance, pay for cleaning up any place in America that this stuff was spilled? I don't think so. Of course, we have in this bill liability protection for ethanol, and the House stuck in the liability protection for MTBE. It really was not considered in the Senate, I admit, but I think it is appropriate we follow through with it. At least I believe there is a strong justification for it. I don't believe this bill should be blocked on that basis.

Mr. TALENT. Will the Senator yield for a brief question?

Mr. SESSIONS. I will be delighted to yield.

Mr. TALENT. I wonder if the Senator's position isn't similar to mine, on the point the Senator from New Hampshire raised, that we at least should not refuse to vote on a bill that could mean millions of jobs for everybody in the country in all sections of the country because of one provision in the bill which could perhaps be fixed or compromised in some other legislation. I wonder if that isn't the Senator's position.

Mr. SESSIONS. I think that is a very good point. I know a number of Senators who favor this bill said they would be open to consider reforming it on a short basis if there was any abuse. Any language of this kind deserves to be carefully examined. I understand New Hampshire has filed a lawsuit that might be prohibited by this legislation, so I can understand the Senator from New Hampshire being concerned about that.

From what I understand, if the fundamental principle in the legislation appears to be sound, I can be supportive of it. If, in its application, it is unfair and unjust, I would be prepared to support reform.

Mr. TALENT. I thank the Senator for yielding for a question.

Mr. SESSIONS. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Missouri.

Mr. TALENT. Mr. President, it is a real pleasure for me to come down and speak on behalf of the Energy Policy Act. I want to begin by congratulating those involved in the conference committee who reached an agreement upon it.

I saw my friend, the senior Senator from Iowa. He certainly did yeomen's work on behalf of a provision that is very important to us in Missouri: The renewable fuel standard, as well as the biodiesel tax credit. I am going to begin my brief remarks and end them by commenting on those provisions. They stand to create hundreds of thousands of jobs in the short term around the country and in the long term have the potential not just to revolutionize family production by bringing in a whole new wave of value-added enterprise but also help create energy independence for this country.

As we have said on this floor on many occasions, when we are able to grow our own fuel, by growing corn, by growing soybeans, and turning them into fuel that we can burn in our cars, it just revolutionizes international relations in the world and also helps the environment and protects the economy as well. This bill is a major step in that direction. For that reason alone, I think it deserves to be voted on and passed.

There are provisions in this bill, as the Senator from North Dakota said before in his very eloquent remarks, that all of us would pick out or change if we could. But this is one Energy bill that this Congress has had to write for a very diverse country. I would suggest, when we are trying to come out of a recession, when we are trying to create jobs, when we are trying to achieve energy independence for this country, now is the time for statesmanship, not obstruction. Now is the time for compromise rather than confrontation over discrete points of a very big bill. Now is the time to move forward with all the good parts of this bill that we know are going to create jobs, that we know are going to help create energy independence, that we know are going to be good for the environment, with a view toward getting together afterward and helping to fix or reform the parts of the bill about which we may have some doubts. I hope we can do that. I hope we can get a vote on this bill.

I hope in particular that we will not see that weapon, the filibuster, hauled out to stop us from even expressing an opinion on the first national energy policy that this Congress has ever really passed.

We have heard much discussion in the last week or two about the importance of jobs. I very much believe in that. We cannot do anything we want to do in this country, we cannot do education, we cannot have health care, we cannot have defense, we cannot have opportunity without prosperity, and we cannot have that without jobs. This bill flat creates jobs. It will protect hundreds of thousands of jobs against being lost. It will create nearly a million. The natural gas and coal provisions, which are not those over which Missouri has a parochial interest but which I strongly support, would create more than 400,000 direct and indirect new jobs just through the construction of the Alaska natural gas pipeline, which will at the same time bring affordable energy to the lower 48 States, 38,000 direct jobs, 80,000 indirect jobs, an estimated 400,000 jobs from the multiplier effect. The investment the bill provides for in clean coal technology creates 62,000 jobs; 40,000 construction jobs created by the construction of approximately 27 large new clean coal plants.

When we use this clean coal technology and we make coal environmentally safe, we secure America's energy future because we have hundreds of years of reserves of coal. There is no reason not to move forward so as to create the possibility of reliance upon that even more greatly in the future, if necessary.

The renewable fuel standard I will discuss in a few minutes. Nuclear energy, building a first of its kind nuclear reactor to co-generate hydrogen will create 3,000 construction jobs and 500 long-term high-paying, high-tech jobs. I toured the nuclear energy plant in Missouri in Callaway County just a few weeks ago. It is the wave of the future. We can have more nuclear energy plants like that securing energy for our people around this country. This bill is a key to achieving that.

Some examples of job losses that the Energy Policy Act will prevent in the future, these are job losses we have had in the past: The Potash Corporation, one of the world's largest producers of fertilizer products located in Northbrook, IL, and Canada, that spends $2 million per day on natural gas, has announced layoffs at its Louisiana and Tennessee plants.

Economists predict that Louisiana's chemical industry will lose more than 2,000 jobs in the next 2 years. I have had people come and visit me from the chemical industry saying they are being forced to push jobs offshore because of the high cost of energy. I have had manufacturers in Missouri tell me that the high cost of energy and the unpredictability of the cost of energy is driving jobs offshore. It does not have to be that way. We can have an energy policy that encourages all different kinds of energy—the traditional forms, the alternative forms. This bill does that.

No, the bill is not really liked too much, if I may so, by those on the extreme ends of either part of the political spectrum. There are some who do not want the Government involved at all, even in stimulating the production of supply of energy. There are others who for other reasons on the other side of the spectrum do not want the private market to be stimulated for the production of energy. But Americans are out there, Missourians are out there, worrying about the loss of their jobs, worrying about what opportunities are going to be available in the future. Access to affordable, stable supplies of energy of all kinds is a key to this country's prosperity and independence, and that is what it comes down to.

Those of us on the Energy Committee, on both sides of the aisle in the Senate, have had that target in view from the minute that we began writing this bill. The Senator from Tennessee is certainly well aware of that because of the major part that he played in it.

I close by talking about the special importance of the renewable fuels section of this bill. Everybody back home is so pleased that we have recognized in this Congress, by an overwhelming margin, the importance of ethanol and biodiesel to this Nation's energy supply. The bill will increase ethanol production and the use of ethanol throughout our national economy to 5 billion gallons by the year 2012. It will create 214,000 jobs, $5.3 billion in new investment in renewable fuels production facilities. The biodiesel tax credit of a dollar is groundbreaking for the production of biodiesel in this country. With this tax credit, we can expect biodiesel, in just a few years, to be in the same situation that ethanol is now, and a few years after that the situation that ethanol will be in in the future, one of the mainstays of energy production. These are a key to value-added enterprises as well.

I will never forget on a day I was traveling around central Missouri and I talked to some corn farmers and they were talking about commodity prices. They were pretty depressed, and there has been a lot of reason to be depressed about prices of corn in the last 2 years. They did not really see a lot of hope. These were great producers, efficient producers, but they knew even if prices creeped up, one change in the international situation might push them down again. Then I went to the ethanol plant in Macon, the same kind of producers, but these were investors in the ethanol plant. One of them pulled me aside. There was an air of optimism there, an air of energy. One of them pulled me aside and said: Jim, the good thing about this is when the price of corn goes down, I just make more money off the ethanol. That is what value-added enterprises mean to family production in this country.

If we lose family farmers, if we lose the family production sector in this country, we lose something that we cannot recover, the values that go with an attachment to and a belief in the land. Value-added enterprises, of which the chief is renewable fuel, is the future for family producers. It is the future for energy independence in the country as well.

We are proud in Missouri, as I know the Presiding Officer is proud in Minnesota, of the leadership role we have played in the production of ethanol. We expect to have a leadership role, we do, and expect our leadership role to grow in the production of biodiesel. That is what this bill provides for.

I close by saying that although there are many parts of the bill that are going to help Missouri, there is no question about that, and I am enthusiastic about it, I am pleased to have participated in writing a lot of the bill, and pleased to vote for it, there are many parts of it I like. This renewable fuels section is really important to Missouri. Agriculture and tourism are the two biggest parts of Missouri's economy.

This bill is a joint effort. I think it is idle for any section of the country or any group of Senators who want a particular kind of energy to believe that they can get what they want for their section of the country, or that they can get what they want for the kind of energy supplies that they favor apart from a bill like this that helps everybody pull together. We cannot unravel this thing and pass a bunch of different bills. It is not going to happen. We are one country. We have to rely on many different sources of energy, but it has to be one policy. We have to have it all in one policy. It is not going to be perfect, but it is going to make a difference for the future. To the extent that it is not perfect, we can work on it.

I would so much rather have a view of legislation that says, look, we would rather go ahead knowing that we will take what is good and we can work on the things that we are concerned about than stopping everything because we cannot achieve that perfection given the state of human nature and the realistic possibilities in which we have to operate.

I am going to be pleased to support this bill. I urge Senators who have greater doubts than I do, or maybe who have themselves dug in on one issue or another, to try to work out an arrangement with the bipartisan group of Senators who have pushed this bill for so long. I know the Senator from New Mexico is ready to talk. The leadership is ready to talk. I am hopeful we will see the leaders on both sides of the aisle supporting this bill.

Now, as I said before, is the time for us to pull together and send a clear signal to this country that we can and will pass a comprehensive national energy policy that will create a stable and affordable supply of energy for years to come and allow our entrepreneurs, our manufacturers, our farmers, our small business people, to move ahead with the predictability that a stable energy supply gives them.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. CANTWELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNEMPLOYMENT INSURANCE EXTENSION

Ms. CANTWELL. Mr. President, I know we are still under consideration of the Energy conference report and many Members have been to the floor talking about the prescription drug conference report as well.

Before we adjourn, whatever date that is, sometime in the very near future, hopefully before the Thanksgiving holiday, it is imperative that this body take a stance and pass the unemployment benefit extension before we go home.

We are in the same position we were in virtually a year ago. What has changed? The economy might have gotten slightly better but not really much better. We have a .4 percent improvement in the unemployment rate. We in Washington State are still just above 7 percent in unemployment.

The reason we do the unemployment benefit extension program at the Federal level is to help States, which includes those that have been hardest hit by unemployment, get some extra weeks of unemployment benefits. It has been a successful program in the times of downturns of our economy. During the first Bush and Clinton administrations, when our economy was not doing so well, we basically extended Federal unemployment benefits for a total of 30 months. At that time, the benefits were at the Federal level, 20 additional weeks.

We are at this point in time now where we have extended the Federal program in this recession for about 22 months. Yet while we have seen a slight economic improvement, as I said, .4 percent, I believe it is not enough to continue the improvements we would like to see in our economy.

In an economic downturn, make no mistake about it, working Americans would rather have a paycheck than an unemployment check. But giving people an unemployment check in times of tough economic situations helps our economy overall. Every $1 spent on unemployment benefits generates $2.15 of stimulus. That is mortgage payments paid, health care bills that are met, a continuation of the economy at the most stable level we can have when we are not seeing job increases.

It is vitally important, before we adjourn—we have spent all this time debating judges and there was a good debate on both sides—we get back to some of the basic issues that need to be accomplished before we adjourn. Certainly unemployment benefits, I believe, should be that priority.

What is going to happen in December if we adjourn sometime next week—this program expires at the end of December. What is likely, if that happens, is we will see 90,000 people at the national level fall off this benefit program and as many as 2 million people in the first several months of the year could be without unemployment benefits.

Like many of my colleagues, I hope the economy improves. But I don't think we are seeing an indication it will improve that rapidly that soon. To leave these people without benefits at a time when we could be stimulating the economy is irresponsible.

For Washington State, the numbers are similar. We have about 200,000 people in Washington State who will exhaust their benefits in the first 6 months of 2004. I would rather those people be receiving some benefits and having the certainty of receiving those benefits now, even if it is a shorter extension period.

The challenge we ran into last December as we bantered back and forth—and, actually, the Senate did the right thing in the eleventh hour by passing the unemployment benefit extension; the House decided not to act on it. What happened was we left many Americans without certainty of the unemployment benefits.

Some of my colleagues believe nothing happened, that when we got back in January we reconstituted that program and people did not lose a thing. That is not true. I know constituents who made alternative plans, not knowing whether Congress had the intention of extending the unemployment benefit program. There was not the certainty. I had constituents who took money out of pension programs with 30 percent penalties, basically trading off their long-term investment for short-term return because they did not think we were going to extend benefits.

We ought to give working Americans some certainty that as this economy continues to struggle, we are going to be there with unemployment benefits.

My colleague from Nevada has cited several times that many Members of Congress voted to terminate this program. In the 1990s, after we had the 30 months of an extension of employment benefits by both the Bush and Clinton administrations, and after we had a 1.2 percent improvement in the unemployment rate, yes, we curtailed that program. However, we are doing less now, less under more severe economic conditions, than the first President Bush and President Clinton did during that time period. They went for 30 months. They had a Federal program that was 20 weeks instead of the 13 we have now, and they only curtailed the program once they saw a better return to the economy.

I encourage my colleagues to put this bill on the priority list for the next several days. Let's figure out a way to give unemployed Americans some certainty as they face the holiday season. Let's give those millions of people who are going to be impacted by not having this Federal program continued some relief and know we will be also holding up our economy. Let's not say to people that this Congress went ahead and passed tax cuts for the wealthiest of Americans, did a variety of things that may have been targeted tax credits, but failed to extend to hard-working Americans the unemployment benefit program into which they have paid.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance; that the Senate proceed to its immediate consideration; the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. On behalf of the majority leader, in my capacity as a Senator from Minnesota, I object.

Ms. CANTWELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

Mr. FRIST. Mr. President, we have had a full day of debate on this very important conference report. We have had a number of Senators come to the floor in support of the bill and others who have used this as an opportunity to highlight their opposition to one aspect of the bill or another. The bill finally establishes a comprehensive energy policy, and I do urge my colleagues to look at the bill not just piece by piece but in its entirety. Chairman DOMENICI had to negotiate a whole range of tough issues to put together a bill that requires a very fragile balance, as people even more fully understand this and come to the floor to address different aspects of the bill.

I understand there are some Members who want to preserve their rights on this legislation and who don't want to allow a time limitation. But given the importance of the legislation, at this juncture I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate to the conference report H.R. 6, the energy policy bill to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

Bill Frist, Pete Domenici, John Cornyn, Mike Crapo, Larry Craig, Ben Nighthorse Campbell, Michael B. Enzi, Mike DeWine, Christopher Bond, Robert F. Bennett, Trent Lott, Pat Roberts, Jim Bunning, Mitch McConnell, Richard G. Lugar, Norm Coleman, Conrad Burns.

Mr. FRIST. Mr. President, this cloture vote will occur on Friday of this week unless changed by unanimous consent. I hope that cloture is invoked and that the Senate can then act expeditiously to vote adoption of the conference report. Until that time, Members will be allowed to come to the floor to express themselves with regard to this legislation. We encourage them to do so.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

IN MEMORY OF RUTH BURNETT, MAYOR OF FAIRBANKS AND BELOVED STAFF MEMBER

Mr. STEVENS. Mr. President, my heart became heavy with sadness as I learned this weekend of the death of my close personal friend Ruth Burnett.

Ruth Burnett was not only a person who gave me great support as the manager of my Fairbanks office, she, her husband Wally Burnett, Sr. and I became friends 50 years ago after my family and I moved to Fairbanks. As the years went by, we kept in touch and from the days of my earliest Senate campaign Ruth and Wally supported me.

Ruth's time as mayor of Fairbanks brought us even closer together and I was delighted when Ruth agreed to be my representative in Fairbanks. She worked tirelessly, without regard to office hours. And she was responsible for bringing to our attention the plight of thousands of interior Alaskans so that my staff and I in Washington, DC could try to help them. She gave me many ideas on where to send Federal money in the interior so that we could do the most good for the most people.

Ruth's whole family pitched in to support her. Wally Burnett, Jr. was a leading member of my Washington, DC staff and the Senate Appropriations staff. Public service has been a hallmark of the Burnett family—a family with a great Alaskan tradition.

Ruth will be dearly missed, but her spirit will live on through the great family she leaves behind and through the many lives she touched.

HONORING OUR ARMED FORCES

Mr. KENNEDY. Mr. President, in these difficult days when the brave men and women of our Armed Forces face such great dangers in Iraq, we continue to mourn the losses of our heroes who gave their lives in past wars. One of those heroes is Major Richard W. Cooper, Jr., of Holyoke, MA, and his loss is very much in our minds now. Major Cooper was a navigator aboard a B–52 bomber from Westover Air Force Base. He was on one of the final bombing runs in the Vietnam War in 1972, and his plane went down on December 19 of that year. He has been listed as Missing in Action ever since. The Air Force never gave up the search and recently, his remains were discovered and identified through the Joint Task Force Full Accounting operation in Vietnam. Next month, on December 19, at long last, 31 years to the day after his final mission for our country, Major Cooper will be laid to rest with full military honors in Arlington National Cemetery.

Major Cooper earned many decorations for his loyal service to our country, including the Distinguished Flying Cross, and we honor his great courage. Our Nation has often called its sons and daughters into harm's way, and their families bear the scars of battle forever. America owes an enormous debt of gratitude to Major Cooper and his family, and our thoughts and prayers are very much with them now. Massachusetts is proud of him and so is our country.

Mr. WARNER. Mr. President, I seek recognition to honor a Virginia Soldier, CWO Sharon T. Swartworth, who was tragically killed in action in Iraq on Friday, November 7, 2003. I want to express gratitude, on behalf of the Senate, for her service to our Nation. The American people, I am certain, join me in expressing their prayers and compassion to her family.

CWO Sharon T. Swartworth entered the Army shortly before her eighteenth birthday, her father signing the papers allowing her to enlist early. "She traveled around the world before she was assigned to the Pentagon." She understood the importance of her present assignment and despite the personal risk, wanted to serve the United States and the people of Iraq during this critical time.

A warrant officer of the Judge Advocate General's Corps, she served as the primary adviser to the judge advocate general on all matters concerning legal administrators in the Army. She was temporarily in Iraq to process awards for deserving soldiers and to ensure the legal needs of soldiers were being met.

CWO Sharon T. Swartworth leaves behind: her son, William III; her husband, William, a captain of the Naval Medical Corps; and her father, Bernard Mayo.

I, among many friends and colleagues, attended the ceremony at Arlington Cemetery. Her family, who has borne this tragedy with dignity, are brave souls who have sacrificed so much for this Nation. We owe them and the other families who have lost their loved ones a debt of gratitude.

She was an exceptional woman with a bright future and family in front of her. Her father related, "She did it all, and we can be proud of her. She was a soldier." I can not craft a finer eulogy. The Commonwealth of Virginia and the entire Nation shall mourn her loss.

Mr. JEFFORDS. Mr. President, I was deeply saddened to learn yesterday of the death in Iraq of another of Vermont's sons. LT Pierre Piche of Starksboro, VT was one of 17 brave young soldiers who died in the crash of two Blackhawk helicopters last Saturday. This brings to five the number of Vermonters who have given their lives in Iraq.

The newspaper articles reporting on the death of Lieutenant Piche, and also on the Nov. 7 death of SSG Scott Rose, a young man whose wife and parents in-law are from Springfield, VT, bring home the heart-wrenching pain felt by those who have lost a son or daughter, mother or father, sister or brother, or close friend in this war.

Lieutenant Piche was Lisa Johnson's only child. Ms. Johnson speaks of the daily anxiety she faced hearing the reports of dead and wounded and wondering if it was her son. At first, she turned for consolation to her father, a World War II veteran. Tragically, he died in July. Hearing reports of the helicopter crash last Saturday, she spent the rest of the weekend with her stomach in knots until she received a phone call from her daughter in-law, Cherish, with the simple, chilling words "They're here."

Army officers had come to Lieutenant Piche's home to tell his wife that the lieutenant was dead. An hour later, officers arrived at Ms. Johnson's home to deliver the same message.

Staff Sergeant Rose became a father for the first time on July 31. He never saw his child, though. He already had left for Iraq and was unable to get home on leave before the tragic crash that ended his life. His wife Michele Rose is now left to raise their infant daughter in his absence.

I have been concerned throughout this conflict, and most particularly during the recent debate on the President's request for an additional $87 billion, that our focus on the financial costs and broader strategic and tactical questions associated with the war has blinded us somewhat to the brutal anguish faced by those who have lost a loved one in Iraq. We must never forget that each and every casualty suffered in Iraq delivers a crushing blow to many here at home. Moreover, we must have sympathy for the terrible anxiety faced daily by the families of men and women serving in Iraq. This war has many victims and we must not lose sight of their pain.

I ask unanimous consent to print in the RECORD the two newspaper articles detailing this war's effects on the lives of these two Vermont families.

There being objection, the material was ordered to be printed in the RECORD, as follows:

[From the Burlington Free Press, Nov. 18, 2003]

FIFTH VERMONT SOLDIER DIES IN IRAQ

(By Brent Hallenbeck)

STARKSBORO.—Pierre Piche last spoke to his mother a few weeks ago by phone from Iraq. He told her he wanted to come home to his wife of 3 years and earn his master's degree so he could become a teacher.

His mother had recently sent him a rubber koi fish, and he said he planned to have a pond filled with the tranquil Japanese fish. "He tried not to focus on how dangerous it was getting over there. He just wanted peace," his mother, Lisa Johnson, said Monday afternoon at her home in Starksboro. "He was determined to do what he needed to do to keep his men safe and get home."

Piche, 28 and 16 of his fellow soldiers died Saturday when their Black Hawk helicopters crashed, possibly as a result of enemy fire, in Mosul, Iraq. The crash is the single deadliest incident since the war began in Iraq 8 months ago.

Piche, a first lieutenant with the Army's 101st Airborne Division, is the fifth soldier with Vermont roots to die in the war. He is the only child of Lisa Johnson, who has wanted to pull Piche back into her arms ever since he was deployed to Iraq a month before the war began.

"I wanted to take him home. When your child goes into something dangerous, a mother goes and gets him," Johnson said, fighting tears. "It's been a pretty hellish time since February."

Piche grew up in Colchester, where he attended Malletts Bay School. His mother remembers that Piche was a complex child who would ask heavy questions about the origins of the universe or the workings of the human body and expect, almost demand, an answer.

"When he was born I called him my Mr. Magoo because he was this very serious little boy," she said, pointing to a photograph of her and her 2-year-old son sitting in the woods. The child was wearing an expression that was intense but wise. "He was like a little old man right away," she said.

He was also "full of all the right kind of mischief," according to Hugh Johnson, who became his stepfather when Piche was 6. He remembers once that his stepson tried unsuccessfully to ride his bike up a boat ramp on dry land. "Suddenly there was a great tumbling of boy and steel," Hugh Johnson said.

The family moved when Piche was 9 to South Hero, where he attended Folsom School. Lisa Johnson said he demonstrated his kindly nature by taking in all sorts of animals, from dogs and cats to iguanas, chickens and geese.

The family moved to Starksboro when Piche was 14. He went to private school in Connecticut, then college, including for a time the University of Vermont. He graduated from Middle Tennessee State in 1998 after majoring in political science.

Piche was always patriotic and believed in serving his country, his mother said. While in college he joined the Army Reserve and soon after entered the Army full-time, rising through the ranks of the 101st Airborne at Fort Campbell, KY, where he and his wife, Cherish, made their home.

Pierre Piche made his final visit to Vermont last Christmas. Friends and family came to Starksboro for festive holiday parties. He took Cherish Piche, who has lived in the South most of her life, out for snowmobile rides and sledding expeditions.

War in Iraq was looming last December, and Piche and his mother knew he was likely to be deployed. "I deliberately avoided that subject," Lisa Johnson said. "He didn't want to talk about it either. We knew, and there wasn't any point."

She held out hope he would be safe. Months earlier, he had switched jobs, from a command post to maintenance duties that would perhaps be less risky. "The idea was he wouldn't be out there on the front line," Hugh Johnson said.

Piche arrived in Iraq 9 months ago, and the Johnsons followed the news intently from Starksboro. Whenever Lisa Johnson heard a soldier died anywhere near where she believed her son was she would cry, and immediately struggle to gather her senses—as a social worker, she said it was essential to be composed.

Her father, Robert Fusco of Jonesville, would console her. A World War II veteran, Fusco would tell her Piche was well-trained, smart and vigilant, and would make sure he and his soldiers would come home. "Anytime I got scared my father would tell me to toughen up," Lisa Johnson said. Fusco died of heart failure July 8, proud to the end of his grandson's accomplishments.

Piche e-mailed his mother often, and recently sent photos showing him in his cropped brown hair and brown camouflage while holding an automatic weapon.

Another photo showed him in uniform holding a dog. Lisa Johnson said he frequently discovered abandoned pets in Iraq and tried to find good homes for them. "Even in the middle of chaos he could find good things," she said. "That's what good guys do."

Piche's unit was being moved from one location to another Saturday, a move he was dreading. He told his mother that Iraq was becoming a more dangerous place—more aggressive, less predictable.

She heard Saturday about the two helicopters crashing in Mosul. "I spent the rest of the weekend in knots," she said. She and Cherish Piche spoke by phone all day Saturday, telling each other that they hoped by some fluke Piche was not on either of those helicopters, and just couldn't get to a computer to e-mail either of them to say he was safe. Then Cherish Piche called Sunday afternoon. Her words were simple: "They're here." Army soldiers had come to her home at Fort Campbell to say that her husband was dead.

An hour later, at 5 p.m., two soldiers came to the gray Cape Cod on Big Hollow Road to give Lisa and Hugh Johnson the same news. "I just said, 'No, no, no,' and I went outside and I was crazy," Lisa Johnson said. She wandered through the miles of woods behind her home. "I just cried and screamed—'No, it can't be, it just can't be.'"

Hugh Johnson said he knows that if he could, his stepson would have been trying to save his fellow soldiers until the last minute. Pride doesn't translate to solace, not when parents are mourning the loss of a son who was always giving to others. "It's such a waste," Hugh Johnson said. "He should have had another 60 years of doing that." "I'm proud of him and I'm proud of him no matter what," Lisa Johnson said. "That doesn't make his dying any easier."

The Johnsons and Piche's widow are making funeral arrangements while awaiting for his body to return home. Lisa Johnson said they hope to bury him near his grandfather, Fusco, at Holy Rosary Cemetery in Richmond.

Meanwhile, the family is welcoming a constant flow of visitors bearing generous amounts of food and any words of consolation they can muster. The food and the words are appreciated, Lisa Johnson said, but not important. "All that matters," she said, "is that they loved him."

[From the Rutland Herald, Nov. 18, 2003]

SOLDIER KILLED IN IRAQ WILL BE EULOGIZED IN SPRINGFIELD

(By Susan Smallheer)

SPRINGFIELD.—An Army soldier who died in Iraq without ever holding his newborn daughter will be eulogized with full military honors Saturday in Springfield. Staff Sgt. Scott C. Rose, 30, whose wife, Michele, is from Springfield, will receive full military honors and a special farewell Saturday at St. Mary's Catholic Church, according to Rose's father, Alfred Rose of Fayetteville, N.C.

Rose was one of six soldiers who died on Nov. 7 near Tikrit when their Black Hawk helicopter came under attack, exploded and fell to the ground. He had been in Iraq since April. Rose was the crew chief.

Alfred Rose said his son and his wife met at North Carolina State University and married, living at Fort Campbell, Ky., the base of the 101st Airborne Division. Michele (Basso) Rose gave birth to their daughter Meghan Louise at Fort Campbell on July 31, and the baby never met her father, the elder Rose said.

Rose said that he was able to hook up a Web camera so his son could watch the baby over the Internet from Iraq, but that he died before he was able to get leave and come home to visit his new daughter. She is the couple's only child.

Rose said his son died with three of his fellow crew members, all of whom were very close friends. According to news reports, the Black Hawk was transporting two officials from the Army's Judge Advocate General corps from the Pentagon when the helicopter was hit.

Alfred Rose, himself a retired lieutenant colonel from the 82nd Airborne Division, said his son's mission on Nov. 7 was to transport "command and control" personnel from Mosul to Tikrit. His son was the crew chief.

He said his son was born in Attleboro, Mass., but grew up in North Carolina, attending high school in Fayetteville. He was captain of the wrestling team and also played soccer, was also involved in drama and debate. He graduated second in his class and attended North Carolina State on a full Navy scholarship.

But he switched to the Army even after receiving orders to the Navy's prestigious flight school in Pensacola, Fla., his father said, to combine his love of flying and his wish to be a family man. Navy flight training involves six month stints on aircraft carriers. "However, the world situation turned sour and he was deployed nearly continuously from Bosnia to the NCO School in Virginia and immediately to Iraq. Scott badly wanted to join his unit, which was already over there," his father recalled.

His father called him "the Tom Cruise of the Lancer flight line, he loved his work, he loved to teach others." "He was one of those rare great men, soldier, leader, husband, father . . . our son," he said.

The elder Rose said his son's unit was not expected back from Iraq until February or March 2004. According to an article in the Fayetteville Observer, Rose had started flying when he was 14 years old. In college, he started studying aeronautical engineering, but switched to history.

His son called his helicopter "Goat 26431." He named it so in honor of his grandfather's military aircraft, which was also nicknamed Goat. His grandfather also died on active duty.

The father said his son's helicopter came under fire the morning of Nov. 7. A second Black Hawk helicopter was following close behind and was not hit, but Rose said those in the second helicopter heard the impact of the weapon, saw flames erupt and his son's helicopter crash. At the time the helicopter was hit, they were about 280 feet above the ground and had slowed to make a landing in a designated area.

His son received a Bronze Star and a Purple Heart, as well as the Army Commendation medal. His wife's father and stepmother, Alfred and Paula Basso, live on Poppe Road in Springfield, according to William Young, director of the David Memorial Chapel, which is working closely with the military to plan Saturday's funeral. Details of the service are still being worked out, according to a spokesman at the funeral home.

Young said Rose would not be buried in Vermont as his remains were being cremated. The elder Rose said that a memorial account in his son's name has been set up to benefit his infant daughter at the Bryant Credit Union in Springfield.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On October 25, 2003, a Miami, FL, teen was charged with a hate crime after police say he harassed a 19-year-old woman driving with a gay pride sticker on her car.

The teen leaned out of his car window at a traffic light to make an obscene gesture toward the young woman and said to her, "We hate faggots . . . we kill people like you." The truck pulled up to her again at the next light where he continued to make lewd comments and gestures. The teen cut in front of the woman and hit his brakes, causing the woman's car to swerve, according to police. Police say the driver then swerved his truck three times towards the woman's car, running her off the road.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

SBA ASSISTANCE FOLLOWING HURRICANE ISABEL

Mr. ALLEN. Mr. President, I wish to call to the attention of my colleagues the well-coordinated and rapid response of the good people from the United States Small Business Administration in the days and weeks that have followed the disaster caused by Hurricane Isabel.

Virginia is still recovering from this terrible natural disaster. In Virginia, initial assessments indicate that 1,062 homes were destroyed; over 8,800 homes sustained major damage; 1.8 million customers lost electricity of varying duration from a day to over a week; there were 28 deaths in the Commonwealth; crop losses are in the tens of millions; and total damages are in the billions to homes, businesses, transportation and other infrastructure facilities.

Our Commonwealth was devastated and the residents of Virginia, as they always do, have come together to help neighbors repair damages, to help families find housing and to console those who lost loved ones in their time of grief.

Soon after the storm cut across Virginia, and the economic impact began to be felt, I contacted Small Business Administration leaders, seeking to bring direct assistance to these affected businesses. On September 22, SBA representatives responded quickly. My colleague, JOHN WARNER, and I toured the significant damage to many flooded small businesses in Old Town Alexandria, VA.

The quick response, expertise and enthusiasm of the SBA leaders gave hope to small business owners who were upset at the great losses and burdened by damage to their infrastructure, uncertainty when to reopen, loss of inventory, very little capital and lost incomes. The people saw that there was help, that it was not just their own sweat, worry and furrowed brows, but that the SBA was there to assist them directly.

Herb Mitchell, associate administrator for the Office of Disaster Assistance at the SBA, Anthony Bedell, associate administrator for the Office of Congressional and Legislative Affairs, Sue Hensley, associate administrator for the Office of Communications and Public Liaison and their leader Melanie Sabelhaus, Deputy Administrator for the SBA walked with us while we viewed the damage first hand, talking with business owners who were able to ask specific questions and receive answers and solutions.

On the spot, Melanie Sabelhaus of the SBA also set up an onsite Business Disaster Recovery Center with the local Chamber of Commerce in Old Town Alexandria to help business owners who suffered loss. Our top priority was to get small businesses dried out, disinfected and back in business, and I am proud that this team effort has proceeded successfully. By getting our boots in the mud, we were able to get a direct, human response to promptly assist distressed small business owners, who are the backbone of the American economy.

Later the same week they answered my call and came with me again to southeastern Virginia, to places such as Burwell's Bay in Isle of Wight County, Suffolk and Wakefield in Sussex County. There we witnessed the terrible devastation. People there not only experienced great trauma, difficulty and loss, they were still without power, looking to the SBA for assistance, which was able to provide human, personal attention to help get them up and running again. Small businesses such as Cameron Chemical and the Marina Restaurant, whose owners we were able to talk with, which were forced to close their businesses indefinitely, and which together employ dozens of hard-working Virginians were given hands-on assistance by the SBA to reopen in a timely manner. Low interest loans, business disruption assistance from the SBA visibly cheered their faces with hope and gratitude. Traveling with me again was Melanie Sabelhaus, along with Anne Bradbury, assistant administrator for congressional affairs and Becky Brantley, assistant administrator for disaster assistance.

I commend the Small Business Administration's leadership, under the direction of Administrator Hector Barreto, Jr., and the entire team at the SBA. They responded to each of my requests and demonstrated knowledge, experience and genuine care by helping small businesses get clean, dry, rebuilt and open again for customers and employees. Their enthusiastic outreach truly gave hope to many owners and employees. And, as a U.S. Senator, one can often try to get Federal agencies to help people. From my perspective, the Small Business Administration is demonstrably one of the very best lead teams in the Federal Government. On behalf of Virginians, I thank them for their special care. Many small entrepreneurs are open for business due to our efforts. It is a satisfying job well done.

VOTE EXPLANATION

Mr. KENNEDY. Mr. President, regarding the voice vote on the nomination of Major General Robert T. Clark, U.S. Army, yesterday in the U.S. Senate, had such vote been a rollcall vote, I would have voted "nay."

ADDITIONAL STATEMENTS

TRIBUTE TO DELEGATE HOWARD "PETE" RAWLINGS

• Ms. MIKULSKI. Mr. President, I rise to pay tribute to the life and legacy of Delegate Pete Rawlings. He was a big man with a big heart—who leaves an indelible mark on the people of Maryland.

The Baltimore Sun said Delegate Rawlings had "the passion of a civil rights activist and the analytical mind of a mathematician combined with the savvy of a backroom pol." I think that captures him perfectly.

Delegate Rawlings used America's unique opportunity structure to build a life of accomplishment and of service. But more importantly, he expanded that opportunity structure for thousands of others. In over a quarter century in the House of Delegates, Pete Rawlings was known as a man of principle who put his principles into action.

Mathematician and politician, educator and leader, Pete Rawlings may be best remembered for his untiring advocacy to improve education for all. He was an unfailing advocate for education. He used his power and influence to provide an unprecedented State commitment to education, a $1.3 billion commitment that the State recognized it would be constitutionally bound to fulfill. Maryland's schools are better today because of Delegate Rawlings.

The passing of Delegate Rawlings is a tragedy, but his life was a triumph. His wife, Dr. Nina Cole, and his children, Wendall Rawlings, Lisa Rawlings, and Councilwoman Stephanie C. Rawlings Black are in my thoughts and prayers.

I ask that an editorial from the Baltimore Sun be printed in the CONGRESSIONAL RECORD.

The editorial follows:

[From the Baltimore Sun, Nov. 16, 2003]

PETE

He'd thunder and preach, he'd deplore and beseech, he'd count pennies and votes and usually come out on the money.

With the death Friday of Del. Howard P. "Pete" Rawlings, Maryland lost an extraordinarily gifted leader and one of the most accomplished politicians of his era—known for both a tight fist and a caring heart.

Mr. Rawlings' intellectual grasp of policy detail and instinct for mastering the levers of power propelled him to a top post in the General Assembly. His greatest contributions arose, however, from his willingness to take on the unpopular yet critical tasks of fiscal management.

He never forgot his West Baltimore constituents, yet he had the rare courage to sometimes tell them no.

Such was the force of his conviction that he managed not only to survive such battles but to prosper. His remarkable legacy includes a new generation of political leaders he mentored along the way.

As a freshman delegate, part of a tiny minority of black lawmakers, Mr. Rawlings claimed his seat on the House Appropriations Committee in 1979 and immediately started breaking the rules. He publicly questioned every spending item, including those dear to the hearts of his committee mates, wanting to know what good the money would do for "his people."

Colleagues rolled their eyes. Who was this guy? They were used to machine-backed black legislators who were reliable votes, and to the "screamers" who would grandstand in protest of the system but never get anything done. In Mr. Rawlings, they found the passion of a civil rights activist and the analytical mind of a mathematician combined with the savvy of a backroom pol.

He was quickly tagged as a "comer," was named to a subcommittee chairmanship and by 1992 was awarded the gavel of Appropriations Committee chairman.

Running Appropriations in Annapolis isn't like in Congress, where the bounty flows seemingly without limit. In Maryland, the budget has to balance. Mr. Rawlings made it his business to try to ensure the taxpayers' money was being spent wisely.

He battled with Baltimore mayors and officials of Morgan State University. He authored reforms in education, housing and health care. He brought home the bacon as he saw fit.

The strongest testimony to his style may be his endorsement of Martin O'Malley in the 1999 mayoral race against black competitors, thus awarding the job of running a majority-black city to a white politician Mr. Rawlings thought better qualified.

Much of Mr. Rawlings' success stemmed from the sense that he was not interested in power for its own sake, but for what he could accomplish. That, and a deep bass voice that boomed with such moral authority it seemed to come from the heavens.

His passing robs Baltimore of its most effective and empathetic advocate. All of Maryland, though, is poorer for his loss.•

COMMENDING MAJOR FIRMAN RAY ON RECEIVING THE SILVER STAR MEDAL

• Mr. BAUCUS. Mr. President, it is my great pleasure and pride to rise today to honor a true Montana hero—MAJ Firman Ray. Major Ray grew up in Butte and Stevensville. He attended the University of Montana. To this day, he remains a staunch Grizzly fan. His mother Tempie Ray is a retired high school librarian in Stevensville. Firman is the nephew of Carl and Martha Davis from Dillon. At the Montana Constitutional Convention, I was Carl's intern. Furthermore, Firman's wife Sheila Hall Ray was my son's babysitter when we lived in Missoula. Firman and his family are 100 percent Montana.

MAJ Firman Ray has a distinguished career with the Army and he is only getting started. He has excelled in each of his positions since he was commissioned in 1991. Firman also survived the 9/11 attack on the Pentagon where his office was hit by the terrorists.

Today, we recognize MAJ Firman Ray to receive the Silver Star for distinguished gallantry in action against the enemy in Somalia in 1993. The Silver Star is the third highest medal awarded for combat service and the fourth highest medal that a soldier may receive. The Silver Star is awarded to a person who, while serving in any capacity with the U.S. Army, is cited for gallantry in action against an enemy of the United States while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in conflict against an opposing armed force in which the United States is not a belligerent party.

For those reasons and so many more, I am honored to announce that today MAJ Firman Ray will finally receive the distinguished Silver Star award for his valorous performance of duty with the U.S. Army in Somalia that is long overdue.

Many of you may remember the movie, "Black Hawk Down." MAJ Firman Ray, then Lieutenant Ray, was part of the team that the movie, Black Hawk Down, portrayed. It was during the predawn hours of September 25, 1993, that a U.S. Army UH–60 Blackhawk helicopter was shot down in Mogadishu, Somalia. Lieutenant Ray was part of AT Platoon that was given the mission to conduct a search and rescue operation at the helicopter crash site. Clearly understanding the urgency of the situation, Lieutenant Ray took his two lead MK–19 gun vehicles and instructed them to quickly advance to the crash site. Upon entering the site, intense small arms fire and sporadic rocket propelled grenade fire erupted. The gunners under Lieutenant Ray's command were able to destroy three enemy positions in a building just north of the crash site. While attempting to again secure the site, another firefight ensued on the west side. Lieutenant Ray dismounted and on the run, dodged under considerable fire to position the gun vehicles to establish security. Lieutenant Ray's unit was again under fire two more times where Firman moved the gun vehicles into strategic positions that were vital to suppressing enemy fire. Once the perimeter was finally secured, Lieutenant Ray assisted in collecting the remains of the soldiers killed in the helicopter crash.

Shortly afterwards, the stillness was broken by yet another attack and a firefight resumed. During the next 30 minutes of battle and under fire, Lieutenant Ray ran to and from each gun vehicle's position, directing counter fire and ensuring adequate ammunition. The mission was complete and all personnel and sensitive equipment attempted to withdraw to the airfield. Lieutenant Ray directed his rear security gun vehicle to assume the lead and, again, enemy militia began firing with small arms and RPG's, inflicting casualties. With four blocks to go, Lieutenant Ray remained dismounted and slowly moved south, deftly crossing intersections proven treacherous by prior American casualties.

From the onset to outcome, Lieutenant Ray was first in and last out. He performed his duty with bravery and poise. He is a decisive leader who inspires fierce soldier loyalty, trust, and cohesiveness. Because of his quick and intelligent decisions, and due to his confident direction, Lieutenant Ray's platoon, under the most extreme battle conditions, provided the decisive ingredient to the success of the mission. Due to his combat performance, Firman Ray is deserving of the Silver Star for distinctive recognition as an exceptional soldier and leader of men.

I commend Major Ray for his heroic efforts in Operation Restoration Hope and I am proud that he receives the Silver Star today. He exemplifies valor, bravery, and courage. Major Ray put his life on the line to defend our country. He put his life on the line to save his men. For that, we all owe him a huge debt of gratitude.

We are proud to call MAJ Firman Ray a Montanan. And as Montanans and Americans, we are eternally grateful for his selfless service to our country, which has made our Nation a safer place and has helped to promote and defend democracy across the globe.

Firman, as you know, receiving a Silver Star Medal is quite an accomplishment. I can think of no one more deserving than you. From one Montanan to another, thank you for your commitment to your country, service to your community, and for making America safer for each and every one of us.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Finance.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:48 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 254. An act to revise the boundary of the Kaloko-Honokohau National Historical Park in the State of Hawaii, and for other purposes;

S. 867. An act to designate the facility of the United States Postal Service located at 710 Wick Lane in Billings, Montana, as the "Ronald Reagan Post Office Building"; and

S. 1718. An act to designate the facility of the United States Postal Service located at 3710 West 73rd Terrace in Prairie Village, Kansas, as the "Senator James B. Pearson Post Office".

The message also announced that the House passed the following bills in which it requests the concurrence of the Senate:

H.R. 280. An act to establish certain National Heritage Areas, and for other purposes;

H.R. 1189. An act to increase the waiver requirement for certain local matching requirements for grants provided to American Samoa, Guam, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, and for other purposes;

H.R. 1204. An act to amend the National Wildlife Refuge System Administration Act of 1966 to establish requirements for the award of concessions in the National Wildlife Refuge System, to provide for maintenance and repair of properties located in the System by concessionaires authorized to use such properties, and for other purposes;

H.R. 1274. An act to direct the Administrator of General Services to convey to Fresno County, California, the existing Federal courthouse in that county;

H.R. 1651. An act to provide for the exchange of land within the Sierra National Forest, California, and for other purposes;

H.R. 1658. An act to amend the Railroad Right-of-Way Conveyance Validation Act to validate additional conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to facilitate the construction of the transcontinental railway, and for other purposes;

H.R. 2130. An act to redesignate the facility of the United States Postal Service located at 121 Kinderkamack Road in River Edge, New Jersey, as the "New Bridge Landing Post Office";

H.R. 2907. An act to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership;

H.R. 3287. An act to award congressional gold medals posthumously on behalf of Reverend Joseph A. DeLaine, Harry and Eliza Briggs, and Levi Pearson in recognition of their contributions to the Nation as pioneers in the effort to desegregate public schools that led directly to the landmark desegregation case of Brown et al. v. the Board of Education of Topeka et al; and

H.R. 3300. An act to designate the facility of the United States Postal Service located at 15500 Pearl Road in Strongsville, Ohio, as the "Walter F. Ehrnfelt, Jr. Post Office Building."

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res 69. Concurrent resolution expressing the sense of Congress that Althea Gibson should be recognized for her ground breaking achievements in athletics and her commitment to ending racial discrimination and prejudice within the world of sports; and

H. Con. Res. 313. Concurrent resolution to urge the President, on behalf of the United States, to present the Presidential Medal of Freedom to His Holiness, Pope John Paul II, in recognition of his significant, enduring, and historic contributions to the causes of freedom, human dignity, and peace and to commemorate the Silver Jubilee of His Holiness' inauguration of his ministry as Bishop of Rome and Supreme Pastor of the Catholic Church.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message also announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 1066. An act to correct a technical error from Unit T–07 of the John H. Chafee Coastal Barrier Resources System;

S. 1590. An act to redesignate the facility of the United States Postal Service, located at 315 Empire Boulevard in Crown Heights, Brooklyn, New York, as the "James E. Davis Post Office Building";

S.J. Res. 18. Joint resolution commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years; and

S.J. Res. 22. Joint resolution recognizing Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research.

The enrolled bills and joint resolutions were signed subsequently by the President pro tempore (Mr. STEVENS).

At 4:52 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 1824. An act to amend the Foreign Assistance Act of 1961 to reauthorize the Overseas Private Investment Corporation, and for other purposes.

The message also announced that the House passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1813. An act to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign centers and programs for the treatment of victims of torture, and for other purposes.

ENROLLED BILL SIGNED

At 6:20 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 1588. An act to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

ENROLLED BILLS SIGNED

At 7:27 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 254. An act to revise the boundary of the Kaloko-Honokohau National Historical Park Addition Act of 2003.

S. 867. An act to designate the facility of the United States Postal Service located at 710 Wick Lane in Billings, Montana, as the "Ronald Reagan Post Office Building".

S. 1718. An act to designate the facility of the United States Postal Service located at 3710 West 73rd Terrace in Prairie Village, Kansas, as the "Senator James B. Pearson Post Office".

H.R. 23. An act to amend the Housing and Community Development Act of 1974 to authorize communities to use community development block grant funds for construction of tornado-safe shelters in manufactured home parks.

H.R. 2744. An act to designate the facility of the United States Postal Service located at 514 17th Street in Moline, Illinois, as the "David Bybee Post Office Building".

H.R. 2754. An act making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

H.R. 3175. An act to designate the facility of the United States Postal Service located at 2650 Cleveland Avenue NW in Canton, Ohio, as the "Richard D. Watkins Post Office Building".

H.R. 3379. An act to designate the facility of the United States Postal Service located at 3210 East 10th Street in Bloomington, Indiana, as the "Francis X. McCloskey Post Office Building".

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 280. An act to establish the National Aviation Heritage Area, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1189. An act to increase the waiver requirement for certain local matching requirements for grants provided to American Samoa, Guam, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1204. An act to amend the National Wildlife Refuge System Administration Act of 1966 to establish requirements for the award of concessions in the National Wildlife Refuge System, to provide for maintenance and repair of properties located in the System by concessionaires authorized to use such properties, and for other purposes; to the Committee on Environment and Public Works.

H.R. 1651. An act to provide for the exchange of land within the Sierra National Forest, California, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1658. An act to amend the Railroad Right-of-Way Conveyance Validation Act to validate additional conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to facilitate the construction of the transcontinental railway, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2130. An act to redesignate the facility of the United States Postal Service located at 650 Kinderkamack Road in River Edge, New Jersey, as the "New Bridge Landing Post Office"; to the Committee on Governmental Affairs.

H.R. 3300. An act to designate the facility of the United States Postal Service located at 15500 Pearl Road in Strongsville, Ohio, as the "Walter F. Ehrnfelt, Jr., Post Office Building"; to the Committee on Governmental Affairs.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 69. Concurrent resolution expressing the sense of Congress that Althea Gibson should be recognized for her ground breaking achievements in athletics and her commitment to ending racial discrimination and prejudice within the world of sports; to the Committee on the Judiciary.

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, November 19, 2003, she had presented to the President of the United States the following enrolled bills and joint resolutions:

S. 1066. An act to correct a technical error from Unit T–07 of the John H. Chafee Coastal Barrier Resources System;

S. 1590. An act to redesignate the facility of the United States Postal Service, located at 315 Empire Boulevard in Crown Heights, Brooklyn, New York, as the "James E. Davis Post Office Building";

S.J. Res. 18. Joint resolution commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years; and

S.J. Res. 22. Joint resolution recognizing the Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC5258. A communication from the Attorney, Aviation Enforcement and Proceedings, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Reporting Requirement for Disability-Related Complaints" (RIN2105-AD04) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC-5259. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 757-200 Series Airplanes Docket No. 2001-NM-192" (RIN2120-AA64) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5260. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 747 Series Airplanes Powered by General Electric (GE) Series Engines Doc. No. 2001-NM-17" (RIN2120-AA64) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5261. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Rolls Royce Deutschland Ltd. & KG, Model Tay 62015 and 650-15 Turbofan Engines Doc. No. 2002-NE-37" (RIN2120-AA64) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5262. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: CFM International CFM56-5B and 7B Series Turbofan Engines Doc. No. 2001-NE-37" (RIN2120-AA64) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5263. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 727 Series Airplanes Doc. No. 202-NM-271" (RIN2120-AA64) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5264. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revision of Class E Airspace, Holyoke, Co Doc. No. 00-NM-32" (RIN2120-AA66) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5265. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E Airspace, Dunkirk, NY Doc. No. 02-AEA-08" (RIN2120-AA66) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5266. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revision of Jet Route No. 02-AGL-16" (RIN2120-AA66) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5267. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment to Class E5 Airspace; Augusta, GA Doc. No. 02-ASO-19" (RIN2120-AA66) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5268. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments Doc. No. 30341" (RIN2120-AA65) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5269. A communication from the Regulatory Officer, Federal Motor Carrier Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Limitations on the Issuance of Commercial Driver's Licenses With a Hazardous Materials Endorsement; Delay of Compliance Date" (RIN2126-AA70) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5270. A communication from the Secretary of the Commission, Bureau of Consumer Protection, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled "16 CFR 305—'Appliance Labeling Rule' [Clothes Washer Ranges—2003]" (RIN3084-AA74) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5271. A communication from the Chief Counsel, Saint Lawrence Seaway Development Corporation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Seaway Regulations and Rules: Inflation Adjustment of Civil Monetary Penalty" (RIN2135-AA16) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5272. A communication from the Attorney-Advisor, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "FMVSS No. 208, Response to Petitions for Reconsideration of the December 2001 Amendments to the Advanced Air Bag Rule—pt. 2" (RIN2127-AI82) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5273. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Bureau, transmitting, pursuant to law, the report of a rule entitled "In the Matter of Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems; Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band" (FCC03-16) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5274. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Bureau, transmitting, pursuant to law, the report of a rule entitled "Partial Band Licensing and Loading Standards for Earth Stations in the FSS that Share Spectrum With Terrestrial Services, Blanket Licensing for Small Aperture Terminals in the C-Band, Routine Licensing of 3.7 Meter Transmit and Receive Stations at C-Band, and Deployment of Geostationary-Orbit FSS Earth Stations" (FCC02-17) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5275. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Bureau, transmitting, pursuant to law, the report of a rule entitled "Order on Reconsideration, 'In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands" (FCC03-162) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5276. A communication from the Senior Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations, and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service" (CS Doc. No. 00-78) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5277. A communication from the Senior Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Implementation of Section 304 of the Telecommunications Act of 1996—Commercial Availability of Navigation Devices/Compatibility Between Cable Systems and Consumer Electronics Equipment" (CS Doc. No. 97-80) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5278. A communication from the Senior Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television" (FCC02-230) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5279. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band" (FCC96-54) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5280. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "In the Matter of Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands" (IB Doc. No. 02-364) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5281. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that are Presumed to Posses Market Power in the Foreign Telecommunications Markets" (IB Doc. No. 00-106) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5282. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Call-back Service; Petition for Rulemaking of the Telecommunications Resellers Association to Eliminate Comity-Based Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Call-back Service" (IB Doc. No. 02-18) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5283. A communication from the Associate Bureau Chief, Wireless Communications Commission, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)" (GN Doc. No. 01-74) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5284. A communication from the Associate Bureau Chief, Wireless Communications Commission, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "In the Matter of Federal-State Joint Board on Universal Service" (FCC03-249) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5285. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report relative to the audit of the Telecommunications Development Fund; to the Committee on Commerce, Science, and Transportation.

EC–5286. A communication from the Acting Assistant Secretary for Export Administration, Bureau of Industry and Security Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Addition of Kazakhstan to the Nuclear Suppliers Group (NSG), and Other Revisions" (RIN0694-AC90) received on November 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5287. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "In the Matter of Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range" (FCC03-24) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5288. A communication from the Attorney Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Parts 2 and 87 of the Commission's Rules to Accommodate Advanced Digital Communications in the 117.975-137 MHz Band and to Implement Flight Information Services in the 137-137 MHz Band" (FCC01-378) received on November 17, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5289. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 99-01; to the Committee on Appropriations.

EC–5290. A communication from the Director, Regulatory Review Group, Farm Service Agency, transmitting, pursuant to law, the report of a rule entitled "Removal of Obsolete Regulations" (RIN0560-AH04) received on November 14, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5291. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, a report relative to funding transfers made during FY 2003 under the authority of the Department's Appropriations Acts 2001, 2002, and 2003; to the Committee on Armed Services.

EC–5292. A communication from the Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled "Federal Acquisition Regulation; Federal Acquisition Circular 2001-17" (FAC2001-17) received on November 14, 2003; to the Committee on Armed Services.

EC–5293. A communication from the Deputy Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Amendments to the Bank Secrecy Act Regulations; Definitions of Futures Commission Merchants and Introducing Brokers in Commodities as Financial Institutions; Requirement that Futures Commission Merchants and Introducing Brokers in Commodities Report Suspicious Transactions" (RIN1506-AA44) received on November 17, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5294. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Elibility; 66 FR 54718" (FEMA-7771) received on November 14, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5295. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Changes in Flood Elevation Determinations; 66 FR 56769" (44 CFR Part 65) received on November 14, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5296. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Changes in Flood Elevations Determinations; 66 FR 56773" (FEMA-B-7422) received on November 14, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5297. A communication from the Assistant General Counsel for Regulations, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled "Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects" (RIN2501-AC98) received on November 14, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5298. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to a transaction involving U.S. exports to the Kingdom of the Netherlands; to the Committee on Banking, Housing, and Urban Affairs.

EC–5299. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to a transaction involving U.S. exports to Mexico; to the Committee on Banking, Housing, and Urban Affairs.

EC–5300. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to a transaction involving U.S. exports to Kazakhstan; to the Committee on Banking, Housing, and Urban Affairs.

EC–5301. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Abandoned Mine Land (AML) Reclamation Program; Enhancing AML Reclamation" (RIN1029-AC07) received on November 17, 2003; to the Committee on Energy and Natural Resources.

EC–5302. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Kentucky Abandoned Mine Land (AML) Plan" (KY-239-FOR) received on November 17, 2003; to the Committee on Energy and Natural Resources.

EC–5303. A communication from the Director, Office of Human Resources Management, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary for Congressional and Intergovernmental Affairs, Department of Energy, received on November 17, 2003; to the Committee on Energy and Natural Resources.

EC–5304. A communication from the Director, Office of Human Resources Management, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary for Congressional and Governmental Affairs, Department of Energy, received on November 17, 2003; to the Committee on Energy and Natural Resources.

EC–5305. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Emergency Wartime Supplemental Appropriations Act, a report relative to the export to Iraq of electronic counter measures; to the Committee on Foreign Relations.

EC–5306. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, a report relative to Cuban emigration policies; to the Committee on Foreign Relations.

EC–5307. A communication from the Commissioner, Social Security Administration, transmitting, a report of the Administration's processing of continuing disability reviews for fiscal year 2002; to the Committee on Finance.

EC–5308. A communication from the Commissioner, Social Security Administration, transmitting, the Administration's Performance and Accountability Report for Fiscal Year 2003; to the Committee on Finance.

EC–5309. A communication from the Director, Executive Office of the President, Office of Management and Budget, transmitting, pursuant to law, a report entitled "Statistical Programs of the United States Government: Fiscal Year 2004"; to the Committee on Governmental Affairs.

EC–5310. A communication from the Inspector General, Department of the Interior, transmitting, pursuant to law, a report relative to the Department's inventory of commercial and inherently governmental activities; to the Committee on Governmental Affairs.

EC–5311. A communication from the Auditor of the District of Columbia, transmitting, a report relative to the District's Sports and Entertainment Commission; to the Committee on Governmental Affairs.

EC–5312. A communication from the Managing Director, Federal Communications Commission, transmitting, pursuant to law, a copy of the Commission's FY 2001 commercial inventory submission; to the Committee on Governmental Affairs.

EC–5313. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15-210, "Sports and Entertainment Commission Financial Affairs Temporary Amendment Act of 2003"; to the Committee on Governmental Affairs.

EC–5314. A communication from the Auditor of the District of Columbia, transmitting, a report relative to the District's Sports and Entertainment Commission; to the Committee on Governmental Affairs.

EC–5315. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "National Coverage Determinations" relative to Medicare and Medicaid; to the Committee on Health, Education, Labor, and Pensions.

EC–5316. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Skin Protectant Products for Over-the-Counter Human Use; Astringent Drug Products; Final Monograph; Direct Final Rule; Confirmation of Effective Date" (RIN0910-AA01) received on November 14, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5317. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Iron-Containing Supplements and Drugs; Label Warning Statements and Unit-Dose Packaging Requirements; Removal of Regulations for Unit-Dose Packaging Requirements for Dietary Supplements and Drugs" received on November 14, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5318. A communication from the Deputy General Counsel, National Endowment for the Arts, transmitting, pursuant to law, the report of a rule entitled "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)" (RIN3135-AA18 and -AA19) received on November 17, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5319. A communication from the Assistant General Counsel, National Endowment for the Humanities, transmitting, pursuant to law, the report of a rule entitled "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)" (RIN3136-AA25 and -AA26) received on November 17, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5320. A communication from the General Counsel, Institute of Museum and Library Services, transmitting, pursuant to law, the report of a rule entitled "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)" (RIN3137-AA14) received on November 17, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5321. A communication from the Secretary, Judicial Conference of the United States, a report relative to the legislative proposals recently adopted by the Conference at its September 2003 meeting; to the Committee on the Judiciary.

EC–5322. A communication from the Acting Deputy General Counsel, Office of Disaster Assistance, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled "Disaster Loan Program" (RIN3245-AE82) received on November 14, 2003; to the Committee on Small Business and Entrepreneurship.

EC–5323. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to U.S. military personnel and U.S. individual citizens retained as contractors involved in the anti-narcotics campaign in Columbia; to the Committee on Foreign Relations.

EC–5324. A communication from the President of the United States, transmitting, a report relative to the President's decision to take no action to suspend or prohibit the proposed investment by Singapore Technologies Telemedia Pte. Ltd. in Global Crossing Ltd.; to the Committee on Banking, Housing, and Urban Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, with an amendment:

S. 551. A bill to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes (Rept. No. 108-201).

By Mr. McCAIN, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 733. A bill to authorize appropriations for fiscal year 2004 for the United States Coast Guard, and for other purposes (Rept. No. 108-202).

S. 1218. A bill to provide for Presidential support and coordination of interagency ocean science programs and development and coordination of a comprehensive and integrated United States research and monitoring program (Rept. No. 108–203) .

EXECUTIVE REPORTS OF COMMITTEES

The following executive report of committees was submitted on November 17, 2003:

By Mr. HATCH for the Committee on the Judiciary.

James B. Comey, of New York, to be Deputy Attorney General.

DISCHARGED NOMINATIONS

The Senate Committee on Foreign Relations was discharged from further consideration of the following nominations and the nominations were confirmed:

Foreign Service nomination beginning with Robert Goldberg and ending with Robert Goldberg.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. LINCOLN (for herself and Mr. BINGAMAN):

S. 1889. A bill to amend titles XIX and XXI of the Social Security Act to permit States to cover low-income youth up to age 23 with an enhanced matching rate; to the Committee on Finance.

By Mr. ENZI (for himself, Mr. REID, Mr. ENSIGN, Mrs. BOXER, Mr. ALLEN, Mrs. MURRAY, Mr. ALLARD, Mr. BURNS, and Mr. SMITH):

S. 1890. A bill to require the mandatory expensing of stock options granted to executive officers, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GRAHAM of South Carolina (for himself and Mr. DURBIN):

S. 1891. A bill to amend title 11, United States Code, to establish a priority for the payment of claims for duties paid to the United States by licensed customs brokers and sureties on behalf of a debtor; to the Committee on the Judiciary.

By Mr. BAYH:

S. 1892. A bill to provide information and advice to pension plan participants to assist them in making decisions regarding the investment of their pension plan assets, and for other purposes; to the Committee on Finance.

By Mr. BAUCUS (for himself and Mr. CRAIG):

S. 1893. A bill to provide for review in the Court of International Trade of certain determinations of binational panels and committees under the North American Free Trade Agreement; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Mr. ALLEN, and Mr. HATCH):

S. 1894. A bill to amend the Internal Revenue Code of 1986 to provide for the deduction of interest paid in certain situations where the debt is guaranteed by a related foreign person; to the Committee on Finance.

By Ms. SNOWE (for herself and Mr. KERRY):

S. 1895. A bill to temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958 through March 15, 2004, and for other purposes; considered and passed.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. SMITH, Mr. ROCKEFELLER, Mr. HATCH, Mr. CONRAD, Mr. BUNNING, Mr. GRAHAM of Florida, Mr. SANTORUM, Mr. JEFFORDS, and Mr. BREAUX):

S. 1896. A bill to provide extensions for certain expiring provisions of the Internal Revenue Code of 1986, and for other purposes; to the Committee on Finance.

By Mrs. DOLE:

S.J. Res. 25. A joint resolution proposing an amendment to the Constitution of the United States relative to the line item veto; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 595

At the request of Mr. HATCH, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 595, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financings to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 664

At the request of Mr. HATCH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 664, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 857

At the request of Mr. ROCKEFELLER, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 857, a bill to amend the Internal Revenue Code of 1986 to provide a tax incentive to individuals teaching in elementary and secondary schools located in rural or high unemployment areas and to individuals who achieve certification from the National Board for Professional Teaching Standards, and for other purposes.

S. 1266

At the request of Mrs. CLINTON, the names of the Senator from Georgia (Mr. MILLER), the Senator from Indiana (Mr. LUGAR), the Senator from Arizona (Mr. MCCAIN) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 1266, a bill to award a congressional gold medal to Dr. Dorothy Height, in recognition of her many contributions to the Nation.

S. 1277

At the request of Mr. BIDEN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1277, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement discipline, accountability, and due process laws.

S. 1380

At the request of Mr. SMITH, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1380, a bill to distribute universal service support equitably throughout rural America, and for other purposes.

S. 1628

At the request of Mr. ALEXANDER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1628, a bill to prescribe the oath of renunciation and allegiance for purposes of the Immigration and Nationality Act.

S. 1679

At the request of Mr. BUNNING, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 1679, a bill to amend the Internal Revenue Code of 1986 to reduce the depreciation recovery period for roof systems.

S. 1700

At the request of Mr. HATCH, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1700, a bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 1858

At the request of Mr. COCHRAN, the names of the Senator from Idaho (Mr. CRAIG) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 1858, a bill to authorize the Secretary of Agriculture to conduct a loan repayment program to encourage the provision of veterinary services in shortage and emergency situations.

S.J. RES. 19

At the request of Mr. SPECTER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S.J. Res. 19, a joint resolution recognizing Commodore John Barry as the first flag officer of the United States Navy.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the names of the Senator from Maryland (Ms. MIKULSKI) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. RES. 253

At the request of Mr. NELSON of Florida, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. Res. 253, a resolution to recognize the evolution and importance of motorsports.

S. RES. 262

At the request of Ms. SNOWE, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. Res. 262, a resolution to encourage the Secretary of the Treasury to initiate expedited negotiations with the People's Republic of China on establishing a market-based currency valuation and to fulfill its commitments under international trade agreements.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ENZI (for himself, Mr. REID, Mr. ENSIGN, Mrs. BOXER, Mr. ALLEN, Mrs. MURRAY, Mr. ALLARD, Mr. BURNS, and Mr. SMITH):

S. 1890. A bill to require the mandatory expensing of stock options granted to executive officers, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. ENZI. Mr. President, I rise to introduce the Stock Option Accounting Act. This bill has been a long time in the making. It is a strong bipartisan bill that addresses the important role stock options play in our economy.

As an Accountant, and as a member of the Senate who was a small businessman for many years, I tend to believe most of the issues we address in Congress should be examined with an eye toward preserving the strength and integrity of our small business sector, and ensuring that the regulations that govern it are fair and preserve and promote, rather than discourage, innovation and competition.

I think that's something we can all agree on, so I know I won't have to go into too much detail about the importance of our small business sector, especially our small, high tech businesses. When it comes to small businesses, especially our high technology centers, we truly are the envy of the world. Our talented and creative engineers and inventors have paved the way for innovations in advanced technologies and computer software that other countries will always try to imitate.

Here in the United States, our Small Business Administration is well aware of the importance of that sector to our Nation's economy. Nearly 23 million strong, small businesses represent more than 99.7 percent of all employers, employ more than half of all private sector employees, generate 60 to 80 percent of net new jobs annually, create more than 50 percent of nonfarm private gross domestic product (GDP) and produce 13 to 14 times more patents per employee than large patenting firms.

Last week, I chaired a hearing in the Banking Committee's Subcommittee on Securities and Investment that featured testimony from the Financial Accounting Standards Board (FASB) and the small business community. It became quite evident during the hearing that FASB is ill equipped to conduct economic impact studies of the accounting standards that it adopts even through its one of their precepts. FASB may be able to conduct a cost analysis of an accounting standard proposal determining the costs of computers and additional manpower necessary to implement a new statement. But, it does not have the expertise to look at the comprehensive impact a new standard may have on the economy.

In addition, as the hearing progressed, it was evident that FASB is not listening to small businesses, and not taking their concerns seriously about a standard that FASB Board members stated was "set in concrete" prior to an official comment period on any draft proposal.

At the hearing, small business witnesses testified about how they are worried that the expensing of stock options would make this form of employee compensation prohibitive. They said it would make it very difficult if not impossible to attract and retain talented employees. It would also have a detrimental effect on the entrepreneurial nature and spirit of our country. In all of my years listening on this issue, not one small business owner has spoken in favor of expensing stock options.

After the hearing, I was more convinced than ever that legislation like this bill was needed to address the issue of the expensing of stock options.

A key element of FASB's current structure is its independence and I want to make it clear that I support that principle. FASB's independence, like freedom, must be earned—and its independence does not provide a shield that absolves FASB of accountability and due process.

When it comes to the issue of stock options, a case can be made that FASB took up the project with a pre-ordained result in mind. It's no surprise, therefore, that the process that was established to pursue the matter seems to reflect a project that was begun with the end in mind. There is enough evidence there to at least make one wonder.

First, FASB doesn't seem to have given much consideration to the more than 200 public comment letters they received. The public comments made by FASB Board Members seem to also reflect a skewed process, as does the lack of response to the many high tech companies that have visited with FASB in the past several months. In addition, FASB has refused to conduct real road tests to actual valuation methods.

According to the FASB website "Facts about FASB 2003–2004," the Board follows certain precepts in the conduct of its activities. They are: 1. To be objective in its decision making and to ensure, insofar as possible, the neutrality of information resulting from its standards. To be neutral, information must report economic activity as faithfully as possible without coloring the image it communicates for the purpose of influencing behavior in any particular direction. 2. To weight carefully the views of its constituents in developing concepts and standards. However, the ultimate determinant of concepts and standards must be the Board's judgment, based on research, public input and careful deliberation about the usefulness of the resulting information. 3. To promulgate standards only when the expected benefits exceed the perceived costs. While reliable, quantitative cost-benefit calculations are seldom possible, the Board strives to determine that a proposed standard will meet a significant need and that the costs it imposes, compared with possible alternatives, are justified in relation to the overall benefits. 4. To bring about needed changes in ways that minimize disruption to the continuity of reporting practice. Reasonable effective dates and transition provisions are established when new standards are introduced. The Board considers it desirable that change be evolutionary to the extent that it can be accommodated by the need for relevance, reliability, comparability and consistency. 5. To review the effects of past decisions and interpret, amend or replace standards in timely fashion when such action is indicated.

Precept number 3 greatly interests me. I am very concerned that FASB has repeatedly refused to consider the economic consequences of its decisions. The mandatory expending of all employee stock options has serious economic, labor, trade and competitiveness implications. These issues fall squarely within the jurisdiction and oversight of Congress. It's not hard to imagine what would be said of Congress if we failed to take note of the economic implications of the actions we take on the floor.

Simply put, at the end of the day, if FASB is going to earn its independence, it will have to adhere to a process that is objective, fair, open and balanced. So far, FASB seems to be more concerned about getting the job done—than in getting it right.

That is why I am offering legislation that will expense the stock options given to the top five executives of a company, exempt small businesses and start up companies, and set conditions for the expensing of broad-based options for the remaining employees. I treat the three groups differently in this matter because a very real and strong accounting distinction exists between the two types of workers.

First of all, in a very real sense the top five executives of an organization are different from the general employee group in the manner in which they are treated by the SEC and the manner in which their compensation is defined and distributed from an accounting perspective.

The top five executives, for instance, are treated differently when it comes to their compensation and a wide range of other matters. Proxy rules, for instance, require significant additional disclosures from the top five executives than they do of any other group.

Second, from an accounting perspective, there is a clear distinction between executives and the broad employee group. In their recent book, In the Company of Owners, Professor Joseph Blasi and Douglas Kruse concluded, based on extensive research, that options granted to all but the top executives in a company are not labor income, but a form of capital income.

To quote from their book, "They represent risk sharing profits that workers receive on top of their normal market wages and benefits. As such, it makes little sense to deduct the value of those options from profits."

In addition, Blasi and Kruse found that, "options turn employees into economic partners in the enterprise. As such, they stand to share in the stock appreciation that they help to bring about. . . . Options provide an additional dimension to their employment relationship, allowing workers to participate in both the risks and the rewards of property ownership. . . . There's substantial economic evidence that options bring workers capital rather than labor income. . . . The earnings workers get from options comes on top of their regular market wage."

In contrast, options for top executives function more as labor income, particularly in companies without broad based option plans. These top executives bargain for their entire "compensation" package and, in many cases, stock options represent a large part of the total package. Their negotiations about compensation are distinctly different than other employees.

That brings me to our bill and its purpose—or, to continue with my line of reasoning—If these two groups should be compensated differently for their efforts when it comes to stock options, how should it be done?

Our legislation would mandate a valuation method of the options given to the top five executives that does not require companies to predict their future stock price volatility. One of the members of the Option Valuation Group, Fred Cook, appointed by the FASB strongly recommended this method—one where stock price volatility is set at zero so that companies don't have to use a crystal ball and try to predict their future stock price.

Another key principle in our legislation is the requirement that FASB develop a method of "truing up"—or correcting errors—that are made when stock option estimates are made at grant date. There are several other areas where estimates are made in financial statements, and then corrected over time as the precise facts are learned. Today, no such corrections are made in the stock options area—a fundamental flaw in the system.

To address these issues, the bill has three major components. First, the bill would target executive compensation. A company would be required to expense immediately options of the top five highly compensated individuals at a company. The Securities and Exchange Commission already requires this information in annual statements and proxy statements. In addition, it would provide investors with a clearer understanding of the stock options of top company officials. This also would work in conjunction with the self-regulatory organization's rules, approved last week by the Securities and Exchange Commission, to require shareholder approval of stock option plans.

Second, small business would be exempt from expensing stock options. The exemption for small businesses would follow the current SEC rules for defining small businesses. The bill would allow small companies a 3-year grace period after an initial public offering prior to a company being required to expense stock options. This would allow a sufficient period of time to work out any initial volatility after the initial public offering.

Finally, the bill would not permit the Securities and Exchange Commission to recognize a stock option expensing standard unless two things happen. First, companies must be able to recognize the true expense of stock options on their financial statements. Currently, FASB wants companies to expense stock options upon the grant date of an option. Unfortunately, the current valuation models for stock options, Black-Scholes, binomial, Crystal Ball, and others, are horrible indicators of the true cost to a company stock options.

The bill would require that a company be able to "true-up" its financial statements when a stock option is exercised, lapses or is forfeited. If the cost goes up then the company must record the increase when an option is exercised. Likewise, if an option lapses or is forfeited then a company should be able to wipe those previously taken expenses off its balanced sheet. This is only fair.

The second item prior to an accounting standard to be recognized is the completion of an economic analysis study by the Secretary of Commerce and the Secretary of Labor. This study would look at how the use of stock options may stimulate economic growth in our nation's economy. In addition, the study would relate how stock options expensing could effect the competiveness of U.S. companies in international markets.

I strongly believe that this bill is essential to our economic strength. It is clear that FASB is not listening to small business and therefore is not listening to the future of our country. FASB is therefore ill equipped to make the economic analysis decisions to determine the true effect of stock option expensing on our economy.

In addition, the bill also targets the invasion's need for greater information on executive compensation. I ask my colleagues to take a serious look at this bill and to support its passage.

I ask unanimous consent that a summary of the bill be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF KEY PROVISIONS OF THE ENZI-REID STOCK OPTION ACCOUNTING REFORM ACT

MANDATORY EXPENSING OF STOCK OPTION HELD BY HIGHLY COMPENSATED OFFICERS

The legislation requires that the chief executive officer and the next four most highly compensated executive officers shall expense their stock options in the annual reports filed with the Commission.

Expensing the options granted to the CEO and next four most highly compensated executive officers would go into effect immediately.

This is consistent with information that must be filed with the Commission as part of Securities Exchange Commission Regulation S–K and part of proxy statement filings pursuant to Securities Exchange Act Rule 14.

The section would require that the "fair value" of a stock option would be equal to the value that would be agreed upon by a willing buyer and seller taking into account all of the characteristics and restrictions imposed upon the stock option.

In light of the extreme inaccuracy of existing stock valuation models (e.g., Black Scholes, binomial, etc.), particularly with regard to the factor that requires companies to predict the volatility of their stock price, the legislation requires that the assumed volatility of the underlying stock option shall be considered zero.

SMALL BUSINESS EXEMPTION

The legislation exempts from the top five expensing requirement all small businesses as defined currently by the Securities and Exchange Commission pursuant to Regulation S–B.

The legislation also delays stock option expensing of a small business issuer until three years after an initial public offering has taken place. This would allow a small business issuer's stock to settle down from the initial volatility of the initial public offering.

PROHIBITION ON EXPENSING; "TRUING UP" REQUIREMENT; AND ECONOMIC IMPACT STUDY

The legislation prohibits the SEC from recognizing any stock option expensing accounting standard set by a standard setting body unless and until: 1. The expensing standard recognizes the true expense of the stock option on a company's financial statement when the option is exercised, expires or is forfeited, a "truing up" requirement; and 2. A comprehensive economic impact study has been conducted by the Departments of Commerce and Labor.

As to the first requirement above, currently, stock options must be expensed based upon the grant date of the option. There is no "truing up," or correcting, errors made at the time of grant when subsequent events prove the initial estimates to be inaccurate. The legislation requires that when an option is exercised, expires or is forfeited, the company would reconcile the actual expense to the company to the amount expensed previously upon the date of grant.

As to the second requirement, the legislation requires the Secretary of Commerce and the Secretary of Labor to conduct and complete a joint study on the economic impact of the mandatory expensing of all employee stock options. The study will address: 1. the use of broad-based stock option plans in expanding employee corporate ownership to workers at a wide range of income levels with particular focus on non-executive workers; 2. the role of such plans in the recruitment and retention of skilled workers; 3. the role of such plans in stimulating research and innovation; 4. the effect of such plans in stimulating the economic growth of the United States; and 5. the role of such plans in strengthening the international competitiveness of United States' businesses.

Mr. REID. Mr. President, I want to thank Senators ENZI, ENSIGN, BOXER, and ALLEN for their hard work and continued efforts on this issue.

It is with pleasure that I introduce bipartisan legislation, the Stock Option Accounting Reform Act of 2003, that is good for economic growth and the American way.

We have to protect investors and stockholders by ensuring that our Nation's accounting standards are transparent, open and balanced. At the same time, we don't want to choke the entrepreneurial spirit of start-up companies with too much bureaucratic red tape.

This legislation achieves just the right balance. It gives regulators a framework to protect the integrity of the accounting process, but it doesn't stifle free enterprise.

This bill requires a joint study by the Department of Labor and Department of Commerce to help FASB (Financial Accounting Standards Board) treat stock options fairly. It will help regulators valuate stocks for accounting purposes. It will curb stock option abuse by requiring the top five executives at large companies to expense their options. This will provide a true picture of a company's financial health.

Finally, it will protect small businesses and start-ups that rely upon stock options to attract good employees.

This bill is good for emerging companies and good for consumers. It's a balanced approach that deserves broad bipartisan support.

By Mr. BAYH:

S. 1892. A bill to provide information and advice to pension plan participants to assist them in making decisions regarding the investment of their pension plan assets, and for other purposes; to the Committee on Finance.

Mr. BAYH. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the Bill was ordered to be printed in the RECORD, as follows:

S. 1892

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NOTICE OF HIGH CONCENTRATION OF PENSION ASSETS IN EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) in amended by adding at the end of the following new subsection:

"(e) NOTICE OF HIGH CONCENTRATION OF PLAN ASSETS IN EMPLOYER SECURITIES.—

"(1) IN GENERAL.—In the case of an individual account plan to which this subsection applies, if the percentage of assets in the individual account that consists of employer securities and employer real property exceeds 50 percent of the total account, the plan administrator shall include with the account statement a notice that the account may be overinvested in employer securities and employer real property. Any determination under this paragraph shall be made as of the most recent valuation date under the plan.

"(2) EXCLUSION OF ASSETS HELD THROUGH POOLED INVESTMENT VEHICLES.—Employer securities and employer real property held through an investment option of the plan which is not designed to invest primarily in employer securities or employer real property shall not be taken under paragraph (1) is determining the percentage of assets that consist of employer securities and employer real property.

"(3) APPLICATION.—

"(A) IN GENERAL.—This subsection shall apply to any individual account plan which—

"(i) holds employer securities which are readily tradable on an established securities market, and

"(ii) permits a participant or beneficiary to exercise control over assets in the individual's account.

"(B) EXCEPTION FOR ESOPS.—This subsection shall not apply to an employee stock ownership plan (as defined in section 4795(e)(7)) of the Internal Revenue Code of 1986) if the plan has no contributions which are subject to section 401 (k) or (m) of such Code.

"(4) EMPLOYER SECURITIES AND REAL PROPERTY.—For purposes of this subsection, the terms 'employer securities' and 'employer real property' have the meanings given such terms by paragraphs (1) and (2) of section 407(d), respectively."

(b) PENALTY.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended—

(1) in subsection (a)(6), by striking "(6), or (7)" and inserting "(6), (7), or (8)",

(2) by redesignating paragraph (8) of subsection (c) as paragraph (9), and

(3) by inserting after paragraph (7) the following new paragraph:

"(8) The Secretary may assess a civil penalty against a plan administrator of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with section 105(e). For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2003.

SEC. 2. TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

(a) IN GENERAL.—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by redesignating paragraphs (2) and (3) as paragraphs (5) and (6), respectively, and by inserting after paragraph (1) the following:

"(2) LIMITATIONS.—

"(A) DOLLAR LIMITATION.—The aggregate amount which may be excluded with respect to qualified retirement planning services provided to any individual during a taxable year shall not exceed $1,500.

"(B) ADJUSTED GROSS INCOME.—No amount may be excluded with respect to qualified retirement planning services provided during a taxable year if the modified adjusted gross income of the taxpayer for such taxable year exceeds $100,000 ($200,000 in the case of married individuals filing a joint return). For purposes of this subparagraph, the term 'modified adjusted gross income' means adjusted gross income, determined without regard to this section and sections 911, 931, and 933.

"(3) CASH REIMBURSEMENTS.—For purposes of this subsection, the term 'qualified retirement planning services' includes a cash reimbursement by an employer to an employee for a benefit described in paragraph (1).

"(4) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by a qualified investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan."

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting "132(m)(4)," after "132(f)(4),".

(2) Section 414(s)(2) of such Code is amended by inserting "132(m)(4)," after "132(f)(4),".

(3) Section 415(c)(3)(D)(ii) of such Code is amended by inserting "132(m)(4)," after "132(f)(4),".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. SMITH, Mr. ROCKEFELLER, Mr. HATCH, Mr. CONRAD, Mr. BUNNING, Mr. GRAHAM of Florida, Mr. SANTORUM, Mr. JEFFORDS, and Mr. BREAUX):

S. 1896. A bill to provide extensions for certain expiring provisions of the Internal Revenue Code of 1986, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1896

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Tax Relief Extension Act of 2003".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—EXTENSIONS OF CERTAIN EXPIRING PROVISIONS

SEC. 101. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

(a) IN GENERAL.—Paragraph (2) of section 9812(f) is amended by striking "December 31, 2003" and inserting "June 30, 2004".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2004.

SEC. 102. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subparagraphs (A), (B), and (C) of section 45(c)(3) are each amended by striking "January 1, 2004" and inserting "July 1, 2004".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to facilities placed in service after December 31, 2003.

SEC. 103. WORK OPPORTUNITY CREDIT.

(a) IN GENERAL.—Subparagraph (B) of section 51(c)(4) is amended by striking "December 31, 2003" and inserting "June 30, 2004".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2003.

SEC. 104. WELFARE-TO-WORK CREDIT.

(a) IN GENERAL.—Subsection (f) of section 51A is amended by striking "December 31, 2003" and inserting "June 30, 2004".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2003.

SEC. 105. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.

(a) IN GENERAL.—Subparagraph (H) of section 613A(c)(6) is amended—

(1) by striking "January 1, 2004" and inserting "July 1, 2004", and

(2) by adding at the end the following new sentence: "In the case of any taxable year beginning after December 31, 2003, which includes June 30, 2004, any increase in the allowance for depletion by reason of this subparagraph shall be equal to the amount which bears the same ratio to the increase in such allowance determined without regard to this sentence as the number of days in the taxable year before July 1, 2004, bears to the total number of days in such taxable year.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 106. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 1397E(e) is amended by inserting "$200,000,000 for the period beginning after December 31, 2003, and before July 1, 2004," after "2003,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after December 31, 2003.

SEC. 107. COVER OVER OF TAX ON DISTILLED SPIRITS.

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking "January 1, 2004" and inserting "July 1, 2004".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles brought into the United States after December 31, 2003.

SEC. 108. DEDUCTION FOR CORPORATE DONATIONS OF COMPUTER TECHNOLOGY.

(a) EXTENSION OF DEDUCTION.—Section 170(e)(6)(G) (relating to termination) is amended by striking "contribution made during any taxable year beginning after December 31, 2003' and inserting "contribution made after June 30, 2004".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after December 31, 2003.

SEC. 109. CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) IN GENERAL.—Section 30 is amended—

(1) in subsection (b)(2)—

(A) by striking "December 31, 2003," and inserting "June 30, 2004,".

(B) in subparagraph (A), by striking "calendar year 2004" and inserting "after June 30, 2004, and before July 1, 2005",

(C) in subparagraph (B), by striking "calendar year 2005" and inserting "after June 30, 2005, and before July 1, 2006", and

(D) in subparagraph (C), by striking "calendar year 2006" and inserting "after June 30, 2006, and before July 1, 2007", and

(2) in subsection (e), by striking "December 31, 2006" and inserting "June 30, 2007".

(b) Conforming Amendment.—Clause (iii) of section 280F(a)(1)(C) is amended by striking "January 1, 2007" and inserting "July 1, 2007".

(c) Effective Date.—The amendments made by this section shall apply to property placed in service after December 31, 2003.

SEC. 110. DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.

(a) In General.—Section 179A is amended—

(1) in subsection (b)(1)(B)—

(A) by striking "December 31, 2003," and inserting "June 30, 2004,",

(B) in clause (i), by striking "calendar year 2004" and inserting "after June 30, 2004, and before July 1, 2005",

(C) in clause (ii), by striking "calendar year 2005" and inserting "after June 30, 2005, and before July 1, 2006", and

(D) in clause (iii), by striking "calendar year 2006" and inserting "after June 30, 2006, and before July 1, 2007", and

(2) in subsection (f), by striking "December 31, 2006" and inserting "June 30, 2007".

(b) Effective Date.—The amendments made by subsection (a) shall apply to property placed in service after December 31, 2003.

SEC. 111. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL TEACHERS.

(a) In General.—Subparagraph (D) of section 62(a)(2) is amended—

(1) by inserting "and the period beginning after December 31, 2003, and before July 1, 2004," after "2003,", and

(2) by inserting "for each taxable year or $125 for such period" after "$250".

(b) Effective Date.—The amendments made by subsection (a) shall apply to expenses paid or incurred after December 31, 2003.

SEC. 112. AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) In General.—Paragraphs (2) and (3)(B) of section 220(i) (defining cut-off year) are each amended by striking "2003" each place it appears and inserting "2004".

(b) Conforming Amendments.—

(1) Paragraph (2) of section 220(j) is amended by striking "1998, 1999, 2001, or 2002" each place it appears and inserting "1998, 1999, 2001, 2002, or 2003".

(2) Subparagraph (A) of section 220(j)(4) is amended by striking "and 2002" and inserting "2002, and 2003".

(c) Effective Date.—The amendments made by this section shall take effect on January 1, 2004.

SEC. 113. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) Extension of Termination Date.—Subsection (h) of section 198 is amended by striking "December 31, 2003" and inserting "June 30, 2004".

(b) Effective Date.—The amendment made by subsection (a) shall apply to expenditures paid or incurred after December 31, 2003.

SEC. 114. EXPANSION OF WOTC TO NEW YORK LIBERTY ZONE.

(a) In General.—Subclause (I) of section 1400L(a)(2)(D)(iv) is amended by inserting "or the period beginning after December 31, 2003, and before July 1, 2004" after "2003".

(b) Conforming Amendment.—Subclause (II) of section 1400L(a)(2)(D)(iv) is amended by inserting "or period described in subclause (I)" after "year".

(c) Effective Date.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2003.

SEC. 115. TEMPORARY SPECIAL RULES FOR TAXATION OF LIFE INSURANCE COMPANIES.

(a) In General.—Subsection (j) of section 809 is amended by striking "or 2003" and inserting "2003, or 2004".

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 116. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

(a) Designation of Zone.—Subsection (f) of section 1400 is amended by striking "December 31, 2003" both places it appears and inserting "June 30, 2004".

(b) Tax-Exempt Economic Development Bonds.—Subsection (b) of section 1400A is amended by striking "December 31, 2003" and inserting "June 30, 2004".

(c) Zero Percent Capital Gains Rate.—

(1) In general.—Subsection (b) of section 1400B is amended by striking "January 1, 2004" each place it appears and inserting "July 1, 2004".

(2) Conforming amendments.—

(A) Section 1400B(e)(2) is amended—

(i) by striking "December 31, 2008" and inserting "June 30, 2009", and

(ii) by striking "2008" in the heading and inserting "JUNE 2009".

(B) Section 1400B(g)(2) is amended by striking "December 31, 2008" and inserting "June 30, 2009".

(C) Section 1400F(d) is amended by striking "December 31, 2008" and inserting "June 30, 2009".

(d) First-Time Homebuyer Credit.—Subsection (i) of section 1400C is amended by striking "January 1, 2004" and inserting "July 1, 2004".

(e) Effective Date.—The amendments made by this section shall take effect on January 1, 2004.

SEC. 117. COMBINED EMPLOYMENT TAX REPORTING PROGRAM.

(a) In General.—Paragraph (1) of section 976(b) of the Taxpayer Relief Act of 1997 is amended by striking "for a period ending with the date which is 5 years after the date of the enactment of this Act" and inserting "during the period ending before July 1, 2004".

(b) Effective Date.—The amendment made by subsection (a) shall apply to disclosures on or after the date of the enactment of this Act.

TITLE II—REVENUE PROVISIONS

SEC. 201. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) In General.—Section 4132(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

"(I) Any vaccine against hepatitis A.".

(b) Conforming Amendment.—Section 9510(c)(1)(A) is amended by striking "October 18, 2000" and inserting "the date of the enactment of the Tax Relief Extension Act of 2003".

(c) Effective Date.—

(1) Sales, etc.—The amendments made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) Deliveries.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 202. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) In General.—Section 4132(a)(1) (defining taxable vaccine), as amended by this Act, is amended by adding at the end the following new subparagraph:

"(N) Any trivalent vaccine against influenza.".

(b) Effective Date.—

(1) Sales, etc.—The amendment made by this section shall apply to sales and uses on or after the later of—

(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act, or

(B) the date on which the Secretary of Health and Human Services lists any vaccine against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

(2) Deliveries.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 203. EXTENSION OF TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) Amendment of Internal Revenue Code of 1986.—Paragraph (5) of section 420(b) (relating to expiration) is amended by striking "December 31, 2005" and inserting "December 31, 2013".

(b) Amendments of ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking "Tax Relief Extension Act of 1999" and inserting "Tax Relief Extension Act of 2003".

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking "Tax Relief Extension Act of 1999" and inserting "Tax Relief Extension Act of 2003".

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended—

(A) by striking "January 1, 2006" and inserting "January 1, 2014", and

(B) by striking "Tax Relief Extension Act of 1999" and inserting "Tax Relief Extension Act of 2003".

SEC. 204. EXTENSION OF IRS USER FEES.

(a) In General.—Section 7528(c) (relating to termination) is amended by striking "December 31, 2004" and inserting "December 31, 2011".

(b) Effective Date.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

By Mrs. DOLE:

S.J. Res. 25. A joint resolution proposing an amendment to the Constitution of the United States relative to the line item veto; to the Committee on the Judiciary.

Mrs. DOLE. Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 25

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission by the Congress:

"ARTICLE—

"SECTION 1. Congress shall have the power to enact a line-item veto.".

AMENDMENTS SUBMITTED & PROPOSED

SA 2203. Mr. THOMAS (for Mr. SPECTER (for himself and Mr. GRAHAM, of Florida)) proposed an amendment to the bill S. 1156, to amend title 38, United States Code, to improve and enhance the provision of health care for veterans, to authorize major construction projects and other facilities matters for the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.

SA 2204. Mr. THOMAS (for Mr. SPECTER) proposed an amendment to the bill S. 1156, supra.

SA 2205. Mr. THOMAS (for Mr. SPECTER (for himself and Mr. GRAHAM, of Florida)) proposed an amendment to the bill H.R. 2297, to amend title 38, United States Code, to improve benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.

SA 2206. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 671, to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2203. Mr. THOMAS (for Mr. SPECTER (for himself and Mr. GRAHAM of Florida)) proposed an amendment to the bill S. 1156, to amend title 38, United States Code, to improve and enhance the provision of health care for veterans, to authorize major construction projects and other facilities matters for the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans Health Care, Capital Asset, and Business Improvement Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—HEALTH CARE AUTHORITIES AND RELATED MATTERS

Sec. 101. Improved benefits for former prisoners of war.
Sec. 102. Provision of health care to veterans who participated in certain Department of Defense chemical and biological warfare testing.
Sec. 103. Eligibility for Department of Veterans Affairs health care for certain Filipino World War II veterans residing in the United States.
Sec. 104. Enhancement of rehabilitative services.
Sec. 105. Enhanced agreement authority for provision of nursing home care and adult day health care in contract facilities.
Sec. 106. Five-year extension of period for provision of noninstitutional extended-care services and required nursing home care.
Sec. 107. Expansion of Department of Veterans Affairs pilot program on assisted living for veterans.
Sec. 108. Improvement of program for provision of specialized mental health services to veterans.

TITLE II—CONSTRUCTION AND FACILITIES MATTERS

Subtitle A—Program Authorities

Sec. 201. Increase in threshold for major medical facility construction projects.
Sec. 202. Enhancements to enhanced-use lease authority.
Sec. 203. Simplification of annual report on long-range health planning.

Subtitle B—Project Authorizations

Sec. 211. Authorization of major medical facility projects.
Sec. 212. Authorization of major medical facility leases.
Sec. 213. Advance planning authorizations.
Sec. 214. Authorization of appropriations.

Subtitle C—Capital Asset Realignment for Enhanced Services Initiative

Sec. 221. Authorization of major construction projects in connection with Capital Asset Realignment Initiative.
Sec. 222. Advance notification of capital asset realignment actions.
Sec. 223. Sense of Congress and report on access to health care for veterans in rural areas.

Subtitle D—Plans for New Facilities

Sec. 231. Plans for facilities in specified areas.
Sec. 232. Study and report on feasibility of coordination of veterans health care services in South Carolina with new university medical center.

Subtitle E—Designation of Facilities

Sec. 241. Designation of Department of Veterans Affairs medical center, Prescott, Arizona, as the Bob Stump Department of Veterans Affairs Medical Center.
Sec. 242. Designation of Department of Veterans Affairs health care facility, Chicago, Illinois, as the Jesse Brown Department of Veterans Affairs Medical Center.
Sec. 243. Designation of Department of Veterans Affairs medical center, Houston, Texas, as the Michael E. DeBakey Department of Veterans Affairs Medical Center.
Sec. 244. Designation of Department of Veterans Affairs medical center, Salt Lake City, Utah, as the George E. Wahlen Department of Veterans Affairs Medical Center.
Sec. 245. Designation of Department of Veterans Affairs outpatient clinic, New London, Connecticut.
Sec. 246. Designation of Department of Veterans Affairs outpatient clinic, Horsham, Pennsylvania.

TITLE III—PERSONNEL MATTERS

Sec. 301. Modification of certain authorities on appointment and promotion of personnel in the Veterans Health Administration.
Sec. 302. Appointment of chiropractors in the Veterans Health Administration.
Sec. 303. Additional pay for Saturday tours of duty for additional health care workers in the Veterans Health Administration.
Sec. 304. Coverage of employees of Veterans' Canteen Service under additional employment laws.

TITLE IV—OTHER MATTERS

Sec. 401. Office of Research Oversight in Veterans Health Administration.
Sec. 402. Enhancement of authorities relating to nonprofit research corporations.
Sec. 403. Department of Defense participation in Revolving Supply Fund purchases.
Sec. 404. Five-year extension of housing assistance for homeless veterans.
Sec. 405. Report date changes.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—HEALTH CARE AUTHORITIES AND RELATED MATTERS

SEC. 101. IMPROVED BENEFITS FOR FORMER PRISONERS OF WAR.

(a) OUTPATIENT DENTAL CARE FOR ALL FORMER PRISONERS OF WAR.—Section 1712(a)(1)(F) is amended by striking "and who was detained or interned for a period of not less than 90 days".

(b) EXEMPTION FROM PHARMACY COPAYMENT REQUIREMENT.—Section 1722A(a)(3) is amended—

(1) by striking "or" at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph (B):

"(B) to a veteran who is a former prisoner of war; or".

SEC. 102. PROVISION OF HEALTH CARE TO VETERANS WHO PARTICIPATED IN CERTAIN DEPARTMENT OF DEFENSE CHEMICAL AND BIOLOGICAL WARFARE TESTING.

Section 1710(e) is amended—

(1) in paragraph (1), by adding at the end the following new subparagraph:

"(E) Subject to paragraphs (2) and (3), a veteran who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as

'Project Shipboard Hazard and Defense (SHAD)' and related land-based tests) is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any illness, notwithstanding that there is insufficient medical evidence to conclude that such illness is attributable to such testing.";

(2) in paragraph (2)(B)—

(i) by striking out "paragraph (1)(C) or (1)(D)" and inserting "subparagraph (C), (D), or (E) of paragraph (1)"; and

(ii) by striking "service described in that paragraph" and inserting "service or testing described in such subparagraph"; and

(3) in paragraph (3)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(D) in the case of care for a veteran described in paragraph (1)(E), after December 31, 2005.".

SEC. 103. ELIGIBILITY FOR DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FOR CERTAIN FILIPINO WORLD WAR II VETERANS RESIDING IN THE UNITED STATES.

The text of section 1734 is amended to read as follows:

"(a) The Secretary shall furnish hospital and nursing home care and medical services to any individual described in subsection (b) in the same manner, and subject to the same terms and conditions, as apply to the furnishing of such care and services to individuals who are veterans as defined in section 101(2) of this title. Any disability of an individual described in subsection (b) that is a service-connected disability for purposes of this subchapter (as provided for under section 1735(2) of this title) shall be considered to be a service-connected disability for purposes of furnishing care and services under the preceding sentence.

"(b) Subsection (a) applies to any individual who is a Commonwealth Army veteran or new Philippine Scout and who—

"(1) is residing in the United States; and

"(2) is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.".

SEC. 104. ENHANCEMENT OF REHABILITATIVE SERVICES.

(a) REHABILITATIVE SERVICES THROUGH MEDICAL CARE AUTHORITY.—Section 1701(8) is amended by striking "(other than those types of vocational rehabilitation services provided under chapter 31 of this title)".

(b) EXPANSION OF AUTHORIZED REHABILITATIVE SERVICES.—(1) Section 1718 is amended—

(A) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(B) by inserting after subsection (c) the following new subsection (d):

"(d) In providing to a veteran rehabilitative services under this chapter, the Secretary may furnish the veteran with the following:

"(1) Work skills training and development services.

"(2) Employment support services.

"(3) Job development and placement services.".

(2) Subsection (c) of such section is amended—

(A) in paragraph (1), by striking "subsection (b) of this section" and inserting "subsection (b) or (d)"; and

(B) in paragraph (2)—

(i) by striking "subsection (b) of this section" and inserting "subsection (b) or (d)"; and

(ii) by striking "paragraph (2) of such subsection" and inserting "subsection (b)(2)".

SEC. 105. ENHANCED AGREEMENT AUTHORITY FOR PROVISION OF NURSING HOME CARE AND ADULT DAY HEALTH CARE IN CONTRACT FACILITIES.

(a) ENHANCED AUTHORITY.—Subsection (c) of section 1720 is amended—

(1) by designating the existing text as paragraph (2); and

(2) by inserting before paragraph (2), as so designated, the following new paragraph (1):

"(1)(A) In furnishing nursing home care, adult day health care, or other extended care services under this section, the Secretary may enter into agreements for furnishing such care or services with—

"(i) in the case of the medicare program, a provider of services that has entered into a provider agreement under section 1866(a) of the Social Security Act (42 U.S.C. 1395cc(a)); and

"(ii) in the case of the medicaid program, a provider participating under a State plan under title XIX of such Act (42 U.S.C. 1396 et seq.).

"(B) In entering into an agreement under subparagraph (A) with a provider of services described in clause (i) of that subparagraph or a provider described in clause (ii) of that subparagraph, the Secretary may use the procedures available for entering into provider agreements under section 1866(a) of the Social Security Act.".

(b) CONFORMING AMENDMENT.—Subsection (f)(1)(B) of such section is amended by inserting "or agreement" after "contract" each place it appears.

SEC. 106. FIVE-YEAR EXTENSION OF PERIOD FOR PROVISION OF NONINSTITUTIONAL EXTENDED-CARE SERVICES AND REQUIRED NURSING HOME CARE.

(a) NONINSTITUTIONAL EXTENDED CARE SERVICES.—Section 1701(10)(A) is amended by striking "the date of the enactment of the Veterans Millennium Health Care and Benefits Act and ending on December 31, 2003," and inserting "November 30, 1999, and ending on December 31, 2008,".

(b) REQUIRED NURSING HOME CARE.—Section 1710A(c) is amended by striking "December 31, 2003" and inserting "December 31, 2008".

SEC. 107. EXPANSION OF DEPARTMENT OF VETERANS AFFAIRS PILOT PROGRAM ON ASSISTED LIVING FOR VETERANS.

Section 103(b) of the Veterans Millennium Health Care and Benefits Act (Public Law 106–117; 113 Stat. 1552; 38 U.S.C. 1710B note) is amended—

(1) by striking "LOCATION OF PILOT PROGRAM.—" and inserting "LOCATIONS OF PILOT PROGRAM.—(1)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) In addition to the health care region of the Department selected for the pilot program under paragraph (1), the Secretary may also carry out the pilot program in not more than one additional designated health care region of the Department selected by the Secretary for purposes of this section.

"(B) Notwithstanding subsection (f), the authority of the Secretary to provide services under the pilot program in a health care region of the Department selected under subparagraph (A) shall cease on the date that is three years after the commencement of the provision of services under the pilot program in the health care region.".

SEC. 108. IMPROVEMENT OF PROGRAM FOR PROVISION OF SPECIALIZED MENTAL HEALTH SERVICES TO VETERANS.

(a) INCREASE IN FUNDING.—Subsection (c) of section 116 of the Veterans Millennium Health Care and Benefits Act (Public Law 106–117; 113 Stat. 1559; 38 U.S.C. 1712A note) is amended—

(1) in paragraph (1), by striking "$15,000,000" and inserting "$25,000,000 in each of fiscal years 2004, 2005, and 2006";

(2) in paragraph (2), by striking "$15,000,000" and inserting "$25,000,000"; and

(3) in paragraph (3)—

(A) by inserting "(A)" after "(3)"; and

(B) by adding at the end the following new subparagraph:

"(B) For purposes of this paragraph, in fiscal years 2004, 2005, and 2006, the fiscal year used to determine the baseline amount shall be fiscal year 2003.".

(b) ALLOCATION OF FUNDS.—Subsection (d) of that section is amended—

(1) by striking "The Secretary" and inserting "(1) In each of fiscal years 2004, 2005, and 2006, the Secretary"; and

(2) by adding at the end the following new paragraphs:

"(2) In allocating funds to facilities in a fiscal year under paragraph (1), the Secretary shall ensure that—

"(A) not less than $10,000,000 is allocated by direct grants to programs that are identified by the Mental Health Strategic Health Care Group and the Committee on Care of Severely Chronically Mentally Ill Veterans;

"(B) not less than $5,000,000 is allocated for programs on post-traumatic stress disorder; and

"(C) not less than $5,000,000 is allocated for programs on substance use disorder.

"(3) The Secretary shall provide that the funds to be allocated under this section during each of fiscal years 2004, 2005, and 2006 are funds for a special purpose program for which funds are not allocated through the Veterans Equitable Resource Allocation system.".

TITLE II—CONSTRUCTION AND FACILITIES MATTERS

Subtitle A—Program Authorities

SEC. 201. INCREASE IN THRESHOLD FOR MAJOR MEDICAL FACILITY CONSTRUCTION PROJECTS.

Section 8104(a)(3)(A) is amended by striking "$4,000,000" and inserting "$7,000,000".

SEC. 202. ENHANCEMENTS TO ENHANCED-USE LEASE AUTHORITY.

(a) NOTIFICATION OF PROPERTY TO BE LEASED.—Section 8163 is amended—

(1) in the first sentence of subsection (a)—

(A) by striking "designate a property to be leased under an enhanced-use lease" and inserting "enter into an enhanced-use lease with respect to certain property"; and

(B) by striking "before making the designation" and inserting "before entering into the lease";

(2) in subsection (b), by striking "of the proposed designation" and inserting "to the congressional veterans' affairs committees and to the public of the proposed lease"; and

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by striking "designate the property involved" and inserting "enter into an enhanced-use lease of the property involved"; and

(ii) by striking "to so designate the property" and inserting "to enter into such lease";

(B) in paragraph (2), by striking "90-day period" and inserting "45-day period";

(C) in paragraph (3)—

(i) by striking "general description" in subparagraph (D) and inserting "description of the provisions"; and

(ii) by adding at the end the following new subparagraph:

"(G) A summary of a cost-benefit analysis of the proposed lease."; and

(D) by striking paragraph (4).

(b) DISPOSITION OF LEASED PROPERTY.—Section 8164 is amended—

(1) in subsection (a)—

(A) by striking "by requesting the Administrator of General Services to dispose of the property pursuant to subsection (b)" in the first sentence; and

(B) by striking the third sentence;

(2) in subsection (b)—

(A) by striking "Secretary and the Administrator of General Services jointly determine" and inserting "Secretary determines"; and

(B) by striking "Secretary and the Administrator consider" and inserting "Secretary considers"; and

(3) in subsection (c), by striking "90 days" and inserting "45 days".

(c) USE OF PROCEEDS.—Section 8165 is amended—

(1) in subsection (a)(2), by striking "and remaining after any deduction from such funds under the laws referred to in subsection (c)";

(2) in subsection (b), by adding at the end the following new sentence: "The Secretary may use the proceeds from any enhanced-use lease to reimburse applicable appropriations of the Department for any expenses incurred in the development of additional enhanced-use leases."; and

(3) by striking subsection (c).

(d) CLERICAL AMENDMENTS.—(1) The heading of section 8163 is amended to read as follows:

"§ 8163. Hearing and notice requirements regarding proposed leases".

(2) The item relating to section 8163 in the table of sections at the beginning of chapter 81 is amended to read as follows:

"8163. Hearing and notice requirements regarding proposed leases.".

SEC. 203. SIMPLIFICATION OF ANNUAL REPORT ON LONG-RANGE HEALTH PLANNING.

Section 8107(b) is amended by striking paragraphs (3) and (4).

Subtitle B—Project Authorizations

SEC. 211. AUTHORIZATION OF MAJOR MEDICAL FACILITY PROJECTS.

The Secretary of Veterans Affairs may carry out the following major medical facility projects, with each project to be carried out in an amount not to exceed the amount specified for that project:

(1) Construction of a long-term care facility in Lebanon, Pennsylvania, $14,500,000.

(2) Construction of a long-term care facility in Beckley, West Virginia, $20,000,000.

(3) Construction of a new bed tower to consolidate two inpatient sites of care in the city of Chicago at the West Side Division of the Department of Veterans Affairs health care system in Chicago, Illinois, in an amount not to exceed $98,500,000.

(4) Seismic corrections to strengthen Medical Center Building 1 of the Department of Veterans Affairs health care system in San Diego, California, in an amount not to exceed $48,600,000.

(5) A project for (A) renovation of all inpatient care wards at the West Haven, Connecticut, facility of the Department of Veterans Affairs health system in Connecticut to improve the environment of care and enhance safety, privacy, and accessibility, and (B) establishment of a consolidated medical research facility at that facility, in an amount not to exceed $50,000,000.

(6) Construction of a Department of Veterans Affairs-Department of the Navy joint venture comprehensive outpatient medical care facility to be built on the grounds of the Pensacola Naval Air Station, Pensacola, Florida, in an amount not to exceed $45,000,000.

SEC. 212. AUTHORIZATION OF MAJOR MEDICAL FACILITY LEASES.

The Secretary of Veterans Affairs may enter into leases for medical facilities as follows:

(1) For an outpatient clinic in Charlotte, North Carolina, in an amount not to exceed $3,000,000.

(2) For an outpatient clinic extension, Boston, Massachusetts, in an amount not to exceed $2,879,000.

SEC. 213. ADVANCE PLANNING AUTHORIZATIONS.

The Secretary of Veterans Affairs may carry out advance planning for a major medical facility project at each of the following locations, with such planning to be carried out in an amount not to exceed the amount specified for that location:

(1) Denver, Colorado, in an amount not to exceed $30,000,000, of which $26,000,000 shall be provided by the Secretary of Veterans Affairs and $4,000,000 shall be provided by the Secretary of Defense.

(2) Pittsburgh, Pennsylvania, in an amount not to exceed $9,000,000.

(3) Las Vegas, Nevada, in an amount not to exceed $25,000,000.

(4) Columbus, Ohio, in an amount not to exceed $9,000,000.

(5) East Central, Florida, in an amount not to exceed $17,500,000.

SEC. 214. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for the Secretary of Veterans Affairs for fiscal year 2004—

(1) for the Construction, Major Projects, account, a total of $363,100,000, of which—

(A) $276,600,000 is for the projects authorized in section 211; and

(B) $86,500,000 is for the advance planning authorized in section 213; and

(2) for the Medical Care account, $5,879,000 for the leases authorized in section 212.

(b) LIMITATION.—The projects authorized in section 211 may only be carried out using—

(1) funds appropriated for fiscal year 2004 pursuant to the authorization of appropriations in subsection (a);

(2) funds appropriated for Construction, Major Projects, for a fiscal year before fiscal year 2004 that remain available for obligation; and

(3) funds appropriated for Construction, Major Projects, for fiscal year 2004 for a category of activity not specific to a project.

Subtitle C—Capital Asset Realignment for Enhanced Services Initiative

SEC. 221. AUTHORIZATION OF MAJOR CONSTRUCTION PROJECTS IN CONNECTION WITH CAPITAL ASSET REALIGNMENT INITIATIVE.

(a) AUTHORITY TO CARRY OUT MAJOR CONSTRUCTION PROJECTS.—Subject to subsection (b), the Secretary of Veterans Affairs may carry out major construction projects as specified in the final report of the Capital Asset Realignment for Enhanced Services Commission and approved by the Secretary.

(b) LIMITATION.—The Secretary may not exercise the authority in subsection (a) until 45 days after the date of the submittal of the report required by subsection (c).

(c) REPORT ON PROPOSED MAJOR CONSTRUCTION PROJECTS.—(1) The Secretary shall submit to the Committees on Veterans' Affairs and the Committees on Appropriations of the Senate and House of Representatives not later than February 1, 2004, a report describing the major construction projects the Secretary proposes to carry out in connection with the Capital Asset Realignment for Enhanced Services initiative.

(2) The report shall list each proposed major construction project in order of priority, with such priority determined in the order as follows:

(A) The use of the facility to be constructed or altered as a replacement or enhancement facility necessitated by the loss, closure, or other divestment of major infrastructure or clinical space at a Department of Veterans Affairs medical facility currently in operation, as determined by the Secretary.

(B) The remedy of life and safety code deficiencies, including seismic, egress, and fire deficiencies at such facility.

(C) The use of such facility to provide health care services to a population that is determined under the Capital Asset Realignment for Enhanced Services initiative to be underserved or not currently served by such facility.

(D) The renovation or modernization of such facility, including the provision of barrier-free design, improvement of building systems and utilities, or enhancement of clinical support services.

(E) The need for such facility to further an enhanced-use lease or sharing agreement.

(F) Any other factor that the Secretary considers to be of importance in providing care to eligible veterans.

(3) In developing the list of projects and according a priority to each project, the Secretary should consider the importance of allocating available resources equitably among the geographic service areas of the Department and take into account recent shifts in populations of veterans among those geographic service areas.

(d) SUNSET.—The Secretary may not enter into a contract to carry out major construction projects under the authority in subsection (a) after September 30, 2006.

SEC. 222. ADVANCE NOTIFICATION OF CAPITAL ASSET REALIGNMENT ACTIONS.

(a) REQUIREMENT FOR ADVANCE NOTIFICATION.—If the Secretary of Veterans Affairs approves a recommendation resulting from the Capital Asset Realignment for Enhanced Services initiative, then before taking any action resulting from that recommendation that would result in—

(1) a medical facility closure;

(2) an administrative reorganization described in subsection (c) of section 510 of title 38, United States Code; or

(3) a medical facility consolidation,

the Secretary shall submit to Congress a written notification of the intent to take such action.

(b) LIMITATION.—Upon submitting a notification under subsection (a), the Secretary may not take any action described in the notification until the later of—

(1) the end of the 60-day period beginning on the date on which the notification is received by Congress; or

(2) the end of a period of 30 days of continuous session of Congress beginning on the date on which the notification is received by Congress or, if either House of Congress is not in session on such date, the first day after such date on which both Houses of Congress are in session.

(c) CONTINUOUS SESSION OF CONGRESS.—For the purposes of subsection (b)—

(1) the continuity of a session of Congress is broken only by an adjournment of Congress sine die; and

(2) any day on which either House is not in session because of an adjournment of more

than three days to a day certain is excluded in the computation of any period of time in which Congress is in continuous session.

(d) MEDICAL FACILITY CONSOLIDATION.—For the purposes of subsection (a), the term "medical facility consolidation" means an action that closes one or more medical facilities for the purpose of relocating those activities to another medical facility or facilities within the same geographic service area.

SEC. 223. SENSE OF CONGRESS AND REPORT ON ACCESS TO HEALTH CARE FOR VETERANS IN RURAL AREAS.

(a) SENSE OF CONGRESS.—Recognizing the difficulties that veterans residing in rural areas encounter in gaining access to health care in facilities of the Department of Veterans Affairs, it is the sense of Congress that the Secretary of Veterans Affairs should take steps to ensure that an appropriate mix of facilities and clinical staff is available for health care for veterans residing in rural areas.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report describing the steps the Secretary is taking, and intends to take, to improve access to health care for veterans residing in rural areas.

Subtitle D—Plans for New Facilities

SEC. 231. PLANS FOR FACILITIES IN SPECIFIED AREAS.

(a) SOUTHERN NEW JERSEY.—(1) The Secretary of Veterans Affairs shall develop a plan for meeting the future hospital care needs of veterans who reside in southern New Jersey.

(2) For purposes of paragraph (1), the term "southern New Jersey" means the following counties of the State of New Jersey: Ocean, Burlington, Camden, Gloucester, Salem, Cumberland, Atlantic, and Cape May.

(b) FAR SOUTH TEXAS.—(1) The Secretary shall develop a plan for meeting the future hospital care needs of veterans who reside in far south Texas.

(2) For purposes of paragraph (1), the term "far south Texas" means the following counties of the State of Texas: Bee, Calhoun, Crockett, DeWitt, Dimmit, Goliad, Jackson, Victoria, Webb, Aransas, Duval, Jim Wells, Kleberg, Nueces, Refugio, San Patricio, Brooks, Cameron, Hidalgo, Jim Hogg, Kenedy, Starr, Willacy, and Zapata.

(c) NORTH CENTRAL WASHINGTON.—(1) The Secretary shall develop a plan for meeting the future hospital care needs of veterans who reside in north central Washington.

(2) For purposes of paragraph (1), the term "north central Washington" means the following counties of the State of Washington: Chelan, Douglas, Ferry, Grant, Kittitas, and Okanogan.

(d) PENSACOLA AREA.—(1) The Secretary shall develop a plan for meeting the future hospital care needs of veterans who reside in the Pensacola area.

(2) For purposes of paragraph (1), the term "Pensacola area" means—

(A) the counties of Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Liberty, Gulf, and Franklin of the State of Florida; and

(B) the counties of Covington, Geneva, Houston, and Escambia of the State of Alabama.

(e) CONSIDERATION OF USE OF CERTAIN EXISTING AUTHORITIES.—In developing the plans under this section, the Secretary shall, at a minimum, consider options using the existing authorities of sections 8111 and 8153 of title 38, United States Code, to—

(1) establish a hospital staffed and managed by employees of the Department, either in private or public facilities, including Federal facilities; or

(2) enter into contracts with existing Federal facilities, private facilities, and private providers for that care.

(f) REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on each plan under this section not later than April 15, 2004.

SEC. 232. STUDY AND REPORT ON FEASIBILITY OF COORDINATION OF VETERANS HEALTH CARE SERVICES IN SOUTH CAROLINA WITH NEW UNIVERSITY MEDICAL CENTER.

(a) STUDY REQUIRED.—The Secretary of Veterans Affairs shall conduct a study to examine the feasibility of coordination by the Department of Veterans Affairs of its needs for inpatient hospital, medical care, and long-term care services for veterans with the pending construction of a new university medical center at the Medical University of South Carolina, Charleston, South Carolina.

(b) MATTERS TO BE INCLUDED IN STUDY.—(1) As part of the study under subsection (a), the Secretary shall consider the following:

(A) Integration with the Medical University of South Carolina of some or all of the services referred to in subsection (a) through contribution to the construction of that university's new medical facility or by becoming a tenant provider in that new facility.

(B) Construction by the Department of Veterans Affairs of a new independent inpatient or outpatient facility alongside or nearby the university's new facility.

(2) In carrying out paragraph (1), the Secretary shall consider the degree to which the Department and the university medical center would be able to share expensive technologies and scarce specialty services that would affect any such plans of the Secretary or the university.

(3) In carrying out the study, the Secretary shall especially consider the applicability of the authorities under section 8153 of title 38, United States Code (relating to sharing of health care resources between the Department and community provider organizations), to govern future arrangements and relationships between the Department and the Medical University of South Carolina.

(c) CONSULTATION WITH SECRETARY OF DEFENSE.—The Secretary of Veterans Affairs shall consult with the Secretary of Defense in carrying out the study under this section. Such consultation shall include consideration of establishing a Department of Veterans Affairs-Department of Defense joint health-care venture at the site referred to in subsection (a).

(d) REPORT.—Not later than April 15, 2004, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the results of the study. The report shall include the Secretary's recommendations with respect to coordination described in subsection (a), including recommendations with respect to each of the matters referred to in subsection (b).

Subtitle E—Designation of Facilities

SEC. 241. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, PRESCOTT, ARIZONA, AS THE BOB STUMP DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

The Department of Veterans Affairs Medical Center located in Prescott, Arizona, shall after the date of the enactment of this Act be known and designated as the "Bob Stump Department of Veterans Affairs Medical Center". Any reference to such medical center in any law, regulation, map, document, or other paper of the United States shall be considered to be a reference to the Bob Stump Department of Veterans Affairs Medical Center.

SEC. 242. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITY, CHICAGO, ILLINOIS, AS THE JESSE BROWN DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

The Department of Veterans Affairs health care facility located at 820 South Damen Avenue in Chicago, Illinois, shall after the date of the enactment of this Act be known and designated as the "Jesse Brown Department of Veterans Affairs Medical Center". Any reference to such facility in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Jesse Brown Department of Veterans Affairs Medical Center.

SEC. 243. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, HOUSTON, TEXAS, AS THE MICHAEL E. DEBAKEY DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

The Department of Veterans Affairs Medical Center in Houston, Texas, shall after the date of the enactment of this Act be known and designated as the "Michael E. DeBakey Department of Veterans Affairs Medical Center". Any reference to such facility in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Michael E. DeBakey Department of Veterans Affairs Medical Center.

SEC. 244. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, SALT LAKE CITY, UTAH, AS THE GEORGE E. WAHLEN DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

The Department of Veterans Affairs Medical Center in Salt Lake City, Utah, shall after the date of the enactment of this Act be known and designated as the "George E. Wahlen Department of Veterans Affairs Medical Center". Any references to such facility in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the George E. Wahlen Department of Veterans Affairs Medical Center.

SEC. 245. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC, NEW LONDON, CONNECTICUT.

The Department of Veterans Affairs outpatient clinic located in New London, Connecticut, shall after the date of the enactment of this Act be known and designated as the "John J. McGuirk Department of Veterans Affairs Outpatient Clinic". Any reference to such outpatient clinic in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the John J. McGuirk Department of Veterans Affairs Outpatient Clinic.

SEC. 246. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC, HORSHAM, PENNSYLVANIA.

The Department of Veterans Affairs outpatient clinic located in Horsham, Pennsylvania, shall after the date of the enactment of this Act be known and designated as the "Victor J. Saracini Department of Veterans Affairs Outpatient Clinic". Any reference to such outpatient clinic in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Victor J. Saracini Department of Veterans Affairs Outpatient Clinic.

TITLE III—PERSONNEL MATTERS

SEC. 301. MODIFICATION OF AUTHORITIES ON APPOINTMENT AND PROMOTION OF PERSONNEL IN THE VETERANS HEALTH ADMINISTRATION.

(a) POSITIONS TREATABLE AS HYBRID STATUS POSITIONS.—(1) Section 7401 is amended—

(A) by striking paragraph (2) and inserting the following new paragraph (2):

“(2) Scientific and professional personnel, such as microbiologists, chemists, and biostatisticians.”; and

(B) by striking paragraph (3) and inserting the following new paragraph (3):

“(3) Audiologists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical and dental technologists, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technicians, therapeutic radiologic technicians, and social workers.”.

(2) Personnel appointed to the Veterans Health Administration before the date of the enactment of this Act who are in an occupational category of employees specified in paragraph (3) of section 7401 of title 38, United States Code, by reason of the amendment made by paragraph (1)(B) of this subsection shall, as of such date, be deemed to have been appointed to the Administration under such paragraph (3).

(b) APPOINTMENTS AND PROMOTIONS.—Section 7403 of such title is amended—

(1) in subsection (f)(3)—

(A) by inserting “reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-time employees,” after “adverse actions,”;

(B) by inserting “, whether appointed under this section or section 7405(a)(1)(B) of this title” after “such positions”; and

(C) by inserting a comma after “status)”; and

(2) by adding at the end the following new subsection:

“(h)(1) If the Secretary uses the authority provided in subsection (c) for the promotion and advancement of an occupational category of employees described in section 7401(3) of this title, as authorized by subsection (f)(1)(B), the Secretary shall do so through one or more systems prescribed by the Secretary. Each such system shall be planned, developed, and implemented in collaboration with, and with the participation of, exclusive employee representatives of such occupational category of employees.

“(2)(A) Before prescribing a system of promotion and advancement of an occupational category of employees under paragraph (1), the Secretary shall provide to exclusive employee representatives of such occupational category of employees a written description of the proposed system.

“(B) Not later than 30 days after receipt of the description of a proposed system under subparagraph (A), exclusive employee representatives may submit to the Secretary the recommendations, if any, of such exclusive employee representatives with respect to the proposed system.

“(C) The Secretary shall give full and fair consideration to any recommendations received under subparagraph (B) in deciding whether and how to proceed with a proposed system.

“(3) The Secretary shall implement immediately any part of a system of promotion and advancement under paragraph (1) that is proposed under paragraph (2) for which the Secretary receives no recommendations from exclusive employee representatives under paragraph (2).

“(4) If the Secretary receives recommendations under paragraph (2) from exclusive employee representatives on any part of a proposed system of promotion and advancement under that paragraph, the Secretary shall determine whether or not to accept the recommendations, either in whole or in part. If the Secretary determines not to accept all or part of the recommendations, the Secretary shall—

“(A) notify the congressional veterans' affairs committees of the recommendations and of the portion of the recommendations that the Secretary has determined not to accept;

“(B) meet and confer with such exclusive employee representatives, for a period not less than 30 days, for purposes of attempting to reach an agreement on whether and how to proceed with the portion of the recommendations that the Secretary has determined not to accept;

“(C) at the election of the Secretary, or of a majority of such exclusive employee representatives who are participating in negotiations on such matter, employ the services of the Federal Mediation and Conciliation Service during the period referred to in subparagraph (B) for purposes of reaching such agreement; and

“(D) if the Secretary determines that activities under subparagraph (B), (C), or both are unsuccessful at reaching such agreement and determines (in the sole and unreviewable discretion of the Secretary) that further meeting and conferral under subparagraph (B), mediation under subparagraph (C), or both are unlikely to reach such agreement—

“(i) notify the congressional veterans' affairs committees of such determinations, identify for such committees the portions of the recommendations that the Secretary has determined not to accept, and provide such committees an explanation and justification for determining to implement the part of the system subject to such portions of the recommendations without regard to such portions of the recommendations; and

“(ii) commencing not earlier than 30 days after notice under clause (i), implement the part of the system subject to the recommendations that the Secretary has determined not to accept without regard to those recommendations.

“(5) If the Secretary and exclusive employee representatives reach an agreement under paragraph (4) providing for the resolution of a disagreement on one or more portions of the recommendations that the Secretary had determined not to accept under that paragraph, the Secretary shall immediately implement such resolution.

“(6) In implementing a system of promotion and advancement under this subsection, the Secretary shall—

“(A) develop and implement mechanisms to permit exclusive employee representatives to participate in the periodic review and evaluation of the system, including peer review, and in any further planning or development required with respect to the system as a result of such review and evaluation; and

“(B) provide exclusive employee representatives appropriate access to information to ensure that the participation of such exclusive employee representative in activities under subparagraph (A) is productive.

“(7)(A) The Secretary may from time to time modify a system of promotion and advancement under this subsection.

“(B) In modifying a system, the Secretary shall take into account any recommendations made by the exclusive employee representatives concerned.

“(C) In modifying a system, the Secretary shall comply with paragraphs (2) through (5) and shall treat any proposal for the modification of a system as a proposal for a system for purposes of such paragraphs.

“(D) The Secretary shall promptly submit to the congressional veterans' affairs committees a report on any modification of a system. Each report shall include—

“(i) an explanation and justification of the modification; and

“(ii) a description of any recommendations of exclusive employee representatives with respect to the modification and a statement whether or not the modification was revised in light of such recommendations.

“(8) In the case of employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary may develop procedures for input from representatives under this subsection from any appropriate organization that represents a substantial percentage of such employees or, if none, in such other manner as the Secretary considers appropriate, consistent with the purposes of this subsection.

“(9) In this subsection, the term ‘congressional veterans' affairs committees’ means the Committees on Veterans' Affairs of the Senate and the House of Representatives.”.

(c) TEMPORARY, PART-TIME, AND WITHOUT COMPENSATION APPOINTMENTS.—Section 7405 of such title is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking subparagraphs (B) and (C) and inserting the following new subparagraphs:

“(B) Positions listed in section 7401(3) of this title.

“(C) Librarians.”; and

(B) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraph (B):

“(B) Positions listed in section 7401(3) of this title.”; and

(2) in subsection (c)(1), by striking “section 7401(1)” and inserting “paragraphs (1) and (3) of section 7401”.

(d) AUTHORITY FOR ADDITIONAL PAY FOR CERTAIN HEALTH CARE PROFESSIONALS.—Section 7454(b)(1) of such title is amended by striking “certified or registered” and all that follows through “occupational therapists,” and inserting “individuals in positions listed in section 7401(3) of this title,”.

SEC. 302. APPOINTMENT OF CHIROPRACTORS IN THE VETERANS HEALTH ADMINISTRATION.

(a) APPOINTMENTS.—Section 7401 is amended—

(1) in the matter preceding paragraph (1), by striking “medical” and inserting “health”; and

(2) in paragraph (1), by inserting “chiropractors,” after “podiatrists,”.

(b) QUALIFICATIONS OF APPOINTEES.—Section 7402(b) is amended—

(1) by redesignating paragraph (10) as paragraph (11); and

(2) by inserting after paragraph (9) the following new paragraph (10):

"(10) Chiropractor.—To be eligible to be appointed to a chiropractor position, a person must—

"(A) hold the degree of doctor of chiropractic, or its equivalent, from a college of chiropractic approved by the Secretary; and

"(B) be licensed to practice chiropractic in a State.".

(c) Period of Appointments and Promotions.—Section 7403(a)(2) is amended by adding at the end the following new subparagraph:

"(H) Chiropractors.".

(d) Grades and Pay Scales.—Section 7404(b)(1) is amended by striking the third center heading in the table and inserting the following:

"CLINICAL PODIATRIST, CHIROPRACTOR, AND OPTOMETRIST SCHEDULE".

(e) Malpractice and Negligence Protection.—Section 7316(a) is amended—

(1) in paragraph (1), by striking "medical" each place it appears and inserting "health"; and

(2) in paragraph (2)—

(A) by striking "medical" the first place it appears and inserting "health"; and

(B) by inserting "chiropractor," after "podiatrist,".

(f) Treatment as Scarce Medical Specialists for Contracting Purposes.—Section 7409(a) is amended by inserting "chiropractors," in the second sentence after "optometrists,".

(g) Collective Bargaining Exemption.—Section 7421(b) is amended by adding at the end the following new paragraph:

"(8) Chiropractors.".

(h) Effective Date.—The amendments made by this section shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act.

SEC. 303. ADDITIONAL PAY FOR SATURDAY TOURS OF DUTY FOR ADDITIONAL HEALTH CARE WORKERS IN THE VETERANS HEALTH ADMINISTRATION.

(a) In General.—Section 7454(b) is amended by adding at the end the following new paragraph:

"(3) Employees appointed under section 7408 of this title shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.".

(b) Applicability.—The amendment made by subsection (a) shall take effect with respect to the first pay period beginning on or after January 1, 2004.

SEC. 304. COVERAGE OF EMPLOYEES OF VETERANS' CANTEEN SERVICE UNDER ADDITIONAL EMPLOYMENT LAWS.

(a) Coverage.—Paragraph (5) of section 7802 is amended by inserting before the semicolon a period and the following: "An employee appointed under this section may be considered for appointment to a Department position in the competitive service in the same manner that a Department employee in the competitive service is considered for transfer to such position. An employee of the Service who is appointed to a Department position in the competitive service under the authority of the preceding sentence may count toward the time-in-service requirement for a career appointment in such position any previous period of employment in the Service".

(b) Technical Amendments.—Such section is further amended—

(1) by striking the semicolon at the end of each of paragraphs (1) through (10) and inserting a period;

(2) by striking "The Secretary " and all that follows through "(1) establish," and inserting "(a) Locations for Canteens.—The Secretary shall establish,";

(3) by redesignating paragraphs (2) through (11) as subsections (b) through (k), respectively, and by realigning those subsections (as so redesignated) so as to be flush to the left margin;

(4) in subsection (b) (as so redesignated), by inserting "Warehouses and Storage Depots.—The Secretary shall" before "establish";

(5) in subsection (c) (as so redesignated), by inserting "Space, Buildings, and Structures.—The Secretary shall" before "furnish";

(6) in subsection (d) (as so redesignated), by inserting "Equipment, Services, and Utilities.—The Secretary shall" before "transfer";

(7) in subsection (e) (as so redesignated and as amended by subsection (a)), by inserting "Personnel.—The Secretary shall" before "employ";

(8) in subsection (f) (as so redesignated), by inserting "Contracts and Agreements.—The Secretary shall" before "make all";

(9) in subsection (g) (as so redesignated), by inserting "Prices.—The Secretary shall" before "fix the";

(10) in subsection (h) (as so redesignated), by inserting "Gifts and Donations.—The Secretary may" before "accept";

(11) in subsection (i) (as so redesignated), by inserting "Rules and Regulations.—The Secretary shall" before "make such";

(12) in subsection (j) (as so redesignated), by inserting "Delegation.—The Secretary may" before "delegate such"; and

(13) in subsection (k) (as so redesignated), by inserting "Authority To Cash Checks, Etc.—The Secretary may" before "authorize".

TITLE IV—OTHER MATTERS

SEC. 401. OFFICE OF RESEARCH OVERSIGHT IN VETERANS HEALTH ADMINISTRATION.

(a) Statutory Charter.—(1) Chapter 73 is amended by inserting after section 7306 the following new section:

"§ 7307. Office of Research Oversight

"(a) Requirement for Office.—(1) There is in the Veterans Health Administration an Office of Research Oversight (hereinafter in this section referred to as the 'Office'). The Office shall advise the Under Secretary for Health on matters of compliance and assurance in human subjects protections, research safety, and research impropriety and misconduct. The Office shall function independently of entities within the Veterans Health Administration with responsibility for the conduct of medical research programs.

"(2) The Office shall—

"(A) monitor, review, and investigate matters of medical research compliance and assurance in the Department with respect to human subjects protections; and

"(B) monitor, review, and investigate matters relating to the protection and safety of human subjects and Department employees participating in medical research in Department programs.

"(b) Director.—(1) The head of the Office shall be a Director, who shall report directly to the Under Secretary for Health (without delegation).

"(2) Any person appointed as Director shall be—

"(A) an established expert in the field of medical research, administration of medical research programs, or similar fields; and

"(B) qualified to carry out the duties of the Office based on demonstrated experience and expertise.

"(c) Functions.—(1) The Director shall report to the Under Secretary for Health on matters relating to protections of human subjects in medical research projects of the Department under any applicable Federal law and regulation, the safety of employees involved in Department medical research programs, and suspected misconduct and impropriety in such programs. In carrying out the preceding sentence, the Director shall consult with employees of the Veterans Health Administration who are responsible for the management and conduct of Department medical research programs.

"(2) The matters to be reported by the Director to the Under Secretary under paragraph (1) shall include allegations of research impropriety and misconduct by employees engaged in medical research programs of the Department.

"(3)(A) When the Director determines that such a recommendation is warranted, the Director may recommend to the Under Secretary that a Department research activity be terminated, suspended, or restricted, in whole or in part.

"(B) In a case in which the Director reasonably believes that activities of a medical research project of the Department place human subjects' lives or health at imminent risk, the Director shall direct that activities under that project be immediately suspended or, as appropriate and specified by the Director, be limited.

"(d) General Functions.—(1) The Director shall conduct periodic inspections and reviews, as the Director determines appropriate, of medical research programs of the Department. Such inspections and reviews shall include review of required documented assurances.

"(2) The Director shall observe external accreditation activities conducted for accreditation of medical research programs conducted in facilities of the Department.

"(3) The Director shall investigate allegations of research impropriety and misconduct in medical research projects of the Department.

"(4) The Director shall submit to the Under Secretary for Health, the Secretary, and the Committees on Veterans' Affairs of the Senate and House of Representatives a report on any suspected lapse, from whatever cause or causes, in protecting safety of human subjects and others, including employees, in medical research programs of the Department.

"(5) The Director shall carry out such other duties as the Under Secretary for Health may require.

"(e) Source of Funds.—Amounts for the activities of the Office, including its regional offices, shall be derived from amounts appropriated for the Veterans Health Administration for Medical Care.

"(f) Annual Report.—Not later than March 15 each year, the Director shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the activities of the Office during the preceding calendar year. Each such report shall include, with respect to that year, the following:

"(1) A summary of reviews of individual medical research programs of the Department completed by the Office.

"(2) Directives and other communications issued by the Office to field activities of the Department.

"(3) Results of any investigations undertaken by the Office during the reporting period consonant with the purposes of this section.

"(4) Other information that would be of interest to those committees in oversight of the Department medical research program.

"(g) MEDICAL RESEARCH.—For purposes of this section, the term 'medical research' means medical research described in section 7303(a)(2) of this title.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7306 the following new item:

"7307. Office of Research Oversight.".

(b) CONFORMING AMENDMENT.—Section 7303 is amended by striking subsection (e).

SEC. 402. ENHANCEMENT OF AUTHORITIES RELATING TO NONPROFIT RESEARCH CORPORATIONS.

(a) COVERAGE OF PERSONNEL UNDER TORT CLAIMS LAWS.—(1) Subchapter IV of chapter 73 is amended by inserting after section 7364 the following new section:

"§ 7364A. Coverage of employees under certain Federal tort claims laws

"(a) An employee of a corporation established under this subchapter who is described by subsection (b) shall be considered an employee of the Government, or a medical care employee of the Veterans Health Administration, for purposes of the following provisions of law:

"(1) Section 1346(b) of title 28.

"(2) Chapter 171 of title 28.

"(3) Section 7316 of this title

"(b) An employee described in this subsection is an employee who—

"(1) has an appointment with the Department, whether with or without compensation;

"(2) is directly or indirectly involved or engaged in research or education and training that is approved in accordance with procedures established by the Under Secretary for Health for research or education and training; and

"(3) performs such duties under the supervision of Department personnel.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7364 the following new item:

"7364A. Coverage of employees under certain Federal tort claims laws.".

(b) CLARIFICATION OF EXECUTIVE DIRECTOR'S ETHICS CERTIFICATION DUTIES.—Section 7366(c) is amended—

(1) by inserting "(1)" after "(c)";

(2) by striking "any year—" and all that follows through "shall be subject" and inserting "any year shall be subject";

(3) by striking "functions; and" and inserting "functions."; and

(4) by striking paragraph (2) and inserting the following:

"(2) Each corporation established under this subchapter shall each year submit to the Secretary a statement signed by the executive director of the corporation verifying that each director and employee has certified awareness of the laws and regulations referred to in paragraph (1) and of the consequences of violations of those laws and regulations in the same manner as Federal employees are required to so certify.".

(c) FIVE-YEAR EXTENSION OF AUTHORITY TO ESTABLISH RESEARCH CORPORATIONS.—Section 7368 is amended by striking "December 31, 2003" and inserting "December 31, 2008".

SEC. 403. DEPARTMENT OF DEFENSE PARTICIPATION IN REVOLVING SUPPLY FUND PURCHASES.

(a) ENHANCEMENT OF DEPARTMENT OF DEFENSE PARTICIPATION.—Section 8121 is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively;

(2) by designating the last sentence of subsection (a) as subsection (c); and

(3) by inserting after paragraph (3) of subsection (a) the following new subsection (b):

"(b) The Secretary may authorize the Secretary of Defense to make purchases through the fund in the same manner as activities of the Department. When services, equipment, or supplies are furnished to the Secretary of Defense through the fund, the reimbursement required by paragraph (2) of subsection (a) shall be made from appropriations made to the Department of Defense, and when services or supplies are to be furnished to the Department of Defense, the fund may be credited, as provided in paragraph (3) of subsection (a), with advances from appropriations available to the Department of Defense.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply only with respect to funds appropriated for a fiscal year after fiscal year 2003.

SEC. 404. FIVE-YEAR EXTENSION OF HOUSING ASSISTANCE FOR HOMELESS VETERANS.

Section 2041(c) is amended by striking "December 31, 2003" and inserting "December 31, 2008".

SEC. 405. REPORT DATE CHANGES.

(a) SENIOR MANAGERS QUARTERLY REPORT.—Section 516(e)(1)(A) is amended by striking "30 days" and inserting "45 days".

(b) ANNUAL REPORT ON ASSISTANCE TO HOMELESS VETERANS.—Section 2065(a) is amended by striking "April 15 of each year" and inserting "June 15 of each year".

(c) ANNUAL REPORT OF COMMITTEE ON CARE OF SEVERELY CHRONICALLY MENTALLY ILL VETERANS.—Section 7321(d)(2) is amended by striking "February 1, 1998, and February 1 of each of the six following years" and inserting "June 1 of each year through 2008".

(d) ANNUAL REPORT ON SHARING OF HEALTH CARE RESOURCES.—Section 8153(g) is amended—

(1) by striking "not more than 60 days after the end of each fiscal year" and inserting "not later than February 1 of each year"; and

(2) by inserting "during the preceding fiscal year" after "under this section".

(e) ANNUAL REPORT OF SPECIAL COMMITTEE ON PTSD.—Section 110(e)(2) of the Veterans' Health Care Act of 1984 (38 U.S.C. 1712A note) is amended by striking "February 1 of each of the three following years" and inserting "May 1 of each year through 2008".

SA 2204. Mr. THOMAS (for Mr. SPECTER) proposed an amendment to the bill S. 1156, to amend title 38, United States Code, to improve and enhance the provision of health care for veterans, to authorize major construction projects and other facilities matters for the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes; as follows:

Amend the title to read as follows: "A bill to amend title 38, United States Code, to improve and enhance provision of health care for veterans, to authorize major construction projects and other facilities matters for the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.".

SA 2205. Mr. THOMAS (for Mr. SPECTER (for himself and Mr. GRAHAM of Florida)) proposed an amendment to the bill H.R. 2297, To amend title 38, United Stated Code, to improve benefits under laws administered by the Secretary of Veterans' Affairs, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans Benefits Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—SURVIVOR BENEFITS

Sec. 101. Retention of certain veterans survivor benefits for surviving spouses remarrying after age 57.
Sec. 102. Benefits for children with spina bifida of veterans of certain service in Korea.
Sec. 103. Alternative beneficiaries for National Service Life Insurance and United States Government Life Insurance.
Sec. 104. Payment of benefits accrued and unpaid at time of death.

TITLE II—BENEFITS FOR FORMER PRISONERS OF WAR AND FOR FILIPINO VETERANS

SUBTITLE A—FORMER PRISONERS OF WAR

Sec. 201. Presumptions of service-connection relating to diseases and disabilities of former prisoners of war.

SUBTITLE B—FILIPINO VETERANS

Sec. 211. Rate of payment of benefits for certain Filipino veterans and their survivors residing in the United States.
Sec. 212. Burial benefits for new Philippine Scouts residing in the United States.
Sec. 213. Extension of authority to maintain regional office in the Republic of the Philippines.

TITLE III—EDUCATION BENEFITS, EMPLOYMENT PROVISIONS, AND RELATED MATTERS

Sec. 301. Expansion of Montgomery GI Bill education benefits for certain self-employment training.
Sec. 302. Increase in rates of survivors' and dependents' educational assistance.
Sec. 303. Restoration of survivors' and dependents' education benefits of individuals being ordered to full-time National Guard duty.
Sec. 304. Rounding down of certain cost-of-living adjustments on educational assistance.
Sec. 305. Authorization for State approving agencies to approve certain entrepreneurship courses.
Sec. 306. Repeal of provisions relating to obsolete education loan program.
Sec. 307. Six-year extension of the Veterans' Advisory Committee on Education.
Sec. 308. Procurement program for small business concerns owned and controlled by service-disabled veterans.
Sec. 309. Outstationing of Transition Assistance Program personnel.

TITLE IV—HOUSING BENEFITS AND RELATED MATTERS

Sec. 401. Authorization to provide adapted housing assistance to certain disabled members of the Armed Forces who remain on active duty.
Sec. 402. Increase in amounts for certain adaptive benefits for disabled veterans.
Sec. 403. Permanent authority for housing loans for members of the Selected Reserve.
Sec. 404. Reinstatement of minimum requirements for sale of vendee loans.
Sec. 405. Adjustment to home loan fees.
Sec. 406. One-year extension of procedures on liquidation sales of defaulted home loans guaranteed by the Department of Veterans Affairs.

TITLE V—BURIAL BENEFITS

Sec. 501. Burial plot allowance.
Sec. 502. Eligibility of surviving spouses who remarry for burial in national cemeteries.
Sec. 503. Permanent authority for State cemetery grants program.

TITLE VI—EXPOSURE TO HAZARDOUS SUBSTANCES

Sec. 601. Radiation Dose Reconstruction Program of Department of Defense.
Sec. 602. Study on disposition of Air Force Health Study.
Sec. 603. Funding of Medical Follow-Up Agency of Institute of Medicine of National Academy of Sciences for epidemiological research on members of the Armed Forces and veterans.

TITLE VII—OTHER MATTERS

Sec. 701. Time limitations on receipt of claim information pursuant to requests of Department of Veterans Affairs.
Sec. 702. Clarification of applicability of prohibition on assignment of veterans benefits to agreements requiring payment of future receipt of benefits.
Sec. 703. Six-year extension of Advisory Committee on Minority Veterans.
Sec. 704. Temporary authority for performance of medical disabilities examinations by contract physicians.
Sec. 705. Forfeiture of benefits for subversive activities.
Sec. 706. Two-year extension of round-down requirement for compensation cost-of-living adjustments.
Sec. 707. Codification of requirement for expeditious treatment of cases on remand.
Sec. 708. Technical and clerical amendments.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—SURVIVOR BENEFITS

SEC. 101. RETENTION OF CERTAIN VETERANS SURVIVOR BENEFITS FOR SURVIVING SPOUSES REMARRYING AFTER AGE 57.

(a) EXCEPTION TO TERMINATION OF BENEFITS UPON REMARRIAGE.—Section 103(d)(2)(B) is amended by striking "The remarriage after age 55" and inserting "The remarriage after age 57 of the surviving spouse of a veteran shall not bar the furnishing of benefits specified in paragraph (5) to such person as the surviving spouse of the veteran. Notwithstanding the previous sentence, the remarriage after age 55".

(b) COORDINATION OF BENEFITS.—Section 1311 is amended by adding at the end the following new subsection:

"(e) In the case of an individual who is eligible for dependency and indemnity compensation under this section by reason of section 103(d)(2)(B) of this title who is also eligible for benefits under another provision of law by reason of such individual's status as the surviving spouse of a veteran, then, notwithstanding any other provision of law (other than section 5304(b)(3) of this title), no reduction in benefits under such other provision of law shall be made by reason of such individual's eligibility for benefits under this section.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on January 1, 2004.

(d) RETROACTIVE BENEFITS PROHIBITED.—No benefit may be paid to any person by reason of the amendments made by subsections (a) and (b) for any period before the effective date specified in subsection (c).

(e) APPLICATION FOR BENEFITS.—In the case of an individual who but for having remarried would be eligible for benefits under title 38, United States Code, by reason of the amendment made by subsection (a) and whose remarriage was before the date of the enactment of this Act and after the individual had attained age 57, the individual shall be eligible for such benefits by reason of such amendment only if the individual submits an application for such benefits to the Secretary of Veterans Affairs not later than the end of the one-year period beginning on the date of the enactment of this Act.

(f) TECHNICAL CORRECTION.—Section 101(b) of the Veterans Benefits Act of 2002 (Public Law 107–330; 116 Stat. 2821; 38 U.S.C. 103 note) is amended by striking "during the 1-year period" and all that follows through "(c)" and inserting "before the end of the one-year period beginning on the date of the enactment of the Veterans Benefits Act of 2003".

SEC. 102. BENEFITS FOR CHILDREN WITH SPINA BIFIDA OF VETERANS OF CERTAIN SERVICE IN KOREA.

(a) IN GENERAL.—Chapter 18 is amended—

(1) by redesignating subchapter III, and sections 1821, 1822, 1823, and 1824, as subchapter IV, and sections 1831, 1832, 1833, and 1834, respectively; and

(2) by inserting after subchapter II the following new subchapter III:

"SUBCHAPTER III—CHILDREN OF CERTAIN KOREA SERVICE VETERANS BORN WITH SPINA BIFIDA

"§ 1821. Benefits for children of certain Korea service veterans born with spina bifida

"(a) BENEFITS AUTHORIZED.—The Secretary may provide to any child of a veteran of covered service in Korea who is suffering from spina bifida the health care, vocational training and rehabilitation, and monetary allowance required to be paid to a child of a Vietnam veteran who is suffering from spina bifida under subchapter I of this chapter as if such child of a veteran of covered service in Korea were a child of a Vietnam veteran who is suffering from spina bifida under such subchapter.

"(b) SPINA BIFIDA CONDITIONS COVERED.—This section applies with respect to all forms and manifestations of spina bifida, except spina bifida occulta.

"(c) VETERAN OF COVERED SERVICE IN KOREA.—For purposes of this section, a veteran of covered service in Korea is any individual, without regard to the characterization of that individual's service, who—

"(1) served in the active military, naval, or air service in or near the Korean demilitarized zone (DMZ), as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on September 1, 1967, and ending on August 31, 1971; and

"(2) is determined by the Secretary, in consultation with the Secretary of Defense, to have been exposed to a herbicide agent during such service in or near the Korean demilitarized zone.

"(d) HERBICIDE AGENT.—For purposes of this section, the term 'herbicide agent' means a chemical in a herbicide used in support of United States and allied military operations in or near the Korean demilitarized zone, as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on September 1, 1967, and ending on August 31, 1971.".

(b) CHILD DEFINED.—Section 1831, as redesignated by subsection (a) of this section, is amended by striking paragraph (1) and inserting the following new paragraph (1):

"(1) The term 'child' means the following:

"(A) For purposes of subchapters I and II of this chapter, an individual, regardless of age or marital status, who—

"(i) is the natural child of a Vietnam veteran; and

"(ii) was conceived after the date on which that veteran first entered the Republic of Vietnam during the Vietnam era.

"(B) For purposes of subchapter III of this chapter, an individual, regardless of age or marital status, who—

"(i) is the natural child of a veteran of covered service in Korea (as determined for purposes of section 1821 of this title); and

"(ii) was conceived after the date on which that veteran first entered service described in subsection (c) of that section.".

(c) NONDUPLICATION OF BENEFITS.—Subsection (a) of section 1834, as redesignated by subsection (a) of this section, is amended by adding at the end the following new sentence: "In the case of a child eligible for benefits under subchapter I or II of this chapter who is also eligible for benefits under subchapter III of this chapter, a monetary allowance shall be paid under the subchapter of this chapter elected by the child.".

(d) CONFORMING AMENDMENTS.—(1) Section 1811(1)(A) is amended by striking "section 1821(1)" and inserting "section 1831(1)".

(2) The heading for chapter 18 is amended to read as follows:

"CHAPTER 18—BENEFITS FOR CHILDREN OF VIETNAM VETERANS AND CERTAIN OTHER VETERANS".

(e) CLERICAL AMENDMENTS.—(1) The table of sections at the beginning of chapter 18 is amended by striking the items relating to subchapter III and sections 1821, 1822, 1823, and 1824 and inserting the following new items:

"SUBCHAPTER III—CHILDREN OF CERTAIN KOREA SERVICE VETERANS BORN WITH SPINA BIFIDA

"1821. Benefits for children of certain Korea service veterans born with spina bifida.

"SUBCHAPTER IV—GENERAL PROVISIONS

"1831. Definitions.
"1832. Applicability of certain administrative provisions.
"1833. Treatment of receipt of monetary allowance and other benefits.
"1834. Nonduplication of benefits.".

(2) The table of chapters at the beginning of title 38, United States Code, and at the beginning of part II, are each amended by striking the item relating to chapter 18 and inserting the following new item:

"18. Benefits for Children of Vietnam Veterans and Certain Other Veterans .... 1802".

SEC. 103. ALTERNATIVE BENEFICIARIES FOR NATIONAL SERVICE LIFE INSURANCE AND UNITED STATES GOVERNMENT LIFE INSURANCE.

(a) NATIONAL SERVICE LIFE INSURANCE.—Section 1917 is amended by adding at the end the following new subsection:

"(f)(1) Following the death of the insured and in a case not covered by subsection (d)—

"(A) if the first beneficiary otherwise entitled to payment of the insurance does not make a claim for such payment within two years after the death of the insured, payment may be made to another beneficiary designated by the insured, in the order of precedence as designated by the insured, as if the first beneficiary had predeceased the insured; and

"(B) if, within four years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be made, payment may (notwithstanding any other provision of law) be made to such person as may in the judgment of the Secretary be equitably entitled thereto.

"(2) Payment of insurance under paragraph (1) shall be a bar to recovery by any other person.".

(b) UNITED STATES GOVERNMENT LIFE INSURANCE.—Section 1952 is amended by adding at the end the following new subsection:

"(c)(1) Following the death of the insured and in a case not covered by section 1950 of this title—

"(A) if the first beneficiary otherwise entitled to payment of the insurance does not make a claim for such payment within two years after the death of the insured, payment may be made to another beneficiary designated by the insured, in the order of precedence as designated by the insured, as if the first beneficiary had predeceased the insured; and

"(B) if, within four years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be made, payment may (notwithstanding any other provision of law) be made to such person as may in the judgment of the Secretary be equitably entitled thereto.

"(2) Payment of insurance under paragraph (1) shall be a bar to recovery by any other person.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2004.

(d) TRANSITION PROVISION.—In the case of a person insured under subchapter I or II of chapter 19 of title 38, United States Code, who dies before the effective date of the amendments made by subsections (a) and (b), as specified by subsection (c), the two-year and four-year periods specified in subsection (f)(1) of section 1917 of title 38, United States Code, as added by subsection (a), and subsection (c)(1) of section 1952 of such title, as added by subsection (b), as applicable, shall for purposes of the applicable subsection be treated as being the two-year and four-year periods, respectively, beginning on the effective date of such amendments, as so specified.

SEC. 104. PAYMENT OF BENEFITS ACCRUED AND UNPAID AT TIME OF DEATH.

(a) REPEAL OF TWO-YEAR LIMITATION ON PAYMENT.—Section 5121(a) is amended by striking "for a period not to exceed two years" in the matter preceding paragraph (1).

(b) PAYMENT RECIPIENTS FOR BENEFICIARIES UNDER CHAPTER 18.—Such section is further amended—

(1) by striking "and" at the end of paragraph (4);

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following new paragraph (5):

"(5) Upon the death of a child claiming benefits under chapter 18 of this title, to the surviving parents.".

(c) TECHNICAL AMENDMENTS.—Such section is further amended—

(1) in the matter preceding paragraph (1), by striking the comma after "or decisions";

(2) by striking the semicolon at the end of paragraphs (1), (2), (3), and (4), and at the end of subparagraphs (A) and (B) of paragraph (2), and inserting a period.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

TITLE II—BENEFITS FOR FORMER PRISONERS OF WAR AND FOR FILIPINO VETERANS

Subtitle A—Former Prisoners of War

SEC. 201. PRESUMPTIONS OF SERVICE-CONNECTION RELATING TO DISEASES AND DISABILITIES OF FORMER PRISONERS OF WAR.

Subsection (b) of section 1112 is amended to read as follows:

"(b)(1) For the purposes of section 1110 of this title and subject to the provisions of section 1113 of this title, in the case of a veteran who is a former prisoner of war—

"(A) a disease specified in paragraph (2) which became manifest to a degree of 10 percent or more after active military, naval, or air service shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of such disease during the period of service; and

"(B) if the veteran was detained or interned as a prisoner of war for not less than thirty days, a disease specified in paragraph (3) which became manifest to a degree of 10 percent or more after active military, naval, or air service shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of such disease during the period of service.

"(2) The diseases specified in this paragraph are the following:

"(A) Psychosis.

"(B) Any of the anxiety states.

"(C) Dysthymic disorder (or depressive neurosis).

"(D) Organic residuals of frostbite, if the Secretary determines that the veteran was detained or interned in climatic conditions consistent with the occurrence of frostbite.

"(E) Post-traumatic osteoarthritis.

"(3) The diseases specified in this paragraph are the following:

"(A) Avitaminosis.

"(B) Beriberi (including beriberi heart disease).

"(C) Chronic dysentery.

"(D) Helminthiasis.

"(E) Malnutrition (including optic atrophy associated with malnutrition).

"(F) Pellagra.

"(G) Any other nutritional deficiency.

"(H) Cirrhosis of the liver.

"(I) Peripheral neuropathy except where directly related to infectious causes.

"(J) Irritable bowel syndrome.

"(K) Peptic ulcer disease.".

Subtitle B—Filipino Veterans

SEC. 211. RATE OF PAYMENT OF BENEFITS FOR CERTAIN FILIPINO VETERANS AND THEIR SURVIVORS RESIDING IN THE UNITED STATES.

(a) RATE OF PAYMENT.—Section 107 is amended—

(1) in the second sentence of subsection (b), by striking "Payments" and inserting "Except as provided in subsection (c), payments"; and

(2) in subsection (c)—

(A) by inserting "and subchapter II of chapter 13 (except section 1312(a)) of this title" after "chapter 11 of this title";

(B) by striking "in subsection (a)" and inserting "in subsection (a) or (b)"; and

(C) by striking "of subsection (a)" and inserting "of the applicable subsection".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to benefits paid for months beginning after the date of the enactment of this Act.

SEC. 212. BURIAL BENEFITS FOR NEW PHILIPPINE SCOUTS RESIDING IN THE UNITED STATES.

(a) BENEFIT ELIGIBILITY.—Section 107, as amended by section 211 of this Act, is amended—

(1) in subsection (b)(2)—

(A) by striking "and" and inserting a comma; and

(B) by inserting ", 23, and 24 (to the extent provided for in section 2402(8))" after "(except section 1312(a))";

(2) in the second sentence of subsection (b), as so amended, by inserting "or (d)" after "subsection (c)";

(3) in subsection (d)(1), by inserting "or (b), as otherwise applicable," after "subsection (a)"; and

(4) in subsection (d)(2), by inserting "or whose service is described in subsection (b) and who dies after the date of the enactment of the Veterans Benefits Act of 2003," after "November 1, 2000,".

(b) NATIONAL CEMETERY INTERMENT.—Section 2402(8) is amended by striking "section 107(a)" and inserting "subsection (a) or (b) of section 107".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

SEC. 213. EXTENSION OF AUTHORITY TO MAINTAIN REGIONAL OFFICE IN THE REPUBLIC OF THE PHILIPPINES.

Section 315(b) is amended by striking "December 31, 2003" and inserting "December 31, 2009".

TITLE III—EDUCATION BENEFITS, EMPLOYMENT PROVISIONS, AND RELATED MATTERS

SEC. 301. EXPANSION OF MONTGOMERY GI BILL EDUCATION BENEFITS FOR CERTAIN SELF-EMPLOYMENT TRAINING.

(a) Definition of Training Establishment.—Section 3452(e) is amended by striking “means any” and all that follows and inserting “means any of the following:

“(1) An establishment providing apprentice or other on-job training, including those under the supervision of a college or university or any State department of education.

“(2) An establishment providing self-employment on-job training consisting of full-time training for a period of less than six months that is needed or accepted for purposes of obtaining licensure to engage in a self-employment occupation or required for ownership and operation of a franchise that is the objective of the training.

“(3) A State board of vocational education.

“(4) A Federal or State apprenticeship registration agency.

“(5) A joint apprenticeship committee established pursuant to the Act of August 16, 1937, popularly known as the ‘National Apprenticeship Act’ (29 U.S.C. 50 et seq.).

“(6) An agency of the Federal Government authorized to supervise such training.”.

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date that is six months after the date of the enactment of this Act and shall apply to self-employment on-job training approved and pursued on or after that date.

SEC. 302. INCREASE IN RATES OF SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE.

(a) Survivors' and Dependents' Educational Assistance.—Section 3532 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “at the monthly rate of” and all that follows and inserting “at the monthly rate of $788 for full-time, $592 for three-quarter-time, or $394 for half-time pursuit.”; and

(B) in paragraph (2), by striking “at the rate of” and all that follows and inserting “at the rate of the lesser of—

“(A) the established charges for tuition and fees that the educational institution involved requires similarly circumstanced nonveterans enrolled in the same program to pay; or

“(B) $788 per month for a full-time course.”;

(2) in subsection (b), by striking “$670” and inserting “$788”; and

(3) in subsection (c)(2), by striking “shall be” and all that follows and inserting “shall be $636 for full-time, $477 for three-quarter-time, or $319 for half-time pursuit.”.

(b) Correspondence Courses.—Section 3534(b) is amended by striking “$670” and inserting “$788”.

(c) Special Restorative Training.—Section 3542(a) is amended—

(1) by striking “$670” and inserting “$788”; and

(2) by striking “$210” each place it appears and inserting “$247”.

(d) Apprenticeship Training.—Section 3687(b)(2) is amended by striking “shall be $488 for the first six months” and all that follows and inserting “shall be $574 for the first six months, $429 for the second six months, $285 for the third six months, and $144 for the fourth and any succeeding six-month period of training.”.

(e) Effective Date.—The amendments made by this section shall take effect on July 1, 2004, and shall apply with respect to educational assistance allowances payable under chapter 35 and section 3687(b)(2) of title 38, United States Code, for months beginning on or after that date.

SEC. 303. RESTORATION OF SURVIVORS' AND DEPENDENTS' EDUCATION BENEFITS OF INDIVIDUALS BEING ORDERED TO FULL-TIME NATIONAL GUARD DUTY.

(a) Delimiting Date.—Section 3512(h) is amended by inserting “or is involuntarily ordered to full-time National Guard duty under section 502(f) of title 32,” after “title 10,”.

(b) Effective Date.—The amendment made by subsection (a) shall take effect as of September 11, 2001.

SEC. 304. ROUNDING DOWN OF CERTAIN COST-OF-LIVING ADJUSTMENTS ON EDUCATIONAL ASSISTANCE.

(a) Basic Educational Assistance Under Montgomery GI Bill.—Section 3015(h) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting “(1)” after “(h)”;

(3) by striking “(rounded to the nearest dollar)”;

(4) in subparagraph (B), as so redesignated, by striking “paragraph (1)” and inserting “subparagraph (A)”; and

(5) by adding at the end the following new paragraph:

“(2) Any increase under paragraph (1) in a rate with respect to a fiscal year after fiscal year 2004 and before fiscal year 2014 shall be rounded down to the next lower whole dollar amount. Any such increase with respect to a fiscal year after fiscal year 2013 shall be rounded to the nearest whole dollar amount.”.

(b) Survivors' and Dependents' Educational Assistance.—Section 3564 is amended—

(1) by inserting “(a)” before “With”;

(2) by striking “(rounded to the nearest dollar)”; and

(3) by adding at the end the following new subsection:

“(b) Any increase under subsection (a) in a rate with respect to a fiscal year after fiscal year 2004 and before fiscal year 2014 shall be rounded down to the next lower whole dollar amount. Any such increase with respect to a fiscal year after fiscal year 2013 shall be rounded to the nearest whole dollar amount.”.

SEC. 305. AUTHORIZATION FOR STATE APPROVING AGENCIES TO APPROVE CERTAIN ENTREPRENEURSHIP COURSES.

(a) Approval of Entrepreneurship Courses.—Section 3675 is amended by adding at the end the following new subsection:

“(c)(1) A State approving agency may approve the entrepreneurship courses offered by a qualified provider of entrepreneurship courses.

“(2) For purposes of this subsection, the term ‘entrepreneurship course’ means a non-degree, non-credit course of business education that enables or assists a person to start or enhance a small business concern (as defined pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a))).

“(3) Subsection (a) and paragraphs (1) and (2) of subsection (b) shall not apply to—

“(A) an entrepreneurship course offered by a qualified provider of entrepreneurship courses; and

“(B) a qualified provider of entrepreneurship courses by reason of such provider offering one or more entrepreneurship courses.”.

(b) Business Owners Not Treated as Already Qualified.—Section 3471 is amended by inserting before the last sentence the following: “The Secretary shall not treat a person as already qualified for the objective of a program of education offered by a qualified provider of entrepreneurship courses solely because such person is the owner or operator of a business.”.

(c) Inclusion of Entrepreneurship Courses in Definition of Program of Education.—Subsection (b) of section 3452 is amended by adding at the end the following: “Such term also includes any course, or combination of courses, offered by a qualified provider of entrepreneurship courses.”.

(d) Inclusion of Qualified Provider of Entrepreneurship Courses in Definition of Educational Institution.—Subsection (c) of section 3452 is amended by adding at the end the following: “Such term also includes any qualified provider of entrepreneurship courses.”.

(e) Definition of Qualified Provider of Entrepreneurship Courses.—Section 3452 is further amended by adding at the end the following new subsection:

“(h) The term ‘qualified provider of entrepreneurship courses’ means any of the following entities insofar as such entity offers, sponsors, or cosponsors an entrepreneurship course (as defined in section 3675(c)(2) of this title):

“(1) Any small business development center described in section 21 of the Small Business Act (15 U.S.C. 648).

“(2) The National Veterans Business Development Corporation (established under section 33 of the Small Business Act (15 U.S.C. 657c)).”.

(f) Effective Date.—The amendments made by this section shall apply to courses approved by State approving agencies after the date of the enactment of this Act.

SEC. 306. REPEAL OF PROVISIONS RELATING TO OBSOLETE EDUCATION LOAN PROGRAM.

(a) Termination of Program.—The Secretary of Veterans Affairs may not make a loan under subchapter III of chapter 36 of title 38, United States Code, after the date of the enactment of this Act.

(b) Discharge of Liabilities.—Effective as of the date of the transfer of funds under subsection (c)—

(1) any liability on an education loan under subchapter III of chapter 36 of title 38, United States Code, that is outstanding as of such date shall be deemed discharged; and

(2) the right of the United States to recover an overpayment declared under section 3698(e)(1) of such title that is outstanding as of such date shall be deemed waived.

(c) Termination of Loan Fund.—(1) Effective as of the day before the date of the repeal under this section of subchapter III of chapter 36 of title 38, United States Code, all monies in the revolving fund of the Treasury known as the “Department of Veterans Affairs Education Loan Fund” shall be transferred to the Department of Veterans Affairs Readjustment Benefits Account, and the revolving fund shall be closed.

(2) Any monies transferred to the Department of Veterans Affairs Readjustment Benefits Account under paragraph (1) shall be merged with amounts in that account and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in that account.

(d) Use of Entitlement to Veterans Educational Assistance for Education Loan Program.—Section 3462(a) is amended by striking paragraph (2).

(e) Repeal of Education Loan Program.—Subchapter III of chapter 36 is repealed.

(f) CONFORMING AMENDMENTS.—(1) Section 3485(e)(1) is amended by striking "(other than an education loan under subchapter III)".

(2) Section 3512 is amended by striking subsection (f).

(g) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 36 is amended by striking the items relating to subchapter III and sections 3698 and 3699.

(h) EFFECTIVE DATES.—(1) The amendments made by subsection (d) shall take effect on the date of the enactment of this Act.

(2) The amendments made by subsections (e), (f), and (g) shall take effect 90 days after the date of the enactment of this Act.

SEC. 307. SIX-YEAR EXTENSION OF THE VETERANS' ADVISORY COMMITTEE ON EDUCATION.

(a) MEMBERSHIP.—Subsection (a) of section 3692 is amended in the second sentence by inserting ", to the maximum extent practicable," after "The committee shall also".

(b) EXTENSION.—Subsection (c) of that section is amended by striking "December 31, 2003" and inserting "December 31, 2009".

(c) TECHNICAL AMENDMENTS.—That section is further amended—

(1) in subsections (a) and (b), by striking "chapter 106" each place it appears and inserting "chapter 1606"; and

(2) in subsection (b), by striking "chapter 30" and inserting "chapters 30".

SEC. 308. PROCUREMENT PROGRAM FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.

The Small Business Act (15 U.S.C. 631 et seq.) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

"SEC. 36. PROCUREMENT PROGRAM FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.

"(a) SOLE SOURCE CONTRACTS.—In accordance with this section, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if—

"(1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity;

"(2) the anticipated award price of the contract (including options) will not exceed—

"(A) $5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

"(B) $3,000,000, in the case of any other contract opportunity; and

"(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

"(b) RESTRICTED COMPETITION.—In accordance with this section, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.

"(c) RELATIONSHIP TO OTHER CONTRACTING PREFERENCES.—A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

"(d) ENFORCEMENT; PENALTIES.—Rules similar to the rules of paragraphs (5) and (6) of section 8(m) shall apply for purposes of this section.

"(e) CONTRACTING OFFICER.—For purposes of this section, the term 'contracting officer' has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).".

SEC. 309. OUTSTATIONING OF TRANSITION ASSISTANCE PROGRAM PERSONNEL.

(a) IN GENERAL.—(1) Chapter 41 is amended by adding at the end the following new section:

"§ 4113. Outstationing of Transition Assistance Program personnel

"(a) STATIONING OF TAP PERSONNEL AT OVERSEAS MILITARY INSTALLATIONS.—(1) The Secretary—

"(A) shall station employees of the Veterans' Employment and Training Service, or contractors under subsection (c), at each veterans assistance office described in paragraph (2); and

"(B) may station such employees or contractors at such other military installations outside the United States as the Secretary, after consultation with the Secretary of Defense, determines to be appropriate or desirable to carry out the purposes of this chapter.

"(2) Veterans assistance offices referred to in paragraph (1)(A) are those offices that are established by the Secretary of Veterans Affairs on military installations pursuant to the second sentence of section 7723(a) of this title.

"(b) FUNCTIONS.—Employees (or contractors) stationed at military installations pursuant to subsection (a) shall provide, in person, counseling, assistance in identifying employment and training opportunities, help in obtaining such employment and training, and other related information and services to members of the Armed Forces who are being separated from active duty, and the spouses of such members, under the Transition Assistance Program and Disabled Transition Assistance Program established in section 1144 of title 10.

"(c) AUTHORITY TO CONTRACT WITH PRIVATE ENTITIES.—The Secretary, consistent with section 1144 of title 10, may enter into contracts with public or private entities to provide, in person, some or all of the counseling, assistance, information and services under the Transition Assistance Program required under subsection (a).".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"4113. Outstationing of Transition Assistance Program personnel.".

(b) DEADLINE FOR IMPLEMENTATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Labor shall implement section 4113 of title 38, United States Code, as added by subsection (a), and shall have employees of the Veterans' Employment and Training Service, or contractors, to carry out that section at the military installations involved by such date.

(c) ADDITIONAL AMENDMENT.—(1) The second sentence of section 7723(a) is amended by inserting "and taking into account recommendations, if any, of the Secretary of Labor" after "Secretary of Defense"

(2) The amendment made by paragraph (1) shall apply with respect to offices established after the date of the enactment of this Act.

TITLE IV—HOUSING BENEFITS AND RELATED MATTERS

SEC. 401. AUTHORIZATION TO PROVIDE ADAPTED HOUSING ASSISTANCE TO CERTAIN DISABLED MEMBERS OF THE ARMED FORCES WHO REMAIN ON ACTIVE DUTY.

Section 2101 is amended by adding at the end the following new subsection:

"(c)(1) The Secretary may provide assistance under subsection (a) to a member of the Armed Forces serving on active duty who is suffering from a disability described in paragraph (1), (2), or (3) of that subsection if such disability is the result of an injury incurred or disease contracted in or aggravated in line of duty in the active military, naval, or air service. Such assistance shall be provided to the same extent as assistance is provided under that subsection to veterans eligible for assistance under that subsection and subject to the requirements of the second sentence of that subsection.

"(2) The Secretary may provide assistance under subsection (b) to a member of the Armed Forces serving on active duty who is suffering from a disability described in subparagraph (A) or (B) of paragraph (1) of that subsection if such disability is the result of an injury incurred or disease contracted in or aggravated in line of duty in the active military, naval, or air service. Such assistance shall be provided to the same extent as assistance is provided under that subsection to veterans eligible for assistance under that subsection and subject to the requirements of paragraph (2) of that subsection.".

SEC. 402. INCREASE IN AMOUNTS FOR CERTAIN ADAPTIVE BENEFITS FOR DISABLED VETERANS.

(a) INCREASE IN ASSISTANCE AMOUNT FOR SPECIALLY ADAPTED HOUSING.—Section 2102 is amended—

(1) in the matter preceding paragraph (1) of subsection (a), by striking "$48,000" and inserting "$50,000"; and

(2) in subsection (b)(2), by striking "$9,250" and inserting "$10,000".

(b) INCREASE IN AMOUNT OF ASSISTANCE FOR AUTOMOBILE AND ADAPTIVE EQUIPMENT FOR CERTAIN DISABLED VETERANS.—Section 3902(a) is amended by striking "$9,000" and inserting "$11,000".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to assistance furnished on or after the date of the enactment of this Act.

SEC. 403. PERMANENT AUTHORITY FOR HOUSING LOANS FOR MEMBERS OF THE SELECTED RESERVE.

Section 3702(a)(2)(E) is amended by striking "For the period" and all that follows through "each" and inserting "Each".

SEC. 404. REINSTATEMENT OF MINIMUM REQUIREMENTS FOR SALE OF VENDEE LOANS.

(a) REINSTATEMENT.—Subsection (a) of section 3733 is amended by adding at the end the following new paragraph:

"(7) During the period that begins on the date of the enactment of the Veterans' Benefits Act of 2003 and ends on September 30, 2013, the Secretary shall carry out the provisions of this subsection as if—

"(A) the references in the first sentence of paragraph (1) to '65 percent' and 'may be financed' were references to '85 percent' and 'shall be financed', respectively;

"(B) the second sentence of paragraph (1) were repealed; and

"(C) the reference in paragraph (2) to 'September 30, 1990,' were a reference to 'September 30, 2013,'.".

(b) STYLISTIC AMENDMENTS.—Such section is further amended—

(1) by striking "of this subsection" after—

(A) "paragraph (1)" in subsections (a)(4)(A), (a)(5), (a)(6), and (c)(2); and

(B) "paragraph (5)" in subsection (a)(4)(B)(i); and

(2) by striking "of this paragraph" each place it appears in subsection (a)(4).

SEC. 405. ADJUSTMENT TO HOME LOAN FEES.

Effective January 1, 2004, paragraph (2) of section 3729(b) is amended to read as follows:

"(2) The loan fee table referred to in paragraph (1) is as follows:

"LOAN FEE TABLE

Type of loan	Active duty veteran	Reservist	Other obligor
(A)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed before January 1, 2004)	2.00	2.75	NA
(A)(ii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after January 1, 2004, and before October 1, 2004)	2.20	2.40	NA
(A)(iii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2004, and before October 1, 2011)	2.15	2.40	NA
(A)(iv) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2011)	1.40	1.65	NA
(B)(i) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed before January 1, 2004)	3.00	3.00	NA
(B)(ii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after January 1, 2004, and before October 1, 2011)	3.30	3.30	NA
(B)(iii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2011 and before October 1, 2013)	2.15	2.15	NA
(B)(iv) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2013)	1.25	1.25	NA
(C)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed before October 1, 2011)	1.50	1.75	NA
(C)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after October 1, 2011)	0.75	1.00	NA
(D)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed before October 1, 2011)	1.25	1.50	NA
(D)(ii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after October 1, 2011)	0.50	0.75	NA
(E) Interest rate reduction refinancing loan	0.50	0.50	NA
(F) Direct loan under section 3711	1.00	1.00	NA
(G) Manufactured home loan under section 3712 (other than an interest rate reduction refinancing loan)	1.00	1.00	NA
(H) Loan to Native American veteran under section 3762 (other than an interest rate reduction refinancing loan)	1.25	1.25	NA
(I) Loan assumption under section 3714	0.50	0.50	0.50
(J) Loan under section 3733(a)	2.25	2.25	2.25".

SEC. 406. ONE-YEAR EXTENSION OF PROCEDURES ON LIQUIDATION SALES OF DEFAULTED HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.

Section 3732(c)(11) is amended by striking "October 1, 2011" and inserting "October 1, 2012".

TITLE V—BURIAL BENEFITS

SEC. 501. BURIAL PLOT ALLOWANCE.

(a) IN GENERAL.—Section 2303(b) is amended—

(1) in the matter preceding paragraph (1), by striking "a burial allowance under such section 2302, or under such subsection, who was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty, or who is a veteran of any war" and inserting "burial in a national cemetery under section 2402 of this title"; and

(2) in paragraph (2), by striking "(other than a veteran whose eligibility for benefits under this subsection is based on being a veteran of any war)" and inserting "is eligible for a burial allowance under section 2302 of this title or under subsection (a) of this section, or was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty, and such veteran".

(b) CONFORMING AMENDMENT.—Section 2307 is amended in the last sentence by striking "and (b)" and inserting "and (b)(2)".

SEC. 502. ELIGIBILITY OF SURVIVING SPOUSES WHO REMARRY FOR BURIAL IN NATIONAL CEMETERIES.

(a) ELIGIBILITY.—Section 2402(5) is amended by striking "(which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce)" and inserting "(which for purposes of this chapter includes a surviving spouse who had a subsequent remarriage)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to deaths occurring on or after January 1, 2000.

SEC. 503. PERMANENT AUTHORITY FOR STATE CEMETERY GRANTS PROGRAM.

(a) PERMANENT AUTHORITY.—Subsection (a) of section 2408 is amended—

(1) by striking "(1)"; and

(2) by striking paragraph (2).

(b) CONFORMING AMENDMENT.—Subsection (e) of such section is amended by striking "Sums appropriated under subsection (a) of this section" and inserting "Amounts appropriated to carry out this section".

(c) TECHNICAL AMENDMENT TO REPEAL OBSOLETE PROVISION.—Subsection (d)(1) of such section is amended by striking "on or after November 21, 1997,".

TITLE VI—EXPOSURE TO HAZARDOUS SUBSTANCES

SEC. 601. RADIATION DOSE RECONSTRUCTION PROGRAM OF DEPARTMENT OF DEFENSE.

(a) REVIEW OF MISSION, PROCEDURES, AND ADMINISTRATION.—(1) The Secretary of Veterans Affairs and the Secretary of Defense shall jointly conduct a review of the mission, procedures, and administration of the Radiation Dose Reconstruction Program of the Department of Defense.

(2) In conducting the review under paragraph (1), the Secretaries shall—

(A) determine whether any additional actions are required to ensure that the quality assurance and quality control mechanisms of the Radiation Dose Reconstruction Program are adequate and sufficient for purposes of the program; and

(B) determine the actions that are required to ensure that the mechanisms of the Radiation Dose Reconstruction Program for communication and interaction with veterans are adequate and sufficient for purposes of the program, including mechanisms to permit veterans to review the assumptions utilized in their dose reconstructions.

(3) Not later than 90 days after the date of the enactment of this Act, the Secretaries shall jointly submit to Congress a report on the review under paragraph (1). The report shall set forth—

(A) the results of the review;

(B) a plan for any actions determined to be required under paragraph (2); and

(C) such other recommendations for the improvement of the mission, procedures, and administration of the Radiation Dose Reconstruction Program as the Secretaries jointly consider appropriate.

(b) On-Going Review and Oversight.—The Secretaries shall jointly take appropriate actions to ensure the on-going independent review and oversight of the Radiation Dose Reconstruction Program, including the establishment of the advisory board required by subsection (c).

(c) Advisory Board.—(1) In taking actions under subsection (b), the Secretaries shall jointly appoint an advisory board to provide review and oversight of the Radiation Dose Reconstruction Program.

(2) The advisory board under paragraph (1) shall be composed of the following:

(A) At least one expert in historical dose reconstruction of the type conducted under the Radiation Dose Reconstruction Program.

(B) At least one expert in radiation health matters.

(C) At least one expert in risk communications matters.

(D) A representative of the Department of Veterans Affairs.

(E) A representative of the Defense Threat Reduction Agency.

(F) At least three veterans, including at least one veteran who is a member of an atomic veterans group.

(3) The advisory board under paragraph (1) shall—

(A) conduct periodic, random audits of dose reconstructions under the Radiation Dose Reconstruction Program and of decisions by the Department of Veterans Affairs on claims for service connection of radiogenic diseases;

(B) assist the Department of Veterans Affairs and the Defense Threat Reduction Agency in communicating to veterans information on the mission, procedures, and evidentiary requirements of the Radiation Dose Reconstruction Program; and

(C) carry out such other activities with respect to the review and oversight of the Radiation Dose Reconstruction Program as the Secretaries shall jointly specify.

(4) The advisory board under paragraph (1) may make such recommendations on modifications in the mission or procedures of the Radiation Dose Reconstruction Program as the advisory board considers appropriate as a result of the audits conducted under paragraph (3)(A).

SEC. 602. STUDY ON DISPOSITION OF AIR FORCE HEALTH STUDY.

(a) Study Required.—The Secretary of Veterans Affairs shall, in accordance with this section, carry out a study to determine the appropriate disposition of the Air Force Health Study, an epidemiologic study of Air Force personnel who were responsible for conducting aerial spray missions of herbicides during the Vietnam era.

(b) Study Through National Academy of Sciences.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, to carry out the study required by subsection (a).

(c) Elements.—Under the study under subsection (a), the National Academy of Sciences, or other appropriate scientific organization, shall address the following:

(1) The scientific merit of retaining and maintaining the medical records, other study data, and laboratory specimens collected in the course of the Air Force Health Study after the currently-scheduled termination date of the study in 2006.

(2) Whether or not any obstacles exist to retaining and maintaining the medical records, other study data, and laboratory specimens referred to in paragraph (1), including privacy concerns.

(3) The advisability of providing independent oversight of the medical records, other study data, and laboratory specimens referred to in paragraph (1), and of any further study of such records, data, and specimens, and, if so, the mechanism for providing such oversight.

(4) The advisability of extending the Air Force Health Study, including the potential value and relevance of extending the study, the potential cost of extending the study, and the Federal or non-Federal entity best suited to continue the study if extended.

(5) The advisability of making the laboratory specimens of the Air Force Health Study available for independent research, including the potential value and relevance of such research, and the potential cost of such research.

(d) Report.—Not later than 120 days after entering into an agreement under subsection (b), the National Academy of Sciences, or other appropriate scientific organization, shall submit to the Secretary and Congress a report on the results of the study under subsection (a). The report shall include the results of the study, including the matters addressed under subsection (c), and such other recommendations as the Academy, or other appropriate scientific organization, considers appropriate as a result of the study.

SEC. 603. FUNDING OF MEDICAL FOLLOW-UP AGENCY OF INSTITUTE OF MEDICINE OF NATIONAL ACADEMY OF SCIENCES FOR EPIDEMIOLOGICAL RESEARCH ON MEMBERS OF THE ARMED FORCES AND VETERANS.

(a) Funding.—(1) The Secretary of Veterans Affairs and the Secretary of Defense shall each make available to the National Academy of Sciences in each of fiscal years 2004 through 2013 the amount of $250,000 for the Medical Follow-Up Agency of the Institute of Medicine of the Academy for purposes of epidemiological research on members of the Armed Forces and veterans.

(2) The Secretary of Veterans Affairs shall make available amounts under paragraph (1) for a fiscal year from amounts available for the Department of Veterans Affairs for that fiscal year.

(3) The Secretary of Defense shall make available amounts under paragraph (1) for a fiscal year from amounts available for the Department of Defense for that fiscal year.

(b) Use of Funds.—The Medical Follow-Up Agency shall use funds made available under subsection (a) for epidemiological research on members of the Armed Forces and veterans.

(c) Supplement Not Supplant.—Amounts made available to the Medical Follow-Up Agency under this section for a fiscal year for the purposes referred to in subsection (b) are in addition to any other amount made available to the Agency for that fiscal year for those purposes.

TITLE VII—OTHER MATTERS

SEC. 701. TIME LIMITATIONS ON RECEIPT OF CLAIM INFORMATION PURSUANT TO REQUESTS OF DEPARTMENT OF VETERANS AFFAIRS.

(a) Information to Complete Claims Applications.—Section 5102 is amended by adding at the end the following new subsection:

"(c) Time Limitation.—(1) If information that a claimant and the claimant's representative, if any, are notified under subsection (b) is necessary to complete an application is not received by the Secretary within one year from the date such notice is sent, no benefit may be paid or furnished by reason of the claimant's application.

"(2) This subsection shall not apply to any application or claim for Government life insurance benefits.".

(b) Construction of Limitation on Information to Substantiate Claims.—Section 5103(b) is amended—

(1) in paragraph (1), by striking "if such" and all that follows through "application" and inserting "such information or evidence must be received by the Secretary within one year from the date such notice is sent"; and

(2) by adding at the end the following new paragraph:

"(3) Nothing in paragraph (1) shall be construed to prohibit the Secretary from making a decision on a claim before the expiration of the period referred to in that subsection.".

(c) Effective Date.—The amendments made by this section shall take effect as if enacted on November 9, 2000, immediately after the enactment of the Veterans Claims Assistance Act of 2000 (Public Law 106–475; 114 Stat. 2096).

(d) Procedures for Readjudication of Certain Claims.—(1) The Secretary of Veterans Affairs shall readjudicate a claim of a qualified claimant if the request for such readjudication is received not later than the end of the one-year period that begins on the date of the enactment of this Act.

(2) For purposes of this subsection, a claimant is qualified within the meaning of paragraph (1) if the claimant—

(A) received notice under section 5103(a) of title 38, United States Code, requesting information or evidence to substantiate a claim;

(B) did not submit such information or evidence within a year after the date such notice was sent;

(C) did not file a timely appeal to the Board of Veterans' Appeals or the United States Court of Appeals for Veterans Claims; and

(D) submits such information or evidence during the one-year period referred to in paragraph (1).

(3) If the decision of the Secretary on a readjudication under this subsection is in favor of the qualified claimant, the award of the grant shall take effect as if the prior decision by the Secretary on the claim had not been made.

(4) Nothing in this subsection shall be construed to establish a duty on the part of the Secretary to identify or readjudicate any claim that—

(A) is not submitted during the one-year period referred to in paragraph (1); or

(B) has been the subject of a timely appeal to the Board of Veterans' Appeals or the United States Court of Appeals for Veterans Claims.

(e) Construction on Providing Renotification.—Nothing in this section, or the amendments made by this section, shall be construed to require the Secretary of Veterans Affairs—

(1) to provide notice under section 5103(a) of such title with respect to a claim insofar as the Secretary has previously provided such notice; or

(2) to provide for a special notice with respect to this section and the amendments made by this section.

SEC. 702. CLARIFICATION OF APPLICABILITY OF PROHIBITION ON ASSIGNMENT OF VETERANS BENEFITS TO AGREEMENTS REQUIRING PAYMENT OF FUTURE RECEIPT OF BENEFITS.

Section 5301(a) is amended—

(1) by inserting "(1)" after "(a)";

(2) by designating the last sentence as paragraph (2); and

(3) by adding at the end the following new paragraph:

"(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

"(B) Notwithstanding subparagraph (A), nothing in this paragraph is intended to prohibit a loan involving a beneficiary under the terms of which the beneficiary may use the benefit to repay such other person as long as each of the periodic payments made to repay such other person is separately and voluntarily executed by the beneficiary or is made by preauthorized electronic funds transfer pursuant to the Electronic Funds Transfers Act (15 U.S.C. 1693 et seq.).

"(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.".

SEC. 703. SIX-YEAR EXTENSION OF ADVISORY COMMITTEE ON MINORITY VETERANS.

Section 544(e) is amended by striking "December 31, 2003" and inserting "December 31, 2009".

SEC. 704. TEMPORARY AUTHORITY FOR PERFORMANCE OF MEDICAL DISABILITIES EXAMINATIONS BY CONTRACT PHYSICIANS.

(a) AUTHORITY.—Using appropriated funds, other than funds available for compensation and pension, the Secretary of Veterans Affairs may provide for the conduct of examinations with respect to the medical disabilities of applicants for benefits under laws administered by the Secretary by persons other than Department of Veterans Affairs employees. The authority under this section is in addition to the authority provided in section 504(b) of the Veterans' Benefits Improvement Act of 1996 (Public Law 104–275; 38 U.S.C. 5101 note).

(b) PERFORMANCE BY CONTRACT.—Examinations under the authority provided in subsection (a) shall be conducted pursuant to contracts entered into and administered by the Under Secretary for Benefits.

(c) EXPIRATION.—The authority in subsection (a) shall expire on December 31, 2009. No examination may be carried out under the authority provided in that subsection after that date.

(d) REPORT.—Not later than four years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the use of the authority provided in subsection (a). The Secretary shall include in the report an assessment of the effect of examinations under that authority on the cost, timeliness, and thoroughness of examinations with respect to the medical disabilities of applicants for benefits under laws administered by the Secretary.

SEC. 705. FORFEITURE OF BENEFITS FOR SUBVERSIVE ACTIVITIES.

(a) ADDITION OF CERTAIN OFFENSES.—Paragraph (2) of section 6105(b) is amended—

(1) by inserting "175, 229," after "sections"; and

(2) by inserting "831, 1091, 2332a, 2332b," after "798,".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to claims filed after the date of the enactment of this Act.

SEC. 706. TWO-YEAR EXTENSION OF ROUND-DOWN REQUIREMENT FOR COMPENSATION COST-OF-LIVING ADJUSTMENTS.

Sections 1104(a) and 1303(a) are each amended by striking "2011" and inserting "2013".

SEC. 707. CODIFICATION OF REQUIREMENT FOR EXPEDITIOUS TREATMENT OF CASES ON REMAND.

(a) CASES REMANDED BY BOARD OF VETERANS' APPEALS.—(1) Chapter 51 is amended by adding at the end of subchapter I the following new section:

"§ 5109B. Expedited treatment of remanded claims

"The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the appropriate regional office of the Veterans Benefits Administration of any claim that is remanded to a regional office of the Veterans Benefits Administration by the Board of Veterans' Appeals.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5109A the following new item:

"5109B. Expedited treatment of remanded claims.".

(b) CASES REMANDED BY COURT OF APPEALS FOR VETERANS CLAIMS.—(1) Chapter 71 is amended by adding at the end the following new section:

"§ 7112. Expedited treatment of remanded claims

"The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the Board of any claim that is remanded to the Secretary by the Court of Appeals for Veterans Claims.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"7112. Expedited treatment of remanded claims.".

(c) REPEAL OF SOURCE SECTION.—Section 302 of the Veterans' Benefits Improvement Act of 1994 (Public Law 103–446; 108 Stat. 4658; 38 U.S.C. 5101 note) is repealed.

SEC. 708. TECHNICAL AND CLERICAL AMENDMENTS.

(a) MISCELLANEOUS AMENDMENTS.—(1) Section 103(d) is amended—

(A) in paragraph (4)—

(i) in the matter preceding subparagraph (A), by striking "this subsection" and inserting "paragraph (2)(A) or (3)"; and

(ii) in subparagraph (A), by striking "paragraph (2)" and inserting "paragraph (2)(A)"; and

(B) in paragraph (5), by striking "Paragraphs (2)" and inserting "Paragraphs (2)(A)".

(2) Section 1729A is amended—

(A) in subsection (b), by striking "after June 30, 1997," in the matter preceding paragraph (1);

(B) in subsection (c), by striking paragraph (3);

(C) by striking subsection (e); and

(D) by redesignating subsection (f) as subsection (e).

(3) Section 1804(c)(2) is amended by striking "subsection" and inserting "section".

(4) Section 1974(a)(5) is amended by striking "Secretary of Transportation" and inserting "Secretary of Homeland Security".

(b) AMENDMENTS RELATING TO THE JOBS FOR VETERANS ACT.—(1)(A) Subsection (c)(2)(B)(ii) of section 4102A is amended by striking "October 1, 2002" and inserting "October 1, 2003".

(B) The amendment made by subparagraph (A) shall take effect as if included in the enactment of section 4(a) of the Jobs for Veterans Act (Public Law 107–288; 116 Stat. 2038).

(2) Subsection (f)(1) of section 4102A is amended by striking "6 months after the date of the enactment of this section," and inserting "May 7, 2003,".

(c) AMENDMENTS RELATING TO THE ESTABLISHMENT OF SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY.—(1) Section 1322 is amended—

(A) in subsection (a), by striking "Secretary of Health and Human Services" and all that follows through the period and inserting "Commissioner of Social Security, and shall be certified by the Commissioner to the Secretary upon request of the Secretary."; and

(B) in subsection (b)—

(i) by striking "Secretary of Health and Human Services" in the first sentence and inserting "Commissioner of Social Security";

(ii) by striking "the two Secretaries" and inserting "the Secretary and the Commissioner"; and

(iii) by striking "Secretary of Health and Human Services" in the second sentence and inserting "Commissioner".

(2) Section 5101(a) is amended by striking "Secretary of Health and Human Services" and inserting "Commissioner of Social Security".

(3) Section 5317 is amended by striking "Secretary of Health and Human Services" in subsections (a), (b), and (g) and inserting "Commissioner of Social Security".

(4)(A) Section 5318 is amended—

(i) in subsection (a), by striking "Department of Health and Human Services" and inserting "Social Security Administration"; and

(ii) in subsection (b)—

(I) by striking "Department of Health and Human Services" and inserting "Social Security Administration";

(II) by striking "Secretary of Health and Human Services" the first place it appears and inserting "Commissioner of Social Security";

(III) by striking "Secretary of Health and Human Services" the second place it appears and inserting "Commissioner"; and

(IV) by striking "such Secretaries" and inserting "the Secretary and the Commissioner".

(B)(i) The heading of such section is amended to read as follows:

"§ 5318. Review of Social Security Administration death information".

(ii) The item relating to that section in the table of sections at the beginning at chapter 53 is amended to read as follows:

"5318. Review of Social Security Administration death information.".

SA 2206. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 671, to amend the Harmonized Tariff Schedule of the

United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes; which was ordered to lie on the table; as follows:

On page 137, between lines 3 and 4, insert the following:

SEC. 1421. TEMPORARY DUTY REDUCTIONS FOR CERTAIN COTTON SHIRTING FABRIC.

(a) CERTAIN COTTON SHIRTING FABRICS.—

(1) IN GENERAL.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

"	9902.52.08	Woven fabrics of cotton, all the foregoing certified by the importer as suitable for use in making men's and boys' shirts and as imported by or for the benefit of a manufacturer of men's and boys' shirts, subject to the quantity limitations contained in general note 18 of this subchapter (provided for in section 204(b)(3)(B)(i)(III) of the Andean Trade Preference Act (19 U.S.C. 3203)).	Free	No change	No change	On or before 12/31/2005	
	9902.52.09	Woven fabrics of cotton, all the foregoing certified by the importer as containing 100 percent pima cotton grown in the United States, as suitable for use in making men's and boys' shirts, and as imported by or for the benefit of a manufacturer of men's and boys' shirts (provided for in section 204(b)(3)(B)(i)(III) of the Andean Trade Preference Act (19 U.S.C. 3203)).	Free	No change	No change	On or before 12/31/2005	".

(2) DEFINITIONS AND LIMITATION ON QUANTITY OF IMPORTS.—The U.S. Notes to chapter 99 are amended by adding at the end the following:

"17. For purposes of subheadings 9902.52.08 and 9902.52.09, the term 'making' means cutting and sewing in the United States, and the term 'manufacturer' means a person or entity that cuts and sews in the United States.

"18. The aggregate quantity of cotton fabrics entered under subheading 9902.52.08 from January 1 to December 31 of each year, inclusive, by or on behalf of each manufacturer of men's and boys' shirts shall be limited to 85 percent of the total square meter equivalents of all imported cotton woven fabric used by such manufacturer in cutting and sewing men's and boys' cotton shirts in the United States and purchased by such manufacturer during calendar year 2000.".

(b) DETERMINATION OF TARIFF-RATE QUOTAS.—

(1) AUTHORITY TO ISSUE LICENSES AND LICENSE USE.—To implement the limitation on the quantity of imports of cotton woven fabrics under subheading 9902.52.08 of the Harmonized Tariff Schedule of the United States, as required by U.S. Note 18 to subchapter II of chapter 99 of such Schedule, for the entry, or withdrawal from warehouse for consumption, the Secretary of Commerce shall issue licenses designating eligible manufacturers and the annual quantity restrictions under each such license. A licensee may assign the authority (in whole or in part) to import fabric under subheading 9902.52.08 of such Schedule.

(2) LICENSES UNDER U.S. NOTE 18.—For purposes of U.S. Note 18 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States, as added by subsection (a)(2), a license shall be issued within 60 days of an application containing a notarized affidavit from an officer of the manufacturer that the manufacturer is eligible to receive a license and stating the quantity of imported cotton woven fabric purchased during calendar year 2000 for use in the cutting and sewing men's and boys' shirts in the United States.

(3) AFFIDAVITS.—For purposes of an affidavit described in this subsection, the date of purchase shall be—

(A) the invoice date if the manufacturer is not the importer of record; and

(B) the date of entry if the manufacturer is the importer of record.

On page 263, between lines 11 and 12, insert the following:

SEC. 2007. COTTON TRUST FUND.

(a) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the "Pima Cotton Trust Fund", consisting of $32,000,000 transferred to the Pima Cotton Trust Fund from funds in the general fund of the Treasury.

(b) GRANTS.—

(1) GENERAL PURPOSE.—From amounts in the Pima Cotton Trust Fund, the Secretary of Commerce is authorized to provide grants to spinners of United States grown pima cotton, manufacturers of men's and boys' cotton shirting, and a nationally recognized association that promotes the use of pima cotton grown in the United States, to assist such spinners and manufacturers in maximizing United States employment in the production of textile or apparel products and to increase the promotion of the use of United States grown pima cotton respectively.

(2) TIMING FOR GRANT AWARDS.—The Secretary of the Treasury shall, not later than 90 days after the date of enactment of this section, establish guidelines for the application and awarding of the grants described in paragraph (1), and shall award such grants to qualified applicants not later than 180 days after the date of enactment of this section. Each grant awarded under this section shall be distributed to the qualified applicant in 2 equal annual installments.

(3) DISTRIBUTION OF FUNDS.—Of the amounts in the Pima Cotton Trust Fund—

(A) $8,000,000 shall be made available to a nationally recognized association established for the promotion of pima cotton grown in the United States for the use in textile and apparel goods;

(B) $8,000,000 shall be made available to yarn spinners of pima cotton grown in the United States, and shall be allocated to each spinner based on the percentage of the spinner's production of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), from pima cotton grown in the United States in single and plied form during calendar year 2002 (as evidenced by an affidavit provided by the spinner), compared to the production of such yarns for all spinners who qualify under this subparagraph; and

(C) $16,000,000 shall be made available to manufacturers who cut and sew cotton shirts in the United States and that certify that they used imported cotton fabric during the period January 1, 1998, through July 1, 2003, and shall be allocated to each manufacturer on the bases of the dollar value (excluding duty, shipping, and related costs) of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased by the manufacturer during calendar year 2002 (as evidenced by an affidavit from the manufacturer) used in the manufacturing of men's and boys' cotton shirts, compared to the dollar value (excluding duty, shipping, and related costs) of such fabric for all manufacturers who qualify under this subparagraph.

(4) AFFIDAVIT OF SHIRTING MANUFACTURERS.—For purposes of paragraph (3)(D), an officer of the manufacturer of men's and boys' shirts shall provide a notarized affidavit affirming—

(A) that the manufacturer used imported cotton fabric during the period January 1, 1998, through July 1, 2003, to cut and sew men's and boys' woven cotton shirts in the United States;

(B) the dollar value of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased during calendar year 2002;

(C) that the manufacturer maintains invoices along with other supporting documentation (such as price lists and other technical descriptions of the fabric qualities) showing the dollar value of such fabric purchased, the date of purchase, and evidencing the fabric as woven cotton fabric of 80s or higher count and 2-ply in warp; and

(D) that the fabric was suitable for use in the manufacturing of men's and boys' cotton shirts.

(5) DATE OF PURCHASE.—For purposes of the affidavit required by paragraph (4), the date of purchase shall be the invoice date, and the dollar value shall be determined excluding duty, shipping, and related costs.

(6) AFFIDAVIT OF YARN SPINNERS.—For purposes of paragraph (3)(B), an officer of a company that produces ringspun yarns shall provide a notarized affidavit affirming—

(A) that the manufacturer used pima cotton grown in the United States during the period January 1, 2002, through December 31, 2002, to produce ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during 2002;

(B) the quantity, measured in pounds, of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002; and

(C) that the manufacturer maintains supporting documentation showing the quantity of such yarns produced, and evidencing the yarns as ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002.

(7) NO APPEAL.—Any grant awarded by the Secretary under this section shall be final and not subject to appeal or protest.

(c) AUTHORIZATION.—There are authorized to be appropriated, and are appropriated out of the amounts in the general fund of the Treasury not otherwise appropriated, such sums as are necessary to carry out the provisions of this section, including funds necessary for the administration and oversight of the grants provided for in this section.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. THOMAS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, November 19, 2003, at 9 a.m., in open and possibly closed session, to receive testimony on current Army issues.

COMMITTEE ON ARMED SERVICES

Mr. THOMAS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, November 19, 2003, at 2:30 p.m., in executive session to discuss pending military nominations.

COMMITTEE ON FINANCE

Mr. THOMAS. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session on Wednesday, November 19, 2003; to consider nomination of Arnold I. Havens, to be General Counsel for the Department of the Treasury.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. THOMAS. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, November 19, 2003, at 9:30 a.m., for a hearing titled "Agroterrorism: The Threat to America's Breadbasket."

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. THOMAS. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in Executive Session during the session of the Senate on Wednesday, November 19, 2003. The following agenda will be considered:

S , Mammography Quality Standards Reauthorization Act of 2003

S , Medical Device Technical Corrections Act of 2003

S. 741, Minor Use and Minor Species Animal Health Act of 2003 and Food Allergen Labeling and Consumer Protection Act of 2003 (manager's amendment to be filed)

S. 573, Organ Donation and Recovery Improvement Act

Presidential Nominations

THE PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. THOMAS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, November 19, 2003, at 2:30 a.m., on "Judicial Nominations," in the Dirksen Senate Office Building Room 226.

Witness List:

Panel I: Senators.

Panel II: Williams James Haynes II to be United States Circuit Judge for the Fourth Circuit; Louis Guirola, Jr. to be United States District Judge for the Southern District of Mississippi; Virginia E. Hopkins to be United States District Judge for the Northern District of Alabama; and Kenneth M. Karas to be United States District Judge for the Southern District of New York.

THE PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. THOMAS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on November 19, 2003 at 2 p.m. to hold closed Conference on the Fiscal Year 04 Intelligence Authorization.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. WYDEN. Mr. President, I ask unanimous consent a legislative fellow in my office, Kevin Vranes, be granted the privilege of the floor during the duration of consideration of the conference report on the Energy bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent that Dr. Jonathan Epstein, a legislative fellow in Senator BINGAMAN's office, be given floor privileges during the pendency of H.R. 6, the Energy Policy Act of 2003 conference report and any votes thereupon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I ask unanimous consent that a fellow in my office, Ms. Barbara Peichel, be granted floor privileges for the duration of the consideration of the Energy bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. I ask unanimous consent Matthew Griles be granted the privilege of the floor during the pendency of this debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. CLINTON. Mr. President, I ask unanimous consent that the privilege of the floor be granted to the following fellows in my staff: Robyn Golden and William Rom.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRESIDENTIAL MEDAL OF FREEDOM TO POPE JOHN PAUL II

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 313, which is at the desk.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 313) to urge the President, on behalf of the United States, to present the Presidential Medal of Freedom to His Holiness, Pope John Paul II, in recognition of his significant, enduring, and historic contributions to the causes of freedom, human dignity, and peace and to commemorate the Silver Jubilee of His Holiness' inauguration of his ministry as Bishop of Rome and Supreme Pastor of the Catholic Church.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 313) was agreed to.

The preamble was agreed to.

TEMPORARY EXTENSIONS OF THE PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. 1895, introduced earlier today by Senator SNOWE.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1895) a bill to temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958 through March 15, 2004, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Ms. SNOWE. Mr. President, I rise today to support passage of the Small Business Administration Continuation Act of 2003. This bill provides a short-term extension of the Small Business Administration and all of its programs. In particular, it ensures the continuation of the SBA's 504 loan program, Small Business Investment Company program, and other activities currently conducted by the SBA, which must be extended before Congress adjourns this year. I am pleased to be joined by Senator KERRY, the ranking member of the Committee on Small Business and Entrepreneurship, in supporting this bill.

On September 26, 2003, the Senate unanimously approved the Small Business Administration 50th Anniversary Reauthorization Act of 2003, S. 1375, which I introduced as the chair of the Committee on Small Business. That bill provides for the 3-year reauthorization of the SBA and its small business programs, including the 504 loan program and the SBIC program.

The reauthorization bill will continue the SBA's role in assisting American small business to thrive and grow, through the agency's lending, entrepreneurial development, and government contracting programs and services. Most importantly, it will enable the agency to help small businesses continue creating new jobs for our economy. According to the SBA, for the years covered by the reauthorization bill, an estimated 3.34 million jobs will be created or retained as a result of the reauthorization programs.

While the Small Business Administration 50th Anniversary Reauthorization Act provides for the continuation of these programs, the other body has been delayed in its consideration of legislation to reauthorize the agency. The SBA's programs that rely on appropriations will be continued once the Commerce, Justice, State and the Judiciary appropriations legislation for Fiscal Year 2004 is enacted. However, several of the SBA's programs and activities, like the 504 loan and SBIC programs, do not rely on appropriations. As a result, they are in jeopardy of shutting down without the bill before us today, and that's a result America's small businesses simply cannot afford.

I am confident that we can enact legislation to reauthorize the SBA once the other body has completed work on its version of the bill. In the interim, we must ensure that the SBA can continue to offer the entire range of its programs to our nation's small businesses, which are the driving force behind our current economic recovery. With small businesses comprising 99.7 percent of all businesses in the United States, employing 57 percent of the total private-sector workforce, and accounting for approximately 40 percent of the Gross Domestic Product, they deserve nothing less!

The 504 loan program, one of the agency's flagship lending programs, allows small businesses to obtain long-term, fixed-rate financing to purchase land, buildings, or equipment. In the past four fiscal years, the SBA has provided guarantees for more than 20,000 loans through the 504 Loan Program, for a total of approximately $8.6 billion, and these loans have allowed small businesses to create or retain more than 445,000 jobs.

The SBIC Program utilizes private venture capital, with matching Federal funds, to provide financing to small businesses, many of which have found it difficult to obtain financing from traditional venture capital firms, both because of the businesses' small size and because of difficult economic trends. Since the start of Fiscal Year 1999, small business investment companies supported by the SBA have made more than 15,800 investments in small businesses, with a total value of $16.9 billion. This critical long-term or "patient" capital for small businesses has led to the creation and retention of approximately 481,000 jobs during this period.

Both of these programs are critical to our efforts to provide necessary capital to small businesses so that those businesses can provide the jobs and the growth to improve the Nation's economy. In addition, both of these programs rely on fees charged to the program participants, rather than on Federal appropriations, to fund their operation. Because neither program requires any Federal funds, the SBA needs legislative authorization to collect the fees that operate the programs and ensure that they function at a zero subsidy rate. Currently, the authorization for these fees has been temporarily extended under the present continuing resolution.

With the close of the First Session of the 108th Congress rapidly approaching, we must act now to ensure that the SBA and its programs are continued. The bill before us achieves that goal by extending the authorization for the agency and its programs through March 15, 2004. That will provide ample time for the other body to pass its legislation, for us to reconcile the differences, and for the president to sign a long-term reauthorization bill for the SBA.

This legislation is absolutely necessary for America's small businesses. I urge my colleagues to support this bill and thereby ensure that the SBA, and in particular the 504 loan and SBIC programs, will continue to serve small businesses and enable small businesses to obtain the financing they need, as they contribute so greatly to the revitalization of our national economy.

In summary, the Small Business Administration Continuation Act of 2003 is a straight extension of the authorization for the Small Business Administration, SBA, and its programs at their FY 2003 levels through March 15, 2003. Currently, the SBA and its programs are operating under the provisions of the Continuing Resolution. The bill also increases the fee authorization for the Small Business Investment Company, SBIC, program so that it can continue operating at a zero subsidy rate for 2004. The SBIC fee level was increased in the last Continuing Resolution and that increase is merely continued in this bill to avoid statutory interpretation problems.

While the Senate has passed a 3-year reauthorization of the SBA, S. 1375, the House has not completed work on its reauthorization bill. In order to provide time for the House to act and the bills to be reconciled, this bill extends the SBA's authorization on a short-term basis so the agency can continue providing its critical lending, entrepreneurial development, and government contracting programs to the Nation's small businesses.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. KERRY. Mr. President, today, as the ranking Democrat of the Committee on Small Business and Entrepreneurship, I join the committee's chair, Senator OLYMPIA SNOWE, in introducing a bill to extend for 4 months—through March 15, 2004—the authority to operate the Small Business Administration's programs. It is our hope that it can be expeditiously considered by the Senate.

Enacting this bill before Congress adjourns for the holidays is critical in order to continue making accessible to small businesses the many needed resources, from long-term loans to technical and contracting assistance, of the SBA. Among those that would be in jeopardy of closing are the agency's loans for growing businesses through what's more commonly referred to as the 504 loan program, certain established Women's Business Centers, the contracting program to assist minority-owned small businesses, the program to provide surety bonds to small contractors through so-called "preferred sureties" and one of the agency's venture capital programs.

The agency's 504 program is more important than ever to our small businesses and the economy. The need could not be clearer, with demand for loans up 25 percent in both the number of loans made and the total dollar amount in loans made. As the year came to a close, these loans pumped more than $3 billion into our local economies through thousands of small businesses. Remarkably, making these loans available to small businesses costs the taxpayers nothing because the borrowers, lenders and certified development companies cover costs of the program through fees. While it requires no appropriations to guarantee these loans, continuation of the program depends upon the ability of the lenders to charge fees, which must be specifically permitted by Congress. This program is extremely successful and should absolutely continue. I believe I speak for many when I say that the Congress wants the lending community to continue devoting resources to 504 loans, keeping this affordable financing available to small businesses. We fully intend to provide authorization for 3 years when the SBA's comprehensive reauthorization bill is enacted in early 2004.

I feel just as strongly about the importance of continuing the SBA's venture capital programs. Specifically, we need to make clear that the amount of fees that can be charged to participating securities venture capital firms is increased from 1.38 percent to 1.46 percent. Venture capital has been very scarce over the past few years, and this program has been responsible for more than 50 percent of the number of deals made in this country. In spite of the industry's rough times, the committee is supportive of the Small Business Investment Company programs and wants to see more successes like Staples and Callaway golf lead the way in their industries and create jobs.

Extending the Women's Business Center Sustainability pilot program—which is made permanent in both the House and Senate SBA reauthorization bills—is tremendously important to the 86,000 women business owners across the Nation who use the entrepreneurial development assistance each year. Without the continuation of the agency's authority to operate pilot programs, it is possible that the Small Business Administration could misinterpret Congress's strong support for this pilot and discontinue funding 55 centers in over 40 states, closing over half of the most experienced and active women's business centers. In 1999, when I authored the Women's Business Center Sustainability pilot program, it was my intention to continue the most productive and well-equipped women's business centers, knowing that demand for such services was rapidly growing. Today, with women-owned businesses opening at one-and-a-half times the rate of all privately held firms, the need for women's business centers is even greater. Until Congress makes permanent the Women's Business Center Sustainability Pilot program, as intended in already passed legislation, an extension of authority is vital—not only to the centers themselves, but to the women's business community and to the 18 million workers employed by women-owned businesses around the country.

We also need to ensure the continuation of the agency's contracting assistance. One type of assistance in particular is the Small and Disadvantaged Businesses, SDB, Certification program. It was created to assist small businesses through government contracting, access to capital, management and technical assistance, and export assistance. The program was originally implemented to help Federal agencies reach a 5 percent goal of utilization of these essential businesses incurred to address discrimination and under-utilization of certain firms in Federal contracting.

The positive implications of this program have grown beyond the expectations of even the authors of the original legislation. By supporting these socially and economically disadvantaged businesses, the Federal Government has helped these entrepreneurs revitalize neighborhoods, create jobs, and encourages real, measurable economic growth. The program has shown to be a resounding success, however, a great deal of work still needs to be done. Moreover, the Federal Government has failed to meet the 23 percent government-wide goal for small business utilization in Federal procurement. Agencies have continually failed to meet the goals for socially and economically disadvantaged, women owned businesses, service disabled veteran owned, and HUBZone firms, all of which contribute to the overall 23 percent goal. Part of the problem faced by small businesses participating in these programs and by those attempting to enforce small business utilization goals is the perception that these goals are intended to be a maximum set-aside for small firms. They are not. They are minimum thresholds. The continuation of the SDB program throughout the government will help Federal agencies continue to utilize these small businesses and continue to foster business development and in much needed sectors of the economy.

I would like to make clear that this bill is not intended to interfere with any program, pilot program or authority that has a longer authorization, like the Small Business Innovation and Small Business Technology Transfer programs. If there are any doubts about our intentions, the bill is structured to keep all programs, pilots and initiatives operating that could have expired between September 30, 2003, and March 15, 2003, and to keep them operating as on September 30.

I commend our committee, and the leadership of our chair, Senator SNOWE, for deliberating and passing our comprehensive reauthorization bill in July and look forward to working with our colleagues in the House to pass a final bill in early 2004.●

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD.

The bill (S. 1895) was read the third time and passed, as follows:

S. 1895

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF PROGRAM AUTHORITY.

(a) IN GENERAL.—Any program, authority, or provision, including any pilot program, authorized under the Small Business Act (15 U.S.C. 631 et seq.) or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) as of September 30, 2003, that is scheduled to expire on or after September 30, 2003 and before March 15, 2004, shall remain authorized through March 15, 2004, under the same terms and conditions in effect on September 30, 2003.

(b) EXCEPTION.—Notwithstanding subsection (a), section 303(g)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 683(g)(2)) is amended by striking "1.38 percent" and inserting "1.46 percent".

THE 50TH ANNIVERSARY OF THE MUTUAL DEFENSE TREATY BETWEEN THE UNITED STATES AND THE REPUBLIC OF KOREA

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 379, S. Res. 256.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. RES. 256) observing the 50th anniversary of the Mutual Defense Treaty between the United States and the Republic of Korea, affirming the deep cooperation and friendship between the people of the United States and the people of the Republic of Korea, and thanking the Republic of Korea for its contributions to the global war on terrorism and to the stabilization and reconstruction of Afghanistan and Iraq.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, all with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 256) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 256

Whereas October 1, 2003, marked the 50th anniversary of the signing of the Mutual Defense Treaty between the United States of America and the Republic of Korea, signed at Washington October 1, 1953, and entered into force November 17, 1954 (hereinafter referred to as the "Mutual Defense Treaty");

Whereas the United States and the Republic of Korea have formed a bond through the common struggle against communist aggression;

Whereas more than 34,000 Americans lost their lives fighting in the Korean War, and approximately 37,000 men and women of the United States Armed Forces are still deployed on the Korean peninsula, enduring separation from their families and other hardships in the defense of freedom;

Whereas the Mutual Defense Treaty has been instrumental in securing peace on the Korean peninsula and providing an environment in which the Republic of Korea has become an economically vibrant, free, democratic society;

Whereas the foundation of the Mutual Defense Treaty rests not only on a common adversary, but more importantly on a shared interest in, and commitment to, peace, democracy, and freedom on the Korean peninsula, in Asia, and throughout the world;

Whereas the United States and the Republic of Korea are working closely together to find a diplomatic solution to the threat posed by North Korea's pursuit of nuclear weapons and the export by North Korea of ballistic missiles;

Whereas the Republic of Korea is making valuable contributions to the global war on terrorism, including the contribution of logistics support for international forces operating in Afghanistan;

Whereas the Republic of Korea has pledged $260,000,000 and has already sent 700 military engineers and medical personnel to assist in the United States-led effort to stabilize and reconstruct Iraq; and

Whereas South Korea President Roh Moo-hyun pledged on October 18, 2003, to dispatch additional troops to work alongside United States and coalition forces in Iraq: Now, therefore, be it

Resolved, That the Senate—

(1) observes the 50th anniversary of the Mutual Defense Treaty between the United States of America and the Republic of Korea, signed at Washington October 1, 1953, and entered into force November 17, 1954;

(2) reaffirms the deep cooperation and friendship between the people of the United States and the people of the Republic of Korea; and

(3) thanks the Republic of Korea for its contributions to the global war on terrorism and to the stabilization and reconstruction of Afghanistan and Iraq.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination on today's Executive Calendar: Calendar No. 321.

NOMINATION DISCHARGED

Further, I ask consent that the Foreign Relations Committee be discharged from further consideration of the following nomination and the Senate proceed en bloc to its consideration: PN1019–2, Robert Goldberg.

I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

IN THE AIR FORCE

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Col. Bruce E. Burda, 0432

FOREIGN SERVICE

Robert Goldberg

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ORDERS FOR TOMORROW

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. Thursday, November 20. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and that the Senate then resume consideration of the conference report to accompany H.R. 6, the Energy Policy Act of 2003.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, we worked for several hours this afternoon on the conference on the omnibus. Significant progress was made. The DC title was closed. The VA-HUD title was closed. The Commerce-State-Justice is one open item. But that should be resolved quickly tomorrow, which leaves Agriculture and Labor-HHS.

I think that is what we have left. I think progress was made. Another couple of hours tomorrow and we should be able to finish that. That would bring that very important bill to the floor. At this stage, it appears that Senators STEVENS and BYRD have done an outstanding job, having just dealt with those appropriations bills and not extraneous materials, as some talked about doing.

I think this is something that, in a relatively short period of time, if things continue like this in conference, should not take a lot of floor time.

Mr. FRIST. Mr. President, just to add to the comments of the distinguished assistant minority leader, the Medicare conference, I believe, will be held tomorrow, and most probably tomorrow morning, although I am not sure if a final announcement or determination of the time has been made. It will be made a little later tonight.

Substantial progress has been made on that conference as well. There are a few numbers coming in from CBO over the course of tonight. Once they are back, that conference will be held.

What our colleagues have just heard is that, on the omnibus, substantial progress has been made. And on what we are addressing on the floor—energy—real progress is being made. Also, in terms of Medicare prescription drugs, real progress is being made. People are collaborating. Everybody understands that we will be here probably each day, every day until we finish the Senate's business. After a long day today, we have made real progress.

PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, tomorrow the Senate will resume consideration of the Energy conference report. A number of Senators did come and participate in the debate today on the Energy conference report, and the Senate will continue that debate into tomorrow's session.

I remind my colleagues that a cloture motion was filed on the conference report during today's session, and that cloture vote will occur Friday morning.

Mr. REID. Mr. President, today we had a very orderly debate in the Senate. We alternated back and forth, unless there wasn't someone on the other side, Democrat or Republican. Senator FEINSTEIN is one who waited around all day to speak. Because of her being part of the conference, she was not able to speak. I wonder if, following Senator DOMENICI, who wishes to speak at 9:30, we can have Senator FEINSTEIN recognized. I alert people that she wishes to speak for up to an hour.

I ask unanimous consent that Senator DOMENICI be recognized at 9:30 for whatever time he may consume and that Senator FEINSTEIN then be recognized for up to 1 hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I recognize how well things have gone today, and although I haven't talked with Senator DOMENICI, I assume that will be fine for him. Obviously, I did not object. I suspect we will handle the day just that way—going back and forth making sure there is an appropriate amount of time on both sides.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:56 p.m., adjourned until Thursday, November 20, 2003, at 9:30 a.m.

NOMINATIONS

Executive nomination received by the Senate November 19, 2003:

DEPARTMENT OF THE TREASURY

J. RUSSELL GEORGE, OF VIRGINIA, TO BE INSPECTOR GENERAL FOR TAX ADMINISTRATION, DEPARTMENT OF THE TREASURY, VICE DAVID C. WILLIAMS.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 19, 2003:

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. BRUCE E. BURDA

FOREIGN SERVICE NOMINATION OF ROBERT GOLDBERG.

HOUSE OF REPRESENTATIVES—*Wednesday, November 19, 2003*

The House met at 10 a.m.

Rabbi Dr. Ari Korenblit, Temple Sholom, Brooklyn, New York, offered the following prayer:

God, bless America.

We thank You, God, for our country which has nurtured the hopes and dreams of people throughout the world.

For our country which is the most charitable Nation that has ever existed, sharing its bounty and talents with all.

For our country which has provided welcoming portals of refuge, sanctuary and opportunity, both material and spiritual.

For our country which has been enriched by the prayers and talents from the early pilgrims to our recent citizens.

In these troubled times, let us especially remember the early pilgrims who came to these shores with their faith, dreams and hope in God. This is the secret of our endurance, prosperity and success.

God, inspire the Members of this great Chamber and all our leaders with courage to champion our divine moral code and with the strength to uphold those freedoms we hold dear. Bless and protect our soldiers who defend those principles throughout the world. May we forever be one Nation under God and continue our sacred duty to be the conscience of the world.

Please, God, fill our hearts with thanksgiving every moment.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Florida (Mr. FOLEY) come forward and lead the House in the Pledge of Allegiance.

Mr. FOLEY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment bills of the House of the following titles:

H.R. 23. An act to amend the Housing and Community Development Act of 1974 to authorize communities to use community development block grant funds for construction of tornado-safe shelters in manufactured home parks.

H.R. 2744. An act to designate the facility of the United States Postal Service located at 514 17th Street in Moline, Illinois, as the "David Bybee Post Office Building".

H.R. 3175. An act to designate the facility of the United States Postal Service located at 2650 Cleveland Avenue, NW in Canton, Ohio, as the "Richard D. Watkins Post Office Building".

H.R. 3379. An act to designate the facility of the United States Postal Service located at 3210 East 10th Street in Bloomington, Indiana, as the "Francis X. McCloskey Post Office Building".

The message also announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2765. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2004, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 2765) "An Act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2004, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. DEWINE, Mrs. HUTCHISON, Mr. BROWNBACK, Mr. STEVENS, Ms. LANDRIEU, Mr. DURBIN, and Mr. INOUYE, to be the conferees on the part of the Senate.

The message also announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2861. An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 2861) "An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. BOND, Mr. BURNS, Mr. SHELBY, Mr. CRAIG, Mr. DOMENICI, Mr. DEWINE, Mrs. HUTCHISON, Mr. STEVENS, Ms. MIKULSKI, Mr. LEAHY, Mr. HARKIN, Mr. BYRD, Mr. JOHNSON, Mr. REID, and Mr. INOUYE, to be the conferees on the part of the Senate.

The message also announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 189. An act to authorize appropriations for nanoscience, nano-engineering, and nanotechnology research, and for other purposes.

The message also announced that the Senate agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2754) "An Act making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes."

WELCOMING RABBI DR. ARI KORENBLIT

(Mr. WEINER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEINER. Mr. Speaker, on behalf of the House of Representatives, it is my pleasure to welcome Rabbi Korenblit and thank him for delivering this morning's prayer.

Rabbi Korenblit's eloquence this morning was no surprise to those of us in Brooklyn who have come to know him as one of the community's most prominent moral leaders. Since 1997, he has been the Rabbi at Temple Sholom in Southern Brooklyn, after having served congregations in New Jersey and Manhattan.

Rabbi Korenblit was ordained at Meor Hatorah Rabbinical College and received advanced rabbinical training at Torah Vodaath Rabbinical Institute, Boston Kolel and Gur Aryeh Institute for Advanced Rabbinical Studies.

What has most distinguished the Rabbi's career is his commitment to children, which is matched only by his commitment to his faith. He is not only the Rabbi at Temple Sholom, but he is the principal of the Schwartz Religious School at the Temple. And he spent many years as not only a principal but as a school teacher, camp director and youth group director. He has

☐This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

also written and lectured extensively on educational issues, with a focus on child rearing matters. Untold numbers of young people in our community have grown up to lead healthy spiritual lives because of the influence of Rabbi Korenblit, and I can think of no greater contribution one can make to his community.

I am not only pleased to congratulate Rabbi Korenblit on the honor of being chosen to deliver this morning's prayer, but I wanted to congratulate his shul, Temple Sholom, on their 50th anniversary. For more than a generation, Temple Sholom has served the religious and social needs of the Mill Basin and Bergen Beach communities, and I wish them many more decades of continued vitality.

In closing, it is also my pleasure to welcome this day the Rabbi's wife, Daniela Reik, who is with us today, his three daughters, Haviva, Eliora, Emuna, and his mother-in-law, Mignon.

Thank you very much, Rabbi.

SUPPORT THE MEDICARE MODERNIZATION BILL

(Mr. FOLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FOLEY. Mr. Speaker, what should be a celebratory week for America's seniors is turning into a partisan fight. In memory of my grandmother, I come to the floor today urging my colleagues to come together on this important change in Medicare to provide prescription drugs for the first time in our Nation's history for our seniors.

Let me ask our colleagues on the other side of the aisle, in the memory of Claude Pepper, Franklin Roosevelt and others who cared so deeply for seniors, to put aside your partisan differences and walk with us in improving the most important fundamental health care program for seniors in our Nation's history. Discount drug cards, lower prices for prescription drugs, availability for new technology to help those who are ailing, preventive health care, diagnostic screening for cardiovascular disease and diabetes. This is a tremendously important bill for our Nation's seniors. Let us not fight about it. Let us move forward.

AARP supports this bill. Yet the Democratic leadership is urging Members that if they vote for it, they should leave the caucus. One Member from California is actually resigning from AARP because she is so upset with their endorsement of the bill. AARP has long been known as the gold standard for keeping and caring for America's seniors. Let us not put their vision outside this building. Let us bring it in. Let us debate this bill but in behalf of millions of American seniors, let us pass this important landmark legislation this week before we go home.

ESTABLISHING ARABIA MOUNTAIN NATIONAL HERITAGE AREA

(Ms. MAJETTE asked and was given permission to address the House for 1 minute.)

Ms. MAJETTE. Mr. Speaker, yesterday the House of Representatives unanimously passed H.R. 280, which includes H.R. 1618, establishing the Arabia Mountain National Heritage Area. I thank the Committee on Resources and each of the cosponsors from Georgia for their hard work in passing this bill. This has been truly a bipartisan effort, with five Democrats and five Republican cosponsors. I would like to particularly thank the gentleman from Georgia (Mr. LINDER) for his leadership.

The Arabia Mountain legislation will protect the natural, cultural and historical resources of Georgia's granite outcroppings and will preserve the wonders that Arabia Mountain has to offer. The heritage area is a living history lesson, illustrating 7,000 years of human interaction with a unique landscape. Despite its proximity to Atlanta, it includes Panola Mountain, which is pristine land untouched by development, unique granite outcroppings that are more than 400 million years old, and endangered mosses and lichens that top Arabia Mountain itself.

Beyond the natural beauty is a rich cultural history that began when Native Americans quarried these soapstone and granite outcroppings more than 5,000 years ago. By connecting the heritage area's natural, cultural and historical resources through rivers, greenways and parks, this region will rapidly become a popular recreation area for Georgians and all Americans.

I thank my colleagues for recognizing the importance of the Arabia Mountain National Heritage Area and for passing H.R. 280.

AMERICAN DIABETES MONTH

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, November is American Diabetes Month, and it is important that communities throughout our Nation participate in spreading awareness of the facts about the disease. Diabetes is a very serious health problem in America, as two out of three people who suffer from diabetes will die of heart disease or stroke. Diabetes also leads to other complications, including blindness, high blood pressure, kidney disease, nervous system disease, amputations, dental disease, problems in pregnancy and other health risks.

This touches almost every family in every part of America. According to the American Diabetes Association, 13 million people have been diagnosed with the disease and an additional 5.2 million have been estimated to be unaware that they are living with the disease. As for my home State of South Carolina, we have the second highest rate of diabetes in the Nation. Also alarming is that 90 to 95 percent of diabetes cases are developed later in life, but Americans can reduce their risk by eating properly and maintaining regular exercise.

I urge everyone to get the facts about diabetes during November, American Diabetes Month. In conclusion, God bless our troops.

VOTE AGAINST MEDICARE MODERNIZATION BILL

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute.)

Mr. DEFAZIO. Mr. Speaker, we have before us not a simple prescription drug benefit for seniors which they need and which is long overdue, not just a complicated, convoluted, expensive and inadequate benefit for seniors, it is the pharmaceutical promotion and profits protection act. It prohibits any mandated, or even negotiated reductions in the extortionate price of pharmaceuticals. Yes, it would outlaw the Federal Government negotiating for price reductions on behalf of Medicare beneficiaries. It will block seniors who are seeking to import less expensive U.S. manufactured drugs from Canada. It provides a $20 billion subsidy to the private insurance industry to undermine Medicare. It is a cruel hoax targeted on the most vulnerable among us. It is not, as the gentleman from Florida said, bipartisan.

I knew Claude Pepper. I served with Claude Pepper. And FDR, I did not know him, but I know that he passed Social Security without a single Republican vote. And LBJ passed Medicare without support on that side. Now suddenly in defense of the pharmaceutical industry and the private insurance industry, they want to attack Medicare but pretend they are doing this for the good of seniors.

AT&T WIRELESS ANNOUNCES LAYOFFS

(Mr. EMANUEL asked and was given permission to address the House for 1 minute.)

Mr. EMANUEL. Today in the Wall Street Journal, AT&T Wireless announced that they are going to lay off nearly 10 percent of their workforce, 3,000 employees, and outsource hundreds of other jobs to India. These 3,000 employees will be added to the 9 million Americans who already cannot find work and the 2 million Americans who are defined as long-term unemployed Americans. This economy, although growing, is stalled. As Goldman Sachs recently described, it is not a jobless economy, it is a job-loss recovery. As we have reached record consumer debt and bankruptcy, long-term record unemployment, adding additional employees today by the announcement of AT&T Wireless to lay off 3,000 employees, this economy is not working for middle-class Americans.

There are some in this Chamber who like to spike the ball on the 40-yard line and declare the mission accomplished as it relates to the economy. This economy is not working for middle-class families who find health care costs skyrocketing out of control, college costs skyrocketing out of control, their job in a tenuous position, and their bankruptcy and consumer debt rising faster than they can meet the demands of their family.

Mr. Speaker, I rise and ask that Members of this Chamber focus on the needs of middle-class families and get the economy moving by producing jobs.

WAR IN IRAQ COUNTERPRODUCTIVE TO WINNING WAR ON TERROR

(Mr. KUCINICH asked and was given permission to address the House for 1 minute.)

Mr. KUCINICH. Mr. Speaker, the war in Iraq has proven to be counterproductive to our goals in winning the war on terror. It has produced an increase in anti-American sentiment all over the world, an increased presence of al Qaeda inside Iraq, and a greater instability in the region. Every day that we are inside Iraq, the situation gets progressively worse as evidenced by the frequent and more sophisticated attacks on our troops. As a result of the escalating terrorist attacks upon our troops, more Americans have died after the end of combat was announced on May 1. The U.S. occupation of Iraq is counterproductive as it is a contributing cause for instability. We simply cannot help the people of Iraq by continuing this occupation, nor can we tolerate talk of a draft to sustain an occupation.

That is why we need to get the U.S. out and the United Nations in.

MEDICARE MARKET BASKET UPDATE FOR HOSPITALS

(Mr. GINGREY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY. Mr. Speaker, I rise today in support of the market basket update to hospitals provided for in the House-Senate Medicare agreement. This legislation will supply a full update for hospitals that submit data for a set of 10 quality indicators.

□ 1015

Those hospitals that do not submit data would receive updates of 0.4 percent less than the market basket level.

It is imperative that our hospitals and especially, Mr. Speaker, our rural hospitals receive this full update in order to ensure that they maintain the ability to provide needed goods and services.

I stressed the importance of this issue by offering a letter to the Medicare conferees urging them to reject the proposed market basket reduction to hospitals and ensure that the final Medicare legislation delivers unfettered improvements for rural health care and a full market basket update for hospitals. Over 120 of my colleagues joined me in that effort.

I urge my colleagues to continue to back this provision in the final version of the bill and show support for our hospitals by its passage.

IN SUPPORT OF H.R. 253

(Mr. BLUMENAUER asked and was given permission to address the House for 1 minute.)

Mr. BLUMENAUER. Mr. Speaker, today on the suspension calendar H.R. 253, the Two Floods bill, is an opportunity to reauthorize and reform America's flood insurance program. It is a great opportunity to build on the legacy of the late Hale Boggs from Louisiana who helped create the program because he understood how important it was to a State like his.

The bill passed out of the Committee on Financial Services with a unanimous vote, broad support from bankers, realtors, environmentalists. With the help of the gentleman from Louisiana (Mr. BAKER), we assure that the special needs of flood-prone areas are met, that we help people move their homes out of harm's way, that there is more assistance for the States with the biggest problems, and it will reduce the premium pressure, saving money for 4½ million policyholders. Last, but by no means least, these reforms will ultimately mean significant savings in disaster relief costs for the Federal Government.

One percent of the property should not require 25 percent of the loss costs for the entire country. This Bill is a win-win for the economy, for people moved out of harm's way, and for the environment. I urge my colleagues to carefully consider it as it comes forward later today.

PRESIDENT BUSH'S TRIP TO GREAT BRITAIN

(Mr. McDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McDERMOTT. Mr. Speaker, King George II's return to Great Britain reminds me of the return of Richard the Lionheart from the Crusades. The President is coming back to England. He says he is going to meet with the families of the bereaved from 9/11. Apparently, he does not know that 400 people have died in the United States in their service in Iraq. He has never seen fit to meet with them.

In less than 1 year, we have lost more people in Iraq than we lost in 3 years in the Vietnam War. But the President has a secret plan he is now revealing. His secret plan is that he is going to declare victory and have the troops out by June 1.

Mr. Speaker, this President is leading us over the cliff with no respect for the people that he has put in harm's way. He ought to come up to Walter Reed and visit the wounded and then go out and visit some of the families that have lost people in Iraq. To do less than that is to ignore the sacrifice they have made.

MEDICARE: INDIGENT CARE

(Mr. PEARCE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PEARCE. Mr. Speaker, I rise this morning to encourage my colleagues to support H.R. 1.

One of the important provisions in this bill is reimbursement for States and counties that are required to treat illegal immigrants through the Emergency Medical Treatment and Labor Act. This unfunded mandate is breaking the hospitals in my district.

As a border State, we constantly incur costs on our counties that are mandated by the Federal Government but never reimbursed. By Federal law, hospitals must treat any person, regardless of citizenship, in need of medical attention. If the person is a United States citizen, Medicare or Medicaid pays for the treatment, but there is no reimbursement for illegal immigrants. Border hospitals are caving under these costs of providing care daily for illegal immigrants who have no insurance and no ability to pay.

For example, Luna County in my district is often expected to pay for Mexican citizens to be picked up at the border, taken to a hospital and treated, and then returned to the border. Taxpayers are footing the bill for indigent care. This provision ensures that counties and States will receive the money in return for the services the Federal Government requires them to provide.

MEDICARE PRESCRIPTION DRUG BENEFIT

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, over the next couple of days, in a very rushed and possibly confused effort, this body will bring to the floor a Medicare bill. When we talk to our seniors across the Nation, they believe that this is in response to their desire to have a real, guaranteed Medicare prescription drug benefit. But, Mr. Speaker, what has happened was a closed-door conference with no participation of Democrats, and I want to be convinced that we have something that will help all of our seniors. We have got privatization of Medicare, vouchers for Medicare, big money for pharmaceutical companies, and no guaranteed prescription drug benefit.

President Johnson went out on a limb in 1965 with hardly any Republican support and gave a lifespan to our seniors that they could never imagine. Shame on this body. Shame on the other body if they take this opportunity to destroy Medicare as we know it and as it can be a better entity for all. Let us get to work as a bipartisan House, two Chambers, producing something that really means a vital lifeline to our seniors.

H.R. 1 CONFERENCE REPORT AND THE AARP

(Ms. WOOLSEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, I rise to express my profound disappointment with the squandered opportunity we have right now, an opportunity to provide our seniors with the prescription drug coverage they need and they deserve.

But I am just as concerned about the decision made by AARP, the American Association of Retired People, to endorse these misguided policies. I have long been proud of my membership in AARP, but now they have sold out seniors. Now I understand why AARP no longer stands for American Association of Retired People. Perhaps they would like to be known as the American Association of the Republican Party. They no longer represent retirees. They are more concerned about the interests of large drug companies.

I want no part of an organization that is willing to sacrifice its principles for short-term political gain or favors from the majority party, and neither do more than 65 of my colleagues. Today we will surrender our AARP membership, and I urge all of my colleagues who truly care about the needs of seniors to do the same.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SHAW). Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later today.

EXPRESSING SENSE OF HOUSE REGARDING COURAGEOUS LEADERSHIP OF UNIFIED BUDDHIST CHURCH OF VIETNAM

Mr. LEACH. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 427) expressing the sense of the House of Representatives regarding the courageous leadership of the Unified Buddhist Church of Vietnam and the urgent need for religious freedom and related human rights in the Socialist Republic of Vietnam, as amended.

The Clerk read as follows:

H. RES. 427

Whereas Buddhism has a 2,000-year tradition in Vietnam and the Unified Buddhist Church of Vietnam (UBCV) is an heir to this tradition;

Whereas the Government of Vietnam in 1981 declared the UBCV, one of the largest religious denominations in the country, illegal, confiscated its temples, and persecuted its clergy for refusing to join the state-sponsored Buddhist organizations;

Whereas the Government of Vietnam has often imprisoned UBCV clergy and subjected them to other forms of persecution; the Patriarch of the UBCV, the 85-year-old Most Venerable Thich Huyen Quang, has been detained and restrained for more than 2 decades in isolated areas of Vietnam;

Whereas the Vietnamese Government has held the Most Venerable Thich Quang Do, the Executive President of the UBCV and his deputy, the Venerable Thich Tue Sy, in various forms of detention since 1977;

Whereas the Very Venerable Thich Thien Minh, Supreme Counselor of the UBCV, was tortured to death in a reeducation camp in 1978;

Whereas many other leading UBCV figures, including Thich Thien Hanh, Thich Phuoc An, Thich Dong Tho, Thich Vien Dinh, Thich Thai Hoa, Thich Nguyen Ly, Thich Thanh Huyen, Thich Khong Tanh, Thich Phuoc Vien, Thich Hai Tang, Thich Dong Tho, Thich Nguyen Vuong, Thich Chi Mau, Thich Chi Thang, and Thich Thanh Quang have been detained, harassed, and under tight surveillance;

Whereas several members of the UBCV have fled to Cambodia to escape religious repression and harassment;

Whereas Pham Van Tuong, formerly known as Thich Tri Luc, disappeared from Cambodia in July 2002 after being given refugee status by the United Nations High Commissioner for Refugees (UNHCR), and has since been discovered to be in custody in Vietnam, where he is reportedly charged with the vague crime of "fleeing abroad or defecting overseas with the intent to oppose the people's administration," which carries a possible sentence of life imprisonment;

Whereas Vietnam has acceded to international covenants and treaties that prohibit the forced repatriation of UNHCR-recognized refugees;

Whereas Vietnam has acceded to international covenants and treaties that protect the right to faith, belief, and practice;

Whereas Vietnam's constitution protects the right of religious belief;

Whereas in a show of religious tolerance, the Vietnamese Government in April 2003 allowed the Most Venerable Thich Huyen Quang, the Fourth Supreme Patriarch of the UBCV, to receive urgent medical care in Hanoi;

Whereas at that time, Vietnamese Prime Minister Phan Van Khai met with Venerable Thich Huyen Quang and assured him that his and Venerable Thich Quang Do's detention were mistakes by local officials and that he hoped they would extend Buddhist forgiveness toward past actions of the government;

Whereas in June 2003, the Vietnamese Government ended the detention order against Venerable Thich Quang Do, the Executive President of the UBCV;

Whereas in September and October 2003, the UBCV held a meeting in Nguyen Thieu Pagoda in Binh Dinh province to discuss church affairs, choose a new leadership which had been vacant for a decade, and verify Vietnamese Prime Minister Phan Van Khai's promise of a new era of understanding and respect;

Whereas Vietnamese authorities attempted to disrupt these gatherings by restricting the travel of monks from other provinces and then intimidating those attending;

Whereas on October 8, 2003, Vietnamese authorities initiated a tense standoff following the meeting, where police stopped a vehicle carrying the UBCV's new leadership and subsequently detained the eleven passengers;

Whereas Venerables Thich Huyen Quang and Thich Quang Do were taken to their respective pagodas where they have been effectively isolated and detained; four senior monks, the Venerable Thich Tue Sy, Thich Thanh Huyen, Thich Nguyen Ly, and the UBCV Supreme Patriarch's personal assistant, Venerable Thich Dong Tho, were immediately sentenced to 24 months of administrative detainment by written orders of the Ho Chi Minh City People's Committee, and three others, the Venerables Thich Thien Hanh, Thich Thai Hoa, and Thich Nguyen Vuong to 24 months administrative detainment by "oral" orders from various local authorities, in protest of which the Venerable Thich Thien Hanh initiated a hunger strike on October 19, 2003;

Whereas according to reports by the United States State Department, the United States Commission on International Religious Freedom, and the European Union, the Socialist Republic of Vietnam systematically limits the right of religious organizations to choose their own clergy;

Whereas according to these same reports, the Socialist Republic of Vietnam uses house arrest and long prison sentences to punish individuals for practicing their faith, as evidenced also by the jail sentences handed down to Father Nguyen Van Ly, his three relatives, Montagnard and Hmong Protestants, Cao Dai, and Hoa Hao Buddhists;

Whereas during the 107th Congress the House of Representatives passed H.R. 2833, the Vietnam Human Rights Act, on September 6, 2001, which noted the persecutions faced by various members of the UBCV over the past 25 years; and

Whereas because of systematic, egregious, and ongoing abuses of religious freedom, the United States Commission on International Religious Freedom recommended that the President of the United States designate Vietnam as a "country of particular concern" under the provisions of the International Religious Freedom Act of 1998: Now, therefore, be it

Resolved, That the House of Representatives—

(1) congratulates the new leadership of the Unified Buddhist Church of Vietnam;

(2) urges the Government of Vietnam to respect the right of all independent religious organizations to meet, worship, operate, and practice their faith in accordance with Vietnam's own constitution and international covenants to which Vietnam is a signatory;

(3) urges the Government of Vietnam to restore freedom to all Vietnamese citizens imprisoned or under house arrest for practicing their faith or for advocating freedom of religion, especially the Most Venerable Thich Huyen Quang and the Very Venerable Thich Quang Do;

(4) is committed to promoting religious freedom in Vietnam, and, in furtherance of this goal, urges the implementation of the recommendations of the United States Commission on International Religious Freedom; and

(5) urges the United States Embassy in Vietnam to closely monitor cases of abuse of religious belief and practice, routinely visit detained clergy members, especially those in need of medical care, and report to the Congress on specific measures taken to protect and promote religious freedom in Vietnam.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Iowa (Mr. LEACH) and the gentleman from California (Mr. LANTOS) each will control 20 minutes.

The Chair recognizes the gentleman from Iowa (Mr. LEACH).

GENERAL LEAVE

Mr. LEACH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. LEACH. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of H. Res. 427 regarding the United Buddhist Church of Vietnam. This resolution congratulates the newly appointed leadership of this Buddhist Church and notes the persecutions faced by the church during the past 3 decades and urges the Government of the Socialist Republic of Vietnam to comply with its own constitutional and international pledges to protect rights of religious belief and practice.

According to the State Department, the Vietnamese government "continues to maintain broad legal and policy restrictions on religious freedom and to ban and actively discourage participation in what it regards as illegal religious groups, including the Unified Buddhist Church of Vietnam." The most recent Country Reports on Human Rights Practices notes that religious and organizational activities by Buddhist monks associated with this church are illegal and that all of this Buddhist church's activities outside of private temple worship have been proscribed by the government.

The plight of the Unified Buddhist Church is perhaps most poignantly symbolized by the enforced isolation endured by some of its senior clerics over the past 2½ decades, notwithstanding their advanced age and sometimes frail health. Inspired by their examples of nonviolence and courage, we reaffirm our belief in the rights of all people to worship and to organize their religious communities according to the dictates of conscience, free from state coercion.

At the same time, it is important to note that H. Res. 427 is not merely critical of past transgressions. It is also aspirational. In addition to citing the Constitution of Vietnam, which formally protects religious freedom of belief, it notes certain extremely modest but welcome developments earlier this year.

This past spring the Vietnamese government allowed the Fourth Supreme Patriarch of the Buddhist Church to travel to Hanoi to seek urgent medical care and also ended the long-standing detention ordered against the Venerable Thich Quang Do. During that period the Vietnamese Prime Minister reportedly met with the Supreme Patriarch and made statements that some hoped would presage an era of increased governmental openness towards the Unified Buddhist Church of Vietnam.

Unfortunately, those statements have not yet borne practical dividends, and just last month there were indications of a renewed crackdown in the Buddhist leadership, including the return of numerous senior clerics to effective detention. At a time when Vietnam is admittedly undergoing many transformations that are progressive, we urge the government of that nation to trust its citizens with the basic freedoms that they deserve.

I would like to thank the personnel of the United States Department of State and the U.S. Commission on International Religious Freedom who worked with our committee staff and with the gentlewoman from California (Ms. LORETTA SANCHEZ), the sponsor, to update and refine the language of the original resolution. The text before us is a thoughtful, accurate product that deserves the support of this body.

Mr. Speaker I reserve the balance of my time.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

I rise in strong support of this resolution.

□ 1030

Mr. Speaker, I first would like to commend my good friend and colleague, the gentlewoman from California (Ms. LORETTA SANCHEZ) for introducing this important and timely resolution. I would also like to thank the gentleman from Illinois (Chairman HYDE) for moving this legislation to the floor so expeditiously.

Mr. Speaker, the resolution before the House tackles a critically important human rights matter: the continued oppression of the United Buddhist Church of Vietnam and the lack of religious freedom in that country. For most of the last two millennia, Buddhism flourished in Vietnam. But in 1981, the United Buddhist Church of Vietnam was declared illegal, its temples were confiscated by the government, its clergy was persecuted because they refused to join State-sponsored Buddhist organizations.

Leading figures in the Buddhist Church have been jailed, detained in isolated areas, harassed, and kept under constant surveillance. The Vietnamese government has systematically prevented Buddhist monks from meeting and worshipping as they choose.

The Vietnamese government's campaign of repression against key religious figures and organizations has been strongly criticized by the United States Commission on International Religious Freedom, an organization which we will be soon commending this morning. Our President has designated Vietnam "as a country of particular concern" under the International Religious Freedom Act.

Mr. Speaker, this resolution urges the government of Vietnam to respect the right of all religious organizations to meet, to worship, to operate, and to practice their faith in accordance with Vietnam's own Constitution and international covenants to which Vietnam is a signatory. We cannot have truly normal relations with Vietnam until the Vietnamese government finally lives up to its obligations to protect religious freedom.

Mr. Speaker, I urge all of my colleagues to support this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. LEACH. Mr. Speaker, I reserve the balance of my time.

Mr. LANTOS. In that case, Mr. Speaker, I am delighted to yield such time as she may consume to the gentlewoman from California (Ms. LORETTA SANCHEZ), the author of this resolution.

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I thank the gentleman from Iowa (Mr. LEACH) for bringing this to the floor, and I thank the gentleman from Illinois (Chairman HYDE).

Mr. Speaker, I represent the largest Vietnamese population outside of Vietnam in the world, in Orange County, California, so I have been following the relationship of the United States and Vietnam for the last 7 years that I have been in the Congress. I rise today to speak on behalf of House Resolution 427, a bipartisan resolution which highlights the courageous leadership of the Unified Buddhist Church of Vietnam, which is currently undergoing one of the harshest crackdowns in history, and the urgent need for religious freedom, and for basic human rights in the Socialist Republic of Vietnam.

This resolution, which I introduced with my colleagues, the gentleman from New Jersey (Mr. SMITH), the gentleman from Virginia (Mr. TOM DAVIS), the gentlewoman from California (Ms. LOFGREN), and the gentleman from California (Mr. ROYCE) is timely, important, and will do a great deal to advance the cause of religious freedom in Vietnam.

Now, many of my colleagues will say, well, LORETTA has opposed trade relations with Vietnam, or there has always been a difficult relationship with Vietnam, and the answer is yes, but that is in the past. This is about the current situation, and the current situation is about religious freedom, or the ability for the Vietnamese people to express their religious beliefs in the way that they want.

Let us remember that the United States was based in part on those people who came to this land to seek their way of respecting and praising their Lord. And, in the same way, that is a basic human right for all people of the world.

Despite the growing bilateral and economic relations that the United States has with Vietnam, the Vietnamese government has continued to blatantly disregard religious freedom in Vietnam. It is a basic right guaranteed by the Vietnamese constitution and enshrined in the United Nations Covenant on Civil and Political Rights, which Vietnam has both ratified and has pledged to uphold. According to the 2003 report of the United States Commission on International Religious Freedom, the Vietnamese government does not, does not fully support religious freedom. I would like to quote some of the statements from that report.

It says, "The current approach of the U.S. Government to advance religious freedom in Vietnam has failed to yield concrete results. Key religious dissidents have been imprisoned. Others remain under house arrest. In addition, the government has intensified its crackdown on religious minorities in the western provinces and in the Central Highlands."

The report goes on to state that "Therefore, the Commission recommends that the United States Government intensify its leverage to hold the government of Vietnam to its international obligation to protect human rights, including that of religious freedom."

This resolution does just that.

The latest incident, which occurred just this year, the one with the Unified Buddhist Church of Vietnam, the largest religious denomination in that country, was because they held a meeting to elect new leadership, discuss their future, and to verify that the Prime Minister of Vietnam had promised a new era of understanding and respect. In stark contrast to that promise of respect and understanding, the Vietnamese authorities disrupted that meeting, intimidated the people at that meeting, and ultimately arrested most of the leadership.

The Venerables Thich Huyen Quang and Thich Quang Do were taken into custody and remain in detainment. Now, one of them is 75 years old. I have met with him in Vietnam. He is not a menace to society. In fact, he was nominated by over 60 Members of Congress in the year 2000 for the Noble Peace Prize. He has about 2 decades worth of arrests from this current government.

These actions are unconscionable but, unfortunately, they are nothing new. The Vietnamese government has routinely used intimidation, harassment, and imprisonment to punish individuals who choose to practice their own faith.

I recently spoke with a high-ranking Vietnamese official regarding the crackdown on the church, and about religious freedom in Vietnam in general, and he said, of course Vietnam supports religious freedom, but he failed to deny that, in fact, they have imprisoned the leadership of the Unified Buddhist Church of Vietnam.

I was informed that if these leaders want to practice their faith, they are more than welcome to do so as members of the State-authorized Buddhist Church. Having the option of joining only one State-sponsored Buddhist Church is a far cry, in my opinion, of religious freedom. And enduring decades of imprisonment for peacefully practicing one's faith is not religious freedom. Vietnam has a long way to go.

So, in closing, I urge my colleagues to support this resolution. Doing so will not only send a strong message to the Vietnamese government that its actions are not going unnoticed, but it will reinforce the human rights standards that we expect of Vietnam as we move forward in strengthening our bilateral relationship with them.

Mr. LEACH. Mr. Speaker, first I would like to thank the gentlewoman from California for her wonderful leadership on this initiative and also that of her colleague, the gentleman from California (Mr. LANTOS).

Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Virginia (Mr. TOM DAVIS).

Mr. TOM DAVIS of Virginia. Mr. Speaker, let me just say it is a pleasure to follow my friend and colleague from California, and I have enjoyed working with her on these issues and the leadership she has given to the human rights issues in Vietnam.

I rise in support of H. Res. 427, a resolution to that congratulates the Unified Buddhist Church of Vietnam for its courageous leadership and calls for religious freedom and related human rights in Vietnam.

Mr. Speaker, Vietnam's constitution protects the rights of religious belief, and the Vietnamese government has acceded to a number of international treaties to protect the right to faith and practice. Buddhism has a 2,000 year history in Vietnam, and the Unified Buddhist Church of Vietnam is an important part of this tradition. Yet, in 1981, the Vietnamese government outlawed the UBCV, the Unified Buddhist Church of Vietnam, and has since detained and harassed many of its clergy members and subjected them to other forms of persecution.

Earlier this year, the Vietnamese Prime Minister met with the Venerable Thich Huyen Quang, the Supreme Patriarch of the Unified Church of Vietnam, and assured him that previous arrests were mistakes and that the government would respect and honor religious freedom. But despite these promises, the Vietnamese government arrested members this past September after they held a meeting to discuss church matters and elect new leadership.

The punishment by Vietnamese authorities of individuals who practice their religious faith or exert other basic human rights are not uncommon in Vietnam. In addition to the arrests of the Most Venerable Thich Quang Do and other members of the UBCV, the Vietnamese government has imprisoned father Nguyen Huu Le, Dr. Nguyen Dan Que, Father Van Ly and three of his relatives, and many other individuals for practicing their faiths and for promoting human rights in Vietnam.

As the United States continues to establish diplomatic and economic relationships with Vietnam, we have to remember that many of the most basic issues remain unresolved, including the lack of religious freedom and related human rights violations. House Resolution 427 sends a clear signal that we will not tolerate these violations.

Mr. Speaker, I commend the new leadership of the Unified Buddhist Church of Vietnam, and I urge my colleagues to vote in support of this bipartisan resolution.

Mr. LANTOS. Mr. Speaker, I am delighted to yield 2 minutes to the gentlewoman from California (Ms. LOFGREN), a distinguished member of the California delegation.

Ms. LOFGREN. I look forward to the day, Mr. Speaker, when we no longer need to introduce resolutions condemning the Vietnamese government for human rights violations.

Unfortunately, I see no sign of change in Vietnam. The Vietnamese government continues to systematically violate the human rights of its citizens through political, cultural, and religious oppression. In fact, it seems that things have gotten worse in recent years, despite our attempts to build Normal Trade Relations with Vietnam.

Just last month, the Unified Buddhist Church of Vietnam held two peaceful assemblies to discuss church affairs and elect new leadership following promises of a new era of "respect and understanding for religious freedom" by the Vietnamese Prime Minister. In stark contrast to this promise of "respect and understanding," the Vietnamese Security Police intercepted the church leadership. After a tense 10-hour standoff, 11 monks were arrested and placed under administrative detention. The Buddhist Church's Patriarch, Thich Huyen Quang, 86 years old, and his deputy, Noble Peace Prize nominee Thich Quang do, 75 years old, are currently being held in total isolation.

According to the U.S. Commission on International Religious Freedom, this is pretty much the norm in Vietnam. They say "key religious dissidents have been imprisoned, and others remain in detention or under house arrest." They have reports of 18 Buddhists in prison or under house arrest, and 20 UBCV in detention or reeducation camps.

My colleagues and I have repeatedly sent letters to the Vietnamese government asking them to release prisoners of conscience and to refrain from various forms of political, religious, and cultural oppression. The vast majority of these requests seem to fall on deaf ears, like our recent letter regarding the arrest of the 86-year-old Buddhist leader and his 75-year-old deputy. This is unacceptable.

So today I rise with my colleagues in very strong support of this resolution. We cannot sit idly by as the Vietnamese government continues to oppress its people while hiding behind the veil of free trade. As long as the people of Vietnam are oppressed, our government cannot relax, even if there are strategic military interests and a strong relationship with Vietnam. Our interests must include human rights and now is the time to act.

The whole world is watching and we will not cease until we see improvements in Vietnam.

Mr. LEACH. Mr. Speaker, I yield 3 minutes to our distinguished colleague, the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Speaker, I rise in support as a cosponsor of this legislation. Of course, the focus here is to spotlight the Unified Buddhist Church of Vietnam and the treatment that it has been receiving at the hands of the government of North Vietnam, that Communist government that now, for over 20 years, for 20 years have been trying to suppress the Buddhist Church, and that church has simply been fighting to practice their religion peacefully.

□ 1045

The difficulties commenced in 1981 when the government declared the Buddhist Church, and this is the Unified Buddhist Church of Vietnam, they declared it illegal. They confiscated the temples of the Buddhist Church. They began persecuting the clergy if that clergy did not join up with Communist organizations, stated-sponsored Buddhist organizations.

When I visited Vietnam, I saw firsthand the Communist Party's harassment of those Vietnamese citizens who decided to peacefully set forth dissenting political views, dissenting religious views. I met with several of them who were under house arrest. In particular, the Venerable Thich Quang Do and the Venerable Le Quang Liem. The reason they were under house arrest was simply because they were protesting a rewrite of the holy books, of the Buddhist holy books, holy works. The Communist Party had attempted to slash 80 or 90 percent of those works, and instead resubstitute and rewrite a culture that goes back thousands and thousands of years. And, of course, the laity and the leadership of the church took great umbrage at this and simply asked that they be allowed to practice their religion.

Well, in June of this year when the Vietnamese government ended the detention order against Thich Quang Do, we were all quite hopeful. However, our hopes were quickly dashed when last month the Buddhist Church's meetings were disrupted and the travel of monks was restricted and, again, some were arrested.

Today we are here to say as the United States Congress that we are not satisfied with the state of human rights in Vietnam and that the United States has a strong interest in promoting respect for individual rights around the world. The U.S. must be a strong advocate of human rights, particularly when basic freedoms are being wantonly abused as they are in Vietnam.

We must continue to shine a light on Vietnam. I urge the passage of this resolution. I thank the gentleman for yielding me time.

Mr. LANTOS. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

Mr. LEACH. Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in strong support of H. Res. 427, which recognizes the courageous leadership of the Unified Buddhist Church in Vietnam and stresses the urgent need for the government of the Republic of Vietnam to respect religious freedom and basic human rights. I thank the gentlewoman from California (Ms. LORETTA SANCHEZ) for offering it today.

Mr. Speaker, Vietnam's oppression of religious liberty, which is well documented in the State Department Reports on Human Rights and Religious Freedom, as well as by credible human rights organizations, continues to deteriorate. This is a regime with clear non-ambiguous policies designed to control and to repress religion. At its Seventh plenum in January 2003, the Communist Party's Central Committee stepped up its persecution of religious groups issuing a resolution which calls for the establishment of cells of Communist party members within each of Vietnam's six approved religions in order to foil "hostile forces."

Persecution of Buddhists highlighted in this resolution has been particularly harsh. Many leading clergy of the Unified Buddhist Church of Vietnam have been imprisoned including the church's Patriarch, the Most Venerable Thich Huyen Quang, who is now 85 years old and has been detained for the past 21 years.

The government has continually attempted to control the selection of new clergy for the Unified Buddhist Church, restricting the travel of and intimidating monks attending selection meetings. We know that other groups suffer severe religious persecution as well, including the Christian Montagnards in the Central Highlands, Catholics and members of indigenous Vietnamese religions.

One particular case, Mr. Speaker, that has been disturbing, one of many, is that of Father Ly, an outspoken critic of the regime who is currently serving a 10-year sentence for calling on the government for the return of confiscated church properties and respect for religious freedom. Amazingly, his nephews, Nguyen Vu Viet and Nguyen Truc Cuong, and his niece, Nguyen Thi Hoa, recently received prison sentences after a sham trial, after being found guilty of dubious charges of "abusing democracy."

Next week, Mr. Speaker, the Vietnamese government has the chance to set the record straight when their appeal will be heard. They should be released. They have to be released along with Father Ly. And I think this Congress, the House and the Senate, needs to be watching very carefully if our relationship is to progress. We have to see significant and sustained progress on these cases and, of course, those with regards to the Unified Buddhist Church.

Mr. Speaker, this Congress has not been lax in trying to raise these issues, as I know my good friend and colleague Mr. LEACH knows because he has worked so strongly in this area. "I offered The Vietnam Human Rights Act" as an amendment to the State Department bill, which is now pending before the House and Senate. Similar legislation has already passed the House before and hopefully the session, the Vietnam Human Rights Act will become law. This legislation sets up a number of criteria that would seek to move the ball forward with regard to human rights, and in particular, the area of religious freedom.

Again, it is a good resolution that has been offered today and it deserves the honest support of this body.

Mr. LEACH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman for his profound statement and for his leadership on so many human rights issues as well as the gentleman from California (Mr. LANTOS).

Mr. Speaker, I would only conclude with the observation that there are very important abstract principles at issue here but they are made concrete by references to individuals which the gentleman from New Jersey (Mr. SMITH) has just done. Individuals matter because it is with the individual that the picture at large can be revealed. So we care about the individuals in this particular instance as well as the principle of the freedom of religion.

Mr. PAUL. Mr. Speaker, I am opposed to this ill-conceived and ill-timed bill. I would like to remind my colleagues that according to our own Constitution, Congress is prohibited from making any law "respecting the establishment of religion or the free exercise thereof." Yet are we not doing that today—albeit in a country some 10,000 miles away? Why on earth are we commending one particular church in Vietnam in the name of "religious freedom"? At the risk of being blunt, what business is the Unified Buddhist Church of Vietnam of the United States Congress? The answer, of course, is that this legislation is of a much more political than a religious nature: this bill tells the Vietnamese government how it should enforce its own constitution, commits the United States government to promoting religious freedom in Vietnam, and tells the U.S. embassy staff in Vietnam to "closely monitor" religious issues in Vietnam. It is an attempt to meddle in the affairs of Vietnam and force them to adopt the kinds of laws we think they should have. Mr. Speaker, as much as we value our own religious liberty, we must realize that setting the example of the benefits of a society that values such liberty is much more effective than demanding that other countries pass the kinds of laws we want them to pass. The unintended consequences of this otherwise well-meaning legislation is that relations with the Vietnamese government will likely suffer, making it less likely that Vietnam's leaders look favorably upon our own history of religious liberty.

Mr. LEACH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHAW). The question is on the motion offered by the gentleman from Iowa (Mr. LEACH) that the House suspend the rules and agree to the resolution, H. Res. 427, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. LANTOS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

HONORING VICTIMS OF CAMBODIAN GENOCIDE THAT TOOK PLACE FROM APRIL 1975 TO JANUARY 1979

Mr. LEACH. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 83) honoring the victims of the Cambodian genocide that took place from April 1975 to January 1979.

The Clerk read as follows:

H. CON. RES. 83

Whereas beginning in April 1975 and ending in January 1979 at least 1,700,000 to 3,000,000 people were deliberately and systematically killed in Cambodia in one of the worst human tragedies of the modern era;

Whereas in 1975, Pol Pot led the Communist guerilla group, the Khmer Rouge, in a large-scale insurgency in Cambodia that resulted in the removal of Cambodians from their homes and into labor camps in an attempt to restructure Khmer society;

Whereas traditional Khmer culture and society were systematically destroyed, including the destruction of temples, schools, hospitals, and other buildings;

Whereas families were separated in an attempt by the Khmer Rouge to prevent family formation, many individuals were punished or killed for education, wealth, or sophistication, and doctors, nurses, clergy, teachers, business owners, artisans, city dwellers, and even those individuals who wore glasses were singled out for execution since they were seen as bourgeois or contaminated with Western influence;

Whereas the Khmer Rouge maintained control by mass public torture, executions, and dismantling of the social order;

Whereas men, women, and children were sent to labor camps and forced to do strenuous farm work and famine and disease became epidemic while medicine and medical care were non-existent;

Whereas after the Khmer Rouge regime was overthrown in 1979 thousands of Cambodians fled on foot to refugee camps in Thailand and many refugees were processed again in other camps in the Philippines and Indonesia;

Whereas from these refugee camps approximately 145,149 Cambodians made their way to the United States between 1975 and 1999, with the majority of Cambodians arriving in the early 1980s;

Whereas these Cambodians were subsequently resettled in communities across the United States;

Whereas according to United States Bureau of the Census figures for 2000, there are approximately 206,053 Cambodians currently living in the United States;

Whereas despite their tremendous loss, Cambodians and Cambodian-Americans have shown courage and resiliency;

Whereas the memory of those Cambodians who were killed during the Cambodian genocide must never be forgotten and the survivors of the Cambodian genocide should be honored;

Whereas the resettlement of Cambodians reflected the hard work of voluntary agencies through funding by the Federal government, individual citizens, and Federal, State, and local governmental agencies, all working together to assist the new arrivals in adjusting to American society;

Whereas Cambodian refugees have done much to further successful resettlement in the United States, including through mutual assistance associations organized by previously resettled Southeast Asian refugees to help new refugees through the provision of essential social, psychological, cultural, educational, and economic services; and

Whereas while remembering and honoring both their traditional culture and their traumatic past, the new generation of Cambodian Americans is contributing to American society in meaningful ways: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress—

(1) honors the victims of the genocide in Cambodia that took place beginning in April 1975 and ending in January 1979; and

(2) is committed to pursue justice for the victims of the Cambodian genocide.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Iowa (Mr. LEACH) and the gentleman from California (Mr. LANTOS) each will control 20 minutes.

The Chair recognizes the gentleman from Iowa (Mr. LEACH).

GENERAL LEAVE

Mr. LEACH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Con. Res. 83.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. LEACH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Con. Res. 83, honoring the victims of the Cambodian genocide. It is difficult to gain a full perspective on historic events, particularly those that are most inhumane, such as genocide. Tragically, the 20th century, which was marked by advances in medicine and nutrition that raise the prospect of nearly doubling the life span of countless people around the globe, also was marked by explosions of hatred that mercilessly ended life for millions of others. The killing of so many Cambodians under the Khmer Rouge in the 1970s stands among the worst of those atrocities.

In the field of law, there exists the precept of a statute of limitations. But for genocide, mankind's greatest crime, such a precept cannot be bound merely by time. There also must be accountability. While justice and time are interwoven, the preeminent principle is justice. To the extent that accountability today is inadequate, accountability tomorrow must follow.

For some, justice for the Cambodian genocide seems a frail prospect, given that almost a generation has passed in that country. Indeed, it does not lie within our power to construct perfect justice for that, or any other, genocide. But as time goes on and mortality places more of the perpetrators beyond our reckoning, the most important accountability is not necessarily monetary, penal or retributive. The march of time underscores the importance of memory. Victims must be remembered and civilized peoples of the world must commit themselves to ensuring that such horrific circumstances are not repeated within human history.

It is in this context that this resolution assumes its proper importance. I would like to commend the gentlewoman from California (Ms. MILLENDER-McDONALD) for her efforts in introducing H. Con. Res. 83, which honors the victims of the Cambodian genocide, gives voice to our desire for justice, and notes the contributions of Cambodian Americans to our own society.

To some, this resolution may seem unimportant because it principally marks an instance of symbolism. I disagree and believe that its power derives precisely from its symbolism. This resolution deserves our unanimous support.

Mr. Speaker, I reserve the balance of my time.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of this resolution. Mr. Speaker, first I would like to commend my dear friend and wonderful neighbor, the gentlewoman from California (Ms. MILLENDER-McDONALD) for introducing this important resolution. The gentlewoman has shown enormous leadership on behalf of Cambodian Americans and her work is greatly appreciated by all of us.

The resolution calls attention to one of the most horrendous chapters in contemporary world history. The Cambodian genocide which unfolded from April 1975 to January 1979. Mr. Speaker, 3 million Cambodians living in cities were forced into the countryside in a brutal and bloody effort to reshape Cambodian society. The Khmer Rouge targeted these city dwellers for execution, along with anyone else deemed by them to be educated, sophisticated or just different.

By the time the Khmer Rouge was forced from power in 1979, over 1.7 million Cambodian citizens amounting to over 20 percent of Cambodia's population had perished. When a number of us visited Cambodia not long ago, the vestiges of this brutal onslaught of innocent men, women and children was still profoundly visible. Hundreds of thousands of Cambodians had been forced to flee their native lands. Many were living in squalid refugee camps in Thailand and other Southeast Asia nations.

During the 1980s, some 150,000 Cambodians were received by our own country as refugees, and they began the long process of rebuilding their shattered lives. Cambodians who had lost most of their families and been subject to forced labor and torture found new lives here in the United States, and they began the difficult process of rebuilding their shattered dreams.

Cambodian Americans now number over 200,000, Mr. Speaker, and they are making an enormous contribution to our Nation's economy and to the development of our diverse culture. These new Americans continue to face many challenges rebuilding their lives in the United States even with financial, psychological and educational assistance provided to them. With passage of this resolution, we remember the victims of the Cambodian genocide, not only those who perished in Cambodia's Killing Fields, but those who were left to live with the physical and psychological scars inflicted by the hands of the brutal Khmer Rouge.

□ 1100

The courage and resiliency of these survivors is an inspiration to all of us. We cannot undo the massive devastation of the horrendous 4 years of Cambodia's history. By remembering the victims of the Cambodian genocide, however, we do our best to prevent such atrocities from ever happening again.

Mr. Speaker, I strongly support this important resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. LEACH. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Speaker, I rise in strong support of this resolution and again thank the gentlewoman from California (Ms. MILLENDER-McDONALD) for proposing it. We share Long Beach, which is the home of a large Cambodian exiled community. Let me note the people who are exiled in Long Beach and elsewhere in the United States from Cambodia are there because they fled terror almost beyond imagination.

Cambodia was pushed into a regional conflict in the 1960s. They did not really choose to do so. Sihanouk, their king, tried to keep that country out of that conflict; and eventually, as I say, they were pushed into it. And who pushed them? Well, the Vietnamese certainly pushed the Cambodians into it, but so did the United States of America. While we were looking towards protecting our interests in Southeast Asia, we made the Cambodians vulnerable to the type of atrocities that cost the lives of millions of Cambodians and left so many people exiled in the United States and elsewhere throughout the world.

That conflict was something that we should not forget, and we should not forget that during this massacre that followed America's withdrawal from Vietnam in Cambodia, where millions of people were imprisoned and perhaps up to a million and a half murdered, that those people were suffering and going through this situation and America ignored all of the pleas. During that time period, we turned our back on something that we had pushed them into; and we held our fingers to our ears and refused to hear the cries of agony that was coming from the slaughter that was taking place there in Cambodia.

Pol Pot and his Khmer Rouge, who, I might add, were the perfect communists, they were not working people who just rose up, they were well-educated people and well educated in Marxism, Leninism and their plans from their Marxist professors in Paris who gave them the ideas of what a perfect society would be like. And, of course, to create a perfect society they had to slaughter everyone in their society that was imperfect by their plan.

Well, we did not do what was right back in those days. The Cambodians suffered. Today we recognize that with this resolution. But we must do more than pass a resolution. We must make sure that we are committed to democracy in Cambodia. Let us not turn our backs again or put our hands over our ears when we hear that things are going wrong in Cambodia.

Hun Sen, who currently controls the government in Cambodia, was himself a member of the Khmer Rouge, was a brigade commander; and if there were people slaughtered, there is no doubt he was engaged in it. Today, when they attempt to have free elections and organize an opposition party to Hun Sen's rule, people get killed. People disappear.

Let us not turn our backs and with this resolution declare that we are committed to democracy and to helping the people of Cambodia.

Mr. LANTOS. Mr. Speaker, I yield such time as she may consume to the gentleman from California (Ms. MILLENDER-McDONALD), my good friend and distinguished colleague who is the author of this resolution.

Ms. MILLENDER-McDONALD. Mr. Speaker, first of all, I want to thank the gentleman from Illinois (Mr. HYDE) and the ranking member, the gentleman from California (Mr. LANTOS), for their great leadership and their sensitivity in marshaling this piece of legislation to the floor.

I would like to also thank the gentleman from Iowa (Mr. LEACH) for managing this piece of legislation; and I would like to thank my colleague and friend from the area that we both represent, Long Beach, for joining in this morning in presenting this resolution.

Mr. Speaker, I rise today to speak on my resolution, House Concurrent Resolution 83, a bill honoring the victims of the Cambodian genocide. Between April, 1975, and January, 1979, up to 3 million Cambodians were deliberately and systematically killed in what later became known as the Killing Fields. Many more were tortured, starved, and brainwashed but survived this horrific period in history.

In 1975, Pol Pot led the communist guerilla group, the Khmer Rouge, in a large-scale insurgency that resulted in the removal of millions of Cambodians from their homes and forced them into brutal labor camps. Traditional Khmer culture and society were systematically destroyed. Temples, schools, hospitals, and other buildings were shattered. Families were separated in an attempt by the Khmer Rouge to prevent family formation. Many were punished or killed for education, wealth or sophistication. Doctors, nurses, clergy, teachers, business owners, artisans, city dwellers and even those who wore glasses were singled out for execution since they were seen as bourgeois or contaminated with western influence.

The Khmer Rouge maintained control by mass public torture, executions, and dismantling the social order. Men, women and children were sent to labor camps and forced to do strenuous farm work. They were starved, with little food and contaminated drinking water. Famine and disease became epidemic, while medicine and medical care were nonexistent.

When the Khmer Rouge regime was overthrown in 1979, thousands of Cambodians fled on foot to refugee camps on the Thai border. While war continued to rage in their homeland, they waited for up to 12 years to be resettled in a third country such as the United States. From the refugee camps in Thailand, Vietnam, the Philippines, and Indonesia, approximately 145,000 Cambodians made their way to the United States between 1975 and 1999.

The majority of Cambodians arrived in the early 1980s. With the assistance of the Federal Government, State, local and voluntary agencies, Cambodians were resettled in communities across the country. Mutual assistance associations organized by previously resettled southeast Asian refugees helped these newcomers by providing essential social, physiological, cultural, educational and economic services.

I am grateful for the work that these organizations have done to help assimilate the many Cambodians that reside in my district and around this country. The United Cambodian Community, the Khmer Parent Association, the Family and Good Health Association, and the Cambodian Chamber of Congress all have played an important role in trying to help these refugees find their way and to help them overcome the horrendous experiences that they had in their homeland.

The Cambodian culture and contributions have enriched the American landscape. According to U.S. census figures, there are 176,148 Cambodians currently living in the United States, including almost 100,000 in the City of Long Beach. I am proud that the largest Cambodian population in the United States resides in my district.

Despite the tremendous loss of family members, homes, and even parts of their heritage, Cambodians have shown enormous resiliency. They continue in their struggle to fully assimilate themselves into the fabric of our society.

Unfortunately, some Cambodian refugees still suffer severe emotional trauma from the cruelties experienced under the Khmer Rouge. An article in The New York Times this past Sunday noted the difficulty and the adjustment that Cambodian refugees have had to make from forced labor to a free society. We must continue to help Cambodian refugees share in the American Dream. Passage of this measure is a start in the pursuit of justice for the victims of the Cambodian genocide.

Mr. Speaker, I urge swift passage of this resolution paying tribute to the victims of the Cambodian genocide; and I thank the chairman, the ranking member, and all who will partake in this resolution.

Mr. LANTOS. Mr. Speaker, I am very pleased to yield 2½ minutes to the gentleman from Massachusetts (Mr. MEEHAN).

Mr. MEEHAN. Mr. Speaker, I thank the ranking member for yielding me this time, and I thank the chairman of the committee as well as the gentlewoman from California, the author of this resolution.

Mr. Speaker, I rise to express my strong support for House Concurrent Resolution 83, a resolution honoring those who were deliberately and systematically killed by the Khmer Rouge regime. I want to pay my solemn respects to those who lost their lives and to the survivors and their loved ones, so many of whom reside in my district and in Massachusetts and who carry the scars to this day.

The Cambodian genocide was one of the darkest chapters in human history. In April of 1975, Pol Pot led the Khmer Rouge in a brutal insurgency against the Cambodian government in an effort to wipe out traditional Khmer culture and society. Over the next 4 years, the Khmer Rouge orchestrated the calculated destruction of the Cambodian people through forced labor, public torture, and death marches.

Following the overthrow of Khmer Rouge in 1979, hundreds of thousands of Cambodians fled the country on foot to refugee camps. I met and hired one of those who worked in my Lowell district office. Sarah Kuon would tell me of her earliest memories as a child walking along a railroad track with rocks and bare feet for miles and miles, trying to get to a refugee camp.

Many of these refugees eventually resettled in the United States; and I am proud to represent a large and active Cambodian community in and around the city of Lowell, Massachusetts, my hometown.

Cambodian Americans have made invaluable contributions to our communities through their spirit, leadership, and strength. I am proud that the City of Lowell elected the first Cambodian-American anywhere in the United States to public elective office. Rity Uong was elected to the Lowell City Council in 1979 in an at-large election. Just 2 weeks ago, he was reelected to his third term on the city council.

This resolution represents a small but important step in honoring the victims, their survivors, and their descendants by making public and vivid the hidden details of the Cambodian genocide. This resolution should remind the world not only of the horrors perpetrated by the Khmer Rouge but of the horrors of genocide in Europe, Africa, and around the world.

I am honored to add my voice to those of my colleagues today in remembering the victims of the Cambodian genocide, and I will continue to pursue justice for its victims. We will never forget what happened or turn our backs on the truth.

Mr. LANTOS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LEACH. Mr. Speaker, I yield myself such time as I may consume to conclude with great thanks to the gentlewoman from California (Ms. MILLENDER-MCDONALD) for her gentility and her civil leadership of this very important international human rights issue.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHAW). The question is on the motion offered by the gentleman from Iowa (Mr. LEACH) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 83.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. LANTOS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

□ 1115

HONORING SEEDS OF PEACE FOR ITS PROMOTION OF UNDERSTANDING AMONG YOUTH FROM REGIONS OF CONFLICT

Mr. LEACH. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 288) honoring Seeds of Peace for its promotion of understanding, reconciliation, acceptance, coexistence, and peace among youth from the Middle East and other regions of conflict.

The Clerk read as follows:

H. CON. RES. 288

Whereas Seeds of Peace, founded by John Wallach in 1993, is a program that brings together young people from regions of conflict to study and learn about coexistence and conflict resolution;

Whereas although the original focus of Seeds of Peace was to bring Israeli, Palestinian, Jordanian, and Egyptian youth together, the program has expanded over the past decade to involve youths from other regions of conflict, including from Greece, Turkey and divided Cyprus, the Balkans, India, Pakistan, and Afghanistan;

Whereas these young people study and learn primarily at a summer camp operated by Seeds of Peace in Otisfield, Maine, and also through its regional programs such as the Jerusalem Center for Coexistence;

Whereas Seeds of Peace works to dispel fear, mistrust, and prejudice, which are root causes of violence and conflict, and to build a new generation of leaders who are committed to achieving peace;

Whereas Seeds of Peace reveals the human face of those whom youth have been taught to hate, by engaging campers in both guided coexistence sessions and ordinary summer camp activities such as living together in cabins, sharing meals, canoeing, swimming, playing sports, and creative exploration through the arts and computers;

Whereas the Arab-Israeli conflict is currently at a critical juncture, and sustained progress towards peace depends on the emergence of a new generation of leaders who will choose dialogue, friendship, and openness over violence and hatred;

Whereas Seeds of Peace provides year-round opportunities for former participants to build on the relationships they have forged at camp, so that the learning processes begun at camp can continue back in the participants' home countries, where they are most needed;

Whereas Seeds of Peace is strongly supported by participating governments and many world leaders;

Whereas previous Federal funding for Seeds of Peace demonstrates its recognized importance in promoting United States foreign policy goals; and

Whereas it is especially important to reaffirm that youth must be involved in long-term, visionary solutions to conflicts perpetuated by cycles of violence: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress—

(1) honors the accomplishments of Seeds of Peace for promoting understanding, reconciliation, acceptance, coexistence, and peace among youth from the Middle East and other regions of conflict around the world; and

(2) offers Seeds of Peace as a model of hope that living together in peace and security is possible.

The SPEAKER pro tempore (Mr. SHAW). Pursuant to the rule, the gentleman from Iowa (Mr. LEACH) and the gentleman from California (Mr. LANTOS) each will control 20 minutes.

The Chair recognizes the gentleman from Iowa (Mr. LEACH).

GENERAL LEAVE

Mr. LEACH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. LEACH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Con. Res. 288, honoring Seeds of Peace for its promotion of understanding, reconciliation, acceptance, coexistence, and peace among youth from the Middle East and other regions of conflict.

I commend the gentleman from Maine (Mr. ALLEN) and the other cosponsors of this resolution. Seeds of Peace is a courageous organization that prepares youth from conflict-ridden areas and trains them to be leaders of tomorrow. Seeds of Peace was founded in late 1993 by the late John Wallach, an award-winning author and journalist in order to bring together Arab and Israeli youth as a way for them to learn conflict resolution skills necessary for making peace. While the primary focus is on the Middle East, participants also come from the Balkans, South Asia, and Cyprus.

Since 1993, over 2,000 teens from 22 nations have graduated from Seeds of Peace. Every year hundreds of Arab and Israeli teenagers are brought together and learn to recognize the humanity within each other. Seeds of Peace makes it possible for people who are blinded by hatred and prejudice to see the value in coexistence and mutual understanding. Seeds of Peace programs expose young people to critical thinking, respect for the rule of law, human rights, participatory decision-making, nonviolent dispute resolution, and a free press.

The invaluable lessons learned and lasting friendships made through Seeds of Peace programs provide hope that respect and tolerance can prevail in communities where hate and ignorance have tragically hallmarked social interactions.

For participants, Seeds of Peace takes the war out of the streets and puts some of the most difficult issues on the table in an environment free from violence. In a period of self-reflection, teens are challenged to deal with complicated and emotional issues. They are given a candle of hope to take back to their home societies, and are prayerfully provided the determination and will to participate in civil society discussions and initiatives that can lead to a more civil region and world.

Negotiations and treaties are the responsibilities of governments. Peace, on the other hand, is made by people. In this context, Seeds of Peace are seeds of hope. I strongly urge the passage of this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of this resolution. First, I want to pay tribute to my distinguished colleague, the gentleman from Maine (Mr. ALLEN), for introducing this resolution. This resolution brings about the realization of an important dream. It honors the organization Seeds of Peace for promoting understanding and coexistence among young people from the Middle East and other areas of conflict all around the globe. It praises Seeds of Peace for demonstrating that Israelis and Palestinians, Greek Cypriots and Turkish Cypriots, Serbs and Bosnians and others can live together in peace and prosperity.

Seeds of Peace reflects the vision of my late friend, John Wallach, who founded this organization 10 years ago. John believed that real peace is made by people as much as by treaties, and he believed that peacemaking starts with the attitudes developed in youth.

More than 2,000 young people from nearly two dozen nations in areas of conflict have participated in Seeds of Peace programs mainly at the Seeds of Peace summer camp in Otisfield, Maine. Here they encounter, work with, play with, and argue with each other, and far more often than not befriend their counterparts from the other side of their national conflict.

Seeds of Peace works to dispel the mistrust and prejudice that are among the root causes of violence and to build a generation of leaders committed to achieving peace.

Of course, Mr. Speaker, Seeds of Peace does not guarantee peace, and it is certainly not an alternative to patiently negotiated peace treaties among governments. It does, however, ensure that there will be a growing core of high-quality people on both sides of the Israeli-Arab divide, and other conflicts as well, who will view one another as flesh and blood human beings and not as dehumanized enemies. The mutual understanding fostered by Seeds of Peace reinforces negotiations in good times and helps buffer conflicts in bad times.

For that reason, Seeds of Peace deserves our respect, our appreciation, and our commendation as a successful venture in people-to-people peacemaking. It serves as a model for what a world which is violence-free could be in the future.

I urge all of my colleagues to support H. Con. Res. 288.

Mr. Speaker, I reserve the balance of my time.

Mr. LEACH. Mr. Speaker, I yield 5 minutes to the gentlewoman from Florida (Ms. ROS-LEHTINEN), distinguished chair of the Subcommittee on the Middle East and Central Asia.

Ms. ROS-LEHTINEN. Mr. Speaker, I appreciate the gentleman yielding me this time.

Mr. Speaker, I want to say to all Members, this is a very important initiative, a very important bill; and I urge its passage.

Mr. LANTOS. Mr. Speaker, I yield such time as he may consume to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in support of H. Con. Res. 288, and I want to thank the gentleman from Illinois (Chairman HYDE), the ranking member, the gentleman from California (Mr. LANTOS), and the gentleman from Iowa (Mr. LEACH) for helping bring this resolution to the floor.

Treaties are negotiated by governments; peace is made by people. Seeds of Peace is grounded in this truth. Seeds of Peace, founded by the award-winning author and journalist John Wallach in 1993 is a program which brings together young people from regions of conflict to study and learn about coexistence and conflict resolution.

The program initially focused on Israeli, Palestinian, Jordanian and Egyptian youth, but has expanded over the past decades to involve youth from Greece, Turkey and divided Cyprus, the Balkans, India, Pakistan, Afghanistan, and other countries.

H. Con. Res. 288 honors the accomplishments of Seeds of Peace, and offers the program as a model of hope that living together in peace and security is possible. I want to thank my colleagues, the gentleman from Michigan (Mr. KNOLLENBERG), the gentleman from Maine (Mr. MICHAUD), the gentleman from Ohio (Mr. CHABOT), and 46 other Members who have cosponsored the resolution.

At the summer camp in Otisfield, Maine, and at the Jerusalem Center for Coexistence, the young people of Seeds of Peace come face to face with those whom they have been taught to hate and mistrust. An Egyptian wrote to his peers following this past summer at camp, "This camp changed things in my character, in my thoughts, and in my whole life. I really loved the people there without looking to where they are from or what is their religion. This is really the beginning of the road."

Recently, two new grassroots initiatives for peace in the Israeli-Palestinian conflict have emerged. These efforts present much hope. Sustained progress, however, ultimately depends on a new generation of leaders. Youth must be involved in long-term visionary solutions to conflicts perpetuated by cycles of violence.

Participating governments and world leaders strongly support Seeds of Peace. Previous Federal funding for the program demonstrates its importance in promoting United States foreign policy goals.

Seeds of Peace is even working with youngsters in Maine where a large influx of refugees and immigrants has contributed to an increase in racial and ethnic tension. As we honor Seeds of Peace today, we should remember that it offers priceless lessons to our communities at home, as well as nations abroad. I have visited the Seeds of Peace camp up in Otisfield; it is a moving and inspirational experience, and congressional support over the years has been vital to the continuation of this particular undertaking.

Mr. Speaker, I urge support for the resolution.

Mr. LEACH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would conclude by thanking the gentleman from Maine (Mr. ALLEN) who has so thoughtfully brought this resolution before us. Congress is in the gentleman's debt.

Mr. LANTOS. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of this important resolution honoring Seeds of Peace. I thank the gentleman from Maine (Mr. ALLEN) for authoring this resolution.

In describing the Day of Redemption, the Prophet Isaiah tells us "a little child shall lead them." During the past 3 years of violence and bloodshed, it is clear that the leaders of Israel and the Palestinian Authority have failed their people. The beauty and wisdom of the Seeds of Peace program is to instill within Israeli and Arab children a sense of understanding, reconciliation, and acceptance so that some day these future leaders can bring peace to their embattled peoples.

Mr. Speaker, my office is well acquainted with Seeds of Peace through its relationship with one of its most illustrious graduates, a young man named Fadi El Salameen. The oldest of nine children from a Palestinian family in Hebron, Fadi has overcome incredible hardships in his life and is currently studying at Earlham College in Indiana. He tells us that he owes his success, self-confidence, and his optimism for peace in the Middle East to his experiences in the woods of Maine with Seeds of Peace.

Finally, Mr. Speaker, I would like to think after months of such terrible news, perhaps the seeds of peace are finally growing roots in the region. After so many acts of Palestinian terrorism and Israeli reprisals, after the deaths of dozens of innocent people on both sides, we are seeing some hopeful signs. In particular, I think the upcoming signing of the Geneva Accord and the continued strength of a grass roots peace petition called the People's Voice hold out hope that a comprehensive political settlement of the conflict is not an impossible dream.

And if Israeli and Arab children are willing to live together in Maine each summer to participate in Seeds of Peace, we owe it to them to continue working as hard as we can to bring peace and security to their homelands. I support this resolution.

Mr. LANTOS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I am delighted to be able to make a statement on this group because the program of Seeds of Peace since 1993 has really made a difference in communication, most especially with young people. They have brought together people like Indians and Pakistanis and Israelis and Arabs, as well as teenagers from Cyprus, Afghanistan and the U.S. to understand that peace really is possible. They have helped young people from all conflict areas see each other as human beings, not as the enemy. They have helped them to break down the barriers of hatred and distrust.

□ 1130

In March of 2003, two Seeds of Peace students joined me in a peace dialogue that I had here at the Capitol. The Israeli student said when she joined Seeds of Peace, she felt she was doing something significant. The change was not aimed to change the world right away. It started out small, giving her an opportunity to change her own personal world. It gave her the opportunity to talk about the other side in terms of friends instead of saying "those Palestinians."

The Palestinian student said she first participated in a Seeds of Peace camp in 1999. She said 4 years have passed since then and she cannot recognize the person she was before. She also said that at Seeds of Peace, you get to open up, actually listen to each other, listen to different views and points of view and not toward just rebutting their argument, but to understand and eventually find respect for the argument.

We must voice our support for grassroots institutions that are mobilizing for peace. It might start small, but when young people in this number begin to speak about peace and trying to understand each other around the world, we will see the impact in the future. Institutions like Seeds of Peace can be instrumental in changing this world. They have helped the world to remember one thing, that peace begins with each of us.

Mr. MICHAUD. Mr. Speaker, as a proud original cosponsor of this resolution, I rise in strong support of House Concurrent Resolution 288, honoring Seeds of Peace for its promotion of understanding, reconciliation, acceptance, coexistence, and peace among youth from the Middle East and other regions of conflict.

Since 1993, Seeds of Peace has brought children from war torn areas to the Seeds of

Peace International Camp in my district in Maine.

It is a source of great pride to have such a noble mission based in my state.

That mission is to sow the seeds of peace in children who have grown up in the horrors of war.

Seeds of Peace helps teenagers from the war torn regions of the Middle East, the Balkans, Cyprus, and South Asia, learn to respect and understand those they would call their enemy.

In so many of these conflicts building trust between the youth of the opposing sides is the only hope for ending the cycle of violence.

The work performed by Seeds of Peace goes to the heart of our war on terrorism, and it goes to the heart of our goal to bring peace and prosperity to the world because it goes to the hearts of children to show them that violence is not the answer.

I thank my good friend and fellow representative from Maine for introducing this legislation and I urge my colleagues to support it.

Mrs. MALONEY. Mr. Speaker, I rise today in support of H. Con. Res. 288 which honors the Seeds of Peace Program for its efforts to promote understanding and peace among young people from areas of conflict.

John Wallach, a constituent of mine and a true visionary, founded the program in 1993 to bring youths together from around the world to break down barriers and learn more about each other.

The organization plays a vital role in promoting many of our foreign policy goals and has been recognized by American leaders for its outstanding work.

By instilling understanding and open-mindedness in the world's children, we can help to put an end to long-standing conflicts and bring hope to these regions.

Seeds of Peace is a wonderful program that I hope will continue to produce more thoughtful, understanding leaders of the future.

At a time when there is so much hate in the world, the Seeds of Peace participants are an inspiration, and I admire their courage and determination.

I join my colleagues in paying tribute to this great organization and its founder John Wallach.

Mr. LANTOS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LEACH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHAW). The question is on the motion offered by the gentleman from Iowa (Mr. LEACH) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 288.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. LANTOS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

COMMENDING AFGHAN WOMEN FOR THEIR PARTICIPATION IN AFGHAN GOVERNMENT AND CIVIL SOCIETY

Ms. ROS-LEHTINEN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 393) commending Afghan women for their participation in Afghan government and civil society, encouraging the inclusion of Afghan women in the political and economic life of Afghanistan, and advocating the protection of Afghan women's human rights in the Afghanistan Constitution, as amended.

The Clerk read as follows:

H. RES. 393

Whereas the women of Afghanistan suffered horrible tragedies under the Taliban regime;

Whereas the Afghan people have rejected the Taliban and are in the process of building a free and democratic republic and repairing the damage inflicted upon Afghan society by the Taliban;

Whereas those efforts have improved the daily lives of Afghan women, children, and refugees;

Whereas more Afghan girls are attending school than ever before in the history of Afghanistan and, in addition, many millions more adult women are either returning to school to make up for the time they were not allowed to attend school during the Taliban regime or taking vocational training classes to prepare for the job market;

Whereas women in Afghanistan now are able to work outside the home and hold positions in all levels of government and in private sector organizations, as they did before the Taliban regime;

Whereas the reconstruction of Afghanistan and the writing of the Afghanistan Constitution provide a unique opportunity to continue this success and to affirm women's human rights under the law;

Whereas, in order for women to fully participate in Afghan society, they must have the right to vote, the right to run for office, equality of opportunity, and access to health care, education, and employment;

Whereas women's human rights must be guaranteed in the Afghanistan Constitution; and

Whereas the United States, through its diplomatic activities, is actively involved in encouraging the full inclusion and participation of Afghan women in the political and economic life of their country, and must continue to do so throughout the reconstruction process: Now, therefore, be it

Resolved, That the House of Representatives—

(1) commends the participation of Afghan women in Afghanistan's government and civil society;

(2) proclaims its ongoing commitment to encouraging the full inclusion of women, and indeed all members of Afghan society, in the political and economic life of their country; and

(3) advocates the protection of the human rights of all Afghans, particularly women, in the Afghanistan Constitution.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Florida (Ms. ROS-LEHTINEN) and the gentleman from California (Mr. LANTOS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Florida (Ms. ROS-LEHTINEN).

GENERAL LEAVE

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

In 1996, a heavy shroud was placed on the people of Afghanistan when the Taliban captured Kabul. But the Taliban's brutality and blatant disregard for the lives and the well-being of the Afghan people was perhaps most clearly evident among half of its population, the women of Afghanistan. They had been made destitute, sick and marginalized. They were banned from receiving any education past the age of 8. They were denied proper medical treatment. Throughout, the strong will and courage of the Afghan women helped them endure these most deplorable of circumstances.

Today, the Afghan people are free. Women are enjoying freedoms and opportunities previously denied to them under the Taliban. The new Afghan Ministry of Education estimates that over 5 million children are in school, and 42 percent of these are girls. A Ministry of Women's Affairs has been created for the sole purpose of advocating for the rights of women and ensuring their access to, and participation in, all sectors of Afghan society. The current head of the Human Rights Commission is an Afghan woman, Dr. Sima Simar. Afghan women are playing an active role in the political and economic reconstruction of their nation, including as members of the commission responsible for the drafting of the Afghan Constitution. Their contributions can already be seen in this draft document. Articles 44, 83 and 84 of the Constitution mandate the promotion of women's education and the elimination of illiteracy while also establishing requirements that seek to ensure female representation throughout the government. After suffering unspeakable oppression, persecution and violations of their most basic freedoms, the women of Afghanistan, as the women's minister recently stated, "can have our position in the society, and our people in Afghanistan can be under one Constitution."

All of these developments, Mr. Speaker, as the International Crisis Group has described it, "heralded a new day for women in Afghanistan."

However, this would not have been possible without the support of the international community and, in particular, the unwavering commitment of our United States. One of the many ways in which we have demonstrated our commitment to the full participation of women in Afghanistan's political and economic reconstruction has been through programs such as the U.S. Agency for International Development, AID, and its contribution of $2.5 million for the creation of women's resource centers in various provinces throughout Afghanistan.

The resolution before us details the developments that have taken place since the end of the Taliban regime and the progress made in improving the daily lives of Afghan women. Further, it notes the efforts of the United States in encouraging the full inclusion and participation of Afghan women in the political and economic arena and proclaims our ongoing commitment on this front. House Resolution 393 is a straightforward resolution that commends the participation of Afghan women in civil society and underscores the will of the U.S. House of Representatives that the protection of the human rights of all Afghans, particularly women, be protected in the constitution of Afghanistan.

I ask my colleagues to support this measure.

Mr. Speaker, I reserve the balance of my time.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

I rise in strong support of this resolution. First I would like to thank the gentlewoman from Illinois (Mrs. BIGGERT), the gentlewoman from New York (Mrs. MALONEY) and the gentlewoman from Florida (Ms. ROS-LEHTINEN) for their important contribution in bringing this issue to our attention.

Mr. Speaker, Afghanistan is entering a crucial phase in its efforts to leave behind the legacy of two decades of nightmare, civil war, narco-terrorism, the Taliban, and the appalling abuse of women and girls. Over the coming year, the Afghans will be approving a new constitution and a new Afghan government hopes to hold free and fair elections. These acts will determine Afghanistan's course for decades to come.

The role of women and girls in this process remains, unfortunately, unclear. After suffering for so long under the brutal Taliban regime, Afghan women are finally participating in Afghan society, including the political process in that country. But despite progress being made, the threat still remains that Afghan women will once again become the subject of both discrimination and violence. Indeed, Mr. Speaker, girls' education is coming increasingly under attack, with the burning of schools dedicated for that purpose. And there are disturbing reports of abuses of women's rights by local warlords in spite of the efforts of the Afghan transitional authority to protect them.

Our resolution commends the participation of Afghan women in the government of Afghanistan and in civil society, and it encourages the full inclusion of women in all sectors of Afghan society, particularly the political, economic and educational sectors. As the key decisions on the Afghan Constitution draw near, the United States and the international community must continue to press the Afghan government to allow the full inclusion of women in Afghan society at all levels and to provide for the full protection of women's human rights in the Constitution of Afghanistan.

I urge all of my colleagues to support H. Res. 393.

Mr. Speaker, I reserve the balance of my time.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield 5 minutes to the gentlewoman from Illinois (Mrs. BIGGERT), the sponsor of the resolution.

Mrs. BIGGERT. Mr. Speaker, I thank the gentlewoman for yielding me this time and for her very helpful input on this resolution. Her commitment to protecting human rights is well-known, and I am honored to work with her to support the women of Afghanistan.

Mr. Speaker, I rise today in support of this very important resolution. I am honored to sponsor it and I thank the gentlewoman from New York (Mrs. MALONEY) for introducing it with me. I also want to thank my neighbor, the gentleman from Illinois (Mr. HYDE) along with the gentleman from California (Mr. LANTOS) and the staff on the Committee on International Relations for helping to bring this resolution to the floor.

Frankly, it is no secret that Afghan women had a very, very hard time under Taliban rule. Women were frequently beaten, raped, kidnapped and killed. They had no access to education or health care. For 5 years, they were told that the only place for them was at home with their husbands or in the grave. Women were systematically and routinely singled out for abuse simply because they were women. In short, they lived in nightmarish conditions that few of us could even imagine.

Two years after the fall of the Taliban, the women of Afghanistan are making tremendous progress in reclaiming their rightful place in society. Women are returning to positions they held in pre-Taliban times, working as doctors, lawyers, teachers, civil servants and in numerous other professions. Most girls are attending school, which was not true ever before in the history of this country. They are no longer forced to wear the burdensome burqa, although many of them do, and hopefully they are no longer living in fear of being brutalized simply because they are female.

These women have overcome unimaginable obstacles and they deserve our ongoing support as they work to build a new democracy. I have been involved in several meetings here in the United States and a video conference with women leaders in Afghanistan through the U.S.-Afghan Women's Council. It is encouraging to see that the country is transforming itself into a democracy and the Afghan women are participating, working towards elections, and some of these women will be candidates. All of this is good news, but there is still so much more that must be accomplished.

As part of the rebuilding process, the people of Afghanistan are drafting a constitution that will define the principles of their new democratic government. Under the Bonn agreement, the final draft will be finished in a few short months. As the drafters continue the hard work of crafting that important document, we must continue to encourage the inclusion of women and the protection of their most basic rights. The creation of a permanent Afghan government marks an important transition in the history of that country. It also provides a unique opportunity to commend the women of Afghanistan for overcoming the monumental challenges they have faced and to reiterate the U.S. commitment to protecting the human rights of all. This is what the resolution does.

The United States has a vested interest in promoting a democratic regime in Afghanistan. As President Bush put it, women will be the backbone of a new Afghanistan. It is critical, therefore, that women be assured of their right to participate in the civic life of their country. It is encouraging to note that women have been involved in the drafting of the constitution. However, in order for women to continue participating in public life, this right must be protected.

I am pleased that the U.S. has taken such an active role in aiding the women of Afghanistan. In the last Congress, we passed and the President signed into law the Afghan Women and Children's Relief Act. This much-needed legislation provided educational and health care assistance for women and children living in Afghanistan and as refugees in neighboring countries. This was an important first step that provided immediate assistance. Now, however, it is time to look beyond the short term and provide long-term assurance that the women of Afghanistan will never again be targeted for abuse by their government and forced to live under such horrific conditions.

Mr. Speaker, this is an important and timely resolution. In order to promote true democracy in Afghanistan, we must do all we can to encourage the inclusion of women in the civic life of their country. I am honored to support this resolution, and I encourage my colleagues to do so as well.

Mr. LANTOS. Mr. Speaker, I am delighted to yield 4 minutes to the gentlewoman from New York (Mrs. MALONEY) who has been an indefatigable fighter for all human rights issues and without whom we would not be considering this resolution.

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Mrs. MALONEY. Mr. Speaker, I thank the gentleman for yielding me this time and acknowledge the tremendous role that he and the gentleman from Illinois (Mr. HYDE) had in the passage of this resolution.

I rise in strong support of this resolution which commends Afghan women and supports their participation in government and the inclusion of women's rights in the Afghan constitution. The gentlewoman from Illinois (Mrs. BIGGERT), my good friend, and I co-authored this resolution to acknowledge the struggles that Afghan women have faced and to show the support of this Congress for winning the battles that remain.

Women under the Taliban were denied their basic rights to work, education, and health care; and they suffered greatly over the course of 23 years of war. The end of the Taliban regime, appointment of women to the cabinet, and the establishment of the Ministry of Women's Affairs and the participation of over 200 women delegates in the June, 2002, Loya Jirga gave women hope. Yet many women continue to wear the burka out of fear of attack from fundamentalist extremists, and there are extremely disturbing reports of discrimination and the burning of over 30 girls' schools.

Earlier this Congress showed their support not only in words but with financial support. Our amendment to the fiscal year 2004 emergency supplemental appropriations legislation directed $5 million to the Independent Human Rights Commission in Afghanistan and $60 million in direct funding for the Ministry of Women's Affairs and Afghan women-led governmental organizations which is necessary to build permanent institutions to safeguard women's rights in Afghanistan.

For women to advance in Afghanistan, they must have equal rights under the law, they must have the right to vote and the right to run for office and the equality of opportunity and access to health care, education, and employment. These rights will not be possible in Afghanistan without their inclusion in the constitution and without the ability of delegates to the December Loya Jirga to speak out for women's rights and human rights without fear of reprisal.

I deeply thank this Congress and the leadership of this Congress for being committed to helping the women in Afghanistan, for their support of the passage of this important resolution, and their earlier support for direct appropriations to help the women in Afghanistan. I particularly thank the leadership of the gentleman from California (Mr. LANTOS), the gentleman from Illinois (Mr. HYDE), and the gentlewoman from Illinois (Mrs. BIGGERT).

Ms. ROS-LEHTINEN. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from California (Mr. ROHRABACHER), a staunch defender of human rights worldwide.

Mr. ROHRABACHER. Mr. Speaker, I rise in strong support of this resolution and commend those who were involved with bringing it to the floor today.

About 5 months ago, I traveled across Afghanistan. Just actually my wife and I decided to travel by car, and we were told that it was rather risky and that it was a precarious situation; but we wanted to see exactly what was happening on the scene, and I would like to report a little incident that happened.

As we were traveling between Kabul and Mazar Sharif, we saw the devastation throughout the countryside, burned-out Russian tanks and buildings that had been destroyed. We noticed some young people, hundreds of people, gathered at this old building that seemed like a bombed-out relic from World War II; and we had our driver stop, and we walked over and we had an interpreter with us. And there we found, I guess, about 100 young Afghan children all about 8, 9, 10 years old, sitting in this burned-out building where they had piled rocks together and formed little desks, trying to teach each other how to read and to write. There was never a symbol of a people who were more committed to moving ahead and to bringing themselves out of the ashes of this horrible catastrophe that has befallen their country for these last 25 years than these young children; and what was most important is they were not just a bunch of boys. There were young boys and young girls who were there being taught to read and to write and to improve themselves and thus bring up their country, and it was one of the most inspiring sights I had seen.

The United States has a special burden here in Afghanistan. We turned away from the Afghans before, and it led to another era of crises after the Soviets left; and let me just note that I am afraid to offer this to my colleagues: I think we need to pay more attention to Afghanistan. This resolution is an important step, but we need to pay more attention. Things are sliding back in the wrong direction if we do not pay attention.

And I think we have a message today to the people of Afghanistan, and that is democracy is sometimes slow to move, but we are committed to helping them rebuild their country and to build those institutions that provide for human dignity. We respect their religion, we respect their faith, but we also know that the persecution of women is not required by Islam, that this Taliban extremism and Islamic extremism that we see in various parts of the world does not reflect the broad cross-section of Muslims who would grant women their rights and have little children who happen to be girls educated and treated equally and with due respect. But today we have to work with the Afghan people to make sure that the Taliban does not come back, and that threat still exists. And to the people of Afghanistan we say today do not give in to these evil people again. The Americans have not left. We will not leave until they are secure from the return of the Taliban and al Qaeda and the terrorists that held them in bondage.

Mr. LANTOS. Mr. Speaker, I want to commend my friend from California for his powerful statement.

Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I rise today to support this resolution, but I must note that it is not enough. We need to make every effort to assist the women of Afghanistan to become full and participating members of society as so many women there wish.

Inside the Beltway it may seem that we are doing enough, but we have continually appropriated money to help Afghan women and children, 5 million in 2003, 25 million in 2004, 60 million in the recent supplemental appropriations bill. But unfortunately the money is not necessarily getting to the women themselves, and Members of Congress have written to our President about that, but we have not actually made the difference that we would want.

Last week when I returned to my district, I met an Afghan women's advocate, Afifa Azim, who was full of hope but has been let down by this administration. She had come all the way to America to search for support from private organizations in California. Imagine, she had to travel here to find private help when we have appropriated millions of dollars for women's programs and the President has told us he is committed to administering the money in the best possible way. Other Afghan women advocates are telling me the same.

The problem is not that the women of Afghanistan are not full of hope, nor is the problem with Congress who has appropriated funds. The problem is that the administration has not tracked the resources to make sure that they get to the Afghan women who need these funds; and I would like to read from the San Francisco Chronicle a story about Ms. Azim. She said, "What's most unfortunate is that in the beginning, the international community was promising to first help the women, but that has not happened. For almost 2 years, they were promising to open women's centers in different provinces, but it hasn't happened, all because of a lack of resources, not desire."

If the President is serious about winning the war on terror, he must not forget that a great key to our success lies in the women of Afghanistan. I support this resolution, but I would be happier if we were actually directing the President to send the resources necessary to the women of Afghanistan. And I include in the RECORD the article from the San Francisco Chronicle about Ms. Azim's visit.

[From the San Francisco Chronicle, Nov. 17, 2003]

Afghan Woman Soldier on Bay Area Visit To Raise Support for Freedoms Not Yet Realized

(By Anastasia Hendrix)

Standing just 5 feet tall, even in heels, Afifa Azim may appear diminutive but her ambition to improve the lives of women in Afghanistan is enormous, and she is visiting the Bay Area to get some help.

Though the world's attention has shifted to the conflict in Iraq and the repressive Taliban regime has been chased out of Afghanistan, women there have not been able to enjoy the freedoms they had decades ago, she said.

"Most of the women outside of Kabul, in the villages, are still oppressed, still wearing burkas and still are afraid," she said. "I am saying please be patient and pay attention to Afghanistan. We still desperately need it."

Azim is the director of the Afghan Women's Network, an umbrella organization comprised of 65 nonprofit, nongovernmental groups designed to support, train and employ women.

Born in Kabul, the 49-year-old mother of two daughters and three sons oversees the agency's headquarters in Peshawar, Pakistan, as well as two offices in Afghanistan. The agency has yet to get a working fax machine, she said, but has received grants for several computers.

She is meeting with native Afghans and women's rights advocates as part of a program developed by the San Francisco-based Women's Intercultural Network (WIN), which strives to create a network of women's organizations around the world for "collective action on mutual concerns."

"A lot of people are going into Afghanistan now doing refugee work, doing work on housing, food and infrastructure, but nobody's really working directly with the women to build the capacity of their organizations," said Marilyn Fowler, president and chief executive officer of the network. "It's not just about money, but also the training and technology that is so badly needed."

Azim is one of nine women on a committee participating in the drafting of Afghanistan's new constitution, which will be important to legally, protect women's rights, she said.

It is a more daunting task than it may seem, said Rona Popal, executive director of the Fremont-based Afghan Women Association International, who recently returned from a trip to Kabul.

"For example, the Ministry of Women's Affairs is one of the poorest ministries (in the Afghan government). Many programs have been closed, and a lot of women have had to be laid off," she said. "What's most unfortunate is that in the beginning, the international community was promising to first help the women, but that had not happened. For almost two years they were promising to open women's centers in different provinces, but it hasn't happened—all because of a lack of resources, not desire."

If anyone is up to the challenge of fighting for the emerging women's rights movement in Afghanistan, it is Azim, said Irene Lu, a senior at Standford University who spent six months this year working for the Afghan Women's Network in Kabul.

"It's amazing how much she really loves her country. She works day and night thinking of specific projects," Lu said,' 'She's often at the office untill 1 or 12 at night, and she even came to the office at 3 a.m. to talk to me about one of the projects we were working on."

With Azim, Lu created a national directory of nonprofit women's groups in and around Afghanistan, surveyed women in refugee camps and created a paid internship program for female students at Kabul University.

Azim said there are setbacks and times of sadness and frustration, but that she relies on the strength of other women's rights advocates for motivation and her family for inspiration.

Her three sons, ages 18, 19, and 20, all volunteer for her organization. Her daughters, ages 8 and 22, are constant reminder of her goals, she said.

"I want them to have a bright future, to be able to have a good and happy life," she said.

Her husband, Azim, is also supportive of her efforts, it not necessarily her frequent trips to Kabul, she said. The family fled Afghanistan in 1985 but plans to move back by new year, she said.

Today, Azim is headed back to Pakistan. She said she will travel and work as much as necessary to broaden awareness about the struggles still facing Afghan women.

"We know that American women are strong and have the power to do something to help our women, even if the government can't or won't" she said. "Of this, I am confident.".

Ms. ROS-LEHTINEN. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. ROYCE), a strong leader in our Committee on International Relations.

Mr. ROYCE. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I support this bill commending the participation of Afghan women in that society. But let me share with the Members that I had an opportunity to travel in Afghanistan, and there is a small orphanage that I have supported. I have been a board member for a number of years on this particular board for this school that attempts to teach orphans in Afghanistan. And I wanted to see about the work that they were conducting. So when I was there, I actually had an opportunity to talk not only to the students, several of whom spoke English, but also with the teachers.

One of the teachers showed me, by the way, the scars on his legs and arms. He was caught by the former regime. He was not teaching jihad. He was teaching mathematics. He was teaching science. And that was considered verboten. That was forbidden by that government. And as a consequence, he was tortured for that. But the school continued its work clandestinely, and today that work continues. And I asked the young students there what they intended to be when they grew up, and we got different answers from different students. But one young woman stood up and she said, "When I grow up, I want to go to the University of Kabul because I am going to be a physician."

And I asked her, "Why do you want to become a doctor?"

She said, "I want to become a doctor because I want to help my people."

We forget that two thirds of the physicians in Afghanistan before the Taliban, two thirds of physicians, were women. But, in fact, when that society was hijacked by the Taliban and that brutal regime began the process of excluding women not only from education but from the workforce and from riding a bus or from visiting a doctor, we forget just how brutal that regime was.

I have got a great deal of respect for what the new government is trying to do. The new Afghan government has established a Ministry of Women's Affairs dedicated to improving women's rights, but in the meantime the reality continues, that at the hands of regional warlords and brigands and religious fanatics, women are still beaten and they are still raped and they are still abducted.

However, as this is happening, women are playing a role in the political reconstruction of Afghanistan. Seven women are members of the constitutional drafting commission. That is 20 percent of the commission. Under the released draft constitution, Afghanistan's president can nominate women to hold up to 50 percent of the seats of the upper house of parliament.

For the first time in years, Afghans are hearing the voice of women on the air because the broadcasts of Radio Free Afghanistan air commentary from both the women in the Afghan ministries and the men and women that are interviewed on the streets, in the towns. And it is important to remember again that before 1978 women were very influential in this society. Not only were they two-thirds of teachers, as I mentioned, but they played a role throughout the society, throughout the workforce, and they must play a vital role in helping Afghanistan become a stable state.

There is so much work to be done, and there is so much more attention that we as a Congress, not just the administration, but we as a Congress need to pay to this problem.

But Afghanistan has made tremendous strides, at least in Kabul, in the liberation from the Taliban; and we have to remember that the Taliban is still rooted in parts of that country. And I ask my colleagues to support this resolution and to continue to focus in their own time and in their own ways on ideas of how we can expand some measure of progress beyond the capital into the regional areas of Afghanistan.

Mr. LANTOS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

I want to thank the gentleman from California (Mr. LANTOS), my good friend. It is always a real honor and a pleasure to work with him. He is a man of integrity, great intelligence, and I consider him one of my mentors. It is always a pleasure to handle a bill on the floor with him.

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Mr. Speaker, in closing, I would merely like to underscore the stark contrast between the Afghanistan that we had under the Taliban and the free Afghanistan that today is working to rebuild from the ruins of over 20 years of war and oppression. But all is not perfect, as we heard from many speakers here today. The road ahead will not be an easy task, but nothing that is worth doing and having usually comes easy.

The Afghan people and especially the women of Afghanistan need our support. They need our steadfast commitment to stay with them, to remain engaged for the long haul. This resolution before us reiterates that commitment, a commitment that was articulated by President Bush just this morning, and I ask my colleagues to support the resolution of the gentlewoman from Illinois (Mrs. BIGGERT) and the gentlewoman from New York (Mrs. MALONEY).

Mr. LARSON of Connecticut. Mr. Speaker, I rise today in strong support of the resolution commending Afghan women for their participation in the Afghan government. Overcoming a history of suppression under Taliban rule, the women of Afghanistan have worked to strengthen women's rights in Afghanistan's new democracy.

Prior to Taliban rule, Afghanistan had a Constitutional democracy that affirmed women's rights, including the right to vote and equal pay provisions. However, under control of the Taliban, women were silenced and denied basic-fundamental rights to healthcare, education and employment. Today, Afghan women have emerged to help build a brighter and more stable future for Afghanistan.

Afghan women are more involved than ever in the Afghanistan government. Currently, there are two women holding high-ranking positions in Afghanistan's transitional government. Additionally, on September 5, 2003, the third annual conference of Women for Afghan Women (WAW) met in Kandahar to draft an Afghan Women's Bill of Rights to present to President Hamid Karzai. These rights include mandatory education for all women, protection and security from gender abuse, freedom to vote and the ability to run for all elections.

Afghanistan is at a crucial transition point and it is imperative that the United States continue its support in promoting democracy and equality for both men and women of Afghanistan. I urge all of my fellow Members to vote with me in support of H. Res. 393 and commend the women of Afghanistan for their contributions and involvement in the Afghan government.

Ms. ROS-LEHTINEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHAW). The question is on the motion offered by the gentlewoman from Florida (Ms. ROS-LEHTINEN) that the House suspend the rules and agree to the resolution, H. Res. 393, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. LANTOS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

MUTUAL FUNDS INTEGRITY AND FEE TRANSPARENCY ACT OF 2003

Mr. OXLEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2420) to improve transparency relating to the fees and costs that mutual fund investors incur and to improve corporate governance of mutual funds, as amended.

The Clerk read as follows:

H.R. 2420

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Mutual Funds Integrity and Fee Transparency Act of 2003".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title.

TITLE I—INTEGRITY AND FEE TRANSPARENCY

Sec. 101. Improved transparency of mutual fund costs.
Sec. 102. Obligations regarding certain distribution and soft dollar arrangements.
Sec. 103. Mutual fund governance.
Sec. 104. Audit committee requirements for investment companies.
Sec. 105. Trading restrictions.
Sec. 106. Definition of no-load mutual fund.
Sec. 107. Informing directors of significant deficiencies.
Sec. 108. Exemption from in person meeting requirements.
Sec. 109. Proxy voting disclosure.
Sec. 110. Incentive compensation and mutual fund sales.
Sec. 111. Commission study and report regulating soft dollar arrangements.
Sec. 112. Study of arbitration claims.

TITLE II—PREVENTION OF ABUSIVE MUTUAL FUND PRACTICES

Sec. 201. Prevention of fraud; internal compliance and control procedures.
Sec. 202. Ban on joint management of mutual funds and hedge funds.
Sec. 203. Short term trading by interested persons prohibited.
Sec. 204. Elimination of stale prices.
Sec. 205. Prevention of unfair after-hours trading.
Sec. 206. Report on adequacy of remedial actions.

TITLE I—INTEGRITY AND FEE TRANSPARENCY

SEC. 101. IMPROVED TRANSPARENCY OF MUTUAL FUND COSTS.

(a) REGULATION REVISION REQUIRED.—Within 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, or the Investment Company Act of 1940, or any combination thereof, to require, consistent with the protection of investors and the public interest, improved disclosure with respect to an open-end management investment company, in the quarterly statement or other periodic report to shareholders or other appropriate disclosure document, of the following:

(1) The estimated amount, in dollars for each $1,000 of investment in the company, of the operating expenses of the company that are borne by shareholders.

(2) The structure of, or method used to determine, the compensation of individuals employed by the investment adviser of the company to manage the portfolio of the company, and the ownership interest of such individuals in the securities of the company.

(3) The portfolio turnover rate of the company, set forth in a manner that facilitates comparison among investment companies, and a description of the implications of a high turnover rate for portfolio transaction costs and performance.

(4) Information concerning the company's policies and practices with respect to the payment of commissions for effecting securities transactions to a member of an exchange, broker, or dealer who—

(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(C) facilitates the sale and distribution of the company's shares.

(5) Information concerning payments by any person other than the company that are intended to facilitate the sale and distribution of the company's shares.

(6) Information concerning discounts on front-end sales loads for which investors may be eligible, including the minimum purchase amounts required for such discounts.

(b) APPROPRIATE DISCLOSURE DOCUMENT.—

(1) IN GENERAL.—For purposes of subsection (a), a disclosure shall not be considered to be made in an appropriate disclosure document if the disclosure is made exclusively in a prospectus or statement of additional information, or both such documents.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), the disclosures required by paragraph (2) and (4) of subsection (a) may be considered to be made in an appropriate disclosure document if the disclosure is made exclusively in a prospectus or statement of additional information, or both such documents.

(c) CONCEPT RELEASE REQUIRED.—

(1) In general.—The Commission shall issue a concept release examining the issue of portfolio transaction costs incurred by investment companies, including commission, spread, opportunity, and market impact costs, with respect to trading of portfolio securities and how such costs may be disclosed to mutual fund investors in a manner that will enable investors to compare such costs among funds.

(2) Report and recommendations required.—The Commission shall submit a report on the findings from the concept release required by paragraph (1), as well as legislative and regulatory recommendations, if any, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, no later than 270 days after the date of enactment of this Act.

(d) Additional Requirement for Fee Statement.—

(1) In general.—Not later than 270 days after the date of enactment of this Act, the Commission shall prescribe a rule to require, with respect to an open-end management investment company, in the quarterly statement or other periodic report, or other appropriate disclosure document, a statement informing shareholders that such shareholders have paid fees on their investments, that such fees have been deducted from the amounts shown on the statements, and where such shareholders may find additional information regarding the amount of these fees.

(2) Appropriate disclosure document.—The statement required by paragraph (1) shall not be considered to be made in an appropriate disclosure document unless such statement is—

(A) made in each periodic statement to a shareholder that discloses the value of the holdings of the shareholder in the securities of the company; and

(B) prominently displayed, in a location in close proximity to the statement of the shares account value.

(e) Reducing Burdens on Small Funds.—In prescribing rules under this section, the Commission shall give consideration to methods for reducing for small investment companies the burdens of making the disclosures required by such rules, consistent with the public interest and the protection of investors.

SEC. 102. OBLIGATIONS REGARDING CERTAIN DISTRIBUTION AND SOFT DOLLAR ARRANGEMENTS.

(a) Reporting Requirement.—Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is amended by adding at the end the following new subsection:

"(g) Obligations Regarding Certain Distribution and Soft Dollar Arrangements.—

"(1) Reporting requirements.—Each investment adviser to a registered investment company shall, no less frequently than annually, submit to the board of directors of the company a report on—

"(A) payments during the reporting period by the adviser (or an affiliated person of the adviser) that were directly or indirectly made for the purpose of promoting the sale of shares of the investment company (referred to in paragraph (2) as a 'revenue sharing arrangement');

"(B) services to the company provided or paid for by a broker or dealer or an affiliated person of the broker or dealer (other than brokerage and research services) in exchange for the direction of brokerage to the broker or dealer (referred to in paragraph (2) as a 'directed brokerage arrangement'); and

"(C) research services obtained by the adviser (or an affiliated person of the adviser) during the reporting period from a broker or dealer the receipt of which may reasonably be attributed to securities transactions effected on behalf of the company or any other company that is a member of the same group of investment companies (referred to in paragraph (2) as a 'soft dollar arrangement').

"(2) Fiduciary duty of board of directors.—The board of directors of a registered investment company shall have a fiduciary duty—

"(A) to review the investment adviser's direction of the company's brokerage transactions, including directed brokerage arrangements and soft dollar arrangements, and to determine that the direction of such brokerage is in the best interests of the shareholders of the company; and

"(B) to review any revenue sharing arrangements to ensure compliance with this Act and the rules adopted thereunder, and to determine that such revenue sharing arrangements are in the best interests of the shareholders of the company.

"(3) Summaries of reports in annual reports to shareholders.—In accordance with regulations prescribed by the Commission under paragraph (4), annual reports to shareholders of a registered investment company shall include a summary of the most recent report submitted to the board of directors under paragraph (1).

"(4) Regulations.—The Commission shall adopt rules and regulations implementing this section, which rules and regulations shall, among other things, prescribe the content of the required reports.

"(5) Definition.—For purposes of this subsection—

"(A) the term 'brokerage and research services' has the same meaning as in section 28(e)(3) of the Securities Exchange Act of 1934; and

"(B) the term 'research services' means the services described in subparagraphs (A) and (B) of such section.".

(b) Contractual Records.—Within 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule prescribed pursuant to section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)), require that—

(1) if any research services (as such term is defined in section 15(g)(5)(B) of the Investment Company Act of 1940, as amended by subsection (a) of this section)—

(A) are provided by a member of an exchange, broker, or dealer who effects securities transactions in an account, and

(B) are prepared or provided by a party that is unaffiliated with such member, broker, or dealer,

any person exercising investment discretion with respect to such account shall maintain a copy of the written contract between the person preparing such research and the member of an exchange, broker, or dealer; and

(2) such contract shall describe the nature and value of the services provided.

SEC. 103. MUTUAL FUND GOVERNANCE.

(a) Director Independence.—Section 10(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–10) is amended by striking "60 per centum" and inserting "one-third".

(b) Definition of Interested Person.—Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) is amended—

(1) in subparagraph (A)—

(A) by striking clause (vi) and redesignating clause (vii) as clause (vi); and

(B) by amending clause (v) to read as follows:

"(v) any natural person who is a member of a class of persons who the Commission, by rule or regulation, determines are unlikely to exercise an appropriate degree of independence as a result of—

"(I) a material business or professional relationship with the company or any affiliated person of the company, or

"(II) a close familial relationship with any natural person who is an affiliated person of the company,"; and

(2) in subparagraph (B)—

(A) by striking clause (vi) and redesignating clause (vii) as clause (vi); and

(B) by amending clause (v) to read as follows:

"(v) any natural person who is a member of a class of persons who the Commission, by rule or regulation, determines are unlikely to exercise an appropriate degree of independence as a result of—

"(I) a material business or professional relationship with such investment adviser or principal underwriter (or affiliated person thereof), or

"(II) a close familial relationship with a natural person who is such investment adviser or principal underwriter (or affiliated person thereof),".

SEC. 104. AUDIT COMMITTEE REQUIREMENTS FOR INVESTMENT COMPANIES.

(a) Amendments.—Section 32 of the Investment Company Act of 1940 (15 U.S.C. 80a–31) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) and (2) and inserting the following:

"(1) such accountant shall have been selected at a meeting held within 30 days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of the members of the audit committee of such registered company;

"(2) such selection shall have been submitted for ratification or rejection at the next succeeding annual meeting of stockholders if such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of the members of the audit committee of such registered company, cast in person at a meeting called for the purpose of voting on such action;"; and

(B) by adding at the end the following new sentence: "The Commission, by rule, regulation, or order, may exempt a registered management company or registered face-amount certificate company subject to this subsection from the requirement in paragraph (1) that the votes by the members of the audit committee be cast at a meeting in person when such a requirement is impracticable, subject to such conditions as the Commission may require."; and

(2) by adding at the end the following new subsection:

"(d) Audit Committee Requirements.—

"(1) Requirements as prerequisite to filing financial statements.—Any registered management company or registered face-amount certificate company that files with the Commission any financial statement signed or certified by an independent public accountant shall comply with the requirements of paragraphs (2) through (6) of this subsection and any rule or regulation of the Commission issued thereunder.

"(2) Responsibility relating to independent public accountants.—The audit committee of the registered company, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any independent public accountant employed by such registered company (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing the audit report or related work, and each such independent public accountant shall report directly to the audit committee.

"(3) INDEPENDENCE.—

"(A) IN GENERAL.—Each member of the audit committee of the registered company shall be a member of the board of directors of the company, and shall otherwise be independent.

"(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of a registered company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

"(i) accept any consulting, advisory, or other compensatory fee from the registered company or the investment adviser or principal underwriter of the registered company; or

"(ii) be an 'interested person' of the registered company, as such term is defined in section 2(a)(19).

"(4) COMPLAINTS.—The audit committee of the registered company shall establish procedures for—

"(A) the receipt, retention, and treatment of complaints received by the registered company regarding accounting, internal accounting controls, or auditing matters; and

"(B) the confidential, anonymous submission by employees of the registered company and its investment adviser or principal underwriter of concerns regarding questionable accounting or auditing matters.

"(5) AUTHORITY TO ENGAGE ADVISERS.—The audit committee of the registered company shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

"(6) FUNDING.—The registered company shall provide appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

"(A) to the independent public accountant employed by the registered company for the purpose of rendering or issuing the audit report; and

"(B) to any advisers employed by the audit committee under paragraph (5).

"(7) AUDIT COMMITTEE.—For purposes of this subsection, the term 'audit committee' means—

"(A) a committee (or equivalent body) established by and amongst the board of directors of a registered investment company for the purpose of overseeing the accounting and financial reporting processes of the company and audits of the financial statements of the company; and

"(B) if no such committee exists with respect to a registered investment company, the entire board of directors of the company.".

(b) CONFORMING AMENDMENT.—Section 10A(m) of the Securities Exchange Act of 1934 is amended by adding at the end the following new paragraph:

"(7) EXEMPTION FOR INVESTMENT COMPANIES.—Effective one year after the date of enactment of the Mutual Funds Integrity and Fee Transparency Act of 2003, for purposes of this subsection, the term 'issuer' shall not include any investment company that is registered under section 8 of the Investment Company Act of 1940.".

(c) IMPLEMENTATION.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue final regulations to carry out section 32(d) of the Investment Company Act of 1940, as added by subsection (a) of this section.

SEC. 105. TRADING RESTRICTIONS.

Subsection (e) of section 22 of the Investment Company Act of 1940 (15 U.S.C. 80a–22(e)) is amended to read as follows:

"(e) TRADING RESTRICTIONS.—

"(1) PROHIBITION AND EXCEPTIONS.—No registered investment company shall suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agents designated for that purpose for redemption, except—

"(A) for any period (i) during which the principal market for the securities in which the company invests is closed, other than customary week-end and holiday closings; or (ii) during which trading on such exchange is restricted;

"(B) for any period during which an emergency exists as a result of which (i) disposal by the company of securities owned by it is not reasonably practicable; or (ii) it is not reasonably practicable for such company fairly to determine the value of its net assets; or

"(C) for such other periods as the Commission may by order permit for the protection of security holders of the company.

"(2) COMMISSION RULES.—The Commission shall by rules and regulations—

"(A) determine the conditions under which trading shall be deemed to be restricted;

"(B) determine the conditions under which an emergency shall be deemed to exist; and

"(C) provide for the determination by each company, subject to such limitations as the Commission shall determine are necessary and appropriate for the protection of investors, of the principal market for the securities in which the company invests.".

SEC. 106. DEFINITION OF NO-LOAD MUTUAL FUND.

Within 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule adopted by the Commission or a self-regulatory organization (or both)—

(1) clarify the definition of "no-load" as such term is used by investment companies that impose any fee under a plan adopted pursuant to rule 12b-1 of the Commission's rules (17 C.F.R. 270.12b–1); and

(2) require disclosure to prevent investors from being misled by the use of such terminology by the company or its adviser or principal underwriter.

SEC. 107. INFORMING DIRECTORS OF SIGNIFICANT DEFICIENCIES.

Section 42 of the Investment Company Act of 1940 (15 U.S.C. 80a–41) is amended by adding at the end the following new subsection:

"(f) INFORMING DIRECTORS OF SIGNIFICANT DEFICIENCIES.—If the report of an inspection by the Commission of a registered investment company identifies significant deficiencies in the operations of such company, or of its investment adviser or principal underwriter, the company shall provide such report to the directors of such company.".

SEC. 108. EXEMPTION FROM IN PERSON MEETING REQUIREMENTS.

Section 15(c) of the of the Investment Company Act of 1940 (15 U.S.C. 80a–15(c)) is amended by adding at the end the following new sentence: "The Commission, by rule, regulation, or order, may exempt a registered investment company subject to this subsection from the requirement that the votes of its directors be cast at a meeting in person when such a requirement is impracticable, subject to such conditions as the Commission may require.".

SEC. 109. PROXY VOTING DISCLOSURE.

Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) is amended by adding at the end the following new subsection:

"(k) PROXY VOTING DISCLOSURE.—Every registered management investment company, other than a small business investment company, shall file with the Commission not later than August 31 of each year an annual report, on a form prescribed by the Commission by rule, containing the registrant's proxy voting record for the most recent twelve-month period ending on June 30. The financial statements of every such company shall state that information regarding how the company voted proxies relating to portfolio securities during the most recent 12-month period ending on June 30 is available—

"(1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the company's website at a specified Internet address; or both; and

"(2) on the Commission's website.".

SEC. 110. INCENTIVE COMPENSATION AND MUTUAL FUND SALES.

(a) COMMISSION RULE REQUIRED.—Within 270 days after the date of enactment of this Act, the Commission shall by rule prohibit, as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices, the sale of the securities of an investment company or of municipal fund securities by a broker or dealer or by a municipal securities broker or dealer without the disclosure of—

(1) the amount and source of sales fees, payments by persons other than the investment company that are intended to facilitate the sale and distribution of the securities, and commissions for effecting portfolio securities transactions, or other payments, paid to such broker or dealer, or municipal securities broker or dealer, or associated person thereof in connection with such sale;

(2) any commission or other fees or charges the investor has paid or will or might be subject to, including as a result of purchases or redemptions;

(3) any conflicts of interest that any associated person of the investor's broker or dealer or municipal securities broker or dealer may face due to the receipt of differential compensation in connection with such sale; and

(4) information about the estimated amount of any asset-based distribution expenses incurred, or to be incurred, by the investment company in connection with the investor's purchase of the securities.

(b) BENCHMARKS.—In connection with the rule required by subsection (a), the Commission shall, to the extent practical, establish standards for such disclosures.

(c) DEFINITIONS.—

(1) DIFFERENTIAL COMPENSATION.—For purposes of this section, an associated person of a broker or dealer shall be considered to receive differential compensation if such person receives any increased or additional remuneration, in whatever form—

(A) for sales of the securities of an investment company or municipal fund security that is affiliated with, or otherwise specifically designated by, such broker or dealer or municipal securities broker or dealer, as compared with the remuneration for sales of securities of an investment company or municipal fund security offered by such broker or dealer or municipal securities broker or dealer that are not so affiliated or designated; or

(B) for the sale of any class of securities of an investment company or municipal fund security as compared with the remuneration for the sale of a class of securities of such investment company or municipal fund security (offered by such broker or dealer or municipal securities broker or dealer) that charges a sales load (as defined in section 2(a)(35) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(35)) only at the time of such a sale.

(2) MUNICIPAL FUND SECURITY.—For purposes of this section, a municipal fund security is any municipal security issued by an issuer that, but for the application of section 2(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(b)), would constitute an investment company within the meaning of section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

SEC. 111. COMMISSION STUDY AND REPORT REGULATING SOFT DOLLAR ARRANGEMENTS.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall conduct a study of the use of soft dollar arrangements by investment advisers as contemplated by section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)).

(2) AREAS OF CONSIDERATION.—The study required by this section shall examine—

(A) the trends in the average amounts of soft dollar commissions paid by investment advisers and investment companies in the past 3 years;

(B) the types of services provided through soft dollar arrangements;

(C) the benefits and disadvantages of the use of soft dollars for investors, including the extent to which use of soft dollar arrangements affects the ability of mutual fund investors to evaluate and compare the expenses of different mutual funds;

(D) the potential or actual conflicts of interest (or both potential and actual conflicts) created by soft dollar arrangements, including whether certain potential conflicts are being managed effectively by other laws and regulations specifically addressing those situations, the role of the board of directors in managing these potential or actual (or both) conflicts, and the effectiveness of the board in this capacity;

(E) the transparency of such soft dollar arrangements to investment company shareholders and investment advisory clients of investment advisers, the extent to which enhanced disclosure is necessary or appropriate to enable investors to better understand the impact of these arrangements, and an assessment of whether the cost of any enhanced disclosure or other regulatory change would result in benefits to the investor; and

(F) whether such section 28(e) should be modified, and whether other regulatory or legislative changes should be considered and adopted to benefit investors.

(b) REPORT · REQUIRED.—The Commission shall submit a report on the study required by subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, no later than one year after the date of enactment of this Act.

SEC. 112. STUDY OF ARBITRATION CLAIMS.

(a) STUDY REQUIRED.—The Securities and Exchange Commission shall conduct a study of the increased rate of arbitration claims and decisions involving mutual funds since 1995 for the purposes of identifying trends in arbitration claim rates and, if applicable, the causes of such increased rates and the means to avert such causes.

(b) REPORT.—The Securities and Exchange Commission shall submit a report on the study required by subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than one year after the date of enactment of this Act.

TITLE II—PREVENTION OF ABUSIVE MUTUAL FUND PRACTICES

SEC. 201. PREVENTION OF FRAUD; INTERNAL COMPLIANCE AND CONTROL PROCEDURES.

(a) AMENDMENT.—Subsection (j) of section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a–17(j)) is amended to read as follows:

"(j) DETECTION AND PREVENTION OF FRAUD.—

"(1) COMMISSION RULES TO PROHIBIT FRAUD, DECEPTION, AND MANIPULATION.—It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such person of any security held or to be acquired by such registered investment company, or any security issued by such registered investment company or by an affiliated registered investment company, in contravention of such rules and regulations as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative.

"(2) CODES OF ETHICS.—Such rules and regulations shall include requirements for the adoption of codes of ethics by registered investment companies and investment advisers of, and principal underwriters for, such investment companies establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business. Such rules and regulations shall require each such registered investment company to disclose such codes of ethics (and any changes therein) in the periodic report to shareholders of such company, and to disclose such code of ethics and any waivers and material violations thereof on a readily accessible electronic public information facility of such company and in such additional form and manner as the Commission shall require by rule or regulation.

"(3) ADDITIONAL COMPLIANCE PROCEDURES.—Such rules and regulations shall—

"(A) require each investment company and investment adviser registered with the Commission to adopt and implement policies and procedures reasonably designed to prevent violation of the Securities Act of 1933 (15 U.S.C. 78a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), subchapter II of chapter 53 of title 31, United States Code, chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

"(B) require each such company and adviser to review such policies and procedures annually for their adequacy and the effectiveness of their implementation;

"(C) require each such company to appoint a chief compliance officer to be responsible for overseeing such policies and procedures—

"(i) whose compensation shall be approved by the members of the board of directors of the company who are not interested persons of such company;

"(ii) who shall report directly to the members of the board of directors of the company who are not interested persons of such company, privately as such members request, but no less frequently than annually; and

"(iii) whose report to such members shall include any violations or waivers of, and any other significant issues arising under, such policies and procedures; and

"(D) require each such company to establish policies and procedures reasonably designed to protect any officer, director, employee, contractor, subcontractor, or agent of such company from retaliation, including discharge, demotion, suspension, harassment, or any other manner of discrimination in the terms and conditions of employment, because of any lawful act done by such officer, director, employee, contractor, subcontractor, or agent to provide information, cause information to be provided, or otherwise assist in an investigation that relates to any conduct which such officer, director, employee, contractor, subcontractor, or agent reasonably believes constitutes a violation of the securities laws or the code of ethics of such investment company.

"(4) SELF-CERTIFICATION.—Such rules and regulations shall require the members of the board of directors who are not interested persons of each registered open-end investment company to certify, in the periodic report to shareholders, or other appropriate disclosure document, that—

"(A) procedures are in place for verifying that the determination of current net asset value of any redeemable security issued by the company used in computing periodically the current price for the purpose of purchase, redemption, and sale complies with the requirements of the Investment Company Act of 1940 and the rules and regulations thereunder, and the company is in compliance with such procedures;

"(B) procedures are in place for the oversight of the flow of funds into and out of the securities of the company, and the company is in compliance with such procedures;

"(C) procedures are in place to ensure that investors are receiving any applicable discounts on front-end sales loads that are disclosed in the company's prospectus;

"(D) procedures are in place to ensure that, if the company's shares are offered as different classes of shares, such classes are designed in the interests of investors, and could reasonably be an appropriate investment option for an investor;

"(E) procedures are in place to ensure that information about the company's portfolio securities is not disclosed in violation of the securities laws or the company's code of ethics;

"(F) the members of the board of directors who are not interested persons of the company have reviewed and approved the compensation of the company's portfolio manager in connection with their consideration of the investment advisory contract under section 15(c);

"(G) the company has established and enforces a code of ethics as required by paragraph (2) of this subsection; and

"(H) the company is in compliance with the additional requirements of paragraph (3) of this subsection.".

(b) Deadline for Rules.—The Securities and Exchange Commission shall prescribe rules to implement the amendment made by subsection (a) of this section within 90 days after the date of enactment of this Act.

SEC. 202. BAN ON JOINT MANAGEMENT OF MUTUAL FUNDS AND HEDGE FUNDS.

(a) Amendment.—Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a-15) is further amended by adding at the end the following new subsection:

"(h) Ban on Joint Management of Mutual Funds and Hedge Funds.—

"(1) Prohibition of joint management.—It shall be unlawful for any individual to serve or act as the portfolio manager or investment adviser of a registered open-end investment company if such individual also serves or acts as the portfolio manager or investment adviser of an investment company that is not registered or of such other categories of companies as the Commission shall prescribe by rule in order to prohibit conflicts of interest, such as conflicts in the selection of the portfolio securities.

"(2) Exceptions.—Notwithstanding paragraph (1), the Commission may, by rule, regulation, or order, permit joint management by a portfolio manager in exceptional circumstances when necessary to protect the interest of investors, provided that such rule, regulation, or order requires—

"(A) enhanced disclosure by the registered open-end investment company to investors of any conflicts of interest raised by such joint management; and

"(B) fair and equitable policies and procedures for the allocation of securities to the portfolios of the jointly managed companies, and certification by the members of the board of directors who are not interested persons of such registered open-end investment company, in the periodic report to shareholders, or other appropriate disclosure document, that such policies and procedures of such company are fair and equitable.

"(3) Definition.—For purposes of this subsection, the term 'portfolio manager' means the individual or individuals who are designated as responsible for decision-making in connection with the securities purchased and sold on behalf of a registered open-end investment company, but shall not include individuals who participate only in making research recommendations or executing transactions on behalf of such company.".

(b) Deadline for Rules.—The Securities and Exchange Commission shall prescribe rules to implement the amendment made by subsection (a) of this section within 90 days after the date of enactment of this Act.

SEC. 203. SHORT TERM TRADING BY INTERESTED PERSONS PROHIBITED.

(a) Short Term Trading Prohibited.—Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a-17) is further amended by adding at the end the following new subsection:

"(k) Short Term Trading Prohibited.—It shall be unlawful for any officer, director, partner, or employee of a registered investment company, any affiliated person, investment adviser, or principal underwriter of such company, or any officer, director, partner, or employee of such an affiliated person, investment adviser, or principal underwriter, to engage in short-term transactions, as such term is defined by the Commission by rule, in any securities of which such company, or any affiliate of such company, is the issuer, except that this subsection shall not prohibit transactions in money market funds, other funds the investment policy of which expressly permits short-term transactions, or such other categories of registered investment companies as the Commission shall specify by rule.".

(b) Increased Redemption Fees Permitted for Short Term Trading.—Within 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise rule 11a-3 of its rules under the Investment Company Act of 1940 (17 CFR 270.11a-30), or other rules of the Commission, as necessary to permit an investment company to charge redemption fees in excess of 2 percent upon the redemption of any securities of such company that are redeemed within such period after their purchase as the Commission specifies in such rule to prevent short term trading that is unfair to the shareholders of such company.

(c) Deadline for Rules.—The Securities and Exchange Commission shall prescribe rules to implement the amendment made by subsection (a) of this section within 90 days after the date of enactment of this Act.

SEC. 204. ELIMINATION OF STALE PRICES.

Within 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe, by rule or regulation, standards concerning the obligation of registered open-end investment companies under the Investment Company Act of 1940 to apply and use fair value methods of determination of net asset value when market quotations are unavailable or do not accurately reflect the fair market value of the companies' portfolio securities, in order to prevent dilution of the interests of long-term investors or as necessary in the other interests of investors. Such rule or regulation shall identify, in addition to significant events, the conditions or circumstances from which such obligation will arise, such as the need to value securities traded on foreign exchanges, and the methods by which fair value methods shall be applied in such events, conditions, and circumstances.

SEC. 205. PREVENTION OF UNFAIR AFTER-HOURS TRADING.

(a) Additional Rules Required.—Within 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue rules to prevent transactions in the securities of any registered open-end investment company in violation of section 22 of the Investment Company Act of 1940 (15 U.S.C. 80a-22), including after-hours trades that are executed at a price based on a net asset value that was determined as of a time prior to the actual execution of the transaction.

(b) Trades Collected by Intermediaries.—Such rules shall permit execution of such after-hours trades that are provided to the registered open-end investment company by a broker-dealer, retirement plan administrator, or other intermediary, after the time as of which such net asset value was determined, if such trades are collected by such intermediaries subject to procedures that are—

(1) designed to prevent the acceptance of trades by such intermediaries after the time as of which net asset value was determined; and

(2) subject to an independent annual audit to verify that the procedures do not permit the acceptance of trades after the time as of which such net asset value was determined.

(c) Independently Maintained Systems.—Such rules shall permit firms that utilize computer systems and procedures provided by unaffiliated entities to collect transactions to satisfy the independent audit requirements under subsection (b)(2) by means of an independent audit obtained by such unaffiliated entity.

SEC. 206. REPORT ON ADEQUACY OF REMEDIAL ACTIONS.

(a) Report Required.—Within 180 days of enactment, the Securities and Exchange Commission shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on market timing and late trading of mutual funds.

(b) Required Contents of Report.—The report required by this section shall include the following:

(1) The economic harm of market timing and late trading of mutual fund shares on long-term mutual fund shareholders.

(2) The findings by the Commission's Office of Compliance, Inspections and Examinations, and the actions taken by the Commission's Division of Enforcement, regarding—

(A) illegal late trading practices;

(B) illegal market timing practices; and

(C) market timing practices that are not in violation of prospectus disclosures.

(3) When the Commission became aware that the use of market timing practices was harming long-term shareholders, and the circumstances surrounding the Commission's discovery of that activity.

(4) The steps the Commission has taken since becoming aware of market timing practices to protect long-term mutual fund investors.

(5) Any additional legislative or regulatory action that is necessary to protect long-term mutual fund shareholders against the detrimental effects of late trading and market timing practices.

The SPEAKER pro tempore (Mr. Simmons). Pursuant to the rule, the gentleman from Ohio (Mr. Oxley) and the gentleman from Pennsylvania (Mr. Kanjorski) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. Oxley).

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this legislation, and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I stood on this floor last year and spoke of the need to reform and improve the accounting profession, financial reporting, corporate governance, and Wall Street research practices. Congress responded admirably by passing the Sarbanes-Oxley Act which has proved successful in improving the transparency of financial statements and stemming the alarming rate of corporate fraud.

Now, we necessarily turn our focus to mutual funds. We are in the midst of what one former SEC chairman calls the "biggest financial scandal of the past 50 years." An industry representative has lamented the "shocking betrayal of trust." Indeed, the scandals are deeply troubling for a host of reasons.

First, we have become a Nation of investors, 95 million strong, and the investment vehicles of choice are mutual funds. It is imperative that Congress ensures that these investors, representing 54 million households, are protected.

Second, the nature of the misconduct by trusted fiduciaries, fund executives, directors, and portfolio managers is especially egregious. Secret deals were reached to provide special trading privileges to large, preferred customers. Fund managers and executives were caught market-timing their own funds, and fund directors were found asleep at the switch.

Third, the mutual fund fraud is widespread. We are not talking about the actions of a few boiler room operations; we are talking about pervasive financial fraud by all segments of the fund industry, including the most trusted companies.

Finally, the regulators charged with investor protection failed to detect or deter improper and illegal practices which have apparently been occurring for a number of years. It is inexcusable that these activities were not uncovered until this year.

Long before the current scandal came to light, the Committee on Financial Services has called for reform. I am proud of the work of my colleagues, particularly the gentleman from Louisiana (Mr. BAKER), chairman of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises. The gentleman from Louisiana (Chairman BAKER) held oversight and legislative hearings long before it was fashionable to scrutinize the fund industry. He and I shepherded this legislation through the committee in July, but not without some resistance.

The legislation before the House today, the Mutual Funds Integrity and Fee Transparency Act, is a comprehensive reform package which contains numerous provisions to aid investors.

I will not go into all of the details but, importantly, it will provide for greater transparency of fund fees, costs, expenses, and operations so that investors can make better informed decisions and help market forces to drive fees down for fund investors. It will strengthen fund management, particularly the board's independent directors, and it will curb the trading abuses which have recently been revealed.

We know there are some who believe this legislation goes too far; there are some who think it does not go far enough. To those people, I would say that we have achieved a good balance here. It is proinvestor, it is tough, but it does not regulate for regulation's sake.

Again, I would like to commend the gentleman from Louisiana (Mr. BAKER) for his outstanding leadership on these issues and for crafting a fine piece of legislation. He was ahead of the curve yet again.

Mr. Speaker, I reserve the balance of my time.

Mr. KANJORSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, with approximately 95 million investors and $7 trillion in assets, mutual funds constitute a major component of our securities industry. Mutual funds became a dominant force in our capital markets because they have democratized investing for millions of average Americans, greatly facilitating their ability to acquire a diversified portfolio. Before September, many authorities and experts had also generally extolled the reliability and integrity of the industry.

During the last 2 months, however, we have learned of alleged and actual instances of wrongdoing at more than a dozen mutual fund families with more than $2.5 trillion in assets under management. The most serious transgressions brought to light so far have involved market timing abuses, late trading, and preferential portfolio disclosures to industry insiders.

The current evidence also suggests that additional announcements of misconduct in the mutual fund industry will continue to proliferate in the months ahead. A recent survey by the Securities and Exchange Commission found that 30 percent of responding broker-dealers assisted market timers in some way. It also revealed that more than 25 percent of answering broker-dealers reported that customers had placed or confirmed mutual fund orders after the market closed and received the preferential closing price.

These misdeeds and findings have caused great and considerable concern for average American investors who had placed their trust and hard-earned savings in accounts at mutual fund companies. The widening investigation by State and Federal authorities has also resulted in a reevaluation of the mutual fund industry's business practices and regulatory oversight.

These budding inquiries have caused me considerable unease as well. It is completely and absolutely unacceptable for securities professionals, who have an obligation to serve the best interests of their customers, to place their own interests first and to provide preferential treatment to selected insiders. In my view, we have an obligation to American investors to monitor these developments and take action to prevent further abuses.

Before news of the mutual fund industry scandals broke in September, the Committee on Financial Services approved a mutual fund reform bill by a voice vote. In general, H.R. 2420 seeks to enhance the disclosures of the mutual fund fees and costs to investors, improve corporate governance for mutual funds, and heighten the awareness of boards about mutual funds activities.

A manager's amendment attached today to H.R. 2420 makes several additions to the reported bill. Several of these changes address the recently discovered problems in the mutual fund industry. For example, the bill will now allow for an increase in redemption fees to reduce the ability of market timers to profit from their transactions. The bill also now requires the Commission to act to strengthen audit trails to guard against late trading.

Although each of these modifications generally improve H.R. 2420, I remain concerned that we may have rushed to judgment in these matters. The manager's amendment would have benefited from a more thorough vetting by the Securities and Exchange Commission, State regulators, and other experts. We should have made technical improvements to the bill to ensure its workability.

We also have missed an opportunity to consider other worthy reform ideas. We could have created a system to better protect mutual fund investors against fraud by expanding fidelity bonding requirements. We could have additionally required mutual fund managers to make the same disclosures about their personal transactions that we already mandate senior corporate executives to make.

The Investment Company Act further requires that mutual funds be organized and operated in the best interests of shareholders. We, therefore, could have considered adding legislative language to establish a fiduciary responsibility of mutual fund boards to ensure that funds are also organized and operated in such a way. Finally, we might have worked to heighten the scrutiny of the joint management of mutual funds and hedge funds within the same investment company to prevent conflicts of interest.

Mr. Speaker, I am particularly disappointed that H.R. 2420 does not include any of the regulatory enhancements that the Securities and Exchange Commission specifically requested earlier this year and that are contained in H.R. 2179, the Securities Fraud Deterrence and Investor Restitution Act. These proposals would increase the level of fines the Commission may impose against wrongdoers, improve its ability to return money to swindled investors, and enhance the agency's enforcement authorities.

Each of these administrative proposals would protect mutual fund investors more immediately and more effectively than the bill we are now considering. Fortunately, the Senate has an opportunity to review these worthy ideas and adopt a more comprehensive, stronger, and refined mutual fund bill when it considers these matters next year.

That said, we need to advance the legislative process today so that we can eventually better protect average investors from further transgressions by unscrupulous and unprincipled participants in the mutual fund industry. Although imperfect, H.R. 2420 takes some steps to restore accountability and reestablish investor trust. We should, therefore, approve the bill.

In closing, Mr. Speaker, mutual funds have successfully worked to help millions of middle-class Americans to successfully save for an early retirement, purchase a vacation home, afford a dream vacation, pay for a college education, or cover medical bills or other needs. We need to ensure that this success continues. I encourage my colleagues to adopt this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 6 minutes to the gentleman from Louisiana (Mr. BAKER), the chairman of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.

Mr. BAKER. Mr. Speaker, I thank the gentleman for yielding me this time. I certainly want to start by commending the chairman for his leadership on this important issue. He has been committed to the principle of getting it right, not getting it done fast, and I think his long-suffering patience on this issue is to be highly commended, for we have learned much, unfortunately, over the last weeks and months.

When the committee first began its work almost 2 years ago with an examination of mutual fund industry performance, it was with an eye toward whether or not investors truly understood the costs associated with investing in a particular fund, whether disclosures were adequate, and whether the markets were functioning in a fair manner.

Well, only a few months later, the door to scandal not only opened a bit, it blew wide open. There were not just minor aberrations of some arcane accounting misrepresentation, but intentional acts clearly in violation of the statutory provisions.

In one instance, there was a union where certain selected union members were engaging in a practice known as late trading. This resulted in their fellow union brotherhood being disenfranchised. It became so prevalent that the house where these trades were executed began to call that time of day the "boilermaker hour." Our systems of checks and balances had broken. It was a system of checks: you write me one, I will write you one.

Clearly, the principle on which a fair, functioning capital market must operate would require professionals never to set aside their fiduciary duties for the sake of personal gain. Unfortunately, it was happening.

So how do we ensure that that is the principle that guides market performance? It is not easy, but I think H.R. 2420 is a very important beginning. Full disclosure of all fees, full disclosure of what are known as "soft dollar" transactions, full disclosure of where the portfolio managers themselves invest their own funds and what they are paid at the expense of shareholders.

The bill goes a long way, and I would join with some in saying perhaps we have not gone far enough.

Let me digress with regard to the description of a mutual fund and a mutual fund management company. Mutual funds are organizations into which working families write their checks and send their money. They have a board which then hires a mutual fund management company, an operating company, a for-profit company, a company driven by the goal to make as much money as they can through the mutual fund.

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Nothing wrong with that. But the board is constructed of members who may well be the executives of the management company. So the people who are making the judgments about whether to hire management company A or management B are themselves employees of that company. Imagine how hard it must be to fire one's self in that instance. That is why I think it very important for us to engage in not only the bill's proposed two-thirds required membership be independent, but that the chairman himself be independent of that significant conflict.

And I would like to read from testimony of Chairman Donaldson, chairman of the SEC, just yesterday in response to a question in the Senate: "I think the board chairman should be totally independent. And I think the further you go toward a totally independent board, the better. The matter seems to be closed."

And as we proceed with consideration of this legislation through conference, I certainly will renew my effort to see that that particular provision is included. The bill does a great deal more, but I think it is not the end of the process.

We in the Congress have an obligation with 95 million Americans and over half of all households now directly invested in the marketplace to ensure there is a fair and balanced functioning market. We must have the investing facts clearly disclosed. We must have rules that are clearly understood, trades engaged in by professionals who hold themselves to the highest standards of fiduciary duty.

We must have, above all, the standard adopted where fiduciary principles never are set aside for personal gain and all the rules will be applied equitably to all investors. We do, in fact, have the broadest, deepest, most successful capital markets of any time in world history, but we cannot deviate from these principles.

The passage of H.R. 2420 will ensure we begin to return to that path, never again to deviate from that responsibility.

Mr. Speaker, I would like to ask the chair of the Committee on Financial Services, the gentleman from Ohio (Mr. OXLEY), if the gentleman would like to express his opinion with regard to the appropriateness of further consideration of the independent chair and a provision being adopted, if possible, in conference at a later time in the consideration of this legislation.

Mr. OXLEY. Mr. Speaker, will the gentleman yield?

Mr. BAKER. I yield to the gentleman from Ohio.

Mr. OXLEY. Mr. Speaker, I thank the gentleman for his continued leadership and tenacity on this issue. A few of us were kind of isolated and lonely when this whole issue began. And I suspect that we are now seeing the fruits of your efforts in taking on this difficult issue.

And I would say that based on the testimony that Chairman Donaldson gave to the other body just yesterday it is pretty clear that the SEC not only supports our efforts but would indeed support an independent chair. So from that standpoint, obviously, this is the beginning of the process, not the end. And to that end, obviously we will consider other measures going forward.

But I think, clearly, as the gentleman pointed out, this is an excellent bill that deals with some of the real abuses that have been out there in the public eye for the last several months. And this is how our process works. As you know, very much like what ended up as Sarbanes-Oxley, this is the House's ability to get our hands around this issue and show that the Members of the House are quite concerned about these burgeoning scandals and are not willing to sit back and allow this to happen on our watch.

Mr. BAKER. Mr. Speaker, I thank the chairman for his leadership.

Mr. KANJORSKI. Mr. Speaker, I yield 3½ minutes to the gentleman from Massachusetts (Mr. FRANK), the ranking member of the Committee on Financial Services, who has been instrumental in working with me on this bill on our side of the aisle.

Mr. FRANK of Massachusetts. Mr. Speaker, the gentleman from Pennsylvania (Mr. KANJORSKI) has played a very important role in this. I am glad to be here in support of his efforts. I agree that this is a bill that is a good set of steps forward, it is more than a first step, but it is not everything that we should be doing. It is useful to do it now.

I have spoken with the Attorney General of New York, Mr. Spitzer, the Secretary of the Commonwealth of

Massachusetts, Mr. Galvin. They have further ideas about how we can improve the protection of the investing public. The gentleman from Pennsylvania (Mr. KANJORSKI) himself has some ideas. So I am glad we are moving. And I appreciate the fact we do not end when we adjourn for the year this legislative process; we will resume it next year and be in conference with the Senate bill, and maybe even ourselves pass some other legislation in this regard.

But I want to address two other aspects of this issue. It is important that we legislate. It is also important that we fully empower those who are charged with investigation and enforcement. We are the legislative branch. We set the policy. But we are not able to carry it out. What is important is that those entities that are empowered to carry it out be allowed to do that. Now, a number of people have noted today on that.

We have learned recently some disturbing facts about the mutual fund industry. It should be clear that we learned them primarily from two State regulators, the Attorney General of New York and the Secretary of the Commonwealth of Massachusetts. And I am proud to say, Mr. Speaker, that on our side of the aisle we take pride in that because there were efforts to impinge on their ability to do this work.

And I am very pleased that our resistance to any effort to diminish the role played by State regulators in the securities field has been vindicated. If, in fact, the Attorney General of New York, the Secretary of the Commonwealth of Massachusetts, and some other regulators did not have the incentive, the tools, the ability fully to investigate, we would not know today what we know.

In addition, we have had the problem that the SEC has said, well, there were some limits in terms of funding. A year ago back to 2001, my predecessor as ranking member, the very able gentleman from New York, Mr. JOHN LaFalce, when we were asked to raise SEC fees, he led our side in saying, let us make sure a lot of that goes to the SEC to increase their budget. And there was resistance. Even after the corporate reform bill last year, the Sarbanes-Oxley bill, was passed, we as a Congress did not initially give the SEC the money they needed to enforce that.

Now, my colleague, the gentleman from Pennsylvania (Mr. KANJORSKI), has correctly pointed out we regret the fact that we have not also passed 2179, the SEC enforcement bill, giving the SEC more powers that they have asked for, including some that would specifically enhance their ability to levy fines against mutual fund companies. Parts of that bill specifically deal with the power to penalize mutual fund companies under those acts. But in addition to the additional powers, we need to give them more people. And we did fight, beginning late last year on into early this year; finally the Congress agreed to give the SEC the amount of money that they needed for Sarbanes-Oxley, but there is, of course, a time lag between getting the money and being able to spend it.

Now, both sides agreed to give the SEC flexibility in hiring, and we gave them that. But we ought to note that by the time we were to persuade this Congress to give the SEC adequate funds, they tell us they did not have time to spend it. So, ironically, the SEC had to give back some money this year, over $100 million. But they have told us that that does not mean that that level was too high, only that they did not get it in time to spend it, over our objections.

We now, I think, should go forward and have a situation where State regulators and the SEC are fully funded and fully empowered to do their job.

Mr. OXLEY. Mr. Speaker, I yield 3½ minutes to the gentleman from Delaware (Mr. CASTLE), distinguished member of the committee.

Mr. CASTLE. Mr. Speaker, I thank the chairman, not just for yielding to me, but for the great work that he and the gentleman from Louisiana (Mr. BAKER) have done on this and also the gentleman from Pennsylvania (Mr. KANJORSKI) and the gentleman from Massachusetts (Mr. FRANK). I think it truly has been a team effort for both parties getting together to try to address the problem. Maybe we are not as far as I would like to be, as perhaps some others would like to be, but I think we started to move in the right direction. For that I am very pleased.

Mr. Speaker, I will submit a statement here that supports H.R. 2420 and goes through the details of some of the reasons for that. But I would like to take my time before us today just to discuss what I consider to be the breadth and extent of this problem and what we have to do.

It is very interesting because 2 decades ago only 6 percent of American households had mutual funds, and the total was supposedly $134 billion. Today one-half of all American families are involved in mutual funds in some way or another, probably do not even know they are. They are in their 401(k) plans or another retirement plan or something of that nature. It involves $7 trillion of money.

This, of all these issues we have talked about, probably involves more Americans in a financial sense than anything else we ever had before our committee or before the Congress of the United States of America. It represents 10 percent of all the financial assets of the United States of America. To suggest that this is not overwhelmingly important, in my judgment, would be wrong.

It is amazing to me that just 6 months ago the mutual fund industry was making statements as they were looking at the banking industry and the corporate problems and everything else that they are the only ones with an unblemished record. Nobody knew. Nobody at the State level, nobody at the Federal level knew what was going on. And while we can talk about the SEC now, I would like to know where the SEC was a year ago, 3 years ago, 5 years ago, 10 years ago, or whatever it may be, why was somebody not looking at some of these problems, which are relatively self-evident when you really examine it closely if you understand the details of how mutual funds work.

I would hope that those kinds of people have been working at the SEC under Republicans and Democrats. And I am afraid to say that has not been the case so far. And, frankly, I think we all need to be critical of that.

Should we move quickly on this? And I understand what Mr. Greenspan and Secretary Snow and others have said about, well, we need to take our time. Well, I do not disagree completely because you want to do it correctly; but on the other hand I think we need to move as quickly as possible. There has been a recognized problem, and we need to do something about it. And quite frankly, I am delighted that this bill is on the floor today and our leaders have come forward and said we need to move forward. Maybe they will do something somewhat differently in the Senate, but hopefully they will do something and hopefully we will have something which we can hold out to the American public as evidence that we are moving in the right direction as far as mutual funds are concerned.

On the old issue of who should regulate, where we should be, I give credit to the States. I think they have done a wonderful job, particularly in New York and Massachusetts, and perhaps other States in coming forward and revealing some the problems. Frankly, I am not sure where the SEC would be today, I am not sure where we would be today if that had not happened. Yes, there are jurisdictional issues, but for the most part I think they deserve a great deal of credit as far as all of that is concerned.

The SEC, according to Stephen Cutler, has examined the records of 88 of these mutual funds, and they found problems with a great percentage of them. And they have found in the case of 30 percent of them that they have had market-timing problems. Virtually half of these funds have had problems one way or another in the area in which we are trying to deal. That just shows me how rapidly we have to move and what we have to do.

So I give credit to everybody for the hearings, for the legislation, and what we are doing today because, frankly, I think you are going to start to see some changes. I think a lot of it is going to be because of this legislation which we are considering today and all that has led up to it.

Mr. Speaker, I rise today in support of H.R. 2420, the "Mutual Funds Integrity and Fee Transparency Act of 2003." I commend Chairman OXLEY and Subcommittee Chairman BAKER for continuing your work in protecting American investors and I am proud to play a role in addressing the problems in the mutual fund industry. Hearings in the Financial Services Committee have enabled us to address a number of ongoing reforms that are necessary for the mutual fund industry to increase transparency for investors. From these hearings we have also learned of additional problems within the mutual fund industry that have only recently come to light such as improper trading practices. We have improved this legislation by incorporating all of the issues and I am proud of the legislation we passed out of committee with strong bipartisan support.

The average American family chooses to invest in mutual funds. I want to make clear what is at stake. Two decades ago, only 6 percent of American households had mutual fund shares valued at $134 billion. Today, half of all American families have $7 trillion at stake. Mutual funds represent about 10 percent of the total financial assets of the U.S. population. The number of funds have grown from less than 500 mutual funds in 1980 to approximately 8,000 mutual funds today.

Just 6 months ago the mutual fund industry was boasting of its unblemished record. It concerns me that the scandals we have learned of in recent weeks may only be the tip of the iceberg. This should be a wake-up call to both the Securities and Exchange Commission (SEC) and the industry that change is needed. Mutual funds are a $7 trillion industry, and with more than 50 percent of the American public invested in mutual funds there is the potential for investors to be hurt more so by these recent revelations than even the WorldCom and Enron scandals. I am not downplaying the problems that were in play there, but I feel this issue is further-reaching and could impact a greater number of investors in the long run. Some in the industry have stated market timing was an open practice; furthermore, some funds have even stated they participated in market timing on a limited level witb clients to allow controversial trading as a way to control the improper practice. This bothers me. Favoritism to big investors and violating ethical and legal codes rob the average investor who depends on their investments for costs such as education and retirement. There is a lot at stake, and the reforms addressed in this legislation will help prevent future investor betrayals. This bill addresses the recent market scandals and makes additional necessary reforms to the mutual fund industry, and I would like to highlight just a few.

First, to address recent scandals in the mutual fund industry, the manager's amendment will explicitly ban short-term trading by fund insiders and permit funds to charge more than the current maximum 2 percent redemption fee to discourage all market timers. Second, to prevent market timing trades, made possible by stale pricing, the manager's amendment directs the SEC to clarify rules regarding mutual funds' obligation to apply fair value pricing. Third, the manager' amendment also addresses late trading. Late trading is not only an improper advantage for large fund investors, it is illegal. Late trading has allowed some big fund investors to take advantage of the current day's price on orders to buy or sell shares placed after the close of the New York markets, when proper procedure would be to carry out the orders at the following day's price. Some have likened this practice to "betting today on yesterday's horse race." The manager's amendment directs the SEC to issue rules to prevent late trading without disadvantaging those investors who use financial intermediaries such as broker-dealers and 401(k) and pension plan administrators to purchase fund shares.

Fourth, this legislation rightly increases the requirement of independent board members from one-half to two-thirds of total board membership and strengthens independence qualifications. A greater number of independent directors will increase protections of investors' interests against those of directors whose interests are tied to the success of their funds' advisers. Fifth, the bill requires disclosure of brokers' conflicts of interest where they are paid incentives to promote particular funds, so that investors can weigh sales incentives.

Finally, I am concerned about fees that mutual fund investors face. I understand that mutual fund companies feel there is a need for certain fees, but these fees must be transparent to investors. In many cases investors choose "no-load" funds for their no-fee structure, but hidden fees such as 12-(b)-1 fees are often charged. I am pleased this legislation would prohibit a fund from advertising as a "no-load" fund if in fact the 12-(b)-1 fee is charged. Furthermore, in an effort to enhance transparency of fees, the bill requires that mutual funds disclose fees, in dollar amounts, on a hypothetical $1,000 investment, and further requires that this information not be buried in a prospectus.

Mr. Speaker, the House Financial Services Committee and Congress acted in the wake of the Enron and WorldCom scandals to protect investors. Today we are again being called on to protect the average American investor, and I urge my colleagues on both sides of the aisle to join me in supporting this important and very necessary legislation.

Mr. KANJORSKI. Mr. Speaker, I yield 2½ minutes to the gentleman from North Carolina (Mr. MILLER).

Mr. MILLER of North Carolina. Mr. Speaker, mutual funds are how America's middle class saves. It is how young couples save for their first home. It is how middle class families save for their children's education, for their children's college, and for retirement. It is how the middle class families save for a rainy day, to provide against life's harsh uncertainties.

It is infuriating that some mutual fund managers have taken advantage of those families. It is even more infuriating that they have such disrespect for the middle class families who trusted them with their life savings. They seem to see America's middle class as rubes or hicks, not as the very people who make this Nation work.

This legislation is a beginning, and I am pleased that no one today has described it as the end. But I certainly hope that when the Senate considers the regulation of the mutual fund industry next year they will pause to consider other reform proposals which others today have spoken of. The gentleman from Pennsylvania (Mr. KANJORSKI) has already spoken of such proposals, and I know that the gentleman from Illinois (Mr. EMANUEL) will in just a moment.

I certainly hope that we will urge that the Senate consider measures to assure that the welfare of the funds' investors, not the funds' managers, is the guiding principle to how the funds are governed. The funds need truly independent directors who know the industry, will ask tough questions, and will exercise independent judgment, not just go along with the funds' managers.

We should consider requiring that there be a single lead independent director, focused responsibility with the authority to hire outside experts, to call meetings of the board, and to place items on the board's agenda.

Finally, we should require a clear fiduciary duty by the managers of the fund to the investors in the fund.

Mr. Speaker, there may be reasons to address the same concerns in different ways or, perhaps, even to leave well enough alone. But as long as some funds are not governed for the benefit of the investors, we will likely be dealing with one new fund management practice after another, each designed to separate the middle class from more and more of its life savings.

I will vote for this bill today; but I hope the Senate, with the luxury of time next year, will look closely to make sure that we have done enough to protect America's middle class. They work hard for the money they have earned, and they deserve better.

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Mr. OXLEY. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Mrs. KELLY), the distinguished chairman of the Subcommittee on Oversight and Investigations.

Mrs. KELLY. Mr. Speaker, I rise in support of this legislation.

Mr. Speaker, I would like to commend the gentleman from Ohio (Mr. OXLEY) and the gentleman from Louisiana (Mr. BAKER), the gentleman from Pennsylvania (Mr. KANJORSKI) and the gentleman from Massachusetts (Mr. FRANK) for their leadership in improving and moving this legislation through. It is going to send a clear message to all Americans that we are trying to make sure that when they invest their money, there will be fairness and there will be oversight in the marketplace.

The interest of the investors of this Nation need to come first. As the gentleman from Delaware (Mr. CASTLE) said, this is a good step in restoring confidence to those people with whom we trust our investment money. And when we entrust that money to them, we want to know that it will be regulated, that the transactions will be transparent so we can see what they are doing.

This problem with the mutual funds should have been addressed many years ago. Again, as my colleague, the gentleman from Delaware (Mr. CASTLE) pointed out, this is something the SEC should have acted on a long time ago, and especially during the 1990s when we had a strong market and such a bright light of investigation could have gone in with possibly less impact, because we certainly do not want to do anything that is going to affect this Nation's growth that we are experiencing with our economy now.

I think it is imperative that Congress take action to strengthen investor confidence. It will allow our economy to continue to experience a full growth. And we have to be sure that our investors here in the United States, now over half of all American families are invested in mutual funds, we have to make sure that we have, they have the backing of Congress, that they have the oversight from Congress, but more importantly, that that backing and oversight comes from the SEC.

They need to invest their hard-earned money with full faith and hope for prosperous futures. The Mutual Fund Integrity Fee and Transparency Act is an important step in the process. The legislation improves accountability and integrity by requiring a greater independence and transparency, as I mentioned before, and eliminating conflict of interests which we certainly are finding out were.

Nearly 100 million Americans invest their money in mutual funds. These investments really represent a part of their nest egg. This is what they are using for their tuition for their kids. This is what they are going to use for their first home. It is what they are thinking about when they are thinking about what they are going to do for their retirement. These investments are the essential part of the lives of American families. Our work today is not going to be done. We are going to be all finished because this is a first step in this. We are going to continue to investigate these issues, and I look forward to continuing to work on these issues to strengthen investor confidence to ensure the highest level of integrity, transparency and accountability in this market.

I want people to have faith when they put their dollars into the U.S. markets, that the market is acting in their behalf and not on the behalf of someone who is going to make a private profit from what their money is. I urge my colleagues to support this legislation.

Mr. KANJORSKI. Mr. Speaker, I yield 2 minutes to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY. Mr. Speaker, as a cosponsor of this legislation I am pleased to rise in support of it, but I regret that it did not include the SEC recommendations that the Democrats supported.

Since the demise of Enron 2 years ago, the Committee on Financial Services has undertaken a comprehensive reform agenda. We have rewritten the rules applying to the accounting industry and completely changed the relationship between boards of directors and corporate managers.

The legislation we are considering today represents the beginning of similar reforms for the mutual funds industry. This legislation attacks conflicts of interest and increases the independence and accountability of oversight boards. It increases the number of independent board members from 40 percent to two-thirds. With increased independence, also comes increased responsibility as the legislation places fiduciary duties on boards of directors, requiring them to review revenue sharing and soft dollar arrangements.

It will also require disclosure of fund managers' compensation structure and bar the same individual from managing a mutual fund and hedge fund. On the consumer side, the bill requires the disclosure of total fees an investor will pay per $1,000 they invest.

Finally, I am pleased that this legislation provides the SEC more authority to police the funds industry. I can only hope that they use it. I would also like to commend the leadership of State regulators and State attorneys general, specifically Mr. Elliot Spitzer from New York State. The following is an article he recently authored and published on this subject:

[From the New York Times, Nov. 17, 2003]

REGULATION BEGINS AT HOME

(By Eliot Spitzer)

ALBANY—With two decisions in the last two weeks, the Bush administration has sent its clearest message yet that it values corporate interests over the interests of the average Americans. In the Securities and Exchange Commission's settlement with Putnam Investments, the public comes away short-changed. In the Environmental Protection Agency's decision to forgo enforcement of the Clean Air Act, the public comes away completely empty-handed.

The 95 million Americans who invest in mutual funds paid more than $70 billion in fees in 2002. These fees went to an industry that did not take seriously its responsibility to safeguard investors' money. Investors are now rightly concerned about whether those mutual funds that breached their fiduciary duties will be required to refund the exorbitant fees they took, and what mechanism will be put in place to ensure that the fees charged in the future are fair.

Unfortunately, the S.E.C.'s deal with Putnam does not provide a satisfactory answer to these questions. Instead, it raises new questions.

The commission's first failure is one of oversight. The mutual fund investigation began when an informant approached our office with evidence of illegal trading practices. Tipsters also approached the commission, which is supposed to be the nation's primary securities markets regulator, but the commission simply did not act on the information.

The commission's second failure was acting in haste to settle with Putnam even though the investigation is barely 10 weeks old and is yielding new and important information each day. Whether the commission recognizes it or not, the first settlement in a complex investigation always sets the tone for what follows. In this case, the bar is set too low.

The Putnam agreement does contain a useful provision mandating that the funds' board of directors be more independent of the management companies that run its day-to-day operations. It also talks of fines and restitution, but leaves for another day the determination of the amount Putnam should pay.

Most important, the agreement does not address the manner in which the fees charged to investors are calculated. Nor does it require the fund to inform investors exactly how much they are being charged—or even provide a structure that will create market pressure to reduce those fees. Finally, there is no discussion of civil or criminal sanctions for the managers who acted improperly by engaging in or permitting market timing and late trading.

S.E.C. officials are now saying that they may be interested in additional reforms. But by settling so quickly, they have lost leverage in obtaining further measures to protect investors. After reviewing this agreement, I can say with certainty that any resolution with my office will require concessions from the industry that go far beyond what the commission obtained from Putnam.

It is not surprising that the commission would sanction a deal that ignores consumers and is unsatisfactory to state regulators. Just look at the Bush administration's decision to abandon pending enforcement actions and investigations of Clear Air Act violations.

Even supporters of the Bush administration's environmental policy were stunned when the E.P.A. announced that it was closing pending investigations into more than 100 power plants and factories for violating the Clean Air Act—and dropping 13 cases in which it had already made a determination that the law had been violated.

Regulators may disagree about what our environmental laws should look like. But we should all be able to agree that companies that violated then-existing pollution laws should be punished.

Those environmental laws were enacted to protect a public that was concerned about its health and safety. By letting companies that violated the Clean Air Act off the hook, the Environmental Protection Agency has effectively issued an industry-wide pardon. This will only embolden polluters to continue practices that harm the environment.

My office had worked with the agency to investigate polluters, and will continue to do so when possible. But today a bipartisan coalition of 14 state attorneys general will sue the agency to halt the implementation of weaker standards. In addition, we will continue to press the lawsuits that have been filed. We have also requested the E.P.A. records for the cases that have been dropped, and will file lawsuits if they are warranted by the facts.

Similarly, my office—while committed to working with the Security and Exchange Commission in our investigation of the mutual fund industry—will not be party to settlements that fail to protect the interests of investors and let the industry off with little more than a slap on the wrist.

The public expects and deserves the protection that effective government oversight provides. Until the Bush administration shows it is willing to do the job, however, it appears the public will have to rely on state regulators and lawmakers to protect its interests.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from Florida (Ms. HARRIS), a valuable member of the committee.

Ms. HARRIS. Mr. Speaker, I rise to express my vigorous support for H.R. 2420, the Mutual Fund Integrity and Fee Transparency Act. Mutual funds have become a vital tool that millions of Americans rely on. In fact, approximately some 95 million investors representing nearly half of all U.S. households own a stake in some type of mutual fund. Reflecting the dramatic shift in recent decades toward this investment alternative, the mutual funds industry hold an estimated $7 trillion dollars in assets.

Just as the stock market boom of the 1990s bolstered the average American's belief in the strength of our Nation's capital markets, the corporate malfeasance of recent years rocked that market.

Through the market's ups and down during this period, many investors maintained their mutual fund holdings because they felt these investments represented a safe harbor for their assets. In essence, this perception constitutes precisely why the latest problems to shake the industry have created such damage. Mutual funds reputation as the harbinger of safe and easy investing has vanished. As our Nation confronts an array of daunting challenges, restoring and safeguarding the economic security of every American must remain one of our top priorities.

The legislation that we consider today responds to the illegal and unethical practices that have affected the mutual fund industry. Moreover, it comprises an integral part of the gentleman from Ohio's (Mr. OXLEY) strategy to enhance investor protection which continues to serve as the hallmark of his leadership in the Committee on Financial Services.

I applaud the vision and foresight of the gentleman from Ohio (Mr. OXLEY) and the gentleman from Louisiana (Mr. BAKER) that they have demonstrated in forcefully addressing the concerns regarding the mutual fund disclosure and investor protection well in advance of State and Federal investigators.

Throughout the hearing and markup process, we have heard ample evidence regarding how the vague disclosures permitted under current law have allowed greed to tarnish the mutual fund industry.

The Mutual Fund Integrity and Fee Transparency Act provide Americans with a clear understanding of the management, the fees and the ethics of the organizations with whom they entrust that are hard earned dollars, restoring a significant amount of confidence in the reliability and security of our capital markets.

Mr. KANJORSKI. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. HINOJOSA).

Mr. HINOJOSA. Mr. Speaker, I thank the gentleman from Pennsylvania (Mr. KANJORSKI) for yielding me time.

Mr. Speaker, I commend the gentleman from Ohio (Mr. OXLEY) and the ranking member, the gentleman from Massachusetts (Mr. FRANK) for their leadership in moving this issue forward. I also acknowledge and credit the good work of the gentleman from Louisiana (Mr. BAKER) and the gentleman from Pennsylvania (Mr. KANJORSKI).

I rise in support of H.R. 2420, the Mutual Fund Integrity and Fee Transparency Act of 2003. I agreed to cosponsor this legislation which emphasizes integrity and values in the securities industry. I will vote for this bill today. However, I want the House and Senate to continue to modify its content because the mutual fund issues at hand continue to evolve.

Congress needs to ensure that the final bill sent to President Bush for his signature reflects appropriate solutions to real problems so that mutual funds shareholders will benefit from it. At present we are caught in the middle of regulatory one-upsmanship which is creating an interesting situation for Congress. Although some people in the mutual funds industry certainly make themselves easy targets, press accounts of the problem have helped inflame the situation, as have the very public battles between two regulators responsible for oversight of the mutual funds industry.

Mutual funds such as Putnam have violated certain laws and regulations. However, in just 6 weeks that same fund is in the process of cleaning house, has settled with the Securities and Exchange Commission, put strict compliance measures in place as part of that settlement, and is now run by a man some consider to be one of the most ethical men in the financial services industry.

At the end of the day, the overall mutual funds industry restitution may be $50 to $100 per affected share holder. We need to remember that the majority of mutual funds shareholders are not affected by the recent developments in this market and the guilty parties are rightfully being fined and punished under existing laws, not laws that have yet to be passed. Market forces are at work.

Mr. Speaker, the public perception of good funds versus bad funds will shape success for the mutual funds companies. Although I have cosponsored this legislation, and will vote for it today, I want to stress how important it is that we proceed very carefully with this legislation and any legislation that changes the regulation of the mutual funds industry.

Mr. OXLEY. Mr. Speaker, does the gentleman from Pennsylvania (Mr. KANJORSKI) have any further speakers?

Mr. KANJORSKI. Mr. Speaker, I have one more speaker.

Mr. OXLEY. Mr. Speaker, I reserve the balance of my time.

Mr. KANJORSKI. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Mr. Speaker, I would like to enter into a colloquy with the chairman of the committee.

Section 202 of the manager's amendment requires the commission to issue rules that will protect mutual fund investors against conflicts of the interest created by the situation where the same individual serves as a portfolio manager of both a mutual fund and a hedge fund. This provision generally bans joint management of the two types of funds by the same individual. I note that the joint management of such funds by the same individual could create conflict whereby mutual fund investors effectively subsidize the hedge fund managed by the same individual.

Is it your understanding that the rules that the commission will be promulgating pursuant to the section will address those conflicts of interest?

Mr. OXLEY. Mr. Speaker, will the gentleman yield?

Mr. EMANUEL. I yield to the gentleman from Ohio.

Mr. OXLEY. Mr. Speaker, the answer is yes. The rules will ban joint management by the same individual but not the same firm, both the registered investment company and other unregistered investment vehicles. Those rules will address the conflicts of interest that are presented by such an arrangement, including the conflicts raised by the gentleman.

Mr. EMANUEL. Reclaiming my time, I support H.R. 2420 for the simple reason that I think it is essential to replace and retain, but also reconstruct the Good Housekeeping seal that the mutual fund industry has had for so long. They have lost it in the last 6 months.

This legislation would restore that seal, that sense that people's money, the middle-class investors' money is safe with the mutual fund. How it would do that is it would reverse the culture and the practice that has been developed in the mutual fund industry where the manager's strategy, the manager's mentality is, heads I win; tails the investors lose.

That is what has been going on. This legislation is not only a good step in the right direction, it is a strong step in the right direction.

As we just were talking a second ago about the relationship between mutual funds and hedge funds, I know as the Senate takes this up, we have more work to do in this area. In my view for too long we have a culture that has been developed in the industry where it is self-serving to the management. It is essential now as the relationship between mutual funds and hedge funds exist in the same family, to go beyond the individual area, but to ensure that the mutual fund investor does not subsidize the well-to-do investors in the hedge fund.

We have made sure that if we are going to allow that to exist, that real walls exist between the mutual fund industry and the hedge funds inside those families; and that those walls that boast sharing of research, staffing, IPO's, that, in fact, there is a wall that exists so we get back that culture, get back that mentality, look for other conflicts of interest and deal with them in this legislation.

I am proud like we did in the Fair Credit Reporting Act which we will soon vote on, that again here in this step we have bipartisanship, taking the right type of steps to ensure that the democratic capitalism and culture of the most fluid markets that exist in the world and the most open markets continue to be encouraged; that mom-and-pop investors that save for college and save for retirement, that their funds are safe.

The SPEAKER pro tempore (Mr. SIMMONS). The gentleman from Pennsylvania (Mr. KANJORSKI) has 30 seconds.

Mr. KANJORSKI. Mr. Speaker, I yield myself such time as I may consume.

I have no further requests for time. Mr. Speaker, in closing, I would like to congratulate the chairman, the gentleman from Ohio (Mr. OXLEY) for a job well done and the chairman of my subcommittee, the gentleman from Louisiana (Mr. BAKER) for a job well done.

We have the unusual experience in the House of Representatives in the Financial Services industry of having a collegial relationship on both sides of the aisle, and this piece of legislation reflects that. We certainly look for a continuing of that type of collegial relationship, and, again, my compliments to the chairman and to the chairman of the subcommittee.

Mr. Speaker, I yield back the balance of my time.

□ 1245

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

In closing, let me also commend my friend from Pennsylvania, as well as the gentleman from Massachusetts (Mr. FRANK), the ranking member, for their leadership and their assistance on this issue.

As the gentleman knows, the gentleman from Louisiana (Mr. BAKER) has been very active on this issue for a number of months; and as I indicated to him, his efforts going forward were most appreciated, and we come to this day where we are going to pass this bill by a large margin, and that is due to the work of all three gentlemen that I mentioned. It is good to be in a situation where the committee works so well together on a number of issues. As the gentleman from Illinois indicated, when we bring up the conference report on the bill that all of us worked so hard on, we are going to be a very effective responder to some of those problems that developed in the area of consumer demand, as well as identity theft which will come forward, we hope, in the next few hours.

Mrs. KELLY. Mr. Speaker, during debate on the bill today, the gentleman from Pennsylvania placed in the RECORD an editorial authored by the Attorney General of New York. I want to also include for the RECORD a response published on November 18, 2003, in the Wall Street Journal by the chairman of the Securities Exchange Commission.

[From the Wall Street Journal, Nov. 18, 2003]

INVESTORS FIRST

(By William H. Donaldson)

WASHINGTON.—Among its many roles, the Securities and Exchange Commission has two critical missions. The first is to protect investors, and the second is to punish those who violate our securities laws. Last week's partial settlement of the SEC's fraud case against the Putnam mutual-fund complex does both. It offers immediate and significant protections for Putnam's current mutual-fund investors, serving as an important first step. Moreover, by its terms, it enhances our ability to obtain meaningful financial sanctions against alleged wrongdoing at Putnam, and leaves the door open for further inquiry and regulatory action.

Despite its merits, the settlement has provoked considerable discussion, and some criticism. Unfortunately, the criticism is misguided and misinformed, and it obscures the settlement's fundamental significance.

By acting quickly, the SEC required Putnam to agree to terms that produce immediate and lasting benefits for investors currently holding Putnam funds. First, we put in place a process for Putnam to make full restitution for investor losses associated with Putnam's misconduct. Second, we required Putnam to admit its violations for purposes of seeking a penalty and other monetary relief. Third, we forced immediate, tangible reforms at Putnam to protect investors from this day forward. These reforms are already being put into place, and they are working to protect Putnam investors from the sort of misconduct we found in this case.

Among the important reforms Putnam will implement is a requirement that Putnam employees who invest in Putnam funds hold those investments for at least 90 days, and in some cases for as long as one year—putting an end to the type of short-term trading we found at Putnam. On the corporate governance front, Putnam fund boards of trustees will have independent chairmen, at least 75% of the board members will be independent, and all board actions will be approved by a majority of the independent directors.

In addition, the fund boards of trustees will have their own independent staff member who will report to and assist the fund boards in monitoring Putnam's compliance with the federal securities laws, its fiduciary duties to shareholders, and its Code of Ethics. Putnam has also committed to submit to an independent review of its policies and procedures designed to prevent and detect problems in these critical areas—now, and every other year.

This settlement is not the end of the Commission's investigation of Putnam. We are also continuing to examine the firm's actions and to pursue additional remedies that may be appropriate, including penalties and other monetary relief. If we turn up more evidence of illegal trading, or any other prohibited activity, we will not hesitate to bring additional enforcement actions against Putnam or any of its employees. Indeed, our action in federal court charging two Putnam portfolio managers with securities fraud is pending.

There are two specific criticisms of the settlement that merit a response.

First, some have charged that it was a mistake not to force the new management at Putnam to agree that the old management had committed illegal acts. In fact, we took the unusual step of requiring Putnam to admit to liability for the purpose of determining the amount of any penalty to be imposed. We made a decision, however, that it would be better to move quickly to obtain real and practical protections for Putnam's investors, right now, rather than to pursue a blanket legal admission from Putnam. The SEC is hardly out of the mainstream in making such a decision. All other federal agencies, and many state agencies (including that of the New York attorney general), willingly and regularly forgo blanket admissions in order to achieve meaningful and timely resolutions of civil proceedings.

Second, some have criticized the Putnam settlement because it does not address how fees are charged and disclosed in the mutual fund industry. While this issue is serious, the claim is spurious. The Putnam case is about excessive short-term trading by at least six Putnam management professionals and the failure of Putnam to detect and deter that trading. The amount and disclosure of fees is not, and never has been, a part of the Putnam case, and thus it would be wholly improper to try to piggyback the fee-disclosure issue on an unrelated matter.

If our continuing investigation of Putnam uncovers evidence of wrongdoing in the fee-disclosure area, we will not hesitate to act, and the Commission is already moving forward with rulemaking that will address this issue, and others, on an industry-wide basis. Those lacking rulemaking authority seem to want to shoehorn the consideration of the fee-disclosure issues into the settlement of lawsuits about other subjects. But we should not use the threat of civil or criminal prosecution to extract concessions that have nothing to do with the alleged violations of the law.

Criticism of the Commission for moving to quickly misses the significance of the Commission's action. While continuing our broader investigation of Putnam, we have reached a fair and far-reaching settlement that establishes substantial governance reforms and compliance controls that are already benefiting Putnam's investors. It is a settlement where the Commission put the interests of investors first.

As the Commission continues to initiate critical and immediate reforms of the mutual-fund industry, and while we investigate a multitude of other cases involving mutual fund abuses, we will continue to seek reforms that provide immediate relief to harmed investors.

Mr. MOORE. Mr. Speaker, as a member of the Financial Services Committee, I rise in support of H.R. 2420, the Mutual Fund Integrity and Fee Transparency Act of 2003, which I joined in cosponsoring after our committee approved it earlier this year.

H.R. 2420 includes numerous provisions to help stop trading abuses involving mutual funds such as those that have been recently uncovered by State and Federal regulators. For example, it requires better disclosures of mutual fund fees and expenses to help investors compare the relative costs of funds and make more informed investment decisions, and it improves the corporate governance of mutual fund companies.

Among other things, the bill requires the Securities and Exchange Commission (SEC) to issue rules that would prevent late trades; prohibits mutual fund employees from engaging in any short-term trading of their personal shares, and allows funds to charge higher redemption fees to discourage short-term trades by others; prohibits any individual from managing both a mutual fund and a hedge fund at the same time; requires mutual funds to provide operating cost comparisons using a standard $1,000 investment as an example; requires funds to disclose the extent to which their portfolio "turns over" each year; requires disclosures of financial incentives provided to brokers to recommend certain funds, of how fund managers are compensated, and of the extent to which fund managers hold fund shares in their personal portfolio; requires that at least two-thirds of the directors of a mutual fund be independent; and enhances the fiduciary duty of a fund's board of directors to act on behalf of investors.

I do, however, have concerns with some of the provisions that were included in the bill through adoption of today's manager's amendment. I believe that this legislation has suffered as a result of the addition of this amendment without any bipartisan consideration of its provisions. My concerns involve the following issues:

The manager's amendment would require fund companies and their principals to establish a code of ethics and to disclose such code of ethics in periodic reports to shareholders. In addition to developing and making public a fund's code of ethics, the fund company is required by this section to "disclose such code of ethics and any waivers and material violations thereof on a readily accessible electronic public information facility of such company."

Establishing and following a code of ethics to ensure that fund companies operate in the best interests of investors is a critical step towards meaningful reform of the mutual fund industry; however, publicly disclosing waivers and material violations of codes of ethics places fund companies at unprecedented levels of liability risk, particularly if done on a "readily accessible electronic public information facility"—e.g., a Web site.

The manager's amendment requires the independent directors of a fund's board to certify, at the risk of personal liability, that a host of procedures exist for the day-to-day operations of the fund company, including: Verification that the current net asset value of any security issued by the fund company complies with the applicable securities laws; oversight of the flow of funds into and out of the securities company; ensuring investors receive applicable discounts on advertised front-end sales loads; share classes are offered in the interests of investors and "could reasonably be an appropriate investment option for an investor"; and review and approval of the portfolio manager's compensation.

This section raises serious questions about the appropriate role of the board of directors by changing the face of mutual fund company boards to act as managers of the day-to-day operations of the fund, over which they normally now have little control, with regard to actual compliance. No other board structure, for any other sort of public company, has these sorts of requirements. Given the litany of new requirements imposed on independent directors, grave concerns are already being raised about a fund's ability to find individuals willing to serve on a fund board. If fund companies are able to find individuals willing to subject themselves to new liability, the company would likely have to compensate that individual for taking on this risk—a cost that will ultimately be borne by shareholders.

For example, section 201(a)(4)(A) requires the independent directors of the mutual fund (a separate company) to certify that the mutual fund's investment manager (another company) has procedures in place to verify the fund's net asset value and that there is compliance with these procedures. Net asset values are determined daily. Given the independent fund director's relationship to those who do daily pricing, independent directors would be hard pressed to comfortably provide the certifications required. I have additional concern about how independent directors of the mutual fund could certify that investors receive front-end load sales discounts when neither the fund nor their investment manager knows the identity of the investors or how to communicate with them. This is often the case when funds are sold by third party intermediaries. I am also concerned about language that requires the independent directors to certify that mutual fund share classes are designed in the interests of investors and are reasonably appropriate investment options. Directors of the fund should not be asked to assume the role of financial adviser to an investor.

Another significant concern relates to independent fund director approval and certification of portfolio manager compensation. This chips away at the fundamental structure underlying the relationship between the mutual fund and its investment management company. As indicated, they are separate companies. The independent fund directors negotiate and approve the investment management contract on behalf of mutual fund investors. In this way, they control expenses for investors. They hire out expert investment management and can fire them if they don't perform. It is inappropriate for them to approve and certify approval of compensation at another company. When someone hires a company to do something, you don't usually get to approve their employees' compensation—only what you pay the company.

Finally, the manager's amendment requires the mutual fund to appoint a chief compliance officer and the independent directors of the fund to approve his or her compensation. The amendment also requires the compliance officer to provide reports directly and privately to the independent fund directors. I have no problem with the fund appointing a compliance officer who "functionally reports" to it, but "administratively reports" to the investment manager. This can be worked out. But, for the same reasons cited above, I think it is improper for the independent directors of the fund to approve the compensation of someone who works for its contractor. In addition, the language of this provision could be read to require each fund to appoint its own compliance officer, when a mutual fund often manages several dozen funds. The result could be a costly, unworkable situation.

Overall, H.R. 2420 is a bill is a timely and needed piece of legislation; as Consumers Union stated in a letter to Congress earlier today, it "is an important first step in the effort toward reforming this industry and protecting the interests of millions of investors." I support its passage in this body today, but hope that the Senate and ultimately, a conference committee, can address the remaining issues I have outlined here.

Mr. UDALL of Colorado. Mr. Speaker, I support this bill as a necessary first step toward greater protection for the millions of Americans who have invested in mutual funds.

Anyone who reads the daily newspapers is aware of the need for greater vigilance by the Securities and Exchange Commission to prevent continued practices by fund managers and others that enrich favored individuals and groups at the expense of the majority of mutual-fund shareholders.

I do understand that there are concerns about some parts of the bill, including a provision that would authorize an increase in the fees charged for redemption of fund shares, presumably as a way to reduce the likelihood of some transactions that would have adverse effects on other shareholders.

I have heard from people in Colorado who think that the costs to shareholders of such fee increases would outweigh its benefits, and I think they make some good points in support of that view.

However, my understanding is that while the bill would authorize such fee increases, it does not mandate them. And, on balance, I think the potentially adverse effects of this provision are outweighed by the desirable changes to current law that would be made by other parts of the bill.

So, I will vote for the bill as a necessary first step to respond to a real and urgent problem. My hope is that it will be further refined as the legislative process proceeds in the other body and possibly in conference.

Mr. CASTLE. Mr. Speaker, I rise today in support of H.R. 2420, the "Mutual Funds Integrity and Fee Transparency Act of 2003." I commend Chairman OXLEY and Subcommittee Chairman BAKER for continuing your work in protecting American investors and I am proud to play a role in addressing the problems in the mutual fund industry. Hearings in the Financial Services Committee have enabled us to address a number of ongoing reforms that are necessary for the mutual fund industry to increase transparency for investors. From these hearings we have also learned of additional problems within the mutual fund industry that have only recently come to light such as improper trading practices. We have improved this legislation by incorporating all of the issues and I am proud of the legislation we passed out of committee with strong bipartisan support.

The average American family chooses to invest in mutual funds. I want to make clear what is at stake. Two decades ago, only 6 percent of American households had mutual fund shares valued at $134 billion. Today, half of all American families have $7 trillion at stake. Mutual funds represent about 10 percent of the total financial assets of the U.S. population. The number of funds have grown from less than 500 mutual funds in 1980 to approximately 8,000 mutual funds today.

It concerns me that the scandals we have learned of in recent weeks may only be the tip of the iceberg. This should be a wake up call to both the Securities and Exchange Commission (SEC) and the industry that change is needed. Mutual funds are a $7 trillion industry and with more than 50 percent of the American public invested in mutual funds there is the potential for investors to be hurt more so by these recent revelations than even the World Com and Enron scandals. I am not downplaying the problems that were in play there but I feel this issue is further reaching and could impact a greater number of investors in the long run. Some in the industry have stated market timing was an open practice, furthermore, some funds have even stated they participated in market timing on a limited level with clients to allow controversial trading as a way to control the improper practice. This bothers me. Favoritism to big investors and violating ethical and legal codes rob the average investor who depends on their investments for costs such as education and retirement. There is a lot at stake and the reforms addressed in this legislation will help prevent future investor betrayals. This bill addresses the recent market scandals and makes additional necessary reforms to the mutual fund industry, and I would like to highlight just a few.

First, to address recent scandals in the mutual fund industry, the manager's amendment will explicitly ban sort term trading by fund insiders and permit funds to charge more than the current maximum 2 percent redemption fee to discourage all market timers. Second, to prevent market timing trades, made possible by stale pricing, the manager's amendment directs the SEC to clarify rules regarding mutual funds' obligation to apply fair value pricing. Third, the manager's amendment also addresses late trading. Late trading is not only an improper advantage for large fund investors, it is illegal. Late trading has allowed some big fund investors to take advantage of the current day's price on orders to buy or sell shares placed after the close of the New York markets, when proper procedure would be to carry out the orders at the following day's price. Some have likened this practice to "betting today on yesterday's horse race." The manager's amendment directs the SEC to issue rules to prevent late trading without disadvantaging those investors who use financial intermediaries such as broker-dealers and 401(k) and pension plan administrators to purchase fund shares.

Fourth, this legislation rightly increases the requirement of independent board members from one-half to two-thirds of total board membership and strengthens independence qualifications. A greater number of independent directors will increase protections of investors' interest against those of directors whose interests are tied to the success of their funds' advisers. Fifth, the bill requires disclosure of brokers' conflicts of interest where they are paid incentives to promote particular funds so that investors can weigh sales incentives.

Finally, I am concerned about fees that mutual fund investors face. I understand that mutual fund companies feel there is a need for certain fees, but these fees must be transparent to investors. In many cases investors choose "no-load" funds for their no fee structure, but hidden fees such as 12–(b)–1 fees are often charged. I am pleased this legislation would prohibit a fund from advertising as a "no-load" fund if in fact the 12–(b)–1 fee is charged. Furthermore, in an effort to enhance transparency of fees, the bill requires that mutual funds disclose fees, in dollar amounts, on a hypothetical $1,000 investment, and further requires that this information not be buried in a prospectus.

Mr. Speaker, the House Financial Services Committee and Congress acted in the wake of the Enron and World Com scandals to protect investors. Today we are again being called on to protect the average American investor and I urge my colleagues on both sides of the aisle to join me in supporting this important and very necessary legislation.

Mr. PORTMAN. Mr. Speaker, I rise today in strong support of H.R. 2420, the Mutual Funds Integrity and Fee Transparency Act, and congratulate Chairman OXLEY and Chairman BAKER for bringing this needed legislation to the House Floor so expeditiously. These critical reforms will help to ensure that America's 95 million mutual fund investors, representing a combined $7 trillion in assets, are reassured and protected. I have a special interest in this issue because I have worked over the past eight years to strengthen 401(k) plans, many of which are significantly invested in mutual funds.

I am deeply concerned about the allegations of illegal mutual fund trading practices, including improper market timing and late trading. There have also been reports that certain investors, including large institutional investors, have been given preferential treatment, to the detriment and disadvantage of individual investors. Each day has brought news of additional allegations, indicating that the abuse is widespread in the mutual fund industry.

Every investor is entitled to fair treatment. Every investor should expect, and is indeed entitled, to expect that the mutual fund industry will place the interest of investors first. In fact, the Investment Company Act requires that mutual funds be organized, operated and managed in the interest of the funds' shareholders, not those of the fund directors, executives or certain investors.

H.R. 2420 provides key reforms. The bill will strengthen funds' compliance with rules, by requiring each fund a code of ethics and a chief compliance officer; ban short-term trading by insiders; allow higher fees to discourage short-term trading; and eliminate conflicts of interest in portfolio management. Investors will be provided with more information about fees, with additional disclosure required about estimated fund operating expenses, portfolio turnover rates and whether brokers receive extra financial incentives to sell particular fund shares. And mutual fund corporate governance will be strengthened by requiring two thirds of all board directors be independent.

Mr. Speaker, I strongly support these important reforms. I urge my colleagues to vote for this legislation to help improve mutual fund disclosure; eliminate conflicts of interest, and strengthen corporate governance.

Ms. MCCARTHY of Missouri. Mr. Speaker, I rise today to urge my colleagues to support H.R. 2420 and remove any question that U.S. mutual funds are a sound investment. "The Mutual Funds Integrity and Fee Transparency Act of 2003" is the product of hard work and bipartisan cooperation to address concerns by investors in the wake of revelations this year of improprieties by irresponsible individuals in the mutual fund industry.

Today almost 100 million Americans invest in stock and bond mutual funds through direct holdings, 401(k) accounts, and through other mechanisms. I am one of these investors. Mutual funds are a stellar success story, combining diversification of risk with the simplicity of a single vehicle. Estimates are that mutual fund holdings today exceed $7 trillion dollars.

We must provide investors with the assurances they need to continue to fuel the mutual fund engine. H.R. 2420 will protect investors by reforming the mutual fund industry in several significant ways. Among the important provisions of this measure are rules to require greater transparency to investors as to the fees they are charged, and a new directive to the Securities and Exchange Commission to conduct a study of transaction costs.

This measure also correctly addresses the issue of the objectivity of the mutual fund's board of directors by requiring that two-thirds of the directors be independent, a significant increase from the current 40 percent requirement.

I support H.R. 2420 and urge my colleagues to do the same. As the bill advances through the legislative process it will undergo further changes, and I would recommend minor corrections that will improve the functionality and efficacy of this measure.

I encourage my colleagues to make certain that we enact legislation that produces the transparency that investors require yet does not become overly bureaucratic or burdensome to the mutual fund industry. For example, the requirement in H.R. 2420 for the appointment of a Chief Compliance Officer should take into account that investment management companies generally oversee several funds, and that each individual fund should not require a separate Chief Compliance Officer. Such a step would only add to the management costs of the funds which in turn will result in higher costs to the investor.

We must also balance the much needed protection given to whistleblowers in H.R. 2420 with the legitimate needs of businesses to weed out poor performers. With hundreds of funds to choose among, there is no lack of competition in the mutual fund industry, and when the success of a given fund is measured in fractions the emphasis must be on getting results for the investor. Let us be certain to protect whistleblowers while not creating a safe harbor for underachievers.

Mr. Speaker, H.R. 2420 is worthy of our support, and again I urge my colleagues to vote in the affirmative today, and to work to further improve the measure as it moves toward enactment.

Mr. SHAYS. Mr. Speaker, I rise in support of the Mutual Funds Integrity and Fee Transparency Act.

Mutual funds are based on trust. Every day, America's workers hand over their hard-earned money and trust mutual fund companies to invest their savings for them.

That trust has been severely damaged in recent months, and I can only hope this harm is not irreparable because mutual funds have played an important role in democratizing our stock markets.

This isn't Enron. It isn't WorldCom. But it's just as bad because there are 95 million mutual fund investors in America and they're being harmed. Mutual funds are one of the best ways for workers to plan for their retirements. It allows them to diversity their investments and access the capital markets without having to become experts in individual stocks. It allows them to build wealth in a way that was once reserved for the Rockefellers and Kennedys.

These investors are being defrauded by insiders who trade, in the short term, their own fund shares and trade even after the markets close. For each dollar gained through these illegal activities, every other investor in these funds loses, a result that goes against the very nature of mutual funds.

The Financial Services Committee acted quickly and reported out a good bill. The legislation before us today takes important steps in highlighting the growing cost of mutual fund fees and improving the accountability and integrity of mutual fund companies.

In an equally important step, the bill increase the requirement of independent board members from one-half to two-thirds and strengthens independence qualifications. I hope this provision leads to more independent directors who will be better able to protect investors' interest against those of directors whose interests are tied to the success of their funds' advisers.

I urge swift passage of this bill so that the Securities and Exchange Commission will have the tools it needs to right the mutual fund industry. In the meantime, I hope mutual fund companies heed this wake-up call and begin to rebuild the trust they have squandered.

Mr. OSE. Mr. Speaker, I rise today in strong support of H.R. 2420, the Mutual Funds Integrity and Fee Transparency Act of 2003. As a Member of the Financial Services Committee I am proud to be an original cosponsor of legislation that makes significant and much needed reforms to the mutual funds industry by implementing measures to improve transparency on fund fees and practices, bolster oversight abilities, address conflicts of interest and enhance information provided to investors. H.R. 2420 will strengthen the market by improving investor confidence and by giving investors the necessary information to make more informed investment decisions.

In today's climate, it seems one cannot pick up a paper without reading about financial scandals involving improper conduct involving mutual funds. The actions of this body in passing this H.R. 2420 will mitigate the adverse impact these recent scandals may have on the market by reassuring American investors that Congress and relevant regulatory bodies are acting expeditiously to address shortfalls in industry practice and regulation.

I commend Chairman BAKER on his leadership on this bill, with foresight he recognized loopholes in mutual fund regulation and even before the current scandals surfaced worked hard to implement significant reforms to clarify and codify rules on disclosure, improve transparency, and increase oversight capabilities. In the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, where I serve as Vice-Chairman, Chairman BAKER has held a number of hearings to examine this issue in a deliberate and methodical manner, and I thank him for his dedication to this issue.

I would also like to recognize the leadership Chairman OXLEY has demonstrated in bringing this bill to the floor today. His manager's amendment strengthen the existing bill and in the spirit of the H.R. 2420's original intent, ensure that mutual funds are contentious in their fiduciary duty to investors.

Mutual funds have become more accessible to increasing numbers of Americans over the years, and this has served the industry well. Today 95 million individuals, comprising nearly half of all U.S. households, own mutual funds. More Americans have a vested interest in the success of these funds for the health of their savings and pensions, and their increased involvement also is symbolic of the trust they have in the integrity of the system. It is imperative that we do not let the American mutual investors down by failing to resolve these issues.

Mr. Speaker, this bill is an important and necessary step in restoring American investor trust into the mutual fund industry. I applaud the leadership Chairman BAKER and Chairman OXLEY have shown on this bill, and thank them for their service on behalf of American investors. I yield back the remainder of my time.

Mr. OXLEY. Mr. Speaker, I yield back the balance of our time.

The SPEAKER pro tempore (Mr. SIMMONS). The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the bill, H.R. 2420, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. OXLEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

TORTURE VICTIMS RELIEF REAUTHORIZATION ACT OF 2003

Mr. SMITH of New Jersey. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1813) to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign centers and programs for the treatment of victims of torture, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1813

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Torture Victims Relief Reauthorization Act of 2003".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR DOMESTIC TREATMENT CENTERS FOR VICTIMS OF TORTURE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 5(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended to read as follows:

"(1) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated for the Department of Health and Human Services for fiscal years 2004 and 2005, there are authorized to be appropriated to carry out subsection (a) (relating to assistance for domestic centers and programs for the treatment of victims of torture) $20,000,000 for fiscal year 2004 and $25,000,000 for fiscal year 2005.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2003.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR FOREIGN TREATMENT CENTERS FOR VICTIMS OF TORTURE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 4(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended to read as follows:

"(1) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated for fiscal years 2004 and 2005 pursuant to chapter 1 of part I of the Foreign Assistance Act of 1961, there are authorized to be appropriated to the President to carry out section 130 of such Act (relating to assistance for centers in foreign countries and programs for the treatment of victims of torture) $11,000,000 for fiscal year 2004 and $12,000,000 for fiscal year 2005.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2003.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES CONTRIBUTION TO THE UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE.

Of the amounts authorized to be appropriated for fiscal years 2004 and 2005 pursuant to chapter 3 of part I of the Foreign Assistance Act of 1961, there are authorized to be appropriated to the President for a voluntary contribution to the United Nations Voluntary Fund for Victims of Torture $6,000,000 for fiscal year 2004 and $7,000,000 for fiscal year 2005.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey (Mr. SMITH) and the gentleman from California (Mr. LANTOS) each will control 20 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. SMITH).

GENERAL LEAVE

Mr. SMITH of New Jersey. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill that is under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. SMITH of New Jersey. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, torture remains a cruel weapon of choice for antidemocratic, dictatorial regimes around the globe. It is used to silence opposition leaders and to suffocate political dissent.

Today, torture is commonplace and, sadly, systematic. In many countries around the globe, including the People's Republic of China, Cuba, and many countries in Africa, the Middle East, it is used to extract confessions. It is used to humiliate, to punish. It is used to crush people's souls and hearts and their bodies and to break them while they are in captivity. Torturers themselves, it turns out and is no surprise to any of us, are sadistic and cruel beyond imagination.

Mr. Speaker, even torturing a single, carefully targeted individual can have a multiplier effect, sending a message of fear throughout the entire community and even across generations. For example, the paralyzing effect of torture is painfully clear in Turkmenistan where countless people have been tortured, killed and disappeared in the wake of last year's November 25 attack on President Niyazov's motorcade.

We see it throughout China, especially regarding people who are part of the Falun Gong. Hundreds of them have been tortured to death simply because of their expression of their conscience in that religious expression. We see it with the Buddhists and others. We see it with the Catholics in the underground church in China where, again, these individuals are routinely and through incredible harshness tortured.

I point out to my colleagues that even after a dictatorial regime has fallen, as it has in Iraq, the impact of torture can be felt for years. Leaders are broken and lost. There is a profound lack of trust in public institutions, in the police and in courts. Unless we find a way to understand and to heal the legacy of torture people will be unable to work with each other to rebuild their nation. Individuals who are tortured, who carry around both psychologically and in their person that legacy, very often suffer post-traumatic stress disorder, one of the worst expressions or manifestations or legacies of that torture. Unless we are able to heal or provide or facilitate that healing, these people are literally walking time bombs, and we will find it hard both in these countries and the emigre community to build institutions that will not fail.

I think many Members will be surprised to learn that in the United States there are an estimated 500,000 torture survivors, most of whom came to the United States as refugees. Worldwide, while it is impossible to count the actual number, Amnesty International has documented torture in 150 countries. So we know the number is in the millions.

The Torture Victims Relief Reauthorization Act before the body today provides $20 million to the Department of Health and Human Services to assist treatment programs in the United States for fiscal 2004 and $25 million for fiscal year 2005.

Mr. Speaker, in spite of these numbers, and this is an increase over the previous year's, the number of survivors seeking treatment in U.S. centers funded through this legislation has steadily increased. The word is getting out that one can go to these centers and get treatment, and the process, very often a lifelong process of healing, can begin.

We found, or there has been a finding I should say, that when the centers first opened there were about 935 people who were helped in 1999 as a result of the legislation we passed then. That jumped to 1,550 clients served in 2000 to 2,579 in 2001. We now know that there are some 3,664 clients that have gotten services at a cost of about $3,500 per client in fiscal year 2002. With the additional funding that we contemplate that this bill would authorize, it is estimated that U.S. centers would have the capacity and the ability to serve an additional 2,800 survivors per year.

Torture treatment centers provide a range of services, Mr. Speaker, including medical exams, lab tests, psychological and psychiatric screening evaluations, psychiatric medication, individual, group and family therapy, and crisis counseling.

In addition, the network of treatment centers already in the U.S., and we know this, needs to be expanded; and I would point out to my colleagues there are a number of large cities with large emigre communities with torture victims who are not being served in places like Miami, New Orleans, Houston, Dallas, Atlanta, Cleveland, St. Louis, Kansas City, Salt Lake City, and Seattle. Hopefully, as a result of this reauthorization and the subsequent appropriations, money will be made available to craft or to establish those centers that are so vitally needed in those cities.

The Torture Victims Relief Reauthorization Act also authorizes $11 million in U.S. funds for the Agency for International Development to support foreign treatment centers in 2004 and $12 million in fiscal year 2005. This is a modest increase from the $10 million we first authorized in 1999; and, of course, the need is much more than that, but at least this is an attempt to try to meet some of that need.

USAID's Victims of Torture Fund, I would point out to my colleagues, administers treatment programs in 26 countries in Latin America, Africa, Asia, the Near East, and in Europe. Last year, the fund supported approximately 45 treatment programs. Nongovernmental organizations that receive this funding provide a direct service to survivors, to their families and communities. They strengthen the capacity of country-based institutions to deliver services to survivors and increase the level of knowledge and understanding about the needs of torture victims. These treatment centers can also gather forensic evidence that can be used to improve the capability of those documenting and seeking redress from the practice of torture.

To help meet the needs of victims around the globe, I would remind my colleagues that the U.N. established a fund back in 1981, and before we passed our first act, the United States' contribution to that fund was only in the hundreds of thousands. We have now pushed that number to $5 million, and this legislation would increase it to $7 million; and hopefully that, too, will be part of the fix to help mitigate the suffering endured by torture victims.

This is a good bill. I hope my colleagues will support it. I want to thank the gentleman from California (Mr. LANTOS), my good friend and colleague and the ranking member of the committee, who is the chief cosponsor and has worked with us hand in glove in crafting this legislation. I especially want to thank the gentleman from Illinois (Mr. HYDE), our good friend and colleague, the chairman of our committee, for his leadership on this very unrecognized and very below-most-people's-radar-screens issue. They often say torture victims, what are we talking about, and yet they are in our midst. They are suffering. They need help. This legislation provides at least some help.

Mr. Speaker, I reserve the balance of my time.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume, and I rise in strong support of this legislation.

Mr. Speaker, the Torture Victims Relief Reauthorization Act of 2003 ensures that our Nation continues to play a leadership role in combatting one of the most despicable of all human rights violations, the use of torture around the globe.

I was very pleased to join with the gentleman from New Jersey (Mr. SMITH), my good friend and distinguished colleague, in sponsoring this measure. I would like to commend the gentleman from New Jersey (Mr. SMITH) for his long-standing leadership on this issue, and I want to congratulate him for all of his work to support the heroic endeavors of all clinics around the world in the treatment of victims of torture. He is in the forefront of every single issue relating to human rights, and he has carried the ball on this issue as well.

On June 26, 1945, Mr. Speaker, the United Nations charter was signed, inaugurating the global fight for human rights. On the same day, 42 years later, the United Nations convention against torture came into force, declaring the depravity of torture and affirming the equal and inalienable rights of all members of the human family. In 1998, the United Nations declared June 26 an international day in support of torture victims.

Mr. Speaker, despite the work that has been done on the international front to prevent torture, it is a grim truth that governments worldwide continue to torture their citizens with impunity. Exact figures are difficult to come by, but Amnesty International estimates that some 117 countries, more than half of the countries on the face of this planet, still practice torture on their own citizens.

Pakistan, Guatemala, Zimbabwe, and China consistently rank high on this grim and despicable list. In some nations, the governments themselves carry out the torture. In some, they condone its use by the nation's political machinery.

The ramifications of torture practices are beyond the realm of the comprehension of normal human beings. Torture leaves no victim unscarred. It effectively shapes the remainder of his or her life. Torture survivors need psychological and physical therapy to cope with the post-traumatic stress that afflicts them every single day.

□ 1300

Recovering from torture, Mr. Speaker, is a long-term process. It can take years before torture survivors can once again feel emotionally stable and comfortable in their own society.

Mr. Speaker, it sometimes just takes one individual to stand strong against the darkness of human rights violations. The torture victims treatment center community is fortunate to have such a person in my wife's and my good friend, Dr. Inge Genefke, of Copenhagen, Denmark.

Dr. Genefke started her work for torture victims as cofounder of the Danish Medical Group of Amnesty International 30 years ago. She observed during the treatment of torture victims that the physical wounds of those lucky enough to survive torture heal with time, but the trauma of her clients lingered on much longer.

In 1982, Dr. Genefke started a multidisciplinarian treatment approach integrating physical and psychological treatment. Her work has been utilized by torture victim treatment centers across the globe, dramatically improving the treatment of torture victims in scores of countries.

An estimated half a million foreign torture survivors reside in the United States, and we estimate that about 100 million live worldwide. There are now 250 treatment centers for torture victims internationally, with the sole purpose of providing crucial services to survivors of torture. In our own country, the Center for Victims of Torture in Minnesota was the first of its kind in the United States and the third torture victims center in the world, and I want to pay tribute to my friend and colleague, the gentlewoman from Minnesota (Ms. MCCOLLUM), for her leadership role in connection with this important center.

These centers are among those funded through the Torture Victims Relief Act, and their work is the only hope for people who have endured torture. I urge all of my colleagues to support our legislation, H.R. 1813.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of New Jersey. Mr. Speaker, I reserve the balance of my time.

Mr. LANTOS. Mr. Speaker, I am delighted to yield 4 minutes to the gentlewoman from Minnesota (Ms. MCCOLLUM), my good friend and distinguished colleague, who has been a leader on all human rights issues, including the plight of torture victims.

Ms. MCCOLLUM. Mr. Speaker, I rise today to acknowledge the valuable work that is being done to aid victims of torture and in strong support of the Torture Victims Relief Reauthorization Act of 2003. I commend my colleagues, the gentleman from New Jersey (Mr. SMITH), the ranking member, the gentleman from California (Mr. LANTOS) and the gentleman from Illinois (Mr. HYDE) for this important piece of legislation, and I commend the leadership of the House for bringing this bill to the floor today.

Mr. Speaker, Minnesota is the home for the Center for the Victims of Torture, a world renowned treatment center for the healing of torture victims. When the center opened in 1985, it became the first of its kind in the United States and the third treatment center in the entire world. And right now the center is putting the final touches on a second clinic in St. Paul, Minnesota. In fact, this new clinic is only a few blocks from my home, and my neighbors and I welcome the center and their tireless commitment to serve torture victims.

Mr. Speaker, the use of torture is a tool of intimidation, and the oppression continues to take place in more than 120 countries worldwide. It is estimated that one-third of the world's 12 million refugees are victims of torture. Many victims of torture are community leaders, those individuals who stand up and speak out for social change, political and religious change. The victims are often teachers, students, journalists, trade union organizers, human rights activists, or elected leaders, and they represent people of all ages, social classes, and religious beliefs.

Groups that sanction and sponsor and commit torture focus on these leaders because they want to inflict terror, intimidation and fear on entire communities because torture is about control. Frequently, the aim of this brutality is not to kill the victim, but to break their will. In many instances, doctors and medical personnel participate during the torture sessions to ensure that the victim will not die. The victims are humiliated, crippled, traumatized and then returned to their communities as a brutal message of intimidation to others.

Once a person has been tortured, their life has been fundamentally changed. But there is hope. Through this bill, thousands of torture victims living in the United States will receive the care that they need to heal and reenter society and lead positive, productive lives. The U.S. can be proud of the leadership we have shown in working to heal the victims of torture. Our country is a leader in the rehabilitation programs and continues to work to prevent torture around the globe.

The world community should continue to look to the United States for leadership because in the struggle of torture, the American people have answered the call. Torture relief is providing hope and opportunity for victims and families. The treatment is working, but there is more that can be done. This legislation will double the current support for our Nation's treatment centers, ensuring hope and opportunity for victims to receive the care that they need.

This legislation also creates a partnership by increasing funding for foreign treatment centers and strengthening our commitment to the United Nations Voluntary Fund for Victims of Torture. This bill sends a strong message to the international community that treating victims of torture is a priority and that we welcome the support of our like-minded friends around the globe.

Mr. Speaker, in closing, I would like to say that torture is a crime against humanity, unacceptable at any time by any nation, and any nation that tortures or tolerates torture is not truly free. Any government that silently witnesses the horrors of torture or hears the screams of the victims but does not act contributes to this oppressive, inhumane crime that extinguishes the essence of our human dignity.

Today, this Congress has an opportunity to speak with one voice for those who have suffered the unimaginable and continue to suffer. The message is clear and simple: Support this bill. And I encourage my colleagues to not only support the legislation, but to help fund this legislation.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume to thank my friend from Minnesota for her eloquent and powerful statement.

Mr. Speaker, I am delighted to yield such time as he may consume to the gentleman from Maryland (Mr. CARDIN), a fighter for human rights and the distinguished ranking member of the Helsinki Commission, the most successful international entity working for human rights.

Mr. CARDIN. Mr. Speaker, let me thank the gentleman for yielding me this time and just associate myself with the comments that he has made, that the gentlewoman from Minnesota (Ms. MCCOLLUM) has made and those that the gentleman from New Jersey (Mr. SMITH) has made. I think we are all in agreement that the United States must continue its leadership role in the international community to condemn in the strongest possible way the use of torture and to be a leader in rehabilitating those victims of torture.

We are talking about the physical and mental rehabilitation of people who have suffered from torture. These are people who need help, and this legislation will provide that additional assistance. It is the right thing to do.

I want to thank the gentleman from California (Mr. LANTOS), who has been a leader in this Congress on so many human rights issues in so many different ways. He has really, I think, provided the moral compass for this Congress to take up many of these very important issues. So I applaud all of his efforts in this regard.

Mr. Speaker, I agree with the gentleman from California on his assessment of the gentleman from New Jersey (Mr. SMITH), who is the chairman of our Helsinki Commission. I have had the honor of being the ranking Democrat, and our commission has put a very high focus on the issues of torture. And, quite frankly, we do not care whether the country has good relationships with us or not. If they use torture, it is wrong, and we are going to bring it to the international community's attention, and we are going to do everything we can in order to make sure it does not occur.

I have a list here of all the different hearings and briefings we have had on our commission, and you will see the country list, unfortunately, is very long. It includes many countries. We have put a spotlight and I think we have done a lot of good in slowing down the use of torture and making it clear that there will be a price to pay if you use torture in your country.

This legislation basically extends our role, to make it clear that the United States will continue to be a leader on this issue internationally by doing what we can here domestically, as well as internationally, to aid the victims of torture. I am pleased that it significantly increases the dollars that will be made available for our treatment programs here in the United States, as well as our participation internationally.

The gentlewoman from Minnesota (Ms. MCCOLLUM) mentioned the first center in the United States in Minnesota, and she is very proud of the role that was played by her State and herself, through her leadership, on this issue. I am pleased there is an organization in my district, the Advocates for Survivors of Torture and Trauma that aids victims of torture. Since 2000, the number of people that have sought assistance in this center has tripled. That is an indication of the problem that we are confronting in being a country that is willing to take people who have to flee other countries because of persecution, and now we have a responsibility to bring them back fully within our society. The funding of these centers will help to do that. It is the right thing to do. Without these additional funds in my community, it would take over a month to get an appointment. We hope this money will speed up the opportunity to seek and be able to receive the appropriate type of assistance.

The bottom line is this is an important bill. It is going to help people and will continue our commitment to fight torture and to be a player in rehabilitating the lives of those who have suffered from the use of torture. I encourage all of colleagues to support this legislation.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume to thank my friend for his powerful and significant statement.

Mr. Speaker, I have no additional requests for time, and I yield back the balance of my time.

Mr. SMITH of New Jersey. Mr. Speaker, I yield myself 1 minute to thank my friends and colleagues for their very strong statements and their passion on this issue.

The gentleman from Maryland (Mr. CARDIN), who is the ranking Democrat on the Helsinki Commission, we work together. There is no division. There is no air between our shoulders as we promote human rights in general and the elimination, or a zero tolerance policy towards torture within the OSCE.

There are 55 countries that make up the OSCE. At the parliamentary assemblies and with bilateral meetings and with country visits, we bring this issue up. We bring it up with the heads of state, we go to gulags, like the gentleman from Virginia (Mr. WOLF), who is also a member of our commission, and we do all that we can to stop torture in the first place.

But as this bill seeks to do, there are victims, they number in the millions, and their needs are not being cared for in many instances, especially overseas. The lucky ones make it here as emigres and as asylum seekers, and we have to make sure that both domestically and internationally, we try to mitigate that enormous pain and the nightmares they carry with them. As we know from our hearings and from our site visits from talking to these victims, maybe they cannot be cured fully and completely, but the pain can be eliminated to a great extent, and they can develop coping mechanisms and the like in order to deal with it and live a more normal life despite the fact that they have suffered so horrifically.

So I want to thank my friends and colleagues. And again, the gentleman from California (Mr. LANTOS), who knows this personally, who is a Holocaust survivor and is always out front on human rights. It is always great to work as a teammate with him. And, again, I thank the gentleman from Maryland for his kinds words, as well as my friend and colleague from Minnesota, I want to thank her as well.

Mr. SABO. Mr. Speaker, I rise today to acknowledge the important work that is being done to aid victims of torture, and to reemphasize my support for the reauthorization of the Torture Victims Relief Act, TVRA.

Minneapolis, Minnesota, is home to the United States first comprehensive torture treatment center, the Center for Victims of Torture, CVT. When CVT opened in 1985 they were the first center in the United States and only the third in the entire world.

Freedom from torture is a universal and fundamental human right. Yet torture continues to take place in more than 120 countries worldwide. It is estimated that one-third of the world's 12 million refugees are victims of torture. Politicians, journalists, teachers, students, religious leaders, trade union and human rights activists are all targets. The aim of torture is not to kill the victim, but to break down the victim's personality. Crippled, traumatized, and humiliated, the victims are returned to their communities as a warning to others.

Torture is fundamentally a political weapon, employed by repressive regimes to shape cultures through fear. For over a decade, what the clients in Minnesota have taught us, as well as victims from over 70 other nations of the world, is that torture:

Targets leadership of the opposition, to snuff out creativity and emerging movements, which may threaten the regimes corrupt hold on society;

Sends a message of fear throughout the network of that leader's family and community of followers and admirers. As a bishop from Africa once said about the meaning of torture, the message is clear: "If they'll do this to me, what will they do to my flock?"

In Minnesota we have also learned how traumas of this severity and scale have a trans-generational effect, shaping the health, the hopes and the aspirations of future generations.

Because of these significant and predictable effects, torture is the most effective weapon against democracy. Even after a dictatorial regime has fallen, as it has in Iraq, we can expect that the impact of torture will be felt for generations: leadership broken and lost; their families and communities still frightened and disengaged from public life; a profound lack of trust in public institutions, police, and courts; a lesson in forced political apathy learned and lived out every day.

There are more than 500,000 torture survivors in the United States alone—refugees and asylum seekers who have fled repressive regimes. In recent years, there has been a dramatic increase in the number of victims of torture seeking help at U.S. rehabilitation centers. In the U.S. there are 34 rehabilitation centers and programs joined together under the National Consortium of Torture Treatment Programs, which was first started by the Center for Victims of Torture in Minnesota.

I have seen leadership restored and people made whole after they have received care at CVT. Restoring a torture survivor to full health has a lasting benefit for the entire community. Former clients of CVT are now public school teachers, small business owners, nurses, doctors and more. I would like to commend CVT for their tireless work on behalf of torture victims in the U.S. and worldwide, and encourage my colleagues to support the reauthorization of the Torture Victims Relief Act.

Mr. RAMSTAD. Mr. Speaker, I am pleased to rise in strong support of H.R. 1813, the Torture Victims Relief Authorization Act.

I am especially proud that the first Center for Victims of Torture in the United States is located in Minnesota. Minnesota's Center for Victims of Torture is certainly one of the premier centers for torture survivors in the entire world.

Minnesota is home to about 14,000 victims of torture, and there are some 400,000 victims of torture in our country. Even though people are becoming increasingly aware of the issue of torture, support and treatment for the victims have often been lacking.

That's where the center, with its excellent leadership, comes in. We in Minnesota have learned much, and now we want to bring that leadership, and the path-breaking work of the center, to the rest of the country.

Mr. Speaker, this important legislation provides support for Minnesota's Center for Victims of Torture and will enable our world-renowned Center to continue providing rehabilitation and other critical services to victims of torture.

All Minnesotans can be proud of our Center for Victims of Torture, which helps victims of torture recover from their horrific pain, suffering and scars.

Mr. Speaker, the issues of torture and human rights have finally penetrated the global consciousness, and I urge my colleagues to support passage of this important legislation.

Mr. SMITH of New Jersey. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and pass the bill, H.R. 1813, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules, and on the motion to instruct conferees postponed yesterday. Votes will be taken in the following order:

H.R. 1006, by the yeas and nays;

House Concurrent Resolution 320, by the yeas and nays;

H.R. 3491, by the yeas and nays;

And the motion to instruct on H.R. 1, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. The remaining electronic votes will be conducted as 5-minute votes.

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CAPTIVE WILDFIRE SAFETY ACT

The SPEAKER pro tempore (Mr. SHIMKUS). The unfinished business is the question of suspending the rules and passing the bill, H.R. 1006, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland (Mr. GILCHREST) that the House suspend the rules and pass the bill, H.R. 1006, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 419, nays 0, not voting 15, as follows:

[Roll No. 634]

YEAS—419

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland

Stupak
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—15

Andrews
Ballance
Bishop (NY)
Collins
Cubin
Davis (IL)
Fletcher
Gephardt
Gingrey
Hobson
Isakson
Menendez
Moran (VA)
Smith (WA)
Sullivan

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SHIMKUS) (during the vote). Members are advised that 2 minutes remain in this vote.

☐ 1336

Mr. STUPAK changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. MORAN of Virginia. Mr. Speaker, on rollcall No. 634 I was unavoidably detained. Had I been present, I would have voted "yea."

Mr. MENENDEZ. Mr. Speaker, on rollcall No. 634, I was unavoidably detained in traffic. Had I been present, I would have voted "yea."

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the remainder of this series will be conducted as 5-minute votes.

EXPRESSING THE SENSE OF CONGRESS REGARDING THE IMPORTANCE OF MOTORSPORTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 320.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Florida (Ms. ROS-LEHTINEN) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 320, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 414, nays 0, not voting 20, as follows:

[Roll No. 635]

YEAS—414

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—20

Andrews
Ballance
Bishop (NY)
Carter
Collins
Conyers
Cubin
Davis (IL)
Fletcher
Franks (AZ)
Gephardt
Isakson
Jefferson
Lofgren
Obey
Rodriguez
Schakowsky
Smith (MI)
Smith (WA)
Sullivan

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that 2 minutes remain in this vote.

☐ 1344

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY AND CULTURE ACT

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 3491.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. NEY) that the House suspend the rules and pass the bill, H.R. 3491, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 409, nays 9, not voting 16, as follows:

[Roll No. 636]

YEAS—409

Abercrombie
Ackerman
Aderholt
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)

NAYS—9

Akin
Coble
Flake
Johnson, Sam
Jones (NC)
Paul
Sensenbrenner
Smith (MI)
Taylor (NC)

NOT VOTING—16

Andrews
Ballance
Bishop (NY)
Collins
Cubin
Davis (IL)
Fletcher
Gephardt
Houghton
Isakson
John
Kirk
Larson (CT)
Smith (WA)
Sullivan
Young (FL)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SHIMKUS) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1351

So (two thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MOTION TO INSTRUCT CONFEREES ON H.R. 1, MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003

The SPEAKER pro tempore. The unfinished business is the question on the motion to instruct conferees on the bill, H.R. 1.

The Clerk will designate the motion.

The Clerk designated the motion.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentlewoman from Nevada (Ms. BERKLEY) on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 203, nays 218, not voting 13, as follows:

[Roll No. 637]

YEAS—203

Abercrombie
Ackerman
Alexander
Allen
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Blumenauer
Boehlert
Boswell
Boucher
Boyd
Brady (PA)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Hall
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Sweeney
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—218

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)

Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Cox
Crane
Crenshaw
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Issa
Istook
Janklow
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—13

Andrews
Ballance
Bishop (NY)
Brown (OH)
Collins
Cubin
Davis (IL)
DeLay
Fletcher
Gephardt
Isakson
Smith (WA)
Sullivan

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Mr. SMITH of New Jersey changed his vote from "yea" to "nay."

So the motion to instruct was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. SWEENEY. Mr. Speaker, please be advised that on the Berkley motion to instruct on November 19, 2003, I inadvertently voted "yea" when my intent was to vote "nay."

OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS ACT OF 2003

Mr. BEREUTER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1824) to amend the Foreign Assistance Act of 1961 to reauthorize the Overseas Private Investment Corporation, and for other purposes.

The Clerk read as follows:

S. 1824

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Overseas Private Investment Corporation Amendments Act of 2003".

SEC. 2. ISSUING AUTHORITY.

Section 235(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(a)(2)) is amended by striking "November 1, 2000" and inserting "2007".

SEC. 3. TECHNICAL CORRECTIONS.

(a) ADMINISTRATIVE COSTS.—Section 235(a)(1)(B) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(a)(1)(B)) is amended by striking "subsidy cost" and inserting "subsidy and administrative costs".

(b) NONCREDIT ACCOUNT REVOLVING FUND.—Section 235(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(c)) is amended—

(1) in the first sentence—

(A) by striking "an insurance and guaranty fund, which shall have separate accounts to be known as the Insurance Reserve and the Guaranty Reserve, which reserves" and inserting "a noncredit account revolving fund, which"; and

(B) by striking "such reserves have" and inserting "of the fund has";

(2) by striking the third sentence; and

(3) in the last sentence, by striking "reserves" and inserting "fund".

(c) PAYMENTS TO DISCHARGE LIABILITIES.—Section 235(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(d)) is amended—

(1) in the first sentence, by striking "Insurance Reserve, as long as such reserve" and inserting "noncredit account revolving fund, as long as such fund"; and

(2) in the second sentence, by striking "or under similar predecessor guaranty authority" and all that follows through "subsection (f) of this section" and inserting "or 234(c) shall be paid in accordance with the Federal Credit Reform Act of 1990".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 235(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(f)) is amended—

(1) in the first sentence, by striking "insurance and guaranty fund" and inserting "noncredit account revolving fund"; and

(2) by striking "Insurance Reserve" each place it appears and inserting "noncredit account revolving fund".

(e) BOARD OF DIRECTORS.—Section 233(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2193(b)) is amended in the second paragraph—

(1) by striking "officials" and inserting "principal officers";

(2) by inserting "whose duties relate to the programs of the Corporation" after "Government of the United States"; and

(3) by striking "an official" and inserting "one such officer".

SEC. 4. INVESTMENT INSURANCE.

(a) EXPROPRIATION OR CONFISCATION.—Section 234(a)(1)(B) of the Foreign Assistance Act of 1961 (22 U.S.C. 2194(a)(1)(B)) is amended by inserting "or any political subdivision thereof" after "government".

(b) DEFINITION OF EXPROPRIATION.—Section 238(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2198(b)) is amended by inserting ", a political subdivision of a foreign government, or a corporation owned or controlled by a foreign government," after "government".

SEC. 5. LOCAL CURRENCY GUARANTY.

(a) LOCAL CURRENCY GUARANTY.—Section 234 of the Foreign Assistance Act of 1961 (22 U.S.C. 2194) is amended by adding at the end the following:

"(h) LOCAL CURRENCY GUARANTIES FOR ELIGIBLE INVESTORS.—To issue to—

"(1) eligible investors, or

"(2) local financial institutions, guaranties, denominated in currencies other than United States dollars, of loans and other investments made to projects sponsored by or significantly involving eligible investors, assuring against loss due to such risks and upon such terms and conditions as the Corporation may determine, for projects that the Corporation determines to have significant developmental effects or as the Corporation determines to be necessary or appropriate to carry out the purposes of this title.".

(b) DEFINITION OF LOCAL FINANCIAL INSTITUTION.—Section 238 of the Foreign Assistance Act of 1961 (22 U.S.C. 2198) is amended—

(1) in subsection (d), by striking "and" after the semicolon;

(2) in subsection (f), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(g) the term 'local financial institution'—

"(1) means any bank or financial institution that is organized under the laws of any country or area in which the Corporation operates; but

"(2) does not include a branch, however organized, of a bank or other financial institution that is organized under the laws of a country in which the Corporation does not operate.".

SEC. 6. OUTREACH TO MINORITY- AND WOMEN-OWNED BUSINESSES.

(a) IN GENERAL.—Section 240 of the Foreign Assistance Act of 1961 (22 U.S.C. 2200) is amended—

(1) in the first sentence, by striking "The Corporation" and inserting:

"(a) IN GENERAL.—The Corporation"; and

(2) by adding at the end the following:

"(b) OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.—The Corporation shall collect data on the involvement of minority- and women-owned businesses in projects supported by the Corporation, including—

"(1) the amount of insurance and financing provided by the Corporation to such businesses in connection with projects supported by the Corporation; and

"(2) to the extent such information is available, the involvement of such businesses in procurement activities conducted or supported by the Corporation.

The Corporation shall include, in its annual report submitted to the Congress under section 240A, the aggregate data collected under this paragraph, in such form as to quantify the effectiveness of the Corporation's outreach activities to minority- and women-owned businesses.".

The SPEAKER pro tempore (Mr. SHIMKUS). Pursuant to the rule, the gentleman from Nebraska (Mr. BEREUTER) and the gentleman from California (Mr. LANTOS) each will control 20 minutes.

The Chair recognizes the gentleman from Nebraska (Mr. BEREUTER).

GENERAL LEAVE

Mr. BEREUTER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. BEREUTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge my colleagues to pass the bill before us this afternoon, S. 1824, the Overseas Private Investment Corporation Amendments Act of 2003. This bipartisan measure, which passed the Senate on November 14 by unanimous consent, would extend the authority to the Overseas Private Investment Corporation through September 30, 2007.

This action is necessary in light of the fact that the authority for this important agency originally terminated on September 30 of this year and that its continuation on an emergency basis expires at the end of this week. This Member, therefore, asks his colleagues to pass this bill so it can be sent to the President and signed into law without delay. Its provisions are identical to those contained in H.R. 3145 which was approved by voice vote by the Committee on International Relations on September 25.

The OPIC Amendments Act of 2003 makes technical and conforming changes to OPIC's statutes, allows the corporation to offer its investment insurance in several key markets, including acts of an entity owned or controlled by a foreign government, permits the corporation to provide a guarantee of local currency loans made by a locally-established bank in countries without an established banking presence, and directs the corporation to collect data on the involvement of minority- and women-owned businesses in all of its projects.

This key development agency has compiled an impressive track record since its inception in 1971, supporting U.S. investors in overseas markets in order to help our exporters. At the same time, it has created more than 250,000 jobs in the U.S. and led to $64 billion in U.S. exports. It operates on a self-sustaining basis, returning approximately $200 million each year to the U.S. Treasury, and helps to support other key U.S. development programs.

Members' support of this measure will ensure that OPIC continues to play a developmental role in frontline states such as Pakistan and Afghanistan and will permit it to implement investment and financing programs in Iraq at minimal cost to the American taxpayer. Therefore, this Member urges support of this measure.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. Without objection, the gentlewoman from Nevada (Ms. BERKLEY) will assume control of the time for the minority.

There was no objection.

Ms. BERKLEY. Mr. Speaker, I yield myself such time as I may consume, and I rise in strong support of S. 1824.

Mr. Speaker, I reserve the balance of my time.

Mr. BEREUTER. Mr. Speaker, it is my pleasure to yield such time as he may consume to the distinguished gentleman from California (Mr. ROHRABACHER), a member of the committee.

Mr. ROHRABACHER. Mr. Speaker, I rise in support of S. 1824, a bill to reauthorize funding for the Overseas Private Investment Corporation. I never supported OPIC in the past because, until recently, what OPIC basically did was provide insurance for Fortune 500 corporations to invest overseas, and when those investments went belly up, the American taxpayer picked up the bill. OPIC was basically an ATM machine for the Fortune 500.

Well, things are different now. Things are changing at OPIC for the better.

A new president, Dr. Peter Watson, is in charge of OPIC, and OPIC funds are now being channeled to business initiatives that promote democracy and justice and are in the interests of the American people.

One case of particular interest is that of Ethiopia.

☐ 1415

Ethiopia is a case of particular interest. Ethiopia is run today by leaders who are inclined towards war and who frequently violate the rights of honest people whose property has been confiscated by their government. Some of these victims are U.S. citizens. One of the victims is Mr. Berhane, my constituent, and now a U.S. citizen. The Berhane family is a very well-respected family in Orange County. We all know them and respect them as honest, hardworking people.

Mr. Berhane owned a successful enterprise in Ethiopia that was stolen, confiscated by Ethiopia's former Marxist dictatorship. Although the current regime in Ethiopia claims that such stolen property will be returned, they refuse to give the Berhane family back their business or offer just compensation.

Members of Congress and officials from the executive branch have warned the government of Ethiopia that this issue is taken seriously; and it will, therefore, have damaging repercussions if this injustice to the Berhane family continues.

Underscoring this new commitment at OPIC, I have been informed that OPIC will no longer consider any project for Ethiopia until this American family is properly compensated for their property, for their confiscated property. Let the government of Ethiopia be forewarned, this issue will not stop here. We applaud OPIC today. Funding for Ethiopia by multilateral development banks and the United States Agency for International Development is in jeopardy. It will be called into question until Americans are treated fairly in Ethiopia and their just claims dealt with honestly.

I applaud OPIC and call on those who run Ethiopia not to hurt their own people for selfish reasons and to give the Berhane family back its property. I call on my colleagues to support this reauthorization of OPIC which is now reconforming itself to those noble principles which justified the creation of OPIC in the beginning, and it is doing so demonstrably in my district by standing up for this American family. So I am very proud to stand for the reauthorization of OPIC today.

The SPEAKER pro tempore (Mr. SHIMKUS). Without objection, the remainder of the time will be controlled by the gentleman from California (Mr. LANTOS) for the minority.

There was no objection.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, I rise in strong support of S. 1824, the Overseas Private Investment Corporation Amendments Act of 2003.

Mr. Speaker, I would first like to express my deep appreciation to the gentleman from Illinois (Chairman HYDE), who once again demonstrated outstanding leadership in managing this all-encompassing, bipartisan committee review of OPIC's operations and management.

On November 4 of this year, the Committee on International Relations reported H.R. 3145, the identical companion bill to the legislation we are considering today. All of the language in the committee's report should be considered directly applicable to the reauthorization we are voting on today.

Mr. Speaker, OPIC has faced its share of controversy over many years. In particular, OPIC's mission to support private investment in developing countries has sometimes seemed to be in conflict with its own statutory responsibilities regarding loss of U.S. jobs and the protection of the environment.

OPIC's leadership recently has made significant efforts to address these issues. I want to commend Dr. Peter Watson, the president and CEO of the Overseas Private Investment Corporation, for his commitment to ensuring that OPIC complies with its statutory mandate on environment and labor rights standards.

The reauthorization package we have before us is sound. Not only does the bill reauthorize OPIC through September 30, 2007, but it reflects a comprehensive, bipartisan compromise between the committee, OPIC, and all of its stakeholders.

I am particularly pleased, Mr. Speaker, that our package will address the concerns shared by many of my colleagues in recent years about the effectiveness of OPIC's safeguards to ensure that its projects support the interests of American workers, protect the global environment, and support human rights.

I want to thank my distinguished colleague, the gentleman from Illinois (Mr. HYDE), for his willingness to work with us to address these concerns. The report language we have agreed upon directs OPIC to establish a robust and independent accountability mechanism on these matters, which I strongly believe will help guarantee broad congressional support for this important institution.

Mr. Speaker, this legislation has strong bipartisan support, as well as the support from environmental and labor groups. I urge all of my colleagues to support OPIC's reauthorization by voting in favor of this legislation.

Mr. Speaker, before I close, I include for the RECORD two letters from OPIC President Watson to Chairman HYDE and me that were crucial to our side's support for this legislation.

OVERSEAS PRIVATE
INVESTMENT CORPORATION,
Washington, DC, October 30, 2003.

Hon. HENRY HYDE,
Chairman, Committee on International Relations, House of Representatives, Washington, DC.

Hon. TOM LANTOS,
Ranking Member, Committee on International Relations, House of Representatives, Washington, DC.

DEAR CHAIRMAN HYDE AND CONGRESSMAN LANTOS: As Congress prepares to conclude action on legislation to reauthorize the Overseas Private Investment Corporation (OPIC), I wanted to affirm to you again my strong commitment to OPIC's statutory mandates with regard to the environment.

During my confirmation hearing before the Senate Foreign Relations Committee in May 2001, I said, "I support OPIC's rejection of applications for projects that pose major or unreasonable hazards to the environment, health and safety. OPEC should continue to support only environmentally responsible development." I believe that my actions and decisions over the past two years in promoting environmentally sound development have given substance to these words.

Over this time, I have had the opportunity to talk with members of the International Relations Committee and Congressional Committee staff concerning OPIC's environmental stewardship, and to discuss ways to make our program more accountable and transparent. My meetings with Representative Earl Blumenauer have been particularly valuable in this regard.

Based on these many discussions, I want to confirm to the Committee my intent, in consultation with stakeholders, to create an "accountability mechanism" at OPIC. Among other functions, it is my intention that the mechanism will allow for a robust, consistent and independent environmental evaluation of OPIC projects, policies and practices, ensuring that OPIC environmental program is the model for best practices in other bilateral and multilateral institutions, and that the agency continues to meet its developmental goals in the most environmentally responsible manner. I look forward to beginning this ambitious process in the coming weeks.

I also want to confirm to the Committee my intent to continue the dialogue with stakeholders on a "transparency" initiative. Among other functions, such an initiative is intended to ensure that stakeholders can more clearly see how OPIC is implementing its statutory mandates and policy commitments concerning environmental stewardship. This initiative would heighten transparency and information disclosure concerning OPIC's projects and internal mechanisms. I look forward to re-engaging in this dialogue in the coming weeks and months.

Additionally, with a view toward fully supporting our statutory mandates and enhancing the contribution provided to the Corporation by the Board of Directors, I wanted to inform the Committee that when a private sector Director term expires, I am prepared to recommend to the Administration that a future private sector Director have, as part of that individual's professional qualifications, substantial experience in advocating for or managing regulatory compliance with environmental standards.

I deeply appreciate the bipartisan support OPIC has received from the Committee over the past year, and look forward to continuing to work with you and other members of the Committee in the future.

Best regards,

PETER S. WATSON,
President & CEO.

OVERSEAS PRIVATE
INVESTMENT CORPORATION,
Washington, DC, October 30, 2003.

Hon. HENRY J. HYDE,
Chairman, Committee on International Relations, House of Representatives, Washington, DC.

Hon. TOM LANTOS,
Ranking Member, Committee on International Relations, House of Representatives, Washington, DC.

DEAR CHAIRMAN HYDE AND CONGRESSMAN LANTOS: Thank you for your letter of October 29, 2003. Let me say that I am deeply honored by your generous comments regarding OPIC's recent progress toward fulfilling its developmental mission and important foreign policy priorities. Cooperation with the Committee has been essential to OPIC's successes to date, and I look forward to continuing our close cooperation with the Committee into the future.

Your letter also referenced OPIC's establishment of a separate Office of Investment Policy and requested a summary of the functions and policies of the new office in carrying out OPIC's development mission, including worker rights. I am pleased to provide the following to you in response.

Prior to 2001, OPIC statutory review for environmental, worker rights, human rights and U.S. effects conditionalities were performed in OPIC's Financial Management and Statutory Review Department (FMSR). The Department fell under the responsibility of the Vice President and Treasurer, which was predominantly focused on the agency's budget and accounting function.

As this office did not give the priority needed to enforce its statutory responsibilities, I set out to correct the situation by separating the budget and accounting functions from the statutory review functions when I assumed my responsibilities as President & CEO in 2001.

The result was a new Office of the Chief Financial Officer, created to deal exclusively with budget and accounting activities. Concurrently, I created the Office of Investment Policy with the special responsibility for OPIC's environmental, U.S. effects, human rights and worker rights conditionalities, integrating all major statutory review functions into one department.

Accordingly, in creating an office headed by a new Vice President, consideration of statutory review functions was for the first time elevated to the same level as OPIC's product departments, Finance, Insurance and Investment Funds, with full voting rights in OPIC internal deliberative mechanisms. The result has been an overall elevation of and improvement in OPIC's handling of its statutory conditionalities. Allow me now to make a brief description of the functions of the office:

Environment

OPIC is required by statute to conduct an environmental assessment of every project proposed for insurance or financing and to decline support for investment projects that, in OPIC's judgment, would have an unreasonable or major adverse impact on the environment, or on the health or safety in the host country. For most industrial sectors, OPIC expects projects to meet the more stringent of World Bank or host-country environmental, health and safety standards.

For projects in sectors designated as "environmentally sensitive" a full Environmental Impact Assessment (EIA) must be submitted for OPIC's review. As part of its review process, OPIC lists every such project on OPIC's web site for a 60-day public comment period.

U.S. effects

OPIC supports only those projects that are not likely to harm the U.S. economy or have a negative effect on U.S. employment. Additionally, OPIC will not support "runaway plants," which substitute existing U.S. facilities with foreign plants to serve the same markets. By statute, and consistent with overall U.S. government policy, OPIC does not participate in projects subject to performance requirements that would substantially reduce the potential U.S. trade benefits of the investments.

Human rights

OPIC's statute directs the agency to take human rights into account in the operation of its programs and to operate its programs consistent with the provisions of Section 116 of the Foreign Assistance Act. OPIC consults the State Department's Bureau for Democracy, Human Rights and Labor Affairs, (DRL) with respect to each and every project considered for OPIC financing and insurance, as well as downstream transactions undertaken by OPIC supported investment funds. No project commitment is concluded by OPIC until DRL has provided OPIC with its clearance on human rights.

Worker rights

OPIC has the strongest worker rights mandate of any international financial institution, multilateral or bilateral. OPIC is prohibited by statute from supporting projects that contribute to violations of internationally recognized worker rights. What is unique about OPIC's statutory mandate is that it operates on both the country eligibility and project levels.

OPIC promotes worker rights on the country level by withholding eligibility for OPIC programs from countries that are excluded from eligibility from the Generalized System of Preferences (GSP) on worker rights grounds, as well as other non-GSP countries that fail to take steps to adopt and implement internationally recognized worker rights. On the project level, the mandate is implemented through contractual obligations between OPIC and the companies OPIC supports. These obligations incorporate host country labor laws and International Labor Organization (ILO) standards to ensure that projects do not cause worker rights violations.

OPIC monitors worker rights in the field and requires companies to promptly remediate worker rights violations or face the default and other legal remedies available under OPIC's authority. Looking to the future, OPIC hopes to work with stakeholders to enhance compliance with internationally recognized worker rights. We also hope that this process will improve due diligence, reporting and monitoring procedures providing detailed, accurate and timely information on worker rights, and concurrently, that enforcement procedures are comprehensive, effective and transparent. I wish to assure the Committee of my strong personal interest and involvement in this regard, and look forward to sharing the results of our efforts with the Committee on a regular basis.

Future activities

I would also take this opportunity to confirm to the Committee my intent, in consultation with stakeholders, to create an accountability mechanism at OPIC. Among other functions, it is my intention that the mechanism will allow for a robust, consistent and independent evaluation of social, labor, human rights and transparency standards of OPIC projects, policies and practices.

I also want to confirm to the Committee my intent to continue the dialogue with stakeholders on a "transparency" initiative. Among other functions, such an initiative is intended to ensure that stakeholders can more clearly see how OPIC is implementing its statutory mandates and policy commitments concerning its stewardship of social, labor and human rights issues. This initiative would heighten transparency and information disclosure concerning OPIC's projects and internal mechanisms. I look forward to re-engaging in this dialogue in the coming weeks and months.

In closing, I would like to express my appreciation to the Committee for its support, and I look forward to working with you in the future.

Best regards,

PETER S. WATSON,
President & CEO.

Mr. Speaker, I yield back the balance of my time.

Mr. BEREUTER. Mr. Speaker, I thank the gentleman from California (Mr. LANTOS) for his statement and for the cooperation that he and other Members on his side of the aisle and the staff of both sides of the aisle have given us in the advancement of this legislation to reauthorize OPIC.

Mr. Speaker, I urge all Members to support the reauthorization of this very worthy, important agency.

Mr. MANZULLO. Mr. Speaker, I rise in support of the Overseas Private Investment Corporation Amendments Act of 2003 (S. 1824), which will reauthorize the vital programs of the Overseas Private Investment Corporation (OPIC) for another four years. As the author of the previous OPIC reauthorization bill in 1999 (P.L. 106–158), I am pleased to strongly endorse S. 1824.

Since 1971, OPIC-supported projects have facilitated $145 billion worth of investments in hundreds of projects that have helped developing countries and emerging economies of the former East Bloc improve their standard of living. In addition, OPIC-supported projects have helped to create or sustain 254,000 American jobs and $65 billion in exports; expanded economic development; encouraged political stability; and promoted free market reforms around the world.

As an additional benefit, OPIC operates at no net cost to taxpayers by charging fees for its services. It has earned a profit in each year of operations—$175 million in 2002—and built its substantial reserves to more than $4 billion. I wish every government agency operated like OPIC by producing a profit for the taxpayer. All of OPIC's guaranty and insurance obligations are backed by OPIC's own substantial reserves and by the full faith and credit of the U.S. Government.

As chairman of the Small Business Committee, I am particularly pleased that under the current leadership of OPIC President and CEO Peter Watson, OPIC has launched two significant initiatives to encourage greater use of OPIC's programs by small business exporters to fulfill the mandate contained in P.L. 106–158 to expand OPIC's small business efforts. First, in July 2003, OPIC announced the establishment of a new department focusing on small and medium-size businesses. The Small and Medium Enterprise Department will be responsible for OPIC's Direct Loan program, which provides financing to U.S. businesses with annual revenues under $250 million. The Small Business Center will also be part of the new department. Small businesses looking to participate in the global marketplace have unique requirements. Lack of resources to pursue opportunities abroad, concern over political risks, or the inability to find private sector support can prevent U.S. small businesses from expanding overseas. The Small Business Center at OPIC will help meet these needs by providing financing and political risk insurance to small businesses with annual revenues of less than $35 million.

Second, OPIC and a small business lender. WorldBusiness Capital, Inc. (WBC) of Hartford, Connecticut, in July 2003 entered into a historic cooperative agreement that will expand support for U.S. small businesses investing overseas and enhance the activities of OPIC's Small Business Center. Under the agreement, OPIC will provide loan guarantees for WBC projects pursuant to a risk-sharing arrangement. WBC will make loans with its own funds, and will continue to monitor and service each loan. WorldBusiness Capital, Inc. intends to make OPIC-guaranteed loans of between $250,000 and $10 million to U.S. small businesses expanding into overseas markets. Hopefully, this private-public partnership will set an example for other banks to enter into similar arrangements to publicize and maximize the leverage of OPIC's programs to small business exporters. Delegated authority lenders and preferred lenders are quite common programs at the Export-Import Bank of the United States and the Small Business Administration. The same should hold true for OPIC.

Mr. Speaker, it is a privilege and honor for me to support the Overseas Private Investment Corporation Amendments Act of 2003. I commend my good friends, Chairman HENRY HYDE of Illinois and ranking minority Member TOM LANTOS of California of the House International Relations Committee for working so hard on this bill and bringing it to the floor in a timely manner. My only regret is that my duties on the Small Business Committee prevented me from taking a more active role in the OPIC reauthorization process this time around. I urge my colleagues to support S. 1824.

Mr. THOMAS. Mr. Speaker, I submit two letters for the record with respect to S. 1824, legislation to reauthorize the Overseas Private Investment Corporation (OPIC). These letters are a letter that I wrote to Dr. Peter S. Watson, President and CEO of OPIC, and the letter that I received from Dr. Watson in response clarifying OPIC's statutory obligations and existing practices with respect to issues regarding worker rights.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, November 18, 2003.

Hon. PETER S. WATSON,
President and Chief Executive Officer, Overseas Private Investment Corporation, Washington, DC.

DEAR MR. WATSON: The House of Representatives may soon consider H.R. 3145, legislation to reauthorize the operations of the Overseas Private Investment Corporation (OPIC) through September 30, 2007. It is my understanding that nothing in this reauthorization would alter in any way OPIC's statutory obligations or existing practices with respect to issues regarding worker rights. I request that you provide the Committee, in writing, with confirmation of this understanding and a complete summary of any and all of OPIC's existing statutory obligations and practices with regards to worker rights.

I look forward to hearing from you.

Best regards,

BILL THOMAS,
Chairman.

OVERSEAS PRIVATE
INVESTMENT CORPORATION,
Washington, DC, November 18, 2003.

Hon. WILLIAM M. THOMAS,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR CHAIRMAN THOMAS: Thank you for your letter of November 18, 2003. Your letter referenced H.R. 3145, legislation to reauthorize the operations of ah Overseas Private Investment Corporation (OPIC) through September 30, 2007, and it requested both a confirmation that nothing in this reauthorization would alter in any way OPIC's statutory obligations or existing practices with respect to issues regarding worker rights and a summary of such existing statutory obligations and practices.

OPIC shares your understanding that H.R. 3145 would not alter in any way OPIC's statutory obligations or existing practices with respect to issues regarding worker rights. On the country level, under current law and OPIC practice, OPIC "may insure, reinsure guarantee, or finance a project only if the country in which the project is to be undertaken is taking steps to adopt and implement laws that extended internationally recognized workers rights" to workers in that country, unless "the President determines that such activities by OPIC would be in the national economic interests of the United States." (22 U.S.C. 2191a(a)).

In addition, OPIC is prohibited from providing "assistance for any program, project, or activity that contributes to the violation of internationally recognized worker rights" of workers in the recipient country. (Sec. 533 of the Consolidated Appropriations Resolution, 2003.) In this context, "internationally recognized worker rights" means "the right of association; the right to organize and bargain collectively; [and] a prohibition on the use of any form of forced or compulsory labor." Sec. 507(4) of the Trade Act of 1974 (19 U.S.C. 2467(4)). "Internationally recognized worker rights" also includes "a minimum age for the employment of children, and a prohibition on the worst forms of child labor . . .; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health" (Sec. 507(4) of the Trade Act of 1974) to the extent "commensurate with the level of development of the recipient country and sector," and in a manner that "shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture." (See 533 of the Consolidated Appropriations Resolution, 2003.

OPIC's statutory obligations and current practice also require it to include language in its contracts requiring eligible investors to observe the applicable laws of the recipient country. In all contracts which OPIC enters into with eligible investors, OPIC includes the following language, "The investor agrees not to take actions to prevent employees of the foreign enterprise from lawfully exercising their right of association and their right to organize and bargain collectively. The investor further agrees to observe applicable laws relating to a minimum age for the employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety, and not to use forced labor. The investor is not responsible under this paragraph for the actions of a foreign government." (22 U.S.C. 2191a(a)(1)).

Best regards,

PETER S. WATSON,
President & CEO.

Mr. BLUMENAUER. Mr. Speaker, I support the reauthorization of the Overseas Private Investment Corporation (OPIC) and the important role it plays in assisting emerging markets in developing countries and promoting U.S. exports, which creates jobs here at home. OPIC's operations and activities have supported over 250,000 U.S. jobs and produced $64 billion of U.S. exports.

With this important role comes a responsibility to ensure that projects promoted by OPIC uphold adequate environmental, labor, and human rights standards, I am pleased that OPIC is taking steps to ensure this responsibility is upheld. The Report accompanying this legislation outlines the International Relations Committee's expectation that OPIC continue its work towards implementing an "accountability mechanism" and "transparency initiative."

The accountability mechanism should be in the form of an independent position within OPIC that evaluates and reports on environmental, social, labor and human rights impacts. The transparency initiative should make certain that interested stakeholders have appropriate access to information concerning OPIC's projects. This level of transparency will strengthen OPIC's programs and policies.

I expect this Congress and the International Relations Committee to monitor OPIC's progress towards these initiatives through hearings and reports. I look forward to continued dialogue with OPIC on these issues to strengthen the link between economic development, and environmental and social progress.

Mr. BEREUTER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. BEREUTER) that the House suspend the rules and pass the Senate bill, S. 1824.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

RECOGNIZING THE 5TH ANNIVERSARY OF THE SIGNING OF THE INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998

Mr. SMITH of New Jersey. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 423) recognizing the 5th anniversary of the signing of the International Religious Freedom Act of 1998 and urging a renewed commitment to eliminating violations of the internationally recognized right to freedom of religion and protecting fundamental human rights, as amended.

The Clerk read as follows:

H. RES. 423

Whereas the people of the United States enjoy and respect the freedom of religion and believe that the fundamental rights of all individuals shall be recognized;

Whereas fundamental human rights, including the right to freedom of thought, conscience, and religion, are protected in numerous international agreements and declarations;

Whereas religious freedom is a fundamental human right and all people are entitled to believe, practice, and worship according to their conscience;

Whereas the right to freedom of religion is expressed in the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, adopted and proclaimed by the United Nations General Assembly Resolution 36/55 of November 22, 1981; the Helsinki Accords; the International Covenant on Civil and Political Rights, done at New York on December 16, 1966, and entered into force March 23, 1976; the United Nations Charter; and the Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly Resolution 217(A)(III) of December 10, 1984;

Whereas the freedom for all individuals to adopt, believe, worship, observe, teach, and practice a religion individually or collectively has been explicitly articulated in Article 18 of the Universal Declaration of Human Rights and Article 18(1) of the International Covenant on Civil and Political Rights;

Whereas religious persecution is not confined to a country, a region, or a regime; but whereas all governments should provide and protect religious liberty;

Whereas much of the world's population is continually denied or restricted in the right to believe or practice their faith;

Whereas religious persecution often includes confinement, separation, humiliation, rape, enslavement, forced conversion, imprisonment, torture, and death;

Whereas October 27, 2003, marks the 5th anniversary of the signing of the International Religious Freedom Act of 1998 (22 U.S.C. 6401 et seq.), creating the Office of International Religious Freedom in the Department of State and the United States Commission on International Religious Freedom and resulting in a greater awareness of religious persecution both in the United States and abroad; and

Whereas the United States recognizes the need for additional domestic and international attention and action to promote religious liberty: Now, therefore, be it

Resolved, That the House of Representatives—

(1) recognizes the 5th anniversary of the signing of the International Religious Freedom Act of 1998 (22 U.S.C. 6401 et seq.); and

(2) urges a renewed commitment to eliminating violations of the internationally recognized right to freedom of religion and protecting fundamental human rights.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey (Mr. SMITH) and the gentleman from California (Mr. LANTOS) each will control 20 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. WOLF), the author of this legislation 5 years ago, a very hardworking chairman of the Subcommittee on Commerce, Justice, State, Judiciary and Related Agencies but, from my point of view, even more importantly, a leader in the area of human rights, and has been for the last 23 years as a Member of Congress.

Mr. WOLF. Mr. Speaker, I want to thank the gentleman from New Jersey (Mr. SMITH) for his leadership and the gentleman from California (Mr. LANTOS) for his leadership on this issue.

Mr. Speaker, I rise today to recognize, as I said the other day, every time these issues come up, it is the gentleman from New Jersey (Mr. SMITH), the gentleman from Illinois (Mr. HYDE), the gentleman from California (Mr. LANTOS). I mean, everyone else ought to be participating in this too; but I want them to know, and Chairman HYDE too, how much I appreciate it.

But think about it, every time a bill comes up dealing with persecution and oppression, it is always those three gentlemen. Why can we not get 432 other people to come on over and join these three patriots?

Mr. Speaker, I rise today to recognize and thank the United States Commission on International Religious Freedom. This fall we celebrate the 5th year of the commission and thank them for their tireless efforts to bring awareness to religious freedom violations across the globe. Those around the world suffering persecution for the religious beliefs have truly benefited from the commitment of the commission.

The commission produces an annual report. Each report helps to bring visibility to oppressive governments that violate the basic freedoms of their citizens. The protection of human rights and the plight of those suffering for their faith must not, should not ever fall on deaf ears. Someone must fight for them.

Nameless victims in China, including Tibet, which is not part of China, although the Chinese may think it is, China, Tibet, Vietnam, Sudan, Indonesia, India, Pakistan, Vietnam, and many other places where faith is under attack are waiting for a message of hope, waiting to hear that we in the United States care.

When the United States speaks out, the Congress, the government, we can make a difference. We cannot stand idly by and watch innocent people suffer. We must not let terrible atrocities go unchallenged. We have a moral obligation to speak out.

The United States Commission on International Freedom is shining a bright light in some of the darkest corners of the world. I commend them, encourage their continued work on behalf of the oppressed and persecuted people around the globe.

Mr. Speaker, Article 18 of the Universal Declaration of Human Rights states:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

I rise today to recognize and thank the United States Commission on International Religious Freedom. This fall we celebrate the fifth year of the commission and thank them for their tireless effort to bring awareness to religious freedom violations across the globe.

The commission was created by Congress in 1998 to shine a light on and generate a heightened awareness of the ongoing atrocities associated with persecution of individuals around the world for their religious beliefs.

As a results of their investigations, hearings, and reports, the commission has provided Congress and the administration with timely and accurate information on religious freedom abuses and sound policy recommendations to the president, the secretary of state, and Congress.

Those around the world suffering persecution for their religious beliefs have truly benefitted from the commitment of the commission. The commission produces an annual report. Each report helps to bring visibility to oppressive governments that violate the basic freedoms of their citizens.

As an example, look at what is occurring in some of these countries:

China—According to the Cardinal Kung Foundation, there are at least 22 Roman Catholic bishops in Chinese prisons, labor camps or under house arrest. Numerous Protestant House Church leaders and worshipers in China have been imprisoned or detained. Large numbers of Muslims in China are in prison because of their faith. Young Muslim Uighur boys and girls are not even allowed to enter a mosque until they are 18 years old. Hundreds more bishops, priests, and lay people are already in prison. Torture and death are common.

Tibet—Buddhist monks and nuns are in prison and hundreds of monasteries and nunneries have been destroyed. Yet loyalty to the Dalai Lama remains strong. Despite this brutal crackdown by the government of China, the Tibetan people remain strong and cling to their heritage and unique identity.

Sudan—Millions have died in the 20-year civil war and the majority have been Christians who starved to death.

Egypt—The Coptic Christians continue to experience harassment and persecution.

Pakistan—The government has failed to protect the rights of religious minorities. Christians are persecuted and blasphemy laws are strong.

Iran—Bahais are persecuted and imprisoned because of their faith.

India—Violence is ongoing against Christians, churches are burned or destroyed, nuns raped.

Indonesia—Christian churches and Muslim mosques are attacked and burned.

Saudi Arabia—State Department annual report on human rights documents that freedom of religion does not exist and that non-Muslim groups are not allowed to worship in public, and risk being detained, imprisoned, tortured, or deported. Conversion form Islam to another religion is punishable by death.

Vietnam—Buddhist, Protestants, Catholics and minority groups suffer intense persecution at the hands of brutal communist rulers.

It goes on and on.

The protection of human rights and the plight of those suffering for their faith must not fall on deaf ears. Someone must fight for them. Nameless victims in China, Vietnam, Sudan, Indonesia, India, Pakistan, Vietnam and the many other places where faith is under attack are waiting for a message of hope, waiting to hear that we care.

When the United States speaks out, the United States makes a difference. We cannot stand idly by and watch innocent people suffer. We must not let terrible atrocities go unchallenged. We have a moral obligation to speak out.

The United States Commission on International Religious Freedom is shining a bright light in some of the darkest corners of the world. They have made a difference over the last 5 years and continue to have an impact on the lives of the suffering people of the world. I commend them and encourage their continued work on behalf of the oppressed and persecuted people around the globe.

As the President recently stated in his speech for the National Endowment for Democracy "The bedrock of successful societies is the right to religious liberty."

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of this resolution. Let me begin by commending my good friend and colleague, the gentleman from Virginia (Mr. WOLF), for sponsoring this important resolution. As co-chairman of the Congressional Human Rights Caucus, Congressman WOLF has been tireless in his support for human rights and religious liberty around the globe. Without his passionate commitment and determination, we would not have passed this landmark piece of legislation.

Mr. Speaker, I would be remiss if I did not also commend the distinguished vice chairman of the Committee on International Relations, the gentleman from New Jersey (Mr. SMITH), my good friend, who is another tireless advocate for human rights and who was pivotal in the passage of the Religious Freedom Act.

In the 5 years since President Clinton signed the Religious Freedom Act and established the Office of International Religious Freedom and the United States Commission on Religious Freedom, huge strides have been made in making religious freedom a core objective of U.S. foreign policy.

In addition to the full-time diplomatic work of these two offices, the annual report on international religious freedom published by the State Department every year, these documents and the diplomatic efforts give hope to millions of people who are denied the ability to proclaim freely and to practice freely their faith.

The Religious Freedom Act also requires the Department of State to name and to sanction the most egregious violators of religious freedom. This asks for the United States annually to confront governments like China, Egypt, and Saudi Arabia for their policies of religious persecution and discrimination. The Religious Freedom Act has given our government an important set of tools to use to document and confront the alarming reemergence of virulent anti-Semitism in Europe and elsewhere.

Mr. Speaker, I am pleased that the resolution we are considering today stresses the need to renew the commitment of the Congress to the promotion of religious liberty. Religious freedom continues to be under siege in many parts of the world, and we must rededicate ourselves to the effort to confront the violators.

Mr. Speaker, freedom of religion and conscience are the cornerstones of liberty and of democracy. That is why religion is the first freedom enumerated in our Bill of Rights. If we succeed in promoting religious liberty in the United States' foreign policy, we will not only bring an end to unfathomable human suffering, but we will also advance the development of democracy and we will promote other fundamental human rights.

Mr. Speaker, I urge all of my colleagues to support H. Res. 423.

Mr. Speaker, I reserve the balance of my time.

□ 1430

Mr. SMITH of New Jersey. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to join the gentleman from California (Mr. LANTOS) and my good friend, the gentleman from Virginia (Mr. WOLF) in support of this resolution which clearly is important to recognize the fifth anniversary of the signing of the International Religious Freedom Act of 1998 because that was an historic landmark piece of legislation. And we today renew our commitment, rededicate ourselves to promoting the tolerance that was embodied in that legislation, that anyone's faith or lack of faith needs to be respected. Certainly, at a time when there is a growing intolerance, particularly in the Middle East and in places like the People's Republic of China, where we have actually seen a worsening of religious oppression, we need to speak out boldly and clearly and unambiguously for religious freedom. This legislation, the law and, the heartfelt sentiments behind it are going to be carried forward robustly to bring freedom to those persecuted for their faith.

Let me also point out that there are a number of countries that are off many people's radar screens. China, yes, we know it is bad and getting worse there, particularly as it relates to the Uygurs—the Muslims—the Buddhists, and the Falon Gong—who are being tortured and mistreated in growing numbers, even followed by Chinese agents into this country and harassed, which, is amazing to me—as well as the underground Catholic Church and the underground Evangelical and Christian Church. If you are not part of the officially recognized Chinese Government-controlled Church, watch out. You will be severely dealt with, particularly if you step over a very ambiguous line they have made in the sand.

Let me say that this legislation was landmark. There are countries like Turkmenistan, Cuba, Uzbekistan, Saudi Arabia, and Vietnam that have seen a deterioration, as well as Georgia, Azerbaijan, Kyrgyzstan, Belarus and even Russia.

I would point out to my colleagues that some of the more matured democracies, like France, have seen a growing intolerance when it comes to religious expression. As a matter of fact, I spent 2 hours meeting with the prime author of their religious cults legislation and was appalled at the far-reaching nature of that legislation, to designate a body of religious belief or denomination a cult. Once branded, it comes under the severe repression of the government; and my hope is that that legislation will be junked in the near future, although I will not hold my breath. But in good countries like France, where you would expect there to be a tolerance, we see the tide going in the other direction.

As a matter of fact, the Chinese and other governments have actually looked at the French model and are looking to emulate it and to put a cover, a facade, on their own repression harkening back to that legislation.

I just want to point out to my colleagues as well, that getting here 5 years ago was not all that easy. The gentleman from California (Mr. LANTOS) will remember that we went through several iterations of the language that the gentleman from Virginia (Mr. WOLF) originally introduced, always with his full concurrence and his meticulous attention to detail. The previous administration, at first, was against it. Secretary Albright and John Shattuck, the Assistant Secretary, said if we pass this, we will somehow set up a hierarchy of human rights. If ever there was a bogus argument, that was it.

When all of us joined in on passing and implementing the Jackson-Vanik amendment, we did not set up a hierarchy of human rights when it came to immigration. When many of us were against, as we all were, apartheid in South Africa and believed that sanctions were a means to that end, which I believed very strongly, that did not say we were putting racism above any other human rights. It was in addition to, not in lieu of. And, thankfully, and with the help of my friend, the gentleman from California (Mr. LANTOS), we were able to craft legislation that, ultimately, the Clinton Administration signed into law; and now, 5 years later, is being very, very vigorously implemented by the Bush Administration.

Let me also remind my colleagues this act created an ambassador at large, which is now being ably filled by Tom Hanford. He has a great staff. Tom Farr, who recently retired, did the yeoman's work in that position. There was not a country on the face of the Earth, there was not a religious intolerance or practice that he was not aware of, as well as the staff. They did a very good job in chronicling accurately what indeed is going on around the world. And from the basis of that chronicling, we are able to take more effective action.

We also created a Commission on International Religious Freedom, which is also staffed, as well as manned, by commissioners who are experts in the fields, and I think they are doing a tremendous job in giving us an independent look, in addition to the State Department office, as to what is going on in country after country as it relates to religious freedom.

I would just say to my colleagues that for the countries of particular concern, the designation that was created in the legislation has also been very, very useful. But I would hope, and I recently wrote, along with other Members, a letter to Secretary Colin Powell asking that some of the countries that are not on this list right now be put on it because of either their deterioration with regard to religious freedom or because they have been ongoing, egregious violators on it. And some of those countries we would like to see on the list include Turkmenistan, Saudi Arabia and Vietnam. We believe they should be designated as CPCs. Hopefully, as the analysis is done on their practices, the State Department will come to that determination.

Again, I want to thank my colleagues. When we finally got this legislation down to the White House 5 years ago after numerous hearings, rewrites and rewrites and rewrites, it was a good bipartisan product; and, again, the gentleman from California (Mr. LANTOS) was there every step of the way, working with us on that legislation. I actually chaired the subcommittee that worked on it. We held the hearings together and made sure that this legislation was shepherded through the House and into the Senate. But the yeoman's work was done by the gentleman from Virginia (Mr. WOLF) and I again want to single him out and say how grateful we all are for this landmark and historic piece of legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. LANTOS. Mr. Speaker, I yield 8 minutes to the gentleman from Texas (Mr. EDWARDS), my good friend and distinguished colleague, who has been a fighter for religious freedom throughout his distinguished congressional tenure.

Mr. EDWARDS. Mr. Speaker, I rise in support of House Resolution 423, which recognize the fifth anniversary of the signing of the International Religious Freedom Act of 1998.

Religious freedom, without a doubt, should be a fundamental right of every citizen of the world. And I want to commend the gentleman from New Jersey (Mr. SMITH) and the gentleman from California (Mr. LANTOS) for their tireless leadership in defending that right for all. This resolution urges "a renewed commitment to eliminating the violations to the internationally recognized right to freedom of religion."

I strongly agree that we should make that renewed commitment. Earlier this morning, a number of House Members, along with the gentleman from New Jersey (Mr. SMITH) in the last few moments rightly criticized religious bigotry and discrimination in Vietnam, Cambodia, Afghanistan, China and other nations around the world. I applaud my colleagues for saying that the world should not tolerate torture, imprisonment or murder of people because of their personal religious faith.

I also I am deeply grateful to live in the United States, where we do not imprison citizens because their religious faith is different from others. I belief perhaps America's greatest single contribution to the world, from our experiment in democracy, is our model of religious freedom and tolerance.

The foundation of that religious freedom here is the principle of the separation of church and state embedded in the first 16 words of our Bill of Rights. "Congress shall pass no law respecting an establishment of religion or prohibiting the free exercise thereof."

In his letter to the Danbury Baptists of Connecticut in 1802, Thomas Jefferson expressed his belief that the principle of church-state separation is one of the most sacred of our founding principles. Unfortunately, many Americans today have come to perceive that separation of church and state implies disrespect for religion. Nothing could be further from the truth as Jefferson said so eloquently over a century ago.

Separation of church and state does not mean keeping people of faith out of government. It does means keeping government out of our faith.

By passing language saying "Congress shall pass no law respecting an establishment of religion" known as the establishment clause of the Bill of Rights, our Founding Fathers were putting religion on a pedestal so high that no hand of politicians or government could reach it and control it.

Our Founding Fathers were right, separation of church and state in America has led to more religious freedom, vitality and tolerance than any nation in the world, perhaps throughout the history of the world. Most nations have gotten it wrong because they have tried to use the power of government to fund religion or to emphasize one religion or faith over another.

With government funding has come government regulation of religion, and, ultimately, the result has been intolerance against those whose faiths are not in the majority of that country.

While I am profoundly grateful for our religious freedom in America, I am also deeply disturbed by recent Bush administration regulations and proposed laws that would limit religious freedom right here at home, the religious freedom of American citizens. It would be ironic and tragic for Members of Congress to be pushing today for more religious freedom abroad while allowing religious freedom to be limited here in America. Let me be specific.

This resolution says, "Whereas the right to freedom of religion is expressed in the declaration on the elimination of all forms of intolerance and discrimination based on religion or belief."

Instead of eliminating all forms of intolerance and discrimination based on religious belief, the Bush administration actually supports using Federal tax dollars to subsidize religious discrimination. This is known as the so-called Charitable Choice proposals. Under Bush administration proposals, an American citizen can be fired from a Federally-funded job solely because of his or her personal religious faith.

Now, let me repeat that. Under Bush administration proposals, an American citizen can be fired from a Federally-funded, tax-supported job for no other reason than that person's religious faith. The administration, for example, would allow a group that associated with Bob Jones University to accept $1 million in job training funds and $1 million tax dollars, your dollars and mine. And then with some of that money put out a sign that says, no Jews or Catholics need apply here to this Federally-funded job.

That is offensive, and it is outrageous, and it should not be allowed in America. To allow and to actually subsidize such religious discrimination when using American tax dollars is wrong, and it is unconstitutional.

We all know why, for example, a Baptist Church can hire a Baptist minister with their own money to carry out the church's own spiritual mission. However, long-standing Federal policy has been when organizations receive Federal tax dollars to run social service programs, not religious programs, they cannot discriminate in job hiring based simply on a person's religious faith. Yet, President Bush's administration wants to change that policy for billions of tax dollars and for potentially hundreds of thousands jobs. For example, the administration wants to contract out, privatize up to 850,000 present Federal jobs. And in that proposal, they say a group accepting millions of dollars, totaling billions if you add them all up, for hundreds of thousands of jobs, that those groups receiving our tax dollars, and say I am not hiring you because you do not pass my personal religious test.

I believe the administration position flies in the face of this resolution today, the Bill of Rights and Americans' personal religious freedom. No American citizen should have to pass any other person's religious test to qualify for a tax-funded job.

Mr. Speaker, it is right for House Members to stand up for religious freedom in other nations as we are today, but I would suggest we should more carefully examine how Bush administration policies will lead to religious discrimination right here at home. If Americans are denied the right to a Federally-funded job, the opportunity and effect to feed their families simply because someone else did not like their personal religious faith, then those Americans are clearly being denied the free exercise of their religious freedom.

Perhaps most Americans to date have not been concerned about these so-called charitable choice provisions, first because they probably were not aware that these proposals have been made by the administration; and, second, most Americans think that the 1st amendment protects our religious freedom so no one can threaten it. But in the years ahead, if the Bush administration charitable choice proposals continue to be implemented as they are being done right now, dozens, then hundreds, and ultimately thousands of Americans will be denied a tax-funded job single my because of their personal faith.

☐ 1445

I project that Americans will be outraged to find out that this United States Congress, the same Members who are voting to push religious freedom in other nations, the right thing to do, are voting to deny religious freedom and to subsidize with tax dollars job discrimination against Americans based on their religious faith.

While we are right to condemn religious discrimination in other nations, we should stop subsidizing religious discrimination here in America. Religious freedom is a cherished right for all American citizens. Congress has a responsibility on a bipartisan basis to stop the Bush administration proposals, which would put that right at risk for thousands and thousands of American citizens. If we are going to preach religious freedom to other nations, perhaps we should also practice it here at home.

Mr. LANTOS. Mr. Speaker, I am delighted to yield 3 minutes to the gentleman from Virginia (Mr. SCOTT), my good friend and distinguished colleague.

Mr. SCOTT of Virginia. Mr. Speaker, I thank my colleague for yielding me the time.

Mr. Speaker, I have the honor of serving in this body as a Representative from Virginia, the home State of James Madison and Thomas Jefferson who authored the statute on religious freedom which served as a model for the religious freedom provisions in our Bill of Rights. So I am pleased to rise in support of H. Res. 423, recognizing the fifth anniversary of the signing of the International Religious Freedom Act of 1998 and urging renewed commitment to eliminating violations of the internationally recognized right to freedom of religion and protecting fundamental human rights.

I want to thank my distinguished colleague from Virginia (Mr. WOLF) for his sponsorship of this resolution.

I agree with the provisions, the whereas in this resolution: whereas religious freedom is an absolute right and all people are entitled to do with their own souls as they choose; whereas the right of freedom of religion is expressed in the declaration on the elimination of all forms of intolerance and discrimination based on religion or belief adopted and proclaimed by the

United Nations and many other organizations; whereas freedom of all individuals to adopt, believe, worship, observe, teach and practice a religion individually or collectively has been explicitly articulated; whereas religious persecution is not confined to a country, a region, or a regime; but whereas all governments should provide and protect religious liberty. I agree with all of those principles, but I feel compelled to point out that this House has not always followed the principles articulated in the resolution.

For example, just a few months ago, this House in the Head Start reauthorization bill, by a very close vote rejected the long-standing principle that teachers could not be fired or denied employment solely because of their religious belief. Instead, we adopted a provision which allows the 8 percent of the Head Start programs which are faith-based to discriminate based on religion, with Federal money, not the church money, but with the Federal money. Ironically, that vote to allow the discrimination came one day after congressional leaders participated in a ceremony praising the 40th anniversary of the March on Washington. Ironic because one of the few articulated purposes and successes of the March on Washington was a prohibition against employment discrimination with Federal money.

Head Start, since inception, has prohibited employment discrimination based on religion, and hopefully the Senate will reject the House action and reaffirm the prohibitions against discrimination with the Federal money.

So, Mr. Speaker, as we celebrate the International Religious Freedom Act and condemn religious intolerance, we ought to renew our own commitment to that principle here in the United States and condemn efforts to allow employment discrimination with Federal money based solely on religious beliefs.

Mr. SMITH of New Jersey. Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona (Mr. FRANKS), my good friend and colleague.

Mr. FRANKS of Arizona. Mr. Speaker, it has now been 5 years since the International Religious Freedom Act was signed into law, and our view of the world has changed very dramatically since then due to a number of factors, primarily September 11 and the war against terrorism. The fundamental right of religious freedom is one of the very most critical foundations of this Republic.

Mr. Speaker, we must never forget that our Nation was founded by those who fled their country to preserve the inalienable right to religious liberty; and throughout the history of our Nation, people have left their homes in the cover of night to escape to the United States due to the religious persecution in their own countries. Unfortunately, in many places in the world today, the right to choose and practice one's faith is still not protected.

Mr. Speaker, it is so vitally imperative that we as a Nation continue to work to eliminate violations of religious freedom and human rights. One of the most compelling and pressing issues at this moment, and one where we have a great deal of leverage, is our responsibility to help establish true freedom in Afghanistan and Iraq. True freedom in those nations is absolutely impossible apart from provisions in their new constitutions that absolutely guarantee full religious freedom for every one of their people.

Our principal efforts in those countries, if we do nothing else, must center on preserving the right of religious freedom for every individual. It is critical, Mr. Speaker, even to the war on terrorism because constitutionally guaranteed religious freedom creates a vital framework for discussion and debate. It has the power to turn the war of weapons into a war of words. May we not forget that critical truth.

Mr. Speaker, Patrick Henry stated it this way. He said, "I have but one lamp by which my feet are guided, and that is the lamp of experience. I know of no way of judging the future but by the past." He understood the urgency and nature of the battle when he declared, "There is no longer any room for hope. If we wish to be free, if we mean to preserve inviolate those inestimable privileges for which we have been so long engaged, and which we have pledged ourselves never to abandon until the glorious object of our contest shall be obtained, we must fight!"

Mr. Speaker, indeed, we have fought but we now must ask ourselves what it was we were truly fighting for. I believe we fought, as President Bush said, for the "advance of freedom" because "we believe that freedom, the freedom we prize, is not for us alone; it is the right and capacity of all mankind." Guided by the lamp of our own experience of our own Nation, in those words, the President makes the most compelling argument that I can imagine for the United States to renew its commitment to eliminating violations of the right to religious freedom and to protecting fundamental human rights for every human being across the world.

Mr. PAUL. Mr. Speaker, I rise to oppose this legislation but want to make it clear that I am not doing so because I oppose religious freedom, as one might falsely conclude from the way this bill is crafted. My concerns with this bill are the same concerns I raise whenever Congress attempts to act in areas in which it has no constitutional authority: under the guise of promoting a laudable cause—religious freedom—this legislation seeks to impose our views of this topic on other sovereign nations. In short, it is yet another example of the U.S. meddling in the affairs of other countries.

Mr. Speaker, as Americans we have a special attachment to the idea of religious freedom. That is the reason many of our ancestors came to this land and fought for independence. But I don't think the way to advance religious freedom around the world is to demand that every country adopt our approach. I believe that so demanding will only engender ill-will toward the United States and, ironically, increased resistance to this idea. People generally to not like being told by foreign countries what to do or how they can worship. I believe the best way we can promote the idea of religious liberty abroad is to serve as a working, living example of the benefits of liberty. The United States has been admired historically in other countries because our system of government demonstrates the economic and other benefits of liberty. That is why other nations seek to emulate the United States, not because we demand that their religious laws conform to our notions of what is acceptable.

Mr. LANTOS. Mr. Speaker, we have no additional requests for time, and I yield back the balance of our time.

Mr. SMITH of New Jersey. Mr. Speaker, we have no further requests for speakers, and I yield back the balance of our time.

The SPEAKER pro tempore (Mr. OSE). The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and agree to the resolution, H. Res. 423, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. LANTOS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

FAIRNESS TO CONTACT LENS CONSUMERS ACT

Mr. BURR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3140) to provide for availability of contact lens prescriptions to patients, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3140

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fairness to Contact Lens Consumers Act".

SEC. 2. AVAILABILITY OF CONTACT LENS PRESCRIPTIONS TO PATIENTS.

(a) IN GENERAL.—When a prescriber completes a contact lens fitting, the prescriber—

(1) whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription; and

(2) shall, as directed by any person designated to act on behalf of the patient, provide or verify the contact lens prescription by electronic or other means.

(b) LIMITATIONS.—A prescriber may not—

(1) require purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of a prescription under subsection (a)(1) or (a)(2) or verification of a prescription under subsection (a)(2);

(2) require payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription under subsection (a)(1) or (a)(2) or verification of a prescription under subsection (a)(2); or

(3) require the patient to sign a waiver or release as a condition of verifying or releasing a prescription.

SEC. 3. IMMEDIATE PAYMENT OF FEES IN LIMITED CIRCUMSTANCES.

A prescriber may require payment of fees for an eye examination, fitting, and evaluation before the release of a contact lens prescription, but only if the prescriber requires immediate payment in the case of an examination that reveals no requirement for ophthalmic goods. For purposes of the preceding sentence, presentation of proof of insurance coverage for that service shall be deemed to be a payment.

SEC. 4. PRESCRIBER VERIFICATION.

(a) Prescription Requirement.—A seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is—

(1) presented to the seller by the patient or prescriber directly or by facsimile; or

(2) verified by direct communication.

(b) Record Requirement.—A seller shall maintain a record of all direct communications referred to in subsection (a).

(c) Information.—When seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information:

(1) Patient's full name and address.

(2) Contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate.

(3) Quantity of lenses ordered.

(4) Date of patient request.

(5) Date and time of verification request.

(6) Name of contact person at seller's company, including facsimile and telephone number.

(d) Verification Events.—A prescription is verified under this Act only if one of the following occurs:

(1) The prescriber confirms the prescription is accurate by direct communication with the seller.

(2) The prescriber informs the seller that the prescription is inaccurate and provides the accurate prescription.

(3) The prescriber fails to communicate with the seller within 8 business hours, or a similar time as defined by the Federal Trade Commission, after receiving from the seller the information described in subsection (c).

(e) Invalid Prescription.—If a prescriber informs a seller before the deadline under subsection (d)(3) that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it.

(f) No Alteration.—A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, if the same contact lens is manufactured by the same company and sold under multiple labels to individual providers, the seller may fill the prescription with a contact lens manufactured by that company under another label.

(g) Direct Communication.—As used in this section, the term "direct communication" includes communication by telephone, facsimile, or electronic mail.

SEC. 5. EXPIRATION OF CONTACT LENS PRESCRIPTIONS.

(a) In General.—A contact lens prescription shall expire—

(1) on the date specified by the law of the State in which the prescription was written, if that date is one year or more after the issue date of the prescription;

(2) not less than one year after the issue date of the prescription if such State law specifies no date or a date that is less than one year after the issue date of the prescription; or

(3) notwithstanding paragraphs (1) and (2), on the date specified by the prescriber, if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient.

(b) Special Rules for Prescriptions of Less Than 1 Year.—If a prescription expires in less than 1 year, the reasons for the judgment referred to in subsection (a)(3) shall be documented in the patient's medical record. In no circumstance shall the prescription expiration date be less than the period of time recommended by the prescriber for a reexamination of the patient that is medically necessary.

(c) Definition.—As used in this section, the term "issue date" means the date on which the patient receives a copy of the prescription.

SEC. 6. CONTENT OF ADVERTISEMENTS AND OTHER REPRESENTATIONS.

Any person that engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription.

SEC. 7. PROHIBITION OF CERTAIN WAIVERS.

A prescriber may not place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination. The preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription.

SEC. 8. RULEMAKING BY FEDERAL TRADE COMMISSION.

The Federal Trade Commission shall prescribe rules pursuant to section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) to carry out this Act. Rules so prescribed shall be exempt from the requirements of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 2301 et seq.). Any such regulations shall be issued in accordance with section 553 of title 5, United States Code. The first rules under this section shall take effect not later than 180 days after the effective date of this Act.

SEC. 9. VIOLATIONS.

(a) In General.—Any violation of this Act or the rules required under section 8 shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

(b) Actions by the Commission.—The Federal Trade Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 10. STUDY AND REPORT.

(a) Study.—The Federal Trade Commission shall undertake a study to examine the strength of competition in the sale of prescription contact lenses. The study shall include an examination of the following issues:

(1) Incidence of exclusive relationships between prescribers or sellers and contact lens manufacturers and the impact of such relationships on competition.

(2) Difference between online and offline sellers of contact lenses, including price, access, and availability.

(3) Incidence, if any, of contact lens prescriptions that specify brand name or custom labeled contact lenses, the reasons for the incidence, and the effect on consumers and competition.

(4) The impact of the Federal Trade Commission eyeglasses rule (16 C.F.R. 456 et seq.) on competition, the nature of the enforcement of the rule, and how such enforcement has impacted competition.

(5) Any other issue that has an impact on competition in the sale of prescription contact lenses.

(b) Report.—Not later than 12 months after the effective date of this Act, the Chairman of the Federal Trade Commission shall submit to the Congress a report of the study required by subsection (a).

SEC. 11. DEFINITIONS.

As used in this Act:

(1) Contact Lens Fitting.—The term "contact lens fitting" means the process that begins after the initial eye examination and ends when a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change in prescription is required, and such term may include—

(A) an examination to determine lens specifications;

(B) except in the case of a renewal of a prescription, an initial evaluation of the fit of the lens on the eye; and

(C) medically necessary follow up examinations.

(2) Prescriber.—The term "prescriber" means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration.

(3) Contact Lens Prescription.—The term "contact lens prescription" means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription, including the following:

(A) Name of the patient.

(B) Date of examination.

(C) Issue date and expiration date of prescription.

(D) Name, postal address, telephone number, and facsimile telephone number of prescriber.

(E) Power, material or manufacturer or both.

(F) Base curve or appropriate designation.

(G) Diameter, when appropriate.

(H) In the case of a private label contact lens, name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name.

SEC. 12. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. BURR) and the gentlewoman from Illinois (Ms. SCHAKOWSKY) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. BURR).

GENERAL LEAVE

Mr. BURR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. BURR. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, today is a great day for the 36 million contact lens wearers across the United States. Today, Republicans and Democrats have come together to help contact lens wearers by improving their access to the competitive contact lens marketplace in granting them the right to their contact lens prescriptions.

People who wear glasses may not recognize the importance of this legislation because, unlike contact lens wearers, they have had these rights since 1978. Now, 25 years later, contact lens wearers have the same rights to their prescriptions, without having to ask for them, and the ability to buy their lenses from any seller, be it an eye doctor, a discount club, or an Internet company.

I appreciate the support of the American Optometric Association, especially my optometrist in Winston Salem, North Carolina, Dr. Burke, who read through these drafts. He helped us as we put the bill together. He improved the legislation and put us where we are today.

Not only is this bill great for contact lens wearers, but it is, in my opinion, also good for eye doctors. I want them to listen. For the first time in Federal legislation, patients are told they must go back regularly to their eye doctors and get their contact lens prescriptions renewed. If patients try to buy contact lenses with expired prescriptions, sellers by law cannot fill their orders. This is a big deal, Mr. Speaker; and I am sure most physicians across this country would love Congress to pass legislation that required patients to come back to them on a regular basis. We do that in this legislation.

Additionally, H.R. 3140 will make it very hard for unlawful contact lens sellers to even stay in business. Right now, many contact lens sellers do not ask for physicians' contact information because the sellers have no intention of verifying the prescriptions. Multiple provisions in this bill will make this behavior illegal. Contact lens sellers will now be required to get all pertinent information from patients and call eye doctors' offices to verify that information. With the FTC enforcing this law, eye doctors should be assured that they will only have to do business with honest contact lens sellers.

Mr. Speaker, I want to thank the gentleman from California (Mr. STARK) and the gentleman from Wisconsin (Mr. SENSENBRENNER) for first introducing this legislation 8 years ago during the 104th Congress. They were the initial leaders on this issue, and I appreciate their efforts and the subsequent support on this legislation. I also want to thank the dean of our House, the gentleman from Michigan (Mr. DINGELL), and his staff for the excellent help in drafting this compromise piece of legislation that benefits all parties involved in the contact lens marketplace.

Finally, I want to thank the gentleman from Florida (Mr. STEARNS) and the gentleman from Louisiana (Mr. TAUZIN), the full committee chairman, and their staffs who shepherded this bill through the Committee on Energy and Commerce in record time.

Mr. Speaker, I urge my colleagues to support this.

Mr. Speaker, I reserve the balance of my time.

Ms. SCHAKOWSKY. Mr. Speaker, I yield myself 5 minutes.

I rise in strong support and as an original cosponsor of H.R. 3140, the Fairness to Contact Lens Consumers Act. I am pleased that the House is taking action on this important measure before the end of the legislative session.

This is an important consumer rights issue. Thirty-six million Americans use contact lenses, and Congress must address the regulatory issues that impact the rights of those consumers and their ability to purchase contact lenses from their preferred vendors. We have a duty to make sure that consumers' interests are being met; that they have access to affordable and safe contact lenses; and that uniform standards regulate this process nationwide.

Several of my colleagues have spent a great deal of time studying the subject, including, of course, the gentleman from North Carolina (Mr. BURR), the gentleman from Michigan (Mr. DINGELL), the gentleman from New York (Mr. TOWNS), the gentleman from California (Mr. WAXMAN), and the gentleman from California (Mr. STARK); and I want to commend and thank them for their leadership.

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As a contact lens user myself, I am glad to have the opportunity to take part in the debate and passage of this legislation and appreciate the opportunity to work with those who have crafted this legislation, as well as the distinguished chairman of the Subcommittee on Commerce, Trade and Consumer Protection, the gentleman from Florida (Mr. STEARNS). We appreciate the support also of the American Optometric Association for supporting this proconsumer legislation.

This bill will change current law to provide what we all agree to be needed changes, so that consumers are explicitly entitled to a copy of their contact lens prescription from their doctor. That way, they will have the freedom to shop around to get the best deal possible for filling their contact lens needs.

There have been reports of eye care providers unnecessarily preventing or delaying consumer access to their own prescriptions. There is some suggestion patients may not even know they are entitled to ask for their prescription. Clearly, we need to address those problems, and the legislation we are discussing today includes strong language guaranteeing those rights.

The bill requires eye doctors and optometrists to provide parents with a copy of their contact lens prescription, regardless of whether or not the patient asks for a copy. Under this measure, eye doctors and other prescribers are prohibited from requiring that consumers buy contact lenses from them as a condition of performing an eye exam or providing the prescription.

While consumers have a right to shop for the best deal when purchasing contact lenses, Congress, doctors, and industry all have a duty and an interest in making sure that patient safety is not compromised in the process. The Food and Drug Administration mandates that contact lens sales require a valid prescription from an eye care professional. With the increasing prevalence of mail order contact lens providers, whether through the Internet or 1-800 numbers, I believe it is important we give consumers expanded access while adhering to the FDA requirements.

In the interest of fairness to consumers and doctors, this legislation establishes clear uniform rules that will guarantee fairness and safety to contact lens consumers in every State, regardless of existing laws.

The bill creates a verification system that will ensure prompt filling of contact lens prescriptions. Under the legislation, when consumers place orders with third-party contact lens vendors, those vendors must verify the prescription with their doctors. Their doctors will then have 8 hours to respond. If they do not, the prescription will be deemed valid by the vendor and the order filled. These safeguards, coupled with time requirements, will ensure prompt and safe access to contact lenses at affordable prices for consumers.

This legislation requires the FTC to issue rules implementing the bill's requirements and empowers the FTC to enforce these rules. The new rules will become effective within 60 days of enactment.

I want to again commend those who worked to bring this proconsumer legislation to the floor, and I urge all of my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. BURR. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida (Mr. STEARNS), the subcommittee chairman.

Mr. STEARNS. Mr. Speaker, I thank our distinguished colleague for yielding me this time, and thank him, of course, for H.R. 3140, the Fairness to Contact Lens Consumers Act.

As has already been pointed out, about 36 million Americans wear contact lenses, but those millions of Americans do not have a right to a copy of their contact lens prescription. I think a lot of us did not realize that. This bill changes all of that, so doctors are required now to provide patients with a copy of their prescriptions whether they ask for it or not. So now it is their property, and they can use it as they wish.

Of course, with that prescription, the consumer now has an opportunity to be empowered so that the issue of competition is heightened in the contact lens market. Because unlike doctors who are prevented from filling drug prescriptions, eye doctors and optometrists are able to fill contact lens prescriptions. This sets up a conflict-of-interest situation, where third-party sellers are actually competing for the sale of lenses with the individual writing the prescription. That will all change under this bill.

So this bill requires doctors and optometrists to verify prescriptions with third-party sellers. If the doctor refuses, for example, to verify this prescription, then the verification is presumed. What this means is the consumer will no longer be caught between the doctor and the seller in a competitive tug-of-war where the consumer is always the loser. This bill gives power to consumers over their buying decisions and allows the consumer to make his choice.

I think it has been pointed out that the bill has also received the endorsement of the American Optometric Association and has received strong bipartisan support in the Committee on Energy and Commerce. It came out of the Subcommittee on Commerce, Trade, and Consumer Protection, which I chair, and it is a good piece of legislation. I support it and I commend the author.

Ms. SCHAKOWSKY. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. TOWNS), the lead Democratic cosponsor of the bill.

Mr. TOWNS. Mr. Speaker, let me begin by thanking the chairman of the committee, the gentleman from Louisiana (Mr. TAUZIN), and of course the ranking member of the full committee, the gentleman from Michigan (Mr. DINGELL), and to the gentleman from Florida (Mr. STEARNS), of course, and the ranking member as well, the gentlewoman from Illinois (Ms. SCHAKOWSKY).

Mr. Speaker, this legislation is long overdue. This legislation will allow sellers to work in coordination with optometrists and ophthalmologists across the Nation to ensure that every consumer has access to their prescription in a timely fashion while making the contact lens marketplace more competitive.

Consumers deserve the best possible prices and service. Therefore, Congress must involve itself, as it is doing with H.R. 3140. I am proud that both sellers and the doctors have come together in support of this legislation, and I urge all of my colleagues to support this bill.

In addition to my friend, the gentleman from North Carolina (Mr. BURR), I would also like to thank the following: Kelly Zerzan, Jonathan Cordone, Jenny Hansen, and Jesse McCollum for their hard work on this bill as well.

Once again, I urge all of my colleagues to support H.R. 3140. It is a great bill and deserves the support of this House. Any time we can make life better for consumers, then we should be anxious and eager to do so, and there is no doubt in my mind that this legislation makes life a lot better for consumers. So I am delighted to support it and encourage my colleagues to do likewise.

Mr. BURR. Mr. Speaker, I reserve the balance of my time.

Ms. SCHAKOWSKY. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. STARK), who worked hard on this legislation and over a long period of time.

Mr. STARK. Mr. Speaker, I extend my thanks as well to the gentleman from North Carolina for his enterprise and efforts in seeing this bill brought to the floor, and to thank the gentlewoman from Illinois (Ms. SCHAKOWSKY) for her work, as well as the people who have been mentioned, the gentleman from New York (Mr. TOWNS), the gentleman from Michigan (Mr. DINGELL), the gentleman from Louisiana (Mr. TAUZIN), the gentleman from California (Mr. WAXMAN), and others who have been concerned about it.

I think that I have today to give credit where credit is due. This bill should really be referred to as the Deborah Stark bill. Now, who is Deborah Stark? She happens to be the mother of my children and my long-suffering wife. And this bill has its genesis right down the road on Pennsylvania Avenue where she went one day, when we still lived in California full time, to have her eyes examined because her contact lenses were giving her problems and, hopefully, to get a new prescription and send it out to California to have it filled, so she would have her new contact lenses when she arrived home in California.

So she went to this physician down the road. And as she was about to leave, having then paid the bill, she was told that she could not have a copy of the prescription. She was, not surprisingly, incredulous. I was not only incredulous, I was mildly upset, and that led to this day.

So we do not sit back here, as many people think, as Members of Congress, and just dream up ways to make life complicated for ophthalmologists and optometrists. We respond, generally not to constituents quite so close to home, but we respond to the problems that people in this country have, and it takes us often a long time, in this case almost 10 years. But when we get there, we do a good job, as we see with the many people who have worked to do this.

I would like to add that Consumers Union was one of the early supporters of this bill and helped us to work it through. It is the law in California already, and I am sure that the other 30 million people who do not reside in California who wear contact lenses, I am too cowardly to stick my finger in my eye, so I do not, but many people will be pleased, and it will be of great convenience to them. I am one who happens to believe in free enterprise, and I think it is going to create some competition in the world and perhaps make lives better for everyone concerned in this.

So, again, my thanks to those people who worked so hard. It is a good bill. The consumers will benefit. The advocates for all the providers involved have worked with us to support it, and I urge its adoption.

I'm pleased to join with my colleagues on both sides of the aisle in support of the Fairness to Contact Lens Consumers Act and urge every Member of Congress to join us in voting for this important consumer protection legislation.

This bill requires eye care professionals to provide their patients with a copy of their contact lens prescription so the patient can choose to purchase their contact lenses from that professional or seek an alternative provider. The bill also enforces a verification system for prescriptions that puts the onus on eye doctors to quickly verify their patients' contact lens prescriptions. This makes real the option for consumers to purchase their contact lenses through third parties—such as online venders—which are often more affordable and convenient for consumers. This is a law my home State of California has already enacted and one that consumers deserve to have in all parts of our country.

This might not be a high profile issue, but it is important to the 36 million of contact lens wearers around the country. Eyeglass wearers have enjoyed unobstructed access to their eyeglass prescriptions since the Federal Trade Commission issued regulations in 1978 requiring their automatic release. Yet, 25 years later, similar action has yet to be taken for contact lens wearers. If this bill is enacted, we will finally have brought contact lens consumer protections up-to-date.

I got involved in this issue more than a decade ago when my wife asked her eye care provider in D.C. for her contact lens prescription so she would have it if she needed it while we were in California. To her—and my—astonishment, the provider refused to give her the prescription saying that the law did not require him to do so. We checked it out and he was correct. I've been working to fix this problem ever since.

The simple fact is that contact lenses are fast replacing eyeglasses as the corrective vision instrument of choice for consumers. Despite this trend, many States allow prescribing eye care professionals to refuse to release contact lens prescriptions to their patients. Eye doctors cite health concerns, but the fact is that they have a strong financial incentive to restrict consumer access to the contact lens market. Without their contact lens prescription in hand, consumers are forced to purchase their lenses from their prescribing eye doctor—who obviously profits from each and every sale.

Over the years, I've introduced several bills to require the release of contact lens prescriptions. For the last several years, Representatives BURR, DINGELL, TAUZIN, WAXMAN, SCHAKOWSKY and I have been working together to fashion a bipartisan bill that can garner the support of a broad coalition to ensure its passage.

That day is here. I started out this effort with the support of Consumers Union and I'm pleased they have endorsed this version of the legislation as well. I'm also pleased that the American Optometric Association has been willing to come to the negotiating table and has also endorsed this final version of our legislation.

That tells you this is a good bill—we've got consumers and optometrists—the largest providers of contact lenses—agreeing that this day has come. It is time to update our consumer protection laws to ensure that contact lens wearers have the right to safely purchase their lenses from the provider that best meets their needs. Join us in support of H.R. 3140 to give consumers that right.

Ms. SCHAKOWSKY. Mr. Speaker, I yield 3 minutes to the gentleman from Utah (Mr. MATHESON).

Mr. MATHESON. Mr. Speaker, I rise to express my strong support for H.R. 3140, the Fairness to Contact Lens Consumers Act. I am pleased to have been an original cosponsor of this bipartisan legislation. It simply does the right thing for consumers.

This legislation will require eye doctors and optometrists to provide patients with a copy of their prescription for contact lenses, regardless of whether or not the patient asks for that copy. And the bill also requires that these prescribers to verify and provide a copy of the prescription to any person designated by the consumer to act on their behalf, such as third-party sellers.

What many people may not know, is that eye doctors have been required to provide patients with a copy of their prescriptions for eyeglasses since 1978, but the same requirement for some reason has not been in place for contact lens prescriptions. Today, with around 36 million Americans wearing contact lenses, ensuring that consumers are able to obtain their contact lens prescriptions and make a choice in where they purchase their contact lenses is simply the right thing to do.

I strongly support this bill and urge my colleagues to vote for it.

Ms. SCHAKOWSKY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BURR. Mr. Speaker, I yield myself such time as I may consume to once again reiterate that this is a tremendous bipartisan effort that, as the gentleman from California (Mr. STARK) said, is well overdue, but this legislation is ripe today. I urge my colleagues to support it unanimously.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. OSE). The question is on the motion offered by the gentleman from North Carolina (Mr. BURR) that the House suspend the rules and pass the bill, H.R. 3140, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. MORAN of Kansas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

REGULATION OF NONCORRECTIVE CONTACT LENS AS MEDICAL DEVICES

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2218) to amend the Federal Food, Drug, and Cosmetic Act to provide for the regulation of noncorrective contact lens as medical devices, and for other purposes.

The Clerk read as follows:

H.R. 2218

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds as follows:

(1) All contact lenses have significant effects on the eye and pose serious potential health risks if improperly manufactured or used without appropriate involvement of a qualified eye care professional.

(2) Most contact lenses currently marketed in the United States, including certain plano and decorative contact lenses, have been approved as medical devices pursuant to premarket approval applications or cleared pursuant to premarket notifications by the Food and Drug Administration ("FDA").

(3) FDA has asserted medical device jurisdiction over most corrective and noncorrective contact lenses as medical devices currently marketed in the United States, including certain plano and decorative contact lenses, so as to require approval pursuant to premarket approval applications or clearance pursuant to premarket notifications.

(4) All contact lenses can present risks if used without the supervision of a qualified eye care professional. Eye injuries in children and other consumers have been reported for contact lenses that are regulated by FDA as medical devices primarily when used without professional involvement, and noncorrective contact lenses sold without approval or clearance as medical devices have caused eye injuries in children.

SEC. 2. REGULATION OF CERTAIN ARTICLES AS MEDICAL DEVICES.

Section 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j) is amended by adding at the end the following subsection:

"Regulation of Contact Lens as Devices

"(n)(1) All contact lenses shall be deemed to be devices under section 201(h).

"(2) Paragraph 1 shall not be construed as having any legal effect on any article that is not described in that paragraph.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on H.R. 2218, the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

□ 1515

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 2218, which amends the Federal Food, Drug and Cosmetic Act to provide for the regulation of noncorrective contact lens as medical devices, and I commend the gentleman from Arkansas (Mr. BOOZMAN) for his work on this legislation.

As the corrective contact lens industry has grown, so has the practice of using noncorrective contact lenses for cosmetic purposes. Currently, there is very little regulation of these lenses. However, all contact lenses have significant effects on the eye and pose health risks if improperly manufactured or used without the supervision of a qualified eye care practitioner. Both corrective and noncorrective contact lenses have been approved as medical devices by the FDA. It just makes sense that the FDA should have the authority to regulate these lenses.

Mr. Speaker, having said that, I would urge all of my colleagues to support this important resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, colored and patterned contact lenses can be a fun way to express one's sense of style. Noncorrective contact lenses that are manufactured responsibly and worn under the supervision of a qualified eye care professional are useful and a perfectly safe commodity.

For years, the FDA saw it that way too and properly classified colored contact lenses as medical devices. In fact, just over a year ago FDA issued an official notification noting that noncorrective contacts "present significant risks of blindness and other eye injury if distributed without the involvement of a qualified eye professional."

But in April, for whatever reason, and we have seen an FDA that has become more and more politicized in the last couple of years, but for some reason the FDA flip-flopped deciding that colored contact lenses were not medical devices and were instead cosmetics. This quiet, but important, policy change opened the door to a new public health threat.

By reclassifying colored contacts as cosmetics, FDA eliminated the requirement that these products be manufactured to exacting standards, that they be FDA approved for safety before marketing, and that they be labeled with directions for safe use. FDA has expressed concern about the safety of noncorrective lenses administered without a doctor's involvement. But FDA's decision to reclassify them in this increasingly politicized FDA, this decision to reclassify them eliminated its authority to require that very involvement.

Despite concerns raised by Members in the House, but more importantly by Prevent Blindness Ohio and other eye health advocates, FDA went ahead with this misguided plan. This bill corrects that mistake by statutorily reclassifying noncorrective contacts as medical devices by statute. This bill was carefully drafted to ensure that this would be its only effect, and it clearly states this change will have no limiting effect on FDA's discretion in classifying other products under the Food, Drug and Cosmetic Act.

H.R. 2218 enjoys bipartisan support in the Committee on Energy and Commerce. The chairman of the Subcommittee on Health, the gentleman from Florida (Mr. BILIRAKIS), and I have cosponsored this legislation, as have several other colleagues; and I am joined on the floor today by two other leading health advocates, the gentleman from California (Mr. WAXMAN) and the gentlewoman from California (Ms. ESHOO). I urge my colleagues to join us in supporting this important legislation in protecting the vision and health of American consumers.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Arkansas (Mr. BOOZMAN), who is himself an optometrist and certainly has lived with this problem for many, many years and knows the real world, and I thank the gentleman for bringing this to our attention.

Mr. BOOZMAN. Mr. Speaker, I thank the gentleman from Florida (Chairman BILIRAKIS) for yielding me this time.

I also thank the gentleman from California (Mr. WAXMAN) and his staff for working so hard on this bill. They have really gone above and beyond the call of duty in spending a great deal of time getting this to the situation that we have now. I also thank the gentleman from Florida (Mr. BILIRAKIS) for his help and the gentleman from Louisiana (Mr. TAUZIN).

Today we have the opportunity to close a loophole that has caused harm to many people young and old throughout the country. The loophole is a quirk in the law that allows decorative, plain old contact lenses to be sold without a prescription. Although this may not sound like a big deal, as a practicing optometrist for over 25 years, it is.

There are many cases of damage caused by contact lenses sold without the supervision of an eye care professional. Take, for instance, the case of a 14-year-old girl who purchased a pair of decorative contact lenses from a local video store and received no instructions on how to care for them. She ended up suffering a severe bacterial eye infection, and ultimately had to have a corneal transplant, which is a very significant surgery. Or the 32-year-old man who bought a pair of lenses at the local flea market for a Halloween costume. Again, the customer was provided with no directions at all on proper usage. He was later diagnosed with a corneal abrasion. He had scratched his eye because they did not fit his eye. He was later in a situation that resulted in possible permanent loss of vision.

Unfortunately, there are many, many more people whose vision has been compromised because of this type of contact lens being available to the general public without the supervision of eye care professionals. It is important to know that although adults are affected by the availability of these lenses, our children are the most vulnerable. As all of us who have children know, reason is often overruled by the desire to be fashionable and trendy.

Selling lenses to change one's eye color in video stores, flea markets, hair salons, and gas stations is inviting trouble and, frankly, should not be allowed.

A simple eye infection is the least of problems with unsupervised contact lens use. The worst is it can lead to permanent blindness. Proper care of the lenses and instructions on the correct way to use them are the keys to preventing these afflictions. Consumers are not getting this information from the video store clerk or the gas station attendant.

H.R. 2218 presents a simple fix to a dangerous problem. This bill is not intended to address the complicated legal issues surrounding intended use. The gentleman from California (Mr. WAXMAN) and I have worked hard to ensure that the language in this bill remains neutral on this question, and I think we have succeeded.

Additionally H.R. 2218 is being endorsed by the health care community, including the American Optometric Association and the American Academy of Ophthalmology, as well as the leading manufacturers in the contact lens industry and consumer protection groups.

Mr. Speaker, I cannot stress strongly enough that unregulated, unsupervised use of decorative contact lenses is extremely hazardous to one's health. H.R. 2218 would simply close that loophole that allows these lenses to be sold unregulated. I would strongly encourage my colleagues to support H.R. 2218.

Mr. BROWN of Ohio. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I thank the gentleman for yielding me this time.

I am very pleased to be able to join my colleagues in urging support for a bill that deems all contact lenses to be medical devices under the Federal Food, Drug and Cosmetic Act; and I thank the gentleman from Arkansas (Mr. BOOZMAN) for his leadership in sponsoring this legislation. Anyone who has any doubts about how significantly contact lenses affect the structure and function of the eye need only spend a few minutes talking with the gentleman from Arkansas (Mr. BOOZMAN), who, by virtue of his professional training, understands these dangers better than anyone else in the House of Representatives.

This bill is urgently needed. All contact lenses pose serious health risks. Lenses the wrong size can deprive the surface of the eye of oxygen. Lenses worn for too long can cause painful ulcerations of the cornea. Lenses that are poorly manufactured or misused can become contaminated and cause vision-threatening infections. Until recently, FDA had the tools to control the risks of contact lenses. They considered all lenses of all types to be Class III medical devices. Using its medical device authority, the FDA required that companies follow good manufacturing standards, obtain approval prior to marketing, report adverse events promptly, and sell their lenses only with a prescription from an eye care professional.

However, under FDA's current interpretation of the law, some contact lenses are now considered cosmetic, nonmedical devices. These lenses, which the agency refers to as decorative lenses, are colored or feature unusual designs. These lenses pose exactly the same health risks as other lenses, yet today these lenses only have to comply with requirements for cosmetics, and there are very few requirements and they are difficult to enforce.

Treating them in this way, I believe, is a recipe for disaster. Lenses sold outside the protections of medical device laws have caused numerous eye injuries. It is critically important that FDA have the ability to stop these dangerous sales as quickly and efficiently as possible. The solution is simple: treat all contact lenses as medical devices. No contact lenses should be classified in the same category as lipstick.

H.R. 2218 would ensure that all contact lenses are treated the same as medical devices. This bill is enforced by professional associations representing ophthalmologists and optometrists, by leading manufacturers and by consumer groups. It is a basic consumer protection, and it is common sense.

Finally, let me say this bill has been written with the understanding and agreement of all parties that it should not be interpreted as either a rejection or a ratification of the legal arguments underlying FDA's decision to treat noncorrective lenses as cosmetics. For that reason, the bill includes a rule of construction stating that the bill should not be construed as having any effect on any product regulated by the FDA other than the specific contact lenses at issue here. I thank the gentleman from Ohio and the distinguished chairman of the Subcommittee on Health, and I join with every Member who has spoken on this bill in urging support for it.

Mr. BILIRAKIS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. OSE). The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and pass the bill, H.R. 2218, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to amend the Federal Food, Drug, and Cosmetic Act to provide for the regulation of all contact lenses as medical devices, and for other purposes.".

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2297. An act to amend title 38, United States Code, to improve benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.

The message also announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 1156. An act to amend title 38, United States Code, to improve and enhance provision of health care for veterans, to authorize major construction projects and other facilities matters for the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.

PEDIATRIC RESEARCH EQUITY ACT OF 2003

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 650) to amend the Federal Food, Drug, and Cosmetic Act to authorize the Food and Drug Administration to require certain research into drugs used in pediatric patients.

The Clerk read as follows:

S. 650

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Pediatric Research Equity Act of 2003".

SEC. 2. RESEARCH INTO PEDIATRIC USES FOR DRUGS AND BIOLOGICAL PRODUCTS.

(a) IN GENERAL.—Subchapter A of chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 505A the following:

"SEC. 505B. RESEARCH INTO PEDIATRIC USES FOR DRUGS AND BIOLOGICAL PRODUCTS.

"(a) NEW DRUGS AND BIOLOGICAL PRODUCTS.—

"(1) IN GENERAL.—A person that submits an application (or supplement to an application)—

"(A) under section 505 for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration; or

"(B) under section 351 of the Public Health Service Act (42 U.S.C. 262) for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration;

shall submit with the application the assessments described in paragraph (2).

"(2) ASSESSMENTS.—

"(A) IN GENERAL.—The assessments referred to in paragraph (1) shall contain data, gathered using appropriate formulations for each age group for which the assessment is required, that are adequate—

"(i) to assess the safety and effectiveness of the drug or the biological product for the claimed indications in all relevant pediatric subpopulations; and

"(ii) to support dosing and administration for each pediatric subpopulation for which the drug or the biological product is safe and effective.

"(B) SIMILAR COURSE OF DISEASE OR SIMILAR EFFECT OF DRUG OR BIOLOGICAL PRODUCT.—

"(i) IN GENERAL.—If the course of the disease and the effects of the drug are sufficiently similar in adults and pediatric patients, the Secretary may conclude that pediatric effectiveness can be extrapolated from adequate and well-controlled studies in adults, usually supplemented with other information obtained in pediatric patients, such as pharmacokinetic studies.

"(ii) EXTRAPOLATION BETWEEN AGE GROUPS.—A study may not be needed in each pediatric age group if data from 1 age group can be extrapolated to another age group.

"(3) DEFERRAL.—On the initiative of the Secretary or at the request of the applicant, the Secretary may defer submission of some or all assessments required under paragraph (1) until a specified date after approval of the drug or issuance of the license for a biological product if—

"(A) the Secretary finds that—

"(i) the drug or biological product is ready for approval for use in adults before pediatric studies are complete;

"(ii) pediatric studies should be delayed until additional safety or effectiveness data have been collected; or

"(iii) there is another appropriate reason for deferral; and

"(B) the applicant submits to the Secretary—

"(i) certification of the grounds for deferring the assessments;

"(ii) a description of the planned or ongoing studies; and

"(iii) evidence that the studies are being conducted or will be conducted with due diligence and at the earliest possible time.

"(4) WAIVERS.—

"(A) FULL WAIVER.—On the initiative of the Secretary or at the request of an applicant, the Secretary shall grant a full waiver, as appropriate, of the requirement to submit assessments for a drug or biological product under this subsection if the applicant certifies and the Secretary finds that—

"(i) necessary studies are impossible or highly impracticable (because, for example, the number of patients is so small or the patients are geographically dispersed);

"(ii) there is evidence strongly suggesting that the drug or biological product would be ineffective or unsafe in all pediatric age groups; or

"(iii) the drug or biological product—

"(I) does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients; and

"(II) is not likely to be used in a substantial number of pediatric patients.

"(B) PARTIAL WAIVER.—On the initiative of the Secretary or at the request of an applicant, the Secretary shall grant a partial waiver, as appropriate, of the requirement to submit assessments for a drug or biological product under this subsection with respect to a specific pediatric age group if the applicant certifies and the Secretary finds that—

"(i) necessary studies are impossible or highly impracticable (because, for example, the number of patients in that age group is so small or patients in that age group are geographically dispersed);

"(ii) there is evidence strongly suggesting that the drug or biological product would be ineffective or unsafe in that age group;

"(iii) the drug or biological product—

"(I) does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients in that age group; and

"(II) is not likely to be used by a substantial number of pediatric patients in that age group; or

"(iv) the applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

"(C) Pediatric formulation not possible.—If a waiver is granted on the ground that it is not possible to develop a pediatric formulation, the waiver shall cover only the pediatric groups requiring that formulation.

"(D) Labeling requirement.—If the Secretary grants a full or partial waiver because there is evidence that a drug or biological product would be ineffective or unsafe in pediatric populations, the information shall be included in the labeling for the drug or biological product.

"(b) Marketed Drugs and Biological Products.—

"(1) In general.—After providing notice in the form of a letter and an opportunity for written response and a meeting, which may include an advisory committee meeting, the Secretary may (by order in the form of a letter) require the holder of an approved application for a drug under section 505 or the holder of a license for a biological product under section 351 of the Public Health Service Act (42 U.S.C. 262) to submit by a specified date the assessments described in subsection (a)(2) if the Secretary finds that—

"(A)(i) the drug or biological product is used for a substantial number of pediatric patients for the labeled indications; and

"(ii) the absence of adequate labeling could pose significant risks to pediatric patients; or

"(B)(i) there is reason to believe that the drug or biological product would represent a meaningful therapeutic benefit over existing therapies for pediatric patients for 1 or more of the claimed indications; and

"(ii) the absence of adequate labeling could pose significant risks to pediatric patients.

"(2) Waivers.—

"(A) Full waiver.—At the request of an applicant, the Secretary shall grant a full waiver, as appropriate, of the requirement to submit assessments under this subsection if the applicant certifies and the Secretary finds that—

"(i) necessary studies are impossible or highly impracticable (because, for example, the number of patients in that age group is so small or patients in that age group are geographically dispersed); or

"(ii) there is evidence strongly suggesting that the drug or biological product would be ineffective or unsafe in all pediatric age groups.

"(B) Partial waiver.—At the request of an applicant, the Secretary shall grant a partial waiver, as appropriate, of the requirement to submit assessments under this subsection with respect to a specific pediatric age group if the applicant certifies and the Secretary finds that—

"(i) necessary studies are impossible or highly impracticable (because, for example, the number of patients in that age group is so small or patients in that age group are geographically dispersed);

"(ii) there is evidence strongly suggesting that the drug or biological product would be ineffective or unsafe in that age group;

"(iii)(I) the drug or biological product—

"(aa) does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients in that age group; and

"(bb) is not likely to be used in a substantial number of pediatric patients in that age group; and

"(II) the absence of adequate labeling could not pose significant risks to pediatric patients; or

"(iv) the applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

"(C) Pediatric formulation not possible.—If a waiver is granted on the ground that it is not possible to develop a pediatric formulation, the waiver shall cover only the pediatric groups requiring that formulation.

"(D) Labeling requirement.—If the Secretary grants a full or partial waiver because there is evidence that a drug or biological product would be ineffective or unsafe in pediatric populations, the information shall be included in the labeling for the drug or biological product.

"(3) Relationship to other pediatric provisions.—

"(A) No assessment without written request.—No assessment may be required under paragraph (1) for a drug subject to an approved application under section 505 unless—

"(i) the Secretary has issued a written request for a related pediatric study under section 505A(c) of this Act or section 409I of the Public Health Service Act (42 U.S.C. 284m);

"(ii)(I) if the request was made under section 505A(c)—

"(aa) the recipient of the written request does not agree to the request; or

"(bb) the Secretary does not receive a response as specified under section 505A(d)(4)(A); or

"(II) if the request was made under section 409I of the Public Health Service Act (42 U.S.C. 284m)—

"(aa) the recipient of the written request does not agree to the request; or

"(bb) the Secretary does not receive a response as specified under section 409I(c)(2) of that Act; and

"(iii)(I) the Secretary certifies under subparagraph (B) that there are insufficient funds under sections 409I and 499 of the Public Health Service Act (42 U.S.C. 284m, 290b) to conduct the study; or

"(II) the Secretary publishes in the Federal Register a certification that certifies that—

"(aa) no contract or grant has been awarded under section 409I or 499 of the Public Health Service Act (42 U.S.C. 284m, 290b); and

"(bb) not less than 270 days have passed since the date of a certification under subparagraph (B) that there are sufficient funds to conduct the study.

"(B) No agreement to request.—Not later than 60 days after determining that no holder will agree to the written request (including a determination that the Secretary has not received a response specified under section 505A(d) of this Act or section 409I of the Public Health Service Act (42 U.S.C. 284m), the Secretary shall certify whether the Secretary has sufficient funds to conduct the study under section 409I or 499 of the Public Health Service Act (42 U.S.C. 284m, 290b), taking into account the prioritization under section 409I.

"(c) Meaningful Therapeutic Benefit.—For the purposes of paragraph (4)(A)(iii)(I) and (4)(B)(iii)(I) of subsection (a) and paragraphs (1)(B)(i) and (2)(B)(iii)(I)(aa) of subsection (b), a drug or biological product shall be considered to represent a meaningful therapeutic benefit over existing therapies if the Secretary estimates that—

"(1) if approved, the drug or biological product would represent a significant improvement in the treatment, diagnosis, or prevention of a disease, compared with marketed products adequately labeled for that use in the relevant pediatric population; or

"(2) the drug or biological product is in a class of products or for an indication for which there is a need for additional options.

"(d) Submission of Assessments.—If a person fails to submit an assessment described in subsection (a)(2), or a request for approval of a pediatric formulation described in subsection (a) or (b), in accordance with applicable provisions of subsections (a) and (b)—

"(1) the drug or biological product that is the subject of the assessment or request may be considered misbranded solely because of that failure and subject to relevant enforcement action (except that the drug or biological product shall not be subject to action under section 303); but

"(2) the failure to submit the assessment or request shall not be the basis for a proceeding—

"(A) to withdraw approval for a drug under section 505(e); or

"(B) to revoke the license for a biological product under section 351 of the Public Health Service Act (42 U.S.C. 262).

"(e) Meetings.—Before and during the investigational process for a new drug or biological product, the Secretary shall meet at appropriate times with the sponsor of the new drug or biological product to discuss—

"(1) information that the sponsor submits on plans and timelines for pediatric studies; or

"(2) any planned request by the sponsor for waiver or deferral of pediatric studies.

"(f) Scope of Authority.—Nothing in this section provides to the Secretary any authority to require a pediatric assessment of any drug or biological product, or any assessment regarding other populations or uses of a drug or biological product, other than the pediatric assessments described in this section.

"(g) Orphan Drugs.—Unless the Secretary requires otherwise by regulation, this section does not apply to any drug for an indication for which orphan designation has been granted under section 526.

"(h) Integration With Other Pediatric Studies.—The authority under this section shall remain in effect so long as an application subject to this section may be accepted for filing by the Secretary on or before the date specified in section 505A(n).".

(b) Conforming Amendments.—

(1) Section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)(1)) is amended in the second sentence—

(A) by striking "and (F)" and inserting "(F)"; and

(B) by striking the period at the end and inserting ", and (G) any assessments required under section 505B.".

(2) Section 505A(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(h)) is amended—

(A) in the subsection heading, by striking "REGULATIONS" and inserting "PEDIATRIC RESEARCH REQUIREMENTS"; and

(B) by striking "pursuant to regulations promulgated by the Secretary" and inserting "by a provision of law (including a regulation) other than this section".

(3) Section 351(a)(2) of the Public Health Service Act (42 U.S.C. 262(a)(2)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following:

"(B) Pediatric studies.—A person that submits an application for a license under this paragraph shall submit to the Secretary as part of the application any assessments required under section 505B of the Federal Food, Drug, and Cosmetic Act.".

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Abbreviated New Drug Application.—Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) is amended in subparagraphs (A) and (B) of subsection (b)(2) and subparagraphs (A) and (B) of subsection (c)(2) by striking “505(j)(4)(B)” and inserting “505(j)(5)(B)”.

(b) PEDIATRIC ADVISORY COMMITTEE.—

(1) Section 505A(i)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(i)(2)) is amended by striking “Advisory Subcommittee of the Anti-Infective Drugs” each place it appears.

(2) Section 14 of the Best Pharmaceuticals for Children Act (42 U.S.C. 284m note; Public Law 107–109) is amended—

(A) in the section heading, by striking “PHARMACOLOGY”;

(B) in subsection (a), by striking “(42 U.S.C. 217a),” and inserting (42 U.S.C. 217a) or other appropriate authority,”;

(C) in subsection (b)—

(i) in paragraph (1), by striking “and in consultation with the Director of the National Institutes of Health”; and

(ii) in paragraph (2), by striking “and 505A” and inserting “505A, and 505B”; and

(D) by striking “pharmacology” each place it appears and inserting “therapeutics”.

(3) Section 15(a)(2)(A) of the Best Pharmaceuticals for Children Act (115 Stat. 1419) is amended by striking “Pharmacology”.

(4) Section 16(1)(C) of the Best Pharmaceuticals for Children Act (21 U.S.C. 355a note; Public Law 107–109) is amended by striking “Advisory Subcommittee of the Anti-Infective Drugs”.

(5) Section 17(b)(1) of the Best Pharmaceuticals for Children Act (21 U.S.C. 355b(b)(1)) is amended in the second sentence by striking “Advisory Subcommittee of the Anti-Infective Drugs”.

(6) Paragraphs (8), (9), and (11) of section 409I(c) of the Public Health Service Act (42 U.S.C. 284m(c)) are amended by striking “Advisory Subcommittee of the Anti-Infective Drugs” each place it appears.

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), this Act and the amendments made by this Act take effect on the date of enactment of this Act.

(b) APPLICABILITY TO NEW DRUGS AND BIOLOGICAL PRODUCTS.—

(1) IN GENERAL.—Subsection (a) of section 505B of the Federal Food, Drug, and Cosmetic Act (as added by section 2) shall apply to an application described in paragraph (1) of that subsection submitted to the Secretary of Health and Human Services on or after April 1, 1999.

(2) WAIVERS AND DEFERRALS.—

(A) WAIVER OR DEFERRAL GRANTED.—If, with respect to an application submitted to the Secretary of Health and Human Services between April 1, 1999, and the date of enactment of this Act, a waiver or deferral of pediatric assessments was granted under regulations of the Secretary then in effect, the waiver or deferral shall be a waiver or deferral under subsection (a) of section 505B of the Federal Food, Drug, and Cosmetic Act, except that any date specified in such a deferral shall be extended by the number of days that is equal to the number of days between October 17, 2002, and the date of enactment of this Act.

(B) WAIVER AND DEFERRAL NOT GRANTED.—If, with respect to an application submitted to the Secretary of Health and Human Services between April 1, 1999, and the date of enactment of this Act, neither a waiver nor deferral of pediatric assessments was granted under regulations of the Secretary then in effect, the person that submitted the application shall be required to submit assessments under subsection (a)(2) of section 505B of the Federal Food, Drug, and Cosmetic Act on the date that is the later of—

(i) the date that is 1 year after the date of enactment of this Act; or

(ii) such date as the Secretary may specify under subsection (a)(3) of that section;

unless the Secretary grants a waiver under subsection (a)(4) of that section.

(c) NO LIMITATION OF AUTHORITY.—Neither the lack of guidance or regulations to implement this Act or the amendments made by this Act nor the pendency of the process for issuing guidance or regulations shall limit the authority of the Secretary of Health and Human Services under, or defer any requirement under, this Act or those amendments.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to insert extraneous material on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

□ 1530

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of S. 650, the Pediatric Research Equity Act. This bill gives the Food and Drug Administration new statutory authority to require certain pediatric tests, to require certain research into drugs used for pediatric patients, and it provides for appropriate enforcement of the requirement to submit timely pediatric assessments.

As chairman of the Energy and Commerce Subcommittee on Health, I have been a long-time supporter of pediatric research efforts. To that end, it is important that the FDA has the authority that it needs to require pediatric studies and also information for drugs and biological products in cases where the needed information is not generated by using existing incentive and funding mechanisms. S. 650 will provide that authority.

I think it is appropriate to express appreciation to Senator DEWINE for this piece of legislation and to the gentleman from Ohio (Mr. BROWN), the gentleman from California (Mr. WAXMAN), the gentlewoman from California (Ms. ESHOO) and so many others who have shown concern in this regard and, of course, join us here today.

I urge my colleagues to support the bill that the Senate has passed.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

I would like to thank the gentleman from California (Mr. WAXMAN), the gentlewoman from California (Ms. ESHOO), the gentleman from Pennsylvania (Mr. GREENWOOD) and the gentleman from Michigan (Mr. STUPAK) for their leadership on the important issue of prescription drug research for children. The legislation we consider today is in large part the product of their hard work and their good work.

The FDA requires drug manufacturers to verify the safety and effectiveness of a new medicine before it can be sold in our country. But because most research has been done on adults, new medicines that are safe and effective in grownups may not be safe and effective when used in children. That is why we enacted legislation rewarding safety and efficacy testing that focuses on children. Drug companies that voluntarily conduct this testing are granted what amounts to a patent extension on the pediatric use of their medicines. Though progress has been made, an article published last year in the New England Journal of Medicine confirmed that fully 60 percent of drugs coming to the market remain unstudied and unlabeled for use in children. FDA's Pediatric Rule addressed that concern, but a Federal judge struck it down last year because, according to those judges, the agency lacked sufficient statutory authority.

The legislation today before us corrects that deficiency and codifies the Pediatric Rule. S. 650 requires pediatric testing as a condition of new drug approval every time. It authorizes responsible exceptions, though, deferrals and waivers when these actions would be determined to serve the interests of patients. This approach will ensure that most medicines are testified for safety and effectiveness in children before they hit the market. It gives the FDA the flexibility to move drugs to market when testing is unwarranted or impossible or would hold up a drug important for adult patients.

I have, Mr. Speaker, one important concern with this otherwise laudable legislation. It relates to a controversial provision added by the other body which terminates the testing requirement when the pediatric marketing exclusivity provision expires. There is no policy justification for this change. If it is responsible to require pediatric testing today, it will be no less responsible to do so after the government subsidy for pediatric testing has expired. America's children, pure and simple, are not served by this language. The only ones who benefit again are drugmakers. It has been a really good week for drugmakers in this country. As good as this bill is, they get a benefit they do not deserve. They also get a benefit later in the week if this House passes the Medicare bill to the tune of about $140 billion more in profits on a bill that, frankly, they and the

Republican majority and President Bush sat down and wrote to help the drug industry and the insurance industry.

This provision in our bill is objectionable on procedural grounds, also. The other body acted months ago, but the Committee on Energy and Commerce did not schedule a markup that would have permitted us to debate and vote on the sunset provision and consider related issues important especially to the gentleman from Michigan (Mr. STUPAK) and to other Members. I hope this process will not become the model for health legislation in this House.

Having said that, the bill is an important step forward in children's health. America's leading children's health advocates also strongly support the Pediatric Rule. The American Academy of Pediatrics called it an essential tool. The Elizabeth Glaser Pediatric AIDS Foundation said it will safeguard children by taking the guesswork out of children's medicine.

I hope Members will join me in voting to send the Pediatric Research Equity Act to the White House.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I continue to reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield 5 minutes to the gentlewoman from California (Ms. ESHOO), one of the authors of this legislation.

Ms. ESHOO. I thank the distinguished ranking member for yielding me this time.

Mr. Speaker, I rise today in support of S. 650, the Pediatric Research Equity Act. As the Democratic sponsor of the House version of this legislation, along with the gentleman from Pennsylvania (Mr. GREENWOOD), I am very excited that this important bipartisan legislation is being considered before Congress departs and closes shop before the end of this year.

In the last session, the Congress took an important step toward increasing drug safety for children by reauthorizing the Best Pharmaceuticals for Children Act, a bill that I also cosponsored with the gentleman from Pennsylvania (Mr. GREENWOOD). The law provided 6 months of marketing exclusivity for prescription drug manufacturers who undertake the costly, but very necessary, task of testing drugs for safety and efficacy in children. Prior to its enactment, there was little if any information on how drugs affected children. That surprised a lot of people. Most people assumed that the process was really very different. Doctors were cutting adult pills in half, hoping they would work in children, often with life-threatening results. In the years since its passage, the Best Pharmaceuticals for Children Act has yielded significant and lifesaving dosing and efficacy information for prescription drugs for children, and this law continues to work today and work very well. Anyone that is a parent can appreciate the success this bill has had in protecting children.

Despite this success, there are times when the Food and Drug Administration needs additional pediatric clinical data on a drug. Since the passage of the Best Pharmaceuticals for Children Act, a court struck down an important regulation crafted by the FDA that provided a framework for requiring drug manufacturers to perform clinical trials in pediatric populations when the Agency believed they were absolutely necessary. The court argued that the Congress had not given the FDA this authority, effectively tying the Agency's hands with respect to providing safer drugs for children.

In response to this court decision, the gentleman from Pennsylvania (Mr. GREENWOOD) and I introduced the Pediatric Research Equity Act, which specifically gives the FDA the authority that the court struck down, the authority to require prescription drug manufacturers to perform necessary tests for our children. The FDA's gold standard has protected American consumers and America's children for decades. The Congress has to take this step to equip the FDA with the resources and the authority it needs to continue this exceptional performance.

This bill has very important support. Amongst that honor roll of support is the American Academy of Pediatrics which has worked so well and so closely with us, and we want to thank them for that; the Elizabeth Glaser Pediatric AIDS Foundation; the pharmaceutical industry and other groups that are dedicated to providing safe and effective treatments to children. In years past, some have been critical of our work to increase drug safety for children, charging that it is really more about providing incentives to drug companies than it is about children. This effort, as with our work on the Best Pharmaceuticals for Children Act, has always been about making drug treatments safer and more effective for children. And while I understand that the process for moving this bill forward has not been perfect, as so many things around here are not, the underlying bill and the goals it contains are ones that every single Member of the House can and should support.

Finally, Mr. Speaker, I want to offer my unending gratitude to our committee staff for their work on moving this bill forward. In particular, I would like to thank Patrick Ronan with the majority for his help and John Ford on the minority side for his assistance and his advice. As always, it has been invaluable. I also wish to recognize the leadership of the gentleman from Florida (Mr. BILIRAKIS) and always to my partner, the gentleman from Pennsylvania (Mr. GREENWOOD). I think we have been able to get some really important things done. I wish to recognize the inspiration of Dr. Phil Pizzo, dean of the Stanford Medical School, a pediatrician himself. And last but never least, Anne Wilson, my legislative director. This legislation becomes her swan song. She goes off to the private sector to do some really great work, but this is one of the signature pieces that she has really worked so hard on. I salute her for it.

I urge my colleagues to vote "yes" on S. 650, the Pediatric Research Equity Act, and my thanks to everyone that have been partners in this what I think has been a noble and important undertaking.

Mr. BILIRAKIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. GREENWOOD).

Mr. GREENWOOD. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of S. 650, the Pediatric Research Equity Act. This legislation was passed by the Senate by unanimous consent on July 23. Earlier this year, along with the gentlewoman from California (Ms. ESHOO) and the gentlewoman from Ohio (Ms. PRYCE), I introduced this legislation in the House. Both of these Members have been leaders on trying to get this legislation enacted into law.

Children, their physicians, and their parents need to know that the drugs they use are safe and effective. Just over a year ago, a Federal court struck down the 1998 Pediatric Rule on the grounds that Congress had not explicitly given the authority to require that these much-needed pediatric studies be done. The Pediatric Research Equity Act creates a critical safety net for children by restoring this authority. Before it was struck down, the Pediatric Rule led to invaluable pediatric safety and dosing information. The rule places children on equal therapeutic footing with adults by ensuring that medicines coming into the marketplace will be labeled for pediatric use and be available in formulations such as liquids or chewable tablets that children can take.

This legislation will also ensure that there will be no delay in the approval of drugs for adult use by allowing pediatric testing to be deferred until after approval if these studies would delay the availability of the product for adults.

Mr. Speaker, this legislation complements the Best Pharmaceuticals for Children Act which Congress passed 2 years ago. That law recognizes the importance of pediatric drug testing by offering an incentive to companies who conduct tests of drugs on children. However, certain medicines are not captured by the Best Pharmaceuticals for Children Act and, therefore, will be left unstudied for pediatric use without the rule. Both the BPCA and the rule are needed as a strong, two-prong approach to ensure that drugs are appropriately studied and labeled for infants, children and adolescents.

Mr. Speaker, this legislation was discharged from the Committee on Energy and Commerce. Many of us on both sides of the aisle had hoped that the committee would consider this through normal order as there were issues that both sides wanted to make about the legislation. But due to the Medicare and the energy conferences and the limitations those bills have created in the committees, it was necessary for this legislation to be discharged. While this was not the perfect process, I urge my colleagues to join our colleagues in the Senate and the 25 children's health groups, including the American Academy of Pediatrics and the Elizabeth Glaser Pediatric AIDS Foundation, who support this legislation. In their own words, quote, we cannot overstate the extraordinary contribution this legislation will make to children's health.

I would also like to thank my staff member Alan Eisenberg who has worked very hard for a long period on this issue. I urge passage of the legislation.

Mr. BROWN of Ohio. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan (Mr. STUPAK) who has been an absolute leader with a great understanding on these very complicated drug issues.

Mr. STUPAK. I thank the gentleman for yielding me this time.

Mr. Speaker, the pediatric research equity bill is not a bad bill. I agree with the premise of the bill. As the ranking member of the Subcommittee on Health said, it is unfortunate that we have not had a hearing on this bill, we have not had a chance to mark it up, we have not had a chance to amend it. Because I would wish that Congress would stop for a minute and look at this bill before we make another fatal mistake when we deal with pharmaceuticals dealing with young people. As the other speakers said, it is necessary to test and do proper labeling on drugs before we give them to children. We need to know, I think is what the chairman said, all the ramifications before we give young people drugs. This bill goes halfway. This bill only goes halfway. This Congress should not allow the continuation of the practice of pharmaceutical companies being able to develop drugs but not put on proper labeling.

□ 1545

Or when it is time to change the label, to expeditiously change the label, as the other speakers have said, we have been cutting pills in half thinking for young people half a pill is better than a full pill. When they do this testing, when it comes time to label, doctors, families, patients need to know how should the drug be used in dispense. What is the proper dosage for young people? What duration of time should the pill be taken and how often? What are the side effects of the use of this drug? These are the questions that are required for proper use and labeling, but yet it is not required in this legislation nor was it required in the pharmaceutical act of 2002.

So before a drug is marketed, it should be properly labeled with all the necessary information to be used in pediatric patients. Doctors and patients and families have no idea on how to administer drugs or what the effect will be on young people without proper labeling. All I am saying is we should have had an opportunity to amend this legislation to make sure before a patent is extended, before a drug is given for pediatric patients, that the proper labeling is done and made available to doctors, patients, and their families. It is marketed and given to children before we know what the effects are on young people.

As we said earlier, the Best Pharmaceutical Act of 2002 did require a strengthening of labeling requirements, but it did not mandate proper labeling before marketing of these drugs. While the FDA can misbrand a drug for improper labeling, it has never used the enforcement power it has. It has never used the enforcement power granted to it by Congress. As a result, case after case, the pharmaceutical companies have been granted patent extensions and then not gone through with the labeling of the drugs for years. And these drugs were not labeled misbranded by the FDA. Between 1997 and 2002, the year of the Best Pharmaceutical Act for children, the average time for labeling was 9 months after the extension of that patent. Now based upon the Best Pharmaceutical Act of 2002, it is still 5 months after the drug has been used in the marketplace. How on God's green Earth can we stand here and say we will label the proper use of drugs after it is marketed? Five months, that is what it is right now. Some of them are a year. The average is 5 months.

If we would have had a chance to have this before our committee, we could at least have offered some amendments. To uphold the true intention of this legislation and the true intent of the Best Pharmaceutical Act is to make sure we have labeling before drugs are put on the marketplace and not after, requiring, and not suggesting, that the Secretary of HHS label drugs as misbranded if companies fail to test and label these drugs for use in children.

I would like to see this legislation defeated. That will not happen here today. But once again, the Congress of the United States has punted an opportunity to protect our children. We once again said we will allow drugs to be used; we will worry about the side effects on young people after. There is no reason why we could not mandate proper labeling before. And if my colleagues read the language of the bill, it says may, the Secretary may.

We have asked and we have talked to the sponsor in the Senate and we have talked to others. We said why can they not just make it mandatory, label before they market and use in young people? Once again, Congress is avoiding its responsibility to protect the health, safety, and welfare of our young people. The ideas behind this legislation are great. The intent is great, but we have to follow it through. And we have all sat in committees and heard the stories of young people receiving drugs that were improperly used or administered that were not to be used for young people. We find out after the fact, after the drug has been used in the mainstream of commerce and being used by physicians.

Mr. BILIRAKIS. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Ohio (Ms. PRYCE).

Ms. PRYCE of Ohio. Mr. Speaker, I thank the gentleman for yielding me this time and for his strong leadership on this measure.

Mr. Speaker, today is a great day for America's children. Today we will stand with the President of the United States on an extraordinary piece of legislation, legislation that will have the effect of dramatically improving the health and well-being of our Nation's children.

About this time last year, my good friend and former Member, Connie Morella, and I introduced this legislation to put into law the Pediatric Rule, a rule that required drug companies to conduct safety tests of adult medicines that were likely to be given to children. We introduced that bill even before a U.S. district court struck down that rule finding that the FDA did not have the authority to enforce it. We felt then, as we do now, that this rule must be strengthened and codified to ensure advancements and effectiveness in medicines that we give to our children.

In light of the district court's ruling, Members of this body renewed our efforts this year to see that the rule would be put into law for good. With the hard work of the gentleman from Pennsylvania (Mr. GREENWOOD) and the gentlewoman from California (Ms. ESHOO) and the blessings of the gentleman from Louisiana (Chairman TAUZIN) and the gentleman from Florida (Chairman BILIRAKIS) and the gentleman from Ohio (Mr. BROWN), ranking member, we have found ourselves today ready to move forward.

The rule is so important for a few very simple reasons. Many people wrongly assume that children's bodies are just smaller versions of adult bodies. That is just not the case. Simply reducing the dosage of medicine for the treatment of a child is not always effective and is definitely not always safe. By protecting this rule, the Pediatric Rule, and continuing to provide incentives for testing medicines for kids, we will give doctors the information they need to provide our children with the best quality health care.

Mr. Speaker, when I told my constituents at Children's Hospital in Columbus, Ohio, that this legislation would be up for consideration today, I was greeted with elation. Those who care for and treat our children want the very best for them. They know what they need to deliver the very best. They need the Pediatric Rule and believe it is critical to preserving the long-term health and safety of our kids. That is exactly what this bill does. I am proud to be a part of making these safeguards permanent and this bill a reality.

Mr. Speaker, I urge my colleagues to join me in strengthening the health of our children by adopting this legislation. Every pediatrician will rest easier. I am certain that every parent will.

Mr. BROWN of Ohio. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I rise in support of the Pediatric Research Equity Act, and I urge other Members to support it as well. This legislation has been a long time in coming. Physicians have known for decades that failing to test drugs in children could have deadly consequences.

It was not until the late 1990s that Congress and the FDA finally acted to ensure testing of drugs in children. In 1997 Congress enacted a bill giving pharmaceutical companies generous financial incentives for voluntarily conducting pediatric studies. A year later, FDA finalized a regulation known as the Pediatric Rule, requiring companies to conduct studies in children for important or widely used drugs, and that regulation was regarded by both the FDA and by physician and patient groups as essential because the financial incentives still left many important drugs and many age groups unstudied. Unfortunately, the Pediatric Rule was struck down by a district court last year. I believe the case was wrongly decided and that FDA had adequate authority; but we need to codify the rule now, as this bill would do, in order to provide children with the strongest protection of their right to receive medicines that are as safe and as effective as the medicines given to adults.

While I strongly support this bill, there is one provision I do not support. The bill contains a sunset provision which will repeal in 5 years the protections for children that this bill is designed to provide. I regret this bill did not go through the committee allowing us the opportunity to strike this provision. Sunsetting the bill is simply bad policy. There is no serious medical or public health argument that it would enhance the health of American children to repeal this law in 5 years. Certainly no one makes the argument that the rules regarding testing of drugs in adults need to be reassessed every 5 years.

Since the sunset provision is not based on improving the public health, why is it in the bill? I have been told that the law giving companies financial incentives for conducting pediatric studies sunsets every 5 years, so this bill should too. But the financial incentives bill raises very different concerns. Those incentives extend drug company monopolies on popular drugs, which in turn raises the price of those drugs for all Americans.

The Congress has an obligation to reassess the size of the incentives periodically to make sure that the cost in higher drug prices is worth the benefit being gained.

There is no similar reason to reassess the Pediatric Rule, and I am very concerned that by sunsetting the two bills together, the Congress will be put in a position where reauthorization of the Pediatric Rule is held hostage to reauthorization of the incentives.

The fact that we have been denied the opportunity to strike the sunset is unfortunate. Similarly, I regret that the gentleman from Michigan (Mr. STUPAK) was denied the opportunity to offer his amendment which addresses an extremely serious issue. I strongly support his amendment and would have liked to have voted for it in committee.

Nevertheless, despite my concern with the process, I will vote for this bill. It is urgent that we pass this legislation as quickly as possible. Every day that we do not act to put the Pediatric Rule back into effect, we run an additional risk that the health of American children will be compromised.

For more than 40 years, the Food and Drug Act has offered a guarantee to adult Americans that their drugs will be safe and effective. It is time we assured our children of the same guarantee.

This bill will also assure that all contact lens care products will be regulated as device accessories.

Mr. DINGELL. Mr. Speaker, I support S. 650, the "Pediatric Research Equity Act of 2003." This bill will make clear that the Food and Drug Administration (FDA) has the authority to require testing for drugs that are administered to children in appropriate cases. This legislation will effectively moot pending litigation. Last year, a Federal district court held that FDA lacked statutory authority to promulgate the pediatric rule. While appeals are pending, this bill will provide a speedy and certain resolution of that question.

Mr. Speaker, I do want to express my concerns with a provision in this bill which sunsets FDA's authority on October 1, 2007. Why on earth should a regulatory authority to protect the health of children be time limited? There are reasons, none of them good. This date just happens to coincide with the expiration of a provision of existing law which provides a financially powerful incentive to drug makers to test drugs for children. Whatever the perceived merits of the incentive, it costs consumers a lot of money because it delays generic drug entry into the market for six months beyond what would normally be the case. The rule is being tied to the incentive and that, in my view, is just plain wrong.

We should have had an opportunity to debate and offer amendments to improve S. 650, but this bill is being brought to the floor without being reported or otherwise considered by the Committee on Energy and Commerce. This is an unnecessary and unwise bypass of the committee of jurisdiction. The health of America's children is too important for us to avoid careful consideration of matters that affect them. For us to merely adopt the work product of the Senate is to shirk our duty for our children. We can do better, and the fact that we did not do better is unfortunate.

Mr. BROWN of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. OSE). The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and pass the Senate bill, S. 650.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H.R. 2420, by the yeas and nays;

House Resolution 427, by the yeas and nays;

House Concurrent Resolution 83, by the yeas and nays.

The first electronic vote in this series will be conducted as a 15-minute vote. The remaining votes in this series will be 5-minute votes.

MUTUAL FUNDS INTEGRITY AND FEE TRANSPARENCY ACT OF 2003

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 2420, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the bill, H.R. 2420, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 418, nays 2, not voting 14, as follows:

[Roll No. 638]

YEAS—418

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—2

Flake
Paul

NOT VOTING—14

Andrews
Bishop (NY)
Collins
Conyers
Cubin
DeMint
Fletcher
Gephardt
Isakson
Istook
McCrery
Smith (WA)
Sullivan
Toomey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SWEENEY) (during the vote). Members are advised there are 2 minutes remaining on this vote.

□ 1620

Mr. GILLMOR changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the remainder of this series of votes will be conducted as 5-minute votes.

EXPRESSING SENSE OF HOUSE REGARDING COURAGEOUS LEADERSHIP OF UNIFIED BUDDHIST CHURCH OF VIETNAM

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the resolution, H. Res. 427, as amended.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa (Mr. LEACH) that the House suspend the rules and agree to the resolution, H. Res. 427, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 409, nays 13, not voting 12, as follows:

[Roll No. 639]

YEAS—409

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baird
Baldwin
Ballance
Ballenger
Barrett (SC)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)

Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—13

Bartlett (MD)
Evans
Everett
Gordon
Gutknecht
Hastings (FL)
Johnson, Sam
McDermott
Neugebauer
Paul
Sessions
Simmons
Slaughter

NOT VOTING—12

Andrews
Baker
Bishop (NY)
Collins
Cubin
DeMint
Fletcher
Gephardt
Isakson
Smith (WA)
Sullivan
Toomey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

☐ 1630

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

HONORING VICTIMS OF CAMBODIAN GENOCIDE THAT TOOK PLACE FROM APRIL 1975 TO JANUARY 1979

The SPEAKER pro tempore (Mr. SWEENEY). The pending business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 83.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa (Mr. LEACH) that the House suspend the rules and agree to the concurrent resolution, H.R. 83, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 420, nays 1, not voting 13, as follows:

[Roll No. 640]

YEAS—420

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hyde
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—1

Paul

NOT VOTING—13

Andrews
Bishop (NY)
Collins
Cubin
DeMint
Fletcher
Gephardt
Hunter
Isakson
Pryce (OH)
Smith (WA)
Sullivan
Toomey

□ 1639

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

POISON CONTROL CENTER ENHANCEMENT AND AWARENESS ACT AMENDMENTS OF 2003

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 686) to provide assistance for poison prevention and to stabilize the funding of regional poison control centers, as amended.

The Clerk read as follows:

S. 686

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Poison Control Center Enhancement and Awareness Act Amendments of 2003".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Poison control centers are our Nation's primary defense against injury and deaths from poisoning. Twenty-four hours a day, the general public as well as health care practitioners contact their local poison centers for help in diagnosing and treating victims of poisoning and other toxic exposures.

(2) Poisoning is the third most common form of unintentional death in the United States. In any given year, there will be between 2,000,000 and 4,000,000 poison exposures. More than 50 percent of these exposures will involve children under the age of 6 who are exposed to toxic substances in their home. Poisoning accounts for 285,000 hospitalizations, 1,200,000 days of acute hospital care, and 13,000 fatalities annually.

(3) Stabilizing the funding structure and increasing accessibility to poison control centers will promote the utilization of poison control centers, and reduce the inappropriate use of emergency medical services and other more costly health care services.

(4) The tragic events of September 11, 2001, and the anthrax cases of October 2001, have dramatically changed our Nation. During this time period, poison centers in many areas of the country were answering thousands of additional calls from concerned residents. Many poison centers were relied upon as a source for accurate medical information about the disease and the complications resulting from prophylactic antibiotic therapy.

(5) The 2001 Presidential Task Force on Citizen Preparedness in the War on Terrorism recommended that the Poison Control Centers be used as a source of public information and public education regarding potential biological, chemical, and nuclear domestic terrorism.

(6) The increased demand placed upon poison centers to provide emergency information in the event of a terrorist event involving a biological, chemical, or nuclear toxin will dramatically increase call volume.

SEC. 3. AMENDMENT TO PUBLIC HEALTH SERVICE ACT.

Title XII of the Public Health Service Act (42 U.S.C. 300d et seq.) is amended by adding at the end the following:

"PART G—POISON CONTROL

"SEC. 1271. MAINTENANCE OF A NATIONAL TOLL-FREE NUMBER.

"(a) IN GENERAL.—The Secretary shall provide coordination and assistance to regional poison control centers for the establishment of a nationwide toll-free phone number to be used to access such centers.

"(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting the establishment or continued operation of any privately funded nationwide toll-free phone number used to provide advice and other assistance for poisonings or accidental exposures.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $2,000,000 for each of the fiscal years 2000 through 2009. Funds appropriated under this subsection shall not be used to fund any toll-free phone number described in subsection (b).

"SEC. 1272. NATIONWIDE MEDIA CAMPAIGN TO PROMOTE POISON CONTROL CENTER UTILIZATION.

"(a) IN GENERAL.—The Secretary shall establish a national media campaign to educate the public and health care providers about poison prevention and the availability of poison control resources in local communities and to conduct advertising campaigns concerning the nationwide toll-free number established under section 1271.

"(b) CONTRACT WITH ENTITY.—The Secretary may carry out subsection (a) by entering into contracts with 1 or more nationally recognized media firms for the development and distribution of monthly television, radio, and newspaper public service announcements.

"(c) EVALUATION.—The Secretary shall—

"(1) establish baseline measures and benchmarks to quantitatively evaluate the impact of the nationwide media campaign established under this section; and

"(2) prepare and submit to the appropriate congressional committees an evaluation of the nationwide media campaign on an annual basis.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $600,000 for each of fiscal years 2000 through 2005 and such sums as may be necessary for each of fiscal years 2006 through 2009.

"SEC. 1273. MAINTENANCE OF THE POISON CONTROL CENTER GRANT PROGRAM.

"(a) REGIONAL POISON CONTROL CENTERS.—The Secretary shall award grants to certified regional poison control centers for the purposes of achieving the financial stability of such centers, and for preventing and providing treatment recommendations for poisonings.

"(b) OTHER IMPROVEMENTS.—The Secretary shall also use amounts received under this section to—

"(1) develop standardized poison prevention and poison control promotion programs;

"(2) develop standard patient management guidelines for commonly encountered toxic exposures;

"(3) improve and expand the poison control data collection systems, including, at the Secretary's discretion, by assisting the poison control centers to improve data collection activities;

"(4) improve national toxic exposure surveillance by enhancing activities at the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry;

"(5) expand the toxicologic expertise within poison control centers; and

"(6) improve the capacity of poison control centers to answer high volumes of calls during times of national crisis.

"(c) CERTIFICATION.—Except as provided in subsection (d), the Secretary may make a grant to a center under subsection (a) only if—

"(1) the center has been certified by a professional organization in the field of poison control, and the Secretary has approved the organization as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning; or

"(2) the center has been certified by a State government, and the Secretary has approved the State government as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning.

"(d) WAIVER OF CERTIFICATION REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary may grant a waiver of the certification requirement of subsection (c) with respect to a noncertified poison control center or a newly established center that applies for a grant under this section if such center can reasonably demonstrate that the center will obtain such a certification within a reasonable period of time as determined appropriate by the Secretary.

"(2) RENEWAL.—The Secretary may renew a waiver under paragraph (1).

"(3) LIMITATION.—In no instance may the sum of the number of years for a waiver under paragraph (1) and a renewal under paragraph (2) exceed 5 years. The preceding sentence shall take effect as if enacted on February 25, 2000.

"(e) SUPPLEMENT NOT SUPPLANT.—Amounts made available to a poison control center under this section shall be used to supplement and not supplant other Federal, State, or local funds provided for such center.

"(f) MAINTENANCE OF EFFORT.—A poison control center, in utilizing the proceeds of a grant under this section, shall maintain the expenditures of the center for activities of the center at a level that is not less than the level of such expenditures maintained by the center for the fiscal year preceding the fiscal year for which the grant is received.

"(g) MATCHING REQUIREMENT.—The Secretary may impose a matching requirement with respect to amounts provided under a grant under this section if the Secretary determines appropriate.

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 2000 through 2004 and $27,500,000 for each of fiscal years 2005 through 2009.

"SEC. 1274. RULE OF CONSTRUCTION.

"Nothing in this part may be construed to ease any restriction in Federal law applicable to the amount or percentage of funds appropriated to carry out this part that may be used to prepare or submit a report.".

SEC. 4. CONFORMING AMENDMENT.

The Poison Control Center Enhancement and Awareness Act (42 U.S.C. 14801 et seq.) is hereby repealed.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 686.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of S. 686, the Poison Control Center Enhancement and Awareness Act amendments.

This bill, Mr. Speaker, amends the Poison Control Enhancement and Awareness Act to provide additional assistance for poison prevention and to stabilize the funding of regional poison control centers.

I would like to extend my thanks first to my colleague, the gentleman from Michigan (Mr. UPTON), for all of his work on this important legislation and also add to that list the gentleman from New York (Mr. TOWNS), who has been very interested in this subject for a long time, the gentleman from Texas (Mr. BARTON), Senator DEWINE, and, of course, the gentleman from Ohio (Mr. BROWN) and the others who have been so very cooperative.

Poisoning is the third most common form of unintentional death in the United States. Many of these exposures involve children. Poison control centers are a primary defense against injury and death from poisoning.

In the events since September 11, poison centers have taken on the additional role, Mr. Speaker, of providing medical information about biological, chemical, and nuclear domestic terrorism. S. 686 would authorize funds to maintain national toll-free poison control hotlines and the Poison Control Center Grant Program. Additionally, the legislation would create a nationwide media campaign to promote poison control center utilization and to allow the Secretary to assist in the implementation and maintenance of continuous national surveillance of poison control center data to detect new hazards from toxic substances, household products and pharmaceuticals.

□ 1645

I urge my colleagues, Mr. Speaker, to support this important legislation that the Senate has passed.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

I want to thank my colleagues, the gentleman from New York (Mr. TOWNS), my friend, and the gentleman from Michigan (Mr. UPTON), for their hard work on this bill, as well as my friend and colleague, the gentleman from Florida (Mr. BILIRAKIS), with whom we have worked so well.

Every day these specially trained staff of pharmacists and nurses at poison control centers across the country field calls from frantic parents concerned that their child ingested a poisonous substance. They field calls from an elderly couple with questions about whether one medication might cause an adverse reaction if taken with another; and as the events of September 11 and the cases of anthrax have shown us, poison control centers field calls from concerned residents uncertain about the danger they have been exposed to.

Handling an average of one poison exposure call every 15 seconds across the country, these men and women answer questions about poisonings, about drug abuse, about product contents, about adverse reactions.

Legislation we are considering today will enhance the work of poison control centers through improved maintenance of a national toll-free number that is linked to regional poison control centers. This bill will help promote the nationwide media campaign to promote poison control center utilization. If a person has a problem, they need to know whom to call and they need to know the number, and they need to know that they are reliable. Every parent, every baby-sitter, every coworker, every household, and every office should know how to contact the poison control center closest to them.

This bill from the gentleman from New York (Mr. TOWNS) and the gentleman from Michigan (Mr. UPTON) will help develop standardized prevention and poison control centers and will improve national surveillance of toxic exposures. It will improve the collection of data to help detect new hazards, including those found in our homes.

Mr. Speaker, every year roughly 120 children under 14 needlessly die from unintentional poisoning, 120 children under the age of 14. The bill we are considering today can save the lives of many of them. It is an important step towards reversing that trend and saving more children from poison exposure.

I urge my colleagues to support S. 686.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield such time as he might require to the gentleman from Michigan (Mr. UPTON), the father of this act.

Mr. UPTON. Mr. Speaker, I thank my good chairman who has been instrumental in getting this important piece of legislation to the floor. Again, he has done yeoman's work with so many others here in this body.

Mr. Speaker, as the lead sponsor of the bipartisan House version of the Poison Control Center Enhancement and Awareness Act Amendments of 2003, it is my pleasure to help manage this bill, S. 686, the Senate version of the legislation on the floor today.

What we are doing today is taking up the Senate-passed bill and inserting updated language from our bill. We are doing so because we determined that it was the best way to expedite the final passage of this much-needed legislation reauthorizing and strengthening our Federal commitment to ensuring that our Nation's poison control centers can continue to provide life-saving services to all of our constituents, particularly in these last throes of this session of the Congress.

I want to take this opportunity to particularly acknowledge Senator DEWINE's tremendous leadership on this legislation in the other body and to thank our original cosponsor and colleague, the gentleman from New York (Mr. TOWNS), who is on the floor; the gentleman from Louisiana (Mr. TAUZIN), committee chairman; and the gentleman from Michigan (Mr. DINGELL), the ranking member; the gentleman from Florida (Mr. BILIRAKIS), the House subcommittee chairman; the gentleman from Ohio (Mr. BROWN), the ranking member; and also for the many staff who have helped. I am grateful for their hard work, particularly Cheryl Jaeger and John Ford, and for the assistance that we have received from the American Association of Poison Control Centers and Jane Williams on my staff who helped shepherd this through so many juggernauts; and if we had a parking place for the staff member of the month in front of the Capitol, her name would be the first inscribed on that plate.

Mr. Speaker, poison control centers provide vital, very cost-effective services to the American public. Each year, more than 2 million poisonings are reported to poison control centers throughout this country. More than 90 percent of these poisonings occur in the home, and 50 percent of poisoning victims are children under the age of 6. For every dollar spent on poison control services, we save $7 in medical costs. We prevent a nightmare from happening in virtually any house that uses the phone number and uses these particular facilities.

The horrific events of 9/11 and the anthrax cases the next month brought home the vital role that our Nation's poison control centers must be prepared to play in the event of further terrorist attacks. The 2001 Presidential Task Force on Citizen Preparedness in the War on Terrorism recommended that poison control centers be used as a source of public information and public education regarding potential biological, chemical, and nuclear domestic terrorism.

Mr. Speaker, the passage and enactment of this bill will ensure that our Nation's poison control centers have the resources that they need to fulfill their vital mission as the first line of defense against accidental poisonings and the response to biological, chemical, and nuclear terrorism. I ask that all of the Members join us in voting for this legislation. It will indeed save lives for many Americans.

Mr. BROWN of Ohio. Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. TOWNS), who has worked so hard on this bill.

Mr. TOWNS. Mr. Speaker, I would like to begin by thanking the gentleman from Louisiana (Mr. TAUZIN), the chairman of the committee; the gentleman from Michigan (Mr. DINGELL), the ranking member; of course, the gentleman from Florida (Mr. BILIRAKIS), the Subcommittee on Health chair; and of course, the gentleman from Ohio (Mr. BROWN), the ranking member; and the gentleman from Michigan (Mr. UPTON), who worked very closely with me and also the gentleman from California (Mr. WAXMAN).

Poison control centers have always had broad bipartisan support, and I was delighted once again to join my good friend, the gentleman from Michigan (Mr. UPTON), in sponsoring the House version of the reauthorization.

The role of these centers in basic public health care continues to grow. For example, the Academy of Pediatrics recently urged parents to contact the local poison control centers rather than using the time-honored method of inducing vomiting in children where poisoning is suspected. Our action today will ensure that poison control centers will be there to answer the call for those frightened parents.

Continued strong Federal funding will help to establish new centers as well. This effort is particularly critical at a time when we are increasingly concerned about poison being used as an element of bioterrorism. That is why, Mr. Speaker, I am pleased that language was included to ensure that funds under this bill would go directly to the centers for their work and not diverted to costly and unnecessary studies.

I would like to thank the committee leadership and committee staff on both sides of the aisle for moving this legislation expeditiously, and I would urge our Senate colleagues to ensure that the bill is passed with the House modifications prior to our adjournment.

As a result of what we are doing here today, the lives of people will be saved. Not only that, we will save a lot of money because it is cost-productive.

Many times we have youngsters in particular who end up in the emergency room, and it costs a whole lot more to treat a person in the emergency room than to pick up the phone and call the poison control center and for them to tell that mother who has already panicked that all they have to do is take this and let their son or daughter go to sleep. Therefore, I am excited about this because it is cost-saving, and that is something that we should not forget. Anywhere, anytime we can cut corners and save lives at the same time, then I think we should not hesitate to do it.

Mr. BILIRAKIS. Mr. Speaker, I yield such time as he might consume to the gentleman from Texas (Mr. BARTON).

Mr. BARTON of Texas. Mr. Speaker, I want to start off by commending my good friend from Florida (Mr. BILIRAKIS) for his excellent leadership on this and my friends on the Democratic side, the gentleman from Ohio (Mr. BROWN) and the gentleman from New York (Mr. TOWNS) and the gentleman from Michigan (Mr. DINGELL).

The very fact that we have this Poison Control Center Enhancement and Awareness Act Amendments on the floor is helping to depoison the atmosphere of this House. It is good to be on the floor this afternoon working with our friends on the other side of the aisle instead of throwing bricks back and forth. So the very fact that we are bringing this piece of legislation to the floor is helping depoison the atmosphere in the House.

This is a piece of legislation that builds on what was done back in 1999 when we authorized these poison control centers. Former Senator Dave Karnes, a former White House Fellow friend of mine from Nebraska, called me on this piece of legislation several weeks ago, asked if I would touch base with the House leadership and encourage them to move it, as it had already passed the Senate and was awaiting floor time.

I went to the gentleman from Louisiana (Mr. TAUZIN) and the gentleman from Florida (Mr. BILIRAKIS), and they were very willing to put this on a fast track; and, again, I want to thank the gentleman from Florida (Mr. BILIRAKIS) for making this part of the package of the bill that is on the floor this afternoon.

There are somewhere between 2 million and 4 million poison exposures each year to our Nation's children. Thankfully, in many cases of those cases, it does not end up in a catastrophic situation; but unfortunately, on occasion, it does.

The bill before us today, when the President signs it, is going to minimize the possibility or the probability that those exposures will result in a catastrophic situation. As a father of three children, when they were at home, we took advantage of many of the programs that are in this act in terms of labeling our household goods and chemicals and medicines so that our younger children saw the little smiley face turned upside down, the little green poison control, and of course, it had the message on it and the phone number to call locally or regionally if one had a problem.

So I rise in strong support of this. I am assured that we are going to have bipartisan endorsement; and, again, I want to thank the leadership for their strong work, and on our side the gentleman from Florida (Mr. BILIRAKIS) and on the Democrat side, the gentleman from New York (Mr. TOWNS) and the gentleman from Ohio (Mr. BROWN) for their excellent work.

Mr. BROWN of Ohio. Mr. Speaker, I have no other speakers. I think the gentleman from Florida (Mr. BILIRAKIS) has one. Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I would say that the gentleman from Texas (Mr. BARTON) was here earlier, before even the votes. He wanted to really speak on this subject because he has a great interest in it, and I appreciate that interest.

Mr. Speaker, I yield such time as he might consume to the gentleman from North Carolina (Mr. HAYES).

Mr. HAYES. Mr. Speaker, I want to give my thanks to the gentleman from Florida (Mr. BILIRAKIS), the subcommittee chairman, and the gentleman from New York (Mr. TOWNS) for their help and leadership on this vital legislation; and I rise in strong support of S. 686, the Poison Control Enhancement and Awareness Act, and urge my colleagues to enthusiastically support final passage. As a cosponsor of the House version of H.R. 1819, I am pleased we are considering this critical legislation for approval today.

Mr. Speaker, the Poison Control Enhancement and Awareness Act provides essential support to our Nation's poison control centers. A critical component of the legislation would reauthorize a grant program to keep our poison control centers running and prepared for everyday emergencies.

This grant program is vital for the Carolinas Poison Center, which serves all of North Carolina. Carolinas Poison Center provides life-saving help to parents whose children have swallowed something dangerous, physicians who have unexplained illnesses, hospital emergency rooms which know what the toxic exposure was to a patient but need instructions on how to treat it, and many others in need of critical information about toxic exposure. Carolinas Poison Center's ability to continue these essential services depends on the continuation of the essential grant program as provided in Senate 686, which funds approximately one-fourth of its budget.

The tragic events of September 11 and the anthrax cases of October 2001 have dramatically changed our Nation.

During this time, the Carolinas Poison Center, as well as poison centers throughout the country, answered thousands of additional calls from concerned residents. The Carolinas Poison Center was utilized by many citizens as the primary source for accurate medical information about anthrax and other potential bioterrorism diseases but also for the complications resulting from prophylactic antibiotic therapy.

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Poison control centers throughout the country have become critical sources of local, State and regional bioterrorism response and information in cooperation with the Centers for Disease Control. The Carolinas Poison Center recently completed an analysis of the 2000–2002 human exposure and information call volume, as well as reported human exposure clinical effects in order to determine daily volume and effects baselines, and threshold limits for detection of possible biochemical and disease outbreaks. These results were reported to State public health officials, and software capabilities that enabled Carolinas Poison Control Center were funded, in part, by Federal Prison Control Center grant funds.

Mr. Speaker, I commend my colleagues on the Committee on Energy and Commerce for their work on this critical legislation, and our leadership for helping to move it forward today. I urge my colleagues to join me in securing passage for this essential legislation.

Mr. BROWN of Ohio. Mr. Speaker, I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SWEENEY). The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and pass the Senate bill, S. 686, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. BILIRAKIS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

BIRTH DEFECTS AND DEVELOPMENTAL DISABILITIES PREVENTION ACT OF 2003

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 286) to revise and extend the Birth Defects Prevention Act of 1998.

The Clerk read as follows:

S. 286

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Birth Defects and Developmental Disabilities Prevention Act of 2003".

SEC. 2. NATIONAL CENTER ON BIRTH DEFECTS AND DEVELOPMENTAL DISABILITIES.

Section 317C of the Public Health Service Act (42 U.S.C. 247b–4) is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (A)—

(i) by striking "and developmental disabilities" and inserting ", developmental disabilities, and disabilities and health"; and

(ii) by striking "subsection (d)(2)" and inserting "subsection (c)(2)";

(B) in subparagraph (B), by striking "and" at the end;

(C) in subparagraph (C), by striking the period and inserting a semicolon; and

(D) by adding at the end the following:

"(D) to conduct research on and to promote the prevention of such defects and disabilities, and secondary health conditions among individuals with disabilities; and

"(E) to support a National Spina Bifida Program to prevent and reduce suffering from the Nation's most common permanently disabling birth defect.";

(2) by striking subsection (b);

(3) in subsection (d)—

(A) by striking paragraph (1) and inserting the following:

"(1) contains information regarding the incidence and prevalence of birth defects, developmental disabilities, and the health status of individuals with disabilities and the extent to which these conditions have contributed to the incidence and prevalence of infant mortality and affected quality of life;";

(B) in paragraph (3), by inserting ", developmental disabilities, and secondary health conditions among individuals with disabilities" after "defects";

(C) in paragraph (4), by striking "and" at the end;

(D) by redesignating paragraph (5) as paragraph (7); and

(E) by inserting after paragraph (4) the following:

"(5) contains information on the incidence and prevalence of individuals living with birth defects and disabilities or developmental disabilities, information on the health status of individuals with disabilities, information on any health disparities experienced by such individuals, and recommendations for improving the health and wellness and quality of life of such individuals;

"(6) contains a summary of recommendations from all birth defects research conferences sponsored by the Centers for Disease Control and Prevention, including conferences related to spina bifida; and";

(4) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively;

(5) by inserting after subsection (d) (as so redesignated), the following:

"(e) ADVISORY COMMITTEE.—Notwithstanding any other provision of law, the members of the advisory committee appointed by the Director of the National Center for Environmental Health that have expertise in birth defects, developmental disabilities, and disabilities and health shall be transferred to and shall advise the National Center on Birth Defects and Developmental Disabilities effective on the date of enactment of the Birth Defects and Developmental Disabilities Prevention Act of 2003."; and

(6) in subsection (f), by striking "$30,000,000" and all that follows and inserting "such sums as may be necessary for each of fiscal years 2003 through 2007.".

SEC. 3. TECHNICAL CORRECTIONS FOR STATE COUNCILS ON DEVELOPMENTAL DISABILITIES.

(a) IN GENERAL.—Section 122(a) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15022(a)) is amended—

(1) in paragraph (3)(A)(ii), by inserting before the period the following: ", the amount received by the State for the previous year, or the amount of Federal appropriations received in fiscal year 2000, 2001, or 2002, whichever is greater"; and

(2) in paragraph (4)(A)(ii), by inserting before the period the following: ", the amount received by the State for the previous year, or the amount of Federal appropriations received in fiscal year 2000 2001, or 2002, whichever is greater".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2003 and apply to allotments beginning in fiscal year 2004.

SEC. 4. REPORT ON SURVEILLANCE ACTIVITIES.

Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services jointly with the Secretary of Education shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce and Committee on Education and the Workforce of the House of Representatives a report concerning surveillance activities under section 102 of the Children's Health Act of 2000 (Public Law 106-310), specifically including—

(1) a description of the current grantees under the National Autism and Pervasive Developmental Disabilities Surveillance Program and the Centers of Excellence in Autism and Pervasive Developmental Disabilities the data collected, analyzed, and reported under such grants, the sources of such data, and whether such data was obtained with parental consent as required under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g);

(2) a description of current sources of data for the surveillance of autism and developmental disabilities and the methods for obtaining such data, including whether such data was obtained with parental or patient consent for disclosure;

(3) an analysis of research on autism and developmental disabilities with respect to the methods of collection and reporting, including whether such research was obtained with parental or patient consent for disclosure;

(4) an analysis of the need to add education records in the surveillance of autism and other developmental disabilities, including the methodological and medical necessity for such records and the rights of parents and patients in the use of education records (in accordance with the Family Educational Rights and Privacy Act of 1974);

(5) a description of the efforts taken by the Centers for Disease Control and Prevention to utilize education records in conducting the surveillance program while obtaining parental or patient consent for such education records, including the outcomes of such efforts;

(6) a description of the challenges provided to obtaining education records (in the absence of parental or patient consent) for the

purpose of obtaining additional surveillance data for autism and other developmental disabilities; and

(7) a description of the manner in which such challenges can be overcome, including efforts to educate parents, increase confidence in the privacy of the surveillance program, and increase the rate of parental or patient consent, and including specific quantitative and qualitative justifications for any recommendations for changes to existing statutory authority, including the Family Educational Rights and Privacy Act of 1974.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) reach will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 286, the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

I rise today in support of S. 286, which is the Birth Defects and Developmental Disabilities Prevention Act. This legislation will allow public health surveillance for developmental disabilities using records maintained by local educational institutions.

A baby born in America today has a life expectancy 30 years longer than a child born at the turn of the century. Public health initiatives are largely responsible for this vast improvement, but we cannot rest on our laurels, Mr. Speaker, because much more remains to be done.

Many of us have worked diligently to examine many of the difficult barriers we face in working to improve children's health and well-being, and this legislation, initiated by our colleague, the gentleman from New Jersey, (Mr. FERGUSON), and helped to a large degree by another colleague from New Jersey (Mr. SMITH) and so many others, the gentleman from Ohio (Mr. BROWN) and so many others, will assist the Centers for Disease Control and Prevention in accurately determining the size and scope of many developmental disabilities, including autism, mental retardation, and cerebral palsy.

My hope, Mr. Speaker, is that this information will ultimately help us identify causes and possible cures for these disabling, very disabling conditions. I might add these diseases are not only disabling insofar as the child is concerned, but what it does to the parents is just unbelievable. I know we have all seen that, and, hopefully, we can find some way to find at least the causes.

In any case, Mr. Speaker, I urge all of my colleagues to support this legislation that the Senate has already passed.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

I want to thank my colleague, the gentleman from Maryland (Mr. HOYER), for his tireless work on the issue of developmental disabilities, as well as the ranking member of the committee, the gentleman from Michigan (Mr. DINGELL), and the chairman of the committee, the gentleman from Louisiana (Mr. TAUZIN), and their staff, who deserve plaudits for their work in bringing this to the floor.

Mr. Speaker, 150,000 children are born each year with a birth defect. That is 150,000 families too many who receive the news no new parent should ever have to hear. Both genetic and environmental factors can cause birth defects, but for over 60 percent of them, the causes still remain unknown.

In 1998, Congress passed the Birth Defects Prevention Act, which created a Federal birth defects prevention and surveillance strategy. A couple of years later, the gentleman from Florida (Mr. BILIRAKIS) and I introduced and worked together to pass the Children's Health Bill Act of 2000, which established the National Center on Birth Defects and Developmental Disabilities at the Centers for Disease Control and Prevention in Atlanta.

Passage of these two bills demonstrated a congressional commitment to address two significant threats to children's health, birth defects and developmental disabilities. The bill we are considering today, the Birth Defects and Developmental Disabilities Prevention Act, will strengthen that commitment towards children and has the overwhelming support of the children's advocacy community.

The National Center on Birth Defects and Developmental Disabilities at CDC does extensive research and provides indispensable resources on birth defects, such as autism, spina bifida, and fetal alcohol syndrome, as well as research and support focusing on childhood and adult disabilities. Passage of this bill will go a long way towards continuing these critical efforts.

The bill also continues the important work States have done expanding community-based birth defects tracking systems, programs to prevent birth defects and activities to improve access to health services for children with birth defects.

History has shown when we choose to confront a public health problem that threatens the health and lives of children, we can indeed and often have stopped it in its tracks. Before the development of the polio vaccine in the 1950s, an estimated 50,000 people in the U.S. were affected by polio each year. With the widespread vaccination of children beginning in the 1950s, polio has been virtually eliminated in the United States, and there have been no new cases since 1991.

Mr. Speaker, I wear on my lapel a pin, which is a canary in a bird cage. The mineworkers took a canary down in the mines 100 years ago, and if the canary died, the mineworker knew he had to get out of the mines. In those days, 100 years ago, the workers had no real protection in the mines from government or from labor unions. In those days, a child born in the United States 100 years ago had a life expectancy of 46, 47, 48 years old. One hundred years later, because of our public health infrastructure, because of legislation like the one that the gentleman from Florida (Mr. BILIRAKIS) worked on, because of Medicare and Social Security and the safe drinking water and clean air laws and seat belt laws and prohibitions on child labor and civil rights laws and laws protecting the women and the disabled, we have come so far so that our life expectancy is literally three decades longer.

That is not because of transplants or because of chemotherapy, it is mostly because of public health initiatives like we are addressing today. The only threat to that, Mr. Speaker, is that some people, sometimes in this body, have fallen short on providing for that public health infrastructure. We have too often, in efforts to privatize Medicare or Social Security or to weaken environmental laws and worker-safety laws, we have sometimes backslid on some of these advancements we have made in the last hundred years.

Unfortunately, this week is an example, with the bill to privatize Medicare, of sliding back. It will do nothing to lengthen people's lives. In fact, it will do the opposite. However, today, Mr. Speaker, this legislation brought to the floor by the gentleman from Florida (Mr. BILIRAKIS), the gentleman from Maryland (Mr. HOYER), and I, the gentleman from Michigan (Mr. DINGELL), the gentleman from Louisiana (Mr. TAUZIN), and others will, in fact, strengthen that public health system, will, in fact, strengthen the Centers for Disease Control to help us and them tackle other children's health problems with the same resolve that we tackled polio.

Passage of the Birth Defects and Developmental Disabilities Prevention Act is an important step towards that goal, and I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume, and I want to thank the gentleman for all those comments. He puts it so very well.

My oldest son, Emmanuel, is a physician, an internist. He works awfully hard, puts in a lot of hours and does not make much money. Sort of like the late father of the gentleman from Ohio (Mr. BROWN). But when he was going through his rotation, he told me the toughest one was the one dealing with pediatrics, with children, and to see some of these parents, particularly with the autistic children.

I would say that the children's health bill that the gentleman from Ohio (Mr. BROWN) referred to, a great impetus on that, to a large degree, was due to the actress Rene Russo. She really pushed us on that. She came here and testified, and I am just glad we were able to do it. But at the same time, we see all these terrible things happening.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. FERGUSON), the father of this bill, this very needed bill, this very great bill.

Mr. FERGUSON. Mr. Speaker, I want to thank the chairman for the great work he has done in helping to shepherd this bill, and also to thank the gentleman from Ohio (Mr. BROWN) and our friends on the other side of the aisle who have worked with us in great cooperation.

Mr. Speaker, many people are not aware that birth defects affect over 3 percent of all births in America, and that they are also the leading cause of infant death. Among the babies who survive, their birth defects often result in lifelong disabilities. Now, thankfully, families who are blessed with a special needs child find their hearts and minds grow immeasurably as they care for and work to meet the needs of their precious new addition. These families also face many challenges, however, and we have a responsibility to address those disabilities which are, in fact, preventable.

In 1998, we passed the Birth Defects Prevention Act, which created a Federal birth defects prevention and surveillance strategy. This bill passed the Senate by a voice vote and the House 405–2. That was followed by the Children's Health Act of 2000, which established the National Center on Birth Defects and Developmental Disabilities at the Center for Disease Control. With these two important pieces of legislation, Congress recognized that birth defects and developmental disabilities are major threats to children's health.

The Birth Defects and Developmental Disabilities Prevention Act of 2003 revises and extends the Birth Defects Prevention Act of 1998. This bill is straightforward, and it has the support of the March of Dimes, the Spina Bifida Association of America, the Autism Society of America, among others. This legislation renews a Federal commitment to protecting children's health.

With the commitment of this Congress, we can help prevent birth defects and developmental disabilities in children, we can promote child development, and we can ensure the health and wellness among children and adults who are living with disabilities. I want to express my appreciation, once again, for the chairman's leadership on this issue.

Mr. DINGELL. Mr. Speaker, I strongly support S. 286, the "Birth Defects and Developmental Disabilities Prevention Act of 2003." I would like to commend my colleagues, particularly Representatives BROWN and STUPAK for working so diligently on this legislation.

Birth defects are the leading cause of infant mortality in the United States, accounting for more than 20 percent of all infant deaths. About 150,000 babies are born each year with birth defects; this means frightening news for the parents of one out of every 28 babies. Both genetic and environmental factors can cause birth defects; however, the causes of 60 to 70 percent of all birth defects are unknown. These shocking numbers compel us to take steps to learn more about their causes, to identify factors that may cause or increase the risk of a baby having a birth defect, to educate the public about these potential risks, and to inform women about how to protect themselves and their babies.

S. 286 reauthorizes the programs of the National Center on Birth Defects and Developmental Disabilities at the Centers for Disease Control and Prevention (CDC) and requires the Secretary of Health and Human Services to conduct research on and promote the prevention of birth defects and developmental disabilities. This legislation also supports a National spina bifida program to prevent and reduce suffering from the Nation's most common permanently disabling birth defect. All of these measures will enable the CDC to both expand and continue its work in promoting the health of babies, children, and adults by working to identify the causes of birth defects and developmental disabilities.

The Birth Defects and Developmental Disabilities Prevention Act of 2003 is supported by many organizations, including the March of Dimes and it deserves our support as well.

Mr. SMITH of New Jersey. Mr. Speaker, I rise today to support this important bill, the Birth Defects and Developmental Disabilities Prevention Act, which will bolster our Federal Government's efforts to prevent unborn babies from developing birth defects and help these special children after birth.

Specifically, this piece of legislation contains two provisions that are especially important to our work helping those who suffer from autism and spina bifida, which combined affect more than 1.5 million Americans and their families.

This bill will codify our Government's support for a National Spina Bifida Program at the Centers for Disease Control and Prevention (CDC). Last year, thanks to widespread support of many in this Chamber, we were able to secure initial funding to establish this program. And this year, members of the Congressional Spina Bifida Caucus—which I cochair along with my friend Congressman STUPAK—are working hard to continue to grow and develop the program.

The National Program is working to prevent cases of spina bifida by spreading the word to all women of child-bearing age that daily consumption of .4 milligrams of folic acid supplements can reduce their baby's chance of developing spina bifida by 75 percent. The program is working with the National Institutes of Health and other agencies to develop new therapies for people born with spina bifida. Additionally, it is helping better educate doctors and nurses on how they should best care of these patients, and working to reach patients and clinicians what they must do to prevent and treat various secondary health problems to which people with spina bifida are particularly susceptible.

I look forward to continuing to work with my colleagues in Congress, officials at the CDC, and the hardworking advocates with the National Spina Bifida Program to help all those living with spina bifida.

Secondly, S. 286 contains a very important provision addressing an ongoing autism surveillance project I authored several years ago and which was incorporated as title I of the Children's Health Act. Right now, the CDC, in conjunction with state health departments and other research entities, is conducting autism surveillance in more than 15 States, including New Jersey. The rate of diagnosis of new autism patients is at least 1 in every 250 people, and may be even higher in some regions.

In order for us to obtain an accurate picture of the Nation's autism epidemic, it is absolutely imperative that health officials have the ability to gather the data they need. The provision in S. 286 will help ensure that the Departments of Health and Human Services and Education will work together to gather this much-needed data from education records, which are estimated to be the source of more than 40 percent of the data in need.

Without this coordination by health and education officials, we will never obtain an accurate picture of the autism epidemic because in order to achieve optimum results, we need to know more about this disorder, what causes it, and what we can do to prevent it. This data being collected is indispensable and will help us improve life for all with autism.

I would like to thank all of my colleagues who helped bring this bill to the floor today, and I look forward to continuing to work together so we can have healthier, happier babies and families.

Mr. BROWN of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and pass the Senate bill, S. 286.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. BILIRAKIS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

SUPPORTING GOALS AND IDEALS OF NATIONAL EPILEPSY AWARENESS MONTH

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 48) supporting the goals and ideals of "National Epilepsy Awareness Month" and urging support for epilepsy research and service programs.

The Clerk read as follows:

S. CON. RES. 98

Whereas epilepsy is a neurological condition that causes seizures and affects 2,300,000 people in the United States;

Whereas a seizure is a disturbance in the electrical activity of the brain, and 1 in every 12 Americans will suffer at least 1 seizure;

Whereas 180,000 new cases of seizures and epilepsy are diagnosed each year, and 3 percent of Americans will develop epilepsy by the time they are 75;

Whereas 41 percent of people who currently have epilepsy experience persistent seizures despite the treatment they are receiving;

Whereas a survey conducted by the Centers for Disease Control and Prevention demonstrated that the hardships imposed by epilepsy are comparable to those imposed by cancer, diabetes, and arthritis;

Whereas epilepsy in older children and adults remains a formidable barrier to leading a normal life by affecting education, employment, marriage, childbearing, and personal fulfillment;

Whereas uncontrollable seizures in a child can create multiple problems affecting the child's development, education, socialization, and daily life activities;

Whereas the social stigma surrounding epilepsy continues to fuel discrimination, and isolates people who suffer from seizure disorders from mainstream life;

Whereas a significant number of people with epilepsy may lack access to medical care for the treatment of the disease;

Whereas in spite of these formidable obstacles, people with epilepsy can live healthy and productive lives and make significant contributions to society;

Whereas November is an appropriate month to designate as "National Epilepsy Awareness Month"; and

Whereas the designation of a "National Epilepsy Awareness Month" would help to focus attention on, and increase understanding of, epilepsy and those people who suffer from it: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) supports the goals and ideals of a "National Epilepsy Awareness Month";

(2) requests the President to issue a proclamation declaring a "National Epilepsy Awareness Month";

(3) calls upon the American people to observe "National Epilepsy Awareness Month" with appropriate programs and activities; and

(4) urges support for epilepsy research programs at the National Institutes of Health and at the Centers for Disease Control and Prevention.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on H. Con. Res.48, the concurrent resolution now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of Senate Concurrent Resolution 48, a concurrent resolution supporting the goals and ideals of National Epilepsy Awareness Month. This resolution urges funding for epilepsy research and service programs.

More than 2 million people in the United States have epilepsy. Approximately 300,000 of those 2 million are children or adolescents. November has been designated as National Epilepsy Awareness Month to increase public awareness of this very debilitating disease.

Epilepsy is a chronic condition that produces random, temporary changes in the brain's electrical activities. These changes cause seizures that affect awareness, movement, or sensation. Although there is currently no cure, there is medication available that can help to control seizures and to enable people with epilepsy to lead normal lives.

I would like to acknowledge, I guess I will call them the mothers of this legislation, Senator LINCOLN from the other body, and the gentlewoman from Florida (Ms. BROWN), my colleague from my home State, for their making us aware of this.

As chairman of the Subcommittee on Health of the Committee on Energy and Commerce, Mr. Speaker, I believe it is important that Congress work to increase public awareness of epilepsy and to dispel any myths and stigma, and, gosh knows, even today, there is still some stigma associated with this disease, and to promote research into the causes, treatment, and possible cures.

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Mr. Speaker, I urge my colleagues to support the resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from Florida (Mr. BILIRAKIS) again, and especially the gentlewoman from Florida (Ms. CORRINE BROWN) for her work raising awareness about epilepsy. I would add that the gentlewoman from Florida (Ms. CORRINE BROWN) is interested in this legislation in response to what constituents have told her, that when people come forward and express what is important to them, often a Member of Congress responds to their constituents and really goes to bat for them, and the gentlewoman from Florida (Ms. CORRINE BROWN) did that with this legislation.

Epilepsy is a devastating and prevalent illness in our country. Ineffective treatment, delayed or lack of access to high-quality specialized care and the severity of the underlying neurological disorder are all possible contributors to the development of hard-to-control seizures.

Education and public awareness initiatives encouraging timely diagnosis and appropriate treatment can reduce the risk of severe brain damage. These strategies also can address damaging misconceptions which so many of us have about this disease. The resolution we are considering today recognizes the importance of our continuing fight against epilepsy,and the significant role the National Epilepsy Awareness Month plays in this effort. I hope my colleagues will join me in honoring the nearly 2.5 million Americans with epilepsy, will pass this resolution, and encourage all of us to take extra steps to combat this awful disease.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Florida (Ms. CORRINE BROWN).

Ms. CORRINE BROWN of Florida. Mr. Speaker, I thank the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) for their leadership on this matter.

Mr. Speaker, 25 million Americans, or one in every 10, will experience at least one seizure in their lifetime. At least 2.3 million Americans currently have epilepsy, but the effects of this disease extend to family members, caregivers, and employers.

Epilepsy is a neurological condition characterized by recurrent, unprovoked seizures. Seizure disorders can develop and strike at any time in life. Approximately one-third of the 181,000 new cases of epilepsy and seizures that develop each year begin in childhood, and as many as 44 percent of the people with epilepsy continue to have seizures despite treatment. While the disorder does not discriminate, the state of health care in this country is such that the impact is most heavily felt in minority communities. Currently, there is no cure.

Epilepsy can be a formidable barrier to normal life, affecting educational attainment, employment, and personal fulfillment. The stigma associated with seizures and societal misconceptions about them remain as facts of life for many individuals with epilepsy and magnify the social effects of this condition. Increased health care costs result in an economic burden on individuals, families, communities, and society as a whole. A 3-year study, sponsored by the Epilepsy Foundation, to determine the financial cost to individuals and the Nation found that the annual economic cost is approximately $12.5 billion. Of this, $1.7 billion is direct medical costs while $10.8 billion is indirect costs such as lost earning power, social isolation, and widespread unemployment. The study also found marked divisions in costs among people with epilepsy whose seizures are well controlled and those who continue to experience seizures despite treatment.

Another disturbing fact about this issue, African Americans and minority populations are suffering disproportionately. Once again, when this country gets a cold, the African American community gets pneumonia. The Epilepsy Foundation recently launched a diversity initiative with the goal of ensuring that all people with epilepsy have access to valuable services and information that help them manage their condition, monitor their health, and pursue the highest quality health care. The initiative was launched in response to disparities identified in health care access and quality of life with epilepsy who are members of minority communities.

As our population continues to grow more diverse, these findings provide a wake-up call to the health care community that the health care quality divide is in danger of turning into a gulf. The Institute of Medicine reports that African Americans, Hispanics, and other minorities receive lower-quality health care than whites, even when income, age, and insurance status were considered.

The disparities in health care delivery to minorities are real. The real challenge is to take the reality and develop solutions. Awareness is the first step. It is for this compelling reason that I ask you to join me in designating November 2003 as National Epilepsy Awareness Month. This resolution passed the Senate earlier this year, and it is now up to the House to ensure that this measure is recognized. Together we can make a difference in the lives of people struggling with the medical and social impact of this serious health condition. I ask Members to please join me in supporting S. Con. Res. 48.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, I would like to say how pleased I am to have worked with the gentleman from Ohio (Mr. BROWN) on these suspensions here today. We have had a number of them. We have been here quite awhile, about 4 hours; and it is an illustration of what we can do if we work together. I would also like to express my appreciation to the staff on both sides of the aisle.

Mr. Speaker, I yield back the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to echo the words of the gentleman from Florida (Chairman BILIRAKIS) and the cooperation that he always shows in putting together good legislation out of the Subcommittee on Health.

Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Mr. Speaker, I rise today in strong support of S. Con. Res. 48, recognizing the goals of National Epilepsy Awareness Month.

Passing this resolution sends a strong signal of support to the 2.3 million Americans who suffer from this heart-breaking condition and life-threatening condition, and most importantly to their families.

Current treatments help for some, but not all. Twenty-five percent of all patients experience seizures which cannot be controlled, placing them in danger of irreversible damage. I applaud the continuing efforts of the researchers and medical professionals who improve the lives of those afflicted by epilepsy and who work towards its eventual cure. They deserve our unwavering support.

I want to also recognize one Chicago-based organization, which I am intimately and personally involved with. Through nationwide grass roots efforts, Citizens United for Research in Epilepsy, or CURE, seeks to find a cure for pediatric epilepsy and to raise public awareness of the disease, and they deserve our thanks.

Epilepsy is a cross-cultural condition that strikes people of all ages and income levels. In fact, 3 percent of all Americans will develop epilepsy by the time they reach age 75. Millions of people confront this tremendously challenging physical barrier to completing their education, working in the workplace, and supporting a family. Some must face this challenge without access to proper treatment.

We must support the effort of the National Institutes of Health and the Centers for Disease Control in their continued pursuit to improve these treatments. We must expand access to these treatments to all afflicted Americans regardless of income. And we must increase awareness among the American people of the severity and prevalence of this health crisis.

Mr. Speaker, I thank our colleagues in the Senate for passing this important resolution, as well as the gentleman from Ohio (Mr. BROWN) and the gentlewoman from Florida (Ms. CORRINE BROWN), and I strongly encourage my colleagues to support S. Con. Res. 48.

Mr. Speaker, I rise today in strong support of S. Con. Res. 48, recognizing the goals of National Epilepsy Awareness Month. Passing this resolution sends a strong signal of support to the 2.3 million Americans who suffer from this debilitating condition and to their families. It signals our commitment to raising awareness of epilepsy and to providing the research funding needed to eradicate this heartbreaking and life-threatening condition.

Earlier this year, I circulated to my colleagues an article from the February 18th edition of the New York Times. It described mounting new evidence about seizures, its causes and effects, and the need for increasing research. There is growing awareness among physicians and researchers that seizures can lead to brain damage, increased susceptibility to more frequent seizures, and even sudden death.

There has been a dramatic increase in epilepsy research over the last decade, but there is still much work to be done. Twenty-five percent of epileptic patients have uncontrollable seizures. Current treatment does not prevent some patients from suffering seizures and irreversible damage. That is why we have a responsibility to expand research to improve these treatments.

In my hometown of Chicago, one organization that is working to improve treatments for epilepsy is Citizens United for Research in Epilepsy, or CURE. CURE is a national organization founded by parents of children with epilepsy, which, through grassroots efforts, seeks to find a cure for pediatric epilepsy and to raise public awareness of the disease and its devastation.

Epilepsy is a cross cultural condition that strikes people of all ages and income levels. In fact, 3 percent of all Americans will develop epilepsy by the time they reach age 75. That's 3 percent who must confront a tremendously challenging physical barrier to completing their education, contributing in the workplace, and supporting a family life. While it is a formidable and daunting challenge, there is good news. Although existing treatments may not cure epilepsy, they can certainly help patients confront the challenge and lead normal, productive and happy lives. The bad news is that not all Americans have access to these services. Because they lack the resources for comprehensive treatment, they, their families, and their communities suffer needlessly.

We must support the efforts of the National Institutes of Health and the Centers for Disease Control in their continued efforts to improve these treatments. We must expand access to these treatments to all afflicted Americans regardless of income. And we must increase awareness among the American people of the severity and prevalence of this health crisis.

Mr. Speaker, I thank our colleagues in the Senate for passing this important resolution, as well as the gentlelady from Florida, Ms. BROWN, for introducing a companion resolution in the House. I also applaud the continuing efforts of the researchers and medical professionals who improve the lives of those afflicted by epilepsy, and who work towards its eventual cure. They deserve our unwavering support. I strongly encourage my colleagues to vote for S. Con. Res. 48.

Mr. HOYER. Mr. Speaker, I am pleased to support this resolution, S. Con. Res. 48, supporting the goals and ideals of National Epilepsy Awareness Month.

More than 2.3 million people in the United States have some form of epilepsy. Thirty percent of them are children under the age of 18. About 180,000 new cases of seizures and epilepsy are diagnosed each year. A large number of children and adults have undetected or untreated epilepsy. Yet so many people know very little about the condition, including how to detect it, and how to treat it.

I serve on the Labor, Health and Human Services, and Education Appropriations Subcommittee and have long advocated an increased federal commitment for both the research and treatment for adults and children with epilepsy. I have supported greater epilepsy research at the National Institutes of Health to study causes and cures of this neurological condition. I was honored to be a part of establishing the first epilepsy-specific program at the Centers for Disease Control and Prevention. And I am pleased that this year the House has provided $3 million for the Health Resources and Services Administration to implement a demonstration public health program to serve people with epilepsy who lack access to adequate medical care. I hope that funding will be included in the final omnibus appropriations bill for this purpose.

While the progress we have made so far in increasing research and improving public health strategies for epilepsy is important, we must also continue to increase awareness and education. By increasing awareness we can affect social attitudes, government programs, and the delivery of health care services for persons currently without treatment. We can improve efforts for prevention and treatment. And perhaps one day soon we can find a cure.

In about 70 percent of epilepsy cases there is no known cause. Of the remaining 30 percent, the most frequent causes are head trauma (such as from a car accident, sports accident, or a fall), brain tumor, stroke, poisoning (including lead poisoning and alcoholism), infection, or maternal injury.

But with treatment, people can achieve full or partial control of seizures in about 85 percent of cases. Drug therapy is often required treatment, and less often, surgery. Dietary changes can also sometimes control seizures.

Improved prevention and treatment is dependent on improved awareness and education.

This week many of us in Congress are discussing the need to provide seniors greater and improved access to prescription drugs. Seniors with epilepsy are no different. They need unimpeded access to, and coverage for, the critical anti-epileptic drugs that treat their condition. Many people with epilepsy are concerned about the availability of all anti-epileptic drug options when enrolling in managed care plans. A Medicare bill that pushes seniors into managed care may not meet the needs of this population. When we consider the Medicare legislation before us, we must ensure that seniors, including seniors with epilepsy, should not be forced to worry about their drug coverage.

I applaud this resolution and support the establishment of an annual Epilepsy Awareness Month.

Mr. BROWN of Ohio. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SWEENEY). The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and concur in the Senate concurrent resolution, S. Con. Res. 48.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

BASIC PILOT PROGRAM EXTENSION AND EXPANSION ACT OF 2003

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1685) to extend and expand the basic pilot program for employment eligibility verification, and other purposes.

The Clerk read as follows:

S. 1685

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Basic Pilot Program Extension and Expansion Act of 2003".

SEC. 2. EXTENSION OF PROGRAMS.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking "6-year period" and inserting "11-year period".

SEC. 3. EXPANSION OF THE BASIC PILOT PROGRAM.

(a) IN GENERAL.—Section 401(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by inserting after "United States" the following: ", and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004".

(b) REPORT.—Section 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) by striking "The" and inserting:

"(a) IN GENERAL.—The", and

(2) by adding at the end the following new subsection:

"(b) REPORT ON EXPANSION.—Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

"(1) evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

"(2) describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the basic pilot program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a)."

(c) CONFORMING AMENDMENTS.—Section 402(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) in paragraph (2)(B), by striking "or entity electing—" and all that follows through "(ii) the citizen attestation pilot program" and inserting "or entity electing the citizen attestation pilot program";

(2) by striking paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(d) ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.—Title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking "Attorney General" each place that term appears and inserting "Secretary of Homeland Security".

SEC. 4. PILOT IMMIGRATION PROGRAM.

(a) PROCESSING PRIORITY UNDER PILOT IMMIGRATION PROGRAM FOR REGIONAL CENTERS TO PROMOTE ECONOMIC GROWTH.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security"; and

(2) by adding at the end the following:

"(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.".

(b) EXTENSION.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended by striking "10 years" and inserting "15 years".

SEC. 5. GAO STUDY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall report to Congress on the immigrant investor program created under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

(b) CONTENTS.—The report described in subsection (a) shall include information regarding—

(1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program;

(2) the country of origin of the immigrant investors;

(3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;

(4) the number of immigrant investors that have sought to become citizens of the United States;

(5) the types of commercial enterprises that the immigrant investors have established; and

(6) the types and number of jobs created by the immigrant investors.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 1685, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we are considering Senate 1685, a bill authored by Senator GRASSLEY that represents a fair and reasonable compromise regarding the reauthorization of the employment eligibility verification pilot project.

The Immigration Reform and Control Act of 1986 made it unlawful for employers to knowingly hire or employ illegal aliens and required employers to check the identity and work eligibility documents of all new employees. Unfortunately, illegal aliens have used the easy and cheap availability of counterfeit documents to make a mockery of this law. Today's document-based verification system just does not work. It frustrates employers who do not want to hire illegal aliens but have no other choice than to accept documents that have a high likelihood of being counterfeit.

In 1996, Congress responded to this state of affairs by creating a pilot program under which employers who elect to participate may submit the Social Security and alien identification numbers of newly hired employees to be checked against Social Security Administration and INS records.

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This weeds out bogus numbers provided by illegal aliens and thus ensures that new hires are genuinely eligible to work.

The pilot program has been a great success over its 6 years of operation. A recent study found that 96 percent of participating employers believed the pilot to be an effective and reliable tool for employment verification, 94 percent believed it to be more reliable than the IRCA-required document check, and 83 percent believed that participating in the pilot reduced uncertainty regarding work authorization. The study recommended the continuation of the pilot.

Last month, this body considered H.R. 2359, introduced by the gentleman from California (Mr. CALVERT), that would have extended the pilot program for an additional 5 years. It would have allowed employers throughout the Nation to voluntarily participate. Currently, the Department of Homeland Security is required to operate the pilot in at least five of the seven States with the highest estimated number of illegal aliens.

Senate 1685 also extends the pilot for an additional 5 years. It also takes two steps to address the concerns of some of our colleagues that aspects of the pilot program can be improved. First, the bill delays nationwide expansion for a year. It provides that employers in all States shall be able to participate in the basic pilot program no later than December 1, 2004. In addition, not later than June 1, 2004, the Secretary of Homeland Security shall complete a report evaluating whether any problems identified in the 2001 report on the basic pilot program have been substantially resolved and describing what actions the Secretary shall take to resolve any outstanding problems before undertaking the expansion of the program.

Senate 1685 also addresses the immigrant investor visa program. To encourage economic development through the program, Congress created a 5-year temporary pilot program in 1993 that set aside 3,000 immigrant visas each year for aliens who invested at least $500,000 in designated regional centers. A regional center is any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A center seeking approval must submit a proposal showing how it plans to focus on a geographical region within the United States to achieve the required growth. Once a center has been approved, an alien applicant can receive an investor visa by showing that he will make the qualifying investment within the approved regional center. In 2000, Congress extended this program until September 2003.

Senate 1685 extends this pilot program for an additional 5 years and also allows the Department of Homeland Security to process investor visa petitions involving regional centers expeditiously, as compared to nonpilot program investor visa petitions.

I urge my colleagues to support this bill. The legislation will provide willing employers throughout the Nation the tools they need to hire a legal workforce.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

The consideration of S. 1685 is a positive step toward resolving a concern that many Americans have as relates to ensuring the complete and accurate employment of those who are able and should be employed in a legal manner. The basic pilot is a temporary, voluntary program for electronically verifying the employment authorization of newly-hired employees. The bill, S. 1685, would extend the program for another 5 years.

The objective of employment verification is to ensure that American employers hire workers who are authorized to work in the United States. Under the basic pilot, the employer examines the documents of a newly-hired employee and then transmits the pertinent information electronically to an office of the Social Security Administration. The SSA office compares the information with its records. In the case of a foreign worker, the SSA office will pass the information on to the Bureau of Citizenship and Immigration Services.

The BCIS compares the alien's employment data with immigration records to determine whether he or she is authorized to work in the United States. If BCIS confirms that the alien employee is authorized to work in the United States, it issues a confirmation number. If BCIS determines instead that the new employee is not authorized for employment in the United States, it issues a tentative nonconfirmation number. Procedures are available to permit either the employer or the employee to contest a tentative nonconfirmation before it becomes final, at least allowing procedures of due process so that those who would insist that they are allowed to work here would have the opportunity to protest any denial and to be able to provide information to prove that they can work here in the United States.

The basic pilot is an effective employee verification program that makes it easier and safer for employers to hire foreign workers which makes it easier for lawful foreign workers to find employment.

Section 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 required the Attorney General to submit a report on the basic pilot to the House and Senate Judiciary Committees. The report was done by the Institute for Survey Research at Temple University. The Institute identified a substantial number of implementation problems. It concluded, among other things, that the basic pilot was a good program, but that it was not ready yet for larger-scale implementation. Consequently, I have concerns about a provision in S. 1685 which would expand the pilot program from its present size of being available in only six States to being available in all 50 States.

S. 1685 has a provision, however, which I believe addresses the problems that the Institute identified. This provision would require the Secretary of Homeland Security, prior to expanding the program, to submit a report to the

House and Senate Judiciary Committees stating, one, the extent to which these problems have been resolved; and, two, describing what additional actions will be taken before expanding the program. This is a helpful addition, if you will, that counters the overexpansion to 50 States, which I believe we are not yet prepared for in terms of manpower hours at Homeland Security and, as well, technology to be able to address the overload that will occur. But it is an important issue to ensure that employers are, in fact, complying with the law and hiring those appropriately able to work in the United States.

S. 1685 also would extend the duration of an immigrant investor pilot program for 5 additional years. It is a little-used program, and I think we should do a lot to expand and promote this program because it is an investment program. This pilot program arose out of the basic immigrant investor EB–5 program. Ten thousand EB–5 visas are available each year, 5,000 of which are reserved for people who participate in the pilot program.

The requirements for participating in the pilot program are essentially the same as the requirements for participating in the EB–5 investor program, with some exceptions. An investor under the pilot program can qualify with an investment of less than $1 million, which is the requirement for the basic EB–5 program. The pilot program investor may satisfy the eligibility requirements with an investment of as little as $500,000 in a specified type of commercial enterprise that would be to promote economic growth, improve regional productivity, create new jobs or save existing ones, and increase domestic capital investment in certain definitively needy areas that would benefit from this investment. I would encourage the utilization of these visas as much as possible.

I am pleased that foreign investors are being encouraged to invest in regions of our country that need the stimulation of such enterprises. I think this is a worthwhile program that should be extended. I urge my colleagues to vote for this bill.

Might I also acknowledge the work of the Committee on the Judiciary, the House Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) who worked on this legislation and my chairman on the Subcommittee on Immigration, Border Security, and Claims, the gentleman from Indiana (Mr. HOSTETTLER), that efforts were waged to compromise on this legislation. I do still have concerns, but I believe that we have worked through a bill that is suited for the support of my colleagues.

Mr. Speaker, the Basic Pilot is a temporary, voluntary program for electronically verifying the employment authorization of newly hired employees. The bill, S. 1685, would extend the program for another 5 years.

The objective of employment verification is to ensure that American employers hire workers who are authorized to work in the United States. Under the Basic Pilot, the employer examines the documents of a newly hired employee and then transmits the pertinent information electronically to an office at the Social Security Administration (SSA). The SSA office compares the information with its records. In the case of a foreign worker, the SSA office will pass the information on to the Bureau of Citizenship and Immigration Services (BCIS).

The BCIS compares the alien's employment data with immigration records to determine whether he or she is authorized to work in the United States. If BCIS confirms that the alien employee is authorized to work in the United States, it issues a confirmation number. If BCIS determines instead that the new employee is not authorized for employment in the United States, it issues a tentative nonconfirmation number. Procedures are available to permit either the employer or the employee to contest a tentative nonconfirmation before it becomes final.

The Basic Pilot is an effective employee verification program that makes it easier and safer for employers to hire foreign workers, which makes it easier for lawful foreign workers to find employment.

Section 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) required the Attorney General to submit a report on the Basic Pilot to the House and Senate Judiciary Committees. The report was done by the Institute for Survey Research at Temple University. The institute identified a substantial number of implementation problems. It concluded, among other things, that the Basic Pilot was a good program but that it was not ready yet for larger scale implementation. Consequently, I have concerns about a provision in S. 1685 which would expand the pilot program from its present size of being available in only 6 States to being available in all 50 States.

S. 1685 has a provision, however, which addresses the problems that the institute identified. This provision would require the Secretary of Homeland Security, prior to expanding the program to submit a report to the House and Senate Judiciary Committees stating first, the extent to which these problems have been resolved; and second, describing what additional actions will be taken before expanding the program.

S. 1685 would extend the duration of an immigrant investor pilot program for 5 additional years. This pilot program arose out of the basic immigrant investor EB–5 program. Ten thousand EB–5 visas are available each year, 5,000 of which are reserved for people who participate in the pilot program.

The requirements for participating in the pilot program are essentially the same as the requirements for participating in the EB–5 investor program, with some exceptions. An investor under the pilot program can qualify with an investment of less than $1 million, which is the requirement for the basic EB–5 program. The pilot program investor may satisfy the eligibility requirements with an investment of as little as $500,000 in a specified type of commercial enterprise. The enterprise must promote economic growth, improve regional productivity, create new jobs or save existing ones, and increase domestic capital investment.

I am pleased that foreign investors are being encouraged to invest in regions of our country that need the stimulation of such enterprises. I think this is a worthwhile program that should be extended.

I urge you therefore to vote for this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 5 minutes to the gentleman from Indiana (Mr. HOSTETTLER), chairman of the Subcommittee on Immigration, Border Security, and Claims.

Mr. HOSTETTLER. I thank the chairman for yielding me this time, and I think the ranking member of the subcommittee, the gentlewoman from Texas (Ms. JACKSON-LEE), for her work on this legislation as well.

Mr. Speaker, I want to emphasize two points. First, employers participating in the pilot program find it of immense help in the day-to-day operations of their businesses. And, second, the pilot is working extraordinarily well and will only get better in the future.

The report commissioned by the Immigration and Naturalization Service, or INS, to evaluate the program found that "an overwhelming majority of employers participating found the basic pilot program to be an effective and reliable tool for employment verification." Participating employers appreciate the pilot because it reduces uncertainty. The pilot ensures that their operations will not be disrupted by the mass dismissal of employees after the Department of Homeland Security or the Social Security Administration question the status of their employees. The pilot ensures that they will not be put in the position of hiring illegal aliens, investing hundreds of thousands of hours in training them and then losing the benefit of this investment years down the road when they are forced to dismiss these illegal employees.

As Paul Weyrich has said in his support of this bill, "If we are really serious about enforcing the immigration laws we have on the books, then we must provide the means for employers to quickly determine the validity of the documents with which they are presented. The way the pilot program works is simple and reflects plain common sense."

The report indicated that the pilot program could be improved in a few areas. Some employers had taken adverse actions against new employees tentatively found ineligible to work. And INS databases had to be improved, especially in the context of adding data for persons recently issued a work authorization document and for new immigrants and refugees. However, remember that the report evaluated operations of the pilot in the 1990s. Since that time, INS and now the Department of Homeland Security, or DHS, have been actively making any needed improvements. DHS believes that there has been "an overwhelming improvement in the timeliness of data entry, particularly in response to the events of September 11." In fact, DHS now requires that all new data regarding immigrants be entered into the system within 3 days and all new information regarding temporary visitors be entered within 14 days.

As to employer responsibilities, DHS said that "greater emphasis on pilot procedures has been added to training materials, and safeguards have been added to pilot software to increase compliance with required procedures. For instance, employers will be required to certify that they have talked with their employees and advised them of their rights if they cannot immediately be confirmed." Finally, DHS reports that the soon-to-be-implemented Internet-based version of the pilot will greatly reduce or eliminate any remaining problems.

S. 1685, the bill now under consideration, should ameliorate concerns about any lingering problems in the pilot program by delaying nationwide implementation until next December and requiring the Secretary of Homeland Security to issue a report by June evaluating whether the problems identified by the 2001 report have been substantially resolved and describing what actions he needs to take before December 2004 in order to resolve them.

Mr. Speaker, I urge my colleagues to vote for S. 1685.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me also note, I think, an important aspect of this bill, and, that is, a concern about the dissemination of information and violation of privacy that the initial bill exhibited. I am pleased to note that the Senate removed a provision that would give State and local governments access to the information collected with this program. That would have been the first step toward the dissemination or the idea, which I think is still highly debatable, of a national identity card. So, in fact, we have provided safeguard provisions to make this legislation work, to provide the information that is necessary to ensure the protection of the workplace, and also to provide due process rights for all who are involved.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. CALVERT), the author of the House version of the bill.

Mr. CALVERT. Mr. Speaker, I rise in support of S. 1685, the Basic Pilot Program Extension and Expansion Act of 2003. The basic pilot employment verification system is the only automated system offered to employers to verify employment eligibility of new employees.

In 1994 I spoke with a Border Patrol agent who identified a key need in the enforcement of immigration laws. Employers need a simple way, a reliable tool to verify the worker status of new employees. In response, I introduced a bill to create the basic pilot program to do just that. Operating in six of the most problematic States on a voluntary basis, the basic pilot has proven to be an overwhelming success. The basic pilot program is the best tool available for employers to comply with immigration laws which prohibit hiring undocumented immigrants.

Recently, a contract cleaning service for Wal-Mart was raided by the Bureau of Immigration and Customs Enforcement and over 250 employees were arrested. If Wal-Mart's cleaning service had used the basic pilot program and verified the I-9 documents provided by their workers, this situation could have been avoided. We must provide companies the option of using this employment verification program and assist them in complying with Federal immigration law. This program is in no way mandatory. It is completely voluntary and may be used at the discretion of the employer. Without the option to use the basic pilot program, employers have no means of verifying legal work status for immigrants, causing many employers to discriminate against legal workers.

☐ 1745

This program gives employers the confidence to hire legal immigrants, reducing discrimination in the workplace. Additionally, S. 1685 allows employers from any State to voluntarily use this program. Many of my colleagues have expressed concerns that this will expand the program too far too fast. The reality is that current pilot States are home to over 80 percent of all illegal immigrants, which means the impact on the program will be negligible. The bill also requires the Department of Homeland Security to complete a report identifying and resolving any problems with the program and the expansion.

After 7 successful years, it is time to give all employers the option of verifying their workforce and avoiding entanglements with the Immigration and Customs Enforcement.

I would like to thank Senator GRASSLEY for sponsoring S. 1685, the Senate counterpart to my bill, and encourage my colleagues to vote for a bill that promotes compliance with Federal law.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California (Mr. BERMAN), member of the Subcommittee on Immigration, Border Security, and Claims, who has worked long years in bringing us a consistent and effective immigration policy for this country.

Mr. BERMAN. Mr. Speaker, I thank the gentlewoman for her kind comments.

I rise in support of the proposal. I opposed the House bill that went through in part because I had concerns about what was in section 3 of the bill allowing data to be shared with State and local governments. That is no longer in the bill that has come over from the Senate. The expansion of the program is conditioned on some additional studies to make sure it is working right, and the fundamental principle is a legitimate principle. Employers who want to do the right thing should be able to access accurate information about status given the state of the Federal law at this time on who they should and should not hire.

So I always supported the principle of the pilot program. We just want to make sure it provides accurate information about the employee so that people who are eligible to work are not denied employment as a result of utilizing that system, and I congratulate the majority and the minority for pushing what I think is a more reasonable approach through.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the chairman of the Committee on the Judiciary for yielding me this time.

Mr. Speaker, the basic pilot program was originally authorized in the 1996 Immigration Act. It allows employers in six States to verify the validity of the Social Security numbers of new hires. S. 1685 reauthorizes this program and expands it to allow employers in all 50 States to voluntarily participate in the basic pilot program.

The program offers employers the opportunity to ensure that individuals they hire are eligible to work in the United States.

Illegal immigrants drive down wages and take jobs from American workers. Recent studies show immigration has depressed the wages of American workers in similar jobs by more than $2,500 per year. Ninety percent of the American people believe that we should reduce illegal immigration, and 79 percent feel that the Federal Government should require employers to verify the work status of potential employees. The main attraction for the 10 to 20 million illegal aliens who have crossed our borders is work. If we want to reduce the incentive for illegal immigration and its negative impacts, we must reduce the availability of jobs for illegal immigrants.

This program reduces illegal immigration because it allows employers to make sure they are only hiring someone who is eligible to work in the United States.

Everyone who is concerned about lost jobs and unemployment should support the expansion of the basic pilot program. If we are serious about saving jobs for citizens and legal immigrants, we should pass S. 1685.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

First of all, let me again acknowledge my colleagues on the Subcommittee on Immigration, Border Security, and Claims and the full Committee on the Judiciary; but I always want to acknowledge the staff, both majority and minority, for working through this legislation.

I would simply say that we have realized that we have this dilemma between the need for American workers to have jobs, particularly in this economy, and juxtaposing it against the numbers of immigrants who have come to this country for opportunity, in many instances economic opportunity. I hope that, as we look at this legislation, we will be reminded of the fact that we do need to establish a real immigration policy for this Nation.

The basic pilot legislation helps us to avoid what I think is the ugliest part of this conflict with illegal immigration, and that is racial stereotyping and stigmatizing of those who happen to come from a background that would ordinarily suggest that they are not here with legal status. By being able to find out real information through the BCIS and the Social Security Administration, employers can be safe and secure in those that they might hire.

At the same time I think that this body owes it to the establishment of a real immigration policy along with the administration that we should pass 245(i) and begin to look at ways to address the question of 8 million undocumented aliens by earning access to legalization, by passing legislation that allows those who have come here to work to earn their way to citizenship first by way of being in this country for 5 years without a criminal background, paying taxes, and working, finding a way for them to route themselves to real citizenship.

Might I say in conclusion that as we organize a Homeland Security Department, and the Committee on the Judiciary worked very hard to establish aspects of the immigration provisions, to the credit of the Committee on the Judiciary, that particular section was called the Bureau of Citizenship, I believe, and Immigration Services. That is an important step, that we want people to be able to legally access citizenship, those who have come here to work and come here to do what is good for this country to be able to access citizenship even if their first entry might have been in an illegal status.

This legislation clearly is needed today, but we do need a forceful immigration policy. With that I ask my colleagues to vote for this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the only way we are going to get a handle on the illegal immigration problem of this country is by giving employers the means to verify whether an applicant for employment is legally able to work here and then to enforce the 1986 law which makes it illegal for an employer to hire an illegal alien. If we do not do both, then it will be always cheaper for an employer to break the law by hiring an illegal alien because they do not have to pay them the minimum wage, they do not have to have workplace safety and environmental standards. In many cases they are paid in cash; and the deductions for Social Security and Federal and State income tax withholding are not taken out, all of which is illegal, but there still is a huge economic incentive for an employer to break the law multiple times by hiring an illegal alien.

This bill is an important part of closing a part of that loop, by giving employers nationwide the tools to find out if the person who is asking for a job is legal and a better way of being able to determine whether the documents that the applicant presents are genuine documents or counterfeit documents.

So we have done a part of making our immigration laws more effective by passing this legislation, but the other part indeed deals with enforcement because without enforcement of the immigration law, the problem that we thought we solved with the amnesty that was granted in 1986 will continue whether or not there is another amnesty that is granted by the Congress, which is a move that I personally oppose. So with that, I urge the Members to support this bill.

Mr. OSBORNE. Mr. Speaker, as an original cosponsor of similar House legislation, I encourage my colleagues to support S. 1685, the Basic Pilot Extension Act of 2003. This important legislation would extend for five years the Basic Pilot Verification Program, which is a voluntary program that employers use in conjunction with the Bureau of Immigration and Citizenship Services (BCIS) and the Social Security Administration (SSA) to confirm employment eligibility in my home state of Nebraska, among others. This pilot, which started in November 1997, involves verification checks of the SSA and the BCIS databases of all newly hired employees regardless of citizenship. Unfortunately, the Basic Pilot program is scheduled to terminate on November 30th of this year.

The agricultural economy of Nebraska's Third District relies heavily on immigrant labor. Employers across my district have told me that they want to comply with the Immigration Reform and Control Act of 1986, which made it unlawful for employers to knowingly hire or employ aliens not eligible to work, and required employers to verify documents of new workers. However, a simple visual check of these documents by employers will not tell them if these are in fact counterfeit documents, and that this potential new hire is in fact an illegal alien.

I have heard from many business people in the Third District about their need for the Basic Pilot program. Employers need the appropriate tools to ensure that they are indeed hiring eligible workers, and S. 1685 would allow employers in all states to opt to participate in the program. By checking the new hire's documents against the BCIS and SSA databases, the Basic Pilot program allows employers to feel more confident about their new hire.

I thank my colleague, Representative CALVERT, for his hard work on this issue in the House and I urge my colleagues to support S. 1685.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SWEENEY). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the Senate bill, S. 1685.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

PROVIDING FOR FEDERAL COURT PROCEEDINGS IN PLANO, TEXAS

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1720) to provide for Federal court proceedings in Plano, Texas.

The Clerk read as follows:

S. 1720

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHANGE IN COMPOSITION OF DIVISIONS OF EASTERN DISTRICT OF TEXAS.

(a) IN GENERAL.—Section 124(c) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking "Denton, and Grayson" and inserting "Delta, Denton, Fannin, Grayson, Hopkins, and Lamar"; and

(B) by inserting "and Plano" after "held at Sherman";

(2) by striking paragraph (4) and redesignating paragraphs (5) through (7) as paragraphs (4) through (6), respectively; and

(3) in paragraph (5), as so redesignated, by inserting "Red River," after "Franklin,".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) PENDING CASES NOT AFFECTED.—This section and the amendments made by this section shall not affect any action commenced before the effective date of this section and pending in the United States District Court for the Eastern District of Texas on such date.

(3) JURIES NOT AFFECTED.—This section and the amendments made by this section shall

not affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving in the Eastern Judicial District of Texas on the effective date of this section.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 1720, the Senate bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Today when I was driving in, I followed a car that had a big bumper sticker on it that said "Don't Mess with Texas," and I came to the House today with great fear and trepidation that by messing with Texas and deciding where the Federal courts will sit, I would be caught in the crossfire of a Texas cat fight, and I am happy to report that the cats are purring and the Members can mess with Texas and not get in trouble by passing this bill.

Senate 1720 implements the March, 1991, Judicial Conference proposal to designate Plano, Texas, as a place for holding court in the Eastern District of Texas. It also realigns the divisions of the U.S. District Court for the Eastern District of Texas to reflect the closing of the courthouse in Denton County. The Paris division is eliminated and its counties redistributed among the other divisions of this court.

Plano is the largest city in the Eastern District of Texas. Of the 93 judicial districts in the United States, the Eastern District of Texas is the only one in which its largest city cannot hold Federal court.

This is a major impediment to the efficient operations of the Federal court system in the Eastern District of Texas. Senate 1720 will greatly assist the affected citizens, litigants, lawyers, and judges and also will promote the efficient administration of justice.

The bill is identical to language in section 102 of H.R. 1302, the Federal Courts Improvement Act of 2003, which was introduced by the chairman and ranking member of the Subcommittee on Courts, the Internet, and Intellectual Property. In addition, this Congress has passed this exact language on five previous occasions since 1991.

Following Senate passage of Senate 1720, the gentleman from Texas (Mr. HALL) expressed concern that the legislation does not ensure that the eastern district caseload will be distributed equally between Plano and Sherman. While the judges of the eastern district have unanimously agreed to split the docket between Sherman and Plano, this agreement, in a signed resolution, is nonbinding.

I share the concerns of the gentleman from Texas (Mr. HALL). Therefore, I support Senate 1720 premised on the understanding that the judges of the eastern district will do as they promised by implementing a system to assign at least 50 percent of the cases filed in or transferred to the Sherman district to a resident district judge sitting in the city of Sherman. The remaining 50 percent of the cases will be assigned to the Plano court.

Finally, in response to my request for assurance that the judges' agreement will be implemented, the Administrative Office of the U.S. Courts has written a letter promising to do whatever is necessary to implement this plan. I will insert this letter along with the resolution signed by the judges of the Eastern District of Texas into the RECORD. With these assurances, I am sure that we can mess with Texas and not get caught in the crossfire.

I urge my colleagues to support this bill.

JUDICIAL CONFERENCE
OF THE UNITED STATES,
Washington, DC, November 19, 2003.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I understand that S. 1720, a bill to designate Plano, Texas, will be considered by the House later today. The bill would remedy a serious problem hindering efficient judicial administration in the Eastern District of Texas.

This bill has the strong support of the Judicial Conference of the United States. As a provision of an omnibus court improvement bill, it has been passed by the House in two previous Congresses, only to remain unacted upon in the Senate.

The judges of the Eastern District of Texas have formally resolved that half of the Sherman Division caseload will be docketed and tried in Sherman, Texas, and half will be docketed and tried in Plano, Texas. A copy of an order of the court of June 13, 2003, stating this specifically and in some detail is enclosed hereto.

The Judicial Conference and the court in the Eastern District of Texas are well aware of the concerns of those in Sherman that the judicial business of the division would be largely transferred to Plano. This is not and will not be the case. This issue was considered by the Judicial Conference Committee on Court Administration and Case Management when the proposal was first considered. The resolve of the judges to assure equity to Sherman, Texas, and other factors relating to the great need for a court presence in Plano caused that committee to recommend that the Judicial Conference approve this proposal, which it did.

I congratulate you and the members of the Judiciary Committee for taking prompt action on this bill which will allow the court to better service the citizens of this region of Texas.

Sincerely,
LEONIDAS RALPH MECHAM,
Secretary.

Enclosure.

GENERAL ORDER NO. 03–15

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

RESOLUTION REGARDING PLACES OF HOLDING COURT IN THE SHERMAN DIVISION

Since 1991, both this court and the Judicial Conference of the United States have supported legislation authorizing Plano as a place of holding court in the Sherman Division. Rapid population growth in the Sherman Division over the past decade, particularly in Collin and Denton Counties, underscores the need for an additional court facility. Sherman Division civil and criminal weighted filings over the past five years have grown by 100%. Sherman now has the second heaviest weighted caseload of the six divisions in the Eastern District of Texas.

In the near future, two resident district judges, a resident magistrate judge and a visiting district judge will be hearing all Sherman Division cases in only two courtrooms. The court has already run out of room in Sherman and needs to acquire additional court facilities in the Division. Having court facilities in both Sherman and Plano will enable the court to better manage the rapidly growing caseload and provide better service to a large population base in southern Collin County.

It is the court's intention, when a place of holding court in Plano is authorized, to assign the case filings as follows:

50% civil and criminal cases docketed and tried in Sherman (Judges Brown and Davis).

50% civil and criminal cases docketed and tried in Plano (Judge Schell).

In light of the above, the judges of this court hereby REAFFIRM our prior resolution to establish Plano as a place of holding court in the Sherman Division, and RESOLVE, if pending legislation passes that authorizes Plano as a place of holding court, to have half the Sherman Division caseload docketed and tried in Sherman, and the other half of the caseload docketed and tried in Plano. If Judge Brown ceases holding court in Sherman, a new resident judge shall be designated to hold court in Sherman as soon as possible, and pending the new judge's residing in Sherman, 50% of civil and criminal cases shall be docketed and tried in Sherman, and the clerk's office in Sherman shall remain staffed sufficiently to support a resident judge.

Signed this 13th day of June, 2003.

For the Court:

John Hannah, Jr.,
Chief Judge.

Mr. Speaker, I reserve the balance of my time.

□ 1800

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 1720 and I ask my colleagues to support the bill as well. It is a narrow bill, but a necessary one. It is identical to the provisions of the Federal Courts Improvement Act currently before the Committee on the Judiciary, and to legislation which has I think several times passed the House.

The purpose of the bill is to allow for Federal court proceedings and an additional courthouse in Plano, Texas. As a result, the bill will remedy a critical problem hindering the efficient judicial administration of the U.S. District Court for the Eastern District of Texas.

The existing courthouse is in Sherman, Texas and is overburdened by its increasing caseload. Filings over the past 5 years have grown by 100 percent. This situation mandates a solution. S. 1720 designates Plano as an additional place of holding court to help address this expanded workload.

The one substantive concern about the bill, how cases will be distributed between the two courthouses, has been resolved. As I understand it, the chairman of the Committee on the Judiciary has agreed to engage in a colloquy with the distinguished gentleman from Texas in which it will become clear that S. 1720 is intended to relieve the overflow of filings in the Sherman courthouse, but not do away with the Sherman courthouse. I think the chairman has already made that clear, that that is his intention.

Furthermore, there is agreement from the Senate sponsor, the junior Senator from Texas, that the civil and criminal case filings for the Sherman division will be split 50–50 between the Plano and Sherman courthouses. The U.S. District Court for the Eastern District of Texas has adopted a resolution memorializing this agreement, and the Judicial Conference of the United States has sent a letter to the same effect. Finally, the Committee on the Judiciary Report on the Federal Courts Improvement Act, which currently contains identical provisions, will reflect this understanding. Through these measures, we can rest assured that the addition of this courthouse will have no negative impact on the Sherman courthouse.

I appreciate the efforts that my colleagues have made to address the concerns of those in Sherman, and I am confident that there is general agreement that the judicial business of the Sherman and Plano divisions will be shared equally.

Mr. Speaker, I ask my colleagues to support S. 1720.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. SAM JOHNSON).

Mr. SAM JOHNSON of Texas. Mr. Speaker, I appreciate the gentleman yielding me this time. I just want to thank the gentleman from Texas (Mr. HALL) and the gentleman from California (Mr. BERMAN) for working with us.

This is a bipartisan agreement. I will let my colleagues know that Collin County is expected to increase by 73 percent in population by the year 2020, so this is a needed court and long overdue.

Mr. Speaker, you know, the role of the Federal Government is to serve people. And one way the government serves the people is through the judicial system.

Well, the people of Plano, nearly 250,000 strong and the largest city in Collin County, do not have access to a nearby Federal court. Simply put, today's bill is good legislation that is long overdue. Anytime a lawyer wants to file a court paper, they have to drive 48 miles to near the Oklahoma border to Sherman, TX. Anytime a police officer needs to sign a legal document, they have to drive nearly 100 miles round trip. That is not time well spent.

If the role of the Federal Government is to serve the people, then it's time to let Collin County hold court. You know, Plano consumes more than three-fourths of the criminal cases in Sherman and nearly 4 out of 5 civil cases. Clearly there is a need in Plano for a Federal bench. The people of Collin County and the Eastern District of Texas are woefully underserved.

On the top of that, the population of Collin County is expected to increase by 73 percent by the year 2020. If we don't take care of this now, when will we?

With four judges but just two courtrooms, the Sherman division badly needs another courtroom somewhere. That somewhere should be the city of Plano. Important to the city of Sherman, the bill also protects the Grayson County Courthouse Docket by expanding the Sherman Court jurisdiction to four new counties; Fannin, Lamar, Delta, and Hopkins.

I also want to thank my friend Ralph Hall for his work on this issue. I hope he believes we addressed many of his initial concerns.

Before I close, I'd like to thank my colleagues in the Senate, Senators CORNYN and HUTCHISON, who helped get this bill through the other body.

This measure has passed the House every Congress since 1991, only to die in committee in the Senate. Their leadership paved the way to make this possible for Collin County.

In the name of good government, the Federal Government started serving the people of Collin County.

GENERAL ORDER NO. 03-15

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

RESOLUTION REGARDING PLACES OF HOLDING COURT IN THE SHERMAN DIVISION

Since 1991, both this court and the Judicial Conference of the United States have supported legislation authorizing Plano as a place of holding court in the Sherman Division. Rapid population growth in the Sherman Division over the past decade, particularly in Collin and Denton Counties, underscores the need for an additional court facility. Sherman Division civil and criminal weighted filings over the past five years have grown by 100%. Sherman now has the second heaviest weighted caseload of the six divisions in the Eastern District of Texas.

In the near future, two resident district judges, a resident magistrate judge and a visiting district judge will be hearing all Sherman Division cases in only two courtrooms. The court has already run out of room in Sherman and needs to acquire additional court facilities in the Division. Having court facilities in both Sherman and Plano will enable the court to better manage the rapidly growing caseload and provide better service to a large population base in southern Collin County.

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In light of the above, the judges of this court hereby REAFFIRM our prior resolution to establish Plano as a place of holding court in the Sherman Division, and RESOLVE, if pending legislation passes that authorizes Plano as a place of holding court, to have half the Sherman Division caseload docketed and tried in Sherman, and the other half of the caseload docketed and tried in Plano. The court intends to maintain at least one resident judge in Sherman and one resident judge in Plano. If Judge Brown ceases holding court in Sherman, a new resident judge shall be designated to hold court in Sherman as soon as possible, and pending the new judge's residing in Sherman, 50% of civil and criminal cases shall be docketed and tried in Sherman, and the clerk's office in Sherman shall remain staffed sufficiently to support a resident judge.

Signed this 13th day of June, 2003.

For the Court:

John Hannah, Jr.
Chief Judge.

Mr. BERMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. HALL).

Mr. HALL. Mr. Speaker, when I arrived at the Capitol today, I was handed the floor schedule that indicated that Senate bill 1720 had been placed on the Suspension Calendar. We have not had a lot of time to try to work out the details, but I am grateful to a lot of people for their assurance that we are going to keep the agreement that has been made between the two courts.

First, I want to thank, of course, the gentleman from Wisconsin (Chairman SENSENBRENNER), Debby Lehman, Sam Garg, Blain Merritt, and Phil Kiko for their good work and for their support. I thank the ranking member, the gentleman from Michigan (Mr. CONYERS), of the Committee on the Judiciary and Perry Applebaum. I thank the gentleman from California (Mr. BERMAN), my friend and ranking member on the subcommittee, and Shanna Winters and Alec French. They have all worked hard during the course of the day to work out assurance, and with the gentleman from Texas's (Mr. JOHNSON) support of assurance that this will be a 50–50 division.

I have never opposed Plano having a court. It is a huge city. It is a great city. It is a growing city. And as we move along with this 50–50 agreement and Plano grows, as it surely will, they will need more judges and more courts there. I certainly hope to help them.

For several years, efforts have been made to hold court proceedings in Plano, Texas where they have had no court proceedings. I have no objection to such, and I only want to continue holding court in Sherman, Texas. Agreements have been made to hold 50 percent of the cases in Plano and 50 percent in Sherman, adding some counties to the Sherman district. I only want this agreement to be part of the proceedings, and I will be asking for a colloquy in a little bit with the gentleman from Wisconsin (Chairman SENSENBRENNER). I have conferred with Judge McGraw of Grayson County. I have received petitions from Judge McGraw and many of the major cities in and around Grayson County. I represent them. If I do not represent them, they will not be represented in this matter, and I want to be recorded here and now that we want an agreement of a 50–50 division of litigation to be committed to writing, both here and in the Senate.

I have spoken with Senator JOHN CORNYN then of the Committee on the Judiciary, and I have spoken with Senator KAY BAILEY HUTCHISON, subcommittee chairman, and they too want this documentation. There has been a difference of opinion as to whether or not it would be codified into the statute itself, and while this will not have that codification, there will be report language that will be with this bill, and I think will be evidence to people within the next 10, 15, 20, 30, 40 years that we still want a court in Sherman, Texas in Grayson County.

Senator KAY BAILEY HUTCHISON and JOHN CORNYN want Grayson County protected on the 50–50 agreement and, accordingly, they are placing proper report language in the Senate Committee on the Judiciary report to be placed with the passage of Senate bill 1720.

So Mr. Speaker, first, let me place in the RECORD the statement of the gentleman from Michigan (Mr. CONYERS), the ranking member on the Committee on the Judiciary.

I also want to engage in a colloquy with my colleague, the gentleman from Wisconsin (Chairman SENSENBRENNER). I again thank the chairman on S. 1720, a bill to provide for the Federal court proceedings in Plano, Texas.

It is my understanding that we have reached an agreement with Members on both sides of the aisle and with Senators CORNYN and HUTCHISON that the passage of this legislation shall be accompanied by the following report language in the Commerce, Justice, State Appropriations bill that would indicate a sense of Congress as follows: "Both Sherman and Plano shall have a resident United States District Judge. Fifty percent of the cases filed in or transferred to the Sherman Division of the United States District Court for the Eastern District of Texas shall be assigned for trial and tried in Sherman by either the resident United States District Judge sitting in Sherman or another United States District Judge assigned to hold court in Sherman. The remaining 50 percent of the cases shall be assigned for trial and tried in Plano by either the resident United States District Judge sitting in Plano or another United States District Judge assigned to hold court in Plano. If the resident judge in Sherman or Plano retires or dies, 50 percent of the cases shall continue to be tried in Sherman and 50 percent tried in Plano while a new resident judge is being assigned. This provision shall not prevent the transfer of a case to another judge or division of the United States District Court for the Eastern District of Texas or another United States District Court for trial, if such transfer is permitted by applicable law."

Mr. Speaker, I have long expressed my support and I have no objection to a Plano district court. The people in Plano are entitled to a court and, likewise, the people of Sherman are entitled to an assurance that an addition of a Plano court will not diminish or otherwise imperil the court in Sherman. The folks in Plano are happy with the gentleman from Texas (Mr. SAM JOHNSON), and they should be. I want the people in Grayson County to be happy with this transaction also. I think this report language gives clarity to this amendment and would ensure the viability of both courts for the next 50 years.

Mr. SENSENBRENNER. Mr. Speaker, will the gentleman yield?

Mr. HALL. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, the Committee on the Judiciary has no control over report language of bills that are under the jurisdiction of the Committee on Appropriations, and since the thought has been to have this statutory amendment placed in the Commerce, Justice, State Appropriation bill, I can say that the Committee on the Judiciary would have no objection to this, because this codifies the agreement that has been made and the resolution that has been adopted by the judges of the Eastern District of Texas, as well as confirmed by the Administrative Office of the U.S. Courts representing the Judicial Conference of the United States.

So I have no objection to this statutory amendment if it should find its way into an appropriation bill. But the gentleman from Texas and everybody else knows full well that what happens in appropriation bills at the end of a session of Congress is a very mysterious thing that those of us who serve on authorizing committees will never understand as long as we are here.

But rest assured that what the gentleman from Texas has said does represent the understanding of members of the Committee on the Judiciary, and if the appropriators will listen to us, for once, they will be able to make a constructive addition to an appropriation bill, whether it is the State, Justice, Commerce one or another one that mysteriously arises from the bowels of the Capitol within the next few days.

Mr. HALL. Mr. Speaker, reclaiming my time, we have Senator CORNYN and Senator HUTCHISON who will place this in the report language in the Senate judiciary bill.

Mr. CONYERS. Mr. Speaker, I rise in support of this legislation, which would provide greater access to Federal courts for litigants in various counties in Texas. One provision of the bill adds the city of Plano as a place of holding court; current residents of Plano must travel to the city of Sherman. It is my understanding that, with respect to the courthouses in Plano and Sherman, the courts will ensure that the civil and criminal dockets will be divided equally.

Mr. BERMAN. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I am happy to yield back the balance of my time as well.

The SPEAKER pro tempore (Mr. SWEENEY). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the Senate bill, S. 1720.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

ENVIRONMENTAL POLICY AND CONFLICT RESOLUTION ADVANCEMENT ACT OF 2003

Mr. GREENWOOD. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 421) to reauthorize the United States Institute for Environmental Conflict Resolution, and for other purposes.

The Clerk read as follows:

H.R. 421

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Environmental Policy and Conflict Resolution Advancement Act of 2003".

SEC. 2. ENVIRONMENTAL DISPUTE RESOLUTION FUND.

Section 13 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5609) is amended by striking subsection (b) and inserting the following:

"(b) ENVIRONMENTAL DISPUTE RESOLUTION FUND.—There is authorized to be appropriated to the Environmental Dispute Resolution Fund established by section 10 $4,000,000 for each of fiscal years 2004 through 2008, of which—

"(1) $3,000,000 shall be used to pay operations costs (including not more than $1,000 for official reception and representation expenses); and

"(2) $1,000,000 shall be used for grants or other appropriate arrangements to pay the costs of services provided in a neutral manner relating to, and to support the participation of non-Federal entities (such as State and local governments, tribal governments, nongovernmental organizations, and individuals) in, environmental conflict resolution proceedings involving Federal agencies.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Pennsylvania (Mr. GREENWOOD) and the gentleman from Colorado (Mr. UDALL) each will control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. GREENWOOD).

GENERAL LEAVE

Mr. GREENWOOD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 421.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GREENWOOD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased that we are here today to consider H.R. 421, the Environmental Policy and Conflict Resolution Advancement Act of 2003. H.R. 421 amends the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Policy Act of 1992 to reauthorize the Environmental Dispute Resolution Fund.

Specifically, the bill authorizes the fund at $4 million and extends it through fiscal year 2008. The bill also stipulates how the funding is to be distributed: $3 million to pay for the operating costs of the Institute for Environmental Conflict Resolution, and $1 million for grants to encourage participation of non-Federal entities in Federal environmental disputes.

In 1998 the Institute for Environmental Conflict Resolution was established as part of the National Environmental Foundation. The Foundation administers the Environmental Dispute Resolution Fund. The institute was created to assist in the resolution of Federal environmental, natural resources, and public lands conflicts and controversies through facilitated negotiation, mediation, and collaborative problem-solving. The Environmental Dispute Resolution Fund is maintained separately from the Udall Trust Fund and provides the financial support for the operation of the institute.

I want to thank my distinguished colleague, the gentleman from Arizona (Mr. KOLBE), for introducing this legislation and for ensuring that it was brought before us today. I want also to urge my colleagues to join me in support of H.R. 421, the Environmental Policy and Conflict Resolution Advancement Act of 2003.

Mr. Speaker, I reserve the balance of my time.

Mr. UDALL of Colorado. Mr. Speaker, I yield myself such time as I may consume.

Mr. UDALL of Colorado. Mr. Speaker, I rise in strong support of this bill which was introduced by our colleague and my good friend, the gentleman from Arizona (Mr. KOLBE). As a cosponsor of the bill, I want to thank the Committee on Resources chairman, the gentleman from California (Mr. POMBO) and the ranking member, the gentleman from West Virginia (Mr. RAHALL), as well as the Committee on Education and the Workforce chairman, the gentleman from Ohio (Mr. BOEHNER) and the ranking member, the gentleman from California (Mr. GEORGE MILLER), for making it possible for the House to consider the bill today.

As my colleague, the gentleman from Pennsylvania (Mr. GREENWOOD) has explained, the bill would reauthorize the United States Institute for Environmental Conflict Resolution. The institute is part of the Morris K. Udall Foundation, which is located at the University of Arizona in Tucson. Its purpose is to provide mediation and facilitation to help resolve environmental conflicts.

☐ 1815

The bill would authorize appropriation of $4 million annually for the institute's work in fiscal years 2004 through 2008. The institute's projects involve a wide range of environmental natural resource and public lands issues. It provides impartial, nonpartisan expertise and services to all parties involved, and works with private individuals and organizations as well as with Federal, State, local agencies and Indian tribes.

Over the past 5 years, it has had requests for assistance in more than 100 cases across 30 States. And there is every indication that the number of requests will increase in the years ahead.

In short, Mr. Speaker, this is a noncontroversial bill that will reauthorize an important program that aims at resolving conflicts and reducing the need for litigation. I urge its approval.

Again, I want to thank the leaders of the Committee on Resources and the Committee on Education and the Workforce for bringing this important bill forward.

Mr. Speaker, I reserve the balance of my time.

Mr. GREENWOOD. Mr. Speaker, I yield 3 minutes to the gentleman from Arizona (Mr. KOLBE), the author of the legislation.

Mr. KOLBE. Mr. Speaker, I want to thank the gentleman from Pennsylvania (Mr. GREENWOOD) for managing this bill on the floor this afternoon and the Committee on Education and the Workforce for bringing this bill forward, also the Committee on Resources represented today by the gentleman from Colorado (Mr. UDALL) on the minority side. Both have worked to bring this bill to the floor, and I thank them for the support they have given to this.

I do rise in support of H.R. 421, Environmental Policy and Conflict Resolution Advancement Act of 2003. The bill has been explained by both the gentleman from Pennsylvania (Mr. GREENWOOD) and the gentleman from Colorado (Mr. UDALL); and I will not go into more detail except to say that, of course, it does reauthorize for a period of years and provides funding for that same period of years for the U.S. Institute for Environmental Conflict Resolution, which is part of the Morris K. Udall Foundation.

As we all know, Morris Udall was a beloved Member of this body for many years and devoted much of his life to natural resources and to environmental issues and to environmental conflict resolution. So I can think of nothing more appropriate than this organization and this institute which works to resolve these conflicts to have it named after Morris Udall.

The institute has been around since 1998 as an impartial, nonpartisan institution which provides professional expertise and services and resources to parties that are involved in environmental disputes. It assists in resolving those environmental and natural resources issues, public lands conflicts that involve the Federal Government and other governmental agencies. And it deals with conflicts on a nationwide basis.

In 5 years of operation the institute has been involved in more than 300 conflict resolution cases and projects. The gentleman from Colorado (Mr. UDALL) referred to 100; but on an informal basis, they have been involved in at least a couple hundred more other than that. It does, as we have already heard, authorize $4 million, $1 million of which would be for a participation fund which would assist the stakeholders, communities' agricultural interests, resources users, tribes that are involved in environmental disputes with the Federal Government. And it would help them participate in alternative conflict resolution processes. The funds are intended to continue general services and provide assistance to the Federal and State agencies and tribal governments.

Mr. Speaker, this institute has already more than paid for itself. Literally countless numbers of disputes have been resolved in a way that have saved taxpayers millions of dollars by resolving them quickly and resolving them in a way that avoided litigation. The institute does work, and the reason it can do the work that it does is because its work is accepted by both sides, by all sides. It works in a nonpartisan fashion. If works in a fashion which brings the sides together to resolve the dispute. It is a model for what we should be using to resolve environmental disputes.

Mr. Speaker, I urge the passage of this important piece of legislation.

Mr. UDALL of Colorado. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GREENWOOD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the motion offered by the gentleman from Pennsylvania (Mr. GREENWOOD) that the House suspend the rules and pass the bill, H.R. 421.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

FLORIDA NATIONAL FOREST LAND MANAGEMENT ACT OF 2003

Mr. PUTNAM. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 117) to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes.

The Clerk read as follows:

S. 117

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Florida National Forest Land Management Act of 2003".

SEC. 2. DEFINITIONS.

In this Act:

(1) Secretary.—The term "Secretary" means the Secretary of Agriculture.

(2) State.—The term "State" means the State of Florida.

SEC. 3. SALE OR EXCHANGE OF LAND.

(a) In General.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any right, title, and interest of the United States in and to the parcels of Federal land in the State described in subsection (b).

(b) Description of Land.—The parcels of Federal land in the State referred to in subsection (a) consist of—

(1) tract A–942a, East Bay, Santa Rosa County, consisting of approximately 61 acres, and more particularly described as T. 1 S., R. 27 W., sec. 31, W½ of SW¼;

(2) tract A–942b, East Bay, Santa Rosa County, consisting of approximately 40 acres, and more particularly described as T. 1 S., R. 27 W., sec. 38;

(3) tract A–942c, Ft. Walton, Okaloosa County, located southeast of the intersection of and adjacent to State Road 86 and Mooney Road, consisting of approximately 0.59 acres, and more particularly described as T. 1 S., R. 24 W., sec. 26;

(4) tract A–942d, located southeast of Crestview, Okaloosa County, consisting of approximately 79.90 acres, and more particularly described as T. 2 N., R. 23 W., sec. 2, NW¼ NE¼ and NE¼ NW¼;

(5) tract A–943, Okaloosa County Fairgrounds, Ft. Walton, Okaloosa County, consisting of approximately 30.14 acres, and more particularly described as T. 1 S., R. 24 W., sec. 26, S½;

(6) tract A–944, City Ball Park—Ft. Walton, Okaloosa County, consisting of approximately 12.43 acres, and more particularly described as T. 1 S., R. 24 W., sec. 26, S½;

(7) tract A–945, Landfill-Golf Course Driving Range, located southeast of Crestview, Okaloosa County, consisting of approximately 40.85 acres, and more particularly described as T. 2 N., R. 23 W., sec. 4, NW¼ NE¼;

(8) tract A–959, 2 vacant lots on the north side of Micheaux Road in Bristol, Liberty County, consisting of approximately 0.5 acres, and more particularly described as T. 1 S., R. 7 W., sec. 6;

(9) tract C–3m–d, located southwest of Astor in Lake County, consisting of approximately 15.0 acres, and more particularly described as T. 15 S., R. 28 E., sec. 37;

(10) tract C–691, Lake County, consisting of the subsurface rights to approximately 40.76 acres of land, and more particularly described as T. 17 S., R. 29 E., sec. 25, SE¼ NW¼;

(11) tract C–2208b, Lake County, consisting of approximately 39.99 acres, and more particularly described as T. 17 S., R. 28 E., sec. 28, NW¼ SE¼;

(12) tract C–2209, Lake County, consisting of approximately 127.2 acres, as depicted on the map, and more particularly described as T. 17 S., R. 28 E., sec. 21, NE¼ SW¼, SE¼ NW¼, and SE¼ NE¼;

(13) tract C–2209b, Lake County, consisting of approximately 39.41 acres, and more particularly described as T. 17 S., R. 29 E., sec. 32, NE¼ SE¼;

(14) tract C–2209c, Lake County, consisting of approximately 40.09 acres, and more particularly described as T. 18 S., R. 28 E., sec. 14, SE¼ SW¼;

(15) tract C–2209d, Lake County, consisting of approximately 79.58 acres, and more particularly described as T. 18 S., R. 29 E., sec. 5, SE¼ NW¼, NE¼ SW¼;

(16) tract C–2210, government lot 1, 20 recreational residential lots, and adjacent land on Lake Kerr, Marion County, consisting of approximately 30 acres, and more particularly described as T. 13 S., R. 25 E., sec. 22;

(17) tract C–2213, located in the F.M. Arrendondo grant, East of Ocala, Marion County, and including a portion of the land located east of the western right-of-way of State Highway 19, consisting of approximately 15.0 acres, and more particularly described as T. 14 and 15 S., R. 26 E., sec. 36, 38, and 40; and

(18) all improvements on the parcels described in paragraphs (1) through (17).

(c) Legal Description Modification.—The Secretary may, for the purposes of soliciting offers for the sale or exchange of land under subsection (d), modify the descriptions of land specified in subsection (b) based on—

(1) a survey; or

(2) a determination by the Secretary that the modification would be in the best interest of the public.

(d) Solicitations of Offers.—

(1) In general.—Subject to such terms and conditions as the Secretary may prescribe, the Secretary may solicit offers for the sale or exchange of land described in subsection (b).

(2) Rejection of offers.—The Secretary may reject any offer received under this section if the Secretary determines that the offer—

(A) is not adequate; or

(B) is not in the public interest.

(e) Methods of Sale.—The Secretary may sell the land described in subsection (b) at public or private sale (including at auction), in accordance with any terms, conditions, and procedures that the Secretary determines to be appropriate.

(f) Brokers.—In any sale or exchange of land described in subsection (b), the Secretary may—

(1) use a real estate broker; and

(2) pay the real estate broker a commission in an amount that is comparable to the amounts of commission generally paid for real estate transactions in the area.

(g) Concurrence of the Secretary of the Air Force.—A parcel of land described in paragraphs (1) through (7) of subsection (b) shall not be sold or exchanged by the Secretary without the concurrence of the Secretary of the Air Force.

(h) Cash Equalization.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), if the value of non-Federal land for which Federal land is exchanged under this section is less than the value of the Federal land exchanged, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of the Federal land.

(i) Disposition of Proceeds.—

(1) In general.—The net proceeds derived from any sale or exchange under this Act shall be deposited in the fund established by Public Law 90–171 (commonly known as the "Sisk Act") (16 U.S.C. 484a).

(2) Use.—Amounts deposited under paragraph (1) shall be available to the Secretary for expenditure, without further appropriation, for—

(A) acquisition of land and interests in land for inclusion as units of the National Forest System in the State; and

(B) reimbursement of costs incurred by the Secretary in carrying out land sales and exchanges under this Act, including the payment of real estate broker commissions under subsection (f).

SEC. 4. ADMINISTRATION.

(a) In General.—Land acquired by the United States under this Act shall be—

(1) subject to the Act of March 1, 1911 (commonly known as the "Weeks Act") (16 U.S.C. 480 et seq.); and

(2) administered in accordance with laws (including regulations) applicable to the National Forest System.

(b) Applicable Law.—The land described in section 3(b) shall not be subject to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(c) Withdrawal.—Subject to valid existing rights, the land described in section 3(b) is withdrawn from location, entry, and patent under the public land laws, mining laws, and mineral leasing laws (including geothermal leasing laws).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. PUTNAM) and the gentleman from Texas (Mr. STENHOLM) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. PUTNAM).

Mr. PUTNAM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of Senate 117, the Florida National Forest Management Act of 2003. I commend the gentleman from Florida (Mr. MILLER), my good friend, for his leadership on this issue.

This bill allows the Secretary of Agriculture to solicit offers to sell or exchange 17 parcels of land within the National Forest system in Florida. These parcels, according to the Department of Agriculture are "isolated lands that no longer contain National Forest characteristics and are no longer manageable as National Forest system land." Many of the parcels this bill considers contain structures such as baseball fields and the Okaloosa County Fairgrounds.

The committee received letters of support from the Department of Agriculture and the concurrence of the Air Force for the sale or exchange of lands adjacent to Air Force property in Florida. All interested parties agree that this bill will improve ownership patterns, facilitate the best use of these lands, and enable the Forest Service to achieve its land management objectives. I urge all the Members to support this important legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. STENHOLM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 117, the Florida National Forest Land Management Act of 2003. This legislation was introduced by Senator GRAHAM, was passed in the Senate by unanimous consent on March 4. The companion measure we consider tonight was introduced by the gentleman from Florida (Mr. MILLER).

This legislation was drafted with the help of the U.S. Forest Service and supported by the Air Force and will aid the agency with fire prevention and protection in the area.

Mr. Speaker, I urge my colleagues to support this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. PUTNAM. Mr. Speaker, I include in the RECORD jurisdiction-related letters between the Committee on Agriculture and the Committee on Resources regarding this legislation.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, November 19, 2003.

Hon. BOB GOODLATTE,
Committee on Agriculture, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I understand that you wish to consider H.R. 482, on the Floor of the House of Representatives today. This bill authorizes the Secretary of Agriculture to convey several National Forest System parcels in the State of Florida. The bill was referred solely to the Committee on Agriculture. However, a closer reading shows that 16 of the 17 parcels are located in the Choctawhatchee and Ocala National Forests, which are forests created from the public domain. Those forests are under the jurisdiction of the Committee on Resources under Rule X of the Rules of the House of Representatives. In addition, the bill waives a provision of the Federal Land Policy Management Act, a statute also under Resources' purview.

My staff has reviewed the bill and we have no problem with the substance. Because of the limited number of days remaining in the first session of the 108th Congress and the importance of this bill to Congressman Jeff Miller, I will not insist on a referral of the bill. Of course, this action does not waive our jurisdiction over the bill, nor is this action to be construed as a precedent for other, similar legislation. In addition, I would ask you to support my request to have the Committee on Resources to be represented on any conference on H.R. 482 or a similar bill, should one become necessary. Finally, I would include this letter and any response you might have in the Congressional Record during debate on H.R. 482.

Thank you for your consideration of my request. I appreciate our continued excellent working relationship on forest issues and look forward to working with you on other bills this Congress.

Sincerely,

RICHARD W. POMBO,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, November 19, 2003.

Hon. RICHARD POMBO,
Committee on Resources,
Washington, DC.

DEAR MR. CHAIRMAN: I wanted to take this opportunity to thank you for your letter regarding H.R. 482. As you know, its companion bill S. 117 is being considered on the floor of the House of Representatives today. The bill, S. 117 would authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes.

Both S. 117 and H.R. 482 were referred solely to the House Agriculture Committee. However, I understand that your committee could have received sequential jurisdiction over this legislation. Therefore, I understand and appreciate your willingness to forego committee referral of the bill for the sake of timeliness and the importance of this legislation to Congressman Miller of Florida.

I support your request to have the Committee on Resources be represented on any conference on S. 117 or a similar bill, should one be necessary. However, after passage, this bill will move to the President for his approval.

Thank you in advance for your consideration of this request.

Sincerely,

BOB GOODLATTE,
Chairman.

Mr. Speaker, I yield such time as he may consume to the gentleman from Florida (Mr. MILLER), the sponsor of the legislation.

Mr. MILLER of Florida. Mr. Speaker, I thank my colleague, the gentleman from Florida (Mr. PUTNAM), from Polk County for yielding me this time.

Mr. Speaker, I too rise today in support of Senate Bill 117, the Florida National Forest Land Management Act of 2003. This legislation does allow the State of Florida and the U.S. Department of Forestry to close the loop on a patchwork of land that goes from the panhandle of Florida to the tip of the peninsula.

In my district alone some of this land has transferred from the Forestry Service to the Air Force and back to the Forestry Service again. In Okaloosa County, 80 acres are currently leased for the county fairgrounds, complete with ball fields. This parcel is a parcel of land that the Department of Forestry does not want or need, but cannot convey unless this legislation is passed.

Under the Federal sites administration law, Congress can identify specific excess land that can be sold by the Forestry Service and with the money earned purchase State forest areas. This method has already been used in Texas, Mississippi, and in Virginia. For Florida, and, more specifically, my district, this is a win-win. Okaloosa County gets the land; the Department of Forestry can use the money it receives to purchase additional property.

Under the legislation, which has been passed in the Senate and approved by the House Committee on Agriculture, the Secretary of Agriculture may solicit offers for the sale or exchange of the land or reject any offer received under this section if the Secretary determines that the offer is inadequate or is not in the best interest of the public.

For parcels that run adjacent to or are in any way connected to the Air Force's property, which some parcels are, the sale or exchange cannot be executed by the Secretary of Agriculture without the concurrence of the Secretary of the Air Force.

Additionally, the Congressional Budget Office estimates that enacting this legislation would not significantly affect the Federal budget, and the measure contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of State, local, or tribal governments.

Therefore, Mr. Speaker, I would like to thank the leadership for making room on today's calendar for this important piece of legislation. I would like to thank the chairman and also my colleague, the gentleman from Florida (Mr. PUTNAM), and the ranking member, the gentleman from Texas (Mr. STENHOLM), for their assistance in seeing that this measure comes to the floor. I ask for their support and others.

Mr. PUTNAM. Mr. Speaker, I have no further speakers on this issue. We do thank the gentleman from Texas (Mr. STENHOLM) and the rest of the minority for their assistance in moving this legislation as quickly as we have.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. PUTNAM) that the House suspend the rules and pass the Senate bill, S. 117.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. PUTNAM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on S. 117.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Debate has been concluded on all motions to suspend the rules.

Pursuant to the provisions of clause 8 of rule XX, the Chair will now put the question on each motion to suspend the rules on which further proceedings were postponed in the order in which that motion was entertained.

Votes will be taken in the following order:

H. Con. Res. 288, by the yeas and nays;

H. Res. 393, by the yeas and nays;

H. Res. 423, by the yeas and nays;

H.R. 3140, by the yeas and nays.

Votes on S. 686 and S. 286 will be taken tomorrow.

The first electronic vote will be conducted as a 15-minute vote. The remaining votes in this series will be 5-minute votes.

HONORING SEEDS OF PEACE FOR ITS PROMOTION OF UNDERSTANDING AMONG YOUTH FROM REGIONS OF CONFLICT

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 288.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa (Mr. LEACH) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 288 on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 415, nays 0, not voting 19, as follows:

[Roll No. 641]

YEAS—415

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—19

Andrews
Bishop (NY)
Collins
Cubin
DeMint
Ehlers
Fletcher
Gephardt
Gibbons
Hoeffel
Isakson
Pence
Smith (WA)
Solis
Sullivan
Terry
Thomas
Toomey
Waxman

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1847

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to clause 8 of rule XX, the remainder of this series will be conducted as 5-minute votes.

COMMENDING AFGHAN WOMEN FOR THEIR PARTICIPATION IN AFGHAN GOVERNMENT AND CIVIL SOCIETY

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the resolution, H. Res. 393, as amended.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Florida (Ms. ROS-LEHTINEN) that the House suspend the rules and agree to the resolution, H. Res. 393, as amended, on which the yeas and nays are ordered.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 414, nays 1, not voting 19, as follows:

[Roll No. 542]

YEAS—414

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry

Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—1

Paul

NOT VOTING—19

Andrews
Bishop (NY)
Collins
Cubin
DeMint
Ehlers
Fletcher
Gephardt
Gibbons
Hoeffel
Isakson
Johnson, Sam
Pryce (OH)
Smith (TX)
Smith (WA)
Sullivan
Thomas
Toomey
Waxman

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1854

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

The title of the resolution was amended so as to read: "A resolution commending Afghan women for their participation in Afghan government and civil society, encouraging the inclusion of Afghan women in the political and economic life of Afghanistan, and advocating the protection of the human rights of all Afghans, particularly women, in the Afghanistan Constitution.".

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. WAXMAN. Mr. Speaker, I ask that the RECORD reflect that had I been able to be here, I would have voted "yea" on H. Con. Res. 288 and H. Res. 393.

RECOGNIZING THE 5TH ANNIVERSARY OF THE SIGNING OF THE INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the resolution, H. Res. 423, as amended.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and agree to the resolution, H. Res. 423, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 416, nays 1, not voting 17, as follows:

[Roll No. 643]

YEAS—416

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski

Kaptur
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy

Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff

Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—1

Paul

NOT VOTING—17

Andrews
Bishop (NY)
Collins
Cubin
DeMint
Ehlers

Fletcher
Gephardt
Hoeffel
Isakson
Johnson, Sam
Keller

Sabo
Smith (WA)
Sullivan
Thomas
Toomey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1902

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FAIRNESS TO CONTACT LENS CONSUMERS ACT

The SPEAKER pro tempore (Mr. SIMPSON). The pending business is the question of suspending the rules and passing the bill, H.R. 3140, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. BURR) that the House suspend the rules and pass the bill, H.R. 3140, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 406, nays 12, not voting 16, as follows:

[Roll No. 644]

YEAS—406

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Bereuter
Berkley
Berman
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp

Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Conyers
Cooper
Costello
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Emanuel
Emerson

Engel
English
Eshoo
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Foley
Forbes
Ford
Fossella
Frank (MA)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinchey
Hinojosa
Hobson
Holden
Holt
Honda

Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Janklow
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
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Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
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Taylor (MS)
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Tiberi
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Upton
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Vitter
Walden (OR)
Walsh
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Sullivan
Toomey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GINGREY) (during the vote). Two minutes remain in this vote.

☐ 1910

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1078

Mr. BARRETT of South Carolina. Mr. Speaker, I ask unanimous consent that my name be removed as cosponsor of H.R. 1078.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

MAKING IN ORDER AT ANY TIME CONSIDERATION OF H.R. 253, TWO FLOODS AND YOU ARE OUT OF THE TAXPAYERS' POCKET ACT OF 2003

Mr. FOLEY (during debate on motion to instruct on H.R. 1). Mr. Speaker, I ask unanimous consent that it shall be in order at any time without intervention of any point of order to consider in the House the bill H.R. 253; the bill shall be considered as read for amendment; in lieu of the amendment recommended by the Committee on Financial Services now printed in the bill, an amendment in the nature of a substitute and numbered one printed in the CONGRESSIONAL RECORD of November 19, 2003, shall be considered as adopted; the previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except:

(1) one hour of debate on the bill, as amended, equally divided and controlled by the chairman and ranking minority member of the Committee on Financial Services;

(2) a further amendment in the nature of a substitute now at the desk, if offered by the gentleman from Louisiana (Mr. BAKER) or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for 30 minutes equally divided and controlled by the proponent and an opponent; and

(3) one motion to recommit with or without instructions.

Further, that the amendment placed at the desk be considered as read for purposes of this unanimous consent request.

The text of the amendment in the nature of a substitute is as follows:

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 253, AS REPORTED, OFFERED BY MR. BAKER OF LOUISIANA

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Flood Mitigation Reform Act of 2003".

SEC. 2. EXTENSION OF PROGRAM AND CONSOLIDATION OF AUTHORIZATIONS.

The National Flood Insurance Act of 1968 is amended as follows:

(1) BORROWING AUTHORITY.—In the first sentence of section 1309(a) (42 U.S.C. 4016(a)), by striking "through December" and all that follows through ", and" and inserting the following: "through the date specified in section 1319, and".

(2) AUTHORITY FOR CONTRACTS.—In section 1319 (42 U.S.C. 4026), by striking "after" and all that follows and inserting "after September 30, 2008.".

(3) EMERGENCY IMPLEMENTATION.—In section 1336(a) (42 U.S.C. 4056(a)), by striking "during the period" and all that follows through "in accordance" and inserting "during the period ending on the date specified in section 1319, in accordance".

(4) AUTHORIZATION OF APPROPRIATIONS FOR STUDIES.—In section 1376(c) (42 U.S.C. 4127(c)), by striking "through" and all that follows and inserting the following: "through the date specified in section 1319, for studies under this title.".

SEC. 3. ESTABLISHMENT OF PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

(a) IN GENERAL.—The National Flood Insurance Act of 1968 is amended by inserting after section 1361 (42 U.S.C. 4102) the following new section:

"PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES

"SEC. 1362. (a) AUTHORITY.—To the extent amounts are made available for use under this section, the Director may, subject to the limitations of this section, provide financial assistance to States and communities for taking actions with respect to severe repetitive loss properties (as such term is defined in subsection (b)) to mitigate flood damage to such properties and losses to the National Flood Insurance Fund from such properties.

"(b) SEVERE REPETITIVE LOSS PROPERTY.—For purposes of this section, the term 'severe repetitive loss property' has the following meaning:

"(1) SINGLE-FAMILY PROPERTIES.—In the case of a property consisting of one to four residences, such term means a property that—

"(A) is covered under a contract for flood insurance made available under this title; and

"(B) has incurred flood-related damage—

"(i) for which four or more separate claims payments have been made under flood insurance coverage under this title before the date of the enactment of the Flood Mitigation Reform Act of 2003, with the amount of each such claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000;

"(ii) for which four or more separate claims payments have been made under flood insurance coverage under this title after the date of the enactment of the Flood Mitigation Reform Act of 2003, with the amount of each such claim exceeding $3,000, and with the cumulative amount of such claims payments exceeding $15,000; or

"(iii) for which at least two separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.

"(2) MULTIFAMILY PROPERTIES.—In the case of a property consisting of five or more residences, such term shall have such meaning as the Director shall by regulation provide.

"(c) ELIGIBLE ACTIVITIES.—Amounts provided under this section to a State or community may be used only for the following activities:

"(1) MITIGATION ACTIVITIES.—To carry out mitigation activities that reduce flood damages to severe repetitive loss properties, including elevation, relocation, demolition (with or without reconstruction of the structure in a floodproof manner), and floodproofing of structures, and minor physical localized flood control projects.

"(2) PURCHASE.—To purchase severe repetitive loss properties, subject to subsection (f).

"(d) MATCHING REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Director may not provide assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds for carrying out the eligible activities to be funded with such assistance amounts.

"(2) WAIVER.—

"(A) AUTHORITY.—Subject to subparagraph (B), the Director may waive the limitation under paragraph (1) for any State, and for the communities located in that State, with respect to a year, if, for such year—

"(i) 5 percent or more of the total number of severe repetitive loss properties in the United States are located in such State; and

"(ii) the State submits a plan to the Director specifying how the State intends to reduce the number of severe repetitive loss properties and the Director determines, after consultation with State and technical experts, that the State has taken actions to reduce the number of such properties.

"(B) LIMITATION.—In each waiver under subparagraph (A), the Director may waive the limitation under paragraph (1) only to the extent that the State or community involved is required to contribute, for each severe repetitive loss property for which grant amounts are provided, not less than 10 percent of the cost of the activities for such properties that are to be funded with grant amounts.

"(3) NON-FEDERAL FUNDS.—For purposes of this subsection, the term 'non-Federal funds' includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the eligible activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

"(e) STANDARDS FOR MITIGATION OFFERS.—The program under this section for providing assistance for eligible activities for severe repetitive loss properties shall be subject to the following limitations:

"(1) PRIORITY.—In determining the properties for which to provide assistance for eligible activities under subsection (c), the Director shall provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time.

"(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties to take eligible activities under subsection (c) as soon as is practicable.

"(3) FUNDING REQUIREMENT.—An offer to provide assistance for any eligible activity under subsection (c) with respect to a property may not be made unless adequate amounts are available in the National Flood Insurance Fund pursuant to subsection (h) for the full amount of the portion of such assistance for such property to be provided by the Director.

"(4) NOTICE.—Upon making an offer to provide assistance with respect to a property for any eligible activity under subsection (c), the State or community shall notify each holder of a recorded interest on the property of such offer and activity.

"(f) PURCHASE PRICE.—A State or community may take action under subsection (c)(2) to purchase a severe repetitive loss property only if the amount of purchase offer is not less than the greatest of—

"(1) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this title;

"(2) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property; and

"(3) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property.

"(g) INCREASED PREMIUMS IN CASES OF REFUSAL TO MITIGATE.—

"(1) IN GENERAL.—In any case in which the owner of a severe repetitive loss property refuses an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property, the Director shall—

"(A) notify each holder of a recorded interest on the property of such refusal; and

"(B) notwithstanding subsections (a) through (c) of section 1308, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time that the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to paragraph (2) and subject to the limitation under paragraph (3).

"(2) INCREASED PREMIUMS UPON SUBSEQUENT FLOOD DAMAGE.—Notwithstanding subsections (a) through (c) of section 1308, if the owner of a severe repetitive loss property does not accept an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property and a claim payment exceeding $1,500 is made under flood insurance coverage under this title for damage to the property caused by a flood event occurring after such offer is made, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time of such flood event, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to this paragraph and subject to the limitation under paragraph (3).

"(3) LIMITATION ON INCREASED PREMIUMS.—In no case may the chargeable premium rate for a severe repetitive loss property be increased pursuant to this subsection to an amount exceeding the applicable estimated risk premium rate for the area (or subdivision thereof) under section 1307(a)(1).

"(4) TREATMENT OF DEDUCTIBLES.—Any increase in chargeable premium rates required under this subsection for a severe repetitive loss property may be carried out, to the extent appropriate, as determined by the Director, by adjusting any deductible charged in connection with flood insurance coverage under this title for the property.

"(5) NOTICE OF CONTINUED OFFER.—Upon each renewal or modification of any flood insurance coverage under this title for a severe repetitive loss property, the Director shall notify the owner that the offer made pursuant to subsection (c) is still open.

"(6) APPEALS.—

"(A) IN GENERAL.—Any owner of a severe repetitive loss property may appeal a determination of the Director to take action under paragraph (1)(B) or (2) with respect to such property, based only upon the following grounds:

"(i) As a result of such action, the owner of the property will not be able to purchase a replacement primary residence of comparable value and that is functionally equivalent.

"(ii) As a result of such action, the preservation or maintenance of any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of historic places will be interfered with, impaired, or disrupted.

"(iii) The flooding that resulted in the flood insurance claims sufficient for the property to be classified as a severe repetitive loss property resulted from significant actions by a third party in violation of Federal, State, or local law, ordinance, or regulation.

"(iv) In purchasing the property, the owner relied upon flood insurance rate maps of the Federal Emergency Management Agency that were current at the time and did not indicate that the property was located in an area having special flood hazards.

"(B) PROCEDURE.—An appeal under this paragraph of a determination of the Director shall be made by filing, with the Director, a request for an appeal within 90 days after receiving notice of such determination. Upon receiving the request, the Director shall select, from a list of independent third parties compiled by the Director for such purpose, a party to hear such appeal. Within 90 days after filing of the request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1)(B) or (2), as applicable.

"(C) EFFECT OF FINAL DETERMINATION.—In an appeal under this paragraph—

"(i) if a final determination is made that the grounds under subparagraph (A) exist, the third party hearing such appeal shall make a determination of how much to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1)(B) or (2) and the Director shall promptly reduce the chargeable risk premium rate for such property by such amount; and

"(ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly increase the chargeable risk premium rate for such property to the amount established pursuant to paragraph (1)(B) or (2), as applicable, and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates during the pendency of the appeal.

"(D) COSTS.—If the third party hearing an appeal under this paragraph is compensated for such service, the costs of such compensation shall be borne—

"(i) by the owner of the property requesting the appeal, if the final determination in the appeal is that the grounds under subparagraph (A) do not exist; and

"(ii) by the National Flood Insurance Fund, if such final determination is that the grounds under subparagraph (A) do exist.

"(E) REPORT.—Not later than 6 months after the date of the enactment of the Flood Mitigation Reform Act of 2003, the Director shall submit a report to the House of Representatives and the Senate describing the rules, procedures, and administration for appeals under this paragraph.

"(h) DISCRETIONARY ACTIONS IN CASES OF FRAUDULENT CLAIMS.—If the Director determines that a fraudulent claim was made under flood insurance coverage under this title for a severe repetitive loss property, the Director may—

"(1) cancel the policy and deny the provision to such policyholder of any new flood insurance coverage under this title for the property; or

"(2) refuse to renew the policy with such policyholder upon expiration and deny the provision of any new flood insurance coverage under this title to such policyholder for the property.

"(i) FUNDING.—Pursuant to section 1310(a)(8), the Director may use amounts from the National Flood Insurance Fund to provide assistance under this section each of fiscal years 2004, 2005, and 2006. The amount so used in each such fiscal year may not exceed $40,000,000 and shall remain available for such purpose until expended or the expiration of the 3-year period under subsection (j), whichever occurs first. After the expiration of such 3-year period, the Director may use amounts from such Fund to provide assistance in connection with any outstanding offers for eligible activities under this section. Notwithstanding any other provision of this title, amounts made available pursuant to this subsection shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.

"(j) TERMINATION.—The Director may not provide assistance under this section to any State or community for carrying out eligible activities under this section pursuant to an offer for such activities made after the expiration of the 3-year period beginning on the date of the enactment of the Flood Mitigation Reform Act of 2003.

"(k) REGULATIONS.—The Director shall issue regulations to carry out this section, which shall take effect not later than the expiration of the 180-day period beginning on the date of the enactment of the Flood Mitigation Reform Act of 2003. The regulations shall be issued after notice and opportunity for public comment in accordance with the procedure under section 553 of title 5, United States Code, applicable to substantive rules (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).".

(b) AVAILABILITY OF NATIONAL FLOOD INSURANCE FUND AMOUNTS.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

(1) in paragraph (7), by striking "and" at the end; and

(2) by striking paragraph (8) and inserting the following new paragraph:

"(8) for financial assistance under section 1362 to States and communities for taking actions under such section with respect to severe repetitive loss properties, but only to the extent provided in section 1362(i); and”.

(c) Inapplicability of Annual Limitations on Premium Increases in Cases of Refusal To Mitigate.—Section 1308(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(e)) is amended by striking “Notwithstanding” and inserting “Except with respect to any increase pursuant to section 1362(g) and notwithstanding”.

(d) GAO Study.—

(1) In general.—The Comptroller General of the United States shall carry out a study of the pilot program for mitigation of severe repetitive loss properties established under the amendments made by this section. Such study shall determine—

(A) the number of properties for which mitigation activities have been conducted under the program;

(B) the amount of savings to the National Flood Insurance Program as a result of the program;

(C) the number of property owners to whom offers were made for mitigation activities under the program that initially refused such offers; and

(D) the number of owners referred to in subparagraph (C) that eventually accepted such offers.

(2) Report.—Not later than Oct. 31, 2006, the Comptroller General shall submit a report to the Congress regarding the results of the study.

SEC. 4. AMENDMENTS TO EXISTING FLOOD MITIGATION ASSISTANCE PROGRAM.

(a) Standard for Approval of Mitigation Plans.—Section 1366(e)(3) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104(c) is amended by adding at the end the following new sentence: “The Director may approve only mitigation plans that give priority for funding to such properties, or to such subsets of properties, as are in the best interest of the National Flood Insurance Fund.”.

(b) Priority for Mitigation Assistance.—Section 1366(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by striking paragraph (4) and inserting the following new paragraph:

“(4) Priority for mitigation assistance.—In providing grants under this subsection for mitigation activities, the Director shall give first priority for funding to such properties, or to such subsets of such properties as the Director may establish, that the Director determines are in the best interests of the National Flood Insurance Fund and for which matching amounts under subsection (f) are available.”.

(c) Coordination With States and Communities.—Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following new subsection:

“(m) Coordination With States and Communities.—The Director shall, in consultation and coordination with States and communities take such actions as are appropriate to encourage and improve participation in the national flood insurance program of owners of properties, including owners of properties that are not located in areas having special flood hazards but are located within the 100-year floodplain.”.

(d) Funding.—Section 1367(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d(b)) is amended by striking paragraph (1) and inserting the following new paragraph:

“(1) in each fiscal year, amounts from the National Flood Insurance Fund not exceeding $40,000,000;

SEC. 5. FEMA AUTHORITY TO FUND MITIGATION ACTIVITIES FOR INDIVIDUAL PROPERTIES.

(a) In General.—Chapter I of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by adding at the end the following new section:

“GRANTS FOR MITIGATION ACTIONS FOR CERTAIN INDIVIDUAL PROPERTIES

“Sec. 1323. (a) In General.—The Director may provide funding for mitigation actions that reduce flood damages to individual properties for which one or more claim payments for losses have been made under flood insurance coverage under this title, but only if the Director determines that—

“(1) such activities are in the best interest of the National Flood Insurance Fund; and

“(2) such activities can not be funded under the program under section 1366 because—

“(A) the requirements of section 1366(g) are not being met by the State or community in which the property is located; or

“(B) the State or community does not have the capacity to manage such activities.

“(b) Priority for Worst-Case Properties.—In determining the properties for which funding is to be provided under this section, the Director shall consult with the States in which such properties are located and provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time.”.

(b) Availability of National Flood Insurance Fund Amounts.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended by adding at the end the following new paragraph:

“(9) for funding, not to exceed $10,000,000 in any fiscal year, for mitigation actions under section 1323, except that, notwithstanding any other provision of this title, amounts made available pursuant to this paragraph shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.”.

SEC. 6. TARGETS FOR PARTICIPATION IN FLOOD INSURANCE PROGRAM.

Section 1305 of the National Flood Insurance Act of 1968 (42 U.S.C. 4012) is amended by adding at the end the following new subsection:

“(d) Targets for Participation.—Not later than December 31, 2004, the Director shall submit to the Congress a detailed plan for increasing the percentage of properties located in areas in which flood insurance coverage under this title is made available that are covered by such insurance. The plan shall describe specific actions to be taken to ensure that such participation is not less than—

“(1) 55 percent as of December 31, 2005;

“(2) 57 percent as of December 31, 2006; and

“(3) 60 percent as of December 31, 2007.”.

SEC. 7. REITERATION OF FEMA RESPONSIBILITY TO MAP MUDSLIDES.

As directed in section 1360(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(b)), the Director of the Federal Emergency Management Agency is again directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of such section 1360, in order to make known the degree of hazard within each such zone at the earliest possible date.

The SPEAKER pro tempore (Mr. Gingrey). Is there objection to the request of the gentleman from Florida?

Mr. FRANK of Massachusetts. Mr. Speaker, reserving the right to object, I just want to say that this unanimous-consent agreement reflects a very cooperative agreement between the majority and the minority. We have had a chance to go over all this. It is an agreed upon procedure. We have even had a chance to read the bill. And so because this is such a contrast to the Medicare bill and the way it has been handled, I do not object.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 1, MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003

Mr. INSLEE. Mr. Speaker, pursuant to clause 7(c) of rule XXII, I hereby give notice of my intention to offer a motion to instruct on H.R. 1, the Medicare Prescription Drug and Modernization Act of 2003.

The form of the motion is as follows:

Mr. Inslee of Washington moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 1 be instructed as follows:

(1) To reject the provisions of subtitle C of title II of the House bill.

(2) To reject the provisions of section 231 of the Senate amendment.

(3) Within the scope of conference, to increase payments by an amount equal to the amount of savings attributable to the rejection of the aforementioned provisions to—

(A) raise the average standardized amount for hospitals in rural and other urban areas to the level of the rate for those in larger urban areas; and

(B) to raise the physicians' work geographic index for any locality in which such index is less than 1.0 to a work geographic index of 1.0.

(4) To insist upon section 601 of the House bill.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 2989, DEPARTMENTS OF TRANSPORTATION, AND TREASURY AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004

Mr. HASTINGS of Florida. Mr. Speaker, pursuant to clause 7(c) of rule XXII, I announce my intention to offer a motion to instruct conferees tomorrow on the bill H.R. 2989, the Departments of Transportation and Treasury and Independent Agencies Appropriations Act of 2004.

The form of the motion is as follows:

Mr. Hastings of Florida moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendments to the bill H.R. 2989 be instructed to recede from disagreement with Senate Amendment

1928 (relating to the provision of $1,500,000,000 for grants to assist State and local efforts to improve election technology and the administration of Federal elections, as authorized by the Help America Vote Act of 2002).

PERSONAL EXPLANATION

Ms. JACKSON-LEE of Texas. Mr. Speaker, I was unavoidably detained in my district yesterday, but if I had been here I would have voted in the following way: On rollcall vote 628, on ordering the previous question, I would have voted "nay;" on rollcall vote 629, on agreeing to H. Res. 443, I would have voted "no;" on rollcall vote 630, H.R. 6, I would have voted "yea;" on rollcall vote 631, on agreeing to the energy and water conference report, I would have voted "aye;" on rollcall vote 632, H.R. 1274, I would have voted "aye;" and on rollcall vote 633, on the motion to instruct conferees on H.R. 2417, I would have voted "aye."

MOTION TO INSTRUCT CONFEREES ON H.R. 1, MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003

Ms. HOOLEY of Oregon. Mr. Speaker, I offer a motion to instruct.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Ms. HOOLEY of Oregon moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 1 be instructed as follows:

(1) To reject the provisions of subtitle C of title II of the House bill.

(2) To reject the provisions of section 231 of the Senate amendment.

(3) Within the scope of conference, to increase payments for physician services by an amount equal to the amount of savings attributable to the rejection of the aforementioned provisions.

(4) To insist upon section 601 of the House bill.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentlewoman from Oregon (Ms. HOOLEY) and the gentleman from Florida (Mr. FOLEY) each will control 30 minutes.

The Chair recognizes the gentlewoman from Oregon (Ms. HOOLEY).

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Ms. HOOLEY of Oregon. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I stand here in the well of the people's House today to offer a motion to instruct the conferees of the Medicare prescription drug bill to provide a much-needed payment update to physicians for the next 2 years and eliminate provisions that would privatize Medicare.

Right now, as we speak, doctors are faced with the tough choices of treating patients, old friends and new patients alike, or turning them away since the reimbursements under the Medicare program have not kept pace with the costs of practicing medicine. This is not an argument about the quality of health care; it is about the ability to receive health care at all. This is a particular problem in rural areas like those that make up part of my district in Oregon.

The decisions that we make on this bill will have a disproportionate impact on the ability of millions of Americans to have access to health care. We cannot enable more doctors to see more Medicare patients if we continue cutting payments to doctors. If we do not act soon, there will be another 4.5 percent reduction in reimbursements to physicians who are treating those who count on their care the most, our seniors. That 4.5 percent cut represents a loss of $20 million to my State alone. The overall costs are staggering, and the damage to the health of American seniors will be as well.

For a State with historically low Medicare reimbursements like Oregon, the impact is even greater. According to the AMA, the cost of practicing medicine has gone up by more than one-third since 1991. Over the same period of time, the rise in Medicare payments has been less than 10 percent. Just last year, doctor payments were cut by 5.4 percent; and if we allow those further cuts to take effect, this would be the fifth time in 12 years that rates have been cut. If cut, the level would drop to nearly 8 percent below the 2001 level.

My doctors tell me their costs have not dropped by 8 percent, and I suspect that doctors across the country would agree. It makes no sense whatsoever to cut payments when the costs of practicing medicine are on the rise. Doctors simply cannot afford to take more cuts. I am worried whether we are going to have a Medicare system by the cuts we are asking doctors to take. Already one-quarter of family physicians across the Nation are saying they cannot accept any new Medicare patients. Who knows how many more will choose to do the same in January when they are told reimbursements have been slashed again.

As a Nation, we must provide our doctors with a means to treat and provide health care to our citizens. This motion would instruct the conferees to protect the language in the House version of the prescription drug bill that would reverse the cut to our physicians while providing a 1.5 percent increase to payments for the next 2 years.

To fund the increases in payments to our doctors, this motion strikes funding for privatization provisions in the underlying prescription drug bill. The Centers for Medicare and Medicaid Services estimates that under a privatized Medicare, premiums would skyrocket for seniors who choose to stay in traditional Medicare. I am concerned that by increasing the premiums of traditional Medicare many beneficiaries would be forced into HMOs and other private plans.

This small, but critical, increase will give doctors nationwide the wherewithal to continue treating seniors on Medicare, and it will give Congress time to develop a permanent fix for this flawed system that shortchanges doctors and continues to restrict the ability of seniors to access health care services.

I ask my colleagues to work with me to fix this Medicare physician reimbursement formula which currently threatens to destabilize the Medicare program. Seniors rely on their doctors and the medicines they need to stay healthy. They have waited too long for a prescription drug benefit in Medicare and relief from the high cost of prescription drugs. We must work together for a drug benefit that prevents seniors from risking their health by cutting pills in half or having to choose between paying for medicine or paying their rent, electricity, or buying food.

For 4 decades this Nation promised that Medicare would provide health care for all seniors. Medicare ensures these hard-working older Americans who have paid taxes and paid into the system that they have health care coverage. I urge my colleagues to vote for this motion to allow our constituents to continue to have access to high-quality care.

Mr. Speaker, I reserve the balance of my time.

Mr. FOLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am thrilled to be on the floor talking about Medicare tonight and certainly thrilled I have a chance to answer some of the comments made by the gentlewoman from Oregon (Ms. HOOLEY).

In my district in Florida, I have the fifth largest Medicare eligible population of 435 congressional districts. This is not an issue I take lightly. I would suggest some of our colleagues read the actual bill because what they are asking us to do tonight in their amendment is exactly why we are focused on some of the reforms in the very Medicare package we are talking about.

A physician update, an increase in payment, is in the bill the House Republicans have authored and sent to this floor and now is in conference. There was a mention that there was a fee cut last year of 5.4 percent. I would like to correct the record. As a member of the Committee on Ways and Means who fought to increase physician reimbursement, not only did we eliminate the cut a year ago; we actually increased by 1.5 percent in this bill. In Oregon we have a 1.5 percent update in 2004 and in 2005. We have a 5 percent bonus for those working in rural Oregon to make certain that they are able to see the patients because of the limited access and limited number of physicians. So there is a 16 percent increase in the bill we are talking about today.

Let me also take some exception when it is discussed about this FEHBP competitive-style model for a minute. My district is typical of most districts in the country. In fact, in Florida I represent eight counties: Palm Beach County, St. Lucie, Okeechobee, Glades, Hendry, Martin, and Charlotte. It goes from the east coast on the Atlantic to the west, ending at the Gulf of Mexico. There is almost every demographic mix one can imagine, people moving from the north and east coast; and what they have said to me in town hall after town hall, I want choices like Members of Congress have. They say they want choices like we have in our health care delivery system, and I reach for my wallet because I know somewhere in here is my Federal health benefit plan; and I get a range of options to choose from, whether I want a higher deductible, higher copayment, whether I want a fee-for-service or PPO or a managed care plan.

Seniors in my district are smart enough to know they are able to make choices. The Democrats have been down the street burning AARP cards this afternoon. Rather than engaging in constructive debate on how to fix the most important plan for seniors in this country, they are invoking memories of Jane Fonda burning things in city streets around our country and screaming that AARP has sold them out.

A month ago AARP was, as I was told by some of my colleagues on the other side of the aisle, the gold standard of senior lobbying organizations, and I tend to agree. I meet with AARP in my district in order to have a dialogue to see if we can meet some common ground and common objective. So when AARP indicated that they were supporting our Medicare bill, it was not only refreshing that we were engaged in a bipartisan, constructive conversation, but we were actually modernizing Medicare.

So to eliminate the competitive model in the Medicare plan we are discussing undermines the very notion of what the gentlewoman from Oregon (Ms. HOOLEY) is debating on the floor today. The update for physicians is in the bill.

Let me also say another thing that is troubling me because I have been somewhat perplexed by this insistence by the other side of the aisle that the trouble with this bill is we do not get after those nasty drug companies.

We do not just let our citizens run across the border and buy drugs from Canada. I just finished a TV interview with one of my colleagues talking about the cost of drugs in America and the cost of drugs in Canada, but let me talk about a more critical concern of mine.

In my district in my county in Florida, the first case of anthrax poisoning occurred in Palm Beach County, Florida, the death of a man who worked for the National Inquirer because he contracted anthrax through the mail that was sent to the National Inquirer.

Why do I bring that up and why do I raise the anthrax attacks and the fear it invoked in Florida? Because one of the concerns that we have all indicated is we want cheaper prescription drug prices for our seniors, but we wanted a protected chain of custody to make certain that the drugs we are getting for our seniors are not tainted.

Let me read this headline from the National Journal Group American Health Line. It says that Florida laws to prevent the sale of counterfeit or diluted prescription drugs in the State are too weak, according to a report issued Tuesday. The Miami Herald reports the report found that as many as 55 of the 1,458 prescription drug wholesalers licensed in Florida sell counterfeit or diluted medications or treatments illegally imported into the United States. The Office of the Attorney General said the questionable medicines for some wholesalers have reached pharmacies, but the extent of the problem is not known.

So I continue to hear these bottles of pills rattling on the other side of the aisle saying just let us have our chance to be in the debate, and we will get Americans cheaper drugs from Canada. Well, the first person that dies from an anthrax-laced medication or the first person that receives phony or altered cancer drugs and dies because they did not receive the proper dosage, the first person who has a catastrophic incident because somehow that cheaper drug that my colleagues have suggested they will bring to our States has harmed a citizen, I cannot wait to watch the rush for the exit by each of those who have been rattling these pill bottles saying that was not my idea, I certainly did not want any part of it.

So let us debate Medicare and let us debate it on the floor, not in the AARP lobby, not in the newspapers, and not on TV, but for seniors like my parents and in the memory of my grandmother, whose one wish was that Social Security and Medicare would sustain her for her life. The one check she would wait for was Social Security, and the one thing she wanted more than ever was not to be a burden on her children or grandchildren. She wanted to be self-sustaining. It is in her memory I have worked 9 years on Medicare and want to make certain this proposal works. So I reject this motion.

We will continue to have discussions on it, but the things that have been raised in this motion today on H.R. 1 are just not accurate. They just do not apply. If they read the bill, they will see that physicians are getting compensated properly. They will see the competitive model is not going to undermine Medicare. It has no effect on entitlement. There is continued entitlement to defined benefits under current law. There is continued access to traditional FFS Medicare through the fee-for-service Medicare throughout the country, and all payments to plans, including traditional fee-for-service Medicare based on the demographic and health risks of employees. We have provisions in this bill that deal with most of the problems raised.

Mr. Speaker, I reserve the balance of my time.

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Ms. HOOLEY of Oregon. Mr. Speaker, I yield 7 minutes to the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. Mr. Speaker, I thank the gentlewoman from Oregon (Ms. HOOLEY) for yielding time and thank her for her leadership on this Medicare issue and her leadership on health care issues generally.

Mr. Speaker, I heard my friend from Florida not once, not twice, not three times, maybe not even four times, maybe five, six times say, "You should just read the bill." That is the problem. As bad as the Medicare bill is, the process is even worse. We would like to read the bill. We cannot find it. The reason we cannot find the bill is the bill was, first of all, written by the prescription drug companies, by the insurance companies, in private, similar to how Vice President CHENEY wrote the energy bill, Vice President CHENEY who still receives $3,000 a week from an oil company as part of his pay, but these bills have been written in secret.

The prescription drug bill has been written by the insurance industry, by the drug industry. At the conference committee when the House and Senate were trying to work together to write a bill, no House Democrats were allowed in the room. No House Democrats were allowed to look at the bill, to discuss the bill, to debate the bill or to offer amendments. When I hear my friend from Florida sort of gratuitously say we should read the bill, we would like that opportunity.

The problem with this prescription drug issue, it is not really a prescription drug bill. We could have passed a prescription drug bill, take $400 billion and distributed it to seniors who need drug coverage. We could have done that cooperatively, bipartisanly in a day or two, but what this bill really is, it is a Medicare privatization bill. When you think about this, and I have been a ranking Democrat on the Subcommittee on Health for 4, 5, 6 years, I have been on that committee for more years than that and watched sort of how the Republicans look at this Medicare issue. They all say, my mom's on Medicare, my grandfather's on Medicare, I like the program. Ultimately, when you look at what Republicans do in Medicare and you look at the history of the Republican Party with Medicare, the problem is they simply do not like Medicare. You can say, well, that's not true.

Let us do a little bit of history. When Congress passed the legislation to create Medicare, President Johnson signed the bill in July of 1965 creating this program that now insures 39 million Americans. At that moment, half of American seniors had no health insurance. The other half did, but it was clearly a big problem. Lyndon Johnson signed this bill. The fact is only 13 Republicans in the whole House of Representatives supported the bill to create Medicare. Gerald Ford, a Member of the House, opposed it. Bob Michel, the Republican leader, opposed it. John Rhodes, another Republican leader, opposed it. Bob Dole opposed it. Senator Strom Thurmond opposed it. Donald Rumsfeld voted against the creation of Medicare. They simply did not like the idea of a government program. They wanted to continue to let these seniors be out in the market, be in the private market. If they could get insurance good; if they could not, that was just too bad. They should have thought of that and made more money or whatever the reason. Nothing much happened to change Medicare except it worked, from 1965 until 1995. Then the first time Republicans had a chance, the first time Republicans were in the majority in 1995, right out of the box Newt Gingrich tried to privatize Medicare. He tried to cut $250 billion from Medicare to pay for a tax break for the most privileged people in society, just like they do now. He immediately tried to privatize Medicare. Fortunately, President Clinton stopped that. Fortunately, other Members of this Congress stood up and fought it and stopped it.

Speaker Gingrich, in 1995, bragging in a meeting of the American Conservative Union, said, We don't get rid of Medicare right away. We don't think it's politically smart. We think the right way is to go through a transition, but we know it's going to wither on the vine. That is what Speaker Gingrich wanted to do. He wanted to privatize it.

Bob Dole, then a Senator, then a Presidential candidate, Bob Dole bragged that he was in the arena trying to fight Medicare, trying to fight its creation 30 years earlier.

It is pretty clear that Republicans in 1965 voted against the creation of Medicare, including one future President, one future Presidential candidate and other leading Republicans. Then in 1995, when they had a chance, they immediately tried to privatize Medicare and cut its funding. In fact, AARP president Bill Novelli, who has gotten sort of famous this week in his sellout to the drug companies and the insurance interests, Bill Novelli wrote the preface in Newt Gingrich's health care book, his health care privatization book. He called Newt a big-idea person. The Republican majority has continued to rally behind Newt Gingrich's call for Medicare privatization. JOHN LINDER told the House Rules Committee last year that Medicare was a Soviet-style program. Dick Armey, majority leader of the House of Representatives last year, said, in a free society we wouldn't want to have Medicare. Former Congressman RICK SANTORUM says the traditional Medicare program has to be phased out. And BILL THOMAS, working with the drug industry and the insurance industry in writing this Medicare privatization bill, told a reporter, to those who say that this bill would end Medicare as we know it, our answer is, we certainly hope so.

The conference bill does that. It would end Medicare as we know it, because Republicans would rather throw money at a private failure rather than continue support for a public success.

Mr. Speaker, Medicare has worked for seniors in this country. We need to add a prescription drug benefit inside Medicare, not turn this program over to the insurance interests who are getting a $20 billion taxpayer gift once this bill is signed into law if it passes, and we do not want to turn this program over to the drug industry who will profit 140 billion additional dollars under this bill.

Mr. Speaker, my Republican friends, it is an honest debate. They simply do not like Medicare. They do not believe there should be a government program called Medicare. They think the insurance industry and the drug industry ought to do this. That is their view. Mr. Speaker, I hope that enough Members rally around because it is clear that seniors in this country want to protect Medicare. They do not want it privatized. They want a public health system that works for everybody and treats everybody the same.

Mr. FOLEY. Mr. Speaker, I yield myself such time as I may consume.

It is indeed appropriate that there be a doctor in the House sitting in the well presiding as we discuss this important project, a doctor who happens to be a Republican. The notion that we want to destroy Medicare is patently false. It is interesting, I am on the Committee on Ways and Means, so this is something we deal with quite frequently, how many letters I get urging us to increase the fee payments to Medicare+Choice organizations, Blue Cross and Blue Shield of New Jersey, Blue Cross and Blue Shield of Florida. From my colleagues on the other side of the aisle who somehow find those Medicare+Choice, which are popular with their constituents, we should increase reimbursements to those plans. But if they listened to the argument they just made about privatization, then those Medicare+Choice panels would not even operate. They would not even exist.

So it seems like there is a number of Members here that seem to trust the private health insurance industry when it suits the political goals of allowing their constituents to have access to prescription drugs, to eyeglasses, to other remedial services, that is okay. That is not really privatization. That is kind of a sort of an experiment, I guess. But that is in fact what is happening today. There are managed care plans that President Clinton supported and endorsed and increased funding for, community health care organizations, a number of things that we have done in our communities to make certain health care is delivered.

We know they are losing the debate when they have to bring up Newt Gingrich on the floor and rather than talk about substantive debate here, many of us have read the bill numerous times because we had it on the floor, we all had a vote, I think nine Democrats joined us in supporting that bill. I know it was not in its entirety, I am sure there are some new additions, some new conference report language, some different things, but we are not talking about whole new territory here, we are not going over new ground. But I would caution when we start accusing the entirety of the Republican Party as being opposed to Medicare that that is somewhat of a hurtful statement to this Member because I take seriously the responsibility I have representing seniors, I take seriously the fact that my parents are on Medicare, enrolled in Medicare, my father is suffering today with cancer who is being treated by great physicians in Palm Beach County who are being reimbursed by Medicare, who seem to be not only caring for him, but obviously thrilled with their work and happy with the reimbursements being offered.

The current Medicare system is a sickness model. I am hopeful that the party on the other side of the aisle comes back to the roots of Claude Pepper from Florida and Lyndon Johnson who would have recognized a fabulous program but one that needs to reflect today's technologies.

In our bill we have wellness incentives to look for dietetic screenings to see if we can prolong the life of someone suffering from diabetes. Medicare today will reimburse to amputate your limb, they will watch you go blind, they will put you on dialysis, but we will not reimburse a dietician to come in and see if we can properly construct a diet to minimize the onset of the disease. That is a plan that they want to sit here and defend? New technologies that can indicate a cancer in the body early and detect it and cause, hopefully, the cure of that cancer. Cardiovascular screening that I have worked on with Senator BOB GRAHAM from Florida.

This Medicare bill we are bringing to the floor has a lot more to offer than some of the criticism would indicate. But I still have to snicker when I see a group of people standing outside of AARP burning cards. It harkens back to an earlier day. I just somewhat humorously look at how quickly they turn on that organization whom they held in such high esteem up to 48 hours ago and now is being vilified here on the floor. We are happy AARP weighed in. They said it was a first step. They did not say this was a panacea, nor did any Member of this body ever suggest that this is the last thing we will ever do on Medicare. We will learn as we go along, we will add, we will try and increase the opportunities for preventive health care, we will increase reimbursement to hospitals in every Members' district, a bill that I authored. We are doing the drug discount card, another provision that I authored that will be in this bill. I think we are on the right track.

Mr. Speaker, I reserve the balance of my time.

Ms. HOOLEY of Oregon. Mr. Speaker, I yield myself such time as I may consume.

Just a reminder, I think that everybody on the floor of the House, all Members from both the Republican and Democratic Party, would be happy to see those changes, that in fact they would not pay for amputation of a leg or an arm and would pay for diabetes treatment along the way.

Mr. Speaker, I yield 5 minutes to the gentleman from New Jersey (Mr. PALLONE) who has been working on health care issues the entire time he has been in Congress.

Mr. PALLONE. Mr. Speaker, I want to thank the gentlewoman for yielding me the time and her remarks.

I listened to what the gentleman from Florida said, and I have to say, I know he is well-intentioned. I certainly do not mean to imply that he is not well-intentioned, but the problem is that the ideology of the Republicans is getting in the way of what works practically. I am afraid that the ideology, even though they may not intend it, ultimately, will destroy Medicare.

The gentleman from Florida talked about Lyndon Johnson and the origins of Medicare. I do not want to go through all that again, but we must remember that the reason that President Johnson and the Democrats primarily put Medicare into place in the sixties was because the private market did not work. Seniors were not able to go out and get insurance in the private market, and so that is why the government had to set up a program to insure the senior citizens. That is the bottom line. Practically speaking, I do not really have an ideology. I do not care if it is a government program versus a private program, but the bottom line is that the government program, the Medicare program, works and it works because you have this large pool that all the seniors are members of, and the private market has essentially told us in many cases that they are not going to provide the type of health insurance that many of the Republicans have talked about.

The gentleman says that Democrats are against HMOs. I do not have a problem with HMOs and managed care. He mentioned my home State of New Jersey. Sure, lots of seniors sign up for HMOs in New Jersey. But the problem is that the HMOs have increasingly dropped the seniors. Something like 80,000 to 100,000 New Jersey seniors in the last few years have been dropped by HMOs. All we are saying, as Democrats, is we do not want seniors to be forced into managed care, forced into HMOs in order to get a drug benefit. That is what the gentleman is doing. That is what the Republicans are doing with this bill. Essentially, the only way practically speaking that you are going to be able to get a drug benefit is if you join an HMO, and then you lose your choice of doctors. That is not fair. If you really cared about Medicare, and you wanted to just expand it and include a prescription drug benefit to deal with preventive care, then all you have to do is what the Democrats have said all along, add the drug benefit to traditional Medicare. We have talked about that. We have said just like you have part B now for your doctor bills, where you pay about a $50 a month premium, you have a $100 deductible for your first doctor's visit and after that the Federal Government pays 80 percent of the cost and you pay 20 percent up to a certain amount when the Federal Government pays the whole thing. We advocated and we voted on a substitute to this awful Republican bill. We had a Democratic substitute that did exactly the same. You paid $25 a month, the first $100 deductible on your drug bills you have to pay, and after that 80 percent is paid for by the Federal Government, 20 percent by you, up to a certain amount, and then the Federal Government pays 100 percent. If you really liked traditional Medicare and wanted to keep it going the way it is, then you would not have any problem doing just that. Take whatever pot of money you have and add a prescription drug benefit to traditional Medicare. But that is not what you do. The Republicans basically want to privatize, and they force people to go into an HMO to get the drug benefit.

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The gentlewoman's motion here is very simple. Basically, she is saying do not give extra money to the HMOs and the private insurers because we know that they cannot compete with the regular Medicare program. Do not give them the windfall and extra money in order to make them participate in this plan. Take that money and give it, as she said, to the doctors to increase their reimbursement rate. Whether we give it to the doctors or whomever we give it to, the bottom line is that we should not be giving windfall dollars to HMOs and private insurers so that they have extra money to compete with the traditional Medicare fee-for-service.

If my colleagues feel that there needs to be competition and that HMOs should be out there as an option, or other private insurance options should be out there, then let them compete in a traditional way. Do not give them all this extra money and say, Here is some extra money, so you come into the market, because then we do not have fair competition. We do not have fair competition at all. We are giving them extra money, and what we are going to ultimately do is to make it impossible for people to stay in traditional Medicare.

The thing that really bothers me the most is that they keep mentioning on the Republican side all the different groups that support this Republican Medicare bill. They mention AARP, they mention the AMA, they mention the drug companies, PhARMA or whatever. The reason that all these different groups support this bill is because they are all getting a piece of the action. In other words, the doctors are getting an increased reimbursement rate, so of course they think it is a great bill. AARP is an insurance company. They are going to sell insurance, so they think it is a great idea. And the drug companies love it because they have a clause in here that says that the Secretary of Health and Human Services, the Medicare administrator, cannot negotiate price reductions, so they are happy because they can continue to charge higher price, increasing prices.

So all these different special interest groups, they are all very happy; but the Medicare recipient, the senior, is the one that suffers because they are not being given an adequate benefit. Not only are you telling them that they have to join an HMO, but they are going to have to pay more out in their out-of-pocket in order to get any kind of drug benefit.

If we look at the way this thing is structured, the deductible is $275, not $100. 275. The cost sharing, basically the Federal Government pays 75 percent of the cost but only up to $2,200 a year. After that there is a doughnut hole and the senior has to pay out of pocket up to $5,044. So what we are going to see here with these seniors is there is no set premium. So the HMO is going to come in and say they are going to charge them, who knows, $75 a month, $80 a month. The sky is the limit. There is no set premium; 275 deductible, between $2,200 and $5,000 out of pocket. They get nothing from the Federal Government. There is no reason for anybody to sign up for this thing because they are not getting a benefit. They have to lose their choice of doctors. They get a lousy benefit that is not even worth having. Meanwhile, all the special interests, the HMOs, get all this windfall in terms of dollars.

Mr. GEORGE MILLER of California. Mr. Speaker, will the gentleman yield?

Mr. PALLONE. I yield to the gentleman from California.

Mr. GEORGE MILLER of California. Mr. Speaker, the gentleman is correct here. Assuming the $35 premium, in fact, out of the first $5,000 of benefit, they have to pay $4,020 out of pocket.

Mr. PALLONE. Absolutely.

Mr. GEORGE MILLER of California. Mr. Speaker, I guess maybe some people in America think that is a drug benefit, but that is not going to provide. Out of the first $5,000, they pay $4,020 out of their pocket and they get $1,000 in benefit.

Mr. PALLONE. Right. Reclaiming my time, Mr. Speaker, that is assuming that the benefit is $35.

Mr. GEORGE MILLER of California. That is assuming it is $35, but nothing in the law requires it to be $35.

Mr. PALLONE. Absolutely not.

Mr. FOLEY. Mr. Speaker, I reserve the balance of my time.

Ms. HOOLEY of Oregon. Mr. Speaker, I yield 4 minutes to the gentleman from Florida (Mr. HASTINGS).

Mr. HASTINGS of Florida. Mr. Speaker, I thank the distinguished gentlewoman from Oregon for yielding me this time, and I appreciate her so very much for her bringing this motion.

It is most regrettable that we are in this dispute in the manner that we are because in many respects it comes from a lack of communication between the two respective sides.

Mr. Speaker, it gives me great pleasure to support the gentlewoman from Oregon's (Ms. HOOLEY) measure.

Since 1965 Medicare has been a vital instrument in ensuring quality health care to America's elderly and disabled. Like my friend from Florida, my mother is on Medicare, and like my friend from Florida, my mother is desperately ill. The real truth of the matter is if it were not for Medicare, I would not be able to sustain my mother's present care.

Medicare's 40 million beneficiaries use thousands of different health care products and services furnished by over 1 million providers in hundreds of markets nationwide. However, today a great number of people in this House seek to dismantle Medicare with a fool's gold of a bill titled the Medicare Prescription Drug and Modernization Act.

Despite my Democratic colleague's best efforts to make this an inclusive and comprehensive process, one that addresses the real concerns of America's seniors and disabled, we are shut out from negotiations. My friend on the other side from Florida, and he is my friend, may have seen this bill. But I serve on the Committee on Rules. We have not met on it for it has not been filed, and we will not see it until maybe an hour before we go to the Committee on Rules on this measure.

The bill does not ensure affordable prescription drugs because of the arbitrary budget cap pushed by the administration. H.R. 1 has high deductibles and does not guarantee an affordable premium. In addition, the Medicare Prescription Drug and Modernization Act creates large coverage gaps with many seniors being required to pay high premiums even when they do not receive benefits. Let me tell the Members about one guy that is from Myakka City, Florida, Mr. Coldao, a Vietnam veteran-turned-farmer who cannot afford health coverage and now faces losing the little that he has because drug companies flee rural areas in search of bigger profits.

Approving this bill may not guarantee a destitute future for those of us that are Members of Congress, but it will guarantee a destitute future for those seniors who do not and have not served in this body.

Mr. Speaker, simply put, this bill should be wrapped around a toilet paper holder and stuck in one of the Capitol's bathrooms. It is that bad. It is poison for this country. It stinks.

And now I want to tell my friend about this AARP. I am a member of that organization until yesterday. And I did not go to AARP and burn my card. I sent to its director notice that I resigned, and let me tell the gentleman why. Because I never received a mumbling word from anybody at AARP asking me, one of the 35 million members, what I think about this particular measure. I did not receive a questionnaire from them, and I ask my friend from Florida, are all seniors being treated equally under the Republican plan that he has seen and Democrats have not? What are the effects on Medicaid in the State of Florida and in the State of Oregon and this Nation as it pertains to the poor? And most importantly, here come the baby boomers. Baby boomers, get ready. Get ready to go bust under this plan.

Mr. FOLEY. Mr. Speaker, I yield myself such time as I may consume.

Of course I respect very much my colleague from Florida, and I appreciate his words tonight. I do want to at least add that at the current program we have on Medicare, just to correct any record, there is zero prescription drug coverage in Medicare. So for the very seniors they are talking about tonight, the veterans they are talking about tonight, citizens watching us tonight, they have zero coverage from Medicare for prescription drugs. Yes, there is a $275 deductible, and there is a monthly premium. The average American spends about $2,000 on drug costs annually. Under our plan they will probably save anywhere from $900 to $1,100 that will now be provided through Medicare to them. So anyone who is spending money on drugs today with this bill will have a benefit.

The drug discount card that I authored along with Senator HAGEL that is now part of this global bill includes for low-income families a $600 credit much like their ATM card that they can use at drug stores to not only achieve a discount off the retail price of the pharmaceutical but also have money to purchase and back up that purchase.

So, yes, I am pleased with the progress we are making. I am pleased that we have things in this bill to provide new remedies for situations for ailing seniors, and I am encouraged by the fact that we have been able to increase reimbursements to hospitals, increase reimbursements to physicians. We are able to do some of the diagnostic tests necessary to improve and enhance the quality of life. So I feel very comfortable, as we continue the debate, that more changes probably can be made if we deal in a constructive fashion.

Mr. PALLONE. Mr. Speaker, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from New Jersey.

Mr. PALLONE. Mr. Speaker, again I have not seen the bill because it has not been given to the Democrats, but my understanding is that the Medicare program that the gentleman has talked about, the comprehensive program, is not effective until the year 2006.

Could the gentleman explain to me, if it is true that all these problems are out there and all these changes need to be made to Medicare, why the Republicans are going to wait until the year 2006 to have this program kick in?

Mr. FOLEY. Mr. Speaker, reclaiming my time, actually 6 months from enactment, we will start with a discount card that will provide an immediate $600 in the plan. A number of the wellness provisions we are talking about will become instantaneous, the increase to physicians, the increase to hospitals, the increase to managed care.

Mr. PALLONE. But generally, Mr. Speaker, it does not kick in until 2006.

Mr. FOLEY. Mr. Speaker, reclaiming my time, there will be a number of things that will take place up until 2006. The big fundamental prescription drug will be 2006, the gentleman is correct. Because we have to get plans up and running. We have to implement the delivery system. We have to get plans concurrent. We have to do the pharmacology. So there are a number of things that will require some time.

Mr. PALLONE. Mr. Speaker, the gentleman does not think that could be done by next year?

Mr. FOLEY. Maybe. That may be possible as we move forward. With some cooperation, we may be able to actually expedite the time frame. That is this gentleman's wish. The sooner, the better. But within 6 months of enactment, we will have the first phase of this. We will have a number of the components already implemented. As to the prescription drug plan, I think our leadership will move more quickly than 2006.

Mr. Speaker, I reserve the balance of my time.

Ms. HOOLEY of Oregon. Mr. Speaker, I yield 3½ minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Speaker, I thank my colleague for yielding me this time and also for this motion to instruct and for her tremendous leadership on this issue.

This bill of course we have yet to see but have heard a lot about what will essentially privatize Medicare. Not only will the bill begin to dismantle a program that has worked for over 30 years; it does fatten the pockets of the pharmaceutical and the private insurance industry donors, leaves over 9 million rural Medicare beneficiaries with no access to affordable prescription drugs, and really does pit seniors one against the other based on their income through means testing.

I hope we say no to this Republican bill. Under this bill, Republicans have eliminated Federal Medicaid funding to fill in the gaps in the Medicare drug benefit, disproportionately affecting rural beneficiaries who are 20 percent more likely to have incomes below 150 percent of poverty level. This means that up to 1.7 million beneficiaries could have their current drug coverage reduced.

Under this bill new, untested private insurers are authorized to provide a prescription drug benefit. Under this bill Republicans cap Medicare spending for the traditional programs and also for private plans, of course shifting the greater risk and cost to our senior citizens. It does not make any sense to provide a $12 billion slush fund to keep private insurers in Medicare, which is really anticompetitive. It is costly and it is unfair to seniors.

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Also, as I understand it, under this bill, Republicans leave seniors who spend between $2,200 and $3,500 for prescription drugs without any cost assistance or sharing for Medicare. And again, not having seen the bill, but from what we hear, under this bill, and of course the administration and the Republican leadership have weakened all of the measures to control the costs of these drugs; policies to promote access to generic drugs and reimportation of U.S.-made drugs which, of course, we passed in this House, those provisions have either been watered down or just totally disregarded.

To put it simply, a senior who receives $2,200 worth of drugs in a year will pay about $420 in premiums, $275 deductibles, and $481, which is about 25 percent of drug costs from $276 to $2,200. So the total cost is somewhere between $1,700 and $2,200 in drugs.

Also, with this gap or what we call the "doughnut hole," the Republicans have left that in this bill, of course. Seniors whose drug costs fall above $2,200 and $3,500 will pay 100 percent of the cost. Seniors with $3,500 in annual drug costs will pay too much.

Mr. Speaker, this is really the beginning of the end of Medicare as we know it. This is an attempt really to dismantle Medicare. We cannot allow that. We must stand up for our constituents. We must stand up for our senior citizens and provide a prescription drug benefit which is helpful, not which is harmful. This bill is not comprehensive, I guess. I mean we have not seen it, but from what we hear, it is terrible and it is very incomplete.

So I think we need to be honest with our senior citizens. It does privatize Medicare. It does begin to dismantle Medicare. It is much too costly for our senior citizens to buy drugs which are already too expensive.

Mr. FOLEY. Mr. Speaker, I yield myself such time as I may consume.

It is almost comical on the floor for people who claim they have never seen this bill, they know every aspect of it and can criticize it with great flourish and abundance.

We just heard about the rural health care network, and I absolutely represent a lot of rural communities. Mr. Speaker, $30 billion additionally to fund rural health. Standardized amount for payments. A labor share to help with the labor index in rural communities. The disproportionate share program is increased in our bill. Low-volume hospitals receive additional payments based on their discharges. Critical-access hospitals have additional benefits. A wage index. Graduate medical education programs. Sole-community hospitals qualify based on some data.

These are all incorporated in this new Medicare reform proposal that will benefit constituents in the gentlewoman from California's district.

Bonus payments for physician, an increased 5 percent add-on if you are in the rural component. Clinics pay separately for professional services. Rural health care clinics, federally qualified. Low-volume rural ambulance, targets higher payments for ambulances in rural communities. Home health care adds an additional 5 percent.

So these are all funded by our program, including community health centers.

Now, it came up about the $2,200, the doughnut that they continue to describe. The median recipient on Medicare uses approximately $2,000 annually in drug utilization costs. That is why we came up with the $2,200 to cover the majority of Americans. After $3,600 of drug expenditures, we then pick up 95 percent of the tab for the catastrophically ill.

Now, what the Democrats fail to continue to mention, and I wish they would put their price tag alongside their lofty ideas, is to give drugs to every senior in an unlimited amount without payment, without copayment, without deductible, would be about $900 billion, almost $1 trillion. Please, somebody on the other side, advise me where that money comes from, and I will be willing to listen to their proposal.

But in the abstract and failing to offer concrete solutions, they criticize a bill that has been worked on by the Committee on Ways and Means. They should contact some of their Democratic colleagues who serve on the committee with me. They are probably not happy with every aspect of the bill, but they have seen it. We have debated it. We have discussed it. This bill has been around for about 4½ years, no shocks, no nuances, no changes. It has all been part of the debate. Yes, they may object to portions of it, but to claim that somehow we just popped this bill up in the middle of the night belies the 4½ years I have been on the committee working on this and shows little of the knowledge of the very important components that provide relief to a number of their constituents, Democrat, Republican, and Independent alike.

Mr. Speaker, I reserve the balance of my time.

Ms. HOOLEY of Oregon. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentlewoman for offering this motion and for yielding me this time.

I just want to say, following up what my colleague, the gentleman from Florida (Mr. HASTINGS) said, and that is that unfortunately, we now see people who are offering themselves as so-called honest brokers who set up thresholds and tests as to whether this would be a good bill for senior citizens; whether or not this would provide the kind of drug benefit that senior citizens should have and that they need to match the cost of the drugs that they now have to pay the prices that they have to pay, we now see that that organization, AARP, was in the bag all of the time. They were not there representing their members, they were not there representing senior citizens; they were there representing themselves as an insurance company. Now, we see that under the provisions of the bill, they stand to do billions of dollars in business. They do about $100 million in business now, selling Medigap insurance policies, but now they want to get into the pharmaceutical business.

So they were not an objective observer of this process. They were not there as guardians; they were there as special interests with a special seat at the table. So special that the Republican administration gave them a number of contracts over the last couple of years from the Department of Labor and other agencies in this Federal Government, and now all of a sudden we find out they took a dive on the bill. They did not talk to their Members and say, what should we do. The beltway lobbyists, speaking from their own interests, made a decision to support this bill to the extent now that all day long we have been watching on the news as people have been turning in their membership in AARP, people have been resigning from the organization. I have a letter here from their legislative chairman in Raleigh, North Carolina who says that he is resigning because they were never asked about this. And the fact that they would support a bill as they understand it with the level of benefits, with the privatization of Medicare, they want out. They are resigning. That was supposedly the honest broker that was going between the sides and discussing the merits of this program.

This bill is one thing and one thing only: it is to provide protection to the big pharmaceutical industry. This bill does nothing about price. You can have your discount cards, but it is discounted off an inflated price, and it specifically prohibits the Secretary of Health and Human Services from negotiating price. When asked about why this is in the provision in a meeting today, one of the authors of the bill said because that is the way big PhRMA wanted it. Well, big PhRMA got their way and Mr. Middle America, they got hosed in this operation.

We cannot negotiate like Wal-Mart. We cannot negotiate like Costo. We cannot negotiate like the Veterans' Administration. No. They get to set the price and then somehow we are going to give you a discount off an inflated price. So they did not do anything about price there; all they did was protect the profits of the pharmaceutical industry, and if the seniors get a benefit, they will be lucky. Out of the first $5,000, they will pay $4,000. That is not the benefit that the AARP should be fighting for.

Mr. FOLEY. Mr. Speaker, I yield myself such time as I may consume.

I would just ask Members who are so comfortable with the insurance provided to them through Blue Cross Blue Shield, it is a PPO, it is made out to me, it is a government-wide benefit plan that has a retail pharmacy carrier; it has a mail order if I want; there is a customer service number; I can use it at most hospitals for admission and medical doctors. But surprisingly, it is not the Federal Government, it is Blue Cross and Blue Shield. So if this is so onerous and a disaster waiting to happen, then maybe my colleagues ought to turn in their card. I think they probably would not go without the coverage, and that is what my constituents have been asking for: give me what you have. Let me have choices. Let me have options. Let me decide for myself.

Now, they may be outraged at AARP, but up until last week they were always throwing it in our faces that this was the legitimate group that negotiated for seniors, and now all of a sudden they have racked up this alleged racketeering, mob-style pharmaceutical alliance with big PhRMA. It is just interesting, when they change their viewpoint and decide to support something we are doing, this is evil incarnate. A week ago they were the gold standard of senior care and consideration; today we are going to burn our cards.

So I ask my colleagues to be the judge: is it politics, or is it process? Is it results, or is it claiming credit? As a Member of the Committee on Ways and Means, yes, there is a lot more I would like to do to this bill. But part of the process I have learned is compromise, negotiation, and meaningful steps forward to make results achievable for citizens, the people that pay our salary that send us to work.

When I go home after reviewing this bill and looking at its contents, I know in my heart I can look at seniors, whether they live in Lake Worth, Port St. Lucie, Punta Gorda, Okeechobee; whether they are wealthy or poor, whatever their ethnic background, whatever their family composition, that I will be able to look them in the eye and say, this is a better program than it was last month and last year.

Mr. Speaker, with that I know the hour is late, and I sincerely appreciate, as I have worked with the gentlewoman from Oregon on a number of issues, and we care deeply about health care; we share common objectives and common goals. But I think the characterization of this bill is overstated in its demagoguery. I think if we look at what is being provided and the full range of services, people should come away from this bill knowing this is an important, critical first step to providing prescription drug coverage for our seniors. Today, at this hour, seniors have absolutely zero coverage by the Federal Government for prescription drugs.

If there is any indication that what we are about to embark on by those who suggest this is not a benefit, then they have not read the calculation. Just do the math along with me. From $3,600 to $5,000, the example used by the gentleman from California, if you spent $5,000, you are only paying $900; well, do the math. From $3,600 to $5,000 is $1,400. Your obligation is a 5 percent copay of that. So it does not take rocket science to figure out that is $70. That means you have $1,330 of a benefit there alone. If you take the front end, if you take the front end and you look at the deductible and the $2,200 amount, you are talking about roughly $900 to $1,100. So if you add those two together, there is about $2,430 of benefit for a person that spends $5,000, not counting the $600 and the discount card, plus the discounts achieved. So if we reflect on all of those numbers and you hear these numbers thrown around, get out a calculator, we will supply the numbers. It is not that difficult.

My final statement will be to those who say our seniors do not understand enough of what they are doing to be able to figure these new processes or new bills out. Well, do my colleagues know what? The generation I am talking about managed their way through the depression, they survived World War II, they taught us how to ride our bikes and drive our cars. They raised us. They fought wars. They have been able to succeed in life on their own without the Federal Government dumbing them down and acting like they cannot make choices.

The Medicare bill we are about to bring to this floor represents significant, important, fundamental change. It represents increasing opportunity to gain wellness care. It represents prescription drug coverage for the first time in this Nation's history.

The Congress was controlled by the Democrats in 1965, when Medicare was introduced, to 1995 when the Republicans took over and, in that span of time, no prescription drugs were added. So I ask the basic question. I have been working on it since I came to Congress in 1995. We finally have a product on the floor in 2003, a lot later than I would have liked to, but under our majority, with President Bush and the Senate majority in Republican hands, we are about to embark on a wellness Medicare program for the 21st century.

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So I appreciate the time of the gentlewoman from Oregon (Ms. HOOLEY), and I appreciate the House's indulgence.

Mr. Speaker, I yield back the balance of my time.

Ms. HOOLEY of Oregon. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Florida (Mr. FOLEY) and I have worked on many issues together. I guess I would like to offer today to work on another issue. Oregon happens to be a very low reimbursement State because we have been very efficient in our health care. I am glad that Florida has a high reimbursement rate. I would just like to be there with them. And our State, because it is a low reimbursement State, I have areas in my district where doctors are filled. Because they lose money every time they take a Medicare patient, they do not want to take anymore. It is not because they do not want to provide the service; it is that they cannot afford to do it. They cannot afford to have 100 percent of their clients Medicare clients because, again, of the reimbursement level.

I urge my colleagues to vote for this motion to direct the millions that the House bill uses for privatization to improving Medicare payments for physicians. Physicians cannot deliver 21st-century medicine to our seniors with payment rates that do not cover the cost of their care.

My motion would address the concerns of doctors across the country and ensure that they are able to treat Medicare patients. Instead of putting the Medicare system in jeopardy through risky and untested privatization schemes, we should protect our constituents' access to care.

I urge my colleagues to support our doctors and their patients and to vote "yes" on the motion to instruct.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HENSARLING). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentlewoman from Oregon (Ms. HOOLEY).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. HOOLEY of Oregon. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

CONFERENCE REPORT ON H.R. 2417, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2004

Mr. GOSS (during consideration of motion to instruct conferees on H.R. 1) submitted the following conference report and statement on the bill (H.R. 2417) to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes:,

CONFERENCE REPORT (H. REPT. 108–381)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2417), to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Intelligence Authorization Act for Fiscal Year 2004".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations.
Sec. 102. Classified schedule of authorizations.
Sec. 103. Personnel ceiling adjustments.
Sec. 104. Intelligence Community Management Account.
Sec. 105. Office of Intelligence and Analysis of the Department of the Treasury.
Sec. 106. Incorporation of reporting requirements.
Sec. 107. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense or Department of Energy.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

Subtitle A—Recurring General Provisions

Sec. 301. Increase in employee compensation and benefits authorized by law.
Sec. 302. Restriction on conduct of intelligence activities.

Subtitle B—Intelligence

Sec. 311. Authority of Federal Bureau of Investigation to award personal services contracts.
Sec. 312. Budget treatment of costs of acquisition of major systems by the intelligence community.
Sec. 313. Modification of sunset of application of sanctions laws to intelligence activities.
Sec. 314. Modification of notice and wait requirements on projects to construct or improve intelligence community facilities.
Sec. 315. Extension of deadline for final report of the National Commission for the Review of the Research and Development Programs of the United States Intelligence Community.
Sec. 316. Improvement of information sharing among Federal, State, and local government officials.
Sec. 317. Pilot program on analysis of signals and other intelligence by intelligence analysts of various elements of the intelligence community.
Sec. 318. Pilot program on recruitment and training of intelligence analysts.
Sec. 319. Improvement of equality of employment opportunities in the intelligence community.
Sec. 320. Sense of Congress on recruitment as intelligence community personnel of members of the Armed Forces on their discharge or release from duty.
Sec. 321. External Collection Capabilities and Requirements Review Panel.

Subtitle C—Counterintelligence

Sec. 341. Counterintelligence initiatives for the intelligence community.

Subtitle D—Reports

Sec. 351. Report on cleared insider threat to classified computer networks.
Sec. 352. Report on security background investigations and security clearance procedures of the Federal Government.
Sec. 353. Report on detail of civilian intelligence personnel among elements of the intelligence community and the Department of Defense.
Sec. 354. Report on modifications of policy and law on classified information to facilitate sharing of information for national security purposes.
Sec. 355. Report on strategic planning.
Sec. 356. Report on United States dependence on computer hardware and software manufactured overseas.
Sec. 357. Report on lessons learned from military operations in Iraq.
Sec. 358. Reports on conventional weapons and ammunition obtained by Iraq in violation of certain United Nations Security Council resolutions.
Sec. 359. Report on operations of Directorate of Information Analysis and Infrastructure Protection and Terrorist Threat Integration Center.
Sec. 360. Report on Terrorist Screening Center.
Sec. 361. Repeal and modification of report requirements relating to intelligence activities.

Subtitle E—Other Matters

Sec. 371. Extension of suspension of reorganization of Diplomatic Telecommunications Service Program Office.
Sec. 372. Modifications of authorities on explosive materials.
Sec. 373. Modification of prohibition on the naturalization of certain persons.
Sec. 374. Modification to definition of financial institution in Right to Financial Privacy Act.
Sec. 375. Coordination of Federal Government research on security evaluations.
Sec. 376. Treatment of classified information in money laundering cases.
Sec. 377. Technical amendments.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

Sec. 401. Amendment to certain Central Intelligence Agency Act of 1949 notification requirements.
Sec. 402. Protection of certain Central Intelligence Agency personnel from tort liability.
Sec. 403. Repeal of obsolete limitation on use of funds in central services working capital fund.
Sec. 404. Purchases by Central Intelligence Agency of products of Federal Prison Industries.
Sec. 405. Postponement of Central Intelligence Agency compensation reform and other matters.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

Sec. 501. Protection of certain National Security Agency personnel from tort liability.
Sec. 502. Use of funds for counterdrug and counterterrorism activities for Colombia.
Sec. 503. Scene visualization technologies.
Sec. 504. Measurement and signatures intelligence research program.

Sec. 505. Availability of funds of National Security Agency for national security scholarships.

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2004 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.

(2) The Department of Defense.

(3) The Defense Intelligence Agency.

(4) The National Security Agency.

(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.

(6) The Department of State.

(7) The Department of the Treasury.

(8) The Department of Energy.

(9) The Department of Justice.

(10) The Federal Bureau of Investigation.

(11) The National Reconnaissance Office.

(12) The National Geospatial-Intelligence Agency.

(13) The Coast Guard.

(14) The Department of Homeland Security.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2004, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill H.R. 2417 of the One Hundred Eighth Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2004 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall promptly notify the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives whenever the Director exercises the authority granted by this section.

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of Central Intelligence for fiscal year 2004 the sum of $221,513,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for advanced research and development shall remain available until September 30, 2005.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 310 full-time personnel as of September 30, 2004. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2004 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for research and development shall remain available until September 30, 2005.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2004, there are also authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2004 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount authorized to be appropriated in subsection (a), $47,142,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2005, and funds provided for procurement purposes shall remain available until September 30, 2006.

(2) TRANSFER OF FUNDS.—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(1)).

(4) AUTHORITY.—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

SEC. 105. OFFICE OF INTELLIGENCE AND ANALYSIS OF THE DEPARTMENT OF THE TREASURY.

(a) ESTABLISHMENT OF OFFICE.—(1) Chapter 3 of subtitle I of title 31, United States Code, is amended—

(A) by redesignating section 311 as section 312; and

(B) by inserting after section 310 the following:

"§311. Office of Intelligence and Analysis

"(a) ESTABLISHMENT.—There is established within the Department of the Treasury, the Office of Intelligence and Analysis (in this section referred to as the 'Office'), which shall—

"(1) be responsible for the receipt, analysis, collation, and dissemination of foreign intelligence and foreign counterintelligence information (within the meaning of section 3 of the National Security Act of 1947 (50 U.S.C. 401a)) related to the operation and responsibilities of the Department of the Treasury; and

"(2) have such other related duties and authorities as may be assigned to it by the Secretary, subject to the authority, direction, and control of the Secretary.

"(b) ASSISTANT SECRETARY FOR INTELLIGENCE AND ANALYSIS.—The Office shall be headed by an Assistant Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall report directly to the Undersecretary of the Treasury for Enforcement.".

(2) The table of sections at the beginning of chapter 3 of such title is amended by striking the item relating to section 311 and inserting the following new items:

"311. Office of Intelligence and Analysis.
"312. Continuing in office.".

(b) CONSTRUCTION OF AUTHORITY.—Nothing in section 311 of title 31, United States Code (as amended by subsection (a)), shall be construed to alter the authorities and responsibilities of the Director of Central Intelligence with respect to the Office of Intelligence and Analysis of the Department of the Treasury as an element of the intelligence community.

(c) CONSULTATION WITH DCI IN APPOINTMENT OF ASSISTANT SECRETARY.—Section 106(b)(2) of the National Security Act of 1947 (50 U.S.C. 403–6(b)(2)) is amended by adding at the end the following:

"(E) The Assistant Secretary for Intelligence and Analysis of the Department of the Treasury.".

(d) CONFORMING AMENDMENTS.—

(1) NATIONAL SECURITY ACT.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

(A) in subparagraph (H), by striking "the Department of the Treasury,";

(B) by redesignating subparagraphs (J) and (K) as subparagraphs (K) and (L), respectively; and

(C) by inserting after subparagraph (I) the following new subparagraph (J):

"(J) the Office of Intelligence and Analysis of the Department of the Treasury;".

(2) TITLE 31.—Section 301(e) of title 31, United States Code, is amended by striking "7" and inserting "8".

(3) TITLE 5.—Section 5315 of title 5, United States Code, is amended in the item relating to Assistant Secretaries of the Treasury by striking "(7)" and inserting "(8)".

SEC. 106. INCORPORATION OF REPORTING REQUIREMENTS.

(a) IN GENERAL.—Each requirement to submit a report to the congressional intelligence committees that is included in the joint explanatory statement to accompany the conference report on the bill H.R. 2417 of the One Hundred Eighth Congress, or in the classified annex to this Act, is hereby incorporated into this Act, and is hereby made a requirement in law.

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term "congressional intelligence committees" means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 107. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE OR DEPARTMENT OF ENERGY.

(a) CONSULTATION IN PREPARATION.—(1) The Director of Central Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of

this Act, including a provision of the classified Schedule of Authorizations referred to in section 102(a) or the classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense or the Department of Energy is prepared or conducted in consultation with the Secretary of Defense or the Secretary of Energy, as appropriate.

(2) The Secretary of Defense or the Secretary of Energy may carry out any consultation required by this subsection through an official of the Department of Defense or the Department of Energy, as the case may be, designated by such Secretary for that purpose.

(b) SUBMITTAL.—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees of Congress:

(1) The Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate.

(2) The Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2004 the sum of $226,400,000.

TITLE III—GENERAL PROVISIONS

Subtitle A—Recurring General Provisions

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

Subtitle B—Intelligence

SEC. 311. AUTHORITY OF FEDERAL BUREAU OF INVESTIGATION TO AWARD PERSONAL SERVICES CONTRACTS.

(a) AUTHORITY.—(1) Title III of the National Security Act of 1947 is amended by inserting after section 301 (50 U.S.C. 409a) the following new section:

"AUTHORITY OF FEDERAL BUREAU OF INVESTIGATION TO AWARD PERSONAL SERVICES CONTRACTS

"SEC. 302. (a) IN GENERAL.—The Director of the Federal Bureau of Investigation may enter into personal services contracts if the personal services to be provided under such contracts directly support the intelligence or counterintelligence missions of the Federal Bureau of Investigation.

"(b) INAPPLICABILITY OF CERTAIN REQUIREMENTS.—Contracts under subsection (a) shall not be subject to the annuity offset requirements of sections 8344 and 8468 of title 5, United States Code, the requirements of section 3109 of title 5, United States Code, or any law or regulation requiring competitive contracting.

"(c) CONTRACT TO BE APPROPRIATE MEANS OF SECURING SERVICES.—The Chief Contracting Officer of the Federal Bureau of Investigation shall ensure that each personal services contract entered into by the Director under this section is the appropriate means of securing the services to be provided under such contract.".

(2) The table of contents for that Act is amended by inserting after the item relating to section 301 the following new item:

"Sec. 302. Authority of Federal Bureau of Investigation to award personal services contracts.".

(b) REPORTS ON EXERCISE OF AUTHORITY.—(1) Not later than one year after the date of the enactment of this Act, and annually thereafter, the Director of the Federal Bureau of Investigation shall submit to the appropriate committees of Congress a report on the exercise of the authority in section 302 of the National Security Act of 1947, as added by subsection (a).

(2) Each report under this subsection shall include, for the one-year period ending on the date of such report, the following:

(A) The number of contracts entered into during the period.

(B) The cost of each such contract.

(C) The length of each such contract.

(D) The types of services to be provided under each such contract.

(E) The availability, if any, of United States Government personnel to perform functions similar to the services to be provided under each such contract.

(F) The efforts of the Federal Bureau of Investigation to fill available personnel vacancies, or request additional personnel positions, in areas relating to the intelligence or counterintelligence mission of the Bureau.

(3) Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

(4) In this subsection—

(A) for purposes of the submittal of the classified annex to any report under this subsection, the term "appropriate committees of Congress" means—

(i) the Select Committee on Intelligence of the Senate; and

(ii) the Permanent Select Committee on Intelligence of the House of Representatives; and

(B) for purposes of the submittal of the unclassified portion of any report under this subsection, the term "appropriate committees of Congress" means—

(i) the committees specified in subparagraph (A);

(ii) the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate; and

(iii) the Committees on Appropriations, Government Reform and Oversight, and the Judiciary of the House of Representatives.

SEC. 312. BUDGET TREATMENT OF COSTS OF ACQUISITION OF MAJOR SYSTEMS BY THE INTELLIGENCE COMMUNITY.

(a) FINDINGS.—Congress makes the following findings:

(1) Funds within the National Foreign Intelligence Program often must be shifted from program to program and from fiscal year to fiscal year to address funding shortfalls caused by significant increases in the costs of acquisition of major systems by the intelligence community.

(2) While some increases in the costs of acquisition of major systems by the intelligence community are unavoidable, the magnitude of growth in the costs of acquisition of many major systems indicates a systemic bias within the intelligence community to underestimate the costs of such acquisition, particularly in the preliminary stages of development and production.

(3) Decisions by Congress to fund the acquisition of major systems by the intelligence community rely significantly upon initial estimates of the affordability of acquiring such major systems and occur within a context in which funds can be allocated for a variety of alternative programs. Thus, substantial increases in costs of acquisition of major systems place significant burdens on the availability of funds for other programs and new proposals within the National Foreign Intelligence Program.

(4) Independent cost estimates, prepared by independent offices, have historically represented a more accurate projection of the costs of acquisition of major systems.

(5) Recognizing the benefits associated with independent cost estimates for the acquisition of major systems, the Secretary of Defense has built upon the statutory requirement in section 2434 of title 10, United States Code, to develop and consider independent cost estimates for the acquisition of such systems by mandating the use of such estimates in budget requests of the Department of Defense.

(6) The mandatory use throughout the intelligence community of independent cost estimates for the acquisition of major systems will assist the President and Congress in the development and funding of budgets which more accurately reflect the requirements and priorities of the United States Government for intelligence and intelligence-related activities.

(b) BUDGET TREATMENT OF COSTS OF ACQUISITION OF MAJOR SYSTEMS.—(1) Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by inserting after section 506 the following new section:

"BUDGET TREATMENT OF COSTS OF ACQUISITION OF MAJOR SYSTEMS BY THE INTELLIGENCE COMMUNITY

"SEC. 506A. (a) INDEPENDENT COST ESTIMATES.—(1) The Director of Central Intelligence shall, in consultation with the head of each element of the intelligence community concerned, prepare an independent cost estimate of the full life-cycle cost of development, procurement, and operation of each major system to be acquired by the intelligence community.

"(2) Each independent cost estimate for a major system shall, to the maximum extent practicable, specify the amount required to be appropriated and obligated to develop, procure, and operate the major system in each fiscal year of the proposed period of development, procurement, and operation of the major system.

"(3)(A) In the case of a program of the intelligence community that qualifies as a major system, an independent cost estimate shall be prepared before the submission to Congress of the budget of the President for the first fiscal year in which appropriated funds are anticipated to be obligated for the development or procurement of such major system.

"(B) In the case of a program of the intelligence community for which an independent cost estimate was not previously required to be prepared under this section, including a program for which development or procurement commenced before the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2004, if the aggregate future costs of development or procurement (or any combination of such activities) of the program will exceed $500,000,000 (in current fiscal year dollars), the program shall qualify as a major system for purposes of this section, and an independent cost estimate for such major system shall be prepared before the submission to Congress of the budget of the President for the first fiscal year thereafter in which appropriated funds are anticipated to be obligated for such major system.

"(4) The independent cost estimate for a major system shall be updated upon—

"(A) the completion of any preliminary design review associated with the major system;

"(B) any significant modification to the anticipated design of the major system; or

"(C) any change in circumstances that renders the current independent cost estimate for the major system inaccurate.

"(5) Any update of an independent cost estimate for a major system under paragraph (4) shall meet all requirements for independent cost estimates under this section, and shall be treated as the most current independent cost estimate for the major system until further updated under that paragraph.

"(b) PREPARATION OF INDEPENDENT COST ESTIMATES.—(1) The Director shall establish within the Office of the Deputy Director of Central Intelligence for Community Management an office which shall be responsible for preparing independent cost estimates, and any updates thereof, under subsection (a), unless a designation is made under paragraph (2).

"(2) In the case of the acquisition of a major system for an element of the intelligence community within the Department of Defense, the Director and the Secretary of Defense shall provide that the independent cost estimate, and any updates thereof, under subsection (a) be prepared by an entity jointly designated by the Director and the Secretary in accordance with section 2434(b)(1)(A) of title 10, United States Code.

"(c) UTILIZATION IN BUDGETS OF PRESIDENT.—(1) If the budget of the President requests appropriations for any fiscal year for the development or procurement of a major system by the intelligence community, the President shall, subject to paragraph (2), request in such budget an amount of appropriations for the development or procurement, as the case may be, of the major system that is equivalent to the amount of appropriations identified in the most current independent cost estimate for the major system for obligation for each fiscal year for which appropriations are requested for the major system in such budget.

"(2) If the amount of appropriations requested in the budget of the President for the development or procurement of a major system is less than the amount of appropriations identified in the most current independent cost estimate for the major system for obligation for each fiscal year for which appropriations are requested for the major system in such budget, the President shall include in the budget justification materials submitted to Congress in support of such budget—

"(A) an explanation for the difference between the amount of appropriations requested and the amount of appropriations identified in the most current independent cost estimate;

"(B) a description of the importance of the major system to the national security;

"(C) an assessment of the consequences for the funding of all programs of the National Foreign Intelligence Program in future fiscal years if the most current independent cost estimate for the major system is accurate and additional appropriations are required in future fiscal years to ensure the continued development or procurement of the major system, including the consequences of such funding shortfalls on the major system and all other programs of the National Foreign Intelligence Program; and

"(D) such other information on the funding of the major system as the President considers appropriate.

"(d) INCLUSION OF ESTIMATES IN BUDGET JUSTIFICATION MATERIALS.—The budget justification materials submitted to Congress in support of the budget of the President shall include the most current independent cost estimate under this section for each major system for which appropriations are requested in such budget for any fiscal year.

"(e) DEFINITIONS.—In this section:

"(1) The term 'budget of the President' means the budget of the President for a fiscal year as submitted to Congress under section 1105(a) of title 31, United States Code.

"(2) The term 'independent cost estimate' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with the acquisition of a major system, which shall be based on programmatic and technical specifications provided by the office within the element of the intelligence community with primary responsibility for the development, procurement, or operation of the major system.

"(3) The term 'major system' means any significant program of an element of the intelligence community with projected total development and procurement costs exceeding $500,000,000 (in current fiscal year dollars), which costs shall include all end-to-end program costs, including costs associated with the development and procurement of the program and any other costs associated with the development and procurement of systems required to support or utilize the program.".

(2) The table of contents for the National Security Act of 1947 is amended by inserting after the item relating to section 506 the following new item:

"Sec. 506A. Budget treatment of costs of acquisition of major systems by the intelligence community.".

(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

(d) LIMITATIONS.—(1)(A) For each major system for which funds have been authorized for a fiscal year before fiscal year 2005, or for which funds are sought in the budget of the President for fiscal year 2005, as submitted to Congress pursuant to section 1105(a) of title 31, United States Code, and for which no independent cost estimate has been provided to Congress, no contract, or option to contract, for the procurement or acquisition of such major system may be entered into, or option to contract be exercised, before the date of the enactment of an Act to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government.

(B) Subparagraph (A) shall not affect any contract for procurement or acquisition that was entered into before the date of the enactment of this Act.

(2) Commencing as of the date of the submittal to Congress of the budget of the President for fiscal year 2006 pursuant to section 1105(a) of title 31, United States Code, no funds may be obligated or expended for the development or procurement of a major system until the President has complied with the requirements of section 506A of the National Security Act of 1947 (as added by subsection (b)) with respect to such major system.

(3) In this subsection, the terms "independent cost estimate" and "major system" have the meaning given such terms in subsection (e) of section 506A of the National Security Act of 1947 (as so added).

SEC. 313. MODIFICATION OF SUNSET OF APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES.

(a) MODIFICATION.—Section 905 of the National Security Act of 1947 (50 U.S.C. 441d) is repealed.

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by striking the item relating to section 905.

SEC. 314. MODIFICATION OF NOTICE AND WAIT REQUIREMENTS ON PROJECTS TO CONSTRUCT OR IMPROVE INTELLIGENCE COMMUNITY FACILITIES.

(a) INCREASE OF THRESHOLDS FOR NOTICE.—Subsection (a) of section 602 of the Intelligence Authorization Act for Fiscal Year 1995 (Public Law 103–359; 108 Stat. 3432; 50 U.S.C. 403–2b(a)) is amended—

(1) by striking "$750,000" each place it appears and inserting "$5,000,000"; and

(2) by striking "$500,000" each place it appears and inserting "$1,000,000".

(b) NOTICE AND WAIT REQUIREMENTS FOR EMERGENCY PROJECTS.—Subsection (b)(2) of that section is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(2) by inserting "(A)" after "(2) REPORT.—";

(3) by striking "21-day period" and inserting "7-day period"; and

(4) by adding at the end the following new subparagraph:

"(B) Notwithstanding subparagraph (A), a project referred to in paragraph (1) may begin on the date the notification is received by the appropriate committees of Congress under that paragraph if the Director of Central Intelligence and the Secretary of Defense jointly determine that—

"(i) an emergency exists with respect to the national security or the protection of health, safety, or environmental quality; and

"(ii) any delay in the commencement of the project would harm any or all of those interests.".

SEC. 315. EXTENSION OF DEADLINE FOR FINAL REPORT OF THE NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Subsection (a) of section 1007 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 401 note; 116 Stat. 2442) is amended by striking "September 1, 2003" and inserting "September 1, 2004".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of section 1007 of the Intelligence Authorization Act for Fiscal Year 2003.

SEC. 316. IMPROVEMENT OF INFORMATION SHARING AMONG FEDERAL, STATE, AND LOCAL GOVERNMENT OFFICIALS.

(a) TRAINING PROGRAM FOR STATE AND LOCAL OFFICIALS.—Section 892(c) of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 482) is amended by adding at the end the following new paragraph:

"(3)(A) The Secretary shall establish a program to provide appropriate training to officials described in subparagraph (B) in order to assist such officials in—

"(i) identifying sources of potential terrorist threats through such methods as the Secretary determines appropriate;

"(ii) reporting information relating to such potential terrorist threats to the appropriate Federal agencies in the appropriate form and manner;

"(iii) assuring that all reported information is systematically submitted to and passed on by the Department for use by appropriate Federal agencies; and

"(iv) understanding the mission and roles of the intelligence community to promote more effective information sharing among Federal, State, and local officials and representatives of the private sector to prevent terrorist attacks against the United States.

"(B) The officials referred to in subparagraph (A) are officials of State and local government agencies and representatives of private sector entities with responsibilities relating to the oversight and management of first responders, counterterrorism activities, or critical infrastructure.

"(C) The Secretary shall consult with the Attorney General to ensure that the training program established in subparagraph (A) does not duplicate the training program established in section 908 of the USA PATRIOT Act (Public Law 107–56; 28 U.S.C. 509 note).

"(D) The Secretary shall carry out this paragraph in consultation with the Director of Central Intelligence and the Attorney General.".

(b) REPORT.—Not later than 60 days after the date of the enactment of this Act, the Secretary

of Homeland Security shall submit to Congress a report that describes the Secretary's plan for implementing section 892 of the Homeland Security Act of 2002 and includes an estimated date of completion of the implementation.

SEC. 317. PILOT PROGRAM ON ANALYSIS OF SIGNALS AND OTHER INTELLIGENCE BY INTELLIGENCE ANALYSTS OF VARIOUS ELEMENTS OF THE INTELLIGENCE COMMUNITY.

(a) In General.—The Director of Central Intelligence shall, in coordination with the Secretary of Defense, carry out a pilot program to assess the feasibility and advisability of permitting intelligence analysts of various elements of the intelligence community to access and analyze intelligence from the databases of other elements of the intelligence community in order to achieve the objectives set forth in subsection (c).

(b) Covered Intelligence.—The intelligence to be analyzed under the pilot program under subsection (a) shall include the following:

(1) Signals intelligence of the National Security Agency.

(2) Such intelligence of other elements of the intelligence community as the Director shall select for purposes of the pilot program.

(c) Objectives.—The objectives set forth in this subsection are as follows:

(1) To enhance the capacity of the intelligence community to undertake "all source fusion" analysis in support of the intelligence and intelligence-related missions of the intelligence community.

(2) To reduce, to the extent possible, the amount of intelligence collected by the intelligence community that is not assessed, or reviewed, by intelligence analysts.

(3) To reduce the burdens imposed on analytical personnel of the elements of the intelligence community by current practices regarding the sharing of intelligence among elements of the intelligence community.

(d) Commencement.—The Director shall commence the pilot program under subsection (a) not later than December 31, 2003.

(e) Various Mechanisms Required.—In carrying out the pilot program under subsection (a), the Director shall develop and utilize various mechanisms to facilitate the access to, and the analysis of, intelligence in the databases of the intelligence community by intelligence analysts of other elements of the intelligence community, including the use of so-called "detailees in place".

(f) Security.—(1) In carrying out the pilot program under subsection (a), the Director shall take appropriate actions to protect against the disclosure and unauthorized use of intelligence in the databases of the elements of the intelligence community which may endanger sources and methods which (as determined by the Director) warrant protection.

(2) The actions taken under paragraph (1) shall include the provision of training on the accessing and handling of information in the databases of various elements of the intelligence community and the establishment of limitations on access to information in such databases regarding United States persons.

(g) Assessment.—Not later than February 1, 2004, after the commencement under subsection (d) of the pilot program under subsection (a), the Under Secretary of Defense for Intelligence and the Assistant Director of Central Intelligence for Analysis and Production shall jointly carry out an assessment of the progress of the pilot program in meeting the objectives set forth in subsection (c).

(h) Report.—(1) The Director of Central Intelligence shall, in coordination with the Secretary of Defense, submit to the appropriate committees of Congress a report on the assessment carried out under subsection (g).

(2) The report shall include—

(A) a description of the pilot program under subsection (a);

(B) the findings of the Under Secretary and Assistant Director as a result of the assessment;

(C) any recommendations regarding the pilot program that the Under Secretary and the Assistant Director jointly consider appropriate in light of the assessment; and

(D) any recommendations that the Director and Secretary consider appropriate for purposes of the report.

(i) Appropriate Committees of Congress Defined.—In this section, the term "appropriate committees of Congress" means—

(1) the Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the Senate; and

(2) the Permanent Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

SEC. 318. PILOT PROGRAM ON RECRUITMENT AND TRAINING OF INTELLIGENCE ANALYSTS.

(a) Pilot Program.—(1) The Director of Central Intelligence shall carry out a pilot program to ensure that selected students or former students are provided funds to continue academic training, or are reimbursed for academic training previously obtained, in areas of specialization that the Director, in consultation with the other heads of the elements of the intelligence community, identifies as areas in which the current analytic capabilities of the intelligence community are deficient or in which future analytic capabilities of the intelligence community are likely to be deficient.

(2) A student or former student selected for participation in the pilot program shall commit to employment with an element of the intelligence community, following completion of appropriate academic training, under such terms and conditions as the Director considers appropriate.

(3) The pilot program shall be known as the Pat Roberts Intelligence Scholars Program.

(b) Elements.—In carrying out the pilot program under subsection (a), the Director shall—

(1) establish such requirements relating to the academic training of participants as the Director considers appropriate to ensure that participants are prepared for employment as intelligence analysts; and

(2) periodically review the areas of specialization of the elements of the intelligence community to determine the areas in which such elements are, or are likely to be, deficient in analytic capabilities.

(c) Duration.—The Director shall carry out the pilot program under subsection (a) during fiscal years 2004 through 2006.

(d) Limitation on Number of Members During Fiscal Year 2004.—The total number of individuals participating in the pilot program under subsection (a) during fiscal year 2004 may not exceed 150 students.

(e) Responsibility.—The Director shall carry out the pilot program under subsection (a) through the Assistant Director of Central Intelligence for Analysis and Production.

(f) Reports.—(1) Not later than 120 days after the date of the enactment of this Act, the Director shall submit to Congress a preliminary report on the pilot program under subsection (a), including a description of the pilot program and the authorities to be utilized in carrying out the pilot program.

(2) Not later than one year after the commencement of the pilot program, the Director shall submit to Congress a report on the pilot program. The report shall include—

(A) a description of the activities under the pilot program, including the number of individuals who participated in the pilot program and the training provided such individuals under the pilot program;

(B) an assessment of the effectiveness of the pilot program in meeting the purpose of the pilot program; and

(C) any recommendations for additional legislative or administrative action that the Director considers appropriate in light of the pilot program.

(g) Funding.—Of the amounts authorized to be appropriated by this Act, $4,000,000 shall be available until expended to carry out this section.

SEC. 319. IMPROVEMENT OF EQUALITY OF EMPLOYMENT OPPORTUNITIES IN THE INTELLIGENCE COMMUNITY.

(a) Findings.—Congress makes the following findings:

(1) It is the recommendation of the Joint Inquiry of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, that the Intelligence Community should enhance recruitment of a more ethnically and culturally diverse workforce and devise a strategy to capitalize upon the unique cultural and linguistic capabilities of first generation Americans.

(2) The Intelligence Community could greatly benefit from an increased number of employees who are proficient in foreign languages and knowledgeable of world cultures, especially in foreign languages that are critical to the national security interests of the United States. Particular emphasis should be given to the recruitment of United States citizens whose linguistic capabilities are acutely required for the improvement of the overall intelligence collection and analysis effort of the United States Government.

(3) The Intelligence Community has a significantly lower percentage of women and minorities than the total workforce of the Federal government and the total civilian labor force.

(4) Women and minorities continue to be under-represented in senior grade levels, and in core mission areas, of the intelligence community.

(b) Pilot Project To Promote Equality of Employment Opportunities for Women and Minorities Throughout the Intelligence Community Using Innovative Methodologies.—The Director of Central Intelligence shall carry out a pilot project under this section to test and evaluate alternative, innovative methods to promote equality of employment opportunities in the intelligence community for women, minorities, and individuals with diverse ethnic and cultural backgrounds, skills, language proficiency, and expertise.

(c) Methods.—In carrying out the pilot project, the Director shall employ methods to increase diversity of officers and employees in the intelligence community.

(d) Duration of Project.—The Director shall carry out the project under this section for a 3-year period.

(e) Report.—Not later than 2 years after the date the Director implements the pilot project under this section, the Director shall submit to Congress a report on the project. The report shall include—

(1) an assessment of the effectiveness of the project; and

(2) recommendations on the continuation of the project, as well recommendations as for improving the effectiveness of the project in meeting the goals of promoting equality of employment opportunities in the intelligence community for women, minorities, and individuals with diverse ethnic and cultural backgrounds, skills, language proficiency, and expertise.

(f) Diversity Plan.—(1) Not later than February 15, 2004, the Director of Central Intelligence shall submit to Congress a report which

describes the plan of the Director, entitled the "DCI Diversity Strategic Plan", and any subsequent revision to that plan, to increase diversity of officers and employees in the intelligence community, including the short- and long-term goals of the plan. The report shall also provide a detailed description of the progress that has been made by each element of the intelligence community in implementing the plan.

(2) In implementing the plan, the Director shall incorporate innovative methods for recruitment and hiring that the Director has determined to be effective from the pilot project carried out under this section.

(g) INTELLIGENCE COMMUNITY DEFINED.—In this section, the term "intelligence community" has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(4)).

SEC. 320. SENSE OF CONGRESS ON RECRUITMENT AS INTELLIGENCE COMMUNITY PERSONNEL OF MEMBERS OF THE ARMED FORCES ON THEIR DISCHARGE OR RELEASE FROM DUTY.

It is the sense of Congress that the elements of the intelligence community should, in the course of their civilian recruitment efforts in the United States, endeavor to recruit as personnel of the intelligence community citizens and, as appropriate, nationals of the United States who are members of the Armed Forces who participated in Operation Enduring Freedom, Operation Iraqi Freedom, and other campaigns undertaken abroad upon the separation, discharge, or release of such individuals from the Armed Forces.

SEC. 321. EXTERNAL COLLECTION CAPABILITIES AND REQUIREMENTS REVIEW PANEL.

The President may establish an External Collection Capabilities and Requirements Review Panel as specified in the classified annex to this Act.

Subtitle C—Counterintelligence

SEC. 341. COUNTERINTELLIGENCE INITIATIVES FOR THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—(1) Title XI of the National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end the following new section:

"COUNTERINTELLIGENCE INITIATIVES

"SEC. 1102. (a) INSPECTION PROCESS.—(1) In order to protect intelligence sources and methods from unauthorized disclosure, the Director of Central Intelligence shall establish and implement an inspection process for all agencies and departments of the United States that handle classified information relating to the national security of the United States intended to assure that those agencies and departments maintain effective operational security practices and programs directed against counterintelligence activities.

"(2) The Director shall carry out the process through the Office of the National Counterintelligence Executive.

"(b) ANNUAL REVIEW OF DISSEMINATION LISTS.—(1) The Director of Central Intelligence shall establish and implement a process for all elements of the intelligence community to review, on an annual basis, individuals included on distribution lists for access to classified information. Such process shall ensure that only individuals who have a particularized 'need to know' (as determined by the Director) are continued on such distribution lists.

"(2) Not later than October 15 of each year, the Director shall certify to the congressional intelligence committees that the review required under paragraph (1) has been conducted in all elements of the intelligence community during the preceding fiscal year.

"(c) COMPLETION OF FINANCIAL DISCLOSURE STATEMENTS REQUIRED FOR ACCESS TO CERTAIN CLASSIFIED INFORMATION.—(1) The Director of Central Intelligence shall establish and implement a process by which each head of an element of the intelligence community directs that all employees of that element, in order to be granted access to classified information referred to in subsection (a) of section 1.3 of Executive Order No. 12968 (August 2, 1995; 60 F.R. 40245; 50 U.S.C. 435 note), submit financial disclosure forms as required under subsection (b) of such section.

"(2) The Director shall carry out paragraph (1) through the Office of the National Counterintelligence Executive.

"(d) ARRANGEMENTS TO HANDLE SENSITIVE INFORMATION.—The Director of Central Intelligence shall establish, for all elements of the intelligence community, programs and procedures by which sensitive classified information relating to human intelligence is safeguarded against unauthorized disclosure by employees of those elements.".

(2) The table of contents contained in the first section of such Act is amended in the items relating to title XI by adding at the end the following new item:

"Sec. 1102. Counterintelligence initiatives.".

(b) INTELLIGENCE AND NATIONAL SECURITY ASPECTS OF ESPIONAGE PROSECUTIONS.—The Attorney General, acting through the Office of Intelligence Policy and Review of the Department of Justice, and in consultation with the Director of Central Intelligence, acting through the Office of the National Counterintelligence Executive, shall establish policies and procedures to assist the Attorney General in the consideration of intelligence and national security-related equities in the development of charging documents and related pleadings in espionage prosecutions.

Subtitle D—Reports

SEC. 351. REPORT ON CLEARED INSIDER THREAT TO CLASSIFIED COMPUTER NETWORKS.

(a) REPORT REQUIRED.—The Director of Central Intelligence and the Secretary of Defense shall jointly submit to the appropriate committees of Congress a report on the risks to the national security of the United States of the current computer security practices of the elements of the intelligence community and of the Department of Defense.

(b) ASSESSMENTS.—The report under subsection (a) shall include an assessment of the following:

(1) The vulnerability of the computers and computer systems of the elements of the intelligence community, and of the Department of Defense, to various threats from foreign governments, international terrorist organizations, and organized crime, including information warfare (IW), Information Operations (IO), Computer Network Exploitation (CNE), and Computer Network Attack (CNA).

(2) The risks of providing users of local area networks (LANs) or wide-area networks (WANs) of computers that include classified information with capabilities for electronic mail, upload and download, or removable storage media without also deploying comprehensive computer firewalls, accountability procedures, or other appropriate security controls.

(3) Any other matters that the Director and the Secretary jointly consider appropriate for purposes of the report.

(c) INFORMATION ON ACCESS TO NETWORKS.—The report under subsection (a) shall also include information as follows:

(1) An estimate of the number of access points on each classified computer or computer system of an element of the intelligence community or the Department of Defense that permit unsupervised uploading or downloading of classified information, set forth by level of classification.

(2) An estimate of the number of individuals utilizing such computers or computer systems who have access to input-output devices on such computers or computer systems.

(3) A description of the policies and procedures governing the security of the access points referred to in paragraph (1), and an assessment of the adequacy of such policies and procedures.

(4) An assessment of the viability of utilizing other technologies (including so-called "thin client servers") to achieve enhanced security of such computers and computer systems through more rigorous control of access to such computers and computer systems.

(d) RECOMMENDATIONS.—The report under subsection (a) shall also include such recommendations for modifications or improvements of the current computer security practices of the elements of the intelligence community, and of the Department of Defense, as the Director and the Secretary jointly consider appropriate as a result of the assessments under subsection (b) and the information under subsection (c).

(e) SUBMITTAL DATE.—The report under subsection (a) shall be submitted not later than February 15, 2004.

(f) FORM.—The report under subsection (a) may be submitted in classified or unclassified form, at the election of the Director.

(g) DEFINITIONS.—In this section:

(1) The term "appropriate committees of Congress" means—

(A) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(B) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

(2) The term "elements of the intelligence community" means the elements of the intelligence community set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 352. REPORT ON SECURITY BACKGROUND INVESTIGATIONS AND SECURITY CLEARANCE PROCEDURES OF THE FEDERAL GOVERNMENT.

(a) REPORT REQUIRED.—The Director of Central Intelligence, the Secretary of Defense, the Attorney General, the Director of the Office of Personnel Management, and the heads of other appropriate Federal departments and agencies (as determined by the President) shall jointly submit to the appropriate committees of Congress a report on the utility and effectiveness of the current security background investigations and security clearance procedures of the Federal Government in meeting the purposes of such investigations and procedures.

(b) PARTICULAR REPORT MATTERS.—The report shall address in particular the following:

(1) A comparison of the costs and benefits of conducting background investigations for Secret clearance with the costs and benefits of conducting full field background investigations.

(2) The standards governing the revocation of security clearances.

(c) RECOMMENDATIONS.—The report under subsection (a) shall include such recommendations for modifications or improvements of the current security background investigations or security clearance procedures of the Federal Government as are considered appropriate as a result of the preparation of the report under that subsection.

(d) SUBMITTAL DATE.—The report under subsection (a) shall be submitted not later than February 15, 2004.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Select Committee on Intelligence and the Committees on Armed Services and the Judiciary of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committees on Armed Services

and the Judiciary of the House of Representatives.

SEC. 353. REPORT ON DETAIL OF CIVILIAN INTELLIGENCE PERSONNEL AMONG ELEMENTS OF THE INTELLIGENCE COMMUNITY AND THE DEPARTMENT OF DEFENSE.

(a) REPORT REQUIRED.—The Director of Central Intelligence shall, in consultation with the heads of the elements of the intelligence community, submit to the appropriate committees of Congress a report on means of improving the detail or transfer of civilian intelligence personnel between and among the various elements of the intelligence community for the purpose of enhancing the flexibility and effectiveness of the intelligence community in responding to changes in requirements for the collection, analysis, and dissemination of intelligence.

(b) REPORT ELEMENTS.—The report under subsection (a) shall—

(1) set forth a variety of proposals on means of improving the detail or transfer of civilian intelligence personnel as described in that subsection;

(2) identify the proposal or proposals determined by the heads of the elements of the intelligence community most likely to meet the purpose described in that subsection; and

(3) include such recommendations for such legislative or administrative action as the heads of the elements of the intelligence community consider appropriate to implement the proposal or proposals identified under paragraph (2).

(c) SUBMITTAL DATE.—The report under subsection (a) shall be submitted not later than February 15, 2004.

(d) DEFINITIONS.—In this section:

(1) The term "appropriate committees of Congress" means—

(A) the Select Committee on Intelligence and the Committees on Armed Services, Governmental Affairs, and the Judiciary of the Senate; and

(B) the Permanent Select Committee on Intelligence and the Committees on Armed Services, Government Reform, and the Judiciary of the House of Representatives.

(2) The term "elements of the intelligence community" means the elements of the intelligence community set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term "heads of the elements of the intelligence community" includes the Secretary of Defense with respect to each element of the intelligence community within the Department of Defense or the military departments.

SEC. 354. REPORT ON MODIFICATIONS OF POLICY AND LAW ON CLASSIFIED INFORMATION TO FACILITATE SHARING OF INFORMATION FOR NATIONAL SECURITY PURPOSES.

(a) REPORT.—Not later than four months after the date of the enactment of this Act, the President shall submit to the appropriate committees of Congress a report that—

(1) identifies impediments in current policy and regulations to the sharing of classified information horizontally across and among Federal departments and agencies, and vertically between the Federal Government and agencies of State and local governments and the private sector, for national security purposes, including homeland security; and

(2) proposes appropriate modifications of policy, law, and regulations to eliminate such impediments in order to facilitate such sharing of classified information for national security purposes, including homeland security.

(b) CONSIDERATIONS.—In preparing the report under subsection (a), the President shall—

(1) consider the extent to which the reliance on a document-based approach to the protection of classified information impedes the sharing of classified information; and

(2) consider the extent to which the utilization of a database-based approach, or other electronic approach, to the protection of classified information might facilitate the sharing of classified information.

(c) COORDINATION WITH OTHER INFORMATION SHARING ACTIVITIES.—In preparing the report under subsection (a), the President shall, to the maximum extent practicable, take into account actions being undertaken under the Homeland Security Information Sharing Act (subtitle I of title VIII of Public Law 107–296; 116 Stat. 2252; 6 U.S.C. 481 et seq.).

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Select Committee on Intelligence and the Committees on Armed Services, Governmental Affairs, and the Judiciary of the Senate; and

(2) the Permanent Select Committee on Intelligence, the Select Committee on Homeland Security, and the Committees on Armed Services and the Judiciary of the House of Representatives.

SEC. 355. REPORT ON STRATEGIC PLANNING.

(a) REPORT.—Not later than February 15, 2004, the Secretary of Defense and the Director of Central Intelligence shall jointly submit to the appropriate committees of Congress a report that assesses progress in the following:

(1) The development by the Department of Defense and the intelligence community of a comprehensive and uniform analytical capability to assess the utility and advisability of various sensor and platform architectures and capabilities for the collection of intelligence.

(2) The improvement of coordination between the Department and the intelligence community on strategic and budgetary planning.

(b) FORM.—The report under subsection (a) may be submitted in classified form.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

SEC. 356. REPORT ON UNITED STATES DEPENDENCE ON COMPUTER HARDWARE AND SOFTWARE MANUFACTURED OVERSEAS.

(a) REPORT.—Not later than February 15, 2004, the Director of Central Intelligence shall submit to the appropriate committees of Congress a report on the extent of United States dependence on computer hardware or software that is manufactured overseas.

(b) ELEMENTS.—The report under subsection (a) shall address the following:

(1) The extent to which the United States currently depends on computer hardware or software that is manufactured overseas.

(2) The extent to which United States dependence, if any, on such computer hardware or software is increasing.

(3) The vulnerabilities of the national security and economy of the United States as a result of United States dependence, if any, on such computer hardware or software.

(4) Any other matters relating to United States dependence, if any, on such computer hardware or software that the Director considers appropriate.

(c) CONSULTATION WITH PRIVATE SECTOR.—(1) In preparing the report under subsection (a), the Director may consult, and is encouraged to consult, with appropriate persons and entities in the computer hardware or software industry and with other appropriate persons and entities in the private sector.

(2) Consultations of the Director with persons or entities under paragraph (1) shall not be treated as the activities of an advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(d) FORM.—(1) The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(2) The report may be in the form of a National Intelligence Estimate.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

SEC. 357. REPORT ON LESSONS LEARNED FROM MILITARY OPERATIONS IN IRAQ.

(a) REPORT.—As soon as possible, but not later than one year after the date of the enactment of this Act, the Director of Central Intelligence shall submit to the appropriate committees of Congress a report on the intelligence lessons learned as a result of Operation Iraqi Freedom, including lessons relating to the following:

(1) The tasking, collection, processing, exploitation, analysis, and dissemination of intelligence.

(2) The accuracy, timeliness, and objectivity of intelligence analysis.

(3) The intelligence support available to policymakers and members of the Armed Forces in combat.

(4) The coordination of intelligence activities and operations with military operations.

(5) The strengths and limitations of intelligence systems and equipment.

(6) Such other matters as the Director considers appropriate.

(b) RECOMMENDATIONS.—The report under subsection (a) shall include such recommendations on improvement in the matters described in subsection (a) as the Director considers appropriate.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives; and

(2) the Select Committee on Intelligence and the Committee on Armed Services of the Senate.

SEC. 358. REPORTS ON CONVENTIONAL WEAPONS AND AMMUNITION OBTAINED BY IRAQ IN VIOLATION OF CERTAIN UNITED NATIONS SECURITY COUNCIL RESOLUTIONS.

(a) PRELIMINARY REPORT.—Not later than 90 days after the date of the enactment of this Act, the Director of the Defense Intelligence Agency shall, after such consultation with the Secretary of State and the Attorney General as the Director considers appropriate, submit to the appropriate committees of Congress a preliminary report on all information obtained by the Department of Defense and the intelligence community on the conventional weapons and ammunition obtained by Iraq in violation of applicable resolutions of the United Nations Security Council adopted since the invasion of Kuwait by Iraq in August 1990.

(b) FINAL REPORT.—(1) Not later than one year after the date of the enactment of this Act, the Director shall submit to the appropriate committees of Congress a final report on the information described in subsection (a).

(2) The final report under paragraph (1) shall include such updates of the preliminary report under subsection (a) as the Director considers appropriate.

(c) ELEMENTS.—Each report under this section shall set forth, to the extent practicable, with

respect to each shipment of weapons or ammunition addressed in such report the following:

(1) The country of origin.

(2) Any country of transshipment.

(d) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Select Committee on Intelligence and the Committees on Armed Services and Foreign Relations of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committees on Armed Services and International Relations of the House of Representatives.

SEC. 359. REPORT ON OPERATIONS OF DIRECTORATE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION AND TERRORIST THREAT INTEGRATION CENTER.

(a) REPORT REQUIRED.—The President shall submit to the appropriate committees of Congress a report on the operations of the Directorate of Information Analysis and Infrastructure Protection of the Department of Homeland Security and the Terrorist Threat Integration Center. The report shall include the following:

(1) An assessment of the operations of the Directorate and the Center, including the capabilities of each—

(A) to meet personnel requirements, including requirements to employ qualified analysts, and the status of efforts to employ qualified analysts;

(B) to share intelligence information with the other elements of the intelligence community, including the sharing of intelligence information through secure information technology connections between the Directorate, the Center, and the other elements of the intelligence community;

(C) to disseminate intelligence information, or analyses of intelligence information, to other departments and agencies of the Federal Government and, as appropriate, to State and local governments;

(D) to coordinate with State and local counterterrorism and law enforcement officials;

(E) to receive information from Federal, State, and local officials, and private sector entities, relating to the respective responsibilities and authorities of the Directorate and the Center; and

(F) to access information, including intelligence and law enforcement information, from the departments and agencies of the Federal Government, including the ability of the Directorate to access, in a timely and efficient manner, all information authorized by section 202 of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 122).

(2) An assessment of the ability of the Center to fulfill the responsibilities assigned to it by the President given its structure, authorities, current assets, and capabilities.

(3) An assessment of the ability of the Directorate to fulfill the responsibilities set forth in section 201 of the Homeland Security Act of 2002 (6 U.S.C. 121) given its current assets and capabilities.

(4) A plan of action (including appropriate milestones, funding, and sources of funding) for bringing the Center to its full operational capacity as called for in the Information on the State of the Union given by the President to Congress under section 3 of Article II of the Constitution of the United States in 2003.

(5) A delineation of the responsibilities and duties of the Directorate and of the responsibilities and duties of the Center.

(6) A delineation and summary of the areas in which the responsibilities and duties of the Directorate, the Center, and other elements of the Federal Government overlap.

(7) An assessment of whether the areas of overlap, if any, delineated under paragraph (6) represent an inefficient utilization of resources.

(8) A description of the policies and procedures to ensure that the Directorate and the Center comply with the Constitution and applicable statutes, Executive orders, and regulations of the United States.

(9) The practical impact, if any, of the operations of the Center on individual liberties and privacy.

(10) Such information as the President considers appropriate to explain the basis for the establishment and operation of the Center as a "joint venture" of participating agencies rather than as an element of the Directorate reporting directly to the Secretary of Homeland Security through the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection.

(b) SUBMITTAL DATE.—The report required by this section shall be submitted not later than May 1, 2004.

(c) FORM.—The report required by this section shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Select Committee on Intelligence and the Committees on Governmental Affairs, the Judiciary, and Appropriations of the Senate; and

(2) the Permanent Select Committee on Intelligence, the Select Committee on Homeland Security, and the Committees on the Judiciary and Appropriations of the House of Representatives.

SEC. 360. REPORT ON TERRORIST SCREENING CENTER.

(a) REPORT.—Not later than September 16, 2004, the President shall submit to Congress a report on the establishment and operation of the Terrorist Screening Center, established on September 16, 2003, by Homeland Security Presidential Directive 6, including the matters described in subsection (b).

(b) COVERED MATTERS.—The matters referred to in subsection (a) are the following:

(1) An analysis of the operations of the Terrorist Screening Center to ensure that the Terrorist Screening Center does not violate the Constitution, or any statute, Executive order, or regulation of the United States.

(2) A description of the architecture of the database system of the Terrorist Screening Center, including the number of databases maintained, operated, or administered by the Terrorist Screening Center, and the extent to which these databases have been integrated.

(3) A determination of whether data from all watch lists detailed in the April 2003 report of the Comptroller General of the United States, entitled "Information Technology: Terrorist Watch Lists should be Consolidated to Promote Better Integration and Sharing," have been incorporated into the Terrorist Screening Center database system.

(4) A determination of whether there remain any relevant databases that are not yet part of the Terrorist Screening Center database system.

(5) A schedule that specifies the dates on which each Federal watch list database identified in the report referred to in paragraph (3), or determined under paragraph (4) to be not yet part of the Terrorist Screening Center database system, were, or will be, integrated into the Terrorist Screening Center database system.

(6) A description of the protocols in effect to ensure the protection of classified and sensitive information contained in the Terrorist Screening Center database system.

(7) A description of—

(A) the process by which databases in the Terrorist Screening Center database system are reviewed for accuracy and timeliness of data and the frequency of updates of such reviews; and

(B) the mechanism used to ensure that data within a particular database is synchronized and replicated throughout the database system of the Terrorist Screening Center.

(8) A description of the extent to which the Terrorist Screening Center makes information available to the private sector and critical infrastructure components, and the criteria for determining which private sector and critical infrastructure components receive that information.

(9) The number of individuals listed in the Terrorist Screening Center database system.

(10) The estimated operating budget of, and sources of funding for, the Terrorist Screening Center for each of fiscal years 2004, 2005, and 2006.

(11) An assessment of the impact of the Terrorist Screening Center on current law enforcement systems.

(12) The practical impact, if any, of the operations of the Terrorist Screening Center on individual liberties and privacy.

(13) Such recommendations as the President considers appropriate for modifications of law or policy to ensure the continuing operation of the Terrorist Screening Center.

(c) FORM OF REPORT.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

SEC. 361. REPEAL AND MODIFICATION OF REPORT REQUIREMENTS RELATING TO INTELLIGENCE ACTIVITIES.

(a) ANNUAL EVALUATION OF PERFORMANCE AND RESPONSIVENESS OF INTELLIGENCE COMMUNITY.—Section 105 of the National Security Act of 1947 (50 U.S.C. 403–5) is amended by striking subsection (d).

(b) PERIODIC REPORTS ON DISCLOSURE OF INTELLIGENCE INFORMATION TO UNITED NATIONS.—Section 112(b) of the National Security Act of 1947 (50 U.S.C. 404g(b)(1)) is amended—

(1) in the subsection caption, by striking "PERIODIC" and inserting "ANNUAL";

(2) in paragraph (1), by striking "semiannually" and inserting "annually"; and

(3) in paragraph (3), by striking "periodic" and inserting "the annual".

(c) ANNUAL REPORT ON INTELLIGENCE COMMUNITY COOPERATION WITH COUNTERDRUG ACTIVITIES.—Section 114 of the National Security Act of 1947 (50 U.S.C. 404i) is amended—

(1) by striking subsection (a); and

(2) by redesignating subsections (b) through (f) as subsections (a) through (e), respectively.

(d) ANNUAL REPORT ON COVERT LEASES.—Section 114 of the National Security Act of 1947, as amended by this section, is further amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(e) ANNUAL REPORT ON CERTAIN FOREIGN COMPANIES INVOLVED IN PROLIFERATION OF WEAPONS OF MASS DESTRUCTION.—Section 827 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2430; 50 U.S.C. 404n–3) is repealed.

(f) ANNUAL REPORT ON INTELLIGENCE ACTIVITIES OF PEOPLE'S REPUBLIC OF CHINA.—Section 308 of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 111 Stat. 2253; 50 U.S.C. 402a note) is repealed.

(g) ANNUAL REPORT ON COORDINATION OF COUNTERINTELLIGENCE MATTERS WITH FBI.—Section 811(c) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 50 U.S.C. 402a(c)) is amended—

(1) by striking paragraph (6); and

(2) by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(h) ANNUAL REPORT ON POSTEMPLOYMENT ASSISTANCE FOR TERMINATED INTELLIGENCE EMPLOYEES.—Section 1611 of title 10, United States Code, is amended by striking subsection (e).

(i) Annual Report on Activities of FBI Personnel Outside the United States.—Section 540C of title 28, United States Code, is repealed.

(j) Annual Report on Exceptions to Consumer Disclosure Requirements for National Security Investigations.—Section 604(b)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)) is amended—

(1) by striking subparagraphs (D) and (E); and

(2) by redesignating subparagraph (F) as subparagraph (D).

(k) Reports on Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions.—Subsection (b)(1) of section 721 of the Intelligence Authorization Act for Fiscal Year 1997 (Public Law 104–293; 50 U.S.C. 2366) is amended by striking "a semiannual" and inserting "an annual".

(l) Conforming Amendments.—Section 507 of the National Security Act of 1947 (50 U.S.C. 415b) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking subparagraphs (A), (C), (G), (I), (J), and (L);

(ii) by redesignating subparagraphs (B), (D), (E), (H), (K), (M), and (N) as subparagraphs (A), (C), (D), (G), (H), and (I), respectively;

(iii) by inserting after subparagraph (A), as so redesignated, the following new subparagraph (B):

"(B) The annual report on intelligence provided to the United Nations required by section 112(b)(1)."; and

(iv) by inserting after subparagraph (D), as so redesignated, the following new subparagraph (E):

"(E) The annual report on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions required by section 721 of the Intelligence Authorization Act for Fiscal Year 1997 (Public Law 104–293; 50 U.S.C. 2366)."; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking "section 114(b)" and inserting "section 114(a)";

(ii) in subparagraph (B), by striking "section 114(d)" and inserting "section 114(c)";

(iii) by striking subparagraphs (C), (E), and (F); and

(iv) by redesignating subparagraphs (D) and (G) as subparagraphs (C) and (D), respectively; and

(2) in subsection (b)—

(A) by striking paragraphs (1) and (4); and

(B) by redesignating paragraphs (2), (3), (5), (6), (7), and (8) as paragraphs (1), (2), (3), (4), (5), and (6), respectively.

(m) Clerical Amendments.—

(1) National Security Act of 1947.—The table of contents for the National Security Act of 1947 is amended by striking the item relating to section 603.

(2) Title 28, United States Code.—The table of sections at the beginning of chapter 33 of title 28, United States Code, is amended by striking the item relating to section 540C.

(n) Effective Date.—The amendments made by this section shall take effect on December 31, 2003.

Subtitle E—Other Matters

SEC. 371. EXTENSION OF SUSPENSION OF REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

Section 311 of the Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107–108; 22 U.S.C. 7301 note) is amended—

*(1) in the heading, by striking "***TWO-YEAR***" before "***SUSPENSION OF REORGANIZATION***"; and*

(2) in the text, by striking "ending on October 1, 2003" and inserting "ending on the date that is 60 days after the appropriate congressional committees of jurisdiction (as defined in section 324(d) of that Act (22 U.S.C. 7304(d)) are notified jointly by the Secretary of State (or the Secretary's designee) and the Director of the Office of Management and Budget (or the Director's designee) that the operational framework for the office has been terminated".

SEC. 372. MODIFICATIONS OF AUTHORITIES ON EXPLOSIVE MATERIALS.

(a) Clarification of Aliens Authorized To Distribute Explosive Materials.—Section 842(d)(7) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B)—

(A) by inserting "or" at the end of clause (i); and

(B) by striking clauses (iii) and (iv); and

(3) by adding the following new subparagraphs:

"(C) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, who is present in the United States under military orders for training or other military purpose authorized by the United States and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the authorized military purpose; or

"(D) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;".

(b) Clarification of Aliens Authorized To Possess or Receive Explosive Materials.—Section 842(i)(5) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B)—

(A) by inserting "or" at the end of clause (i); and

(B) by striking clauses (iii) and (iv); and

(3) by adding the following new subparagraphs:

"(C) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, who is present in the United States under military orders for training or other military purpose authorized by the United States and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the authorized military purpose; or

"(D) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;".

SEC. 373. MODIFICATION OF PROHIBITION ON THE NATURALIZATION OF CERTAIN PERSONS.

Section 313(e)(4) of the Immigration and Nationality Act (8 U.S.C. 1424(e)(4)) is amended—

(1) by inserting "when Department of Defense activities are relevant to the determination" after "Secretary of Defense"; and

(2) by inserting "and the Secretary of Homeland Security" after "Attorney General".

SEC. 374. MODIFICATION TO DEFINITION OF FINANCIAL INSTITUTION IN RIGHT TO FINANCIAL PRIVACY ACT.

(a) Modification of Definition.—Section 1114 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414) is amended by adding at the end the following:

"(d) For purposes of this section, and sections 1115 and 1117 insofar as they relate to the operation of this section, the term 'financial institution' has the same meaning as in subsections (a)(2) and (c)(1) of section 5312 of title 31, United States Code, except that, for purposes of this section, such term shall include only such a financial institution any part of which is located inside any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.".

(b) Cross Reference Modification.—Section 1101(1) of such Act (12 U.S.C. 3401(1)) is amended by inserting ", except as provided in section 1114," before "means any office".

SEC. 375. COORDINATION OF FEDERAL GOVERNMENT RESEARCH ON SECURITY EVALUATIONS.

(a) Workshops for Coordination of Research.—The National Science Foundation and the Office of Science and Technology Policy shall jointly sponsor not less than two workshops on the coordination of Federal Government research on the use of behavioral, psychological, and physiological assessments of individuals in the conduct of security evaluations.

(b) Deadline for Completion of Activities.—The activities of the workshops sponsored under subsection (a) shall be completed not later than March 1, 2004.

(c) Purposes.—The purposes of the workshops sponsored under subsection (a) are as follows:

(1) To provide a forum for cataloging and coordinating federally funded research activities relating to the development of new techniques in the behavioral, psychological, or physiological assessment of individuals to be used in security evaluations.

(2) To develop a research agenda for the Federal Government on behavioral, psychological, and physiological assessments of individuals, including an identification of the research most likely to advance the understanding of the use of such assessments of individuals in security evaluations.

(3) To distinguish between short-term and long-term areas of research on behavioral, psychological, and physiological assessments of individuals in order to maximize the utility of short-term and long-term research on such assessments.

(4) To identify the Federal agencies best suited to support research on behavioral, psychological, and physiological assessments of individuals.

(5) To develop recommendations for coordinating future federally funded research for the development, improvement, or enhancement of security evaluations.

(d) Advisory Group.—(1) In order to assist the National Science Foundation and the Office of Science and Technology Policy in carrying out the activities of the workshops sponsored under subsection (a), there is hereby established an interagency advisory group with respect to such workshops.

(2) The advisory group shall be composed of the following:

(A) A representative of the Social, Behavioral, and Economic Directorate of the National Science Foundation.

(B) A representative of the Office of Science and Technology Policy.

(C) The Secretary of Defense, or a designee of the Secretary.

(D) The Secretary of State, or a designee of the Secretary.

(E) The Attorney General, or a designee of the Attorney General.

(F) The Secretary of Energy, or a designee of the Secretary.

(G) The Secretary of Homeland Security, or a designee of the Secretary.

(H) The Director of Central Intelligence, or a designee of the Director.

(I) The Director of the Federal Bureau of Investigation, or a designee of the Director.

(J) The National Counterintelligence Executive, or a designee of the National Counterintelligence Executive.

(K) Any other official assigned to the advisory group by the President for purposes of this section.

(3) The members of the advisory group under subparagraphs (A) and (B) of paragraph (2) shall jointly head the advisory group.

(4) The advisory group shall provide the Foundation and the Office such information, advice, and assistance with respect to the workshops sponsored under subsection (a) as the advisory group considers appropriate.

(5) The advisory group shall not be treated as an advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) FOIA EXEMPTION.—All files of the National Science Foundation and the Office of Science and Technology Policy for purposes of administering this section, including any files of a Federal, State, or local department or agency or of a private sector entity provided to or utilized by a workshop or advisory group under this section, shall be exempt from the provisions of section 552 of title 5, United States Code, that require publication, disclosure, search, or review in connection therewith.

(f) REPORT.—Not later than March 1, 2004, the National Science Foundation and the Office of Science and Technology Policy shall jointly submit to Congress a report on the results of activities of the workshops sponsored under subsection (a), including the findings and recommendations of the Foundation and the Office as a result of such activities.

(g) FUNDING.—(1) Of the amount authorized to be appropriated for the Intelligence Community Management Account by section 104(a), $500,000 shall be available to the National Science Foundation and the Office of Science and Technology Policy to carry out this section.

(2) The amount authorized to be appropriated by paragraph (1) shall remain available until expended.

SEC. 376. TREATMENT OF CLASSIFIED INFORMATION IN MONEY LAUNDERING CASES.

Section 5318A of title 31, United States Code, is amended by adding at the end the following:

"(f) CLASSIFIED INFORMATION.—In any judicial review of a finding of the existence of a primary money laundering concern, or of the requirement for 1 or more special measures with respect to a primary money laundering concern, made under this section, if the designation or imposition, or both, were based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.), such information may be submitted by the Secretary to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review of any finding made or any requirement imposed under this section.".

SEC. 377. TECHNICAL AMENDMENTS.

(a) NATIONAL SECURITY ACT OF 1947.—Section 112(d)(1) of the National Security Act of 1947 (50 U.S.C. 404g(d)(1)) is amended by striking "section 103(c)(6)" and inserting "section 103(c)(7)".

(b) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—(1) Section 5(a)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(1)) is amended by striking "(c)(6)" each place it appears and inserting "(c)(7)".

(2) Section 6 of that Act (50 U.S.C. 403g) is amended by striking "section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6))" and inserting "section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))".

(3) Section 15 of that Act (50 U.S.C. 403o) is amended—

(A) in subsection (a)(1), by striking "special policemen of the General Services Administration perform under the first section of the Act entitled 'An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policeman for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes'(40 U.S.C. 318)," and inserting "officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40, United States Code,"; and

(B) in subsection (b), by striking "the fourth section of the Act referred to in subsection (a) of this section (40 U.S.C. 318c)" and inserting "section 1315(c)(2) of title 40, United States Code".

(c) NATIONAL SECURITY AGENCY ACT OF 1959.—Section 11 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended—

(1) in subsection (a)(1), by striking "special policemen of the General Services Administration perform under the first section of the Act entitled 'An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policeman for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes' (40 U.S.C. 318)" and inserting "officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40, United States Code,"; and

(2) in subsection (b), by striking "the fourth section of the Act referred to in subsection (a) (40 U.S.C. 318c)" and inserting "section 1315(c)(2) of title 40, United States Code".

(d) INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003.—Section 343 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2399; 50 U.S.C. 404n–2) is amended—

(1) in subsection (c), by striking "section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6))" and inserting "section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))"; and

(2) in subsection (e)(2), by striking "section 103(c)(6)" and inserting "section 103(c)(7)".

(e) FEDERAL INFORMATION SECURITY MANAGEMENT ACT OF 2002.—Section 3535(b)(1) of title 44, United States Code, as added by section 1001(b)(1) of the Homeland Security Act of 2002 (Public Law 107–296), and section 3545(b)(1) of title 44, United States Code, as added by section 301(b)(1) of the E–Government Act of 2002 (Public Law 107–347), are each amended by inserting "or any other law" after "1978".

(f) PUBLIC LAW 107–173.—Section 201(c)(3)(F) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173; 116 Stat. 548; 8 U.S.C. 1721(c)(3)(F)) is amended by striking "section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6))" and inserting "section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))".

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. AMENDMENT TO CERTAIN CENTRAL INTELLIGENCE AGENCY ACT OF 1949 NOTIFICATION REQUIREMENTS.

Section 4(b)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403e(b)(5)) is amended by inserting ", other than regulations under paragraph (1)," after "Regulations".

SEC. 402. PROTECTION OF CERTAIN CENTRAL INTELLIGENCE AGENCY PERSONNEL FROM TORT LIABILITY.

Section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o) is amended by adding at the end the following new subsection:

"(d)(1) Notwithstanding any other provision of law, any Agency personnel designated by the Director under subsection (a), or designated by the Director under section 5(a)(4) to carry firearms for the protection of current or former Agency personnel and their immediate families, defectors and their immediate families, and other persons in the United States under Agency auspices, shall be considered for purposes of chapter 171 of title 28, United States Code, or any other provision of law relating to tort liability, to be acting within the scope of their office or employment when such Agency personnel take reasonable action, which may include the use of force, to—

"(A) protect an individual in the presence of such Agency personnel from a crime of violence;

"(B) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or

"(C) prevent the escape of any individual whom such Agency personnel reasonably believe to have committed a crime of violence in the presence of such Agency personnel.

"(2) Paragraph (1) shall not affect the authorities of the Attorney General under section 2679 of title 28, United States Code.

"(3) In this subsection, the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code.".

SEC. 403. REPEAL OF OBSOLETE LIMITATION ON USE OF FUNDS IN CENTRAL SERVICES WORKING CAPITAL FUND.

Section 21(f)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u(f)(2)) is amended—

(1) in subparagraph (A), by striking "(A) Subject to subparagraph (B), the Director" and inserting "The Director"; and

(2) by striking subparagraph (B).

SEC. 404. PURCHASES BY CENTRAL INTELLIGENCE AGENCY OF PRODUCTS OF FEDERAL PRISON INDUSTRIES.

Notwithstanding section 4124 of title 18, United States Code, purchases by the Central Intelligence Agency from Federal Prison Industries shall be made only if the Director of Central Intelligence determines that the product or service to be purchased from Federal Prison Industries best meets the needs of the Agency.

SEC. 405. POSTPONEMENT OF CENTRAL INTELLIGENCE AGENCY COMPENSATION REFORM AND OTHER MATTERS.

(a) POSTPONEMENT OF COMPENSATION REFORM PLAN.—Section 402(a)(2) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2403; 50 U.S.C. 403–4 note) is amended by striking "February 1, 2004," and all that follows through the end and inserting "the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2005.".

(b) CONTRIBUTION BY CIA EMPLOYEES OF CERTAIN BONUS PAY TO THRIFT SAVINGS PLAN.—

(1) CIVIL SERVICE RETIREMENT SYSTEM PARTICIPANTS.—Section 8351(d) of title 5, United States Code, is amended—

(A) by inserting "(1)" after "(d)"; and

(B) by adding at the end the following new paragraph:

"(2)(A) Only those employees of the Central Intelligence Agency participating in the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 403–4 note) and making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project.

"(B) Contributions under this paragraph are subject to section 8432(d) of this title.".

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM PARTICIPANTS.—Section 8432 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(k)(1) Only those employees of the Central Intelligence Agency participating in the pilot

project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 403–4 note) and making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project.

"(2) Contributions under this subsection are subject to subsection (d).

"(3) For purposes of subsection (c), basic pay of an employee of the Central Intelligence Agency participating in the pilot project referred to in paragraph (1) shall include bonus pay received by the employee as part of the pilot project.".

(c) Report.—(1) The Director of Central Intelligence shall submit to the congressional intelligence committees a report on the amount of compensation (including basic pay, bonuses, and employer contributions to the Thrift Savings Plan) of each employee of the Central Intelligence Agency participating in the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2403; 50 U.S.C. 403–4 note), and on the amount that each such employee would have received had such employee received compensation under the existing system of compensation used by the Agency.

(2) The report required by paragraph (1) shall be submitted together with the report required by paragraph (3) of such section 402(b).

(3) In this subsection, the term "congressional intelligence committees" has the meaning given that term in section 402(d) of the Intelligence Authorization Act for Fiscal Year 2003.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

SEC. 501. PROTECTION OF CERTAIN NATIONAL SECURITY AGENCY PERSONNEL FROM TORT LIABILITY.

Section 11 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by adding at the end the following new subsection:

"(d)(1) Notwithstanding any other provision of law, agency personnel designated by the Director of the National Security Agency under subsection (a) shall be considered for purposes of chapter 171 of title 28, United States Code, or any other provision of law relating to tort liability, to be acting within the scope of their office or employment when such agency personnel take reasonable action, which may include the use of force, to—

"(A) protect an individual in the presence of such agency personnel from a crime of violence;

"(B) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or

"(C) prevent the escape of any individual whom such agency personnel reasonably believe to have committed a crime of violence in the presence of such agency personnel.

"(2) Paragraph (1) shall not affect the authorities of the Attorney General under section 2679 of title 28, United States Code.

"(3) In this subsection, the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code.".

SEC. 502. USE OF FUNDS FOR COUNTERDRUG AND COUNTERTERRORISM ACTIVITIES FOR COLOMBIA.

(a) Authority.—Funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counterdrug activities for fiscal year 2004, and any unobligated funds available to any element of the intelligence community for such activities for a prior fiscal year, shall be available—

(1) to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by organizations designated as terrorist organizations (such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC)); and

(2) to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations.

(b) Applicability of Certain Laws and Limitations.—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Sections 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8077 of the Department of Defense Appropriations Act, 2004 (Public Law 108–87; 117 Stat. 1090).

(3) The numerical limitations on the number of United States military personnel and United States individual civilian contractors in section 3204(b)(1) of the Emergency Supplemental Act, 2000 (division B of Public Law 106–246; 114 Stat. 575), as amended by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (115 Stat. 2131).

(c) Limitation on Participation of United States Personnel.—No United States Armed Forces personnel or United States civilian contractor employed by the United States Armed Forces will participate in any combat operation in connection with assistance made available under this section, except for the purpose of acting in self defense or during the course of search and rescue operations for United States citizens.

SEC. 503. SCENE VISUALIZATION TECHNOLOGIES.

Of the amount authorized to be appropriated by this Act, $2,500,000 shall be available for the National Geospatial-Intelligence Agency (NGA) for scene visualization technologies.

SEC. 504. MEASUREMENT AND SIGNATURES INTELLIGENCE RESEARCH PROGRAM.

(a) Research Program.—(1) The Secretary of Defense and the Director of Central Intelligence shall jointly carry out a program to incorporate the results of basic research on sensors into the measurement and signatures intelligence systems of the United States, to the extent the results of such research are applicable to such systems.

(2) In carrying out paragraph (1), the Secretary of Defense and the Director of Central Intelligence shall act through the Director of the Defense Intelligence Agency's Directorate for MASINT and Technical Collection (hereinafter in this section referred to as the "Director").

(b) Program Components.—The program under subsection (a) shall review and assess basic research on sensors and technologies conducted both by the United States Government and by non-governmental entities. In carrying out the program, the Director shall protect intellectual property rights, maintain organizational flexibility, and establish research projects, funding levels, and potential benefits in an equitable manner through the Directorate.

(c) Advisory Panel.—(1) The Director shall establish an advisory panel to assist the Director in carrying out the program under subsection (a).

(2) The advisory panel shall be headed by the Director who shall determine the selection, review, and assessment of the research projects under the program.

(3)(A) The Director shall appoint as members of the advisory panel representatives of each entity of the MASINT community, and may appoint as such members representatives of national laboratories, universities, and private sector entities.

(B) For purposes of this subsection the term "MASINT community" means academic, professional, industrial, and government entities that are committed towards the advancement of the sciences in measurement and signatures intelligence.

(C) The term for a member of the advisory panel shall be established by the Director, but may not exceed a period of 5 consecutive years.

(D) Members of the advisory panel may not receive additional pay, allowances, or benefits by reason of their service on the advisory panel, but may receive per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(4) The Director may accept contributions from non-governmental participants on the advisory panel to defray the expenses of the advisory panel.

(5) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the advisory panel established under this subsection.

(d) FOIA Exemption.—All files in the possession of the Defense Intelligence Agency for purposes of administering the program under this section, including any files of a Federal, State, or local department or agency or of a private sector entity provided to or utilized by the program, shall be exempt from the provisions of section 552 of title 5, United States Code, that require publication, disclosure, search, or review in connection therewith.

SEC. 505. AVAILABILITY OF FUNDS OF NATIONAL SECURITY AGENCY FOR NATIONAL SECURITY SCHOLARSHIPS.

(a) Availability of Funds.—Any funds authorized to be appropriated for the National Security Agency for a fiscal year after fiscal year 2003 may be made available to the Independent College Fund of Maryland (also known as the "I–Fund") for the purpose of the establishment and provision of national security scholarships to the extent such funds are specifically authorized for that purpose.

(b) Mechanisms of Availability.—Funds may be made available to the Independent College Fund of Maryland under subsection (a) by grant, contract, cooperative agreement, or such other appropriate mechanisms as the Director of the National Security Agency considers appropriate.

And the Senate agree to the same.

From the Permanent Select Committee on Intelligence, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

Porter J. Goss,
Doug Bereuter,
Sherwood Boehlert,
Jim Gibbons,
Ray LaHood,
Randy "Duke" Cunningham,
Pete Hoekstra,
Richard Burr,
Terry Everett,
Elton Gallegly,
Mac Collins,
Jane Harman,
Alcee L. Hastings,
Silvestre Reyes,
Leonard L. Boswell,
Collin C. Peterson,
Bud Cramer,
Anna G. Eshoo,
Rush Holt,
C.A. Dutch Ruppersberger.

From the Committee on Armed Services, for consideration of defense tactical intelligence and related activities:

Duncan Hunter,
Curt Weldon,
Managers on the Part of the House.

From the Select Committee on Intelligence:

Pat Roberts,
Orrin Hatch,
Mike DeWine,
Christopher S. Bond,
Trent Lott,
Olympia Snowe,
Chuck Hagel,
Saxby Chambliss,
John Warner,
Jay Rockefeller,
Carl Levin,
Dianne Feinstein,
Ron Wyden,
Dick Durbin,
Evan Bayh,
John Edwards,
Barbara A. Mikulski.
From the Committee on Armed Services:
Wayne Allard,
Bill Nelson.
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the Senate and House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2417), to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, submit the following joint statement to the Senate and House in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The managers agree that the congressionally directed actions described in the House bill, the Senate amendment, the respective committee reports, and classified annexes accompanying H.R. 2417 and S. 1025, should be undertaken to the extent that such congressionally directed actions are not amended, altered, substituted, or otherwise specifically addressed in either this joint Explanatory Statement or in the classified annex to the conference report on the bill H.R. 2417.

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the Conferees, and minor drafting and clarifying changes.

TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations

Section 101 of the conference report lists the departments, agencies, and other elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for fiscal year 2004. The list illustrates the oversight and legislative jurisdiction exercised by the Intelligence Committees in both Houses. It also reflects the primary jurisdiction of the Senate Select Committee on Intelligence over all presidential nominations within the intelligence elements of all departments, agencies, and other entities of the United States Government. The managers note that this conference report marks the first appearance of the Department of Homeland Security in an intelligence authorization bill. This reflects the jurisdiction of the Intelligence Committees in both Houses over the intelligence activities and components of that Department as established by Congress in the "Homeland Security Act of 2002" (P.L. 107–296), and as designated by the President in Executive Order 13284 (January 23, 2003). The Conferees have also included the Department of Justice (DoJ) in this section to better reflect the fact that Intelligence Committee jurisdiction of both Houses extends to the intelligence activities and components of DoJ, including, particularly, the Office of Intelligence Policy and Review, which directly supports numerous National Foreign Intelligence Program (NFIP) activities across the Intelligence Community. Section 101 is identical to Section 101 of the House bill.

Sec. 102. Classified schedule of authorizations

Section 102 of the conference report makes clear that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and applicable personnel ceilings covered under this Title for fiscal year 2004 are contained in a classified Schedule of Authorizations. The classified Schedule of Authorizations is incorporated into the Act by this section. The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The classified annex provides details of the Schedule. Section 102 is identical to Section 102 of the House bill.

Sec. 103. Personnel ceiling adjustments

Section 103 of the conference report authorizes the Director of Central Intelligence (DCI), with the approval of the Director of the Office of Management and Budget, in fiscal year 2004, to authorize employment of civilian personnel in excess of the personnel ceilings applicable to the components of the Intelligence Community under Section 102 by an amount not to exceed two percent of the total of the ceilings applicable under Section 102. The DCI may exercise this authority only if necessary to the performance of important intelligence functions. Any exercise of this authority must be reported to the Intelligence Committees of the Congress.

The Conferees emphasize that the authority conferred by Section 103 is not intended to permit wholesale increases in personnel strength in any intelligence component. Rather, the section provides the DCI with flexibility to adjust personnel levels temporarily for contingencies and for overages caused by an imbalance between hiring new employees and attrition of current employees. The Conferees do not expect the DCI to allow heads of intelligence components to plan to exceed levels set in the Schedule of Authorizations except for the satisfaction of clearly identified hiring needs that are consistent with the authorization of personnel strengths in this bill. In no case is this authority to be used to provide for positions denied by this bill. Section 103 of the House bill and Section 103 of the Senate amendment are identical.

Sec. 104. Intelligence Community Management Account

Section 104 of the conference report authorizes appropriations for the Intelligence Community Management Account (CMA) of the DCI and sets the personnel end-strength for the Intelligence Community Management Staff for fiscal year 2004.

Subsection (a) authorizes appropriations of $221,513,000 for fiscal year 2004 for the activities of the CMA of the DCI.

Subsection (b) authorizes 310 full-time personnel for the Intelligence Community Management Staff for fiscal year 2004 and provides that such personnel may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (c) authorizes additional appropriations and personnel for the CMA as specified in the classified Schedule of Authorizations and permits additional amounts to remain available for research and development through September 30, 2005. Subsection (c) of the House bill provided only for one-year research and development funds. The House recedes to the Senate.

Subsection (d) requires that, except as provided in Section 113 of the National Security Act of 1947, during fiscal year 2004, personnel from another element of the United States Government be detailed to an element of the CMA on a reimbursable basis, or for temporary situations of less than one year on a non-reimbursable basis.

Subsection (e) authorizes $47,142,000 of the amount authorized in subsection (a) to be made available for the National Drug Intelligence Center (NDIC). Subsection (e) requires the DCI to transfer these funds to the Attorney General to be used for NDIC activities under the authority of the Attorney General and subject to Section 103 (d) (1) of the National Security Act.

Although a DoJ organization, the NDIC is authorized and funded entirely through NFIP funds. The Conferees expect NDIC to be better integrated into the Intelligence Community, particularly with respect to counter-narcotics activities and strategic planning.

Sec. 105. Office of Intelligence and Analysis of the Department of the Treasury

Section 105 is similar to Section 105 of the House bill. The Senate amendment had no similar provision. The Senate recedes with slight modifications. Section 105 authorizes the establishment of an Office of Intelligence and Analysis within the Department of the Treasury (Treasury) to be headed by a presidentially appointed and Senate-confirmed Assistant Secretary. Subsection (c) requires that the Secretary of the Treasury consult with the DCI before recommending to the President an individual to be nominated to the position.

As a result of the findings of the "Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001" (Joint Inquiry), the Conferees seek to ensure that there is full, appropriate, and timely sharing of information and analysis within the U.S. Government concerning financial networks associated with international terrorism. Since the September 11, 2001, terrorist attacks, the U.S. Government has blocked the assets of over 260 individuals and groups supporting terrorist causes. It has also frozen approximately $120 million in terrorist-related assets.

Currently, there is no single Executive Branch office tasked by statute with ensuring that all elements of the intelligence and law enforcement communities cooperate and coordinate in the identification and the targeting of terrorist financial assets. Moreover, coordination on terrorist financing issues within Treasury, and between Treasury and the Intelligence Community, while improving, is currently uneven and disjointed. The Conferees are convinced that Treasury must be more effective in articulating the counterterrorist financing mission. Treasury must also implement the mission requirements from an intelligence sharing and operational perspective more effectively.

The managers recognize that the staffs of the Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network (FinCEN) possess unique analytical capabilities regarding terrorist financial targets and that this resource should be leveraged across the Intelligence Community. Treasury's access to Intelligence Community information, however, must be enhanced if it is to fulfill this mission. Treasury's analytical products need to be more effectively coordinated with, and disseminated throughout, the Intelligence Community. The Conferees note that the Chairman of the House Committee on Financial Services has provided valuable input on the language of Section 105.

The Conferees seek to establish a new office to accomplish this requirement within Treasury. The Conferees are hopeful that the creation of this new office will streamline and centralize the U.S. Government's capabilities to track terrorist financing networks across the globe. The Conferees further expect that the new office will be treated as a full partner in the Intelligence Community, receiving all intelligence, law enforcement, and other information necessary for it to carry out its important task.

The Conferees also insist that the requirements of the "Intelligence Authorization Act for Fiscal Year 2003" (FY 03 Act) (P.L. 107-306) are met. Section 341 of the FY 03 Act requires that the DCI establish a Foreign Terrorist Asset Tracking Center (FTAT-C) within the Central Intelligence Agency (CIA). Establishment of a Treasury Bureau of Intelligence and Analysis should markedly strengthen FTAT-C's analytic capacity. Section 342 of the FY 03 Act also directed that the Secretary of the Treasury submit semiannual reports concerning U.S. Government operations against terrorist financial networks. The first Section 342 report was due on February 1, 2003, but was not completed until May 12, 2003. The Conferees expect that the establishment of the Office of Intelligence and Analysis within Treasury will make future Section 342 reports more timely and informative with respect to U.S. Government progress against terrorist-related financial targets.

Sec. 106. Incorporation of reporting requirements

Section 106 is similar to Section 105 of the Senate amendment. The House bill had no similar provision. The House recedes to the Senate position. Section 106 incorporates into the Act by reference each requirement to submit a report contained in the joint explanatory statement to accompany the conference report or in the associated classified annex to this Conference Report.

Sec. 107. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense or Department of Energy

Section 107 is identical to Section 106 of the Senate amendment. The House bill had no similar provision. The House recedes.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations

Section 201 authorizes appropriations of $226,400,000 for the Central Intelligence Agency Retirement and Disability Fund. Section 201 of the House bill and Section 201 of the Senate amendment are identical.

TITLE III—GENERAL PROVISIONS

Subtitle A—Recurring General Provisions

Sec. 301. Increase in employee compensation and benefits authorized by law

Section 301 is identical to Section 301 of the Senate amendment and Section 301 of the House bill.

Sec. 302. Restriction on conduct of intelligence activities

Section 302 is identical to Section 302 of the Senate amendment and Section 302 of the House bill.

Subtitle B—Intelligence

Sec. 311. Authority of Federal Bureau of Investigation to award personal services contracts

Section 311 would grant the Federal Bureau of Investigation (FBI) specific statutory authority to enter into personal services contracts for the procurement of services that are only in direct support of an intelligence or counterintelligence mission. The Conferees expect that such services will be used, among other things, to provide the FBI with needed expertise in asset validation, counterterrorism investigations, counterespionage activities, counterintelligence damage assessments, counterintelligence training, and related technical support. The Conferees anticipate that this authority will be used as a contracting mechanism when other contracting mechanisms are insufficient to meet the national security requirements of the FBI. The Conferees also note that this provision does not modify existing restrictions on the use of contractors to perform "inherently governmental functions." This authority should not be used by the FBI to avoid or forestall the currently aggressive efforts to recruit and hire qualified staff employees to fill personnel vacancies.

The Conferees believe that this authority is consistent with the public's desire that the FBI operate with greater flexibility with respect to its national security mission following the September 11th attacks. The Conferees believe, however, that the FBI should use the increased flexibility afforded under this section carefully. The FBI should implement this section in a manner that strictly reflects the unique nature of the authorization. The Conferees require that before a contract can be entered into, the Chief Contracting Officer must determine that a personal service contract is "the appropriate means of securing" the needed services. Additionally, the Conferees expect that the Director of the FBI will ensure that the authority granted by this section is exercised in a prudent manner and with appropriate oversight.

Neither the House bill nor the Senate amendment contained a similar provision. This provision is similar to the authority afforded to certain Department of Defense elements in Section 841 of the Conference Report accompanying the "Defense Authorization Act for Fiscal Year 2004." The Conferees agreed to include this section, however, after learning that the increased pace and amount of work in the post-September 11th environment has created a need for this authority for the FBI. The Conferees believe there exists an operational imperative for the FBI to enter into personal services contracts to support its counterterrorism, counterespionage, and counterintelligence missions.

The Conferees note that the Chairman of the House Committee on the Judiciary has indicated that although he would prefer that this provision be carried in the "Department of Justice Appropriations Authorization Act, Fiscal Years 2004-2006" (H.R. 3036), he has "no substantive objection" to the provision. Additionally, the Chairman of the House Committee on Government Reform has submitted a letter in support of including this provision in this Conference Report.

Congress, through the statutory annual reporting requirement contained in this section, and through its general oversight authority, will monitor the FBI's use of this authority closely and will not hesitate to revise the authority if exercised irresponsibly or otherwise abused.

The Conferees expect that the unclassified report to all specified congressional committees will be substantially the same, except that intelligence source and methods information should be included only in a classified annex provided to the Intelligence Committees.

Sec. 312. Budget treatment of costs of acquisition of major systems by the intelligence community

Section 312 was added to the Senate amendment on the Senate floor. As amended by the Conferees, the House recedes to this provision.

The Conferees are concerned about the cost growth of major Intelligence Community acquisitions, which result in a reshuffling of the NFIP on an almost annual basis to address consequential budget shortfalls.

Funding requests submitted in the President's budget generally reflect an estimate that has been prepared by the same Intelligence Community component that is responsible for the acquisition and operation of the system. The magnitude and consistency of the growth of recent acquisitions indicates a systemic bias on the part of Intelligence Community components to underestimate the funding required for major acquisitions. Because of "perceived affordability," more acquisitions are started, and as a result, the NFIP is burdened with more content than available resources can support.

In contrast, the Secretary of Defense has implemented a successful program requiring the development of independent cost estimates for major acquisitions. The Secretary has mandated the use of such estimates in the Department of Defense budget requests. Section 2434 of Title 10, United States Code, provides that "The Secretary of Defense may not approve the system development and demonstration, or production and deployment, of a major defense acquisition program unless an independent estimate of the full life-cycle cost of the program and a manpower estimate for the program [has] been considered by the Secretary." Further, Title 10 requires that the independent estimate be prepared "by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program. * * *"

The Conferees note, with approval, that the DCI has already established an organization within the Office of the Deputy Director of Central Intelligence for Community Management to provide an independent cost analysis capability. This is a significant development because, historically, independent cost estimates have represented a much more accurate projection of the costs of major acquisitions. The budget submitted to Congress, however, has typically reflected the Intelligence Community operational component's cost estimate, which in general has been significantly lower than a corresponding independent estimate.

Section 312 formalizes the process for developing independent cost estimates for major Intelligence Community acquisitions.

The Conferees have included at subsection (d) a restriction on the use of appropriated funds with respect to major acquisitions for which independent cost estimates have not been prepared, or for which the requirements of Section 312 have not been followed.

DoJ raised an objection to a subsection in the Senate-passed bill requiring that the President's budget request for the development or procurement of a major intelligence system must be an amount equivalent to the most current independent cost estimate. DoJ noted that such a requirement would violate the Recommendations Clause of the Constitution (Article II, Section 3), which provides that the President shall recommend to Congress such legislative measures as he deems necessary.

To address DoJ's Recommendations Clause objection, the Conferees modified the provision. The provision included in this Conference Report now only requires that the President provide additional information to the Congress if the budget request is less than the amount set forth in the most current independent cost estimate for the program. This additional information, which is required to be included in the budget justification materials submitted to Congress, would (1) explain the difference between the amount requested and the independent cost estimate; (2) describe the importance of the system to national security; (3) provide an assessment of the impact on funding intelligence programs if the independent cost estimate is accurate; and (4) provide any other information the President considers appropriate.

The Intelligence Committees received a DoJ letter regarding the modified provision on the eve of conference. The letter expresses DoJ's judgment that, as modified, the provision does not present any Recommendations Clause concern. DoJ, however, maintains a reservation with respect to the requirement in the modified provision that the budget justification explain the difference between the President's budget request and the independent cost estimate. The Conferees have considered DoJ's position and are satisfied that Section 312, as modified, represents an appropriate accommodation of the interests at stake. The provision respects the President's authority given by the Recommendations Clause and is consistent with Congress's powers and authority under Article I of the Constitution to obtain information from the Executive Branch necessary for the consideration of legislation, particularly legislation regarding budgetary matters.

Sec. 313. Modification of sunset of application of sanctions laws to intelligence activities

Neither the House bill nor the Senate amendment included a similar provision. The Conferees have included, at Section 313, a provision to strike Section 905 of the National Security Act of 1947 (50 U.S.C. 441d). This action revives Title IX of the National Security Act, which has been dormant since January 6, 2000.

Sec. 314. Modification of notice and wait requirements on projects to construct or improve intelligence community facilities

Section 314 was similar to versions passed as House Section 311 and Senate amendment Section 312. The House recedes with minor amendments.

Section 314 amends congressional notification requirements for certain unprogrammed construction and improvement projects based on the cost of the project. These adjustments take into account higher construction costs.

Section 314 would also allow the DCI and the Secretary of Defense together, or the DO alone with respect to a project primarily for the CIA, to initiate certain unprogrammed construction and improvement projects seven days after notifying Congress. Currently there is a 21-day notification period. In emergencies, these projects can be commenced without prior notice. Use of this emergency authority is expected to be rare.

Sec. 315. Extension of deadline for final report of the National Commission for the Review of the Research and Development Programs of the United States Intelligence Community

The House bill and the Senate amendment contained similar provisions. The House recedes with minor amendments.

Sec. 316. Improvement of information sharing among Federal, State, and local government officials

The House bill contained a similar provision. The Senate amendment had no such provision. The Senate recedes with amendments.

Section 316 authorizes the Secretary of Homeland Security, in consultation with the DCI and the Attorney General, to implement a program to improve the sharing of intelligence collected by the Federal government with State and local officials. This program is intended to complement implementation of the "Homeland Security Information Sharing Act" (P.L. 107–296, Title VIII, Subtitle I).

The program should be designed to encourage State and local officials, and certain private sector representatives, to share with each other and with appropriate Federal officials lawfully collected information vital to the prevention of terrorist attacks against the United States. The training provided to officials and representatives should help these individuals to identify sources of potential threats, to report information related to potential threats to the appropriate agencies in the appropriate form and manner, and to assure that reported information is systematically submitted to the Department of Homeland Security and disseminated to all appropriate Federal departments and agencies. A report on the status of implementation of Section 892 of the "Homeland Security Act of 2002" (Public Law 107–296) is also required under this section. The project grants no new authorities to any department or agency for the collection of information.

Sec. 317. Pilot program on analysis of signals and other intelligence by intelligence analysts of various elements of the intelligence community

This Section is similar to Section 313 of the Senate amendment. The House bill had no such provision. The House recedes with minor amendments.

Sec. 318. Pilot program on recruitment and training of intelligence analysts

This section is similar to Section 314 of the Senate amendment. The House recedes with amendments. Upon enactment, the pilot program will be known as the Pat Roberts Intelligence Scholars Program.

Sec. 319. Improvement of equality of employment opportunities in the intelligence community

Section 319 is similar to Section 337 of the House bill. The Senate amendment had no similar provision. The Senate recedes with minor amendments. The provision is intended to develop programs that will enhance ethnic and cultural diversity throughout the Intelligence Community through the recruitment of individuals with diverse ethnic and cultural backgrounds, skill sets, and language proficiency.

Sec. 320. Sense of Congress on recruitment as intelligence community personnel of members of the Armed Forces on their discharge or release from duty

Section 320 was added by the Conferees. Neither the House bill nor the Senate amendment contained a similar provision. With Section 320, the Conferees encourage the Intelligence Community to recruit among American armed forces veterans of Operation Enduring Freedom, Operation Iraqi Freedom, and other military service to take advantage of the unique national security, military, and technical experience of such personnel, and to try to keep the experience from being lost to the U.S. Government upon their discharge or release from active duty.

Sec. 321. External Collection Capabilities and Requirements Review Panel

Section 321 was added by the Conferees. The provision permits the President to establish an External Capabilities and Requirements Review Panel as specified in the Classified Annex.

Subtitle C—Counterintelligence

Sec. 341. Counterintelligence initiatives for the intelligence community

Section 341 contains several counterintelligence reforms included in Section 321 of the House-passed bill. The Senate amendment contained no such provision. The Senate recedes with amendments.

In addition to the statutory requirements added by Section 341, the Conferees direct the National Counterintelligence Executive (NCIX) to consult with all components of the Intelligence Community on the status of current policies and procedures for conducting investigative reviews of production, marking, handling, storage, and communication of classified information, as well as training on related security matters to protect intelligence sources and methods. Not later than April 1, 2004, NCIX shall provide a written report to the intelligence committees with an assessment of the adequacy of Intelligence Community components' investigation of their handling of classified information and the adequacy of training on related security matters. In this report, NCIX shall include proposed uniform policies and procedures for all Intelligence Community components to conduct annual inspections of each agency's handling of classified information, to include, as appropriate, prohibitions on employees' bringing items such as cameras, document scanners, and personal electronic devices into Intelligence Community facilities. After NCIX has reported to Congress uniform policies and procedures for the conduct of annual inspections of the handling of classified information, NCIX may carry out its responsibility to implement an inspection process by delegating to Intelligence Community components the task of carrying out the inspections. NCIX shall closely monitor, and report to the intelligence committees on, the performance of those inspections.

As passed by the House, the counterintelligence reforms required by this section would have required the Attorney General, acting through the FBI Director, to establish an FBI Office of Counterintelligence to investigate potential espionage activities within the FBI. The Conferees understand that the FBI has recently established such an office. Because of this development, the

Conferees agreed to drop the statutory requirement for such an office. The Conferees reaffirm their commitment to a fully empowered Office of Counterintelligence and expect to be provided periodic reports on the resource needs and operations of the office.

Subsection (b) of Section 341 of the conference report would require the Attorney General, acting through DoJ's Office of Intelligence Policy and Review, in consultation with the DCI, acting through the Office of the NCIX, to establish written policies and procedures to assist the Attorney General's consideration of intelligence and national security equities in the development of indictments and related pleadings in espionage prosecutions. The Conferees note, however, that DoJ should and does consult closely with the Intelligence Community on all aspects of espionage investigations, not just in the development of indictments and related pleadings.

The Conferees also note that although the decision as to whether and whom to prosecute is ultimately and properly left to the discretion of the Attorney General there are significant and strategic intelligence equities at stake in these types of cases. The Conferees believe it is unwise for operational and prosecutorial decisions to proceed without close consultation at every stage. The Conferees are cognizant of the coordination that already occurs with respect to the disclosure of classified information in the presentation of such cases. DoJ and the other elements of the Intelligence Community are commended for this.

The Conferees believe, however, that the Attorney General should have the benefit of the perspective of counterintelligence professionals before making his decision on how much previously classified or sensitive information should be included in a charging document or in other pleadings. The Conferees note that the United States could lose its ability to learn more about the extent to which a spy has given away our national security secrets because so much information is contained in these types of documents. The Conferees highlight the Robert Hanssen case as an example. The Conferees recognize that there may be tactical or legal requirements for including some such information. The Conferees are concerned that some charging documents or pleadings include information that goes beyond that required by either criteria. The Conferees do not seek to vitiate any prerogatives of the Attorney General in determining whom to charge criminally, or how a matter should be charged. The NCIX is not required to concur in the Attorney General's decisions in these matters. The Conferees simply seek to improve the process by which the Attorney General makes these decisions when it involves a counterintelligence or an espionage matter. When the Attorney General makes a decision to include information beyond that meeting the minimum requirements of the Constitution for purposes of charging an individual, the Conferees merely seek to provide the Attorney General with as much insight as possible on the effects of those decisions on national security.

In addition to the statutory modifications in Section 341, the Conferees recommend that the Executive Branch move expeditiously to implement further counterintelligence reforms. In particular, the Conferees have serious concerns with several aspects of the handling of the Hanssen espionage case and other investigations.

The NCIX damage assessment in the Hanssen matter also included a reference to the effect of Section 8318 of Title 5, United States Code, with respect to a spy's cooperation with the U.S. Government. The Conferees are interested whether an amendment to this section should be made so that both the spouse and the individual whose action caused the forfeiture of an annuity, or retired pay, under 5 U.S.C. 8312 and 8313 must cooperate fully with the U.S. Government in any lawful investigation or damage assessment in order to maintain the spouse's eligibility for benefits. The Conferees direct the DCI and the Attorney General, jointly, to provide to the House and Senate Intelligence Committees, no later than February 1, 2004, a written assessment of their views on this particular question and how such an amendment would assist their respective organizations.

Subtitle D—Reports

Sec. 351. Report on cleared insider threat to classified computer networks

Section 351 is similar to Section 331 of the Senate amendment. The House bill had no similar provision. The House recedes, with minor amendments.

Sec. 352. Report on security background investigations and security clearance procedures of the Federal Government

Section 352 is similar to Section 332 of the Senate amendment. The House bill had no similar provision. The House recedes with amendments.

Sec. 353. Report on detail of civilian intelligence personnel among elements of the intelligence community and the Department of Defense

Section 353 is similar to Section 333 of the Senate amendment. The House bill had no similar provision. The House recedes.

Sec. 354. Report on modifications of policy and law on classified information to facilitate sharing of information for national security purposes

Section 354 is similar to Section 334 of the Senate amendment. The House bill had no similar provision. The House recedes with minor amendments.

Sec. 355. Report on strategic planning

Section 355 is similar to Section 335 of the Senate amendment. The House bill had no similar provision. The House recedes with minor amendments.

Sec. 356. Report on United States dependence on computer hardware and software manufactured overseas

Section 356 is similar to Section 336 of the Senate amendment. The House bill had no similar provision. The House recedes with minor amendments.

Sec. 357. Report on lessons learned from military operations in Iraq

Section 357 represents a combination of Section 337 of the Senate amendment and Section 344 of the House bill. The Senate recedes with minor amendments. The Conferees also expect that the House and Senate Intelligence Committees will receive in writing from the DCI in a timely fashion any and all status reports and updates concerning the activities of the Iraq Survey Group on a regular, periodic basis.

Sec. 358. Reports on conventional weapons and ammunition obtained by Iraq in violation of certain United Nations Security Council resolutions

Section 358 is similar to Section 338 of the Senate amendment. The House had no similar provision. The House recedes with minor amendments.

Sec. 359. Report on operations of Directorate of Information Analysis and Infrastructure Protection and Terrorist Threat Integration Center

Section 359 is similar to Section 340 of the Senate amendment. The House bill had no similar provision. The House recedes with amendments.

Sec. 360. Report on Terrorist Screening Center

Section 360 is similar to Section 345 of the House bill. The Senate amendment had no similar provision. The Senate recedes with amendments.

Sec. 361. Repeal and modification of report requirements relating to intelligence activities

Section 361 is similar to both Section 339 of the Senate amendment and Section 342 of the House bill. Each House recedes in part, with minor amendments.

Subtitle E—Other Matters

Sec. 371. Extension of suspension of reorganization of Diplomatic Telecommunications Service Program Office

Section 371 is identical to Section 351 of the Senate amendment and Section 331 of the House bill.

Sec. 372. Modifications of authorities on explosive materials

Section 372 is identical to Section 352 of the Senate amendment. It is similar to Section 332 of the House bill. The House recedes.

Sec. 373. Modification of prohibition of the naturalization of certain persons

Section 373 is identical to Section 353 of the Senate amendment and to Section 333 of the House bill.

Sec. 374. Modification to definition of financial institution in Right to Financial Privacy Act

Section 374 is similar to both Section 354 of the Senate amendment and to Section 334 of the House bill. Section 374 of the Conference Report expands the definition of "financial institution" for purposes of section-1 114 of the Right to Financial Privacy Act (12 U.S.C. 3414 (RFPA). It provides enhanced authority for authorized Intelligence Community collection activities designed to prevent, deter, and disrupt terrorism and espionage directed against the U.S. and to enhance foreign intelligence efforts.

The Conferees believe this new definition is necessary for effective counterintelligence, foreign intelligence, and international terrorism operations of the United States. Section 1114 currently permits U.S. Government authorities engaged in counterintelligence or foreign intelligence activities to use "National Security Letters," approved by a senior government official, to obtain certain financial records from defined "financial institutions." The definition of "financial institution" in the RFPA has been essentially unmodified since the RFPA became law in 1978. This amendment updates the definition to include those entities that today provide financial services to individuals, but would not be covered by the current definition. Financial records maintained by these entities are not currently covered by the RFPA and, thus, are not accessible by intelligence elements of the United States Government using this authority. In order to expand the definition of "financial institution" for purposes only of section 1114, this subsection adopts, in part, the definition of "financial institution" found in section 5312 (a) (2) of Title 31, United States Code. It is important to highlight that this definition also is consistent with the definition used in section 804(5) of the Counterintelligence and

Security Enhancements Act of 1994 (50 U.S.C. 438).

The Conferees intend that this authority be used for accessing records and information from financial institutions for counterintelligence, foreign intelligence, and international terrorism investigations. The Conferees note, with approval, the significant actions of the U.S. Government in tracking terrorist finances. The Conferees believe that the authority granted by this section will enhance the Government's efforts in this regard. This provision allows the U.S. Government to have, through use of "National Security Letters," greater access to a larger universe of information that goes beyond traditional financial records, but is nonetheless crucial in tracking terrorist finances or espionage activities. The Conferees understand that this authority should be used for accessing records and information for the purposes of identifying an individual's financial relationship with the specified financial institutions.

Section 3414 (a) (5) (C) of the RFPA requires the Attorney General to "fully inform" the Congressional Intelligence Committees semiannually concerning all requests made pursuant to the provision. To date, the Attorney General has limited these reports to statistical information. The Conferees accordingly request that the Attorney General, pursuant to his responsibility to "fully inform" the House and Senate Intelligence Committees, include in his next semiannual report to these particular committees information about the process and standards for approving National Security Letters. The Conferees also request that the next semiannual report include a description of issues (if any) concerning the scope of such letters, or financial institution compliance with such letters, that have arisen in Federal and State judicial, administrative, and regulatory settings, or otherwise.

The Conferees have amended the provision that appeared in both the House bill and Senate amendment to ensure that all financial institutions covered by the amended National Security Letters provision are also protected by the cost reimbursement and immunity provisions of the Act (12 U.S.C. 3415, 3417). With those amendments, the House recedes.

Sec. 375. Coordination of Federal Government research on security evaluations

Section 375 is similar to Section 355 of the Senate amendment. The House bill had no similar provision. The House recedes with amendments to ensure that classified information considered during the research initiative is protected from unauthorized disclosure.

Sec. 376. Treatment of classified information in money laundering cases

Section 376 is identical to Section 357 of the Senate amendment. The House bill had no similar provision. The House recedes.

Section 376 amends section 5318A of title 31, United States Code. That section, which was added in Section 311 of P.L. 107-56 (Oct. 26, 2001), permits the Secretary of the Treasury to take targeted action against countries, institutions, transactions, or types of accounts the Secretary of the Treasury finds to be of "primary money-laundering concern." The new amendment will permit the Secretary of the Treasury, in a judicial review proceeding, to submit any classified information on which such a finding, or related action, is based to the court ex party and in camera. This permission parallels the authority granted to the Secretary to submit classified information to a reviewing court in connection with any proceedings under the International Emergency Economic Powers Act. In administering a proceeding in which classified information is submitted to a court under this provision, the Conferees intend that a court will fashion procedures, necessary to assure a moving party due process of law, that resemble those already required in similar situations in which the government, or another party, seeks to base a claim or defense on classified information.

Sec. 377. Technical amendments

Section 377 is similar to Section 356 of the Senate amendment and to Section 343 of the House bill. The Senate recedes with amendments, including the addition of a technical amendment to the "Federal Information Security Management Act of 2002" (P.L. 107-296 and P.L. 107-347) which was included in the Senate amendment as Section 404.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

Sec. 401. Amendment to certain Central Intelligence Agency Act of 1949 notification requirements

Section 401 is identical to Section 401 of the Senate amendment. The House had no similar provision. The House recedes.

Sec. 402. Protection of certain Central Intelligence Agency personnel from tort liability

Section 402 is similar to Section 402 of the Senate amendment and Section 401 of the House bill. The House recedes with minor amendments. The Conferees note that this protection against tort liability extends only to officials of the Central Intelligence Agency who are Agency personnel designated by the Director under Section 15 (a) of the "Central Intelligence Agency Act of 1949" (CIA Act) (50 U.S.C. 403o), or designated by the Director under Section 5 (a) (4) of the CIA Act (50 U.S.C. 4030 to carry firearms for the protection of current or former Agency personnel and their immediate families, defectors, and their immediate families, and other persons in the United States under Agency auspices.

Sec. 403. Repeal of obsolete limitation on use of funds in central services working capital fund

Section 403 is identical to Section 403 of the Senate amendment and to Section 402 of the House bill.

Sec. 404. Purchases by the Central Intelligence Agency of products of Federal Prison Industries

Section 404 is an amended version of Section 335 contained in the House bill. The Conferees modified the provision to better reflect actual Central Intelligence Agency procurement practices, which already conform to the goals envisioned by Section 335 of the House bill. The Senate amendment had no similar provision. The Senate recedes, with amendments as noted.

Sec. 405. Postponement of Central Intelligence Agency compensation reform and other matters

Section 405 contains language that is similar to Section 405 of the Senate amendment. The House bill had no similar provision. Section 405 includes certain statutory limitations and reporting requirements designed to address misgivings regarding the Central Intelligence Agency Compensation Reform program. The Conferees have concerns regarding the efforts of the DCI to revise and reform the compensation structure of the Central Intelligence Agency. The DCI's Compensation Reform program also has engendered anxiety among employees due to the perceived impact the system may have on retirement benefits and compensation, in general.

Subsection (b) of Section 405 addresses the potential for decreases in employee retirement benefits. The provision permits those CIA employees designated by the DCI for participation in the congressionally-directed Compensation Reform pilot program to contribute to Thrift Savings Plan accounts any part of their pay which they receive from bonus monies under the program.

Generally, under current law, Federal employees can only contribute "basic pay" to their Thrift Savings Plans, not bonus monies. As a result, the Conferees note that pilot program participants have not been contributing bonus monies to their Thrift Savings Plans. Under the CIA's Compensation Reform pilot program, however, participating employees will likely receive a higher percentage of their yearly compensation as performance bonuses. Treating these performance bonuses as "basic pay" will permit these employees to take full advantage of their ability to contribute to their Thrift Savings Plans, consistent with existing limitations on the amount of contributions to certain retirement accounts. The Conferees acknowledge that while this provision will not compensate employees for the potential reduction in their federal annuities due to possible decreases in basic pay under the Compensation Reform pilot program, it will encourage increased utilization of Thrift Savings Plans and, thus, partially offset any retirement annuity reductions.

The Conferees are cognizant of, and generally supportive of, the desire of the Administration to move to a compensation structure across government that rewards top performers (i.e., "pay-for-performance"). The Conferees are encouraged by the fact that the CIA has sought input and guidance from the Office of Personnel Management and Office of Management and Budget with respect to any restructuring of CIA's compensation system. Prior to any Agency-wide implementation of Compensation Reform, the pilot program must first be completed, and the Conferees direct that the results of the pilot be provided to the Intelligence Committees in a written report within 45 days of the conclusion of the pilot program, as required by Section 402 (b) (3) of the FY 03 Act. The House and Senate Intelligence Committees will scrutinize closely the written report on the pilot program. The Committees must have an opportunity to weigh fully the costs and benefits associated with this particular Compensation Reform plan.

To ensure that the Intelligence Committees have a full opportunity to conduct this important review and carefully consider the results of the pilot program, the Conferees have included a provision that delays implementation of Compensation Reform across the Agency until after enactment of the "Intelligence Authorization Act for Fiscal Year 2005." Implementation of the program before the Intelligence Committees have rigorously reviewed the results of the pilot, would frustrate the intent of Congress in establishing the pilot program and requiring a report on its results. The Conferees note that this provision restricts implementation of the program across the CIA until the specified date. This is anticipated to be a delay of a little less than a year, at the most.

The Conferees note, however, that ultimate acceptance (or specific statutory restrictions on implementation) of this Compensation Reform proposal certainly remains an open question. The answer to this question will very much depend on the information provided to the Intelligence Committees during the interim period, as well as the willingness of the DCI and Senior CIA managers to constructively and cooperatively engage in discussions with the Intelligence Committees on this Compensation Reform proposal. The Conferees note with approval the DCI's continued expression of his willingness to consult and cooperate with Congress in its ongoing review of this proposal. The Conferees take him at his word. As noted, the Conferees support generally the concept that the CIA compensation system needs to be reformed. The question is whether this is the right system to be adopted.

The Conferees also have added two additional reporting requirements to ensure the House and Senate Intelligence Committees are fully advised of the effects that Compensation Reform will have on employees.

The first report will compare amounts that each employee participating in the pilot program would have earned under the pre-existing compensation structure at the CIA with amounts actually earned under the pilot program.

Second, the Conferees direct the DCI to conduct a blind survey utilizing an independent, external human resource or personnel consulting organization. This survey shall be completed not later than March 31, 2004. The purpose for the survey is (1) To gauge the level of concern among all CIA employees (both within the pilot program and throughout the CIA) with the Compensation Reform program as currently proposed and (2) to ascertain how many employees currently under the pilot program, having the benefit of their participation in such program, would choose to "opt out" of the program if they were to be given that option. The Conferees direct that all of the questions to be presented in the survey shall be provided in full, and in writing, to the Committees before the survey is taken. Moreover, the Conferees direct that the results of the survey shall be provided in full, and in writing, to the Intelligence Committees within 30 days of the survey's completion.

The Conferees further note that the DCI has indicated his intention to keep employees currently assigned to the pilot program within that program until such time as Compensation Reform is permitted to be implemented across the CIA or its implementation Agency-wide is otherwise restricted by Congress.

The Conferees believe that it would be appropriate for the DCI to permit employees who have been compensated under the pilot program to "opt out" of the system at the end of the pilot program's first year, if they desire to do so. Additionally, the Conferees believe that it would be appropriate for the DCI to provide supplemental compensation or benefits necessary to ensure that those employees who might "opt out" of the pilot program and who actually lost compensation, or experienced a reduction in other benefits because of their directed participation in the pilot program, are "made whole" by receiving an amount of compensation and benefits equivalent to what they would have received under CIA's pre-existing compensation structure.

The Conferees have not directed by statute or otherwise that the DCI provide the "opt out" or "make whole" options to those affected employees. The Conferees do, however, believe these options would be a fair method of reimbursing those employees who may have been subjected to adverse financial circumstances based on their directed participation in the pilot program. The Conferees commit the decision to institute such measures solely to the DCI's discretion.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

Sec. 501. Protection of certain National Security Agency personnel from tort liability

Section 501 is similar to Section 502 of the Senate amendment and to Section 504 of the House bill. The House recedes with amendments.

Sec. 502. Use of funds for counterdrug and counterterrorism activities for Colombia

Section 502 is similar to both Section 503 of the Senate amendment and to Section 501 of the House bill. The House recedes with amendments.

The Conferees believe that Colombian President Alvaro Uribe's approach to ending Colombia's long running terrorist insurgency and reducing narcotics production and trafficking is the best chance for that country to overcome the legacy of violence it has endured for decades. President Uribe's steadfastness in pursuing these goals takes on even greater significance when observed in the light of the sheer brutality of terrorist attacks perpetrated on innocent Colombians by narco-terrorists. Terrorist attacks on his inauguration ceremonies in Bogota make manifest the fact that Uribe himself remains a target of terrorist violence.

Section 502 allows funds available for intelligence and intelligence-related activities to be used to support a unified campaign against drug traffickers and terrorist organizations. The Administration has chosen to pursue a policy in Colombia that recognizes the inseparable nature of these two threats. The Conferees endorse this approach. This section is an indication of the confidence the Conferees place in President's Uribe's aggressive pursuit of the twin goals of ending the insurgency and battling drug trafficking.

Sec. 503. Scene visualization technologies

Section 503 is identical to Section 504 of the Senate amendment. There was no similar provision in the House bill. The House recedes.

Sec. 504. Measurement and signatures intelligence research program

Section 504 is similar to Section 505 of the House bill. There is no similar provision in the Senate amendment. The Senate recedes with amendments, including amendments to ensure that classified information considered during the research initiative is protected from unauthorized disclosure.

Sec. 505. Availability of funds of National Security Agency for national security scholarships

Section 505 has no counterpart in the Senate amendment or in the House bill. It is a provision adopted by the Managers during the conference.

OTHER MATTERS

Reaffirming the functional definition of covert action

The Conferees have taken note of the text on covert action contained in the classified annex to S. 1025, as reported on May 8, 2003, by the Senate Select Committee on Intelligence (annex text). The Conferees intend the following language to substitute for the annex text:

The Conferees attach critical importance to the requirements for covert action approval and notification in the National Security Act of 1947 (Act). In addition to the information and oversight value of mandatory notification, fulfilling these notification requirements fosters great confidence in Executive Branch covert action programs.

The Administration has amply and repeatedly demonstrated its commitment to adhere to the approval and notification requirements of the National Security Act. Neither the Administration nor the Conferees have sought or agreed to modify, amend, or reinterpret the scope of the Act, or approval and notification requirements under the Act. The Conferees expect all departments and agencies of the U.S. Government to continue to comply fully with the Act and its legislative history.

Manned airborne reconnaissance aircraft replacement

Recent military operations in Iraq and Afghanistan, along with broader requirements to support the global war on terrorism, and standing global reconnaissance requirements have placed enormous operational tempo demands on manned airborne reconnaissance platforms operated by the U.S. Army, Navy, and Air Force. The limited number of these assets and the large number of requirements placed on them have led to their designation as "high demand/low density" assets that have to be intensively managed by the Department of Defense (DOD) to ensure their most productive, efficient use. While many of these airborne reconnaissance platforms were initially developed for service-specific reconnaissance requirements, they have evolved over time into a patchwork airborne reconnaissance architecture that is not optimized to support national and combatant commanders' intelligence requirements.

Congress established the position of Under Secretary of Defense for Intelligence (USD(I)) in the National Defense Authorization Act for Fiscal Year 2003 (P.L. 107–314). A clear intent of that action was to create a position and an organization in DOD that would better assess service and Defense-wide intelligence requirements and better develop, coordinate and integrate current and projected DOD intelligence capabilities in support of service, joint, and national intelligence collection requirements. The Conferees expect the USD(I) to move expeditiously to establish requirements for the development of a fully integrated manned and unmanned airborne reconnaissance architecture for the future, with adequate capabilities and availability to meet projected requirements, minimize unnecessary duplication of effort, and maximize operational efficiency.

Some of these platforms, such as the Navy's EP–3E and the Army's RC–12 Guardrail, are nearing the end of their expected service lives and are in urgent need of replacement. The Conferees are concerned that while the need to recapitalize manned airborne reconnaissance platforms in a coordinated, integrated fashion is well known within the DOD, only the Army has established a formal program for replacing its legacy manned airborne signals intelligence reconnaissance platforms by the competitive development and production of the Aerial Common Sensor (ACS).

The Conferees are aware that the Navy is interested in taking advantage of the work done by the Army on ACS, and is considering the adoption of an ACS-based solution for replacement of the EP–3E. The Conferees applaud the Navy efforts to establish a joint program with the Army, but are concerned that a thorough analysis of options has not yet been conducted. While the Navy did commission an initial analysis of options, the Conferees feel a more rigorous, thorough analysis is warranted for such an important program.

The Conferees direct the Secretary of Defense to conduct a thorough analysis of options to replace the EP-3E mission capability. The analysis should be conducted as expeditiously as possible in order to avoid delaying an EP-3E replacement. The Conferees expect that the analysis should evaluate: (1) all reasonable alternatives, including all manned and unmanned replacement alternatives, such as the RC-135 Rivet Joint, Global Hawk unmanned aerial vehicle, and the ACS; (2) the consistency of the cost methodology; and, (3) a solution that maximizes signals intelligence capability, low life-cycle costs, and increases interoperability. In order to ensure the Navy makes a well-founded acquisition decision, the Conferees direct the Secretary of the Navy not to proceed with the acquisition of an EP-3E replacement until this analysis is complete and the Defense Acquisition Board approval has been granted. The Navy should use additional funding that may be available to expedite the study, analysis, and decision making processes.

The Conferees are also concerned that the Air Force has not moved more aggressively to analyze program alternatives for replacing or modernizing the RC-135, which will also be required in future years. The Conferees believe that, when it is time to replace the RC-135 platform, DOD could avail itself of more modern platforms that use state of the art technology in aircraft and intelligence collection systems, emphasize lower operating costs, and take full advantage of robust communications capabilities to reduce platform size, weight, and operational costs.

The Conferees direct the Secretary of Defense to conduct a formal Analysis of Alternatives (AOA) for replacement or modernization of the RC-135 mission. The AOA shall consider all manned and unmanned replacement alternatives, including high altitude, long endurance unmanned aerial vehicles, an ACS-based option, and more cutting edge technologies such as high altitude aero-bodies. The AOA should also specifically address the option of forming a joint program with Army, Navy, and Air Force participation.

The Conferees expect these analyses will be coordinated with the Under Secretary of Defense for Acquisition, Technology and Logistics and the USD(I), and will be a consistent part of the comprehensive effort by the USD(I), in consultation, as appropriate, with the DCI, to establish requirements for the development of a fully integrated manned and unmanned airborne reconnaissance architecture that makes appropriate use of reach-back technology.

Development of sophisticated analytic tools

Following the terrorist attacks of September 11, 2001, the Intelligence Committees have repeatedly emphasized the importance of developing sophisticated new analytic tools to ensure the rapid processing and analysis of foreign intelligence information, as well as increased collaboration among the diverse national security elements of the Federal government. The potential value of such tools for "connecting the dots" is clear. The Conferees recognize, however, that advanced analytic tools, if misused, could impact the privacy of U.S. persons. Efforts by the Defense Department and other agencies to develop these tools have come under intense scrutiny for this reason. To address reservations concerning possible encroachments on individual liberties, the Fiscal Year 2003 and Fiscal Year 2004 Department of Defense Appropriations Acts (P.L. 108-7 (Division M) and P.L. 108-87, respectively) contained limitations on the development and use of certain "data-mining" activities.

In Section 8131 of the Department of Defense Appropriations Act for Fiscal Year 2004, and in its accompanying classified annex, the Defense Advanced Research Projects Agency's Terrorist Information Awareness program was terminated and requested funds were expressly provided to the National Foreign Intelligence Program (NFIP) to develop "[p]rocessing, analysis, and collaboration tools for counterterrorism foreign intelligence." Section 8131 prohibited "deployment and implementation" of these tools except for

(1) Lawful military operations of the United States conducted outside the United States; or

(2) Lawful foreign intelligence activities conducted wholly overseas, or wholly against nonUnited States citizens.

The Conferees do not interpret the restriction contained in Section 8131 as a restriction on the development of analytic tools for "processing, analysis, and collaboration tools for counterterrorism foreign intelligence." Instead, the Conferees recognize this language as a restriction on "deployment and implementation."

In the Classified Annex accompanying this Act, the Conferees have specifically authorized the use of the funds appropriated to the NFIP to continue development of advanced processing, analysis, and collaboration tools. The Conferees direct that any experiments or efforts to test these tools should be conducted only against U.S. Government databases containing foreign intelligence information lawfully collected, analyzed, retained, or disseminated under existing statutes, regulations, Executive orders, or Attorney General guidelines governing such activities, including all applicable restrictions concerning the collection, analysis, retention, or dissemination of U.S. person information. The Conferees encourage active participation in these developmental efforts by all elements of the Intelligence Community.

The Conferees are convinced, however, that an analysis of the policies and procedures necessary to safeguard individual liberties and privacy should occur concurrently with the development of these analytic tools, not as an afterthought. The Conferees recognize that current restrictions on the conduct of intelligence and law enforcement activities, as well as the protections afforded U.S. persons under applicable laws, regulations, and Executive orders, can be applied to these new tools. The Administration should also consider whether new policies and procedures are necessary to ensure privacy protections when these advanced information technology tools are utilized in intelligence and law enforcement activities. This examination should include diverse opinion and expertise and should be conducted with as much transparency as possible, recognizing the importance of protecting intelligence sources and methods.

The Conferees direct that the Attorney General and the DCI jointly provide an unclassified report, with a classified annex, as necessary, to the Intelligence Committees regarding the application of the Constitution, laws, regulations, Executive orders, and guidelines of the United States to the use of these advanced analytic tools by the Intelligence Community. This report should specifically address existing protections for the collection, analysis, retention, and dissemination of U.S. person information. Although the Conferees have not authorized the development, testing, or deployment of these advanced analytic tools against databases which contain information other than foreign intelligence information, including private sector databases, the report should address the application of existing laws or policies to searches of such databases, whether publicly or privately held, as well as any proposed modifications to laws or policies that may be necessary in the future to ensure appropriate protections for U.S. persons. The report should include an analysis of law, regulation, and policy that takes into account potential technological advances that will protect privacy interests, such as selective revelation technologies, enhanced access controls and audit trails, and techniques to "anonymize" U.S. person information. The Conferees believe that the Attorney General and DCI should seek input from experts in law, technology, public policy, and national security when drafting this report. This report should be provided to the Intelligence Committees no later than one year after enactment of this Act.

From the Permanent Select Committee on Intelligence, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

PORTER J. GOSS,
DOUG BEREUTER,
SHERWOOD BOEHLERT,
JIM GIBBONS,
RAY LAHOOD,
RANDY "DUKE" CUNNINGHAM,
PETE HOEKSTRA,
RICHARD BURR,
TERRY EVERETT,
ELTON GALLEGLY,
MAC COLLINS,
JANE HARMAN,
ALCEE L. HASTINGS,
SILVESTRE REYES,
LEONARD L. BOSWELL,
COLLIN C. PETERSON,
BUD CRAMER,
ANNA G. ESHOO,
RUSH HOLT,
C.A. DUTCH RUPPERSBERGER,

From the Committee on Armed Services, for consideration of defense tactical intelligence and related activities:

DUNCAN HUNTER,
CURT WELDON,
Managers on the Part of the House.

From the Select Committee on Intelligence:

PAT ROBERTS,
ORRIN HATCH,
MIKE DEWINE,
CHRISTOPHER S. BOND,
TRENT LOTT,
OLYMPIA SNOWE,
CHUCK HAGEL,
SAXBY CHAMBLISS,
JOHN WARNER,
JAY ROCKEFELLER,
CARL LEVIN,
DIANNE FEINSTEIN,
RON WYDEN,
DICK DURBIN,
EVAN BAYH,
JOHN EDWARDS,
BARBARA A. MIKULSKI,

From the Committee on Armed Services:

WAYNE ALLARD,
BILL NELSON,
Managers on the Part of the Senate.

MOTION TO INSTRUCT CONFEREES ON H.R. 2660, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

Mr. KILDEE. Mr. Speaker, I offer a motion to instruct.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. KILDEE moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 2660, be instructed to insist on no less than $14,247,432,000 for student financial assistance and the highest funding level possible for subpart 1 of part A of title IV of the Higher Education Act of 1965 (the Pell Grant Program).

Mr. KILDEE (during the reading). Mr. Speaker, I ask unanimous consent that the motion to instruct be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from Michigan (Mr. KILDEE) and the gentleman from Ohio (Mr. REGULA) each will control 30 minutes.

The Chair recognizes the gentleman from Michigan (Mr. KILDEE).

Mr. KILDEE. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, the motion I am offering today asks conferees to provide the highest possible funding level for the Pell grant program. It is important to remember that the vast majority, 84 percent of the 5 million Pell grant recipients have incomes less than $30,000. Unfortunately, since President Bush took office, this program and its recipients have suffered.

During President Clinton's term the Pell grant maximum rose from $2,300 to $3,750. In contrast during President Bush's current term the Pell grant has only risen $350 in the past 2 years. All this comes at a time when the cost of college is rising significantly.

In the House and Senate fiscal year 2004 appropriations bill, these troubling trends have continued. These bills freeze the maximum Pell grant at $4,050, the first such freeze in a decade. As a result, the maximum Pell grant would finance only 36 percent of the average individual's college cost in the 2004 academic year under the Republican bill. This is compared to 84 percent when the program was first established.

To make matters worse, the House and Senate bill were actually under the administration's admittedly paltry request, under the administration's request. This chronic underfunding, coupled with the sour economy, has led to a growing deficit in the Pell grant program. If we continue to underfund this program, this deficit is likely to grow into the billions of dollars.

Pell grant funding is crucial for those seeking to attend college. Almost two-thirds of all students must borrow to finance their college education. The average student loan debt has nearly doubled over the past decade to $17,000. Pell grant recipients are four times more likely to borrow student loans. Families of low-income, college-qualified, high school graduates face an annual unmet need of $3,800. College expenses not covered by Pell grants, work study, or student loans, $3,800.

A college education is critical to an individual's future success. Individuals holding a bachelor's degree earn an average of 80 percent more than someone with just a high school diploma. Over a lifetime, this earnings' gap for an individual with just a high school degree widens to well over $1 million. These statistics are startling and make access to college education even more important today. An investment in Pell grants is truly an investment when you see the size of that gap.

The recipients of those Pell grants will return far more to the Treasury than what we received in the Pell grants. That is not just guessing; that is going back in history to the GI Bill of Rights. No one on my side of the city of Flint, Michigan, went to college until the GI Bill of Rights came along. They went to college and they returned far more to the Treasury than what they received from the government. This is truly an investment.

Unfortunately, the Republican record on this issue is poor at best. In fiscal year 1996 House Republicans cut President Clinton's request for a $2,620 maximum Pell grant by $180. Over the past 2 years, the Pell grant has only increased $50. Both the House and Senate bills have frozen the maximum Pell grant. And now the Pell grant program is running a deficit. This deficit is very likely to increase given our current budget and economic conditions.

Mr. Speaker, this House needs to take a stand today. We need to emphatically say that we are going to reverse the trend of recent years and actually invest in the Pell grant program. Without such an investment, our students, especially the most needy, are going to continue to have the doors of college education shut in their faces.

Mr. Speaker, I urge members to support this motion to instruct.

Mr. Speaker, I reserve the balance of my time.

Mr. REGULA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we could just look at this chart and I would rest my case. The blue is the Pell grant under the Democrats. The red is the Pell grants under the Republicans.

Now, I am pleased that in the motion to instruct that the gentleman from Michigan (Mr. KILDEE) is urging us to adopt the number passed that was in the House-passed bill. We did not get a vote on the Democrat side; but, nevertheless, tonight we are being asked to instruct conferees to adopt the number that was in the House bill. And that is great. It was a good number as evidenced by the chart. This chart shows the maximum award under the Pell grant program. It has grown under Republican leadership, as evidenced by the red line here. And in the labor bill it maintains the maximum award of $4,050 for fiscal year 2004. When we took control of the Congress in 1995, the maximum Pell grant under the now-minority was only $2,340. And it was funded at $6.2 billion. Today under the Republican leadership, the maximum is $4,050 and the amount in the budget authority was $12.25 billion.

I agree with the previous speaker, this is a great program. It gives middle-income students access to college. In 2004 there will be about 4.9 million students, almost 5 million students that will have a chance to go to college because of Pell grants. In the last 2 years, the number of Pell grant recipients has surged by 25 percent. It is a good example of a need-based program meant to open doors and provide an equality of education opportunity. The poorer the student, the larger the award. It is a means-tested program, so it recognizes that those with the most need get the most help. It is an example of the Federal Government enabling school choice for millions of Americans. They can use their Pell grants for public or private schools; they can use them to attend religious schools. Real choice is one reason that this country's higher education system is the envy of the world.

And let me emphasize that in 2004 not one student will see their Pell grant reduced based on their circumstances. I think it is a record we can be very proud of. We can be proud as a Nation that we are providing some help to students to ensure that they have access to higher education. I think more and more we come to realize how important it is for individuals to get access and opportunity to get the benefits that go with higher education.

Personally, I would like to see the school system become seamless: from the day that student ends the first grade that they think in terms of going through 16 years and getting the college education, that we do not think there is a stopping place, that the student thinks in terms of their future ending up with some type of education beyond high school. The Pell grants ensure that every child will have an opportunity that might not otherwise get that chance.

Mr. Speaker, I reserve the balance of my time.

Mr. KILDEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the motion that was read, that is for overall student aid. We maintain the House level, which is higher than the level of the other body. But we also ask that for the Pell grants we reach the highest grant level possible.

Mr. Speaker, I yield such time as he may consume to the ranking member of the committee, the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentleman from Michigan (Mr. KILDEE) for bringing this motion and giving us an opportunity not only to speak on this issue but also to hopefully persuade the conferees to do as we suggest in his motion, and that is to seek an overall funding level of at least 14.3 million for student aid and the highest possible level for the Pell grant program.

Today we are faced with the critical need to expand opportunities for low- and middle-income students to access college education. Too many students are forced to take on high loan debt, work long hours, and forgo college all together. Typical middle-income students face a $3,000-a-year unmet need after all grants, loans, and work study, while the typical low-income student faces an unmet need of some $3,800. For millions of laid-off American workers, additional education training is the key to successfully reentering the workforce. Without additional student aid, these workers will remain jobless for a longer period of time than necessary, or they may remain jobless for a very, very long time because of failure to adapt their skills to the changing marketplace.

In California, alone, more than half a million students workers who were retained rely on the Pell grants to attend college. Today the average Pell grant of $2,415 is worth approximately $50 less in real terms than it was almost 30 years ago. And that is the reason we are asking to hopefully honor these higher levels of the House-passed legislation.

□ 2030

Pell grants now represent just 11 percent of all student aid compared to Federal loans, which represent 45 percent of all student aid. Thirty years ago, the two major grant programs, Pell and the supplemental education opportunity grants, accounted for more than 40 percent of all student aid. Today, they account for less than 20 percent.

Just as a higher education and student aid has become more important to our national security and economic prosperity, President Bush called on them to cut the maximum Pell grant, and the Republican 2004 Labor-HHS freezes the maximum Pell grant at $4,050.

In addition, the Republican 2004 Labor-HHS bill slashes the Bush administration's overall Pell budget request by $465 million.

We should support, and not oppose, efforts to meet our critical national, economic, and security needs. Yet the Republican 2004 Labor-HHS bill not only fails to meet those needs but also fails to meet the needs of current and future college students.

I urge my colleagues to vote "yes" on the Kildee motion to support these higher levels of funding, and I would say to my friend and colleague from Ohio (Mr. REGULA), the chairman of the subcommittee, that we would like to share a little credit for those increases in Pells since we had a Democratic President a number of those years. We had a Democratic Senate, and we would like to think we participated in that effort.

What troubles us is the right-hand edge of that chart where it is topping out. It is sort of hitting a plateau and kind of running along there without those increases. The gentleman has been a champion of education. I could not feel anymore comfortable than making the plea to him because I spent many hours with him on elementary and secondary education and higher education, and all of the issues that confront these institutions; and we have tried, I think, in our best wisdom to try and improve those institutions.

Clearly, we are now seeing part of it is the turmoil in the economy, part of it is the turmoil in State budgets; but students are not able to put together the financial wherewithal, and especially low-income students are starting not to apply to colleges and universities, and we know that we need them to do this.

The gentleman and I have sat through numerous conferences where they have now made clearly the determination in the employer community that what the student needs for entry level jobs, if that job is in any way going to lead to a career, they need the same set of skills, talent, and education one would receive in an AA degree, as they would just for entry level, but for many students, especially those from low-income communities, that means that they have got to have some financial assistance for those 2 years of college as they try to acquire those skills. Should they desire to go on, obviously the burden gets greater.

So I guess we do not feel that this is falling on deaf ears with the chairman because he has been a champion. We are hoping, and I think he started in the omnibus appropriations bill this evening the negotiation and maybe the Labor-HHS bill ends up in that appropriations. We are hoping that as all of those figures are moved around and those decisions are made that this is sort of our last plea to try and meet these numbers so that we can attend to the problems of low-income students who have worked hard in high school, become eligible to go on to community college, to 4-year colleges, to universities and that the financial support system is what really stands in their way.

We would hope that when we vote on the Kildee motion, I guess we will vote tomorrow, we would hope that it would be overwhelmingly in support of that motion and that message would be carried into the appropriations deliberations over the next couple of days and over the weekend, if necessary, in order to hammer out a budget that we could all support for Pell grants and for student aid.

I want to thank the gentleman who has been involved so many years in higher education, on the authorizing committee, the gentleman from Michigan (Mr. KILDEE), for offering this motion; and we look forward to everyone's support for this motion.

Mr. REGULA. Mr. Speaker, I yield as much time as he may consume to the gentleman from Pennsylvania (Mr. PETERSON), a very valued member of the subcommittee.

Mr. PETERSON of Pennsylvania. Mr. Speaker, I thank the chairman for yielding me the time, and I would like to commend the chairman for his leadership on this issue. I know the gentleman from Ohio is a strong supporter of education.

I want to congratulate the Democrats for coming aboard. Where were they in July when the chairman was funding Pell grants at the level they now want to support? Where were their votes then? Or was partisan politics more important?

I think the record speaks for itself. We talk about a plateau up here, which may be a plateau in the maximum grant, but it is not a plateau in money.

Last year, it was $11.365 billion; this year, $12.250 billion, almost a $1 billion increase; but that has been absorbed by the increased number of students. In fact, from the beginning of this chart we were talking about 2.9 million students, and at the end of this chart we are talking about 5 million students. So the growth in the program has been immense.

Those who criticize the plateau we have reached here in the maximum grant, let us go back to 1992, to 1993 where there was a huge decrease; 1994, a continued decrease; 1995, a slight bump but still way below 1991 and 1992. I do not know what was going on then, but my colleagues were in control, and it shows the blue part here where the real money for Pell grants was not put in the budget.

The increase of the maximum grant was not flat. It actually was declining over a 3-year period. So there is no decline up here, and the reason there is not growth is a strong growth in the number of students at a time when budgets are tight, but we want to congratulate my colleagues today for joining support of the House numbers.

As we review the education issues, I think we had a chart up here last week on special education or whether it is Pell grants or whether it is funding for other education programs, since 1996 the Republicans have put money on the table for the youth of this country. More money in an 8- or 9-year period than has even come close to in 8 or 9 years prior to that. That chart last week on IDEA was almost the same as this, almost flat funding for 9 or 10 years, and then a strong, steady escalation.

We would like to have this chart going on up, but if we had not picked up the number of students we picked up last year, we could have, because we are putting in about $1 billion.

Let us join hands, but let us be fair. Pell grants are the gas and oil of education for the young people of this country, especially for the poor. They are the grants that give people help, and I can think of lots of them in my family. My younger brother was the first one to receive a college education. It was not available, Pell grants and other grants were not available in Pennsylvania when I was in high school. I never had the opportunity to go to a college. Why? I looked at being in medical school. My family was too poor. There was no State help. I looked at going into forestry and found out we could not afford that.

So the minute I graduated from high school I went to work and built a life with hard work; but my younger brother went to the military; and it was through that program, after he came back from Vietnam, that he got the first college education in our family, my brother Bruce, and I am very proud of him. It took him more than 4 years to do it, took him a while to get his act together, but he got a college education because the military system assisted him.

Yes, this program is vital to our future, and we are glad my colleagues are here tonight to support the Republican position that was here in July but was not adequately supported from their party. Pell grants are not about Republicans and Democrats. They are about kids, and I will stand on this record of achievement anytime.

We always wish it could have been better, and the grant may have flattened out in its maximum grant; but the number of students, if we had that chart would show us continuing to go up because we have a lot more students getting them. We have a record of success. We thank my colleagues for joining us. Just wish they had been here in July.

Mr. KILDEE. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. KIND).

Mr. KIND. Mr. Speaker, I thank my friend and leader from Michigan for yielding me this time, and I appreciate and commend to him bringing this motion tonight. This is a very important program in regards to higher education funding, and the gentleman from Michigan (Mr. KILDEE) is someone who probably has more institutional knowledge in regard to the education programs and the funding of education programs than anyone else in the House of Representatives.

I think this is an important motion. It is a timely motion because of the trend that will be set here with the precedent being created in the next fiscal year as far as freezing the average Pell grant award given in this country. But just to be clear, the motion calls for not less than the House number that we should strive for in conference, and I appreciate the work the chairman has done in regard to the defense of education funding programs. He has been a champion in this issue. But what is being called for now is for the first time in over a decade freezing Pell grant awards at $4,050. If this goes through, this will affect adversely 86,000 more students who would normally qualify for Pell grants, but will be shut out of the system.

In Wisconsin, the State that I represent, we have 58,000 students who rely on Pell grants in order to go on to post-secondary education opportunities. There are five State universities in my congressional district alone. Thousands of students in Western Wisconsin rely on Pell grants in order to open up the doors to higher education.

Not only by underinvesting in this area will we have an adverse impact on future economic growth. I submit that it is going to have national security implications as well. I think this body would be well served to spend a little time studying the trends of places like China and India and the education infrastructure going on in those countries and the numbers of undergraduates that they are producing every year, which are going up year by year, including more engineering students being graduated in China and in India; and if we do not invest in the future of our country, our youth, we are going to leave them in a tough position to be able to compete in the global marketplace, not to mention perhaps slipping in regard to the technological edge and superiority that we now hold as a Nation compared to other nations that are investing in this area.

Just as an example, China yesterday announced that they are going to increase the fuel efficiency standards for the cars sold in China at higher standards than what exists here in the United States of America. Part of that is going to involve advances in technology to enable them to do it. It is an embarrassment that China is taking this unprecedented step, and we know in our gut that we should be doing it here as well.

When the original Pell grant program was passed many years back, it accounted for roughly 86 percent of the cost of a student with tuition and fees and room and board. Today, that slips below 50 percent. Now there is greater reliance on loans for students to finance their education.

Again, in my congressional district, the average student, when they do graduate from a 4-year university, is facing on average about $17,000 of debt coming out of school because of the greater reliance on loans as opposed to these grant programs. We are forcing them to dig a fiscal hole at a crucial time in their life when they are trying to start a career, have a family, have children, and this trend has been going on for some time.

My colleagues on the other side are finally pointing to the graph and that, but they often neglect it was President Clinton that was forcing this investment in college education programs, why we saw the consistent trend line in the 1990s; but let us also remind ourselves that he was doing that in the context of balanced budgets and budget surpluses, because there is nothing easier to do in this place than to pass a bill that is not paid for, and this has been a consistent trend for the last few years: a $30 billion energy bill yesterday, perhaps a $400 billion prescription medication bill later on this week, not paid for, all deficit financing. That is easy politics to support, but when the Clinton administration was increasing Pell grant awards during the 1990s, we were doing it in an era of budget surpluses, with fiscal discipline and fiscal responsibility.

Hopefully, they are not crowing too loudly in regard to what was occurring in the 1990s versus the freeze now that we are seeing under one-party control here in Washington.

□ 2045

This is an important program. It does affect so many students. Again, by freezing not only the Pell Grant program but by freezing all campus-based student aid programs, college work study programs, SEOGs, Perkins' loans, the LEAP program, we are going to be forcing more and more students to have to build a debt route to finance their schooling, but more importantly closing the door of opportunity for many students who would otherwise qualify for higher education, but will not be able to afford it because of the lack of resources that are available.

So I hope that my colleagues support this motion. I commend the gentleman from Michigan for raising this issue in a timely basis. Again, I commend the work that has been done even on the other side, of the chairman in his defense of a lot of education funding in this fiscal year and also in past years. But this is important and we should not lose sight in regard to the crucial investments that have to be made for the future of our country, the youth of our Nation.

Mr. REGULA. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PETERSON).

Mr. PETERSON of Pennsylvania. Mr. Speaker, the gentleman from Wisconsin made a statement that I guess we were confused about. He talked about a number of students that would not get grants under this program. I wonder if he could give us that information again. We did not understand it.

Mr. KIND. Mr. Speaker, will the gentleman yield?

Mr. PETERSON of Pennsylvania. I yield to the gentleman from Wisconsin.

Mr. KIND. Mr. Speaker, I would be happy to clarify my statement. By freezing the Pell Grant award in regard to the funding level that is established, there has been a score indicating that 86,000 more students who would otherwise qualify for Pell Grant funding will not qualify as a consequence. This is nationwide, not just in the State of Wisconsin.

Mr. PETERSON of Pennsylvania. Reclaiming my time, Mr. Speaker, what does the gentleman mean? If a person qualifies for a Pell Grant, the program borrows money, if I understand it correctly, and then we have to replenish it. But anybody who meets the criteria of the Pell Grants will receive the Pell Grants, whether we budget enough money or not; am I correct?

Mr. REGULA. That is right.

Mr. KIND. Mr. Speaker, if the gentleman will continue to yield so that I can clarify myself, it is in the context of all the regulatory changes as well that the administration is proposing in the formula and the effect that that would have on the 86,000 students in this country that this side is very concerned about and we are hoping to engage our colleagues' support on the issue as well.

Mr. PETERSON of Pennsylvania. Well, Mr. Speaker, again reclaiming my time, I personally have no understanding of how a student who qualifies for a Pell Grant will not receive Pell Grants. The gentleman is talking about a number of issues here, but I think he is misleading the American public a bit with that statement. If someone qualifies for a Pell Grant, whether we adequately fund the program or not this year, it will be backfilled next year.

And so I hate to leave young people in America with the perception that this budget could disqualify them from a Pell Grant, and if we did something different that they would get a Pell Grant. I think that is a little less than accurate.

Mr. KILDEE. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. FATTAH).

Mr. FATTAH. Mr. Speaker, let me thank the sponsor of this motion for all the work that he has done. And let me say, I do not believe there is anyone in this Chamber who would be more enthusiastic about fully funding and making available higher education opportunities than the gentleman from Ohio, who is the chairman of this subcommittee.

I think that none of us come to this floor tonight, at least I do not, as part of some partisan attempt to win a few debating points. The future of the young people in our country is much too important for us to make this a partisan back and forth.

I went to a number of institutions, but before I went to the University of Pennsylvania and to the Kennedy School at Harvard. I went to the Community College of Philadelphia. I went there able to enroll with the basic educational opportunity grant, a Pell Grant recipient, when I started out as a college student. I have at home tonight two young children, one 5 years old and another just 8 weeks old, and two older ones who have matriculated most of their way through higher education, one through law school and another who is finishing a business education at a university home in Pennsylvania.

I served with the gentleman who just spoke from Pennsylvania for a long period of my years in the Pennsylvania Senate and House, and during that time served in a leadership role at the Pennsylvania Higher Education Assistance Agency, where over a million young people were provided, through State grant assistance, the opportunity to go to college. We just launched in Philadelphia an effort where we secured some $40 million through local funds to make sure that every graduate of our public schools knows with a certainty that they can go on to college.

This question of the future of our Nation is not just one for my daughters at home, Cameron and Chandler, but it is really the shaping impulse of the future of our country that we not focus so much on the next election but that we focus on the next generation. We need these young people to be college educated in order to have an economy that works.

I do not think anyone would suggest that since not one Republican voted for the Clinton economic plan that somehow they were not for 20 million new jobs, or they were not for balanced budgets, or they were not for the surpluses that were generated during the Clinton years. Those Democrats that found some question about this appropriations bill earlier in this session were voting because they wanted more done, not less done. And we come here tonight to join with the chairman and to say that at a minimum the conference committee, which both of us serve on, should do at least as much as the House has suggested that we do.

Mr. REGULA. Mr. Speaker, I yield myself such time as I may consume, and let me make a couple of points here.

One, not one student will be denied a Pell Grant that meets the qualifications. Number two, the formula is written into the law, and we are not changing the formula. So the maximum amount will remain the same. And, number three, on July 10, 215 Republicans voted for the bill, and my colleagues tonight are saying in this motion that they agree with the number that was adopted then.

We support the motion because the motion is saying do what the Republicans did on July 10 in terms of funding the Pell Grants. We are totally in agreement. We were in agreement then, and we are in agreement tonight. We like the program. We want to make sure that every student that meets the criteria of need will have an opportunity.

So we do not have a disagreement tonight on what we are trying to accomplish, and we are pleased that the other side has this position tonight. We wish our colleagues had had it on July 10, but we welcome your support tonight and will join you in this motion.

Mr. FATTAH. Mr. Speaker, will the gentleman yield?

Mr. REGULA. I yield to the gentleman from Pennsylvania.

Mr. FATTAH. Mr. Speaker, as we would have wished that there would have been at least one Republican that voted for the Clinton economic plan, there are times in which clarity on these issues is not as readily available.

But I want to thank the chairman for all that he has done, and we hope that in this conference that we will do at least as much as the gentleman was able to get the House to do.

Mr. REGULA. Mr. Speaker, reclaiming my time, we would like to do that, and we will certainly make every effort because we have not changed our minds since July 10 that this is a good program and should receive the funding that was incorporated in the bill at that time.

Mr. FATTAH. Mr. Speaker, if the gentleman will continue to yield, I will conclude by saying that I would hope there would come a day we could guarantee that every American youngster would be able to qualify for a Pell Grant or some vehicle for them to go on to college.

The gentleman has done a lot of work with me on GEAR UP and other projects, and we are doing a lot, but there is more to be done because millions of our young people in this country do not yet know with a certainty that they can go to college, and we have not, in this time of high tuition increases, kept pace. That is all we are asking tonight; that we do as much as we can do at this moment in time.

Mr. REGULA. Once again reclaiming my time, Mr. Speaker, we are in agreement on Trio and GEAR UP, and I think the gentleman would be in agreement that we make the system as seamless as possible so that these students will enter kindergarten and the first grade with the idea that they are going to go all the way. And part of that would be the Pell Grants, to ensure that, regardless of their economic circumstances, and that is often beyond their control, but that they are still going to get that kind of an opportunity.

Mr. Speaker, I reserve the balance of my time.

Mr. KILDEE. Mr. Speaker, I yield myself such time as I may consume, before I recognize the gentlewoman from New York, to say that we, obviously, are concerned and worried that whenever a conference committee meets that the House may come back with something less than what was in the House version of the bill. That is why this motion calls upon the conferees to provide no less than the House level for overall student financial aid and the highest amount of funding for the Pell Grant program. Because strange things have happened in conference before.

Mr. Speaker, I yield 5 minutes to the gentlewoman from New York (Mrs. LOWEY).

Mrs. LOWEY. Mr. Speaker, I want to join my colleagues in saying that we appreciate all the good work that the gentleman from Ohio (Mr. REGULA) has done, and we know of his great, great commitment. I have had the privilege of serving on the committee with him, and we know of his great commitment to education. And I feel confident that if the gentleman himself could put more money into the Pell Grants and into this bill for education that he would like to do so. I know that sometimes these decisions are not just left up to the chairman.

But I do hope that we can get together, Democrats and Republicans, and support the motion of my good friend, the gentleman from Michigan (Mr. KILDEE); that we can work together to hopefully get more money, but, clearly, no less than was in the House bill, because that is the important point we want to make together.

We know the facts, Mr. Speaker. Over the next 10 years, more than 16 million students will be enrolled in America's colleges and universities preparing for the challenges of a high-tech economy and a highly-educated and productive workplace. Yet, affording higher education does remain a serious challenge for so many Americans.

I meet with college students often, and I recently met with several students to discuss the high cost of college tuition. The chairman and I know that most of these students are working two and three jobs. With the cost of college increasing faster than the rate of inflation, many of these students are really struggling just to pay the bills. In fact, one student at a local college told me that his parents were denied credit in purchasing a house because of all the outstanding student loans he is wearing around his neck, and it is so very difficult for him.

We understand how important an education is, and an advanced degree should not be this difficult or this costly. One would hope that during these hard economic times students attending college could count on greater support from the Federal Government, and that is what this is all about. As hard as Chairman REGULA worked, and many of us were prodding us all on, neither the House or the Senate bills increase the assistance. For example, we know that the maximum Pell Grant is frozen at $4,050.

And let me remind my colleagues, I think it is important to note that when the Pell grant was started in 1975, the grants paid about 84 percent of college costs and it now pays only 41 percent. So the average student loan debt has nearly doubled over the last 5 years. Last year, the average undergraduate borrower left school with nearly $17,000 in debt due to Federal student loans. With nearly 64 percent of students depending on student loans, how can we in good conscience, Democrats and Republicans, all of us, keep the Pell stagnant and flat fund the very programs that encourage States to implement needs-based aid, especially when colleges across the country are instituting record-high tuitions to make up for faltering State budgets and decreased philanthropy.

So in conclusion, let us remember that over the course of a lifetime, a college graduate can expect to earn $1 million more than a high school graduate, and clearly making college accessible to all Americans is a sound investment. So what I am really hoping with this very important motion, and I want to thank my friend, the gentleman from Michigan (Mr. KILDEE), and I hope that Democrats and Republicans will support it, that we work very, very hard to help the 2.9 million graduating high school students, the 5 million Pell Grant recipients, and the millions of Americans who rely on student aid programs to make attending college a reality.

Once again, I know of Chairman REGULA's deep commitment to education, and I know that in the conference he will do everything he can, and I hope that at a very minimum the House number is kept and that we will not go below it. Because we all who are committed to education and working so hard on this very important committee, which we treasure, we all hope that we can increase these numbers in years to come because we both understand the importance of it. So let us make sure we do not go below the House number.

□ 2100

Mr. REGULA. Mr. Speaker, I reserve the balance of my time.

Mr. KILDEE. Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey (Mr. HOLT).

Mr. HOLT. Mr. Speaker, I thank the gentleman from Michigan (Mr. KILDEE) for this motion, and I want to thank the gentleman from Ohio (Chairman REGULA) who certainly has the best of intentions, but there are times when a motion to instruct can help a well-meaning chairman get the most out of a conference.

As the gentlewoman from New York (Mrs. LOWEY) pointed out, Pell grants have eroded in their purchasing power. They were intended to provide three-quarters of a typical college tuition. Now it is maybe a third.

Furthermore, as the gentleman from Pennsylvania (Mr. PETERSON) and the gentleman from Ohio (Mr. REGULA) pointed out, the dollar amount is in statute and so no student is going to lose the Pell grants this year; but as long as we continue to underfund them and borrow money from subsequent years so we can pay the tuition for this year's students, the program is not healthy and that needs to be adjusted. I join with my colleagues and echo the comments of the gentleman from Michigan (Mr. KILDEE) and others in this motion to instruct.

I would like to take an opportunity to talk about another issue regarding Pell grants and their affordability. In May of this year, the Department of Education published updates to the allowance for State taxes and other taxes that are used by students and their families to calculate the expected family income, or what they know as the EFC. The EFC is the amount students and their families are expected to contribute toward college in a given year, and a family's EFC determines eligibility for Pell grants and other Federal aid, and many private institutions use EFC to determine eligibility for private financial aid.

Unfortunately, the Department's change in how the State and local taxes are figured into a family's ability to pay will increase the contribution expected from the family for nearly all American families. While the impact of increases in EFC will vary from student to student and family to family, it will reduce aid for many students. In fact, the Department of Education recently determined that the changes in the State and local tax allowances would cause about 84,000 students to lose their Pell grants entirely and would reduce Pell grants overall by maybe $300 million. Students will lose many other types of Federal, State, and private assistance as well under this new calculation.

At a time when tuition costs are rising and the economy is sputtering, it is troubling that the administration would make any changes, any changes that would reduce financial aid. Furthermore, these changes are grossly unfair. They reduce the credit that families get for paying State and local taxes at the very time when they are paying more State and local taxes.

According to the National Association of State Budget Officers, State taxes increased by more than $8 billion in fiscal year 2003 and will grow even more, maybe $17 billion, in 2004. When the Senate considered the Labor-HHS appropriations, Senator CORZINE offered an amendment to block these new changes from the administration, and it passed on a large bipartisan vote.

The gentleman from Florida (Mr. KELLER) and I, along with 75 other Members, including the gentleman from Michigan (Mr. KILDEE), have written a letter to the appropriators urging Congress to retain the Corzine amendment so that in this conference or in any other bill that includes fiscal year 2004 funding for the Department of Education, the cuts would be restored.

Mr. Speaker, I urge Members to stand with America's college students in supporting the Corzine amendment in conference and in supporting the Kildee motion.

Mr. REGULA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let us be clear, there are no students going to be cut off. Those that meet the qualifications are going to get the grants in accordance with their family's economic situation. The formula is written into the law. We are not changing that.

Secondly, what this motion proposes is to do exactly what the House did on July 10. We welcome the support of the other side of the aisle and the fact that they are joining the 215 Members that voted for the bill that contain the Pell grant numbers exactly as are being proposed tonight, and we certainly support the motion to instruct because this motion is instructing House Members to do what we did on July 10. We are happy to join the other side in this effort and hope on a bipartisan basis prospectively in the future that we retain strong support for Pell.

All of the arguments that have been made tonight are very compelling, and it is what I would like to see, and that is to get the system seamless so that young people think in terms of 16 years, because if America is to be competitive in the years ahead, we need a very well-educated population. We have seen time and again how important that is to the future of our Nation.

Mr. Speaker, I yield back the balance of my time.

Mr. KILDEE. Mr. Speaker, I yield myself the balance of my time.

Parliamentary procedures did not enable us to ask for a higher amount, or we would have asked for a higher amount.

The motion calls upon the conferees to provide no less than the House level for overall student financial assistance and the highest amount of funding for the Pell grant program.

Without adequate resources in this program, low- and moderate-income students will not be able to gain a post-secondary education. College costs are soaring, we know that. So much so that Democratic Members introduced legislation today to help hold down college tuition increases. But without additional Pell grant funding, our neediest students are going to continue to be left behind.

This Congress is able to pass massive tax cuts, which I voted against, for the wealthiest in our Nation; yet the maximum Pell grant has barely been increased since President Bush entered office. The Pell grant program is running a deficit. This deficit is likely to increase based on the likely outcome of this conference, and that is our concern.

The President's record on Pell is clear. Pell grant funding has not been a priority since President Bush took office. Increases in this account have largely been due to Democratic efforts to raise funding. In order to ensure a well-educated workforce, we need to provide opportunities for all individuals to gain a college education. Low- and moderate-income individuals need Pell grants to attend college. It is that simple. Unless we make Pell grant funding a priority, we are not providing everyone, regardless of their economic means, with a college opportunity. I urge Members to support this motion.

Mr. CASTLE. Mr. Speaker, I rise today in support of the Kildee Motion which recognizes what the House, and Chairman REGULA, have done to increase funding for our student financial assistance programs. It is my hope that the conference report will sustain these increases and that this Congress will maintain our consistent support for higher education.

The vital programs at hand increase access to higher education and help to make college more affordable for students and parents across the country. While student aid is key these increases are not the sole solution to the crisis we are facing in American institutions of higher learning. Statistics show college tuition has been increasing well beyond the cost of living, causing students to graduate with incredible debt. For example, over the past 10 years, after adjusting for inflation, average tuition and fees at both public and private 4-year colleges and universities rose 38 percent. This is an extraordinary problem, a problem that I am dedicated to understanding and addressing.

I have always argued that increased funding must be accompanied by fundamental reforms. It is incumbent upon us, as legislators, to make every effort to ensure taxpayer dollars are spent carefully and effectively. Increasing federal spending will never eliminate all barriers to higher learning, as the pace of tuition is growing too fast. The Committee on Education and the Workforce is in the process of reauthorizing the Higher Education Act and I am confident we will do all that we can to tackle rising tuition and fees in a meaningful manner.

In my opinion, one way we can begin combating rising costs is by empowering parents and students with information. Imposing more transparency into the process will require schools to answer to the consumer about the where their money is going, the choices that school is making, as well as their efforts to contain costs. In essence it becomes a team effort where the winners are the student.

I believe in a balance of adequate education funding and fiscal constraint. Considering our current domestic and international responsibilities, I believe the House Labor, Health and Human Services and Education Appropriations Act represents a delicate balance between increased funding for all federal education programs and fiscal restraint. I supported these levels when they passed the House in July and I support them again today.

Mr. KILDEE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ROGERS of Alabama). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Michigan (Mr. KILDEE).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. KILDEE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 108–382) on the resolution (H. Res. 449) providing for consideration of motions to suspend the rules, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.J. RES. 78, FURTHER CONTINUING APPROPRIATIONS, FISCAL YEAR 2004

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 108–383) on the resolution (H. Res. 450) providing for consideration of the joint resolution (H.J. Res. 78) making further continuing appropriations for the fiscal year 2004, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2417, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2004

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 108–384) on the resolution (H. Res. 451) waiving points of order against the conference report to accompany the bill (H.R. 2417) to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, which was referred to the House Calendar and ordered to be printed.

ANNIVERSARY OF THE DEATH OF ISRAELI PRIME MINISTER YITZAK RABIN

(Mr. MORAN of Virginia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MORAN of Virginia. Mr. Speaker, earlier this month marked the anniversary of the death of former Israeli Prime Minister Yitzak Rabin. A true man of peace, his life was tragically cut short during a rally for peace in Tel Aviv.

Yitzak Rabin was a hero dedicated to the security, the stability, and the success of the State of Israel who gained trust among Israelis and among Arabs. His strength, courage, and commitment to peace in the Middle East has inspired thousands. Although his dream for peace has not been realized, his vision has not faded from our hearts.

I rise today to commemorate the life and achievements of this extraordinary statesman. May his vision inspire and endure for generations to come, and may we pay tribute to his legacy by continuing his quest for peace in the Middle East.

Mr. Speaker, I will insert in the RECORD at this point Yitzak Rabin's last speech which he delivered the night of his assassination.

THE LAST SPEECH—PEACE RALLY, KINGS OF ISRAEL SQUARE, TEL AVIV, NOVEMBER 4, 1995

> Allow me to say, I am also moved. I want to thank each and every one of you who stood up here against violence and for peace. This government, which I have the privilege to lead, together with my friend Shimon Peres, decided to give peace a chance. A peace that will solve most of the problems of the State of Israel. I was a military man for twenty-seven years. I fought as long as there were no prospects for peace. Today I believe that there are prospects for peace, great prospects. We must take advantage of it for the sake of those standing here, and for the sake of those who do not stand here. And they are many among our people.
>
> I have always believed that the majority of the people want peace, are prepared to take risks for peace. And you here, by showing up at this rally, prove it, along with the many who did not make it here, that the people truly want peace and oppose violence. Violence is undermining the very foundations of Israeli democracy. It must be condemned, denounced, and isolated. This is not the way of the State of Israel. Controversies may arise in a democracy, but the decision must be reached through democratic elections, just as it happened in 1992, when we were given the mandate to do what we are doing, and to continue to do it.
>
> I want to thank from here the President of Egypt, the King of Jordan, and the King of Morocco, whose representatives are present here, conveying their partnership with us on the march toward peace. But above all—the people of Israel, who have proven, in the three years this government has been in office, that peace is attainable, a peace that will provide an opportunity for a progressive society and economy. Peace exists first and foremost in our prayers, but not only in prayers. Peace is what the Jewish People aspire to, a true aspiration.
>
> Peace entails difficulties, even pain. Israel knows no path devoid of pain. But the path of peace is preferable to the path of war. I say this to you as one who was a military man and minister of defense, and who saw the pain of the families of IDF soldiers. It is for their sake, and for the sake of our children and grandchildren, that I want this government to exert every effort, exhaust every opportunity, to promote and to reach a comprehensive peace.
>
> This rally must send a message to the Israeli public, to the Jewish community throughout the world, to many, many in the Arab world and in the entire world, that the people of Israel want peace, support peace, and for that, I thank you very much.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

WHAT SENIORS WILL REALLY PAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

Mr. BURTON of Indiana. Mr. Speaker, we are going to be voting before the end of the week on probably one of the most sweeping reforms in Medicare in the history of the program, and it is going to involve prescription drug coverage for seniors. There is a lot of misunderstanding about the bill, mainly because the bill has not been reported out of the committee yet; but we have gotten a synopsis of the bill, and I think it is important to see what this is really going to do.

Tonight, and I am going to be doing this every night, tonight I have a chart that shows what seniors will really pay on average. This is an average. If we look at the chart, the annual premium that seniors will pay every year is $420, and then they have a $275 deductible which totals $695. Then they will pay 25 percent of the next $1,925. The government will pay 75 percent, and that is a figure of $481. If we add those together, that is $1,176. And when we take out the amount that the senior is going to pay as opposed to what the government is going to be pay, for that $1,176, the senior will be getting $1,444.

After that there is what they call the doughnut hole: from $2,200 to $5,044 there is no coverage. So seniors will be required to pay on average about $2,844. If we add the other costs I enumerated, we are looking at a total cost to seniors on an annual basis, if they get about $5,000 in expenditures, they will pay $4,020 and the government will pay $1,444 of the total figure.

The fact of the matter is the senior will be out $4,020, and the government's part will be $1,444. I think it is very important that we make certain seniors understand this before we pass this bill because I think most seniors believe they are going to get first dollar coverage or get very broad coverage in a very short period of time, and this will be a big disappointment to them, in my opinion.

The other thing I would like to point out is the cost of Medicare and Medicaid.

When I first got elected to the Indiana General Assembly, and I served in the Indiana State Senate, we were blackjacked by the Federal Government into taking Medicaid. At that time they told us it would cost about $20 million per year for the Medicaid bill.

□ 2115

Medicaid in Indiana this past year was $1.3 billion for our share and $2.5 billion for the Federal Government share. If you just take the Indiana share, you will find that it is about 70 times what the initial cost was of Medicaid. So it went up 70 times since 1969. If you look at Medicare, Medicare was passed in 1965 and in 1967 Medicare cost, across the country, $3 billion. In 2001, Medicare cost $241 billion. I think it is very important that we put all this in perspective, because Medicare went up 80 times since 1965, Medicaid went up 70 times since 1969. And so we can anticipate that there will be a rapid growth in the prescription drug coverage as seniors find out what they are not getting and what they expected.

I would like to say to my colleagues on both sides of the aisle, seniors need to get the facts. The fact is they are not going to get the benefits that they think they are going to get, and if they do get the benefits that they think they are going to get, the cost is going to be much higher than the $400 billion over 10 years they have talked about. As a matter of fact, I have been told, and I cannot verify this, that CBO has said it is going to cost $432 billion over the next 10 years, and the bill has not yet been reported to my knowledge out of committee.

I think this is very, very important. AARP, the senior organization, has said this is a very beneficial thing for seniors, and it is a good first step. I think they realize that when seniors find out about this, they are going to demand more. I can understand that. So what will happen, I believe, is what happened in 1988 when we passed the catastrophic health care bill. Seniors thought they were getting a good deal. I voted against that bill. There were 11 of us that voted against it in 1988. We were castigated by senior groups and seniors across the country because they said we did not care about them. But a year and a half later, when seniors found out what was in the bill, they were chasing Dan Rostenkowski, the chairman of the Committee on Ways and Means, down the street with umbrellas, beating on his car saying, what have you done to us and the bill was repealed within a short period of time.

I am going to make a prediction tonight. If we pass this bill in its present form, I believe that the seniors are going to be very upset not only with the Congress, but with AARP and other groups that say this is a very good first step. Because when they find out that the benefits that they anticipate are not there, they are going to be very angry just like it was in 1988. I would like to say to my colleagues, let us do what absolutely must be done to help seniors. Seventy-six percent of the seniors have a plan where they get their prescription drugs already. Twenty-four percent do not. We ought to help the 24 percent who do not. Those are the ones that we need to be helping. If we did that, I think we would solve a large part of the problem.

I will be back tomorrow night.

EXCHANGE OF SPECIAL ORDER

Mr. CUMMINGS. Mr. Speaker, I ask unanimous consent to take my special order time out of order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

IN MEMORIAM: HOWARD PETERS RAWLINGS, 1937–2003

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. CUMMINGS) is recognized for 5 minutes.

Mr. CUMMINGS. Mr. Speaker, I rise to remember and honor a teacher and mentor and a friend, a dedicated husband and father from my hometown of Baltimore who rose from modest beginnings to lift up the people of his community and the State of Maryland.

Howard Peters Rawlings spent his earliest years in Baltimore's Poe Homes public housing project. However, when he finally succumbed to cancer on November 14 of this year, he had become one of the most influential and well-respected leaders of the great State of Maryland. Pete Rawlings' life exemplified the character and integrity that all Americans should seek to achieve in their own lives. That, Mr. Speaker, is why I ask that we pause in the work of this great House to reflect upon the character of this truly great man.

Despite the daily hardships of their lives, Pete Rawlings' parents, Howard Toussant and Beatrice Peters Rawlings, instilled in him the core values for which I rise to honor him today. Pete was born during the Great Depression, an age when few Americans expected a lifetime of exemplary achievement from any young African American. The young Howard Rawlings was not deterred, however. As a matter of fact, he was determined to be excellent at everything he did, and he was successful at that. His dedication to excellence led Pete to academic success at Baltimore's Douglass High School and carried him onward until he earned his bachelor's degree at Morgan State University, his master's degree in mathematics at the University of Wisconsin, and the experience that would make him a master teacher in more ways than one. Yet, Pete Rawlings never forgot from whence he had come. He was called to public service and rose to chair one of the most powerful committees in the Maryland legislature.

The source of much of Pete's influence can be traced to his chairmanship of the appropriations committee in Maryland's House of Delegates, the legislative body where I served together with him for nearly 14 years. Pete was determined to make his lifelong fight for better schools, health care and housing the center of legislative debate, and he did succeed. He was a driving force behind the debates about reorganizing Maryland's school system, Maryland's higher education system, expanding financial support for our public schools, extending health care and creating safe and affordable housing for tens of thousands of additional families. We who were privileged to know and work with Pete understood that his influence did not derive from his position of power alone.

As Dr. Steven Carter once observed, true leaders are defined by their integrity. Leaders of integrity have the capacity to discern right from wrong and they act upon what they know to be right even if that commitment places them in peril. Dr. Carter's insights about integrity are exemplified by Pete Rawlings' lifetime of service to the people of our community and State. In his commitment to the education of our children, health care for all and fair housing, Delegate Rawlings consistently followed his vision of what is right, both for the present and for decades to come. At times, he was rewarded for his dedication by harsh criticism. Yet Pete remained steadfast, knowing that the course that he followed was opening the doors of opportunity for many people to come. Otherwise, he knew they would be left on the outside looking in and left in a state of arrested development. He did not seek celebrity or acclaim, but generations to come will remember him as a true and faithful servant who kept the faith of the people he served.

Mr. Speaker, all too often those of us in public life worry too much about the next election. A true statesman, however, worries about the next generation and children yet unborn. Pete Rawlings was such a man.

As I close, Mr. Speaker, I am moved to share with you that dying from cancer, my friend and colleague continued working from his hospital bed until his death. The people of Maryland have lost a great leader and I have lost a great friend and mentor. At this difficult moment for Pete's loving wife Nina and their wonderful family, I join all the people of the great State of Maryland in offering our prayers and our gratitude for a life well lived. I thank God that he allowed Pete Rawlings' life to eclipse with my own.

RENEWABLE FUELS STANDARD

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska (Mr. OSBORNE) is recognized for 5 minutes.

Mr. OSBORNE. Mr. Speaker, yesterday the House passed an energy bill, the first comprehensive energy bill that we have had in more than a decade. It is now being considered by the other body. I would like to talk about just one small part of the energy bill and that is the ethanol industry. Sometimes this is controversial. Many times people feel that this is simply a giveaway to the Midwest and particularly to farmers, but I would like to take another look at this.

It is true that the ethanol tax credit is 52 cents a gallon. In 2003, we produced 2.7 billion gallons of ethanol, so that amounts to a $1.4 billion tax incentive. Of course, that is a cost to the taxpayer. But that is not the end of the story. The ethanol industry increases the demand for corn by roughly 10 to 15 percent and as most people understand, when the demand goes up, it also drives the price up. What happens is that we, because of the ethanol industry, increase the price of corn by a minimum of five to 10 cents per bushel, and in 2002 it is estimated that the price of corn increased by roughly 40 to 50 cents per bushel. As prices rise, farm price supports decrease. For instance, if a bushel of corn brings $1.50 a bushel, the price support at $1.50 is 82 cents in the farm bill. If the price goes to $2.70, there is zero price support. As a result, what we have found is that the increase in price driven by ethanol decreases the cost of the farm bill by roughly $1 billion. As a matter of fact, higher commodity prices in 2002 reduced farm bill spending by roughly $3 billion along with the drought. In 2003, the farm bill is going to be reduced by roughly $6 billion from projected cost. That is a 25 to 30 percent less costly farm bill than what we had anticipated.

In addition, and this is something that is really important, ethanol is projected to lower gas prices by 6.6 cents per gallon based on 2002 prices. What that does, it translates into a $3.3 billion annual savings to consumers. On the one side, we have a $1.4 billion tax incentive which costs the taxpayers, but on the other side we have a $1 billion tax saving in the farm bill and we also have a $3.3 billion saving at the pump. So the net saving of the ethanol part of the farm bill and a part of the energy bill is roughly $3 billion.

In addition, ethanol reduces dependence on foreign oil, equal to about what we received from Iraq before the war; reduces greenhouse gas emissions by 12 to 19 percent; reduces carbon dioxide by 35 percent; provides 192,000 new jobs in the United States; improves the U.S. trade balance by $2 billion; increases net farm income by $4.5 billion annually; and it can be produced from corn stalks, rice straw, waste products and switchgrass, so it is not confined to the Midwest States. As a matter of fact, we have some ethanol plants being developed now in California. It also increases the octane in fuel because of higher combustion rates.

Then I would like to mention also the fact that it can be used in diesel fuel to increase energy efficiency. It can be used to produce fuel cells. And also it produces high protein livestock feed as a by-product.

The last thing I would like to mention is something that is very much misunderstood. We often hear people say, it takes more energy to produce ethanol than it yields. Actually for every BTU of fossil fuel used to produce ethanol, that is, to plant the corn, to till it, cultivate it, harvest it and process it, for every 1 BTU, British Thermal Unit, you get $1.389 BTUs of energy. In contrast, for gasoline for every BTU you get .808 BTUs, and for MTBE you get .675 BTUs of energy. You have a much higher yield.

You say, where does this come from? Basically, it comes from the fact that the corn absorbs the sun and this extra energy comes from the sun. It is very energy efficient, and we think it is going to be a tremendous benefit to the U.S. economy as we move forward and as we go from 2.7 billion gallons of ethanol to roughly 5 billion within the next few years.

THE WAR IN IRAQ

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. LEE) is recognized for 5 minutes.

Ms. LEE. Mr. Speaker, I rise tonight to talk about the war in Iraq. First of all, we all must recognize that over 400 Americans have been killed in Iraq and those numbers are rising. One, two, and now 16 and 17 lives at a time. We do not even know how many Iraqis have died because the Pentagon classifies that information as irrelevant. When we asked Ambassador Bremer at an International Relations Committee hearing how many Iraqis had been killed, he said he did not know because that was not really relevant to reconstruction efforts.

What we are witnessing are the results of a failed and failing foreign policy as a result of the fact that the Bush administration launched a preemptive war that was neither justified nor necessary.

□ 2130

To persuade many Members of Congress and the public to support this war, the administration apparently manipulated intelligence information and spun a distorted web of deception, and this will not be forgotten. Congress should not be talking about adjournment until we have answered these incredibly important questions about how we got into this mess.

That is why I have introduced House Resolution 410, which states that Congress should not adjourn until we have started an investigation into these questions as called for by the Waxman and the Tauscher resolutions. These questions are absolutely relevant. The American people deserve the answers. The methods by which we got into this war, the poor intelligence, and the unwillingness to work with the United Nations have shaped the current quagmire that we face; and, again, this is not going away.

Furthermore, in its rush to war, the administration completely failed to properly plan for its aftermath. This shortsightedness has cost American, as well as Iraqi, lives and created chaos and insecurity in Iraq. Unilateralism, we have found out, and some of us have known for many years, is not leadership; and unilateralism will not succeed in Iraq, as we are seeing. What we need is an effective transition strategy, effective transition strategy, so that we do not leave a worse disaster in its wake. That strategy must include a clear vision of how and when United States troops will come home and a real plan, a real plan, for Iraqi political and economic success. To achieve such success, we need to abandon what the New York Times has recently called "the miserable United States monopoly in Baghdad."

Although United States unilateralism has gravely damaged our relations with much of the world, we must continue to at least try to internationalize the transition to Iraqi independence. The United Nations should have real political and economic authority in this effort at peacekeeping and rebuilding. The Pentagon is really not the right agency to foster the creation of this new government; the United Nations is. And, yes, some of us have suggested to the President that Donald Rumsfeld be asked to leave because we believe that he has led this effort in the wrong direction and has not planned adequately for the protection of our young people. So once again we hope that this resolution will come up before we leave.

As a candidate, George Bush, remember, dismissed the concept of nation-building; but as Commander in Chief, he has really mangled it. So we should really let the United Nations fulfill its mission by leading the effort to forge peace, security, and democracy in Iraq.

What should the United States role in Iraq be during this transition? For starters, we should at least recognize that we need to win friends and allies and not make new enemies. Also, I have said before and I will say it again, I believe that our Nation should absolutely pay for the damage that it has caused through its bombing, through its killing; but repairing bombing damage does not mean handing billions of dollars to Bechtel and Halliburton with regard to the no-bid contracts which they are receiving. Iraq's long-term economic development really should be in its own hands just as its sovereignty should be.

Again, as I have said earlier, we are really in a quagmire right now, one of poor planning and poor policy. And it is costing hundreds of American lives and hundreds of billions of dollars. Where in the world will we find the resources for our senior citizens and our children? How are we going to fund Leave No Child Behind, the $9 billion that we need to put into public education? How are we going to fund affordable housing? Where will we find the resources to ensure our public transportation system and all of those quality-of-life issues that Americans so deserve? Not to mention our veterans. Where do we find the resources to provide their benefits which they so deserve?

So we must find a way out of this. And of course that means, again, for starters that the Iraqi people and their representatives must have a greater role and a real role in shaping their own state, and that means that the United States must shift authority to the U.N., and that means we must adopt new tactics that will enhance U.S. security and Iraqi safety by encouraging peace and hope rather than war and fear.

THE WAR IN IRAQ

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. MCDERMOTT) is recognized for 5 minutes.

Mr. MCDERMOTT. Mr. Speaker, we are beginning to see comparisons being made between the U.S. situation in Iraq and the situation we were in in Vietnam. Some are valid; some are not.

One comparison is completely valid and could apply to any conflict. Soldiers get hurt and maimed and die. As a young doctor, I served as a medical officer in the Navy from 1968 to 1970. I worked in California with troops evacuated from Vietnam, and I see those faces when I go up to Walter Reed today.

The issues that we discuss on the floor, who was pushy with the CIA, who knew more than he said, who knew less than he claimed, are important; but they are not important because we want to play some kind of political game of "gotcha." They are important because they are key links in the chain of events that led to more than 130,000 Americans being deployed in Iraq, that led to more than 400 dying, and led to wards filled with boys on Georgia Avenue who do not have arms and legs anymore.

More Americans have died in Iraq in the past 8 months than died in the first 3 years in Vietnam. Regardless of whether this war makes or breaks the Bush Presidency, they are dead.

I did not support the President's decision to go to war. I believe that whatever threat the Hussein regime posed was being effectively contained. I believed and still believe that the presence of large numbers of U.N. inspectors roaming around Iraq was doing a credible job of making sure that Hussein's desires and ambitions did not materialize into weapons and delivery systems.

Containment, however, has a bad name in this administration. But I am old enough to remember President Reagan using it to bring down the Soviet Union. But containment was abandoned on March 19; and it is not over, that war they started.

While it is important for us to continue questioning how we got into the war and learn what lessons we can, our urgent task now is to figure out how to get out. We need to know whether there are 5,000 guerillas fighting us, as General Abizaid says, or 50,000, as the CIA apparently believes.

This is no small matter. Our Defense Secretary has created his own in-house Office of Special Intelligence to rival the CIA. We do not know which agency is closer to the truth. Lawrence of Arabia in World War I did awfully well with just 3,000 Arab irregulars. They tied down nearly 70 times that many Turkish troops. With a ratio like that, 5,000 guerrillas could tie down 350,000 of our troops. If 50,000 is the right number, we are looking at 3½ million of our own troops. And remember the Turks did not beat Lawrence, just as the Russians did not defeat the Afghan mujahedeen and Carthage did not rout Rome.

Our troops are identified as crusaders, invaders, occupiers, the superpower. American troops are magnets for centuries of resentment and targets for those who within Iraq are happy for the opportunity to stir those resentments up.

We need to know whether there is a plan to get out in a reasonable way or not. I do not believe we should walk away and leave the Iraqis in chaos. However much I deplore the way we went in, I do not want to have to deplore the way we get out. It is tempting to do what Senator Aiken from Vermont suggested in Vietnam, declare victory and get out; but it would be wrong. What would be right is to level with the American people, level with our allies, level with the U.N., and make a sustainable plan to leave Iraq; and I pray to leave Iraq better off than when we found it.

So far, the President has only said we were going to have an election after we had a constitution. Now we are going to have an election before the constitution and we are going to be out of there on June 1. It looks like it is all tied to the timing of the election in 2004. That is unfair to the people that we are serving in Iraq who have lost arms, who have lost legs, who have been severely injured. The President should be honest with us and honest with the U.N. and strike a workable deal. It can be done, but it requires the President of the United States to get off this attitude of "bring them on." That was foolishness from the start, and now we have people coming in from all over the Middle East to be involved in taking on our troops, and each day we lose more. There is no excuse.

But the President goes out to fundraisers. He goes to Great Britain. He says he will meet with the bereaved over in Great Britain. But he does not go to public ceremonies honoring our dead in this country. Why is that? Is he afraid? Why does he not go forward and stand next to the mothers and the fathers as they lower their loved ones into the ground?

This President has never been straight with us about this war, and he is going to have to be, or we are going to wind up exactly as we did in Vietnam, running from the top of the embassy or some other way that we leave the country in disgrace. We should not allow that to happen to our troops.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind Members not to make personal references to the President such as accusing him of lying.

IRAQ

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WATERS) is recognized for 5 minutes.

Ms. WATERS. Mr. Speaker, I am here this evening because I came to defy the President of the United States of America. I came to talk about what is happening in Iraq.

I came to do that, understanding that this President does not want this kind of discussion. I recognize that the President does not want us to continue to remind him of this disaster in Iraq. This is a President who has tried to intimidate the news media and told them to stop writing about the bad things that were going on in Iraq, and he told them to write about good things that are happening in Iraq. But thank God that the news media of this country has continued to report on what is really going on in Iraq. Oh, yes, they have talked about some of the children returning to school, and they have talked about the book bags. But the American people want to know about what is happening with our soldiers. The American people are terribly upset about the loss of the lives of our soldiers.

So I am here in defiance of the orders and the attempts to keep us from talking about what is going on. The President's unilateral invasion of Iraq and his administration's subsequent mismanagement of the Iraq conflict have left our Nation in a quagmire. According to the Pentagon's own figures, 422 American servicemen and -women have been killed in Iraq since the beginning of the war and 2,041 have been wounded. No less than 284 Americans have been killed since the President announced the end of the major combat operations on May 1, and the casualties continue to climb.

I believe that this administration is in denial. Yes, the President posted that sign "Mission Accomplished." However, the war really did begin after the sign was posted, and our soldiers have been picked off one by one.

Mr. Speaker, attacks on U.S. helicopters have killed nearly 40 soldiers this month alone, and the attacks continue every day. This past Monday, two more soldiers were killed in two separate attacks near the town of Balad, 45 miles northwest of Baghdad.

□ 2145

One soldier died and two more were wounded when Iraqi insurgents engaged their patrol with small arms fire. The other soldier was killed when a convoy was struck by a roadside bomb. Every day, more American soldiers are killed in Iraq with no exit strategy and no end in sight.

Mr. Speaker, I remember when our soldiers rolled into Baghdad. I remember the way the President bragged about Operation Shock and Awe. I remember how they said to the American people, we have all of the equipment and supplies and the military might that we need. We are going to shock and awe. And this kind of sloganeering that I thought was unbecoming of this administration was the order of the day.

Now, this administration is doing it again. The administration's most recent response to the mounting American casualties has been a new bombing campaign. This campaign is known as Operation Iron Hammer in Baghdad and Operation Ivy Cyclone north of Baghdad. It involves heavy aerial attacks on so-called suspected terrorists' meeting places and infrastructure. For the past 6 days, U.S. forces have pounded targets with 500-pound bombs, cannon fire, and artillery.

I believe it is another public relations campaign. Mr. Speaker, this administration is famous for spinning and sloganeering and basically posturing, and this is another kind of spinning that is going on. They think when they come up with this kind of sloganeering that somehow they are more believable.

So we have this new Operation Iron Hammer in Baghdad, and what is it doing? We are told that they are hitting suspected terrorists. Who are they killing? What terrorists are they stopping when, in fact, the terrorists, as they have been identified who are killing our soldiers, continue day after day to pick our soldiers off. There is no evidence to suggest that this bombing campaign will accomplish anything. In fact, it may make the situation worse.

A top secret CIA assessment from Iraq, which was widely reported last week, warned that bombing campaigns like this one could only incite more Iraqis to fight against Americans.

Mr. Speaker, I will be coming often to tell the truth about what is going on in Iraq. I will not be intimidated.

EXPLORING IRAQ EXIT STRATEGIES

The SPEAKER pro tempore (Mr. ROGERS of Alabama). Under a previous order of the House, the gentleman from Ohio (Mr. KUCINICH) is recognized for 5 minutes.

Mr. KUCINICH. Mr. Speaker, over the last year and a half, the administration has attempted to make the case that the Iraq war is part of the global "War on Terror." They argued that military action to disarm Iraq would save the United States from being directly attacked by Iraq's weapons of mass destruction, and would also prevent Iraq from giving weapons of mass destruction to terrorist groups that could then launch attacks against the United States.

Of course, no weapons of mass destruction have been found, and there has been no proof offered that legitimately connects Saddam Hussein with the September 11 attacks or the work of the al Qaeda network on September 11.

The war has effectively had the opposite effect of what was desired. Al Qaeda, which was not proven to exist inside of Iraq prior to the war, is now thriving in Iraq and is targeting U.S. soldiers in their war against the United States. The U.S. occupation is fueling internal and regional hatred towards the U.S. and is providing al Qaeda with a recruiting poster for their anti-American ambitions.

The world is considerably less safe because of this endeavor. Terrorist attacks in Saudi Arabia and Turkey, and a complete breakdown in the Israeli-Palestinian conflict, only reinforce that the war in Iraq did not bring peace to the region as President Bush said it would.

Clearly, the mission has not been accomplished. More U.S. troops have died since the end of the war than during combat operations. Last week, the U.S. military launched Operation Iron Hammer, a version of shock and awe, targeted at foreign and nationalist terrorists insurgents whose presence in Iraq is a direct result of the U.S. invasion.

Most of the world's nations view the war and occupation of Iraq to be a U.S. folly. The U.S. is stuck, mostly alone, with a costly, unpopular, and unending occupation of Iraq.

This is why a major change is needed. That is why I believe we need to get the U.S. out and the United Nations in. The U.N. will not go in, however, unless the main focus of resistance and instability, the United States, agrees to pull out.

The U.S. must also renounce all political and economic interests in Iraq. It will be necessary to renounce, clearly and unequivocally, any interest in controlling Iraq's oil resources. The U.N., not the U.S., will administer Iraq's oil revenues.

Under a new U.N. resolution, the U.N. will administer contracts to repair Iraq. War profiteering will no longer be tolerated. It will be necessary to suspend all reconstruction contracts and close the U.S.-led Coalition Provisional Authority, because of the suspicion that various contracts have been given to large American corporations were as a result of political connections. In its place, the U.N. would help Iraqis administer funds to employ Iraqis to repair the damage from the invasion.

I believe if we hand over the security, administrative, and economic responsibilities to the United Nations, member countries would be more inclined to help pull the United States out of this quagmire.

I am not suggesting that we do not have responsibilities there. We need a phase-in of the U.N. force and a phase-out of the U.S., while keeping a Navy fleet to defend the territorial integrity of Iraq from foreign invasion.

The U.S. owes a moral debt to the people of Iraq for the damage caused by the U.S. invasion. The U.S. will also owe a contribution to the U.N. to help Iraq make the transition to self-government.

American taxpayers deserve their contributions to be handled in an accountable, transparent manner. However, Americans are not required to build a state-of-the-art infrastructure as the administration seems to be planning.

All we can do now is to make a dramatic reversal. Of course, we must acknowledge that the continued U.S. military presence in Iraq is counterproductive and destabilizing. We have a choice in front of us: either we change course, withdraw our troops, and request that the U.N. move in and bring the U.N. in and take the U.S. out, or we sink deeper into this occupation, with more U.S. casualties, ever higher financial costs, and diminished security for Americans. I think that we can still turn this around. I think that America can take a new direction.

Today, Mr. Speaker, in the Washington Post on page A21, there is a story called "Sending a Message," and I will include that in the RECORD of my Special Order. What that does is it talks about the aspects in which the war is escalating and the damage that is occurring to Iraqi communities as a result of U.S. military action. I would suggest that the damage inherent, as is described in this story, is not only to the humble people whose homes are being blown up, but it is also to the U.S. reputation, because as we get into the cycle of violence, we will be digging ourselves in deeper, and we will be distancing ourselves from the world community. This is a time that we need to reach out to the world community, take a new approach, and that will then enable the United States to finally end this unfortunate episode.

"Sending a Message" With a Show of Force

RURAL IRAQI HOMES DESTROYED IN U.S. OFFENSIVE

(By Daniel Williams)

TIKRIT, IRAQ, Nov. 18.—The house of Omar Khalil Ibrahim is a flattened jumble of broken bricks and roofing. Three of his neighbors' homes, still standing, are riddled with big holes made by tank shells that blasted through two or three walls. A dead cow lies rotting beside a broken shed.

The scene in central Iraq was the result of a U.S. military offensive aimed at taking the initiative away from anti-occupation guerrillas. It is using helicopter gunships, tanks and Bradley fighting vehicles, as well as an occasional jet strike, unleashing 500-pound bombs and satellite-guided rockets.

One high-ranking commander described it as a "no-holds barred" operation. The targets are suspected hideaways, command centers and safe houses of the elusive guerrillas, U.S. officials said.

"We have to use these capabilities to take that fight to the enemy, and why not?" said Maj. Gen. Charles H. Swannack Jr., the commander of the 82nd Airborne Division, which patrols western Iraq. "That's why we use them. They are the right systems."

For all the heavy and sophisticated armaments, the targets in Hawijat al-Ali, a rural hamlet near Tikrit, are small-scale. The houses are single-story structures set within walled rose gardens.

"We were surprised by all the big shooting," said Kafi Khalaf, Ibrahim's wife. "They spent a lot to get rid of our houses."

U.S. military officials say the show of force is a necessary response to escalating attacks in central Iraq. Maj. Gordon Tate, a spokesman for the 4th Infantry Division in Tikrit, said the offensive, which began Oct. 1, picked up steam after Nov. 2, when guerrillas shot down a U.S. CH–47 Chinook transport helicopter near the western town of Fallujah, killing 16 soldiers. Rocket and artillery operations replaced search-and-seizure raids that characterized U.S. military activity in the summer and early fall.

"We are sending a message. We are showing we are here," Tate said. Among the weapons now in use are rockets that each disperse 960 little anti-personnel bombs. Five Iraqis were killed Monday night in a 4th Infantry Division attack, Tate said.

Tate said that sympathizers of deposed Iraqi president Saddam Hussein pay mercenaries to harass U.S. troops. "We want them to think twice," he said. "They should leave out of fear or face death."

To curb the use of roadside bombs that are among the deadliest weapons employed by Iraqi resistance fighters, soldiers have orders to shoot and kill anyone seen digging a hole alongside thoroughfares, Tate said. The same goes for anyone seen carrying a weapon, he said.

Emphasizing the new get-tough approach, U.S. troops in dozens of armored vehicles patrolled in convoys throughout Tikrit Monday. "They are saying, 'I dare you,'" said Ashraf Skarki, a farmer. "The noise and dust, it is all part of their letter to Tikrit."

The activity is not limited to this town, which is notoriously hostile to the U.S. occupation. In Baqubah, several miles east of Tikrit, a pair of F–15 fighter jets, launched from Qatar on the Persian Gulf, dropped four 500-pound bombs Tuesday on some abandoned farmhouses, military officials said. Apache helicopter gunships and artillery poured fire on targets on Baqubah's outskirts and then ground troops pounded the area with 155mm howitzers and 120mm mortars.

"We have taken action on these targets before, but this is to demonstrate one more time that we have significant firepower and we can use it at our discretion," said Lt. Col. Mark Young, commander of the 67th Armor Regiment's 3rd Battalion, part of the 4th Infantry Division. "This is the biggest operation we've had in the Baqubah area in terms of tonnage and volume" of munitions, he said.

On Monday, two U.S. soldiers were killed near Balad, about 35 miles from Baqubah, one in a rocket-propelled grenade attack, the other by a roadside bomb.

"We will not let these insurgents dance on our territory. We need to maintain an offensive stance and let the enemy know that we will come down with a heavy hand," said Lt. Col. Steve Russell, a battalion commander with the 4th Infantry Division.

In Baghdad at mid-evening, U.S. forces fired heavy weapons at suspected guerrilla positions in the far western part of the city. A series of blasts reverberated across the capital. For a second consecutive night, the city was largely blacked out. U.S. officials blamed the electrical outage on a storm that they said toppled high-tension wires, although the weather has been calm for several days all across Iraq.

Exactly who the guerrillas are remains a mystery, even to commanders on the ground. At a briefing in Baghdad on Tuesday, Swannack said that 90 percent of the fighters that U.S. forces have captured or killed were loyalists of Hussein or Iraqi religious militants. While the Bush administration has described foreign fighters as posing a mounting threat, Swannack estimated that only 10 percent of the guerrillas had come from abroad.

"We are not finding foreign fighters coming across the borders in significant numbers to do the fighting," said Swannack, whose soldiers patrol a vast swath of Iraq that borders Syria, Jordan and Saudi Arabia.

Resident of Hawijat al-Ali doubted the offensive in the Tikrit area would be successful. "Do they really think making this kind of ruin will stop the resistance?" said Jamal Shahib, who described himself as a shepherd.

Shahib and other residents said U.S. soldiers arrived Monday night searching for Ali Ahmed Hamid and Hussein Ali, two teenagers suspected of being members of Saddam's Fedayeen, a militia created in the 1990s as an irregular adjunct to Iraq's army and secret police. They did not find the young men. The soldiers arrested Omar Khalil Ibrahim, 55, and told the residents to leave their houses. They then unleashed the barrages of firepower to destroy the structures.

Everyone denied that anyone had a connection to Saddam's Fedayeen. One woman, in a fit of emotion, began to chant, "With our blood and our souls, we will defend you, O Saddam."

FLORIDA'S CITRUS INDUSTRY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. MEEK) is recognized for 5 minutes.

Mr. MEEK of Florida. Mr. Speaker, I want to thank my colleagues from Florida, Mr. PUTNAM and Mr. SHAW, for arranging this special order this evening.

Trade is a crucially important issue in Florida. With our great seaports and airports and our global position as the crossroads between North America and Central and South America and the Caribbean, Florida is well positioned to benefit from trade with our neighbors. However, in order for that trade to benefit Floridians, to create new jobs and new businesses and to promote the growth of existing enterprises, it must be conducted fairly.

One of Florida's signature industries is citrus. Citrus is Florida's second largest industry, responsible for generating over $9 billion for the economy and providing nearly 90,000 people with jobs. The industry also accounts for roughly $1 billion in revenue for the State and local governments. Not only is this industry responsible for giving jobs to tens of thousands of Floridians, it also helps to fund our public hospitals and schools, and our fire and police services.

But all is not well with Florida's citrus industry—primarily because of the impact of imports—and I urge the Bush administration to remember this fact when it considers requests to reduce or eliminate the current tariff on imported citrus juices during the Free Trade Area of the Americas negotiations this weekend or any other negotiations.

There are only two regions in the world that produce a substantial quantity of orange juice: Brazil and the United States. There are also only two regions of the world that consume substantial amounts of orange juice: the United States and the European Union. Brazil already has a virtual monopoly on the EU orange juice market, while Florida's growers sell their product almost entirely in the United States.

There is considerable evidence that the current tariff on imported juices encourages competition among producers and allows Florida's growers to compete on a level playing field. Florida's 12,000 growers, most of whom operate small family-owned operations, are the most efficient and environmentally responsible in the world. Without the tariff, however, Florida's growers cannot compete against the four dominant processors in Brazil, who take advantage of cheap labor and weak environmental laws at the expense of Florida's growers.

The industry also provides many environmental benefits to the State of Florida and its citizens. A collapse of the industry would lead, perhaps inevitably, to more development and more congestion—and also to more air and water pollution and toxins in the environment. I understand that a collapse of the citrus industry would also threaten over 150 different species with extinction.

Today, Florida's citrus industry is already suffering tremendously because of uncertainty over the future of the tariff. The price of citrus is declining. Growers are selling land because they know they will have no future if the tariff is reduced or eliminated. In addition, the huge processors in Brazil are taking steps to exploit any reduction in the tariff by acquiring more groves in Brazil to enable them to dramatically increase production and overwhelm the U.S. market. It would be hard for any industry to survive, and impossible to prosper, in this environment.

The industry cannot afford to wait 6 more months or a year for the Bush administration to make a decision. This is why I urge the Bush administration to state clearly this week its final decision on this matter—to put an end to this uncertainty that is so seriously harming Florida's citrus industry.

Mr. Speaker, Florida's citrus industry—unlike almost all other agricultural commodities—receives no U.S. subsidies. American taxpayer money does not subsidize this industry. The tariff is the industry's only lifeline.

Again, I urge the administration to consider the ramifications of reducing or eliminating the tariff, which would discourage greater competition and would enable Brazil to secure a global monopoly over the orange juice market.

MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from Georgia (Mr. GINGREY) is recognized for 60 minutes as the designee of the majority leader.

Mr. GINGREY. Mr. Speaker, I want to thank my colleagues on this side of the aisle for joining with me tonight in discussing over the next hour one of the most important issues to come before this great body, this United States House of Representatives, probably in the history of the Congress, and I am talking about, Mr. Speaker, the impending passage of the bipartisan Medicare Prescription Drug and Modernization Act of 2003.

Mr. Speaker, Medicare is a good program. Medicare had done a lot of things since its inception, of course, when it was first put into place almost 40 years ago, but it is not perfect. Medicare, although it is a good program, is not perfect. Two of the main problems, Mr. Speaker, with Medicare are these: number 1, it has never had a prescription drug benefit. Yes, it covers hospital expenses. Yes, it covers major surgery and, certainly, it allows some time to be spent in a skilled nursing home if that is necessary. But it has never had any emphasis on preventive therapy which, of course, is what prescription drugs is all about.

Now, maybe back in 1965, when I was a freshman in medical school, we were not prescribing as many drugs. There were not as many lifesaving drugs on the market. In fact, back then, there was a penicillin antibiotic if you had an infection. There was a heart medication called digitalis if your heart was not beating properly. There was maybe codeine if you had a bad headache. But there were not the lifesaving drugs that are available to us today in the 21st century.

Medicare also does not do anything about preventive care, and there is no catastrophic coverage, Mr. Speaker. Under part A of Medicare, after a patient has expended a certain number of days in the hospital for a covered illness, then everything is out-of-pocket, and the same is true for an extended stay in a nursing home. That is why so many of our seniors find themselves in their twilight years having to go on Medicaid, having to become literally wards of the State because of this lack of catastrophic coverage.

So, Mr. Speaker, the main two problems have finally been addressed in the Medicare Prescription Drug and Modernization Act. We are finally going to deliver on a promise to our seniors and include under Medicare a prescription drug benefit, and also make sure that our seniors have an opportunity to get the preventive care and disease management they need.

Mr. Speaker, not covering for a prescription and covering for major surgery is really akin to having a service contract on your car that covers to have the transmission replaced, but not to have the oil changed. It makes absolutely no sense. So finally, Mr. Speaker, we have come to the point in the history of Medicare where we have got to change, we have got to bring it into the 21st century.

Other people, Members of Congress, the health coverage that we have, has a strong emphasis on prevention and wellness and, in the long run, this is less expensive. Certainly, managed care understands that, that it is in their best interest to keep people healthy. When we think about it, so many of us; in fact, most of our citizens who are on that type of plan, including probably all Members of Congress, they are used to that preventive care. They have that catastrophic coverage. And, all of a sudden, they turn 65, and Medicare becomes primary, and if they cannot afford, or if they do not have an employer-provided health benefit for a retiree or a very expensive maybe Medigap plan and they are just relying on Medicare, then they have gone from a coverage that gave them protection, that gave them catastrophic protection and, all of a sudden, at age 65 and beyond, they do not have that anymore, and that makes no sense at all.

The point is, Mr. Speaker, that we have not modernized Medicare, and that is what we are going to do here within the next couple of days in this 108th Congress. I am very proud, as a Member and as a physician Member, to be a part of this historic time in our Congress.

I am, as I say, very pleased that members of my caucus are here with us tonight in this late hour, but they understand the importance of this issue, and they understand the need to make sure that the public and, hopefully, some are watching tonight, especially our seniors, have an opportunity to see exactly what we are going to do for them with this passage of this historic piece of legislation.

At this time, Mr. Speaker, I yield to the gentleman from South Carolina (Mr. WILSON), just across the border from my home State of Georgia, my good friend and colleague.

□ 2200

Mr. WILSON of South Carolina. Mr. Speaker, it is an honor to be here tonight. I would like to thank my colleague, the gentleman from Georgia (Mr. GINGREY), for his leadership in helping to present the truth about the prescription drug plan which is before Congress this week.

I want our colleagues to know that it means so much to me that we have a physician such as the gentleman from Georgia (Mr. GINGREY) here who has a background of working for quality health care for persons in Georgia and the southeastern part of the United States. And he has got a background of knowing what is needed for our citizens. And it just means a lot to have his leadership tonight.

Additionally, I am happy to be here because of the support of AARP of the plan which is before us at this time. I am a member of AARP. I am proud of their promotion of the best health plan that they feel can be produced, and that is the bill before us this week.

Additionally, I want to congratulate the gentleman from California (Chairman THOMAS) of the Committee on Ways and Means who has worked so hard to try to balance interests and come up with a bill which is beneficial to the people of the United States. As we are quite familiar with the providing of prescription drugs, there are other features in the bill that I find very helpful. And I want to relate three of them tonight because I think they are going to have meaning to persons of all ages and particularly for younger people, for persons middle-aged, and, indeed, beneficial for persons who are AARP members.

The first point I would like to bring out is that this bill provides for health savings accounts. This is a provision which in the past has been known as medical savings accounts. This has been a provision which the gentleman from Illinois (Speaker HASTERT) here has been a primary proponent of because it provides new incentives for individuals to put money aside for health care.

The H.R. 1 provisions provide that health savings accounts can provide for people to put, say, up to $1,000. If they have a deductible on their policy of $1,000 they can place $1,000 into an account which can be used to pay all qualified medical expenses. The contributions, earnings, and distributions are all tax free. These accounts are portable from job to job and into retirement. And, indeed, when persons pass away, the money that is left over will be passed on through their estate to their loved ones and their family members. Individuals, employers, and family members can all make contributions.

This is a revolutionary effort on behalf of all Americans, both seniors and nonseniors. Because of the health savings accounts, less money will be spent by the taxpayer. And Americans can plan their futures and plan their ability to provide for better health. These plans will allow seniors to have more control over their health care options.

Other features that I find very helpful in the bill that is before us are to provide for preventative care. The newly enrolled beneficiaries will be covered for a physical. And this I think is so beneficial. I know every time that I have had a health insurance plan, the first question I have after we sign up, unfortunately, is do we have a provision for a physical. And I found out that we did not in my law practice. So it was really very disappointing to me because I believe that if you can have a physical and you can have the normal test, that this will be beneficial to planning your health care.

Additionally, cardiovascular screening, blood tests including cholesterol will be included in the testing provisions. And then another very important effort will be made for diabetes screening for at-risk beneficiaries. This is particularly appropriate to consider today because November is American Diabetes Month. And I know that in the southeastern part of the United States, that we, unfortunately rank very high with the number of persons who suffer from diabetes.

These benefits do not have deductibles or co-pays so those with limited resources can access the benefits. These screenings will catch treatable, manageable conditions that would otherwise result in severe health consequences and cost the Medicare program an immense amount of money. But the main feature is it will help people live longer healthy and fulfilling lives.

Another and final point that I want to bring out that had not received extraordinary attention is reform of the average wholesale price, the AWP, which needs to be reformed. And, additionally, the provision of oncology services. These are cancer treatments that we will provide in the bill for reimbursements to physicians in services to patients. And this has particularly been enhanced in the last several days because of concern that there may be a reduction in reimbursements and services to patients.

I know firsthand how important this is and that one of our sons at the age of 17 was diagnosed with malignant thyroid cancer. But thanks to his treatment at the Lexington Medical Center, the detection by Dr. Butch Bledsoe, the surgery by Dr. Dan Davis, the pathology reports by Dr. John Carter, and the subsequent treatment by Dr. Tripp Jones, our son is in full remission. In fact, he was able to graduate from the Naval Academy, and he is following in the footsteps of the gentleman from Georgia (Dr. GINGREY). He is in his third year of medical school at Uniformed Services University here at Bethesda, Maryland. So we know firsthand that by getting proper cancer treatment in our family that people can recover and live full lives.

The bill will provide fixes to a flawed system that is costing America's seniors in prescription drugs, but the oncologist and other practitioners are covered by the reform with assistance with practice expenses.

Additionally, a final point, the average sales price, ASP, will be calculated at a rate that will be welcomed by the health community, including the much-appreciated oncologists and other specialists.

As I conclude tonight, I want to say a message as always: God bless our troops. We will not forget the sneak attack of September the 11th on our innocent civilians in New York, Pennsylvania, and Washington.

Mr. GINGREY. Mr. Speaker, I thank the gentleman from South Carolina (Mr. WILSON). I especially am grateful for him sharing that very personal anecdotal information with us about his son.

Mr. Speaker, what the gentleman from South Carolina (Mr. WILSON) is talking about is so true, that medications that are available today we did not have in 1965. God forbid maybe if his son had had that leukemia in 1965, he would not be alive today. I know my mom who was suffering from cancer several years ago would not be alive today if it were not for the chemotherapy that basically completely put her cancer in remission.

Just imagine now, just imagine someone that is in their late 60s or maybe even mid-70s that has no insurance coverage for prescriptions who comes down with cancer that could very well be successfully treated if only they could afford, if only they could afford to take a very expensive medication that would cure that cancer, put that cancer in remission, and let them continue to live and enjoy life. So that is why it is so important in this 21st century that we finally have a coverage for prescription drugs.

It gives me a lot of pleasure at this point, Mr. Speaker, to yield time to the gentleman from Georgia (Mr. BURNS), my colleague and friend from the 12th Congressional District.

Mr. BURNS. Mr. Speaker, it is a historic time. It is a historic time to be in Congress. We are at the brink of passing landmark legislation that is long overdue in our country. This week, just in a day or two or three, we are going to take up on this floor H.R. 1, the Medicare Reform Modernization Act, including a prescription drug benefit for our seniors. This is an important and historic vote that we have to come together now and complete the promise that we have made to America.

I committed to the 12th district of Georgia that I would preserve and protect and improve Medicare. H.R. 1 does that. I committed that I would work hard to ensure that our seniors receive a prescription drug benefit that will improve their quality of life, that will allow them to live full and complete lives that are free from pain and free from suffering. H.R. 1 will do that.

As my colleagues have both pointed out, for the first time in the history of Medicare, we will begin to shift from treatment from acute care to prevention to utilizing those drugs, the wonder drugs that we have now in the 21st century to ensure that our seniors can live full lives.

It is a tragedy that in today's Medicare world someone with diabetes cannot receive the prescription of insulin which would prevent them from losing a limb or having to be subjected to painful dialysis. It is a tragedy that under today's Medicare those with heart conditions cannot receive the medications they deserve, but yet have to be patients for bypass surgery or other invasive practices. This bill provides our seniors with the coverage that they need to ensure their future.

There are many provisions in the bill that are positive for America's seniors. It is a bipartisan bill. It is a conference report that has come through the fire. This House acted originally on our version, the Senate on theirs; and now we come together. I think if you look at the contents of this bill, the naysayers will sit there and pick it apart; but if you look at the total package, it is good for America. Medicine has changed dramatically since 1965. It is time for Medicare to change so that it can provide the medical services to our seniors.

The things that I want to point out in this bill relate to the fact that our low-income seniors who have the greatest need receive the greatest benefit. These individuals will no longer have to choose between their prescription drugs and food or utilities or roof over their head. They will be given essentially 100 percent coverage, and that ensures that they will live full and complete lives. So those at the low-income levels of our society will benefit the most. Those who have tremendous medical needs, prescription drug needs, catastrophic drug costs they will also receive significant support. I think if you look at this bill, those two areas alone suggest we need to deliver the prescription Medicare bill for our seniors.

Implementation is critical. And I appreciate the discount card that is going to be available in April of 2004. And I certainly appreciate the fact that our low-income seniors will receive immediately $600 worth of prescription drug assistance per year. And then in 2006, the full prescription drug plan will be available.

I come from a district, the 12th in Georgia, with many rural hospitals. This bill is a strong statement in support of rural hospitals. It extends the standardized base payment rate for our rural hospitals. For all of those hospitals in cities of less than a million, it ensures that they immediately get an increase in the disproportionate share payments that they are entitled to. And I think if you look at the rural health care component in this bill, you find that it is second to none that has ever been a part of our Congress.

Another very significant component of this bill that I think too many people overlook, there is a fear that for some reason employers would abandon their retirees. Just 2 days ago, we had a press conference here in the Capitol where we met with the employer coalition representatives of over 60 U.S.

companies that have worked hand in hand with the Congress to be able to ensure that these companies will not abandon their retiree health plans but would stay in the game, that would continue to provide the medical coverage for retirees, the prescription drug coverage for retirees that their retirees have earned through a lifetime of service.

□ 2215

So if we look at the employer coalition over 60 companies and their commitment to their employees and their commitment to their retirees and their willingness to work with Congress, H.R. 1 provides the incentive for these employers to stay in the game.

Certainly I had an opportunity in the summer and early fall to meet with representatives of the AARP, American Association of Retired Persons. Again, I am a member. My wife is a member, and I met with them in the 12th district, and I was talking with them and we were comparing the House and Senate version of the bill, and we were talking about the changes we needed to make and the compromises and the coming together; and I committed to them that when this bill came out of conference that it would be a bill that they could support and that together the Congress and AARP would work for the passage of this bill, and indeed, that is what has happened. I am glad and proud of the fact that we were able to work effectively with AARP to ensure that seniors in America receive the health care coverage that they deserve.

Lastly, Mr. Speaker, I want to point out the most significant component of this bill and that is a choice, a choice. If a senior is happy with their current Medicare, they can continue receiving that benefit as it currently exists. If they would like a drug benefit coverage with that, they are welcome to accept that benefit, but they are not required to do so. It is their choice. If they choose to take Medicare advantage where they receive screening, where they receive supportive preventive care, that is the individual Medicare recipient's choice. We have preserved Medicare, Mr. Speaker. We have protected Medicare, Mr. Speaker. We have enhanced Medicare, Mr. Speaker.

If my good colleague and friend from Georgia would be willing, I would like to maybe pose a question or two and get his input on this bill, if he is willing to engage in a colloquy.

Mr. GINGREY. Absolutely.

Mr. BURNS. Mr. Speaker, I think one of the things that the gentleman can help the Nation understand, as a physician, how do you compare the current physician reimbursement policies under Medicare with the proposals that are in this new modernization act?

Mr. GINGREY. I am so glad that the gentleman asked that question, and I have actually been speaking on the floor of this House for the last month on a weekly basis talking about that very thing that the gentleman speaks of.

Physicians have been suffering severely over the last several years. They have taken deep cuts in Medicare payments, and the projected cuts for the next 2 years were 4.5 percent, 4.5 percent less per year in Medicare reimbursement at a time when their practice expenses, especially the cost of malpractice premiums, are literally going through the roof; and the answer to my colleague's question is that under this bill, physicians not only in the next 2 years will not suffer that 4.5 percent cut, but in fact, they will have a 1.5 percent increase.

Mr. BURNS. That is a large swing. We are talking a 10 percent, 11 percent swing over the next 2 years.

Mr. GINGREY. Mr. Speaker, that is correct.

Mr. BURNS. I think one of the things we need to understand is that our physicians need to be willing to accept new Medicare patients, and we need to make sure that health care is available as well as access to help our seniors, and H.R. 1 provides that capability.

The gentleman was a part of the employer coalition conference when we talked about the employers being a part of this solution. What was your impression and what incentives do you see for employers to stay engaged, to continue to provide their retirees with the benefits that were really committed to them while they were working for their organizations?

Mr. GINGREY. Another great question, and I am sure the gentleman from the 12th, from southeast Georgia, as he has had town hall meetings in his district all the way from Augusta to Savannah, is hearing the same concerns that I have been hearing. In fact, these were the major concerns and have been the major concerns of the AARP, and that is, what happens to these retirees who have had a great health insurance plan after their retirement that includes a very generous prescription drug benefit from their employer. There was this great fear, has been a great fear, that all of the sudden employers may, since there is an opportunity, an option under Medicare, drop their plans; and so we have made sure that we incentivize employers to keep those plans, to keep providing for those men and women who in some instances have worked 40 years for the company, very loyally working for the company. This Medicare Modernization and Prescription Drug Act actually gives 28 percent, 28 percent of coverage up to $5,000 per individual to employers, a tax-free supplement to incentivize them not to drop those plans. The AARP and its 35 million seniors are quite happy with that, and I think we have solved that problem.

Mr. BURNS. Mr. Speaker, I think we need to recognize that we need to keep our employers in the game. We need to keep them involved in supporting their retirees, and certainly this provision in H.R. 1 does that.

The last question deals with our low-income seniors and really all seniors. What does my colleague see as the level of health care that they will receive under H.R. 1, this modernization act, compared to traditional Medicare that has been around some 40-plus, almost 40 years now?

Mr. GINGREY. As the gentleman said at the beginning of his remarks, the most important part of this legislation is that it helps our needier seniors. It gives them probably the greatest benefit.

Most of our seniors who are not low income, yes, they get significant help with this bill, particularly in regard to catastrophic coverage when they get above $3,600 out of pocket in any 1 year, but the point the gentleman is making is such a good one. It is so important for the public to understand, and that is that we are taking care of our neediest seniors first. If they have an income, an individual, of less than $12,000 give or take a few dollars per year or a couple at the $16,000 income level per year, then they pay nothing for their deductible. They do not pay a copay. They do not have to pay those monthly premiums. All of that is taken care of, and they are only liable for maybe a dollar for a generic drug or $3 for a brand-name medication or, if they are above 135 percent of the Federal poverty level, that goes to $2, $5. So minimum, and that is where the emphasis is, as the gentleman from the 12th is pointing out, on our most needy seniors.

Mr. BURNS. Mr. Speaker, I think if we look at this bill and we look at all aspects of the bill, it is a good bill. Never let the perfect get in the way of the good. This is a solid bill that needs to be passed in Congress.

I think one of the components of the bill that my good friend and colleague from South Carolina (Mr. WILSON) pointed out was the health savings account. What a revolutionary opportunity for Americans and for families to support tax free the health care costs, their own and then perhaps their parents; and if I look at that single provision alone, it is a tremendous advantage to America.

I would like to thank my colleague, the gentleman from Georgia (Mr. GINGREY), for his leadership. I am delighted to have the opportunity to serve in Congress with two physicians in our freshman class who understand health care and who understand the challenges of our seniors.

Mr. Speaker, as this conference report comes to the floor later this week, I think it is time for action. It is time for us to stand up for America and to stand up for America's seniors, to pass this bill and to ensure that our seniors receive the Medicare coverage they deserve, the prescription benefits that they deserve and need desperately but also preserve this system for my children and my grandchildren and for America.

Mr. GINGREY. Mr. Speaker, I thank the gentleman from Georgia for those very, very timely and accurate comments in regard to this bill. In fact, the gentleman from Georgia mentioned the health savings account, and I think that is one of the many parts of this bill that is so good. It is something that we have waited for a long time to have what we might call a universal health savings account opportunity.

Mr. Speaker, at this point, I would like to yield to my colleague and friend, the gentleman from Indiana (Mr. CHOCOLA), who is a small businessman and understands this issue just about as good as anybody that I have discussed it with.

Mr. CHOCOLA. Mr. Speaker, I thank the gentleman for yielding, and I thank him for his leadership in bringing us to together tonight to really discuss what has been pointed out, I think, as one of the historic bills we will consider in our career, no matter how long we serve in this body and have the privilege of representing the people in our home districts.

We have had a lot of talk about all the provisions that are in this bill and how important they are, and certainly the prescription drug provision is very important in the basis of this bill, and I join my colleagues in saying it is about time that we live up to the promises that we have made to our seniors and really live up to our responsibility to deliver the prescription drug benefit under Medicare that they deserve.

Really, what I would like to do tonight is focus on another provision of the bill that I think is equally important and really has an impact on every single working family in our country. Not only does it impact retirees, not only does it impact Medicare recipients, but it impacts every single family in this country, and as the gentleman from Georgia pointed out, that is health savings accounts; and the reason I want to talk about this is because ever since the day I decided to run for Congress, every single conversation that I have had about health care in America has revolved around the following conversation.

Basically, health care reform is the most important and complicated domestic issue that we face as a Congress, and the only way that we are going to see true health care transformation in this country is to have individual ownership and control of health care coverage; and the only way that we are going to have individual ownership and control of health care coverage is to have what we used to call medical savings accounts, but now we call health savings accounts, because it rewards people for shopping for their health care services on economic, not an emotional, basis, and it is an opportunity for people to build wealth over a period of their life, over the course of their career, and they can use that wealth to cover their retiree health care needs.

I used to be a small business owner, as the gentleman from Georgia pointed out, and we had about 1,300 employees. We provided very generous health care benefits for our employees, but every year it was harder and harder and harder to be able to keep those benefits in place at a reasonable cost to the company and reasonable cost to the employees; but every single day I saw the magic of ownership in accounts like profit sharing plan accounts, like a 401(k) plan. People that live paycheck to paycheck did not have bank accounts, took 100 percent personal responsibility in those accounts because they knew it was their money, and if it was managed well, it would benefit their retirements and their family.

I thought every day as I watched the magic of that ownership, why can we not apply these same principles to health care coverage in America, and that is exactly what health savings accounts do. As an employer would it not be great if we could establish a system that says that the employer can contribute and the individual can contribute on a tax-free basis into an account that covers a high-deductible policy?

Mr. Speaker, for those that are not familiar with what health savings accounts are, basically they are a high-deductible health care policy, and the high-deductible portion of that policy is owned by the beneficiary of that policy. They make the decisions on what medical services they are going to buy. They make the decisions on how much they are going to pay for those medical services; and if they are good shoppers and they are relatively healthy, and certainly our experience in our company, I do not think it was too different than most experiences, in that the 80/20 rule applies. Eighty percent of the people are pretty healthy, and they do not really need expensive health care coverage. Twenty percent of the people do encounter health care needs, and they will be covered by the catastrophic portion of their coverage; but for the 80 percent, they will be able to shop wisely and save money.

That is in their account on a year-by-year basis. That money will grow tax free year over year and grow into an asset that they can utilize in their retirement to purchase qualified health care needs.

□ 2230

Mr. Speaker, I do not think there is anything we can do that would be more responsible as Members of Congress than to free the American people to have wealth for their health care retirement needs. Certainly Medicare is a very important provision. It has been a great law in this country and has covered many people in a very responsible way. As this whole debate goes on this week, we will all recognize that since 1965 health care in America has changed, and we need to change Medicare to reflect that change. And we certainly need to provide a prescription drug benefit for our Medicare recipients. But would it not be great if we could provide every single American working family the opportunity to build wealth and be able to be free to have a substantial account in the bank, to be able to have the flexibility to have the health care services they desire, no matter what those are, when they retire?

So, Mr. Speaker, I think it is so important that we do not forget how important this provision is. And as we talk about how do we lower health care costs in America, just think of this: When is the last time you changed the oil in a rental car? If we do not own it, we do not take care of it. If we own our health care coverage, we have every incentive to take care of ourselves. We are rewarded for having health prevention and we are rewarded for buying our health care costs on an economic basis.

And there are two examples to show how powerful that is. Three years ago, I had LASIK surgery. And 3 years ago, I paid $3,000 to have that LASIK surgery so I could see. Today, you can probably go for 30 to 40 percent less to have that same surgery. The only difference in that medical procedure is that it is not covered by insurance. It is paid for by people out of their own pocket. They shop, and economic and market forces have driven that cost down. The same thing with elective surgery. People who have plastic surgery, those costs have risen slower than the cost of inflation.

So, Mr. Speaker, it is possible to bring health care costs down in America. It is possible to live up to our responsibility to our seniors. It is possible to give every American family the freedom and the flexibility to have the wealth to take care of their retirement health care needs if we pass this bill. So I join with my colleagues here tonight to encourage every Member of this body to pass H.R. 1 and live up to our responsibilities to the American people.

Mr. GINGREY. Mr. Speaker, I thank the gentleman from Indiana. I think this is such an important aspect of this bill and I appreciate his discussing that with us.

Mr. Speaker, there are probably 40 million people in this great country of ours who have no health insurance at all, and 60 percent of them, maybe more than 60 percent, have jobs. They are not unemployed. Maybe they work for a small shop of five to 10 to 15 people and that employer just cannot go out in the marketplace and get a volume discount, so they just cannot afford it. It is a benefit they cannot afford.

This health savings account will give these employees that are working but do not have the opportunity for group health insurance to put up to $5,000, up to $5,000 a year, Mr. Speaker, tax deferred and will have an opportunity for that account to grow, as the gentleman from Indiana so vividly pointed out.

I want to shift gears, Mr. Speaker, for just a minute. We have heard a lot of discussion tonight during this time about the AARP and how very supportive they are of this Medicare Modernization and Prescription Drug Act, this bipartisan conference committee report. Let me just read a letter, Mr. Speaker, from the President of AARP, Mr. William Novelli, and here is what Mr. Novelli says about this bill.

"Some people are surprised by AARP's support of the Medicare prescription drug legislation now before Congress. They shouldn't be. Our decision is not based on political calculation or allegiance to rigid ideology, but solely on what this will mean for our members and the health of all older Americans.

"There are many reasons for our endorsement. First, this bill will provide prescription drug coverage at little cost to those who need it most: People with low incomes, including those who depend on Social Security for all or most of their income. Second, it will provide substantial relief for those with very high drug costs and will provide modest relief for millions more.

"Finally, we are pleased to see a substantial increase in protections for retiree benefits. That fairness is maintained by upholding the health benefit protections of the Age Discrimination and Employment Act.

"On July 14, in a letter to congressional leadership, we outlined our concerns and our expectations for a bill that we could support. Among them was our opposition to what is commonly known as "premium support," a new structure requiring traditional Medicare to compete against private plans, which could very likely result in higher out-of-pocket costs for those who choose to stay in traditional Medicare.

"As a result of negotiations, this was scaled back to a demonstration project that is very limited in scope that doesn't begin until 2010, that exempts low-income beneficiaries and limits any premium increases. This will not," and I repeat, Mr. Speaker, "this will not jeopardize traditional Medicare" as we know it.

"Of real concern to our members and millions of older and disabled Americans was the prospect that by gaining a Medicare benefit, they might lose their current employer-retiree coverage." We talked about that earlier. "We said that the final agreement should provide adequate incentives for employers to maintain their current plans. The proposed legislation includes an unprecedented $88 billion in subsidies to ensure that people who have good private coverage do not lose it.

"This bill is not perfect, but millions of Americans cannot wait for perfect. They need help now. And, finally, help is on the way.

"This is an issue too important to be held hostage to the status quo. As the late civil rights leader Whitney Young once said, 'We have no permanent friends or enemies, just permanent interests.' Our interests are what is best for our members and for all older Americans.

"In the coming days, we will do all we can to help the American people understand how important this legislation is to them and to convince Members of Congress to work in a bipartisan," absolutely a bipartisan "fashion to pass it now." William Novelli, President of the American Association of Retired Persons.

Mr. Speaker, at this time I would like to yield to my colleague and good friend from the great State of Alabama. Our districts butt up against each other at the State line, and I know that the people that he represents in his district in Alabama have the same needs, life experiences, and concerns that my folks do in the 11th District of Georgia.

So it gives me a great deal of pleasure at this time, and I thank the gentleman from Alabama (Mr. ROGERS) for joining us tonight.

Mr. ROGERS of Alabama. Mr. Speaker, I thank my good friend and colleague, the gentleman from Georgia, for yielding to me.

Mr. Speaker, it has been said that good things come to those who wait, but when it comes to our seniors' health, waiting is a luxury we can no longer afford. Year after year we hear the cries for help: Drug costs are skyrocketing, family budgets are stretched, doctors' visits go unfulfilled. Mr. Speaker, the prognosis is clear: Seniors need our help.

In my home State of Alabama, seniors now pay nearly $1,300 per year for prescription drugs. These costs are expected to rise just as seniors' dependency on lifesaving prescription drugs continues to grow. But rising drug costs are not the only symptoms. Alabama's seniors and doctors suffer from unfair rural health care penalties as well. Rural doctors, for example, are being squeezed by health care costs. They are finding it more and more difficult to continue providing service to our seniors. This is because Medicare simply has not reimbursed rural health doctors at fair and reasonable rates. As a consequence, we are experiencing a crisis in rural health care. The most highly-qualified doctors are forced to move out and younger doctors are choosing not to move in.

Mr. Speaker, America's seniors sent us here to get the job done. The bipartisan plan to strengthen Medicare with a prescription drug benefit helps seniors right where they need it, in their pockets. This legislation provides record increases for rural health care, it gives seniors more choices and more options, and, most importantly, it provides a drug benefit that is completely optional while allowing seniors to stay in Medicare's traditional fee-for-service system.

Doctors in rural areas, like mine in Alabama, would have a greater incentive to continue providing care. Seniors would subsequently benefit from more health care options and more doctors. Most importantly, seniors would get an immediate discount on their prescriptions. A Medicare-endorsed prescription drug card would be available within 6 months of the passage of this bill and provide savings up to 25 percent on seniors' prescriptions. And the best part, every senior who receives Medicare is eligible for these instant savings, which typically number in the hundreds or even thousands of dollars every single year.

There are also safeguards for our most vulnerable Americans. For certain low-income seniors, a $600 annual credit would appear on their drug card. This helps ensure that our poorest seniors receive access to the best possible care, no matter their income.

Mr. Speaker, this bill is not just about today, it is about our future, for our near retirees and for our children. It is not perfect, but it is a great start.

I know many of my colleagues here share my enthusiasm for this bipartisan bill, but the chorus of support for its passage is not limited to those in this Chamber. In fact, the AARP has formally blessed this bill with their "Good Housekeeping Seal of Approval." AARP and its 35 million members have committed to helping ensure passage of this historic legislation.

To quote AARP President James Parkel from a statement earlier today, "The bill represents an historic breakthrough, and an important milestone in the Nation's commitment to strengthen and expand health security for current and future beneficiaries."

So let us get the job done. I urge my colleagues on both sides of the aisle to come together to improve the health of our seniors. We all need to support this bipartisan proposal to create a new prescription drug benefit under Medicare and help improve the lives of our seniors for generations to come.

I thank the gentleman from Georgia, Mr. Speaker.

Mr. GINGREY. Mr. Speaker, I thank the gentleman from Alabama, and before I introduce the last member of our team tonight, I would like to read a letter from the President of the American Medical Association, and he says:

"Dear Mr. Speaker, the American Medical Association is proud to support the Medicare Prescription Drug and Modernization Act of 2003 conference report. Congress listened to America's patients and the physicians who serve them.

"The AMA gave Congress a set of principles for a sound prescription drug policy. We asked that the pharmaceutical drug benefit be fully funded as a separate new part of the Medicare program and provide for adequate accounting so that drug program expenditures can be tracked separately from all other expenditures. We asked that it be targeted to reduce hardship for those with low incomes and those with catastrophic costs and that patients be offered a choice of insurance options. The conference report meets all of these requirements.

"We asked for help with the drastic 4.5 percent physician payment cuts that physicians and other health care providers will face beginning in less than 2 months. We said that cuts in Medicare payments jeopardize access to medical care not only for seniors but also for military retirees and their dependents. The conference report provides a 2-year increase in payments for 2004 and 2005 of at least 1.5 percent each year," not, Mr. Speaker, a 4.5 percent cut. "It also provides a mechanism to begin correcting the flawed payment formula in an effort to stabilize those payments over time.

"We asked for relief from regulatory burdens imposed on physicians and other health care providers when dealing with the Centers for Medicare and Medicaid Services, CMS. Using many components of the AMA model bill, the conference report guarantees physicians certain due process rights in Medicare appeals and targets education dollars promote.

"We asked important flexibility and assistance in moving toward electronic prescribing technology. The conference report provides incentive grants to small, rural, and low-volume practices instead of mandating that all providers use electronic prescribing technologies in a short time frame. It also provides for 'safe harbors' for group practices and others in an effort to make these technologies more widely available."

□ 2245

"We asked to retain the coding system that makes sense for American physicians, not to move to a new, untested system. The conference report removed language that would have imposed new, regulatory burdens in payment coding systems that physicians use every day. Moving physicians from some 7,000 codes to some 170,000 codes could only mean less time spent with patients.

"We ask that geographic disparities in payments between rural and urban areas be diminished. The conferees worked out a compromise to increase payments in this regard and to thoroughly study patient access to physicians, as well as retention and attraction of physicians to scarcity areas.

"The status quo is unacceptable to patients and their physicians. The Medicare conference agreement includes numerous provisions that will improve seniors' access to medical services. We worked closely with Congress to do the right thing for American's seniors, and Congress heard us. We pledge to wholeheartedly support the Medicare Prescription Drug and Modernization Act. Sincerely, Michael D. Maves," president of the American Medical Association.

Mr. Speaker, I think this is a perfect segue into the introduction of my colleague from Texas who not only is my freshman colleague in this Congress, but he also is my colleague as a physician and further as a specialist in obstetrics and gynecology. I yield to the gentleman from Texas (Mr. BURGESS).

Mr. BURGESS. Mr. Speaker, unlike the gentleman from Georgia, I was not involved in medicine when Medicare was passed back in 1965. It was a good program that was passed to help seniors with their surgery costs and their medical costs if they were hospitalized, but there was an important omission; and now this Congress almost 40 years later, almost 4 decades later, stands on the brink of correcting that deficiency that started in 1965.

Seniors to this day have no comprehensive drug benefit, an omission from the original Medicare passed in 1965. On a daily basis, I saw how this impacted my patients. I would have patients who could not afford the medications that I prescribed, patients who would split pills or take a smaller dose. Medicare would cover the cost of the doctor visit, but because of this hole that was left in the program, which could only be classified as a typical government approach, they would often be unable to follow my recommended course of treatment if prescription drugs were involved due to a lack of coverage.

This President and this Republican Congress have had the courage to stand up and do what is right by correcting this oversight by helping millions of American seniors pay for their prescription drugs. This bill gives seniors purchasing power to meet their prescription drug needs and cover their health costs.

The prescription drug discount card will reduce the cost of prescription drugs by as much as 25 percent. With the additional subsidy placed on for low-income seniors, this benefit alone will cover drug costs for nearly half the seniors enrolled in Medicare with minimal financial participation on the part of the beneficiary. Additionally, the bill would authorize consumer-based accounts dedicated to their holder's health and well-being.

We have heard a lot about health savings accounts this evening during the course of this hour, and I would underscore the importance of health savings accounts. This is not an arbitrary concept. This is not just an idea that someone has had; this is, in fact, a reality that has been in existence for the last 5 years. The Archer Medical Savings Accounts were passed in 1996 or 1997. I had a medical savings account until coming to Congress and have seen firsthand how you can have real wealth grow in an interest-bearing tax-free account dedicated to your health care needs. Health savings accounts allow individuals and families to put their money in tax free, allow it to grow tax free, and be withdrawn tax free to cover medical costs. These accounts will give younger Americans the ability to save for future medical expenses, and give older Americans the ability to soften the financial strain of costly procedures or even long-term care insurance. By shifting Medicare to a more consumer-focused program, we improve health outcomes, give purchasing power and make the program more accountable to the American taxpayer.

There have been those who criticize this ground-breaking program before Congress as an attempt to privatize. Mr. Speaker, which President actually privatized Medicare? In fact, it was Lyndon Johnson. The private market has been intimately involved in Medicare since day one. When President Johnson signed Medicare into law in 1965, he was asking hundreds of thousands of doctors and their private practices and their private hospitals to participate in a government program. The program then depended on the private market to provide a network of doctors to care for seniors, and the program today depends upon that same private market to provide that care.

Because the delivery of health care is so much more complex today than it was back in 1965 with the complex array of specialty providers, physician networks, insurance companies, pharmaceutical benefit managers and mail order pharmacies, it would be irresponsible of the U.S. Congress to not rely on this same network that provides care every day to millions of Americans as we look to reform how Medicare covers America's seniors.

As for the claim that seniors will be forced into HMOs, nothing could be further from the truth. We have heard over and over how health savings accounts will impact the health of Americans in the future. The truth is that under this bill, seniors will have more options to meet their health care needs than they currently have. Under this proposal, seniors would certainly have the option to receive care through an HMO. Some seniors prefer that type of care, but they would also have the option to receive their care through a preferred provider organization or, if they like fee-for-service Medicare, they can stay right where they are. The bill provides choices available to seniors; it does not limit them.

Our work is far from done with this bill. More work needs to be done to infuse more market-based principles into this government-run program. More work will need to be done to improve the program so it focuses not just on covering as many Americans as possible, but actually improving their health with attention to the detail of health maintenance.

Congress will remain accountable and engaged. Medicare is a program that will need continual supervision over the years to ensure it remains a viable program. We will continue our oversight on Medicare for future generations. This Medicare bill is the future of health care for our Nation.

Mr. GINGREY. Mr. Speaker, I thank the gentleman from Texas (Mr. BURGESS) and the other Members for joining us tonight. An hour goes by very quickly. I think we need about three to really talk about everything that we need to talk about.

In conclusion, let me say that we proudly support this Medicare Modernization and Prescription Drug Act of 2003. We talk about compassionate conservatism, and that is a pledge upon which our 43rd President ran, and he promised that we would deliver. And some pun intended, I might add as an OB-GYN, but the President promised, and this leadership promised, this Republican Congress promised that we would deliver. Finally, at long last we have overcome a lot of obstructionism to get to the day that we are going to deliver to American seniors, and they deserve it.

It is compassionate because there are people in this society who through absolutely no fault of their own need our help, and that is what compassionate conservatism is all about. Mr. Speaker, I say this is its finest hour. Let us get this bill passed with support from both sides of the aisle and make this truly a bipartisan success for our seniors.

PRESCRIPTION DRUG COVERAGE UNDER MEDICARE

The SPEAKER pro tempore (Mr. ROGERS of Alabama). Under the Speaker's announced policy of January 7, 2003, the gentleman from New Jersey (Mr. PALLONE) is recognized for 60 minutes as the designee of the minority leader.

Mr. PALLONE. Mr. Speaker, I plan to be joined tonight by some of my colleagues on the Democratic side, and I appreciate the fact that they are here to join me. I did listen to much of what was said by my colleagues on the Republican side in the last hour.

One thing that bothers me the most about some of their statements is that they seem to color everything based on ideology. I hear constant references to conservativism, even if it is compassionate. I hear references to market forces and the private market. They suggest that they are not privatizing and somehow Medicare has been privatized for some time going back to Lyndon Johnson.

First of all, it is very important to understand that I personally, and I know this is true about my colleagues, we do not look at this from an ideological perspective. I do not think we really care whether it is conservative or liberal or market or regulatory. We are only interested in providing a prescription drug benefit to senior citizens, and, practically speaking, the best way to do that.

My concern about the Republican side is they seem to be ideologically driven: there have to be market forces or this has to be some kind of conservative approach, and the notion that everything has to be privatized or really has been privatized all along. It is just not the case.

When we talk about Medicare when it was first started under Lyndon Johnson, he started Medicare because he realized that if a senior citizen, practically speaking, wanted to go out and buy insurance in the private market, which is all that existed at the time in the early 1960s, that they could not get health insurance. They could not buy it. There was no way to do it.

The reason that Medicare, which is a government program, not a private industry program, was set up was because of the failure of the private insurance market to accommodate and provide affordable, comprehensive health care for senior citizens. I do not care how it is provided, but the bottom line is that the private market could not provide the health insurance. There is no indication that that has changed in any way today. To suggest that somehow Medicare now is private is simply not true.

I think that Republicans are spending so much time trying to make sure that Medicare is privatized in order to provide a prescription drug benefit that they are losing sight of the fact that the purpose is to provide the benefit. If we look at what this Republican bill, this Medicare conference report that we are going to get, and we have not seen it yet, if we look at what we are told that it is going to include, and we are going to vote on Friday or Saturday, we find that there is an attempt to privatize Medicare; and the way that they do it is by providing the HMOs and private insurance companies a huge amount of money, plus-up money, if you will, so they can, what the Republicans say, compete with traditional Medicare.

The bottom line is that if we had a true competitive market between traditional Medicare or HMOs, the market should take care of itself and they should not have to add all of this extra money to boost up the HMOs and make sure that the HMOs and the private market are going to cover seniors. The irony is what they are doing here is forcing the seniors into managed care, into HMOs. You are not going to get this drug benefit unless you essentially sign up for an HMO. You are going to lose your choice of doctor; and as a consequence you are suffering, and traditional Medicare as we know it is going to disappear.

What is this drug benefit that they are going to provide? Well, I would maintain that it is such a meager benefit, and it is going to cost senior citizens so much money out of pocket it is essentially meaningless. Since it is voluntary, most seniors will not even sign up for it.

☐ 2300

In July when this bill came up in the House, the Democrats had a substitute. What we said is this. If you, as Republicans, feel that you want to provide a certain amount, pot of money to provide a prescription drug benefit, we know that the traditional Medicare program works very well, and nobody on the other side is saying that that is not true, then why do you not just add the money and add the drug benefit to traditional Medicare the way you added a benefit to pay your doctor bills. Seniors know that part A pays for their hospitalization, part B Medicare pays for their doctor bills. With their doctor bills, they pay about a $50 per month premium, they have a $100 deductible on the first visit to the doctor, 80 percent of the doctor bills are paid for by the Federal Government, 20 percent copay and after you reach a certain amount that you pay out-of-pocket, the Federal Government pays 100 percent. We as Democrats said, let's just emulate that and extend it to prescription drugs, call it part C, part D, whatever you want, you pay a $25 per month premium for your prescription drugs, you pay a $100 deductible for the first drugs, whatever, and then you would have 80 percent paid for by the Federal Government, 20 percent you would pay, copay, and then at a certain threshold just like in part B, 100 percent of the cost of your drugs would be paid for by the Federal Government.

That is not what the Republican bill does. The Republican bill, first of all, says that you are probably going to pay $35 a month premium but there is no set premium. It could be $75, $85 a month. Who knows? The deductible is not $100 but $275 a year. And 75 percent of the cost is paid for by the Federal Government, 25 percent by you, up to the first $2,200. But from $2,200 to $5,000 for your drug costs, you get nothing from the Federal Government. You pay the whole expense. I would maintain that you are going to have to shell out so much money for this premium and get so little of a benefit that most seniors would not even sign up. Keep in mind, you are only going to get it if you sign up for an HMO and give up your choice of doctors, and they are giving all this extra money to the HMOs to try to make sure that they will provide a prescription drug benefit because many of the HMOs in the past few years that have initially provided prescription drug benefits decided to drop the seniors, and now many of the seniors who signed up for them do not have it anymore. That is 100,000 people in my home State of New Jersey alone.

I have my colleagues here. I would like to yield some time to them. First, I wanted to make two more points, because I have had seniors ask me this question. Number one, they say what are you doing about cost? Republicans are doing nothing about cost. They specifically have in their bill language that says that the Medicare administrator cannot negotiate lower prices, unlike what we do for the VA or we do for military personnel. Democrats, of course, in our substitute, we had negotiated prices on the part of the Medicare administrator. That is because of the prescription drug industry. Just like the Republican bill will help the insurance companies, help the HMOs, it is also going to help the drug industry because they will not be any cost containment. The other thing that is in the Republican bill that a lot of seniors have told me they are concerned about is no reimportation, no opportunity to reimport drugs from Canada or other countries to try to create a competitive market and lower cost. The third thing that some of my seniors have said that I wanted to mention and just throw out to my colleagues is that the Republican bill does not even take effect until the year 2006. We are going to go through an election for President, we are going to go through another election for Congress, 3 years from now, before this bill kicks in. I hear my Republican colleagues say, oh, this is only the beginning, we're going to have to do more down the line. If this is such a great thing, why is not starting at the beginning of the year? If they pass it this week and the President signs it, why is not effective January 1? Why do we have to wait another 3 years? In any case, I see some of my colleagues would like to speak. I yield to the gentleman from Texas (Mr. RODRIGUEZ) who has not only done a lot of work in general on the health care issue but I know has particularly paid attention in the context of the Congressional Hispanic Caucus with health care and this issue. I appreciate the gentleman being here tonight.

Mr. RODRIGUEZ. I want to thank the gentleman from New Jersey, and I want to thank him personally for what he has done in the area of health care. I know that when we heard the other gentlemen, the Republican from Texas talk a little bit about the history, I know that one of the reasons for Medicare is the fact that as our seniors reach their twilight years, we have forgotten the previous history, and, that is, that one of the difficulties was that the existing insurance companies and health providers, as soon as you got ill, you were being dumped. Concerning LBJ, there is a little story that I tell that was written up that one of the things that he had gotten the insurance companies into the White House and the medical profession into the White House and he had basically got them in there and told them, look, I'm even going to be doing you a favor. You can go ahead and insure the young people while they're healthy and take care of them, and I know that as soon as they get ill, you're dumping them. So allow me the opportunity to establish Medicare, and I'll take them off your hands.

We have forgotten that history. We are going back to allowing the private sector to come in. It would be great if that could work out, but the reality is that my seniors do not have the resources and the profit margins are not there for the private sector to profit from it because our seniors do not have the resources and they are the ones most likely to get ill. So most of the companies do not even want to touch that. But now, of course, they do because there is some benefits that they are going to be receiving. I know that there are some tax cuts also included in this effort.

Mr. PALLONE. When I have posed that to the Republicans and I have said, the private market does not want to come in, even the HMOs do not come in, their answer is, we'll just give them more money. We know they have these plus-ups. I guess about $20 billion of the $400 billion is extra money going to the HMOs and the PPOs, the private sector, to offer this kind of drug benefit. Then I say to them, what if the $20 billion doesn't work? They say, we'll just give them more money. That is their response, but it is the absolute opposite of what true competition is. If you are going to have to keep giving them more and more money in order to get them to enter into this market, how is that free enterprise and market economy?

Mr. RODRIGUEZ. You know they do not want a free enterprise, especially when they put specific language in the bill that does not allow an opportunity, and I cannot understand this. If you really want a free enterprise, here you have it with our veterans, the VA has been able to get a contract where they can get lower prices. In this bill, I cannot believe that they have gotten language in there that does not allow that to occur. In fact, it makes it against the law for them to even try to negotiate. So it is a protection of the pharmaceutical companies. It is apparent that this bill is definitely being supported by the pharmaceutical companies, definitely being supported by the special interests. It is unfortunate, but our seniors are the ones who are going to suffer.

I wanted to briefly talk a little bit, because I know that when we talk about Medicare prescription drug coverage, our seniors in our rural communities throughout this country are hit even harder. I share that with the gentleman because I know he is well aware that this same effort has been tried in terms of the privatization of Medicare. They came to us some years ago and said, we can provide Medicare cheaper. We tried that. We know now that it did not work. In fact, in my counties in south Texas, Wilson County, Atascosa County, they were not making the profits that they wanted so they dropped. We do not see the HMOs in rural Texas and probably throughout rural America. There is a lack of access to services. If they do not see those huge profits, then they do not drop the individual but they drop the whole county.

Mr. PALLONE. This is what I envision is going to happen here in counties like yours or in my own State of New Jersey. We had 100,000 people dropped by HMOs in the last few years. Because they keep giving all this extra money to the HMOs that are in this bill, I will use New Jersey as an example, but I think it could be true in Texas or anyplace. Because they are getting all this extra money, some HMO is going to step forward and say okay, look, you're giving me all this extra money, I'll offer a prescription drug benefit. If your seniors enter my program, you're giving me all this extra money, I'll offer a prescription drug benefit, but I'm going to charge, who knows, for the cost of the premium, not $35, $65, $75, $85 a month, whatever.

According to this bill, as long as there is one HMO in the area, in my district or in your county, that is willing to provide the benefit, regardless of what they are going to charge for a premium, that will preclude a senior from getting any kind of drug benefit under traditional Medicare. So if they have traditional Medicare and there is some lousy HMO that comes in and wants to offer them this plan because they are getting all this money, but charging a high premium that they cannot afford, or they see no benefit because they have to lose their choice of doctors, then they are out of luck because you can only get, maybe, I am not even sure, but you can only get drug benefits with traditional Medicare or without joining an HMO if there is not an HMO in the area that is going to offer it. But it does not have to be an HMO if it offers a reasonable plan or a reasonable price. It just has to be anyone that happens to be there.

Mr. RODRIGUEZ. It is unfortunate. I want to give you some figures from Texas alone.

□ 2310

Texas has close to 530,000 Medicare beneficiaries that are in rural Texas, and 20 percent of them live in the rural communities. I can attest to the gentleman that those individuals are specifically going to have difficulties. This promise was given to us in the 1990s about Medicare HMOs that were touted as a way to control escalating cost; but by the end of the decade, as we well know, provided plans have abandoned thousands of seniors and they have left them out there in the cold. And I expect that the same thing is going to happen.

I want to give an example also of a study that was done in the San Antonio area in Texas like it was done throughout the country. For instance, in San Antonio, Zocor, which is a cholesterol medication, runs approximately $110 for 30 tablets. Right now in the communities of Pearsall, Texas, in Atascosa County, where I have a population of 15,000, that prescription costs 25 percent more. So even prescriptions now in rural communities are even more costly. So as we can see, the costs will add up quickly and force rural seniors with this proposal to really not be able to benefit. It is unfortunate, but what we see now is basically a dismantling of Medicare.

And we recognize that. Because there is not a sincereness. The money that is coming to provide Medicare for seniors and for prescriptions is coming from cancer patients. Almost 1 billion per year, it is estimated; that those women with breast cancer, other people who suffer from cancer, it is just like taking education programs for kids to provide after-school programs. Both are in need. So we are taking from patients who suffer from cancer and then providing prescription drugs for our seniors. They are both in need of the service. So it is really unfortunate that they are unwilling to provide resources to really beef up the program the way it should be. And what I see is the beginning of a dismantling of Medicare in a way that is very dishonest, a push on this effort. And I know that we have people here who basically believe, and it is hard to comprehend that, that when it comes to health care that we do not have an obligation or a responsibility. But we need to understand that this country ought to be just in terms of how we treat our most vulnerable, how we treat our seniors in the twilight years; and this is no way to do that.

So I am hoping that we will be able to get the votes to kill this proposal because I think that all it is is a way of basically beginning to look at dismantling Medicare as we know it. It is a program that has worked. What we need to do is fund it appropriately and make sure that prescription drug coverage is part of that. If I can just share with my colleagues, this administration, when it comes to heath care, they have gone after Medicaid, which is the program that responds to the most needy of our country. They have gone after the CHIP program that funds the kids in this country, working Americans who are out there working their hearts out and paying their taxes and yet find themselves unable to insure their own kids and themselves. And this administration is the same administration that is trying to destroy those same programs; and now they come up with a Medicare program that has a prescription drug coverage where they have taken money from the cancer patients? So when we look at a picture like that, we know that there is something wrong, and we know that their sincerity in trying to meet the problems that confront us is not there.

Once again I want to thank the gentleman for being here tonight and talking about this critical issue, and I am hoping that Americans are out there listening because this is a serious issue that is before us. It is an issue that confronts all our seniors, and we all have elderly in our communities that are impacted by this, and we are playing games.

The gentleman just mentioned something that is extremely important. If it is so great, why not do it now? And the reason why is because it is a hollow promise. There is nothing there. And when it does happen, it is going to be devastating and it is going to be a nightmare.

Mr. PALLONE. Mr. Speaker, I want to thank the gentleman for his comments. And I have to tell him that most seniors think this is going to take place immediately, within a few months; and when I mention to my seniors that it does not take effect until 2006, they are shocked. They think how could they be talking about this 2 or 3 years from now? And when I mentioned it to one of the Republicans from Florida who spoke on the motion to instruct tonight, he said it would take that many years for the insurance companies and everybody to adjust to put this in place, which does not make any sense. We can have the structure changed in a month or two if we really want to do it.

Mr. RODRIGUEZ. Mr. Speaker, if I can just close, it does make sense in a political year where they can get political contributions.

Mr. PALLONE. Exactly.

Mr. Speaker, I yield to the gentleman from Texas (Mr. SANDLIN).

Mr. SANDLIN. Mr. Speaker, I would like to thank my friend from New Jersey for leading this hour.

Mr. Speaker, we have heard a lot of talk tonight from our friends on the other side of the aisle about how they want to provide a prescription drug plan. I do not know about all that, but what I do know is this: the plan the Republicans have privatizes Medicare. That is what it does. It privatizes Medicare. It eliminates coverage for over 2 million Americans. It gives tax subsidies for the wealthy. It forgets to give real help to those of low income. It has a very high deductible, and, Mr. Speaker, as we know and as our friends on the other side of the aisle have been forced to admit reluctantly, it has a gap in coverage so large that our seniors would forget there is any coverage at all but for the fact that they have to continue to pay premiums each and every month even at a time when they are not getting any coverage. And our friends on the other side of the aisle have had to admit that on this floor before this Congress and before the American people.

Mr. Speaker, maybe I was mistaken. I thought we wanted to provide a prescription drug plan to help America's seniors. I thought that was what we were working on. But I have kind of seen the light. Our Republican friends do not really want to have a drug plan that helps seniors. They want a plan written by the HMOs and the pharmaceutical manufacturing companies. And I can see why those companies and the Republicans want that plan. The drug companies want a drug plan because they supply the drugs and they set the prices. Sweet. What a good deal. They supply the product, and they set the price.

And it gets better than that. The Republican plan forces seniors off of Medicare and shoves them permanently into the waiting arms of HMOs. The Republican plan is to move all of the revenue to HMOs and place all the burden on our seniors.

And, Mr. Speaker, what is the big rush? As has been mentioned by the gentleman from New Jersey (Mr. PALLONE) and the gentleman from Texas (Mr. RODRIGUEZ) and others, what is the rush? If we pass this Republican sham of a bill written by the drug companies, it does not even go into effect until the year 2006. This is 2003. What are we doing? How stupid do they think the American public is? What a sham. This is not a drug plan for seniors. It provides no coverage in 2003. It provides no coverage in 2004. It provides no coverage in 2005. And it just kicks in coverage in 2006. At least that is their planned coverage.

Like I said, we are not in a rush to pass the bill; so why pass it today? Why pass it in 2003 and have no coverage until 2006? Maybe, I mean just maybe, it is because elections are coming up in

2004. Would that be why they are passing this bill?

So our Republicans want to pass a bill in 2003 with no coverage. Then they want to brag about it in 2004 with a fancy name. They want to run on that when they are not even paying any benefits. And then who knows what they are going to do in 2006? As the gentleman from New Jersey (Mr. PALLONE) has mentioned, we have got a whole new administration possibly. We have got a whole different Congress. We do not have any commitments. We are passing something in 2003 for 2006. That is ridiculous.

In summary, the Republicans are telling seniors to sit down and shut up until elections are over and then they are going to deal with them. Sit down and shut up.

Every Member of Congress claims to be committed to lowering the price of prescription drugs for our Nation's seniors, but the truth of the matter is that actions speak louder than words. I believe, as has been mentioned tonight, I believe the gentleman from New Jersey (Mr. PALLONE) mentioned it, we passed a reimportation bill with overwhelming support this summer, bipartisan support, that would have finally granted our seniors access to the same safe, quality, low-priced drugs sold in 25 other nations including Canada.

□ 2320

Now, this was part of a deal between the Republican leadership and one of its own Members to secure that Member's vote for H.R. 1 in exchange for a commitment to do something about lowering the cost of drugs. H.R. 1 passed by one vote due to that promise, and we all know it. We were all here on the floor. We all know where it happened: right over on that aisle. One vote, when the Republican leadership kept the vote open 45 minutes, contrary to the rules of this House, based on a promise to do something.

But that was just a blatant lie, because here we are, the final conference bill that not only fails to include reimportation, but makes it harder to reimport drugs from other nations.

To further ensure the drug companies' flourishing profit margins, this legislation specifically prohibits the Secretary of HHS from using the purchasing power of 40 million Medicare beneficiaries to negotiate for lower prices. What is that all about, Mr. Speaker? Why in the world would we put in legislation and say we are prohibiting the Secretary from negotiating for lower prices? I have never heard of such. What kind of business deal is that?

Now, if the Republicans are so darn proud of this pitiful plan, I want to know why they meet in secret in the conference committee. Now, I have never heard an answer to that. The Democrats do not even get told where the meeting is. Now, I can understand they were embarrassed to bring forth a bill written by the insurance companies; I can understand why they are all embarrassed about that. They did not want the Senate to know, they did not want the House to know, they did not want the public to know. But to preserve their dignity, could they not have just changed or covered up the HMO letterhead and had a regular conference committee meeting where everybody participates, where everyone has an opportunity to have their say?

And, Mr. Speaker, it is critically important to note, as the gentleman from New Jersey (Mr. PALLONE) mentioned, it is important to note that we are presently debating and talking about a nonexistent bill. There is no drug bill. We are guessing at the content. The Republicans say, they say that they are going to produce an 1,100-page bill, and we will vote on it Friday or Saturday.

Now, I would like to see a show of hands, Mr. Speaker, and see how many people in here are going to be able to receive, read, and understand an 1,100-page bill in just a few hours. I mean I see no one has raised their hand because that is ridiculous.

So the Republicans are planning to pass an 1,100-page bill that is currently not in existence, that has been read by no one, that was written by the insurance company, that provides absolutely no benefits until 2006, but privatizes Medicare. That is the plan. Now, is that not special? Is that not special, Mr. Speaker?

Now, much has been made of the fact that AARP endorsed this bill. Not so. Some of the executives of that organization did, but there was not a vote of the membership and, in fact, the AARP membership across this country is up in arms about it. This is a PR stunt by the executives, and that is who is leading that organization is a former PR man.

Let me read to my colleagues, because we heard all about the PR dude, but let us hear what some of the people say. Mr. P.R. Latta in Raleigh, North Carolina, he is writing to AARP and he says, "As you all know, I have on many occasions informed you AARP opposes privatizing Medicare and Social Security. All of you know I tried to tell it like it is. AARP at the national level is supporting the present prescription drug bill. This bill does not serve the seniors, and it privatizes the prescription drugs under the misused distortions of freedom of choice.

"The support of this bill makes it impossible for me to trust AARP at the national level, and their support of this bill, with its many faults, makes it impossible for me to represent AARP at the local level.

"Therefore, effective at the end of this meeting, November 20, 2003, I will resign as your legislative chairman."

Mr. PALLONE. Mr. Speaker, I listened to everything the gentleman said, but I want to just take it one step further. The gentleman pointed out that we have no bill, and that is certainly true. The gentleman from Florida, earlier on the Republican side tonight, actually challenged some of us on the Democratic side on the motion to instruct and said that we had not read the bill. And the gentleman from Ohio (Mr. BROWN), from our Committee on Energy and Commerce said, well, where is the bill? We have not received it. And, of course, the Republican Member from Florida had no response because they have not shown it to us, if it even exists. But imagine, as the gentleman said, not only do we not have the bill, not only has there been no conference participation by the Democrats, but now these organizations like AARP, AMA, the PhRMA, the drug manufacturers, all mentioned on the other side as endorsing the bill, some of them are even running ads for a bill that does not exist.

So I mean the guy who is the legislative chairman, he did not say it in the letter there, but one would almost have to resign knowing that your organization has endorsed legislation that is not even available to look at. It is unbelievable.

Mr. SANDLIN. Mr. Speaker, that is exactly right. Many of these folks are going to find out, when Medicare is privatized, as is the plan; that is where we are headed, let us make no mistake about it, we will no longer have to see these groups coming up here to talk to Congress, because we are not going to have anything to do with it. It is privatized. It is all then going to be a matter of what the HMOs are going to pay, and they will just have to go talk with them.

Let us look at what a few organizations have said. Again, the rank and file of AARP is opposed to it. Let us look at the Alliance for Retired Americans: "The Alliance for Retired Americans categorically opposes the proposed Medicare bill being touted by Republican leaders on Capitol Hill. The Bush administration and Congress are callously using a much-needed and long-awaited prescription drug benefit to privatize Medicare. Under the proposed bill Medicare, as we know it, will cease to exist. They may say they are looking out for seniors, but they are really protecting the profits of the big pharmaceutical companies and ensuring profits to the insurance industry." That is the Alliance for Retired Americans.

I have a list, not to read all of this, but the Medicare Rights Center: "The bill under consideration does more harm than good."

Families USA: "The proposal does too much to destroy Medicare and too little to help the seniors who can least afford the medicines."

The Transport Workers Union of America: "The bill fulfills Newt Gingrich's dream of causing Medicare to 'wither on the vine.' It includes requirements and incentives to force people out of Medicare into private insurance plans; not only the "premium support" provisions, but the $12 billion slush fund for the President to bribe and coerce seniors into private plans."

The Center for Medicare Advocacy: "Even in its most limited form, the premium support or voucher "demonstration" will cause elders and people with disabilities to pay different amounts for Medicare in different parts of the country."

UAW: "Make no mistake, the issue before the Senate is not simply the nature of prescription drug coverage that will be provided to seniors. Rather, the conference report directly puts at risk the continued stability and viability of the entire Medicare program."

TWU: "In exchange for these devastating changes to the basic Medicare program, seniors will get a prescription drug benefit that will leave one-half of all seniors paying more out-of-pocket than they do now and turns over to private insurers the power to decide what drugs to cover, how much to charge, and whether to offer coverage at all."

Mr. Speaker, I have an entire list. I am not going to go through it. But folks like the National Committee to Preserve Social Security and Medicare, Alliance for Retired Americans, Medicare Rights Center, National Seniors Law Center, American Federation of Teachers, NEA, National Taxpayers Union, American Nurses Association, and the list goes on and on. Everyone knows that this is a sham. And when we start looking at it, and our Republican friends will hear that and they say, oh, that is just a bunch of activists and progressive advocacy groups that are against that.

We heard them tonight talking about, as the gentleman from New Jersey (Mr. PALLONE) mentioned, all this ideology and being conservative. Mr. Speaker, come on, let us get with it. The most conservative and fiscally responsible groups in this country oppose this bill. Cato Institute. Now, who is more fiscally responsible and conservative than them? Quote: "The Medicare prescription drug bill to be voted on by Congress this week is a terrible mistake that will dearly cost our children and grandchildren. This is a bill for politicians." I am leaving some of it out. "Sometimes the better part of valor is recognizing when you have made a mistake. Congress should recognize this bill as a mistake and go back to the drawing board."

The Club for Growth: "We oppose the Medicare prescription drug conference report. On balance the bill is too costly to taxpayers and would force millions of Americans into a government-run program greatly inferior to the coverage they have today."

Heritage Foundation, that well-known activist group, liberal advocacy group: "Of course, the agreement contains an unworkable and potentially unpopular drug benefit with millions of Americans losing part of their existing coverage. Instead of targeting benefits to seniors who need them, the Medicare conferees are insisting on creating universal drug entitlement to be delivered through the vehicle stand-alone insurance. Meanwhile, the politically engineered premiums and deductibles, coupled with their odd combination of doughnut holes and gaps in coverage, are likely to be unpopular with seniors."

The National Taxpayers Union: "The vote on final passage of the bill will be among the most heavily weighted in 2003. They say, "There are many problems with the provisions of the final Medicare prescription drug legislation, but perhaps the worst is that it will add hundreds of billions of dollars in unfunded liabilities to a Medicare system already headed for bankruptcy."

Citizens Against Government Waste: "Congress is about to pass a bill that will add a prescription drug benefit to Medicare. The bad news is this bill fails to reform Medicare. It may take away prescription drug coverage that you and your friends already have."

American Conservative Union and others have similar comments.

□ 2330

Mr. Speaker, it is clear, this secret nonexistent missive that is created by the insurance companies in this country is ridiculous. For the Republicans to cram this bill with no benefits down the throats of our seniors is unconscionable. Mark my word, Mr. Speaker, if this bill passes, if this bill passes, it will pass solely on the backs of the votes of our friends on the other side of the aisle. And the Republicans can answer to America's seniors for this travesty. It is on their backs and on their shoulders. It is their responsibility.

We should work together to craft a bill that is voluntary, has a specified cost, a low deductible, and absolutely no gap in coverage. It should guarantee coverage under Medicare because seniors have already paid for that coverage. We do not need to help the HMOs. It is our responsibility as a Congress to pass that sort of bill.

To even consider the Republican bill is a slap in the face to seniors all across America. It should be an embarrassment to this great institution.

Mr. PALLONE. Mr. Speaker, I appreciate the gentleman's comments and particularly those quotes that he has from some of the conservative groups at the end. Because, as my colleagues know, when I started out this evening, I wanted to make the point that I do not really care about the ideology. I just think this thing is not going to work and not deliver any benefit to seniors and they are going to lose their choice of doctors by having to join an HMO.

It is great to see some of the conservative groups, which I normally do not agree with, are essentially saying the same thing: it is not going to work. It is not going to provide a benefit. Seniors are going to be forced out of their traditional Medicare.

Mr. Speaker, I yield to the gentleman from Arkansas (Mr. ROSS), who probably knows more about the prescription drug issue than anybody else because he is an owner of a pharmacy with his wife, or his wife is an owner. And he really knows how this works, practically, in the shortcomings.

Mr. ROSS. Mr. Speaker, I thank the gentleman from New Jersey (Mr. PALLONE) for yielding. And I thank my colleague from Texas (Mr. SANDLIN) for his comments and very thoughtful remarks this evening on behalf of America's seniors.

I have got to tell my colleagues that it is a frustrating time for me because, as was mentioned, my wife and I own a small-town family pharmacy. She is a pharmacist. And I have seen so many seniors walk through the doors of our pharmacy who either could not afford their medicine or could not afford to take it properly. And living in a small town, Prescott, Arkansas, population 3,400, I know a week or two later that senior is 16 miles down the road in Hope, Arkansas, in the hospital having a leg amputated, running up a $20,000, $30,000, $40,000, $50,000 Medicare bill for other complications simply because they could not afford their medicine or could not afford to take it properly.

So I ran for Congress. I ran for Congress to try and modernize Medicare to include medicine for our seniors. And I knew it was pretty partisan in Washington, but I thought if there was an issue that would not be a Democrat issue or a Republican issue but, rather, a seniors issue, this would be it. But I got to town and learned it is a big drug manufacturers' issue.

This is not a seniors bill we are going to be voting on this week. This is a bill written by the big drug manufacturers to benefit the big drug manufacturers. I am sick and tired of all this partisan bickering. I am sick and tired of Democrats being locked out, committee members being locked out of the room where they are writing this bill. If they get the drug manufacturers up out of the chairs at the table, they would have room for Members of Congress that have been elected like everyone else who had been appointed to that committee to address this issue. That is wrong and it is shameful, and it is a disgrace to our democracy.

There are several problems with this bill. There are really a lot of problems with it. Let me just list a few of them for my colleagues, if I may. If anyone has any doubt in their mind whether or not this bill was written by the big drug manufacturers, believe me, their fingerprints are all over it.

The Republican leadership actually had the nerve to put language in this bill that says the Federal Government shall be prohibited, prohibited, from negotiating with the big drug manufacturers to bring down the high cost of medicine. That is in the bill. And they call it a seniors' bill.

The second problem is the privatization aspect. Let me tell you why the big drug manufacturers want to see this Medicare prescription drug benefit privatized. You hear how drugs are cheaper, less expensive, less costly in other countries. It is true. I did a study about a year ago where we compared the price paid by seniors in Arkansas's 4th Congressional District on the five most commonly used brand-name drugs with the price paid by seniors on those same drugs in seven other countries. And what we found was startling. Seniors in my congressional district back home in Arkansas pay on average 110 percent more, 110 percent more than seniors pay on average in those other countries. Now, why is that? Because America is the only industrialized nation in the world where people go without health insurance.

In these other countries everybody has health insurance and in these other countries their governments tell the big drug manufacturers if you want your drug in our country, you are going to give us a discount. And they do. Well, the drug manufacturers know that if we have 40 million seniors all under one plan in America, then we too as a government will demand those kinds of discounts and rebates to help offset the cost of the program. Thus the reasoning for creating and privatizing a Medicare prescription drug benefit.

Our parents, our grandparents are literally going to have hundreds of insurance companies knocking on their door, calling them on the phone, sending them mail all trying to sell them exactly the same policy because they want to spread those 40 million people every which way they can so no one will have the buying power to demand those discounts from the drug manufacturers.

This bill does nothing to bring down the high cost of prescription drugs. In fact, no insurance company has come forward to say they will offer a prescription drug plan for seniors. And that is why in this bill, the Republicans have put a $12 slush fund, $12 billion, they are just going to give to private insurance companies that will agree to offer a prescription drug benefit for seniors. There is a reason Medicare was created 38 years ago. Insurance is about spreading the risk. And the reality is with seniors there is no risk to spread. Seniors spend a lot of money on health care to either stay healthy or to get well. Privatizing Medicare will not work. If they get away with this, Social Security will be next.

Finally, the benefit itself. Number one is, as my colleague from Texas (Mr. SANDLIN) said so eloquently, the benefit does not even start until 2006. Folks, any time there is a plan offered up that does not kick in until after the next election, you ought to be leery of it. This plan does not even kick in until 2006. And when it does, this is what everyone get, and when I explain what they get, they are going to have a clear understanding of why they want to make sure it does not kick in until after the next election:

There is a premium of about $35 a month, although they cannot tell you for sure what it will be, but they think somewhere around $35 a month. That is $420 a year. Then there is a deductible of $275 a year. Then from $275 worth of prescription drugs each year that a senior meets up to $2,200, the senior pays 25 percent and Medicare pays 75 percent. That part actually sounds pretty decent. So the senior is out $481.25 on that part. But listen to this: once the senior has spent $2,200 on prescription drugs in a year, and as a small-town pharmacy owner I can tell you for a lot of seniors that only takes about 3 or 4 or 5 months, once a senior spends $2,200, all the way up to $5,044, the senior is back paying the full cost of the prescription on their own. Medicare pays nothing. But, guess what? Medicare continues to bill you the $35-a-month premium.

□ 2340

That is $2,844 out of seniors' pockets.

Mr. PALLONE. Mr. Speaker, maybe my colleague was going to say it, but we have done some statistical analysis that shows the majority of the seniors fall into the donut hole. So some people might think, well, I am not going to fall into that, but most seniors will be in that situation where they are paying a premium and getting nothing at some point.

Mr. ROSS. Absolutely, good point, and I appreciate the gentleman from New Jersey pointing that out.

The bottom line is, and you need a CPA to figure this thing out, but when you take all the numbers I just presented and add them up, and the bottom line, all this talk on the floor of the House of Representatives, the vote that is going to occur is going to boil down to this, that in 2006 seniors are going to get a prescription drug plan written by the big drug manufacturers that requires seniors to pay out of their own pocket $4,020.25 out of the first $5,044. Let me repeat that. Seniors under this plan, which does not even start until 2006, are going to pay $4,020.25 out of the first $5,044.

Contrast that to Members of Congress, the health insurance plan we have, and quite frankly, the health insurance plan that most people who are fortunate to have health insurance in America now is very similar. Members of Congress pay $1,261 on the first $5,044, with their insurance plan picking up the difference. So the Republican leadership thinks that they should only pay $1,261 on the first $5,044, but they want seniors, they want our mothers and grandmothers, to pay $4,020.25 on the first $5,044.

Mr. PALLONE. Mr. Speaker, reclaiming my time, the reason why the Republicans have carved out this donut hole, which is going to make all these seniors, as my colleague says, pay a premium and get nothing in return is because they save a tremendous amount of money. Here they are worried about saving some money at the expense of the seniors at the Federal Government level, but yet they are going to throw all this money to the HMOs and to private companies to plus up the money that they get, and they do not have to have any kind of cost containment which would bring the costs down to the Federal Government. After all, if we had cost containment, the Federal Government would not have to shell out all this extra money, and we could fill that donut hole. I mean, it is just a way of saving money to the Federal Government, but at the same time, at the expense of the senior citizens.

Mr. SANDLIN. Mr. Speaker, if the gentleman would yield, my good friend from Arkansas (Mr. ROSS) brings up an excellent point, and our friends on the other side of the aisle, the Republicans, continually say we need to offer a plan to seniors that is just as good as the ones that the Members of Congress have, and if it is good enough for Congress, then it is good enough for our seniors. I would like to inquire of the gentleman from Arkansas about that and ask him, does the plan presented by the Republicans match the plan in Congress, and do we in Congress have a donut hole? Is there any gap in coverage suffered by the Members of Congress?

Mr. ROSS. Mr. Speaker, Members of Congress pay 25 percent of the cost of the medicine, at least under the health plan that I am on and most of us are on. There are several options to choose from, and anyone with private health insurance, and again we have got 43.6 million people without health insurance in this country. Ten million of them unfortunately are children, but most people fortunate enough to have health insurance pay roughly 20 to 25 percent of the cost of the medicine. So in the first $5,044, Members of Congress pay $1,261, but the Republican national leadership wants our mothers and grandmothers and fathers and grandfathers to pay $4,020.25 out of the first $5,044, and that is a benefit that does not even kick in until 2006.

I will give them this. Starting in April of 2004, they are going to give our seniors a prescription drug discount card. You stay up late enough tonight and watch cable TV. They will be advertised on TV. You can buy them, and any discount that is realized from that card comes directly from your family pharmacy and not from the big drug manufacturer.

Again, they are not going to the root of the cause. Eighty-seven percent of the costs of medicine comes from the big drug manufacturer. This discount card does not discount any of the money paid by the big drug manufacturer, and so the savings amounts to 50 cents to $3. They did a study on this. This literally amounts to 50 cents to $3.

So you take a senior that is on six prescriptions a month and a $500 drug bill, let us say it is $3 per prescription. That is an $18 savings. How in the world is that going to help seniors choose between the light bill, rent, or groceries?

Mr. PALLONE. Mr. Speaker, I know the gentleman is familiar with the pharmacy industry. The bill avoids any cost containment. It actually says the Secretary of Medicare administrator cannot negotiate price reductions. There is nothing in the bill with these discount cards that would have any impact on the drug companies' ability to raise prices. So you might not save anything, right, if they raise the price and you get the same discount? You may end up paying more.

Mr. ROSS. Number 1, the discount is not being paid by the drug manufacturer, which is 87 percent of the cost to the manufacturer. The discount is being paid by your family pharmacy in amounts of 50 cents to $3.

More importantly, and I do not think this has ever been raised on the floor of this House, but this bill preempts State laws that regulate discount cards. About half the States in America, because these cards are so fly-by-night and so fraudulent and have ripped off so many seniors, because they find out the benefit they are getting from it is less than what they charge per month for the card, that most States in America now have regulations to monitor and control these so-called discount prescription drug cards. This bill preempts those State laws. There will be no regulation of these discount card companies.

Max Richtman is the head of the National Committee to Preserve Social Security and Medicare. I want to say they are a bipartisan group. They are not. They are nonpartisan, and they are nonprofit. That is the Nation's second largest senior advocacy group, and I think he put it pretty well. He said, Have you ever heard of Medicare fraud? This Republican prescription drug bill, it is Medicare fraud. It is nothing more than a false hope and a false promise for our seniors.

This is America, and we can do better than this by our seniors, by our greatest generation.

Mr. PALLONE. Mr. Speaker, I appreciate the gentleman's comments and his insight from the pharmacy business, and I think we have about maybe seven or eight minutes. I would like to yield now to the gentleman from Ohio (Mr. STRICKLAND), my colleague on the Subcommittee on Health.

Mr. STRICKLAND. Mr. Speaker, I thank the gentleman for yielding, and I have been sitting here listening to this discussion, and I feel a quiet anger because I think something is being contemplated in this House that is going to be detrimental, perhaps devastating, to what I would consider the second most important piece of legislation Congress has ever passed to help seniors, and I am talking about the Medicare program.

A lot of people in this chamber are nervous because they are afraid if they do not support this bad bill that our Republican friends will get a lot of money from the pharmaceutical companies, the President will go out and raise a lot of money and they will run a lot of TV ads. They are especially nervous because of the action of the AARP, the recent decision of the AARP to endorse this shameful piece of legislation, but I have heard from some of my constituents who are members of the AARP in the last few days, and they are outraged. They are outraged at their national leadership, and so I am not at all intimidated by the fact that the AARP has seemingly sold out the people they are supposed to be representing.

I would like to just emphasize the fact that the executive director and the CEO of AARP, Mr. William D. Novelli, wrote a foreword to a book written by Newt Gingrich. Remember Newt Gingrich, when he was Speaker of the House talking about Medicare and saying that it would wither on the vine? Well, because of Mr. Gingrich's personal problems and some other issues, he is no longer Speaker, but those who want Medicare to wither on the vine are alive and well, and many of them are leaders in this House of Representatives.

I would just like to share with my colleagues what Mr. Novelli, this CEO of AARP, said in the foreword to Newt Gingrich's book.

□ 2350

He wrote: "Newt's ideas are influencing how we at AARP are thinking about our national role in health promotion and disease prevention and in our advocating for system change." I wonder how many AARP members across this country agree with Newt Gingrich, and how many of them feel good about their CEO and executive director actually saying that Newt Gingrich's ideas are going to be influencing how AARP will be advocating for system change.

The system change they are talking about is the destruction of Medicare as we know it. The American people need to understand that under this plan that is being promoted by the President and by the leadership in this House, they cannot maintain their relationship in traditional Medicare and have prescription drug coverage. They will be forced out of traditional Medicare and forced into a Medicare HMO, or if one is available, they will have to go outside traditional Medicare and purchase a drug-only plan. We are not talking about a Medicare prescription drug plan, we are talking about an HMO privatized prescription drug plan.

Mr. PALLONE. Reclaiming my time for a moment, Mr. Speaker, I know what the Republicans say. They say, oh, you can stay in traditional Medicare, but you do not get the drug benefit. And the only way you get it is if these plans the gentleman is talking about are not available in their particular area.

But, as I said before, it is very easy with all this money that they are throwing to these private plans to get one in an area that would provide the semblance of coverage at a very high cost, and then you are totally precluded from getting the drug benefit under traditional Medicare.

Mr. STRICKLAND. We have talked this evening about the fact that this plan does not start until 2006, and they say, well, it takes time, I guess, for the insurance companies to set this up. It would take very little time if we were simply to provide a prescription drug plan as a part of the traditional Medicare program. We could get this program underway, I would guess, in a matter of a few months, at most.

And yet they are going to pass this, or try to pass it. If they pass it, they are going to go tell America's seniors, we did it for you. Of course, it will not take effect until 2006, and by the time seniors find out what they have been given, they will realize they have been snookered. They will have been snookered, but the 2004 election will have passed, and we will have been able to boast to the American people that we provided them something. But what they will have provided the American people is a bitter pill.

I just hope that all of my colleagues, Republican and Democrat alike, will reject this sham legislation, protect Medicare, and do what is right for our seniors. I hope we will have the courage to stand strong in the face of what is going to be, and we all know it, it is going to be an onslaught of TV advertising paid for by the pharmaceutical companies. And that is a shame.

Mr. PALLONE. I want to thank the gentleman from Ohio and the rest of my colleagues. I think we may only have another minute or so left, but I started out by saying early this evening that I just want to provide a prescription drug benefit, as we all do on the Democratic side, for our seniors. We do not care about the ideology. We do not care about the different labels, conservative, liberal, progressive, whatever.

But the problem is, the Republicans are providing a sham bill. They are doing all kinds of twists and turns and whatever rather than just providing a straight drug benefit, and yet it is so easy, as my colleague said, to do just that. We just need to add it to traditional Medicare, just like we do with part B now.

I go around and explain that to seniors, and that is what they think they are getting. They think this is going to be a new part C or part D. And just like they receive their pay, the Federal Government pays for their doctor bills, that it will be the same way. They have no idea that they have to go through all these twists and turns and have to join an HMO or find some drug-only policy and end up paying a variable premium. It is going to be so shocking to them when they finally figure it out.

But as the gentleman said, the Republicans have figured this out. They have figured, let us pass it, get through the 2004 election, and then 2 years later, when they finally figure it out, well, we will deal with that later.

Mr. Speaker, I see my colleague from Arkansas is here, and so I will yield to him.

Mr. ROSS. We have primarily tonight talked about the Medicare prescription drug benefit, or the lack of it, under the Republican prescription drug plan, but this 1,100-page bill, which they have not even allowed us to see yet, has other provisions in it that I think are worth noting, two primarily.

One is that it increases part B deductibles for seniors in 2005, and then they will be indexed to grow based on part B expenditures for each year thereafter. They are going to increase part B deductibles. That is nothing more than a tax on sick seniors.

Secondly, a lot of seniors rely on oxygen to stay alive in their home and hospitals beds, and they are getting those things now through a local supplier. They have the freedom to choose. This is going to be put out for competitive bidding. Competitive bidding. That means that if your oxygen machine breaks or you have an ice storm, and you have to have a portable tank, and your supplier may be someone that lives 5 or 6 hours away, that is a serious issue.

This bill has a lot more problems than simply the lack of a prescription drug benefit. But I will close, Mr. Speaker, by simply saying this: If seniors cannot afford the first $2,200 worth of medicine, tell me how they are going to afford the next $2,844? Because that is the gap. From $2,200 to $5,044 they are stuck paying the monthly premium of around $35, but they get no help at all. They are footing the bill entirely on their own. And that is wrong.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

The following Members (at the request of Mr. CUMMINGS) to revise and extend their remarks and include extraneous material:

Mr. BROWN of Ohio, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

Mr. EMANUEL, for 5 minutes, today.

Mr. KUCINICH, for 5 minutes, today.

Ms. LEE, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Ms. CARSON of Indiana, for 5 minutes, today.

Mr. CUMMINGS, for 5 minutes, today.

Ms. SOLIS, for 5 minutes, today.

Mr. MCDERMOTT, for 5 minutes, today.

Mr. HINCHEY, for 5 minutes, today.

Mr. INSLEE, for 5 minutes, today.

Mr. DAVIS of Illinois, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Ms. WATSON, for 5 minutes, today.

Ms. WATERS, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

Ms. MEEK of Florida, for 5 minutes, today.

The following Members (at the request of Mr. GINGREY) to revise and extend their remarks and include extraneous material:

Mrs. JO ANN DAVIS of Virginia, for 5 minutes, today.

Mr. SHUSTER, for 5 minutes, today.

Mr. WELDON of Pennsylvania, for 5 minutes, today.

Mr. JONES of North Carolina, for 5 minutes, November 20.

ENROLLED BILLS SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 23. An act to amend the Housing and Community Development Act of 1974 to authorize communities to use community development block grant funds for construction of tornado-safe shelters in manufactured home parks.

H.R. 1588. An act to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

H.R. 2744. An act to designate the facility of the United States Postal Service located at 514 17th Street in Moline, Illinois, as the "David Bybee Post Office Building".

H.R. 2754. An act making appropriations for energy and water development for the fiscal year ending September 30 2004, and for other purposes.

H.R. 3175. An act to designate the facility of the United States Postal Service located at 2650 Cleveland Avenue, NW in Canton, Ohio, as the "Richard D. Watkins Post Office Building".

H.R. 3379. An act to designate the facility of the United States Postal Service located at 3210 East 10th Street in Bloomington, Indiana, as the "Francis X. McCloskey Post Office Building".

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to enrolled bills and joint resolutions of the Senate of the following titles:

S. 254. An act to revise the boundary of the Kaloko-Honokohau National Historical Park Addition Act of 2003.

S. 867. An act to designate the facility of the United States Postal Service located at 710 Wicks Land in Billings, Montana, as the "Ronald Reagan Post Office Building."

S. 1066. An act to correct a technical error from Unit T-07 of the "John H. Chafee Coastal Barrier Resources System."

S. 1590. An act to redesignate the facility of the United States Postal Service located at 315 Empire Boulevard in Crown Heights, Brooklyn, New York, as the "James E. Davis Post Office Building."

S. 1718. An act to designate the facility of the United States Postal Service located at 3710 West 73rd Terrace in Prairie Village, Kansas, as the "Senator James B. Pearson Post Office."

S.J. Res. 18. A joint resolution commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years.

S.J. Res. 22. A joint resolution recognizing the Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research.

ADJOURNMENT

Mr. ROSS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 57 minutes p.m.), the House adjourned until tomorrow, Thursday, November 20, 2003, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

5468. A letter from the Principal Deputy, Department of Defense, transmitting the Department's report entitled "Effects of FY 2000 Compensation Initiatives on Recruiting and Retention," pursuant to 37 U.S.C. 1015, Public Law 106—65, section 673; to the Committee on Armed Services.

5469. A letter from the Chairman and Secretary, Board of Governors of the Federal Reserve System and Department of the Treasury, transmitting Pursuant to section 103(d) of the Gramm-Leach-Bliley Act, a report concerning financial holding companies; to the Committee on Financial Services.

5470. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of the determination and memorandum of justification pursuant to Section 2(b)(6) of the Export-Import Bank Act of 1945, as amended; to the Committee on Financial Services.

5471. A letter from the Senior Staff Attorney, United States Court of Appeals for the First Circuit, transmitting an opinion of the United States Court of Appeals for the District of Columbia Circuit (No. 03-1407 — Maroni v. Pemi-Baker Regional School District (October 9, 2003)); to the Committee on Education and the Workforce.

5472. A letter from the Secretary, Department of the Treasury, transmitting an annual report to the President and to the Congress on the audit of the Telecommunications Development Fund, pursuant to 47 U.S.C. 614; to the Committee on Energy and Commerce.

5473. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's report entitled, "Preliminary Fleet Alternative Fuel Vehicles' Program Report for Fiscal Year 2003" October 20, 2003, pursuant to Public Law 105—388; to the Committee on Energy and Commerce.

5474. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Commuications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations. (Magnolia, Arkansas and Oil City, Louisiana) [MB Docket No. 02-199 RM-10514] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5475. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (DeRidder, De Quincy, and Merryville, Louisiana and Newton, Texas) [MM Docket No. 02-56 RM-10391 RM-10581] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5476. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Washington, Watkinsville, Gray, Forsyth, Irwinton, and Atlanta, Georgia) [MM Docket No. 01-281 RM-10287] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5477. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Conway, South Carolina) [MB Docket No. 03-110 RM-10700] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5478. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Broken Bow, Oklahoma) [MM Docket No. 01-209 RM-10224] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5479. A letter from the Senior Legal Advisor to the Bureau Chief, Mass Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Taccoa, Sugar Hill, and Lawrenceville Georgia] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5480. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations; and 73.622(b), Table of Allotments, Digital Broadcast Television Stations (Asheville, North Carolina and Greenville, South Carolina) [MB Docket No. 02-363 RM-10604] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5481. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Okmulgee and Glenpool, Oklahoma) [MM Docket No. 02-15 RM-10364] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5482. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations. (Depoe Bay, Garibaldi, Cottage Grove, Veneta and Toledo, Oregon) [MB Docket No. 02-255 RM-10524] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5483. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Auburn, Northport, Tuscaloosa, Camp Hill, Gardendale, Homewood, Birmingham, Dadeville, Orrville, Goodwater, Pine Level, Jemison, and Thomaston, Alabama) [MM Docket No. 01-104 RM-10103 RM-10323 RM-10324] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5484. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Wapanucka, Oklahoma) [MM Dkt No.01-181 RM-10201]; (Evant, Texas) [MM Dkt No.01-188 RM-10203]; (Comanche, Texas) [MM Dkt No.01-190 RM-10210]; (Hollis, Oklahoma) [MM Dkt No.01-217 RM-10236]; (Santa Anna, Texas) [MM Dkt No.01-220 RM-10239]; (Mooreland, Oklahoma) [MM Dkt No.01-226 RM-10254]; (Junction, Texas) [MM Dkt No.01-228 RM-10256]; (Alton, Missouri) [MM Dkt No.01-233 RM-10261]; (Taos, New Mexico) [MM Dkt No.01-282 RM-10293]; (McCamey, Texas) [MM D kt No.01-283 RM-10294]; (Dickens, Texas) [MM Dkt No.01-284 RM-10295]; (Hamlin, Texas) to the Committee on Energy and Commerce.

5485. A letter from the Senior Legal Advisor to the Bureau Chief, Mass Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Macon, Mississippi) [MM Docket No. 01-38 RM-10064] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5486. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Sault Saint Marie, Michigan) [MB Docket No. 02-83 RM-10404] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5487. A letter from the Senior Legal Advisor to the Bureau Chief, Mass Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Old Fort, Fletcher, and Asheville, North Carolina; Surgoinville, Tennessee, and Augusta, GA) [MM Docket No. 01-175 RM-10197] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5488. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of the Television Table of Allotments to Delete Noncommercial Reservation to Channel 16, 482-488 MHz, Pittsburgh, Pennsylvania [MM Docket No. 01-276 Facility ID Number 41314] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5489. A letter from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Kernville, California) [MB Docket No. 03-111 RM-10701] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5490. A letter from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Othello and Basin City, Washington) [MB Docket No. 03-25 RM-10637] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5491. A letter from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Roundup, Montana) [MB Docket No. 02-127 RM-10449] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5492. A letter from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Orange, Midlothian, and South Hill, Virginia, and Reidsville, North Carolina) [MB Docket No. 03-47 RM-10592] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5493. A letter from the Senior Legal Advisor to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast stations. (Farmington, Grass Valley, Jackson, Lindon, Placerville and Fair Oaks, California, and Carson City and Sun

Valley, Nevada) [MM Docket No. 90-189 RM-6904 RM-7114 RM-7186 RM-7415 RM-7298] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5494. A letter from the Senior Legal Advisor to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Cadiz and Oak Grove, Kentucky) [MM Docket No. 93-314 RM-8396] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5495. A letter from the Senior Legal Advisor, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Savannah, Springfield and Tybee Island, Georgia) [MB Docket No. 03-119 RM-10694] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5496. A letter from the Chief of Staff, Consumer & Governmental Affairs Bureau, Federal Communications Commission, transmitting the Commission's final rule — Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities [CC Docket No. 98-67] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5497. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications COmmission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Marion and Johnston City, Illinois) [MB Docket No. 03-13 RM-10628] received October 28, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committeeon Energy and Commerce.

5498. A letter from the Director, International Cooperation, Department of Defense, transmitting a copy of Transmittal 20-03 informing of an intent to sign the Second Amendment to the Addendum to the Multilateral Memorandum of Understanding (MMOU) on NATO Airborne Early Warning and Control (AEW&C), pursuant to Section 27(f) of the Arms Export Control Act and Section 1(f) of Executive Order 11958, pursuant to 22 U.S.C. 2767(f); to the Committee on International Relations.

5499. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of major defense equipment and defense articles to the United Kingdom (Transmittal No. DTC 108-03), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

5500. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of major defense equipment and defense articles to the Czech Republic (Transmittal No. DDTC 114-03), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

5501. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of export of Items to Iraq in the National Interest of the United States pursuant to section 1504 of the Emergency Wartime Supplemental Appropriation Act, 2003 (Transmittal No. DTC 03IZ-03); to the Committee on International Relations.

5502. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report concerning Cuban emigration policies, pursuant to Public Law 105—277, section 2245; to the Committee on International Relations.

5503. A letter from the Inspector General, Department of the Interior, transmitting the Department's inventory of commercial and inherently governmental activities prepared in accordance with the Federal Activities Reform (FAIR) Act of 1998 (P.L. 105-270) and the Office of Management and Budget (OMB) Circular No. A-76; to the Committee on Government Reform.

5504. A letter from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting the semiannual report on the activities of the Office of Inspector General for the period April 1, 2003 through September 30, 2003, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 8G(h)(2); to the Committee on Government Reform.

5505. A letter from the Director, Office of Management and Budget, transmitting a report entitled "Statistical Programs of the United States Government: Fiscal Year 2004," pursuant to 44 U.S.C. 3504(e)(2); to the Committee on Government Reform.

5506. A letter from the Register of Copyrights and Under Secretary of Commerce for Intellectual Property, Copyright Office and the Patent and Trademark Office, transmitting a copy of the joint report on the effectiveness of the Vessel Hull Design Protection Act, as mandated by section 504 of the Digital Millennium Copyright Act and section 5005 of the Intellectual Property and Communications Omnibus Reform Act; to the Committee on the Judiciary.

5507. A letter from the Chair, United States Sentencing Commission, transmitting an emergency ammendment passed by unanimous vote on October 8, 2003, and the accompanying report in response to section 401(m) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21 (the "PROTECT Act"); to the Committee on the Judiciary.

5508. A letter from the Deputy Director, Bureau of Transportation Statistics, transmitting the Transportation Statistics Annual Report 2003, pursuant to 49 U.S.C. 111(j); to the Committee on Transportation and Infrastructure.

5509. A letter from the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, transmitting the Department's Annual Report of the Task Force on the Prohibition of Importation of Products of Forced or Prison Labor from the People's Republic of China, pursuant to 22 U.S.C. 6961; to the Committee on Ways and Means.

5510. A letter from the Comptroller, Department of Defense, transmitting notification of funding transfers made during FY 2003, as required by section 8005 of the Department of Defense Appropriations Acts, 2001, 2002, and 2003; and section 1001 of the National Defense Authorization Acts for fiscal years (FY) 2001, 2002, and 2003; and notification of funding transfers made during FY 2003 under the authority of the Consolidated Appropriations Resolution, 2003, the Emergency Supplemental Appropriations Act, 2003, and the Homeland Security Act, 2003; jointly to the Committees on Armed Services and Appropriations.

5511. A letter from the Attorney General and Secretary, Departments of Justice and Health and Human Services, transmitting the sixth Annual Report on the Health Care Fraud and Abuse Control (HCFAC) Program for Fiscal Year 2002, pursuant to 42 U.S.C. 1395i; jointly to the Committees on Energy and Commerce and Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. TOM DAVIS of Virginia: Committee on Government Reform. H.R. 2751. A bill to provide new human capital flexibilities with respect to the GAO, and for other purposes; with an amendment (Rept. 108–380). Referred to the Committee of the Whole House on the State of the Union.

Mr. GOSS: Committee of Conference. Conference report on H.R. 2417. A bill to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. 108–381). Ordered to be printed.

Mr. SESSIONS: Committee on Rules. House Resolution 449. Resolution providing for consideration of motions to suspend the rules (Rept. 108–382). Referred to the House Calendar.

Mr. LINDER: Committee on Rules. House Resolution 450. Resolution providing for the consideration of the joint resolution (H.J. Res. 78) making further continuing appropriations for the fiscal year 2004, , and for other purposes (Rept. 108–383). Referred to the House Calendar.

Mr. GOSS: Committee on Rules. House Resolution 451. Resolution waiving points of order against the conference report to accompany the bill (H.R. 2417) to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. 108–384). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. TIERNEY (for himself, Ms. McCollum, Mr. George Miller of California, Mr. Kildee, Mr. Owens, Mr. Payne, Mr. Andrews, Ms. Woolsey, Mr. Hinojosa, Mrs. McCarthy of New York, Mr. Kucinich, Mr. Wu, Mr. Holt, Mr. Davis of Illinois, Mr. Case, Mr. Grijalva, Mr. Van Hollen, Mr. Ryan of Ohio, Mr. Bishop of New York, Mr. Emanuel, and Ms. Pelosi):

H.R. 3519. A bill to address rising college tuition by strengthening the compact between the States, the Federal government, and institutions of higher education to make college more affordable; to the Committee on Education and the Workforce.

By Mrs. KELLY:

H.R. 3520. A bill to reduce duplication in Federal financial literacy and financial programs, identify more effective ways to provide financial education, and facilitate greater cooperation at the Federal, State and local levels and between government units and entities in the private sector by requiring the establishment of a national strategy for assuring financial education, and for other purposes; to the Committee on Financial Services.

By Mr. THOMAS:

H.R. 3521. A bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BARRETT of South Carolina (for himself, Mr. Miller of Florida, and Mr. Goode):

H.R. 3522. A bill to amend the Immigration and Nationality Act to bar the admission, and facilitate the removal, of alien terrorists and their supporters and fundraisers, to secure our borders against terrorists, drug traffickers, and other illegal aliens, to facilitate the removal of illegal aliens and aliens who are criminals or human rights abusers, to reduce visa, document, and employment fraud, to temporarily suspend processing of certain visas and immigration benefits, to reform the legal immigration system, and for other purposes; to the Committee on the Judiciary.

By Mr. BELL (for himself, Mr. Cole, Mr. Cannon, and Mr. Jefferson):

H.R. 3523. A bill to extend the same Federal benefits to law enforcement officers serving private institutions of higher education and rail carriers, that apply to law enforcement officers serving units of State and local government; to the Committee on the Judiciary.

By Ms. GINNY BROWN-WAITE of Florida:

H.R. 3524. A bill to amend the Missing Children's Assistance Act to extend the applicability of such Act to individuals determined to have a mental capacity less than 18 years of age; to the Committee on Education and the Workforce.

By Mr. DOOLITTLE (for himself, Mr. Hastert, Mr. DeLay, Mr. Sam Johnson of Texas, Mr. Herger, Mr. Lewis of California, and Mr. McKeon):

H.R. 3525. A bill to amend the Federal Election Campaign Act of 1971 to reform the financing of campaigns for election for Federal office; to the Committee on House Administration, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DUNCAN:

H.R. 3526. A bill to require the Secretary of the Treasury to mint coins in commemoration of David Crockett and his contributions to American history; to the Committee on Financial Services.

By Mrs. JOHNSON of Connecticut (for herself, Mr. Becerra, Mr. Houghton, Mr. Weller, Mr. Cardin, and Mr. Neal of Massachusetts):

H.R. 3527. A bill to amend the Internal Revenue Code of 1986 to exclude from unrelated business taxable income the gain or loss on the sale or exchange of certain brownfield sites, and for other purposes; to the Committee on Ways and Means.

By Mrs. LOWEY:

H.R. 3528. A bill to amend the Federal Water Pollution Control Act to authorize the use of funds made available for nonpoint source management programs for projects and activities relating to the development and implementation of phase II of the storm water program of the Environmental Protection Agency; to the Committee on Transportation and Infrastructure.

By Mr. McKEON:

H.R. 3529. A bill to direct the Secretary of the Interior to cancel certain Bureau of Land Management leases that authorize extraction of sand and gravel from the Federal mineral estate in lands in Soledad Canyon adjacent to the City of Santa Clarita, California, and for other purposes; to the Committee on Resources.

By Mr. GEORGE MILLER of California (for himself, Mr. Abercrombie, Mr. Evans, Mr. Grijalva, Mr. Andrews, Mr. Owens, Mr. Brown of Ohio, Ms. McCollum, Mr. Frank of Massachusetts, Mr. Payne, Ms. DeLauro, Mr. McGovern, Mr. Davis of Illinois, Ms. Linda T. Sánchez of California, Mr. Lynch, Mr. Kucinich, Mr. Ryan of Ohio, Mr. Farr, Mr. Michaud, Mr. Tierney, Ms. Roybal-Allard, Ms. Woolsey, Mr. Bishop of New York, Mr. Hinojosa, Mr. Delahunt, Mr. Crowley, Mr. Baca, Mr. Kildee, Mr. Rodriguez, Mr. Green of Texas, Mr. Holt, Mr. Sanders, Mr. Berman, and Mr. Lantos):

H.R. 3530. A bill to provide for labor recruiter accountability, and for other purposes; to the Committee on Education and the Workforce.

By Mr. MURPHY (for himself, Mr. Murtha, and Mr. English):

H.R. 3531. A bill to amend the Internal Revenue Code of 1986 to provide for a transferable credit against the income tax for producing energy from waste coal; to the Committee on Ways and Means.

By Mr. RYUN of Kansas:

H.R. 3532. A bill to amend the National Trails System Act to improve the efficiency and fairness of acquiring railroad rights-of-way for interim use as public trails by applying the procedures that govern other Federal real estate acquisitions; to the Committee on Resources.

By Mr. SAXTON:

H.R. 3533. A bill to amend the Federal Credit Reform Act of 1990 to require appropriations to cover the estimated subsidy costs of monetary resources provided by the United States Government to the International Monetary Fund, and for other purposes; to the Committee on the Budget, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TANCREDO (for himself, Mr. Deal of Georgia, Mr. Duncan, Mr. Hefley, and Mr. Herger):

H.R. 3534. A bill to enhance border enforcement, improve homeland security, remove incentives for illegal immigration, and establish a guest worker program; to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Government Reform, Education and the Workforce, and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TOOMEY:

H.R. 3535. A bill to amend title XVIII of the Social Security Act to facilitate the use of private contracts under the Medicare Program; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WELLER (for himself, Mr. Rush, Mr. Jackson of Illinois, Mr. Lipinski, Mr. Gutierrez, Mr. Emanuel, Mr. Hyde, Mr. Davis of Illinois, Mr. Crane, Ms. Schakowsky, Mr. Kirk, Mr. Costello, Mrs. Biggert, Mr. Hastert, Mr. Johnson of Illinois, Mr. Manzullo, Mr. Evans, Mr. LaHood, and Mr. Shimkus):

H.R. 3536. A bill to designate the facility of the United States Postal Service located at 210 Main Street in Malden, Illinois, as the "Army Staff Sgt. Lincoln Hollinsaid Malden Post Office"; to the Committee on Government Reform.

By Mr. WELLER (for himself, Mr. Rush, Mr. Jackson of Illinois, Mr. Lipinski, Mr. Gutierrez, Mr. Emanuel, Mr. Hyde, Mr. Davis of Illinois, Mr. Crane, Ms. Schakowsky, Mr. Kirk, Mr. Costello, Mrs. Biggert, Mr. Hastert, Mr. Johnson of Illinois, Mr. Manzullo, Mr. Evans, Mr. LaHood, and Mr. Shimkus):

H.R. 3537. A bill to designate the facility of the United States Postal Service located at 185 State Street in Manhattan, Illinois, as the "Army Pvt. Shawn Pahnke Manhattan Post Office"; to the Committee on Government Reform.

By Mr. WELLER (for himself, Mr. Rush, Mr. Jackson of Illinois, Mr. Lipinski, Mr. Gutierrez, Mr. Emanuel, Mr. Hyde, Mr. Davis of Illinois, Mr. Crane, Ms. Schakowsky, Mr. Kirk, Mr. Costello, Mrs. Biggert, Mr. Hastert, Mr. Johnson of Illinois, Mr. Manzullo, Mr. Evans, Mr. LaHood, and Mr. Shimkus):

H.R. 3538. A bill to designate the facility of the United States Postal Service located at 201 South Chicago Avenue in Saint Anne, Illinois, as the "Marine Capt. Ryan Beaupre Saint Anne Post Office"; to the Committee on Government Reform.

By Mrs. WILSON of New Mexico (for herself and Mr. Towns):

H.R. 3539. A bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, research, and medical management referral program for hepatitis C virus infection; to the Committee on Energy and Commerce.

By Mr. BAIRD:

H.J. Res. 77. A joint resolution proposing an amendment to the Constitution of the United States regarding the appointment of individuals to fill vacancies in the House of Representatives; to the Committee on the Judiciary.

By Mr. YOUNG of Florida:

H.J. Res. 78. A joint resolution making further continuing appropriations for the fiscal year 2004, and for other purposes; to the Committee on Appropriations.

By Mr. TOWNS (for himself and Mr. Faleomavaega):

H. Con. Res. 329. Concurrent resolution congratulating the people and Government of the Republic of Kazakhstan on the twelfth anniversary of the independence of Kazakhstan and praising longstanding and growing friendship between the United States and Kazakhstan; to the Committee on International Relations, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LANTOS (for himself, Mr. Shays, Mr. Frank of Massachusetts, Mr. Gephardt, Mr. Kucinich, Mr. Moran of Virginia, Mr. Hinchey, Mr.

Pallone, Mr. Matsui, Ms. Norton, Ms. Lee, Mr. Abercrombie, Mr. McNulty, Mr. Delahunt, Mr. Engel, Mr. McDermott, Mr. McGovern, Mr. Berman, Ms. Schakowsky, Mr. George Miller of California, Ms. Slaughter, Mr. Conyers, Mr. Brady of Pennsylvania, Mr. Crowley, Mr. Evans, Mr. Jackson of Illinois, Ms. Millender-McDonald, Mr. Lewis of Georgia, Mr. Weiner, Mrs. Maloney, Ms. Woolsey, Mr. Frost, Mr. Stark, Mr. Levin, Mr. Filner, Mr. Allen, Mr. Capuano, Mr. Olver, Mr. Wexler, Mr. Sanders, Ms. McCollum, Mr. Grijalva, Mr. Gonzalez, Mr. Owens, Ms. Baldwin, and Ms. Majette):

H. Con. Res. 330. Concurrent resolution expressing the concern of Congress regarding human rights violations committed against lesbians, gay men, bisexuals, and transgendered (LGBT) individuals around the world based on their real or perceived sexual orientation or gender identity; to the Committee on International Relations.

By Mr. SOUDER:

H. Con. Res. 331. Concurrent resolution expressing the sense of the Congress that the President should seek to enter into a free trade agreement with the United Kingdom; to the Committee on Ways and Means.

By Mr. CAMP (for himself, Mr. Herger, Mr. Shaw, and Mr. Brady of Texas):

H. Res. 452. A resolution recognizing and supporting the goals and ideals of National Adoption Month; to the Committee on Government Reform.

By Mr. HASTINGS of Florida (for himself, Mr. Wexler, Ms. Ros-Lehtinen, Mr. Lantos, Mr. Menendez, Ms. Granger, Mr. Whitfield, Mr. Berman, Mr. Weiner, Mr. Deutsch, Mr. English, Mr. Waxman, Mr. Reyes, Mr. Moran of Virginia, Mr. Wynn, Ms. Harman, Mr. Levin, Mr. Engel, Ms. Kaptur, Mr. Towns, Ms. Norton, Mr. Ackerman, Mr. Lewis of Georgia, Mr. Burton of Indiana, Ms. Solis, Mr. Dicks, Mr. Nadler, Mr. Crowley, Mr. Rodriguez, and Mrs. Tauscher):

H. Res. 453. A resolution condemning the terrorist attacks in Istanbul, Turkey, on November 15, 2003, expressing condolences to the families of the individuals murdered and expressing sympathies to the individuals injured in the terrorist attacks, and standing in solidarity with Turkey in the fight against terrorism; to the Committee on International Relations.

By Mrs. JONES of Ohio:

H. Res. 454. A resolution encouraging the AMBER Alert Coordinator of the Department of Justice to include within the minimum standards established pursuant to the PROTECT Act a specific criterion for issuance of an alert through the AMBER Alert communications network; to the Committee on the Judiciary.

By Mr. MURPHY (for himself, Mr. Kolbe, Mr. Cantor, Mr. Gerlach, Mr. Shuster, Mr. Pearce, Mr. Latham, Mr. Sweeney, Mr. Weldon of Florida, Mrs. Emerson, Mr. Taylor of North Carolina, Ms. Harris, and Mr. Kennedy of Rhode Island):

H. Res. 455. A resolution expressing the sense of the House of Representatives in support of establishing a program to foster private investment by the people of the United States in Iraqi schools and hospitals through adopt-a-school and adopt-a-hospital initiatives; to the Committee on International Relations.

MEMORIALS

Under clause 3 of rule XII, memorials were presented and referred as follows:

224. The SPEAKER presented a memorial of the Legislature of the State of Florida, relative to House Memorial No. 1669 memorializing the Congress of the United States to provide for the conveyance of the National Forest System lands underlying the George Kilpatrick Dam on the Oklawaha River near Palatka, Florida, and the National Forest System lands lying below the 21 feet National Geodetic Vertical Datum (NGVD) underlying the Rodman Reservoir formed by such dam and National Forest Service Tract #C-615 to the State of Florida; to the Committee on Agriculture.

225. Also, a memorial of the Senate of the Commonwealth of Pennsylvania, relative to Senate Resolution No. 163 urging the President and the Congress of the United States to continue to support the revitalization of the American steel industry; to the Committee on Ways and Means.

226. Also, a memorial of the Legislature of the State of Florida, relative to Senate Memorial No. 1180 urging the Congress of the United States to enact prescription drug coverage as part of the federal Medicare program; jointly to the Committees on Ways and Means and Energy and Commerce.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 31: Mrs. Myrick.

H.R. 54: Mr. Hulshof.

H.R. 218: Mr. Smith of Washington, Mrs. Capps, and Mr. Inslee.

H.R. 331: Mr. Schrock.

H.R. 375: Mr. Jones of North Carolina.

H.R. 401: Mr. Flake.

H.R. 486: Mr. Petri.

H.R. 713: Mr. Acevedo-Vilá, Mr. Gutknecht, and Mr. Filner.

H.R. 715: Mr. Ryan of Ohio.

H.R. 734: Mr. Michaud, Mr. Rothman, Mr. Towns, Mr. Sanders, and Mr. Frost.

H.R. 834: Mr. Gephardt.

H.R. 839: Mr. Bishop of Georgia, Mr. Barrett of South Carolina, Mr. Matsui, Mr. Sherwood, and Mr. Feeney.

H.R. 840: Mr. Davis of Alabama.

H.R. 857: Mr. Sandlin, Mrs. Bono, Mr. Miller of North Carolina, Mr. Baird, Mr. Tierney, Ms. Lee, Mr. Ruppersberger, and Mr. Goss.

H.R. 876: Mr. Everett, Mr. Barrett of South Carolina, Mr. Gonzalez, Mr. Baird, Ms. McCollum, Mr. Ballance, Ms. Berkley, Mr. Boucher, Ms. Ros-Lehtinen, Mr. Davis of Illinois, Mr. Gordon, Mr. Honda, and Mr. Towns.

H.R. 898: Mr. Shuster.

H.R. 1285: Mr. Moran of Virginia, Ms. Berkley, Mr. Oberstar, Mrs. Tauscher, Mr. DeFazio, Ms. Hooley of Oregon, Mrs. McCarthy of New York, Ms. McCollum, and Mr. McDermott.

H.R. 1336: Mr. Kline, Mr. DeMint, Mr. Barrett of South Carolina, and Ms. Ros-Lehtinen.

H.R. 1372: Mr. Vitter, Mr. Hefley, and Mr. Nunes.

H.R. 1414: Mr. Shays.

H.R. 1434: Mr. Jefferson, Mr. Owens, and Mr. Thompson of Mississippi.

H.R. 1532: Mr. Porter, Mr. Cardin, Mrs. Biggert, Mr. Brady of Pennsylvania, Ms. Kaptur, Mr. Kleczka, Mr. Chabot, and Mr. Baird.

H.R. 1659: Mr. Baca.

H.R. 1680: Mr. Michaud.

H.R. 1688: Mr. Kind, Mr. Davis of Illinois, Mr. Green of Texas, Mr. Oberstar, Mr. Wynn, Mr. Hinchey, Ms. Watson, Mr. Conyers, Mr. Hall, Ms. Millender-McDonald, Mr. Wexler, Mr. Lampson, Mr. Berman, and Ms. Berkley.

H.R. 1700: Mr. Bradley of New Hampshire.

H.R. 1708: Mr. LaHood.

H.R. 1776: Mr. Garrett of New Jersey.

H.R. 1824: Mr. Jenkins, Mr. Emanuel, and Mr. LaHood.

H.R. 1914: Mr. Bass, Mr. Gerlach, Mr. Beauprez, Mr. Pearce, Mr. Sherwood, Mr. Shimkus, Mr. Thomas, Mr. Rohrabacher, Mr. Bachus, Mr. Barton of Texas, Ms. Berkley, Mrs. Bono, Mr. Carson of Oklahoma, Mr. Chabot, Mr. Chocola, Mr. Cooper, Ms. DeLauro, Mr. Dooley of California, Mr. Emanuel, Mr. Ford, Mr. Franks of Arizona, Mr. Graves, Mr. Hall, Mr. Hensarling, Mr. Hulshof, Mr. Israel, Mr. Langevin, Mrs. Lowey, Mr. Manzullo, Mr. Markey, Mr. Matheson, Mr. Meeks of New York, Mr. Menendez, Mr. Gary G. Miller of California, Mr. Pitts, Ms. Pryce of Ohio, Mr. Quinn, Mr. Radanovich, Mr. Rogers of Kentucky, Mr. Sherman, Mr. Simpson, Mr. Tancredo, Mr. Walden of Oregon, Mr. Young of Alaska, and Mr. Neugebauer.

H.R. 1943: Mr. Bereuter.

H.R. 2096: Mr. Manzullo, Mr. Nussle, Mr. Gallegly, Mr. Saxton, and Mr. Toomey.

H.R. 2217: Ms. Woolsey.

H.R. 2314: Mrs. Jones of Ohio.

H.R. 2347: Mr. Ferguson.

H.R. 2404: Mrs. Lowey and Mr. Turner of Texas.

H.R. 2582: Mr. McDermott.

H.R. 2727: Mr. Olver.

H.R. 2760: Mr. Burton of Indiana and Mr. Moran of Virginia.

H.R. 2768: Mr. Cardin, Mr. Wynn, and Mr. Ruppersberger.

H.R. 2808: Mr. Ballance, Ms. Corrine Brown of Florida, Mrs. Davis of California, Ms. Harris, Mr. Houghton, Mr. Levin, Mr. Marshall, Mr. Meehan, Mr. Murtha, Mr. Payne, Ms. Pelosi, Mr. Pence, Mr. Price of North Carolina, and Mr. Tierney.

H.R. 2809: Mr. Faleomavaega.

H.R. 2810: Mr. Faleomavaega.

H.R. 2818: Ms. Norton, Ms. Corrine Brown of Florida, and Mr. Abercrombie.

H.R. 2823: Mr. Frank of Massachusetts, Mr. LaHood, and Mr. Ramstad.

H.R. 2851: Mr. King of Iowa.

H.R. 2852: Mr. Burgess.

H.R. 2879: Ms. Solis.

H.R. 2897: Ms. DeLauro, Ms. Kilpatrick, and Mr. Brown of Ohio.

H.R. 2929: Mr. Green of Texas.

H.R. 2945: Mr. McDermott.

H.R. 2952: Mrs. Kelly and Mr. Price of North Carolina.

H.R. 2961: Mr. Upton, Mrs. Lowey, Mr. Kennedy of Rhode Island, Mr. McGovern, Mr. Boswell, Mr. Brown of Ohio, Mr. Hinchey, Mr. Sanders, Mr. Simmons, Mr. Andrews, Mr. Reyes, Mr. Rothman, and Mr. Marshall.

H.R. 2978: Mr. Ney and Mr. Wynn.

H.R. 2980: Mr. Waxman, Ms. Norton, Mr. Kleczka, and Mr. Serrano.

H.R. 3003: Mr. Bonilla.

H.R. 3051: Mr. Pascrell and Mr. Wynn.

H.R. 3064: Mr. Upton, Mr. Moore, and Mrs. Biggert.

H.R. 3084: Mr. Bishop of New York.

H.R. 3109: Mr. AKIN, Mrs. BIGGERT, Mr. BOOZMAN, Mr. JANKLOW, Mr. LATOURETTE, MR. VITTER, Mr. WALDEN of Oregon, Mr. WELDON of Pennsylvania, Mr. WILSON of South Carolina, Mr. BURNS, Mr. BURR, Mr. BURTON of Indiana, Mr. BUYER, Mr. CAMP, Mrs. CAPITO, Mr. COLE, Mr. COLLINS, Mr. COX, Mr. CRENSHAW, Mr. CULBERSON, Mr. DEAL of Georgia, Mr. MCCRERY, Mr. MCHUGH, Mr. GARY G. MILLER of California, Mr. MORAN of Kansas, Mr. NEUGEBAUER, Mr. NORWOOD, and Mr. OSE.

H.R. 3120: Ms. MILLENDER-MCDONALD.

H.R. 3125: Mr. PETRI and Mr. LEWIS of Kentucky.

H.R. 3133: Mr. FROST.

H.R. 3150: Mr. SMITH of Washington, Mrs. MALONEY, Mr. BERMAN, Mr. LARSEN of Washington, Mr. DAVIS of Florida, Mr. FORD, and Mr. PRICE of North Carolina.

H.R. 3184: Mr. DAVIS of Alabama.

H.R. 3190: Mr. WICKER, Mr. BISHOP of Utah, and Mr. MCCOTTER.

H.R. 3213: Mr. HALL and Mr. BASS.

H.R. 3242: Mr. CASE and Mr. SPRATT.

H.R. 3244: Mr. ISRAEL.

H.R. 3277: Mr. HAYES, Mr. SHIMKUS, Ms. MCCARTHY of Missouri, Mr. PASCRELL, Mr. ORTIZ, Mr. STRICKLAND, Mr. DAVIS of Tennessee, Ms. SOLIS, Mr. LAMPSON, Mr. MCINTYRE, Mr. BROWN of Ohio, Mr. ALLEN, Mr. COSTELLO, Mr. WU, Mr. RYAN of Ohio, Ms. KAPTUR, Mr. NEAL of Massachusetts, Mrs. CAPPS, Mr. MARSHALL, Mr. PALLONE, Mr. OLVER, Mr. KENNEDY of Minnesota, Mr. GREEN of Texas, Mr. BISHOP of Utah, Mr. REYNOLDS, Mr. LEWIS of Kentucky, Mr. GREENWOOD, Mr. KELLER, Mr. ROGERS of Michigan, Mr. THORNBERRY, Mr. GOODLATTE, Mr. FRANKS of Arizona, Mr. REHBERG, Mr. BRADLEY of New Hampshire, Mr. HERGER, Mr. FERGUSON, Mr. PEARCE, Mr. GINGREY, Mr. BOOZMAN, Mr. COLE, Mr. MILLER of Florida, Mr. FORBES, and Mr. BROWN of South Carolina.

H.R. 3278. Mr. VAN HOLLEN.

H.R. 3306: Mr. GUTIERREZ.

H.R. 3307: Mr. DREIER.

H.R. 3308: Mr. KING of Iowa, Mr. HENSARLING, Mrs. MUSGRAVE, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. NAPOLITANO, Mr. NETHERCUTT, Mr. REGULA, Mr. RYAN of Wisconsin, and Mr. BEAUPREZ.

H.R. 3344: Mr. MATHESON, Mr. ORTRIZ, Mr. GREEN of Texas, Mr. SNYDER, and Mr. MARSHALL.

H.R. 3350: Mr. GUTIERREZ and Mr. ABERCROMBIE.

H.R. 3352: Mr. MILLER of Florida and Mr. HINCHEY.

H.R. 3358: Mr. GOODLATTE.

H.R. 3371: Mr. SNYDER.

H.R. 3403: Mr. FOLEY.

H.R. 3424: Mr. MEEKS of New York and Ms. BERKLEY.

H.R. 3425: Mr. RODRIGUEZ, Mr. SPRATT, Mr. VAN HOLLEN, and Mr. RANGEL.

H.R. 3429: Mr. UPTON.

H.R. 3441: Mr. DEUTSCH and Mr. WALSH.

H.R. 3442: Mr. VAN HOLLEN, Mr. MCDERMOTT, Mr. DAVIS of Illinois, Ms. LEE, Mrs. CAPITO, Mr. WYNN, Mr. GUTIERREZ, Mr. CONYERS, Mr. HONDA, Ms. WATSON, Mr. GORDON, Ms. KAPTUR, Mr. RODRIGUEZ, Mr. KILDEE, and Mr. BERMAN.

H.R. 3471: Mr. ISRAEL.

H.R. 3476: Mr. GRAVES, Mr. TOWNS, Mr. GUTIERREZ, Mr. BOSWELL, Mr. HOLDEN, Mr. ABERCROMBIE, Ms. MILLENDER-MCDONALD, Mr. JEFFERSON, Mr. GRIJALVA, Mr. GREEN of Texas, Mr. MICHAUD, Mr. JACKSON of Illinois, Mr. EDWARDS, Mr. COSTELLO, Mr. WILSON of South Carolina, Mr. BOUCHER, Mr. GOODE, Mr. LAHOOD, and Mr. GOODLATTE.

H.R. 3500: Mr. ETHERIDGE, Mr. JENKINS, Mr. GORDON, Mr. HILL, Mr. BOUCHER, and Mr. MARSHALL.

H.J. Res. 40: Mr. WICKER.

H. Con. Res. 126: Mr. FRANKS of Arizona.

H. Con. Res. 218: Mr. FOLEY.

H. Con. Res. 247: Mr. BRADLEY of New Hampshire.

H. Con. Res. 276: Mr. FILNER, Mr. ABERCROMBIE, Mr. DEFAZIO, Mr. RYAN of Ohio, Mr. FROST, Mr. STARK, and Mr. MICHAUD.

H. Con. Res. 307: Mr. RODRIGUEZ, Mr. FLAKE, and Mr. CANTOR.

H. Con. Res. 311: Mr. CROWLEY and Mr. DEUTSCH.

H. Con. Res. 312: Mrs. JONES of Ohio, Mr. PAYNE, Mr. HINOJOSA, Mrs. DAVIS of California, and Ms. DELAURO.

H. Con. Res. 315: Mr. SMITH of New Jersey.

H. Con. Res. 323: Ms. KILPATRICK and Mr. PAYNE.

H. Con. Res. 325: Mr. GILCHREST.

H. Res. 291: Ms. ESHOO.

H. Res. 346: Mr. MCHUGH.

H. Res. 371: Mr. JANKLOW.

H. Res. 387: Ms. WOOLSEY.

H. Res. 393: Ms. CARSON of Indiana.

H. Res. 402: Mr. BALLENGER.

H. Res. 410: Mr. MCGOVERN.

H. Res. 445: Mr. BERRY, Mr. STRICKLAND, Mrs. JONES of Ohio, Mr. MURTHA, Mr. STUPAK, and Mr. KUCINICH.

H. Res. 447: Mrs. MALONEY and Mr. JACKSON of Illinois.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1078: Mr. BARRETT of South Carolina.

PETITIONS, ETC.

Under clause 3 of rule XII,

44. The SPEAKER presented a petition of the Town of Huntington, NY, relative to Town Board Resolution No. 2003-708, petitioning the United States Congress to enact the Assault Weapons Ban Reauthorization Act of 2003; which was referred to the Committee on the Judiciary.

AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 253

OFFERED BY MR. BEREUTER

(Amendment in the Nature of a Substitute)

AMENDMENT NO. 1: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Flood Insurance Reform Act of 2003".

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the national flood insurance program (A) identifies the flood risk, (B) provides flood risk information to the public, (C) encourages State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, and (D) makes flood insurance available on a nationwide basis that would otherwise not be available, to accelerate recovery from floods, mitigate future losses, save lives, and reduce the personal and national costs of flood disasters;

(2) the national flood insurance program insures approximately 4,400,000 policyholders;

(3) approximately 48,000 properties currently insured under the program have experienced, within a 10-year period, two or more flood losses where each such loss exceeds the amount $1,000;

(4) approximately 10,000 of these repetitive-loss properties have experienced either two or three losses that cumulatively exceed building value or four or more losses, each exceeding $1,000;

(5) repetitive-loss properties constitute a significant drain on the resources of the national flood insurance program, costing about $200,000,000 annually;

(6) repetitive-loss properties comprise approximately one percent of currently insured properties but are expected to account for 25 to 30 percent of claims losses;

(7) the vast majority of repetitive-loss properties were built before local community implementation of floodplain management standards under the program and thus are eligible for subsidized flood insurance;

(8) while some property owners take advantage of the program allowing subsidized flood insurance without requiring mitigation action, others are trapped in a vicious cycle of suffering flooding, then repairing flood damage, then suffering flooding, without the means to mitigate losses or move out of harm's way;

(9) mitigation of repetitive-loss properties through buyouts, elevations, relocations, or flood-proofing will produce savings for policyholders under the program and for Federal taxpayers through reduced flood insurance losses and reduced Federal disaster assistance;

(10) a strategy of making mitigation offers aimed at high-priority repetitive-loss properties and shifting more of the burden of recovery costs to property owners who choose to remain vulnerable to repetitive flood damage can encourage property owners to take appropriate actions that reduce loss of life and property damage and benefit the financial soundness of the program; and

(11) the method for addressing repetitive-loss properties should be flexible enough to take into consideration legitimate circumstances that may prevent an owner from taking a mitigation action.

SEC. 3. EXTENSION OF PROGRAM AND CONSOLIDATION OF AUTHORIZATIONS.

The National Flood Insurance Act of 1968 is amended as follows:

(1) BORROWING AUTHORITY.—In the first sentence of section 1309(a) (42 U.S.C. 4016(a)), by striking "through December" and all that follows through ", and" and inserting the following: "through the date specified in section 1319, and".

(2) AUTHORITY FOR CONTRACTS.—In section 1319 (42 U.S.C. 4026), by striking "after" and all that follows and inserting "after September 30, 2008.".

(3) EMERGENCY IMPLEMENTATION.—In section 1336(a) (42 U.S.C. 4056(a)), by striking "during the period" and all that follows through "in accordance" and inserting "during the period ending on the date specified in section 1319, in accordance".

(4) AUTHORIZATION OF APPROPRIATIONS FOR STUDIES.—In section 1376(c) (42 U.S.C. 4127(c)), by striking "through" and all that follows and inserting the following: "through the date specified in section 1319, for studies under this title.".

SEC. 4. ESTABLISHMENT OF PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

(a) In General.—The National Flood Insurance Act of 1968 is amended by inserting after section 1361 (42 U.S.C. 4102) the following new section:

"PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES

"Sec. 1362. (a) Authority.—To the extent amounts are made available for use under this section, the Director may, subject to the limitations of this section, provide financial assistance to States and communities for taking actions with respect to severe repetitive loss properties (as such term is defined in subsection (b)) to mitigate flood damage to such properties and losses to the National Flood Insurance Fund from such properties.

"(b) Severe Repetitive Loss Property.—For purposes of this section, the term 'severe repetitive loss property' has the following meaning:

"(1) Single-family properties.—In the case of a property consisting of one to four residences, such term means a property that—

"(A) is covered under a contract for flood insurance made available under this title; and

"(B) has incurred flood-related damage—

"(i) for which four or more separate claims payments have been made under flood insurance coverage under this title before the date of the enactment of the Flood Insurance Reform Act of 2003, with the amount of each such claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000;

"(ii) for which four or more separate claims payments have been made under flood insurance coverage under this title after the date of the enactment of the Flood Insurance Reform Act of 2003, with the amount of each such claim exceeding $3,000, and with the cumulative amount of such claims payments exceeding $15,000; or

"(iii) for which at least two separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.

"(2) Multifamily properties.—In the case of a property consisting of five or more residences, such term shall have such meaning as the Director shall by regulation provide.

"(c) Eligible Activities.—Amounts provided under this section to a State or community may be used only for the following activities:

"(1) Mitigation activities.—To carry out mitigation activities that reduce flood damages to severe repetitive loss properties, including elevation, relocation, demolition, and floodproofing of structures, and minor physical localized flood control projects.

"(2) Purchase.—To purchase severe repetitive loss properties, subject to subsection (f).

"(d) Matching Requirement.—

"(1) In general.—Except as provided in paragraph (2), the Director may not provide assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds for carrying out the eligible activities to be funded with such assistance amounts.

"(2) Waiver.—

"(A) Authority.—Subject to subparagraph (B), the Director may waive the limitation under paragraph (1) for any State, and for the communities located in that State, with respect to a year, if, for such year—

"(i) 5 percent or more of the total number of severe repetitive loss properties in the United States are located in such State; and

"(ii) the State submits a plan to the Director specifying how the State intends to reduce the number of severe repetitive loss properties and the Director determines, after consultation with State and technical experts, that the State has taken actions to reduce the number of such properties.

"(B) Limitation.—In each waiver under subparagraph (A), the Director may waive the limitation under paragraph (1) only to the extent that the State or community involved is required to contribute, for each severe repetitive loss property for which grant amounts are provided, not less than 10 percent of the cost of the activities for such properties that are to be funded with grant amounts.

"(3) Non-federal funds.—For purposes of this subsection, the term 'non-Federal funds' includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the eligible activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

"(e) Standards for Mitigation Offers.—The program under this section for providing assistance for eligible activities for severe repetitive loss properties shall be subject to the following limitations:

"(1) Priority.—In determining the properties for which to provide assistance for eligible activities under subsection (c), the Director shall provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time.

"(2) Offers.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties to take eligible activities under subsection (c) as soon as is practicable.

"(3) Notice.—Upon making an offer to provide assistance with respect to a property for any eligible activity under subsection (c), the State or community shall notify each holder of a recorded interest on the property of such offer and activity.

"(f) Purchase Offers.—A State or community may take action under subsection (c)(2) to purchase a severe repetitive loss property only if the following requirements are met:

"(1) Use of property.—The State or community enters into an agreement with the Director that provides assurances that the property purchased will be used in a manner that is consistent with the requirements of clauses (i) and (ii) of section 404(b)(2)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(b)(2)(B)) for properties acquired, accepted, or from which a structure will be removed pursuant to a project provided property acquisition and relocation assistance under such section 404(b).

"(2) Purchase price.—The amount of purchase offer is not less than the greatest of—

"(A) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this title;

"(B) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property;

"(C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property;

"(D) an amount equal to the replacement value of the property immediately before the most recent flood event affecting the property, except that this subparagraph shall apply in the case only of a property for which the State or community taking action under subsection (c)(2) determines, and the Director concurs, that the fair market value referred to in subparagraph (C) of the property is less than the purchase price of a replacement primary residence that is of comparable value, functionally equivalent, and located in the same community or market area but not in an area having special flood hazards.

"(g) Increase to Actuarial Rates in Cases of Refusal to Mitigate.—

"(1) In general.—In any case in which the owner of a severe repetitive loss property refuses an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property, the Director shall—

"(A) notify each holder of a recorded interest on the property of such refusal; and

"(B) increase the chargeable risk premium rate for flood insurance coverage under this title for the property to an amount equal to the applicable estimated risk premium rate for such area (or subdivision thereof) under section 1307(a)(1) and apply appropriate loss deductibles.

"(2) Appeals.—

"(A) In general.—Any owner of a severe repetitive loss property may appeal a determination of the Director to take action under paragraph (1)(B) with respect to such property, based only upon the following grounds:

"(i) As a result of such action, the owner of the property will not be able to purchase a replacement primary residence of comparable value and that is functionally equivalent.

"(ii) As a result of such action, the preservation or maintenance of any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of historic places will be interfered with, impaired, or disrupted.

"(iii) The flooding that resulted in the flood insurance claims described in subsection (b)(2) for the property resulted from significant actions by a third party in violation of Federal, State, or local law, ordinance, or regulation.

"(iv) In purchasing the property, the owner relied upon flood insurance rate maps of the Federal Emergency Management Agency that were current at the time and did not indicate that the property was located in an area having special flood hazards.

"(B) Procedure.—An appeal under this paragraph of a determination of the Director shall be made by filing, with the Director, a request for an appeal within 90 days after receiving notice of such determination. Upon receiving the request, the Director shall select, from a list of independent third parties compiled by the Director for such purpose, a party to hear such appeal. Within 90 days after filing of the request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1).

"(C) EFFECT OF FINAL DETERMINATION.—In an appeal under this paragraph—

"(i) if a final determination is made that the grounds under subparagraph (A) exist, the third party hearing such appeal shall make a determination of how much to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1) and the Director shall promptly reduce the chargeable risk premium rate for such property by such amount; and

"(ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly increase the chargeable risk premium rate for such property to the amount established pursuant to paragraph (1) and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates during the pendency of the appeal.

"(D) COSTS.—If the third party hearing an appeal under this paragraph is compensated for such service, the costs of such compensation shall be borne—

"(i) by the owner of the property requesting the appeal, if the final determination in the appeal is that the grounds under subparagraph (A) do not exist; and

"(ii) by the National Flood Insurance Fund, if such final determination is that the grounds under subparagraph (A) do exist.

"(E) REPORT.—Not later than 6 months after the date of the enactment of the Flood Insurance Reform Act of 2003, the Director shall submit a report to the House of Representatives and the Senate describing the rules, procedures, and administration for appeals under this paragraph.

"(h) DISCRETIONARY ACTIONS IN CASES OF FRAUDULENT CLAIMS.—If the Director determines that a fraudulent claim was made under flood insurance coverage under this title for a severe repetitive loss property, the Director may—

"(1) cancel the policy and deny the provision to such policyholder of any new flood insurance coverage under this title for the property; or

"(2) refuse to renew the policy with such policyholder upon expiration and deny the provision of any new flood insurance coverage under this title to such policyholder for the property.

"(i) FUNDING.—Pursuant to section 1310(a)(8), the Director may use amounts from the National Flood Insurance Fund to provide assistance under this section in each of fiscal years 2004, 2005, 2006, 2007, and 2008, except that the amount so used in each such fiscal year may not exceed $40,000,000 and shall remain available until expended. Notwithstanding any other provision of this title, amounts made available pursuant to this subsection shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.

"(j) TERMINATION.—The Director may not provide assistance under this section to any State or community after September 30, 2008.".

(b) AVAILABILITY OF NATIONAL FLOOD INSURANCE FUND AMOUNTS.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

(1) in paragraph (7), by striking "and" at the end; and

(2) by striking paragraph (8) and inserting the following new paragraph:

"(8) for financial assistance under section 1362 to States and communities for taking actions under such section with respect to severe repetitive loss properties, but only to the extent provided in section 1362(i); and".

SEC. 5. ENHANCED AUTHORITY IN FLOOD MITIGATION ASSISTANCE PROGRAM.

(a) MITIGATION ASSISTANCE FOR REPETITIVE CLAIMS PROPERTIES.—Section 1366(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended—

(1) by striking paragraph (4) and inserting the following new paragraph:

"(4) STANDARD FOR ASSISTANCE.—In providing grants under this subsection for mitigation activities, the Director shall give first priority for funding to repetitive claims properties, or to such subsets of such properties as the Director may establish pursuant to subsection (n)(2), that the Director determines are the most cost-effective for the taxpayers of the United States, are in the best interests of the National Flood Insurance Fund, and for which matching amounts under subsection (f) are available."; and

(2) by adding at the end the following new paragraph:

"(6) NOTICE.—Upon making an offer to conduct any eligible mitigation activity under paragraph (5) with respect to a repetitive claims property or a severe repetitive loss property (as such term is defined in section 1362(b)) using amounts provided under this section, the State or community shall notify each holder of a recorded interest on the property of such offer and activity.".

(b) LIMITATIONS ON PROPERTY ACQUISITION.—Section 1366(e)(5)(C) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(e)(5)(C)) is amended by striking "for public use, as the Director determines is consistent with sound land management and use in such area" and inserting the following: "except that amounts provided under this section may not be used for acquisition of any property unless—

"(i) the State or community enters into an agreement with the Director that provides assurances that the property purchased will be used in a manner that is consistent with the requirements of clauses (i) and (ii) of section 404(b)(2)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(b)(2)(B)) for properties acquired, accepted, or from which a structure will be removed pursuant to a project provided property acquisition and relocation assistance under such section 404(b); and

"(ii) the amount of purchase offer is not less than the greatest of—

"(I) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this title;

"(II) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property;

"(III) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property"; and

"(IV) an amount equal to the replacement value of the property immediately before the most recent flood event affecting the property, except that this subclause shall apply in the case only of a property for which the State or community determines, and the Director concurs, that the fair market value referred to in subclause (III) of the property is less than the purchase price of a replacement primary residence that is of comparable value, functionally equivalent, and located in the same community or market area but not in an area having special flood hazards".

(c) WAIVER OF LIMITATIONS ON ASSISTANCE.—Section 1366(f) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(f)) is amended by striking paragraph (3) and inserting the following new paragraph:

"(3) WAIVER.—The Director may waive the dollar amount limitations under paragraphs (1) and (2) for any State or community—

"(A) for any 5-year period when a major disaster or emergency declared by the President (pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)) as a result of flood conditions is in effect with respect to areas in the State or community; or

"(B) whenever the Director determines that repetitive claims properties are located within such State or community and that waiver of the cost limitations is cost-effective and in the best interests of the National Flood Insurance Fund.".

(d) PENALTIES FOR REFUSAL TO MITIGATE AND FRAUDULENT CLAIMS.—Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended—

(1) by striking subsection (k);

(2) by redesignating subsection (j) as subsection (l); and

(3) by inserting after subsection (i) the following new subsections:

"(j) INCREASE TO ACTUARIAL RATES IN CASES OF REFUSAL TO MITIGATE.—

"(1) IN GENERAL.—In any case in which the owner of a repetitive claims property refuses an offer of a State or community to conduct, with respect to such property, mitigation activities under subsection (e) under a mitigation plan approved by the Director, the Director shall—

"(A) notify each holder of a recorded interest on the property of such refusal; and

"(B) increase the chargeable risk premium rate for flood insurance coverage under this title for the property to an amount equal to the applicable estimated risk premium rate for such area (or subdivision thereof) under section 1307(a)(1) and apply appropriate loss deductibles.

"(2) APPEALS.—

"(A) MITIGATION ACTIONS.—Any owner of a repetitive claims property may appeal a determination of the Director to take action under paragraph (1)(B) with respect to such property, based only upon the following grounds:

"(i) As a result of such action, the owner of the property will not be able to purchase a replacement primary residence of comparable value and that is functionally equivalent.

"(ii) As a result of such action, the preservation or maintenance of any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of historic places will be interfered with, impaired, or disrupted.

"(iii) The flooding that resulted in the flood insurance claims payments described in subsection (n)(2) for the property resulted from significant actions by a third party in violation of Federal, State, or local law, ordinance, or regulation.

"(iv) In purchasing the property, the owner relied upon flood insurance rate maps of the Federal Emergency Management Agency that were current at the time and did not indicate that the property was located in an area having special flood hazards.

"(B) PROCEDURE.—An appeal under this paragraph of a determination of the Director shall be made by filing, with the Director, a request for an appeal within 90 days after receiving notice of such determination. Upon receiving the request, the Director shall select, from a list of independent third parties compiled by the Director for such purpose, a party to hear such appeal. Within 90 days after filing of the request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1).

"(C) EFFECT OF FINAL DETERMINATION.—In an appeal under this paragraph—

"(i) if a final determination is made that the grounds under subparagraph (A) exist, the third party hearing such appeal shall make a determination of how much to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1) and the Director shall promptly reduce the chargeable risk premium rate for such property by such amount; and

"(ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly increase the chargeable risk premium rate for such property to the amount established pursuant to paragraph (1) and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates during the pendency of the appeal.

"(D) COSTS.—If the third party hearing an appeal under this paragraph is compensated for such service, the costs of such compensation shall be borne—

"(i) by the owner of the property requesting the appeal, if the final determination in the appeal is that the grounds under subparagraph (A) do not exist; and

"(ii) by the National Flood Mitigation Fund, if such final determination is that the grounds under subparagraph (A) do exist.

"(E) REPORT.—Not later than 6 months after the date of the enactment of the Flood Insurance Reform Act of 2003, the Director shall submit a report to the House of Representatives and the Senate describing the rules, procedures, and administration for appeals under this paragraph, which shall be submitted together with the report required under section 1362(g)(2)(E).

"(k) DISCRETIONARY ACTIONS IN CASES OF FRAUDULENT CLAIMS.—If the Director determines that a fraudulent claim was made under flood insurance coverage under this title for a repetitive claims property, the Director may—

"(1) cancel the policy and deny the provision to such policyholder of any new flood insurance coverage under this title for the property; or

"(2) refuse to renew the policy with such policyholder upon expiration and deny the provision of any new flood insurance coverage under this title to such policyholder for the property.".

(e) COORDINATION WITH STATES AND COMMUNITIES.—Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following new subsection:

"(m) COORDINATION WITH STATES AND COMMUNITIES.—The Director shall, in consultation and coordination with States and communities:

"(1) IDENTIFICATION OF REPETITIVE CLAIMS PROPERTIES.—Identify repetitive claims properties and properties at risk of becoming repetitive claims properties.

"(2) MANAGEMENT OF 100-YEAR FLOODPLAIN.—Take such actions as are appropriate to encourage and improve participation of owners of properties that are not located in areas having special flood hazards but are located within the 100-year floodplain.".

(f) DEFINITION OF REPETITIVE CLAIMS PROPERTY.—Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following new subsection:

"(n) DEFINITIONS.—For purposes of this section:

"(1) COMMUNITY.—The term 'community' means—

"(A) a political subdivision that—

"(i) has zoning and building code jurisdiction over a particular area having special flood hazards; and

"(ii) is participating in the national flood insurance program; or

"(B) a political subdivision of a State, or other authority, that is designated to develop and administer a mitigation plan and manage projects by political subdivisions, all of which meet the requirements of subparagraph (A).

"(2) REPETITIVE CLAIMS PROPERTY.—The term 'repetitive claims property' means, without regard to the ownership of the property, a property with respect to which claim payments for losses have been made—

"(A) under flood insurance coverage under this title,

"(B) on more than one occasion within a 10-year period, and

"(C) for which the cumulative value of the amount by which such claims exceed the amount of any applicable deductible under such coverage is $5,000 or more,

The Director may, by regulation, further define subsets of repetitive claims properties for purposes of subsection (e)(4).".

(g) FUNDING.—Section 1367(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d(b)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4); and

(2) by striking paragraph (1) and inserting the following new paragraphs:

"(1) in each fiscal year, amounts from the National Flood Insurance Fund not exceeding $20,000,000;

"(2) in each of fiscal years 2004, 2005, 2006, 2007, and 2008, in addition to amounts under paragraph (1), amounts from the National Flood Insurance Fund not exceeding $40,000,000, to remain available until expended, except that—

"(A) such amounts shall be used only under section 1366 for mitigation activities for repetitive claims properties (as such term is defined in section 1366(n)); and

"(B) notwithstanding any other provision of this title, amounts made available pursuant to this paragraph shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title; and".

SEC. 6. FEMA AUTHORITY TO FUND MITIGATION ACTIVITIES FOR INDIVIDUAL REPETITIVE CLAIMS PROPERTIES.

(a) IN GENERAL.—Chapter I of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by adding at the end the following new section:

"GRANTS FOR REPETITIVE INSURANCE CLAIMS PROPERTIES

"SEC. 1323. (a) IN GENERAL.—The Director may provide funding for mitigation actions that reduce flood damages to repetitive claims properties, but only if the Director determines that—

"(1) such activities are in the best interest of the National Flood Insurance Fund; and

"(2) such activities can not be funded under the program under section 1366 because—

"(A) the requirements of section 1366(g) are not being met by the State or community in which the property is located; or

"(B) the State or community does not have the capacity to manage such activities.

"(b) PRIORITY FOR WORST-CASE PROPERTIES.—In determining properties for which funding is to be provided under this section, the Director shall give priority based on the amount of losses to the National Flood Insurance Fund that claims for a property have caused or are reasonably expected to cause.

"(c) DEFINITION.—For purposes of this section, the term 'repetitive claims property' has the meaning given such term in section 1366(n).".

(b) AVAILABILITY OF NATIONAL FLOOD INSURANCE FUND AMOUNTS.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended by adding at the end the following new paragraph:

"(9) for funding, not to exceed $10,000,000 in any fiscal year, for mitigation actions under section 1323, except that, notwithstanding any other provision of this title, amounts made available pursuant to this paragraph shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.".

SEC. 7. ACTUARIAL RATE PROPERTIES.

(a) IN GENERAL.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by striking subsection (c) and inserting the following new subsection:

"(c) ACTUARIAL RATE PROPERTIES.—Subject only to the limitations provided under paragraphs (1) and (2), the chargeable rate shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 1307(a)(1) with respect to the following properties:

"(1) POST-FIRM PROPERTIES.—Any property the construction or substantial improvement of which the Director determines has been started after December 31, 1974, or started after the effective date of the initial rate map published by the Director under paragraph (2) of section 1360 for the area in which such property is located, whichever is later, except that the chargeable rate for properties under this paragraph shall be subject to the limitation under subsection (e).

"(2) PROPERTIES REFUSING MITIGATION ASSISTANCE.—Any property for which the Director has taken action under section 1362(g)(1) or 1366(i)(1).

"(3) CERTAIN LEASED COASTAL AND RIVER PROPERTIES.—Any property leased from the Federal Government (including residential and nonresidential properties) that the Director determines is located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.".

(b) INAPPLICABILITY OF ANNUAL LIMITATIONS ON PREMIUM INCREASES.—Section 1308(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(e)) is amended by striking "Notwithstanding" and inserting "Except with respect to properties described under paragraph (2) or (3) of subsection (c) and notwithstanding".

SEC. 8. ELECTRONIC DATABASE OF REPETITIVE CLAIMS PROPERTIES.

Section 1364 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104a) is amended by adding at the end the following new subsection:

"(d) ELECTRONIC DATABASE OF REPETITIVE CLAIMS PROPERTIES.—The Director may, if the Director determines such action is feasible, establish and maintain a database identifying by location and address all repetitive claims properties (as such term is defined in section 1366(n)), repetitive loss structures (as such term is defined in section 1370), and severe repetitive loss properties (as such term is defined in section 1362(b)). If established, the Director shall make the database available to the public in a format that may be searched electronically. Such a database shall not include any information regarding ownership of properties.''.

SEC. 9. REPLACEMENT OF MOBILE HOMES ON ORIGINAL SITES.

Section 1315 of the National Flood Insurance Act of 1968 (42 U.S.C. 4022) is amended by adding at the end the following new subsection:

''(c) REPLACEMENT OF MOBILE HOMES ON ORIGINAL SITES.—

''(1) COMMUNITY PARTICIPATION.—The placement of any mobile home on any site shall not affect the eligibility of any community to participate in the flood insurance program under this title and the Flood Disaster Protection Act of 1973 (notwithstanding that such placement may fail to comply with any elevation or flood damage mitigation requirements), if—

''(A) such mobile home was previously located on such site;

''(B) such mobile home was relocated from such site because of flooding that threatened or affected such site; and

''(C) such replacement is conducted not later than the expiration of the 180-day period that begins upon the subsidence (in the area of such site) of the body of water that flooded to a level considered lower than flood levels.

''(2) DEFINITION.—For purposes of this subsection, the term 'mobile home' has the meaning given such term in the law of the State in which the mobile home is located.''.

SEC. 10. REITERATION OF FEMA RESPONSIBILITY TO MAP MUDSLIDES.

As directed in section 1360(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(b)), the Director of the Federal Emergency Management Agency is again directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of such section 1360, in order to make known the degree of hazard within each such zone at the earliest possible date.

EXTENSIONS OF REMARKS

TRIBUTE TO HELEN PACE

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. MCINNIS. Mr. Speaker, I rise today to pay tribute to a hardworking woman from my district. Helen Pace has recently retired from Berthod Motors in Glenwood Springs, Colorado after 38 years of service. I join with my colleagues here today in recognizing Helen's dedication and continuous service before this body of Congress.

Helen first started working for Berthod Motors back on October 15, 1965. Back then, Louie and Aline Berthod were the owners of this Glenwood Springs automotive landmark, which was then located in the Tamarack Building on the corner of 10th and Grand Avenue.

Along with her husband Cecil, Helen has played a significant role in establishing the Berthod Motors tradition. Cecil began employment with Berthod in the equipment division back in 1957 and went to work alongside his wife Helen from 1965 until his own retirement in 1994. Helen's career at Berthod began as a warranty clerk, eventually taking over accounts receivable and becoming office manager. Together, Cecil and Helen Pace devoted nearly 75 years of continuous service and commitment to the customers of Berthod Motors. In retirement, Helen plans to make good use of her new Buick Century, already planning a road trip with her husband in the car that she received as a retirement gift.

Mr. Speaker, it is increasingly rare these days that one person would spend close to 40 years devoted to a job they loved. Helen Pace has committed the last 38 years of her life serving the customers of Berthod Motors, a commitment that should not go unrecognized. I join with my colleagues here today in wishing Helen and her husband Cecil joy in their well-deserved retirement.

IN RECOGNITION OF THE 150TH ANNIVERSARY OF THE OBERLIN FIRE DEPARTMENT

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. KAPTUR. Mr. Speaker, this year, the Oberlin, Ohio, Fire Department celebrates its 150th anniversary. Established in 1853, today the department boasts a staff of 30, state-of-the-art equipment, safety and educational programming, and professional recognition. The community has celebrated the sesquicentennial with a parade, summertime events, a traditional firefighter competition featuring an old-fashioned bucket brigade, hose race, and water ball contest, displays and an open house, and culminating in a special dinner this fall.

The mission of the Oberlin Fire Department is "To proudly protect lives and property by providing prompt, skillful, cost-effective protection and life safety services." It is routinely recognized for successfully meeting this mission with the prestigious yearly Life Safety Achievement Award. It serves the 10,000 people of Oberlin and New Russia Township in northeast Ohio with emergency responses, college fire safety courses, school and community educational services, and fire prevention efforts.

For a century and a half, ordinary men and women have conducted themselves with extraordinary bravery as they skillfully guarded the safety of their fellow citizens in Oberlin. I am proud and humbled to represent these fine people, and join with the community in a resounding "thank you!"

TRIBUTE TO OPEN SPACE PROTECTION IN GRAND COUNTY, CO

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. UDALL of Colorado. Mr. Speaker, I rise today to pay tribute to the Middle Park Land Trust and the Denver Water Department for their efforts in creating an outstanding conservation easement for Colorado's citizens in Grand County, Colorado.

Open space in Grand County and the rest of our state is coming under increasing pressure because of the rapid expansion of Colorado's population. In response, Grand County's elected officials and citizens partnered together to begin a 7-year odyssey to protect and preserve the open ranges, meadows and ridges in the Fraser Valley. Through a series of deed restrictions, conservation easements and open space development, more than 20,000 acres of land are now under some form of protection from development in Grand County.

The Denver Water Department was encouraged to "donate" properties they owned because of the efforts of Grand County citizens to raise approximately $6,000 in funds to help cover some of the costs related to monitoring lands in perpetuity and to provide funds to pay legal fees in case the easement is questioned in court.

The Colorado General Assembly partnered in this historic easement by passing legislation that changed tax deductions to tax credits and increasing the value of allowable easements from $100,000 to $260,000, thus encouraging the development of multiple land trusts across the state.

Road and trail easements are now being developed to connect the towns of Fraser and Winter Park while protecting connecting routes and surrounding lands. Once again, citizens in the county, Fraser's local library and county officials have been encouraged in their efforts by the historic conservation easement crafted by Grand County citizens.

The Middle Park Land Trust has had its most successful and productive year. I applaud their innovative conservation efforts and encourage more partnerships like this, not only in Colorado's pristine mountain counties, but throughout the country as we seek to preserve our Nation's beautiful lands for now and for generations to come. Present and future generations will be thankful for the foresight in preserving some of the landscapes such as these in Grand County that inspire, enhance wildlife and recreational opportunities.

I have attached a copy of a local newspaper story about this important effort.

[From the Winter Park Manifest Oct. 29, 2003]

MEADOWS ARE OPEN FOREVER

(By Harry Williamson)

As you take your drive into the Fraser Valley this week, check out the meadows on the west side of Highway 40 just south of Tabernash.

Ignoring a couple of dilapidated, ancient cabins way back in the trees, there's not a spec of building to be seen. It's just horses and the occasional coyote moving among the sagebrush.

And that's the sight you're going to see forever—never a house, never businesses bordering the highway—thanks to a deal finalized by the county, the Middle Park Land Trust and the Denver Water Department.

Completing seven years of work, a conservation easement has been signed that protects the 514 acres, part of the old Stadelman Ranch, from any type of development ever taking place.

In addition, the approximately 300 acres on the east side of the highway is also protected by deed restrictions signed by the landowners that prohibits any building in those meadows. The only land that is not removed from possible future building is the approximately 160 acres at the far north end, just before Tabernash, which is owned by the city of Arvada.

And, the approximately 45 acres of meadow in the Hidden River Ranch subdivision, located just north of the meadows on the west side of the highway is also removed from development by a deed restriction.

So what you see today in those meadows, is pretty much what you're always going to get.

"In all of our surveys concerning what land local residents wanted to see protected, these meadows were always very high on the list," said Cindy Southway, Land Trust director.

The easement on the west side meadows was signed between Denver Water and the county, which was assisted by the Land Trust in developing the agreement.

Denver Water also owns the slightly more than 900 acres atop the ridge further west of the meadows, heavily-treed land that the agency likely plans to sell for development.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Commissioner James Newberry said that under the agreement a developer would be able to use the meadows as a portion of the open space required to develop the remainder of the land under the county's Rural Land Use Process, which requires at least 66 percent open space. This type of land development was developed by the county in 1999 as a way to maintain the rural character of the county.

County officials said that since the land atop the ridge is not included in an urban growth area, as designated by the county's master plan, the only way it can be developed is through the rural land process.

Southway said that if and when the land is sold for development, it is hoped that a new conservation easement could be developed between the new owner and the Land Trust.

"We're in the business of holding these easement, and we could work with that developer to tighten it (the easement) up to get them tax benefits," she said.

The effort to get the meadows under easement was started approximately seven years ago by the Land Trust, then called the Grand County Land Conservancy. The idea, however, floundered over the years for various reasons, including Denver Water's hesitance to make what the Land Trust referred to as a "donation" to cover some of the cost of "monitoring the land for perpetuity. Southway added that funds are also needed to be held in reserve to pay legal fees in case the easement is ever questioned in court.

She said that when a landowner balks at making a donation, then the Land Trust does fundraisers to obtain the funds, with approximately $6,000 raised for the Denver Water project.

Newberry said that the county, involved in other discussions with Denver Water, suggested a few months ago that negotiations on the easement possibility be resumed. He said that due to state legislation passed last year counties are now able to hold non-development easements.

"Once Denver Water started talking about it, we got this thing done in record time, considering there was a government entity on the two ends of the deal," Newberry said.

He added that the negotiations, once restarted, took just under three months.

Newberry said another agreement has been finalized where Denver Water has donated an easement of an existing old farm road that extends along the bottom of the ridge. He said the county's plan is to make the roadway part of the Fraser Valley Parkway, which has been a concept for the last 20 years as an alternative route to Highway 40. Officials said, once developed, the roadbed would be a 60 feet wide collector road consisting of two lanes.

He said the county has already acquired the necessary right-of-way for the parkway from County Road 522, through two developments near Tabernash and on through, via the Denver Water road, to County Road 50.

Newberry said the county is currently working with the town of Fraser, the library and the people who own the land between County Roads 50 and 73 to identify and purchase a road easement. Once this route, to also include a trail easement, is determined the road would connect with the existing parkway. Plans are for the parkway to then run through a still-to-be-determined route through the Rendezvous subdivision and on through the town of Winter Park.

Southway said 2003 has been a very successful year for the Middle Park Land Trust, which was started in 1995. She said that, during the year, approximately 1,400 acres have either been put under easement or that an agreement is being finalized. She added that its been her agency's most productive year, due in large measure to legislation passed last year that gives Colorado tax credits for land put under a conservation easement.

She explained that the state before was like the federal government where a tax deduction was given.

"The State of Colorado changed to a tax credit, and increased the maximum value of the easement allowable for the credit from $100,000 to $260,000. These tax credits are dollar for dollar, and they're a commodity, they can be sold. This makes it much more attractive for landowners, who retain ownership and use of the land. They just can't develop it," she said.

"The exciting thing is that it has been a great year for land trusts all across Colorado," she added.

Southway said that there are currently approximately 20,000 acres of land now under some form of non-development easement in Grand County.

TRIBUTE TO JANET WHITCHURCH—RECIPIENT OF THE 2003 ST. MADELEINE SOPHIE BARAT AWARD

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. ESHOO. Mr. Speaker, I rise today to honor Janet Whitchurch, a distinguished Californian, as she receives the 2003 St. Madeleine Sophie Barat Award. This award, named for the foundress of the Society of the Religious of the Sacred Heart, honors individuals who have made extraordinary contributions to Sacred Heart Schools, Atherton, over a significant period of time. Founded in 1897, Sacred Heart Schools includes St. Joseph's School of the Sacred Heart and Sacred Heart Preparatory.

Janet Whitchurch grew up in the San Francisco Bay Area and earned a Bachelor of Arts in Studio Art and a Master of Arts in Painting from Stanford University. She began her teaching career at Sacred Heart Preparatory in 1969 and taught Studio Art, Art History, Freshman History and served as Department Chair. Mrs. Whitchurch left Sacred Heart Preparatory in 1984 but soon realized that she had left her heart at the School. She converted to Catholicism and returned to Sacred Heart in 1995 to continue teaching and cultivating students as Chair of the Fine Arts Department.

Mr. Speaker, I'm proud to honor Janet Whitchurch's work, her values, and her commitment to Sacred Heart Schools and I ask my colleagues to join me in honoring her as she receives the 2003 St. Madeleine Sophie Barat Award for the extraordinary contributions she has made to Sacred Heart Schools.

HONORING CARL AND MIKE LOWELL

HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I rise to honor two of South Florida's outstanding citizens, Carl Lowell and his son, Mike Lowell.

Carl Lowell pitched for St. Joseph's University in 1968 and '69 before leaving after his junior year to go to dental school in Puerto Rico. He was named Most Valuable Player of the 1968 team and was an honorable mention on the All-Middle-Atlantic Conference team after going 6–3 with a 2.39 earned run average while striking out 65 batters in 78 2/3 innings. On March 29, 1969, he pitched a no-hitter against Franklin & Marshall, one of just five no-hitters in school history. His career 3.31 ERA is the fourth-lowest in the school's record books.

Carl, pitching for the Puerto Rican national team, beat Cuba in international competition. Carl is of Cuban and German descent and is a strong believer in freedom and democracy. When Cuban dictator Fidel Castro wanted to meet the team and have his photo taken with the players, Carl stayed on the bus instead.

Today, Carl is a prominent and respected dentist in South Florida.

His son, Mike, is the third baseman for the 2003 World Series Champion Florida Marlins and is one of baseball's best hitters. This year he hit 32 homers with 105 runs-batted-in despite missing the last month of the season with a broken hand. He's a 2002 and 2003 All Star and recently won the 2003 National League Silver Slugger Award which is given to the top offensive players at each position, as voted on by major league baseball managers and coaches.

Mike grew up in Miami where he was a high school baseball star and became the heart of the best Coral Gables High team in decades. He made All Dade First Team and was an All State/All Star in 1992.

Mike was offered a full scholarship by Florida International University (FIU) where he excelled and was an Academic All-American.

In 1995, he was drafted by the New York Yankees and quickly moved up the minor league system. His parents had always stressed the importance of a good education, and after being drafted, with some special help from his mother, Beatriz, Mike returned to FIU. Mike had three grade-by-final-exam courses, and Beatriz went to class and took notes for him while he was in the instructional league. He graduated Magna Cum Laude in 1996 with a degree in Finance.

In 1999, he was traded back home to play for the Florida Marlins. However, less than three weeks later, Mike's plans were put on hold by a startling discovery. While undergoing a regular physical examination, Mike was diagnosed with testicular cancer. The surgery and three weeks of radiation were successful, and today he is cancer-free.

On July 20, 2002, Carl had prostate cancer surgery. Mike spent the whole day at the hospital with him, then hit a game-winning home run against the Expos that night. After the game, he said he had dedicated the home run to his father.

Mike created the Mike Lowell Foundation which hosts the Mike Lowell Foundation Charity Golf Classic. All the proceeds from the event are donated to a wonderful charity in South Florida which provides free medical care to low income cancer patients, "La Liga Contra el Cancer" (The League Against Cancer) and local sports programs.

A patriot like his father, on April 25, 2000, Mike sat out the game to protest the shameful raid on the home of Elian Gonzalez, further earning the respect and admiration of freedom loving people everywhere.

Mr. Speaker, South Florida is truly fortunate to have these distinguished individuals living in our community. They are fine examples of love, perseverance, patriotism and civic leadership.

HONORING COMMISSIONER JIM CADUE FOR HIS TWENTY YEARS OF SERVICE

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. KANJORSKI. Mr. Speaker, I rise today to recognize Jim Cadue for his twenty years of service as a Monroe County Commissioner. He was honored on Friday, November 14, 2003 at the Pennsylvania Room of the Camelback Ski Resort in Tannersville Pennsylvania.

My colleagues, Jim is a Monroe County legend. He is the first person in the county's illustrious history to be elected to five consecutive terms. Jim served as Chairman from 1984 to 1991. In his elected career, Jim has compiled a list of accomplishments that any elected official would be proud to have. He constructed a new 311–bed county correctional facility and expanded the county administration offices. He established a new salary plan and job classification system for 700 full-time county employees.

Jim also led Monroe County to develop and implement an award winning comprehensive plan and a $25 million bond referendum for the purchase of land to be preserved in open space. He also put through an initiative that led to the creation of a corporate office and industrial park totaling 600 acres. Jim also built a new county environmental learning center. He helped save jobs at Tobyhanna Depot and led the effort for a more environmentally friendly solid waste disposal plan. Jim was also the steward for twenty responsible county budgets.

Mr. Speaker, Jim Cadue has spent a lifetime creating opportunity and prosperity for the people of Monroe County and at the same time protecting our natural environment for our children and grandchildren.

Jim is an active leader in national, state and local organizations. He has served as President of the County Commissioners Association of Pennsylvania and Chairman of the National Association of Counties. Locally, he Chairs the Hospice Golf Tournament Committee. Jim is also a member of the Pennsylvania Society, the Lehigh Consistory, American Legion Post #413, the Elks Lodge, and the Pocono Lodge #780 Free and Accepted Masons.

It is no surprise that the honor Jim is receiving Friday is not his first. Jim has received the County Commissioners Association of Pennsylvania's Outstanding Member Award and the Governor's Award for Local Government Excellence from the Pennsylvania Department of Community and Economic Development.

Jim also served our country in the United States Army Military Police, where he attained the rank of Sergeant E–5.

Mr. Speaker, it is a privilege and honor to work with a person who is so committed to building a brighter future in Northeastern Pennsylvania. Jim is a leader who simply gets the job done for his constituents. I ask that my colleagues pay tribute to Monroe County Commissioner Jim Cadue as he receives this well-deserved honor.

TRIBUTE TO RON TAYLOR

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. MCINNIS. Mr. Speaker, I would like to take a moment to honor a victim's advocate volunteer who selflessly serves the community of Grand Junction, Colorado. Ron Taylor is a dedicated volunteer who gives of his time to help those in need and I would like to join my colleagues in recognizing his contributions here today.

Ron, a dentist by day, volunteers his nights to aiding victims of crime. Even before an official Colorado victim's program was established, Ron worked as a volunteer with the Chaplain at the Grand Junction Police Department helping crime victims and employees following traumatic incidents. Later, he helped the Mesa County Sheriff's office get their Victims Advocate program off the ground.

Ron is a kind and caring person who is always prepared to help whenever he's needed. He can often be found sacrificing his own comfort and rest to be of service to those who value his generous contributions of time and compassion. In fact, Ron often rises at 3 am to render aid to those in need.

Mr. Speaker, Ron Taylor is a dedicated and compassionate person who devotes most of his free time to assisting those in need. We should all be so lucky to have such an involved person in our community. Ron's enthusiasm and commitment certainly deserve the recognition of this body of Congress.

TRIBUTE TO MAJOR RICHARD W. COOPER, JR., USAF

HON. JOHN W. OLVER

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. OLVER. Mr. Speaker, I rise to pay tribute to Richard W. Cooper, Jr., a U.S. Air Force Major who conducted missions over Southeast Asia. Major Cooper was the navigator aboard a B–52D Stratofortress bomber out of Westover Air Force Base that participated in Operation Linebacker II, a bombing campaign in the waning days of U.S. involvement in Vietnam. On December 19, 1972, Major Cooper's plane was downed and he was listed as "Missing In Action" for over 30 years. Major Cooper was thirty years old. Recently, Major Cooper's remains were found, identified, and returned to the United States. His remains will be buried at 11 a.m. on December 19th, 2003 in Arlington National Cemetery.

Through his service and commitment, Major Cooper was awarded eleven decorations that include the Distinguished Flying Cross; the Purple Heart; the Air Medal with two silver and two bronze Oak Leaf Clusters; the Air Force Outstanding Unit Award; and, the Combat Readiness Medal.

In recognition of his life, the nation owes a deep debt of gratitude to Major Cooper for his courage, heroism, and exemplary service. Our thoughts and prayers are with Major Cooper's family in Holyoke, Massachusetts as they finally lay him to rest.

IN HONOR OF THE 100TH ANNIVERSARY OF THE TEAMSTERS UNION LOCAL NUMBER 20

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. KAPTUR. Mr. Speaker, teamsters Union Local Number 20 celebrates its 100-year anniversary in 2003. For a century, hard-working men and women have come together for the good of the many as they strove to bring their families a better life.

Chartered in 1903, Local 20's first members were icehouse workers. Over the years, four Teamsters Locals came together to form the present-day Local 20, 7,200 members united. Teamsters Local 20 represents members in fifteen counties in Northwest Ohio, including not only truck drivers but nursing home workers, candy makers, and makers of fiberglass. Uniquely, in a truly representational form of operation, stewards from every shop the union represents form the Stewards Council, which sets the policy for the union.

As noted in the union's history, much has changed in the hundred years since Teamsters Local 20 has been chartered: horses were driven rather than trucks, one of two children died in childhood, women were denied the right to vote, there were no child labor laws, no civil rights, no Social Security, no workers compensation, no unemployment compensation, no federal protection for working rights and unions, no workplace safety requirements, no overtime pay or minimum wage, no right to bargain collectively, and no forty hour work week.

The history of our nation's social protection as these basic rights were guaranteed is the history of the Teamsters as well, for their struggles are intertwined with our nation's awakening to social justice. Without Teamster families, and the millions of others in the labor movement, we would yet be in those dark ages of the past. This 100th anniversary is a good time to remind all Americans that we would not enjoy the standard of living we enjoy now without the efforts of united labor. Daniel Webster said, "Liberty and Union, now and forever, one and inseparable." Though he meant these words in another context, their meaning rings true for our own time. It is the union men and women who built this nation, who power it now, and whose prosperity must drive it forward.

I am pleased to recognize the 100th anniversary of Teamsters Local 20, and pay special tribute to its members as we commemorate this milestone. Thank you for your contributions to the labor movement, to our communities, our nation, and our future.

FILNER MOTION TO INSTRUCT THE CONFEREES ON THE ENERGY POLICY ACT OF 2003

HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. UDALL of New Mexico. Mr. Speaker, without doubt, I am sympathetic to the purpose behind this motion. I am a staunch supporter of smart environmental regulations, and I oppose the approach that the Bush Administration has taken toward stripping regulations on clean air and water. However, after speaking with people on both sides of this issue, I have concluded that this motion is not the right approach.

In New Mexico, the Interstate Oil and Gas Compact Commission, with Governor Bill Richardson as the state's representative, is currently working toward model regulations for management of stormwater pollution in the state. In the meantime, the local oil and gas companies continue to follow general guidelines. I am encouraged by the work being done at the state level to address this issue, as I believe it is important to work with all interests to generate a collaborative solution.

Although I will vote in opposition to this nonbinding motion, I continue to be disturbed by many of the provisions in the Energy Policy Act of 2003. Unfortunately, the way this bill has been crafted echoes the practice of the Administration to put corporations before the environment, before public opinion, and before logic that tells us we need to gear our energy policy toward future needs—not toward the profit of industry. The exclusion of Democrats from the entire conference is reason to believe the bill is not as balanced as its authors claim.

I hope that my many concerns are addressed in the final conference report and I look forward to a vote on the final bill.

TRIBUTE TO PAUL WILLIAMS

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. MCINNIS. Mr. Speaker, it is with a solemn heart that I take this opportunity to pay tribute to the life of Paul Williams who recently passed away at the age of 90. Paul was a pillar of the Glenwood Springs, Colorado community, and as his family mourns their loss, I think it is appropriate that we remember his life and celebrate his contributions to our nation today.

Paul moved to Colorado in 1937 and in 1941 he married Catherine Ukele, his wife of 62 years. During World War II, Paul answered his country's call to duty and served honorably as a member of the Signal Corps in Africa and throughout Europe. Following the war, Paul returned to Glenwood Springs where he went to work for the City's Municipal Electric Company. An accomplished electrician, Paul used his talents for the betterment of his community. He was among five men who built and erected a lighted cross on red mountain, and he delighted in maintaining the lights of the Glenwood Springs High School football field.

Paul will be remembered as a valued member of the Glenwood Springs community. He was a 35-year member of the Glenwood Springs Volunteer Fire Department, the American Legion, the Eastern Star and the Masonic Lodge. There is no question that Glenwood Springs is a better place as the result of Paul's tireless service.

Mr. Speaker, Paul Williams' dedication and selflessness certainly deserve the recognition of this body of Congress. It is my privilege to pay tribute to him for his contributions to the community of Glenwood Springs and our nation. I would like to extend my thoughts and deepest sympathies to Paul's family and friends during this difficult time of bereavement.

TRIBUTE TO DR. DAVID M. BARTLEY, PRESIDENT OF HOLYOKE COMMUNITY COLLEGE

HON. JOHN W. OLVER

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. OLVER. Mr. Speaker, I rise today to recognize and honor Dr. David M. Bartley, President of Holyoke Community College, as he retires after twenty-eight years of service.

Under President Bartley's tenure the College's enrollment, budget, and number of employees all doubled in size. He was the driving force in the College's transformation from a small, local college into a regional, academic institution with a strong focus on workforce development and continuing education.

When he took office in 1975, President Bartley initiated a long-range plan to create a thriving and growing college. His persistence resulted in numerous accomplishments over the years, beginning with the establishment of the Holyoke Community College Foundation. The Foundation was the first of its kind in Massachusetts and has allowed the College to permanently endow 50 scholarships for needy students.

The College has also created and expanded programs and services for traditional and nontraditional students that have received national recognition. They include Cooperative Education, Women in Transition, a comprehensive Learning Assistance Center, ESL support, Community Service Learning, a mentoring program for engineering technology students, and a successful, federally funded TRIO program.

President Bartley is particularly proud of the fact that Holyoke Community College has done an outstanding job of serving minority students and the underrepresented in our society. Today, 25 percent of the college's graduates are minorities, 70 percent are women, and 30 percent are men, the exact reverse from when he arrived in 1975.

Holyoke Community College has developed a strong and positive image in western Massachusetts and beyond. President Bartley is in great part responsible for this evolution. He has brought consistent and healthy increases in enrollment and private sector support. He has forged winning partnerships with industry and mentored other educational institutions seeking to emulate his college's success.

In assessing and accrediting Holyoke Community College, the New England Association of Schools and Colleges once remarked that they found the College to be "dynamic, resilient and forward thinking". Indeed, the exact same thing can be said for President Bartley and his years of leadership.

I would also like to commend President Bartley on his distinguished career in government. Prior to arriving at Holyoke Community College, he served for twelve years in the Massachusetts House of Representatives. For eight of those years, he held the elected position of Speaker of the House. He was held in high esteem for his accessibility, his deep grasp of issues of public concern, and his sense of fair play.

These qualities helped him make a dynamic transition to leadership in academia. He immediately put all his experiences and skills to work for Holyoke Community College and tens of thousands of graduates have been the beneficiaries.

In recognition of an outstanding career in public service, I ask my colleagues to join me in congratulating President Bartley on his accomplishments and on his retirement.

CONGRATULATING BISHOP TIMLIN, DR. JAMES AND MRS. MARY LOU BURNE ON BEING HONORED BY THE LITTLE FLOWER MANOR AND THE SAINT THERESE RESIDENCE

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. KANJORSKI. Mr. Speaker, I rise today to recognize Bishop Timlin, and Dr. James and Mrs. Mary Lou Burne as they are honored by the Little Flower Manor and St. Therese Residence this Friday, November 14, 2003 at the Annual Crystal Rose Dinner at the Woodlands in Wilkes-Barre.

Bishop Timlin is appropriately being honored for his stewardship and tireless support of the Little Flower Manor. His determination and hard work made the Saint Therese Residence a reality. For the past twenty five years his dedication and persistence has provided an opportunity for the aged and infirm to be treated with respect, dignity and compassion.

Mr. Speaker, as the spiritual leader of the Diocese of Scranton, Bishop Timlin has demonstrated that "together we can move mountains" and inspired others to join in helping to make Northeastern Pennsylvania the compassionate place that it is.

Jim and Mary Lou are being recognized for their unselfish dedication to many worthy causes. They are co-founders of the Family to Family Thanksgiving Food Basket Program that has served over one hundred thousand needy individuals since 1986. They have also played an active role with the Friends of the Poor, Special Olympics, Youth Association for Retarded Citizens, UNICO, YMCA, and Keystone College.

My colleagues, these individuals devote much of their time and effort to help those who are less fortunate. They are leaders in making their communities a better place to live and work.

Mr. Speaker, it is sincerely a privilege and honor to represent these community leaders who devote themselves to helping others and building a brighter future for Scranton and Northeastern Pennsylvania. I ask that my colleagues pay tribute to Bishop Timlin and Dr. James and Mrs. Mary Lou Burne as they receive this well-deserved honor.

IN HONOR OF JUDGE JOSEPH FLORES

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. KAPTUR. Mr. Speaker, I rise today to pay tribute to a truly remarkable man, The Honorable Joseph Flores of Toledo, Ohio. Recently retired from the Lucas County Juvenile Court, Judge Flores has graciously served our community for several decades. For many who came to this area, Joe Flores was the first person who greeted them and welcomed them to our community. Whether it was as attorney, mentor, or friend, he was dedicated to helping others recognize their potential.

A proud Mexican American, Joe was born August 2, 1934 to Carmen Ventura and Jose Suarez Flores in Toledo. He graduated from the University of Notre Dame in 1956 with a degree in Political Science. He entered into the United States Navy's Officers Candidate School and completed 52 months of active duty, ending in 1961, having attained the rank of Lieutenant Commander.

While still in the Navy, Joe Flores met his wife, Mary Jane, a naval nurse, and the two were married in 1964. They are the parents of two children, Andre Jose and Maria Carmen. Returning from the Navy, Joe decided to attend law school. He graduated from Ohio Northern University in 1964 and practiced law in Findlay, Ohio for one year.

Moving to Toledo in 1966, Joe practiced law with attorneys Charles Doneghy and Robert Penn. Interestingly, all three became judges. He decided to run for elected office because he enjoyed interacting with people when Judge Doneghy would ask him to help at various events. Joe Flores was elected Judge of the Lucas County Juvenile Court in 1981. "At that time, few Latinos were part of the legal community. Becoming known as the Judge who could speak Spanish, he ended up being asked to do a variety of translations. Judge Flores is thought to be the first elected Latino Judge in Ohio. Carlos Cordova was an acting judge at the time, but was not elected to the post. Since then, Ohio has had two other Latino Judges, José Villanueva (Cuyahoga County Common Pleas) and Gustalo Nunez (Lorain Municipal Court.)

Recognizing his contributions to the legal profession and the Hispanic community, the Latino Peace Officers Association created the Judge Joseph Flores Award in May 2003. The award will be given annually to a Latino Peace Officer who exhibits exemplary service to the community. The group decided to name the award after Flores due to his instrumental role in integrating the Toledo Police Department with more Latino Peace Officers.

I am pleased to pay special tribute to my friend Judge Flores for his pioneering efforts on behalf of Latinos in Northwest Ohio. Understanding the importance of a representative voice in the local community, he was the first Latino on many boards as he stresses the importance of community involvement for Hispanics/Latinos.

Judge Joseph Flores forged his career with courage and determination, despite facing many obstacles along the way. He blazed the trail where none existed, and his legacy continues to inspire new generations of Latino leaders. Onward!

H.R. 1829—FEDERAL PRISON INDUSTRIES COMPETITION IN CONTRACTING ACT OF 2003

HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. UDALL of New Mexico. Mr. Speaker, I rise today in support of H.R. 1829, the Federal Prison Industries Competition in Contracting Act of 2003. As a Ranking Member of one of the Small Business Committee's Subcommittees, I take very seriously the importance of small businesses in our economy, as well as the impact of our policies in small businesses.

As we have said time and time again, small businesses are the driving force in our economic recovery. They are the lifeblood of the American economy, creating three out of four new jobs, and representing 99 percent of all employers. This is why we must ensure that small businesses receive the tools that they need to compete in today's competitive marketplace and we must make the playing field as level as possible.

Today, we look at a form of unfair competition for small businesses coming from the federal prison industry. The idea behind FPI is to use work as a means of rehabilitation and to teach inmates a skill, which can be used to put them back on the right track. I strongly support this goal. I'm sure all of my colleagues support this goal, as well. Unfortunately it is not that simple. I believe that this commendable idea of giving individuals a means for a second chance has turned into an industry who's sole focus is not rehabilitation, but turning a profit.

As of fiscal year 2002, FPI brought in $678.7 million in revenue and this would have placed them at 34 out of the top 100 federal contractors for the year. FPI increased their revenue from FY 2001 by more than $95 million. This level of involvement might seem justified. Yet, as FPI becomes a "Mega" contractor, it benefits only 15 percent of all federal inmates. Something is not right with this picture.

Over past years, FPI has been able to grow through the use of preferential contracting treatment, exemption from such labor laws as OSHA, minimum wage rates and an endless line of credit from the U.S. Treasury Department. This industry is government owned and operated, and has used these competitive advantages to expand its market share, yet they are competing against private sector companies.

Adding on to these advantages is that FPI are not held to basic standards of product quality or requirements to meet deadlines. This is especially concerning because many of the products that come from FPI are used by the troops in our military, and agencies like FAA that ensure safe transportation. These are areas that cannot afford to be taken lightly. We have an obligation to ensure that the public is safeguarded.

I do believe that we can have the principle of using the federal marketplace as a tool in the rehabilitation process of inmates, but it must be balanced and it must be fair. The current practice is weighted too far in favor of FPI with very little demonstrated benefit, while clearly costing our nation's small businesses jobs and opportunities.

As the main driver of our economy, small businesses deserve a level playing field. In today's competitive market—we cannot overlook an industry that continues to expand while at the same time causing our nation's small businesses to lose valuable opportunities.

It is for these reasons that I support passage of H.R. 1829, and urge my colleagues to do the same.

TRIBUTE TO REVEREND FRANCIS G.S. EVERETT, JR.

HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to a man who has served as a mentor in South Carolina's public schools and as a member and pastor of Mount Pisgah Baptist Church in Orangeburg, South Carolina, for more than 30 years.

Reverend Francis G.S. Everett, Jr., spent 23 years at Elloree High School as a teacher and principal and later worked in Orangeburg School District Five. His efforts at community improvement were widely recognized and remain commendable to this day.

The parishioners of Mount Pisgah Baptist Church have strongly supported Reverend

Everett as he has lifted up its many ministries and represented the church well in the Mount Pisgah Union, the Orthodox Baptist Association, the Cooperative Baptist Convention of South Carolina, and the Orangeburg Ministerial Alliance. He has also served as a co-chaplain at South Carolina State University, and as a member of the Orangeburg Calhoun Regional Medical Center Chaplain Corp.

An activist for educational advancement, Reverend Everett has served with the Orangeburg-Calhoun Technical College Foundation and South Carolina Board of Directors of the State Chamber of Commerce. He is a member of the Orangeburg Calhoun Retired Education Association, the South Carolina Education Association, the National Education Association, and as a trustee of Morris College in Sumter, South Carolina.

Reverend Everett earned his A.B. and M.S. degrees from South Carolina State University and was awarded the Honorary Doctor of Divinity Degree from Union Baptist Seminary of Birmingham, Alabama.

Reverend Everett is married to Mrs. Althea Hilton Everett of Alcolu, South Carolina. The couple has two children, Ralph and Gwendolyn.

Mr. Speaker, I invite you to join me in paying tribute to this role model to educational and spiritual leaders in our nation. Reverend Everett has developed a life of unwavering commitment to his students, his parishioners and his family and friends. He serves as an inspiration to so many, and I am proud to honor him today.

END OF R.J. REYNOLDS' SPONSORSHIP OF THE WINSTON CUP SERIES

HON. RICHARD BURR

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. BURR. Mr. Speaker, I rise today to note the end of an era in motorsports. Sunday's race at Homestead, Miami marked the last NASCAR race that will be run under R.J. Reynolds Tobacco Company's sponsorship and the Winston banner.

Winston Cup and NASCAR have been synonymous for 33 years. Under R.J. Reynolds sponsorship, stock car racing has grown from a regional sport with little national exposure to one with a loyal and global following of millions of fans. More than six million fans attended 39 Winston Cup events this year in 19 states; millions more followed the races, practices, and qualifying sessions on television, radio, and the Internet.

One of the best places to look for examples of the astronomical growth in the sport over the years is in driving winnings: in 1971, Richard Petty won 21 races and took home roughly $300,000. The last Winston Cup Champion, Matt Kenseth, won one race this year—and will take home more than $8 million. Those numbers tell only part of the tale, however. Since its initial involvement with NASCAR, Winston has contributed more than $100 million in point fund money, with $32 million earmarked for the Cup Champions. And perhaps no one can measure the contribution the company's sponsorship has made to the families and communities associated with the sport and its tremendous growth.

Names like Petty, Jarrett, Waltrip, Yarborough, Allison, and Earnhardt. Towns like Bristol, Darlington, Rockingham, and Talladega. Some carried the sport until Winston came along; others owned it while Winston was there; and still others will carry the Winston tradition into the future. The sport under the Winston banner had its heroes, and its heartaches. Some occupy both categories. Fans everywhere will carry their memories of the Winston Cup with them for years to come.

On behalf of NASCAR fans everywhere, Mr. Speaker, I would like to extend my thanks to the men and women of R.J. Reynolds for everything they have done for the sport over the last three decades. It truly was a family affair, and the drivers, the teams, and the fans will miss their love for and commitment to the sport.

Time, however, marches on. NASCAR existed before Winston's sponsorship, and it will continue next year with a new Cup Series sponsor. In the eyes of this Member, though, and countless fans across the country, it will always be the Winston Cup.

TRIBUTE TO JAMES DORR

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. McINNIS. Mr. Speaker, it is with a solemn heart that I take this opportunity to pay tribute to the life of James Dorr who passed away recently at the age of 64. Jim was a pillar of the Steamboat Springs, Colorado community. As his family mourns their loss, I think it is appropriate that we remember Jim's life and celebrate his contributions to our nation today.

Jim's childhood was spent on his family's ranch in the Middle Elk River Valley. After graduating from Steamboat Springs High School, Jim attended Colorado State University where he joined the ROTC program. Upon graduation from college, Jim was commissioned as a second lieutenant in the United States Air Force and entered pilot training in 1962. He was stationed at Laughlin Air force Base in Del Rio, Texas, where he trained to be an expert pilot of the B-52 bomber.

In 1964, Jim married Margaret Eskeldson, who would be his wife of forty years. He answered his country's call to duty and went on to serve during the Vietnam conflict as the pilot of a bomber crew that logged 120 combat missions. In a time of war, Jim's courage, conviction and patriotism shone through, proving him to be a true hero. By war's end, Jim's service had earned him the rank of Major, as well as numerous decorations.

Upon returning to Steamboat Springs, Jim continued his service to our nation through volunteer work. He was an active member of the American Legion and the Veterans of Foreign Wars. With the Veterans of Foreign Wars, Jim served as a Commandant for two terms and was instrumental in spearheading a program to create a scholarship for veterans' dependents.

Mr. Speaker, Jim Dorr's dedication and selflessness certainly deserve the recognition of this body of Congress and this nation. It is my privilege to pay tribute to him for his many contributions to the community of Steamboat Springs and our nation. I would like to extend my thoughts and deepest sympathies to Jim's family and friends during this difficult time of bereavement.

ACKNOWLEDGING AN INNOVATIVE BOULDER COUNTY COOPERATIVE PLANNING AGREEMENT

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. UDALL of Colorado. Mr. Speaker, I rise today to acknowledge an innovative and significant agreement between the various communities in Boulder County, Colorado. Working together in a spirit of cooperation, the nine municipal communities in the county came together with Boulder County to produce this agreement which will help promote wise planning and smart growth management and thereby preserve the quality of life in the county and these communities.

Called the Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement (or the Super IGA), this plan was signed on October 16, 2003 by Boulder County and the communities of Boulder, Erie, Jamestown, Lafayette, Longmont, Louisville, Lyons, Nederland and Superior.

In Colorado, as in many States, intergovernmental agreements are typically created to address common management issues between neighboring communities. With this Super IGA, communities within the entire county have come together to address common concerns and issues and have established a roadmap for the benefit of all residents of the county.

Over the past few years, county and city officials labored to come to terms on an accord that outlines growth boundaries for development, provides land use regulations that prevent growth into hazardous areas like flood plains, and designates buffer zones between communities. An IGA of this magnitude, across nearly 800 square miles, consisting of a dozen different municipalities, and encompassing over 300,000 people, is a remarkable achievement.

This Super IGA is based on more than 10 underlying plans that inherently permit flexibility through an open amendment process. It is that basic flexibility that will likely drive this 20 year agreement, allowing the various governing bodies to strive for their individual success, yet within the framework of a larger consensual accord.

This innovative and forward-looking approach to planning and growth management is indeed exciting. Clearly, as this is a new approach, we all are watching this carefully and hope that it is successful. But its very creation shows that communities can come together and work toward common goals. Boulder

County and these communities have embarked on an approach which I hope will continue to foster positive intergovernmental relationships, and strengthen the sense of our collective community. It's an example of the things that local communities can do to make sure that growth and development complement the needs and desires of citizens and local communities.

Mr. Speaker, I ask my colleagues to join me in honoring the creators of this Boulder County Super IGA, and in wishing them continued success. For our colleagues' information, I am attaching an article from the Colorado Daily newspaper.

[From the Colorado Daily, Oct. 16, 2003]

"SUPER IGA NOW RULES LOCAL LAND USE IN BOULDER

(By Richard Valenty)

Mayors from Boulder County municipalities joined Boulder County Commissioners in signing the Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement Thursday at A Spice of Life Event Center in Boulder.

Fortunately, the document has a short name, the "Super IGA." The Super IGA partially coordinates at least ten smaller Intergovernmental Agreements (IGA), called Underlying Plans.

IGA's, in general, often involve land use regulations to prevent situations like development in naturally hazardous areas like flood plains, or to manage growth by creating buffers of open space between communities. For example, the Boulder Valley Comprehensive Plan is a joint land use plan between the city and county of Boulder, thus is an IGA between the two entities.

"These IGA's are sort of a shared vision by the county and by various cities and towns about where growth will happen, and what parts of the county we want to see remain rural in the future," said Ron Stewart, Boulder County Commissioner.

Representatives of the city of Boulder, Boulder County, Lafayette, Longmont, Louisville, Erie, Jamestown, Lyons, Nederland and Superior signed the Super IGA. The town of Ward is not participating, since federal lands and county open space surround it and therefore urban sprawl is not a concern.

According to Stewart, the Super IGA agreement is the culmination of years of hard work.

"I've been working on this for about the last three years," said Stewart. "Also, the city managers and administrators throughout the county have been very helpful in putting this together. Every city council in the county ultimately voted in favor of this. Our county attorney told me that by the time we got it done, it was on its 30th draft."

The City of Lafayette was the last county municipality to agree to be part of the Super IGA. According to Stewart, it was difficult to create a draft that would satisfy everybody.

"Lafayette simply had more concern about the agreement than other cities, and it took us longer than others to work those issues out," said Stewart. "After the drought last year, they wanted assurance that they could build new reservoirs for water storage."

Not all of Boulder County was covered by an IGA before Thursday, but the Super IGA contains a clause to "cover additional unincorporated areas not covered by any Underlying Plan."

"The Super IGA covers additional territory in the county that would have been outside the area of those agreements," said Stewart.

The Super IGA document is also designed to limit annexation plans of one entity from encroaching on another entity's Influence Areas, according to the document.

"The Super IGA says that everyone will respect each other's planning area, and that one town isn't going to be providing utility services in somebody else's planning area," said Stewart. "It's the kind of commitment to planning and to a shared vision that allows us to keep the quality of life that we have in Boulder County."

Stewart added that Boulder residents should not fear situations like the city of Jamestown trying to influence the Boulder Valley Comprehensive Plan, since Underlying Plans would only be amended by members of the underlying IGA.

"No group or committee is created out of the formation of the Super IGA," said Stewart. "If anyone wants to change a land use designation, the various underlying IGAs would have to be amended. In our Comprehensive Plan, the city and county of Boulder could change it without the approval of the rest of the Super IGA."

Also, the Super IGA states that additional issues such as sales tax revenue sharing, affordable housing and library services could eventually become parts of regional agreements.

"There isn't any serious talk of revenue sharing right now," said Stewart. "That paragraph is meant to state that there is additional work that could be done in terms of regionalism."

James Burrus, Boulder County media information officer, called the signing of the Super IGA "truly historic." Burrus indicated that this is the only agreement of its kind in Colorado, and Stewart believes it has some national significance as well.

"There are places in America where they do this kind of planning, setting urban growth boundaries, but these are places where the law requires it to happen," said Stewart. "The historic thing here is that nobody required anybody to do this. It was done voluntarily.

"This is really a statement that even in a state like Colorado, where land use laws don't encourage a lot of cooperation, we were all able to get on the same page on a voluntary basis," said Stewart.

IN HONOR OF MOTHER TERESA OF CALCUTTA

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. KAPTUR. Mr. Speaker, on October 19, 2003, Roman Catholics, humanitarians, and social justice advocates the world over celebrated the beatification of Mother Teresa of Calcutta by Pope John Paul II in Rome. Beatification is one of the steps toward sainthood in the Roman Catholic Church.

It is impossible to encapsulate the life and work of Mother Teresa into one entry. Many know the basics of her story: born in Albania in 1910, she turned from a comfortable existence when she decided to become a Catholic nun in 1928. Assigned to a convent school in Calcutta, she taught geography and history. Feeling the need to serve God and her fellow human beings in another way, Mother Teresa founded a religious order, the Missionaries of Charity, in, 1948. The order was based on reaching out to the poor, the suffering, and the dying wherever they were: streets and alleys, shacks and hovels. From that first mission there are now more than 400. The work has expanded to hospices for AIDS patients so that these sufferers, along with the least among us, enjoy comfort and some measure of peace in their final days. Though 5,000 sisters are now members of the order, thousands more volunteer for periods of their lives in the Missionaries of Charity. So many of these are inspired by the diminutive foundress herself. "My vocation is love" she said. "There is joy in transcending self to serve others."

Celebrated throughout the world for her works, honored with many awards including 1979's Nobel Peace prize, Mother Teresa is already considered a saint by many of those whose lives she touched. No one who met her, who shook her strong hands, who looked at the deeply wrinkled face, who spoke to the dark eyes which penetrated into one's soul, who listened to the deep and powerful voice, came away from the encounter the same person. Even people who saw her only casually were moved by her graceful strength and quiet dignity. I am reminded of a leader in our own country recalling a story of a time on an airplane when people saw her and took out their checkbooks. She never said a word, simply her presence called them to help. In more dramatic ways, meetings with Mother Teresa changed the course of people's lives. Still, she eschewed such trappings of notoriety, gaining her greatest sustenance from her love of God and her work to alleviate the suffering in the world. More than anyone else in our time, Mother Teresa lived Christ's admonition "Whatsoever you do to the least among you, that you do also to me." She ignored the accouterments of affluence by admonishing, "God does not ask me to be successful, he only asks me to be faithful."

She wrestled within herself and struggled through daily hardships, yet she somehow transcended the difficulties and was cherished as a living embodiment of God's love for every human being. I close this recognition of Mother Teresa's beautification with her own summation of her life's work: "My community is the poor. Their security is my own. Their heart is my own. My house is the house of the poor—not just the poor, but the poorest of the poor: those who are so dirty and full of germs that no one goes near them; those who do not go to pray because they are naked; those who do not eat because they do not have the strength; those who collapse on the sidewalks knowing they are about to die while the living walk by without even looking back; those who do not cry because they have no more tears left."

In one's own lifetime, rarely does a person observe a living saint. Mother Teresa will remain for all time such a living legend. May her selflessness inspire a world beleaguered by war, affluence, and ancient hatreds.

CONFERENCE REPORT ON H.R. 1588, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

SPEECH OF

HON. RICHARD BURR

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 7, 2003

Mr. BURR. Mr. Speaker, with the passage of the conference report on H.R. 1588 today, we have taken a great step forward in the defense of our homeland and the support of our military forces. Not only are we equipping our military with the tools and resources they need to carry out their missions today, we are also providing for the research and development necessary to meet future threats.

I am particularly pleased to see that the House and Senate have seen fit to include a long-awaited agreement regarding concurrent receipt for our disabled veterans. While I regret that we could not provide the full benefits for all of our disabled military veterans, I am encouraged that we are providing full receipt of both retirement and disability pay to more veterans than have ever been previously allowed by law. This Congress has achieved something that hasn't been seen in any previous Congress. I am hopeful that in the coming years we can expand this important benefit for our veterans.

Additionally, Mr. Speaker, I am encouraged to see that the benefits of TRICARE have been extended to our National Guardsmen and Reservists and their families. All too often, many of these families are unable to meet their premium payments for private insurance when a family member is called away to serve his or her country. With this provision, we will be providing the health care that our soldiers' families need.

I am pleased to see that reform of the procurement and acquisitions process to the benefit of small businesses is also included in the conference report. It is certainly my desire to see our military receive only the best equipment and services, but not without allowing our nation's small businesses the chance to compete and to offer quality services or innovative products.

Mr. Speaker, our safety and freedom ultimately relies on our troops. I am glad that this legislation provides a strong across the board pay raise and other important provisions for our men and women in uniform and their families. I am deeply grateful for the sacrifices our troops make every day in the name of freedom, and am pleased the House was able to pass it today.

Unfortunately, I was unable to be present for the vote on this conference report due to a visit to my district by President Bush. Had I been present, I would have voted "yea" on agreeing to the conference report.

TRIBUTE TO BRIGETTE BALET

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. MCINNIS. Mr. Speaker, it is my honor to rise and pay tribute to a remarkable young woman from my district. Brigette Balet from Montrose, Colorado sacrificed her summer break to assist friends in need. For her service, Brigette recently received the Key Citizens Award from the City of Montrose and I am proud to join the citizens of Montrose in recognizing Brigette's contributions before this body of Congress here today.

Last summer, Susan and Paul Beaston lost their home to fire. Without being asked, Brigette donned a mask and set to work helping the Beastons clean up the mess. Throughout the summer, and into the fall, Brigette worked tirelessly to clean the home and itemize the damage.

Brigette's service to the Beastons illustrates her selfless and altruistic nature. It is truly a tremendous young woman who is willing to forego a summer vacation to work in a soot and smoke filled home.

Mr. Speaker, I am proud to rise and pay tribute to Brigette Balet. She is an amazing young woman with a bright future and a fine example to young people everywhere. I would like to join the Beastons and the Montrose community in congratulating Brigette on a well-deserved award.

TRIBUTE TO MRS. LELER VIRGINIA SCARBOROUGH GEORGE

HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to one of my constituents, Mrs. Leler Virginia Scarborough George, who celebrated her 100th Birthday on November 16, 2003. Mrs. George, whose life has reflected not only her exemplary character, courage and commitment to family, but also a dedication to the education of her children, her faith and an untiring work ethic.

Mrs. George was born on November 16, 1903, to Samuel and Lydia Scarborough of Lee County in Bishopville, S.C. Later, Mrs. George married Jimmy George from Wysacky, SC. They purchased their first home on 75 acres of land, which Mrs. George still owns today. Mr. and Mrs. George placed great importance on educating their children and found the resources to send them to Mayesville Institute, a private, boarding school attended by the incomparable civil and human rights pioneer Mary McLeod Bethune. Despite grave challenges, the Georges successfully balanced the financial demands of schooling their children and running a farming operation.

At the young age of 45, Mr. Jimmy George suddenly passed away, leaving Mrs. George with eight children to raise and a ninth child on the way. With undaunted courage, Mrs. George resolved to hold on to their home and farm, and continue pursuing their shared dreams. Mrs. George demonstrated her business acumen and success as a farmer by converting the horse and plow operations she inherited to a completely mechanized farm. In 1983, she was named by the Smithsonian Museum as head of one of the eight outstanding farm families in America.

Mrs. George's greatest legacy and contribution to society are the self discipline and burning desire for education that she instilled in each of her children. All nine of whom went to college and received graduate degrees. Their achievements against remarkable odds attest to the determination and sacrifices of Mrs. George. Her oldest son, James, now deceased, attended Morris College, owned several businesses, and served as director of Training and Rehabilitation for the City of Sumter; Rosella G. Toney, now retired, was an Assistant Principal at Bishopville High School; Mary G. Hopkins, served as a college librarian at Virginia State University and retired as head librarian for Franklin County Middle School in Rocky Mount, VA; Dr. Ruth G. Kennedy retired from North Carolina Central University as an Associate Professor of English and served for a year as Executive Assistant to the Interim Chancellor; Ivorie Lowe retired as Dean of Girls at Bloom Township High School in Chicago, IL; Arthur L. George, formerly an educator with both local schools and the University of South Carolina at Spartanburg, retired as a sales manager with Prudential Insurance Company and presently serves as Senior Chaplain for the Fairfax County Adult Detention Center in Virginia; Kershaw George, a former University of South Carolina Administrator in Admissions, has become an entrepreneur; Dr. Eugene George, formerly an Assistant Professor of Education at the University of South Carolina and Associate Superintendent of Richland School District #1, is presently a school principal in Columbia; Doris Baskette, a former school principal, is now a principal leader and mentor with the South Carolina Department of Education.

A dedicated and lifelong member of St. Mark Baptist Church, Mrs. George received St. Mark's "Mother of the Church" honor this year. An active member, she has served as president of the Missionary Society and Floral Club, Treasurer of the Sunday School, and member of the Usher Board. She maintains her political activism through her membership with the National Council of Negro Women.

Mr. Speaker, Mrs. George's 100th birthday marks a life of stellar achievements, and she is still going strong. There is no question that Mrs. Leler Virginia Scarborough George is a role model for all of us, and ask you and my colleagues to join me in wishing her Godspeed.

MISSED ROLLCALL VOTES

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. BEREUTER. Mr. Speaker, on November 17, 2003, this Member unavoidably missed Rollcall Votes Number 620, 621, 622, 623, 624 due to official business off the Hill. Had this Member been present, this Member would have voted "aye" on these rollcall votes on three suspensions and one procedural vote. The three suspensions were S.J. Res. 22, a resolution recognizing the Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research; S.J.

Res. 18, a resolution commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years; and H. Con. Res. 299, a resolution honoring Mr. Sargent Shriver for his dedication and service to the United States of America, for his service in the United States Navy, and for his lifetime of work as an ambassador for the poor and powerless citizens of the United States of America. The fourth vote was a procedural motion changing the hour of meeting for Tuesday, November 18, 2003.

CONFERENCE REPORT ON H.R. 1588, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

SPEECH OF

HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 7, 2003

Mr. UDALL of New Mexico. Mr. Speaker, today, with our soldiers in harm's way around the globe, and as seemingly constant reports come on the television of brave men and women either killed or wounded, I rise in support of the FY04 National Defense Authorization Act conference report. This important legislation provides much-needed pay increases for our troops, as well as authorizes funding for important construction projects at New Mexico's military bases. This is, however, far from perfect legislation and I have very serious concerns about several provisions included in this year's bill. This legislation has traditionally been free of highly controversial issues, which, unfortunately, have found their way into this year's authorization.

I would first like to touch on the exemptions to the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) that were included in this legislation. I was a conferee on this section of the bill and believe that the exemptions included in the conference report do not strike an adequate balance between maintaining a level of high military readiness, which I strongly support, and protecting at-risk species.

The DOD argues that the existing national security exemptions in our environmental laws are not good enough for the military, even though the GAO found that claim was without basis. The DOD Authorization Conference Report creates a far weaker and unwarranted regulatory process for the Navy. Therefore, Mr. Speaker, we should have rejected the exemptions to the ESA and MMPA. As Mr. Rumsfeld acknowledged in Qatar, we have the "best trained, best equipped and finest troops on the face of the earth." Considering this, the military exemptions this legislation creates are unnecessary and should have been struck from the Report.

Another issue that I believe is inadequately addressed in the report before us today has to do with the Disabled Veterans Tax, also known as concurrent receipt. This conference report includes a Republican proposal that would only partially end the tax, thereby leaving out two-thirds of military retirees affected by the tax and forcing those covered to wait 10 years for full benefits. Mr. Speaker, since I have been in Congress, I have cosponsored H.R. 303, to provide full concurrent receipt for all veterans eligible for both retirement and disability pay; I have signed the discharge petition to get H.R. 303 on the floor; I have signed numerous letters on this topic; and I strongly support ending this inequitable situation. For that reason, since I support a total fix to this unfair tax, today I will be supporting the Democratic motion to recommit the conference report with instructions to report it back with the complete elimination of the Disabled Veterans Tax.

The conference agreement also contains a number of dangerous provisions relating to the development of a new generation of nuclear weapons. The agreement authorizes the administration's request of $15 million for research on the nuclear "bunker buster," the Robust Nuclear Earth Penetrator, plus $6 million for "advanced concept initiatives." I strongly oppose these provisions. Instead of building new nuclear weapons, I believe we should fund weapons that have just as strong a deterrent capability, but do not encourage new uses for nuclear weapons or encourage a new nuclear arms race.

Mr. Speaker, I voted against H.R. 1588 when it first passed the House because of many of the provisions I just discussed. However, even during its first time through the House, I supported the across-the-board 4.15 percent pay increase for military personnel, and I strongly support these provisions again as it is included in the conference agreement.

However, there are a few provisions in particular that I strongly support which were not included in the initial House version of the Defense Authorization legislation. Now that they are included in the conference report, I will be voting in support of this conference agreement today.

One provision not included in the House version, but one that I have been working hard to ensure it is included in the conference report, is authorization of $9 million for Cannon Air Force Base located in my district in Clovis, New Mexico. $7.7 million of this $9 million would be used to construct a much-needed new Aerospace Ground Equipment (AGE) Complex and $1.3 million would be used to install a permanent Simplified Short Approach Lighting System (SSALS) with sequenced flashers on a runway at the air force base. These are both very important upgrades that will improve the safety of our troops stationed at Cannon Air Force Base and, in turn, help improve the safety of our nation.

One other provision that has helped sway me to support passage of this authorization is making an additional 12,000 legal permanent reservists who serve in the military eligible to apply to become U.S. citizens after a year of service for citizenship in the United States. I believe that if immigrants are willing to serve in war, then a grateful nation should give them what they are fighting for, American citizenship.

Mr. Speaker, clearly there provisions that are both good and bad. In a bill this size, it is inevitable that this is the case. As such, because I believe the conference agreement includes important provisions that were not included in the House version of the bill, I will be voting in support of passage of this important legislation. With our men and women overseas in harms way, supporting this bill with its important pay raises for them and their families is a fitting way to show our support for them.

PERSONAL EXPLANATION

HON. EARL BLUMENAUER

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. BLUMENAUER. Mr. Speaker, had I been present for the following votes on November 17, 2003, I would have voted as follows:

Rollcall vote 620; I would have voted "yea" on S.J. Res. 22, recognizing the Agricultural Research Service of the Department of Agriculture for 50 years of service to the Nation.

Rollcall vote 621; I would have voted "yea" on S.J. Res. 18, commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years.

Rollcall vote 622; I would have voted "yea" on H. Con. Res. 299, honoring Mr. Sargent Shriver for his dedication and service to the United States of America.

Rollcall vote 623; I would have voted "yea" on the motion to change the hour of meeting.

AMERICA'S PRIVATE SECTOR AIDS CIVIC EDUCATION EFFORT, VOTER PARTICIPATION

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. ANDREWS. Mr. Speaker, a recent Gallup poll that asked Americans what keeps our country strong found some very interesting results. While 67 percent identified "willingness to serve in the military" as important to keeping America strong, 84 percent and 86 percent, respectively, identified "high level of voting (in national elections)" and "having a well-educated populace". Yet other polls show that our citizens' civic knowledge is low and that our voter participation is among the lowest in the world.

A number of Americans, from my district and from virtually every other district across the country, are undertaking a major effort to keep our country strong, according to the definition expressed in the Gallup poll. They are working to keep Americans well educated about civic matters and to encourage citizen participation in our democracy.

These patriotic Americans have joined with the Committee for Citizen Awareness (CCA) and other notable Americans like Secretary of State Colin Powell, and Constitutional author Caroline Kennedy in this effort. The CCA provides free, award-winning civic videotapes to

America's high schools, cable television stations, community colleges, libraries and others in every congressional district in the country.

We all owe a debt of gratitude to the efforts of the CCA and to individuals and organizations such as the following:

Tom Beddow, Vice President of Public Affairs and Government Markets of 3M Company
Donald J. Gillespie, President and CEO of A.M. Community Credit Union
John Schofield, Chairman, President and CEO of Advanced Fibre Communications
James W. Barner, President and CEO of Altoona Hospital
Barney B. Chapman, Vice President of America First Credit Union
Marite Plume, President and CEO of Argonne Credit Union
Dr. G. William Benz, President of Ashland University
Ricky A. Burke, Vice President of Metro Region Operations of Atmos Energy
LuAnn C. Williams, Corporate Communication Officer of Bangor Hydro-Electric Company
Dr. Michael Allkins, President of Bay De Noc Community College
Dr. Robert Fisher, President of Belmont University
Michael Cascone, Jr., Chairman, President, and CEO of Blue Cross & Blue Shield of Florida
Gary A. Regoli, President/CEO of Boeing Wichita Credit Union
Truman L. Gates, Chief Executive Officer of Desert Regional Medical Center
David Jacobstein, President and COO of Developers Diversified Realty Corp.
Andrew "Flip" Flipowski, President and CEO of divine interVentures, inc.
Vince R. Volpe, President of Dresser-Rand
Doris Grose, President of Educaid, Wachovia Corporation
Dr. Roger S. Newton, President and CEO of Esperion Therapeutics
Marla K. Shepard, President and CEO of First Future Credit Union
Robert Anestis, Chairman, President and CEO of Florida East Coast Industries, Inc.
Patrick L. Taylor, CEO of General Electric Evendale Employees Federal Credit Union
Dr. Craig Turner, President of Hardin-Simmons University
Dr. Charles D. Dunn, President of Henderson State University
Ray Romero, Chairman of Hickam Federal Credit Union
Dr. Jean Goodnow, President of Illinois Valley Community College
Andrew L. Farkas, Chairman and CEO of Insignia Financial Group
Dr. Jerry W. Weber, President of Kankakee Community College
Dr. Joseph G. Burke, President of Keuka College
Dr. Linda Stegall, President of Kingwood College
Thomas Fleming, Chairman of the Board of Kirkbride Center
Walter Malinowski, President of Labat-Anderson Inc.
Dr. L. Michael Metke, President of Lake Washington Technical College
Hank Hernandez, CEO of Las Palmas Medical Center
Brian T. Flynn, CEO of Manatee Memorial Hospital
Mark Hillard, CEO of Maricopa Integrated Health System
Sister Mary Reap, IHM, President of Marywood University
Kenneth Rudzewick, President and CEO of Maspeth Federal Savings and Loan Association
Frank VanderSloot, President and CEO of Melaleuca Advantage Federal Credit Union
Aiken Regional Medical Centers
Akzo Nobel, Inc.
American Savings Foundation
Anglo Gold Jerritt Canyon, Inc.
ARROW Electronics, Inc.
Aultman Health Foundation
AvMed Healthplan
Baltimore City Community College
Bluebonnett Savings Bank
Boston University
Bridgewater State College
Brinks Home Security
Catholic Medical Center
Central Ohio Technical College
Chandler, Franklin & O'Bryan
Chicago Patrolman's Federal Credit Union
Christiana Care Health System
Coastline Community Credit Union
Columbia University Health Sciences
Computer Sciences Corporation
Cushman & Wakefield, Inc.
Cuyahoga Falls General Hospital
Fiorello H. Laguardia Comm. College
First Community Bancshares, Inc.
Flushing Savings Bank
FMC Airport Systems Jetway
Glendale Memorial Hospital
Graceland University
Grenada Lake Medical Center
Gulfstream Aerospace Corporation
Harper-Wyman Company
Hawaii State Federal Credit Union
Holyoke Hospital
Jewish Hospital College of Nursing
Kindred Hospital Greensboro
Laney College
Liberty Mutual Insurance Company
Merck & Co., Inc.
Montreat College
Nassau Educators Federal Credit Union
National Park Medical Center
North Brooklyn Health Network
Northland Area Federal Credit Union
Northwest Florida Community Hospital
Novartis Pharmaceutical Corporation
O-Cedar Brands, Inc.
Provena St. Mary's Hospital
Santa Clara University
Saturn Corporation
Seven Rivers Community Hospital
South Carolina State University
St. John's Regional Medical Center
The Rockefeller Group
The Summit Federal Credit Union
The University of Iowa
Tri-County Technical College
Utah Valley State College
Valley Baptist Health System
Washington County Health System Inc.
Wells Fargo Bank
WesCorp
Wesleyan College
Westinghouse Waste Isolation Division

HONORING NICK BECK

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. RADANOVICH. Mr. Speaker, I rise today to honor Nick Beck on the occasion of his retirement from the Madera City Fire Department after 39 years of service. A celebration in his honor will take place on Sunday, November 16th in Madera, California.

Mr. Beck proudly served our country in the United States Army before working with the Madera City Fire Department. After training in California and Georgia, he was assigned to Company B of the 97th Signal Battalion in Germany. Nick was also selected to attend the 7th Army Non-Commissioned Officers Academy where he graduated in the top 10 of his class. Just months after his service in the Army ended, Mr. Beck started his employment with the Madera City Fire Department.

In 1969, Nick was promoted to Apparatus Engineer, a specialist in the operation of heavy fire equipment vehicles. He was named Fire Lieutenant in 1976, then Battalion Chief in 1979. Each promotion was achieved through a competitive examination, and Nick scored number one on each test. In the early '90s, Mr. Beck was instrumental in the city's efforts to contract for fire protection with the California Department of Forestry and Fire Protection. Through his efforts, a contractual agreement was met, which led to an estimated $2 million in savings for the City of Madera over the last 10 years. Nick also received two Madera County Firefighter of the Year awards.

Mr. Beck has also been a prominent member of numerous professional organizations. He is a past-President of the Central California Fire Training Officers Association, the Madera County Employees Federal Credit Union, the Central California Fire Prevention Officers Association, and the Madera Firefighters Association. He is also a member of the 1st Fresno City College Fire Science Advisory Board and the California State Firefighters Association.

Mr. Speaker, I rise today to honor Nick Beck for his valiant service to the Madera City Fire Department. I invite my colleagues to join me in wishing Mr. Beck an exciting, well-deserved retirement.

TRIBUTE TO BEN STEPHENSON

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. McINNIS. Mr. Speaker, it is my honor to rise and pay tribute to a remarkable man from my district. For his dedication to the students of Montrose, Colorado, Ben Stephenson was recently named Colorado's Assistant Principal of the Year. I am proud today to call Ben's contributions to the attention of this body of Congress and this nation.

As Assistant Principal of Columbine Middle School, Ben goes beyond the call of duty each day. To best serve the children, Ben works in conjunction with teachers, parents, and administrators to assure the well being of Columbine's students. In addition to his official duties, Ben also works tirelessly for the safety of his students. He has been instrumental in implementing anti-bullying and classroom safety programs in the school. The students of Columbine Middle School are truly safer and happier as the result of Ben's contributions.

For his award, Ben will receive $1,000 from the Colorado Association of School Executives. Although he could keep this prize money, Ben has decided to use it to spearhead a school project to build a student weight room. This selfless donation is illustrative of Ben's true compassion for the students of Columbine.

Mr. Speaker, I am proud to call to the attention of this body of Congress and this nation the contributions of Ben Stephenson. Ben has dedicated his life to educating young minds. His passion for student safety, and his desire to pass along his knowledge and morals to the next generation, is truly admirable. I would like to join the students of Columbine middle school, and the community of Montrose, in congratulating Ben on a well-deserved award.

HONORING THE REMARKABLE CAREER OF MR. RAMON PUIG

HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I rise to honor the remarkable accomplishments of Mr. Ramon Puig. He truly is the embodiment of the American dream.

Mr. Puig was born in the central mountain town of Zaza del Medio, in the Cuban province of Las Villas in 1920. At a young age, he learned to be a tailor and at 23, he opened shop in his hometown and began making and selling tropical dress shirts called guayaberas.

As his popularity grew, he traveled throughout the island, taking skillful measurements and delivering his custom-made guayaberas. Eventually, he became a regular supplier of guayaberas to Cubans throughout the entire country.

When Cuba fell to totalitarianism in 1959, Mr. Puig left his shop as he was forced to work in the dictatorship's sugarcane fields.

He arrived in Miami on one of the Freedom Flights of October 18, 1968. There, he worked for eight months as a hotel dishwasher for 95 cents an hour.

He put his life back together and in 1971, opened his first guayabera shop in Miami. His superb work, skillful craftsmanship and attention to detail have earned him the nickname, el Rey de las Guayaberas, the Guayabera King. His stylish shirts have earned him national attention, including a recent article in GQ magazine.

Every day, he drives to his store and personally takes his customers' measurements, cuts the patterns, and supervises the seamstresses who stitch his custom-made guayaberas. His shirts are superbly made with embroidery and fine details that make each shirt unique.

He carefully keeps track of everyone who buys his tailor-made guayaberas with record books filled with names, occupations, measurements and cuttings from the fabric he used to make their particular guayabera.

Mr. Puig's list of clients includes stars George Hamilton, Robert Duvall, Emilio and Gloria Estefan, mayors, governors, senators and every U.S. president since Ronald Reagan. Their autographed photos adorn his office.

In 1995, he moved his shop, La Casa de las Guayaberas, to 5840 SW Eighth Street in Miami. The store carries about 8,000 guayaberas and has hundreds more in storage.

But the love of his life is Juana Maria, the wonderful woman he married 60 years ago. She is his partner in business as well as life.

Mr. Speaker, I congratulate my friend, Mr. Ramon Puig, for his long and remarkable career.

I commend him for his hard work and wish him continued success and happiness. I am honored to call this great man, my friend.

TRIBUTE TO SISTER HELEN COSTELLO, RSCJ RECIPIENT OF THE 2003 ST. MADELEINE SOPHIE BARAT AWARD

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. ESHOO. Mr. Speaker, I rise today to honor Sister Helen Costello, RSCJ, a distinguished Californian, as she receives the 2003 St. Madeleine Sophie Barat Award. This award, named for the foundress of the Society of the Religious of the Sacred Heart, honors individuals who over a significant period of time have made extraordinary contributions to Sacred Heart Schools, Atherton. Founded in 1897, Sacred Heart Schools includes St. Joseph's School of the Sacred Heart and Sacred Heart Preparatory.

Sister Helen Costello was born in San Francisco and entered the 8th grade at the Convent of the Sacred Heart in 1929, which was then a boarding school for girls. Sister Costello graduated from Sacred Heart School in 1935 and took her final vows in Rome in 1949. She taught at St. Joseph's School from the early 1950's until 1967. During that time she was responsible for overseeing the altar boys, some of whom still keep in touch with her. Since leaving the School, Sister Costello has worked with the Handicapables, assisted children with cancer, and counseled students. Throughout the years, Sister Costello has dedicated her time and talents to the students and families of Sacred Heart School.

Mr. Speaker, I'm proud to honor her work, her values, and her deep love for her students and I ask my colleagues to join me in honoring Sister Helen Costello, RCSJ, as she receives the 2003 St. Madeleine Sophie Barat Award for her extraordinary contributions to Sacred Heart Schools.

REINTRODUCTION OF DEPARTMENT OF STATE REVIEW BILL

HON. MAC THORNBERRY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. THORNBERRY. Mr. Speaker, for some time, I have believed that it is essential to transform our military so that the United States is better able to deal with the enormous security challenges of the 21st century. Since my first term in Congress, I have worked to develop a more flexible, adaptable military with a "culture of innovation" that will ensure that our security is protected as the threats against us, our allies, and our values grow in number and complexity. But at the same time, I recognize that American national security does not rest solely on the shoulders of the U.S. military.

Based on my work in defense transformation, I became convinced that homeland security was a vital area requiring not just more money, but a major reorganization of the government agencies charged with protecting the American homeland. I introduced the first bill creating a new organization to better protect the homeland on March 21, 2001, and that new Department is now up and running.

I also believe that a transformation is needed at the Department of State so that it is better able to formulate and implement American foreign policy in the coming years. On September 18, 1998, I introduced H.R. 4065 in the 105th Congress to require that an independent, non-partisan panel review all the facets and functions of the Department of State and to provide Congress with its findings and with a plan for reorganizing the Department. The bill was reintroduced as H.R. 106 in the 106th Congress and as H.R. 304 in the 107th Congress.

I believe that the events of the past two years only add a greater degree of urgency to the need for such a transformation. It is time for Congress to take action.

The gentleman from Arkansas, Mr. Snyder, has also been working on these issues for some time. He has suggested a number of improvements in my previous proposals, and today we are introducing the revised version of the bill. It does not prescribe in legislative language exactly how the Department of State should be reorganized despite the many studies and reports which have recommended various actions. It does establish the framework for a serious study of all of the recommendations and requires that a proposal be submitted to Congress. We would then have to act upon the legislation in the normal order.

There have been a number of outside studies which recommend reform in very strong terms. For example, in January 2001, a study cosponsored by the Council on Foreign Relations and the Center for Strategic and International Studies and chaired by former Secretary of Defense and career foreign service officer, Frank Carlucci, issued "a scathing report," warning that "the United States will soon face serious dangers and enormous costs because its foreign policy establishment has not come to terms with global changes a full decade after the Cold War ended." (Los Angeles Times, January 30, 2001). "No government bureaucracy is in greater need of reform than the Department of State," the report found.

In March 2001, the United States Commission on National Security/21st Century, better known as the Hart-Rudman Commission, found that "The Department of State is a crippled institution that is starved for resources by Congress because of its inadequacies and is thereby weakened further. The department suffers in particular from an ineffective organizational structure in which regional and functional goals compete, and in which sound management, accountability, and leadership are lacking (p. 47)." Other studies and reports have reached similar conclusions.

This bill requires a serious study of the organization of the Department of State and our diplomatic structure. The Commission created by the bill will examine all levels of the Department, from the organization chart of bureaus and offices to staffing at embassies around the world. It will also look at issues such as public diplomacy—whether we are organized to wage the battle over ideas, which is so critical to the ultimate success of the war on terrorism—and use of foreign assistance—whether we are prepared to use effectively innovative new programs, such as the Millennium Challenge Account.

There may be a variety of opinions on what the Department of State should be doing and on exactly what organizational and process changes should be made, but we should all be able to agree that how decisions are made, and especially how they are implemented, needs drastic improvement.

Mr. Speaker, change is always difficult, and we should not impose change without a good reason for doing so. We also have an obligation, I think, to seek better, more effective ways to advance American interests, and no Department should be exempt from penetrating examination in pursuit of those larger interests.

INTRODUCTION OF THE VIDEO CONSUMER PRIVACY PROTECTION ACT OF 2003

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. MARKEY. Mr. Speaker, I rise to introduce the Video Programming Consumer Privacy Protection Act of 2003. Mr. Speaker, as our Nation's communications networks continue to grow and become ever more sophisticated, more individuals and industries will be using broadband networks at home and work. As America upgrades its communications infrastructure for the 21st century, we must make sure that the information superhighway is safe for all its travelers and this is particularly true with respect to personal privacy.

As the co-chair of the Congressional Privacy Caucus, along with Representative JOE BARTON (R–TX), I have been concerned about protecting privacy and closing anachronistic or technology-specific loopholes in consumer privacy protections for a long time.

Mr. Speaker, it is becoming increasingly apparent that, in addition to the protections accorded consumers with respect to information gathered by cable operators, video rental stores, and telecommunications carriers, which are contained in current law, further protections are needed to ensure that consumer privacy rights are retained and respected on the information superhighway by other entities. This includes entities with access to consumer video information, or who are using other technologies to essentially deliver similar services to those covered by current law.

This is especially the case in the video marketplace. Current law contains privacy protections for consumers when they rent video cassettes—as contained in the Video Privacy Protection Act of 1988, codified at 18 U.S.C. 2710—or subscribe to cable or other services from a cable operator, as contained in the Communications Act of 1934, 47 U.S.C. 551.

Since the privacy provisions protecting cable subscribers were put in place in 1984, the Direct Broadcast Satellite industry has developed. Today, Echostar and DirecTV, for example, have approximately 20 million subscribers. Although they offer multichannel video programming across the country in a manner comparable to many cable operators, current legal privacy protections protect cable subscribers but not satellite subscribers. This makes absolutely no sense when one considers that millions of such satellite subscribers are watching the same programming as the cable subscriber next door. Consumers who switch from cable to satellite service often do not know that the privacy protections the law accords them in one market do not follow them when they switch technologies even though the video services they obtain are similar.

In addition, the provisions of the Video Privacy Protection Act of 1988, which was enacted in the wake of a scandal involving the disclosure of the video rental records of Judge Robert Bork in a newspaper, covers video cassette rentals but not such "rentals" if they are not in cassette form. In other words, if a consumer physically rents a movie from Blockbuster and walks out of the store with a video cassette, there are legal privacy protections governing the unauthorized disclosure of the consumer's rental choice. Yet if the very same movie is delivered online or over-the-air, and not as a video cassette, it is not covered by that statute.

Moreover, the digital video recorder is quickly becoming a popular device in homes around the country. The personal records of video subscriber choices and viewing habits are available to companies such as Tivo and Replay TV. Consumers should certainly be accorded the same privacy protections for subscribing to these services in my view as they receive under the law from cable operators today. Indeed, the information available to such companies may be more detailed and specific about a consumer's viewing habits than that which may be obtained by many cable operators. The total lack of any legal protections in this area is especially troubling given reports that such companies are willing to sell certain, aggregate data about consumer viewing habits to marketers and others. Currently there is no prohibition on the sale or disclosure of more personal television viewing data.

Mr. Speaker, the bill I'm introducing today is very simple and straightforward. It merely takes the provisions of law governing consumer privacy which today apply to cable operators and makes them applicable to satellite providers as well as vendors of other multichannel video services, including Tivo and Replay TV. This bill provides essential, similar privacy protections for consumers regardless of whether they subscribe to Comcast or Cox cable, Echostar or DirecTV, or whether they also subscribe to Tivo or ReplayTV. This will keep our critical consumer privacy laws current with changes in the marketplace and advances in technology.

I look forward to working with my House colleagues, including my colleagues on the Telecommunications and Internet Subcommittee and fellow members of the Congressional Privacy Caucus, in addressing these issues perhaps in the next session of Congress.

PERSONAL EXPLANATION

HON. JIM KOLBE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. KOLBE. Mr. Speaker, yesterday, I was unavoidably detained and missed the vote on S.J. Res. 18, Commending the Inspector General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement during the past 25 years (No. 621). I intended to vote "aye."

TRIBUTE TO SISTER ANN McGOWAN, RSCJ—RECIPIENT OF THE 2003 ST. MADELEINE SOPHIE BARAT AWARD

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. ESHOO. Mr. Speaker, I rise today to honor Sister Ann McGowan, RSCJ, a distinguished Californian, as she receives the 2003 St. Madeleine Sophie Barat Award. This award, named for the foundress of the Society of the Religious of the Sacred Heart, honors individuals who over a significant period of time have made extraordinary contributions to Sacred Heart Schools, Atherton. Founded in 1897, Sacred Heart Schools includes St. Joseph's School of the Sacred Heart and Sacred Heart Preparatory.

Sister Ann McGowan, RSCJ, was born in Washington DC, and moved with her family to the West Coast when she was still a child. She attended La Jolla High School in San Diego and the San Diego College for Women, where she majored in Biology. She entered the Society of the Sacred Heart soon afterward, and spent her years as a novice at the Sacred Heart School in nearby El Cajon. She was given special permission to come to teach at St. Joseph's School, which was transitioning from being an all-boys parish school to being a co-ed Sacred Heart School.

Sister McGowan loved working with boys during the day, pinning up the skirts of her habit to coach baseball in the afternoons, and working in the girls boarding school at night. In the fall of 1976, she began her tenure as Principal of St. Joseph's School, Preschool through 8th Grade, and the school prospered under her enlightened leadership for 16 years. It was Sister McGowan's vision that the school pride itself on excellence in all areas, educating the whole child. She insisted on the highest standards for her students and for her faculty, and of course, for herself. Her eye for excellence helped to build one of the finest schools in the San Francisco Bay Area.

Mr. Speaker, I'm proud to honor Sister McGowan's work, her values, and her deep love for her students. I ask my colleagues to join me in honoring Sister Ann McGowan, RCSJ, as she receives the 2003 St. Madeleine Sophie Barat Award for her extraordinary contributions to Sacred Heart Schools.

U.S.-CHINA MARITIME AGREEMENT BEGINS A NEW ERA OF COOPERATION

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. OBERSTAR. Mr. Speaker, I rise today to express my support for the recent U.S.-China maritime agreement, the result of successful U.S.-China maritime negotiations that concluded in August of this year. The agreement, which is now under final review by the Departments of Transportation and State, is the most significant maritime pact with China in the last 15 years, and represents a major breakthrough in U.S.-China maritime relations. Its conclusion is a testament to the will of both governments and the importance of U.S.-China bilateral relations.

The recently announced framework agreement between the U.S. and China is significant because it addresses a number of long-standing impediments to expanding maritime trade between our two nations. The agreement achieves a long overdue goal, which I have supported, of ensuring a level playing field for both countries. While the specific details of the agreement are yet to be released, the fundamental issues of concern for the U.S. involved market access issues such as: bonding for Non-Vessel Operating Commercial Carriers, opening branch offices, and provision of logistics services. Issues for China included the filing of confidential freight rates and controlled carriers, among others.

The commitment of lead U.S. negotiator Captain William Schubert, U.S. Maritime Administrator and his Chinese counterpart, Su Xiang, Director General of the Department of Water Transport, was significant in reaching this agreement. Captain Schubert and Director General Su reflected the newfound will of their governments since the expiration of the last agreement in 1998.

Since 1998, the policies of the government of China on international maritime trade have evolved from protectionism, to an acceptance of the benefits of competition and open access for consumers and shippers of both countries. In January 1999, I met with Vice Minister of Communications Hong Shanxiang in Bejing. Minister Hong referred to China as a developing country whose maritime interests needed protection. I pointed out that in maritime it was the United States that was in the position of a developing country, with our fleet declining from 3,000 vessels in 1945 to 450 in 1999, making us the smallest maritime nation. China, meanwhile has become a maritime power.

I am pleased that the government of China has now recognized that in the maritime field, their industry is capable of meeting the challenges, and gaining the benefits, of a competitive system. With this agreement, both governments committed to making the concept of a more open and economically successful bilateral maritime relationship a reality.

The China Ocean Shipping Company (COSCO) was an important force behind the U.S. China Maritime agreement. COSCO is the 5th largest shipping company in the world and the principle maritime carrier between Asia and the United States. I wish to applaud COSCO's leadership in both Beijing and Washington, notably Mr. Gao Weijie, who kept all of us informed and helped to forge a consensus among the maritime parties involved.

Much work remains once the agreement is officially signed. Both sides must take completing actions to ensure that the discriminatory policies are dismantled, as provided for in the agreement.

Mr. Speaker, as the Ranking Democrat on the House Transportation and Infrastructure Committee, and an active maritime policy participant for over two decades, I want to commend Captain Schubert and Bruce Carlton of MARAD, Minister Hu of China, Mr. Gao of COSCO, and all maritime agreement participants who worked so hard to ensure that this U.S.-China Maritime agreement would become a reality.

PERSONAL EXPLANATION

HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. BONNER. Mr. Speaker, on November 17 I was unavoidably detained in my district and was not able to vote on rollcall votes numbered 620, 621, 622, and 623. Had I been present, I would have voted "aye" on rollcall 620, "aye" on rollcall 621, "aye" on rollcall 622, and "aye" on rollcall 623.

ACKNOWLEDGING MR. DENNIS DOUGHERTY, CEO OF VISUAL ELECTRONICS, LTD

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. UDALL of Colorado. Mr. Speaker, I rise today to acknowledge Mr. Dennis Dougherty, the CEO of Visual Electronics, Ltd. Dennis has not only been a leading entrepreneur in Colorado, he is also an active leader of the Human Rights Campaign and an outspoken proponent of civil rights. Still a Republican, despite my entreaties to the contrary, Dennis is living proof that one can be a hard-driving and successful businessman and also contribute to causes that are beyond self-interest and the so-called "bottom line."

A Colorado newspaper recently published a profile on Dennis Dougherty and included some highlights of his career in the ever-changing high technology sector. I would like to share a few items that describe Dennis and his contributions to both the private and public sectors:

> As the hands-on director of a 25 year old customer service-oriented company, Dougherty has weathered tough economic times by stressing attention to client satisfaction. Visual Electronics marketing manager, Kim Johnson, said, "If you make a client happy, they're going to come back to you."
>
> Dennis was raised in Omaha, Nebraska and served in Vietnam after being drafted by the Army. Dennis served honorably and in a time and place where being an "out gay person" was unheard of and dangerous.
>
> Through 12 hour work days and a continuing commitment to meet the needs of his customers, Dennis built a multi-million dollar company providing ACD monitoring systems for call centers, 911 emergency operations, help desks and tech support lines. Visual Electronics is, in its own way, a prime example of the growth potential in technology services.
>
> Dougherty has also been a regional and national philanthropist, supporting human rights work, aimed at establishing equal rights for gays and lesbians. Dennis is also a major supporter of the Colorado AIDS Project and the National Sports Çenter for the Disabled in Winter Park, Colorado.

Coloradans are proud of Dennis Dougherty and the contribution he and his company have made to our state. Through his attention to detail, his strong people skills, his sales acumen and his outstanding commitment to his work colleagues, Dennis and Visual Electronics, Ltd. are valuable members of our business community and I am proud to recognize him today.

PERSONAL EXPLANATION

HON. JIM RYUN

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. RYUN of Kansas. Mr. Speaker, unfortunately, I missed four votes in the House of Representatives on November 17, 2003. Had I been in attendance I would have made the following votes:

Passage of S.J. Res. 22, Recognizing the Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research. Had I been in attendance, I would have voted "yea."

Passage of S.J. Res. 18, Commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years. Had I been in attendance, I would have voted "yea."

Passage of H. Con. Res. 299, Honoring Mr. Sargent Shriver for his dedication and service to the United States of America, for his service in the United States Navy, and for his lifetime of work as an ambassador for the poor and powerless citizens of the United States of America, and for other purposes. Had I been in attendance, I would have voted "yea."

On the Motion regarding the Hour of Meeting. Had I been in attendance, I would have voted "yea."

TRIBUTE TO BRANDON PHILIP WATTERS

HON. DEVIN NUNES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. NUNES. Mr. Speaker, I rise today to pay tribute to a brave young man from my home district, who selflessly gave his life trying to save a friend.

On June 25, 2003, Brandon Philip Watters was at Sequoia National Park with his brother, Garet, and friends. They were swimming at "the cliffs," along the Kaweah River. Brandon was enjoying a well-deserved summer break from pre-med courses at the University of California, Santa Cruz.

Suddenly, Brandon noticed that his friend, Renne Suddeth, was caught in the rapids. Without thought to his own safety, he immediately dove in the water, struggling against the roiling waters. Marshaling every bit of his strength, he was able to get his nearly drowned friend to safety.

Just as Garet pulled Renne from the river, Brandon was pulled underneath the turbulent water by strong currents. Recognizing the extreme peril of diving in after Brandon, who was the strongest swimmer among them, the others kept each other from jumping in after him.

Brandon's courageous act cost him his life. The water was so treacherous that well-trained, experienced divers noted that it hindered their recovery efforts for more than two hours.

Brandon was undoubtedly aware of the danger. We know that he would make the same decision were he given that choice again. His sacrifice is a testimony to his personal character.

That was even evident as hundreds of his friends flocked to St. Mary's Church to honor his memory. His wit, intelligence, self-effacing modesty, generosity and kindness have touched many people.

I urge my colleagues to join me by extending their sympathies and deepest gratitude to the family of Brandon Watters for his life and sacrifice. He will be missed.

GAP IN HOMELAND SECURITY

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. COBLE. Mr. Speaker, I rise today to bring attention to a serious gap in our homeland security strategy and to encourage my colleagues to work with me to move expeditiously and cost effectively to remedy this problem. Currently, the Coast Guard only employs eight armed air assets that are equipped to use force to protect our entire port and waterway network and to enforce our nation's drug laws. This is unacceptable. This fleet is obviously much too small to provide coverage to the almost 90,000 miles of U.S. coastline and hundreds of ports and waterways. In light of this serious vulnerability, it is my strong belief that the Coast Guard should move quickly to initiate a competition for a new multi-mission armed cutter helicopter. We need more assets now and should not stand idle while millions of Americans who live along our coastlines remain vulnerable. This being said, I completely support the mandate of the Transportation and Infrastructure Committee contained in H.R. 2443 that directs the Coast Guard to expand its fleet of armed Sting Ray helicopters. The plan to acquire additional HITRON Sting Ray helicopters through a flexible lease arrangement is a common sense interim solution until a new state-of-the-art multipurpose helicopter can be deployed. In the aftermath of 9–11, the Sting Ray fleet suddenly has a key role on the front lines of both America's war on drugs and terrorism.

On September 15, 2003, Coast Guard Subcommittee Chairman LoBiondo and Ranking Member Filner wrote the leadership of the Appropriations Committee to emphasize the priority our Coast Guard Subcommittee is giving to the establishment of a an expanded fleet of MH–68A armed helicopters. Recognizing the Coast Guard is confronting a serious challenge in trying to balance its limited resources to meet both its humanitarian missions and its new homeland security responsibilities, it is my belief that the only way to effectively address this problem is to increase the number of assets tasked to perform these kinds of operations and to ensure that these assets have prioritized missions. The Coast Guard simply does not have enough assets to perform all their traditional missions plus all their new responsibilities. As a result, the Coast Guard should acquire additional assets for the airborne use of force mission.

I am particularly alarmed over reports out of the Coast Guard that there is a plan to rebuild their existing 20 year old HH–65 fleet rather than replace it through a competitive process. This is a classic case of being penny wise and dollar foolish and it defies common logic in this post-9–11 environment. Instead of accurately identifying the new mission and then deciding on the best possible helicopter to carry it out, it is an example of shrinking the mission to fit the assets on hand. The Department of Homeland Security requires a new and larger state-of-the-art cutter-deployed helicopter to meet the growing challenge. Rebuilding a twenty year old helicopter is simply not acceptable. The Coast Guard should move quickly to initiate a competition to procure a modern technology Multi-Mission Cutter Helicopter and related Airborne Use of Force assets that can also be used by Customs, Secret Service and the Border Patrol. Mr. Speaker, as you and others in this body know, I am a fiscal conservative who is always conscious of how we in Washington spend taxpayer dollars. I have also always been a strong advocate for the Coast Guard and believe that this branch of our military service is a big bang for the taxpayer buck. Given the 100 percent success of the current HITRON fleet, I believe this would be one of the most effective and cost-efficient ways to address the enormous vulnerabilities that continue to exist along our nation's coastlines and in our ports and waterways.

APPLAUD AMERICA'S LOCAL BROADCAST STATIONS

HON. ED WHITFIELD

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. WHITFIELD. Mr. Speaker, I rise today to applaud America's local broadcast stations for a program they recently launched to assist the families of our men and women in uniform who are fighting the war on terrorism abroad.

As of today, there are more than 140,000 active-duty and reserve personnel serving our great Nation in Iraq, Afghanistan, and around the world.

I have the privilege of representing the soldiers stationed at Ft. Campbell, Kentucky assigned to the 101st Airborne Division, the 5th Special Forces Group, and the 160th Special Operations Aviation Regiment. The men and women of these premier Army units have been deployed for extensive periods of time, often with little or no break between deployments.

For the families left behind, these extended separations can be trying not only emotionally, but financially as well. In many cases, the primary "bread winner" is the person sent overseas, leaving wives and children to cope with unexpected expenses.

The National Association of Broadcasters and its 6,000 radio station and 1,000 television station members recently partnered with the Armed Forces Relief Trust (AFRT) to help raise funds for those families that are facing financial challenges. The AFRT solicits contributions and then disburses interest-free loans and grants to family members of deployed personnel who are in need. To support this effort, the broadcasters produced and are voluntarily airing Public Service Announcements, so that AFRT can assist even more families in need.

The AFRT provides important services. They may provide assistance so a soldier can fly home to attend their father's funeral. The services may include a special reading program for a sailor's daughter. They may assist with special medical attention for a pilot's spouse, or college tuition for a Marine's child.

Mr. Speaker, our fighting men and women and their families are sacrificing a great deal on our behalf. It is the duty of all Americans to provide comfort and assistance in any way they can.

I extend a special thanks to the radio and television station owners who are calling attention to this important cause. They are providing an important public service and I commend them for their efforts.

PERSONAL EXPLANATION

HON. RON KIND

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. KIND. Mr. Speaker, on Monday, November 17, 2003, I was unable to record my vote on three resolutions under suspension of the rules, and one motion changing the hour of meeting. My unavoidable absence was due to the fact that I was hosting an important forum on Chronic Wasting Disease in Wisconsin with federal and state leaders.

Had I been able to vote, I would have voted the following:

Roll call #620: Yes, Roll call #621: Yes, Roll call #622: Yes, Roll call #623: Yes.

CELEBRATING THE 100TH BIRTHDAY OF SIMHA LAINER

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. BERMAN. Mr. Speaker, Mr. SHERMAN and I rise today to pay tribute to our good friend, Simha Lainer who will be celebrating his 100th birthday at a dinner and reception hosted by the New Community Jewish High School on Sunday, December 14, 2003. Simha has been a cornerstone of the Jewish community in Los Angeles for many years, and he continues to play an active role in the promotion of Jewish education and many other worthy causes.

Simha was born in the Ukraine. As a young man, he spent time in the Middle East, Ecuador, Peru, Venezuela, and Mexico. He immigrated to the United States with his family in 1951. Although he worked in the textile industry, and later in real estate, his passion has always been education.

Simha, along with his wife Sara(z"l) and his three remarkable sons Mark, Nahum and Luis, who in their own right have supported so many worthy causes, have pioneered efforts to make a Jewish education available to as many children as possible. In 1989, Simha and his family established the Simha and Sara Lainer Fund for Jewish Education. As a result of this fund, the Los Angeles Bureau of Jewish Education has provided financial aid to many students that otherwise would have been unable to study the Torah. The fund has also provided Simha and his family an opportunity to honor religious schoolteachers and early childhood educators for their hard work and dedication.

Simha has also provided critical leadership to promote upper levels of Jewish education. For example, he served on the Board of Directors at the University of Judaism, the Board of Trustees of the Jewish Community Foundation, and the Board of the West Coast Friends of Bar Ilan University. Simha is also the founder of the Western Region of American Friends of the Hebrew University.

In addition to his many educational achievements here in the United States, Simha has also displayed an unwavering commitment to the establishment and maintenance of Israeli institutions of education. Thanks to his leadership and vision, thousands of Israeli and American children will be prepared to lead productive lives and promote religious and cultural tolerance.

Mr. Speaker, we ask our colleagues to join us in saluting Simha for all of his outstanding contributions and to wish him a happy 100th birthday.

RECOGNIZING CHESTER COUNTY CHAPTER 377 OF THE NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES

HON. JIM GERLACH

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. GERLACH. Mr. Speaker. I rise today to recognize Chester County Chapter 377 of the National Association of Retired Federal Employees and all of its members on the 50th anniversary of its founding.

The National Association of Retired Federal Employees (NARFE), an organization of former workers of the United States government, was established in 1921 and has grown to over 420,000 members—each of whom is affiliated with one of 1,591 chapters nationwide. They perform an advocacy role at the national level in promoting and protecting the annuity and health insurance rights of all former employees. It also provides significant services to all United States government retirees by aiding them in understanding and utilizing their individual rights under current directives.

Much like other national advocacy groups, NARFE is separated into state organizations which are further subdivided into a number of local chapters based on population and geography. In Pennsylvania, there is a statewide federation of approximately 22,000 members who likewise are affiliated with Chester County Chapter 377 or one of the 56 other local chapters.

The Chester County Chapter 377 of NARFE encompasses the entire county and has a membership of over 400 retirees. The Chapter holds ten meetings a year hosting outside speakers on a variety of issues important to its members. I am honored to be speaking at their 50th Anniversary luncheon on December 2, 2003. In addition to the meetings, NARFE members are informed on retirement issues through a national monthly magazine and from periodic chapter newsletters.

I ask that my colleagues join me today in recognizing Chester County Chapter 377 of the National Association of Retired Federal Employees, its President Stewart F. Taylor, and all of its members on the 50th Anniversary of the its founding. Half a century of hard work and dedication has led to great success in protecting the benefits of retired federal employees in Chester County, the Commonwealth of Pennsylvania and across the United States.

HONORING THE LIFE AND WORK OF RETIRED BRIGADIER GENERAL PAUL ROBERSON

HON. CIRO D. RODRIGUEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. RODRIGUEZ. Mr. Speaker, I rise today to honor the life and work of retired Brigadier General Paul Roberson. Today, Paul was brought to his final resting place at our Nation's most hallowed ground, Arlington National Cemetery. Our friend and colleague now rests with America's national heroes.

Although born a Californian, Paul's first assignment as an Air Force officer brought him to Texas, and he spent much of his career in the San Antonio area. A veteran of the Vietnam War, Paul's military honors included the Legion of Merit with oak leaf cluster, Bronze Star Medal, Meritorious Service Medal with two oak leaf clusters, National Defense Service Medal, Vietnam Service Medal, Republic of Vietnam Gallantry Cross with Palm and the Republic of Vietnam Campaign Medal.

After a long, distinguished career with the United States Air Force, Paul led efforts in San Antonio to avoid the closure of Kelly AFB during the 1995 BRAC process. With the BRAC decision to close and realign Kelly AFB, Paul wasted no time in working to transform the largest base to be closed in the BRAC process into a productive and vibrant center for aerospace maintenance and international trade. Under his leadership, Kelly AFB became KellyUSA, which now boasts thousands of new jobs and a bright future as a leading industrial and trade center in South Texas. He has left a legacy of success.

Creating KellyUSA was no easy task, and Paul approached it with both determination and optimism. I worked closely with Paul during these years after I came to Congress. Paul always had his list of priority action items and gently, but firmly, made his case. He met obstacles resolutely and with confidence. More often, he welcomed success with humility and appreciation. This is how I will remember Paul.

Paul leaves behind a loving family and a community in San Antonio which he helped shape for the future. We all owe Paul our thanks and appreciation for his life of service to our Nation, to the United States Air Force, to KellyUSA, and to the people of San Antonio. Paul made public service an art, and we all thank him for the tapestry of his life's work.

TRIBUTE TO ROBERT GLOCKNER

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. ESHOO. Mr. Speaker, I rise today to honor Robert Glockner, a distinguished Californian, as he receives the 2003 St. Madeleine Sophie Barat Award. This award, named for the foundress of the Society of the Religious of the Sacred Heart, honors individuals who have made extraordinary contributions to Sacred Heart Schools, Atherton, over a significant period of time. Sacred Heart Schools founded in 1897, includes St. Joseph's School of the Sacred Heart and Sacred Heart Preparatory.

Robert Glockner, Trustee Emeritus, became involved with Sacred Heart School in 1975 when the first of his four daughters to graduate from Sacred Heart Preparatory enrolled in the school. In 1976 he was asked to serve on the Advisory Board that later became the governing Board of Trustees. Mr. Glockner served as the Chair of the School's first major capital campaign and helped to raise $3.5 million and funded the completion of the

McGanney Gymnasium. From 1984 to 1986 he served as Chair of the Board. For his determination and leadership during his twelve years on the Board he was named Trustee Emeritus, a distinction bestowed on only two other Board members.

I'm exceedingly proud to honor his work, his values, and his commitment to Sacred Heart Schools. He is a model for others to emulate and his leadership will touch generations of students to come.

Mr. Speaker, I ask my colleagues to join me in honoring Robert Glockner as he receives the 2003 St. Madeleine Sophie Barat Award for his extraordinary contributions to Sacred Heart Schools.

CONFERENCE REPORT ON H.R. 1588, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

SPEECH OF

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 7, 2003

Mr. UDALL of Colorado. Mr. Speaker, when this House voted on H.R. 1588 in May, I voted against it. I didn't think the bill as it stood then was one I could endorse. The conference report that we are considering today is marginally better. Although I still have strong reservations, I will support the conference report.

We are 2 years into our war on terrorism and still engaged in military action in Iraq. There is no doubt that we must continue to focus on defending our homeland against terrorism, we must support our military personnel, and we must give our military the training, equipment, and weapons it needs to beat terrorism around the world.

That's why I'm in favor of provisions in the bill that support those men and women who have put their lives on the line in Afghanistan and Iraq. The bill provides an average 4.15 percent pay raise for service members, boosts military special pay and extends bonuses, and funds programs to improve living and working facilities on military installations.

I am pleased that the report includes provisions recognizing the importance of non-citizen soldiers and the many sacrifices and contributions they have made. The report eases the naturalization process for these soldiers and their families, reducing to one year the length of service requirement for naturalization during peacetime; allowing soldiers to apply and take oaths for citizenship overseas; and granting permanent resident status to the surviving family of U.S. citizen soldiers who are granted posthumous citizenship as a result of death incurred in combat.

I'm also pleased that this bill will allow approximately one-third of eligible disabled military retirees to receive both their retirement and disability benefits. I would have preferred that the bill extend this "concurrent receipt" to all disabled retirees, but this is a great improvement on the bill the House considered earlier this year—which included no such provisions. I am also pleased that the bill extends the military's TRICARE health coverage to National Guard and reservists and their families if servicemembers have been called to active duty. These are all necessary and important provisions that I support.

I do have a number of serious reservations about the bill.

I don't believe it addresses 21st century threats as well as it could. With the exception of the Crusader artillery system, the Administration and Congress have continued every major weapons system inherited from previous administrations. So although the bill brings overall defense spending to levels 13 percent higher than the average Cold War levels, it doesn't present a coherent vision of how to realign our defense priorities.

The bill still includes provisions that would exempt the Department of Defense from compliance with some requirements under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). There is broad-based support for existing environmental laws—as there should be—and these laws already allow case-by-case flexibility to protect national security. The Pentagon has never sought to take advantage of this flexibility, so it strains belief that these laws are undermining our national security. Indeed, the General Accounting Office has found that training readiness remains high at military installations notwithstanding our environmental laws. I am not persuaded that the changes to these acts proposed by the military are justified.

The bill still includes worrisome provisions to overhaul DOD's personnel system. Although they are improved from the bill the House considered earlier this year, these provisions would still strip DOD's civilian employees of worker rights relating to due process, appeals, and collective bargaining.

Most disturbingly, the bill still includes provisions on nuclear weapons development. This bill provides funding to study the feasibility of developing nuclear earth-penetrating weapons and authorizes previously prohibited research on low-yield nuclear weapons. Low-yield nuclear weapons have an explosive yield of five kilotons or less—"only" a third of the explosive yield of the bomb dropped on Hiroshima. Our obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) require the United States to work towards nuclear disarmament, rather than further increase the size and diversity of our arsenal. By continuing the development of new U.S. nuclear weapons at the same time that we are trying to convince other nations to forego obtaining such weapons, we undermine our credibility in the fight to stop nuclear proliferation.

Mr. Speaker, I am very disappointed that this conference report rolls back civil service protections, environmental protections, and our work in the area of nuclear nonproliferation. But some of these provisions were improved in conference, and the addition of concurrent receipt provisions for our nation's veterans is critical. In view of these changes to the bill, added to my belief in the importance of supporting our men and women in uniform, I will support the conference report today.

TRIBUTE TO ANTHONY SOMOGYI

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. McINNIS. Mr. Speaker, it is with great pride that I pay tribute to Captain Anthony Somogyi from Palisade, Colorado. Anthony is a pilot in the United States Army who recently returned home from serving our country in Operation Iraqi Freedom. Our nation is proud of Anthony's extraordinary valor, and it is my honor today to pay tribute to his dedication and commitment before this body of Congress.

Anthony grew up in Palisade and attended Palisade High School. After graduating, he moved to the University of North Dakota where he earned his bachelors degree and graduated cum laude. Upon leaving college, Anthony decided to employ his considerable education and talents for the betterment of our nation. His patriotism and conviction is a shining example to all young Americans.

Anthony was assigned to the Army's 4th Infantry Division for a six-month deployment in Iraq. While there, he was an Air Mission Commander whose team flew over 80 combat missions. Anthony's unit participated in Task Force Iron Horse, the operation responsible for seizing numerous airfields and countless weapons throughout Iraq. In addition, he played a role in securing the border between Iran and Iraq.

Mr. Speaker, I am proud to pay tribute to Captain Anthony Somogyi's courageous service. His selfless desire to protect the freedom of all Americans is a reflection of his unwavering love for our country. I am extremely proud of Anthony and his fellow servicemen and women, Thank you and welcome home.

RECOGNIZING JASON THOMAS HANSER FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Jason Thomas Hanser, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 66, and in earning the most prestigious award of Eagle Scout.

Jason has been very active with his troop, participating in many Scout activities. Over the 7 years Jason has been involved with Scouting, he has earned 37 merit badges and has held numerous leadership positions, serving as assistant senior patrol leader, patrol leader, librarian, and assistant scoutmaster in Troop 66. Jason is also a Brave in the Tribe of Mic-O-Say.

For his Eagle Scout project, Jason identified and mapped out the location of all veterans buried in the cemetery in Plattsburg, Missouri. He identified over 350 veterans dating back to the Civil War. His project aided the American Legion in placing flags on Memorial Day.

Mr. Speaker, I proudly ask you to join me in commending Jason Thomas Hanser for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

RECOGNIZING NATIONAL DISABILITY EMPLOYMENT AWARENESS MONTH

HON. DAVID SCOTT

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. SCOTT of Georgia. Mr. Speaker, I am pleased to recognize October as National Disability Employment Awareness Month (NDEAM). Congress designated each October as National Disability Employment Awareness Month in order to increase the public's awareness of the contributions and skills of American workers with disabilities. Various programs carried out throughout the month also highlight the specific employment barriers that still need to be addressed and removed. People with disabilities face many barriers to employment, including everything from transportation to contending with the prevailing attitude surrounding the disabled, but many of them want to work. They want the opportunity. The key is to focus on the abilities of the person, not the disabilities.

This effort to educate the American public about issues related to disability and employment actually began in 1945, when Congress enacted a law declaring the first week in October each year "National Employ the Physically Handicapped Week." In 1962, the word "physically" was removed to acknowledge the employment needs and contributions of individuals with all types of disabilities. In 1988, Congress expanded the week to a month and changed the name to "National Disability Employment Awareness Month." This year's theme for National Disability Employment Awareness Month was "America Works Best When All Americans Work."

I am also grateful to Wayne McMillon, CEO of the Bobby Dodd Institute, Lori Nipp, Board Member of the Bobby Dodd Institute, Megan Dakake of the Bobby Dodd Institute and Dorothy Cochran, CEO of Clayton County Worktec who work actively to prepare individuals with disabilities for employment, to expand employment opportunities available to them and to improve the quality of life for people with disabilities in Georgia. Each of these individuals work on behalf of the Javits-Wagner-O'Day Program which provides employment opportunities for nearly 40,000 Americans who are blind or have other severe disabilities.

The Javits-Wagner-O'Day (JWOD) Program uses the purchasing power of the Federal Government to buy products and services from participating, community-based nonprofit agencies dedicated to training and employing individuals with disabilities. In the United States, the program serves 40,000 people with disabilities and 972 Georgians with disabilities earned nearly $3 million in wages last year as a result of JWOD.

A coordinated effort on behalf of the Committee for Purchase From People Who Are Blind or Severely Disabled (the Federal agency that oversees the Program), National Industries for the Blind (NIB) and NISH-Creating Employment Opportunities for People with Severe Disabilities, the JWOD Program provides people who are blind or who have other severe disabilities the opportunity to acquire job skills and training, receive good wages and benefits and gain greater independence and quality of life. Through the JWOD Program, people with disabilities enjoy full participation in their community and can market their JWOD-learned skills into other public and private sector jobs. It is with great pleasure that I recognize the great contributions of American workers with disabilities and I encourage others to do the same every day of the year.

TRIBUTE TO JIM L. RIDLING FOR HIS TIRELESS COMMUNITY SERVICE TO MONTGOMERY, AL, AND MAXWELL AIR FORCE BASE

HON. TERRY EVERETT

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. EVERETT. Mr. Speaker, Montgomery, Alabama, in my congressional district, is the home to Maxwell Air Force Base and the Air University. It is without a doubt the crown jewel in Air Force excellence and base operations. This didn't just happen by accident. Many people have played major roles in building the necessary synergy of local and federal support to transform Maxwell and Montgomery into the success stories they are today. One of those key players is Jim L. Ridling, who is retiring from Southern Guaranty Insurance.

As the Montgomery Area Chamber of Commerce points out, senior Air Force leaders continue to praise the excellent relationship between the Montgomery and Maxwell-Gunter as the best in the Air Force. No doubt, some of that praise goes to the man who twice presided over the "Wright Flyers", served as chairman of the Montgomery Area Chamber. of Commerce's Military Council, and labored as a member of the Executive Committee of the Montgomery Air Force Association.

Jim Ridling has worked behind the scenes and sometimes out front to make sure the needs of Maxwell and other area defense activities were met both locally and in Washington. This is no small task and the rewards are big as Montgomery continues to enjoy a local defense economic impact of well over $1 billion annually.

All I have mentioned really doesn't begin to scratch the surface of Jim's community service. He's also a member of the Board of Directors of the Business Council of Alabama, a member of Board of Directors of the Montgomery Area Chamber of Commerce, a member of the Board of Directors of the Montgomery Museum of Fine Arts, a member of the School of Business Advisory Council of Troy State University, and a member of the Board of Directors of the Boy Scouts of America. And this remarkable record doesn't even include his "real" job.

This week we pause to honor Jim Ridling as he retires from the post of President and CEO of Southern Guaranty Insurance Company in Montgomery. Jim was never content with building Southern Guaranty into a business success. He also focused his sights on making Montgomery a continued success. And we are ever grateful. I wish him and his wife Catherine all the best, but I somehow believe that Jim's days of service to Montgomery are far from over.

TRIBUTE TO COLONEL MITCHELL PAIGE

HON. MARY BONO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mrs. BONO. Mr. Speaker, I rise today to recognize and pay tribute to the life of one of our nation's greatest, and most decorated, war heroes, Marine Colonel Mitchell Paige. Colonel Paige passed away this past weekend on November 15, 2003 in his home in La Quinta, California. He is survived by his wife Marilyn, his six children, fifteen grandchildren and six greatgrandchildren. I want to extend my deepest condolences to Marilyn, who is a wonderful woman and whom I know Colonel Paige loved very deeply, as well as her entire family.

Colonel Paige served with distinction in the Marine Corps for nearly twenty-eight years with a career that spanned from the date of his enlistment on September 1, 1936 to his retirement on July 1, 1964. The numerous awards and medals bestowed upon Colonel Paige included the Medal of Honor, the Purple Heart, and the Presidential Unit Citation.

President Franklin D. Roosevelt bestowed the Medal of Honor, the highest award for valor given a member of the U.S. Armed Forces, on then Platoon Sergeant Paige for his heroic actions on October 26, 1942 during World War II's Battle of Guadalcanal. His career and service to our nation are so exemplary that the Commandant of the Marine Corps, Gen. Michael W. Hagee, added Colonel Paige's autobiography, "A Marine Named Mitch," to the U.S. Marine Reading Program. His actions are so legendary that the Hasbro Toy Company used his likeness for their 1998 Medal of Honor GI Joe model.

Words cannot justly describe the valor and steadfastness to duty that were displayed by Colonel Paige during the Battle of Guadalcanal. To understand his heroism, one must first understand the importance of the airstrip that his Marine Platoon fought to control during the fall of 1942. During that fall, the Japanese Army was building an airstrip in the Solomon Islands from which they would be able to disrupt communication and supply lines between the United States, Australia and Great Britain. On August 7, 1942, in a surprise attack, the Marines landed and quickly seized control of the field. The Marines completed construction and put the field into operation. In the battles that followed, the two sides continued to struggle for control of the island.

On October 26, 1942, Platoon Sergeant Paige led his platoon of thirty-three men in defending the critical ridge from which the opposing forces planned to launch their final assault against the airfield. During the fighting, each and every member of Paige's platoon was wounded or killed. The only Marine able to fight, Paige moved up and down the line pulling the dead and wounded back into their foxholes. Sergeant Paige held the Japanese Army back by firing short bursts from each of the four water-cooled Browning machine guns that his platoon had been given to defend the critical ridge. His actions convinced the Japanese that the crest of the hill was well defended. In truth, it was, defended by a single Marine named Platoon Sergeant Mitchell Paige.

Sergeant Paige's heroism did not end there. In the morning mist, near the end of the fighting, Sergeant Paige grabbed one of the water-cooled Brownings, a job for which the weapon was never designed, and walked down the hill towards the location of the enemy who were preparing to outflank his position. Firing as he went, Sergeant Paige took out the remaining enemy forces on the ridge. Later, joined by a makeshift line consisting of communication personnel, riflemen, runners, cooks and messman, Sergeant Paige led a bayonet counterattack against the enemy. The counterattack was successful and the Japanese forces, having suffered staggering losses, receded all because a single Marine fought with valor and distinction on a small island a little over sixty-one years ago.

After the Battle of Guadalcanal, Colonel Paige continued to serve in the Marines for another twenty-two years. His service and love of country can best be summed up in his own words: "I am proud to be a citizen of a nation whose objective is peace and goodwill for all mankind. A nation which has contributed so much for the benefit of peoples all over the world. A nation, under God, with liberty and justice for all. I am proud to be an American. I can never believe it is old fashioned to love our Flag and Country nor can I ever believe it is being square to stand in readiness behind our Flag to defend those ideals for which it stands against all enemies, foreign and domestic."

America owes Colonel Paige a debt of gratitude. His actions, the actions of a single Marine, most certainly turned the tide in the Pacific Conflict during World War II. His actions saved countless lives of American servicemen and his actions quite literally won the War. Mr. Speaker, I rise today to recognize and pay tribute to the life of a man who lived with valor and honor, a man who loved his country and fought bravely defending her, a man who was a patriot and an American Hero, Marine Colonel Mitchell Paige.

PERSONAL EXPLANATION

HON. SUE WILKINS MYRICK

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mrs. MYRICK. Mr. Speaker, I was unable to participate in the following votes due to a personal matter that kept me at home. If I had been present, I would have voted as follows:

Rollcall vote 620, on S.J. Res. 22, recognizing the Agriculture Research Service of the Department of Agriculture, I would have voted "yes."

Rollcall vote 621, on S.J. Res. 18, commending the Inspectors General, I would have voted "yes."

Rollcall vote 622, on H. Con. Res. 299, honoring Mr. Sargent Shriver, I would have voted "yes."

Rollcall vote 623, on the motion to change the convening time, I would have voted "yes."

COMMENDING THE RECORDING ACADEMY ON THE ANNOUNCEMENT OF ITS CULTURAL POLICY INITIATIVE

HON. KAREN McCARTHY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. MCCARTHY of Missouri. Mr. Speaker, I rise today to commend the National Academy of Recording Arts and Sciences, also known as the Recording Academy, on the announcement of the GRAMMY Cultural Policy Initiative.

The Recording Academy is dedicated to improving the quality of life and cultural condition for music and those who make it. An organization of 18,000 musicians, songwriters, producers and other recording professionals, the Recording Academy is internationally known for the GRAMMY Awards, and is responsible for numerous groundbreaking outreach, professional development, cultural enrichment, education and human services programs.

An outstanding example of the Recording Academy's commitment to music is the National Recording Registry at the Library of Congress. It was an honor for me to be a sponsor with Representative STENY HOYER of the National Recording Preservation Act of 2000 which established the registry. The Recording Academy now works with the Library of Congress to ensure the preservation of our national audio heritage for the enjoyment and education of generations to come. As a result of these efforts the National Recording Registry at the Library of Congress includes early recordings by ragtime composer Scott Joplin, inventor Thomas Edison, and singer Bessie Smith, plus more recent works by Bob Dylan, Aretha Franklin, and Frank Sinatra.

The first 50 recordings in the National Recording Registry truly represent the breadth and brilliance of our recorded heritage in both music and the spoken word, and each year more landmark recordings will be preserved and protected through their addition to the Registry.

To further advance its cultural mission, the Recording Academy unveiled its GRAMMY Cultural Policy Initiative on September 17 in Washington. Neil Portnow, President of the Recording Academy, launched this Initiative on behalf of NARAS to advance the rights of recording artists through advocacy, education and dialogue. Coordinated by Daryl Friedman, Senior Executive Director of the Washington office of the Recording Academy, the advocacy team will utilize its chapters and membership nationwide to educate the public through seminars and other grassroots events.

The Academy is also set to launch the GRAMMY Town Hall, a nationwide series of discussions with music industry leaders on critical issues such as file sharing, copyright protection, and intellectual property.

Mr. Speaker, the importance of music to my life and to the lives of people around the world cannot be overstated. Music transcends borders and breaks down cultural barriers. Young Americans reap the lifetime benefits from music instruction in our schools. Music creates timeless memories. Music strikes a chord in all of us.

We must also recognize the economic impact of music. One of the bright spots of the U.S. trade economy is our recording industry. Recorded music generates a trade surplus for our nation and is one of America's leading exports, touching virtually every nation on the planet.

Mr. Speaker, please join me in recognizing Mr. Portnow, Mr. Friedman and Recording Academy Chairman Dan Carlin for launching this important initiative.

PERSONAL EXPLANATION

HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, in order to deal with the recent floods that struck the Lynwood, South Gate, Watts, and Willowbrook areas of my district, I was absent for rollcall vote 620 on S.J. Res. 22, recognizing the Agricultural Research Service; rollcall vote 621 on S.J. Res. 18, commending the service of Inspectors General; rollcall vote 622 on H. Con. Res. 299, honoring Sargent Shriver; and rollcall vote 623 on the motion to change the meeting times for Tuesday, November 18, 2003, to 10 a.m. for Morning Hour and 11 a.m. for legislative business.

Had I been present, I would have voted "aye" on each of these rollcall votes.

PERSONAL EXPLANATION

HON. SOLOMON P. ORTIZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. ORTIZ. Mr. Speaker, due to official business in my district, I was unable to vote during the following rollcall votes. Had I been present, I would have voted as indicated below.

Rollcall No. 620, "yes"; rollcall No. 621, "yes"; rollcall No. 622, "yes"; and rollcall No. 623, "yes."

IN RECOGNITION OF THE 23RD STREET ASSOCIATION

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mrs. MALONEY. Mr. Speaker, I rise to pay tribute to the 23rd Street Association on the occasion of their Annual Award Luncheon. This year, the 23rd Street Association is honoring Cushman & Wakefield and Kenneth Krasnow for their dedication and service to the community.

Named New York Top Tenant-Rep Firm on Co-Star's Top 50 Manhattan Office Leases list, Cushman & Wakefield is the largest New York-based commercial real estate firm, representing tenants in three of the city's top 10 deals last year. The firm's retail brokers have also won the coveted Real Estate Board of New York (REBNY) Retail Deal of the Year Award every year since the award's inception. Cushman & Wakefield is New York City's largest property manager, managing approximately 52 million square feet of property. Founded in New York City in 1917, Cushman & Wakefield now operates 163 offices in 49 countries and employs over 11,000 professionals.

Ken Krasnow, Senior Managing Director for the New York Metro Region, joined Cushman & Wakefield in 1987 and spent ten years as a commercial leasing broker in Midtown Manhattan. Mr. Krasnow rose through the ranks, serving as Director of Business Development and Regional Managing Director for Cushman & Wakefield's Stamford and Long Island offices before his promotion to Senior Managing Director. Mr. Krasnow has responsibility for the firm's offices in midtown and downtown Manhattan, White Plains, NY, Stamford, CT, and Melville, Long Island, with approximately 175 brokers generating $200 million in annual revenue. Recently named one of Real Estate New York's "40 under 40" and one of Real Estate Forum's "next great leaders," Mr. Krasnow is responsible for the strategic direction, business growth and development at Cushman & Wakefield as well as profitability of the region for the firm.

Despite his heavy business obligations, Mr. Krasnow has made time for civic and charitable works. He is active in numerous organizations, including REBNY, YM/WREA and the Westchester County Association, and serves as a member of the boards of the National Conference for Community and Justice, St. Mary's Foundation for Children and the Avenue of the Americas Association.

I would also like to commend the 23rd Street Association for its success in enhancing the quality of life for families and businesses in the area bounded by the Hudson and East Rivers from 17th to 28th Street. Incorporated in 1929 by 22 local business people, today's 23rd Street Association has approximately 300 members. Their projects include conducting business-training programs in local junior high schools, mobilizing the community to support a $2.5 million renovation of Madison Square Park, working with the local police to combat drug dealing and other crime, and developing annual summertime concert programming and children's entertainment in the community.

The Association is fortunate to represent individuals and organizations that are so committed to the advancement of their community. In recognition of the invaluable contributions and the selfless efforts of tonight's honorees, I ask that my colleagues join me in saluting the 23rd Street Association on 74 extraordinary years of service to the community.

APPOINTMENT OF CONFEREES ON H.R. 1904, HEALTHY FORESTS RESTORATION ACT OF 2003

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. ANDREWS. Mr. Speaker, I would like to join with my colleague, the Honorable BARTLETT in asking the members appointed as conferees of H.R. 1904 to preserve the language, approved by our Senate colleagues, enhancing the penalties for interstate commerce in cockfighting and dog fighting. Our freestanding legislation (H.R. 1532), which I have co-sponsored with Mr. BARTLETT, already has the bipartisan support of 122 cosponsors, and we are confident of the strong support for this legislation in the House. The House has also previously approved an amendment to the farm bill that covered the core provision of our legislation: increasing the maximum jail time to allow for the imposition of felony-level penalties for violations of Section 26 of the Animal Welfare Act.

We are not aware of any organizational opposition to the legislation, except from groups and individuals directly involved in dogfighting and cockfighting activities. On the other hand, we have secured endorsements from a wide range of veterinary, animal welfare, agricultural, and law enforcement organizations. In fact, more than 80 state and local law enforcement agencies have endorsed this legislation, as a necessary complement to their law enforcement efforts.

We believe that animal welfare warrants passage of the legislation. Both dogfighting and cockfighting involve animals pumped up with stimulants to make them more aggressive, whose handlers force them to keep fighting even as they suffer terrible injuries. Children are often exposed to these violent spectacles and taught that such animal suffering is enjoyable entertainment. Some dogfighters steal family pets to use as bait for training their dogs. Others abandon their fighting dogs, leaving them to roam and wreak havoc in our neighborhoods, or end up at animal shelters where they cannot be adopted due to their aggressive training. All in all, animal fighting is a brutal business that merits serious penalties.

However, there is also an economic reason to enact this legislation. In the fall of 2002, there was an outbreak of Exotic Newcastle Disease in southern California. The California state veterinarian has documented that the network of cockfighting enthusiasts in the Southwest was primarily responsible for the dramatic spread of this avian disease—which resulted in quarantines in California, Arizona, Nevada and Texas, and an extreme disruption of normal agricultural practices. Before the containment effort was completed, the federal government spent $200 million on containment and compensation, and ordered the killing of 3.8 million birds, primarily from commercial poultry operations. As a result, the Texas Poultry Federation and other agricultural organizations have embraced our legislation. By increasing the penalties for animal fighting, we may be able to shrink the size of the cockfighting industry and prevent future outbreaks of END, or other diseases that jeopardize our agriculture industry.

I thank the conferees for their consideration and hope that they will agree to include the Senate-passed animal fighting provisions in the final Healthy Forests legislation.

A BILL TO EXPAND THE TAX BENEFITS FOR THE NEW YORK LIBERTY ZONE

HON. AMO HOUGHTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. HOUGHTON. Mr. Speaker, today I am joined by my colleague from New York, Mr. RANGEL, in introducing a bill to extend the period that the New York Liberty Zone bonds can be issued by New York State and New York City, and to make other changes that would enhance the tax provisions that were included in the original New York Liberty Zone Benefits legislation. The provisions were part of the Job Creation and Worker Assistance Act of 2002, enacted on March 9, 2002, in order to aid in the rebuilding of downtown New York City after the devastation caused by the September 11, 2001, terrorist attack.

A loud thank you to the Congress for passing the original legislation. The benefits contained in the package were important and needed. The Liberty bonds have been an invaluable tool for those developments already assisted. They have been utilized, but not to the full extent, primarily due to the economic downturn that was underway and accelerated after the tragedy. While the market for new commercial real estate has been weak, it is estimated the bond allocation for residential projects will be exhausted by the end of next year.

The changes requested include: (1) extend the Liberty bonds expiration date to December 31, 2009 from December 31, 2004 to reflect a more realistic time line for the recovery of the commercial real estate market in New York City, (2) increase the amount of the Liberty bonds that can be used for residential development projects from $1.6 billion to $3.0 billion to provide more flexibility to accommodate greater than expected demand for new housing in Lower Manhattan, (3) eliminate the 100,000 square foot minimum for non-public utility projects outside the Liberty Zone, which has greatly hindered the development of much needed smaller utility projects, and (4) a technical correction to Section 1400L(c), which would permit eligible entities to "opt out" of the mandatory provision stating that taxpayers must depreciate their Liberty Zone leasehold improvements over an accelerated five year term. The latter change would be retroactive and would be consistent with other similar accelerated depreciation laws, and allows taxpayers to depreciate property over the normal depreciation period.

These changes are in the spirit of the original legislation. They merely reflect the different conditions, which exist now that did not exist in March of 2002. So in essence, we believe they are important to the recovery of New

York City. They will help to ensure the full utilization of the tax benefits provided in the original Liberty Zone legislation. We urge our colleagues to support this important legislation.

HONORING THE GRAND OPENING OF EXCHANGE CITY—NEW ORLEANS

HON. DAVID VITTER

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. VITTER. Mr. Speaker, I rise today to honor the grand opening of Exchange City—New Orleans, which took place on November 5th, 2003 at the City Park Campus of Delgado Community College. Through the partnership of Junior Achievement and the Learning Exchange, every fifth grade student in a 12-parish area of Southeast Louisiana will have the opportunity to experience first-hand how our American free enterprise system works and the effects of the economy on their everyday lives.

As the first Exchange City in Louisiana and the 18th Junior Achievement Exchange City in the United States, this 10,000 square foot indoor virtual city is equipped with sidewalks, a town square, a City Hall, and fourteen businesses. The Exchange City program includes a six-week curriculum covering English, Language Arts, Reading, Mathematics, Economics, Civics, and Data Analysis material. Fifth grade teachers will receive training on this curriculum and teach it to their students before their one-day visit to Exchange City.

During their one-day trip to Exchange City, students will elect a judge and a mayor to preside over their city. They will apply for jobs, receive pay checks, and take out loans to run their businesses. Students will operate a broadcast center with radio and television stations and learn about paying utility bills.

This innovative hands-on program is a wonderful opportunity for students in Southeast Louisiana to learn the importance of education. They will discover how the material they are learning in their classrooms directly applies to the real world. I commend Junior Achievement and all supporters of Exchange City—New Orleans for providing our children with such an outstanding and practical educational experience.

ARMED FORCES RELIEF TRUST PSA PROGRAM

HON. FRANK PALLONE JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. PALLONE. Mr. Speaker, I rise today to recognize a program that provides an important service to the men and women serving in our military.

With our armed forces deployed for extended tours of duty in both Iraq and Afghanistan, the pressures placed on family members left behind can be enormous. The longer our fighting men and women are stationed abroad, the more these needs continue to escalate.

Today, more than 140,000 troops are fighting the war on terrorism in Iraq, in Afghanistan, and around the world.

Many of our brave men and women have now been deployed much longer than expected. Some active units served in Afghanistan, returned home for six months, and were immediately re-deployed to Iraq. In many cases, a sole breadwinner is deployed, making it difficult on their family left behind to cope with medical bills or other unexpected expenses.

Today, I would like to recognize an effort undertaken by local radio and television stations to help address these issues. The National Association of Broadcasters is leading its local television and radio stations in a partnership with the Armed Forces Relief Trust to raise funds for military families in need.

By producing, distributing and airing radio and television Public Service Announcements, the NAB and its radio and television broadcast members are helping raise funds for those military families in need.

Last year, the four emergency assistance programs representing the Army, Navy, Air Force, and Marine Corps distributed more than $109 million in interest-free loans and grants to military families. Now that the four programs have combined efforts in one Trust, and more importantly, now that the trust is receiving generous access to the airwaves to get out its message, they will undoubtedly be able to provide even more assistance.

Mr. Speaker, all of us count on our service people who are far from home protecting us. Their families are enduring enough hardship in waiting for them to return. It is incumbent upon all of us to ensure their families do not want financially during this most difficult time.

I would like to compliment the local radio and television stations that are involved in this effort. As small business people, they are dedicating a valuable resource—airtime—to a timely and important cause. I salute their efforts.

H. CON. RES. 288, HONORING SEEDS OF PEACE FOR ITS PROMOTION OF UNDERSTANDING, RECONCILIATION, ACCEPTANCE, COEXISTENCE, AND PEACE AMONG YOUTH FROM THE MIDDLE EAST AND OTHER REGIONS OF CONFLICT

HON. JOSEPH CROWLEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. CROWLEY. Mr. Speaker, I rise in strong support of H. Con. Res. 288, Honoring Seeds of Peace for its promotion of understanding, reconciliation, acceptance, coexistence, and peace among youth from the Middle East and other regions of conflict.

I am a strong supporter of Seeds of Peace, which brings youngsters from conflict areas together to literally sow the seeds of peace and to develop the next generation of leaders. I have had the privilege of working with Seeds of Peace during my time in Congress and have seen the benefits of this program.

During July, Seeds of Peace had a breakfast in Congress and I was able to participate and eat with several campers. During the breakfast I had the opportunity to speak with several second year campers. Two of these campers were an Israeli and a Palestinian, these two boys had become close friends and they told me that regardless of the violence going on around them at home they still made efforts to see each other.

They told me about the difficulties they sometimes faced when security was tight entering Israel but they still made their efforts to stay in contact. The boys told me that while they don't agree on everything they still work together to find a solution to whatever problem may arise, they are able to work it out.

Mr. Speaker, whether they are Arab or Jew, Greek or Turkish, Protestant or Catholic, Indian or Pakistani, bringing people together will achieve a lasting return in understanding and toleration.

I firmly believe that by working together, conflict can be overcome. The United States Congress, and our country should continue to support these people to people partnerships, which lay the groundwork for cooperation, coexistence and ultimately peace in the future.

TRIBUTE TO FRED AND ROXY LIGRANI

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. MCINNIS. Mr. Speaker, it is with great pride that I rise today to recognize Fred and Roxy Ligrani of Grand Junction, Colorado. As farmers, Fred and Roxy have spent six decades working tirelessly to feed their fellow countrymen. They are making a difference in their community and touching the lives of their many neighbors in the Grand Valley. I would like to honor their accomplishments today before this body of Congress and this nation.

For the Ligrani brothers, farming runs in their blood; they grew up tending vegetables. Fred and Roxy's grandfather, Rocco, bought land in Grand Junction and developed it as a homestead in 1906. Respect and appreciation for the land, as well as knowledge of how best to cultivate it, are a rich heritage that the Ligrani family passes on from generation to generation.

Fred and Roxy's dedication to farming is evident from their customer's loyalty. The Ligranis have been recognized by American Vegetable Grower Magazine three times in the past. Even as the Grand Valley becomes urbanized, the Ligrani brothers remain focused on producing quality produce. They have maintained this dedication for 60 years.

Mr. Speaker, Fred and Roxy Ligrani have shown an extraordinary dedication to the citizens of Grand Junction. Their strenuous efforts offer hope to a world that is increasingly dependent on technology. These two talented and determined men are a shining example of the rewards of hard work and perseverance. It is my great honor to recognize the Ligranis before this body of Congress and this nation today. I wish them all the best in the future.

TRIBUTE TO MR. CHARLES P. IVERSEN

HON. BILL PASCRELL, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. PASCRELL. Mr. Speaker, I would like to call your attention to an exceptional individual who I have long been proud to call my friend, Mr. Charles P. Iversen. On Friday, November 21, 2003, members of the Plumber's Union Local No. 14 will celebrate Charlie Iversen's retirement from the union by coming together to pay tribute to Charlie and his lifelong commitment to and leadership in the labor movement.

Over the past 45 years, Charlie Iversen has worked tirelessly on behalf of the men, women, and families in Plumber's Local No. 14. Using his administrative experience and talent for creative leadership to greatly improve the work environment and expand the business interests for plumbers throughout Northern New Jersey, Charlie has left an indelible mark on the lives of many, demonstrating the positive difference that a single person can make. It is therefore only fitting that he be recognized in this, the permanent record of the greatest freely elected body on earth.

In 1955, Charlie Iversen embarked upon what would become a distinguished career in the field of plumbing engineering when he took a position with William Zabransky Jr., Inc. During his time in the employ of William Zabransky, Charlie joined Local No. 326 as an Apprentice, and pursued certification in a UA Training Program at Purdue University. Upon his graduation from Purdue, he became an instructor at Plumber's Local No. 14 Training School while continuing to augment his own personal education at Kean College, Rutgers University, William Paterson College, and Fairleigh Dickinson University.

In 1982, after 27 years as an esteemed employee of William Zabransky, Jr., Inc., Charlie was elected to the position of Business Agent of Plumber's Local No. 14. In this capacity, Charlie exhibited his diligence as an administrator and his boundless enthusiasm as a spokesman for the business interests of Local No. 14, leading him to be named the Union's Business Manager/ Administrator in 1996.

Perhaps most inspiring is the way in which Charlie Iversen has balanced his love for his work with his interest in furthering the cause of the labor movement. As an active member of the American Society of Plumbing Engineers, a former Vice President of the New Jersey State Association of Pipe Trades, a Trustee of Plumber's Local No. 14 Pension, Welfare, Education, and Annuity Funds, and a Treasurer of Local No. 14's Political Action Committee, Charlie has worked hard to ensure that members of Local No. 14 receive the representation and benefits that they deserve. Through word and deed, Charlie has spent the last 45 years demonstrating that the only real success in life comes from a whole-hearted commitment to serving the members of the community in which you live and work.

Mr. Speaker, the job of a United States Congressman involves so much that is rewarding, yet nothing compares to recognizing the extraordinary efforts of individuals like Charlie Iversen. I ask that you join our colleagues, the members of the Plumber's Union Local No. 14, Charlie's family and friends, and me in recognizing Charles P. Iversen for his outstanding service to the families of Local 14.

TRIBUTE TO THE ALTOONA SYMPHONY ORCHESTRA

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. SHUSTER. Mr. Speaker, I rise today to congratulate the Altoona Symphony Orchestra on its 75th Anniversary and to thank the organization for the high-quality music with which it has provided its community.

The Gearhart String Ensemble was founded in the early years of the twentieth century upon the tradition of the early railroad bands and orchestras that were abundant throughout central Pennsylvania at that time. In 1928, the then strictly volunteer orchestra compiled of 24 musicians made its debut under the direction of Russell Gearhart. Since then, it has grown to employ more than 75 musicians and was renamed the Altoona Symphony Orchestra.

Although 75 years have passed, the orchestra maintains its youthful fervor with its diverse repertoire and inspiring attitude. The constantly changing roster of nationally and internationally renowned guest artists renders a different sound for every concert, keeping the audience attentive and entertained. With this vast array of musical talent, the symphony orchestra provides an invaluable cultural experience to the communities of Central Pennsylvania through its mastery of classical music pieces.

The orchestra continues to produce music that rivals the masterful and highly acclaimed sound of the Boston Pops, and is recognized as one of the outstanding Pennsylvania symphony orchestras. As a result of the dedicated, hard work of its Board of Trustees, the orchestra has progressed immensely, and it will undoubtedly continue to do so under its guidance and leadership. I congratulate the Altoona Symphony Orchestra on a wonderful 75 years and look forward to its sounds of tomorrow.

PERSONAL EXPLANATION

HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. GUTIERREZ. Mr. Speaker, I was unavoidably absent from this Chamber on November 17, 2003. I would like the record to show that, had I been present, I would have voted "yea" on rollcall votes 620, 621, 622 and 623.

HONORING SOUTHERN CALIFORNIA FIRE FIGHTERS

HON. HILDA L. SOLIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. SOLIS. Mr. Speaker, I rise today to speak about the courage of fire fighters from Los Angeles County Fire Department. Firefighters in my community, from the cities of Azusa, Baldwin Park, Bradbury, Claremont, Covina, Duarte, El Monte, Glendora, Irwindale, Rosemead, San Dimas, South El Monte, Temple and Unincorporated areas of Los Angeles County, fought the fires and saved the lives and homes of countless people. Had it not been for the rapid response and bravery of firefighters, the loss of life, the damage to residents, housing, and commercial property would have been much worse.

I am hopeful that if we learn one lesson from this horrible disaster, it will be that more financial resources need to go towards helping fire departments protect people. According to the Forest Service, more than 90 percent of wild land fires are the result of human activity, and fires are almost twice as likely to start near roads than in the wilderness.

Even though they are adjacent to some of America's largest communities, Southern California forests only receive a fraction of the money they need to manage fire every year. Last year, Southern California forests received only $4 million out of the $53 million spent on California fire reduction—a mere 8 percent of the fire funding distributed to California's National Forests.

The Southern California fires demonstrate that the federal government must spend its fire management dollars near communities. Firefighters should not be put in harms way when we can prevent future tragedies by making communities near forest areas.

Our Nation is blessed with brave men and women who protect our homeland from every potential danger and the risk of their own safety to demonstrate their commitment to the state of California. They are true American heroes and I thank them on behalf of my constituents.

PERSONAL EXPLANATION

HON. GINNY BROWN-WAITE

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, I rise today to make a clarification to my voting record. I returned early this morning from a Congressional Delegation trip to Iraq. Unfortunately, while I was away, I was unable to cast a recorded vote on three measures passed yesterday. Had I been present, I would have voted in favor of:

S.J. Res. 22—A resolution recognizing the Agriculture Research Service of the Dept of Agriculture.

S.J. Res. 18—A resolution commending the Inspectors General.

H. Con. Res. 299—Honoring Mr. Sargent Shriver.

SENSE OF THE CONGRESS RESOLUTION TO COMBAT OBSTETRIC FISTULA

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. TOWNS. Mr. Speaker, today, I rise to introduce a Sense of the Congress resolution which will draw attention to a tragedy which affects thousands of women around the world each year.

Obstetric fistula is a major pregnancy-related complication. It occurs when a woman is in obstructed and prolonged labor without medical help. The prolonged pressure of the baby's head against the mother's pelvis cuts off the blood supply to the soft tissues surrounding her bladder, rectum, and vagina. Because of the prolonged and difficult labor, the baby usually dies. However, if the mother survives, the physical and emotional consequences are devastating. The injured tissue soon rots away, leaving a perforation, or fistula which causes the woman to lose control over urination and/or bowel function. Because of a lack of understanding about the cause and treatment of fistulas, women who are fistula sufferers are often abandoned by their husbands, forced out of their homes, and ostracized by family.

Although currently virtually unknown in the western world, fistulas were once common in the United States and Europe before the advent of widespread maternal healthcare and hospital births. The current estimates of one million fistula sufferers may be very conservative. Actual sufferers may number over 3 million throughout the developing world. This suffering can be readily ameliorated with reconstructive surgery. Fistula surgical repair has up to a 90 percent success rate and ranges in cost from $100–$400. Although this surgery is inexpensive by American standards, for women in the developing world, this cost is prohibitive. Even if the surgery is affordable, many women in developing countries are either unaware of treatment options or unable to access treatment.

A recent report, Obstetric Fistula Needs Assessment: Findings from Nine African Countries, commissioned by the United Nations Population Fund (UNFPA) details fistula occurrence in nine countries in sub-Saharan Africa: Benin, Chad, Malawi, Mali, Mozambique, Niger, Nigeria, Uganda and Zambia. There are currently 35 hospitals in the aforementioned countries which have the capacity to conduct fistula surgery; but are without the financial resources.

The United States House of Representatives should address this issue. To that end, I am introducing a Sense of the Congress Resolution which acknowledges the need of the U.S. government to take steps to end the needless suffering of these women.

I request that my colleagues support this bill.

TRIBUTE TO THE HUNTINGDON LADY BEARCATS

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. SHUSTER. Mr. Speaker, I rise today to congratulate the Huntingdon Lady Bearcats on their PIAA, Class AA volleyball State championship.

The Bearcats overcame the odds against them and handily defeated their competition in the tournament. United behind their strong coach, Priscilla Gibboney, the high school girls got everyone involved in each match, allowing the underestimated team to hand out losses to taller, more experienced opponents.

The Huntingdon Lady Bearcats have claimed two team State championship titles in the school's history, which is a great testimony to the unique character of this team. They fought through obstacles and kept their composure, and their unwillingness to quit led to their perseverance. I congratulate the Huntingdon Lady Bearcats on their State championship and I look forward to hearing of their continued success in next year's season.

Led by head coach Priscilla Gibboney and assistant coach David Kemp, the 13 members of this championship team include Seniors Tara McMinn (Captain), Megan Goss, Laura Madden, Meredith Orr, Katie Criswell, Jordan Rackley, and Sara Kylor; Juniors Hadley Hammers, Bethany Kozak, and Jenna Sheffield; Sophomores Olivia Hallahan and Emily Kemp; and Freshman Greta Gibboney. Congratulations one and all.

PERSONAL EXPLANATION

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. MENENDEZ. Mr. Speaker, yesterday I was tending to official business and was not present for Roll Call Votes 620 through 623. The votes were on Senate Joint Resolutions 22 and 18, House Concurrent Resolution 299, and on a motion to the meeting time of the House, respectively. Had I been present, I would have voted "yea" on these measures.

TRIBUTE TO MOTHER ESSIE BAXTER JONES

HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. LOFGREN. Mr. Speaker, I rise to congratulate Mother Essie Baxter Jones, for her 100th birthday celebration.

Mother Essie Baxter Jones was born the third of nine children on March 23, 1903 in Kilgore, Texas, Gregg County, Route 1. In 1903, Route 1 was simply a horse and buggy trail; today, it is a superhighway, Highway 1252. Growing up, she worked on a farm where she learned about growing cotton, corn, peanuts, white potatoes, sweet potatoes and watermelons, and also helped her father build churches throughout the community.

Later on, she operated a successful family store and café for those who came to work in the oil fields in Kilgore and afterward built her own café in Odessa, Texas. She also worked in the defense industry sewing tents and cooking for the soldiers in Waco, Texas.

Having moved here in 1963, Mother Essie Baxter Jones has been a resident of San Jose, California for 40 years and, throughout that time, she has been actively involved in the community, including her work in the Prayer Garden Church of God in Christ and Templo Juan 3:16 in San Jose, California.

Her "secrets" for lifelong happiness are: "Honor, obey and respect your mother and father; trust in the Lord and obey His Word; deal fairly with everyone; and save some of the money that you earn."

I want to thank Mother Essie Baxter Jones for her many years of service to our community and congratulate her on this milestone birthday, her 100th. Much has changed for the better during her lifetime and she contributed to the positive changes. May God bless her with years of happiness and service.

CONGRATULATING UF'S WOMEN'S TENNIS TEAM

HON. CLIFF STEARNS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. STEARNS. Mr. Speaker, it is with great pleasure that I rise today to recognize the 2003 University of Florida women's tennis team, for achieving the highest honor in collegiate play, the NCAA title. The Gators upset the top-ranked and two time defending champion Stanford in front of a spirited sellout crowd at Linder Stadium at Ring Tennis Complex in Gainesville, Florida.

This week the University of Florida women's tennis team has been invited to The White House to participate in the 2003 NCAA Spring Sports Championship Day, recognizing the NCAA team champions from the 2003 spring season. The 2003 Gator team will be UF's fourth national championship team to visit The White House, joining the 1996 football team, the 1998 soccer and 1998 women's tennis teams. I congratulate the Women's Tennis Team on their exceptional 2003 season and wish them the best of luck in 2004. Go Gators!

PERSONAL EXPLANATION

HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. GUTIERREZ. Mr. Speaker, I was unavoidably absent from this Chamber on May 13, 2003. I would like the record to show that, had I been present, I would have voted "yea" on rollcall votes 183, 184, and 185. On May 19, 2003, I was also unavoidably absent from this Chamber. I would like the record to show that had I been present, I would have voted "yea" on rollcall votes 192, 193, and 194. Furthermore, I was absent from this Chamber on May 23, 2003, and had I been present in this Chamber, I would have voted "nay" on rollcall vote 226.

TRIBUTE TO DR. MARGARET ALLEN, DR. RAMONCITA (RAYE) MAESTAS, AND DR. CHRISTINE SURAWICZ

HON. JIM McDERMOTT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. MCDERMOTT. Mr. Speaker, I rise today to pay tribute to three outstanding physicians, Dr. Margaret Allen, Dr. Ramoncita (Raye) Maestas, and Dr. Christine Surawicz, who have been nominated for the Local Legends project, sponsored by the American Medical Women's Association and the National Library of Medicine, to celebrate the lives and achievements of America's women physicians around the country.

Dr. Allen currently is Medical Director at the Hope Heart Institute in Seattle, where she conducts promising research on tissue repair and remodeling in cardiovascular disease, and cardiovascular gene therapy.

Dr. Allen is a pioneer in the field of cardiovascular disease. A cardiothoracic surgeon by training, she was recruited in 1985 by the University of Washington to develop and head its cardiac transplant service. This program received accreditation under Dr. Allen's leadership, and it has been a strong regional asset for many years. Dr. Allen served as director of the program from 1985 to 1996, and also directed the Pediatric Cardiac Transplant Program at Children's Hospital and Regional Medical Center.

Dr. Allen has been active in numerous professional and non-profit organizations throughout her career. Among other positions, she has served as President of the United Network for Organ Sharing (UNOS). Dr. Allen has worked diligently to improve access to organ transplantation and to diminish disparities in access across communities.

Dr. Maestas is a family physician at Harborview Medical Center in Seattle, and a member of the faculty at the University of Washington School of Medicine. Dr. Maestas has dedicated her professional career to caring for the medically underserved. Following her residency, Dr. Maestas practiced at the SeaMar Clinic, a federally qualified health center serving a largely Hispanic population. She then practiced and taught at the Providence Family Practice Residency Program within the Providence health care system, which has a long history of charitable care in the Seattle area. Her current practice site, the Harborview Medical Center, provides much of the safety net care to Seattle and King County residents.

Dr. Maestas is a distinguished educator. She serves on the faculty at Providence and the University of Washington, and is a leader in developing the new medical school curriculum at the University of Washington. Dr. Maestas also has made significant contributions to the community. Her prominent work on issues of domestic violence and cultural competency has gained her national recognition.

Dr. Surawicz is a gastroenterologist and faculty member at the University of Washington School of Medicine in Seattle. Dr. Surawicz has distinguished herself as a clinician, educator, researcher and administrator throughout her career at the University of Washington. She has directed the Gastroenterology Department since 1981, and since 1993 has served as Section Chief of Gastroenterology at Harborview Medical Center, which serves Seattle and King County. In 2002, Dr. Surawicz was appointed Assistant Dean for Faculty Development in the School of Medicine, a measure of the regard for her leadership among her peers.

Dr. Surawicz is widely recognized in her field of gastroenterology. She has published extensively in national and international peer-reviewed journals, and has held several board-level positions in national organizations, including service as President of the American College of Gastroenterology, and as Chair of the FDA's Gastrointestinal Drug Advisory Council.

I am honored to announce the selection of these physicians, nominated by their peers, each of whom has made significant contributions to her field of medicine and to her community. These extraordinary women are to be congratulated for their years of dedication and hard work. I ask my colleagues to join me today saluting Dr. Margaret Allen, Dr. Ramoncita (Raye) Maestas, and Dr. Christine Surawicz for their service and commitment to their profession and to our community.

CHARITABLE GIVING ACT, H.R. 7

HON. MARK E. SOUDER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. SOUDER. Mr. Speaker, why are we holding the poor hostage?

Earlier this year, both the House and the Senate overwhelmingly passed legislation that would provide non-itemizers the ability to claim a tax deduction for charitable giving. Yet here we are nearing the end of this session, and have yet to see a conference committee take up the legislation. Instead we have seen a great deal of negative rhetoric designed not to help the poor of our nations, but to advance individual political goals.

The money for social services needs to get into the hands of the men and women who are making the biggest impact on the lives of their communities. If we in Congress are to be good stewards of the public trust, we have to be certain that the money we dedicate for social services goes into the hands of the most effective organizations. To do otherwise would be a violation of the public's trust in us.

What we are talking about with the Charitable Giving Act, however, is not a case where we as the Congress have to make a decision about where the money should go. This legislation allows individuals across the nation to make those decisions. Who better to identify a communities needs, and the organizations that are most effectively addressing those needs, than the men and women who live and work in that community? I believe that the best way we can help the faith-based and community organizations who need financial assistance is to encourage private sector philanthropy for all individuals who contribute to charitable organizations, not just for those who itemize their tax returns. Approximately two-thirds of tax returns filed do not claim itemized deductions; therefore those individuals are unable to deduct their charitable giving. The majority of non-itemizers are low- and middle-income taxpayers These are the very taxpayers who would benefit from the Charitable Giving Act, and these are the very people are our best indicator of the effectiveness of an organization.

This legislation also has included a $150 million authorization for the Compassion Capital Fund. This authorization recognizes the unique contributions of smaller community and faith-based service organizations by making it possible for these organizations to obtain a grant that they can use to expand their impact on their neighborhoods. Many of our neighborhood service organizations do not possess the capacity to manage a million dollar grant. This does not mean that these smaller organizations are not effective. On the contrary, they may be the best organizations in town. Through the Compassion Capital Fund, intermediaries are able to issue smaller grants, and provide technical assistance that will allow more organizations the ability to increase their services to the poor.

The Charitable Giving Act contains, in large part, what I believe are the most significant ways the Federal Government can lend its support to social service organizations across the country. The government can be helpful in alleviating some of the problems facing our communities today, but we will never have enough resources to help everyone. We need to team up with faith-based and community organizations of all types to ensure that no matter how serious a person's need, they will have someplace to go for help. That place could be the local government agency, it could be the local church, or a community center. Partisan debate, while very entertaining, will not ultimately help the poor and hurting. Passing this legislation will. We all need to work together for the greater good by dropping the rhetorical bickering and get this legislation to the President's desk.

HONORING ROBERT "BOBBY" McDONNELL

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. PELOSI. Mr. Speaker, it is with great personal sadness that I pay final tribute to a good friend and a great leader in the San Francisco community—Robert "Bobby" McDonnell—who died on August 17th. His extraordinary work in the labor movement and in the community earned him the respect and appreciation of the City of San Francisco.

A native San Franciscan, Bobby graduated from Marin Catholic High School and attended the College of Marin and the University of San Francisco. Bobby McDonnell had a long and distinguished career dedicated to the working men and women of the San Francisco Bay Area. He served as Field Representative and as Secretary-Treasurer for the Laborers' International Union of America, AFL-CIO, Local 261 from 1968 to 1999. He was an Executive Board Member of the San Francisco Labor Council, and also a member of the San Francisco Building and Trades Council. His fierce commitment to the labor movement never ceased, and he advocated labor issues at every opportunity from coast to coast.

He was a member of the Golden Gate Bridge District's Board of Directors from 1984 until the time of his death, where he worked tirelessly to maintain a great public agency. His achievements during his long tenure are too many to list, but in all his endeavors, he served with passion, integrity and excellence.

He was a devoted and enthusiastic godfather to St. Vincent's School for Boys. He unselfishly worked as a volunteer, organizer and fundraiser not only for St. Vincent's, but also the United Way, the United Irish Cultural Center and the Amigos of Central Latino. One of his favorite activities was playing Santa Claus for the different organizations where he volunteered. It was a perfect job for him, because those who knew him say he spread joy and humor wherever he went.

To his wife Mary, his brother Danny, his stepsons Jerry, Michael, David and Harry, I extend my deepest sympathy and my profound appreciation for your sharing Bobby with us. We miss him greatly.

RECOGNIZING NATIONAL DIABETES AWARENESS MONTH

HON. HILDA L. SOLIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. SOLIS. Mr. Speaker, I rise today to recognize the month of November as National Diabetes Awareness Month.

An estimated 18.2 million people in the U.S., or 6.3 percent of the population have diabetes. According to the Centers for Disease Control and Prevention (CDC), while an estimated 13 million have been diagnosed with diabetes, 5.2 million do not even realize they are diabetics. The American Diabetes Association estimates the economic cost of diabetes in the U.S. in 2002 was $132 billion, or one out of every 10 health care dollars spent.

Diabetes is the number one disease-related cause of death in Los Angeles County. In California, more than 1.4 million California adults and 12,000 adolescents have been diagnosed with diabetes. Among adults ages 50–64, diabetes prevalence was significantly higher among African Americans (20.5 percent) and Latinos (17.9 percent) than whites (8.3 percent). Additionally, 176,000 adolescents not diagnosed with diabetes were at risk because they did not participate in regular physical activity and were overweight or at risk for being overweight.

I have been active in the efforts to combat diabetes because I know the burdens it imposes on people and their families. I am a cosponsor of the Diabetes Prevention Access and Care Act (H.R. 1916) which directs the National Institutes of Health to support research with respect to pre-diabetes and diabetes, particularly type II diabetes. This important legislation will help all Americans by providing much-needed diabetes prevention and outreach.

Although diabetes is an epidemic that is widespread, complicated, and severe, it can be controlled. Taking small steps like healthy diets and physical activity can lead to big rewards. Diabetes is a disease that permeates our communities, families, and friendships and we must do all that we can to stop the spread of this deadly disease.

TRIBUTE TO FIRST LIEUTENANT TODD JASON BRYANT

HON. KEN CALVERT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. CALVERT. Mr. Speaker, I rise to pay tribute to a hero from my congressional district. Earlier this afternoon, I had the distinct honor to attend the funeral service for Todd Jason Bryant, First Lieutenant, United States Army at Arlington National Cemetery. Today I would ask that the House of Representatives honor and remember this incredible young man who died in service to his country.

Todd was born on January 14, 1980, in Long Beach, California. Todd came from a military family and his desire and determination to join the military was resolute. He enlisted in the Army Reserve and completed Basic Training at Fort Sill, Oklahoma before his senior year of high school. He came to my office for an appointment to the U.S. Military Academy at West Point. I was proud to nominate this ambitious young man who I knew would distinguish himself at West Point, just as he had done his whole life.

He interned in my office before his senior year at West Point and graduated with a degree in Political Science on June 1, 2002. He would often joke that he was going to run for my congressional seat someday—I have no doubt he would have succeeded. After graduation, Todd attended the Armor Officer's Basic Course at Fort Knox, Kentucky, graduating in December 2002. He reported to Fort Riley, Kansas in January 2003, and was initially assigned to Headquarters and Headquarters Company, 1st, Battalion 34th Armor Regiment where he served as an Assistant Operations Officer. In April of 2003, Todd was reassigned to C Company, 1–34 AR where he assumed duties as Platoon Leader, 3rd Platoon. On August 30, 2003, Todd and Jenifer Reardon were married in Pennsylvania, nine days before shipping out with his unit in support of Operation Iraqi Freedom. On Friday, October 31, 2003, Todd was killed by an explosive device as his Humvee traveled on a road between Fallujah and Baghdad. He was 23 years old.

As we look at the incredibly rich military history of our country we realize that this history is comprised of men, just like Todd, who bravely fought for the ideals of freedom and democracy. Each story is unique and humbling for those of us who, far from the dangers they have faced, live our lives in relative comfort and ease. Today was probably the hardest day the Bryant family has ever faced and my thoughts, prayers and deepest gratitude for their sacrifice goes out to them. There are no words that can relieve their pain. Larry and Linda Bryant have raised an extraordinary family. Their oldest son, Tim is a Major in the Marines, their daughter, Tiffany, is a Captain in the Army and Todd, First Lieutenant in the United States Army, recipient of the Meritorious Service Medal, National Defense Service Medal Army Service Ribbon, Bronze Star, and the Purple Heart has been laid to rest in our country's most distinguished military cemetery.

His wife and family have all given a part of themselves today in the loss of their loved one and I hope they know that their son, the goodness he brought to this world and the sacrifice he has made, will not be forgotten.

MOURNING THE DEATH OF CHARLEY SCHNEIDER

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. PORTER. Mr. Speaker, I rise today to mourn the passing of a good friend and a pillar of the community in Southern Nevada, Charley Schneider. I had the privilege of working with Charley, and cannot do justice to what a great person and friend Charley was.

Charley Schneider was born in San Antonio, Texas in 1938, but moved to Basic, Nevada, as Henderson was known at the time, in 1949. He was a graduate of Basic High School and worked at Farmers Insurance for 33 years. Charley was a wonderful person to work with, always willing to lend a hand, listen when you needed to talk to someone, and helped customers above and beyond the requirements of his job. Charley retired from Farmers 3 years ago, and looked forward to being able to spend more time with his wife Maggie and daughter Stevie. Sadly, Charley passed away last weekend at the age of 65. I urge all members of this House to join me in mourning the passing of Charley Schneider and extending our condolences to the family and friends who greatly loved him.

TRIBUTE TO THE MOUNTAIN LODGE NO. 281, F.&A.M. AND THE JUNIATA LODGE NO. 282, F.&A.M.

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. SHUSTER. Mr. Speaker, I rise today to congratulate the Mountain Lodge No. 281, F.&A.M. and the Juniata Lodge No. 282, F.&A.M. on their 150th Anniversary and to thank them for their service and dedication to their community.

From its home town of Edinburgh, England, the Honorable Fraternity of Freemasonry came to Pennsylvania in 1730 on a mission to spread the Masonic vision of a "Brotherhood of man under the Fatherhood of God." Out of this need for brotherhood, the Mountain Lodge and Juniata Lodge were founded on December 8, 1853. Since that date these two lodges have consistently exhibited the qualities to which they are committed, sharing with their community a moral code based upon honesty, strength of character, and the highest standard of ethics.

The Freemasons lead their communities by the example that they set in their own lives as they work to uphold the very pillars of the American society. Each Freemason is taught to be true, the crucial attribute that provides the basis for all virtues of man, and to maintain a devotion to spirituality and intellectual growth. Additionally, they bear a strong commitment to artistic and cultural excellence. While cultivating all of the above characteristics, a freemason's family values remain strong and devoted. These organizations have not only enriched the lives of their members, but of those in the surrounding communities who have undoubtedly benefitted from the charity, education and service that they have repeatedly provided.

This nation was built by a group of men, bound by brotherhood under the direction of God, who believed in the natural rights of freedom and democracy. The members of these Masonic lodges have worked daily for 150 years to preserve that "Brotherhood of man under the Fatherhood of God," and the standard of excellence upon which it was founded. The growing and active memberships of these organizations are a symbol of the community's devotion to success and the promise that is to come. As a proud member of the Juniata Lodge, I congratulate these two Masonic lodges on their 150th Anniversary and thank them for all their hard work and service.

NATIONAL FAMILY CAREGIVERS MONTH

HON. JAMES R. LANGEVIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. LANGEVIN. Mr. Speaker, as you may know, November is National Family Caregivers Month, and I rise today to celebrate and honor our nation's caregivers. Nationwide, more than 25 million caregivers annually provide over $200 billion in unpaid care to their loved ones with disabling and chronic conditions. More importantly, this voluntary care allows seniors and others to continue living at home, which improves their spirits and often speeds up recovery.

Family caregiving comes in many forms—from the mother raising a child with developmental disabilities and fighting for her child's right to an education, to the wife caring for her husband with Alzheimer's Disease and enduring that anguish. There are as many unique situations as there are family caregivers. But, what these caregivers all have in common is their compassion, their dedication and their selflessness. Family caregiving contributes to family stability, and it often spares families from more costly, out-of-home placements. These people are the quiet heroes of our nation. However, too often, they are also silent sufferers.

Most caregivers freely and willingly provide this care out of love and commitment, but often at great cost to themselves physically, emotionally, and financially. Studies show that many caregivers stretch themselves so thin that they jeopardize their own health and ability to provide continued care to their dependent loved ones.

In my home state of Rhode Island, Tracey Laranjo is the mother of ten-year-old Tyler. Tyler is bipolar and suffers from Severe Attention Deficit Hyperactivity Disorder, Obsessive Compulsive Disorder, and certain developmental disabilities. Tyler is also an important member of the Laranjo family—the gifts and the love he brings to his parents and older brother are not really different than any other ten year old. Tyler is a lucky child, with parents who have fought long and hard to get him the mental health services that he needs, while educating themselves about how to take care of their son. But not surprisingly, sometimes Tracey is exhausted. After a long wait, she was fortunate enough to recently access respite care services in Rhode Island and can now take an occasional break, knowing that her son is being properly cared for. She refers to these respite hours, 110 hours per year, as "gold"—saving them for times she knows she needs them, and grateful for every minute. These hours give Tracey time to recoup without feeling guilty, and let her reflect on the special child she has been blessed with.

Just a few hours of respite can go a long way in keeping a family together, keeping a child at home, and turning a situation where a vulnerable person was at risk of abuse into one where that same person feels loved, respected and valued. No family should ever be denied this kind of assistance.

However, the vast majority of family caregivers does not have access to respite, cannot afford it, cannot find qualified, trained respite services or providers, or do not qualify for existing respite benefits because they are not Medicaid eligible or do not meet the limited eligibility requirements of other narrowly-targeted state or federal programs. As we celebrate National Family Caregivers Month, we must remember that for a person providing intense and exhausting care 24 hours a day, 7 days a week, 365 days a year, an occasional short break can literally be a lifesaver.

In keeping with the Supreme Court's Olmstead decision requiring states to ensure that individuals with disabilities and chronic conditions are able to live and work in the least restrictive environment, respite provides the support caregivers need to avoid or delay institutional placements.

We can recognize and honor the nation's caregivers by passing the Lifespan Respite Care Act of 2003, which I introduced this spring. H.R. 1083 would authorize competitive grants to states and other eligible entities to make respite available and accessible to family caregivers, regardless of age or disability. This legislation would help states maximize use of existing resources and leverage new dollars by building on current services and systems that states already have in place. The bill would support planned and emergency respite, respite worker training and recruitment, caregiver training, and program evaluation.

The Senate has already passed the Lifespan Respite Care Act of 2003. I urge my colleagues to join the 85 bipartisan cosponsors of the House bill and ask that the House take immediate action to pass it in time to honor the nation's caregivers in celebration of National Family Caregivers Month.

OIL AND GAS INDUSTRY, YOU'VE GOT A FRIEND (OR 246) IN CONGRESS

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Mr. FILNER. Mr. Speaker, today is a sad day in the history of Congress. Today one industry has hijacked a political party and that party has bulldozed a poor energy policy through this body.

The U.S. Congress is often held up and revered as the model of Democracy. Yet this bill has been bad news for Americans—and our form of government—from the start. First, the Administration, led by Vice President CHENEY, held secret meetings with energy industry insiders to determine what they wanted from an energy policy—what the energy industry wants should not be confused with what the nation needed from an energy policy. Next, after a heavy-handed process, a bill, H.R. 6, was passed in this body. The bill then moved into conference, at which point, the two Republican co-chairs decided that they would write the nation's energy policy by themselves with no input from Democrats, but with plenty of input from lobbyists looking out for their oil, gas and other energy industry clients. The energy bill went from bad to worse as, at the last minute, many sweetheart deals were added that had never been passed by either body. Never before has the energy industry had such a friend in the White House and such great friends in the Congress—we know now that GOP does indeed mean "Gas, Oil, and Petroleum".

Thus far, I have only addressed the problems with the process surrounding this bill. The problems with the policy are too numerous to name here, but I want to highlight some of the more outrageous:

It does not improve our energy security and does nothing to promote renewable energy sources. This bill funnels billions of dollars into the oil and gas industries, making us more dependent than ever on foreign sources for these resources. In fact, only ⅓ of the subsidies in this bill go toward promoting clean, renewable energy that we can find right here in the U.S.A. The policy before us today is stuck in the 20th century and does not take advantage of the advances in technology in the clean and renewable energy arena, and prefers to favor older, dirtier methods to generate our energy supply.

It does not protect our water from contaminants that can cause serious health problems.

This bill actually protects MTBE (methyl tertiary butyl ether) producers from product liability suits. MTBE has been proven to be harmful to our health, yet this bill leaves the taxpayers to clean up the mess and lets the producers off scot-free. California, more than any other state has been affected by MTBE. In some cities, many of the drinking water wells are now unusable because of MTBE contamination.

It exempts the oil and gas construction activities from Clean Water Act controls on stormwater runoff. I introduced a motion to instruct conferees on H.R. 6 that would have struck language that gave oil and gas construction activities a free pass from controlling their stormwater runoff. This exemption makes them the only construction activity that does not have to take measures to ensure that runoff from their construction sites does not pollute our lakes, streams and rivers. Unfortunately, my motion did not pass and this harmful handout to the oil and gas industry remains.

It does not address the problems that caused the California Energy Crisis of 2000–2001. This bill does nothing to prevent the kind of market manipulation that caused energy prices to skyrocket in California. Even the most conservative estimates indicate that California lost over $9 billion to this manipulation by energy companies. This bill leaves California—and the rest of the Nation—without any protections against market manipulation.

It is for these reasons and many more that I cannot and will not support this awful bill. This bill has been bought and paid for by the energy industry—mostly the oil and gas industries. Unfortunately, all Americans will pay the price for this bad bill.

ENERGY POLICY ACT OF 2003

HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 2003

Ms. LEE. Mr. Speaker, the Energy Policy Act of 2003 that unfortunately passed this afternoon is a failure in process and policy.

The Republican majority squandered a historic opportunity to forge a truly bipartisan consensus that would meet the nation's immediate needs while expanding conservation and encouraging renewable energy to wean us from foreign oil.

The Republican majority has steamrolled concerns, facts, and opposition, all to benefit powerful energy industries at the expense of American people.

This bill not only fails to promote a healthy energy policy, it will also cost the American people over $140 billion over the next decade.

These costs include industry subsidies, taxbreaks, authorizations for new government spending, and mandates that increase consumer prices for gasoline and electricity.

This legislation continues the Bush administration's rollbacks of environmental protections while steamrolling the public interest.

It was written for big energy companies by big energy companies to benefit big energy companies, with a $16 billion package of tax breaks and production subsidies for the oil, coal, and nuclear industries.

Mr. Speaker, this bill threatens more than the pocketbooks of the American people, it also poses an imminent threat to our Nation's air quality, drinking water, and public lands.

We see this threat to our public health most clearly in my home State of California.

MTBE, a known cause of cancer, is leaking out of storage tanks, but this bill shields MTBE producers and oil companies from product liability lawsuits and pays them $2 billion.

This gasoline additive, intended to reduce air pollution, has contaminated groundwater supplies in numerous California communities.

In addition to weakening clean water protections, this bill will crack open the door for offshore drilling by shifting control of projects off California's coastline toward the Federal Government.

It also requires a faster permitting process and the easing of some environmental rules to promote energy development on public lands.

This bill will cause catastrophic harm to the public health and the public interest.

This bill is a total failure based on taxbreaks and subsidies alone.

What makes this bill even more difficult to stomach is the possibility of what could have been.

This bill does not, for example, provide a clear direction for the development of the electricity grid.

This bill also does not encourage the U.S. car industry to manufacture vehicles that consume less fuel and produce fewer pollutants.

Additionally, this bill does not significantly encourage energy conservation and it does nothing to wean this country from oil and gas imports.

Tragically, America needs a new energy policy. Just not this one.

We need an energy bill that would remove subsidies and market distortions.

We need a progressive energy policy that would invest in energy efficiency and renewable energy sources instead of fossil fuels. Such a policy would create four times as many jobs without adding to the deficit, burdening taxpayers, or poisoning our air and water.

I strongly opposed this bill because of its complete failure to protect America's environment, protect America's health, and protect American taxpayers.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, November 20, 2003 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

NOVEMBER 21

9 a.m.
Foreign Relations
To hold hearings to examine the nomination of James C. Oberwetter, of Texas, to be Ambassador to the Kingdom of Saudi Arabia.
SD–419

10 a.m.
Health, Education, Labor, and Pensions
To hold hearings to examine the nomination of Steven J. Law, of the District of Columbia, to be Deputy Secretary of Labor.
SD–430

NOVEMBER 24

10 a.m.
Judiciary
Business meeting to consider pending calendar business.
SD–226